TITLE 42—THE PUBLIC HEALTH AND WELFARE

CHAPTER 1—THE PUBLIC HEALTH SERVICE

SUBCHAPTER I—GENERALLY

SUBCHAPTER II—PAY

SUBCHAPTER I—GENERALLY

§§ 1 to 1j. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 1, acts July 1, 1902, ch. 1370, §1, 32 Stat. 712; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309, provided that Public Health and Marine Hospital Service should be known as the Public Health Service. See section 202 of this title.

Section 1a, act Nov. 11, 1943, ch. 298, §1, 57 Stat. 587, provided for organization and function of Public Health Service. See section 203 of this title.

Section 1b, act Nov. 11, 1943, ch. 298, §2, 57 Stat. 587, provided for appointment of Assistant Surgeons General, their grade, pay, and allowances. See sections 206, 207, and 210 of this title.

Section 1c, act Nov. 11, 1943, ch. 298, §3, 57 Stat. 587, provided for chiefs of divisions, their grade, pay and allowances, and creation of a Dental Division and a Sanitary Engineering Division. See sections 206, 207, and 210 of this title.

Section 1d, act Nov. 11, 1943, ch. 298, §4, 57 Stat. 587, provided for temporary promotions in regular corps in time of war. See section 211 of this title.

Section 1e, act Nov. 11, 1943, ch. 298, §5, 58 Stat. 588, provided for review of record of officers above grade of assistant surgeon and their separation from service. See section 211 of this title.

Section 1f, act Nov. 11, 1943, ch. 298, §6, 58 Stat. 588, provided for an acting Surgeon General during absence of Surgeon General and Assistant to Surgeon General. See section 206 of this title.

Section 1g, act Nov. 11, 1943, ch. 298, §7, 57 Stat. 588, provided for death and disability benefits of commissioned officers during war and for transfer of Service to military forces. See sections 213 and 217 of this title.

Section 1h, act Nov. 11, 1943, ch. 298, §8, 57 Stat. 589, provided for commissioned officers' benefits as civil officers and employees of United States and election of benefits. See Title 5, Government Organization and Employees.

Section 1i, act Nov. 11, 1943, ch. 298, §9, 57 Stat. 589, provided for beneficiaries' benefits where commissioned officer lost his life on active duty between Dec. 7, 1941, and Nov. 11, 1943.

Section 1j, act Nov. 11, 1943, ch. 298, §11, 57 Stat. 589, provided for transfer of appropriations to continue transferred functions. See note set out under section 201 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly §611, of act July 1, 1944, which repealed these sections, was renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; §813 by act July 30, 1956, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506; §1213 by Pub. L. 92–294. §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936.

§ 2. Omitted

CODIFICATION

Section, acts Feb. 3, 1905, ch. 297, 33 Stat. 650; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309; 1939 Reorg. Plan No. I, eff. July 1, 1939, §201, 4 F.R. 2728, 53 Stat. 1424, which provided for jurisdiction of Federal Security Agency over the Service, was superseded by section 202 of this title.

REPEALS

Act Aug. 14, 1912, ch. 288, §1, 37 Stat. 309, which changed name of Public Health and Marine Hospital Service of the United States to Public Health Service was repealed by act July 1, 1944, ch. 373, title XIII, §1313, 58 Stat. 714, renumbered by acts Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; July 30, 1956, ch. 779, §3(b), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, §4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, §3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, §6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, §3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, §2(b)(2); 87 Stat. 604, and repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973,

87 Stat. 936. Act July 1, 1944, retained the name Public Health Service.

§§ 3, 4. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 3, acts July 1, 1902, ch. 1370, § 9, 32 Stat. 714; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for rules and regulations of service by the President. See section 216 of this title.

Section 4, R.S. § 4802; acts July 1, 1902, ch. 1370, § 9, 32 Stat. 714; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for an annual report by Surgeon General to Federal Security Administrator. See section 229 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b). Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2). Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

§ 5. Omitted

CODIFICATION

Section, act Mar. 4, 1915, ch. 167, § 4, 38 Stat. 1191, provided for appointment to higher grade of officers of Public Health Service detailed with the former Isthmian Canal Commission.

§§ 6 to 15a. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 6, acts July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for care of sick and disabled seamen. See section 249 of this title.

Section 6a, act Mar. 31, 1936, ch. 161, 49 Stat. 1185, provided for care of seamen on Government vessels not in Military or Naval Establishments and of cadets on State school ships. See section 249 of this title.

Section 7, act Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for investigations by Service into diseases, etc., and publications relating thereto. See section 241 of this title.

Section 8, acts July 1, 1902, ch. 1370, § 4, 32 Stat. 713; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for use of Service in time of war. See section 217 of this title.

Section 8a, act Apr. 9, 1930, ch. 125, § 2(a), 46 Stat. 150, provided for extension of facilities of Service to health officials and scientists. See section 241 of this title.

Section 9, act Oct. 1, 1918, ch. 179, § 2, 40 Stat. 1008, provided for suppression of Spanish influenza and other communicable diseases. See section 264 of this title.

Section 9a, act Apr. 9, 1930, ch. 125, § 3, 46 Stat. 150, provided that administrative office and bureau divisions in District of Columbia be a part of departmental organization and scientific offices and research laboratories as part of field services. See section 203 of this title.

Section 10, acts Mar. 3, 1875, ch. 130, 18 Stat. 377; July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for appointment of Surgeon General. See section 205 of this title.

Section 11, R.S. § 4802; acts July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for supervisory powers of Surgeon General. See section 203 of this title.

Section 11a, act Apr. 9, 1930, ch. 125, § 10(b), 46 Stat. 152, provided for pay and allowances of Surgeon General and for reversion in grade on expiration of term. See sections 205 and 207 of this title.

Section 11b, act Aug. 9, 1939, ch. 606, 53 Stat. 1266, provided for rank and pay of Assistant to Surgeon General. See sections 206 and 207 of this title.

Section 12, acts Jan. 4, 1889, ch. 19, § 1, 25 Stat. 639; July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for appointment of medical officers after examination. See section 209 of this title.

Section 13, act Jan. 4, 1889, ch. 19, § 2, 25 Stat. 639, provided for original appointments as assistant surgeons and promotion of passed assistant surgeon. See sections 209 and 211 of this title.

Section 14, act Aug. 14, 1912, ch. 288, § 2, 37 Stat. 309, provided for help as provided by Congress. See section 209 of this title.

Section 15, acts Mar. 3, 1891, ch. 541, 26 Stat. 923; July 31, 1894, ch. 174, 28 Stat. 179; July 1, 1902, ch. 1370, § 1, 32 Stat. 712, provided for details for duty in bureau. See section 215 of this title.

Section 15a, acts Mar. 2, 1895, ch. 177, § 1, 28 Stat. 780; July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for detail of two hospital attendants for duty in laboratory. See section 215 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b). Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2). Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

§ 16. Omitted

CODIFICATION

Section, which was from the Interior Department Appropriation Act, 1950, act Oct. 12, 1949, ch. 680, title I, 63 Stat. 791, was not repeated in the General Appropriation Act, 1951, act Sept. 6, 1950, ch. 896, 64 Stat. 595. It related to detail of Public Health medical officers to the Bureau of Mines. For provisions for details to executive departments, see section 215 of this title.

Similar provisions were contained in the following prior acts:

June 29, 1948, ch. 754, 62 Stat. 1139.
July 25, 1947, ch. 337, 61 Stat. 483.
July 1, 1946, ch. 529, 60 Stat. 375.
July 3, 1945, ch. 262, 59 Stat. 351.
June 28, 1944, ch. 298, 58 Stat. 499.
July 12, 1943, ch. 219, 57 Stat. 485.
July 2, 1942, ch. 473, 56 Stat. 548.
June 28, 1941, ch. 259, 55 Stat. 345.
June 18, 1940, ch. 395, 54 Stat. 444.
May 10, 1939, ch. 119, 53 Stat. 725.
May 9, 1938, ch. 187, 52 Stat. 330.
Aug. 9, 1937, ch. 570, 50 Stat. 602.
June 22, 1936, ch. 691, 49 Stat. 1791.
May 9, 1935, ch. 101, 49 Stat. 205.
Apr. 7, 1934, ch. 104, title III, 48 Stat. 564.
Mar. 1, 1933, ch. 144, title III, 47 Stat. 1406.
July 1, 1932, ch. 361, title III, 47 Stat. 516.
Feb. 23, 1931, ch. 280, title III, 46 Stat. 1349.
Apr. 18, 1930, ch. 184, title III, 46 Stat. 212.
Jan. 25, 1929, ch. 102, title III, 45 Stat. 1133.
Feb. 15, 1928, ch. 57, title III, 45 Stat. 103.
Feb. 24, 1927, ch. 189, title III, 44 Stat. 1219.
Apr. 29, 1926, ch. 195, title III, 44 Stat. 368.
Jan. 24, 1923, ch. 42, 42 Stat. 1210.
Mar. 4, 1921, ch. 161, 41 Stat. 1401.
June 5, 1920, ch. 235, 41 Stat. 911.
July 19, 1919, ch. 24, 41 Stat. 199.
July 1, 1918, ch. 113, 40 Stat. 671.

REPEALS

Act July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714, as renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat.

1049; Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; July 30, 1956, ch. 779, §3(b), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, §4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, §3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, §6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, §3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, §2(b)(2), 87 Stat. 604, and repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936, repealed portions of Appropriations Acts June 12, 1917, ch. 27, §1, 40 Stat. 146; May 24, 1922, ch. 199, 42 Stat. 588; Jan. 24, 1923, ch. 42, 42 Stat. 1210; June 5, 1924, ch. 264, 43 Stat. 422; Mar. 3, 1925, ch. 462, 43 Stat. 1175, which contained similar provisions to those of this section, but later appropriation acts containing such provisions were not repealed.

§§ 17 to 25e. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 17, act Oct. 1, 1918, ch. 178, 40 Stat. 992, provided for a detail for duty with Department of Agriculture. See section 215 of this title.

Section 17a, act Apr. 9, 1930, ch. 125, §1, 46 Stat. 150, provided for a detail for duty with executive and independent departments carrying on public health activities. See section 215 of this title.

Section 17b, act Apr. 9, 1930, ch. 125, §2(a), 46 Stat. 150, provided for a detail for duty with educational and research institutions. See section 215 of this title.

Section 17c, act Apr. 26, 1939, ch. 92, §1, 53 Stat. 620, provided for a detail for duty on vessels of Coast and Geodetic Survey. See section 215 of this title.

Section 18, act Oct. 27, 1918, ch. 196, 40 Stat. 1017, provided for a Reserve of the Public Health Service. See sections 204, 207, 209, and 210 of this title.

Section 18a, act Apr. 9, 1930, ch. 125, §6, 46 Stat. 151, provided for assignment of Reserve officers to active duty and for such service counting for promotion credits. See section 204 of this title.

Section 18b, act Mar. 18, 1943, ch. 17, title I, 57 Stat. 24, provided for distribution of Reserve officers among the several grades. See section 209 of this title.

Section 19, acts Feb. 19, 1897, ch. 265, 29 Stat. 554; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309, provided for leaves of absence for medical officers. See section 210–1 of this title.

Section 20, act July 9, 1917, ch. 37, 40 Stat. 242, provided for pensions to officers detailed for service with Coast Guard, Army, or Navy. See section 213 of this title.

Section 21, acts July 1, 1902, ch. 1370, §5, 32 Stat. 713; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309; Apr. 9, 1930, ch. 125, §13, 46 Stat. 152; May 26, 1930, ch. 320, §1, 46 Stat. 379, provided for establishment of National Advisory Health Council as an advisory board for National Institute of Health. See section 218 of this title.

Section 21a, act Aug. 10, 1939, ch. 636, 53 Stat. 1338, provided for compensation of National Advisory Health Council. See section 210 of this title.

Section 22, acts July 1, 1902, ch. 1370, §6, 32 Stat. 713; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309; May 26, 1930, ch. 320, §1, 46 Stat. 379, provided for appointment of chiefs of divisions and director of institute, and their pay and allowances. See sections 206 and 210 of this title.

Section 23, act Mar. 4, 1913, ch. 149, 37 Stat. 915, provided for pay of director of Hygienic Laboratory which is now known as the National Institute of Health. See section 210 of this title.

Section 23a, act May 26, 1930, ch. 320, §1, 46 Stat. 379, provided that Hygienic Laboratory should be succeeded by the National Institute of Health and that all laws, authorizations, and appropriations of Hygienic Laboratory should become applicable to its successor.

Section 23b, act May 26, 1930, ch. 320, §2, 46 Stat. 379, provided for acceptance of gifts by Federal Security Administrator. See section 219 of this title.

Section 23c, act May 26, 1930, ch. 320, §3, 46 Stat. 380, provided for detailing to duty of scientists receiving fellowships. See sections 209 and 241 of this title.

Section 23d, act May 26, 1930, ch. 320, §4, 46 Stat. 380, provided for appointment and compensation of personnel of the National Institute of Health. See section 209 of this title.

Section 23e, act May 26, 1930, ch. 320, §5, 46 Stat. 380, provided that facilities of the National Institute of Health be available to States, counties, and municipalities. See section 241 of this title.

Section 23f, act May 26, 1930, ch. 320, §6, 46 Stat. 380, provided for rank, pay, and allowances of Director of the Institute. See sections 206, 207, and 210 of this title.

Section 23g, acts Apr. 9, 1930, ch. 125, §2(b), 46 Stat. 150; May 26, 1930, ch. 320, §1, 46 Stat. 379, provided for additional divisions in Institute as authorized by Administrator. See section 203 of this title.

Section 24, act July 9, 1918, ch. 143, ch. XV, §3, 40 Stat. 886, provided for establishment of a Division of Venereal Diseases.

Section 25, act July 9, 1918, ch. 143, ch. XV, §4, 40 Stat. 886, provided for duties of Division of Venereal Diseases.

Section 25a, act July 9, 1918, ch. 143, ch. XV, §4a, as added May 24, 1938, ch. 267, 52 Stat. 439, provided for appropriations to assist political subdivisions in venereal disease work. See sections 241 and 246 of this title.

Section 25b, act July 9, 1918, ch. 143, ch. XV, §4b, as added May 24, 1938, ch. 267, 52 Stat. 439, provided for allotments to political subdivisions for venereal disease work. See section 246 of this title.

Section 25c, act July 9, 1918, ch. 143, ch. XV, §4c, as added May 24, 1938, ch. 267, 52 Stat. 439, provided for payments from allotments to political subdivisions. See section 246 of this title.

Section 25d, act July 9, 1918, ch. 143, ch. XV, §4d, as added May 24, 1938, ch. 267, 52 Stat. 439, provided for rules and regulations governing the Division of Venereal Diseases, is covered by section 216 of this title.

Section 25e, act July 9, 1918, ch. 143, ch. XV, §4e, as added May 24, 1938, ch. 267, 52 Stat. 439, provided for construction of sections 25a to 25e of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly §611 of act July 1, 1944, which repealed these sections, was renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; §813 by act July 30, 1956, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506; §1213 by Pub. L. 92–294, §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2). Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936.

§ 26. Isolation of civilians for protection of military, air and naval forces

The Secretary of the Army, the Secretary of the Air Force and the Secretary of the Navy are authorized and directed to adopt measures for the purpose of assisting the various States in caring for civilian persons whose detention, isolation, quarantine, or commitment to institutions may be found necessary for the protection of the military, air and naval forces of the United States against venereal diseases.

(July 9, 1918, ch. 143, ch. XV, §2, 40 Stat. 886.)

CODIFICATION

The Secretary of the Air Force was inserted in text under the authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, and Secretary of Defense Transfer Order No. 40 [App. A(73)], July 22, 1949. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947. Sections 205(a) and 207 (a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sec-

tions 3010 to 3013 and 8010 to 8013 continued the Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

TRANSFER OF FUNCTIONS

For transfer of certain functions insofar as they pertain to the Air Force, and to the extent that they were not previously transferred to the Secretary of the Air Force from the Secretary of the Army, see Secretary of Defense Transfer Order No. 40 [App. A(73)], July 22, 1949.

§ 27. Definitions

The terms ''State'' and ''States,'' as used in this chapter, shall be held to include the District of Columbia.

(July 9, 1918, ch. 143, ch. XV, § 8, 40 Stat. 887.)

REFERENCES IN TEXT

This chapter, referred to in text, means chapter XV of act July 9, 1918, ch. 143, 40 Stat. 887, which, insofar as classified to the Code, enacted sections 24 to 27 of this title and amended section 28 of this title. For complete classification of this Act to the Code, see Tables.

§§ 28 to 43. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 28, acts July 1, 1902, ch. 1370, § 3, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309; July 9, 1918, ch. 143, ch. XV, § 3, 40 Stat. 886, provided divisions under Assistant Surgeons General and the rank, pay, and allowances of said Assistants. See sections 206, 207, and 210 of this title.

Section 28a, act Apr. 9, 1930, ch. 125, § 10(c), 46 Stat. 152, provided for a chief of the narcotics division. See section 206 of this title.

Section 29, acts July 1, 1902, ch. 1370, § 7, 32 Stat. 713; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for conferences with State and Territorial boards of health. See section 242n of this title.

Section 30, acts July 1, 1902, ch. 1370, § 8, 32 Stat. 714; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for compilation of mortality, morbidity, and vital statistics. See section 242k(g) of this title.

Section 31, act June 5, 1920, ch. 235, § 1, 41 Stat. 883, provided that officers of Service could make allotments of their pay. See section 704 of Title 37, Pay and Allowances of the Uniformed Services.

Section 32, act Mar. 6, 1920, ch. 94, § 1, 41 Stat. 507, provided for purchase of quartermaster supplies by officers of Service. See section 210 of this title.

Section 33, act Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1378, provided for limitations on expenditure of appropriations. See section 227 of this title.

Section 33a, act May 14, 1935, ch. 110, 49 Stat. 229, provided for covering into Treasury moneys collected for treatment of foreign seamen and other pay patients. See section 221 of this title.

Section 34, acts July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 2, 37 Stat. 309; Apr. 9, 1930, ch. 125, § 10(a), 46 Stat. 152, provided for titles for officers of the Service. See section 207 of this title.

Section 35, act Apr. 9, 1930, ch. 125, § 10(a), 46 Stat. 152, provided titles for officers other than medical officers of Service. See section 207 of this title.

Section 36, act Apr. 9, 1930, ch. 125, § 10(a), 46 Stat. 152, provided titles for officers in grade of Assistant Surgeons General. See section 206 of this title.

Section 37, acts Apr. 9, 1930, ch. 125, § 9, 46 Stat. 151; Nov. 11, 1943, ch. 298, § 7, 57 Stat. 588, provided for promotions, pay and allowances, and severance from Service of commissioned officers. See sections 209 et seq. of this title.

Section 38, act Apr. 9, 1930, ch. 125, § 4, 46 Stat. 150, provided for appointment and grades of medical, dental, sanitary engineer, and pharmacist officers. See section 209 of this title.

Section 39, Apr. 9, 1930, ch. 125, § 5, 46 Stat. 150, provided for number, pay and allowances, and service credits for pay purposes of medical, dental, sanitary engineer, and pharmacist officers. See sections 209 et seq. of this title.

Section 40, act Apr. 9, 1930, ch. 125, § 11, 46 Stat. 152, provided for appointment and qualifications of employees other than commissioned officers. See section 209 of this title.

Section 41, act Apr. 9, 1930, ch. 125, § 7, 46 Stat. 151, provided for appointment of persons other than commissioned officers for scientific research. See section 209 of this title.

Section 42, act Apr. 9, 1930, ch. 125, § 12, 46 Stat. 152, provided for medical and hospital services to officers disabled by sickness or injury. See sections 213 and 248 of this title.

Section 43, act Mar. 3, 1919, ch. 98, § 3, 40 Stat. 1303, related to transfer of property and equipment to Service. Act Mar. 4, 1921, ch. 156, 41 Stat. 1365, formerly cited to section 43, was repealed by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2). Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

§§ 44, 45. Repealed. Oct. 31, 1951, ch. 654, § 1(45), 65 Stat. 703

Section 44, act Mar. 15, 1920, ch. 100, § 1, 41 Stat. 530; 1939 Reorg. Plan No. I, § 201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424, related to transfer of surplus motor-propelled vehicles in War Department (now Department of the Army) to Federal Security Agency for use of Public Health Service.

Section 45, act Mar. 15, 1920, ch. 100, § 4, 41 Stat. 531; 1939 Reorg. Plan No. I, § 201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424, related to freight charges for transfer of motor-propelled vehicles in War Department (now Department of the Army) to Federal Security Agency for use of Public Health Service.

§ 46. Omitted

CODIFICATION

Section, which related to relocation of physicians and dentists, was from the First Supplemental National Defense Appropriation Act, 1944, act Dec. 23, 1943, ch. 380, title I, § 101, 57 Stat. 617, and was not repeated in subsequent appropriation acts.

SUBCHAPTER II—PAY

§ 61. Omitted

CODIFICATION

Section, acts Jan. 22, 1925, ch. 87, title I, 43 Stat. 774; Mar. 2, 1926, ch. 43, title I, § 1, 44 Stat. 147, related to travel expenses for travel on Government owned vessels and was superseded by section 404 et seq. of Title 37, Pay and Allowances of the Uniformed Services.

§ 62. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section, act May 18, 1920, ch. 190, § 11 (proviso), 41 Stat. 604, related to longevity pay and credit for service in other branches. See section 517 of Title 10, Armed Forces, and sections 201, and 203 to 205 of Title 37, Pay and Allowances of the Uniformed Services.

§ 63. Omitted

CODIFICATION

Section, acts May 28, 1924, ch. 203, 43 Stat. 194; Feb. 11, 1925, ch. 209, 43 Stat. 872; May 21, 1926, ch. 355, 44 Stat. 604, which related to time spent at the Military and Naval Academies, expired with the appropriation acts of which it was a part.

§ 64. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section, act May 18, 1920, ch. 190, § 12, 41 Stat. 604, related to transportation of dependents. See sections 404 to 407 and 409 to 411 of Title 37, Pay and Allowances of the Uniformed Services.

§§ 64a to 64c. Omitted

CODIFICATION

Section 64a, act Feb. 21, 1929, ch. 288, 45 Stat. 1254, defined child and children as used in section 64 of this title, and was superseded by section 401 of Title 37, Pay and Allowances of the Uniformed Services.

Section 64b, act June 24, 1935, ch. 291, § 3, 49 Stat. 421, defined permanent change in station as used in section 64 of this title and was superseded by section 411 of Title 37.

Provisions of section 64c, which related to use of government automobiles to transport school children at isolated stations, were enacted as permanent legislation by the 1948 amendment to section 227 of this title. Section 64c was based upon the following prior appropriation acts:

June 14, 1948, ch. 465, title II, 62 Stat. 400.
July 8, 1947, ch. 210, title II, 61 Stat. 267.
July 26, 1946, ch. 672, title II, 60 Stat. 690.
July 3, 1945, ch. 263, title II, 59 Stat. 368.
June 28, 1944, ch. 302, title II, 58 Stat. 559.
July 12, 1943, ch. 221, title II, 57 Stat. 507.
July 2, 1942, ch. 475, title II, 56 Stat. 582.
July 1, 1941, ch. 269, title II, 55 Stat. 483.
June 26, 1940, ch. 428, title II, 54 Stat. 587.

§ 65. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section, acts Mar. 2, 1923, ch. 178, title I, 42 Stat. 1385; Aug. 4, 1949, ch. 393, § 11, 63 Stat. 559, prohibited issuance of heat or light in kind to any person in Public Health Service while such person is receiving an allowance for rental of quarters.

§§ 66 to 69. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 66, act Apr. 9, 1930, ch. 125, § 8, 46 Stat. 151, provided for disability pay for commissioned officers. See section 212 of this title.

Section 67, act May 14, 1937, ch. 180, title I, 50 Stat. 148, provided for compensation of field employees rendering part-time and call services. See section 210 of this title.

Section 68, acts June 26, 1940, ch. 428, title II, 54 Stat. 584; July 1, 1941, ch. 269, title II, 55 Stat. 480, provided transportation funds for shipment of deceased officers. See section 224 of this title.

Section 69, acts May 27, 1908, ch. 200, 35 Stat. 373; May 13, 1938, ch. 213, 52 Stat. 352; Oct. 28, 1943, ch. 289, 57 Stat. 583, provided for settlement of accounts of deceased officers and men. See section 2771 of Title 10, Armed Forces.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b). Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294. § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2). Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

§ 70. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 655

Section, act June 30, 1949, ch. 286, title I, 63 Stat. 365, provided for a per diem allowance of officers detailed to the Coast Guard.

Acts June 26, 1943, ch. 147, title I, 57 Stat. 210; Mar. 31, 1943, ch. 30, § 1, 57 Stat. 55; June 22, 1944, ch. 269, title I, 58 Stat. 315; May 29, 1945, ch. 130, 59 Stat. 216; July 12, 1946, ch. 569, § 1, 60 Stat. 530; July 1, 1947, ch. 186, title I, 61 Stat. 225; June 19, 1948, ch. 558, title I, 62 Stat. 562, which contained provisions similar to section 70 of this title, were repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 651–654.

§ 70a. Repealed. Dec. 28, 1945, ch. 597, § 4, 59 Stat. 662

Section, act Oct. 27, 1943, ch. 287, § 6, 57 Stat. 583, provided for reimbursement for property lost or destroyed in service while serving with the Navy.

CHAPTER 1A—THE PUBLIC HEALTH SERVICE; SUPPLEMENTAL PROVISIONS

§§ 71 to 71*l*. Transferred

CODIFICATION

Section 71, act Apr. 9, 1930, ch. 125, § 1, 46 Stat. 150, which provided for a detail for duty with executive and independent departments carrying on public health activities, was transferred to section 17a of this title.

Section 71a, act Apr. 9, 1930, ch. 125, § 2(a), 46 Stat. 150, which provided for a detail for duty with educational and research institutions, was transferred to section 17b of this title.

Section 71b, act Apr. 9, 1930, ch. 125, § 2(a), 46 Stat. 150, which provided for extension of facilities of Service to health officials and scientist, was transferred to section 8a of this title.

Section 71c, acts Apr. 9, 1930, ch. 125, § 2(b), 46 Stat. 150; May 26, 1930, ch. 320, § 1, 46 Stat. 379, which provided for additional divisions in Institute as authorized by Federal Security Administrator, was transferred to section 23g of this title.

Section 71d, act Apr. 9, 1930, ch. 125, § 3, 46 Stat. 150, which provided that administrative office and bureau divisions in District of Columbia be a part of departmental organization and scientific offices and research laboratories be a part of the field service, was transferred to section 9a of this title.

Section 71e, act Apr. 9, 1930, ch. 125, § 4, 46 Stat. 150, which provided for appointment and grades of medical, dental, sanitary, engineer, and pharmacist officers, was transferred to section 38 of this title.

Section 71f, act Apr. 9, 1930, ch. 125, § 5, 46 Stat. 150, which provided for number, pay and allowances, and service credits for pay purposes of medical, dental, sanitary, engineer, and pharmacist officers, was transferred to section 39 of this title.

Section 71g, act Apr. 9, 1930, ch. 125, § 6, 46 Stat. 151, which provided for assignment of Reserve officers to active duty and for such service counting for promotion credits, was transferred to section 18a of this title.

Section 71h, act Apr. 9, 1930, ch. 125, § 7, 46 Stat. 151, which provided for appointment of persons other than commissioned officers for scientific research, was transferred to section 41 of this title.

Section 71i, act Apr. 9, 1930, ch. 125, § 8, 46 Stat. 151, which provided for disability pay for commissioned officers, was transferred to section 66 of this title.

Section 71j, act Apr. 9, 1930, ch. 125, § 9, 46 Stat. 151, which provided for promotions and pay and allowances

of commissioned officers, was transferred to section 37 of this title.

Section 71k, act Apr. 9, 1930, ch. 125, §10(a), 46 Stat. 152, which provided titles for officers other than medical officers of Service, was transferred to section 35 of this title.

Section 71*l*, act Apr. 9, 1930, ch. 125, §10(a), 46 Stat. 152, which provided titles for officers in grade of Assistant Surgeon General, was transferred to section 36 of this title.

§ 71m. Omitted

CODIFICATION

Section, act Apr. 9, 1930, ch. 125, §10(a), 46 Stat. 152, which provided for repeal of limitation upon number of senior surgeons and Assistant Surgeons General at large of Public Health Service on active duty, was executed to section 34 of this title.

§§ 71n to 71q. Transferred

CODIFICATION

Section 71n, act Apr. 9, 1930, ch. 125, §10(b), 46 Stat. 152, which provided for pay and allowances of Surgeon General and for reversion in grade on expiration of term, was transferred to section 11a of this title.

Section 71*o*, act Apr. 9, 1930, ch. 125, §10(c), 46 Stat. 152, which provided for a Chief of the Narcotics Division, was transferred to section 28a of this title.

Section 71p, act Aug. 9, 1930, ch. 125, §11, 46 Stat. 152, which provided for appointment and qualifications of employees other than commissioned officers, was transferred to section 40 of this title.

Section 71q, act Apr. 9, 1930, ch. 125, §12, 46 Stat. 152, which provided for medical and hospital services to officers disabled by sickness or injury, was transferred to section 42 of this title.

§ 71r. Omitted

CODIFICATION

Section, acts Apr. 9, 1930, ch. 125, §13, 46 Stat. 152; May 26, 1930, ch. 320, §1, 46 Stat. 379, which changed the name of the Advisory board for National Institute of Health to the National Advisory Health Council and provided for appointment of additional members and the terms of service, compensation, and allowances for such additional members and an additional function for the Council, was executed to section 21 of this title.

CHAPTER 2—SANITATION AND QUARANTINE

Sec.

§§ 81 to 87. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 81, act Feb. 15, 1893, ch. 114, §1, 27 Stat. 449, provided penalties for entry of vessels in violation of quarantine laws. See section 271 of this title.

Section 82, acts Feb. 15, 1893, ch. 114, §2, 27 Stat. 450; Aug. 18, 1894, ch. 300, 28 Stat. 372; Feb. 27, 1921, ch. 80, 41 Stat. 1149; Feb. 7, 1925, ch. 146, 43 Stat. 809; July 10, 1940, ch. 566, 54 Stat. 747, provided for bills of health. See section 269 of this title.

Section 82a, act Feb. 15, 1893, ch. 114, §13, as added Mar. 3, 1931, ch. 409, §1, 46 Stat. 1491, provided for duplicate bills of health. See section 269 of this title.

Section 83, act Feb. 15, 1893, ch. 114, §11, as added Mar. 3, 1901, ch. 836, 31 Stat. 1087, provided that vessels from foreign ports without bill of health not entering the United States were subject to quarantine regulations.

Section 84, act Feb. 15, 1893, ch. 114, §6, 27 Stat. 452, provided for disposition of infected vessels.

Section 85, act June 19, 1906, ch. 3433, §4, 34 Stat. 300, provided penalties for infractions of quarantine. See section 271 of this title.

Section 86, act Apr. 29, 1878, ch. 66, §1, 20 Stat. 37, prohibited entry of vessels and vehicles contrary to State quarantine laws. See sections 264 to 272 of this title. Compliance with State laws, see section 97 of this title.

Section 87, act Apr. 17, 1917, ch. 3, 40 Stat. 6, provided for payment of cost of fumigation and disinfection of foreign vessels.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly §611 of act July 1, 1944, which repealed these sections, was renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; §813 by act July 30, 1956, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506; §1213 by Pub. L. 92–294, §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936.

§ 88. Discharge of cargo of vessel in quarantine

Whenever, by the health laws of any State, or by the regulations made pursuant thereto, any vessel arriving within a collection district of such State is prohibited from coming to the port of entry by law established for such district, and such health laws require or permit the cargo of the vessel to be unladen at some other place within or near to such district, the collector, after due report to him of the whole of such cargo, may grant his warrant or permit for the unlading and discharge thereof, under the care of the surveyor, or of one or more inspectors, at some other place where such health laws permit, and upon the conditions and restrictions which shall be directed by the Secretary of Health and Human Services, or which such collector may, for the time, deem expedient for the security of the public revenue.

(R.S. §4793; 1939 Reorg. Plan No. I, §201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Words ''or delivery'' after ''port of entry'' which were included in this section as originally enacted were omitted as ports of delivery were abolished pursuant to the President's Message to Congress on Mar. 3, 1913, set out in Codification note under section 1 of Title 19, Customs Duties.

R.S. §4793 derived from act Feb. 23, 1799, ch. 12, §2, 1 Stat. 619.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agen-

cy and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Department of the Treasury relating to public health transferred to Federal Security Agency pursuant to Reorg. Plan No. I of 1939, set out in the Appendix to Title 5, Government Organization and Employees.

§ 89. Quarantine warehouses; erection

There shall be purchased or erected, under the orders of the President, suitable warehouses, with wharves and inclosures, where merchandise may be unladen and deposited, from any vessel which shall be subject to a quarantine, or other restraint, pursuant to the health laws of any State, at such convenient places therein as the safety of the public revenue and the observance of such health laws may require.

(R.S. § 4794.)

CODIFICATION

R.S. § 4794 derived from act Feb. 23, 1799, ch. 12, § 3, 1 Stat. 620.

§ 90. Deposit of goods in warehouses

Whenever the cargo of a vessel is unladen at some other place than the port of entry under sections 88 and 89 of this title, all the articles of such cargo shall be deposited, at the risk of the parties concerned therein, in such public or other warehouses or inclosures as the collector shall designate, there to remain under the joint custody of such collector and of the owner, or master, or other person having charge of such vessel, until the same are entirely unladen or discharged, and until the articles so deposited may be safely removed without contravening such health laws. And when such removal is allowed, the collector having charge of such articles may grant permits to the respective owners or consignees, their factors or agents, to receive all merchandise which has been entered, and the duties accruing upon which have been paid, upon the payment by them of a reasonable rate of storage; which shall be fixed by the Secretary of Health and Human Services for all public warehouses and inclosures.

(R.S. § 4795; 1939 Reorg. Plan No. I, § 201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1953 Reorg. Plan No. 1, §§ 5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

R.S. § 4795 derived from act Feb. 23, 1799, ch. 12, § 2, 1 Stat. 619.

Omission of words ''or delivery'' after ''port of entry'', see Codification note set out under section 88 of this title.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Department of the Treasury relating to public health transferred to Federal Security Agency pursuant to Reorg. Plan No. I of 1939, set out in the Appendix to Title 5, Government Organization and Employees.

§ 91. Extending time for entry of vessels subject to quarantine

The Secretary of Health and Human Services is authorized, whenever a conformity to such quarantines and health laws requires it, and in respect to vessels subject thereto, to prolong the terms limited for the entry of the same, and the report or entry of their cargoes, and to vary or dispense with any other regulations applicable to such reports or entries. No part of the cargo of any vessel shall, however, in any case, be taken out or unladen therefrom, otherwise than is allowed by law, or according to the regulations established by sections 88 and 90 of this title.

(R.S. § 4796; 1939 Reorg. Plan No. I, § 201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

R.S. § 4796 derived from act Feb. 23, 1799, ch. 12, § 1, 1 Stat. 619.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education and Welfare by section 5 of 1953 Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Department of the Treasury relating to public health transferred to Federal Security Agency pursuant to Reorg. Plan No. I of 1939, set out in the Appendix to Title 5, Government Organization and Employees.

§§ 92 to 96. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 92, acts Feb. 15, 1893, ch. 114, § 3, 27 Stat. 450; July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for enforcement of quarantine regulations. See sections 264 to 267 of this title.

Section 92a, acts Apr. 29, 1878, ch. 66, § 5, 20 Stat. 38; July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, § 1, 37 Stat. 309, provided for a national quarantine system. See sections 264 to 267 of this title.

Section 93, acts Feb. 15, 1893, ch. 114, § 4, 27 Stat. 451; July 1, 1902, ch. 1370, § 1, 32 Stat. 712; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for duties of Surgeon General relating to quarantine. See sections 264 to 270 of this title.

Section 94, act Feb. 15, 1893, ch. 114, § 5, 27 Stat. 451, provided for regulations to secure sanitary conditions of vessels. See section 269 of this title.

Section 94a, act Feb. 15, 1893, ch. 114, § 14, as added Mar. 3, 1931, ch. 409, § 1, 46 Stat. 1492, provided for hours

of inspection at quarantine stations. See section 267 of this title.

Section 94b, act Feb. 15, 1893, ch. 114, §16, as added Mar. 3, 1931, ch. 409, §1, 46 Stat. 1492, provided for schedule of charges and payment of them. See section 269 of this title.

Section 94c, act Feb. 15, 1893, ch. 114, §15, as added Mar. 3, 1931, ch. 409, §1, 46 Stat. 1492, provided for procurement of health certificates. See section 269 of this title.

Section 94d, act Feb. 15, 1893, ch. 114, §17, as added Mar. 3, 1931, ch. 409, §1, 46 Stat. 1492, provided medical and hospital benefits to officers and employees of national quarantine service. See section 253 of this title.

Section 94e, act Mar. 3, 1931, ch. 409, §3, 46 Stat. 1492, provided for extended quarantine service. See section 267 of this title.

Section 95, acts Mar. 27, 1890, ch. 51, §1, 26 Stat. 31; July 1, 1902, ch. 1370, §1, 32 Stat. 712; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309, related to regulations to prevent spread of communicable diseases. See section 264 of this title.

Section 96, act June 19, 1906, ch. 3433, §6, 34 Stat. 301, provided that jurisdiction over established station acquired by the United States be ceded before payment of compensation.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly §611, of act July 1, 1944, which repealed these sections, was renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, 83, §9(b), 62 Stat. 47; §813 by act July 30, 1956, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506; §1213 by Pub. L. 92–294, §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936.

§ 97. State health laws observed by United States officers

The quarantines and other restraints established by the health laws of any State, respecting any vessels arriving in, or bound to, any port or district thereof, shall be duly observed by the officers of the customs revenue of the United States, by the masters and crews of the several Coast Guard vessels, and by the military officers commanding in any fort or station upon the seacoast; and all such officers of the United States shall faithfully aid in the execution of such quarantines and health laws, according to their respective powers and within their respective precincts, and as they shall be directed, from time to time, by the Secretary of Health and Human Services. But nothing in title 58 of the Revised Statutes shall enable any State to collect a duty of tonnage or impost without the consent of Congress.

(R.S. §4792; Jan. 28, 1915, ch. 20, §1, 38 Stat. 800; 1939 Reorg. Plan No. I, §201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; Aug. 4, 1949, ch. 393, §§1, 20, 63 Stat. 496, 561; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Title 58 of the Revised Statutes, referred to in text, was in the original ''this Title'' meaning title 58 of the Revised Statutes, consisting of R.S. §§4792 to 4800, which were classified to sections 88 to 91, 97, and 112 to 114 of this title and section 8 of former Title 4, Flag and Seal, Seat of Government, and the States. Such section 8 of former Title 4 was repealed by act July 30, 1947, ch. 389, §2, 61 Stat. 645, and reenacted by the first section thereof as section 73 of Title 4. For complete classification of R.S. §§4792 to 4800 to the Code, see Tables.

CODIFICATION

R.S. §4792 derived from act Feb. 23, 1799, ch. 12, §1, 1 Stat. 619.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Department of the Treasury relating to public health transferred to Federal Security Agency pursuant to Reorg. Plan No. I of 1939, set out in the Appendix to Title 5, Government Organization and Employees.

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

''Coast Guard vessels'' substituted in text for ''revenue-cutters'', Revenue Cutter Service and Life-Saving Service having been combined to form Coast Guard by section 1 of act Jan. 28, 1915. That act was repealed by section 20 of act Aug. 4, 1949, section 1 of which reestablished the Coast Guard by enacting Title 14, Coast Guard.

§ 98. Vessels for quarantine officers

The Secretary of the Navy is authorized, in his discretion, at the request of the Secretary of Health and Human Services, to place gratuitously, at the disposal of the proper quarantine authorities, at any of the ports of the United States, to be used temporarily for quarantine purposes, such vessels or hulks belonging to the United States as are not required for other uses of the national government, subject to such restrictions and regulations as the Secretary of the Navy may deem necessary to impose for the preservation thereof.

(June 14, 1879, No. 6, 21 Stat. 50; Feb. 15, 1893, ch. 114, 27 Stat. 449; July 1, 1902, ch. 1370, §1, 32 Stat. 712; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309; 1939 Reorg. Plan No. I, §201, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REPEALS

Act Feb. 15, 1893, ch. 114, 27 Stat. 449, cited as a credit to this section and which abolished the National Board of Health and placed all duties relating to quarantines and quarantine regulations with the Marine Hospital Service, was repealed by act July 1, 1944, ch. 373, title XIII, §1313, formerly §611, 58 Stat. 714, renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; §813 by act July

30, 1956, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec 24, 1970, 84 Stat. 1506; §1213 by Pub. L. 92–294, §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2), Nov. 16, 1973, 87 Stat. 604.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Public Health Service and its functions and personnel transferred from Department of the Treasury to Federal Security Agency pursuant to Reorg. Plan No. I of 1939, set out in the Appendix to Title 5, Government Organization and Employees.

Marine Hospital Service was redesignated Public Health and Marine Hospital Service by act July 1, 1902, ch. 1370, §1, 32 Stat. 712, which in turn was redesignated Public Health Service by act Aug. 14, 1912, ch. 288, §1, 37 Stat. 309.

National Board of Health was abolished and all duties relating to quarantines and quarantine regulations were placed in Marine Hospital Service by act Feb. 15, 1893, ch. 114, 27 Stat. 449.

§§ 99 to 108. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 99, act Feb. 15, 1893, ch. 114, §12, as added Mar. 3, 1901, ch. 836, 31 Stat. 1087, authorized medical officers performing duties as quarantine officers to administer oaths. See section 272 of this title.

Section 100, act Feb. 15, 1893, ch. 114, §8, 27 Stat. 452, provided compensation for use of State buildings for quarantine purposes.

Section 101, act June 19, 1906, ch. 3433, §5, 34 Stat. 301, provided for acquisition of quarantine stations. See section 267 of this title.

Section 102, act Feb. 15, 1893, ch. 114, §10, as added Mar. 3, 1901, ch. 836, 31 Stat. 1086; amended July 1, 1902, ch. 1370, §1, 32 Stat. 712, provided for establishment of quarantine grounds. See sections 267 and 271 of this title.

Section 103, act June 19, 1906, ch. 3433, §1, 34 Stat. 299, provided for control and management of quarantine grounds. See section 267 of this title.

Section 104, acts June 19, 1906, ch. 3433, §2, 34 Stat. 299; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309, provided for transferal of title of land and water from other departments to Service for its use.

Section 105, act June 19, 1906, ch. 3433, §3, 34 Stat. 300, provided for notice of selection of places for quarantine stations and anchorages.

Section 106, acts Aug. 1, 1888, ch. 727, 25 Stat. 355; July 1, 1902, ch. 1370, §1, 32 Stat. 712; Aug. 14, 1912, ch. 288, §1, 37 Stat. 309, provided penalties for trespass on quarantine stations. See section 271 of this title.

Section 107, act Mar. 27, 1890, ch. 51, §2, 26 Stat. 31, provided penalties for the violation of quarantine laws by officers of Service. See section 271 of this title.

Section 108, act Mar. 27, 1890, ch. 51, §3, 26 Stat. 32, provided penalties for the violation of quarantine laws by common carriers. See section 271 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly §611, of act July 1, 1944, which repealed these sections, was renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; §813 by act July 30, 1956, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506; §1213 by Pub. L. 92–294, §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936.

§ 109. Repealed. May 29, 1928, ch. 901, § 1(24), 45 Stat. 986, 988

Section, acts June 12, 1917, ch. 27, 40 Stat. 121; June 5, 1920, ch. 235, 41 Stat. 885; Feb. 17, 1922, ch. 55, 42 Stat. 380; Jan. 3, 1923, ch. 22, 42 Stat. 1102; Apr. 4, 1924, ch. 84, title I, 43 Stat. 76; Jan. 20, 1925, ch. 85, 43 Stat. 757; Jan. 22, 1925, ch. 87, title I, 43 Stat. 775, required a detailed report to be made to Congress of expenditures to prevent epidemics.

§§ 110, 111. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 110, acts June 5, 1920, ch. 235, 41 Stat. 875; June 16, 1921, ch. 23, 42 Stat. 38, provided for a schedule of charges for vessels at New York quarantine station. See section 269 of this title.

Section 111, act Feb. 15, 1893, ch. 114, §7, 27 Stat. 452, provided for suspension of immigration. See section 265 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly §611 of act July 1, 1944, which repealed these sections, was renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; §813 by act July 30, 1958, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506; §1213 by Pub. L. 92–294, §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936.

§ 112. Removal of revenue officers from port during epidemic

Whenever, by the prevalence of any contagious or epidemic disease in or near the place by law established as the port of entry for any collection district, it becomes dangerous or inconvenient for the officers of the revenue employed therein to continue the discharge of their respective offices at such port, the Secretary of the Treasury, or, in his absence, the Undersecretary of the Treasury, may direct the removal of the officers of the revenue from such port to any other more convenient place, within, or as near as may be to, such collection district. And at such place such officers may exercise the same powers, and shall be liable to the same duties, according to existing circumstances, as in the port or district established by law. Public notice of any such removal shall be given as soon as may be.

(R.S. §4797; July 31, 1894, ch. 174, §4, 28 Stat. 205; June 10, 1921, ch. 18, §301, 42 Stat. 23; Feb. 17, 1922, ch. 55, 42 Stat. 366.)

CODIFICATION

R.S. 4797 derived from act Feb. 23, 1799, ch. 12, §4, 1 Stat. 620.

Acts July 31, 1894, and June 10, 1921, abolished offices of First Comptroller and Comptroller of the Treasury. ''Undersecretary of the Treasury'' was substituted in text for ''the First Comptroller'' on authority of act Feb. 17, 1922.

§ 113. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section, R.S. § 4799, act Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, related to adjournment of courts during an epidemic.

§ 114. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, R.S. § 4800, related to removal of prisoners during an epidemic.

CHAPTER 3—LEPROSY

§§ 121 to 125. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 121, acts Mar. 3, 1905, ch. 1443, § 1, 33 Stat. 1009; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for establishment in perpetuity of a hospital station and laboratory at Molokai, Hawaii.

Section 122, act Mar. 3, 1905, ch. 1443, § 3, 33 Stat. 1009, provided for admission and treatment of leper patients. See section 255 of this title.

Section 123, acts Mar. 3, 1905, ch. 1443, § 4, 33 Stat. 1009; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for detail of officers and employees for leprosy work. See section 215 of this title.

Section 124, acts Mar. 3, 1905, ch. 1443, § 6, 33 Stat. 1010; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided regulations for administration of hospital station and laboratory.

Section 125, acts Mar. 3, 1905, ch. 1443, § 7, 33 Stat. 1010; Mar. 4, 1911, ch. 285, § 1, 36 Stat. 1394; Aug. 14, 1912, ch. 288, § 1, 37 Stat. 309, provided for additional pay and allowances to officers detailed on leprosy duty. See section 210 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–134, § 2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

§§ 131 to 135. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 131, act Feb. 3, 1917, ch. 26, § 1, 39 Stat. 872, provided for establishment of a leprosy home in the United States.

Section 132, act Feb. 3, 1917, ch. 26, § 4, 39 Stat. 873, provided for erection of buildings for the home.

Section 133, act Feb. 3, 1917, ch. 26, § 2, 39 Stat. 873, provided for receipt of lepers into the home. See section 255 of this title.

Section 134, act Feb. 3, 1917, ch. 26, § 3, 39 Stat. 873, provided for regulations governing the home. See section 255 of this title.

Section 135, act Feb. 3, 1917, ch. 26, § 5, 39 Stat. 873, provided for additional pay of officers detailed to duty at said home. See section 210 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–204, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

CHAPTER 3A—CANCER

§§ 137 to 137g. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 137, act Aug. 5, 1937, ch. 565, § 1, 50 Stat. 559, provided for establishment of National Cancer Institute. See section 281 of this title.

Section 137a, act Aug. 5, 1937, ch. 565, § 2, 50 Stat. 559, provided for powers and duties of Surgeon General. See section 282 of this title.

Section 137b, act Aug. 5, 1937, ch. 565, § 3, 50 Stat. 560, provided for establishment of National Advisory Cancer Council. See section 218 of this title.

Section 137c, act Aug. 5, 1937, ch. 565, § 4, 50 Stat. 560, provided for powers and functions of Council. See section 284 of this title.

Section 137d, act Aug. 5, 1937, ch. 565, § 5, 50 Stat. 561, provided for administration of powers by Surgeon General. See section 283 of this title.

Section 137e, act Aug. 5, 1937, ch. 565, § 6, 50 Stat. 561, provided for acceptance of gifts. See section 283 of this title.

Section 137f, act Aug. 5, 1937, ch. 565, § 7, 50 Stat. 561, provided for appropriations. See section 285 of this title.

Section 137g, act Aug. 5, 1937, ch. 565, § 8, 50 Stat. 562, related to appointment of officers, functions under other provisions, regulations, reports, effective date, and citation. See sections 209, 216, 229, and 286 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly § 611, of act July 1, 1944, which repealed these sections, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; § 713 by act Feb. 28, 1948, ch 83, § 9(b), 62 Stat. 47; § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919; § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931; § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506; § 1213 by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137; § 1313 by Pub. L. 93–154, § 2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

CHAPTER 4—VIRUSES, SERUMS, TOXINS, ANTITOXINS, ETC.

§§ 141 to 148. Repealed. July 1, 1944, ch. 373, title XIII, § 1313, 58 Stat. 714

Section 141, act July 1, 1902, ch. 1378, § 1, 32 Stat. 728, provided for regulation of sale of and interstate traffic of viruses, serums, toxins, antitoxins, etc. See section 262 of this title.

Section 142, act July 1, 1902, ch. 1378, § 2, 32 Stat. 729, related to falsely labeling or marking container or package. See section 262 of this title.

Section 143, act July 1, 1902, ch. 1378, § 3, 32 Stat. 729, provided for inspection of manufacturing establishments. See section 262 of this title.

Section 144, act July 1, 1902, ch. 1378, § 4, 32 Stat. 729, provided for inspection of foreign manufacturing establishments. See section 262 of this title.

Section 145, acts July 1, 1902, ch. 1370, § 1, 32 Stat. 712; July 1, 1902, ch. 1378, § 4, 32 Stat. 729; Aug. 14, 1912, ch. 288, 37 Stat. 309, provided for issuing of licenses to manufacturing establishments. See section 262 of this title.

Section 146, act July 1, 1902, ch. 1378, § 5, 32 Stat. 729, provided for enforcement of regulations. See section 262 of this title.

Section 147, act July 1, 1902, ch. 1378, § 6, 32 Stat. 729, provided against interfering with officers. See section 262 of this title.

Section 148, act July 1, 1902, ch. 1378, § 7, 32 Stat. 729, related to penalties for offenses. See section 262 of this title.

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly §611, of act July 1, 1944, which repealed these sections, was renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; §813 by act July 30, 1956, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506; §1213 by Pub. L. 92–294, §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936.

CHAPTER 5—MATERNITY AND INFANCY WELFARE AND HYGIENE

§§ 161 to 175. Repealed. Jan. 22, 1927, ch. 53, § 2, 44 Stat. 1024, eff. June 30, 1929

Section 161, act Nov. 23, 1921, ch. 135, §3, 42 Stat. 224, related to creation of Board of Maternity and Infant Hygiene and administration of this chapter by Children's Bureau.

Section 162, act Nov. 23, 1921, ch. 135, §1, 42 Stat. 224, related to authorization of appropriations.

Section 163, acts Nov. 23, 1921, ch. 135, §2, 42 Stat. 224; Jan. 22, 1927, ch. 53, §1, 44 Stat. 1024, related to amount and apportionment of appropriations.

Section 164, act Nov. 23, 1921, ch. 135, §4, 42 Stat. 225, related to acceptance of provisions of this chapter by the States.

Section 165, act Nov. 23, 1921, ch. 135, §5, 42 Stat. 225, related to deduction of administrative expenses from appropriation.

Section 166, act Nov. 23, 1921, ch. 135, §6, 42 Stat. 225, related to clerical assistants for Children's Bureau.

Section 167, act Nov. 23, 1921, ch. 135, §7, 42 Stat. 225, related to apportionment of appropriation to States.

Section 168, act Nov. 23, 1921, ch. 135, §8, 42 Stat. 225, related to submission and approval of plans by States.

Section 169, act Nov. 23, 1921, ch. 135, §9, 42 Stat. 225, related to power of representatives of Children's Bureau to enter homes and to take charge of children.

Section 170, act Nov. 23, 1921, ch. 135, §10, 42 Stat. 225, related to certification of amounts apportioned to States.

Section 171, act Nov. 23, 1921, ch. 135, §11, 42 Stat. 226, related to reports by States.

Section 172, act Nov. 23, 1921, ch. 135, §12, 42 Stat. 226, related to limitation on expenditure of amounts apportioned to States.

Section 173, act Nov. 23, 1921, ch. 135, §13, 42 Stat. 226, related to requirement that Children's Bureau perform duties assigned to it by this chapter.

Section 174, act Nov. 23, 1921, ch. 135, §14, 42 Stat. 226, related to construction of this chapter.

Section 175, act Mar. 10, 1924, ch. 46, §3, 43 Stat. 17, related to extension of this chapter to Hawaii.

CHAPTER 6—THE CHILDREN'S BUREAU

Sec.

§ 191. Bureau established

There shall be established in the Department of Health and Human Services a bureau to be known as the Children's Bureau.

(Apr. 9, 1912, ch. 73, §1, 37 Stat. 79; Mar. 4, 1913, ch. 141, §3, 37 Stat. 737; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was formerly classified to section 18 of Title 29, Labor.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Federal Security Agency'' substituted for ''Department of Labor'' pursuant to Reorg. Plan No. 2 of 1946, set out in the Appendix to Title 5, Government Organization and Employees, which transferred Children's Bureau, exclusive of its Industrial Division, from Department of Labor to Federal Security Agency. Functions of Bureau, its Chief, and of Secretary of Labor relating to such functions transferred to Federal Security Administrator.

Functions authorized by section 192 of this title and such other functions of Federal Security Agency as Administrator might designate were to be administered through Children's Bureau under his direction and control.

Functions of Children's Bureau under sections 201 to 216, 217 to 219 of Title 29, Labor, transferred to Secretary of Labor.

For transfer of personnel, property, records and funds, see section 12 of Reorg. Plan No. 2 of 1946.

Act Apr. 9, 1912, established Children's Bureau in Department of Commerce and Labor. Act Mar. 4, 1913, transferred Children's Bureau to Department of Labor, which was created by that act, and was authority for substitution of ''Department of Labor'' for ''Department of Commerce and Labor''.

§ 192. Chief of bureau; investigations and reports

The Children's Bureau shall be under the direction of a chief, to be appointed by the President, by and with the advice and consent of the Senate. The said bureau shall investigate and report to the Secretary of Health and Human Services, upon all matters pertaining to the welfare of children and child life among all classes of our people, and shall especially investigate the questions of infant mortality, the birth rate, orphanage, juvenile courts, desertion, dangerous occupations, accidents and diseases of children, employment, legislation affecting children in the several States and Territories. But no official, or agent, or representative of said bureau shall, over the objection of the head of the family, enter any house used exclusively as a family residence. The chief of said bureau may from time to time publish the results of these investigations in such manner and to such extent as may be prescribed by the Secretary.

(Apr. 9, 1912, ch. 73, §2, 37 Stat. 79; Mar. 4, 1913, ch. 141, §§3, 6, 37 Stat. 737, 738; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

In the first sentence of this section, provisions which specified an annual compensation of $5,000 for the chief

of the Childrens Bureau have been omitted superseded. Following enactment of the Classification Act of 1923, the compensation was fixed in accordance with that Act. See act Feb. 27, 1925, title IV, 43 Stat. 1050. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, §8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees. Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

Section was formerly classified to section 18a of Title 29, Labor.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Federal Security Administrator'' substituted for ''said department'' and for ''Secretary of Labor'' pursuant to Reorg. Plan No. 2 of 1946. See note set out under section 191 of this title.

''Secretary of Labor'' substituted for ''Secretary of Commerce and Labor'' pursuant to act Mar. 4, 1913. See note set out under section 191 of this title.

§ 193. Assistant chief

There shall be in the Children's Bureau, until otherwise provided for by law, an assistant chief, to be appointed by the Secretary of Health and Human Services.

(Apr. 9, 1912, ch. 73, §3, 37 Stat. 80; Mar. 4, 1913, ch. 141, §§3, 6, 37 Stat. 737, 738; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section 3 of act Apr. 9, 1912, also provided for compensation of assistant chief and for appointment and compensation of other employees of the bureau.

Section was formerly classified to section 18b of Title 29, Labor.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out in as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Federal Security Administrator'' substituted for ''Secretary of Labor'' pursuant to Reorg. Plan No. 2 of 1946. See note set out under section 191 of this title.

''Secretary of Labor'' substituted for ''Secretary of Commerce and Labor'' pursuant to act Mar. 4, 1913. See note set out under section 191 of this title.

§ 194. Quarters for bureau

The Secretary of Health and Human Services is directed to furnish sufficient quarters for the work of this bureau at an annual rental not to exceed $2,000.

(Apr. 9, 1912, ch. 73, §4, 37 Stat. 80; Mar. 4, 1913, ch. 141, §3, 37 Stat. 737; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was formerly classified to section 18c of Title 29, Labor.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Federal Security Administrator'' substituted for ''Secretary of Labor'' pursuant to Reorg. Plan No. 2 of 1946. See note set out under section 191 of this title.

''Secretary of Labor'' substituted for ''Secretary of Commerce and Labor'' pursuant to act Mar. 4, 1913. See note set out under section 191 of this title.

CHAPTER 6A—PUBLIC HEALTH SERVICE

SUBCHAPTER I—ADMINISTRATION AND MISCELLANEOUS PROVISIONS

Sec.

SUBCHAPTER I—ADMINISTRATION AND MISCELLANEOUS PROVISIONS

§ 201. Definitions

When used in this chapter—

(a) The term ''Service'' means the Public Health Service;

(b) The term ''Surgeon General'' means the Surgeon General of the Public Health Service;

(c) Unless the context otherwise requires, the term ''Secretary'' means the Secretary of Health and Human Services.

(d) The term ''regulations'', except when otherwise specified, means rules and regulations made by the Surgeon General with the approval of the Secretary;

(e) The term ''executive department'' means any executive department, agency, or independent establishment of the United States or any corporation wholly owned by the United States;

(f) Except as provided in sections 246(g)(4)(B),[1] 247c(c)(1),[1] 254d(h)(3),[1] 263c(5),[1] 264(d), 292a(9),[1] 300a(c), 300f(13), and 300n(1)[1] of this title, the term ''State'' includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(g) The term ''possession'' includes, among other possessions, Puerto Rico and the Virgin Islands;

(h) Repealed. Pub. L. 97–35, title IX, § 986(a), Aug. 13, 1981, 95 Stat. 603.

(i) The term ''vessel'' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, exclusive of aircraft and amphibious contrivances;

(j) The term ''habit-forming narcotic drug'' or ''narcotic'' means opium and coca leaves and the several alkaloids derived therefrom, the best known of these alkaloids being morphia, heroin, and codeine, obtained from opium, and cocaine derived from the coca plant; all compounds, salts, preparations, or other derivatives obtained either from the raw material or from the various alkaloids; Indian hemp and its various derivatives, compounds, and preparations, and peyote in its various forms; isonipecaine and its

[1] See References in Text note below.

derivatives, compounds, salts, and preparations; opiates (as defined in section 4731(g)[1] of title 26);

(k) The term ''addict'' means any person who habitually uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction;

(*l*) The term ''psychiatric disorders'' includes diseases of the nervous system which affect mental health;

(m) The term ''State mental health authority'' means the State health authority, except that, in the case of any State in which there is a single State agency, other than the State health authority, charged with responsibility for administering the mental health program of the State, it means such other State agency;

(n) The term ''heart diseases'' means diseases of the heart and circulation;

(*o*) The term ''dental diseases and conditions'' means diseases and conditions affecting teeth and their supporting structures, and other related diseases of the mouth; and

(p) The term ''uniformed service'' means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, or National Oceanic and Atmospheric Administration.

(q) The term ''drug dependent person'' means a person who is using a controlled substance (as defined in section 802 of title 21) and who is in a state of psychic or physical dependence, or both, arising from the use of that substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort caused by its absence.

(July 1, 1944, ch. 373, title I, § 2, 58 Stat. 682; July 3, 1946, ch. 538, § 3, 60 Stat. 421; Feb. 28, 1948, ch. 83, § 1, 62 Stat. 38; June 16, 1948, ch. 481, § 6(a), 62 Stat. 469; June 24, 1948, ch. 621, § 6(a), 62 Stat. 601; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 86–70, § 31(a), June 25, 1959, 73 Stat. 148; Pub. L. 86–415, § 5(a), Apr. 8, 1960, 74 Stat. 34; Pub. L. 86–624, § 29(a), July 12, 1960, 74 Stat. 419; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; Pub. L. 91–212, § 11, Mar. 13, 1970, 84 Stat. 67; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Pub. L. 91–513, title I, § 2(b), Oct. 27, 1970, 84 Stat. 1240; Pub. L. 93–523, § 2(b), Dec. 16, 1974, 88 Stat. 1693; Pub. L. 94–317, title III, § 301(a), June 23, 1976, 90 Stat. 707; Pub. L. 94–484, title IX, § 905(a), Oct. 12, 1976, 90 Stat. 2325; Pub. L. 95–83, title I, § 107, Aug. 1, 1977, 91 Stat. 386; Pub. L. 96–79, title II, § 203(e)(2), Oct. 4, 1979, 93 Stat. 635; Pub. L. 97–35, title IX, §§ 902(d)(5), 986(a), Aug. 13, 1981, 95 Stat. 560, 603; Pub. L. 103–43, title XX, § 2008(e), June 10, 1993, 107 Stat. 212.)

REFERENCES IN TEXT

Section 246(g) of this title, referred to in subsec. (f), was repealed by Pub. L. 96–398, title I, § 107(d), Oct. 7, 1980, 94 Stat. 1571.

Section 247c(c)(1) of this title, referred to in subsec. (f), was repealed by Pub. L. 94–317, title II, § 203(f)(1), June 23, 1976, 90 Stat. 704.

Section 254d(h)(3) of this title, referred to in subsec. (f), was redesignated section 254d(i)(4) of this title by Pub. L. 100–177, title II, § 202(b)(5), title III, § 301(1), Dec. 1, 1987, 101 Stat. 996, 1003, and was subsequently redesignated section 254d(j)(4) of this title by Pub. L. 107–251, title III, § 301(b)(1), Oct. 26, 2002, 116 Stat. 1643.

Section 263c(5) of this title, referred to in subsec. (f), was in the original a reference to section 355(5) of the Public Health Service Act which was redesignated section 531(5) of the Federal Food, Drug, and Cosmetic Act by Pub. L. 101–629, § 19(a)(3), Nov. 28, 1990, 104 Stat. 4530, and is now classified to section 360hh(5) of Title 21, Food and Drugs.

Section 292a of this title, referred to in subsec. (f), contained definitions for purposes of subchapter V of this chapter prior to the general revision of subchapter V by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. See sections 292*o* and 295p of this title.

Section 300n of this title, referred to in subsec. (f), was repealed by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 4731(g) of title 26, referred to in subsec. (j), was repealed by Pub. L. 91–513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292. A definition of ''opiate'' is contained in section 102 of Pub. L. 91–513, which is classified to section 802 of Title 21, Food and Drugs. Reference to section 4731(g) of title 26 was substituted for ''section 3228(f) of title 26'' on authority of section 7852(b) of Title 26, Internal Revenue Code, which provides that a reference in other laws to the Internal Revenue Code of 1939 is deemed a reference to the corresponding provision of the Internal Revenue Code of 1986.

CODIFICATION

Section was enacted as part of title I of act July 1, 1944, ch. 373, 58 Stat. 682, and not as part of title II of such Act which comprises this subchapter.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1981—Subsec. (f). Pub. L. 97–35, § 902(d)(5), struck out reference to section 300d(2) of this title.

Subsec. (h). Pub. L. 97–35, § 986(a), struck out subsec. (h) which defined ''seamen''.

1979—Subsec. (f). Pub. L. 96–79 struck out from enumeration of excepted sections reference to section 300s–3(1) of this title.

1977—Subsec. (f). Pub. L. 95–83 expanded definition of ''State'' to include American Samoa and the Trust Territory of the Pacific Islands.

1976—Subsec. (f). Pub. L. 94–484 amended subsec. (f) generally.

Pub. L. 94–317 substituted provisions defining, with certain specific exceptions, ''State'' to include the several States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands for provisions defining ''State'' to include a State or the District of Columbia, Puerto Rico, or the Virgin Islands, except in section 264(d) of this title such term means a State or the District of Columbia, and in subchapter XII of this chapter such term includes Guam, American Samoa, and the Trust Territory of the Pacific Islands.

1974—Subsec. (f). Pub. L. 93–523 designated existing provisions as cl. (1) and added cl. (2).

1970—Subsec. (c). Pub. L. 91–212 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The term 'Administrator' means the Federal Security Administrator;''.

Subsec. (q). Pub. L. 91–513 added subsec. (q).

1960—Subsec. (f). Pub. L. 86–624 struck out ''Hawaii,'' before ''Puerto Rico''.

Subsec. (p). Pub. L. 86–415 added subsec. (p).

1959—Subsec. (f). Pub. L. 86–70 struck out ''Alaska,'' after ''Hawaii,'' and substituted ''or the District of Columbia'' for '', the District of Columbia, or Alaska''.

1948—Subsec. (j). Act Feb. 28, 1948, inserted ''isonipecaine and its derivatives, compounds, salts, and preparations; opiates (as defined in section 4731(g) of title 26)''.

Subsec. (n). Act June 16, 1948, added subsec. (n).
Subsec. (*o*). Act June 24, 1948, added subsec. (*o*).
1946—Subsecs. (*l*), (m). Act July 3, 1946, added subsecs. (*l*) and (m).

CHANGE OF NAME

Coast and Geodetic Survey consolidated with Weather Bureau to form a new agency in Department of Commerce to be known as Environmental Science Services Administration, and commissioned officers of Survey transferred to ESSA, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, abolished Environmental Science Services Administration, established National Oceanic and Atmospheric Administration, and redesignated Commissioned Officer Corps of ESSA as Commissioned Officer Corps of NOAA. For further details, see Transfer of Functions note set out under section 851 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–310, div. A, title XXIX, §2901, Oct. 17, 2000, 114 Stat. 1168, provided that: ''This division [see Tables for classification] and the amendments made by this division take effect October 1, 2000, or upon the date of the enactment of this Act [Oct. 17, 2000], whichever occurs later.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 2101 of Pub. L. 103–43 provided that: ''Subject to section 203(c) [enacting provisions set out as a note under section 283c of this title], this Act [see Short Title of 1993 Amendment note below] and the amendments made by this Act take effect upon the date of the enactment of this Act [June 10, 1993].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 902(d)(5) of Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

Amendment by section 986(a) of Pub. L. 97–35 effective Oct. 1, 1981, see section 986(c) of Pub. L. 97–35, set out as a note under section 249 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 12(b) of Pub. L. 91–212 provided that: ''The amendments made by sections 10(d) and 11 [amending this section and sections 276, 277, 278, 280, 280a–1, 280b–2 to 280b–9, and 280b–11 of this title] shall take effect on the date of enactment of this Act [Mar. 13, 1970].''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 47(f) of Pub. L. 86–624 provided that: ''The amendments made by subsection (c), paragraphs (3) and (4) of subsection (b), and paragraph (4) of subsection (d) of section 14 [amending sections 15i, 15jj, 15ggg, 244, and 645 of Title 20, Education], by section 20(a) [amending section 41 of Title 29, Labor], by section 23(b) [amending section 466j of Title 33, Navigation and Navigable Waters], by subsections (a), (b), and (c), and paragraph (4) of subsection (d), of section 29 [amending this section and sections 255, 264, and 291i of this title], and by subsection (d), and paragraph (2) of subsection (c), of section 30 [amending sections 410 and 1301 of this title] shall become effective on August 21, 1959.''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 47(d) of Pub. L. 86–70.

SHORT TITLE OF 2005 AMENDMENTS

Pub. L. 109–148, div. C, §1, Dec. 30, 2005, 119 Stat. 2818, provided that: ''This division [enacting sections 247d–6d and 247d–6e of this title] may be cited as the 'Public Readiness and Emergency Preparedness Act'.''

Pub. L. 109–129, §1, Dec. 20, 2005, 119 Stat. 2550, provided that: ''This Act [enacting section 274*l*–1 of this title, amending sections 274k, 274*l*, and 274m of this title, and enacting provisions set out as a note under section 274k of this title] may be cited as the 'Stem Cell Therapeutic and Research Act of 2005'.''

Pub. L. 109–60, §1, Aug. 11, 2005, 119 Stat. 1979, provided that: ''This Act [enacting section 280g–3 of this title and provisions set out as a note under section 280g–3 of this title] may be cited as the 'National All Schedules Prescription Electronic Reporting Act of 2005'.''

Pub. L. 109–41, §1(a), July 29, 2005, 119 Stat. 424, provided that: ''This Act [enacting part C (§299b–21 et seq.) of subchapter VII of this chapter, redesignating former part C (§299c et seq.) as part D of subchapter VII of this chapter, and amending sections 299c–6 and 299c–7 of this title] may be cited as the 'Patient Safety and Quality Improvement Act of 2005'.''

Pub. L. 109–18, §1, June 29, 2005, 119 Stat. 340, provided that: ''This Act [enacting section 256a of this title] may be cited as the 'Patient Navigator Outreach and Chronic Disease Prevention Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENTS

Pub. L. 108–377, §1, Oct. 30, 2004, 118 Stat. 2202, provided that: ''This Act [amending section 280g of this title and enacting provisions set out as notes under section 280g of this title] may be cited as the 'Asthmatic Schoolchildren's Treatment and Health Management Act of 2004'.''

Pub. L. 108–365, §1, Oct. 25, 2004, 118 Stat. 1738, provided that: ''This Act [amending section 263b of this title] may be cited as the 'Mammography Quality Standards Reauthorization Act of 2004'.''

Pub. L. 108–362, §1, Oct. 25, 2004, 118 Stat. 1703, provided that: ''This Act [amending sections 273 and 285c–3 of this title] may be cited as the 'Pancreatic Islet Cell Transplantation Act of 2004'.''

Pub. L. 108–355, §1, Oct. 21, 2004, 118 Stat. 1404, provided that: ''This Act [enacting sections 290bb–36 and 290bb–36b of this title, amending sections 290bb–34 and 290bb–36 of this title, renumbering former section 290bb–36 of this title as section 290bb–36a of this title, and enacting provisions set out as a note under section 290bb–36 of this title] may be cited as the 'Garrett Lee Smith Memorial Act'.''

Pub. L. 108–276, §1, July 21, 2004, 118 Stat. 835, provided that: ''This Act [enacting sections 247d–6a and 247d–6c of this title and section 320 of Title 6, Domestic Security, amending sections 247d–6, 247d–6b, 287a–2, 300aa–6, and 1320b–5 of this title, sections 312 and 313 of Title 6, and section 360bbb–3 of Title 21, Food and Drugs, renumbering section 300hh–12 of this title as section 247d–6b of this title, enacting provisions set out as notes under sections 247d–6a and 247d–6b of this title, and repealing provisions set out as a note under section 1107a of Title 10, Armed Forces] may be cited as the 'Project BioShield Act of 2004'.''

Pub. L. 108–216, §1, Apr. 5, 2004, 118 Stat. 584, provided that: ''This Act [enacting sections 273a and 274f–1 to 274f–4 of this title and amending sections 273 and 274f of this title] may be cited as the 'Organ Donation and Recovery Improvement Act'.''

SHORT TITLE OF 2003 AMENDMENTS

Pub. L. 108–197, §1, Dec. 19, 2003, 117 Stat. 2898, provided that: ''This Act [amending section 300gg–5 of this title and section 1185a of Title 29, Labor] may be cited as the 'Mental Health Parity Reauthorization Act of 2003'.''

Pub. L. 108–194, §1, Dec. 19, 2003, 117 Stat. 2888, provided that: ''This Act [enacting part G (§300d–71 et seq.) of subchapter X of this chapter, repealing chapter 142 of this title, enacting provisions set out as a note under section 300d–71 of this title, and repealing provisions set out as a note under section 14801 of this title] may

be cited as the 'Poison Control Center Enhancement and Awareness Act Amendments of 2003'.''

Pub. L. 108–163, §1, Dec. 6, 2003, 117 Stat. 2020, provided that: ''This Act [enacting section 254c–18 of this title, amending sections 233, 247b–1, 247b–6, 247c–1, 254b, 254c, 254c–14, 254c–16, 254e to 254g, 254*l*, 254*l*–1, 254*o*, 300e–12, and 300ff–52 of this title, repealing section 254c–17 of this title, enacting provisions set out as a note under section 233 of this title, amending provisions set out as notes under sections 254b and 1396a of this title, and repealing provisions set out as notes under sections 254e and 254*o* of this title] may be cited as the 'Health Care Safety Net Amendments Technical Corrections Act of 2003'.''

Pub. L. 108–154, §1, Dec. 3, 2003, 117 Stat. 1933, provided that: ''This Act [amending sections 247b–4 and 15022 of this title and enacting provisions set out as notes under sections 247b–4b and 15022 of this title] may be cited as the 'Birth Defects and Developmental Disabilities Prevention Act of 2003'.''

Pub. L. 108–75, §1, Aug. 15, 2003, 117 Stat. 898, provided that: ''This Act [enacting sections 247b–21 and 285*l*–6 of this title and amending section 247b–20 of this title] may be cited as the 'Mosquito Abatement for Safety and Health Act'.''

Pub. L. 108–41, §1, July 1, 2003, 117 Stat. 839, provided that: ''This Act [amending section 244 of this title] may be cited as the 'Automatic Defibrillation in Adam's Memory Act'.''

Pub. L. 108–20, §1, Apr. 30, 2003, 117 Stat. 638, provided that: ''This Act [enacting part C (§239 et seq.) of subchapter I of this chapter, amending section 233 of this title, and enacting provisions set out as a note under section 233 of this title] may be cited as the 'Smallpox Emergency Personnel Protection Act of 2003'.''

SHORT TITLE OF 2002 AMENDMENTS

Pub. L. 107–313, §1, Dec. 2, 2002, 116 Stat. 2457, provided that: ''This Act [amending section 300gg–5 of this title and section 1185a of Title 29, Labor] may be cited as the 'Mental Health Parity Reauthorization Act of 2002'.''

Pub. L. 107–280, §1, Nov. 6, 2002, 116 Stat. 1988, provided that: ''This Act [enacting sections 283h and 283i of this title and provisions set out as a note under section 283h of this title] may be cited as the 'Rare Diseases Act of 2002'.''

Pub. L. 107–260, §1, Oct. 29, 2002, 116 Stat. 1743, provided that: ''This Act [amending section 280e of this title and enacting provisions set out as a note under section 280e of this title] may be cited as the 'Benign Brain Tumor Cancer Registries Amendment Act'.''

Pub. L. 107–251, §1(a), Oct. 26, 2002, 116 Stat. 1621, provided that: ''This Act [enacting subparts V (§256) and X (§256f et seq.) of part D of subchapter II of this chapter and sections 254c–14 to 254c–17, 254g, and 254t of this title, amending sections 233, 247b–1, 247b–6, 247c–1, 254b, 254c, 254d to 254f–1, 254h to 254i, 254k to 254*o*, 254q, 254q–1, 256d, 290cc–34, 294*o*, 295p, 300e–12, and 300ff–52 of this title, repealing sections 254g and 254t of this title, and enacting provisions set out as notes under this section and sections 254b, 254e, 254*l*, 254*o*, 256, and 1396a of this title] may be cited as the 'Health Care Safety Net Amendments of 2002'.''

Pub. L. 107–251, title II, §211, Oct. 26, 2002, 116 Stat. 1632, provided that: ''This subtitle [subtitle B (§§211, 212) of title II of Pub. L. 107–251, enacting section 254c–14 of this title] may be cited as the 'Telehealth Grant Consolidation Act of 2002'.''

Pub. L. 107–205, §1, Aug. 1, 2002, 116 Stat. 811, provided that: ''This Act [enacting sections 297n–1, 297w, 297x, and 298 of this title, amending sections 294c, 296, 296p, and 297n of this title, and enacting provisions set out as a note under section 296 of this title] may be cited as the 'Nurse Reinvestment Act'.''

Pub. L. 107–188, §1(a), June 12, 2002, 116 Stat. 594, provided that: ''This Act [see Tables for classification] may be cited as the 'Public Health Security and Bioterrorism Preparedness and Response Act of 2002'.''

Pub. L. 107–188, title I, §159(a), June 12, 2002, 116 Stat. 634, provided that: ''This section [enacting sections 244 and 245 of this title and provisions set out as a note under section 244 of this title] may be cited as the 'Community Access to Emergency Defibrillation Act of 2002'.''

Pub. L. 107–172, §1, May 14, 2002, 116 Stat. 541, provided that: ''This Act [enacting section 285a–10 of this title and provisions set out as a note under section 285a–10 of this title] may be cited as the 'Hematological Cancer Research Investment and Education Act of 2002'.''

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–84, §1, Dec. 18, 2001, 115 Stat. 823, provided that: ''This Act [enacting sections 247b–18, 247b–19, and 283g of this title and enacting provisions set out as notes under sections 247b–18 and 281 of this title] may be cited as the 'Muscular Dystrophy Community Assistance, Research and Education Amendments of 2001', or the 'MD–CARE Act'.''

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–580, §1, Dec. 29, 2000, 114 Stat. 3088, provided that: ''This Act [enacting section 285r of this title, amending section 281 of this title, and enacting provisions set out as notes under section 285r of this title] may be cited as the 'National Institute of Biomedical Imaging and Bioengineering Establishment Act'.''

Pub. L. 106–551, §1, Dec. 20, 2000, 114 Stat. 2752, provided that: ''This Act [enacting section 287a–3a of this title and provisions set out as a note under section 287a–3a of this title] may be cited as the 'Chimpanzee Health Improvement, Maintenance, and Protection Act'.''

Pub. L. 106–545, §1, Dec. 19, 2000, 114 Stat. 2721, provided that: ''This Act [enacting sections 285*l*–2 to 285*l*–5 of this title] may be cited as the 'ICCVAM Authorization Act of 2000'.''

Pub. L. 106–525, §1(a), Nov. 22, 2000, 114 Stat. 2495, provided that: ''This Act [enacting sections 287c–31 to 287c–34, 293e, 296e–1, and 299a–1 of this title, amending sections 281, 296f, 299a, 299c–6, and 300u–6 of this title, repealing section 283b of this title, and enacting provisions set out as notes under sections 281, 287c–31, 293e, and 3501 of this title] may be cited as the 'Minority Health and Health Disparities Research and Education Act of 2000'.''

Pub. L. 106–505, §1(a), Nov. 13, 2000, 114 Stat. 2314, provided that: ''This Act [enacting sections 238p, 238q, 247d to 247d–7, 254c–9 to 254c–13, 284k, 284*l*, 285d–6a, 285e–10a, 285f–3, 287a–4 and 288–5a of this title, amending sections 273, 274b–5, 284d, 285a–8, 285e–11, 285f–3, 287a–2 and 287a–3 of this title, repealing former section 247d of this title, enacting provisions set out as notes under this section and sections 238p, 254c, 273, 284k, 285d–6a, 287, 287a–2 and 289 of this title, and amending provisions set out as a note under section 289 of this title] may be cited as the 'Public Health Improvement Act'.''

Pub. L. 106–505, title I, §101, Nov. 13, 2000, 114 Stat. 2315, provided that: ''This title [enacting sections 247d to 247d–7 of this title and repealing former section 247d of this title] may be cited as the 'Public Health Threats and Emergencies Act'.''

Pub. L. 106–505, title II, §201, Nov. 13, 2000, 114 Stat. 2325, provided that: ''This title [enacting sections 284k, 284*l*, 287a–4 and 288a–5 of this title, amending section 284d of this title, and enacting provisions set out as notes under section 284k of this title] may be cited as the 'Clinical Research Enhancement Act of 2000'.''

Pub. L. 106–505, title III, §301, Nov. 13, 2000, 114 Stat. 2330, provided that: ''This title [enacting section 287a–2 of this title, amending section 287a–3 of this title, and enacting provisions set out as notes under sections 287 and 287a–2 of this title] may be cited as the 'Twenty-First Century Research Laboratories Act'.''

Pub. L. 106–505, title IV, §401, Nov. 13, 2000, 114 Stat. 2336, provided that: ''This subtitle [subtitle A (§§401–404) of title IV of Pub. L. 106–505, enacting sections 238p and 238q of this title and provisions set out as a note under section 238p of this title] may be cited as the 'Cardiac Arrest Survival Act of 2000'.''

Pub. L. 106–505, title V, §501, Nov. 13, 2000, 114 Stat. 2342, provided that: ''This title [enacting sections 254c–9 to 254c–13 and 285d–6a of this title and provisions set out as a note under section 285d–6a of this title] may be cited as the 'Lupus Research and Care Amendments of 2000'.''

Pub. L. 106–505, title VI, §601, Nov. 13, 2000, 114 Stat. 2345, provided that: ''This title [amending sections 247b–5 and 285a–8 of this title] may be cited as the 'Prostate Cancer Research and Prevention Act'.''

Pub. L. 106–505, title VII, §701(a), Nov. 13, 2000, 114 Stat. 2346, provided that: ''This section [amending section 273 of this title and enacting provisions set out as a note under section 273 of this title] may be cited as the ''Organ Procurement Organization Certification Act of 2000'.''

Pub. L. 106–345, §1, Oct. 20, 2000, 114 Stat. 1319, provided that: ''This Act [enacting subpart III (§300ff–38) of part B of subchapter XXIV of this chapter and sections 247c–2, 300ff–30, 300ff–37a, 300ff–75a, and 300ff–75b of this title, redesignating subparts II (§300ff–51 et seq.) and III (§300ff–61 et seq.) of part C of subchapter XXIV of this chapter as subparts I and II, respectively, of part C of subchapter XXIV of this chapter, amending sections 300ff–12 to 300ff–15, 300ff–21 to 300ff–23, 300ff–26 to 300ff–28, 300ff–33, 300ff–34, 300ff–37, 300ff–53 to 300ff–55, 300ff–61, 300ff–62, 300ff–64, 300ff–71, 300ff–73 to 300ff–75, 300ff–77, and 300ff–111 of this title, repealing former subpart I (§300ff–41 et seq.) of part C of subchapter XXIV of this chapter and sections 300ff–31, 300ff–35, and 300ff–36 of this title, and enacting provisions set out as notes under sections 300cc, 300ff–11, 300ff–12, and 300ff–111 of this title] may be cited as the 'Ryan White CARE Act Amendments of 2000'.''

Pub. L. 106–310, §1, Oct. 17, 2000, 114 Stat. 1101, provided that: ''This Act [see Tables for classification] may be cited as the 'Children's Health Act of 2000'.''

Pub. L. 106–310, div. B, §3001, Oct. 17, 2000, 114 Stat. 1168, provided that: ''This division [see Tables for classification] may be cited as the 'Youth Drug and Mental Health Services Act'.''

Pub. L. 106–310, div. B, title XXXVI, §3661, Oct. 17, 2000, 114 Stat. 1241, provided that: ''This subtitle [subtitle C (§§3661–3665) of title XXXVI of Pub. L. 106–310, enacting section 290aa–5b of this title and provisions set out as notes under section 290aa–5b of this title and section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Ecstasy Anti-Proliferation Act of 2000'.''

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–129, §1, Dec. 6, 1999, 113 Stat. 1653, provided that: ''This Act [enacting subchapter VII of this chapter and sections 254c–4 and 256e of this title, amending sections 203, 242b, 242q–1, 286d, 288, 289c–1, 290aa, 300cc–18, 300ff–73, 1320b–12, 11221, and 11261 of this title, enacting provisions set out as notes under sections 241, 254c, 295k, and 299 of this title, and amending provisions set out as a note under section 299a of this title] may be cited as the 'Healthcare Research and Quality Act of 1999'.''

SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105–392, §1(a), Nov. 13, 1998, 112 Stat. 3524, provided that: ''This Act [see Tables for classification] may be cited as the 'Health Professions Education Partnerships Act of 1998'.''

Pub. L. 105–392, title I, §121, Nov. 13, 1998, 112 Stat. 3562, provided that: ''This subtitle [subtitle B (§§121–124) of title I of Pub. L. 105–392, enacting sections 296, 296a to 296f, 296j, 296m, 296p, 297q, and 297t of this title, transferring section 298b–2 of this title to section 296g of this title, repealing sections 296k to 296m, 296r, 297, 297–1, 297c, 298, 298a, 298b, 298b–1, 298b–3 to 298b–5, and 298b–7 of this title, and enacting provisions set out as notes under section 296 of this title] may be cited as the 'Nursing Education and Practice Improvement Act of 1998'.''

Pub. L. 105–392, title IV, §419(a), Nov. 13, 1998, 112 Stat. 3591, provided that: ''This section [enacting sections 280f to 280f–3 of this title and provisions set out as a note under section 280f of this title] may be cited as the 'Fetal Alcohol Syndrome and Fetal Alcohol Effect Prevention and Services Act'.''

Pub. L. 105–340, §1, Oct. 31, 1998, 112 Stat. 3191, provided that: ''This Act [enacting sections 285b–7a and 300u–9 of this title and amending sections 242k, 280e–4, 283a, 284e, 285a–8, 285e–10, 287d, 300k, 300n–4a, 300n–5, and 300u–5 of this title] may be cited as the 'Women's Health Research and Prevention Amendments of 1998'.''

Pub. L. 105–277, div. A, §101(f) [title IX, §901], Oct. 21, 1998, 112 Stat. 2681–337, 2681–436, provided that: ''This title [enacting sections 300gg–6 and 300gg–52 of this title and section 1185b of Title 29, Labor, and provisions set out as notes under sections 300gg–6 and 300gg–52 of this title and section 1185b of Title 29] may be cited as the 'Women's Health and Cancer Rights Act of 1998'.''

Pub. L. 105–248, §1, Oct. 9, 1998, 112 Stat. 1864, provided that: ''This Act [amending section 263b of this title] may be cited as the 'Mammography Quality Standards Reauthorization Act of 1998'.''

Pub. L. 105–196, §1, July 16, 1998, 112 Stat. 631, provided that: ''This Act [enacting sections 274*l* and 274m of this title, amending sections 274g and 274k of this title, repealing former section 274*l* of this title, and enacting provisions set out as notes under section 274k of this title] may be cited as the 'National Bone Marrow Registry Reauthorization Act of 1998'.''

Pub. L. 105–168, §1(a), Apr. 21, 1998, 112 Stat. 43, provided that: ''This Act [amending section 247b–4 of this title and enacting provisions set out as a note under section 247b–4 of this title] may be cited as the 'Birth Defects Prevention Act of 1998'.''

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–78, title VI, §603(a), Nov. 13, 1997, 111 Stat. 1519, provided that: ''This section [enacting section 284f of this title and provisions set out as a note under section 284f of this title] may be cited as the 'Morris K. Udall Parkinson's Disease Research Act of 1997'.''

SHORT TITLE OF 1996 AMENDMENTS

Pub. L. 104–299, §1, Oct. 11, 1996, 110 Stat. 3626, provided that: ''This Act [enacting sections 254b and 254c of this title, amending sections 233, 256c, 1395x, and 1396d of this title, repealing sections 256 and 256a of this title, and enacting provisions set out as notes under sections 233 and 254b of this title] may be cited as the 'Health Centers Consolidation Act of 1996'.''

Pub. L. 104–204, title VI, §601, Sept. 26, 1996, 110 Stat. 2935, provided that: ''This title [enacting sections 300gg–4 and 300gg–51 of this title and section 1185 of Title 29, Labor, amending sections 300gg–21, 300gg–23, 300gg–44, 300gg–61, and 300gg–62 of this title and sections 1003, 1021, 1022, 1024, 1132, 1136, 1144, 1181, 1191, and 1191a of Title 29, and enacting provisions set out as notes under section 300gg–4 and 300gg–44 of this title and section 1003 of Title 29] may be cited as the 'Newborns' and Mothers' Health Protection Act of 1996'.''

Pub. L. 104–204, title VII, §701, Sept. 26, 1996, 110 Stat. 2944, provided that: ''This title [enacting section 300gg–5 of this title and section 1185a of Title 29, Labor, and enacting provisions set out as notes under section 300gg–5 of this title and section 1185a of Title 29] may be cited as the 'Mental Health Parity Act of 1996'.''

Pub. L. 104–191, §1(a), Aug. 21, 1996, 110 Stat. 1936, provided that: ''This Act [see Tables for classification] may be cited as the 'Health Insurance Portability and Accountability Act of 1996'.''

Pub. L. 104–182, §1(a), Aug. 6, 1996, 110 Stat. 1613, provided that: ''This Act [enacting sections 300g–7 to 300g–9, 300h–8, 300j–3c, and 300j–12 to 300j–18 of this title and section 1263a of Title 33, Navigation and Navigable Waters, amending sections 300f, 300g–1 to 300g–6, 300h, 300h–5 to 300h–7, 300i, 300i–1, 300j to 300j–2, 300j–4 to 300j–8, 300j–11, and 300j–21 to 300j–25 of this title, sections 4701 and 4721 of Title 16, Conservation, and section 349 of Title 21, Food and Drugs, repealing section 13551 of this title, enacting provisions set out as notes under

this section, sections 300f, 300g–1, 300j–1, and 300j–12 of this title, section 1281 of Title 33, and section 45 of former Title 40, Public Buildings, Property, and Works, and amending provisions set out as a note under this section] may be cited as the 'Safe Drinking Water Act Amendments of 1996'.''

Pub. L. 104–146, §1, May 20, 1996, 110 Stat. 1346, provided that: ''This Act [enacting sections 300ff–27a, 300ff–31, 300ff–33 to 300ff–37, 300ff–77, 300ff–78, 300ff–101, and 300ff–111 of this title, amending sections 294n, 300d, 300ff–11 to 300ff–17, 300ff–21 to 300ff–23, 300ff–26 to 300ff–29, 300ff–47 to 300ff–49, 300ff–51, 300ff–52, 300ff–54, 300ff–55, 300ff–64, 300ff–71, 300ff–74, 300ff–76, and 300ff–84 of this title, transferring section 294n of this title to section 300ff–111 of this title, repealing sections 300ff–18 and 300ff–30 of this title, and enacting provisions set out as notes under sections 300cc, 300ff–11, and 300ff–33 of this title and section 4103 of Title 5, Government Organization and Employees] may be cited as the 'Ryan White CARE Act Amendments of 1996'.''

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104–73, §1(a), Dec. 26, 1995, 109 Stat. 777, provided that: ''This Act [amending section 233 of this title and enacting provisions set out as a note under section 233 of this title] may be cited as the 'Federally Supported Health Centers Assistance Act of 1995'.''

SHORT TITLE OF 1993 AMENDMENTS

Pub. L. 103–183, §1(a), Dec. 14, 1993, 107 Stat. 2226, provided that: ''This Act [enacting sections 247b–6, 247b–7, 256d, 280b–1a, 285f–2, 300n–4a, and 300u–8 of this title, amending sections 233, 238j, 242b, 242k, 242*l*, 242m, 247b, 247b–1, 247b–5, 247c, 247c–1, 254j, 280b, 280b–1, 280b–2, 280b–3, 280e–4, 300d, 300d–2, 300d–3, 300d–12, 300d–13, 300d–16, 300d–22, 300d–31, 300d–32, 300k, 300m, 300n, 300n–1, 300n–4, 300n–5, 300u–5, 300w, and 300aa–26 of this title, repealing sections 300d–1 and 300d–33 of this title, and enacting provisions set out as notes under sections 238j, 263b, 285f–2, and 300m of this title] may be cited as the 'Preventive Health Amendments of 1993'.''

Section 1(a) of Pub. L. 103–43 provided that: ''This Act [see Tables for classification] may be cited as the 'National Institutes of Health Revitalization Act of 1993'.''

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102–539, §1, Oct. 27, 1992, 106 Stat. 3547, provided that: ''This Act [enacting section 263b of this title and provisions set out as a note under section 263b of this title] may be cited as the 'Mammography Quality Standards Act of 1992'.''

Pub. L. 102–531, §1(a), Oct. 27, 1992, 106 Stat. 3469, provided that: ''This Act [enacting sections 247b–3 to 247b–5, 247c–1, 256c, 280d–11, 300*l*–1, and 300u–7 of this title, amending sections 236, 242*l*, 247b–1, 247d, 254b, 254c, 256, 256a, 280b to 280b–2, 285c–4, 285d–7, 285m–4, 289c, 290aa–9, 290bb–1, 292y, 293j, 293*l*, 294n, 295j, 295*l*, 295n, 295*o*, 296k, 298b–7, 300u, 300u–1, 300u–5, 300w, 300w–3 to 300w–5, 300aa–2, 300aa–15, 300aa–19, 300aa–26, 300cc, 300cc–2, 300cc–15, 300cc–17, 300cc–20, 300cc–31, 300ee–1, 300ee–2, 300ee–31, 300ee–32, 300ee–34, 300ff–11 to 300ff–13, 300ff–17, 300ff–27, 300ff–28, 300ff–41, 300ff–43, 300ff–49, 300ff–75, 4841, and 9604 of this title, section 1341 of Title 15, Trade and Commerce, and section 2001 of Title 25, Indians, repealing section 297j of this title, enacting provisions set out as notes under sections 236, 292y, 300e, and 300w–4 of this title, amending provisions set out as notes under sections 241, 281, and 295k of this title and section 303 of Title 38, Veterans' Benefits, and repealing provisions set out as notes under section 246 and 300e of this title] may be cited as the 'Preventive Health Amendments of 1992'.''

Pub. L. 102–515, §1, Oct. 24, 1992, 106 Stat. 3372, provided that: ''This Act [enacting sections 280e to 280e–4 of this title and provisions set out as a note under section 280e of this title] may be cited as the 'Cancer Registries Amendment Act'.''

Pub. L. 102–501, §1, Oct. 24, 1992, 106 Stat. 3268, provided that: ''This Act [amending section 233 of this title and enacting provisions set out as notes under section 233 of this title] may be cited as the 'Federally Supported Health Centers Assistance Act of 1992'.''

Pub. L. 102–493, §1, Oct. 24, 1992, 106 Stat. 3146, provided that: ''This Act [enacting sections 263a–1 to 263a–7 of this title and provisions set out as a note under section 263a–1 of this title] may be cited as the 'Fertility Clinic Success Rate and Certification Act of 1992'.''

Pub. L. 102–410, §1(a), Oct. 13, 1992, 106 Stat. 2094, provided that: ''This Act [amending sections 299 to 299a–2, 299b to 299b–3, 299c to 299c–3, 299c–5, and 300w–9 of this title and enacting provisions set out as notes under sections 299a–2, 299b–1, and 299b–2 of this title] may be cited as the 'Agency for Health Care Policy and Research Reauthorization Act of 1992'.''

Pub. L. 102–409, §1, Oct. 13, 1992, 106 Stat. 2092, provided that: ''This Act [enacting section 283a of this title] may be cited as the 'DES Education and Research Amendments of 1992'.''

Pub. L. 102–408, §1(a), Oct. 13, 1992, 106 Stat. 1992, provided that: ''This Act [enacting subchapter V of this chapter and sections 297n, 298b–7, and 300d–51 of this title, amending sections 242a, 296k to 296m, 296r, 297, 297–1, 297b, 297d, 297e, 298, 298b, and 298b–6 of this title and section 1078–3 of Title 20, Education, repealing sections 295g–10a, 297c–1, and 297n of this title, enacting provisions set out as notes under this section, sections 292, 295j, 295k, 296k, and 297b of this title, section 1078–3 of Title 20, and section 343–1 of Title 21, Food and Drugs, and amending provisions set out as a note under section 300x of this title] may be cited as the 'Health Professions Education Extension Amendments of 1992'.''

Pub. L. 102–408, title II, §201, Oct. 13, 1992, 106 Stat. 2069, provided that: ''This title [enacting sections 297n and 298b–7 of this title, amending sections 296k to 296m, 296r, 297, 297–1, 297b, 297d, 297e, 298, 298b, and 298b–6 of this title, repealing sections 297c–1 and 297n of this title, and enacting provisions set out as notes under sections 296k and 297b of this title] may be referred to as the Nurse Education and Practice Improvement Amendments of 1992.''

Pub. L. 102–352, §1, Aug. 26, 1992, 106 Stat. 938, provided that: ''This Act [amending sections 285n, 285n–2, 285*o*, 285*o*–2, 285p, 290aa–1, 290aa–3, 290cc–21, 290cc–28, 290cc–30, 300x–7, 300x–27, 300x–33, 300x–53, and 300y of this title, enacting provisions set out as a note under section 285n of this title, and amending provisions set out as notes under sections 290aa and 300x of this title] may be cited as the 'Public Health Service Act Technical Amendments Act'.''

Pub. L. 102–321, §1(a), July 10, 1992, 106 Stat. 323, provided that: ''This Act [see Tables for classification] may be cited as the 'ADAMHA Reorganization Act'.''

SHORT TITLE OF 1991 AMENDMENTS

Pub. L. 102–168, §1, Nov. 26, 1991, 105 Stat. 1102, provided that: ''This Act [amending sections 300u, 300u–5, 300aa–11, 300aa–12, 300aa–15, 300aa–16, 300aa–19, and 300aa–21 of this title, enacting provisions set out as a note under section 300aa–11 of this title, and amending provisions set out as a note under section 300aa–1 of this title] may be cited as the 'Health Information, Health Promotion, and Vaccine Injury Compensation Amendments of 1991'.''

Pub. L. 102–96, §1, Aug. 14, 1991, 105 Stat. 481, provided that: ''This Act [amending section 300cc–13 of this title and enacting provisions set out as a note under section 300cc–13 of this title] may be cited as the 'Terry Beirn Community Based AIDS Research Initiative Act of 1991'.''

SHORT TITLE OF 1990 AMENDMENTS

Pub. L. 101–639, §1, Nov. 28, 1990, 104 Stat. 4600, provided that: ''This Act [amending sections 290cc–13, 299a, 300x–3, and 300x–10 to 300x–12 of this title] may be cited as the 'Mental Health Amendments of 1990'.''

Pub. L. 101–616, §1, Nov. 16, 1990, 104 Stat. 3279, provided that: ''This Act [enacting sections 274f, 274g, 274k,

and 274*l* of this title, amending sections 273 to 274d of this title, enacting provisions set out as notes under sections 273, 274, and 274k of this title, and repealing provisions set out as a note under section 273 of this title] may be cited as the 'Transplant Amendments Act of 1990'.''

Pub. L. 101–613, §1, Nov. 16, 1990, 104 Stat. 3224, provided that: ''This Act [enacting sections 285g–4 and 290b of this title and provisions set out as a note under section 285g–4 of this title] may be cited as the 'National Institutes of Health Amendments of 1990'.''

Pub. L. 101–597, §1, Nov. 16, 1990, 104 Stat. 3013, provided that: ''This Act [enacting sections 254f–1, 254*o*–1, and 254r of this title, amending sections 242a, 254d to 254i, 254k, 254*l* to 254q–1, 254s, 294h, 294n, 294aa, 295g–1, 296m, 1320c–5, 1395*l*, 1395u, 1395x, 3505d, and 9840 of this title and section 2123 of Title 10, Armed Forces, and enacting provisions set out as notes under sections 242a, 254*l*–1, and 254*o* of this title] may be cited as the 'National Health Service Corps Revitalization Amendments of 1990'.''

Pub. L. 101–590, §1, Nov. 16, 1990, 104 Stat. 2915, provided that: ''This Act [enacting subchapter X of this chapter, amending sections 300w–4 and 300w–9 of this title, and enacting provisions set out as a note under section 300d of this title] may be cited as the 'Trauma Care Systems Planning and Development Act of 1990'.''

Pub. L. 101–558, §1, Nov. 15, 1990, 104 Stat. 2772, provided that: ''This Act [amending sections 280b to 280b–3 of this title] may be cited as the 'Injury Control Act of 1990'.''

Pub. L. 101–557, §1, Nov. 15, 1990, 104 Stat. 2766, provided that: ''This Act [enacting sections 242q to 242q–5 of this title, amending sections 280c, 280c–2, 280c–3, 280c–5, 285e–2, 285e–3, 300u–6, 300ff–17, 300ff–51, and 300ff–52 of this title and section 4512 of Title 20, Education, and enacting provisions set out as a note under section 300u–6 of this title] may be cited as the 'Home Health Care and Alzheimer's Disease Amendments of 1990'.''

Pub. L. 101–527, §1(a), Nov. 6, 1990, 104 Stat. 2311, provided that: ''This Act [enacting sections 254c–1, 254t, 256a, 294bb, 294cc, and 300u–6 of this title, amending sections 242k, 242m, 254b, 254c, 294m, 294*o*, and 295g–2 of this title, enacting provisions set out as notes under sections 242k and 300u–6 of this title, and repealing provisions set out as a note under section 292h of this title] may be cited as the 'Disadvantaged Minority Health Improvement Act of 1990'.''

Pub. L. 101–502, §1, Nov. 3, 1990, 104 Stat. 1285, provided that: ''This Act [amending sections 207, 247b, 300aa–6, 300aa–11 to 300aa–13, 300aa–15, 300aa–16, 300aa–21, 300ff–13, 300ff–47, and 300ff–49 of this title, section 331 of Title 21, Food and Drugs, and section 201 of Title 37, Pay and Allowances of the Uniformed Services, enacting provisions set out as notes under sections 300aa–2, 300aa–11, and 300aa–12 of this title and section 201 of Title 37, and amending provisions set out as a note under section 300aa–1 of this title] may be cited as the 'Vaccine and Immunization Amendments of 1990'.''

Pub. L. 101–381, §1, Aug. 18, 1990, 104 Stat. 576, provided that: ''This Act [enacting subchapter XXIV of this chapter, transferring section 300ee–6 of this title to section 300ff–48 of this title, amending sections 284a, 286, 287a, 287c–2, 289f, 290aa–3a, 299c–5, 300ff–48, and 300aaa to 300aaa–13 of this title, and enacting provisions set out as notes under sections 300x–4, 300ff–11, 300ff–46, and 300ff–80 of this title] may be cited as the 'Ryan White Comprehensive AIDS Resources Emergency Act of 1990'.''

Pub. L. 101–374, §1, Aug. 15, 1990, 104 Stat. 456, provided that: ''This Act [amending sections 290aa–12, 290cc–2, and 300x–4 of this title, enacting provisions set out as notes under sections 289e, 290aa–12, 290cc–2, and 300x–4 of this title, and amending provisions set out as a note under section 289e of this title] may be cited as the 'Drug Abuse Treatment Waiting Period Reduction Amendments of 1990'.''

Pub. L. 101–368, §1, Aug. 15, 1990, 104 Stat. 446, provided that: ''This Act [amending section 247b of this title] may be cited as the 'Tuberculosis Prevention Amendments of 1990'.''

Pub. L. 101–354, §1, Aug. 10, 1990, 104 Stat. 409, provided that: ''This Act [enacting subchapter XIII of this chapter] may be cited as the 'Breast and Cervical Cancer Mortality Prevention Act of 1990'.''

Short Title of 1989 Amendment

Pub. L. 101–93, §1, Aug. 16, 1989, 103 Stat. 603, provided that: ''This Act [see Tables for classification] may be cited as the 'Drug Abuse Treatment Technical Corrections Act of 1989'.''

Short Title of 1988 Amendments

Pub. L. 100–690, §2011, Nov. 18, 1988, 102 Stat. 4193, provided that: ''This subtitle [subtitle A (§§2011–2081) of title II of Pub. L. 100–690, enacting sections 290aa–11 to 290aa–14, 290cc–11 to 290cc–13, 290ff, 300x–1a, 300x–4a, 300x–9a, and 300x–9b of this title, amending sections 242a, 290aa, 290aa–3, 290aa–6, 290aa–8, 290bb–2, 290cc to 290cc–2, 300x, 300x–1a to 300x–4, 300x–5, 300x–9, and 300x–10 to 300x–12 of this title and section 484 of former Title 40, Public Buildings, Property, and Works, repealing sections 300y to 300y–2 of this title, enacting provisions set out as notes under this section and sections 290aa, 290cc–11, 300x–9a, and 300x–11 of this title, and amending provisions set out as a note under section 801 of Title 21, Food and Drugs] may be cited as the 'Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988'.''

Pub. L. 100–607, §1(a), Nov. 4, 1988, 102 Stat. 3048, provided that: ''This Act [see Tables for classification] may be cited as the 'Health Omnibus Programs Extension of 1988'.''

Pub. L. 100–607, title I, §100(a), Nov. 4, 1988, 102 Stat. 3048, provided that: ''This title [see Tables for classification] may be cited as the 'National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988'.''

Pub. L. 100–607, title II, §200, Nov. 4, 1988, 102 Stat. 3062, provided that: ''This title [see Tables for classification] may be cited as the 'AIDS Amendments of 1988'.''

Pub. L. 100–607, title IV, §401(a), Nov. 4, 1988, 102 Stat. 3114, provided that: ''This title [enacting sections 300y–21 to 300y–27 of this title, amending sections 273 to 274e of this title, and enacting provisions set out as notes under sections 273 and 300y–21 of this title] may be cited as the 'Organ Transplant Amendments Act of 1988'.''

Pub. L. 100–607, title VI, §601(a), Nov. 4, 1988, 102 Stat. 3122, as amended by Pub. L. 100–690, title II, §2603(a)(1), Nov. 18, 1988, 102 Stat. 4234, provided that: ''This title [see Tables for classification] may be cited as the 'Health Professions Reauthorization Act of 1988'.''

Pub. L. 100–607, title VII, §700(a), Nov. 4, 1988, 102 Stat. 3153, provided that: ''This title [enacting sections 296r, 297c–1, 297j, 297n, and 298b–6 of this title, amending sections 210, 294a, 296k, 296*l*, 296m, 297, 297–1, 297a, 297b, 297d, 297e, 298, and 298b–3 of this title, and enacting provisions set out as a note under section 297d of this title] may be cited as the 'Nursing Shortage Reduction and Education Extension Act of 1988'.''

Pub. L. 100–607, title IX, §901, Nov. 4, 1988, 102 Stat. 3171, provided that: ''This title [enacting section 300ee–6 of this title and provisions set out as notes under such section] may be cited as the 'Prison Testing Act of 1988'.''

Pub. L. 100–578, §1, Oct. 31, 1988, 102 Stat. 2903, provided that: ''This Act [amending section 263a of this title and enacting provisions set out as notes under section 263a of this title] may be cited as the 'Clinical Laboratory Improvement Amendments of 1988'.''

Pub. L. 100–572, §1, Oct. 31, 1988, 102 Stat. 2884, provided that: ''This Act [enacting sections 247b–1 and 300j–21 to 300j–26 of this title, and amending section 300j–4 of this title] may be cited as the 'Lead Contamination Control Act of 1988'.''

Pub. L. 100–553, §1, Oct. 28, 1988, 102 Stat. 2769, provided that: ''This Act [enacting sections 285m to 285m–6

of this title, amending sections 281 and 285j of this title, and enacting provisions set out as a note under section 285m of this title] shall be cited as the 'National Deafness and Other Communication Disorders Act of 1988'.''

Pub. L. 100–517, § 1(a), Oct. 24, 1988, 102 Stat. 2578, provided that: ''This Act [amending sections 300e, 300e–1, 300e–9, and 300e–10 of this title, enacting provisions set out as notes under sections 300e, 300e–9, and 1302 of this title, and repealing provisions set out as notes under section 300e–1 of this title] may be cited as the 'Health Maintenance Organization Amendments of 1988'.''

Pub. L. 100–386, § 1(a), Aug. 10, 1988, 102 Stat. 919, provided that: ''This Act [amending sections 254b and 254c of this title and enacting provisions set out as a note under section 254b of this title] may be cited as the 'Community and Migrant Health Centers Amendments of 1988'.''

SHORT TITLE OF 1987 AMENDMENTS

Pub. L. 100–203, title IV, § 4301(a), Dec. 22, 1987, 101 Stat. 1330–221, provided that: ''This subtitle [subtitle D (§§ 4301–4307) of title IV of Pub. L. 100–203, enacting section 300aa–34 of this title, amending sections 300aa–11 to 300aa–13, 300aa–15 to 300aa–17, 300aa–19, 300aa–21 to 300aa–23, 300aa–25 to 300aa–28, and 300aa–31 of this title, repealing section 300aa–18 of this title, and amending provisions set out as a note under section 300aa–1 of this title] may be cited as the 'Vaccine Compensation Amendments of 1987'.''

Pub. L. 100–177, § 1(a), Dec. 1, 1987, 101 Stat. 986, provided that: ''This Act [enacting sections 254*l*–1, 254q, and 254q–1 of this title, amending sections 242a, 242c, 242k, 242m, 242n, 242p, 247b, 254d to 254g, 254h–1, 254k, 254m to 254q, 254r, 295g–8, and 11137 of this title, repealing former section 254q of this title, and enacting provisions set out as notes under sections 242c, 242k, 242m, 254*l*–1, 254*o*, 300aa–2, and 11137 of this title] may be cited as the 'Public Health Service Amendments of 1987'.''

Pub. L. 100–175, title VI, § 601, Nov. 29, 1987, 101 Stat. 979, provided that: ''This title [enacting part K (§ 280c et seq.) of subchapter II of this chapter] may be cited as the 'Health Care Services in the Home Act of 1987'.''

Pub. L. 100–97, § 1, Aug. 18, 1987, 101 Stat. 713, provided: ''That this Act [enacting section 295g–8a of this title and provisions set out as a note under section 295g–8a of this title] may be cited as the 'Excellence in Minority Health Education and Care Act'.''

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–660, title III, § 301, Nov. 14, 1986, 100 Stat. 3755, provided that: ''This title [enacting sections 300aa–1 to 300aa–33 of this title, amending sections 218, 242c, 262, 286, and 289f of this title, redesignating former sections 300aa to 300aa–15 of this title as sections 300cc to 300cc–15 of this title, and enacting provisions set out as notes under sections 300aa–1 and 300aa–4 of this title] may be cited as the 'National Childhood Vaccine Injury Act of 1986'.''

Pub. L. 99–660, title V, § 501, Nov. 14, 1986, 100 Stat. 3794, provided that: ''This title [enacting sections 300x–10 to 300x–13 of this title and amending sections 290aa–3 and 300x–4 of this title] may be cited as the 'State Comprehensive Mental Health Services Plan Act of 1986'.''

Pub. L. 99–660, title VIII, § 801, Nov. 14, 1986, 100 Stat. 3799, provided that: ''This title [amending sections 300e–1, 300e–4, 300e–5 to 300e–10, 300e–16, and 300e–17 of this title, repealing sections 300e–2, 300e–3, and 300e–4a of this title, and enacting provisions set out as notes under sections 300e, 300e–1, 300e–4, and 300e–5 of this title] may be cited as the 'Health Maintenance Organization Amendments of 1986'.''

Pub. L. 99–649, § 1, Nov. 10, 1986, 100 Stat. 3633, provided: ''That this Act [enacting sections 280b to 280b–3 of this title and provisions set out as a note under section 280b of this title] may be cited as the 'Injury Prevention Act of 1986'.''

Pub. L. 99–570, title IV, § 4001(a), Oct. 27, 1986, 100 Stat. 3207–103, provided that: ''This subtitle [subtitle A (§§ 4001–4022) of title IV of Pub. L. 99–570, enacting sections 290aa–3a, 290aa–6 to 290aa–10, and 300y to 300y–2 of this title, amending sections 218, 241, 290aa to 290aa–3, 290aa–4, 290aa–5, 290bb–1, 290bb–2, 290cc, and 290cc–2 of this title and sections 331 and 350a of Title 21, Food and Drugs, and enacting provisions set out as notes under sections 290aa–3, 290aa–3a, and 290bb of this title] may be cited as the 'Alcohol and Drug Abuse Amendments of 1986'.''

Pub. L. 99–339, § 1, June 19, 1986, 100 Stat. 642, provided that: ''This Act [enacting sections 300g–6, 300h–5 to 300h–7, 300i–1, and 300j–11 of this title, amending sections 300f, 300g–1 to 300g–5, 300h to 300h–2, 300h–4, 300h–6, 300h–7, 300i, 300j to 300j–4, 300j–7, and 6979a of this title and sections 1261 and 1263 of Title 15, Commerce and Trade, transferring section 6939b to 6979a of this title, and enacting provisions set out as notes under sections 300g–6 and 300j–1 of this title and section 1261 of Title 15] may be cited as the 'Safe Drinking Water Act Amendments of 1986'.''

Pub. L. 99–280, § 1(a), Apr. 24, 1986, 100 Stat. 399, provided that: ''This Act [amending sections 254b and 254c of this title and repealing sections 300y to 300y–11 of this title] may be cited as the 'Health Services Amendments Act of 1986'.''

SHORT TITLE OF 1985 AMENDMENTS

Pub. L. 99–158, § 1(a), Nov. 20, 1985, 99 Stat. 820, provided that: ''This Act [enacting sections 275, 281 to 283, 284 to 284c, 285 to 285a–5, 285b to 285b–6, 285c to 285c–7, 285d to 285d–7, 285ed to 285e–2, 285f, 285g to 285g–3, 285h, 285i, 285j to 285j–2, 285k, 285*l*, 286 to 286a–1, 286b to 286b–8, 287 to 287a–1, 287b, 287c to 287c–3, 288 to 288b, and 289 to 289h of this title, amending sections 217a, 218, 241, 290aa–5, and 300c–12 of this title, repealing sections 275 to 280a–1, 280b to 280b–2, 280b–4, 280b–5, and 280b–7 to 280b–11 of this title, omitting sections 286c to 286e, 287d to 287i, 288c, 289, 289c–1 to 289c–3, 289c–4 to 289c–7, 289i to 289k, 289k–2 to 289k–5, and 289*l* to 289*l*–8 of this title, enacting provisions set out as notes under sections 218, 281, 285c, 285e, 285e–2, 285j–1 and 289d of this title, and repealing provisions set out as a note under section 287i of this title] may be cited as the 'Health Research Extension Act of 1985'.''

Pub. L. 99–129, § 1, Oct. 22, 1985, 99 Stat. 523, provided: ''That this Act [enacting sections 294q–1 to 294q–3 of this title, amending sections 254*l*, 292a, 292b, 292h, 292j, 293c, 294a, 294b, 294d, 294e, 294g, 294j, 294m to 294p, 294z, 295f to 295f–2, 295g, 295g–1, 295g–3, 295g–4, 295g–6 to 295g–8, 295g–8b, 295h, 295h–1a to 295h–1c, 296k, 296*l*, 296m, 297a, 298b–5, and 300aa–14 of this title, repealing sections 292c, 295 to 295e–5, 295g–2, 295g–5, 295g–8a, and 295g–9 of this title, enacting provisions set out as notes under sections 254*l*, 292h, 293c, 294d, 294n, and 300aa–14 of this title and section 462 of the Appendix to Title 50, War and National Defense, and amending provisions set out as a note under section 298b–5 of this title] may be cited as the 'Health Professions Training Assistance Act of 1985'.''

Pub. L. 99–117, § 1(a), Oct. 7, 1985, 99 Stat. 491, provided that: ''this Act [amending sections 207, 210, 213a, 242c, 242n, 243, 246, 247b, 247e, 253, 290aa–3, 300x–4, 300x–5, and 300x–9 of this title and section 1333 of Title 15, Commerce and Trade, repealing sections 247, 254a–1, 299 to 299j, 300d–4, 300d–6, and 300aa–4 of this title, and enacting provisions set out as notes under sections 210, 241, and 242n of this title] may be cited as the 'Health Services Amendments of 1985'.''

Pub. L. 99–92, § 1, Aug. 16, 1985, 99 Stat. 393, provided: ''That this Act [enacting section 297i of this title, transferring section 296c to section 298b–5 of this title, amending sections 296k to 296m, 297, 297–1, 297a, 297b, 297d, 297e, 298, 298b, and 298b–5 of this title, sections 1332, 1333, 1336, and 1341 of Title 15, Commerce and Trade, and section 6103 of Title 26, Internal Revenue Code, repealing sections 296 to 296b, 296d to 296f, 296j, 297h, and 297j of this title, and enacting provisions set out as notes under sections 296k and 298b–5 of this title and section 1333 of Title 15] may be cited as the 'Nurse Education Amendments of 1985'.''

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98–555, §1(a), Oct. 30, 1984, 98 Stat. 2854, provided that: ''this Act [enacting sections 300w–9 and 300w–10 of this title and amending sections 247b, 247c, 255, 300, 300w, 300w–4, and 300w–5 of this title] may be cited as the 'Preventive Health Amendments of 1984'.''

Pub. L. 98–551, §1, Oct. 30, 1984, 98 Stat. 2815, provided: ''That this Act [enacting section 300u–5 of this title, amending sections 242b, 242c, 242m, 242n, 254r, 300u, and 300u–3 of this title and sections 360bb and 360ee of Title 21, Food and Drugs, and repealing sections 300u–5 to 300u–9 of this title] may be cited as the 'Health Promotion and Disease Prevention Amendments of 1984'.''

Pub. L. 98–509, §1(a), Oct. 19, 1984, 98 Stat. 2353, provided that: ''this Act [enacting sections 290bb–1a, 290cc–1, 290cc–2, and 300x–1a of this title, amending sections 218, 290aa, 290aa–1 to 290aa–3, 290bb, 290bb–2, 290cc, 290dd, 290dd–1, 300x, 300x–1, and 300x–2 to 300x–9 of this title and section 802 of Title 21, Food and Drugs, repealing sections 1161 to 1165 of Title 21, and enacting provisions set out as notes under sections 300x and 300x–1a of this title and section 802 of Title 21] may be cited as the 'Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984'.''

Pub. L. 98–507, §1, Oct. 19, 1984, 98 Stat. 2339, provided: ''That this Act [enacting sections 273 to 274e of this title and provisions set out as notes under section 273 of this title] may be cited as the 'National Organ Transplant Act'.''

SHORT TITLE OF 1983 AMENDMENTS

Pub. L. 98–194, §1, Dec. 1, 1983, 97 Stat. 1345, provided: ''That this Act [amending section 254g of this title and enacting provisions set out as notes under section 254g of this title] may be cited as the 'Rural Health Clinics Act of 1983'.''

Pub. L. 98–24, §1(a), Apr. 26, 1983, 97 Stat. 175, provided that: ''This Act [enacting sections 290aa–4 and 290aa–5 of this title, transferring sections 219 to 224, 225a to 227, 228 to 229d, 289k–1, 3511, 4551, 4585, 4587, 4588, 4571, 4561, 4581, and 4582 of this title to sections 300aa to 300aa–5, 300aa–6 to 300aa–8, 300aa–9 to 300aa–14, 290aa–3, 290aa, 290aa–1, 290bb, 290bb–1, 290bb–2, 290dd, 290dd–1, 290dd–2, and 290dd–3 of this title, respectively, and sections 1173(a), 1174, 1175, 1180, 1191, 1192, and 1193 of Title 21, Food and Drugs, to sections 290aa–2(e), 290ee–2, 290ee–3, 290ee–1, 290aa–2, 290ee, and 290cc of this title, respectively, amending sections 218, 278, 289*l*–4, 290aa to 290aa–2, 290bb to 290bb–2, 290cc, 290dd to 290dd–2, 290ee to 290ee–3, and 4577 of this title and sections 1165, 1173, and 1177 of Title 21, repealing sections 4552, 4553, and 4586 of this title and sections 1117, 1172, and 1194 of Title 21, enacting provisions set out as a note under section 290aa of this title, amending provisions set out as a note under section 4541 of this title, and repealing provisions set out as a note under section 242 of this title] may be cited as the 'Alcohol and Drug Abuse Amendments of 1983'.''

SHORT TITLE OF 1981 AMENDMENT

Section 940(a) of Pub. L. 97–35 provided that: ''This subtitle [subtitle F (§§940–949) of title IX of Pub. L. 97–35, amending sections 300e to 300e–4a, 300e–6 to 300e–9, 300e–11, 300e–17, and 300m–6 of this title, repealing sections 300e–13 and 300e–15 of this title, and enacting provisions set out as notes under sections 300e–9 and 300m–6 of this title] may be cited as the 'Health Maintenance Organization Amendments of 1981'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–538, §1(a), Dec. 17, 1980, 94 Stat. 3183, provided that: ''this Act [enacting sections 289c–3, 289c–4, 289c–7 of this title, amending sections 286e, 287c, 287i, 289a, 289c–1, 289c–2, 289c–5, 289c–6, 294a, 294d, 294v, 300k–1, 300*l*–5, 300m, 300m–3, 300m–6, 300n, and 300n–1 of this title and section 1182 of Title 8, Aliens and Nationality, repealing sections 289c–3a and 289c–8 and former sections 289c–3, 289c–4, and 289c–7 of this title, and enacting provisions set out as notes under sections 289, 300*l*–5, and 300m–6 of this title] may be cited as the 'Health Programs Extension Act of 1980'.''

SHORT TITLE OF 1979 AMENDMENTS

Pub. L. 96–142, title I, §101, Dec. 12, 1979, 93 Stat. 1067, provided that: ''This title [amending sections 295g–9, 300d–1, 300d–3, 300d–5, 300d–6, 300d–8, and 300d–21 of this title and enacting provisions set out as a note under section 295g–9 of this title] may be cited as the 'Emergency Medical Services Systems Amendments of 1979'.''

Pub. L. 96–142, title II, §201, Dec. 12, 1979, 93 Stat. 1070, provided that: ''This title [enacting section 300c–12 and amending section 300c–11 of this title] may be cited as the 'Sudden Infant Death Syndrome Amendments of 1979'.''

Section 1(a) of Pub. L. 96–79 provided that: ''This Act [enacting sections 300m–6, 300s, 300s–1, 300s–6, and 300t–11 to 300t–14 of this title, amending this section and sections 246, 300k–1 to 300k–3, 300*l* to 300*l*–5, 300m to 300m–5, 300n, 300n–1, 300n–3, 300n–5, 300q, 300q–2, 300r, 300s–3, 300s–5, 300t, 1396b, 2689t, and 4573 of this title and section 1176 of Title 21, Food and Drugs, repealing sections 300*o* to 300*o*–3, 300p to 300p–3, 300q–1, and former section 300s of this title, redesignating former section 300s–1 as 300s–1a of this title, and enacting provisions set out as notes under sections 300k–1, 300*l*, 300*l*–1, 300*l*–4, 300*l*–5, 300m, 300m–6, 300n, 300q, and 300t–11 of this title] may be cited as the 'Health Planning and Resources Development Amendments of 1979'.''

Pub. L. 96–76, title I, §101(a), Sept. 29, 1979, 93 Stat. 579, provided that: ''This title [enacting section 297–1 of this title, amending sections 296, 296d, 296e, 296k to 296m, 297 to 297c, 297e, and 297j of this title, and enacting provisions set out as notes under sections 296 and 297j of this title] may be cited as the 'Nurse Training Amendments of 1979'.''

Pub. L. 96–76, title III, §301, Sept. 29, 1979, 93 Stat. 584, provided that: ''This title [amending sections 204, 206, 207, 209, 210–1, 210b, 211, 212, 213a, 215, and 218a of this title and sections 201, 415, and 1006 of Title 37, Pay and Allowances of the Uniformed Services, and enacting provisions set out as a note under section 206 of this title] may be cited as the 'Public Health Service Administrative Amendments of 1979'.''

SHORT TITLE OF 1978 AMENDMENTS

Pub. L. 95–626, §1(a), Nov. 10, 1978, 92 Stat. 3551, provided that: ''This Act [enacting sections 242p, 247, 247a, 247b–1, 254a–1, 255, 256, 256a, 300a–21 to 300a–29, 300a–41, 300b–6, and 300u–6 to 300u–9 of this title, amending sections 218, 246, 247b, 247c, 247e, 254a, 254b, 254c, 254k, 294t, 294u, 295h–1, 300b, 300b–3, 300c–21, 300c–22, 300d–2, 300d–3, 300d–5, 300d–6, 300e–12, 300e–14a, 300u–5, 1396b, and 4846 of this title, repealing sections 256, 4801, 4811, 4844, and 4845 of this title, enacting provisions set out as notes under this section and sections 246, 247a, 247c, 254a–1, 254b to 254d, 256, 256a, 289b, 289d, 300a–21, 300d–2, and 300d–3 of this title, and amending provisions set out as notes under sections 300b and 1395x of this title] may be cited as the 'Health Services and Centers Amendments of 1978'.''

Pub. L. 95–626, title I, §101, Nov. 10, 1978, 92 Stat. 3551, provided that: ''This part [part A (§§101–107) of title I of Pub. L. 95–626, enacting section 256a of this title, amending sections 218, 247e, 254b, 254c, 255, 300e–12, 300e–14a, and 1396b of this title, repealing section 256 of this title, and enacting provisions set out as notes under sections 254b, 254c, and 256a of this title] may be cited as the 'Migrant and Community Health Centers Amendments of 1978'.''

Pub. L. 95–626, title I, §111, Nov. 10, 1978, 92 Stat. 3562, provided that: ''This part [part B (§§111–116) of title I of Pub. L. 95–626, enacting sections 254a–1 and 256 of this title, amending sections 294t and 294u of this title, and enacting provisions set out as notes under sections 254a–1, 254d, and 256 of this title] may be cited as the 'Primary Health Care Act of 1978'.''

Pub. L. 95–626, title II, §200, Nov. 10, 1978, 92 Stat. 3570, provided that: ''This title [enacting sections 247, 247a,

255, and 300b–6 of this title, amending sections 246, 247b, 247c, 300b, 300b–3, 300c–21, 300c–22, 300d–2, 300d–3, 300d–5, 300d–6, and 4846 of this title, repealing sections 4801, 4811, 4844, and 4845 of this title, enacting provisions set out as notes under sections 246, 247a, 247c, 289d, 300d–2, and 300d–3 of this title, and amending provisions set out as notes under sections 300b and 1395x of this title] may be cited as the 'Health Services Extension Act of 1978'.''

Pub. L. 95–623, §1(a), Nov. 9, 1978, 92 Stat. 3443, provided that: ''This Act [enacting sections 229c, 242n, and 4362a of this title, amending sections 210, 242b, 242c, 242k, 242m, 242*o*, 289k, 289*l*–1, 292e, 292h, 292i, 294t, 295f–1, 295f–2, 295g–2, 295g–8, 295h–2, 7411, 7412, 7417, and 7617 of this title, repealing section 280c of this title, enacting provisions set out as a note under section 242m of this title, and amending provisions set out as notes under sections 292h, 295h–4, and 296 of this title] may be cited as the 'Health Services Research, Health Statistics, and Health Care Technology Act of 1978'.''

Pub. L. 95–622, title II, §201(a), Nov. 9, 1978, 92 Stat. 3420, provided that: ''This title [enacting sections 289*l*–6 to 289*l*–8 of this title, amending sections, 241, 248, 277, 280b, 281 to 286g, 287a to 287d, 287g, 287i, 289c–6, 289*l* to 289*l*–2, 289*l*–4, 4541, 4573, and 4585 of this title, and enacting provisions set out as notes under sections 241, 286b, 286f, 289a, and 289*l*–1 of this title] may be cited as the 'Biomedical Research and Research Training Amendments of 1978'.''

Pub. L. 95–559, §1(a), Nov. 1, 1978, 92 Stat. 2131, provided that: ''This Act [enacting sections 300e–4a, 300e–16, and 300e–17 of this title, amending sections 300e, 300e–1, 300e–3, 300e–4, 300e–5, 300e–7, 300e–8, 300e–9, 300e–11 to 300e–13, 1320a–1, 1396a, and 1396b of this title, and enacting provisions set out as notes under sections 300e–3, 300e–4, 300e–16, and 1396a of this title] may be cited as the ''Health Maintenance Organization Amendments of 1978'.''

SHORT TITLE OF 1977 AMENDMENTS

Pub. L. 95–190, §1, Nov. 16, 1977, 91 Stat. 1393, provided that: ''This Act [enacting sections 300j–10 and 7625a of this title, amending sections 300f, 300g–1, 300g–3, 300g–5, 300h, 300h–1, 300j to 300j–2, 300j–4, 300j–6, 300j–8, 7410, 7411, 7413, 7414, 7416, 7419, 7420, 7426, 7472 to 7475, 7478, 7479, 7502, 7503, 7506, 7521, 7522, 7525, 7541, 7545, 7549, 7602, 7604, 7607, 7623, and 7626 of this title, enacting provisions set out as notes under section 300f of this title, and section 5108 of Title 5, Government Organization and Employees, and amending provisions set out as notes under sections 300f, 7401, and 7502 of this title] may be cited as the 'Safe Drinking Water Amendments of 1977'.''

Section 101 of title I of Pub. L. 95–83 provided that: ''This title [amending this section and sections 242m, 300e–8, 300k–3, 300*l* to 300*l*–5, 300m, 300m–2, 300m–4, 300m–5, 300n–3, 300n–5, 300*o*–1 to 300*o*–3, 300p, 300p–3, 300q, 300q–2, 300r, 300s–3, 300t, and 1396b of this title, and enacting provisions set out as a note under section 1396b of this title] may be cited as the 'Health Planning and Health Services Research and Statistics Extension Act of 1977'.''

Section 201 of title II of Pub. L. 95–83 provided that: ''This title [amending sections 280b, 286b, 286c, 286d, 286f, 286g, 287c, 287d, 287f, 287h, 287i, and 289*l*–1 of this title] may be cited as the 'Biomedical Research Extension Act of 1977'.''

Section 301 of title III of Pub. L. 95–83 provided that: ''This title [enacting section 294y–1 of this title, amending sections 210, 246, 247d, 254c, 292g, 292h, 293a, 294d, 294e, 294h, 294i, 294j, 294n, 294r, 294s, 294w, 294z, 295f–1, 295g–1, 295g–9, 295h–5, 295h–5c, 296e, 296m, 297, 300, 300a–1, 300a–2, 300a–3, 300c–11, 300c–21, 300c–22, 701, 2689a to 2689e, 2689h, 2689p, 2689q, 4572, 4573, and 4577 of this title, sections 1101 and 1182 of Title 8, Aliens and Nationality, sections 1112 and 1176 of Title 21, Food and Drugs, and section 1614 of Title 25, Indians, enacting provisions set out as notes under sections 242b, 242*l*, 294d, 294i, 294n, 294r, 294t, 294y–1, 294z, 295f–1, 295g–1, 295h–5, and 296m of this title and sections 1101 and 1182 of Title 8, and amending provisions set out as notes under sections 289k–2, 1395x, and 1396b of this title] may be cited as the 'Health Services Extension Act of 1977'.''

SHORT TITLE OF 1976 AMENDMENTS

Pub. L. 94–573, §1(a), Oct. 21, 1976, 90 Stat. 2709, provided that: ''This Act [enacting section 300d–21 of this title, amending sections 295f–6 and 300d to 300d–9 of this title, enacting provisions set out as notes under sections 242b, 300d, 300d–7, and 300d–9 of this title, and amending provisions set out as notes under sections 218, 289c–1, and 289*l*–1 of this title] may be cited as the 'Emergency Medical Services Amendments of 1976'.''

Pub. L. 94–562, §1(a), Oct. 19, 1976, 90 Stat. 2645, provided that: ''This Act [enacting sections 289c–3a, 289c–7, and 289c–8 of this title, amending sections 289c–2, 289c–5, and 289c–6 of this title, and enacting provisions set out as notes under sections 289a, 289c–3a, and 289c–7 of this title] may be cited as the 'Arthritis, Diabetes, and Digestive Disease Amendments of 1976'.''

Section 1(a) of Pub. L. 94–484 provided that: ''This Act [enacting sections 254 to 254k, 292, 292e to 292k, 294 to 294*l*, 294r to 294z, 294aa, 295f–1, 295g to 295g–8, 295g–10, 295h to 295h–2, and 295h–4 to 295h–7 of this title; renumbering sections 293d as 292a, 293e as 292b, 295h–8 as 292c, 295h–9 as 292d, 293g to 293i as 293d to 293f, 294 to 294c as 294m to 294p, 294e as 294q, 295f–5 as 295f–2, and 295f–6 as 295g–9 of this title; amending this section and sections 234, 244–1, 245a, 246, 247c, 254b, 263c, 292a to 292c, 293 to 293d, 293f, 294g, 294m to 294p, 295e–1 to 295e–4, 295f to 295f–4, 295g, 295g–11, 295g–23, 295h–1 to 295h–3, 297, 300a, 300d, 300d–7, 300f, 300*l*–1, 300n, and 300s–3 of this title and sections 1101 and 1182 of Title 8, Aliens and Nationality; repealing sections 234, 244–1, 245a, 254b, 292 to 292j, 293f, 294d, 294f, 294g, 295f–1, to 295f–4, 295g, 295g–1, 295g–11, and 295g–21 to 295g–23 of this title; omitting sections 295h to 295h–2, 295h–3a to 295h–3d, 295h–4, 295h–5, and 295h–7 of this title; and enacting provisions set out as notes under sections 254d, 292, 292b, 292h, 293, 293f, 294, 294n, 294*o*, 294q, 294r, 294t, 294z, 295g, 295g–1, 295g–9, 295g–10, 295h, 295h–4, and 300*l*–1 of this title and section 1182 of Title 8] may be cited as the 'Health Professions Educational Assistance Act of 1976'.''

Pub. L. 94–460, §1(a), Oct. 8, 1976, 90 Stat. 1945, provided that: ''This Act [enacting section 300e–15 of this title, amending sections 242c, 289k–2, 300e, 300e–1 to 300e–11, 300e–13, 300n–1, 1395x note, 1395mm, and 1396b of this title, section 8902 of Title 5, Government Organization and Employees, and section 360d of Title 21, Food and Drugs, and enacting provisions set out as notes under sections 300e and 1396b of this title] may be cited as the 'Health Maintenance Organization Amendments of 1976'.''

Pub. L. 94–380, §1, Aug. 12, 1976, 90 Stat. 1113, provided: ''That this Act [amending section 247b of this title and enacting provisions set out as a note under section 247b of this title] may be cited as the 'National Swine Flu Immunization Program of 1976'.''

Section 101 of title I of Pub. L. 94–317 provided that: ''This title [enacting subchapter XV of this chapter] may be cited as the 'National Consumer Health Information and Health Promotion Act of 1976'.''

Section 201 of title II of Pub. L. 94–317 provided that: ''This title [amending sections 243, 247b, 247c, 4801, 4831, and 4841 to 4843 of this title and enacting provisions set out as notes under sections 247b and 247c of this title] may be cited as the 'Disease Control Amendments of 1976'.''

Pub. L. 94–278, §1(a), Apr. 22, 1976, 90 Stat. 401, provided that: ''This Act [enacting sections 217a–1, 289*l*–5, 300b, 300b–1 to 300b–5 of this title and sections 350 and 378 of Title 21, Food and Drugs, and amending sections 213e, 225a, 234, 241, 247d, 254c, 287, 287a to 287d, 287f to 287i, 289a, 289c–1, 289c–5, 289c–6, 289*l*–1, 289*l*–2, 294b, 295g–23, 300c–11, 300*l*, 300p–3, 300s–1, 6062 and 6064 of this title and sections 321, 333, 334 and 343 of Title 21, and enacting provisions set out as notes under sections 218, 287, 289c–1, 289c–2, 289*l*–1, 300b and 6001 of this title and sections 334 and 350 of Title 21] may be cited as the 'Health Research and Health Services Amendment of 1976'.''

Pub. L. 94–278, title IV, §401, Apr. 22, 1976, 90 Stat. 407, provided that: ''This title [enacting part A of sub-

chapter IX of this chapter, omitting former Part B of of subchapter IX of this chapter relating to Cooley's Anemia Programs, redesignating former Parts C and D of subchapter IX of this chapter as Parts B and C of subchapter IX of this chapter, respectively, and amending section 300c–11 of this title] may be cited as the 'National Sickle Cell Anemia, Cooley's Anemia, Tay-Sachs, and Genetic Diseases Act'.''

Pub. L. 94–278, title VI, §601, Apr. 22, 1976, 90 Stat. 413, provided that: ''This title [amending sections 289a, 289c–1, 289c–5, and 289c–6 of this title and amending provisions set out as notes under section 289c–1 of this title] may be cited as the 'National Arthritis Act Technical Amendments of 1976'.''

SHORT TITLE OF 1975 AMENDMENTS

Pub. L. 94–63, title I, §101, July 29, 1975, 89 Stat. 304, provided that: ''This title [amending section 246 of this title and enacting provisions set out as a note under section 246 of this title] may be cited as the 'Special Health Revenue Sharing Act of 1975'.''

Pub. L. 94–63, title II, §201, July 29, 1975, 89 Stat. 306, provided that: ''This title [enacting sections 300a–6a and 300a–8 of this title, amending sections 300, 300a–1 to 300a–4 of this title, and repealing section 3505c of this title] may be cited as the 'Family Planning and Population Research Act of 1975'.''

Pub. L. 94–63, title IX, §901(a), July 29, 1975, 89 Stat. 354, provided that: ''This title [enacting sections 296j to 296m and 298b–3 of this title, amending sections 296 to 296i, 297 to 297e, 297g to 297h, 298 to 298b–2, 298c, 298c–1 and 298c–7 of this title, repealing sections 296g, 296i, 297f, 298c–7, and 298c–8 of this title, and enacting provisions set out as notes under sections 296, 296a, 296d, 296e, 296m, 297, and 297b of this title and former section 297f of this title] may be cited as the 'Nurse Training Act of 1975'.''

Pub. L. 93–641, §1, Jan. 4, 1975, 88 Stat. 2225, provided that: ''This Act [enacting subchapter XIII of this chapter amending section 300e–4 of this title, repealing section 247a of this title, and enacting provisions set out as notes under sections 217a, 229, 291b, 300*l*–4, and 300m of this title] may be cited as the 'National Health Planning and Resources Development Act of 1974'.''

SHORT TITLE OF 1974 AMENDMENTS

Pub. L. 93–640, §1, Jan. 4, 1975, 88 Stat. 2217, provided that: ''This Act [enacting sections 289c–4, 289c–5, and 289c–6 of this title, amending sections 289a and 289c–1 of this title, and enacting provisions set out as notes under section 289c–1 of this title] may be cited as the 'National Arthritis Act of 1974'.''

Pub. L. 93–523, §1, Dec. 16, 1974, 88 Stat. 1660, as amended by Pub. L. 104–182, title V, §501(e), Aug. 6, 1996, 110 Stat. 1691, provided that: ''This Act [enacting subchapter XII of this chapter and section 349 of Title 21, Food and Drugs, amending this section, and enacting provisions set out as a note under section 300f of this title] may be cited as the 'Safe Drinking Water Act of 1974'.''

Pub. L. 93–354, §1, July 23, 1974, 88 Stat. 373, provided that: ''This Act [enacting sections 289c–1a, 289c–2, and 289c–3 of this title, amending sections 247b and 289c–1 of this title, and enacting provisions set out as notes under section 289c–2 of this title] may be cited as the 'National Diabetes Mellitus Research and Education Act'.''

Pub. L. 93–353, §1(a), July 23, 1974, 88 Stat. 362, provided that: ''This Act [enacting sections 242k, 242m to 242*o*, and 253b of this title, renumbering former sections 242i, 242j, 242f, 242d, 242g, and 242h as sections 235, 236, 242*l*, 244–1, 245a, and 247d of this title, amending sections 236, 242b, 242c, 242*l*, 244–1, 245a, 280b, 280b–1, 280b–2, 280b–4, 280b–5, and 280b–7 to 280b–9, and repealing sections 242e, 244, 244a, 245, 247, 280b–3, and 280b–12 of this title, and enacting provisions set out as notes under sections 242m, 253b, and 280b of this title] may be cited as the 'Health Services Research, Health Statistics, and Medical Libraries Act of 1974'.''

Pub. L. 93–353, title I, §101, July 23, 1974, 88 Stat. 362, provided that: ''This title [enacting sections 242k, 242m to 242*o*, and 253b, renumbering former sections 242i, 242j, 242f, 242d, 242g, and 242h as sections 235, 236, 242*l*, 244–1, 245a, and 247d of this title, amending sections 236, 242b, 242c, 242*l*, 244–1, and 245a, repealing sections 242e, 244, 244a, 245, and 247 of this title, and enacting provisions set out as notes under sections 242m and 253b of this title] may be cited as the 'Health Services Research and Evaluation and Health Statistics Act of 1974'.''

Pub. L. 93–352, title I, §101, July 23, 1974, 88 Stat. 358, provided that: ''This title [enacting section 289*l*–4 of this title, amending sections 241, 282, 286a, 286b, 286c, 286d, 286g, and 289*l* of this title, enacting provisions set out as notes under sections 289*l* and 289*l*–1 of this title, and amending provisions set out as a note under this section] may be cited as the 'National Cancer Act Amendments of 1974'.''

Pub. L. 93–348, title I, §1, July 12, 1974, 88 Stat. 342, provided that: ''This Act [enacting sections 289*l*–1 to 289*l*–3 of this title, amending sections 218, 241, 242a, 282, 286a, 286b, 287a, 287b, 287d, 288a, 289c, 289c–1, 289*g*, 289k, and 300a–7 of this title, and enacting provisions set out as notes under sections 218, 241, 289*l*–1, and 289*l*–3 of this title] may be cited as the 'National Research Act'.''

Pub. L. 93–348, title I, §101, July 12, 1974, 88 Stat. 342, provided that: ''This title [enacting sections 289*l*–1 and 289*l*–2 and amending sections 241, 242a, 282, 286a, 286b, 287a, 287b, 287d, 288a, 289c, 289c–1, 289*g*, 289k, 295f–3, and 295h–9 of this title] may be cited as the 'National Research Service Award Act of 1974'.''

Pub. L. 93–296, §1, May 31, 1974, 88 Stat. 184, provided that: ''This Act [enacting Part H of subchapter III of this chapter and provisions set out as notes under section 289k–2 of this title] may be cited as the 'Research on Aging Act of 1974'.''

Pub. L. 93–270, §1, Apr. 22, 1974, 88 Stat. 90, provided that: ''This Act [enacting part B of subchapter IX of this chapter, amending sections 289d and 289g of this title, and enacting provisions set out as a note under section 289g of this title] may be cited as the 'Sudden Infant Death Syndrome Act of 1974'.''

SHORT TITLE OF 1973 AMENDMENTS

Pub. L. 93–222, §1, Dec. 29, 1973, 87 Stat. 914, provided in part that Pub. L. 93–222 [enacting subchapter XI of this chapter and section 280c of this title, amending section 2001 of this title and section 172 of Title 12, Bank and Banking, repealing section 763c of Title 33, Navigation and Navigable Waters, enacting provisions set out as notes under sections 300e and 300e–1 of this title, amending provisions set out as notes under this section, and repealing provisions set out as notes under this section and sections 211a, 212a, and 222 of this title] shall be cited as the ''Health Maintenance Organization Act of 1973.''

Pub. L. 93–154, §1, Nov. 16, 1973, 87 Stat. 594, provided that: ''This Act [enacting subchapter X of this chapter and section 295f–6 of this title, amending sections 295f–2 and 295f–4 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Emergency Medical Services Systems Act of 1973'.''

Pub. L. 93–45, §1, June 18, 1973, 87 Stat. 91, provided that: ''This Act [enacting section 300a–7 of this title, amending sections 242b, 242c, 244–1, 245a, 246, 280b–4, 280b–5 280b–7, 280b–8, 280b–9, 291a, 291j–1, 291j–5, 295h–1, 295h–2, 295h–3a, 299a, 300, 300a–1, 300a–2, 300a–3, 2661, 2671, 2677, 2681, 2687, 2688a, 2688d, 2688j–1, 2688j–2, 2688*l*, 2688*l*–1, 2688n–1, 2688*o*, and 2688u of this title, and enacting provisions set out as amendment to note provisions under this section] may be cited as the 'Health Programs Extension Act of 1973'.''

SHORT TITLE OF 1972 AMENDMENTS

Pub. L. 92–585, §1, Oct. 27, 1972, 86 Stat. 1290, provided that: ''This Act [enacting section 234 of this title, amending sections 254b and 294a of this title, and enacting provisions set out as a note under section 246 of this

title] may be cited as the 'Emergency Health Personnel Act Amendments of 1972'.''

Pub. L. 92–449, §1, Sept. 30, 1972, 86 Stat. 748, provided that: ''This Act [enacting section 247c of this title, amending sections 247b and 300 of this title, and enacting provisions set out as notes under section 247c of this title] may be cited as the 'Communicable Disease Control Amendments Act of 1972'.''

Pub. L. 92–449, title II, §201, Sept. 30, 1972, 86 Stat. 750, provided that: ''This title [enacting section 247c of this title and provisions set out as notes under section 247c of this title] may be cited as the 'National Venereal Disease Prevention and Control Act'.''

Pub. L. 92–423, §1, Sept. 19, 1972, 86 Stat. 679, provided that: ''This Act [enacting sections 287b to 287f and 287i of this title, amending sections 218, 241, 287, 287a, 287g, and 287h of this title, and enacting provisions set out as notes under section 287 of this title] may be cited as the 'National Heart, Blood Vessel, Lung, and Blood Act of 1972'.''

SHORT TITLE OF 1971 AMENDMENTS

Pub. L. 92–218, §1, Dec. 23, 1971, 85 Stat. 778, provided that: ''This Act [enacting sections 286a to 286g and 289*l* of this title, amending sections 218, 241, 282, 283, and 284 of this title, and enacting provisions set out as notes under sections 281, 286, and 289*l* of this title] may be cited as 'The National Cancer Act of 1971'.''

Pub. L. 92–158, §1(a), Nov. 18, 1971, 85 Stat. 465, provided that: ''This Act [enacting sections 296h, 296i, 297i, 298b–1, and 298b–2 of this title, amending sections 296, 296a, 296b, 296c, 296d, 296e, 296f, 296g, 297, 297a, 297b, 297c, 297e, 297f, 298, 298b, 298c, and 298c–7 of this title and enacting provisions set out as notes under sections 296, 296a, 296d, 296e, 297b, and 298c of this title] may be cited as the 'Nurse Training Act of 1971'.''

Pub. L. 92–157, title I, §101(a), Nov. 18, 1971, 85 Stat. 431, provided that: ''This title [enacting sections 293i, 294*g*, 295e–1 to 295e–5, 295f–5, 295g–11, 295g–21 to 295g–23, and 3505d of this title, amending sections 210 to 218, 242i, 254, 276, 277, 280, 280a–1, 292b, 292d to 292f, 292h to 292j, 293 to 293e, 293g, 293h, 294 to 294f, 295f to 295f–4, 295g, 295g–1, 295h–3d, 295h–4, 295h–8, 295h–9, 1857c–6, 1857c–8, 1857f–6c, 1857h–5, and 2676 of this title and section 346a of Title 21, Food and Drugs, and enacting provisions set out as notes under section 295h–8 of this title] may be cited as the 'Comprehensive Health Manpower Training Act of 1971'.''

SHORT TITLE OF 1970 AMENDMENTS

Pub. L. 91–623, §1, Dec. 31, 1970, 84 Stat. 1868, provided: ''That this Act [enacting sections 233 and 254b of this title] may be cited as the 'Emergency Health Personnel Act of 1970'.''

Pub. L. 91–572, §1, Dec. 24. 1970, 84 Stat. 1504, provided that: ''This Act [enacting sections 300 to 300a–6 and 3505a to 3505c of this title, amending sections 211a, 212a of this title and section 763c of Title 33, Navigation and Navigable Waters, and enacting provisions set out as notes under sections 201, 222, and 300 of this title] may be cited as the 'Family Planning Services and Population Research Act of 1970'.''

Pub. L. 91–519, §1, Nov. 2, 1970, 84 Stat. 1342, provided that: ''This Act [enacting sections 295h–3a to 295h–3d, 295h–8, and 296h–9 of this title, amending sections 295f–1, 295f–2, 295h to 295h–2, 295h–4, and 295h–7 of this title, repealing section 295h–3 of this title, and enacting provisions set out as notes under sections 295f–1, 295–f2, and 295h–4 of this title] may be cited as the 'Health Training Improvement Act of 1970'.''

Pub. L. 91–515, title I, §101, Oct. 30, 1970, 84 Stat. 1297, provided that: ''This title [amending sections 299 to 299*g*, 299i, and 299j of this title] may be cited as the 'Heart Disease, Cancer, Stroke, and Kidney Disease Amendments of 1970'.''

Pub. L. 91–464, §1, Oct. 16, 1970, 84 Stat. 988, provided: ''That this Act [amending section 247b of this title] may be cited as the 'Communicable Disease Control Amendments of 1970'.''

Pub. L. 91–296, §1(a), June 30, 1970, 84 Stat. 336, provided that: ''This Act [enacting sections 229b, 291j–1 to 291j–10, and 291*o*–1 of this title, amending sections 291a, 242b, 245a, 246, 291 note, 291b, 291c, 291d, 291e, 291f, 291i, 291k to 291m–1, 291*o*, and 299a of this title and section 1717 of Title 12, Banks and Banking, enacting provisions set out as notes under this section and sections 242, 245a, 246, 291a, 291b, 291c, 291e, 291f, 291*o*, 295h–6, and 2688p of this title, and repealing sections 295h–6 and 2688p of this title] may be cited as the 'Medical Facilities Construction and Modernization Amendments of 1970'.''

Section 1 of Pub. L. 91–212 provided that: ''This Act [enacting section 280b–12 of this title and amending this section and sections 276 to 278, 280, 280a–1, 280b, 280b–2 to 280b–9, and 280b–11 of this title] may be cited as the 'Medical Library Assistance Extension Act of 1970'.''

SHORT TITLE OF 1968 AMENDMENTS

Pub. L. 90–574, title IV, §401, Oct. 15, 1968, 82 Stat. 1011, provided that: ''This title [amending sections 291a and 291b of this title] may be cited as the 'Hospital and Medical Facilities Construction and Modernization Assistance Amendments of 1968'.''

Pub. L. 90–490, §1, Aug. 16, 1968, 82 Stat. 773, provided: ''That this Act [enacting sections 294f, 295g–1, 295h–6, 295h–7, 296f, 296g, and 297h of this title, amending sections 242d, 242g, 292b to 292e, 293 to 293d, 294 to 294d, 295f to 295f–4, 295g, 295h to 295h–3, 296 to 296b, 296d, 296e, 297 to 297f, 298b, 298c, and 298c–1 of this title, omitting sections 298c–2 to 298c–6 of this title, and enacting provisions set out as notes under sections 292b, 292e, 293 to 293c, 294f, 295f, 295f–2, 295g, 296, 296d, 296f, and 297a of this title] may be cited as the 'Health Manpower Act of 1968'.''

SHORT TITLE OF 1967 AMENDMENTS

Pub. L. 90–174, §1, Dec. 5, 1967, 81 Stat. 533, provided: ''That this Act [enacting sections 217b, 254a, 263a, and 291m–1 of this title, amending sections 241, 242, 242b, 243, 244, 246, 249, 251, 293e, 295h–4, and 296e of this title, repealing section 291n of this title, and enacting provisions set out as notes under this section and sections 242b, 242c, 246, 263a, and 296e of this title] may be cited as the 'Partnership for Health Amendments of 1967'.''

Pub. L. 90–174, §5(c), Dec. 5, 1967, 81 Stat. 539, provided that: ''This section [enacting section 263a of this title and provisions set out as notes under section 263a of this title] may be cited as the 'Clinical Laboratories Improvement Act of 1967'.''

Pub. L. 90–31, §1, June 24, 1967, 81 Stat. 79, provided: ''That this Act [enacting section 225a of this title and amending sections 2681, 2684, 2687, 2688a, 2688d, and 2691 of this title] may be cited as the 'Mental Health Amendments of 1967'.''

SHORT TITLE OF 1966 AMENDMENTS

Pub. L. 89–751, §1, Nov. 3, 1966, 80 Stat. 1222, provided: ''That this Act [enacting sections 295h to 295h–5 and 298c to 298c–8 of this title, amending sections 292b, 294d, 294n to 294p, 296, 297c to 297f, and 298 of this title and section 1717 of Title 12, Banks and Banking, and enacting provisions set out as notes under sections 294, 294d, 297c, and 297f of this title] may be cited as the 'Allied Health Professions Personnel Training Act of 1966'.''

Pub. L. 89–749, §1, Nov. 3, 1966, 80 Stat. 1180, provided: ''That this Act [amending 243, 245a, and 246 of this title, repealing sections 247a and 247c of this title, and enacting provisions set out as notes under this section and sections 243 and 245a of this title] may be cited as the 'Comprehensive Health Planning and Public Health Services Amendments of 1966'.''

Pub. L. 89–709, §1, Nov. 2, 1966, 80 Stat. 1103, provided: ''That this Act [amending sections 293, 293a, 293d, 293e, 294, 294a, and 294b of this title] may be cited as the 'Veterinary Medical Education Act of 1966'.''

SHORT TITLE OF 1965 AMENDMENTS

Section 1 of Pub. L. 89–291, Oct. 22, 1965, 79 Stat. 1059, provided that: ''This Act [enacting section 280a–1 of

this title and Part J of subchapter II of this chapter and amending section 277 of this title] may be cited as the 'Medical Library Assistance Act of 1965'.''

Pub. L. 89–290, §1, Oct. 22, 1965, 79 Stat. 1052, provided that: ''This Act [enacting sections 295f to 295f–4 and 295g of this title and amending sections 293, 293a, 293d, 294 to 294d, 297b, and 298b of this title] may be cited as the 'Health Professions Educational Assistance Amendments of 1965'.''

Pub. L. 89–239, §1, Oct. 6, 1965, 79 Stat. 926, provided: ''That this Act [enacting sections 299 to 299i of this title, amending sections 211a and 212a of this title, sections 757, 790, 800 of former Title 5, Executive Departments and Government Officers and Employees, and section 763c of Title 33, Navigation and Navigable Waters, and enacting provisions set out as notes under sections 201, 214, 222, and 249 of this title] may be cited as the 'Heart Disease, Cancer, and Stroke Amendments of 1965'.''

Pub. L. 89–115, §1, Aug. 9, 1965, 79 Stat. 448, provided: ''That this Act [amending sections 241, 292c, and 292d of this title and section 2211 of former Title 5, Executive Departments and Government Officers and Employees, and enacting section 623h of former Title 5 and provisions set out as a note thereunder] may be cited as the 'Health Research Facilities Amendments of 1965'.''

Pub. L. 89–109, §1, Aug. 5, 1965, 79 Stat. 435, provided: ''That this Act [amending sections 246, 247a, 247b, and 247d of this title] may be cited as the 'Community Health Services Extension Amendments of 1965'.''

SHORT TITLE OF 1964 AMENDMENTS

Pub. L. 88–581, §1, Sept. 4, 1964, 78 Stat. 908, provided: ''That this Act [enacting subchapter VI of this chapter, amending sections 291c, 291*o*, 293, 293a, 293e, and 293h of this title, and enacting provisions set out as notes under sections 201, 211a, 212a, 222, 291c, 293, 293e, and 293h of this title, sections 757, 790, and 800 of former Title 5, Executive Departments and Government Officers and Employees, and section 763c of Title 33, Navigation and Navigable Waters] may be cited as the 'Nurse Training Act of 1964'.''

Pub. L. 88–497, §1, Aug. 27, 1964, 78 Stat. 613, provided that: ''This Act [amending sections 244–1 and 245a of this title] may be cited as the 'Graduate Public Health Training Amendments of 1964'.''

Pub. L. 88–443, §1, Aug. 18, 1964, 78 Stat. 447, provided that: ''This Act [enacting sections 247c, 291 to 291j, 291k to 291m, 291n, and 291*o* of this title and enacting provisions set out as notes under section 291 of this title] may be cited as the 'Hospital and Medical Facilities Amendments of 1964'.''

SHORT TITLE OF 1963 AMENDMENT

Pub. L. 88–129, §1, Sept. 24, 1963, 77 Stat. 164, provided: ''That this Act [enacting sections 292j, 293 to 293h, and 294 to 294e and amending sections 292 to 292b and 292d to 292i of this title] may be cited as the 'Health Professions Educational Assistance Act of 1963'.''

SHORT TITLE OF 1962 AMENDMENT

Pub. L. 87–868, §1, Oct. 23, 1962, 76 Stat. 1155, provided that this Act [enacting section 247b of this title] may be cited as the ''Vaccination Assistance Act of 1962.''

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87–395, §1, Oct. 5, 1961, 75 Stat. 824, provided: ''That this Act [enacting section 247a of this title, amending sections 246, 289c, 291i, 291n, 291s, 291t, 291w, and 292c to 292g of this title, and enacting provisions set out as a note under section 291s of this title] may be cited as the 'Community Health Services and Facilities Act of 1961'.''

SHORT TITLE OF 1960 AMENDMENT

Section 1 of Pub. L. 86–415, Apr. 8, 1960, 74 Stat. 32, provided: ''That this Act [amending this section and sections 209, 210, 211, 212, 253, and 415 of this title and section 2251 of former Title 5, Executive Departments and Government Officers and Employees, and enacting provisions set out as notes under sections 209 and 212 of this title and section 2253 of former Title 5] may be cited as the 'Public Health Service Commissioned Corps Personnel Act of 1960'.''

SHORT TITLE OF 1956 AMENDMENTS

Section 2 of act Aug. 3, 1956, ch. 907, 70 Stat. 962, provided that: ''This Act [enacting part I of subchapter II of this chapter] may be cited as the 'National Library of Medicine Act'.''

Act July 3, 1956, ch. 510, §1, 70 Stat. 489, provided that: ''This Act [enacting section 246 of this title, amended section 241 of this title, and enacting provisions set out as a note under section 246 of this title] may be cited as the 'National Health Survey Act'.''

SHORT TITLE OF 1955 AMENDMENT

Joint Res. July 28, 1955, ch. 417, §1, 69 Stat. 382, provided that: ''This joint resolution [enacting section 242b of this title and provisions set out as a note under section 242b of this title] may be cited as the 'Mental Health Study Act of 1955'.''

SHORT TITLE OF 1948 AMENDMENTS

Section 1 of act June 24, 1948, provided that: ''This Act [enacting part C of subchapter III of this chapter and amending this section and sections 210, 218, and 241 of this title] may be cited as the 'National Dental Research Act'.''

Section 1 of act June 16, 1948, provided that: ''This Act [enacting sections 287 to 287c of this title and amending this section and sections 203, 206, 210, 218, 219, 241, 246, 281, 283, and 286 of this title] may be cited as the 'National Heart Act'.''

SHORT TITLE OF 1946 AMENDMENT

Section 1 of act July 3, 1946, provided: ''That this Act [enacting sections 232 and 242a of this title, amending this section and sections 209, 210, 215, 218, 219, 241, 244, and 246 of this title, and enacting provisions set out as a note under this section] may be cited as the 'National Mental Health Act'.''

SHORT TITLE

Section 1 of act July 1, 1944, as amended by acts Aug. 13, 1946, ch. 958, §4, 60 Stat. 1049; July 30, 1956, ch. 779, §3(a), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, §4(a), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, §3(a), 79 Stat. 930; Dec. 24, 1970, Pub. L. 91–572, §6(a), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, §3(a), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, §2(b)(1), 87 Stat. 604; Dec. 29, 1973, Pub. L. 93–222, §7(a), 87 Stat. 936, provided that: ''This Act [enacting this chapter] may be cited as the 'Public Health Service Act'.''

Section 329 of act July 1, 1944, formerly §310, as added by Pub. L. 87–692, Sept. 25, 1962, 76 Stat. 592, amended and renumbered, formerly classified to section 254b of this title, was popularly known as the ''Migrant Health Act''.

Section 1400 of title XIV of act July 1, 1944, as added Aug. 6, 1996, Pub. L. 104–182, title V, §501(e), 110 Stat. 1691, provided that: ''This title [enacting subchapter XII of this chapter] may be cited as the 'Safe Drinking Water Act'.''

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly §611, of act July 1, 1944, renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; §813 by act July 30, 1956, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506, §1213 by Pub. L. 92–294, §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2), Nov. 16, 1973, 87 Stat. 604, repealed and amended sections in this title and in Title 8, Aliens and Nationality, Title 14, Coast Guard, Title

21, Food and Drugs, Title 24, Hospitals and Asylums, former Title 31, Money and Finance, Title 33, Navigation and Navigable Waters, former Title 34, Navy, Title 44, Public Printing and Documents, former Title 46, Shipping, Title 48, Territories and Insular Possessions, and former Title 49, Transportation, and was itself repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

SAVINGS PROVISION

Section 1314, formerly § 612, of act July 1, 1944, as renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, provided that the repeal of statutes and parts of statutes by sections 1313, formerly § 611, of act July 1, 1944, not affect any act done, right accruing or accrued, or suit or proceeding had or commenced in any civil cause before such repeal, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3, of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

CONGRESSIONAL DECLARATION OF PURPOSE FOR COMPREHENSIVE ALCOHOL ABUSE, DRUG ABUSE, AND MENTAL HEALTH AMENDMENTS ACT OF 1988

Pub. L. 100–690, title II, § 2012, Nov. 18, 1988, 102 Stat. 4193, provided that: ''The purposes of this subtitle [subtitle A (§§ 2011–2081) of title II of Pub. L. 100–690, see Tables for classification] with respect to substance abuse are—

''(1) to prevent the transmission of the etiologic agent for acquired immune deficiency syndrome by ensuring that treatment services for intravenous drug abuse are available to intravenous drug abusers;

''(2) to continue the Federal Government's partnership with the States in the development, maintenance, and improvement of community-based alcohol and drug abuse programs;

''(3) to provide financial and technical assistance to the States and communities in their efforts to develop and maintain a core of prevention services for the purpose of reducing the incidence of substance abuse and the demand for alcohol and drug abuse treatment;

''(4) to assist and encourage States in the initiation and expansion of prevention and treatment services to underserved populations;

''(5) to increase, to the greatest extent possible, the availability and quality of treatment services so that treatment on request may be provided to all individuals desiring to rid themselves of their substance abuse problem; and

''(6) to increase understanding about the extent of alcohol abuse and other forms of drug abuse by expanding data collection activities and supporting research on the comparative cost and efficacy of substance abuse prevention and treatment services.''

PURPOSE OF ACT JULY 3, 1946

Section 2 of act July 3, 1946, provided: ''The purpose of this Act [see Short Title of 1946 Amendment note above] is the improvement of the mental health of the people of the United States through the conducting of researches, investigations, experiments, and demonstrations relating to the cause, diagnosis, and treatment of psychiatric disorders; assisting and fostering such research activities by public and private agencies, and promoting the coordination of all such researches and activities and the useful application of their results; training personnel in matters relating to mental health; and developing, and assisting States in the use of, the most effective methods of prevention, diagnosis, and treatment of psychiatric disorders.''

EXISTING POSITIONS, PROCEDURES, REGULATIONS, FUNDS, APPROPRIATIONS, AND PROPERTY

Sections 1301 to 1303, formerly §§ 601 to 603, of act July 1, 1944, as renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; Sept. 3, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, related to the effect of this chapter on existing positions, procedures, regulations, funds, appropriations, and property, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

APPROPRIATIONS FOR EMERGENCY HEALTH AND SANITATION ACTIVITIES

Section 1304, formerly § 604, of act July 1, 1944, as renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, authorized annual appropriations during World War II and during period of demobilization to conduct health and sanitation activities in military, naval, or industrial areas, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936. Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of section 1004 of act July 1, 1944, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on September 8, 1939, and May 27, 1941.

AVAILABILITY OF APPROPRIATIONS

Pub. L. 91–296, title VI, § 601, June 30, 1970, 84 Stat. 353, as amended Pub. L. 93–45, title IV, § 401(a), June 18, 1973, 87 Stat. 95; Pub. L. 93–352, title I, § 113, July 23, 1974, 88 Stat. 360, provided that: ''Notwithstanding any other provision of law, unless enacted after the enactment of this Act [June 30, 1970] expressly in limitation of the provisions of this section, funds appropriated for

any fiscal year to carry out any program for which appropriations are authorized by the Public Health Service Act (Public Law 410, Seventy-eighth Congress, as amended) [this chapter] or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (Public Law 88–164, as amended) [sections 2689 et seq. and 6001 et seq. of this title] shall remain available for obligation and expenditure until the end of such fiscal year.''

FEDERAL ACCOUNTABILITY

Pub. L. 102–321, title II, § 203(b), July 10, 1992, 106 Stat. 410, provided that: ''Any rule or regulation of the Department of Health and Human Services that is inconsistent with the amendments made by this Act [see Tables for classification] shall not have any legal effect, including section 50(e) of part 96 of title 45, Code of Federal Regulations (45 CFR 96.50(e)).''

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying this chapter, see Pub. L. 86–613, § 18, July 12, 1960, 74 Stat. 380, set out as a note under section 1261 of Title 15, Commerce and Trade.

DEFINITION OF ''SECRETARY''

Pub. L. 90–574, title V, § 507, Oct. 15, 1968, 82 Stat. 1013, as amended by Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided that: ''As used in the amendments made by this Act [enacting sections 229a, 299j, 2688e to 2688q, and 2697a of this title, amending sections 210g, 242h, 291a, 291b, 299a to 299e, 2693, and 3259 of this title, repealing section 3442 of this title, and enacting provisions set out as notes under sections 291a, 2688e, 3442 of this title, section 278 of Title 22, Foreign Relations and Intercourse, and section 3681 of Title 38, Veterans' Benefits], the term 'Secretary' means the Secretary of Health and Human Services.''

Pub. L. 90–174, § 15, Dec. 5, 1967, 81 Stat. 542, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the amendments made by this Act [enacting sections 217b, 243(c), 251(b), 254a, 263a, and 291m–1 and amending sections 242b, 242g(c), 246(d)(1), (e), and 296e(c)(1) of this title] the term 'Secretary' means the Secretary of Health and Human Services.''

PART A—ADMINISTRATION

§ 202. Administration and supervision of Service

The Public Health Service in the Department of Health and Human Services shall be administered by the Assistant Secretary for Health under the supervision and direction of the Secretary.

(July 1, 1944, ch. 373, title II, § 201, 58 Stat. 683; 1953 Reorg. Plan No. 1, §§ 5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 103–43, title XX, § 2008(f), June 10, 1993, 107 Stat. 212.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' and ''Assistant Secretary for Health'' for ''Surgeon General''.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

INTERNATIONAL HEALTH ADMINISTRATION

Ex. Ord. No. 10399, Sept. 27, 1952, 17 F.R. 8648, designated Surgeon General to perform certain duties under International Sanitary Regulations of World Health Organization.

REORGANIZATION PLAN NO. 3 OF 1966

Eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 25, 1966, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

PUBLIC HEALTH SERVICE

SECTION 1. TRANSFER OF FUNCTIONS

(a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to the Secretary of Health, Education, and Welfare (hereinafter referred to as the Secretary) all functions of the Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service.

(b) This section shall not apply to the functions vested by law in any advisory council, board, or committee of or in the Public Health Service which is established by law or is required by law to be established.

SEC. 2. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Secretary may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any officer, employee, or agency of the Public Health Service or of the Department of Health, Education, and Welfare.

SEC. 3. ABOLITIONS

(a) The following agencies of the Public Health Service are hereby abolished:

(1) The Bureau of Medical Services, including the office of Chief of the Bureau of Medical Services.

(2) The Bureau of State Services, including the office of Chief of the Bureau of State Services.

(3) The agency designated as the National Institutes of Health (42 U.S.C. 203), including the office of Director of the National Institutes of Health (42 U.S.C. 206(b)) but excluding the several research Institutes in the agency designated as the National Institutes of Health.

(4) The agency designated as the Office of the Surgeon General (42 U.S.C. 203(1)), together with the office held by the Deputy Surgeon General (42 U.S.C. 206(a)).

(b) The Secretary shall make such provisions as he shall deem necessary respecting the winding up of any outstanding affairs of the agencies abolished by the provisions of this section.

SEC. 4. INCIDENTAL TRANSFERS

As he may deem necessary in order to carry out the provisions of this reorganization plan, the Secretary may from time to time effect transfers within the Department of Health, Education, and Welfare of any of the records, property, personnel and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of the Department which relate to functions affected by this reorganization plan.

[The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services, respectively, by 20 U.S.C. 3508.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1966, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization of health functions of the Department of Health, Education, and Welfare.

I

Today we face new challenges and unparalleled opportunities in the field of health. Building on the progress of the past several years, we have truly begun to match the achievements of our medicine to the needs of our people.

The task ahead is immense. As a nation, we will unceasingly pursue our research and learning, our training and building, our testing and treatment. But now our concern must also turn to the organization of our Federal health programs.

As citizens we are entitled to the very best health services our resources can provide.

As taxpayers, we demand the most efficient and economic health organizations that can be devised.

I ask the Congress to approve a reorganization plan to bring new strength to the administration of Federal health programs.

I propose a series of changes in the organization of the Public Health Service that will bring to all Americans a structure modern in design, more efficient in operation and better prepared to meet the great and growing needs of the future. Through such improvements we can achieve the full promise of the landmark health legislation enacted by the 89th Congress.

I do not propose these changes lightly. They follow a period of careful deliberation. For many months the Secretary of Health, Education, and Welfare, and the Surgeon General have consulted leading experts in the Nation—physicians, administrators, scientists, and public health specialists. They have confirmed my belief that modernization and reorganization of the Public Health Service are urgently required and long overdue.

II

The Public Health Service is an operating agency of the Department of Health, Education, and Welfare. It is the principal arm of the Federal Government in the field of health. Its programs are among those most vital to our well-being.

Since 1953 more than 50 new programs have been placed in the Public Health Service. Its budget over the past 12 years has increased tenfold—from $250 million to $2.4 billion.

Today the organization of the Public Health Service is clearly obsolete. The requirement that new and expanding programs be administered through an organizational structure established by law more than two decades ago stands as a major obstacle to the fulfillment of our Nation's health goals.

As presently constituted, the Public Health Service is composed of four major components:

National Institutes of Health.
Bureau of State Services.
Bureau of Medical Services.
Office of the Surgeon General.

Under present law, Public Health Service functions must be assigned only to these four components.

This structure was designed to provide separate administrative arrangements for health research, programs of State and local aid, health services, and executive staff resources. At a time when these functions could be neatly compartmentalized, the structure was adequate. But today the situation is different.

Under recent legislation many new programs provide for an integrated attack on specific disease problems or health hazards in the environment by combining health services, State and local aid, and research. Each new program of this type necessarily is assigned to one of the three operating components of the Public Health Service. Yet none of these components is intended to administer programs involving such a variety of approaches.

Our health problems are difficult enough without having them complicated by outmoded organizational arrangements.

But if we merely take the step of integrating the four agencies within the Public Health Service we will not go far enough. More is required.

III

The Department of Health, Education, and Welfare performs major health or health-related functions which are not carried out through the Public Health Service, although they are closely related to its functions. Among these are:

Health insurance for the aged, administered through the Social Security Administration;

Medical assistance for the needy, administered through the Welfare Administration;

Regulation of the manufacture, labeling, and distribution of drugs, carried out through the Food and Drug Administration; and

Grants-in-aid to States for vocational rehabilitation of the handicapped, administered by the Vocational Rehabilitation Administration.

Expenditures for health and health-related programs of the Department administered outside the Public Health Service have increased from $44 million in 1953 to an estimated $5.4 billion in 1967.

As the head of the Department, the Secretary of Health, Education, and Welfare is responsible for the Administration and coordination of all the Department's health functions. He has clear authority over the programs I have just mentioned.

But today he lacks this essential authority over the Public Health Service. The functions of that agency are vested in the Surgeon General and not in the Secretary.

This diffusion of responsibility is unsound and unwise.

To secure the highest possible level of health services for the American people the Secretary of Health, Education, and Welfare must be given the authority to establish—and modify as necessary—the organizational structure for Public Health Service programs.

He must also have the authority to coordinate health functions throughout the Department. The reorganization plan I propose will accomplish these purposes. It will provide the Secretary with the flexibility to create new and responsive organizational arrangements to keep pace with the changing and dynamic nature of our health programs.

My views in this respect follow a basic principle of good government set by the Hoover Commission in 1949 when it recommended that ''the Department head should be given authority to determine the organization within his Department.''

IV

In summary, the reorganization plan would:

Transfer to the Secretary of Health, Education, and Welfare the functions now vested in the Surgeon General of the Public Health Service and in its various subordinate units (this transfer will not affect certain statutory advisory bodies such as the National Advisory Cancer and Heart Councils);

Abolish the four principal statutory components of the Public Health Service, including the offices held by their heads (the Bureau of Medical Services, the Bureau of State Services, the National Institutes of Health exclusive of its several research institutes such as the National Cancer and Heart Institutes, and the Office of the Surgeon General); and

Authorize the Secretary to assign the functions transferred to him by the plan to officials and entities of the Public Health Service and to other agencies of the Department as he deems appropriate.

Thus, the Secretary would be—

Enabled to assure that all health functions of the Department are carried out as effectively and economically as possible;

Given authority commensurate with his responsibility; and

Made responsible in fact for matters for which he is now, in any case, held accountable by the President, the Congress, and the people.

V

I have found, after investigation, that each reorganization included in the accompanying reorganization plan is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

Should the reorganizations in the accompanying reorganization plan take effect, they will make possible more effective and efficient administration of the affected health programs. It is, however, not practicable at this time to itemize the reductions in expenditures which may result.

I strongly recommend that the Congress allow the reorganization plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, April 25, 1966.

EXECUTIVE ORDER NO. 10506

Ex. Ord. No. 10506, Dec. 10, 1953, 18 F.R. 8219, which delegated certain functions of the President relating to the Public Health Service, was superseded by Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, set out below.

EX. ORD. NO. 11140. DELEGATION OF FUNCTIONS

Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by Section 301 of Title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Secretary of Health and Human Services is hereby authorized and empowered, without the approval, ratification, or other action of the President, to perform the following-described functions vested in the President under the Public Health Service Act (58 Stat. 682), as amended [this chapter]:

(a) The authority under Section 203 (42 U.S.C. 204): to appoint commissioned officers of the Reserve Corps.

(b) The authority under Section 206(b) (42 U.S.C. 207(b)) to prescribe titles, appropriate to the several grades, for commissioned officers of the Public Health Service other than medical officers.

(c) The authority under Section 207(a)(2) (42 U.S.C. 209(a)(2)) to terminate commissions of officers of the Reserve Corps without the consent of the officers concerned.

(d) The authority under Section 210(a), (k), and (*l*) (42 U.S.C. 211(a), (k), and (*l*)) to make or terminate temporary promotions of commissioned officers of the Regular Corps and Reserve Corps.

(e) The authority under Section 211(a)(5) (42 U.S.C. 212(a)(5)) to approve voluntary retirements under that section.

(f) The authority to prescribe regulations under the following-designated Sections: 207(a), 207(b), 208(e), 210(a), 210(b), 210(d)(1), 210(h), 210(i), 210(j)(1), 210(k), 215(a), 218(a), 219(a), and 510 (42 U.S.C. 209(a), 209(b), 210(e), 211(a), 211(b), 211(d)(1), 211(h), 211(i), 211(j)(1), 211(k), 216(a), 218a(a), 210–1(a), and 228).

(g) The authority under Sections 321(a) and 364(a) (42 U.S.C. 248(a) and 267(a)) to approve the selection of suitable sites for and the establishment of additional institutions, hospitals, stations, grounds, and anchorages; subject, however, to the approval of the Director of the Office of Management and Budget, except as he may otherwise provide.

SEC. 2. The Surgeon General is hereby authorized and empowered, without the approval, ratification, or other action of the President, to perform the function vested in the President by Sections 203 and 207(a)(2) of the Public Health Service Act (58 Stat. 683, 685), as amended (42 U.S.C. 204 and 209(a)(2)), or otherwise, of accepting voluntary resignations of commissioned officers of the Regular Corps or the Reserve Corps.

SEC. 3. The Secretary of Health and Human Services is hereby authorized and empowered, without the approval, ratification, or other action of the President, to exercise the authority vested in the President by Section 704 of Title 37 of the United States Code to prescribe regulations.

SEC. 4. The Secretary of Health and Human Services is hereby authorized to redelegate all or any part of the functions set forth under (a), (b), (c), and (d) of Section 1 hereof to the Surgeon General of the Public Health Service or other official of that Service who is required to be appointed by and with the advice and consent of the Senate.

SEC. 5. All actions heretofore taken by appropriate authority with respect to the matters affected by this order and in force at the time of the issuance of this order, including any regulations prescribed or approved with respect to such matters, shall, except as they may be inconsistent with the provisions of this order, remain in effect until amended, modified, or revoked pursuant to the authority conferred by this order.

SEC. 6. As used in this order, the term ''functions'' embraces duties, powers, responsibilities, authority, or discretion, and the term ''perform'' may be construed to mean ''exercise''.

SEC. 7. (a) Executive Order No. 10506 of December 10, 1953, entitled ''Delegating Certain Functions of the President under the Public Health Service Act,'' is hereby superseded.

(b) Executive Orders Nos. 9993 of August 31, 1948, 10031 of January 26, 1949, 10280 of August 16, 1951, 10354 of May 26, 1952, and 10497 of October 27, 1953, which prescribed regulations relating to commissioned officers and employees of the Public Health Service, are hereby revoked. Nothing in this subsection shall be deemed to alter or otherwise affect the regulations prescribed by the Surgeon General (42 CFR Parts 21 and 22) to replace the regulations prescribed by the orders described in the preceding sentence.

§ 203. Organization of Service

The Service shall consist of (1) the Office of the Surgeon General, (2) the National Institutes of Health, (3) the Bureau of Medical Services, and[1] (4) the Bureau of State Services, and[2] the Agency for Healthcare Research and Quality. The Secretary is authorized and directed to assign to the Office of the Surgeon General,[3] to the National Institutes of Health, to the Bureau of Medical Services, and to the Bureau of State Services, respectively, the several functions of the Service, and to establish within them such divisions, sections, and other units as he may find necessary; and from time to time abolish, transfer, and consolidate divisions, sections, and other units and assign their functions and personnel in such manner as he may find necessary for efficient operation of the Service. No division shall be established, abolished, or transferred, and no divisions shall be consolidated, except with the approval of the Secretary. The National Institutes of Health shall be administered as a part of the field service. The Secretary may delegate to any officer or employee of the Service such of his powers and duties under this chapter, except the making of regulations, as he may deem necessary or expedient.

(July 1, 1944, ch. 373, title II, § 202, 58 Stat. 683; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; 1953

[1] So in original. The ''and'' probably should not appear.

[2] So in original. Probably should be followed by ''(5)''.

[3] See 1993 Amendment note below.

Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 103–43, title XX, §2008(g), June 10, 1993, 107 Stat. 212; Pub. L. 106–129, §2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

AMENDMENTS

1999—Pub. L. 106–129 substituted ''Agency for Healthcare Research and Quality'' for ''Agency for Health Care Policy and Research''.

1993—Pub. L. 103–43, §2008(g)(2), inserted '', and the Agency for Health Care Policy and Research'' in first sentence.

Pub. L. 103–43, §2008(g)(1), which directed the amendment of this section by striking ''Surgeon General'' the second and subsequent times that such term appears and inserting ''Secretary'', was executed by making the substitution before ''is authorized and directed'' and before ''may delegate to any officer'' and by leaving unchanged ''Surgeon General'' in the phrase ''assign to the Office of the Surgeon General'' in second sentence, to reflect the probable intent of Congress.

1948—Act June 16, 1948, substituted ''National Institutes of Health'' for ''National Institute of Health'' in cl. (2).

TRANSFER OF FUNCTIONS

Bureau of Medical Services, Bureau of State Services, National Institutes of Health, excluding several research Institutes in agency, and Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and all functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare, and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 204. Commissioned corps; composition; appointment of Regular and Reserve officers; appointment and status of warrant officers

There shall be in the Service a commissioned Regular Corps and, for the purpose of securing a reserve for duty in the Service in time of national emergency, a Reserve Corps. All commissioned officers shall be citizens and shall be appointed without regard to the civil-service laws and compensated without regard to chapter 51 and subchapter III of chapter 53 of title 5. Commissioned officers of the Reserve Corps shall be appointed by the President and commissioned officers of the Regular Corps shall be appointed by him by and with the advice and consent of the Senate. Commissioned officers of the Reserve Corps shall at all times be subject to call to active duty by the Surgeon General, including active duty for the purpose of training and active duty for the purpose of determining their fitness for appointment in the Regular Corps. Warrant officers may be appointed to the Service for the purpose of providing support to the health and delivery systems maintained by the Service and any warrant officer appointed to the Service shall be considered for purposes of this chapter and title 37 to be a commissioned officer within the commissioned corps of the Service.

(July 1, 1944, ch. 373, title II, §203, 58 Stat. 683; Feb. 28, 1948, ch. 83, §2, 62 Stat. 39; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 96–76, title III, §302(a), Sept. 29, 1979, 93 Stat. 584.)

REFERENCES IN TEXT

The civil-service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

''Chapter 51 and subchapter III of chapter 53 of title 5'' substituted in text for ''the Classification Act of 1949, as amended'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1979—Pub. L. 96–76 inserted provisions relating to appointment and status of warrant officers.

1949—Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923''.

1948—Act Feb. 28, 1948, struck out provision that all active service in Reserve Corps, as well as service in Regular Corps, shall be credited for purpose of promotion in Regular Corps.

REPEALS

Act Oct. 28, 1949, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services and Surgeon General, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

OSTEOPATHS AS RESERVE OFFICERS

Section 709 of act July 1, 1944, formerly §609, renumbered §709 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049, which provided for appointment of osteopaths as reserve officers until six months after World War II, was repealed by Joint Res. July 25, 1947, ch. 327, §1, 61 Stat. 449.

§ 205. Appointment and tenure of office of Surgeon General; reversion in rank

The Surgeon General shall be appointed from the Regular Corps for a four-year term by the President by and with the advice and consent of the Senate. The Surgeon General shall be appointed from individuals who (1) are members of the Regular Corps, and (2) have specialized training or significant experience in public health programs. Upon the expiration of such

term the Surgeon General, unless reappointed, shall revert to the grade and number in the Regular or Reserve Corps that he would have occupied had he not served as Surgeon General.

(July 1, 1944, ch. 373, title II, § 204, 58 Stat. 684; Pub. L. 97–25, title III, § 303(a), July 27, 1981, 95 Stat. 145; Pub. L. 97–35, title XXVII, § 2765(b), Aug. 13, 1981, 95 Stat. 932.)

AMENDMENTS

1981—Pub. L. 97–35 inserted reference to Reserve Corps and substituted provisions relating to appointment of an individual from the Regular Corps and with specialized training and significant experience, for provisions relating to appointment of an individual sixty-four years of age or older.

Pub. L. 97–25 inserted provision that the President may appoint to office of Surgeon General an individual who is sixty-four years of age or older.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 206. Assignment of officers

(a) Deputy Surgeon General

The Surgeon General shall assign one commissioned officer from the Regular Corps to administer the Office of the Surgeon General, to act as Surgeon General during the absence or disability of the Surgeon General or in the event of a vacancy in that office, and to perform such other duties as the Surgeon General may prescribe, and while so assigned he shall have the title of Deputy Surgeon General.

(b) Assistant Surgeons General

The Surgeon General shall assign eight commissioned officers from the Regular Corps to be, respectively, the Director of the National Institutes of Health, the Chief of the Bureau of State Services, the Chief of the Bureau of Medical Services, the Chief Medical Officer of the United States Coast Guard, the Chief Dental Officer of the Service, the Chief Nurse Officer of the Service, the Chief Pharmacist Officer of the Service, and the Chief Sanitary Engineering Officer of the Service, and while so serving they shall each have the title of Assistant Surgeon General.

(c) Creation of temporary positions as Assistant Surgeons General

(1) The Surgeon General, with the approval of the Secretary, is authorized to create special temporary positions in the grade of Assistant Surgeons General when necessary for the proper staffing of the Service. The Surgeon General may assign officers of either the Regular Corps or the Reserve Corps to any such temporary position, and while so serving they shall each have the title of Assistant Surgeon General.

(2) Except as provided in this paragraph, the number of special temporary positions created by the Surgeon General under paragraph (1) shall not on any day exceed 1 per centum of the highest number, during the ninety days preceding such day, of officers of the Regular Corps on active duty and officers of the Reserve Corps on active duty for more than thirty days. If on any day the number of such special temporary positions exceeds such 1 per centum limitation, for a period of not more than one year after such day, the number of such special temporary positions shall be reduced for purposes of complying with such 1 per centum limitation only by the resignation, retirement, death, or transfer to a position of a lower grade, of any officer holding any such temporary position.

(d) Designation of Assistant Surgeon General with respect to absence, disability, or vacancy in offices of Surgeon General and Deputy Surgeon General

The Surgeon General shall designate the Assistant Surgeon General who shall serve as Surgeon General in case of absence or disability, or vacancy in the offices, of both the Surgeon General and the Deputy Surgeon General.

(July 1, 1944, ch. 373, title II, § 205, 58 Stat. 684; Feb. 28, 1948, ch. 83, § 3, 62 Stat. 39; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–76, title III, §§ 302(b), 303, Sept. 29, 1979, 93 Stat. 584.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–76, § 302(b), inserted provisions relating to assignment of Chief Nurse Officer and Chief Pharmacist Officer, and substituted ''eight'' for ''six''.

Subsec. (c). Pub. L. 96–76, § 303, designated existing provisions as par. (1), struck out provisions relating to maximum number of special temporary positions, and added par. (2).

1948—Subsec. (b). Act June 16, 1948, substituted ''National Institutes of Health'' for ''National Institute of Health''.

Subsecs. (c), (d). Act Feb. 28, 1948, added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1979 AMENDMENT

Section 314 of Pub. L. 96–76 provided that: ''The amendments made by sections 303, 304, 305, 306, 307, and 313 [amending this section, sections 207, 209, 210b, and 211 of this title, and sections 201, 415, and 1006 of Title 37, Pay and Allowances of the Uniformed Services] shall take effect on October 1, 1979.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Office of Surgeon General, together with office held by Deputy Surgeon General, Bureau of Medical Services, including office of Chief of Bureau of Medical Services, Bureau of State Services, including office of Chief of Bureau of State Services, and National Institutes of Health, including office of Director of National Institutes of Health, abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Serv-

ices by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare, by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 207. Grades, ranks, and titles of commissioned corps

(a) Grades of commissioned officers

The Surgeon General, during the period of his appointment as such, shall be of the same grade as the Surgeon General of the Army; the Deputy Surgeon General and the Chief Medical Officer of the United States Coast Guard, while assigned as such, shall have the grade corresponding with the grade of major general; and the Chief Dental Officer, while assigned as such, shall have the grade as is prescribed by law for the officer of the Dental Corps selected and appointed as Assistant Surgeon General of the Army. During the period of appointment to the position of Assistant Secretary for Health, a commissioned officer of the Public Health Service shall have the grade corresponding to the grade of General of the Army. Assistant Surgeons General, while assigned as such, shall have the grade corresponding with either the grade of brigadier general or the grade of major general, as may be determined by the Secretary after considering the importance of the duties to be performed: *Provided*, That the number of Assistant Surgeons General having a grade higher than that corresponding to the grade of brigadier general shall at no time exceed one-half of the number of positions created by subsection (b) of section 206 of this title or pursuant to subsection (c) of section 206 of this title. The grades of commissioned officers of the Service shall correspond with grades of officers of the Army as follows:

(1) Officers of the director grade—colonel;

(2) Officers of the senior grade—lieutenant colonel;

(3) Officers of the full grade—major;

(4) Officers of the senior assistant grade—captain;

(5) Officers of the assistant grade—first lieutenant;

(6) Officers of the junior assistant grade—second lieutenant;

(7) Chief warrant officers of (W–4) grade—chief warrant officer (W–4);

(8) Chief warrant officers of (W–3) grade—chief warrant officer (W–3);

(9) Chief warrant officers of (W–2) grade—chief warrant officer (W–2); and

(10) Warrant officers of (W–1) grade—warrant officer (W–1).

(b) Titles of medical officers

The titles of medical officers of the foregoing grades shall be respectively (1) medical director, (2) senior surgeon, (3) surgeon, (4) senior assistant surgeon, (5) assistant surgeon, and (6) junior assistant surgeon. The President is authorized to prescribe titles, appropriate to the several grades, for commissioned officers of the Service other than medical officers. All titles of the officers of the Reserve Corps shall have the suffix ''Reserve''.

(c) Repealed. Pub. L. 96–76, title III, § 304(b), Sept. 29, 1979, 93 Stat. 584

(d) Maximum number in grade for each fiscal year

Within the total number of officers of the Regular Corps authorized by the appropriation Act or Acts for each fiscal year to be on active duty, the Secretary shall by regulation prescribe the maximum number of officers authorized to be in each of the grades from the warrant officer (W–1) grade to the director grade, inclusive. Such numbers shall be determined after considering the anticipated needs of the Service during the fiscal year, the funds available, the number of officers in each grade at the beginning of the fiscal year, and the anticipated appointments, the anticipated promotions based on years of service, and the anticipated retirements during the fiscal year. The number so determined for any grade for a fiscal year may not exceed the number limitation (if any) contained in the appropriation Act or Acts for such year. Such regulations for each fiscal year shall be prescribed as promptly as possible after the appropriation Act fixing the authorized strength of the corps for that year, and shall be subject to amendment only if such authorized strength or such number limitation is thereafter changed. The maxima established by such regulations shall not require (apart from action pursuant to other provisions of this chapter) any officer to be separated from the Service or reduced in grade.

(e) Exception to grade limitations for officers assigned to Department of Defense

In computing the maximum number of commissioned officers of the Public Health Service authorized by law to hold a grade which corresponds to the grade of brigadier general or major general, there may be excluded from such computation not more than three officers who hold such a grade so long as such officers are assigned to duty and are serving in a policy-making position in the Department of Defense.

(f) Exception to maximum number limitations for officers assigned to Department of Defense

In computing the maximum number of commissioned officers of the Public Health Service authorized by law or administrative determination to serve on active duty, there may be excluded from such computation officers who are assigned to duty in the Department of Defense.

(July 1, 1944, ch. 373, title II, § 206, 58 Stat. 684; Feb. 28, 1948, ch. 83, § 4, 62 Stat. 39; Oct. 31, 1951, ch. 653, 65 Stat. 700; July 17, 1952, ch. 931, 66 Stat. 758; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 87–649, § 11(1), Sept. 7, 1962, 76 Stat. 497; Pub. L. 95–215, § 8(b), Dec. 19, 1977, 91 Stat. 1507; Pub. L. 96–76, title III, § 304, Sept. 29, 1979, 93 Stat. 584; Pub. L. 99–117, § 9, Oct. 7, 1985, 99 Stat. 494; Pub. L. 101–93, § 5(p), Aug. 16, 1989, 103 Stat. 614; Pub. L. 101–502, § 5(k)(1), Nov. 3, 1990, 104 Stat. 1289; Pub. L.

104–201, div. A, title V, § 582, Sept. 23, 1996, 110 Stat. 2538.)

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–201 added subsec. (f).

1990—Subsec. (a). Pub. L. 101–502 inserted after first sentence ''During the period of appointment to the position of Assistant Secretary for Health, a commissioned officer of the Public Health Service shall have the grade corresponding to the grade of General of the Army.''

1989—Subsec. (e). Pub. L. 101–93, which directed the substitution of ''the Department of Defense'' for ''the office of Assistant Secretary of Defense for Health Affairs'', was executed by making the substitution for ''the office of the Assistant Secretary of Defense for Health Affairs'' as the probable intent of Congress.

1985—Subsec. (e). Pub. L. 99–117 added subsec. (e).

1979—Subsec. (a). Pub. L. 96–76, § 304(a), added pars. (7) to (10).

Subsec. (c). Pub. L. 96–76, § 304(b), struck out subsec. (c) setting forth the grade and pay and allowances as director for a commissioned officer below the grade of director assigned to serve as chief of a division.

Subsec. (d). Pub. L. 96–76, § 304(c), substituted ''warrant officer (W–1)'' for ''junior assistant''.

1977—Subsec. (b)(6). Pub. L. 95–215 substituted ''junior assistant'' for ''senior assistant''.

1962—Subsec. (a). Pub. L. 87–649 struck out provisions which related to pay and allowances.

1952—Subsec. (a). Act July 17, 1952, provided that the Chief Medical Officer of the Coast Guard should have the grade, pay, and allowances of a major general.

1951—Subsec. (a). Act Oct. 31, 1951, provided equality of grade, pay, and allowances between the Chief Dental Officer and the comparable officer in the Army.

1948—Subsec. (a). Act Feb. 28, 1948, increased grade of Deputy Surgeon General from brigadier general to major general and increased grade of certain Assistant Surgeons General from brigadier general to major general as the Federal Security Administrator might determine.

Subsecs. (c), (d). Act Feb. 28, 1948, added subsecs. (c) and (d).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Dec. 1, 1990, see section 5(k)(3) of Pub. L. 101–502, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–76 effective Oct. 1, 1979, see section 314 of Pub. L. 96–76, set out as a note under section 206 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Office of Surgeon General, together with office held by Deputy Surgeon General, abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 208. Repealed. Feb. 28, 1948, ch. 83, § 5(a), 62 Stat. 40

Section, act July 1, 1944, ch. 373, title II, § 207, 58 Stat. 685, related to establishment of special temporary provisions. See sections 206(c) and 207(c) of this title.

§ 209. Appointment of personnel

(a) Original appointments to Regular and Reserve Corps; limitation on appointment and call to active duty

(1) Except as provided in subsections (b) and (e) of this section, original appointments to the Regular Corps may be made only in the warrant officer (W–1), chief warrant officer (W–2), chief warrant officer (W–3), chief warrant officer (W–4), junior assistant, assistant, and senior assistant grades and original appointments to a grade above junior assistant shall be made only after passage of an examination, given in accordance with regulations of the President, in one or more of the several branches of medicine, dentistry, hygiene, sanitary engineering, pharmacy, psychology, nursing, or related scientific specialties in the field of public health.

(2) Original appointments to the Reserve Corps may be made to any grade up to and including the director grade but only after passage of an examination given in accordance with regulations of the President. Reserve commissions shall be for an indefinite period and may be terminated at any time, as the President may direct.

(3) No individual who has attained the age of forty-four shall be appointed to the Regular Corps, or called to active duty in the Reserve Corps for a period in excess of one year, unless (A) he has had a number of years of active service (as defined in section 212(d) of this title) equal to the number of years by which his age exceeds forty-four, or (B) the Surgeon General determines that he possesses exceptional qualifications, not readily available elsewhere in the Commissioned Corps of the Public Health Service, for the performance of special duties with the Service, or (C) in the case of an officer of the Reserve Corps, the Commissioned Corps of the Service has been declared by the President to be a military service.

(b) Grade and number of original appointments

(1) Not more than 10 per centum of the original appointments to the Regular Corps author-

ized to be made during any fiscal year may be made to grades above that of senior assistant, but no such appointment (other than an appointment under section 205 of this title) may be made to a grade above that of director. For the purpose of this subsection the number of original appointments authorized to be made during a fiscal year shall be (1) the excess of the number of officers of the Regular Corps authorized by the appropriation Act or Acts for such year over the number of officers on active duty in the Regular Corps on the first day of such year, plus (2) the number of such officers of the Regular Corps who, during such fiscal year, have been or will be retired upon attainment of age sixty-four or have for any other reason ceased to be on active duty. In determining the number of appointments authorized by this subsection an appointment shall be deemed to be made in the fiscal year in which the nomination is transmitted by the President to the Senate.

(2) In addition to the number of original appointments to the Regular Corps authorized by paragraph (1) to be made to grades above that of senior assistant, original appointments authorized to be made to the Regular Corps in any year may be made to grades above that of senior assistant, but not above that of director, in the case of any individual who—

(A)(i) was on active duty in the Reserve Corps on July 1, 1960, (ii) was on such active duty continuously for not less than one year immediately prior to such date, and (iii) applies for appointment to the Regular Corps prior to July 1, 1962; or

(B) does not come within clause (A)(i) and (ii) but was on active duty in the Reserve Corps continuously for not less than one year immediately prior to his appointment to the Regular Corps and has not served on active duty continuously for a period, occurring after June 30, 1960, of more than three and one-half years prior to applying for such appointment.

(3) No person shall be appointed pursuant to this subsection unless he meets standards established in accordance with regulations of the President.

(c) Issuance of commissions

Commissions evidencing the appointment by the President of officers of the Regular or Reserve Corps shall be issued by the Secretary under the seal of the Department of Health and Human Services.

(d) Date of appointment; credit for service

(1) For purposes of basic pay and for purposes of promotion, any person appointed under subsection (a) of this section to the grade of senior assistant in the Regular Corps, and any person appointed under subsection (b) of this section, shall, except as provided in paragraphs (2) and (3) of this subsection, be considered as having had on the date of appointment the following length of service: Three years if appointed to the senior assistant grade, ten years if appointed to the full grade, seventeen years if appointed to the senior grade, and eighteen years if appointed to the director grade.

(2) For purposes of basic pay, any person appointed under subsection (a) of this section to the grade of senior assistant in the Regular Corps, and any person appointed under subsection (b) of this section, shall, in lieu of the credit provided in paragraph (1) of this subsection, be credited with the service for which he is entitled to credit under any other provision of law if such service exceeds that to which he would be entitled under such paragraph.

(3) For purposes of promotion, any person originally appointed in the Regular Corps to the senior assistant grade or above who has had active service in the Reserve Corps shall be considered as having had on the date of appointment the length of service provided for in paragraph (1) of this subsection, plus whichever of the following is greater: (A) The excess of his total active service in the Reserve Corps (above the grade of junior assistant) over the length of service provided in such paragraph, to the extent that such excess is on account of service in the Reserve Corps in or above the grade to which he is appointed in the Regular Corps or (B) his active service in the same or any higher grade in the Reserve Corps after the first day on which, under regulations in effect on the date of his appointment to the Regular Corps, he would have had the training and experience necessary for such appointment.

(4) For purposes of promotion, any person whose original appointment is to the assistant grade in the Regular Corps shall be considered as having had on the date of appointment service equal to his total active service in the Reserve Corps in and above the assistant grade.

(e) Reappointment; credit for service

(1) A former officer of the Regular Corps may, if application for appointment is made within two years after the date of the termination of his prior commission in the Regular Corps, be reappointed to the Regular Corps without examination, except as the Surgeon General may otherwise prescribe, and without regard to the numerical limitations of subsection (b) of this section.

(2) Reappointments pursuant to this subsection may be made to the permanent grade held by the former officer at the time of the termination of his prior commission, or to the next higher grade if such officer meets the eligibility requirements prescribed by regulation for original appointment to such higher grade. For purposes of pay, promotion, and seniority in grade, such reappointed officer shall receive the credits for service to which he would be entitled if such appointment were an original appointment, but in no event less than the credits he held at the time his prior commission was terminated, except that if such officer is reappointed to the next higher grade he shall receive no credit for seniority in grade.

(3) No former officer shall be reappointed pursuant to this subsection unless he shall meet such standards as the Secretary may prescribe.

(f) Special consultants

In accordance with regulations, special consultants may be employed to assist and advise in the operations of the Service. Such consultants may be appointed without regard to the civil-service laws.

(g) Designation for fellowships; duties; pay

In accordance with regulations, individual scientists, other than commissioned officers of the Service, may be designated by the Surgeon General to receive fellowships, appointed for duty with the Service without regard to the civil-service laws, may hold their fellowships under conditions prescribed therein, and may be assigned for studies or investigations either in this country or abroad during the terms of their fellowships.

(h) Aliens

Persons who are not citizens may be employed as consultants pursuant to subsection (f) of this section and may be appointed to fellowships pursuant to subsection (g) of this section. Unless otherwise specifically provided, any prohibition in any other Act against the employment of aliens, or against the payment of compensation to them, shall not be applicable in the case of persons employed or appointed pursuant to such subsections.

(i) Civil service appointments by Secretary

The appointment of any officer or employee of the Service made in accordance with the civil-service laws shall be made by the Secretary, and may be made effective as of the date on which such officer or employee enters upon duty.

(July 1, 1944, ch. 373, title II, § 207, formerly § 208, 58 Stat. 685; July 3, 1946, ch. 538, § 4, 60 Stat. 421; Aug. 13, 1946, ch. 958, § 3, 60 Stat. 1049; renumbered § 207 and amended Feb. 28, 1948, ch. 83, § 5(a)–(d), 62 Stat. 40; Oct. 12, 1949, ch. 681, title V, § 521(a), 63 Stat. 834; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Apr. 27, 1956, ch. 211, § 3(a)–(c)(1), 70 Stat. 116; Pub. L. 86–415, §§ 2, 3, Apr. 8, 1960, 74 Stat. 32; Pub. L. 96–76, title III, § 305, Sept. 29, 1979, 93 Stat. 585; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXVII, § 2765(c), Aug. 13, 1981, 95 Stat. 933; Pub. L. 97–414, § 8(a), Jan. 4, 1983, 96 Stat. 2060.)

REFERENCES IN TEXT

The civil-service laws, referred to in subsecs. (f), (g), and (i), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsec. (f), the words ''and their compensation may be fixed without regard to the Classification Act of 1923, as amended'', and in subsec. (g), the words ''and compensated without regard to the Classification Act of 1923, as amended'' were omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While section 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exceptions contained in subsecs. (f) and (g) because of section 1106(b) which provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by section 1106(a). The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, § 8(a), 80 Stat. 632 (of which section 1 revised and enacted Title 5, Government Organization and Employees, into law). Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

In subsec. (h), the references to subsections (f) and (g) of this section were, in the original, references to subsections (e) and (f) and were changed to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 207 of act July 1, 1944, was classified to section 208 of this title, prior to repeal by act Feb. 28, 1948, ch. 83, § 5(a), 62 Stat. 40.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 97–414 inserted ''psychology,'' after ''pharmacy,''.

1981—Subsec. (b)(1). Pub. L. 97–35 inserted provisions relating to exception for an appointment under section 205 of this title.

1979—Subsec. (a)(1). Pub. L. 96–76 inserted applicability to warrant officers and chief warrant officers.

1960—Subsec. (a)(3). Pub. L. 86–415, § 2, added par. (3).

Subsec. (b). Pub. L. 86–415, § 3, designated first, second and third sentences as par. (1), fourth sentence as par. (3), and added par. (2).

1956—Subsec. (a)(1). Act Apr. 27, 1956, § 3(a), inserted reference to subsection (e) of this section.

Subsec. (a)(2). Act Apr. 27, 1956, § 3(c)(1), substituted ''an indefinite period'' for ''a period of not more than five years''.

Subsecs. (e) to (i). Act Apr. 27, 1956, § 3(b), added subsec. (e) and redesignated former subsecs. (e) to (h) as (f) to (i), respectively.

1949—Subsec. (d). Act Oct. 12, 1949, substituted ''base pay'' for ''pay and pay period'' wherever appearing.

1948—Subsec. (a)(1). Act Feb. 28, 1948, struck out ''surgery'' after ''several branches of medicine''.

Subsec. (a)(2). Act Feb. 28, 1948, struck out ''any such commission'' before ''may be terminated'', and ''in his discretion'' after ''at any time''.

Subsec. (b). Act Feb. 28, 1948, provided for grade and number of original appointments.

Subsecs. (c) to (f). Act Feb. 28, 1948, added subsecs. (c) and (d) and redesignated former subsecs. (c) and (d) as (e) and (f), respectively. Former subsecs. (e) and (f) redesignated (g) and (h).

Subsec. (g). Act Feb. 28, 1948, redesignated former subsec. (e) as (g) and changed reference in text from ''subsection (c) of this section'' to ''subsection (e) of this section'', and ''subsection (d) of this section'' to ''subsection (g) of this section''.

Subsec. (h). Act Feb. 28, 1948, redesignated former subsec. (f) as (h).

1946—Subsec. (b). Act July 3, 1946, authorized appointment of additional officers to grades above that of senior assistant but not above that of director, and limits the number so appointed to 20.

Subsec. (b)(2). Act Aug. 13, 1946, inserted ''(A)'' before ''to assist'', substituted ''clause'' for ''paragraphs'', and inserted cl. (B).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–76 effective Oct. 1, 1979, see section 314 of Pub. L. 96–76, set out as a note under section 206 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 8(a) of Pub. L. 86–415 provided that: ''The amendments made by sections 2 and 5(b) [amending this section and section 210 of this title] shall become effective July 1, 1960.''

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and em-

ployees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services and Surgeon General, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

PERSONAL SERVICES CONTRACTING

Pub. L. 109–149, title II, § 216, Dec. 30, 2005, 119 Stat. 2861, provided that: ''The Division of Federal Occupational Health hereafter may utilize personal services contracting to employ professional management/administrative and occupational health professionals.''

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. F, title II, § 216, Dec. 8, 2004, 118 Stat. 3141.

Pub. L. 108–199, div. E, title II, § 216, Jan. 23, 2004, 118 Stat. 255.

Pub. L. 108–7, div. G, title II, § 216, Feb. 20, 2003, 117 Stat. 325.

Pub. L. 107–116, title II, § 216, Jan. 10, 2002, 115 Stat. 2201.

Pub. L. 106–554, § 1(a)(1) [title II], Dec. 21, 2000, 114 Stat. 2763, 2763A–13.

Pub. L. 106–113, div. B, § 1000(a)(4) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A–225.

Pub. L. 105–277, div. A, § 101(f) [title II], Oct. 21, 1998, 112 Stat. 2681–337, 2681–347.

Pub. L. 105–78, title II, Nov. 13, 1997, 111 Stat. 1477.

Pub. L. 104–208, div. A, title I, § 101(e) [title II], Sept. 30, 1996, 110 Stat. 3009–233, 3009–242.

Pub. L. 104–134, title I, § 101(d) [title II], Apr. 26, 1996, 110 Stat. 1321–211, 1321–221; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

TERM OF RESERVE COMMISSIONS IN EFFECT ON APRIL 27, 1956

Section 3(c)(2) of act Apr. 27, 1956, provided that: ''The enactment of paragraph (1) of this subsection [amending subsec. (a)(2) of this section] shall not affect the term of the commission of any officer in the Reserve Corps in effect on the date of such enactment [Apr. 27, 1956] unless such officer consents in writing to the extension of his commission for an indefinite period, in which event his commission shall be so extended without the necessity of a new appointment.''

§§ 209a, 209b. Omitted

CODIFICATION

Section 209a, act Dec. 22, 1944, ch. 660, title I, 58 Stat. 856, which related to number of regular commissioned nurses to be appointed, their grades, and their length of service for purposes of pay and pay periods, was not repeated in subsequent appropriation acts.

Section 209b, act Dec. 22, 1944, ch. 660, title I, 58 Stat. 857, which authorized appointment of fifty additional regular commissioned officers of which twenty-four were to be in grades above that of senior assistant, was not repeated in subsequent appropriation acts.

§ 209c. Repealed. Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499

Section, act July 3, 1945, ch. 263, title II, 59 Stat. 370, provided that for purposes of pay and pay period officers appointed to grades above that of senior assistant pursuant to section 209b of this title shall be considered as having had on date of appointment service equal to that of junior officer of grade to which appointed.

§ 209d. Appointment of osteopaths as commissioned officers

Graduates of colleges of osteopathy whose graduates are eligible for licensure to practice medicine or osteopathy in a majority of the States of the United States, or approved by a body or bodies acceptable to the Secretary, shall be eligible, subject to the other provisions of this Act, for appointment as commissioned medical officers in the Public Health Service.

(Feb. 28, 1948, ch. 83, § 5(b), 62 Stat. 40; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

REFERENCES IN TEXT

This Act, referred to in text, is act Feb. 28, 1948, ch. 83, 62 Stat. 38. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as a part of the Public Health Service Act which comprises this chapter.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 210. Pay and allowances

(a) Commissioned officers of Regular and Reserve Corps; special pay for active duty; incentive special pay for Public Health Service nurses

(1) Commissioned officers of the Regular and Reserve Corps shall be entitled to receive such pay and allowances as are now or may hereafter be authorized by law.

(2) For provisions relating to the receipt of special pay by commissioned officers of the Reg-

ular and Reserve Corps while on active duty, see section 303a(b) of title 37.

(b) Purchase of supplies

Commissioned officers on active duty and retired officers entitled to retired pay pursuant to section 211(g)(3), 212, or 213a(a) of this title, shall be permitted to purchase supplies from the Army, Navy, Air Force, and Marine Corps at the same price as is charged officers thereof.

(c) Members of national advisory or review councils or committees

Members of the National Advisory Health Council and members of other national advisory or review councils or committees established under this chapter, including members of the Technical Electronic Product Radiation Safety Standards Committee and the Board of Regents of the National Library of Medicine, but excluding ex officio members, while attending conferences or meetings of their respective councils or committees or while otherwise serving at the request of the Secretary, shall be entitled to receive compensation at rates to be fixed by the Secretary, but at rates not exceeding the daily equivalent of the rate specified at the time of such service for grade GS–18 of the General Schedule, including traveltime; and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(d) Field employees

Field employees of the Service, except those employed on a per diem or fee basis, who render part-time duty and are also subject to call at any time for services not contemplated in their regular part-time employment, may be paid annual compensation for such part-time duty and, in addition, such fees for such other services as the Surgeon General may determine; but in no case shall the total paid to any such employee for any fiscal year exceed the amount of the minimum annual salary rate of the classification grade of the employee.

(e) Additional pay for service at Gillis W. Long Hansen's Disease Center

Any civilian employee of the Service who is employed at the Gillis W. Long Hansen's Disease Center on April 7, 1986, shall be entitled to receive, in addition to any compensation to which the employee may otherwise be entitled and for so long as the employee remains employed at the Center, an amount equal to one-fourth of such compensation.

(f) Allowances included in fellowships

Individuals appointed under section 209(g) of this title shall have included in their fellowships such stipends or allowances, including travel and subsistence expenses, as the Surgeon General may deem necessary to procure qualified fellows.

(g) Positions in professional, scientific and executive service; compensation; appointment

The Secretary is authorized to establish and fix the compensation for, within the Public Health Service, not more than one hundred and seventy-nine positions, of which not less than one hundred and fifteen shall be for the National Institutes of Health, not less than five shall be for the National Institute on Alcohol Abuse and Alcoholism for individuals engaged in research on alcohol abuse and alcoholism, not less than ten shall be for the National Center for Health Services Research, not less than twelve shall be for the National Center for Health Statistics, and not less than seven shall be for the National Center for Health Care Technology, in the professional, scientific, and executive service, each position being established to effectuate those research and development activities of the Public Health Service which require the services of specially qualified scientific, professional and administrative personnel: *Provided*, That the rates of compensation for positions established pursuant to the provisions of this subsection shall not be less than the minimum rate of grade 16 of the General Schedule nor more than (1) the highest rate of grade 18 of the General Schedule, or (2) in the case of two such positions, the rate specified, at the time the service in the position is performed, for level II of the Executive Schedule (5 U.S.C. 5313); and such rates of compensation for all positions included in this proviso shall be subject to the approval of the Director of the Office of Personnel Management. Positions created pursuant to this subsection shall be included in the classified civil service of the United States, but appointments to such positions shall be made without competitive examination upon approval of the proposed appointee's qualifications by the Director of the Office of Personnel Management or such officers or agents as it may designate for this purpose.

(July 1, 1944, ch. 373, title II, § 208, formerly § 209, 58 Stat. 686; July 3, 1946, ch. 538, § 5(a), 60 Stat. 422; renumbered § 208 and amended Feb. 28, 1948, ch. 83, § 5(a), (g), (h), 62 Stat. 40; June 16, 1948, ch. 481, § 4(d), 62 Stat. 467; June 24, 1948, ch. 621, § 4(d), 62 Stat. 601; Oct. 12, 1949, ch. 681, title V, § 521(b), 63 Stat. 834; Aug. 9, 1950, ch. 654, § 1, 64 Stat. 426; Aug. 15, 1950, ch. 714, §§ 3(e), 4(b), 64 Stat. 447; 1953 Reorg. Plan No. 1, §§ 5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1955, ch. 437, title II, § 201, 69 Stat. 407; June 29, 1956, ch. 477, title II, § 201, 70 Stat. 430; July 31, 1956, ch. 804, title I, § 117(b), 70 Stat. 741; Pub. L. 85–462, § 12(e), June 20, 1958, 72 Stat. 214; Pub. L. 85–929, § 9, Sept. 6, 1958, 72 Stat. 1789; Pub. L. 86–415, § 5(b), Apr. 8, 1960, 74 Stat. 34; Pub. L. 86–703, title II, § 201, Sept. 2, 1960, 74 Stat. 764; Pub. L. 87–649, §§ 11(3), 14b, Sept. 7, 1962, 76 Stat. 497, 499; Pub. L. 87–793, § 1001(d), Oct. 11, 1962, 76 Stat. 864; Pub. L. 88–426, title III, § 305(1), Aug. 14, 1964, 78 Stat. 422; Pub. L. 90–574, title V, § 501, Oct. 15, 1968, 82 Stat. 1012; Pub. L. 91–515, title VI, § 601(b)(1), Oct. 30, 1970, 84 Stat. 1310; Pub. L. 92–157, title III, § 301(a), Nov. 18, 1971, 85 Stat. 463; Pub. L. 95–83, title III, § 312, Aug. 1, 1977, 91 Stat. 398; Pub. L. 95–623, § 11(a), Nov. 9, 1978, 92 Stat. 3455; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 96–32, § 7(g), July 10, 1979, 93 Stat. 84; Pub. L. 96–398, title VIII, § 805, Oct. 7, 1980, 94 Stat. 1608; Pub. L. 99–117, § 3(a), Oct. 7, 1985, 99 Stat. 491; Pub. L. 99–272, title XVII, § 17002(a)(1), (b), Apr. 7, 1986, 100 Stat. 359; Pub. L. 100–607, title VII, § 706, Nov. 4, 1988, 102

Stat. 3159; Pub. L. 106–398, §1 [[div. A], title VI, §634(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–159.)

REFERENCES IN TEXT

Classified civil service, referred to in subsec. (g), as meaning ''competitive service'', see section 2102(c) of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 208 of act July 1, 1944, was renumbered section 207 and is classified to section 209 of this title.

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–398 added par. (2) and struck out former par. (2) which read as follows:

''(2)(A) Except as provided in subparagraph (B), commissioned medical and dental officers in the Regular and Reserve Corps shall while on active duty be paid special pay in the same amounts as, and under the same terms and conditions which apply to, the special pay now or hereafter paid to commissioned medical and dental officers of the Armed Forces under chapter 5 of title 37.

''(B) A commissioned medical officer in the Regular or Reserve Corps (other than an officer serving in the Indian Health Service) may not receive additional special pay under section 302(a)(4) of title 37 for any period during which the officer is providing obligated service under (i) section 254m of this title, (ii) section 234(e) of this title (as such section was in effect prior to October 1, 1977), or (iii) section 294u of this title (as such section was in effect between October 1, 1977, and August 13, 1981).''

Subsec. (a)(3). Pub. L. 106–398, §1 [[div. A], title VI, §634(b)(1)], struck out par. (3) which read as follows: ''Commissioned nurse officers in the Regular and Reserve Corps shall, while in active duty, be paid incentive special pay in the same amounts as, and under the same terms and conditions which apply to, the incentive special pay now or hereafter paid to commissioned nurse officers of the Armed Forces under chapter 5 of title 37.''

1988—Subsec. (a)(3). Pub. L. 100–607 added par. (3).

1986—Subsec. (a)(2)(B). Pub. L. 99–272, §17002(a)(1), inserted ''(other than an officer serving in the Indian Health Service)''.

Subsec. (e). Pub. L. 99–272, §17002(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Whenever any noncommissioned officer or other employee of the Service is assigned for duty which the Surgeon General finds requires intimate contact with persons afflicted with leprosy, he may be entitled to receive, as provided by regulations of the President, in addition to any pay or compensation to which he may otherwise be entitled, not more than one-half of such pay or compensation.''

1985—Subsec. (a)(2). Pub. L. 99–117 substituted ''(A) Except as provided in subparagraph (B), commissioned'' for ''Commissioned'', and added subpar. (B).

1980—Subsec. (a). Pub. L. 96–398 redesignated existing provisions as par. (1) and added par. (2).

1979—Subsec. (c). Pub. L. 96–32 substituted ''section 5703 of title 5'' for ''section 5703(b) of title 5''.

1978—Subsec. (g). Pub. L. 95–623 increased limitation on establishment of positions to one hundred and seventy-nine from one hundred and fifty-five and required minimum number of positions for certain National Centers: ten, National Center for Health Services Research; twelve, National Center for Health Statistics; and seven, National Center for Health Care Technology.

1977—Subsec. (g). Pub. L. 95–83 increased limitation on establishment of positions to one hundred and fifty-five from one hundred and fifty and required not less than five for the National Institute on Alcohol Abuse and Alcoholism for individuals engaged in research on alcohol abuse and alcoholism.

1971—Subsec. (f). Pub. L. 92–157, which directed that ''subsection (g)'' be substituted for ''section 209(f)'', was executed by substituting ''section 209(g) of this title'' for ''section 209(f) of this title'', to reflect the probable intent of Congress.

1970—Subsec. (c). Pub. L. 91–515 extended coverage to encompass members of other national review councils or national advisory or review committees established under this chapter, including members of the Technical Electronic Product Radiation Safety Standards Committee and the Board of Regents of the National Library of Medicine, authorized service to be at the request of the Secretary in place of the Surgeon General, and revised rates of compensation and travel allowances.

1968—Subsec. (g). Pub. L. 90–574 inserted ''(1)'' after ''nor more than'' and added cl. (2).

1962—Subsec. (b). Pub. L. 87–649 struck out sentence which permitted commissioned officers on active duty to make allotments from their pay, and substituted ''Commissioned officers on active duty and retired officers'' for ''Such officers, and retired officers.'' See section 704 of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (g). Pub. L. 87–793 substituted provisions requiring the rates of compensation to be not less than the minimum rate of grade 16 nor more than the highest rate of grade 18 of the General Schedule, for provisions which prescribed annual rates of compensation of not less than $12,500 nor more than $19,000.

1960—Subsec. (b). Pub. L. 86–415 authorized retired officers entitled to retired pay pursuant to section 211(g)(3), 212, or 213a(a) of this title, to purchase supplies, and included the purchase of supplies from the Air Force.

Subsec. (g). Pub. L. 86–703 substituted ''one hundred and fifty'' for ''eighty-five'' and ''one hundred and fifteen'' for ''seventy-three''.

1958—Subsec. (g). Pub. L. 85–929 substituted ''in the professional, scientific, and executive service'' for ''in the professional and scientific service'', and substituted ''of specially qualified scientific, professional, and administrative personnel'' for ''of specially qualified scientific or professional personnel''.

Pub. L. 85–462, substituted ''eighty-five positions, of which not less than seventy-three shall be for the National Institutes of Health'' for ''sixty positions''.

1956—Subsec. (g). Act June 29, 1956, substituted ''$20,000'' for ''$15,000''.

1955—Subsec. (g). Act Aug. 1, 1955, increased from thirty to sixty the number of positions which the Administrator may establish in the professional and scientific service.

1950—Subsec. (b). Act Aug. 9, 1950, struck out ''and may be granted leaves of absence without any deduction from their pay'' after ''allotments from their pay'' in first sentence.

Subsec. (c). Act Aug. 15, 1950, §3(e), made provisions applicable to members of all national advisory councils.

Subsec. (g). Act Aug. 15, 1950, §4(b), added subsec. (g).

1949—Subsec. (a). Act Oct. 12, 1949, made section applicable to Reserve officers.

Subsec. (b). Act Oct. 12, 1949, redesignated subsec. (c) as (b) and repealed former subsec. (b) relating to Reserve officers.

Subsec. (c). Act Oct. 12, 1949, redesignated subsec. (e) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Act Oct. 12, 1949, redesignated subsec. (f) as (d) and repealed former subsec. (d) relating to female commissioned officers and defining ''dependent''.

Subsec. (e). Act Oct. 12, 1949, redesignated subsec. (g) as (e) and struck out references to allowances. Former subsec. (e) redesignated (c).

Subsec. (f). Act Oct. 12, 1949, redesignated subsec. (h) as (f). Former subsec. (f) redesignated (d).

Subsecs. (g), (h). Act Oct. 12, 1949, redesignated subsecs. (g) and (h) as (e) and (f), respectively.

1948—Subsec. (b). Act Feb. 28, 1948, inserted ''except as otherwise provided by law''.

Subsec. (e). Acts June 16, 1948, §4(d), and June 24, 1948, §4(d), made section applicable to the National Advisory Heart Council and increased the per diem of all mem-

bers from $25 to $50, and made section applicable to the National Advisory Dental Research Council, respectively.

Subsec. (h). Act Feb. 28, 1948, substituted ''section 209(f) of this title'' for ''section 209(d) of this title''.

1946—Subsec. (e). Act July 3, 1946, inserted ''members of the National Advisory Mental Health Council''.

CHANGE OF NAME

Reference to the Gillis W. Long Hansen's Disease Center deemed to refer to the National Hansen's Disease Programs Center, pursuant to section 2 of Pub. L. 107–220, set out as a note under section 247e of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 17002(a)(2) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as of October 7, 1985.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 3(b) of Pub. L. 99–117 provided that: ''The amendment made by subsection (a) [amending this section] shall not diminish any benefits under an agreement entered into before the date of enactment of this Act [Oct. 7, 1985] by a commissioned medical officer in the Regular Corps or the Reserve Corps of the Public Health Service.''

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–793 effective first day of first pay period which begins on or after Oct. 11, 1962, see section 1008 of Pub. L. 87–793.

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–415 effective July 1, 1960, see section 8(a) of Pub. L. 86–415, set out as a note under section 209 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment by Pub. L. 85–929 effective Sept. 6, 1958, see section 6(a) of Pub. L. 85–929, set out as a note under section 342 of Title 21, Food and Drugs.

Amendment by Pub. L. 85–462 effective June 20, 1958, see section 17(b) of Pub. L. 85–462.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 31, 1956, effective at beginning of first pay period commencing after June 30, 1956, see section 120 of act July 31, 1956.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 3(a) of act Aug. 9, 1950, provided that: ''Sections 1 and 2 of this Act [amending this section and enacting section 210–1 of this title] shall become effective on July 1, 1950.''

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

REPEALS

Act July 31, 1956, ch. 804, title I, §117(b), 70 Stat. 741, cited as a credit to this section, which amended subsec. (g) of this section to increase the salary rates, was repealed by Pub. L. 88–426, title III, §305(1), Aug. 14, 1964, 78 Stat. 422.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in subsec. (g) pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, eff. Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

MAXIMUM PAY AND ALLOWANCES FOR SPECIFIC FISCAL YEARS

Pub. L. 100–436, title II, §208, Sept. 20, 1988, 102 Stat. 1699, provided in part that: ''No funds appropriated for the fiscal year ending September 30, 1989, by this or any other Act, may be used to pay basic pay, special pays, basic allowances for subsistence and basic allowances for quarters of the commissioned corps of the Public Health Service described in section 204 of title 42, United States Code, at a level that exceeds 110 percent of the Executive Level I [5 U.S.C. 5312] annual rate of basic pay''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100–202, §101(h) [title II, §208], Dec. 22, 1987, 101 Stat. 1329–256, 1329–274.

Pub. L. 99–500, §101(i) [H.R. 5233, title II, §208], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, §101(i) [H.R. 5233, title II, §208], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title II, §208, Dec. 12, 1985, 99 Stat. 1119.

Pub. L. 98–619, title II, §208, Nov. 8, 1984, 98 Stat. 3321.

Pub. L. 98–139, title II, §208, Oct. 31, 1983, 97 Stat. 888.

NURSES AND ALLIED HEALTH PROFESSIONALS

Pub. L. 100–436, title II, § 214, Sept. 20, 1988, 102 Stat. 1700, provided that: ''Funds made available for fiscal year 1989 and hereafter to the National Institutes of Health shall be available for payment of nurses and allied health professionals using pay, schedule options, benefits, and other authorities as provided for the nurses of the Veterans' Administration under 38 U.S.C. chapter 73.''

§ 210–1. Annual and sick leave

(a) Regulations

In accordance with regulations of the President, commissioned officers of the Regular Corps and officers of the Reserve Corps on active duty may be granted annual leave and sick leave without any deductions from their pay and allowances: *Provided*, That such regulations shall not authorize annual leave to be accumulated in excess of sixty days.

(b) Repealed. Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499

(c) Repealed. Pub. L. 96–76, title III, § 311, Sept. 29, 1979, 93 Stat. 586

(d) Definitions

For purposes of this section the term ''accumulated annual leave'' means unused accrued annual leave carried forward from one leave year into a succeeding leave year, and the term ''accrued annual leave'' means the annual leave accruing to an officer during one leave year.

(July 1, 1944, ch. 373, title II, § 219, as added Aug. 9, 1950, ch. 654, § 2, 64 Stat. 426; amended Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499; Pub. L. 96–76, title III, § 311, Sept. 29, 1979, 93 Stat. 586.)

PARTIAL REPEAL OF SUBSECTION (d)

Subsection (d) of this section was repealed by Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499, insofar as it was applicable to the last sentence of subsection (c) of this section which authorized a lump-sum payment to an officer credited with unused accumulated and accrued annual leave. See section 501 of Title 37, Pay and Allowances of the Uniformed Services.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–76, repealed subsec. (c) which set forth limitations on granting of annual leave under subsec. (a) of this section.

1962—Subsec. (b). Pub. L. 87–649 repealed subsec. (b) which required forfeiture of all pay and allowances of an officer absent without leave. See section 503 of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (c). Pub. L. 87–649 repealed last sentence which authorized a lump-sum payment for unused accumulated and accrued annual leave on date of separation, retirement, or release from active duty. See section 501 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective July 1, 1950, see section 3(a) of act Aug. 9, 1950, set out as an Effective Date of 1950 Amendment note under section 210 of this title.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, of Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

COMPENSATION FOR PRIOR ACCUMULATED AND ACCRUED LEAVE; LIMITATION; INAPPLICABLE TO OFFICERS ON TERMINAL LEAVE PRIOR TO JULY 1, 1950

Section 3(b), (c) of act Aug. 9, 1950, provided that any officer credited with more than sixty days of accumulated and accrued leave on June 30, 1949, be compensated for so much of such leave as exceeds sixty days, that such compensation be due and payable on July 1, 1950, and that the provisions of this Act not apply to any officer on terminal leave preceding separation, retirement, or release from active duty.

AVAILABILITY OF FUNDS

Section 4 of act Aug. 9, 1950, provided for the availability of funds for payment of compensation for prior accumulated and accrued leave for any officer under section 3 of this Act.

LEAVE REGULATIONS

Section 5 of act Aug. 9, 1950, provided that: ''Except insofar as the provisions of this Act [enacting this section, amending section 210 of this title, and enacting provisions set out as notes under this section and section 210 of this title] are inconsistent therewith, leave regulations adopted prior to the enactment of this Act [Aug. 9, 1950], pursuant to the Public Health Service Act [this chapter], shall remain in effect until repealed, amended, or superseded.''

§ 210a. Repealed. Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499

Section, act Feb. 28, 1948, ch. 83, § 5(e), (f), 62 Stat. 41, related to service credit for commissioned officers on active duty Feb. 28, 1948, and to service credit for pay and promotion purposes of certain appointees during period Feb. 28, 1948, to July 1, 1948.

§ 210b. Professional categories

(a) Division of corps; basis of categories

For the purpose of establishing eligibility of officers of the Regular Corps for promotions, the Surgeon General shall by regulation divide the corps into professional categories. Each category shall, as far as practicable, be based upon one of the subjects of examination set forth in section 209(a)(1) of this title or upon a subdivision of such subject, and the categories shall be designed to group officers by fields of training in such manner that officers in any one grade in any one category will be available for similar duty in the discharge of the several functions of the Service.

(b) Assignment of officers

Each officer of the Regular Corps on active duty shall, on the basis of his training and expe-

rience, be assigned by the Surgeon General to one of the categories established by regulations under subsection (a) of this section. Except upon amendment of such regulations, no assignment so made shall be changed unless the Surgeon General finds (1) that the original assignment was erroneous, or (2) that the officer is equally well qualified to serve in another category to which he has requested to be transferred, and that such transfer is in the interests of the Service.

(c) Maximum number of officers in each category

Within the limits fixed by the Secretary in regulations under section 207(d) of this title for any fiscal year, the Surgeon General shall determine for each category in the Regular Corps the maximum number of officers authorized to be in each of the grades from the warrant officer (W–1) grade to the director grade, inclusive.

(d) Vacancies in grade for purposes of promotion

The excess of the number so fixed for any grade in any category over the number of officers of the Regular Corps on active duty in such grade in such category (including in the case of the director grade, officers holding such grade in accordance with section 207(c) of this title) shall for the purpose of promotions constitute vacancies in such grade in such category. For purposes of this subsection, an officer who has been temporarily promoted or who is temporarily holding the grade of director in accordance with section 207(c) of this title shall be deemed to hold the grade to which so promoted or which he is temporarily holding; but while he holds such promotion or grade, and while any officer is temporarily assigned to a position pursuant to section 206(c) of this title, the number fixed under subsection (c) of this section for the grade of his permanent rank shall be reduced by one.

(e) Absence of vacancy in grade as affecting promotion

The absence of a vacancy in a grade in a category shall not prevent an appointment to such grade pursuant to section 209 of this title, a permanent length of service promotion, or the recall of a retired officer to active duty; but the making of such an appointment, promotion, or recall shall be deemed to fill a vacancy if one exists.

(f) Vacancy in grade as affecting maximum number for each category

Whenever a vacancy exists in any grade in a category the Surgeon General may increase by one the number fixed by him under subsection (c) of this section for the next lower grade in the same category, without regard to the numbers fixed in regulations under section 207(d) of this title; and in that event the vacancy in the higher grade shall not be filled except by a permanent promotion, and upon the making of such promotion the number for the next lower grade shall be reduced by one.

(July 1, 1944, ch. 373, title II, § 209, as added Feb. 28, 1948, ch. 83, § 5(i), 62 Stat. 41; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–76, title III, § 306, Sept. 29, 1979, 93 Stat. 585.)

PRIOR PROVISIONS

A prior section 209 of act July 1, 1944, was renumbered section 208 and is classified to section 210 of this title.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–76 substituted ''warrant officer (W–1)'' for ''assistant''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–76 effective Oct. 1, 1979, see section 314 of Pub. L. 96–76, set out as a note under section 206 of this title.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 211. Promotion of commissioned officers

(a) Permanent or temporary promotions; examination

Promotions of officers of the Regular Corps to any grade up to and including the director grade shall be either permanent promotions based on length of service, other permanent promotions to fill vacancies, or temporary promotions. Permanent promotions shall be made by the President, by and with the advice and consent of the Senate, and temporary promotions shall be made by the President. Each permanent promotion shall be to the next higher grade, and shall be made only after examination given in accordance with regulations of the President.

(b) Promotion to certain grades only to fill vacancies; regulations; "restricted grade" defined

The President may by regulation provide that in a specified professional category permanent promotions to the senior grade, or to both the full grade and the senior grade, shall be made only if there are vacancies in such grade. A grade in any category with respect to which such regulations have been issued is referred to in this section as a ''restricted grade''.

(c) Examinations

Examinations to determine qualification for permanent promotions may be either noncompetitive or competitive, as the Surgeon General shall in each case determine; except that examinations for promotions to the assistant or senior assistant grade shall in all cases be noncompetitive. The officers to be examined shall be selected by the Surgeon General from the professional category, and in the order of senior-

ity in the grade, from which promotion is to be recommended. In the case of a competitive examination the Surgeon General shall determine in advance of the examination the number (which may be one or more) of officers who, after passing the examination, will be recommended to the President for promotion; but if the examination is one for promotions based on length of service, or is one for promotions to fill vacancies other than vacancies in the director grade or in a restricted grade, such number shall not be less than 80 per centum of the number of officers to be examined.

(d) Permanent promotions to qualified officers on length of service

Officers of the Regular Corps, found pursuant to subsection (c) of this section to be qualified, shall be given permanent promotions based on length of service, as follows:

(1) Officers in the warrant officer (W–1) grade, chief warrant officer (W–2) grade, chief warrant officer (W–3) grade, chief warrant officer (W–4) grade, and junior assistant grade shall be promoted at such times as may be prescribed in regulations of the President.

(2) Officers with permanent rank in the assistant grade, the senior assistant grade, and the full grade shall (except as provided in regulations under subsection (b) of this section) be promoted after completion of three, ten, and seventeen years, respectively, of service in grades above the junior assistant grade; and such promotions, when made, shall be effective, for purposes of pay and seniority in grade, as of the day following the completion of such years of service. An officer with permanent rank in the assistant, senior assistant, or full grade who has not completed such years of service shall be promoted at the same time, and his promotion shall be effective as of the same day, as any officer junior to him in the same grade in the same professional category who is promoted under this paragraph.

(e) Promotion of professional category officers to fill certain vacancies

Officers in a professional category of the Regular Corps, found pursuant to subsection (c) of this section to be qualified, may be given permanent promotions to fill any or all vacancies in such category in the senior assistant grade, the full grade, the senior grade, or the director grade; but no officer who has not had one year of service with permanent or temporary rank in the next lower grade shall be promoted to any restricted grade or to the director grade.

(f) Reexamination upon failure of promotion; effective date of promotion

If an officer who has completed the years of service required for promotion to a grade under paragraph (2) of subsection (d) of this section fails to receive such promotion, he shall (unless he has already been twice examined for promotion to such grade) be once reexamined for promotion to such grade. If he is thereupon promoted (otherwise than under subsection (e) of this section), the effective date of such promotion shall be one year later than it would have been but for such failure. Upon the effective date of any permanent promotion of such officer to such grade, he shall be considered as having had only the length of service required for such promotion which he previously failed to receive.

(g) Separation from service upon failure of promotion

If, for reasons other than physical disability, an officer of the Regular Corps in the warrant officer (W–1) grade or junior assistant grade is found pursuant to subsection (c) of this section not to be qualified for promotion he shall be separated from the Service. If, for reasons other than physical disability, an officer of the Regular Corps in the chief warrant officer (W–2), chief warrant officer (W–3), assistant, senior assistant, or full grade, after having been twice examined for promotion (other than promotion to a restricted grade), fails to be promoted—

(1) if in the chief warrant officer (W–2) or assistant grade he shall be separated from the Service and paid six months' basic pay and allowances;

(2) if in the chief warrant officer (W–3) or senior assistant grade he shall be separated from the Service and paid one year's basic pay and allowances;

(3) if in the full grade he shall be considered as not in line for promotion and shall, at such time thereafter as the Surgeon General may determine, be retired from the Service with retired pay (unless he is entitled to a greater amount by reason of another provision of law)—

(A) in the case of an officer who first became a member of a uniformed service before September 8, 1980, at the rate of 2½ percent of the retired pay base determined under section 1406(h) of title 10 for each year, not in excess of 30, of his active commissioned service in the Service; or

(B) in the case of an officer who first became a member of a uniformed service on or after September 8, 1980, at the rate determined by multiplying—

(i) the retired pay base determined under section 1407 of title 10; by

(ii) the retired pay multiplier determined under section 1409 of such title for the number of years of his active commissioned service in the Service.

(h) Separation from service upon refusal to stand examination

If an officer of the Regular Corps, eligible to take an examination for promotion, refuses to take such examination, he may be separated from the Service in accordance with regulations of the President.

(i) Review of record; separation from service

At the end of his first three years of service, the record of each officer of the Regular Corps originally appointed to the senior assistant grade or above, shall be reviewed in accordance with regulations of the President and, if found not qualified for further service, he shall be separated from the Service and paid six months' pay and allowances.

(j) Determination of order of seniority

(1) The order of seniority of officers in a grade in the Regular Corps shall be determined, sub-

ject to the provisions of paragraph (2) of this subsection, by the relative length of time spent in active service after the effective date of each such officer's original appointment or permanent promotion to that grade. When permanent promotions of two or more officers to the same grade are effective on the same day, their relative seniority shall be the same as it was in the grade from which promoted. In all other cases of original appointments or permanent promotions (or both) to the same grade effective on the same day, relative seniority shall be determined in accordance with regulations of the President.

(2) In the case of an officer originally appointed in the Regular Corps to the grade of assistant or above, his seniority in the grade to which appointed shall be determined after inclusion, as service in such grade, of any active service in such grade or in any higher grade in the Reserve Corps, but (if the appointment is to the grade of senior assistant or above) only to the extent of whichever of the following is greater: (A) His active service in such grade or any higher grade in the Reserve Corps after the first day on which, under regulations in effect on the date of his appointment to the Regular Corps, he had the training and experience necessary for such appointment, or (B) the excess of his total active service in the Reserve Corps (above the grade of junior assistant) over three years if his appointment in the Regular Corps is to the senior assistant grade, over ten years if the appointment is to the full grade, or over seventeen years if the appointment is to the senior grade.

(k) Temporary promotions; fill vacancy in higher grade; war or national emergency; selection of officers; termination of appointment

Any commissioned officer of the Regular Corps in any grade in any professional category may be recommended to the President for temporary promotion to fill a vacancy in any higher grade in such category, up to and including the director grade. In time of war, or of national emergency proclaimed by the President, any commissioned officer of the Regular Corps in any grade in any professional category may be recommended to the President for promotion to any higher grade in such category, up to and including the director grade, whether or not a vacancy exists in such grade. The selection of officers to be recommended for temporary promotions shall be made in accordance with regulations of the President. Promotion of an officer recommended pursuant to this subsection may be made without regard to length of service, without examination, and without vacating his permanent appointment, and shall carry with it the pay and allowances of the grade to which promoted. Such promotions may be terminated at any time, as may be directed by the President.

(*l*) Determination of requirements of Service by Secretary; assignment of Reserve Officers to professional categories; temporary promotions; termination of temporary promotions

Whenever the number of officers of the Regular Corps on active duty, plus the number of officers of the Reserve Corps who have been on active duty for thirty days or more, exceeds the authorized strength of the Regular Corps, the Secretary shall determine the requirements of the Service in each grade in each category, based upon the total number of officers so serving on active duty and the tasks being performed by the Service; and the Surgeon General shall thereupon assign each officer of the Reserve Corps on active duty to a professional category. If the Secretary finds that the number of officers fixed under section 210b(c) of this title for any grade and category (or the number of officers, including officers of the Reserve Corps, on active duty in such grade in such category, if such number is greater than the number fixed under section 210b(c) of this title) is insufficient to meet such requirements of the Service, officers of either the Regular Corps or the Reserve Corps may be recommended for temporary promotion to such grade in such category. Any such promotion may be terminated at any time, as may be directed by the President.

(m) Acceptance of promotion; oath and affidavit

Any officer of the Regular Corps, or any officer of the Reserve Corps on active duty, who is promoted to a higher grade shall, unless he expressly declines such promotion, be deemed for all purposes to have accepted such promotion; and shall not be required to renew his oath of office, or to execute a new affidavit as required by section 3332 of title 5.

(July 1, 1944, ch. 373, title II, §210, 58 Stat. 687; Feb. 28, 1948, ch. 83, §6(a), 62 Stat. 42; Oct. 12, 1949, ch. 681, title V, §521(c), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Apr. 27, 1956, ch. 211, §4(a), 70 Stat. 117; Pub. L. 86–415, §5(c), Apr. 8, 1960, 74 Stat. 34; Pub. L. 87–649, §11(2), Sept. 7, 1962, 76 Stat. 497; Pub. L. 96–76, title III, §307, Sept. 29, 1979, 93 Stat. 585; Pub. L. 96–342, title VIII, §813(h)(1), Sept. 8, 1980, 94 Stat. 1110; Pub. L. 99–348, title II, §207(a), July 1, 1986, 100 Stat. 701.)

CODIFICATION

In subsec. (m), ''section 3332 of title 5'' substituted for ''the Act of December 11, 1926, as amended (5 U.S.C. 21a)'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1986—Subsec. (g)(3). Pub. L. 99–348 added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

''(A) in the case of an officer who first became a member of a uniformed service before September 8, 1980, at the rate of 2½ per centum of basic pay of the permanent grade held by him at the time of retirement for each year, not in excess of thirty, of his active commissioned service in the Service; or

''(B) in the case of an officer who first became a member of a uniformed service on or after September 8, 1980, 2½ per centum of the monthly retired pay base computed under section 1407(h) of title 10, for each year, not in excess of thirty, of his active commissioned service in the Service.''

1980—Subsec. (g)(3). Pub. L. 96–342 revised provisions into subpars. (A) and (B) and substituted provisions respecting computation of retired pay for officers who became members of the uniformed service before Sept. 8, 1980, and for officers who became members of the uniformed service on or after Sept. 8, 1980, for provisions respecting computation of retired pay for officers.

1979—Subsec. (d)(1). Pub. L. 96–76, §307(a), inserted applicability to warrant officers and chief warrant officers.

Subsec. (g). Pub. L. 96–76, § 307(b), in provision before par. (1), inserted applicability to separation from Service of warrant officers and chief warrant officers subsequent to one examination or two examinations, respectively, in par. (1), inserted applicability to a chief warrant officer (W–2), and in par. (2), inserted applicability to a chief warrant officer (W–3).

1962—Subsec. (g). Pub. L. 87–649 substituted ''basic pay'' for ''pay'' in cls. (1) and (2).

1960—Subsec. (g). Pub. L. 86–415 substituted ''of the basic pay of the permanent grade held by him at the time of retirement for each year'' for ''of his active duty pay at the time of retirement for each complete year'' in cl. (3).

1956—Subsec. (d)(2). Act Apr. 27, 1956, struck out ''pay period and for purposes of'' before ''seniority in grade''.

1949—Subsec. (g). Act Oct. 12, 1949, struck out ''incurred in line of duty'' wherever appearing.

1948—Act Feb. 28, 1948, amended subsecs. (a) to (c) generally and added subsecs. (d) to (m).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–76 effective Oct. 1, 1979, see section 314 of Pub. L. 96–76, set out as a note under section 206 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 211a. Repealed. Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936

Section, act July 1, 1944, ch. 373, title XIII, § 1311, formerly title VII, § 711, as added Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; renumbered title VIII, § 811, July 30, 1956, ch. 779, § 3(b), 70 Stat. 721; renumbered title IX, § 911, Sept. 4, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; renumbered title X, § 1011, Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; renumbered title XI, § 1111, Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; renumbered title XII, § 1211, May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; renumbered title XIII, § 1311, Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, provided for appointment to higher grades of Public Health Service officers for mental health and hospital construction activities.

§ 211b. Repealed. Pub. L. 94–412, title V, § 501(f), Sept. 14, 1976, 90 Stat. 1258

Section, act Feb. 28, 1948, ch. 83, § 6(b)–(f), 62 Stat. 45, dealt with promotion of Public Health Service officers.

SAVINGS PROVISION

Repeal not to affect any action taken or proceeding pending at the time of repeal, see section 501(h) of Pub. L. 94–412, set out as a note under section 1601 of Title 50, War and National Defense.

§ 211c. Promotion credit for medical officers in assistant grade

Any medical officer of the Regular Corps of the Public Health Service who—

(1)(A) was appointed to the assistant grade in the Regular Corps and whose service in such Corps has been continuous from the date of appointment or (B) may hereafter be appointed to the assistant grade in the Regular Corps, and

(2) had or will have completed a medical internship on the date of such appointment,

shall be credited with one year for purposes of promotion and seniority in grade, except that no such credit shall be authorized if the officer has received or will receive similar credit for his internship under other provisions of law. In the case of an officer on active duty on the effective date of this section who is entitled to the credit authorized herein, the one year shall be added to the promotion and seniority-in-grade credits with which he is credited on such date.

(July 1, 1944, ch. 373, title II, § 220, as added Apr. 30, 1956, ch. 223, § 3, 70 Stat. 121.)

REFERENCES IN TEXT

For ''the effective date of this section'', referred to in text, see section 7 of act Apr. 30, 1956, which provided in part that this section shall become effective the first day of the month following the day of enactment, Apr. 30, 1956.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 212. Retirement of commissioned officers

(a) Age; voluntariness; length of service; computation of retired pay

(1) A commissioned officer of the Service shall, if he applies for retirement, be retired on or after the first day of the month following the month in which he attains the age of sixty-four years. This paragraph does not permit or require the involuntary retirement of any individual because of the age of the individual.

(2) A commissioned officer of the Service may be retired by the Secretary, and shall be retired if he applies for retirement, on the first day of any month after completion of thirty years of active service.

(3) Any commissioned officer of the Service who has had less than thirty years of active service may be retired by the Secretary, with or without application by the officer, on the first day of any month after completion of twenty or more years of active service of which not less than ten are years of active commissioned service in any of the uniformed services.

(4) Except as provided in paragraph (6), a commissioned officer retired pursuant to paragraph (1), (2), or (3) who was (in the case of an officer in the Reserve Corps) on active duty with the Service on the day preceding such retirement shall be entitled to receive retired pay at the rate of 2½ per centum of the basic pay of the highest grade held by him as such officer and in which, in the case of a temporary promotion to such grade, he has performed active duty for not less than six months, (A) for each year of active service, or (B) if it results in higher retired pay, for each of the following years:

(i) his years of active service (determined without regard to subsection (d) of this section) as a member of a uniformed service; plus

(ii) in the case of a medical or dental officer, four years and, in the case of a medical officer, who has completed one year of medical internship or the equivalent thereof, one additional year, the four years and the one year to be reduced by the period of active service performed during such officer's attendance at medical school or dental school or during his medical internship; plus

(iii) the number of years of service with which he was entitled to be credited for purposes of basic pay on May 31, 1958, or (if higher) on any date prior thereto, reduced by any such year included under clause (i) and further reduced by any such year with which he was entitled to be credited under paragraphs (7) and (8) of section 205(a) of title 37 on any date before June 1, 1958;

except that (C) in the case of any officer whose retired pay, so computed, is less than 50 per centum of such basic pay, who retires pursuant to paragraph (1) of this subsection, who has not less than twelve whole years of active service (computed without the application of subsection (e) of this section), and who does not use, for purposes of a retirement annuity under subchapter III of chapter 83 of title 5, any service which is also creditable in computing his retired pay from the Service, it shall, instead, be 50 per centum of such pay, and (D) the retired pay of an officer shall in no case be more than 75 per centum of such basic pay.

(5) With the approval of the President, a commissioned officer whose service as Surgeon General, Deputy Surgeon General, or Assistant Surgeon General has totaled four years or more and who has had not less than twenty-five years of active service in the Service may retire voluntarily at any time; and except as provided in paragraph (6), his retired pay shall be at the rate of 75 per centum of the basic pay of the highest grade held by him as such officer.

(6) The retired pay of a commissioned officer retired under this subsection who first became a member of a uniformed service after September 7, 1980, is determined by multiplying—

(A) the retired pay base determined under section 1407 of title 10; by

(B) the retired pay multiplier determined under section 1409 of such title for the number of years of service credited to the officer under paragraph (4).

(7) Retired pay computed under section 211(g)(3) of this title or under paragraph (4) or (5) of this subsection, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(b) Basic pay of highest temporary grade

For purposes of subsection (a) of this section, the basic pay of the highest grade to which a commissioned officer has received a temporary promotion means the basic pay to which he would be entitled if serving on active duty in such grade on the date of his retirement.

(c) Recall to active duty

A commissioned officer, retired for reasons other than for failure of promotion to the senior grade, may (1) if an officer of the Regular Corps or an officer of the Reserve Corps entitled to retired pay under subsection (a) of this section, be involuntarily recalled to active duty during such times as the Commissioned Corps constitutes a branch of the land or naval forces of the United States, and (2) if an officer of either the Regular or Reserve Corps, be recalled to active duty at any time with his consent.

(d) "Active service" defined

The term ''active service'', as used in subsection (a) of this section, includes:

(1) all active service in any of the uniformed services;

(2) active service with the Public Health Service, other than as a commissioned officer, which the Surgeon General determines is comparable to service performed by commissioned officers of the Service, except that, if there are more than five years of such service only the last five years thereof may be included;

(3) all active service (other than service included under the preceding provisions of this subsection) which is creditable for retirement purposes under laws governing the retirement of members of any of the uniformed services; and

(4) service performed as a member of the Senior Biomedical Research Service established by section 237 of this title, except that, if there are more than 5 years of such service, only the last 5 years thereof may be included.

(e) Crediting of part of year

For the purpose of determining the number of years by which a percentage of the basic pay of an officer is to be multiplied in computing the amount of his retired pay pursuant to section 211(g)(3) of this title or paragraph (4) of subsection (a) of this section, each full month of service that is in addition to the number of full years of service credited to an officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(f) Retirement or separation for physical disability

For purposes of retirement or separation for physical disability under chapter 61 of title 10, a commissioned officer of the Service shall be credited, in addition to the service described in section 1208(a)(2) of that title, with active service with the Public Health Service, other than as a commissioned officer, which the Surgeon General determines is comparable to service performed by commissioned officers of the Service, except that, if there are more than five years of such service, only the last five years thereof may be so credited. For such purposes, such section 1208(a)(2) shall be applicable to officers of the Regular or Reserve Corps of the Service.

(July 1, 1944, ch. 373, title II, § 211, 58 Stat. 688; Feb. 28, 1948, ch. 83, § 7, 62 Stat. 46; Oct. 12, 1949, ch. 681, title V, § 521(d), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Apr. 27, 1956, ch. 211, § 5(a)–(c), 70 Stat. 117; Aug. 10, 1956, ch. 1041, § 5, 70A Stat. 620; Pub. L. 86–415, § 4, Apr. 8, 1960, 74 Stat. 33; Pub. L. 91–253, § 1, May 14, 1970, 84 Stat. 216; Pub. L. 96–76, title III, § 308, Sept. 29, 1979, 93 Stat. 585; Pub. L. 96–342, title VIII, § 813(h)(2), Sept. 8, 1980, 94 Stat. 1110; Pub. L. 97–25, title III, § 303(b), July 27, 1981, 95 Stat. 145; Pub. L. 97–35, title XXVII, § 2765(a), Aug. 13, 1981, 95 Stat. 932; Pub. L. 98–94, title IX, §§ 922(d), 923(f), Sept. 24, 1983, 97 Stat. 642, 643; Pub. L. 99–348, title II, § 207(b), July 1, 1986, 100 Stat. 702; Pub. L. 101–509, title V, § 529 [title III, § 304(b)], Nov. 5, 1990, 104 Stat. 1427, 1464.)

CODIFICATION

In subsec. (a)(4), ''subchapter III of chapter 83 of title 5'' substituted for ''the Civil Service Retirement Act'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1990—Subsec. (d)(4). Pub. L. 101–509 added par. (4).

1986—Subsec. (a)(6). Pub. L. 99–348 amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''In computing retired pay under paragraph (4) or (5) in the case of any commissioned officer who first became a member of a uniformed service on or after September 8, 1980, the monthly retired pay base computed under section 1407(h) of title 10 shall be used in lieu of using the basic pay of the highest grade held by him as such officer.''

1983—Subsec. (a)(7). Pub. L. 98–94, § 922(d), added par. (7).

Subsec. (e). Pub. L. 98–94, § 923(f), substituted ''each full month of service that is in addition to the number of full years of service credited to an officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded'' for ''a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded''.

1981—Subsec. (a)(1). Pub. L. 97–35 substituted ''shall, if he applies for retirement, be retired on or after'' for ''shall be retired on'', and substituted provisions relating to involuntary retirement as a result of age, for provisions relating to inapplicability to the Surgeon General.

Pub. L. 97–25 inserted provision that this paragraph does not apply to Surgeon General.

1980—Subsec. (a)(4). Pub. L. 96–342, § 813(h)(2)(A), substituted ''Except as provided in paragraph (6), a'' for ''A''.

Subsec. (a)(5). Pub. L. 96–342, § 813(h)(2)(B), substituted ''except as provided in paragraph (6), his'' for ''his''.

Subsec. (a)(6). Pub. L. 96–342, § 813(h)(2)(C), added par. (6).

1979—Subsec. (e). Pub. L. 96–76 struck out requirement respecting active service for purposes of credit.

1970—Subsec. (a)(4). Pub. L. 91–253 inserted ''plus'' after the semicolon at end of cl. (ii) and added cl. (iii).

1960—Pub. L. 86–415 amended section generally, and among other changes, authorized retirement of commissioned officers who have had less than 30 years of active service any time after the completion of 20 years of active service, permitted persons who have served as Deputy Surgeons General or Assistant Surgeons General for four or more years and who have had at least 25 years of active service to retire voluntarily at any time, provided for the recall to active duty of officers of the Reserve Corps entitled to retired pay under subsection (a) of this section during such times as the Corps constitutes a branch of the land or naval forces of the United States, authorized credit, for retirement purposes, of active service in the uniformed services and limited to five years the crediting of active service with the Public Health Service other than as a commissioned officer, and established the methods for computation of retired pay for active duty officers retiring for age or length of service.

1956—Subsec. (a). Act Apr. 27, 1956, § 5(a), authorized crediting of noncommissioned service for purposes of retirement.

Subsec. (b)(1). Act Apr. 27, 1956, § 5(b), authorized crediting of noncommissioned service in the Service for purposes of retirement.

Subsec. (c). Act Apr. 27, 1956, § 5(c), permitted recall of retired officers of the Regular Corps without their consent whenever the Regular Corps has military status, and authorized recall of retired officers of the Regular or Reserve Corps with their consent at any time.

Subsec. (g). Act Aug. 10, 1956, provided for crediting of service for purposes of retirement or separation for physical disability under chapter 61 of title 10.

1949—Subsec. (a). Act Oct. 12, 1949, redesignated subsec. (b) as (a), substituted ''subsection (b)'' for ''subsection (c)'' and repealed former subsec. (a) relating to retirement for disability or disease.

Subsec. (b). Act Oct. 12, 1949, redesignated subsec. (c) as (b) and struck out reference to retirement for disability or disease. Former subsec. (b) redesignated (a).

Subsec. (c). Act Oct. 12, 1949, redesignated subsec. (d) as (c) and struck out reference to recovery from a disability. Former subsec. (c) redesignated (b).

Subsecs. (d) to (f). Act Oct. 12, 1949, redesignated subsecs. (e) to (g) as (d) to (f), respectively. Former subsec. (d) redesignated (c).

Subsecs. (g), (h). Act Oct. 12, 1949, redesignated subsec. (h) as (g) and amended subsection generally to relate to retirement or separation for physical disability. Former subsec. (g) redesignated (f).

1948—Subsec. (b). Act Feb. 28, 1948, inserted length of service for retirement purposes.

Subsec. (c)(2). Act Feb. 28, 1948, made subdivision applicable to grade of Assistant Surgeon General.

Subsec. (d). Act Feb. 28, 1948, substituted ''under the provisions of subsection (b) of this section'' for ''for age''.

Subsecs. (g), (h). Act Feb. 28, 1948, added subsecs. (g) and (h).

CHANGE OF NAME

Senior Biomedical Research Service changed to Silvio O. Conte Senior Biomedical Research Service by Pub. L. 103–43, title XX, § 2001, June 10, 1993, 107 Stat. 208. See section 237 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 529 [title III, § 304(c)] of Pub. L. 101–509 provided that: ''Except as otherwise provided, the provisions of this section [enacting section 237 of this title

and amending this section] shall be effective on the 90th day following the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922(d) of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of Title 10, Armed Forces.

Amendment by section 923(f) of Pub. L. 98–94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of Title 10.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 2 of Pub. L. 91–253 provided that: ''The amendments made by this Act [amending this section] shall apply in the case of retired pay for any period after the month in which this Act is enacted [May 1970].''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 8(b) of Pub. L. 86–415 provided that: ''The amendment made by section 4 [amending this section] shall become effective on the date of enactment of this Act [Apr. 8, 1960] in the case of commissioned officers of the Regular Corps of the Public Health Service, and on July 1, 1960, in the case of commissioned officers of the Reserve Corps of the Public Health Service.''

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

SAVINGS PROVISION

Section 8(c), (d) of Pub. L. 86–415 provided that:

''(c) An officer in the Regular Corps on active duty on the date of enactment of this Act [Apr. 8, 1960] may be retired and have his retired pay computed under section 211 of the Public Health Service Act, as amended by this Act [this section], or, if he so elects, under such section as in effect prior to the date of enactment of this Act [Apr. 8, 1960].

''(d) The limitation under subsection (f) of section 211 of the Public Health Service Act, as amended by this Act [subsec. (f) of this section], on the amount of active service with the Public Health Service, other than as a commissioned officer, which may be counted for purposes of retirement or separation for physical disability, shall not apply in the case of any officer of the Reserve Corps of the Public Health Service on active duty on June 30, 1960.''

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, eff. Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

COVERAGE UNDER CIVIL SERVICE RETIREMENT ACT

Creditable service for purposes of the Civil Service Retirement Act for certain commissioned officers of the Regular or Reserve Corps of the Public Health Service, see section 6(a), (b) of Pub. L. 86–415, set out as a note under section 8332 of Title 5, Government Organization and Employees.

§ 212a. Repealed. Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936

Section, act July 1, 1944, ch. 373, title XIII, § 1312, formerly title VII, § 712, as added Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; renumbered title VIII, § 812, July 30, 1956, ch. 779, § 3(b), 70 Stat. 721; renumbered title IX, § 912, Sept. 4, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; renumbered title X, § 1012, Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; renumbered title XI, § 1112, Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; renumbered title XII, § 1212, May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; renumbered title XIII, § 1312, Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, provided for retirement of certain officers of Reserve Corps of the Public Health Service for disability.

§ 212b. Repealed. Apr. 27, 1956, ch. 211, § 5(d), 70 Stat. 117

Section, act July 31, 1953, ch. 296, title II, § 201, 67 Stat. 254, authorized recall of retired officers of the Service. See section 212(c) of this title.

§ 213. Military benefits

(a) Rights, privileges, immunities, and benefits accorded to commissioned officers or their survivors

Except as provided in subsection (b) of this section, commissioned officers of the Service and their surviving beneficiaries shall, with respect to active service performed by such officers—

(1) in time of war;

(2) on detail for duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard; or

(3) while the Service is part of the military forces of the United States pursuant to Executive order of the President;

be entitled to all rights, privileges, immunities, and benefits now or hereafter provided under any law of the United States in the case of commissioned officers of the Army or their surviving beneficiaries on account of active military service, except retired pay and uniform allowances.

(b) Award of decorations

The President may prescribe the conditions under which commissioned officers of the Service may be awarded military ribbons, medals, and decorations.

(c) Authority of Surgeon General

The authority vested by law in the Department of the Army, the Secretary of the Army, or other officers of the Department of the Army with respect to rights, privileges, immunities,

and benefits referred to in subsection (a) of this section shall be exercised, with respect to commissioned officers of the Service, by the Surgeon General.

(d) Active service deemed active military service with respect to laws administered by Secretary of Veterans Affairs

Active service of commissioned officers of the Service shall be deemed to be active military service in the Armed Forces of the United States for the purposes of all laws administered by the Secretary of Veterans Affairs (except the Servicemen's Indemnity Act of 1951) and section 417 of this title.

(e) Active service deemed active military service with respect to Servicemembers Civil Relief Act

Active service of commissioned officers of the Service shall be deemed to be active military service in the Armed Forces of the United States for the purposes of all rights, privileges, immunities, and benefits now or hereafter provided under the Servicemembers Civil Relief Act (50 App. U.S.C. 501 et seq.).

(f) Active service deemed active military service with respect to anti-discrimination laws

Active service of commissioned officers of the Service shall be deemed to be active military service in the Armed Forces of the United States for purposes of all laws related to discrimination on the basis of race, color, sex, ethnicity, age, religion, and disability.

(July 1, 1944, ch. 373, title II, § 212, 58 Stat. 689; July 15, 1954, ch. 507, § 14(a), 68 Stat. 481; Aug. 1, 1956, ch. 837, title V, § 501(b)(1), 70 Stat. 881; Pub. L. 94–278, title XI, § 1101, Apr. 22, 1976, 90 Stat. 415; Pub. L. 102–54, § 13(q)(1)(C), June 13, 1991, 105 Stat. 278; Pub. L. 105–392, title IV, § 402(a), Nov. 13, 1998, 112 Stat. 3587; Pub. L. 108–189, § 2(e), Dec. 19, 2003, 117 Stat. 2866.)

REFERENCES IN TEXT

The Servicemen's Indemnity Act of 1951, referred to in subsec. (d), is act Apr. 25, 1951, ch. 39, pt. I, 65 Stat. 33, which was classified generally to subchapter II (§ 851 et seq.) of chapter 13 of former Title 38, Pensions, Bonuses, and Veterans' Relief, and was repealed by act Aug. 1, 1956, ch. 873, title V, § 502(9), 70 Stat. 886.

The Servicemembers Civil Relief Act, referred to in subsec. (e), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 501 of Title 50, Appendix, and Tables.

AMENDMENTS

2003—Subsec. (e). Pub. L. 108–189 substituted ''Servicemembers Civil Relief Act'' for ''Soldiers' and Sailors' Civil Relief Act of 1940''.

1998—Subsec. (f). Pub. L. 105–392 added subsec. (f).

1991—Subsec. (d). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

1976—Subsec. (e). Pub. L. 94–278 added subsec. (e).

1956—Act Aug. 1, 1956, amended section generally to extend all rights, privileges, immunities, and benefits provided for commissioned officers of the Army or their surviving beneficiaries to commissioned officers of the Service, with the exception of retired pay and uniform allowances, when performing duty under certain circumstances, and to provide that active service of commissioned officers shall be deemed to be active military service in the Armed Forces for the purposes of all laws administered by the Veterans' Administration (except the Servicemen's Indemnity Act of 1951) and section 417 of this title.

1954—Subsec. (a)(1). Act July 15, 1954, struck out ''burial payments in the event of death,'' after ''limited to,''.

EFFECTIVE DATE OF 1956 AMENDMENT; APPLICABILITY

Section 501(b)(2) of act Aug. 1, 1956, provided that: ''The amendment made by this subsection [amending this section] (A) shall apply only with respect to service performed on or after July 4, 1952, (B) shall not be construed to affect the entitlement of any person to benefits under the Veterans' Readjustment Assistance Act of 1952 [act July 16, 1952, ch. 875, 66 Stat. 633], (C) shall not be construed to authorize any payment under section 202(i) of the Social Security Act [section 402(i) of this title], or under Veterans Regulation Numbered 9(a), for any death occurring prior to January 1, 1957, and (D) shall not be construed to authorize payment of any benefits for any period prior to January 1, 1957.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

RECOMPUTATION OF SOCIAL SECURITY BENEFITS FOR OFFICERS ENTITLED TO OLD-AGE INSURANCE BENEFITS PRIOR TO JANUARY 1, 1957, OR FOR SURVIVORS OF OFFICERS WHO DIED PRIOR TO JANUARY 1, 1957

Section 501(b)(3) of act Aug. 1, 1956, provided that: ''In the case of any individual—

''(A) who performed active service (i) as a commissioned officer of the Public Health Service at any time during the period beginning July 4, 1952, and ending December 31, 1956, or (ii) as a commissioned officer of the Coast and Geodetic Survey at any time during the period beginning July 29, 1945, and ending December 31, 1956; and

''(B)(i) who became entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] prior to January 1, 1957, or

''(ii) who died prior to January 1, 1957, and whose widow, child, or parent is entitled for the month of January 1957, on the basis of his wages and self-employment income, to a monthly survivor's benefit under section 202 of such act [section 402 of this title]; and

''(C) any part of whose service described in subparagraph (A) was not included in the computation of his primary insurance amount under section 215 of such act [section 415 of this title] but would have been included in such computation if the amendment made by paragraph (1) of this subsection or paragraph (1) of subsection (d) had been effective prior to the date of such computation,

the Secretary of Health, Education, and Welfare [now Health and Human Services] shall, notwithstanding the provisions of section 215(f)(1) of the Social Security Act

[section 415(f)(1) of this title], recompute the primary insurance amount of such individual upon the filing of an application, after December 1956, by him or (if he dies without filing such an application) by any person entitled to monthly survivor's benefits under section 202 of such act [section 402 of this title] on the basis of his wages and self-employment income. Such recomputation shall be made only in the manner, provided in title II of the Social Security Act [sections 401 to 425 of this title] as in effect at the time of the last previous computation or recomputation of such individual's primary insurance amount, and as though application therefor was filed in the month in which application for such last previous computation or recomputation was filed. No recomputation made under this paragraph shall be regarded as a recomputation under section 215(f) of the Social Security Act [section 415(f) of this title]. Any such recomputation shall be effective for and after the twelfth month before the month in which the application was filed, but in no case for any month before January 1957.''

DISPOSITION OF REMAINS OF DECEASED PERSONNEL

Recovery, care, and disposition of the remains of deceased members of the uniformed services and other deceased personnel, see section 1481 et seq. of Title 10, Armed Forces.

BURIAL OF CERTAIN COMMISSIONED OFFICERS

Act Apr. 30, 1956, ch. 227, 70 Stat. 124, provided: ''That burial in national cemeteries of the remains of commissioned officers of the United States Public Health Service who were detailed for duty with the Army or Navy during World War I pursuant to the act of July 1, 1902 (32 Stat. 712, 713), as amended, and Executive Order Numbered 2571 dated April 3, 1917, and of the wife, widow, minor child and, in the discretion of the Secretary of the Army, unmarried adult child of these officers is authorized: *Provided*, That the remains of the wife, widow, and children may, in the discretion of the Secretary of the Army, be removed from a national cemetery proper and interred in the post section of a national cemetery if, upon death, the related officer is not buried in the same or an adjoining gravesite.''

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Dec. 30, 1992, 58 F.R. 3485, provided:

Memorandum for the Secretary of Defense, the Secretary of Health and Human Services

The authority of the President under section 212(b) of the Public Health Service Act (42 U.S.C. 213(b)) is hereby delegated to the Secretary of Defense. In the exercise of that authority, the Secretary of Defense shall ensure that no military ribbon, medal, or decoration is awarded to an officer of the Public Health Service without the approval of the Secretary of Health and Human Services.

The Secretary of Defense shall ensure the publication of this memorandum in the Federal Register.

GEORGE BUSH.

§ 213a. Rights, benefits, privileges, and immunities for commissioned officers or beneficiaries; exercise of authority by Secretary or designee

(a) Commissioned officers of the Service or their surviving beneficiaries are entitled to all the rights, benefits, privileges, and immunities now or hereafter provided for commissioned officers of the Army or their surviving beneficiaries under the following provisions of title 10:

(1) Section 1036, Escorts for dependents of members: transportation and travel allowances.

(2) Chapter 61, Retirement or Separation for Physical Disability, except that sections 1201, 1202, and 1203 do not apply to commissioned officers of the Public Health Service who have been ordered to active duty for training for a period of more than 30 days.

(3) Chapter 69, Retired Grade, except sections 1370, 1374,[1] 1375 and 1376(a).

(4) Chapter 71, Computation of Retired Pay, except formula No. 3 of section 1401.

(5) Chapter 73, Retired Serviceman's Family Protection Plan; Survivor Benefit Plan.

(6) Chapter 75, Death Benefits.

(7) Section 2771, Final settlement of accounts: deceased members.

(8) Chapter 163, Military Claims, but only when commissioned officers of the Service are entitled to military benefits under section 213 of this title.

(9) Section 2603, Acceptance of fellowships, scholarships, or grants.

(10) Section 2634, Motor vehicles: for members on permanent change of station.

(11) Section 1035, Deposits of Savings.

(12) Section 1552, Correction of military records: claims incident thereto.

(13) Section 1553, Review of discharge or dismissal.

(14) Section 1554, Review of retirement or separation without pay for physical disability.

(15) Section 1124, Cash awards for suggestions, inventions, or scientific achievements.

(16) Section 1052, Reimbursement for adoption expenses.

(17) Section 1059, Transitional compensation and commissary and exchange benefits for dependents of members separated for dependent abuse.

(b) The authority vested by title 10 in the ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' with respect to the rights, privileges, immunities, and benefits referred to in subsection (a) of this section shall be exercised, with respect to commissioned officers of the Service, by the Secretary of Health and Human Services or his designee.

(July 1, 1944, ch. 373, title II, § 221, as added Aug. 10, 1956, ch. 1041, § 4, 70A Stat. 619; amended Pub. L. 85–861, § 4, Sept. 2, 1958, 72 Stat. 1547; Pub. L. 86–160, § 3, Aug. 14, 1959, 73 Stat. 359; Pub. L. 87–555, § 2, July 27, 1962, 76 Stat. 244; Pub. L. 88–132, § 5(k), Oct. 2, 1963, 77 Stat. 214; Pub. L. 88–431, § 1(d), Aug. 14, 1964, 78 Stat. 440; Pub. L. 89–538, § 3(b), Aug. 14, 1966, 80 Stat. 348; Pub. L. 92–425, § 5, Sept. 21, 1972, 86 Stat. 713; Pub. L. 96–76, title III, § 312, Sept. 29, 1979, 93 Stat. 586; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96–513, title V, § 507(f)(2), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 99–117, § 4, Oct. 7, 1985, 99 Stat. 492; Pub. L. 105–85, div. A, title VI, § 653(a), Nov. 18, 1997, 111 Stat. 1804; Pub. L. 107–107, div. A, title VI, § 653(a), Dec. 28, 2001, 115 Stat. 1153.)

REFERENCES IN TEXT

Section 1374 of title 10, referred to in subsec. (a)(3), was repealed by Pub. L. 103–337, div. A, title XVI, § 1662(k)(2), Oct. 5, 1994, 108 Stat. 3006. See sections 12771 to 12773 of Title 10, Armed Forces.

CODIFICATION

Section was formerly classified to section 316 of title 37 prior to the general revision and enactment of Title

[1] See References in Text note below.

37, Pay and Allowances of the Uniformed Services, by Pub. L. 87–649, § 1, Sept. 7, 1962, 76 Stat. 451.

AMENDMENTS

2001—Subsec. (a)(17). Pub. L. 107–107 added cl. (17).
1997—Subsec. (a)(16). Pub. L. 105–85 added cl. (16).
1985—Subsec. (a)(15). Pub. L. 99–117 added cl. (15).
1980—Subsec. (a)(3). Pub. L. 96–513 inserted reference to section 1370 of title 10.
1979—Subsec. (a)(12) to (14). Pub. L. 96–76 added cls. (12) to (14).
1972—Subsec. (a)(5). Pub. L. 92–425 substituted ''Retired Serviceman's Family Protection Plan; Survivor Benefit Plan'' for ''Annuities Based on Retired or Retainer Pay''.
1966—Subsec. (a)(11). Pub. L. 89–538 added cl. (11).
1964—Subsec. (a)(10). Pub. L. 88–431 added cl. (10).
1963—Subsec. (b). Pub. L. 88–132 inserted reference to Secretary of Defense.
1962—Subsec. (a). Pub. L. 87–555 added cl. (9). Notwithstanding directory language that section be amended by ''adding the following new clause at the end thereof'', the amendment was executed to subsec. (a) to reflect the probable intent of Congress since the ''new'' clause was numbered ''(9)'' and subsec. (a) contained cls. (1) to (8).
1959—Subsec. (a). Pub. L. 86–160 added cl. (1) and renumbered former cls. (1) to (7) as (2) to (8).
1958—Subsec. (a). Pub. L. 85–861 substituted ''provisions'' for ''chapters'' in opening clause, struck out former cl. (1) which related to chapter 55 of title 10, renumbered former cls. (2) to (6) as (1) to (5), amended cl. (1), as renumbered, to make sections 1201 to 1203 of title 10, inapplicable to commissioned officers of the Public Health Service who have been ordered to active duty for training for a period of more than 30 days, inserted a reference to section 1374 of title 10 in cl. (2), as renumbered, struck out ''Care of the Dead'' after ''Benefits'' in cl. (5), as renumbered, and added cl. (6).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 653(c) of Pub. L. 105–85 provided that: ''The amendments made by this section [amending this section and former section 857a of Title 33, Navigation and Navigable Waters] shall apply only to adoptions that are completed on or after the date of the enactment of this Act [Nov. 18, 1997].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as an Effective Date note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

RULES AND REGULATIONS; SAVINGS DEPOSIT BENEFITS

Regulations prescribed by the Secretary of Health, Education, and Welfare [now Health and Human Services] concerning savings deposit benefits for Public Health Service personnel to be prescribed jointly with regulations prescribed by the Secretaries concerned under section 1035 of Title 10, Armed Forces, see section 3(c) of Pub. L. 89–538, set out as a note under section 1035 of Title 10.

BACK PAYMENTS: VALIDATION; APPLICATION; LIMITATIONS; ACCOUNTABILITY OF DISBURSING OFFICERS; REGULATIONS

Transportation and travel allowances to escorts for dependents of members, see sections 4 to 7 of Pub. L. 86–160, set out as a note under section 1036 of Title 10, Armed Forces.

DESIGNATION OF BENEFICIARY MADE BEFORE JANUARY 1, 1956

Designation of beneficiary made before Jan. 1, 1956, considered as the designation of a beneficiary for the purposes of section 4 of Pub. L. 85–861, which amended this section, see section 31 of Pub. L. 85–861, set out as a note under section 2771 of Title 10, Armed Forces.

§ 214. Presentation of United States flag upon retirement

(a) Presentation of flag

Upon the release of an officer of the commissioned corps of the Service from active commissioned service for retirement, the Secretary of Health and Human Services shall present a United States flag to the officer.

(b) Multiple presentations not authorized

An officer is not eligible for presentation of a flag under subsection (a) of this section if the officer has previously been presented a flag under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) No cost to recipient

The presentation of a flag under this section shall be at no cost to the recipient.

(July 1, 1944, ch. 373, title II, § 213, as added Pub. L. 106–65, div. A, title VI, § 652(b), Oct. 5, 1999, 113 Stat. 665.)

PRIOR PROVISIONS

A prior section 214, acts July 1, 1944, ch. 373, title II, § 213, 58 Stat. 689; Apr. 27, 1956, ch. 211, § 2(a), 70 Stat. 116, authorized allowances for uniforms, prior to repeal by Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499. See section 415 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section applicable with respect to releases from service described in section on or after Oct. 1, 1999, see section 652(d) of Pub. L. 106–65, set out as a note under section 12605 of Title 10, Armed Forces.

§ 214a. Repealed. Sept. 1, 1954, ch. 1211, § 5, 68 Stat. 1130

Section, act July 31, 1953, ch. 296, title II, § 204, 67 Stat. 257, related to allowances for use of taxicabs, etc., around duty posts. See section 408 of Title 37, Pay and Allowances of the Uniformed Services.

§ 215. Detail of Service personnel

(a) Other Government departments

The Secretary is authorized, upon the request of the head of an executive department, to detail officers or employees of the Service to such department for duty as agreed upon by the Secretary and the head of such department in order

to cooperate in, or conduct work related to, the functions of such department or of the Service. When officers or employees are so detailed their salaries and allowances may be paid from working funds established as provided by law or may be paid by the Service from applicable appropriations and reimbursement may be made as agreed upon by the Secretary and the head of the executive department concerned. Officers detailed for duty with the Army, Air Force, Navy, or Coast Guard shall be subject to the laws for the government of the service to which detailed.

(b) State health or mental health authorities

Upon the request of any State health authority or, in the case of work relating to mental health, any State mental health authority, personnel of the Service may be detailed by the Surgeon General for the purpose of assisting such State or a political subdivision thereof in work related to the functions of the Service.

(c) Congressional committees and nonprofit educational, research, or other institutions engaged in health activities for special studies and dissemination of information

The Surgeon General may detail personnel of the Service to any appropriate committee of the Congress or to nonprofit educational, research[1] or other institutions engaged in health activities for special studies of scientific problems and for the dissemination of information relating to public health.

(d) Availability of funds; reimbursement by State; detailed services deemed service for computation of pay, promotion, etc.

Personnel detailed under subsections (b) and (c) of this section shall be paid from applicable appropriations of the Service, except that, in accordance with regulations such personnel may be placed on leave without pay and paid by the State, subdivision, or institution to which they are detailed. In the case of detail of personnel under subsections (b) or (c) of this section to be paid from applicable Service appropriations, the Secretary may condition such detail on an agreement by the State, subdivision, or institution concerned that such State, subdivision, or institution concerned shall reimburse the United States for the amount of such payments made by the Service. The services of personnel while detailed pursuant to this section shall be considered as having been performed in the Service for purposes of the computation of basic pay, promotion, retirement, compensation for injury or death, and the benefits provided by section 213 of this title.

(July 1, 1944, ch. 373, title II, §214, 58 Stat. 690; July 3, 1946, ch. 538, §6, 60 Stat. 423; Oct. 12, 1949, ch. 681, title V, §521(e), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–76, title III, §309, Sept. 29, 1979, 93 Stat. 585.)

CODIFICATION

In subsec. (a), Air Force was inserted on the authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 502, which established a separate Department of the Air Force, and Secretary of Defense Transfer Order No. 40 [App. A(74)], July 22, 1949, which transferred certain functions, insofar as they pertain to the Air Force, which were not previously transferred to the Department of the Air Force and Secretary of the Air Force. Section 207(a), (f) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 8010 to 8013 continued the Department of the Air Force under the administrative supervision of a Secretary of the Air Force.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–76, §309(a), inserted provisions authorizing detail of personnel to appropriate committees of Congress.

Subsec. (d). Pub. L. 96–76, §309(b), inserted provisions relating to agreements by States, etc., for reimbursement upon detail of personnel.

1949—Subsec. (d). Act Oct. 12, 1949, substituted ''the computation of basic pay'' for ''longevity pay''.

1946—Subsec. (b). Act July 3, 1946, provided for detail of personnel on request from a State mental health authority.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

TRANSFERS OF PERSONNEL OCCASIONED BY CREATION OF THE ENVIRONMENTAL PROTECTION AGENCY

Pub. L. 91–604, §15(b)(1)–(8)(A), Dec. 31, 1970, 84 Stat. 1710–1712, provided that:

''(1) Subject to such requirements as the Civil Service Commission may prescribe, any commissioned officer of the Public Health Service (other than an officer who retires under section 211 of the Public Health Service Act [section 212 of this title] after his election but prior to his transfer pursuant to this paragraph and paragraph (2)) who, upon the day before the effective date of Reorganization Plan Numbered 3 of 1970 (hereinafter in this subsection referred to as the 'plan'), is serving

[1] So in original. Probably should be followed by a comma.

as such officer (A) primarily in the performance of functions transferred by such plan to the Environmental Protection Agency or its Administrator (hereinafter in this subsection referred to as the 'Agency' and the 'Administrator,' respectively), may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Agency; or (B) primarily in the performance of functions determined by the Secretary of Health, Education, and Welfare (hereinafter in this subsection referred to as the 'Secretary') to be materially related to the functions so transferred, may, if authorized by agreement between the Secretary and the Administrator, and if such officer so elects, acquire such status and be so transferred.

''(2) An election pursuant to paragraph (1) shall be effective only if made in accordance with such procedures as may be prescribed by the Civil Service Commission (A) before the close of the 24th month after the effective date of the plan [Dec. 2, 1970], or (B) in the case of a commissioned officer who would be liable for training and service under the Military Selective Service Act of 1967 [section 451 et seq. of Title 50, App., War and National Defense] but for the operation of section 6(b)(3) thereof (50 U.S.C. App. 456(b)(3)), before (if it occurs later than the close of such 24th month) the close of the 90th day after the day upon which he has completed his 24th month of service as such officer.

''(3)(A) Except as provided in subparagraph (B), any commissioned officer of the Public Health Service who, pursuant to paragraphs (1) and (2), elects to transfer to a position in the Agency which is subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code (hereinafter in this subsection referred to as the 'transferring officer'), shall receive a pay rate of the General Schedule grade of such position which is not less than the sum of the following amounts computed as of the day preceding the date of such election:

''(i) the basic pay, the special pay, the continuation pay, and the subsistence and quarters allowances, to which he is annually entitled as a commissioned officer of the Public Health Service pursuant to title 37, United States Code;

''(ii) the amount of Federal income tax, as determined by estimate of the Secretary, which the transferring officer, had he remained a commissioned officer, would have been required to pay on his subsistence and quarters allowances for the taxable year then current if they had not been tax free;

''(iii) an amount equal to the biweekly average cost of the coverages designated 'high option, self and family' under the Government-wide Federal employee health benefits programs plans, multiplied by twenty-six; and

''(iv) an amount equal to 7 per centum of the sum of the amounts determined under clauses (i) through (iii), inclusive.

''(B) A transferring officer shall in no event receive, pursuant to subparagraph (A), a pay rate in excess of the maximum rate applicable under the General Schedule to the class of position, as established under chapter 51 of title 5, United States Code, to which such officer is transferred pursuant to paragraphs (1) and (2).

''(4)(A) A transferring officer shall be credited, on the day of his transfer pursuant to his election under paragraphs (1) and (2), with one hour of sick leave for each week of active service, as defined by section 211(d) of the Public Health Service Act [section 212(d) of this title].

''(B) The annual leave to the credit of a transferring officer on the day before the day of his transfer, shall, on such day of transfer, be transferred to his credit in the Agency on an adjusted basis under regulations prescribed by the Civil Service Commission. The portion of such leave, if any, that is in excess of the sum of (i) 240 hours, and (ii) the number of hours that have accrued to the credit of the transferring officer during the calendar year then current and which remain unused, shall thereafter remain to his credit until used, and shall be reduced in the manner described by subsection (c) of section 6304 of title 5, United States Code.

''(5) A transferring officer who is required to change his official station as a result of his transfer under this subsection shall be paid such travel, transportation, and related expenses and allowances, as would be provided pursuant to subchapter II of chapter 57 of title 5, United States Code, in the case of a civilian employee so transferred in the interest of the Government. Such officer shall not (either at the time of such transfer or upon a subsequent separation from the competitive service) be deemed to have separated from, or changed permanent station within, a uniformed service for purposes of section 404 of title 37, United States Code.

''(6) Each transferring officer who prior to January 1, 1958, was insured pursuant to the Federal Employees' Group Life Insurance Act of 1954, and who subsequently waived such insurance, shall be entitled to become insured under chapter 87 of title 5, United States Code, upon his transfer to the Agency regardless of age and insurability.

''(7)(A) Effective as of the date a transferring officer acquires competitive status as an employee of the Agency, there shall be considered as the civilian service of such officer for all purposes of chapter 83, title 5, United States Code, (i) his active service as defined by section 211(d) of the Public Health Service Act [section 212(d) of this title], or (ii) any period for which he would have been entitled, upon his retirement as a commissioned officer of the Public Health Service, to receive retired pay pursuant to section 211(a)(4)(B) of such Act [section 212(a)(4)(B) of this title]; however, no transferring officer may become entitled to benefits under both subchapter III of such chapter and title II of the Social Security Act [section 401 et seq. of this title] based on service as such a commissioned officer performed after 1956, but the individual (or his survivors) may irrevocably elect to waive benefit credit for the service under one such law to secure credit under the other.

''(B) A transferring officer on whose behalf a deposit is required to be made by subparagraph (C) and who, after transfer to a competitive position in the Agency under paragraphs (1) and (2), is separated from Federal service or transfers to a position not covered by subchapter III of chapter 83 of title 5, United States Code, shall not be entitled, nor shall his survivors be entitled, to a refund of any amount deposited on his behalf in accordance with this section. In the event he transfers, after transfer under paragraphs (1) and (2), to a position covered by another Government staff requirement system under which credit is allowable for service with respect to which a deposit is required under subparagraph (C), no credit shall be allowed under such subchapter III with respect to such service.

''(C) The Secretary shall deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund, on behalf of and to the credit of such transferring officer, an amount equal to that which such individual would be required to deposit in such fund to cover the years of service credited to him for purposes of his retirement under subparagraph (A), had such service been service as an employee as defined in section 8331(1) of title 5, United States Code. The amount so required to be deposited with respect to any transferring officer shall be computed on the basis of the sum of each of the amounts described in paragraph (3)(A) which were received by, or accrued to the benefit of, such officer during the years so credited. The deposits which the Secretary is required to make under this subparagraph with respect to any transferring officer shall be made within two years after the date of his transfer as provided in paragraphs (1) and (2), and the amounts due under this subparagraph shall include interest computed from the period of service credited to the date of payment in accordance with section 8334(e) of title 5, United States Code.

''(8)(A) A commissioned officer of the Public Health Service, who, upon the day before the effective date of the plan, is on active service therewith primarily assigned to the performance of functions described in paragraph (1)(A), shall, while he remains in active serv-

ice, as defined by section 211(d) of the Public Health Service Act [section 212(d) of this title], be assigned to the performance of duties with the Agency, except as the Secretary and the Administrator may jointly otherwise provide.''

§ 216. Regulations

(a) Prescription by President: appointments, retirement, etc.

The President shall from time to time prescribe regulations with respect to the appointment, promotion, retirement, termination of commission, titles, pay, uniforms, allowances (including increased allowances for foreign service), and discipline of the commissioned corps of the Service.

(b) Promulgation by Surgeon General; administration of Service

The Surgeon General, with the approval of the Secretary, unless specifically otherwise provided, shall promulgate all other regulations necessary to the administration of the Service, including regulations with respect to uniforms for employees, and regulations with respect to the custody, use, and preservation of the records, papers, and property of the Service.

(c) Preference to school of medicine

No regulation relating to qualifications for appointment of medical officers or employees shall give preference to any school of medicine.

(July 1, 1944, ch. 373, title II, § 215, 58 Stat. 690; Oct. 12, 1949, ch. 681, title V, § 521(f), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

AMENDMENTS

1949—Subsec. (b). Act Oct. 12, 1949, struck out references to travel and transportation of household goods and effects.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, January 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 217. Use of Service in time of war or emergency

In time of war, or of emergency proclaimed by the President, he may utilize the Service to such extent and in such manner as shall in his judgment promote the public interest. In time of war, or of emergency involving the national defense proclaimed by the President, he may by Executive order declare the commissioned corps of the Service to be a military service. Upon such declaration, and during the period of such war or such emergency or such part thereof as the President shall prescribe, the commissioned corps (a) shall constitute a branch of the land and naval forces of the United States, (b) shall, to the extent prescribed by regulations of the President, be subject to the Uniform Code of Military Justice [10 U.S.C. 801 et seq.], and (c) shall continue to operate as part of the Service except to the extent that the President may direct as Commander in Chief.

(July 1, 1944, ch. 373, title II, § 216, 58 Stat. 690; Apr. 27, 1956, ch. 211, § 1, 70 Stat. 116.)

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in text, is classified to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

AMENDMENTS

1956—Act Apr. 27, 1956, empowered President to declare commissioned corps of the Service to be a military service in time of emergency involving national defense, and substituted ''the Uniform Code of Military Justice'' for ''the Articles of War and to the Articles for the Government of the Navy''.

REPEAL OF PRIOR ACTS CONTINUING SECTION

Section 6 of Joint Res. July 3, 1952, ch. 570, 66 Stat. 334, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54 as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of said Joint Res. July 3, 1952.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EXECUTIVE ORDER NO. 9575

Ex. Ord. No. 9575, eff. June 28, 1945, 10 F.R. 7895, which declared the Commissioned Corps of the Public Health Service to be a military service subject to the Articles for the Government of the Navy as therein prescribed, was superseded by Ex. Ord. No. 10349, eff. Apr. 28, 1952, 17 F.R. 3769.

EXECUTIVE ORDER NO. 10349

Ex. Ord. No. 10349, eff. Apr. 28, 1952, 17 F.R. 3769, superseded Ex. Ord. No. 9575, and subjected the Commissioned Corps of the Public Health Service to the provisions of the Uniform Code of Military Justice until June 1, 1952.

EXECUTIVE ORDER NO. 10356

Ex. Ord. No. 10356, eff. June 2, 1952, 17 F.R. 4967, amended Ex. Ord. No. 10349, and extended from June 1, 1952, to June 15, 1952, the period during which the Commissioned Corps of the Public Health Service was subject to the provisions of the Uniform Code of Military justice.

EXECUTIVE ORDER NO. 10362

Ex. Ord. No. 10362, eff. June 14, 1952, 17 F.R. 5413, amended Ex. Ord. No. 10356, and extended from June 15, 1952, to June 30, 1952, the period during which the Commissioned Corps of the Public Health Service was subject to the Uniform Code of Military Justice.

EXECUTIVE ORDER NO. 10367

Ex. Ord. No. 10367, eff. June 30, 1952, 17 F.R. 5929, amended Ex. Ord. No. 10362, and extended from June 30, 1952, to July 3, 1952, the period during which the Commissioned Corps of the Public Health Service was subject to the Uniform Code of Military Justice.

§ 217a. Advisory councils or committees

(a) Appointment; purpose

The Secretary may, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, from time to time, appoint such advisory councils or committees (in addition to those authorized to be established under other provisions of law), for such periods of time, as he deems desirable with such period commencing on a date specified by the Secretary for the purpose of advising him in connection with any of his functions.

(b) Compensation and allowances of members not full-time employees of United States

Members of any advisory council or committee appointed under this section who are not regular full-time employees of the United States shall, while attending meetings or conferences of such council or committee or otherwise engaged on business of such council or committee receive compensation and allowances as provided in section 210(c) of this title for members of national advisory councils established under this chapter.

(c) Delegation of functions

Upon appointment of any such council or committee, the Secretary may delegate to such council or committee such advisory functions relating to grants-in-aid for research or training projects or programs, in the areas or fields with which such council or committee is concerned, as the Secretary determines to be appropriate.

(July 1, 1944, ch. 373, title II, § 222, as added Pub. L. 87–838, § 3, Oct. 17, 1962, 76 Stat. 1073; amended Pub. L. 91–515, title VI, § 601(a)(3), (c), Oct. 30, 1970, 84 Stat. 1310, 1311; Pub. L. 99–158, § 3(a)(4), Nov. 20, 1985, 99 Stat. 879.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5.

AMENDMENTS

1985—Subsec. (c). Pub. L. 99–158 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Upon appointment of any such council or committee, the Surgeon General, with the approval of the Secretary, may transfer such of the functions of the National Advisory Health Council relating to grants-in-aid for research or training projects or programs in the areas or fields with which such council or committee is concerned as he determines to be appropriate.''

1970—Subsec. (a). Pub. L. 91–515, § 601(c)(1), substituted provisions authorizing the Secretary to appoint advisory councils or committees without regard to specified provisions governing appointments in the competitive service and relating to classification and General Schedule pay rates, for provisions authorizing the Surgeon General to appoint advisory committees without regard to the civil service laws and subject to the Secretary's approval in such cases as he prescribed.

Subsec. (b). Pub. L. 91–515, § 601(a)(3), inserted ''council or'' before ''committee'' wherever appearing.

Subsec. (c). Pub. L. 91–515, § 601(a)(3), (c)(2), inserted ''council or'' before ''committee'' wherever appearing, and ''or programs'' after ''projects''.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF ADVISORY COMMITTEES; REPORT BY SECRETARY TO CONGRESSIONAL COMMITTEES RELATING TO TERMINATION

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, provided that:

''(a) An advisory committee established by or pursuant to the Public Health Service Act [section 201 et seq. of this title], the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 [sections 2689 et seq. and 6001 et seq. of this title], or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [section 4541 et seq. of this title] shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after the date of the enactment of this Act [Jan. 4, 1975].

''(b) The Secretary of Health, Education, and Welfare shall report, within one year after the date of the enactment of the Act [Jan. 4, 1975], to the Committee on Labor and Public Welfare of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives (1) the purpose and use of each advisory committee established by or pursuant to the Public Health Service Act, the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 and (2) his recommendations respecting the termination of each such advisory committee.''

§ 217a–1. Advisory committees; prohibition of consideration of political affiliations

All appointments to advisory committees established to assist in implementing the Public Health Service Act [42 U.S.C. 201 et seq.], the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 [42 U.S.C. 2689 et seq., 6000 et seq.], and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of

1970 [42 U.S.C. 4541 et seq.], shall be made without regard to political affiliation.

(Pub. L. 94–278, title X, § 1001, Apr. 22, 1976, 90 Stat. 415.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to this chapter (§ 201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, referred to in text, is Pub. L. 88–164, Oct. 31, 1963, 77 Stat. 282, as amended. Title I of the Act, known as the Developmental Disabilities Assistance and Bill of Rights Act, was classified principally to chapter 75 (§ 6000 et seq.) of this title, prior to repeal by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737. Title II of the Act, known as the Community Mental Health Centers Act, was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title, prior to repeal by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560. Title IV of the Act was classified generally to subchapter IV (§ 2691 et seq.) of chapter 33 of this title, prior to repeal by Pub. L. 94–103, title III, § 302(c), Oct. 4, 1975, 89 Stat. 507. Title III of the Act which amended provisions in Title 20, Education, and Title V of the Act which was classified generally to subchapter V (§ 2698 et seq.) of chapter 33 of this title, were repealed by Pub. L. 91–230, title VI, § 662(4), Apr. 13, 1970, 84 Stat. 188. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, referred to in text, is Pub. L. 91–616, Dec. 31, 1970, 84 Stat. 1848, as amended, which is classified principally to chapter 60 (§ 4541 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4541 of this title and Tables.

CODIFICATION

Section was not enacted as a part of the Public Health Service Act which comprises this chapter.

§ 217b. Volunteer services

Subject to regulations, volunteer and uncompensated services may be accepted by the Secretary, or by any other officer or employee of the Department of Health and Human Services designated by him, for use in the operation of any health care facility or in the provision of health care.

(July 1, 1944, ch. 373, title II, § 223, as added Pub. L. 90–174, § 6, Dec. 5, 1967, 81 Stat. 539; amended Pub. L. 103–43, title XX, § 2008(h), June 10, 1993, 107 Stat. 212.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

§ 218. National Advisory Councils on Migrant Health

(a) Appointment; duties

Within 120 days of July 29, 1975, the Secretary shall appoint and organize a National Advisory Council on Migrant Health (hereinafter in this subsection referred to as the ''Council'') which shall advise, consult with, and make recommendations to, the Secretary on matters concerning the organization, operation, selection, and funding of migrant health centers and other entities under grants and contracts under section 254b[1] of this title.

(b) Membership

The Council shall consist of fifteen members, at least twelve of whom shall be members of the governing boards of migrant health centers or other entities assisted under section 254b[1] of this title. Of such twelve members who are members of such governing boards, at least nine shall be chosen from among those members of such governing boards who are being served by such centers or grantees and who are familiar with the delivery of health care to migratory agricultural workers and seasonal agricultural workers. The remaining three Council members shall be individuals qualified by training and experience in the medical sciences or in the administration of health programs.

(c) Terms of office

Each member of the Council shall hold office for a term of four years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of the members first taking office after July 29, 1975, shall expire as follows: four shall expire four years after such date, four shall expire three years after such date, four shall expire two years after such date, and three shall expire one year after such date, as designated by the Secretary at the time of appointment.

(d) Applicability of section 14(a) of Federal Advisory Committee Act

Section 14(a) of the Federal Advisory Committee Act shall not apply to the Council.

(July 1, 1944, ch. 373, title II, § 217, 58 Stat. 691; July 3, 1946, ch. 538, § 5(b)–(d), 60 Stat. 422; June 16, 1948, ch. 481, §§ 4(a)–(c), 6(b), 62 Stat. 467, 469; June 24, 1948, ch. 621, § 4(a)–(c), 62 Stat. 600; Aug. 15, 1950, ch. 714, § 3(a)–(d), 64 Stat. 446; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 91–515, title VI, § 601(a)(1), Oct. 30, 1970, 84 Stat. 1310; Pub. L. 91–616, title IV, § 401, Dec. 31, 1970, 84 Stat. 1853; Pub. L. 92–157, title III, § 301(b), Nov. 18, 1971, 85 Stat. 463; Pub. L. 92–218, § 6(a)(1), Dec. 23, 1971, 85 Stat. 785; Pub. L. 92–255, title V, § 502(a), Mar. 21, 1972, 86 Stat. 85; Pub. L. 92–423, § 7(a), Sept. 19, 1972, 86 Stat. 687; Pub. L. 93–348, title II, § 211(a), July 12, 1974, 88 Stat. 351; Pub. L. 94–63, title IV, § 401(b), July 29, 1975, 89 Stat. 341; Pub. L. 94–371, § 9, July 26, 1976, 90 Stat. 1040; Pub. L. 95–622, title III, § 302(b), Nov. 9, 1978, 92 Stat. 3442; Pub. L. 95–626, title I, § 102(b)(1), Nov. 10, 1978, 92 Stat. 3551; Pub. L. 96–180, § 13, Jan. 2, 1980, 93 Stat. 1304; Pub. L. 96–181, § 14, Jan. 2, 1980, 93 Stat. 1315; Pub. L. 98–24, § 2(a)(2), Apr. 26, 1983, 97 Stat. 176; Pub. L. 98–509, title III, § 302, Oct. 19, 1984, 98 Stat. 2364; Pub. L. 99–158, § 3(a)(2), (3), Nov. 20, 1985, 99 Stat. 878, 879; Pub. L. 99–570, title IV, § 4004(c), Oct. 27, 1986, 100 Stat. 3207–111; Pub. L. 99–660, title III, § 311(b)(1), Nov. 14, 1986, 100 Stat. 3779.)

REFERENCES IN TEXT

Section 254b of this title, referred to in subsecs. (a) and (b), was in the original a reference to section 329,

[1] See References in Text note below.

meaning section 329 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of this chapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Section 2 of Pub. L. 104–299 enacted a new section 330 of act July 1, 1944, which is classified to section 254b of this title.

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (d), is section 14(a) of Pub. L. 92–463, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1986—Pub. L. 99–570 redesignated former subsec. (e)(1) to (4) as subsecs. (a) to (d), respectively, in subsec. (c), further redesignated former cls. (A) and (B) as (1) and (2), respectively, and struck out former subsecs. (a) to (d), which related, respectively, to composition, qualifications, appointment and tenure of the National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism; duties of the National Advisory Mental Health Council; duties of the National Advisory Council on Alcohol Abuse and Alcoholism; and the composition, qualifications, and duties of the National Advisory Council on Drug Abuse.

Subsec. (c). Pub. L. 99–660 which directed that ''section 300cc of this title'' be substituted for ''section 300aa of this title'' could not be executed because the reference in question appeared in former subsec. (c) which was repealed by Pub. L. 99–570.

1985—Subsec. (a). Pub. L. 99–158, § 3(a)(2)(A), in first sentence substituted ''National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism'' for ''National Advisory Health Council, the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Dental Research Council'', and substituted ''by the Secretary'' for ''by the Surgeon General with the approval of the Secretary of Health, Education, and Welfare''.

Pub. L. 99–158, § 3(a)(2)(B)(i), in second sentence struck out ''in the case of the National Advisory Health Council, are skilled in the sciences related to health, and'' after ''scientific authorities who,''.

Pub. L. 99–158, § 3(a)(2)(B)(ii), which directed the substitution in second sentence of ''the National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism'' for ''the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, the National Advisory Heart Council, and the National Advisory Dental Research Council'' was executed by making the substitution for ''the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Dental Research Council'' as the probable intent of Congress in view of the prior deletion of ''the National Advisory Heart Council,'' by Pub. L. 92–423. See 1972 Amendment note below.

Pub. L. 99–158, § 3(a)(2)(B)(iii), in second sentence substituted ''and alcohol abuse and alcoholism'' for '', alcohol abuse and alcoholism, and dental diseases and conditions''.

Pub. L. 99–158, § 3(a)(2)(C), struck out third sentence which provided that in the case of the National Advisory Dental Research Council, four of the six members selected from among the leading medical or scientific authorities be dentists.

Subsec. (b). Pub. L. 99–158, § 3(a)(3), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to the duties of the National Advisory Health Council.

Subsecs. (c) to (e), (g). Pub. L. 99–158, § 3(a)(3), redesignated subsecs. (d), (e), and (g) as (c), (d), and (e), respectively.

1984—Subsec. (a). Pub. L. 98–509 inserted provision requiring the Secretary to assure that the membership of the National Advisory Council on Alcohol Abuse and Alcoholism is broadly representative of experts in the fields of prevention, research, and treatment of alcohol abuse, alcoholism, and rehabilitation of alcohol abusers.

1983—Subsecs. (c), (d). Pub. L. 98–24 substituted ''section 300aa of this title'' for ''section 219 of this title''.

1980—Subsec. (a). Pub. L. 96–180 authorized appointees to serve after the expiration of their terms until their successors have taken office.

Subsec. (e)(1). Pub. L. 96–181, in provisions relating to the eligibility for selection of members, inserted officers or employees of State and local drug abuse agencies, and inserted provision that appointed members may serve after the expiration of their terms until their successors have taken office.

1978—Subsec. (f). Pub. L. 95–622 struck out subsec. (f) which related to the establishment of a National Advisory Council for the Protection of Subjects of Biomedical and Behavioral Research.

Subsec. (g)(1), (2). Pub. L. 95–626 substituted ''section 254b'' for ''section 247d''.

1976—Subsec. (d). Pub. L. 94–371 inserted provision that the Council advise the Secretary regarding policies and priorities with respect to grants and contracts in the field of alcohol abuse and alcoholism.

1975—Subsec. (g). Pub. L. 94–63 added subsec. (g).

1974—Subsec. (f). Pub. L. 93–348 added subsec. (f).

1972—Subsec. (a). Pub. L. 92–423, § 7(a)(1), (2), struck out ''the National Advisory Heart Council,'' after ''the National Advisory Council on Alcohol Abuse and Alcoholism'' in two places and ''heart diseases,'' after ''alcohol abuse and alcoholism,'', respectively.

Subsec. (b). Pub. L. 92–423, § 7(a)(2), struck out ''heart,'' after ''alcohol abuse and alcoholism,''.

Subsec. (e). Pub. L. 92–255 added subsec. (e).

1971—Subsec. (a). Pub. L. 92–218, § 6(a)(1)(A), (B), struck out reference to National Advisory Cancer Council before National Advisory Mental Health Council in two places and struck out ''cancer,'' before ''psychiatric disorders''.

Pub. L. 92–157 substituted ''National Advisory Council on Alcohol Abuse and Alcoholism'' for ''National Advisory Council on Alcoholic Abuse and Alcoholism'' in second sentence.

Subsec. (b). Pub. L. 92–218, § 6(a)(1)(B), struck out ''cancer,'' before ''mental health'' in listing of various diseases.

1970—Subsec. (a). Pub. L. 91–616, § 401(a), made subsection applicable to National Advisory Council on Alcohol Abuse and Alcoholism, and inserted alcohol abuse and alcoholism to enumeration of diseases concerning which members of such Council must be skilled, and prescribed manner in which terms of members of Council would expire.

Subsec. (b). Pub. L. 91–616, § 401(b), inserted reference to National Advisory Council on Alcohol Abuse and Alcoholism authorizing the Surgeon General to utilize the services of members of such Council for additional periods.

Pub. L. 91–515 inserted ''or committees'' after ''councils''.

Subsec. (d). Pub. L. 91–616, § 401(c), added subsec. (d).

1950—Act Aug. 15, 1950, § 3(d), amended section catchline to reflect addition of new advisory councils.

Subsec. (a). Act Aug. 15, 1950, § 3(a), applied provisions to all of the advisory councils with regard to composition, qualifications, and appointment and tenure of members.

Subsec. (b). Act Aug. 15, 1950, § 3(b), made subsection also applicable to new advisory councils.

Subsec. (c). Act Aug. 15, 1950, § 3(c), redesignated subsec. (e) as (c) and repealed former subsec. (c).

Subsecs. (d), (f), (g). Act Aug. 15, 1950, § 3(c), repealed subsecs. (d), (f), and (g).

1948—Acts June 16, 1948, § 4(c), and June 24, 1948, § 4(c), included in section catchline the National Advisory Heart and Dental Research Councils, respectively.

Subsec. (a). Act June 16, 1948, § 6(b), substituted ''National Institutes of Health'' for ''National Institute of Health'' in second sentence.

Subsec. (b). Acts June 16, 1948, § 4(b), and June 24, 1948, § 4(b), made subsection applicable to the National Advisory Heart Council and the National Advisory Dental Research Council, respectively.

Subsec. (f). Act June 16, 1948, § 4(a), added subsec. (f) which established the National Advisory Heart Council.

Subsec. (g). Act June 24, 1948, § 4(a), added subsec. (g) which established the National Advisory Dental Research Council.

1946—Act July 3, 1946, inserted ''Mental Health'' in section catchline.

Subsec. (b). Act July 3, 1946, inserted ''or of the National Advisory Mental Health Council''.

Subsecs. (d), (e). Act July 3, 1946, added subsecs. (d) and (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 302(b) of Pub. L. 95–622 provided that the amendment made by that section is effective Nov. 1, 1978.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 211(b) of Pub. L. 93–348, as amended by Pub. L. 94–278, title III, § 301(b), Apr. 22, 1976, 90 Stat. 407; Pub. L. 94–573, § 18(b), Oct. 21, 1976, 90 Stat. 2720; Pub. L. 95–203, § 5(b), Nov. 23, 1977, 91 Stat. 1454, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect November 1, 1978.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 9 of Pub. L. 92–423 provided that: ''This Act and the amendments made by this Act [see Short Title of 1972 Amendment note under section 201 of this title] shall take effect sixty days after the date of enactment of this Act [Sept. 19, 1972] or on such prior date after the date of enactment of this Act as the President shall prescribe and publish in the Federal Register.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 7 of Pub. L. 92–218 provided that:

''(a) This Act and the amendments made by this Act [enacting sections 286a to 286g and 289*l* of this title, amending this section and sections 241, 282, 283, and 284 of this title, and enacting provisions set out as notes under sections 281 and 286 of this title] shall take effect sixty days after the date of enactment of this Act [Dec. 23, 1971] or on such prior date after the date of enactment of this Act as the President shall prescribe and publish in the Federal Register.

''(b) The first sentence of section 454 of the Public Health Service Act [section 289*l* of this title] (added by section 5 of this Act) shall apply only with respect to appointments made after the effective date of this Act (as prescribed by subsection (a)).

''(c) Notwithstanding the provisions of subsection (a), members of the National Cancer Advisory Board (authorized under section 410B of the Public Health Service Act, as added by this Act) [section 286f of this title] may be appointed, in the manner provided for in such section, at any time after the date of enactment of this Act [Dec. 23, 1971]. Such officers shall be compensated from the date they first take office, at the rates provided for in such section 410B [section 286f of this title].''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 3(a), (c) of act Aug. 15, 1950, provided that the amendments and repeals made by that section are effective Oct. 1, 1950.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

For transfer of certain membership functions, insofar as they pertain to the Air Force, which functions were not previously transferred from Secretary of the Army to Secretary of the Air Force and from Department of the Army to Department of the Air Force, see Secretary of Defense Transfer Order No. 40 [App. C(7)], July 22, 1949.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

EXPIRATION OF TERMS OF OFFICE ON SEPTEMBER 30, 1950

Section 3(c) of act Aug. 15, 1950, provided in part that terms of office as members of national advisory councils pursuant to this section subsisting on Sept. 30, 1950, shall expire at the close of business on such day.

TERMINATION OF NATIONAL ADVISORY HEALTH COUNCIL

Section 3(a)(1) of Pub. L. 99–158 provided that: ''The National Advisory Health Council established under section 217 [this section] is terminated.''

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 218a. Training of officers

(a) In general

Appropriations available for the pay and allowances of commissioned officers of the Service shall also be available for the pay and allowances of any such officer on active duty while attending any Federal or non-Federal educational institution or training program and, subject to regulations of the President and to the limitation prescribed in such appropriations, for payment of his tuition, fees, and other necessary expenses incident to such attendance.

(b) Voluntary separation within period subsequent to attendance

Any officer whose tuition, fees, and other necessary expenses are paid pursuant to subsection (a) of this section while attending an educational institution or training program for a period in excess of thirty days shall be obligated to pay to the Service an amount equal to two times the total amount of such tuition, fees, and

other necessary expenses received by such officer during such period, and two times the total amount of any compensation received by, and any allowance paid to, such officer during such period, if after return to active service such officer voluntarily leaves the Service within (1) six months, or (2) twice the period of such attendance, whichever is greater. Such subsequent period of service shall commence upon the cessation of such attendance and of any further continuous period of training duty for which no tuition and fees are paid by the Service and which is part of the officer's prescribed formal training program, whether such further training is at a Service facility or otherwise. The Surgeon General may waive, in whole or in part, any payment which may be required by this subsection upon a determination that such payment would be inequitable or would not be in the public interest.

(c) Training in leave without pay status

A commissioned officer may be placed in leave without pay status while attending an educational institution or training program whenever the Secretary determines that such status is in the best interest of the Service. For purposes of computation of basic pay, promotion, retirement, compensation for injury or death, and the benefits provided by sections 213 and 233 of this title, an officer in such status pursuant to the preceding sentence shall be considered as performing service in the Service and shall have an active service obligation as set forth in subsection (b) of this section.

(July 1, 1944, ch. 373, title II, §218, as added Feb. 28, 1948, ch. 83, §8, 62 Stat. 47; amended Apr. 27, 1956, ch. 211, §6, 70 Stat. 117; Pub. L. 96–76, title III, §310, Sept. 29, 1979, 93 Stat. 585; Pub. L. 105–392, title IV, §402(b), Nov. 13, 1998, 112 Stat. 3588.)

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–392 added subsec. (c).

1979—Subsec. (b). Pub. L. 96–76 substituted provisions relating to payment by an officer to the Service upon voluntary separation of two times the total amount of tuition, fees, and other necessary expenses received by such officer and two times the total amount of any compensation received by, and any allowance paid to, such officer, for provisions relating to reimbursement by the officer to the Service upon voluntary separation of tuition and fees and in last sentence substituted ''payment'' for ''reimbursement'' wherever appearing.

1956—Subsec. (a). Act Apr. 27, 1956, §6(a), authorized training of all officers of the Service, and substituted ''any Federal or non-Federal educational institution or training program'' for ''any educational institution''.

Subsec. (b). Act Apr. 27, 1956, §6(b), required reimbursement of tuition and fees by officers who receive training in excess of 30 days and who voluntarily leave the Service within a period of time which is equal to twice the period of such training, with a minimum period of six months of service, and a maximum period of two years, and permitted the Surgeon General to waive any reimbursement.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§§ 219 to 224. Transferred

CODIFICATION

Section 219, acts July 1, 1944, ch. 373, title V, §501, 58 Stat. 709; July 3, 1946, ch. 538, §10, 60 Stat. 425; June 16, 1948, ch. 481, §6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 15, 1968, Pub. L. 90–574, title V, §503(b), 82 Stat. 1012; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695, which related to gifts for the benefit of the Service, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

Section 220, act July 1, 1944, ch. 373, title V, §502, 58 Stat. 710, which related to use of immigration station hospitals, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

Section 221, act July 1, 1944, ch. 373, title V, §503, 58 Stat. 710, which related to disposition of money collected for care of patients, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

Section 222, acts July 1, 1944, ch. 373, title V, §504, 58 Stat. 710, June 25, 1948, ch. 654, §6, 62 Stat. 1018; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to care of Service patients at Saint Elizabeths Hospital, was renumbered section 2104 of act July 1, 1944, by Pub. L. 98–24 and transferred to section 300aa–3 of this title, renumbered section 2304 of act July 1, 1944, by Pub. L. 99–660 and transferred to section 300cc–3 of this title, and was repealed by Pub. L. 98–621, §10(s), Nov. 8, 1984, 98 Stat. 3381.

Section 223, act July 1, 1944, ch. 373, title V, §505, 58 Stat. 710; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to settlement of claims, was renumbered section 2105 of act July 1, 1944, by Pub. L. 98–24 and transferred to section 300aa–4 of this title, and was repealed by Pub. L. 99–117, §12(f), Oct. 7, 1985, 99 Stat. 495. See section 300cc–4 of this title.

Section 224, acts July 1, 1944, ch. 373, title V, §506, 58 Stat. 710; July 15, 1954, ch. 507, §14(b), 68 Stat. 481, which related to transportation of remains of officers, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

A new title V (§501 et seq.) of the Public Health Service Act was added by Pub. L. 98–24, §2(b), Apr. 26, 1983, 97 Stat. 177, and is classified to subchapter III–A (§290aa et seq. of this title).

§ 225. Repealed. July 12, 1955, ch. 328, § 5(4), 69 Stat. 296

Section, acts July 1, 1944, ch. 373, title V, §507, 58 Stat. 711; Feb. 25, 1946, ch. 35, §2, 60 Stat. 30, provided for settlement of accounts of deceased officers. See section 2771 of Title 10, Armed Forces, and section 714 of Title 32, National Guard.

EFFECTIVE DATE OF REPEAL

Repeal effective as of effective date of payment provisions of sections 361 to 365 of former Title 37, Pay and Allowances, except with respect to the deaths of members, see section 5 of act July 12, 1955.

§§ 225a to 227. Transferred

CODIFICATION

Section 225a, act July 1, 1944, ch. 373, title V, §507, as added June 24, 1967, Pub. L. 90–31, §5, 81 Stat. 79; amend-

ed Oct. 27, 1970, Pub. L. 91–513, title I, §3(c), 84 Stat. 1241; Apr. 22, 1976, Pub. L. 94–278, title XI, §1102(b), 90 Stat. 415; Oct. 7, 1980, Pub. L. 96–398, title VIII, §804(b), 94 Stat. 1603; Aug. 13, 1981, Pub. L. 97–35, title IX, §902(g)(2), 95 Stat. 560, which related to availability of appropriations for grants to Federal institutions, was successively renumbered by subsequent acts and transferred, see section 238d of this title.

A prior section 507 of act July 1, 1944, ch. 373, title V, providing for settlement of accounts of deceased officers, was classified to section 225 of this title and subsequently repealed.

Section 226, act July 1, 1944, ch. 373, title V, §508, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, which related to transfer of funds between appropriations, was successively renumbered by subsequent acts and transferred, see section 238e of this title.

Section 227, acts July 1, 1944, ch. 373, title V, §509 58 Stat. 711; June 16, 1948, ch. 481, §6(b), 62 Stat. 469; June 25, 1948, ch. 654, §7, 62 Stat. 1018; Reorg. Plan No. 1 of 1953 §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to availability of appropriations for carrying out purposes of this chapter, was successively renumbered by subsequent acts and transferred, see section 238f of this title.

§ 227a. Omitted

CODIFICATION

Section, Pub. L. 90–132, title II, §204, Nov. 8, 1967, 81 Stat. 407, which provided that appropriations to the Public Health Service be available for research grants to hospitals of the Service, the Bureau of Prisons, Department of Justice, and to Saint Elizabeths Hospital, on the same terms and conditions as grants to non-Federal institutions, was enacted as part of the Department of Health, Education, and Welfare Appropriation Act, 1968, and not as part of the Public Health Service Act which comprises this chapter, and was not repeated in subsequent appropriation acts. See section 300cc–6 of this title. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 89–787, title II, §204, Nov. 7, 1966, 80 Stat. 1400.
Pub. L. 89–156, title II, §204, Aug. 31, 1965, 79 Stat. 609.
Pub. L. 88–605, title II, §204, Sept. 19, 1964, 78 Stat. 979.
Pub. L. 88–136, title II, §204, Oct. 11, 1963, 77 Stat. 244.
Pub. L. 87–582, title II, §204, Aug. 14, 1962, 76 Stat. 379.
Pub. L. 87–290, title II, §206, Sept. 22, 1961, 75 Stat. 608.
Pub. L. 86–703, title II, §207, Sept. 2, 1960, 74 Stat. 773.
Pub. L. 86–158, title II, §210, Aug. 14, 1959, 73 Stat. 355.

§§ 228 to 229d. Transferred

CODIFICATION

Section 228, acts July 1, 1944, ch. 373, title V, §510, 58 Stat. 711; June 25, 1948, ch. 645, §5, 62 Stat. 859, which related to wearing of uniforms, was successively renumbered by subsequent acts and transferred, see section 238g of this title.

Section 229, act July 1, 1944, ch. 373, title V, §511, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to an annual report by Surgeon General, was successively renumbered by subsequent acts and transferred, see section 238h of this title.

Section 229a, act July 1, 1944, ch. 373, title V, §512, as added Oct. 15, 1968, Pub. L. 90–574, title V, §503(a), 82 Stat. 1012, which related to memorials and other acknowledgments for contributions to health of the Nation, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

Section 229b, act July 1, 1944, ch. 373, title V, §513, as added June 30, 1970, Pub. L. 91–296, title IV, §401(a), 84 Stat. 351; amended Oct. 7, 1980, Pub. L. 96–398, title VIII, §804(c), 94 Stat. 1608; Aug. 13, 1981, Pub. L. 97–35, title IX, §902(g)(3), 95 Stat. 560, which related to evaluation of programs, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

Section 229c, act July 1, 1944, ch. 373, title V, §514, as added Nov. 9, 1978, Pub. L. 95–623, §11(e), 92 Stat. 3456, which related to contract authority of Secretary, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

Section 229d, act July 1, 1944, ch. 373, title V, §515, formerly Pub. L. 88–164, title II, §225, as added Pub. L. 94–63, title III, §303, July 29, 1975, 89 Stat. 326; amended Pub. L. 95–622, title I, §110(c), Nov. 9, 1978, 92 Stat. 3420; renumbered and amended Pub. L. 97–35, title IX, §902(e)(2)(A), Aug. 13, 1981, 95 Stat. 560, which related to recovery of payments, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

§ 230. Repealed. Apr. 27, 1956, ch. 211, § 5(e), 70 Stat. 117

Section, act July 1, 1944, ch. 373, title VII, §706, formerly title VI, §606, 58 Stat. 713; renumbered title VII, §706, Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; amended Feb. 28, 1948, ch. 83, §9(a), 62 Stat. 47; Oct. 12, 1949, ch. 681, title V, §521(g), 63 Stat. 835, provided for computation of retired pay. See section 212 of this title.

§ 231. Service and supply fund; uses; reimbursement

A service and supply fund of $250,000 is established, without fiscal year limitation, for the payment of salaries, travel, and other expenses necessary to the maintenance and operation of (1) a supply service for the purchase, storage, handling, issuance, packing, or shipping of stationery, supplies, materials, equipment, and blank forms, for which stocks may be maintained to meet, in whole or in part, requirements of the Public Health Service and requisitions of other Government Offices, and (2) such other services as the Surgeon General, with the approval of the Secretary of Health and Human Services, determines may be performed more advantageously as central services; said fund to be reimbursed from applicable appropriations or funds available when services are performed or stock furnished, or in advance, on a basis of rates which shall include estimated or actual charges for personal services, materials, equipment (including maintenance, repairs, and depreciation), and other expenses.

(July 3, 1945, ch. 263, title II, 59 Stat. 370; 1953 Reorg. Plan No. 1, §§5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–414, §9(i), Jan. 4, 1983, 96 Stat. 2064.)

CODIFICATION

Section is from the Federal Security Appropriation Act, 1946, act July 3, 1945, and was not enacted as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1983—Pub. L. 97–414 inserted ", or in advance," after "stock furnished".

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by sec-

tion 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 232. National Institute of Mental Health; authorization of appropriation; construction; location

There is authorized to be appropriated a sum not to exceed $7,500,000 for the erection and equipment, for the use of the Public Health Service in carrying out the provisions of this Act, of suitable and adequate hospital buildings and facilities, including necessary living quarters for personnel, and of suitable and adequate laboratory buildings and facilities, and such buildings and facilities shall be known as the National Institute of Mental Health. The Administrator of General Services is authorized to acquire, by purchase, condemnation, donation, or otherwise, a suitable and adequate site or sites, selected on the advice of the Surgeon General of the Public Health Service, in or near the District of Columbia for such buildings and facilities, and to erect thereon, furnish, and equip such buildings and facilities. The amount authorized to be appropriated in this section shall include the cost of preparation of drawings and specifications, supervision of construction, and other administrative expenses incident to the work: *Provided*, That the Administrator of General Services shall prepare the plans and specifications, make all necessary contracts, and supervise construction.

(July 3, 1946, ch. 538, § 11, 60 Stat. 425; June 30, 1949, ch. 288, title I, § 103(a), 63 Stat. 380.)

REFERENCES IN TEXT

This Act, referred to in text, is act July 3, 1946, ch. 538, 60 Stat. 421, as amended, known as the National Mental Health Act, which enacted sections 232 and 242a of this title, amended sections 201, 209, 210, 215, 218, 219, 241, 244, and 246 of this title, and enacted provisions set out as notes under section 201 of this title. For complete classification of this Act to the Code, see Short Title of 1946 Amendment note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as a part of the National Mental Health Act, and not as a part of the Public Health Service Act which comprises this chapter.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Works Agency and of all agencies thereof, together with functions of Federal Works Administrator transferred to Administrator of General Services by section 103(a) of act June 30, 1949. Both Federal Works Agency and office of Federal Works Administrator abolished by section 103(b) of that act. See text of, and Historical and Revision Notes under, section 303(b) of Title 40, Public Buildings, Property, and Works.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605, formerly section 505, of act June 30, 1949, ch. 288, 63 Stat. 403; renumbered by act Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583.

§ 233. Civil actions or proceedings against commissioned officers or employees

(a) Exclusiveness of remedy

The remedy against the United States provided by sections 1346(b) and 2672 of title 28, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of title 28, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigation, by any commissioned officer or employee of the Public Health Service while acting within the scope of his office or employment, shall be exclusive of any other civil action or proceeding by reason of the same subject-matter against the officer or employee (or his estate) whose act or omission gave rise to the claim.

(b) Attorney General to defend action or proceeding; delivery of process to designated official; furnishing of copies of pleading and process to United States attorney, Attorney General, and Secretary

The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the Secretary to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

(c) Removal to United States district court; procedure; proceeding upon removal deemed a tort action against United States; hearing on motion to remand to determine availability of remedy against United States; remand to State court or dismissal

Upon a certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of

the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merit that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State Court: *Provided*, That where such a remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in the event the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

(d) Compromise or settlement of claim by Attorney General

The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28 and with the same effect.

(e) Assault or battery

For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to assault or battery arising out of negligence in the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations.

(f) Authority of Secretary or designee to hold harmless or provide liability insurance for assigned or detailed employees

The Secretary or his designee may, to the extent that he deems appropriate, hold harmless or provide liability insurance for any officer or employee of the Public Health Service for damage for personal injury, including death, negligently caused by such officer or employee while acting within the scope of his office or employment and as a result of the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, if such employee is assigned to a foreign country or detailed to a State or political subdivision thereof or to a non-profit institution, and if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 2679(b) of title 28, for such damage or injury.

(g) Exclusivity of remedy against United States for entities deemed Public Health Service employees; coverage for services furnished to individuals other than center patients; application process; subrogation of medical malpractice claims; applicable period; entity and contractor defined

(1)(A) For purposes of this section and subject to the approval by the Secretary of an application under subparagraph (D), an entity described in paragraph (4), and any officer, governing board member, or employee of such an entity, and any contractor of such an entity who is a physician or other licensed or certified health care practitioner (subject to paragraph (5)), shall be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under subsection (k)(3) of this section (subject to paragraph (3)). The remedy against the United States for an entity described in paragraph (4) and any officer, governing board member, employee, or contractor (subject to paragraph (5)) of such an entity who is deemed to be an employee of the Public Health Service pursuant to this paragraph shall be exclusive of any other civil action or proceeding to the same extent as the remedy against the United States is exclusive pursuant to subsection (a) of this section.

(B) The deeming of any entity or officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section shall apply with respect to services provided—

(i) to all patients of the entity, and

(ii) subject to subparagraph (C), to individuals who are not patients of the entity.

(C) Subparagraph (B)(ii) applies to services provided to individuals who are not patients of an entity if the Secretary determines, after reviewing an application submitted under subparagraph (D), that the provision of the services to such individuals—

(i) benefits patients of the entity and general populations that could be served by the entity through community-wide intervention efforts within the communities served by such entity;

(ii) facilitates the provision of services to patients of the entity; or

(iii) are otherwise required under an employment contract (or similar arrangement) between the entity and an officer, governing board member, employee, or contractor of the entity.

(D) The Secretary may not under subparagraph (A) deem an entity or an officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section, and may not apply such deeming to services described in subparagraph (B)(ii), unless the entity has submitted an application for such deeming to the Secretary in such form and such manner as the Secretary shall prescribe. The application shall contain detailed information, along with supporting documentation, to verify that the entity, and the officer, governing board member, employee, or contractor of the entity, as the case may be, meets the requirements of subparagraphs (B) and (C) of this paragraph and that the entity meets the requirements of paragraphs (1) through (4) of subsection (h) of this section.

(E) The Secretary shall make a determination of whether an entity or an officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section within 30 days after the receipt of an application under subparagraph (D). The determination of the Secretary that an entity or an officer, gov-

erning board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section shall apply for the period specified by the Secretary under subparagraph (A).

(F) Once the Secretary makes a determination that an entity or an officer, governing board member, employee, or contractor of an entity is deemed to be an employee of the Public Health Service for purposes of this section, the determination shall be final and binding upon the Secretary and the Attorney General and other parties to any civil action or proceeding. Except as provided in subsection (i) of this section, the Secretary and the Attorney General may not determine that the provision of services which are the subject of such a determination are not covered under this section.

(G) In the case of an entity described in paragraph (4) that has not submitted an application under subparagraph (D):

(i) The Secretary may not consider the entity in making estimates under subsection (k)(1) of this section.

(ii) This section does not affect any authority of the entity to purchase medical malpractice liability insurance coverage with Federal funds provided to the entity under section 254b, 254b, or 256a of this title.[1]

(H) In the case of an entity described in paragraph (4) for which an application under subparagraph (D) is in effect, the entity may, through notifying the Secretary in writing, elect to terminate the applicability of this subsection to the entity. With respect to such election by the entity:

(i) The election is effective upon the expiration of the 30-day period beginning on the date on which the entity submits such notification.

(ii) Upon taking effect, the election terminates the applicability of this subsection to the entity and each officer, governing board member, employee, and contractor of the entity.

(iii) Upon the effective date for the election, clauses (i) and (ii) of subparagraph (G) apply to the entity to the same extent and in the same manner as such clauses apply to an entity that has not submitted an application under subparagraph (D).

(iv) If after making the election the entity submits an application under subparagraph (D), the election does not preclude the Secretary from approving the application ([2] and thereby restoring the applicability of this subsection to the entity and each officer, governing board member, employee, and contractor of the entity, subject to the provisions of this subsection and the subsequent provisions of this section.

(2) If, with respect to an entity or person deemed to be an employee for purposes of paragraph (1), a cause of action is instituted against the United States pursuant to this section, any claim of the entity or person for benefits under an insurance policy with respect to medical malpractice relating to such cause of action shall be subrogated to the United States.

(3) This subsection shall apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1993.

(4) An entity described in this paragraph is a public or non-profit private entity receiving Federal funds under section 254b of this title.

(5) For purposes of paragraph (1), an individual may be considered a contractor of an entity described in paragraph (4) only if—

(A) the individual normally performs on average at least 32½ hours of service per week for the entity for the period of the contract; or

(B) in the case of an individual who normally performs an average of less than 32½ hours of services per week for the entity for the period of the contract, the individual is a licensed or certified provider of services in the fields of family practice, general internal medicine, general pediatrics, or obstetrics and gynecology.

(h) Qualifications for designation as Public Health Service employee

The Secretary may not approve an application under subsection (g)(1)(D) of this section unless the Secretary determines that the entity—

(1) has implemented appropriate policies and procedures to reduce the risk of malpractice and the risk of lawsuits arising out of any health or health-related functions performed by the entity;

(2) has reviewed and verified the professional credentials, references, claims history, fitness, professional review organization findings, and license status of its physicians and other licensed or certified health care practitioners, and, where necessary, has obtained the permission from these individuals to gain access to this information;

(3) has no history of claims having been filed against the United States as a result of the application of this section to the entity or its officers, employees, or contractors as provided for under this section, or, if such a history exists, has fully cooperated with the Attorney General in defending against any such claims and either has taken, or will take, any necessary corrective steps to assure against such claims in the future; and

(4) will fully cooperate with the Attorney General in providing information relating to an estimate described under subsection (k) of this section.

(i) Authority of Attorney General to exclude health care professionals from coverage

(1) Notwithstanding subsection (g)(1) of this section, the Attorney General, in consultation with the Secretary, may on the record determine, after notice and opportunity for a full and fair hearing, that an individual physician or other licensed or certified health care practitioner who is an officer, employee, or contractor of an entity described in subsection (g)(4) of this section shall not be deemed to be an employee of the Public Health Service for purposes of this section, if treating such individual as such an employee would expose the Government to an unreasonably high degree of risk of loss because such individual—

(A) does not comply with the policies and procedures that the entity has implemented pursuant to subsection (h)(1) of this section;

[1] See References in Text notes below.

[2] So in original. There is no closing parenthesis.

(B) has a history of claims filed against him or her as provided for under this section that is outside the norm for licensed or certified health care practitioners within the same specialty;

(C) refused to reasonably cooperate with the Attorney General in defending against any such claim;

(D) provided false information relevant to the individual's performance of his or her duties to the Secretary, the Attorney General, or an applicant for or recipient of funds under this chapter; or

(E) was the subject of disciplinary action taken by a State medical licensing authority or a State or national professional society.

(2) A final determination by the Attorney General under this subsection that an individual physician or other licensed or certified health care professional shall not be deemed to be an employee of the Public Health Service shall be effective upon receipt by the entity employing such individual of notice of such determination, and shall apply only to acts or omissions occurring after the date such notice is received.

(j) Remedy for denial of hospital admitting privileges to certain health care providers

In the case of a health care provider who is an officer, employee, or contractor of an entity described in subsection (g)(4) of this section, section 254h(e) of this title shall apply with respect to the provider to the same extent and in the same manner as such section applies to any member of the National Health Service Corps.

(k) Estimate of annual claims by Attorney General; criteria; establishment of fund; transfer of funds to Treasury accounts

(1)(A) For each fiscal year, the Attorney General, in consultation with the Secretary, shall estimate by the beginning of the year the amount of all claims which are expected to arise under this section (together with related fees and expenses of witnesses) for which payment is expected to be made in accordance with section 1346 and chapter 171 of title 28 from the acts or omissions, during the calendar year that begins during that fiscal year, of entities described in subsection (g)(4) of this section and of officers, employees, or contractors (subject to subsection (g)(5) of this section) of such entities.

(B) The estimate under subparagraph (A) shall take into account—

(i) the value and frequency of all claims for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by entities described in subsection (g)(4) of this section or by officers, employees, or contractors (subject to subsection (g)(5) of this section) of such entities who are deemed to be employees of the Public Health Service under subsection (g)(1) of this section that, during the preceding 5-year period, are filed under this section or, with respect to years occurring before this subsection takes effect, are filed against persons other than the United States,

(ii) the amounts paid during that 5-year period on all claims described in clause (i), regardless of when such claims were filed, adjusted to reflect payments which would not be permitted under section 1346 and chapter 171 of title 28, and

(iii) amounts in the fund established under paragraph (2) but unspent from prior fiscal years.

(2) Subject to appropriations, for each fiscal year, the Secretary shall establish a fund of an amount equal to the amount estimated under paragraph (1) that is attributable to entities receiving funds under each of the grant programs described in paragraph (4) of subsection (g) of this section, but not to exceed a total of $10,000,000 for each such fiscal year. Appropriations for purposes of this paragraph shall be made separate from appropriations made for purposes of sections 254b, 254b and 256a of this title.[1]

(3) In order for payments to be made for judgments against the United States (together with related fees and expenses of witnesses) pursuant to this section arising from the acts or omissions of entities described in subsection (g)(4) of this section and of officers, governing board member,[3] employees, or contractors (subject to subsection (g)(5) of this section) of such entities, the total amount contained within the fund established by the Secretary under paragraph (2) for a fiscal year shall be transferred not later than the December 31 that occurs during the fiscal year to the appropriate accounts in the Treasury.

***(l)* Timely response to filing of action or proceeding**

(1) If a civil action or proceeding is filed in a State court against any entity described in subsection (g)(4) of this section or any officer, governing board member, employee, or any contractor of such an entity for damages described in subsection (a) of this section, the Attorney General, within 15 days after being notified of such filing, shall make an appearance in such court and advise such court as to whether the Secretary has determined under subsections (g) and (h) of this section, that such entity, officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section with respect to the actions or omissions that are the subject of such civil action or proceeding. Such advice shall be deemed to satisfy the provisions of subsection (c) of this section that the Attorney General certify that an entity, officer, governing board member, employee, or contractor of the entity was acting within the scope of their employment or responsibility.

(2) If the Attorney General fails to appear in State court within the time period prescribed under paragraph (1), upon petition of any entity or officer, governing board member, employee, or contractor of the entity named, the civil action or proceeding shall be removed to the appropriate United States district court. The civil action or proceeding shall be stayed in such court until such court conducts a hearing, and makes a determination, as to the appropriate forum or procedure for the assertion of the

[3] So in original. Probably should be ''members,''.

claim for damages described in subsection (a) of this section and issues an order consistent with such determination.

(m) Application of coverage to managed care plans

(1) An entity or officer, governing board member, employee, or contractor of an entity described in subsection (g)(1) of this section shall, for purposes of this section, be deemed to be an employee of the Public Health Service with respect to services provided to individuals who are enrollees of a managed care plan if the entity contracts with such managed care plan for the provision of services.

(2) Each managed care plan which enters into a contract with an entity described in subsection (g)(4) of this section shall deem the entity and any officer, governing board member, employee, or contractor of the entity as meeting whatever malpractice coverage requirements such plan may require of contracting providers for a calendar year if such entity or officer, governing board member, employee, or contractor of the entity has been deemed to be an employee of the Public Health Service for purposes of this section for such calendar year. Any plan which is found by the Secretary on the record, after notice and an opportunity for a full and fair hearing, to have violated this subsection shall upon such finding cease, for a period to be determined by the Secretary, to receive and to be eligible to receive any Federal funds under titles XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.].

(3) For purposes of this subsection, the term ''managed care plan'' shall mean health maintenance organizations and similar entities that contract at-risk with payors for the provision of health services or plan enrollees and which contract with providers (such as entities described in subsection (g)(4) of this section) for the delivery of such services to plan enrollees.

(n) Report on risk exposure of covered entities

(1) Not later than one year after December 26, 1995, the Comptroller General of the United States shall submit to the Congress a report on the following:

(A) The medical malpractice liability claims experience of entities that have been deemed to be employees for purposes of this section.

(B) The risk exposure of such entities.

(C) The value of private sector risk-management services, and the value of risk-management services and procedures required as a condition of receiving a grant under section 254b, 254b, or 256a of this title.[4]

(D) A comparison of the costs and the benefits to taxpayers of maintaining medical malpractice liability coverage for such entities pursuant to this section, taking into account—

(i) a comparison of the costs of premiums paid by such entities for private medical malpractice liability insurance with the cost of coverage pursuant to this section; and

(ii) an analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of such entities.

(2) The report under paragraph (1) shall include the following:

(A) A comparison of—

(i) an estimate of the aggregate amounts that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) would have directly or indirectly paid in premiums to obtain medical malpractice liability insurance coverage if this section were not in effect; with

(ii) the aggregate amounts by which the grants received by such entities under this chapter were reduced pursuant to subsection (k)(2) of this section.

(B) A comparison of—

(i) an estimate of the amount of privately offered such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) purchased during the three-year period beginning on January 1, 1993; with

(ii) an estimate of the amount of such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) will purchase after December 26, 1995.

(C) An estimate of the medical malpractice liability loss history of such entities for the 10-year period preceding October 1, 1996, including but not limited to the following:

(i) Claims that have been paid and that are estimated to be paid, and legal expenses to handle such claims that have been paid and that are estimated to be paid, by the Federal Government pursuant to deeming entities as employees for purposes of this section.

(ii) Claims that have been paid and that are estimated to be paid, and legal expenses to handle such claims that have been paid and that are estimated to be paid, by private medical malpractice liability insurance.

(D) An analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of entities that have been deemed as employees for purposes of this section.

(3) In preparing the report under paragraph (1), the Comptroller General of the United States shall consult with public and private entities with expertise on the matters with which the report is concerned.

***(o)* Volunteer services provided by health professionals at free clinics**

(1) For purposes of this section, a free clinic health professional shall in providing a qualifying health service to an individual be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under para-

[4] See References in Text notes below.

graph (6)(D). The preceding sentence is subject to the provisions of this subsection.

(2) In providing a health service to an individual, a health care practitioner shall for purposes of this subsection be considered to be a free clinic health professional if the following conditions are met:

(A) The service is provided to the individual at a free clinic, or through offsite programs or events carried out by the free clinic.

(B) The free clinic is sponsoring the health care practitioner pursuant to paragraph (5)(C).

(C) The service is a qualifying health service (as defined in paragraph (4)).

(D) Neither the health care practitioner nor the free clinic receives any compensation for the service from the individual or from any third-party payor (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program). With respect to compliance with such condition:

(i) The health care practitioner may receive repayment from the free clinic for reasonable expenses incurred by the health care practitioner in the provision of the service to the individual.

(ii) The free clinic may accept voluntary donations for the provision of the service by the health care practitioner to the individual.

(E) Before the service is provided, the health care practitioner or the free clinic provides written notice to the individual of the extent to which the legal liability of the health care practitioner is limited pursuant to this subsection (or in the case of an emergency, the written notice is provided to the individual as soon after the emergency as is practicable). If the individual is a minor or is otherwise legally incompetent, the condition under this subparagraph is that the written notice be provided to a legal guardian or other person with legal responsibility for the care of the individual.

(F) At the time the service is provided, the health care practitioner is licensed or certified in accordance with applicable law regarding the provision of the service.

(3)(A) For purposes of this subsection, the term ''free clinic'' means a health care facility operated by a nonprofit private entity meeting the following requirements:

(i) The entity does not, in providing health services through the facility, accept reimbursement from any third-party payor (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program).

(ii) The entity, in providing health services through the facility, either does not impose charges on the individuals to whom the services are provided, or imposes a charge according to the ability of the individual involved to pay the charge.

(iii) The entity is licensed or certified in accordance with applicable law regarding the provision of health services.

(B) With respect to compliance with the conditions under subparagraph (A), the entity involved may accept voluntary donations for the provision of services.

(4) For purposes of this subsection, the term ''qualifying health service'' means any medical assistance required or authorized to be provided in the program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], without regard to whether the medical assistance is included in the plan submitted under such program by the State in which the health care practitioner involved provides the medical assistance. References in the preceding sentence to such program shall as applicable be considered to be references to any successor to such program.

(5) Subsection (g) of this section (other than paragraphs (3) through (5)) and subsections (h), (i), and (*l*) of this section apply to a health care practitioner for purposes of this subsection to the same extent and in the same manner as such subsections apply to an officer, governing board member, employee, or contractor of an entity described in subsection (g)(4) of this section, subject to paragraph (6) and subject to the following:

(A) The first sentence of paragraph (1) applies in lieu of the first sentence of subsection (g)(1)(A) of this section.

(B) This subsection may not be construed as deeming any free clinic to be an employee of the Public Health Service for purposes of this section.

(C) With respect to a free clinic, a health care practitioner is not a free clinic health professional unless the free clinic sponsors the health care practitioner. For purposes of this subsection, the free clinic shall be considered to be sponsoring the health care practitioner if—

(i) with respect to the health care practitioner, the free clinic submits to the Secretary an application meeting the requirements of subsection (g)(1)(D) of this section; and

(ii) the Secretary, pursuant to subsection (g)(1)(E) of this section, determines that the health care practitioner is deemed to be an employee of the Public Health Service.

(D) In the case of a health care practitioner who is determined by the Secretary pursuant to subsection (g)(1)(E) of this section to be a free clinic health professional, this subsection applies to the health care practitioner (with respect to the free clinic sponsoring the health care practitioner pursuant to subparagraph (C)) for any cause of action arising from an act or omission of the health care practitioner occurring on or after the date on which the Secretary makes such determination.

(E) Subsection (g)(1)(F) of this section applies to a health care practitioner for purposes of this subsection only to the extent that, in providing health services to an individual, each of the conditions specified in paragraph (2) is met.

(6)(A) For purposes of making payments for judgments against the United States (together with related fees and expenses of witnesses) pursuant to this section arising from the acts or omissions of free clinic health professionals,

there is authorized to be appropriated $10,000,000 for each fiscal year.

(B) The Secretary shall establish a fund for purposes of this subsection. Each fiscal year amounts appropriated under subparagraph (A) shall be deposited in such fund.

(C) Not later than May 1 of each fiscal year, the Attorney General, in consultation with the Secretary, shall submit to the Congress a report providing an estimate of the amount of claims (together with related fees and expenses of witnesses) that, by reason of the acts or omissions of free clinic health professionals, will be paid pursuant to this section during the calendar year that begins in the following fiscal year. Subsection (k)(1)(B) of this section applies to the estimate under the preceding sentence regarding free clinic health professionals to the same extent and in the same manner as such subsection applies to the estimate under such subsection regarding officers, governing board members, employees, and contractors of entities described in subsection (g)(4) of this section.

(D) Not later than December 31 of each fiscal year, the Secretary shall transfer from the fund under subparagraph (B) to the appropriate accounts in the Treasury an amount equal to the estimate made under subparagraph (C) for the calendar year beginning in such fiscal year, subject to the extent of amounts in the fund.

(7)(A) This subsection takes effect on the date of the enactment of the first appropriations Act that makes an appropriation under paragraph (6)(A), except as provided in subparagraph (B)(i).

(B)(i) Effective on August 21, 1996—

(I) the Secretary may issue regulations for carrying out this subsection, and the Secretary may accept and consider applications submitted pursuant to paragraph (5)(C); and

(II) reports under paragraph (6)(C) may be submitted to the Congress.

(ii) For the first fiscal year for which an appropriation is made under subparagraph (A) of paragraph (6), if an estimate under subparagraph (C) of such paragraph has not been made for the calendar year beginning in such fiscal year, the transfer under subparagraph (D) of such paragraph shall be made notwithstanding the lack of the estimate, and the transfer shall be made in an amount equal to the amount of such appropriation.

(p) Administration of smallpox countermeasures by health professionals

(1) In general

For purposes of this section, and subject to other provisions of this subsection, a covered person shall be deemed to be an employee of the Public Health Service with respect to liability arising out of administration of a covered countermeasure against smallpox to an individual during the effective period of a declaration by the Secretary under paragraph (2)(A).

(2) Declaration by Secretary concerning countermeasure against smallpox

(A) Authority to issue declaration

(i) In general

The Secretary may issue a declaration, pursuant to this paragraph, concluding that an actual or potential bioterrorist incident or other actual or potential public health emergency makes advisable the administration of a covered countermeasure to a category or categories of individuals.

(ii) Covered countermeasure

The Secretary shall specify in such declaration the substance or substances that shall be considered covered countermeasures (as defined in paragraph (7)(A)) for purposes of administration to individuals during the effective period of the declaration.

(iii) Effective period

The Secretary shall specify in such declaration the beginning and ending dates of the effective period of the declaration, and may subsequently amend such declaration to shorten or extend such effective period, provided that the new closing date is after the date when the declaration is amended.

(iv) Publication

The Secretary shall promptly publish each such declaration and amendment in the Federal Register.

(B) Liability of United States only for administrations within scope of declaration

Except as provided in paragraph (5)(B)(ii), the United States shall be liable under this subsection with respect to a claim arising out of the administration of a covered countermeasure to an individual only if—

(i) the countermeasure was administered by a qualified person, for a purpose stated in paragraph (7)(A)(i), and during the effective period of a declaration by the Secretary under subparagraph (A) with respect to such countermeasure; and

(ii)(I) the individual was within a category of individuals covered by the declaration; or

(II) the qualified person administering the countermeasure had reasonable grounds to believe that such individual was within such category.

(C) Presumption of administration within scope of declaration in case of accidental vaccinia inoculation

(i) In general

If vaccinia vaccine is a covered countermeasure specified in a declaration under subparagraph (A), and an individual to whom the vaccinia vaccine is not administered contracts vaccinia, then, under the circumstances specified in clause (ii), the individual—

(I) shall be rebuttably presumed to have contracted vaccinia from an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B); and

(II) shall (unless such presumption is rebutted) be deemed for purposes of this subsection to be an individual to whom a covered countermeasure was administered by a qualified person in accordance with the terms of such declaration and as described by subparagraph (B).

(ii) Circumstances in which presumption applies

The presumption and deeming stated in clause (i) shall apply if—

(I) the individual contracts vaccinia during the effective period of a declaration under subparagraph (A) or by the date 30 days after the close of such period; or

(II) the individual has resided with, or has had contact with, an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B) and contracts vaccinia after such date.

(D) Acts and omissions deemed to be within scope of employment

(i) In general

In the case of a claim arising out of alleged transmission of vaccinia from an individual described in clause (ii), acts or omissions by such individual shall be deemed to have been taken within the scope of such individual's office or employment for purposes of—

(I) subsection (a) of this section; and

(II) section 1346(b) and chapter 171 of title 28.

(ii) Individuals to whom deeming applies

An individual is described by this clause if—

(I) vaccinia vaccine was administered to such individual as provided by subparagraph (B); and

(II) such individual was within a category of individuals covered by a declaration under subparagraph (A)(i).

(3) Exhaustion; exclusivity; offset

(A) Exhaustion

(i) In general

A person may not bring a claim under this subsection unless such person has exhausted such remedies as are available under part C of this subchapter, except that if the Secretary fails to make a final determination on a request for benefits or compensation filed in accordance with the requirements of such part within 240 days after such request was filed, the individual may seek any remedy that may be available under this section.

(ii) Tolling of statute of limitations

The time limit for filing a claim under this subsection, or for filing an action based on such claim, shall be tolled during the pendency of a request for benefits or compensation under part C of this subchapter.

(iii) Construction

This subsection shall not be construed as superseding or otherwise affecting the application of a requirement, under chapter 171 of title 28, to exhaust administrative remedies.

(B) Exclusivity

The remedy provided by subsection (a) of this section shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses, except for a proceeding under part C of this subchapter.

(C) Offset

The value of all compensation and benefits provided under part C of this subchapter for an incident or series of incidents shall be offset against the amount of an award, compromise, or settlement of money damages in a claim or suit under this subsection based on the same incident or series of incidents.

(4) Certification of action by Attorney General

Subsection (c) of this section applies to actions under this subsection, subject to the following provisions:

(A) Nature of certification

The certification by the Attorney General that is the basis for deeming an action or proceeding to be against the United States, and for removing an action or proceeding from a State court, is a certification that the action or proceeding is against a covered person and is based upon a claim alleging personal injury or death arising out of the administration of a covered countermeasure.

(B) Certification of Attorney General conclusive

The certification of the Attorney General of the facts specified in subparagraph (A) shall conclusively establish such facts for purposes of jurisdiction pursuant to this subsection.

(5) Covered person to cooperate with United States

(A) In general

A covered person shall cooperate with the United States in the processing and defense of a claim or action under this subsection based upon alleged acts or omissions of such person.

(B) Consequences of failure to cooperate

Upon the motion of the United States or any other party and upon finding that such person has failed to so cooperate—

(i) the court shall substitute such person as the party defendant in place of the United States and, upon motion, shall remand any such suit to the court in which it was instituted if it appears that the court lacks subject matter jurisdiction;

(ii) the United States shall not be liable based on the acts or omissions of such person; and

(iii) the Attorney General shall not be obligated to defend such action.

(6) Recourse against covered person in case of gross misconduct or contract violation

(A) In general

Should payment be made by the United States to any claimant bringing a claim under this subsection, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover for that portion of the damages so awarded or paid, as

well as interest and any costs of litigation, resulting from the failure of any covered person to carry out any obligation or responsibility assumed by such person under a contract with the United States or from any grossly negligent, reckless, or illegal conduct or willful misconduct on the part of such person.

(B) Venue

The United States may maintain an action under this paragraph against such person in the district court of the United States in which such person resides or has its principal place of business.

(7) Definitions

As used in this subsection, terms have the following meanings:

(A) Covered countermeasure

The term ''covered countermeasure'' or ''covered countermeasure against smallpox'', means a substance that is—

(i)(I) used to prevent or treat smallpox (including the vaccinia or another vaccine); or

(II) used to control or treat the adverse effects of vaccinia inoculation or of administration of another covered countermeasure; and

(ii) specified in a declaration under paragraph (2).

(B) Covered person

The term ''covered person'', when used with respect to the administration of a covered countermeasure, means a person who is—

(i) a manufacturer or distributor of such countermeasure;

(ii) a health care entity under whose auspices—

(I) such countermeasure was administered;

(II) a determination was made as to whether, or under what circumstances, an individual should receive a covered countermeasure;

(III) the immediate site of administration on the body of a covered countermeasure was monitored, managed, or cared for; or

(IV) an evaluation was made of whether the administration of a countermeasure was effective;

(iii) a qualified person who administered such countermeasure;

(iv) a State, a political subdivision of a State, or an agency or official of a State or of such a political subdivision, if such State, subdivision, agency, or official has established requirements, provided policy guidance, supplied technical or scientific advice or assistance, or otherwise supervised or administered a program with respect to administration of such countermeasures;

(v) in the case of a claim arising out of alleged transmission of vaccinia from an individual—

(I) the individual who allegedly transmitted the vaccinia, if vaccinia vaccine was administered to such individual as provided by paragraph (2)(B) and such individual was within a category of individuals covered by a declaration under paragraph (2)(A)(i); or

(II) an entity that employs an individual described by clause (I)[5] or where such individual has privileges or is otherwise authorized to provide health care;

(vi) an official, agent, or employee of a person described in clause (i), (ii), (iii), or (iv);

(vii) a contractor of, or a volunteer working for, a person described in clause (i), (ii), or (iv), if the contractor or volunteer performs a function for which a person described in clause (i), (ii), or (iv) is a covered person; or

(viii) an individual who has privileges or is otherwise authorized to provide health care under the auspices of an entity described in clause (ii) or (v)(II).

(C) Qualified person

The term ''qualified person'', when used with respect to the administration of a covered countermeasure, means a licensed health professional or other individual who—

(i) is authorized to administer such countermeasure under the law of the State in which the countermeasure was administered; or

(ii) is otherwise authorized by the Secretary to administer such countermeasure.

(D) Arising out of administration of a covered countermeasure

The term ''arising out of administration of a covered countermeasure'', when used with respect to a claim or liability, includes a claim or liability arising out of—

(i) determining whether, or under what conditions, an individual should receive a covered countermeasure;

(ii) obtaining informed consent of an individual to the administration of a covered countermeasure;

(iii) monitoring, management, or care of an immediate site of administration on the body of a covered countermeasure, or evaluation of whether the administration of the countermeasure has been effective; or

(iv) transmission of vaccinia virus by an individual to whom vaccinia vaccine was administered as provided by paragraph (2)(B).

(July 1, 1944, ch. 373, title II, § 224, formerly § 223, as added Pub. L. 91–623, § 4, Dec. 31, 1970, 84 Stat. 1870; renumbered § 224, Pub. L. 92–157, title III, § 301(c), Nov. 18, 1971, 85 Stat. 463; amended Pub. L. 102–501, §§ 2–4, Oct. 24, 1992, 106 Stat. 3268–3270; Pub. L. 103–183, title VII, § 706(a), Dec. 14, 1993, 107 Stat. 2241; Pub. L. 104–73, §§ 2–5(b), 6–11, Dec. 26, 1995, 109 Stat. 777–781; Pub. L. 104–191, title I, § 194, Aug. 21, 1996, 110 Stat. 1988; Pub. L. 104–299,

[5] So in original. Probably should be ''subclause''.

§ 4(a)(1), Oct. 11, 1996, 110 Stat. 3644; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664; Pub. L. 107–296, title III, § 304(c), Nov. 25, 2002, 116 Stat. 2165; Pub. L. 108–20, § 3(a)–(i), Apr. 30, 2003, 117 Stat. 646–648; Pub. L. 108–163, § 2(m)(1), Dec. 6, 2003, 117 Stat. 2023.)

REFERENCES IN TEXT

The references to section 254b of this title the first place appearing in subsecs. (g)(1)(G)(ii), (k)(2), and (n)(1)(C), were in the original references to section 329, meaning section 329 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of this chapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626.

Section 256a of this title, referred to in subsecs. (g)(1)(G)(ii), (k)(2), and (n)(1)(C), was repealed by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

The Social Security Act, referred to in subsecs. (m)(2) and (*o*)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2003—Subsec. (g)(1)(G)(ii). Pub. L. 108–163 substituted ''254b'' for ''254c, 254b(h)'' before '', or''.

Subsec. (k)(2). Pub. L. 108–163 substituted ''254b'' for ''254c, 254b(h)'' before ''and''.

Subsec. (n)(1)(C). Pub. L. 108–163 substituted ''254b'' for ''254c, 254b(h)'' before '', or''.

Subsec. (p)(2)(A)(ii). Pub. L. 108–20, § 3(i), substituted ''paragraph (7)(A)'' for ''paragraph(8)(A)''.

Subsec. (p)(2)(C)(ii)(II). Pub. L. 108–20, § 3(a), substituted ''has resided with, or has had contact with,'' for ''resides or has resided with''.

Subsec. (p)(2)(D). Pub. L. 108–20, § 3(b), added subpar. (D).

Subsec. (p)(3). Pub. L. 108–20, § 3(c), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''The remedy provided by subsection (a) of this section shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses.''

Subsec. (p)(5). Pub. L. 108–20, § 3(d), substituted ''Covered person'' for ''Defendant'' in heading.

Subsec. (p)(7)(A)(i)(II). Pub. L. 108–20, § 3(e), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''vaccinia immune globulin used to control or treat the adverse effects of vaccinia inoculation; and''.

Subsec. (p)(7)(B). Pub. L. 108–20, § 3(f)(1), substituted ''means a person'' for ''includes any person'' in introductory provisions.

Subsec. (p)(7)(B)(ii). Pub. L. 108–20, § 3(f)(2), substituted ''auspices—'' for ''auspices'', designated ''such countermeasure was administered;'' as subcl. (I), and added subcls. (II) to (IV).

Subsec. (p)(7)(B)(iv) to (viii). Pub. L. 108–20, § 3(f)(3), (4), added cls. (iv) to (viii) and struck out former cl. (iv) which read as follows: ''an official, agent, or employee of a person described in clause (i), (ii), or (iii).''

Subsec. (p)(7)(C). Pub. L. 108–20, § 3(g), substituted ''individual who—'' for ''individual who'', designated ''is authorized to administer such countermeasure under the law of the State in which the countermeasure was administered.'' as cl. (i), substituted ''; or'' for period at end of cl. (i), and added cl. (ii).

Subsec. (p)(7)(D). Pub. L. 108–20, § 3(h), added subpar. (D).

2002—Subsecs. (g)(1)(G)(ii), (k)(2), (n)(1)(C). Pub. L. 107–251 substituted ''254b(h)'' for ''256''.

Subsec. (p). Pub. L. 107–296 added subsec. (p).

1996—Subsec. (g)(4). Pub. L. 104–299 substituted ''under section 254b of this title.'' for ''under any of the following grant programs:'' and struck out subpars. (A) to (D) which read as follows:

''(A) Section 254b of this title (relating to grants for migrant health centers).

''(B) Section 254c of this title (relating to grants for community health centers).

''(C) Section 256 of this title (relating to grants for health services for the homeless).

''(D) Section 256a of this title (relating to grants for health services for residents of public housing).''

Subsec. (*o*). Pub. L. 104–191 added subsec. (*o*).

1995—Subsec. (g)(1). Pub. L. 104–73, §§ 3(1), 4, 5(a), designated existing provisions as subpar. (A), inserted ''and subject to the approval by the Secretary of an application under subparagraph (D)'' after ''For purposes of this section'', substituted ''an entity described in paragraph (4), and any officer, governing board member, or employee of such an entity, and any contractor of such an entity who is a physician or other licensed or certified health care practitioner (subject to paragraph (5)), shall be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under subsection (k)(3) of this section (subject to paragraph (3)). The remedy against the United States for an entity described in paragraph (4) and any officer, governing board member, employee, or contractor'' for '', an entity described in paragraph (4) and any officer, employee, or contractor (subject to paragraph (5)) of such an entity who is a physician or other licensed or certified health care practitioner shall be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer of the full amount estimated under subsection (k)(1)(A) of this section was made under subsection (k)(3) of this section (subject to paragraph (3)). The remedy against the United States for an entity described in paragraph (4) and any officer, employee, or contractor'', and added subpars. (B) to (H).

Subsec. (g)(3). Pub. L. 104–73, § 2(a), struck out at end ''This subsection shall not apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1996.''

Subsec. (g)(5)(B). Pub. L. 104–73, § 8, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''in the case of an individual who normally performs on average less than 32½ hours of services per week for the entity for the period of the contract and is a licensed or certified provider of obstetrical services—

''(i) the individual's medical malpractice liability insurance coverage does not extend to services performed by the individual for the entity under the contract, or

''(ii) the Secretary finds that patients to whom the entity furnishes services will be deprived of obstetrical services if such individual is not considered a contractor of the entity for purposes of paragraph (1).''

Subsec. (h). Pub. L. 104–73, § 5(b)(1), in introductory provisions substituted ''The Secretary may not approve an application under subsection (g)(1)(D) of this section unless the Secretary determines that the entity—'' for ''Notwithstanding subsection (g)(1) of this section, the Secretary, in consultation with the Attorney General, may not deem an entity described in subsection (g)(4) of this section to be an employee of the Public Health Service Act for purposes of this section unless the entity—''.

Subsec. (h)(4). Pub. L. 104–73, § 5(b)(2), substituted ''will fully cooperate'' for ''has fully cooperated''.

Subsec. (i)(1). Pub. L. 104–73, § 9, substituted ''may on the record determine, after notice and opportunity for a full and fair hearing'' for ''may determine, after notice and opportunity for a hearing''.

Subsec. (k)(1)(A). Pub. L. 104–73, § 2(b)(1), substituted ''For each fiscal year'' for ''For each of the fiscal years 1993, 1994, and 1995'' and struck out ''(except that an estimate shall be made for fiscal year 1993 by December 31, 1992, subject to an adjustment within 90 days thereafter)'' after ''beginning of the year''.

Subsec. (k)(2). Pub. L. 104–73, §§ 2(b)(2), 10, substituted ''for each fiscal year'' for ''for each of the fiscal years 1993, 1994, and 1995'' and ''$10,000,000'' for ''$30,000,000''.

Subsec. (k)(3). Pub. L. 104–73, § 3(2), which directed amendment of subsec. (k)(3) by inserting ''governing board member,'' after ''officer,'', was executed by inserting such language after ''officers,'' to reflect the probable intent of Congress.

Subsec. (*l*). Pub. L. 104–73, § 6, added subsec. (*l*).

Subsec. (m). Pub. L. 104–73, § 7, added subsec. (m).

Subsec. (n). Pub. L. 104–73, § 11, added subsec. (n).

1993—Subsec. (k)(2). Pub. L. 103–183 inserted at end ''Appropriations for purposes of this paragraph shall be made separate from appropriations made for purposes of sections 254b, 254c, 256 and 256a of this title.''

1992—Subsecs. (g) to (k). Pub. L. 102–501 added subsecs. (g) to (k).

EFFECTIVE DATE OF 2003 AMENDMENTS

Pub. L. 108–163, § 3, Dec. 6, 2003, 117 Stat. 2023, provided that: ''This Act [see Short Title of 2003 Amendments note set out under section 201 of this title] is deemed to have taken effect immediately after the enactment of Public Law 107–251 [Oct. 26, 2002].''

Pub. L. 108–20, § 3(j), Apr. 30, 2003, 117 Stat. 649, provided that: ''This section [amending this section] shall take effect as of November 25, 2002.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 5 of Pub. L. 104–299, as amended by Pub. L. 104–208, div. A, title I, § 101(e) [title V, § 521], Sept. 30, 1996, 110 Stat. 3009–233, 3009–275, provided that: ''This Act [enacting sections 254b and 254c of this title, amending this section and sections 256c, 1395x, and 1396d of this title, repealing sections 256 and 256a of this title, and enacting provisions set out as notes under sections 201 and 254b of this title] and the amendments made by this Act shall become effective on October 1, 1996.''

[Section 101(e) [title V, § 521] of Pub. L. 104–208 provided that the amendment made by that section is effective on the day after Oct. 11, 1996.]

EFFECTIVE DATE OF 1995 AMENDMENT

Section 5(c) of Pub. L. 104–73 provided that: ''If, on the day before the date of the enactment of this Act [Dec. 26, 1995], an entity was deemed to be an employee of the Public Health Service for purposes of section 224(g) of the Public Health Service Act [subsec. (g) of this section], the condition under paragraph (1)(D) of such section (as added by subsection (a) of this section) that an application be approved with respect to the entity does not apply until the expiration of the 180-day period beginning on such date.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 6 of Pub. L. 102–501 provided that: ''The amendments made by this Act [amending this section] shall take effect on the date of the enactment of this Act [Oct. 24, 1992].''

REPORT ON RISK EXPOSURE OF COVERED ENTITIES

Section 5 of Pub. L. 102–501 provided that:

''(a) IN GENERAL.—Not later than April 1, 1995, the Attorney General, in consultation with the Secretary of Health and Human Services (hereafter referred to as the 'Secretary'), shall submit a report to Congress on the medical malpractice liability claims experience of entities subject to section 224(g) of the Public Health Service Act [42 U.S.C. 233(g)] (as added by section 2(a)) and the risk exposure associated with such entities.

''(b) EFFECT OF LIABILITY PROTECTIONS ON COSTS INCURRED BY COVERED ENTITIES.—The Attorney General's report under subsection (a) shall include an analysis by the Secretary comparing—

''(1) the Secretary's estimate of the aggregate amounts that such entities (together with the officers, employees, and contractors of such entities who are subject to section 224(g) of such Act) would have directly or indirectly paid to obtain medical malpractice liability insurance coverage had section 224(g) of the Public Health Service Act not been enacted into law, with

''(2) the aggregate amounts by which the grants received by such entities under the Public Health Service Act [this chapter] were reduced as a result of the enactment of section 224(k)(2) of such Act [42 U.S.C. 233(k)(2)].''

§ 234. Repealed. Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2281, eff. Oct. 1, 1977

Section, act July 1, 1944, ch. 373, title II, § 225, as added Oct. 27, 1972, Pub. L. 92–585, § 5, 86 Stat. 1293; amended Aug. 23, 1974, Pub. L. 93–385, § 1, 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title IX, § 901, 90 Stat. 415; Sept. 30, 1976, Pub. L. 94–437, title I, § 104, 90 Stat. 1403; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(t), 90 Stat. 2246, related to Public Health and National Health Service Corps Scholarship Training program.

§ 235. Administration of grants in multigrant projects; promulgation of regulations

For the purpose of facilitating the administration of, and expediting the carrying out of the purposes of, the programs established by subchapters V, VI, and VII[1] of this chapter, and sections 242b, 246(a), 246(b), 246(c), 246(d),[1] and 246(e)[1] of this title in situations in which grants are sought or made under two or more of such programs with respect to a single project, the Secretary is authorized to promulgate regulations—

(1) under which the administrative functions under such programs with respect to such project will be performed by a single administrative unit which is the administrative unit charged with the administration of any of such programs or is the administrative unit charged with the supervision of two or more of such programs;

(2) designed to reduce the number of applications, reports, and other materials required under such programs to be submitted with respect to such project, and otherwise to simplify, consolidate, and make uniform (to the extent feasible), the data and information required to be contained in such applications, reports, and other materials; and

(3) under which inconsistent or duplicative requirements imposed by such programs will be revised and made uniform with respect to such project;

except that nothing in this section shall be construed to authorize the Secretary to waive or suspend, with respect to any such project, any requirement with respect to any of such programs if such requirement is imposed by law or by any regulation required by law.

(July 1, 1944, ch. 373, title II, § 226, formerly title III, § 310A, as added Pub. L. 91–515, title II, § 270, Oct. 30, 1970, 84 Stat. 1306; amended Pub. L. 92–157, title II, § 201, Nov. 18, 1971, 85 Stat. 461; renumbered § 226, Pub. L. 93–353, title I, § 102(e), July 23, 1974, 88 Stat. 362.)

[1] See References in Text note below.

REFERENCES IN TEXT

Subchapters V and VI of this chapter, referred to in text, are classified to sections 292 et seq. and 296 et seq., respectively, of this title.

Subchapter VII of this chapter, referred to in text, which was classified to section 299 et seq. of this title, was repealed by Pub. L. 99–117, §12(d), Oct. 7, 1985, 99 Stat. 495.

Section 246(d) of this title, referred to in text, was repealed by Pub. L. 97–35, title IX, §902(b), Aug. 13, 1981, 95 Stat. 559.

Section 246(e) of this title, referred to in text, was repealed by Pub. L. 94–63, title V, §501(b), July 29, 1975, 89 Stat. 346.

CODIFICATION

Section was formerly classified to section 242i of this title.

AMENDMENTS

1971—Pub. L. 92–157 provided for administration of programs established under subchapters V and VI of this chapter.

§ 236. Orphan Products Board

(a) Establishment; composition; chairman

There is established in the Department of Health and Human Services a board for the development of drugs (including biologics) and devices (including diagnostic products) for rare diseases or conditions to be known as the Orphan Products Board. The Board shall be comprised of the Assistant Secretary for Health of the Department of Health and Human Services and representatives, selected by the Secretary, of the Food and Drug Administration, the National Institutes of Health, the Centers for Disease Control and Prevention, and any other Federal department or agency which the Secretary determines has activities relating to drugs and devices for rare diseases or conditions. The Assistant Secretary for Health shall chair the Board.

(b) Function

The function of the Board shall be to promote the development of drugs and devices for rare diseases or conditions and the coordination among Federal, other public, and private agencies in carrying out their respective functions relating to the development of such articles for such diseases or conditions.

(c) Duties with respect to drugs for rare diseases or conditions

In the case of drugs for rare diseases or conditions the Board shall—

(1) evaluate—

(A) the effect of subchapter B of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360aa et seq.] on the development of such drugs, and

(B) the implementation of such subchapter;[1]

(2) evaluate the activities of the National Institutes of Health for the development of drugs for such diseases or conditions,

(3) assure appropriate coordination among the Food and Drug Administration, the National Institutes of Health and the Centers for Disease Control and Prevention in the carrying out of their respective functions relating to the development of drugs for such diseases or conditions to assure that the activities of each agency are complementary,

(4) assure appropriate coordination among all interested Federal agencies, manufacturers, and organizations representing patients, in their activities relating to such drugs,

(5) with the consent of the sponsor of a drug for a rare disease or condition exempt under section 505(i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(i)] or regulations issued under such section, inform physicians and the public respecting the availability of such drug for such disease or condition and inform physicians and the public respecting the availability of drugs approved under section 505(c) of such Act [21 U.S.C. 355(c)] or licensed under section 262 of this title for rare diseases or conditions,

(6) seek business entities and others to undertake the sponsorship of drugs for rare diseases or conditions, seek investigators to facilitate the development of such drugs, and seek business entities to participate in the distribution of such drugs, and

(7) recognize the efforts of public and private entities and individuals in seeking the development of drugs for rare diseases or conditions and in developing such drugs.

(d) Consultation

The Board shall consult with interested persons respecting the activities of the Board under this section and as part of such consultation shall provide the opportunity for the submission of oral views.

(e) Annual report; contents

The Board shall submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives an annual report—

(1) identifying the drugs which have been designated under section 526 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360bb] for a rare disease or condition,

(2) describing the activities of the Board, and

(3) containing the results of the evaluations carried out by the Board.

The Director of the National Institutes of Health shall submit to the Board for inclusion in the annual report a report on the rare disease and condition research activities of the Institutes of the National Institutes of Health; the Secretary of the Treasury shall submit to the Board for inclusion in the annual report a report on the use of the credit against tax provided by section 44H[2] of title 26; and the Secretary of Health and Human Services shall submit to the Board for inclusion in the annual report a report on the program of assistance under section 360ee of title 21 for the development of drugs for rare diseases and conditions. Each annual report shall be submitted by June 1 of each year for the preceding calendar year.

(July 1, 1944, ch. 373, title II, §227, as added Pub. L. 97–414, §3, Jan. 4, 1983, 96 Stat. 2051; amended

[1] So in original. The semicolon probably should be a comma.

[2] See References in Text note below.

Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–321, title I, § 163(b)(1), July 10, 1992, 106 Stat. 375; Pub. L. 102–531, title III, § 312(d)(1), Oct. 27, 1992, 106 Stat. 3504.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (c)(1)(A), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended. Subchapter B of the Federal Food, Drug, and Cosmetic Act probably means subchapter B of chapter V of the Federal Food, Drug, and Cosmetic Act which is classified generally to part B (section 360aa et seq.) of subchapter V of chapter 9 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Section 44H of title 26, referred to in subsec. (e), was renumbered section 28 of title 26, by Pub. L. 98–369, div. A, title IV, § 471(c)(1), July 18, 1984, 98 Stat. 826, and subsequently renumbered section 45C of title 26 by Pub. L. 104–188, title I, § 1205(a)(1), Aug. 20, 1996, 110 Stat. 1775.

PRIOR PROVISIONS

A prior section 236, act July 1, 1944, ch. 373, title II, § 227, formerly title III, § 310B, as added Oct. 30, 1970, Pub. L. 91–515, title II, § 280, 84 Stat. 1307; renumbered § 227 and amended July 23, 1974, Pub. L. 93–353, title I, § 102(f), 88 Stat. 362, related to an annual report by Secretary on activities related to health facilities and services and expenditure of funds, prior to repeal by Pub. L. 97–35, title XXI, § 2193(b)(4), Aug. 13, 1981, 95 Stat. 827.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Subsec. (c)(2). Pub. L. 102–321, § 163(b)(1)(A), which directed the striking out of '', and the Alcohol, Drug Abuse, and Mental Health Administration'', was executed by striking ''and the Alcohol, Drug Abuse, and Mental Health Administration'' after ''National Institutes of Health'' to reflect the probable intent of Congress.

Subsec. (c)(3). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–321, § 163(b)(1)(B), struck out '', the Alcohol, Drug Abuse, and Mental Health Administration,'' after ''National Institutes of Health''.

Subsec. (e). Pub. L. 102–321, § 163(b)(1)(C), (D), in concluding provisions, struck out ''and the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration'' after ''National Institutes of Health'' the first place appearing and ''and the Alcohol, Drug Abuse, and Mental Health Administration'' after ''National Institutes of Health'' the second place appearing.

1986—Subsec. (e). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 801 of Pub. L. 102–321 provided that:

''(a) IN GENERAL.—This Act [See Tables for classification] takes effect on the date of the enactment of this Act [July 10, 1992], subject to subsections (b) through (d).

''(b) AMENDMENTS.—The amendments described in this Act are made on the date of the enactment of this Act and take effect on such date, except as provided in subsections (c) and (d).

''(c) REORGANIZATION UNDER TITLE I.—Title I [§§ 101–171] takes effect on October 1, 1992. The amendments described in such title are made on such date and take effect on such date.

''(d) PROGRAMS PROVIDING FINANCIAL ASSISTANCE.—

''(1) FISCAL YEAR 1993 AND SUBSEQUENT YEARS.—In the case of any program making awards of grants, cooperative agreements, or contracts, the amendments made by this Act are effective for awards made on or after October 1, 1992.

''(2) PRIOR FISCAL YEARS.—

''(A) Except as provided in subparagraph (B), in the case of any program making awards of grants, cooperative agreements, or contracts, if the program began operation prior to the date of the enactment of this Act [July 10, 1992] and the program is amended by this Act, awards made prior to October 1, 1992, shall continue to be subject to the terms and conditions upon which such awards were made, notwithstanding the amendments made by this Act.

''(B) Subparagraph (A) does not apply with respect to the amendments made by this Act to part B of title XIX of the Public Health Service Act [section 300x et seq. of this title]. Section 205(a) [set out as a note under section 300x of this title] applies with respect to the program established in such part.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e) of this section relating to the requirement to submit an annual report to certain committees of Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 101 of House Document No. 103–7.

USE OF ''CDC'' AS ACRONYM FOR CENTERS FOR DISEASE CONTROL AND PREVENTION

Section 312(i) of Pub. L. 102–531 provided that: ''The amendments made by this section [amending this section, sections 247d, 280b to 280b–2, 285c–4, 285d–7, 285m–4, 289c, 290aa–9, 290bb–1, 300u–5, 300aa–2, 300aa–19, 300aa–26, 300cc, 300cc–2, 300cc–15, 300cc–17, 300cc–20, 300cc–31, 300ee–1, 300ee–2, 300ee–31, 300ee–32, 300ee–34, 300ff–11 to 300ff–13, 300ff–17, 300ff–27, 300ff–28, 300ff–41, 300ff–43, 300ff–49, 300ff–75, 4841, and 9604 of this title, section 1341 of Title 15, Commerce and Trade, section 2001 of Title 25, Indians, and provisions set out as notes under sections 241 and 281 of this title and section 303 of Title 38, Veterans' Benefits] may not be construed as prohibiting the Director of the Centers for Disease Control and Prevention from utilizing for official purposes the term 'CDC' as an acronym for such Centers.''

NATIONAL COMMISSION ON ORPHAN DISEASES

Pub. L. 99–91, § 4, Aug. 15, 1985, 99 Stat. 388, as amended by Pub. L. 100–290, § 4, Apr. 18, 1988, 102 Stat. 92; Pub. L. 102–321, title I, § 163(c)(1), July 10, 1992, 106 Stat. 376, provided that:

''(a) ESTABLISHMENT.—There is established the National Commission on Orphan Diseases (hereinafter referred to as the 'Commission').

''(b) DUTY.—The Commission shall assess the activities of the National Institutes of Health, the Food and Drug Administration, other public agencies, and private entities in connection with—

''(1) basic research conducted on rare diseases;

''(2) the use in research on rare diseases of knowledge developed in other research;

''(3) applied and clinical research on the prevention, diagnosis, and treatment of rare diseases; and

''(4) the dissemination to the public, health care professionals, researchers, and drug and medical device manufacturers of knowledge developed in research on rare diseases and other diseases which can be used in the prevention, diagnosis, and treatment of rare diseases.

''(c) REVIEW REQUIREMENTS.—In assessing the activities of the National Institutes of Health, and the Food and Drug Administration in connection with research on rare diseases, the Commission shall review—

''(1) the appropriateness of the priorities currently placed on research on rare diseases;

''(2) the relative effectiveness of grants and contracts when used to fund research on rare diseases;

''(3) the appropriateness of specific requirements applicable to applications for funds for research on rare diseases taking into consideration the reasonable capacity of applicants to meet such requirements;

''(4) the adequacy of the scientific basis for such research, including the adequacy of the research facilities and research resources used in such research and the appropriateness of the scientific training of the personnel engaged in such research;

''(5) the effectiveness of activities undertaken to encourage such research;

''(6) the organization of the peer review process applicable to applications for funds for such research to determine if the organization of the peer review process could be revised to improve the effectiveness of the review provided to proposals for research on rare diseases;

''(7) the effectiveness of the coordination between the national research institutes of the National Institutes of Health, the Food and Drug Administration, and private entities in supporting such research; and

''(8) the effectiveness of activities undertaken to assure that knowledge developed in research on nonrare diseases is, when appropriate, used in research on rare diseases.

''(d) COMPOSITION.—The Commission shall be composed of twenty members appointed by the Secretary of Health and Human Services as follows:

''(1) Ten members shall be appointed from individuals who are not officers or employees of the Government and who by virtue of their training or experience in research on rare diseases or in the treatment of rare diseases are qualified to serve on the Commission.

''(2) Five members shall be appointed from individuals who are not officers or employees of the Government and who have a rare disease or are employed to represent or are members of an organization concerned about rare disease.

''(3) Four nonvoting members shall be appointed for the directors of the national research institutes of the National Institutes of Health which the Secretary determines are involved with rare diseases.

''(4) One nonvoting member shall be appointed from officers or employees of the Food and Drug Administration who the Secretary determines are involved with rare diseases.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made. If any member of the Commission who was appointed to the Commission as a director of a national research institute or as an officer or employee of the Food and Drug Administration leaves that office or position, or if any member of the Commission who was appointed from persons who are not officers or employees of the Government becomes an officer or employee of the Government, such member may continue as a member of the Commission for not longer than the ninety-day period beginning on the date such member leaves that office or position or becomes such an officer or employee, as the case may be.

''(e) TERM.—Members shall be appointed for the life of the Commission.

''(f) COMPENSATION.—

''(1) Except as provided in paragraph (2), members of the Commission shall each be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties as members of the Commission.

''(2) Members of the Commission who are full-time officers or employees of the Government shall receive no additional pay by reason of their service on the Commission.

''(g) CHAIRMAN.—The Chairman of the Commission shall be designated by the members of the Commission.

''(h) STAFF.—Subject to such rules as may be prescribed by the Commission, the Commission may appoint and fix the pay of such personnel as it determines are necessary to enable the Commission to carry out its functions. Personnel shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

''(i) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Commission may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the basic pay payable for grade GS–15 of the General Schedule.

''(j) DETAIL OF PERSONNEL.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its functions.

''(k) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

''(*l*) GENERAL AUTHORITY.—The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

''(m) INFORMATION.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

''(n) REPORT.—The Commission shall transmit to the Secretary and to each House of the Congress a report not later than February 1, 1989, on the activities of the Commission. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for—

''(1) a long range plan for the use of public and private resources to improve research into rare diseases and to assist in the prevention, diagnosis, and treatment of rare diseases; and

''(2) such legislation or administrative actions as it considers appropriate.

''(*o*) TERMINATION.—The Commission shall terminate 90 days after the date of the submittal of its report under subsection (n).

''(p) FUNDS.—The Director of the National Institutes of Health shall make available $1,000,000 to the Commission from appropriations for fiscal year 1986 for the National Institutes of Health.''

§ 237. Silvio O. Conte Senior Biomedical Research Service

(a) Creation; number of members

(1) There shall be in the Public Health Service a Silvio O. Conte Senior Biomedical Research Service, not to exceed 500 members.

(2) The authority established in paragraph (1) regarding the number of members in the Silvio O. Conte Senior Biomedical Research Service is in addition to any authority established regarding the number of members in the commissioned Regular Corps, in the Reserve Corps, and in the Senior Executive Service. Such paragraph may not be construed to require that the number of members in the commissioned Regular Corps, in the Reserve Corps, or in the Senior Executive Service be reduced to offset the number of members serving in the Silvio O. Conte Senior Biomedical Research Service (in this section referred to as the ''Service'').

(b) Appointments; qualifications; provisions inapplicable to members

The Service shall be appointed by the Secretary without regard to the provisions of title 5 regarding appointment, and shall consist of individuals outstanding in the field of biomedical research or clinical research evaluation. No individual may be appointed to the Service unless such individual (1) has earned a doctoral level degree in biomedicine or a related field, and (2) meets the qualification standards prescribed by the Office of Personnel Management for appointment to a position at GS–15 of the General Schedule. Notwithstanding any previous applicability to an individual who is a member of the Service, the provisions of subchapter I of chapter 35 (relating to retention preference), chapter 43 (relating to performance appraisal and performance actions), chapter 51 (relating to classification), subchapter III of chapter 53 (relating to General Schedule pay rates), and chapter 75 (relating to adverse actions) of title 5 shall not apply to any member of the Service.

(c) Performance appraisal system

The Secretary shall develop a performance appraisal system designed to—

(1) provide for the systematic appraisal of the performance of members, and

(2) encourage excellence in performance by members.

(d) Pay of members

(1) The Secretary shall determine, subject to the provisions of this subsection, the pay of members of the Service.

(2) The pay of a member of the Service shall not be less than the minimum rate payable for GS–15 of the General Schedule and shall not exceed the rate payable for level I of the Executive Schedule unless approved by the President under section 5377(d)(2) of title 5.

(e) Contribution to retirement system of institutions of higher education

The Secretary may, upon the request of a member who—

(1) performed service in the employ of an institution of higher education immediately prior to his appointment as a member of the Service, and

(2) retains the right to continue to make contributions to the retirement system of such institution,

contribute an amount not to exceed 10 percent per annum of the member's basic pay to such institution's retirement system on behalf of such member. A member who requests that such contribution be made shall not be covered by, or earn service credit under, any retirement system established for employees of the United States under title 5, but such service shall be creditable for determining years of service under section 6303(a) of such title.

(f) Career and noncareer appointment of certain individuals

Subject to the following sentence, the Secretary may, notwithstanding the provisions of title 5 regarding appointment, appoint an individual who is separated from the Service involuntarily and without cause to a position in the competitive civil service at GS–15 of the General Schedule, and such appointment shall be a career appointment. In the case of such an individual who immediately prior to his appointment to the Service was not a career appointee in the civil service or the Senior Executive Service, such appointment shall be in the excepted civil service and may not exceed a period of 2 years.

(g) Rules and regulations

The Secretary shall promulgate such rules and regulations, not inconsistent with this section, as may be necessary for the efficient administration of the Service.

(July 1, 1944, ch. 373, title II, § 228, as added Pub. L. 101–509, title V, § 529 [title III, § 304(a)], Nov. 5, 1990, 104 Stat. 1427, 1463; amended Pub. L. 103–43, title XX, § 2001, June 10, 1993, 107 Stat. 208.)

REFERENCES IN TEXT

The General Schedule, referred to in subsecs. (b), (d)(2), and (f), is set out under section 5332 of Title 5, Government Organization and Employees.

The provisions of title 5 regarding appointments, referred to in subsecs. (b) and (f), are classified to section 3301 et seq. of Title 5.

Level I of the Executive Schedule, referred to in subsec. (d)(2), is set out in section 5312 of Title 5.

AMENDMENTS

1993—Pub. L. 103–43, § 2001(b), substituted ''Silvio O. Conte Senior Biomedical Research Service'' for ''Senior Biomedical Research Service'' in section catchline.

Subsec. (a). Pub. L. 103–43, § 2001(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There shall be in the Public Health Service a Senior Biomedical Research Service (hereinafter in this section referred to as the 'Service'), not to exceed 350 members at any time.''

EFFECTIVE DATE

Section effective on the 90th day following Nov. 5, 1990, see section 529 [title III, § 304(c)] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 212 of this title.

PART B—MISCELLANEOUS PROVISIONS

CODIFICATION

This part was classified to subchapter XXV (§ 300aaa et seq.) of this chapter prior to its renumbering by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.

§ 238. Gifts for benefit of Service

(a) Acceptance by Secretary

The Secretary of Health and Human Services is authorized to accept on behalf of the United

States gifts made unconditionally by will or otherwise for the benefit of the Service or for the carrying out of any of its functions. Conditional gifts may be so accepted if recommended by the Surgeon General, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress.

(b) Depository of funds; availability for expenditure

Any unconditional gift of money accepted pursuant to the authority granted in subsection (a) of this section, the net proceeds from the liquidation (pursuant to subsection (c) or subsection (d) of this section) of any other property so accepted, and the proceeds of insurance on any such gift property not used for its restoration, shall be deposited in the Treasury of the United States and are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Service, and he may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such gifts and the income from such investments shall be available for expenditure in the operation of the Service and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Service by Congress.

(c) Evidences of unconditional gifts of intangible property

The evidences of any unconditional gift of intangible personal property, other than money, accepted pursuant to the authority granted in subsection (a) of this section shall be deposited with the Secretary of the Treasury and he, in his discretion, may hold them, or liquidate them except that they shall be liquidated upon the request of the Secretary of Health and Human Services whenever necessary to meet payments required in the operation of the Service or the performance of its functions. The proceeds and income from any such property held by the Secretary of the Treasury shall be available for expenditure as is provided in subsection (b) of this section.

(d) Real property or tangible personal property

The Secretary of Health and Human Services, shall hold any real property or any tangible personal property accepted unconditionally pursuant to the authority granted in subsection (a) of this section and he shall permit such property to be used for the operation of the Service and the performance of its functions or he may lease or hire such property, and may insure such property, and deposit the income thereof with the Secretary of the Treasury to be available for expenditure as provided in subsection (b) of this section: *Provided*, That the income from any such real property or tangible personal property shall be available for expenditure in the discretion of the Secretary of Health and Human Services, for the maintenance, preservation, or repair and insurance of such property and that any proceeds from insurance may be used to restore the property insured. Any such property when not required for the operation of the Service or the performance of its functions may be liquidated by the Secretary of Health and Human Services, and the proceeds thereof deposited with the Secretary of the Treasury, whenever in his judgment the purposes of the gifts will be served thereby.

(July 1, 1944, ch. 373, title II, § 231, formerly title V, § 501, 58 Stat. 709; July 3, 1946, ch. 538, § 10, 60 Stat. 425; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 90–574, title V, § 503(b), Oct. 15, 1968, 82 Stat. 1012; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; renumbered title XXI, § 2101, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2301, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2501, Pub. L. 100–607, title II, § 201(1), (2), Nov. 4, 1988, 102 Stat. 3062; renumbered title XXVI, § 2601, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2701, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 231, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa of this title prior to renumbering by Pub. L. 103–43, to section 300cc of this title prior to renumbering by Pub. L. 100–607, to section 300aa of this title prior to renumbering by Pub. L. 99–660, and to section 219 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1968—Subsec. (e). Pub. L. 90–574 struck out subsec. (e) which provided for acknowledgment of donations of $50,000 or more in aid of research by the establishment of suitable memorials within the National Institutes of Health and the National Institute of Mental Health.

1948—Subsec. (e). Act June 16, 1948, substituted ''National Institutes of Health'' for ''National Institute of Health''.

1946—Subsec. (e). Act July 3, 1946, inserted reference to National Institute of Mental Health.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 238a. Use of immigration station hospitals

The Immigration and Naturalization Service may, by agreement of the heads of the departments concerned, permit the Public Health Service to use hospitals at immigration stations for the care of Public Health Service patients. The Surgeon General shall reimburse the Immigration and Naturalization Service for the actual cost of furnishing fuel, light, water, telephone, and similar supplies and services, which reimbursement shall be covered into the proper Immigration and Naturalization Service appropriation, or such costs may be paid from working funds established as provided by law, but no charge shall be made for the expense of physical upkeep of the hospitals. The Immigration and Naturalization Service shall reimburse the Surgeon General for the care and treatment of persons detained in hospitals of the Public Health Service at the request of the Immigration and Naturalization Service unless such persons are entitled to care and treatment under section 249(a)[1] of this title.

(July 1, 1944, ch. 373, title II, § 232, formerly title V, § 502, 58 Stat. 710, renumbered title XXI, § 2102, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2302, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2502, Pub. L. 100–607, title II, § 201(1), (2), Nov. 4, 1988, 102 Stat. 3062; renumbered title XXVI, § 2602, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2702, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 232, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

REFERENCES IN TEXT

Subsec. (a) of section 249 of this title, referred to in text, which related to persons entitled to care and treatment without charge, was repealed, and subsec. (c) of section 249 of this title was redesignated as subsec. (a), by Pub. L. 97–35, title IX, § 986(a), (b)(2), Aug. 13, 1981, 95 Stat. 603.

CODIFICATION

Section was formerly classified to section 300aaa–1 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–1 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–1 of this title prior to renumbering by Pub. L. 99–660, and to section 220 of this title prior to renumbering by Pub. L. 98–24.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by sections 1 and 2 of Reorg. Plan No. 2 of 1950, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, which were repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 662. Immigration and Naturalization Service, referred to in this section, was a bureau in Department of Justice.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

[1] See References in Text note below.

§ 238b. Disposition of money collected for care of patients

Money collected as provided by law for expenses incurred in the care and treatment of foreign seamen, and money received for the care and treatment of pay patients, including any amounts received from any executive department on account of care and treatment of pay patients, shall be covered into the appropriation from which the expenses of such care and treatment were paid.

(July 1, 1944, ch. 373, title II, § 233, formerly title V, § 503, 58 Stat. 710, renumbered title XXI, § 2103, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2303, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2503, Pub. L. 100–607, title II, § 201(1), (2), Nov. 4, 1988, 102 Stat. 3062; renumbered title XXVI, § 2603, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2703, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 233, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–2 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–2 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–2 of this title prior to renumbering by Pub. L. 99–660, and to section 221 of this title prior to renumbering by Pub. L. 98–24.

§ 238c. Transportation of remains of officers

Appropriations available for traveling expenses of the Service shall be available for meeting the cost of preparation for burial and of transportation to the place of burial of remains of commissioned officers, and of personnel specified in regulations, who die in line of duty. Appropriations available for carrying out the provisions of this chapter shall also be available for the payment of such expenses relating to the recovery, care and disposition of the remains of personnel or their dependents as may be authorized under other provisions of law.

(July 1, 1944, ch. 373, title II, § 234, formerly title V, § 506, 58 Stat. 710; July 15, 1954, ch. 507, § 14(b), 68 Stat. 481; renumbered title XXI, § 2106, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2306, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2504, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2604, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2704, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renum-

bered title II, § 234, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–3 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–5 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–5 of this title prior to renumbering by Pub. L. 99–660, and to section 224 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1954—Act July 15, 1954, inserted sentence at end relating to availability of appropriations for paying expenses relating to recovery, care, and disposition of the remains of personnel or their dependents.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DISPOSITION OF REMAINS OF DECEASED PERSONNEL

Recovery, care and disposition of the remains of deceased members of the uniformed services and other deceased personnel, see section 1481 et seq. of Title 10, Armed Forces.

§ 238d. Availability of appropriations for grants to Federal institutions

Appropriations to the Public Health Service available under this chapter for research, training, or demonstration project grants or for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction, drug abuse, and drug dependence and appropriations under title VI of the Mental Health Systems Act [42 U.S.C. 9511 et seq.] shall also be available on the same terms and conditions as apply to non-Federal institutions, for grants for the same purpose to Federal institutions, except that grants to Federal institutions may be funded at 100 per centum of the costs.

(July 1, 1944, ch. 373, title II, § 235, formerly title V, § 507, as added Pub. L. 90–31, § 5, June 24, 1967, 81 Stat. 79; amended Pub. L. 91–513, title I, § 3(c), Oct. 27, 1970, 84 Stat. 1241; Pub. L. 94–278, title XI, § 1102(b), Apr. 22, 1976, 90 Stat. 415; Pub. L. 96–398, title VIII, § 804(b), Oct. 7, 1980, 94 Stat. 1608; Pub. L. 97–35, title IX, § 902(g)(2), Aug. 13, 1981, 95 Stat. 560; renumbered title XXI, § 2107, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2307, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2505, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2605, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2705, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 235, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

REFERENCES IN TEXT

The Mental Health Systems Act, referred to in text, is Pub. L. 96–398, Oct. 7, 1980, 94 Stat. 1564, as amended. Title VI of the Mental Health Systems Act is classified generally to subchapter V (§ 9511 et seq.) of chapter 102 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

CODIFICATION

Section was formerly classified to section 300aaa–4 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–6 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–6 of this title prior to renumbering by Pub. L. 99–660, and to section 225a of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1981—Pub. L. 97–35 struck out provisions relating to appropriations available under Community Mental Health Centers Act for construction, etc.

1980—Pub. L. 96–398 struck out ''and'' after ''drug dependence,'' and inserted reference to title VI of the Mental Health Systems Act.

1976—Pub. L. 94–278 substituted ''Federal institutions, except that grants to'' for ''hospitals of the Service, of the Veterans' Administration, or of the Bureau of Prisons of the Department of Justice, and to Saint Elizabeths Hospital, except grants to such''.

1970—Pub. L. 91–513 inserted references to appropriations available for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction, drug abuse, and drug dependence, and appropriations available under Community Mental Health Centers Act for construction and staffing of community mental health centers and alcoholism and narcotic addiction, drug abuse, and drug dependence facilities, and inserted provision that grants to specified Federal institutions may be funded at 100 per centum of the costs.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

EFFECTIVE DATE

Section 5 of Pub. L. 90–31 provided that this section is effective July 1, 1968.

§ 238e. Transfer of funds

For the purpose of any reorganization under section 203 of this title, the Secretary, with the approval of the Director of the Office of Management and Budget, is authorized to make such transfers of funds between appropriations as may be necessary for the continuance of transferred functions.

(July 1, 1944, ch. 373, title II, § 236, formerly title V, § 508, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; renumbered title XXI, § 2108, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2308, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2506, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2606, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2706, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 236, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–5 of this title prior to renumbering by Pub. L. 103–43, to sec-

tion 300cc–7 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–7 of this title prior to renumbering by Pub. L. 99–660, and to section 226 of this title prior to renumbering by Pub. L. 98–24.

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated Bureau of the Budget as Office of Management and Budget.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 238f. Availability of appropriations

Appropriations for carrying out the purposes of this chapter shall be available for expenditure for personal services and rent at the seat of Government; books of reference, periodicals, and exhibits; printing and binding; transporting in Government-owned automotive equipment, to and from school, children of personnel who have quarters for themselves and their families at stations determined by the Surgeon General to be isolated stations; expenses incurred in pursuing, identifying, and returning prisoners who escape from any hospital, institution, or station of the Service or from the custody of any officer or employee of the Service, including rewards for the capture of such prisoners; furnishing, repairing, and cleaning such wearing apparel as may be prescribed by the Surgeon General for use by employees in the performance of their official duties; reimbursing officers and employees, subject to regulations of the Secretary, for the cost of repairing or replacing their personal belongings damaged or destroyed by patients while such officers or employees are engaged in the performance of their official duties; and maintenance of buildings of the National Institutes of Health.

(July 1, 1944, ch. 373, title II, § 237, formerly title V, § 509, 58 Stat. 711; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; June 25, 1948, ch. 654, § 7, 62 Stat. 1018; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, § 2109, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2309, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2507, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2607, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2707, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 237, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–6 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–8 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–8 of this title prior to renumbering by Pub. L. 99–660, and to section 227 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1948—Act June 25, 1948, amended section generally to make it apply to all appropriations to carry out the purposes of the Service instead of merely to appropriations to carry out the research functions of the Service.

Act June 16, 1948, substituted ''National Institutes of Health'' for ''National Institute of Health''.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

BUY AMERICAN PROVISIONS

Section 2004 of Pub. L. 103–43, as amended by Pub. L. 105–392, title IV, § 416(a), (b), Nov. 13, 1998, 112 Stat. 3590, provided that:

''(a) SENSE OF CONGRESS REGARDING PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or product that may be authorized to be purchased with financial assistance provided pursuant to this Act for any of the fiscal years 1994 through 1996, it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

''(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance pursuant to this Act, the Secretary of Health and Human Services shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress.''

[Pub. L. 105–392, title IV, § 416(c), Nov. 13, 1998, 112 Stat. 3591, provided that: ''This section [amending section 2004 of Pub. L. 103–43, set out above] is deemed to have taken effect immediately after the enactment of Public Law 103–43 [June 10, 1993].'']

AVAILABILITY OF APPROPRIATIONS FOR ACTIVE COMMISSIONED OFFICERS AND OTHER EXPENSES

Pub. L. 102–394, title II, § 202, Oct. 6, 1992, 106 Stat. 1810, provided that: ''Appropriations in this or any other Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be available for expenses for active commissioned officers in the Public Health Service Reserve Corps and for not to exceed 2,800 commissioned officers in the Regular Corps; expenses incident to the dissemination of health information in foreign countries through exhibits and other appropriate means; advances of funds for compensation, travel, and

subsistence expenses (or per diem in lieu thereof) for persons coming from abroad to participate in health or scientific activities of the Department pursuant to law; expenses of primary and secondary schooling of dependents in foreign countries, of Public Health Service commissioned officers stationed in foreign countries, at costs for any given area not in excess of those of the Department of Defense for the same area, when it is determined by the Secretary that the schools available in the locality are unable to provide adequately for the education of such dependents, and for the transportation of such dependents, between such schools and their places of residence when the schools are not accessible to such dependents by regular means of transportation; expenses for medical care for civilian and commissioned employees of the Public Health Service and their dependents assigned abroad on a permanent basis in accordance with such regulations as the Secretary may provide; rental or lease of living quarters (for periods not exceeding five years), and provision of heat, fuel, and light and maintenance, improvement, and repair of such quarters, and advance payments therefor, for civilian officers and employees of the Public Health Service who are United States citizens and who have a permanent station in a foreign country; purchase, erection, and maintenance of temporary or portable structures; and for the payment of compensation to consultants or individual scientists appointed for limited periods of time pursuant to section 207(f) or section 207(g) of the Public Health Service Act [42 U.S.C. 209(f), (g)], at rates established by the Assistant Secretary for Health, or the Secretary where such action is required by statute, not to exceed the per diem rate equivalent to the maximum rate payable for senior-level positions under 5 U.S.C. 5376.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, §202, Nov. 26, 1991, 105 Stat. 1126.

Pub. L. 101–517, title II, §202, Nov. 5, 1990, 104 Stat. 2208.

Pub. L. 101–166, title II, §203, Nov. 21, 1989, 103 Stat. 1176.

Pub. L. 100–202, §101(h) [title II, §203], Dec. 22, 1987, 101 Stat. 1329–256, 1329–273.

Pub. L. 99–500, §101(i) [H.R. 5233, title II, §203], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, §101(i) [H.R. 5233, title II, §203], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title II, §203, Dec. 12, 1985, 99 Stat. 1118.

Pub. L. 98–619, title II, §203, Nov. 8, 1984, 98 Stat. 3320.

Pub. L. 98–139, title II, §203, Oct. 31, 1983, 97 Stat. 887.

Pub. L. 97–377, title I, §101(e)(1) [title II, §203], Dec. 21, 1982, 96 Stat. 1878, 1893.

CREDITING OF PAYMENTS FOR ROOM AND BOARD TO APPROPRIATION ACCOUNTS

Pub. L. 102–394, title II, §206, Oct. 6, 1992, 106 Stat. 1811, provided that: ''Hereafter amounts received from employees of the Department in payment for room and board may be credited to the appropriation accounts which finance the activities of the Public Health Service.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, §206, Nov. 26, 1991, 105 Stat. 1126.

Pub. L. 101–517, title II, §206, Nov. 5, 1990, 104 Stat. 2209.

Pub. L. 101–166, title II, §207, Nov. 21, 1989, 103 Stat. 1177.

§ 238g. Wearing of uniforms

Except as may be authorized by regulations of the President, the insignia and uniform of commissioned officers of the Service, or any distinctive part of such insignia or uniform, or any insignia or uniform any part of which is similar to a distinctive part thereof, shall not be worn, after the promulgation of such regulations, by any person other than a commissioned officer of the Service.

(July 1, 1944, ch. 373, title II, §238, formerly title V, §510, 58 Stat. 711; June 25, 1948, ch. 645, §5, 62 Stat. 859; renumbered title XXI, §2110, Pub. L. 98–24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, §2310, Pub. L. 99–660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2508, Pub. L. 100–607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2608, Pub. L. 100–690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, §2708, Pub. L. 101–381, title I, §101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, §238, Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–7 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–9 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–9 of this title prior to renumbering by Pub. L. 99–660, and to section 228 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1948—Act June 25, 1948, struck out penal provisions. See section 702 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1948 AMENDMENT

Amendment effective Sept. 1, 1948, see section 20 of act June 25, 1948.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 238h. Biennial report

The Surgeon General shall transmit to the Secretary, for submission to the Congress, on January 1, 1995, and on January 1, every 2 years thereafter, a full report of the administration of the functions of the Service under this chapter, including a detailed statement of receipts and disbursements.

(July 1, 1944, ch. 373, title II, §239, formerly title V, §511, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, §2111, Pub. L. 98–24, §2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, §2311, Pub. L. 99–660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, §2509, Pub. L. 100–607, title II, §201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, §2609, Pub. L. 100–690, title II, §2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title

XXVII, § 2709, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 239, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213; Pub. L. 104–66, title I, § 1062(a), Dec. 21, 1995, 109 Stat. 720.)

CODIFICATION

Section was formerly classified to section 300aaa–8 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–10 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–10 of this title prior to renumbering by Pub. L. 99–660, and to section 229 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1995—Pub. L. 104–66 amended section catchline and text generally. Prior to amendment, text read as follows: ''The Surgeon General shall transmit to the Secretary, for submission to the Congress at the beginning of each regular session, a full report of the administration of the functions of the Service under this chapter, including a detailed statement of receipts and disbursements.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 3 on page 101 identifies a reporting provision which, as subsequently amended, is contained in this section), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, § 1402(1)] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 202 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

AGENCY REPORTING REQUIREMENTS; REPORT BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE TO CONGRESSIONAL COMMITTEES RELATING TO REQUIREMENTS, TERMINATION, ETC.

Pub. L. 93–641, § 7, Jan. 4, 1975, 88 Stat. 2275, provided that by Jan. 4, 1976, the Secretary of Health, Education, and Welfare report to specific committees of the Senate and the House of Representatives on the identity, due date, etc., of certain reports required under the Public Health Service Act, the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970.

§ 238i. Memorials and other acknowledgments for contributions to health of Nation

The Secretary may provide for suitably acknowledging, within the Department (whether by memorials, designations, or other suitable acknowledgments), (1) efforts of persons who have contributed substantially to the health of the Nation and (2) gifts for use in activities of the Department related to health.

(July 1, 1944, ch. 373, title II, § 240, formerly title V, § 512, as added Pub. L. 90–574, title V, § 503(a), Oct. 15, 1968, 82 Stat. 1012; renumbered title XXI, § 2112, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2312, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2510, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2610, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2710, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 240, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–9 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–11 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–11 of this title prior to renumbering by Pub. L. 99–660, and to section 229a of this title prior to renumbering by Pub. L. 98–24.

§ 238j. Evaluation of programs

(a) In general

Such portion as the Secretary shall determine, but not less than 0.2 percent nor more than 1 percent, of any amounts appropriated for programs authorized under this chapter shall be made available for the evaluation (directly, or by grants of contracts) of the implementation and effectiveness of such programs.

(b) Report on evaluations

Not later than February 1 of each year, the Secretary shall prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report summarizing the findings of the evaluations conducted under subsection (a) of this section.

(July 1, 1944, ch. 373, title II, § 241, formerly title V, § 513, as added Pub. L. 91–296, title IV, § 401(a), June 30, 1970, 84 Stat. 351; amended Pub. L. 96–398, title VIII, § 804(c), Oct. 7, 1980, 94 Stat. 1608; Pub. L. 97–35, title IX, § 902(g)(3), Aug. 13, 1981, 95 Stat. 560; renumbered title XXI, § 2113, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2313, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2511, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2611, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2711, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 241, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213; Pub. L. 103–183, title VII, § 701, Dec. 14, 1993, 107 Stat. 2239.)

CODIFICATION

Section was formerly classified to section 300aaa–10 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–12 of this title prior to renumbering by

Pub. L. 100–607, to section 300aa–12 of this title prior to renumbering by Pub. L. 99–660, and to section 229b of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1993—Pub. L. 103–183 amended section generally. Prior to amendment, section read as follows: ''Such portion as the Secretary may determine, but not more than 1 per centum, of any appropriation for grants, contracts, or other payments under any provision of this chapter, the Mental Health Systems Act, the Act of August 5, 1954 (Public Law 568, Eighty–third Congress), or the Act of August 16, 1957 (Public Law 85–151), for any fiscal year beginning after June 30, 1970, shall be available for evaluation (directly, or by grants or contracts) of any program authorized by this chapter or any of such other Acts, and, in the case of allotments from any such appropriation, the amount available for allotment shall be reduced accordingly.''

1981—Pub. L. 97–35 struck out references to Mental Retardation Facilities Construction Act and Community Mental Health Centers Act.

1980—Pub. L. 96–398 inserted reference to Mental Health Systems Act.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 701 of Pub. L. 103–183 provided that the amendment made by that section is effective Oct. 1, 1994.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

§ 238k. Contract authority

The authority of the Secretary to enter into contracts under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(July 1, 1944, ch. 373, title II, § 242, formerly title V, § 514, as added Pub. L. 95–623, § 11(e), Nov. 9, 1978, 92 Stat. 3456; renumbered title XXI, § 2114, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; renumbered title XXIII, § 2314, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2512, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2612, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2712, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 242, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–11 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–13 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–13 of this title prior to renumbering by Pub. L. 99–660, and to section 229c of this title prior to renumbering by Pub. L. 98–24.

OBLIGATIONS RELATED TO AGREEMENT WITH PRIVATE ENTITIES

Pub. L. 105–277, div. A, § 101(f) [title II], Oct. 21, 1998, 112 Stat. 2681–337, 2681–349, provided in part: ''That hereinafter obligations may be incurred related to agreement with private entities without receipt of advance payment.''

§ 238*l*. Recovery

(a) Right of United States to recover base amount plus interest

If any facility with respect to which funds have been paid under the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.] (as such Act was in effect prior to October 1, 1981) is, at any time within twenty years after the completion of remodeling, construction, or expansion or after the date of its acquisition—

(1) sold or transferred to any entity (A) which would not have been qualified to file an application under section 222 of such Act [42 U.S.C. 2689j] (as such section was in effect prior to October 1, 1981) or (B) which is disapproved as a transferee by the State mental health agency or by another entity designated by the chief executive officer of the State, or

(2) ceases to be used by a community mental health center in the provision of comprehensive mental health services,

the United States shall be entitled to recover from the transferor, transferee, or owner of the facility, the base amount prescribed by subsection (c)(1) of this section plus the interest (if any) prescribed by subsection (c)(2) of this section.

(b) Notice of sale, transfer, or change

The transferor and transferee of a facility that is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which changes as described in subsection (a)(2) of this section, shall provide the Secretary written notice of such sale, transfer, or change within 10 days after the date on which such sale, transfer, or cessation of use occurs or within 30 days after October 22, 1985, whichever is later.

(c) Base amount; interest

(1) The base amount that the United States is entitled to recover under subsection (a) of this section is the amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the remodeling, construction, expansion, or acquisition of the project or projects.

(2)(A) The interest that the United States is entitled to recover under subsection (a) of this section is the interest for the period (if any) described in subparagraph (B) at a rate (determined by the Secretary) based on the average of the bond equivalent rates of ninety-one-day Treasury bills auctioned during that period.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) if notice is provided as prescribed by subsection (b) of this section, 191 days after the date on which such sale, transfer, or cessation of use occurs, or

(ii) if notice is not provided as prescribed by subsection (b) of this section, 11 days after such sale, transfer, or cessation of use occurs,

and ending on the date the amount the United States is entitled to recover is collected.

(d) Waiver of recovery rights

The Secretary may waive the recovery rights of the United States under subsection (a) of this section with respect to a facility (under such conditions as the Secretary may establish by regulation) if the Secretary determines that there is good cause for waiving such rights.

(e) Pre-judgment lien

The right of recovery of the United States under subsection (a) of this section shall not, prior to judgment, constitute a lien on any facility.

(July 1, 1944, ch. 373, title II, § 243, formerly title V, § 515, formerly Pub. L. 88–164, title II, § 225, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 326; amended Pub. L. 95–622, title I, § 110(c), Nov. 9, 1978, 92 Stat. 3420; renumbered title V, § 515, and amended Pub. L. 97–35, title IX, § 902(e)(2)(A), Aug. 13, 1981, 95 Stat. 560; renumbered title XXI, § 2115, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; Pub. L. 99–129, title II, § 226(a), Oct. 22, 1985, 99 Stat. 546; renumbered title XXIII, § 2315, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2513, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2613, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2713, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; Pub. L. 102–229, title II, § 208, Dec. 12, 1991, 105 Stat. 1716; Pub. L. 102–239, § 1, Dec. 17, 1991, 105 Stat. 1912; renumbered title II, § 243, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

REFERENCES IN TEXT

The Community Mental Health Centers Act, referred to in subsec. (a), is title II of Pub. L. 88–164, as added by Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title prior to its repeal by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560. Section 222 of the Community Mental Health Centers Act was classified to section 2689j of this title prior to its repeal.

CODIFICATION

Section was classified to section 300aaa–12 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–14 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–14 of this title prior to renumbering by Pub. L. 99–660, to section 229d of this title prior to renumbering by Pub. L. 98–24, and to section 2689m of this title prior to renumbering by Pub. L. 97–35.

AMENDMENTS

1991—Subsec. (d). Pub. L. 102–229 and Pub. L. 102–239 amended subsec. (d) identically, substituting ''subsection (a)'' for ''subsection (a)(2)''.

1985—Pub. L. 99–129 amended section generally. Prior to amendment, section read as follows: ''If any facility of a community mental health center acquired, remodeled, constructed, or expanded with funds provided under the Community Mental Health Centers Act is, at any time within twenty years after the completion of such remodeling, construction, or expansion or after the date of its acquisition with such funds—

''(1) sold or transferred to any person or entity (A) which is not qualified to file an application under section 222 of the Community Mental Health Centers Act, or (B) which is not approved as a transferee by the State agency of the State in which such facility is located, or its successor; or

''(2) not used by a community mental health center in the provision of comprehensive mental health services, and the Secretary has not determined that there is good cause for termination of such use,

the United States shall be entitled to recover from either the transferor or the transferee in the case of a sale or transfer or from the owner in the case of termination of use an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the United States district court for the district in which the center is situated) of so much of such facility or center as constituted an approved project or projects, as the amount of the Federal participation bore to the acquisition, remodeling, construction, or expansion cost of such project or projects. Such right of recovery shall not constitute a lien upon such facility or center prior to judgment.''

1981—Pub. L. 97–35 substituted ''the Community Mental Health Centers Act'' for ''this subchapter'' and ''section 222 of the Community Mental Health Centers Act'' for ''section 2689j of this title''.

1978—Pub. L. 95–622 substituted ''this subchapter'' for ''this part''.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 226(b) of Pub. L. 99–129 provided that: ''In the case of any facility that was or is constructed, remodeled, expanded, or acquired on or before the date of enactment of this Act [Oct. 22, 1985] or within 180 days after the date of enactment of this Act, the period described in clause (i) or (ii), as the case may be, of section 2115(c)(2)(B) [now 243(c)(2)(B)] of the Public Health Service Act [subsec. (c)(2)(B)(i), (ii) of this section] (as amended by subsection (a) of this section) shall begin no earlier than 181 days after the date of enactment of this Act.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 902(h) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 201, 225a [now 238d], 229b [now 238j], 243, 246, 289k–1, 300d–4, 300d–6, 300*l*–2, 300m, 300m–3, 9412, and 9511 of this title, repealing sections 247b–1, 247b–2, 255, 300d to 300d–3, 300d–5, 300d–7 to 300d–9, 300d–21, 2689 to 2689*l*, 2689n to 2689p, 2689r to 2689aa, 9411, 9421 to 9423, 9431 to 9438, 9451, 9452, 9461 to 9465, 9471 to 9473, 9481, 9491 to 9493, 9502, 9512, 9521, and 9523 of this title, repealing provisions set out as notes under sections 246 and 2689 of this title, and transferring section 2689m to section 229d [now 238*l*] of this title] shall take effect October 1, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 110(c) of Pub. L. 95–622 provided that the amendment made by that section is effective July 29, 1975.

EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

OTHER LEGAL RIGHTS OF UNITED STATES NOT ADVERSELY AFFECTED BY 1985 AMENDMENT

Section 226(c) of Pub. L. 99–129 provided that: ''The amendments made by subsection (a) of this section

[amending this section] shall not adversely affect other legal rights of the United States.''

§ 238m. Use of fiscal agents

(a) Contracting authority

The Secretary may enter into contracts with fiscal agents—

(1)(A) to determine the amounts payable to persons who, on behalf of the Indian Health Service, furnish health services to eligible Indians,

(B) to determine the amounts payable to persons who, on behalf of the Public Health Service, furnish health services to individuals pursuant to section 247d or 249 of this title,

(2) to receive, disburse, and account for funds in making payments described in paragraph (1),

(3) to make such audits of records as may be necessary to assure that these payments are proper, and

(4) to perform such additional functions as may be necessary to carry out the functions described in paragraphs (1) through (3).

(b) Contracting prerequisites

(1) Contracts under subsection (a) of this section may be entered into without regard to section 5 of title 41 or any other provision of law requiring competition.

(2) No such contract shall be entered into with an entity unless the Secretary finds that the entity will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(c) Advances under contracts

A contract under subsection (a) of this section may provide for advances of funds to enable entities to make payments under the contract.

(d) Applicable statutory provisions

Subsections (d) and (e)[1] of section 1395u of this title shall apply to contracts with entities under subsection (a) of this section in the same manner as they apply to contracts with carriers under that section.

(e) "Fiscal agent" defined

In this section, the term ''fiscal agent'' means a carrier described in section 1395u(f)(1)[1] of this title and includes, with respect to contracts under subsection (a)(1)(A) of this section, an Indian tribe or tribal organization acting under contract with the Secretary under the Indian Self-Determination Act (Public Law 93–638) [25 U.S.C. 450f et seq.].

(July 1, 1944, ch. 373, title II, § 244, formerly title XXI, § 2116, as added Pub. L. 99–272, title XVII, § 17003, Apr. 7, 1986, 100 Stat. 359; renumbered title XXIII, § 2316, Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755; renumbered title XXV, § 2514, Pub. L. 100–607, title II, § 201(1), (3), Nov. 4, 1988, 102 Stat. 3062, 3063; renumbered title XXVI, § 2614, Pub. L. 100–690, title II, § 2620(a), Nov. 18, 1988, 102 Stat. 4244; renumbered title XXVII, § 2714, Pub. L. 101–381, title I, § 101(1), (2), Aug. 18, 1990, 104 Stat. 576; renumbered title II, § 244, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.)

REFERENCES IN TEXT

Subsections (d), (e), and (f) of section 1395u of this title, referred to in subsecs. (c) and (e), were repealed by Pub. L. 108–173, title IX, § 911(c)(5), Dec. 8, 2003, 117 Stat. 2384.

The Indian Self-Determination Act, referred to in subsec. (e), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

CODIFICATION

Section was classified to section 300aaa–13 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–15 of this title prior to renumbering by Pub. L. 100–607, and to section 300aa–15 of this title prior to renumbering by Pub. L. 99–660.

§ 238n. Abortion-related discrimination in governmental activities regarding training and licensing of physicians

(a) In general

The Federal Government, and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that—

(1) the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;

(2) the entity refuses to make arrangements for any of the activities specified in paragraph (1); or

(3) the entity attends (or attended) a postgraduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.

(b) Accreditation of postgraduate physician training programs

(1) In general

In determining whether to grant a legal status to a health care entity (including a license or certificate), or to provide such entity with financial assistance, services or other benefits, the Federal Government, or any State or local government that receives Federal financial assistance, shall deem accredited any postgraduate physician training program that would be accredited but for the accrediting agency's reliance upon an accreditation standards[1] that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether such standard provides exceptions or exemptions. The government involved shall formulate such regulations or other mechanisms, or enter into such

[1] See References in Text note below.

[1] So in original. Probably should be ''standard''.

agreements with accrediting agencies, as are necessary to comply with this subsection.

(2) Rules of construction

(A) In general

With respect to subclauses (I) and (II) of section 292d(a)(2)(B)(i) of this title (relating to a program of insured loans for training in the health professions), the requirements in such subclauses regarding accredited internship or residency programs are subject to paragraph (1) of this subsection.

(B) Exceptions

This section shall not—

(i) prevent any health care entity from voluntarily electing to be trained, to train, or to arrange for training in the performance of, to perform, or to make referrals for induced abortions; or

(ii) prevent an accrediting agency or a Federal, State or local government from establishing standards of medical competency applicable only to those individuals who have voluntarily elected to perform abortions.

(c) Definitions

For purposes of this section:

(1) The term ''financial assistance'', with respect to a government program, includes governmental payments provided as reimbursement for carrying out health-related activities.

(2) The term ''health care entity'' includes an individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions.

(3) The term ''postgraduate physician training program'' includes a residency training program.

(July 1, 1944, ch. 373, title II, § 245, as added Pub. L. 104–134, title I, § 101(d) [title V, § 515], Apr. 26, 1996, 110 Stat. 1321–211, 1321–245; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

§ 238*o*. Restriction on use of funds for assisted suicide, euthanasia, and mercy killing

Appropriations for carrying out the purposes of this chapter shall not be used in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.].

(July 1, 1944, ch. 373, title II, § 246, as added Pub. L. 105–12, § 9(e), Apr. 30, 1997, 111 Stat. 27.)

REFERENCES IN TEXT

The Assisted Suicide Funding Restriction Act of 1997, referred to in text, is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

EFFECTIVE DATE

Section effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as a note under section 14401 of this title.

§ 238p. Recommendations and guidelines regarding automated external defibrillators for Federal buildings

(a) Guidelines on placement

The Secretary shall establish guidelines with respect to placing automated external defibrillator devices in Federal buildings. Such guidelines shall take into account the extent to which such devices may be used by lay persons, the typical number of employees and visitors in the buildings, the extent of the need for security measures regarding the buildings, buildings or portions of buildings in which there are special circumstances such as high electrical voltage or extreme heat or cold, and such other factors as the Secretary determines to be appropriate.

(b) Related recommendations

The Secretary shall publish in the Federal Register the recommendations of the Secretary on the appropriate implementation of the placement of automated external defibrillator devices under subsection (a) of this section, including procedures for the following:

(1) Implementing appropriate training courses in the use of such devices, including the role of cardiopulmonary resuscitation.

(2) Proper maintenance and testing of the devices.

(3) Ensuring coordination with appropriate licensed professionals in the oversight of training of the devices.

(4) Ensuring coordination with local emergency medical systems regarding the placement and incidents of use of the devices.

(c) Consultations; consideration of certain recommendations

In carrying out this section, the Secretary shall—

(1) consult with appropriate public and private entities;

(2) consider the recommendations of national and local public-health organizations for improving the survival rates of individuals who experience cardiac arrest in nonhospital settings by minimizing the time elapsing between the onset of cardiac arrest and the initial medical response, including defibrillation as necessary; and

(3) consult with and counsel other Federal agencies where such devices are to be used.

(d) Date certain for establishing guidelines and recommendations

The Secretary shall comply with this section not later than 180 days after November 13, 2000.

(e) Definitions

For purposes of this section:

(1) The term ''automated external defibrillator device'' has the meaning given such term in section 238q of this title.

(2) The term ''Federal building'' includes a building or portion of a building leased or rented by a Federal agency, and includes buildings on military installations of the United States.

(July 1, 1944, ch. 373, title II, § 247, as added Pub. L. 106–505, title IV, § 403, Nov. 13, 2000, 114 Stat. 2337.)

FINDINGS

Pub. L. 106–505, title IV, § 402, Nov. 13, 2000, 114 Stat. 2336, provided that: ''Congress makes the following findings:

''(1) Over 700 lives are lost every day to sudden cardiac arrest in the United States alone.

''(2) Two out of every three sudden cardiac deaths occur before a victim can reach a hospital.

''(3) More than 95 percent of these cardiac arrest victims will die, many because of lack of readily available life saving medical equipment.

''(4) With current medical technology, up to 30 percent of cardiac arrest victims could be saved if victims had access to immediate medical response, including defibrillation and cardiopulmonary resuscitation.

''(5) Once a victim has suffered a cardiac arrest, every minute that passes before returning the heart to a normal rhythm decreases the chance of survival by 10 percent.

''(6) Most cardiac arrests are caused by abnormal heart rhythms called ventricular fibrillation. Ventricular fibrillation occurs when the heart's electrical system malfunctions, causing a chaotic rhythm that prevents the heart from pumping oxygen to the victim's brain and body.

''(7) Communities that have implemented programs ensuring widespread public access to defibrillators, combined with appropriate training, maintenance, and coordination with local emergency medical systems, have dramatically improved the survival rates from cardiac arrest.

''(8) Automated external defibrillator devices have been demonstrated to be safe and effective, even when used by lay people, since the devices are designed not to allow a user to administer a shock until after the device has analyzed a victim's heart rhythm and determined that an electric shock is required.

''(9) Increasing public awareness regarding automated external defibrillator devices and encouraging their use in Federal buildings will greatly facilitate their adoption.

''(10) Limiting the liability of Good Samaritans and acquirers of automated external defibrillator devices in emergency situations may encourage the use of automated external defibrillator devices, and result in saved lives.''

CERTAIN TECHNOLOGIES AND PRACTICES REGARDING SURVIVAL RATES FOR CARDIAC ARREST

Pub. L. 106–129, § 7, Dec. 6, 1999, 113 Stat. 1676, provided that: ''The Secretary of Health and Human Services shall, in consultation with the Administrator of the General Services Administration and other appropriate public and private entities, develop recommendations regarding the placement of automatic external defibrillators in Federal buildings as a means of improving the survival rates of individuals who experience cardiac arrest in such buildings, including recommendations on training, maintenance, and medical oversight, and on coordinating with the system for emergency medical services.''

§ 238q. Liability regarding emergency use of automated external defibrillators

(a) Good Samaritan protections regarding AEDs

Except as provided in subsection (b) of this section, any person who uses or attempts to use an automated external defibrillator device on a victim of a perceived medical emergency is immune from civil liability for any harm resulting from the use or attempted use of such device; and in addition, any person who acquired the device is immune from such liability, if the harm was not due to the failure of such acquirer of the device—

(1) to notify local emergency response personnel or other appropriate entities of the most recent placement of the device within a reasonable period of time after the device was placed;

(2) to properly maintain and test the device; or

(3) to provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, except that such requirement of training does not apply if—

(A) the employee or agent was not an employee or agent who would have been reasonably expected to use the device; or

(B) the period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm (or between the acquisition of the device and the occurrence of the harm, in any case in which the device was acquired after such engagement of the person) was not a reasonably sufficient period in which to provide the training.

(b) Inapplicability of immunity

Immunity under subsection (a) of this section does not apply to a person if—

(1) the harm involved was caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;

(2) the person is a licensed or certified health professional who used the automated external defibrillator device while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional;

(3) the person is a hospital, clinic, or other entity whose purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent; or

(4) the person is an acquirer of the device who leased the device to a health care entity (or who otherwise provided the device to such entity for compensation without selling the device to the entity), and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent.

(c) Rules of construction

(1) In general

The following applies with respect to this section:

(A) This section does not establish any cause of action, or require that an automated external defibrillator device be placed at any building or other location.

(B) With respect to a class of persons for which this section provides immunity from civil liability, this section supersedes the law of a State only to the extent that the State has no statute or regulations that provide persons in such class with immunity for civil liability arising from the use by such persons of automated external defibrillator

devices in emergency situations (within the meaning of the State law or regulation involved).

(C) This section does not waive any protection from liability for Federal officers or employees under—

(i) section 233 of this title; or

(ii) sections 1346(b), 2672, and 2679 of title 28 or under alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of title 28.

(2) Civil actions under Federal law

(A) In general

The applicability of subsections (a) and (b) of this section includes applicability to any action for civil liability described in subsection (a) of this section that arises under Federal law.

(B) Federal areas adopting State law

If a geographic area is under Federal jurisdiction and is located within a State but out of the jurisdiction of the State, and if, pursuant to Federal law, the law of the State applies in such area regarding matters for which there is no applicable Federal law, then an action for civil liability described in subsection (a) of this section that in such area arises under the law of the State is subject to subsections (a) through (c) of this section in lieu of any related State law that would apply in such area in the absence of this subparagraph.

(d) Federal jurisdiction

In any civil action arising under State law, the courts of the State involved have jurisdiction to apply the provisions of this section exclusive of the jurisdiction of the courts of the United States.

(e) Definitions

(1) Perceived medical emergency

For purposes of this section, the term ''perceived medical emergency'' means circumstances in which the behavior of an individual leads a reasonable person to believe that the individual is experiencing a life-threatening medical condition that requires an immediate medical response regarding the heart or other cardiopulmonary functioning of the individual.

(2) Other definitions

For purposes of this section:

(A) The term ''automated external defibrillator device'' means a defibrillator device that—

(i) is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];

(ii) is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed;

(iii) upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual; and

(iv) in the case of a defibrillator device that may be operated in either an automated or a manual mode, is set to operate in the automated mode.

(B)(i) The term ''harm'' includes physical, nonphysical, economic, and noneconomic losses.

(ii) The term ''economic loss'' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(iii) The term ''noneconomic losses'' means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

(July 1, 1944, ch. 373, title II, § 248, as added Pub. L. 106–505, title IV, § 404, Nov. 13, 2000, 114 Stat. 2338.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (e)(2)(A)(i), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

PART C—SMALLPOX EMERGENCY PERSONNEL PROTECTION

§ 239. General provisions

(a) Definitions

For purposes of this part:

(1) Covered countermeasure

The term ''covered countermeasure'' means a covered countermeasure as specified in a Declaration made pursuant to section 233(p) of this title.

(2) Covered individual

The term ''covered individual'' means an individual—

(A) who is a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialities[1];

(B) who is or will be functioning in a role identified in a State, local, or Department of Health and Human Services smallpox emergency response plan (as defined in paragraph (7)) approved by the Secretary;

(C) who has volunteered and been selected to be a member of a smallpox emergency response plan described in subparagraph (B) prior to the time at which the Secretary publicly announces that an active case of smallpox has been identified either within or outside of the United States; and

(D) to whom a smallpox vaccine is administered pursuant to such approved plan dur-

[1] So in original. Probably should be ''specialties''.

ing the effective period of the Declaration (including the portion of such period before April 30, 2003).

(3) Covered injury

The term ''covered injury'' means an injury, disability, illness, condition, or death (other than a minor injury such as minor scarring or minor local reaction) determined, pursuant to the procedures established under section 239a of this title, to have been sustained by an individual as the direct result of—

(A) administration to the individual of a covered countermeasure during the effective period of the Declaration; or

(B) accidental vaccinia inoculation of the individual in circumstances in which—

(i) the vaccinia is contracted during the effective period of the Declaration or within 30 days after the end of such period;

(ii) smallpox vaccine has not been administered to the individual; and

(iii) the individual has been in contact with an individual who is (or who was accidentally inoculated by) a covered individual.

(4) Declaration

The term ''Declaration'' means the Declaration Regarding Administration of Smallpox Countermeasures issued by the Secretary on January 24, 2003, and published in the Federal Register on January 28, 2003.

(5) Effective period of the Declaration

The term ''effective period of the Declaration'' means the effective period specified in the Declaration, unless extended by the Secretary.

(6) Eligible individual

The term ''eligible individual'' means an individual who is (as determined in accordance with section 239a of this title)—

(A) a covered individual who sustains a covered injury in the manner described in paragraph (3)(A); or

(B) an individual who sustains a covered injury in the manner described in paragraph (3)(B).

(7) Smallpox emergency response plan

The term ''smallpox emergency response plan'' or ''plan'' means a response plan detailing actions to be taken in preparation for a possible smallpox-related emergency during the period prior to the identification of an active case of smallpox either within or outside the United States.

(b) Voluntary program

The Secretary shall ensure that a State, local, or Department of Health and Human Services plan to vaccinate individuals that is approved by the Secretary establishes procedures to ensure, consistent with the Declaration and any applicable guidelines of the Centers for Disease Control and Prevention, that—

(1) potential participants are educated with respect to contraindications, the voluntary nature of the program, and the availability of potential benefits and compensation under this part;

(2) there is voluntary screening provided to potential participants that can identify health conditions relevant to contraindications; and

(3) there is appropriate post-inoculation medical surveillance that includes an evaluation of adverse health effects that may reasonably appear to be due to such vaccine and prompt referral of, or the provision of appropriate information to, any individual requiring health care as a result of such adverse health event.

(July 1, 1944, ch. 373, title II, § 261, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 638.)

§ 239a. Determination of eligibility and benefits

(a) In general

The Secretary shall establish procedures for determining, as applicable with respect to an individual—

(1) whether the individual is an eligible individual;

(2) whether an eligible individual has sustained a covered injury or injuries for which medical benefits or compensation may be available under sections 239c and 239d of this title, and the amount of such benefits or compensation; and

(3) whether the covered injury or injuries of an eligible individual caused the individual's death for purposes of benefits under section 239e of this title.

(b) Covered individuals

The Secretary may accept a certification, by a Federal, State, or local government entity or private health care entity participating in the administration of covered countermeasures under the Declaration, that an individual is a covered individual.

(c) Criteria for reimbursement

(1) Injuries specified in injury table

In any case where an injury or other adverse effect specified in the injury table established under section 239b of this title as a known effect of a vaccine manifests in an individual within the time period specified in such table, such injury or other effect shall be presumed to have resulted from administration of such vaccine.

(2) Other determinations

In making determinations other than those described in paragraph (1) as to the causation or severity of an injury, the Secretary shall employ a preponderance of the evidence standard and take into consideration all relevant medical and scientific evidence presented for consideration, and may obtain and consider the views of qualified medical experts.

(d) Deadline for filing request

The Secretary shall not consider any request for a benefit under this part with respect to an individual, unless—

(1) in the case of a request based on the administration of the vaccine to the individual, the individual files with the Secretary an initial request for benefits or compensation under this part not later than one year after the date of administration of the vaccine; or

(2) in the case of a request based on accidental vaccinia inoculation, the individual files with the Secretary an initial request for benefits or compensation under this part not later than two years after the date of the first symptom or manifestation of onset of the adverse effect.

(e) Structured settlements at Secretary's option

In any case in which there is a reasonable likelihood that compensation or payment under section 239c, 239d, or 239e(b) of this title will be required for a period in excess of one year from the date an individual is determined eligible for such compensation or payment, the Secretary shall have the discretion to make a lump-sum payment, purchase an annuity or medical insurance policy, or execute an appropriate structured settlement agreement, provided that such payment, annuity, policy, or agreement is actuarially determined to have a value equal to the present value of the projected total amount of benefits or compensation that the individual is eligible to receive under such section or sections.

(f) Review of determination

(1) Secretary's review authority

The Secretary may review a determination under this section at any time on the Secretary's own motion or on application, and may affirm, vacate, or modify such determination in any manner the Secretary deems appropriate. The Secretary shall develop a process by which an individual may file a request for reconsideration of any determination made by the Secretary under this section.

(2) Judicial and administrative review

No court of the United States, or of any State, District, territory or possession thereof, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this section. No officer or employee of the United States shall review any action by the Secretary under this section (unless the President specifically directs otherwise).

(July 1, 1944, ch. 373, title II, § 262, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 640.)

§ 239b. Smallpox vaccine injury table

(a)[1] Smallpox vaccine injury table

(1) Establishment required

The Secretary shall establish by interim final regulation a table identifying adverse effects (including injuries, disabilities, illnesses, conditions, and deaths) that shall be presumed to result from the administration of (or exposure to) a smallpox vaccine, and the time period in which the first symptom or manifestation of onset of each such adverse effect must manifest in order for such presumption to apply.

(2) Amendments

The Secretary may by regulation amend the table established under paragraph (1). An amendment to the table takes effect on the date of the promulgation of the final rule that makes the amendment, and applies to all requests for benefits or compensation under this part that are filed on or after such date or are pending as of such date. In addition, the amendment applies retroactively to an individual who was not with respect to the injury involved an eligible individual under the table as in effect before the amendment but who with respect to such injury is an eligible individual under the table as amended. With respect to a request for benefits or compensation under this part by an individual who becomes an eligible individual as described in the preceding sentence, the Secretary may not provide such benefits or compensation unless the request (or amendment to a request, as applicable) is filed before the expiration of one year after the effective date of the amendment to the table in the case of an individual to whom the vaccine was administered and before the expiration of two years after such effective date in the case of a request based on accidental vaccinia inoculation.

(July 1, 1944, ch. 373, title II, § 263, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 641.)

§ 239c. Medical benefits

(a) In general

Subject to the succeeding provisions of this section, the Secretary shall make payment or reimbursement for medical items and services as reasonable and necessary to treat a covered injury of an eligible individual, including the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.

(b) Benefits secondary to other coverage

Payment or reimbursement for services or benefits under subsection (a) of this section shall be secondary to any obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer) under any other provision of law or contractual agreement, to pay for or provide such services or benefits.

(July 1, 1944, ch. 373, title II, § 264, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 641.)

§ 239d. Compensation for lost employment income

(a) In general

Subject to the succeeding provisions of this section, the Secretary shall provide compensation to an eligible individual for loss of employment income (based on such income at the time of injury) incurred as a result of a covered injury, at the rate specified in subsection (b) of this section.

(b) Amount of compensation

(1) In general

Compensation under subsection (a) of this section shall be at the rate of 66⅔ percent of

[1] So in original. No subsec. (b) has been enacted.

the relevant pay period (weekly, monthly, or otherwise), except as provided in paragraph (2).

(2) Augmented compensation for dependents

If an eligible individual has one or more dependents, the basic compensation for loss of employment income as described in paragraph (1) shall be augmented at the rate of 8⅓ percent.

(3) Consideration of other programs

(A) In general

The Secretary may consider the provisions of sections 8114, 8115, and 8146a of title 5, and any implementing regulations, in determining the amount of payment under subsection (a) of this section and the circumstances under which such payments are reasonable and necessary.

(B) Minors

With respect to an eligible individual who is a minor, the Secretary may consider the provisions of section 8113 of title 5, and any implementing regulations, in determining the amount of payment under subsection (a) of this section and the circumstances under which such payments are reasonable and necessary.

(4) Treatment of self-employment income

For purposes of this section, the term ''employment income'' includes income from self-employment.

(c) Limitations

(1) Benefits secondary to other coverage

(A) In general

Any compensation under subsection (a) of this section shall be secondary to the obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer), under any other law or contractual agreement, to pay compensation for loss of employment income or to provide disability or retirement benefits.

(B) Relation to other obligations

Compensation under subsection (a) of this section shall not be made to an eligible individual to the extent that the total of amounts paid to the individual under such subsection and under the other obligations referred to in subparagraph (A) is an amount that exceeds the rate specified in subsection (b)(1) of this section. If under any such other obligation a lump-sum payment is made, such payment shall, for purposes of this paragraph, be deemed to be received over multiple years rather than received in a single year. The Secretary may, in the discretion of the Secretary, determine how to apportion such payment over multiple years.

(2) No benefits in case of death

No payment shall be made under subsection (a) of this section in compensation for loss of employment income subsequent to the receipt, by the survivor or survivors of an eligible individual, of benefits under section 239e of this title for death.

(3) Limit on total benefits

(A) In general

Except as provided in subparagraph (B)—

(i) total compensation paid to an individual under subsection (a) of this section shall not exceed $50,000 for any year; and

(ii) the lifetime total of such compensation for the individual may not exceed an amount equal to the amount authorized to be paid under section 239e of this title.

(B) Permanent and total disability

The limitation under subparagraph (A)(ii) does not apply in the case of an eligible individual who is determined to have a covered injury or injuries meeting the definition of disability in section 416(i) of this title.

(4) Waiting period

(A) In general

Except as provided in subparagraph (B), an eligible individual shall not be provided compensation under this section for the first 5 work days of loss of employment income.

(B) Exception

Subparagraph (A) does not apply if the period of loss of employment income of an eligible individual is 10 or more work days.

(5) Termination of benefits

No payment shall be made under subsection (a) of this section in compensation for loss of employment income once the eligible individual involves[1] reaches the age of 65.

(d) Benefit in addition to medical benefits

A benefit under subsection (a) of this section shall be in addition to any amounts received by an eligible individual under section 239c of this title.

(July 1, 1944, ch. 373, title II, § 265, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 642.)

§ 239e. Payment for death

(a) Death benefit

(1) In general

The Secretary shall pay, in the case of an eligible individual whose death is determined to have resulted from a covered injury or injuries, a death benefit in the amount determined under paragraph (2) to the survivor or survivors in the same manner as death benefits are paid pursuant to the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) with respect to an eligible deceased (except that in the case of an eligible individual who is a minor with no living parent, the legal guardian shall be considered the survivor in the place of the parent).

(2) Benefit amount

(A) In general

The amount of the death benefit under paragraph (1) in a fiscal year shall equal the amount of the comparable benefit calculated

[1] So in original. Probably should be ''involved''.

under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) in such fiscal year, without regard to any reduction attributable to a limitation on appropriations, but subject to subparagraph (B).

(B) Reduction for payments for lost employment income

The amount of the benefit as determined under subparagraph (A) shall be reduced by the total amount of any benefits paid under section 239d of this title with respect to lost employment income.

(3) Limitations

(A) In general

No benefit is payable under paragraph (1) with respect to the death of an eligible individual if—

(i) a disability benefit is paid with respect to such individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.); or

(ii) a death benefit is paid or payable with respect to such individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.).

(B) Exception in the case of a limitation on appropriations for disability benefits under PSOB

In the event that disability benefits available to an eligible individual under the Public Safety Officers' Benefits Program under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) are reduced because of a limitation on appropriations, and such reduction would affect the amount that would be payable under subparagraph (A) without regard to this subparagraph, benefits shall be available under paragraph (1) to the extent necessary to ensure that the survivor or survivors of such individual receives a total amount equal to the amount described in paragraph (2).

(b) Election in case of dependents

(1) In general

In the case of an eligible individual whose death is determined to have resulted from a covered injury or injuries, if the individual had one or more dependents under the age of 18, the legal guardian of the dependents may, in lieu of the death benefit under subsection (a) of this section, elect to receive on behalf of the aggregate of such dependents payments in accordance with this subsection. An election under the preceding sentence is effective in lieu of a request under subsection (a) of this section by an individual who is not the legal guardian of such dependents.

(2) Amount of payments

Payments under paragraph (1) with respect to an eligible individual described in such paragraph shall be made as if such individual were an eligible individual to whom compensation would be paid under subsection (a) of section 239d of this title, with the rate augmented in accordance with subsection (b)(2) of such section and with such individual considered to be an eligible individual described in subsection (c)(3)(B) of such section.

(3) Limitations

(A) Age of dependents

No payments may be made under paragraph (1) once the youngest of the dependents involved reaches the age of 18.

(B) Benefits secondary to other coverage

(i) In general

Any payment under paragraph (1) shall be secondary to the obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer), under any other law or contractual agreement, to pay compensation for loss of employment income or to provide disability benefits, retirement benefits, life insurance benefits on behalf of dependents under the age of 18, or death benefits.

(ii) Relation to other obligations

Payments under paragraph (1) shall not be made to with respect to[1] an eligible individual to the extent that the total of amounts paid with respect to the individual under such paragraph and under the other obligations referred to in clause (i) is an amount that exceeds the rate of payment that applies under paragraph (2). If under any such other obligation a lump-sum payment is made, such payment shall, for purposes of this subparagraph, be deemed to be received over multiple years rather than received in a single year. The Secretary may, in the discretion of the Secretary, determine how to apportion such payment over multiple years.

(c) Benefit in addition to medical benefits

A benefit under subsection (a) or (b) of this section shall be in addition to any amounts received by an eligible individual under section 239c of this title.

(July 1, 1944, ch. 373, title II, § 266, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 643.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (a)(1), (2)(A), (3), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended. Subpart 1 of part L of title I of the Act is classified generally to part A (§ 3796 et seq.) of subchapter XII of chapter 46 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of this title and Tables.

§ 239f. Administration

(a) Administration by agreement with other agency or agencies

The Secretary may administer any or all of the provisions of this part through Memo-

[1] So in original.

randum of Agreement with the head of any appropriate Federal agency.

(b) Regulations

The head of the agency administering this part or provisions thereof (including any agency head administering such Act[1] or provisions through a Memorandum of Agreement under subsection (a) of this section) may promulgate such implementing regulations as may be found necessary and appropriate. Initial implementing regulations may be interim final regulations.

(July 1, 1944, ch. 373, title II, § 267, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 645.)

§ 239g. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2007, to remain available until expended, including administrative costs and costs of provision and payment of benefits. The Secretary's payment of any benefit under section 239c, 239d, or 239e of this title shall be subject to the availability of appropriations under this section.

(July 1, 1944, ch. 373, title II, § 268, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 645.)

§ 239h. Relationship to other laws

Except as explicitly provided herein, nothing in this part shall be construed to override or limit any rights an individual may have to seek compensation, benefits, or redress under any other provision of Federal or State law.

(July 1, 1944, ch. 373, title II, § 269, as added Pub. L. 108–20, § 2, Apr. 30, 2003, 117 Stat. 645.)

SUBCHAPTER II—GENERAL POWERS AND DUTIES

PART A—RESEARCH AND INVESTIGATIONS

§ 241. Research and investigations generally

(a) Authority of Secretary

The Secretary shall conduct in the Service, and encourage, cooperate with, and render assistance to other appropriate public authorities, scientific institutions, and scientists in the conduct of, and promote the coordination of, research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man, including water purification, sewage treatment, and pollution of lakes and streams. In carrying out the foregoing the Secretary is authorized to—

(1) collect and make available through publications and other appropriate means, information as to, and the practical application of, such research and other activities;

(2) make available research facilities of the Service to appropriate public authorities, and to health officials and scientists engaged in special study;

(3) make grants-in-aid to universities, hospitals, laboratories, and other public or private institutions, and to individuals for such research projects as are recommended by the advisory council to the entity of the Department supporting such projects and make, upon recommendation of the advisory council to the appropriate entity of the Department, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research;

(4) secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

(5) for purposes of study, admit and treat at institutions, hospitals, and stations of the Service, persons not otherwise eligible for such treatment;

(6) make available, to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical methods to experiments, studies, and surveys in health and medical fields;

(7) enter into contracts, including contracts for research in accordance with and subject to the provisions of law applicable to contracts entered into by the military departments under sections 2353 and 2354 of title 10, except that determination, approval, and certification required thereby shall be by the Secretary of Health and Human Services; and

(8) adopt, upon recommendations of the advisory councils to the appropriate entities of the Department or, with respect to mental health, the National Advisory Mental Health Council, such additional means as the Secretary considers necessary or appropriate to carry out the purposes of this section.

The Secretary may make available to individuals and entities, for biomedical and behavioral research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

(b) Testing for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects; consultation

(1) The Secretary shall conduct and may support through grants and contracts studies and testing of substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects. In carrying out this paragraph, the Secretary shall consult with entities of the Federal Government, outside of the Department of Health and Human Services, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct for such entity studies and testing of substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects.

(2)(A) The Secretary shall establish a comprehensive program of research into the biological effects of low-level ionizing radiation under which program the Secretary shall conduct such research and may support such research by others through grants and contracts.

[1] So in original. Probably should be ''part''.

(B) The Secretary shall conduct a comprehensive review of Federal programs of research on the biological effects of ionizing radiation.

(3) The Secretary shall conduct and may support through grants and contracts research and studies on human nutrition, with particular emphasis on the role of nutrition in the prevention and treatment of disease and on the maintenance and promotion of health, and programs for the dissemination of information respecting human nutrition to health professionals and the public. In carrying out activities under this paragraph, the Secretary shall provide for the coordination of such of these activities as are performed by the different divisions within the Department of Health and Human Services and shall consult with entities of the Federal Government, outside of the Department of Health and Human Services, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct and support such activities for such entity.

(4) The Secretary shall publish a biennial report which contains—

(A) a list of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed;

(B) information concerning the nature of such exposure and the estimated number of persons exposed to such substances;

(C) a statement identifying (i) each substance contained in the list under subparagraph (A) for which no effluent, ambient, or exposure standard has been established by a Federal agency, and (ii) for each effluent, ambient, or exposure standard established by a Federal agency with respect to a substance contained in the list under subparagraph (A), the extent to which, on the basis of available medical, scientific, or other data, such standard, and the implementation of such standard by the agency, decreases the risk to public health from exposure to the substance; and

(D) a description of (i) each request received during the year involved—

(I) from a Federal agency outside the Department of Health and Human Services for the Secretary, or

(II) from an entity within the Department of Health and Human Services to any other entity within the Department,

to conduct research into, or testing for, the carcinogenicity of substances or to provide information described in clause (ii) of subparagraph (C), and (ii) how the Secretary and each such other entity, respectively, have responded to each such request.

(5) The authority of the Secretary to enter into any contract for the conduct of any study, testing, program, research, or review, or assessment under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Diseases not significantly occurring in United States

The Secretary may conduct biomedical research, directly or through grants or contracts, for the identification, control, treatment, and prevention of diseases (including tropical diseases) which do not occur to a significant extent in the United States.

(d) Protection of privacy of individuals who are research subjects

The Secretary may authorize persons engaged in biomedical, behavioral, clinical, or other research (including research on mental health, including research on the use and effect of alcohol and other psychoactive drugs) to protect the privacy of individuals who are the subject of such research by withholding from all persons not connected with the conduct of such research the names or other identifying characteristics of such individuals. Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals.

(July 1, 1944, ch. 373, title III, § 301, 58 Stat. 691; July 3, 1946, ch. 538, § 7(a), (b), 60 Stat. 423; June 16, 1948, ch. 481, § 4(e), (f), 62 Stat. 467; June 24, 1948, ch. 621, § 4(e), (f), 62 Stat. 601; June 25, 1948, ch. 654, § 1, 62 Stat. 1017; July 3, 1956, ch. 510, § 4, 70 Stat. 490; Pub. L. 86–798, Sept. 15, 1960, 74 Stat. 1053; Pub. L. 87–838, § 2, Oct. 17, 1962, 76 Stat. 1073; Pub. L. 89–115, § 3, Aug. 9, 1965, 79 Stat. 448; Pub. L. 90–174, § 9, Dec. 5, 1967, 81 Stat. 540; Pub. L. 91–513, title I, § 3(a), Oct. 27, 1970, 84 Stat. 1241; Pub. L. 91–515, title II, § 292, Oct. 30, 1970, 84 Stat. 1308; Pub. L. 92–218, § 6(a)(2), Dec. 23, 1971, 85 Stat. 785; Pub. L. 92–423, § 7(b), Sept. 19, 1972, 86 Stat. 687; Pub. L. 93–282, title I, § 122(b), May 14, 1974, 88 Stat. 132; Pub. L. 93–348, title I, § 104(a)(1), July 12, 1974, 88 Stat. 346; Pub. L. 93–352, title I, § 111, July 23, 1974, 88 Stat. 360; Pub. L. 94–278, title I, § 111, Apr. 22, 1976, 90 Stat. 405; Pub. L. 95–622, title II, §§ 261, 262, Nov. 9, 1978, 92 Stat. 3434; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 99–158, § 3(a)(5), Nov. 20, 1985, 99 Stat. 879; Pub. L. 99–570, title IV, § 4021(b)(2), Oct. 27, 1986, 100 Stat. 3207–124; Pub. L. 99–660, title I, § 104, Nov. 14, 1986, 100 Stat. 3751; Pub. L. 100–607, title I, § 163(1), (2), Nov. 4, 1988, 102 Stat. 3062; Pub. L. 103–43, title XX, § 2009, June 10, 1993, 107 Stat. 213.)

AMENDMENTS

1993—Subsec. (b)(4). Pub. L. 103–43 substituted ''a biennial report'' for ''an annual report'' in introductory provisions.

1988—Subsec. (d). Pub. L. 100–607 redesignated concluding provisions of subsec. (a) of section 242a of this title as subsec. (d) of this section, substituted ''biomedical, behavioral, clinical, or other research (including research on mental health, including'' for ''research on mental health, including'', and substituted ''drugs)'' for ''drugs,''.

1986—Subsec. (a)(3). Pub. L. 99–570 struck out ''or, in the case of mental health projects, by the National Advisory Mental Health Council;'' after ''Department supporting such projects'' and struck out ''or the National Advisory Mental Health Council'' after ''appropriate entity of the Department''.

Subsec. (c). Pub. L. 99–660 added subsec. (c).

1985—Subsec. (a)(3). Pub. L. 99–158, § 3(a)(5)(A), substituted ''as are recommended by the advisory council to the entity of the Department supporting such projects or, in the case of mental health projects, by the National Advisory Mental Health Council; and make, upon recommendation of the advisory council to

the appropriate entity of the Department or the National Advisory Mental Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research'' for ''as are recommended by the National Advisory Health Council, or, with respect to cancer, recommended by the National Cancer Advisory Board, or, with respect to mental health, recommended by the National Advisory Mental Health Council, or with respect to heart, blood vessel, lung, and blood diseases and blood resources, recommended by the National Heart, Lung, and Blood Advisory Council, or, with respect to dental diseases and conditions, recommended by the National Advisory Dental Research Council; and include in the grants for any such project grants of penicillin and other antibiotic compounds for use in such project; and make, upon recommendation of the National Advisory Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research: *Provided*, That such uniform percentage, not to exceed 15 per centum, as the Secretary may determine, of the amounts provided for grants for research projects for any fiscal year through the appropriations for the National Institutes of Health may be transferred from such appropriations to a separate account to be available for such research grants-in-aid for such fiscal year''.

Subsec. (a)(8). Pub. L. 99–158, §3(a)(5)(B), substituted ''recommendations of the advisory councils to the appropriate entities of the Department or, with respect to mental health, the National Advisory Mental Health Council, such additional means as the Secretary considers'' for ''recommendation of the National Advisory Health Council, or, with respect to cancer, upon recommendation of the National Cancer Advisory Board, or, with respect to mental health, upon recommendation of the National Advisory Mental Health Council, or, with respect to heart, blood vessel, lung, and blood diseases and blood resources, upon recommendation of the National Heart, Lung and Blood Advisory Council, or, with respect to dental diseases and conditions, upon recommendations of the National Advisory Dental Research Council, such additional means as he deems''.

1978—Pub. L. 95–622 designated existing provisions as subsec. (a), redesignated former pars. (a) to (h) as (1) to (8), respectively, substituted ''Secretary'' for ''Surgeon General'' wherever appearing, and inserted following par. (8) provisions relating to authority of Secretary to make available to individuals and entities substances and living organisms, and added subsec. (b).

1976—Subsecs. (c), (h). Pub. L. 94–278 substituted ''heart, blood vessel, lung, and blood diseases and blood resources'' for ''heart diseases'' and ''National Heart, Lung and Blood Advisory Council'' for ''National Heart and Lung Advisory Council''.

1974—Subsec. (c). Pub. L. 93–348, §104(a)(1), redesignated subsec. (d) as (c) and substituted ''research projects'' for ''research or research training projects'' in two places, ''general support of their research'' for ''general support of their research and research training programs'' and ''research grants-in-aid'' for ''research and research training program grants-in-aid''. Former subsec. (c), authorizing Surgeon General to establish and maintain research fellowships in the Public Health Service with such stipends and allowances, including traveling and subsistence expenses, as he may deem necessary to procure the assistance of the most brilliant and promising research fellows from the United States and abroad, was struck out.

Subsec. (d). Pub. L. 93–348, §104(a)(1)(C), redesignated subsec. (e) as (d).

Pub. L. 93–282 substituted ''mental health, including research on the use and effect of alcohol and other psychoactive drugs'' for ''the use and effect of drugs'' in former concluding provisions of section 242a(a) of this title. See 1988 Amendment note above.

Subsecs. (e), (f). Pub. L. 93–348, §104(a)(1)(C), redesignated subsecs. (f) and (g) as (e) and (f), respectively. Former subsec. (e) redesignated (d).

Subsec. (g). Pub. L. 93–352 struck out ''during the fiscal year ending June 30, 1966, and each of the eight succeeding fiscal years'' after ''Enter into contracts''. Notwithstanding directory language that amendment be made to subsec. (h), the amendment was executed to subsec. (g) to reflect the probable intent of Congress and the intervening redesignation of subsec. (h) as (g) by Pub. L. 93–348.

Pub. L. 93–348, §104(a)(1)(C), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Subsecs. (h), (i). Pub. L. 93–348, §104(a)(1)(C), redesignated subsecs. (h) and (i) as (g) and (h), respectively.

1972—Subsecs. (d), (i). Pub. L. 92–423 substituted ''National Heart and Lung Advisory Council'' for ''National Advisory Heart Council''.

1971—Subsecs. (d), (i). Pub. L. 92–218 substituted ''National Cancer Advisory Board'' for ''National Advisory Cancer Council''.

1970—Subsec. (d). Pub. L. 91–513 added subsec. (d). See 1988 Amendment note above.

Subsec. (h). Pub. L. 91–515 substituted ''eight'' for ''five'' succeeding fiscal years.

1967—Subsec. (h). Pub. L. 90–174 substituted ''five'' for ''two'' succeeding fiscal years.

1965—Subsecs. (h), (i). Pub. L. 89–115 added subsec. (h) and redesignated former subsec. (h) as (i).

1962—Subsec. (d). Pub. L. 87–838 inserted ''or research training'' in two places.

1960—Subsec. (d). Pub. L. 86–798 authorized the Surgeon General, upon recommendation of the National Advisory Health Council, to make grants to public or non-profit universities, hospitals, laboratories, and other institutions to support research and research training programs, and to make available for such research and research training programs, up to 15 per centum of amounts provided for research grants through the appropriations for the National Institutes of Health.

1956—Subsecs. (g), (h). Act July 3, 1956, added subsec. (g) and redesignated former subsec. (g) as (h).

1948—Subsec. (d). Acts June 16, 1948, §4(e), and June 24, 1948, §4(e), made provisions applicable to the National Advisory Heart Council and the National Advisory Dental Research Council, respectively.

Subsec. (d). Act June 25, 1948, continued in basic legislation the authority to purchase penicillin and other antibiotic compounds for use in research projects.

Subsec. (g). Acts June 16, 1948, §4(f), and June 24, 1948, §4(f), made provisions applicable to the National Advisory Heart Council and the National Advisory Dental Research Council, respectively.

1946—Subsec. (d). Act July 3, 1946, made the National Advisory Mental Health Council the body to make recommendations to the Surgeon General on awarding of grants-in-aid for research projects with respect to mental health.

Subsec. (g). Act July 3, 1946, gave National Advisory Health Council the right to make recommendations to carry out purposes of this section.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(7), and ''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (b)(1), (3), and (4)(D)(I), (II), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Sections 261 and 262 of Pub. L. 95–622 provided that the amendments made by those sections are effective Oct. 1, 1978.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 104(b) of Pub. L. 93–348 provided that: ''The amendments made by subsection (a) [amending this section and sections 242a, 282, 286a, 286b, 287a, 287b, 287d,

288a, 289c, 289c–1, 289g, 289k, and heading preceding section 289*l* of this title] shall not apply with respect to commitments made before the date of the enactment of this Act [July 12, 1974] by the Secretary of Health, Education, and Welfare for research training under the provisions of the Public Health Service Act amended or repealed by subsection (a).''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–423 effective 60 days after Sept. 19, 1972, or on such prior date after Sept. 19, 1972, as the President shall prescribe and publish in the Federal Register, see section 9 of Pub. L. 92–423, set out as a note under section 218 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–218 effective 60 days after Dec. 23, 1971, or on such prior date after Dec. 23, 1971, as the President shall prescribe and publish in the Federal Register, see section 7 of Pub. L. 92–218, set out as a note under section 218 of this title.

COORDINATION OF DATA SURVEYS AND REPORTS

Pub. L. 106–113, div. B, §1000(a)(6) [title VII, §703(e)], Nov. 29, 1999, 113 Stat. 1536, 1501A–402, provided that: ''The Secretary of Health and Human Services, through the Assistant Secretary for Planning and Evaluation, shall establish a clearinghouse for the consolidation and coordination of all Federal databases and reports regarding children's health.''

FEMALE GENITAL MUTILATION

Pub. L. 104–134, title I, §101(d) [title V, §520], Apr. 26, 1996, 110 Stat. 1321–211, 1321–250; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided that:

''(a) Congress finds that—

''(1) the practice of female genital mutilation is carried out by members of certain cultural and religious groups within the United States; and

''(2) the practice of female genital mutilation often results in the occurrence of physical and psychological health effects that harm the women involved.

''(b) The Secretary of Health and Human Services shall do the following:

''(1) Compile data on the number of females living in the United States who have been subjected to female genital mutilation (whether in the United States or in their countries of origin), including a specification of the number of girls under the age of 18 who have been subjected to such mutilation.

''(2) Identify communities in the United States that practice female genital mutilation, and design and carry out outreach activities to educate individuals in the communities on the physical and psychological health effects of such practice. Such outreach activities shall be designed and implemented in collaboration with representatives of the ethnic groups practicing such mutilation and with representatives of organizations with expertise in preventing such practice.

''(3) Develop recommendations for the education of students of schools of medicine and osteopathic medicine regarding female genital mutilation and complications arising from such mutilation. Such recommendations shall be disseminated to such schools.

''(c) For purposes of this section the term 'female genital mutilation' means the removal or infibulation (or both) of the whole or part of the clitoris, the labia minor, or the labia major.

''(d) The Secretary of Health and Human Services shall commence carrying out this section not later than 90 days after the date of enactment of this Act [Apr. 26, 1996].''

SENTINEL DISEASE CONCEPT STUDY

Section 1910 of Pub. L. 103–43 directed Secretary of Health and Human Services, in cooperation with Agency for Toxic Substances and Disease Registry and Centers for Disease Control and Prevention, to design and implement a pilot sentinel disease surveillance system for identifying relationship between occupation of household members and incidence of subsequent conditions or diseases in other members of household, and required Director of the National Institutes of Health to prepare and submit to Congress, not later than 4 years after June 10, 1993, a report concerning this project.

STUDY OF THYROID MORBIDITY FOR HANFORD, WASHINGTON

Section 161 of Pub. L. 100–607, as amended by Pub. L. 102–531, title III, §312(e)(1), Oct. 27, 1992, 106 Stat. 3506, directed Secretary of Health and Human Services, acting through Director of Centers for Disease Control and Prevention, to conduct a study of thyroid morbidity of the population, including Indian tribes and tribal organizations, in vicinity of Hanford, in State of Washington, authorized Director to contract out portions of study, and required Director, not later than 42 months after Nov. 4, 1988, to transmit a report, including such study, to Congress, chief executive officers of States of Oregon and Washington, and governing officials of Indian tribes in vicinity of Hanford, Washington.

NATIONAL COMMISSION ON SLEEP DISORDERS RESEARCH

Section 162 of Pub. L. 100–607 directed Secretary of Health and Human Services, after consultation with Director of National Institutes of Health, to establish a National Commission on Sleep Disorders Research to conduct a comprehensive study of present state of knowledge of incidence, prevalence, morbidity, and mortality resulting from sleep disorders, and of social and economic impact of such disorders, evaluate public and private facilities and resources (including trained personnel and research activities) available for diagnosis, prevention, and treatment of, and research into, such disorders, and identify programs (including biological, physiological, behavioral, environmental, and social programs) by which improvement in management and research into sleep disorders could be accomplished and, not later than 18 months after initial meeting of Commission, to submit to appropriate Committees of Congress a final report, and provided for termination of the Commission 30 days after submission of final report.

RESEARCH WITH RESPECT TO HEALTH RESOURCES AND SERVICES ADMINISTRATION

Section 632 of Pub. L. 100–607 provided that with respect to any program of research pursuant to this chapter, any such program carried out in fiscal year 1987 by an agency other than Health Resources and Services Administration (or appropriate to be carried out by such an agency) could not, for each of fiscal years 1989 through 1991, be carried out by such Administration.

CONTINUING CARE FOR PSYCHIATRIC PATIENTS IN FORMER CLINICAL RESEARCH CENTER AT NATIONAL INSTITUTE ON DRUG ABUSE

Pub. L. 99–117, §10, Oct. 7, 1985, 99 Stat. 494, provided that: ''In any fiscal year beginning after September 30, 1981, from funds appropriated for carrying out section 301 of the Public Health Service Act [this section] with respect to mental health, the Secretary of Health and Human Services may provide, by contract or otherwise, for the continuing care of psychiatric patients who were under active and continuous treatment at the National Institute on Drug Abuse Clinical Research Center on the date such Clinical Research Center ceased operations.''

ANALYSIS OF THYROID CANCER; CREATION AND PUBLICATION OF RADIOEPIDEMIOLOGICAL TABLES

Pub. L. 97–414, §7, Jan. 4, 1983, 96 Stat. 2059, provided that:

''(a) In carrying out section 301 of the Public Health Service Act [this section], the Secretary of Health and Human Services shall—

''(1) conduct scientific research and prepare analyses necessary to develop valid and credible assessments of the risks of thyroid cancer that are associated with thyroid doses of Iodine 131;

''(2) conduct scientific research and prepare analyses necessary to develop valid and credible methods to estimate the thyroid doses of Iodine 131 that are received by individuals from nuclear bomb fallout;

''(3) conduct scientific research and prepare analyses necessary to develop valid and credible assessments of the exposure to Iodine 131 that the American people received from the Nevada atmospheric nuclear bomb tests; and

''(4) prepare and transmit to the Congress within one year after the date of enactment of this Act [Jan. 4, 1983] a report with respect to the activities conducted in carrying out paragraphs (1), (2), and (3).

''(b)(1) Within one year after the date of enactment of this Act [Jan. 4, 1983], the Secretary of Health and Human Services shall devise and publish radioepidemiological tables that estimate the likelihood that persons who have or have had any of the radiation related cancers and who have received specific doses prior to the onset of such disease developed cancer as a result of these doses. These tables shall show a probability of causation of developing each radiation related cancer associated with receipt of doses ranging from 1 millirad to 1,000 rads in terms of sex, age at time of exposure, time from exposure to the onset of the cancer in question, and such other categories as the Secretary, after consulting with appropriate scientific experts, determines to be relevant. Each probability of causation shall be calculated and displayed as a single percentage figure.

''(2) At the time the Secretary of Health and Human Services publishes the tables pursuant to paragraph (1), such Secretary shall also publish—

''(A) for the tables of each radiation related cancer, an evaluation which will assess the credibility, validity, and degree of certainty associated with such tables; and

''(B) a compilation of the formulas that yielded the probabilities of causation listed in such tables. Such formulas shall be published in such a manner and together with information necessary to determine the probability of causation of any individual who has or has had a radiation related cancer and has received any given dose.

''(3) The tables specified in paragraph (1) and the formulas specified in paragraph (2) shall be devised from the best available data that are most applicable to the United States, and shall be devised in accordance with the best available scientific procedures and expertise. The Secretary of Health and Human Services shall update these tables and formulas every four years, or whenever he deems it necessary to insure that they continue to represent the best available scientific data and expertise.''

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 242. Studies and investigations on use and misuse of narcotic drugs and other drugs; annual report to Attorney General; cooperation with States

(a) In carrying out the purposes of section 241 of this title with respect to drugs the use or misuse of which might result in drug abuse or dependency, the studies and investigations authorized therein shall include the use and misuse of narcotic drugs and other drugs. Such studies and investigations shall further include the quantities of crude opium, coca leaves, and their salts, derivatives, and preparations, and other drugs subject to control under the Controlled Substances Act [21 U.S.C. 801 et seq.] and Controlled Substances Import and Export Act [21 U.S.C. 951 et seq.], together with reserves thereof, necessary to supply the normal and emergency medicinal and scientific requirements of the United States. The results of studies and investigations of the quantities of narcotic drugs or other drugs subject to control under such Acts, together with reserves of such drugs, that are necessary to supply the normal and emergency medicinal and scientific requirements of the United States, shall be reported not later than the first day of April of each year to the Attorney General, to be used at his discretion in determining manufacturing quotas or importation requirements under such Acts.

(b) The Surgeon General shall cooperate with States for the purpose of aiding them to solve their narcotic drug problems and shall give authorized representatives of the States the benefit of his experience in the care, treatment, and rehabilitation of narcotic addicts to the end that each State may be encouraged to provide adequate facilities and methods for the care and treatment of its narcotic addicts.

(July 1, 1944, ch. 373, title III, § 302, 58 Stat. 692; Pub. L. 91–513, title II, § 701(j), Oct. 27, 1970, 84 Stat. 1282.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (a), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsec. (a), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–513 inserted references to drug dependency, drugs other than narcotic drugs, and substances subject to control under the Controlled Substances Act and the Controlled Substances Import and Export Act, substituted the first day of April of each year for the first day of September of each year as the date by which the study results must be submitted, substituted the Attorney General for the Secretary of the Treasury as the officer to whom the report is to be submitted, and struck out references to the Narcotic Drugs Import and Export Act.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91–513, set out as an Effective Date note under section 801 of Title 21, Food and Drugs.

SAVINGS PROVISION

Amendment by Pub. L. 91–513 not to affect or abate any prosecutions for violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs on Oct. 27,

1970, to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91–513, set out as a note under section 321 of Title 21, Food and Drugs.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

MARIHUANA AND HEALTH REPORTING

Pub. L. 91–296, title V, June 30, 1970, 84 Stat. 352, as amended by Pub. L. 95–461, § 3(a), Oct. 14, 1978, 92 Stat. 1268; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, known as the Marihuana and Health Reporting Act, which required the Secretary of Health and Human Services, after consultation with the Surgeon General and other appropriate individuals, to transmit a report to the Congress on or before January 31, 1971, and biennially thereafter (1) containing current information on the health consequences of using marihuana, and (2) containing such recommendations for legislative and administrative action as he may deem appropriate, was repealed by Pub. L. 98–24, § 2(d), Apr. 26, 1983, 97 Stat. 182.

§ 242a. Repealed. Pub. L. 106–310, div. B, title XXXII, § 3201(b)(1), Oct. 17, 2000, 114 Stat. 1190

Section, act July 1, 1944, ch. 373, title III, § 303, as added July 3, 1946, ch. 538, § 7(c), 60 Stat. 423; amended Aug. 2, 1956, ch. 871, title V, § 501, 70 Stat. 929; Pub. L. 91–513, title I, § 3(a), Oct. 27, 1970, 84 Stat. 1241; Pub. L. 93–282, title I, § 122(b), May 14, 1974, 88 Stat. 132; Pub. L. 93–348, title I, § 104(a)(2), July 12, 1974, 88 Stat. 346; Pub. L. 95–633, title I, § 108(b), Nov. 10, 1978, 92 Stat. 3773; Pub. L. 96–398, title VIII, § 803(a), Oct. 7, 1980, 94 Stat. 1607; Pub. L. 100–177, title II, § 202(a), Dec. 1, 1987, 101 Stat. 996; Pub. L. 100–607, title I, § 163(1)(A), Nov. 4, 1988, 102 Stat. 3062; Pub. L. 100–690, title II, § 2058(b), Nov. 18, 1988, 102 Stat. 4214; Pub. L. 101–597, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3035; Pub. L. 102–321, title I, § 115(b), July 10, 1992, 106 Stat. 348; Pub. L. 102–408, title III, § 305, Oct. 13, 1992, 106 Stat. 2084; Pub. L. 105–392, title IV, § 403, Nov. 13, 1998, 112 Stat. 3588, related to mental health.

§ 242b. General authority respecting research, evaluations, and demonstrations in health statistics, health services, and health care technology

(a) Scope of activities

The Secretary may, through the Agency for Healthcare Research and Quality or the National Center for Health Statistics, or using Ruth L. Kirschstein National Research Service Awards or other appropriate authorities, undertake and support training programs to provide for an expanded and continuing supply of individuals qualified to perform the research, evaluation, and demonstration projects set forth in section 242k of this title and in subchapter VII of this chapter.

(b) Additional authority; scope of activities

To implement subsection (a) of this section and section 242k of this title, the Secretary may, in addition to any other authority which under other provisions of this chapter or any other law may be used by him to implement such subsection, do the following:

(1) Utilize personnel and equipment, facilities, and other physical resources of the Department of Health and Human Services, permit appropriate (as determined by the Secretary) entities and individuals to utilize the physical resources of such Department, provide technical assistance and advice, make grants to public and nonprofit private entities and individuals, and, when appropriate, enter into contracts with public and private entities and individuals.

(2) Admit and treat at hospitals and other facilities of the Service persons not otherwise eligible for admission and treatment at such facilities.

(3) Secure, from time to time and for such periods as the Secretary deems advisable but in accordance with section 3109 of title 5, the assistance and advice of consultants from the United States or abroad. The Secretary may for the purpose of carrying out the functions set forth in sections 242c,[1] 242k, and 242n[1] of this title, obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the number of days or the period of service) for each of the centers the services of not more than fifteen experts who have appropriate scientific or professional qualifications.

(4) Acquire, construct, improve, repair, operate, and maintain laboratory, research, and other necessary facilities and equipment, and such other real or personal property (including patents) as the Secretary deems necessary; and acquire, without regard to section 8141 of title 40, by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia.

(c) Coordination of activities through units of Department

(1) The Secretary shall coordinate all health services research, evaluations, and demonstrations, all health statistical and epidemiological activities, and all research, evaluations, and demonstrations respecting the assessment of health care technology undertaken and supported through units of the Department of Health and Human Services. To the maximum extent feasible such coordination shall be carried out through the Agency for Healthcare Research and Quality and the National Center for Health Statistics.

(2) The Secretary shall coordinate the health services research, evaluations, and demonstrations, the health statistical and (where appropriate) epidemiological activities, and the research, evaluations, and demonstrations respecting the assessment of health care technology authorized by this chapter through the Agency for Healthcare Research and Quality and the National Center for Health Statistics.

(July 1, 1944, ch. 373, title III, § 304, as added July 28, 1955, ch. 417, § 3, 69 Stat. 382; amended Aug. 2, 1956, ch. 871, title V, § 502, 70 Stat. 930; Pub. L.

[1] See References in Text note below.

90–174, § 3(a), Dec. 5, 1967, 81 Stat. 534; Pub. L. 91–296, title IV, § 401(b)(1)(A), June 30, 1970, 84 Stat. 352; Pub. L. 91–515, title II, §§ 201(a)–(c), 202, 203, Oct. 30, 1970, 84 Stat. 1301–1303; Pub. L. 93–45, title I, § 102, June 18, 1973, 87 Stat. 91; Pub. L. 93–353, title I, § 103, July 23, 1974, 88 Stat. 362; Pub. L. 95–623, §§ 3, 7, Nov. 9, 1978, 92 Stat. 3443, 3451; Pub. L. 96–32, § 5(a)–(c), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title IX, § 918, Aug. 13, 1981, 95 Stat. 565; Pub. L. 98–551, § 5(c), Oct. 30, 1984, 98 Stat. 2819; Pub. L. 101–239, title VI, § 6103(e)(1), Dec. 19, 1989, 103 Stat. 2205; Pub. L. 103–183, title V, § 501(b), Dec. 14, 1993, 107 Stat. 2237; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874.)

REFERENCES IN TEXT

Sections 242c and 242n of this title, referred to in subsec. (b)(3), were repealed by Pub. L. 101–239, title VI, § 6103(d)(1), Dec. 19, 1989, 103 Stat. 2205.

CODIFICATION

In subsec. (b)(4), ''section 8141 of title 40'' substituted for ''the Act of March 3, 1877 (40 U.S.C. 34)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards''.

1999—Subsecs. (a), (c). Pub. L. 106–129 substituted ''Agency for Healthcare Research and Quality'' for ''Agency for Health Care Policy and Research'' wherever appearing.

1993—Subsec. (d). Pub. L. 103–183 struck out subsec. (d) which directed Secretary to conduct an ongoing study of present and projected future health costs of pollution and other environmental conditions resulting from human activity and to submit to Congress reports on the study.

1989—Subsec. (a). Pub. L. 101–239, § 6103(e)(1)(B), substituted ''the Agency for Health Care Policy and Research'' for ''the National Center for Health Services Research and Health Care Technology Assessment'' and ''in section 242k of this title and in subchapter VII of this chapter'' for ''in sections 242c, 242k, and 242n of this title''.

Pub. L. 101–239, § 6103(e)(1)(A), redesignated par. (3) as entire subsec. (a) and struck out pars. (1) and (2) which required Secretary to conduct and support research, demonstrations, evaluations, and statistical and epidemiological activities for purpose of improving health services in the United States, and which specified types of activities Secretary was to emphasize in carrying out par. (1).

Subsec. (b). Pub. L. 101–239, § 6103(e)(1)(C), substituted ''subsection (a) of this section and section 242k of this title'' for ''subsection (a) of this section''.

Subsec. (c)(1), (2). Pub. L. 101–239, § 6103(e)(1)(D), substituted ''the Agency for Health Care Policy and Research'' for ''the National Center for Health Services Research and Health Care Technology Assessment''.

1984—Subsec. (a)(1). Pub. L. 98–551, § 5(c)(1), (2), substituted ''the National Center for Health Services Research and Health Care Technology Assessment and the National Center for Health Statistics'' for ''the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology''.

Subsec. (a)(3). Pub. L. 98–551, § 5(c)(1), (3), substituted ''the National Center for Health Services Research and Health Care Technology Assessment or the National Center for Health Statistics'' for ''the National Center for Health Services Research, the National Center for Health Statistics, or the National Center for Health Care Technology''.

Subsec. (c)(1), (2). Pub. L. 98–551, § 5(c)(1), (2), substituted ''the National Center for Health Services Research and Health Care Technology Assessment and the National Center for Health Statistics'' for ''the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology''.

1981—Subsec. (a)(3). Pub. L. 97–35, § 918(a), substituted ''may'' for ''shall'', ''or the'' for ''and the'', ''or using'' for ''and using'', and ''or other'' for ''and other''.

Subsecs. (b)(1), (c)(1). Pub. L. 97–35, § 918(d)(1), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(1). Pub. L. 97–35, § 918(b)(1), (2), substituted provisions relating to advice and assistance of the National Academy of Sciences, for provisions relating to joint authority of the National Academy of Sciences, and struck out definition of ''Academy'' as meaning the National Academy of Sciences.

Subsec. (d)(3). Pub. L. 97–35, § 918(b)(3), (c), (d)(2), substituted ''every three years'' for ''every two years'', and ''Energy and'' for ''Interstate and Foreign'', and struck out references to the Academy.

1979—Subsec. (b)(1), (3). Pub. L. 96–32, § 5(a), (b), amended directory language of Pub. L. 95–623, § 3(b), (d), and required no change in text. See 1978 Amendment note below.

Subsec. (d). Pub. L. 96–32, § 5(c), substituted ''(d)'' for ''(e)'' as designation of subsection added by Pub. L. 95–623, § 7, thereby correcting the subsection designation.

1978—Subsec. (a)(1). Pub. L. 95–623, § 3(a), substituted provision for the Secretary acting through the National Center for Health Care Technology for such action through other units of the Department of Health, Education, and Welfare and ''conduct'' for ''undertake'', included epidemiological activities, and declared as an objective the improvement of the effectiveness, efficiency, and quality of Federal health services.

Subsec. (a)(2). Pub. L. 95–623, § 3(a), provided for emphasis to demonstrations, evaluations, and epidemiological activities; redesignated as subpar. (A) former subpar. (C); struck out ''technology'' and ''quality'' after ''organization,'' and ''utilization,'', respectively, and end clause ''including systems for the delivery of preventive, personal, and mental health care'' and former subpar. (A) activities respecting ''the determination of an individual's health''; added subpars. (B) through (D); struck out former subpar. (D) activities respecting ''individual and community knowledge of individual health and the systems for the delivery of health care''; added subpars. (E) through (I); and redesignated as subpar. (J) former subpar. (B).

Subsec. (a)(3). Pub. L. 95–623, § 3(a), added par. (3).

Subsec. (b)(1). Pub. L. 95–623, § 3(b), as amended by Pub. L. 96–32, § 5(a), substituted '', when appropriate, enter into contracts with public and private entities and individuals'' for ''enter into contracts with public and private entities and individuals, for (A) health services research, evaluation, and demonstrations, and (B) health services research and health statistics training, and (C) health statistical activities''.

Subsec. (b)(3). Pub. L. 95–623, § 3(d), as amended by Pub. L. 96–32, § 5(b), substituted ''advisable but in accordance with section 3109 of title 5'' for ''advisable'', struck out ''experts and'' before ''consultants'', and authorized the Secretary to obtain for the centers the services of experts with appropriate scientific or professional qualifications.

Subsec. (c). Pub. L. 95–623, § 3(c), designated existing text as par. (1), substituted ''evaluations, and demonstrations, all health statistical and epidemiological activities, and all research, evaluations, and demonstrations respecting the assessment of health care technology'' for ''evaluation, demonstration, and health statistical activities'' before ''undertaken and supported'', required coordination of activities to also be carried out through the National Center for Health Care Technology, and added par. (2).

Subsec. (d). Pub. L. 95–623, § 7, as amended by Pub. L. 96–32, § 5(c), added subsec. (d).

1974—Pub. L. 93–353, in revising generally provisions of subsecs. (a) to (c), provided for general authority respecting health statistics and health services research, evaluation, and demonstrations, subsec. (a) relating to scope of activities, subsec. (b) relating to additional authority and scope of activities, and subsec. (c) relating to coordination of activities through units of the Department. Former provisions related to research and demonstrations relating to health facilities and services, subsec. (a) relating to grants and contracts for projects for research, experiments, or demonstrations and related training, cost limitation, wage rates, labor standards, and other conditions, and payments (former subsec. (a)(2) and (3) now being covered by section 242m(h) and (e), respectively), subsec. (b) relating to systems analysis of national health care plans, and cost and coverage report on existing legislative proposals, and subsec. (c) relating to authorization of appropriations.

1973—Subsec. (c)(1). Pub. L. 93–45 authorized appropriations of $42,617,000 for fiscal year ending June 30, 1974.

1970—Subsec. (a)(1). Pub. L. 91–515, §§ 201(a)(1), 203, redesignated subsec. (a) as (a)(1), substituted ''(A)'' and ''(B)'' for ''(1)'' and ''(2)'', and ''(i) to (iii)'' for ''(A) to (C)'', and added cls. (iv) and (v).

Subsec. (a)(2). Pub. L. 91–515, § 201(a)(2), redesignated subsec. (b) as (a)(2), and substituted ''subsection'' for ''section'' wherever appearing.

Subsec. (a)(3). Pub. L. 91–515, §§ 201(a)(3), 202, redesignated subsec. (c) as (a)(3)(A), substituted ''subsection'' for ''section'' wherever appearing, and added subsec. (a)(3)(B).

Subsec. (b). Pub. L. 91–515, § 201(a)(2)(A), (b), added subsec. (b). Former subsec. (b) redesignated (a)(2).

Subsecs. (c), (d). Pub. L. 91–515, §§ 201(a)(3)(A), (c), 202(1), redesignated subsec. (d) as (c), and substituted provisions authorizing appropriations for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973, and authorizing to be appropriated such additional sums for each fiscal year as may be necessary to carry out the provisions of subsec. (b), for provisions authorizing appropriations of $20,000,000 for the fiscal year ending June 30, 1968, $40,000,000 for the fiscal year ending June 30, 1969, and $60,000,000 for the fiscal year ending June 30, 1970. Former subsec. (c) redesignated (a)(3)(A).

Pub. L. 91–296 struck out provisions authorizing use of appropriated funds for evaluation of program authorized by this section. See section 229b of this title.

1967—Pub. L. 90–174 substituted provisions of subsecs. (a) to (d) for research and demonstrations relating to health facilities (incorporated from former section 291n of this title) for provisions of former subsecs. (a) to (d) for mental health study including grants for special projects, conditions thereof, and definition of ''organization'', authorization of appropriations, terms of grant, availability of amounts otherwise appropriated and noninterference with research and study programs of the National Institute of Mental Health, and acceptance of additional financial support.

1956—Act Aug. 2, 1956, changed heading of section 304 of act July 1, 1944 from ''Grants for special projects in mental health'' to ''Mental health study grants''. Section heading has been changed for purposes of codification.

EFFECTIVE DATE OF 1970 AMENDMENTS

Section 201(d) of Pub. L. 91–515 provided that: ''The amendments made by subsection (c) of this section [amending this section] shall be effective only with respect to fiscal years ending after June 30, 1970.''

Section 401(b)(1) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to appropriations for fiscal years beginning after June 30, 1970.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Aug. 2, 1956, effective July 1, 1956, see section 503 of act Aug. 2, 1956.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

COMMISSION ON SYSTEMIC INTEROPERABILITY

Pub. L. 108–173, title X, § 1012, Dec. 8, 2003, 117 Stat. 2435, directed the Secretary of Health and Human Services to establish a commission to be known as the ''Commission on Systemic Interoperability'', which would develop a comprehensive strategy for the adoption and implementation of health care information technology standards, and which would terminate 30 days after submitting a report, not later than Oct. 31, 2005, to the Secretary and to Congress, describing the strategy developed.

MODEL STANDARDS WITH RESPECT TO PREVENTIVE HEALTH SERVICES IN COMMUNITIES

Pub. L. 95–83, title III, § 314, Aug. 1, 1977, 91 Stat. 398, required the Secretary of Health, Education, and Welfare, within two years of Aug. 1, 1977, to establish model standards with respect to preventive health services in communities and report such standards to Congress.

TRANSFER OF EQUIPMENT

Pub. L. 94–573, § 15, Oct. 21, 1976, 90 Stat. 2719, provided that notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare could vest title to equipment purchased with funds under the seven contracts for emergency medical services demonstration projects entered into in 1972 and 1973 under this section (as in effect at the time the contracts were entered into), and by contractors with the United States under such contracts or subcontractors under such contracts, in such contractors or subcontractors without further obligation to the Government or on such terms as the Secretary considered appropriate.

CONGRESSIONAL DECLARATION OF PURPOSE

Section 2 of Joint Res. July 28, 1955, provides a Congressional statement of the critical need for an analysis and reevaluation of the human and economic problems of mental illness and of the resources, methods, and practices utilized in diagnosing, treating, caring for, and rehabilitating the mentally ill, both within and outside of institutions, as might lead to the development of recommendations for such better utilization of those resources or such improvements on and new developments in methods of diagnosis, treatment, care, and rehabilitation as give promise of resulting in a marked reduction in the incidence or duration of mental illness and, in consequence, a lessening of the appalling emotional and financial drain on the families of those afflicted or on the economic resources of the States and of the Nation and a declaration of the policy to promote mental health and to help solve the complex and the interrelated problems posed by mental illness by encouraging the undertaking of nongovernmental, multidisciplinary research into and reevaluation of all aspects of our resources, methods, and practices for diagnosing, treating, caring for, and rehabilitating the mentally ill, including research aimed at the prevention of mental illness.

CHILDREN'S EMOTIONAL ILLNESS STUDY; PROGRAM GRANTS; CONDITIONS; DEFINITIONS; APPROPRIATIONS; TERMS OF GRANT

Pub. L. 89–97, title II, § 231, July 30, 1965, 79 Stat. 360, as amended by Pub. L. 90–248, title III, § 305, Jan. 2, 1968, 81 Stat. 929, authorized the Secretary of Health, Edu-

cation, and Welfare upon the recommendation of the National Advisory Mental Health Council and after securing the advice of experts in pediatrics and child welfare, to make grants to organizations on certain conditions for carrying out a program of research into and study of resources, methods, and practices for diagnosing or preventing emotional illness in children and of treating, caring for, and rehabilitating children with emotional illnesses, defined ''organization'', and authorized appropriations for the making of such grants for fiscal years ending June 30, 1966, and June 30, 1967, with such research and study to be completed not later than three years from the date it was inaugurated.

§ 242c. Repealed. Pub. L. 101–239, title VI, § 6103(d)(1)(A), Dec. 19, 1989, 103 Stat. 2205

Section, act July 1, 1944, ch. 373, title III, § 305, as added July 3, 1956, ch. 510, § 3, 70 Stat. 490; amended Oct. 30, 1970, Pub. L. 91–515, title II, § 210, 84 Stat. 1303; June 18, 1973, Pub. L. 93–45, title I, § 103, 87 Stat. 91; July 23, 1974, Pub. L. 93–353, title I, § 104, 88 Stat. 363; Oct. 8, 1976, Pub. L. 94–460, title III, § 301, 90 Stat. 1960; Nov. 9, 1978, Pub. L. 95–623, § 4, 92 Stat. 3445; Aug. 13, 1981, Pub. L. 97–35, title IX, § 919(a)(1), (2)(A), (3), (b)(1), (c), (d), 95 Stat. 565, 566; Oct. 30, 1984, Pub. L. 98–551, §§ 5(a), (b), 6, 98 Stat. 2817, 2819, 2820; Oct. 7, 1985, Pub. L. 99–117, § 6, 99 Stat. 492; Nov. 14, 1986, Pub. L. 99–660, title III, § 311(b)(2), 100 Stat. 3779; Dec. 1, 1987, Pub. L. 100–177, title I, §§ 101, 102, 101 Stat. 987; Nov. 4, 1988, Pub. L. 100–607, title II, § 204(1), 102 Stat. 3079; Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(b)(3), 102 Stat. 4244; Aug. 16, 1989, Pub. L. 101–93, § 5(e)(3), 103 Stat. 612, related to National Center for Health Services Research and Health Care Technology Assessment.

TERMINATION OF NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT

Section 6103(d)(1)(A) of Pub. L. 101–239 provided in part that the National Center for Health Services Research and Health Care Technology Assessment is terminated.

TRANSITIONAL AND SAVINGS PROVISIONS FOR PUB. L. 101–239

For provision transferring personnel of Department of Health and Human Services employed on Dec. 19, 1989, in connection with functions vested in Administrator for Health Care Policy and Research pursuant to amendments made by section 6103 of Pub. L. 101–239, and assets, liabilities, etc., of Department arising from or employed, held, used, or available on that date, or to be made available after that date, in connection with those functions, to Administrator for appropriate allocation, and for provisions for continued effectiveness of actions, orders, rules, official documents, etc., of Department that have been issued, made, granted, or allowed to become effective in performance of those functions, and that were effective on Dec. 19, 1989, see section 6103(f) of Pub. L. 101–239, set out as a note under section 299 of this title.

§ 242d. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title III, § 306, as added Aug. 2, 1956, ch. 871, title I, § 101, 70 Stat. 923; amended July 23, 1959, Pub. L. 86–105, § 1, 73 Stat. 239; Sept. 8, 1960, Pub. L. 88–497, § 2, 78 Stat. 613; Aug. 16, 1968, Pub. L. 90–490, title III, § 302(b), 82 Stat. 789; Mar. 12, 1970, Pub. L. 91–208, § 3, 84 Stat. 52; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; June 18, 1973, Pub. L. 93–45, title I, § 104(a), 87 Stat. 91, which related to graduate or specialized training for physicians, engineers, nurses, and other professional personnel, was renumbered section 312 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 244–1 of this title, and was subsequently repealed.

§ 242e. Repealed. Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362

Section, act July 1, 1944, ch. 373, title III, § 307, as added Aug. 2, 1956, ch. 871, title II, § 201, 70 Stat. 924; amended July 23, 1959, Pub. L. 86–105, § 2, 73 Stat. 239; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311, provided for a professional nurse traineeship program for which authorization of appropriations were made through fiscal year ending June 30, 1964. Provision for the continuation of the program was made by the Nurse Training Act of 1964, which enacted section 297 et seq. of this title.

§§ 242f to 242j. Transferred

CODIFICATION

Section 242f, act July 1, 1944, ch. 373, title III, § 308, as added July 12, 1960, Pub. L. 86–610, § 3, 74 Stat. 364, which related to international cooperation with respect to biomedical research and health services research and statistical activities, was renumbered section 307 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 242*l* of this title.

Section 242g, act July 1, 1944, ch. 373, title III, § 309, as added Sept. 8, 1960, Pub. L. 86–720, § 1(a), 74 Stat. 819; amended Aug. 27, 1964, Pub. L. 88–497, § 3, 78 Stat. 613; Nov. 3, 1966, Pub. L. 89–749, § 4, 80 Stat. 1190; Dec. 5, 1967, Pub. L. 90–147, §§ 2(g), 8(c), 81 Stat. 534, 540; Aug. 16, 1968, Pub. L. 90–490, title III, § 302(a), 82 Stat. 788; Mar. 12, 1970, Pub. L. 91–208, §§ 1, 2, 84 Stat. 52; June 30, 1970, Pub. L. 91–296, title IV, § 401(b)(1)(B), 84 Stat. 352; June 18, 1973, Pub. L. 93–45, title I, § 104(b), (c), 87 Stat. 91, which related to graduate public health training grants, was renumbered section 313 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 245a of this title, and was subsequently repealed.

Section 242h, act July 1, 1944, ch. 373, title III, § 310, as added Sept. 25, 1962, Pub. L. 87–692, 76 Stat. 592, and amended and renumbered, which related to health services for domestic agricultural migrants, was renumbered section 319 of act July 1, 1944, by Pub. L. 93–353, title I, § 102(d), July 23, 1974, 88 Stat. 362, transferred to section 247d of this title, and subsequently renumbered and transferred to section 254b of this title, prior to being omitted in the general amendment of subpart I (§ 254b et seq.) of part D of this subchapter by Pub. L. 104–299, § 2.

Section 242i, act July 1, 1944, ch. 373, title III, § 310A, as added Oct. 30, 1970, Pub. L. 91–515, title II, § 270, 84 Stat. 1306; amended Nov. 18, 1971, Pub. L. 92–157, title II, § 201, 85 Stat. 461, which related to administration of grants in multigrant projects, was renumbered section 226 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 235 of this title.

Section 242j, act July 1, 1944, ch. 373, title III, § 310B, as added Oct. 30, 1970, Pub. L. 91–515, title II, § 280, 84 Stat. 1307, which provided for and annual report by Secretary on activities related to health facilities and services and expenditure of funds, was renumbered section 227 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 236 of this title, and was subsequently repealed.

§ 242k. National Center for Health Statistics

(a) Establishment; appointment of Director; statistical and epidemiological activities

There is established in the Department of Health and Human Services the National Center for Health Statistics (hereinafter in this section referred to as the ''Center'') which shall be under the direction of a Director who shall be appointed by the Secretary. The Secretary, acting through the Center, shall conduct and support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.

(b) Duties

In carrying out subsection (a) of this section, the Secretary, acting through the Center,

(1) shall collect statistics on—

(A) the extent and nature of illness and disability of the population of the United States (or of any groupings of the people included in the population), including life expectancy, the incidence of various acute and chronic illnesses, and infant and maternal morbidity and mortality,

(B) the impact of illness and disability of the population on the economy of the United States and on other aspects of the well-being of its population (or of such groupings),

(C) environmental, social, and other health hazards,

(D) determinants of health,

(E) health resources, including physicians, dentists, nurses, and other health professionals by specialty and type of practice and the supply of services by hospitals, extended care facilities, home health agencies, and other health institutions,

(F) utilization of health care, including utilization of (i) ambulatory health services by specialties and types of practice of the health professionals providing such services, and (ii) services of hospitals, extended care facilities, home health agencies, and other institutions,

(G) health care costs and financing, including the trends in health care prices and cost, the sources of payments for health care services, and Federal, State, and local governmental expenditures for health care services, and

(H) family formation, growth, and dissolution;

(2) shall undertake and support (by grant or contract) research, demonstrations, and evaluations respecting new or improved methods for obtaining current data on the matters referred to in paragraph (1);

(3) may undertake and support (by grant or contract) epidemiological research, demonstrations, and evaluations on the matters referred to in paragraph (1); and

(4) may collect, furnish, tabulate, and analyze statistics, and prepare studies, on matters referred to in paragraph (1) upon request of public and nonprofit private entities under arrangements under which the entities will pay the cost of the service provided.

Amounts appropriated to the Secretary from payments made under arrangements made under paragraph (4) shall be available to the Secretary for obligation until expended.

(c) Statistical and epidemiological compilations and surveys

The Center shall furnish such special statistical and epidemiological compilations and surveys as the Committee on Labor and Human Resources and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives may request. Such statistical and epidemiological compilations and surveys shall not be made subject to the payment of the actual or estimated cost of the preparation of such compilations and surveys.

(d) Technical aid to States and localities

To insure comparability and reliability of health statistics, the Secretary shall, through the Center, provide adequate technical assistance to assist State and local jurisdictions in the development of model laws dealing with issues of confidentiality and comparability of data.

(e) Cooperative Health Statistics System

For the purpose of producing comparable and uniform health information and statistics, there is established the Cooperative Health Statistics System. The Secretary, acting through the Center, shall—

(1) coordinate the activities of Federal agencies involved in the design and implementation of the System;

(2) undertake and support (by grant or contract) research, development, demonstrations, and evaluations respecting the System;

(3) make grants to and enter into contracts with State and local health agencies to assist them in meeting the costs of data collection and other activities carried out under the System; and

(4) review the statistical activities of the Department of Health and Human Services to assure that they are consistent with the System.

States participating in the System shall designate a State agency to administer or be responsible for the administration of the statistical activities within the State under the System. The Secretary, acting through the Center, shall prescribe guidelines to assure that statistical activities within States participating in the system[1] produce uniform and timely data and assure appropriate access to such data.

(f) Federal-State cooperation

To assist in carrying out this section, the Secretary, acting through the Center, shall cooperate and consult with the Departments of Commerce and Labor and any other interested Federal departments or agencies and with State and local health departments and agencies. For such purpose he shall utilize insofar as possible the services or facilities of any agency of the Federal Government and, without regard to section 5 of title 41, of any appropriate State or other public agency, and may, without regard to such section, utilize the services or facilities of any private agency, organization, group, or individual, in accordance with written agreements between the head of such agency, organization, or group and the Secretary or between such individual and the Secretary. Payment, if any, for such services or facilities shall be made in such amounts as may be provided in such agreement.

(g) Collection of health data; data collection forms

To secure uniformity in the registration and collection of mortality, morbidity, and other health data, the Secretary shall prepare and distribute suitable and necessary forms for the collection and compilation of such data.

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[1] So in original. Probably should be capitalized.

(h) Registration area records

(1) There shall be an annual collection of data from the records of births, deaths, marriages, and divorces in registration areas. The data shall be obtained only from and restricted to such records of the States and municipalities which the Secretary, in his discretion, determines possess records affording satisfactory data in necessary detail and form. The Secretary shall encourage States and registration areas to obtain detailed data on ethnic and racial populations, including subpopulations of Hispanics, Asian Americans, and Pacific Islanders with significant representation in the State or registration area. Each State or registration area shall be paid by the Secretary the Federal share of its reasonable costs (as determined by the Secretary) for collecting and transcribing (at the request of the Secretary and by whatever method authorized by him) its records for such data.

(2) There shall be an annual collection of data from a statistically valid sample concerning the general health, illness, and disability status of the civilian noninstitutionalized population. Specific topics to be addressed under this paragraph, on an annual or periodic basis, shall include the incidence of illness and accidental injuries, prevalence of chronic diseases and impairments, disability, physician visits, hospitalizations, and the relationship between demographic and socioeconomic characteristics and health characteristics.

(i) Technical assistance in effective use of statistics

The Center may provide to public and nonprofit private entities technical assistance in the effective use in such activities of statistics collected or compiled by the Center.

(j) Coordination of health statistical and epidemiological activities

In carrying out the requirements of section 242b(c) of this title and paragraph (1) of subsection (e) of this section, the Secretary shall coordinate health statistical and epidemiological activities of the Department of Health and Human Services by—

(1) establishing standardized means for the collection of health information and statistics under laws administered by the Secretary;

(2) developing, in consultation with the National Committee on Vital and Health Statistics, and maintaining the minimum sets of data needed on a continuing basis to fulfill the collection requirements of subsection (b)(1) of this section;

(3) after consultation with the National Committee on Vital and Health Statistics, establishing standards to assure the quality of health statistical and epidemiological data collection, processing, and analysis;

(4) in the case of proposed health data collections of the Department which are required to be reviewed by the Director of the Office of Management and Budget under section 3509[2] of title 44, reviewing such proposed collections to determine whether they conform with the minimum sets of data and the standards promulgated pursuant to paragraphs (2) and (3), and if any such proposed collection is found not to be in conformance, by taking such action as may be necessary to assure that it will conform to such sets of data and standards, and

(5) periodically reviewing ongoing health data collections of the Department, subject to review under such section 3509,[2] to determine if the collections are being conducted in accordance with the minimum sets of data and the standards promulgated pursuant to paragraphs (2) and (3) and, if any such collection is found not to be in conformance, by taking such action as may be necessary to assure that the collection will conform to such sets of data and standards not later than the ninetieth day after the date of the completion of the review of the collection.

(k) National Committee on Vital and Health Statistics; establishment; membership; term of office; compensation; functions; consultations of Secretary with Committee and professional advisory groups

(1) There is established in the Office of the Secretary a committee to be known as the National Committee on Vital and Health Statistics (hereinafter in this subsection referred to as the ''Committee'') which shall consist of 18 members.

(2) The members of the Committee shall be appointed from among persons who have distinguished themselves in the fields of health statistics, electronic interchange of health care information, privacy and security of electronic information, population-based public health, purchasing or financing health care services, integrated computerized health information systems, health services research, consumer interests in health information, health data standards, epidemiology, and the provision of health services. Members of the Committee shall be appointed for terms of 4 years.

(3) Of the members of the Committee—

(A) 1 shall be appointed, not later than 60 days after August 21, 1996, by the Speaker of the House of Representatives after consultation with the Minority Leader of the House of Representatives;

(B) 1 shall be appointed, not later than 60 days after August 21, 1996, by the President pro tempore of the Senate after consultation with the Minority Leader of the Senate; and

(C) 16 shall be appointed by the Secretary.

(4) Members of the Committee shall be compensated in accordance with section 210(c) of this title.

(5) The Committee—

(A) shall assist and advise the Secretary—

(i) to delineate statistical problems bearing on health and health services which are of national or international interest;

(ii) to stimulate studies of such problems by other organizations and agencies whenever possible or to make investigations of such problems through subcommittees;

(iii) to determine, approve, and revise the terms, definitions, classifications, and guidelines for assessing health status and health

[2] See References in Text note below.

services, their distribution and costs, for use (I) within the Department of Health and Human Services, (II) by all programs administered or funded by the Secretary, including the Federal-State-local cooperative health statistics system referred to in subsection (e) of this section, and (III) to the extent possible as determined by the head of the agency involved, by the Department of Veterans Affairs, the Department of Defense, and other Federal agencies concerned with health and health services;

(iv) with respect to the design of and approval of health statistical and health information systems concerned with the collection, processing, and tabulation of health statistics within the Department of Health and Human Services, with respect to the Cooperative Health Statistics System established under subsection (e) of this section, and with respect to the standardized means for the collection of health information and statistics to be established by the Secretary under subsection (j)(1) of this section;

(v) to review and comment on findings and proposals developed by other organizations and agencies and to make recommendations for their adoption or implementation by local, State, national, or international agencies;

(vi) to cooperate with national committees of other countries and with the World Health Organization and other national agencies in the studies of problems of mutual interest;

(vii) to issue an annual report on the state of the Nation's health, its health services, their costs and distributions, and to make proposals for improvement of the Nation's health statistics and health information systems; and

(viii) in complying with the requirements imposed on the Secretary under part C of title XI of the Social Security Act [42 U.S.C. 1320d et seq.];

(B) shall study the issues related to the adoption of uniform data standards for patient medical record information and the electronic exchange of such information;

(C) shall report to the Secretary not later than 4 years after August 21, 1996, recommendations and legislative proposals for such standards and electronic exchange; and

(D) shall be responsible generally for advising the Secretary and the Congress on the status of the implementation of part C of title XI of the Social Security Act [42 U.S.C. 1320d et seq.].

(6) In carrying out health statistical activities under this part, the Secretary shall consult with, and seek the advice of, the Committee and other appropriate professional advisory groups.

(7) Not later than 1 year after August 21, 1996, and annually thereafter, the Committee shall submit to the Congress, and make public, a report regarding the implementation of part C of title XI of the Social Security Act [42 U.S.C. 1320d et seq.]. Such report shall address the following subjects, to the extent that the Committee determines appropriate:

(A) The extent to which persons required to comply with part C of title XI of the Social Security Act are cooperating in implementing the standards adopted under such part.

(B) The extent to which such entities are meeting the security standards adopted under such part and the types of penalties assessed for noncompliance with such standards.

(C) Whether the Federal and State Governments are receiving information of sufficient quality to meet their responsibilities under such part.

(D) Any problems that exist with respect to implementation of such part.

(E) The extent to which timetables under such part are being met.

(*l*) Data specific to particular ethnic and racial populations

In carrying out this section, the Secretary, acting through the Center, shall collect and analyze adequate health data that is specific to particular ethnic and racial populations, including data collected under national health surveys. Activities carried out under this subsection shall be in addition to any activities carried out under subsection (m) of this section.

(m) Grants for assembly and analysis of data on ethnic and racial populations

(1) The Secretary, acting through the Center, may make grants to public and nonprofit private entities for—

(A) the conduct of special surveys or studies on the health of ethnic and racial populations or subpopulations;

(B) analysis of data on ethnic and racial populations and subpopulations; and

(C) research on improving methods for developing statistics on ethnic and racial populations and subpopulations.

(2) The Secretary, acting through the Center, may provide technical assistance, standards, and methodologies to grantees supported by this subsection in order to maximize the data quality and comparability with other studies.

(3) Provisions of section 242m(d) of this title do not apply to surveys or studies conducted by grantees under this subsection unless the Secretary, in accordance with regulations the Secretary may issue, determines that such provisions are necessary for the conduct of the survey or study and receives adequate assurance that the grantee will enforce such provisions.

(4)(A) Subject to subparagraph (B), the Secretary, acting through the Center, shall collect data on Hispanics and major Hispanic subpopulation groups and American Indians, and for developing special area population studies on major Asian American and Pacific Islander populations.

(B) The provisions of subparagraph (A) shall be effective with respect to a fiscal year only to the extent that funds are appropriated pursuant to paragraph (3) of subsection (n) of this section, and only if the amounts appropriated for such fiscal year pursuant to each of paragraphs (1) and (2) of subsection (n) of this section equal or exceed the amounts so appropriated for fiscal year 1997.

(n) Authorization of appropriations

(1) For health statistical and epidemiological activities undertaken or supported under sub-

sections (a) through (*l*) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 2003.

(2) For activities authorized in paragraphs (1) through (3) of subsection (m) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1999 through 2003. Of such amounts, the Secretary shall use not more than 10 percent for administration and for activities described in subsection (m)(2) of this section.

(3) For activities authorized in subsection (m)(4) of this section, there are authorized to be appropriated $1,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(July 1, 1944, ch. 373, title III, § 306, as added Pub. L. 93–353, title I, § 105, July 23, 1974, 88 Stat. 365; amended Pub. L. 95–623, §§ 5, 8(a), Nov. 9, 1978, 92 Stat. 3445, 3453; Pub. L. 97–35, title IX, § 920, Aug. 13, 1981, 95 Stat. 566; Pub. L. 97–414, § 8(b), Jan. 4, 1983, 96 Stat. 2060; Pub. L. 100–177, title I, §§ 104, 105(a), Dec. 1, 1987, 101 Stat. 988; Pub. L. 101–239, title VI, § 6103(e)(2), Dec. 19, 1989, 103 Stat. 2206; Pub. L. 101–527, § 7(a), (b)(1), (c), Nov. 6, 1990, 104 Stat. 2327, 2328; Pub. L. 102–54, § 13(q)(1)(A)(i), June 13, 1991, 105 Stat. 278; Pub. L. 103–183, title V, § 501(a), (d), Dec. 14, 1993, 107 Stat. 2237, 2238; Pub. L. 104–191, title II, § 263, Aug. 21, 1996, 110 Stat. 2031; Pub. L. 105–340, title II, § 201, Oct. 31, 1998, 112 Stat. 3193; Pub. L. 105–392, title II, § 201(b), Nov. 13, 1998, 112 Stat. 3585.)

REFERENCES IN TEXT

Section 3509 of title 44, referred to in subsec. (j)(4), (5), which required submission of certain plans and forms for collection of information to the Director of the Office of Management and Budget for approval, was omitted in the general amendment of chapter 35 of Title 44, Public Printing and Documents, by Pub. L. 96–511, § 2(a), Dec. 11, 1980, 94 Stat. 2812. Pub. L. 104–13 subsequently enacted a new section 3509 of Title 44 relating to designation of a central collection agency. Provisions appearing in former section 3509 are contained in section 3507 of Title 44.

The Social Security Act, referred to in subsec. (k)(5)(A)(viii), (D), (7), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part C of title XI of the Act is classified generally to part C (§ 1320d et seq.) of subchapter XI of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (g) of this section were contained in section 313 of act July 1, 1944, ch. 373, title III, 58 Stat. 693; Oct. 30, 1970, Pub. L. 91–516, title II, § 282, 84 Stat. 1308 (formerly classified to section 245 of this title), prior to repeal by Pub. L. 93–353, § 102(a).

Provisions similar to those comprising subsec. (h) of this section were contained in section 312a of act July 1, 1944, ch. 373, title III, as added Aug. 31, 1954, ch. 1158, § 2, 68 Stat. 1025 (formerly classified to section 244a of this title), prior to repeal by Pub. L. 93–353, § 102(a).

AMENDMENTS

1998—Subsec. (m)(4). Pub. L. 105–392, § 201(b)(1), added par. (4).

Subsec. (n)(1). Pub. L. 105–340, § 201(1), and Pub. L. 105–392, § 201(b)(2), amended par. (1) identically, substituting ''2003'' for ''1998''.

Subsec. (n)(2). Pub. L. 105–392, § 201(b)(3)(A), in first sentence, substituted ''paragraphs (1) through (3) of subsection (m)'' for ''subsection (m)'' and substituted ''such sums as may be necessary for each of the fiscal years 1999 through 2003.'' for ''$5,000,000 for fiscal year 1991, $7,500,000 for fiscal year 1992, $10,000,000 for fiscal year 1993, and $10,000,000 for each of the fiscal years 1994 through 2003.''

Pub. L. 105–340, § 201(2), substituted ''2003'' for ''1998''.

Subsec. (n)(3). Pub. L. 105–392, § 201(b)(3)(B), added par. (3).

1996—Subsec. (k)(1). Pub. L. 104–191, § 263(1), substituted ''18'' for ''16''.

Subsec. (k)(2). Pub. L. 104–191, § 263(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The members of the Committee shall be appointed by the Secretary from among persons who have distinguished themselves in the fields of health statistics, health planning, epidemiology, and the provision of health services. Members of the Committee shall be appointed for terms of 4 years.''

Subsec. (k)(3), (4). Pub. L. 104–191, § 263(3), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (k)(5). Pub. L. 104–191, § 263(4), amended par. (5) generally. Prior to amendment, par. (5) consisted of subpars. (A) to (G) relating to Committee functions in assisting and advising the Secretary.

Pub. L. 104–191, § 263(3), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (k)(6). Pub. L. 104–191, § 263(3), redesignated par. (5) as (6).

Subsec. (k)(7). Pub. L. 104–191, § 263(5), added par. (7).

1993—Subsec. (c). Pub. L. 103–183, § 501(a)(1), substituted ''Committee on Labor and Human Resources'' for ''Committee on Human Resources''.

Subsec. (g). Pub. L. 103–183, § 501(a)(2), substituted ''data'' for ''data which shall be published as a part of the health reports published by the Secretary''.

Subsec. (i). Pub. L. 103–183, § 501(a)(3), struck out ''engaged in health planning activities'' after ''entities''.

Subsec. (k)(2). Pub. L. 103–183, § 501(a)(4), struck out subpar. (A) designation, substituted ''Members'' for ''Except as provided in subparagraph (B), members'', and struck out subpar. (B) which related to extensions of membership terms of members of National Committee on Vital and Health Statistics whose terms were to expire in calendar years 1988, 1989, and 1990.

Subsec. (*l*). Pub. L. 103–183, § 501(a)(5)(A)–(C), redesignated subsec. (m) as (*l*), substituted ''subsection (m)'' for ''subsection (n)'', and struck out former subsec. (*l*) which related to development of plan for collection and coordination of statistical and epidemiological data on effects of environment on health and establishment of guidelines for compilation, analysis, and distribution of statistics and information necessary for coordinated determination of effects of conditions of employment and indoor and outdoor environmental conditions on public health.

Subsec. (m). Pub. L. 103–183, § 501(a)(5)(B), redesignated subsec. (n) as (m). Former subsec. (m) redesignated (*l*).

Subsecs. (n), (*o*). Pub. L. 103–183, § 501(a)(5)(B), (D), (d), redesignated subsec. (*o*) as (n), in par. (1) substituted ''(*l*)'' for ''(m)'' and ''1998'' for ''1993'', and in par. (2) substituted ''(m)'' for ''(n)'', struck out ''and'' after ''1992,'', inserted '', and $10,000,000 for each of the fiscal years 1994 through 1998'', and substituted ''(m)(2)'' for ''(n)(2)''. Former subsec. (n) redesignated (m).

1991—Subsec. (k)(4)(C). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (h). Pub. L. 101–527, § 7(a), designated existing text as par. (1), inserted after second sentence ''The Secretary shall encourage States and registration areas to obtain detailed data on ethnic and racial populations, including subpopulations of Hispanics, Asian Americans, and Pacific Islanders with significant representation in the State or registration area.'', and added par. (2).

Subsecs. (m) to (*o*). Pub. L. 101–527, § 7(b)(1), (c), added subsecs. (m) and (n) and redesignated former subsec.

(m) as (*o*) and amended it generally. Prior to amendment, subsec. (*o*) read as follows: ''For health statistical and epidemiological activities undertaken or supported under this section, there are authorized to be appropriated $55,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989 and 1990.''

1989—Subsec. (a). Pub. L. 101–239, § 6103(e)(2)(A), inserted at end ''The Secretary, acting through the Center, shall conduct and support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.''

Subsec. (b). Pub. L. 101–239, § 6103(e)(2)(B), substituted ''subsection (a) of this section'' for ''section 242b(a) of this title''.

Subsec. (m). Pub. L. 101–239, § 6103(e)(2)(C), added subsec. (m).

1987—Subsec. (a). Pub. L. 100–177, § 104, struck out ''and supervised by the Assistant Secretary for Health (or such other officer of the Department as may be designated by the Secretary as the principal adviser to him for health programs)''.

Subsec. (k)(1). Pub. L. 100–177, § 105(a)(1), substituted ''16 members'' for ''fifteen members''.

Subsec. (k)(2)(A). Pub. L. 100–177, § 105(a)(2), substituted ''terms of 4 years'' for ''terms of three years''.

Subsec. (k)(2)(B). Pub. L. 100–177, § 105(a)(3), added subpar. (B) and struck out former subpar. (B) which read as follows: ''Of the members first appointed—

''(i) five shall be appointed for terms of one year,

''(ii) five shall be appointed for terms of two years, and

''(iii) five shall be appointed for terms of three years,

as designated by the Secretary at the time of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.''

1983—Subsec. (*l*)(2)(D). Pub. L. 97–414 redesignated subpar. (E) as (D) and struck out former subpar. (D) which provided that the Center would serve as a clearinghouse for statistics and information with respect to which guidelines had been established under subpar. (A).

Subsec. (*l*)(2)(E) to (G). Pub. L. 97–414 redesignated subpars. (F) and (G) as (E) and (F), respectively. Former subpar. (E) redesignated (D).

1981—Subsec. (a). Pub. L. 97–35, § 920(d)(1), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (c). Pub. L. 97–35, § 920(d)(2), substituted ''Energy and'' for ''Interstate and Foreign''.

Subsec. (e). Pub. L. 97–35, § 920(a), (d)(1), in par. (3) inserted applicability to other activities, and in par. (4) substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsecs. (j), (k)(4)(C), (D). Pub. L. 97–35, § 920(d)(1), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (*l*)(2). Pub. L. 97–35, § 920(b), (c), (d)(1), in subpar. (A) inserted reference to Office of Federal Statistical Policy and Standards, in subpar. (B)(v) substituted ''Health and Human Services'' for ''Health, Education, and Welfare'', and in subpar. (D) struck out provisions relating to assistance to executive departments.

1978—Subsec. (b). Pub. L. 95–623, § 5(a), struck out ''may'' after ''through the Center,'', substituted in pars. (1) and (2) ''shall collect'' and ''shall undertake'' for ''collect'' and ''undertake'', respectively, and added pars. (3) and (4) and provision for availability of certain appropriated funds from par. (4) payments until expended.

Subsec. (c). Pub. L. 95–623, § 5(b), substituted ''statistical and epidemiological compilations'' for ''statistical compilations'' in two places and ''Committee on Human Resources'' for ''Committee on Labor and Public Welfare'' of the Senate.

Subsec. (e). Pub. L. 95–623, § 5(c)(1), incorporated in introductory text prior cl. (1) provision requiring the Secretary to assist State and local health agencies and Federal agencies involved in health matters in the design and implementation of a cooperative system for producing comparable and uniform health information and statistics at the Federal, State, and local levels; enacted in pars. (1) and (2) provisions almost identical to prior cls. (2) and (3); enacted par. (3); struck out former cl. (4) provision for the Federal share of the data collection costs under the system; enacted in par. (4) provisions almost identical to former cl. (5); and required State designation of a State administrative agency to be responsible for the statistical activities within the State under the System and Federal guidelines for production of uniform and timely data and appropriate access to the data.

Subsec. (f). Pub. L. 95–623, § 5(d), substituted ''the Secretary, acting through the Center, shall cooperate and consult'' for ''the Secretary shall cooperate and consult''.

Subsecs. (i), (j). Pub. L. 95–623, § 5(f), added subsecs. (i) and (j). Former subsec. (i) redesignated (k).

Subsec. (k). Pub. L. 95–623, § 5(c)(2), (e), (f), struck from par. (1) ''United States'' before ''National Committee on Vital and Health Statistics''; authorized in par. (2)(A) the appointment of Committee members from distinguished persons in field of health planning; required the Committee to assist and advise the Secretary with respect to the Cooperative Health Statistics System and the standardized means for the collection of health information and statistics to be established by the Secretary; and redesignated such amended subsec. (i) as (k).

Subsec. (*l*). Pub. L. 95–623, § 8(a), added subsec. (*l*).

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 12 of Pub. L. 101–527 provided that: ''This Act and the amendments made by this Act [enacting sections 254c–1, 254t, 256a, 294bb, 294cc, and 300u–6 of this title, amending this section and sections 242m, 254b, 254c, 294m, 294*o*, and 295g–2 of this title, enacting provisions set out as notes under sections 201 and 300u–6 of this title, and repealing provisions set out as a note under section 292h of this title] shall take effect October 1, 1990, or upon the date of the enactment of this Act [Nov. 6, 1990], whichever occurs later.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 105(b) of Pub. L. 100–177 provided that: ''The amendments made by this section [amending this section] shall become effective on January 1, 1988.''

MONEY RECEIVED BY CENTER FROM REIMBURSEMENTS, INTERAGENCY AGREEMENTS, AND SALE OF DATA TAPES TO REMAIN AVAILABLE UNTIL EXPENDED

Pub. L. 103–333, title II, Sept. 30, 1994, 108 Stat. 2550, provided in part: ''That for fiscal year 1995 and subsequent fiscal years amounts received by the National

Center for Health Statistics from reimbursements and interagency agreements and the sale of data tapes may be credited to this appropriation and shall remain available until expended''.

§ 242*l*. International cooperation

(a) Cooperative endeavors; statement of purpose

For the purpose of advancing the status of the health sciences in the United States (and thereby the health of the American people), the Secretary may participate with other countries in cooperative endeavors in biomedical research, health care technology, and the health services research and statistical activities authorized by section 242k of this title and by subchapter VII of this chapter.

(b) Authority of Secretary; building construction prohibition

In connection with the cooperative endeavors authorized by subsection (a) of this section, the Secretary may—

(1) make such use of resources offered by participating foreign countries as he may find necessary and appropriate;

(2) establish and maintain fellowships in the United States and in participating foreign countries;

(3) make grants to public institutions or agencies and to nonprofit private institutions or agencies in the United States and in participating foreign countries for the purpose of establishing and maintaining the fellowships authorized by paragraph (2);

(4) make grants or loans of equipment and materials, for use by public or nonprofit institutions or agencies, or by individuals, in participating foreign countries;

(5) participate and otherwise cooperate in any international meetings, conferences, or other activities concerned with biomedical research, health services research, health statistics, or health care technology;

(6) facilitate the interchange between the United States and participating foreign countries, and among participating foreign countries, of research scientists and experts who are engaged in experiments or programs of biomedical research, health services research, health statistical activities, or health care technology activities, and in carrying out such purpose may pay per diem compensation, subsistence, and travel for such scientists and experts when away from their places of residence at rates not to exceed those provided in section 5703(b)[1] of title 5 for persons in the Government service employed intermittently;

(7) procure, in accordance with section 3109 of title 5, the temporary or intermittent services of experts or consultants; and

(8) enter into contracts with individuals for the provision of services (as defined in section 104 of part 37 of title 48, Code of Federal Regulations (48 CFR 37.104)) in participating foreign countries, which individuals may not be deemed employees of the United States for any purpose.

The Secretary may not, in the exercise of his authority under this section, provide financial assistance for the construction of any facility in any foreign country.

(c) Benefits for overseas assignees

The Secretary may provide to personnel appointed or assigned by the Secretary to serve abroad, allowances and benefits similar to those provided under chapter 9 of title I of the Foreign Service Act of 1990 (22 U.S.C. 4081 et seq.). Leaves of absence for personnel under this subsection shall be on the same basis as that provided under subchapter I of chapter 63 of title 5 to individuals serving in the Foreign Service.

(d) Strategies to improve injection safety

In carrying out immunization programs and other programs in developing countries for the prevention, treatment, and control of infectious diseases, including HIV/AIDS, tuberculosis, and malaria, the Director of the Centers for Disease Control and Prevention, in coordination with the Coordinator of United States Government Activities to Combat HIV/AIDS Globally, the National Institutes of Health, national and local government, and other organizations, such as the World Health Organization and the United Nations Children's Fund, shall develop and implement effective strategies to improve injection safety, including eliminating unnecessary injections, promoting sterile injection practices and technologies, strengthening the procedures for proper needle and syringe disposal, and improving the education and information provided to the public and to health professionals.

(July 1, 1944, ch. 373, title III, § 307, formerly § 308, as added Pub. L. 86–610, § 3, July 12, 1960, 74 Stat. 364; renumbered § 307 and amended Pub. L. 93–353, title I, § 106, July 23, 1974, 88 Stat. 367; Pub. L. 97–35, title IX, § 921, Aug. 13, 1981, 95 Stat. 566; Pub. L. 101–239, title VI, § 6103(e)(3), Dec. 19, 1989, 103 Stat. 2206; Pub. L. 102–531, title III, § 310, Oct. 27, 1992, 106 Stat. 3503; Pub. L. 103–183, title VII, § 702, Dec. 14, 1993, 107 Stat. 2239; Pub. L. 108–25, title III, § 306, May 27, 2003, 117 Stat. 739.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (b)(6), was amended generally by Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

The Foreign Service Act of 1990, referred to in subsec. (c), probably means the Foreign Service Act of 1980, which is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071. Chapter 9 of title I of the Act is classified generally to subchapter IX (§ 4081 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

CODIFICATION

Section was formerly classified to section 242f of this title.

PRIOR PROVISIONS

A prior section 307 of act July 1, 1944, was classified to section 242e of this title, prior to repeal by Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–25 added subsec. (d).

1993—Subsec. (c). Pub. L. 103–183 added subsec. (c).

1992—Subsec. (b)(8). Pub. L. 102–531, which directed amendment of subsec. (b) by adding par. (8) at the end thereof, was executed by adding par. (8) after par. (7) to reflect the probable intent of Congress.

[1] See References in Text note below.

1989—Subsec. (a). Pub. L. 101–239 substituted ''section 242k of this title and by subchapter VII of this chapter'' for ''sections 242b, 242c, 242k, and 242n of this title''.

1981—Subsec. (a). Pub. L. 97–35, § 921(a), inserted reference to health care technology and section 242n of this title.

Subsec. (b). Pub. L. 97–35, § 921(b), in par. (5) inserted reference to health care technology, and in par. (6) inserted reference to health care technology activities.

1974—Pub. L. 93–353 amended section generally.

INTERNATIONAL HEALTH STUDY

Pub. L. 95–83, title III, § 315, Aug. 1, 1977, 91 Stat. 398, provided that the Secretary of Health, Education, and Welfare arrange through the National Academy of Sciences or other nonprofit private groups or associations, for a study to determine opportunities for broadened Federal program activities in areas of international health, which study was to consider biomedical and behavioral research, health services research, health professions education, immunization and public health activities, and other areas that might improve our and other nations' capacities to prevent, diagnose, control, or cure disease, and to organize and deliver effective and efficient health services, with an interim report on such study completed no later than Oct. 1, 1977 and a final report completed no later than Jan. 1, 1978 and both reports submitted to the Secretary, the Committee on Human Resources of the Senate, and the Committee on Interstate and Foreign Commerce of the House of Representatives.

§ 242m. General provisions respecting effectiveness, efficiency, and quality of health services

(a) Reports to Congress and President; preparation; review by Office of Management and Budget

(1) Not later than March 15 of each year, the Secretary shall submit to the President and Congress the following reports:

(A) A report on health care costs and financing. Such report shall include a description and analysis of the statistics collected under section 242k(b)(1)(G) of this title.

(B) A report on health resources. Such report shall include a description and analysis, by geographical area, of the statistics collected under section 242k(b)(1)(E) of this title.

(C) A report on the utilization of health resources. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(F) of this title.

(D) A report on the health of the Nation's people. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(A) of this title.

(2) The reports required in paragraph (1) shall be prepared through the National Center for Health Statistics.

(3) The Office of Management and Budget may review any report required by paragraph (1) of this subsection before its submission to Congress, but the Office may not revise any such report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting any such report.

(b) Grants or contracts; applications, submittal; application peer review group, findings and recommendations; necessity of favorable recommendation; appointments

(1) No grant or contract may be made under section 242b, 242k, or 242*l* of this title unless an application therefor has been submitted to the Secretary in such form and manner, and containing such information, as the Secretary may by regulation prescribe and unless a peer review group referred to in paragraph (2) has recommended the application for approval.

(2)(A) Each application submitted for a grant or contract under section 242k of this title in an amount exceeding $50,000 of direct costs and for a health services research, evaluation, or demonstration project, or for a grant under section 242k(m) of this title, shall be submitted to a peer review group for an evaluation of the technical and scientific merits of the proposals made in each such application. The Director of the National Center for Health Statistics shall establish such peer review groups as may be necessary to provide for such an evaluation of each such application.

(B) A peer review group to which an application is submitted pursuant to subparagraph (A) shall report its finding and recommendations respecting the application to the Secretary, acting through the Director of the National Center for Health Statistics, in such form and manner as the Secretary shall by regulation prescribe. The Secretary may not approve an application described in such subparagraph unless a peer review group has recommended the application for approval.

(C) The Secretary, acting through the Director of the National Center for Health Statistics, shall make appointments to the peer review groups required in subparagraph (A) from among persons who are not officers or employees of the United States and who possess appropriate technical and scientific qualifications, except that peer review groups regarding grants under section 242k(m) of this title may include appropriately qualified such officers and employees.

(c) Development and dissemination of statistics

The Secretary shall take such action as may be necessary to assure that statistics developed under sections 242b and 242k of this title are of high quality, timely, comprehensive as well as specific, standardized, and adequately analyzed and indexed, and shall publish, make available, and disseminate such statistics on as wide a basis as is practicable.

(d) Information; publication restrictions

No information, if an establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under section 242b, 242k, or 242*l* of this title may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose; and in the case of information obtained in the course of health statistical or epidemiological activities under section 242b or 242k of this title, such information may not be published or

released in other form if the particular establishment or person supplying the information or described in it is identifiable unless such establishment or person has consented (as determined under regulations of the Secretary) to its publication or release in other form.

(e) Payment procedures; advances or reimbursement; installments; conditions; reductions

(1) Payments of any grant or under any contract under section 242b, 242k, or 242*l* of this title may be made in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary deems necessary to carry out the purposes of such section.

(2) The amounts otherwise payable to any person under a grant or contract made under section 242b, 242k, or 242*l* of this title shall be reduced by—

(A) amounts equal to the fair market value of any equipment or supplies furnished to such person by the Secretary for the purpose of carrying out the project with respect to which such grant or contract is made, and

(B) amounts equal to the pay, allowances, traveling expenses, and related personnel expenses attributable to the performance of services by an officer or employee of the Government in connection with such project, if such officer or employee was assigned or detailed by the Secretary to perform such services,

but only if such person requested the Secretary to furnish such equipment or supplies, or such services, as the case may be.

(f) Contracts without regard to section 3324 of title 31 and section 5 of title 41

Contracts may be entered into under section 242b or 242k of this title without regard to section 3324 of title 31 and section 5 of title 41.

(July 1, 1944, ch. 373, title III, § 308, as added Pub. L. 93–353, title I, § 107(a), July 23, 1974, 88 Stat. 368; amended Pub. L. 94–273, § 7(2), Apr. 21, 1976, 90 Stat. 378; Pub. L. 95–83, title I, § 104, Aug. 1, 1977, 91 Stat. 384; Pub. L. 95–623, §§ 2, 6(d), 8(b), Nov. 9, 1978, 92 Stat. 3443, 3451, 3455; Pub. L. 97–35, title IX, §§ 917(a), (b), 919(a)(2)(B), 922, Aug. 13, 1981, 95 Stat. 564, 565, 567; Pub. L. 97–414, § 8(c), Jan. 4, 1983, 96 Stat. 2060; Pub. L. 98–551, § 7, Oct. 30, 1984, 98 Stat. 2820; Pub. L. 100–177, title I, §§ 106(a), 107, 108, Dec. 1, 1987, 101 Stat. 988–990; Pub. L. 100–690, title II, § 2612, Nov. 18, 1988, 102 Stat. 4235; Pub. L. 101–239, title VI, § 6103(e)(4), Dec. 19, 1989, 103 Stat. 2206; Pub. L. 101–527, § 7(b)(2), (d), Nov. 6, 1990, 104 Stat. 2328; Pub. L. 103–183, title V, § 501(c), Dec. 14, 1993, 107 Stat. 2237; Pub. L. 105–392, title IV, § 401(d), Nov. 13, 1998, 112 Stat. 3587.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (e) of this section were contained in subsec. (a)(3) of section 304 of act July 1, 1944, ch. 373, title III, as added July 28, 1955, ch. 417, § 3, 69 Stat. 382, and amended (formerly classified to section 242b(a)(3) of this title), prior to general amendment of section 304 by Pub. L. 93–353, § 103.

AMENDMENTS

1998—Subsec. (b)(2)(A), (C). Pub. L. 105–392 substituted ''242k(m)'' for ''242k(n)''.

1993—Subsec. (a)(1). Pub. L. 103–183, § 501(c)(1)(A), redesignated subpars. (B) to (E) as (A) to (D), respectively, and struck out former subpar. (A) which read as follows: ''A report on—

''(i) the administration of sections 242b, 242k, and 242*l* of this title and subchapter VII of this chapter during the preceding fiscal year; and

''(ii) the current state and progress of health services research, health statistics, and health care technology.''

Subsec. (a)(2). Pub. L. 103–183, § 501(c)(1)(B), substituted ''reports required in paragraph (1) shall be prepared through the National Center'' for ''reports required by subparagraphs (B) through (E) of paragraph (2) shall be prepared through the Agency for Health Care Policy and Research and the National Center''.

Subsec. (c). Pub. L. 103–183, § 501(c)(2)(A)–(D), (3), redesignated subsec. (g)(2) as subsec. (c), substituted ''shall take'' for ''shall (A) take'' and ''and shall publish'' for ''and (B) publish'', and struck out former subsec. (c) which read as follows: ''The aggregate number of grants and contracts made or entered into under sections 242b and 242c of this title for any fiscal year respecting a particular means of delivery of health services or another particular aspect of health services may not exceed twenty; and the aggregate amount of funds obligated under grants and contracts under such sections for any fiscal year respecting a particular means of delivery of health services or another particular aspect of health services may not exceed $5,000,000.''

Subsec. (f). Pub. L. 103–183, § 501(c)(4), substituted ''section 3324 of title 31 and section 5 of title 41'' for ''sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5)''.

Subsec. (g). Pub. L. 103–183, § 501(c)(2)(B), (C), (E), redesignated par. (2) as subsec. (c) and struck out par. (1) which read as follows: ''The Secretary shall—

''(A) publish, make available and disseminate, promptly in understandable form and on as broad a basis as practicable, the results of health services research, demonstrations, and evaluations undertaken and supported under sections 242b and 242c of this title;

''(B) make available to the public data developed in such research, demonstrations, and evaluations; and

''(C) provide indexing, abstracting, translating, publishing, and other services leading to a more effective and timely dissemination of information on health services research, demonstrations, and evaluations in health care delivery to public and private entities and individuals engaged in the improvement of health care delivery and the general public; and undertake programs to develop new or improved methods for making such information available.''

Subsec. (h). Pub. L. 103–183, § 501(c)(5), struck out subsec. (h) which read as follows:

''(1) Except where the Secretary determines that unusual circumstances make a larger percentage necessary in order to effectuate the purposes of section 242k of this title, a grant or contract under any of such sections of this title with respect to any project for construction of a facility or for acquisition of equipment may not provide for payment of more than 50 per centum of so much of the cost of the facility or equipment as the Secretary determines is reasonably attributable to research, evaluation, or demonstration purposes.

''(2) Laborers and mechanics employed by contractors and subcontractors in the construction of such a facility shall be paid wages at rates not less than those prevailing on similar work in the locality, as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 267a—267a–5, known as the Davis-Bacon Act); and the Secretary of Labor shall have with respect to any labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. Appendix) and section 276c of title 40.

''(3) Such grants and contracts shall be subject to such additional requirements as the Secretary may by regulation prescribe.''

1990—Subsec. (b)(2)(A). Pub. L. 101–527, § 7(b)(2)(A), inserted ''or for a grant under section 242k(n) of this title,'' after ''demonstration project,''.

Subsec. (b)(2)(C). Pub. L. 101–527, § 7(b)(2)(B), inserted before period at end '', except that peer review groups regarding grants under section 242k(n) of this title may include appropriately qualified such officers and employees''.

Subsec. (b)(3). Pub. L. 101–527, § 7(d), struck out par. (3) which related to applications submitted under section 242k of this title for which a grant or contract may be made under another provision of this chapter.

1989—Pub. L. 101–239, § 6103(e)(4)(A), amended section catchline.

Subsec. (a)(1)(A)(i). Pub. L. 101–239, § 6103(e)(4)(B)(i), substituted ''sections 242b, 242k, and 242*l* of this title and subchapter VII of this chapter'' for ''sections 242b, 242c, 242k, and 242*l* of this title and section 242n of this title''.

Subsec. (a)(2). Pub. L. 101–239, § 6103(e)(4)(B)(ii), substituted ''the Agency for Health Care Policy and Research'' for ''the National Center for Health Services Research and Health Care Technology Assessment''.

Subsec. (b)(1). Pub. L. 101–239, § 6103(e)(4)(C)(i), which directed amendment of par. (1) by substituting ''section 242b, 242k, or 242*l* of this title'' for ''sections 242b, 242c, 242k, 242*l*, and 242n of this title'', was executed by making the substitution for ''section 242b, 242c, 242k, 242*l*, or 242n of this title'' as the probable intent of Congress.

Subsec. (b)(2)(A). Pub. L. 101–239, § 6103(e)(4)(C)(ii), substituted ''under section 242k of this title'' for ''under section 242b or 242c of this title,'' in first sentence, struck out second sentence which read as follows: ''Each application for a grant, contract, or cooperative agreement in an amount exceeding $50,000 of direct costs for the dissemination of research findings or the development of research agendas (including conferences, workshops, and meetings) shall be submitted to a standing peer review group with persons with appropriate expertise and shall not be submitted to any peer review group established to review applications for research, evaluation, or demonstration projects.'', and amended last sentence generally. Prior to amendment, last sentence read as follows: ''The Secretary, acting through the Director of the National Center for Health Services Research and Health Care Technology Assessment (or, as appropriate, through the Director of the National Center for Health Statistics), shall establish such peer review groups as may be necessary to provide for such an evaluation of an application described in the first two sentences of this subparagraph.''

Subsec. (b)(2)(B). Pub. L. 101–239, § 6103(e)(4)(C)(iii), substituted ''the Director of the National Center for Health Statistics'' for ''the Director involved''.

Subsec. (b)(2)(C). Pub. L. 101–239, § 6103(e)(4)(C)(iv), substituted ''the Director of the National Center for Health Statistics'' for ''the Directors''.

Subsec. (b)(3). Pub. L. 101–239, § 6103(e)(4)(C)(v), substituted ''submitted under section 242k of this title'' for ''submitted under section 242b, 242c, or 242k of this title'' and ''approved under any of such sections'' for ''approved under section 242b, 242c, or 242k of this title''.

Subsec. (d). Pub. L. 101–239, § 6103(e)(4)(D), substituted ''section 242b, 242k, or 242*l* of this title'' for ''section 242b, 242c, 242k, 242*l*, or 242n of this title'', struck out ''(1)'' after ''for such other purpose; and'', and substituted ''publication or release in other form.'' for ''publication or release in other form, and (2) in the case of information obtained in the course of health services research, evaluations, or demonstrations under section 242b or 242c of this title or in the course of health care technology activities under section 242n of this title, such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented (as determined under regulations of the Secretary) to its publication or release in other form.''

Subsec. (e)(1), (2). Pub. L. 101–239, § 6103(e)(4)(E), substituted ''section 242b, 242k, or 242*l* of this title'' for ''section 242b, 242c, 242k, 242*l*, or 242n of this title''.

Subsec. (f). Pub. L. 101–239, § 6103(e)(4)(F), substituted ''section 242b or 242k of this title'' for ''section 242b, 242c, 242k, or 242n of this title''.

Subsec. (g)(1). Pub. L. 101–239, § 6103(e)(4)(G)(i), struck out at end ''Except as provided in subsection (d) of this section, the Secretary may not restrict the publication and dissemination of data from, and results of projects undertaken by, centers supported under section 242c(d) of this title.''

Subsec. (g)(2). Pub. L. 101–239, § 6103(e)(4)(G)(ii), substituted ''sections 242b and 242k of this title'' for ''sections 242b, 242c, 242k, and 242n of this title''.

Subsec. (h)(1). Pub. L. 101–239, § 6103(e)(4)(H), substituted ''effectuate the purposes of section 242k of this title'' for ''effectuate the purposes of section 242b, 242c, 242k, or 242n of this title'' and ''contract under any of such sections'' for ''contract under section 242b, 242c, 242k, or 242n of this title''.

Subsec. (i). Pub. L. 101–239, § 6103(e)(4)(I), struck out subsec. (i) which authorized appropriations for carrying out certain programs under sections 242b, 242c, 242k, and 242n of this title during fiscal years 1988 to 1990.

1988—Subsec. (b)(2)(A). Pub. L. 100–690 inserted after first sentence ''Each application for a grant, contract, or cooperative agreement in an amount exceeding $50,000 of direct costs for the dissemination of research findings or the development of research agendas (including conferences, workshops, and meetings) shall be submitted to a standing peer review group with persons with appropriate expertise and shall not be submitted to any peer review group established to review applications for research, evaluation, or demonstration projects.'' and substituted ''an application described in the first two sentences of this subparagraph'' for ''each such application'' in last sentence.

1987—Subsec. (a)(1), (2). Pub. L. 100–177, § 106(a)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) Not later than December 1 of each year, the Secretary shall make a report to Congress respecting (A) the administration of sections 242b, 242c, 242k, and 242*l* and section 242n of this title during the preceding fiscal year, and (B) the current state and progress of health services research and, health statistics, and health care technology.

''(2) The Secretary, acting through the National Center for Health Services Research and the National Center for Health Statistics, shall assemble and submit to the President and the Congress not later than December 1 of each year the following reports:

''(A) A report on health care costs and financing. Such report shall include a description and analysis of the statistics collected under section 242k(b)(1)(G) of this title.

''(B) A report on health resources. Such report shall include a description and analysis, by geographic area, of the statistics collected under section 242k(b)(1)(E) of this title.

''(C) A report on the utilization of health resources. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(F) of this title.

''(D) A report on the health of the Nation's people. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(A) of this title.''

Subsec. (a)(3). Pub. L. 100–177, § 106(a)(2), struck out ''or (2)'' after ''paragraph (1)''.

Subsec. (b)(1). Pub. L. 100–177, § 107(1), inserted ''and unless a peer review group referred to in paragraph (2) has recommended the application for approval'' before period at end.

Subsec. (b)(2). Pub. L. 100–177, § 107(2), added par. (2) and struck out former par. (2) which read as follows: ''Each application submitted for a grant or contract under section 242b or 242c of this title, in an amount exceeding $50,000 of direct costs and for a health services research, evaluation, or demonstration project, shall be

submitted by the Secretary for review for scientific merit to a panel of experts appointed by him from persons who are not officers or employees of the United States and who possess qualifications relevant to the project for which the application was made. A panel to which an application is submitted under this paragraph shall report its findings and recommendations respecting the application to the Secretary in such form and manner as the Secretary shall by regulation prescribe.''

Subsec. (i). Pub. L. 100–177, §108, amended subsec. (i) generally, substituting provisions authorizing appropriations for fiscal years 1988 to 1990 for carrying out activities under sections 242b, 242c, 242k, and 242n of this title for former provisions authorizing appropriations for fiscal years 1975 to 1987 for carrying out activities under those sections.

1984—Subsec. (i)(1). Pub. L. 98–551, §7(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987, inserted ''and Health Care Technology Assessment'' after ''Research'', substituted ''and at least 10 per centum of such amount or $1,500,000, whichever is less, shall be available only for the user liaison program and the technical assistance program referred to in section 242c(c)(2) of this title and for dissemination activities directly undertaken through such Center'' for ''and at least 5 per centum of such amount or $1,000,000, whichever is less, shall be available only for dissemination activities directly undertaken through such Center'', inserted ''For health care technology assessment activities undertaken under subsections (b)(5), (e), (f), and (g) of section 242c of this title the Secretary shall obligate from funds appropriated under this paragraph not less than $3,000,000 for the fiscal year ending September 30, 1985, $3,500,000 for the fiscal year ending September 30, 1986, and $4,000,000 for the fiscal year ending September 30, 1987. For grants under section 242n of this title the Secretary shall obligate from funds appropriated under this paragraph not less than $500,000 for the fiscal year ending September 30, 1985, $750,000 for the fiscal year ending September 30, 1986, and $750,000 for the fiscal year ending September 30, 1987.'', and in last sentence substituted ''for any fiscal year'' for ''for each of the fiscal years ending September 30, 1982, September 30, 1983, and September 30, 1984,''.

Subsec. (i)(2). Pub. L. 98–551, §7(b), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

1983—Subsec. (d). Pub. L. 97–414 inserted '', if an establishment or person supplying the information or described in it is identifiable,'' after ''No information'', and substituted ''such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose'' for ''authorized by guidelines in effect under section 242k(*l*)(2) of this title or under regulations of the Secretary''.

1981—Subsec. (a)(2). Pub. L. 97–35, §922(a), substituted ''December'' for ''September'', which change had already been made by Pub. L. 94–273.

Subsec. (b)(2). Pub. L. 97–35, §922(b), substituted ''$50,000'' for ''$35,000''.

Subsec. (d)(2). Pub. L. 97–35, §922(c), inserted applicability to health care technology activities under section 242n of this title.

Subsec. (i)(1). Pub. L. 97–35, §§917(a), 919(a)(2)(B), inserted provisions respecting amounts of and limitations on uses for appropriations for the fiscal years ending Sept. 30, 1982, 1983, and 1984.

Subsec. (i)(2). Pub. L. 97–35, §917(b), inserted provisions respecting appropriations for the fiscal years ending Sept. 30, 1982, 1983, and 1984.

1978—Subsec. (a)(1). Pub. L. 95–623, §6(d)(1), required the report to cover the administration of section 242n of this title and the current state and progress of health care technology.

Subsec. (b)(1). Pub. L. 95–623, §6(d)(2), inserted reference to grant or contract under section 242n of this title.

Subsec. (d). Pub. L. 95–623, §§6(d)(3), 8(b), inserted reference to section 242n of this title and substituted in cl. (1) ''statistical or epidemiological activities'' for ''statistical activities''; and authorized use of information for purposes other than for which supplied when authorized by guidelines in effect under section 242k(*l*)(2) of this title.

Subsecs. (e), (f), (g)(2), (h)(1). Pub. L. 95–623, §6(d)(4)–(7), inserted references to section 242n of this title.

Subsec. (i)(1). Pub. L. 95–623, §2(a), authorized appropriation of $35,000,000; $40,000,000; and $45,000,000 for fiscal years ending Sept. 30, 1979, through 1981, and substituted minimum amounts of the lesser of 20 per centum of appropriated funds or $6,000,000 for health services research, evaluation and demonstration activities of the National Center for Health Services Research and 5 per centum of such funds or $1,000,000 for dissemination activities of such Center for prior similar requirement of 25 per centum of appropriated funds for the applicable fiscal years for health services research, evaluation, and demonstration activities of the Secretary.

Subsec. (i)(2). Pub. L. 95–623, §2(b), authorized appropriation of $50,000,000; $65,000,000; and $70,000,000 for fiscal years ending Sept. 30, 1979, through 1981.

1977—Subsec. (i)(1). Pub. L. 95–83, §104(a), authorized appropriation of $28,600,000 for fiscal year ending Sept. 30, 1978.

Subsec. (i)(2). Pub. L. 95–83, §104(b), authorized appropriation of $33,600,000 for fiscal year ending Sept. 30, 1978.

1976—Subsec. (a). Pub. L. 94–273 substituted ''December'' for ''September'' wherever appearing.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–392, title IV, §401(e), Nov. 13, 1998, 112 Stat. 3587, provided that: ''This section [amending this section and sections 247b–5, 247b–6, 247c, 285f–2, 300d–1 to 300d–3, 300d–13, 300d–32, 300k, and 300n–1 of this title] is deemed to have taken effect immediately after the enactment of Public Law 103–183 [Dec. 14, 1993].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2600 of Pub. L. 100–690 provided that: ''Except as provided in section 2613(b)(1) [42 U.S.C. 285m note], the amendments made by this subtitle [subtitle G (§§2600–2641) of title II of Pub. L. 100–690, enacting sections 285m–4 to 285m–6 of this title, amending this section, sections 242c, 281, 284, 284c, 285j, 285m, 285m–1 to 285m–6, 286, 289f, 290cc–28, 290cc–36, 292h, 294a, 295g–4, 295g–7, 295g–8b, 295h, 295h–5, 295j, 297j, 297n, 300cc–3, 300cc–13, 300cc–17, 300cc–20, 300cc–31, 300dd–1, 300dd–3, 300dd–8, 300dd–10, 300dd–12 to 300dd–14, 300dd–21, 300dd–32, 300ee, 300ee–2, 300ee–5, 300ee–12, 300ee–13, 300ee–15 to 300ee–18, 300ee–20, 300ee–22, 300ee–34, 300ff–48, and 300aaa to 300aaa–13 of this title, and section 393 of Title 21, Food and Drugs, enacting provisions set out as notes under section 285m of this title, amending provisions set out as notes under sections 201, 292h, 300cc, 300ee–1, and 300ff–48 of this title, and repealing provisions set out as a note under section 285m of this title] shall take effect immediately after the enactment of the Health Omnibus Programs Extension of 1988 [Nov. 4, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 106(c) of Pub. L. 100–177 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 242p of this title] shall apply to reports and profiles required to be submitted after November 1, 1987.''

MINE WORKERS STUDY; REPORT COMPLETED AND SUBMITTED NO LATER THAN 30 MONTHS AFTER NOVEMBER 9, 1978

Section 10 of Pub. L. 95–623, as amended by S. Res. 30, Mar. 7, 1979; H. Res. 549, Mar. 25, 1980, required the Secretary, acting through the National Center for Health Services Research, to arrange for the conduct of a study to evaluate the impact upon the utilization of

health services by and the health status of members of the United Mine Workers and their dependents as a result of changes in the United Mine Workers' collective-bargaining agreements of Mar. 1978 with a report to be submitted to the Secretary and specific committees of the Senate and House of Representatives within 30 months after Nov. 9, 1978.

AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR ENDING JUNE 30, 1977

Section 107(b) of Pub. L. 93–353 provided that: ''The authorizations of appropriations provided by section 308(i) of the Public Health Service Act [subsec. (i) of this section] is extended for the fiscal year ending June 30, 1977, in the amounts authorized for the preceding fiscal year unless before June 30, 1976, Congress has passed legislation repealing this subsection.''

§ 242n. Repealed. Pub. L. 101–239, title VI, § 6103(d)(1)(B), Dec. 19, 1989, 103 Stat. 2205

Section, act July 1, 1944, ch. 373, title III, § 309, as added Nov. 9, 1978, Pub. L. 95–623, § 6(c), 92 Stat. 3447; amended July 10, 1979, Pub. L. 96–32, § 5(d), 93 Stat. 83; Aug. 13, 1981, Pub. L. 97–35, title IX, §§ 917(c), 923, 95 Stat. 565, 567; Oct. 30, 1984, Pub. L. 98–551, § 8, 98 Stat. 2820; Oct. 7, 1985, Pub. L. 99–117, § 8(a), 99 Stat. 493; Dec. 1, 1987, Pub. L. 100–177, title I, § 109, 101 Stat. 990, related to grants for a council on health care technology.

TERMINATION OF COUNCIL ON HEALTH CARE TECHNOLOGY

Section 6103(d)(1)(B) of Pub. L. 101–239 provided in part that the council on health care technology established under this section is terminated.

TRANSITIONAL AND SAVINGS PROVISIONS FOR PUB. L. 101–239

For provision transferring personnel of Department of Health and Human Services employed on Dec. 19, 1989, in connection with functions vested in Administrator for Health Care Policy and Research pursuant to amendments made by section 6103 of Pub. L. 101–239, and assets, liabilities, etc., of Department arising from or employed, held, used, or available on that date, or to be made available after that date, in connection with those functions, to Administrator for appropriate allocation, and for provisions for continued effectiveness of actions, orders, rules, official documents, etc., of Department that have been issued, made, granted, or allowed to become effective in performance of those functions, and that were effective on Dec. 19, 1989, see section 6103(f) of Pub. L. 101–239, set out as a note under section 299 of this title.

§ 242*o*. Health conferences; publication of health educational information

(a) A conference of the health authorities in and among the several States shall be called annually by the Secretary. Whenever in his opinion the interests of the public health would be promoted by a conference, the Secretary may invite as many of such health authorities and officials of other State or local public or private agencies, institutions, or organizations to confer as he deems necessary or proper. Upon the application of health authorities of five or more States it shall be the duty of the Secretary to call a conference of all State health authorities joining in the request. Each State represented at any conference shall be entitled to a single vote. Whenever at any such conference matters relating to mental health are to be discussed, the mental health authorities of the respective States shall be invited to attend.

(b) From time to time the Secretary shall issue information related to public health, in the form of publications or otherwise, for the use of the public, and shall publish weekly reports of health conditions in the United States and other countries and other pertinent health information for the use of persons and institutions concerned with health services.

(July 1, 1944, ch. 373, title III, § 310, formerly §§ 309, 310, as added Pub. L. 93–353, title I, § 107(a), July 23, 1974, 88 Stat. 371; renumbered § 310, Pub. L. 95–623, § 6(a), (b), Nov. 9, 1978, 92 Stat. 3447.)

CODIFICATION

Subsec. (a) of this section consists of former section 309 of act July 1, 1944, prior to the renumbering of that section as section 310(a) by Pub. L. 95–623. Subsec. (b) of this section consists of former section 310 of act July 1, 1944, prior to the renumbering of that section as section 310(b) by Pub. L. 95–623.

PRIOR PROVISIONS

A prior section 310 of act July 1, 1944, was renumbered section 329, and was classified to section 254b of this title prior to the general amendment of subpart I (§ 254b et seq.) of part D of this subchapter by Pub. L. 104–299.

Provisions similar to those comprising subsec. (a) of this section were contained in section 312 of act July 1, 1944, ch. 373, title III, 58 Stat. 693, as amended (formerly classified to section 244 of this title), prior to repeal by Pub. L. 93–353, § 102(a).

Provisions similar to those comprising subsec. (b) of this section were contained in section 315 of act July 1, 1944, ch. 373, title III, 58 Stat. 695; Oct. 30, 1970, Pub. L. 91–515, title II, § 282, 84 Stat. 1308 (formerly classified to section 247 of this title), prior to repeal by Pub. L. 93–353, § 102(a).

§ 242p. National disease prevention data profile

(a) The Secretary, acting through the National Center for Health Statistics, shall submit to Congress on March 15, 1990, and on March 15 of every third year thereafter, a national disease prevention data profile in order to provide a data base for the effective implementation of this Act and to increase public awareness of the prevalence, incidence, and any trends in the preventable causes of death and disability in the United States. Such profile shall include at a minimum—

(1) mortality rates for preventable diseases;

(2) morbidity rates associated with preventable diseases;

(3) the physical determinants of health of the population of the United States and the relationship between these determinants of health and the incidence and prevalence of preventable causes of death and disability; and

(4) the behavioral determinants of health of the population of the United States including, but not limited to, smoking, nutritional and dietary habits, exercise, and alcohol consumption, and the relationship between these determinants of health and the incidence and prevalence of preventable causes of death and disability.

(b) In preparing the profile required by subsection (a) of this section, the Secretary, acting through the National Center for Health Statistics, shall comply with all relevant provisions of sections 242k and 242m of this title.

(Pub. L. 95–626, title IV, § 404, Nov. 10, 1978, 92 Stat. 3591; Pub. L. 100–177, title I, § 106(b), Dec. 1, 1987, 101 Stat. 989.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 95–626, Nov. 10, 1978, 92 Stat. 3551, known as the Health Services and Centers Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendments note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–177 substituted ''on March 15, 1990, and on March 15 of every third year thereafter'' for ''on December 1, 1980, and on December 1 of every third year thereafter'' in first sentence.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–177 applicable to reports and profiles required to be submitted after Nov. 1, 1987, see section 106(c) of Pub. L. 100–177, set out as a note under section 242m of this title.

§ 242q. Task Force on Aging Research; establishment and duties

(a) Establishment

The Secretary of Health and Human Services shall establish a Task Force on Aging Research.

(b) Duties

With respect to aging research (as defined in section 242q–4 of this title), the Task Force each fiscal year shall—

(1) make recommendations to the Secretary specifying the particular projects of research, or the particular categories of research, that should be conducted or supported by the Secretary;

(2) of the projects specified under paragraph (1), make recommendations to the Secretary of the projects that should be given priority in the provision of funds; and

(3) make recommendations to the Secretary of the amount of funds that should be appropriated for such research.

(c) Provision of information to public

The Task Force may make available to health professionals, and to other members of the public, information regarding the research described in subsection (b) of this section.

(Pub. L. 101–557, title III, § 301, Nov. 15, 1990, 104 Stat. 2768.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

§ 242q–1. Membership

(a) Composition

The Task Force shall be composed of—

(1) the Assistant Secretary for Health;

(2) the Surgeon General of the Public Health Service;

(3) the Assistant Secretary for Planning and Evaluation;

(4) the Director of the National Institute on Aging, and the Directors of such other agencies of the National Institutes of Health as the Secretary determines to be appropriate;

(5) the Commissioner of the Administration on Aging;

(6) the Commissioner of Food and Drugs;

(7) the Under Secretary for Health of the Department of Veterans Affairs;

(8) the Administrator of the the[1] Substance Abuse and Mental Health Services Administration;

(9) the Administrator of the Centers for Medicare & Medicaid Services;

(10) the Commissioner of Social Security;

(11) the Director of the Agency for Healthcare Research and Quality;

(12) two Members of the House of Representatives appointed by the Speaker of the House in consultation with the Minority Leader, and two members of the Senate appointed by the Majority Leader in consultation with the Minority Leader, not more than one of whom from each body shall be members of the same political party; and

(13) three members of the general public, to be appointed by the Secretary, that shall include one representative each from—

(A) a nonprofit group representing older Americans;

(B) a private voluntary health organization concerned with the health problems affecting older Americans; and

(C) a nonprofit organization concerned with research related to the health and independence of older Americans.

(b) Chair

The Secretary, acting through either the Assistant Secretary for Health or the Director of the National Institute on Aging, shall serve as the Chair of the Task Force.

(c) Quorum

A majority of the members of the Task Force shall constitute a quorum, and a lesser number may hold hearings.

(d) Meetings

The Task Force shall meet periodically at the call of the Chair, but in no event less than twice each year.

(e) Compensation and expenses

(1) Compensation

Members of the Task Force who are not regular full-time employees of the United States Government shall, while attending meetings and conferences of the Task Force or otherwise engaged in the business of the Task Force (including traveltime), be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service under GS–18 of the General Schedules established under section 5332 of title 5.

(2) Expenses

While away from their homes or regular places of business on the business of the Task Force, members of such Task Force may be allowed travel expenses, including per diem in

[1] So in original.

lieu of subsistence, as is authorized under section 5703 of title 5 for persons employed intermittently in the Government service.

(Pub. L. 101–557, title III, § 302, Nov. 15, 1990, 104 Stat. 2769; Pub. L. 102–321, title I, § 161, July 10, 1992, 106 Stat. 375; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 108–173, title IX, § 900(e)(6)(D), Dec. 8, 2003, 117 Stat. 2373.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

2003—Subsec. (a)(9). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

1999—Subsec. (a)(11). Pub. L. 106–129 substituted ''Director of the Agency for Healthcare Research and Quality'' for ''Administrator for Health Care Policy and Research''.

1992—Subsec. (a)(7). Pub. L. 102–405 substituted ''Under Secretary for Health of the Department of Veterans Affairs'' for ''Chief Medical Director of the Department of Veterans Affairs''.

Subsec. (a)(8). Pub. L. 102–321 substituted ''Substance Abuse and Mental Health Services Administration'' for ''Alcohol, Drug Abuse and Mental Health Administration''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 242q–2. Administrative staff and support

The Secretary, acting through either the Assistant Secretary for Health or the Director of the National Institute on Aging, shall appoint an Executive Secretary for the Task Force and shall provide the Task Force with such administrative staff and support as may be necessary to enable the Task Force to carry out subsections (b) and (c) of section 242q of this title.

(Pub. L. 101–557, title III, § 303, Nov. 15, 1990, 104 Stat. 2770.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

§ 242q–3. Reports

(a) In general

Not later than 1 year after November 15, 1990, and annually thereafter, the Task Force shall prepare and submit to the Secretary, and to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report providing the recommendations required in section 242q(b) of this title.

(b) Availability to public

The Task Force may make available to the public copies of the reports required in subsection (a) of this section.

(Pub. L. 101–557, title III, § 304, Nov. 15, 1990, 104 Stat. 2770.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 242q–4. Definitions

For purposes of sections 242q to 242q–5 of this title:

(1) Aging research

(A) The term ''aging research'' means research on the aging process and on the diagnosis and treatment of diseases, disorders, and complications related to aging, including menopause. Such research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals.

(B) For purposes of subparagraph (A), the term ''independence'', with respect to diseases, disorders, and complications of aging, means the functional ability of individuals to perform activities of daily living or instrumental activities of daily living without assistance or supervision.

(2) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(3) Task Force

The term ''Task Force'' means the Task Force on Aging Research established under section 242q(a) of this title.

(Pub. L. 101–557, title III, § 305, Nov. 15, 1990, 104 Stat. 2770.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not

as part of the Public Health Service Act which comprises this chapter.

§ 242q–5. Authorization of appropriations

For the purpose of carrying out sections 242q to 242q–5 of this title, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1993.

(Pub. L. 101–557, title III, § 306, Nov. 15, 1990, 104 Stat. 2770.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

§ 242r. Improvement and publication of data on food-related allergic responses

(a) In general

The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the Commissioner of Food and Drugs, shall improve (including by educating physicians and other health care providers) the collection of, and publish as it becomes available, national data on—

(1) the prevalence of food allergies;

(2) the incidence of clinically significant or serious adverse events related to food allergies; and

(3) the use of different modes of treatment for and prevention of allergic responses to foods.

(b) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(Pub. L. 108–282, title II, § 207, Aug. 2, 2004, 118 Stat. 910.)

CODIFICATION

Section was enacted as part of the Food Allergen Labeling and Consumer Protection Act of 2004, and not as part of the Public Health Service Act which comprises this chapter.

PART B—FEDERAL-STATE COOPERATION

§ 243. General grant of authority for cooperation

(a) Enforcement of quarantine regulations; prevention of communicable diseases

The Secretary is authorized to accept from State and local authorities any assistance in the enforcement of quarantine regulations made pursuant to this chapter which such authorities may be able and willing to provide. The Secretary shall also assist States and their political subdivisions in the prevention and suppression of communicable diseases and with respect to other public health matters, shall cooperate with and aid State and local authorities in the enforcement of their quarantine and other health regulations, and shall advise the several States on matters relating to the preservation and improvement of the public health.

(b) Comprehensive and continuing planning; training of personnel for State and local health work; fees

The Secretary shall encourage cooperative activities between the States with respect to comprehensive and continuing planning as to their current and future health needs, the establishment and maintenance of adequate public health services, and otherwise carrying out public health activities. The Secretary is also authorized to train personnel for State and local health work. The Secretary may charge only private entities reasonable fees for the training of their personnel under the preceding sentence.

(c) Development of plan to control epidemics and meet emergencies or problems resulting from disasters; cooperative planning; temporary assistance; reimbursement of United States

(1) The Secretary is authorized to develop (and may take such action as may be necessary to implement) a plan under which personnel, equipment, medical supplies, and other resources of the Service and other agencies under the jurisdiction of the Secretary may be effectively used to control epidemics of any disease or condition and to meet other health emergencies or problems. The Secretary may enter into agreements providing for the cooperative planning between the Service and public and private community health programs and agencies to cope with health problems (including epidemics and health emergencies).

(2) The Secretary may, at the request of the appropriate State or local authority, extend temporary (not in excess of six months) assistance to States or localities in meeting health emergencies of such a nature as to warrant Federal assistance. The Secretary may require such reimbursement of the United States for assistance provided under this paragraph as he may determine to be reasonable under the circumstances. Any reimbursement so paid shall be credited to the applicable appropriation for the Service for the year in which such reimbursement is received.

(July 1, 1944, ch. 373, title III, § 311, 58 Stat. 693; Pub. L. 89–749, § 5, Nov. 3, 1966, 80 Stat. 1190; Pub. L. 90–174, § 4, Dec. 5, 1967, 81 Stat. 536; Pub. L. 91–515, title II, § 282, Oct. 30, 1970, 84 Stat. 1308; Pub. L. 94–317, title II, § 202(b), (c), June 23, 1976, 90 Stat. 703; Pub. L. 97–35, title IX, § 902(c), Aug. 13, 1981, 95 Stat. 559; Pub. L. 97–414, § 8(d), Jan. 4, 1983, 96 Stat. 2060; Pub. L. 99–117, § 11(a), Oct. 7, 1985, 99 Stat. 494.)

AMENDMENTS

1985—Subsec. (c)(1). Pub. L. 99–117 struck out ''referred to in section 247b(f) of this title'' after ''epidemics of any disease or condition'', ''involving or resulting from disasters or any such disease'' after ''health emergencies or problems'' in first sentence, and struck out ''resulting from disasters or any disease or condition referred to in section 247b(f) of this title'' after ''(including epidemics and health emergencies)'' in second sentence.

1983—Subsec. (c)(2). Pub. L. 97–414 substituted ''six months'' for ''forty-five days'' after ''not in excess of''.

1981—Subsec. (a). Pub. L. 97–35, § 902(c)(1), inserted applicability to other public health matters, and struck out reference to section 246 of this title.

Subsec. (b). Pub. L. 97–35, § 902(c)(2), substituted ''public health activities'' for ''the purposes of section 246 of this title''.

1976—Subsec. (b). Pub. L. 94–317, § 202(c), inserted provision authorizing Secretary to charge only private entities reasonable fees for training of their personnel.

Subsec. (c). Pub. L. 94–317, § 202(b), made changes in phraseology and restructured provisions into pars. (1) and (2) and, in par. (1), as so restructured, inserted provisions authorizing Secretary to develop a plan utilizing Public Health Service personnel, equipment, medical supplies and other resources to control epidemics of any disease referred to in section 247b of this title.

1970—Subsecs. (a), (b). Pub. L. 91–515 substituted ''Secretary'' for ''Surgeon General'' wherever appearing.

1967—Subsec. (c). Pub. L. 90–174 added subsec. (c).

1966—Pub. L. 89–749 designated existing provisions as subsec. (a), added subsec. (b), and amended subsec. (b) to permit Surgeon General to train personnel for State and local health work.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 5(a) of Pub. L. 89–749 provided that subsec. (b) of this section is effective July 1, 1966.

Section 5(b) of Pub. L. 89–749 provided that the amendment of subsec. (b) of this section, permitting the Surgeon General to train personnel for State and local health work, is effective July 1, 1967.

FOOD ALLERGENS IN THE FOOD CODE

Pub. L. 108–282, title II, § 209, Aug. 2, 2004, 118 Stat. 910, provided that: ''The Secretary of Health and Human Services shall, in the Conference for Food Protection, as part of its efforts to encourage cooperative activities between the States under section 311 of the Public Health Service Act (42 U.S.C. 243), pursue revision of the Food Code to provide guidelines for preparing allergen-free foods in food establishments, including in restaurants, grocery store delicatessens and bakeries, and elementary and secondary school cafeterias. The Secretary shall consider guidelines and recommendations developed by public and private entities for public and private food establishments for preparing allergen-free foods in pursuing this revision.''

TRAINING OF PRIVATE PERSONS SUBJECT TO REIMBURSEMENT OR ADVANCES TO APPROPRIATIONS

Pub. L. 103–333, title II, Sept. 30, 1994, 108 Stat. 2550, provided in part: ''That for fiscal year 1995 and subsequent fiscal years training of private persons shall be made subject to reimbursement or advances to this appropriation for not in excess of the full cost of such training''.

§ 244. Public access defibrillation programs

(a) In general

The Secretary shall award grants to States, political subdivisions of States, Indian tribes, and tribal organizations to develop and implement public access defibrillation programs—

(1) by training and equipping local emergency medical services personnel, including firefighters, police officers, paramedics, emergency medical technicians, and other first responders, to administer immediate care, including cardiopulmonary resuscitation and automated external defibrillation, to cardiac arrest victims;

(2) by purchasing automated external defibrillators, placing the defibrillators in public places where cardiac arrests are likely to occur, and training personnel in such places to administer cardiopulmonary resuscitation and automated external defibrillation to cardiac arrest victims;

(3) by setting procedures for proper maintenance and testing of such devices, according to the guidelines of the manufacturers of the devices;

(4) by providing training to members of the public in cardiopulmonary resuscitation and automated external defibrillation;

(5) by integrating the emergency medical services system with the public access defibrillation programs so that emergency medical services personnel, including dispatchers, are informed about the location of automated external defibrillators in their community; and

(6) by encouraging private companies, including small businesses, to purchase automated external defibrillators and provide training for their employees to administer cardiopulmonary resuscitation and external automated defibrillation to cardiac arrest victims in their community.

(b) Preference

In awarding grants under subsection (a) of this section, the Secretary shall give a preference to a State, political subdivision of a State, Indian tribe, or tribal organization that—

(1) has a particularly low local survival rate for cardiac arrests, or a particularly low local response rate for cardiac arrest victims; or

(2) demonstrates in its application the greatest commitment to establishing and maintaining a public access defibrillation program.

(c) Use of funds

A State, political subdivision of a State, Indian tribe, or tribal organization that receives a grant under subsection (a) of this section may use funds received through such grant to—

(1) purchase automated external defibrillators that have been approved, or cleared for marketing, by the Food and Drug Administration;

(2) provide automated external defibrillation and basic life support training in automated external defibrillator usage through nationally recognized courses;

(3) provide information to community members about the public access defibrillation program to be funded with the grant;

(4) provide information to the local emergency medical services system regarding the placement of automated external defibrillators in public places;

(5) produce materials to encourage private companies, including small businesses, to purchase automated external defibrillators;

(6) establish an information clearinghouse that provides information to increase public access to defibrillation in schools; and

(7) further develop strategies to improve access to automated external defibrillators in public places.

(d) Application

(1) In general

To be eligible to receive a grant under subsection (a) of this section, a State, political subdivision of a State, Indian tribe, or tribal

organization shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(2) Contents

An application submitted under paragraph (1) shall—

(A) describe the comprehensive public access defibrillation program to be funded with the grant and demonstrate how such program would make automated external defibrillation accessible and available to cardiac arrest victims in the community;

(B) contain procedures for implementing appropriate nationally recognized training courses in performing cardiopulmonary resuscitation and the use of automated external defibrillators;

(C) contain procedures for ensuring direct involvement of a licensed medical professional and coordination with the local emergency medical services system in the oversight of training and notification of incidents of the use of the automated external defibrillators;

(D) contain procedures for proper maintenance and testing of the automated external defibrillators, according to the labeling of the manufacturer;

(E) contain procedures for ensuring notification of local emergency medical services system personnel, including dispatchers, of the location and type of devices used in the public access defibrillation program; and

(F) provide for the collection of data regarding the effectiveness of the public access defibrillation program to be funded with the grant in affecting the out-of-hospital cardiac arrest survival rate.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $25,000,000 for fiscal year 2003, and such sums as may be necessary for each of the fiscal years 2004 through 2006. Not more than 10 percent of amounts received under a grant awarded under this section may be used for administrative expenses.

(July 1, 1944, ch. 373, title III, § 312, as added Pub. L. 107–188, title I, § 159(c), June 12, 2002, 116 Stat. 634; amended Pub. L. 108–41, § 2, July 1, 2003, 117 Stat. 839.)

PRIOR PROVISIONS

A prior section 244, acts July 1, 1944, ch. 373, title III, § 312, 58 Stat. 693; July 3, 1946, ch. 538, § 8, 60 Stat. 424; Dec. 5, 1967, Pub. L. 90–174, § 12(b), 81 Stat. 541; Oct. 30, 1970, Pub. L. 91–515, title II, § 282, 84 Stat. 1308, provided for health conferences, prior to repeal by Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362. See section 242*o*(a) of this title.

A prior section 312 of act July 1, 1944, was classified to section 244–1 of this title prior to repeal by Pub. L. 94–484.

AMENDMENTS

2003—Subsec. (c)(6), (7). Pub. L. 108–41 added par. (6) and redesignated former par. (6) as (7).

FINDINGS

Pub. L. 107–188, title I, § 159(b), June 12, 2002, 116 Stat. 634, provided that: ''Congress makes the following findings:

''(1) Over 220,000 Americans die each year from cardiac arrest. Every 2 minutes, an individual goes into cardiac arrest in the United States.

''(2) The chance of successfully returning to a normal heart rhythm diminishes by 10 percent each minute following sudden cardiac arrest.

''(3) Eighty percent of cardiac arrests are caused by ventricular fibrillation, for which defibrillation is the only effective treatment.

''(4) Sixty percent of all cardiac arrests occur outside the hospital. The average national survival rate for out-of-hospital cardiac arrest is only 5 percent.

''(5) Communities that have established and implemented public access defibrillation programs have achieved average survival rates for out-of-hospital cardiac arrest as high as 50 percent.

''(6) According to the American Heart Association, wide use of defibrillators could save as many as 50,000 lives nationally each year.

''(7) Successful public access defibrillation programs ensure that cardiac arrest victims have access to early 911 notification, early cardiopulmonary resuscitation, early defibrillation, and early advanced care.''

§ 244–1. Repealed. Pub. L. 94–484, title V, § 503(b), Oct. 12, 1976, 90 Stat. 2300

Section, act July 1, 1944, ch. 373, title III, § 312, formerly § 306, as added Aug. 2, 1956, ch. 871, title I, § 101, 70 Stat. 923; amended July 23, 1959, Pub. L. 86–105, § 1, 73 Stat. 239; Sept 8, 1960, Pub. L. 86–720, § 1(b), 74 Stat. 820; Aug. 27, 1964, Pub. L. 88–497, § 2, 78 Stat. 613; Aug. 16, 1968, Pub. L. 90–490, title III, § 302(b), 82 Stat. 789; Mar. 12, 1970, Pub. L. 91–208, § 3, 84 Stat. 52; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; June 18, 1973, Pub. L. 93–45, title I, § 104(a), 87 Stat. 91; renumbered § 312 and amended July 23, 1974, Pub. L. 93–353, title I, § 102(b), 88 Stat. 362; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(a)(1), 90 Stat. 2244, related to graduate or specialized training for physicians, engineers, nurses, and other professional personnel.

EFFECTIVE DATE OF REPEAL

Section 503(c) of Pub. L. 94–484 provided that: ''The amendments made by this section [amending former section 295f–2 of this title and repealing this section and section 245a of this title] shall take effect October 1, 1977.''

§ 244a. Repealed. Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362

Section, act July 1, 1944, ch. 373, title III, § 312a, as added Aug. 31, 1954, ch. 1158, § 2, 68 Stat. 1025, related to birth and death statistics, annual collection, and compensation for transcription. See section 242k(h) of this title.

§ 245. Public access defibrillation demonstration projects

(a) In general

The Secretary shall award grants to political subdivisions of States, Indian tribes, and tribal organizations to develop and implement innovative, comprehensive, community-based public access defibrillation demonstration projects that—

(1) provide cardiopulmonary resuscitation and automated external defibrillation to cardiac arrest victims in unique settings;

(2) provide training to community members in cardiopulmonary resuscitation and automated external defibrillation; and

(3) maximize community access to automated external defibrillators.

(b) Use of funds

A recipient of a grant under subsection (a) of this section shall use the funds provided through the grant to—

(1) purchase automated external defibrillators that have been approved, or cleared for marketing, by the Food and Drug Administration;

(2) provide basic life training in automated external defibrillator usage through nationally recognized courses;

(3) provide information to community members about the public access defibrillation demonstration project to be funded with the grant;

(4) provide information to the local emergency medical services system regarding the placement of automated external defibrillators in the unique settings; and

(5) further develop strategies to improve access to automated external defibrillators in public places.

(c) Application

(1) In general

To be eligible to receive a grant under subsection (a) of this section, a political subdivision of a State, Indian tribe, or tribal organization shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(2) Contents

An application submitted under paragraph (1) may—

(A) describe the innovative, comprehensive, community-based public access defibrillation demonstration project to be funded with the grant;

(B) explain how such public access defibrillation demonstration project represents innovation in providing public access to automated external defibrillation; and

(C) provide for the collection of data regarding the effectiveness of the demonstration project to be funded with the grant in—

(i) providing emergency cardiopulmonary resuscitation and automated external defibrillation to cardiac arrest victims in the setting served by the demonstration project; and

(ii) affecting the cardiac arrest survival rate in the setting served by the demonstration project.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2002 through 2006. Not more than 10 percent of amounts received under a grant awarded under this section may be used for administrative expenses.

(July 1, 1944, ch. 373, title III, § 313, as added Pub. L. 107–188, title I, § 159(c), June 12, 2002, 116 Stat. 636.)

PRIOR PROVISIONS

A prior section 245, acts July 1, 1944, ch. 373, title III, § 313, 58 Stat. 693; Oct. 30, 1970, Pub. L. 91–515, title II, § 282, 84 Stat. 1308, provided for collection of vital statistics, prior to repeal by Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362. See section 242k(g) of this title.

A prior section 313 of act July 1, 1944, was classified to section 245a of this title prior to repeal by Pub. L. 94–484.

§ 245a. Repealed. Pub. L. 94–484, title V, § 503(b), Oct. 12, 1976, 90 Stat. 2300

Section, act July 1, 1944, ch. 373, title III, § 313, formerly § 309, as added Sept. 8, 1960, Pub. L. 86–720, § 1(a), 74 Stat. 819; amended Aug. 27, 1964, Pub. L. 88–497, § 3, 78 Stat. 613; Nov. 3, 1966, Pub. L. 89–749, § 4, 80 Stat. 1190; Dec. 5, 1967, Pub. L. 90–174, §§ 2(g), 8(c), 81 Stat. 534, 540; Aug. 16, 1968, Pub. L. 90–490, title III, § 302(a), 82 Stat. 788; Mar. 12, 1970, Pub. L. 91–208, §§ 1, 2, 84 Stat. 52; June 30, 1970, Pub. L. 91–296, title IV, § 401(b)(1)(B), 84 Stat. 352; June 18, 1973, Pub. L. 93–45, title I, § 104(b), (c), 87 Stat. 91; renumbered § 313 and amended July 23, 1974, Pub. L. 93–353, title I, § 102(c), 88 Stat. 362; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(a)(2), (3), 90 Stat. 2244, related to graduate public health training grants.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1977, see section 503(c) of Pub. L. 94–484, set out as a note under section 244–1 of this title.

§ 246. Grants and services to States

(a) Comprehensive health planning and services

(1) In order to assist the States in comprehensive and continuing planning for their current and future health needs, the Secretary is authorized during the period beginning July 1, 1966, and ending June 30, 1973, to make grants to States which have submitted, and had approved by the Secretary, State plans for comprehensive State health planning. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $2,500,000 for the fiscal year ending June 30, 1967, $7,000,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $15,000,000 for the fiscal year ending June 30, 1971, $17,000,000 for the fiscal year ending June 30, 1972, $20,000,000 for the fiscal year ending June 30, 1973, and $10,000,000 for the fiscal year ending June 30, 1974.

(2) In order to be approved for purposes of this subsection, a State plan for comprehensive State health planning must—

(A) designate, or provide for the establishment of, a single State agency, which may be an interdepartmental agency, as the sole agency for administering or supervising the administration of the State's health planning functions under the plan;

(B) provide for the establishment of a State health planning council, which shall include representatives of Federal, State, and local agencies (including as an ex officio member, if there is located in such State one or more hospitals or other health care facilities of the Department of Veterans Affairs, the individual whom the Secretary of Veterans Affairs shall have designated to serve on such council as the representative of the hospitals or other health care facilities of such Department which are located in such State) and nongovernmental organizations and groups concerned with health (including representation

of the regional medical program or programs included in whole or in part within the State), and of consumers of health services, to advise such State agency in carrying out its functions under the plan, and a majority of the membership of such council shall consist of representatives of consumers of health services;

(C) set forth policies and procedures for the expenditure of funds under the plan, which, in the judgment of the Secretary, are designed to provide for comprehensive State planning for health services (both public and private and including home health care), including the facilities and persons required for the provision of such services, to meet the health needs of the people of the State and including environmental considerations as they relate to public health;

(D) provide for encouraging cooperative efforts among governmental or nongovernmental agencies, organizations and groups concerned with health services, facilities, or manpower, and for cooperative efforts between such agencies, organizations, and groups and similar agencies, organizations, and groups in the fields of education, welfare, and rehabilitation;

(E) contain or be supported by assurances satisfactory to the Secretary that the funds paid under this subsection will be used to supplement and, to the extent practicable, to increase the level of funds that would otherwise be made available by the State for the purpose of comprehensive health planning and not to supplant such non-Federal funds;

(F) provide such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(G) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

(H) provide that the State agency will from time to time, but not less often than annually, review its State plan approved under this subsection and submit to the Secretary appropriate modifications thereof;

(I) effective July 1, 1968, (i) provide for assisting each health care facility in the State to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan developed in accordance with criteria established by the Secretary after consultation with the State which will meet the needs of the State for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner, and (ii) provide that the State agency furnishing such assistance will periodically review the program (developed pursuant to clause (i)) of each health care facility in the State and recommend appropriate modification thereof;

(J) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this subsection; and

(K) contain such additional information and assurances as the Secretary may find necessary to carry out the purposes of this subsection.

(3)(A) From the sums appropriated for such purpose for each fiscal year, the several States shall be entitled to allotments determined, in accordance with regulations, on the basis of the population and the per capita income of the respective States; except that no such allotment to any State for any fiscal year shall be less than 1 per centum of the sum appropriated for such fiscal year pursuant to paragraph (1). Any such allotment to a State for a fiscal year shall remain available for obligation by the State, in accordance with the provisions of this subsection and the State's plan approved thereunder, until the close of the succeeding fiscal year.

(B) The amount of any allotment to a State under subparagraph (A) for any fiscal year which the Secretary determines will not be required by the State, during the period for which it is available, for the purposes for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as he may fix, to other States with respect to which such a determination has not been made, in proportion to the original allotments to such States under subparagraph (A) for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State from funds appropriated pursuant to this subsection for a fiscal year shall be deemed part of its allotment under subparagraph (A) for such fiscal year.

(4) From each State's allotment for a fiscal year under this subsection, the State shall from time to time be paid the Federal share of the expenditures incurred during that year or the succeeding year pursuant to its State plan approved under this subsection. Such payments shall be made on the basis of estimates by the Secretary of the sums the State will need in order to perform the planning under its approved State plan under this subsection, but with such adjustments as may be necessary to take account of previously made underpayments or overpayments. The ''Federal share'' for any State for purposes of this subsection shall be all, or such part as the Secretary may determine, of the cost of such planning, except that in the case of the allotments for the fiscal year ending June 30, 1970, it shall not exceed 75 per centum of such cost.

(b) Project grants for areawide health planning; authorization of appropriations; prerequisites for grants; application; contents

(1)(A) The Secretary is authorized, during the period beginning July 1, 1966, and ending June 30, 1974, to make, with the approval of the State agency administering or supervising the administration of the State plan approved under subsection (a) of this section, project grants to any other public or nonprofit private agency or organization (but with appropriate representation of the interests of local government where the recipient of the grant is not a local government or combination thereof or an agency of such government or combination) to cover not to exceed 75 per centum of the costs of projects for developing (and from time to time revising) comprehensive regional, metropolitan area, or other local area plans for coordination of existing and planned health services, including the facilities and persons required for provision of such services; and including the provision of such services through home health care; except that in the case of project grants made in any State prior to July 1, 1968, approval of such State agency shall be required only if such State has such a State plan in effect at the time of such grants. No grant may be made under this subsection after June 30, 1970, to any agency or organization to develop or revise health plans for an area unless the Secretary determines that such agency or organization provides means for appropriate representation of the interests of the hospitals, other health care facilities, and practicing physicians serving such area, and the general public. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1967, $7,500,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $20,000,000 for the fiscal year ending June 30, 1971, $30,000,000 for the fiscal year ending June 30, 1972, $40,000,000 for the fiscal year ending June 30, 1973, and $25,100,000 for the fiscal year ending June 30, 1974.

(B) Project grants may be made by the Secretary under subparagraph (A) to the State agency administering or supervising the administration of the State plan approved under subsection (a) of this section with respect to a particular region or area, but only if (i) no application for such a grant with respect to such region or area has been filed by any other agency or organization qualified to receive such a grant, and (ii) such State agency certifies, and the Secretary finds, that ample opportunity has been afforded to qualified agencies and organizations to file application for such a grant with respect to such region or area and that it is improbable that, in the foreseeable future, any agency or organization which is qualified for such a grant will file application therefor.

(2)(A) In order to be approved under this subsection, an application for a grant under this subsection must contain or be supported by reasonable assurances that there has been or will be established, in or for the area with respect to which such grant is sought, an areawide health planning council. The membership of such council shall include representatives of public, voluntary, and nonprofit private agencies, institutions, and organizations concerned with health (including representatives of the interests of local government of the regional medical program for such area, and of consumers of health services). A majority of the members of such council shall consist of representatives of consumers of health services.

(B) In addition, an application for a grant under this subsection must contain or be supported by reasonable assurances that the areawide health planning agency has made provision for assisting health care facilities in its area to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan which will meet the needs of the State and the area for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner.

(c) Project grants for training, studies, and demonstrations; authorization of appropriations

The Secretary is also authorized, during the period beginning July 1, 1966, and ending June 30, 1974, to make grants to any public or nonprofit private agency, institution, or other organization to cover all or any part of the cost of projects for training, studies, or demonstrations looking toward the development of improved or more effective comprehensive health planning throughout the Nation. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $1,500,000 for the fiscal year ending June 30, 1967, $2,500,000 for the fiscal year ending June 30, 1968, $5,000,000 for the fiscal year ending June 30, 1969, $7,500,000 for the fiscal year ending June 30, 1970, $8,000,000 for the fiscal year ending June 30, 1971, $10,000,000 for the fiscal year ending June 30, 1972, $12,000,000 for the fiscal year ending June 30, 1973, and $4,700,000 for the fiscal year ending June 30, 1974.

(July 1, 1944, ch. 373, title III, § 314, 58 Stat. 693; July 3, 1946, ch. 538, § 9, 60 Stat. 424; June 16, 1948, ch. 481, § 5, 62 Stat. 468; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 852, § 18, 70 Stat. 910; Pub. L. 85–544, § 1, July 22, 1958, 72 Stat. 400; Pub. L. 87–395, § 2(a)–(d), Oct. 5, 1961, 75 Stat. 824; Pub. L. 87–688, § 4(a)(1), Sept. 25, 1962, 76 Stat. 587; Pub. L. 89–109, § 4, Aug. 5, 1965, 79 Stat. 436; Pub. L. 89–749, § 3, Nov. 3, 1966, 80 Stat. 1181; Pub. L. 90–174, §§ 2(a)–(f), 3(b)(2), 8(a), (b), 12(d), Dec. 5, 1967, 81 Stat. 533–535, 540, 541; Pub. L. 91–296, title I, § 111(b), title IV, § 401(b)(1)(C), (D), June 30, 1970, 84 Stat. 340, 352; Pub. L. 91–513, title I, § 3(b), Oct. 27, 1970, 84 Stat. 1241; Pub. L. 91–515, title II, §§ 220, 230, 240, 250, 260(a)–(c)(1), 282, Oct. 30, 1970, 84 Stat. 1304–1306, 1308; Pub. L. 91–616, title III, § 331, Dec. 31, 1970, 84 Stat. 1853; Pub. L. 91–648, title IV, § 403, Jan. 5, 1971, 84 Stat. 1925, as amended Pub. L. 95–454, title VI, § 602(c), Oct. 13, 1978, 92 Stat. 1189; Pub. L. 92–255, title IV, § 403(a), Mar. 21, 1972, 86 Stat. 77; Pub. L. 93–45, title I, § 106, June 18, 1973, 87 Stat. 92; Pub. L. 93–151, § 8, Nov. 9, 1973, 87 Stat. 568; Pub. L. 94–63, title I, § 102, title V, § 501(b), title VII, § 701(a), (b), July 29, 1975, 89 Stat. 304, 346, 352; Pub. L. 94–484, title IX, § 905(b)(1), Oct. 12, 1976, 90 Stat. 2325; Pub. L. 95–83, title III, § 302, Aug. 1, 1977, 91

Stat. 387; Pub. L. 95–454, title VI, § 602(c), Oct. 13, 1978, 92 Stat. 1189; Pub. L. 95–622, title I, § 109, Nov. 9, 1978, 92 Stat. 3417; Pub. L. 95–626, title II, § 201(a), (b)(2), Nov. 10, 1978, 92 Stat. 3570; Pub. L. 96–32, § 6(e), (f), July 10, 1979, 93 Stat. 83; Pub. L. 96–79, title I, § 115(k)(2), Oct. 4, 1979, 93 Stat. 610; Pub. L. 96–398, title I, § 107(d), Oct. 7, 1980, 94 Stat. 1571; Pub. L. 97–35, title IX, § 902(b), Aug. 13, 1981, 95 Stat. 559; Pub. L. 99–117, § 12(a), Oct. 7, 1985, 99 Stat. 495; Pub. L. 102–54, § 13(q)(1)(D), June 13, 1991, 105 Stat. 279.)

AMENDMENTS

1991—Subsec. (a)(2)(B). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'', ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' and ''such Department'' for ''such Administration''.

1985—Subsec. (g). Pub. L. 99–117 directed that subsec. (g) be repealed. Previously, subsec. (g) was repealed by Pub. L. 96–398. See 1980 Amendment note below.

1981—Subsec. (d). Pub. L. 97–35 struck out subsec. (d) which related to grants for services, form, manner, etc., of application, review of activities undertaken, allotments, and authorization of appropriations.

1980—Subsec. (g). Pub. L. 96–398 struck out subsec. (g) which related to application, procedures applicable, amount, etc., for State mental health program grants.

1979—Subsec. (d)(2)(C)(ii). Pub. L. 96–32, § 6(e), substituted ''uniform national health program reporting system'' for ''uniform national reporting system''.

Subsec. (d)(4)(A). Pub. L. 96–32, § 6(f), in provision following subd. (II) of cl. (ii), substituted ''the preceding provisions of this subparagraph'' for ''clauses (i) and (ii)'' and ''amount'' for ''amounts'' and inserted provision that if the amount appropriated for a fiscal year is equal to or less than the amount appropriated for fiscal year ending Sept. 30, 1979, the total amount of grants for a State health authority shall be an amount which bears the same ratio to the amount appropriated as the total amount of grants received by such authority from appropriations for fiscal year ending Sept. 30, 1979, bears to the amount appropriated for that fiscal year.

Subsec. (g)(2)(D)(iv). Pub. L. 96–79 substituted ''a plan which is consistent with the State health plan in effect for the State under section 300m–3(c) of this title and'' for ''a plan''.

1978—Subsec. (d). Pub. L. 95–626, § 201(b)(2), completely revised subsec. (d) under which the Secretary is authorized to make grants to State health authorities to assist in meeting the costs of providing comprehensive public health services by including requirements that the States submit an application outlining how funds will be used to supplement non-Federal support for the provision of public health services in the State, by setting out formulae under which funds will be made available to States including definitions of ''applicable grant computation percentage'' and ''State and local expenditures for comprehensive public health services'', by requiring implementation of a national health program reporting system to assure accountability for expenditure of funds, and by authorizing appropriations of $150,000,000 for fiscal year ending Sept. 30, 1980, and $170,000,000 for fiscal year ending Sept. 30, 1981.

Subsec. (d)(7)(A). Pub. L. 95–626, § 201(a)(1), inserted provision authorizing an appropriation of $103,000,000 for fiscal year ending Sept. 30, 1979.

Subsec. (d)(7)(B). Pub. L. 95–626, § 201(a)(2), inserted provision authorizing an appropriation of $20,000,000 for fiscal year ending Sept. 30, 1979.

Subsec. (f). Pub. L. 95–454 designated existing provisions of section 403 of Pub. L. 91–648 (see 1971 Amendment note below) as subsec. (a) thereof and added subsec. (b) thereto repealing subsec. (f) of this section as subsec. (f) of this section had applied to commissioned officers of the Public Health Service.

Subsec. (g). Pub. L. 95–622 substituted provisions relating to grants for State mental health programs for provisions relating to regulations and amendments with respect to grants to States under subsecs. (a) and (d) and reduction and suspension of subsec. (a) and (d) grant payments.

1977—Subsec. (d)(7)(A). Pub. L. 95–83, § 302(a), substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $106,750,000 for fiscal year ending Sept. 30, 1978.

Subsec. (d)(7)(B). Pub. L. 95–83, § 302(b), substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $12,680,000 for fiscal year ending Sept. 30, 1978.

1976—Subsec. (g)(4)(B). Pub. L. 94–484 defined ''State'' to include the Northern Mariana Islands.

1975—Subsec. (d). Pub. L. 94–63, §§ 102, 701(a), substituted provisions relating to grants made pursuant to allotments to State health and mental health authorities for meeting the costs of providing comprehensive public health services, for provisions relating to grants made pursuant to appropriations for fiscal year ending June 30, 1968 to fiscal year ending June 30, 1975, to State health or mental health authorities to aid in the establishment and maintenance of adequate public health services, including the training of personnel for State and local health work.

Subsec. (e). Pub. L. 94–63, §§ 501(b), 701(b), struck out subsec. (e) which authorized appropriations from fiscal year ending June 30, 1968 through fiscal year ending June 30, 1975 for project grants for health services and related training, set forth procedures for making such grants, and prohibited grants after the fiscal year ending June 30, 1975, for provisions of this chapter amended by title VII of the Health Revenue Sharing and Health Services Act of 1975.

1973—Subsec. (a)(1). Pub. L. 93–45, § 106(a)(1), authorized appropriations of $10,000,000 for fiscal year ending June 30, 1974.

Subsec. (b)(1)(A). Pub. L. 93–45, § 106(a)(2), (b), authorized appropriations of $25,100,000 for fiscal year ending June 30, 1974, and extended period for making project grants from June 30, 1973, to June 30, 1974.

Subsec. (c). Pub. L. 93–45, § 106(a)(3), (b), authorized appropriations of $4,700,000 for fiscal year ending June 30, 1974, and extended period for grants from June 30, 1973, to June 30, 1974.

Subsec. (d)(1). Pub. L. 93–45, § 106(a)(4), authorized appropriations of $90,000,000 for fiscal year ending June 30, 1974.

Subsec. (e). Pub. L. 93–151 prohibited use of appropriated funds for lead based paint poisoning control.

Pub. L. 93–45, § 106(a)(5), authorized appropriations of $230,700,000 for fiscal year ending June 30, 1974, and prohibited any grant for such fiscal year to cover cost of services described in cl. (1) or (2) of the first sentence if a grant or contract to cover cost of such services may be made or entered into from funds authorized to be appropriated for such fiscal year under an appropriations authorization in any provision of this chapter (other than this subsection) amended by title I of the Health Programs Extension Act of 1973.

1972—Subsec. (d)(2)(K). Pub. L. 92–255 required State plans to provide for licensing of facilities for treatment and rehabilitation of persons with drug abuse and other drug dependence problems and for expansion of State mental health programs and other prevention and treatment programs in the field of drug abuse and drug dependence.

1971—Subsec. (f). Pub. L. 91–648, § 403(a), as amended by Pub. L. 94–454, § 602(c), repealed subsec. (f) which authorized the Secretary to arrange the interchange of personnel with States to aid in discharge of responsibilities in field of health care, except as subsec. (b) applied to commissioned officers of the Public Health Service. See 1978 Amendment note above.

1970—Pub. L. 91–515, § 282, substituted ''Secretary'' for ''Surgeon General'' in subsecs. (a)(1), (a)(2)(C), (E) to (H), (K), (a)(3)(B), (a)(4), (b)(1)(A), (c), (d)(1), (d)(2)(C), (F) to (H), (J), (d)(4)(A), (d)(6), and (g)(1) to (3).

Subsec. (a)(1). Pub. L. 91–515, § 220(a), extended period for making grants to States from June 30, 1970 to June 30, 1973, and authorized appropriations for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973.

Subsec. (a)(2)(B). Pub. L. 91–515, § 220(b), (c), inserted provisions authorizing appointment of an exofficio member from representatives of Federal, State, and local agencies involved, and requiring representation of the regional medical program or programs included in whole or in part within the State.

Subsec. (a)(2)(C). Pub. L. 91–515, § 220(d), inserted ''and including home health care'' after ''private'' and ''and including environmental considerations as they relate to public health'' after ''people of the State''.

Subsec. (b). Pub. L. 91–515, § 230, redesignated existing provisions as subsec. (b)(1)(A), and, as so redesignated, extended period for making project grants from June 30, 1970 to June 30, 1973, inserted ''and including the provision of such services through home health care'' after ''such services'', and authorized appropriations for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973, and added subsec. (b)(1)(B) and (b)(2).

Pub. L. 91–296, § 111(b), inserted provisions requiring that before grants be made to agencies or organizations to develop or revise health plans for an area the Secretary determine that the agency or organization provides means for appropriate representation of the interests of the hospitals, practicing physicians, and the general public.

Subsec. (c). Pub. L. 91–515, § 240, extended period for making grants from June 30, 1970, to June 30, 1973, and authorized appropriations for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973.

Subsec. (d)(1). Pub. L. 91–515, § 250(a), authorized appropriations for fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973.

Pub. L. 91–296, § 401(b)(1)(C), struck out except which provided for use of up to 1 per centum by Secretary for evaluation.

Subsec. (d)(2)(C). Pub. L. 91–515, § 250(b), inserted provisions requiring State plan to contain assurances that the plan is compatible with total health program of the State.

Subsec. (d)(2)(K). Pub. L. 91–513 added subpar. (K).

Subsec. (d)(2)(L). Pub. L. 91–616 added subpar. (L).

Subsec. (e). Pub. L. 91–515, § 260(a), (b), (c)(1), inserted provisions authorizing appropriations for fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973, provisions authorizing grants to cover part of cost of equity requirements and amortization of loans on facilities acquired from the Office of Economic Opportunity or construction in connection with any program or project transferred from the Office of Economic Opportunity, and provisions requiring the application for any grant made under this subsection to be referred for review and comment to the appropriate areawide health planning agency, or, if no such agency is in the area, then to such other public or nonprofit private agency or organization (if any) which performs similar functions.

Pub. L. 91–296, § 401(b)(1)(D), struck out provision for use of up to 1 per centum of appropriation for grants under subsec. (e) by the Secretary for evaluation.

1967—Subsec. (a)(1). Pub. L. 90–174, § 2(a)(1), extended period for making grants to States from June 30, 1968, to June 30, 1970, increased appropriations authorization for fiscal year ending June 30, 1968, from $5,000,000 to $7,000,000, and authorized appropriations of $10,000,000 and $15,000,000 for fiscal years ending June 30, 1969, and 1970, respectively.

Subsec. (a)(2)(I) to (K). Pub. L. 90–174, § 2(a)(2), added subpar. (I) and redesignated former subpars. (I) and (J) as (J) and (K), respectively.

Subsec. (a)(4). Pub. L. 90–174, § 2(a)(3), limited Federal share of expenditures, in case of allotments for fiscal year ending June 30, 1968, to 75 per centum of cost of planning.

Subsec. (b). Pub. L. 90–174, § 2(b)(1), (2), extended period for making grants to public or nonprofit private organizations from June 30, 1968, to June 30, 1970, and authorized appropriations of $10,000,000 and $15,000,000 for fiscal years ending June 30, 1969, and 1970, respectively, and provided for appropriate representation of interests of local government where recipient of grant is not a local government or combination thereof or an agency of such government or combination, respectively.

Subsec. (c). Pub. L. 90–174, § 2(c), extended period for making grants to public or nonprofit private organizations from June 30, 1968, to June 30, 1970, and authorized appropriations of $5,000,000 and $7,500,000 for fiscal years ending June 30, 1969, and 1970, respectively.

Subsec. (d)(1). Pub. L. 90–174, §§ 2(d)(1), 8(a), increased appropriations authorization for fiscal year ending June 30, 1968, from $62,500,000 to $70,000,000, and authorized appropriations of $90,000,000 and $100,000,000 for fiscal years ending June 30, 1969, and 1970, respectively, and made program evaluation funds available for any fiscal year ending after June 30, 1968, respectively.

Subsec. (d)(5). Pub. L. 90–174, § 2(d)(2), made Federal share of 66⅔ per centum applicable to the Trust Territory of the Pacific Islands.

Subsec. (d)(7). Pub. L. 90–174, § 2(d)(3), provided for an allocation of 70 per centum of funds for provision under the State plan of services in communities of the State.

Subsec. (e). Pub. L. 90–174, §§ 2(e), 3(b)(2), 8(b), increased appropriations authorization for fiscal year ending June 30, 1968, from $62,500,000 to $90,000,000, authorized appropriations of $95,000,000 and $80,000,000 for fiscal years ending June 30, 1969, and 1970, respectively, inserted ''(including related training)'' after ''providing services'' in cl. (1), substituted ''developing'' for ''stimulating'' and inserted ''(including related training)'' after ''health services'' in cl. (2), struck out cl. (3) which authorized grants to cover part of cost of undertaking studies, demonstrations, or training designed to develop new methods or improve existing methods of providing health services, and made program evaluation funds available for any fiscal year ending after June 30, 1968.

Subsec. (f)(5). Pub. L. 90–174, § 12(d)(1), inserted ''for'' before ''the expenses of travel''.

Subsec. (f)(6), (8). Pub. L. 90–174, § 12(d)(2), substituted ''Department'' for ''Service''.

Subsec. (g)(4)(B). Pub. L. 90–174, § 2(f), defined ''State'' to include the Trust Territory of the Pacific Islands.

1966—Subsec. (a). Pub. L. 89–749 substituted provisions authorizing the Surgeon General to make grants to States to assist in comprehensive and continuing planning for their current and future health needs, authorizing appropriations therefor, setting out the requirements for an acceptable State plan for comprehensive State health planning, covering the allotting of the appropriated sums to the States, and the payment of the allotted funds, for provisions authorizing the Surgeon General, through the use of grants and other assistance, to help local programs of prevention, treatment, and control of venereal diseases, covering the payment of the costs of assistance by personnel of the Public Health Service to assist in carrying out the purposes of the section with respect to venereal disease, and authorizing the appropriation of funds.

Subsec. (b). Pub. L. 89–749 substituted provisions for project grants by the Surgeon General covering the development of comprehensive regional, metropolitan, or local coordination of existing and planned health facilities and persons required for providing services and the authorization of appropriations of $5,000,000 for fiscal 1967 and $7,500,000 for fiscal 1968 for provisions authorizing the appropriation of funds to enable the Surgeon General to aid in the development of measures for the local prevention, treatment, and control of tuberculosis.

Subsec. (c). Pub. L. 89–749 substituted provisions for project grants for the development of improved or more effective comprehensive health planning throughout the United States and the authorization of appropriations of $1,500,000 for fiscal 1967 and $2,500,000 for fiscal 1968 for provisions authorizing the Surgeon General to

assist, through grants and otherwise, in the establishment and maintenance of adequate public health services by States, counties, health districts, and other political subdivisions, authorizing appropriations therefor, and covering the allotment, payment, and allocation of appropriated funds.

Subsec. (d). Pub. L. 89–749 substituted provisions authorizing grants by the Surgeon General to State health or mental health authorities to assist in establishing and maintaining adequate public health services, setting out the requirements for an acceptable State plan for the supplying of public health services, authorizing an appropriation of $62,500,000 for fiscal 1968, the allotment of appropriated funds, payments to States, and the determination of the Federal share for provisions covering the allotment of appropriated funds among the several States on the basis of population, incidence of venereal disease, tuberculosis, mental health problems, and the financial needs of the various States.

Subsec. (e). Pub. L. 89–749 substituted provisions for project grants for health services development to public or private nonprofit agencies and for the authorization of an appropriation of $62,500,000 for fiscal 1968 for provisions covering the establishment and maintenance of community programs of heart disease control and the allotments and appropriations therefor.

Subsec. (f). Pub. L. 89–749 substituted provisions covering the interchange of personnel with States, the application of statutes covering Federal employees to interchanged personnel, and the coverage of State officers and employees, for provisions for the determination and certification of amounts paid to each State from allotments thereto.

Subsec. (g). Pub. L. 89–749 substituted provisions for consultation with State health planning agencies concerning regulations and amendments with respect to grants to States, the reduction of payments, cessation of payments for non-compliance, and definitions, for provisions limiting the expending of grant funds for purposes specified by statute and by the agency, organization, or institution to which payment was made.

Subsecs. (h) to (m). Pub. L. 89–749 struck out subsecs. (h) to (m) which dealt, respectively, with requirement that State funds be provided for same purpose as that for which allotted funds are spent, cessation of Federal aid and procedures in connection therewith, promulgation of rules and regulations and consultation with State health authorities precedent thereto, availability of appropriated funds for administrative expenses including printing and travel expenses, applicability of section to Guam and Samoa, and reduction of payments commensurate to expense of detailing of Public Health Service personnel to States.

1965—Subsec. (c). Pub. L. 89–109 substituted ''first six fiscal years ending after June 30, 1961'' for ''first five fiscal years ending after June 30, 1961'' and ''$5,000,000'' for ''$2,500,000''.

1962—Subsec. (*l*). Pub. L. 87–688 inserted ''and American Samoa'', ''or American Samoa'', and ''or American Samoa, respectively'' after ''Guam''.

1961—Subsec. (c). Pub. L. 87–395, §2(a)–(c), substituted ''of the first five fiscal years ending after June 30, 1961, the sum of $50,000,000'' for ''fiscal year a sum not to exceed $30,000,000'', ''such amount as may be necessary'' for ''an amount, not to exceed $3,000,000'', ''$2,500,000'' for ''$1,000,000'', and provided that when an appropriating act provides that the amounts it specifies are available only for allotments and payments for such services and activities under this subsection as specified in such act, the requirements of subsec. (h) shall apply to such allotments and payments.

Subsec. (m). Pub. L. 87–395, §2(d), added subsec. (m).

1958—Subsec. (c). Pub. L. 85–544 designated existing provisions of second sentence as cl. (1) and added cl. (2).

1956—Subsec. (*l*). Act Aug. 1, 1956, added subsec. (*l*).

1948—Subsec. (e). Act June 16, 1948, §5(a), added subsec. (e) to provide for community programs of heart disease control. Former subsec. (e) redesignated (f).

Subsec. (f). Act June 16, 1948, §5(a), (b), redesignated former subsec. (e) as (f) and inserted proviso relating to determination and certification of amounts to be paid under subsec. (e). Former subsec. (f) redesignated (g).

Subsec. (g). Act June 16, 1948, §5(a), (c), redesignated former subsec. (f) as (g) and brought subsecs. (e) and (f)(1) within the provisions of this subsection. Former subsec. (g) redesignated (h).

Subsec. (h). Act June 16, 1948, §5(a), (d), redesignated former subsec. (g) as (h) and made subsection applicable to agencies, institutions or other organizations specified in subsec. (f)(1). Former subsec. (h) redesignated (i).

Subsec. (i). Act June 16, 1948, §5(a), (e), redesignated former subsec. (h) as (i), made subsection applicable to subsec. (e), and made technical changes as a result of the renumbering of subsections. Former subsec. (i) redesignated (j).

Subsecs. (j), (k). Act June 16, 1948, §5(a), redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

1946—Subsec. (c). Act July 3, 1946, increased annual appropriation from $20,000,000 to $30,000,000, and increased annual amount available to provide demonstrations and to train personnel for State and local health work from $2,000,000 to $3,000,000.

Subsec. (d). Act July 3, 1946, provided that Surgeon General shall give special consideration to the extent of the mental health problem as well as other special problems.

Subsecs. (f), (h), (i). Act July 3, 1946, provided that in matters relating to work in field of mental health Surgeon General shall deal with State mental health authorities where they differ from general health authorities.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 107(d) of Pub. L. 96–398 provided that the amendment made by that section is effective Sept. 30, 1981. See Repeals note below.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective one year after Oct. 4, 1979, see section 129(a) of Pub. L. 96–79.

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 201(b)(2) of Pub. L. 95–626 provided that the amendment made by section is effective Oct. 1, 1979.

Section 403(b) of Pub. L. 91–648, as added by section 602(c) of Pub. L. 95–454, provided that the repeal of subsec. (f) of this section (as applicable to commissioned officers of the Public Health Service) is effective beginning on the effective date of the Civil Service Reform Act of 1978, i.e., 90 days after Oct. 13, 1978.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 102 of Pub. L. 94–63 provided that the amendment made by that section is effective with respect to grants made under subsec. (d) of this section from appropriations under such subsection for fiscal years beginning after June 30, 1975.

Amendment by section 501(b) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Repeal of subsec. (f) of this section (less applicability to commissioned officers of the Public Health Service) by section 403(a) of Pub. L. 91–648, as amended by Pub. L. 94–454, §602(c), effective sixty days after Jan. 5, 1971, see section 404 of Pub. L. 91–648, set out as an Effective Date note under section 3371 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1970 AMENDMENTS

Section 260(c)(2) of Pub. L. 91–515 provided that: ''The amendment made by paragraph (1) [amending this sec-

tion] shall be effective with respect to grants under section 314(c) of the Public Health Service Act [subsec. (e) of this section] which are made after the date of enactment of this Act [Oct. 30, 1970.]''

Section 401(b)(1) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to appropriations for fiscal years beginning after June 30, 1970.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 2(d)(2), (f) of Pub. L. 90–174 provided that the amendments made by that section are effective July 1, 1968.

Section 3(b) of Pub. L. 90–174 provided that the amendment of this section, the repeal of section 291n of this title, and the enactment of provisions set out as a note under section 242b of this title by such section 3(b) is effective with respect to appropriations for fiscal years ending after June 30, 1967.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 6 of Pub. L. 89–749 provided in part that: ''The amendments made by section 3 [amending this section] shall become effective as of July 1, 1966, except that the provisions of section 314 of the Public Health Service Act [this section] as in effect prior to the enactment of this Act shall be effective until July 1, 1967, in lieu of the provisions of subsections (d) and (e), and the provisions of subsections (g) insofar as they relate to such subsections (d) and (e), of section 314 of the Public Health Service Act [this section] as amended by this Act.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 4(b) of Pub. L. 87–688 provided that: ''The amendments made by this section [amending this section and sections 291g, 291i, and 291t of this title] shall become effective July 1, 1962.''

EFFECTIVE AND TERMINATION DATE OF 1958 AMENDMENT

Section 2 of Pub. L. 85–544 provided that: ''The amendment made by the first section of this Act [amending this section] shall be applicable only to the fiscal years beginning July 1, 1958, and July 1, 1959.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 18 of act Aug. 1, 1956, provided that the amendment made by that section is effective July 1, 1956.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 96–398, title I, § 107(d), cited as a credit to this section and set out as an Effective Date of 1980 Amendment note above, which provided for repeal of subsec. (g) of this section, effective Sept. 30, 1981, was repealed by section 902(e)(1) of Pub. L. 97–35, title IX, Aug. 13, 1981, 95 Stat. 560, effective Oct. 1, 1981.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Health and Human Services under subsecs. (a)(2)(F) and (d)(2)(F) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(C) of this title.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

YEAR 2000 HEALTH OBJECTIVES PLANNING

Pub. L. 101–582, Nov. 15, 1990, 104 Stat. 2867, provided for grants for State plans regarding health objectives for year 2000, prior to repeal by Pub. L. 102–531, title I, § 105, Oct. 27, 1992, 106 Stat. 3474.

CONGRESSIONAL FINDINGS AND DECLARATION

Section 201(b)(1) of Pub. L. 95–626 provided that: ''The Congress finds and declares that—

''(A) individual health status can be effectively and economically improved through an adequate investment in community public health programs and services;

''(B) the Federal Government and the States and their communities share in the financial responsibility for funding public health programs;

''(C) the Federal contribution to funds for public health programs should serve as an incentive to an additional investment by State and local governments;

''(D) existing categorical programs of Federal financial assistance to combat specific public health problems should be supplemented by a national program of stable generic support for such public health activities as the prevention and control of environmental health hazards, prevention and control of diseases, prevention and control of health problems of particularly vulnerable population groups, and development and regulation of health care facilities and health services delivery systems; and

''(E) the States and their communities, not the Federal Government, should have primary responsibility for identifying and measuring the impact of public health problems and the allocation of resources for their amelioration.''

Section 2 of Pub. L. 89–749 provided that:

''(a) The Congress declares that fulfillment of our national purpose depends on promoting and assuring the highest level of health attainable for every person, in an environment which contributes positively to healthful individual and family living; that attainment of this goal depends on an effective partnership, involving close intergovernmental collaboration, official and voluntary efforts, and participation of individuals and organizations; that Federal financial assistance must be directed to support the marshaling of all health resources—national, State, and local—to assure comprehensive health services of high quality for every person, but without interference with existing patterns of private professional practice of medicine, dentistry, and related healing arts.

''(b) To carry out such purpose, and recognizing the changing character of health problems, the Congress finds that comprehensive planning for health services, health manpower, and health facilities is essential at every level of government; that desirable administration requires strengthening the leadership and capacities of State health agencies; and that support of health services provided people in their communities should be broadened and made more flexible.''

Section 2 of act July 3, 1956, provided that:

''(a) The Congress hereby finds and declares—

''(1) that the latest information on the number and relevant characteristics of persons in the country suffering from heart disease, cancer, diabetes, arthritis and rheumatism, and other diseases, injuries, and handicapping conditions is now seriously out of date; and

''(2) that periodic inventories providing reasonably current information on these matters are urgently needed for purposes such as (A) appraisal of the true state of health of our population (including both adults and children), (B) adequate planning of any programs to improve their health, (C) research in the field of chronic diseases, and (D) measurement of the numbers of persons in the working ages so disabled as to be unable to perform gainful work.

''(b) It is, therefore, the purpose of this Act [see Short Title of 1956 Amendment note set out under section 201

of this title] to provide (1) for a continuing survey and special studies to secure on a non-compulsory basis accurate and current statistical information on the amount, distribution, and effects of illness and disability in the United States and the services received for or because of such conditions; and (2) for studying methods and survey techniques for securing such statistical information, with a view toward their continuing improvement.''

LIMITATION ON GRANTS-IN-AID TO SCHOOLS OF PUBLIC HEALTH

Section 2 of Pub. L. 85–544, which had limited the authority of the Surgeon General to make grants-in-aid totaling not to exceed $1,000,000 annually to schools of public health for fiscal year beginning July 1, 1958, and July 1, 1959, was repealed by section 2 of Pub. L. 86–720, Sept. 8, 1960, 74 Stat. 820.

GRANTS TO STATES TO PROVIDE FOR VACCINATION AGAINST POLIOMYELITIS

The Poliomyelitis Vaccination Assistance Act of 1955, act Aug. 12, 1955, ch. 863, 69 Stat. 704, as amended Feb. 15, 1956, ch. 39, 70 Stat. 18, authorized appropriations to remain available until close of June 30, 1957 and provided for allotments to States, State application for funds, payments to States, use of funds paid to States, furnishing of vaccine by Surgeon General, diversion of Federal funds, supervision over exercise of functions, and definitions.

APPLICABILITY OF REORGANIZATION PLAN NO. 3 OF 1966

Section 7 of Pub. L. 89–749 provided that: ''The provisions enacted by this Act [amending this section and sections 242g and 243 of this title] shall be subject to the provisions of Reorganization Plan No. 3 of 1966 [set out as a note under section 202 of this title].''

§ 246a. Bureau of State Services management fund; establishment; advancements; availability

For the purpose of facilitating the economical and efficient conduct of operations in the Bureau of State Services which are financed by two or more appropriations where the costs of operation are not readily susceptible of distribution as charges to such appropriations, there is established the Bureau of State Services management fund. Such amounts as the Secretary may determine to represent a reasonable distribution of estimated costs among the various appropriations involved may be advanced each year to this fund and shall be available for expenditure for such costs under such regulations as may be prescribed by the Secretary: *Provided*, That funds advanced to this fund shall be available only in the fiscal year in which they are advanced: *Provided further*, That final adjustments of advances in accordance with actual costs shall be effected wherever practicable with the appropriations from which such funds are advanced.

(Pub. L. 86–703, title II, § 201, Sept. 2, 1960, 74 Stat. 765; Pub. L. 91–515, title II, § 282, Oct. 30, 1970, 84 Stat. 1308.)

CODIFICATION

Section was not enacted as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1970—Pub. L. 91–515 substituted ''Secretary'' for ''Surgeon General'' wherever appearing.

§ 247. Omitted

Section, act July 1, 1944, ch. 373, title III, § 315, as added Oct. 4, 1988, Pub. L. 100–471, § 1, 102 Stat. 2284, which related to grants for treatment drugs for acquired immune deficiency syndrome, ceased to exist Mar. 31, 1989, pursuant to subsec. (d) thereof.

PRIOR PROVISIONS

A prior section 247, act July 1, 1944, ch. 373, title III, § 315, as added Nov. 10, 1978, Pub. L. 95–626, title II, § 203, 92 Stat. 3578; amended July 10, 1979, Pub. L. 96–32, § 6(h), 93 Stat. 83, related to formula grants to States for preventive health service programs, prior to repeal by Pub. L. 99–117, § 12(b), Oct. 7, 1985, 99 Stat. 495.

Another prior section 247, acts July 1, 1944, ch. 373, title III, § 315, 58 Stat. 695; Oct. 30, 1970, Pub. L. 91–515, title II, § 282, 84 Stat. 1308, provided for publication of health educational information, prior to repeal by Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362. See section 242*o*(b) of this title.

§ 247a. Family support groups for Alzheimer's disease patients

(a) Establishment; priorities

Subject to available appropriations, the Secretary, acting through the National Institute of Mental Health, the National Institutes of Health, and the Administration on Aging, shall promote the establishment of family support groups to provide, without charge, educational, emotional, and practical support to assist individuals with Alzheimer's disease or a related memory disorder and members of the families of such individuals. In promoting the establishment of such groups, the Secretary shall give priority to—

(1) university medical centers and other appropriate health care facilities which receive Federal funds from the Secretary and which conduct research on Alzheimer's disease or provide services to individuals with such disease; and

(2) community-based programs which receive funds from the Secretary, acting through the Administration on Aging.

(b) National network to coordinate groups

The Secretary shall promote the establishment of a national network to coordinate the family support groups described in subsection (a) of this section.

(July 1, 1944, ch. 373, title III, § 316, as added Pub. L. 99–319, title IV, § 401, May 23, 1986, 100 Stat. 489; amended Pub. L. 103–43, title XX, § 2008(a), June 10, 1993, 107 Stat. 210.)

PRIOR PROVISIONS

A prior section 247a, act July 1, 1944, ch. 373, title III, § 316, as added Nov. 10, 1978, Pub. L. 95–626, title II, § 208(a), 92 Stat. 3586; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(1)(A), 95 Stat. 826, related to lead-based paint poisoning prevention programs, prior to repeal by Pub. L. 97–35, title XXI, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827.

Another prior section 247a, act July 1, 1944, ch. 373, title III, § 316, as added Oct. 30, 1970, Pub. L. 91–515, title II, § 281, 84 Stat. 1307, provided for establishment, composition, qualifications of members, terms of office, vacancies, reappointment, compensation, travel expenses, and functions of National Advisory Council on Comprehensive Health Planning Programs, prior to repeal by Pub. L. 93–641, § 5(d), Jan. 4, 1975, 88 Stat. 2275.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 struck out subsec. (c) which read as follows: ''The Secretary shall report to

Congress, not later than one year after May 23, 1986, on family support groups and the network of such groups established pursuant to this section.''

§ 247b. Project grants for preventive health services

(a) Grant authority

The Secretary may make grants to States, and in consultation with State health authorities, to political subdivisions of States and to other public entities to assist them in meeting the costs of establishing and maintaining preventive health service programs.

(b) Application

No grant may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and be submitted in such manner as the Secretary shall by regulation prescribe and shall provide—

(1) a complete description of the type and extent of the program for which the applicant is seeking a grant under subsection (a) of this section;

(2) with respect to each such program (A) the amount of Federal, State, and other funds obligated by the applicant in its latest annual accounting period for the provision of such program, (B) a description of the services provided by the applicant in such program in such period, (C) the amount of Federal funds needed by the applicant to continue providing such services in such program, and (D) if the applicant proposes changes in the provision of the services in such program, the priorities of such proposed changes, reasons for such changes, and the amount of Federal funds needed by the applicant to make such changes;

(3) assurances satisfactory to the Secretary that the program which will be provided with funds under a grant under subsection (a) of this section will be provided in a manner consistent with the State health plan in effect under section 300m–3(c)[1] of this title and in those cases where the applicant is a State, that such program will be provided, where appropriate, in a manner consistent with any plans in effect under an application approved under section 247[1] of this title;

(4) assurances satisfactory to the Secretary that the applicant will provide for such fiscal control and fund accounting procedures as the Secretary by regulation prescribes to assure the proper disbursement of and accounting for funds received under grants under subsection (a) of this section;

(5) assurances satisfactory to the Secretary that the applicant will provide for periodic evaluation of its program or programs;

(6) assurances satisfactory to the Secretary that the applicant will make such reports (in such form and containing such information as the Secretary may by regulation prescribe) as the Secretary may reasonably require and keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness of, and to verify, such reports;

(7) assurances satisfactory to the Secretary that the applicant will comply with any other conditions imposed by this section with respect to grants; and

(8) such other information as the Secretary may by regulation prescribe.

(c) Approval; annual project review

(1) The Secretary shall not approve an application submitted under subsection (b) of this section for a grant for a program for which a grant was previously made under subsection (a) of this section unless the Secretary determines—

(A) the program for which the application was submitted is operating effectively to achieve its stated purpose,

(B) the applicant complied with the assurances provided the Secretary when applying for such previous grant, and

(C) the applicant will comply with the assurances provided with the application.

(2) The Secretary shall review annually the activities undertaken by each recipient of a grant under subsection (a) of this section to determine if the program assisted by such grant is operating effectively to achieve its stated purposes and if the recipient is in compliance with the assurances provided the Secretary when applying for such grant.

(d) Amount of grant; payment

The amount of a grant under subsection (a) of this section shall be determined by the Secretary. Payments under such grants may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

(e) Reduction

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by—

(1) the fair market value of any supplies (including vaccines and other preventive agents) or equipment furnished the grant recipient, and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) of this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(f) Recordkeeping; audit authority

(1) Each recipient of a grant under subsection (a) of this section shall keep such records as the

[1] See References in Text note below.

Secretary shall by regulation prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of grants under subsection (a) of this section that are pertinent to such grants.

(g) Use of grant funds; mandatory treatment prohibited

(1) Nothing in this section shall limit or otherwise restrict the use of funds which are granted to a State or to an agency or a political subdivision of a State under provisions of Federal law (other than this section) and which are available for the conduct of preventive health service programs from being used in connection with programs assisted through grants under subsection (a) of this section.

(2) Nothing in this section shall be construed to require any State or any agency or political subdivision of a State to have a preventive health service program which would require any person, who objects to any treatment provided under such a program, to be treated or to have any child or ward treated under such program.

(h) Reports

The Secretary shall include, as part of the report required by section 300u–4 of this title, a report on the extent of the problems presented by the diseases and conditions referred to in subsection (j) of this section; on the amount of funds obligated under grants under subsection (a) of this section in the preceding fiscal year for each of the programs listed in subsection (j) of this section; and on the effectiveness of the activities assisted under grants under subsection (a) of this section in controlling such diseases and conditions.

(i) Technical assistance

The Secretary may provide technical assistance to States, State health authorities, and other public entities in connection with the operation of their preventive health service programs.

(j) Authorization of appropriations

(1) Except for grants for immunization programs the authorization of appropriations for which are established in paragraph (2), for grants under subsections (a) and (k)(1) of this section for preventive health service programs to immunize without charge children, adolescents, and adults against vaccine-preventable diseases, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1998 through 2005. Not more than 10 percent of the total amount appropriated under the preceding sentence for any fiscal year shall be available for grants under subsection (k)(1) of this section for such fiscal year.

(2) For grants under subsection (a) of this section for preventive health service programs for the provision without charge of immunizations with vaccines approved for use, and recommended for routine use, after October 1, 1997, there are authorized to be appropriated such sums as may be necessary.

(k) Additional grants to States, political subdivisions, and other public and nonprofit private entities

(1) The Secretary may make grants to States, political subdivisions of States, and other public and nonprofit private entities for—

(A) research into the prevention and control of diseases that may be prevented through vaccination;

(B) demonstration projects for the prevention and control of such diseases;

(C) public information and education programs for the prevention and control of such diseases; and

(D) education, training, and clinical skills improvement activities in the prevention and control of such diseases for health professionals (including allied health personnel).

(2) The Secretary may make grants to States, political subdivisions of States, and other public and nonprofit private entities for—

(A) research into the prevention and control of diseases and conditions;

(B) demonstration projects for the prevention and control of such diseases and conditions;

(C) public information and education programs for the prevention and control of such diseases and conditions; and

(D) education, training, and clinical skills improvement activities in the prevention and control of such diseases and conditions for health professionals (including allied health personnel).

(3) No grant may be made under this subsection unless an application therefor is submitted to the Secretary in such form, at such time, and containing such information as the Secretary may by regulation prescribe.

(4) Subsections (d), (e), and (f) of this section shall apply to grants under this subsection in the same manner as such subsections apply to grants under subsection (a) of this section.

(July 1, 1944, ch. 373, title III, § 317, as added Pub. L. 87–868, § 2, Oct. 23, 1962, 76 Stat. 1155; amended Pub. L. 89–109, § 2, Aug. 5, 1965, 79 Stat. 435; Pub. L. 91–464, § 2, Oct. 16, 1970, 84 Stat. 988; Pub. L. 92–449, title I, § 101, Sept. 30, 1972, 86 Stat. 748; Pub. L. 93–354, § 4, July 23, 1974, 88 Stat. 376; Pub. L. 94–63, title VI, § 601, July 29, 1975, 89 Stat. 346; Pub. L. 94–317, title II, § 202(a), June 23, 1976, 90 Stat. 700; Pub. L. 94–380, § 2, Aug. 12, 1976, 90 Stat. 1113; Pub. L. 95–626, title II, §§ 202, 204(b)(2), Nov. 10, 1978, 92 Stat. 3574, 3583; Pub. L. 96–32, § 6(i), July 10, 1979, 93 Stat. 83; Pub. L. 97–35, title IX, § 928, Aug. 13, 1981, 95 Stat. 569; Pub. L. 98–555, § 2, Oct. 30, 1984, 98 Stat. 2854; Pub. L. 99–117, § 11(c), Oct. 7, 1985, 99 Stat. 495; Pub. L. 100–177, title I, §§ 110(a), 111, Dec. 1, 1987, 101 Stat. 990, 991; Pub. L. 101–368, § 2, Aug. 15, 1990, 104 Stat. 446; Pub. L. 101–502, § 2(a), Nov. 3, 1990, 104 Stat. 1285; Pub. L. 103–183, title III, § 301(b), Dec. 14, 1993, 107

Stat. 2235; Pub. L. 105–392, title III, § 303, Nov. 13, 1998, 112 Stat. 3586; Pub. L. 106–310, div. A, title XVII, § 1711, Oct. 17, 2000, 114 Stat. 1152.)

REFERENCES IN TEXT

Section 300m–3 of this title, referred to in subsec. (b)(3), was repealed by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 247 of this title, referred to in subsec. (b)(3), was repealed by Pub. L. 99–117, § 12(b), Oct. 7, 1985, 99 Stat. 495.

AMENDMENTS

2000—Subsec. (j)(1). Pub. L. 106–310 substituted ''1998 through 2005'' for ''1998 through 2002'' in first sentence.

1998—Subsec. (j)(1). Pub. L. 105–392, § 303(1), substituted ''children, adolescents, and adults against vaccine-preventable diseases, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1998 through 2002.'' for ''individuals against vaccine-preventable diseases, there are authorized to be appropriated $205,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995.''

Subsec. (j)(2). Pub. L. 105–392, § 303(2), substituted ''1997'' for ''1990''.

1993—Subsec. (j). Pub. L. 103–183, § 301(b)(1), redesignated subpars. (A) and (B) of par. (1) as pars. (1) and (2), respectively, substituted ''established in paragraph (2)'' for ''established in subparagraph (B)'' in par. (1), and struck out former par. (2), which read as follows: ''For grants under subsection (a) of this section for preventive health service programs for the prevention, control, and elimination of tuberculosis, and for grants under subsection (k)(2) of this section, there are authorized to be appropriated $24,000,000 for fiscal year 1988, $31,000,000 for fiscal year 1989, $36,000,000 for fiscal year 1990, $36,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995. Not more than 10 percent of the total amount appropriated under the preceding sentence for any fiscal year shall be available for grants under subsection (k)(2) of this section for such fiscal year.''

Subsec. (k)(2). Pub. L. 103–183, § 301(b)(2)(A), (B), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''The Secretary may make grants to States, political subdivisions of States, and other public and nonprofit private entities for—

''(A) research into the prevention, control, and elimination of tuberculosis, especially research concerning strains of tuberculosis resistant to drugs and research concerning cases of tuberculosis that affect certain populations;

''(B) demonstration projects for the prevention, control, and elimination of tuberculosis;

''(C) public information and education programs for prevention, control, and elimination of tuberculosis; and

''(D) education, training, and clinical skills improvement activities in the prevention, control, and elimination of tuberculosis for health professionals, including allied health personnel.''

Subsec. (k)(3). Pub. L. 103–183, § 301(b)(2)(B), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (k)(4), (5). Pub. L. 103–183, § 301(b)(2)(B), (C), redesignated par. (5) as (4) and made technical amendments to references to subsections (d), (e), and (f) of this section and subsection (a) of this section, to reflect change in references to corresponding provisions of original act. Former par. (4) redesignated (3).

Subsec. (*l*). Pub. L. 103–183, § 301(b)(3), struck out subsec. (*l*) which related to establishment and function of Advisory Council for the Elimination of Tuberculosis.

1990—Subsec. (j)(1)(A). Pub. L. 101–502, § 2(a)(1), substituted provisions authorizing appropriations for fiscal years 1991 through 1995 for provisions authorizing appropriations for fiscal years 1988 through 1990.

Subsec. (j)(1)(B). Pub. L. 101–502, § 2(a)(2), substituted Oct. 1, 1990, for Dec. 1, 1987, and provisions authorizing appropriations as may be necessary for provisions authorizing appropriations for fiscal years 1988 to 1990.

Subsec. (j)(1)(C). Pub. L. 101–502, § 2(a)(3), struck out subpar. (C) which, on the implementation of part 2 of subchapter XIX of this chapter, authorized appropriations for grants under subsec. (a) of this section for fiscal years 1988 to 1990.

Subsec. (j)(2). Pub. L. 101–368, § 2(c), inserted provisions authorizing appropriations of $36,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992 through 1995.

Pub. L. 101–368, § 2(a)(1), substituted ''preventive health service programs for the prevention, control, and elimination of tuberculosis'' for ''preventive health service programs for tuberculosis''.

Subsec. (k)(2)(A) to (D). Pub. L. 101–368, § 2(a)(2), substituted ''prevention, control, and elimination'' for ''prevention and control''.

Subsec. (*l*). Pub. L. 101–368, § 2(b), added subsec. (*l*).

1987—Subsec. (j). Pub. L. 100–177, §§ 110(a), 111(a), amended subsec. (j) generally, substituting provisions authorizing appropriations for fiscal years 1988 to 1990 for grants under subsecs. (a) and (k) of this section for former provisions authorizing appropriations for fiscal years 1982 to 1987 for grants under subsec. (a) of this section.

Subsec. (k). Pub. L. 100–177, § 111(b), added subsec. (k).

1985—Subsec. (j). Pub. L. 99–117 amended directory language of Pub. L. 97–35, § 928(b), to correct a technical error. See 1981 Amendment note below.

1984—Subsec. (j)(1). Pub. L. 98–555, § 2(a), substituted ''immunize individuals against vaccine-preventable diseases'' for ''immunize children against immunizable diseases'' and inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

Subsec. (j)(2). Pub. L. 98–555, § 2(b), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

1981—Subsec. (a). Pub. L. 97–35, § 928(a), struck out par. (1) which related to grants to State health authorities, and redesignated par. (2) as entire section and, as so redesignated, struck out reference to former par. (1).

Subsec. (j). Pub. L. 97–35, § 928(b), as amended by Pub. L. 99–117, substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984, for provisions setting forth appropriations through fiscal year ending Sept. 30, 1981, and provisions setting forth limitations, conditions, etc., for appropriations.

1979—Subsec. (j)(4), (5). Pub. L. 96–32 added par. (4), redesignated former par. (4) as (5) and, in par. (5) as so redesignated, substituted ''paragraph (1), (2), (3), or (4)'' for ''paragraph (1), (2), or (3)''.

1978—Pub. L. 95–626, § 202, amended section generally, substituting provisions relating to project grants for preventive health services for provisions relating to grants for disease control programs.

Subsec. (g)(2). Pub. L. 95–626, § 204(b)(2), struck out ''Except as provided in section 247c of this title,'' before ''No funds appropriated under any provision of this chapter''.

1976—Pub. L. 94–317 amended section generally to include many non-communicable diseases as well as expanding coverage of communicable diseases, increased appropriations for grants, widened scope of Secretary's authority to make grants and enter into contracts to include nonprofit private entities, and required a report from the Secretary on the effectiveness of all Federal and other public and private activities in controlling the diseases covered under this section.

Subsecs. (j) to (*l*). Pub. L. 94–380 added subsecs. (j) to (*l*).

1975—Subsec. (d)(3). Pub. L. 94–63, § 601(b), inserted authorization of appropriation for fiscal year 1976.

Subsec. (h)(1). Pub. L. 94–63, § 601(a), inserted reference to diseases borne by rodents.

1974—Subsec. (a). Pub. L. 93–354, § 4(1)–(3), substituted ''communicable and other disease control'' for ''communicable disease control'', ''communicable and other

diseases'' for ''communicable diseases'', and ''communicable and other disease control program'' for ''communicable disease program''.

Subsec. (b)(2)(C). Pub. L. 93–354, § 4(1), (4), substituted ''communicable or other disease'' for ''communicable disease'' in cl. (i) and ''communicable and other disease control'' for ''communicable disease control'' in cl. (ii).

Subsecs. (b)(3), (d)(1), (2), (3), (f)(1). Pub. L. 93–354, § 4(1), substituted ''communicable and other disease control'' for ''communicable disease control''.

Subsec. (h)(1). Pub. L. 93–354, § 4(1), (5), substituted ''communicable and other disease control'' for ''communicable disease control'' in two places and inserted reference to diabetes mellitus.

Subsec. (i). Pub. L. 93–354, § 4(1), substituted ''communicable and other disease control'' for ''communicable disease control''.

1972—Subsec. (a). Pub. L. 92–449 substituted provision for grants by the Secretary in consultation with the State health authority to agencies and political subdivisions of States, for former provision for grants by the Secretary with the approval of the State health authority to political subdivisions or instrumentalities of States, incorporated existing provisions in provision designated as cl. (1), inserting '', in the area served by the applicant for the grant,'', substituted a cl. (2) reading ''design of the applicant's communicable disease program to determine its effectiveness'', for former provision reading ''levels of performance in preventing and controlling such diseases'', struck out appropriations authorization of $75,000,000 and $90,000,000 for fiscal years ending June 30, 1971, and 1972, now covered for subsequent years in subsec. (d), and struck out provision for use of grants to meet cost of studies to determine the control needs of communities and the means of best meeting such needs, now covered in subsec. (h)(1) of this section.

Subsec. (b). Pub. L. 92–449 substituted provisions of par. (1) respecting applications for grants, submission, approval, form, and content of applications; par. (2) respecting application requirements; and par. (3) incorporating former subsec. (g) provisions respecting consent of individuals for former definitions provision now incorporated in subsec. (h) of this section.

Subsec. (c). Pub. L. 92–449 designated existing provisions as par. (1) and among minor punctuation changes inserted ''under grants'' after ''Payments''; and redesignated former subsec. (d) as par. (2), inserted ''of the Government'' after ''officer or employee'', substituted ''in detailing the personnel'' for ''personal services'', and struck out provision that reduced amount shall, for purposes of subsec. (c), be deemed to have been paid to the agency.

Subsec. (d). Pub. L. 92–449 substituted provisions respecting authorization of appropriations and limitation on use of funds for provisions respecting grant reduction.

Subsec. (e). Pub. L. 92–449 substituted provisions for emergency plan development and authorization of appropriations for provisions relating to use of funds.

Subsec. (f). Pub. L. 92–449 substituted provisions respecting conditional limitation on use of funds for provisions for an annual report.

Subsec. (g). Pub. L. 92–449 incorporated former subsec. (f) provisions in introductory text and cl. (3), prescribed a January 1 submission date, and inserted provisions of cls. (1), (2), and (4). Former subsec. (g) consent of individuals provision respecting communicable disease control and vaccination assistance were covered in subsec. (b)(3) of this section and section 247c(h) of this title.

Subsec. (h). Pub. L. 92–449 redesignated former subsec. (b) as (h), substituted in introductory text ''this section'' for ''this subsection'', and in par. (1) struck out ''venereal disease'' after ''tuberculosis,'', inserted ''(other than venereal disease)'' after ''other communicable diseases'', and included in definition of ''communicable disease control program'' vaccination programs, laboratory services, and control studies.

Subsec. (i). Pub. L. 92–449 redesignated former subsec. (e) as (i), inserted reference to agency of a State, and substituted ''under provisions of Federal law (other than this chapter)'' for ''under other provisions of this chapter or other Federal law''.

1970—Subsec. (a). Pub. L. 91–464 authorized appropriation of $75,000,000 for fiscal year ending June 30, 1971, and $90,000,000 for fiscal year ending June 30, 1972, and made award of grants dependent upon extent of communicable disease and success of programs and permitted use of grants for meeting cost of programs and studies to control communicable diseases and struck out reference to purchase of vaccines and use of grants for salaries and expenses of personnel and to authority of the Surgeon General.

Subsec. (b). Pub. L. 91–464 substituted definitions of ''communicable disease control program'' and ''State'' for definition of ''immunization program''.

Subsec. (c). Pub. L. 91–464 substituted reference to Secretary for reference to Surgeon General and struck out provisions relating to purchasing and furnishing of vaccines and requirement of obtaining assurances from recipients of grants.

Subsec. (d). Pub. L. 91–464 substituted reference to Secretary for reference to Surgeon General and struck out reference to Public Health Service.

Subsec. (e). Pub. L. 91–464 struck out reference to title V of the Social Security Act and substituted provisions for the use of funds for the conduct of communicable disease control programs for provisions for the purchase of vaccine or for organizing, promoting, conducting, or participating in immunization programs.

Subsecs. (f), (g). Pub. L. 91–464 added subsecs. (f) and (g).

1965—Subsec. (a). Pub. L. 89–109, § 2(a), (b), (d)(1), inserted ''and each of the next three fiscal years'', substituted ''any fiscal year ending prior to July 1, 1968'' for ''the fiscal years ending June 30, 1963, and June 30, 1964'', ''tetanus, and measles'' for ''and tetanus'', ''of preschool age'' for ''under the age of five years'', and ''immunization'' for ''intensive community vaccination'', and permitted grants to be used to pay costs in connection with immunization of other infectious diseases.

Subsec. (b). Pub. L. 89–109, § 2(c), (d)(1), substituted ''against the diseases referred to in subsection (a) of this section'' for ''against poliomyelitis, diphtheria, whooping cough, and tetanus'', ''of preschool age'' for ''who are under the age of five years'' and ''immunization'' for ''intensive community vaccination'' in two places.

Subsec. (c). Pub. L. 89–109, § 2(d)(1), (e), inserted ''on the basis of estimates'' and ''(with necessary adjustments on account of underpayments or overpayments)'' in par. (1), and substituted ''immunization'' for ''intensive community vaccination'' in pars. (2) and (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 202 of Pub. L. 95–626, as amended by Pub. L. 96–32, § 6(g), July 10, 1979, 93 Stat. 83, provided that the amendment made by that section is effective Oct. 1, 1978.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 202(a) of Pub. L. 94–317 provided that the amendment made by that section is effective with respect to grants under this section for fiscal years beginning after June 30, 1975.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 608 of title VI of Pub. L. 94–63 provided that: ''Except as may otherwise be specifically provided, the amendments made by this title [enacting sections 300c–21 and 300c–22 of this title, amending this section, and enacting provisions set out as notes under sections 289, 289k–2, and 1395x of this title] and by titles I [amending section 246 of this title and enacting provisions set out as notes under section 246 of this title], II [enacting sections 300a–6a and 300a–8 of this title, amending sections 300 and 300a–1 to 300a–4 of this title, repealing section 3505c of this title, and enacting provi-

sion set out as a note under section 300 of this title], III [enacting sections 2689 to 2689aa of this title, amending sections 2691 and 2693 to 2696 of this title, and enacting provisions set out as notes under section 2689 of this title], IV [amending sections 218 and 254b of this title and enacting provision set out as a note under section 254b of this title], and V [enacting section 254c of this title and amending section 246 of this title] of this Act shall take effect July 1, 1975. The amendments made by this title and by such titles to the provisions of law amended by this title and by such titles are made to such provisions as amended by title VII of this Act [amending sections 246, 254b, 300, 300a–1 to 300a–3 of this title and sections 2681, 2687, 2688a, 2688d, 2688j–1, 2688j–2, 2688*l*, 2688*l*–1, 2688n–1, 2688*o*, and 2688u of this title].''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 102 of Pub. L. 92–449 provided that: ''The amendment made by section 101 of this title [amending this section] shall apply to grants made under section 317 of the Public Health Service Act [this section] after June 30, 1972, except that subsection (d) of such section as amended by section 101 [subsec. (d) of this section] shall take effect on the date of enactment of this Act [Sept. 30, 1972].''

ASSISTANCE OF ADMINISTRATOR OF VETERANS' AFFAIRS IN ADMINISTRATION OF NATIONAL SWINE FLU IMMUNIZATION PROGRAM OF 1976; CLAIMS FOR DAMAGES

Pub. L. 94–420, § 3, Sept. 23, 1976, 90 Stat. 1301, provided that, in order to assist Secretary of Health, Education, and Welfare in carrying out National Swine Flu Immunization Program of 1976 pursuant to 42 U.S.C. 247b(j), as added by Pub. L. 94–380, Administrator of Veterans' Affairs, in accordance with 42 U.S.C. 2476(j), could authorize administration of vaccine, procured under such program and provided by Secretary at no cost to Veterans' Administration, to eligible veterans (voluntarily requesting such vaccine) in connection with provision of care for a disability under chapter 17 of title 38, in any health care facility under jurisdiction of Administrator, and provided for consideration and processing of claims and suits for damages for personal injury or death, in connection with administration of vaccine.

STUDY BY SECRETARY OF SCOPE AND EXTENT OF LIABILITY ARISING OUT OF IMMUNIZATION PROGRAM; ALTERNATIVE PROTECTIVE APPROACHES; REPORT TO CONGRESS

Section 3 of Pub. L. 94–380 directed Secretary to conduct a study of liability for personal injuries or death arising out of immunization programs and of alternative approaches to provide protection against such liability and report to Congress on findings of such study by Aug. 12, 1977.

§ 247b–1. Screenings, referrals, and education regarding lead poisoning

(a) Authority for grants

(1) In general

Subject to paragraph (2), the Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States and political subdivisions of States for the initiation and expansion of community programs designed—

(A) to provide, for infants and children—

(i) screening for elevated blood lead levels;

(ii) referral for treatment of such levels; and

(iii) referral for environmental intervention associated with such levels; and

(B) to provide education about childhood lead poisoning.

(2) Authority regarding certain entities

With respect to a geographic area with a need for activities authorized in paragraph (1), in any case in which neither the State nor the political subdivision in which such area is located has applied for a grant under paragraph (1), the Secretary may make a grant under such paragraph to any grantee under section 254b, 254b, or 256a of this title[1] for carrying out such activities in the area.

(3) Provision of all services and activities through each grantee

In making grants under paragraph (1), the Secretary shall ensure that each of the activities described in such paragraph is provided through each grantee under such paragraph. The Secretary may authorize such a grantee to provide the services and activities directly, or through arrangements with other providers.

(b) Status as medicaid provider

(1) In general

Subject to paragraph (2), the Secretary may not make a grant under subsection (a) of this section unless, in the case of any service described in such subsection that is made available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(A) the applicant for the grant will provide the service directly, and the applicant has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(B) the applicant will enter into an agreement with a provider under which the provider will provide the service, and the provider has entered into such a participation agreement and is qualified to receive such payments.

(2) Waiver regarding certain secondary agreements

(A) In the case of a provider making an agreement pursuant to paragraph (1)(B) regarding the provision of services, the requirement established in such paragraph regarding a participation agreement shall be waived by the Secretary if the provider does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits plan.

(B) A determination by the Secretary of whether a provider referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the provider accepts voluntary donations regarding the provision of services to the public.

(c) Priority in making grants

In making grants under subsection (a) of this section, the Secretary shall give priority to applications for programs that will serve areas with a high incidence of elevated blood lead levels in infants and children.

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[1] See References in Text notes below.

(d) Grant application

No grant may be made under subsection (a) of this section, unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall prescribe and shall include each of the following:

(1) A complete description of the program which is to be provided by or through the applicant.

(2) Assurances satisfactory to the Secretary that the program to be provided under the grant applied for will include educational programs designed to—

(A) communicate to parents, educators, and local health officials the significance and prevalence of lead poisoning in infants and children (including the sources of lead exposure, the importance of screening young children for lead, and the preventive steps that parents can take in reducing the risk of lead poisoning) which the program is designed to detect and prevent; and

(B) communicate to health professionals and paraprofessionals updated knowledge concerning lead poisoning and research (including the health consequences, if any, of low-level lead burden; the prevalence of lead poisoning among all socioeconomic groupings; the benefits of expanded lead screening; and the therapeutic and other interventions available to prevent and combat lead poisoning in affected children and families).

(3) Assurances satisfactory to the Secretary that the applicant will report on a quarterly basis the number of infants and children screened for elevated blood lead levels, the number of infants and children who were found to have elevated blood lead levels, the number and type of medical referrals made for such infants and children, the outcome of such referrals, and other information to measure program effectiveness.

(4) Assurances satisfactory to the Secretary that the applicant will make such reports respecting the program involved as the Secretary may require.

(5) Assurances satisfactory to the Secretary that the applicant will coordinate the activities carried out pursuant to subsection (a) of this section with related activities and services carried out in the State by grantees under title V or XIX of the Social Security Act [42 U.S.C. 701 et seq., 1396 et seq.].

(6) Assurances satisfactory to the Secretary that Federal funds made available under such a grant for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds that would, in the absence of such Federal funds, be made available for the program for which the grant is to be made and will in no event supplant such State, local, and other non-Federal funds.

(7) Assurances satisfactory to the Secretary that the applicant will ensure complete and consistent reporting of all blood lead test results from laboratories and health care providers to State and local health departments in accordance with guidelines of the Centers for Disease Control and Prevention for standardized reporting as described in subsection (m) of this section.

(8) Such other information as the Secretary may prescribe.

(e) Relationship to services and activities under other programs

(1) In general

A recipient of a grant under subsection (a) of this section may not make payments from the grant for any service or activity to the extent that payment has been made, or can reasonably be expected to be made, with respect to such service or activity—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(B) by an entity that provides health services on a prepaid basis.

(2) Applicability to certain secondary agreements for provision of services

Paragraph (1) shall not apply in the case of a provider through which a grantee under subsection (a) of this section provides services under such subsection if the Secretary has provided a waiver under subsection (b)(2) of this section regarding the provider.

(f) Method and amount of payment

The Secretary shall determine the amount of a grant made under subsection (a) of this section. Payments under such grants may be made in advance on the basis of estimates or by way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants. Not more than 10 percent of any grant may be obligated for administrative costs.

(g) Supplies, equipment, and employee detail

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by—

(1) the fair market value of any supplies or equipment furnished the grant recipient; and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee;

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) of this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(h) Records

Each recipient of a grant under subsection (a) of this section shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(i) Audit and examination of records

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant under subsection (a) of this section, that are pertinent to such grant.

(j) Annual report

(1) In general

Not later than May 1 of each year, the Secretary shall submit to the Congress a report on the effectiveness during the preceding fiscal year of programs carried out with grants under subsection (a) of this section and of any programs that are carried out by the Secretary pursuant to subsection (*l*)(2) of this section.

(2) Certain requirements

Each report under paragraph (1) shall include, in addition to any other information that the Secretary may require, the following information:

(A) The number of infants and children screened.

(B) Demographic information on the population of infants and children screened, including the age and racial or ethnic status of such population.

(C) The number of screening sites.

(D) A description of the severity of the extent of the blood lead levels of the infants and children screened, expressed in categories of severity.

(E) The sources of payment for the screenings.

(F) The number of grantees that have established systems to ensure mandatory reporting of all blood lead tests from laboratories and health care providers to State and local health departments.

(G) A comparison of the data provided pursuant to subparagraphs (A) through (F) with the equivalent data, if any, provided in the report under paragraph (1) preceding the report involved.

(k) Indian tribes

For purposes of this section, the term ''political subdivision'' includes Indian tribes.

(*l*) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 2005.

(2) Allocation for other programs

Of the amounts appropriated under paragraph (1) for any fiscal year, the Secretary may reserve not more than 20 percent for carrying out programs regarding the activities described in subsection (a) of this section in addition to the program of grants established in such subsection.

(m) Guidelines for standardized reporting

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop national guidelines for the uniform reporting of all blood lead test results to State and local health departments.

(July 1, 1944, ch. 373, title III, § 317A, as added Pub. L. 100–572, § 3, Oct. 31, 1988, 102 Stat. 2887; amended Pub. L. 102–531, title III, § 303(a), Oct. 27, 1992, 106 Stat. 3484; Pub. L. 103–183, title VII, § 705(a), Dec. 14, 1993, 107 Stat. 2241; Pub. L. 105–392, title IV, § 404, Nov. 13, 1998, 112 Stat. 3588; Pub. L. 106–310, div. A, title XXV, §§ 2501(a), (b), 2504, Oct. 17, 2000, 114 Stat. 1161, 1164; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664; Pub. L. 108–163, § 2(m)(1), Dec. 6, 2003, 117 Stat. 2023.)

REFERENCES IN TEXT

The reference to section 254b of this title the first place appearing, referred to in subsec. (a)(2), was in the original a reference to section 329, meaning section 329 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of this subchapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626.

Section 256a of this title, referred to in subsec. (a)(2), was repealed by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

The Social Security Act, referred to in subsecs. (b)(1) and (d)(5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V and XIX of the Act are classified generally to subchapters V (§ 701 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 247b–1, Pub. L. 95–626, title IV, § 401, Nov. 10, 1978, 92 Stat. 3590; S. Res. 30, Mar. 7, 1979; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; H. Res. 549, Mar. 25, 1980, related to demonstration and evaluation of optimal methods for organizing and delivering comprehensive preventive health services to defined populations, prior to repeal by Pub. L. 97–35, title IX, § 902(a), (h), Aug. 13, 1981, 95 Stat. 559, 561, eff. Oct. 1, 1981.

AMENDMENTS

2003—Subsec. (a)(2). Pub. L. 108–163 substituted ''254b'' for ''254c, 254b(h)'' before '', or''.

2002—Subsec. (a)(2). Pub. L. 107–251 substituted ''254b(h)'' for ''256''.

2000—Subsec. (d)(7), (8). Pub. L. 106–310, § 2501(a)(1), added par. (7) and redesignated former par. (7) as (8).

Subsec. (j)(2)(F), (G). Pub. L. 106–310, § 2501(a)(2), added subpar. (F), redesignated former subpar. (F) as (G), and substituted ''(F)'' for ''(E)''.

Subsec. (*l*)(1). Pub. L. 106–310, § 2504, substituted ''1994 through 2005'' for ''1994 through 2002''.

Subsec. (m). Pub. L. 106–310, § 2501(b), added subsec. (m).

1998—Subsec. (*l*)(1). Pub. L. 105–392 substituted ''2002'' for ''1998''.

1993—Subsec. (*l*)(1). Pub. L. 103–183 substituted ''through 1998'' for ''through 1997''.

1992—Pub. L. 102–531 amended section generally, substituting present provisions for provisions relating to grants to States for lead poisoning prevention, grant applications, conditions for approval, method and amount of payment, reduction of amount, record-keeping and audits, inclusion of Indian tribes as grant recipients, and authorization of appropriations.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

DEVELOPMENT AND IMPLEMENTATION OF EFFECTIVE DATA MANAGEMENT BY THE CENTERS FOR DISEASE CONTROL AND PREVENTION

Pub. L. 106–310, div. A, title XXV, § 2501(c), Oct. 17, 2000, 114 Stat. 1161, provided that:

''(1) IN GENERAL.—The Director of the Centers for Disease Control and Prevention shall—

''(A) assist with the improvement of data linkages between State and local health departments and between State health departments and the Centers for Disease Control and Prevention;

''(B) assist States with the development of flexible, comprehensive State-based data management systems for the surveillance of children with lead poisoning that have the capacity to contribute to a national data set;

''(C) assist with the improvement of the ability of State-based data management systems and federally-funded means-tested public benefit programs (including the special supplemental food program for women, infants and children (WIC) under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) and the early head start program under section 645A of the Head Start Act (42 U.S.C. 9840a(h)) to respond to ad hoc inquiries and generate progress reports regarding the lead blood level screening of children enrolled in those programs;

''(D) assist States with the establishment of a capacity for assessing how many children enrolled in the Medicaid, WIC, early head start, and other federally-funded means-tested public benefit programs are being screened for lead poisoning at age-appropriate intervals;

''(E) use data obtained as result of activities under this section to formulate or revise existing lead blood screening and case management policies; and

''(F) establish performance measures for evaluating State and local implementation of the requirements and improvements described in subparagraphs (A) through (E).

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary for each [sic] the fiscal years 2001 through 2005.

''(3) EFFECTIVE DATE.—This subsection takes effect on the date of the enactment of this Act [Oct. 17, 2000].''

§ 247b–2. Repealed. Pub. L. 97–35, title IX, § 902(a), Aug. 13, 1981, 95 Stat. 559

Section, Pub. L. 95–626, title IV, § 402, Nov. 10, 1978, 92 Stat. 3591; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to deterrence of smoking and alcoholic beverage use among children and adolescents.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 300aaa–12 of this title.

§ 247b–3. Education, technology assessment, and epidemiology regarding lead poisoning

(a) Prevention

(1) Public education

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall carry out a program to educate health professionals and paraprofessionals and the general public on the prevention of lead poisoning in infants and children. In carrying out the program, the Secretary shall make available information concerning the health effects of low-level lead toxicity, the causes of lead poisoning, and the primary and secondary preventive measures that may be taken to prevent such poisoning.

(2) Interagency Task Force

(A) Not later than 6 months after October 27, 1992, the Secretary shall establish a council to be known as the Interagency Task Force on the Prevention of Lead Poisoning (in this paragraph referred to as the ''Task Force''). The Task Force shall coordinate the efforts of Federal agencies to prevent lead poisoning.

(B) The Task Force shall be composed of—

(i) the Secretary, who shall serve as the chair of the Task Force;

(ii) the Secretary of Housing and Urban Development;

(iii) the Administrator of the Environmental Protection Agency; and

(iv) senior staff of each of the officials specified in clauses (i) through (iii), as selected by the officials respectively.

(C) The Task Force shall—

(i) review, evaluate, and coordinate current strategies and plans formulated by the officials serving as members of the Task Force, including—

(I) the plan of the Secretary of Health and Human Services entitled ''Strategic Plan for the Elimination of Lead Poisoning'', dated February 21, 1991;

(II) the plan of the Secretary of Housing and Urban Development entitled ''Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing'', dated December 7, 1990; and

(III) the strategy of the Administrator of the Environmental Protection Agency entitled ''Strategy for Reducing Lead Exposures'', dated February 21, 1991;

(ii) develop a unified implementation plan for programs that receive Federal financial assistance for activities related to the prevention of lead poisoning;

(iii) establish a mechanism for sharing and disseminating information among the agencies represented on the Task Force;

(iv) identify the most promising areas of research and education concerning lead poisoning;

(v) identify the practical and technological constraints to expanding lead poisoning prevention;

(vi) annually carry out a comprehensive review of Federal programs providing assistance to prevent lead poisoning, and not later than May 1 of each year, submit to the Committee on Labor and Human Resources of the Senate and the Committee on the Environment and Public Works of the Senate, and to the Committee on Energy and Commerce of the House of Representatives, a re-

port that summarizes the findings made as a result of such review and that contains the recommendations of the Task Force on the programs and policies with respect to which the Task Force is established, including related budgetary recommendations; and

(vii) annually review and coordinate departmental and agency budgetary requests with respect to all lead poisoning prevention activities of the Federal Government.

(b) Technology assessment and epidemiology

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, directly or through grants or contracts—

(1) provide for the development of improved, more cost-effective testing measures for detecting lead toxicity in children;

(2) provide for the development of improved methods of assessing the prevalence of lead poisoning, including such methods as may be necessary to conduct individual assessments for each State;

(3) provide for the collection of data on the incidence and prevalence of lead poisoning of infants and children, on the demographic characteristics of infants and children with such poisoning (including racial and ethnic status), and on the source of payment for treatment for such poisoning (including the extent to which insurance has paid for such treatment); and

(4) provide for any applied research necessary to improve the effectiveness of programs for the prevention of lead poisoning in infants and children.

(July 1, 1944, ch. 373, title III, § 317B, as added Pub. L. 102–531, title III, § 303(b), Oct. 27, 1992, 106 Stat. 3488; amended Pub. L. 103–43, title XX, § 2008(i)(1)(B)(i), June 10, 1993, 107 Stat. 212.)

AMENDMENTS

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–531, § 303(b), which enacted this section.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 247b–3a. Training and reports by the Health Resources and Services Administration

(a) Training

The Secretary of Health and Human Services, acting through the Administrator of the Health Resources and Services Administration and in collaboration with the Administrator of the Centers for Medicare & Medicaid Services and the Director of the Centers for Disease Control and Prevention, shall conduct education and training programs for physicians and other health care providers regarding childhood lead poisoning, current screening and treatment recommendations and requirements, and the scientific, medical, and public health basis for those policies.

(b) Report

The Secretary of Health and Human Services, acting through the Administrator of the Health Resources and Services Administration, annually shall report to Congress on the number of children who received services through health centers established under section 254b of this title and received a blood lead screening test during the prior fiscal year, noting the percentage that such children represent as compared to all children who received services through such health centers.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each[1] the fiscal years 2001 through 2005.

(Pub. L. 106–310, div. A, title XXV, § 2503, Oct. 17, 2000, 114 Stat. 1163; Pub. L. 108–173, title IX, § 900(e)(6)(E), Dec. 8, 2003, 117 Stat. 2374.)

CODIFICATION

Section was enacted as part of the Children's Health Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

§ 247b–4. National Center on Birth Defects and Developmental Disabilities

(a) In general

(1) National Center

There is established within the Centers for Disease Control and Prevention a center to be known as the National Center on Birth Defects and Developmental Disabilities (referred to in this section as the ''Center''), which shall be headed by a director appointed by the Director of the Centers for Disease Control and Prevention.

(2) General duties

The Secretary shall carry out programs—

(A) to collect, analyze, and make available data on birth defects, developmental disabilities, and disabilities and health (in a manner that facilitates compliance with subsection (c)(2) of this section), including data on the causes of such defects and disabilities and on the incidence and prevalence of such defects and disabilities;

(B) to operate regional centers for the conduct of applied epidemiological research on the prevention of such defects and disabilities;

(C) to provide information and education to the public on the prevention of such defects and disabilities;

[1] So in original. Probably should be followed by ''of''.

(D) to conduct research on and to promote the prevention of such defects and disabilities, and secondary health conditions among individuals with disabilities; and

(E) to support a National Spina Bifida Program to prevent and reduce suffering from the Nation's most common permanently disabling birth defect.

(3) Folic acid

The Secretary shall carry out section 247b–11 of this title through the Center.

(4) Certain programs

(A) Transfers

All programs and functions described in subparagraph (B) are transferred to the Center, effective upon the expiration of the 180-day period beginning on October 17, 2000.

(B) Relevant programs

The programs and functions described in this subparagraph are all programs and functions that—

(i) relate to birth defects; folic acid; cerebral palsy; mental retardation; child development; newborn screening; autism; fragile X syndrome; fetal alcohol syndrome; pediatric genetic disorders; disability prevention; or other relevant diseases, disorders, or conditions as determined[1] the Secretary; and

(ii) were carried out through the National Center for Environmental Health as of the day before October 17, 2000.

(C) Related transfers

Personnel employed in connection with the programs and functions specified in subparagraph (B), and amounts available for carrying out the programs and functions, are transferred to the Center, effective upon the expiration of the 180-day period beginning on October 17, 2000. Such transfer of amounts does not affect the period of availability of the amounts, or the availability of the amounts with respect to the purposes for which the amounts may be expended.

(b) Grants and contracts

(1) In general

In carrying out subsection (a) of this section, the Secretary may make grants to and enter into contracts with public and nonprofit private entities.

(2) Supplies and services in lieu of award funds

(A) Upon the request of a recipient of an award of a grant or contract under paragraph (1), the Secretary may, subject to subparagraph (B), provide supplies, equipment, and services for the purpose of aiding the recipient in carrying out the purposes for which the award is made and, for such purposes, may detail to the recipient any officer or employee of the Department of Health and Human Services.

(B) With respect to a request described in subparagraph (A), the Secretary shall reduce the amount of payments under the award involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(3) Application for award

The Secretary may make an award of a grant or contract under paragraph (1) only if an application for the award is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out the purposes for which the award is to be made.

(c) Biennial report

Not later than February 1 of fiscal year 1999 and of every second such year thereafter, the Secretary shall submit to the Committee on Commerce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate, a report that, with respect to the preceding 2 fiscal years—

(1) contains information regarding the incidence and prevalence of birth defects, developmental disabilities, and the health status of individuals with disabilities and the extent to which these conditions have contributed to the incidence and prevalence of infant mortality and affected quality of life;

(2) contains information under paragraph (1) that is specific to various racial and ethnic groups (including Hispanics, non-Hispanic whites, Blacks, Native Americans, and Asian Americans);

(3) contains an assessment of the extent to which various approaches of preventing birth defects, developmental disabilities, and secondary health conditions among individuals with disabilities have been effective;

(4) describes the activities carried out under this section;

(5) contains information on the incidence and prevalence of individuals living with birth defects and disabilities or developmental disabilities, information on the health status of individuals with disabilities, information on any health disparities experienced by such individuals, and recommendations for improving the health and wellness and quality of life of such individuals;

(6) contains a summary of recommendations from all birth defects research conferences sponsored by the Centers for Disease Control and Prevention, including conferences related to spina bifida; and

(7) contains any recommendations of the Secretary regarding this section.

(d) Applicability of privacy laws

The provisions of this section shall be subject to the requirements of section 552a of title 5. All Federal laws relating to the privacy of information shall apply to the data and information that is collected under this section.

(e) Advisory committee

Notwithstanding any other provision of law, the members of the advisory committee ap-

[1] So in original. Probably should be followed by the word ''by''.

pointed by the Director of the National Center for Environmental Health that have expertise in birth defects, developmental disabilities, and disabilities and health shall be transferred to and shall advise the National Center on Birth Defects and Developmental Disabilities effective on December 3, 2003.

(f) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2003 through 2007.

(July 1, 1944, ch. 373, title III, § 317C, as added Pub. L. 102–531, title III, § 306(a), Oct. 27, 1992, 106 Stat. 3494; amended Pub. L. 103–43, title XX, § 2008(i)(1)(B)(iii), June 10, 1993, 107 Stat. 213; Pub. L. 105–168, § 2, Apr. 21, 1998, 112 Stat. 43; Pub. L. 106–310, div. A, title VI, § 611, Oct. 17, 2000, 114 Stat. 1119; Pub. L. 108–154, § 2, Dec. 3, 2003, 117 Stat. 1933.)

AMENDMENTS

2003—Subsec. (a)(2)(A). Pub. L. 108–154, § 2(1)(A), substituted '', developmental disabilities, and disabilities and health'' for ''and developmental disabilities'' and ''subsection (c)(2)'' for ''subsection (d)(2)''.

Subsec. (a)(2)(D), (E). Pub. L. 108–154, § 2(1)(B)–(D), added subpars. (D) and (E).

Subsecs. (b), (c). Pub. L. 108–154, § 2(2),(4), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which related to additional provisions regarding collection of data.

Subsec. (d). Pub. L. 108–154, § 2(4), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 108–154, § 2(3)(A), added par. (1) and struck out former par. (1) which read as follows: ''contains information regarding the incidence and prevalence of birth defects and the extent to which birth defects have contributed to the incidence and prevalence of infant mortality;''.

Subsec. (d)(3). Pub. L. 108–154, § 2(3)(B), inserted '', developmental disabilities, and secondary health conditions among individuals with disabilities'' after ''defects''.

Subsec. (d)(5) to (7). Pub. L. 108–154, § 2(3)(C)–(E), added pars. (5) and (6) and redesignated former par. (5) as (7).

Subsec. (e). Pub. L. 108–154, § 2(5), added subsec. (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 108–154, § 2(6) substituted ''such sums as may be necessary for each of fiscal years 2003 through 2007.'' for ''$30,000,000 for fiscal year 1999, $40,000,000 for fiscal year 2000, and such sums as may be necessary for each of the fiscal years 2001 and 2002.''

2000—Pub. L. 106–310, § 611(1), substituted ''National Center on Birth Defects and Developmental Disabilities'' for ''Programs regarding birth defects'' in section catchline.

Subsec. (a). Pub. L. 106–310, § 611(2), added subsec. (a) and struck out heading and text of former subsec. (a) relating to Secretary's responsibility, acting through the Centers for Disease Control and Prevention, to carry out programs regarding birth defects.

Subsec. (b)(1). Pub. L. 106–310, § 611(3), substituted ''subsection (a)(2)(A) of this section'' for ''subsection (a)(1) of this section'' in introductory provisions.

1998—Pub. L. 105–168 amended section generally, substituting present provisions for provisions which directed Secretary to encourage and assist States in collection and analysis of epidemiological data on birth defects and to establish and maintain National Information Clearinghouse on Birth Defects, required report not later than July 1, 1993, and biennially thereafter, and authorized appropriations for fiscal years 1993, 1994, and 1995.

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–531, § 306(a), which enacted this section.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

CONGRESSIONAL FINDINGS

Pub. L. 105–168, § 1(b), Apr. 21, 1998, 112 Stat. 43, provided that: ''Congress makes the following findings:

''(1) Birth defects are the leading cause of infant mortality, directly responsible for one out of every five infant deaths.

''(2) Thousands of the 150,000 infants born with a serious birth defect annually face a lifetime of chronic disability and illness.

''(3) Birth defects threaten the lives of infants of all racial and ethnic backgrounds. However, some conditions pose excess risks for certain populations. For example, compared to all infants born in the United States, Hispanic-American infants are more likely to be born with anencephaly spina bifida and other neural tube defects and African-American infants are more likely to be born with sickle-cell anemia.

''(4) Birth defects can be caused by exposure to environmental hazards, adverse health conditions during pregnancy, or genetic mutations. Prevention efforts are slowed by lack of information about the number and causes of birth defects. Outbreaks of birth defects may go undetected because surveillance and research efforts are underdeveloped and poorly coordinated.

''(5) Public awareness strategies, such as programs using folic acid vitamin supplements to prevent spina bifida and alcohol avoidance programs to prevent Fetal Alcohol Syndrome, are essential to prevent the heartache and costs associated with birth defects.''

§ 247b–4a. Early detection, diagnosis, and interventions for newborns and infants with hearing loss

(a) Definitions

For the purposes of this section only, the following terms in this section are defined as follows:

(1) Hearing screening

Newborn and infant hearing screening consists of objective physiologic procedures to detect possible hearing loss and to identify newborns and infants who, after rescreening, require further audiologic and medical evaluations.

(2) Audiologic evaluation

Audiologic evaluation consists of procedures to assess the status of the auditory system; to establish the site of the auditory disorder; the type and degree of hearing loss, and the potential effects of hearing loss on communication; and to identify appropriate treatment and referral options. Referral options should include linkage to State IDEA part C coordinating agencies or other appropriate agencies, medical evaluation, hearing aid/sensory aid assessment, audiologic rehabilitation treatment, national and local consumer, self-help, parent, and education organizations, and other family-centered services.

(3) Medical evaluation

Medical evaluation by a physician consists of key components including history, examination, and medical decision making focused on symptomatic and related body systems for the purpose of diagnosing the etiology of hearing loss and related physical conditions, and for identifying appropriate treatment and referral options.

(4) Medical intervention

Medical intervention is the process by which a physician provides medical diagnosis and direction for medical and/or surgical treatment options of hearing loss and/or related medical disorder associated with hearing loss.

(5) Audiologic rehabilitation

Audiologic rehabilitation (intervention) consists of procedures, techniques, and technologies to facilitate the receptive and expressive communication abilities of a child with hearing loss.

(6) Early intervention

Early intervention (e.g., nonmedical) means providing appropriate services for the child with hearing loss and ensuring that families of the child are provided comprehensive, consumer-oriented information about the full range of family support, training, information services, communication options and are given the opportunity to consider the full range of educational and program placements and options for their child.

(b) Purposes

The purposes of this section are to clarify the authority within the Public Health Service Act [42 U.S.C. 201 et seq.] to authorize statewide newborn and infant hearing screening, evaluation and intervention programs and systems, technical assistance, a national applied research program, and interagency and private sector collaboration for policy development, in order to assist the States in making progress toward the following goals:

(1) All babies born in hospitals in the United States and its territories should have a hearing screening before leaving the birthing facility. Babies born in other countries and residing in the United States via immigration or adoption should have a hearing screening as early as possible.

(2) All babies who are not born in hospitals in the United States and its territories should have a hearing screening within the first 3 months of life.

(3) Appropriate audiologic and medical evaluations should be conducted by 3 months for all newborns and infants suspected of having hearing loss to allow appropriate referral and provisions for audiologic rehabilitation, medical and early intervention before the age of 6 months.

(4) All newborn and infant hearing screening programs and systems should include a component for audiologic rehabilitation, medical and early intervention options that ensures linkage to any new and existing statewide systems of intervention and rehabilitative services for newborns and infants with hearing loss.

(5) Public policy in regard to newborn and infant hearing screening and intervention should be based on applied research and the recognition that newborns, infants, toddlers, and children who are deaf or hard-of-hearing have unique language, learning, and communication needs, and should be the result of consultation with pertinent public and private sectors.

(c) Statewide newborn and infant hearing screening, evaluation and intervention programs and systems

Under the existing authority of the Public Health Service Act [42 U.S.C. 201 et seq.], the Secretary of Health and Human Services (in this section referred to as the ''Secretary''), acting through the Administrator of the Health Resources and Services Administration, shall make awards of grants or cooperative agreements to develop statewide newborn and infant hearing screening, evaluation and intervention programs and systems for the following purposes:

(1) To develop and monitor the efficacy of statewide newborn and infant hearing screening, evaluation and intervention programs and systems. Early intervention includes referral to schools and agencies, including community, consumer, and parent-based agencies and organizations and other programs mandated by part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.], which offer programs specifically designed to meet the unique language and communication needs of deaf and hard-of-hearing newborns, infants, toddlers, and children.

(2) To collect data on statewide newborn and infant hearing screening, evaluation and intervention programs and systems that can be used for applied research, program evaluation and policy development.

(d) Technical assistance, data management, and applied research

(1) Centers for Disease Control and Prevention

Under the existing authority of the Public Health Service Act [42 U.S.C. 201 et seq.], the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall make awards of grants or cooperative agreements to provide technical assistance to State agencies to complement an intramural program and to conduct applied research related to newborn and infant hearing screening, evaluation and intervention programs and systems. The program shall develop standardized procedures for data management and program effectiveness and costs, such as—

(A) to ensure quality monitoring of newborn and infant hearing loss screening, evaluation, and intervention programs and systems;

(B) to provide technical assistance on data collection and management;

(C) to study the costs and effectiveness of newborn and infant hearing screening, evaluation and intervention programs and systems conducted by State-based programs in order to answer issues of importance to State and national policymakers;

(D) to identify the causes and risk factors for congenital hearing loss;

(E) to study the effectiveness of newborn and infant hearing screening, audiologic and medical evaluations and intervention programs and systems by assessing the health, intellectual and social developmental, cognitive, and language status of these children at school age; and

(F) to promote the sharing of data regarding early hearing loss with State-based birth defects and developmental disabilities monitoring programs for the purpose of identifying previously unknown causes of hearing loss.

(2) National Institutes of Health

Under the existing authority of the Public Health Service Act, the Director of the National Institutes of Health, acting through the Director of the National Institute on Deafness and Other Communication Disorders, shall for purposes of this section, continue a program of research and development on the efficacy of new screening techniques and technology, including clinical studies of screening methods, studies on efficacy of intervention, and related research.

(e) Coordination and collaboration

(1) In general

Under the existing authority of the Public Health Service Act [42 U.S.C. 201 et seq.], in carrying out programs under this section, the Administrator of the Health Resources and Services Administration, the Director of the Centers for Disease Control and Prevention, and the Director of the National Institutes of Health shall collaborate and consult with other Federal agencies; State and local agencies, including those responsible for early intervention services pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (Medicaid Early and Periodic Screening, Diagnosis and Treatment Program); title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.], (State Children's Health Insurance Program); title V of the Social Security Act [42 U.S.C. 701 et seq.] (Maternal and Child Health Block Grant Program); and part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.]; consumer groups of and that serve individuals who are deaf and hard-of-hearing and their families; appropriate national medical and other health and education specialty organizations; persons who are deaf and hard-of-hearing and their families; other qualified professional personnel who are proficient in deaf or hard-of-hearing children's language and who possess the specialized knowledge, skills, and attributes needed to serve deaf and hard-of-hearing newborns, infants, toddlers, children, and their families; third-party payers and managed care organizations; and related commercial industries.

(2) Policy development

Under the existing authority of the Public Health Service Act, the Administrator of the Health Resources and Services Administration, the Director of the Centers for Disease Control and Prevention, and the Director of the National Institutes of Health shall coordinate and collaborate on recommendations for policy development at the Federal and State levels and with the private sector, including consumer, medical and other health and education professional-based organizations, with respect to newborn and infant hearing screening, evaluation and intervention programs and systems.

(3) State early detection, diagnosis, and intervention programs and systems; data collection

Under the existing authority of the Public Health Service Act, the Administrator of the Health Resources and Services Administration and the Director of the Centers for Disease Control and Prevention shall coordinate and collaborate in assisting States to establish newborn and infant hearing screening, evaluation and intervention programs and systems under subsection (c) of this section and to develop a data collection system under subsection (d) of this section.

(f) Rule of construction

Nothing in this section shall be construed to preempt any State law.

(g) Authorization of appropriations

(1) Statewide newborn and infant hearing screening, evaluation and intervention programs and systems

For the purpose of carrying out subsection (c) of this section under the existing authority of the Public Health Service Act [42 U.S.C. 201 et seq.], there are authorized to the Health Resources and Services Administration appropriations in the amount of $5,000,000 for fiscal year 2000, $8,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal year 2002.

(2) Technical assistance, data management, and applied research; Centers for Disease Control and Prevention

For the purpose of carrying out subsection (d)(1) of this section under the existing authority of the Public Health Service Act, there are authorized to the Centers for Disease Control and Prevention, appropriations in the amount of $5,000,000 for fiscal year 2000, $7,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal year 2002.

(3) Technical assistance, data management, and applied research; National Institute on Deafness and Other Communication Disorders

For the purpose of carrying out subsection (d)(2) of this section under the existing authority of the Public Health Service Act, there are authorized to the National Institute on Deafness and Other Communication Disorders appropriations for such sums as may be necessary for each of the fiscal years 2000 through 2002.

(Pub. L. 106–113, div. B, §1000(a)(4) [title VI, §601], Nov. 29, 1999, 113 Stat. 1535, 1501A–276.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsecs. (b) to (e) and (g), is act July 1, 1944, ch. 373, 58 Stat. 682,

as amended, which is classified generally to this chapter (§ 201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsecs. (c)(1) and (e)(1), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§ 1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Social Security Act, referred to in subsec. (e)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V, XIX, and XXI of the Act are classified generally to subchapters V (§ 701 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was enacted as part of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2000, and not as part of the Public Health Service Act which comprises this chapter.

§ 247b–4b. Developmental disabilities surveillance and research programs

(a) National autism and pervasive developmental disabilities surveillance program

(1) In general

The Secretary of Health and Human Services (in this section referred to as the ''Secretary''), acting through the Director of the Centers for Disease Control and Prevention, may make awards of grants and cooperative agreements for the collection, analysis, and reporting of data on autism and pervasive developmental disabilities. In making such awards, the Secretary may provide direct technical assistance in lieu of cash.

(2) Eligibility

To be eligible to receive an award under paragraph (1) an entity shall be a public or nonprofit private entity (including health departments of States and political subdivisions of States, and including universities and other educational entities).

(b) Centers of excellence in autism and pervasive developmental disabilities epidemiology

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish not less than three regional centers of excellence in autism and pervasive developmental disabilities epidemiology for the purpose of collecting and analyzing information on the number, incidence, correlates, and causes of autism and related developmental disabilities.

(2) Recipients of awards for establishment of centers

Centers under paragraph (1) shall be established and operated through the awarding of grants or cooperative agreements to public or nonprofit private entities that conduct research, including health departments of States and political subdivisions of States, and including universities and other educational entities.

(3) Certain requirements

An award for a center under paragraph (1) may be made only if the entity involved submits to the Secretary an application containing such agreements and information as the Secretary may require, including an agreement that the center involved will operate in accordance with the following:

(A) The center will collect, analyze, and report autism and pervasive developmental disabilities data according to guidelines prescribed by the Director, after consultation with relevant State and local public health officials, private sector developmental disability researchers, and advocates for those with developmental disabilities.

(B) The center will assist with the development and coordination of State autism and pervasive developmental disabilities surveillance efforts within a region.

(C) The center will identify eligible cases and controls through its surveillance systems and conduct research into factors which may cause autism and related developmental disabilities.

(D) The center will develop or extend an area of special research expertise (including genetics, environmental exposure to contaminants, immunology, and other relevant research specialty areas).

(c) Clearinghouse

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall carry out the following:

(1) The Secretary shall establish a clearinghouse within the Centers for Disease Control and Prevention for the collection and storage of data generated from the monitoring programs established by this title.[1] Through the clearinghouse, such Centers shall serve as the coordinating agency for autism and pervasive developmental disabilities surveillance activities. The functions of such a clearinghouse shall include facilitating the coordination of research and policy development relating to the epidemiology of autism and other pervasive developmental disabilities.

(2) The Secretary shall coordinate the Federal response to requests for assistance from State health department officials regarding potential or alleged autism or developmental disability clusters.

(d) Definition

In this title,[1] the term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(e) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 106–310, div. A, title I, § 102, Oct. 17, 2000, 114 Stat. 1107.)

[1] See References in Text note below.

REFERENCES IN TEXT

This title, referred to in subsecs. (c)(1) and (d), is title I of div. A of Pub. L. 106–310, Oct. 17, 2000, 114 Stat. 1105, which enacted this section and sections 247b–4c to 247b–4e and 284g of this title.

CODIFICATION

Section was enacted as part of the Children's Health Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

REPORT ON SURVEILLANCE ACTIVITIES

Pub. L. 108–154, § 4, Dec. 3, 2003, 117 Stat. 1934, provided that: ''Not later than 18 months after the date of enactment of this Act [Dec. 3, 2003], the Secretary of Health and Human Services jointly with the Secretary of Education shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce and Committee on Education and the Workforce of the House of Representatives a report concerning surveillance activities under section 102 of the Children's Health Act of 2000 (Public Law 106–310) [this section], specifically including—

''(1) a description of the current grantees under the National Autism and Pervasive Developmental Disabilities Surveillance Program and the Centers of Excellence in Autism and Pervasive Developmental Disabilities, the data collected, analyzed, and reported under such grants, the sources of such data, and whether such data was obtained with parental consent as required under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g);

''(2) a description of current sources of data for the surveillance of autism and developmental disabilities and the methods for obtaining such data, including whether such data was obtained with parental or patient consent for disclosure;

''(3) an analysis of research on autism and developmental disabilities with respect to the methods of collection and reporting, including whether such research was obtained with parental or patient consent for disclosure;

''(4) an analysis of the need to add education records in the surveillance of autism and other developmental disabilities, including the methodological and medical necessity for such records and the rights of parents and patients in the use of education records (in accordance with the Family Educational Rights and Privacy Act of 1974);

''(5) a description of the efforts taken by the Centers for Disease Control and Prevention to utilize education records in conducting the surveillance program while obtaining parental or patient consent for such education records, including the outcomes of such efforts;

''(6) a description of the challenges provided to obtaining education records (in the absence of parental or patient consent) for the purpose of obtaining additional surveillance data for autism and other developmental disabilities; and

''(7) a description of the manner in which such challenges can be overcome, including efforts to educate parents, increase confidence in the privacy of the surveillance program, and increase the rate of parental or patient consent, and including specific quantitative and qualitative justifications for any recommendations for changes to existing statutory authority, including the Family Educational Rights and Privacy Act of 1974.''

§ 247b–4c. Information and education

(a) In general

The Secretary shall establish and implement a program to provide information and education on autism to health professionals and the general public, including information and education on advances in the diagnosis and treatment of autism and training and continuing education through programs for scientists, physicians, and other health professionals who provide care for patients with autism.

(b) Stipends

The Secretary may use amounts made available under this section to provide stipends for health professionals who are enrolled in training programs under this section.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 106–310, div. A, title I, § 103, Oct. 17, 2000, 114 Stat. 1108.)

CODIFICATION

Section was enacted as part of the Children's Health Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

§ 247b–4d. Inter-agency Autism Coordinating Committee

(a) Establishment

The Secretary shall establish a committee to be known as the ''Autism Coordinating Committee'' (in this section referred to as the ''Committee'') to coordinate all efforts within the Department of Health and Human Services concerning autism, including activities carried out through the National Institutes of Health and the Centers for Disease Control and Prevention under this title[1] (and the amendment made by this title).[1]

(b) Membership

(1) In general

The Committee shall be composed of the Directors of such national research institutes, of the Centers for Disease Control and Prevention, and of such other agencies and such other officials as the Secretary determines appropriate.

(2) Additional members

If determined appropriate by the Secretary, the Secretary may appoint to the Committee—

(A) parents or legal guardians of individuals with autism or other pervasive developmental disorders; and

(B) representatives of other governmental agencies that serve children with autism such as the Department of Education.

(c) Administrative support; terms of service; other provisions

The following shall apply with respect to the Committee:

(1) The Committee shall receive necessary and appropriate administrative support from

[1] See References in Text note below.

the Department of Health and Human Services.

(2) Members of the Committee appointed under subsection (b)(2)(A) of this section shall serve for a term of 3 years, and may serve for an unlimited number of terms if reappointed.

(3) The Committee shall meet not less than two times each year.

(Pub. L. 106–310, div. A, title I, § 104, Oct. 17, 2000, 114 Stat. 1109.)

REFERENCES IN TEXT

This title, referred to in subsec. (a), is title I of div. A of Pub. L. 106–310, Oct. 17, 2000, 114 Stat. 1105, which enacted this section and sections 247b–4b, 247b–4c, 247b–4e, and 284g of this title.

CODIFICATION

Section was enacted as part of the Children's Health Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

§ 247b–4e. Report to Congress

Not later than January 1, 2001, and each January 1 thereafter, the Secretary shall prepare and submit to the appropriate committees of Congress, a report concerning the implementation of this title[1] and the amendments made by this title.[1]

(Pub. L. 106–310, div. A, title I, § 105, Oct. 17, 2000, 114 Stat. 1109.)

REFERENCES IN TEXT

This title, referred to in text, is title I of div. A of Pub. L. 106–310, Oct. 17, 2000, 114 Stat. 1105, which enacted this section and sections 247b–4b to 247b–4d and 284g of this title.

CODIFICATION

Section was enacted as part of the Children's Health Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

§ 247b–5. Preventive health measures with respect to prostate cancer

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States and local health departments for the purpose of enabling such States and departments to carry out programs that may include the following:

(1) To identify factors that influence the attitudes or levels of awareness of men and health care practitioners regarding screening for prostate cancer.

(2) To evaluate, in consultation with the Agency for Health Care Policy and Research and the National Institutes of Health, the effectiveness of screening strategies for prostate cancer.

(3) To identify, in consultation with the Agency for Health Care Policy and Research, issues related to the quality of life for men after prostrate[1] cancer screening and followup.

(4) To develop and disseminate public information and education programs for prostate cancer, including appropriate messages about the risks and benefits of prostate cancer screening for the general public, health care providers, policy makers and other appropriate individuals.

(5) To improve surveillance for prostate cancer.

(6) To address the needs of underserved and minority populations regarding prostate cancer.

(7) Upon a determination by the Secretary, who shall take into consideration recommendations by the United States Preventive Services Task Force and shall seek input, where appropriate, from professional societies and other private and public entities, that there is sufficient consensus on the effectiveness of prostate cancer screening—

(A) to screen men for prostate cancer as a preventive health measure;

(B) to provide appropriate referrals for the medical treatment of men who have been screened under subparagraph (A) and to ensure, to the extent practicable, the provision of appropriate followup services and support services such as case management;

(C) to establish mechanisms through which State and local health departments can monitor the quality of screening procedures for prostate cancer, including the interpretation of such procedures; and

(D) to improve, in consultation with the Health Resources and Services Administration, the education, training, and skills of health practitioners (including appropriate allied health professionals) in the detection and control of prostate cancer.

(8) To evaluate activities conducted under paragraphs (1) through (7) through appropriate surveillance or program monitoring activities.

(b) Requirement of matching funds

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such section, to make available non-Federal contributions (in cash or in kind under paragraph (2)) toward such costs in an amount equal to not less than $1 for each $3 of Federal funds provided in the grant. Such contributions may be made directly or through donations from public or private entities.

(2) Determination of amount of non-Federal contribution

(A) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including equipment or services (and excluding indirect or overhead costs). Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) In making a determination of the amount of non-Federal contributions for purposes of paragraph (1), the Secretary may include only non-Federal contributions in excess

[1] See References in Text note below.

[1] So in original. Probably should be ''prostate''.

of the average amount of non-Federal contributions made by the applicant involved toward the purpose described in subsection (a) of this section for the 2-year period preceding the fiscal year for which the applicant involved is applying to receive a grant under such subsection.

(C) In making a determination of the amount of non-Federal contributions for purposes of paragraph (1), the Secretary shall, subject to subparagraphs (A) and (B) of this paragraph, include any non-Federal amounts expended pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] by the applicant involved toward the purpose described in paragraphs (1) and (2) of subsection (a) of this section.

(c) Education on significance of early detection

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that, in carrying out subsection (a)(3) of this section, the applicant will carry out education programs to communicate to men, and to local health officials, the significance of the early detection of prostate cancer.

(d) Requirement of provision of all services by date certain

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees—

(1) to ensure that, initially and throughout the period during which amounts are received pursuant to the grant, not less than 60 percent of the grant is expended to provide each of the services or activities described in paragraphs (1) and (2) of such subsection;

(2) to ensure that, by the end of any second fiscal year of payments pursuant to the grant, each of the services or activities described in such subsection is provided; and

(3) to ensure that not more than 40 percent of the grant is expended to provide the services or activities described in paragraphs (3) through (6) of such section.[2]

(e) Additional required agreements

(1) Priority for low-income men

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that low-income men, and men at risk of prostate cancer, will be given priority in the provision of services and activities pursuant to paragraphs (1) and (2) of such subsection.

(2) Limitation on imposition of fees for services

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that, if a charge is imposed for the provision of services or activities under the grant, such charge—

(A) will be made according to a schedule of charges that is made available to the public;

(B) will be adjusted to reflect the income of the man involved; and

(C) will not be imposed on any man with an income of less than 100 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(3) Relationship to items and services under other programs

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that the grant will not be expended to make payment for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(B) by an entity that provides health services on a prepaid basis.

(4) Coordination with other prostate cancer programs

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that the services and activities funded through the grant will be coordinated with other Federal, State, and local prostate cancer programs.

(5) Limitation on administrative expenses

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that not more than 10 percent of the grant will be expended for administrative expenses with respect to the grant.

(6) Restrictions on use of grant

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that the grant will not be expended to provide inpatient hospital services for any individual.

(7) Records and audits

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that—

(A) the applicant will establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the applicant under such section;[3] and

(B) upon request, the applicant will provide records maintained pursuant to paragraph (1) to the Secretary or the Comptroller of the United States for purposes of auditing the expenditures by the applicant of the grant.

(f) Reports to Secretary

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees to submit to the Secretary such reports as the Secretary may require with respect to the grant.

(g) Description of intended uses of grant

The Secretary may not make a grant under subsection (a) of this section unless—

[2] So in original. Probably should be ''subsection.''

[3] So in original. Probably should be ''subsection;''.

(1) the applicant involved submits to the Secretary a description of the purposes for which the applicant intends to expend the grant;

(2) the description identifies the populations, areas, and localities in the applicant[4] with a need for the services or activities described in subsection (a) of this section;

(3) the description provides information relating to the services and activities to be provided, including a description of the manner in which the services and activities will be coordinated with any similar services or activities of public or nonprivate entities; and

(4) the description provides assurances that the grant funds will be used in the most cost-effective manner.

(h) Requirement of submission of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary, the application contains the description of intended uses required in subsection (g) of this section, and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(i) Method and amount of payment

The Secretary shall determine the amount of a grant made under subsection (a) of this section. Payments under such grants may be made in advance on the basis of estimates or by way of reimbursement, with necessary adjustments on account of the underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

(j) Technical assistance and provision of supplies and services in lieu of grant funds

(1) Technical assistance

The Secretary may provide training and technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to subsection (a) of this section. The Secretary may provide such technical assistance directly or through grants to, or contracts with, public and private entities.

(2) Provision of supplies and services in lieu of grant funds

(A) Upon the request of an applicant receiving a grant under subsection (a) of this section, the Secretary may, subject to subparagraph (B), provide supplies, equipment, and services for the purpose of aiding the applicant in carrying out such section and, for such purpose, may detail to the applicant any officer or employee of the Department of Health and Human Services.

(B) With respect to a request described in subparagraph (A), the Secretary shall reduce the amount of payments under the grant under subsection (a) of this section to the applicant involved by an amount equal to the costs of detailing personnel (including pay, allowances, and travel expenses) and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(k) "Units of local government" defined

For purposes of this section, the term ''units of local government'' includes Indian tribes.

(*l*) Authorization of appropriations

(1) In general

For the purpose of carrying out this section, there are authorized to be appropriated $20,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 2004.

(2) Allocation for technical assistance

Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall reserve not more than 20 percent for carrying out subsection (j)(1) of this section.

(July 1, 1944, ch. 373, title III, § 317D, as added Pub. L. 102–531, title III, § 308, Oct. 27, 1992, 106 Stat. 3495; amended Pub. L. 103–43, title XX, § 2010(i)(1)(B)(iv), June 10, 1993, 107 Stat. 213; Pub. L. 103–183, title VII, § 705(b), Dec. 14, 1993, 107 Stat. 2241; Pub. L. 105–392, title IV, § 401(a)(3), Nov. 13, 1998, 112 Stat. 3587; Pub. L. 106–505, title VI, § 602(a), Nov. 13, 2000, 114 Stat. 2345.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–505, § 602(a)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States and local health departments for the purpose of enabling such States and departments to carry out programs—

''(1) to screen men for prostate cancer as a preventive health measure;

''(2) to provide appropriate referrals for medical treatment of men screened pursuant to paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services;

''(3) to develop and disseminate public information and education programs for the detection and control of prostate cancer;

''(4) to improve the education, training, and skills of health professionals (including appropriate allied health professionals) in the detection and control of prostate cancer;

''(5) to establish mechanisms through which the States and such departments can monitor the quality of screening procedures for prostate cancer, including the interpretation of such procedures; and

''(6) to evaluate activities conducted under paragraphs (1) through (5) through appropriate surveillance or program monitoring activities.''

Subsec. (*l*)(1). Pub. L. 106–505, § 602(a)(2), substituted ''2004'' for ''1998''.

1998—Subsec. (*l*)(1). Pub. L. 105–392 made technical amendment to directory language of Pub. L. 103–183. See 1993 Amendment note below.

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–531, § 308, which enacted this section.

[4] So in original. Probably should be ''application''.

Subsec. (*l*)(1). Pub. L. 103–183, as amended by Pub. L. 105–392, substituted ''through 1998'' for ''through 1996''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

§ 247b–6. Preventive health services regarding tuberculosis

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States, political subdivisions, and other public entities for preventive health service programs for the prevention, control, and elimination of tuberculosis.

(b) Research, demonstration projects, education, and training

With respect to the prevention, control, and elimination of tuberculosis, the Secretary may, directly or through grants to public or nonprofit private entities, carry out the following:

(1) Research, with priority given to research concerning strains of tuberculosis resistant to drugs and research concerning cases of tuberculosis that affect certain populations.

(2) Demonstration projects.

(3) Public information and education programs.

(4) Education, training, and clinical skills improvement activities for health professionals, including allied health personnel and emergency response employees.

(5) Support of centers to carry out activities under paragraphs (1) through (4).

(6) Collaboration with international organizations and foreign countries in carrying out such activities.

(c) Cooperation with providers of primary health services

The Secretary may make a grant under subsection (a) or (b) of this section only if the applicant for the grant agrees that, in carrying out activities under the grant, the applicant will cooperate with public and nonprofit private providers of primary health services or substance abuse services, including entities receiving assistance under section 254b, 254b, or 256a of this title[1] or under subchapter III–A or XVII of this chapter.

(d) Application for grant

(1) In general

The Secretary may make a grant under subsection (a) or (b) of this section only if an application for the grant is submitted to the Secretary and the application, subject to paragraph (2), is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out the subsection involved.

(2) Plan for prevention, control, and elimination

The Secretary may make a grant under subsection (a) of this section only if the application under paragraph (1) contains a plan regarding the prevention, control, and elimination of tuberculosis in the geographic area with respect to which the grant is sought.

(e) Supplies and services in lieu of grant funds

(1) In general

Upon the request of a grantee under subsection (a) or (b) of this section, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the grantee in carrying out the subsection involved and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) Corresponding reduction in payments

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the grant involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(f) Advisory Council

(1) In general

The Secretary shall establish an advisory council to be known as the Advisory Council for the Elimination of Tuberculosis (in this subsection referred to as the ''Council'').

(2) General duties

The Council shall provide advice and recommendations regarding the elimination of tuberculosis to the Secretary, the Assistant Secretary for Health, and the Director of the Centers for Disease Control and Prevention.

(3) Certain activities

With respect to the elimination of tuberculosis, the Council shall—

(A) in making recommendations under paragraph (2), make recommendations regarding policies, strategies, objectives, and priorities;

(B) address the development and application of new technologies; and

(C) review the extent to which progress has been made toward eliminating tuberculosis.

(4) Composition

The Secretary shall determine the size and composition of the Council, and the frequency and scope of official meetings of the Council.

(5) Staff, information, and other assistance

The Secretary shall provide to the Council such staff, information, and other assistance as may be necessary to carry out the duties of the Council.

(g) Funding

(1) In general; allocation for emergency grants

(A) For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $200,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2002.

[1] See References in Text notes below.

(B) Of the amounts appropriated under subparagraph (A) for a fiscal year, the Secretary may reserve not more than 25 percent for emergency grants under subsection (a) of this section for any geographic area in which there is, relative to other areas, a substantial number of cases of tuberculosis or a substantial rate of increase in such cases.

(2) Research, demonstration projects, education, and training

For the purpose of carrying out subsection (b) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 2002.

(July 1, 1944, ch. 373, title III, § 317E, as added Pub. L. 103–183, title III, § 301(a), Dec. 14, 1993, 107 Stat. 2233; amended Pub. L. 105–392, title IV, §§ 401(b)(1), 405, Nov. 13, 1998, 112 Stat. 3587, 3588; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664; Pub. L. 108–163, § 2(m)(1), Dec. 6, 2003, 117 Stat. 2023.)

REFERENCES IN TEXT

The reference to section 254b of this title the first place appearing, referred to in subsec. (c), was in the original a reference to section 329, meaning section 329 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of this subchapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626.

Section 256a of this title, referred to in subsec. (c), was repealed by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–163 substituted ''254b'' for ''254c, 254b(h)'' before '', or''.

2002—Subsec. (c). Pub. L. 107–251 substituted ''254b(h)'' for ''256''.

1998—Subsec. (g)(1)(A). Pub. L. 105–392, § 405(1)(A), substituted ''2002'' for ''1998''.

Subsec. (g)(1)(B). Pub. L. 105–392, § 405(1)(B), substituted ''25 percent'' for ''$50,000,000''.

Subsec. (g)(2). Pub. L. 105–392, § 405(2), substituted ''2002'' for ''1998''.

Pub. L. 105–392, § 401(b)(1), substituted ''carrying out subsection (b)'' for ''making grants under subsection (b)''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 401(b)(1) of Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 247b–7. Loan repayment program

(a) In general

(1) Authority

Subject to paragraph (2), the Secretary may carry out a program of entering into contracts with appropriately qualified health professionals under which such health professionals agree to conduct prevention activities, as employees of the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry, in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $35,000 of the principal and interest of the educational loans of such health professionals.

(2) Limitation

The Secretary may not enter into an agreement with a health professional pursuant to paragraph (1) unless such professional—

(A) has a substantial amount of educational loans relative to income; and

(B) agrees to serve as an employee of the Centers for Disease Control and Prevention or the Agency for Toxic Substances and Disease Registry for purposes of paragraph (1) for a period of not less than 3 years.

(b) Applicability of certain provisions

With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of this subchapter, the provisions of such subpart shall, except as inconsistent with subsection (a) of this section, apply to the program established in this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $500,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2002.

(d) Availability of appropriations

Amounts appropriated for a fiscal year for contracts under subsection (a) of this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were appropriated.

(July 1, 1944, ch. 373, title III, § 317F, as added Pub. L. 103–183, title VII, § 703, Dec. 14, 1993, 107 Stat. 2240; amended Pub. L. 105–392, title IV, § 406, Nov. 13, 1998, 112 Stat. 3588.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–392, § 406(1), substituted ''$35,000'' for ''$20,000''.

Subsec. (c). Pub. L. 105–392, § 406(2), substituted ''2002'' for ''1998''.

Subsec. (d). Pub. L. 105–392, § 406(3), added subsec. (d).

§ 247b–8. Fellowship and training programs

The Secretary, acting through the Director of the Centers for Disease Control and Prevention,

shall establish fellowship and training programs to be conducted by such Centers to train individuals to develop skills in epidemiology, surveillance, laboratory analysis, and other disease detection and prevention methods. Such programs shall be designed to enable health professionals and health personnel trained under such programs to work, after receiving such training, in local, State, national, and international efforts toward the prevention and control of diseases, injuries, and disabilities. Such fellowships and training may be administered through the use of either appointment or nonappointment procedures.

(July 1, 1944, ch. 373, title III, § 317G, as added Pub. L. 105–115, title IV, § 408(b)(1), Nov. 21, 1997, 111 Stat. 2371.)

EFFECTIVE DATE

Section 408(b)(2) of Pub. L. 105–115 provided that: ''The amendment made by this subsection [enacting this section] is deemed to have taken effect July 1, 1995.''

§ 247b–9. Diabetes in children and youth

(a) Surveillance on juvenile diabetes

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop a sentinel system to collect data on juvenile diabetes, including with respect to incidence and prevalence, and shall establish a national database for such data.

(b) Type 2 diabetes in youth

The Secretary shall implement a national public health effort to address type 2 diabetes in youth, including—

(1) enhancing surveillance systems and expanding research to better assess the prevalence and incidence of type 2 diabetes in youth and determine the extent to which type 2 diabetes is incorrectly diagnosed as type 1 diabetes among children; and

(2) developing and improving laboratory methods to assist in diagnosis, treatment, and prevention of diabetes including, but not limited to, developing noninvasive ways to monitor blood glucose to prevent hypoglycemia and improving existing glucometers that measure blood glucose.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317H, as added Pub. L. 106–310, div. A, title IV, § 401, Oct. 17, 2000, 114 Stat. 1112.)

§ 247b–10. Compilation of data on asthma

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall—

(1) conduct local asthma surveillance activities to collect data on the prevalence and severity of asthma and the quality of asthma management;

(2) compile and annually publish data on the prevalence of children suffering from asthma in each State; and

(3) to the extent practicable, compile and publish data on the childhood mortality rate associated with asthma nationally.

(b) Surveillance activities

The Director of the Centers for Disease Control and Prevention, acting through the representative of the Director on the National Asthma Education Prevention Program Coordinating Committee, shall, in carrying out subsection (a) of this section, provide an update on surveillance activities at each Committee meeting.

(c) Collaborative efforts

The activities described in subsection (a)(1) of this section may be conducted in collaboration with eligible entities awarded a grant under section 280g of this title.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317I, as added Pub. L. 106–310, div. A, title V, § 531, Oct. 17, 2000, 114 Stat. 1117.)

§ 247b–11. Effects of folic acid in prevention of birth defects

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall expand and intensify programs (directly or through grants or contracts) for the following purposes:

(1) To provide education and training for health professionals and the general public for purposes of explaining the effects of folic acid in preventing birth defects and for purposes of encouraging each woman of reproductive capacity (whether or not planning a pregnancy) to consume on a daily basis a dietary supplement that provides an appropriate level of folic acid.

(2) To conduct research with respect to such education and training, including identifying effective strategies for increasing the rate of consumption of folic acid by women of reproductive capacity.

(3) To conduct research to increase the understanding of the effects of folic acid in preventing birth defects, including understanding with respect to cleft lip, cleft palate, and heart defects.

(4) To provide for appropriate epidemiological activities regarding folic acid and birth defects, including epidemiological activities regarding neural tube defects.

(b) Consultations with States and private entities

In carrying out subsection (a) of this section, the Secretary shall consult with the States and with other appropriate public or private entities, including national nonprofit private organizations, health professionals, and providers of health insurance and health plans.

(c) Technical assistance

The Secretary may (directly or through grants or contracts) provide technical assistance to

public and nonprofit private entities in carrying out the activities described in subsection (a) of this section.

(d) Evaluations

The Secretary shall (directly or through grants or contracts) provide for the evaluation of activities under subsection (a) of this section in order to determine the extent to which such activities have been effective in carrying out the purposes of the program under such subsection, including the effects on various demographic populations. Methods of evaluation under the preceding sentence may include surveys of knowledge and attitudes on the consumption of folic acid and on blood folate levels. Such methods may include complete and timely monitoring of infants who are born with neural tube defects.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317J, as added Pub. L. 106–310, div. A, title VI, § 601, Oct. 17, 2000, 114 Stat. 1118.)

§ 247b–12. Safe motherhood

(a) Surveillance

(1) Purpose

The purpose of this subsection is to develop surveillance systems at the local, State, and national level to better understand the burden of maternal complications and mortality and to decrease the disparities among population at risk of death and complications from pregnancy.

(2) Activities

For the purpose described in paragraph (1), the Secretary, acting through the Director of the Centers for Disease Control and Prevention, may carry out the following activities:

(A) The Secretary may establish and implement a national surveillance program to identify and promote the investigation of deaths and severe complications that occur during pregnancy.

(B) The Secretary may expand the Pregnancy Risk Assessment Monitoring System to provide surveillance and collect data in each State.

(C) The Secretary may expand the Maternal and Child Health Epidemiology Program to provide technical support, financial assistance, or the time-limited assignment of senior epidemiologists to maternal and child health programs in each State.

(b) Prevention research

(1) Purpose

The purpose of this subsection is to provide the Secretary with the authority to further expand research concerning risk factors, prevention strategies, and the roles of the family, health care providers and the community in safe motherhood.

(2) Research

The Secretary may carry out activities to expand research relating to—

(A) encouraging preconception counseling, especially for at risk populations such as diabetics;

(B) the identification of critical components of prenatal delivery and postpartum care;

(C) the identification of outreach and support services, such as folic acid education, that are available for pregnant women;

(D) the identification of women who are at high risk for complications;

(E) preventing preterm delivery;

(F) preventing urinary tract infections;

(G) preventing unnecessary caesarean sections;

(H) an examination of the higher rates of maternal mortality among African American women;

(I) an examination of the relationship between domestic violence and maternal complications and mortality;

(J) preventing and reducing adverse health consequences that may result from smoking, alcohol and illegal drug use before, during and after pregnancy;

(K) preventing infections that cause maternal and infant complications; and

(L) other areas determined appropriate by the Secretary.

(c) Prevention programs

(1) In general

The Secretary may carry out activities to promote safe motherhood, including—

(A) public education campaigns on healthy pregnancies and the building of partnerships with outside organizations concerned about safe motherhood;

(B) education programs for physicians, nurses and other health care providers; and

(C) activities to promote community support services for pregnant women.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317K, as added Pub. L. 106–310, div. A, title IX, § 901, Oct. 17, 2000, 114 Stat. 1125.)

§ 247b–13. Prenatal and postnatal health

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall carry out programs—

(1) to collect, analyze, and make available data on prenatal smoking, alcohol and illegal drug use, including data on the implications of such activities and on the incidence and prevalence of such activities and their implications;

(2) to conduct applied epidemiological research on the prevention of prenatal and postnatal smoking, alcohol and illegal drug use;

(3) to support, conduct, and evaluate the effectiveness of educational and cessation programs; and

(4) to provide information and education to the public on the prevention and implications

of prenatal and postnatal smoking, alcohol and illegal drug use.

(b) Grants

In carrying out subsection (a) of this section, the Secretary may award grants to and enter into contracts with States, local governments, scientific and academic institutions, federally qualified health centers, and other public and nonprofit entities, and may provide technical and consultative assistance to such entities.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317L, as added Pub. L. 106–310, div. A, title IX, § 911, Oct. 17, 2000, 114 Stat. 1127.)

§ 247b–14. Oral health promotion and disease prevention

(a) Grants to increase resources for community water fluoridation

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States and Indian tribes for the purpose of increasing the resources available for community water fluoridation.

(2) Use of funds

A State shall use amounts provided under a grant under paragraph (1)—

(A) to purchase fluoridation equipment;

(B) to train fluoridation engineers;

(C) to develop educational materials on the benefits of fluoridation; or

(D) to support the infrastructure necessary to monitor and maintain the quality of water fluoridation.

(b) Community water fluoridation

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in collaboration with the Director of the Indian Health Service, shall establish a demonstration project that is designed to assist rural water systems in successfully implementing the water fluoridation guidelines of the Centers for Disease Control and Prevention that are entitled ''Engineering and Administrative Recommendations for Water Fluoridation, 1995'' (referred to in this subsection as the ''EARWF'').

(2) Requirements

(A) Collaboration

In collaborating under paragraph (1), the Directors referred to in such paragraph shall ensure that technical assistance and training are provided to tribal programs located in each of the 12 areas of the Indian Health Service. The Director of the Indian Health Service shall provide coordination and administrative support to tribes under this section.

(B) General use of funds

Amounts made available under paragraph (1) shall be used to assist small water systems in improving the effectiveness of water fluoridation and to meet the recommendations of the EARWF.

(C) Fluoridation specialists

(i) In general

In carrying out this subsection, the Secretary shall provide for the establishment of fluoridation specialist engineering positions in each of the Dental Clinical and Preventive Support Centers through which technical assistance and training will be provided to tribal water operators, tribal utility operators and other Indian Health Service personnel working directly with fluoridation projects.

(ii) Liaison

A fluoridation specialist shall serve as the principal technical liaison between the Indian Health Service and the Centers for Disease Control and Prevention with respect to engineering and fluoridation issues.

(iii) CDC

The Director of the Centers for Disease Control and Prevention shall appoint individuals to serve as the fluoridation specialists.

(D) Implementation

The project established under this subsection shall be planned, implemented and evaluated over the 5-year period beginning on the date on which funds are appropriated under this section and shall be designed to serve as a model for improving the effectiveness of water fluoridation systems of small rural communities.

(3) Evaluation

In conducting the ongoing evaluation as provided for in paragraph (2)(D), the Secretary shall ensure that such evaluation includes—

(A) the measurement of changes in water fluoridation compliance levels resulting from assistance provided under this section;

(B) the identification of the administrative, technical and operational challenges that are unique to the fluoridation of small water systems;

(C) the development of a practical model that may be easily utilized by other tribal, State, county or local governments in improving the quality of water fluoridation with emphasis on small water systems; and

(D) the measurement of any increased percentage of Native Americans or Alaskan Natives who receive the benefits of optimally fluoridated water.

(c) School-based dental sealant program

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in collaboration with the Administrator of the Health Resources and Services Administration, may award grants to States and Indian tribes to provide for the development of school-based dental sealant programs to improve the access of children to sealants.

(2) Use of funds

A State shall use amounts received under a grant under paragraph (1) to provide funds to eligible school-based entities or to public elementary or secondary schools to enable such entities or schools to provide children with access to dental care and dental sealant services. Such services shall be provided by licensed dental health professionals in accordance with State practice licensing laws.

(3) Eligibility

To be eligible to receive funds under paragraph (1), an entity shall—

(A) prepare and submit to the State an application at such time, in such manner and containing such information as the State may require; and

(B) be a public elementary or secondary school—

(i) that is located in an urban area in which and[1] more than 50 percent of the student population is participating in Federal or State free or reduced meal programs; or

(ii) that is located in a rural area and, with respect to the school district in which the school is located, the district involved has a median income that is at or below 235 percent of the poverty line, as defined in section 9902(2) of this title.

(d) Definitions

For purposes of this section, the term ''Indian tribe'' means an Indian tribe or tribal organization as defined in section 450b(b) and section 450b(c)[2] of title 25.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317M, as added Pub. L. 106–310, div. A, title XVI, § 1602, Oct. 17, 2000, 114 Stat. 1148.)

REFERENCES IN TEXT

Section 450b of title 25, referred to in subsec. (d), has been amended, and subsecs. (b) and (c) of section 450b no longer define the terms ''Indian tribe'' and ''tribal organization''. However, such terms are defined elsewhere in that section.

§ 247b–14a. Identification of interventions that reduce the burden and transmission of oral, dental, and craniofacial diseases in high risk populations; development of approaches for pediatric oral and craniofacial assessment

(a) In general

The Secretary of Health and Human Services, through the Maternal and Child Health Bureau, the Indian Health Service, and in consultation with the National Institutes of Health and the Centers for Disease Control and Prevention, shall—

(1) support community-based research that is designed to improve understanding of the etiology, pathogenesis, diagnosis, prevention, and treatment of pediatric oral, dental, craniofacial diseases and conditions and their sequelae in high risk populations;

(2) support demonstrations of preventive interventions in high risk populations including nutrition, parenting, and feeding techniques; and

(3) develop clinical approaches to assess individual patients for the risk of pediatric dental disease.

(b) Compliance with State practice laws

Treatment and other services shall be provided pursuant to this section by licensed dental health professionals in accordance with State practice and licensing laws.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section for each[1] the fiscal years 2001 through 2005.

(Pub. L. 106–310, div. A, title XVI, § 1601, Oct. 17, 2000, 114 Stat. 1148.)

CODIFICATION

Section was enacted as part of the Children's Health Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

§ 247b–15. Surveillance and education regarding hepatitis C virus

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may (directly and through grants to public and nonprofit private entities) provide for programs to carry out the following:

(1) To cooperate with the States in implementing a national system to determine the incidence of hepatitis C virus infection (in this section referred to as ''HCV infection'') and to assist the States in determining the prevalence of such infection, including the reporting of chronic HCV cases.

(2) To identify, counsel, and offer testing to individuals who are at risk of HCV infection as a result of receiving blood transfusions prior to July 1992, or as a result of other risk factors.

(3) To provide appropriate referrals for counseling, testing, and medical treatment of individuals identified under paragraph (2) and to ensure, to the extent practicable, the provision of appropriate follow-up services.

(4) To develop and disseminate public information and education programs for the detection and control of HCV infection, with priority given to high risk populations as determined by the Secretary.

(5) To improve the education, training, and skills of health professionals in the detection and control of HCV infection, with priority given to pediatricians and other primary care physicians, and obstetricians and gynecologists.

(b) Laboratory procedures

The Secretary may (directly and through grants to public and nonprofit private entities)

[1] So in original. The word ''and'' probably should not appear.

[2] See References in Text note below.

[1] So in original. Probably should be followed by ''of''.

carry out programs to provide for improvements in the quality of clinical-laboratory procedures regarding hepatitis C, including reducing variability in laboratory results on hepatitis C antibody and PCR testing.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317N, as added Pub. L. 106–310, div. A, title XVIII, § 1801, Oct. 17, 2000, 114 Stat. 1152.)

STUDY AND DEMONSTRATION PROJECTS REGARDING CASES OF HEPATITIS C AMONG CERTAIN EMERGENCY RESPONSE EMPLOYEES

Pub. L. 106–398, § 1 [[div. A], title XVII, § 1704], Oct. 30, 2000, 114 Stat. 1654, 1654A–365, provided that:

''(a) STUDY REGARDING PREVALENCE AMONG CERTAIN EMERGENCY RESPONSE EMPLOYEES.—

''(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the 'Secretary'), in consultation with the Secretary of Labor, shall conduct a study to determine—

''(A) an estimate of the prevalence of hepatitis C among designated emergency response employees in the United States; and

''(B) the likely means through which such employees become infected with such disease in the course of performing their duties as such employees.

''(2) DESIGNATED EMERGENCY RESPONSE EMPLOYEES.—For purposes of this section, the term 'designated emergency response employees' means firefighters, paramedics, and emergency medical technicians who are employees or volunteers of units of local government.

''(3) DATE CERTAIN FOR COMPLETION; REPORT TO CONGRESS.—The Secretary shall commence the study under paragraph (1) not later than 90 days after the date of the enactment of this Act [Oct. 30, 2000]. Not later than one year after such date, the Secretary shall complete the study and submit to the Congress a report describing the findings of the study.

''(b) DEMONSTRATION PROJECTS REGARDING TRAINING AND TREATMENT.—

''(1) IN GENERAL.—The Secretary, in consultation with the Secretary of Labor, shall make grants to qualifying local governments for the purpose of carrying out demonstration projects that (directly or through arrangements with nonprofit private entities) carry out each of the following activities:

''(A) Training designated emergency response employees in minimizing the risk of infection with hepatitis C in performing their duties as such employees.

''(B) Testing such employees for infection with the disease.

''(C) Treating the employees for the disease.

''(2) QUALIFYING LOCAL GOVERNMENTS.—For purposes of this section, the term 'qualifying local government' means a unit of local government whose population of designated emergency response employees has a prevalence of hepatitis C that is not less than 200 percent of the national average for the prevalence of such disease in such populations.

''(3) CONFIDENTIALITY.—A grant may be made under paragraph (1) only if the qualifying local government involved agrees to ensure that information regarding the testing or treatment of designated emergency response employees pursuant to the grant is maintained confidentially in a manner not inconsistent with applicable law.

''(4) EVALUATIONS.—The Secretary shall provide for an evaluation of each demonstration project under paragraph (1) in order to determine the extent to which the project has been effective in carry [sic] out the activities described in such paragraph.

''(5) REPORT TO CONGRESS.—Not later than 180 days after the date on which all grants under paragraph (1) have been expended, the Secretary shall submit to Congress a report providing—

''(A) a summary of evaluations under paragraph (4); and

''(B) the recommendations of the Secretary for administrative or legislative initiatives regarding the activities described in paragraph (1).

''(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there is authorized to be appropriated to the Department of Health and Human Services and the Department of Labor $10,000,000 for fiscal year 2001.''

§ 247b–16. Grants for lead poisoning related activities

(a) Authority to make grants

(1) In general

The Secretary shall make grants to States to support public health activities in States and localities where data suggests that at least 5 percent of preschool-age children have an elevated blood lead level through—

(A) effective, ongoing outreach and community education targeted to families most likely to be at risk for lead poisoning;

(B) individual family education activities that are designed to reduce ongoing exposures to lead for children with elevated blood lead levels, including through home visits and coordination with other programs designed to identify and treat children at risk for lead poisoning; and

(C) the development, coordination and implementation of community-based approaches for comprehensive lead poisoning prevention from surveillance to lead hazard control.

(2) State match

A State is not eligible for a grant under this section unless the State agrees to expend (through State or local funds) $1 for every $2 provided under the grant to carry out the activities described in paragraph (1).

(3) Application

To be eligible to receive a grant under this section, a State shall submit an application to the Secretary in such form and manner and containing such information as the Secretary may require.

(b) Coordination with other children's programs

A State shall identify in the application for a grant under this section how the State will coordinate operations and activities under the grant with—

(1) other programs operated in the State that serve children with elevated blood lead levels, including any such programs operated under title V, XIX, or XXI of the Social Security Act [42 U.S.C. 701 et seq., 1396 et seq., 1397aa et seq.]; and

(2) one or more of the following—

(A) the child welfare and foster care and adoption assistance programs under parts B and E of title IV of such Act [42 U.S.C. 620 et seq., 670 et seq.];

(B) the head start program established under the Head Start Act (42 U.S.C. 9831 et seq.);

(C) the program of assistance under the special supplemental nutrition program for women, infants and children (WIC) under section 1786 of this title;

(D) local public and private elementary or secondary schools; or

(E) public housing agencies, as defined in section 1437a of this title.

(c) Performance measures

The Secretary shall establish needs indicators and performance measures to evaluate the activities carried out under grants awarded under this section. Such indicators shall be commensurate with national measures of maternal and child health programs and shall be developed in consultation with the Director of the Centers for Disease Control and Prevention.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 317O, as added Pub. L. 106–310, div. A, title XXV, § 2502(a), Oct. 17, 2000, 114 Stat. 1162.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1), (2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts B and E of title IV of the Act are classified generally to parts B (§ 620 et seq.) and E (§ 670 et seq.), respectively, of subchapter IV of chapter 7 of this title. Titles V, XIX, and XXI of the Act are classified generally to subchapters V (§ 701 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Head Start Act, referred to in subsec. (b)(2)(B), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

§ 247b–17. Human papillomavirus

(a) Surveillance

(1) In general

The Secretary, acting through the Centers for Disease Control and Prevention, shall—

(A) enter into cooperative agreements with States and other entities to conduct sentinel surveillance or other special studies that would determine the prevalence in various age groups and populations of specific types of human papillomavirus (referred to in this section as ''HPV'') in different sites in various regions of the United States, through collection of special specimens for HPV using a variety of laboratory-based testing and diagnostic tools; and

(B) develop and analyze data from the HPV sentinel surveillance system described in subparagraph (A).

(2) Report

The Secretary shall make a progress report to the Congress with respect to paragraph (1) no later than 1 year after the effective date of this section.

(b) Prevention activities; education program

(1) In general

The Secretary, acting through the Centers for Disease Control and Prevention, shall conduct prevention research on HPV, including—

(A) behavioral and other research on the impact of HPV-related diagnosis on individuals;

(B) formative research to assist with the development of educational messages and information for the public, for patients, and for their partners about HPV;

(C) surveys of physician and public knowledge, attitudes, and practices about genital HPV infection; and

(D) upon the completion of and based on the findings under subparagraphs (A) through (C), develop and disseminate educational materials for the public and health care providers regarding HPV and its impact and prevention.

(2) Report; final proposal

The Secretary shall make a progress report to the Congress with respect to paragraph (1) not later than 1 year after the effective date of this section, and shall develop a final report not later than 3 years after such effective date, including a detailed summary of the significant findings and problems and the best strategies to prevent future infections, based on available science.

(c) HPV education and prevention

(1) In general

The Secretary shall prepare and distribute educational materials for health care providers and the public that include information on HPV. Such materials shall address—

(A) modes of transmission;

(B) consequences of infection, including the link between HPV and cervical cancer;

(C) the available scientific evidence on the effectiveness or lack of effectiveness of condoms in preventing infection with HPV; and

(D) the importance of regular Pap smears, and other diagnostics for early intervention and prevention of cervical cancer purposes in preventing cervical cancer.

(2) Medically accurate information

Educational material under paragraph (1), and all other relevant educational and prevention materials prepared and printed from this date forward for the public and health care providers by the Secretary (including materials prepared through the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Health Resources and Services Administration), or by contractors, grantees, or subgrantees thereof, that are specifically designed to address STDs including HPV shall contain medically accurate information regarding the effectiveness or lack of effectiveness of condoms in preventing the STD the materials are designed to address. Such requirement only applies to materials mass produced for the public and health care providers, and not to routine communications.

(July 1, 1944, ch. 373, title III, § 317P, as added Pub. L. 106–554, § 1(a)(1) [title V, § 516(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–72.)

REFERENCES IN TEXT

The effective date of this section, referred to in subsecs. (a)(2) and (b)(2), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

§ 247b–18. Surveillance and research regarding muscular dystrophy

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may award grants and cooperative agreements to public or nonprofit private entities (including health departments of States and political subdivisions of States, and including universities and other educational entities) for the collection, analysis, and reporting of data on Duchenne and other forms of muscular dystrophy. In making such awards, the Secretary may provide direct technical assistance in lieu of cash.

(b) National muscular dystrophy epidemiology program

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may award grants to public or nonprofit private entities (including health departments of States and political subdivisions of States, and including universities and other educational entities) for the purpose of carrying out epidemiological activities regarding Duchenne and other forms of muscular dystrophies, including collecting and analyzing information on the number, incidence, correlates, and symptoms of cases. In carrying out the preceding sentence, the Secretary shall provide for a national surveillance program. In making awards under this subsection, the Secretary may provide direct technical assistance in lieu of cash.

(c) Coordination with centers of excellence

The Secretary shall ensure that epidemiological information under subsections (a) and (b) of this section is made available to centers of excellence supported under section 283g(b) of this title by the Director of the National Institutes of Health.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(July 1, 1944, ch. 373, title III, § 317Q, as added Pub. L. 107–84, § 4, Dec. 18, 2001, 115 Stat. 828.)

FINDINGS

Pub. L. 107–84, § 2, Dec. 18, 2001, 115 Stat. 823, provided that: ''Congress makes the following findings:

''(1) Of the childhood muscular dystrophies, Duchenne Muscular Dystrophy (DMD) is the world's most common and catastrophic form of genetic childhood disease, and is characterized by a rapidly progressive muscle weakness that almost always results in death, usually by 20 years of age.

''(2) Duchenne muscular dystrophy is genetically inherited, and mothers are the carriers in approximately 70 percent of all cases.

''(3) If a female is a carrier of the dystrophin gene, there is a 50 percent chance per birth that her male offspring will have Duchenne muscular dystrophy, and a 50 percent chance per birth that her female offspring will be carriers.

''(4) Duchenne is the most common lethal genetic disorder of childhood worldwide, affecting approximately 1 in every 3,500 boys worldwide.

''(5) Children with muscular dystrophy exhibit extreme symptoms of weakness, delay in walking, waddling gait, difficulty in climbing stairs, and progressive mobility problems often in combination with muscle hypertrophy.

''(6) Other forms of muscular dystrophy affecting children and adults include Becker, limb girdle, congenital, facioscapulohumeral, myotonic, oculopharyngeal, distal, and Emery-Dreifuss muscular dystrophies.

''(7) Myotonic muscular dystrophy (also known as Steinert's disease and dystrophia myotonica) is the second most prominent form of muscular dystrophy and the type most commonly found in adults. Unlike any of the other muscular dystrophies, the muscle weakness is accompanied by myotonia (delayed relaxation of muscles after contraction) and by a variety of abnormalities in addition to those of muscle.

''(8) Facioscapulohumeral muscular dystrophy (referred to in this section as 'FSHD') is a neuromuscular disorder that is inherited genetically and has an estimated frequency of 1 in 20,000. FSHD, affecting between 15,000 to 40,000 persons, causes a progressive and sever [sic] loss of skeletal muscle gradually bringing weakness and reduced mobility. Many persons with FSHD become severely physically disabled and spend many decades in a wheelchair.

''(9) FSHD is regarded as a novel genetic phenomenon resulting from a crossover of subtelomeric DNA and may be the only human disease caused by a deletion-mutation.

''(10) Each of the muscular dystrophies, though distinct in progressivity and severity of symptoms, have a devastating impact on tens of thousands of children and adults throughout the United States and worldwide and impose severe physical and economic burdens on those affected.

''(11) Muscular dystrophies have a significant impact on quality of life—not only for the individual who experiences its painful symptoms and resulting disability, but also for family members and caregivers.

''(12) Development of therapies for these disorders, while realistic with recent advances in research, is likely to require costly investments and infrastructure to support gene and other therapies.

''(13) There is a shortage of qualified researchers in the field of neuromuscular research.

''(14) Many family physicians and health care professionals lack the knowledge and resources to detect and properly diagnose the disease as early as possible, thus exacerbating the progressiveness of symptoms in cases that go undetected or misdiagnosed.

''(15) There is a need for efficient mechanisms to translate clinically relevant findings in muscular dystrophy research from basic science to applied work.

''(16) Educating the public and health care community throughout the country about this devastating disease is of paramount importance and is in every respect in the public interest and to the benefit of all communities.''

REPORT TO CONGRESS

Pub. L. 107–84, § 6, Dec. 18, 2001, 115 Stat. 829, provided that: ''Not later than January 1, 2003, and each January 1 thereafter, the Secretary [of Health and Human Services] shall prepare and submit to the appropriate committees of Congress, a report concerning the implementation of this Act [see Short Title of 2001 Amendment note set out under section 201 of this title] and the amendments made by this Act.''

§ 247b–19. Information and education

(a) In general

The Secretary of Health and Human Services (referred to in this Act as the ''Secretary'') shall establish and implement a program to provide

information and education on muscular dystrophy to health professionals and the general public, including information and education on advances in the diagnosis and treatment of muscular dystrophy and training and continuing education through programs for scientists, physicians, medical students, and other health professionals who provide care for patients with muscular dystrophy.

(b) Stipends

The Secretary may use amounts made available under this section provides[1] stipends for health professionals who are enrolled in training programs under this section.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 107–84, § 5, Dec. 18, 2001, 115 Stat. 828.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 107–84, Dec. 18, 2001, 115 Stat. 823, known as the Muscular Dystrophy Community Assistance, Research and Education Amendments of 2001 and also as the MD–CARE Act. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Muscular Dystrophy Community Assistance, Research and Education Amendments of 2001, also known as the MD–CARE Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 247b–20. Food safety grants

(a) In general

The Secretary may award grants to States and Indian tribes (as defined in section 450b(e) of title 25) to expand participation in networks to enhance Federal, State, and local food safety efforts, including meeting the costs of establishing and maintaining the food safety surveillance, technical, and laboratory capacity needed for such participation.

(b) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $19,500,000 for fiscal year 2002, and such sums as may be necessary for each of the fiscal years 2003 through 2006.

(July 1, 1944, ch. 373, title III, § 317R, as added Pub. L. 107–188, title III, § 312, June 12, 2002, 116 Stat. 674; amended Pub. L. 108–75, § 2(1), Aug. 15, 2003, 117 Stat. 898.)

AMENDMENTS

2003—Pub. L. 108–75 made technical amendment relating to placement of section within original act.

§ 247b–21. Mosquito-borne diseases; coordination grants to States; assessment and control grants to political subdivisions

(a) Coordination grants to States; assessment grants to political subdivisions

(1) In general

With respect to mosquito control programs to prevent and control mosquito-borne diseases (referred to in this section as ''control programs''), the Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States for the purpose of—

(A) coordinating control programs in the State involved; and

(B) assisting such State in making grants to political subdivisions of the State to conduct assessments to determine the immediate needs in such subdivisions for control programs, and to develop, on the basis of such assessments, plans for carrying out control programs in the subdivisions.

(2) Preference in making grants

In making grants under paragraph (1), the Secretary shall give preference to States that have one or more political subdivisions with an incidence, prevalence, or high risk of mosquito-borne disease, or a population of infected mosquitoes, that is substantial relative to political subdivisions in other States.

(3) Certain requirements

A grant may be made under paragraph (1) only if—

(A) the State involved has developed, or agrees to develop, a plan for coordinating control programs in the State, and the plan takes into account any assessments or plans described in subsection (b)(3) of this section that have been conducted or developed, respectively, by political subdivisions in the State;

(B) in developing such plan, the State consulted or will consult (as the case may be under subparagraph (A)) with political subdivisions in the State that are carrying out or planning to carry out control programs;

(C) the State agrees to monitor control programs in the State in order to ensure that the programs are carried out in accordance with such plan, with priority given to coordination of control programs in political subdivisions described in paragraph (2) that are contiguous;

(D) the State agrees that the State will make grants to political subdivisions as described in paragraph (1)(B), and that such a grant will not exceed $10,000; and

(E) the State agrees that the grant will be used to supplement, and not supplant, State and local funds available for the purpose described in paragraph (1).

(4) Reports to Secretary

A grant may be made under paragraph (1) only if the State involved agrees that, promptly after the end of the fiscal year for which the grant is made, the State will submit to the Secretary a report that—

(A) describes the activities of the State under the grant; and

(B) contains an evaluation of whether the control programs of political subdivisions in the State were effectively coordinated with each other, which evaluation takes into account any reports that the State received under subsection (b)(5) of this section from such subdivisions.

[1] So in original. Probably should be ''to provide''.

(5) Number of grants

A State may not receive more than one grant under paragraph (1).

(b) Prevention and control grants to political subdivisions

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to political subdivisions of States or consortia of political subdivisions of States, for the operation of control programs.

(2) Preference in making grants

In making grants under paragraph (1), the Secretary shall give preference to a political subdivision or consortium of political subdivisions that—

(A) has—

(i) a history of elevated incidence or prevalence of mosquito-borne disease;

(ii) a population of infected mosquitoes; or

(iii) met criteria determined by the Secretary to suggest an increased risk of elevated incidence or prevalence of mosquito-borne disease in the pending fiscal year;

(B) demonstrates to the Secretary that such political subdivision or consortium of political subdivisions will, if appropriate to the mosquito circumstances involved, effectively coordinate the activities of the control programs with contiguous political subdivisions;

(C) demonstrates to the Secretary (directly or through State officials) that the State in which such a political subdivision or consortium of political subdivisions is located has identified or will identify geographic areas in such State that have a significant need for control programs and will effectively coordinate such programs in such areas; and

(D) is located in a State that has received a grant under subsection (a) of this section.

(3) Requirement of assessment and plan

A grant may be made under paragraph (1) only if the political subdivision or consortium of political subdivisions involved—

(A) has conducted an assessment to determine the immediate needs in such subdivision or consortium for a control program, including an entomological survey of potential mosquito breeding areas; and

(B) has, on the basis of such assessment, developed a plan for carrying out such a program.

(4) Requirement of matching funds

(A) In general

With respect to the costs of a control program to be carried out under paragraph (1) by a political subdivision or consortium of political subdivisions, a grant under such paragraph may be made only if the subdivision or consortium agrees to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than ⅓ of such costs ($1 for each $2 of Federal funds provided in the grant).

(B) Determination of amount contributed

Non-Federal contributions required in subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(C) Waiver

The Secretary may waive the requirement established in subparagraph (A) if the Secretary determines that extraordinary economic conditions in the political subdivision or consortium of political subdivisions involved justify the waiver.

(5) Reports to Secretary

A grant may be made under paragraph (1) only if the political subdivision or consortium of political subdivisions involved agrees that, promptly after the end of the fiscal year for which the grant is made, the subdivision or consortium will submit to the Secretary, and to the State within which the subdivision or consortium is located, a report that describes the control program and contains an evaluation of whether the program was effective.

(6) Amount of grant; number of grants

(A) Amount of grant

(i) Single political subdivision

A grant under paragraph (1) awarded to a political subdivision for a fiscal year may not exceed $100,000.

(ii) Consortium

A grant under paragraph (1) awarded to a consortium of 2 or more political subdivisions may not exceed $110,000 for each political subdivision. A consortium is not required to provide matching funds under paragraph (4) for any amounts received by such consortium in excess of amounts each political subdivision would have received separately.

(iii) Waiver of requirement

A grant may exceed the maximum amount in clause (i) or (ii) if the Secretary determines that the geographical area covered by a political subdivision or consortium awarded a grant under paragraph (1) has an extreme need due to the size or density of—

(I) the human population in such geographical area; or

(II) the mosquito population in such geographical area.

(B) Number of grants

A political subdivision or a consortium of political subdivisions may not receive more than one grant under paragraph (1).

(c) Applications for grants

A grant may be made under subsection (a) or (b) of this section only if an application for the

grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(d) Technical assistance

Amounts appropriated under subsection (f) of this section may be used by the Secretary to provide training and technical assistance with respect to the planning, development, and operation of assessments and plans under subsection (a) of this section and control programs under subsection (b) of this section. The Secretary may provide such technical assistance directly or through awards of grants or contracts to public and private entities.

(e) Definition of political subdivision

In this section, the term ''political subdivision'' means the local political jurisdiction immediately below the level of State government, including counties, parishes, and boroughs. If State law recognizes an entity of general government that functions in lieu of, and is not within, a county, parish, or borough, the Secretary may recognize an area under the jurisdiction of such other entities of general government as a political subdivision for purposes of this section.

(f) Authorization of appropriations

(1) In general

For the purpose of carrying out this section, there are authorized to be appropriated $100,000,000 for fiscal year 2003, and such sums as may be necessary for each of fiscal years 2004 through 2007.

(2) Public health emergencies

In the case of control programs carried out in response to a mosquito-borne disease that constitutes a public health emergency, the authorization of appropriations under paragraph (1) is in addition to applicable authorizations of appropriations under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.

(3) Fiscal year 2004 appropriations

For fiscal year 2004, 50 percent or more of the funds appropriated under paragraph (1) shall be used to award grants to political subdivisions or consortia of political subdivisions under subsection (b) of this section.

(July 1, 1944, ch. 373, title III, § 317S, as added Pub. L. 108–75, § 2(2), Aug. 15, 2003, 117 Stat. 898.)

REFERENCES IN TEXT

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, referred to in subsec. (f)(2), is Pub. L. 107–188, June 12, 2002, 116 Stat. 594, as amended. For complete classification of this Act to the Code, see Short Title of 2002 Amendments note set out under section 201 of this title and Tables.

§ 247c. Sexually transmitted diseases; prevention and control projects and programs

(a) Technical assistance to public and nonprofit private entities and scientific institutions

The Secretary may provide technical assistance to appropriate public and nonprofit private entities and to scientific institutions for their research in, and training and public health programs for, the prevention and control of sexually transmitted diseases.

(b) Research, demonstration, and public information and education projects

The Secretary may make grants to States, political subdivisions of States, and any other public and nonprofit private entity for—

(1) research into the prevention and control of sexually transmitted diseases;

(2) demonstration projects for the prevention and control of sexually transmitted diseases;

(3) public information and education programs for the prevention and control of such diseases; and

(4) education, training, and clinical skills improvement activities in the prevention and control of such diseases for health professionals (including allied health personnel).

(c) Project grants to States

The Secretary is also authorized to make project grants to States and, in consultation with the State health authority, to political subdivisions of States, for—

(1) sexually transmitted diseases surveillance activities, including the reporting, screening, and followup of diagnostic tests for, and diagnosed cases of, sexually transmitted diseases;

(2) casefinding and case followup activities respecting sexually transmitted diseases, including contact tracing of infectious cases of sexually transmitted diseases and routine testing, including laboratory tests and followup systems;

(3) interstate epidemiologic referral and followup activities respecting sexually transmitted diseases; and

(4) such special studies or demonstrations to evaluate or test sexually transmitted diseases prevention and control strategies and activities as may be prescribed by the Secretary.

(d) Grants for innovative, interdisciplinary approaches

The Secretary may make grants to States and political subdivisions of States for the development, implementation, and evaluation of innovative, interdisciplinary approaches to the prevention and control of sexually transmitted diseases.

(e) Authorization of appropriations; terms and conditions; payments; recordkeeping; audit; grant reduction; information disclosure

(1) For the purpose of making grants under subsections (b) through (d) of this section, there are authorized to be appropriated $85,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998.

(2) Each recipient of a grant under this section shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant was given or used, and the amount of

that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(3) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of grants under this section that are pertinent to such grants.

(4) The Secretary, at the request of a recipient of a grant under this section, may reduce such grant by the fair market value of any supplies or equipment furnished to such recipient and by the amount of pay, allowances, travel expenses, and any other costs in connection with the detail of an officer or employee of the United States to the recipient when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such recipient and for the purpose of carrying out the program with respect to which the grant under this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies, equipment, or personal services on which the reduction of such grant is based.

(5) All information obtained in connection with the examination, care, or treatment of any individual under any program which is being carried out with a grant made under this section shall not, without such individual's consent, be disclosed except as may be necessary to provide service to him or as may be required by a law of a state or political subdivision of a State. Information derived from any such program may be disclosed—

(A) in summary, statistical, or other form; or

(B) for clinical or research purposes;

but only if the identity of the individuals diagnosed or provided care or treatment under such program is not disclosed.

(f) Consent of individuals

Nothing in this section shall be construed to require any State or any political subdivision of a State to have a sexually transmitted diseases program which would require any person, who objects to any treatment provided under such a program, to be treated under such a program.

(July 1, 1944, ch. 373, title III, § 318, as added Pub. L. 92–449, title II, § 203, Sept. 30, 1972, 86 Stat. 751; amended Pub. L. 94–317, title II, § 203(b)–(i), June 23, 1976, 90 Stat. 704, 705; Pub. L. 94–484, title IX, § 905(b)(2), Oct. 12, 1976, 90 Stat. 2325; Pub. L. 95–626, title II, § 204(b)(1), (c), (d), Nov. 10, 1978, 92 Stat. 3583; Pub. L. 96–32, § 6(j), July 10, 1979, 93 Stat. 84; Pub. L. 97–35, title IX, § 929, Aug. 13, 1981, 95 Stat. 569; Pub. L. 98–555, § 3, Oct. 30, 1984, 98 Stat. 2854; Pub. L. 100–607, title III, § 311, Nov. 4, 1988, 102 Stat. 3112; Pub. L. 103–183, title IV, § 401, Dec. 14, 1993, 107 Stat. 2236; Pub. L. 105–392, title IV, § 401(b)(2), (c), Nov. 13, 1998, 112 Stat. 3587.)

PRIOR PROVISIONS

A prior section 247c, act July 1, 1944, ch. 373 title III, § 318, as added Aug. 18, 1964, Pub. L. 88–443, § 2, 78 Stat. 447, related to grants for assisting in the areawide planning of health and related facilities, prior to repeal by Pub. L. 89–749, § 6, Nov. 3, 1966, 80 Stat. 1190 eff. July 1, 1967.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–392, § 401(b)(2), redesignated subsec. (e), relating to consent of individuals, as (f).

Subsec. (e)(5). Pub. L. 105–392, § 401(c), made technical amendment to directory language of Pub. L. 103–183, § 401(c)(3). See 1993 Amendment note below.

Subsec. (f). Pub. L. 105–392, § 401(b)(2), redesignated subsec. (e), relating to consent of individuals, as (f).

1993—Subsec. (b)(3). Pub. L. 103–183, § 401(c)(1), substituted ''; and'' for '', and''.

Subsec. (c)(3). Pub. L. 103–183, § 401(c)(2), which directed the substitution of ''; and'' for '', and'', could not be executed because '', and'' did not appear.

Subsec. (d). Pub. L. 103–183, § 401(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 103–183, § 401(a)(1), redesignated subsec. (d), relating to authorization of appropriations, etc., as (e).

Subsec. (e)(1). Pub. L. 103–183, § 401(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purpose of making grants under subsections (b) and (c) of this section there are authorized to be appropriated $45,000,000 for the fiscal year ending September 30, 1979, $51,500,000 for the fiscal year ending September 30, 1980, $59,000,000 for the fiscal year ending September 30, 1981, $40,000,000 for the fiscal year ending September 30, 1982, $46,500,000 for the fiscal year ending September 30, 1983, $50,000,000 for the fiscal year ending September 30, 1984, $57,000,000 for the fiscal year ending September 30, 1985, $62,500,000 for the fiscal year ending September 30, 1986, $68,000,000 for the fiscal year ending September 30, 1987, $78,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991. For grants under subsection (b) of this section in any fiscal year, the Secretary shall obligate not less than 10 per centum of the amount appropriated for such fiscal year under the preceding sentence. Grants made under subsection (b) or (c) of this section shall be made on such terms and conditions as the Secretary finds necessary to carry out the purposes of such subsection, and payments under any such grants shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary.''

Subsec. (e)(5). Pub. L. 103–183, § 401(c)(3), as amended by Pub. L. 105–392, § 401(c), substituted ''form; or'' for ''form, or'' in subpar. (A) and ''purposes;'' for ''purposes,'' in subpar. (B).

1988—Pub. L. 100–607, § 311(1), amended section catchline.

Subsec. (d). Pub. L. 100–607, § 311(2), (3), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to acquired immune deficiency syndrome.

Subsec. (d)(1). Pub. L. 100–607, § 311(4), substituted ''(b) and (c)'' for ''(b), (c), and (d)'', struck out ''and'' after ''1986,'', and inserted '', $78,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991'' before period at end of first sentence; substituted ''(b) or (c)'' for ''(b), (c), or (d)'' in third sentence; and struck out at end ''If the appropriations under the first sentence for fiscal year 1985 exceed $50,000,000, one-half of the amount in excess of $50,000,000 shall be made available for grants under subsection (d) of this section; if the appropriations under the first sentence for fiscal year 1986 exceed $52,500,000, one-half of the amount in excess of $52,500,000 shall be made available for such grants; and if the appropriations under the first sentence for fiscal year 1987 exceed $55,000,000, one-half of the amount in excess of $55,000,000 shall be made available for such grants.''

Subsecs. (e) to (g). Pub. L. 100–607, § 311(2), (3), struck out subsec. (f) which related to conditional limitation on use of funds and redesignated subsecs. (e) and (g) as (d) and (e), respectively.

1984—Subsec. (a). Pub. L. 98–555, § 3(b)(1), substituted ''research in, and training and public health programs for, the prevention and control of sexually transmitted diseases'' for ''research, training, and public health programs for the prevention and control of venereal disease''.

Subsec. (b). Pub. L. 98–555, § 3(b)(2), in amending subsec. (b) generally, designated existing provisions as pars. (1) to (3), added par. (4), and substituted references to sexually transmitted diseases for reference to venereal disease.

Subsec. (c). Pub. L. 98–555, § 3(b)(3), (6)(A), substituted ''sexually transmitted diseases'' for ''venereal disease'' wherever appearing, struck out par. (4) relating to professional venereal disease education, training and clinical skills improvement activities, and redesignated par. (5) as (4).

Subsec. (d). Pub. L. 98–555, § 3(b)(5)(A), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98–555, § 3(a), (b)(4), (5), redesignated subsec. (d) as (e), and in par. (1) of subsec. (e) as so redesignated, substituted ''(b), (c), and (d)'' for ''(b) and (c)'', inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987, substituted ''10 per centum'' for ''5 per centum'', and inserted provisions directing that one-half the excess of appropriations in fiscal years 1985, 1986, and 1987 over certain amounts be made available for grants under subsec. (d). Notwithstanding language of section 3(b)(5)(B)(ii) directing the substitution of ''(b), (c), or (d)'' for ''(b) or (c)'' in second sentence of subsec. (e)(1), the amendment was executed by making the substitution in third sentence of subsec. (e)(1) to reflect the probable intent of Congress because ''(b) or (c)'' did not appear in second sentence. Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 98–555, § 3(b)(5)(A), (6)(A), (C), redesignated subsecs. (e) and (f) as (f) and (g), respectively, in subsecs. (f) and (g) as so redesignated, substituted ''sexually transmitted diseases'' for ''venereal disease'', and struck out former subsec. (g) which defined venereal disease.

1981—Subsec. (d)(1). Pub. L. 97–35 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1979—Subsec. (b). Pub. L. 96–32 amended directory language of Pub. L. 95–626, § 204(c)(2), and required no change in text. See 1978 Amendment note below.

1978—Subsec. (b). Pub. L. 95–626, § 204(c)(2), as amended by Pub. L. 96–32, substituted ''research, demonstrations, and public information and education for the prevention and control of venereal disease'' for ''research, demonstrations, education, and training for the prevention and control of venereal disease'', struck out ''(1)'' preceding provisions thus amended, and struck out par. (2) which authorized appropriation of $5,000,000 for fiscal year 1976, $6,600,000 for fiscal year 1977, and $7,600,000 for fiscal year 1978 for purpose of carrying out this subsection.

Subsec. (c). Pub. L. 95–626, § 204(d), struck out ''(1)'' after ''(c)'' at beginning of existing provisions, changed designations at beginning of each of the five clauses from ''(A)'', ''(B)'', ''(C)'', ''(D)'', and ''(E)'' to ''(1)'', ''(2)'', ''(3)'', ''(4)'', and ''(5)'', respectively, substituted ''The Secretary is also authorized'' for ''The Secretary is authorized'' in provisions preceding cl. (1) as redesignated, substituted ''professional (including appropriate allied health personnel) venereal disease education, training and clinical skills improvement activities'' for ''professional and public venereal disease education activities'' in cl. (4) as redesignated, and struck out former par. (2) which had authorized appropriations of $32,000,000 for fiscal year 1976, $41,500,000 for fiscal year 1977, and $43,500,000 for fiscal year 1978.

Subsec. (d)(1). Pub. L. 95–626, § 204(c)(1), inserted provisions authorizing appropriations of $45,000,000 for fiscal year ending Sept. 30, 1979, $51,500,000 for fiscal year ending Sept. 30, 1980, and $59,000,000 for fiscal year ending Sept. 30, 1981, for purpose of making grants under subsecs. (b) and (c) of this section, and inserted provisions directing Secretary to obligate not less than 5 per centum of amount appropriated for any fiscal year.

Subsec. (f). Pub. L. 95–626, § 204(b)(1), redesignated subsec. (g) as (f). Former subsec. (f), requiring that not to exceed 50 per centum of amounts appropriated for any fiscal year under subsecs. (b) and (c) of this section could be used by Secretary for grants for such fiscal year under section 247b of this title, was struck out.

Subsec. (g). Pub. L. 95–626, § 204(b)(1), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

1976—Subsec. (a). Pub. L. 94–317, § 203(c), substituted ''public and nonprofit private entities and to'' for ''public authorities and''.

Subsec. (b)(1). Pub. L. 94–317, § 203(i), inserted ''education,'' before ''and training''.

Subsec. (b)(2). Pub. L. 94–317, § 203(b)(1), substituted provisions authorizing appropriations of $5,000,000 for fiscal year 1976, $6,600,000 for fiscal year 1977, and $7,600,000 for fiscal year 1978, for provisions authorizing appropriations of $7,500,000 for fiscal year ending June 30, 1973, and for each of the next two fiscal years.

Subsec. (c). Pub. L. 94–484, purported to amend former subsec. (c)(1) by defining ''State'' to include the Northern Mariana Islands. Former subsec. (c) of this section had been previously repealed by section 203(f)(1) of Pub. L. 94–317. See par. below.

Pub. L. 94–317, § 203(b)(2), (d), (e), (f)(1), (3), (8), redesignated subsec. (d) as (c), inserted, in par. (1)(B), reference to routine testing, including laboratory tests and followup systems and substituted in par. (1)(E). ''prevention and control strategies and activities'' for ''control'' and, in par. (2), provisions authorizing appropriations of $32,000,000 for fiscal year 1976, $41,500,000 for fiscal year 1977, and $43,500,000 for fiscal year 1978, for provisions authorizing appropriations of $30,000,000 for the fiscal year ending June 30, 1973, and for each of the next two succeeding fiscal years. Former subsec. (c), which provided for authorization of appropriations to enable the Secretary to make grants to state health authorities to establish and maintain programs for diagnosis and treatment of venereal disease was amended by striking out reference to dark-field microscope techniques for diagnosis of both gonorrhea an syphilis, and as so amended, was repealed.

Subsec. (d). Pub. L. 94–317, § 203(f)(2), (4), (5), (8), redesignated subsec. (e) as (d), substituted in par. (1) ''or (c)'' for ''or (d)'', struck out in par. (4) provisions relating to the amount of reduction of a grant under former subsec. (c) whereby such amount shall be deemed a part of the grant to the recipient of the grant and shall be deemed to have been paid to such recipient, and inserted in par. (5) reference to requirement by law of a State or political subdivision of a state. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94–317, § 203(f)(8), (g), redesignated subsec. (f) as (e) and substituted ''247b(g)(2) of this title'' for ''247b(d)(4) of this title''. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 94–317, § 203(f)(6), (8), redesignated subsec. (g) as (f) and substituted ''and (c)'' for '', (c), and (d)''. Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 94–317, § 203(f)(7), (8), redesignated subsec. (h) as (g) and struck out ''treated or to have any child or ward of his'' after ''a program, to be''. Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 94–317, § 203(h), added subsec. (h). Former subsec. (h) redesignated (g).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

DISTRIBUTION OF INFORMATION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME BY DIRECTOR OF CENTERS FOR DISEASE CONTROL TO EVERY AMERICAN HOUSEHOLD

Pub. L. 100–202, § 101(h) [title II], Dec. 22, 1987, 101 Stat. 1329–256, 1329–365, provided: ''That the Director

shall cause to be distributed without necessary clearance of the content by any official, organization or office, an AIDS mailer to every American household by June 30, 1988, as approved and funded by the Congress in Public Law 100–71 [July 11, 1987, 101 Stat. 391].''

CONGRESSIONAL FINDINGS AND DECLARATIONS

Section 204(a) of Pub. L. 95–626 provided that: ''The Congress finds and declares that—

''(1) the number of reported cases of venereal disease persists in epidemic proportions in the United States;

''(2) the number of persons affected by venereal disease and reported to public health authorities is only a fraction of those actually affected;

''(3) the incidence of venereal disease continues to be particularly high among American youth, ages fifteen to twenty-nine, and among populations in metropolitan areas;

''(4) venereal disease accounts for severe permanent disabilities and sometimes death in newborns and causes reproductive dysfunction in women of childbearing age;

''(5) it is conservatively estimated that the public cost of health care for persons suffering from complications of venereal disease exceeds one-half billion dollars annually;

''(6) the number of trained Federal venereal disease prevention and control personnel has fallen to a dangerously inadequate level;

''(7) no vaccine for syphilis, gonorrhea, or any other venereal disease has yet been developed, nor does a blood test for the detection of asymptomatic gonorrhea in women exist, nor are safe and effective therapeutic agents available for some other venereal diseases;

''(8) school health education programs, public information and awareness campaigns, mass diagnostic screening and case followup have all been found to be effective venereal disease prevention and control methodologies;

''(9) skilled and knowledgeable health care providers, informed and concerned individuals and active, well-coordinated voluntary groups are fundamental to venereal disease prevention and control;

''(10) biomedical research toward improved diagnostic and therapeutic tools is of singular importance to the elimination of venereal disease; and

''(11) an increasing number of sexually transmissible diseases besides syphilis and gonorrhea have become a public health hazard.''

Section 203(a) of Pub. L. 94–317 provided that: ''The Congress finds and declares that—

''(1) the number of reported cases of venereal disease continues in epidemic proportions in the United States;

''(2) the number of patients with venereal disease reported to public health authorities is only a fraction of those actually infected;

''(3) the incidence of venereal disease is particularly high in the 15–29-year age group, and in metropolitan areas;

''(4) venereal disease accounts for needless deaths and leads to such severe disabilities as sterility, insanity, blindness, and crippling conditions;

''(5) the number of cases of congenital syphilis, a preventable disease, tends to parallel the incidence of syphilis in adults;

''(6) it is conservatively estimated that the public cost of care for persons suffering the complications of venereal disease exceed $80,000,000 annually;

''(7) medical researchers have no successful vaccine for syphilis or gonorrhea, and have no blood test for the detection of gonorrhea among the large reservoir of asymptomatic females;

''(8) school health education programs, public information and awareness campaigns, mass diagnostic screening and case followup activities have all been found to be effective disease intervention methodologies;

''(9) knowledgeable health providers and concerned individuals and groups are fundamental to venereal disease prevention and control;

''(10) biomedical research leading to the development of vaccines for syphilis and gonorrhea is of singular importance for the eventual eradication of these dreaded diseases; and

''(11) a variety of other sexually transmitted diseases, in addition to syphilis and gonorrhea, have become of public health significance.''

Section 202 of Pub. L. 92–449 provided that:

''(a) The Congress finds and declares that—

''(1) the number or reported cases of venereal disease has reached epidemic proportions in the United States;

''(2) the number of patients with venereal disease reported to public health authorities is only a fraction of those treated by physicians;

''(3) the incidence of venereal disease is particularly high among individuals in the 20–24 age group, and in metropolitan areas;

''(4) venereal disease accounts for needless deaths and leads to such severe disabilities as sterility, insanity, blindness, and crippling conditions;

''(5) the number of cases of congenital syphilis, a preventable disease, in infants under one year of age increased by 33⅓ per centum between 1970 and 1971;

''(6) health education programs in schools and through the mass media may prevent a substantial portion of the venereal disease problem; and

''(7) medical authorities have no successful vaccine for syphilis or gonorrhea and no blood test for the detection of gonorrhea among the large reservoir of asymptomatic females.

''(b) In order to preserve and protect the health and welfare of all citizens, it is the purpose of this Act [this chapter] to establish a national program for the prevention and control of venereal disease.''

§ 247c–1. Infertility and sexually transmitted diseases

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States, political subdivisions of States, and other public or nonprofit private entities for the purpose of carrying out the activities described in subsection (c) of this section regarding any treatable sexually transmitted disease that can cause infertility in women if treatment is not received for the disease.

(b) Authority regarding individual diseases

With respect to diseases described in subsection (a) of this section, the Secretary shall, in making a grant under such subsection, specify the particular disease or diseases with respect to which the grant is to be made. The Secretary may not make the grant unless the applicant involved agrees to carry out this section only with respect to the disease or diseases so specified.

(c) Authorized activities

With respect to any sexually transmitted disease described in subsection (a) of this section, the activities referred to in such subsection are—

(1) screening women for the disease and for secondary conditions resulting from the disease, subject to compliance with criteria issued under subsection (f) of this section;

(2) providing treatment to women for the disease;

(3) providing counseling to women on the prevention and control of the disease (includ-

ing, in the case of a woman with the disease, counseling on the benefits of locating and providing such counseling to any individual from whom the woman may have contracted the disease and any individual whom the woman may have exposed to the disease);

(4) providing follow-up services;

(5) referrals for necessary medical services for women screened pursuant to paragraph (1), including referrals for evaluation and treatment with respect to acquired immune deficiency syndrome and other sexually transmitted diseases;

(6) in the case of any woman receiving services pursuant to any of paragraphs (1) through (5), providing to the partner of the woman the services described in such paragraphs, as appropriate;

(7) providing outreach services to inform women of the availability of the services described in paragraphs (1) through (6);

(8) providing to the public information and education on the prevention and control of the disease, including disseminating such information; and

(9) providing training to health care providers in carrying out the screenings and counseling described in paragraphs (1) and (3).

(d) Requirement of availability of all services through each grantee

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that each activity authorized in subsection (c) of this section will be available through the applicant. With respect to compliance with such agreement, the applicant may expend the grant to carry out any of the activities directly, and may expend the grant to enter into agreements with other public or nonprofit private entities under which the entities carry out the activities.

(e) Required providers regarding certain services

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that, in expending the grant to carry out activities authorized in subsection (c) of this section, the services described in paragraphs (1) through (7) of such subsection will be provided only through entities that are State or local health departments, grantees under section 254b, 254b, 256a, or 300 of this title,[1] or are other public or nonprofit private entities that provide health services to a significant number of low-income women.

(f) Quality assurance regarding screening for diseases

For purposes of this section, the Secretary shall establish criteria for ensuring the quality of screening procedures for diseases described in subsection (a) of this section.

(g) Confidentiality

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees, subject to applicable law, to maintain the confidentiality of information on individuals with respect to activities carried out under subsection (c) of this section.

(h) Limitation on imposition of fees for services

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that, if a charge is imposed for the provision of services or activities under the grant, such charge—

(1) will be made according to a schedule of charges that is made available to the public;

(2) will be adjusted to reflect the income of the individual involved; and

(3) will not be imposed on any individual with an income of less than 150 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(i) Limitations on certain expenditures

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that not less than 80 percent of the grant will be expended for the purpose of carrying out paragraphs (1) through (7) of subsection (c) of this section.

(j) Reports to Secretary

(1) Collection of data

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees, with respect to any disease selected under subsection (b) of this section for the applicant, to submit to the Secretary, for each fiscal year for which the applicant receives such a grant, a report providing—

(A) the incidence of the disease among the population of individuals served by the applicant;

(B) the number and demographic characteristics of individuals in such population;

(C) the types of interventions and treatments provided by the applicant, and the health conditions with respect to which referrals have been made pursuant to subsection (c)(5) of this section;

(D) an assessment of the extent to which the activities carried pursuant to subsection (a) of this section have reduced the incidence of infertility in the geographic area involved; and

(E) such other information as the Secretary may require with respect to the project carried out with the grant.

(2) Utility and comparability of data

The Secretary shall carry out activities for the purpose of ensuring the utility and comparability of data collected pursuant to paragraph (1).

(k) Maintenance of effort

With respect to activities for which a grant under subsection (a) of this section is authorized to be expended, the Secretary may make such a grant only if the applicant involved agrees to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the average level of such expenditures maintained by the applicant for the 2-year period preceding the fiscal year for which the applicant is applying to receive such a grant.

[1] See References in Text notes below.

(*l*) Requirement of application

(1) In general

The Secretary may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Secretary, the application contains the plan required in paragraph (2), and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(2) Submission of plan for program of grantee

(A) In general

The Secretary may make a grant under subsection (a) of this section only if the applicant involved submits to the Secretary a plan describing the manner in which the applicant will comply with the agreements required as a condition of receiving such a grant, including a specification of the entities through which activities authorized in subsection (c) of this section will be provided.

(B) Participation of certain entities

The Secretary may make a grant under subsection (a) of this section only if the applicant provides assurances satisfactory to the Secretary that the plan submitted under subparagraph (A) has been prepared in consultation with an appropriate number and variety of—

(i) representatives of entities in the geographic area involved that provide services for the prevention and control of sexually transmitted diseases, including programs to provide to the public information and education regarding such diseases; and

(ii) representatives of entities in such area that provide family planning services.

(m) Duration of grant

The period during which payments are made to an entity from a grant under subsection (a) of this section may not exceed 3 years. The provision of such payments shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments in such year. The preceding sentence may not be construed to establish a limitation on the number of grants under such subsection that may be made to an entity.

(n) Technical assistance, and supplies and services in lieu of grant funds

(1) Technical assistance

The Secretary may provide training and technical assistance to grantees under subsection (a) of this section with respect to the planning, development, and operation of any program or service carried out under such subsection. The Secretary may provide such technical assistance directly or through grants or contracts.

(2) Supplies, equipment, and employee detail

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by—

(A) the fair market value of any supplies or equipment furnished the grant recipient; and

(B) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee;

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) of this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(*o*) Evaluations and reports by Secretary

(1) Evaluations

The Secretary shall, directly or through contracts with public or private entities, provide for annual evaluations of programs carried out pursuant to subsection (a) of this section in order to determine the quality and effectiveness of the programs.

(2) Report to Congress

Not later than 1 year after the date on which amounts are first appropriated pursuant to subsection (q) of this section, and biennially thereafter, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report—

(A) summarizing the information provided to the Secretary in reports made pursuant to subsection (j)(1) of this section, including information on the incidence of sexually transmitted diseases described in subsection (a) of this section; and

(B) summarizing evaluations carried out pursuant to paragraph (1) during the preceding fiscal year.

(p) Coordination of Federal programs

The Secretary shall coordinate the program carried out under this section with any similar programs administered by the Secretary (including coordination between the Director of the Centers for Disease Control and Prevention and the Director of the National Institutes of Health).

(q) Authorization of appropriations

For the purpose of carrying out this section, other than subsections (*o*) and (r) of this section, there are authorized to be appropriated $25,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1998.

(r) Separate grants for research on delivery of services

(1) In general

The Secretary may make grants for the purpose of conducting research on the manner in which the delivery of services under subsection (a) of this section may be improved. The Secretary may make such grants only to grantees under such subsection and to public and nonprofit private entities that are carrying out programs substantially similar to programs carried out under such subsection.

(2) Authorization of appropriations

For the purpose of carrying out paragraph (1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 through 1998.

(July 1, 1944, ch. 373, title III, § 318A, as added Pub. L. 102–531, title III, § 304, Oct. 27, 1992, 106 Stat. 3490; amended Pub. L. 103–43, title XX, § 2008(i)(1)(B)(ii), June 10, 1993, 107 Stat. 212; Pub. L. 103–183, title IV, § 402, Dec. 14, 1993, 107 Stat. 2236; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664; Pub. L. 108–163, § 2(m)(1), Dec. 6, 2003, 117 Stat. 2023.)

REFERENCES IN TEXT

The reference to section 254b of this title the first place appearing, referred to in subsec. (e), was in the original a reference to section 329, meaning section 329 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of this subchapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626.

Section 256a of this title, referred to in subsec. (e), was repealed by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

AMENDMENTS

2003—Subsec. (e). Pub. L. 108–163 substituted ''254b'' for ''254c, 254b(h)'' before '', 256a''.

2002—Subsec. (e). Pub. L. 107–251 substituted ''254b(h)'' for ''256''.

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–531, § 304, which enacted this section.

Subsec. (*o*)(2). Pub. L. 103–183, § 402(a), substituted ''subsection (q)'' for ''subsection (s)''.

Subsec. (q). Pub. L. 103–183, § 402(b)(1), substituted ''through 1998'' for ''and 1995''.

Subsec. (r)(2). Pub. L. 103–183, § 402(b)(2), substituted ''1998'' for ''1995''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

§ 247c–2. Data collection regarding programs under subchapter XXIV

For the purpose of collecting and providing data for program planning and evaluation activities under subchapter XXIV of this chapter, there are authorized to be appropriated to the Secretary (acting through the Director of the Centers for Disease Control and Prevention) such sums as may be necessary for each of the fiscal years 2001 through 2005. Such authorization of appropriations is in addition to other authorizations of appropriations that are available for such purpose.

(July 1, 1944, ch. 373, title III, § 318B, as added Pub. L. 106–345, title IV, § 412, Oct. 20, 2000, 114 Stat. 1350.)

§ 247d. Public health emergencies

(a) Emergencies

If the Secretary determines, after consultation with such public health officials as may be necessary, that—

(1) a disease or disorder presents a public health emergency; or

(2) a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists,

the Secretary may take such action as may be appropriate to respond to the public health emergency, including making grants, providing awards for expenses, and entering into contracts and conducting and supporting investigations into the cause, treatment, or prevention of a disease or disorder as described in paragraphs (1) and (2). Any such determination of a public health emergency terminates upon the Secretary declaring that the emergency no longer exists, or upon the expiration of the 90-day period beginning on the date on which the determination is made by the Secretary, whichever occurs first. Determinations that terminate under the preceding sentence may be renewed by the Secretary (on the basis of the same or additional facts), and the preceding sentence applies to each such renewal. Not later than 48 hours after making a determination under this subsection of a public health emergency (including a renewal), the Secretary shall submit to the Congress written notification of the determination.

(b) Public Health Emergency Fund

(1) In general

There is established in the Treasury a fund to be designated as the ''Public Health Emergency Fund'' to be made available to the Secretary without fiscal year limitation to carry out subsection (a) of this section only if a public health emergency has been declared by the Secretary under such subsection. There is authorized to be appropriated to the Fund such sums as may be necessary.

(2) Report

Not later than 90 days after the end of each fiscal year, the Secretary shall prepare and submit to the Committee on Health, Edu-

cation, Labor, and Pensions and the Committee on Appropriations of the Senate and the Committee on Commerce and the Committee on Appropriations of the House of Representatives a report describing—

(A) the expenditures made from the Public Health Emergency Fund in such fiscal year; and

(B) each public health emergency for which the expenditures were made and the activities undertaken with respect to each emergency which was conducted or supported by expenditures from the Fund.

(c) Supplement not supplant

Funds appropriated under this section shall be used to supplement and not supplant other Federal, State, and local public funds provided for activities under this section.

(d) Data submittal and reporting deadlines

In any case in which the Secretary determines that, wholly or partially as a result of a public health emergency that has been determined pursuant to subsection (a) of this section, individuals or public or private entities are unable to comply with deadlines for the submission to the Secretary of data or reports required under any law administered by the Secretary, the Secretary may, notwithstanding any other provision of law, grant such extensions of such deadlines as the circumstances reasonably require, and may waive, wholly or partially, any sanctions otherwise applicable to such failure to comply. Before or promptly after granting such an extension or waiver, the Secretary shall notify the Congress of such action and publish in the Federal Register a notice of the extension or waiver.

(July 1, 1944, ch. 373, title III, § 319, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2315; amended Pub. L. 107–188, title I, §§ 141, 144(a), 158, June 12, 2002, 116 Stat. 626, 630, 633.)

PRIOR PROVISIONS

A prior section 247d, act July 1, 1944, ch. 373, title III, § 319, as added Pub. L. 98–49, July 13, 1983, 97 Stat. 245; amended Pub. L. 100–607, title II, § 256(a), Nov. 4, 1988, 102 Stat. 3110; Pub. L. 102–321, title I, § 163(b)(2), July 10, 1992, 106 Stat. 376; Pub. L. 102–531, title III, § 312(d)(2), Oct. 27, 1992, 106 Stat. 3504, authorized the Secretary to take appropriate action relating to public health emergencies, prior to repeal by Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2315.

Another prior section 247d, act July 1, 1944, ch. 373, title III, § 319, formerly § 310, as added Sept. 25, 1962, Pub. L. 87–692, 76 Stat. 592, and amended and renumbered, which related to migrant health centers, was renumbered section 329 of act July 1, 1944, by Pub. L. 95–626, title I, § 102(a), Nov. 10, 1978, 92 Stat. 3551, and transferred to section 254b of this title, prior to being omitted in the general amendment of subpart I (§ 254b et seq.) of part D of this subchapter by Pub. L. 104–299, § 2.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–188, § 158, substituted ''grants, providing awards for expenses, and'' for ''grants and'' in concluding provisions.

Pub. L. 107–188, § 144(a), inserted at end of concluding provisions ''Any such determination of a public health emergency terminates upon the Secretary declaring that the emergency no longer exists, or upon the expiration of the 90-day period beginning on the date on which the determination is made by the Secretary, whichever occurs first. Determinations that terminate under the preceding sentence may be renewed by the Secretary (on the basis of the same or additional facts), and the preceding sentence applies to each such renewal. Not later than 48 hours after making a determination under this subsection of a public health emergency (including a renewal), the Secretary shall submit to the Congress written notification of the determination.''

Subsec. (d). Pub. L. 107–188, § 141, added subsec. (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–188, title I, § 144(b), June 12, 2002, 116 Stat. 630, provided that: ''The amendment made by subsection (a) [amending this section] applies to any public health emergency under section 319(a) of the Public Health Service Act [subsec. (a) of this section], including any such emergency that was in effect as of the day before the date of the enactment of this Act [June 12, 2002]. In the case of such an emergency that was in effect as of such day, the 90-day period described in such section with respect to the termination of the emergency is deemed to begin on such date of enactment.''

§ 247d–1. National needs to combat threats to public health

(a) Capacities

(1) In general

Not later than 1 year after November 13, 2000, the Secretary, and such Administrators, Directors, or Commissioners, as may be appropriate, and in collaboration with State and local health officials, shall establish reasonable capacities that are appropriate for national, State, and local public health systems and the personnel or work forces of such systems. Such capacities shall be revised every five years, or more frequently as the Secretary determines to be necessary.

(2) Basis

The capacities established under paragraph (1) shall improve, enhance or expand the capacity of national, State and local public health agencies to detect and respond effectively to significant public health threats, including major outbreaks of infectious disease, pathogens resistant to antimicrobial agents and acts of bioterrorism. Such capacities may include the capacity to—

(A) recognize the clinical signs and epidemiological characteristic of significant outbreaks of infectious disease;

(B) identify disease-causing pathogens rapidly and accurately;

(C) develop and implement plans to provide medical care for persons infected with disease-causing agents and to provide preventive care as needed for individuals likely to be exposed to disease-causing agents;

(D) communicate information relevant to significant public health threats rapidly to local, State and national health agencies, and health care providers; or

(E) develop or implement policies to prevent the spread of infectious disease or antimicrobial resistance.

(b) Supplement not supplant

Funds appropriated under this section shall be used to supplement and not supplant other Federal, State, and local public funds provided for activities under this section.

(c) Technical assistance

The Secretary shall provide technical assistance to the States to assist such States in fulfilling the requirements of this section.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $4,000,000 for fiscal year 2001, and such sums as may be necessary for each subsequent fiscal year through 2006.

(July 1, 1944, ch. 373, title III, § 319A, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2316; amended Pub. L. 107–188, title I, § 111(1), June 12, 2002, 116 Stat. 611.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–188 substituted ''five years'' for ''10 years''.

§ 247d–2. Assessment of public health needs

(a) Program authorized

Not later than 1 year after November 13, 2000, and every five years thereafter, the Secretary shall award grants to States, or consortia of two or more States or political subdivisions of States, to perform, in collaboration with local public health agencies, an evaluation to determine the extent to which the States or local public health agencies can achieve the capacities applicable to State and local public health agencies described in subsection (a) of section 247d–1 of this title. The Secretary shall provide technical assistance to States, or consortia of two or more States or political subdivisions of States, in addition to awarding such grants.

(b) Procedure

(1) In general

A State, or a consortium of two or more States or political subdivisions of States, may contract with an outside entity to perform the evaluation described in subsection (a) of this section.

(2) Methods

To the extent practicable, the evaluation described in subsection (a) of this section shall be completed by using methods, to be developed by the Secretary in collaboration with State and local health officials, that facilitate the comparison of evaluations conducted by a State to those conducted by other States receiving funds under this section.

(c) Report

Not later than 1 year after the date on which a State, or a consortium of two or more States or political subdivisions of States, receives a grant under this subsection, such State, or a consortium of two or more States or political subdivisions of States, shall prepare and submit to the Secretary a report describing the results of the evaluation described in subsection (a) of this section with respect to such State, or consortia of two or more States or political subdivisions of States.

(d) Supplement not supplant

Funds appropriated under this section shall be used to supplement and not supplant other Federal, State, and local public funds provided for activities under this section.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $45,000,000 for fiscal year 2001, and such sums as may be necessary for each subsequent fiscal year through 2003.

(July 1, 1944, ch. 373, title III, § 319B, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2317; amended Pub. L. 107–188, title I, § 111(2), June 12, 2002, 116 Stat. 611.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–188 substituted ''five years'' for ''10 years'' in first sentence.

§ 247d–3. Grants to improve State and local public health agencies

(a) Program authorized

The Secretary shall award competitive grants to eligible entities to address core public health capacity needs using the capacities developed under section 247d–1 of this title, with a particular focus on building capacity to identify, detect, monitor, and respond to threats to the public health.

(b) Eligible entities

A State or political subdivision of a State, or a consortium of two or more States or political subdivisions of States, that has completed an evaluation under section 247d–2(a) of this title, or an evaluation that is substantially equivalent as determined by the Secretary under section 247d–2(a) of this title, shall be eligible for grants under subsection (a) of this section.

(c) Use of funds

An eligible entity that receives a grant under subsection (a) of this section, may use funds received under such grant to—

(1) train public health personnel;

(2) develop, enhance, coordinate, or improve participation in an electronic network by which disease detection and public health related information can be rapidly shared among national, regional, State, and local public health agencies and health care providers;

(3) develop a plan for responding to public health emergencies, including significant outbreaks of infectious diseases or bioterrorism attacks, which is coordinated with the capacities of applicable national, State, and local health agencies and health care providers; and

(4) enhance laboratory capacity and facilities.

(d) Report

No later than January 1, 2005, the Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate and the Committee on Commerce and the Com-

mittee on Appropriations of the House of Representatives a report that describes the activities carried out under this section and sections 247d–1 and 247d–2 of this title.

(e) Supplement not supplant

Funds appropriated under this section shall be used to supplement and not supplant other Federal, State, and local public funds provided for activities under this section.

(July 1, 1944, ch. 373, title III, § 319C, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2317; amended Pub. L. 107–188, title I, § 131(b), June 12, 2002, 116 Stat. 626.)

AMENDMENTS

2002—Subsec. (f). Pub. L. 107–188 struck out heading and text of subsec. (f). Text read as follows: ''There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 2001, and such sums as may be necessary for each subsequent fiscal year through 2006.''

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 247d–3a. Grants to improve State, local, and hospital preparedness for and response to bioterrorism and other public health emergencies

(a) In general

To enhance the security of the United States with respect to bioterrorism and other public health emergencies, the Secretary shall make awards of grants or cooperative agreements to eligible entities to enable such entities to conduct the activities described in subsection (d) of this section.

(b) Eligible entities

(1) In general

To be eligible to receive an award under subsection (a) of this section, an entity shall—

(A)(i) be a State; and

(ii) prepare and submit to the Secretary an application at such time, and in such manner, and containing such information as the Secretary may require, including an assurance that the State—

(I) has completed an evaluation under section 247d–2(a) of this title, or an evaluation that is substantially equivalent to an evaluation described in such section (as determined by the Secretary);

(II) has prepared, or will (within 60 days of receiving an award under this section) prepare, a Bioterrorism and Other Public Health Emergency Preparedness and Response Plan in accordance with subsection (c) of this section;

(III) has established a means by which to obtain public comment and input on the plan prepared under subclause (II), and on the implementation of such plan, that shall include an advisory committee or other similar mechanism for obtaining comment from the public at large as well as from other State and local stakeholders;

(IV) will use amounts received under the award in accordance with the plan prepared under subclause (II), including making expenditures to carry out the strategy contained in the plan; and

(V) with respect to the plan prepared under subclause (II), will establish reasonable criteria to evaluate the effective performance of entities that receive funds under the award and include relevant benchmarks in the plan; or

(B)(i) be a political subdivision of a State or a consortium of 2 or more such subdivisions; and

(ii) prepare and submit to the Secretary an application at such time, and in such manner, and containing such information as the Secretary may require.

(2) Coordination with Statewide plans

An award under subsection (a) of this section to an eligible entity described in paragraph (1)(B) may not be made unless the application of such entity is in coordination with, and consistent with, applicable Statewide plans described in subsection (d)(1) of this section.

(c) Bioterrorism and Other Public Health Emergency Preparedness and Response Plan

Not later than 60 days after receiving amounts under an award under subsection (a) of this section, an eligible entity described in subsection (b)(1)(A) of this section shall prepare and submit to the Secretary a Bioterrorism and Other Public Health Emergency Preparedness and Response Plan. Recognizing the assessment of public health needs conducted under section 247d–2 of this title, such plan shall include a description of activities to be carried out by the entity to address the needs identified in such assessment (or an equivalent assessment).

(d) Use of funds

An award under subsection (a) of this section may be expended for activities that may include the following and similar activities:

(1) To develop Statewide plans (including the development of the Bioterrorism and Other Public Health Emergency Preparedness and Response Plan required under subsection (c) of this section), and community-wide plans for responding to bioterrorism and other public health emergencies that are coordinated with the capacities of applicable national, State, and local health agencies and health care providers, including poison control centers.

(2) To address deficiencies identified in the assessment conducted under section 247d–2 of this title.

(3) To purchase or upgrade equipment (including stationary or mobile communications equipment), supplies, pharmaceuticals or other priority countermeasures to enhance preparedness for and response to bioterrorism or other public health emergencies, consistent with the plan described in subsection (c) of this section.

(4) To conduct exercises to test the capability and timeliness of public health emergency response activities.

(5) To develop and implement the trauma care and burn center care components of the State plans for the provision of emergency medical services.

(6) To improve training or workforce development to enhance public health laboratories.

(7) To train public health and health care personnel to enhance the ability of such personnel—

(A) to detect, provide accurate identification of, and recognize the symptoms and epidemiological characteristics of exposure to a biological agent that may cause a public health emergency; and

(B) to provide treatment to individuals who are exposed to such an agent.

(8) To develop, enhance, coordinate, or improve participation in systems by which disease detection and information about biological attacks and other public health emergencies can be rapidly communicated among national, State, and local health agencies, emergency response personnel, and health care providers and facilities to detect and respond to a bioterrorist attack or other public health emergency, including activities to improve information technology and communications equipment available to health care and public health officials for use in responding to a biological threat or attack or other public health emergency.

(9) To enhance communication to the public of information on bioterrorism and other public health emergencies, including through the use of 2–1–1 call centers.

(10) To address the health security needs of children and other vulnerable populations with respect to bioterrorism and other public health emergencies.

(11) To provide training and develop, enhance, coordinate, or improve methods to enhance the safety of workers and workplaces in the event of bioterrorism.

(12) To prepare and plan for contamination prevention efforts related to public health that may be implemented in the event of a bioterrorist attack, including training and planning to protect the health and safety of workers conducting the activities described in this paragraph.

(13) To prepare a plan for triage and transport management in the event of bioterrorism or other public health emergencies.

(14) To enhance the training of health care professionals to recognize and treat the mental health consequences of bioterrorism or other public health emergencies.

(15) To enhance the training of health care professionals to assist in providing appropriate health care for large numbers of individuals exposed to a bioweapon.

(16) To enhance training and planning to protect the health and safety of personnel, including health care professionals, involved in responding to a biological attack.

(17) To improve surveillance, detection, and response activities to prepare for emergency response activities including biological threats or attacks, including training personnel in these and other necessary functions and including early warning and surveillance networks that use advanced information technology to provide early detection of biological threats or attacks.

(18) To develop, enhance, and coordinate or improve the ability of existing telemedicine programs to provide health care information and advice as part of the emergency public health response to bioterrorism or other public health emergencies.

Nothing in this subsection may be construed as establishing new regulatory authority or as modifying any existing regulatory authority.

(e) Priorities in use of grants

(1) In general

(A) Priorities

Except as provided in subparagraph (B), the Secretary shall, in carrying out the activities described in this section, address the following hazards in the following priority:

(i) Bioterrorism or acute outbreaks of infectious diseases.

(ii) Other public health threats and emergencies.

(B) Determination of the Secretary

In the case of the hazard involved, the degree of priority that would apply to the hazard based on the categories specified in clauses (i) and (ii) of subparagraph (A) may be modified by the Secretary if the following conditions are met:

(i) The Secretary determines that the modification is appropriate on the basis of the following factors:

(I) The extent to which eligible entities are adequately prepared for responding to hazards within the category specified in clause (i) of subparagraph (A).

(II) There has been a significant change in the assessment of risks to the public health posed by hazards within the category specified in clause (ii) of such subparagraph.

(ii) Prior to modifying the priority, the Secretary notifies the appropriate committees of the Congress of the determination of the Secretary under clause (i) of this subparagraph.

(2) Areas of emphasis within categories

The Secretary shall determine areas of emphasis within the category of hazards specified in clause (i) of paragraph (1)(A), and shall determine areas of emphasis within the category of hazards specified in clause (ii) of such paragraph, based on an assessment of the risk and likely consequences of such hazards and on an evaluation of Federal, State, and local needs, and may also take into account the extent to which receiving an award under subsection (a) of this section will develop capacities that can be used for public health emergencies of varying types.

(f) Certain activities

In administering activities under section 247d–3(c)(4) of this title or similar activities, the Secretary shall, where appropriate, give priority to activities that include State or local government financial commitments, that seek to in-

corporate multiple public health and safety services or diagnostic databases into an integrated public health entity, and that cover geographic areas lacking advanced diagnostic and laboratory capabilities.

(g) Coordination with local Medical Response System

An eligible entity and local Metropolitan Medical Response Systems shall, to the extent practicable, ensure that activities carried out under an award under subsection (a) of this section are coordinated with activities that are carried out by local Metropolitan Medical Response Systems.

(h) Coordination of Federal activities

In making awards under subsection (a) of this section, the Secretary shall—

(1) annually notify the Director of the Federal Emergency Management Agency, the Director of the Office of Justice Programs, and the Director of the National Domestic Preparedness Office, as to the amount, activities covered under, and status of such awards; and

(2) coordinate such awards with other activities conducted or supported by the Secretary to enhance preparedness for bioterrorism and other public health emergencies.

(i) Definition

For purposes of this section, the term ''eligible entity'' means an entity that meets the conditions described in subparagraph (A) or (B) of subsection (b)(1) of this section.

(j) Funding

(1) Authorizations of appropriations

(A) Fiscal year 2003

(i) Authorizations

For the purpose of carrying out this section, there is authorized to be appropriated $1,600,000,000 for fiscal year 2003, of which—

(I) $1,080,000,000 is authorized to be appropriated for awards pursuant to paragraph (3) (subject to the authority of the Secretary to make awards pursuant to paragraphs (4) and (5)); and

(II) $520,000,000 is authorized to be appropriated—

(aa) for awards under subsection (a) of this section to States, notwitstanding[1] the eligibility conditions under subsection (b) of this section, for the purpose of enhancing the preparedness of hospitals (including children's hospitals), clinics, health centers, and primary care facilities for bioterrorism and other public health emergencies; and

(bb) for Federal, State, and local planning and administrative activities related to such purpose.

(ii) Contingent additional authorization

If a significant change in circumstances warrants an increase in the amount authorized to be appropriated under clause (i) for fiscal year 2003, there are authorized to be appropriated such sums as may be necessary for such year for carrying out this section, in addition to the amount authorized in clause (i).

(B) Other fiscal years

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2006.

(2) Supplement not supplant

Amounts appropriated under paragraph (1) shall be used to supplement and not supplant other State and local public funds provided for activities under this section.

(3) State Bioterrorism and Other Public Health Emergency Preparedness and Response block grant for fiscal year 2003

(A) In general

For fiscal year 2003, the Secretary shall, in an amount determined in accordance with subparagraphs (B) through (D), make an award under subsection (a) of this section to each State, notwithstanding the eligibility conditions described in subsection (b) of this section, that submits to the Secretary an application for the award that meets the criteria of the Secretary for the receipt of such an award and that meets other implementation conditions established by the Secretary for such awards. No other awards may be made under subsection (a) of this section for such fiscal year, except as provided in paragraph (1)(A)(i)(II) and paragraphs (4) and (5).

(B) Base amount

In determining the amount of an award pursuant to subparagraph (A) for a State, the Secretary shall first determine an amount the Secretary considers appropriate for the State (referred to in this paragraph as the ''base amount''), except that such amount may not be greater than the minimum amount determined under subparagraph (D).

(C) Increase on basis of population

After determining the base amount for a State under subparagraph (B), the Secretary shall increase the base amount by an amount equal to the product of—

(i) the amount appropriated under paragraph (1)(A)(i)(I) for the fiscal year, less an amount equal to the sum of all base amounts determined for the States under subparagraph (B), and less the amount, if any, reserved by the Secretary under paragraphs (4) and (5); and

(ii) subject to paragraph (4)(C), the percentage constituted by the ratio of an amount equal to the population of the State over an amount equal to the total population of the States (as indicated by the most recent data collected by the Bureau of the Census).

(D) Minimum amount

Subject to the amount appropriated under paragraph (1)(A)(i)(I), an award pursuant to subparagraph (A) for a State shall be the greater of the base amount as increased under subparagraph (C), or the minimum

[1] So in original. Probably should be ''notwithstanding''.

amount under this subparagraph. The minimum amount under this subparagraph is—

(i) in the case of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, an amount equal to the lesser of—

(I) $5,000,000; or

(II) if the amount appropriated under paragraph (1)(A)(i)(I) is less than $667,000,000, an amount equal to 0.75 percent of the amount appropriated under such paragraph, less the amount, if any, reserved by the Secretary under paragraphs (4) and (5); or

(ii) in the case of each of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, an amount determined by the Secretary to be appropriate, except that such amount may not exceed the amount determined under clause (i).

(4) Certain political subdivisions

(A) In general

For fiscal year 2003, the Secretary may, before making awards pursuant to paragraph (3) for such year, reserve from the amount appropriated under paragraph (1)(A)(i)(I) for the year an amount determined necessary by the Secretary to make awards under subsection (a) of this section to political subdivisions that have a substantial number of residents, have a substantial local infrastructure for responding to public health emergencies, and face a high degree of risk from bioterrorist attacks or other public health emergencies. Not more than three political subdivisions may receive awards pursuant to this subparagraph.

(B) Coordination with Statewide plans

An award pursuant to subparagraph (A) may not be made unless the application of the political subdivision involved is in coordination with, and consistent with, applicable Statewide plans described in subsection (c) of this section.

(C) Relationship to formula grants

In the case of a State that will receive an award pursuant to paragraph (3), and in which there is located a political subdivision that will receive an award pursuant to subparagraph (A), the Secretary shall, in determining the amount under paragraph (3)(C) for the State, subtract from the population of the State an amount equal to the population of such political subdivision.

(D) Continuity of funding

In determining whether to make an award pursuant to subparagraph (A) to a political subdivision, the Secretary may consider, as a factor indicating that the award should be made, that the political subdivision received public health funding from the Secretary for fiscal year 2002.

(5) Significant unmet needs; degree of risk

(A) In general

For fiscal year 2003, the Secretary may, before making awards pursuant to paragraph (3) for such year, reserve from the amount appropriated under paragraph (1)(A)(i)(I) for the year an amount determined necessary by the Secretary to make awards under subsection (a) of this section to eligible entities that—

(i) have a significant need for funds to build capacity to identify, detect, monitor, and respond to a bioterrorist or other threat to the public health, which need will not be met by awards pursuant to paragraph (3); and

(ii) face a particularly high degree of risk of such a threat.

(B) Recipients of grants

Awards pursuant to subparagraph (A) may be supplemental awards to States that receive awards pursuant to paragraph (3), or may be awards to eligible entities described in subsection (b)(1)(B) of this section within such States.

(C) Finding with respect to District of Columbia

The Secretary shall consider the District of Columbia to have a significant unmet need for purposes of subparagraph (A), and to face a particularly high degree of risk for such purposes, on the basis of the concentration of entities of national significance located within the District.

(6) Funding of local entities

For fiscal year 2003, the Secretary shall in making awards under this section ensure that appropriate portions of such awards are made available to political subdivisions, local departments of public health, hospitals (including children's hospitals), clinics, health centers, or primary care facilities, or consortia of such entities.

(July 1, 1944, ch. 373, title III, §319C–1, as added Pub. L. 107–188, title I, §131(a), June 12, 2002, 116 Stat. 617.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(3), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 247d–3b. Partnerships for community and hospital preparedness

(a) Grants

The Secretary shall make awards of grants or cooperative agreements to eligible entities to

enable such entities to improve community and hospital preparedness for bioterrorism and other public health emergencies.

(b) Eligibility

To be eligible for an award under subsection (a) of this section, an entity shall—

(1) be a partnership consisting of—

(A) one or more hospitals (including children's hospitals), clinics, health centers, or primary care facilities; and

(B)(i) one or more political subdivisions of States;

(ii) one or more States; or

(iii) one or more States and one or more political subdivisions of States; and

(2) prepare, in consultation with the Chief Executive Officer of the State, District, or territory in which the hospital, clinic, health center, or primary care facility described in paragraph (1)(A) is located, and submit to the Secretary, an application at such time, in such manner, and containing such information as the Secretary may require.

(c) Regional coordination

In making awards under subsection (a) of this section, the Secretary shall give preference to eligible entities that submit applications that, in the determination of the Secretary, will—

(1) enhance coordination—

(A) among the entities described in subsection (b)(1)(A) of this section; and

(B) between such entities and the entities described in subsection (b)(1)(B) of this section; and

(2) serve the needs of a defined geographic area.

(d) Consistency of planned activities

An entity described in subsection (b)(1) of this section shall utilize amounts received under an award under subsection (a) of this section in a manner that is coordinated and consistent, as determined by the Secretary, with an applicable State Bioterrorism and Other Public Health Emergency Preparedness and Response Plan.

(e) Use of funds

An award under subsection (a) of this section may be expended for activities that may include the following and similar activities—

(1) planning and administration for such award;

(2) preparing a plan for triage and transport management in the event of bioterrorism or other public health emergencies;

(3) enhancing the training of health care professionals to improve the ability of such professionals to recognize the symptoms of exposure to a potential bioweapon, to make appropriate diagnosis, and to provide treatment to those individuals so exposed;

(4) enhancing the training of health care professionals to recognize and treat the mental health consequences of bioterrorism or other public health emergencies;

(5) enhancing the training of health care professionals to assist in providing appropriate health care for large numbers of individuals exposed to a bioweapon;

(6) enhancing training and planning to protect the health and safety of personnel involved in responding to a biological attack;

(7) developing and implementing the trauma care and burn center care components of the State plans for the provision of emergency medical services; or

(8) conducting such activities as are described in section 247d–3a(d) of this title that are appropriate for hospitals (including children's hospitals), clinics, health centers, or primary care facilities.

(f) Limitation on awards

A political subdivision of a State shall not participate in more than one partnership described in subsection (b)(1) of this section.

(g) Priorities in use of grants

(1) In general

(A) Priorities

Except as provided in subparagraph (B), the Secretary shall, in carrying out the activities described in this section, address the following hazards in the following priority:

(i) Bioterrorism or acute outbreaks of infectious diseases.

(ii) Other public health threats and emergencies.

(B) Determination of the Secretary

In the case of the hazard involved, the degree of priority that would apply to the hazard based on the categories specified in clauses (i) and (ii) of subparagraph (A) may be modified by the Secretary if the following conditions are met:

(i) The Secretary determines that the modification is appropriate on the basis of the following factors:

(I) The extent to which eligible entities are adequately prepared for responding to hazards within the category specified in clause (i) of subparagraph (A).

(II) There has been a significant change in the assessment of risks to the public health posed by hazards within the category specified in clause (ii) of such subparagraph.

(ii) Prior to modifying the priority, the Secretary notifies the appropriate committees of the Congress of the determination of the Secretary under clause (i) of this subparagraph.

(2) Areas of emphasis within categories

The Secretary shall determine areas of emphasis within the category of hazards specified in clause (i) of paragraph (1)(A), and shall determine areas of emphasis within the category of hazards specified in clause (ii) of such paragraph, based on an assessment of the risk and likely consequences of such hazards and on an evaluation of Federal, State, and local needs, and may also take into account the extent to which receiving an award under subsection (a) of this section will develop capacities that can be used for public health emergencies of varying types.

(h) Coordination with local Medical Response System

An eligible entity and local Metropolitan Medical Response Systems shall, to the extent prac-

ticable, ensure that activities carried out under an award under subsection (a) of this section are coordinated with activities that are carried out by local Metropolitan Medical Response Systems.

(i) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 through 2006.

(July 1, 1944, ch. 373, title III, § 319C–2, as added Pub. L. 107–188, title I, § 131(a), June 12, 2002, 116 Stat. 624.)

§ 247d–4. Revitalizing the Centers for Disease Control and Prevention

(a) Facilities; capacities

(1) Findings

Congress finds that the Centers for Disease Control and Prevention has an essential role in defending against and combatting public health threats and requires secure and modern facilities, and expanded and improved capabilities related to bioterrorism and other public health emergencies, sufficient to enable such Centers to conduct this important mission.

(2) Facilities

(A) In general

The Director of the Centers for Disease Control and Prevention may design, construct, and equip new facilities, renovate existing facilities (including laboratories, laboratory support buildings, scientific communication facilities, transshipment complexes, secured and isolated parking structures, office buildings, and other facilities and infrastructure), and upgrade security of such facilities, in order to better conduct the capacities described in section 247d–1 of this title, and for supporting public health activities.

(B) Multiyear contracting authority

For any project of designing, constructing, equipping, or renovating any facility under subparagraph (A), the Director of the Centers for Disease Control and Prevention may enter into a single contract or related contracts that collectively include the full scope of the project, and the solicitation and contract shall contain the clause ''availability of funds'' found at section 52.232–18 of title 48, Code of Federal Regulations.

(3) Improving the capacities of the Centers for Disease Control and Prevention

The Secretary, taking into account evaluations under section 247d–2(a) of this title, shall expand, enhance, and improve the capabilities of the Centers for Disease Control and Prevention relating to preparedness for and responding effectively to bioterrorism and other public health emergencies. Activities that may be carried out under the preceding sentence include—

(A) expanding or enhancing the training of personnel;

(B) improving communications facilities and networks, including delivery of necessary information to rural areas;

(C) improving capabilities for public health surveillance and reporting activities, taking into account the integrated system or systems of public health alert communications and surveillance networks under subsection (b) of this section; and

(D) improving laboratory facilities related to bioterrorism and other public health emergencies, including increasing the security of such facilities.

(b) National communications and surveillance networks

(1) In general

The Secretary, directly or through awards of grants, contracts, or cooperative agreements, shall provide for the establishment of an integrated system or systems of public health alert communications and surveillance networks between and among—

(A) Federal, State, and local public health officials;

(B) public and private health-related laboratories, hospitals, and other health care facilities; and

(C) any other entities determined appropriate by the Secretary.

(2) Requirements

The Secretary shall ensure that networks under paragraph (1) allow for the timely sharing and discussion, in a secure manner, of essential information concerning bioterrorism or another public health emergency, or recommended methods for responding to such an attack or emergency.

(3) Standards

Not later than one year after June 12, 2002, the Secretary, in cooperation with health care providers and State and local public health officials, shall establish any additional technical and reporting standards (including standards for interoperability) for networks under paragraph (1).

(c) Authorization of appropriations

(1) Facilities; capacities

(A) Facilities

For the purpose of carrying out subsection (a)(2) of this section, there are authorized to be appropriated $300,000,000 for each of the fiscal years 2002 and 2003, and such sums as may be necessary for each of the fiscal years 2004 through 2006.

(B) Mission; improving capacities

For the purposes of achieving the mission of the Centers for Disease Control and Prevention described in subsection (a)(1) of this section, for carrying out subsection (a)(3) of this section, for better conducting the capacities described in section 247d–1 of this title, and for supporting public health activities, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2002 through 2006.

(2) National communications and surveillance networks

For the purpose of carrying out subsection (b) of this section, there are authorized to be

appropriated such sums as may be necessary for each of the fiscal years 2002 through 2006.

(July 1, 1944, ch. 373, title III, § 319D, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2318; amended Pub. L. 107–188, title I, § 103, June 12, 2002, 116 Stat. 603.)

AMENDMENTS

2002—Pub. L. 107–188 reenacted section catchline without change and amended text generally, substituting detailed provisions relating to facilities, capacities, and national communications and surveillance networks for provisions relating to findings of need for secure and modern facilities.

§ 247d–5. Combating antimicrobial resistance

(a) Task force

(1) In general

The Secretary shall establish an Antimicrobial Resistance Task Force to provide advice and recommendations to the Secretary and coordinate Federal programs relating to antimicrobial resistance. The Secretary may appoint or select a committee, or other organization in existence as of November 13, 2000, to serve as such a task force, if such committee, or other organization meets the requirements of this section.

(2) Members of task force

The task force described in paragraph (1) shall be composed of representatives from such Federal agencies, and shall seek input from public health constituencies, manufacturers, veterinary and medical professional societies and others, as determined to be necessary by the Secretary, to develop and implement a comprehensive plan to address the public health threat of antimicrobial resistance.

(3) Agenda

(A) In general

The task force described in paragraph (1) shall consider factors the Secretary considers appropriate, including—

(i) public health factors contributing to increasing antimicrobial resistance;

(ii) public health needs to detect and monitor antimicrobial resistance;

(iii) detection, prevention, and control strategies for resistant pathogens;

(iv) the need for improved information and data collection;

(v) the assessment of the risk imposed by pathogens presenting a threat to the public health; and

(vi) any other issues which the Secretary determines are relevant to antimicrobial resistance.

(B) Detection and control

The Secretary, in consultation with the task force described in paragraph (1) and State and local public health officials, shall—

(i) develop, improve, coordinate or enhance participation in a surveillance plan to detect and monitor emerging antimicrobial resistance; and

(ii) develop, improve, coordinate or enhance participation in an integrated information system to assimilate, analyze, and exchange antimicrobial resistance data between public health departments.

(4) Meetings

The task force described under paragraph (1) shall convene not less than twice a year, or more frequently as the Secretary determines to be appropriate.

(b) Research and development of new antimicrobial drugs and diagnostics

The Secretary and the Director of Agricultural Research Services, consistent with the recommendations of the task force established under subsection (a) of this section, shall directly or through awards of grants or cooperative agreements to public or private entities provide for the conduct of research, investigations, experiments, demonstrations, and studies in the health sciences that are related to—

(1) the development of new therapeutics, including vaccines and antimicrobials, against resistant pathogens;

(2) the development or testing of medical diagnostics to detect pathogens resistant to antimicrobials;

(3) the epidemiology, mechanisms, and pathogenesis of antimicrobial resistance;

(4) the sequencing of the genomes, or other DNA analysis, or other comparative analysis, of priority pathogens (as determined by the Director of the National Institutes of Health in consultation with the task force established under subsection (a) of this section), in collaboration and coordination with the activities of the Department of Defense and the Joint Genome Institute of the Department of Energy; and

(5) other relevant research areas.

(c) Education of medical and public health personnel

The Secretary, after consultation with the Assistant Secretary for Health, the Surgeon General, the Director of the Centers for Disease Control and Prevention, the Administrator of the Health Resources and Services Administration, the Director of the Agency for Healthcare Research and Quality, members of the task force described in subsection (a) of this section, professional organizations and societies, and such other public health officials as may be necessary, shall—

(1) develop and implement educational programs to increase the awareness of the general public with respect to the public health threat of antimicrobial resistance and the appropriate use of antibiotics;

(2) develop and implement educational programs to instruct health care professionals in the prudent use of antibiotics; and

(3) develop and implement programs to train laboratory personnel in the recognition or identification of resistance in pathogens.

(d) Grants

(1) In general

The Secretary shall award competitive grants to eligible entities to enable such entities to increase the capacity to detect, monitor, and combat antimicrobial resistance.

(2) Eligible entities

Eligible entities for grants under paragraph (1) shall be State or local public health agencies, Indian tribes or tribal organizations, or other public or private nonprofit entities.

(3) Use of funds

An eligible entity receiving a grant under paragraph (1) shall use funds from such grant for activities that are consistent with the factors identified by the task force under subsection (a)(3) of this section, which may include activities that—

(A) provide training to enable such entity to identify patterns of resistance rapidly and accurately;

(B) develop, improve, coordinate or enhance participation in information systems by which data on resistant infections can be shared rapidly among relevant national, State, and local health agencies and health care providers; and

(C) develop and implement policies to control the spread of antimicrobial resistance.

(e) Grants for demonstration programs

(1) In general

The Secretary shall award competitive grants to eligible entities to establish demonstration programs to promote judicious use of antimicrobial drugs or control the spread of antimicrobial-resistant pathogens.

(2) Eligible entities

Eligible entities for grants under paragraph (1) may include hospitals, clinics, institutions of long-term care, professional medical societies, schools or programs that train medical laboratory personnel, or other public or private nonprofit entities.

(3) Technical assistance

The Secretary shall provide appropriate technical assistance to eligible entities that receive grants under paragraph (1).

(f) Supplement not supplant

Funds appropriated under this section shall be used to supplement and not supplant other Federal, State, and local public funds provided for activities under this section.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $40,000,000 for fiscal year 2001, $25,000,000 for each of the fiscal years 2002 and 2003, and such sums as may be necessary for each of the fiscal years 2004 through 2006.

(July 1, 1944, ch. 373, title III, § 319E, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2318; amended Pub. L. 107–188, title I, § 109, June 12, 2002, 116 Stat. 610.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–188, § 109(1)(A), in introductory provisions, substituted ''shall directly or through awards of grants or cooperative agreements to public or private entities provide for the conduct of'' for ''shall conduct and support''.

Subsec. (b)(4). Pub. L. 107–188, § 109(1)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the sequencing of the genomes of priority pathogens as determined by the Director of the National Institutes of Health in consultation with the task force established under subsection (a) of this section; and''.

Subsec. (e)(2). Pub. L. 107–188, § 109(2), inserted ''schools or programs that train medical laboratory personnel,'' after ''professional medical societies,''.

Subsec. (g). Pub. L. 107–188, § 109(3), substituted ''$25,000,000 for each of the fiscal years 2002 and 2003, and such sums as may be necessary for each of the fiscal years 2004 through 2006'' for ''and such sums as may be necessary for each subsequent fiscal year through 2006''.

§ 247d–6. Public health countermeasures to a bioterrorist attack

(a) Working group on bioterrorism and other public health emergencies

(1) In general

The Secretary, in coordination with the Secretary of Agriculture, the Attorney General, the Director of Central Intelligence, the Secretary of Defense, the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Director of the Federal Emergency Management Agency, the Secretary of Homeland Security, the Secretary of Labor, the Secretary of Veterans Affairs, and with other similar Federal officials as determined appropriate, shall establish a working group on the prevention, preparedness, and response to bioterrorism and other public health emergencies. Such joint working group, or subcommittees thereof, shall meet periodically for the purpose of consultation on, assisting in, and making recommendations on—

(A) responding to a bioterrorist attack, including the provision of appropriate safety and health training and protective measures for medical, emergency service, and other personnel responding to such attacks;

(B) prioritizing countermeasures required to treat, prevent, or identify exposure to a biological agent or toxin pursuant to section 262a of this title;

(C) facilitation of the awarding of grants, contracts, or cooperative agreements for the development, manufacture, distribution, supply-chain management, and purchase of priority countermeasures;

(D) research on pathogens likely to be used in a biological threat or attack on the civilian population;

(E) development of shared standards for equipment to detect and to protect against biological agents and toxins;

(F) assessment of the priorities for and enhancement of the preparedness of public health institutions, providers of medical care, and other emergency service personnel (including firefighters) to detect, diagnose, and respond (including mental health response) to a biological threat or attack;

(G) in the recognition that medical and public health professionals are likely to provide much of the first response to such an attack, development and enhancement of the quality of joint planning and training programs that address the public health and medical consequences of a biological threat or attack on the civilian population between—

(i) local firefighters, ambulance personnel, police and public security officers, or other emergency response personnel (including private response contractors); and

(ii) hospitals, primary care facilities, and public health agencies;

(H) development of strategies for Federal, State, and local agencies to communicate information to the public regarding biological threats or attacks;

(I) ensuring that the activities under this subsection address the health security needs of children and other vulnerable populations;

(J) strategies for decontaminating facilities contaminated as a result of a biological attack, including appropriate protections for the safety of workers conducting such activities;

(K) subject to compliance with other provisions of Federal law, clarifying the responsibilities among Federal officials for the investigation of suspicious outbreaks of disease and other potential public health emergencies, and for related revisions of the interagency plan known as the Federal response plan; and

(L) in consultation with the National Highway Traffic Safety Administration and the U.S. Fire Administration, ways to enhance coordination among Federal agencies involved with State, local, and community based emergency medical services, including issuing a report that—

(i) identifies needs of community-based emergency medical services; and

(ii) identifies ways to streamline and enhance the process through which Federal agencies support community-based emergency medical services.

(2) Consultation with experts

In carrying out subparagraphs (B) and (C) of paragraph (1), the working group under such paragraph shall consult with the pharmaceutical, biotechnology, and medical device industries, and other appropriate experts.

(3) Use of subcommittees regarding consultation requirements

With respect to a requirement under law that the working group under paragraph (1) be consulted on a matter, the working group may designate an appropriate subcommittee of the working group to engage in the consultation.

(4) Discretion in exercise of duties

Determinations made by the working group under paragraph (1) with respect to carrying out duties under such paragraph are matters committed to agency discretion for purposes of section 701(a) of title 5.

(5) Rule of construction

This subsection may not be construed as establishing new regulatory authority for any of the officials specified in paragraph (1), or as having any legal effect on any other provision of law, including the responsibilities and authorities of the Environmental Protection Agency.

(b) Advice to the Federal Government

(1) Required advisory committees

In coordination with the working group under subsection (a) of this section, the Secretary shall establish advisory committees in accordance with paragraphs (2) and (3) to provide expert recommendations to assist such working groups in carrying out their respective responsibilities under subsections (a) and (b) of this section.

(2) National Advisory Committee on Children and Terrorism

(A) In general

For purposes of paragraph (1), the Secretary shall establish an advisory committee to be known as the National Advisory Committee on Children and Terrorism (referred to in this paragraph as the ''Advisory Committee'').

(B) Duties

The Advisory Committee shall provide recommendations regarding—

(i) the preparedness of the health care (including mental health care) system to respond to bioterrorism as it relates to children;

(ii) needed changes to the health care and emergency medical service systems and emergency medical services protocols to meet the special needs of children; and

(iii) changes, if necessary, to the national stockpile under section 300hh–12 of this title to meet the emergency health security of children.

(C) Composition

The Advisory Committee shall be composed of such Federal officials as may be appropriate to address the special needs of the diverse population groups of children, and child health experts on infectious disease, environmental health, toxicology, and other relevant professional disciplines.

(D) Termination

The Advisory Committee terminates one year after June 12, 2002.

(3) Emergency Public Information and Communications Advisory Committee

(A) In general

For purposes of paragraph (1), the Secretary shall establish an advisory committee to be known as the Emergency Public Information and Communications Advisory Committee (referred to in this paragraph as the ''EPIC Advisory Committee'').

(B) Duties

The EPIC Advisory Committee shall make recommendations to the Secretary and the working group under subsection (a) of this section and report on appropriate ways to communicate public health information regarding bioterrorism and other public health emergencies to the public.

(C) Composition

The EPIC Advisory Committee shall be composed of individuals representing a di-

verse group of experts in public health, medicine, communications, behavioral psychology, and other areas determined appropriate by the Secretary.

(D) Dissemination

The Secretary shall review the recommendations of the EPIC Advisory Committee and ensure that appropriate information is disseminated to the public.

(E) Termination

The EPIC Advisory Committee terminates one year after June 12, 2002.

(c) Strategy for communication of information regarding bioterrorism and other public health emergencies

In coordination with working group under subsection (a) of this section, the Secretary shall develop a strategy for effectively communicating information regarding bioterrorism and other public health emergencies, and shall develop means by which to communicate such information. The Secretary may carry out the preceding sentence directly or through grants, contracts, or cooperative agreements.

(d) Recommendation of Congress regarding official Federal Internet site on bioterrorism

It is the recommendation of Congress that there should be established an official Federal Internet site on bioterrorism, either directly or through provision of a grant to an entity that has expertise in bioterrorism and the development of websites, that should include information relevant to diverse populations (including messages directed at the general public and such relevant groups as medical personnel, public safety workers, and agricultural workers) and links to appropriate State and local government sites.

(e) Grants

(1) In general

The Secretary, in coordination with the working group established under subsection (b) of this section, shall, on a competitive basis and following scientific or technical review, award grants to or enter into cooperative agreements with eligible entities to enable such entities to increase their capacity to detect, diagnose, and respond to acts of bioterrorism upon the civilian population.

(2) Eligibility

To be an eligible entity under this subsection, such entity must be a State, political subdivision of a State, a consortium of two or more States or political subdivisions of States, or a hospital, clinic, primary care facility, professional organization or society, school or program that trains medical laboratory personnel, private accrediting organization, or other nonprofit private institution or entity meeting criteria established by the Secretary.

(3) Use of funds

An entity that receives a grant under this subsection shall use such funds for activities that are consistent with the priorities identified by the working group under subsection (b) of this section, including—

(A) training health care professionals and public health personnel to enhance the ability of such personnel to recognize the symptoms and epidemiological characteristics of exposure to a potential bioweapon;

(B) addressing rapid and accurate identification of potential bioweapons;

(C) coordinating medical care for individuals exposed to bioweapons; and

(D) facilitating and coordinating rapid communication of data generated from a bioterrorist attack between national, State, and local health agencies, and health care providers.

(4) Coordination

The Secretary, in awarding grants under this subsection, shall—

(A) notify the Director of the Office of Justice Programs, and the Director of the National Domestic Preparedness Office annually as to the amount and status of grants awarded under this subsection; and

(B) coordinate grants awarded under this subsection with grants awarded by the Office of Emergency Preparedness and the Centers for Disease Control and Prevention for the purpose of improving the capacity of health care providers and public health agencies to respond to bioterrorist attacks on the civilian population.

(5) Activities

An entity that receives a grant under this subsection shall, to the greatest extent practicable, coordinate activities carried out with such funds with the activities of a local Metropolitan Medical Response System.

(f) Federal assistance

The Secretary shall ensure that the Department of Health and Human Services is able to provide such assistance as may be needed to State and local health agencies to enable such agencies to respond effectively to bioterrorist attacks.

(g) Education; training regarding pediatric issues

(1) Materials; core curriculum

The Secretary, in collaboration with members of the working group described in subsection (b) of this section, and professional organizations and societies, shall—

(A) develop materials for teaching the elements of a core curriculum for the recognition and identification of potential bioweapons and other agents that may create a public health emergency, and for the care of victims of such emergencies, recognizing the special needs of children and other vulnerable populations, to public health officials, medical professionals, emergency physicians and other emergency department staff, laboratory personnel, and other personnel working in health care facilities (including poison control centers);

(B) develop a core curriculum and materials for community-wide planning by State and local governments, hospitals and other health care facilities, emergency response units, and appropriate public and private

sector entities to respond to a bioterrorist attack or other public health emergency;

(C) develop materials for proficiency testing of laboratory and other public health personnel for the recognition and identification of potential bioweapons and other agents that may create a public health emergency; and

(D) provide for dissemination and teaching of the materials described in subparagraphs (A) through (C) by appropriate means, which may include telemedicine, long-distance learning, or other such means.

(2) Certain entities

The entities through which education and training activities described in paragraph (1) may be carried out include Public Health Preparedness Centers, the Public Health Service's Noble Training Center, the Emerging Infections Program, the Epidemic Intelligence Service, the Public Health Leadership Institute, multi-State, multi-institutional consortia, other appropriate educational entities, professional organizations and societies, private accrediting organizations, and other nonprofit institutions or entities meeting criteria established by the Secretary.

(3) Grants and contracts

In carrying out paragraph (1), the Secretary may carry out activities directly and through the award of grants and contracts, and may enter into interagency cooperative agreements with other Federal agencies.

(4) Health-related assistance for emergency response personnel training

The Secretary, in consultation with the Attorney General and the Director of the Federal Emergency Management Agency, may provide technical assistance with respect to health-related aspects of emergency response personnel training carried out by the Department of Justice and the Federal Emergency Management Agency.

(h) Accelerated research and development on priority pathogens and countermeasures

(1) In general

With respect to pathogens of potential use in a bioterrorist attack, and other agents that may cause a public health emergency, the Secretary, taking into consideration any recommendations of the working group under subsection (a) of this section, shall conduct, and award grants, contracts, or cooperative agreements for, research, investigations, experiments, demonstrations, and studies in the health sciences relating to—

(A) the epidemiology and pathogenesis of such pathogens;

(B) the sequencing of the genomes, or other DNA analysis, or other comparative analysis, of priority pathogens (as determined by the Director of the National Institutes of Health in consultation with the working group established in subsection (a) of this section), in collaboration and coordination with the activities of the Department of Defense and the Joint Genome Institute of the Department of Energy;

(C) the development of priority countermeasures; and

(D) other relevant areas of research;

with consideration given to the needs of children and other vulnerable populations.

(2) Priority

The Secretary shall give priority under this section to the funding of research and other studies related to priority countermeasures.

(3) Role of Department of Veterans Affairs

In carrying out paragraph (1), the Secretary shall consider using the biomedical research and development capabilities of the Department of Veterans Affairs, in conjunction with that Department's affiliations with health-professions universities. When advantageous to the Government in furtherance of the purposes of such paragraph, the Secretary may enter into cooperative agreements with the Secretary of Veterans Affairs to achieve such purposes.

(4) Priority countermeasures

For purposes of this section, the term ''priority countermeasure'' means a drug, biological product, device, vaccine, vaccine adjuvant, antiviral, or diagnostic test that the Secretary determines to be—

(A) a priority to treat, identify, or prevent infection by a biological agent or toxin listed pursuant to section 262a(a)(1) of this title, or harm from any other agent that may cause a public health emergency; or

(B) a priority to treat, identify, or prevent conditions that may result in adverse health consequences or death and may be caused by the administering of a drug, biological product, device, vaccine, vaccine adjuvant, antiviral, or diagnostic test that is a priority under subparagraph (A).

(i) General Accounting Office report

Not later than 180 days after November 13, 2000, the Comptroller General shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate and the Committee on Commerce and the Committee on Appropriations of the House of Representatives a report that describes—

(1) Federal activities primarily related to research on, preparedness for, and the management of the public health and medical consequences of a bioterrorist attack against the civilian population;

(2) the coordination of the activities described in paragraph (1);

(3) the amount of Federal funds authorized or appropriated for the activities described in paragraph (1); and

(4) the effectiveness of such efforts in preparing national, State, and local authorities to address the public health and medical consequences of a potential bioterrorist attack against the civilian population.

(j) Supplement not supplant

Funds appropriated under this section shall be used to supplement and not supplant other Federal, State, and local public funds provided for activities under this section.

(July 1, 1944, ch. 373, title III, § 319F, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2321; amended Pub. L. 107–188, title I, §§ 104(a) 105, 108, 111(3), 125, June 12, 2002, 116 Stat. 605, 606, 609, 611, 614; Pub. L. 108–276, § 2(d), July 21, 2004, 118 Stat. 842.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–276, § 2(d)(1), inserted ''the Secretary of Homeland Security,'' after ''Management Agency,'' in introductory provisions.

Subsec. (h)(4)(B). Pub. L. 108–276, § 2(d)(2), substituted ''to treat, identify, or prevent conditions'' for ''to diagnose conditions''.

2002—Subsec. (a). Pub. L. 107–188, § 108, added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''The Secretary, in coordination with the Secretary of Defense, shall establish a joint interdepartmental working group on preparedness and readiness for the medical and public health effects of a bioterrorist attack on the civilian population. Such joint working group shall—

''(1) coordinate research on pathogens likely to be used in a bioterrorist attack on the civilian population as well as therapies to treat such pathogens;

''(2) coordinate research and development into equipment to detect pathogens likely to be used in a bioterrorist attack on the civilian population and protect against infection from such pathogens;

''(3) develop shared standards for equipment to detect and to protect against infection from pathogens likely to be used in a bioterrorist attack on the civilian population; and

''(4) coordinate the development, maintenance, and procedures for the release of, strategic reserves of vaccines, drugs, and medical supplies which may be needed rapidly after a bioterrorist attack upon the civilian population.''

Subsec. (b). Pub. L. 107–188, § 104(a)(1), (3), added subsec. (b) and struck out former subsec. (b) which related to establishment, functions, membership, and coordination of a working group on the public health and medical consequences of bioterrorism.

Subsecs. (c), (d). Pub. L. 107–188, § 104(a)(3), added subsecs. (c) and (d). Former subsecs. (c) and (d) redesignated (e) and (f), respectively.

Subsec. (e). Pub. L. 107–188, § 104(a)(2), redesignated subsec. (c) as (e). Former subsec. (e) redesignated (g).

Subsec. (e)(2). Pub. L. 107–188, § 111(3), which directed the amendment of section 391F(e)(2) of the Public Health Service Act by striking out ''or'' after ''clinic,'' and inserting before period '', professional organization or society, school or program that trains medical laboratory personnel, private accrediting organization, or other nonprofit private institution or entity meeting criteria established by the Secretary'', was executed to subsec. (e)(2) of this section, which is section 319F(e)(2) of the Act, to reflect the probable intent of Congress.

Subsec. (f). Pub. L. 107–188, § 104(a)(2), redesignated subsec. (d) as (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 107–188, § 105, amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows: ''The Secretary, in collaboration with members of the working group described in subsection (b) of this section, and professional organizations and societies, shall—

''(1) develop and implement educational programs to instruct public health officials, medical professionals, and other personnel working in health care facilities in the recognition and care of victims of a bioterrorist attack; and

''(2) develop and implement programs to train laboratory personnel in the recognition and identification of a potential bioweapon.''

Pub. L. 107–188, § 104(a)(2), redesignated subsec. (e) as (g). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 107–188, § 125, amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: ''The Secretary shall consult with the working group described in subsection (a) of this section, to develop priorities for and conduct research, investigations, experiments, demonstrations, and studies in the health sciences related to—

''(1) the epidemiology and pathogenesis of potential bioweapons;

''(2) the development of new vaccines or other therapeutics against pathogens likely to be used in a bioterrorist attack;

''(3) the development of medical diagnostics to detect potential bioweapons; and

''(4) other relevant research areas.''

Pub. L. 107–188, § 104(a)(2), redesignated subsec. (f) as (h). Former subsec. (h) redesignated (j).

Subsec. (i). Pub. L. 107–188, § 104(a)(1), (2), redesignated subsec. (g) as (i) and struck out heading and text of former subsec. (i). Text read as follows: ''There are authorized to be appropriated to carry out this section $215,000,000 for fiscal year 2001, and such sums as may be necessary for each subsequent fiscal year through 2006.''

Subsec. (j). Pub. L. 107–188, § 104(a)(2), redesignated subsec. (h) as (j).

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

General Accounting Office redesignated Government Accountability Office by section 8 of Pub. L. 108–271, set out as a note under section 702 of Title 31, Money and Finance.

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(3), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the Office of Emergency Preparedness of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(5), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department

of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

OTHER REPORTS

Pub. L. 107–188, title I, §101(b)(1), June 12, 2002, 116 Stat. 598, provided that:

''(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [June 12, 2002], the Secretary of Health and Human Services (referred to in this subsection as the 'Secretary') shall submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, a report concerning—

''(A) the recommendations and findings of the National Advisory Committee on Children and Terrorism under section 319F(c)(2) of the Public Health Service Act [probably means subsec. (b)(2) of this section];

''(B) the recommendations and findings of the EPIC Advisory Committee under section 319F(c)(3) of such Act [probably means subsec. (b)(3) of this section];

''(C) the characteristics that may render a rural community uniquely vulnerable to a biological attack, including distance, lack of emergency transport, hospital or laboratory capacity, lack of integration of Federal or State public health networks, workforce deficits, or other relevant characteristics;

''(D) the characteristics that may render areas or populations designated as medically underserved populations (as defined in section 330 of such Act [section 254b of this title]) uniquely vulnerable to a biological attack, including significant numbers of low-income or uninsured individuals, lack of affordable and accessible health care services, insufficient public and primary health care resources, lack of integration of Federal or State public health networks, workforce deficits, or other relevant characteristics;

''(E) the recommendations of the Secretary with respect to additional legislative authority that the Secretary determines is necessary to effectively strengthen rural communities, or medically underserved populations (as defined in section 330 of such Act); and

''(F) the need for and benefits of a National Disaster Response Medical Volunteer Service that would be a private-sector, community-based rapid response corps of medical volunteers.''

STUDY REGARDING COMMUNICATIONS ABILITIES OF PUBLIC HEALTH AGENCIES

Pub. L. 107–188, title I, §104(b), June 12, 2002, 116 Stat. 606, provided that: ''The Secretary of Health and Human Services, in consultation with the Federal Communications Commission, the National Telecommunications and Information Administration, and other appropriate Federal agencies, shall conduct a study to determine whether local public health entities have the ability to maintain communications in the event of a bioterrorist attack or other public health emergency. The study shall examine whether redundancies are required in the telecommunications system, particularly with respect to mobile communications, for public health entities to maintain systems operability and connectivity during such emergencies. The study shall also include recommendations to industry and public health entities about how to implement such redundancies if necessary.''

§ 247d–6a. Authority for use of certain procedures regarding qualified countermeasure research and development activities

(a) In general

(1) Authority

In conducting and supporting research and development activities regarding countermeasures under section 247d–6(h) of this title, the Secretary may conduct and support such activities in accordance with this section and, in consultation with the Director of the National Institutes of Health, as part of the program under section 285f of this title, if the activities concern qualified countermeasures.

(2) Qualified countermeasure

For purposes of this section, the term ''qualified countermeasure'' means a drug (as that term is defined by section 321(g)(1) of title 21), biological product (as that term is defined by section 262(i) of this title), or device (as that term is defined by section 321(h) of title 21) that the Secretary determines to be a priority (consistent with sections 182(2) and 184(a) of title 6) to—

(A) treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a public health emergency affecting national security; or

(B) treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device that is used as described in subparagraph (A).

(3) Interagency cooperation

(A) In general

In carrying out activities under this section, the Secretary is authorized, subject to subparagraph (B), to enter into interagency agreements and other collaborative undertakings with other agencies of the United States Government.

(B) Limitation

An agreement or undertaking under this paragraph shall not authorize another agency to exercise the authorities provided by this section.

(4) Availability of facilities to the Secretary

In any grant, contract, or cooperative agreement entered into under the authority provided in this section with respect to a biocontainment laboratory or other related or ancillary specialized research facility that the Secretary determines necessary for the purpose of performing, administering, or supporting qualified countermeasure research and development, the Secretary may provide that the facility that is the object of such grant, contract, or cooperative agreement shall be available as needed to the Secretary to respond to public health emergencies affecting national security.

(5) Transfers of qualified countermeasures

Each agreement for an award of a grant, contract, or cooperative agreement under section 247d–6(h) of this title for the development of a qualified countermeasure shall provide that the recipient of the award will comply with all applicable export-related controls with respect to such countermeasure.

(b) Expedited procurement authority

(1) Increased simplified acquisition threshold for qualified countermeasure procurements

(A) In general

For any procurement by the Secretary of property or services for use (as determined by the Secretary) in performing, administering, or supporting qualified countermeasure research or development activities under this section that the Secretary determines necessary to respond to pressing research and development needs under this section, the amount specified in section 403(11) of title 41, as applicable pursuant to section 252a(a) of title 41, shall be deemed to be $25,000,000 in the administration, with respect to such procurement, of—

(i) section 253(g)(1)(A) of title 41 and its implementing regulations; and

(ii) section 252a(b) of title 41 and its implementing regulations.

(B) Application of certain provisions

Notwithstanding subparagraph (A) and the provision of law and regulations referred to in such subparagraph, each of the following provisions shall apply to procurements described in this paragraph to the same extent that such provisions would apply to such procurements in the absence of subparagraph (A):

(i) Chapter 37 of title 40 (relating to contract work hours and safety standards).

(ii) Subsections (a) and (b) of section 57 of title 41.

(iii) Section 254d of title 41 (relating to the examination of contractor records).

(iv) Section 3131 of title 40 (relating to bonds of contractors of public buildings or works).

(v) Subsection (a) of section 254 of title 41 (relating to contingent fees to middlemen).

(vi) Section 6962 of this title.

(vii) Section 1354 of title 31 (relating to the limitation on the use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

(C) Internal controls to be instituted

The Secretary shall institute appropriate internal controls for procurements that are under this paragraph, including requirements with regard to documenting the justification for use of the authority in this paragraph with respect to the procurement involved.

(D) Authority to limit competition

In conducting a procurement under this paragraph, the Secretary may not use the authority provided for under subparagraph (A) to conduct a procurement on a basis other than full and open competition unless the Secretary determines that the mission of the BioShield Program under the Project BioShield Act of 2004 would be seriously impaired without such a limitation.

(2) Procedures other than full and open competition

(A) In general

In using the authority provided in section 253(c)(1) of title 41 to use procedures other than competitive procedures in the case of a procurement described in paragraph (1) of this subsection, the phrase ''available from only one responsible source'' in such section 253(c)(1) shall be deemed to mean ''available from only one responsible source or only from a limited number of responsible sources''.

(B) Relation to other authorities

The authority under subparagraph (A) is in addition to any other authority to use procedures other than competitive procedures.

(C) Applicable government-wide regulations

The Secretary shall implement this paragraph in accordance with government-wide regulations implementing such section 253(c)(1) (including requirements that offers be solicited from as many potential sources as is practicable under the circumstances, that required notices be published, and that submitted offers be considered), as such regulations apply to procurements for which an agency has authority to use procedures other than competitive procedures when the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency.

(3) Increased micropurchase threshold

(A) In general

For a procurement described by paragraph (1), the amount specified in subsections (c), (d), and (f) of section 428 of title 41 shall be deemed to be $15,000 in the administration of that section with respect to such procurement.

(B) Internal controls to be instituted

The Secretary shall institute appropriate internal controls for purchases that are under this paragraph and that are greater than $2,500.

(C) Exception to preference for purchase card mechanism

No provision of law establishing a preference for using a Government purchase card method for purchases shall apply to purchases that are under this paragraph and that are greater than $2,500.

(4) Review

(A) Review allowed

Notwithstanding subsection (f) of this section, section 1491 of title 28, and section 3556 of title 31, review of a contracting agency decision relating to a procurement described in paragraph (1) may be had only by filing a protest—

(i) with a contracting agency; or

(ii) with the Comptroller General under subchapter V of chapter 35 of title 31.

(B) Override of stay of contract award or performance committed to agency discretion

Notwithstanding section 1491 of title 28 and section 3553 of title 31, the following authorizations by the head of a procuring activity are committed to agency discretion:

(i) An authorization under section 3553(c)(2) of title 31 to award a contract for a procurement described in paragraph (1) of this subsection.

(ii) An authorization under section 3553(d)(3)(C) of such title to perform a contract for a procurement described in paragraph (1) of this subsection.

(c) Authority to expedite peer review

(1) In general

The Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, employ such expedited peer review procedures (including consultation with appropriate scientific experts) as the Secretary, in consultation with the Director of NIH, deems appropriate to obtain assessment of scientific and technical merit and likely contribution to the field of qualified countermeasure research, in place of the peer review and advisory council review procedures that would be required under sections 241(a)(3), 284(b)(1)(B), 284(b)(2), 284a(a)(3)(A), 289a, and 289c of this title, as applicable to a grant, contract, or cooperative agreement—

(A) that is for performing, administering, or supporting qualified countermeasure research and development activities; and

(B) the amount of which is not greater than $1,500,000.

(2) Subsequent phases of research

The Secretary's determination of whether to employ expedited peer review with respect to any subsequent phases of a research grant, contract, or cooperative agreement under this section shall be determined without regard to the peer review procedures used for any prior peer review of that same grant, contract, or cooperative agreement. Nothing in the preceding sentence may be construed to impose any requirement with respect to peer review not otherwise required under any other law or regulation.

(d) Authority for personal services contracts

(1) In general

For the purpose of performing, administering, or supporting qualified countermeasure research and development activities, the Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, obtain by contract (in accordance with section 3109 of title 5, but without regard to the limitations in such section on the period of service and on pay) the personal services of experts or consultants who have scientific or other professional qualifications, except that in no case shall the compensation provided to any such expert or consultant exceed the daily equivalent of the annual rate of compensation for the President.

(2) Federal Tort Claims Act coverage

(A) In general

A person carrying out a contract under paragraph (1), and an officer, employee, or governing board member of such person, shall, subject to a determination by the Secretary, be deemed to be an employee of the Department of Health and Human Services for purposes of claims under sections 1346(b) and 2672 of title 28 for money damages for personal injury, including death, resulting from performance of functions under such contract.

(B) Exclusivity of remedy

The remedy provided by subparagraph (A) shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the entity involved (person, officer, employee, or governing board member) for any act or omission within the scope of the Federal Tort Claims Act.

(C) Recourse in case of gross misconduct or contract violation

(i) In general

Should payment be made by the United States to any claimant bringing a claim under this paragraph, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover against any entity identified in subparagraph (B) for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any such entity to carry out any obligation or responsibility assumed by such entity under a contract with the United States or from any grossly negligent or reckless conduct or intentional or willful misconduct on the part of such entity.

(ii) Venue

The United States may maintain an action under this subparagraph against such entity in the district court of the United States in which such entity resides or has its principal place of business.

(3) Internal controls to be instituted

(A) In general

The Secretary shall institute appropriate internal controls for contracts under this subsection, including procedures for the Secretary to make a determination of whether a person, or an officer, employee, or governing board member of a person, is deemed to be an employee of the Department of Health and Human Services pursuant to paragraph (2).

(B) Determination of employee status to be final

A determination by the Secretary under subparagraph (A) that a person, or an officer, employee, or governing board member of a person, is or is not deemed to be an employee of the Department of Health and Human Services shall be final and binding

on the Secretary and the Attorney General and other parties to any civil action or proceeding.

(4) Number of personal services contracts limited

The number of experts and consultants whose personal services are obtained under paragraph (1) shall not exceed 30 at any time.

(e) Streamlined personnel authority

(1) In general

In addition to any other personnel authorities, the Secretary may, as the Secretary determines necessary to respond to pressing qualified countermeasure research and development needs under this section, without regard to those provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, appoint professional and technical employees, not to exceed 30 such employees at any time, to positions in the National Institutes of Health to perform, administer, or support qualified countermeasure research and development activities in carrying out this section.

(2) Limitations

The authority provided for under paragraph (1) shall be exercised in a manner that—

(A) recruits and appoints individuals based solely on their abilities, knowledge, and skills;

(B) does not discriminate for or against any applicant for employment on any basis described in section 2302(b)(1) of title 5;

(C) does not allow an official to appoint an individual who is a relative (as defined in section 3110(a)(3) of such title) of such official;

(D) does not discriminate for or against an individual because of the exercise of any activity described in paragraph (9) or (10) of section 2302(b) of such title; and

(E) accords a preference, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of such title).

(3) Internal controls to be instituted

The Secretary shall institute appropriate internal controls for appointments under this subsection.

(f) Actions committed to agency discretion

Actions by the Secretary under the authority of this section are committed to agency discretion.

(July 1, 1944, ch. 373, title III, § 319F–1, as added Pub. L. 108–276, § 2(a), July 21, 2004, 118 Stat. 835.)

REFERENCES IN TEXT

The Project BioShield Act of 2004, referred to in subsec. (b)(1)(D), is Pub. L. 108–276, July 21, 2004, 118 Stat. 835. For complete classification of this Act to the Code, see Short Title of 2004 Amendments note set out under section 201 of this title and Tables.

The Federal Tort Claims Act, referred to in subsec. (d)(2), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28. For complete classification of this Act to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (e)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

RULE OF CONSTRUCTION

Pub. L. 108–276, § 2(e), July 21, 2004, 118 Stat. 842, provided that: ''Nothing in this section [enacting this section and amending sections 247d–6, 287a–2, and 300aa–6 of this title] has any legal effect on sections 302(2), 302(4), 304(a), or 304(b) of the Homeland Security Act of 2002 [6 U.S.C. 182(2), (4), 184(a), (b)].''

OUTREACH

Pub. L. 108–276, § 6, July 21, 2004, 118 Stat. 862, provided that: ''The Secretary of Health and Human Services shall develop outreach measures to ensure to the extent practicable that diverse institutions, including Historically Black Colleges and Universities and those serving large proportions of Black or African Americans, American Indians, Appalachian Americans, Alaska Natives, Asians, Native Hawaiians, other Pacific Islanders, Hispanics or Latinos, or other underrepresented populations, are meaningfully aware of available research and development grants, contracts, cooperative agreements, and procurements conducted under sections 2 and 3 of this Act [enacting this section and section 320 of Title 6, Domestic Security, amending sections 247d–6, 247d–6b, 287a–2, and 300aa–6 of this title and sections 312 and 313 of Title 6, renumbering section 300hh–12 of this title as section 247d–6b of this title, and enacting provisions set out as notes under this section and section 247d–6b of this title].''

RECOMMENDATION FOR EXPORT CONTROLS ON CERTAIN BIOMEDICAL COUNTERMEASURES

Pub. L. 108–276, § 7, July 21, 2004, 118 Stat. 863, provided that: ''Upon the award of any grant, contract, or cooperative agreement under section 2 or 3 of this Act [enacting this section and section 320 of Title 6, Domestic Security, amending sections 247d–6, 247d–6b, 287a–2, and 300aa–6 of this title and sections 312 and 313 of Title 6, renumbering section 300hh–12 of this title as section 247d–6b of this title, and enacting provisions set out as notes under this section and section 247d–6b of this title] for the research, development, or procurement of a qualified countermeasure or a security countermeasure (as those terms are defined in this Act [see Short Title of 2004 Amendments note set out under section 201 of this title]), the Secretary of Health and Human Services shall, in consultation with the heads of other appropriate Federal agencies, determine whether the countermeasure involved in such grant, contract, or cooperative agreement is subject to existing export-related controls and, if not, may make a recommendation to the appropriate Federal agency or agencies that such countermeasure should be included on the list of controlled items subject to such controls.''

ENSURING COORDINATION, COOPERATION AND THE ELIMINATION OF UNNECESSARY DUPLICATION IN PROGRAMS DESIGNED TO PROTECT THE HOMELAND FROM BIOLOGICAL, CHEMICAL, RADIOLOGICAL, AND NUCLEAR AGENTS

Pub. L. 108–276, § 8, July 21, 2004, 118 Stat. 863, provided that:

''(a) ENSURING COORDINATION OF PROGRAMS.—The Secretary of Health and Human Services, the Secretary of

Homeland Security, and the Secretary of Defense shall ensure that the activities of their respective Departments coordinate, complement, and do not unnecessarily duplicate programs to identify potential domestic threats from biological, chemical, radiological or nuclear agents, detect domestic incidents involving such agents, analyze such incidents, and develop necessary countermeasures. The aforementioned Secretaries shall further ensure that information and technology possessed by the Departments relevant to these activities are shared with the other Departments.

''(b) DESIGNATION OF AGENCY COORDINATION OFFICER.—The Secretary of Health and Human Services, the Secretary of Homeland Security, and the Secretary of Defense shall each designate an officer or employee of their respective Departments who shall coordinate, through regular meetings and communications, with the other aforementioned Departments such programs and activities carried out by their Departments.''

§ 247d–6b. Strategic National Stockpile

(a) Strategic National Stockpile

(1) In general

The Secretary, in coordination with the Secretary of Homeland Security (referred to in this section as the ''Homeland Security Secretary''), shall maintain a stockpile or stockpiles of drugs, vaccines and other biological products, medical devices, and other supplies in such numbers, types, and amounts as are determined by the Secretary to be appropriate and practicable, taking into account other available sources, to provide for the emergency health security of the United States, including the emergency health security of children and other vulnerable populations, in the event of a bioterrorist attack or other public health emergency.

(2) Procedures

The Secretary, in managing the stockpile under paragraph (1), shall—

(A) consult with the working group under section 247d–6(a) of this title;

(B) ensure that adequate procedures are followed with respect to such stockpile for inventory management and accounting, and for the physical security of the stockpile;

(C) in consultation with Federal, State, and local officials, take into consideration the timing and location of special events;

(D) review and revise, as appropriate, the contents of the stockpile on a regular basis to ensure that emerging threats, advanced technologies, and new countermeasures are adequately considered;

(E) devise plans for the effective and timely supply-chain management of the stockpile, in consultation with appropriate Federal, State and local agencies, and the public and private health care infrastructure;

(F) deploy the stockpile as required by the Secretary of Homeland Security to respond to an actual or potential emergency;

(G) deploy the stockpile at the discretion of the Secretary to respond to an actual or potential public health emergency or other situation in which deployment is necessary to protect the public health or safety; and

(H) ensure the adequate physical security of the stockpile.

(b) Smallpox vaccine development

(1) In general

The Secretary shall award contracts, enter into cooperative agreements, or carry out such other activities as may reasonably be required in order to ensure that the stockpile under subsection (a) of this section includes an amount of vaccine against smallpox as determined by such Secretary to be sufficient to meet the health security needs of the United States.

(2) Rule of construction

Nothing in this section shall be construed to limit the private distribution, purchase, or sale of vaccines from sources other than the stockpile described in subsection (a) of this section.

(c) Additional authority regarding procurement of certain biomedical countermeasures; availability of special reserve fund

(1) In general

(A) Use of fund

A security countermeasure may, in accordance with this subsection, be procured with amounts in the special reserve fund under paragraph (10).

(B) Security countermeasure

For purposes of this subsection, the term ''security countermeasure'' means a drug (as that term is defined by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), biological product (as that term is defined by section 262(i) of this title), or device (as that term is defined by section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))) that—

(i)(I) the Secretary determines to be a priority (consistent with sections 182(2) and 184(a) of title 6) to treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent identified as a material threat under paragraph (2)(A)(ii), or to treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug, biological product, or device against such an agent;

(II) the Secretary determines under paragraph (2)(B)(ii) to be a necessary countermeasure; and

(III)(aa) is approved or cleared under chapter V of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 351 et seq.] or licensed under section 262 of this title; or

(bb) is a countermeasure for which the Secretary determines that sufficient and satisfactory clinical experience or research data (including data, if available, from pre-clinical and clinical trials) support a reasonable conclusion that the countermeasure will qualify for approval or licensing within eight years after the date of a determination under paragraph (5); or

(ii) is authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360bbb–3].

(2) Determination of material threats

(A) Material threat

The Homeland Security Secretary, in consultation with the Secretary and the heads of other agencies as appropriate, shall on an ongoing basis—

(i) assess current and emerging threats of chemical, biological, radiological, and nuclear agents; and

(ii) determine which of such agents present a material threat against the United States population sufficient to affect national security.

(B) Public health impact; necessary countermeasures

The Secretary shall on an ongoing basis—

(i) assess the potential public health consequences for the United States population of exposure to agents identified under subparagraph (A)(ii); and

(ii) determine, on the basis of such assessment, the agents identified under subparagraph (A)(ii) for which countermeasures are necessary to protect the public health.

(C) Notice to Congress

The Secretary and the Homeland Security Secretary shall promptly notify the designated congressional committees (as defined in paragraph (10)) that a determination has been made pursuant to subparagraph (A) or (B).

(D) Assuring access to threat information

In making the assessment and determination required under subparagraph (A), the Homeland Security Secretary shall use all relevant information to which such Secretary is entitled under section 122 of title 6, including but not limited to information, regardless of its level of classification, relating to current and emerging threats of chemical, biological, radiological, and nuclear agents.

(3) Assessment of availability and appropriateness of countermeasures

The Secretary, in consultation with the Homeland Security Secretary, shall assess on an ongoing basis the availability and appropriateness of specific countermeasures to address specific threats identified under paragraph (2).

(4) Call for development of countermeasures; commitment for recommendation for procurement

(A) Proposal to the President

If, pursuant to an assessment under paragraph (3), the Homeland Security Secretary and the Secretary make a determination that a countermeasure would be appropriate but is either currently unavailable for procurement as a security countermeasure or is approved, licensed, or cleared only for alternative uses, such Secretaries may jointly submit to the President a proposal to—

(i) issue a call for the development of such countermeasure; and

(ii) make a commitment that, upon the first development of such countermeasure that meets the conditions for procurement under paragraph (5), the Secretaries will, based in part on information obtained pursuant to such call, make a recommendation under paragraph (6) that the special reserve fund under paragraph (10) be made available for the procurement of such countermeasure.

(B) Countermeasure specifications

The Homeland Security Secretary and the Secretary shall, to the extent practicable, include in the proposal under subparagraph (A)—

(i) estimated quantity of purchase (in the form of number of doses or number of effective courses of treatments regardless of dosage form);

(ii) necessary measures of minimum safety and effectiveness;

(iii) estimated price for each dose or effective course of treatment regardless of dosage form; and

(iv) other information that may be necessary to encourage and facilitate research, development, and manufacture of the countermeasure or to provide specifications for the countermeasure.

(C) Presidential approval

If the President approves a proposal under subparagraph (A), the Homeland Security Secretary and the Secretary shall make known to persons who may respond to a call for the countermeasure involved—

(i) the call for the countermeasure;

(ii) specifications for the countermeasure under subparagraph (B); and

(iii) the commitment described in subparagraph (A)(ii).

(5) Secretary's determination of countermeasures appropriate for funding from special reserve fund

(A) In general

The Secretary, in accordance with the provisions of this paragraph, shall identify specific security countermeasures that the Secretary determines, in consultation with the Homeland Security Secretary, to be appropriate for inclusion in the stockpile under subsection (a) of this section pursuant to procurements made with amounts in the special reserve fund under paragraph (10) (referred to in this subsection individually as a ''procurement under this subsection'').

(B) Requirements

In making a determination under subparagraph (A) with respect to a security countermeasure, the Secretary shall determine and consider the following:

(i) The quantities of the product that will be needed to meet the needs of the stockpile.

(ii) The feasibility of production and delivery within eight years of sufficient quantities of the product.

(iii) Whether there is a lack of a significant commercial market for the product at the time of procurement, other than as a security countermeasure.

(6) Recommendation for President's approval

(A) Recommendation for procurement

In the case of a security countermeasure that the Secretary has, in accordance with paragraphs (3) and (5), determined to be appropriate for procurement under this subsection, the Homeland Security Secretary and the Secretary shall jointly submit to the President, in coordination with the Director of the Office of Management and Budget, a recommendation that the special reserve fund under paragraph (10) be made available for the procurement of such countermeasure.

(B) Presidential approval

The special reserve fund under paragraph (10) is available for a procurement of a security countermeasure only if the President has approved a recommendation under subparagraph (A) regarding the countermeasure.

(C) Notice to designated congressional committees

The Secretary and the Homeland Security Secretary shall notify the designated congressional committees of each decision of the President to approve a recommendation under subparagraph (A). Such notice shall include an explanation of the decision to make available the special reserve fund under paragraph (10) for procurement of such a countermeasure, including, where available, the number of, nature of, and other information concerning potential suppliers of such countermeasure, and whether other potential suppliers of the same or similar countermeasures were considered and rejected for procurement under this section and the reasons therefor.

(D) Subsequent specific countermeasures

Procurement under this subsection of a security countermeasure for a particular purpose does not preclude the subsequent procurement under this subsection of any other security countermeasure for such purpose if the Secretary has determined under paragraph (5)(A) that such countermeasure is appropriate for inclusion in the stockpile and if, as determined by the Secretary, such countermeasure provides improved safety or effectiveness, or for other reasons enhances preparedness to respond to threats of use of a biological, chemical, radiological, or nuclear agent. Such a determination by the Secretary is committed to agency discretion.

(E) Rule of construction

Recommendations and approvals under this paragraph apply solely to determinations that the special reserve fund under paragraph (10) will be made available for a procurement of a security countermeasure, and not to the substance of contracts for such procurement or other matters relating to awards of such contracts.

(7) Procurement

(A) In general

For purposes of a procurement under this subsection that is approved by the President under paragraph (6), the Homeland Security Secretary and the Secretary shall have responsibilities in accordance with subparagraphs (B) and (C).

(B) Interagency agreement; costs

(i) Interagency agreement

The Homeland Security Secretary shall enter into an agreement with the Secretary for procurement of a security countermeasure in accordance with the provisions of this paragraph. The special reserve fund under paragraph (10) shall be available for payments made by the Secretary to a vendor for such procurement.

(ii) Other costs

The actual costs to the Secretary under this section, other than the costs described in clause (i), shall be paid from the appropriation provided for under subsection (f)(1) of this section.

(C) Procurement

(i) In general

The Secretary shall be responsible for—

(I) arranging for procurement of a security countermeasure, including negotiating terms (including quantity, production schedule, and price) of, and entering into, contracts and cooperative agreements, and for carrying out such other activities as may reasonably be required, in accordance with the provisions of this subparagraph; and

(II) promulgating such regulations as the Secretary determines necessary to implement the provisions of this subsection.

(ii) Contract terms

A contract for procurements under this subsection shall (or, as specified below, may) include the following terms:

(I) Payment conditioned on delivery

The contract shall provide that no payment may be made until delivery has been made of a portion, acceptable to the Secretary, of the total number of units contracted for, except that, notwithstanding any other provision of law, the contract may provide that, if the Secretary determines (in the Secretary's discretion) that an advance payment is necessary to ensure success of a project, the Secretary may pay an amount, not to exceed 10 percent of the contract amount, in advance of delivery. The contract shall provide that such advance payment is required to be repaid if there is a failure to perform by the vendor under the contract. Nothing in this subclause may be construed as affecting rights of vendors under provisions of law or regulation (including the Federal Acquisition Regulation) relating to termination of contracts for the convenience of the Government.

(II) Discounted payment

The contract may provide for a discounted price per unit of a product that

is not licensed, cleared, or approved as described in paragraph (1)(B)(i)(III)(aa) at the time of delivery, and may provide for payment of an additional amount per unit if the product becomes so licensed, cleared, or approved before the expiration date of the contract (including an additional amount per unit of product delivered before the effective date of such licensing, clearance, or approval).

(III) Contract duration

The contract shall be for a period not to exceed five years, except that, in first awarding the contract, the Secretary may provide for a longer duration, not exceeding eight years, if the Secretary determines that complexities or other difficulties in performance under the contract justify such a period. The contract shall be renewable for additional periods, none of which shall exceed five years.

(IV) Storage by vendor

The contract may provide that the vendor will provide storage for stocks of a product delivered to the ownership of the Federal Government under the contract, for such period and under such terms and conditions as the Secretary may specify, and in such case amounts from the special reserve fund under paragraph (10) shall be available for costs of shipping, handling, storage, and related costs for such product.

(V) Product approval

The contract shall provide that the vendor seek approval, clearance, or licensing of the product from the Secretary; for a timetable for the development of data and other information to support such approval, clearance, or licensing; and that the Secretary may waive part or all of this contract term on request of the vendor or on the initiative of the Secretary.

(VI) Non-stockpile transfers of security countermeasures

The contract shall provide that the vendor will comply with all applicable export-related controls with respect to such countermeasure.

(iii) Availability of simplified acquisition procedures

(I) In general

If the Secretary determines that there is a pressing need for a procurement of a specific countermeasure, the amount of the procurement under this subsection shall be deemed to be below the threshold amount specified in section 403(11) of title 41, for purposes of application to such procurement, pursuant to section 252a(a) of title 41, of—

(aa) section 253(g)(1)(A) of title 41 and its implementing regulations; and

(bb) section 252a(b) of title 41 and its implementing regulations.

(II) Application of certain provisions

Notwithstanding subclause (I) and the provision of law and regulations referred to in such clause, each of the following provisions shall apply to procurements described in this clause to the same extent that such provisions would apply to such procurements in the absence of subclause (I):

(aa) Chapter 37 of title 40 (relating to contract work hours and safety standards).

(bb) Subsections (a) and (b) of section 57 of title 41.

(cc) Section 254d of title 41 (relating to the examination of contractor records).

(dd) Section 3131 of title 40 (relating to bonds of contractors of public buildings or works).

(ee) Subsection (a) of section 254 of title 41 (relating to contingent fees to middlemen).

(ff) Section 6962 of this title.

(gg) Section 1354 of title 31 (relating to the limitation on the use of appropriated funds for contracts with entities not meeting veterans employment reporting requirements).

(III) Internal controls to be established

The Secretary shall establish appropriate internal controls for procurements made under this clause, including requirements with respect to documentation of the justification for the use of the authority provided under this paragraph with respect to the procurement involved.

(IV) Authority to limit competition

In conducting a procurement under this subparagraph, the Secretary may not use the authority provided for under subclause (I) to conduct a procurement on a basis other than full and open competition unless the Secretary determines that the mission of the BioShield Program under the Project BioShield Act of 2004 would be seriously impaired without such a limitation.

(iv) Procedures other than full and open competition

(I) In general

In using the authority provided in section 253(c)(1) of title 41 to use procedures other than competitive procedures in the case of a procurement under this subsection, the phrase ''available from only one responsible source'' in such section 253(c)(1) shall be deemed to mean ''available from only one responsible source or only from a limited number of responsible sources''.

(II) Relation to other authorities

The authority under subclause (I) is in addition to any other authority to use procedures other than competitive procedures.

(III) Applicable government-wide regulations

The Secretary shall implement this clause in accordance with government-wide regulations implementing such section 253(c)(1) (including requirements that offers be solicited from as many potential sources as is practicable under the circumstances, that required notices be published, and that submitted offers be considered), as such regulations apply to procurements for which an agency has authority to use procedures other than competitive procedures when the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency.

(v) Premium provision in multiple award contracts

(I) In general

If, under this subsection, the Secretary enters into contracts with more than one vendor to procure a security countermeasure, such Secretary may, notwithstanding any other provision of law, include in each of such contracts a provision that—

(aa) identifies an increment of the total quantity of security countermeasure required, whether by percentage or by numbers of units; and

(bb) promises to pay one or more specified premiums based on the priority of such vendors' production and delivery of the increment identified under item (aa), in accordance with the terms and conditions of the contract.

(II) Determination of Government's requirement not reviewable

If the Secretary includes in each of a set of contracts a provision as described in subclause (I), such Secretary's determination of the total quantity of security countermeasure required, and any amendment of such determination, is committed to agency discretion.

(vi) Extension of closing date for receipt of proposals not reviewable

A decision by the Secretary to extend the closing date for receipt of proposals for a procurement under this subsection is committed to agency discretion.

(vii) Limiting competition to sources responding to request for information

In conducting a procurement under this subsection, the Secretary may exclude a source that has not responded to a request for information under section 253a(a)(1)(B) of title 41 if such request has given notice that the Secretary may so exclude such a source.

(8) Interagency cooperation

(A) In general

In carrying out activities under this section, the Homeland Security Secretary and the Secretary are authorized, subject to subparagraph (B), to enter into interagency agreements and other collaborative undertakings with other agencies of the United States Government.

(B) Limitation

An agreement or undertaking under this paragraph shall not authorize another agency to exercise the authorities provided by this section to the Homeland Security Secretary or to the Secretary.

(9) Restrictions on use of funds

Amounts in the special reserve fund under paragraph (10) shall not be used to pay—

(A) costs for the purchase of vaccines under procurement contracts entered into before July 21, 2004; or

(B) costs other than payments made by the Secretary to a vendor for a procurement of a security countermeasure under paragraph (7).

(10) Definitions

(A) Special reserve fund

For purposes of this subsection, the term ''special reserve fund'' has the meaning given such term in section 320[1] of title 6.

(B) Designated congressional committees

For purposes of this section, the term ''designated congressional committees'' means the following committees of the Congress:

(i) In the House of Representatives: the Committee on Energy and Commerce, the Committee on Appropriations, the Committee on Government Reform, and the Select Committee on Homeland Security (or any successor to the Select Committee).

(ii) In the Senate: the appropriate committees.

(d) Disclosures

No Federal agency shall disclose under section 552 of title 5 any information identifying the location at which materials in the stockpile under subsection (a) of this section are stored.

(e) Definition

For purposes of subsection (a) of this section, the term ''stockpile'' includes—

(1) a physical accumulation (at one or more locations) of the supplies described in subsection (a) of this section; or

(2) a contractual agreement between the Secretary and a vendor or vendors under which such vendor or vendors agree to provide to such Secretary supplies described in subsection (a) of this section.

(f) Authorization of appropriations

(1) Strategic National Stockpile

For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated $640,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006. Such authorization is in addition to amounts in the special

[1] See References in Text note below.

reserve fund referred to in subsection (c)(10)(A) of this section.

(2) Smallpox vaccine development

For the purpose of carrying out subsection (b) of this section, there are authorized to be appropriated $509,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.

(July 1, 1944, ch. 373, title III, § 319F–2, formerly Pub. L. 107–188, title I, § 121, June 12, 2002, 116 Stat. 611; Pub. L. 107–296, title XVII, § 1705(a), Nov. 25, 2002, 116 Stat. 2316; renumbered § 319F–2 of act July 1, 1944, and amended Pub. L. 108–276, § 3(a), July 21, 2004, 118 Stat. 842.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (c)(1)(B)(i)(III)(aa), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended. Chapter V of the Act is classified generally to subchapter V (§ 351 et seq.) of chapter 9 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Project BioShield Act of 2004, referred to in subsec. (c)(7)(C)(iii)(IV), is Pub. L. 108–276, July 21, 2004, 118 Stat. 835. For complete classification of this Act to the Code, see Short Title of 2004 Amendments note set out under section 201 of this title and Tables.

Section 320 of title 6, referred to in subsec. (c)(10)(A), was in the original section 510 of the Homeland Security Act of 2002 and was translated as meaning the section 510 of Pub. L. 107–296 as added by Pub. L. 108–276, which defines ''special reserve fund'', to reflect the probable intent of Congress. Another section 510 of Pub. L. 107–296, relating to urban and the high risk area communications capabilities, is classified to section 321 of Title 6, Domestic Security.

CODIFICATION

Section was formerly classified to section 300hh–12 of this title prior to renumbering by Pub. L. 108–276.

AMENDMENTS

2004—Pub. L. 108–276, § 3(a)(2), amended section generally. Prior to amendment, text related in subsec. (a) to Strategic National Stockpile, in subsec. (b) to smallpox vaccine development, in subsec. (c) to disclosures, in subsec. (d) to definition of ''stockpile'', and in subsec. (e) to authorization of appropriations.

2002—Subsec. (a)(1). Pub. L. 107–296, § 1705(a)(1), substituted ''The Secretary of Homeland Security'' for ''The Secretary of Health and Human Services'' and inserted ''the Secretary of Health and Human Services and'' after ''in coordination with'' and ''of Health and Human Services'' after ''as are determined by the Secretary''.

Subsecs. (a)(2), (b)(1). Pub. L. 107–296, § 1705(a)(2), inserted ''of Health and Human Services'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–296, title XVII, § 1705(b), Nov. 25, 2002, 116 Stat. 2316, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department [of Homeland Security].''

STOCKPILE FUNCTIONS TRANSFERRED

Pub. L. 108–276, § 3(c)(1),(2), July 21, 2004, 118 Stat. 853, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), there shall be transferred to the Secretary of Health and Human Services the functions, personnel, assets, unexpended balances, and liabilities of the Strategic National Stockpile, including the functions of the Secretary of Homeland Security relating thereto.

''(2) EXCEPTIONS.—

''(A) FUNCTIONS.—The transfer of functions pursuant to paragraph (1) shall not include such functions as are explicitly assigned to the Secretary of Homeland Security by this Act [see Short Title of 2004 Amendments note set out under section 201 of this title] (including the amendments made by this Act).

''(B) ASSETS AND UNEXPENDED BALANCES.—The transfer of assets and unexpended balances pursuant to paragraph (1) shall not include the funds appropriated under the heading 'BIODEFENSE COUNTERMEASURES' in the Department of Homeland Security Appropriations Act, 2004 (Public Law 108–90 [117 Stat. 1148]).''

POTASSIUM IODIDE

Pub. L. 107–188, title I, § 127, June 12, 2002, 116 Stat. 615, provided that:

''(a) IN GENERAL.—Through the national stockpile under section 121 [now section 319F–2 of act July 1, 1944, this section], the President, subject to subsections (b) and (c), shall make available to State and local governments potassium iodide tablets for stockpiling and for distribution as appropriate to public facilities, such as schools and hospitals, in quantities sufficient to provide adequate protection for the population within 20 miles of a nuclear power plant.

''(b) STATE AND LOCAL PLANS.—

''(1) IN GENERAL.—Subsection (a) applies with respect to a State or local government, subject to paragraph (2), if the government involved meets the following conditions:

''(A) Such government submits to the President a plan for the stockpiling of potassium iodide tablets, and for the distribution and utilization of potassium iodide tablets in the event of a nuclear incident.

''(B) The plan is accompanied by certifications by such government that the government has not already received sufficient quantities of potassium iodide tablets from the Federal Government.

''(2) LOCAL GOVERNMENTS.—Subsection (a) applies with respect to a local government only if, in addition to the conditions described in paragraph (1), the following conditions are met:

''(A) The State in which the locality involved is located—

''(i) does not have a plan described in paragraph (1)(A); or

''(ii) has a plan described in such paragraph, but the plan does not address populations at a distance greater than 10 miles from the nuclear power plant involved.

''(B) The local government has petitioned the State to modify the State plan to address such populations, not exceeding 20 miles from such plant, and 60 days have elapsed without the State modifying the State plan to address populations at the full distance sought by the local government through the petition.

''(C) The local government has submitted its local plan under paragraph (1)(A) to the State, and the State has approved the plan and certified that the plan is not inconsistent with the State emergency plan.

''(c) GUIDELINES.—Not later than one year after the date of the enactment of this Act [June 12, 2002], the President, in consultation with individuals representing appropriate Federal, State, and local agencies, shall establish guidelines for the stockpiling of potassium iodide tablets, and for the distribution and utilization of potassium iodide tablets in the event of a nuclear incident. Such tablets may not be made available under subsection (a) until such guidelines have been established.

''(d) INFORMATION.—The President shall carry out activities to inform State and local governments of the program under this section.

''(e) REPORTS.—

''(1) PRESIDENT.—Not later than six months after the date on which the guidelines under subsection (c)

are issued, the President shall submit to the Congress a report—

''(A) on whether potassium iodide tablets have been made available under subsection (a) or other Federal, State, or local programs, and the extent to which State and local governments have established stockpiles of such tablets; and

''(B) the measures taken by the President to implement this section.

''(2) NATIONAL ACADEMY OF SCIENCES.—

''(A) IN GENERAL.—The President shall request the National Academy of Sciences to enter into an agreement with the President under which the Academy conducts a study to determine what is the most effective and safe way to distribute and administer potassium iodide tablets on a mass scale. If the Academy declines to conduct the study, the President shall enter into an agreement with another appropriate public or nonprofit private entity to conduct the study.

''(B) REPORT.—The President shall ensure that, not later than six months after the date of the enactment of this Act [June 12, 2002], the study required in subparagraph (A) is completed and a report describing the findings made in the study is submitted to the Congress.

''(f) APPLICABILITY.—Subsections (a) and (d) cease to apply as requirements if the President determines that there is an alternative and more effective prophylaxis or preventive measures for adverse thyroid conditions that may result from the release of radionuclides from nuclear power plants.''

DESIGNATION AND AUTHORIZATION TO PERFORM FUNCTIONS UNDER SECTION 319F–2 OF THE PUBLIC HEALTH SERVICE ACT

Memorandum of President of the United States, Oct. 21, 2004, 69 F.R. 70349, provided:

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby direct you to perform the functions vested in the President under section 319F–2(c)(6) of the Public Health Service Act, 42 U.S.C. 247d–6b(c)(6).

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 247d–6c. Reports regarding authorities under this Act

(a) Secretary of Health and Human Services

(1) Annual reports on particular exercises of authority

(A) Relevant authorities

The Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall submit reports in accordance with subparagraph (B) regarding the exercise of authority under the following provisions of law:

(i) With respect to section 247d–6a of this title:

(I) Subsection (b)(1) (relating to increased simplified acquisition threshold).

(II) Subsection (b)(2) (relating to procedures other than full and open competition).

(III) Subsection (c) (relating to expedited peer review procedures).

(ii) With respect to section 247d–6b of this title:

(I) Subsection (c)(7)(C)(iii) (relating to simplified acquisition procedures).

(II) Subsection (c)(7)(C)(iv) (relating to procedures other than full and open competition).

(III) Subsection (c)(7)(C)(v) (relating to premium provision in multiple-award contracts).

(iii) With respect to section 360bbb–3 of title 21:

(I) Subsection (a)(1) (relating to emergency uses of certain drugs and devices).

(II) Subsection (b)(1) (relating to a declaration of an emergency).

(III) Subsection (e) (relating to conditions on authorization).

(B) Contents of reports

The Secretary shall annually submit to the designated congressional committees a report that summarizes—

(i) the particular actions that were taken under the authorities specified in subparagraph (A), including, as applicable, the identification of the threat agent, emergency, or the biomedical countermeasure with respect to which the authority was used;

(ii) the reasons underlying the decision to use such authorities, including, as applicable, the options that were considered and rejected with respect to the use of such authorities;

(iii) the number of, nature of, and other information concerning the persons and entities that received a grant, cooperative agreement, or contract pursuant to the use of such authorities, and the persons and entities that were considered and rejected for such a grant, cooperative agreement, or contract, except that the report need not disclose the identity of any such person or entity; and

(iv) whether, with respect to each procurement that is approved by the President under section 247d–6b(c)(6) of this title, a contract was entered into within one year after such approval by the President.

(2) Annual summaries regarding certain activity

The Secretary shall annually submit to the designated congressional committees a report that summarizes the activity undertaken pursuant to the following authorities under section 247d–6a of this title:

(A) Subsection (b)(3) (relating to increased micropurchase threshold).

(B) Subsection (d) (relating to authority for personal services contracts).

(C) Subsection (e) (relating to streamlined personnel authority).

With respect to subparagraph (B), the report shall include a provision specifying, for the one-year period for which the report is submitted, the number of persons who were paid amounts greater than $100,000 and the number of persons who were paid amounts between $50,000 and $100,000.

(3) Report on additional barriers to procurement of security countermeasures

Not later than one year after July 21, 2004, the Secretary, in consultation with the Secretary of Homeland Security, shall report to the designated congressional committees any potential barriers to the procurement of security countermeasures that have not been addressed by this Act.

(b) Government Accountability Office review

(1) In general

Four years after July 21, 2004, the Comptroller General of the United States shall initiate a study—

(A)(i) to review the Secretary of Health and Human Services' utilization of the authorities granted under this Act with respect to simplified acquisition procedures, procedures other than full and open competition, increased micropurchase thresholds, personal services contracts, streamlined personnel authority, and the purchase of security countermeasures under the special reserve fund; and

(ii) to make recommendations to improve the utilization or effectiveness of such authorities in the future;

(B)(i) to review and assess the adequacy of the internal controls instituted by such Secretary with respect to such authorities, where required by this Act; and

(ii) to make recommendations to improve the effectiveness of such controls;

(C)(i) to review such Secretary's utilization of the authority granted under this Act to authorize an emergency use of a biomedical countermeasure, including the means by which the Secretary determines whether and under what conditions any such authorizations should be granted and the benefits and adverse impacts, if any, resulting from the use of such authority; and

(ii) to make recommendations to improve the utilization or effectiveness of such authority and to enhance protection of the public health;

(D) to identify any purchases or procurements that would not have been made or would have been significantly delayed except for the authorities described in subparagraph (A)(i); and

(E)(i) to determine whether and to what extent activities undertaken pursuant to the biomedical countermeasure research and development authorities established in this Act have enhanced the development of biomedical countermeasures affecting national security; and

(ii) to make recommendations to improve the ability of the Secretary to carry out these activities in the future.

(2) Additional provisions regarding determination on development of biomedical countermeasures affecting national security

In the report under paragraph (1), the determination under subparagraph (E) of such paragraph shall include—

(A) the Comptroller General's assessment of the current availability of countermeasures to address threats identified by the Secretary of Homeland Security;

(B) the Comptroller General's assessment of the extent to which programs and activities under this Act will reduce any gap between the threat and the availability of countermeasures to an acceptable level of risk; and

(C)(i) the Comptroller General's assessment of threats to national security that are posed by technology that will enable, during the 10-year period beginning on July 21, 2004, the development of antibiotic resistant, mutated, or bioengineered strains of biological agents; and

(ii) recommendations on short-term and long-term governmental strategies for addressing such threats, including recommendations for Federal policies regarding research priorities, the development of countermeasures, and investments in technology.

(3) Report

A report providing the results of the study under paragraph (1) shall be submitted to the designated congressional committees not later than five years after July 21, 2004.

(c) Report regarding biocontainment facilities

Not later than 120 days after July 21, 2004, the Secretary of Homeland Security and the Secretary of Health and Human Services shall jointly report to the designated congressional committees whether there is a lack of adequate large-scale biocontainment facilities necessary for the testing of security countermeasures in accordance with Food and Drug Administration requirements.

(d) Designated congressional committees

For purposes of this section, the term ''designated congressional committees'' means the following committees of the Congress:

(1) In the House of Representatives: the Committee on Energy and Commerce, the Committee on Appropriations, the Committee on Government Reform, and the Select Committee on Homeland Security (or any successor to the Select Committee).

(2) In the Senate: the appropriate committees.

(Pub. L. 108–276, § 5, July 21, 2004, 118 Stat. 860.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(3) and (b)(1), (2)(B), is Pub. L. 108–276, July 21, 2004, 118 Stat. 835, known as the Project BioShield Act of 2004. For complete classification of this Act to the Code, see Short Title of 2004 Amendments note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Project BioShield Act of 2004, and not as part of the Public Health Service Act which comprises this chapter.

§ 247d–6d. Targeted liability protections for pandemic and epidemic products and security countermeasures

(a) Liability protections

(1) In general

Subject to the other provisions of this section, a covered person shall be immune from

suit and liability under Federal and State law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure if a declaration under subsection (b) of this section has been issued with respect to such countermeasure.

(2) Scope of claims for loss

(A) Loss

For purposes of this section, the term ''loss'' means any type of loss, including—

(i) death;

(ii) physical, mental, or emotional injury, illness, disability, or condition;

(iii) fear of physical, mental, or emotional injury, illness, disability, or condition, including any need for medical monitoring; and

(iv) loss of or damage to property, including business interruption loss.

Each of clauses (i) through (iv) applies without regard to the date of the occurrence, presentation, or discovery of the loss described in the clause.

(B) Scope

The immunity under paragraph (1) applies to any claim for loss that has a causal relationship with the administration to or use by an individual of a covered countermeasure, including a causal relationship with the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, or use of such countermeasure.

(3) Certain conditions

Subject to the other provisions of this section, immunity under paragraph (1) with respect to a covered countermeasure applies only if—

(A) the countermeasure was administered or used during the effective period of the declaration that was issued under subsection (b) of this section with respect to the countermeasure;

(B) the countermeasure was administered or used for the category or categories of diseases, health conditions, or threats to health specified in the declaration; and

(C) in addition, in the case of a covered person who is a program planner or qualified person with respect to the administration or use of the countermeasure, the countermeasure was administered to or used by an individual who—

(i) was in a population specified by the declaration; and

(ii) was at the time of administration physically present in a geographic area specified by the declaration or had a connection to such area specified in the declaration.

(4) Applicability of certain conditions

With respect to immunity under paragraph (1) and subject to the other provisions of this section:

(A) In the case of a covered person who is a manufacturer or distributor of the covered countermeasure involved, the immunity applies without regard to whether such countermeasure was administered to or used by an individual in accordance with the conditions described in paragraph (3)(C).

(B) In the case of a covered person who is a program planner or qualified person with respect to the administration or use of the covered countermeasure, the scope of immunity includes circumstances in which the countermeasure was administered to or used by an individual in circumstances in which the covered person reasonably could have believed that the countermeasure was administered or used in accordance with the conditions described in paragraph (3)(C).

(5) Effect of distribution method

The provisions of this section apply to a covered countermeasure regardless of whether such countermeasure is obtained by donation, commercial sale, or any other means of distribution, except to the extent that, under paragraph (2)(E) of subsection (b) of this section, the declaration under such subsection provides that subsection (a) of this section applies only to covered countermeasures obtained through a particular means of distribution.

(6) Rebuttable presumption

For purposes of paragraph (1), there shall be a rebuttable presumption that any administration or use, during the effective period of the emergency declaration by the Secretary under subsection (b) of this section, of a covered countermeasure shall have been for the category or categories of diseases, health conditions, or threats to health with respect to which such declaration was issued.

(b) Declaration by Secretary

(1) Authority to issue declaration

Subject to paragraph (2), if the Secretary makes a determination that a disease or other health condition or other threat to health constitutes a public health emergency, or that there is a credible risk that the disease, condition, or threat may in the future constitute such an emergency, the Secretary may make a declaration, through publication in the Federal Register, recommending, under conditions as the Secretary may specify, the manufacture, testing, development, distribution, administration, or use of one or more covered countermeasures, and stating that subsection (a) of this section is in effect with respect to the activities so recommended.

(2) Contents

In issuing a declaration under paragraph (1), the Secretary shall identify, for each covered countermeasure specified in the declaration—

(A) the category or categories of diseases, health conditions, or threats to health for which the Secretary recommends the administration or use of the countermeasure;

(B) the period or periods during which, including as modified by paragraph (3), subsection (a) of this section is in effect, which

period or periods may be designated by dates, or by milestones or other description of events, including factors specified in paragraph (6);

(C) the population or populations of individuals for which subsection (a) of this section is in effect with respect to the administration or use of the countermeasure (which may be a specification that such subsection applies without geographic limitation to all individuals);

(D) the geographic area or areas for which subsection (a) of this section is in effect with respect to the administration or use of the countermeasure (which may be a specification that such subsection applies without geographic limitation), including, with respect to individuals in the populations identified under subparagraph (C), a specification, as determined appropriate by the Secretary, of whether the declaration applies only to individuals physically present in such areas or whether in addition the declaration applies to individuals who have a connection to such areas, which connection is described in the declaration; and

(E) whether subsection (a) of this section is effective only to a particular means of distribution as provided in subsection (a)(5) of this section for obtaining the countermeasure, and if so, the particular means to which such subsection is effective.

(3) Effective period of declaration

(A) Flexibility of period

The Secretary may, in describing periods under paragraph (2)(B), have different periods for different covered persons to address different logistical, practical or other differences in responsibilities.

(B) Additional time to be specified

In each declaration under paragraph (1), the Secretary, after consulting, to the extent the Secretary deems appropriate, with the manufacturer of the covered countermeasure, shall also specify a date that is after the ending date specified under paragraph (2)(B) and that allows what the Secretary determines is—

(i) a reasonable period for the manufacturer to arrange for disposition of the covered countermeasure, including the return of such product to the manufacturer; and

(ii) a reasonable period for covered persons to take such other actions as may be appropriate to limit administration or use of the covered countermeasure.

(C) Additional period for certain strategic national stockpile countermeasures

With respect to a covered countermeasure that is in the stockpile under section 247d–6b of this title, if such countermeasure was the subject of a declaration under paragraph (1) at the time that it was obtained for the stockpile, the effective period of such declaration shall include a period when the countermeasure is administered or used pursuant to a distribution or release from the stockpile.

(4) Amendments to declaration

The Secretary may through publication in the Federal Register amend any portion of a declaration under paragraph (1). Such an amendment shall not retroactively limit the applicability of subsection (a) of this section with respect to the administration or use of the covered countermeasure involved.

(5) Certain disclosures

In publishing a declaration under paragraph (1) in the Federal Register, the Secretary is not required to disclose any matter described in section 552(b) of title 5.

(6) Factors to be considered

In deciding whether and under what circumstances or conditions to issue a declaration under paragraph (1) with respect to a covered countermeasure, the Secretary shall consider the desirability of encouraging the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of such countermeasure.

(7) Judicial review

No court of the United States, or of any State, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this subsection.

(8) Preemption of State law

During the effective period of a declaration under subsection (b) of this section, or at any time with respect to conduct undertaken in accordance with such declaration, no State or political subdivision of a State may establish, enforce, or continue in effect with respect to a covered countermeasure any provision of law or legal requirement that—

(A) is different from, or is in conflict with, any requirement applicable under this section; and

(B) relates to the design, development, clinical testing or investigation, formulation, manufacture, distribution, sale, donation, purchase, marketing, promotion, packaging, labeling, licensing, use, any other aspect of safety or efficacy, or the prescribing, dispensing, or administration by qualified persons of the covered countermeasure, or to any matter included in a requirement applicable to the covered countermeasure under this section or any other provision of this chapter, or under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(9) Report to Congress

Within 30 days after making a declaration under paragraph (1), the Secretary shall submit to the appropriate committees of the Congress a report that provides an explanation of the reasons for issuing the declaration and the reasons underlying the determinations of the Secretary with respect to paragraph (2). Within 30 days after making an amendment under paragraph (4), the Secretary shall submit to such committees a report that provides the

reasons underlying the determination of the Secretary to make the amendment.

(c) Definition of willful misconduct

(1) Definition

(A) In general

Except as the meaning of such term is further restricted pursuant to paragraph (2), the term ''willful misconduct'' shall, for purposes of subsection (d) of this section, denote an act or omission that is taken—

(i) intentionally to achieve a wrongful purpose;

(ii) knowingly without legal or factual justification; and

(iii) in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

(B) Rule of construction

The criterion stated in subparagraph (A) shall be construed as establishing a standard for liability that is more stringent than a standard of negligence in any form or recklessness.

(2) Authority to promulgate regulatory definition

(A) In general

The Secretary, in consultation with the Attorney General, shall promulgate regulations, which may be promulgated through interim final rules, that further restrict the scope of actions or omissions by a covered person that may qualify as ''willful misconduct'' for purposes of subsection (d) of this section.

(B) Factors to be considered

In promulgating the regulations under this paragraph, the Secretary, in consultation with the Attorney General, shall consider the need to define the scope of permissible civil actions under subsection (d) of this section in a way that will not adversely affect the public health.

(C) Temporal scope of regulations

The regulations under this paragraph may specify the temporal effect that they shall be given for purposes of subsection (d) of this section.

(D) Initial rulemaking

Within 180 days after December 30, 2005, the Secretary, in consultation with the Attorney General, shall commence and complete an initial rulemaking process under this paragraph.

(3) Proof of willful misconduct

In an action under subsection (d) of this section, the plaintiff shall have the burden of proving by clear and convincing evidence willful misconduct by each covered person sued and that such willful misconduct caused death or serious physical injury.

(4) Defense for acts or omissions taken pursuant to Secretary's declaration

Notwithstanding any other provision of law, a program planner or qualified person shall not have engaged in ''willful misconduct'' as a matter of law where such program planner or qualified person acted consistent with applicable directions, guidelines, or recommendations by the Secretary regarding the administration or use of a covered countermeasure that is specified in the declaration under subsection (b) of this section, provided either the Secretary, or a State or local health authority, was provided with notice of information regarding serious physical injury or death from the administration or use of a covered countermeasure that is material to the plaintiff's alleged loss within 7 days of the actual discovery of such information by such program planner or qualified person.

(5) Exclusion for regulated activity of manufacturer or distributor

(A) In general

If an act or omission by a manufacturer or distributor with respect to a covered countermeasure, which act or omission is alleged under subsection (e)(3)(A) of this section to constitute willful misconduct, is subject to regulation by this chapter or by the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], such act or omission shall not constitute ''willful misconduct'' for purposes of subsection (d) of this section if—

(i) neither the Secretary nor the Attorney General has initiated an enforcement action with respect to such act or omission; or

(ii) such an enforcement action has been initiated and the action has been terminated or finally resolved without a covered remedy.

Any action or proceeding under subsection (d) of this section shall be stayed during the pendency of such an enforcement action.

(B) Definitions

For purposes of this paragraph, the following terms have the following meanings:

(i) Enforcement action

The term ''enforcement action'' means a criminal prosecution, an action seeking an injunction, a seizure action, a civil monetary proceeding based on willful misconduct, a mandatory recall of a product because voluntary recall was refused, a proceeding to compel repair or replacement of a product, a termination of an exemption under section 505(i) or 520(g) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(i), 360j(g)], a debarment proceeding, an investigator disqualification proceeding where an investigator is an employee or agent of the manufacturer, a revocation, based on willful misconduct, of an authorization under section 564 of such Act [21 U.S.C. 360bbb–3], or a suspension or withdrawal, based on willful misconduct, of an approval or clearance under chapter V of such Act [21 U.S.C. 351 et seq.] or of a licensure under section 262 of this title.

(ii) Covered remedy

The term ''covered remedy'' means an outcome—

(I) that is a criminal conviction, an injunction, or a condemnation, a civil monetary payment, a product recall, a repair or replacement of a product, a termination of an exemption under section 505(i) or 520(g) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(i), 360j(g)], a debarment, an investigator disqualification, a revocation of an authorization under section 564 of such Act [21 U.S.C. 360bbb–3], or a suspension or withdrawal of an approval or clearance under chapter 5[1] of such Act or of a licensure under section 262 of this title; and

(II) that results from a final determination by a court or from a final agency action.

(iii) Final

The terms ''final'' and ''finally''—

(I) with respect to a court determination, or to a final resolution of an enforcement action that is a court determination, mean a judgment from which an appeal of right cannot be taken or a voluntary or stipulated dismissal; and

(II) with respect to an agency action, or to a final resolution of an enforcement action that is an agency action, mean an order that is not subject to further review within the agency and that has not been reversed, vacated, enjoined, or otherwise nullified by a final court determination or a voluntary or stipulated dismissal.

(C) Rules of construction

(i) In general

Nothing in this paragraph shall be construed—

(I) to affect the interpretation of any provision of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], of this chapter, or of any other applicable statute or regulation; or

(II) to impair, delay, alter, or affect the authority, including the enforcement discretion, of the United States, of the Secretary, of the Attorney General, or of any other official with respect to any administrative or court proceeding under this chapter, under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], under title 18, or under any other applicable statute or regulation.

(ii) Mandatory recalls

A mandatory recall called for in the declaration is not a Food and Drug Administration enforcement action.

(d) Exception to immunity of covered persons

(1) In general

Subject to subsection (f) of this section, the sole exception to the immunity from suit and liability of covered persons set forth in subsection (a) of this section shall be for an exclusive Federal cause of action against a covered person for death or serious physical injury proximately caused by willful misconduct, as defined pursuant to subsection (c) of this section, by such covered person. For purposes of section 2679(b)(2)(B) of title 28, such a cause of action is not an action brought for violation of a statute of the United States under which an action against an individual is otherwise authorized.

(2) Persons who can sue

An action under this subsection may be brought for wrongful death or serious physical injury by any person who suffers such injury or by any representative of such a person.

(e) Procedures for suit

(1) Exclusive Federal jurisdiction

Any action under subsection (d) of this section shall be filed and maintained only in the United States District Court for the District of Columbia.

(2) Governing law

The substantive law for decision in an action under subsection (d) of this section shall be derived from the law, including choice of law principles, of the State in which the alleged willful misconduct occurred, unless such law is inconsistent with or preempted by Federal law, including provisions of this section.

(3) Pleading with particularity

In an action under subsection (d) of this section, the complaint shall plead with particularity each element of the plaintiff's claim, including—

(A) each act or omission, by each covered person sued, that is alleged to constitute willful misconduct relating to the covered countermeasure administered to or used by the person on whose behalf the complaint was filed;

(B) facts supporting the allegation that such alleged willful misconduct proximately caused the injury claimed; and

(C) facts supporting the allegation that the person on whose behalf the complaint was filed suffered death or serious physical injury.

(4) Verification, certification, and medical records

(A) In general

In an action under subsection (d) of this section, the plaintiff shall verify the complaint in the manner stated in subparagraph (B) and shall file with the complaint the materials described in subparagraph (C). A complaint that does not substantially comply with subparagraphs (B) and (C) shall not be accepted for filing and shall not stop the running of the statute of limitations.

(B) Verification requirement

(i) In general

The complaint shall include a verification, made by affidavit of the plaintiff under oath, stating that the pleading is true to the knowledge of the deponent, except as to matters specifically identified as being alleged on information and belief, and that as to those matters the plaintiff believes it to be true.

[1] So in original. Probably should be chapter ''V''.

(ii) Identification of matters alleged upon information and belief

Any matter that is not specifically identified as being alleged upon the information and belief of the plaintiff, shall be regarded for all purposes, including a criminal prosecution, as having been made upon the knowledge of the plaintiff.

(C) Materials required

In an action under subsection (d) of this section, the plaintiff shall file with the complaint—

(i) an affidavit, by a physician who did not treat the person on whose behalf the complaint was filed, certifying, and explaining the basis for such physician's belief, that such person suffered the serious physical injury or death alleged in the complaint and that such injury or death was proximately caused by the administration or use of a covered countermeasure; and

(ii) certified medical records documenting such injury or death and such proximate causal connection.

(5) Three-judge court

Any action under subsection (d) of this section shall be assigned initially to a panel of three judges. Such panel shall have jurisdiction over such action for purposes of considering motions to dismiss, motions for summary judgment, and matters related thereto. If such panel has denied such motions, or if the time for filing such motions has expired, such panel shall refer the action to the chief judge for assignment for further proceedings, including any trial. Section 1253 of title 28 and paragraph (3) of subsection (b) of section 2284 of title 28 shall not apply to actions under subsection (d) of this section.

(6) Civil discovery

(A) Timing

In an action under subsection (d) of this section, no discovery shall be allowed—

(i) before each covered person sued has had a reasonable opportunity to file a motion to dismiss;

(ii) in the event such a motion is filed, before the court has ruled on such motion; and

(iii) in the event a covered person files an interlocutory appeal from the denial of such a motion, before the court of appeals has ruled on such appeal.

(B) Standard

Notwithstanding any other provision of law, the court in an action under subsection (d) of this section shall permit discovery only with respect to matters directly related to material issues contested in such action, and the court shall compel a response to a discovery request (including a request for admission, an interrogatory, a request for production of documents, or any other form of discovery request) under Rule 37, Federal Rules of Civil Procedure, only if the court finds that the requesting party needs the information sought to prove or defend as to a material issue contested in such action and that the likely benefits of a response to such request equal or exceed the burden or cost for the responding party of providing such response.

(7) Reduction in award of damages for collateral source benefits

(A) In general

In an action under subsection (d) of this section, the amount of an award of damages that would otherwise be made to a plaintiff shall be reduced by the amount of collateral source benefits to such plaintiff.

(B) Provider of collateral source benefits not to have lien or subrogation

No provider of collateral source benefits shall recover any amount against the plaintiff or receive any lien or credit against the plaintiff's recovery or be equitably or legally subrogated to the right of the plaintiff in an action under subsection (d) of this section.

(C) Collateral source benefit defined

For purposes of this paragraph, the term ''collateral source benefit'' means any amount paid or to be paid in the future to or on behalf of the plaintiff, or any service, product, or other benefit provided or to be provided in the future to or on behalf of the plaintiff, as a result of the injury or wrongful death, pursuant to—

(i) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(ii) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(iii) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; or

(iv) any other publicly or privately funded program.

(8) Noneconomic damages

In an action under subsection (d) of this section, any noneconomic damages may be awarded only in an amount directly proportional to the percentage of responsibility of a defendant for the harm to the plaintiff. For purposes of this paragraph, the term ''noneconomic damages'' means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(9) Rule 11 sanctions

Whenever a district court of the United States determines that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure in an action under subsection (d) of this section, the court shall impose upon the attorney, law firm, or parties that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which may in-

clude an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorney's fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

(10) Interlocutory appeal

The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction of an interlocutory appeal by a covered person taken within 30 days of an order denying a motion to dismiss or a motion for summary judgment based on an assertion of the immunity from suit conferred by subsection (a) of this section or based on an assertion of the exclusion under subsection (c)(5) of this section.

(f) Actions by and against the United States

Nothing in this section shall be construed to abrogate or limit any right, remedy, or authority that the United States or any agency thereof may possess under any other provision of law or to waive sovereign immunity or to abrogate or limit any defense or protection available to the United States or its agencies, instrumentalities, officers, or employees under any other law, including any provision of chapter 171 of title 28 (relating to tort claims procedure).

(g) Severability

If any provision of this section, or the application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this section and the application of such remainder to any person or circumstance shall not be affected thereby.

(h) Rule of construction concerning National Vaccine Injury Compensation Program

Nothing in this section, or any amendment made by the Public Readiness and Emergency Preparedness Act, shall be construed to affect the National Vaccine Injury Compensation Program under subchapter XIX of this chapter.

(i) Definitions

In this section:

(1) Covered countermeasure

The term ''covered countermeasure'' means—

(A) a qualified pandemic or epidemic product (as defined in paragraph (7));

(B) a security countermeasure (as defined in section 247d–6b(c)(1)(B) of this title); or

(C) a drug (as such term is defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)), biological product (as such term is defined by section 262(i) of this title), or device (as such term is defined by section 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(h)) that is authorized for emergency use in accordance with section 564 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360bbb–3].

(2) Covered person

The term ''covered person'', when used with respect to the administration or use of a covered countermeasure, means—

(A) the United States; or

(B) a person or entity that is—

(i) a manufacturer of such countermeasure;

(ii) a distributor of such countermeasure;

(iii) a program planner of such countermeasure;

(iv) a qualified person who prescribed, administered, or dispensed such countermeasure; or

(v) an official, agent, or employee of a person or entity described in clause (i), (ii), (iii), or (iv).

(3) Distributor

The term ''distributor'' means a person or entity engaged in the distribution of drugs, biologics, or devices, including but not limited to manufacturers; repackers; common carriers; contract carriers; air carriers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies.

(4) Manufacturer

The term ''manufacturer'' includes—

(A) a contractor or subcontractor of a manufacturer;

(B) a supplier or licenser of any product, intellectual property, service, research tool, or component or other article used in the design, development, clinical testing, investigation, or manufacturing of a covered countermeasure; and

(C) any or all of the parents, subsidiaries, affiliates, successors, and assigns of a manufacturer.

(5) Person

The term ''person'' includes an individual, partnership, corporation, association, entity, or public or private corporation, including a Federal, State, or local government agency or department.

(6) Program planner

The term ''program planner'' means a State or local government, including an Indian tribe, a person employed by the State or local government, or other person who supervised or administered a program with respect to the administration, dispensing, distribution, provision, or use of a security countermeasure or a qualified pandemic or epidemic product, including a person who has established requirements, provided policy guidance, or supplied technical or scientific advice or assistance or provides a facility to administer or use a covered countermeasure in accordance with a declaration under subsection (b) of this section.

(7) Qualified pandemic or epidemic product

The term ''qualified pandemic or epidemic product'' means a drug (as such term is defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)),[2]

[2] So in original. A third closing parenthesis probably should appear.

biological product (as such term is defined by section 262(i) of this title), or device (as such term is defined by section 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(h))[2] that is—

(A)(i) a product manufactured, used, designed, developed, modified, licensed, or procured—

(I) to diagnose, mitigate, prevent, treat, or cure a pandemic or epidemic; or

(II) to limit the harm such pandemic or epidemic might otherwise cause; or

(ii) a product manufactured, used, designed, developed, modified, licensed, or procured to diagnose, mitigate, prevent, treat, or cure a serious or life-threatening disease or condition caused by a product described in clause (i); and

(B)(i) approved or cleared under chapter V of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 351 et seq.] or licensed under section 262 of this title;

(ii) the object of research for possible use as described by subparagraph (A) and is the subject of an exemption under section 505(i) or 520(g) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(i), 360j(g)]; or

(iii) authorized for emergency use in accordance with section 564 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360bbb–3].

(8) Qualified person

The term ''qualified person'', when used with respect to the administration or use of a covered countermeasure, means—

(A) a licensed health professional or other individual who is authorized to prescribe, administer, or dispense such countermeasures under the law of the State in which the countermeasure was prescribed, administered, or dispensed; or

(B) a person within a category of persons so identified in a declaration by the Secretary under subsection (b) of this section.

(9) Security countermeasure

The term ''security countermeasure'' has the meaning given such term in section 247d–6b(c)(1)(B) of this title.

(10) Serious physical injury

The term ''serious physical injury'' means an injury that—

(A) is life threatening;

(B) results in permanent impairment of a body function or permanent damage to a body structure; or

(C) necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

(July 1, 1944, ch. 373, title III, § 319F–3, as added Pub. L. 109–148, div. C, § 2, Dec. 30, 2005, 119 Stat. 2818.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (b)(8)(B), (c)(5)(A), (B)(i), (ii)(I), (C)(i), and (i)(7)(B)(i), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. Chapter V of the Act is classified generally to subchapter V (§ 351 et seq.) of chapter 9 of Title 21. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (e)(6)(B), (9), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Public Readiness and Emergency Preparedness Act, referred to in subsec. (h), is div. C of Pub. L. 109–148, Dec. 30, 2005, 119 Stat. 2818, which enacted this section, section 247d–6e of this title, and provisions set out as a note under section 201 of this title. For complete classification of this Act to the Code, see Short Title of 2005 Amendment note set out under section 201 of this title and Tables.

§ 247d–6e. Covered countermeasure process

(a) Establishment of Fund

Upon the issuance by the Secretary of a declaration under section 247d–6d(b) of this title, there is hereby established in the Treasury an emergency fund designated as the ''Covered Countermeasure Process Fund'' for purposes of providing timely, uniform, and adequate compensation to eligible individuals for covered injuries directly caused by the administration or use of a covered countermeasure pursuant to such declaration, which Fund shall consist of such amounts designated as emergency appropriations under section 402 of H. Con. Res. 95 of the 109th Congress, this emergency designation shall remain in effect through October 1, 2006.

(b) Payment of compensation

(1) In general

If the Secretary issues a declaration under 247d–6d(b) of this title, the Secretary shall, after amounts have by law been provided for the Fund under subsection (a) of this section, provide compensation to an eligible individual for a covered injury directly caused by the administration or use of a covered countermeasure pursuant to such declaration.

(2) Elements of compensation

The compensation that shall be provided pursuant to paragraph (1) shall have the same elements, and be in the same amount, as is prescribed by sections 239c, 239d, and 239e of this title in the case of certain individuals injured as a result of administration of certain countermeasures against smallpox, except that section 239e(a)(2)(B) of this title shall not apply.

(3) Rule of construction

Neither reasonable and necessary medical benefits nor lifetime total benefits for lost employment income due to permanent and total disability shall be limited by section 239e of this title.

(4) Determination of eligibility and compensation

Except as provided in this section, the procedures for determining, and for reviewing a determination of, whether an individual is an eligible individual, whether such individual has sustained a covered injury, whether compensation may be available under this section, and the amount of such compensation shall be those stated in section 239a of this title (other than in subsection (d)(2) of such section), in

regulations issued pursuant to that section, and in such additional or alternate regulations as the Secretary may promulgate for purposes of this section. In making determinations under this section, other than those described in paragraph (5)(A) as to the direct causation of a covered injury, the Secretary may only make such determination based on compelling, reliable, valid, medical and scientific evidence.

(5) Covered countermeasure injury table

(A) In general

The Secretary shall by regulation establish a table identifying covered injuries that shall be presumed to be directly caused by the administration or use of a covered countermeasure and the time period in which the first symptom or manifestation of onset of each such adverse effect must manifest in order for such presumption to apply. The Secretary may only identify such covered injuries, for purpose of inclusion on the table, where the Secretary determines, based on compelling, reliable, valid, medical and scientific evidence that administration or use of the covered countermeasure directly caused such covered injury.

(B) Amendments

The provisions of section 239b of this title (other than a provision of subsection (a)(2) of such section that relates to accidental vaccinia inoculation) shall apply to the table established under this section.

(C) Judicial review

No court of the United States, or of any State, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this paragraph.

(6) Meanings of terms

In applying sections 239a, 239b, 239c, 239d, and 239e of this title for purposes of this section—

(A) the terms ''vaccine'' and ''smallpox vaccine'' shall be deemed to mean a covered countermeasure;

(B) the terms ''smallpox vaccine injury table'' and ''table established under section 239b of this title'' shall be deemed to refer to the table established under paragraph (4); and

(C) other terms used in those sections shall have the meanings given to such terms by this section.

(c) Voluntary program

The Secretary shall ensure that a State, local, or Department of Health and Human Services plan to administer or use a covered countermeasure is consistent with any declaration under 247d–6d of this title and any applicable guidelines of the Centers for Disease Control and Prevention and that potential participants are educated with respect to contraindications, the voluntary nature of the program, and the availability of potential benefits and compensation under this part.

(d) Exhaustion; exclusivity; election

(1) Exhaustion

Subject to paragraph (5), a covered individual may not bring a civil action under section 247d–6d(d) of this title against a covered person (as such term is defined in section 247d–6d(i)(2) of this title) unless such individual has exhausted such remedies as are available under subsection (a) of this section, except that if amounts have not by law been provided for the Fund under subsection (a) of this section, or if the Secretary fails to make a final determination on a request for benefits or compensation filed in accordance with the requirements of this section within 240 days after such request was filed, the individual may seek any remedy that may be available under section 247d–6d(d) of this title.

(2) Tolling of statute of limitations

The time limit for filing a civil action under section 247d–6d(d) of this title for an injury or death shall be tolled during the pendency of a claim for compensation under subsection (a) of this section.

(3) Rule of construction

This section shall not be construed as superseding or otherwise affecting the application of a requirement, under chapter 171 of title 28, to exhaust administrative remedies.

(4) Exclusivity

The remedy provided by subsection (a) of this section shall be exclusive of any other civil action or proceeding for any claim or suit this section encompasses, except for a proceeding under section 247d–6d of this title.

(5) Election

If under subsection (a) of this section the Secretary determines that a covered individual qualifies for compensation, the individual has an election to accept the compensation or to bring an action under section 247d–6d(d) of this title. If such individual elects to accept the compensation, the individual may not bring such an action.

(e) Definitions

For purposes of this section, the following terms shall have the following meanings:

(1) Covered countermeasure

The term ''covered countermeasure'' has the meaning given such term in section 247d–6d of this title.

(2) Covered individual

The term ''covered individual'', with respect to administration or use of a covered countermeasure pursuant to a declaration, means an individual—

(A) who is in a population specified in such declaration, and with respect to whom the administration or use of the covered countermeasure satisfies the other specifications of such declaration; or

(B) who uses the covered countermeasure, or to whom the covered countermeasure is administered, in a good faith belief that the individual is in the category described by subparagraph (A).

(3) Covered injury

The term ''covered injury'' means serious physical injury or death.

(4) Declaration

The term ''declaration'' means a declaration under section 247d–6d(b) of this title.

(5) Eligible individual

The term ''eligible individual'' means an individual who is determined, in accordance with subsection (b) of this section, to be a covered individual who sustains a covered injury.

(July 1, 1944, ch. 373, title III, § 319F–4, as added Pub. L. 109–148, div. C, § 3, Dec. 30, 2005, 119 Stat. 2829.)

REFERENCES IN TEXT

H. Con. Res. 95 of the 109th Congress, referred to in subsec. (a), is H. Con. Res. 95, Apr. 28, 2005, 119 Stat. 3633, which is not classified to the Code.

§ 247d–7. Demonstration program to enhance bioterrorism training, coordination, and readiness

(a) In general

The Secretary shall make grants to not more than three eligible entities to carry out demonstration programs to improve the detection of pathogens likely to be used in a bioterrorist attack, the development of plans and measures to respond to bioterrorist attacks, and the training of personnel involved with the various responsibilities and capabilities needed to respond to acts of bioterrorism upon the civilian population. Such awards shall be made on a competitive basis and pursuant to scientific and technical review.

(b) Eligible entities

Eligible entities for grants under subsection (a) of this section are States, political subdivisions of States, and public or private non-profit organizations.

(c) Specific criteria

In making grants under subsection (a) of this section, the Secretary shall take into account the following factors:

(1) Whether the eligible entity involved is proximate to, and collaborates with, a major research university with expertise in scientific training, identification of biological agents, medicine, and life sciences.

(2) Whether the entity is proximate to, and collaborates with, a laboratory that has expertise in the identification of biological agents.

(3) Whether the entity demonstrates, in the application for the program, support and participation of State and local governments and research institutions in the conduct of the program.

(4) Whether the entity is proximate to, and collaborates with, or is, an academic medical center that has the capacity to serve an uninsured or underserved population, and is equipped to educate medical personnel.

(5) Such other factors as the Secretary determines to be appropriate.

(d) Duration of award

The period during which payments are made under a grant under subsection (a) of this section may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments.

(e) Supplement not supplant

Grants under subsection (a) of this section shall be used to supplement, and not supplant, other Federal, State, or local public funds provided for the activities described in such subsection.

(f) Government Accountability Office report

Not later than 180 days after the conclusion of the demonstration programs carried out under subsection (a) of this section, the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate, and the Committee on Commerce and the Committee on Appropriations of the House of Representatives, a report that describes the ability of grantees under such subsection to detect pathogens likely to be used in a bioterrorist attack, develop plans and measures for dealing with such threats, and train personnel involved with the various responsibilities and capabilities needed to deal with bioterrorist threats.

(g) Authorization of appropriations

There is authorized to be appropriated to carry out this section $6,000,000 for fiscal year 2001, and such sums as may be necessary through fiscal year 2006.

(July 1, 1944, ch. 373, title III, § 319G, as added Pub. L. 106–505, title I, § 102, Nov. 13, 2000, 114 Stat. 2323; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in heading.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 247d–7a. Grants regarding training and education of certain health professionals

(a) In general

The Secretary may make awards of grants and cooperative agreements to appropriate public and nonprofit private health or educational entities, including health professions schools and programs as defined in section 295p of this title, for the purpose of providing low-interest loans, partial scholarships, partial fellowships, revolving loan funds, or other cost-sharing forms of assistance for the education and training of individuals in any category of health professions for which there is a shortage that the Secretary determines should be alleviated in order to prepare for or respond effectively to bioterrorism and other public health emergencies.

(b) Authority regarding non-Federal contributions

The Secretary may require as a condition of an award under subsection (a) of this section that a grantee under such subsection provide non-Federal contributions toward the purpose described in such subsection.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2002 through 2006.

(July 1, 1944, ch. 373, title III, § 319H, as added Pub. L. 107–188, title I, § 106, June 12, 2002, 116 Stat. 607.)

§ 247d–7b. Emergency system for advance registration of health professions volunteers

(a) In general

The Secretary shall, directly or through an award of a grant, contract, or cooperative agreement, establish and maintain a system for the advance registration of health professionals for the purpose of verifying the credentials, licenses, accreditations, and hospital privileges of such professionals when, during public health emergencies, the professionals volunteer to provide health services (referred to in this section as the ''verification system''). In carrying out the preceding sentence, the Secretary shall provide for an electronic database for the verification system.

(b) Certain criteria

The Secretary shall establish provisions regarding the promptness and efficiency of the system in collecting, storing, updating, and disseminating information on the credentials, licenses, accreditations, and hospital privileges of volunteers described in subsection (a) of this section.

(c) Other assistance

The Secretary may make grants and provide technical assistance to States and other public or nonprofit private entities for activities relating to the verification system developed under subsection (a) of this section.

(d) Coordination among States

The Secretary may encourage each State to provide legal authority during a public health emergency for health professionals authorized in another State to provide certain health services to provide such health services in the State.

(e) Rule of construction

This section may not be construed as authorizing the Secretary to issue requirements regarding the provision by the States of credentials, licenses, accreditations, or hospital privileges.

(f) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $2,000,000 for fiscal year 2002, and such sums as may be necessary for each of the fiscal years 2003 through 2006.

(July 1, 1944, ch. 373, title III, § 319I, as added Pub. L. 107–188, title I, § 107, June 12, 2002, 116 Stat. 608.)

§ 247d–7c. Supplies and services in lieu of award funds

(a) In general

Upon the request of a recipient of an award under any of sections 247d through 247d–7b of this title or section 247d–7d of this title, the Secretary may, subject to subsection (b) of this section, provide supplies, equipment, and services for the purpose of aiding the recipient in carrying out the purposes for which the award is made and, for such purposes, may detail to the recipient any officer or employee of the Department of Health and Human Services.

(b) Corresponding reduction in payments

With respect to a request described in subsection (a) of this section, the Secretary shall reduce the amount of payments under the award involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title III, § 319J, as added Pub. L. 107–188, title I, § 110, June 12, 2002, 116 Stat. 611.)

§ 247d–7d. Security for countermeasure development and production

(a) In general

The Secretary, in consultation with the Attorney General and the Secretary of Defense, may provide technical or other assistance to provide security to persons or facilities that conduct development, production, distribution, or storage of priority countermeasures (as defined in section 247d–6(h)(4) of this title).

(b) Guidelines

The Secretary may develop guidelines to enable entities eligible to receive assistance under subsection (a) of this section to secure their facilities against potential terrorist attack.

(July 1, 1944, ch. 373, title III, § 319K, as added Pub. L. 107–188, title I, § 124, June 12, 2002, 116 Stat. 614.)

§ 247d–8. Coordinated program to improve pediatric oral health

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall establish a program to fund innovative oral health activities that improve the oral health of children under 6 years of age who are eligible for services provided under a Federal health program, to increase the utilization of dental services by such children, and to decrease the incidence of early childhood and baby bottle tooth decay.

(b) Grants

The Secretary shall award grants to or enter into contracts with public or private nonprofit schools of dentistry or accredited dental training institutions or programs, community dental programs, and programs operated by the Indian Health Service (including federally recognized

Indian tribes that receive medical services from the Indian Health Service, urban Indian health programs funded under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.], and tribes that contract with the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.]) to enable such schools, institutions, and programs to develop programs of oral health promotion, to increase training of oral health services providers in accordance with State practice laws, or to increase the utilization of dental services by eligible children.

(c) Distribution

In awarding grants under this section, the Secretary shall, to the extent practicable, ensure an equitable national geographic distribution of the grants, including areas of the United States where the incidence of early childhood caries is highest.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section $10,000,000 for each[1] the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 320A, as added Pub. L. 106–310, div. A, title XVI, § 1603, Oct. 17, 2000, 114 Stat. 1151.)

REFERENCES IN TEXT

The Indian Health Care Improvement Act, referred to in subsec. (b), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (b), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

CODIFICATION

Section 1603 of Pub. L. 106–310, which directed that section 320A (this section) be added at the end of part B of the Public Health Service Act, was executed by adding section 320A at the end of part B of title III of the Public Health Service Act, to reflect the probable intent of Congress, notwithstanding that section 320 of the Public Health Service Act (section 247e of this title) appears in part C of title III of the Public Health Service Act.

PART C—HOSPITALS, MEDICAL EXAMINATIONS, AND MEDICAL CARE

AMENDMENTS

1978—Pub. L. 95–626, title I, § 113(a)(1), Nov. 10, 1978, 92 Stat. 3562, struck out heading ''Subpart I—General Provisions''.

1976—Pub. L. 94–484, title IV, § 407(a), Oct. 12, 1976, 90 Stat. 2268, added heading ''Subpart I—General Provisions''.

§ 247e. National Hansen's Disease Programs Center

(a) Care and treatment

(1) At or through the National Hansen's Disease Programs Center (located in the State of Louisiana), the Secretary shall without charge provide short-term care and treatment, including outpatient care, for Hansen's disease and related complications to any person determined by the Secretary to be in need of such care and treatment. The Secretary may not at or through such Center provide long-term care for any such disease or complication.

(2) The Center referred to in paragraph (1) shall conduct training in the diagnosis and management of Hansen's disease and related complications, and shall conduct and promote the coordination of research (including clinical research), investigations, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of Hansen's disease and other mycobacterial diseases and complications related to such diseases.

(3) Paragraph (1) is subject to section 211 of the Department of Health and Human Services Appropriations Act, 1998.

(b) Additional sites authorized

In addition to the Center referred to in subsection (a) of this section, the Secretary may establish sites regarding persons with Hansen's disease. Each such site shall provide for the outpatient care and treatment for Hansen's disease and related complications to any person determined by the Secretary to be in need of such care and treatment.

(c) Agency designated by Secretary

The Secretary shall carry out subsections (a) and (b) of this section acting through an agency of the Service. For purposes of the preceding sentence, the agency designated by the Secretary shall carry out both activities relating to the provision of health services and activities relating to the conduct of research.

(d) Payments to Board of Health of Hawaii

The Secretary shall make payments to the Board of Health of the State of Hawaii for the care and treatment (including outpatient care) in its facilities of persons suffering from Hansen's disease at a rate determined by the Secretary. The rate shall be approximately equal to the operating cost per patient of such facilities, except that the rate may not exceed the comparable costs per patient with Hansen's disease for care and treatment provided by the Center referred to in subsection (a) of this section. Payments under this subsection are subject to the availability of appropriations for such purpose.

(July 1, 1944, ch. 373, title III, § 320, formerly § 331, 58 Stat. 698; June 25, 1948, ch. 654, § 4, 62 Stat. 1018; June 25, 1952, ch. 460, 66 Stat. 157; Pub. L. 86–624, § 29(b), July 12, 1960, 74 Stat. 419; renumbered § 339, Pub. L. 94–484, title IV, § 407(b)(2), Oct. 12, 1976, 90 Stat. 2268; renumbered § 320, and amended Pub. L. 95–626, title I, § 105(a), Nov. 10, 1978, 92 Stat. 3560; Pub. L. 96–32, § 7(b), July 10, 1979, 93 Stat. 84; Pub. L. 99–117, § 2(a), Oct. 7, 1985, 99 Stat. 491; Pub. L. 105–78, title II, § 211(h), Nov. 13, 1997, 111 Stat. 1494; Pub. L. 107–220, § 1(a), Aug. 21, 2002, 116 Stat. 1332.)

REFERENCES IN TEXT

Section 211 of the Department of Health and Human Services Appropriations Act, 1998, referred to in subsec. (a)(3), is section 211 of Pub. L. 105–78, which enacted this section and provisions set out as notes below.

[1] So in original. Probably should be followed by ''of''.

CODIFICATION

Section was classified to section 255 of this title prior to its renumbering by Pub. L. 95–626.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–220 substituted ''National Hansen's Disease Programs Center'' for ''Gillis W. Long Hansen's Disease Center''.

1997—Pub. L. 105–78 amended section catchline and text generally, substituting present provisions for former provisions which related to: in subsec. (a), care and treatment; and in subsec. (b), payments to Board of Health of Hawaii.

1985—Pub. L. 99–117 substituted ''Hansen's disease program'' for ''Receipt, apprehension, detention, treatment, and release of lepers'' in section catchline.

Subsec. (a). Pub. L. 99–117 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Service shall, in accordance with regulations, receive into any hospital of the Service suitable for his accommodation any person afflicted with leprosy who presents himself for care, detention, or treatment, or who may be apprehended under subsection (b) of this section or section 264 of this title, and any person afflicted with leprosy duly consigned to the care of the Service by the proper health authority of any State. The Surgeon General is authorized, upon the request of any health authority, to send for any person within the jurisdiction of such authority who is afflicted with leprosy and to convey such person to the appropriate hospital for detention and treatment. When the transportation of any such person is undertaken for the protection of the public health the expense of such removal shall be met from funds available for the maintenance of hospitals of the Service. Such funds shall also be available, subject to regulations, for transportation of recovered indigent leper patients to their homes, including subsistence allowance while traveling. When so provided in appropriations available for any fiscal year for the maintenance of hospitals of the Service, the Surgeon General is authorized and directed to make payments to the Board of Health of Hawaii for the care and treatment in its facilities of persons afflicted with leprosy at a per diem rate, determined from time to time by the Surgeon General, which shall, subject to the availability of appropriations, be approximately equal to the per diem operating cost per patient of such facilities, except that such per diem rate shall not be greater than the comparable per diem operating cost per patient at the National Leprosarium, Carville, Louisiana.''

Subsec. (b). Pub. L. 99–117 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Surgeon General may provide by regulation for the apprehension, detention, treatment, and release of persons being treated by the Service for leprosy.''

1979—Subsec. (a). Pub. L. 96–32 substituted ''apprehended under subsection (b) of this section or section 264 of this title'' for ''apprehended under section 256 or 264 of this title''.

1978—Pub. L. 95–626 designated existing provisions as subsec. (a) and added subsec. (b).

1960—Pub. L. 86–624 struck out '', Territory, or the District of Columbia'' after ''proper health authority of any State'', and substituted ''Board of Health of Hawaii'' for ''Board of Health of the Territory of Hawaii''.

1952—Act June 25, 1952, provided for payments to Hawaiian Board of Health for expenditures made by them in care and treatment of patients.

1948—Act June 25, 1948, authorized payment of travel expenses of indigent leper patients.

CHANGE OF NAME

Pub. L. 107–220, §§1(b), 2, Aug. 21, 2002, 116 Stat. 1332, provided that:

''(b) PUBLIC LAW 105–78.—References in section 211 of Public Law 105–78 [amending this section and enacting provisions set out as a note under this section], and in deeds, agreements, or other documents under such section, to the Gillis W. Long Hansen's Disease Center shall be deemed to be references to the National Hansen's Disease Programs Center.

''SEC. 2. OTHER REFERENCES.

''Any reference in a law, map, regulation, document, paper, or other record of the United States to the Gillis W. Long Hansen's Disease Center shall be deemed to be a reference to the 'National Hansen's Disease Programs Center' ''.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86–624, set out as a note under section 201 of this title.

RELOCATION OF NATIONAL HANSEN'S DISEASE PROGRAMS CENTER

Pub. L. 105–78, title II, §211(a)–(g), Nov. 13, 1997, 111 Stat. 1489, as amended by Pub. L. 107–220, §1(b), Aug. 21, 2002, 116 Stat. 1332, provided that:

''(a) The Secretary of Health and Human Services may in accordance with this section provide for the relocation of the Federal facility known as the National Hansen's Disease Programs Center (located in the vicinity of Carville, in the State of Louisiana), including the relocation of the patients of the Center.

''(b)(1) Subject to paragraph (2), in relocating the Center the Secretary may on behalf of the United States transfer to the State of Louisiana, without charge, title to the real property and improvements that as of the date of the enactment of this Act [Nov. 13, 1997] constitute the Center. Such real property is a parcel consisting of approximately 330 acres. The exact acreage and legal description used for purposes of the transfer shall be in accordance with a survey satisfactory to the Secretary.

''(2) Any conveyance under paragraph (1) is not effective unless the deed or other instrument of conveyance contains the conditions specified in subsection (d); the instrument specifies that the United States and the State of Louisiana agree to such conditions; and the instrument specifies that, if the State engages in a material breach of the conditions, title to the real property and improvements involved reverts to the United States at the election of the Secretary.

''(c)(1) With respect to Federal equipment and other items of Federal personal property that are in use at the Center as of the date of the enactment of this Act [Nov. 13, 1997], the Secretary may, subject to paragraph (2), transfer to the State such items as the Secretary determines to be appropriate, if the Secretary makes the transfer under subsection (b).

''(2) A transfer of equipment or other items may be made under paragraph (1) only if the State agrees that, during the 30-year period beginning on the date on which the transfer under subsection (b) is made, the items will be used exclusively for purposes that promote the health or education of the public, except that the Secretary may authorize such exceptions as the Secretary determines to be appropriate.

''(d) For purposes of subsection (b)(2), the conditions specified in this subsection with respect to a transfer of title are the following:

''(1) During the 30-year period beginning on the date on which the transfer is made, the real property and improvements referred to in subsection (b)(1) (referred to in this subsection as the 'transferred property') will be used exclusively for purposes that promote the health or education of the public, with such incidental exceptions as the Secretary may approve.

''(2) For purposes of monitoring the extent to which the transferred property is being used in accordance with paragraph (1), the Secretary will have access to such documents as the Secretary determines to be necessary, and the Secretary may require the advance approval of the Secretary for such contracts, conveyances of real or personal property, or other transactions as the Secretary determines to be necessary.

''(3) The relocation of patients from the transferred property will be completed not later than 3 years after the date on which the transfer is made, except to the extent the Secretary determines that relocating particular patients is not feasible. During the period of relocation, the Secretary will have unrestricted access to the transferred property, and after such period will have such access as may be necessary with respect to the patients who pursuant to the preceding sentence are not relocated.

''(4)(A) With respect to projects to make repairs and energy-related improvements at the transferred property, the Secretary will provide for the completion of all such projects for which contracts have been awarded and appropriations have been made as of the date on which the transfer is made.

''(B) If upon completion of the projects referred to in subparagraph (A) there are any unobligated balances of amounts appropriated for the projects, and the sum of such balances is in excess of $100,000—

''(i) the Secretary will transfer the amount of such excess to the State; and

''(ii) the State will expend such amount for the purposes referred to in paragraph (1), which may include the renovation of facilities at the transferred property.

''(5)(A) The State will maintain the cemetery located on the transferred property, will permit individuals who were long-term-care patients of the Center to be buried at the cemetery, and will permit members of the public to visit the cemetery.

''(B) The State will permit the Center to maintain a museum on the transferred property, and will permit members of the public to visit the museum.

''(C) In the case of any waste products stored at the transferred property as of the date of the transfer, the Federal Government will after the transfer retain title to and responsibility for the products, and the State will not require that the Federal Government remove the products from the transferred property.

''(6) In the case of each individual who as of the date of the enactment of this Act [Nov. 13, 1997] is a Federal employee at the transferred property with facilities management or dietary duties:

''(A) The State will offer the individual an employment position with the State, the position with the State will have duties similar to the duties the individual performed in his or her most recent position at the transferred property, and the position with the State will provide compensation and benefits that are similar to the compensation and benefits provided for such most recent position, subject to the concurrence of the Governor of the State.

''(B) If the individual becomes an employee of the State pursuant to subparagraph (A), the State will make payments in accordance with subsection (e)(2)(B) (relating to disability), as applicable with respect to the individual.

''(7) The Federal Government may, consistent with the intended uses by the State of the transferred property, carry out at such property activities regarding at-risk youth.

''(8) Such additional conditions as the Secretary determines to be necessary to protect the interests of the United States.

''(e)(1) This subsection applies if the transfer under subsection (b) is made.

''(2) In the case of each individual who as of the date of the enactment of this Act [Nov. 13, 1997] is a Federal employee at the Center with facilities management or dietary duties, and who becomes an employee of the State pursuant to subsection (d)(6)(A):

''(A) The provisions of subchapter III of chapter 83 of title 5, United States Code, or of chapter 84 of such title, whichever are applicable, that relate to disability shall be considered to remain in effect with respect to the individual (subject to subparagraph (C)) until the earlier of—

''(i) the expiration of the 2-year period beginning on the date on which the transfer under subsection (b) is made; or

''(ii) the date on which the individual first meets all conditions for coverage under a State program for payments during retirement by reason of disability.

''(B) The payments to be made by the State pursuant to subsection (d)(6)(B) with respect to the individual are payments to the Civil Service Retirement and Disability Fund, if the individual is receiving Federal disability coverage pursuant to subparagraph (A). Such payments are to be made in a total amount equal to that portion of the normal-cost percentage (determined through the use of dynamic assumptions) of the basic pay of the individual that is allocable to such coverage and is paid for service performed during the period for which such coverage is in effect. Such amount is to be determined in accordance with chapter 84 of such title 5, is to be paid at such time and in such manner as mutually agreed by the State and the Office of Personnel Management, and is in lieu of individual or agency contributions otherwise required.

''(C) In the determination pursuant to subparagraph (A) of whether the individual is eligible for Federal disability coverage (during the applicable period of time under such subparagraph), service as an employee of the State after the date of the transfer under subsection (b) shall be counted toward the service requirement specified in the first sentence of section 8337(a) or 8451(a)(1)(A) of such title 5 (whichever is applicable).

''(3) In the case of each individual who as of the date of the enactment of this Act is a Federal employee with a position at the Center and is, for duty at the Center, receiving the pay differential under section 208(e) of the Public Health Service Act [section 210(e) of this title] or under section 5545(d) of title 5, United States Code:

''(A) If as of the date of the transfer under subsection (b) the individual is eligible for an annuity under section 8336 or 8412 of title 5, United States Code, then once the individual separates from the service and thereby becomes entitled to receive the annuity, the pay differential shall be included in the computation of the annuity if the individual separated from the service not later than the expiration of the 90-day period beginning on the date of the transfer.

''(B) If the individual is not eligible for such an annuity as of the date of the transfer under subsection (b) but subsequently does become eligible, then once the individual separates from the service and thereby becomes entitled to receive the annuity, the pay differential shall be included in the computation of the annuity if the individual separated from the service not later than the expiration of the 90-day period beginning on the date on which the individual first became eligible for the annuity.

''(C) For purposes of this paragraph, the individual is eligible for the annuity if the individual meets all conditions under such section 8336 or 8412 to be entitled to the annuity, except the condition that the individual be separated from the service.

''(4) With respect to individuals who as of the date of the enactment of this Act are Federal employees with positions at the Center and are not, for duty at the center, receiving the pay differential under section 208(e) of the Public Health Service Act [section 210(e) of this title] or under section 5545(d) of title 5, United States Code:

''(A) During the calendar years 1997 and 1998, the Secretary may in accordance with this paragraph provide to any such individual a voluntary separation incentive payment. The purpose of such payments is to avoid or minimize the need for involuntary separations under a reduction in force with respect to the Center.

''(B) During calendar year 1997, any payment under subparagraph (A) shall be made under section 663 of the Treasury, Postal Service, and General Government Appropriations Act, 1997 (as contained in section 101(f) of division A of Public Law 104–208) [5

U.S.C. 5597 note], except that, for purposes of this subparagraph, subsection (b) of such section 663 does not apply.

''(C) During calendar year 1998, such section 663 applies with respect to payments under subparagraph (A) to the same extent and in the same manner as such section applied with respect to the payments during fiscal year 1997, and for purposes of this subparagraph, the reference in subsection (c)(2)(D) of such section 663 to December 31, 1997, is deemed to be a reference to December 31, 1998.

''(f) The following provisions apply if under subsection (a) the Secretary makes the decision to relocate the Center:

''(1) The site to which the Center is relocated shall be in the vicinity of Baton Rouge, in the State of Louisiana.

''(2) The facility involved shall continue to be designated as the National Hansen's Disease Programs Center.

''(3) The Secretary shall make reasonable efforts to inform the patients of the Center with respect to the planning and carrying out of the relocation.

''(4) In the case of each individual who as of October 1, 1996, was a patient of the Center and is considered by the Director of the Center to be a long-term-care patient (referred to in this subsection as an 'eligible patient'), the Secretary shall continue to provide for the long-term care of the eligible patient, without charge, for the remainder of the life of the patient.

''(5)(A) For purposes of paragraph (4), an eligible patient who is legally competent has the following options with respect to support and maintenance and other nonmedical expenses:

''(i) For the remainder of his or her life, the patient may reside at the Center.

''(ii) For the remainder of his or her life, the patient may receive payments each year at an annual rate of $33,000 (adjusted in accordance with subparagraphs (C) and (D)), and may not reside at the Center. Payments under this clause are in complete discharge of the obligation of the Federal Government under paragraph (4) for support and maintenance and other nonmedical expenses of the patient.

''(B) The choice by an eligible patient of the option under clause (i) of subparagraph (A) may at any time be revoked by the patient, and the patient may instead choose the option under clause (ii) of such subparagraph. The choice by an eligible patient of the option under such clause (ii) is irrevocable.

''(C) Payments under subparagraph (A)(ii) shall be made on a monthly basis, and shall be pro rated as applicable. In 1999 and each subsequent year, the monthly amount of such payments shall be increased by a percentage equal to any percentage increase taking effect under section 215(i) of the Social Security Act [section 415(i) of this title] (relating to a cost-of-living increase) for benefits under title II of such Act [section 401 et seq. of this title] (relating to Federal old-age, survivors, and disability insurance benefits). Any such percentage increase in monthly payments under subparagraph (A)(ii) shall take effect in the same month as the percentage increase under such section 215(i) takes effect.

''(D) With respect to the provision of outpatient and inpatient medical care for Hansen's disease and related complications to an eligible patient:

''(i) The choice the patient makes under subparagraph (A) does not affect the responsibility of the Secretary for providing to the patient such care at or through the Center.

''(ii) If the patient chooses the option under subparagraph (A)(ii) and receives inpatient care at or through the Center, the Secretary may reduce the amount of payments under such subparagraph, except to the extent that reimbursement for the expenses of such care is available to the provider of the care through the program under title XVIII of the Social Security Act [section 1395 et seq. of this title] or the program under title XIX of such Act [section 1396 et seq. of this title]. Any such reduction shall be made on the basis of the number of days for which the patient received the inpatient care.

''(6) The Secretary shall provide to each eligible patient such information and time as may be necessary for the patient to make an informed decision regarding the options under paragraph (5)(A).

''(7) After the date of the enactment of this Act [Nov. 13, 1997], the Center may not provide long-term care for any individual who as of such date was not receiving such care as a patient of the Center.

''(8) If upon completion of the projects referred to in subsection (d)(4)(A) there are unobligated balances of amounts appropriated for the projects, such balances are available to the Secretary for expenses relating to the relocation of the Center, except that, if the sum of such balances is in excess of $100,000, such excess is available to the State in accordance with subsection (d)(4)(B). The amounts available to the Secretary pursuant to the preceding sentence are available until expended.

''(g) For purposes of this section:

''(1) The term 'Center' means the National Hansen's Disease Programs Center.

''(2) The term 'Secretary' means the Secretary of Health and Human Services.

''(3) The term 'State' means the State of Louisiana.''

§ 248. Control and management of hospitals; furnishing prosthetic and orthopedic devices; transfer of patients; disposal of articles produced by patients; disposal of money and effects of deceased patients; payment of burial expenses

The Surgeon General, pursuant to regulations, shall—

(a) Control, manage, and operate all institutions, hospitals, and stations of the Service, including minor repairs and maintenance, and provide for the care, treatment, and hospitalization of patients, including the furnishing of prosthetic and orthopedic devices; and from time to time, with the approval of the President, select suitable sites for and establish such additional institutions, hospitals, and stations in the States and possessions of the United States as in his judgment are necessary to enable the Service to discharge its functions and duties;

(b) Provide for the transfer of Public Health Service patients, in the care of attendants where necessary, between hospitals and stations operated by the Service or between such hospitals and stations and other hospitals and stations in which Public Health Service patients may be received, and the payment of expenses of such transfer;

(c) Provide for the disposal of articles produced by patients in the course of their curative treatment, either by allowing the patient to retain such articles or by selling them and depositing the money received therefor to the credit of the appropriation from which the materials for making the articles were purchased;

(d) Provide for the disposal of money and effects, in the custody of the hospitals or stations, of deceased patients; and

(e) Provide, to the extent the Surgeon General determines that other public or private funds are not available therefor, for the payment of expenses of preparing and transporting the remains of, or the payment of reasonable burial

expenses for, any patient dying in a hospital or station.

(July 1, 1944, ch. 373, title III, § 321, 58 Stat. 695; June 25, 1948, ch. 654, § 2, 62 Stat. 1017; Pub. L. 95–622, title II, § 266, Nov. 9, 1978, 92 Stat. 3437.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–622 struck out ", and tobacco" after "orthopedic devices".

1948—Subsec. (a). Act June 25, 1948, § 2(a), amended subsec. (a) generally, continuing authority of Service to furnish tobacco to patients being treated by it.

Subsec. (e). Act June 25, 1948, § 2(b), added subsec. (e).

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 248a. Closing or transfer of hospitals; reduction of services; Congressional authorization required

(a) Except as provided in subsection (b) of this section, the Secretary of Health and Human Services shall take such action as may be necessary to assure that the hospitals of the Public Health Service, located in Seattle, Washington, Boston, Massachusetts, San Francisco, California, Galveston, Texas, New Orleans, Louisiana, Baltimore, Maryland, Staten Island, New York, and Norfolk, Virginia, shall continue—

(1) in operation as hospitals of the Public Health Service,

(2) to provide for all categories of individuals entitled or authorized to receive care and treatment at hospitals or other stations of the Public Health Service inpatient, outpatient, and other health care services in like manner as such services were provided on January 1, 1973, to such categories of individuals at the hospitals of the Public Health Service referred to in the matter preceding paragraph (1) and at a level and range at least as great as the level and range of such services which were provided (or authorized to be provided) by such hospitals on such date, and

(3) to conduct at such hospitals a level and range of other health-related activities (including training and research activities) which is not less than the level and range of such activities which were being conducted on January 1, 1973, at such hospitals.

(b)(1) The Secretary may—

(A) close or transfer control of a hospital of the Public Health Service to which subsection (a) of this section applies,

(B) reduce the level and range of health care services provided at such a hospital from the level and range required by subsection (a)(2) of this section or change the manner in which such services are provided at such a hospital from the manner required by such subsection, or

(C) reduce the level and range of the other health-related activities conducted at such hospital from the level and range required by subsection (a)(3) of this section,

if Congress by law (enacted after November 16, 1973) specifically authorizes such action.

(2) Any recommendation submitted to the Congress for legislation to authorize an action described in paragraph (1) with respect to a hospital of the Public Health Service shall be accompanied by a copy of the written, unqualified approval of the proposed action submitted to the Secretary by each (A) section 314(a) State health planning agency whose section 314(a) plan covers (in whole or in part) the area in which such hospital is located or which is served by such hospital, and (B) section 314(b) areawide health planning agency whose section 314(b) plan covers (in whole or in part) such area.

(3) For purposes of this subsection, the term "section 314(a) State health planning agency" means the agency of a State which administers or supervises the administration of a State's health planning functions under a State plan approved under section 314(a) of the Public Health Service Act (referred to in paragraph (2) as a "section 314(a) plan"); and the term "section 314(b) areawide health planning agency" means a public or nonprofit private agency or organization which has developed a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b) of that Act (referred to in paragraph (2) as a "section 314(b) plan").

(Pub. L. 93–155, title VIII, § 818(a), (b), Nov. 16, 1973, 87 Stat. 622; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Section 314 of the Public Health Service Act, referred to in subsec. (b)(2), (3), is classified to section 246 of this title.

CODIFICATION

Section was enacted as part of the Department of Defense Appropriation Authorization Act, 1974, and not as part of the Public Health Service Act which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in Pub. L. 92–585, § 3, Oct. 27, 1972, 86 Stat. 1292, setting out procedure to be followed in closing or transferring control of hospitals or other health care delivery facilities of Public Health Service, prior to repeal by Pub. L. 93–155, § 818(c).

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 248b. Transfer or financial self-sufficiency of public health service hospitals and clinics

(a) Deadline for closure, transfer, or financial self-sufficiency

The Secretary of Health and Human Services (hereinafter in this subtitle referred to as the ''Secretary'') shall, in accordance with this section and notwithstanding section 248a of this title, provide for the closure, transfer, or financial self-sufficiency of all hospitals and other stations of the Public Health Service (hereinafter in this subtitle referred to as the ''Service'') not later than September 30, 1982.

(b) Proposals for transfer or financial self-sufficiency

Not later than July 1, 1981, the Secretary shall notify each Service hospital and other station, and the chief executive officer of each State and of each locality in which such a hospital or other station is located, that the Secretary will accept proposals for the transfer of each such hospital and station from the Service to a public (including Federal) or nonprofit private entity or for the achievement of financial self-sufficiency of each such hospital and station not later than September 30, 1982. No such proposal shall be considered by the Secretary if it is submitted later than September 1, 1981.

(c) Evaluation of proposals

The Secretary shall evaluate promptly each proposal submitted under subsection (b) of this section with respect to a hospital or other station and determine, not later than September 30, 1981, whether or not under such proposal the hospital or station—

(1) will be maintained as a general health care facility providing a range of services to the population within its service area,

(2) will continue to make services available to existing patient populations, and

(3) has a reasonable expectation of financial viability and, in the case of a hospital or station that is not proposed to be transferred, of financial self-sufficiency.

Paragraph (1) shall not apply in the case of a proposal for the transfer of a discrete, minor, freestanding part of a hospital or station to a local public entity for the purpose of continuing the provision of services to refugees.

(d) Rejection or approval of proposal

(1) If the Secretary determines that a proposal for a hospital or other station does not meet the standards of subsection (c) of this section or if there is no proposal submitted under subsection (b) of this section with respect to a hospital or other station, the Secretary shall provide for the closure of the hospital or station by not later than October 31, 1981.

(2) If the Secretary determines that a proposal for a hospital or other station meets the standards of subsection (c) of this section, the Secretary shall take such steps, within the amounts available through appropriations, as may be necessary and proper—

(A) to operate (or participate or assist in the operation of) the hospital or station by the Service until the transfer is accomplished or financial self-sufficiency is achieved,

(B) to bring the hospital or station into compliance with applicable licensure, accreditation, and local medical practice standards, and

(C) to provide for such other legal, administrative, personnel, and financial arrangements (including allowing payments made with respect to services provided by the hospital or station to be made directly to that hospital or station) as may be necessary to effect a timely and orderly transfer of such hospital or station (including the land, building, and equipment thereof) from the Service, or for the financial self-sufficiency of the hospital or station, not later than September 30, 1982.

(e) Establishment of identifiable administrative unit

There is established, within the Office of the Assistant Secretary for Health of the Department of Health and Human Services, an identifiable administrative unit which shall have direct responsibility and authority for overseeing the activities under this section.

(f) Finding of financial self-sufficiency

For purposes of this section, a hospital or station cannot be found to be financially self-sufficient if the hospital or station is relying, in whole or in part, on direct appropriated funds for its continued operations.

(Pub. L. 97–35, title IX, § 987, Aug. 13, 1981, 95 Stat. 603.)

References in Text

This subtitle, referred to in subsec. (a), is subtitle J of title IX of Pub. L. 97–35, §§ 985 to 988, Aug. 13, 1981, 95 Stat. 602, which enacted this section, amended sections 201, 249, and 254e of this title, and enacted provisions set out as notes under this section and section 249 of this title. For complete classification of this subtitle to the Code, see Tables.

Section 248a of this title, referred to in subsec. (a), was in the original ''section 818 of Public Law 93–155'', meaning section 818 of Pub. L. 93–155, title VIII, Nov. 16, 1973, 87 Stat. 622, which enacted section 248a of this title and repealed section 3 of Pub. L. 92–585, Oct. 27, 1972, 86 Stat. 1292.

Codification

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1981, and not as part of the Public Health Service Act which comprises this chapter.

Congressional Findings and Declaration of Purpose

Section 985 of Pub. L. 97–35 provided that:

''(a) Congress finds that—

''(1) because of national budgetary considerations, it has become necessary to terminate Federal appropriations for Public Health Service hospitals and clinics,

''(2) with proper planning and coordination, some of these hospitals and clinics could be transferred to State, local, or private control or become financially self-sufficient and continue to provide effective and efficient health care to individuals in the areas in which they are located,

''(3) a precipitous closure of these hospitals and clinics will preclude the possibility of such orderly transfer to entities which are willing and able to take over operations at such facilities and will cause unnecessary and costly hardships on the patients and staffs at such facilities and on the communities in which the facilities are located, and

''(4) it is in the national interest, consistent with sound budgetary considerations, to assist in the or-

derly and prompt transfer of such operations to State, local, or private operation or in the achievement of financial self-sufficiency where feasible.

''(b) The purposes of this subtitle [enacting this section, amending sections 201, 249, and 254e of this title, and enacting provisions set out as notes under section 249 of this title] are—

''(1) to provide for the prompt and orderly closure by October 31, 1981, of Public Health Service hospitals and clinics which cannot reasonably be transferred to State, local, or private operation or become financially self-sufficient and for the transfer or achievement of financial self-sufficiency by September 30, 1982, of those hospitals and clinics which can be so transferred or which can achieve such financial self-sufficiency, and

''(2) to provide for transitional assistance for merchant seamen whose entitlement to receive free care through Public Health Service hospitals and clinics is repealed and who are hospitalized at the end of fiscal year 1981 and require continuing hospitalization.''

§§ 248c, 248d. Repealed. Pub. L. 104–201, div. A, title VII, § 727(a)(1), (2), Sept. 23, 1996, 110 Stat. 2596

Section 248c, Pub. L. 97–99, title IX, § 911, Dec. 23, 1981, 95 Stat. 1386; Pub. L. 98–94, title XII, § 1252(g), formerly § 1252(f), Sept. 24, 1983, 97 Stat. 699, renumbered § 1252(g), Pub. L. 101–510, div. A, title VII, § 718(b)(1), Nov. 5, 1990, 104 Stat. 1586; Pub. L. 98–557, § 17(f)(1), Oct. 30, 1984, 98 Stat. 2868, related to continued use of former Public Health Service facilities.

Section 248d, Pub. L. 98–94, title XII, § 1252, Sept. 24, 1983, 97 Stat. 698; Pub. L. 98–557, § 17(f)(2), Oct. 30, 1984, 98 Stat. 2868; Pub. L. 99–661, div. A, title VII, § 706, Nov. 14, 1986, 100 Stat. 3905; Pub. L. 100–456, div. A, title VI, § 645, Sept. 29, 1988, 102 Stat. 1988; Pub. L. 101–510, div. A, title VII, § 718(a), (b), Nov. 5, 1990, 104 Stat. 1586, 1587; Pub. L. 102–25, title VII, § 705(h), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103–160, div. A, title VII, § 717(a), Nov. 30, 1993, 107 Stat. 1693; Pub. L. 104–106, div. A, title VII, §§ 721, 722, 727, title XV, § 1502(c)(8), Feb. 10, 1996, 110 Stat. 377, 380, 508, related to Public Health Service facilities providing medical care for dependents, members, and former members of uniformed services.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1997, see section 727(b) of Pub. L. 104–201, set out in an Inclusion of Certain Designated Providers in Uniformed Services Health Care Delivery System note under section 1073 of Title 10, Armed Forces.

EQUITABLE IMPLEMENTATION OF UNIFORM COST SHARING REQUIREMENTS FOR UNIFORMED SERVICES TREATMENT FACILITIES

Pub. L. 104–106, div. A, title VII, § 726, Feb. 10, 1996, 110 Stat. 379, provided that the uniform managed care benefit fee and copayment schedule developed by Secretary of Defense for use in all managed care initiatives of military health service system be extended to managed care program of Uniformed Services Treatment Facility only after the later of the implementation of the TRICARE regional program covering service area of Facility or Oct. 1, 1996, and provided for evaluation of such extension by Comptroller General, prior to repeal by Pub. L. 104–201, div. A, title VII, § 727(a)(4), Sept. 23, 1996, 110 Stat. 2596.

MANAGED-CARE DELIVERY AND REIMBURSEMENT MODEL FOR THE UNIFORMED SERVICES TREATMENT FACILITIES

Section 718(c) of Pub. L. 101–510, as amended by Pub. L. 102–484, div. A, title VII, § 716, Oct. 23, 1992, 106 Stat. 2438; Pub. L. 103–160, div. A, title VII, § 718, Nov. 30, 1993, 107 Stat. 1694; Pub. L. 104–106, div. A, title VII, §§ 724(a), 725, Feb. 10, 1996, 110 Stat. 378, provided that not later than Nov. 5, 1990, the Secretary of Defense was to begin operation of a managed-care delivery and reimbursement model to continue to use Uniformed Services Treatment Facilities in the military health services system, prior to repeal by Pub. L. 104–201, div. A, title VII, § 727(a)(3), Sept. 23, 1996, 110 Stat. 2596.

§ 249. Medical care and treatment of quarantined and detained persons

(a) Persons entitled to treatment

Any person when detained in accordance with quarantine laws, or, at the request of the Immigration and Naturalization Service, any person detained by that Service, may be treated and cared for by the Public Health Service.

(b) Temporary treatment in emergency cases

Persons not entitled to treatment and care at institutions, hospitals, and stations of the Service may, in accordance with regulations of the Surgeon General, be admitted thereto for temporary treatment and care in case of emergency.

(c) Authorization for outside treatment

Persons whose care and treatment is authorized by subsection (a) of this section may, in accordance with regulations, receive such care and treatment at the expense of the Service from public or private medical or hospital facilities other than those of the Service, when authorized by the officer in charge of the station at which the application is made.

(July 1, 1944, ch. 373, title III, § 322, 58 Stat. 696; June 25, 1948, ch. 654, § 3, 62 Stat. 1018; Aug. 8, 1956, ch. 1036, § 3, 70 Stat. 1120; Pub. L. 88–424, Aug. 13, 1964, 78 Stat. 398; Pub. L. 90–174, § 10(c), Dec. 5, 1967, 81 Stat. 541; Pub. L. 97–35, title IX, § 986(a), (b)(1), (2), Aug. 13, 1981, 95 Stat. 603.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35, § 986(a), (b)(2), redesignated subsec. (c) as (a). Former subsec. (a), which related to persons entitled to medical, etc., treatment and hospitalization, was struck out.

Subsec. (b). Pub. L. 97–35, § 986(a), (b)(2), redesignated subsec. (d) as (b). Former subsec. (b), which related to treatment for seamen on foreign-flag vessels, was struck out.

Subsec. (c). Pub. L. 97–35, § 986(b)(1), (2), redesignated subsec. (e) as (c), substituted ''subsection (a)'' for ''subsection (c)'', and struck out ''entitled to care and treatment under subsection (a) of this section and persons'' after ''Persons''. Former subsec. (c) redesignated (a).

Subsecs. (d), (e). Pub. L. 97–35, § 986(b)(2), redesignated subsecs. (d) and (e) as (b) and (c), respectively.

1967—Subsec. (a)(7). Pub. L. 90–174 substituted provision for entitlement to treatment and hospitalization of seamen-trainees, while participating in maritime training programs to develop or enhance their employability in maritime industry, for provision for such entitlement of employees and noncommissioned officers in field service of Public Health Service when injured or taken sick in line of duty.

1964—Subsec. (a)(8). Pub. L. 88–424 added par. (8).

1948—Subsec. (e). Act June 25, 1948, permitted Service to provide for care and treatment of individuals detained in accordance with our quarantine laws.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 986(c) of Pub. L. 97–35 provided that: ''The amendments and repeals made by this section [amending this section and sections 201 and 254e of this title] shall take effect on October 1, 1981.''

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and em-

ployees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department transferred, with a few exceptions, to Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by sections 1 and 2 of Reorg. Plan No. 2 of 1950, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, which were repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 662. Immigration and Naturalization Service, referred to in this section, was a bureau in Department of Justice.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

CONTINUED CARE FOR MERCHANT SEAMEN HOSPITALIZED IN PUBLIC HEALTH SERVICE HOSPITALS

Section 988 of Pub. L. 97–35 provided that:

''(a) The Secretary shall provide, by contract or other arrangement with a Federal entity and without charge but subject to subsection (b), for the continuation of inpatient hospital services (and outpatient services related to the condition of hospitalization) to any individual who—

''(1) on September 30, 1981, is receiving inpatient hospital services at a Public Health Service hospital on the basis of the entitlement contained in section 322(a) of the Public Health Service Act (42 U.S.C. 249(a)), as such section was in effect on such date, for treatment of a condition,

''(2) requires continued hospitalization after such date for treatment of that condition (or requires outpatient services related to such condition), and

''(3) the Secretary determines has no other source of inpatient hospital services available for continued treatment of that condition.

''(b) Services may not be provided under subsection (a) to an individual after the earlier of—

''(1) September 30, 1982,

''(2) the end of the first 60-day consecutive period (beginning after September 30, 1981) during the entire period of which the individual is not an inpatient of a hospital.

''(c) Notwithstanding any other provision of law, the head of any Federal department or agency which provides, under other authority of law and through federal facilities, inpatient hospital services or outpatient services, or both, is authorized to provide inpatient hospital services (and related outpatient services) to individuals under contract or other arrangement with the Secretary pursuant to this section.''

FOREIGN SEAMEN

Section 810(c), formerly §710(c), of act July 1, 1944, as renumbered by acts Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; July 30, 1956, ch. 779, §3(b), 70 Stat. 720, which gave foreign seamen the same benefits as accorded seamen employed on United States vessels under subsec. (a)(1) of this section, was repealed effective Jan. 25, 1948, by Joint Res. July 25, 1947, ch. 327, §2(b), 61 Stat. 451.

§ 250. Medical care and treatment of Federal prisoners

The Service shall supervise and furnish medical treatment and other necessary medical, psychiatric, and related technical and scientific services, authorized by section 4005 of title 18, in penal and correctional institutions of the United States.

(July 1, 1944, ch. 373, title III, §323, 58 Stat. 697.)

CODIFICATION

''Section 4005 of title 18'' substituted in text for ''the Act of May 13, 1930, as amended (U.S.C., 1940 edition, title 18, secs. 751, 752)'' on authority of act June 25, 1948, ch. 645, 62 Stat. 684, the first section of which enacted Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 250a. Transfer of appropriations

The Attorney General may transfer to the Health Resources and Services Administration such amounts as may be necessary for direct expenditures by that Administration for medical relief for inmates of Federal penal and correctional institutions.

(Pub. L. 109–108, title I, Nov. 22, 2005, 119 Stat. 2297.)

CODIFICATION

Section was enacted as part of the appropriation act cited as the credit to this section, and not as part of the Public Health Service Act which comprises this chapter.

Section was formerly classified to section 341h of title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 108–447, div. B, title I, Dec. 8, 2004, 118 Stat. 2860.

Pub. L. 108–199, div. B, title I, Jan. 23, 2004, 118 Stat. 53.

Pub. L. 108–7, div. B, title I, Feb. 20, 2003, 117 Stat. 58.

Pub. L. 107–77, title I, Nov. 28, 2001, 115 Stat. 757.

Pub. L. 106–553, §1(a)(2) [title I], Dec. 21, 2000, 114 Stat. 2762, 2762A–60.

Pub. L. 106–113, div. B, §1000(a)(1) [title I], Nov. 29, 1999, 113 Stat. 1535, 1501A–13.

Pub. L. 105–277, div. A, §101(b) [title I], Oct. 21, 1998, 112 Stat. 2681–50, 2681–60.

Pub. L. 105–119, title I, Nov. 26, 1997, 111 Stat. 2449.

Pub. L. 104–208, div. A, title I, §101(a) [title I], Sept. 30, 1996, 110 Stat. 3009, 3009–11.

Pub. L. 104–134, title I, §101[(a)] [title I], Apr. 26, 1996, 110 Stat. 1321, 1321–9; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103–317, title I, Aug. 26, 1994, 108 Stat. 1732.

Pub. L. 103–121, title I, Oct. 27, 1993, 107 Stat. 1161.

Pub. L. 102–395, title I, Oct. 6, 1992, 106 Stat. 1836.

Pub. L. 102–140, title I, Oct. 28, 1991, 105 Stat. 790.

Pub. L. 101–515, title II, Nov. 5, 1990, 104 Stat. 2114.

Pub. L. 101–162, title II, Nov. 21, 1989, 103 Stat. 1000.

Pub. L. 100–459, title II, Oct. 1, 1988, 102 Stat. 2196.

Pub. L. 100–202, §101(a) [title II], Dec. 22, 1987, 101 Stat. 1329, 1329–13.

Pub. L. 99–500, § 101(b) [title II], Oct. 18, 1986, 100 Stat. 1783–39, 1783–49, and Pub. L. 99–591, § 101(b) [title II], Oct. 30, 1986, 100 Stat. 3341–39, 3341–49.
Pub. L. 99–180, title II, Dec. 13, 1985, 99 Stat. 1144.
Pub. L. 98–411, title II, Aug. 30, 1984, 98 Stat. 1556.
Pub. L. 98–166, title II, Nov. 28, 1983, 97 Stat. 1084.
Pub. L. 97–377, § 101(d) [S. 2956, title II], Dec. 21, 1982, 96 Stat. 1866.
Pub. L. 97–92, § 101(h) [incorporating Pub. L. 96–536, § 101*o*; H.R. 7584, title II], Dec. 15, 1981, 95 Stat. 1190.
Pub. L. 96–536, § 101*o* [H.R. 7584, title II], Dec. 16, 1980, 94 Stat. 3169.
Pub. L. 96–68, title II, Sept. 24, 1979, 93 Stat. 421.
Pub. L. 95–431, title II, Oct. 10, 1978, 92 Stat. 1028.
Pub. L. 95–86, title II, Aug. 2, 1977, 91 Stat. 427.
Pub. L. 94–362, title II, July 14, 1976, 90 Stat. 945.
Pub. L. 94–121, title II, Oct. 21, 1975, 89 Stat. 620.
Pub. L. 93–433, title II, Oct. 5, 1974, 88 Stat. 1194.
Pub. L. 93–162, title II, Nov. 27, 1973, 87 Stat. 643.
Pub. L. 92–544, title II, Oct. 25, 1972, 86 Stat. 1116.
Pub. L. 92–77, title II, Aug. 10, 1971, 85 Stat. 253.
Pub. L. 91–472, title II, Oct. 21, 1970, 84 Stat. 1047.
Pub. L. 91–153, title II, Dec. 24, 1969, 83 Stat. 410.
Pub. L. 90–470, title II, Aug. 9, 1968, 82 Stat. 675.
Pub. L. 90–133, title II, Nov. 8, 1967, 81 Stat. 418.
Pub. L. 89–797, title II, Nov. 8, 1966, 80 Stat. 1487.
Pub. L. 89–164, title II, Sept. 2, 1965, 79 Stat. 628.
Pub. L. 88–527, title II, Aug. 31, 1964, 78 Stat. 719.
Pub. L. 88–245, title II, Dec. 30, 1963, 77 Stat. 783.
Pub. L. 87–843, title II, Oct. 18, 1962, 76 Stat. 1088.
Pub. L. 87–264, title II, Sept. 21, 1961, 75 Stat. 553.
Pub. L. 86–678, title II, Aug. 31, 1960, 74 Stat. 563.
Pub. L. 86–84, title II, July 13, 1959, 73 Stat. 189.
Pub. L. 85–474, title II, June 30, 1958, 72 Stat. 252.
Pub. L. 85–49, title II, June 11, 1957, 71 Stat. 62.
June 20, 1956, ch. 414, title II, 70 Stat. 307.
July 7, 1955, ch. 279, title II, 69 Stat. 273.

§ 251. Medical examination and treatment of Federal employees; medical care at remote stations

(a) The Surgeon General is authorized to provide at institutions, hospitals, and station of the Service medical, surgical, and hospital services and supplies for persons entitled to treatment under subchapter I of Chapter 81 of title 5 and extensions thereof. The Surgeon General may also provide for making medical examinations of—

(1) employees of the Federal Government for retirement purposes;

(2) employees in the Federal classified service, and applicants for appointment, as requested by the Director of the Office of Personnel Management for the purpose of promoting health and efficiency;

(3) seamen for purposes of qualifying for certificates of service; and

(4) employees eligible for benefits under the Longshore and Harbor Workers' Compensation Act, as amended [33 U.S.C. 901 et seq.], as requested by any deputy commissioner thereunder.

(b) The Secretary is authorized to provide medical, surgical, and dental treatment and hospitalization and optometric care for Federal employees (as defined in section 8901(1) of title 5) and their dependents at remote medical facilities of the Public Health Service where such care and treatment are not otherwise available. Such employees and their dependents who are not entitled to this care and treatment under any other provision of law shall be charged for it at rates established by the Secretary to reflect the reasonable cost of providing the care and treatment. Any payments pursuant to the preceding sentence shall be credited to the applicable appropriation to the Public Health Service for the year in which such payments are received.

(July 1, 1944, ch. 373, title III, § 324, 58 Stat. 697; Pub. L. 90–174, § 10(a), (b), Dec. 5, 1967, 81 Stat. 540; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 97–468, title VI, § 615(b)(4), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 98–426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

REFERENCES IN TEXT

The Longshore and Harbor Workers' Compensation Act, as amended, referred to in subsec. (a)(4), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

CODIFICATION

In subsec. (a), ''subchapter I of chapter 81 of title 5'' substituted for ''United States Employees' Compensation Act'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a)(4). Pub. L. 98–426 substituted ''Longshore and Harbor Workers' Compensation Act'' for ''Longshoremen's and Harbor Workers' Compensation Act''.

1983—Subsec. (a)(1). Pub. L. 97–468 struck out ''employees of the Alaska Railroad and'' before ''employees of the Federal Government''.

1967—Subsec. (a). Pub. L. 90–174, § 10(a), designated existing provisions as subsec. (a) and redesignated cls. (a) to (d) as cls. (1) to (4), respectively.

Subsec. (b). Pub. L. 90–174, § 10(b), added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97–468.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in subsec. (a)(2), pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 252. Medical examination of aliens

The Surgeon General shall provide for making, at places within the United States or in other countries, such physical and mental examinations of aliens as are required by the immigration laws, subject to administrative regulations prescribed by the Attorney General and medical regulations prescribed by the Surgeon General with the approval of the Secretary.

(July 1, 1944, ch. 373, title III, § 325, 58 Stat. 697; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

REFERENCES IN TEXT

The immigration laws, referred to in text, are classified generally to Title 8, Aliens and Nationality. See, also, section 1101(a)(17) of Title 8.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 253. Medical services to Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service

(a) Persons entitled to medical services

Subject to regulations of the President—

(1) commissioned officers, chief warrant officers, warrant officers, cadets, and enlisted personnel of the Regular Coast Guard on active duty, including those on shore duty and those on detached duty; and Regular, and temporary members of the United States Coast Guard Reserve when on active duty;

(2) commissioned officers, ships' officers, and members of the crews of vessels of the National Oceanic and Atmospheric Administration on active duty, including those on shore duty and those on detached duty; and

(3) commissioned officers of the Regular or Reserve Corps of the Public Health Service on active duty;

shall be entitled to medical, surgical, and dental treatment and hospitalization by the Service. The Surgeon General may detail commissioned officers for duty aboard vessels of the Coast Guard or the National Oceanic and Atmospheric Administration.

(b) Health care for involuntarily separated officers and dependents

(1) The Secretary may provide health care for an officer of the Regular or Reserve Corps involuntarily separated from the Service, and for any dependent of such officer, if—

(A) the officer or dependent was receiving health care at the expense of the Service at the time of separation; and

(B) the Secretary finds that the officer or dependent is unable to obtain appropriate insurance for the conditions for which the officer or dependent was receiving health care.

(2) Health care may be provided under paragraph (1) for a period of not more than one year from the date of separation of the officer from the Service.

(c) Examination of personnel of Service assigned to Coast Guard or National Oceanic and Atmospheric Administration

The Service shall provide all services referred to in subsection (a) of this section required by the Coast Guard or National Oceanic and Atmospheric Administration and shall perform all duties prescribed by statute in connection with the examinations to determine physical or mental condition for purposes of appointment, enlistment, and reenlistment, promotion and retirement, and officers of the Service assigned to duty on Coast Guard or National Oceanic and Atmospheric Administration vessels may extend aid to the crews of American vessels engaged in deep-sea fishing.

(July 1, 1944, ch. 373, title III, § 326, 58 Stat. 697; June 7, 1956, ch. 374, § 306(3), 70 Stat. 254; Pub. L. 86–415, § 5(d), Apr. 8, 1960, 74 Stat. 34; Pub. L. 88–71, § 2, July 19, 1963, 77 Stat. 83; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Pub. L. 99–117, § 5, Oct. 7, 1985, 99 Stat. 492.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99–117 added subsec. (b).

1963—Subsec. (b). Pub. L. 88–71, § 2(a), repealed subsec. (b) which provided for treatment of dependents of personnel. See section 253a(b) of this title.

Subsec. (c). Pub. L. 88–71, § 2(b), inserted ''or Coast and Geodetic Survey'' after ''Coast Guard'' in two places.

1960—Subsec. (a). Pub. L. 86–415 struck out provisions which authorized medical, surgical, and dental care and hospitalization for retired personnel of Coast Guard, Coast and Geodetic Survey, and Public Health Service.

1956—Subsec. (b). Act June 7, 1956, repealed subsec. (b) except insofar as it related to dependent members of families of ships' officers and members of crews of vessels of Coast and Geodetic Survey.

CHANGE OF NAME

Coast and Geodetic Survey consolidated with Weather Bureau to form a new agency in Department of Commerce to be known as Environmental Science Services Administration, and commissioned officers of Survey transferred to ESSA, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, abolished Environmental

Science Services Administration, established National Oceanic and Atmospheric Administration, and redesignated Commissioned Officer Corps of ESSA as Commissioned Officer Corps of NOAA. For further details, see Transfer of Functions note set out under section 851 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 7, 1956, effective six months after June 7, 1956, see section 307 of act June 7, 1956.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 253a. Medical services to retired personnel of National Oceanic and Atmospheric Administration

(a) Eligibility

Subject to regulations of the President, retired ships' officers and retired members of the crews of vessels of the National Oceanic and Atmospheric Administration shall be entitled to medical, surgical, and dental treatment and hospitalization by the Public Health Service if the ships' officer or crew member, (1) was on active duty as a vessel employee of the National Oceanic and Atmospheric Administration on July 1, 1963, or on July 19, 1963, whichever is later, and his employment as a vessel employee was continuous from that date until retirement, or (2) was retired as a vessel employee of the National Oceanic and Atmospheric Administration on or before July 1, 1963, or on July 19, 1963, whichever is later.

(b) Treatment of dependents of personnel

Subject to regulations of the President, dependent members of families (as defined in such regulations) of ships' officers and members of crews of vessels of the National Oceanic and Atmospheric Administration, whether such, ships' officers and members of crew are on active duty or retired, shall be furnished medical advice and outpatient treatment by the Public Health Service and, if suitable accommodations are available, they shall also be furnished hospitalization by the Public Health Service if the ships' officer or crew member (1) was on active duty as a vessel employee of the National Oceanic and Atmospheric Administration on July 1, 1963, or on July 19, 1963, whichever is later, and his employment as a vessel employee has been continuous from that time, or (2) was on active duty as a vessel employee of the National Oceanic and Atmospheric Administration on July 1, 1963, or on July 19, 1963, whichever is later, and his employment as a vessel employee was continuous from that time until retirement, or (3) was retired as a vessel employee of the National Oceanic and Atmospheric Administration on or before July 1, 1963, or on July 19, 1963, whichever is later. When dependent members of families are hospitalized, a per diem charge, at such uniform rate as may be prescribed from time to time for the hospitalization of dependents of members of the uniformed services at hospitals of the uniformed services pursuant to section 1078(a) of title 10 shall be made.

(c) Identification

The National Oceanic and Atmospheric Administration shall furnish proper identification to those persons entitled to medical treatment under the provisions of this section.

(Pub. L. 88–71, § 1, July 19, 1963, 77 Stat. 83; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Pub. L. 98–498, title III, § 310(b), (c), Oct. 19, 1984, 98 Stat. 2306, 2307.)

CODIFICATION

Section was not enacted as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–498, § 310(b), substituted ''by the Public Health Service if'' for ''at facilities of the Public Health Service: *Provided*, That''.

Subsec. (b). Pub. L. 98–498, § 310(c), struck out ''at its hospitals and relief stations'' before ''and, if suitable accommodations'' and substituted ''by the Public Health Service if'' for ''at hospitals of the Public Health Service: *Provided*, That''.

CHANGE OF NAME

Coast and Geodetic Survey consolidated with Weather Bureau to form a new agency in Department of Commerce to be known as Environmental Science Services Administration, and commissioned officers of Survey transferred to ESSA, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, abolished Environmental Science Services Administration, established National Oceanic and Atmospheric Administration, and redesignated Commissioned Officer Corps of ESSA as Commissioned Officer Corps of NOAA. For further details, see Transfer of Functions note set out under section 851 of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EX. ORD. NO. 11160. REGULATIONS RELATING TO MEDICAL CARE FOR RETIRED PERSONNEL OF COAST AND GEODETIC SURVEY [NOW NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION] AND THEIR DEPENDENTS

Ex. Ord. No. 11160, July 6, 1964, 29 F.R. 9315, provided:

By virtue of the authority vested in me by the first section of the Act of July 19, 1963 (Public Law 88–71, 77 Stat. 83, 42 U.S.C. 253a) [this section], and as President of the United States, I hereby prescribe the following regulations relating to the medical care of certain retired personnel of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration] and dependents of Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration] ships' officers and crew members, both active and retired.

SECTION 1. *Definitions.* As used in these regulations, the term:

(1) ''Retired ships' officer and retired crew member'' means a noncommissioned ships' officer or crew member of a vessel of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration] who either was on active duty as a vessel employee on July 19, 1963, and whose employment as such vessel employee was continuous from that date until the date of his retirement, or who had retired as a vessel employee on or before July 19, 1963.

(2) ''Active duty ships' officer and active duty crew member'' means a noncommissioned ships' officer or crew member on active duty as a vessel employee of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration] on July 19, 1963, and whose employment as such vessel employee has been continuous from that time.

(3) ''Dependent members of families'', with respect to active duty or retired ships' officers or crew members, means:

(A) the lawful wife;

(B) the unmarried legitimate child, including an adopted child or stepchild, who has not passed his twenty-first birthday; and

(C) the father or mother, if in fact dependent upon such active duty or retired ships' officer or crew member for over one-half of his or her support.

(4) ''Relief stations'' means Public Health Service outpatient clinics and outpatient offices.

(5) ''Outpatient clinic'' means a full-time outpatient medical facility, operated in Federally owned or leased space under the supervision of a commissioned medical officer or a full-time civil service medical officer (formerly known as a Second-Class Relief Station).

(6) ''Outpatient office'' means a part-time outpatient facility serving all classes of legal beneficiaries, located in other than Federal space, and in the charge of a local private physician under contract to the Service to provide medical care on an annual or fee basis (formerly known as a Third-Class Relief Station).

SEC. 2. *Persons entitled to treatment.* The following persons shall be entitled to medical care under these regulations:

(1) Retired ships' officers and retired crew members of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration];

(2) Dependent members of families of persons described in paragraph (1) of this section;

(3) Dependent members of families of active duty ships' officers and crew members of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration].

SEC. 3. *Application for treatment; evidence of eligibility.* Persons entitled to medical care under Section 2 of these regulations, when applying to Public Health Service medical care facilities for medical care, shall produce proper identification, as issued to them by the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration], and such identification shall be accepted as evidence of eligibility for such medical care by the Service.

SEC. 4. *Extent of treatment; retired ships' officers and crew members.* Subject to the limitation imposed by paragraph (2) of this section, retired ships' officers and crew members entitled to medical care under these regulations shall be furnished:

(1) Medical, surgical, and dental treatment at hospitals, outpatient clinics, and outpatient offices of the Service, and hospitalization at hospitals of the Service. The Service will not be responsible for defraying the cost of hospitalization, medical services, and supplies procured elsewhere.

(2) Dental treatment shall be furnished to the extent that facilities and services at hospitals and outpatient clinics of the Service having full-time dental officers on duty are available to provide such treatment. At other Service facilities, dental treatment shall be limited to emergency measures necessary to relieve pain.

SEC. 5. *Extent of treatment; dependent members of families; charges.* (a) Dependent members of families shall be furnished medical advice and outpatient treatment at hospitals, outpatient clinics, and outpatient offices of the Service and, if suitable accommodations are available, shall be furnished hospitalization at hospitals of the Service. The Service will not be responsible for defraying the cost of hospitalization, medical services, and supplies procured elsewhere.

(b) For the purpose of this section—

(1) Medical advice and outpatient treatment may include such services and supplies as the Medical Officer in Charge may deem to be necessary for reasonable and adequate treatment.

(2) Hospitalization shall be furnished when, in the opinion of the Medical Officer in Charge, suitable accommodations are available and the condition of the patient is such as to require hospitalization. When hospitalization is authorized, it may include such services and supplies as the Medical Officer in Charge may deem to be necessary for reasonable and adequate treatment.

(c) Charges shall be made for hospitalization of dependent members of families at the same per diem rate as is prescribed for dependents of members of the uniformed services pursuant to section 1078(a) of Title 10 of the United States Code.

(d) Dental treatment may be furnished to the extent that facilities and services at hospitals and outpatient clinics of the Service having full-time dental officers are available to provide such treatment. Dental care will not be furnished under any circumstances in private facilities at the expense of the Service.

SEC. 6. *Prior orders.* Executive Order No. 9703 of March 12, 1946, prescribing regulations relating to medical care of certain personnel of the Coast Guard, Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration], Public Health Service, and former Lighthouse Service, is hereby amended to the extent necessary to conform it to the provisions of this order.

LYNDON B. JOHNSON.

§ 253b. Former Lighthouse Service employees; medical service eligibility

Subject to regulations of the President, lightkeepers, assistant lightkeepers, and officers and crews of vessels of the former Lighthouse Service, including any such persons who subsequent to June 30, 1939, were involuntarily assigned to other civilian duty in the Coast Guard, who were entitled to medical relief at hospitals and other stations of the Public Health Service prior to July 1, 1944, and who retired under the provisions of section 763 of title 33, shall be entitled to medical, surgical, and dental treatment and hospitalization at hospitals and other stations of the Public Health Service.

(Pub. L. 93–353, title I, § 108(a), July 23, 1974, 88 Stat. 371.)

CODIFICATION

Section was enacted as a part of Health Services Research, Health Statistics, and Medical Libraries Act of 1974, and also as a part of Health Services Research and Evaluation and Health Statistics Act of 1974, and not as a part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section 108(b) of Pub. L. 93–353 provided that: ''Subsection (a) [enacting this section] shall be effective from December 28, 1973.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 254. Interdepartmental work

Nothing contained in this part shall affect the authority of the Service to furnish any materials, supplies, or equipment, or perform any work of services, requested in accordance with sections 1535 and 1536 of title 31, or the authority of any other executive department to furnish any materials, supplies, or equipment, or perform any work or services, requested by the Department of Health and Human Services for the Service in accordance with that section.

(July 1, 1944, ch. 373, title III, § 327, 58 Stat. 697; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

''Sections 1535 and 1536 of title 31'' substituted in text for ''section 7 of the Act of May 21, 1920, as amended (U.S.C., 1940 edition, title 31, sec. 686)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 254a. Sharing of medical care facilities and resources

(a) Definitions

For purposes of this section—

(1) the term ''specialized health resources'' means health care resources (whether equipment, space, or personnel) which, because of cost, limited availability, or unusual nature, are either unique in the health care community or are subject to maximum utilization only through mutual use;

(2) the term ''hospital'', unless otherwise specified, includes (in addition to other hospitals) any Federal hospital.

(b) Statement of purpose; agreements or arrangements; reciprocity; reimbursement; credits

For the purpose of maintaining or improving the quality of care in Public Health Service facilities and to provide a professional environment therein which will help to attract and retain highly qualified and talented health personnel, to encourage mutually beneficial relationships between Public Health Service facilities and hospitals and other health facilities in the health care community, and to promote the full utilization of hospitals and other health facilities and resources, the Secretary may—

(1) enter into agreements or arrangements with schools of medicine, schools of osteopathic medicine, and with other health professions schools, agencies, or institutions, for such interchange or cooperative use of facilities and services on a reciprocal or reimbursable basis, as will be of benefit to the training or research programs of the participating agencies; and

(2) enter into agreements or arrangements with hospitals and other health care facilities for the mutual use or the exchange of use of specialized health resources, and providing for reciprocal reimbursement.

Any reimbursement pursuant to any such agreement or arrangement shall be based on charges covering the reasonable cost of such utilization, including normal depreciation and amortization costs of equipment. Any proceeds to the Government under this subsection shall be credited to the applicable appropriation of the Public Health Service for the year in which such proceeds are received.

(July 1, 1944, ch. 373, title III, § 327A, formerly § 328, as added Pub. L. 90–174, § 7, Dec. 5, 1967, 81 Stat. 539; renumbered § 327A, Pub. L. 95–626, title I, § 113(a)(2), Nov. 10, 1978, 92 Stat. 3562; amended Pub. L. 100–607, title VI, § 629(a)(1), Nov. 4, 1988, 102 Stat. 3146.)

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100–607 inserted ''schools of osteopathic medicine,'' after ''schools of medicine,'' and ''professions'' after ''health''.

AVAILABILITY OF APPROPRIATIONS FOR EXPENSES OF SHARING MEDICAL CARE FACILITIES AND RESOURCES

Pub. L. 102–394, title II, § 204, Oct. 6, 1992, 106 Stat. 1811, provided that: ''Funds advanced to the National Institutes of Health Management Fund from appropriations in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be available for the expenses of sharing medical care facilities and resources pursuant to section 327A of the Public Health Service Act [42 U.S.C. 254a].''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, § 204, Nov. 26, 1991, 105 Stat. 1126.

Pub. L. 101–517, title II, § 204, Nov. 5, 1990, 104 Stat. 2208.

Pub. L. 101–166, title II, § 205, Nov. 21, 1989, 103 Stat. 1177.

Pub. L. 100–202, § 101(h) [title II, § 205], Dec. 22, 1987, 101 Stat. 1329–256, 1329–274.
Pub. L. 99–500, § 101(i) [H.R. 5233, title II, § 205], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, § 101(i) [H.R. 5233, title II, § 205], Oct. 30, 1986, 100 Stat. 3341–287.
Pub. L. 99–178, title II, § 205, Dec. 12, 1985, 99 Stat. 1119.
Pub. L. 98–619, title II, § 205, Nov. 8, 1984, 98 Stat. 3321.
Pub. L. 98–139, title II, § 205, Oct. 31, 1983, 97 Stat. 887.
Pub. L. 97–377, title I, § 101(e)(1) [title II, § 205], Dec. 21, 1982, 96 Stat. 1878, 1894.

PART D—PRIMARY HEALTH CARE

SUBPART I—HEALTH CENTERS

AMENDMENTS

1996—Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626, substituted ''Health Centers'' for ''Primary Health Centers'' in subpart heading.
1978—Pub. L. 95–626, title I, § 113(a)(3), Nov. 10, 1978, 92 Stat. 3562, added heading ''Part D—Primary Health Care'' and, immediately under it, heading ''Subpart I—Primary Health Centers''.

§ 254b. Health centers

(a) "Health center" defined

(1) In general

For purposes of this section, the term ''health center'' means an entity that serves a population that is medically underserved, or a special medically underserved population comprised of migratory and seasonal agricultural workers, the homeless, and residents of public housing, by providing, either through the staff and supporting resources of the center or through contracts or cooperative arrangements—

(A) required primary health services (as defined in subsection (b)(1) of this section); and

(B) as may be appropriate for particular centers, additional health services (as defined in subsection (b)(2) of this section) necessary for the adequate support of the primary health services required under subparagraph (A);

for all residents of the area served by the center (hereafter referred to in this section as the ''catchment area'').

(2) Limitation

The requirement in paragraph (1) to provide services for all residents within a catchment area shall not apply in the case of a health center receiving a grant only under subsection (g), (h), or (i) of this section.

(b) Definitions

For purposes of this section:

(1) Required primary health services

(A) In general

The term ''required primary health services'' means—

(i) basic health services which, for purposes of this section, shall consist of—

(I) health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians and where appropriate, physician assistants, nurse practitioners, and nurse midwives;

(II) diagnostic laboratory and radiologic services;

(III) preventive health services, including—

(aa) prenatal and perinatal services;

(bb) appropriate cancer screening;

(cc) well-child services;

(dd) immunizations against vaccine-preventable diseases;

(ee) screenings for elevated blood lead levels, communicable diseases, and cholesterol;

(ff) pediatric eye, ear, and dental screenings to determine the need for vision and hearing correction and dental care;

(gg) voluntary family planning services; and

(hh) preventive dental services;

(IV) emergency medical services; and

(V) pharmaceutical services as may be appropriate for particular centers;

(ii) referrals to providers of medical services (including specialty referral when medically indicated) and other health-related services (including substance abuse and mental health services);

(iii) patient case management services (including counseling, referral, and follow-up services) and other services designed to assist health center patients in establishing eligibility for and gaining access to Federal, State, and local programs that provide or financially support the provision of medical, social, housing, educational, or other related services;

(iv) services that enable individuals to use the services of the health center (including outreach and transportation services and, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals); and

(v) education of patients and the general population served by the health center regarding the availability and proper use of health services.

(B) Exception

With respect to a health center that receives a grant only under subsection (g) of this section, the Secretary, upon a showing of good cause, shall—

(i) waive the requirement that the center provide all required primary health services under this paragraph; and

(ii) approve, as appropriate, the provision of certain required primary health services only during certain periods of the year.

(2) Additional health services

The term ''additional health services'' means services that are not included as required primary health services and that are appropriate to meet the health needs of the population served by the health center involved. Such term may include—

(A) behavioral and mental health and substance abuse services;

(B) recuperative care services;

(C) environmental health services, including—

(i) the detection and alleviation of unhealthful conditions associated with—

(I) water supply;

(II) chemical and pesticide exposures;

(III) air quality; or

(IV) exposure to lead;

(ii) sewage treatment;

(iii) solid waste disposal;

(iv) rodent and parasitic infestation;

(v) field sanitation;

(vi) housing; and

(vii) other environmental factors related to health; and

(D) in the case of health centers receiving grants under subsection (g) of this section, special occupation-related health services for migratory and seasonal agricultural workers, including—

(i) screening for and control of infectious diseases, including parasitic diseases; and

(ii) injury prevention programs, including prevention of exposure to unsafe levels of agricultural chemicals including pesticides.

(3) Medically underserved populations

(A) In general

The term ''medically underserved population'' means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services.

(B) Criteria

In carrying out subparagraph (A), the Secretary shall prescribe criteria for determining the specific shortages of personal health services of an area or population group. Such criteria shall—

(i) take into account comments received by the Secretary from the chief executive officer of a State and local officials in a State; and

(ii) include factors indicative of the health status of a population group or residents of an area, the ability of the residents of an area or of a population group to pay for health services and their accessibility to them, and the availability of health professionals to residents of an area or to a population group.

(C) Limitation

The Secretary may not designate a medically underserved population in a State or terminate the designation of such a population unless, prior to such designation or termination, the Secretary provides reasonable notice and opportunity for comment and consults with—

(i) the chief executive officer of such State;

(ii) local officials in such State; and

(iii) the organization, if any, which represents a majority of health centers in such State.

(D) Permissible designation

The Secretary may designate a medically underserved population that does not meet the criteria established under subparagraph (B) if the chief executive officer of the State in which such population is located and local officials of such State recommend the designation of such population based on unusual local conditions which are a barrier to access to or the availability of personal health services.

(c) Planning grants

(1) In general

(A) Centers

The Secretary may make grants to public and nonprofit private entities for projects to plan and develop health centers which will serve medically underserved populations. A project for which a grant may be made under this subsection may include the cost of the acquisition and lease of buildings and equipment (including the costs of amortizing the principal of, and paying the interest on, loans) and shall include—

(i) an assessment of the need that the population proposed to be served by the health center for which the project is undertaken has for required primary health services and additional health services;

(ii) the design of a health center program for such population based on such assessment;

(iii) efforts to secure, within the proposed catchment area of such center, financial and professional assistance and support for the project;

(iv) initiation and encouragement of continuing community involvement in the development and operation of the project; and

(v) proposed linkages between the center and other appropriate provider entities, such as health departments, local hospitals, and rural health clinics, to provide better coordinated, higher quality, and more cost-effective health care services.

(B) Managed care networks and plans

The Secretary may make grants to health centers that receive assistance under this section to enable the centers to plan and develop a managed care network or plan. Such a grant may only be made for such a center if—

(i) the center has received grants under subsection (e)(1)(A) of this section for at least 2 consecutive years preceding the year of the grant under this subparagraph or has otherwise demonstrated, as required by the Secretary, that such center has been providing primary care services for at least the 2 consecutive years immediately preceding such year; and

(ii) the center provides assurances satisfactory to the Secretary that the provision of such services on a prepaid basis, or under another managed care arrangement, will not result in the diminution of the level or quality of health services provided to the medically underserved population

served prior to the grant under this subparagraph.

(C) Practice management networks

The Secretary may make grants to health centers that receive assistance under this section to enable the centers to plan and develop practice management networks that will enable the centers to—

(i) reduce costs associated with the provision of health care services;

(ii) improve access to, and availability of, health care services provided to individuals served by the centers;

(iii) enhance the quality and coordination of health care services; or

(iv) improve the health status of communities.

(D) Use of funds

The activities for which a grant may be made under subparagraph (B) or (C) may include the purchase or lease of equipment, which may include data and information systems (including paying for the costs of amortizing the principal of, and paying the interest on, loans for equipment), the provision of training and technical assistance related to the provision of health care services on a prepaid basis or under another managed care arrangement, and other activities that promote the development of practice management or managed care networks and plans.

(2) Limitation

Not more than two grants may be made under this subsection for the same project, except that upon a showing of good cause, the Secretary may make additional grant awards.

(d) Loan guarantee program

(1) Establishment

(A) In general

The Secretary shall establish a program under which the Secretary may, in accordance with this subsection and to the extent that appropriations are provided in advance for such program, guarantee up to 90 percent of the principal and interest on loans made by non-Federal lenders to health centers, funded under this section, for the costs of developing and operating managed care networks or plans described in subsection (c)(1)(B) of this section, or practice management networks described in subsection (c)(1)(C) of this section.

(B) Use of funds

Loan funds guaranteed under this subsection may be used—

(i) to establish reserves for the furnishing of services on a pre-paid basis;

(ii) for costs incurred by the center or centers, otherwise permitted under this section, as the Secretary determines are necessary to enable a center or centers to develop, operate, and own the network or plan; or

(iii) to refinance an existing loan (as of the date of refinancing) to the center or centers, if the Secretary determines—

(I) that such refinancing will be beneficial to the health center and the Federal Government; or

(II) that the center (or centers) can demonstrate an ability to repay the refinanced loan equal to or greater than the ability of the center (or centers) to repay the original loan on the date the original loan was made.

(C) Publication of guidance

Prior to considering an application submitted under this subsection, the Secretary shall publish guidelines to provide guidance on the implementation of this section. The Secretary shall make such guidelines available to the universe of parties affected under this subsection, distribute such guidelines to such parties upon the request of such parties, and provide a copy of such guidelines to the appropriate committees of Congress.

(D) Provision directly to networks or plans

At the request of health centers receiving assistance under this section, loan guarantees provided under this paragraph may be made directly to networks or plans that are at least majority controlled and, as applicable, at least majority owned by those health centers.

(E) Federal credit reform

The requirements of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) shall apply with respect to loans refinanced under subparagraph (B)(iii).

(2) Protection of financial interests

(A) In general

The Secretary may not approve a loan guarantee for a project under this subsection unless the Secretary determines that—

(i) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such percent per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States, except that the Secretary may not require as security any center asset that is, or may be, needed by the center or centers involved to provide health services;

(ii) the loan would not be available on reasonable terms and conditions without the guarantee under this subsection; and

(iii) amounts appropriated for the program under this subsection are sufficient to provide loan guarantees under this subsection.

(B) Recovery of payments

(i) In general

The United States shall be entitled to recover from the applicant for a loan guarantee under this subsection the amount of

any payment made pursuant to such guarantee, unless the Secretary for good cause waives such right of recovery (subject to appropriations remaining available to permit such a waiver) and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made. Amounts recovered under this clause shall be credited as reimbursements to the financing account of the program.

(ii) Modification of terms and conditions

To the extent permitted by clause (iii) and subject to the requirements of section 504(e) of the Credit Reform Act of 1990 (2 U.S.C. 661c(e)), any terms and conditions applicable to a loan guarantee under this subsection (including terms and conditions imposed under clause (iv)) may be modified or waived by the Secretary to the extent the Secretary determines it to be consistent with the financial interest of the United States.

(iii) Incontestability

Any loan guarantee made by the Secretary under this subsection shall be incontestable—

(I) in the hands of an applicant on whose behalf such guarantee is made unless the applicant engaged in fraud or misrepresentation in securing such guarantee; and

(II) as to any person (or successor in interest) who makes or contracts to make a loan to such applicant in reliance thereon unless such person (or successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

(iv) Further terms and conditions

Guarantees of loans under this subsection shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this section will be achieved.

(3) Loan origination fees

(A) In general

The Secretary shall collect a loan origination fee with respect to loans to be guaranteed under this subsection, except as provided in subparagraph (C).

(B) Amount

The amount of a loan origination fee collected by the Secretary under subparagraph (A) shall be equal to the estimated long term cost of the loan guarantees involved to the Federal Government (excluding administrative costs), calculated on a net present value basis, after taking into account any appropriations that may be made for the purpose of offsetting such costs, and in accordance with the criteria used to award loan guarantees under this subsection.

(C) Waiver

The Secretary may waive the loan origination fee for a health center applicant who demonstrates to the Secretary that the applicant will be unable to meet the conditions of the loan if the applicant incurs the additional cost of the fee.

(4) Defaults

(A) In general

Subject to the requirements of the Credit Reform Act of 1990[1] (2 U.S.C. 661 et seq.), the Secretary may take such action as may be necessary to prevent a default on a loan guaranteed under this subsection, including the waiver of regulatory conditions, deferral of loan payments, renegotiation of loans, and the expenditure of funds for technical and consultative assistance, for the temporary payment of the interest and principal on such a loan, and for other purposes. Any such expenditure made under the preceding sentence on behalf of a health center or centers shall be made under such terms and conditions as the Secretary shall prescribe, including the implementation of such organizational, operational, and financial reforms as the Secretary determines are appropriate and the disclosure of such financial or other information as the Secretary may require to determine the extent of the implementation of such reforms.

(B) Foreclosure

The Secretary may take such action, consistent with State law respecting foreclosure procedures and, with respect to reserves required for furnishing services on a prepaid basis, subject to the consent of the affected States, as the Secretary determines appropriate to protect the interest of the United States in the event of a default on a loan guaranteed under this subsection, except that the Secretary may only foreclose on assets offered as security (if any) in accordance with paragraph (2)(A)(i).

(5) Limitation

Not more than one loan guarantee may be made under this subsection for the same network or plan, except that upon a showing of good cause the Secretary may make additional loan guarantees.

(6) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection such sums as may be necessary.

(e) Operating grants

(1) Authority

(A) In general

The Secretary may make grants for the costs of the operation of public and nonprofit private health centers that provide health services to medically underserved populations.

(B) Entities that fail to meet certain requirements

The Secretary may make grants, for a period of not to exceed 2 years, for the costs of the operation of public and nonprofit private

[1] See References in Text note below.

entities which provide health services to medically underserved populations but with respect to which the Secretary is unable to make each of the determinations required by subsection (k)(3) of this section.

(C) Operation of networks and plans

The Secretary may make grants to health centers that receive assistance under this section, or at the request of the health centers, directly to a network or plan (as described in subparagraphs (B) and (C) of subsection (c)(1) of this section) that is at least majority controlled and, as applicable, at least majority owned by such health centers receiving assistance under this section, for the costs associated with the operation of such network or plan, including the purchase or lease of equipment (including the costs of amortizing the principal of, and paying the interest on, loans for equipment).

(2) Use of funds

The costs for which a grant may be made under subparagraph (A) or (B) of paragraph (1) may include the costs of acquiring and leasing buildings and equipment (including the costs of amortizing the principal of, and paying interest on, loans), and the costs of providing training related to the provision of required primary health services and additional health services and to the management of health center programs.

(3) Construction

The Secretary may award grants which may be used to pay the costs associated with expanding and modernizing existing buildings or constructing new buildings (including the costs of amortizing the principal of, and paying the interest on, loans) for projects approved prior to October 1, 1996.

(4) Limitation

Not more than two grants may be made under subparagraph (B) of paragraph (1) for the same entity.

(5) Amount

(A) In general

The amount of any grant made in any fiscal year under subparagraphs (A) and (B) of paragraph (1) to a health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of—

(i) State, local, and other operational funding provided to the center; and

(ii) the fees, premiums, and third-party reimbursements, which the center may reasonably be expected to receive for its operations in such fiscal year.

(B) Networks and plans

The total amount of grant funds made available for any fiscal year under paragraph (1)(C) and subparagraphs (B) and (C) of subsection (c)(1) of this section to a health center or to a network or plan shall be determined by the Secretary, but may not exceed 2 percent of the total amount appropriated under this section for such fiscal year.

(C) Payments

Payments under grants under subparagraph (A) or (B) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments.

(D) Use of nongrant funds

Nongrant funds described in clauses (i) and (ii) of subparagraph (A), including any such funds in excess of those originally expected, shall be used as permitted under this section, and may be used for such other purposes as are not specifically prohibited under this section if such use furthers the objectives of the project.

(f) Infant mortality grants

(1) In general

The Secretary may make grants to health centers for the purpose of assisting such centers in—

(A) providing comprehensive health care and support services for the reduction of—

(i) the incidence of infant mortality; and

(ii) morbidity among children who are less than 3 years of age; and

(B) developing and coordinating service and referral arrangements between health centers and other entities for the health management of pregnant women and children described in subparagraph (A).

(2) Priority

In making grants under this subsection the Secretary shall give priority to health centers providing services to any medically underserved population among which there is a substantial incidence of infant mortality or among which there is a significant increase in the incidence of infant mortality.

(3) Requirements

The Secretary may make a grant under this subsection only if the health center involved agrees that—

(A) the center will coordinate the provision of services under the grant to each of the recipients of the services;

(B) such services will be continuous for each such recipient;

(C) the center will provide follow-up services for individuals who are referred by the center for services described in paragraph (1);

(D) the grant will be expended to supplement, and not supplant, the expenditures of the center for primary health services (including prenatal care) with respect to the purpose described in this subsection; and

(E) the center will coordinate the provision of services with other maternal and child health providers operating in the catchment area.

(g) Migratory and seasonal agricultural workers

(1) In general

The Secretary may award grants for the purposes described in subsections (c), (e), and (f)

of this section for the planning and delivery of services to a special medically underserved population comprised of—

(A) migratory agricultural workers, seasonal agricultural workers, and members of the families of such migratory and seasonal agricultural workers who are within a designated catchment area; and

(B) individuals who have previously been migratory agricultural workers but who no longer meet the requirements of subparagraph (A) of paragraph (3) because of age or disability and members of the families of such individuals who are within such catchment area.

(2) Environmental concerns

The Secretary may enter into grants or contracts under this subsection with public and private entities to—

(A) assist the States in the implementation and enforcement of acceptable environmental health standards, including enforcement of standards for sanitation in migratory agricultural worker and seasonal agricultural worker labor camps, and applicable Federal and State pesticide control standards; and

(B) conduct projects and studies to assist the several States and entities which have received grants or contracts under this section in the assessment of problems related to camp and field sanitation, exposure to unsafe levels of agricultural chemicals including pesticides, and other environmental health hazards to which migratory agricultural workers and seasonal agricultural workers, and members of their families, are exposed.

(3) Definitions

For purposes of this subsection:

(A) Migratory agricultural worker

The term ''migratory agricultural worker'' means an individual whose principal employment is in agriculture, who has been so employed within the last 24 months, and who establishes for the purposes of such employment a temporary abode.

(B) Seasonal agricultural worker

The term ''seasonal agricultural worker'' means an individual whose principal employment is in agriculture on a seasonal basis and who is not a migratory agricultural worker.

(C) Agriculture

The term ''agriculture'' means farming in all its branches, including—

(i) cultivation and tillage of the soil;

(ii) the production, cultivation, growing, and harvesting of any commodity grown on, in, or as an adjunct to or part of a commodity grown in or on, the land; and

(iii) any practice (including preparation and processing for market and delivery to storage or to market or to carriers for transportation to market) performed by a farmer or on a farm incident to or in conjunction with an activity described in clause (ii).

(h) Homeless population

(1) In general

The Secretary may award grants for the purposes described in subsections (c), (e), and (f) of this section for the planning and delivery of services to a special medically underserved population comprised of homeless individuals, including grants for innovative programs that provide outreach and comprehensive primary health services to homeless children and youth and children and youth at risk of homelessness.

(2) Required services

In addition to required primary health services (as defined in subsection (b)(1) of this section), an entity that receives a grant under this subsection shall be required to provide substance abuse services as a condition of such grant.

(3) Supplement not supplant requirement

A grant awarded under this subsection shall be expended to supplement, and not supplant, the expenditures of the health center and the value of in kind contributions for the delivery of services to the population described in paragraph (1).

(4) Temporary continued provision of services to certain former homeless individuals

If any grantee under this subsection has provided services described in this section under the grant to a homeless individual, such grantee may, notwithstanding that the individual is no longer homeless as a result of becoming a resident in permanent housing, expend the grant to continue to provide such services to the individual for not more than 12 months.

(5) Definitions

For purposes of this section:

(A) Homeless individual

The term ''homeless individual'' means an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations and an individual who is a resident in transitional housing.

(B) Substance abuse

The term ''substance abuse'' has the same meaning given such term in section 290cc–34(4) of this title.

(C) Substance abuse services

The term ''substance abuse services'' includes detoxification, risk reduction, outpatient treatment, residential treatment, and rehabilitation for substance abuse provided in settings other than hospitals.

(i) Residents of public housing

(1) In general

The Secretary may award grants for the purposes described in subsections (c), (e), and (f) of this section for the planning and delivery of services to a special medically underserved population comprised of residents of public

housing (such term, for purposes of this subsection, shall have the same meaning given such term in section 1437a(b)(1) of this title) and individuals living in areas immediately accessible to such public housing.

(2) Supplement not supplant

A grant awarded under this subsection shall be expended to supplement, and not supplant, the expenditures of the health center and the value of in kind contributions for the delivery of services to the population described in paragraph (1).

(3) Consultation with residents

The Secretary may not make a grant under paragraph (1) unless, with respect to the residents of the public housing involved, the applicant for the grant—

(A) has consulted with the residents in the preparation of the application for the grant; and

(B) agrees to provide for ongoing consultation with the residents regarding the planning and administration of the program carried out with the grant.

(j) Access grants

(1) In general

The Secretary may award grants to eligible health centers with a substantial number of clients with limited English speaking proficiency to provide translation, interpretation, and other such services for such clients with limited English speaking proficiency.

(2) Eligible health center

In this subsection, the term ''eligible health center'' means an entity that—

(A) is a health center as defined under subsection (a) of this section;

(B) provides health care services for clients for whom English is a second language; and

(C) has exceptional needs with respect to linguistic access or faces exceptional challenges with respect to linguistic access.

(3) Grant amount

The amount of a grant awarded to a center under this subsection shall be determined by the Administrator. Such determination of such amount shall be based on the number of clients for whom English is a second language that is served by such center, and larger grant amounts shall be awarded to centers serving larger numbers of such clients.

(4) Use of funds

An eligible health center that receives a grant under this subsection may use funds received through such grant to—

(A) provide translation, interpretation, and other such services for clients for whom English is a second language, including hiring professional translation and interpretation services; and

(B) compensate bilingual or multilingual staff for language assistance services provided by the staff for such clients.

(5) Application

An eligible health center desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, including—

(A) an estimate of the number of clients that the center serves for whom English is a second language;

(B) the ratio of the number of clients for whom English is a second language to the total number of clients served by the center;

(C) a description of any language assistance services that the center proposes to provide to aid clients for whom English is a second language; and

(D) a description of the exceptional needs of such center with respect to linguistic access or a description of the exceptional challenges faced by such center with respect to linguistic access.

(6) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection, in addition to any funds authorized to be appropriated or appropriated for health centers under any other subsection of this section, such sums as may be necessary for each of fiscal years 2002 through 2006.

(k) Applications

(1) Submission

No grant may be made under this section unless an application therefore is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe.

(2) Description of need

An application for a grant under subparagraph (A) or (B) of subsection (e)(1) of this section for a health center shall include—

(A) a description of the need for health services in the catchment area of the center;

(B) a demonstration by the applicant that the area or the population group to be served by the applicant has a shortage of personal health services; and

(C) a demonstration that the center will be located so that it will provide services to the greatest number of individuals residing in the catchment area or included in such population group.

Such a demonstration shall be made on the basis of the criteria prescribed by the Secretary under subsection (b)(3) of this section or on any other criteria which the Secretary may prescribe to determine if the area or population group to be served by the applicant has a shortage of personal health services. In considering an application for a grant under subparagraph (A) or (B) of subsection (e)(1) of this section, the Secretary may require as a condition to the approval of such application an assurance that the applicant will provide any health service defined under paragraphs (1) and (2) of subsection (b) of this section that the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided to the applicant.

(3) Requirements

Except as provided in subsection (e)(1)(B) of this section, the Secretary may not approve an application for a grant under subparagraph (A) or (B) of subsection (e)(1) of this section unless the Secretary determines that the entity for which the application is submitted is a health center (within the meaning of subsection (a) of this section) and that—

(A) the required primary health services of the center will be available and accessible in the catchment area of the center promptly, as appropriate, and in a manner which assures continuity;

(B) the center has made and will continue to make every reasonable effort to establish and maintain collaborative relationships with other health care providers in the catchment area of the center;

(C) the center will have an ongoing quality improvement system that includes clinical services and management, and that maintains the confidentiality of patient records;

(D) the center will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(E) the center—

(i)(I) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan; and

(II) has or will have a contractual or other arrangement with the State agency administering the program under title XXI of such Act (42 U.S.C. 1397aa et seq.) with respect to individuals who are State children's health insurance program beneficiaries; or

(ii) has made or will make every reasonable effort to enter into arrangements described in subclauses (I) and (II) of clause (i);

(F) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], to medical assistance under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.], or to assistance for medical expenses under any other public assistance program or private health insurance program;

(G) the center—

(i) has prepared a schedule of fees or payments for the provision of its services consistent with locally prevailing rates or charges and designed to cover its reasonable costs of operation and has prepared a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay;

(ii) has made and will continue to make every reasonable effort—

(I) to secure from patients payment for services in accordance with such schedules; and

(II) to collect reimbursement for health services to persons described in subparagraph (F) on the basis of the full amount of fees and payments for such services without application of any discount;

(iii)(I) will assure that no patient will be denied health care services due to an individual's inability to pay for such services; and

(II) will assure that any fees or payments required by the center for such services will be reduced or waived to enable the center to fulfill the assurance described in subclause (I); and

(iv) has submitted to the Secretary such reports as the Secretary may require to determine compliance with this subparagraph;

(H) the center has established a governing board which except in the case of an entity operated by an Indian tribe or tribal or Indian organization under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or an urban Indian organization under the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.)—

(i) is composed of individuals, a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center;

(ii) meets at least once a month, selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a governing board of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and

(iii) in the case of an application for a second or subsequent grant for a public center, has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;

except that, upon a showing of good cause the Secretary shall waive, for the length of the project period, all or part of the requirements of this subparagraph in the case of a health center that receives a grant pursuant to subsection (g), (h), (i), or (p) of this section;

(I) the center has developed—

(i) an overall plan and budget that meets the requirements of the Secretary; and

(ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to—

(I) the costs of its operations;

(II) the patterns of use of its services;

(III) the availability, accessibility, and acceptability of its services; and

(IV) such other matters relating to operations of the applicant as the Secretary may require;

(J) the center will review periodically its catchment area to—

(i) ensure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the residents of the area promptly and as appropriate;

(ii) ensure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs; and

(iii) ensure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social grouping, and available transportation;

(K) in the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, the center has—

(i) developed a plan and made arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals; and

(ii) identified an individual on its staff who is fluent in both that language and in English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences;

(L) the center, has developed an ongoing referral relationship with one or more hospitals; and

(M) the center encourages persons receiving or seeking health services from the center to participate in any public or private (including employer-offered) health programs or plans for which the persons are eligible, so long as the center, in complying with this subparagraph, does not violate the requirements of subparagraph (G)(iii)(I).

For purposes of subparagraph (H), the term ''public center'' means a health center funded (or to be funded) through a grant under this section to a public agency.

(4) Approval of new or expanded service applications

The Secretary shall approve applications for grants under subparagraph (A) or (B) of subsection (e)(1) of this section for health centers which—

(A) have not received a previous grant under such subsection; or

(B) have applied for such a grant to expand their services;

in such a manner that the ratio of the medically underserved populations in rural areas which may be expected to use the services provided by such centers to the medically underserved populations in urban areas which may be expected to use the services provided by such centers is not less than two to three or greater than three to two.

***(l)* Technical assistance**

The Secretary shall establish a program through which the Secretary shall provide (either through the Department of Health and Human Services or by grant or contract) technical and other assistance to eligible entities to assist such entities to meet the requirements of subsection (k)(3) of this section. Services provided through the program may include necessary technical and nonfinancial assistance, including fiscal and program management assistance, training in fiscal and program management, operational and administrative support, and the provision of information to the entities of the variety of resources available under this subchapter and how those resources can be best used to meet the health needs of the communities served by the entities.

(m) Memorandum of agreement

In carrying out this section, the Secretary may enter into a memorandum of agreement with a State. Such memorandum may include, where appropriate, provisions permitting such State to—

(1) analyze the need for primary health services for medically underserved populations within such State;

(2) assist in the planning and development of new health centers;

(3) review and comment upon annual program plans and budgets of health centers, including comments upon allocations of health care resources in the State;

(4) assist health centers in the development of clinical practices and fiscal and administrative systems through a technical assistance plan which is responsive to the requests of health centers; and

(5) share information and data relevant to the operation of new and existing health centers.

(n) Records

(1) In general

Each entity which receives a grant under subsection (e) of this section shall establish and maintain such records as the Secretary shall require.

(2) Availability

Each entity which is required to establish and maintain records under this subsection shall make such books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying or mechanical reproduction on or off the premises of such entity upon a reasonable request therefore. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the authority to

conduct such examination, copying, and reproduction.

(*o*) Delegation of authority

The Secretary may delegate the authority to administer the programs authorized by this section to any office, except that the authority to enter into, modify, or issue approvals with respect to grants or contracts may be delegated only within the central office of the Health Resources and Services Administration.

(p) Special consideration

In making grants under this section, the Secretary shall give special consideration to the unique needs of sparsely populated rural areas, including giving priority in the awarding of grants for new health centers under subsections (c) and (e) of this section, and the granting of waivers as appropriate and permitted under subsections (b)(1)(B)(i) and (k)(3)(G) of this section.

(q) Audits

(1) In general

Each entity which receives a grant under this section shall provide for an independent annual financial audit of any books, accounts, financial records, files, and other papers and property which relate to the disposition or use of the funds received under such grant and such other funds received by or allocated to the project for which such grant was made. For purposes of assuring accurate, current, and complete disclosure of the disposition or use of the funds received, each such audit shall be conducted in accordance with generally accepted accounting principles. Each audit shall evaluate—

(A) the entity's implementation of the guidelines established by the Secretary respecting cost accounting,

(B) the processes used by the entity to meet the financial and program reporting requirements of the Secretary, and

(C) the billing and collection procedures of the entity and the relation of the procedures to its fee schedule and schedule of discounts and to the availability of health insurance and public programs to pay for the health services it provides.

A report of each such audit shall be filed with the Secretary at such time and in such manner as the Secretary may require.

(2) Records

Each entity which receives a grant under this section shall establish and maintain such records as the Secretary shall by regulation require to facilitate the audit required by paragraph (1). The Secretary may specify by regulation the form and manner in which such records shall be established and maintained.

(3) Availability of records

Each entity which is required to establish and maintain records or to provide for and[2] audit under this subsection shall make such books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying or mechanical reproduction on or off the premises of such entity upon a reasonable request therefore. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the authority to conduct such examination, copying, and reproduction.

(4) Waiver

The Secretary may, under appropriate circumstances, waive the application of all or part of the requirements of this subsection with respect to an entity.

(r) Authorization of appropriations

(1) In general

For the purpose of carrying out this section, in addition to the amounts authorized to be appropriated under subsection (d) of this section, there are authorized to be appropriated $1,340,000,000 for fiscal year 2002 and such sums as may be necessary for each of the fiscal years 2003 through 2006.

(2) Special provisions

(A) Public centers

The Secretary may not expend in any fiscal year, for grants under this section to public centers (as defined in the second sentence of subsection (k)(3) of this section) the governing boards of which (as described in subsection (k)(3)(H) of this section) do not establish general policies for such centers, an amount which exceeds 5 percent of the amounts appropriated under this section for that fiscal year. For purposes of applying the preceding sentence, the term ''public centers'' shall not include health centers that receive grants pursuant to subsection (h) or (i) of this section.

(B) Distribution of grants

For fiscal year 2002 and each of the following fiscal years, the Secretary, in awarding grants under this section, shall ensure that the proportion of the amount made available under each of subsections (g), (h), and (i) of this section, relative to the total amount appropriated to carry out this section for that fiscal year, is equal to the proportion of the amount made available under that subsection for fiscal year 2001, relative to the total amount appropriated to carry out this section for fiscal year 2001.

(3) Funding report

The Secretary shall annually prepare and submit to the appropriate committees of Congress a report concerning the distribution of funds under this section that are provided to meet the health care needs of medically underserved populations, including the homeless, residents of public housing, and migratory and seasonal agricultural workers, and the appropriateness of the delivery systems involved in responding to the needs of the particular populations. Such report shall include an assessment of the relative health care access needs of the targeted populations and the rationale for any substantial changes in the distribution of funds.

[2] So in original. Probably should be ''an''.

(July 1, 1944, ch. 373, title III, § 330, as added Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626; amended Pub. L. 107–251, title I, § 101, Oct. 26, 2002, 116 Stat. 1622; Pub. L. 108–163, § 2(a), Dec. 6, 2003, 117 Stat. 2020.)

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (d)(1)(E), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. The Credit Reform Act of 1990, referred to in subsec. (d)(4)(A), probably means the Federal Credit Reform Act of 1990. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

The Social Security Act, referred to in subsec. (k)(3)(E)(i), (F), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Indian Self-Determination Act, referred to in subsec. (k)(3)(H), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (k)(3)(H), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§ 1601 et seq.) of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 254a–1, act July 1, 1944, ch. 373, title III, § 328, as added Nov. 10, 1978, Pub. L. 95–626, title I, § 114, 92 Stat. 3563; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to hospital-affiliated primary care centers, prior to repeal by Pub. L. 99–117, § 12(c), Oct. 7, 1985, 99 Stat. 495.

A prior section 254b, act July 1, 1944, ch. 373, title III, § 329, formerly § 310, as added Sept. 25, 1962, Pub. L. 87–692, 76 Stat. 592; amended Aug. 5, 1965, Pub. L. 89–109, § 3, 79 Stat. 436; Oct. 15, 1968, Pub. L. 90–574, title II, § 201, 82 Stat. 1006; Mar. 12, 1970, Pub. L. 91–209, 84 Stat. 52; June 18, 1973, Pub. L. 93–45, title I, § 105, 87 Stat. 91; renumbered § 319, July 23, 1974, Pub. L. 93–353, title I, § 102(d), 88 Stat. 362; amended July 29, 1975, Pub. L. 94–63, title IV, § 401(a), title VII, § 701(c), 89 Stat. 334, 352; Apr. 22, 1976, Pub. L. 94–278, title VIII, § 801(a), 90 Stat. 414; Aug. 1, 1977, Pub. L. 95–83, title III, § 303, 91 Stat. 388; renumbered § 329 and amended Nov. 10, 1978, Pub. L. 95–626, title I, §§ 102(a), 103(a)–(g)(1)(B), (2), (h), (i), 92 Stat. 3551–3555; July 10, 1979, Pub. L. 96–32, § 6(a), 93 Stat. 83; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title IX, § 930, 95 Stat. 569; Dec. 21, 1982, Pub. L. 97–375, title I, § 107(b), 96 Stat. 1820; Apr. 24, 1986, Pub. L. 99–280, §§ 6, 7, 100 Stat. 400, 401; Aug. 10, 1988, Pub. L. 100–386, § 2, 102 Stat. 919; Nov. 6, 1990, Pub. L. 101–527, § 9(b), 104 Stat. 2333; Oct. 27, 1992, Pub. L. 102–531, title III, § 309(a), 106 Stat. 3499, related to migrant health centers, prior to the general amendment of this subpart by Pub. L. 104–299, § 2.

Another prior section 254b, act July 1, 1944, ch. 373, title III, § 329, as added Dec. 31, 1970, Pub. L. 91–623, § 2, 84 Stat. 1868; amended Nov. 18, 1971, Pub. L. 92–157, title II, § 203, 85 Stat. 462; Oct. 27, 1972, Pub. L. 92–585, § 2, 86 Stat. 1290; July 29, 1975, Pub. L. 94–63, title VIII, §§ 801–803, 89 Stat. 353, 354; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(b), 90 Stat. 2244, related to establishment of National Health Service Corps, assignment of personnel and statement of purpose, prior to repeal by Pub. L. 94–484, title IV, § 407(b)(1), Oct. 12, 1976, 90 Stat. 2268. See section 254d et seq. of this title.

A prior section 330 of act July 1, 1944, was classified to section 254c of this title prior to the general amendment of this subpart by Pub. L. 104–299.

AMENDMENTS

2003—Subsec. (c)(1)(B). Pub. L. 108–163, § 2(a)(2)(A), substituted ''plan.'' for ''plan..'' in introductory provisions.

Subsec. (d)(1)(B)(iii)(I). Pub. L. 108–163, § 2(a)(2)(B), inserted ''or'' at end.

Subsec. (e)(3) to (5). Pub. L. 108–163, § 2(a)(1)(A), amended pars. (3) to (5) to read as if subpar. (C) of the second par. (4) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment notes below.

Subsec. (j). Pub. L. 108–163, § 2(a)(2)(E), added subsec. (j) identical to the subsec. (j) appearing in the amendment by section 101(8)(C) of Pub. L. 107–251. See 2002 Amendment notes below. Former subsec. (j) redesignated (k).

Pub. L. 108–163, § 2(a)(1)(C), amended subsec. (j) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment notes below.

Subsec. (j)(3)(H). Pub. L. 108–163, § 2(a)(1)(B), amended subpar. (H) to read as if subpar. (C) of par. (7) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment note below.

Subsec. (k). Pub. L. 108–163, § 2(a)(2)(C), (D), redesignated subsec. (j) as (k) and struck out heading and text of former subsec. (k). Text read as follows: ''The Secretary may provide (either through the Department of Health and Human Services or by grant or contract) all necessary technical and other nonfinancial assistance (including fiscal and program management assistance and training in such management) to any public or private nonprofit entity to assist entities in developing plans for, or operating as, health centers, and in meeting the requirements of subsection (j)(2) of this section.''

Pub. L. 108–163, § 2(a)(1)(C), amended subsec. (k) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment notes below.

Subsec. (*l*). Pub. L. 108–163, § 2(a)(2)(H), inserted ''(either through the Department of Health and Human Services or by grant or contract)'' after ''shall provide'' and substituted ''(k)(3)'' for ''(*l*)(3)''.

Pub. L. 108–163, § 2(a)(2)(G), added subsec. (*l*) identical to the subsec. (m) appearing in the amendment by section 101(9) of Pub. L. 107–251. See 2002 Amendment notes below. Former subsec. (*l*) redesignated (r).

Pub. L. 108–163, § 2(a)(1)(C), amended subsec. (*l*) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment note below.

Subsecs. (m) to (*o*). Pub. L. 108–163, § 2(a)(1)(C), amended subsecs. (m) to (*o*) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment notes below.

Subsec. (p). Pub. L. 108–163, § 2(a)(2)(I), substituted ''(k)(3)(G)'' for ''(j)(3)(G)''.

Pub. L. 108–163, § 2(a)(1)(C), amended subsec. (p) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment note below.

Subsec. (q). Pub. L. 108–163, § 2(a)(1)(C), amended subsec. (q) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment note below.

Subsec. (r). Pub. L. 108–163, § 2(a)(2)(F), redesignated subsec. (*l*) as (r).

Pub. L. 108–163, § 2(a)(1)(C), amended subsec. (r) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment note below.

Subsec. (r)(1). Pub. L. 108–163, § 2(a)(2)(J)(i), substituted ''$1,340,000,000 for fiscal year 2002 and such sums as may be necessary for each of the fiscal years 2003 through 2006'' for ''$802,124,000 for fiscal year 1997, and such sums as may be necessary for each of the fiscal years 1998 through 2001''.

Subsec. (r)(2)(A). Pub. L. 108–163, §2(a)(2)(J)(ii), substituted ''(k)(3)'' for ''(j)(3)'' and ''(k)(3)(H)'' for ''(j)(3)(G)(ii)''.

Subsec. (r)(2)(B). Pub. L. 108–163, §2(a)(2)(J)(iii), added subpar. (B) identical to the subpar. (B) appearing in the amendment by section 101(11)(B)(ii) of Pub. L. 107–251 and struck out heading and text of former subpar. (B) relating to distribution of grants for fiscal years 1997 through 1999. See 2002 Amendment note below.

Subsec. (s). Pub. L. 108–163, §2(a)(1)(C), amended subsec. (s) to read as if pars. (8) through (11) of section 101 of Pub. L. 107–251 had not been enacted. See 2002 Amendment notes below.

2002—Subsec. (b)(1)(A)(i)(III)(bb). Pub. L. 107–251, §101(1)(A), substituted ''appropriate cancer screening'' for ''screening for breast and cervical cancer''.

Subsec. (b)(1)(A)(ii). Pub. L. 107–251, §101(1)(B), inserted ''(including specialty referral when medically indicated)'' after ''medical services''.

Subsec. (b)(1)(A)(iii). Pub. L. 107–251, §101(1)(C), inserted ''housing,'' after ''social,''.

Subsec. (b)(2)(A). Pub. L. 107–251, §101(2)(C), added subpar. (A). Former subpar. (A) redesignated (C).

Subsec. (b)(2)(A)(i). Pub. L. 107–251, §101(2)(A), substituted ''associated with—'' and subcls. (I) to (IV) for ''associated with water supply;''.

Subsec. (b)(2)(B) to (D). Pub. L. 107–251, §101(2)(B), (C), added subpar. (B) and redesignated former subpars. (A) and (B) as (C) and (D), respectively.

Subsec. (c)(1)(B). Pub. L. 107–251, §101(3)(A)(iii), struck out concluding provisions which read as follows: ''Any such grant may include the acquisition and lease of buildings and equipment which may include data and information systems (including the costs of amortizing the principal of, and paying the interest on, loans), and providing training and technical assistance related to the provision of health services on a prepaid basis or under another managed care arrangement, and for other purposes that promote the development of managed care networks and plans.''

Pub. L. 107–251, §101(3)(A)(ii), in introductory provisions, substituted ''managed care network or plan.'' for ''network or plan for the provision of health services, which may include the provision of health services on a prepaid basis or through another managed care arrangement, to some or to all of the individuals which the centers serve''.

Pub. L. 107–251, §101(3)(A)(i), substituted ''Managed care'' for ''Comprehensive service delivery'' in heading.

Subsec. (c)(1)(C), (D). Pub. L. 107–251, §101(3)(B), added subpars. (C) and (D).

Subsec. (d). Pub. L. 107–251, §101(4)(A), substituted ''Loan guarantee program'' for ''Managed care loan guarantee program'' in heading.

Subsec. (d)(1)(A). Pub. L. 107–251, §101(4)(B)(i), substituted ''up to 90 percent of the principal and interest on loans made by non-Federal lenders to health centers, funded under this section, for the costs of developing and operating managed care networks or plans described in subsection (c)(1)(B) of this section, or practice management networks described in subsection (c)(1)(C) of this section'' for ''the principal and interest on loans made by non-Federal lenders to health centers funded under this section for the costs of developing and operating managed care networks or plans''.

Subsec. (d)(1)(B)(iii). Pub. L. 107–251, §101(4)(B)(ii), added cl. (iii).

Subsec. (d)(1)(D), (E). Pub. L. 107–251, §101(4)(B)(iii), added subpars. (D) and (E).

Subsec. (d)(6) to (8). Pub. L. 107–251, §101(4)(C), redesignated par. (8) as (6) and struck out headings and text of former pars. (6) and (7) which related to annual reports and program evaluation, respectively.

Subsec. (e)(1)(B). Pub. L. 107–251, §101(4)(A)(i), substituted ''subsection (k)(3)'' for ''subsection (j)(3)''.

Subsec. (e)(1)(C). Pub. L. 107–251, §101(4)(A)(ii), added subpar. (C).

Subsec. (e)(3). Pub. L. 107–251, §101(4)(C), redesignated par. (4), relating to limitation, as (3).

Subsec. (e)(4). Pub. L. 107–251, §101(4)(C), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(5). Pub. L. 107–251, §101(4)(B), (C), redesignated par. (5) as (4), inserted ''subparagraphs (A) and (B) of'' after ''any fiscal year under'' in subpar. (A), added subpar. (B), and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (g)(2)(A). Pub. L. 107–251, §101(5)(A)(i), inserted ''and seasonal agricultural worker'' after ''migratory agricultural worker''.

Subsec. (g)(2)(B). Pub. L. 107–251, §101(5)(A)(ii), substituted ''and seasonal agricultural workers, and members of their families,'' for ''and members of their families''.

Subsec. (g)(3)(A). Pub. L. 107–251, §101(5)(B), struck out ''on a seasonal basis'' after ''in agriculture''.

Subsec. (h)(1). Pub. L. 107–251, §101(6)(A), substituted ''homeless children and youth and children and youth at risk of homelessness'' for ''homeless children and children at risk of homelessness''.

Subsec. (h)(4). Pub. L. 107–251, §101(6)(B)(ii), added par. (4). Former par. (4) redesignated (5).

Subsec. (h)(5). Pub. L. 107–251, §101(6)(B)(i), (C), redesignated par. (4) as (5) and substituted '', risk reduction, outpatient treatment, residential treatment, and rehabilitation'' for ''and residential treatment'' in subpar. (C).

Subsec. (j). Pub. L. 107–251, §101(8)(C), added subsec. (j) relating to access grants.

Pub. L. 107–251, §101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as subsecs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsec. (j)(3)(E)(i). Pub. L. 107–251, §101(7)(A)(i), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (j)(3)(E)(ii). Pub. L. 107–251, §101(7)(A)(ii), substituted ''arrangements described in subclauses (I) and (II) of clause (i)'' for ''such an arrangement''.

Subsec. (j)(3)(G)(iii), (iv). Pub. L. 107–251, §101(7)(B), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (j)(3)(H). Pub. L. 107–251, §101(7)(C), substituted ''or (q)'' for ''or (p)'' in concluding provisions.

Subsec. (j)(3)(M). Pub. L. 107–251, §101(7)(D)–(F), added subpar. (M).

Subsec. (k). Pub. L. 107–251, §101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as subsecs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsec. (*l*). Pub. L. 107–251, §101(8)(A), redesignated subsec. (*l*) as (s).

Subsec. (m). Pub. L. 107–251, §101(9), which directed striking subsec. (m) (as redesignated by paragraph (9)(B)) and adding a new subsec. (m), could not be executed. The new subsec. (m) to be added read as follows: ''(m) TECHNICAL ASSISTANCE.—The Secretary shall establish a program through which the Secretary shall provide technical and other assistance to eligible entities to assist such entities to meet the requirements of subsection (*l*)(3) of this section. Services provided through the program may include necessary technical and nonfinancial assistance, including fiscal and program management assistance, training in fiscal and program management, operational and administrative support, and the provision of information to the entities of the variety of resources available under this subchapter and how those resources can be best used to meet the health needs of the communities served by the entities.''

Pub. L. 107–251, §101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as subsecs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsecs. (n) to (p). Pub. L. 107–251, §101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as subsecs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsec. (q). Pub. L. 107–251, §101(10), which directed the substitution of ''(*l*)(3)(G)'' for ''(j)(3)(G)'' in subsec. (q) ''(as redesignated by paragraph (9)(B))'', could not be executed.

Pub. L. 107–251, §101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as sub-

secs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsec. (r). Pub. L. 107–251, §101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as subsecs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsec. (s). Pub. L. 107–251, §101(8)(B), which directed the redesignation of subsecs. (j), (k), and (m) through (q) as subsecs. (n), (*o*), and (p) through (s), respectively, could not be executed.

Subsec. (s)(1). Pub. L. 107–251, §101(11)(A), substituted ''$1,340,000,000 for fiscal year 2002 and such sums as may be necessary for each of the fiscal years 2003 through 2006'' for ''$802,124,000 for fiscal year 1997, and such sums as may be necessary for each of the fiscal years 1998 through 2001''.

Subsec. (s)(2)(A). Pub. L. 107–251, §101(11)(B)(i), substituted ''(*l*)(3)'' for ''(j)(3)'' and ''(*l*)(3)(H)'' for ''(j)(3)(G)(ii)''.

Subsec. (s)(2)(B). Pub. L. 107–251, §101(11)(B)(ii), added subpar. (B) and struck out heading and text of former subpar. (B) relating to distribution of grants for fiscal years 1997 through 1999.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendments by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 5 of Pub. L. 104–299, as amended, set out as an Effective Date of 1996 Amendment note under section 233 of this title.

SAVINGS PROVISION FOR CURRENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

Section 3(b) of Pub. L. 104–299 provided that: ''The Secretary of Health and Human Services shall ensure the continued funding of grants made, or contracts or cooperative agreements entered into, under subpart I of part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) (as such subpart existed on the day prior to the date of enactment of this Act [Oct. 11, 1996]), until the expiration of the grant period or the term of the contract or cooperative agreement. Such funding shall be continued under the same terms and conditions as were in effect on the date on which the grant, contract or cooperative agreement was awarded, subject to the availability of appropriations.''

GUARANTEE STUDY

Pub. L. 107–251, title V, §501, Oct. 26, 2002, 116 Stat. 1664, as amended by Pub. L. 108–163, §2(n)(2), Dec. 6, 2003, 117 Stat. 2023, provided that: ''The Secretary of Health and Human Services shall conduct a study regarding the ability of the Department of Health and Human Services to provide for guarantees of solvency for managed care networks or plans involving health centers receiving funding under section 330 of the Public Health Service Act [this section]. The Secretary shall prepare and submit a report to the appropriate Committees of Congress regarding such ability not later than 2 years after the date of enactment of the Health Care Safety Net Amendments of 2002 [Oct. 26, 2002].''

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Section 4(c) of Pub. L. 104–299 provided that: ''Whenever any reference is made in any provision of law, regulation, rule, record, or document to a community health center, migrant health center, public housing health center, or homeless health center, such reference shall be considered a reference to a health center.''

LEGISLATIVE PROPOSAL FOR CHANGES CONFORMING TO PUB. L. 104–299

Section 4(e) of Pub. L. 104–299 provided that: ''After consultation with the appropriate committees of the Congress, the Secretary of Health and Human Services shall prepare and submit to the Congress a legislative proposal in the form of an implementing bill containing technical and conforming amendments to reflect the changes made by this Act [see Short Title of 1996 Amendments note set out under section 201 of this title].''

§ 254c. Rural health care services outreach, rural health network development, and small health care provider quality improvement grant programs

(a) Purpose

The purpose of this section is to provide grants for expanded delivery of health care services in rural areas, for the planning and implementation of integrated health care networks in rural areas, and for the planning and implementation of small health care provider quality improvement activities.

(b) Definitions

(1) Director

The term ''Director'' means the Director specified in subsection (d) of this section.

(2) Federally qualified health center; rural health clinic

The terms ''Federally qualified health center'' and ''rural health clinic'' have the meanings given the terms in section 1395x(aa) of this title.

(3) Health professional shortage area

The term ''health professional shortage area'' means a health professional shortage area designated under section 254e of this title.

(4) Medically underserved community

The term ''medically underserved community'' has the meaning given the term in section 295p(6) of this title.

(5) Medically underserved population

The term ''medically underserved population'' has the meaning given the term in section 254b(b)(3) of this title.

(c) Program

The Secretary shall establish, under section 241 of this title, a small health care provider quality improvement grant program.

(d) Administration

(1) Programs

The rural health care services outreach, rural health network development, and small health care provider quality improvement grant programs established under section 241 of this title shall be administered by the Director of the Office of Rural Health Policy of the Health Resources and Services Administration, in consultation with State offices of rural health or other appropriate State government entities.

(2) Grants

(A) In general

In carrying out the programs described in paragraph (1), the Director may award

grants under subsections (e), (f), and (g) of this section to expand access to, coordinate, and improve the quality of essential health care services, and enhance the delivery of health care, in rural areas.

(B) Types of grants

The Director may award the grants—

(i) to promote expanded delivery of health care services in rural areas under subsection (e) of this section;

(ii) to provide for the planning and implementation of integrated health care networks in rural areas under subsection (f) of this section; and

(iii) to provide for the planning and implementation of small health care provider quality improvement activities under subsection (g) of this section.

(e) Rural health care services outreach grants

(1) Grants

The Director may award grants to eligible entities to promote rural health care services outreach by expanding the delivery of health care services to include new and enhanced services in rural areas. The Director may award the grants for periods of not more than 3 years.

(2) Eligibility

To be eligible to receive a grant under this subsection for a project, an entity—

(A) shall be a rural public or rural nonprofit private entity;

(B) shall represent a consortium composed of members—

(i) that include 3 or more health care providers; and

(ii) that may be nonprofit or for-profit entities; and

(C) shall not previously have received a grant under this subsection for the same or a similar project, unless the entity is proposing to expand the scope of the project or the area that will be served through the project.

(3) Applications

To be eligible to receive a grant under this subsection, an eligible entity, in consultation with the appropriate State office of rural health or another appropriate State entity, shall prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, including—

(A) a description of the project that the eligible entity will carry out using the funds provided under the grant;

(B) a description of the manner in which the project funded under the grant will meet the health care needs of rural underserved populations in the local community or region to be served;

(C) a description of how the local community or region to be served will be involved in the development and ongoing operations of the project;

(D) a plan for sustaining the project after Federal support for the project has ended;

(E) a description of how the project will be evaluated; and

(F) other such information as the Secretary determines to be appropriate.

(f) Rural health network development grants

(1) Grants

(A) In general

The Director may award rural health network development grants to eligible entities to promote, through planning and implementation, the development of integrated health care networks that have combined the functions of the entities participating in the networks in order to—

(i) achieve efficiencies;

(ii) expand access to, coordinate, and improve the quality of essential health care services; and

(iii) strengthen the rural health care system as a whole.

(B) Grant periods

The Director may award such a rural health network development grant for implementation activities for a period of 3 years. The Director may also award such a rural health network development grant for planning activities for a period of 1 year, to assist in the development of an integrated health care network, if the proposed participants in the network do not have a history of collaborative efforts and a 3-year grant would be inappropriate.

(2) Eligibility

To be eligible to receive a grant under this subsection, an entity—

(A) shall be a rural public or rural nonprofit private entity;

(B) shall represent a network composed of participants—

(i) that include 3 or more health care providers; and

(ii) that may be nonprofit or for-profit entities; and

(C) shall not previously have received a grant under this subsection (other than a grant for planning activities) for the same or a similar project.

(3) Applications

To be eligible to receive a grant under this subsection, an eligible entity, in consultation with the appropriate State office of rural health or another appropriate State entity, shall prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, including—

(A) a description of the project that the eligible entity will carry out using the funds provided under the grant;

(B) an explanation of the reasons why Federal assistance is required to carry out the project;

(C) a description of—

(i) the history of collaborative activities carried out by the participants in the network;

(ii) the degree to which the participants are ready to integrate their functions; and

(iii) how the local community or region to be served will benefit from and be in-

volved in the activities carried out by the network;

(D) a description of how the local community or region to be served will experience increased access to quality health care services across the continuum of care as a result of the integration activities carried out by the network;

(E) a plan for sustaining the project after Federal support for the project has ended;

(F) a description of how the project will be evaluated; and

(G) other such information as the Secretary determines to be appropriate.

(g) Small health care provider quality improvement grants

(1) Grants

The Director may award grants to provide for the planning and implementation of small health care provider quality improvement activities. The Director may award the grants for periods of 1 to 3 years.

(2) Eligibility

To be eligible for a grant under this subsection, an entity—

(A)(i) shall be a rural public or rural nonprofit private health care provider or provider of health care services, such as a critical access hospital or a rural health clinic; or

(ii) shall be another rural provider or network of small rural providers identified by the Secretary as a key source of local care; and

(B) shall not previously have received a grant under this subsection for the same or a similar project.

(3) Applications

To be eligible to receive a grant under this subsection, an eligible entity, in consultation with the appropriate State office of rural health or another appropriate State entity shall prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, including—

(A) a description of the project that the eligible entity will carry out using the funds provided under the grant;

(B) an explanation of the reasons why Federal assistance is required to carry out the project;

(C) a description of the manner in which the project funded under the grant will assure continuous quality improvement in the provision of services by the entity;

(D) a description of how the local community or region to be served will experience increased access to quality health care services across the continuum of care as a result of the activities carried out by the entity;

(E) a plan for sustaining the project after Federal support for the project has ended;

(F) a description of how the project will be evaluated; and

(G) other such information as the Secretary determines to be appropriate.

(4) Expenditures for small health care provider quality improvement grants

In awarding a grant under this subsection, the Director shall ensure that the funds made available through the grant will be used to provide services to residents of rural areas. The Director shall award not less than 50 percent of the funds made available under this subsection to providers located in and serving rural areas.

(h) General requirements

(1) Prohibited uses of funds

An entity that receives a grant under this section may not use funds provided through the grant—

(A) to build or acquire real property; or

(B) for construction.

(2) Coordination with other agencies

The Secretary shall coordinate activities carried out under grant programs described in this section, to the extent practicable, with Federal and State agencies and nonprofit organizations that are operating similar grant programs, to maximize the effect of public dollars in funding meritorious proposals.

(3) Preference

In awarding grants under this section, the Secretary shall give preference to entities that—

(A) are located in health professional shortage areas or medically underserved communities, or serve medically underserved populations; or

(B) propose to develop projects with a focus on primary care, and wellness and prevention strategies.

(i) Report

Not later than September 30, 2005, the Secretary shall prepare and submit to the appropriate committees of Congress a report on the progress and accomplishments of the grant programs described in subsections (e), (f), and (g) of this section.

(j) Authorization of appropriations

There are authorized to be appropriated to carry out this section $40,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.

(July 1, 1944, ch. 373, title III, § 330A, as added Pub. L. 104–299, § 3(a), Oct. 11, 1996, 110 Stat. 3642; amended Pub. L. 107–251, title II, § 201, Oct. 26, 2002, 116 Stat. 1628; Pub. L. 108–163, § 2(b), Dec. 6, 2003, 117 Stat. 2021.)

PRIOR PROVISIONS

A prior section 254c, act July 1, 1944, ch. 373, title III, § 330, as added July 29, 1975, Pub. L. 94–63, title V, § 501(a), 89 Stat. 342; amended Apr. 22, 1976, Pub. L. 94–278, title VIII, § 801(b), 90 Stat. 415; Aug. 1, 1977, Pub. L. 95–83, title III, § 304, 91 Stat. 388; Nov. 10, 1978, Pub. L. 95–626, title I, § 104(a)–(d)(3)(B), (4), (5), (e), (f), 92 Stat. 3556–3559; July 10, 1979, Pub. L. 96–32, §§ 6(b)–(d), 7(c), 93 Stat. 83, 84; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Oct. 19, 1980, Pub. L. 96–470, title I, § 106(e), 94 Stat. 2238; Aug. 13, 1981, Pub. L. 97–35, title IX, §§ 903(a), 905, 906, 95 Stat. 561, 562; Jan. 4, 1983, Pub. L. 97–414, § 8(e), 96 Stat. 2060; Apr. 24, 1986, Pub. L. 99–280, §§ 2–4, 100 Stat. 399, 400; Aug. 10, 1988, Pub. L.

100–386, §§3, 4, 102 Stat. 921, 923; Nov. 4, 1988, Pub. L. 100–607, title I, §163(3), 102 Stat. 3062; Dec. 19, 1989, Pub. L. 101–239, title VI, §6103(e)(5), 103 Stat. 2207; Nov. 6, 1990, Pub. L. 101–527, §9(a), 104 Stat. 2332; Oct. 27, 1992, Pub. L. 102–531, title III, §309(b), 106 Stat. 3500, related to community health centers, prior to the general amendment of this subpart by Pub. L. 104–299, §2.

AMENDMENTS

2003—Subsec. (b)(4). Pub. L. 108–163 substituted ''section 295p(6)'' for ''section 295p''.

2002—Pub. L. 107–251 amended section generally. Prior to amendment, section related to a rural health outreach, network development, and telemedicine grant program, and in subsec. (a), provided for administration by the Office of Rural Health Policy; in subsec. (b), set out the objectives of grants; in subsec. (c), set out eligibility requirements; in subsec. (d), described preferred characteristics of applicant networks; in subsec. (e), specified permitted uses of grant funds; in subsec. (f), limited the duration of grants; and in subsec. (g), authorized appropriations.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 5 of Pub. L. 104–299, as amended, set out as an Effective Date of 1996 Amendment note under section 233 of this title.

RURAL ACCESS TO EMERGENCY DEVICES

Pub. L. 106–505, title IV, subtitle B, Nov. 13, 2000, 114 Stat. 2340, provided that:

''SEC. 411. SHORT TITLE.

''This subtitle may be cited as the 'Rural Access to Emergency Devices Act' or the 'Rural AED Act'.

''SEC. 412. FINDINGS.

''Congress makes the following findings:

''(1) Heart disease is the leading cause of death in the United States.

''(2) The American Heart Association estimates that 250,000 Americans die from sudden cardiac arrest each year.

''(3) A cardiac arrest victim's chance of survival drops 10 percent for every minute that passes before his or her heart is returned to normal rhythm.

''(4) Because most cardiac arrest victims are initially in ventricular fibrillation, and the only treatment for ventricular fibrillation is defibrillation, prompt access to defibrillation to return the heart to normal rhythm is essential.

''(5) Lifesaving technology, the automated external defibrillator, has been developed to allow trained lay rescuers to respond to cardiac arrest by using this simple device to shock the heart into normal rhythm.

''(6) Those people who are likely to be first on the scene of a cardiac arrest situation in many communities, particularly smaller and rural communities, lack sufficient numbers of automated external defibrillators to respond to cardiac arrest in a timely manner.

''(7) The American Heart Association estimates that more than 50,000 deaths could be prevented each year if defibrillators were more widely available to designated responders.

''(8) Legislation should be enacted to encourage greater public access to automated external defibrillators in communities across the United States.

''SEC. 413. GRANTS.

''(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Rural Health Outreach Office of the Health Resources and Services Administration, shall award grants to community partnerships that meet the requirements of subsection (b) to enable such partnerships to purchase equipment and provide training as provided for in subsection (c).

''(b) COMMUNITY PARTNERSHIPS.—A community partnership meets the requirements of this subsection if such partnership—

''(1) is composed of local emergency response entities such as community training facilities, local emergency responders, fire and rescue departments, police, community hospitals, and local non-profit entities and for-profit entities concerned about cardiac arrest survival rates;

''(2) evaluates the local community emergency response times to assess whether they meet the standards established by national public health organizations such as the American Heart Association and the American Red Cross; and

''(3) submits to the Secretary of Health and Human Services an application at such time, in such manner, and containing such information as the Secretary may require.

''(c) USE OF FUNDS.—Amounts provided under a grant under this section shall be used—

''(1) to purchase automated external defibrillators that have been approved, or cleared for marketing, by the Food and Drug Administration; and

''(2) to provide defibrillator and basic life support training in automated external defibrillator usage through the American Heart Association, the American Red Cross, or other nationally recognized training courses.

''(d) REPORT.—Not later than 4 years after the date of the enactment of this Act [Nov. 13, 2000], the Secretary of Health and Human Services shall prepare and submit to the appropriate committees of Congress a report containing data relating to whether the increased availability of defibrillators has affected survival rates in the communities in which grantees under this section operated. The procedures under which the Secretary obtains data and prepares the report under this subsection shall not impose an undue burden on program participants under this section.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $25,000,000 for fiscal years 2001 through 2003 to carry out this section.''

REPORT ON TELEMEDICINE

Pub. L. 106–129, §6, Dec. 6, 1999, 113 Stat. 1675, provided that: ''Not later than January 10, 2001, the Secretary of Health and Human Services shall submit to the Congress a report that—

''(1) identifies any factors that inhibit the expansion and accessibility of telemedicine services, including factors relating to telemedicine networks;

''(2) identifies any factors that, in addition to geographical isolation, should be used to determine which patients need or require access to telemedicine care;

''(3) determines the extent to which—

''(A) patients receiving telemedicine service have benefited from the services, and are satisfied with the treatment received pursuant to the services; and

''(B) the medical outcomes for such patients would have differed if telemedicine services had not been available to the patients;

''(4) determines the extent to which physicians involved with telemedicine services have been satisfied with the medical aspects of the services;

''(5) determines the extent to which primary care physicians are enhancing their medical knowledge and experience through the interaction with specialists provided by telemedicine consultations; and

''(6) identifies legal and medical issues relating to State licensing of health professionals that are presented by telemedicine services, and provides any recommendations of the Secretary for responding to such issues.''

§ 254c–1. Grants for health services for Pacific Islanders

(a) Grants

The Secretary of Health and Human Services (hereafter in this section referred to as the ''Secretary'') shall provide grants to, or enter into contracts with, public or private nonprofit agencies that have demonstrated experience in serving the health needs of Pacific Islanders living in the Territory of American Samoa, the Commonwealth of Northern Mariana Islands, the Territory of Guam, the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.

(b) Use of grants or contracts

Grants or contracts made or entered into under subsection (a) of this section shall be used, among other items—

(1) to continue, as a priority, the medical officer training program in Pohnpei, Federated States of Micronesia;

(2) to improve the quality and availability of health and mental health services and systems, with an emphasis therein on preventive health services and health promotion programs and projects, including improved health data systems;

(3) to improve the quality and availability of health manpower, including programs and projects to train new and upgrade the skills of existing health professionals by—

(A) establishing dental officer, dental assistant, nurse practitioner, or nurse clinical specialist training programs;

(B) providing technical training of new auxiliary health workers;

(C) upgrading the training of currently employed health personnel in special areas of need;

(D) developing long-term plans for meeting health profession needs;

(E) developing or improving programs for faculty enhancement or post-doctoral training; and

(F) providing innovative health professions training initiatives (including scholarships) targeted toward ensuring that residents of the Pacific Basin attend and graduate from recognized health professional programs;

(4) to improve the quality of health services, including laboratory, x-ray, and pharmacy, provided in ambulatory and inpatient settings through quality assurance, standard setting, and other culturally appropriate means;

(5) to improve facility and equipment repair and maintenance systems;

(6) to improve alcohol, drug abuse, and mental health prevention and treatment services and systems;

(7) to improve local and regional health planning systems; and

(8) to improve basic local public health systems, with particular attention to primary care and services to those most in need.

No funds under subsection (b) of this section shall be used for capital construction.

(c) Advisory Council

The Secretary of Health and Human Services shall establish a ''Pacific Health Advisory Council'' which shall consist of 12 members and shall include—

(1) the Directors of the Health Departments for the entities identified in subsection (a) of this section; and

(2) 6 members, including a representative of the Rehabilitation Hospital of the Pacific, representing organizations in the State of Hawaii actively involved in the provision of health services or technical assistance to the entities identified in subsection (a) of this section. The Secretary shall solicit the advice of the Governor of the State of Hawaii in appointing the 5 Council members in addition to the representative of the Rehabilitation Hospital of the Pacific from the State of Hawaii.

The Secretary shall be responsible for providing sufficient staff support to the Council.

(d) Advisory Council functions

The Council shall meet at least annually to—

(1) recommend priority areas of need for funding by the Public Health Service under this section; and

(2) review progress in addressing priority areas and make recommendations to the Secretary for needed program modifications.

(e) Omitted

(f) Authorization of appropriation

There is authorized to be appropriated to carry out this section $10,000,000 for each of the fiscal years 1991 through 1993.

(Pub. L. 101–527, § 10, Nov. 6, 1990, 104 Stat. 2333.)

CODIFICATION

Section was enacted as part of the Disadvantaged Minority Health Improvement Act of 1990, and not as part of the Public Health Service Act which comprises this chapter.

Subsec. (e) of this section, which required the Secretary, in consultation with the Council, to annually prepare and submit to appropriate committees of Congress a report describing the expenditure of funds authorized to be appropriated under this section, with any recommendations of the Secretary, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 95 of House Document No. 103–7.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 254c–2. Special diabetes programs for type I diabetes

(a) In general

The Secretary, directly or through grants, shall provide for research into the prevention and cure of Type[1] I diabetes.

[1] So in original. Probably should not be capitalized.

(b) Funding

(1) Transferred funds

Notwithstanding section 1397dd(a) of this title, from the amounts appropriated in such section for each of fiscal years 1998 through 2002, $30,000,000 is hereby transferred and made available in such fiscal year for grants under this section.

(2) Appropriations

For the purpose of making grants under this section, there is appropriated, out of any funds in the Treasury not otherwise appropriated—

(A) $70,000,000 for each of fiscal years 2001 and 2002 (which shall be combined with amounts transferred under paragraph (1) for each such fiscal years);

(B) $100,000,000 for fiscal year 2003; and

(C) $150,000,000 for each of fiscal years 2004 through 2008.

(July 1, 1944, ch. 373, title III, § 330B, as added Pub. L. 105–33, title IV, § 4921, Aug. 5, 1997, 111 Stat. 574; amended Pub. L. 105–34, title XVI, § 1604(f)(1)(B), (C), Aug. 5, 1997, 111 Stat. 1098; Pub. L. 106–554, § 1(a)(6) [title IX, § 931(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–585; Pub. L. 107–360, § 1(a), Dec. 17, 2002, 116 Stat. 3019.)

AMENDMENTS

2002—Subsec. (b)(2)(C). Pub. L. 107–360 added subpar. (C).

2000—Subsec. (b). Pub. L. 106–554 designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1997—Pub. L. 105–34, § 1604(f)(1)(B), amended directory language of Pub. L. 105–33, § 4921, which enacted this section.

Pub. L. 105–34, § 1604(f)(1)(C)(i), struck out ''children with'' before ''type I diabetes'' in section catchline.

Subsec. (a). Pub. L. 105–34, § 1604(f)(1)(C)(ii), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary shall make grants for services for the prevention and treatment of type I diabetes in children, and for research in innovative approaches to such services. Such grants may be made to children's hospitals; grantees under section 254b of this title and other federally qualified health centers; State and local health departments; and other appropriate public or nonprofit private entities.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1604(f)(4) of Pub. L. 105–34 provided that: ''The provisions of, and amendments made by, this subsection [amending this section and provisions set out as a note under section 5701 of Title 26, Internal Revenue Code] shall take effect immediately after the sections referred to in this subsection [sections 4921, 9302, 11104, and 11201 of Pub. L. 105–33] take effect.''

REPORT ON DIABETES GRANT PROGRAMS

Pub. L. 105–33, title IV, § 4923, Aug. 5, 1997, 111 Stat. 574, as amended by Pub. L. 106–554, § 1(a)(6) [title IX, § 931(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–585; Pub. L. 107–360, § 1(c), Dec. 17, 2002, 116 Stat. 3019, provided that:

''(a) EVALUATION.—The Secretary of Health and Human Services shall conduct an evaluation of the diabetes grant programs established under the amendments made by this chapter [chapter 3 (§§ 4921–4923) of subtitle J of title IV of Pub. L. 105–33, enacting this section and section 254c–3 of this title].

''(b) REPORTS.—The Secretary shall submit to the appropriate committees of Congress—

''(1) an interim report on the evaluation conducted under subsection (a) not later than January 1, 2000, and

''(2) a final report on such evaluation not later than January 1, 2007.''

§ 254c–3. Special diabetes programs for Indians

(a) In general

The Secretary shall make grants for providing services for the prevention and treatment of diabetes in accordance with subsection (b) of this section.

(b) Services through Indian health facilities

For purposes of subsection (a) of this section, services under such subsection are provided in accordance with this subsection if the services are provided through any of the following entities:

(1) The Indian Health Service.

(2) An Indian health program operated by an Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement, or compact with the Indian Health Service pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(3) An urban Indian health program operated by an urban Indian organization pursuant to a grant or contract with the Indian Health Service pursuant to title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

(c) Funding

(1) Transferred funds

Notwithstanding section 1397dd(a) of this title, from the amounts appropriated in such section for each of fiscal years 1998 through 2002, $30,000,000, to remain available until expended, is hereby transferred and made available in such fiscal year for grants under this section.

(2) Appropriations

For the purpose of making grants under this section, there is appropriated, out of any money in the Treasury not otherwise appropriated—

(A) $70,000,000 for each of fiscal years 2001 and 2002 (which shall be combined with amounts transferred under paragraph (1) for each such fiscal years);

(B) $100,000,000 for fiscal year 2003; and

(C) $150,000,000 for each of fiscal years 2004 through 2008.

(July 1, 1944, ch. 373, title III, § 330C, as added Pub. L. 105–33, title IV, § 4922, Aug. 5, 1997, 111 Stat. 574; amended Pub. L. 105–174, title III, § 3001, May 1, 1998, 112 Stat. 82; Pub. L. 106–554, § 1(a)(6) [title IX, § 931(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–585; Pub. L. 107–360, § 1(b), Dec. 17, 2002, 116 Stat. 3019.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (b)(2), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (b)(3), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this

Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

AMENDMENTS

2002—Subsec. (c)(2)(C). Pub. L. 107–360 added subpar. (C).

2000—Subsec. (c). Pub. L. 106–554 designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1998—Subsec. (c). Pub. L. 105–174 inserted ''', to remain available until expended,'' after ''fiscal years 1998 through 2002, $30,000,000''.

FUNDS AVAILABLE UNTIL EXPENDED

Pub. L. 108–7, div. F, title II, Feb. 20, 2003, 117 Stat. 261, provided in part ''That funds appropriated under the Special Diabetes Program for Indians (42 U.S.C. 254c–3(c)) for fiscal year 2003 and thereafter for the purpose of making grants shall remain available until expended''.

§ 254c–4. Centers for strategies on facilitating utilization of preventive health services among various populations

(a) In general

The Secretary, acting through the appropriate agencies of the Public Health Service, shall make grants to public or nonprofit private entities for the establishment and operation of regional centers whose purpose is to develop, evaluate, and disseminate effective strategies, which utilize quality management measures, to assist public and private health care programs and providers in the appropriate utilization of preventive health care services by specific populations.

(b) Research and training

The activities carried out by a center under subsection (a) of this section may include establishing programs of research and training with respect to the purpose described in such subsection, including the development of curricula for training individuals in implementing the strategies developed under such subsection.

(c) Priority regarding infants and children

In carrying out the purpose described in subsection (a) of this section, the Secretary shall give priority to various populations of infants, young children, and their mothers.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2000 through 2004.

(July 1, 1944, ch. 373, title III, § 330D, as added Pub. L. 106–129, § 3, Dec. 6, 1999, 113 Stat. 1670.)

§ 254c–5. Epilepsy; seizure disorder

(a) National public health campaign

(1) In general

The Secretary shall develop and implement public health surveillance, education, research, and intervention strategies to improve the lives of persons with epilepsy, with a particular emphasis on children. Such projects may be carried out by the Secretary directly and through awards of grants or contracts to public or nonprofit private entities. The Secretary may directly or through such awards provide technical assistance with respect to the planning, development, and operation of such projects.

(2) Certain activities

Activities under paragraph (1) shall include—

(A) expanding current surveillance activities through existing monitoring systems and improving registries that maintain data on individuals with epilepsy, including children;

(B) enhancing research activities on the diagnosis, treatment, and management of epilepsy;

(C) implementing public and professional information and education programs regarding epilepsy, including initiatives which promote effective management of the disease through children's programs which are targeted to parents, schools, daycare providers, patients;

(D) undertaking educational efforts with the media, providers of health care, schools and others regarding stigmas and secondary disabilities related to epilepsy and seizures, and its effects on youth;

(E) utilizing and expanding partnerships with organizations with experience addressing the health and related needs of people with disabilities; and

(F) other activities the Secretary deems appropriate.

(3) Coordination of activities

The Secretary shall ensure that activities under this subsection are coordinated as appropriate with other agencies of the Public Health Service that carry out activities regarding epilepsy and seizure.

(b) Seizure disorder; demonstration projects in medically underserved areas

(1) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants for the purpose of carrying out demonstration projects to improve access to health and other services regarding seizures to encourage early detection and treatment in children and others residing in medically underserved areas.

(2) Application for grant

A grant may not be awarded under paragraph (1) unless an application therefore is submitted to the Secretary and the Secretary approves such application. Such application shall be submitted in such form and manner and shall contain such information as the Secretary may prescribe.

(c) Definitions

For purposes of this section:

(1) The term ''epilepsy'' refers to a chronic and serious neurological condition characterized by excessive electrical discharges in the brain causing recurring seizures affecting all life activities. The Secretary may revise the definition of such term to the extent the Secretary determines necessary.

(2) The term ''medically underserved'' has the meaning applicable under section 295p(6) of this title.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 330E, as added Pub. L. 106–310, div. A, title VIII, § 801, Oct. 17, 2000, 114 Stat. 1124.)

§ 254c–6. Certain services for pregnant women

(a) Infant adoption awareness

(1) In general

The Secretary shall make grants to national, regional, or local adoption organizations for the purpose of developing and implementing programs to train the designated staff of eligible health centers in providing adoption information and referrals to pregnant women on an equal basis with all other courses of action included in nondirective counseling to pregnant women.

(2) Best-practices guidelines

(A) In general

A condition for the receipt of a grant under paragraph (1) is that the adoption organization involved agree that, in providing training under such paragraph, the organization will follow the guidelines developed under subparagraph (B).

(B) Process for development of guidelines

(i) In general

The Secretary shall establish and supervise a process described in clause (ii) in which the participants are—

(I) an appropriate number and variety of adoption organizations that, as a group, have expertise in all models of adoption practice and that represent all members of the adoption triad (birth mother, infant, and adoptive parent); and

(II) affected public health entities.

(ii) Description of process

The process referred to in clause (i) is a process in which the participants described in such clause collaborate to develop best-practices guidelines on the provision of adoption information and referrals to pregnant women on an equal basis with all other courses of action included in nondirective counseling to pregnant women.

(iii) Date certain for development

The Secretary shall ensure that the guidelines described in clause (ii) are developed not later than 180 days after October 17, 2000.

(C) Relation to authority for grants

The Secretary may not make any grant under paragraph (1) before the date on which the guidelines under subparagraph (B) are developed.

(3) Use of grant

(A) In general

With respect to a grant under paragraph (1)—

(i) an adoption organization may expend the grant to carry out the programs directly or through grants to or contracts with other adoption organizations;

(ii) the purposes for which the adoption organization expends the grant may include the development of a training curriculum, consistent with the guidelines developed under paragraph (2)(B); and

(iii) a condition for the receipt of the grant is that the adoption organization agree that, in providing training for the designated staff of eligible health centers, such organization will make reasonable efforts to ensure that the individuals who provide the training are individuals who are knowledgeable in all elements of the adoption process and are experienced in providing adoption information and referrals in the geographic areas in which the eligible health centers are located, and that the designated staff receive the training in such areas.

(B) Rule of construction regarding training of trainers

With respect to individuals who under a grant under paragraph (1) provide training for the designated staff of eligible health centers (referred to in this subparagraph as ''trainers''), subparagraph (A)(iii) may not be construed as establishing any limitation regarding the geographic area in which the trainers receive instruction in being such trainers. A trainer may receive such instruction in a different geographic area than the area in which the trainer trains (or will train) the designated staff of eligible health centers.

(4) Adoption organizations; eligible health centers; other definitions

For purposes of this section:

(A) The term ''adoption organization'' means a national, regional, or local organization—

(i) among whose primary purposes are adoption;

(ii) that is knowledgeable in all elements of the adoption process and on providing adoption information and referrals to pregnant women; and

(iii) that is a nonprofit private entity.

(B) The term ''designated staff'', with respect to an eligible health center, means staff of the center who provide pregnancy or adoption information and referrals (or will provide such information and referrals after receiving training under a grant under paragraph (1)).

(C) The term ''eligible health centers'' means public and nonprofit private entities that provide health services to pregnant women.

(5) Training for certain eligible health centers

A condition for the receipt of a grant under paragraph (1) is that the adoption organization involved agree to make reasonable efforts to ensure that the eligible health centers with respect to which training under the grant is provided include—

(A) eligible health centers that receive grants under section 300 of this title (relating to voluntary family planning projects);

(B) eligible health centers that receive grants under section 254b of this title (relating to community health centers, migrant health centers, and centers regarding homeless individuals and residents of public housing); and

(C) eligible health centers that receive grants under this chapter for the provision of services in schools.

(6) Participation of certain eligible health clinics

In the case of eligible health centers that receive grants under section 254b or 300 of this title:

(A) Within a reasonable period after the Secretary begins making grants under paragraph (1), the Secretary shall provide eligible health centers with complete information about the training available from organizations receiving grants under such paragraph. The Secretary shall make reasonable efforts to encourage eligible health centers to arrange for designated staff to participate in such training. Such efforts shall affirm Federal requirements, if any, that the eligible health center provide nondirective counseling to pregnant women.

(B) All costs of such centers in obtaining the training shall be reimbursed by the organization that provides the training, using grants under paragraph (1).

(C) Not later than 1 year after October 17, 2000, the Secretary shall submit to the appropriate committees of the Congress a report evaluating the extent to which adoption information and referral, upon request, are provided by eligible health centers. Within a reasonable time after training under this section is initiated, the Secretary shall submit to the appropriate committees of the Congress a report evaluating the extent to which adoption information and referral, upon request, are provided by eligible health centers in order to determine the effectiveness of such training and the extent to which such training complies with subsection (a)(1) of this section. In preparing the reports required by this subparagraph, the Secretary shall in no respect interpret the provisions of this section to allow any interference in the provider-patient relationship, any breach of patient confidentiality, or any monitoring or auditing of the counseling process or patient records which breaches patient confidentiality or reveals patient identity. The reports required by this subparagraph shall be conducted by the Secretary acting through the Administrator of the Health Resources and Services Administration and in collaboration with the Director of the Agency for Healthcare Research and Quality.

(b) Application for grant

The Secretary may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 330F, as added Pub. L. 106–310, div. A, title XII, § 1201, Oct. 17, 2000, 114 Stat. 1132.)

§ 254c–7. Special needs adoption programs; public awareness campaign and other activities

(a) Special needs adoption awareness campaign

(1) In general

The Secretary shall, through making grants to nonprofit private entities, provide for the planning, development, and carrying out of a national campaign to provide information to the public regarding the adoption of children with special needs.

(2) Input on planning and development

In providing for the planning and development of the national campaign under paragraph (1), the Secretary shall provide for input from a number and variety of adoption organizations throughout the States in order that the full national diversity of interests among adoption organizations is represented in the planning and development of the campaign.

(3) Certain features

With respect to the national campaign under paragraph (1):

(A) The campaign shall be directed at various populations, taking into account as appropriate differences among geographic regions, and shall be carried out in the language and cultural context that is most appropriate to the population involved.

(B) The means through which the campaign may be carried out include—

(i) placing public service announcements on television, radio, and billboards; and

(ii) providing information through means that the Secretary determines will reach individuals who are most likely to adopt children with special needs.

(C) The campaign shall provide information on the subsidies and supports that are available to individuals regarding the adoption of children with special needs.

(D) The Secretary may provide that the placement of public service announcements, and the dissemination of brochures and other materials, is subject to review by the Secretary.

(4) Matching requirement

(A) In general

With respect to the costs of the activities to be carried out by an entity pursuant to paragraph (1), a condition for the receipt of a grant under such paragraph is that the entity agree to make available (directly or through donations from public or private entities) non-Federal contributions toward

such costs in an amount that is not less than 25 percent of such costs.

(B) Determination of amount contributed

Non-Federal contributions under subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such contributions.

(b) National resources program

The Secretary shall (directly or through grant or contract) carry out a program that, through toll-free telecommunications, makes available to the public information regarding the adoption of children with special needs. Such information shall include the following:

(1) A list of national, State, and regional organizations that provide services regarding such adoptions, including exchanges and other information on communicating with the organizations. The list shall represent the full national diversity of adoption organizations.

(2) Information beneficial to individuals who adopt such children, including lists of support groups for adoptive parents and other postadoptive services.

(c) Other programs

With respect to the adoption of children with special needs, the Secretary shall make grants—

(1) to provide assistance to support groups for adoptive parents, adopted children, and siblings of adopted children; and

(2) to carry out studies to identify—

(A) the barriers to completion of the adoption process; and

(B) those components that lead to favorable long-term outcomes for families that adopt children with special needs.

(d) Application for grant

The Secretary may make an award of a grant or contract under this section only if an application for the award is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) Funding

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 330G, as added Pub. L. 106–310, div. A, title XII, § 1211, Oct. 17, 2000, 114 Stat. 1135.)

§ 254c–8. Healthy start for infants

(a) In general

(1) Continuation and expansion of program

The Secretary, acting through the Administrator of the Health Resources and Services Administration, Maternal and Child Health Bureau, shall under authority of this section continue in effect the Healthy Start Initiative and may, during fiscal year 2001 and subsequent years, carry out such program on a national basis.

(2) Definition

For purposes of paragraph (1), the term ''Healthy Start Initiative'' is a reference to the program that, as an initiative to reduce the rate of infant mortality and improve perinatal outcomes, makes grants for project areas with high annual rates of infant mortality and that, prior to the effective date of this section, was a demonstration program carried out under section 241 of this title.

(3) Additional grants

Effective upon increased funding beyond fiscal year 1999 for such Initiative, additional grants may be made to States to assist communities with technical assistance, replication of successful projects, and State policy formation to reduce infant and maternal mortality and morbidity.

(b) Requirements for making grants

In making grants under subsection (a) of this section, the Secretary shall require that applicants (in addition to meeting all eligibility criteria established by the Secretary) establish, for project areas under such subsection, community-based consortia of individuals and organizations (including agencies responsible for administering block grant programs under title V of the Social Security Act [42 U.S.C. 701 et seq.], consumers of project services, public health departments, hospitals, health centers under section 254b of this title, and other significant sources of health care services) that are appropriate for participation in projects under subsection (a) of this section.

(c) Coordination

Recipients of grants under subsection (a) of this section shall coordinate their services and activities with the State agency or agencies that administer block grant programs under title V of the Social Security Act [42 U.S.C. 701 et seq.] in order to promote cooperation, integration, and dissemination of information with Statewide systems and with other community services funded under the Maternal and Child Health Block Grant.

(d) Rule of construction

Except to the extent inconsistent with this section, this section may not be construed as affecting the authority of the Secretary to make modifications in the program carried out under subsection (a) of this section.

(e) Additional services for at-risk pregnant women and infants

(1) In general

The Secretary may make grants to conduct and support research and to provide additional health care services for pregnant women and infants, including grants to increase access to prenatal care, genetic counseling, ultrasound services, and fetal or other surgery.

(2) Eligible project area

The Secretary may make a grant under paragraph (1) only if the geographic area in

which services under the grant will be provided is a geographic area in which a project under subsection (a) of this section is being carried out, and if the Secretary determines that the grant will add to or expand the level of health services available in such area to pregnant women and infants.

(3) Evaluation by Government Accountability Office

(A) In general

During fiscal year 2004, the Comptroller General of the United States shall conduct an evaluation of activities under grants under paragraph (1) in order to determine whether the activities have been effective in serving the needs of pregnant women with respect to services described in such paragraph. The evaluation shall include an analysis of whether such activities have been effective in reducing the disparity in health status between the general population and individuals who are members of racial or ethnic minority groups. Not later than January 10, 2004, the Comptroller General shall submit to the Committee on Commerce in the House of Representatives, and to the Committee on Health, Education, Labor, and Pensions in the Senate, a report describing the findings of the evaluation.

(B) Relation to grants regarding additional services for at-risk pregnant women and infants

Before the date on which the evaluation under subparagraph (A) is submitted in accordance with such subparagraph—

(i) the Secretary shall ensure that there are not more than five grantees under paragraph (1); and

(ii) an entity is not eligible to receive grants under such paragraph unless the entity has substantial experience in providing the health services described in such paragraph.

(f) Funding

(1) General program

(A) Authorization of appropriations

For the purpose of carrying out this section (other than subsection (e) of this section), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(B) Allocations

(i) Program administration

Of the amounts appropriated under subparagraph (A) for a fiscal year, the Secretary may reserve up to 5 percent for coordination, dissemination, technical assistance, and data activities that are determined by the Secretary to be appropriate for carrying out the program under this section.

(ii) Evaluation

Of the amounts appropriated under subparagraph (A) for a fiscal year, the Secretary may reserve up to 1 percent for evaluations of projects carried out under subsection (a) of this section. Each such evaluation shall include a determination of whether such projects have been effective in reducing the disparity in health status between the general population and individuals who are members of racial or ethnic minority groups.

(2) Additional services for at-risk pregnant women and infants

(A) Authorization of appropriations

For the purpose of carrying out subsection (e) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(B) Allocation for community-based mobile health units

Of the amounts appropriated under subparagraph (A) for a fiscal year, the Secretary shall make available not less than 10 percent for providing services under subsection (e) of this section (including ultrasound services) through visits by mobile units to communities that are eligible for services under subsection (a) of this section.

(July 1, 1944, ch. 373, title III, § 330H, as added Pub. L. 106–310, div. A, title XV, § 1501, Oct. 17, 2000, 114 Stat. 1146; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (a)(2), is the date of enactment of Pub. L. 106–310, which was approved Oct. 17, 2000.

The Social Security Act, referred to in subsecs. (b) and (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title V of the Act is classified generally to subchapter V (§ 701 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2004—Subsec. (e)(3). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in heading.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 254c–9. Establishment of program of grants

(a) In general

The Secretary of Health and Human Services shall in accordance with sections 254c–9 to 254c–13 of this title make grants to provide for projects for the establishment, operation, and coordination of effective and cost-efficient systems for the delivery of essential services to individuals with lupus and their families.

(b) Recipients of grants

A grant under subsection (a) of this section may be made to an entity only if the entity is a public or nonprofit private entity, which may include a State or local government; a public or nonprofit private hospital, community-based or-

ganization, hospice, ambulatory care facility, community health center, migrant health center, or homeless health center; or other appropriate public or nonprofit private entity.

(c) Certain activities

To the extent practicable and appropriate, the Secretary shall ensure that projects under subsection (a) of this section provide services for the diagnosis and disease management of lupus. Activities that the Secretary may authorize for such projects may also include the following:

(1) Delivering or enhancing outpatient, ambulatory, and home-based health and support services, including case management and comprehensive treatment services, for individuals with lupus; and delivering or enhancing support services for their families.

(2) Delivering or enhancing inpatient care management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities of individuals with lupus.

(3) Improving the quality, availability, and organization of health care and support services (including transportation services, attendant care, homemaker services, day or respite care, and providing counseling on financial assistance and insurance) for individuals with lupus and support services for their families.

(d) Integration with other programs

To the extent practicable and appropriate, the Secretary shall integrate the program under sections 254c–9 to 254c–13 of this title with other grant programs carried out by the Secretary, including the program under section 254b of this title.

(Pub. L. 106–505, title V, § 521, Nov. 13, 2000, 114 Stat. 2343.)

CODIFICATION

Section was enacted as part of the Lupus Research and Care Amendments of 2000, and also as part of the Public Health Improvement Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 254c–10. Certain requirements

A grant may be made under section 254c–9 of this title only if the applicant involved makes the following agreements:

(1) Not more than 5 percent of the grant will be used for administration, accounting, reporting, and program oversight functions.

(2) The grant will be used to supplement and not supplant funds from other sources related to the treatment of lupus.

(3) The applicant will abide by any limitations deemed appropriate by the Secretary on any charges to individuals receiving services pursuant to the grant. As deemed appropriate by the Secretary, such limitations on charges may vary based on the financial circumstances of the individual receiving services.

(4) The grant will not be expended to make payment for services authorized under section 254c–9(a) of this title to the extent that payment has been made, or can reasonably be expected to be made, with respect to such services—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(B) by an entity that provides health services on a prepaid basis.

(5) The applicant will, at each site at which the applicant provides services under section 254c–9(a) of this title, post a conspicuous notice informing individuals who receive the services of any Federal policies that apply to the applicant with respect to the imposition of charges on such individuals.

(Pub. L. 106–505, title V, § 522, Nov. 13, 2000, 114 Stat. 2344.)

CODIFICATION

Section was enacted as part of the Lupus Research and Care Amendments of 2000, and also as part of the Public Health Improvement Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 254c–11. Technical assistance

The Secretary may provide technical assistance to assist entities in complying with the requirements of sections 254c–9 to 254c–13 of this title in order to make such entities eligible to receive grants under section 254c–9 of this title.

(Pub. L. 106–505, title V, § 523, Nov. 13, 2000, 114 Stat. 2344.)

CODIFICATION

Section was enacted as part of the Lupus Research and Care Amendments of 2000, and also as part of the Public Health Improvement Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 254c–12. Definitions

For purposes of sections 254c–9 to 254c–13 of this title:

(1) Official poverty line

The term ''official poverty line'' means the poverty line established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(2) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(Pub. L. 106–505, title V, § 524, Nov. 13, 2000, 114 Stat. 2344.)

CODIFICATION

Section was enacted as part of the Lupus Research and Care Amendments of 2000, and also as part of the Public Health Improvement Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 254c–13. Authorization of appropriations

For the purpose of carrying out sections 254c–9 to 254c–13 of this title, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2003.

(Pub. L. 106–505, title V, § 525, Nov. 13, 2000, 114 Stat. 2345.)

CODIFICATION

Section was enacted as part of the Lupus Research and Care Amendments of 2000, and also as part of the Public Health Improvement Act, and not as part of the Public Health Service Act which comprises this chapter.

§ 254c–14. Telehealth network and telehealth resource centers grant programs

(a) Definitions

In this section:

(1) Director; Office

The terms ''Director'' and ''Office'' mean the Director and Office specified in subsection (c) of this section.

(2) Federally qualified health center and rural health clinic

The term ''Federally qualified health center'' and ''rural health clinic'' have the meanings given the terms in section 1395x(aa) of this title.

(3) Frontier community

The term ''frontier community'' shall have the meaning given the term in regulations issued under subsection (r) of this section.

(4) Medically underserved area

The term ''medically underserved area'' has the meaning given the term ''medically underserved community'' in section 295p(6) of this title.

(5) Medically underserved population

The term ''medically underserved population'' has the meaning given the term in section 254b(b)(3) of this title.

(6) Telehealth services

The term ''telehealth services'' means services provided through telehealth technologies.

(7) Telehealth technologies

The term ''telehealth technologies'' means technologies relating to the use of electronic information, and telecommunications technologies, to support and promote, at a distance, health care, patient and professional health-related education, health administration, and public health.

(b) Programs

The Secretary shall establish, under section 241 of this title, telehealth network and telehealth resource centers grant programs.

(c) Administration

(1) Establishment

There is established in the Health Resources and Services Administration an Office for the Advancement of Telehealth. The Office shall be headed by a Director.

(2) Duties

The telehealth network and telehealth resource centers grant programs established under section 241 of this title shall be administered by the Director, in consultation with the State offices of rural health, State offices concerning primary care, or other appropriate State government entities.

(d) Grants

(1) Telehealth network grants

The Director may, in carrying out the telehealth network grant program referred to in subsection (b) of this section, award grants to eligible entities for projects to demonstrate how telehealth technologies can be used through telehealth networks in rural areas, frontier communities, and medically underserved areas, and for medically underserved populations, to—

(A) expand access to, coordinate, and improve the quality of health care services;

(B) improve and expand the training of health care providers; and

(C) expand and improve the quality of health information available to health care providers, and patients and their families, for decisionmaking.

(2) Telehealth resource centers grants

The Director may, in carrying out the telehealth resource centers grant program referred to in subsection (b) of this section, award grants to eligible entities for projects to demonstrate how telehealth technologies can be used in the areas and communities, and for the populations, described in paragraph (1), to establish telehealth resource centers.

(e) Grant periods

The Director may award grants under this section for periods of not more than 4 years.

(f) Eligible entities

(1) Telehealth network grants

(A) Grant recipient

To be eligible to receive a grant under subsection (d)(1) of this section, an entity shall be a nonprofit entity.

(B) Telehealth networks

####### (i) In general

To be eligible to receive a grant under subsection (d)(1) of this section, an entity shall demonstrate that the entity will provide services through a telehealth network.

####### (ii) Nature of entities

Each entity participating in the telehealth network may be a nonprofit or for-profit entity.

####### (iii) Composition of network

The telehealth network shall include at least 2 of the following entities (at least 1 of which shall be a community-based health care provider):

(I) Community or migrant health centers or other Federally qualified health centers.

(II) Health care providers, including pharmacists, in private practice.

(III) Entities operating clinics, including rural health clinics.

(IV) Local health departments.

(V) Nonprofit hospitals, including community access hospitals.

(VI) Other publicly funded health or social service agencies.

(VII) Long-term care providers.

(VIII) Providers of health care services in the home.

(IX) Providers of outpatient mental health services and entities operating outpatient mental health facilities.

(X) Local or regional emergency health care providers.

(XI) Institutions of higher education.

(XII) Entities operating dental clinics.

(2) Telehealth resource centers grants

To be eligible to receive a grant under subsection (d)(2) of this section, an entity shall be a nonprofit entity.

(g) Applications

To be eligible to receive a grant under subsection (d) of this section, an eligible entity, in consultation with the appropriate State office of rural health or another appropriate State entity, shall prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the project that the eligible entity will carry out using the funds provided under the grant;

(2) a description of the manner in which the project funded under the grant will meet the health care needs of rural or other populations to be served through the project, or improve the access to services of, and the quality of the services received by, those populations;

(3) evidence of local support for the project, and a description of how the areas, communities, or populations to be served will be involved in the development and ongoing operations of the project;

(4) a plan for sustaining the project after Federal support for the project has ended;

(5) information on the source and amount of non-Federal funds that the entity will provide for the project;

(6) information demonstrating the long-term viability of the project, and other evidence of institutional commitment of the entity to the project;

(7) in the case of an application for a project involving a telehealth network, information demonstrating how the project will promote the integration of telehealth technologies into the operations of health care providers, to avoid redundancy, and improve access to and the quality of care; and

(8) other such information as the Secretary determines to be appropriate.

(h) Terms; conditions; maximum amount of assistance

The Secretary shall establish the terms and conditions of each grant program described in subsection (b) of this section and the maximum amount of a grant to be awarded to an individual recipient for each fiscal year under this section. The Secretary shall publish, in a publication of the Health Resources and Services Administration, notice of the application requirements for each grant program described in subsection (b) of this section for each fiscal year.

(i) Preferences

(1) Telehealth networks

In awarding grants under subsection (d)(1) of this section for projects involving telehealth networks, the Secretary shall give preference to an eligible entity that meets at least 1 of the following requirements:

(A) Organization

The eligible entity is a rural community-based organization or another community-based organization.

(B) Services

The eligible entity proposes to use Federal funds made available through such a grant to develop plans for, or to establish, telehealth networks that provide mental health, public health, long-term care, home care, preventive, or case management services.

(C) Coordination

The eligible entity demonstrates how the project to be carried out under the grant will be coordinated with other relevant federally funded projects in the areas, communities, and populations to be served through the grant.

(D) Network

The eligible entity demonstrates that the project involves a telehealth network that includes an entity that—

(i) provides clinical health care services, or educational services for health care providers and for patients or their families; and

(ii) is—

(I) a public library;

(II) an institution of higher education; or

(III) a local government entity.

(E) Connectivity

The eligible entity proposes a project that promotes local connectivity within areas, communities, or populations to be served through the project.

(F) Integration

The eligible entity demonstrates that health care information has been integrated into the project.

(2) Telehealth resource centers

In awarding grants under subsection (d)(2) of this section for projects involving telehealth resource centers, the Secretary shall give preference to an eligible entity that meets at least 1 of the following requirements:

(A) Provision of services

The eligible entity has a record of success in the provision of telehealth services to medically underserved areas or medically underserved populations.

(B) Collaboration and sharing of expertise

The eligible entity has a demonstrated record of collaborating and sharing expertise with providers of telehealth services at the national, regional, State, and local levels.

(C) Broad range of telehealth services

The eligible entity has a record of providing a broad range of telehealth services, which may include—

(i) a variety of clinical specialty services;

(ii) patient or family education;

(iii) health care professional education; and

(iv) rural residency support programs.

(j) Distribution of funds

(1) In general

In awarding grants under this section, the Director shall ensure, to the greatest extent possible, that such grants are equitably distributed among the geographical regions of the United States.

(2) Telehealth networks

In awarding grants under subsection (d)(1) of this section for a fiscal year, the Director shall ensure that—

(A) not less than 50 percent of the funds awarded shall be awarded for projects in rural areas; and

(B) the total amount of funds awarded for such projects for that fiscal year shall be not less than the total amount of funds awarded for such projects for fiscal year 2001 under section 254c of this title (as in effect on the day before October 26, 2002).

(k) Use of funds

(1) Telehealth network program

The recipient of a grant under subsection (d)(1) of this section may use funds received through such grant for salaries, equipment, and operating or other costs, including the cost of—

(A) developing and delivering clinical telehealth services that enhance access to community-based health care services in rural areas, frontier communities, or medically underserved areas, or for medically underserved populations;

(B) developing and acquiring, through lease or purchase, computer hardware and software, audio and video equipment, computer network equipment, interactive equipment, data terminal equipment, and other equipment that furthers the objectives of the telehealth network grant program;

(C)(i) developing and providing distance education, in a manner that enhances access to care in rural areas, frontier communities, or medically underserved areas, or for medically underserved populations; or

(ii) mentoring, precepting, or supervising health care providers and students seeking to become health care providers, in a manner that enhances access to care in the areas and communities, or for the populations, described in clause (i);

(D) developing and acquiring instructional programming;

(E)(i) providing for transmission of medical data, and maintenance of equipment; and

(ii) providing for compensation (including travel expenses) of specialists, and referring health care providers, who are providing telehealth services through the telehealth network, if no third party payment is available for the telehealth services delivered through the telehealth network;

(F) developing projects to use telehealth technology to facilitate collaboration between health care providers;

(G) collecting and analyzing usage statistics and data to document the cost-effectiveness of the telehealth services; and

(H) carrying out such other activities as are consistent with achieving the objectives of this section, as determined by the Secretary.

(2) Telehealth resource centers

The recipient of a grant under subsection (d)(2) of this section may use funds received through such grant for salaries, equipment, and operating or other costs for—

(A) providing technical assistance, training, and support, and providing for travel expenses, for health care providers and a range of health care entities that provide or will provide telehealth services;

(B) disseminating information and research findings related to telehealth services;

(C) promoting effective collaboration among telehealth resource centers and the Office;

(D) conducting evaluations to determine the best utilization of telehealth technologies to meet health care needs;

(E) promoting the integration of the technologies used in clinical information systems with other telehealth technologies;

(F) fostering the use of telehealth technologies to provide health care information and education for health care providers and consumers in a more effective manner; and

(G) implementing special projects or studies under the direction of the Office.

(*l*) Prohibited uses of funds

An entity that receives a grant under this section may not use funds made available through the grant—

(1) to acquire real property;

(2) for expenditures to purchase or lease equipment, to the extent that the expenditures would exceed 40 percent of the total grant funds;

(3) in the case of a project involving a telehealth network, to purchase or install transmission equipment (such as laying cable or telephone lines, or purchasing or installing microwave towers, satellite dishes, amplifiers, or digital switching equipment);

(4) to pay for any equipment or transmission costs not directly related to the purposes for which the grant is awarded;

(5) to purchase or install general purpose voice telephone systems;

(6) for construction; or

(7) for expenditures for indirect costs (as determined by the Secretary), to the extent that the expenditures would exceed 15 percent of the total grant funds.

(m) Collaboration

In providing services under this section, an eligible entity shall collaborate, if feasible, with entities that—

(1)(A) are private or public organizations, that receive Federal or State assistance; or

(B) are public or private entities that operate centers, or carry out programs, that receive Federal or State assistance; and

(2) provide telehealth services or related activities.

(n) Coordination with other agencies

The Secretary shall coordinate activities carried out under grant programs described in subsection (b) of this section, to the extent practicable, with Federal and State agencies and nonprofit organizations that are operating similar programs, to maximize the effect of public dollars in funding meritorious proposals.

(*o*) Outreach activities

The Secretary shall establish and implement procedures to carry out outreach activities to advise potential end users of telehealth services in rural areas, frontier communities, medically underserved areas, and medically underserved populations in each State about the grant programs described in subsection (b) of this section.

(p) Telehealth

It is the sense of Congress that, for purposes of this section, States should develop reciprocity agreements so that a provider of services under this section who is a licensed or otherwise authorized health care provider under the law of 1 or more States, and who, through telehealth technology, consults with a licensed or otherwise authorized health care provider in another State, is exempt, with respect to such consultation, from any State law of the other State that prohibits such consultation on the basis that the first health care provider is not a licensed or authorized health care provider under the law of that State.

(q) Report

Not later than September 30, 2005, the Secretary shall prepare and submit to the appropriate committees of Congress a report on the progress and accomplishments of the grant programs described in subsection (b) of this section.

(r) Regulations

The Secretary shall issue regulations specifying, for purposes of this section, a definition of the term ''frontier area''. The definition shall be based on factors that include population density, travel distance in miles to the nearest medical facility, travel time in minutes to the nearest medical facility, and such other factors as the Secretary determines to be appropriate. The Secretary shall develop the definition in consultation with the Director of the Bureau of the Census and the Administrator of the Economic Research Service of the Department of Agriculture.

(s) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) for grants under subsection (d)(1) of this section, $40,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006; and

(2) for grants under subsection (d)(2) of this section, $20,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.

(July 1, 1944, ch. 373, title III, § 330I, as added Pub. L. 107–251, title II, § 212, Oct. 26, 2002, 116 Stat. 1632; amended Pub. L. 108–163, § 2(c), Dec. 6, 2003, 117 Stat. 2021.)

AMENDMENTS

2003—Subsec. (a)(4). Pub. L. 108–163, § 2(c)(1), substituted ''section 295p(6)'' for ''section 295p''.

Subsec. (c)(1). Pub. L. 108–163, § 2(c)(2), substituted ''Health Resources and Services Administration'' for ''Health and Resources and Services Administration''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendments by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

§ 254c–15. Rural emergency medical service training and equipment assistance program

(a) Grants

The Secretary, acting through the Administrator of the Health Resources and Services Administration (referred to in this section as the ''Secretary'') shall award grants to eligible entities to enable such entities to provide for improved emergency medical services in rural areas.

(b) Eligibility

To be eligible to receive a grant under this section, an entity shall—

(1) be—

(A) a State emergency medical services office;

(B) a State emergency medical services association;

(C) a State office of rural health;

(D) a local government entity;

(E) a State or local ambulance provider; or

(F) any other entity determined appropriate by the Secretary; and

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, that includes—

(A) a description of the activities to be carried out under the grant; and

(B) an assurance that the eligible entity will comply with the matching requirement of subsection (e) of this section.

(c) Use of funds

An entity shall use amounts received under a grant made under subsection (a) of this section, either directly or through grants to emergency medical service squads that are located in, or that serve residents of, a nonmetropolitan statistical area, an area designated as a rural area by any law or regulation of a State, or a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith Modification, originally published in a notice of availability of funds in the Federal Register on February 27, 1992, 57 Fed. Reg. 6725), to—

(1) recruit emergency medical service personnel;

(2) recruit volunteer emergency medical service personnel;

(3) train emergency medical service personnel in emergency response, injury prevention, safety awareness, and other topics relevant to the delivery of emergency medical services;

(4) fund specific training to meet Federal or State certification requirements;

(5) develop new ways to educate emergency health care providers through the use of technology-enhanced educational methods (such as distance learning);

(6) acquire emergency medical services equipment, including cardiac defibrillators;

(7) acquire personal protective equipment for emergency medical services personnel as required by the Occupational Safety and Health Administration; and

(8) educate the public concerning cardiopulmonary resuscitation, first aid, injury prevention, safety awareness, illness prevention, and other related emergency preparedness topics.

(d) Preference

In awarding grants under this section the Secretary shall give preference to—

(1) applications that reflect a collaborative effort by 2 or more of the entities described in subparagraphs (A) through (F) of subsection (b)(1) of this section; and

(2) applications submitted by entities that intend to use amounts provided under the grant to fund activities described in any of paragraphs (1) through (5) of subsection (c) of this section.

(e) Matching requirement

The Secretary may not award a grant under this section to an entity unless the entity agrees that the entity will make available (directly or through contributions from other public or private entities) non-Federal contributions toward the activities to be carried out under the grant in an amount equal to 25 percent of the amount received under the grant.

(f) Emergency medical services

In this section, the term ''emergency medical services''—

(1) means resources used by a qualified public or private nonprofit entity, or by any other entity recognized as qualified by the State involved, to deliver medical care outside of a medical facility under emergency conditions that occur—

(A) as a result of the condition of the patient; or

(B) as a result of a natural disaster or similar situation; and

(2) includes services delivered by an emergency medical services provider (either compensated or volunteer) or other provider recognized by the State involved that is licensed or certified by the State as an emergency medical technician or its equivalent (as determined by the State), a registered nurse, a physician assistant, or a physician that provides services similar to services provided by such an emergency medical services provider.

(g) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2002 through 2006.

(2) Administrative costs

The Secretary may use not more than 10 percent of the amount appropriated under paragraph (1) for a fiscal year for the administrative expenses of carrying out this section.

(July 1, 1944, ch. 373, title III, § 330J, as added Pub. L. 107–251, title II, § 221, Oct. 26, 2002, 116 Stat. 1638.)

§ 254c–16. Mental health services delivered via telehealth

(a) Definitions

In this section:

(1) Eligible entity

The term ''eligible entity'' means a public or nonprofit private telehealth provider network that offers services that include mental health services provided by qualified mental health providers.

(2) Qualified mental health professionals

The term ''qualified mental health professionals'' refers to providers of mental health services reimbursed under the medicare program carried out under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) who have additional training in the treatment of mental illness in children and adolescents or who have additional training in the treatment of mental illness in the elderly.

(3) Special populations

The term ''special populations'' refers to the following 2 distinct groups:

(A) Children and adolescents in mental health underserved rural areas or in mental health underserved urban areas.

(B) Elderly individuals located in long-term care facilities in mental health underserved rural or urban areas.

(4) Telehealth

The term ''telehealth'' means the use of electronic information and telecommunications technologies to support long distance clinical health care, patient and professional health-related education, public health, and health administration.

(b) Program authorized

(1) In general

The Secretary, acting through the Director of the Office for the Advancement of Telehealth of the Health Resources and Services Administration, shall award grants to eligible entities to establish demonstration projects for the provision of mental health services to special populations as delivered remotely by qualified mental health professionals using telehealth and for the provision of education regarding mental illness as delivered remotely by qualified mental health professionals using telehealth.

(2) Populations served

The Secretary shall award the grants under paragraph (1) in a manner that distributes the grants so as to serve equitably the populations described in subparagraphs (A) and (B) of subsection (a)(3) of this section.

(c) Use of funds

(1) In general

An eligible entity that receives a grant under this section shall use the grant funds—

(A) for the populations described in subsection (a)(3)(A) of this section—

(i) to provide mental health services, including diagnosis and treatment of mental illness, as delivered remotely by qualified mental health professionals using telehealth; and

(ii) to collaborate with local public health entities to provide the mental health services; and

(B) for the populations described in subsection (a)(3)(B) of this section—

(i) to provide mental health services, including diagnosis and treatment of mental illness, in long-term care facilities as delivered remotely by qualified mental health professionals using telehealth; and

(ii) to collaborate with local public health entities to provide the mental health services.

(2) Other uses

An eligible entity that receives a grant under this section may also use the grant funds to—

(A) pay telecommunications costs; and

(B) pay qualified mental health professionals on a reasonable cost basis as determined by the Secretary for services rendered.

(3) Prohibited uses

An eligible entity that receives a grant under this section shall not use the grant funds to—

(A) purchase or install transmission equipment (other than such equipment used by qualified mental health professionals to deliver mental health services using telehealth under the project involved); or

(B) build upon or acquire real property.

(d) Equitable distribution

In awarding grants under this section, the Secretary shall ensure, to the greatest extent possible, that such grants are equitably distributed among geographical regions of the United States.

(e) Application

An entity that desires a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary determines to be reasonable.

(f) Report

Not later than 4 years after October 26, 2002, the Secretary shall prepare and submit to the appropriate committees of Congress a report that shall evaluate activities funded with grants under this section.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $20,000,000 for fiscal year 2002 and such sums as may be necessary for fiscal years 2003 through 2006.

(July 1, 1944, ch. 373, title III, § 330K, as added Pub. L. 107–251, title II, § 221, Oct. 26, 2002, 116 Stat. 1640; amended Pub. L. 108–163, § 2(d), Dec. 6, 2003, 117 Stat. 2021.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108–163, § 2(d)(1), substituted ''subsection (a)(3)'' for ''subsection (a)(4)''.

Subsec. (c)(1)(A). Pub. L. 108–163, § 2(d)(2)(A), substituted ''subsection (a)(3)(A)'' for ''subsection (a)(4)(A)''.

Subsec. (c)(1)(B). Pub. L. 108–163, § 2(d)(2)(B), substituted ''subsection (a)(3)(B)'' for ''subsection (a)(4)(B)''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendments by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

§ 254c–17. Repealed. Pub. L. 108–163, § 2(e)(2), Dec. 6, 2003, 117 Stat. 2021

Section, Pub. L. 107–251, title I, § 102, Oct. 26, 2002, 116 Stat. 1627, provided for grants to State professional licensing boards to develop and implement State policies to promote telemedicine.

EFFECTIVE DATE OF REPEAL

Repeal deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as an Effective Date of 2003 Amendments note under section 233 of this title.

§ 254c–18. Telemedicine; incentive grants regarding coordination among States

(a) In general

The Secretary may make grants to State professional licensing boards to carry out programs under which such licensing boards of various States cooperate to develop and implement State policies that will reduce statutory and regulatory barriers to telemedicine.

(b) Authorization of appropriations

For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2002 through 2006.

(July 1, 1944, ch. 373, title III, § 330L, as added Pub. L. 108–163, § 2(e)(1), Dec. 6, 2003, 117 Stat. 2021.)

EFFECTIVE DATE

Section deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as an Effective Date of 2003 Amendments note under section 233 of this title.

SUBPART II—NATIONAL HEALTH SERVICE CORPS PROGRAM

AMENDMENTS

1976—Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2268, added heading ''Subpart II—National Health Service Corps Program''.

§ 254d. National Health Service Corps

(a) Establishment; composition; purpose; definitions

(1) For the purpose of eliminating health manpower shortages in health professional shortage

areas, there is established, within the Service, the National Health Service Corps, which shall consist of—

(A) such officers of the Regular and Reserve Corps of the Service as the Secretary may designate,

(B) such civilian employees of the United States as the Secretary may appoint, and

(C) such other individuals who are not employees of the United States.

(2) The Corps shall be utilized by the Secretary to provide primary health services in health professional shortage areas.

(3) For purposes of this subpart and subpart III:

(A) The term ''Corps'' means the National Health Service Corps.

(B) The term ''Corps member'' means each of the officers, employees, and individuals of which the Corps consists pursuant to paragraph (1).

(C) The term ''health professional shortage area'' has the meaning given such term in section 254e(a) of this title.

(D) The term ''primary health services'' means health services regarding family medicine, internal medicine, pediatrics, obstetrics and gynecology, dentistry, or mental health, that are provided by physicians or other health professionals.

(E)(i) The term ''behavioral and mental health professionals'' means health service psychologists, licensed clinical social workers, licensed professional counselors, marriage and family therapists, psychiatric nurse specialists, and psychiatrists.

(ii) The term ''graduate program of behavioral and mental health'' means a program that trains behavioral and mental health professionals.

(b) Recruitment and fellowship programs

(1) The Secretary may conduct at schools of medicine, osteopathic medicine, dentistry, and, as appropriate, nursing and other schools of the health professions, including schools at which graduate programs of behavioral and mental health are offered, and at entities which train allied health personnel, recruiting programs for the Corps, the Scholarship Program, and the Loan Repayment Program. Such recruiting programs shall include efforts to recruit individuals who will serve in the Corps other than pursuant to obligated service under the Scholarship or Loan Repayment Program.

(2) In the case of physicians, dentists, behavioral and mental health professionals, certified nurse midwives, certified nurse practitioners, and physician assistants who have an interest and a commitment to providing primary health care, the Secretary may establish fellowship programs to enable such health professionals to gain exposure to and expertise in the delivery of primary health services in health professional shortage areas. To the maximum extent practicable, the Secretary shall ensure that any such programs are established in conjunction with accredited residency programs, and other training programs, regarding such health professions.

(c) Travel and moving expenses; persons entitled; reimbursement; limitation

(1) The Secretary may reimburse an applicant for a position in the Corps (including an individual considering entering into a written agreement pursuant to section 254n of this title) for the actual and reasonable expenses incurred in traveling to and from the applicant's place of residence to an eligible site to which the applicant may be assigned under section 254f of this title for the purpose of evaluating such site with regard to being assigned at such site. The Secretary may establish a maximum total amount that may be paid to an individual as reimbursement for such expenses.

(2) The Secretary may also reimburse the applicant for the actual and reasonable expenses incurred for the travel of 1 family member to accompany the applicant to such site. The Secretary may establish a maximum total amount that may be paid to an individual as reimbursement for such expenses.

(3) In the case of an individual who has entered into a contract for obligated service under the Scholarship Program or under the Loan Repayment Program, the Secretary may reimburse such individual for all or part of the actual and reasonable expenses incurred in transporting the individual, the individual's family, and the family's possessions to the site of the individual's assignment under section 254f of this title. The Secretary may establish a maximum total amount that may be paid to an individual as reimbursement for such expenses.

(d) Monthly pay adjustments of members directly engaged in delivery of health services in health professional shortage area; "monthly pay" defined; monthly pay adjustment of member with service obligation incurred under Scholarship Program or Loan Repayment Program; personnel system applicable

(1) The Secretary may, under regulations promulgated by the Secretary, adjust the monthly pay of each member of the Corps (other than a member described in subsection (a)(1)(C) of this section) who is directly engaged in the delivery of health services in a health professional shortage area as follows:

(A) During the first 36 months in which such a member is so engaged in the delivery of health services, his monthly pay may be increased by an amount which when added to the member's monthly pay and allowances will provide a monthly income competitive with the average monthly income from a practice of an individual who is a member of the profession of the Corps member, who has equivalent training, and who has been in practice for a period equivalent to the period during which the Corps member has been in practice.

(B) During the period beginning upon the expiration of the 36 months referred to in subparagraph (A) and ending with the month in which the member's monthly pay and allowances are equal to or exceed the monthly income he received for the last of such 36 months, the member may receive in addition to his monthly pay and allowances an amount which when added to such monthly pay and al-

lowances equals the monthly income he received for such last month.

(C) For each month in which a member is directly engaged in the delivery of health services in a health professional shortage area in accordance with an agreement with the Secretary entered into under section 294n(f)(1)(C)[1] of this title, under which the Secretary is obligated to make payments in accordance with section 294n(f)(2)[1] of this title, the amount of any monthly increase under subparagraph (A) or (B) with respect to such member shall be decreased by an amount equal to one-twelfth of the amount which the Secretary is obligated to pay upon the completion of the year of practice in which such month occurs.

For purposes of subparagraphs (A) and (B), the term ''monthly pay'' includes special pay received under chapter 5 of title 37.

(2) In the case of a member of the Corps who is directly engaged in the delivery of health services in a health professional shortage area in accordance with a service obligation incurred under the Scholarship Program or the Loan Repayment Program, the adjustment in pay authorized by paragraph (1) may be made for such a member only upon satisfactory completion of such service obligation, and the first 36 months of such member's being so engaged in the delivery of health services shall, for purposes of paragraph (1)(A), be deemed to begin upon such satisfactory completion.

(3) A member of the Corps described in subparagraph (C) of subsection (a)(1) of this section shall when assigned to an entity under section 254f of this title be subject to the personnel system of such entity, except that such member shall receive during the period of assignment the income that the member would receive if the member was a member of the Corps described in subparagraph (B) of such subsection.

(e) Employment ceiling of Department not affected by Corps members

Corps members assigned under section 254f of this title to provide health services in health professional shortage areas shall not be counted against any employment ceiling affecting the Department.

(f) Assignment of personnel provisions inapplicable to members whose service obligation incurred under Scholarship Program or Loan Repayment Program

Sections 215 and 217 of this title shall not apply to members of the National Health Service Corps during their period of obligated service under the Scholarship Program or the Loan Repayment Program.

(g) Conversion from Corps member to commissioned officer; retirement credits

(1) The Secretary shall, by rule, prescribe conversion provisions applicable to any individual who, within a year after completion of service as a member of the Corps described in subsection (a)(1)(C) of this section, becomes a commissioned officer in the Regular or Reserve Corps of the Service.

(2) The rules prescribed under paragraph (1) shall provide that in applying the appropriate provisions of this chapter which relate to retirement, any individual who becomes such an officer shall be entitled to have credit for any period of service as a member of the Corps described in subsection (a)(1)(C) of this section.

(h) Effective administration of program

The Secretary shall ensure that adequate staff is provided to the Service with respect to effectively administering the program for the Corps.

(i) Demonstration projects; waivers

(1) In carrying out subpart III, the Secretary may, in accordance with this subsection, carry out demonstration projects in which individuals who have entered into a contract for obligated service under the Loan Repayment Program receive waivers under which the individuals are authorized to satisfy the requirement of obligated service through providing clinical service that is not full-time.

(2) A waiver described in paragraph (1) may be provided by the Secretary only if—

(A) the entity for which the service is to be performed—

(i) has been approved under section 254f–1 of this title for assignment of a Corps member; and

(ii) has requested in writing assignment of a health professional who would serve less than full time;

(B) the Secretary has determined that assignment of a health professional who would serve less than full time would be appropriate for the area where the entity is located;

(C) a Corps member who is required to perform obligated service has agreed in writing to be assigned for less than full-time service to an entity described in subparagraph (A);

(D) the entity and the Corps member agree in writing that the less than full-time service provided by the Corps member will not be less than 16 hours of clinical service per week;

(E) the Corps member agrees in writing that the period of obligated service pursuant to section 254*l*–1 of this title will be extended so that the aggregate amount of less than full-time service performed will equal the amount of service that would be performed through full-time service under section 254m of this title; and

(F) the Corps member agrees in writing that if the Corps member begins providing less than full-time service but fails to begin or complete the period of obligated service, the method stated in 254*o*(c) of this title for determining the damages for breach of the individual's written contract will be used after converting periods of obligated service or of service performed into their full-time equivalents.

(3) In evaluating a demonstration project described in paragraph (1), the Secretary shall examine the effect of multidisciplinary teams.

(j) Definitions

For the purposes of this subpart and subpart III:

(1) The term ''Department'' means the Department of Health and Human Services.

[1] See References in Text note below.

(2) The term ''Loan Repayment Program'' means the National Health Service Corps Loan Repayment Program established under section 254*l*–1 of this title.

(3) The term ''Scholarship Program'' means the National Health Service Corps Scholarship Program established under section 254*l* of this title.

(4) The term ''State'' includes, in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(July 1, 1944, ch. 373, title III, § 331, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2268; amended Pub. L. 97–35, title XXVII, § 2701, Aug. 13, 1981, 95 Stat. 902; Pub. L. 100–177, title II, § 202(b), title III, § 301, Dec. 1, 1987, 101 Stat. 996, 1003; Pub. L. 100–607, title VI, § 629(a)(2), Nov. 4, 1988, 102 Stat. 3146; Pub. L. 101–597, title I, § 101, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3013, 3035; Pub. L. 107–251, title III, § 301, Oct. 26, 2002, 116 Stat. 1642.)

REFERENCES IN TEXT

Section 294n of this title, referred to in subsec. (d)(1)(C), was in the original a reference to section 741 of act July 1, 1944. Section 741 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 776 of act July 1, 1944, relating to acquired immune deficiency syndrome, which was classified to section 294n of this title, and subsequently renumbered section 2692 and transferred to section 300ff–111 of this title.

AMENDMENTS

2002—Subsec. (a)(3)(E). Pub. L. 107–251, § 301(a)(1), added subpar. (E).

Subsec. (b)(1). Pub. L. 107–251, § 301(a)(2)(A), substituted ''health professions, including schools at which graduate programs of behavioral and mental health are offered,'' for ''health professions''.

Subsec. (b)(2). Pub. L. 107–251, § 301(a)(2)(B), inserted ''behavioral and mental health professionals,'' after ''dentists,''.

Subsec. (c). Pub. L. 107–251, § 301(a)(3), added subsec. (c) and struck out former subsec. (c) which read as follows: ''The Secretary may reimburse applicants for positions in the Corps (including individuals considering entering into a written agreement pursuant to section 254n of this title) for actual and reasonable expenses incurred in traveling to and from their places of residence to a health professional shortage area (designated under section 254e of this title) in which they may be assigned for the purpose of evaluating such area with regard to being assigned in such area. The Secretary shall not reimburse an applicant for more than one such trip.''

Subsecs. (i), (j). Pub. L. 107–251, § 301(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1990—Subsec. (a). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in pars. (1), (2), and (3)(C).

Pub. L. 101–597, § 101(a), designated existing provisions as par. (1), substituted ''For the purpose of eliminating health manpower shortages in health manpower shortage areas, there is established, within the Service, the National Health Service Corps, which shall consist of—'' for ''There is established, within the Service, the National Health Service Corps (hereinafter in this subpart referred to as the 'Corps') which (1) shall consist of—'', substituted ''States.'' for ''States,'' at end of subpar. (C), struck out closing provisions which read ''(such officers, employees, and individuals hereinafter in this subpart referred to as 'Corps members'), and (2) shall be utilized by the Secretary to improve the delivery of health services in health manpower shortage areas as defined in section 254e(a) of this title.'', and added pars. (2) and (3).

Subsec. (b). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (2).

Pub. L. 101–597, § 101(b), designated existing provision as par. (1), inserted at end ''Such recruiting programs shall include efforts to recruit individuals who will serve in the Corps other than pursuant to obligated service under the Scholarship or Loan Repayment Program.'', and added par. (2).

Subsec. (c). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Subsec. (d)(1). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in introductory provisions and in subpar. (C).

Subsec. (d)(1)(A). Pub. L. 101–597, § 101(c), struck out ''(not to exceed $1,000)'' after ''by an amount''.

Subsecs. (d)(2), (e). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Subsec. (h). Pub. L. 101–597, § 101(d), added subsec. (h) and struck out former subsec. (h) which read as follows: ''In assigning members of the Corps to health manpower shortage areas, to the extent practicable, the Secretary shall—

''(1) give priority to meeting the needs of the Indian Health Service and the needs of health programs or facilities operated by tribes or tribal organizations under the Indian Self-Determination Act (25 U.S.C. 450f et seq.); and

''(2) provide special consideration to the homeless populations who do not have access to primary health care services.''

Subsec. (i). Pub. L. 101–597, § 101(e), substituted ''of this subpart and subpart III'' for ''of this subpart''.

1988—Subsec. (b). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy''.

1987—Subsec. (b). Pub. L. 100–177, § 202(b)(1), inserted reference to Loan Repayment Program.

Subsec. (c). Pub. L. 100–177, § 202(b)(2), made technical amendment to reference to section 254n of this title to reflect renumbering of corresponding section of original act.

Subsecs. (d)(2), (f). Pub. L. 100–177, § 202(b)(3), (4), inserted reference to Loan Repayment Program.

Subsec. (h). Pub. L. 100–177, § 301(2), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 100–177, §§ 202(b)(5), 301(1), redesignated subsec. (h) as (i), added par. (2), and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2701(a), revised provisions and, as so revised, set out existing provisions in cls. (A) and (B), and added cl. (C).

Subsec. (b). Pub. L. 97–35, § 2701(b), substituted ''may'' for ''shall''.

Subsec. (c). Pub. L. 97–35, § 2701(c), inserted provisions respecting a written agreement under section 254n of this title.

Subsec. (d). Pub. L. 97–35, § 2701(d), in par. (1) inserted reference to member described in subsec. (a)(1)(C) of this section, in subpars. (1)(A) and (B) substituted ''may'' for ''shall'', and added par. (3).

Subsec. (g). Pub. L. 97–35, § 2701(e), substituted provisions relating to conversion from Corps member to commissioned officer and retirement credits, for provisions relating to school participation in development of administrative guidelines.

Subsec. (h). Pub. L. 97–35, § 2701(f), in par. (1) substituted ''Health and Human Services'' for ''Health, Education, and Welfare'', in par. (2) substituted ''254*l*'' for ''294t'', and in par. (3) inserted reference to Commonwealth with respect to the Northern Mariana Islands.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 501 of Pub. L. 101–597 provided that: ''This Act and the amendments made by this Act [enacting sections 254f–1, 254*o*–1, and 254r of this title, amending this section, sections 242a, 254e to 254i, 254k, 254*l* to 254q–1, 254s, 294h, 294n, 294aa, 295g–1, 296m, 1320c–5, 1395*l*, 1395u, 1395x, 3505d, and 9840 of this title, and section 2123 of Title 10, Armed Forces, and enacting provisions set out as notes under sections 201, 254*l*–1, and 254*o* of this title] shall take effect October 1, 1990, or upon the date of the enactment of this Act [Nov. 16, 1990], whichever occurs later.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SPECIAL REPORT ON PRESENT AND FUTURE DIRECTION OF NATIONAL HEALTH SERVICE CORPS; SUBMISSION TO CONGRESS NOT LATER THAN FEBRUARY 1, 1979

Pub. L. 95–626, title I, §116(c), Nov. 10, 1978, 92 Stat. 3569, directed Secretary, not later than Feb. 1, 1979, in consultation with National Advisory Council of National Health Service Corps and National Advisory Council on Health Professions Education, to submit to Congress a report on the direction of the National Health Service Corps, particularly its role as a health manpower program and as a health services delivery program, the use of members of the Corps in health manpower shortage areas to meet urban and rural health needs, the types of health professions needed to meet urban and rural health needs, and the projected size, composition, and use of the Corps through 1985.

EFFECTIVE DATE; OTHER PROVISIONS: HEALTH MANPOWER SHORTAGE AREA; APPROVAL OF APPLICATIONS FOR ASSIGNMENT OF CORPS PERSONNEL; ASSIGNMENT PERIOD, COMMENCEMENT; CREDIT FOR MONTHS OF PRIOR HEALTH CARE AND SERVICES FOR ADDITIONAL PAY BENEFIT; NATIONAL ADVISORY COUNCIL ON THE NATIONAL HEALTH SERVICE CORPS, CONTINUATION OF COUNCIL AND APPOINTMENT OF MEMBERS

Section 407(c) of Pub. L. 94–484 provided that:

''(1) The amendment made by subsections (a) and (b) [enacting this subpart and repealing section 254b of this title] shall apply only with respect to fiscal years beginning after September 30, 1977, except that the Secretary of Health, Education, and Welfare [now Health and Human Services] shall carry out the activities described in section 332 of the Public Health Service Act (as added by such amendment) [section 254e of this title] after the date of enactment of this Act [Oct. 12, 1976].

''(2)(A) Any area for which a designation under section 329(b) of the Public Health Service Act (as in effect on September 30, 1977) [former section 254b(b) of this title] was in effect on such date and in which National Health Service Corps personnel were, on such date, providing, under an assignment made under such section (as so in effect), health care and services for persons residing in such area shall, effective October 1, 1977, be considered under subpart II of part C of title III of such Act (as added by subsection (b) of this section) [this subpart] to (i) be designated a health manpower shortage area (as defined by section 332 of such Act (as so added)) [section 254e of this title], and (ii) have had an application approved under section 333 of such Act (as so added)) [section 254f of this title] for the assignment of Corps personnel unless, as determined under subparagraph (B) of this paragraph, the assignment period applicable to such area (within the meaning of section 334 (as so added)) [former section 254g of this title] has expired.

''(B) The assignment period (within the meaning of such section 334) [former section 254g of this title] applicable to an area described in subparagraph (A) of this paragraph shall be considered to have begun on the date Corps personnel were first assigned to such area under section 329 of such Act (as in effect on September 30, 1977) [former section 254b of this title].

''(C) In the case of any physician or dentist member of the Corps who was providing health care and services on September 30, 1977, under an assignment made under section 329(b) of such Act (as in effect on September 30, 1977) [former section 254b(b) of this title], the number of the months during which such member provided such care and services before October 1, 1977, shall be counted in determining the application of the additional pay provisions of section 331(d) of such Act (as added by subsection (b) of this section) [subsec. (d) of this section] to such number.

''(3) The amendment made by subsection (b) which established an Advisory Council previously established under section 329 of the Public Health Service Act [former section 254b of this title] shall not be construed as requiring the establishment of a new Advisory Council under such section 337 [section 254j of this title], and the amendment made by such subsection with respect to the composition of such Advisory Council shall apply with respect to appointments made to the Advisory Council after October 1, 1977, and the Secretary of Health, Education, and Welfare [now Health and Human Services] shall make appointments to the Advisory Council after such date in a manner which will bring about, at the earliest feasible time, the Advisory Council composition prescribed by the amendment.''

§ 254e. Health professional shortage areas

(a) Designation by Secretary; removal from areas designated; "medical facility" defined

(1) For purposes of this subpart the term ''health professional shortage area'' means (A) an area in an urban or rural area (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the Secretary determines has a health manpower shortage and which is not reasonably accessible to an adequately served area, (B) a population group which the Secretary determines has such a shortage, or (C) a public or nonprofit private medical facility or other public facility which the Secretary determines has such a shortage. All Federally qualified health centers and rural health clinics, as defined in section 1861(aa) of the Social Security Act (42 U.S.C. 1395x(aa)), that meet the requirements of section 254g of this title shall be automatically designated as having such a shortage. Not earlier than 6 years after such date of designation, and every 6 years thereafter, each such center or clinic shall demonstrate that the center or clinic meets the applicable requirements of the Federal regulations regarding the definition of a health professional shortage area for purposes of this section. The Secretary shall not remove an area from the areas determined to be health professional shortage areas under subparagraph (A) of the preceding sentence until the Secretary has afforded interested persons and groups in such area an opportunity to provide data and information in support of the designation as a health professional shortage area or a population group described in subparagraph (B) of such sentence or a facility described in subparagraph (C) of such sentence, and has made a determination on the basis of the data and information submitted by such persons and groups and other data and information available to the Secretary.

(2) For purposes of this subsection, the term ''medical facility'' means a facility for the delivery of health services and includes—

(A) a hospital, State mental hospital, public health center, outpatient medical facility, rehabilitation facility, facility for long-term care, community mental health center, migrant health center, facility operated by a city or county health department, and community health center;

(B) such a facility of a State correctional institution or of the Indian Health Service, and a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act [25 U.S.C. 450f et seq.];

(C) such a facility used in connection with the delivery of health services under section 248 of this title (relating to hospitals), 249 of this title (relating to care and treatment of persons under quarantine and others), 250 of this title (relating to care and treatment of Federal prisoners), 251 of this title (relating to examination and treatment of certain Federal employees), 252 of this title (relating to examination of aliens), 253 of this title (relating to services to certain Federal employees), 247e of this title (relating to services for persons with Hansen's disease), or 254b(h) of this title (relating to the provision of health services to homeless individuals); and

(D) a Federal medical facility.

(3) Homeless individuals (as defined in section 254b(h)(5) of this title), seasonal agricultural workers (as defined in section 254b(g)(3) of this title) and migratory agricultural workers (as so defined)), and residents of public housing (as defined in section 1437a(b)(1) of this title) may be population groups under paragraph (1).

(b) Criteria for designation of health professional shortage areas; promulgation of regulations

The Secretary shall establish by regulation criteria for the designation of areas, population groups, medical facilities, and other public facilities, in the States, as health professional shortage areas. In establishing such criteria, the Secretary shall take into consideration the following:

(1) The ratio of available health manpower to the number of individuals in an area or population group, or served by a medical facility or other public facility under consideration for designation.

(2) Indicators of a need, notwithstanding the supply of health manpower, for health services for the individuals in an area or population group or served by a medical facility or other public facility under consideration for designation.

(3) The percentage of physicians serving an area, population group, medical facility, or other public facility under consideration for designation who are employed by hospitals and who are graduates of foreign medical schools.

(c) Considerations in determination of designation

In determining whether to make a designation, the Secretary shall take into consideration the following:

(1) The recommendations of the Governor of each State in which the area, population group, medical facility, or other public facility under consideration for designation is in whole or part located.

(2) The extent to which individuals who are (A) residents of the area, members of the population group, or patients in the medical facility or other public facility under consideration for designation, and (B) entitled to have payment made for medical services under title XVIII, XIX, or XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], cannot obtain such services because of suspension of physicians from the programs under such titles.

(d) Designation; publication of descriptive lists

(1) In accordance with the criteria established under subsection (b) of this section and the considerations listed in subsection (c) of this section the Secretary shall designate health professional shortage areas in the States, publish a descriptive list of the areas, population groups, medical facilities, and other public facilities so designated, and at least annually review and, as necessary, revise such designations.

(2) For purposes of paragraph (1), a complete descriptive list shall be published in the Federal Register not later than July 1 of 1991 and each subsequent year.

(e) Notice of proposed designation of areas and facilities; time for comment

(1) Prior to the designation of a public facility, including a Federal medical facility, as a health professional shortage area, the Secretary shall give written notice of such proposed designation to the chief administrative officer of such facility and request comments within 30 days with respect to such designation.

(2) Prior to the designation of a health professional shortage area under this section, the Secretary shall, to the extent practicable, give written notice of the proposed designation of such area to appropriate public or private nonprofit entities which are located or have a demonstrated interest in such area and request comments from such entities with respect to the proposed designation of such area.

(f) Notice of designation

The Secretary shall give written notice of the designation of a health professional shortage area, not later than 60 days from the date of such designation, to—

(1) the Governor of each State in which the area, population group, medical facility, or other public facility so designated is in whole or part located; and

(2) appropriate public or nonprofit private entities which are located or which have a demonstrated interest in the area so designated.

(g) Recommendations to Secretary

Any person may recommend to the Secretary the designation of an area, population group, medical facility, or other public facility as a health professional shortage area.

(h) Public information programs in designated areas

The Secretary may conduct such information programs in areas, among population groups,

and in medical facilities and other public facilities designated under this section as health professional shortage areas as may be necessary to inform public and nonprofit private entities which are located or have a demonstrated interest in such areas of the assistance available under this subchapter by virtue of the designation of such areas.

(i) Dissemination

The Administrator of the Health Resources and Services Administration shall disseminate information concerning the designation criteria described in subsection (b) of this section to—

(1) the Governor of each State;

(2) the representative of any area, population group, or facility selected by any such Governor to receive such information;

(3) the representative of any area, population group, or facility that requests such information; and

(4) the representative of any area, population group, or facility determined by the Administrator to be likely to meet the criteria described in subsection (b) of this section.

(j) Regulations and report

(1) The Secretary shall submit the report described in paragraph (2) if the Secretary, acting through the Administrator of the Health Resources and Services Administration, issues—

(A) a regulation that revises the definition of a health professional shortage area for purposes of this section; or

(B) a regulation that revises the standards concerning priority of such an area under section 254f–1 of this title.

(2) On issuing a regulation described in paragraph (1), the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report that describes the regulation.

(3) Each regulation described in paragraph (1) shall take effect 180 days after the committees described in paragraph (2) receive a report referred to in such paragraph describing the regulation.

(July 1, 1944, ch. 373, title III, § 332, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2270; amended Pub. L. 95–142, § 7(d), Oct. 25, 1977, 91 Stat. 1193; Pub. L. 96–32, § 7(d), July 10, 1979, 93 Stat. 84; Pub. L. 97–35, title IX, § 986(b)(4), title XXVII, § 2702(a), (b), (c), Aug. 13, 1981, 95 Stat. 603, 903, 904; Pub. L. 100–77, title VI, § 602, July 22, 1987, 101 Stat. 515; Pub. L. 100–177, title III, § 302, Dec. 1, 1987, 101 Stat. 1003; Pub. L. 100–607, title VIII, § 802(b)(2), Nov. 4, 1988, 102 Stat. 3169; Pub. L. 100–628, title VI, § 602(b)(2), Nov. 7, 1988, 102 Stat. 3242; Pub. L. 101–597, title I, § 102, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3014, 3035; Pub. L. 107–251, title III, § 302(a), (d)(2), title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1643, 1645, 1664; Pub. L. 108–163, § 2(f)(1), Dec. 6, 2003, 117 Stat. 2021.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a)(2)(B), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Social Security Act, referred to in subsec. (c)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 332 of act July 1, 1944, was renumbered section 340, and was classified to section 256 of this title prior to repeal by Pub. L. 95–626.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–163, § 2(f)(1)(A), substituted ''such date of designation'' for ''such date of enactment'' and ''regarding'' for '', issued after the date of enactment of this Act, that revise''.

Subsec. (a)(3). Pub. L. 108–163, § 2(f)(1)(B), substituted ''254b(h)(5)'' for ''254b(h)(4)''.

Subsec. (b)(2). Pub. L. 108–163, § 2(f)(1)(C), struck out comma before period at end.

Subsec. (j). Pub. L. 108–163, § 2(f)(1)(D), added subsec. (j).

2002—Subsec. (a)(1). Pub. L. 107–251, § 302(a)(1)(A), inserted after first sentence ''All Federally qualified health centers and rural health clinics, as defined in section 1861(aa) of the Social Security Act (42 U.S.C. 1395x(aa)), that meet the requirements of section 254g of this title shall be automatically designated as having such a shortage. Not earlier than 6 years after such date of enactment, and every 6 years thereafter, each such center or clinic shall demonstrate that the center or clinic meets the applicable requirements of the Federal regulations, issued after the date of enactment of this Act, that revise the definition of a health professional shortage area for purposes of this section.''

Subsec. (a)(2)(C). Pub. L. 107–251, § 601(a), substituted ''254b(h)'' for ''256''.

Subsec. (a)(3). Pub. L. 107–251, § 302(a)(1)(B), substituted ''254b(h)(4) of this title), seasonal agricultural workers (as defined in section 254b(g)(3) of this title) and migratory agricultural workers (as so defined)), and residents of public housing (as defined in section 1437a(b)(1) of this title) may be population groups'' for ''256(r) of this title) may be a population group''.

Subsec. (b)(2). Pub. L. 107–251, § 302(a)(2), struck out after ''designation,'' the following: ''with special consideration to indicators of—

''(A) infant mortality,

''(B) access to health services,

''(C) health status, and

''(D) ability to pay for health services''.

Subsec. (c)(2)(B). Pub. L. 107–251, § 302(a)(3), substituted ''XVIII, XIX, or XXI of the Social Security Act'' for ''XVIII or XIX of the Social Security Act''.

Subsec. (i). Pub. L. 107–251, § 302(d)(2), added subsec. (i).

1990—Subsec. (a)(1). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

Subsec. (a)(2)(A). Pub. L. 101–597, § 102(b)(1), inserted ''facility operated by a city or county health department,'' before ''and community health center''.

Subsec. (a)(2)(B). Pub. L. 101–597, § 102(b)(2), inserted before semicolon '', and a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act''.

Subsec. (a)(2)(C). Pub. L. 101–597, § 102(b)(3), substituted ''section'' for ''sections'' before ''248'', struck out ''or'' before ''253'' and ''or section'' before ''247e'', and inserted before semicolon '', or 256 of this title (relating to the provision of health services to homeless individuals)''.

Subsec. (b). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, § 102(c)(1), struck out '', promulgated not later than May 1, 1977,'' after ''establish by regulation''.

Subsec. (c). Pub. L. 101–597, § 102(c)(2), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows:

''(A) The recommendations of each health systems agency (designated under section 300*l*–4 of this title) for a health service area which includes all or any part of the area, population group, medical facility, or other public facility under consideration for designation.

''(B) The recommendations of the State health planning and development agency (designated under section 300m of this title) if such area, population group, medical facility, or other public facility is within a health service area for which no health systems agency has been designated.''

Subsec. (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (1).

Pub. L. 101–597, § 102(a), (c)(3), designated existing provision as par. (1), struck out '', not later than November 1, 1977,'' after ''Secretary shall designate'', and added par. (2).

Subsec. (e). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

Subsec. (f). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, § 102(c)(4), redesignated par. (3) as (2) and struck out former par. (2) which read as follows:

''(A) each health systems agency (designated under section 300*l*–4 of this title) for a health service area which includes all or any part of the area, population group, medical facility, or other public facility so designated; or

''(B) the State health planning and development agency of the State (designated under section 300m of this title) if there is a part of such area, population group, medical facility, or other public facility within a health service area for which no health systems agency has been designated; and''.

Subsecs. (g), (h). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

1988—Subsec. (a)(3). Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, substituting ''section 256(r)'' for ''section 256(q)(2)''.

1987—Subsec. (a)(1). Pub. L. 100–177, § 302(1), inserted sentence at end relating to removal of an area from areas determined to be health manpower shortage areas.

Subsec. (a)(3). Pub. L. 100–77 added par. (3).

Subsec. (b)(2)(D). Pub. L. 100–177, § 302(2), added subpar. (D).

1981—Subsec. (a)(1)(A). Pub. L. 97–35, § 2702(a), inserted provisions respecting reasonable accessibility to adequately served area.

Subsec. (a)(2)(C). Pub. L. 97–35, § 986(b)(4), substituted ''persons under quarantine'' for ''seamen''.

Subsec. (e). Pub. L. 97–35, § 2702(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 97–35, § 2702(b), substituted ''may'' for ''shall''.

1979—Subsec. (a)(2)(C). Pub. L. 96–32 substituted ''section 247e of this title'' for ''part D of subchapter II of this chapter''.

1977—Subsec. (c)(3). Pub. L. 95–142 added par. (3).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendments by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 631 of title VI of Pub. L. 100–628 provided that: ''The amendments made by subsection (a) of section 601 [amending section 256 of this title] shall take effect in accordance with subsection (b) of such section [formerly set out as a note under section 256 of this title]. The amendments otherwise made by this title [amending this section and sections 256, 290bb–2, 290cc–21, 290cc–28, 290cc–29, 290cc–35, 290cc–36, 290dd, 290ee, and 290ee–1 of this title and amending provisions set out as a note under section 290aa–3 of this title] shall take effect October 1, 1988, or upon the date of the enactment of this Act [Nov. 7, 1988], whichever occurs later.''

Section 831 of title VIII of Pub. L. 100–607 provided that: ''The amendments made by subsection (a) of section 801 [amending section 256 of this title] shall take effect in accordance with subsection (b) of such section [formerly set out as a note under section 256 of this title]. The amendments otherwise made by this title [amending this section and sections 256, 290bb–2, 290cc–21, 290cc–28, 290cc–29, 290cc–35, 290cc–36, 290dd, 290ee, and 290ee–1 of this title and amending provisions set out as a note under section 290aa–3 of this title] shall take effect October 1, 1988, or upon the date of the enactment of this Act [Nov. 4, 1988], whichever occurs later.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 986(b)(4) of Pub. L. 97–35 effective Oct. 1, 1981, see section 986(c) of Pub. L. 97–35, set out as a note under section 249 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 7(e)(1) of Pub. L. 95–142 provided that: ''The amendment made by subsection (d) [amending this section] shall apply with respect to determinations and designations made on and after the date of the enactment of this Act [Oct. 25, 1977].''

REGULATIONS

Pub. L. 107–251, title III, § 302(b), Oct. 26, 2002, 116 Stat. 1644, which required the Secretary to submit a report to Congress, if the Secretary issued regulations revising the definition of a health professional shortage area under this section and standards concerning priority of such an area under section 254f–1 of this title, was repealed by Pub. L. 108–163, § 2(f)(2), Dec. 6, 2003, 117 Stat. 2022.

IMPROVEMENT OF SITE DESIGNATION PROCESS

Pub. L. 107–251, title III, § 302(d)(1), Oct. 26, 2002, 116 Stat. 1644, provided that: ''The Administrator of the Health Resources and Services Administration, in consultation with the Association of State and Territorial Dental Directors, dental societies, and other interested parties, shall revise the criteria on which the designations of dental health professional shortage areas are based so that such criteria provide a more accurate reflection of oral health care need, particularly in rural areas.''

GAO STUDY

Pub. L. 107–251, title III, § 302(e), Oct. 26, 2002, 116 Stat. 1645, provided that: ''Not later than February 1, 2005, the Comptroller General of the United States shall submit to the Congress a report on the appropriateness of the criteria, including but not limited to infant mortality rates, access to health services taking into account the distance to primary health services, the rate of poverty and ability to pay for health services, and low birth rates, established by the Secretary of Health and Human Services for the designation of health professional shortage areas and whether the deeming of federally qualified health centers and rural health clinics as such areas is appropriate and necessary.''

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or home-

less health center, considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

EVALUATION OF CRITERIA USED TO DESIGNATE HEALTH MANPOWER SHORTAGE AREAS; REPORT TO CONGRESS

Section 2702(c) of Pub. L. 97–35 directed the Secretary of Health and Human Services, effective Oct. 1, 1981, to evaluate the criteria used under section 254e(b) of this title to determine if the use of the criteria resulted in areas which did not have a shortage of health professions personnel being designated as health manpower shortage areas, and to consider different criteria (including the actual use of health professions personnel in an area by the residents, taking into account their health status and indicators of unmet demand and likelihood that such demand would not be met in two years) which might be used to designate health manpower shortage areas. The Secretary was to report the results of his activities to Congress not later than Nov. 30, 1982.

§ 254f. Corps personnel

(a) Conditions necessary for assignment of Corps personnel to area; contents of application for assignment; assignment to particular facility; approval of applications

(1) The Secretary may assign members of the Corps to provide, under regulations promulgated by the Secretary, health services in or to a health professional shortage area during the assignment period only if—

(A) a public or private entity, which is located or has a demonstrated interest in such area makes application to the Secretary for such assignment;

(B) such application has been approved by the Secretary;

(C) the entity agrees to comply with the requirements of section 254g of this title; and

(D) the Secretary has (i) conducted an evaluation of the need and demand for health manpower for the area, the intended use of Corps members to be assigned to the area, community support for the assignment of Corps members to the area, the area's efforts to secure health manpower for the area, and the fiscal management capability of the entity to which Corps members would be assigned and (ii) on the basis of such evaluation has determined that—

(I) there is a need and demand for health manpower for the area;

(II) there has been appropriate and efficient use of any Corps members assigned to the entity for the area;

(III) there is general community support for the assignment of Corps members to the entity;

(IV) the area has made unsuccessful efforts to secure health manpower for the area; and

(V) there is a reasonable prospect of sound fiscal management, including efficient collection of fee-for-service, third-party, and other appropriate funds, by the entity with respect to Corps members assigned to such entity.

An application for assignment of a Corps member to a health professional shortage area shall include a demonstration by the applicant that the area or population group to be served by the applicant has a shortage of personal health services and that the Corps member will be located so that the member will provide services to the greatest number of persons residing in such area or included in such population group. Such a demonstration shall be made on the basis of the criteria prescribed by the Secretary under section 254e(b) of this title and on additional criteria which the Secretary shall prescribe to determine if the area or population group to be served by the applicant has a shortage of personal health services.

(2) Corps members may be assigned to a Federal health care facility, but only upon the request of the head of the department or agency of which such facility is a part.

(3) In approving applications for assignment of members of the Corps the Secretary shall not discriminate against applications from entities which are not receiving Federal financial assistance under this chapter. In approving such applications, the Secretary shall give preference to applications in which a nonprofit entity or public entity shall provide a site to which Corps members may be assigned.

(b) Corps member income assurances; grants respecting sufficiency of financial resources

(1) The Secretary may not approve an application for the assignment of a member of the Corps described in subparagraph (C) of section 254d(a)(1) of this title to an entity unless the application of the entity contains assurances satisfactory to the Secretary that the entity (A) has sufficient financial resources to provide the member of the Corps with an income of not less than the income to which the member would be entitled if the member was a member described in subparagraph (B) of section 254d(a)(1) of this title, or (B) would have such financial resources if a grant was made to the entity under paragraph (2).

(2)(A) If in approving an application of an entity for the assignment of a member of the Corps described in subparagraph (C) of section 254d(a)(1) of this title the Secretary determines that the entity does not have sufficient financial resources to provide the member of the Corps with an income of not less than the income to which the member would be entitled if the member was a member described in subparagraph (B) of section 254d(a)(1) of this title, the Secretary may make a grant to the entity to assure that the member of the Corps assigned to it will receive during the period of assignment to the entity such an income.

(B) The amount of any grant under subparagraph (A) shall be determined by the Secretary. Payments under such a grant may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary. No grant may be made unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

(c) Assignment of members without regard to ability of area to pay for services

The Secretary shall assign Corps members to entities in health professional shortage areas without regard to the ability of the individuals

in such areas, population groups, medical facilities, or other public facilities to pay for such services.

(d) Entities entitled to aid; forms of assistance; coordination of efforts; agreements for assignment of Corps members; qualified entity

(1) The Secretary may provide technical assistance to a public or private entity which is located in a health professional shortage area and which desires to make an application under this section for assignment of a Corps member to such area. Assistance provided under this paragraph may include assistance to an entity in (A) analyzing the potential use of health professions personnel in defined health services delivery areas by the residents of such areas, (B) determining the need for such personnel in such areas, (C) determining the extent to which such areas will have a financial base to support the practice of such personnel and the extent to which additional financial resources are needed to adequately support the practice, (D) determining the types of inpatient and other health services that should be provided by such personnel in such areas, and (E) developing long-term plans for addressing health professional shortages and improving access to health care. The Secretary shall encourage entities that receive technical assistance under this paragraph to communicate with other communities, State Offices of Rural Health, State Primary Care Associations and Offices, and other entities concerned with site development and community needs assessment.

(2) The Secretary may provide, to public and private entities which are located in a health professional shortage area to which area a Corps member has been assigned, technical assistance to assist in the retention of such member in such area after the completion of such member's assignment to the area.

(3) The Secretary may provide, to health professional shortage areas to which no Corps member has been assigned, (A) technical assistance to assist in the recruitment of health manpower for such areas, and (B) current information on public and private programs which provide assistance in the securing of health manpower.

(4)(A) The Secretary shall undertake to demonstrate the improvements that can be made in the assignment of members of the Corps to health professional shortage areas and in the delivery of health care by Corps members in such areas through coordination with States, political subdivisions of States, agencies of States and political subdivisions, and other public and private entities which have expertise in the planning, development, and operation of centers for the delivery of primary health care. In carrying out this subparagraph, the Secretary shall enter into agreements with qualified entities which provide that if—

(i) the entity places in effect a program for the planning, development, and operation of centers for the delivery of primary health care in health professional shortage areas which reasonably addresses the need for such care in such areas, and

(ii) under the program the entity will perform the functions described in subparagraph (B),

the Secretary will assign under this section members of the Corps in accordance with the program.

(B) For purposes of subparagraph (A), the term ''qualified entity'' means a State, political subdivision of a State, an agency of a State or political subdivision, or other public or private entity operating solely within one State, which the Secretary determines is able—

(i) to analyze the potential use of health professions personnel in defined health services delivery areas by the residents of such areas;

(ii) to determine the need for such personnel in such areas and to recruit, select, and retain health professions personnel (including members of the National Health Service Corps) to meet such need;

(iii) to determine the extent to which such areas will have a financial base to support the practice of such personnel and the extent to which additional financial resources are needed to adequately support the practice;

(iv) to determine the types of inpatient and other health services that should be provided by such personnel in such areas;

(v) to assist such personnel in the development of their clinical practice and fee schedules and in the management of their practice;

(vi) to assist in the planning and development of facilities for the delivery of primary health care; and

(vii) to assist in establishing the governing bodies of centers for the delivery of such care and to assist such bodies in defining and carrying out their responsibilities.

(e) Practice within State by Corps member

Notwithstanding any other law, any member of the Corps licensed to practice medicine, osteopathic medicine, dentistry, or any other health profession in any State shall, while serving in the Corps, be allowed to practice such profession in any State.

(July 1, 1944, ch. 373, title III, § 333, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2272; amended Pub. L. 97–35, title XXVII, § 2703, Aug. 13, 1981, 95 Stat. 904; Pub. L. 100–177, title III, §§ 303, 304, Dec. 1, 1987, 101 Stat. 1004; Pub. L. 100–607, title VI, § 629(a)(2), Nov. 4, 1988, 102 Stat. 3146; Pub. L. 101–597, title I, § 103, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3015, 3035; Pub. L. 107–251, title III, § 303, Oct. 26, 2002, 116 Stat. 1645; Pub. L. 108–163, § 2(g), Dec. 6, 2003, 117 Stat. 2022.)

AMENDMENTS

2003—Subsec. (a)(1)(C). Pub. L. 108–163 realigned margin.

2002—Subsec. (a)(1). Pub. L. 107–251, § 303(1)(A)(i), struck out ''(specified in the agreement described in section 254g of this title)'' after ''assignment period'' in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 107–251, § 303(1)(A)(ii), struck out ''nonprofit'' before ''private entity''.

Subsec. (a)(1)(C). Pub. L. 107–251, § 303(1)(A)(iii), added subpar. (C) and struck out former subpar. (C) which read as follows: ''an agreement has been entered into between the entity which has applied and the Secretary, in accordance with section 254g of this title; and''.

Subsec. (a)(3). Pub. L. 107–251, § 303(1)(B), inserted at end ''In approving such applications, the Secretary shall give preference to applications in which a non-

profit entity or public entity shall provide a site to which Corps members may be assigned.''

Subsec. (d)(1). Pub. L. 107–251, §303(2), struck out ''nonprofit'' before ''private entity'' in first sentence, added cl. (E), and inserted at end ''The Secretary shall encourage entities that receive technical assistance under this paragraph to communicate with other communities, State Offices of Rural Health, State Primary Care Associations and Offices, and other entities concerned with site development and community needs assessment.''

Subsec. (d)(2). Pub. L. 107–251, §303(2)(A), struck out ''nonprofit'' before ''private entities''.

Subsec. (d)(4). Pub. L. 107–251, §303(2)(A), struck out ''nonprofit'' before ''private entities'' in introductory provisions of subpar. (A) and before ''private entity'' in introductory provisions of subpar. (B).

1990—Subsec. (a)(1). Pub. L. 101–597, §401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in introductory and closing provisions.

Subsec. (a)(1)(D)(ii)(II). Pub. L. 101–597, §103(a), substituted ''has been'' and ''any Corps'' for ''will be'' and ''Corps'', respectively.

Subsec. (b). Pub. L. 101–597, §103(b), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to approval of application for assignment of Corps personnel subject to review and comment on application by health service agencies in designated area.

Subsec. (c). Pub. L. 101–597, §401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, §103(b), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to applications, consideration and approval by Secretary, priorities, cooperation with Corps members, and comments by health professionals and societies in designated areas.

Subsec. (d). Pub. L. 101–597, §401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing in pars. (1) to (4)(A)(i).

Pub. L. 101–597, §103(b)(2), redesignated subsec. (g) as (d). Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 101–597, §103(b)(2), redesignated subsec. (i) as (e). Former subsec. (e) redesignated (c).

Subsec. (f). Pub. L. 101–597, §103(b)(1), struck out subsec. (f) which provided for selection of Corps members for assignment upon basis of characteristics.

Subsec. (g). Pub. L. 101–597, §103(b)(2), redesignated subsec. (g) as (d).

Subsec. (h). Pub. L. 101–597, §103(b)(1), struck out subsec. (h) which related to study and contracts for study of methods of assignments of Corps members.

Subsec. (i). Pub. L. 101–597, §103(b)(2), redesignated subsec. (i) as (e).

Subsecs. (j), (k). Pub. L. 101–597, §103(b)(1), struck out subsecs. (j) and (k) which provided for placement of physicians in medically underserved areas and assignment of family physicians, respectively.

1988—Subsec. (i). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy''.

1987—Subsec. (j). Pub. L. 100–177, §303, added subsec. (j).

Subsec. (k). Pub. L. 100–177, §304, added subsec. (k).

1981—Subsec. (a). Pub. L. 97–35, §2703(a), (b), amended par. (1)(D) generally and, among changes, made numerous changes in nomenclature, inserted at end of par. (1) provisions respecting application, and added par. (3).

Subsec. (c). Pub. L. 97–35, §2703(c), struck out par. (2) which related to special considerations, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsecs. (d) to (f). Pub. L. 97–35, §2703(d), added subsec. (d) and redesignated former subsecs. (d), (e), and (f) as (e), (f), and (g), respectively.

Subsec. (g). Pub. L. 97–35, §2703(d), (e), redesignated former subsec. (f) as (g) and substituted ''may'' for ''shall'' in pars. (1) to (3), inserted provisions respecting health professions personnel in par. (1), added par. (4), and struck out requirement respecting demonstrated interest in pars. (1) and (2). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 97–35, §2703(d), (f), redesignated former subsec. (g) as (h) and directed that ''may'' be substituted for ''shall'' which was executed by substituting ''may'' for ''shall'' in two places preceding par. (1). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 97–35, §2703(d), (g), redesignated former subsec. (h) as (i) and inserted reference to other health profession.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2703(d) of Pub. L. 97–35 provided that the amendment made by that section is effective Oct. 1, 1981.

§ 254f–1. Priorities in assignment of Corps personnel

(a) In general

In approving applications made under section 254f of this title for the assignment of Corps members, the Secretary shall—

(1) give priority to any such application that—

(A) is made regarding the provision of primary health services to a health professional shortage area with the greatest such shortage; and

(B) is made by an entity that—

(i) serves a health professional shortage area described in subparagraph (A);

(ii) coordinates the delivery of primary health services with related health and social services;

(iii) has a documented record of sound fiscal management; and

(iv) will experience a negative impact on its capacity to provide primary health services if a Corps member is not assigned to the entity;

(2) with respect to the geographic area in which the health professional shortage area is located, take into consideration the willingness of individuals in the geographic area, and of the appropriate governmental agencies or health entities in the area, to assist and cooperate with the Corps in providing effective primary health services; and

(3) take into consideration comments of medical, osteopathic, dental, or other health professional societies whose members deliver services to the health professional shortage area, or if no such societies exist, comments of physicians, dentists, or other health professionals delivering services to the area.

(b) Establishment of criteria for determining priorities

(1) In general

The Secretary shall establish criteria specifying the manner in which the Secretary makes a determination under subsection (a)(1)(A) of this section of the health professional shortage areas with the greatest such shortages.

(2) Publication of criteria

The criteria required in paragraph (1) shall be published in the Federal Register not later

than July 1, 1991. Any revisions made in the criteria by the Secretary shall be effective upon publication in the Federal Register.

(c) Notifications regarding priorities

(1) Proposed list

The Secretary shall prepare and publish a proposed list of health professional shortage areas and entities that would receive priority under subsection (a)(1) of this section in the assignment of Corps members. The list shall contain the information described in paragraph (2), and the relative scores and relative priorities of the entities submitting applications under section 254f of this title, in a proposed format. All such entities shall have 30 days after the date of publication of the list to provide additional data and information in support of inclusion on the list or in support of a higher priority determination and the Secretary shall reasonably consider such data and information in preparing the final list under paragraph (2).

(2) Preparation of list for applicable period

For the purpose of carrying out paragraph (3), the Secretary shall prepare and, as appropriate, update a list of health professional shortage areas and entities that are receiving priority under subsection (a)(1) of this section in the assignment of Corps members. Such list—

(A) shall include a specification, for each such health professional shortage area, of the entities for which the Secretary has provided an authorization to receive assignments of Corps members in the event that Corps members are available for the assignments; and

(B) shall, of the entities for which an authorization described in subparagraph (A) has been provided, specify—

(i) the entities provided such an authorization for the assignment of Corps members who are participating in the Scholarship Program;

(ii) the entities provided such an authorization for the assignment of Corps members who are participating in the Loan Repayment Program; and

(iii) the entities provided such an authorization for the assignment of Corps members who have become Corps members other than pursuant to contractual obligations under the Scholarship or Loan Repayment Programs.

The Secretary may set forth such specifications by medical specialty.

(3) Notification of affected parties

(A) Entities

Not later than 30 days after the Secretary has added to a list under paragraph (2) an entity specified as described in subparagraph (A) of such paragraph, the Secretary shall notify such entity that the entity has been provided an authorization to receive assignments of Corps members in the event that Corps members are available for the assignments.

(B) Individuals

In the case of an individual obligated to provide service under the Scholarship Program, not later than 3 months before the date described in section 254m(b)(5) of this title, the Secretary shall provide to such individual the names of each of the entities specified as described in paragraph (2)(B)(i) that is appropriate for the individual's medical specialty and discipline.

(4) Revisions

If the Secretary proposes to make a revision in the list under paragraph (2), and the revision would adversely alter the status of an entity with respect to the list, the Secretary shall notify the entity of the revision. Any entity adversely affected by such a revision shall be notified in writing by the Secretary of the reasons for the revision and shall have 30 days from such notification to file a written appeal of the determination involved which shall be reasonably considered by the Secretary before the revision to the list becomes final. The revision to the list shall be effective with respect to assignment of Corps members beginning on the date that the revision becomes final.

(d) Limitation on number of entities offered as assignment choices in Scholarship Program

(1) Determination of available Corps members

By April 1 of each calendar year, the Secretary shall determine the number of participants in the Scholarship Program who will be available for assignments under section 254f of this title during the program year beginning on July 1 of that calendar year.

(2) Determination of number of entities

At all times during a program year, the number of entities specified under subsection (c)(2)(B)(i) of this section shall be—

(A) not less than the number of participants determined with respect to that program year under paragraph (1); and

(B) not greater than twice the number of participants determined with respect to that program year under paragraph (1).

(July 1, 1944, ch. 373, title III, § 333A, as added and amended Pub. L. 101–597, title I, § 104, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3015, 3035; Pub. L. 107–251, title III, § 304, Oct. 26, 2002, 116 Stat. 1646; Pub. L. 108–163, § 2(h), Dec. 6, 2003, 117 Stat. 2022.)

AMENDMENTS

2003—Subsec. (c)(4). Pub. L. 108–163 substituted ''30 days from such notification'' for ''30 days''.

2002—Subsec. (a)(1)(A). Pub. L. 107–251, § 304(1), struck out '', as determined in accordance with subsection (b) of this section'' after ''such shortage''.

Subsec. (b). Pub. L. 107–251, § 304(2), (7), redesignated subsec. (c) as (b) and struck out heading and text of former subsec. (b). Text read as follows: ''In making a determination under subsection (a)(1)(A) of this section of the health professional shortage areas with the greatest such shortages, the Secretary may consider only the following factors:

''(1) The ratio of available health manpower to the number of individuals in the area or population group involved, or served by the medical facility or other public facility involved.

''(2) Indicators of need as follows:

''(A) The rate of low birthweight births.

''(B) The rate of infant mortality.

''(C) The rate of poverty.

''(D) Access to primary health services, taking into account the distance to such services.''

Subsec. (c). Pub. L. 107–251, § 304(7), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 107–251, § 304(3), struck out second sentence, which read as follows: ''Such criteria shall specify the manner in which the factors described in subsection (b) of this section are implemented regarding such a determination.''

Subsec. (d). Pub. L. 107–251, § 304(7), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 107–251, § 304(4)(B), added par. (1). Former par. (1) redesignated (2).

Subsec. (d)(2). Pub. L. 107–251, § 304(4)(C), in introductory provisions, substituted ''paragraph (3)'' for ''paragraph (2)'' and ''prepare and, as appropriate, update a list of health professional shortage areas and entities'' for ''prepare a list of health professional shortage areas'' and struck out ''for the period applicable under subsection (f) of this section'' after ''Corps members''.

Pub. L. 107–251, § 304(4)(A), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 107–251, § 304(4)(D), added par. (3) and struck out heading and text of former par. (3). Text read as follows:

''(A) Not later than 30 days after the preparation of each list under paragraph (1), the Secretary shall notify entities specified for purposes of subparagraph (A) of such paragraph of the fact that the entities have been provided an authorization to receive assignments of Corps members in the event that Corps members are available for the assignments.

''(B) In the case of individuals with respect to whom a period of obligated service under the Scholarship Program will begin during the period under subsection (f) of this section for which a list under paragraph (1) is prepared, the Secretary shall, not later than 30 days after the preparation of each such list, provide to such individuals the names of each of the entities specified for purposes of paragraph (1)(B)(i) that is appropriate to the medical specialty of the individuals.''

Pub. L. 107–251, § 304(4)(A), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 107–251, § 304(4)(E), added par. (4) and struck out heading and text of former par. (4). Text read as follows: ''If the Secretary makes a revision in a list under paragraph (1) during the period under subsection (f) of this section to which the list is applicable, and the revision alters the status of an entity with respect to the list, the Secretary shall notify the entity of the effect on the entity of the revision. Such notification shall be provided not later than 30 days after the date on which the revision is made.''

Pub. L. 107–251, § 304(4)(A), redesignated par. (3) as (4).

Subsec. (e). Pub. L. 107–251, § 304(7), redesignated subsec. (e) as (d).

Pub. L. 107–251, § 304(5), added subsec. (e) and struck out heading and text of former subsec. (e). Text related to limitation on the number of entities offered as assignment choices in the Scholarship Program based on the number of participants available for assignments.

Subsec. (f). Pub. L. 107–251, § 304(6), struck out heading and text of subsec. (f), which related to applicable period regarding priorities in assignment of Corps members.

1990—Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing in subsecs. (a) to (c)(1), (d)(1), and (e)(3).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

§ 254g. Charges for services by entities using Corps members

(a) Availability of services regardless of ability to pay or payment source

An entity to which a Corps member is assigned shall not deny requested health care services, and shall not discriminate in the provision of services to an individual—

(1) because the individual is unable to pay for the services; or

(2) because payment for the services would be made under—

(A) the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(B) the medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.); or

(C) the State children's health insurance program under title XXI of such Act (42 U.S.C. 1397aa et seq.).

(b) Charges for services

The following rules shall apply to charges for health care services provided by an entity to which a Corps member is assigned:

(1) In general

(A) Schedule of fees or payments

Except as provided in paragraph (2), the entity shall prepare a schedule of fees or payments for the entity's services, consistent with locally prevailing rates or charges and designed to cover the entity's reasonable cost of operation.

(B) Schedule of discounts

Except as provided in paragraph (2), the entity shall prepare a corresponding schedule of discounts (including, in appropriate cases, waivers) to be applied to the payment of such fees or payments. In preparing the schedule, the entity shall adjust the discounts on the basis of a patient's ability to pay.

(C) Use of schedules

The entity shall make every reasonable effort to secure from patients fees and payments for services in accordance with such schedules, and fees or payments shall be sufficiently discounted in accordance with the schedule described in subparagraph (B).

(2) Services to beneficiaries of Federal and federally assisted programs

In the case of health care services furnished to an individual who is a beneficiary of a program listed in subsection (a)(2) of this section, the entity—

(A) shall accept an assignment pursuant to section 1842(b)(3)(B)(ii) of the Social Security Act (42 U.S.C. 1395u(b)(3)(B)(ii)) with respect to an individual who is a beneficiary under the medicare program; and

(B) shall enter into an appropriate agreement with—

(i) the State agency administering the program under title XIX of such Act [42 U.S.C. 1396 et seq.] with respect to an individual who is a beneficiary under the medicaid program; and

(ii) the State agency administering the program under title XXI of such Act [42 U.S.C. 1397aa et seq.] with respect to an individual who is a beneficiary under the State children's health insurance program.

(3) Collection of payments

The entity shall take reasonable and appropriate steps to collect all payments due for health care services provided by the entity, including payments from any third party (including a Federal, State, or local government agency and any other third party) that is responsible for part or all of the charge for such services.

(July 1, 1944, ch. 373, title III, § 334, as added Pub. L. 107–251, title III, § 305, Oct. 26, 2002, 116 Stat. 1647; amended Pub. L. 108–163, § 2(i), Dec. 6, 2003, 117 Stat. 2022.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(2) and (b)(2)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 254g, act July 1, 1944, ch. 373, title III, § 334, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2274; amended Pub. L. 97–35, title XXVII, § 2704, Aug. 13, 1981, 95 Stat. 906; Pub. L. 98–194, § 3, Dec. 1, 1983, 97 Stat. 1345; Pub. L. 100–177, title II, § 202(c), Dec. 1, 1987, 101 Stat. 996; Pub. L. 101–597, title I, § 105, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3018, 3035, related to shared responsibility for costs of Corps personnel providing health services in or to a health professional shortage area during the assignment period, prior to repeal by Pub. L. 107–251, title III, § 305, Oct. 26, 2002, 116 Stat. 1647.

AMENDMENTS

2003—Subsec. (b)(1)(B). Pub. L. 108–163 inserted ''the payment of'' after ''applied to''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

§ 254h. Provision of health services by Corps members

(a) Means of delivery of services; cooperation with other health care providers

In providing health services in a health professional shortage area, Corps members shall utilize the techniques, facilities, and organizational forms most appropriate for the area, population group, medical facility, or other public facility, and shall, to the maximum extent feasible, provide such services (1) to all individuals in, or served by, such health professional shortage area regardless of their ability to pay for the services, and (2) in a manner which is cooperative with other health care providers serving such health professional shortage area.

(b) Utilization of existing health facilities; lease, acquisition, and use of equipment and supplies; permanent and temporary professional services

(1) Notwithstanding any other provision of law, the Secretary may (A) to the maximum extent feasible make such arrangements as he determines necessary to enable Corps members to utilize the health facilities in or serving the health professional shortage area in providing health services; (B) make such arrangements as he determines are necessary for the use of equipment and supplies of the Service and for the lease or acquisition of other equipment and supplies; and (C) secure the permanent or temporary services of physicians, dentists, nurses, administrators, and other health personnel. If there are no health facilities in or serving such area, the Secretary may arrange to have Corps members provide health services in the nearest health facilities of the Service or may lease or otherwise provide facilities in or serving such area for the provision of health services.

(2) If the individuals in or served by a health professional shortage area are being served (as determined under regulations of the Secretary) by a hospital or other health care delivery facility of the Service, the Secretary may, in addition to such other arrangements as he may make under paragraph (1), arrange for the utilization of such hospital or facility by Corps members in providing health services, but only to the extent that such utilization will not impair the delivery of health services and treatment through such hospital or facility to individuals who are entitled to health services and treatment through such hospital or facility.

(c) Loan; purposes; limitations

The Secretary may make one loan to any entity with an approved application under section 254f of this title to assist such entity in meeting the costs of (1) establishing medical, dental, or other health profession practices, including the development of medical practice management systems; (2) acquiring equipment for use in providing health services; and (3) renovating buildings to establish health facilities. No loan may be made under this subsection unless an application therefor is submitted to, and approved by, the Secretary. The amount of any such loan shall be determined by the Secretary, except that no such loan may exceed $50,000.

(d) Property and equipment disposal; fair market value; sale at less than full market value

Upon the expiration of the assignment of all Corps members to a health professional shortage area, the Secretary may (notwithstanding any other provision of law) sell, to any appropriate local entity, equipment and other property of the United States utilized by such members in providing health services. Sales made under this subsection shall be made at the fair market value (as determined by the Secretary) of the equipment or such other property; except that the Secretary may make such sales for a lesser value to an appropriate local entity, if he determines that the entity is financially unable to pay the full market value.

(e) Admitting privileges denied to Corps member by hospital; notice and hearing; denial of Federal funds for violation; "hospital" defined

(1)(A) It shall be unlawful for any hospital to deny an authorized Corps member admitting privileges when such Corps member otherwise meets the professional qualifications established by the hospital for granting such privileges and agrees to abide by the published bylaws of the hospital and the published bylaws, rules, and regulations of its medical staff.

(B) Any hospital which is found by the Secretary, after notice and an opportunity for a hearing on the record, to have violated this subsection shall upon such finding cease, for a period to be determined by the Secretary, to receive and to be eligible to receive any Federal funds under this chapter or under titles XVIII, XIX, or XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.].

(2) For purposes of this subsection, the term ''hospital'' includes a State or local public hospital, a private profit hospital, a private nonprofit hospital, a general or special hospital, and any other type of hospital (excluding a hospital owned or operated by an agency of the Federal Government), and any related facilities.

(July 1, 1944, ch. 373, title III, § 335, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2275; amended Pub. L. 97–35, title XXVII, § 2705, Aug. 13, 1981, 95 Stat. 907; Pub. L. 101–597, title I, § 106, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3018, 3035; Pub. L. 107–251, title III, § 306, Oct. 26, 2002, 116 Stat. 1648.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(1)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2002—Subsec. (e)(1)(B). Pub. L. 107–251 substituted ''titles XVIII, XIX, or XXI of the Social Security Act'' for ''titles XVIII or XIX of the Social Security Act''.

1990—Subsecs. (a), (b)(1)(A), (2), (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

Subsec. (e)(1)(A). Pub. L. 101–597, § 106, substituted ''authorized Corps member admitting privileges'' for ''authorized physician or dentist member of the Corps admitting privileges''.

1981—Subsec. (a)(2). Pub. L. 97–35, § 2705(a), substituted provisions respecting cooperation with other health care providers, for provisions respecting direct health services programs.

Subsec. (c)(4). Pub. L. 97–35, § 2705(b), struck out cl. (4) relating to appropriate continuing education programs.

§ 254h–1. Facilitation of effective provision of Corps services

(a) Consideration of individual characteristics of members in making assignments

In making an assignment of a Corps member to an entity that has had an application approved under section 254f of this title, the Secretary shall, subject to making the assignment in accordance with section 254f–1 of this title, seek to assign to the entity a Corps member who has (and whose spouse, if any, has) characteristics that increase the probability that the member will remain in the health professional shortage area involved after the completion of the period of service in the Corps.

(b) Counseling on service in Corps

(1) In general

The Secretary shall, subject to paragraph (3), offer appropriate counseling on service in the Corps to individuals during the period of membership in the Corps, particularly during the initial period of each assignment.

(2) Career advisor regarding obligated service

(A) In the case of individuals who have entered into contracts for obligated service under the Scholarship or Loan Repayment Program, counseling under paragraph (1) shall include appropriate counseling on matters particular to such obligated service. The Secretary shall ensure that career advisors for providing such counseling are available to such individuals throughout the period of participation in the Scholarship or Loan Repayment Program.

(B) With respect to the Scholarship Program, counseling under paragraph (1) shall include counseling individuals during the period in which the individuals are pursuing an educational degree in the health profession involved, including counseling to prepare the individual for service in the Corps.

(3) Extent of counseling services

With respect to individuals who have entered into contracts for obligated service under the Scholarship or Loan Repayment Program, this subsection shall be carried out regarding such individuals throughout the period of obligated service (and, additionally, throughout the period specified in paragraph (2)(B), in the case of the Scholarship Program). With respect to Corps members generally, this subsection shall be carried out to the extent practicable.

(c) Grants regarding preparation of students for practice

With respect to individuals who have entered into contracts for obligated service under the Scholarship or Loan Repayment Program, the Secretary may make grants to, and enter into contracts with, public and nonprofit private entities (including health professions schools) for the conduct of programs designed to prepare such individuals for the effective provision of primary health services in the health professional shortage areas to which the individuals are assigned.

(d) Assistance in establishing local professional relationships

The Secretary shall assist Corps members in establishing appropriate professional relationships between the Corps member involved and the health professions community of the geographic area with respect to which the member is assigned, including such relationships with

hospitals, with health professions schools, with area health education centers under section 295g–1[1] of this title, with health education and training centers under such section, and with border health education and training centers under such section. Such assistance shall include assistance in obtaining faculty appointments at health professions schools.

(e) Temporary relief from Corps duties

(1) In general

The Secretary shall, subject to paragraph (4), provide assistance to Corps members in establishing arrangements through which Corps members may, as appropriate, be provided temporary relief from duties in the Corps in order to pursue continuing education in the health professions, to participate in exchange programs with teaching centers, to attend professional conferences, or to pursue other interests, including vacations.

(2) Assumption of duties of member

(A) Temporary relief under paragraph (1) may be provided only if the duties of the Corps member involved are assumed by another health professional. With respect to such temporary relief, the duties may be assumed by Corps members or by health professionals who are not Corps members, if the Secretary approves the professionals for such purpose. Any health professional so approved by the Secretary shall, during the period of providing such temporary relief, be deemed to be a Corps member for purposes of section 233 of this title (including for purposes of the remedy described in such section), section 254f(f) of this title, and section 254h(e) of this title.

(B) In carrying out paragraph (1), the Secretary shall provide for the formation and continued existence of a group of health professionals to provide temporary relief under such paragraph.

(3) Recruitment from general health professions community

In carrying out paragraph (1), the Secretary shall—

(A) encourage health professionals who are not Corps members to enter into arrangements under which the health professionals temporarily assume the duties of Corps members for purposes of paragraph (1); and

(B) with respect to the entities to which Corps members have been assigned under section 254f of this title, encourage the entities to facilitate the development of arrangements described in subparagraph (A).

(4) Limitation

In carrying out paragraph (1), the Secretary may not, except as provided in paragraph (5), obligate any amounts (other than for incidental expenses) for the purpose of—

(A) compensating a health professional who is not a Corps member for assuming the duties of a Corps member; or

(B) paying the costs of a vacation, or other interests that a Corps member may pursue during the period of temporary relief under such paragraph.

(5) Sole providers of health services

In the case of any Corps member who is the sole provider of health services in the geographic area involved, the Secretary may, from amounts appropriated under section 254k of this title, obligate on behalf of the member such sums as the Secretary determines to be necessary for purposes of providing temporary relief under paragraph (1).

(f) Determinations regarding effective service

In carrying out subsection (a) of this section and sections 254*l*(d) and 254*l*–1(d) of this title, the Secretary shall carry out activities to determine—

(1) the characteristics of physicians, dentists, and other health professionals who are more likely to remain in practice in health professional shortage areas after the completion of the period of service in the Corps;

(2) the characteristics of health manpower shortage areas, and of entities seeking assignments of Corps members, that are more likely to retain Corps members after the members have completed the period of service in the Corps; and

(3) the appropriate conditions for the assignment and utilization in health manpower shortage areas of certified nurse practitioners, certified nurse midwives, and physician assistants.

(July 1, 1944, ch. 373, title III, § 336, as added Pub. L. 97–35, title XXVII, § 2706(b), Aug. 13, 1981, 95 Stat. 907; amended Pub. L. 100–177, title II, § 202(d), Dec. 1, 1987, 101 Stat. 997; Pub. L. 101–597, title I, § 107, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3018, 3035; Pub. L. 107–251, title III, § 307(a), Oct. 26, 2002, 116 Stat. 1649.)

REFERENCES IN TEXT

Section 295g–1 of this title, referred to in subsec. (d), was in the original a reference to section 781 of act July 1, 1944. Section 781 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.

PRIOR PROVISIONS

A prior section 336 of act July 1, 1944, was renumbered section 336A by Pub. L. 97–35, § 2706(a), and is classified to section 254i of this title.

AMENDMENTS

2002—Subsecs. (c), (f)(1). Pub. L. 107–251 substituted ''health professional shortage areas'' for ''health manpower shortage areas''.

1990—Pub. L. 101–597, § 107, amended section generally. Prior to amendment, section read as follows:

''(a) The Secretary may make grants to and enter into contracts with public and private nonprofit entities for the conduct of programs which are designed to prepare individuals subject to a service obligation under the National Health Service Corps Scholarship Program or Loan Repayment Program to effectively provide health services in the health manpower shortage area to which they are assigned.

''(b) No grant may be made or contract entered into under subsection (a) of this section unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.''

Subsec. (a). Pub. L. 101–597, § 401(b)[(a)], substituted ''health professional shortage area'' for ''health manpower shortage area''.

[1] See References in Text note below.

1987—Subsec. (a). Pub. L. 100–177 substituted ''Scholarship Program or Loan Repayment Program'' for ''scholarship program''.

§ 254i. Annual report to Congress; contents

The Secretary shall submit an annual report to Congress, and shall include in such report with respect to the previous calendar year—

(1) the number, identity, and priority of all health professional shortage areas designated in such year and the number of health professional shortage areas which the Secretary estimates will be designated in the subsequent year;

(2) the number of applications filed under section 254f of this title in such year for assignment of Corps members and the action taken on each such application;

(3) the number and types of Corps members assigned in such year to health professional shortage areas, the number and types of additional Corps members which the Secretary estimates will be assigned to such areas in the subsequent year, and the need for additional members for the Corps;

(4) the recruitment efforts engaged in for the Corps in such year and the number of qualified individuals who applied for service in the Corps in such year;

(5) the number of patients seen and the number of patient visits recorded during such year with respect to each health professional shortage area to which a Corps member was assigned during such year;

(6) the number of Corps members who elected, and the number of Corps members who did not elect, to continue to provide health services in health professional shortage areas after termination of their service in the Corps and the reasons (as reported to the Secretary) of members who did not elect for not making such election;

(7) the results of evaluations and determinations made under section 254f(a)(1)(D) of this title during such year; and

(8) the amount charged during such year for health services provided by Corps members, the amount which was collected in such year by entities in accordance with section 254g of this title, and the amount which was paid to the Secretary in such year under such agreements.

(July 1, 1944, ch. 373, title III, § 336A, formerly § 336, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2277, renumbered § 336A, Pub. L. 97–35, title XXVII, § 2706(a), Aug. 13, 1981, 95 Stat. 907; amended Pub. L. 97–375, title II, § 206(a), Dec. 21, 1982, 96 Stat. 1823; Pub. L. 101–597, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3035; Pub. L. 107–251, title III, § 307(b), Oct. 26, 2002, 116 Stat. 1649.)

AMENDMENTS

2002—Par. (8). Pub. L. 107–251 struck out ''agreements under'' after ''in accordance with''.

1990—Pars. (1), (3), (5), (6). Pub. L. 101–597 substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

1982—Pub. L. 97–375 struck out ''on May 1 of each year'' after ''report to Congress''.

§ 254j. National Advisory Council on National Health Service Corps

(a) Establishment; appointment of members

There is established a council to be known as the National Advisory Council on the National Health Service Corps (hereinafter in this section referred to as the ''Council''). The Council shall be composed of not more than 15 members appointed by the Secretary. The Council shall consult with, advise, and make recommendations to, the Secretary with respect to his responsibilities in carrying out this subpart (other than section 254r[1] of this title), and shall review and comment upon regulations promulgated by the Secretary under this subpart.

(b) Term of members; compensation; expenses

(1) Members of the Council shall be appointed for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term. No member shall be removed, except for cause. Members may not be reappointed to the Council.

(2) Members of the Council (other than members who are officers or employees of the United States), while attending meetings or conferences thereof or otherwise serving on the business of the Council, shall be entitled to receive for each day (including traveltime) in which they are so serving compensation at a rate fixed by the Secretary (but not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule); and while so serving away from their homes or regular places of business all members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government Service employed intermittently.

(c) Termination

Section 14 of the Federal Advisory Committee Act shall not apply with respect to the Council.

(July 1, 1944, ch. 373, title III, § 337, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2277; amended Pub. L. 96–32, § 7(g), July 10, 1979, 93 Stat. 84; Pub. L. 97–35, title XXVII, § 2707, Aug. 13, 1981, 95 Stat. 907; Pub. L. 97–414, § 8(f), Jan. 4, 1983, 96 Stat. 2061; Pub. L. 103–183, title VII, § 706(b), Dec. 14, 1993, 107 Stat. 2241.)

REFERENCES IN TEXT

Section 254r of this title, referred to in subsec. (a), was in the original a reference to section 338G of act July 1, 1944, which was renumbered section 338I by Pub. L. 100–177, title II, § 201(1), Dec. 1, 1987, 101 Stat. 992, and repealed by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787.

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (c), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1993—Subsec. (b)(2). Pub. L. 103–183 inserted ''compensation at a rate fixed by the Secretary (but not to exceed'' before ''the daily equivalent'' and substituted ''Schedule);'' for ''Schedule;''.

[1] See References in Text note below.

1983—Subsec. (a). Pub. L. 97–414 inserted ''(other than section 254r of this title)'' after ''carrying out this subpart''.

1981—Subsec. (a). Pub. L. 97–35, § 2707(a), amended subsec. (a) generally, striking out pars. (1) to (5) respecting required status and background of members appointed by the Secretary.

Subsec. (b)(1). Pub. L. 97–35, § 2707(b), inserted ''not'' before ''be reappointed''.

1979—Subsec. (b)(2). Pub. L. 96–32 substituted ''section 5703 of title 5'' for ''section 5703(b) of title 5''.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 254k. Authorization of appropriations

(a) For the purpose of carrying out this subpart, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2002 through 2006.

(b) An appropriation under an authorization under subsection (a) of this section for any fiscal year may be made at any time before that fiscal year and may be included in an Act making an appropriation under an authorization under subsection (a) of this section for another fiscal year; but no funds may be made available from any appropriation under such authorization for obligation under sections 254d through 254h, section 254i, and section 254j of this title before the fiscal year for which such appropriation is authorized.

(July 1, 1944, ch. 373, title III, § 338, as added Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2278; amended Pub. L. 95–626, title I, § 122, Nov. 10, 1978, 92 Stat. 3570; Pub. L. 96–76, title II, § 202(c), Sept. 29, 1979, 93 Stat. 582; Pub. L. 97–35, title XXVII, § 2708, Aug. 13, 1981, 95 Stat. 908; Pub. L. 100–177, title III, § 305, Dec. 1, 1987, 101 Stat. 1004; Pub. L. 101–597, title I, § 108, Nov. 16, 1990, 104 Stat. 3021; Pub. L. 107–251, title III, § 308, Oct. 26, 2002, 116 Stat. 1649.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–251 struck out par. (1) designation before ''For the purpose'', substituted ''2002 through 2006'' for ''1991 through 2000'', and struck out par. (2) which read as follows: ''In the case of individuals who serve in the Corps other than pursuant to obligated service under the Scholarship or Loan Repayment Program, the Secretary each fiscal year shall, to the extent practicable, make assignments under section 254f of this title of such individuals who are certified nurse midwives, certified nurse practitioners, or physician assistants.''

1990—Subsec. (a). Pub. L. 101–597 added subsec. (a) and struck out former subsec. (a) which read as follows: ''To carry out this subpart, there are authorized to be appropriated $65,000,000 for fiscal year 1988, $65,000,000 for fiscal year 1989, and $65,000,000 for fiscal year 1990.''

1987—Subsec. (a). Pub. L. 100–177 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''To carry out the purposes of this subpart, there are authorized to be appropriated $47,000,000 for the fiscal year ending September 30, 1978; $64,000,000 for the fiscal year ending September 30, 1979; $82,000,000 for the fiscal year ending September 30, 1980; $110,000,000 for the fiscal year ending September 30, 1982; $120,000,000 for the fiscal year ending September 30, 1983; and $130,000,000 for the fiscal year ending September 30, 1984.''

1981—Subsec. (a). Pub. L. 97–35, § 2708(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

Subsec. (b). Pub. L. 97–35, § 2708(b), substituted reference to sections 254d to 254h, 254i, and 254j of this title for reference to this subpart.

1979—Subsec. (a). Pub. L. 96–76 substituted ''$82,000,000'' for ''$70,000,000''.

1978—Subsec. (a). Pub. L. 95–626 substituted ''$64,000,000'' for ''$57,000,000'' as amount authorized to be appropriated for fiscal year ending Sept. 30, 1979.

SUBPART III—SCHOLARSHIP PROGRAM AND LOAN REPAYMENT PROGRAM

AMENDMENTS

1987—Pub. L. 100–177, title II, § 202(f), Dec. 1, 1987, 101 Stat. 999, inserted subpart III heading and redesignated former subpart III as IV.

§ 254*l*. National Health Service Corps Scholarship Program

(a) Establishment

The Secretary shall establish the National Health Service Corps Scholarship Program to assure, with respect to the provision of primary health services pursuant to section 254d(a)(2) of this title—

(1) an adequate supply of physicians, dentists, behavioral and mental health professionals, certified nurse midwives, certified nurse practitioners, and physician assistants; and

(2) if needed by the Corps, an adequate supply of other health professionals.

(b) Eligibility; application; written contract

To be eligible to participate in the Scholarship Program, an individual must—

(1) be accepted for enrollment, or be enrolled, as a full-time student (A) in an accredited (as determined by the Secretary) educational institution in a State and (B) in a course of study or program, offered by such institution and approved by the Secretary, leading to a degree in medicine, osteopathic medicine, dentistry, or other health profession, or an appropriate degree from a graduate program of behavioral and mental health;

(2) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Service or be eligible for selection for civilian service in the Corps;

(3) submit an application to participate in the Scholarship Program; and

(4) sign and submit to the Secretary, at the time of submittal of such application, a written contract (described in subsection (f) of this section) to accept payment of a scholarship and to serve (in accordance with this subpart) for the applicable period of obligated service in a health professional shortage area.

(c) Review and evaluation of information and forms by prospective applicant

(1) In disseminating application forms and contract forms to individuals desiring to participate in the Scholarship Program, the Secretary shall include with such forms—

(A) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under section 254*o* of this title in the case of the individual's breach of the contract; and

(B) information respecting meeting a service obligation through private practice under an agreement under section 254n of this title and such other information as may be necessary for the individual to understand the individual's prospective participation in the Scholarship Program and service in the Corps, including a statement of all factors considered in approving applications for participation in the Program and in making assignments for participants in the Program.

(2) The application form, contract form, and all other information furnished by the Secretary under this subpart shall be written in a manner calculated to be understood by the average individual applying to participate in the Scholarship Program. The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Scholarship Program on a date sufficiently early to insure that such individuals have adequate time to carefully review and evaluate such forms and information.

(3)(A) The Secretary shall distribute to health professions schools materials providing information on the Scholarship Program and shall encourage the schools to disseminate the materials to the students of the schools.

(B)(i) In the case of any health professional whose period of obligated service under the Scholarship Program is nearing completion, the Secretary shall encourage the individual to remain in a health professional shortage area and to continue providing primary health services.

(ii) During the period in which a health professional is planning and making the transition to private practice from obligated service under the Scholarship Program, the Secretary may provide assistance to the professional regarding such transition if the professional is remaining in a health professional shortage area and is continuing to provide primary health services.

(C) In the case of entities to which participants in the Scholarship Program are assigned under section 254f of this title, the Secretary shall encourage the entities to provide options with respect to assisting the participants in remaining in the health professional shortage areas involved, and in continuing to provide primary health services, after the period of obligated service under the Scholarship Program is completed. The options with respect to which the Secretary provides such encouragement may include options regarding the sharing of a single employment position in the health professions by 2 or more health professionals, and options regarding the recruitment of couples where both of the individuals are health professionals.

(d) Factors considered in providing contracts; priorities

(1) Subject to section 254f–1 of this title, in providing contracts under the Scholarship Program—

(A) the Secretary shall consider the extent of the demonstrated interest of the applicants for the contracts in providing primary health services;

(B) the Secretary, in considering applications from individuals accepted for enrollment or enrolled in dental school, shall consider applications from all individuals accepted for enrollment or enrolled in any accredited dental school in a State; and

(C) may[1] consider such other factors regarding the applicants as the Secretary determines to be relevant to selecting qualified individuals to participate in such Program.

(2) In providing contracts under the Scholarship Program, the Secretary shall give priority—

(A) first, to any application for such a contract submitted by an individual who has previously received a scholarship under this section or under section 294z[1] of this title;

(B) second, to any application for such a contract submitted by an individual who has characteristics that increase the probability that the individual will continue to serve in a health professional shortage area after the period of obligated service pursuant to subsection (f) of this section is completed; and

(C) third, subject to subparagraph (B), to any application for such a contract submitted by an individual who is from a disadvantaged background.

(e) Commencement of participation in Scholarship Program; notice

(1) An individual becomes a participant in the Scholarship Program only upon the Secretary's approval of the individual's application submitted under subsection (b)(3) of this section and the Secretary's acceptance of the contract submitted by the individual under subsection (b)(4) of this section.

(2) The Secretary shall provide written notice to an individual promptly upon the Secretary's approving, under paragraph (1), of the individual's participation in the Scholarship Program.

(f) Written contract; contents

The written contract (referred to in this subpart) between the Secretary and an individual shall contain—

(1) an agreement that—

(A) subject to paragraph (2), the Secretary agrees (i) to provide the individual with a scholarship (described in subsection (g) of this section) in each such school year or years for a period of years (not to exceed four school years) determined by the individual, during which period the individual is pursuing a course of study described in subsection (b)(1)(B) of this section, and (ii) to

[1] So in original.

accept (subject to the availability of appropriated funds for carrying out sections 254d through 254h and section 254j of this title) the individual into the Corps (or for equivalent service as otherwise provided in this subpart); and

(B) subject to paragraph (2), the individual agrees—

(i) to accept provision of such a scholarship to the individual;

(ii) to maintain enrollment in a course of study described in subsection (b)(1)(B) of this section until the individual completes the course of study;

(iii) while enrolled in such course of study, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study);

(iv) if pursuing a degree from a school of medicine or osteopathic medicine, to complete a residency in a specialty that the Secretary determines is consistent with the needs of the Corps; and

(v) to serve for a time period (hereinafter in the subpart referred to as the ''period of obligated service'') equal to—

(I) one year for each school year for which the individual was provided a scholarship under the Scholarship Program, or

(II) two years,

whichever is greater, as a provider of primary health services in a health professional shortage area (designated under section 254e of this title) to which he is assigned by the Secretary as a member of the Corps, or as otherwise provided in this subpart;

(2) a provision that any financial obligation of the United States arising out of a contract entered into under this subpart and any obligation of the individual which is conditioned thereon, is contingent upon funds being appropriated for scholarships under this subpart and to carry out the purposes of sections 254d through 254h and sections 254j and 254k of this title;

(3) a statement of the damages to which the United States is entitled, under section 254*o* of this title, for the individual's breach of the contract; and

(4) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with the provisions of this subpart.

(g) Scholarship provisions; contract with educational institution; increase in monthly stipend

(1) A scholarship provided to a student for a school year under a written contract under the Scholarship Program shall consist of—

(A) payment to, or (in accordance with paragraph (2)) on behalf of, the student of the amount (except as provided in section 292k[2] of this title) of—

(i) the tuition of the student in such school year; and

(ii) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the student in such school year; and

(B) payment to the student of a stipend of $400 per month (adjusted in accordance with paragraph (3)) for each of the 12 consecutive months beginning with the first month of such school year.

(2) The Secretary may contract with an educational institution, in which a participant in the Scholarship Program is enrolled, for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in paragraph (1)(A). Payment to such an educational institution may be made without regard to section 3324(a) and (b) of title 31.

(3) The amount of the monthly stipend, specified in paragraph (1)(B) and as previously adjusted (if at all) in accordance with this paragraph, shall be increased by the Secretary for each school year ending in a fiscal year beginning after September 30, 1978, by an amount (rounded to the next highest multiple of $1) equal to the amount of such stipend multiplied by the overall percentage (under section 5303 of title 5) of the adjustment (if such adjustment is an increase) in the rates of pay under the General Schedule made effective in the fiscal year in which such school year ends.

(h) Employment ceiling of Department unaffected

Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic training, shall not be counted against any employment ceiling affecting the Department.

(July 1, 1944, ch. 373, title III, §338A, formerly title VII, §751, as added Pub. L. 94–484, title IV, §408(b)(1), Oct. 12, 1976, 90 Stat. 2281; amended Pub. L. 95–215, §5, Dec. 19, 1977, 91 Stat. 1506; Pub. L. 95–623, §12(c), Nov. 9, 1978, 92 Stat. 3457; Pub. L. 95–626, title I, §113(b), Nov. 10, 1978, 92 Stat. 3563; Pub. L. 96–32, §7(i), July 10, 1979, 93 Stat. 84; renumbered §338A and amended Pub. L. 97–35, title XXVII, §2709(a), (b), Aug. 13, 1981, 95 Stat. 908; Pub. L. 99–129, title II, §210(b), Oct. 22, 1985, 99 Stat. 537; Pub. L. 100–607, title VI, §629(a)(2), Nov. 4, 1988, 102 Stat. 3146; Pub. L. 101–509, title V, §529 [title I, §101(b)(4)(K)], Nov. 5, 1990, 104 Stat. 1427, 1440; Pub. L. 101–597, title II, §201, title IV, §401(b)[(a)], Nov. 16, 1990, 104 Stat. 3021, 3035; Pub. L. 107–251, title III, §309, Oct. 26, 2002, 116 Stat. 1649; Pub. L. 108–163, §2(j), Dec. 6, 2003, 117 Stat. 2022.)

REFERENCES IN TEXT

Section 294z of this title, referred to in subsec. (d)(2)(A), was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 1994.

Section 292k of this title, referred to in subsec. (g)(1)(A), was in the original a reference to section 711 of act July 1, 1944. Section 711 of that Act was renumbered as section 710 by Pub. L. 97–35, title XXVII, §2720(b), Aug. 13, 1981, 95 Stat. 915, and subsequently

[2] See References in Text note below.

omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 710 of act July 1, 1944, relating to insurance accounts, a new section 711, relating to powers and responsibilities of the Secretary, and a new section 712, relating to participation by Federal credit unions, which are classified to sections 292i, 292j, and 292k, respectively, of this title.

CODIFICATION

In subsec. (g)(2), ''section 3324(a) and (b) of title 31'' substituted for ''section 3648 of the Revised Statutes (31 U.S.C. 529)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 294t of this title prior to its renumbering by Pub. L. 97–35.

AMENDMENTS

2003—Subsec. (d)(1)(B). Pub. L. 108–163 realigned margin.

2002—Subsec. (a)(1). Pub. L. 107–251, § 309(1), inserted ''behavioral and mental health professionals,'' after ''dentists,''.

Subsec. (b)(1)(B). Pub. L. 107–251, § 309(2), inserted '', or an appropriate degree from a graduate program of behavioral and mental health'' after ''other health profession''.

Subsec. (c)(1). Pub. L. 107–251, § 309(3), made technical amendment to references in original act which appear in subpar. (A) as reference to section 254*o* of this title and in subpar. (B) as reference to section 254n of this title.

Subsec. (d)(1)(B), (C). Pub. L. 107–251, § 309(4), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(1)(B)(iv), (v). Pub. L. 107–251, § 309(5)(A), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (f)(3). Pub. L. 107–251, § 309(5)(B), made technical amendment to reference in original act which appears in text as reference to section 254*o* of this title.

Subsec. (i). Pub. L. 107–251, § 309(6), struck out subsec. (i), which required an annual report to Congress on the Scholarship Program.

1990—Subsec. (a). Pub. L. 101–597, § 201(a)(1), substituted ''Corps Scholarship Program to assure, with respect to the provision of primary health services pursuant to section 254d(a)(2) of this title—'' and pars. (1) and (2) for ''Corps Scholarship Program (hereinafter in this subpart referred to as the 'Scholarship Program') to assure an adequate supply of trained physicians, dentists, and nurses for the National Health Service Corps (hereinafter in this subpart referred to as the 'Corps') and, if needed by the Corps, podiatrists, optometrists, pharmacists, clinical psychologists, graduates of schools of veterinary medicine, graduates of schools of public health, graduates of programs in health administration, graduates of programs for the training of physician assistants, expanded function dental auxiliaries, and nurse practitioners (as defined in section 296m of this title), and other health professionals.''

Subsec. (b)(4). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Subsec. (c). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (3)(B), (C).

Pub. L. 101–597, § 201(b), inserted par. (1) designation, redesignated former pars. (1) and (2) as subpars. (A) and (B), inserted before period at end of subpar. (B) '', including a statement of all factors considered in approving applications for participation in the Program and in making assignments for participants in the Program'', inserted par. (2) designation, and added par. (3).

Subsec. (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (2)(B).

Pub. L. 101–597, § 201(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In determining which applications under the Scholarship Program to approve (and which contracts to accept), the Secretary shall give priority—

''(1) first, to applications made (and contracts submitted) by individuals who have previously received scholarships under the Scholarship Program or under section 294z of this title; and

''(2) second, to applications made (and contracts submitted)—

''(A) for the school year beginning in calendar year 1978, by individuals who are entering their first, second, or third year of study in a course of study or program described in subsection (b)(1)(B) of this section in such school year;

''(B) for the school year beginning in calendar year 1979, by individuals who are entering their first or second year of study in a course of study or program described in subsection (b)(1)(B) of this section in such school year; and

''(C) for each school year thereafter, by individuals who are entering their first year of study in a course of study or program described in subsection (b)(1)(B) of this section in such school year.''

Subsec. (f)(1)(B)(iv). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in closing provisions.

Pub. L. 101–597, § 201(a)(2), substituted ''as a provider of primary health services'' after ''whichever is greater,''.

Subsec. (g)(3). Pub. L. 101–509 substituted ''(under section 5303 of title 5)'' for ''(as set forth in the report transmitted to the Congress under section 5305 of title 5)''.

Subsec. (i). Pub. L. 101–597, § 201(d)(1), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The Secretary shall report to Congress on March 1 of each year—''.

Subsec. (i)(4), (5). Pub. L. 101–597, § 201(d)(2), added pars. (4) and (5) and struck out former par. (4) which read as follows: ''the amount of tuition paid in the aggregate and at each educational institution for the school year beginning in such year and for prior school years.''

Subsec. (i)(6). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, § 201(d)(2)(C), added par. (6).

1988—Subsec. (b)(1). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy''.

1985—Subsec. (g)(1). Pub. L. 99–129 struck out ''or under section 294z of this title (relating to scholarships for first-year students of exceptional financial need),'' after ''Scholarship Program''.

1981—Subsec. (a). Pub. L. 97–35, § 2709(b)(1), inserted reference to clinical psychologists.

Subsec. (c). Pub. L. 97–35, § 2709(b)(2), (3), substituted ''254*o*'' for ''294w'' in par. (1), and inserted provisions relating to information concerning meeting the service obligation in par. (2).

Subsec. (f). Pub. L. 97–35, § 2709(b)(4)–(6), in par. (1) substituted reference to sections 254d to 254h and 254j of this title, for reference to subpart II of part D of subchapter II of this chapter, in par. (2) substituted reference to sections 254d to 254h, 254j and 254k of this title, for reference to subpart II of part D of subchapter II of this chapter, and in par. (3) substituted ''254*o*'' for ''294w''.

Subsec. (j). Pub. L. 97–35, § 2709(b)(7), struck out subsec. (j) which related to consultation and participation of schools.

1979—Subsec. (g)(3). Pub. L. 96–32 substituted ''section 5305 of title 5'' for ''section 5303 of title 5''.

1978—Subsec. (f). Pub. L. 95–626 substituted ''subpart II of part D'' for ''subpart II of part C'' in pars. (1)(A) and (2).

Subsec. (i). Pub. L. 95–623 substituted March 1 for December 1 as the date for Secretary's annual report to Congress.

1977—Subsec. (d)(2). Pub. L. 95–215 substituted provisions relating to the school years beginning in calendar

years 1978 and 1979 for provisions relating to the school year ending in the fiscal year beginning Oct. 1, 1977.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 228 of Pub. L. 99–129 provided that:

''(a) Except as provided in subsection (b), this Act and the amendments and repeals made by this Act [enacting sections 294q–1 to 294q–3 of this title, amending this section and sections 292a, 292b, 292h, 292j, 293c, 294a, 294b, 294d, 294e, 294g, 294j, 294m to 294p, 294z, 295f to 295f–2, 295g, 295g–1, 295g–3, 295g–4, 295g–6 to 295g–8, 295g–8b, 295h, 295h–1a to 295h–1c, 296k, 296*l*, 296m, 297a, 298b–5, and 300aa–14 of this title, repealing sections 292c, 295 to 295e–5, 295g–2, 295g–5, 295g–8a, and 295g–9 of this title, enacting provisions set out as notes under sections 201, 292h, 293c, 294d, 294n, and 300aa–14 of this title and section 462 of the Appendix to Title 50, War and National Defense, and amending provisions set out as a note under section 298b–5 of this title] shall take effect on the date of enactment of this Act [Oct. 22, 1985].

''(b)(1) The amendments made by section 101(a) of this Act [amending section 294a of this title] shall take effect as of October 1, 1985.

''(2) The amendments made by section 208(e) of this Act [amending section 294e of this title] shall take effect nine months after the date of enactment of this Act [Oct. 22, 1985].

''(3) The amendment made by section 208(h) of this Act [amending section 294a of this title] shall take effect as of October 1, 1983.

''(4) The provisions of section 746 of the Public Health Service Act (as added by the amendment made by section 209(h)(2) of this Act) [section 294g–2 of this title] shall take effect as of June 30, 1984.

''(5) The amendments made by section 209(j) of this Act [amending sections 294m and 297a of this title] shall take effect as of June 30, 1984.

''(6) The amendments made by section 213(a) of this Act [amending section 295g–1 of this title] shall take effect as of October 1, 1985.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 5 of Pub. L. 95–215 provided that the amendment made by that section is effective Oct. 1, 1977.

EFFECTIVE DATE

Section 408(b)(1) of Pub. L. 94–484 provided that the enactment of sections 254*l* to 254r of this title and repeal of section 234 of this title by Pub. L. 94–484 is effective Oct. 1, 1977.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

Section 408(b)(2) of Pub. L. 94–484, as amended, eff. Oct. 12, 1976, by Pub. L. 95–83, title III, § 307(p), Aug. 1, 1977, 91 Stat. 394, provided that:

''(A) Except as provided in subparagraphs (B) and (C), the amendment made by paragraph (1) of this subsection [enacting this section and sections 254*l*–1 to 254r of this title and repealing section 234 of this title] shall apply with respect to scholarships awarded under the National Health Service Corps Scholarship Program from appropriations for such Program for fiscal years beginning after September 30, 1977.

''(B) The provisions of section 225(f)(1) of the Public Health Service Act (as in effect on September 30, 1977) [former section 234(f)(1) of this title] prescribing the financial obligation of a participant in the Public Health and National Health Service Corps Scholarship Program who fails to complete an active duty service obligation incurred under that Program shall apply to any individual who received a scholarship under such Program from appropriations for such Program for any fiscal year ending before October 1, 1977.

''(C) If an individual received a scholarship under the Public Health and National Health Service Corps Scholarship Program for any school year beginning before the date of the enactment of this Act [Oct. 12, 1976], periods of internship or residency served by such individual in a facility of the National Health Service Corps or other facility of the Public Health Service shall be creditable in satisfying such individual's service obligation incurred under that Program for such scholarship or for any scholarship received under the National Health Service Corps Scholarship Program for any subsequent school year. If an individual received a scholarship under the Public Health and National Health Service Corps Program for the first time from appropriations for such Program for the fiscal year ending September 30, 1977, periods of internship or residency served by such individual in such a facility shall be creditable in satisfying such individual's service obligation incurred under that Program for such scholarship.''

SCHOLARSHIP AND LOAN REPAYMENT PROGRAMS

Pub. L. 107–251, title III, § 302(c), Oct. 26, 2002, 116 Stat. 1644, provided that: ''The Secretary of Health and Human Services, in consultation with organizations representing individuals in the dental field and organizations representing publicly funded health care providers, shall develop and implement a plan for increasing the participation of dentists and dental hygienists in the National Health Service Corps Scholarship Program under section 338A of the Public Health Service Act (42 U.S.C. 254*l*) and the Loan Repayment Program under section 338B of such Act (42 U.S.C. 254*l*–1).''

§ 254*l*–1. National Health Service Corps Loan Repayment Program

(a) Establishment

The Secretary shall establish a program to be known as the National Health Service Corps Loan Repayment Program to assure, with respect to the provision of primary health services pursuant to section 254d(a)(2) of this title—

(1) an adequate supply of physicians, dentists, behavioral and mental health professionals, certified nurse midwives, certified nurse practitioners, and physician assistants; and

(2) if needed by the Corps, an adequate supply of other health professionals.

(b) Eligibility

To be eligible to participate in the Loan Repayment Program, an individual must—

(1)(A) have a degree in medicine, osteopathic medicine, dentistry, or another health profession, or an appropriate degree from a graduate program of behavioral and mental health, or be certified as a nurse midwife, nurse practitioner, or physician assistant;

(B) be enrolled in an approved graduate training program in medicine, osteopathic medicine, dentistry, behavioral and mental health, or other health profession; or

(C) be enrolled as a full-time student—

(i) in an accredited (as determined by the Secretary) educational institution in a State; and

(ii) in the final year of a course of a study or program, offered by such institution and approved by the Secretary, leading to a degree in medicine, osteopathic medicine, dentistry, or other health profession;

(2) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Service or be eligible for selection for civilian service in the Corps; and

(3) submit to the Secretary an application for a contract described in subsection (f) of this section (relating to the payment by the Secretary of the educational loans of the individual in consideration of the individual serving for a period of obligated service).

(c) Information to be included with application and contract forms; understandability; availability

(1) Summary and information

In disseminating application forms and contract forms to individuals desiring to participate in the Loan Repayment Program, the Secretary shall include with such forms—

(A) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under section 254*o* of this title in the case of the individual's breach of the contract; and

(B) information respecting meeting a service obligation through private practice under an agreement under section 254n of this title and such other information as may be necessary for the individual to understand the individual's prospective participation in the Loan Repayment Program and service in the Corps.

(2) Understandability

The application form, contract form, and all other information furnished by the Secretary under this subpart shall be written in a manner calculated to be understood by the average individual applying to participate in the Loan Repayment Program.

(3) Availability

The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Loan Repayment Program on a date sufficiently early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

(4) Recruitment and retention

(A) The Secretary shall distribute to health professions schools materials providing information on the Loan Repayment Program and shall encourage the schools to disseminate the materials to the students of the schools.

(B)(i) In the case of any health professional whose period of obligated service under the Loan Repayment Program is nearing completion, the Secretary shall encourage the individual to remain in a health professional shortage area and to continue providing primary health services.

(ii) During the period in which a health professional is planning and making the transition to private practice from obligated service under the Loan Repayment Program, the Secretary may provide assistance to the professional regarding such transition if the professional is remaining in a health professional shortage area and is continuing to provide primary health services.

(C) In the case of entities to which participants in the Loan Repayment Program are assigned under section 254f of this title, the Secretary shall encourage the entities to provide options with respect to assisting the participants in remaining in the health professional shortage areas involved, and in continuing to provide primary health services, after the period of obligated service under the Loan Repayment Program is completed. The options with respect to which the Secretary provides such encouragement may include options regarding the sharing of a single employment position in the health professions by 2 or more health professionals, and options regarding the recruitment of couples where both of the individuals are health professionals.

(d) Factors considered in providing contracts; priorities

(1) Subject to section 254f–1 of this title, in providing contracts under the Loan Repayment Program—

(A) the Secretary shall consider the extent of the demonstrated interest of the applicants for the contracts in providing primary health services; and

(B) may consider such other factors regarding the applicants as the Secretary determines to be relevant to selecting qualified individuals to participate in such Program.

(2) In providing contracts under the Loan Repayment Program, the Secretary shall give priority—

(A) to any application for such a contract submitted by an individual whose training is in a health profession or specialty determined by the Secretary to be needed by the Corps;

(B) to any application for such a contract submitted by an individual who has (and whose spouse, if any, has) characteristics that increase the probability that the individual will continue to serve in a health professional shortage area after the period of obligated service pursuant to subsection (f) of this section is completed; and

(C) subject to subparagraph (B), to any application for such a contract submitted by an individual who is from a disadvantaged background.

(e) Approval required for participation

An individual becomes a participant in the Loan Repayment Program only upon the Secretary and the individual entering into a written contract described in subsection (f) of this section.

(f) Contents of contracts

The written contract (referred to in this subpart) between the Secretary and an individual shall contain—

(1) an agreement that—

(A) subject to paragraph (3), the Secretary agrees—

(i) to pay on behalf of the individual loans in accordance with subsection (g) of this section; and

(ii) to accept (subject to the availability of appropriated funds for carrying out sections 254d through 254h of this title and section 254j of this title) the individual into the Corps (or for equivalent service as otherwise provided in this subpart); and

(B) subject to paragraph (3), the individual agrees—

(i) to accept loan payments on behalf of the individual;

(ii) in the case of an individual described in subsection (b)(1)(C) of this section, to maintain enrollment in a course of study or training described in such subsection until the individual completes the course of study or training;

(iii) in the case of an individual described in subsection (b)(1)(C) of this section, while enrolled in such course of study or training, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study or training); and

(iv) to serve for a time period (hereinafter in this subpart referred to as the ''period of obligated service'') equal to 2 years or such longer period as the individual may agree to, as a provider of primary health services in a health professional shortage area (designated under section 254e of this title) to which such individual is assigned by the Secretary as a member of the Corps or released under section 254n of this title;

(2) a provision permitting the Secretary to extend for such longer additional periods, as the individual may agree to, the period of obligated service agreed to by the individual under paragraph (1)(B)(iv), including extensions resulting in an aggregate period of obligated service in excess of 4 years;

(3) a provision that any financial obligation of the United States arising out of a contract entered into under this subpart and any obligation of the individual that is conditioned thereon, is contingent on funds being appropriated for loan repayments under this subpart and to carry out the purposes of sections 254d through 254h of this title and sections 254j and 254k of this title;

(4) a statement of the damages to which the United States is entitled, under section 254*o* of this title for the individual's breach of the contract; and

(5) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with this subpart.

(g) Payments

(1) In general

A loan repayment provided for an individual under a written contract under the Loan Repayment Program shall consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for—

(A) tuition expenses;

(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; or

(C) reasonable living expenses as determined by the Secretary.

(2) Payments for years served

(A) In general

For each year of obligated service that an individual contracts to serve under subsection (f) of this section the Secretary may pay up to $35,000 on behalf of the individual for loans described in paragraph (1). In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—

(i) affects the ability of the Secretary to maximize the number of contracts that can be provided under the Loan Repayment Program from the amounts appropriated for such contracts;

(ii) provides an incentive to serve in health professional shortage areas with the greatest such shortages; and

(iii) provides an incentive with respect to the health professional involved remaining in a health professional shortage area, and continuing to provide primary health services, after the completion of the period of obligated service under the Loan Repayment Program.

(B) Repayment schedule

Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made no later than the end of the fiscal year in which the individual completes such year of service.

(3) Tax liability

For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual—

(A) the Secretary shall, in addition to such payments, make payments to the individual in an amount equal to 39 percent of the total amount of loan repayments made for the taxable year involved; and

(B) may make such additional payments as the Secretary determines to be appropriate with respect to such purpose.

(4) Payment schedule

The Secretary may enter into an agreement with the holder of any loan for which pay-

ments are made under the Loan Repayment Program to establish a schedule for the making of such payments.

(h) Employment ceiling

Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic or other training, shall not be counted against any employment ceiling affecting the Department.

(July 1, 1944, ch. 373, title III, § 338B, as added Pub. L. 100–177, title II, § 201(3), Dec. 1, 1987, 101 Stat. 992; amended Pub. L. 100–607, title VI, § 629(a)(2), Nov. 4, 1988, 102 Stat. 3146; Pub. L. 101–597, title II, § 202(a)–(g)(1), (h), title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3023–3026, 3035; Pub. L. 105–392, title I, § 109, Nov. 13, 1998, 112 Stat. 3562; Pub. L. 107–251, title III, § 310, Oct. 26, 2002, 116 Stat. 1650; Pub. L. 108–163, § 2(k), Dec. 6, 2003, 117 Stat. 2022.)

PRIOR PROVISIONS

A prior section 338B of act July 1, 1944, was renumbered section 338C by section 201(2) of Pub. L. 100–177 and is classified to section 254m of this title.

AMENDMENTS

2003—Subsec. (e). Pub. L. 108–163 made technical amendment.

2002—Subsec. (a)(1). Pub. L. 107–251, § 310(1)(A), inserted ''behavioral and mental health professionals,'' after ''dentists,''.

Subsec. (a)(2). Pub. L. 107–251, § 310(1)(B), struck out ''(including mental health professionals)'' before period at end.

Subsec. (b)(1)(A). Pub. L. 107–251, § 310(2), added subpar. (A) and struck out former subpar. (A) which read as follows: ''must have a degree in medicine, osteopathic medicine, dentistry, or other health profession, or be certified as a nurse midwife, nurse practioner, or physician assistant;''.

Subsec. (e)(1). Pub. L. 107–251, § 310(3), struck out par. (1) designation and heading.

Subsec. (i). Pub. L. 107–251, § 310(4), struck out subsec. (i), which required an annual report to Congress about the Loan Repayment Program.

1998—Subsec. (b)(1)(B). Pub. L. 105–392 substituted ''behavioral and mental health, or other health profession'' for ''or other health profession''.

1990—Subsec. (a). Pub. L. 101–597, § 202(a)(1), substituted ''Corps Loan Repayment Program to assure, with respect to the provision of primary health services pursuant to section 254d(a)(2) of this title—'' and pars. (1) and (2) for ''Corps Loan Repayment Program (hereinafter in this subpart referred to as the 'Loan Repayment Program') in order to assure—

''(1) an adequate supply of trained physicians, dentists, and nurses for the Corps; and

''(2) if needed by the Corps, an adequate supply of podiatrists, optometrists, pharmacists, clinical psychologists, graduates of schools of veterinary medicine, graduates of schools of public health, graduates of programs in health administration, graduates of programs for the training of physician assistants, expanded function dental auxiliaries, and nurse practitioners (as defined in section 296m of this title), and other health professionals.''

Subsec. (b)(1). Pub. L. 101–597, § 202(b)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(A) be enrolled—

''(i) as a full-time student—

''(I) in an accredited (as determined by the Secretary) educational institution in a State; and

''(II) in the final year of a course of study or program, offered by such institution and approved by the Secretary, leading to a degree in medicine, osteopathic medicine, dentistry, or other health profession; or

''(ii) in an approved graduate training program in medicine, osteopathic medicine, dentistry, or other health profession; or

''(B) have—

''(i) a degree in medicine, osteopathic medicine, dentistry, or other health profession;

''(ii) completed an approved graduate training program in medicine, osteopathic medicine, dentistry, or other health profession in a State, except that the Secretary may waive the completion requirement of this clause for good cause; and

''(iii) a license to practice medicine, osteopathic medicine, dentistry, or other health profession in a State;''.

Subsec. (b)(2) to (4). Pub. L. 101–597, § 202(b)(2)(A), inserted ''and'' at end of par. (2), added par. (3), and struck out former pars. (3) and (4) which read as follows:

''(3) submit an application to participate in the Loan Repayment Program; and

''(4) sign and submit to the Secretary, at the time of the submission of such application, a written contract (described in subsection (f) of this section) to accept repayment of educational loans and to serve (in accordance with this subpart) for the applicable period of obligated service in a health manpower shortage area.''

Subsec. (c)(4). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in subpars. (B) and (C).

Pub. L. 101–597, § 202(c), added par. (4).

Subsec. (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (2)(B).

Pub. L. 101–597, § 202(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In determining which applications under the Loan Repayment Program to approve (and which contracts to accept), the Secretary shall give priority to applications made by—

''(1) individuals whose training is in a health profession or specialty determined by the Secretary to be needed by the Corps; and

''(2) individuals who are committed to service in medically underserved areas.''

Subsec. (e). Pub. L. 101–597, § 202(b)(2)(B), substituted ''only upon the Secretary and the individual entering into a written contract described in subsection (f) of this section.'' for ''only on the Secretary's approval of the individual's application submitted under subsection (b)(3) of this section and the Secretary's acceptance of the contract submitted by the individual under subsection (b)(4) of this section.'' in par. (1) and struck out par. (2) which read as follows: ''The Secretary shall provide written notice to an individual promptly on—

''(A) the Secretary's approving, under paragraph (1), of the individual's participation in the Loan Repayment Program; or

''(B) the Secretary's disapproving an individual's participation in such Program.''

Subsec. (f)(1)(B)(ii), (iii). Pub. L. 101–597, § 202(b)(1)(B), substituted ''subsection (b)(1)(C)'' for ''subsection (b)(1)(A)''.

Subsec. (f)(1)(B)(iv). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, § 202(a)(2), inserted ''as a provider of primary health services'' before ''in a health''.

Subsec. (f)(2). Pub. L. 101–597, § 202(e), inserted before semicolon at end '', including extensions resulting in an aggregate period of obligated service in excess of 4 years''.

Subsec. (g)(1). Pub. L. 101–597, § 202(f)(1), inserted ''regarding the undergraduate or graduate education of the individual (or both), which loans were made'' after ''loans received by the individual''.

Subsec. (g)(2)(A). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area

for reference to health manpower shortage area in cls. (ii) and (iii).

Pub. L. 101–597, § 202(f)(2)(A), substituted ''For each year'' for ''Except as provided in subparagraph (B) and paragraph (3), for each year'' and ''$35,000'' for ''$20,000'', inserted at end ''In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—'', and added immediately thereafter cls. (i) to (iii).

Subsec. (g)(2)(B), (C). Pub. L. 101–597, § 202(f)(2)(B), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''For each year of obligated service that an individual contracts under subsection (f) of this section to serve in the Indian Health Service, or to serve in a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (25 U.S.C. 450f et seq.), the Secretary may pay up to $25,000 on behalf of the individual for loans described in paragraph (1).''

Subsec. (g)(3). Pub. L. 101–597, § 202(g)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In addition to payments made under paragraph (2), in any case in which payments on behalf of an individual under the Loan Repayment Program result in an increase in Federal, State, or local income tax liability for such individual, the Secretary may, on the request of such individual, make payments to such individual in a reasonable amount, as determined by the Secretary, to reimburse such individual for all or part of the increased tax liability of the individual.''

Subsec. (i). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (8).

Pub. L. 101–597, § 202(h), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''The Secretary shall, not later than March 1 of each year, submit to the Congress a report specifying—

''(1) the number, and type of health profession training, of individuals receiving loan payments under the Loan Repayment Program;

''(2) the educational institution at which such individuals are receiving their training;

''(3) the number of applications filed under this section in the school year beginning in such year and in prior school years; and

''(4) the amount of loan payments made in the year reported on.''

1988—Subsec. (b)(1). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy'' wherever appearing.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 202(g)(2) of Pub. L. 101–597 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to contracts under section 338B of the Public Health Service Act [this section] (relating to service in the National Health Service Corps) that are entered into on or after the effective date of this Act [Nov. 16, 1990].''

REGULATIONS

Section 205 of title II of Pub. L. 100–177 provided that: ''Not later than 180 days after the effective date of the amendments made by this title [Dec. 21, 1987], the Secretary of Health and Human Services shall issue regulations for the loan repayment programs established by the amendments [enacting this section and sections 254q and 254q–1 of this title, amending sections 242a, 254d, 254g, 254h–1, and 254*o* of this title, and repealing former section 254q of this title].''

§ 254m. Obligated service under contract

(a) Service in full-time clinical practice

Except as provided in section 254n of this title, each individual who has entered into a written contract with the Secretary under section 254*l* or 254*l*–1 of this title shall provide service in the full-time clinical practice of such individual's profession as a member of the Corps for the period of obligated service provided in such contract.

(b) Notice to individual; information for informed decision; eligibility; notice to Secretary; qualification and appointment as commissioned officer; appointment as civilian member; designation of non-United States employee as member; deferment of obligated service

(1) If an individual is required under subsection (a) of this section to provide service as specified in section 254*l*(f)(1)(B)(v) or 254*l*–1(f)(1)(B)(iv) of this title (hereinafter in this subsection referred to as ''obligated service''), the Secretary shall, not later than ninety days before the date described in paragraph (5), determine if the individual shall provide such service—

(A) as a member of the Corps who is a commissioned officer in the Regular or Reserve Corps of the Service or who is a civilian employee of the United States, or

(B) as a member of the Corps who is not such an officer or employee,

and shall notify such individual of such determination.

(2) If the Secretary determines that an individual shall provide obligated service as a member of the Corps who is a commissioned officer in the Service or a civilian employee of the United States, the Secretary shall, not later than sixty days before the date described in paragraph (5), provide such individual with sufficient information regarding the advantages and disadvantages of service as such a commissioned officer or civilian employee to enable the individual to make a decision on an informed basis. To be eligible to provide obligated service as a commissioned officer in the Service, an individual shall notify the Secretary, not later than thirty days before the date described in paragraph (5), of the individual's desire to provide such service as such an officer. If an individual qualifies for an appointment as such an officer, the Secretary shall, as soon as possible after the date described in paragraph (5), appoint the individual as a commissioned officer of the Regular or Reserve Corps of the Service and shall designate the individual as a member of the Corps.

(3) If an individual provided notice by the Secretary under paragraph (2) does not qualify for appointment as a commissioned officer in the Service, the Secretary shall, as soon as possible after the date described in paragraph (5), appoint such individual as a civilian employee of the United States and designate the individual as a member of the Corps.

(4) If the Secretary determines that an individual shall provide obligated service as a member of the Corps who is not an employee of the United States, the Secretary shall, as soon as

possible after the date described in paragraph (5), designate such individual as a member of the Corps to provide such service.

(5)(A) In the case of the Scholarship Program, the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the training required for the degree for which the individual receives the scholarship, except that—

(i) for an individual receiving such a degree after September 30, 2000, from a school of medicine or osteopathic medicine, such date shall be the date the individual completes a residency in a specialty that the Secretary determines is consistent with the needs of the Corps; and

(ii) at the request of an individual, the Secretary may, consistent with the needs of the Corps, defer such date until the end of a period of time required for the individual to complete advanced training (including an internship or residency).

(B) No period of internship, residency, or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subpart.

(C) In the case of the Loan Repayment Program, if an individual is required to provide obligated service under such Program, the date referred to in paragraphs (1) through (4)—

(i) shall be the date determined under subparagraph (A) in the case of an individual who is enrolled in the final year of a course of study;

(ii) shall, in the case of an individual who is enrolled in an approved graduate training program in medicine, osteopathic medicine, dentistry, or other health profession, be the date the individual completes such training program; and

(iii) shall, in the case of an individual who has a degree in medicine, osteopathic medicine, dentistry, or other health profession and who has completed graduate training, be the date the individual enters into an agreement with the Secretary under section 254*l*–1 of this title.

(c) Obligated service period; commencement

An individual shall be considered to have begun serving a period of obligated service—

(1) on the date such individual is appointed as an officer in a Regular or Reserve Corps of the Service or is designated as a member of the Corps under subsection (b)(3) or (b)(4) of this section, or

(2) in the case of an individual who has entered into an agreement with the Secretary under section 254n of this title, on the date specified in such agreement,

whichever is earlier.

(d) Assignment of personnel

The Secretary shall assign individuals performing obligated service in accordance with a written contract under the Scholarship Program to health professional shortage areas in accordance with sections 254d through 254h and sections 254j and 254k of this title. If the Secretary determines that there is no need in a health professional shortage area (designated under section 254e of this title) for a member of the profession in which an individual is obligated to provide service under a written contract and if such individual is an officer in the Service or a civilian employee of the United States, the Secretary may detail such individual to serve his period of obligated service as a full-time member of such profession in such unit of the Department as the Secretary may determine.

(July 1, 1944, ch. 373, title III, § 338C, formerly title VII, § 752, as added Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2284; amended Pub. L. 95–626, title I, § 113(b), Nov. 10, 1978, 92 Stat. 3563; Pub. L. 96–76, title II, § 202(a), (b), Sept. 29, 1979, 93 Stat. 582; renumbered § 338B and amended Pub. L. 97–35, title XXVII, § 2709(a), (c), Aug. 13, 1981, 95 Stat. 908, 909; Pub. L. 97–414, § 8(g)(1), Jan. 4, 1983, 96 Stat. 2061; renumbered § 338C and amended Pub. L. 100–177, title II, § 201(2), title III, § 306, Dec. 1, 1987, 101 Stat. 992, 1004; Pub. L. 100–607, title VI, § 629(a)(2), Nov. 4, 1988, 102 Stat. 3146; Pub. L. 101–597, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3035; Pub. L. 107–251, title III, § 311, Oct. 26, 2002, 116 Stat. 1650.)

CODIFICATION

Section was formerly classified to section 294u of this title prior to its renumbering by Pub. L. 97–35.

PRIOR PROVISIONS

A prior section 338C of act July 1, 1944, was renumbered section 338D by section 201(2) of Pub. L. 100–177 and is classified to section 254n of this title.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–251, § 311(1)(A), substituted ''section 254*l*(f)(1)(B)(v)'' for ''254*l*(f)(1)(B)(iv)'' in introductory provisions.

Subsec. (b)(5)(A). Pub. L. 107–251, § 311(1)(B)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: ''In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, or pharmacy, the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the training required for such degree, except that—

''(i) at the request of such an individual with whom the Secretary has entered into a contract under section 254*l* of this title prior to October 1, 1985, the Secretary shall defer such date until the end of the period of time (not to exceed the number of years specified in subparagraph (B) or such greater period as the Secretary, consistent with the needs of the Corps, may authorize) required for the individual to complete an internship, residency, or other advanced clinical training; and

''(ii) at the request of such an individual with whom the Secretary has entered into a contract under section 254*l* of this title on or after October 1, 1985, the Secretary may defer such date in accordance with clause (i).''

Subsec. (b)(5)(B). Pub. L. 107–251, § 311(1)(B)(i), (iii), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows:

''(B)(i) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of medicine, osteopathic medicine, or dentistry, the number of years referred to in subparagraph (A)(i) shall be 3 years.

''(ii) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of veterinary medicine, optometry, podiatry, or phar-

macy, the number of years referred to in subparagraph (A)(i) shall be 1 year.''

Subsec. (b)(5)(C). Pub. L. 107–251, § 311(1)(B)(iii), redesignated subpar. (E) as (C). Former subpar. (C) redesignated (B).

Subsec. (b)(5)(C)(i). Pub. L. 107–251, § 311(1)(B)(iv), substituted ''subparagraph (A)'' for ''subparagraph (A), (B), or (D)''.

Subsec. (b)(5)(D). Pub. L. 107–251, § 311(1)(B)(ii), struck out subpar. (D) which read as follows: ''In the case of the Scholarship Program, with respect to an individual receiving a degree from an institution other than a school referred to in subparagraph (A), the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the academic training of the individual leading to such degree.''

Subsec. (b)(5)(E). Pub. L. 107–251, § 311(1)(B)(iii), redesignated subpar. (E) as (C).

Subsec. (e). Pub. L. 107–251, § 311(2), struck out subsec. (e) which related to service under National Research Service Award program as credit against obligated service time.

1990—Subsec. (d). Pub. L. 101–597 substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

1988—Subsec. (b)(5). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy'' wherever appearing.

1987—Subsec. (a). Pub. L. 100–177, § 306(1), inserted ''or 254*l*–1'', and made technical amendment to reference to section 254n of this title to reflect renumbering of corresponding section of original act.

Subsec. (b)(1). Pub. L. 100–177, § 306(2), inserted reference to section 254*l*–l(f)(1)(B)(iv).

Subsec. (b)(5). Pub. L. 100–177, § 306(3), substituted par. (5) consisting of subpars. (A) to (E) for former par. (5) consisting of subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 100–177, § 306(4), made technical amendment to reference to section 254n of this title to reflect renumbering of corresponding section of original act.

1983—Subsec. (e). Pub. L. 97–414 inserted ''or under section 234 of this title as in effect on September 30, 1977'' after ''Scholarship Program''.

1981—Subsec. (a). Pub. L. 97–35, § 2709(c)(1), substituted ''254n'' for ''294v'' and ''254*l*'' for ''294t''.

Subsec. (b). Pub. L. 97–35, § 2709(c)(2), substituted provisions relating to notice, information, etc., for individuals required to give obligated service, for provisions relating to notice, information, etc., for individuals required to provide service under the Scholarship Program.

Subsec. (c). Pub. L. 97–35, § 2709(c)(3), (4), in par. (1) inserted reference to designation under subsec. (b)(3) or (4) of this section, and in par. (2) substituted ''254n'' for ''294v''.

Subsec. (d). Pub. L. 97–35, § 2709(c)(5), inserted provision relating to individuals who are officers in the Service or civilian employees of the United States, and substituted reference to sections 254d to 254h, 254j, and 254k of this title, for reference to subpart II of part D of subchapter II of this chapter.

Subsec. (e). Pub. L. 97–35, § 2709(c)(6), substituted provisions respecting mandatory determination of service requirement, for provisions respecting discretionary determination of service requirement.

1979—Subsec. (b)(5)(A). Pub. L. 96–76, § 202(a), (b)(1), (2), inserted provisions authorizing a greater period than three years for individuals receiving degrees from schools of medicine, osteopathy, and dentistry, and provisions respecting individuals receiving degrees from schools of veterinary medicine, optometry, podiatry, and pharmacy, and substituted ''No period'' for ''No such period''.

Subsec. (b)(5)(B). Pub. L. 96–76, § 202(b)(3), substituted ''referred to in subparagraph (A)'' for ''of medicine, osteopathy, or dentistry''.

1978—Subsec. (d). Pub. L. 95–626 substituted ''subpart II of part D'' for ''subpart II of part C''.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2709(h) of Pub. L. 97–35 provided that: ''The amendments made by paragraphs (2), (3), and (5)(B) of subsection (c) [amending this section] shall apply with respect to contracts entered into under the National Health Service Corps scholarship program under subpart III of part C of title VII of the Public Health Service Act [section 294r et seq. of this title] after the date of the enactment of this Act [Aug. 13, 1981]. An individual who before such date has entered into such a contract and who has not begun the period of obligated service required under such contract shall be given the opportunity to revise such contract to permit the individual to serve such period as a member of the National Health Service Corps who is not an employee of the United States.''

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94–484, set out in part as a note under section 254*l* of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94–484, set out as a note under section 254*l* of this title.

SPECIAL RETENTION PAY FOR REGULAR OR RESERVE OFFICERS FOR PERIOD OFFICER IS OBLIGATED UNDER THIS SECTION

Pub. L. 100–446, title II, Sept. 27, 1988, 102 Stat. 1816, provided that: ''the Secretary of Health and Human Services may authorize special retention pay under paragraph (4) of 37 U.S.C. 302(a) to any regular or reserve officer for the period during which the officer is obligated under section 338B [now 338C] of the Public Health Service Act [this section] and assigned and providing direct health services or serving the officer's obligation as a specialist''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100–202, § 101(g) [title II], Dec. 22, 1987, 101 Stat. 1329–213, 1329–246.

Pub. L. 99–500, § 101(h) [title II], Oct. 18, 1986, 100 Stat. 1783–242, 1783–277, and Pub. L. 99–591, § 101(h) [title II], Oct. 30, 1986, 100 Stat. 3341–242, 3341–277.

§ 254n. Private practice

(a) Application for release of obligations; conditions

The Secretary shall, to the extent permitted by, and consistent with, the requirements of applicable State law, release an individual from all or part of his service obligation under section 254m(a) of this title or under section 234[1] of this title (as in effect on September 30, 1977) if the individual applies for such a release under this section and enters into a written agreement with the Secretary under which the individual agrees to engage for a period equal to the remaining period of his service obligation in the full-time private clinical practice (including service as a salaried employee in an entity directly providing health services) of his health profession—

(1) in the case of an individual who received a scholarship under the Scholarship Program or a loan repayment under the Loan Repayment Program and who is performing obligated service as a member of the Corps in a health professional shortage area on the date

[1] See References in Text note below.

of his application for such a release, in the health professional shortage area in which such individual is serving on such date or in the case of an individual for whom a loan payment was made under the Loan Repayment Program and who is performing obligated service as a member of the Corps in a health professional shortage area on the date of the application of the individual for such a release, in the health professional shortage area selected by the Secretary; or

(2) in the case of any other individual, in a health professional shortage area (designated under section 254e of this title) selected by the Secretary.

(b) Written agreement; actions to ensure compliance

(1) The written agreement described in subsection (a) of this section shall—

(A) provide that, during the period of private practice by an individual pursuant to the agreement, the individual shall comply with the requirements of section 254g of this title that apply to entities; and

(B) contain such additional provisions as the Secretary may require to carry out the objectives of this section.

(2) The Secretary shall take such action as may be appropriate to ensure that the conditions of the written agreement prescribed by this subsection are adhered to.

(c) Breach of service contract

If an individual breaches the contract entered into under section 254*l* or 254*l*–1 of this title by failing (for any reason) to begin his service obligation in accordance with an agreement entered into under subsection (a) of this section or to complete such service obligation, the Secretary may permit such individual to perform such service obligation as a member of the Corps.

(d) Travel expenses

The Secretary may pay an individual who has entered into an agreement with the Secretary under subsection (a) of this section an amount to cover all or part of the individual's expenses reasonably incurred in transporting himself, his family, and his possessions to the location of his private clinical practice.

(e) Sale of equipment and supplies

Upon the expiration of the written agreement under subsection (a) of this section, the Secretary may (notwithstanding any other provision of law) sell to the individual who has entered into an agreement with the Secretary under subsection (a) of this section, equipment and other property of the United States utilized by such individual in providing health services. Sales made under this subsection shall be made at the fair market value (as determined by the Secretary) of the equipment or such other property, except that the Secretary may make such sales for a lesser value to the individual if he determines that the individual is financially unable to pay the full market value.

(f) Malpractice insurance

The Secretary may, out of appropriations authorized under section 254k of this title, pay to individuals participating in private practice under this section the cost of such individual's malpractice insurance and the lesser of—

(1)(A) $10,000 in the first year of obligated service;

(B) $7,500 in the second year of obligated service;

(C) $5,000 in the third year of obligated service; and

(D) $2,500 in the fourth year of obligated service; or

(2) an amount determined by subtracting such individual's net income before taxes from the income the individual would have received as a member of the Corps for each such year of obligated service.

(g) Technical assistance

The Secretary shall, upon request, provide to each individual released from service obligation under this section technical assistance to assist such individual in fulfilling his or her agreement under this section.

(July 1, 1944, ch. 373, title III, § 338D, formerly title VII, § 753, as added Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2285; amended Pub. L. 96–538, title IV, § 403, Dec. 17, 1980, 94 Stat. 3192; renumbered § 338C and amended Pub. L. 97–35, title XXVII, § 2709(a), (d), Aug. 13, 1981, 95 Stat. 908, 910; renumbered § 338D and amended Pub. L. 100–177, title II, § 201(2), title III, § 307, Dec. 1, 1987, 101 Stat. 992, 1005; Pub. L. 101–597, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3035; Pub. L. 107–251, title III, § 312, Oct. 26, 2002, 116 Stat. 1650.)

REFERENCES IN TEXT

Section 234 of this title, referred to in subsec. (a), was repealed by Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2281, effective Oct. 1, 1977.

CODIFICATION

Section was formerly classified to section 294v of this title prior to its renumbering by Pub. L. 97–35.

PRIOR PROVISIONS

A prior section 338D of act July 1, 1944, was renumbered section 338E by section 201(2) of Pub. L. 100–177 and is classified to section 254*o* of this title.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–251 added subsec. (b) and struck out former subsec. (b) which related to written agreements, regulations, and actions to ensure compliance.

1990—Subsec. (a)(1), (2). Pub. L. 101–597 substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

1987—Subsec. (a). Pub. L. 100–177, § 307(1)–(3), made technical amendment to reference to section 254m of this title to reflect renumbering of corresponding section of original act, in introductory provisions, in par. (1) inserted ''who received a scholarship under the Scholarship Program or a loan repayment under the Loan Repayment Program and'' after ''individual'' the first time it appeared as the probable intent of Congress, and inserted ''or in the case of an individual for whom a loan payment was made under the Loan Repayment Program and who is performing obligated service as a member of the Corps in a health manpower shortage area on the date of the application of the individual for such a release, in the health manpower shortage area selected by the Secretary'', and in par. (2) inserted ''selected by the Secretary''.

Subsec. (b). Pub. L. 100–177, § 307(4), inserted at end ''The Secretary shall take such action as may be appropriate to ensure that the conditions of the written agreement prescribed by this subsection are adhered to.''

Subsec. (c). Pub. L. 100–177, § 307(5), inserted reference to section 254*l*–1.

Subsec. (e). Pub. L. 100–177, § 307(b), designated par. (2) as entire subsection and struck out par. (1) which read as follows: ''The Secretary may make such arrangements as he determines are necessary for the individual for the use of equipment and supplies and for the lease or acquisition of other equipment and supplies.''

1981—Subsec. (a). Pub. L. 97–35, § 2709(d)(1), inserted provision respecting requirements of applicable State law, substituted references to sections 254m(a) and 234 of this title, for reference to section 294u(a) of this title, and in cl. (2) struck out priority requirement under section 254f(c) of this title.

Subsec. (b)(1)(B). Pub. L. 97–35, § 2709(d)(2), inserted ''(i)'' before ''shall not'' and added cl. (ii).

Subsecs. (c) to (g). Pub. L. 97–35, § 2709(d)(3), added subsecs. (c) to (g).

1980—Subsec. (a). Pub. L. 96–538 substituted in par. (2) ''which has'' for ''which (A) has'' and struck out subpar. (B) which referred to a health manpower shortage area which has a sufficient financial base to substain private practice and provide the individual with income of not less than the income of members of the Corps, and struck out provision following par. (2) which provided that in the case of an individual described in par. (1), the Secretary release the individual from his service obligation under this subsection only if the Secretary determines that the area in which the individual is serving met the requirements of cl. (B) of par. (2).

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94–484, set out in part as a note under section 254*l* of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94–484, set out as a note under section 254*l* of this title.

§ 254*o*. Breach of scholarship contract or loan repayment contract

(a) Failure to maintain academic standing; dismissal from institution; voluntary termination; liability; failure to accept payment

(1) An individual who has entered into a written contract with the Secretary under section 254*l* of this title and who—

(A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary);

(B) is dismissed from such educational institution for disciplinary reasons; or

(C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract, before the completion of such training,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

(2) An individual who has entered into a written contract with the Secretary under section 254*l*–1 of this title and who—

(A) in the case of an individual who is enrolled in the final year of a course of study, fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled (such level determined by the educational institution under regulations of the Secretary) or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study; or

(B) in the case of an individual who is enrolled in a graduate training program, fails to complete such training program and does not receive a waiver from the Secretary under section 254*l*–1(b)(1)(B)(ii) of this title,

in lieu of any service obligation arising under such contract shall be liable to the United States for the amount that has been paid on behalf of the individual under the contract.

(b) Failure to commence or complete service obligations; formula to determine liability; payment to United States; recovery of delinquent damages; disclosure to credit reporting agencies

(1)(A) Except as provided in paragraph (2), if an individual breaches his written contract by failing (for any reason not specified in subsection (a) of this section or section 254p(d) of this title) to begin such individual's service obligation under section 254*l* of this title in accordance with section 254m or 254n of this title, to complete such service obligation, or to complete a required residency as specified in section 254*l*(f)(1)(B)(iv) of this title, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula

$$A=3\phi\left(\frac{t-s}{t}\right)$$

in which ''A'' is the amount the United States is entitled to recover, ''ϕ'' is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; ''t'' is the total number of months in the individual's period of obligated service; and ''s'' is the number of months of such period served by him in accordance with section 254m of this title or a written agreement under section 254n of this title.

(B)(i) Any amount of damages that the United States is entitled to recover under this subsection or under subsection (c) of this section shall, within the 1-year period beginning on the date of the breach of the written contract (or such longer period beginning on such date as specified by the Secretary), be paid to the United States. Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1395ccc of this title.

(ii) If damages described in clause (i) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages—

(I) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

(II) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

(iii) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. Section 3718 of title 31 shall apply to any such contract to the extent not inconsistent with this subsection.

(iv) To the extent not otherwise prohibited by law, the Secretary shall disclose to all appropriate credit reporting agencies information relating to damages of more than $100 that are entitled to be recovered by the United States under this subsection and that are delinquent by more than 60 days or such longer period as is determined by the Secretary.

(2) If an individual is released under section 254n[1] of this title from a service obligation under section 234[1] of this title (as in effect on September 30, 1977) and if the individual does not meet the service obligation incurred under section 254n[1] of this title, subsection (f) of such section 234[1] of this title shall apply to such individual in lieu of paragraph (1) of this subsection.

(3) The Secretary may terminate a contract with an individual under section 254*l* of this title if, not later than 30 days before the end of the school year to which the contract pertains, the individual—

(A) submits a written request for such termination; and

(B) repays all amounts paid to, or on behalf of, the individual under section 254*l*(g) of this title.

(c) Failure to commence or complete service obligations for other reasons; determination of liability; payment to United States; waiver of recovery for extreme hardship or good cause shown

(1) If (for any reason not specified in subsection (a) of this section or section 254p(d) of this title) an individual breaches the written contract of the individual under section 254*l*–1 of this title by failing either to begin such individual's service obligation in accordance with section 254m or 254n of this title or to complete such service obligation, the United States shall be entitled to recover from the individual an amount equal to the sum of—

(A) the total of the amounts paid by the United States under section 254*l*–1(g) of this title on behalf of the individual for any period of obligated service not served;

(B) an amount equal to the product of the number of months of obligated service that were not completed by the individual, multiplied by $7,500; and

(C) the interest on the amounts described in subparagraphs (A) and (B), at the maximum legal prevailing rate, as determined by the Treasurer of the United States, from the date of the breach;

except that the amount the United States is entitled to recover under this paragraph shall not be less than $31,000.

(2) The Secretary may terminate a contract with an individual under section 254*l*–1 of this title if, not later than 45 days before the end of the fiscal year in which the contract was entered into, the individual—

(A) submits a written request for such termination; and

(B) repays all amounts paid on behalf of the individual under section 254*l*–1(g) of this title.

(3) Damages that the United States is entitled to recover shall be paid in accordance with subsection (b)(1)(B) of this section.

(d) Cancellation of obligation upon death of individual; waiver or suspension of obligation for impossibility, hardship, or unconscionability; release of debt by discharge in bankruptcy, time limitations

(1) Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) for service or payment of damages shall be canceled upon the death of the individual.

(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

(3)(A) Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) for payment of damages may be released by a discharge in bankruptcy under title 11 only if such discharge is granted after the expiration of the 7-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

(B)(i) Subparagraph (A) shall apply to any financial obligation of an individual under the provision of law specified in clause (ii) to the same extent and in the same manner as such subparagraph applies to any obligation of an individual under the Scholarship or Loan Repayment Program (or contract thereunder) for payment of damages.

(ii) The provision of law referred to in clause (i) is subsection (f) of section 234[2] of this title, as in effect prior to the repeal of such section by section 408(b)(1) of Public Law 94–484.

(e) Inapplicability of Federal and State statute of limitations on actions for collection

Notwithstanding any other provision of Federal or State law, there shall be no limitation on the period within which suit may be filed, a judgment may be enforced, or an action relating to an offset or garnishment, or other action, may be initiated or taken by the Secretary, the Attorney General, or the head of another Federal agency, as the case may be, for the repayment of the amount due from an individual under this section.

[1] See References in Text note below.

[2] See References in Text note below.

(f) Effective date

The amendment made by section 313(a)(4) of the Health Care Safety Net Amendments of 2002 (Public Law 107–251) shall apply to any obligation for which a discharge in bankruptcy has not been granted before the date that is 31 days after October 26, 2002.

(July 1, 1944, ch. 373, title III, § 338E, formerly title VII, § 754, as added Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2286; amended Pub. L. 95–83, title III, § 307(g), Aug. 1, 1977, 91 Stat. 391; renumbered § 338D and amended Pub. L. 97–35, title XXVII, § 2709(a), (e)(1)–(4)(A), Aug. 13, 1981, 95 Stat. 908, 911; Pub. L. 97–414, § 8(g)(2), Jan. 4, 1983, 96 Stat. 2061; renumbered § 338E and amended Pub. L. 100–177, title II, §§ 201(2), 202(e), title III, § 308(a), Dec. 1, 1987, 101 Stat. 992, 997, 1006; Pub. L. 100–203, title IV, § 4052(b), Dec. 22, 1987, 101 Stat. 1330–97; Pub. L. 100–360, title IV, § 411(f)(10)(B), July 1, 1988, 102 Stat. 780; Pub. L. 101–597, title II, § 203(a), Nov. 16, 1990, 104 Stat. 3027; Pub. L. 107–251, title III, § 313(a), Oct. 26, 2002, 116 Stat. 1651; Pub. L. 108–163, § 2(*l*)(1), Dec. 6, 2003, 117 Stat. 2022.)

REFERENCES IN TEXT

Section 234 of this title, referred to in subsecs. (b)(2) and (d)(3)(B)(ii), was repealed by Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2281, effective Oct. 1, 1977.

Section 254n of this title, referred to in subsec. (b)(2), in the original referred to section 753, meaning section 753 of the Public Health Service Act, which was classified to section 294v of this title. Section 753 was redesignated section 338C of the Public Health Service Act by Pub. L. 97–35, title XXVII, § 2709(a), Aug. 13, 1981, 95 Stat. 908, and was transferred to section 254n of this title. Section 338C of the Public Health Service Act was renumbered section 338D by Pub. L. 100–177, title II, § 201(2), Dec. 1, 1987, 101 Stat. 992.

Section 313(a)(4) of the Health Care Safety Net Amendments of 2002, referred to in subsec. (f), is section 313(a)(4) of Pub. L. 107–251, which amended subsec. (d)(3)(A) of this section. See 2002 Amendment note below.

CODIFICATION

Section was formerly classified to section 294w of this title prior to its renumbering by Pub. L. 97–35.

PRIOR PROVISIONS

A prior section 338E of act July 1, 1944, was renumbered section 338F by Pub. L. 100–177 and classified to section 254p of this title, and subsequently renumbered 338G by Pub. L. 101–597.

AMENDMENTS

2003—Subsec. (c)(1). Pub. L. 108–163, § 2(*l*)(1)(A), realigned margins.

Subsec. (f). Pub. L. 108–163, § 2(*l*)(1)(B), added subsec. (f).

2002—Subsec. (a)(1). Pub. L. 107–251, § 313(a)(1), substituted semicolon for comma at end of subpar. (A) and ''; or'' for comma at end of subpar. (B), struck out ''or'' at end of subpar. (C), and struck out subpar. (D) which read as follows: ''fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,''.

Subsec. (b)(1)(A). Pub. L. 107–251, § 313(a)(2)(A)(ii)–(iv), struck out ''either'' before ''to begin'', substituted ''254n of this title,'' for ''254n of this title or'', and inserted ''or to complete a required residency as specified in section 254*l*(f)(1)(B)(iv) of this title,'' before ''the United States'' the first time appearing.

Pub. L. 107–251, § 313(a)(2)(A)(i), made technical amendment to reference in original act which appears in text as reference to section 254p of this title.

Subsec. (b)(3). Pub. L. 107–251, § 313(a)(2)(B), added par. (3).

Subsec. (c)(1). Pub. L. 107–251, § 313(a)(3)(A)(ii), added subpars. (A) to (C) and concluding provisions and struck out former subpars. (A) to (C) which related, respectively, to amounts to be recovered in the case of a contract for a 2-year period of obligated service, in the case of a contract for a period of obligated service of greater than 2 years where the breach occurred before the end of the first 2 years of such period, and in the case of a contract for a period of obligated service of greater than 2 years, where the breach occurred after the first 2 years of such period.

Pub. L. 107–251, § 313(a)(3)(A)(i), in introductory provisions, made technical amendment to reference in original act which appears in text as reference to section 254p(d) of this title.

Subsec. (c)(2). Pub. L. 107–251, § 313(a)(3)(B), added par. (2) and struck out former par. (2) which read as follows: ''For purposes of paragraph (1), the term 'unserved obligation penalty' means the amount equal to the product of the number of months of obligated service that were not completed by an individual, multiplied by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000.''

Subsec. (c)(3), (4). Pub. L. 107–251, § 313(a)(3)(B), (C), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.''

Subsec. (d)(3)(A). Pub. L. 107–251, § 313(a)(4), substituted ''7-year period'' for ''five-year period''.

Subsec. (e). Pub. L. 107–251, § 313(a)(5), added subsec. (e).

1990—Subsec. (d)(3). Pub. L. 101–597 designated existing provision as subpar. (A) and added subpar. (B).

1988—Subsec. (b)(1)(B)(i). Pub. L. 100–360 made technical amendment to directory language of Pub. L. 100–203, see 1987 Amendment note below.

1987—Pub. L. 100–177, § 202(e)(6), inserted ''or loan repayment contract'' in section catchline.

Subsec. (a). Pub. L. 100–177, § 202(e)(1), designated existing provisions as par. (1), and former pars. (1) to (4) as subpars. (A) to (D), respectively, and added par. (2).

Subsec. (b)(1). Pub. L. 100–177, § 202(e)(2), designated existing provisions as subpar. (A), made technical amendments to references to sections 254m, 254n, and 254p of this title wherever appearing to reflect renumbering of corresponding sections of original act, inserted ''under section 254*l* of this title'' after first reference to ''service obligation'' as the probable intent of Congress, struck out at end ''Any amount of damages which the United States is entitled to recover under this subsection shall, within the one year period beginning on the date of the breach of the written contract (or such longer period beginning on such date as specified by the Secretary for good cause shown), be paid to the United States.'', and added subpar. (B).

Subsec. (b)(1)(B)(i). Pub. L. 100–203, as amended by Pub. L. 100–360, inserted at end ''Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1395ccc of this title.''

Subsec. (c). Pub. L. 100–177, § 202(e)(4), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–177, §§ 202(e)(3), (5), 308(a), redesignated subsec. (c) as (d), in pars. (1), (2), and (3), inserted ''or the Loan Repayment Program (or a contract thereunder'', and in par. (3) inserted '', and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable''.

1983—Subsec. (b)(1). Pub. L. 97–414 substituted ''section 254p(d)'' for ''section 254q(b)''.

1981—Subsec. (a). Pub. L. 97–35, § 2709(e)(1), (2), redesignated subsec. (b) as (a) and, as so redesignated, in introductory text substituted ''254*l*'' for ''294t'' and added par. (4). Former subsec. (a), which related to liability of individual upon failure to accept payment, was struck out.

Subsec. (b). Pub. L. 97–35, § 2709(e)(1), (3), redesignated subsec. (c) as (b) and, as so redesignated, designated existing provisions as par. (1) and made numerous changes to reflect renumbering of subpart sections, and added par. (2). Former subsec. (b) redesignated (a).

Subsecs. (c), (d). Pub. L. 97–35, § 2709(e)(1), (4)(A), redesignated subsec. (d) as (c) and, as so redesignated, in par. (2) inserted reference to partial or total waiver. Former subsec. (c) redesignated (b).

1977—Subsec. (c). Pub. L. 95–83 substituted '' 'ϕ' is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans'' for '' 'ϕ' is the sum of the amount paid under this subpart to or on behalf of the individual and the interest on such amount which would be payable if at the time it was paid it was a loan''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendments by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–251, title III, § 313(b), Oct. 26, 2002, 116 Stat. 1652, which provided that the amendment to this section made by section 313(a)(4) of Pub. L. 107–251 was applicable to any obligation for which a discharge in bankruptcy had not been granted before the date that was 31 days after Oct. 26, 2002, was repealed by Pub. L. 108–163, §§ 2(*l*)(2), 3, Dec. 6, 2003, 117 Stat. 2023, effective immediately after enactment of Pub. L. 107–251.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 203(b) of Pub. L. 101–597 provided that: ''With respect to any financial obligation of an individual under subsection (f) of section 225 of the Public Health Service Act [former section 234 of this title], as in effect prior to the repeal of such section by section 408(b)(1) of Public Law 94–484, the amendment made by subsection (a) of this section [amending this section] applies to any backruptcy [sic] proceeding in which discharge of such an obligation has not been granted before the date that is 31 days after the date of the enactment of this Act [Nov. 16, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94–484, set out in part as a note under section 254*l* of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94–484, set out as a note under section 254*l* of this title.

SPECIAL REPAYMENT PROVISIONS

Section 204 of Pub. L. 100–177 provided that an individual who breached a written contract entered into under section 254*l* of this title by failing either to begin such individual's service obligation in accordance with section 254m of this title or to complete such service obligation; or otherwise breached such a contract; and, as of Nov. 1, 1987, was liable to United States under subsec. (b) of this section was to be relieved of liability to United States under such section if the individual provided notice to Secretary and service in accordance with a written contract with the Secretary that obligated the individual to provide service in accordance with section and authorized Secretary to exclude an individual from relief from liability under this section for reasons related to the individual's professional competence or conduct.

EXISTING PROCEEDINGS

Section 308(b) of Pub. L. 100–177 provided that: ''The amendment made by subsection (a) [amending this section] applies to any bankruptcy proceeding in which discharge of an obligation under section 338E(d)(3) of the Public Health Service Act [subsec. (d)(3) of this section] (as redesignated by sections 201(2) and 202(e)(3) of this Act) has not been granted before the date that is 31 days after the date of enactment of this Act [Dec. 1, 1987].''

§ 254*o*–1. Fund regarding use of amounts recovered for contract breach to replace services lost as result of breach

(a) Establishment of Fund

There is established in the Treasury of the United States a fund to be known as the National Health Service Corps Member Replacement Fund (hereafter in this section referred to as the ''Fund''). The Fund shall consist of such amounts as may be appropriated under subsection (b) of this section to the Fund. Amounts appropriated for the Fund shall remain available until expended.

(b) Authorization of appropriations to Fund

For each fiscal year, there is authorized to be appropriated to the Fund an amount equal to the sum of—

(1) the amount collected during the preceding fiscal year by the Federal Government pursuant to the liability of individuals under section 254*o* of this title for the breach of contracts entered into under section 254*l* or 254*l*–1 of this title;

(2) the amount by which grants under section 254q–1 of this title have, for such preceding fiscal year, been reduced under subsection (g)(2)(B) of such section; and

(3) the aggregate of the amount of interest accruing during the preceding fiscal year on obligations held in the Fund pursuant to subsection (d) of this section and the amount of proceeds from the sale or redemption of such obligations during such fiscal year.

(c) Use of Fund

(1) Payments to certain health facilities

Amounts in the Fund and available pursuant to appropriations Act may, subject to paragraph (2), be expended by the Secretary to make payments to any entity—

(A) to which a Corps member has been assigned under section 254f of this title; and

(B) that has a need for a health professional to provide primary health services as a result of the Corps member having breached the contract entered into under

section 254*l* or 254*l*–1 of this title by the individual.

(2) Purpose of payments

An entity receiving payments pursuant to paragraph (1) may expend the payments to recruit and employ a health professional to provide primary health services to patients of the entity, or to enter into a contract with such a professional to provide the services to the patients.

(d) Investment

(1) In general

The Secretary of the Treasury shall invest such amounts of the Fund as such Secretary determines are not required to meet current withdrawals from the Fund. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price.

(2) Sale of obligations

Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(July 1, 1944, ch. 373, title III, §338F, as added Pub. L. 101–597, title II, §204, Nov. 16, 1990, 104 Stat. 3027.)

PRIOR PROVISIONS

A prior section 338F of act July 1, 1944, was renumbered section 338G by Pub. L. 101–597 and is classified to section 254p of this title.

Another prior section 338F of act July 1, 1944, was renumbered section 338G by section 201(2) of Pub. L. 100–177 and classified to section 254q of this title, prior to repeal by Pub. L. 100–177, title II, §203, Dec. 1, 1987, 101 Stat. 999.

§ 254p. Special loans for former Corps members to enter private practice

(a) Persons entitled; conditions

The Secretary may, out of appropriations authorized under section 254k of this title, make one loan to a Corps member who has agreed in writing—

(1) to engage in the private full-time clinical practice of the profession of the member in a health professional shortage area (designated under section 254e of this title) for a period of not less than 2 years which—

(A) in the case of a Corps member who is required to complete a period of obligated service under this subpart, begins not later than 1 year after the date on which such individual completes such period of obligated service; and

(B) in the case of an individual who is not required to complete a period of obligated service under this subpart, begins at such time as the Secretary considers appropriate;

(2) to conduct such practice in accordance with section 254n(b)(1) of this title; and

(3) to such additional conditions as the Secretary may require to carry out this section.

Such a loan shall be used to assist such individual in meeting the costs of beginning the practice of such individual's profession in accordance with such agreement, including the costs of acquiring equipment and renovating facilities for use in providing health services, and of hiring nurses and other personnel to assist in providing health services. Such loan may not be used for the purchase or construction of any building.

(b) Amount of loan; maximum interest rate

(1) The amount of a loan under subsection (a) of this section to an individual shall not exceed $25,000.

(2) The interest rate for any such loan shall not exceed an annual rate of 5 percent.

(c) Application for loan; submission and approval; interest rates and repayment terms

The Secretary may not make a loan under this section unless an application therefor has been submitted to, and approved by, the Secretary. The Secretary shall, by regulation, set interest rates and repayment terms for loans under this section.

(d) Breach of agreement; notice; determination of liability

If the Secretary determines that an individual has breached a written agreement entered into under subsection (a) of this section, he shall, as soon as practicable after making such determination, notify the individual of such determination. If within 60 days after the date of giving such notice, such individual is not practicing his profession in accordance with the agreement under such subsection and has not provided assurances satisfactory to the Secretary that he will not knowingly violate such agreement again, the United States shall be entitled to recover from such individual—

(1) in the case of an individual who has received a grant under this section (as in effect prior to October 1, 1984), an amount determined under section 254*o*(b) of this title, except that in applying the formula contained in such section ''ϕ'' shall be the sum of the amount of the grant made under subsection (a) of this section to such individual and the interest on such amount which would be payable if at the time it was paid it was a loan bearing interest at the maximum legal prevailing rate, ''t'' shall be the number of months that such individual agreed to practice his profession under such agreement, and ''s'' shall be the number of months that such individual practices his profession in accordance with such agreement; and

(2) in the case of an individual who has received a loan under this section, the full amount of the principal and interest owed by such individual under this section.

(July 1, 1944, ch. 373, title III, §338G, formerly title VII, §755, as added Pub. L. 94–484, title IV, §408(b)(1), Oct. 12, 1976, 90 Stat. 2287; renumbered §338E and amended Pub. L. 97–35, title XXVII, §2709(a), (f), Aug. 13, 1981, 95 Stat. 908, 911; Pub. L. 97–414, §8(g)(3), Jan. 4, 1983, 96 Stat. 2061; renumbered §338F and amended Pub. L. 100–177, title II, §201(2), title III, §309, Dec. 1, 1987, 101 Stat. 992, 1006; renumbered §338G and amended Pub. L. 101–597, title II, §204, title IV, §401(b)[(a)], Nov. 16, 1990, 104 Stat. 3027, 3035.)

CODIFICATION

Section was formerly classified to section 294x of this title prior to renumbering by Pub. L. 97–35.

PRIOR PROVISIONS

A prior section 338G of act July 1, 1944, was renumbered section 338H by Pub. L. 101–597 and is classified to section 254q of this title.

Another prior section 338G of act July 1, 1944, was renumbered section 338I by section 201(1) of Pub. L. 100–177 and classified to section 254r of this title, prior to repeal by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787.

Another prior section 338G of act July 1, 1944, was classified to section 254q of this title prior to repeal by Pub. L. 100–177, title II, § 203, Dec. 1, 1987, 101 Stat. 999.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

1987—Subsec. (a). Pub. L. 100–177, § 309(1), substituted subsec. (a) consisting of pars. (1) to (3) for former subsec. (a) consisting of pars. (1) and (2).

Subsec. (b). Pub. L. 100–177, § 309(1), added subsec. (b) and struck out former subsec. (b) which read as follows: ''The amount of the grant or loan under subsection (a) of this section to an individual shall be—

''(1) $12,500 if the individual agrees to practice his profession in accordance with the agreement for a period of at least one year, but less than two years; or

''(2) $25,000 if the individual agrees to practice his profession in accordance with the agreement for a period of at least two years.''

Subsec. (c). Pub. L. 100–177, § 309(2), struck out ''grant or'' before ''loan'' in first sentence.

Subsec. (d)(1). Pub. L. 100–177, § 309(3), substituted ''under this section (as in effect prior to October 1, 1984)'' for ''under this section'', and made technical amendment to reference to section 254*o*(b) of this title to reflect renumbering of corresponding section of original act.

1983—Subsec. (d)(1). Pub. L. 97–414 substituted ''section 254*o*(b)'' for ''section 254*o*(c)''.

1981—Subsec. (a). Pub. L. 97–35, § 2709(f)(2)–(4), made numerous changes to reflect renumbering of subpart sections, among them inserting references to section 254k of this title and striking out references to section 294v of this title, and added applicability to loans.

Subsec. (b). Pub. L. 97–35, § 2709(f)(5), inserted applicability to loans.

Subsec. (c). Pub. L. 97–35, § 2709(f)(6), inserted provisions relating to loans and interest rates, etc.

Subsec. (d). Pub. L. 97–35, § 2709(f)(7), restructured and revised criteria determining amount of liability of individual within 60 days after the date of notice instead of within 120 days after the date of notice.

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94–484, set out in part as a note under section 254*l* of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94–484, set out as a note under section 254*l* of this title.

§ 254q. Authorization of appropriations

(a) Authorization of appropriations

For the purposes of carrying out this subpart, there are authorized to be appropriated $146,250,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.

(b) Scholarships for new participants

Of the amounts appropriated under subsection (a) of this section for a fiscal year, the Secretary shall obligate not less than 10 percent for the purpose of providing contracts for—

(1) scholarships under this subpart to individuals who have not previously received such scholarships; or

(2) scholarships or loan repayments under the Loan Repayment Program under section 254*l*–1 of this title to individuals from disadvantaged backgrounds.

(c) Scholarships and loan repayments

With respect to certification as a nurse practitioner, nurse midwife, or physician assistant, the Secretary shall, from amounts appropriated under subsection (a) of this section for a fiscal year, obligate not less than a total of 10 percent for contracts for both scholarships under the Scholarship Program under section 254*l* of this title and loan repayments under the Loan Repayment Program under section 254*l*–1 of this title to individuals who are entering the first year of a course of study or program described in section 254*l*(b)(1)(B) of this title that leads to such a certification or individuals who are eligible for the loan repayment program as specified in section 254*l*–1(b) of this title for a loan related to such certification.

(July 1, 1944, ch. 373, title III, § 338H, formerly § 338G, as added Pub. L. 100–177, title II, § 203, Dec. 1, 1987, 101 Stat. 999; renumbered § 338H and amended Pub. L. 101–597, title II, §§ 204, 205, Nov. 16, 1990, 104 Stat. 3027, 3028; Pub. L. 107–251, title III, § 314, Oct. 26, 2002, 116 Stat. 1652.)

PRIOR PROVISIONS

A prior section 254q, act July 1, 1944, ch. 373, title III, § 338G, formerly title VII, § 756, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2288; renumbered § 338F and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2709(a), (g), 95 Stat. 908, 912; renumbered § 338G, Dec. 1, 1987, Pub. L. 100–177, title II, § 201(2), 101 Stat. 992, authorized appropriations for fiscal years 1978 to 1987, prior to repeal by Pub. L. 100–177, § 203.

A prior section 338H of act July 1, 1944, was renumbered section 338I by Pub. L. 101–597 and is classified to section 254q–1 of this title.

AMENDMENTS

2002—Pub. L. 107–251 amended section generally. Prior to amendment, section related to annual report to Congress, authorization of appropriations for fiscal years 1991 through 2000, and reservation of percentage of appropriated amounts for scholarships for new participants and for first-year study in certain fields.

1990—Subsec. (a). Pub. L. 101–597, § 205(a), substituted ''March 1'' for ''January 20'' and ''5 fiscal years'' for ''3 fiscal years'' wherever appearing.

Subsec. (b). Pub. L. 101–597, § 205(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''There are authorized to be appropriated such sums as may be necessary for scholarships and loan repayments under this subpart.''

§ 254q–1. Grants to States for loan repayment programs

(a) In general

(1) Authority for grants

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to States for the purpose of assisting the States in operating programs described in paragraph (2) in order to provide for the increased availability

of primary health care services in health professional shortage areas. The National Advisory Council established under section 254j of this title shall advise the Administrator regarding the program under this section.

(2) Loan repayment programs

The programs referred to in paragraph (1) are, subject to subsection (c) of this section, programs of entering into contracts under which the State involved agrees to pay all or part of the principal, interest, and related expenses of the educational loans of health professionals in consideration of the professionals agreeing to provide primary health services in health professional shortage areas.

(3) Direct administration by State agency

The Secretary may not make a grant under paragraph (1) unless the State involved agrees that the program operated with the grant will be administered directly by a State agency.

(b) Requirement of matching funds

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the State agrees that, with respect to the costs of making payments on behalf of individuals under contracts made pursuant to paragraph (2) of such subsection, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash toward such costs in an amount equal to not less than $1 for each $1 of Federal funds provided in the grant.

(2) Determination of amount of non-Federal contribution

In determining the amount of non-Federal contributions in cash that a State has provided pursuant to paragraph (1), the Secretary may not include any amounts provided to the State by the Federal Government.

(c) Coordination with Federal program

(1) Assignments for health professional shortage areas under Federal program

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that, in carrying out the program operated with the grant, the State will assign health professionals participating in the program only to public and nonprofit private entities located in and providing health services in health professional shortage areas.

(2) Remedies for breach of contracts

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that the contracts provided by the State pursuant to paragraph (2) of such subsection will provide remedies for any breach of the contracts by the health professionals involved.

(3) Limitation regarding contract inducements

(A) Except as provided in subparagraph (B), the Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that the contracts provided by the State pursuant to paragraph (2) of such subsection will not be provided on terms that are more favorable to health professionals than the most favorable terms that the Secretary is authorized to provide for contracts under the Loan Repayment Program under section 254*l*–1 of this title, including terms regarding—

(i) the annual amount of payments provided on behalf of the professionals regarding educational loans; and

(ii) the availability of remedies for any breach of the contracts by the health professionals involved.

(B) With respect to the limitation established in subparagraph (A) regarding the annual amount of payments that may be provided to a health professional under a contract provided by a State pursuant to subsection (a)(2) of this section, such limitation shall not apply with respect to a contract if—

(i) the excess of such annual payments above the maximum amount authorized in section 254*l*–1(g)(2)(A) of this title for annual payments regarding contracts is paid solely from non-Federal contributions under subsection (b) of this section; and

(ii) the contract provides that the health professional involved will satisfy the requirement of obligated service under the contract solely through the provision of primary health services in a health professional shortage area that is receiving priority for purposes of section 254f–1(a)(1) of this title and that is authorized to receive assignments under section 254f of this title of individuals who are participating in the Scholarship Program under section 254*l* of this title.

(d) Restrictions on use of funds

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that the grant will not be expended—

(1) to conduct activities for which Federal funds are expended—

(A) within the State to provide technical or other nonfinancial assistance under subsection (f) of section 254c[1] of this title;

(B) under a memorandum of agreement entered into with the State under subsection (h) of such section; or

(C) under a grant under section 254r of this title; or

(2) for any purpose other than making payments on behalf of health professionals under contracts entered into pursuant to subsection (a)(2) of this section.

(e) Reports

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees—

(1) to submit to the Secretary such reports regarding the States loan repayment program, as are determined to be appropriate by the Secretary; and

(2) to submit such a report not later than January 10 of each fiscal year immediately following any fiscal year for which the State has received such a grant.

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[1] See References in Text note below.

(f) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out such subsection.

(g) Noncompliance

(1) In general

The Secretary may not make payments under subsection (a) of this section to a State for any fiscal year subsequent to the first fiscal year of such payments unless the Secretary determines that, for the immediately preceding fiscal year, the State has complied with each of the agreements made by the State under this section.

(2) Reduction in grant relative to number of breached contracts

(A) Before making a grant under subsection (a) of this section to a State for a fiscal year, the Secretary shall determine the number of contracts provided by the State under paragraph (2) of such subsection with respect to which there has been an initial breach by the health professionals involved during the fiscal year preceding the fiscal year for which the State is applying to receive the grant.

(B) Subject to paragraph (3), in the case of a State with 1 or more initial breaches for purposes of subparagraph (A), the Secretary shall reduce the amount of a grant under subsection (a) of this section to the State for the fiscal year involved by an amount equal to the sum of the expenditures of Federal funds made regarding the contracts involved and an amount representing interest on the amount of such expenditures, determined with respect to each contract on the basis of the maximum legal rate prevailing for loans made during the time amounts were paid under the contract, as determined by the Treasurer of the United States.

(3) Waiver regarding reduction in grant

The Secretary may waive the requirement established in paragraph (2)(B) with respect to the initial breach of a contract if the Secretary determines that such breach by the health professional involved was attributable solely to the professional having a serious illness.

(h) "State" defined

For purposes of this section, the term ''State'' means each of the several States.

(i) Authorization of appropriations

(1) In general

For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $12,000,000 for fiscal year 2002 and such sums as may be necessary for each of fiscal years 2003 through 2006.

(2) Availability

Amounts appropriated under paragraph (1) shall remain available until expended.

(July 1, 1944, ch. 373, title III, § 338I, formerly § 338H, as added Pub. L. 100–177, title II, § 203, Dec. 1, 1987, 101 Stat. 999; renumbered § 338I and amended Pub. L. 101–597, title II, § 204, title III, § 301, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3027, 3029, 3035; Pub. L. 105–392, title IV, § 408, Nov. 13, 1998, 112 Stat. 3589; Pub. L. 107–251, title III, § 315, Oct. 26, 2002, 116 Stat. 1653.)

REFERENCES IN TEXT

Section 254c of this title, referred to in subsec. (d)(1)(A), was in the original a reference to section 330, meaning section 330 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of this part by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

PRIOR PROVISIONS

A prior section 338I of act July 1, 1944, was classified to section 254r of this title prior to repeal by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–251, § 315(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to States for the purpose of assisting the States in operating programs described in paragraph (2) in order to provide for the increased availability of primary health services in health professional shortage areas.''

Subsec. (e)(1). Pub. L. 107–251, § 315(2), added par. (1) and struck out former par. (1) which read as follows: ''to submit to the Secretary reports providing the same types of information regarding the program operated pursuant to such subsection as reports submitted pursuant to subsection (i) of section 254*l*–1 of this title provide regarding the Loan Repayment Program under such section; and''.

Subsec. (i)(1). Pub. L. 107–251, § 315(3), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''For the purpose of making grants under subsection (a) of this section, there is authorized to be appropriated $10,000,000 for each of the fiscal years 1991 through 1995, and such sums as may be necessary for each of the fiscal years 1998 through 2002.''

1998—Subsec. (i)(1). Pub. L. 105–392 inserted '', and such sums as may be necessary for each of the fiscal years 1998 through 2002'' before period at end.

1990—Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing in subsecs. (a)(1), (2) and (c)(1), (3)(B)(ii).

Pub. L. 101–597, § 301, amended section generally, substituting present provisions for provisions which related to: in subsec. (a), grants; in subsec. (b), applications; in subsec. (c), Federal share; and in subsec. (d), authorization of appropriations.

§ 254r. Grants to States for operation of offices of rural health

(a) In general

The Secretary, acting through the Director of the Office of Rural Health Policy (established in section 912 of this title), may make grants to States for the purpose of improving health care in rural areas through the operation of State offices of rural health.

(b) Requirement of matching funds

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the State

involved agrees, with respect to the costs to be incurred by the State in carrying out the purpose described in such subsection, to provide non-Federal contributions toward such costs in an amount equal to—

(A) for the first fiscal year of payments under the grant, not less than $1 for each $3 of Federal funds provided in the grant;

(B) for any second fiscal year of such payments, not less than $1 for each $1 of Federal funds provided in the grant; and

(C) for any third fiscal year of such payments, not less than $3 for each $1 of Federal funds provided in the grant.

(2) Determination of amount of non-Federal contribution

(A) Subject to subparagraph (B), non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that—

(i) for the first fiscal year of payments under the grant, 100 percent or less of the non-Federal contributions required in paragraph (1) will be provided in the form of in-kind contributions;

(ii) for any second fiscal year of such payments, not more than 50 percent of such non-Federal contributions will be provided in the form of in-kind contributions; and

(iii) for any third fiscal year of such payments, such non-Federal contributions will be provided solely in the form of cash.

(c) Certain required activities

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that activities carried out by an office operated pursuant to such subsection will include—

(1) establishing and maintaining within the State a clearinghouse for collecting and disseminating information on—

(A) rural health care issues;

(B) research findings relating to rural health care; and

(C) innovative approaches to the delivery of health care in rural areas;

(2) coordinating the activities carried out in the State that relate to rural health care, including providing coordination for the purpose of avoiding redundancy in such activities; and

(3) identifying Federal and State programs regarding rural health, and providing technical assistance to public and nonprofit private entities regarding participation in such programs.

(d) Requirement regarding annual budget for office

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that, for any fiscal year for which the State receives such a grant, the office operated pursuant to subsection (a) of this section will be provided with an annual budget of not less than $50,000.

(e) Certain uses of funds

(1) Restrictions

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that—

(A) if research with respect to rural health is conducted pursuant to the grant, not more than 10 percent of the grant will be expended for such research; and

(B) the grant will not be expended—

(i) to provide health care (including providing cash payments regarding such care);

(ii) to conduct activities for which Federal funds are expended—

(I) within the State to provide technical and other nonfinancial assistance under subsection (f) of section 254c[1] of this title;

(II) under a memorandum of agreement entered into with the State under subsection (h) of such section; or

(III) under a grant under section 254q–1 of this title;

(iii) to purchase medical equipment, to purchase ambulances, aircraft, or other vehicles, or to purchase major communications equipment;

(iv) to purchase or improve real property; or

(v) to carry out any activity regarding a certificate of need.

(2) Authorities

Activities for which a State may expend a grant under subsection (a) of this section include—

(A) paying the costs of establishing an office of rural health for purposes of subsection (a) of this section;

(B) subject to paragraph (1)(B)(ii)(III), paying the costs of any activity carried out with respect to recruiting and retaining health professionals to serve in rural areas of the State; and

(C) providing grants and contracts to public and nonprofit private entities to carry out activities authorized in this section.

(f) Reports

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees—

(1) to submit to the Secretary reports containing such information as the Secretary may require regarding activities carried out under this section by the State; and

(2) to submit such a report not later than January 10 of each fiscal year immediately following any fiscal year for which the State has received such a grant.

(g) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an applica-

[1] See References in Text note below.

tion for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out such subsection.

(h) Noncompliance

The Secretary may not make payments under subsection (a) of this section to a State for any fiscal year subsequent to the first fiscal year of such payments unless the Secretary determines that, for the immediately preceding fiscal year, the State has complied with each of the agreements made by the State under this section.

(i) "State" defined

For purposes of this section, the term ''State'' means each of the several States.

(j) Authorization of appropriations

(1) In general

For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $3,000,000 for fiscal year 1991, $4,000,000 for fiscal year 1992, $3,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1998 through 2002.

(2) Availability

Amounts appropriated under paragraph (1) shall remain available until expended.

(k) Termination of program

No grant may be made under this section after the aggregate amounts appropriated under subsection (j)(1) of this section are equal to $36,000,000.

(July 1, 1944, ch. 373, title III, § 338J, as added Pub. L. 101–597, title III, § 302, Nov. 16, 1990, 104 Stat. 3032; amended Pub. L. 105–392, title III, § 301, Nov. 13, 1998, 112 Stat. 3585.)

REFERENCES IN TEXT

Section 254c of this title, referred to in subsec. (e)(1)(B)(ii)(I), was in the original a reference to section 330, meaning section 330 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of this part by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

PRIOR PROVISIONS

A prior section 254r, act July 1, 1944, ch. 373, title III, § 338I, formerly title VII, § 757, as added Aug. 1, 1977, Pub. L. 95–83, title III, § 307(n)(1), 91 Stat. 392; amended Dec. 17, 1980, Pub. L. 96–537, § 3(d), 94 Stat. 3174; renumbered § 338G, Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2709(a), 95 Stat. 908; Oct. 30, 1984, Pub. L. 98–551, § 3, 98 Stat. 2817; renumbered § 338I, Dec. 1, 1987, Pub. L. 100–177, title II, § 201(1), 101 Stat. 992; Nov. 4, 1988, Pub. L. 100–607, title VI, § 629(a)(3), 102 Stat. 3146, which related to Indian Health Scholarships and was classified to section 294y–1 of this title prior to renumbering by Pub. L. 97–35, was repealed by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787. For provisions continuing scholarships provided on or before Nov. 23, 1988, see section 104(b)(2) of Pub. L. 100–713.

A prior section 338J of act July 1, 1944, was renumbered section 338K by Pub. L. 101–597 and is classified to section 254s of this title.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–392, § 301(1), struck out ''in cash'' after ''contributions'' in introductory provisions.

Subsec. (j)(1). Pub. L. 105–392, § 301(2), struck out ''and'' after ''1992,'' and inserted before period at end '', and such sums as may be necessary for each of the fiscal years 1998 through 2002''.

Subsec. (k). Pub. L. 105–392, § 301(3), substituted ''$36,000,000'' for ''$10,000,000''.

COMMUNICATIONS FOR RURAL HEALTH PROVIDERS

Pub. L. 102–538, title I, § 154, formerly § 134, Oct. 27, 1992, 106 Stat. 3541, renumbered § 154 by Pub. L. 103–66, title VI, § 6001(a)(2), Aug. 10, 1993, 107 Stat. 379, directed Secretary of Commerce, in conjunction with Secretary of Health and Human Services, to establish an advisory panel to develop recommendations for the improvement of rural health care through the collection of information needed by providers and the improvement in the use of communications to disseminate such information and, not later than 1 year after establishment of Panel to prepare and submit to Congress a report summarizing the recommendations made by the Panel.

Similar provisions were contained in Pub. L. 101–555, § 3, Nov. 15, 1990, 104 Stat. 2760.

§ 254s. Native Hawaiian Health Scholarships

(a) Eligibility

Subject to the availability of funds appropriated under the authority of subsection (d) of this section, the Secretary shall provide funds to Papa Ola Lokahi for the purpose of providing scholarship assistance to students who—

(1) meet the requirements of section 254*l*(b) of this title, and

(2) are Native Hawaiians.

(b) Terms and conditions

(1) The scholarship assistance provided under subsection (a) of this section shall be provided under the same terms and subject to the same conditions, regulations, and rules that apply to scholarship assistance provided under section 254*l* of this title.

(2) The Native Hawaiian Health Scholarship program shall not be administered by or through the Indian Health Service.

(c) "Native Hawaiian" defined

For purposes of this section, the term ''Native Hawaiian'' means any individual who is—

(1) a citizen of the United States,

(2) a resident of the State of Hawaii, and

(3) a descendant of the aboriginal people, who prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—

(A) genealogical records,

(B) Kupuna (elders) or Kama'aina (long-term community residents) verification, or

(C) birth records of the State of Hawaii.

(d) Authorization of appropriations

There are authorized to be appropriated $1,800,000 for each of the fiscal years 1990, 1991, and 1992 for the purpose of funding the scholarship assistance provided under subsection (a) of this section.

(July 1, 1944, ch. 373, title III, § 338K, formerly § 338J, as added Pub. L. 100–713, title I, § 106, Nov. 23, 1988, 102 Stat. 4787; renumbered § 338K, Pub. L. 101–597, title III, § 302, Nov. 16, 1990, 104 Stat. 3032;

amended Pub. L. 101–644, title IV, § 401, Nov. 29, 1990, 104 Stat. 4668; Pub. L. 107–116, title V, § 514(b), Jan. 10, 2002, 115 Stat. 2220.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–116, which directed the amendment of subsec. (a) by substituting ''Papa Ola Lokahi'' for ''Kamehameha School/Bishop Estate'', was executed by making the substitution for ''Kamehameha Schools/Bishop Estate'' to reflect the probable intent of Congress.

1990—Subsec. (a). Pub. L. 101–644, which directed the general amendment of subsec. (a) of section 338J of the Public Health Service Act, was executed to subsec. (a) of this section, to reflect the probable intent of Congress and the intervening renumbering of section 338J as 338K by Pub. L. 101–597. Prior to amendment, subsec. (a) read as follows: ''Subject to the availability of funds appropriated under the authority of subsection (d) of this section, the Secretary shall provide scholarship assistance, pursuant to a contract with the Kamehameha Schools/Bishop Estate, to students who—

''(1) meet the requirements of section 254*l*(b) of this title, and

''(2) are Native Hawaiians.''

§ 254t. Demonstration project

(a) Program authorized

The Secretary shall establish a demonstration project to provide for the participation of individuals who are chiropractic doctors or pharmacists in the Loan Repayment Program described in section 254*l*–1 of this title.

(b) Procedure

An individual that receives assistance under this section with regard to the program described in section 254*l*–1 of this title shall comply with all rules and requirements described in such section (other than subparagraphs (A) and (B) of section 254*l*–1(b)(1) of this title) in order to receive assistance under this section.

(c) Limitations

(1) In general

The demonstration project described in this section shall provide for the participation of individuals who shall provide services in rural and urban areas.

(2) Availability of other health professionals

The Secretary may not assign an individual receiving assistance under this section to provide obligated service at a site unless—

(A) the Secretary has assigned a physician (as defined in section 1395x(r) of this title) or other health professional licensed to prescribe drugs to provide obligated service at such site under section 254m or 254n of this title; and

(B) such physician or other health professional will provide obligated service at such site concurrently with the individual receiving assistance under this section.

(3) Rules of construction

(A) Supervision of individuals

Nothing in this section shall be construed to require or imply that a physician or other health professional licensed to prescribe drugs must supervise an individual receiving assistance under the demonstration project under this section, with respect to such project.

(B) Licensure of health professionals

Nothing in this section shall be construed to supersede State law regarding licensure of health professionals.

(d) Designations

The demonstration project described in this section, and any providers who are selected to participate in such project, shall not be considered by the Secretary in the designation of a health professional shortage area under section 254e of this title during fiscal years 2002 through 2004.

(e) Rule of construction

This section shall not be construed to require any State to participate in the project described in this section.

(f) Report

(1) In general

The Secretary shall evaluate the participation of individuals in the demonstration projects under this section and prepare and submit a report containing the information described in paragraph (2) to—

(A) the Committee on Health, Education, Labor, and Pensions of the Senate;

(B) the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate;

(C) the Committee on Energy and Commerce of the House of Representatives; and

(D) the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives.

(2) Content

The report described in paragraph (1) shall detail—

(A) the manner in which the demonstration project described in this section has affected access to primary care services, patient satisfaction, quality of care, and health care services provided for traditionally underserved populations;

(B) how the participation of chiropractic doctors and pharmacists in the Loan Repayment Program might affect the designation of health professional shortage areas; and

(C) whether adding chiropractic doctors and pharmacists as permanent members of the National Health Service Corps would be feasible and would enhance the effectiveness of the National Health Service Corps.

(g) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section, such sums as may be necessary for fiscal years 2002 through 2004.

(2) Fiscal year 2005

If the Secretary determines and certifies to Congress by not later than September 30, 2004, that the number of individuals participating in the demonstration project established under this section is insufficient for purposes of performing the evaluation described in subsection (f)(1) of this section, the authorization of appropriations under paragraph (1) shall be extended to include fiscal year 2005.

(July 1, 1944, ch. 373, title III, § 338L, as added Pub. L. 107–251, title III, § 317, Oct. 26, 2002, 116 Stat. 1653.)

PRIOR PROVISIONS

A prior section 254t, act July 1, 1944, ch. 373, title III, § 338L, as added Pub. L. 101–527, § 8, Nov. 6, 1990, 104 Stat. 2328, related to demonstration grants to States for community scholarship programs, prior to repeal by Pub. L. 107–251, title III, § 316, Oct. 26, 2002, 116 Stat. 1653.

SUBPART IV—HOME HEALTH SERVICES

AMENDMENTS

1987—Pub. L. 100–177, title II, § 202(f)(1), Dec. 1, 1987, 101 Stat. 999, substituted ''IV'' for ''III'' as subpart designation.

1983—Pub. L. 97–414, § 6(a), Jan. 4, 1983, 96 Stat. 2057, added heading ''Subpart III—Home Health Services''.

1978—Pub. L. 95–626, title I, § 105(b), title II, § 207(a), Nov. 10, 1978, 92 Stat. 3560, 3585, struck out heading ''Part D—Lepers'' and added heading ''Subpart III—Home Health Services''.

§ 255. Home health services

(a) Purpose; authorization of grants and loans; considerations; conditions on loans; appropriations

(1) For the purpose of encouraging the establishment and initial operation of home health programs to provide home health services in areas in which such services are inadequate or not readily accessible, the Secretary may, in accordance with the provisions of this section, make grants to public and nonprofit private entities and loans to proprietary entities to meet the initial costs of establishing and operating such home health programs. Such grants and loans may include funds to provide training for paraprofessionals (including homemaker home health aides) to provide home health services.

(2) In making grants and loans under this subsection, the Secretary shall—

(A) consider the relative needs of the several States for home health services;

(B) give preference to areas in which a high percentage of the population proposed to be served is composed of individuals who are elderly, medically indigent, or disabled; and

(C) give special consideration to areas with inadequate means of transportation to obtain necessary health services.

(3)(A) No loan may be made to a proprietary entity under this section unless the application of such entity for such loan contains assurances satisfactory to the Secretary that—

(i) at the time the application is made the entity is fiscally sound;

(ii) the entity is unable to secure a loan for the project for which the application is submitted from non-Federal lenders at the rate of interest prevailing in the area in which the entity is located; and

(iii) during the period of the loan, such entity will remain fiscally sound.

(B) Loans under this section shall be made at an interest rate comparable to the rate of interest prevailing on the date the loan is made with respect to the marketable obligations of the United States of comparable maturities, adjusted to provide for administrative costs.

(4) Applications for grants and loans under this subsection shall be in such form and contain such information as the Secretary shall prescribe.

(5) There are authorized to be appropriated for grants and loans under this subsection $5,000,000 for each of the fiscal years ending on September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.

(b) Grants and contracts for training programs for paraprofessionals; considerations; applications; appropriations

(1) The Secretary may make grants to and enter into contracts with public and private entities to assist them in developing appropriate training programs for paraprofessionals (including homemaker home health aides) to provide home health services.

(2) Any program established with a grant or contract under this subsection to train homemaker home health aides shall—

(A) extend for at least forty hours, and consist of classroom instruction and at least twenty hours (in the aggregate) of supervised clinical instruction directed toward preparing students to deliver home health services;

(B) be carried out under appropriate professional supervision and be designed to train students to maintain or enhance the personal care of an individual in his home in a manner which promotes the functional independence of the individual; and

(C) include training in—

(i) personal care services designed to assist an individual in the activities of daily living such as bathing, exercising, personal grooming, and getting in and out of bed; and

(ii) household care services such as maintaining a safe living environment, light housekeeping, and assisting in providing good nutrition (by the purchasing and preparation of food).

(3) In making grants and entering into contracts under this subsection, special consideration shall be given to entities which establish or will establish programs to provide training for persons fifty years of age and older who wish to become paraprofessionals (including homemaker home health aides) to provide home health services.

(4) Applications for grants and contracts under this subsection shall be in such form and contain such information as the Secretary shall prescribe.

(5) There are authorized to be appropriated for grants and contracts under this subsection $2,000,000 for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.

(c) Report to Congress with respect to grants and loans and training of personnel

The Secretary shall report to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives on or before January 1, 1984, with respect to—

(1) the impact of grants made and contracts entered into under subsections (a) and (b) of

this section (as such subsections were in effect prior to October 1, 1981);

(2) the need to continue grants and loans under subsections (a) and (b) of this section (as such subsections are in effect on the day after January 4, 1983); and

(3) the extent to which standards have been applied to the training of personnel who provide home health services.

(d) "Home health services" defined

For purposes of this section, the term ''home health services'' has the meaning prescribed for the term by section 1395x(m) of this title.

(July 1, 1944, ch. 373, title III, § 339, as added Pub. L. 97–414, § 6(a), Jan. 4, 1983, 96 Stat. 2057; amended Pub. L. 98–555, § 6, Oct. 30, 1984, 98 Stat. 2856.)

REFERENCES IN TEXT

Subsections (a) and (b) of this section (as such subsections were in effect prior to October 1, 1981), referred to in subsec. (c)(1), mean subsections (a) and (b) of section 255 of this title prior to repeal of section 255 by Pub. L. 97–35, title IX, § 902(b), Aug. 13, 1981, 95 Stat. 559, effective Oct. 1, 1981.

PRIOR PROVISIONS

A prior section 255, act July 1, 1944, ch. 373, title III, § 339, as added Nov. 10, 1978, Pub. L. 95–626, title II, § 207(a), 92 Stat. 3585, related to grant authority, etc., for home health services, prior to repeal by Pub. L. 97–35, title IX, § 902(b), (h), Aug. 13, 1981, 95 Stat. 559, 561, eff. Oct. 1, 1981.

Another prior section 339 of act July 1, 1944, ch. 373, title III, formerly § 331, 58 Stat. 698; June 25, 1948, ch. 654, § 4, 62 Stat. 1018; June 25, 1952, ch. 460, 66 Stat. 157; July 12, 1960, Pub. L. 86–624, § 29(b), 74 Stat. 419; renumbered § 339, Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(2), 90 Stat. 2268, which related to reception of persons suffering from leprosy in any hospital, was renumbered section 320 of act July 1, 1944, and transferred to section 247e of this title.

AMENDMENTS

1984—Subsecs. (a)(5), (b)(5). Pub. L. 98–555 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

REPORT TO CONGRESS CONCERNING RESULTS OF STUDIES EVALUATING HOME AND COMMUNITY BASED HEALTH SERVICES; STUDIES OF REIMBURSEMENT METHODOLOGIES; INVESTIGATION OF FRAUD; DEMONSTRATION PROJECTS; HOME HEALTH SERVICES, DEFINED

Section 6(b)–(f) of Pub. L. 97–414 directed Secretary of Health and Human Services to report results of studies evaluating home and community based health services, and any recommendations for legislative action which might improve the provision of such services, to Congress prior to Jan. 1, 1985, to compile and analyze results of significant public or private studies relating to reimbursement methodologies for home health services and to report recommendations to Congress within 180 days after Jan. 4, 1983, to investigate methods available to stem medicare and medicaid fraud and abuse and extent to which such methods are applied and to report results to Congress within 18 months of Jan. 4, 1983, and to develop and carry out demonstration projects commencing no later than Jan. 1, 1984, to test methods for identifying patients at risk of institutionalization who could be treated more cost-effectively with home health services, and to test alternative reimbursement methodologies for home health agencies in order to determine most cost-effective way of providing home health services, and to report to Congress with regard to the demonstrations no later than Jan. 1, 1985; and defined ''home health services'' for purposes of this section.

SUBPART V—HEALTHY COMMUNITIES ACCESS PROGRAM

PRIOR PROVISIONS

A prior subpart VI, consisting of section 256a, related to health services for residents of public housing, prior to repeal by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

§ 256. Grants to strengthen the effectiveness, efficiency, and coordination of services for the uninsured and underinsured

(a) In general

The Secretary may award grants to eligible entities to assist in the development of integrated health care delivery systems to serve communities of individuals who are uninsured and individuals who are underinsured—

(1) to improve the efficiency of, and coordination among, the providers providing services through such systems;

(2) to assist communities in developing programs targeted toward preventing and managing chronic diseases; and

(3) to expand and enhance the services provided through such systems.

(b) Eligible entities

To be eligible to receive a grant under this section, an entity shall be an entity that—

(1) represents a consortium—

(A) whose principal purpose is to provide a broad range of coordinated health care services for a community defined in the entity's grant application as described in paragraph (2); and

(B) that includes at least one of each of the following providers that serve the community (unless such provider does not exist within the community, declines or refuses to participate, or places unreasonable conditions on their participation)—

(i) a Federally qualified health center (as defined in section 1395x(aa) of this title);

(ii) a hospital with a low-income utilization rate (as defined in section 1396r–4(b)(3) of this title), that is greater than 25 percent;

(iii) a public health department; and

(iv) an interested public or private sector health care provider or an organization that has traditionally served the medically uninsured and underserved; and

(2) submits to the Secretary an application, in such form and manner as the Secretary shall prescribe, that—

(A) defines a community or geographic area of uninsured and underinsured individuals;

(B) identifies the providers who will participate in the consortium's program under the grant, and specifies each provider's contribution to the care of uninsured and underinsured individuals in the community, including the volume of care the provider provides to beneficiaries under the medicare, medicaid, and State child health insurance programs and to patients who pay privately for services;

(C) describes the activities that the applicant and the consortium propose to perform under the grant to further the objectives of this section;

(D) demonstrates the consortium's ability to build on the current system (as of the date of submission of the application) for serving a community or geographic area of uninsured and underinsured individuals by involving providers who have traditionally provided a significant volume of care for that community;

(E) demonstrates the consortium's ability to develop coordinated systems of care that either directly provide or ensure the prompt provision of a broad range of high-quality, accessible services, including, as appropriate, primary, secondary, and tertiary services, as well as substance abuse treatment and mental health services in a manner that assures continuity of care in the community or geographic area;

(F) provides evidence of community involvement in the development, implementation, and direction of the program that the entity proposes to operate;

(G) demonstrates the consortium's ability to ensure that individuals participating in the program are enrolled in public insurance programs for which the individuals are eligible or know of private insurance programs where available;

(H) presents a plan for leveraging other sources of revenue, which may include State and local sources and private grant funds, and integrating current and proposed new funding sources in a way to assure long-term sustainability of the program;

(I) describes a plan for evaluation of the activities carried out under the grant, including measurement of progress toward the goals and objectives of the program and the use of evaluation findings to improve program performance;

(J) demonstrates fiscal responsibility through the use of appropriate accounting procedures and appropriate management systems;

(K) demonstrates the consortium's commitment to serve the community without regard to the ability of an individual or family to pay by arranging for or providing free or reduced charge care for the poor; and

(L) includes such other information as the Secretary may prescribe.

(c) Limitations

(1) Number of awards

(A) In general

For each of fiscal years 2003, 2004, 2005, and 2006, the Secretary may not make more than 35 new awards under subsection (a) of this section (excluding renewals of such awards).

(B) Rule of construction

This paragraph shall not be construed to affect awards made before fiscal year 2003.

(2) In general

An eligible entity may not receive a grant under this section (including with respect to any such grant made before fiscal year 2003) for more than 3 consecutive fiscal years, except that such entity may receive such a grant award for not more than 1 additional fiscal year if—

(A) the eligible entity submits to the Secretary a request for a grant for such an additional fiscal year;

(B) the Secretary determines that extraordinary circumstances (as defined in paragraph (3)) justify the granting of such request; and

(C) the Secretary determines that granting such request is necessary to further the objectives described in subsection (a) of this section.

(3) Extraordinary circumstances

(A) In general

In paragraph (2), the term ''extraordinary circumstances'' means an event (or events) that is outside of the control of the eligible entity that has prevented the eligible entity from fulfilling the objectives described by such entity in the application submitted under subsection (b)(2) of this section.

(B) Examples

Extraordinary circumstances include—

(i) natural disasters or other major disruptions to the security or health of the community or geographic area served by the eligible entity; or

(ii) a significant economic deterioration in the community or geographic area served by such eligible entity, that directly and adversely affects the entity receiving an award under subsection (a) of this section.

(d) Priorities

In awarding grants under this section, the Secretary—

(1) shall accord priority to applicants that demonstrate the extent of unmet need in the community involved for a more coordinated system of care; and

(2) may accord priority to applicants that best promote the objectives of this section, taking into consideration the extent to which the application involved—

(A) identifies a community whose geographical area has a high or increasing percentage of individuals who are uninsured;

(B) demonstrates that the applicant has included in its consortium providers, sup-

port systems, and programs that have a tradition of serving uninsured individuals and underinsured individuals in the community;

(C) shows evidence that the program would expand utilization of preventive and primary care services for uninsured and underinsured individuals and families in the community, including behavioral and mental health services, oral health services, or substance abuse services;

(D) proposes a program that would improve coordination between health care providers and appropriate social service providers;

(E) demonstrates collaboration with State and local governments;

(F) demonstrates that the applicant makes use of non-Federal contributions to the greatest extent possible; or

(G) demonstrates a likelihood that the proposed program will continue after support under this section ceases.

(e) Use of funds

(1) Use by grantees

(A) In general

Except as provided in paragraphs (2) and (3), a grantee may use amounts provided under this section only for—

(i) direct expenses associated with achieving the greater integration of a health care delivery system so that the system either directly provides or ensures the provision of a broad range of culturally competent services, as appropriate, including primary, secondary, and tertiary services, as well as substance abuse treatment and mental health services; and

(ii) direct patient care and service expansions to fill identified or documented gaps within an integrated delivery system.

(B) Specific uses

The following are examples of purposes for which a grantee may use grant funds under this section, when such use meets the conditions stated in subparagraph (A):

(i) Increases in outreach activities and closing gaps in health care service.

(ii) Improvements to case management.

(iii) Improvements to coordination of transportation to health care facilities.

(iv) Development of provider networks and other innovative models to engage physicians in voluntary efforts to serve the medically underserved within a community.

(v) Recruitment, training, and compensation of necessary personnel.

(vi) Acquisition of technology for the purpose of coordinating care.

(vii) Improvements to provider communication, including implementation of shared information systems or shared clinical systems.

(viii) Development of common processes for determining eligibility for the programs provided through the system, including creating common identification cards and single sliding scale discounts.

(ix) Development of specific prevention and disease management tools and processes.

(x) Translation services.

(xi) Carrying out other activities that may be appropriate to a community and that would increase access by the uninsured to health care, such as access initiatives for which private entities provide non-Federal contributions to supplement the Federal funds provided through the grants for the initiatives.

(2) Direct patient care limitation

Not more than 15 percent of the funds provided under a grant awarded under this section may be used for providing direct patient care and services.

(3) Reservation of funds for national program purposes

The Secretary may use not more than 3 percent of funds appropriated to carry out this section for providing technical assistance to grantees, obtaining assistance of experts and consultants, holding meetings, developing of tools, disseminating of information, evaluation, and carrying out activities that will extend the benefits of programs funded under this section to communities other than the community served by the program funded.

(f) Grantee requirements

(1) Evaluation of effectiveness

A grantee under this section shall—

(A) report to the Secretary annually regarding—

(i) progress in meeting the goals and measurable objectives set forth in the grant application submitted by the grantee under subsection (b) of this section; and

(ii) the extent to which activities conducted by such grantee have—

(I) improved the effectiveness, efficiency, and coordination of services for uninsured and underinsured individuals in the communities or geographic areas served by such grantee;

(II) resulted in the provision of better quality health care for such individuals; and

(III) resulted in the provision of health care to such individuals at lower cost than would have been possible in the absence of the activities conducted by such grantee; and

(B) provide for an independent annual financial audit of all records that relate to the disposition of funds received through the grant.

(2) Progress

The Secretary may not renew an annual grant under this section for an entity for a fiscal year unless the Secretary is satisfied that the consortium represented by the entity has made reasonable and demonstrable progress in meeting the goals and measurable objectives set forth in the entity's grant application for the preceding fiscal year.

(g) Maintenance of effort

With respect to activities for which a grant under this section is authorized, the Secretary may award such a grant only if the applicant for

the grant, and each of the participating providers, agree that the grantee and each such provider will maintain its expenditures of non-Federal funds for such activities at a level that is not less than the level of such expenditures during the fiscal year immediately preceding the fiscal year for which the applicant is applying to receive such grant.

(h) Technical assistance

The Secretary may, either directly or by grant or contract, provide any entity that receives a grant under this section with technical and other nonfinancial assistance necessary to meet the requirements of this section.

(i) Evaluation of program

Not later than September 30, 2005, the Secretary shall prepare and submit to the appropriate committees of Congress a report that describes the extent to which projects funded under this section have been successful in improving the effectiveness, efficiency, and coordination of services for uninsured and underinsured individuals in the communities or geographic areas served by such projects, including whether the projects resulted in the provision of better quality health care for such individuals, and whether such care was provided at lower costs, than would have been provided in the absence of such projects.

(j) Demonstration authority

The Secretary may make demonstration awards under this section to historically black health professions schools for the purposes of—

(1) developing patient-based research infrastructure at historically black health professions schools, which have an affiliation, or affiliations, with any of the providers identified in subsection (b)(1)(B) of this section;

(2) establishment of joint and collaborative programs of medical research and data collection between historically black health professions schools and such providers, whose goal is to improve the health status of medically underserved populations; or

(3) supporting the research-related costs of patient care, data collection, and academic training resulting from such affiliations.

(k) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2002 through 2006.

***(l)* Date certain for termination of program**

Funds may not be appropriated to carry out this section after September 30, 2006.

(July 1, 1944, ch. 373, title III, § 340, as added Pub. L. 107–251, title IV, § 402, Oct. 26, 2002, 116 Stat. 1655.)

PRIOR PROVISIONS

A prior section 256, act July 1, 1944, ch. 373, title III, § 340, as added July 22, 1987, Pub. L. 100–77, title VI, § 601, 101 Stat. 511; amended Nov. 4, 1988, Pub. L. 100–607, title VIII, §§ 801(a), (c), 802(a), (b)(1), 803, 804, 102 Stat. 3168, 3169; Nov. 7, 1988, Pub. L. 100–628, title VI, §§ 601(a), (c), 602(a), (b)(1), 603, 604, 102 Stat. 3241, 3242; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), (3), 103 Stat. 615; Nov. 29, 1990, Pub. L. 101–645, title V, §§ 501–503, 104 Stat. 4724; Oct. 27, 1992, Pub. L. 102–531, title III, § 309(c), 106 Stat. 3501, related to grant program for certain health services for the homeless, prior to repeal by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645, eff. Oct. 1, 1996.

Another prior section 256, act July 1, 1944, ch. 373, title III, § 340, as added Nov. 10, 1978, Pub. L. 95–626, title I, § 115(2), 92 Stat. 3567; amended Dec. 12, 1979, Pub. L. 96–142, title III, § 301(a), 93 Stat. 1073; Aug. 13, 1981, Pub. L. 97–35, title IX, § 903(b)(1), 95 Stat. 561; Jan. 4, 1983, Pub. L. 97–414, § 8(h), 96 Stat. 2061, related to primary care research and demonstration projects to serve medically underserved population, prior to repeal by Pub. L. 97–35, title IX, § 903(c), Aug. 13, 1981, 95 Stat. 561, eff. Oct. 1, 1982.

Another prior section 256, act July 1, 1944, ch. 373, title III, § 340, formerly § 332, 58 Stat. 698; renumbered § 340, Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(2), 90 Stat. 2268, related to apprehension, detention, treatment, and release of persons being treated for leprosy, prior to repeal by Pub. L. 95–626, title I, § 105(b), Nov. 10, 1978, 92 Stat. 3560.

PURPOSE

Pub. L. 107–251, title IV, § 401, Oct. 26, 2002, 116 Stat. 1655, provided that: ''The purpose of this title [enacting this subpart and subpart X (§ 256f et seq.) of this part and provisions set out as a note under section 1396a of this title] is to provide assistance to communities and consortia of health care providers and others, to develop or strengthen integrated community health care delivery systems that coordinate health care services for individuals who are uninsured or underinsured and to develop or strengthen activities related to providing coordinated care for individuals with chronic conditions who are uninsured or underinsured, through the—

''(1) coordination of services to allow individuals to receive efficient and higher quality care and to gain entry into and receive services from a comprehensive system of care;

''(2) development of the infrastructure for a health care delivery system characterized by effective collaboration, information sharing, and clinical and financial coordination among all providers of care in the community; and

''(3) provision of new Federal resources that do not supplant funding for existing Federal categorical programs that support entities providing services to low-income populations.''

§ 256a. Patient navigator grants

(a) Grants

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to eligible entities for the development and operation of demonstration programs to provide patient navigator services to improve health care outcomes. The Secretary shall coordinate with, and ensure the participation of, the Indian Health Service, the National Cancer Institute, the Office of Rural Health Policy, and such other offices and agencies as deemed appropriate by the Secretary, regarding the design and evaluation of the demonstration programs.

(b) Use of funds

The Secretary shall require each recipient of a grant under this section to use the grant to recruit, assign, train, and employ patient navigators who have direct knowledge of the communities they serve to facilitate the care of individuals, including by performing each of the following duties:

(1) Acting as contacts, including by assisting in the coordination of health care services and provider referrals, for individuals who are seeking prevention or early detection services

for, or who following a screening or early detection service are found to have a symptom, abnormal finding, or diagnosis of, cancer or other chronic disease.

(2) Facilitating the involvement of community organizations in assisting individuals who are at risk for or who have cancer or other chronic diseases to receive better access to high-quality health care services (such as by creating partnerships with patient advocacy groups, charities, health care centers, community hospice centers, other health care providers, or other organizations in the targeted community).

(3) Notifying individuals of clinical trials and, on request, facilitating enrollment of eligible individuals in these trials.

(4) Anticipating, identifying, and helping patients to overcome barriers within the health care system to ensure prompt diagnostic and treatment resolution of an abnormal finding of cancer or other chronic disease.

(5) Coordinating with the relevant health insurance ombudsman programs to provide information to individuals who are at risk for or who have cancer or other chronic diseases about health coverage, including private insurance, health care savings accounts, and other publicly funded programs (such as Medicare, Medicaid, health programs operated by the Department of Veterans Affairs or the Department of Defense, the State children's health insurance program, and any private or governmental prescription assistance programs).

(6) Conducting ongoing outreach to health disparity populations, including the uninsured, rural populations, and other medically underserved populations, in addition to assisting other individuals who are at risk for or who have cancer or other chronic diseases to seek preventative care.

(c) Prohibitions

(1) Referral fees

The Secretary shall require each recipient of a grant under this section to prohibit any patient navigator providing services under the grant from accepting any referral fee, kickback, or other thing of value in return for referring an individual to a particular health care provider.

(2) Legal fees and costs

The Secretary shall prohibit the use of any grant funds received under this section to pay any fees or costs resulting from any litigation, arbitration, mediation, or other proceeding to resolve a legal dispute.

(d) Grant period

(1) In general

Subject to paragraphs (2) and (3), the Secretary may award grants under this section for periods of not more than 3 years.

(2) Extensions

Subject to paragraph (3), the Secretary may extend the period of a grant under this section. Each such extension shall be for a period of not more than 1 year.

(3) Limitations on grant period

In carrying out this section, the Secretary—

(A) shall ensure that the total period of a grant does not exceed 4 years; and

(B) may not authorize any grant period ending after September 30, 2010.

(e) Application

(1) In general

To seek a grant under this section, an eligible entity shall submit an application to the Secretary in such form, in such manner, and containing such information as the Secretary may require.

(2) Contents

At a minimum, the Secretary shall require each such application to outline how the eligible entity will establish baseline measures and benchmarks that meet the Secretary's requirements to evaluate program outcomes.

(f) Uniform baseline measures

The Secretary shall establish uniform baseline measures in order to properly evaluate the impact of the demonstration projects under this section.

(g) Preference

In making grants under this section, the Secretary shall give preference to eligible entities that demonstrate in their applications plans to utilize patient navigator services to overcome significant barriers in order to improve health care outcomes in their respective communities.

(h) Duplication of services

An eligible entity that is receiving Federal funds for activities described in subsection (b) of this section on the date on which the entity submits an application under subsection (e) of this section may not receive a grant under this section unless the entity can demonstrate that amounts received under the grant will be utilized to expand services or provide new services to individuals who would not otherwise be served.

(i) Coordination with other programs

The Secretary shall ensure coordination of the demonstration grant program under this section with existing authorized programs in order to facilitate access to high-quality health care services.

(j) Study; reports

(1) Final report by Secretary

Not later than 6 months after the completion of the demonstration grant program under this section, the Secretary shall conduct a study of the results of the program and submit to the Congress a report on such results that includes the following:

(A) An evaluation of the program outcomes, including—

(i) quantitative analysis of baseline and benchmark measures; and

(ii) aggregate information about the patients served and program activities.

(B) Recommendations on whether patient navigator programs could be used to improve patient outcomes in other public health areas.

(2) Interim reports by Secretary

The Secretary may provide interim reports to the Congress on the demonstration grant

program under this section at such intervals as the Secretary determines to be appropriate.

(3) Reports by grantees

The Secretary may require grant recipients under this section to submit interim and final reports on grant program outcomes.

(k) Rule of construction

This section shall not be construed to authorize funding for the delivery of health care services (other than the patient navigator duties listed in subsection (b) of this section).

(*l*) Definitions

In this section:

(1) The term ''eligible entity'' means a public or nonprofit private health center (including a Federally qualified health center (as that term is defined in section 1395x(aa)(4) of this title)), a health facility operated by or pursuant to a contract with the Indian Health Service, a hospital, a cancer center, a rural health clinic, an academic health center, or a nonprofit entity that enters into a partnership or coordinates referrals with such a center, clinic, facility, or hospital to provide patient navigator services.

(2) The term ''health disparity population'' means a population that, as determined by the Secretary, has a significant disparity in the overall rate of disease incidence, prevalence, morbidity, mortality, or survival rates as compared to the health status of the general population.

(3) The term ''patient navigator'' means an individual who has completed a training program approved by the Secretary to perform the duties listed in subsection (b) of this section.

(m) Authorization of appropriations

(1) In general

To carry out this section, there are authorized to be appropriated $2,000,000 for fiscal year 2006, $5,000,000 for fiscal year 2007, $8,000,000 for fiscal year 2008, $6,500,000 for fiscal year 2009, and $3,500,000 for fiscal year 2010.

(2) Availability

The amounts appropriated pursuant to paragraph (1) shall remain available for obligation through the end of fiscal year 2010.

(July 1, 1944, ch. 373, title III, § 340A, as added Pub. L. 109–18, § 2, June 29, 2005, 119 Stat. 340.)

PRIOR PROVISIONS

A prior section 256a, act July 1, 1944, ch. 373, title III, § 340A, as added Nov. 6, 1990, Pub. L. 101–527, § 3, 104 Stat. 2314; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 309(d), 106 Stat. 3502, related to health services for residents of public housing, prior to repeal by Pub. L. 104–299, §§ 4(a)(3), 5, Oct. 11, 1996, 110 Stat. 3645, effective Oct. 1, 1996.

Another prior section 256a, act July 1, 1944, ch. 373, title III, § 340A, as added Nov. 10, 1978, Pub. L. 95–626, title I, § 106(a), 92 Stat. 3560, related to technical assistance demonstration grants and contracts, prior to repeal by Pub. L. 100–77, title VI, § 601, July 22, 1987, 101 Stat. 511.

SUBPART VII—DRUG PRICING AGREEMENTS

§ 256b. Limitation on prices of drugs purchased by covered entities

(a) Requirements for agreement with Secretary

(1) In general

The Secretary shall enter into an agreement with each manufacturer of covered drugs under which the amount required to be paid (taking into account any rebate or discount, as provided by the Secretary) to the manufacturer for covered drugs (other than drugs described in paragraph (3)) purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992, does not exceed an amount equal to the average manufacturer price for the drug under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] in the preceding calendar quarter, reduced by the rebate percentage described in paragraph (2).

(2) "Rebate percentage" defined

(A) In general

For a covered outpatient drug purchased in a calendar quarter, the ''rebate percentage'' is the amount (expressed as a percentage) equal to—

(i) the average total rebate required under section 1927(c) of the Social Security Act [42 U.S.C. 1396r–8(c)] with respect to the drug (for a unit of the dosage form and strength involved) during the preceding calendar quarter; divided by

(ii) the average manufacturer price for such a unit of the drug during such quarter.

(B) Over the counter drugs

(i) In general

For purposes of subparagraph (A), in the case of over the counter drugs, the ''rebate percentage'' shall be determined as if the rebate required under section 1927(c) of the Social Security Act [42 U.S.C. 1396r–8(c)] is based on the applicable percentage provided under section 1927(c)(4) of such Act.

(ii) "Over the counter drug" defined

The term ''over the counter drug'' means a drug that may be sold without a prescription and which is prescribed by a physician (or other persons authorized to prescribe such drug under State law).

(3) Drugs provided under State medicaid plans

Drugs described in this paragraph are drugs purchased by the entity for which payment is made by the State under the State plan for medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(4) "Covered entity" defined

In this section, the term ''covered entity'' means an entity that meets the requirements described in paragraph (5) and is one of the following:

(A) A Federally-qualified health center (as defined in section 1905(*l*)(2)(B) of the Social Security Act [42 U.S.C. 1396d(*l*)(2)(B)]).

(B) An entity receiving a grant under section 256a [1] of this title.

[1] See References in Text note below.

(C) A family planning project receiving a grant or contract under section 300 of this title.

(D) An entity receiving a grant under subpart II[1] of part C of subchapter XXIV of this chapter (relating to categorical grants for outpatient early intervention services for HIV disease).

(E) A State-operated AIDS drug purchasing assistance program receiving financial assistance under subchapter XXIV of this chapter.

(F) A black lung clinic receiving funds under section 937(a) of title 30.

(G) A comprehensive hemophilia diagnostic treatment center receiving a grant under section 501(a)(2) of the Social Security Act [42 U.S.C. 701(a)(2)].

(H) A Native Hawaiian Health Center receiving funds under the Native Hawaiian Health Care Act of 1988.

(I) An urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

(J) Any entity receiving assistance under subchapter XXIV of this chapter (other than a State or unit of local government or an entity described in subparagraph (D)), but only if the entity is certified by the Secretary pursuant to paragraph (7).

(K) An entity receiving funds under section 247c of this title (relating to treatment of sexually transmitted diseases) or section 247b(j)(2)[1] of this title (relating to treatment of tuberculosis) through a State or unit of local government, but only if the entity is certified by the Secretary pursuant to paragraph (7).

(L) A subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act [42 U.S.C. 1395ww(d)(1)(B)]) that—

(i) is owned or operated by a unit of State or local government, is a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government, or is a private non-profit hospital which has a contract with a State or local government to provide health care services to low income individuals who are not entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] or eligible for assistance under the State plan under this subchapter;

(ii) for the most recent cost reporting period that ended before the calendar quarter involved, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act [42 U.S.C. 1395ww(d)(5)(F)]) greater than 11.75 percent or was described in section 1886(d)(5)(F)(i)(II) of such Act [42 U.S.C. 1395ww(d)(5)(F)(i)(II)]; and

(iii) does not obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement.

(5) Requirements for covered entities

(A) Prohibiting duplicate discounts or rebates

(i) In general

A covered entity shall not request payment under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for medical assistance described in section 1905(a)(12) of such Act [42 U.S.C. 1396d(a)(12)] with respect to a drug that is subject to an agreement under this section if the drug is subject to the payment of a rebate to the State under section 1927 of such Act [42 U.S.C. 1396r–8].

(ii) Establishment of mechanism

The Secretary shall establish a mechanism to ensure that covered entities comply with clause (i). If the Secretary does not establish a mechanism within 12 months under the previous sentence, the requirements of section 1927(a)(5)(C) of the Social Security Act [42 U.S.C. 1396r–8(a)(5)(C)] shall apply.

(B) Prohibiting resale of drugs

With respect to any covered outpatient drug that is subject to an agreement under this subsection, a covered entity shall not resell or otherwise transfer the drug to a person who is not a patient of the entity.

(C) Auditing

A covered entity shall permit the Secretary and the manufacturer of a covered outpatient drug that is subject to an agreement under this subsection with the entity (acting in accordance with procedures established by the Secretary relating to the number, duration, and scope of audits) to audit at the Secretary's or the manufacturer's expense the records of the entity that directly pertain to the entity's compliance with the requirements described in subparagraphs[2] (A) or (B) with respect to drugs of the manufacturer.

(D) Additional sanction for noncompliance

If the Secretary finds, after notice and hearing, that a covered entity is in violation of a requirement described in subparagraphs[2] (A) or (B), the covered entity shall be liable to the manufacturer of the covered outpatient drug that is the subject of the violation in an amount equal to the reduction in the price of the drug (as described in subparagraph (A)) provided under the agreement between the entity and the manufacturer under this paragraph.

(6) Treatment of distinct units of hospitals

In the case of a covered entity that is a distinct part of a hospital, the hospital shall not be considered a covered entity under this paragraph unless the hospital is otherwise a covered entity under this subsection.

(7) Certification of certain covered entities

(A) Development of process

Not later than 60 days after November 4, 1992, the Secretary shall develop and imple-

[2] So in original. Probably should be ''subparagraph''.

ment a process for the certification of entities described in subparagraphs (J) and (K) of paragraph (4).

(B) Inclusion of purchase information

The process developed under subparagraph (A) shall include a requirement that an entity applying for certification under this paragraph submit information to the Secretary concerning the amount such entity expended for covered outpatient drugs in the preceding year so as to assist the Secretary in evaluating the validity of the entity's subsequent purchases of covered outpatient drugs at discounted prices.

(C) Criteria

The Secretary shall make available to all manufacturers of covered outpatient drugs a description of the criteria for certification under this paragraph.

(D) List of purchasers and dispensers

The certification process developed by the Secretary under subparagraph (A) shall include procedures under which each State shall, not later than 30 days after the submission of the descriptions under subparagraph (C), prepare and submit a report to the Secretary that contains a list of entities described in subparagraphs (J) and (K) of paragraph (4) that are located in the State.

(E) Recertification

The Secretary shall require the recertification of entities certified pursuant to this paragraph on a not more frequent than annual basis, and shall require that such entities submit information to the Secretary to permit the Secretary to evaluate the validity of subsequent purchases by such entities in the same manner as that required under subparagraph (B).

(8) Development of prime vendor program

The Secretary shall establish a prime vendor program under which covered entities may enter into contracts with prime vendors for the distribution of covered outpatient drugs. If a covered entity obtains drugs directly from a manufacturer, the manufacturer shall be responsible for the costs of distribution.

(9) Notice to manufacturers

The Secretary shall notify manufacturers of covered outpatient drugs and single State agencies under section 1902(a)(5) of the Social Security Act [42 U.S.C. 1396a(a)(5)] of the identities of covered entities under this paragraph, and of entities that no longer meet the requirements of paragraph (5) or that are no longer certified pursuant to paragraph (7).

(10) No prohibition on larger discount

Nothing in this subsection shall prohibit a manufacturer from charging a price for a drug that is lower than the maximum price that may be charged under paragraph (1).

(b) Other definitions

In this section, the terms ''average manufacturer price'', ''covered outpatient drug'', and ''manufacturer'' have the meaning given such terms in section 1927(k) of the Social Security Act [42 U.S.C. 1396r–8(k)].

(c) References to Social Security Act

Any reference in this section to a provision of the Social Security Act [42 U.S.C. 301 et seq.] shall be deemed to be a reference to the provision as in effect on November 4, 1992.

(d) Compliance with requirements

A manufacturer is deemed to meet the requirements of subsection (a) of this section if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of this section (as in effect immediately after November 4, 1992), as applied by the Secretary, and would have entered into an agreement under this section (as such section was in effect at such time), but for a legislative change in this section (or the application of this section) after November 4, 1992.

(July 1, 1944, ch. 373, title III, § 340B, as added Pub. L. 102–585, title VI, § 602(a), Nov. 4, 1992, 106 Stat. 4967; amended Pub. L. 103–43, title XX, § 2008(i)(1)(A), June 10, 1993, 107 Stat. 212.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (3), (4)(L)(i), (5)(A)(i), and (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 256a of this title, referred to in subsec. (a)(4)(B), was repealed by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

Subpart II of part C of subchapter XXIV of this chapter, referred to in subsec. (a)(4)(D), was redesignated subpart I of part C of subchapter XXIV of this chapter by Pub. L. 106–345, title III, § 301(b)(1), Oct. 20, 2000, 114 Stat. 1345, and is classified to section 300ff–51 et seq. of this title.

The Native Hawaiian Health Care Act of 1988, referred to in subsec. (a)(4)(H), was Pub. L. 100–579, Oct. 31, 1988, 102 Stat. 2916, and subtitle D of title II of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4222, which were classified generally to chapter 122 (§ 11701 et seq.) of this title prior to being amended generally and renamed the Native Hawaiian Health Care Improvement Act by Pub. L. 102–396. For complete classification of this Act to the Code, see Tables.

The Indian Health Care Improvement Act, referred to in subsec. (a)(4)(I), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

Section 247b(j)(2) of this title, referred to in subsec. (a)(4)(K), was repealed and section 247b(j)(1)(B) was redesignated section 247b(j)(2) by Pub. L. 103–183, title III, § 301(b)(1)(A), (C), Dec. 14, 1993, 107 Stat. 2235.

CODIFICATION

Another section 340B of act July 1, 1944, was renumbered section 340C and is classified to section 256c of this title.

AMENDMENTS

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–585, § 602(a), which enacted this section.

STUDY OF TREATMENT OF CERTAIN CLINICS AS COVERED ENTITIES ELIGIBLE FOR PRESCRIPTION DRUG DISCOUNTS

Section 602(b) of Pub. L. 102–585 directed Secretary of Health and Human Services to conduct a study of feasi-

bility and desirability of including specified entities receiving funds from a State as covered entities eligible for limitations on prices of covered outpatient drugs under 42 U.S.C. 256b(a) and, not later than 1 year after Nov. 4, 1992, to submit a report to Congress on the study, including in the report a description of the entities that were the subject of the study, an analysis of the extent to which such entities procured prescription drugs, and an analysis of the impact of the inclusion of such entities as covered entities on the quality of care provided to and the health status of the patients of such entities.

SUBPART VIII—BULK PURCHASES OF VACCINES FOR CERTAIN PROGRAMS

AMENDMENTS

1993—Pub. L. 103–43, title XX, § 2008(i)(2)(A)(i), June 10, 1993, 107 Stat. 213, made technical amendment relating to placement of subpart VIII within part D of this subchapter.

§ 256c. Bulk purchases of vaccines for certain programs

(a) Agreements for purchases

(1) In general

Not later than 180 days after October 27, 1992, the Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the Administrator of the Health Resources and Services Administration, shall enter into negotiations with manufacturers of vaccines for the purpose of establishing and maintaining agreements under which entities described in paragraph (2) may purchase vaccines from the manufacturers at the prices specified in the agreements.

(2) Relevant entities

The entities referred to in paragraph (1) are entities that provide immunizations against vaccine-preventable diseases with assistance provided under section 254b of this title.

(b) Negotiation of prices

In carrying out subsection (a) of this section, the Secretary shall, to the extent practicable, ensure that the prices provided for in agreements under such subsection are comparable to the prices provided for in agreements negotiated by the Secretary on behalf of grantees under section 247b(j)(1) of this title.

(c) Authority of Secretary

In carrying out subsection (a) of this section, the Secretary, in the discretion of the Secretary, may enter into the agreements described in such subsection (and may decline to enter into such agreements), may modify such agreements, may extend such agreements, and may terminate such agreements.

(d) Rule of construction

This section may not be construed as requiring any State to reduce or terminate the supply of vaccines provided by the State to any of the entities described in subsection (a)(2) of this section.

(July 1, 1944, ch. 373, title III, § 340C, formerly § 340B, as added Pub. L. 102–531, title III, § 305, Oct. 27, 1992, 106 Stat. 3494; renumbered § 340C, Pub. L. 103–43, title XX, § 2008(i)(2)(A)(ii), June 10, 1993, 107 Stat. 213; amended Pub. L. 104–299, § 4(a)(2), Oct. 11, 1996, 110 Stat. 3645.)

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–299 substituted ''with assistance provided under section 254b of this title'' for ''under the programs established in sections 254b, 254c, 256, and 256a of this title.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–299 effective Oct. 1, 1996, see section 5 of Pub. L. 104–299, as amended, set out as a note under section 233 of this title.

§ 256d. Breast and cervical cancer information

(a) In general

As a condition of receiving grants, cooperative agreements, or contracts under this chapter, each of the entities specified in subsection (c) of this section shall, to the extent determined to be appropriate by the Secretary, make available information concerning breast and cervical cancer.

(b) Certain authorities

In carrying out subsection (a) of this section, an entity specified in subsection (c) of this section—

(1) may make the information involved available to such individuals as the entity determines appropriate;

(2) may, as appropriate, provide information under subsection (a) of this section on the need for self-examination of the breasts and on the skills for such self-examinations;

(3) shall provide information under subsection (a) of this section in the language and cultural context most appropriate to the individuals to whom the information is provided; and

(4) shall refer such clients as the entities determine appropriate for breast and cervical cancer screening, treatment, or other appropriate services.

(c) Relevant entities

The entities specified in this subsection are the following:

(1) Entities receiving assistance under section 247b–7[1] of this title (relating to tuberculosis).

(2) Entities receiving assistance under section 247c of this title (relating to sexually transmitted diseases).

(3) Migrant health centers receiving assistance under section 254b[1] of this title.

(4) Community health centers receiving assistance under section 254c[1] of this title.

(5) Entities receiving assistance under section 254b(h) of this title (relating to homeless individuals).

(6) Entities receiving assistance under section 256a[1] of this title (relating to health services for residents of public housing).

(7) Entities providing services with assistance under subchapter III–A of this chapter or subchapter XVII of this chapter.

(8) Entities receiving assistance under section 300 of this title (relating to family planning).

[1] See References in Text note below.

(9) Entities receiving assistance under subchapter XXIV of this chapter (relating to services with respect to acquired immune deficiency syndrome).

(10) Non-Federal entities authorized under the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(July 1, 1944, ch. 373, title III, § 340D, as added Pub. L. 103–183, title I, § 104, Dec. 14, 1993, 107 Stat. 2230; amended Pub. L. 106–310, div. A, title XXV, § 2502(b), Oct. 17, 2000, 114 Stat. 1163; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664.)

REFERENCES IN TEXT

Section 247b–7 of this title, referred to in subsec. (c)(1), relates to loan repayment program and not to assistance relating to tuberculosis.

Sections 254b and 254c of this title, referred to in subsec. (c)(3), (4), were in the original references to sections 329 and 330, meaning sections 329 and 330 of act July 1, 1944, which were omitted in the general amendment of subpart I (§ 254b et seq.) of this part by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

Section 256a of this title, referred to in subsec. (c)(6), was repealed by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

The Indian Self-Determination Act, referred to in subsec. (c)(10), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

AMENDMENTS

2002—Subsec. (c)(5). Pub. L. 107–251 substituted ''254b(h)'' for ''256''.

2000—Subsec. (c)(1). Pub. L. 106–310 substituted ''section 247b–7 of this title'' for ''section 247b–6 of this title''.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center, considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

SUBPART IX—SUPPORT OF GRADUATE MEDICAL EDUCATION PROGRAMS IN CHILDREN'S HOSPITALS

§ 256e. Program of payments to children's hospitals that operate graduate medical education programs

(a) Payments

The Secretary shall make two payments under this section to each children's hospital for each of fiscal years 2000 through 2005, one for the direct expenses and the other for indirect expenses associated with operating approved graduate medical residency training programs. The Secretary shall promulgate regulations pursuant to the rulemaking requirements of title 5 which shall govern payments made under this subpart.

(b) Amount of payments

(1) In general

Subject to paragraph (2), the amounts payable under this section to a children's hospital for an approved graduate medical residency training program for a fiscal year are each of the following amounts:

(A) Direct expense amount

The amount determined under subsection (c) of this section for direct expenses associated with operating approved graduate medical residency training programs.

(B) Indirect expense amount

The amount determined under subsection (d) of this section for indirect expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

(2) Capped amount

(A) In general

The total of the payments made to children's hospitals under paragraph (1)(A) or paragraph (1)(B) in a fiscal year shall not exceed the funds appropriated under paragraph (1) or (2), respectively, of subsection (f) of this section for such payments for that fiscal year.

(B) Pro rata reductions of payments for direct expenses

If the Secretary determines that the amount of funds appropriated under subsection (f)(1) of this section for a fiscal year is insufficient to provide the total amount of payments otherwise due for such periods under paragraph (1)(A), the Secretary shall reduce the amounts so payable on a pro rata basis to reflect such shortfall.

(c) Amount of payment for direct graduate medical education

(1) In general

The amount determined under this subsection for payments to a children's hospital for direct graduate expenses relating to approved graduate medical residency training programs for a fiscal year is equal to the product of—

(A) the updated per resident amount for direct graduate medical education, as determined under paragraph (2); and

(B) the average number of full-time equivalent residents in the hospital's graduate approved medical residency training programs (as determined under section 1395ww(h)(4) of this title during the fiscal year.

(2) Updated per resident amount for direct graduate medical education

The updated per resident amount for direct graduate medical education for a hospital for a fiscal year is an amount determined as follows:

(A) Determination of hospital single per resident amount

The Secretary shall compute for each hospital operating an approved graduate medical education program (regardless of whether or not it is a children's hospital) a single per resident amount equal to the average (weighted by number of full-time equivalent residents) of the primary care per resident amount and the non-primary care per resi-

dent amount computed under section 1395ww(h)(2) of this title for cost reporting periods ending during fiscal year 1997.

(B) Determination of wage and non-wage-related proportion of the single per resident amount

The Secretary shall estimate the average proportion of the single per resident amounts computed under subparagraph (A) that is attributable to wages and wage-related costs.

(C) Standardizing per resident amounts

The Secretary shall establish a standardized per resident amount for each such hospital—

(i) by dividing the single per resident amount computed under subparagraph (A) into a wage-related portion and a non-wage-related portion by applying the proportion determined under subparagraph (B);

(ii) by dividing the wage-related portion by the factor applied under section 1395ww(d)(3)(E) of this title for discharges occurring during fiscal year 1999 for the hospital's area; and

(iii) by adding the non-wage-related portion to the amount computed under clause (ii).

(D) Determination of national average

The Secretary shall compute a national average per resident amount equal to the average of the standardized per resident amounts computed under subparagraph (C) for such hospitals, with the amount for each hospital weighted by the average number of full-time equivalent residents at such hospital.

(E) Application to individual hospitals

The Secretary shall compute for each such hospital that is a children's hospital a per resident amount—

(i) by dividing the national average per resident amount computed under subparagraph (D) into a wage-related portion and a non-wage-related portion by applying the proportion determined under subparagraph (B);

(ii) by multiplying the wage-related portion by the factor described in subparagraph (C)(ii) for the hospital's area; and

(iii) by adding the non-wage-related portion to the amount computed under clause (ii).

(F) Updating rate

The Secretary shall update such per resident amount for each such children's hospital by the estimated percentage increase in the consumer price index for all urban consumers during the period beginning October 1997 and ending with the midpoint of the Federal fiscal year for which payments are made.

(d) Amount of payment for indirect medical education

(1) In general

The amount determined under this subsection for payments to a children's hospital for indirect expenses associated with the treatment of more severely ill patients and the additional costs associated with the teaching of residents for a fiscal year is equal to an amount determined appropriate by the Secretary.

(2) Factors

In determining the amount under paragraph (1), the Secretary shall—

(A) take into account variations in case mix among children's hospitals and the ratio of the number of full-time equivalent residents in the hospitals' approved graduate medical residency training programs to beds (but excluding beds or bassinets assigned to healthy newborn infants); and

(B) assure that the aggregate of the payments for indirect expenses associated with the treatment of more severely ill patients and the additional costs related to the teaching of residents under this section in a fiscal year are equal to the amount appropriated for such expenses for the fiscal year involved under subsection (f)(2) of this section.

(e) Making of payments

(1) Interim payments

The Secretary shall determine, before the beginning of each fiscal year involved for which payments may be made for a hospital under this section, the amounts of the payments for direct graduate medical education and indirect medical education for such fiscal year and shall (subject to paragraph (2)) make the payments of such amounts in 26 equal interim installments during such period. Such interim payments to each individual hospital shall be based on the number of residents reported in the hospital's most recently filed Medicare cost report prior to the application date for the Federal fiscal year for which the interim payment amounts are established. In the case of a hospital that does not report residents on a Medicare cost report, such interim payments shall be based on the number of residents trained during the hospital's most recently completed Medicare cost report filing period.

(2) Withholding

The Secretary shall withhold up to 25 percent from each interim installment for direct and indirect graduate medical education paid under paragraph (1). The Secretary shall withhold up to 25 percent from each interim installment for direct and indirect graduate medical education paid under paragraph (1) as necessary to ensure a hospital will not be overpaid on an interim basis.

(3) Reconciliation

Prior to the end of each fiscal year, the Secretary shall determine any changes to the number of residents reported by a hospital in the application of the hospital for the current fiscal year to determine the final amount payable to the hospital for the current fiscal year for both direct expense and indirect expense amounts. Based on such determination, the Secretary shall recoup any overpayments

made to pay any balance due to the extent possible. The final amount so determined shall be considered a final intermediary determination for the purposes of section 1395*oo* of this title and shall be subject to administrative and judicial review under that section in the same manner as the amount of payment under section 1395ww(d)[1] of this title is subject to review under such section.

(f) Authorization of appropriations

(1) Direct graduate medical education

(A) In general

There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, for payments under subsection (b)(1)(A) of this section—

(i) for fiscal year 2000, $90,000,000;

(ii) for fiscal year 2001, $95,000,000; and

(iii) for each of the fiscal years 2002 through 2005, such sums as may be necessary.

(B) Carryover of excess

The amounts appropriated under subparagraph (A) for fiscal year 2000 shall remain available for obligation through the end of fiscal year 2001.

(2) Indirect medical education

There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, for payments under subsection (b)(1)(A) of this section—

(A) for fiscal year 2000, $190,000,000;

(B) for fiscal year 2001, $190,000,000; and

(C) for each of the fiscal years 2002 through 2005, such sums as may be necessary.

(g) Definitions

In this section:

(1) Approved graduate medical residency training program

The term ''approved graduate medical residency training program'' has the meaning given the term ''approved medical residency training program'' in section 1395ww(h)(5)(A) of this title.

(2) Children's hospital

The term ''children's hospital'' means a hospital with a Medicare payment agreement and which is excluded from the Medicare inpatient prospective payment system pursuant to section 1395ww(d)(1)(B)(iii) of this title and its accompanying regulations.

(3) Direct graduate medical education costs

The term ''direct graduate medical education costs'' has the meaning given such term in section 1395ww(h)(5)(C) of this title.

(July 1, 1944, ch. 373, title III, § 340E, as added Pub. L. 106–129, § 4, Dec. 6, 1999, 113 Stat. 1671; amended Pub. L. 106–310, div. A, title XX, § 2001, Oct. 17, 2000, 114 Stat. 1155; Pub. L. 108–490, § 1(a), Dec. 23, 2004, 118 Stat. 3972.)

REFERENCES IN TEXT

Section 1395ww(d) of this title, referred to in subsec. (e)(3), was in the original ''section 1186(d) of such Act'' and was translated as reading ''section 1886(d) of such Act'', meaning section 1886(d) of the Social Security Act, to reflect the probable intent of Congress, because the Social Security Act does not contain a section 1186 and section 1395ww(d) of this title relates to review of inpatient hospital service payments.

AMENDMENTS

2004—Subsec. (d)(1). Pub. L. 108–490, § 1(a)(1), substituted ''costs associated with'' for ''costs related to''.

Subsec. (d)(2)(A). Pub. L. 108–490, § 1(a)(2), inserted ''ratio of the'' after ''hospitals and the'' and ''to beds (but excluding beds or bassinets assigned to healthy newborn infants)'' before semicolon.

2000—Subsec. (a). Pub. L. 106–310, § 2001(a), substituted ''2000 through 2005'' for ''2000 and 2001'' and inserted at end ''The Secretary shall promulgate regulations pursuant to the rulemaking requirements of title 5 which shall govern payments made under this subpart.''.

Subsec. (c)(2)(F). Pub. L. 106–310, § 2001(b), substituted ''Federal fiscal year for which payments are made'' for ''hospital's cost reporting period that begins during fiscal year 2000''.

Subsec. (e)(1). Pub. L. 106–310, § 2001(c), inserted at end ''Such interim payments to each individual hospital shall be based on the number of residents reported in the hospital's most recently filed Medicare cost report prior to the application date for the Federal fiscal year for which the interim payment amounts are established. In the case of a hospital that does not report residents on a Medicare cost report, such interim payments shall be based on the number of residents trained during the hospital's most recently completed Medicare cost report filing period.''

Subsec. (e)(2). Pub. L. 106–310, § 2001(d), inserted ''and indirect'' after ''interim installment for direct'' and inserted at end ''The Secretary shall withhold up to 25 percent from each interim installment for direct and indirect graduate medical education paid under paragraph (1) as necessary to ensure a hospital will not be overpaid on an interim basis.''

Subsec. (e)(3). Pub. L. 106–310, § 2001(e), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''At the end of each fiscal year for which payments may be made under this section, the hospital shall submit to the Secretary such information as the Secretary determines to be necessary to determine the percent (if any) of the total amount withheld under paragraph (2) that is due under this section for the hospital for the fiscal year. Based on such determination, the Secretary shall recoup any overpayments made, or pay any balance due. The amount so determined shall be considered a final intermediary determination for purposes of applying section 1395*oo* of this title and shall be subject to review under that section in the same manner as the amount of payment under section 1395ww(d) of this title is subject to review under such section.''

Subsec. (f)(1)(A)(iii). Pub. L. 106–310, § 2001(f)(1), added cl. (iii).

Subsec. (f)(2)(C). Pub. L. 106–310, § 2001(f)(2), added subpar. (C).

Subsec. (g)(2). Pub. L. 106–310, § 2001(g), substituted ''with a Medicare payment agreement and which is excluded from the Medicare inpatient prospective payment system pursuant to section 1395ww(d)(1)(B)(iii) of this title and its accompanying regulations'' for ''described in section 1395ww(d)(1)(B)(iii) of this title''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–490, § 1(b), Dec. 23, 2004, 118 Stat. 3972, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments for periods beginning with fiscal year 2005.''

SUBPART X—PRIMARY DENTAL PROGRAMS

§ 256f. Designated dental health professional shortage area

In this subpart, the term ''designated dental health professional shortage area'' means an

[1] See References in Text note below.

area, population group, or facility that is designated by the Secretary as a dental health professional shortage area under section 254e of this title or designated by the applicable State as having a dental health professional shortage.

(July 1, 1944, ch. 373, title III, § 340F, as added Pub. L. 107–251, title IV, § 403, Oct. 26, 2002, 116 Stat. 1660.)

§ 256g. Grants for innovative programs

(a) Grant program authorized

The Secretary, acting through the Administrator of the Health Resources and Services Administration, is authorized to award grants to States for the purpose of helping States develop and implement innovative programs to address the dental workforce needs of designated dental health professional shortage areas in a manner that is appropriate to the States' individual needs.

(b) State activities

A State receiving a grant under subsection (a) of this section may use funds received under the grant for—

(1) loan forgiveness and repayment programs for dentists who—

(A) agree to practice in designated dental health professional shortage areas;

(B) are dental school graduates who agree to serve as public health dentists for the Federal, State, or local government; and

(C) agree to—

(i) provide services to patients regardless of such patients' ability to pay; and

(ii) use a sliding payment scale for patients who are unable to pay the total cost of services;

(2) dental recruitment and retention efforts;

(3) grants and low-interest or no-interest loans to help dentists who participate in the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) to establish or expand practices in designated dental health professional shortage areas by equipping dental offices or sharing in the overhead costs of such practices;

(4) the establishment or expansion of dental residency programs in coordination with accredited dental training institutions in States without dental schools;

(5) programs developed in consultation with State and local dental societies to expand or establish oral health services and facilities in designated dental health professional shortage areas, including services and facilities for children with special needs, such as—

(A) the expansion or establishment of a community-based dental facility, free-standing dental clinic, consolidated health center dental facility, school-linked dental facility, or United States dental school-based facility;

(B) the establishment of a mobile or portable dental clinic; and

(C) the establishment or expansion of private dental services to enhance capacity through additional equipment or additional hours of operation;

(6) placement and support of dental students, dental residents, and advanced dentistry trainees;

(7) continuing dental education, including distance-based education;

(8) practice support through teledentistry conducted in accordance with State laws;

(9) community-based prevention services such as water fluoridation and dental sealant programs;

(10) coordination with local educational agencies within the State to foster programs that promote children going into oral health or science professions;

(11) the establishment of faculty recruitment programs at accredited dental training institutions whose mission includes community outreach and service and that have a demonstrated record of serving underserved States;

(12) the development of a State dental officer position or the augmentation of a State dental office to coordinate oral health and access issues in the State; and

(13) any other activities determined to be appropriate by the Secretary.

(c) Application

(1) In general

Each State desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(2) Assurances

The application shall include assurances that the State will meet the requirements of subsection (d) of this section and that the State possesses sufficient infrastructure to manage the activities to be funded through the grant and to evaluate and report on the outcomes resulting from such activities.

(d) Matching requirement

The Secretary may not make a grant to a State under this section unless that State agrees that, with respect to the costs to be incurred by the State in carrying out the activities for which the grant was awarded, the State will provide non-Federal contributions in an amount equal to not less than 40 percent of Federal funds provided under the grant. The State may provide the contributions in cash or in kind, fairly evaluated, including plant, equipment, and services and may provide the contributions from State, local, or private sources.

(e) Report

Not later than 5 years after October 26, 2002, the Secretary shall prepare and submit to the appropriate committees of Congress a report containing data relating to whether grants provided under this section have increased access to dental services in designated dental health professional shortage areas.

(f) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $50,000,000 for the 5-fiscal year period beginning with fiscal year 2002.

(July 1, 1944, ch. 373, title III, § 340G, as added Pub. L. 107–251, title IV, § 403, Oct. 26, 2002, 116 Stat. 1661.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended.

Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PART E—NARCOTIC ADDICTS AND OTHER DRUG ABUSERS

§ 257. Repealed. Pub. L. 106–310, div. B, title XXXIV, § 3405(a), Oct. 17, 2000, 114 Stat. 1221

Section, acts July 1, 1944, ch. 373, title III, § 341, 58 Stat. 698; May 8, 1954, ch. 195, § 3, 68 Stat. 80; July 24, 1956, ch. 676, title III, § 302(a), 70 Stat. 622; Pub. L. 89–793, title VI, § 601, Nov. 8, 1966, 80 Stat. 1449; 1967 Reorg. Plan No. 3, § 401, eff. Nov. 3, 1967 (in part), 32 F.R. 11669, 81 Stat. 951; Pub. L. 91–513, title I, § 2(a)(1), Oct. 27, 1970, 84 Stat. 1240; Pub. L. 92–255, title IV, § 402, Mar. 21, 1972, 86 Stat. 77; Pub. L. 93–198, title IV, § 421, Dec. 24, 1973, 87 Stat. 789; Pub. L. 98–473, title II, § 232(a), Oct. 12, 1984, 98 Stat. 2031; Pub. L. 99–646, § 22(a), Nov. 10, 1986, 100 Stat. 3597; Pub. L. 102–54, § 13(q)(1)(B)(i), June 13, 1991, 105 Stat. 278, related to care and treatment of narcotic addicts.

§ 257a. Transferred

CODIFICATION

Section, Pub. L. 91–513, title I, § 4, Oct. 27, 1970, 84 Stat. 1241; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which related to medical treatment of narcotics addiction, was transferred to section 290bb–2a of this title.

§ 258. Repealed. Pub. L. 106–310, div. B, title XXXIV, § 3405(a), Oct. 17, 2000, 114 Stat. 1221

Section, acts July 1, 1944, ch. 373, title III, § 342, 58 Stat. 699; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 91–513, title I, § 2(a)(2)(A), Oct. 27, 1970, 84 Stat. 1240; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to employment, establishment of industries, plants, etc., sale of commodities, and disposition of proceeds.

§ 258a. Transferred

CODIFICATION

Section, act July 8, 1947, ch. 210, title II, § 201, 61 Stat. 269, which related to transfer of balances in working capital fund, narcotic hospitals, to surplus fund, was transferred and is set out as a note under section 290aa of this title.

§§ 259 to 261a. Repealed. Pub. L. 106–310, div. B, title XXXIV, § 3405(a), Oct. 17, 2000, 114 Stat. 1221

Section 259, acts July 1, 1944, ch. 373, title III, § 343, 58 Stat. 699; Pub. L. 91–513, title I, § 2(a)(2)(A), (3), (4), Oct. 27, 1970, 84 Stat. 1240; Pub. L. 92–293, § 3, May 11, 1972, 86 Stat. 136; Pub. L. 98–473, title II, § 232(b), Oct. 12, 1984, 98 Stat. 2031, related to convict addicts or other persons with drug abuse or drug dependence problems.

Section 260, acts July 1, 1944, ch. 373, title III, § 344, 58 Stat. 701; June 25, 1948, ch. 654, § 5, 62 Stat. 1018; July 24, 1956, ch. 676, title III, § 302(b), 70 Stat. 622; Pub. L. 91–513, title I, § 2(a)(2)(A), (3), (4), Oct. 27, 1970, 84 Stat. 1240, related to addicts and persons with drug abuse or drug dependence problems.

Section 260a, act July 1, 1944, ch. 373, title III, § 345, as added May 8, 1954, ch. 195, § 2, 68 Stat. 79; amended July 24, 1956, ch. 676, title III, § 302(c), 70 Stat. 622; Pub. L. 91–358, title I, § 155(c)(32), July 29, 1970, 84 Stat. 572, related to admission of addicts committed from District of Columbia.

Section 261, acts July 1, 1944, ch. 373, title III, § 346, formerly § 345, 58 Stat. 701; renumbered § 346, May 8, 1954, ch. 195, § 2, 68 Stat. 79; amended Pub. L. 91–513, title I, § 2(a)(2)(A), (5), Oct. 27, 1970, 84 Stat. 1240, related to penalties for introducing prohibited articles and substances into hospitals and escaping from, or aiding and abetting escape from hospitals.

Section 261a, act July 1, 1944, ch. 373, title III, § 347, as added May 8, 1954, ch. 195, § 4, 68 Stat. 80; amended Pub. L. 91–513, title I, § 2(a)(4), Oct. 27, 1970, 84 Stat. 1240, related to release of patients and determination by Surgeon General.

PART F—LICENSING OF BIOLOGICAL PRODUCTS AND CLINICAL LABORATORIES

SUBPART 1—BIOLOGICAL PRODUCTS

§ 262. Regulation of biological products

(a) Biologics license

(1) No person shall introduce or deliver for introduction into interstate commerce any biological product unless—

(A) a biologics license is in effect for the biological product; and

(B) each package of the biological product is plainly marked with—

(i) the proper name of the biological product contained in the package;

(ii) the name, address, and applicable license number of the manufacturer of the biological product; and

(iii) the expiration date of the biological product.

(2)(A) The Secretary shall establish, by regulation, requirements for the approval, suspension, and revocation of biologics licenses.

(B) PEDIATRIC STUDIES.—A person that submits an application for a license under this paragraph shall submit to the Secretary as part of the application any assessments required under section 505B of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355c].

(C) The Secretary shall approve a biologics license application—

(i) on the basis of a demonstration that—

(I) the biological product that is the subject of the application is safe, pure, and potent; and

(II) the facility in which the biological product is manufactured, processed, packed, or held meets standards designed to assure that the biological product continues to be safe, pure, and potent; and

(ii) if the applicant (or other appropriate person) consents to the inspection of the facility that is the subject of the application, in accordance with subsection (c) of this section.

(3) The Secretary shall prescribe requirements under which a biological product undergoing investigation shall be exempt from the requirements of paragraph (1).

(b) Falsely labeling or marking package or container; altering label or mark

No person shall falsely label or mark any package or container of any biological product or alter any label or mark on the package or container of the biological product so as to falsify the label or mark.

(c) Inspection of establishment for propagation and preparation

Any officer, agent, or employee of the Department of Health and Human Services, authorized

by the Secretary for the purpose, may during all reasonable hours enter and inspect any establishment for the propagation or manufacture and preparation of any biological product.

(d) Recall of product presenting imminent hazard; violations

(1) Upon a determination that a batch, lot, or other quantity of a product licensed under this section presents an imminent or substantial hazard to the public health, the Secretary shall issue an order immediately ordering the recall of such batch, lot, or other quantity of such product. An order under this paragraph shall be issued in accordance with section 554 of title 5.

(2) Any violation of paragraph (1) shall subject the violator to a civil penalty of up to $100,000 per day of violation. The amount of a civil penalty under this paragraph shall, effective December 1 of each year beginning 1 year after the effective date of this paragraph, be increased by the percent change in the Consumer Price Index for the base quarter of such year over the Consumer Price Index for the base quarter of the preceding year, adjusted to the nearest 1/10 of 1 percent. For purposes of this paragraph, the term ''base quarter'', as used with respect to a year, means the calendar quarter ending on September 30 of such year and the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter.

(e) Interference with officers

No person shall interfere with any officer, agent, or employee of the Service in the performance of any duty imposed upon him by this section or by regulations made by authority thereof.

(f) Penalties for offenses

Any person who shall violate, or aid or abet in violating, any of the provisions of this section shall be punished upon conviction by a fine not exceeding $500 or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

(g) Construction with other laws

Nothing contained in this chapter shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(h) Exportation of partially processed biological products

A partially processed biological product which—

(1) is not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man;

(2) is not intended for sale in the United States; and

(3) is intended for further manufacture into final dosage form outside the United States,

shall be subject to no restriction on the export of the product under this chapter or the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et. seq.] if the product is manufactured, processed, packaged, and held in conformity with current good manufacturing practice requirements or meets international manufacturing standards as certified by an international standards organization recognized by the Secretary and meets the requirements of section 801(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(e)).

(i) "Biological product" defined

In this section, the term ''biological product'' means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition of human beings.

(j) Application of Federal Food, Drug, and Cosmetic Act

The Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] applies to a biological product subject to regulation under this section, except that a product for which a license has been approved under subsection (a) shall not be required to have an approved application under section 505 of such Act [21 U.S.C. 355].

(July 1, 1944, ch. 373, title III, § 351, 58 Stat. 702; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 85–881, § 2, Sept. 2, 1958, 72 Stat. 1704; Pub. L. 91–515, title II, § 291, Oct. 30, 1970, 84 Stat. 1308; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 99–660, title I, § 105(a), title III, § 315, Nov. 14, 1986, 100 Stat. 3751, 3783; Pub. L. 102–300, § 6(b)(1), June 16, 1992, 106 Stat. 240; Pub. L. 104–134, title II, §§ 2102(d)(2), 2104, Apr. 26, 1996, 110 Stat. 1321–319, 1321–320; Pub. L. 105–115, title I, § 123(a)–(d), (g), Nov. 21, 1997, 111 Stat. 2323, 2324; Pub. L. 108–155, § 2(b)(3), Dec. 3, 2003, 117 Stat. 1941.)

REFERENCES IN TEXT

The effective date of this paragraph, referred to in subsec. (d)(2), is the effective date of section 315 of Pub. L. 99–660 which added subsec. (d)(2). See Effective Date of 1986 Amendment note set out below.

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (g), (h), and (j), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

AMENDMENTS

2003—Subsec. (a)(2)(B), (C). Pub. L. 108–155 added subpar. (B) and redesignated former subpar. (B) as (C).

1997—Subsec. (a). Pub. L. 105–115, § 123(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to intrastate and interstate traffic in biological products and suspension or revocation of licenses as affecting prior sales.

Subsec. (b). Pub. L. 105–115, § 123(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''No person shall falsely label or mark any package or container of any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid; nor alter any label or mark on any package or container of any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid so as to falsify such label or mark.''

Subsec. (c). Pub. L. 105–115, § 123(c), substituted ''biological product.'' for ''virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid for sale, barter, or exchange in the District of Columbia, or to be sent, carried, or brought from any State or possession

into any other State or possession or into any foreign country, or from any foreign country into any State or possession.''

Subsec. (d). Pub. L. 105–115, § 123(a)(2), designated par. (2) as subsec. (d), redesignated subpars. (A) and (B) of par. (2) as pars. (1) and (2), respectively, in par. (2), substituted ''Any violation of paragraph (1)'' for ''Any violation of subparagraph (A)'' and substituted ''this paragraph'' for ''this subparagraph'' wherever appearing, and struck out former par. (1) which read as follows: ''Licenses for the maintenance of establishments for the propagation or manufacture and preparation of products described in subsection (a) of this section may be issued only upon a showing that the establishment and the products for which a license is desired meet standards, designed to insure the continued safety, purity, and potency of such products, prescribed in regulations, and licenses for new products may be issued only upon a showing that they meet such standards. All such licenses shall be issued, suspended, and revoked as prescribed by regulations and all licenses issued for the maintenance of establishments for the propagation or manufacture and preparation, in any foreign country, of any such products for sale, barter, or exchange in any State or possession shall be issued upon condition that the licensees will permit the inspection of their establishments in accordance with subsection (c) of this section.''

Subsec. (i). Pub. L. 105–115, § 123(d), added subsec. (i).

Subsec. (j). Pub. L. 105–115, § 123(g), added subsec. (j).

1996—Subsec. (h). Pub. L. 104–134, § 2104, amended subsec. (h) generally, revising and restating former provisions, which also related to exportation of partially processed biological products.

Subsec. (h)(1)(A). Pub. L. 104–134, § 2102(d)(2), substituted ''in a country listed under section 802(b)(1)'' for ''in a country listed under section 802(b)(A)'' and ''to a country listed under section 802(b)(1)'' for ''to a country listed under section 802(b)(4)''.

1992—Subsec. (c). Pub. L. 102–300, which directed substitution of ''Health and Human Services'' for ''Health, Education, and Welfare'', could not be executed because the words ''Health, Education, and Welfare'' did not appear in original statutory text. Previously, references to Department and Secretary of Health and Human Services were substituted for references to Federal Security Agency and its Administrator pursuant to provisions cited in Transfer of Functions note below.

1986—Subsec. (d). Pub. L. 99–660, § 315, designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 99–660, § 105(a), added subsec. (h).

1970—Subsecs. (a) to (c). Pub. L. 91–515 inserted ''vaccine, blood, blood component or derivative, allergenic product,'' after ''antitoxin'' wherever appearing.

1958—Subsec. (d). Pub. L. 85–881 struck out ''made jointly by the Surgeon General, the Surgeon General of the Army, and the Surgeon General of the Navy, and approved by the Secretary'' after ''regulations'' in first sentence.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–155 effective Dec. 3, 2003, except as otherwise provided, see section 4 of Pub. L. 108–155, set out as an Effective Date note under section 355c of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–115 effective 90 days after Nov. 21, 1997, except as otherwise provided, see section 501 of Pub. L. 105–115, set out as a note under section 321 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 105(b) of Pub. L. 99–660 provided that: ''Paragraph (1) of section 351(h) of the Public Health Service Act [former subsec. (h)(1) of this section] as added by subsection (a) shall take effect upon the expiration of 90 days after the date of the enactment of this Act [Nov. 14, 1986].''

Amendment by section 315 of Pub. L. 99–660 effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

References to Secretary and Department of Health, Education, and Welfare substituted for references to Federal Security Administrator and Federal Security Agency, respectively, pursuant to Reorg. Plan No. 1 of 1953, § 5, set out as a note under section 3501 of this title, which transferred all functions of Federal Security Administrator to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency to Department of Health, Education, and Welfare. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

ENHANCED PENALTIES AND CONTROL OF BIOLOGICAL AGENTS

Pub. L. 104–132, title V, § 511, Apr. 24, 1996, 110 Stat. 1284, as amended by Pub. L. 107–188, title II, § 204, June 12, 2002, 116 Stat. 647, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) certain biological agents have the potential to pose a severe threat to public health and safety;

''(2) such biological agents can be used as weapons by individuals or organizations for the purpose of domestic or international terrorism or for other criminal purposes;

''(3) the transfer and possession of potentially hazardous biological agents should be regulated to protect public health and safety; and

''(4) efforts to protect the public from exposure to such agents should ensure that individuals and groups with legitimate objectives continue to have access to such agents for clinical and research purposes.

''(b) CRIMINAL ENFORCEMENT.—[Amended sections 175, 177, and 178 of Title 18, Crimes and Criminal Procedure.]

''(c) TERRORISM.—[Amended section 2332a of Title 18.]''

§ 262a. Enhanced control of dangerous biological agents and toxins

(a) Regulatory control of certain biological agents and toxins

(1) List of biological agents and toxins

(A) In general

The Secretary shall by regulation establish and maintain a list of each biological agent and each toxin that has the potential to pose a severe threat to public health and safety.

(B) Criteria

In determining whether to include an agent or toxin on the list under subparagraph (A), the Secretary shall—

(i) consider—

(I) the effect on human health of exposure to the agent or toxin;

(II) the degree of contagiousness of the agent or toxin and the methods by which the agent or toxin is transferred to humans;

(III) the availability and effectiveness of pharmacotherapies and immunizations to treat and prevent any illness resulting from infection by the agent or toxin; and

(IV) any other criteria, including the needs of children and other vulnerable populations, that the Secretary considers appropriate; and

(ii) consult with appropriate Federal departments and agencies and with scientific experts representing appropriate professional groups, including groups with pediatric expertise.

(2) Biennial review

The Secretary shall review and republish the list under paragraph (1) biennially, or more often as needed, and shall by regulation revise the list as necessary in accordance with such paragraph.

(b) Regulation of transfers of listed agents and toxins

The Secretary shall by regulation provide for—

(1) the establishment and enforcement of safety procedures for the transfer of listed agents and toxins, including measures to ensure—

(A) proper training and appropriate skills to handle such agents and toxins; and

(B) proper laboratory facilities to contain and dispose of such agents and toxins;

(2) the establishment and enforcement of safeguard and security measures to prevent access to such agents and toxins for use in domestic or international terrorism or for any other criminal purpose;

(3) the establishment of procedures to protect the public safety in the event of a transfer or potential transfer of such an agent or toxin in violation of the safety procedures established under paragraph (1) or the safeguard and security measures established under paragraph (2); and

(4) appropriate availability of biological agents and toxins for research, education, and other legitimate purposes.

(c) Possession and use of listed agents and toxins

The Secretary shall by regulation provide for the establishment and enforcement of standards and procedures governing the possession and use of listed agents and toxins, including the provisions described in paragraphs (1) through (4) of subsection (b) of this section, in order to protect the public health and safety.

(d) Registration; identification; database

(1) Registration

Regulations under subsections (b) and (c) of this section shall require registration with the Secretary of the possession, use, and transfer of listed agents and toxins, and shall include provisions to ensure that persons seeking to register under such regulations have a lawful purpose to possess, use, or transfer such agents and toxins, including provisions in accordance with subsection (e)(6) of this section.

(2) Identification; database

Regulations under subsections (b) and (c) of this section shall require that registration include (if available to the person registering) information regarding the characterization of listed agents and toxins to facilitate their identification, including their source. The Secretary shall maintain a national database that includes the names and locations of registered persons, the listed agents and toxins such persons are possessing, using, or transferring, and information regarding the characterization of such agents and toxins.

(e) Safeguard and security requirements for registered persons

(1) In general

Regulations under subsections (b) and (c) of this section shall include appropriate safeguard and security requirements for persons possessing, using, or transferring a listed agent or toxin commensurate with the risk such agent or toxin poses to public health and safety (including the risk of use in domestic or international terrorism). The Secretary shall establish such requirements in collaboration with the Secretary of Homeland Security and the Attorney General, and shall ensure compliance with such requirements as part of the registration system under such regulations.

(2) Limiting access to listed agents and toxins

Requirements under paragraph (1) shall include provisions to ensure that registered persons—

(A) provide access to listed agents and toxins to only those individuals whom the registered person involved determines have a legitimate need to handle or use such agents and toxins;

(B) submit the names and other identifying information for such individuals to the Secretary and the Attorney General, promptly after first determining that the individuals need access under subparagraph (A), and periodically thereafter while the individuals have such access, not less frequently than once every five years;

(C) deny access to such agents and toxins by individuals whom the Attorney General has identified as restricted persons; and

(D) limit or deny access to such agents and toxins by individuals whom the Attorney General has identified as within any category under paragraph (3)(B)(ii), if limiting or denying such access by the individuals involved is determined appropriate by the Secretary, in consultation with the Attorney General.

(3) Submitted names; use of databases by attorney general

(A) In general

Upon the receipt of names and other identifying information under paragraph (2)(B), the Attorney General shall, for the sole purpose of identifying whether the individuals involved are within any of the categories

specified in subparagraph (B), promptly use criminal, immigration, national security, and other electronic databases that are available to the Federal Government and are appropriate for such purpose.

(B) Certain individuals

For purposes of subparagraph (A), the categories specified in this subparagraph regarding an individual are that—

(i) the individual is a restricted person; or

(ii) the individual is reasonably suspected by any Federal law enforcement or intelligence agency of—

(I) committing a crime set forth in section 2332b(g)(5) of title 18;

(II) knowing involvement with an organization that engages in domestic or international terrorism (as defined in section 2331 of such title 18) or with any other organization that engages in intentional crimes of violence; or

(III) being an agent of a foreign power (as defined in section 1801 of title 50).

(C) Notification by Attorney General regarding submitted names

After the receipt of a name and other identifying information under paragraph (2)(B), the Attorney General shall promptly notify the Secretary whether the individual is within any of the categories specified in subparagraph (B).

(4) Notifications by Secretary

The Secretary, after receiving notice under paragraph (3) regarding an individual, shall promptly notify the registered person involved of whether the individual is granted or denied access under paragraph (2). If the individual is denied such access, the Secretary shall promptly notify the individual of the denial.

(5) Expedited review

Regulations under subsections (b) and (c) of this section shall provide for a procedure through which, upon request to the Secretary by a registered person who submits names and other identifying information under paragraph (2)(B) and who demonstrates good cause, the Secretary may, as determined appropriate by the Secretary—

(A) request the Attorney General to expedite the process of identification under paragraph (3)(A) and notification of the Secretary under paragraph (3)(C); and

(B) expedite the notification of the registered person by the Secretary under paragraph (4).

(6) Process regarding persons seeking to register

(A) Individuals

Regulations under subsections (b) and (c) of this section shall provide that an individual who seeks to register under either of such subsections is subject to the same processes described in paragraphs (2) through (4) as apply to names and other identifying information submitted to the Attorney General under paragraph (2)(B). Paragraph (5) does not apply for purposes of this subparagraph.

(B) Other persons

Regulations under subsections (b) and (c) of this section shall provide that, in determining whether to deny or revoke registration by a person other than an individual, the Secretary shall submit the name of such person to the Attorney General, who shall use criminal, immigration, national security, and other electronic databases available to the Federal Government, as appropriate for the purpose of promptly notifying the Secretary whether the person, or, where relevant, the individual who owns or controls such person, is a restricted person or is reasonably suspected by any Federal law enforcement or intelligence agency of being within any category specified in paragraph (3)(B)(ii) (as applied to persons, including individuals). Such regulations shall provide that a person who seeks to register under either of such subsections is subject to the same processes described in paragraphs (2) and (4) as apply to names and other identifying information submitted to the Attorney General under paragraph (2)(B). Paragraph (5) does not apply for purposes of this subparagraph. The Secretary may exempt Federal, State, or local governmental agencies from the requirements of this subparagraph.

(7) Review

(A) Administrative review

(i) In general

Regulations under subsections (b) and (c) of this section shall provide for an opportunity for a review by the Secretary—

(I) when requested by the individual involved, of a determination under paragraph (2) to deny the individual access to listed agents and toxins; and

(II) when requested by the person involved, of a determination under paragraph (6) to deny or revoke registration for such person.

(ii) Ex parte review

During a review under clause (i), the Secretary may consider information relevant to the review ex parte to the extent that disclosure of the information could compromise national security or an investigation by any law enforcement agency.

(iii) Final agency action

The decision of the Secretary in a review under clause (i) constitutes final agency action for purposes of section 702 of title 5.

(B) Certain procedures

(i) Submission of ex parte materials in judicial proceedings

When reviewing a decision of the Secretary under subparagraph (A), and upon request made ex parte and in writing by the United States, a court, upon a sufficient showing, may review and consider ex parte documents containing information the disclosure of which could compromise national security or an investigation by

any law enforcement agency. If the court determines that portions of the documents considered ex parte should be disclosed to the person involved to allow a response, the court shall authorize the United States to delete from such documents specified items of information the disclosure of which could compromise national security or an investigation by any law enforcement agency, or to substitute a summary of the information to which the person may respond. Any order by the court authorizing the disclosure of information that the United States believes could compromise national security or an investigation by any law enforcement agency shall be subject to the processes set forth in subparagraphs (A) and (B)(i) of section 2339B(f)(5) of title 18 (relating to interlocutory appeal and expedited consideration).

(ii) Disclosure of information

In a review under subparagraph (A), and in any judical[1] proceeding conducted pursuant to such review, neither the Secretary nor the Attorney General may be required to disclose to the public any information that under subsection (h) of this section shall not be disclosed under section 552 of title 5.

(8) Notifications regarding theft or loss of agents

Requirements under paragraph (1) shall include the prompt notification of the Secretary, and appropriate Federal, State, and local law enforcement agencies, of the theft or loss of listed agents and toxins.

(9) Technical assistance for registered persons

The Secretary, in consultation with the Attorney General, may provide technical assistance to registered persons to improve security of the facilities of such persons.

(f) Inspections

The Secretary shall have the authority to inspect persons subject to regulations under subsection (b) or (c) of this section to ensure their compliance with such regulations, including prohibitions on restricted persons and other provisions of subsection (e) of this section.

(g) Exemptions

(1) Clinical or diagnostic laboratories

Regulations under subsections (b) and (c) of this section shall exempt clinical or diagnostic laboratories and other persons who possess, use, or transfer listed agents or toxins that are contained in specimens presented for diagnosis, verification, or proficiency testing, provided that—

(A) the identification of such agents or toxins is reported to the Secretary, and when required under Federal, State, or local law, to other appropriate authorities; and

(B) such agents or toxins are transferred or destroyed in a manner set forth by the Secretary by regulation.

(2) Products

(A) In general

Regulations under subsections (b) and (c) of this section shall exempt products that are, bear, or contain listed agents or toxins and are cleared, approved, licensed, or registered under any of the Acts specified in subparagraph (B), unless the Secretary by order determines that applying additional regulation under subsection (b) or (c) of this section to a specific product is necessary to protect public health and safety.

(B) Relevant laws

For purposes of subparagraph (A), the Acts specified in this subparagraph are the following:

(i) The Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(ii) Section 262 of this title.

(iii) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading ''Bureau of Animal Industry'' in the Act of March 4, 1913; 21 U.S.C. 151–159).

(iv) The Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

(C) Investigational use

(i) In general

The Secretary may exempt an investigational product that is, bears, or contains a listed agent or toxin from the applicability of provisions of regulations under subsection (b) or (c) of this section when such product is being used in an investigation authorized under any Federal Act and the Secretary determines that applying additional regulation under subsection (b) or (c) of this section to such product is not necessary to protect public health and safety.

(ii) Certain processes

Regulations under subsections (b) and (c) of this section shall set forth the procedures for applying for an exemption under clause (i). In the case of investigational products authorized under any of the Acts specified in subparagraph (B), the Secretary shall make a determination regarding a request for an exemption not later than 14 days after the first date on which both of the following conditions have been met by the person requesting the exemption:

(I) The person has submitted to the Secretary an application for the exemption meeting the requirements established by the Secretary.

(II) The person has notified the Secretary that the investigation has been authorized under such an Act.

(3) Public health emergencies

The Secretary may temporarily exempt a person from the applicability of the requirements of this section, in whole or in part, if the Secretary determines that such exemption is necessary to provide for the timely participation of the person in a response to a domes-

[1] So in original. Probably should be ''judicial''.

tic or foreign public health emergency (whether determined under section 247d(a) of this title or otherwise) that involves a listed agent or toxin. With respect to the emergency involved, such exemption for a person may not exceed 30 days, except that the Secretary, after review of whether such exemption remains necessary, may provide one extension of an additional 30 days.

(4) Agricultural emergencies

Upon request of the Secretary of Agriculture, after the granting by such Secretary of an exemption under section 8401(g)(1)(D) of title 7 pursuant to a finding that there is an agricultural emergency, the Secretary of Health and Human Services may temporarily exempt a person from the applicability of the requirements of this section, in whole or in part, to provide for the timely participation of the person in a response to the agricultural emergency. With respect to the emergency involved, the exemption under this paragraph for a person may not exceed 30 days, except that upon request of the Secretary of Agriculture, the Secretary of Health and Human Services may, after review of whether such exemption remains necessary, provide one extension of an additional 30 days.

(h) Disclosure of information

(1) Nondisclosure of certain information

No Federal agency specified in paragraph (2) shall disclose under section 552 of title 5 any of the following:

(A) Any registration or transfer documentation submitted under subsections (b) and (c) of this section for the possession, use, or transfer of a listed agent or toxin; or information derived therefrom to the extent that it identifies the listed agent or toxin possessed, used, or transferred by a specific registered person or discloses the identity or location of a specific registered person.

(B) The national database developed pursuant to subsection (d) of this section, or any other compilation of the registration or transfer information submitted under subsections (b) and (c) of this section to the extent that such compilation discloses site-specific registration or transfer information.

(C) Any portion of a record that discloses the site-specific or transfer-specific safeguard and security measures used by a registered person to prevent unauthorized access to listed agents and toxins.

(D) Any notification of a release of a listed agent or toxin submitted under subsections (b) and (c) of this section, or any notification of theft or loss submitted under such subsections.

(E) Any portion of an evaluation or report of an inspection of a specific registered person conducted under subsection (f) of this section that identifies the listed agent or toxin possessed by a specific registered person or that discloses the identity or location of a specific registered person if the agency determines that public disclosure of the information would endanger public health or safety.

(2) Covered agencies

For purposes of paragraph (1) only, the Federal agencies specified in this paragraph are the following:

(A) The Department of Health and Human Services, the Department of Justice, the Department of Agriculture, and the Department of Transportation.

(B) Any Federal agency to which information specified in paragraph (1) is transferred by any agency specified in subparagraph (A) of this paragraph.

(C) Any Federal agency that is a registered person, or has a sub-agency component that is a registered person.

(D) Any Federal agency that awards grants or enters into contracts or cooperative agreements involving listed agents and toxins to or with a registered person, and to which information specified in paragraph (1) is transferred by any such registered person.

(3) Other exemptions

This subsection may not be construed as altering the application of any exemptions to public disclosure under section 552 of title 5, except as to subsection [2] 552(b)(3) of such title, to any of the information specified in paragraph (1).

(4) Rule of construction

Except as specifically provided in paragraph (1), this subsection may not be construed as altering the authority of any Federal agency to withhold under section 552 of title 5, or the obligation of any Federal agency to disclose under section 552 of title 5, any information, including information relating to—

(A) listed agents and toxins, or individuals seeking access to such agents and toxins;

(B) registered persons, or persons seeking to register their possession, use, or transfer of such agents and toxins;

(C) general safeguard and security policies and requirements under regulations under subsections (b) and (c) of this section; or

(D) summary or statistical information concerning registrations, registrants, denials or revocations of registrations, listed agents and toxins, inspection evaluations and reports, or individuals seeking access to such agents and toxins.

(5) Disclosures to Congress; other disclosures

This subsection may not be construed as providing any authority—

(A) to withhold information from the Congress or any committee or subcommittee thereof; or

(B) to withhold information from any person under any other Federal law or treaty.

(i) Civil money penalty

(1) In general

In addition to any other penalties that may apply under law, any person who violates any provision of regulations under subsection (b) or (c) of this section shall be subject to the United States for a civil money penalty in an amount not exceeding $250,000 in the case of an

[2] So in original. Probably should be ''section''.

individual and $500,000 in the case of any other person.

(2) Applicability of certain provisions

The provisions of section 1320a–7a of this title (other than subsections (a), (b), (h), and (i), the first sentence of subsection (c), and paragraphs (1) and (2) of subsection (f)) shall apply to a civil money penalty under paragraph (1) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary may delegate authority under this subsection in the same manner as provided in section 1320a–7a(j)(2) of this title, and such authority shall include all powers as contained in section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).

(j) Notification in event of release

Regulations under subsections (b) and (c) of this section shall require the prompt notification of the Secretary by a registered person whenever a release, meeting criteria established by the Secretary, of a listed agent or toxin has occurred outside of the biocontainment area of a facility of the registered person. Upon receipt of such notification and a finding by the Secretary that the release poses a threat to public health or safety, the Secretary shall take appropriate action to notify relevant State and local public health authorities, other relevant Federal authorities, and, if necessary, other appropriate persons (including the public). If the released listed agent or toxin is an overlap agent or toxin (as defined in subsection (*l*) of this section), the Secretary shall promptly notify the Secretary of Agriculture upon notification by the registered person.

(k) Reports

The Secretary shall report to the Congress annually on the number and nature of notifications received under subsection (e)(8) of this section (relating to theft or loss) and subsection (j) of this section (relating to releases).

***(l)* Definitions**

For purposes of this section:

(1) The terms ''biological agent'' and ''toxin'' have the meanings given such terms in section 178 of title 18.

(2) The term ''listed agents and toxins'' means biological agents and toxins listed pursuant to subsection (a)(1) of this section.

(3) The term ''listed agents or toxins'' means biological agents or toxins listed pursuant to subsection (a)(1) of this section.

(4) The term ''overlap agents and toxins'' means biological agents and toxins that—

(A) are listed pursuant to subsection (a)(1) of this section; and

(B) are listed pursuant to section 8401(a)(1) of title 7.

(5) The term ''overlap agent or toxin'' means a biological agent or toxin that—

(A) is listed pursuant to subsection (a)(1) of this section; and

(B) is listed pursuant to section 8401(a)(1) of title 7.

(6) The term ''person'' includes Federal, State, and local governmental entities.

(7) The term ''registered person'' means a person registered under regulations under subsection (b) or (c) of this section.

(8) The term ''restricted person'' has the meaning given such term in section 175b of title 18.

(m) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2002 through 2007.

(July 1, 1944, ch. 373, title III, § 351A, as added Pub. L. 107–188, title II, § 201(a), June 12, 2002, 116 Stat. 637; amended Pub. L. 107–296, title XVII, § 1709(a), Nov. 25, 2002, 116 Stat. 2318.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec.(g)(2)(B)(i), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Act commonly known as the Virus-Serum-Toxin Act, referred to in subsec. (g)(2)(B)(iii), is the eighth paragraph under the heading ''Bureau of Animal Industry'' of act Mar. 4, 1913, ch. 145, 37 Stat. 832, as amended, which is classified generally to chapter 5 (§ 151 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 151 of Title 21 and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (g)(2)(B)(iv), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

Section 6 of the Inspector General Act of 1978, referred to in subsec. (i)(2), is section 6 of Pub. L. 95–452, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2002—Subsec. (e)(1). Pub. L. 107–296 substituted ''collaboration with the Secretary of Homeland Security and'' for ''consultation with''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE

Pub. L. 107–188, title II, § 203(b), June 12, 2002, 116 Stat. 647, provided that: ''Subsection (h) of section 351A of the Public Health Service Act [subsec. (h) of this section], as added by section 201 of this Act, is deemed to have taken effect on the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 [Pub. L. 104–132, Apr. 24, 1996, 110 Stat. 1214].''

REGULATIONS

Pub. L. 107–188, title II, § 203(a), June 12, 2002, 116 Stat. 647, provided that: ''Regulations promulgated by the Secretary of Health and Human Services under section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 [Pub. L. 104–132, set out as a note under section 262 of this title] are deemed to have been promulgated under section 351A of the Public Health Service Act [this section], as added by section 201 of this Act. Such regulations, including the list under [former] subsection (d)(1) of such section 511, that were in effect on

the day before the date of the enactment of this Act [June 12, 2002] remain in effect until modified by the Secretary in accordance with such section 351A and with section 202 of this Act [set out as a note below].''

REPORT TO CONGRESS

Pub. L. 107–188, title II, § 201(b), June 12, 2002, 116 Stat. 646, required the Secretary of Health and Human Services to report to Congress not later than one year after June 12, 2002, on the implementation, compliance, and future plans under this section.

IMPLEMENTATION BY DEPARTMENT OF HEALTH AND HUMAN SERVICES

Pub. L. 107–188, title II, § 202, June 12, 2002, 116 Stat. 646, provided that:

''(a) DATE CERTAIN FOR NOTICE OF POSSESSION.—Not later than 90 days after the date of the enactment of this Act [June 12, 2002], all persons (unless exempt under subsection (g) of section 351A of the Public Health Service Act [subsec. (g) of this section], as added by section 201 of this Act) in possession of biological agents or toxins listed under such section 351A of the Public Health Service Act [this section] shall notify the Secretary of Health and Human Services of such possession. Not later than 30 days after such date of enactment, the Secretary shall provide written guidance on how such notice is to be provided to the Secretary.

''(b) DATE CERTAIN FOR PROMULGATION; EFFECTIVE DATE REGARDING CRIMINAL AND CIVIL PENALTIES.—Not later than 180 days after the date of the enactment of this Act [June 12, 2002], the Secretary of Health and Human Services shall promulgate an interim final rule for carrying out section 351A of the Public Health Service Act [this section], subject to subsection (c). Such interim final rule shall take effect 60 days after the date on which such rule is promulgated, including for purposes of—

''(1) section 175b(c) of title 18, United States Code (relating to criminal penalties), as added by section 231(a)(5) of this Act; and

''(2) section 351A(i) of the Public Health Service Act [subsec. (i) of this section] (relating to civil penalties).

''(c) TRANSITIONAL PROVISION REGARDING CURRENT RESEARCH AND EDUCATION.—The interim final rule under subsection (b) shall include time frames for the applicability of the rule that minimize disruption of research or educational projects that involve biological agents and toxins listed pursuant to section 351A(a)(1) of the Public Health Service Act [subsec. (a)(1) of this section] and that were underway as of the effective date of such rule.''

§ 263. Preparation of biological products by Service

(a) The Service may prepare for its own use any product described in section 262 of this title and any product necessary to carrying out any of the purposes of section 241 of this title.

(b) The Service may prepare any product described in section 262 of this title for the use of other Federal departments or agencies, and public or private agencies and individuals engaged in work in the field of medicine when such product is not available from establishments licensed under such section.

(July 1, 1944, ch. 373, title III, § 352, 58 Stat. 703.)

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SUBPART 2—CLINICAL LABORATORIES

§ 263a. Certification of laboratories

(a) "Laboratory" or "clinical laboratory" defined

As used in this section, the term ''laboratory'' or ''clinical laboratory'' means a facility for the biological, microbiological, serological, chemical, immuno-hematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(b) Certificate requirement

No person may solicit or accept materials derived from the human body for laboratory examination or other procedure unless there is in effect for the laboratory a certificate issued by the Secretary under this section applicable to the category of examinations or procedures which includes such examination or procedure.

(c) Issuance and renewal of certificates

(1) In general

The Secretary may issue or renew a certificate for a laboratory only if the laboratory meets the requirements of subsection (d) of this section.

(2) Term

A certificate issued under this section shall be valid for a period of 2 years or such shorter period as the Secretary may establish.

(d) Requirements for certificates

(1) In general

A laboratory may be issued a certificate or have its certificate renewed if—

(A) the laboratory submits (or if the laboratory is accredited under subsection (e) of this section, the accreditation body which accredited the laboratory submits), an application—

(i) in such form and manner as the Secretary shall prescribe,

(ii) that describes the characteristics of the laboratory examinations and other procedures performed by the laboratory including—

(I) the number and types of laboratory examinations and other procedures performed,

(II) the methodologies for laboratory examinations and other procedures employed, and

(III) the qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory examinations and other procedures, and

(iii) that contains such other information as the Secretary may require to determine compliance with this section, and

the laboratory agrees to provide to the Secretary (or if the laboratory is accredited, to the accreditation body which accredited it) a description of any change in the information submitted under clause (ii) not later than 6 months after the change was put into effect,

(B) the laboratory provides the Secretary—

(i) with satisfactory assurances that the laboratory will be operated in accordance with standards issued by the Secretary under subsection (f) of this section, or

(ii) with proof of accreditation under subsection (e) of this section,

(C) the laboratory agrees to permit inspections by the Secretary under subsection (g) of this section,

(D) the laboratory agrees to make records available and submit reports to the Secretary as the Secretary may reasonably require, and

(E) the laboratory agrees to treat proficiency testing samples in the same manner as it treats materials derived from the human body referred to it for laboratory examinations or other procedures in the ordinary course of business.

(2) Requirements for certificates of waiver

(A) In general

A laboratory which only performs laboratory examinations and procedures described in paragraph (3) shall be issued a certificate of waiver or have its certificate of waiver renewed if—

(i) the laboratory submits an application—

(I) in such form and manner as the Secretary shall prescribe,

(II) that describes the characteristics of the laboratory examinations and other procedures performed by the laboratory, including the number and types of laboratory examinations and other procedures performed, the methodologies for laboratory examinations and other procedures employed, and the qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory examinations and other procedures, and

(III) that contains such other information as the Secretary may reasonably require to determine compliance with this section, and

(ii) the laboratory agrees to make records available and submit reports to the Secretary as the Secretary may require.

(B) Changes

If a laboratory makes changes in the examinations and other procedures performed by it only with respect to examinations and procedures which are described in paragraph (3), the laboratory shall report such changes to the Secretary not later than 6 months after the change has been put into effect. If a laboratory proposes to make changes in the examinations and procedures performed by it such that the laboratory will perform an examination or procedure not described in paragraph (3), the laboratory shall report such change to the Secretary before the change takes effect.

(C) Effect

Subsections (f) and (g) of this section shall not apply to a laboratory to which has been issued a certificate of waiver.

(3) Examinations and procedures

The examinations and procedures identified in paragraph (2) are laboratory examinations and procedures that have been approved by the Food and Drug Administration for home use or that, as determined by the Secretary, are simple laboratory examinations and procedures that have an insignificant risk of an erroneous result, including those that—

(A) employ methodologies that are so simple and accurate as to render the likelihood of erroneous results by the user negligible, or

(B) the Secretary has determined pose no unreasonable risk of harm to the patient if performed incorrectly.

(4) "Certificate" defined

As used in this section, the term ''certificate'' includes a certificate of waiver issued under paragraph (2).

(e) Accreditation

(1) In general

A laboratory may be accredited for purposes of obtaining a certificate if the laboratory—

(A) meets the standards of an approved accreditation body, and

(B) authorizes the accreditation body to submit to the Secretary (or such State agency as the Secretary may designate) such records or other information as the Secretary may require.

(2) Approval of accreditation bodies

(A) In general

The Secretary may approve a private nonprofit organization to be an accreditation body for the accreditation of laboratories if—

(i) using inspectors qualified to evaluate the methodologies used by the laboratories in performing laboratory examinations and other procedures, the accreditation body agrees to inspect a laboratory for purposes of accreditation with such frequency as determined by[1] Secretary,

(ii) the standards applied by the body in determining whether or not to accredit a laboratory are equal to or more stringent than the standards issued by the Secretary under subsection (f) of this section,

(iii) there is adequate provision for assuring that the standards of the accreditation body continue to be met by the laboratory,

(iv) in the case of any laboratory accredited by the body which has had its accredi-

[1] So in original. Probably should be ''by the''.

tation denied, suspended, withdrawn, or revoked or which has had any other action taken against it by the accrediting body, the accrediting body agrees to submit to the Secretary the name of such laboratory within 30 days of the action taken,

(v) the accreditation body agrees to notify the Secretary at least 30 days before it changes its standards, and

(vi) if the accreditation body has its approval withdrawn by the Secretary, the body agrees to notify each laboratory accredited by the body of the withdrawal within 10 days of the withdrawal.

(B) Criteria and procedures

The Secretary shall promulgate criteria and procedures for approving an accreditation body and for withdrawing such approval if the Secretary determines that the accreditation body does not meet the requirements of subparagraph (A).

(C) Effect of withdrawal of approval

If the Secretary withdraws the approval of an accreditation body under subparagraph (B), the certificate of any laboratory accredited by the body shall continue in effect for 60 days after the laboratory receives notification of the withdrawal of the approval, except that the Secretary may extend such period for a laboratory if it determines that the laboratory submitted an application for accreditation or a certificate in a timely manner after receipt of the notification of the withdrawal of approval. If an accreditation body withdraws or revokes the accreditation of a laboratory, the certificate of the laboratory shall continue in effect—

(i) for 45 days after the laboratory receives notice of the withdrawal or revocation of the accreditation, or

(ii) until the effective date of any action taken by the Secretary under subsection (i) of this section.

(D) Evaluations

The Secretary shall evaluate annually the performance of each approved accreditation body by—

(i) inspecting under subsection (g) of this section a sufficient number of the laboratories accredited by such body to allow a reasonable estimate of the performance of such body, and

(ii) such other means as the Secretary determines appropriate.

(3) Omitted

(f) Standards

(1) In general

The Secretary shall issue standards to assure consistent performance by laboratories issued a certificate under this section of valid and reliable laboratory examinations and other procedures. Such standards shall require each laboratory issued a certificate under this section—

(A) to maintain a quality assurance and quality control program adequate and appropriate for the validity and reliability of the laboratory examinations and other procedures of the laboratory and to meet requirements relating to the proper collection, transportation, and storage of specimens and the reporting of results,

(B) to maintain records, equipment, and facilities necessary for the proper and effective operation of the laboratory,

(C) in performing and carrying out its laboratory examinations and other procedures, to use only personnel meeting such qualifications as the Secretary may establish for the direction, supervision, and performance of examinations and procedures within the laboratory, which qualifications shall take into consideration competency, training, experience, job performance, and education and which qualifications shall, as appropriate, be different on the basis of the type of examinations and procedures being performed by the laboratory and the risks and consequences of erroneous results associated with such examinations and procedures,

(D) to qualify under a proficiency testing program meeting the standards established by the Secretary under paragraph (3), and

(E) to meet such other requirements as the Secretary determines necessary to assure consistent performance by such laboratories of accurate and reliable laboratory examinations and procedures.

(2) Considerations

In developing the standards to be issued under paragraph (1), the Secretary shall, within the flexibility provided under subparagraphs (A) through (E) of paragraph (1), take into consideration—

(A) the examinations and procedures performed and the methodologies employed,

(B) the degree of independent judgment involved,

(C) the amount of interpretation involved,

(D) the difficulty of the calculations involved,

(E) the calibration and quality control requirements of the instruments used,

(F) the type of training required to operate the instruments used in the methodology, and

(G) such other factors as the Secretary considers relevant.

(3) Proficiency testing program

(A) In general

The Secretary shall establish standards for the proficiency testing programs for laboratories issued a certificate under this section which are conducted by the Secretary, conducted by an organization approved under subparagraph (C), or conducted by an approved accrediting body. The standards shall require that a laboratory issued a certificate under this section be tested for each examination and procedure conducted within a category of examinations or procedures for which it has received a certificate, except for examinations and procedures for which the Secretary has determined that a proficiency test cannot reasonably be developed. The testing shall be conducted on a quarterly basis, except where the Secretary

determines for technical and scientific reasons that a particular examination or procedure may be tested less frequently (but not less often than twice per year).

(B) Criteria

The standards established under subparagraph (A) shall include uniform criteria for acceptable performance under a proficiency testing program, based on the available technology and the clinical relevance of the laboratory examination or other procedure subject to such program. The criteria shall be established for all examinations and procedures and shall be uniform for each examination and procedure. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory has performed acceptably for a particular quarter and acceptably for a particular examination or procedure or category of examination or procedure over a period of successive quarters.

(C) Approved proficiency testing programs

For the purpose of administering proficiency testing programs which meet the standards established under subparagraph (A), the Secretary shall approve a proficiency testing program offered by a private nonprofit organization or a State if the program meets the standards established under subparagraph (A) and the organization or State provides technical assistance to laboratories seeking to qualify under the program. The Secretary shall evaluate each program approved under this subparagraph annually to determine if the program continues to meet the standards established under subparagraph (A) and shall withdraw the approval of any program that no longer meets such standards.

(D) Onsite testing

The Secretary shall perform, or shall direct a program approved under subparagraph (C) to perform, onsite proficiency testing to assure compliance with the requirements of subsection (d)(5) of this section. The Secretary shall perform, on an onsite or other basis, proficiency testing to evaluate the performance of a proficiency testing program approved under subparagraph (C) and to assure quality performance by a laboratory.

(E) Training, technical assistance, and enhanced proficiency testing

The Secretary may, in lieu of or in addition to actions authorized under subsection (h), (i), or (j) of this section, require any laboratory which fails to perform acceptably on an individual examination and procedure or a category of examination and procedures—

(i) to undertake training and to obtain the necessary technical assistance to meet the requirements of the proficency[2] testing program,

(ii) to enroll in a program of enhanced proficiency testing, or

(iii) to undertake any combination of the training, technical assistance, or testing described in clauses (i) and (ii).

(F) Testing results

The Secretary shall establish a system to make the results of the proficiency testing programs subject to the standards established by the Secretary under subparagraph (A) available, on a reasonable basis, upon request of any person. The Secretary shall include with results made available under this subparagraph such explanatory information as may be appropriate to assist in the interpretation of such results.

(4) National standards for quality assurance in cytology services

(A) Establishment

The Secretary shall establish national standards for quality assurance in cytology services designed to assure consistent performance by laboratories of valid and reliable cytological services.

(B) Standards

The standards established under subparagraph (A) shall include—

(i) the maximum number of cytology slides that any individual may screen in a 24-hour period,

(ii) requirements that a clinical laboratory maintain a record of (I) the number of cytology slides screened during each 24-hour period by each individual who examines cytology slides for the laboratory, and (II) the number of hours devoted during each 24-hour period to screening cytology slides by such individual,

(iii) criteria for requiring rescreening of cytological preparations, such as (I) random rescreening of cytology specimens determined to be in the benign category, (II) focused rescreening of such preparations in high risk groups, and (III) for each abnormal cytological result, rescreening of all prior cytological specimens for the patient, if available,

(iv) periodic confirmation and evaluation of the proficiency of individuals involved in screening or interpreting cytological preparations, including announced and unannounced on-site proficiency testing of such individuals, with such testing to take place, to the extent practicable, under normal working conditions,

(v) procedures for detecting inadequately prepared slides, for assuring that no cytological diagnosis is rendered on such slides, and for notifying referring physicians of such slides,

(vi) requirements that all cytological screening be done on the premises of a laboratory that is certified under this section,

(vii) requirements for the retention of cytology slides by laboratories for such periods of time as the Secretary considers appropriate, and

(viii) standards requiring periodic inspection of cytology services by persons capable of evaluating the quality of cytology services.

[2] So in original. Probably should be ''proficiency''.

(g) Inspections

(1) In general

The Secretary may, on an announced or unannounced basis, enter and inspect, during regular hours of operation, laboratories which have been issued a certificate under this section. In conducting such inspections the Secretary shall have access to all facilities, equipment, materials, records, and information that the Secretary determines have a bearing on whether the laboratory is being operated in accordance with this section. As part of such an inspection the Secretary may copy any such material or require to it[3] be submitted to the Secretary. An inspection under this paragraph may be made only upon presenting identification to the owner, operator, or agent in charge of the laboratory being inspected.

(2) Compliance with requirements and standards

The Secretary shall conduct inspections of laboratories under paragraph (1) to determine their compliance with the requirements of subsection (d) of this section and the standards issued under subsection (f) of this section. Inspections of laboratories not accredited under subsection (e) of this section shall be conducted on a biennial basis or with such other frequency as the Secretary determines to be necessary to assure compliance with such requirements and standards. Inspections of laboratories accredited under subsection (e) of this section shall be conducted on such basis as the Secretary determines is necessary to assure compliance with such requirements and standards.

(h) Intermediate sanctions

(1) In general

If the Secretary determines that a laboratory which has been issued a certificate under this section no longer substantially meets the requirements for the issuance of a certificate, the Secretary may impose intermediate sanctions in lieu of the actions authorized by subsection (i) of this section.

(2) Types of sanctions

The intermediate sanctions which may be imposed under paragraph (1) shall consist of—

(A) directed plans of correction,

(B) civil money penalties in an amount not to exceed $10,000 for each violation listed in subsection (i)(1) of this section or for each day of substantial noncompliance with the requirements of this section,

(C) payment for the costs of onsite monitoring, or

(D) any combination of the actions described in subparagraphs (A), (B), and (C).

(3) Procedures

The Secretary shall develop and implement procedures with respect to when and how each of the intermediate sanctions is to be imposed under paragraph (1). Such procedures shall provide for notice to the laboratory and a reasonable opportunity to respond to the proposed sanction and appropriate procedures for appealing determinations relating to the imposition of intermediate sanctions[4]

(i) Suspension, revocation, and limitation

(1) In general

Except as provided in paragraph (2), the certificate of a laboratory issued under this section may be suspended, revoked, or limited if the Secretary finds, after reasonable notice and opportunity for hearing to the owner or operator of the laboratory, that such owner or operator or any employee of the laboratory—

(A) has been guilty of misrepresentation in obtaining the certificate,

(B) has performed or represented the laboratory as entitled to perform a laboratory examination or other procedure which is not within a category of laboratory examinations or other procedures authorized in the certificate,

(C) has failed to comply with the requirements of subsection (d) of this section or the standards prescribed by the Secretary under subsection (f) of this section,

(D) has failed to comply with reasonable requests of the Secretary for—

(i) any information or materials, or

(ii) work on materials,

that the Secretary concludes is necessary to determine the laboratory's continued eligibility for its certificate or continued compliance with the Secretary's standards under subsection (f) of this section,

(E) has refused a reasonable request of the Secretary, or any Federal officer or employee duly designated by the Secretary, for permission to inspect the laboratory and its operations and pertinent records during the hours the laboratory is in operation,

(F) has violated or aided and abetted in the violation of any provisions of this section or of any regulation promulgated thereunder, or

(G) has not complied with an intermediate sanction imposed under subsection (h) of this section.

(2) Action before a hearing

If the Secretary determines that—

(A) the failure of a laboratory to comply with the standards of the Secretary under subsection (f) of this section presents an imminent and serious risk to human health, or

(B) a laboratory has engaged in an action described in subparagraph (D) or (E) of paragraph (1),

the Secretary may suspend or limit the certificate of the laboratory before holding a hearing under paragraph (1) regarding such failure or refusal. The opportunity for a hearing shall be provided no later than 60 days from the effective date of the suspension or limitation. A suspension or limitation under this paragraph shall stay in effect until the decision of the Secretary made after the hearing under paragraph (1).

[3] So in original. Probably should be ''require it to''.

[4] So in original. Probably should be followed by a period.

(3) Ineligibility to own or operate laboratories after revocation

No person who has owned or operated a laboratory which has had its certificate revoked may, within 2 years of the revocation of the certificate, own or operate a laboratory for which a certificate has been issued under this section. The certificate of a laboratory which has been excluded from participation under the medicare program under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] because of actions relating to the quality of the laboratory shall be suspended for the period the laboratory is so excluded.

(4) Improper referrals

Any laboratory that the Secretary determines intentionally refers its proficiency testing samples to another laboratory for analysis shall have its certificate revoked for at least one year and shall be subject to appropriate fines and penalties as provided for in subsection (h) of this section.

(j) Injunctions

Whenever the Secretary has reason to believe that continuation of any activity by a laboratory would constitute a significant hazard to the public health the Secretary may bring suit in the district court of the United States for the district in which such laboratory is situated to enjoin continuation of such activity. Upon proper showing, a temporary injunction or restraining order against continuation of such activity pending issuance of a final order under this subsection shall be granted without bond by such court.

(k) Judicial review

(1) Petition

Any laboratory which has had an intermediate sanction imposed under subsection (h) of this section or has had its certificate suspended, revoked, or limited under subsection (i) of this section may, at any time within 60 days after the date the action of the Secretary under subsection (i) or (h) of this section becomes final, file a petition with the United States court of appeals for the circuit wherein the laboratory has its principal place of business for judicial review of such action. As soon as practicable after receipt of the petition, the clerk of the court shall transmit a copy of the petition to the Secretary or other officer designated by the Secretary for that purpose. As soon as practicable after receipt of the copy, the Secretary shall file in the court the record on which the action of the Secretary is based, as provided in section 2112 of title 28.

(2) Additional evidence

If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal of such additional evidence) to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify the findings of the Secretary as to the facts, or make new findings, by reason of the additional evidence so taken, and the Secretary shall file such modified or new findings, and the recommendations of the Secretary, if any, for the modification or setting aside of his original action, with the return of such additional evidence.

(3) Judgment of court

Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to affirm the action, or to set it aside in whole or in part, temporarily or permanently. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) Finality of judgment

The judgment of the court affirming or setting aside, in whole or in part, any such action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

***(l)* Sanctions**

Any person who intentionally violates any requirement of this section or any regulation promulgated thereunder shall be imprisoned for not more than one year or fined under title 18, or both, except that if the conviction is for a second or subsequent violation of such a requirement such person shall be imprisoned for not more than 3 years or fined in accordance with title 18, or both.

(m) Fees

(1) Certificate fees

The Secretary shall require payment of fees for the issuance and renewal of certificates, except that the Secretary shall only require a nominal fee for the issuance and renewal of certificates of waiver.

(2) Additional fees

The Secretary shall require the payment of fees for inspections of laboratories which are not accredited and for the cost of performing proficiency testing on laboratories which do not participate in proficiency testing programs approved under subsection (f)(3)(C) of this section.

(3) Criteria

(A) Fees under paragraph (1)

Fees imposed under paragraph (1) shall be sufficient to cover the general costs of administering this section, including evaluating and monitoring proficiency testing programs approved under subsection (f) of this section and accrediting bodies and implementing and monitoring compliance with the requirements of this section.

(B) Fees under paragraph (2)

Fees imposed under paragraph (2) shall be sufficient to cover the cost of the Secretary in carrying out the inspections and proficiency testing described in paragraph (2).

(C) Fees imposed under paragraphs (1) and (2)

Fees imposed under paragraphs (1) and (2) shall vary by group or classification of lab-

oratory, based on such considerations as the Secretary determines are relevant, which may include the dollar volume and scope of the testing being performed by the laboratories.

(n) Information

On April 1, 1990 and annually thereafter, the Secretary shall compile and make available to physicians and the general public information, based on the previous calendar year, which the Secretary determines is useful in evaluating the performance of a laboratory, including—

(1) a list of laboratories which have been convicted under Federal or State laws relating to fraud and abuse, false billings, or kickbacks,

(2) a list of laboratories—

(A) which have had their certificates revoked, suspended, or limited under subsection (i) of this section, or

(B) which have been the subject of a sanction under subsection (*l*) of this section,

together with a statement of the reasons for the revocation, suspension, limitation, or sanction,

(3) a list of laboratories subject to intermediate sanctions under subsection (h) of this section together with a statement of the reasons for the sanctions,

(4) a list of laboratories whose accreditation has been withdrawn or revoked together with a statement of the reasons for the withdrawal or revocation,

(5) a list of laboratories against which the Secretary has taken action under subsection (j) of this section together with a statement of the reasons for such action, and

(6) a list of laboratories which have been excluded from participation under title XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.].

The information to be compiled under paragraphs (1) through (6) shall be information for the calendar year preceding the date the information is to be made available to the public and shall be accompanied by such explanatory information as may be appropriate to assist in the interpretation of the information compiled under such paragraphs.

(*o*) Delegation

In carrying out this section, the Secretary may, pursuant to agreement, use the services or facilities of any Federal or State or local public agency or nonprofit private organization, and may pay therefor in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

(p) State laws

(1) Except as provided in paragraph (2), nothing in this section shall be construed as affecting the power of any State to enact and enforce laws relating to the matters covered by this section to the extent that such laws are not inconsistent with this section or with the regulations issued under this section.

(2) If a State enacts laws relating to matters covered by this section which provide for requirements equal to or more stringent than the requirements of this section or than the regulations issued under this section, the Secretary may exempt clinical laboratories in that State from compliance with this section.

(q) Consultations

In carrying out this section, the Secretary shall consult with appropriate private organizations and public agencies.

(July 1, 1944, ch. 373, title III, § 353, as added Pub. L. 90–174, § 5(a), Dec. 5, 1967, 81 Stat. 536; amended Pub. L. 100–578, § 2, Oct. 31, 1988, 102 Stat. 2903; Pub. L. 105–115, title I, § 123(h), Nov. 21, 1997, 111 Stat. 2324.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (i)(3) and (n)(6), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Subsec. (e)(3) of this section, which required the Secretary to annually prepare and submit to certain committees of Congress a report describing the results of the evaluation conducted under subsec. (e)(2)(D) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 96 of House Document No. 103–7.

AMENDMENTS

1997—Subsec. (d)(3). Pub. L. 105–115 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''The examinations and procedures identified in paragraph (2) are simple laboratory examinations and procedures which, as determined by the Secretary, have an insignificant risk of an erroneous result, including those which—

''(A) have been approved by the Food and Drug Administration for home use,

''(B) employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible, or

''(C) the Secretary has determined pose no reasonable risk of harm to the patient if performed incorrectly.''

1988—Pub. L. 100–578 substituted ''Certification of laboratories'' for ''Licensing of laboratories'' in section catchline, and amended text generally, revising and restating as subsecs. (a) to (q) provisions of former subsecs. (a) to (*l*).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–115 effective 90 days after Nov. 21, 1997, except as otherwise provided, see section 501 of Pub. L. 105–115, set out as a note under section 321 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1988 AMENDMENT; EXCEPTIONS; CONTINUING APPLICABILITY

Section 3 of Pub. L. 100–578 provided that: ''Subsections (g)(1), (h), (i), (j), (k), (*l*), and (m) of section 353 of the Public Health Service Act [this section], as amended by section 101 [probably means section 2 of Pub. L. 100–578], shall take effect January 1, 1989, except that any reference in such subsections to the standards established under subsection (f) shall be considered a reference to the standards established under subsection (d) of such section 353, as in effect on December 31, 1988. During the period beginning January 1, 1989, and ending December 31, 1989, subsections (a) through (d) and subsection (i) through (*l*) of such section 353 as in effect on December 31, 1988, shall continue

to apply to clinical laboratories. The remaining subsections of such section 353, as so amended, shall take effect January 1, 1990, except that subsections (f)(1)(C) and (g)(2) shall take effect July 1, 1991, with respect to laboratories which were not subject to the requirements of such section 353 as in effect on December 31, 1988.''

EFFECTIVE DATE

Section 5(b) of Pub. L. 90–174 provided that: ''The amendment made by subsection (a) [enacting this section] shall become effective on the first day of the thirteenth month after the month [December 1967] in which it is enacted, except that the Secretary of Health, Education, and Welfare may postpone such effective date for such additional period as he finds necessary, but not beyond the first day of the 19th month after such month [December 1967] in which the amendment is enacted.''

STUDIES

Section 4 of Pub. L. 100–578 directed Secretary to conduct studies and submit report to Congress, not later than May 1, 1990, relating to the reliability and quality control procedures of clinical laboratory testing programs and the effect of errors in the testing procedures and results on the diagnosis and treatment of patients.

§ 263a–1. Assisted reproductive technology programs

(a) In general

Effective 2 years after October 24, 1992, each assisted reproductive technology (as defined in section 263a–7[1] of this title) program shall annually report to the Secretary through the Centers for Disease Control—

(1) pregnancy success rates achieved by such program through each assisted reproductive technology, and

(2) the identity of each embryo laboratory (as defined in section 263a–7[1] of this title) used by such program and whether the laboratory is certified under section 263a–2 of this title or has applied for such certification.

(b) Pregnancy success rates

(1) In general

For purposes of subsection (a)(1) of this section, the Secretary shall, in consultation with the organizations referenced in subsection (c) of this section, define pregnancy success rates and shall make public any proposed definition in such manner as to facilitate comment from any person (including any Federal or other public agency) during its development.

(2) Definition

In developing the definition of pregnancy success rates, the Secretary shall take into account the effect on success rates of age, diagnosis, and other significant factors and shall include in such rates—

(A) the basic live birth rate calculated for each assisted reproductive technology performed by an assisted reproductive technology program by dividing the number of pregnancies which result in live births by the number of ovarian stimulation procedures attempted by such program, and

(B) the live birth rate per successful oocyte retrieval procedure calculated for each assisted reproductive technology performed by an assisted reproductive technology program by dividing the number of pregnancies which result in live births by the number of successful oocyte retrieval procedures performed by such program.

(c) Consultation

In developing the definition under subsection (b) of this section, the Secretary shall consult with appropriate consumer and professional organizations with expertise in using, providing, and evaluating professional services and embryo laboratories associated with assisted reproductive technologies.

(Pub. L. 102–493, § 2, Oct. 24, 1992, 106 Stat. 3146.)

REFERENCES IN TEXT

Section 263a–7 of this title, referred to in subsec. (a), was in the original ''section 7'' meaning section 7 of Pub. L. 102–493, which was translated as reading section 8 to reflect the probable intent of Congress, because definitions are contained in section 8 instead of section 7.

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE

Section 9 of Pub. L. 102–493 provided that: ''This Act [enacting this section, sections 263a–2 to 263a–7 of this title, and provisions set out as a note under section 201 of this title] shall take effect upon the expiration of 2 years after the date of the enactment of this Act [Oct. 24, 1992].''

§ 263a–2. Certification of embryo laboratories

(a) In general

(1) Development

Not later than 2 years after October 24, 1992, the Secretary, through the Centers for Disease Control, shall develop a model program for the certification of embryo laboratories (referred to in this section as a ''certification program'') to be carried out by the States.

(2) Consultation

In developing the certification program under paragraph (1), the Secretary shall consult with appropriate consumer and professional organizations with expertise in using, providing, and evaluating professional services and embryo laboratories associated with the assisted reproductive technology programs.

(b) Distribution

The Secretary shall distribute a description of the certification program to—

(1) the Governor of each State,

(2) the presiding officers of each State legislature,

(3) the public health official of each State, and

(4) the official responsible in each State for the operation of the State's contract with the Secretary under section 1395aa of this title,

[1] See References in Text note below.

and shall encourage such officials to assist in the State adopting such program.

(c) Requirements

The certification program shall include the following requirements:

(1) Administration

The certification program shall be administered by the State and shall provide for the inspection and certification of embryo laboratories in the State by the State or by approved accreditation organizations.

(2) Application requirements

The certification program shall provide for the submission of an application to a State by an embryo laboratory for certification, in such form as may be specified by the State. Such an application shall include—

(A) assurances satisfactory to the State that the embryo laboratory will be operated in accordance with the standards under subsection (d) of this section,

(B) a report to the State identifying the assisted reproductive technology programs with which the laboratory is associated, and

(C) such other information as the State finds necessary.

An embryo laboratory which meets the requirements of section 263a of this title shall, for the purposes of subparagraph (A) be considered in compliance with the standards referred to in such subparagraph which are the same as the standards in effect under section 263a of this title.

(d) Standards

The certification program shall include the following standards developed by the Secretary:

(1) A standard to assure consistent performance of procedures by each embryo laboratory certified under the certification program or by an approved accreditation organization in a State which has not adopted the certification program.

(2) A standard for a quality assurance and a quality control program to assure valid, reliable, and reproduceable[1] procedures in the laboratory.

(3) A standard for the maintenance of records (on a program by program basis) on laboratory tests and procedures performed, including the scientific basis of, and the methodology used for, the tests, procedures, and preparation of any standards or controls, criteria for acceptable and unacceptable outcomes, criteria for sample rejection, and procedures for safe sample disposal.

(4) A standard for the maintenance of written records on personnel and facilities necessary for proper and effective operation of the laboratory, schedules of preventive maintenance, function verification for equipment, and the release of such records to the State upon demand.

(5) A standard for the use of such personnel who meet such qualifications as the Secretary may develop.

(e) Certification under State programs

A State may qualify to adopt the certification program if the State has submitted an application to the Secretary to adopt such program and the Secretary has approved the application. Such an application shall include—

(1) assurances by the State satisfactory to the Secretary that the certification program within the State meets the requirements of this section,

(2) an agreement to make such reports as the Secretary may require, and

(3) information about any proposed use of accreditation organizations under subsection (g)[2] of this section.

(f) Use of accreditation organizations

A State which has adopted the certification program may use accreditation organizations approved under section 263a–3 of this title to inspect and certify embryo laboratories.

(g) Inspections

(1) In general

A State which qualifies to adopt the certification program within the State shall conduct inspections in accordance with paragraph (2) to determine if laboratories in the State meet the requirements of such program. Such inspections shall be carried out by the State or by accreditation organizations used by the State under subsection (g)[2] of this section.

(2) Requirements

Inspections carried out under paragraph (1) shall—

(A) be periodic and unannounced, or

(B) be announced in such circumstances as the Secretary determines will not diminish the likelihood of discovering deficiencies in the operations of a laboratory.

Before making a determination under subparagraph (B), the Secretary shall make public, in such manner as to facilitate comment from any person (including any Federal or other public agency), a proposal indicating the circumstances under which announced inspections would be permitted.

(3) Results

The specific findings, including deficiencies, identified in an inspection carried out under paragraph (1) and any subsequent corrections to those deficiencies shall be announced and made available to the public upon request beginning no later than 60 days after the date of the inspection.

(h) Validation inspections

(1) In general

The Secretary may enter and inspect, during regular hours of operation, embryo laboratories—

(A) which have been certified by a State under the certification program, or

(B) which have been certified by an accreditation organization approved by the Secretary under section 263a–3 of this title,

for the purpose of determining whether the laboratory is being operated in accordance

[1] So in original. Probably should be ''reproducible''.

[2] So in original. Probably should be subsection ''(f)''.

with the standards in subsection (d) of this section.

(2) Access to facilities and records

In conducting an inspection of an embryo laboratory under paragraph (1), the Secretary shall have access to all facilities, equipment, materials, records, and information which the Secretary determines is necessary to determine if such laboratory is being operated in accordance with the standards in subsection (d) of this section. As part of such an inspection, the Secretary may copy any material, record, or information inspected or require it to be submitted to the Secretary. Such an inspection may be made only upon the presentation of identification to the owner, operator, or agent in charge of the laboratory being inspected.

(3) Failure to comply

If the Secretary determines as a result of an inspection under paragraph (1) that the embryo laboratory is not in compliance with the standards in subsection (d) of this section, the Secretary shall—

(A) notify the State in which the laboratory is located and, if appropriate, the accreditation organization which certified the laboratory,

(B) make available to the public the results of the inspection,

(C) conduct additional inspections of other embryo laboratories under paragraph (1) to determine if—

(i) such State in carrying out the certification program is reliably identifying the deficiencies of such laboratory, or

(ii) the accreditation organization which certified such laboratories is reliably identifying such deficencies,[3] and

(D) if the Secretary determines—

(i) that such State in carrying out the certification program has not met the requirements applicable to such program, or

(ii) the accreditation organization which certified such laboratory has not met the requirements of section 263a–3 of this title,

the Secretary may revoke the approval of the State certification program or revoke the approval of such accreditation organization.

(i) Limitation

(1) Secretary

In developing the certification program, the Secretary may not establish any regulation, standard, or requirement which has the effect of exercising supervision or control over the practice of medicine in assisted reproductive technology programs.

(2) State

In adopting the certification program, a State may not establish any regulation, standard, or requirement which has the effect of exercising supervision or control over the practice of medicine in assisted reproductive technology programs.

(j) Term

The term of a certification issued by a State or an accreditation organization in a State shall be prescribed by the Secretary in the certification program and shall be valid for a period of time to be defined by the Secretary through the public comment process described in subsection (h)(2)[4] of this section. The Secretary shall provide an application for recertification to be submitted at the time of changes in the ownership of a certified laboratory or changes in the administration of such a laboratory.

(Pub. L. 102–493, §3, Oct. 24, 1992, 106 Stat. 3146.)

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

§263a–3. Accreditation organizations

(a) Approval of accreditation organizations

Not later than 2 years after October 24, 1992, the Secretary, through the Centers for Disease Control, shall promulgate criteria and procedures for the approval of accreditation organizations to inspect and certify embryo laboratories. The procedures shall require an application to the Secretary by an accreditation organization for approval. An accreditation organization which has received such an approval—

(1) may be used by States in the certification program under section 263a–2 of this title to inspect and certify embryo laboratories, or

(2) may certify embryo laboratories in States which have not adopted such a certification program.

(b) Criteria and procedures

The criteria and procedures promulgated under subsection (a) of this section shall include—

(1) requirements for submission of such reports and the maintenance of such records as the Secretary or a State may require, and

(2) requirements for the conduct of inspections under section 263a–2(h)[1] of this title.

(c) Evaluations

The Secretary shall evaluate annually the performance of each accreditation organization approved by the Secretary by—

(1) inspecting under section 263a–2(i)[2] of this title a sufficient number of embryo laboratories accredited by such an organization to allow a reasonable estimate of the performance of such organization, and

(2) such other means as the Secretary determines to be appropriate.

[3] So in original. Probably should be ''deficiencies,''.

[4] So in original. Probably should be subsection ''(g)(2)''.

[1] So in original. Probably should be section ''263a–2(g)''.

[2] So in original. Probably should be section ''263a–2(h)''.

(d) Transition

If the Secretary revokes approval under section 263a–2(i)(3)(D)[3] of this title of an accreditation organization after an evaluation under subsection (c) of this section, the certification of any embryo laboratory accredited by the organization shall continue in effect for 60 days after the laboratory is notified by the Secretary of the withdrawal of approval, except that the Secretary may extend the period during which the certification shall remain in effect if the Secretary determines that the laboratory submitted an application to another approved accreditation organization for certification after receipt of such notice in a timely manner.

(Pub. L. 102–493, § 4, Oct. 24, 1992, 106 Stat. 3150.)

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

§ 263a–4. Certification revocation and suspension

(a) In general

A certification issued by a State or an accreditation organization for an embryo laboratory shall be revoked or suspended if the State or organization finds, on the basis of inspections and after reasonable notice and opportunity for hearing to the owner or operator of the laboratory, that the owner or operator or any employee of the laboratory—

(1) has been guilty of misrepresentation in obtaining the certification,

(2) has failed to comply with any standards under section 263a–2 of this title applicable to the certification, or

(3) has refused a request of the State or accreditation organization for permission to inspect the laboratory, its operations, and records.

(b) Effect

If the certification of an embryo laboratory is revoked or suspended, the certification of the laboratory shall continue in effect for 60 days after the laboratory receives notice of the revocation or suspension. If the certification of an embryo laboratory is revoked or suspended, the laboratory may apply for recertification after one year after the date of the revocation or suspension.

(Pub. L. 102–493, § 5, Oct. 24, 1992, 106 Stat. 3150.)

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

§ 263a–5. Publication

The Secretary, through the Centers for Disease Control, shall not later than 3 years after October 24, 1992, and annually thereafter publish and distribute to the States and the public—

(1)(A)[1] pregnancy success rates reported to the Secretary under section 263a–1(a)(1) of this title and, in the case of an assisted reproductive technology program which failed to report one or more success rates as required under such section, the name of each such program and each pregnancy success rate which the program failed to report, and

(B) from information reported under section 263a–1(a)(2) of this title—

(i) the identity of each embryo laboratory in a State which has adopted the certification program under such program and whether such laboratory is certified under section 263a–2 of this title,

(ii) the identity of each embryo laboratory in a State which has not adopted such certification program and which has been certified by an accreditation organization approved by the Secretary under section 263a–3 of this title, and

(iii) in the case of an embryo laboratory which is not certified under section 263a–2 of this title or certified by an accreditation organization approved by the Secretary under section 263a–3 of this title, whether the laboratory applied for certification.

(Pub. L. 102–493, § 6, Oct. 24, 1992, 106 Stat. 3151.)

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

§ 263a–6. Fees

The Secretary may require the payment of fees for the purpose of, and in an amount sufficient to cover the cost of, administering sections 263a–1 to 263a–7 of this title. A State operating a program under section 263a–2 of this title may require the payment of fees for the purpose of, and in an amount sufficient to cover the costs of, administering its program.

(Pub. L. 102–493, § 7, Oct. 24, 1992, 106 Stat. 3151.)

REFERENCES IN TEXT

Sections 263a–1 to 263a–7 of this title, referred to in text, was in the original ''this Act'', meaning Pub. L.

[3] So in original. Probably should be section ''263a–2(h)(3)(D)''.

[1] So in original. No par. (2) has been enacted.

102–493, Oct. 24, 1992, 106 Stat. 3146, known as the Fertility Clinic Success Rate and Certification Act of 1992, which enacted sections 263a–1 to 263a–7 of this title and provisions set out as notes under sections 201 and 263a–1 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

§ 263a–7. Definitions

For purposes of sections 263a–1 to 263a–7 of this title:

(1) Assisted reproductive technology

The term ''assisted reproductive technology'' means all treatments or procedures which include the handling of human oocytes or embryos, including in vitro fertilization, gamete intrafallopian transfer, zygote intrafallopian transfer, and such other specific technologies as the Secretary may include in this definition, after making public any proposed definition in such manner as to facilitate comment from any person (including any Federal or other public agency).

(2) Embryo laboratory

The term ''embryo laboratory'' means a facility in which human oocytes are subject to assisted reproductive technology treatment or procedures based on manipulation of oocytes or embryos which are subject to implantation.

(3) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(Pub. L. 102–493, § 8, Oct. 24, 1992, 106 Stat. 3151.)

REFERENCES IN TEXT

Sections 263a–1 to 263a–7 of this title, referred to in text, was in the original ''this Act'', meaning Pub. L. 102–493, Oct. 24, 1992, 106 Stat. 3146, known as the Fertility Clinic Success Rate and Certification Act of 1992, which enacted sections 263a–1 to 263a–7 of this title and provisions set out as notes under sections 201 and 263a–1 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

SUBPART 3—MAMMOGRAPHY FACILITIES

PRIOR PROVISIONS

A prior subpart 3 of part F of title III of the Public Health Service Act, comprising this subpart, was renumbered subchapter C of chapter V of the Federal Food, Drug, and Cosmetic Act, by Pub. L. 101–629, § 19(a)(4), Nov. 28, 1990, 104 Stat. 4530, as amended by Pub. L. 103–80, § 4(a)(2), Aug. 13, 1993, 107 Stat. 779, and is classified to part C (§ 360hh et seq.) of subchapter V of chapter 9 of Title 21, Food and Drugs.

§ 263b. Certification of mammography facilities

(a) Definitions

As used in this section:

(1) Accreditation body

The term ''accreditation body'' means a body that has been approved by the Secretary under subsection (e)(1)(A) of this section to accredit mammography facilities.

(2) Certificate

The term ''certificate'' means the certificate described in subsection (b)(1) of this section.

(3) Facility

(A) In general

The term ''facility'' means a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility as determined by the Secretary, that conducts breast cancer screening or diagnosis through mammography activities. Such term does not include a facility of the Department of Veterans Affairs.

(B) Activities

For the purposes of this section, the activities of a facility include the operation of equipment to produce the mammogram, the processing of the film, the initial interpretation of the mammogram and the viewing conditions for that interpretation. Where procedures such as the film processing, or the interpretation of the mammogram are performed in a location different from where the mammogram is performed, the facility performing the mammogram shall be responsible for meeting the quality standards described in subsection (f) of this section.

(4) Inspection

The term ''inspection'' means an onsite evaluation of the facility by the Secretary, or State or local agency on behalf of the Secretary.

(5) Mammogram

The term ''mammogram'' means a radiographic image produced through mammography.

(6) Mammography

The term ''mammography'' means radiography of the breast.

(7) Survey

The term ''survey'' means an onsite physics consultation and evaluation performed by a medical physicist as described in subsection (f)(1)(E) of this section.

(8) Review physician

The term ''review physician'' means a physician as prescribed by the Secretary under subsection (f)(1)(D) of this section who meets such additional requirements as may be established by an accreditation body under subsection (e)

of this section and approved by the Secretary to review clinical images under subsection (e)(1)(B)(i) of this section on behalf of the accreditation body.

(b) Certificate requirement

(1) Certificate

No facility may conduct an examination or procedure described in paragraph (2) involving mammography after October 1, 1994, unless the facility obtains—

(A) a certificate or a temporary renewal certificate—

(i) that is issued, and, if applicable, renewed, by the Secretary in accordance with paragraphs[1] (1) or (2) of subsection (c) of this section;

(ii) that is applicable to the examination or procedure to be conducted; and

(iii) that is displayed prominently in such facility; or

(B) a provisional certificate or a limited provisional certificate—

(i) that is issued by the Secretary in accordance with paragraphs (3) and (4) of subsection (c) of this section;

(ii) that is applicable to the examination or procedure to be conducted; and

(iii) that is displayed prominently in such facility.

The reference to a certificate in this section includes a temporary renewal certificate, provisional certificate, or a limited provisional certificate.

(2) Examination or procedure

A facility shall obtain a certificate in order to—

(A) operate radiological equipment that is used to image the breast;

(B) provide for the interpretation of a mammogram produced by such equipment at the facility or under arrangements with a qualified individual at a facility different from where the mammography examination is performed; and

(C) provide for the processing of film produced by such equipment at the facility or under arrangements with a qualified individual at a facility different from where the mammography examination is performed.

(c) Issuance and renewal of certificates

(1) In general

The Secretary may issue or renew a certificate for a facility if the person or agent described in subsection (d)(1)(A) of this section meets the applicable requirements of subsection (d)(1) of this section with respect to the facility. The Secretary may issue or renew a certificate under this paragraph for not more than 3 years.

(2) Temporary renewal certificate

The Secretary may issue a temporary renewal certificate, for a period of not to exceed 45 days, to a facility seeking reaccreditation if the accreditation body has issued an accreditation extension, for a period of not to exceed 45 days, for any of the following:

(A) The facility has submitted the required materials to the accreditation body within the established time frames for the submission of such materials but the accreditation body is unable to complete the reaccreditation process before the certification expires.

(B) The facility has acquired additional or replacement equipment, or has had significant personnel changes or other unforeseen situations that have caused the facility to be unable to meet reaccreditation timeframes, but in the opinion of the accreditation body have not compromised the quality of mammography.

(3) Limited provisional certificate

The Secretary may, upon the request of an accreditation body, issue a limited provisional certificate to an entity to enable the entity to conduct examinations for educational purposes while an onsite visit from an accreditation body is in progress. Such certificate shall be valid only during the time the site visit team from the accreditation body is physically in the facility, and in no case shall be valid for longer than 72 hours. The issuance of a certificate under this paragraph, shall not preclude the entity from qualifying for a provisional certificate under paragraph (4).

(4) Provisional certificate

The Secretary may issue a provisional certificate for an entity to enable the entity to qualify as a facility. The applicant for a provisional certificate shall meet the requirements of subsection (d)(1) of this section, except providing information required by clauses (iii) and (iv) of subsection (d)(1)(A) of this section. A provisional certificate may be in effect no longer than 6 months from the date it is issued, except that it may be extended once for a period of not more than 90 days if the owner, lessor, or agent of the facility demonstrates to the Secretary that without such extension access to mammography in the geographic area served by the facility would be significantly reduced and if the owner, lessor, or agent of the facility will describe in a report to the Secretary steps that will be taken to qualify the facility for certification under subsection (b)(1) of this section.

(d) Application for certificate

(1) Submission

The Secretary may issue or renew a certificate for a facility if—

(A) the person who owns or leases the facility or an authorized agent of the person, submits to the Secretary, in such form and manner as the Secretary shall prescribe, an application that contains at a minimum—

(i) a description of the manufacturer, model, and type of each x-ray machine, image receptor, and processor operated in the performance of mammography by the facility;

(ii) a description of the procedures currently used to provide mammography at the facility, including—

(I) the types of procedures performed and the number of such procedures performed in the prior 12 months;

[1] So in original. Probably should be ''paragraph''.

(II) the methodologies for mammography; and

(III) the names and qualifications (educational background, training, and experience) of the personnel performing mammography and the physicians reading and interpreting the results from the procedures;

(iii) proof of on-site survey by a qualified medical physicist as described in subsection (f)(1)(E) of this section; and

(iv) proof of accreditation in such manner as the Secretary shall prescribe; and

(B) the person or agent submits to the Secretary—

(i) a satisfactory assurance that the facility will be operated in accordance with standards established by the Secretary under subsection (f) of this section to assure the safety and accuracy of mammography;

(ii) a satisfactory assurance that the facility will—

(I) permit inspections under subsection (g) of this section;

(II) make such records and information available, and submit such reports, to the Secretary as the Secretary may require; and

(III) update the information submitted under subparagraph (A) or assurances submitted under this subparagraph on a timely basis as required by the Secretary; and

(iii) such other information as the Secretary may require.

An applicant shall not be required to provide in an application under subparagraph (A) any information which the applicant has supplied to the accreditation body which accredited the applicant, except as required by the Secretary.

(2) Appeal

If the Secretary denies an application for the certification of a facility submitted under paragraph (1)(A), the Secretary shall provide the owner or lessor of the facility or the agent of the owner or lessor who submitted such application—

(A) a statement of the grounds on which the denial is based, and

(B) an opportunity for an appeal in accordance with the procedures set forth in regulations of the Secretary published at part 498 of title 42, Code of Federal Regulations.

(3) Effect of denial

If the application for the certification of a facility is denied, the facility may not operate unless the denial of the application is overturned at the conclusion of the administrative appeals process provided in the regulations referred to in paragraph (2)(B).

(e) Accreditation

(1) Approval of accreditation bodies

(A) In general

The Secretary may approve a private nonprofit organization or State agency to accredit facilities for purposes of subsection (d)(1)(A)(iv) of this section if the accreditation body meets the standards for accreditation established by the Secretary as described in subparagraph (B) and provides the assurances required by subparagraph (C).

(B) Standards

The Secretary shall establish standards for accreditation bodies, including—

(i) standards that require an accreditation body to perform—

(I) a review of clinical images from each facility accredited by such body not less often than every 3 years which review will be made by qualified review physicians; and

(II) a review of a random sample of clinical images from such facilities in each 3-year period beginning October 1, 1994, which review will be made by qualified review physicians;

(ii) standards that prohibit individuals conducting the reviews described in clause (i) from maintaining any relationship to the facility undergoing review which would constitute a conflict of interest;

(iii) standards that limit the imposition of fees for accreditation to reasonable amounts;

(iv) standards that require as a condition of accreditation that each facility undergo a survey at least annually by a medical physicist as described in subsection (f)(1)(E) of this section to ensure that the facility meets the standards described in subparagraphs (A) and (B) of subsection (f)(1) of this section;

(v) standards that require monitoring and evaluation of such survey, as prescribed by the Secretary;

(vi) standards that are equal to standards established under subsection (f) of this section which are relevant to accreditation as determined by the Secretary; and

(vii) such additional standards as the Secretary may require.

(C) Assurances

The accrediting body shall provide the Secretary satisfactory assurances that the body will—

(i) comply with the standards as described in subparagraph (B);

(ii) comply with the requirements described in paragraph (4);

(iii) submit to the Secretary the name of any facility for which the accreditation body denies, suspends, or revokes accreditation;

(iv) notify the Secretary in a timely manner before the accreditation body changes the standards of the body;

(v) notify each facility accredited by the accreditation body if the Secretary withdraws approval of the accreditation body under paragraph (2) in a timely manner; and

(vi) provide such other additional information as the Secretary may require.

(D) Regulations

Not later than 9 months after October 27, 1992, the Secretary shall promulgate regula-

tions under which the Secretary may approve an accreditation body.

(2) Withdrawal of approval

(A) In general

The Secretary shall promulgate regulations under which the Secretary may withdraw the approval of an accreditation body if the Secretary determines that the accreditation body does not meet the standards under subparagraph (B) of paragraph (1), the requirements of clauses (i) through (vi) of subparagraph (C) of paragraph (1), or the requirements of paragraph (4).

(B) Effect of withdrawal

If the Secretary withdraws the approval of an accreditation body under subparagraph (A), the certificate of any facility accredited by the body shall continue in effect until the expiration of a reasonable period, as determined by the Secretary, for such facility to obtain another accreditation.

(3) Accreditation

To be accredited by an approved accreditation body a facility shall meet—

(A) the standards described in paragraph (1)(B) which the Secretary determines are applicable to the facility, and

(B) such other standards which the accreditation body may require.

(4) Compliance

To ensure that facilities accredited by an accreditation body will continue to meet the standards of the accreditation body, the accreditation body shall—

(A) make onsite visits on an annual basis of a sufficient number of the facilities accredited by the body to allow a reasonable estimate of the performance of the body; and

(B) take such additional measures as the Secretary determines to be appropriate.

Visits made under subparagraph (A) shall be made after providing such notice as the Secretary may require.

(5) Revocation of accreditation

If an accreditation body revokes the accreditation of a facility, the certificate of the facility shall continue in effect until such time as may be determined by the Secretary.

(6) Evaluation and report

(A) Evaluation

The Secretary shall evaluate annually the performance of each approved accreditation body by—

(i) inspecting under subsection (g)(2) of this section a sufficient number of the facilities accredited by the body to allow a reasonable estimate of the performance of the body; and

(ii) such additional means as the Secretary determines to be appropriate.

(B) Report

The Secretary shall annually prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that describes the results of the evaluation conducted in accordance with subparagraph (A).

(f) Quality standards

(1) In general

The standards referred to in subsection (d)(1)(B)(i) of this section are standards established by the Secretary which include—

(A) standards that require establishment and maintenance of a quality assurance and quality control program at each facility that is adequate and appropriate to ensure the reliability, clarity, and accuracy of interpretation of mammograms and standards for appropriate radiation dose;

(B) standards that require use of radiological equipment specifically designed for mammography, including radiologic standards and standards for other equipment and materials used in conjunction with such equipment;

(C) a requirement that personnel who perform mammography—

(i)(I) be licensed by a State to perform radiological procedures; or

(II) be certified as qualified to perform radiological procedures by an organization described in paragraph (2)(A); and

(ii) during the 2-year period beginning October 1, 1994, meet training standards for personnel who perform mammography or meet experience requirements which shall at a minimum include 1 year of experience in the performance of mammography; and

(iii) upon the expiration of such 2-year period meet minimum training standards for personnel who perform mammograms;

(D) a requirement that mammograms be interpreted by a physician who is certified as qualified to interpret radiological procedures, including mammography—

(i)(I) by a board described in paragraph (2)(B); or

(II) by a program that complies with the standards described in paragraph (2)(C); and

(ii) who meets training and continuing medical education requirements as established by the Secretary;

(E) a requirement that individuals who survey mammography facilities be medical physicists—

(i) licensed or approved by a State to perform such surveys, reviews, or inspections for mammography facilities;

(ii) certified in diagnostic radiological physics or certified as qualified to perform such surveys by a board as described in paragraph (2)(D); or

(iii) in the first 5 years after October 27, 1992, who meet other criteria established by the Secretary which are comparable to the criteria described in clause (i) or (ii);

(F) a requirement that a medical physicist who is qualified in mammography as described in subparagraph (E) survey mammography equipment and oversee quality assurance practices at each facility;

(G) a requirement that—

(i) a facility that performs any mammogram—

(I) except as provided in subclause (II), maintain the mammogram in the permanent medical records of the patient for a period of not less than 5 years, or not less than 10 years if no subsequent mammograms of such patient are performed at the facility, or longer if mandated by State law; and

(II) upon the request of or on behalf of the patient, transfer the mammogram to a medical institution, to a physician of the patient, or to the patient directly; and

(ii)(I) a facility must assure the preparation of a written report of the results of any mammography examination signed by the interpreting physician;

(II) such written report shall be provided to the patient's physicians (if any);

(III) if such a physician is not available or if there is no such physician, the written report shall be sent directly to the patient; and

(IV) whether or not such a physician is available or there is no such physician, a summary of the written report shall be sent directly to the patient in terms easily understood by a lay person; and

(H) standards relating to special techniques for mammography of patients with breast implants.

Subparagraph (G) shall not be construed to limit a patient's access to the patient's medical records.

(2) Certification of personnel

The Secretary shall by regulation—

(A) specify organizations eligible to certify individuals to perform radiological procedures as required by paragraph (1)(C);

(B) specify boards eligible to certify physicians to interpret radiological procedures, including mammography, as required by paragraph (1)(D);

(C) establish standards for a program to certify physicians described in paragraph (1)(D); and

(D) specify boards eligible to certify medical physicists who are qualified to survey mammography equipment and to oversee quality assurance practices at mammography facilities.

(g) Inspections

(1) Annual inspections

(A) In general

The Secretary may enter and inspect facilities to determine compliance with the certification requirements under subsection (b) of this section and the standards established under subsection (f) of this section. The Secretary shall, if feasible, delegate to a State or local agency the authority to make such inspections.

(B) Identification

The Secretary, or State or local agency acting on behalf of the Secretary, may conduct inspections only on presenting identification to the owner, operator, or agent in charge of the facility to be inspected.

(C) Scope of inspection

In conducting inspections, the Secretary or State or local agency acting on behalf of the Secretary—

(i) shall have access to all equipment, materials, records, and information that the Secretary or State or local agency considers necessary to determine whether the facility is being operated in accordance with this section; and

(ii) may copy, or require the facility to submit to the Secretary or the State or local agency, any of the materials, records, or information.

(D) Qualifications of inspectors

Qualified individuals, as determined by the Secretary, shall conduct all inspections. The Secretary may request that a State or local agency acting on behalf of the Secretary designate a qualified officer or employee to conduct the inspections, or designate a qualified Federal officer or employee to conduct inspections. The Secretary shall establish minimum qualifications and appropriate training for inspectors and criteria for certification of inspectors in order to inspect facilities for compliance with subsection (f) of this section.

(E) Frequency

The Secretary or State or local agency acting on behalf of the Secretary shall conduct inspections under this paragraph of each facility not less often than annually, subject to paragraph (6).

(F) Records and annual reports

The Secretary or a State or local agency acting on behalf of the Secretary which is responsible for inspecting mammography facilities shall maintain records of annual inspections required under this paragraph for a period as prescribed by the Secretary. Such a State or local agency shall annually prepare and submit to the Secretary a report concerning the inspections carried out under this paragraph. Such reports shall include a description of the facilities inspected and the results of such inspections.

(2) Inspection of accredited facilities

The Secretary shall inspect annually a sufficient number of the facilities accredited by an accreditation body to provide the Secretary with a reasonable estimate of the performance of such body.

(3) Inspection of facilities inspected by State or local agencies

The Secretary shall inspect annually facilities inspected by State or local agencies acting on behalf of the Secretary to assure a reasonable performance by such State or local agencies.

(4) Timing

The Secretary, or State or local agency, may conduct inspections under paragraphs (1),

(2), and (3), during regular business hours or at a mutually agreeable time and after providing such notice as the Secretary may prescribe, except that the Secretary may waive such requirements if the continued performance of mammography at such facility threatens the public health.

(5) Limited reinspection

Nothing in this section limits the authority of the Secretary to conduct limited reinspections of facilities found not to be in compliance with this section.

(6) Demonstration program

(A) In general

The Secretary may establish a demonstration program under which inspections under paragraph (1) of selected facilities are conducted less frequently by the Secretary (or as applicable, by State or local agencies acting on behalf of the Secretary) than the interval specified in subparagraph (E) of such paragraph.

(B) Requirements

Any demonstration program under subparagraph (A) shall be carried out in accordance with the following:

(i) The program may not be implemented before April 1, 2001. Preparations for the program may be carried out prior to such date.

(ii) In carrying out the program, the Secretary may not select a facility for inclusion in the program unless the facility is substantially free of incidents of noncompliance with the standards under subsection (f) of this section. The Secretary may at any time provide that a facility will no longer be included in the program.

(iii) The number of facilities selected for inclusion in the program shall be sufficient to provide a statistically significant sample, subject to compliance with clause (ii).

(iv) Facilities that are selected for inclusion in the program shall be inspected at such intervals as the Secretary determines will reasonably ensure that the facilities are maintaining compliance with such standards.

(h) Sanctions

(1) In general

In order to promote voluntary compliance with this section, the Secretary may, in lieu of taking the actions authorized by subsection (i) of this section, impose one or more of the following sanctions:

(A) Directed plans of correction which afford a facility an opportunity to correct violations in a timely manner.

(B) Payment for the cost of onsite monitoring.

(2) Patient information

If the Secretary determines that the quality of mammography performed by a facility (whether or not certified pursuant to subsection (c) of this section) was so inconsistent with the quality standards established pursuant to subsection (f) of this section as to present a significant risk to individual or public health, the Secretary may require such facility to notify patients who received mammograms at such facility, and their referring physicians, of the deficiencies presenting such risk, the potential harm resulting, appropriate remedial measures, and such other relevant information as the Secretary may require.

(3) Civil money penalties

The Secretary may assess civil money penalties in an amount not to exceed $10,000 for—

(A) failure to obtain a certificate as required by subsection (b) of this section,

(B) each failure by a facility to substantially comply with, or each day on which a facility fails to substantially comply with, the standards established under subsection (f) of this section or the requirements described in subclauses (I) through (III) of subsection (d)(1)(B)(ii) of this section,

(C) each failure to notify a patient of risk as required by the Secretary pursuant to paragraph (2), and

(D) each violation, or for each aiding and abetting in a violation of, any provision of, or regulation promulgated under, this section by an owner, operator, or any employee of a facility required to have a certificate.

(4) Procedures

The Secretary shall develop and implement procedures with respect to when and how each of the sanctions is to be imposed under paragraphs (1) through (3). Such procedures shall provide for notice to the owner or operator of the facility and a reasonable opportunity for the owner or operator to respond to the proposed sanctions and appropriate procedures for appealing determinations relating to the imposition of sanctions.

(i) Suspension and revocation

(1) In general

The certificate of a facility issued under subsection (c) of this section may be suspended or revoked if the Secretary finds, after providing, except as provided in paragraph (2), reasonable notice and an opportunity for a hearing to the owner or operator of the facility, that the owner, operator, or any employee of the facility—

(A) has been guilty of misrepresentation in obtaining the certificate;

(B) has failed to comply with the requirements of subsection (d)(1)(B)(ii)(III) of this section or the standards established by the Secretary under subsection (f) of this section;

(C) has failed to comply with reasonable requests of the Secretary (or of an accreditation body approved pursuant to subsection (e) of this section) for any record, information, report, or material that the Secretary (or such accreditation body or State carrying out certification program requirements pursuant to subsection (q) of this section) concludes is necessary to determine the continued eligibility of the facility for a certificate or continued compliance with the standards established under subsection (f) of this section;

(D) has refused a reasonable request of the Secretary, any Federal officer or employee duly designated by the Secretary, or any State or local officer or employee duly designated by the State or local agency, for permission to inspect the facility or the operations and pertinent records of the facility in accordance with subsection (g) of this section;

(E) has violated or aided and abetted in the violation of any provision of, or regulation promulgated under, this section; or

(F) has failed to comply with a sanction imposed under subsection (h) of this section.

(2) Action before a hearing

(A) In general

The Secretary may suspend the certificate of the facility before holding a hearing required by paragraph (1) if the Secretary has reason to believe that the circumstance of the case will support one or more of the findings described in paragraph (1) and that—

(i) the failure or violation was intentional; or

(ii) the failure or violation presents a serious risk to human health.

(B) Hearing

If the Secretary suspends a certificate under subparagraph (A), the Secretary shall provide an opportunity for a hearing to the owner or operator of the facility not later than 60 days from the effective date of the suspension. The suspension shall remain in effect until the decision of the Secretary made after the hearing.

(3) Ineligibility to own or operate facilities after revocation

If the Secretary revokes the certificate of a facility on the basis of an act described in paragraph (1), no person who owned or operated the facility at the time of the act may, within 2 years of the revocation of the certificate, own or operate a facility that requires a certificate under this section.

(j) Injunctions

If the Secretary determines that—

(1) continuation of any activity related to the provision of mammography by a facility would constitute a serious risk to human health, the Secretary may bring suit in the district court of the United States for the district in which the facility is situated to enjoin continuation of the activity; and

(2) a facility is operating without a certificate as required by subsection (b) of this section, the Secretary may bring suit in the district court of the United States for the district in which the facility is situated to enjoin the operation of the facility.

Upon a proper showing, the district court shall grant a temporary injunction or restraining order against continuation of the activity or against operation of a facility, as the case may be, without requiring the Secretary to post a bond, pending issuance of a final order under this subsection.

(k) Judicial review

(1) Petition

If the Secretary imposes a sanction on a facility under subsection (h) of this section or suspends or revokes the certificate of a facility under subsection (i) of this section, the owner or operator of the facility may, not later than 60 days after the date the action of the Secretary becomes final, file a petition with the United States court of appeals for the circuit in which the facility is situated for judicial review of the action. As soon as practicable after receipt of the petition, the clerk of the court shall transmit a copy of the petition to the Secretary or other officer designated by the Secretary. As soon as practicable after receipt of the copy, the Secretary shall file in the court the record on which the action of the Secretary is based, as provided in section 2112 of title 28.

(2) Additional evidence

If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order the additional evidence (and evidence in rebuttal of the additional evidence) to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may determine to be proper. The Secretary may modify the findings of the Secretary as to the facts, or make new findings, by reason of the additional evidence so taken, and the Secretary shall file the modified or new findings, and the recommendations of the Secretary, if any, for the modification or setting aside of the original action of the Secretary with the return of the additional evidence.

(3) Judgment of court

Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to affirm the action, or to set the action aside in whole or in part, temporarily or permanently. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) Finality of judgment

The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

***(l)* Information**

(1) In general

Not later than October 1, 1996, and annually thereafter, the Secretary shall compile and make available to physicians and the general public information that the Secretary determines is useful in evaluating the performance of facilities, including a list of facilities—

(A) that have been convicted under Federal or State laws relating to fraud and abuse, false billings, or kickbacks;

(B) that have been subject to sanctions under subsection (h) of this section, together with a statement of the reasons for the sanctions;

(C) that have had certificates revoked or suspended under subsection (i) of this section, together with a statement of the reasons for the revocation or suspension;

(D) against which the Secretary has taken action under subsection (j) of this section, together with a statement of the reasons for the action;

(E) whose accreditation has been revoked, together with a statement of the reasons of the revocation;

(F) against which a State has taken adverse action; and

(G) that meets such other measures of performance as the Secretary may develop.

(2) Date

The information to be compiled under paragraph (1) shall be information for the calendar year preceding the date the information is to be made available to the public.

(3) Explanatory information

The information to be compiled under paragraph (1) shall be accompanied by such explanatory information as may be appropriate to assist in the interpretation of the information compiled under such paragraph.

(m) State laws

Nothing in this section shall be construed to limit the authority of any State to enact and enforce laws relating to the matters covered by this section that are at least as stringent as this section or the regulations issued under this section.

(n) National Advisory Committee

(1) Establishment

In carrying out this section, the Secretary shall establish an advisory committee to be known as the National Mammography Quality Assurance Advisory Committee (hereafter in this subsection referred to as the ''Advisory Committee'').

(2) Composition

The Advisory Committee shall be composed of not fewer than 13, nor more than 19 individuals, who are not officers or employees of the Federal Government. The Secretary shall make appointments to the Advisory Committee from among—

(A) physicians,

(B) practitioners, and

(C) other health professionals,

whose clinical practice, research specialization, or professional expertise include a significant focus on mammography. The Secretary shall appoint at least 4 individuals from among national breast cancer or consumer health organizations with expertise in mammography, at least 2 industry representatives with expertise in mammography equipment, and at least 2 practicing physicians who provide mammography services.

(3) Functions and duties

The Advisory Committee shall—

(A) advise the Secretary on appropriate quality standards and regulations for mammography facilities;

(B) advise the Secretary on appropriate standards and regulations for accreditation bodies;

(C) advise the Secretary in the development of regulations with respect to sanctions;

(D) assist in developing procedures for monitoring compliance with standards under subsection (f) of this section;

(E) make recommendations and assist in the establishment of a mechanism to investigate consumer complaints;

(F) report on new developments concerning breast imaging that should be considered in the oversight of mammography facilities;

(G) determine whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determine the effects of personnel or other requirements of subsection (f) of this section on access to the services of such facilities in such areas;

(H) determine whether there will exist a sufficient number of medical physicists after October 1, 1999, to assure compliance with the requirements of subsection (f)(1)(E) of this section;

(I) determine the costs and benefits of compliance with the requirements of this section (including the requirements of regulations promulgated under this section); and

(J) perform other activities that the Secretary may require.

The Advisory Committee shall report the findings made under subparagraphs (G) and (I) to the Secretary and the Congress no later than October 1, 1993.

(4) Meetings

The Advisory Committee shall meet not less than quarterly for the first 3 years of the program and thereafter, at least annually.

(5) Chairperson

The Secretary shall appoint a chairperson of the Advisory Committee.

(*o*) Consultations

In carrying out this section, the Secretary shall consult with appropriate Federal agencies within the Department of Health and Human Services for the purposes of developing standards, regulations, evaluations, and procedures for compliance and oversight.

(p) Breast cancer screening surveillance research grants

(1) Research

(A) Grants

The Secretary shall award grants to such entities as the Secretary may determine to be appropriate to establish surveillance systems in selected geographic areas to provide data to evaluate the functioning and effectiveness of breast cancer screening programs in the United States, including assessments of participation rates in screening mammog-

raphy, diagnostic procedures, incidence of breast cancer, mode of detection (mammography screening or other methods), outcome and follow up information, and such related epidemiologic analyses that may improve early cancer detection and contribute to reduction in breast cancer mortality. Grants may be awarded for further research on breast cancer surveillance systems upon the Secretary's review of the evaluation of the program.

(B) Use of funds

Grants awarded under subparagraph (A) may be used—

(i) to study—

(I) methods to link mammography and clinical breast examination records with population-based cancer registry data;

(II) methods to provide diagnostic outcome data, or facilitate the communication of diagnostic outcome data, to radiology facilities for purposes of evaluating patterns of mammography interpretation; and

(III) mechanisms for limiting access and maintaining confidentiality of all stored data; and

(ii) to conduct pilot testing of the methods and mechanisms described in subclauses (I), (II), and (III) of clause (i) on a limited basis.

(C) Grant application

To be eligible to receive funds under this paragraph, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(D) Report

A recipient of a grant under this paragraph shall submit a report to the Secretary containing the results of the study and testing conducted under clauses (i) and (ii) of subparagraph (B), along with recommendations for methods of establishing a breast cancer screening surveillance system.

(2) Establishment

The Secretary shall establish a breast cancer screening surveillance system based on the recommendations contained in the report described in paragraph (1)(D).

(3) Standards and procedures

The Secretary shall establish standards and procedures for the operation of the breast cancer screening surveillance system, including procedures to maintain confidentiality of patient records.

(4) Information

The Secretary shall recruit facilities to provide to the breast cancer screening surveillance system relevant data that could help in the research of the causes, characteristics, and prevalence of, and potential treatments for, breast cancer and benign breast conditions, if the information may be disclosed under section 552 of title 5.

(q) State program

(1) In general

The Secretary may, upon application, authorize a State—

(A) to carry out, subject to paragraph (2), the certification program requirements under subsections (b), (c), (d), (g)(1), (h), (i), and (j) of this section (including the requirements under regulations promulgated pursuant to such subsections), and

(B) to implement the standards established by the Secretary under subsection (f) of this section,

with respect to mammography facilities operating within the State.

(2) Approval

The Secretary may approve an application under paragraph (1) if the Secretary determines that—

(A) the State has enacted laws and issued regulations relating to mammography facilities which are the requirements of this section (including the requirements under regulations promulgated pursuant to such subsections), and

(B) the State has provided satisfactory assurances that the State—

(i) has the legal authority and qualified personnel necessary to enforce the requirements of and the regulations promulgated pursuant to this section (including the requirements under regulations promulgated pursuant to such subsections),

(ii) will devote adequate funds to the administration and enforcement of such requirements, and

(iii) will provide the Secretary with such information and reports as the Secretary may require.

(3) Authority of Secretary

In a State with an approved application—

(A) the Secretary shall carry out the Secretary's functions under subsections (e) and (f) of this section;

(B) the Secretary may take action under subsections (h), (i), and (j) of this section; and

(C) the Secretary shall conduct oversight functions under subsections (g)(2) and (g)(3) of this section.

(4) Withdrawal of approval

(A) In general

The Secretary may, after providing notice and opportunity for corrective action, withdraw the approval of a State's authority under paragraph (1) if the Secretary determines that the State does not meet the requirements of such paragraph. The Secretary shall promulgate regulations for the implementation of this subparagraph.

(B) Effect of withdrawal

If the Secretary withdraws the approval of a State under subparagraph (A), the certificate of any facility certified by the State shall continue in effect until the expiration of a reasonable period, as determined by the Secretary, for such facility to obtain certification by the Secretary.

(r) Funding

(1) Fees

(A) In general

The Secretary shall, in accordance with this paragraph assess and collect fees from persons described in subsection (d)(1)(A) of this section (other than persons who are governmental entities, as determined by the Secretary) to cover the costs of inspections conducted under subsection (g)(1) of this section by the Secretary or a State acting under a delegation under subparagraph (A) of such subsection. Fees may be assessed and collected under this paragraph only in such manner as would result in an aggregate amount of fees collected during any fiscal year which equals the aggregate amount of costs for such fiscal year for inspections of facilities of such persons under subsection (g)(1) of this section. A person's liability for fees shall be reasonably based on the proportion of the inspection costs which relate to such person.

(B) Deposit and appropriations

(i) Deposit and availability

Fees collected under subparagraph (A) shall be deposited as an offsetting collection to the appropriations for the Department of Health and Human Services as provided in appropriation Acts and shall remain available without fiscal year limitation.

(ii) Appropriations

Fees collected under subparagraph (A) shall be collected and available only to the extent provided in advance in appropriation Acts.

(2) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(A) to award research grants under subsection (p) of this section, such sums as may be necessary for each of the fiscal years 1993 through 2007; and

(B) for the Secretary to carry out other activities which are not supported by fees authorized and collected under paragraph (1), such sums as may be necessary for fiscal years 1993 through 2007.

(July 1, 1944, ch. 373, title III, § 354, as added Pub. L. 102–539, § 2, Oct. 27, 1992, 106 Stat. 3547; amended Pub. L. 105–248, §§ 2–13, Oct. 9, 1998, 112 Stat. 1864–1867; Pub. L. 108–365, §§ 2–4, Oct. 25, 2004, 118 Stat. 1738–1740.)

PRIOR PROVISIONS

A prior section 263b, act July 1, 1944, ch. 373, title III, § 354, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1173; amended Nov. 28, 1990, Pub. L. 101–629, § 19(a)(1)(B), 104 Stat. 4529; Aug. 13, 1993, Pub. L. 103–80, § 4(a)(2), 107 Stat. 779, set forth Congressional declaration of purpose, prior to repeal by Pub. L. 101–629, § 19(a)(3), Nov. 28, 1990, 104 Stat. 4530.

Sections 263c to 263n, act July 1, 1944, ch. 373, title III, §§ 355–360F, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1174, and amended, which related to electronic product radiation control, were renumbered sections 531 to 542, respectively, of the Federal Food, Drug, and Cosmetic Act by Pub. L. 101–629, § 19(a)(4), Nov. 28, 1990, 104 Stat. 4530, and are classified to sections 360hh to 360ss, respectively, of Title 21, Food and Drugs.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–365, § 2(1)(C), substituted ''temporary renewal certificate, provisional certificate, or a limited provisional certificate'' for ''provisional certificate'' in concluding provisions.

Subsec. (b)(1)(A). Pub. L. 108–365, § 2(1)(A), inserted ''or a temporary renewal certificate'' after ''certificate'' in introductory provisions and substituted ''paragraphs (1) or (2) of subsection (c)'' for ''subsection (c)(1)'' in cl. (i).

Subsec. (b)(1)(B). Pub. L. 108–365, § 2(1)(B), inserted ''or a limited provisional certificate'' after ''certificate'' in introductory provisions and substituted ''paragraphs (3) and (4) of subsection (c)'' for ''subsection (c)(2)'' in cl. (i).

Subsec. (c)(2) to (4). Pub. L. 108–365, § 2(2), added pars. (2) and (3) and redesignated former par. (2) as (4).

Subsec. (n)(2). Pub. L. 108–365, § 3(1), reenacted subpar. (C) without change, added concluding provisions, and struck out former concluding provisions which read as follows: ''whose clinical practice, research specialization, or professional expertise include a significant focus on mammography. The Secretary shall appoint at least 4 individuals from among national breast cancer or consumer health organizations with expertise in mammography and at least 2 practicing physicians who provide mammography services.''

Subsec. (n)(4). Pub. L. 108–365, § 3(2), substituted ''annually'' for ''biannually''.

Subsec. (r)(2). Pub. L. 108–365, § 4, substituted ''2007'' for ''2002'' in subpars. (A) and (B).

1998—Subsec. (a)(4). Pub. L. 105–248, § 9(1), inserted ''or local'' after ''State''.

Subsec. (a)(8). Pub. L. 105–248, § 4(b), added par. (8).

Subsec. (d)(2)(B). Pub. L. 105–248, § 3, substituted ''part 498 of title 42, Code of Federal Regulations'' for ''42 C.F.R. 498 and in effect on October 27, 1992''.

Subsec. (e)(1)(B)(i)(I), (II). Pub. L. 105–248, § 4(a)(1), substituted ''review physicians'' for ''practicing physicians''.

Subsec. (e)(1)(B)(ii). Pub. L. 105–248, § 4(a)(2), substituted ''relationship'' for ''financial relationship''.

Subsec. (f)(1)(G)(i). Pub. L. 105–248, § 5, added cl. (i) and struck out former cl. (i) which read as follows: ''a facility that performs any mammogram maintain the mammogram in the permanent medical records of the patient—

''(I) for a period of not less than 5 years, or not less than 10 years if no additional mammograms of such patient are performed at the facility, or longer if mandated by State law; or

''(II) until such time as the patient should request that the patient's medical records be forwarded to a medical institution or a physician of the patient;

whichever is longer; and''.

Subsec. (f)(1)(G)(ii)(IV). Pub. L. 105–248, § 6, added subcl. (IV) and struck out former subcl. (IV) which read as follows: ''if such report is sent to the patient, the report shall include a summary written in terms easily understood by a lay person; and''.

Subsec. (g)(1). Pub. L. 105–248, § 9(1), inserted ''or local'' after ''State'' wherever appearing.

Subsec. (g)(1)(A). Pub. L. 105–248, § 7, in first sentence, struck out ''certified'' before ''facilities'' and inserted ''the certification requirements under subsection (b) of this section and'' after ''compliance with''.

Subsec. (g)(1)(E). Pub. L. 105–248, § 8(1), inserted '', subject to paragraph (6)'' before period at end.

Subsec. (g)(3). Pub. L. 105–248, § 9(1), (2), inserted ''or local'' after ''State'' in heading and in two places in text.

Subsec. (g)(4). Pub. L. 105–248, § 9(1), inserted ''or local'' after ''State''.

Subsec. (g)(6). Pub. L. 105–248, § 8(2), added par. (6).

Subsec. (h)(2). Pub. L. 105–248, § 10(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (h)(3). Pub. L. 105–248, § 10(a)(1), (b), redesignated par. (2) as (3), added subpar. (C), and redesignated

former subpar. (C) as (D). Former par. (3) redesignated (4).

Subsec. (h)(4). Pub. L. 105–248, §10(a)(1), (c), redesignated par. (3) as (4) and substituted ''paragraphs (1) through (3)'' for ''paragraphs (1) and (2)''.

Subsec. (i)(1)(C). Pub. L. 105–248, §11, inserted ''(or of an accreditation body approved pursuant to subsection (e) of this section)'' after ''of the Secretary'' and inserted ''(or such accreditation body or State carrying out certification program requirements pursuant to subsection (q) of this section)'' after ''that the Secretary''.

Subsec. (i)(1)(D). Pub. L. 105–248, §9(3), inserted ''or local'' after ''any State'' and ''or local agency'' after ''by the State''.

Subsec. (i)(2)(A). Pub. L. 105–248, §12, substituted ''has reason to believe that the circumstance of the case will support one or more of the findings described in paragraph (1) and that—'' and cls. (i) and (ii) for ''makes the finding described in paragraph (1) and determines that—

''(i) the failure of a facility to comply with the standards established by the Secretary under subsection (f) of this section presents a serious risk to human health; or

''(ii) a facility has engaged in an action described in subparagraph (D) or (E) of paragraph (1).''

Subsec. (q)(4)(B). Pub. L. 105–248, §13, substituted ''certified'' for ''accredited''.

Subsec. (r)(2)(A). Pub. L. 105–248, §2, substituted ''subsection (p)'' for ''subsection (q)'' and ''2002'' for ''1997''.

Subsec. (r)(2)(B). Pub. L. 105–248, §2, substituted ''fiscal years'' for ''fiscal year'' and ''2002'' for ''1997''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REGULATIONS

Pub. L. 103–183, title VII, §707, Dec. 14, 1993, 107 Stat. 2241, provided that: ''The Secretary of Health and Human Services is authorized to issue interim final regulations—

''(1) under which the Secretary may approve accreditation bodies under section 354(e) of the Public Health Service Act (42 U.S.C. 263b(e)); and

''(2) establishing quality standards under section 354(f) of the Public Health Service Act (42 U.S.C. 263b(f)).''

STUDY

Section 3 of Pub. L. 102–539 directed Comptroller General of United States to conduct a study of the certification program authorized by this section to determine if the program has resulted in improvement of quality and accessibility of mammography services, and if the program has reduced the frequency of poor quality mammography and improved early detection of breast cancer, with Comptroller General, not later than 3 years from Oct. 27, 1992, submit to Congress an interim report of results of study and, not later than 5 years from such date to submit a final report.

PART G—QUARANTINE AND INSPECTION

§ 264. Regulations to control communicable diseases

(a) Promulgation and enforcement by Surgeon General

The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.

(b) Apprehension, detention, or conditional release of individuals

Regulations prescribed under this section shall not provide for the apprehension, detention, or conditional release of individuals except for the purpose of preventing the introduction, transmission, or spread of such communicable diseases as may be specified from time to time in Executive orders of the President upon the recommendation of the Secretary, in consultation with the Surgeon General,[1].

(c) Application of regulations to persons entering from foreign countries

Except as provided in subsection (d) of this section, regulations prescribed under this section, insofar as they provide for the apprehension, detention, examination, or conditional release of individuals, shall be applicable only to individuals coming into a State or possession from a foreign country or a possession.

(d) Apprehension and examination of persons reasonably believed to be infected

(1) Regulations prescribed under this section may provide for the apprehension and examination of any individual reasonably believed to be infected with a communicable disease in a qualifying stage and (A) to be moving or about to move from a State to another State; or (B) to be a probable source of infection to individuals

[1] So in original. Comma probably should not appear.

who, while infected with such disease in a qualifying stage, will be moving from a State to another State. Such regulations may provide that if upon examination any such individual is found to be infected, he may be detained for such time and in such manner as may be reasonably necessary. For purposes of this subsection, the term ''State'' includes, in addition to the several States, only the District of Columbia.

(2) For purposes of this subsection, the term ''qualifying stage'', with respect to a communicable disease, means that such disease—

(A) is in a communicable stage; or

(B) is in a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals.

(e) Preemption

Nothing in this section or section 266 of this title, or the regulations promulgated under such sections, may be construed as superseding any provision under State law (including regulations and including provisions established by political subdivisions of States), except to the extent that such a provision conflicts with an exercise of Federal authority under this section or section 266 of this title.

(July 1, 1944, ch. 373, title III, § 361, 58 Stat. 703; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 86–624, § 29(c), July 12, 1960, 74 Stat. 419; Pub. L. 94–317, title III, § 301(b)(1), June 23, 1976, 90 Stat. 707; Pub. L. 107–188, title I, § 142(a)(1), (2), (b)(1), (c), June 12, 2002, 116 Stat. 626, 627.)

AMENDMENTS

2002—Pub. L. 107–188, § 142(a)(1), (2), (b)(1), and (c), which directed certain amendments to section 361 of the Public Health Act, was executed by making the amendments to this section, which is section 361 of the Public Health Service Act, to reflect the probable intent of Congress. See below.

Subsec. (b). Pub. L. 107–188, § 142(a)(1), substituted ''Executive orders of the President upon the recommendation of the Secretary, in consultation with the Surgeon General,'' for ''Executive orders of the President upon the recommendation of the National Advisory Health Council and the Surgeon General''.

Subsec. (d). Pub. L. 107–188, § 142(a)(2), (b)(1), substituted in first sentence ''Regulations'' for ''On recommendation of the National Advisory Health Council, regulations'', ''in a qualifying stage'' for ''in a communicable stage'' in two places, designated existing text as par. (1) and substituted ''(A)'' and ''(B)'' for ''(1)'' and ''(2)'', respectively, and added par. (2).

Subsec. (e). Pub. L. 107–188, § 142(c), added subsec. (e).

1976—Subsec. (d). Pub. L. 94–317 inserted provision defining ''State'' to include, in addition to the several States, only the District of Columbia.

1960—Subsec. (c). Pub. L. 86–624 struck out reference to Territory of Hawaii.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86–624, set out as a note under section 201 of this title.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

EXECUTIVE ORDER NO. 12452

Ex. Ord. No. 12452, Dec. 22, 1983, 48 F.R. 56927, which specified certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction, transmission, or spread of such diseases, was revoked by Ex. Ord. No. 13295, § 5, Apr. 4, 2003, 68 F.R. 17255, set out below.

EX. ORD. NO. 13295. REVISED LIST OF QUARANTINABLE COMMUNICABLE DISEASES

Ex. Ord. No. 13295, Apr. 4, 2003, 68 F.R. 17255, as amended by Ex. Ord. No. 13375, § 1, Apr. 1, 2005, 70 F.R. 17299, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 361(b) of the Public Health Service Act (42 U.S.C. 264(b)), it is hereby ordered as follows:

SECTION 1. Based upon the recommendation of the Secretary of Health and Human Services (the ''Secretary''), in consultation with the Surgeon General, and for the purpose of specifying certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction, transmission, or spread of suspected communicable diseases, the following communicable diseases are hereby specified pursuant to section 361(b) of the Public Health Service Act:

(a) Cholera; Diphtheria; infectious Tuberculosis; Plague; Smallpox; Yellow Fever; and Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named).

(b) Severe Acute Respiratory Syndrome (SARS), which is a disease associated with fever and signs and symptoms of pneumonia or other respiratory illness, is transmitted from person to person predominantly by the aerosolized or droplet route, and, if spread in the population, would have severe public health consequences.

(c) Influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic.

SEC. 2. The Secretary, in the Secretary's discretion, shall determine whether a particular condition constitutes a communicable disease of the type specified in section 1 of this order.

SEC. 3. The functions of the President under sections 362 and 364(a) of the Public Health Service Act (42 U.S.C. 265 and 267(a)) are assigned to the Secretary.

SEC. 4. This order is not intended to, and does not, create any right or benefit enforceable at law or equity by any party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

SEC. 5. Executive Order 12452 of December 22, 1983, is hereby revoked.

GEORGE W. BUSH.

§ 265. Suspension of entries and imports from designated places to prevent spread of communicable diseases

Whenever the Surgeon General determines that by reason of the existence of any commu-

nicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.

(July 1, 1944, ch. 373, title III, § 362, 58 Stat. 704.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

For assignment of functions of President under this section, see section 3 of Ex. Ord. No. 13295, Apr. 4, 2003, 68 F.R. 17255, set out as a note under section 264 of this title.

§ 266. Special quarantine powers in time of war

To protect the military and naval forces and war workers of the United States, in time of war, against any communicable disease specified in Executive orders as provided in subsection (b) of section 264 of this title, the Secretary, in consultation with the Surgeon General, is authorized to provide by regulations for the apprehension and examination, in time of war, of any individual reasonably believed (1) to be infected with such disease and (2) to be a probable source of infection to members of the armed forces of the United States or to individuals engaged in the production or transportation of arms, munitions, ships, food, clothing, or other supplies for the armed forces. Such regulations may provide that if upon examination any such individual is found to be so infected, he may be detained for such time and in such manner as may be reasonably necessary.

(July 1, 1944, ch. 373, title III, § 363, 58 Stat. 704; Pub. L. 107–188, title I, § 142(a)(3), (b)(2), June 12, 2002, 116 Stat. 626, 627.)

AMENDMENTS

2002—Pub. L. 107–188, which directed substitution of ''the Secretary, in consultation with the Surgeon General,'' for ''the Surgeon General, on recommendation of the National Advisory Health Council,'' and striking out of ''in a communicable stage'' after ''(1) to be infected with such disease'', in section 363 of the Public Health Act, was executed to this section, which is section 363 of the Public Health Service Act, to reflect the probable intent of Congress.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 267. Quarantine stations, grounds, and anchorages

(a) Control and management

Except as provided in title II of the Act of June 15, 1917, as amended [50 U.S.C. 191 et seq.], the Surgeon General shall control, direct, and manage all United States quarantine stations, grounds, and anchorages, designate their boundaries, and designate the quarantine officers to be in charge thereof. With the approval of the President he shall from time to time select suitable sites for and establish such additional stations, grounds, and anchorages in the States and possessions of the United States as in his judgment are necessary to prevent the introduction of communicable diseases into the States and possessions of the United States.

(b) Hours of inspection

The Surgeon General shall establish the hours during which quarantine service shall be performed at each quarantine station, and, upon application by any interested party, may establish quarantine inspection during the twenty-four hours of the day, or any fraction thereof, at such quarantine stations as, in his opinion, require such extended service. He may restrict the performance of quarantine inspection to hours of daylight for such arriving vessels as cannot, in his opinion, be satisfactorily inspected during hours of darkness. No vessel shall be required to undergo quarantine inspection during the hours of darkness, unless the quarantine officer at such quarantine station shall deem an immediate inspection necessary to protect the public health. Uniformity shall not be required in the hours during which quarantine inspection may be obtained at the various ports of the United States.

(c) Overtime pay for employees of Service

The Surgeon General shall fix a reasonable rate of extra compensation for overtime services of employees of the United States Public Health Service, Foreign Quarantine Division, performing overtime duties including the operation of vessels, in connection with the inspection or quarantine treatment of persons (passengers and crews), conveyances, or goods arriving by land, water, or air in the United States or any place subject to the jurisdiction thereof, hereinafter referred to as ''employees of the Public Health Service'', when required to be on duty between the hours of 6 o'clock postmeridian and 6 o'clock antemeridian (or between the hours of 7 o'clock postmeridian and 7 o'clock antemeridian at stations which have a declared workday of from 7 o'clock antemeridian to 7 o'clock postmeridian),

or on Sundays or holidays, such rate, in lieu of compensation under any other provision of law, to be fixed at two times the basic hourly rate for each hour that the overtime extends beyond 6 o'clock (or 7 o'clock as the case may be) postmeridian, and two times the basic hourly rate for each overtime hour worked on Sundays or holidays. As used in this subsection, the term ''basic hourly rate'' shall mean the regular basic rate of pay which is applicable to such employees for work performed within their regular scheduled tour of duty.

(d) Payment of extra compensation to United States; bond or deposit to assure payment; deposit of moneys to credit of appropriation

(1) The said extra compensation shall be paid to the United States by the owner, agent, consignee, operator, or master or other person in charge of any conveyance, for whom, at his request, services as described in this subsection (hereinafter referred to as overtime service) are performed. If such employees have been ordered to report for duty and have so reported, and the requested services are not performed by reason of circumstances beyond the control of the employees concerned, such extra compensation shall be paid on the same basis as though the overtime services had actually been performed during the period between the time the employees were ordered to report for duty and did so report, and the time they were notified that their services would not be required, and in any case as though their services had continued for not less than one hour. The Surgeon General with the approval of the Secretary of Health and Human Services may prescribe regulations requiring the owner, agent, consignee, operator, or master or other person for whom the overtime services are performed to file a bond in such amounts and containing such conditions and with such sureties, or in lieu of a bond, to deposit money or obligations of the United States in such amount, as will assure the payment of charges under this subsection, which bond or deposit may cover one or more transactions or all transactions during a specified period: *Provided*, That no charges shall be made for services performed in connection with the inspection of (1) persons arriving by international highways, ferries, bridges, or tunnels, or the conveyances in which they arrive, or (2) persons arriving by aircraft or railroad trains, the operations of which are covered by published schedules, or the aircraft or trains in which they arrive, or (3) persons arriving by vessels operated between Canadian ports and ports on Puget Sound or operated on the Great Lakes and connecting waterways, the operations of which are covered by published schedules, or the vessels in which they arrive.

(2) Moneys collected under this subsection shall be deposited in the Treasury of the United States to the credit of the appropriation charged with the expense of the services, and the appropriations so credited shall be available for the payment of such compensation to the said employees for services so rendered.

(July 1, 1944, ch. 373, title III, § 364, 58 Stat. 704; Pub. L. 85–58, ch. VII, § 701, June 21, 1957, 71 Stat. 181; Pub. L. 85–580, title II, § 201, Aug. 1, 1958, 72 Stat. 467; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–580 increased rate of pay for each hour that overtime extends beyond 6 o'clock (or 7 o'clock as the case may be) postmeridian from one and one-half times the basic hourly rate to two times the basic hourly rate.

1957—Subsecs. (c), (d). Pub. L. 85–58 added subsecs. (c) and (d).

TRANSFER OF FUNCTIONS

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (d) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

For assignment of functions of President under subsec. (a) of this section, see section 3 of Ex. Ord. No. 13295, Apr. 4, 2003, 68 F.R. 17255, set out as a note under section 264 of this title.

§ 268. Quarantine duties of consular and other officers

(a) Any consular or medical officer of the United States, designated for such purpose by the Secretary, shall make reports to the Surgeon General, on such forms and at such intervals as the Surgeon General may prescribe, of the health conditions at the port or place at which such officer is stationed.

(b) It shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations; but no additional compensation, except actual and necessary traveling expenses, shall be allowed any such officer by reason of such services.

(July 1, 1944, ch. 373, title III, § 365, 58 Stat. 705; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Reference to Secretary of Health, Education, and Welfare substituted for reference to Federal Security Administrator pursuant to section 5 of Reorg. Plan No. 1, of 1953, set out as a note under section 3501 of this title, which transferred functions of Federal Security Administrator to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency to Department of Health, Education, and Welfare. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 269. Bills of health

(a) Detail of medical officer; conditions precedent to issuance; consular officer to receive fees

Except as otherwise prescribed in regulations, any vessel at any foreign port or place clearing or departing for any port or place in a State or possession shall be required to obtain from the consular officer of the United States or from the Public Health Service officer, or other medical officer of the United States designated by the Surgeon General, at the port or place of departure, a bill of health in duplicate, in the form prescribed by the Surgeon General. The President, from time to time, shall specify the ports at which a medical officer shall be stationed for this purpose. Such bill of health shall set forth the sanitary history and condition of said vessel, and shall state that it has in all respects complied with the regulations prescribed pursuant to subsection (c) of this section. Before granting such duplicate bill of health, such consular or medical officer shall be satisfied that the matters and things therein stated are true. The consular officer shall be entitled to demand and receive the fees for bills of health and such fees shall be established by regulation.

(b) Collectors of customs to receive originals; duplicate copies as part of ship's papers

Original bills of health shall be delivered to the collectors of customs at the port of entry. Duplicate copies of such bills of health shall be delivered at the time of inspection to quarantine officers at such port. The bills of health herein prescribed shall be considered as part of the ship's papers, and when duly certified to by the proper consular or other officer of the United States, over his official signature and seal, shall be accepted as evidence of the statements therein contained in any court of the United States.

(c) Regulations to secure sanitary conditions of vessels

The Surgeon General shall from time to time prescribe regulations, applicable to vessels referred to in subsection (a) of this section for the purpose of preventing the introduction into the States or possessions of the United States of any communicable disease by securing the best sanitary condition of such vessels, their cargoes, passengers, and crews. Such regulations shall be observed by such vessels prior to departure, during the course of the voyage, and also during inspection, disinfection, or other quarantine procedure upon arrival at any United States quarantine station.

(d) Vessels from ports near frontier

The provisions of subsections (a) and (b) of this section shall not apply to vessels plying between such foreign ports on or near the frontiers of the United States and ports of the United States as are designated by treaty.

(e) Compliance with regulations

It shall be unlawful for any vessel to enter any port in any State or possession of the United States to discharge its cargo, or land its passengers, except upon a certificate of the quarantine officer that regulations prescribed under subsection (c) of this section have in all respects been complied with by such officer, the vessel, and its master. The master of every such vessel shall deliver such certificate to the collector of customs at the port of entry, together with the original bill of health and other papers of the vessel. The certificate required by this subsection shall be procurable from the quarantine officer, upon arrival of the vessel at the quarantine station and satisfactory inspection thereof, at any time within which quarantine services are performed at such station.

(July 1, 1944, ch. 373, title III, § 366, 58 Stat. 705.)

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of Bureau of Customs of Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1, of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 270. Quarantine regulations governing civil air navigation and civil aircraft

The Surgeon General is authorized to provide by regulations for the application to air navigation and aircraft of any of the provisions of sections 267 to 269 of this title and regulations prescribed thereunder (including penalties and forfeitures for violations of such sections and regulations), to such extent and upon such conditions as he deems necessary for the safeguarding of the public health.

(July 1, 1944, ch. 373, title III, § 367, 58 Stat. 706.)

ABOLITION OF OFFICE OF SURGEON GENERAL

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education,

and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 271. Penalties for violation of quarantine laws

(a) Penalties for persons violating quarantine laws

Any person who violates any regulation prescribed under sections 264 to 266 of this title, or any provision of section 269 of this title or any regulation prescribed thereunder, or who enters or departs from the limits of any quarantine station, ground, or anchorage in disregard of quarantine rules and regulations or without permission of the quarantine officer in charge, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

(b) Penalties for vessels violating quarantine laws

Any vessel which violates section 269 of this title, or any regulations thereunder or under section 267 of this title, or which enters within or departs from the limits of any quarantine station, ground, or anchorage in disregard of the quarantine rules and regulations or without permission of the officer in charge, shall forfeit to the United States not more than $5,000, the amount to be determined by the court, which shall be a lien on such vessel, to be recovered by proceedings in the proper district court of the United States. In all such proceedings the United States attorney shall appear on behalf of the United States; and all such proceedings shall be conducted in accordance with the rules and laws governing cases of seizure of vessels for violation of the revenue laws of the United States.

(c) Remittance or mitigation of forfeitures

With the approval of the Secretary, the Surgeon General may, upon application therefor, remit or mitigate any forfeiture provided for under subsection (b) of this section, and he shall have authority to ascertain the facts upon all such applications.

(July 1, 1944, ch. 373, title III, § 368, 58 Stat. 706; June 25, 1948, ch. 646, § 1, 62 Stat. 909; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted ''United States attorney'' for ''United States district attorney''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision note thereunder.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 272. Administration of oaths by quarantine officers

Medical officers of the United States, when performing duties as quarantine officers at any port or place within the United States, are authorized to take declarations and administer oaths in matters pertaining to the administration of the quarantine laws and regulations of the United States.

(July 1, 1944, ch. 373, title III, § 369, 58 Stat. 706.)

PART H—ORGAN TRANSPLANTS

PRIOR PROVISIONS

A prior part H related to grants to Alaska for mental health, prior to the general revision of part H by Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2342.

Another prior part H, entitled ''National Library of Medicine'', as added by act Aug. 3, 1956, ch. 907, 70 Stat. 960, was redesignated part I and classified to section 275 et seq. of this title, prior to repeal by Pub. L. 99–158.

§ 273. Organ procurement organizations

(a) Grant authority of Secretary

(1) The Secretary may make grants for the planning of qualified organ procurement organizations described in subsection (b) of this section.

(2) The Secretary may make grants for the establishment, initial operation, consolidation, and expansion of qualified organ procurement organizations described in subsection (b) of this section.

(b) Qualified organizations

(1) A qualified organ procurement organization for which grants may be made under subsection (a) of this section is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2)[1] and—

(A) is a nonprofit entity,

(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] for the procurement of kidneys,

(D) notwithstanding any other provision of law, has met the other requirements of this section and has been certified or recertified by the Secretary within the previous 4-year period as meeting the performance standards to be a qualified organ procurement organization through a process that either—

(i) granted certification or recertification within such 4-year period with such certification or recertification in effect as of January 1, 2000, and remaining in effect through the earlier of—

[1] See References in Text note below.

(I) January 1, 2002; or

(II) the completion of recertification under the requirements of clause (ii); or

(ii) is defined through regulations that are promulgated by the Secretary by not later than January 1, 2002, that—

(I) require recertifications of qualified organ procurement organizations not more frequently than once every 4 years;

(II) rely on outcome and process performance measures that are based on empirical evidence, obtained through reasonable efforts, of organ donor potential and other related factors in each service area of qualified organ procurement organizations;

(III) use multiple outcome measures as part of the certification process; and

(IV) provide for a qualified organ procurement organization to appeal a decertification to the Secretary on substantive and procedural grounds; [2]

(E) has procedures to obtain payment for non-renal organs provided to transplant centers,

(F) has a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as specified by the Director of the Office of Management and Budget) or does not include any part of the area,

(G) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area, and

(H) has a board of directors or an advisory board which—

(i) is composed of—

(I) members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area,

(II) members who represent the public residing in such area,

(III) a physician with knowledge, experience, or skill in the field of histocompatability [3] or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility,

(IV) a physician with knowledge or skill in the field of neurology, and

(V) from each transplant center in its service area which has arrangements described in paragraph (2)(G) [1] with the organization, a member who is a surgeon who has practicing privileges in such center and who performs organ transplant surgery,

(ii) has the authority to recommend policies for the procurement of organs and the other functions described in paragraph (2),[1] and

(iii) has no authority over any other activity of the organization.

(2)(A) Not later than 90 days after November 16, 1990, the Secretary shall publish in the Federal Register a notice of proposed rulemaking to establish criteria for determining whether an entity meets the requirement established in paragraph (1)(E).[1]

(B) Not later than 1 year after November 16, 1990, the Secretary shall publish in the Federal Register a final rule to establish the criteria described in subparagraph (A).

(3) An organ procurement organization shall—

(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

(B) conduct and participate in systematic efforts, including professional education, to acquire all useable organs from potential donors,

(C) arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the Organ Procurement and Transplantation Network under section 274(b)(2)(E) of this title, including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,

(D) arrange for the appropriate tissue typing of donated organs,

(E) have a system to allocate donated organs equitably among transplant patients according to established medical criteria,

(F) provide or arrange for the transportation of donated organs to transplant centers,

(G) have arrangements to coordinate its activities with transplant centers in its service area,

(H) participate in the Organ Procurement Transplantation Network established under section 274 of this title,

(I) have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all useable tissues are obtained from potential donors,

(J) evaluate annually the effectiveness of the organization in acquiring potentially available organs, and

(K) assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors.

(c) Pancreata islet cell transplantation or research

Pancreata procured by an organ procurement organization and used for islet cell transplantation or research shall be counted for purposes of certification or recertification under subsection (b) of this section.

(July 1, 1944, ch. 373, title III, § 371, as added Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2342; amended Pub. L. 100–607, title IV, § 402(a), (c)(1), (2), (d), Nov. 4, 1988, 102 Stat. 3114, 3115; Pub. L. 101–616, title II, §§ 201(a)–(c)(1), (d), (e), 206(b), Nov. 16, 1990, 104 Stat. 3283, 3285; Pub. L. 106–505,

[2] So in original. The semicolon probably should be a comma.

[3] So in original. Probably should be ''histocompatibility''.

title VII, §701(c), Nov. 13, 2000, 114 Stat. 2347; Pub. L. 106–554, §1(a)(1) [title II, §219(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–29; Pub. L. 108–216, §9, Apr. 5, 2004, 118 Stat. 590; Pub. L. 108–362, §2, Oct. 25, 2004, 118 Stat. 1703.)

REFERENCES IN TEXT

Paragraph (2), referred to in subsec. (b)(1), meaning paragraph (2) of subsec. (b) of this section, was redesignated paragraph (3) by section 201(d)(1) of Pub. L. 101–616. See 1990 Amendment note below.

The Social Security Act, referred to in subsec. (b)(1)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Paragraph (1)(E), referred to in subsec. (b)(2)(A), meaning paragraph (1)(E) of subsec. (b) of this section, was redesignated paragraph (1)(F) by section 701(c)(1) of Pub. L. 106–505 and section 1(a)(1) [title II, §219(b)(1)] of Pub. L. 106–554. See 2000 Amendment note below.

PRIOR PROVISIONS

A prior section 273, act July 1, 1944, ch. 373, title III, §371, as added July 28, 1956, ch. 772, title II, §201, 70 Stat. 709, authorized grants to the Territory of Alaska for an integrated mental health program, prior to repeal by Pub. L. 86–70, §31(b)(1), June 25, 1959, 73 Stat. 148, effective July 1, 1959.

A prior section 371 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, §1, 70 Stat. 960, was renumbered section 381 and classified to section 275 of this title, prior to repeal by Pub. L. 99–158, §3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

2004—Subsec. (a)(3). Pub. L. 108–216 struck out par. (3) which read as follows: ''The Secretary may make grants to, and enter into contracts with, qualified organ procurement organizations described in subsection (b) of this section and other nonprofit private entities for the purpose of carrying out special projects designed to increase the number of organ donors.''

Subsec. (c). Pub. L. 108–362 added subsec. (c).

2000—Subsec. (b)(1)(D) to (H). Pub. L. 106–505 and Pub. L. 106–554 amended par. (1) identically, adding subpar. (D), redesignating former subpars. (D) to (G) as (E) to (H), respectively, and realigning margins of subpar. (F).

1990—Pub. L. 101–616, §201(a), substituted ''Organ procurement organizations'' for ''Assistance for organ procurement organizations'' in section catchline.

Subsec. (a)(3). Pub. L. 101–616, §201(b)(1), substituted ''may make grants to, and enter into contracts with, qualified organ procurement organizations described in subsection (b) of this section and other nonprofit private entities for the purpose of carrying out special projects'' for ''may make grants for special projects''.

Subsec. (a)(4). Pub. L. 101–616, §201(b)(2), struck out par. (4) which set forth factors to consider in making grants.

Subsec. (b)(1)(E). Pub. L. 101–616, §201(c)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''has a defined service area which is a geographical area of sufficient size such that (unless the service area comprises an entire State) the organization can reasonably expect to procure organs from not less than 50 donors each year and which either includes an entire standard metropolitan statistical area (as specified by the Office of Management and Budget) or does not include any part of such an area,''.

Subsec. (b)(1)(G)(i)(III). Pub. L. 101–616, §201(e), made technical correction to Pub. L. 100–607, §402(c)(2). See 1988 Amendment note below.

Subsec. (b)(2), (3). Pub. L. 101–616, §201(d), added par. (2) and redesignated former par. (2) as (3).

Subsec. (c). Pub. L. 101–616, §206(b), struck out subsec. (c) which authorized appropriations for subsec. (a) grants for fiscal years 1988 through 1990.

1988—Subsec. (a)(2). Pub. L. 100–607, §402(a)(1), inserted ''consolidation,'' after ''initial operation,''.

Subsec. (a)(3). Pub. L. 100–607, §402(a)(2), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 100–607, §402(a)(2), redesignated former par. (3) as (4).

Subsec. (a)(4)(C). Pub. L. 100–607, §402(a)(3), added subpar. (C).

Subsec. (b)(1)(E). Pub. L. 100–607, §402(c)(1)(A), substituted ''size such that'' for ''size which'', and ''the organization can reasonably expect to procure organs from not less than 50 donors each year'' for ''will include at least fifty potential organ donors each year''.

Subsec. (b)(1)(G)(i)(III). Pub. L. 100–607, §402(c)(2), as amended by Pub. L. 101–616, §201(e), inserted ''or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility'' before comma at end.

Subsec. (b)(2)(C). Pub. L. 100–607, §402(c)(1)(B), substituted ''274(b)(2)(E) of this title, including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,'' for ''274(b)(2)(D) of this title,''.

Subsec. (b)(2)(E). Pub. L. 100–607, §402(c)(1)(C), substituted ''organs equitably among transplant patients'' for ''organs among transplant centers and patients''.

Subsec. (b)(2)(K). Pub. L. 100–607, §402(c)(1)(D), added subpar. (K).

Subsec. (c). Pub. L. 100–607, §402(d), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For grants under subsection (a) of this section there are authorized to be appropriated $5,000,000 for fiscal year 1985, $8,000,000 for fiscal year 1986, and $12,000,000 for fiscal year 1987.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 207 of title II of Pub. L. 101–616 provided that: ''Except as otherwise provided in this title, the amendments made by this title [enacting sections 274f and 274g of this title, amending this section and sections 274 and 274b to 274d of this title, and repealing provisions set out as a note below] shall become effective on October 1, 1990, or on the date of the enactment of this Act [Nov. 16, 1990], whichever occurs later.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 402(c)(3) of Pub. L. 100–607, as amended by Pub. L. 101–274, Apr. 23, 1990, 104 Stat. 139, which provided that the amendment made by section 402(c)(1)(A) of Pub. L. 100–607, amending this section, was not to apply to an organ procurement organization designated under section 1320b–8(b) of this title until Jan. 1, 1992, was repealed by Pub. L. 101–616, title II, §201(c)(2), Nov. 16, 1990, 104 Stat. 3283.

SHORT TITLE

For short title of Pub. L. 98–507, which enacted this part as the ''National Organ Transplant Act'', see section 1 of Pub. L. 98–507, set out as a Short Title of 1984 Amendments note under section 201 of this title.

SEVERABILITY

Section 301 of Pub. L. 101–616 provided that: ''If any provision of this Act [enacting sections 274f, 274g, 274k, and 274*l* of this title, amending this section and sections 274 to 274d of this title, enacting provisions set out as notes under this section and sections 274 and 274k of this title, and repealing provisions set out as a note above], amendment made by this Act, or application of the provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions or amendments to any person or circumstance shall not be affected.''

CERTIFICATION OF ORGAN PROCUREMENT ORGANIZATIONS

Pub. L. 106–505, title VII, §701(b), Nov. 13, 2000, 114 Stat. 2346, and Pub. L. 106–554, §1(a)(1) [title II, §219(a)],

Dec. 21, 2000, 114 Stat. 2763, 2763A–28, provided that: ''Congress makes the following findings:

''(1) Organ procurement organizations play an important role in the effort to increase organ donation in the United States.

''(2) The current process for the certification and recertification of organ procurement organizations conducted by the Department of Health and Human Services has created a level of uncertainty that is interfering with the effectiveness of organ procurement organizations in raising the level of organ donation.

''(3) The General Accounting Office [now Government Accountability Office], the Institute of Medicine, and the Harvard School of Public Health have identified substantial limitations in the organ procurement organization certification and recertification process and have recommended changes in that process.

''(4) The limitations in the recertification process include:

''(A) An exclusive reliance on population-based measures of performance that do not account for the potential in the population for organ donation and do not permit consideration of other outcome and process standards that would more accurately reflect the relative capability and performance of each organ procurement organization.

''(B) A lack of due process to appeal to the Secretary of Health and Human Services for recertification on either substantive or procedural grounds.

''(5) The Secretary of Health and Human Services has the authority under section 1138(b)(1)(A)(i) of the Social Security Act (42 U.S.C. 1320b–8(b)(1)(A)(i)) to extend the period for recertification of an organ procurement organization from 2 to 4 years on the basis of its past practices in order to avoid the inappropriate disruption of the nation's organ system.

''(6) The Secretary of Health and Human Services can use the extended period described in paragraph (5) for recertification of all organ procurement organizations to—

''(A) develop improved performance measures that would reflect organ donor potential and interim outcomes, and to test these measures to ensure that they accurately measure performance differences among the organ procurement organizations; and

''(B) improve the overall certification process by incorporating process as well as outcome performance measures, and developing equitable processes for appeals.''

STUDY REGARDING IMMUNOSUPPRESSIVE DRUGS

Pub. L. 106–310, div. A, title XXI, §2101(b), Oct. 17, 2000, 114 Stat. 1156, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the 'Secretary') shall provide for a study to determine the costs of immunosuppressive drugs that are provided to children pursuant to organ transplants and to determine the extent to which health plans and health insurance cover such costs. The Secretary may carry out the study directly or through a grant to the Institute of Medicine (or other public or nonprofit private entity).

''(2) RECOMMENDATIONS REGARDING CERTAIN ISSUES.—The Secretary shall ensure that, in addition to making determinations under paragraph (1), the study under such paragraph makes recommendations regarding the following issues:

''(A) The costs of immunosuppressive drugs that are provided to children pursuant to organ transplants and to determine the extent to which health plans, health insurance and government programs cover such costs.

''(B) The extent of denial of organs to be released for transplant by coroners and medical examiners.

''(C) The special growth and developmental issues that children have pre- and post-organ transplantation.

''(D) Other issues that are particular to the special health and transplantation needs of children.

''(3) REPORT.—The Secretary shall ensure that, not later than December 31, 2001, the study under paragraph (1) is completed and a report describing the findings of the study is submitted to the Congress.''

STUDY ON HOSPITAL AGREEMENTS WITH ORGAN PROCUREMENT AGENCIES

Pub. L. 103–432, title I, §155(b), Oct. 31, 1994, 108 Stat. 4439, directed Office of Technology Assessment to conduct study to determine efficacy and fairness of requiring a hospital to enter into agreement under subsec. (b)(3)(A) of this section with organ procurement agency for service area in which such hospital is located and impact of such requirement on efficacy and fairness of organ procurement and distribution, and to submit to Congress, not later than 2 years after Oct. 31, 1994, report containing findings of such study and implications of such findings with respect to policies affecting organ procurement and distribution.

TASK FORCE ON ORGAN PROCUREMENT AND TRANSPLANTATION

Pub. L. 98–507, title I, §§101–105, Oct. 19, 1984, 98 Stat. 2339–2342, directed Secretary of Health and Human Services, not later than 90 days after Oct. 19, 1984, to establish a Task Force on Organ Transplantation to conduct comprehensive examinations, prepare an assessment and report, and submit advice as to regulation of the medical, legal, ethical, economic, and social issues presented by human organ procurement and transplantation, with the final report due not later than 12 months after the Task Force is established and the Task Force to terminate 3 months thereafter.

BONE MARROW REGISTRY DEMONSTRATION AND STUDY

Section 401 of Pub. L. 98–507 directed Secretary of Health and Human Services to hold a conference on the feasibility of establishing and the effectiveness of a national registry of voluntary bone marrow donors not later than 9 months after Oct. 19, 1984, and if the conference found that it was feasible to establish a national registry of voluntary donors of bone marrow and that such a registry was likely to be effective in matching donors with recipients, the Secretary was to establish a registry of voluntary donors of bone marrow not later than six months after the completion of the conference, and further directed the Secretary, acting through the Assistant Secretary for Health, to study the establishment and implementation of the registry to identify the issues presented by the establishment of such a registry, to evaluate participation of bone marrow donors, to assess the implementation of the informed consent and confidentiality requirements, and to determine if the establishment of a permanent bone marrow registry was needed and appropriate, and to report the results of the study to Congress not later than two years after the date the registry was established.

§ 273a. National living donor mechanisms

The Secretary may establish and maintain mechanisms to evaluate the long-term effects associated with living organ donations by individuals who have served as living donors.

(July 1, 1944, ch. 373, title III, §371A, as added Pub. L. 108–216, §7, Apr. 5, 2004, 118 Stat. 589.)

§ 274. Organ procurement and transplantation network

(a) Contract authority of Secretary; limitation; available appropriations

The Secretary shall by contract provide for the establishment and operation of an Organ Procurement and Transplantation Network

which meets the requirements of subsection (b) of this section. The amount provided under such contract in any fiscal year may not exceed $2,000,000. Funds for such contracts shall be made available from funds available to the Public Health Service from appropriations for fiscal years beginning after fiscal year 1984.

(b) Functions

(1) The Organ Procurement and Transplantation Network shall carry out the functions described in paragraph (2) and shall—

(A) be a private nonprofit entity that has an expertise in organ procurement and transplantation, and

(B) have a board of directors—

(i) that includes representatives of organ procurement organizations (including organizations that have received grants under section 273 of this title), transplant centers, voluntary health associations, and the general public; and

(ii) that shall establish an executive committee and other committees, whose chairpersons shall be selected to ensure continuity of leadership for the board.

(2) The Organ Procurement and Transplantation Network shall—

(A) establish in one location or through regional centers—

(i) a national list of individuals who need organs, and

(ii) a national system, through the use of computers and in accordance with established medical criteria, to match organs and individuals included in the list, especially individuals whose immune system makes it difficult for them to receive organs,

(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,

(C) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,

(D) assist organ procurement organizations in the nationwide distribution of organs equitably among transplant patients,

(E) adopt and use standards of quality for the acquisition and transportation of donated organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,

(F) prepare and distribute, on a regionalized basis (and, to the extent practicable, among regions or on a national basis), samples of blood sera from individuals who are included on the list and whose immune system makes it difficult for them to receive organs, in order to facilitate matching the compatibility of such individuals with organ donors,

(G) coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,

(H) provide information to physicians and other health professionals regarding organ donation,

(I) collect, analyze, and publish data concerning organ donation and transplants,

(J) carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation,

(K) work actively to increase the supply of donated organs,

(L) submit to the Secretary an annual report containing information on the comparative costs and patient outcomes at each transplant center affiliated with the organ procurement and transplantation network,

(M) recognize the differences in health and in organ transplantation issues between children and adults throughout the system and adopt criteria, polices, and procedures that address the unique health care needs of children,

(N) carry out studies and demonstration projects for the purpose of improving procedures for organ donation procurement and allocation, including but not limited to projects to examine and attempt to increase transplantation among populations with special needs, including children and individuals who are members of racial or ethnic minority groups, and among populations with limited access to transportation, and

(O) provide that for purposes of this paragraph, the term ''children'' refers to individuals who are under the age of 18.

(c) Consideration of critical comments

The Secretary shall establish procedures for—

(1) receiving from interested persons critical comments relating to the manner in which the Organ Procurement and Transplantation Network is carrying out the duties of the Network under subsection (b) of this section; and

(2) the consideration by the Secretary of such critical comments.

(July 1, 1944, ch. 373, title III, § 372, as added Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2344; amended Pub. L. 100–607, title IV, § 403, Nov. 4, 1988, 102 Stat. 3115; Pub. L. 101–616, title II, § 202(a)–(c), Nov. 16, 1990, 104 Stat. 3283, 3284; Pub. L. 106–310, div. A, title XXI, § 2101(a), Oct. 17, 2000, 114 Stat. 1156.)

PRIOR PROVISIONS

A prior section 274, act July 1, 1944, ch. 373, title III, § 372, as added July 28, 1956, ch. 772, title II, § 201, 70 Stat. 710; amended June 25, 1959, Pub. L. 86–70, § 31(b)(2)–(4), 73 Stat. 148, related to grants to Alaska for a mental health program and payment for construction of hospital facilities, prior to the general revision of this part by section 201 of Pub. L. 98–507.

Another section 372 of act July 1, 1944, added by act Aug. 3, 1956, ch. 941, § 1, 70 Stat. 960, which related to functions of National Library of Medicine, was renumbered section 382 and classified to section 276 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

2000—Subsec. (b)(2)(M) to(O). Pub. L. 106–310 added subpars. (M) to (O).

1990—Subsec. (b)(1)(A). Pub. L. 101–616, § 202(a)(1), substituted ''that has an expertise in organ procurement and transplantation'' for ''which is not engaged in any activity unrelated to organ procurement''.

Subsec. (b)(1)(B). Pub. L. 101–616, § 202(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''have a board of directors which includes representatives of organ procurement organizations (including organizations which have received grants under section 273 of this title), transplant cen-

ters, voluntary health associations, and the general public.''

Subsec. (b)(2)(D). Pub. L. 101–616, § 202(b)(1), inserted ''nationwide'' after ''organizations in the'' and ''equitably among transplant patients'' after ''organs''.

Subsec. (b)(2)(F). Pub. L. 101–616, § 202(c), substituted ''compatibility'' for ''compatability''.

Subsec. (b)(2)(K), (L). Pub. L. 101–616, § 202(b)(2)–(4), added subpars. (K) and (L).

1988—Subsec. (b)(2)(B), (C). Pub. L. 100–607, § 403(a)(1), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (b)(2)(D). Pub. L. 100–607, § 403(a)(1), (2), redesignated former subpar. (C) as (D) and substituted ''organs'' for ''organs which cannot be placed within the service areas of the organizations''. Former subpar. (D) redesignated (E).

Subsec. (b)(2)(E). Pub. L. 100–607, § 403(a)(1), (3), redesignated former subpar. (D) as (E) and inserted ''including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,'' after ''organs,''. Former subpar. (E) redesignated (F).

Subsec. (b)(2)(F). Pub. L. 100–607, § 403(a)(1), (4), redesignated former subpar. (E) as (F) and inserted ''(and, to the extent practicable, among regions or on a national basis)'' after ''basis''. Former subpar. (F) redesignated (G).

Subsec. (b)(2)(G) to (I). Pub. L. 100–607, § 403(a)(1), redesignated former subpars. (F) to (H) as (G) to (I), respectively.

Subsec. (b)(2)(J). Pub. L. 100–607, § 403(a)(5), added subpar. (J).

Subsec. (c). Pub. L. 100–607, § 403(b), added subsec. (c).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 202(d) of Pub. L. 101–616 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on December 31, 1990.''

§ 274a. Scientific registry

The Secretary shall, by grant or contract, develop and maintain a scientific registry of the recipients of organ transplants. The registry shall include such information respecting patients and transplant procedures as the Secretary deems necessary to an ongoing evaluation of the scientific and clinical status of organ transplantation. The Secretary shall prepare for inclusion in the report under section 274d of this title an analysis of information derived from the registry.

(July 1, 1944, ch. 373, title III, § 373, as added Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2345; amended Pub. L. 100–607, title IV, § 404, Nov. 4, 1988, 102 Stat. 3116; Pub. L. 101–616, title I, § 101(b), Nov. 16, 1990, 104 Stat. 3282.)

PRIOR PROVISIONS

A prior section 373 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960, which related to a Board of Regents of National Library of Medicine, was renumbered section 383 and classified to section 277 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Pub. L. 101–616 struck out ''and bone marrow registry'' after ''Scientific registry'' in section catchline and struck out subsec. (a) designation and subsec. (b) which directed establishment of bone marrow registry and authorized appropriations for fiscal years 1989 and 1990 for such purpose.

1988—Pub. L. 100–607 inserted ''and bone marrow registry'' in section catchline, designated existing text as subsec. (a), and added subsec. (b).

§ 274b. General provisions respecting grants and contracts

(a) Application requirement

No grant may be made under this part or contract entered into under section 274 or 274a of this title unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall by regulation prescribe.

(b) Special considerations and priority; planning and establishment grants

(1) A grant for planning under section 273(a)(1) of this title may be made for one year with respect to any organ procurement organization and may not exceed $100,000.

(2) Grants under section 273(a)(2) of this title may be made for two years. No such grant may exceed $500,000 for any year and no organ procurement organization may receive more than $800,000 for initial operation or expansion.

(3) Grants or contracts under section 273(a)(3) of this title may be made for not more than 3 years.

(c) Determination of grant amount; terms of payment; recordkeeping; access for purposes of audits and examination of records

(1) The Secretary shall determine the amount of a grant or contract made under section 273 or 274a of this title. Payments under such grants and contracts may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants and contracts.

(2)(A) Each recipient of a grant or contract under section 273 or 274a of this title shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant or contract, the total cost of the undertaking in connection with which such grant or contract was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(B) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant or contract under section 273 or 274a of this title that are pertinent to such grant or contract.

(d) "Transplant center" and "organ" defined

For purposes of this part:

(1) The term ''transplant center'' means a health care facility in which transplants of organs are performed.

(2) The term ''organ'' means the human kidney, liver, heart, lung, pancreas, and any other human organ (other than corneas and eyes) specified by the Secretary by regulation and for purposes of section 274a of this title, such term includes bone marrow.

(July 1, 1944, ch. 373, title III, § 374, as added Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2345;

amended Pub. L. 100–607, title IV, § 402(b), Nov. 4, 1988, 102 Stat. 3114; Pub. L. 101–616, title II, § 203, Nov. 16, 1990, 104 Stat. 3284.)

PRIOR PROVISIONS

A prior section 374 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 961, which related to acceptance and administration of gifts to National Library of Medicine and to establishment of memorials to donors, was renumbered section 384 and classified to section 278 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–616, § 203(1), substituted ''No grant may be made under this part'' for ''No grant may be made under section 273 or 274a of this title''.

Subsec. (b). Pub. L. 101–616, § 203(2), redesignated par. (2) as (1) and substituted ''section 273(a)(1)'' for ''section 273'', struck out former par. (1) which set forth factors in considering applications for section 273 grants, redesignated par. (3) as (2) and substituted ''section 273(a)(2)'' for ''paragraphs (2) and (3) of section 273(a)'', and added par. (3).

Subsec. (c). Pub. L. 101–616, § 203(3), inserted ''or contract'' after ''grant'' wherever appearing and ''and contracts'' after ''grants'' wherever appearing.

1988—Subsec. (b)(3). Pub. L. 100–607 substituted ''paragraphs (2) and (3) of section 273(a) of this title'' for ''section 273 of this title for the establishment, initial operation, or expansion of organ procurement organizations''.

§ 274c. Administration

The Secretary shall designate and maintain an identifiable administrative unit in the Public Health Service to—

(1) administer this part and coordinate with the organ procurement activities under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.],

(2) conduct a program of public information to inform the public of the need for organ donations,

(3) provide technical assistance to organ procurement organizations, the Organ Procurement and Transplantation Network established under section 274 of this title, and other entities in the health care system involved in organ donations, procurement, and transplants, and

(4) provide information—

(i) to patients, their families, and their physicians about transplantation; and

(ii) to patients and their families about the resources available nationally and in each State, and the comparative costs and patient outcomes at each transplant center affiliated with the organ procurement and transplantation network, in order to assist the patients and families with the costs associated with transplantation.

(July 1, 1944, ch. 373, title III, § 375, as added Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2346; amended Pub. L. 100–607, title IV, § 405, Nov. 4, 1988, 102 Stat. 3116; Pub. L. 101–616, title II, § 204, Nov. 16, 1990, 104 Stat. 3285.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 375 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962, which related to definitions, was renumbered section 385 and classified to section 279 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Pub. L. 101–616, § 204(a), struck out '', during fiscal years 1985 through 1990,'' after ''The Secretary shall''.

Par. (3). Pub. L. 101–616, § 204(b)(1), struck out ''receiving funds under section 273 of this title'' after ''organ procurement organizations''.

Par. (4). Pub. L. 101–616, § 204(b)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''not later than April 1 of each of the years 1989 and 1990, submit to the Congress a report on the status of organ donation and coordination services and include in the report an analysis of the efficiency and effectiveness of the procurement and allocation of organs and a description of problems encountered in the procurement and allocation of organs.''

1988—Pub. L. 100–607, in introductory provisions, substituted ''1985 through 1990'' for ''1985, 1986, 1987, and 1988'' and, in par. (4), substituted ''not later than April 1 of each of the years 1989 and 1990, submit to the Congress a report'' for ''one year after the date on which the Task Force on Organ Transplantation transmits its final report under section 104(c) of the National Organ Transplant Act, and annually thereafter through fiscal year 1988, submit to Congress an annual report''.

§ 274d. Report

Not later than February 10 of 1991 and of each second year thereafter, the Secretary shall publish, and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.[1] a report on the scientific and clinical status of organ transplantation. The Secretary shall consult with the Director of the National Institutes of Health and the Commissioner of the Food and Drug Administration in the preparation of the report.

(July 1, 1944, ch. 373, title III, § 376, as added Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2346; amended Pub. L. 100–607, title IV, § 406, Nov. 4, 1988, 102 Stat. 3116; Pub. L. 101–616, title II, § 205, Nov. 16, 1990, 104 Stat. 3285.)

PRIOR PROVISIONS

A prior section 376 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962, which related to Library facilities, was renumbered section 386 and classified to section 280 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Pub. L. 101–616 substituted ''Not later than February 10 of 1991 and of each second year thereafter, the Secretary shall publish, and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.'' for ''The Secretary shall, not later than October 1 of each year, publish''.

1988—Pub. L. 100–607 substituted ''shall, not later than October 1 of each year,'' for ''shall annually''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor,

[1] So in original. The period probably should be a comma.

and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 274e. Prohibition of organ purchases

(a) Prohibition

It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.

(b) Penalties

Any person who violates subsection (a) of this section shall be fined not more than $50,000 or imprisoned not more than five years, or both.

(c) Definitions

For purposes of subsection (a) of this section:

(1) The term ''human organ'' means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation.

(2) The term ''valuable consideration'' does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(3) The term ''interstate commerce'' has the meaning prescribed for it by section 321(b) of title 21.

(Pub. L. 98–507, title III, § 301, Oct. 19, 1984, 98 Stat. 2346; Pub. L. 100–607, title IV, § 407, Nov. 4, 1988, 102 Stat. 3116.)

CODIFICATION

Section was enacted as part of the National Organ Transplant Act, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1988—Subsec. (c)(1). Pub. L. 100–607 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'human organ' means the human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin, and any other human organ specified by the Secretary of Health and Human Services by regulation.''

§ 274f. Reimbursement of travel and subsistence expenses incurred toward living organ donation

(a) In general

The Secretary may award grants to States, transplant centers, qualified organ procurement organizations under section 273 of this title, or other public or private entities for the purpose of—

(1) providing for the reimbursement of travel and subsistence expenses incurred by individuals toward making living donations of their organs (in this section referred to as ''donating individuals''); and

(2) providing for the reimbursement of such incidental nonmedical expenses that are so incurred as the Secretary determines by regulation to be appropriate.

(b) Preference

The Secretary shall, in carrying out subsection (a) of this section, give preference to those individuals that the Secretary determines are more likely to be otherwise unable to meet such expenses.

(c) Certain circumstances

The Secretary may, in carrying out subsection (a) of this section, consider—

(1) the term ''donating individuals'' as including individuals who in good faith incur qualifying expenses toward the intended donation of an organ but with respect to whom, for such reasons as the Secretary determines to be appropriate, no donation of the organ occurs; and

(2) the term ''qualifying expenses'' as including the expenses of having relatives or other individuals, not to exceed 2, accompany or assist the donating individual for purposes of subsection (a) of this section (subject to making payment for only those types of expenses that are paid for a donating individual).

(d) Relationship to payments under other programs

An award may be made under subsection (a) of this section only if the applicant involved agrees that the award will not be expended to pay the qualifying expenses of a donating individual to the extent that payment has been made, or can reasonably be expected to be made, with respect to such expenses—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program;

(2) by an entity that provides health services on a prepaid basis; or

(3) by the recipient of the organ.

(e) Definitions

For purposes of this section:

(1) The term ''donating individuals'' has the meaning indicated for such term in subsection (a)(1) of this section, subject to subsection (c)(1) of this section.

(2) The term ''qualifying expenses'' means the expenses authorized for purposes of subsection (a) of this section, subject to subsection (c)(2) of this section.

(f) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $5,000,000 for each of the fiscal years 2005 through 2009.

(July 1, 1944, ch. 373, title III, § 377, as added Pub. L. 101–616, title II, § 206(a), Nov. 16, 1990, 104 Stat. 3285; amended Pub. L. 108–216, § 3, Apr. 5, 2004, 118 Stat. 584.)

AMENDMENTS

2004—Pub. L. 108–216 amended section catchline and text generally, substituting provisions relating to reimbursement of travel and subsistence expenses incurred toward living organ donation for provisions requiring the Comptroller General to study and report on organ procurement and allocation.

§ 274f–1. Public awareness; studies and demonstrations

(a) Organ donation public awareness program

The Secretary shall, directly or through grants or contracts, establish a public education program in cooperation with existing national public awareness campaigns to increase awareness about organ donation and the need to provide for an adequate rate of such donations.

(b) Studies and demonstrations

The Secretary may make peer-reviewed grants to, or enter into peer-reviewed contracts with, public and nonprofit private entities for the purpose of carrying out studies and demonstration projects to increase organ donation and recovery rates, including living donation.

(c) Grants to States

(1) In general

The Secretary may make grants to States for the purpose of assisting States in carrying out organ donor awareness, public education, and outreach activities and programs designed to increase the number of organ donors within the State, including living donors.

(2) Eligibility

To be eligible to receive a grant under this subsection, a State shall—

(A) submit an application to the Department in the form prescribed;

(B) establish yearly benchmarks for improvement in organ donation rates in the State; and

(C) report to the Secretary on an annual basis a description and assessment of the State's use of funds received under this subsection, accompanied by an assessment of initiatives for potential replication in other States.

(3) Use of funds

Funds received under this subsection may be used by the State, or in partnership with other public agencies or private sector institutions, for education and awareness efforts, information dissemination, activities pertaining to the State donor registry, and other innovative donation specific initiatives, including living donation.

(d) Educational activities

The Secretary, in coordination with the Organ Procurement and Transplantation Network and other appropriate organizations, shall support the development and dissemination of educational materials to inform health care professionals and other appropriate professionals in issues surrounding organ, tissue, and eye donation including evidence-based proven methods to approach patients and their families, cultural sensitivities, and other relevant issues.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $15,000,000 for fiscal year 2005, and such sums as may be necessary for each of the fiscal years 2006 through 2009. Such authorization of appropriations is in addition to any other authorizations of appropriations that are available for such purpose.

(July 1, 1944, ch. 373, title III, § 377A, as added Pub. L. 108–216, § 4, Apr. 5, 2004, 118 Stat. 585.)

§ 274f–2. Grants regarding hospital organ donation coordinators

(a) Authority

(1) In general

The Secretary may award grants to qualified organ procurement organizations and hospitals under section 273 of this title to establish programs coordinating organ donation activities of eligible hospitals and qualified organ procurement organizations under section 273 of this title. Such activities shall be coordinated to increase the rate of organ donations for such hospitals.

(2) Eligible hospital

For purposes of this section, the term ''eligible hospital'' means a hospital that performs significant trauma care, or a hospital or consortium of hospitals that serves a population base of not fewer than 200,000 individuals.

(b) Administration of coordination program

A condition for the receipt of a grant under subsection (a) of this section is that the applicant involved agree that the program under such subsection will be carried out jointly—

(1) by representatives from the eligible hospital and the qualified organ procurement organization with respect to which the grant is made; and

(2) by such other entities as the representatives referred to in paragraph (1) may designate.

(c) Requirements

Each entity receiving a grant under subsection (a) of this section shall—

(1) establish joint organ procurement organization and hospital designated leadership responsibility and accountability for the project;

(2) develop mutually agreed upon overall project performance goals and outcome measures, including interim outcome targets; and

(3) collaboratively design and implement an appropriate data collection process to provide ongoing feedback to hospital and organ procurement organization leadership on project progress and results.

(d) Rule of construction

Nothing in this section shall be construed to interfere with regulations in force on April 5, 2004.

(e) Evaluations

Within 3 years after the award of grants under this section, the Secretary shall ensure an evaluation of programs carried out pursuant to subsection (a) of this section in order to determine the extent to which the programs have increased the rate of organ donation for the eligible hospitals involved.

(f) Matching requirement

The Secretary may not award a grant to a qualifying organ donation entity under this section unless such entity agrees that, with respect to costs to be incurred by the entity in carrying out activities for which the grant was awarded, the entity shall contribute (directly or through donations from public or private entities) non-Federal contributions in cash or in kind, in an amount equal to not less than 30 percent of the amount of the grant awarded to such entity.

(g) Funding

For the purpose of carrying out this section, there are authorized to be appropriated $3,000,000 for fiscal year 2005, and such sums as may be necessary for each of fiscal years 2006 through 2009.

(July 1, 1944, ch. 373, title III, § 377B, as added Pub. L. 108–216, § 4, Apr. 5, 2004, 118 Stat. 586.)

§ 274f–3. Studies relating to organ donation and the recovery, preservation, and transportation of organs

(a) Development of supportive information

The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall develop scientific evidence in support of efforts to increase organ donation and improve the recovery, preservation, and transportation of organs.

(b) Activities

In carrying out subsection (a) of this section, the Secretary shall—

(1) conduct or support evaluation research to determine whether interventions, technologies, or other activities improve the effectiveness, efficiency, or quality of existing organ donation practice;

(2) undertake or support periodic reviews of the scientific literature to assist efforts of professional societies to ensure that the clinical practice guidelines that they develop reflect the latest scientific findings;

(3) ensure that scientific evidence of the research and other activities undertaken under this section is readily accessible by the organ procurement workforce; and

(4) work in coordination with the appropriate professional societies as well as the Organ Procurement and Transplantation Network and other organ procurement and transplantation organizations to develop evidence and promote the adoption of such proven practices.

(c) Research and dissemination

The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, as appropriate, shall provide support for research and dissemination of findings, to—

(1) develop a uniform clinical vocabulary for organ recovery;

(2) apply information technology and telecommunications to support the clinical operations of organ procurement organizations;

(3) enhance the skill levels of the organ procurement workforce in undertaking quality improvement activities; and

(4) assess specific organ recovery, preservation, and transportation technologies.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $2,000,000 for fiscal year 2005, and such sums as may be necessary for each of fiscal years 2006 through 2009.

(July 1, 1944, ch. 373, title III, § 377C, as added Pub. L. 108–216, § 5, Apr. 5, 2004, 118 Stat. 587.)

§ 274f–4. Report relating to organ donation and the recovery, preservation, and transportation of organs

(a) In general

Not later than December 31, 2005, and every 2 years thereafter, the Secretary shall report to the appropriate committees of Congress on the activities of the Department carried out pursuant to this part, including an evaluation describing the extent to which the activities have affected the rate of organ donation and recovery.

(b) Requirements

To the extent practicable, each report submitted under subsection (a) of this section shall—

(1) evaluate the effectiveness of activities, identify effective activities, and disseminate such findings with respect to organ donation and recovery;

(2) assess organ donation and recovery activities that are recently completed, ongoing, or planned; and

(3) evaluate progress on the implementation of the plan required under subsection (c)(5) of this section.

(c) Initial report requirements

The initial report under subsection (a) of this section shall include the following:

(1) An evaluation of the organ donation practices of organ procurement organizations, States, other countries, and other appropriate organizations including an examination across all populations, including those with low organ donation rates, of—

(A) existing barriers to organ donation; and

(B) the most effective donation and recovery practices.

(2) An evaluation of living donation practices and procedures. Such evaluation shall include an assessment of issues relating to informed consent and the health risks associated with living donation (including possible reduction of long-term effects).

(3) An evaluation of—

(A) federally supported or conducted organ donation efforts and policies, as well as federally supported or conducted basic, clinical, and health services research (including research on preservation techniques and organ rejection and compatibility); and

(B) the coordination of such efforts across relevant agencies within the Department and throughout the Federal Government.

(4) An evaluation of the costs and benefits of State donor registries, including the status of existing State donor registries, the effect of

State donor registries on organ donation rates, issues relating to consent, and recommendations regarding improving the effectiveness of State donor registries in increasing overall organ donation rates.

(5) A plan to improve federally supported or conducted organ donation and recovery activities, including, when appropriate, the establishment of baselines and benchmarks to measure overall outcomes of these programs. Such plan shall provide for the ongoing coordination of federally supported or conducted organ donation and research activities.

(July 1, 1944, ch. 373, title III, § 377D, as added Pub. L. 108–216, § 6, Apr. 5, 2004, 118 Stat. 588.)

§ 274g. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $8,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.

(July 1, 1944, ch. 373, title III, § 378, as added Pub. L. 101–616, title II, § 206(a), Nov. 16, 1990, 104 Stat. 3285; amended Pub. L. 105–196, § 4(1), July 16, 1998, 112 Stat. 636.)

AMENDMENTS

1998—Pub. L. 105–196 made technical amendment relating to placement of section within part H of this subchapter.

PART I—C.W. BILL YOUNG CELL TRANSPLANTATION PROGRAM

AMENDMENTS

2005—Pub. L. 109–129, § 3(e), Dec. 20, 2005, 119 Stat. 2562, substituted ''C.W. Bill Young Cell Transplantation Program'' for ''National Bone Marrow Donor Registry'' in part heading.

1990—Pub. L. 101–616, title I, § 101(a)(2), Nov. 16, 1990, 104 Stat. 3279, added part I ''National Bone Marrow Donor Registry'' and redesignated former part I ''Biomedical Ethics'' as J.

1985—Pub. L. 99–158, §§ 3(b), 11, Nov. 20, 1985, 99 Stat. 879, 883, added part I ''Biomedical Ethics'', and repealed former part I ''National Library of Medicine''.

1970—Pub. L. 91–212, § 10(a)(2), Mar. 13, 1970, 84 Stat. 66, redesignated part H ''National Library of Medicine'', as part I ''National Library of Medicine''.

§ 274k. National Program

(a) Establishment

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall by one or more contracts establish and maintain a C.W. Bill Young Cell Transplantation Program (referred to in this section as the ''Program''), successor to the National Bone Marrow Donor Registry, that has the purpose of increasing the number of transplants for recipients suitably matched to biologically unrelated donors of bone marrow and cord blood, and that meets the requirements of this section. The Secretary may award a separate contract to perform each of the major functions of the Program described in paragraphs (1) and (2) of subsection (d) of this section if deemed necessary by the Secretary to operate an effective and efficient system that is in the best interest of patients. The Secretary shall conduct a separate competition for the initial establishment of the cord blood functions of the Program. The Program shall be under the general supervision of the Secretary. The Secretary shall establish an Advisory Council to advise, assist, consult with, and make recommendations to the Secretary on matters related to the activities carried out by the Program. The members of the Advisory Council shall be appointed in accordance with the following:

(1) Each member of the Advisory Council shall serve for a term of 2 years, and each such member may serve as many as 3 consecutive 2-year terms, except that—

(A) such limitations shall not apply to the Chair of the Advisory Council (or the Chair-elect) or to the member of the Advisory Council who most recently served as the Chair; and

(B) one additional consecutive 2-year term may be served by any member of the Advisory Council who has no employment, governance, or financial affiliation with any donor center, recruitment organization, transplant center, or cord blood bank.

(2) A member of the Advisory Council may continue to serve after the expiration of the term of such member until a successor is appointed.

(3) In order to ensure the continuity of the Advisory Council, the Advisory Council shall be appointed so that each year the terms of approximately one-third of the members of the Advisory Council expire.

(4) The membership of the Advisory Council—

(A) shall include as voting members a balanced number of representatives including representatives of marrow donor centers and marrow transplant centers, representatives of cord blood banks and participating birthing hospitals, recipients of a bone marrow transplant, recipients of a cord blood transplant, persons who require such transplants, family members of such a recipient or family members of a patient who has requested the assistance of the Program in searching for an unrelated donor of bone marrow or cord blood, persons with expertise in bone marrow and cord blood transplantation, persons with expertise in typing, matching, and transplant outcome data analysis, persons with expertise in the social sciences, basic scientists with expertise in the biology of adult stem cells, and members of the general public; and

(B) shall include as nonvoting members representatives from the Department of Defense Marrow Donor Recruitment and Research Program operated by the Department of the Navy, the Division of Transplantation of the Health Resources and Services Administration, the Food and Drug Administration, and the National Institutes of Health.

(5) Members of the Advisory Council shall be chosen so as to ensure objectivity and balance and reduce the potential for conflicts of interest. The Secretary shall establish bylaws and procedures—

(A) to prohibit any member of the Advisory Council who has an employment, gov-

ernance, or financial affiliation with a donor center, recruitment organization, transplant center, or cord blood bank from participating in any decision that materially affects the center, recruitment organization, transplant center, or cord blood bank; and

(B) to limit the number of members of the Advisory Council with any such affiliation.

(6) The Secretary, acting through the Advisory Council, shall submit to the Congress—

(A) an annual report on the activities carried out under this section; and

(B) not later than 6 months after December 20, 2005, a report of recommendations on the scientific factors necessary to define a cord blood unit as a high-quality unit.

(b) Accreditation

The Secretary shall, through a public process, recognize one or more accreditation entities for the accreditation of cord blood banks.

(c) Informed consent

The Secretary shall, through a public process, examine issues of informed consent, including—

(1) the appropriate timing of such consent; and

(2) the information provided to the maternal donor regarding all of her medically appropriate cord blood options.

Based on such examination, the Secretary shall require that the standards used by the accreditation entities recognized under subsection (b) of this section ensure that a cord blood unit is acquired with the informed consent of the maternal donor.

(d) Functions

(1) Bone marrow functions

With respect to bone marrow, the Program shall—

(A) operate a system for identifying, matching, and facilitating the distribution of bone marrow that is suitably matched to candidate patients;

(B) consistent with paragraph (3), permit transplant physicians, other appropriate health care professionals, and patients to search by means of electronic access all available bone marrow donors listed in the Program;

(C) carry out a program for the recruitment of bone marrow donors in accordance with subsection (e) of this section, including with respect to increasing the representation of racial and ethnic minority groups (including persons of mixed ancestry) in the enrollment of the Program;

(D) maintain and expand medical contingency response capabilities, in coordination with Federal programs, to prepare for and respond effectively to biological, chemical, or radiological attacks, and other public health emergencies that can damage marrow, so that the capability of supporting patients with marrow damage from disease can be used to support casualties with marrow damage;

(E) carry out informational and educational activities in accordance with subsection (e) of this section;

(F) at least annually update information to account for changes in the status of individuals as potential donors of bone marrow;

(G) provide for a system of patient advocacy through the office established under subsection (h) of this section;

(H) provide case management services for any potential donor of bone marrow to whom the Program has provided a notice that the potential donor may be suitably matched to a particular patient through the office established under subsection (h) of this section;

(I) with respect to searches for unrelated donors of bone marrow that are conducted through the system under subparagraph (A), collect, analyze, and publish data in a standardized electronic format on the number and percentage of patients at each of the various stages of the search process, including data regarding the furthest stage reached, the number and percentage of patients who are unable to complete the search process, and the reasons underlying such circumstances;

(J) support studies and demonstration and outreach projects for the purpose of increasing the number of individuals who are willing to be marrow donors to ensure a genetically diverse donor pool; and

(K) facilitate research with the appropriate Federal agencies to improve the availability, efficiency, safety, and cost of transplants from unrelated donors and the effectiveness of Program operations.

(2) Cord blood functions

With respect to cord blood, the Program shall—

(A) operate a system for identifying, matching, and facilitating the distribution of donated cord blood units that are suitably matched to candidate patients and meet all applicable Federal and State regulations (including informed consent and Food and Drug Administration regulations) from a qualified cord blood bank;

(B) consistent with paragraph (3), allow transplant physicians, other appropriate health care professionals, and patients to search by means of electronic access all available cord blood units made available through the Program;

(C) allow transplant physicians and other appropriate health care professionals to reserve, as defined by the Secretary, a cord blood unit for transplantation;

(D) support studies and demonstration and outreach projects for the purpose of increasing cord blood donation to ensure a genetically diverse collection of cord blood units;

(E) provide for a system of patient advocacy through the office established under subsection (h) of this section;

(F) coordinate with the qualified cord blood banks to support informational and educational activities in accordance with subsection (g) of this section;

(G) maintain and expand medical contingency response capabilities, in coordination with Federal programs, to prepare for and respond effectively to biological, chemical,

or radiological attacks, and other public health emergencies that can damage marrow, so that the capability of supporting patients with marrow damage from disease can be used to support casualties with marrow damage; and

(H) with respect to the system under subparagraph (A), collect, analyze, and publish data in a standardized electronic format, as required by the Secretary, on the number and percentage of patients at each of the various stages of the search process, including data regarding the furthest stage reached, the number and percentage of patients who are unable to complete the search process, and the reasons underlying such circumstances.

(3) Single point of access; standard data

(A) Single point of access

The Secretary shall ensure that health care professionals and patients are able to search electronically for and facilitate access to, in the manner and to the extent defined by the Secretary and consistent with the functions described in paragraphs (1)(A) and (2)(A), cells from bone marrow donors and cord blood units through a single point of access.

(B) Standard data

The Secretary shall require all recipients of contracts under this section to make available a standard dataset for purposes of subparagraph (A) in a standardized electronic format that enables transplant physicians to compare among and between bone marrow donors and cord blood units to ensure the best possible match for the patient.

(4) Definition

The term ''qualified cord blood bank'' means a cord blood bank that—

(A) has obtained all applicable Federal and State licenses, certifications, registrations (including pursuant to the regulations of the Food and Drug Administration), and other authorizations required to operate and maintain a cord blood bank;

(B) has implemented donor screening, cord blood collection practices, and processing methods intended to protect the health and safety of donors and transplant recipients to improve transplant outcomes, including with respect to the transmission of potentially harmful infections and other diseases;

(C) is accredited by an accreditation entity recognized by the Secretary under subsection (b) of this section;

(D) has established a system of strict confidentiality to protect the identity and privacy of patients and donors in accordance with existing Federal and State law;

(E) has established a system for encouraging donation by a genetically diverse group of donors; and

(F) has established a system to confidentially maintain linkage between a cord blood unit and a maternal donor.

(e) Bone marrow recruitment; priorities; information and education

(1) Recruitment; priorities

The Program shall carry out activities for the recruitment of bone marrow donors. Such recruitment program shall identify populations that are underrepresented among potential donors enrolled with the Program. In the case of populations that are identified under the preceding sentence:

(A) The Program shall give priority to carrying out activities under this part to increase representation for such populations in order to enable a member of such a population, to the extent practicable, to have a probability of finding a suitable unrelated donor that is comparable to the probability that an individual who is not a member of an underrepresented population would have.

(B) The Program shall consider racial and ethnic minority groups (including persons of mixed ancestry) to be populations that have been identified for purposes of this paragraph, and shall carry out subparagraph (A) with respect to such populations.

(2) Information and education regarding recruitment; testing and enrollment

(A) In general

The Program shall carry out informational and educational activities, in coordination with organ donation public awareness campaigns operated through the Department of Health and Human Services, for purposes of recruiting individuals to serve as donors of bone marrow, and shall test and enroll with the Program potential bone marrow donors. Such information and educational activities shall include the following:

(i) Making information available to the general public, including information describing the needs of patients with respect to donors of bone marrow.

(ii) Educating and providing information to individuals who are willing to serve as potential bone marrow donors.

(iii) Training individuals in requesting individuals to serve as potential bone marrow donors.

(B) Priorities

In carrying out informational and educational activities under subparagraph (A), the Program shall give priority to recruiting individuals to serve as donors of bone marrow for populations that are identified under paragraph (1).

(3) Transplantation as treatment option

In addition to activities regarding recruitment, the recruitment program under paragraph (1) shall provide information to physicians, other health care professionals, and the public regarding bone marrow transplants from unrelated donors as a treatment option.

(4) Implementation of subsection

The requirements of this subsection shall be carried out by the entity that has been awarded a contract by the Secretary under subsection (a) of this section to carry out the

functions described in subsection (d)(1) of this section.

(f) Bone marrow criteria, standards, and procedures

The Secretary shall enforce, for participating entities, including the Program, individual marrow donor centers, marrow donor registries, marrow collection centers, and marrow transplant centers—

(1) quality standards and standards for tissue typing, obtaining the informed consent of donors, and providing patient advocacy;

(2) donor selection criteria, based on established medical criteria, to protect both the donor and the recipient and to prevent the transmission of potentially harmful infectious diseases such as the viruses that cause hepatitis and the etiologic agent for Acquired Immune Deficiency Syndrome;

(3) procedures to ensure the proper collection and transportation of the marrow;

(4) standards for the system for patient advocacy operated under subsection (h) of this section, including standards requiring the provision of appropriate information (at the start of the search process and throughout the process) to patients and their families and physicians;

(5) standards that—

(A) require the establishment of a system of strict confidentiality of records relating to the identity, address, HLA type, and managing marrow donor center for marrow donors and potential marrow donors; and

(B) prescribe the purposes for which the records described in subparagraph (A) may be disclosed, and the circumstances and extent of the disclosure; and

(6) in the case of a marrow donor center or marrow donor registry participating in the program, procedures to ensure the establishment of a method for integrating donor files, searches, and general procedures of the center or registry with the Program.

(g) Cord blood recruitment; priorities; information and education

(1) Recruitment; priorities

The Program shall support activities, in cooperation with qualified cord blood banks, for the recruitment of cord blood donors. Such recruitment program shall identify populations that are underrepresented among cord blood donors. In the case of populations that are identified under the preceding sentence:

(A) The Program shall give priority to supporting activities under this part to increase representation for such populations in order to enable a member of such a population, to the extent practicable, to have a probability of finding a suitable cord blood unit that is comparable to the probability that an individual who is not a member of an underrepresented population would have.

(B) The Program shall consider racial and ethnic minority groups (including persons of mixed ancestry) to be populations that have been identified for purposes of this paragraph, and shall support activities under subparagraph (A) with respect to such populations.

(2) Information and education regarding recruitment; testing and donation

(A) In general

In carrying out the recruitment program under paragraph (1), the Program shall support informational and educational activities in coordination with qualified cord blood banks and organ donation public awareness campaigns operated through the Department of Health and Human Services, for purposes of recruiting pregnant women to serve as donors of cord blood. Such information and educational activities shall include the following:

(i) Making information available to the general public, including information describing the needs of patients with respect to cord blood units.

(ii) Educating and providing information to pregnant women who are willing to donate cord blood units.

(iii) Training individuals in requesting pregnant women to serve as cord blood donors.

(B) Priorities

In carrying out informational and educational activities under subparagraph (A), the Program shall give priority to supporting the recruitment of pregnant women to serve as donors of cord blood for populations that are identified under paragraph (1).

(3) Transplantation as treatment option

In addition to activities regarding recruitment, the recruitment program under paragraph (1) shall provide information to physicians, other health care professionals, and the public regarding cord blood transplants from donors as a treatment option.

(4) Implementation of subsection

The requirements of this subsection shall be carried out by the entity that has been awarded a contract by the Secretary under subsection (a) of this section to carry out the functions described in subsection (d)(2) of this section.

(h) Patient advocacy and case management for bone marrow and cord blood

(1) In general

The Secretary shall establish and maintain, through a contract or other means determined appropriate by the Secretary, an office of patient advocacy (in this subsection referred to as the ''Office'').

(2) General functions

The Office shall meet the following requirements:

(A) The Office shall be headed by a director.

(B) The Office shall be staffed by individuals with expertise in bone marrow and cord blood therapy covered under the Program.

(C) The Office shall operate a system for patient advocacy, which shall be separate from mechanisms for donor advocacy, and which shall serve patients for whom the Program is conducting, or has been requested to

conduct, a search for a bone marrow donor or cord blood unit.

(D) In the case of such a patient, the Office shall serve as an advocate for the patient by directly providing to the patient (or family members, physicians, or other individuals acting on behalf of the patient) individualized services with respect to efficiently utilizing the system under paragraphs (1) and (2) of subsection (d) of this section to conduct an ongoing search for a bone marrow donor or cord blood unit and assist with information regarding third party payor matters.

(E) In carrying out subparagraph (D), the Office shall monitor the system under paragraphs (1) and (2) of subsection (d) of this section to determine whether the search needs of the patient involved are being met, including with respect to the following:

(i) Periodically providing to the patient (or an individual acting on behalf of the patient) information regarding bone marrow donors or cord blood units that are suitably matched to the patient, and other information regarding the progress being made in the search.

(ii) Informing the patient (or such other individual) if the search has been interrupted or discontinued.

(iii) Identifying and resolving problems in the search, to the extent practicable.

(F) The Office shall ensure that the following data are made available to patients:

(i) The resources available through the Program.

(ii) A comparison of transplant centers regarding search and other costs that prior to transplantation are charged to patients by transplant centers.

(iii) The post-transplant outcomes for individual transplant centers.

(iv) Information concerning issues that patients may face after a transplant.

(v) Such other information as the Program determines to be appropriate.

(G) The Office shall conduct surveys of patients (or family members, physicians, or other individuals acting on behalf of patients) to determine the extent of satisfaction with the system for patient advocacy under this subsection, and to identify ways in which the system can be improved to best meet the needs of patients.

(3) Case management

(A) In general

In serving as an advocate for a patient under paragraph (2), the Office shall provide individualized case management services directly to the patient (or family members, physicians, or other individuals acting on behalf of the patient), including—

(i) individualized case assessment; and

(ii) the functions described in paragraph (2)(D) (relating to progress in the search process).

(B) Postsearch functions

In addition to the case management services described in paragraph (1) for patients, the Office shall, on behalf of patients who have completed the search for a bone marrow donor or cord blood unit, provide information and education on the process of receiving a transplant, including the post-transplant process.

(i) Comment procedures

The Secretary shall establish and provide information to the public on procedures under which the Secretary shall receive and consider comments from interested persons relating to the manner in which the Program is carrying out the duties of the Program. The Secretary may promulgate regulations under this section.

(j) Consultation

In developing policies affecting the Program, the Secretary shall consult with the Advisory Council, the Department of Defense Marrow Donor Recruitment and Research Program operated by the Department of the Navy, and the board of directors of each entity awarded a contract under this section.

(k) Contracts

(1) Application

To be eligible to enter into a contract under this section, an entity shall submit to the Secretary and obtain approval of an application at such time, in such manner, and containing such information as the Secretary shall by regulation prescribe.

(2) Considerations

In awarding contracts under this section, the Secretary shall give consideration to the continued safety of donors and patients and other factors deemed appropriate by the Secretary.

(*l*) Eligibility

Entities eligible to receive a contract under this section shall include private nonprofit entities.

(m) Records

(1) Recordkeeping

Each recipient of a contract or subcontract under subsection (a) of this section shall keep such records as the Secretary shall prescribe, including records that fully disclose the amount and disposition by the recipient of the proceeds of the contract, the total cost of the undertaking in connection with which the contract was made, and the amount of the portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) Examination of records

The Secretary and the Comptroller General of the United States shall have access to any books, documents, papers, and records of the recipient of a contract or subcontract entered into under this section that are pertinent to the contract, for the purpose of conducting audits and examinations.

(n) Penalties for disclosure

Any person who discloses the content of any record referred to in subsection (d)(4)(D) or (f)(5)(A) of this section without the prior written

consent of the donor or potential donor with respect to whom the record is maintained, or in violation of the standards described in subsection (f)(5)(B) of this section, shall be imprisoned for not more than 2 years or fined in accordance with title 18, or both.

(July 1, 1944, ch. 373, title III, § 379, as added Pub. L. 101–616, title I, § 101(a)(2), Nov. 16, 1990, 104 Stat. 3279; amended Pub. L. 105–196, § 2(a), (b)(1), (c)–(g), July 16, 1998, 112 Stat. 631–635; Pub. L. 109–129, § 3(a), Dec. 20, 2005, 119 Stat. 2553.)

AMENDMENTS

2005—Pub. L. 109–129 amended section generally, substituting provisions relating to the C.W. Bill Young Cell Transplantation Program for provisions relating to the National Bone Marrow Donor Registry.

1998—Subsec. (a). Pub. L. 105–196, § 2(a), substituted ''(referred to in this part as the 'Registry') that has the purpose of increasing the number of transplants for recipients suitably matched to biologically unrelated donors of bone marrow, and that meets'' for ''(referred to in this part as the 'Registry') that meets'' and substituted ''under the direction of a board of directors meeting the following requirements:'' and pars. (1) to (4) for ''under the direction of a board of directors that shall include representatives of marrow donor centers, marrow transplant centers, persons with expertise in the social science, and the general public.''

Subsec. (b)(2) to (8). Pub. L. 105–196, § 2(b)(1), added pars. (2) to (7), redesignated former par. (7) as (8), and struck out former pars. (2) to (6) which read as follows:

''(2) establish a system for patient advocacy, separate from mechanisms for donor advocacy, that directly assists patients, their families, and their physicians in the search for an unrelated marrow donor;

''(3) increase the representation of individuals from racial and ethnic minority groups in the pool of potential donors for the Registry in order to enable an individual in a minority group, to the extent practicable, to have a comparable chance of finding a suitable unrelated donor as would an individual not in a minority group;

''(4) provide information to physicians, other health care professionals, and the public regarding bone marrow transplantation;

''(5) recruit potential bone marrow donors;

''(6) collect, analyze, and publish data concerning bone marrow donation and transplantation; and''.

Subsecs. (c), (d). Pub. L. 105–196, § 2(c), (d), added subsecs. (c) and (d). Former subsecs. (c) and (d) redesignated (e) and (f), respectively.

Subsec. (e). Pub. L. 105–196, § 2(c), redesignated subsec. (c) as (e). Former subsec. (e) redesignated (g).

Subsec. (e)(4). Pub. L. 105–196, § 2(e), added par. (4) and struck out former par. (4) which read as follows: ''standards that require the provision of information to patients, their families, and their physicians at the start of the search process concerning—

''(A) the resources available through the Registry;

''(B) all other marrow donor registries meeting the standards described in this paragraph; and

''(C) in the case of the Registry—

''(i) the comparative costs of all charges by marrow transplant centers incurred by patients prior to transplantation; and

''(ii) the success rates of individual marrow transplant centers;''.

Subsec. (f). Pub. L. 105–196, § 2(c), (g)(1), redesignated subsec. (d) as (f) and substituted ''subsection (e)'' for ''subsection (c)''. Former subsec. (f) redesignated (h).

Subsecs. (g) to (i). Pub. L. 105–196, § 2(c), redesignated subsecs. (e) to (g) as (g) to (i), respectively. Former subsecs. (h) and (i) redesignated (j) and (k), respectively.

Subsec. (j). Pub. L. 105–196, § 2(c), redesignated subsec. (h) as (j) and struck out heading and text of former subsec. (j). Text read as follows: ''There are authorized to be appropriated to carry out this section $15,000,000 for fiscal year 1991 and such sums as may be necessary for each of fiscal years 1992 and 1993.''

Subsec. (k). Pub. L. 105–196, § 2(c), (g)(2), redesignated subsec. (i) as (k) and substituted ''subsection (e)(5)(A)'' for ''subsection (c)(5)(A)'' and ''subsection (e)(5)(B)'' for ''subsection (c)(5)(B)''.

Subsec. (*l*). Pub. L. 105–196, § 2(f), added subsec. (*l*).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–196, § 7, July 16, 1998, 112 Stat. 637, provided that: ''This Act [see Short Title of 1998 Amendment note set out under section 201 of this title] takes effect October 1, 1998, or upon the date of the enactment of this Act [July 16, 1998], whichever occurs later.''

SAVINGS PROVISION

Section 102 of title I of Pub. L. 101–616 provided that: ''(a) IN GENERAL.—This title [enacting this section and section 274*l* of this title and amending section 274a of this title], and the amendments made by this title, shall not affect any legal document, including any order, regulation, grant, or contract, in effect on the date of enactment of this Act [Nov. 16, 1990], or any administrative proceeding or lawsuit pending on the date, that relates to the bone marrow registry established under section 373(b) of the Public Health Service Act [section 274a(b) of this title] (as it existed before the amendment made by section 101(b) of this Act).

''(b) CONTINUED EFFECT.—A legal document described in subsection (a) or an order issued in a lawsuit described in subsection (a) shall continue in effect until modified, terminated, or revoked.

''(c) PROCEEDINGS.—In any administrative proceeding or lawsuit described in subsection (a), parties shall take appeals, and officials shall hold proceedings and render judgments, in the same manner and with the same effect as if this title had not been enacted.''

CORD BLOOD INVENTORY

Pub. L. 109–129, § 2, Dec. 20, 2005, 119 Stat. 2550, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall enter into one-time contracts with qualified cord blood banks to assist in the collection and maintenance of 150,000 new units of high-quality cord blood to be made available for transplantation through the C.W. Bill Young Cell Transplantation Program and to carry out the requirements of subsection (b).

''(b) REQUIREMENTS.—The Secretary shall require each recipient of a contract under this section—

''(1) to acquire, tissue-type, test, cryopreserve, and store donated units of cord blood acquired with the informed consent of the donor, as determined by the Secretary pursuant to section 379(c) of the Public Health Service Act [subsec. (c) of this section], in a manner that complies with applicable Federal and State regulations;

''(2) to encourage donation from a genetically diverse population;

''(3) to make cord blood units that are collected pursuant to this section or otherwise and meet all applicable Federal standards available to transplant centers for transplantation;

''(4) to make cord blood units that are collected, but not appropriate for clinical use, available for peer-reviewed research;

''(5) to make data available, as required by the Secretary and consistent with section 379(d)(3) of the Public Health Service Act (42 U.S.C. 274k(d)(3)), as amended by this Act, in a standardized electronic format, as determined by the Secretary, for the C.W. Bill Young Cell Transplantation Program; and

''(6) to submit data in a standardized electronic format for inclusion in the stem cell therapeutic outcomes database maintained under section 379A of the Public Health Service Act [section 274*l* of this title], as amended by this Act.

''(c) RELATED CORD BLOOD DONORS.—

''(1) IN GENERAL.—The Secretary shall establish a 3-year demonstration project under which qualified cord blood banks receiving a contract under this section may use a portion of the funding under such contract for the collection and storage of cord blood units for a family where a first-degree relative has been diagnosed with a condition that will benefit from transplantation (including selected blood disorders, malignancies, metabolic storage disorders, hemoglobinopathies, and congenital immunodeficiencies) at no cost to such family. Qualified cord blood banks collecting cord blood units under this paragraph shall comply with the requirements of paragraphs (1), (2), (3), and (5) of subsection (b).

''(2) AVAILABILITY.—Qualified cord blood banks that are operating a program under paragraph (1) shall provide assurances that the cord blood units in such banks will be available for directed transplantation until such time that the cord blood unit is released for transplantation or is transferred by the family to the C.W. Bill Young Cell Transplantation Program in accordance with guidance or regulations promulgated by the Secretary.

''(3) INVENTORY.—Cord blood units collected through the program under this section shall not be counted toward the 150,000 inventory goal under the C.W. Bill Young Cell Transplantation Program.

''(4) REPORT.—Not later than 90 days after the date on which the project under paragraph (1) is terminated by the Secretary, the Secretary shall submit to Congress a report on the outcomes of the project that shall include the recommendations of the Secretary with respect to the continuation of such project.

''(d) APPLICATION.—To seek to enter into a contract under this section, a qualified cord blood bank shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. At a minimum, an application for a contract under this section shall include a requirement that the applicant—

''(1) will participate in the C.W. Bill Young Cell Transplantation Program for a period of at least 10 years;

''(2) will make cord blood units collected pursuant to this section available through the C.W. Bill Young Cell Transplantation Program in perpetuity or for such time as determined viable by the Secretary; and

''(3) if the Secretary determines through an assessment, or through petition by the applicant, that a cord blood bank is no longer operational or does not meet the requirements of section 379(d)(4) of the Public Health Service Act [subsec. (d)(4) of this section] (as added by this Act) and as a result may not distribute the units, transfer the units collected pursuant to this section to another qualified cord blood bank approved by the Secretary to ensure continued availability of cord blood units.

''(e) DURATION OF CONTRACTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term of each contract entered into by the Secretary under this section shall be for 10 years. The Secretary shall ensure that no Federal funds shall be obligated under any such contract after the earlier of—

''(A) the date that is 3 years after the date on which the contract is entered into; or

''(B) September 30, 2010.

''(2) EXTENSIONS.—Subject to paragraph (1)(B), the Secretary may extend the period of funding under a contract under this section to exceed a period of 3 years if—

''(A) the Secretary finds that 150,000 new units of high-quality cord blood have not yet been collected pursuant to this section; and

''(B) the Secretary does not receive an application for a contract under this section from any qualified cord blood bank that has not previously entered into a contract under this section or the Secretary determines that the outstanding inventory need cannot be met by the one or more qualified cord blood banks that have submitted an application for a contract under this section.

''(3) PREFERENCE.—In considering contract extensions under paragraph (2), the Secretary shall give preference to qualified cord blood banks that the Secretary determines have demonstrated a superior ability to satisfy the requirements described in subsection (b) and to achieve the overall goals for which the contract was awarded.

''(f) REGULATIONS.—The Secretary may promulgate regulations to carry out this section.

''(g) DEFINITIONS.—In this section:

''(1) The term 'C.W. Bill Young Cell Transplantation Program' means the C.W. Bill Young Cell Transplantation Program under section 379 of the Public Health Service Act [this section], as amended by this Act.

''(2) The term 'cord blood donor' means a mother who has delivered a baby and consents to donate the neonatal blood remaining in the placenta and umbilical cord after separation from the newborn baby.

''(3) The term 'cord blood unit' means the neonatal blood collected from the placenta and umbilical cord of a single newborn baby.

''(4) The term 'first-degree relative' means a sibling or parent who is one meiosis away from a particular individual in a family.

''(5) The term 'qualified cord blood bank' has the meaning given to that term in section 379(d)(4) of the Public Health Service Act [subsec. (d)(4) of this section], as amended by this Act.

''(6) The term 'Secretary' means the Secretary of Health and Human Services.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) EXISTING FUNDS.—Any amounts appropriated to the Secretary for fiscal year 2004 or 2005 for the purpose of assisting in the collection or maintenance of cord blood shall remain available to the Secretary until the end of fiscal year 2007.

''(2) SUBSEQUENT FISCAL YEARS.—There are authorized to be appropriated to the Secretary $15,000,000 for each of fiscal years 2007, 2008, 2009, and 2010 to carry out this section.

''(3) LIMITATION.—Not to exceed 5 percent of the amount appropriated under this section in each of fiscal years 2007 through 2009 may be used to carry out the demonstration project under subsection (c).''

REPORT OF INSPECTOR GENERAL; PLAN REGARDING RELATIONSHIP BETWEEN REGISTRY AND DONOR CENTERS

Pub. L. 105–196, § 2(b)(2), July 16, 1998, 112 Stat. 632, directed the Secretary of Health and Human Services to ensure that, not later than 1 year after July 16, 1998, the National Bone Marrow Donor Registry (under this section) developed, evaluated, and implemented a plan to effectuate efficiencies in the relationship between such Registry and donor centers.

STUDY BY GAO

Pub. L. 105–196, § 5, July 16, 1998, 112 Stat. 636, provided that the Comptroller General was to conduct a study of the National Bone Marrow Donor Registry under this section to determine the extent to which the Registry had increased the representation of racial and ethnic minority groups among potential donors enrolled with the Registry and whether the extent of increase resulted in a level of representation that met the standard established in subsec. (c)(1)(A) of this section, the extent to which patients in need of a transplant of bone marrow from a biologically unrelated donor, and the physicians of such patients, had been utilizing the Registry, the number of patients for whom the Registry began a preliminary but not complete search process and the reasons underlying such circumstances, the extent to which the plan required in section 2(b)(2) of Pub. L. 105–196 (42 U.S.C. 274k note) had been implemented, and the extent to which the

Registry, donor centers, donor registries, collection centers, transplant centers, and other appropriate entities had been complying with subsec. (e) of this section; and provided that a report describing the findings of this study was to be submitted to Congress not later than Oct. 1, 2001, and not before Jan. 1, 2001.

COMPLIANCE WITH NEW REQUIREMENTS FOR OFFICE OF PATIENT ADVOCACY

Pub. L. 105–196, §6, July 16, 1998, 112 Stat. 636, provided that with respect to requirements for the office of patient advocacy under subsec. (d) of this section, the Secretary of Health and Human Services was to ensure that, not later than 180 days after Oct. 1, 1998, such office was in compliance with all requirements that were additional to the requirements under this section in effect with respect to patient advocacy on the day before July 16, 1998.

§ 274*l*. Stem cell therapeutic outcomes database

(a) Establishment

The Secretary shall by contract establish and maintain a scientific database of information relating to patients who have been recipients of a stem cell therapeutics product (including bone marrow, cord blood, or other such product) from a donor.

(b) Information

The outcomes database shall include information in a standardized electronic format with respect to patients described in subsection (a) of this section, diagnosis, transplant procedures, results, long-term follow-up, and such other information as the Secretary determines to be appropriate, to conduct an ongoing evaluation of the scientific and clinical status of transplantation involving recipients of a stem cell therapeutics product from a donor.

(c) Annual report on patient outcomes

The Secretary shall require the entity awarded a contract under this section to submit to the Secretary an annual report concerning patient outcomes with respect to each transplant center, based on data collected and maintained by the entity pursuant to this section.

(d) Publicly available data

The outcomes database shall make relevant scientific information not containing individually identifiable information available to the public in the form of summaries and data sets to encourage medical research and to provide information to transplant programs, physicians, patients, entities awarded a contract under section 274k of this title[1] donor registries, and cord blood banks.

(July 1, 1944, ch. 373, title III, §379A, as added Pub. L. 105–196, §3, July 16, 1998, 112 Stat. 635; amended Pub. L. 109–129, §3(b), Dec. 20, 2005, 119 Stat. 2561.)

PRIOR PROVISIONS

A prior section 274*l*, act July 1, 1944, ch. 373, title III, §379A, as added Pub. L. 101–616, title I, §101(a)(2), Nov. 16, 1990, 104 Stat. 3282, related to study by General Accounting Office, prior to repeal by Pub. L. 105–196, §§3, 7, July 16, 1998, 112 Stat. 635, 637, effective Oct. 1, 1998.

AMENDMENTS

2005—Pub. L. 109–129, amended section generally, substituting provisions relating to the stem cell therapeutic outcomes database for provisions relating to the bone marrow scientific registry.

EFFECTIVE DATE

Section effective Oct. 1, 1998, see section 7 of Pub. L. 105–196, set out as an Effective Date of 1998 Amendment note under section 274k of this title.

[1] So in original. Probably should be followed by a comma.

§ 274*l*–1. Definitions

In this part:

(1) The term ''Advisory Council'' means the advisory council established by the Secretary under section 274k(a)(1) of this title.

(2) The term ''bone marrow'' means the cells found in adult bone marrow and peripheral blood.

(3) The term ''outcomes database'' means the database established by the Secretary under section 274*l* of this title.

(4) The term ''Program'' means the C.W. Bill Young Cell Transplantation Program established under section 274k of this title.

(July 1, 1944, ch. 373, title III, §379A–1, as added Pub. L. 109–129, §3(c), Dec. 20, 2005, 119 Stat. 2562.)

§ 274m. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $34,000,000 for fiscal year 2006 and $38,000,000 for each of fiscal years 2007 through 2010.

(July 1, 1944, ch. 373, title III, §379B, as added Pub. L. 105–196, §4(2), July 16, 1998, 112 Stat. 636; amended Pub. L. 109–129, §3(d), Dec. 20, 2005, 119 Stat. 2562.)

AMENDMENTS

2005—Pub. L. 109–129 amended section generally. Prior to amendment, section read as follows: ''For the purpose of carrying out this part, there are authorized to be appropriated $18,000,000 for fiscal year 1999, and such sums as may be necessary for each of the fiscal years 2000 through 2003.''

EFFECTIVE DATE

Section effective Oct. 1, 1998, see section 7 of Pub. L. 105–196, set out as an Effective Date of 1998 Amendment note under section 274k of this title.

§ 275. Repealed. Pub. L. 103–43, title I, § 121(a), June 10, 1993, 107 Stat. 133

Section, act July 1, 1944, ch. 373, title III, §381, as added Nov. 20, 1985, Pub. L. 99–158, §11, 99 Stat. 883; amended Nov. 4, 1988, Pub. L. 100–607, title I, §157(a), 102 Stat. 3059, established the Biomedical Ethics Board and provided for its membership, functions, reports to Congress, etc., and provided for appointment of a Biomedical Ethics Advisory Committee to assist the Biomedical Ethics Board.

A prior section 275, act July 1, 1944, ch. 373, title III, §381, formerly §371, as added Aug. 3, 1956, ch. 907, §1, 70 Stat. 960; renumbered §381, Mar. 13, 1970, Pub. L. 91–212, §10(a)(3), 84 Stat. 66, established a National Library of Medicine in the Public Health Service and stated the congressional purposes for such establishment, prior to repeal by Pub. L. 99–158, §3(b), Nov. 20, 1985, 99 Stat. 879.

§§ 276 to 280a–1. Repealed. Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879

Section 276, act July 1, 1944, ch. 373, title III, §382, formerly §372, as added Aug. 3, 1956, ch. 907, §1, 70 Stat. 960; renumbered §382 and amended Mar. 13, 1970, Pub. L.

91–212, §10(a)(3), (b)(1), (d)(1), 84 Stat. 66, 67; Nov. 18, 1971, Pub. L. 92–157, title III, §301(d)(1), 85 Stat. 463, related to functions of Secretary with regard to acquisition, etc., of materials and rules for public access to materials.

Section 277, act July 1, 1944, ch. 373, title III, §383, formerly §373, as added Aug. 3, 1956, ch. 907, §1, 70 Stat. 960; amended Oct. 22, 1965, Pub. L. 89–291, §4, 79 Stat. 1067; renumbered §383 and amended Mar. 13, 1970, Pub. L. 91–212, §10(a)(3), (d)(1), 84 Stat. 66, 67; Oct. 30, 1970, Pub. L. 91–515, title VI, §601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92–157, title III, §301(d)(2), 85 Stat. 464; Nov. 9, 1978, Pub. L. 95–622, title II, §212, 92 Stat. 3421, related to establishment, etc., of Board of Regents.

Section 278, act July 1, 1944, ch. 373, title III, §384, formerly §374, as added Aug. 3, 1956, ch. 907, §1, 70 Stat. 961; renumbered §384 and amended Mar. 13, 1970, Pub. L. 91–212, §10(a)(3), (d)(1), 84 Stat. 66, 67; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695; Apr. 26, 1983, Pub. L. 98–24, §2(a)(2), 97 Stat. 176, related to acceptance and administration of gifts and establishment of memorials to donors.

Section 279, act July 1, 1944, ch. 373, title III, §385, formerly §375, as added Aug. 3, 1956, ch. 907 §1, 70 Stat. 962; renumbered §385 and amended Mar. 13, 1970, Pub. L. 91–212, §10(a)(3), (b)(2), 84 Stat. 66, defined ''medicine'' and ''medical''.

Section 280, act July 1, 1944, ch. 373, title III, §386, formerly §376, as added Aug. 3, 1956, ch. 907, §1, 70 Stat. 962; renumbered §386 and amended Mar. 13, 1970, Pub. L. 91–212, §10(a)(3), (d)(1), 84 Stat. 66, 67; Nov. 18, 1971, Pub. L. 92–157, title III, §301(d)(3), 85 Stat. 464, authorized appropriations for erection and equipment of Library.

Section 280a, act July 1, 1944, ch. 373, title III, §387, formerly §377, as added Aug. 3, 1956, ch. 907, §1, 70 Stat. 962; amended 1970 Reorg. Plan No. 2 §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; renumbered §387, Mar. 13, 1970, Pub. L. 91–212, §10(a)(3), 84 Stat. 66, related to transfer of Armed Forces Medical Library to Public Health Service for use in administration of part I.

Section 280a–1, act July 1, 1944, ch. 373, title III, §388, formerly §378, as added Oct. 22, 1965, Pub. L. 89–291, §3, 79 Stat. 1067; renumbered §388 and amended Mar. 13, 1970, Pub. L. 91–212, §10(a)(3), (d)(1), 84 Stat. 66, 67; Nov. 18, 1971, Pub. L. 92–157, title III, §301(d)(4), 85 Stat. 464, related to establishment of regional branches.

PART J—PREVENTION AND CONTROL OF INJURIES

AMENDMENTS

1993—Pub. L. 103–183, title II, §203(a)(1), Dec. 14, 1993, 107 Stat. 2232, substituted ''Prevention and Control of Injuries'' for ''Injury Control'' in part heading.

Pub. L. 103–43, title XX, §2008(i)(2)(B)(i), June 10, 1993, 107 Stat. 213, redesignated part K ''Injury Control'' as J. Former part J ''Biomedical Ethics'', consisting of section 275, was repealed by Pub. L. 103–43, title I, §121(a), June 10, 1993, 107 Stat. 133.

1990—Pub. L. 101–616, title I, §101(a)(1), Nov. 16, 1990, 104 Stat. 3279, redesignated part I ''Biomedical Ethics'' as J. Former part J ''Injury Control'' redesignated K.

§ 280b. Research

(a) The Secretary, through the Director of the Centers for Disease Control and Prevention, shall—

(1) conduct, and give assistance to public and nonprofit private entities, scientific institutions, and individuals engaged in the conduct of, research relating to the causes, mechanisms, prevention, diagnosis, treatment of injuries, and rehabilitation from injuries;

(2) make grants to, or enter into cooperative agreements or contracts with, public and nonprofit private entities (including academic institutions, hospitals, and laboratories) and individuals for the conduct of such research; and

(3) make grants to, or enter into cooperative agreements or contracts with, academic institutions for the purpose of providing training on the causes, mechanisms, prevention, diagnosis, treatment of injuries, and rehabilitation from injuries.

(b) The Secretary, through the Director of the Centers for Disease Control and Prevention, shall collect and disseminate, through publications and other appropriate means, information concerning the practical applications of research conducted or assisted under subsection (a) of this section. In carrying out the preceding sentence, the Secretary shall disseminate such information to the public, including through elementary and secondary schools.

(July 1, 1944, ch. 373, title III, §391, as added Pub. L. 99–649, §3, Nov. 10, 1986, 100 Stat. 3633; amended Pub. L. 101–558, §2(a), Nov. 15, 1990, 104 Stat. 2772; Pub. L. 102–531, title III, §312(d)(3), Oct. 27, 1992, 106 Stat. 3504; Pub. L. 103–183, title II, §203(b)(2), Dec. 14, 1993, 107 Stat. 2232.)

PRIOR PROVISIONS

A prior section 280b, act July 1, 1944, ch. 373, title III, §390, as added Oct. 22, 1965, Pub. L. 89–291, §2, 79 Stat. 1059; amended Mar. 13, 1970, Pub. L. 91–212, §§4(b), 5(b), 6(b), 84 Stat. 64, 65; July 23, 1974, Pub. L. 93–353, title II, §§201(a), (b), 202(a), 88 Stat. 371, 372; Aug. 1, 1977, Pub. L. 95–83, title II, §202, 91 Stat. 386; Nov. 9, 1978, Pub. L. 95–622, title II, §211, 92 Stat. 3420; Aug. 13, 1981, Pub. L. 97–35, title IX, §925(a), 95 Stat. 569, set forth findings and declaration of policy and authorized appropriations with regard to assistance to medical libraries, prior to repeal by Pub. L. 99–158, §3(b), Nov. 20, 1985, 99 Stat. 879.

A prior section 391 of act July 1, 1944, ch. 373, title III, as added Oct. 22, 1965, Pub. L. 89–291, §2, 79 Stat. 1059; amended Mar. 13, 1970, Pub. L. 91–212, §10(b)(3), 84 Stat. 66; July 23, 1974, Pub. L. 93–353, title II, §202(b), 88 Stat. 372, which defined ''sciences related to health'', ''National Medical Libraries Assistance Advisory Board'', ''Board'', and ''medical library'', was classified to section 280b–1 of this title, prior to repeal by Pub. L. 99–158, §3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–183 inserted at end ''In carrying out the preceding sentence, the Secretary shall disseminate such information to the public, including through elementary and secondary schools.''

1992—Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'' in subsecs. (a) and (b).

1990—Subsec. (a)(2). Pub. L. 101–558, §2(a)(1), inserted '', or enter into cooperative agreements or contracts with,'' after ''grants to''.

Subsec. (a)(3). Pub. L. 101–558, §2(a)(2), added par. (3).

FINDINGS AND PURPOSES

Section 2 of Pub. L. 99–649 provided that:

''(a) The Congress finds and declares that:

''(1) Injury is one of the principal public health problems in America, and causes over 140,000 deaths per year.

''(2) Injury rates are particularly high for children and the elderly.

''(3) Injury causes 50 percent of all deaths for children over the age of one year and two-thirds of all deaths for children over the age of 15 years, and is the leading cause of death for individuals under the age of 44 years. Individuals over the age of 65 years have the highest fatality rates for many injuries.

''(4) Injury control has not been given high priority in the United States, and the research being conducted on injury control and the number of personnel

involved in injury control activities are not adequate.

''(b) The purposes of this Act [enacting this part] are—

''(1) to promote research into the causes, diagnosis, treatment, prevention, and control of injuries and rehabilitation from injuries;

''(2) to promote cooperation between specialists in fields involved in injury research; and

''(3) to promote coordination between Federal, State, and local governments and public and private entities in order to achieve a reduction in deaths from injuries.''

§ 280b–1. Prevention and control activities

(a) The Secretary, through the Director of the Centers for Disease Control and Prevention, shall—

(1) assist States and political subdivisions of States in activities for the prevention and control of injuries; and

(2) encourage regional activities between States designed to reduce injury rates.

(b) The Secretary, through the Director of the Centers for Disease Control and Prevention, may—

(1) enter into agreements between the Service and public and private community health agencies which provide for cooperative planning of activities to deal with problems relating to the prevention and control of injuries;

(2) work in cooperation with other Federal agencies, and with public and nonprofit private entities, to promote activities regarding the prevention and control of injuries; and

(3) make grants to States and, after consultation with State health agencies, to other public or nonprofit private entities for the purpose of carrying out demonstration projects for the prevention and control of injuries at sites that are not subject to the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], including homes, elementary and secondary schools, and public buildings.

(July 1, 1944, ch. 373, title III, § 392, as added Pub. L. 99–649, § 3, Nov. 10, 1986, 100 Stat. 3634; amended Pub. L. 101–558, § 2(b), Nov. 15, 1990, 104 Stat. 2772; Pub. L. 102–531, title III, §§ 301, 312(d)(4), Oct. 27, 1992, 106 Stat. 3482, 3504; Pub. L. 103–183, title II, § 203(a)(2), (b)(1), Dec. 14, 1993, 107 Stat. 2232.)

References in Text

The Occupational Safety and Health Act of 1970, referred to in subsec. (b)(3), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

Prior Provisions

A prior section 280b–1, act July 1, 1944, ch. 373, title III, § 391, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1059; amended Mar. 13, 1970, Pub. L. 91–212, § 10(b)(3), 84 Stat. 66; July 23, 1974, Pub. L. 93–353, title II, § 202(b), 88 Stat. 372, defined ''sciences related to health'', ''National Medical Libraries Assistance Advisory Board'', ''Board'', and ''medical library'', prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

A prior section 392 of act July 1, 1944, ch. 373, title III, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1060; amended Mar. 13, 1970, Pub. L. 91–212, § 10(b)(4), (d)(2)(A), 84 Stat. 66, 67; July 23, 1974, Pub. L. 93–353, title II, § 202(c), 88 Stat. 372, which related to composition, functions, etc., of the National Medical Libraries Assistance Advisory Board, was classified to section 280b–2 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

Amendments

1993—Pub. L. 103–183, § 203(a)(2)(A), substituted ''Prevention and control activities'' for ''Control activities'' in section catchline.

Subsec. (a)(1). Pub. L. 103–183, § 203(a)(2)(B), inserted ''and control'' after ''prevention''.

Subsec. (b)(1). Pub. L. 103–183, § 203(a)(2)(C), substituted ''the prevention and control of injuries'' for ''injuries and injury control''.

Subsec. (b)(2). Pub. L. 103–183, § 203(b)(1), substituted ''to promote activities regarding the prevention and control of injuries; and'' for ''to promote injury control. In carrying out the preceding sentence, the Secretary shall disseminate such information to the public, including through elementary and secondary schools; and''.

1992—Pub. L. 102–531, § 312(d)(4), substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'' in introductory provisions of subsecs. (a) and (b).

Subsec. (b)(1). Pub. L. 102–531, § 301(1), struck out ''and'' after semicolon at end.

Subsec. (b)(2). Pub. L. 102–531, § 301(2), inserted sentence requiring Secretary to disseminate information on injury control to the public, including through elementary and secondary schools and substituted ''; and'' for period at end.

Subsec. (b)(3). Pub. L. 102–531, § 301(3), added par. (3).

1990—Subsec. (b)(2). Pub. L. 101–558 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''work in cooperation with Federal, State, and local agencies to promote injury control.''

§ 280b–1a. Interpersonal violence within families and among acquaintances

(a) With respect to activities that are authorized in sections 280b and 280b–1 of this title, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall carry out such activities with respect to interpersonal violence within families and among acquaintances. Activities authorized in the preceding sentence include the following:

(1) Collecting data relating to the incidence of such violence.

(2) Making grants to public and nonprofit private entities for the evaluation of programs whose purpose is to prevent such violence, including the evaluation of demonstration projects under paragraph (6).

(3) Making grants to public and nonprofit private entities for the conduct of research on identifying effective strategies for preventing such violence.

(4) Providing to the public information and education on such violence, including information and education to increase awareness of the public health consequences of such violence.

(5) Training health care providers as follows:

(A) To identify individuals whose medical conditions or statements indicate that the individuals are victims of such violence.

(B) To routinely determine, in examining patients, whether the medical conditions or statements of the patients so indicate.

(C) To refer individuals so identified to entities that provide services regarding such

violence, including referrals for counseling, housing, legal services, and services of community organizations.

(6) Making grants to public and nonprofit private entities for demonstration projects with respect to such violence, including with respect to prevention.

(b) For purposes of this part, the term ''interpersonal violence within families and among acquaintances'' includes behavior commonly referred to as domestic violence, sexual assault, spousal abuse, woman battering, partner abuse, elder abuse, and acquaintance rape.

(July 1, 1944, ch. 373, title III, § 393, as added Pub. L. 103–183, title II, § 201(2), Dec. 14, 1993, 107 Stat. 2231.)

PRIOR PROVISIONS

A prior section 393 of act July 1, 1944, was renumbered section 394 and is classified to section 280b–2 of this title.

Another prior section 393 of act July 1, 1944, was renumbered section 394 and was classified to section 280b–4 of this title.

§ 280b–1b. Prevention of traumatic brain injury

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may carry out projects to reduce the incidence of traumatic brain injury. Such projects may be carried out by the Secretary directly or through awards of grants or contracts to public or nonprofit private entities. The Secretary may directly or through such awards provide technical assistance with respect to the planning, development, and operation of such projects.

(b) Certain activities

Activities under subsection (a) of this section may include—

(1) the conduct of research into identifying effective strategies for the prevention of traumatic brain injury;

(2) the implementation of public information and education programs for the prevention of such injury and for broadening the awareness of the public concerning the public health consequences of such injury; and

(3) the implementation of a national education and awareness campaign regarding such injury (in conjunction with the program of the Secretary regarding health-status goals for 2010, commonly referred to as Healthy People 2010), including—

(A) the national dissemination of information on—

(i) incidence and prevalence; and

(ii) information relating to traumatic brain injury and the sequelae of secondary conditions arising from traumatic brain injury upon discharge from hospitals and trauma centers; and

(B) the provision of information in primary care settings, including emergency rooms and trauma centers, concerning the availability of State level services and resources.

(c) Coordination of activities

The Secretary shall ensure that activities under this section are coordinated as appropriate with other agencies of the Public Health Service that carry out activities regarding traumatic brain injury.

(d) "Traumatic brain injury" defined

For purposes of this section, the term ''traumatic brain injury'' means an acquired injury to the brain. Such term does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma, but may include brain injuries caused by anoxia due to trauma. The Secretary may revise the definition of such term as the Secretary determines necessary, after consultation with States and other appropriate public or nonprofit private entities.

(July 1, 1944, ch. 373, title III, § 393A, as added Pub. L. 104–166, § 1, July 29, 1996, 110 Stat. 1445; amended Pub. L. 106–310, div. A, title XIII, § 1301(a), Oct. 17, 2000, 114 Stat. 1137.)

AMENDMENTS

2000—Subsec. (b)(3). Pub. L. 106–310, § 1301(a)(1), added par. (3).

Subsec. (d). Pub. L. 106–310, § 1301(a)(2), substituted ''anoxia due to trauma'' for ''anoxia due to near drowning'' and inserted '', after consultation with States and other appropriate public or nonprofit private entities'' after ''Secretary determines necessary''.

§ 280b–1c. Use of allotments for rape prevention education

(a) Permitted use

The Secretary, acting through the National Center for Injury Prevention and Control at the Centers for Disease Control and Prevention, shall award targeted grants to States to be used for rape prevention and education programs conducted by rape crisis centers, State sexual assault coalitions, and other public and private nonprofit entities for—

(1) educational seminars;

(2) the operation of hotlines;

(3) training programs for professionals;

(4) the preparation of informational material;

(5) education and training programs for students and campus personnel designed to reduce the incidence of sexual assault at colleges and universities;

(6) education to increase awareness about drugs used to facilitate rapes or sexual assaults; and

(7) other efforts to increase awareness of the facts about, or to help prevent, sexual assault, including efforts to increase awareness in underserved communities and awareness among individuals with disabilities (as defined in section 12102 of this title).

(b) Collection and dissemination of information on sexual assault

The Secretary shall, through the National Resource Center on Sexual Assault established under the National Center for Injury Prevention and Control at the Centers for Disease Control and Prevention, provide resource information, policy, training, and technical assistance to Federal, State, local, and Indian tribal agencies, as well as to State sexual assault coalitions and local sexual assault programs and to other professionals and interested parties on issues relat-

ing to sexual assault, including maintenance of a central resource library in order to collect, prepare, analyze, and disseminate information and statistics and analyses thereof relating to the incidence and prevention of sexual assault.

(c) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section $80,000,000 for each of fiscal years 2007 through 2011.

(2) National sexual violence resource center allotment

Of the total amount made available under this subsection in each fiscal year, not less than $1,500,000 shall be available for allotment under subsection (b) of this section.

(d) Limitations

(1) Supplement not supplant

Amounts provided to States under this section shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide services of the type described in subsection (a) of this section.

(2) Studies

A State may not use more than 2 percent of the amount received by the State under this section for each fiscal year for surveillance studies or prevalence studies.

(3) Administration

A State may not use more than 5 percent of the amount received by the State under this section for each fiscal year for administrative expenses.

(July 1, 1944, ch. 373, title III, § 393B, as added Pub. L. 106–386, div. B, title IV, § 1401(a), Oct. 28, 2000, 114 Stat. 1512; amended Pub. L. 109–162, title III, § 302, Jan. 5, 2006, 119 Stat. 3004.)

CODIFICATION

Another section 393B of act July 1, 1944, is classified to section 280b–1d of this title.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–162 reenacted heading without change and amended text generally. Prior to amendment, text contained provisions in par. (1) authorizing appropriations for fiscal years 2001 through 2005 and in par. (2) directing an allotment under subsec. (b) of this section.

§ 280b–1d. National program for traumatic brain injury registries

(a)[1] In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States or their designees to operate the State's traumatic brain injury registry, and to academic institutions to conduct applied research that will support the development of such registries, to collect data concerning—

(1) demographic information about each traumatic brain injury;

(2) information about the circumstances surrounding the injury event associated with each traumatic brain injury;

(3) administrative information about the source of the collected information, dates of hospitalization and treatment, and the date of injury; and

(4) information characterizing the clinical aspects of the traumatic brain injury, including the severity of the injury, outcomes of the injury, the types of treatments received, and the types of services utilized.

(July 1, 1944, ch. 373, title III, § 393B, as added Pub. L. 106–310, div. A, title XIII, § 1301(b), Oct. 17, 2000, 114 Stat. 1137.)

CODIFICATION

Another section 393B of act July 1, 1944, is classified to section 280b–1c of this title.

§ 280b–2. General provisions

(a) Advisory committee

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish an advisory committee to advise the Secretary and such Director with respect to the prevention and control of injuries.

(b) Technical assistance

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may provide technical assistance to public and nonprofit private entities with respect to the planning, development, and operation of any program or service carried out pursuant to this part. The Secretary may provide such technical assistance directly or through grants or contracts.

(c) Biennial report

Not later than February 1 of 1995 and of every second year thereafter, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities carried out under this part during the preceding 2 fiscal years. Such report shall include a description of such activities that were carried out with respect to interpersonal violence within families and among acquaintances and with respect to rural areas.

(July 1, 1944, ch. 373, title III, § 394, formerly § 393, as added Pub. L. 99–649, § 3, Nov. 10, 1986, 100 Stat. 3634; amended Pub. L. 101–558, § 2(c), Nov. 15, 1990, 104 Stat. 2772; Pub. L. 102–531, title III, § 312(d)(5), Oct. 27, 1992, 106 Stat. 3504; renumbered § 394 and amended Pub. L. 103–183, title II, §§ 201(1), 202, Dec. 14, 1993, 107 Stat. 2231, 2232.)

PRIOR PROVISIONS

A prior section 280b–2, act July 1, 1944, ch. 373, title III, § 392, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1060; amended Mar. 13, 1970, Pub. L. 91–212, § 10(b)(4), (d)(2)(A), 84 Stat. 66, 67; July 23, 1974, Pub. L. 93–353, title II, § 202(c), 88 Stat. 372, related to composition, functions, etc., of National Medical Libraries Assistance Advisory Board, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

A prior section 394 of act July 1, 1944, was renumbered section 394A and is classified to section 280b–3 of this title.

[1] So in original. No subsec. (b) has been enacted.

AMENDMENTS

1993—Pub. L. 103–183, § 202, amended section generally. Prior to amendment, section read as follows: ''By not later than September 30, 1992, the Secretary, through the Director of the Centers for Disease Control and Prevention, shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities conducted or supported under this part. The report shall include—

''(1) information regarding the practical applications of research conducted pursuant to subsection (a) of section 280b of this title, including information that has not been disseminated under subsection (b) of such section; and

''(2) information on such activities regarding the prevention and control of injuries in rural areas, including information regarding injuries that are particular to rural areas.''

1992—Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'' in introductory provisions.

1990—Pub. L. 101–558 amended section generally. Prior to amendment, section read as follows: ''By January 1, 1989, the Secretary, through the Director of the Centers for Disease Control, shall prepare and transmit to the Congress a report analyzing the incidence and causes of childhood injuries in the United States and containing recommendations for such legislation with respect to injury control as the Secretary considers appropriate.''

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 280b–3. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $50,000,000 for fiscal year 1994, such sums as may be necessary for each of the fiscal years 1995 through 1998, and such sums as may be necessary for each of the fiscal years 2001 through 2005..[1]

[1] So in original.

(July 1, 1944, ch. 373, title III, § 394A, formerly § 394, as added Pub. L. 99–649, § 3, Nov. 10, 1986, 100 Stat. 3634; amended Pub. L. 101–558, § 2(d), Nov. 15, 1990, 104 Stat. 2773; renumbered § 394A and amended Pub. L. 103–183, title II, §§ 201(1), 204, Dec. 14, 1993, 107 Stat. 2231, 2233; Pub. L. 106–310, div. A, title XIII, § 1306, Oct. 17, 2000, 114 Stat. 1143.)

PRIOR PROVISIONS

A prior section 280b–3, act July 1, 1944, ch. 373, title III, § 393, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1060; amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(a), 3, 10(d)(2), 84 Stat. 63, 64, 67, related to grants for construction of medical library facilities, prior to repeal by Pub. L. 93–353, title II, § 202(d), July 23, 1974, 88 Stat. 372.

Prior sections 280b–4 to 280b–11 were repealed by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

Section 280b–4, act July 1, 1944, ch. 373, title III, § 393, formerly § 394, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1062; amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(b), 10(d)(2)(A), 84 Stat. 63, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(a), 87 Stat. 92; renumbered § 393 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(a), 204, 88 Stat. 372, 373, related to grants for training in medical library sciences.

Section 280b–5, act July 1, 1944, ch. 373, title III, § 394, formerly § 395, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1062; amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(c), (d), 4(a), 5(a), 10(c)(1)(A), (B), (2)(A)–(C), (d)(2)(A), 84 Stat. 63, 64, 66, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(b), (c), 87 Stat. 92; renumbered § 394 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(b), 204, 88 Stat. 372, 373, related to assistance for special scientific projects; research and development in medical library science and related fields.

Section 280b–6, act July 1, 1944, ch. 373, title III, § 396, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1063, was redesignated as subsecs. (b) and (c) of section 280b–5 of this title by Pub. L. 91–212, § 10(c)(2), Mar. 13, 1970, 84 Stat. 66.

Section 280b–7, act July 1, 1944, ch. 373, title III, § 395, formerly § 397, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1063; renumbered § 396 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(e), 6(a)(1), (2), 10(c)(3), (d)(2)(A), 84 Stat. 63, 64, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(d), 87 Stat. 92; renumbered § 395 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(c), 204, 88 Stat. 372, 373, related to grants for establishing, expanding, and improving basic medical library or related resources.

Section 280b–8, act July 1, 1944, ch. 373, title III, § 396, formerly § 398, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1065; renumbered § 397 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(f), 7, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(e), 87 Stat. 92; renumbered § 396 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 202(e), (f), 203(d), 204, 88 Stat. 372, 373, related to grants for establishment of regional medical libraries.

Section 280b–9, act July 1, 1944, ch. 373, title III, § 397, formerly § 399, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 398 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(g), 8, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(f), 87 Stat. 92; renumbered § 397 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(e), 204, 88 Stat. 372, 373, related to grants to provide support for biomedical scientific publications.

Section 280b–10, act July 1, 1944, ch. 373, title III, § 398, formerly § 399a, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 399, Mar. 13, 1970, Pub. L. 91–212, § 10(c)(3), 84 Stat. 67; renumbered § 398, July 23, 1974, Pub. L. 93–353, title II, § 204, 88 Stat. 373, related to the continuing availability of appropriated funds.

Section 280b–11, act July 1, 1944, ch. 373, title III, § 399, formerly § 399b, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 399a and amended Mar. 13, 1970, Pub. L. 91–212, § 10(c)(3), (d)(2)(A), 84 Stat. 67; re-

numbered §399, July 23, 1974, Pub. L. 93–353, title II, §204, 88 Stat. 373; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695, related to the maintenance of records by recipients of grants and audits thereof by the Secretary of Health and Human Services and the Comptroller General of the United States.

A prior section 280b–12, act July 1, 1944, ch. 373, title III, §399b, as added Mar. 13, 1970, Pub. L. 91–212, §9, 84 Stat. 65, related to transfer of funds, prior to repeal by Pub. L. 93–353, title II, §204, July 23, 1974, 88 Stat. 373, applicable with respect to fiscal years beginning after June 30, 1974.

AMENDMENTS

2000—Pub. L. 106–310, which directed the amendment of this section by striking out ''and'' after ''1994'', was executed by striking ''and'' after ''1994,'' to reflect the probable intent of Congress.

Pub. L. 106–310 inserted before period at end '', and such sums as may be necessary for each of the fiscal years 2001 through 2005.''

1993—Pub. L. 103–183, §204, amended section generally. Prior to amendment, section read as follows: ''To carry out sections 280b and 280b–1 of this title, there are authorized to be appropriated $10,000,000 for each of the fiscal years 1988, 1989, and 1990, $30,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.''

1990—Pub. L. 101–558 struck out subsec. (a) designation, inserted before period at end of first sentence '', $30,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993'', and struck out at end ''Of the amounts appropriated under this section for any fiscal year, not more than 20 percent may be used for Federal administrative expenses to carry out such section for such fiscal year.''

§ 280b–4. Study conducted by the Centers for Disease Control and Prevention

(a) Purposes

The Secretary of Health and Human Services acting through the National Center for Injury Prevention and Control at the Centers for Disease Control[1] Prevention shall make grants to entities, including domestic and sexual assault coalitions and programs, research organizations, tribal organizations, and academic institutions to support research to examine prevention and intervention programs to further the understanding of sexual and domestic violence by and against adults, youth, and children.

(b) Use of funds

The research conducted under this section shall include evaluation and study of best practices for reducing and preventing violence against women and children addressed by the strategies included in Department of Health and Human Services-related provisions[2] this title,[3] including strategies addressing underserved communities.

(c) Authorization of appropriations

There shall be authorized to be appropriated to carry out this title $2,000,000 for each of the fiscal years 2007 through 2011.

(Pub. L. 109–162, title IV, §402, Jan. 5, 2006, 119 Stat. 3023.)

REFERENCES IN TEXT

This title, referred to in subsecs. (b) and (c), is title IV of Pub. L. 109–162, Jan. 5, 2006, 119 Stat. 3017, which enacted this section and part L (§14043d et seq.) of subchapter III of chapter 136 and section 14045c of this title. For complete classification of title IV to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of the Public Health Service Act which comprises this chapter.

PART K—HEALTH CARE SERVICES IN THE HOME

AMENDMENTS

1993—Pub. L. 103–43, title XX, §2008(i)(2)(B)(i), June 10, 1993, 107 Stat. 213, redesignated part L ''Health Care Services in the Home'' as K. Former part K ''Injury Control'' redesignated J.

1990—Pub. L. 101–616, title I, §101(a)(1), Nov. 16, 1990, 104 Stat. 3279, redesignated part J ''Injury Control'' as K. Former part K ''Health Care Services in the Home'' redesignated L.

PRIOR PROVISIONS

A prior part K, added Pub. L. 93–222, §3, Dec. 29, 1973, 87 Stat. 934, related to quality assurance, prior to repeal by Pub. L. 95–623, §11(b), Nov. 9, 1978, 92 Stat. 3455.

SUBPART I—GRANTS FOR DEMONSTRATION PROJECTS

§ 280c. Establishment of program

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make not less than 5, and not more than 20, grants to States for the purpose of assisting grantees in carrying out demonstration projects—

(1) to identify low-income individuals who can avoid institutionalization or prolonged hospitalization if skilled medical services, skilled nursing care services, homemaker or home health aide services, or personal care services are provided in the homes of the individuals;

(2) to pay the costs of the provision of such services in the homes of such individuals; and

(3) to coordinate the provision by public and private entities of such services, and other long-term care services, in the homes of such individuals.

(b) Requirement with respect to age of recipients of services

The Secretary may not make a grant under subsection (a) of this section to a State unless the State agrees to ensure that—

(1) not less than 25 percent of the grant is expended to provide services under such subsection to individuals who are not less than 65 years of age; and

(2) of the portion of the grant reserved by the State for purposes of complying with paragraph (1), not less than 10 percent is expended to provide such services to individuals who are not less than 85 years of age.

(c) Relationship to items and services under other programs

A State may not make payments from a grant under subsection (a) of this section for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

[1] So in original. Probably should be followed by ''and''.

[2] So in original. Probably should be followed by ''of''.

[3] See References in Text note below.

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

(July 1, 1944, ch. 373, title III, § 395, as added Pub. L. 100–175, title VI, § 602, Nov. 29, 1987, 101 Stat. 979; amended Pub. L. 101–557, title I, § 101(a)–(c), Nov. 15, 1990, 104 Stat. 2766; Pub. L. 102–108, § 2(f), Aug. 17, 1991, 105 Stat. 550.)

PRIOR PROVISIONS

A prior section 280C, act July 1, 1944, ch. 373, title III, § 399A, formerly § 399c, as added Dec. 29, 1973, Pub. L. 93–222, § 3, 87 Stat. 934; renumbered § 399A, July 29, 1975, Pub. L. 94–63, title VI, § 607(a), (c), 89 Stat. 351, provided for programs designed to assure the quality of health care, prior to repeal by Pub. L. 95–623, § 11(b), Nov. 9, 1978, 92 Stat. 3455.

A prior section 395 of act July 1, 1944, ch. 373, title III, formerly § 397, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1063; renumbered § 396 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(e), 6(a)(1), (2), 10(c)(3), (d)(2)(A), 84 Stat. 63, 64, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(d), 87 Stat. 92; renumbered § 395 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(c), 204, 88 Stat. 372, 373, which related to grants for establishing, expanding, and improving basic medical library or related resources, was classified to section 280b–7 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102–108 inserted ''skilled medical services,'' after ''if''.

1990—Subsec. (a). Pub. L. 101–557, § 101(a), substituted ''shall make not less than 5, and not more than 20, grants'' for ''shall make not less than 3, and not more than 5, grants''.

Subsec. (a)(1). Pub. L. 101–557, § 101(b), substituted ''skilled nursing care services, homemaker or home health aide services, or personal care services are provided in the homes of the individuals'' for ''skilled medical services or related health services (or both) are provided in the homes of the individuals''.

Subsec. (b). Pub. L. 101–557, § 101(c), substituted ''to ensure that—'' and pars. (1) and (2) for ''to ensure that not less than 25 percent of individuals receiving services pursuant to subsection (a) of this section are individuals who are not less than 65 years of age''.

EFFECTIVE DATE

Part effective Oct. 1, 1987, see section 701(a) of Pub. L. 100–175, set out as an Effective Date of 1987 Amendment note under section 3001 of this title.

SHORT TITLE

For short title of title VI of Pub. L. 100–175, which enacted this part as the ''Health Care Services in the Home Act of 1987'', see section 601 of Pub. L. 100–175, set out as a Short Title of 1987 Amendments note under section 201 of this title.

§ 280c–1. Limitation on duration of grant and requirement of matching funds

(a) Limitation on duration of grant

The period during which payments are made to a State from a grant under section 280c(a) of this title may not exceed 3 years. Such payments shall be subject to annual evaluation by the Secretary.

(b) Requirement of matching funds

(1)(A) For the first year of payments to a State from a grant under section 280c(a) of this title, the Secretary may not make such payments in an amount exceeding 75 percent of the costs of services to be provided by the State pursuant to such section.

(B) For the second year of such payments to a State, the Secretary may not make such payments in an amount exceeding 65 percent of the costs of such services.

(C) For the third year of such payments to a State, the Secretary may not make such payments in an amount exceeding 55 percent of the costs of such services.

(2) The Secretary may not make a grant under section 280c(a) of this title to a State unless the State agrees to make available, directly or through donations from public or private entities, non-Federal contributions toward the costs of services to be provided pursuant to such section in an amount equal to—

(A) for the first year of payments to the State from the grant, not less than $25 (in cash or in kind under subsection (c) of this section) for each $75 of Federal funds provided in the grant;

(B) for the second year of such payments to the State, not less than $35 (in cash or in kind under subsection (c) of this section) for each $65 of such Federal funds; and

(C) for the third year of such payments to the State, not less than $45 (in cash or in kind under subsection (c) of this section) for each $55 of such Federal funds.

(c) Determination of amount of non-Federal contribution

Non-Federal contributions required in subsection (b) of this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(July 1, 1944, ch. 373, title III, § 396, as added Pub. L. 100–175, title VI, § 602, Nov. 29, 1987, 101 Stat. 979.)

PRIOR PROVISIONS

A prior section 396 of act July 1, 1944, ch. 373, title III, formerly § 398, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1065; renumbered § 397 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(f), 7, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(e), 87 Stat. 92; renumbered § 396 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 202(e), (f), 203(d), 204, 88 Stat. 372, 373, which related to grants for establishment of regional medical libraries, was classified to section 280b–8 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

§ 280c–2. General provisions

(a) Limitation on administrative expenses

The Secretary may not make a grant under section 280c(a) of this title to a State unless the State agrees that not more than 10 percent of the grant will be expended for administrative expenses with respect to the grant.

(b) Description of intended use of grant

The Secretary may not make a grant under section 280c(a) of this title to a State unless—

(1) the State submits to the Secretary a description of the purposes for which the State intends to expend the grant; and

(2) such description provides information relating to the programs and activities to be supported and services to be provided, including—

(A) the number of individuals who will receive services pursuant to section 280c(a) of this title and the average costs of providing such services to each such individual; and

(B) a description of the manner in which such programs and activities will be coordinated with any similar programs and activities of public and private entities.

(c) Requirement of application

The Secretary may not make a grant under section 280c(a) of this title to a State unless the State has submitted to the Secretary an application for the grant. The application shall—

(1) contain the description of intended expenditures required in subsection (b) of this section;

(2) with respect to carrying out the purpose for which the grant is to be made, provide assurances of compliance satisfactory to the Secretary; and

(3) otherwise be in such form, be made in such manner, and contain such information and agreements as the Secretary determines to be necessary to carry out this subpart.

(d) Evaluations and report by Secretary

The Secretary shall—

(1) provide for an evaluation of each demonstration project for which a grant is made under section 280c(a) of this title; and

(2) not later than 6 months after the completion of such evaluations, submit to the Congress a report describing the findings made as a result of the evaluations.

(e) Authorizations of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1990, $7,500,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.

(July 1, 1944, ch. 373, title III, § 397, as added Pub. L. 100–175, title VI, § 602, Nov. 29, 1987, 101 Stat. 980; amended Pub. L. 101–557, title I, § 101(d), Nov. 15, 1990, 104 Stat. 2766.)

PRIOR PROVISIONS

A prior section 397 of act July 1, 1944, ch. 373, title III, formerly § 399, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 398 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(g), 8, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(f), 87 Stat. 92; renumbered § 397 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(e), 204, 88 Stat. 372, 373, which related to grants to provide support for biomedical scientific publications, was classified to section 280b–9 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101–557 substituted ''there are'' for ''there is'' and inserted before period at end '', $7,500,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993''.

SUBPART II—GRANTS FOR DEMONSTRATION PROJECTS WITH RESPECT TO ALZHEIMER'S DISEASE

§ 280c–3. Establishment of program

(a) In general

The Secretary shall make grants to States for the purpose of assisting grantees in carrying out demonstration projects for planning, establishing, and operating programs—

(1) to coordinate the development and operation with public and private organizations of diagnostic, treatment, care management, respite care, legal counseling, and education services provided within the State to individuals with Alzheimer's disease or related disorders and to the families and care providers of such individuals;

(2) to provide home health care, personal care, day care, companion services, short-term care in health facilities, and other respite care to individuals with Alzheimer's disease or related disorders who are living in single family homes or in congregate settings;

(3) to improve the access of such individuals to home-based or community-based long-term care services (subject to the services being provided by entities that were providing such services in the State involved as of October 1, 1995), particularly such individuals who are members of racial or ethnic minority groups, who have limited proficiency in speaking the English language, or who live in rural areas; and

(4) to provide to health care providers, to individuals with Alzheimer's disease or related disorders, to the families of such individuals, to organizations established for such individuals and such families, and to the general public, information with respect to—

(A) diagnostic services, treatment services, and related services available to such individuals and to the families of such individuals;

(B) sources of assistance in obtaining such services, including assistance under entitlement programs; and

(C) the legal rights of such individuals and such families.

(b) Requirement with respect to certain expenditures

The Secretary may not make a grant under subsection (a) of this section to a State unless the State agrees to expend not less than 50 percent of the grant for the provision of services described in subsection (a)(2) of this section.

(c) Relationship to items and services under other programs

A State may not make payments from a grant under subsection (a) of this section for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

(July 1, 1944, ch. 373, title III, § 398, as added Pub. L. 100–175, title VI, § 602, Nov. 29, 1987, 101 Stat.

981; amended Pub. L. 101–557, title I, § 102(a), (b), Nov. 15, 1990, 104 Stat. 2767; Pub. L. 105–392, title III, § 302(a), Nov. 13, 1998, 112 Stat. 3586.)

PRIOR PROVISIONS

A prior section 398 of act July 1, 1944, ch. 373, title III, formerly § 399a, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 399, Mar. 13, 1970, Pub. L. 91–212, § 10(c)(3), 84 Stat. 67; renumbered § 398, July 23, 1974, Pub. L. 93–353, title II, § 204, 88 Stat. 373, which related to the continuing availability of appropriated funds, was classified to section 280b–10 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392, § 302(a)(1), struck out ''not less than 5, and not more than 15,'' after ''shall make'' in introductory provisions.

Subsec. (a)(2). Pub. L. 105–392, § 302(a)(2), inserted ''who are living in single family homes or in congregate settings'' after ''disorders'' and struck out ''and'' at end.

Subsec. (a)(3), (4). Pub. L. 105–392, § 302(a)(3), (4), added par. (3) and redesignated former par. (3) as (4).

1990—Subsec. (a). Pub. L. 101–557, § 102(a), substituted ''shall make not less than 5, and not more than 15, grants'' for ''shall make not less than 3, and not more than 5, grants''.

Subsec. (a)(1). Pub. L. 101–557, § 102(b), substituted ''with public and private organizations'' for ''by public and private organizations''.

§ 280c–4. Requirement of matching funds

(a) Requirement of matching funds

(1)(A) For the first year of payments to a State from a grant under section 280c–3(a) of this title, the Secretary may not make such payments in an amount exceeding 75 percent of the costs of services to be provided by the State pursuant to such section.

(B) For the second year of such payments to a State, the Secretary may not make such payments in an amount exceeding 65 percent of the costs of such services.

(C) For the third or subsequent year of such payments to a State, the Secretary may not make such payments in an amount exceeding 55 percent of the costs of such services.

(2) The Secretary may not make a grant under section 280c–3(a) of this title to a State unless the State agrees to make available, directly or through donations from public or private entities, non-Federal contributions toward the costs of services to be provided pursuant to such section in an amount equal to—

(A) for the first year of payments to the State from the grant, not less than $25 (in cash or in kind under subsection (c) of this section) for each $75 of Federal funds provided in the grant;

(B) for the second year of such payments to the State, not less than $35 (in cash or in kind under subsection (c) of this section) for each $65 of such Federal funds; and

(C) for the third or subsequent year of such payments to the State, not less than $45 (in cash or in kind under subsection (c) of this section) for each $55 of such Federal funds.

(b) Determination of amount of non-Federal contribution

Non-Federal contributions required in subsection (b) of this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(July 1, 1944, ch. 373, title III, § 398A, formerly § 399, as added Pub. L. 100–175, title VI, § 602, Nov. 29, 1987, 101 Stat. 982; renumbered § 398A, Pub. L. 102–321, title V, § 502(1), July 10, 1992, 106 Stat. 427; amended Pub. L. 105–392, title III, § 302(b), Nov. 13, 1998, 112 Stat. 3586.)

AMENDMENTS

1998—Pub. L. 105–392, § 302(b)(1), substituted ''Requirement of matching funds'' for ''Limitation on duration of grant and requirement of matching funds'' in section catchline.

Subsec. (a). Pub. L. 105–392, § 302(b)(2)–(4), redesignated subsec. (b) as (a), substituted ''third or subsequent year'' for ''third year'' in pars. (1)(C) and (2)(C), and struck out heading and text of former subsec. (a). Text read as follows: ''The period during which payments are made to a State from a grant under section 280c–3(a) of this title may not exceed 3 years. Such payments shall be subject to annual evaluation by the Secretary.''

Subsecs. (b), (c). Pub. L. 105–392, § 302(b)(3), redesignated subsecs. (b) and (c) as (a) and (b), respectively.

§ 280c–5. General provisions

(a) Limitation on administrative expenses

The Secretary may not make a grant under section 280c–3(a) of this title to a State unless the State agrees that not more than 10 percent of the grant will be expended for administrative expenses with respect to the grant.

(b) Description of intended use of grant

The Secretary may not make a grant under section 280c–3(a) of this title to a State unless—

(1) the State submits to the Secretary a description of the purposes for which the State intends to expend the grant; and

(2) such description provides information relating to the programs and activities to be supported and services to be provided, including—

(A) the number of individuals who will receive services pursuant to section 280c–3(a) of this title and the average costs of providing such services to each such individual; and

(B) a description of the manner in which such programs and activities will be coordinated with any similar programs and activities of public and private entities.

(c) Requirement of application

The Secretary may not make a grant under section 280c–3(a) of this title to a State unless the State has submitted to the Secretary an application for the grant. The application shall—

(1) contain the description of intended expenditures required in subsection (b) of this section;

(2) with respect to carrying out the purpose for which the grant is to be made, provide assurances of compliance satisfactory to the Secretary; and

(3) otherwise be in such form, be made in such manner, and contain such information

and agreements as the Secretary determines to be necessary to carry out this subpart.

(d) Evaluations and report by Secretary

The Secretary shall—

(1) provide for an evaluation of each demonstration project for which a grant is made under section 280c–3(a) of this title; and

(2) not later than 6 months after the completion of such evaluations, submit to the Congress a report describing the findings made as a result of the evaluations.

(e) Authorizations of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1990, $7,500,000 for fiscal year 1991, such sums as may be necessary for each of the fiscal years 1992 and 1993, $8,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(July 1, 1944, ch. 373, title III, § 398B, formerly § 399A, as added Pub. L. 100–175, title VI, § 602, Nov. 29, 1987, 101 Stat. 982; amended Pub. L. 101–557, title I, § 102(c), Nov. 15, 1990, 104 Stat. 2767; renumbered § 398B, Pub. L. 102–321, title V, § 502(1), July 10, 1992, 106 Stat. 427; Pub. L. 105–392, title III, § 302(c), Nov. 13, 1998, 112 Stat. 3586.)

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–392 substituted ''1991, such sums'' for ''1991, and such sums'' and inserted before period at end '', $8,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002''.

1990—Subsec. (e). Pub. L. 101–557 substituted ''there are'' for ''there is'' and inserted before period at end '', $7,500,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993''.

SUBPART III—GRANTS FOR HOME VISITING SERVICES FOR AT-RISK FAMILIES

§ 280c–6. Projects to improve maternal, infant, and child health

(a) In general

(1) Establishment of program

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make grants to eligible entities to pay the Federal share of the cost of providing the services specified in subsection (b) of this section to families in which a member is—

(A) a pregnant woman at risk of delivering an infant with a health or developmental complication; or

(B) a child less than 3 years of age—

(i) who is experiencing or is at risk of a health or developmental complication, or of child abuse or neglect; or

(ii) who has been prenatally exposed to maternal substance abuse.

(2) Minimum period of awards; administrative consultations

(A) The Secretary shall award grants under paragraph (1) for periods of at least three years.

(B) The Administrator of the Administration for Children, Youth, and Families and the Director of the National Commission to Prevent Infant Mortality shall be consulted regarding the promulgation of program guidelines and funding priorities under this section.

(3) Requirement of status as medicaid provider

(A) Subject to subparagraph (B), the Secretary may make a grant under paragraph (1) only if, in the case of any service under such paragraph that is covered in the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(i) the entity involved will provide the service directly, and the entity has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(ii) the entity will enter into an agreement with an organization under which the organization will provide the service, and the organization has entered into such a participation agreement and is qualified to receive such payments.

(B)(i) In the case of an organization making an agreement under subparagraph (A)(ii) regarding the provision of services under paragraph (1), the requirement established in such subparagraph regarding a participation agreement shall be waived by the Secretary if the organization does not, in providing health or mental health services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(ii) A determination by the Secretary of whether an organization referred to in clause (i) meets the criteria for a waiver under such clause shall be made without regard to whether the organization accepts voluntary donations regarding the provision of services to the public.

(b) Home visiting services for eligible families

With respect to an eligible family, each of the following services shall, directly or through arrangement with other public or nonprofit private entities, be available (as applicable to the family member involved) in each project operated with a grant under subsection (a) of this section:

(1) Prenatal and postnatal health care.

(2) Primary health care for the children, including developmental assessments.

(3) Education for the parents concerning infant care and child development, including the development and utilization of parent and teacher resource networks and other family resource and support networks where such networks are available.

(4) Upon the request of a parent, providing the education described in paragraph (3) to other individuals who have responsibility for caring for the children.

(5) Education for the parents concerning behaviors that adversely affect health.

(6) Assistance in obtaining necessary health, mental health, developmental, social, housing, and nutrition services and other assistance, including services and other assistance under

maternal and child health programs; the special supplemental nutrition program for women, infants, and children; section 1786 of this title; title V of the Social Security Act [42 U.S.C. 701 et seq.]; title XIX of such Act [42 U.S.C. 1396 et seq.] (including the program for early and periodic screening, diagnostic, and treatment services described in section 1905(r) of such Act [42 U.S.C. 1396d(r)]); titles IV and XIX of the Social Security Act [42 U.S.C. 601 et seq., 1396 et seq.]; housing programs; other food assistance programs; and appropriate alcohol and drug dependency treatment programs, according to need.

(c) Considerations in making grants

In awarding grants under subsection (a) of this section, the Secretary shall take into consideration—

(1) the ability of the entity involved to provide, either directly or through linkages, a broad range of preventive and primary health care services and related social, family support, and developmental services;

(2) different combinations of professional and lay home visitors utilized within programs that are reflective of the identified service needs and characteristics of target populations;

(3) the extent to which the population to be targeted has limited access to health care, and related social, family support, and developmental services; and

(4) whether such grants are equitably distributed among urban and rural settings and whether entities serving Native American communities are represented among the grantees.

(d) Federal share

With respect to the costs of carrying out a project under subsection (a) of this section, a grant under such subsection for the project may not exceed 90 percent of such costs. To be eligible to receive such a grant, an applicant must provide assurances that the applicant will obtain at least 10 percent of such costs from non-Federal funds (and such contributions to such costs may be in cash or in-kind, including facilities and personnel).

(e) Rule of construction regarding at-risk births

For purposes of subsection (a)(1) of this section, a pregnant woman shall be considered to be at risk of delivering an infant with a health or developmental complication if during the pregnancy the woman—

(1) lacks appropriate access to, or information concerning, early and routine prenatal care;

(2) lacks the transportation necessary to gain access to the services described in subsection (b) of this section;

(3) lacks appropriate child care assistance, which results in impeding the ability of such woman to utilize health and related social services;

(4) is fearful of accessing substance abuse services or child and family support services; or

(5) is a minor with a low income.

(f) Delivery of services and case management

(1) Case management model

Home visiting services provided under this section shall be delivered according to a case management model, and a registered nurse, licensed social worker, or other licensed health care professional with experience and expertise in providing health and related social services in home and community settings shall be assigned as the case manager for individual cases under such model.

(2) Case manager

A case manager assigned under paragraph (1) shall have primary responsibility for coordinating and overseeing the development of a plan for each family that is to receive home visiting services under this section, and for coordinating the delivery of such services provided through appropriate personnel.

(3) Appropriate personnel

In determining which personnel shall be utilized in the delivery of services, the case manager shall consider—

(A) the stated objective of the project to be operated with the grant, as determined after considering identified gaps in the current service delivery system; and

(B) the nature of the needs of the family to be served, as determined at the initial assessment of the family that is conducted by the case manager, and through follow-up contacts by other providers of home visiting services.

(4) Family service plan

A case manager, in consultation with a team established in accordance with paragraph (5) for the family involved, shall develop a plan for the family following the initial visit to the home of the family. Such plan shall reflect—

(A) an assessment of the health and related social service needs of the family;

(B) a structured plan for the delivery of home visiting services to meet the identified needs of the family;

(C) the frequency with which such services are to be provided to the family;

(D) ongoing revisions made as the needs of family members change; and

(E) the continuing voluntary participation of the family in the plan.

(5) Home visiting services team

The team to be consulted under paragraph (4) on behalf of a family shall include, as appropriate, other nursing professionals, physician assistants, social workers, child welfare professionals, infant and early childhood specialists, nutritionists, and laypersons trained as home visitors. The case manager shall ensure that the plan is coordinated with those physician services that may be required by the mother or child.

(g) Outreach

Each grantee under subsection (a) of this section shall provide outreach and casefinding services to inform eligible families of the availability of home visiting services from the project.

(h) Confidentiality

In accordance with applicable State law, an entity receiving a grant under subsection (a) of this section shall maintain confidentiality with respect to services provided to families under this section.

(i) Certain assurances

The Secretary may award a grant under subsection (a) of this section only if the entity involved provides assurances satisfactory to the Secretary that—

(1) the entity will provide home visiting services with reasonable frequency—

(A) to families with pregnant women, as early in the pregnancy as is practicable, and until the infant reaches at least 2 years of age; and

(B) to other eligible families, for at least 2 years; and

(2) the entity will coordinate with public health and related social service agencies to prevent duplication of effort and improve the delivery of comprehensive health and related social services.

(j) Submission to Secretary of certain information

The Secretary may award a grant under subsection (a) of this section only if the entity involved submits to the Secretary—

(1) a description of the population to be targeted for home visiting services and methods of outreach and casefinding for identifying eligible families, including the use of lay home visitors where appropriate;

(2) a description of the types and qualifications of home visitors used by the entity and the process by which the entity will provide continuing training and sufficient support to the home visitors; and

(3) such other information as the Secretary determines to be appropriate.

(k) Limitation regarding administrative expenses

Not more than 10 percent of a grant under subsection (a) of this section may be expended for administrative expenses with respect to the grant. The costs of training individuals to serve in the project involved are not subject to the preceding sentence.

***(l)* Restrictions on use of grant**

To be eligible to receive a grant under this section, an entity must agree that the grant will not be expended—

(1) to provide inpatient hospital services;

(2) to make cash payments to intended recipients of services;

(3) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

(m) Reports to Secretary

To be eligible to receive a grant under this section, an entity must agree to submit an annual report on the services provided under this section to the Secretary in such manner and containing such information as the Secretary by regulation requires. At a minimum, the entity shall report information concerning eligible families, including—

(1) the characteristics of the families and children receiving services under this section;

(2) the usage, nature, and location of the provider, of preventive health services, including prenatal, primary infant, and child health care;

(3) the incidence of low birthweight and premature infants;

(4) the length of hospital stays for pre- and post-partum women and their children;

(5) the incidence of substantiated child abuse and neglect for all children within participating families;

(6) the number of emergency room visits for routine health care;

(7) the source of payment for health care services and the extent to which the utilization of health care services, other than routine screening and medical care, available to the individuals under the program established under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], and under other Federal, State, and local programs, is reduced;

(8) the number and type of referrals made for health and related social services, including alcohol and drug treatment services, and the utilization of such services provided by the grantee; and

(9) the incidence of developmental disabilities.

(n) Requirement of application

The Secretary may make a grant under subsection (a) of this section only if—

(1) an application for the grant is submitted to the Secretary;

(2) the application contains the agreements and assurances required in this section, and the information required in subsection (j) of this section;

(3) the application contains evidence that the preparation of the application has been coordinated with the State agencies responsible for maternal and child health and child welfare, and coordinated with services provided under part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.]; and

(4) the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

***(o)* Peer review**

(1) Requirement

In making determinations for awarding grants under subsection (a) of this section, the Secretary shall rely on the recommendations of the peer review panel established under paragraph (2).

(2) Composition

The Secretary shall establish a review panel to make recommendations under paragraph (1) that shall be composed of—

(A) national experts in the fields of maternal and child health, child abuse and ne-

glect, and the provision of community-based primary health services; and

(B) representatives of relevant Federal agencies, including the Health Resources and Services Administration, the Substance Abuse and Mental Health Services Administration, the Administration for Children, Youth, and Families, the U.S. Advisory Board on Child Abuse and Neglect, and the National Commission to Prevent Infant Mortality.

(p) Evaluations

(1) In general

The Secretary shall, directly or through contracts with public or private entities—

(A) conduct evaluations to determine the effectiveness of projects under subsection (a) of this section in reducing the incidence of children born with health or developmental complications, the incidence among children less than 3 years of age of such complications, and the incidence of child abuse and neglect; and

(B) not less than once during each 3-year period, prepare and submit to the appropriate committees of Congress a report concerning the results of such evaluations.

(2) Contents

The evaluations conducted under paragraph (1) shall—

(A) include a summary of the data contained in the annual reports submitted under subsection (m) of this section;

(B) assess the relative effectiveness of projects under subsection (a) of this section in urban and rural areas, and among programs utilizing differing combinations of professionals and trained home visitors recruited from the community to meet the needs of defined target service populations; and

(C) make further recommendations necessary or desirable to increase the effectiveness of such projects.

(q) Definitions

For purposes of this section:

(1) The term ''eligible entity'' includes public and nonprofit private entities that provide health or related social services, including community-based organizations, visiting nurse organizations, hospitals, local health departments, community health centers, Native Hawaiian health centers, nurse managed clinics, family service agencies, child welfare agencies, developmental service providers, family resource and support programs, and resource mothers projects.

(2) The term ''eligible family'' means a family described in subsection (a) of this section.

(3) The term ''health or developmental complication'', with respect to a child, means—

(A) being born in an unhealthy or potentially unhealthy condition, including premature birth, low birthweight, and prenatal exposure to maternal substance abuse;

(B) a condition arising from a condition described in subparagraph (A);

(C) a physical disability or delay; and

(D) a developmental disability or delay.

(4) The term ''home visiting services'' means the services specified in subsection (b) of this section, provided at the residence of the eligible family involved or provided pursuant to arrangements made for the family (including arrangements for services in community settings).

(5) The term ''home visitors'' means providers of home visiting services.

(r) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $30,000,000 for each of the fiscal years 1993 and 1994.

(July 1, 1944, ch. 373, title III, § 399, as added Pub. L. 102–321, title V, § 502(2), July 10, 1992, 106 Stat. 427; amended Pub. L. 103–448, title II, § 204(w)(2)(D), Nov. 2, 1994, 108 Stat. 4746; Pub. L. 108–446, title III, § 305(i)(2), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(3)(A), (b)(6), and (m)(7), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles IV, V, and XIX of the Act are classified generally to subchapters IV (§ 601 et seq.), V (§ 701 et seq.), and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (n)(3), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§ 1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 399 of act July 1, 1944, was renumbered section 398A by section 502(1) of Pub. L. 102–321 and is classified to section 280c–4 of this title.

Another prior section 399 of act July 1, 1944, ch. 373, title III, formerly § 399b, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 399a and amended Mar. 13, 1970, Pub. L. 91–212, § 10(c)(3), (d)(2)(A), 84 Stat. 67; renumbered § 399, July 23, 1974, Pub. L. 93–353, title II, § 204, 88 Stat. 373; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, which related to the maintenance of records by recipients of grants and audits thereof by the Secretary of Health and Human Services and the Comptroller General of the United States, was classified to section 280b–11 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

2004—Subsec. (n)(3). Pub. L. 108–446 substituted ''part C'' for ''part H''.

1994—Subsec. (b)(6). Pub. L. 103–448 substituted ''special supplemental nutrition program'' for ''special supplemental food program''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE

Section effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L.

102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

PURPOSE

Section 501 of title V of Pub. L. 102–321 provided that: ''The purpose of this title [enacting this section] is—

''(1) to increase the use of, and to provide information on the availability of early, continuous and comprehensive prenatal care;

''(2) to reduce the incidence of infant mortality and of infants born prematurely, with low birthweight, or with other impairments including those associated with maternal substance abuse;

''(3) for pregnant women and mothers of children below the age of 3 whose children have experienced or are at risk of experiencing a health or developmental complication, to provide assistance in obtaining health and related social services necessary to meet the special needs of the women and their children;

''(4) to assist, when requested, women who are pregnant and at-risk for poor birth outcomes, or who have young children and are abusing alcohol or other drugs, in obtaining appropriate treatment; and

''(5) to reduce the incidence of child abuse and neglect.''

PART L—[REPEALED]

AMENDMENTS

2000—Pub. L. 106–310, div. B, title XXXI, § 3106(n), Oct. 17, 2000, 114 Stat. 1179, struck out heading for part L ''Services for Children of Substance Abusers''.

1993—Pub. L. 103–43, title XX, § 2008(i)(2)(B)(ii), June 10, 1993, 107 Stat. 213, redesignated part M ''Services for Children of Substance Abusers'' as L. Former part L ''Health Care Services in the Home'' redesignated K.

1990—Pub. L. 101–616, title I, § 101(a)(1), Nov. 16, 1990, 104 Stat. 3279, redesignated part K ''Health Care Services in the Home'' as L.

§ 280d. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title III, § 399D, as added Pub. L. 102–321, title IV, § 401(a), July 10, 1992, 106 Stat. 419, and amended, which related to grants for services for children of substance abusers, was renumbered section 399A of title III of act July 1, 1944 by Pub. L. 106–310, div. A, title V, § 502(1), Oct. 17, 2000, 114 Stat. 1115. Subsequently, section 399D was renumbered section 519 of title V of act July 1, 1944, without reference to its prior renumbering as 399A, by Pub. L. 106–310, div. B, title XXXI, § 3106(m), Oct. 17, 2000, 114 Stat. 1179. Section was transferred to section 290bb–25 of this title.

§ 280d–11. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title III, § 399F, as added Pub. L. 102–531, title II, § 201, Oct. 27, 1992, 106 Stat. 3474, which comprised part N in its entirety and which related to establishment and duties of National Foundation for the Centers for Disease Control and Prevention, was renumbered section 399G of act July 1, 1944, by Pub. L. 106–310, div. A, title V, § 502(3), Oct. 17, 2000, 114 Stat. 1115, and transferred to section 280e–11 of this title.

PART M—NATIONAL PROGRAM OF CANCER REGISTRIES

§ 280e. National program of cancer registries

(a) In general

(1) Statewide cancer registries

The Secretary, acting through the Director of the Centers for Disease Control, may make grants to States, or may make grants or enter into contracts with academic or nonprofit organizations designated by the State to operate the State's cancer registry in lieu of making a grant directly to the State, to support the operation of population-based, statewide registries to collect, for each condition specified in paragraph (2)(A), data concerning—

(A) demographic information about each case of cancer;

(B) information on the industrial or occupational history of the individuals with the cancers, to the extent such information is available from the same record;

(C) administrative information, including date of diagnosis and source of information;

(D) pathological data characterizing the cancer, including the cancer site, stage of disease (pursuant to Staging Guide), incidence, and type of treatment; and

(E) other elements determined appropriate by the Secretary.

(2) Cancer; benign brain-related tumors

(A) In general

For purposes of paragraph (1), the conditions referred to in this paragraph are the following:

(i) Each form of in-situ and invasive cancer (with the exception of basal cell and squamous cell carcinoma of the skin), including malignant brain-related tumors.

(ii) Benign brain-related tumors.

(B) Brain-related tumor

For purposes of subparagraph (A):

(i) The term ''brain-related tumor'' means a listed primary tumor (whether malignant or benign) occurring in any of the following sites:

(I) The brain, meninges, spinal cord, cauda equina, a cranial nerve or nerves, or any other part of the central nervous system.

(II) The pituitary gland, pineal gland, or craniopharyngeal duct.

(ii) The term ''listed'', with respect to a primary tumor, means a primary tumor that is listed in the International Classification of Diseases for Oncology (commonly referred to as the ICD–O).

(iii) The term ''International Classification of Diseases for Oncology'' means a classification system that includes topography (site) information and histology (cell type information) developed by the World Health Organization, in collaboration with international centers, to promote international comparability in the collection, classification, processing, and presentation of cancer statistics. The ICD–O system is a supplement to the Inter-

national Statistical Classification of Diseases and Related Health Problems (commonly known as the ICD) and is the standard coding system used by cancer registries worldwide. Such term includes any modification made to such system for purposes of the United States. Such term further includes any published classification system that is internationally recognized as a successor to the classification system referred to in the first sentence of this clause.

(C) Statewide cancer registry

References in this section to cancer registries shall be considered to be references to registries described in this subsection.

(b) Matching funds

(1) In general

The Secretary may make a grant under subsection (a) of this section only if the State, or the academic or nonprofit private organization designated by the State to operate the cancer registry of the State, involved agrees, with respect to the costs of the program, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 25 percent of such costs or $1 for every $3 of Federal funds provided in the grant.

(2) Determination of amount of non-Federal contribution; maintenance of effort

(A) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) With respect to a State in which the purpose described in subsection (a) of this section is to be carried out, the Secretary, in making a determination of the amount of non-Federal contributions provided under paragraph (1), may include only such contributions as are in excess of the amount of such contributions made by the State toward the collection of data on cancer for the fiscal year preceding the first year for which a grant under subsection (a) of this section is made with respect to the State. The Secretary may decrease the amount of non-Federal contributions that otherwise would have been required by this subsection in those cases in which the State can demonstrate that decreasing such amount is appropriate because of financial hardship.

(c) Eligibility for grants

(1) In general

No grant shall be made by the Secretary under subsection (a) of this section unless an application has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such a manner, and be accompanied by such information, as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and in accordance with the requirements of this section, that the application will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under subsection (a) of this section, and that the applicant will comply with the peer review requirements under sections 289 and 289a of this title.

(2) Assurances

Each applicant, prior to receiving Federal funds under subsection (a) of this section, shall provide assurances satisfactory to the Secretary that the applicant will—

(A) provide for the establishment of a registry in accordance with subsection (a) of this section;

(B) comply with appropriate standards of completeness, timeliness, and quality of population-based cancer registry data;

(C) provide for the annual publication of reports of cancer data under subsection (a) of this section; and

(D) provide for the authorization under State law of the statewide cancer registry, including promulgation of regulations providing—

(i) a means to assure complete reporting of cancer cases (as described in subsection (a) of this section) to the statewide cancer registry by hospitals or other facilities providing screening, diagnostic or therapeutic services to patients with respect to cancer;

(ii) a means to assure the complete reporting of cancer cases (as defined in subsection (a) of this section) to the statewide cancer registry by physicians, surgeons, and all other health care practitioners diagnosing or providing treatment for cancer patients, except for cases directly referred to or previously admitted to a hospital or other facility providing screening, diagnostic or therapeutic services to patients in that State and reported by those facilities;

(iii) a means for the statewide cancer registry to access all records of physicians and surgeons, hospitals, outpatient clinics, nursing homes, and all other facilities, individuals, or agencies providing such services to patients which would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or medical status of any identified patient;

(iv) for the reporting of cancer case data to the statewide cancer registry in such a format, with such data elements, and in accordance with such standards of quality timeliness and completeness, as may be established by the Secretary;

(v) for the protection of the confidentiality of all cancer case data reported to the statewide cancer registry, including a prohibition on disclosure to any person of information reported to the statewide cancer registry that identifies, or could lead to the identification of, an individual can-

cer patient, except for disclosure to other State cancer registries and local and State health officers;

(vi) for a means by which confidential case data may in accordance with State law be disclosed to cancer researchers for the purposes of cancer prevention, control and research;

(vii) for the authorization or the conduct, by the statewide cancer registry or other persons and organizations, of studies utilizing statewide cancer registry data, including studies of the sources and causes of cancer, evaluations of the cost, quality, efficacy, and appropriateness of diagnostic, therapeutic, rehabilitative, and preventative services and programs relating to cancer, and any other clinical, epidemiological, or other cancer research; and

(viii) for protection for individuals complying with the law, including provisions specifying that no person shall be held liable in any civil action with respect to a cancer case report provided to the statewide cancer registry, or with respect to access to cancer case information provided to the statewide cancer registry.

(d) Relationship to certain programs

(1) In general

This section may not be construed to act as a replacement for or diminishment of the program carried out by the Director of the National Cancer Institute and designated by such Director as the Surveillance, Epidemiology, and End Results Program (SEER).

(2) Supplanting of activities

In areas where both such programs exist, the Secretary shall ensure that SEER support is not supplanted and that any additional activities are consistent with the guidelines provided for in subsection (c)(2)(C) and (D) of this section and are appropriately coordinated with the existing SEER program.

(3) Transfer of responsibility

The Secretary may not transfer administration responsibility for such SEER program from such Director.

(4) Coordination

To encourage the greatest possible efficiency and effectiveness of Federally supported efforts with respect to the activities described in this subsection, the Secretary shall take steps to assure the appropriate coordination of programs supported under this part with existing Federally supported cancer registry programs.

(e) Requirement regarding certain study on breast cancer

In the case of a grant under subsection (a) of this section to any State specified in subsection (b) of section 280e–3 of this title, the Secretary may establish such conditions regarding the receipt of the grant as the Secretary determines are necessary to facilitate the collection of data for the study carried out under such section.

(July 1, 1944, ch. 373, title III, § 399B, formerly § 399H, as added Pub. L. 102–515, § 3, Oct. 24, 1992, 106 Stat. 3372; renumbered § 399B and amended Pub. L. 106–310, div. A, title V, § 502(2)(A), (B), Oct. 17, 2000, 114 Stat. 1115; Pub. L. 107–260, § 2(a), Oct. 29, 2002, 116 Stat. 1743.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–260 designated existing provisions as par. (1), inserted par. (1) heading, substituted ''population-based, statewide registries to collect, for each condition specified in paragraph (2)(A), data'' for ''population-based, statewide cancer registries in order to collect, for each form of in-situ and invasive cancer (with the exception of basal cell and squamous cell carcinoma of the skin), data'', redesignated former pars. (1) to (5) as subpars. (A) to (E) of par. (1), respectively, and added par. (2).

2000—Subsec. (e). Pub. L. 106–310, § 502(2)(B), substituted ''subsection (b) of section 280e–3 of this title'' for ''section 280e–3(b) of this title'' and ''such section'' for ''section 399C''.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–260, § 2(b), Oct. 29, 2002, 116 Stat. 1744, provided that: ''The amendments made by subsection (a) [amending this section] apply to grants under section 399B of the Public Health Service Act [this section] for fiscal year 2002 and subsequent fiscal years, except that, in the case of a State that received such a grant for fiscal year 2000, the Secretary of Health and Human Services may delay the applicability of such amendments to the State for not more than 12 months if the Secretary determines that compliance with such amendments requires the enactment of a statute by the State or the issuance of State regulations.''

CONGRESSIONAL FINDINGS AND PURPOSE

Section 2 of Pub. L. 102–515 provided that:

''(a) FINDINGS.—Congress finds that—

''(1) cancer control efforts, including prevention and early detection, are best addressed locally by State health departments that can identify unique needs;

''(2) cancer control programs and existing statewide population-based cancer registries have identified cancer incidence and cancer mortality rates that indicate the burden of cancer for Americans is substantial and varies widely by geographic location and by ethnicity;

''(3) statewide cancer incidence and cancer mortality data, can be used to identify cancer trends, patterns, and variation for directing cancer control intervention;

''(4) the American Association of Central Cancer Registries (AACCR) cites that of the 50 States, approximately 38 have established cancer registries, many are not statewide and 10 have no cancer registry; and

''(5) AACCR also cites that of the 50 States, 39 collect data on less than 100 percent of their population, and less than half have adequate resources for insuring minimum standards for quality and for completeness of case information.

''(b) PURPOSE.—It is the purpose of this Act [enacting this part and provisions set out as a note under section 201 of this title] to establish a national program of cancer registries.''

§ 280e–1. Planning grants regarding registries

(a) In general

(1) States

The Secretary, acting through the Director of the Centers for Disease Control, may make

grants to States for the purpose of developing plans that meet the assurances required by the Secretary under section 280e(c)(2) of this title.

(2) Other entities

For the purpose described in paragraph (1), the Secretary may make grants to public entities other than States and to nonprofit private entities. Such a grant may be made to an entity only if the State in which the purpose is to be carried out has certified that the State approves the entity as qualified to carry out the purpose.

(b) Application

The Secretary may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Secretary, the application contains the certification required in subsection (a)(2) of this section (if the application is for a grant under such subsection), and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(July 1, 1944, ch. 373, title III, § 399C, formerly § 399I, as added Pub. L. 102–515, § 3, Oct. 24, 1992, 106 Stat. 3375; renumbered § 399C, Pub. L. 106–310, div. A, title V, § 502(2)(A), Oct. 17, 2000, 114 Stat. 1115.)

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

§ 280e–2. Technical assistance in operations of statewide cancer registries

The Secretary, acting through the Director of the Centers for Disease Control, may, directly or through grants and contracts, or both, provide technical assistance to the States in the establishment and operation of statewide registries, including assistance in the development of model legislation for statewide cancer registries and assistance in establishing a computerized reporting and data processing system.

(July 1, 1944, ch. 373, title III, § 399D, formerly § 399J, as added Pub. L. 102–515, § 3, Oct. 24, 1992, 106 Stat. 3376; renumbered § 399D, Pub. L. 106–310, div. A, title V, § 502(2)(A), Oct. 17, 2000, 114 Stat. 1115.)

PRIOR PROVISIONS

A prior section 399D of act July 1, 1944, was renumbered section 519, and is classified to section 290bb–25 of this title.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

§ 280e–3. Study in certain States to determine factors contributing to elevated breast cancer mortality rates

(a) In general

Subject to subsections (c) and (d) of this section, the Secretary, acting through the Director of the National Cancer Institute, shall conduct a study for the purpose of determining the factors contributing to the fact that breast cancer mortality rates in the States specified in subsection (b) of this section are elevated compared to rates in other States.

(b) Relevant States

The States referred to in subsection (a) of this section are Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and the District of Columbia.

(c) Cooperation of State

The Secretary may conduct the study required in subsection (a) of this section in a State only if the State agrees to cooperate with the Secretary in the conduct of the study, including providing information from any registry operated by the State pursuant to section 280e(a) of this title.

(d) Planning, commencement, and duration

The Secretary shall, during each of the fiscal years 1993 and 1994, develop a plan for conducting the study required in subsection (a) of this section. The study shall be initiated by the Secretary not later than fiscal year 1994, and the collection of data under the study may continue through fiscal year 1998.

(e) Report

Not later than September 30, 1999, the Secretary shall complete the study required in subsection (a) of this section and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings and recommendations made as a result of the study.

(July 1, 1944, ch. 373, title III, § 399E, formerly § 399K, as added Pub. L. 102–515, § 3, Oct. 24, 1992, 106 Stat. 3376; renumbered § 399E and amended Pub. L. 106–310, div. A, title V, § 502(2)(A), (C), Oct. 17, 2000, 114 Stat. 1115.)

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–310, § 502(2)(C), made technical amendment to reference in original act which appears in text as reference to section 280e(a) of this title.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

POTENTIAL ENVIRONMENTAL AND OTHER RISKS CONTRIBUTING TO INCIDENCE OF BREAST CANCER

Pub. L. 103–43, title XIX, § 1911, June 10, 1993, 107 Stat. 205, provided that Director of the National Cancer Institute, in collaboration with Director of the National Institute of Environmental Health Sciences, was to

conduct case-control study to assess biological markers of environmental and other potential risk factors contributing to incidence of breast cancer in specified counties in State of New York and northeastern United States that had highest age-adjusted mortality rate of such cancer, and to report results of such study to Congress not later than 30 months after June 10, 1993.

§ 280e–4. Authorization of appropriations

(a) Registries

For the purpose of carrying out this part, there are authorized to be appropriated $30,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2003. Of the amounts appropriated under the preceding sentence for any such fiscal year, the Secretary may obligate not more than 25 percent for carrying out section 280e–1 of this title, and not more than 10 percent may be expended for assessing the accuracy, completeness and quality of data collected, and not more than 10 percent of which is to be expended under section 280e–2 of this title.

(b) Breast cancer study

Of the amounts appropriated for the National Cancer Institute under subpart 1 of part C of subchapter III of this chapter for any fiscal year in which the study required in section 280e–3 of this title is being carried out, the Secretary shall expend not less than $1,000,000 for the study.

(July 1, 1944, ch. 373, title III, § 399F, formerly § 399L, as added Pub. L. 102–515, § 3, Oct. 24, 1992, 106 Stat. 3376; amended Pub. L. 103–43, title XX, § 2003, June 10, 1993, 107 Stat. 208; Pub. L. 103–183, title VII, § 705(c), Dec. 14, 1993, 107 Stat. 2241; Pub. L. 105–340, title II, § 202, Oct. 31, 1998, 112 Stat. 3194; renumbered § 399F and amended Pub. L. 106–310, div. A, title V, § 502(2)(A), (D), Oct. 17, 2000, 114 Stat. 1115.)

PRIOR PROVISIONS

A prior section 399F of act July 1, 1944, was renumbered section 399G and is classified to section 280e–11 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310, § 502(2)(D)(ii), substituted ''section 280e–2 of this title'' for ''subsection 280e–2 of this title''.

Pub. L. 106–310, § 502(2)(D)(i), made technical amendment to reference in original act which appears in text as reference to section 280e–1 of this title.

Subsec. (b). Pub. L. 106–310, § 502(2)(D)(iii), made technical amendment to reference in original act which appears in text as reference to section 280e–3 of this title.

1998—Subsec. (a). Pub. L. 105–340 substituted ''2003'' for ''1998''.

1993—Subsec. (a). Pub. L. 103–183 substituted ''through 1998'' for ''through 1996''.

Pub. L. 103–43 substituted ''there are authorized to be appropriated $30,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1996'' for ''the Secretary may use $30,000,000 for each of the fiscal years 1993 through 1997'' in first sentence and ''Of the amounts appropriated under the preceding sentence'' for ''Out of any amounts used'' in second sentence.

PART N—NATIONAL FOUNDATION FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION

CODIFICATION

This part was formerly set out preceding part M of this subchapter.

§ 280e–11. Establishment and duties of Foundation

(a) In general

There shall be established in accordance with this section a nonprofit private corporation to be known as the National Foundation for the Centers for Disease Control and Prevention (in this part referred to as the ''Foundation''). The Foundation shall not be an agency or instrumentality of the Federal Government, and officers, employees, and members of the board of the Foundation shall not be officers or employees of the Federal Government.

(b) Purpose of Foundation

The purpose of the Foundation shall be to support and carry out activities for the prevention and control of diseases, disorders, injuries, and disabilities, and for promotion of public health.

(c) Endowment fund

(1) In general

In carrying out subsection (b) of this section, the Foundation shall establish a fund for providing endowments for positions that are associated with the Centers for Disease Control and Prevention and dedicated to the purpose described in such subsection. Subject to subsection (f)(1)(B) of this section, the fund shall consist of such donations as may be provided by non-Federal entities and such non-Federal assets of the Foundation (including earnings of the Foundation and the fund) as the Foundation may elect to transfer to the fund.

(2) Authorized expenditures of fund

The provision of endowments under paragraph (1) shall be the exclusive function of the fund established under such paragraph. Such endowments may be expended only for the compensation of individuals holding the positions, for staff, equipment, quarters, travel, and other expenditures that are appropriate in supporting the positions, and for recruiting individuals to hold the positions endowed by the fund.

(d) Certain activities of Foundation

In carrying out subsection (b) of this section, the Foundation may provide for the following with respect to the purpose described in such subsection:

(1) Programs of fellowships for State and local public health officials to work and study in association with the Centers for Disease Control and Prevention.

(2) Programs of international arrangements to provide opportunities for public health officials of other countries to serve in public health capacities in the United States in association with the Centers for Disease Control and Prevention or elsewhere, or opportunities for employees of such Centers (or other public health officials in the United States) to serve in such capacities in other countries, or both.

(3) Studies, projects, and research (which may include applied research on the effectiveness of prevention activities, demonstration projects, and programs and projects involving international, Federal, State, and local governments).

(4) Forums for government officials and appropriate private entities to exchange information. Participants in such forums may include institutions of higher education and appropriate international organizations.

(5) Meetings, conferences, courses, and training workshops.

(6) Programs to improve the collection and analysis of data on the health status of various populations.

(7) Programs for writing, editing, printing, and publishing of books and other materials.

(8) Other activities to carry out the purpose described in subsection (b) of this section.

(e) General structure of Foundation; nonprofit status

(1) Board of directors

The Foundation shall have a board of directors (in this part referred to as the ''Board''), which shall be established and conducted in accordance with subsection (f) of this section. The Board shall establish the general policies of the Foundation for carrying out subsection (b) of this section, including the establishment of the bylaws of the Foundation.

(2) Executive director

The Foundation shall have an executive director (in this part referred to as the ''Director''), who shall be appointed by the Board, who shall serve at the pleasure of the Board, and for whom the Board shall establish the rate of compensation. Subject to compliance with the policies and bylaws established by the Board pursuant to paragraph (1), the Director shall be responsible for the daily operations of the Foundation in carrying out subsection (b) of this section.

(3) Nonprofit status

In carrying out subsection (b) of this section, the Board shall establish such policies and bylaws under paragraph (1), and the Director shall carry out such activities under paragraph (2), as may be necessary to ensure that the Foundation maintains status as an organization that—

(A) is described in subsection (c)(3) of section 501 of title 26; and

(B) is, under subsection (a) of such section, exempt from taxation.

(f) Board of directors

(1) Certain bylaws

(A) In establishing bylaws under subsection (e)(1) of this section, the Board shall ensure that the bylaws of the Foundation include bylaws for the following:

(i) Policies for the selection of the officers, employees, agents, and contractors of the Foundation.

(ii) Policies, including ethical standards, for the acceptance and disposition of donations to the Foundation and for the disposition of the assets of the Foundation.

(iii) Policies for the conduct of the general operations of the Foundation.

(iv) Policies for writing, editing, printing, and publishing of books and other materials, and the acquisition of patents and licenses for devices and procedures developed by the Foundation.

(B) In establishing bylaws under subsection (e)(1) of this section, the Board shall ensure that the bylaws of the Foundation (and activities carried out under the bylaws) do not—

(i) reflect unfavorably upon the ability of the Foundation, or the Centers for Disease Control and Prevention, to carry out its responsibilities or official duties in a fair and objective manner; or

(ii) compromise, or appear to compromise, the integrity of any governmental program or any officer or employee involved in such program.

(2) Composition

(A) Subject to subparagraph (B), the Board shall be composed of 7 individuals, appointed in accordance with paragraph (4), who collectively possess education or experience appropriate for representing the general field of public health, the general field of international health, and the general public. Each such individual shall be a voting member of the Board.

(B) The Board may, through amendments to the bylaws of the Foundation, provide that the number of members of the Board shall be a greater number than the number specified in subparagraph (A).

(3) Chair

The Board shall, from among the members of the Board, designate an individual to serve as the chair of the Board (in this subsection referred to as the ''Chair'').

(4) Appointments, vacancies, and terms

Subject to subsection (j) of this section (regarding the initial membership of the Board), the following shall apply to the Board:

(A) Any vacancy in the membership of the Board shall be filled by appointment by the Board, after consideration of suggestions made by the Chair and the Director regarding the appointments. Any such vacancy shall be filled not later than the expiration of the 180-day period beginning on the date on which the vacancy occurs.

(B) The term of office of each member of the Board appointed under subparagraph (A) shall be 5 years. A member of the Board may continue to serve after the expiration of the term of the member until the expiration of the 180-day period beginning on the date on which the term of the member expires.

(C) A vacancy in the membership of the Board shall not affect the power of the Board to carry out the duties of the Board. If a member of the Board does not serve the full term applicable under subparagraph (B), the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(5) Compensation

Members of the Board may not receive compensation for service on the Board. The members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Board.

(g) Certain responsibilities of executive director

In carrying out subsection (e)(2) of this section, the Director shall carry out the following functions:

(1) Hire, promote, compensate, and discharge officers and employees of the Foundation, and define the duties of the officers and employees.

(2) Accept and administer donations to the Foundation, and administer the assets of the Foundation.

(3) Establish a process for the selection of candidates for holding endowed positions under subsection (c) of this section.

(4) Enter into such financial agreements as are appropriate in carrying out the activities of the Foundation.

(5) Take such action as may be necessary to acquire patents and licenses for devices and procedures developed by the Foundation and the employees of the Foundation.

(6) Adopt, alter, and use a corporate seal, which shall be judicially noticed.

(7) Commence and respond to judicial proceedings in the name of the Foundation.

(8) Other functions that are appropriate in the determination of the Director.

(h) General provisions

(1) Authority for accepting funds

The Director of the Centers for Disease Control and Prevention may accept and utilize, on behalf of the Federal Government, any gift, donation, bequest, or devise of real or personal property from the Foundation for the purpose of aiding or facilitating the work of such Centers. Funds may be accepted and utilized by such Director under the preceding sentence without regard to whether the funds are designated as general-purpose funds or special-purpose funds.

(2) Authority for acceptance of voluntary services

(A) The Director of the Centers for Disease Control and Prevention may accept, on behalf of the Federal Government, any voluntary services provided to such Centers by the Foundation for the purpose of aiding or facilitating the work of such Centers. In the case of an individual, such Director may accept the services provided under the preceding sentence by the individual for not more than 2 years.

(B) The limitation established in subparagraph (A) regarding the period of time in which services may be accepted applies to each individual who is not an employee of the Federal Government and who serves in association with the Centers for Disease Control and Prevention pursuant to financial support from the Foundation.

(3) Administrative control

No officer, employee, or member of the Board of the Foundation may exercise any administrative or managerial control over any Federal employee.

(4) Applicability of certain standards to non-Federal employees

In the case of any individual who is not an employee of the Federal Government and who serves in association with the Centers for Disease Control and Prevention pursuant to financial support from the Foundation, the Foundation shall negotiate a memorandum of understanding with the individual and the Director of the Centers for Disease Control and Prevention specifying that the individual—

(A) shall be subject to the ethical and procedural standards regulating Federal employment, scientific investigation, and research findings (including publications and patents) that are required of individuals employed by the Centers for Disease Control and Prevention, including standards under this chapter, the Ethics in Government Act, and the Technology Transfer Act;[1] and

(B) shall be subject to such ethical and procedural standards under chapter 11 of title 18 (relating to conflicts of interest), as the Director of such Centers determines is appropriate, except such memorandum may not provide that the individual shall be subject to the standards of section 209 of title 18.

(5) Financial conflicts of interest

Any individual who is an officer, employee, or member of the Board of the Foundation may not directly or indirectly participate in the consideration or determination by the Foundation of any question affecting—

(A) any direct or indirect financial interest of the individual; or

(B) any direct or indirect financial interest of any business organization or other entity of which the individual is an officer or employee or in which the individual has a direct or indirect financial interest.

(6) Audits; availability of records

The Foundation shall—

(A) provide for biennial audits of the financial condition of the Foundation; and

(B) make such audits, and all other records, documents, and other papers of the Foundation, available to the Secretary and the Comptroller General of the United States for examination or audit.

(7) Reports

(A) Not later than February 1 of each fiscal year, the Foundation shall publish a report describing the activities of the Foundation during the preceding fiscal year. Each such report shall include for the fiscal year involved a comprehensive statement of the operations, activities, financial condition, and accomplishments of the Foundation.

(B) With respect to the financial condition of the Foundation, each report under subparagraph (A) shall include the source, and a description of, all gifts to the Foundation of real or personal property, and the source and amount of all gifts to the Foundation of money. Each such report shall include a specification of any restrictions on the purposes for which gifts to the Foundation may be used.

(C) The Foundation shall make copies of each report submitted under subparagraph (A) available for public inspection, and shall upon request provide a copy of the report to any in-

[1] See References in Text note below.

dividual for a charge not exceeding the cost of providing the copy.

(8) Liaison from Centers for Disease Control and Prevention

The Director of the Centers for Disease Control and Prevention shall serve as the liaison representative of such Centers to the Board and the Foundation.

(i) Federal funding

(1) Authority for annual grants

(A) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall—

(i) for fiscal year 1993, make a grant to an entity described in subsection (j)(9) of this section (relating to the establishment of a committee to establish the Foundation);

(ii) for fiscal year 1994, make a grant to the committee established under such subsection, or if the Foundation has been established, to the Foundation; and

(iii) for fiscal year 1995 and each subsequent fiscal year, make a grant to the Foundation.

(B) A grant under subparagraph (A) may be expended—

(i) in the case of an entity receiving the grant under subparagraph (A)(i), only for the purpose of carrying out the duties established in subsection (j)(9) of this section for the entity;

(ii) in the case of the committee established under such subsection, only for the purpose of carrying out the duties established in subsection (j) of this section for the committee; and

(iii) in the case of the Foundation, only for the purpose of the administrative expenses of the Foundation.

(C) A grant under subparagraph (A) may not be expended to provide amounts for the fund established under subsection (c) of this section.

(D) For the purposes described in subparagraph (B)—

(i) any portion of the grant made under subparagraph (A)(i) for fiscal year 1993 that remains unobligated after the entity receiving the grant completes the duties established in subsection (j)(9) of this section for the entity shall be available to the committee established under such subsection; and

(ii) any portion of a grant under subparagraph (A) made for fiscal year 1993 or 1994 that remains unobligated after such committee completes the duties established in such subsection for the committee shall be available to the Foundation.

(2) Funding for grants

(A) For the purpose of grants under paragraph (1), there is authorized to be appropriated $500,000 for each fiscal year.

(B) For the purpose of grants under paragraph (1), the Secretary may for each fiscal year make available not more than $500,000 from the amounts appropriated for the fiscal year for the programs of the Department of Health and Human Services. Such amounts may be made available without regard to whether amounts have been appropriated under subparagraph (A).

(3) Certain restriction

If the Foundation receives Federal funds for the purpose of serving as a fiscal intermediary between Federal agencies, the Foundation may not receive such funds for the indirect costs of carrying out such purpose in an amount exceeding 10 percent of the direct costs of carrying out such purpose. The preceding sentence may not be construed as authorizing the expenditure of any grant under paragraph (1) for such purpose.

(j) Committee for establishment of Foundation

(1) In general

There shall be established in accordance with this subsection a committee to carry out the functions described in paragraph (2) (which committee is referred to in this subsection as the ''Committee'').

(2) Functions

The functions referred to in paragraph (1) for the Committee are as follows:

(A) To carry out such activities as may be necessary to incorporate the Foundation under the laws of the State involved, including serving as incorporators for the Foundation. Such activities shall include ensuring that the articles of incorporation for the Foundation require that the Foundation be established and operated in accordance with the applicable provisions of this part (or any successor to this part), including such provisions as may be in effect pursuant to amendments enacted after October 27, 1992.

(B) To ensure that the Foundation qualifies for and maintains the status described in subsection (e)(3) of this section (regarding taxation).

(C) To establish the general policies and initial bylaws of the Foundation, which bylaws shall include the bylaws described in subsections (e)(3) and (f)(1) of this section.

(D) To provide for the initial operation of the Foundation, including providing for quarters, equipment, and staff.

(E) To appoint the initial members of the Board in accordance with the requirements established in subsection (f)(2)(A) of this section for the composition of the Board, and in accordance with such other qualifications as the Committee may determine to be appropriate regarding such composition. Of the members so appointed—

(i) 2 shall be appointed to serve for a term of 3 years;

(ii) 2 shall be appointed to serve for a term of 4 years; and

(iii) 3 shall be appointed to serve for a term of 5 years.

(3) Completion of functions of Committee; initial meeting of Board

(A) The Committee shall complete the functions required in paragraph (1) not later than September 30, 1994. The Committee shall terminate upon the expiration of the 30-day pe-

riod beginning on the date on which the Secretary determines that the functions have been completed.

(B) The initial meeting of the Board shall be held not later than November 1, 1994.

(4) Composition

The Committee shall be composed of 5 members, each of whom shall be a voting member. Of the members of the Committee—

(A) no fewer than 2 shall have broad, general experience in public health; and

(B) no fewer than 2 shall have broad, general experience in nonprofit private organizations (without regard to whether the individuals have experience in public health).

(5) Chair

The Committee shall, from among the members of the Committee, designate an individual to serve as the chair of the Committee.

(6) Terms; vacancies

The term of members of the Committee shall be for the duration of the Committee. A vacancy in the membership of the Committee shall not affect the power of the Committee to carry out the duties of the Committee. If a member of the Committee does not serve the full term, the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(7) Compensation

Members of the Committee may not receive compensation for service on the Committee. Members of the Committee may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Committee.

(8) Committee support

The Director of the Centers for Disease Control and Prevention may, from amounts available to the Director for the general administration of such Centers, provide staff and financial support to assist the Committee with carrying out the functions described in paragraph (2). In providing such staff and support, the Director may both detail employees and contract for assistance.

(9) Grant for establishment of Committee

(A) With respect to a grant under paragraph (1)(A)(i) of subsection (i) of this section for fiscal year 1993, an entity described in this paragraph is a private nonprofit entity with significant experience in domestic and international issues of public health. Not later than 180 days after October 27, 1992, the Secretary shall make the grant to such an entity (subject to the availability of funds under paragraph (2) of such subsection).

(B) The grant referred to in subparagraph (A) may be made to an entity only if the entity agrees that—

(i) the entity will establish a committee that is composed in accordance with paragraph (4); and

(ii) the entity will not select an individual for membership on the Committee unless the individual agrees that the Committee will operate in accordance with each of the provisions of this subsection that relate to the operation of the Committee.

(C) The Secretary may make a grant referred to in subparagraph (A) only if the applicant for the grant makes an agreement that the grant will not be expended for any purpose other than carrying out subparagraph (B). Such a grant may be made only if an application for the grant is submitted to the Secretary containing such agreement, and the application is in such form, is made in such manner, and contains such other agreements and such assurances and information as the Secretary determines to be necessary to carry out this paragraph.

(July 1, 1944, ch. 373, title III, § 399G, formerly § 399F, as added Pub. L. 102–531, title II, § 201, Oct. 27, 1992, 106 Stat. 3474; renumbered § 399G, Pub. L. 106–310, div. A, title V, § 502(3), Oct. 17, 2000, 114 Stat. 1115.)

REFERENCES IN TEXT

The Ethics in Government Act, referred to in subsec. (h)(4)(A), probably means the Ethics in Government Act of 1978, Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

The Technology Transfer Act, referred to in subsec. (h)(4)(A), may mean the Federal Technology Transfer Act of 1986, Pub. L. 99–502, Oct. 20, 1986, 100 Stat. 1785, as amended, or the National Competitiveness Technology Transfer Act of 1989, part C (§§ 3131–3133) of title XXXI of div. C of Pub. L. 101–189, Nov. 29, 1989, 103 Stat. 1674. For complete classification of these Acts to the Code, see Short Title of 1986 Amendment note and Short Title of 1989 Amendment note both set out under section 3701 of Title 15, Commerce and Trade, and Tables.

CODIFICATION

Section was formerly classified to section 280d–11 of this title prior to renumbering by Pub. L. 106–310.

PRIOR PROVISIONS

A prior section 399G of act July 1, 1944, was renumbered section 399H and is classified to section 280f of this title.

PART O—FETAL ALCOHOL SYNDROME PREVENTION AND SERVICES PROGRAM

§ 280f. Establishment of Fetal Alcohol Syndrome prevention and services program

(a) Fetal Alcohol Syndrome prevention, intervention and services delivery program

The Secretary shall establish a comprehensive Fetal Alcohol Syndrome and Fetal Alcohol Effect prevention, intervention and services delivery program that shall include—

(1) an education and public awareness program to support, conduct, and evaluate the effectiveness of—

(A) educational programs targeting medical schools, social and other supportive services, educators and counselors and other service providers in all phases of childhood development, and other relevant service providers, concerning the prevention, identification, and provision of services for chil-

dren, adolescents and adults with Fetal Alcohol Syndrome and Fetal Alcohol Effect;

(B) strategies to educate school-age children, including pregnant and high risk youth, concerning Fetal Alcohol Syndrome and Fetal Alcohol Effect;

(C) public and community awareness programs concerning Fetal Alcohol Syndrome and Fetal Alcohol Effect; and

(D) strategies to coordinate information and services across affected community agencies, including agencies providing social services such as foster care, adoption, and social work, medical and mental health services, and agencies involved in education, vocational training and civil and criminal justice;

(2) a prevention and diagnosis program to support clinical studies, demonstrations and other research as appropriate to—

(A) develop appropriate medical diagnostic methods for identifying Fetal Alcohol Syndrome and Fetal Alcohol Effect; and

(B) develop effective prevention services and interventions for pregnant, alcohol-dependent women; and

(3) an applied research program concerning intervention and prevention to support and conduct service demonstration projects, clinical studies and other research models providing advocacy, educational and vocational training, counseling, medical and mental health, and other supportive services, as well as models that integrate and coordinate such services, that are aimed at the unique challenges facing individuals with Fetal Alcohol Syndrome or Fetal Alcohol Effect and their families.

(b) Grants and technical assistance

The Secretary may award grants, cooperative agreements and contracts and provide technical assistance to eligible entities described in section 280f–1 of this title to carry out subsection (a) of this section.

(c) Dissemination of criteria

In carrying out this section, the Secretary shall develop a procedure for disseminating the Fetal Alcohol Syndrome and Fetal Alcohol Effect diagnostic criteria developed pursuant to section 705 of the ADAMHA Reorganization Act to health care providers, educators, social workers, child welfare workers, and other individuals.

(d) National Task Force

(1) In general

The Secretary shall establish a task force to be known as the National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect (referred to in this subsection as the ''Task Force'') to foster coordination among all governmental agencies, academic bodies and community groups that conduct or support Fetal Alcohol Syndrome and Fetal Alcohol Effect research, programs, and surveillance, and otherwise meet the general needs of populations actually or potentially impacted by Fetal Alcohol Syndrome and Fetal Alcohol Effect.

(2) Membership

The Task Force established pursuant to paragraph (1) shall—

(A) be chaired by an individual to be appointed by the Secretary and staffed by the Administration; and

(B) include the Chairperson of the Interagency Coordinating Committee on Fetal Alcohol Syndrome of the Department of Health and Human Services, individuals with Fetal Alcohol Syndrome and Fetal Alcohol Effect, and representatives from advocacy and research organizations such as the Research Society on Alcoholism, the FAS Family Resource Institute, the National Organization of Fetal Alcohol Syndrome, the Arc, the academic community, and Federal, State and local government agencies and offices.

(3) Functions

The Task Force shall—

(A) advise Federal, State and local programs and research concerning Fetal Alcohol Syndrome and Fetal Alcohol Effect, including programs and research concerning education and public awareness for relevant service providers, school-age children, women at-risk, and the general public, medical diagnosis, interventions for women at-risk of giving birth to children with Fetal Alcohol Syndrome and Fetal Alcohol Effect, and beneficial services for individuals with Fetal Alcohol Syndrome and Fetal Alcohol Effect and their families;

(B) coordinate its efforts with the Interagency Coordinating Committee on Fetal Alcohol Syndrome of the Department of Health and Human Services; and

(C) report on a biennial basis to the Secretary and relevant committees of Congress on the current and planned activities of the participating agencies.

(4) Time for appointment

The members of the Task Force shall be appointed by the Secretary not later than 6 months after November 13, 1998.

(July 1, 1944, ch. 373, title III, § 399H, formerly § 399G, as added Pub. L. 105–392, title IV, § 419(d), Nov. 13, 1998, 112 Stat. 3593; renumbered § 399H and amended Pub. L. 106–310, div. A, title V, § 502(4)(A), (B), Oct. 17, 2000, 114 Stat. 1115.)

REFERENCES IN TEXT

Section 705 of the ADAMHA Reorganization Act, referred to in subsec. (c), is section 705 of Pub. L. 102–321, title VII, July 10, 1992, 106 Stat. 438, which was formerly set out as a note under section 285n of this title.

PRIOR PROVISIONS

A prior section 399H of act July 1, 1944, was renumbered section 399B and is classified to section 280e of this title.

Another prior section 399H of act July 1, 1944, was renumbered section 399I and is classified to section 280f–1 of this title.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–310, § 502(4)(B), made technical amendment to reference in original act which appears in text as reference to section 280f–1 of this title.

CONGRESSIONAL FINDINGS AND PURPOSE

Pub. L. 105–392, title IV, § 419(b), (c), Nov. 13, 1998, 112 Stat. 3591, 3592, provided that:

''(b) FINDINGS.—Congress finds that—

''(1) Fetal Alcohol Syndrome is the leading preventable cause of mental retardation, and it is 100 percent preventable;

''(2) estimates on the number of children each year vary, but according to some researchers, up to 12,000 infants are born in the United States with Fetal Alcohol Syndrome, suffering irreversible physical and mental damage;

''(3) thousands more infants are born each year with Fetal Alcohol Effect, also known as Alcohol Related Neurobehavioral Disorder (ARND), a related and equally tragic syndrome;

''(4) children of women who use alcohol while pregnant have a significantly higher infant mortality rate (13.3 per 1,000) than children of those women who do not use alcohol (8.6 per 1,000);

''(5) Fetal Alcohol Syndrome and Fetal Alcohol Effect are national problems which can impact any child, family, or community, but their threat to American Indians and Alaska Natives is especially alarming;

''(6) in some American Indian communities, where alcohol dependency rates reach 50 percent and above, the chances of a newborn suffering Fetal Alcohol Syndrome or Fetal Alcohol Effect are up to 30 times greater than national averages;

''(7) in addition to the immeasurable toll on children and their families, Fetal Alcohol Syndrome and Fetal Alcohol Effect pose extraordinary financial costs to the Nation, including the costs of health care, education, foster care, job training, and general support services for affected individuals;

''(8) the total cost to the economy of Fetal Alcohol Syndrome was approximately $2,500,000,000 in 1995, and over a lifetime, health care costs for one Fetal Alcohol Syndrome child are estimated to be at least $1,400,000;

''(9) researchers have determined that the possibility of giving birth to a baby with Fetal Alcohol Syndrome or Fetal Alcohol Effect increases in proportion to the amount and frequency of alcohol consumed by a pregnant woman, and that stopping alcohol consumption at any point in the pregnancy reduces the emotional, physical, and mental consequences of alcohol exposure to the baby; and

''(10) though approximately 1 out of every 5 pregnant women drink alcohol during their pregnancy, we know of no safe dose of alcohol during pregnancy, or of any safe time to drink during pregnancy, thus, it is in the best interest of the Nation for the Federal Government to take an active role in encouraging all women to abstain from alcohol consumption during pregnancy.

''(c) PURPOSE.—It is the purpose of this section [enacting this part and provisions set out as a note under section 201 of this title] to establish, within the Department of Health and Human Services, a comprehensive program to help prevent Fetal Alcohol Syndrome and Fetal Alcohol Effect nationwide and to provide effective intervention programs and services for children, adolescents and adults already affected by these conditions. Such program shall—

''(1) coordinate, support, and conduct national, State, and community-based public awareness, prevention, and education programs on Fetal Alcohol Syndrome and Fetal Alcohol Effect;

''(2) coordinate, support, and conduct prevention and intervention studies as well as epidemiologic research concerning Fetal Alcohol Syndrome and Fetal Alcohol Effect;

''(3) coordinate, support and conduct research and demonstration projects to develop effective developmental and behavioral interventions and programs that foster effective advocacy, educational and vocational training, appropriate therapies, counseling, medical and mental health, and other supportive services, as well as models that integrate or coordinate such services, aimed at the unique challenges facing individuals with Fetal Alcohol Syndrome or Fetal Alcohol Effect and their families; and

''(4) foster coordination among all Federal, State and local agencies, and promote partnerships between research institutions and communities that conduct or support Fetal Alcohol Syndrome and Fetal Alcohol Effect research, programs, surveillance, prevention, and interventions and otherwise meet the general needs of populations already affected or at risk of being impacted by Fetal Alcohol Syndrome and Fetal Alcohol Effect.''

§ 280f–1. Eligibility

To be eligible to receive a grant, or enter into a cooperative agreement or contract under this part, an entity shall—

(1) be a State, Indian tribal government, local government, scientific or academic institution, or nonprofit organization; and

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may prescribe, including a description of the activities that the entity intends to carry out using amounts received under this part.

(July 1, 1944, ch. 373, title III, § 399I, formerly § 399H, as added Pub. L. 105–392, title IV, § 419(d), Nov. 13, 1998, 112 Stat. 3594; renumbered § 399I, Pub. L. 106–310, div. A, title V, § 502(4)(A), Oct. 17, 2000, 114 Stat. 1115.)

PRIOR PROVISIONS

A prior section 399I of act July 1, 1944, was renumbered section 399C and is classified to section 280e–1 of this title.

Another prior section 399I of act July 1, 1944, was renumbered section 399J and is classified to section 280f–2 of this title.

§ 280f–2. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this part, $27,000,000 for each of the fiscal years 1999 through 2003.

(b) Task Force

From amounts appropriated for a fiscal year under subsection (a) of this section, the Secretary may use not to exceed $2,000,000 of such amounts for the operations of the National Task Force under section 280f(d) of this title.

(July 1, 1944, ch. 373, title III, § 399J, formerly § 399I, as added Pub. L. 105–392, title IV, § 419(d), Nov. 13, 1998, 112 Stat. 3595; renumbered § 399J and amended Pub. L. 106–310, div. A, title V, § 502(4)(A), (C), Oct. 17, 2000, 114 Stat. 1115.)

PRIOR PROVISIONS

A prior section 399J of act July 1, 1944, was renumbered section 399D and is classified to section 280e–2 of this title.

Another prior section 399J of act July 1, 1944, was renumbered section 399K and is classified to section 280f–3 of this title.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–310, § 502(4)(C), made technical amendment to reference in original act which appears in text as reference to section 280f(d) of this title.

§ 280f–3. Sunset provision

This part shall not apply on the date that is 7 years after the date on which all members of the National Task Force have been appointed under section 280f(d)(1) of this title.

(July 1, 1944, ch. 373, title III, § 399K, formerly § 399J, as added Pub. L. 105–392, title IV, § 419(d), Nov. 13, 1998, 112 Stat. 3595; renumbered § 399K and amended Pub. L. 106–310, div. A, title V, § 502(4)(A), (D), Oct. 17, 2000, 114 Stat. 1115.)

PRIOR PROVISIONS

A prior section 399K of act July 1, 1944, was renumbered section 399E and is classified to section 280e–3 of this title.

AMENDMENTS

2000—Pub. L. 106–310, § 502(4)(D), made technical amendment to reference in original act which appears in text as reference to section 280f(d)(1) of this title.

PART P—ADDITIONAL PROGRAMS

§ 280g. Children's asthma treatment grants program

(a) Authority to make grants

(1) In general

In addition to any other payments made under this chapter or title V of the Social Security Act [42 U.S.C. 701 et seq.], the Secretary shall award grants to eligible entities to carry out the following purposes:

(A) To provide access to quality medical care for children who live in areas that have a high prevalence of asthma and who lack access to medical care.

(B) To provide on-site education to parents, children, health care providers, and medical teams to recognize the signs and symptoms of asthma, and to train them in the use of medications to treat asthma and prevent its exacerbations.

(C) To decrease preventable trips to the emergency room by making medication available to individuals who have not previously had access to treatment or education in the management of asthma.

(D) To provide other services, such as smoking cessation programs, home modification, and other direct and support services that ameliorate conditions that exacerbate or induce asthma.

(2) [1] Certain projects

In making grants under paragraph (1), the Secretary may make grants designed to develop and expand the following projects:

(A) Projects to provide comprehensive asthma services to children in accordance with the guidelines of the National Asthma Education and Prevention Program (through the National Heart, Lung and Blood Institute), including access to care and treatment for asthma in a community-based setting.

(B) Projects to fully equip mobile health care clinics that provide preventive asthma care including diagnosis, physical examinations, pharmacological therapy, skin testing, peak flow meter testing, and other asthma-related health care services.

(C) Projects to conduct validated asthma management education programs for patients with asthma and their families, including patient education regarding asthma management, family education on asthma management, and the distribution of materials, including displays and videos, to reinforce concepts presented by medical teams.

(2) [1] Award of grants

(A) Application

(i) In general

An eligible entity shall submit an application to the Secretary for a grant under this section in such form and manner as the Secretary may require.

(ii) Required information

An application submitted under this subparagraph shall include a plan for the use of funds awarded under the grant and such other information as the Secretary may require.

(B) Requirement

In awarding grants under this section, the Secretary shall give preference to eligible entities that demonstrate that the activities to be carried out under this section shall be in localities within areas of known or suspected high prevalence of childhood asthma or high asthma-related mortality or high rate of hospitalization or emergency room visits for asthma (relative to the average asthma prevalence rates and associated mortality rates in the United States). Acceptable data sets to demonstrate a high prevalence of childhood asthma or high asthma-related mortality may include data from Federal, State, or local vital statistics, claims data under title XIX or XXI of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.], other public health statistics or surveys, or other data that the Secretary, in consultation with the Director of the Centers for Disease Control and Prevention, deems appropriate.

(3) Definition of eligible entity

For purposes of this section, the term ''eligible entity'' means a public or nonprofit private entity (including a State or political subdivision of a State), or a consortium of any of such entities.

(b) Coordination with other children's programs

An eligible entity shall identify in the plan submitted as part of an application for a grant under this section how the entity will coordinate operations and activities under the grant with—

(1) other programs operated in the State that serve children with asthma, including any such programs operated under title V, XIX, or XXI of the Social Security Act [42 U.S.C. 701 et seq., 1396 et seq., 1397aa et seq.]; and

(2) one or more of the following—

(A) the child welfare and foster care and adoption assistance programs under parts B

[1] So in original. Two pars. (2) have been enacted.

and E of title IV of such Act [42 U.S.C. 620 et seq., 670 et seq.];

(B) the head start program established under the Head Start Act (42 U.S.C. 9831 et seq.);

(C) the program of assistance under the special supplemental nutrition program for women, infants and children (WIC) under section 1786 of this title;

(D) local public and private elementary or secondary schools; or

(E) public housing agencies, as defined in section 1437a of this title.

(c) Evaluation

An eligible entity that receives a grant under this section shall submit to the Secretary an evaluation of the operations and activities carried out under the grant that includes—

(1) a description of the health status outcomes of children assisted under the grant;

(2) an assessment of the utilization of asthma-related health care services as a result of activities carried out under the grant;

(3) the collection, analysis, and reporting of asthma data according to guidelines prescribed by the Director of the Centers for Disease Control and Prevention; and

(4) such other information as the Secretary may require.

(d) Preference for States that allow students to self-administer medication to treat asthma and anaphylaxis

(1) Preference

The Secretary, in making any grant under this section or any other grant that is asthma-related (as determined by the Secretary) to a State, shall give preference to any State that satisfies the following:

(A) In general

The State must require that each public elementary school and secondary school in that State will grant to any student in the school an authorization for the self-administration of medication to treat that student's asthma or anaphylaxis, if—

(i) a health care practitioner prescribed the medication for use by the student during school hours and instructed the student in the correct and responsible use of the medication;

(ii) the student has demonstrated to the health care practitioner (or such practitioner's designee) and the school nurse (if available) the skill level necessary to use the medication and any device that is necessary to administer such medication as prescribed;

(iii) the health care practitioner formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and

(iv) the student's parent or guardian has completed and submitted to the school any written documentation required by the school, including the treatment plan formulated under clause (iii) and other documents related to liability.

(B) Scope

An authorization granted under subparagraph (A) must allow the student involved to possess and use his or her medication—

(i) while in school;

(ii) while at a school-sponsored activity, such as a sporting event; and

(iii) in transit to or from school or school-sponsored activities.

(C) Duration of authorization

An authorization granted under subparagraph (A)—

(i) must be effective only for the same school and school year for which it is granted; and

(ii) must be renewed by the parent or guardian each subsequent school year in accordance with this subsection.

(D) Backup medication

The State must require that backup medication, if provided by a student's parent or guardian, be kept at a student's school in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

(E) Maintenance of information

The State must require that information described in subparagraphs (A)(iii) and (A)(iv) be kept on file at the student's school in a location easily accessible in the event of an asthma or anaphylaxis emergency.

(2) Rule of construction

Nothing in this subsection creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

(3) Definitions

For purposes of this subsection:

(A) The terms ''elementary school'' and ''secondary school'' have the meaning given to those terms in section 7801 of title 20.

(B) The term ''health care practitioner'' means a person authorized under law to prescribe drugs subject to section 353(b) of title 21.

(C) The term ''medication'' means a drug as that term is defined in section 321 of title 21 and includes inhaled bronchodilators and auto-injectable epinephrine.

(D) The term ''self-administration'' means a student's discretionary use of his or her prescribed asthma or anaphylaxis medication, pursuant to a prescription or written direction from a health care practitioner.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 399L, as added Pub. L. 106–310, div. A, title V, § 501, Oct. 17, 2000, 114 Stat. 1113; amended Pub. L. 108–377, § 3(a), Oct. 30, 2004, 118 Stat. 2203.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (2)(B) and (b)(1), (2)(A), is act Aug. 14, 1935, ch. 531, 49

Stat. 620, as amended. Parts B and E of title IV of the Act are classified generally to parts B (§ 620 et seq.) and E (§ 670 et seq.), respectively, of subchapter IV of chapter 7 of this title. Titles V, XIX, and XXI of the Act are classified generally to subchapters V (§ 701 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Head Start Act, referred to in subsec. (b)(2)(B), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

PRIOR PROVISIONS

A prior section 399L of act July 1, 1944, was renumbered section 399F and is classified to section 280e–4 of this title.

AMENDMENTS

2004—Subsecs. (d), (e). Pub. L. 108–377 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–377, § 3(b), Oct. 30, 2004, 118 Stat. 2204, provided that: ''The amendments made by this section [amending this section] shall apply only with respect to grants made on or after the date that is 9 months after the date of the enactment of this Act [Oct. 30, 2004].''

FINDINGS OF 2004 AMENDMENT

Pub. L. 108–377, § 2, Oct. 30, 2004, 118 Stat. 2202, provided that: ''The Congress finds the following:

''(1) Asthma is a chronic condition requiring lifetime, ongoing medical intervention.

''(2) In 1980, 6,700,000 Americans had asthma.

''(3) In 2001, 20,300,000 Americans had asthma; 6,300,000 children under age 18 had asthma.

''(4) The prevalence of asthma among African-American children was 40 percent greater than among Caucasian children, and more than 26 percent of all asthma deaths are in the African-American population.

''(5) In 2000, there were 1,800,000 asthma-related visits to emergency departments (more than 728,000 of these involved children under 18 years of age).

''(6) In 2000, there were 465,000 asthma-related hospitalizations (214,000 of these involved children under 18 years of age).

''(7) In 2000, 4,487 people died from asthma, and of these 223 were children.

''(8) According to the Centers for Disease Control and Prevention, asthma is a common cause of missed school days, accounting for approximately 14,000,000 missed school days annually.

''(9) According to the New England Journal of Medicine, working parents of children with asthma lose an estimated $1,000,000,000 a year in productivity.

''(10) At least 30 States have legislation protecting the rights of children to carry and self-administer asthma metered-dose inhalers, and at least 18 States expand this protection to epinephrine auto-injectors.

''(11) Tragic refusals of schools to permit students to carry their inhalers and auto-injectable epinephrine have occurred, some resulting in death and spawning litigation.

''(12) School district medication policies must be developed with the safety of all students in mind. The immediate and correct use of asthma inhalers and auto-injectable epinephrine are necessary to avoid serious respiratory complications and improve health care outcomes.

''(13) No school should interfere with the patient-physician relationship.

''(14) Anaphylaxis, or anaphylactic shock, is a systemic allergic reaction that can kill within minutes. Anaphylaxis occurs in some asthma patients. According to the American Academy of Allergy, Asthma, and Immunology, people who have experienced symptoms of anaphylaxis previously are at risk for subsequent reactions and should carry an epinephrine auto-injector with them at all times, if prescribed.

''(15) An increasing number of students and school staff have life-threatening allergies. Exposure to the affecting allergen can trigger anaphylaxis. Anaphylaxis requires prompt medical intervention with an injection of epinephrine.''

§ 280g–1. Early detection, diagnosis, and treatment regarding hearing loss in infants

(a) Statewide newborn and infant hearing screening, evaluation and intervention programs and systems

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make awards of grants or cooperative agreements to develop statewide newborn and infant hearing screening, evaluation and intervention programs and systems for the following purposes:

(1) To develop and monitor the efficacy of state-wide newborn and infant hearing screening, evaluation and intervention programs and systems. Early intervention includes referral to schools and agencies, including community, consumer, and parent-based agencies and organizations and other programs mandated by part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.], which offer programs specifically designed to meet the unique language and communication needs of deaf and hard of hearing newborns, infants, toddlers, and children.

(2) To collect data on statewide newborn and infant hearing screening, evaluation and intervention programs and systems that can be used for applied research, program evaluation and policy development.

(b) Technical assistance, data management, and applied research

(1) Centers for Disease Control and Prevention

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall make awards of grants or cooperative agreements to provide technical assistance to State agencies to complement an intramural program and to conduct applied research related to newborn and infant hearing screening, evaluation and intervention programs and systems. The program shall develop standardized procedures for data management and program effectiveness and costs, such as—

(A) to ensure quality monitoring of newborn and infant hearing loss screening, evaluation, and intervention programs and systems;

(B) to provide technical assistance on data collection and management;

(C) to study the costs and effectiveness of newborn and infant hearing screening, evaluation and intervention programs and systems conducted by State-based programs in order to answer issues of importance to State and national policymakers;

(D) to identify the causes and risk factors for congenital hearing loss;

(E) to study the effectiveness of newborn and infant hearing screening, audiologic and

medical evaluations and intervention programs and systems by assessing the health, intellectual and social developmental, cognitive, and language status of these children at school age; and

(F) to promote the sharing of data regarding early hearing loss with State-based birth defects and developmental disabilities monitoring programs for the purpose of identifying previously unknown causes of hearing loss.

(2) National Institutes of Health

The Director of the National Institutes of Health, acting through the Director of the National Institute on Deafness and Other Communication Disorders, shall for purposes of this section, continue a program of research and development on the efficacy of new screening techniques and technology, including clinical studies of screening methods, studies on efficacy of intervention, and related research.

(c) Coordination and collaboration

(1) In general

In carrying out programs under this section, the Administrator of the Health Resources and Services Administration, the Director of the Centers for Disease Control and Prevention, and the Director of the National Institutes of Health shall collaborate and consult with other Federal agencies; State and local agencies, including those responsible for early intervention services pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (Medicaid Early and Periodic Screening, Diagnosis and Treatment Program); title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.] (State Children's Health Insurance Program); title V of the Social Security Act [42 U.S.C. 701 et seq.] (Maternal and Child Health Block Grant Program); and part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.]; consumer groups of and that serve individuals who are deaf and hard-of-hearing and their families; appropriate national medical and other health and education specialty organizations; persons who are deaf and hard-of-hearing and their families; other qualified professional personnel who are proficient in deaf or hard-of-hearing children's language and who possess the specialized knowledge, skills, and attributes needed to serve deaf and hard-of-hearing newborns, infants, toddlers, children, and their families; third-party payers and managed care organizations; and related commercial industries.

(2) Policy development

The Administrator of the Health Resources and Services Administration, the Director of the Centers for Disease Control and Prevention, and the Director of the National Institutes of Health shall coordinate and collaborate on recommendations for policy development at the Federal and State levels and with the private sector, including consumer, medical and other health and education professional-based organizations, with respect to newborn and infant hearing screening, evaluation and intervention programs and systems.

(3) State early detection, diagnosis, and intervention programs and systems; data collection

The Administrator of the Health Resources and Services Administration and the Director of the Centers for Disease Control and Prevention shall coordinate and collaborate in assisting States to establish newborn and infant hearing screening, evaluation and intervention programs and systems under subsection (a) of this section and to develop a data collection system under subsection (b) of this section.

(d) Rule of construction; religious accommodation

Nothing in this section shall be construed to preempt or prohibit any State law, including State laws which do not require the screening for hearing loss of newborn infants or young children of parents who object to the screening on the grounds that such screening conflicts with the parents' religious beliefs.

(e) Definitions

For purposes of this section:

(1) The term ''audiologic evaluation'' refers to procedures to assess the status of the auditory system; to establish the site of the auditory disorder; the type and degree of hearing loss, and the potential effects of hearing loss on communication; and to identify appropriate treatment and referral options. Referral options should include linkage to State coordinating agencies under part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.] or other appropriate agencies, medical evaluation, hearing aid/sensory aid assessment, audiologic rehabilitation treatment, national and local consumer, self-help, parent, and education organizations, and other family-centered services.

(2) The terms ''audiologic rehabilitation'' and ''audiologic intervention'' refer to procedures, techniques, and technologies to facilitate the receptive and expressive communication abilities of a child with hearing loss.

(3) The term ''early intervention'' refers to providing appropriate services for the child with hearing loss, including nonmedical services, and ensuring that families of the child are provided comprehensive, consumer-oriented information about the full range of family support, training, information services, communication options and are given the opportunity to consider the full range of educational and program placements and options for their child.

(4) The term ''medical evaluation by a physician'' refers to key components including history, examination, and medical decision making focused on symptomatic and related body systems for the purpose of diagnosing the etiology of hearing loss and related physical conditions, and for identifying appropriate treatment and referral options.

(5) The term ''medical intervention'' refers to the process by which a physician provides medical diagnosis and direction for medical and/or surgical treatment options of hearing loss and/or related medical disorder associated with hearing loss.

(6) The term ''newborn and infant hearing screening'' refers to objective physiologic procedures to detect possible hearing loss and to identify newborns and infants who, after rescreening, require further audiologic and medical evaluations.

(f) Authorization of appropriations

(1) Statewide newborn and infant hearing screening, evaluation and intervention programs and systems

For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated to the Health Resources and Services Administration such sums as may be necessary for fiscal year 2002.

(2) Technical assistance, data management, and applied research; Centers for Disease Control and Prevention

For the purpose of carrying out subsection (b)(1) of this section, there are authorized to be appropriated to the Centers for Disease Control and Prevention such sums as may be necessary for fiscal year 2002.

(3) Technical assistance, data management, and applied research; national institute on deafness and other communication disorders

For the purpose of carrying out subsection (b)(2) of this section, there are authorized to be appropriated to the National Institute on Deafness and Other Communication Disorders such sums as may be necessary for fiscal year 2002.

(July 1, 1944, ch. 373, title III, § 399M, as added Pub. L. 106–310, div. A, title VII, § 702, Oct. 17, 2000, 114 Stat. 1121.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsecs. (a)(1), (c)(1), and (e)(1), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§ 1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Social Security Act, referred to in subsec. (c)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V, XIX, and XXI of the Act are classified generally to subchapters V (§ 701 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PURPOSES

Pub. L. 106–310, div. A, title VII, § 701, Oct. 17, 2000, 114 Stat. 1120, provided that: ''The purposes of this title [enacting this section] are to clarify the authority within the Public Health Service Act [this chapter] to authorize statewide newborn and infant hearing screening, evaluation and intervention programs and systems, technical assistance, a national applied research program, and interagency and private sector collaboration for policy development, in order to assist the States in making progress toward the following goals:

''(1) All babies born in hospitals in the United States and its territories should have a hearing screening before leaving the birthing facility. Babies born in other countries and residing in the United States via immigration or adoption should have a hearing screening as early as possible.

''(2) All babies who are not born in hospitals in the United States and its territories should have a hearing screening within the first 3 months of life.

''(3) Appropriate audiologic and medical evaluations should be conducted by 3 months for all newborns and infants suspected of having hearing loss to allow appropriate referral and provisions for audiologic rehabilitation, medical and early intervention before the age of 6 months.

''(4) All newborn and infant hearing screening programs and systems should include a component for audiologic rehabilitation, medical and early intervention options that ensures linkage to any new and existing state-wide systems of intervention and rehabilitative services for newborns and infants with hearing loss.

''(5) Public policy in regard to newborn and infant hearing screening and intervention should be based on applied research and the recognition that newborns, infants, toddlers, and children who are deaf or hard-of-hearing have unique language, learning, and communication needs, and should be the result of consultation with pertinent public and private sectors.''

§ 280g–2. Childhood malignancies

(a) In general

The Secretary, acting as appropriate through the Director of the Centers for Disease Control and Prevention and the Director of the National Institutes of Health, shall study environmental and other risk factors for childhood cancers (including skeletal malignancies, leukemias, malignant tumors of the central nervous system, lymphomas, soft tissue sarcomas, and other malignant neoplasms) and carry out projects to improve outcomes among children with childhood cancers and resultant secondary conditions, including limb loss, anemia, rehabilitation, and palliative care. Such projects shall be carried out by the Secretary directly and through awards of grants or contracts.

(b) Certain activities

Activities under subsection (a) of this section include—

(1) the expansion of current demographic data collection and population surveillance efforts to include childhood cancers nationally;

(2) the development of a uniform reporting system under which treating physicians, hospitals, clinics, and States report the diagnosis of childhood cancers, including relevant associated epidemiological data; and

(3) support for the National Limb Loss Information Center to address, in part, the primary and secondary needs of persons who experience childhood cancers in order to prevent or minimize the disabling nature of these cancers.

(c) Coordination of activities

The Secretary shall assure that activities under this section are coordinated as appropriate with other agencies of the Public Health Service that carry out activities focused on childhood cancers and limb loss.

(d) Definition

For purposes of this section, the term ''childhood cancer'' refers to a spectrum of different malignancies that vary by histology, site of disease, origin, race, sex, and age. The Secretary may for purposes of this section revise the definition of such term to the extent determined by the Secretary to be appropriate.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such

sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 399N, as added Pub. L. 106–310, div. A, title XI, § 1101, Oct. 17, 2000, 114 Stat. 1131.)

§ 280g–3. Controlled substance monitoring program

(a) Grants

(1) In general

Each fiscal year, the Secretary shall award a grant to each State with an application approved under this section to enable the State—

(A) to establish and implement a State controlled substance monitoring program; or

(B) to make improvements to an existing State controlled substance monitoring program.

(2) Determination of amount

(A) Minimum amount

In making payments under a grant under paragraph (1) for a fiscal year, the Secretary shall allocate to each State with an application approved under this section an amount that equals 1.0 percent of the amount appropriated to carry out this section for that fiscal year.

(B) Additional amounts

In making payments under a grant under paragraph (1) for a fiscal year, the Secretary shall allocate to each State with an application approved under this section an additional amount which bears the same ratio to the amount appropriated to carry out this section for that fiscal year and remaining after amounts are made available under subparagraph (A) as the number of pharmacies of the State bears to the number of pharmacies of all States with applications approved under this section (as determined by the Secretary), except that the Secretary may adjust the amount allocated to a State under this subparagraph after taking into consideration the budget cost estimate for the State's controlled substance monitoring program.

(3) Term of grants

Grants awarded under this section shall be obligated in the year in which funds are allotted.

(b) Development of minimum requirements

Prior to awarding a grant under this section, and not later than 6 months after the date on which funds are first appropriated to carry out this section, after seeking consultation with States and other interested parties, the Secretary shall, after publishing in the Federal Register proposed minimum requirements and receiving public comments, establish minimum requirements for criteria to be used by States for purposes of clauses (ii), (v), (vi), and (vii) of subsection (c)(1)(A) of this section.

(c) Application approval process

(1) In general

To be eligible to receive a grant under this section, a State shall submit an application to the Secretary at such time, in such manner, and containing such assurances and information as the Secretary may reasonably require. Each such application shall include—

(A) with respect to a State that intends to use funds under the grant as provided for in subsection (a)(1)(A) of this section—

(i) a budget cost estimate for the controlled substance monitoring program to be implemented under the grant;

(ii) criteria for security for information handling and for the database maintained by the State under subsection (e) of this section generally including efforts to use appropriate encryption technology or other appropriate technology to protect the security of such information;

(iii) an agreement to adopt health information interoperability standards, including health vocabulary and messaging standards, that are consistent with any such standards generated or identified by the Secretary or his or her designee;

(iv) criteria for meeting the uniform electronic format requirement of subsection (h) of this section;

(v) criteria for availability of information and limitation on access to program personnel;

(vi) criteria for access to the database, and procedures to ensure that information in the database is accurate;

(vii) criteria for the use and disclosure of information, including a description of the certification process to be applied to requests for information under subsection (f) of this section;

(viii) penalties for the unauthorized use and disclosure of information maintained in the State controlled substance monitoring program in violation of applicable State law or regulation;

(ix) information on the relevant State laws, policies, and procedures, if any, regarding purging of information from the database; and

(x) assurances of compliance with all other requirements of this section; or

(B) with respect to a State that intends to use funds under the grant as provided for in subsection (a)(1)(B) of this section—

(i) a budget cost estimate for the controlled substance monitoring program to be improved under the grant;

(ii) a plan for ensuring that the State controlled substance monitoring program is in compliance with the criteria and penalty requirements described in clauses (ii) through (viii) of subparagraph (A);

(iii) a plan to enable the State controlled substance monitoring program to achieve interoperability with at least one other State controlled substance monitoring program; and

(iv) assurances of compliance with all other requirements of this section or a statement describing why such compliance is not feasible or is contrary to the best interests of public health in such State.

(2) State legislation

As part of an application under paragraph (1), the Secretary shall require a State to dem-

onstrate that the State has enacted legislation or regulations to permit the implementation of the State controlled substance monitoring program and the imposition of appropriate penalties for the unauthorized use and disclosure of information maintained in such program.

(3) Interoperability

If a State that submits an application under this subsection geographically borders another State that is operating a controlled substance monitoring program under subsection (a)(1) of this section on the date of submission of such application, and such applicant State has not achieved interoperability for purposes of information sharing between its monitoring program and the monitoring program of such border State, such applicant State shall, as part of the plan under paragraph (1)(B)(iii), describe the manner in which the applicant State will achieve interoperability between the monitoring programs of such States.

(4) Approval

If a State submits an application in accordance with this subsection, the Secretary shall approve such application.

(5) Return of funds

If the Secretary withdraws approval of a State's application under this section, or the State chooses to cease to implement or improve a controlled substance monitoring program under this section, a funding agreement for the receipt of a grant under this section is that the State will return to the Secretary an amount which bears the same ratio to the overall grant as the remaining time period for expending the grant funds bears to the overall time period for expending the grant (as specified by the Secretary at the time of the grant).

(d) Reporting requirements

In implementing or improving a controlled substance monitoring program under this section, a State shall comply, or with respect to a State that applies for a grant under subsection (a)(1)(B) of this section submit to the Secretary for approval a statement of why such compliance is not feasible or is contrary to the best interests of public health in such State, with the following:

(1) The State shall require dispensers to report to such State each dispensing in the State of a controlled substance to an ultimate user not later than 1 week after the date of such dispensing.

(2) The State may exclude from the reporting requirement of this subsection—

(A) the direct administration of a controlled substance to the body of an ultimate user;

(B) the dispensing of a controlled substance in a quantity limited to an amount adequate to treat the ultimate user involved for 48 hours or less; or

(C) the administration or dispensing of a controlled substance in accordance with any other exclusion identified by the Secretary for purposes of this paragraph.

(3) The information to be reported under this subsection with respect to the dispensing of a controlled substance shall include the following:

(A) Drug Enforcement Administration Registration Number (or other identifying number used in lieu of such Registration Number) of the dispenser.

(B) Drug Enforcement Administration Registration Number (or other identifying number used in lieu of such Registration Number) and name of the practitioner who prescribed the drug.

(C) Name, address, and telephone number of the ultimate user or such contact information of the ultimate user as the Secretary determines appropriate.

(D) Identification of the drug by a national drug code number.

(E) Quantity dispensed.

(F) Number of refills ordered.

(G) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(H) Date of the dispensing.

(I) Date of origin of the prescription.

(J) Such other information as may be required by State law to be reported under this subsection.

(4) The State shall require dispensers to report information under this section in accordance with the electronic format specified by the Secretary under subsection (h) of this section, except that the State may waive the requirement of such format with respect to an individual dispenser that is unable to submit such information by electronic means.

(e) Database

In implementing or improving a controlled substance monitoring program under this section, a State shall comply with the following:

(1) The State shall establish and maintain an electronic database containing the information reported to the State under subsection (d) of this section.

(2) The database must be searchable by any field or combination of fields.

(3) The State shall include reported information in the database in a manner consistent with criteria established by the Secretary, with appropriate safeguards for ensuring the accuracy and completeness of the database.

(4) The State shall take appropriate security measures to protect the integrity of, and access to, the database.

(f) Use and disclosure of information

(1) In general

Subject to subsection (g) of this section, in implementing or improving a controlled substance monitoring program under this section, a State may disclose information from the database established under subsection (e) of this section and, in the case of a request under subparagraph (D), summary statistics of such information, only in response to a request by—

(A) a practitioner (or the agent thereof) who certifies, under the procedures determined by the State, that the requested information is for the purpose of providing medical or pharmaceutical treatment or evaluating the need for such treatment to a bona fide current patient;

(B) any local, State, or Federal law enforcement, narcotics control, licensure, disciplinary, or program authority, who certifies, under the procedures determined by the State, that the requested information is related to an individual investigation or proceeding involving the unlawful diversion or misuse of a schedule II, III, or IV substance, and such information will further the purpose of the investigation or assist in the proceeding;

(C) the controlled substance monitoring program of another State or group of States with whom the State has established an interoperability agreement;

(D) any agent of the Department of Health and Human Services, a State medicaid program, a State health department, or the Drug Enforcement Administration who certifies that the requested information is necessary for research to be conducted by such department, program, or administration, respectively, and the intended purpose of the research is related to a function committed to such department, program, or administration by law that is not investigative in nature; or

(E) an agent of the State agency or entity of another State that is responsible for the establishment and maintenance of that State's controlled substance monitoring program, who certifies that—

(i) the State has an application approved under this section; and

(ii) the requested information is for the purpose of implementing the State's controlled substance monitoring program under this section.

(2) Drug diversion

In consultation with practitioners, dispensers, and other relevant and interested stakeholders, a State receiving a grant under subsection (a) of this section—

(A) shall establish a program to notify practitioners and dispensers of information that will help identify and prevent the unlawful diversion or misuse of controlled substances; and

(B) may, to the extent permitted under State law, notify the appropriate authorities responsible for carrying out drug diversion investigations if the State determines that information in the database maintained by the State under subsection (e) of this section indicates an unlawful diversion or abuse of a controlled substance.

(g) Limitations

In implementing or improving a controlled substance monitoring program under this section, a State—

(1) shall limit the information provided pursuant to a valid request under subsection (f)(1) of this section to the minimum necessary to accomplish the intended purpose of the request; and

(2) shall limit information provided in response to a request under subsection (f)(1)(D) of this section to nonidentifiable information.

(h) Electronic format

The Secretary shall specify a uniform electronic format for the reporting, sharing, and disclosure of information under this section.

(i) Rules of construction

(1) Functions otherwise authorized by law

Nothing in this section shall be construed to restrict the ability of any authority, including any local, State, or Federal law enforcement, narcotics control, licensure, disciplinary, or program authority, to perform functions otherwise authorized by law.

(2) No preemption

Nothing in this section shall be construed as preempting any State law, except that no such law may relieve any person of a requirement otherwise applicable under this chapter.

(3) Additional privacy protections

Nothing in this section shall be construed as preempting any State from imposing any additional privacy protections.

(4) Federal privacy requirements

Nothing in this section shall be construed to supersede any Federal privacy or confidentiality requirement, including the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033) and section 290dd–2 of this title.

(5) No Federal private cause of action

Nothing in this section shall be construed to create a Federal private cause of action.

(j) Studies and reports

(1) Implementation report

(A) In general

Not later than 180 days after August 11, 2005, the Secretary, based on a review of existing State controlled substance monitoring programs and other relevant information, shall determine whether the implementation of such programs has had a substantial negative impact on—

(i) patient access to treatment, including therapy for pain or controlled substance abuse;

(ii) pediatric patient access to treatment; or

(iii) patient enrollment in research or clinical trials in which, following the protocol that has been approved by the relevant institutional review board for the research or clinical trial, the patient has obtained a controlled substance from either the scientific investigator conducting such research or clinical trial or the agent thereof.

(B) Additional categories of exclusion

If the Secretary determines under subparagraph (A) that a substantial negative impact has been demonstrated with regard to one or more of the categories of patients described in such subparagraph, the Secretary shall identify additional appropriate categories of exclusion from reporting as authorized under subsection (d)(2)(C) of this section.

(2) Progress report

Not later than 3 years after the date on which funds are first appropriated under this section, the Secretary shall—

(A) complete a study that—

(i) determines the progress of States in establishing and implementing controlled substance monitoring programs under this section;

(ii) provides an analysis of the extent to which the operation of controlled substance monitoring programs have reduced inappropriate use, abuse, or diversion of controlled substances or affected patient access to appropriate pain care in States operating such programs;

(iii) determines the progress of States in achieving interoperability between controlled substance monitoring programs, including an assessment of technical and legal barriers to such activities and recommendations for addressing these barriers;

(iv) determines the feasibility of implementing a real-time electronic controlled substance monitoring program, including the costs associated with establishing such a program;

(v) provides an analysis of the privacy protections in place for the information reported to the controlled substance monitoring program in each State receiving a grant for the establishment or operation of such program, and any recommendations for additional requirements for protection of this information;

(vi) determines the feasibility of implementing technological alternatives to centralized data storage, such as peer-to-peer file sharing or data pointer systems, in controlled substance monitoring programs and the potential for such alternatives to enhance the privacy and security of individually identifiable data; and

(vii) evaluates the penalties that States have enacted for the unauthorized use and disclosure of information maintained in the controlled substance monitoring program, and reports on the criteria used by the Secretary to determine whether such penalties qualify as appropriate pursuant to this section; and

(B) submit a report to the Congress on the results of the study.

(k) Preference

Beginning 3 years after the date on which funds are first appropriated to carry out this section, the Secretary, in awarding any competitive grant that is related to drug abuse (as determined by the Secretary) and for which only States are eligible to apply, shall give preference to any State with an application approved under this section. The Secretary shall have the discretion to apply such preference to States with existing controlled substance monitoring programs that meet minimum requirements under this section or to States that put forth a good faith effort to meet those requirements (as determined by the Secretary).

(*l*) Advisory council

(1) Establishment

A State may establish an advisory council to assist in the establishment, implementation, or improvement of a controlled substance monitoring program under this section.

(2) Limitation

A State may not use amounts received under a grant under this section for the operations of an advisory council established under paragraph (1).

(3) Sense of Congress

It is the sense of the Congress that, in establishing an advisory council under this subsection, a State should consult with appropriate professional boards and other interested parties.

(m) Definitions

For purposes of this section:

(1) The term ''bona fide patient'' means an individual who is a patient of the practitioner involved.

(2) The term ''controlled substance'' means a drug that is included in schedule II, III, or IV of section 812(c) of title 21.

(3) The term ''dispense'' means to deliver a controlled substance to an ultimate user by, or pursuant to the lawful order of, a practitioner, irrespective of whether the dispenser uses the Internet or other means to effect such delivery.

(4) The term ''dispenser'' means a physician, pharmacist, or other person that dispenses a controlled substance to an ultimate user.

(5) The term ''interoperability'' with respect to a State controlled substance monitoring program means the ability of the program to electronically share reported information, including each of the required report components described in subsection (d) of this section, with another State if the information concerns either the dispensing of a controlled substance to an ultimate user who resides in such other State, or the dispensing of a controlled substance prescribed by a practitioner whose principal place of business is located in such other State.

(6) The term ''nonidentifiable information'' means information that does not identify a practitioner, dispenser, or an ultimate user and with respect to which there is no reasonable basis to believe that the information can be used to identify a practitioner, dispenser, or an ultimate user.

(7) The term ''practitioner'' means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he or she practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

(8) The term ''State'' means each of the 50 States and the District of Columbia.

(9) The term ''ultimate user'' means a person who has obtained from a dispenser, and who

possesses, a controlled substance for his or her own use, for the use of a member of his or her household, or for the use of an animal owned by him or her or by a member of his or her household.

(n) Authorization of appropriations

To carry out this section, there are authorized to be appropriated—

(1) $15,000,000 for each of fiscal years 2006 and 2007; and

(2) $10,000,000 for each of fiscal years 2008, 2009, and 2010.

(July 1, 1944, ch. 373, title III, § 399O, as added Pub. L. 109–60, § 3, Aug. 11, 2005, 119 Stat. 1979.)

REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (i)(4), is section 264(c) of Pub. L. 104–191, title II, Aug. 21, 1996, 110 Stat. 2033, which was formerly set out as a note under section 1320d–2 of this title.

CODIFICATION

Another section 399O of act July 1, 1944, is classified to section 280g–4 of this title.

PURPOSE

Pub. L. 109–60, § 2, Aug. 11, 2005, 119 Stat. 1979, provided that: ''It is the purpose of this Act [enacting this section and provisions set out as a note under section 201 of this title] to—

''(1) foster the establishment of State-administered controlled substance monitoring systems in order to ensure that health care providers have access to the accurate, timely prescription history information that they may use as a tool for the early identification of patients at risk for addiction in order to initiate appropriate medical interventions and avert the tragic personal, family, and community consequences of untreated addiction; and

''(2) establish, based on the experiences of existing State controlled substance monitoring programs, a set of best practices to guide the establishment of new State programs and the improvement of existing programs.''

§ 280g–4. Grants to foster public health responses to domestic violence, dating violence, sexual assault, and stalking

(a) Authority to award grants

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall award grants to eligible State, tribal, territorial, or local entities to strengthen the response of State, tribal, territorial, or local health care systems to domestic violence, dating violence, sexual assault, and stalking.

(2) Eligible entities

To be eligible to receive a grant under this section, an entity shall—

(A) be—

(i) a State department (or other division) of health, a State domestic or sexual assault coalition or service-based program, State law enforcement task force, or any other nonprofit, nongovernmental, tribal, territorial, or State entity with a history of effective work in the fields of domestic violence, dating violence, sexual assault or stalking, and health care; or

(ii) a local, nonprofit domestic violence, dating violence, sexual assault, or stalking service-based program, a local department (or other division) of health, a local health clinic, hospital, or health system, or any other nonprofit, tribal, or local entity with a history of effective work in the field of domestic or sexual violence and health;

(B) prepare and submit to the Secretary an application at such time, in such manner, and containing such agreements, assurances, and information as the Secretary determines to be necessary to carry out the purposes for which the grant is to be made; and

(C) demonstrate that the entity is representing a team of organizations and agencies working collaboratively to strengthen the response of the health care system involved to domestic violence, dating violence, sexual assault, or stalking and that such team includes domestic violence, dating violence, sexual assault or stalking and health care organizations.

(3) Duration

A program conducted under a grant awarded under this section shall not exceed 2 years.

(b) Use of funds

(1) In general

An entity shall use amounts received under a grant under this section to design and implement comprehensive strategies to improve the response of the health care system involved to domestic or sexual violence in clinical and public health settings, hospitals, clinics, managed care settings (including behavioral and mental health), and other health settings.

(2) Mandatory strategies

Strategies implemented under paragraph (1) shall include the following:

(A) The implementation, dissemination, and evaluation of policies and procedures to guide health care professionals and behavioral and public health staff in responding to domestic violence, dating violence, sexual assault, and stalking, including strategies to ensure that health information is maintained in a manner that protects the patient's privacy and safety and prohibits insurance discrimination.

(B) The development of on-site access to services to address the safety, medical, mental health, and economic needs of patients either by increasing the capacity of existing health care professionals and behavioral and public health staff to address domestic violence, dating violence, sexual assault, and stalking, by contracting with or hiring domestic or sexual assault advocates to provide the services, or to model other services appropriate to the geographic and cultural needs of a site.

(C) The evaluation of practice and the institutionalization of identification, intervention, and documentation including quality improvement measurements.

(D) The provision of training and followup technical assistance to health care professionals, behavioral and public health staff,

and allied health professionals to identify, assess, treat, and refer clients who are victims of domestic violence, dating violence, sexual violence, or stalking.

(3) Permissive strategies

Strategies implemented under paragraph (1) may include the following:

(A) Where appropriate, the development of training modules and policies that address the overlap of child abuse, domestic violence, dating violence, sexual assault, and stalking and elder abuse as well as childhood exposure to domestic violence.

(B) The creation, adaptation, and implementation of public education campaigns for patients concerning domestic violence, dating violence, sexual assault, and stalking prevention.

(C) The development, adaptation, and dissemination of domestic violence, dating violence, sexual assault, and stalking education materials to patients and health care professionals and behavioral and public health staff.

(D) The promotion of the inclusion of domestic violence, dating violence, sexual assault, and stalking into health professional training schools, including medical, dental, nursing school, social work, and mental health curriculum.

(E) The integration of domestic violence, dating violence, sexual assault, and stalking into health care accreditation and professional licensing examinations, such as medical, dental, social work, and nursing boards.

(c) Allocation of funds

Funds appropriated under this section shall be distributed equally between State and local programs.

(d) Authorization of appropriations

There is authorized to be appropriated to award grants under this section, $5,000,000 for each of fiscal years 2007 through 2011.

(July 1, 1944, ch. 373, title III, § 399O, as added Pub. L. 109–162, title V, § 504, Jan. 5, 2006, 119 Stat. 3026.)

CODIFICATION

Another section 399O of act July 1, 1944, is classified to section 280g–3 of this title.

FINDINGS

Pub. L. 109–162, title V, § 501, Jan. 5, 2006, 119 Stat. 3023, provided that: ''Congress makes the following findings:

''(1) The health-related costs of intimate partner violence in the United States exceed $5,800,000,000 annually.

''(2) Thirty-seven percent of all women who sought care in hospital emergency rooms for violence-related injuries were injured by a current or former spouse, boyfriend, or girlfriend.

''(3) In addition to injuries sustained during violent episodes, physical and psychological abuse is linked to a number of adverse physical and mental health effects. Women who have been abused are much more likely to suffer from chronic pain, diabetes, depression, unintended pregnancies, substance abuse and sexually transmitted infections, including HIV/AIDS.

''(4) Health plans spend an average of $1,775 more a year on abused women than on general enrollees.

''(5) Each year about 324,000 pregnant women in the United States are battered by the men in their lives. This battering leads to complications of pregnancy, including low weight gain, anemia, infections, and first and second trimester bleeding.

''(6) Pregnant and recently pregnant women are more likely to be victims of homicide than to die of any other pregnancy-related cause, and evidence exists that a significant proportion of all female homicide victims are killed by their intimate partners.

''(7) Children who witness domestic violence are more likely to exhibit behavioral and physical health problems including depression, anxiety, and violence towards peers. They are also more likely to attempt suicide, abuse drugs and alcohol, run away from home, engage in teenage prostitution, and commit sexual assault crimes.

''(8) Recent research suggests that women experiencing domestic violence significantly increase their safety-promoting behaviors over the short- and long-term when health care providers screen for, identify, and provide followup care and information to address the violence.

''(9) Currently, only about 10 percent of primary care physicians routinely screen for intimate partner abuse during new patient visits and 9 percent routinely screen for intimate partner abuse during periodic checkups.

''(10) Recent clinical studies have proven the effectiveness of a 2-minute screening for early detection of abuse of pregnant women. Additional longitudinal studies have tested a 10-minute intervention that was proven highly effective in increasing the safety of pregnant abused women. Comparable research does not yet exist to support the effectiveness of screening men.

''(11) Seventy to 81 percent of the patients studied reported that they would like their healthcare providers to ask them privately about intimate partner violence.''

PURPOSE

Pub. L. 109–162, title V, § 502, Jan. 5, 2006, 119 Stat. 3024, provided that: ''It is the purpose of this title [enacting this section, sections 294h and 13973 of this title, and provisions set out as a note above] to improve the health care system's response to domestic violence, dating violence, sexual assault, and stalking through the training and education of health care providers, developing comprehensive public health responses to violence against women and children, increasing the number of women properly screened, identified, and treated for lifetime exposure to violence, and expanding research on effective interventions in the health care setting.''

PART Q—PROGRAMS TO IMPROVE THE HEALTH OF CHILDREN

§ 280h. Grants to promote childhood nutrition and physical activity

(a) In general

The Secretary, acting though the Director of the Centers for Disease Control and Prevention, shall award competitive grants to States and political subdivisions of States for the development and implementation of State and community-based intervention programs to promote good nutrition and physical activity in children and adolescents.

(b) Eligibility

To be eligible to receive a grant under this section a State or political subdivision of a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Sec-

retary may require, including a plan that describes—

(1) how the applicant proposes to develop a comprehensive program of school- and community-based approaches to encourage and promote good nutrition and appropriate levels of physical activity with respect to children or adolescents in local communities;

(2) the manner in which the applicant shall coordinate with appropriate State and local authorities, such as State and local school departments, State departments of health, chronic disease directors, State directors of programs under section 1786 of this title, 5-a-day coordinators, governors councils for physical activity and good nutrition, and State and local parks and recreation departments; and

(3) the manner in which the applicant will evaluate the effectiveness of the program carried out under this section.

(c) Use of funds

A State or political subdivision of a State shall use amount received under a grant under this section to—

(1) develop, implement, disseminate, and evaluate school- and community-based strategies in States to reduce inactivity and improve dietary choices among children and adolescents;

(2) expand opportunities for physical activity programs in school- and community-based settings; and

(3) develop, implement, and evaluate programs that promote good eating habits and physical activity including opportunities for children with cognitive and physical disabilities.

(d) Technical assistance

The Secretary may set-aside an amount not to exceed 10 percent of the amount appropriated for a fiscal year under subsection (h) of this section to permit the Director of the Centers for Disease Control and Prevention to—

(1) provide States and political subdivisions of States with technical support in the development and implementation of programs under this section; and

(2) disseminate information about effective strategies and interventions in preventing and treating obesity through the promotion of good nutrition and physical activity.

(e) Limitation on administrative costs

Not to exceed 10 percent of the amount of a grant awarded to the State or political subdivision under subsection (a) of this section for a fiscal year may be used by the State or political subdivision for administrative expenses.

(f) Term

A grant awarded under subsection (a) of this section shall be for a term of 3 years.

(g) Definition

In this section, the term ''children and adolescents'' means individuals who do not exceed 18 years of age.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 399W, as added Pub. L. 106–310, div. A, title XXIV, § 2401, Oct. 17, 2000, 114 Stat. 1158.)

§ 280h–1. Applied research program

(a) In general

The Secretary, acting through the Centers for Disease Control and Prevention and in consultation with the Director of the National Institutes of Health, shall—

(1) conduct research to better understand the relationship between physical activity, diet, and health and factors that influence health-related behaviors;

(2) develop and evaluate strategies for the prevention and treatment of obesity to be used in community-based interventions and by health professionals;

(3) develop and evaluate strategies for the prevention and treatment of eating disorders, such as anorexia and bulimia;

(4) conduct research to establish the prevalence, consequences, and costs of childhood obesity and its effects in adulthood;

(5) identify behaviors and risk factors that contribute to obesity;

(6) evaluate materials and programs to provide nutrition education to parents and teachers of children in child care or pre-school and the food service staff of such child care and pre-school entities; and

(7) evaluate materials and programs that are designed to educate and encourage physical activity in child care and pre-school facilities.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 399X, as added Pub. L. 106–310, div. A, title XXIV, § 2401, Oct. 17, 2000, 114 Stat. 1159.)

§ 280h–2. Education campaign

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, and in collaboration with national, State, and local partners, physical activity organizations, nutrition experts, and health professional organizations, shall develop a national public campaign to promote and educate children and their parents concerning—

(1) the health risks associated with obesity, inactivity, and poor nutrition;

(2) ways in which to incorporate physical activity into daily living; and

(3) the benefits of good nutrition and strategies to improve eating habits.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 399Y, as added Pub. L. 106–310, div. A, title XXIV, § 2401, Oct. 17, 2000, 114 Stat. 1160.)

§ 280h–3. Health professional education and training

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, in collaboration with the Administrator of the Health Resources and Services Administration and the heads of other agencies, and in consultation with appropriate health professional associations, shall develop and carry out a program to educate and train health professionals in effective strategies to—

(1) better identify and assess patients with obesity or an eating disorder or patients at-risk of becoming obese or developing an eating disorder;

(2) counsel, refer, or treat patients with obesity or an eating disorder; and

(3) educate patients and their families about effective strategies to improve dietary habits and establish appropriate levels of physical activity.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title III, § 399Z, as added Pub. L. 106–310, div. A, title XXIV, § 2401, Oct. 17, 2000, 114 Stat. 1160.)

SUBCHAPTER III—NATIONAL RESEARCH INSTITUTES

CODIFICATION

Title IV of the Public Health Service Act, comprising this subchapter, was originally enacted by act July 1, 1944, ch. 373, 58 Stat. 707, at which time title IV related solely to the National Cancer Institute. Because of the extensive amendments, reorganization of the subject matter, and expansion of title IV by the acts listed below, title IV is shown herein as having been added by Pub. L. 99–158, without reference to intervening amendments.

The provisions of title IV as originally enacted were subsequently redesignated as part A of title IV and amended, and parts B to I of title IV were added and amended by the following acts: June 16, 1948, ch. 481, 62 Stat. 464; June 24, 1948, ch. 621, 62 Stat. 598; Aug. 15, 1950, ch. 714, 64 Stat. 443; Oct. 5, 1961, Pub. L. 87–395, 75 Stat. 824; Oct. 17, 1962, Pub. L. 87–838, 76 Stat. 1072; Aug. 16, 1968, Pub. L. 90–489, 82 Stat. 771; Oct. 30, 1970, Pub. L. 91–515, 84 Stat. 1297; Dec. 23, 1971, Pub. L. 92–218, 85 Stat. 778; May 19, 1972, Pub. L. 92–305, 86 Stat. 162; Sept. 19, 1972, Pub. L. 92–423, 86 Stat. 679; Apr. 22, 1974, Pub. L. 93–270, 88 Stat. 90; May 14, 1974, Pub. L. 93–282, 88 Stat. 126; May 31, 1974, Pub. L. 93–296, 88 Stat. 184; July 12, 1974, Pub. L. 93–348, 88 Stat. 342; July 23, 1974, Pub. L. 93–352, 88 Stat. 358; July 23, 1974, Pub. L. 93–354, 88 Stat. 373; Jan. 4, 1975, Pub. L. 93–640, 88 Stat. 2217; July 29, 1975, Pub. L. 94–63, 89 Stat. 304; Nov. 28, 1975, Pub. L. 94–135, 89 Stat. 713; Apr. 21, 1976, Pub. L. 94–273, 90 Stat. 375; Apr. 22, 1976, Pub. L. 94–278, 90 Stat. 401; Oct. 19, 1976, Pub. L. 94–562, 90 Stat. 2645; Aug. 1, 1977, Pub. L. 95–83, 91 Stat. 383; Nov. 9, 1978, Pub. L. 95–622, 92 Stat. 3412; Nov. 9, 1978, Pub. L. 95–623, 92 Stat. 3443; July 10, 1979, Pub. L. 96–32, 93 Stat. 82; Oct. 7, 1980, Pub. L. 96–398, 94 Stat. 1564; Dec. 17, 1980, Pub. L. 96–538, 94 Stat. 3183; Aug. 13, 1981, Pub. L. 97–35, 95 Stat. 358; Apr. 26, 1984, Pub. L. 98–24, 97 Stat. 175.

Title IV was subsequently amended generally and completely reorganized by Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 822.

PART A—NATIONAL INSTITUTES OF HEALTH

§ 281. Organization of National Institutes of Health

(a) Agency of Public Health Service

The National Institutes of Health is an agency of the Service.

(b) Agencies within

(1) The following national research institutes are agencies of the National Institutes of Health:

(A) The National Cancer Institute.

(B) The National Heart, Lung, and Blood Institute.

(C) The National Institute of Diabetes and Digestive and Kidney Diseases.

(D) The National Institute of Arthritis and Musculoskeletal and Skin Diseases.

(E) The National Institute on Aging.

(F) The National Institute of Allergy and Infectious Diseases.

(G) The National Institute of Child Health and Human Development.

(H) The National Institute of Dental and Craniofacial Research.

(I) The National Eye Institute.

(J) The National Institute of Neurological Disorders and Stroke.

(K) The National Institute of General Medical Sciences.

(L) The National Institute of Environmental Health Sciences.

(M) The National Institute on Deafness and Other Communication Disorders.

(N) The National Institute on Alcohol Abuse and Alcoholism.

(O) The National Institute on Drug Abuse.

(P) The National Institute of Mental Health.

(Q) The National Institute of Nursing Research.

(R) The National Institute of Biomedical Imaging and Bioengineering.

(2) The following entities are agencies of the National Institutes of Health:

(A) The National Library of Medicine.

(B) The National Center for Research Resources.

(C) The John E. Fogarty International Center for Advanced Study in the Health Sciences.

(D) The National Center for Human Genome Research.

(E) The Office of Dietary Supplements.

(F) The National Center for Complementary and Alternative Medicine.

(G) The National Center on Minority Health and Health Disparities.

(c) Establishment of additional national research institutes; reorganization or abolition of institutes

(1) The Secretary may establish in the National Institutes of Health one or more additional national research institutes to conduct and support research, training, health information, and other programs with respect to any particular disease or groups of diseases or any other aspect of human health if—

(A) the Secretary determines that an additional institute is necessary to carry out such activities; and

(B) the additional institute is not established before the expiration of 180 days after the Secretary has provided the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate written notice of the determination made under subparagraph (A) with respect to the institute.

(2) The Secretary may reorganize the functions of any national research institute and may abolish any national research institute if the Secretary determines that the institute is no longer required. A reorganization or abolition may not take effect under this paragraph before the expiration of 180 days after the Secretary has provided the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate written notice of the reorganization or abolition.

(d) "National research institute" defined

For purposes of this subchapter, the term ''national research institute'' means a national research institute listed in subsection (b) of this section or established under subsection (c) of this section. A reference to the National Institutes of Health includes its agencies.

(July 1, 1944, ch. 373, title IV, §401, as added Pub. L. 99–158, §2, Nov. 20, 1985, 99 Stat. 822; amended Pub. L. 100–553, §2(1), Oct. 28, 1988, 102 Stat. 2769; Pub. L. 100–607, title I, §101(1), Nov. 4, 1988, 102 Stat. 3048; Pub. L. 100–690, title II, §2613(b)(2), Nov. 18, 1988, 102 Stat. 4238; Pub. L. 102–321, title I, §121(a), July 10, 1992, 106 Stat. 358; Pub. L. 103–43, title XV, §§1501(1), 1511(b)(1), 1521(1), June 10, 1993, 107 Stat. 172, 179, 180; Pub. L. 103–417, §13(b), Oct. 25, 1994, 108 Stat. 4335; Pub. L. 105–277, div. A, §101(f) [title II, §212, title VI, §601(k)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–359, 2681–388; Pub. L. 106–525, title I, §101(b)(1), Nov. 22, 2000, 114 Stat. 2501; Pub. L. 106–580, §3(e), Dec. 29, 2000, 114 Stat. 3091.)

AMENDMENTS

2000—Subsec. (b)(1)(R). Pub. L. 106–580 added subpar. (R).

Subsec. (b)(2)(F). Pub. L. 106–525, §101(b)(1)(A), realigned margins.

Subsec. (b)(2)(G). Pub. L. 106–525, §101(b)(1)(B), added subpar. (G).

1998—Subsec. (b)(1)(H). Pub. L. 105–277, §101(f) [title II, §212], substituted ''National Institute of Dental and Craniofacial Research'' for ''National Institute of Dental Research''.

Subsec. (b)(2)(F). Pub. L. 105–277, §101(f) [title VI, §601(k)], added subpar. (F).

1994—Subsec. (b)(2)(E). Pub. L. 103–417 added subpar. (E).

1993—Subsec. (b)(1)(Q). Pub. L. 103–43, §1511(b)(1)(A), added subpar. (Q).

Subsec. (b)(2)(B). Pub. L. 103–43, §1501(1), amended subpar. (B) generally, substituting ''National Center for Research Resources'' for ''Division of Research Resources''.

Subsec. (b)(2)(D). Pub. L. 103–43, §§1511(b)(1)(B), 1521(1), added subpar. (D) and struck out former subpar. (D) which read as follows: ''The National Center for Nursing Research.''

1992—Subsec. (b)(1)(N) to (P). Pub. L. 102–321 added subpars. (N) to (P).

1988—Subsec. (b)(1)(J), (M). Pub. L. 100–553 and Pub. L. 100–607 made identical amendments, striking out ''and Communicative'' after ''Neurological'' in subpar. (J), and adding subpar. (M). Pub. L. 100–690 amended subsec. (b)(1) to read as if the amendments by Pub. L. 100–607 had not been enacted.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–525, title VI, §603, Nov. 22, 2000, 114 Stat. 2511, provided that: ''This Act [enacting subpart 6 (§287c–31 et seq.) of part E of this subchapter and sections 293e, 296e–1, and 299a–1 of this title, amending sections 281, 296f, 299a, 299c–6, and 300u–6 of this title, repealing section 283b of this title, and enacting provisions set out as notes under sections 201, 287c–31, 293e, and 3501 of this title] and the amendments made by this Act take effect October 1, 2000, or upon the date of the enactment of this Act [Nov. 22, 2000], whichever occurs later.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

STUDY OF THE USE OF CENTERS OF EXCELLENCE AT THE NATIONAL INSTITUTES OF HEALTH

Pub. L. 107–84, §7, Dec. 18, 2001, 115 Stat. 829, required the Secretary of Health and Human Services to contract, not later than 60 days after Dec. 18, 2001, with the Institute of Medicine to conduct a study on the impact of, need for, and other issues associated with Centers of Excellence at the National Institutes of Health and complete the study and submit a report not later than one year after the date of the contract.

REPORT ON MEDICAL USES OF BIOLOGICAL AGENTS IN DEVELOPMENT OF DEFENSES AGAINST BIOLOGICAL WARFARE

Section 1904 of Pub. L. 103–43 directed Secretary of Health and Human Services, in consultation with Secretary of Defense and with heads of other appropriate executive agencies, to report to Congress, not later than 12 months after June 10, 1993, on the appropriateness and impact of the National Institutes of Health assuming responsibility for the conduct of all Federal research, development, testing, and evaluation functions relating to medical countermeasures against biowarfare threat agents.

RESEARCH ON LUPUS ERYTHEMATOSUS

Section 5 of Pub. L. 99–158, as amended by Pub. L. 102–531, title III, §312(f), Oct. 27, 1992, 106 Stat. 3506, directed Secretary of Health and Human Resources to establish a Lupus Erythematosus Coordinating Committee to plan, develop, coordinate, and implement

comprehensive Federal initiatives in research on Lupus Erythematosus, provided for composition of committee and meetings, and directed Committee to prepare a report for Congress on its activities, to be submitted not later than 18 months after Nov. 20, 1985, with Committee to terminate one month after the report was submitted.

INTERAGENCY COMMITTEE ON LEARNING DISABILITIES

Section 9 of Pub. L. 99–158 directed Director of the National Institutes of Health, not later than 90 days after Nov. 20, 1985, to establish an Interagency Committee on Learning Disabilities to review and assess Federal research priorities, activities, and findings regarding learning disabilities (including central nervous system dysfunction in children), provided for composition of the Committee, directed Committee to report to Congress on its activities not later than 18 months after Nov. 20, 1985, and provided that the Committee terminate 90 days after submission of the report.

§ 282. Director of National Institutes of Health

(a) Appointment

The National Institutes of Health shall be headed by the Director of the National Institutes of Health (hereafter in this subchapter referred to as the ''Director of NIH'') who shall be appointed by the President by and with the advice and consent of the Senate. The Director of NIH shall perform functions as provided under subsection (b) of this section and as the Secretary may otherwise prescribe.

(b) Duties and authority

In carrying out the purposes of section 241 of this title, the Secretary, acting through the Director of NIH—

(1) shall be responsible for the overall direction of the National Institutes of Health and for the establishment and implementation of general policies respecting the management and operation of programs and activities within the National Institutes of Health;

(2) shall coordinate and oversee the operation of the national research institutes and administrative entities within the National Institutes of Health;

(3) shall assure that research at or supported by the National Institutes of Health is subject to review in accordance with section 289a of this title;

(4) for the national research institutes and administrative entities within the National Institutes of Health—

(A) may acquire, construct, improve, repair, operate, and maintain, at the site of such institutes and entities, laboratories, and other research facilities, other facilities, equipment, and other real or personal property, and

(B) may acquire, without regard to section 8141 of title 40, by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for use for a period not to exceed ten years;

(5) may secure resources for research conducted by or through the National Institutes of Health;

(6) may, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, establish such technical and scientific peer review groups and scientific program advisory committees as are needed to carry out the requirements of this subchapter and appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for service as members of such groups;

(7) may secure for the National Institutes of Health consultation services and advice of persons from the United States or abroad;

(8) may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, with or without reimbursement therefor;

(9) may, for purposes of study, admit and treat at facilities of the National Institutes of Health individuals not otherwise eligible for such treatment;

(10) may accept voluntary and uncompensated services;

(11) may perform such other administrative functions as the Secretary determines are needed to effectively carry out this subchapter;

(12) after consultation with the Director of the Office of Research on Women's Health, shall ensure that resources of the National Institutes of Health are sufficiently allocated for projects of research on women's health that are identified under section 287d(b) of this title;

(13) may conduct and support research training—

(A) for which fellowship support is not provided under section 288 of this title; and

(B) which does not consist of residency training of physicians or other health professionals; and

(14) may appoint physicians, dentists, and other health care professionals, subject to the provisions of title 5 relating to appointments and classifications in the competitive service, and may compensate such professionals subject to the provisions of chapter 74 of title 38.

The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under paragraph (6). The members of such a group shall be individuals who by virtue of their training or experience are eminently qualified to perform the review functions of such group. Not more than one-fourth of the members of any such group shall be officers or employees of the United States.

(c) Availability of substances and organisms for research

The Director of NIH may make available to individuals and entities, for biomedical and behavioral research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

(d) Services of experts or consultants; number; payment of expenses, conditions, recovery

(1) The Director of NIH may obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the period of service) the services of not more than 220 experts or consultants, with scientific or other professional qualifications, for the National Institutes of Health.

(2)(A) Except as provided in subparagraph (B), experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed, in accordance with title 5, for their travel to and from their place of service and for other expenses associated with their assignment.

(B) Expenses specified in subparagraph (A) shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

(e) Dissemination of research information

The Director of NIH shall—

(1) advise the agencies of the National Institutes of Health on medical applications of research;

(2) coordinate, review, and facilitate the systematic identification and evaluation of, clinically relevant information from research conducted by or through the national research institutes;

(3) promote the effective transfer of the information described in paragraph (2) to the health care community and to entities that require such information;

(4) monitor the effectiveness of the activities described in paragraph (3); and

(5) ensure that, after January 1, 1994, all new or revised health education and promotion materials developed or funded by the National Institutes of Health and intended for the general public are in a form that does not exceed a level of functional literacy, as defined in the National Literacy Act of 1991 (Public Law 102–73).

(f) Associate Director for Prevention; functions

There shall be in the National Institutes of Health an Associate Director for Prevention. The Director of NIH shall delegate to the Associate Director for Prevention the functions of the Director relating to the promotion of the disease prevention research programs of the national research institutes and the coordination of such programs among the national research institutes and between the national research institutes and other public and private entities, including elementary, secondary, and post-secondary schools. The Associate Director shall—

(1) annually review the efficacy of existing policies and techniques used by the national research institutes to disseminate the results of disease prevention and behavioral research programs; and

(2) recommend, coordinate, and oversee the modification or reconstruction of such policies and techniques to ensure maximum dissemination, using advanced technologies to the maximum extent practicable, of research results to such entities.

(g) Enhancing competitiveness of certain entities in obtaining research funds

(1)(A) In the case of entities described in subparagraph (B), the Director of NIH, acting through the Director of the National Center for Research Resources, shall establish a program to enhance the competitiveness of such entities in obtaining funds from the national research institutes for conducting biomedical and behavioral research.

(B) The entities referred to in subparagraph (A) are entities that conduct biomedical and behavioral research and are located in a State in which the aggregate success rate for applications to the national research institutes for assistance for such research by the entities in the State has historically constituted a low success rate of obtaining such funds, relative to such aggregate rate for such entities in other States.

(C) With respect to enhancing competitiveness for purposes of subparagraph (A), the Director of NIH, in carrying out the program established under such subparagraph, may—

(i) provide technical assistance to the entities involved, including technical assistance in the preparation of applications for obtaining funds from the national research institutes;

(ii) assist the entities in developing a plan for biomedical or behavioral research proposals; and

(iii) assist the entities in implementing such plan.

(2) The Director of NIH shall establish a program of supporting projects of biomedical or behavioral research whose principal researchers are individuals who have not previously served as the principal researchers of such projects supported by the Director.

(h) Increased participation of women and disadvantaged individuals in biomedical and behavioral research

The Secretary, acting through the Director of NIH and the Directors of the agencies of the National Institutes of Health, shall, in conducting and supporting programs for research, research training, recruitment, and other activities, provide for an increase in the number of women and individuals from disadvantaged backgrounds (including racial and ethnic minorities) in the fields of biomedical and behavioral research.

(i) Discretionary fund; uses; report to Congressional committees; authorization of appropriations

(1) There is established a fund, consisting of amounts appropriated under paragraph (3) and made available for the fund, for use by the Director of NIH to carry out the activities authorized in this chapter for the National Institutes

of Health. The purposes for which such fund may be expended include—

(A) providing for research on matters that have not received significant funding relative to other matters, responding to new issues and scientific emergencies, and acting on research opportunities of high priority;

(B) supporting research that is not exclusively within the authority of any single agency of such Institutes; and

(C) purchasing or renting equipment and quarters for activities of such Institutes.

(2) Not later than February 10 of each fiscal year, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities undertaken and expenditures made under this section during the preceding fiscal year. The report may contain such comments of the Secretary regarding this section as the Secretary determines to be appropriate.

(3) For the purpose of carrying out this subsection, there are authorized to be appropriated $25,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(j) Data bank of information on clinical trials for drugs for serious or life-threatening diseases and conditions

(1)(A) The Secretary, acting through the Director of NIH, shall establish, maintain, and operate a data bank of information on clinical trials for drugs for serious or life-threatening diseases and conditions (in this subsection referred to as the ''data bank''). The activities of the data bank shall be integrated and coordinated with related activities of other agencies of the Department of Health and Human Services, and to the extent practicable, coordinated with other data banks containing similar information.

(B) The Secretary shall establish the data bank after consultation with the Commissioner of Food and Drugs, the directors of the appropriate agencies of the National Institutes of Health (including the National Library of Medicine), and the Director of the Centers for Disease Control and Prevention.

(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. The Secretary shall disseminate such information through information systems, which shall include toll-free telephone communications, available to individuals with serious or life-threatening diseases and conditions, to other members of the public, to health care providers, and to researchers.

(3) The data bank shall include the following:

(A) A registry of clinical trials (whether federally or privately funded) of experimental treatments for serious or life-threatening diseases and conditions under regulations promulgated pursuant to section 355(i) of title 21, which provides a description of the purpose of each experimental drug, either with the consent of the protocol sponsor, or when a trial to test effectiveness begins. Information provided shall consist of eligibility criteria for participation in the clinical trials, a description of the location of trial sites, a point of contact for those wanting to enroll in the trial, and a description of whether, and through what procedure, the manufacturer or sponsor of the investigation of a new drug will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded protocol use of the new drug, particularly in children, and shall be in a form that can be readily understood by members of the public. Such information shall be forwarded to the data bank by the sponsor of the trial not later than 21 days after the approval of the protocol.

(B) Information pertaining to experimental treatments for serious or life-threatening diseases and conditions that may be available—

(i) under a treatment investigational new drug application that has been submitted to the Secretary under section 360bbb(c) of title 21; or

(ii) as a Group C cancer drug (as defined by the National Cancer Institute).

The data bank may also include information pertaining to the results of clinical trials of such treatments, with the consent of the sponsor, including information concerning potential toxicities or adverse effects associated with the use or administration of such experimental treatments.

(4) The data bank shall not include information relating to an investigation if the sponsor has provided a detailed certification to the Secretary that disclosure of such information would substantially interfere with the timely enrollment of subjects in the investigation, unless the Secretary, after the receipt of the certification, provides the sponsor with a detailed written determination that such disclosure would not substantially interfere with such enrollment.

(5) For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary. Fees collected under section 379h of title 21 shall not be used in carrying out this subsection.

(k) Day care for children of employees

(1) The Director of NIH may establish a program to provide day care services for the employees of the National Institutes of Health similar to those services provided by other Federal agencies (including the availability of day care service on a 24-hour-a-day basis).

(2) Any day care provider at the National Institutes of Health shall establish a sliding scale of fees that takes into consideration the income and needs of the employee.

(3) For purposes regarding the provision of day care services, the Director of NIH may enter into rental or lease purchase agreements.

***(l)* Interagency research on trauma**

The Director of NIH shall carry out the program established in part F of subchapter X of this chapter (relating to interagency research on trauma).

(July 1, 1944, ch. 373, title IV, § 402, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 823; amended

Pub. L. 100–607, title I, §111, Nov. 4, 1988, 102 Stat. 3052; Pub. L. 102–321, title I, §163(b)(3), July 10, 1992, 106 Stat. 376; Pub. L. 103–43, title I, §141(b), title II, §§201, 202, 206, 208, 210(b), (c), title III, §303(b), June 10, 1993, 107 Stat. 139, 144, 148–150, 153; Pub. L. 105–115, title I, §113(a), Nov. 21, 1997, 111 Stat. 2310; Pub. L. 105–362, title VI, §601(a)(1)(A), Nov. 10, 1998, 112 Stat. 3285; Pub. L. 105–392, title IV, §409, Nov. 13, 1998, 112 Stat. 3589; Pub. L. 107–109, §15(c)(2), Jan. 4, 2002, 115 Stat. 1420.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b)(6), (14), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (b)(6), is set out under section 5332 of Title 5, Government Organization and Employees.

The provisions of title 5 relating to classifications, referred to in subsec. (b)(14), are classified generally to chapter 51 (§5101 et seq.) and to subchapter III (§5331 et seq.) of chapter 53 of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (d)(2)(A), are classified generally to section 5701 et seq. of Title 5, Government Organization and Employees.

The National Literacy Act of 1991, referred to in subsec. (e)(5), is Pub. L. 102–73, July 25, 1991, 105 Stat. 333, as amended, which was repealed by Pub. L. 105–220, title II, §251(a)(2), Aug. 7, 1998, 112 Stat. 1079. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (b)(4)(B),''section 8141 of title 40'' substituted for ''the Act of March 3, 1877 (40 U.S.C. 34)'' on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2002—Subsec. (j)(3)(A). Pub. L. 107–109, which directed the amendment of the first sentence of subsec. (j)(3)(A) by substituting ''trial sites,'' for ''trial sites, and'' and ''in the trial, and a description of whether, and through what procedure, the manufacturer or sponsor of the investigation of a new drug will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded protocol use of the new drug, particularly in children,'' for ''in the trial,'', was executed by making the substitutions in the second sentence, to reflect the probable intent of Congress.

1998—Subsec. (b)(13), (14). Pub. L. 105–392 added pars. (13) and (14).

Subsec. (f). Pub. L. 105–362 inserted ''and'' at end of par. (1), substituted a period for ''; and'' at end of par. (2), and struck out par. (3) which read as follows: ''annually prepare and submit to the Director of NIH a report concerning the prevention and dissemination activities undertaken by the Associate Director, including—

''(A) a summary of the Associate Director's review of existing dissemination policies and techniques together with a detailed statement concerning any modification or restructuring, or recommendations for modification or restructuring, of such policies and techniques; and

''(B) a detailed statement of the expenditures made for the prevention and dissemination activities reported on and the personnel used in connection with such activities.''

1997—Subsecs. (j) to (*l*). Pub. L. 105–115 added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (*l*), respectively.

1993—Subsec. (b)(12). Pub. L. 103–43, §141(b), added par. (12).

Subsec. (e)(5). Pub. L. 103–43, §210(b), added par. (5).

Subsec. (f). Pub. L. 103–43, §201, substituted ''other public and private entities, including elementary, secondary, and post-secondary schools. The Associate Director shall—'' and pars. (1) to (3) for ''other public and private entities. The Associate Director shall annually report to the Director of NIH on the prevention activities undertaken by the Associate Director. The report shall include a detailed statement of the expenditures made for the activities reported on and the personnel used in connection with such activities''.

Subsec. (g). Pub. L. 103–43, §202, added subsec. (g).

Subsec. (h). Pub. L. 103–43, §206, added subsec. (h).

Subsec. (i). Pub. L. 103–43, §208, added subsec. (i).

Subsec. (j). Pub. L. 103–43, §210(c), added subsec. (j).

Subsec. (k). Pub. L. 103–43, §303(b), added subsec. (k).

1992—Subsec. (d)(1). Pub. L. 102–321 substituted ''220'' for ''two hundred''.

1988—Subsec. (b)(6). Pub. L. 100–607 inserted ''and scientific program advisory committees'' after ''peer review groups''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–115 effective 90 days after Nov. 21, 1997, except as otherwise provided, see section 501 of Pub. L. 105–115, set out as a note under section 321 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

COLLABORATION AND REPORT

Pub. L. 105–115, title I, §113(b), Nov. 21, 1997, 111 Stat. 2312, directed the Secretary of Health and Human Services, the Director of the National Institutes of Health, and the Commissioner of Food and Drugs to collaborate to determine the feasibility of including device investigations within the scope of the data bank under subsec. (j) of this section, with the Secretary to report to Congress, not later than two years after Nov. 21, 1997, on the public health need, if any, for inclusion of device investigations within the scope of the data bank under subsec. (j), and on the adverse impact, if any, on device innovation and research in the United States if information relating to such device investigations was required to be publicly disclosed.

CHRONIC FATIGUE SYNDROME; EXPERTS AND RESEARCH REPRESENTATIVES ON ADVISORY COMMITTEES AND BOARDS

Section 902(c) of Pub. L. 103–43 provided that: ''The Secretary of Health and Human Services, acting through the Director of the National Institutes of Health, shall ensure that appropriate individuals with expertise in chronic fatigue syndrome or neuromuscular diseases and representative of a variety of

disciplines and fields within the research community are appointed to appropriate National Institutes of Health advisory committees and boards.''

THIRD-PARTY PAYMENTS REGARDING CERTAIN CLINICAL TRIALS AND CERTAIN LIFE-THREATENING ILLNESSES

Section 1901(a) of Pub. L. 103–43 provided that: ''The Secretary of Health and Human Services, acting through the Director of the National Institutes of Health, shall conduct a study for the purpose of—

''(1) determining the policies of third-party payors regarding the payment of the costs of appropriate health services that are provided incident to the participation of individuals as subjects in clinical trials conducted in the development of drugs with respect to acquired immune deficiency syndrome, cancer, and other life-threatening illnesses; and

''(2) developing recommendations regarding such policies.''

PERSONNEL STUDY OF RECRUITMENT, RETENTION AND TURNOVER

Section 1905 of Pub. L. 103–43 directed Secretary of Health and Human Services, acting through Director of National Institutes of Health, to conduct a study to review the retention, recruitment, vacancy and turnover rates of support staff, including firefighters, law enforcement, procurement officers, technicians, nurses and clerical employees, to ensure that National Institutes of Health is adequately supporting conduct of efficient, effective and high quality research for the American public, and to submit a report to Congress on results of such study not later than 1 year after June 10, 1993.

CHRONIC PAIN CONDITIONS

Section 1907 of Pub. L. 103–43 directed Director of the National Institutes of Health to submit to Congress, not later than 2 years after June 10, 1993, a report and study on the incidence in the United States of cases of chronic pain, including chronic pain resulting from back injuries, reflex sympathetic dystrophy syndrome, temporomandibular joint disorder, post-herpetic neuropathy, painful diabetic neuropathy, phantom pain, and post-stroke pain, and the effect of such cases on the costs of health care in the United States.

SUPPORT FOR BIOENGINEERING RESEARCH

Section 1912 of Pub. L. 103–43 directed Secretary of Health and Human Services, acting through Director of the National Institutes of Health, to conduct a study for the purpose of determining the sources and amounts of public and private funding devoted to basic research in bioengineering, including biomaterials sciences, cellular bioprocessing, tissue and rehabilitation engineering, evaluating whether that commitment is sufficient to maintain the innovative edge that the United States has in these technologies, evaluating the role of the National Institutes of Health or any other Federal agency to achieve a greater commitment to innovation in bioengineering, and evaluating the need for better coordination and collaboration among Federal agencies and between the public and private sectors, and, not later than 1 year after June 10, 1993, to prepare and submit to Committee on Labor and Human Resources of Senate, and Committee on Energy and Commerce of House of Representatives, a report containing the findings of the study together with recommendations concerning the enactment of legislation to implement the results of such study.

MASTER PLAN FOR PHYSICAL INFRASTRUCTURE FOR RESEARCH

Section 2002 of Pub. L. 103–43 directed Secretary of Health and Human Services, acting through Director of the National Institutes of Health, not later than June 1, 1994, to present to Congress a master plan to provide for replacement or refurbishment of less than adequate buildings, utility equipment and distribution systems (including the resources that provide electrical and other utilities, chilled water, air handling, and other services that the Secretary, acting through the Director, deemed necessary), roads, walkways, parking areas, and grounds that underpin the laboratory and clinical facilities of the National Institutes of Health, and provided that the plan could make recommendations for the undertaking of new projects that are consistent with the objectives of this section, such as encircling the National Institutes of Health Federal enclave with an adequate chilled water conduit.

§ 283. Biennial report of Director to President and Congress; contents

The Secretary shall transmit to the President and to the Congress a biennial report which shall be prepared by the Director of NIH and which shall consist of—

(1) a description of the activities carried out by and through the National Institutes of Health and the policies respecting the programs of the National Institutes of Health and such recommendations respecting such policies as the Secretary considers appropriate;

(2) a description of the activities undertaken to improve grants and contracting accountability and technical and scientific peer review procedures of the National Institutes of Health and the national research institutes;

(3) the reports made by the Associate Director for Prevention under section 282(f) of this title during the period for which the biennial report is prepared;

(4) a description of the health related behavioral research that has been supported by the National Institutes of Health in the preceding 2-year period, and a description of any plans for future activity in such area; and

(5) the biennial reports of the Directors of each of the national research institutes, the Director of the Division of Research Resources, and the Director of the National Center for Nursing Research.

The first report under this section shall be submitted not later than July 1, 1986, and shall relate to the fiscal year ending September 30, 1985. The next report shall be submitted not later than December 30, 1988, and shall relate to the two-fiscal-year period ending on the preceding September 30. Each subsequent report shall be submitted not later than 90 days after the end of the two-fiscal-year period for which the report is to be submitted.

(July 1, 1944, ch. 373, title IV, § 403, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 826; amended Pub. L. 100–607, title I, § 112, Nov. 4, 1988, 102 Stat. 3052.)

AMENDMENTS

1988—Pars. (4), (5). Pub. L. 100–607 added par. (4) and redesignated former par. (4) as (5).

CHANGE OF NAME

Division of Research Resources changed to National Center for Research Resources by Pub. L. 103–43, title XV, § 1501, June 10, 1993, 107 Stat. 172.

National Center for Nursing Research changed to National Institute of Nursing Research by Pub. L. 103–43, title XV, § 1511, June 10, 1993, 107 Stat. 178.

§ 283a. Establishment of program regarding DES

(a) In general

The Director of NIH shall establish a program for the conduct and support of research and training, the dissemination of health information, and other programs with respect to the diagnosis and treatment of conditions associated with exposure to the drug diethylstilbestrol (in this section referred to as ''DES'').

(b) Education programs

In carrying out subsection (a) of this section, the Director of NIH, after consultation with nonprofit private entities representing individuals who have been exposed to DES, shall conduct or support programs to educate health professionals and the public on the drug, including the importance of identifying and treating individuals who have been exposed to the drug.

(c) Longitudinal studies

After consultation with the Office of Research on Women's Health, the Director of NIH, acting through the appropriate national research institutes, shall in carrying out subsection (a) of this section conduct or support one or more longitudinal studies to determine the incidence of the following diseases or disorders in the indicated populations and the relationship of DES to the diseases or disorders:

(1) In the case of women to whom (on or after January 1, 1938) DES was administered while the women were pregnant, the incidence of all diseases and disorders (including breast cancer, gynecological cancers, and impairments of the immune system, including autoimmune disease).

(2) In the case of women exposed to DES in utero, the incidence of clear cell cancer (including recurrences), the long-term health effects of such cancer, and the effects of treatments for such cancer.

(3) In the case of men and women exposed to DES in utero, the incidence of all diseases and disorders (including impairments of the reproductive and autoimmune systems).

(4) In the case of children of men or women exposed to DES in utero, the incidence of all diseases and disorders.

(d) Exposure to DES in utero

For purposes of this section, an individual shall be considered to have been exposed to DES in utero if, during the pregnancy that resulted in the birth of such individual, DES was (on or after January 1, 1938) administered to the biological mother of the individual.

(e) Authorization of appropriations

In addition to any other authorization of appropriations available for the purpose of carrying out this section, there are authorized to be appropriated for such purpose such sums as may be necessary for each of the fiscal years 1993 through 2003.

(July 1, 1944, ch. 373, title IV, § 403A, as added Pub. L. 102–409, § 2, Oct. 13, 1992, 106 Stat. 2092; amended Pub. L. 105–340, title I, § 101(a), Oct. 31, 1998, 112 Stat. 3191.)

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–340 substituted ''2003'' for ''1996''.

§ 283b. Repealed. Pub. L. 106–525, title I, § 101(b)(2), Nov. 22, 2000, 114 Stat. 2501

Section, act July 1, 1944, ch. 373, title IV, § 404, as added Pub. L. 103–43, title I, § 151, June 10, 1993, 107 Stat. 139, related to the establishment and purpose of the Office of Research on Minority Health.

§ 283c. Office of Behavioral and Social Sciences Research

(a) There is established within the Office of the Director of NIH an office to be known as the Office of Behavioral and Social Sciences Research (in this section referred to as the ''Office''). The Office shall be headed by a director, who shall be appointed by the Director of NIH.

(b)(1) With respect to research on the relationship between human behavior and the development, treatment, and prevention of medical conditions, the Director of the Office shall—

(A) coordinate research conducted or supported by the agencies of the National Institutes of Health; and

(B) identify projects of behavioral and social sciences research that should be conducted or supported by the national research institutes, and develop such projects in cooperation with such institutes.

(2) Research authorized under paragraph (1) includes research on teen pregnancy, infant mortality, violent behavior, suicide, and homelessness. Such research does not include neurobiological research, or research in which the behavior of an organism is observed for the purpose of determining activity at the cellular or molecular level.

(July 1, 1944, ch. 373, title IV, § 404A, as added Pub. L. 103–43, title II, § 203(a), June 10, 1993, 107 Stat. 145.)

EFFECTIVE DATE

Section 203(c) of Pub. L. 103–43 provided that: ''The amendment described in subsection (a) [enacting this section] is made upon the date of the enactment of this Act [June 10, 1993] and takes effect July 1, 1993. Subsection (b) [107 Stat. 145] takes effect on such date.''

§ 283d. Children's Vaccine Initiative

(a) Development of new vaccines

The Secretary, in consultation with the Director of the National Vaccine Program under subchapter XIX of this chapter and acting through the Directors of the National Institute for Allergy and Infectious Diseases, the National Institute for Child Health and Human Development, the National Institute for Aging, and other public and private programs, shall carry out activities, which shall be consistent with the global Children's Vaccine Initiative, to develop affordable new and improved vaccines to be used in the United States and in the developing world that will increase the efficacy and efficiency of the prevention of infectious diseases. In carrying out such activities, the Secretary shall, to the extent practicable, develop and make available vaccines that require fewer contacts to deliver, that can be given early in life, that provide long lasting protection, that obviate refrigeration, needles and syringes, and that protect against a larger number of diseases.

(b) Report

In the report required in section 300aa–4[1] of this title, the Secretary, acting through the Director of the National Vaccine Program under subchapter XIX of this chapter, shall include information with respect to activities and the progress made in implementing the provisions of this section and achieving its goals.

(c) Authorization of appropriations

In addition to any other amounts authorized to be appropriated for activities of the type described in this section, there are authorized to be appropriated to carry out this section $20,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(July 1, 1944, ch. 373, title IV, § 404B, as added Pub. L. 103–43, title II, § 204, June 10, 1993, 107 Stat. 146.)

REFERENCES IN TEXT

Section 300aa–4 of this title, referred to in subsec. (b), was repealed by Pub. L. 105–362, title VI, § 601(a)(1)(H), Nov. 10, 1998, 112 Stat. 3285.

§ 283e. Plan for use of animals in research

(a) Preparation

The Director of NIH, after consultation with the committee established under subsection (e) of this section, shall prepare a plan—

(1) for the National Institutes of Health to conduct or support research into—

(A) methods of biomedical research and experimentation that do not require the use of animals;

(B) methods of such research and experimentation that reduce the number of animals used in such research;

(C) methods of such research and experimentation that produce less pain and distress in such animals; and

(D) methods of such research and experimentation that involve the use of marine life (other than marine mammals);

(2) for establishing the validity and reliability of the methods described in paragraph (1);

(3) for encouraging the acceptance by the scientific community of such methods that have been found to be valid and reliable; and

(4) for training scientists in the use of such methods that have been found to be valid and reliable.

(b) Submission to Congressional committees

Not later than October 1, 1993, the Director of NIH shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, the plan required in subsection (a) of this section and shall begin implementation of the plan.

(c) Periodic review and revision

The Director of NIH shall periodically review, and as appropriate, make revisions in the plan required under subsection (a) of this section. A description of any revision made in the plan shall be included in the first biennial report under section 283 of this title that is submitted after the revision is made.

(d) Dissemination of information

The Director of NIH shall take such actions as may be appropriate to convey to scientists and others who use animals in biomedical or behavioral research or experimentation information respecting the methods found to be valid and reliable under subsection (a)(2) of this section.

(e) Interagency Coordinating Committee on the Use of Animals in Research

(1) The Director of NIH shall establish within the National Institutes of Health a committee to be known as the Interagency Coordinating Committee on the Use of Animals in Research (in this subsection referred to as the ''Committee'').

(2) The Committee shall provide advice to the Director of NIH on the preparation of the plan required in subsection (a) of this section.

(3) The Committee shall be composed of—

(A) the Directors of each of the national research institutes and the Director of the Center for Research Resources (or the designees of such Directors); and

(B) representatives of the Environmental Protection Agency, the Food and Drug Administration, the Consumer Product Safety Commission, the National Science Foundation, and such additional agencies as the Director of NIH determines to be appropriate, which representatives shall include not less than one veterinarian with expertise in laboratory-animal medicine.

(July 1, 1944, ch. 373, title IV, § 404C, as added Pub. L. 103–43, title II, § 205(a), June 10, 1993, 107 Stat. 146.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 283f. Requirements regarding surveys of sexual behavior

With respect to any survey of human sexual behavior proposed to be conducted or supported through the National Institutes of Health, the survey may not be carried out unless—

(1) the proposal has undergone review in accordance with any applicable requirements of sections 289 and 289a of this title; and

(2) the Secretary, in accordance with section 289a–1 of this title, makes a determination that the information expected to be obtained through the survey will assist—

[1] See References in Text note below.

(A) in reducing the incidence of sexually transmitted diseases, the incidence of infection with the human immunodeficiency virus, or the incidence of any other infectious disease; or

(B) in improving reproductive health or other conditions of health.

(July 1, 1944, ch. 373, title IV, § 404D, as added Pub. L. 103–43, title II, § 207, June 10, 1993, 107 Stat. 148.)

PROHIBITION AGAINST SHARP ADULT SEX SURVEY AND AMERICAN TEENAGE SEX SURVEY

Section 2015 of Pub. L. 103–43 provided that: ''The Secretary of Health and Human Services may not during fiscal year 1993 or any subsequent fiscal year conduct or support the SHARP survey of adult sexual behavior or the American Teenage Study of adolescent sexual behavior. This section becomes effective on the date of the enactment of this Act [June 10, 1993].''

§ 283g. Muscular dystrophy; initiative through Director of National Institutes of Health

(a) Expansion, intensification, and coordination of activities

(1) In general

The Director of NIH, in coordination with the Directors of the National Institute of Neurological Disorders and Stroke, the National Institute of Arthritis and Muscoskeletal and Skin Diseases, the National Institute of Child Health and Human Development, and the other national research institutes as appropriate, shall expand and intensify programs of such Institutes with respect to research and related activities concerning various forms of muscular dystrophy, including Duchenne, myotonic, facioscapulohumeral muscular dystrophy (referred to in this section as ''FSHD'') and other forms of muscular dystrophy.

(2) Coordination

The Directors referred to in paragraph (1) shall jointly coordinate the programs referred to in such paragraph and consult with the Muscular Dystrophy Interagency Coordinating Committee established under section 6 of the MD–CARE Act.[1]

(3) Allocations by Director of NIH

The Director of NIH shall allocate the amounts appropriated to carry out this section for each fiscal year among the national research institutes referred to in paragraph (1).

(b) Centers of excellence

(1) In general

The Director of NIH shall award grants and contracts under subsection (a)(1) of this section to public or nonprofit private entities to pay all or part of the cost of planning, establishing, improving, and providing basic operating support for centers of excellence regarding research on various forms of muscular dystrophy.

(2) Research

Each center under paragraph (1) shall supplement but not replace the establishment of a comprehensive research portfolio in all the muscular dystrophies. As a whole, the centers shall conduct basic and clinical research in all forms of muscular dystrophy including early detection, diagnosis, prevention, and treatment, including the fields of muscle biology, genetics, noninvasive imaging, genetics, pharmacological and other therapies.

(3) Coordination of centers; reports

The Director of NIH—

(A) shall, as appropriate, provide for the coordination of information among centers under paragraph (1) and ensure regular communication between such centers; and

(B) shall require the periodic preparation of reports on the activities of the centers and the submission of the reports to the Director.

(4) Organization of centers

Each center under paragraph (1) shall use the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such requirements as may be prescribed by the Director of NIH.

(5) Duration of support

Support for a center established under paragraph (1) may be provided under this section for a period of not to exceed 5 years. Such period may be extended for 1 or more additional periods not exceeding 5 years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director of NIH and if such group has recommended to the Director that such period should be extended.

(c) Facilitation of research

The Director of NIH shall provide for a program under subsection (a)(1) of this section under which samples of tissues and genetic materials that are of use in research on muscular dystrophy are donated, collected, preserved, and made available for such research. The program shall be carried out in accordance with accepted scientific and medical standards for the donation, collection, and preservation of such samples.

(d) Coordinating Committee

(1) In general

The Secretary shall establish the Muscular Dystrophy Coordinating Committee (referred to in this section as the ''Coordinating Committee'') to coordinate activities across the National Institutes and with other Federal health programs and activities relating to the various forms of muscular dystrophy.

(2) Composition

The Coordinating Committee shall consist of not more than 15 members to be appointed by the Secretary, of which—

(A) ⅔ of such members shall represent governmental agencies, including the directors or their designees of each of the national research institutes involved in research with respect to muscular dystrophy and representatives of all other Federal departments and agencies whose programs involve health functions or responsibilities relevant

[1] See References in Text note below.

to such diseases, including the Centers for Disease Control and Prevention, the Health Resources and Services Administration and the Food and Drug Administration and representatives of other governmental agencies that serve children with muscular dystrophy, such as the Department of Education; and

(B) ⅓ of such members shall be public members, including a broad cross section of persons affected with muscular dystrophies including parents or legal guardians, affected individuals, researchers, and clinicians.

Members appointed under subparagraph (B) shall serve for a term of 3 years, and may serve for an unlimited number of terms if reappointed.

(3) Chair

(A) In general

With respect to muscular dystrophy, the Chair of the Coordinating Committee shall serve as the principal advisor to the Secretary, the Assistant Secretary for Health, and the Director of NIH, and shall provide advice to the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, and to the heads of other relevant agencies. The Coordinating Committee shall select the Chair for a term not to exceed 2 years.

(B) Appointment

The Chair of the Committee shall be appointed by and be directly responsible to the Secretary.

(4) Administrative support; terms of service; other provisions

The following shall apply with respect to the Coordinating Committee:

(A) The Coordinating Committee shall receive necessary and appropriate administrative support from the Department of Health and Human Services.

(B) The Coordinating Committee shall meet as appropriate as determined by the Secretary, in consultation with the chair.[2]

(e) Plan for HHS activities

(1) In general

Not later than 1 year after December 18, 2001, the Coordinating Committee shall develop a plan for conducting and supporting research and education on muscular dystrophy through the national research institutes and shall periodically review and revise the plan. The plan shall—

(A) provide for a broad range of research and education activities relating to biomedical, epidemiological, psychosocial, and rehabilitative issues, including studies of the impact of such diseases in rural and underserved communities;

(B) identify priorities among the programs and activities of the National Institutes of Health regarding such diseases; and

(C) reflect input from a broad range of scientists, patients, and advocacy groups.

(2) Certain elements of plan

The plan under paragraph (1) shall, with respect to each form of muscular dystrophy, provide for the following as appropriate:

(A) Research to determine the reasons underlying the incidence and prevalence of various forms of muscular dystrophy.

(B) Basic research concerning the etiology and genetic links of the disease and potential causes of mutations.

(C) The development of improved screening techniques.

(D) Basic and clinical research for the development and evaluation of new treatments, including new biological agents.

(E) Information and education programs for health care professionals and the public.

(f) Reports to Congress

The Coordinating Committee shall biennially submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, a report that describes the research, education, and other activities on muscular dystrophy being conducted or supported through the Department of Health and Human Services. Each such report shall include the following:

(1) The plan under subsection (e)(1) of this section (or revisions to the plan, as the case may be).

(2) Provisions specifying the amounts expended by the Department of Health and Human Services with respect to various forms of muscular dystrophy, including Duchenne, myotonic, FSHD and other forms of muscular dystrophy.

(3) Provisions identifying particular projects or types of projects that should in the future be considered by the national research institutes or other entities in the field of research on all muscular dystrophies.

(g) Public input

The Secretary shall, under subsection (a)(1) of this section, provide for a means through which the public can obtain information on the existing and planned programs and activities of the Department of Health and Human Services with respect to various forms of muscular dystrophy and through which the Secretary can receive comments from the public regarding such programs and activities.

(h) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2002 through 2006. The authorization of appropriations established in the preceding sentence is in addition to any other authorization of appropriations that is available for conducting or supporting through the National Institutes of Health research and other activities with respect to muscular dystrophy.

(July 1, 1944, ch. 373, title IV, § 404E, as added Pub. L. 107–84, § 3, Dec. 18, 2001, 115 Stat. 824.)

REFERENCES IN TEXT

Section 6 of the MD–CARE Act, referred to in subsec. (a)(2), is section 6 of Pub. L. 107–84, which is set out as

[2] So in original. Probably should be capitalized.

a note under section 247b–18 of this title and does not relate to establishment of a coordinating committee. However, subsec. (d) of this section contains provisions relating to the establishment of the Muscular Dystrophy Coordinating Committee.

PRIOR PROVISIONS

A prior section 283g, act July 1, 1944, ch. 373, title IV, § 404E, as added Pub. L. 103–43, title II, § 209, June 10, 1993, 107 Stat. 149, related to Office of Alternative Medicine, prior to repeal by Pub. L. 105–277, div. A, § 101(f) [title VI, § 601(1)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–387.

§ 283h. Office of Rare Diseases

(a) Establishment

There is established within the Office of the Director of NIH an office to be known as the Office of Rare Diseases (in this section referred to as the ''Office''), which shall be headed by a Director (in this section referred to as the ''Director''), appointed by the Director of NIH.

(b) Duties

(1) In general

The Director of the Office shall carry out the following:

(A) The Director shall recommend an agenda for conducting and supporting research on rare diseases through the national research institutes and centers. The agenda shall provide for a broad range of research and education activities, including scientific workshops and symposia to identify research opportunities for rare diseases.

(B) The Director shall, with respect to rare diseases, promote coordination and cooperation among the national research institutes and centers and entities whose research is supported by such institutes.

(C) The Director, in collaboration with the directors of the other relevant institutes and centers of the National Institutes of Health, may enter into cooperative agreements with and make grants for regional centers of excellence on rare diseases in accordance with section 283i of this title.

(D) The Director shall promote the sufficient allocation of the resources of the National Institutes of Health for conducting and supporting research on rare diseases.

(E) The Director shall promote and encourage the establishment of a centralized clearinghouse for rare and genetic disease information that will provide understandable information about these diseases to the public, medical professionals, patients and families.

(F) The Director shall biennially prepare a report that describes the research and education activities on rare diseases being conducted or supported through the national research institutes and centers, and that identifies particular projects or types of projects that should in the future be conducted or supported by the national research institutes and centers or other entities in the field of research on rare diseases.

(G) The Director shall prepare the NIH Director's annual report to Congress on rare disease research conducted by or supported through the national research institutes and centers.

(2) Principal advisor regarding orphan diseases

With respect to rare diseases, the Director shall serve as the principal advisor to the Director of NIH and shall provide advice to other relevant agencies. The Director shall provide liaison with national and international patient, health and scientific organizations concerned with rare diseases.

(c) Definition

For purposes of this section, the term ''rare disease'' means any disease or condition that affects less than 200,000 persons in the United States.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as already have been appropriated for fiscal year 2002, and $4,000,000 for each of the fiscal years 2003 through 2006.

(July 1, 1944, ch. 373, title IV, § 404F, as added Pub. L. 107–280, § 3, Nov. 6, 2002, 116 Stat. 1989.)

FINDINGS AND PURPOSES

Pub. L. 107–280, § 2, Nov. 6, 2002, 116 Stat. 1988, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Rare diseases and disorders are those which affect small patient populations, typically populations smaller than 200,000 individuals in the United States. Such diseases and conditions include Huntington's disease, amyotrophic lateral sclerosis (Lou Gehrig's disease), Tourette syndrome, Crohn's disease, cystic fibrosis, cystinosis, and Duchenne muscular dystrophy.

''(2) For many years, the 25,000,000 Americans suffering from the over 6,000 rare diseases and disorders were denied access to effective medicines because prescription drug manufacturers could rarely make a profit from marketing drugs for such small groups of patients. The prescription drug industry did not adequately fund research into such treatments. Despite the urgent health need for these medicines, they came to be known as 'orphan drugs' because no companies would commercialize them.

''(3) During the 1970s, an organization called the National Organization for Rare Disorders (NORD) was founded to provide services and to lobby on behalf of patients with rare diseases and disorders. NORD was instrumental in pressing Congress for legislation to encourage the development of orphan drugs.

''(4) The Orphan Drug Act [Pub. L. 97–414, see Short Title of 1983 Amendments note set out under section 301 of Title 21, Food and Drugs] created financial incentives for the research and production of such orphan drugs. New Federal programs at the National Institutes of Health and the Food and Drug Administration encouraged clinical research and commercial product development for products that target rare diseases. An Orphan Products Board was established to promote the development of drugs and devices for rare diseases or disorders.

''(5) Before 1983, some 38 orphan drugs had been developed. Since the enactment of the Orphan Drug Act [Jan. 4, 1983], more than 220 new orphan drugs have been approved and marketed in the United States and more than 800 additional drugs are in the research pipeline.

''(6) Despite the tremendous success of the Orphan Drug Act, rare diseases and disorders deserve greater emphasis in the national biomedical research enterprise. The Office of Rare Diseases at the National Institutes of Health was created in 1993, but lacks a statutory authorization.

''(7) The National Institutes of Health has received a substantial increase in research funding from Congress for the purpose of expanding the national investment of the United States in behavioral and biomedical research.

''(8) Notwithstanding such increases, funding for rare diseases and disorders at the National Institutes of Health has not increased appreciably.

''(9) To redress this oversight, the Department of Health and Human Services has proposed the establishment of a network of regional centers of excellence for research on rare diseases.

''(b) PURPOSES.—The purposes of this Act [see Short Title of 2002 Amendments note set out under section 201 of this title] are to—

''(1) amend the Public Health Service Act [this chapter] to establish an Office of Rare Diseases at the National Institutes of Health; and

''(2) increase the national investment in the development of diagnostics and treatments for patients with rare diseases and disorders.''

§ 283i. Rare disease regional centers of excellence

(a) Cooperative agreements and grants

(1) In general

The Director of the Office of Rare Diseases (in this section referred to as the ''Director''), in collaboration with the directors of the other relevant institutes and centers of the National Institutes of Health, may enter into cooperative agreements with and make grants to public or private nonprofit entities to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for regional centers of excellence for clinical research into, training in, and demonstration of diagnostic, prevention, control, and treatment methods for rare diseases.

(2) Policies

A cooperative agreement or grant under paragraph (1) shall be entered into in accordance with policies established by the Director of NIH.

(b) Coordination with other institutes

The Director shall coordinate the activities under this section with similar activities conducted by other national research institutes, centers and agencies of the National Institutes of Health and by the Food and Drug Administration to the extent that such institutes, centers and agencies have responsibilities that are related to rare diseases.

(c) Uses for Federal payments under cooperative agreements or grants

Federal payments made under a cooperative agreement or grant under subsection (a) of this section may be used for—

(1) staffing, administrative, and other basic operating costs, including such patient care costs as are required for research;

(2) clinical training, including training for allied health professionals, continuing education for health professionals and allied health professions personnel, and information programs for the public with respect to rare diseases; and

(3) clinical research and demonstration programs.

(d) Period of support; additional periods

Support of a center under subsection (a) of this section may be for a period of not to exceed 5 years. Such period may be extended by the Director for additional periods of not more than 5 years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as already have been appropriated for fiscal year 2002, and $20,000,000 for each of the fiscal years 2003 through 2006.

(July 1, 1944, ch. 373, title IV, § 404G, as added Pub. L. 107–280, § 4, Nov. 6, 2002, 116 Stat. 1990.)

PART B—GENERAL PROVISIONS RESPECTING NATIONAL RESEARCH INSTITUTES

§ 284. Directors of national research institutes

(a) Appointment

The Director of the National Cancer Institute shall be appointed by the President and the Directors of the other national research institutes shall be appointed by the Secretary. Each Director of a national research institute shall report directly to the Director of NIH.

(b) Duties and authority; grants, contracts, and cooperative agreements

(1) In carrying out the purposes of section 241 of this title with respect to human diseases or disorders or other aspects of human health for which the national research institutes were established, the Secretary, acting through the Director of each national research institute—

(A) shall encourage and support research, investigations, experiments, demonstrations, and studies in the health sciences related to—

(i) the maintenance of health,

(ii) the detection, diagnosis, treatment, and prevention of human diseases and disorders,

(iii) the rehabilitation of individuals with human diseases, disorders, and disabilities, and

(iv) the expansion of knowledge of the processes underlying human diseases, disorders, and disabilities, the processes underlying the normal and pathological functioning of the body and its organ systems, and the processes underlying the interactions between the human organism and the environment;

(B) may, subject to the peer review prescribed under section 289a(b) of this title and any advisory council review under section 284a(a)(3)(A)(i) of this title, conduct the research, investigations, experiments, demonstrations, and studies referred to in subparagraph (A);

(C) may conduct and support research training (i) for which fellowship support is not provided under section 288 of this title, and (ii) which is not residency training of physicians or other health professionals;

(D) may develop, implement, and support demonstrations and programs for the application of the results of the activities of the institute to clinical practice and disease prevention activities;

(E) may develop, conduct, and support public and professional education and information programs;

(F) may secure, develop and maintain, distribute, and support the development and maintenance of resources needed for research;

(G) may make available the facilities of the institute to appropriate entities and individuals engaged in research activities and cooperate with and assist Federal and State agencies charged with protecting the public health;

(H) may accept unconditional gifts made to the institute for its activities, and, in the case of gifts of a value in excess of $50,000, establish suitable memorials to the donor;

(I) may secure for the institute consultation services and advice of persons from the United States or abroad;

(J) may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, with or without reimbursement therefor;

(K) may accept voluntary and uncompensated services; and

(L) may perform such other functions as the Secretary determines are needed to carry out effectively the purposes of the institute.

The indemnification provisions of section 2354 of title 10 shall apply with respect to contracts entered into under this subsection and section 282(b) of this title.

(2) Support for an activity or program under this subsection may be provided through grants, contracts, and cooperative agreements. The Secretary, acting through the Director of each national research institute—

(A) may enter into a contract for research, training, or demonstrations only if the contract has been recommended after technical and scientific peer review required by regulations under section 289a of this title;

(B) may make grants and cooperative agreements under paragraph (1) for research, training, or demonstrations, except that—

(i) if the direct cost of the grant or cooperative agreement to be made does not exceed $50,000, such grant or cooperative agreement may be made only if such grant or cooperative agreement has been recommended after technical and scientific peer review required by regulations under section 289a of this title, and

(ii) if the direct cost of the grant or cooperative agreement to be made exceeds $50,000, such grant or cooperative agreement may be made only if such grant or cooperative agreement has been recommended after technical and scientific peer review required by regulations under section 289a of this title and is recommended under section 284a(a)(3)(A)(ii) of this title by the advisory council for the national research institute involved; and

(C) shall, subject to section 300cc–40b(d)(2) of this title, receive from the President and the Office of Management and Budget directly all funds appropriated by the Congress for obligation and expenditure by the Institute.

(c) Coordination with other public and private entities; cooperation with other national research institutes; appointment of additional peer review groups

In carrying out subsection (b) of this section, each Director of a national research institute—

(1) shall coordinate, as appropriate, the activities of the institute with similar programs of other public and private entities;

(2) shall cooperate with the Directors of the other national research institutes in the development and support of multidisciplinary research and research that involves more than one institute;

(3) may, in consultation with the advisory council for the Institute and with the approval of the Director of NIH—

(A) establish technical and scientific peer review groups in addition to those appointed under section 282(b)(6) of this title; and

(B) appoint the members of peer review groups established under subparagraph (A); and

(4) may publish, or arrange for the publication of, information with respect to the purpose of the Institute without regard to section 501 of title 44.

The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under paragraph (3).

(July 1, 1944, ch. 373, title IV, § 405, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 826; amended Pub. L. 100–607, title I, § 116, Nov. 4, 1988, 102 Stat. 3053; Pub. L. 100–690, title II, § 2613(c), Nov. 18, 1988, 102 Stat. 4239; Pub. L. 103–43, title III, § 301(a)(1), (b), June 10, 1993, 107 Stat. 150.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1993—Subsec. (b)(2)(C). Pub. L. 103–43, § 301(a)(1), added subpar. (C).

Subsec. (c). Pub. L. 103–43, § 301(b)(2), inserted concluding provisions relating to Federal Advisory Committee Act.

Subsec. (c)(3). Pub. L. 103–43, § 301(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''may, in consultation with the advisory council for the Institute and the approval of the Director of NIH, establish and appoint technical and scientific peer review groups in addition to those established and appointed under section 282(b)(6) of this title; and''.

1988—Subsec. (b)(1). Pub. L. 100–607, § 116(1), struck out ''the'' after ''with respect to'' in introductory provisions.

Subsec. (c)(3). Pub. L. 100–690 substituted ''establish and appoint'' and ''established and appointed'' for ''establish'' and ''established'', respectively.

Pub. L. 100–607, § 116(2)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''may, with the approval of the advisory council for the institute and the Director of NIH, appoint technical and scientific peer review groups in addition to those appointed under section 282(b)(6) of this title.''

Subsec. (c)(4). Pub. L. 100–607, § 116(2)(C), added par. (4).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 284a. Advisory councils

(a) Establishment; acceptance of conditional gifts; functions

(1) Except as provided in subsection (h) of this section, the Secretary shall appoint an advisory council for each national research institute which (A) shall advise, assist, consult with, and make recommendations to the Secretary and the Director of such institute on matters related to the activities carried out by and through the institute and the policies respecting such activities, and (B) shall carry out the special functions prescribed by part C of this subchapter.

(2) Each advisory council for a national research institute may recommend to the Secretary acceptance, in accordance with section 238 of this title, of conditional gifts for study, investigation, or research respecting the diseases, disorders, or other aspect of human health with respect to which the institute was established, for the acquisition of grounds, or for the construction, equipping, or maintenance of facilities for the institute.

(3) Each advisory council for a national research institute—

(A)(i) may on the basis of the materials provided under section 289a(b)(2) of this title respecting research conducted at the institute, make recommendations to the Director of the institute respecting such research,

(ii) may review applications for grants and cooperative agreements for research or training and for which advisory council approval is required under section 284(b)(2) of this title and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the institute;

(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspect of human health with respect to which the institute was established and with the approval of the Director of the institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership; compensation

(1) Each advisory council shall consist of ex officio members and not more than eighteen members appointed by the Secretary. The ex officio members shall be nonvoting members.

(2) The ex officio members of an advisory council shall consist of—

(A) the Secretary, the Director of NIH, the Director of the national research institute for which the council is established, the Under Secretary for Health of the Department of Veterans Affairs or the Chief Dental Director of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) The members of an advisory council who are not ex officio members shall be appointed as follows:

(A) Two-thirds of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including not less than two individuals who are leaders in the fields of public health and the behavioral or social sciences) relevant to the activities of the national research institute for which the advisory council is established.

(B) One-third of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, law, health policy, economics, and management.

(4) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day (including traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule.

(c) Term of office; reappointment; vacancy

The term of office of an appointed member of an advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term for 180 days after the date of such expiration. A member who has been appointed for a term of four years may not be reappointed to an advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

(d) Chairman; term of office

The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the national research institute for which the advisory council is established to be the chairman of the advisory council. The term of office of the chairman shall be two years.

(e) Meetings

The advisory council shall meet at the call of the chairman or upon the request of the Direc-

tor of the national research institute for which it was established, but at least three times each fiscal year. The location of the meetings of each advisory council is subject to the approval of the Director of the national research institute for which the advisory council was established.

(f) Appointment of executive secretary; training and orientation for new members

The Director of the national research institute for which an advisory council is established shall designate a member of the staff of the institute to serve as the executive secretary of the advisory council. The Director of such institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of such institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

(g) Comments and recommendations for inclusion in biennial report; additional reports

Each advisory council may prepare, for inclusion in the biennial report made under section 284b of this title, (1) comments respecting the activities of the advisory council in the fiscal years respecting which the report is prepared, (2) comments on the progress of the national research institute for which it was established in meeting its objectives, and (3) recommendations respecting the future directions and program and policy emphasis of the institute. Each advisory council may prepare such additional reports as it may determine appropriate.

(h) Advisory councils in existence; application of section to National Cancer Advisory Board and advisory council to National Heart, Lung, and Blood Institute

(1) Except as provided in paragraph (2), this section does not terminate the membership of any advisory council for a national research institute which was in existence on November 20, 1985. After November 20, 1985—

(A) the Secretary shall make appointments to each such advisory council in such a manner as to bring about as soon as practicable the composition for such council prescribed by this section;

(B) each advisory council shall organize itself in accordance with this section and exercise the functions prescribed by this section; and

(C) the Director of each national research institute shall perform for such advisory council the functions prescribed by this section.

(2)(A) The National Cancer Advisory Board shall be the advisory council for the National Cancer Institute. This section applies to the National Cancer Advisory Board, except that—

(i) appointments to such Board shall be made by the President;

(ii) the term of office of an appointed member shall be 6 years;

(iii) of the members appointed to the Board not less than five members shall be individuals knowledgeable in environmental carcinogenesis (including carcinogenesis involving occupational and dietary factors);

(iv) the chairman of the Board shall be selected by the President from the appointed members and shall serve as chairman for a term of two years;

(v) the ex officio members of the Board shall be nonvoting members and shall be the Secretary, the Director of the Office of Science and Technology Policy, the Director of NIH, the Under Secretary for Health of the Department of Veterans Affairs, the Director of the National Institute for Occupational Safety and Health, the Director of the National Institute of Environmental Health Sciences, the Secretary of Labor, the Commissioner of the Food and Drug Administration, the Administrator of the Environmental Protection Agency, the Chairman of the Consumer Product Safety Commission, the Assistant Secretary of Defense for Health Affairs, and the Director of the Office of Science of the Department of Energy (or the designees of such officers); and

(vi) the Board shall meet at least four times each fiscal year.

(B) This section applies to the advisory council to the National Heart, Lung, and Blood Institute, except that the advisory council shall meet at least four times each fiscal year.

(July 1, 1944, ch. 373, title IV, § 406, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 828; amended Pub. L. 100–607, title I, § 117, Nov. 4, 1988, 102 Stat. 3053; Pub. L. 101–381, title I, § 102(1), Aug. 18, 1990, 104 Stat. 585; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 103–43, title II, § 210(a), title XX, §§ 2008(b)(1), 2010(b)(2), June 10, 1993, 107 Stat. 149, 210, 214; Pub. L. 105–245, title III, § 309(b)(2)(C), Oct. 7, 1998, 112 Stat. 1853.)

AMENDMENTS

1998—Subsec. (h)(2)(A)(v). Pub. L. 105–245 substituted ''Science of the Department of Energy'' for ''Energy Research of the Department of Energy''.

1993—Subsec. (a)(2). Pub. L. 103–43, § 2010(b)(2), substituted ''section 238'' for ''section 300aaa''.

Subsec. (b)(2)(A). Pub. L. 103–43, § 2008(b)(1)(A), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in two places.

Subsec. (c). Pub. L. 103–43, § 210(a), substituted ''for 180 days after the date of such expiration'' for ''until a successor has taken office''.

Subsec. (h)(2)(A)(v). Pub. L. 103–43, § 2008(b)(1)(B), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsecs. (b)(2)(A), (h)(2)(A)(v). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1990—Subsec. (a)(2). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

1988—Subsec. (b)(1). Pub. L. 100–607, § 117(a), inserted at end ''The ex officio members shall be nonvoting members.''

Subsec. (b)(3)(A). Pub. L. 100–607, § 117(b), inserted ''not less than two individuals who are leaders in the fields of'' after ''(including''.

Subsec. (h)(2)(A)(v). Pub. L. 100–607, § 117(c), inserted ''shall be nonvoting members and'' after ''Board'' and substituted ''the Assistant Secretary of Defense for Health Affairs, and the Director of the Office of Energy Research of the Department of Energy'' for ''and the Assistant Secretary of Defense for Health Affairs''.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year

period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 284b. Biennial report

The Director of each national research institute, after consultation with the advisory council for the institute, shall prepare for inclusion in the biennial report made under section 283 of this title a biennial report which shall consist of a description of the activities of the institute and program policies of the Director of the institute in the fiscal years respecting which the report is prepared. The Director of each national research institute may prepare such additional reports as the Director determines appropriate. The Director of each national research institute shall provide the advisory council for the institute an opportunity for the submission of the written comments referred to in section 284a(g) of this title.

(July 1, 1944, ch. 373, title IV, § 407, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 831.)

§ 284c. Certain uses of funds

(a)(1) Except as provided in paragraph (2), the sum of the amounts obligated in any fiscal year for administrative expenses of the National Institutes of Health may not exceed an amount which is 5.5 percent of the total amount appropriated for such fiscal year for the National Institutes of Health.

(2) Paragraph (1) does not apply to the National Library of Medicine, the National Center for Nursing Research, the John E. Fogarty International Center for Advanced Study in the Health Sciences, the Warren G. Magnuson Clinical Center, and the Office of Medical Applications of Research.

(3) For purposes of paragraph (1), the term ''administrative expenses'' means expenses incurred for the support of activities relevant to the award of grants, contracts, and cooperative agreements and expenses incurred for general administration of the scientific programs and activities of the National Institutes of Health.

(b) For fiscal year 1989 and subsequent fiscal years, amounts made available to the National Institutes of Health shall be available for payment of nurses and allied health professionals in accordance with payment authorities, scheduling options, benefits, and other authorities provided under chapter 73 of title 38 for nurses of the Department of Veterans Affairs.

(July 1, 1944, ch. 373, title IV, § 408, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 831; amended Pub. L. 100–607, title I, § 118, Nov. 4, 1988, 102 Stat. 3053; Pub. L. 100–690, title II, § 2613(d), Nov. 18, 1988, 102 Stat. 4239; Pub. L. 103–43, title IV, § 403(b)(1), title XX, § 2008(b)(2), June 10, 1993, 107 Stat. 158, 211; Pub. L. 104–316, title I, § 122(a), Oct. 19, 1996, 110 Stat. 3836; Pub. L. 105–362, title VI, § 601(a)(1)(B), Nov. 10, 1998, 112 Stat. 3285.)

AMENDMENTS

1998—Subsec. (a)(4). Pub. L. 105–362 struck out par. (4) which read as follows: ''Not later than December 31, 1987, and December 31 of each succeeding year, the Secretary shall report to the Congress the amount obligated in the fiscal year preceding such date for administrative expenses of the National Institutes of Health and the total amount appropriated for the National Institutes of Health for such fiscal year. The Secretary shall consult with the Comptroller General of the United States in preparing each report.''

1996—Subsec. (a)(3). Pub. L. 104–316 struck out at end ''In identifying expenses incurred for such support and administration the Secretary shall consult with the Comptroller General of the United States.''

1993—Pub. L. 103–43 amended section catchline generally, redesignated subsec. (b) as (a) and par. (5) of subsec. (a) as (b), struck out former subsec. (a) which authorized appropriations in addition to amounts otherwise appropriated under this subchapter for the National Cancer Institute for programs other than under section 285a–1 of this title and for its program under section 285a–1 of this title and for the National Heart, Lung, and Blood Institute for programs other than under section 285b–1 of this title and for its program under section 285b–1 of this title, and substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in subsec. (b).

1988—Subsec. (a)(1), (2). Pub. L. 100–607, § 118(a), amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1)(A) For the National Cancer Institute (other than its programs under section 285a–1 of this title), there are authorized to be appropriated $1,194,000,000 for fiscal year 1986, $1,270,000,000 for fiscal year 1987, and $1,344,000,000 for fiscal year 1988.

''(B) For the programs under section 285a–1 of this title, there are authorized to be appropriated $68,000,000 for fiscal year 1986, $74,000,000 for fiscal year 1987, and $80,000,000 for fiscal year 1988.

''(2)(A) For the National Heart, Lung, and Blood Institute (other than its programs under section 285b–1 of this title), there are authorized to be appropriated $809,000,000 for fiscal year 1986, $871,000,000 for fiscal year 1987, and $927,000,000 for fiscal year 1988. Of the amount appropriated under this subsection for such fiscal year, not less than 15 percent of such amount shall be reserved for programs respecting diseases of the lung and not less than 15 percent of such amount shall be reserved for programs respecting blood diseases and blood resources.

''(B) For the programs under section 285b–1 of this title, there are authorized to be appropriated $82,000,000 for fiscal year 1986, $90,000,000 for fiscal year 1987, and $98,000,000 for fiscal year 1988.''

Subsec. (a)(2)(B). Pub. L. 100–690 inserted a comma after ''section 285b–1 of this title''.

Subsec. (b)(5). Pub. L. 100–607, § 118(b), added par. (5).

CHANGE OF NAME

National Center for Nursing Research changed to National Institute of Nursing Research by Pub. L. 103–43, title XV, § 1511, June 10, 1993, 107 Stat. 178.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

WARREN G. MAGNUSON CLINICAL CENTER; AVAILABILITY OF FUNDS FOR PAYMENT OF NURSES; RATE OF PAY AND OPTIONS AND BENEFITS

Pub. L. 99–349, title I, July 2, 1986, 100 Stat. 738, provided that: ''Funds made available for fiscal year 1986 and hereafter to the Warren G. Magnuson Clinical Center of the National Institutes of Health shall be available for payment of nurses at the rates of pay and with schedule options and benefits authorized for the Veterans Administration pursuant to 38 U.S.C. 4107.''

§ 284d. Definitions

(a) Health service research

For purposes of this subchapter, the term ''health services research'' means research endeavors that study the impact of the organization, financing and management of health services on the quality, cost, access to and outcomes of care. Such term does not include research on the efficacy of services to prevent, diagnose, or treat medical conditions.

(b) Clinical research

As used in this subchapter, the term ''clinical research'' means patient oriented clinical research conducted with human subjects, or research on the causes and consequences of disease in human populations involving material of human origin (such as tissue specimens and cognitive phenomena) for which an investigator or colleague directly interacts with human subjects in an outpatient or inpatient setting to clarify a problem in human physiology, pathophysiology or disease, or epidemiologic or behavioral studies, outcomes research or health services research, or developing new technologies, therapeutic interventions, or clinical trials.

(July 1, 1944, ch. 373, title IV, § 409, as added Pub. L. 102–321, title I, § 121(b), July 10, 1992, 106 Stat. 358; amended Pub. L. 103–43, title XX, § 2016(a), June 10, 1993, 107 Stat. 218; Pub. L. 106–505, title II, § 206, Nov. 13, 2000, 114 Stat. 2329.)

AMENDMENTS

2000—Pub. L. 106–505 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1993—Pub. L. 103–43 inserted at end ''Such term does not include research on the efficacy of services to prevent, diagnose, or treat medical conditions.''

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 284e. Research on osteoporosis, Paget's disease, and related bone disorders

(a) Establishment

The Directors of the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Institute on Aging, the National Institute of Dental Research, and the National Institute of Diabetes and Digestive and Kidney Diseases, shall expand and intensify the programs of such Institutes with respect to research and related activities concerning osteoporosis, Paget's disease, and related bone disorders.

(b) Coordination

The Directors referred to in subsection (a) of this section shall jointly coordinate the programs referred to in such subsection and consult with the Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee and the Interagency Task Force on Aging Research.

(c) Information clearinghouse

(1) In general

In order to assist in carrying out the purpose described in subsection (a) of this section, the Director of NIH shall provide for the establishment of an information clearinghouse on osteoporosis and related bone disorders to facilitate and enhance knowledge and understanding on the part of health professionals, patients, and the public through the effective dissemination of information.

(2) Establishment through grant or contract

For the purpose of carrying out paragraph (1), the Director of NIH shall enter into a grant, cooperative agreement, or contract with a nonprofit private entity involved in activities regarding the prevention and control of osteoporosis and related bone disorders.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2003.

(July 1, 1944, ch. 373, title IV, § 409A, as added Pub. L. 103–43, title III, § 302, June 10, 1993, 107 Stat. 151; amended Pub. L. 105–340, title I, § 102, Oct. 31, 1998, 112 Stat. 3192.)

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–340 substituted ''through 2003'' for ''and 1996''.

§ 284f. Parkinson's disease

(a) In general

The Director of NIH shall establish a program for the conduct and support of research and training with respect to Parkinson's disease (subject to the extent of amounts appropriated under subsection (e) of this section).

(b) Inter-institute coordination

(1) In general

The Director of NIH shall provide for the coordination of the program established under subsection (a) of this section among all of the national research institutes conducting Parkinson's disease research.

(2) Conference

Coordination under paragraph (1) shall include the convening of a research planning conference not less frequently than once every 2 years. Each such conference shall prepare and submit to the Committee on Appropriations and the Committee on Labor and Human

Resources of the Senate and the Committee on Appropriations and the Committee on Commerce of the House of Representatives a report concerning the conference.

(c) Morris K. Udall research centers

(1) In general

The Director of NIH is authorized to award Core Center Grants to encourage the development of innovative multidisciplinary research and provide training concerning Parkinson's disease. The Director is authorized to award not more than 10 Core Center Grants and designate each center funded under such grants as a Morris K. Udall Center for Research on Parkinson's Disease.

(2) Requirements

(A) In general

With respect to Parkinson's disease, each center assisted under this subsection shall—

(i) use the facilities of a single institution or a consortium of cooperating institutions, and meet such qualifications as may be prescribed by the Director of the NIH; and

(ii) conduct basic and clinical research.

(B) Discretionary requirements

With respect to Parkinson's disease, each center assisted under this subsection may—

(i) conduct training programs for scientists and health professionals;

(ii) conduct programs to provide information and continuing education to health professionals;

(iii) conduct programs for the dissemination of information to the public;

(iv) separately or in collaboration with other centers, establish a nationwide data system derived from patient populations with Parkinson's disease, and where possible, comparing relevant data involving general populations;

(v) separately or in collaboration with other centers, establish a Parkinson's Disease Information Clearinghouse to facilitate and enhance knowledge and understanding of Parkinson's disease; and

(vi) separately or in collaboration with other centers, establish a national education program that fosters a national focus on Parkinson's disease and the care of those with Parkinson's disease.

(3) Stipends regarding training programs

A center may use funds provided under paragraph (1) to provide stipends for scientists and health professionals enrolled in training programs under paragraph (2)(B).

(4) Duration of support

Support of a center under this subsection may be for a period not exceeding five years. Such period may be extended by the Director of NIH for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(d) Morris K. Udall Awards for Excellence in Parkinson's Disease Research

The Director of NIH is authorized to establish a grant program to support investigators with a proven record of excellence and innovation in Parkinson's disease research and who demonstrate potential for significant future breakthroughs in the understanding of the pathogensis,[1] diagnosis, and treatment of Parkinson's disease. Grants under this subsection shall be available for a period of not to exceed 5 years.

(e) Authorization of appropriations

For the purpose of carrying out this section and section 241 of this title and this subchapter with respect to research focused on Parkinson's disease, there are authorized to be appropriated up to $100,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 and 2000.

(July 1, 1944, ch. 373, title IV, § 409B, as added Pub. L. 105–78, title VI, § 603(c), Nov. 13, 1997, 111 Stat. 1520.)

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

ADDITIONAL GRANTS

Pub. L. 108–199, div. E, title II, § 217, Jan. 23, 2004, 118 Stat. 255, provided that: ''Notwithstanding section 409B(c) of the Public Health Service Act [subsec. (c) of this section] regarding a limitation on the number of such grants, funds appropriated in this Act [div. E of Pub. L. 108–199, see Tables for classification] and Acts in fiscal years thereafter may be expended by the Director of the National Institutes of Health to award Core Center Grants to encourage the development of innovative multidisciplinary research and provide training concerning Parkinson's disease. Each center funded under such grants shall be designated as a Morris K. Udall Center for Research on Parkinson's Disease.''

Similar provisions were contained in Pub. L. 108–7, div. G, title II, § 218, Feb. 20, 2003, 117 Stat. 326.

FINDING AND PURPOSE

Section 603(b) of Pub. L. 105–78 provided that:

''(1) FINDING.—Congress finds that to take full advantage of the tremendous potential for finding a cure or effective treatment, the Federal investment in Parkinson's disease must be expanded, as well as the coordination strengthened among the National Institutes of Health research institutes.

''(2) PURPOSE.—It is the purpose of this section [enacting this section] to provide for the expansion and coordination of research regarding Parkinson's disease, and to improve care and assistance for afflicted individuals and their family caregivers.''

[1] So in original. Probably should be ''pathogenesis,''.

§ 284g. Expansion, intensification, and coordination of activities of National Institutes of Health with respect to research on autism

(a) In general

(1) Expansion of activities

The Director of NIH (in this section referred to as the ''Director'') shall expand, intensify, and coordinate the activities of the National Institutes of Health with respect to research on autism.

(2) Administration of program; collaboration among agencies

The Director shall carry out this section acting through the Director of the National Institute of Mental Health and in collaboration with any other agencies that the Director determines appropriate.

(b) Centers of excellence

(1) In general

The Director shall under subsection (a)(1) of this section make awards of grants and contracts to public or nonprofit private entities to pay all or part of the cost of planning, establishing, improving, and providing basic operating support for centers of excellence regarding research on autism.

(2) Research

Each center under paragraph (1) shall conduct basic and clinical research into autism. Such research should include investigations into the cause, diagnosis, early detection, prevention, control, and treatment of autism. The centers, as a group, shall conduct research including the fields of developmental neurobiology, genetics, and psychopharmacology.

(3) Services for patients

(A) In general

A center under paragraph (1) may expend amounts provided under such paragraph to carry out a program to make individuals aware of opportunities to participate as subjects in research conducted by the centers.

(B) Referrals and costs

A program under subparagraph (A) may, in accordance with such criteria as the Director may establish, provide to the subjects described in such subparagraph, referrals for health and other services, and such patient care costs as are required for research.

(C) Availability and access

The extent to which a center can demonstrate availability and access to clinical services shall be considered by the Director in decisions about awarding grants to applicants which meet the scientific criteria for funding under this section.

(4) Coordination of centers; reports

The Director shall, as appropriate, provide for the coordination of information among centers under paragraph (1) and ensure regular communication between such centers, and may require the periodic preparation of reports on the activities of the centers and the submission of the reports to the Director.

(5) Organization of centers

Each center under paragraph (1) shall use the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such requirements as may be prescribed by the Director.

(6) Number of centers; duration of support

(A) In general

The Director shall provide for the establishment of not less than five centers under paragraph (1).

(B) Duration

Support for a center established under paragraph (1) may be provided under this section for a period of not to exceed 5 years. Such period may be extended for one or more additional periods not exceeding 5 years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(c) Facilitation of research

The Director shall under subsection (a)(1) of this section provide for a program under which samples of tissues and genetic materials that are of use in research on autism are donated, collected, preserved, and made available for such research. The program shall be carried out in accordance with accepted scientific and medical standards for the donation, collection, and preservation of such samples.

(d) Public input

The Director shall under subsection (a)(1) of this section provide for means through which the public can obtain information on the existing and planned programs and activities of the National Institutes of Health with respect to autism and through which the Director can receive comments from the public regarding such programs and activities.

(e) Funding

There are authorized to be appropriated such sums as may be necessary to carry out this section. Amounts appropriated under this subsection are in addition to any other amounts appropriated for such purpose.

(July 1, 1944, ch. 373, title IV, § 409C, as added Pub. L. 106–310, div. A, title I, § 101, Oct. 17, 2000, 114 Stat. 1105.)

CODIFICATION

Another section 409C of act July 1, 1944, was renumbered section 409G and is classified to section 284k of this title.

§ 284h. Pediatric Research Initiative

(a) Establishment

The Secretary shall establish within the Office of the Director of NIH a Pediatric Research Initiative (referred to in this section as the ''Initiative'') to conduct and support research that is directly related to diseases, disorders, and other conditions in children. The Initiative shall be headed by the Director of NIH.

(b) Purpose

The purpose of the Initiative is to provide funds to enable the Director of NIH—

(1) to increase support for pediatric biomedical research within the National Institutes of Health to realize the expanding opportunities for advancement in scientific investigations and care for children;

(2) to enhance collaborative efforts among the Institutes to conduct and support multidisciplinary research in the areas that the Director deems most promising; and

(3) in coordination with the Food and Drug Administration, to increase the development of adequate pediatric clinical trials and pediatric use information to promote the safer and more effective use of prescription drugs in the pediatric population.

(c) Duties

In carrying out subsection (b) of this section, the Director of NIH shall—

(1) consult with the Director of the National Institute of Child Health and Human Development and the other national research institutes, in considering their requests for new or expanded pediatric research efforts, and consult with the Administrator of the Health Resources and Services Administration and other advisors as the Director determines to be appropriate;

(2) have broad discretion in the allocation of any Initiative assistance among the Institutes, among types of grants, and between basic and clinical research so long as the assistance is directly related to the illnesses and conditions of children; and

(3) be responsible for the oversight of any newly appropriated Initiative funds and annually report to Congress and the public on the extent of the total funds obligated to conduct or support pediatric research across the National Institutes of Health, including the specific support and research awards allocated through the Initiative.

(d) Authorization

For the purpose of carrying out this section, there are authorized to be appropriated $50,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 through 2005.

(e) Transfer of funds

The Director of NIH may transfer amounts appropriated under this section to any of the Institutes for a fiscal year to carry out the purposes of the Initiative under this section.

(July 1, 1944, ch. 373, title IV, § 409D, as added Pub. L. 106–310, div. A, title X, § 1001, Oct. 17, 2000, 114 Stat. 1127.)

CODIFICATION

Another section 409D of act July 1, 1944, was renumbered section 409H and is classified to section 284*l* of this title.

§ 284i. Autoimmune diseases

(a) Expansion, intensification, and coordination of activities

(1) In general

The Director of NIH shall expand, intensify, and coordinate research and other activities of the National Institutes of Health with respect to autoimmune diseases.

(2) Allocations by Director of NIH

With respect to amounts appropriated to carry out this section for a fiscal year, the Director of NIH shall allocate the amounts among the national research institutes that are carrying out paragraph (1).

(3) Definition

The term ''autoimmune disease'' includes, for purposes of this section such diseases or disorders with evidence of autoimmune pathogensis[1] as the Secretary determines to be appropriate.

(b) Coordinating Committee

(1) In general

The Secretary shall ensure that the Autoimmune Diseases Coordinating Committee (referred to in this section as the ''Coordinating Committee'') coordinates activities across the National Institutes and with other Federal health programs and activities relating to such diseases.

(2) Composition

The Coordinating Committee shall be composed of the directors or their designees of each of the national research institutes involved in research with respect to autoimmune diseases and representatives of all other Federal departments and agencies whose programs involve health functions or responsibilities relevant to such diseases, including the Centers for Disease Control and Prevention and the Food and Drug Administration.

(3) Chair

(A) In general

With respect to autoimmune diseases, the Chair of the Committee shall serve as the principal advisor to the Secretary, the Assistant Secretary for Health, and the Director of NIH, and shall provide advice to the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, and other relevant agencies.

(B) Director of NIH

The Chair of the Committee shall be directly responsible to the Director of NIH.

(c) Plan for NIH activities

(1) In general

Not later than 1 year after October 17, 2000, the Coordinating Committee shall develop a plan for conducting and supporting research and education on autoimmune diseases through the national research institutes and shall periodically review and revise the plan. The plan shall—

(A) provide for a broad range of research and education activities relating to biomedical, psychosocial, and rehabilitative issues, including studies of the disproportionate impact of such diseases on women;

(B) identify priorities among the programs and activities of the National Institutes of Health regarding such diseases; and

[1] So in original. Probably should be ''pathogenesis''.

(C) reflect input from a broad range of scientists, patients, and advocacy groups.

(2) Certain elements of plan

The plan under paragraph (1) shall, with respect to autoimmune diseases, provide for the following as appropriate:

(A) Research to determine the reasons underlying the incidence and prevalence of the diseases.

(B) Basic research concerning the etiology and causes of the diseases.

(C) Epidemiological studies to address the frequency and natural history of the diseases, including any differences among the sexes and among racial and ethnic groups.

(D) The development of improved screening techniques.

(E) Clinical research for the development and evaluation of new treatments, including new biological agents.

(F) Information and education programs for health care professionals and the public.

(3) Implementation of plan

The Director of NIH shall ensure that programs and activities of the National Institutes of Health regarding autoimmune diseases are implemented in accordance with the plan under paragraph (1).

(d) Reports to Congress

The Coordinating Committee under subsection (b)(1) of this section shall biennially submit to the Committee on Commerce of the House of Representatives, and the Committee on Health, Education, Labor and Pensions of the Senate, a report that describes the research, education, and other activities on autoimmune diseases being conducted or supported through the national research institutes, and that in addition includes the following:

(1) The plan under subsection (c)(1) of this section (or revisions to the plan, as the case may be).

(2) Provisions specifying the amounts expended by the National Institutes of Health with respect to each of the autoimmune diseases included in the plan.

(3) Provisions identifying particular projects or types of projects that should in the future be considered by the national research institutes or other entities in the field of research on autoimmune diseases.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005. The authorization of appropriations established in the preceding sentence is in addition to any other authorization of appropriations that is available for conducting or supporting through the National Institutes of Health research and other activities with respect to autoimmune diseases.

(July 1, 1944, ch. 373, title IV, § 409E, as added Pub. L. 106–310, div. A, title XIX, § 1901, Oct. 17, 2000, 114 Stat. 1153.)

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 284j. Muscular dystrophy research

(a) Coordination of activities

The Director of NIH shall expand and increase coordination in the activities of the National Institutes of Health with respect to research on muscular dystrophies, including Duchenne muscular dystrophy.

(b) Administration of program; collaboration among agencies

The Director of NIH shall carry out this section through the appropriate institutes, including the National Institute of Neurological Disorders and Stroke and in collaboration with any other agencies that the Director determines appropriate.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section for each of the fiscal years 2001 through 2005. Amounts appropriated under this subsection shall be in addition to any other amounts appropriated for such purpose.

(July 1, 1944, ch. 373, title IV, § 409F, as added Pub. L. 106–310, div. A, title XXII, § 2201, Oct. 17, 2000, 114 Stat. 1157.)

§ 284k. Clinical research

(a) In general

The Director of National Institutes of Health shall undertake activities to support and expand the involvement of the National Institutes of Health in clinical research.

(b) Requirements

In carrying out subsection (a) of this section, the Director of National Institutes of Health shall—

(1) consider the recommendations of the Division of Research Grants Clinical Research Study Group and other recommendations for enhancing clinical research; and

(2) establish intramural and extramural clinical research fellowship programs directed specifically at medical and dental students and a continuing education clinical research training program at the National Institutes of Health.

(c) Support for the diverse needs of clinical research

The Director of National Institutes of Health, in cooperation with the Directors of the Institutes, Centers, and Divisions of the National Institutes of Health, shall support and expand the resources available for the diverse needs of the clinical research community, including inpatient, outpatient, and critical care clinical research.

(d) Peer review

The Director of National Institutes of Health shall establish peer review mechanisms to evaluate applications for the awards and fellowships

provided for in subsection (b)(2) of this section and section 284*l* of this title. Such review mechanisms shall include individuals who are exceptionally qualified to appraise the merits of potential clinical research training and research grant proposals.

(July 1, 1944, ch. 373, title IV, § 409G, formerly § 409C, as added Pub. L. 106–505, title II, § 203, Nov. 13, 2000, 114 Stat. 2326; renumbered § 409G, Pub. L. 107–109, § 3(1), Jan. 4, 2002, 115 Stat. 1408.)

REFERENCES IN TEXT

Section 284*l* of this title, referred to in subsec. (d), was in the original ''section 409D'', and was translated as meaning section 409D of act July 1, 1944, ch. 373, as added by section 204(b) of Pub. L. 106–505. Such section 409D was renumbered section 409H of act July 1, 1944, ch. 373, by Pub. L. 107–109, § 3(2), Jan. 4, 2002, 115 Stat. 1408. Another section 409D of act July 1, 1944, ch. 373, as added by section 1001 of Pub. L. 106–310, is classified to section 284h of this title.

FINDINGS AND PURPOSE

Pub. L. 106–505, title II, § 202, Nov. 13, 2000, 114 Stat. 2325, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Clinical research is critical to the advancement of scientific knowledge and to the development of cures and improved treatment for disease.

''(2) Tremendous advances in biology are opening doors to new insights into human physiology, pathophysiology and disease, creating extraordinary opportunities for clinical research.

''(3) Clinical research includes translational research which is an integral part of the research process leading to general human applications. It is the bridge between the laboratory and new methods of diagnosis, treatment, and prevention and is thus essential to progress against cancer and other diseases.

''(4) The United States will spend more than $1,200,000,000,000 on health care in 1999, but the Federal budget for health research at the National Institutes of Health was $15,600,000,000 only 1 percent of that total.

''(5) Studies at the Institute of Medicine, the National Research Council, and the National Academy of Sciences have all addressed the current problems in clinical research.

''(6) The Director of the National Institutes of Health has recognized the current problems in clinical research and appointed a special panel, which recommended expanded support for existing National Institutes of Health clinical research programs and the creation of new initiatives to recruit and retain clinical investigators.

''(7) The current level of training and support for health professionals in clinical research is fragmented, undervalued, and underfunded.

''(8) Young investigators are not only apprentices for future positions but a crucial source of energy, enthusiasm, and ideas in the day-to-day research that constitutes the scientific enterprise. Serious questions about the future of life-science research are raised by the following:

''(A) The number of young investigators applying for grants dropped by 54 percent between 1985 and 1993.

''(B) The number of physicians applying for first-time National Institutes of Health research project grants fell from 1226 in 1994 to 963 in 1998, a 21 percent reduction.

''(C) Newly independent life-scientists are expected to raise funds to support their new research programs and a substantial proportion of their own salaries.

''(9) The following have been cited as reasons for the decline in the number of active clinical researchers, and those choosing this career path:

''(A) A medical school graduate incurs an average debt of $85,619, as reported in the Medical School Graduation Questionnaire by the Association of American Medical Colleges (AAMC).

''(B) The prolonged period of clinical training required increases the accumulated debt burden.

''(C) The decreasing number of mentors and role models.

''(D) The perceived instability of funding from the National Institutes of Health and other Federal agencies.

''(E) The almost complete absence of clinical research training in the curriculum of training grant awardees.

''(F) Academic Medical Centers are experiencing difficulties in maintaining a proper environment for research in a highly competitive health care marketplace, which are compounded by the decreased willingness of third party payers to cover health care costs for patients engaged in research studies and research procedures.

''(10) In 1960, general clinical research centers were established under the Office of the Director of the National Institutes of Health with an initial appropriation of $3,000,000.

''(11) Appropriations for general clinical research centers in fiscal year 1999 equaled $200,500,000.

''(12) Since the late 1960s, spending for general clinical research centers has declined from approximately 3 percent to 1 percent of the National Institutes of Health budget.

''(13) In fiscal year 1999, there were 77 general clinical research centers in operation, supplying patients in the areas in which such centers operate with access to the most modern clinical research and clinical research facilities and technologies.

''(b) PURPOSE.—It is the purpose of this title [see Short Title of 2000 Amendments note set out under section 201 of this title] to provide additional support for and to expand clinical research programs.''

OVERSIGHT BY GAO

Pub. L. 106–505, title II, § 207, Nov. 13, 2000, 114 Stat. 2330, provided that, not later than 18 months after Nov. 13, 2000, the Comptroller General was to submit to Congress a report describing the extent to which the National Institutes of Health had complied with the amendments made by title II of Pub. L. 106–505.

§ 284*l*. Enhancement awards

(a) Mentored Patient-Oriented Research Career Development Awards

(1) Grants

(A) In general

The Director of the National Institutes of Health shall make grants (to be referred to as ''Mentored Patient-Oriented Research Career Development Awards'') to support individual careers in clinical research at general clinical research centers or at other institutions that have the infrastructure and resources deemed appropriate for conducting patient-oriented clinical research.

(B) Use

Grants under subparagraph (A) shall be used to support clinical investigators in the early phases of their independent careers by providing salary and such other support for a period of supervised study.

(2) Applications

An application for a grant under this subsection shall be submitted by an individual scientist at such time as the Director may require.

(3) Authorization of appropriations

For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(b) Mid-Career Investigator Awards in Patient-Oriented Research

(1) Grants

(A) In general

The Director of the National Institutes of Health shall make grants (to be referred to as ''Mid-Career Investigator Awards in Patient-Oriented Research'') to support individual clinical research projects at general clinical research centers or at other institutions that have the infrastructure and resources deemed appropriate for conducting patient-oriented clinical research.

(B) Use

Grants under subparagraph (A) shall be used to provide support for mid-career level clinicians to allow such clinicians to devote time to clinical research and to act as mentors for beginning clinical investigators.

(2) Applications

An application for a grant under this subsection shall be submitted by an individual scientist at such time as the Director requires.

(3) Authorization of appropriations

For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(c) Graduate Training in Clinical Investigation Award

(1) In general

The Director of the National Institutes of Health shall make grants (to be referred to as ''Graduate Training in Clinical Investigation Awards'') to support individuals pursuing master's or doctoral degrees in clinical investigation.

(2) Applications

An application for a grant under this subsection shall be submitted by an individual scientist at such time as the Director may require.

(3) Limitations

Grants under this subsection shall be for terms of 2 years or more and shall provide stipend, tuition, and institutional support for individual advanced degree programs in clinical investigation.

(4) Definition

As used in this subsection, the term ''advanced degree programs in clinical investigation'' means programs that award a master's or Ph.D. degree in clinical investigation after 2 or more years of training in areas such as the following:

(A) Analytical methods, biostatistics, and study design.

(B) Principles of clinical pharmacology and pharmacokinetics.

(C) Clinical epidemiology.

(D) Computer data management and medical informatics.

(E) Ethical and regulatory issues.

(F) Biomedical writing.

(5) Authorization of appropriations

For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(d) Clinical Research Curriculum Awards

(1) In general

The Director of the National Institutes of Health shall make grants (to be referred to as ''Clinical Research Curriculum Awards'') to institutions for the development and support of programs of core curricula for training clinical investigators, including medical students. Such core curricula may include training in areas such as the following:

(A) Analytical methods, biostatistics, and study design.

(B) Principles of clinical pharmacology and pharmacokinetics.

(C) Clinical epidemiology.

(D) Computer data management and medical informatics.

(E) Ethical and regulatory issues.

(F) Biomedical writing.

(2) Applications

An application for a grant under this subsection shall be submitted by an individual institution or a consortium of institutions at such time as the Director may require. An institution may submit only one such application.

(3) Limitations

Grants under this subsection shall be for terms of up to 5 years and may be renewable.

(4) Authorization of appropriations

For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(July 1, 1944, ch. 373, title IV, § 409H, formerly § 409D, as added Pub. L. 106–505, title II, § 204(b), Nov. 13, 2000, 114 Stat. 2327; renumbered § 409H, Pub. L. 107–109, § 3(2), Jan. 4, 2002, 115 Stat. 1408.)

§ 284m. Program for pediatric studies of drugs

(a) List of drugs for which pediatric studies are needed

(1) In general

Not later than one year after January 4, 2002, the Secretary, acting through the Director of the National Institutes of Health and in consultation with the Commissioner of Food and Drugs and experts in pediatric research, shall develop, prioritize, and publish an annual list of approved drugs for which—

(A)(i) there is an approved application under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j));

(ii) there is a submitted application that could be approved under the criteria of section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j));

(iii) there is no patent protection or market exclusivity protection under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or

(iv) there is a referral for inclusion on the list under section 505A(d)(4)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(d)(4)(C)); and

(B) in the case of a drug referred to in clause (i), (ii), or (iii) of subparagraph (A), additional studies are needed to assess the safety and effectiveness of the use of the drug in the pediatric population.

(2) Consideration of available information

In developing and prioritizing the list under paragraph (1), the Secretary shall consider, for each drug on the list—

(A) the availability of information concerning the safe and effective use of the drug in the pediatric population;

(B) whether additional information is needed;

(C) whether new pediatric studies concerning the drug may produce health benefits in the pediatric population; and

(D) whether reformulation of the drug is necessary.

(b) Contracts for pediatric studies

The Secretary shall award contracts to entities that have the expertise to conduct pediatric clinical trials (including qualified universities, hospitals, laboratories, contract research organizations, federally funded programs such as pediatric pharmacology research units, other public or private institutions, or individuals) to enable the entities to conduct pediatric studies concerning one or more drugs identified in the list described in subsection (a) of this section.

(c) Process for contracts and labeling changes

(1) Written request to holders of approved applications for drugs lacking exclusivity

The Commissioner of Food and Drugs, in consultation with the Director of the National Institutes of Health, may issue a written request (which shall include a timeframe for negotiations for an agreement) for pediatric studies concerning a drug identified in the list described in subsection (a)(1)(A) of this section (except clause (iv)) to all holders of an approved application for the drug under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355]. Such a written request shall be made in a manner equivalent to the manner in which a written request is made under subsection (a) or (b) of section 505A of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355a], including with respect to information provided on the pediatric studies to be conducted pursuant to the request.

(2) Requests for contract proposals

If the Commissioner of Food and Drugs does not receive a response to a written request issued under paragraph (1) within 30 days of the date on which a request was issued, or if a referral described in subsection (a)(1)(A)(iv) of this section is made, the Secretary, acting through the Director of the National Institutes of Health and in consultation with the Commissioner of Food and Drugs, shall publish a request for contract proposals to conduct the pediatric studies described in the written request.

(3) Disqualification

A holder that receives a first right of refusal shall not be entitled to respond to a request for contract proposals under paragraph (2).

(4) Guidance

Not later than 270 days after January 4, 2002, the Commissioner of Food and Drugs shall promulgate guidance to establish the process for the submission of responses to written requests under paragraph (1).

(5) Contracts

A contract under this section may be awarded only if a proposal for the contract is submitted to the Secretary in such form and manner, and containing such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(6) Reporting of studies

(A) In general

On completion of a pediatric study in accordance with a contract awarded under this section, a report concerning the study shall be submitted to the Director of the National Institutes of Health and the Commissioner of Food and Drugs. The report shall include all data generated in connection with the study.

(B) Availability of reports

Each report submitted under subparagraph (A) shall be considered to be in the public domain (subject to section 505A(d)(4)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355a(d)(4)(D))[1] and shall be assigned a docket number by the Commissioner of Food and Drugs. An interested person may submit written comments concerning such pediatric studies to the Commissioner of Food and Drugs, and the written comments shall become part of the docket file with respect to each of the drugs.

(C) Action by Commissioner

The Commissioner of Food and Drugs shall take appropriate action in response to the reports submitted under subparagraph (A) in accordance with paragraph (7).

(7) Requests for labeling change

During the 180-day period after the date on which a report is submitted under paragraph (6)(A), the Commissioner of Food and Drugs shall—

(A) review the report and such other data as are available concerning the safe and effective use in the pediatric population of the drug studied;

(B) negotiate with the holders of approved applications for the drug studied for any labeling changes that the Commissioner of Food and Drugs determines to be appropriate and requests the holders to make; and

[1] So in original. There probably should be an additional closing parenthesis.

(C)(i) place in the public docket file a copy of the report and of any requested labeling changes; and

(ii) publish in the Federal Register a summary of the report and a copy of any requested labeling changes.

(8) Dispute resolution

(A) Referral to Pediatric Advisory Committee

If, not later than the end of the 180-day period specified in paragraph (7), the holder of an approved application for the drug involved does not agree to any labeling change requested by the Commissioner of Food and Drugs under that paragraph, the Commissioner of Food and Drugs shall refer the request to the Pediatric Advisory Committee.

(B) Action by the Pediatric Advisory Committee

Not later than 90 days after receiving a referral under subparagraph (A), the Pediatric Advisory Committee shall—

(i) review the available information on the safe and effective use of the drug in the pediatric population, including study reports submitted under this section; and

(ii) make a recommendation to the Commissioner of Food and Drugs as to appropriate labeling changes, if any.

(9) FDA determination

Not later than 30 days after receiving a recommendation from the Pediatric Advisory Committee under paragraph (8)(B)(ii) with respect to a drug, the Commissioner of Food and Drugs shall consider the recommendation and, if appropriate, make a request to the holders of approved applications for the drug to make any labeling change that the Commissioner of Food and Drugs determines to be appropriate.

(10) Failure to agree

If a holder of an approved application for a drug, within 30 days after receiving a request to make a labeling change under paragraph (9), does not agree to make a requested labeling change, the Commissioner may deem the drug to be misbranded under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

(11) No effect on authority

Nothing in this subsection limits the authority of the United States to bring an enforcement action under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] when a drug lacks appropriate pediatric labeling. Neither course of action (the Pediatric Advisory Committee process or an enforcement action referred to in the preceding sentence) shall preclude, delay, or serve as the basis to stay the other course of action.

(12) Recommendation for formulation changes

If a pediatric study completed under public contract indicates that a formulation change is necessary and the Secretary agrees, the Secretary shall send a nonbinding letter of recommendation regarding that change to each holder of an approved application.

(d) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section—

(A) $200,000,000 for fiscal year 2002; and

(B) such sums as are necessary for each of the five succeeding fiscal years.

(2) Availability

Any amount appropriated under paragraph (1) shall remain available to carry out this section until expended.

(July 1, 1944, ch. 373, title IV, §409I, as added Pub. L. 107–109, §3(3), Jan. 4, 2002, 115 Stat. 1408; amended Pub. L. 108–155, §3(b)(6), Dec. 3, 2003, 117 Stat. 1942.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (a)(1)(A)(iii) and (c)(10), (11), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

AMENDMENTS

2003—Subsec. (c)(8), (9), (11). Pub. L. 108–155 struck out ''Advisory Subcommittee of the Anti-Infective Drugs'' before ''Advisory Committee'' wherever appearing.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–155 effective Dec. 3, 2003, except as otherwise provided, see section 4 of Pub. L. 108–155, set out as an Effective Date note under section 355c of Title 21, Food and Drugs.

PEDIATRIC ADVISORY COMMITTEE

Pub. L. 107–109, §14, Jan. 4, 2002, 115 Stat. 1419, as amended by Pub. L. 108–155, §3(b)(2), Dec. 3, 2003, 117 Stat. 1941, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall, under section 222 of the Public Health Service Act (42 U.S.C. 217a) or other appropriate authority, convene and consult an advisory committee on pediatric therapeutics (referred to in this section as the 'advisory committee').

''(b) PURPOSE.—

''(1) IN GENERAL.—The advisory committee shall advise and make recommendations to the Secretary, through the Commissioner of Food and Drugs, on matters relating to pediatric therapeutics.

''(2) MATTERS INCLUDED.—The matters referred to in paragraph (1) include—

''(A) pediatric research conducted under sections 351, 409I, and 499 of the Public Health Service Act [sections 262, 284m, and 290b of this title] and sections 501, 502, 505, 505A, and 505B of the Federal Food, Drug, and Cosmetic Act [sections 351, 352, 355, 355a, and 355c of Title 21, Food and Drugs];

''(B) identification of research priorities related to pediatric therapeutics and the need for additional treatments of specific pediatric diseases or conditions; and

''(C) the ethics, design, and analysis of clinical trials related to pediatric therapeutics.

''(c) COMPOSITION.—The advisory committee shall include representatives of pediatric health organizations, pediatric researchers, relevant patient and patient-family organizations, and other experts selected by the Secretary.''

PART C—SPECIFIC PROVISIONS RESPECTING NATIONAL RESEARCH INSTITUTES

SUBPART 1—NATIONAL CANCER INSTITUTE

§ 285. Purpose of Institute

The general purpose of the National Cancer Institute (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of

research, training, health information dissemination, and other programs with respect to the cause, diagnosis, prevention, and treatment of cancer, rehabilitation from cancer, and the continuing care of cancer patients and the families of cancer patients.

(July 1, 1944, ch. 373, title IV, § 410, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 832; amended Pub. L. 100–607, title I, § 121, Nov. 4, 1988, 102 Stat. 3054.)

AMENDMENTS

1988—Pub. L. 100–607 inserted ‘‘, rehabilitation from cancer,’’ after ‘‘treatment of cancer’’.

§ 285a. National Cancer Program

The National Cancer Program shall consist of (1) an expanded, intensified, and coordinated cancer research program encompassing the research programs conducted and supported by the Institute and the related research programs of the other national research institutes, including an expanded and intensified research program for the prevention of cancer caused by occupational or environmental exposure to carcinogens, and (2) the other programs and activities of the Institute.

(July 1, 1944, ch. 373, title IV, § 411, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 832.)

§ 285a–1. Cancer control programs

The Director of the Institute shall establish and support demonstration, education, and other programs for the detection, diagnosis, prevention, and treatment of cancer and for rehabilitation and counseling respecting cancer. Programs established and supported under this section shall include—

(1) locally initiated education and demonstration programs (and regional networks of such programs) to transmit research results and to disseminate information respecting—

(A) the detection, diagnosis, prevention, and treatment of cancer,

(B) the continuing care of cancer patients and the families of cancer patients, and

(C) rehabilitation and counseling respecting cancer,

to physicians and other health professionals who provide care to individuals who have cancer;

(2) the demonstration of and the education of students of the health professions and health professionals in—

(A) effective methods for the prevention and early detection of cancer and the identification of individuals with a high risk of developing cancer, and

(B) improved methods of patient referral to appropriate centers for early diagnosis and treatment of cancer; and

(3) the demonstration of new methods for the dissemination of information to the general public concerning the prevention, early detection, diagnosis, and treatment and control of cancer and information concerning unapproved and ineffective methods, drugs, and devices for the diagnosis, prevention, treatment, and control of cancer.

(July 1, 1944, ch. 373, title IV, § 412, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 832.)

§ 285a–2. Special authorities of Director

(a) Information and education program

(1) The Director of the Institute shall establish an information and education program to collect, identify, analyze, and disseminate on a timely basis, through publications and other appropriate means, to cancer patients and their families, physicians and other health professionals, and the general public, information on cancer research, diagnosis, prevention, and treatment (including information respecting nutrition programs for cancer patients and the relationship between nutrition and cancer). The Director of the Institute may take such action as may be necessary to insure that all channels for the dissemination and exchange of scientific knowledge and information are maintained between the Institute and the public and between the Institute and other scientific, medical, and biomedical disciplines and organizations nationally and internationally.

(2) In carrying out paragraph (1), the Director of the Institute shall—

(A) provide public and patient information and education programs, providing information that will help individuals take personal steps to reduce their risk of cancer, to make them aware of early detection techniques and to motivate appropriate utilization of those techniques, to help individuals deal with cancer if it strikes, and to provide information to improve long-term survival;

(B) continue and expand programs to provide physicians and the public with state-of-the-art information on the treatment of particular forms of cancers, and to identify those clinical trials that might benefit patients while advancing knowledge of cancer treatment;

(C) assess the incorporation of state-of-the-art cancer treatments into clinical practice and the extent to which cancer patients receive such treatments and include the results of such assessments in the biennial reports required under section 284b of this title;

(D) maintain and operate the International Cancer Research Data Bank, which shall collect, catalog, store, and disseminate insofar as feasible the results of cancer research and treatment undertaken in any country for the use of any person involved in cancer research and treatment in any country; and

(E) to the extent practicable, in disseminating the results of such cancer research and treatment, utilize information systems available to the public.

(b) National Cancer Program

The Director of the Institute in carrying out the National Cancer Program—

(1) shall establish or support the large-scale production or distribution of specialized biological materials and other therapeutic substances for cancer research and set standards of safety and care for persons using such materials;

(2) shall, in consultation with the advisory council for the Institute, support (A) research in the cancer field outside the United States

by highly qualified foreign nationals which can be expected to benefit the American people, (B) collaborative research involving American and foreign participants, and (C) the training of American scientists abroad and foreign scientists in the United States;

(3) shall, in consultation with the advisory council for the Institute, support appropriate programs of education and training (including continuing education and laboratory and clinical research training);

(4) shall encourage and coordinate cancer research by industrial concerns where such concerns evidence a particular capability for such research;

(5) may obtain (after consultation with the advisory council for the Institute and in accordance with section 3109 of title 5, but without regard to the limitation in such section on the period of service) the services of not more than one hundred and fifty-one experts or consultants who have scientific or professional qualifications;

(6)(A) may, in consultation with the advisory council for the Institute, acquire, construct, improve, repair, operate, and maintain laboratories, other research facilities, equipment, and such other real or personal property as the Director determines necessary;

(B) may, in consultation with the advisory council for the Institute, make grants for construction or renovation of facilities; and

(C) may, in consultation with the advisory council for the Institute, acquire, without regard to section 8141 of title 40, by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years;

(7) may, in consultation with the advisory council for the Institute, appoint one or more advisory committees composed of such private citizens and officials of Federal, State, and local governments to advise the Director with respect to the Director's functions;

(8) may, subject to section 284(b)(2) of this title and without regard to section 3324 of title 31 and section 5 of title 41, enter into such contracts, leases, cooperative agreements, as may be necessary in the conduct of functions of the Director, with any public agency, or with any person, firm, association, corporation, or educational institution; and

(9) shall, notwithstanding section 284(a) of this title, prepare and submit, directly to the President for review and transmittal to Congress, an annual budget estimate (including an estimate of the number and type of personnel needs for the Institute) for the National Cancer Program, after reasonable opportunity for comment (but without change) by the Secretary, the Director of NIH, and the Institute's advisory council.

Except as otherwise provided, experts and consultants whose services are obtained under paragraph (5) shall be paid or reimbursed, in accordance with title 5 for their travel to and from their place of service and for other expenses associated with their assignment. Such expenses shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (5) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Director of the Institute. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United States. The Secretary may waive in whole or in part a right of recovery under the preceding sentence.

(c) Pre-clinical models to evaluate promising pediatric cancer therapies

(1) Expansion and coordination of activities

The Director of the National Cancer Institute shall expand, intensify, and coordinate the activities of the Institute with respect to research on the development of preclinical models to evaluate which therapies are likely to be effective for treating pediatric cancer.

(2) Coordination with other institutes

The Director of the Institute shall coordinate the activities under paragraph (1) with similar activities conducted by other national research institutes and agencies of the National Institutes of Health to the extent that those Institutes and agencies have responsibilities that are related to pediatric cancer.

(July 1, 1944, ch. 373, title IV, §413, as added Pub. L. 99–158, §2, Nov. 20, 1985, 99 Stat. 833; amended Pub. L. 100–607, title I, §122, Nov. 4, 1988, 102 Stat. 3054; Pub. L. 101–93, §5(c), Aug. 16, 1989, 103 Stat. 611; Pub. L. 103–43, title III, §301(a)(2), June 10, 1993, 107 Stat. 150; Pub. L. 107–109, §15(b), Jan. 4, 2002, 115 Stat. 1420.)

REFERENCES IN TEXT

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (b), are classified generally to section 5701 et seq. of Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (b)(6)(C), ''section 8141 of title 40'' substituted for ''the Act of March 3, 1877 (40 U.S.C. 34)'' on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–109 added subsec. (c).

1993—Subsec. (b)(9). Pub. L. 103–43 struck out subpar. (A) designation and subpar. (B) which permitted Director to receive from President and Office of Management and Budget directly all funds appropriated by Congress for obligation and expenditure by Institute.

1989—Subsec. (a)(1). Pub. L. 101–93 substituted ''Institute and'' for ''Institute and and''.

1988—Subsec. (a). Pub. L. 100–607, §122(1), designated existing provisions as par. (1), substituted ''education program'' for ''education center'', inserted ''and the public and between the Institute and'' after ''between the Institute'', and added par. (2).

Subsec. (b)(5). Pub. L. 100–607, §122(2)(A), substituted ''after consultation with'' for ''with the approval of''.

Subsec. (b)(8) to (10). Pub. L. 100–607, §122(2)(B), inserted ''and'' after ''or educational institution;'' in par.

(8), redesignated par. (10) as (9), and struck out former par. (9) which related to International Cancer Research Data Bank.

§ 285a–3. National cancer research and demonstration centers

(a) Cooperative agreements and grants for establishing and supporting

(1) The Director of the Institute may enter into cooperative agreements with and make grants to public or private nonprofit entities to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for centers for basic and clinical research into, training in, and demonstration of advanced diagnostic, prevention, control, and treatment methods for cancer.

(2) A cooperative agreement or grant under paragraph (1) shall be entered into in accordance with policies established by the Director of NIH and after consultation with the Institute's advisory council.

(b) Uses for Federal payments under cooperative agreements or grants

Federal payments made under a cooperative agreement or grant under subsection (a) of this section may be used for—

(1) construction (notwithstanding any limitation under section 289e of this title);

(2) staffing and other basic operating costs, including such patient care costs as are required for research;

(3) clinical training, including training for allied health professionals, continuing education for health professionals and allied health professions personnel, and information programs for the public respecting cancer; and

(4) demonstration purposes.

As used in this paragraph, the term ''construction'' does not include the acquisition of land, and the term ''training'' does not include research training for which Ruth L. Kirschstein National Research Service Awards may be provided under section 288 of this title.

(c) Period of support; additional periods

Support of a center under subsection (a) of this section may be for a period of not to exceed five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 414, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 835; amended Pub. L. 100–607, title I, § 123, Nov. 4, 1988, 102 Stat. 3055; Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards'' in concluding provisions.

1988—Subsec. (a)(1). Pub. L. 100–607 inserted ''control,'' after ''prevention,''.

§ 285a–4. President's Cancer Panel; establishment, membership, etc., functions

(a)(1) The President's Cancer Panel (hereafter in this section referred to as the ''Panel'') shall be composed of three persons appointed by the President who by virtue of their training, experience, and background are exceptionally qualified to appraise the National Cancer Program. At least two members of the Panel shall be distinguished scientists or physicians.

(2)(A) Members of the Panel shall be appointed for three-year terms, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term, and (ii) a member may serve until the member's successor has taken office. If a vacancy occurs in the Panel, the President shall make an appointment to fill the vacancy not later than 90 days after the date the vacancy occurred.

(B) The President shall designate one of the members to serve as the chairman of the Panel for a term of one year.

(C) Members of the Panel shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties as members of the Panel and shall be paid or reimbursed, in accordance with title 5, for their travel to and from their place of service and for other expenses associated with their assignment.

(3) The Panel shall meet at the call of the chairman, but not less often than four times a year. A transcript shall be kept of the proceedings of each meeting of the Panel, and the chairman shall make such transcript available to the public.

(b) The Panel shall monitor the development and execution of the activities of the National Cancer Program, and shall report directly to the President. Any delays or blockages in rapid execution of the Program shall immediately be brought to the attention of the President. The Panel shall submit to the President periodic progress reports on the National Cancer Program and shall submit to the President, the Secretary, and the Congress an annual evaluation of the efficacy of the Program and suggestions for improvements, and shall submit such other reports as the President shall direct.

(July 1, 1944, ch. 373, title IV, § 415, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 835.)

REFERENCES IN TEXT

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (a)(2)(C), are classified generally to section 5701 et seq. of Title 5, Government Organization and Employees.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to the requirement that the Panel submit to Congress an annual evaluation of the efficacy of the Program and suggestions for improvements, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 189 of House Document No. 103–7.

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 285a–5. Associate Director for Prevention; appointment; function

(a) There shall be in the Institute an Associate Director for Prevention to coordinate and promote the programs in the Institute concerning the prevention of cancer. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or experience are experts in public health or preventive medicine.

(b) The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 416, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 836.)

§ 285a–6. Breast and gynecological cancers

(a) Expansion and coordination of activities

The Director of the Institute, in consultation with the National Cancer Advisory Board, shall expand, intensify, and coordinate the activities of the Institute with respect to research on breast cancer, ovarian cancer, and other cancers of the reproductive system of women.

(b) Coordination with other institutes

The Director of the Institute shall coordinate the activities of the Director under subsection (a) of this section with similar activities conducted by other national research institutes and agencies of the National Institutes of Health to the extent that such Institutes[1] and agencies have responsibilities that are related to breast cancer and other cancers of the reproductive system of women.

(c) Programs for breast cancer

(1) In general

In carrying out subsection (a) of this section, the Director of the Institute shall conduct or support research to expand the understanding of the cause of, and to find a cure for, breast cancer. Activities under such subsection shall provide for an expansion and intensification of the conduct and support of—

(A) basic research concerning the etiology and causes of breast cancer;

(B) clinical research and related activities concerning the causes, prevention, detection and treatment of breast cancer;

(C) control programs with respect to breast cancer in accordance with section 285a–1 of this title, including community-based programs designed to assist women who are members of medically underserved populations, low-income populations, or minority groups;

(D) information and education programs with respect to breast cancer in accordance with section 285a–2 of this title; and

(E) research and demonstration centers with respect to breast cancer in accordance with section 285a–3 of this title, including the development and operation of centers for breast cancer research to bring together basic and clinical, biomedical and behavioral scientists to conduct basic, clinical, epidemiological, psychosocial, prevention and treatment research and related activities on breast cancer.

Not less than six centers shall be operated under subparagraph (E). Activities of such centers should include supporting new and innovative research and training programs for new researchers. Such centers shall give priority to expediting the transfer of research advances to clinical applications.

(2) Implementation of plan for programs

(A) The Director of the Institute shall ensure that the research programs described in paragraph (1) are implemented in accordance with a plan for the programs. Such plan shall include comments and recommendations that the Director of the Institute considers appropriate, with due consideration provided to the professional judgment needs of the Institute as expressed in the annual budget estimate prepared in accordance with section 285a–2(9)[2] of this title. The Director of the Institute, in consultation with the National Cancer Advisory Board, shall periodically review and revise such plan.

(B) Not later than October 1, 1993, the Director of the Institute shall submit a copy of the plan to the President's Cancer Panel, the Secretary and the Director of NIH.

(C) The Director of the Institute shall submit any revisions of the plan to the President's Cancer Panel, the Secretary, and the Director of NIH.

(D) The Secretary shall provide a copy of the plan submitted under subparagraph (A), and any revisions submitted under subparagraph (C), to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

[1] So in original. Probably should not be capitalized.

[2] So in original. Probably should be section ''285a–2(b)(9)''.

(d) Other cancers

In carrying out subsection (a) of this section, the Director of the Institute shall conduct or support research on ovarian cancer and other cancers of the reproductive system of women. Activities under such subsection shall provide for the conduct and support of—

(1) basic research concerning the etiology and causes of ovarian cancer and other cancers of the reproductive system of women;

(2) clinical research and related activities into the causes, prevention, detection and treatment of ovarian cancer and other cancers of the reproductive system of women;

(3) control programs with respect to ovarian cancer and other cancers of the reproductive system of women in accordance with section 285a–1 of this title;

(4) information and education programs with respect to ovarian cancer and other cancers of the reproductive system of women in accordance with section 285a–2 of this title; and

(5) research and demonstration centers with respect to ovarian cancer and cancers of the reproductive system in accordance with section 285a–3 of this title.

(e) Report

The Director of the Institute shall prepare, for inclusion in the biennial report submitted under section 284b of this title, a report that describes the activities of the National Cancer Institute under the research programs referred to in subsection (a) of this section, that shall include—

(1) a description of the research plan with respect to breast cancer prepared under subsection (c) of this section;

(2) an assessment of the development, revision, and implementation of such plan;

(3) a description and evaluation of the progress made, during the period for which such report is prepared, in the research programs on breast cancer and cancers of the reproductive system of women;

(4) a summary and analysis of expenditures made, during the period for which such report is made, for activities with respect to breast cancer and cancers of the reproductive system of women conducted and supported by the National Institutes of Health; and

(5) such comments and recommendations as the Director considers appropriate.

(July 1, 1944, ch. 373, title IV, § 417, as added Pub. L. 103–43, title IV, § 401, June 10, 1993, 107 Stat. 153.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 285a–7. Prostate cancer

(a) Expansion and coordination of activities

The Director of the Institute, in consultation with the National Cancer Advisory Board, shall expand, intensify, and coordinate the activities of the Institute with respect to research on prostate cancer.

(b) Coordination with other institutes

The Director of the Institute shall coordinate the activities of the Director under subsection (a) of this section with similar activities conducted by other national research institutes and agencies of the National Institutes of Health to the extent that such Institutes[1] and agencies have responsibilities that are related to prostate cancer.

(c) Programs

(1) In general

In carrying out subsection (a) of this section, the Director of the Institute shall conduct or support research to expand the understanding of the cause of, and to find a cure for, prostate cancer. Activities under such subsection shall provide for an expansion and intensification of the conduct and support of—

(A) basic research concerning the etiology and causes of prostate cancer;

(B) clinical research and related activities concerning the causes, prevention, detection and treatment of prostate cancer;

(C) prevention and control and early detection programs with respect to prostate cancer in accordance with section 285a–1 of this title, particularly as it relates to intensifying research on the role of prostate specific antigen for the screening and early detection of prostate cancer;

(D) an Inter-Institute Task Force, under the direction of the Director of the Institute, to provide coordination between relevant National Institutes of Health components of research efforts on prostate cancer;

(E) control programs with respect to prostate cancer in accordance with section 285a–1 of this title;

(F) information and education programs with respect to prostate cancer in accordance with section 285a–2 of this title; and

(G) research and demonstration centers with respect to prostate cancer in accordance with section 285a–3 of this title, including the development and operation of centers for prostate cancer research to bring together basic and clinical, biomedical and behavioral scientists to conduct basic, clinical, epidemiological, psychosocial, prevention and control, treatment, research, and related activities on prostate cancer.

Not less than six centers shall be operated under subparagraph (G). Activities of such centers should include supporting new and innovative research and training programs for new researchers. Such centers shall give priority to expediting the transfer of research advances to clinical applications.

[1] So in original. Probably should not be capitalized.

(2) Implementation of plan for programs

(A) The Director of the Institute shall ensure that the research programs described in paragraph (1) are implemented in accordance with a plan for the programs. Such plan shall include comments and recommendations that the Director of the Institute considers appropriate, with due consideration provided to the professional judgment needs of the Institute as expressed in the annual budget estimate prepared in accordance with section 285a–2(9)[2] of this title. The Director of the Institute, in consultation with the National Cancer Advisory Board, shall periodically review and revise such plan.

(B) Not later than October 1, 1993, the Director of the Institute shall submit a copy of the plan to the President's Cancer Panel, the Secretary, and the Director of NIH.

(C) The Director of the Institute shall submit any revisions of the plan to the President's Cancer Panel, the Secretary, and the Director of NIH.

(D) The Secretary shall provide a copy of the plan submitted under subparagraph (A), and any revisions submitted under subparagraph (C), to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(July 1, 1944, ch. 373, title IV, § 417A, as added Pub. L. 103–43, title IV, § 402, June 10, 1993, 107 Stat. 155.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 285a–8. Authorization of appropriations

(a) Activities generally

For the purpose of carrying out this subpart, there are authorized to be appropriated $2,728,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(b) Breast cancer and gynecological cancers

(1) Breast cancer

(A) For the purpose of carrying out subparagraph (A) of section 285a–6(c)(1) of this title, there are authorized to be appropriated $225,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2003. Such authorizations of appropriations are in addition to the authorizations of appropriations established in subsection (a) of this section with respect to such purpose.

(B) For the purpose of carrying out subparagraphs (B) through (E) of section 285a–6(c)(1) of this title, there are authorized to be appropriated $100,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2003. Such authorizations of appropriations are in addition to the authorizations of appropriations established in subsection (a) of this section with respect to such purpose.

(2) Other cancers

For the purpose of carrying out subsection (d) of section 285a–6 of this title, there are authorized to be appropriated $75,000,000 for fiscal year 1994, and such sums as are necessary for each of the fiscal years 1995 through 2003. Such authorizations of appropriations are in addition to the authorizations of appropriations established in subsection (a) of this section with respect to such purpose.

(c) Prostate cancer

For the purpose of carrying out section 285a–7 of this title, there are authorized to be appropriated $72,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2004. Such authorizations of appropriations are in addition to the authorizations of appropriations established in subsection (a) of this section with respect to such purpose.

(d) Allocation regarding cancer control

(1) In general

Of the amounts appropriated for the National Cancer Institute for a fiscal year, the Director of the Institute shall make available not less than the applicable percentage specified in paragraph (2) for carrying out the cancer control activities authorized in section 285a–1 of this title and for which budget estimates are made under section 285a–2(b)(9) of this title for the fiscal year.

(2) Applicable percentage

The percentage referred to in paragraph (1) is—

(A) 7 percent, in the case of fiscal year 1994;

(B) 9 percent, in the case of fiscal year 1995; and

(C) 10 percent, in the case of fiscal year 1996 and each subsequent fiscal year.

(July 1, 1944, ch. 373, title IV, § 417B, as added Pub. L. 103–43, title IV, § 403(a), June 10, 1993, 107 Stat. 157; amended Pub. L. 105–340, title I, § 103, Oct. 31, 1998, 112 Stat. 3192; Pub. L. 106–505, title VI, § 602(b), Nov. 13, 2000, 114 Stat. 2346.)

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–505 substituted ''through 2004'' for ''and 1996''.

1998—Subsec. (b)(1)(A), (B), (2). Pub. L. 105–340 substituted ''through 2003'' for ''and 1996''.

§ 285a–9. Grants for education, prevention, and early detection of radiogenic cancers and diseases

(a) Definition

In this section the term ''entity'' means any—

[2] So in original. Probably should be section ''285a–2(b)(9)''.

(1) National Cancer Institute-designated cancer center;

(2) Department of Veterans Affairs hospital or medical center;

(3) Federally Qualified Health Center, community health center, or hospital;

(4) agency of any State or local government, including any State department of health; or

(5) nonprofit organization.

(b) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration in consultation with the Director of the National Institutes of Health and the Director of the Indian Health Service, may make competitive grants to any entity for the purpose of carrying out programs to—

(1) screen individuals described under section 4(a)(1)(A)(i) or 5(a)(1)(A) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for cancer as a preventative health measure;

(2) provide appropriate referrals for medical treatment of individuals screened under paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services;

(3) develop and disseminate public information and education programs for the detection, prevention, and treatment of radiogenic cancers and diseases; and

(4) facilitate putative applicants in the documentation of claims as described in section 5(a) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).

(c) Indian Health Service

The programs under subsection (a) of this section shall include programs provided through the Indian Health Service or through tribal contracts, compacts, grants, or cooperative agreements with the Indian Health Service and which are determined appropriate to raising the health status of Indians.

(d) Grant and contract authority

Entities receiving a grant under subsection (b) of this section may expend the grant to carry out the purpose described in such subsection.

(e) Health coverage unaffected

Nothing in this section shall be construed to affect any coverage obligation of a governmental or private health plan or program relating to an individual referred to under subsection (b)(1) of this section.

(f) Report to Congress

Beginning on October 1 of the year following the date on which amounts are first appropriated to carry out this section and annually on each October 1 thereafter, the Secretary shall submit a report to the Committee on the Judiciary and the Committee on Health, Education, Labor, and Pensions of the Senate and to the Committee on the Judiciary and the Committee on Commerce of the House of Representatives. Each report shall summarize the expenditures and programs funded under this section as the Secretary determines to be appropriate.

(g) Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out this section $20,000,000 for fiscal year 1999 and such sums as may be necessary for each of the fiscal years 2000 through 2009.

(July 1, 1944, ch. 373, title IV, § 417C, as added Pub. L. 106–245, § 4, July 10, 2000, 114 Stat. 508.)

REFERENCES IN TEXT

Sections 4 and 5 of the Radiation Exposure Compensation Act, referred to in subsec. (b)(1) and (4), are sections 4 and 5 of Pub. L. 101–426, which are set out as a note under section 2210 of this title.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 285a–10. Research, information, and education with respect to blood cancer

(a) Joe Moakley Research Excellence Program

(1) In general

The Director of NIH shall expand, intensify, and coordinate programs for the conduct and support of research with respect to blood cancer, and particularly with respect to leukemia, lymphoma, and multiple myeloma.

(2) Administration

The Director of NIH shall carry out this subsection through the Director of the National Cancer Institute and in collaboration with any other agencies that the Director determines to be appropriate.

(3) Authorization of appropriations

For the purpose of carrying out this subsection, there is authorized to be appropriated such sums as may be necessary for fiscal year 2002 and each subsequent fiscal year. Such authorizations of appropriations are in addition to other authorizations of appropriations that are available for such purpose.

(b) Geraldine Ferraro Cancer Education Program

(1) In general

The Secretary shall direct the appropriate agency within the Department of Health and Human Services, in collaboration with the Director of NIH, to establish and carry out a program to provide information and education for patients and the general public with respect to blood cancer, and particularly with respect to the treatment of leukemia, lymphoma, and multiple myeloma.

(2) Administration

The Agency determined by the Secretary under paragraph (1) shall carry out this subsection in collaboration with private health organizations that have national education and patient assistance programs on blood-related cancers.

(3) Authorization of appropriations

For the purpose of carrying out this subsection, there is authorized to be appropriated such sums as may be necessary for fiscal year

2002 and each subsequent fiscal year. Such authorizations of appropriations are in addition to other authorizations of appropriations that are available for such purpose.

(July 1, 1944, ch. 373, title IV, § 417D, as added Pub. L. 107–172, § 3, May 14, 2002, 116 Stat. 541.)

CODIFICATION

Section 3 of Pub. L. 107–172, which directed that section 417D (this section) be inserted after section 419C of part C of title IV of the Public Health Service Act, was executed by adding section 417D to part C of title IV of the Public Health Service Act, to reflect the probable intent of Congress, notwithstanding that part C does not contain a section 419C.

CONGRESSIONAL FINDINGS

Pub. L. 107–172, § 2, May 14, 2002, 116 Stat. 541, provided that: ''Congress finds that:

''(1) An estimated 109,500 people in the United States will be diagnosed with leukemia, lymphoma, and multiple myeloma in 2001.

''(2) New cases of the blood cancers described in paragraph (1) account for 8.6 percent of new cancer cases.

''(3) Those devastating blood cancers will cause the deaths of an estimated 60,300 persons in the United States in 2001. Every 9 minutes, a person in the United States dies from leukemia, lymphoma, or multiple myeloma.

''(4) While less than 5 percent of Federal funds for cancer research are spent on those blood cancers, those blood cancers cause 11 percent of all cancer deaths in the United States.

''(5) Increased Federal support of research into leukemia, lymphoma, and multiple myeloma has resulted and will continue to result in significant advances in the treatment, and ultimately the cure, of those blood cancers as well as other cancers.''

SUBPART 2—NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

§ 285b. Purpose of Institute

The general purpose of the National Heart, Lung, and Blood Institute (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to heart, blood vessel, lung, and blood diseases and with respect to the use of blood and blood products and the management of blood resources.

(July 1, 1944, ch. 373, title IV, § 418, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 836.)

§ 285b–1. Heart, blood vessel, lung, and blood disease prevention and control programs

(a) The Director of the Institute shall conduct and support programs for the prevention and control of heart, blood vessel, lung, and blood diseases. Such programs shall include community-based and population-based programs carried out in cooperation with other Federal agencies, with public health agencies of State or local governments, with nonprofit private entities that are community-based health agencies, or with other appropriate public or nonprofit private entities.

(b) In carrying out programs under subsection (a) of this section, the Director of the Institute shall give special consideration to the prevention and control of heart, blood vessel, lung, and blood diseases in children, and in populations that are at increased risk with respect to such diseases.

(July 1, 1944, ch. 373, title IV, § 419, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 836; amended Pub. L. 103–43, title V, § 505, June 10, 1993, 107 Stat. 160.)

AMENDMENTS

1993—Pub. L. 103–43 substituted subsecs. (a) and (b) for former section which read as follows: ''The Director of the Institute, under policies established by the Director of NIH and after consultation with the advisory council for the Institute, shall establish programs as necessary for cooperation with other Federal health agencies, State, local, and regional public health agencies, and nonprofit private health agencies in the diagnosis, prevention, and treatment (including the provision of emergency medical services) of heart, blood vessel, lung, and blood diseases, appropriately emphasizing the prevention, diagnosis, and treatment of such diseases of children.''

§ 285b–2. Information and education

The Director of the Institute shall collect, identify, analyze, and disseminate on a timely basis, through publications and other appropriate means, to patients, families of patients, physicians and other health professionals, and the general public, information on research, prevention, diagnosis, and treatment of heart, blood vessel, lung, and blood diseases, the maintenance of health to reduce the incidence of such diseases, and on the use of blood and blood products and the management of blood resources. In carrying out this section, the Director of the Institute shall place special emphasis upon the utilization of collaborative efforts with both the public and private sectors to—

(1) increase the awareness and knowledge of health care professionals and the public regarding the prevention of heart and blood vessel, lung, and blood diseases and the utilization of blood resources; and

(2) develop and disseminate to health professionals, patients and patient families, and the public information designed to encourage adults and children to adopt healthful practices concerning the prevention of such diseases.

(July 1, 1944, ch. 373, title IV, § 420, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 837; amended Pub. L. 100–607, title I, § 126, Nov. 4, 1988, 102 Stat. 3055.)

AMENDMENTS

1988—Pub. L. 100–607 amended second sentence generally. Prior to amendment, second sentence read as follows: ''In carrying out this section the Director of the Institute shall place special emphasis upon—

''(1) the dissemination of information regarding diet and nutrition, environmental pollutants, exercise, stress, hypertension, cigarette smoking, weight control, and other factors affecting the prevention of arteriosclerosis and other cardiovascular diseases and of pulmonary and blood diseases; and

''(2) the dissemination of information designed to encourage children to adopt healthful habits respecting the risk factors related to the prevention of such diseases.''

§ 285b–3. National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program; administrative provisions

(a)(1) The National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program (hereafter in this subpart referred to as the ''Program'') may provide for—

(A) investigation into the epidemiology, etiology, and prevention of all forms and aspects of heart, blood vessel, lung, and blood diseases, including investigations into the social, environmental, behavioral, nutritional, biological, and genetic determinants and influences involved in the epidemiology, etiology, and prevention of such diseases;

(B) studies and research into the basic biological processes and mechanisms involved in the underlying normal and abnormal heart, blood vessel, lung, and blood phenomena;

(C) research into the development, trial, and evaluation of techniques, drugs, and devices (including computers) used in, and approaches to, the diagnosis, treatment (including the provision of emergency medical services), and prevention of heart, blood vessel, lung, and blood diseases and the rehabilitation of patients suffering from such diseases;

(D) establishment of programs that will focus and apply scientific and technological efforts involving the biological, physical, and engineering sciences to all facets of heart, blood vessel, lung, and blood diseases with emphasis on the refinement, development, and evaluation of technological devices that will assist, replace, or monitor vital organs and improve instrumentation for detection, diagnosis, and treatment of and rehabilitation from such diseases;

(E) establishment of programs for the conduct and direction of field studies, large-scale testing and evaluation, and demonstration of preventive, diagnostic, therapeutic, and rehabilitative approaches to, and emergency medical services for, such diseases;

(F) studies and research into blood diseases and blood, and into the use of blood for clinical purposes and all aspects of the management of blood resources in the United States, including the collection, preservation, fractionation, and distribution of blood and blood products;

(G) the education (including continuing education) and training of scientists, clinical investigators, and educators, in fields and specialties (including computer sciences) requisite to the conduct of clinical programs respecting heart, blood vessel, lung, and blood diseases and blood resources;

(H) public and professional education relating to all aspects of such diseases, including the prevention of such diseases, and the use of blood and blood products and the management of blood resources;

(I) establishment of programs for study and research into heart, blood vessel, lung, and blood diseases of children (including cystic fibrosis, hyaline membrane, hemolytic diseases such as sickle cell anemia and Cooley's anemia, and hemophilic diseases) and for the development and demonstration of diagnostic, treatment, and preventive approaches to such diseases; and

(J) establishment of programs for study, research, development, demonstrations and evaluation of emergency medical services for people who become critically ill in connection with heart, blood vessel, lung, or blood diseases.

(2) The Program shall be coordinated with other national research institutes to the extent that they have responsibilities respecting such diseases and shall give special emphasis to the continued development in the Institute of programs related to the causes of stroke and to effective coordination of such programs with related stroke programs in the National Institute of Neurological and Communicative Disorders and Stroke. The Director of the Institute, with the advice of the advisory council for the Institute, shall revise annually the plan for the Program and shall carry out the Program in accordance with such plan.

(b) In carrying out the Program, the Director of the Institute, under policies established by the Director of NIH—

(1) may, after consultation with the advisory council for the Institute, obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the period of such service) the services of not more than one hundred experts or consultants who have scientific or professional qualifications;

(2)(A) may, in consultation with the advisory council for the Institute, acquire and construct, improve, repair, operate, alter, renovate, and maintain, heart, blood vessel, lung, and blood disease and blood resource laboratories, research, training, and other facilities, equipment, and such other real or personal property as the Director determines necessary;

(B) may, in consultation with the advisory council for the Institute, make grants for construction or renovation of facilities; and

(C) may, in consultation with the advisory council for the Institute, acquire, without regard to section 8141 of title 40, by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years;

(3) subject to section 284(b)(2) of this title and without regard to section 3324 of title 31 and section 5 of title 41, may enter into such contracts, leases, cooperative agreements, or other transactions, as may be necessary in the conduct of the Director's functions, with any public agency, or with any person, firm, association, corporation, or educational institutions;

(4) may make grants to public and nonprofit private entities to assist in meeting the cost of the care of patients in hospitals, clinics, and related facilities who are participating in research projects; and

(5) shall, in consultation with the advisory council for the Institute, conduct appropriate intramural training and education programs, including continuing education and laboratory and clinical research training programs.

Except as otherwise provided, experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed, in accordance with title 5, for their travel to and from their place of service and for other expenses associated with their assignment. Such expenses shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Director of the Institute. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United States. The Secretary may waive in whole or in part a right of recovery under the preceding sentence.

(July 1, 1944, ch. 373, title IV, § 421, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 837; amended Pub. L. 100–607, title I, § 127, Nov. 4, 1988, 102 Stat. 3055; Pub. L. 103–43, title V, § 501, title XX, § 2008(b)(3), June 10, 1993, 107 Stat. 158, 211.)

REFERENCES IN TEXT

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (b), are classified generally to section 5701 et seq. of Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (b)(2)(C), ''section 8141 of title 40'' substituted for ''the Act of March 3, 1877 (40 U.S.C. 34)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–43, § 2008(b)(3), inserted comma after ''may''.

Subsec. (b)(5). Pub. L. 103–43, § 501, added par. (5).

1988—Subsec. (a)(1)(D). Pub. L. 100–607, § 127(1), inserted ''and rehabilitation from'' after ''and treatment of''.

Subsec. (b)(1). Pub. L. 100–607, § 127(2), substituted ''after consultation with'' for '', after approval of''.

§ 285b–4. National research and demonstration centers

(a) Heart, blood vessel, lung, blood diseases, and blood resources; utilization of centers for prevention programs

(1) The Director of the Institute may provide, in accordance with subsection (c) of this section, for the development of—

(A) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment and rehabilitation methods (including methods of providing emergency medical services) for heart and blood vessel diseases;

(B) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment and rehabilitation methods (including methods of providing emergency medical services) for lung diseases (including bronchitis, emphysema, asthma, cystic fibrosis, and other lung diseases of children);

(C) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for blood diseases and research into blood, in the use of blood products and in the management of blood resources; and

(D) three centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment (including genetic studies, intrauterine environment studies, postnatal studies, heart arrhythmias, and acquired heart disease and preventive cardiology) for cardiovascular diseases in children.

(2) The centers developed under paragraph (1) shall, in addition to being utilized for research, training, and demonstrations, be utilized for the following prevention programs for cardiovascular, pulmonary, and blood diseases:

(A) Programs to develop improved methods of detecting individuals with a high risk of developing cardiovascular, pulmonary, and blood diseases.

(B) Programs to develop improved methods of intervention against those factors which cause individuals to have a high risk of developing such diseases.

(C) Programs to develop health professions and allied health professions personnel highly skilled in the prevention of such diseases.

(D) Programs to develop improved methods of providing emergency medical services for persons with such diseases.

(E) Programs of continuing education for health and allied health professionals in the diagnosis, prevention, and treatment of such diseases and the maintenance of health to reduce the incidence of such diseases and information programs for the public respecting the prevention and early diagnosis and treatment of such diseases and the maintenance of health.

(3) The research, training, and demonstration activities carried out through any such center may relate to any one or more of the diseases referred to in paragraph (1) of this subsection.

(b) Sickle cell anemia

The Director of the Institute shall provide, in accordance with subsection (c) of this section, for the development of ten centers for basic and clinical research into the diagnosis, treatment, and control of sickle cell anemia.

(c) Cooperative agreements and grants for establishing and supporting; uses for Federal payments; period of support, additional periods

(1) The Director of the Institute may enter into cooperative agreements with and make grants to public or private nonprofit entities to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for centers for basic and clinical research into, training in, and demonstration of the management of blood resources and advanced diagnostic, prevention, and treatment methods for heart, blood vessel, lung, or blood diseases.

(2) A cooperative agreement or grant under paragraph (1) shall be entered into in accordance

with policies established by the Director of NIH and after consultation with the Institute's advisory council.

(3) Federal payments made under a cooperative agreement or grant under paragraph (1) may be used for—

(A) construction (notwithstanding any limitation under section 289e of this title);

(B) staffing and other basic operating costs, including such patient care costs as are required for research;

(C) training, including training for allied health professionals; and

(D) demonstration purposes.

As used in this subsection, the term ''construction'' does not include the acquisition of land, and the term ''training'' does not include research training for which Ruth L. Kirschstein National Research Service Awards may be provided under section 288 of this title.

(4) Support of a center under paragraph (1) may be for a period of not to exceed five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 422, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 839; amended Pub. L. 100–607, title I, § 128, Nov. 4, 1988, 102 Stat. 3055; Pub. L. 103–43, title V, § 502, June 10, 1993, 107 Stat. 158; Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874.)

AMENDMENTS

2002—Subsec. (c)(3). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards'' in concluding provisions.

1993—Subsec. (a)(1)(D). Pub. L. 103–43 added subpar. (D).

1988—Subsec. (a)(1)(A), (B). Pub. L. 100–607 inserted ''and rehabilitation'' after ''prevention, and treatment''.

§ 285b–5. Repealed. Pub. L. 100–607, title I, § 129, Nov. 4, 1988, 102 Stat. 3055

Section, act July 1, 1944, ch. 373, title IV, § 423, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 841, directed Secretary to establish an Interagency Technical Committee on Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources.

§ 285b–6. Associate Director for Prevention; appointment; function

(a) There shall be in the Institute an Associate Director for Prevention to coordinate and promote the programs in the Institute concerning the prevention of heart, blood vessel, lung, and blood diseases. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or experience are experts in public health or preventive medicine.

(b) The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 423, formerly § 424, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 841; renumbered § 423, Pub. L. 100–607, title I, § 129, Nov. 4, 1988, 102 Stat. 3055.)

PRIOR PROVISIONS

A prior section 423 of act July 1, 1944, was classified to section 285b–5 of this title prior to repeal by Pub. L. 100–607.

§ 285b–7. National Center on Sleep Disorders Research

(a) Establishment

Not later than 1 year after June 10, 1993, the Director of the Institute shall establish the National Center on Sleep Disorders Research (in this section referred to as the ''Center''). The Center shall be headed by a director, who shall be appointed by the Director of the Institute.

(b) Purpose

The general purpose of the Center is—

(1) the conduct and support of research, training, health information dissemination, and other activities with respect to sleep disorders, including biological and circadian rhythm research, basic understanding of sleep, chronobiological and other sleep related research; and

(2) to coordinate the activities of the Center with similar activities of other Federal agencies, including the other agencies of the National Institutes of Health, and similar activities of other public entities and nonprofit entities.

(c) Sleep Disorders Research Advisory Board

(1) The Director of the National Institutes of Health shall establish a board to be known as the Sleep Disorders Research Advisory Board (in this section referred to as the ''Advisory Board'').

(2) The Advisory Board shall advise, assist, consult with, and make recommendations to the Director of the National Institutes of Health, through the Director of the Institute, and the Director of the Center concerning matters relating to the scientific activities carried out by and through the Center and the policies respecting such activities, including recommendations with respect to the plan required in subsection (c)[1] of this section.

(3)(A) The Director of the National Institutes of Health shall appoint to the Advisory Board 12 appropriately qualified representatives of the public who are not officers or employees of the Federal Government. Of such members, eight shall be representatives of health and scientific disciplines with respect to sleep disorders and four shall be individuals representing the interests of individuals with or undergoing treatment for sleep disorders.

(B) The following officials shall serve as ex officio members of the Advisory Board:

(i) The Director of the National Institutes of Health.

(ii) The Director of the Center.

[1] So in original. Probably should be subsection ''(d)''.

(iii) The Director of the National Heart, Lung and Blood Institute.

(iv) The Director of the National Institute of Mental Health.

(v) The Director of the National Institute on Aging.

(vi) The Director of the National Institute of Child Health and Human Development.

(vii) The Director of the National Institute of Neurological Disorders and Stroke.

(viii) The Assistant Secretary for Health.

(ix) The Assistant Secretary of Defense (Health Affairs).

(x) The Chief Medical Director of the Veterans' Administration.

(4) The members of the Advisory Board shall, from among the members of the Advisory Board, designate an individual to serve as the chair of the Advisory Board.

(5) Except as inconsistent with, or inapplicable to, this section, the provisions of section 284a of this title shall apply to the advisory board[2] established under this section in the same manner as such provisions apply to any advisory council established under such section.

(d) Development of comprehensive research plan; revision

(1) After consultation with the Director of the Center and the advisory board[2] established under subsection (c) of this section, the Director of the National Institutes of Health shall develop a comprehensive plan for the conduct and support of sleep disorders research.

(2) The plan developed under paragraph (1) shall identify priorities with respect to such research and shall provide for the coordination of such research conducted or supported by the agencies of the National Institutes of Health.

(3) The Director of the National Institutes of Health (after consultation with the Director of the Center and the advisory board[2] established under subsection (c) of this section) shall revise the plan developed under paragraph (1) as appropriate.

(e) Collection and dissemination of information

The Director of the Center, in cooperation with the Centers for Disease Control and Prevention, is authorized to coordinate activities with the Department of Transportation, the Department of Defense, the Department of Education, the Department of Labor, and the Department of Commerce to collect data, conduct studies, and disseminate public information concerning the impact of sleep disorders and sleep deprivation.

(July 1, 1944, ch. 373, title IV, § 424, as added Pub. L. 103–43, title V, § 503, June 10, 1993, 107 Stat. 159.)

CHANGE OF NAME

Reference to Chief Medical Director of Department of Veterans Affairs deemed to refer to Under Secretary for Health of Department of Veterans Affairs pursuant to section 302(e) of Pub. L. 102–405, set out as a note under section 305 of Title 38, Veterans' Benefits.

Reference to Chief Medical Director of Veterans' Administration deemed to refer to Chief Medical Director of Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 201 of Title 38.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 285b–7a. Heart attack, stroke, and other cardiovascular diseases in women

(a) In general

The Director of the Institute shall expand, intensify, and coordinate research and related activities of the Institute with respect to heart attack, stroke, and other cardiovascular diseases in women.

(b) Coordination with other institutes

The Director of the Institute shall coordinate activities under subsection (a) of this section with similar activities conducted by the other national research institutes and agencies of the National Institutes of Health to the extent that such Institutes and agencies have responsibilities that are related to heart attack, stroke, and other cardiovascular diseases in women.

(c) Certain programs

In carrying out subsection (a) of this section, the Director of the Institute shall conduct or support research to expand the understanding of the causes of, and to develop methods for preventing, cardiovascular diseases in women. Activities under such subsection shall include conducting and supporting the following:

(1) Research to determine the reasons underlying the prevalence of heart attack, stroke, and other cardiovascular diseases in women, including African-American women and other women who are members of racial or ethnic minority groups.

(2) Basic research concerning the etiology and causes of cardiovascular diseases in women.

(3) Epidemiological studies to address the frequency and natural history of such diseases and the differences among men and women, and among racial and ethnic groups, with respect to such diseases.

(4) The development of safe, efficient, and cost-effective diagnostic approaches to evaluating women with suspected ischemic heart disease.

(5) Clinical research for the development and evaluation of new treatments for women, including rehabilitation.

(6) Studies to gain a better understanding of methods of preventing cardiovascular diseases

[2] So in original. Probably should be capitalized.

in women, including applications of effective methods for the control of blood pressure, lipids, and obesity.

(7) Information and education programs for patients and health care providers on risk factors associated with heart attack, stroke, and other cardiovascular diseases in women, and on the importance of the prevention or control of such risk factors and timely referral with appropriate diagnosis and treatment. Such programs shall include information and education on health-related behaviors that can improve such important risk factors as smoking, obesity, high blood cholesterol, and lack of exercise.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1999 through 2003. The authorization of appropriations established in the preceding sentence is in addition to any other authorization of appropriation that is available for such purpose.

(July 1, 1944, ch. 373, title IV, § 424A, as added Pub. L. 105–340, title I, § 104, Oct. 31, 1998, 112 Stat. 3192.)

§ 285b–7b. Coordination of Federal asthma activities

(a) In general

The Director of[1] Institute shall, through the National Asthma Education Prevention Program Coordinating Committee—

(1) identify all Federal programs that carry out asthma-related activities;

(2) develop, in consultation with appropriate Federal agencies and professional and voluntary health organizations, a Federal plan for responding to asthma; and

(3) not later than 12 months after October 17, 2000, submit recommendations to the appropriate committees of the Congress on ways to strengthen and improve the coordination of asthma-related activities of the Federal Government.

(b) Representation of the Department of Housing and Urban Development

A representative of the Department of Housing and Urban Development shall be included on the National Asthma Education Prevention Program Coordinating Committee for the purpose of performing the tasks described in subsection (a) of this section.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title IV, § 424B, as added Pub. L. 106–310, div. A, title V, § 521, Oct. 17, 2000, 114 Stat. 1116.)

§ 285b–8. Authorization of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $1,500,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(July 1, 1944, ch. 373, title IV, § 425, as added Pub. L. 103–43, title V, § 504, June 10, 1993, 107 Stat. 160.)

[1] So in original. Probably should be followed by ''the''.

SUBPART 3—NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES

§ 285c. Purpose of Institute

The general purpose of the National Institute of Diabetes and Digestive and Kidney Diseases (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to diabetes mellitus and endocrine and metabolic diseases, digestive diseases and nutritional disorders, and kidney, urologic, and hematologic diseases.

(July 1, 1944, ch. 373, title IV, § 426, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 841.)

STUDY ON METABOLIC DISORDERS

Pub. L. 106–310, div. A, title XXVIII, § 2802, Oct. 17, 2000, 114 Stat. 1167, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall, in consultation with relevant experts or through the Institute of Medicine, study issues related to treatment of PKU and other metabolic disorders for children, adolescents, and adults, and mechanisms to assure access to effective treatment, including special diets, for children and others with PKU and other metabolic disorders. Such mechanisms shall be evidence-based and reflect the best scientific knowledge regarding effective treatment and prevention of disease progression.

''(b) DISSEMINATION OF RESULTS.—Upon completion of the study referred to in subsection (a), the Secretary shall disseminate and otherwise make available the results of the study to interested groups and organizations, including insurance commissioners, employers, private insurers, health care professionals, State and local public health agencies, and State agencies that carry out the Medicaid program under title XIX of the Social Security Act [section 1396 et seq. of this title] or the State children's health insurance program under title XXI of such Act [section 1397aa et seq. of this title].

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2003.''

REVIEW OF DISEASE RESEARCH PROGRAMS OF THE NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES

Section 10 of Pub. L. 99–158 provided that: ''The Secretary of Health and Human Services shall conduct an administrative review of the disease research programs of the National Institute of Diabetes and Digestive and Kidney Diseases to determine if any of such programs could be more effectively and efficiently managed by other national research institutes. The Secretary shall complete such review within the one-year period beginning on the date of enactment of this Act [Nov. 20, 1985].''

§ 285c–1. Data systems and information clearinghouses

(a) National Diabetes Data System and National Diabetes Clearinghouse

The Director of the Institute shall (1) establish the National Diabetes Data System for the

collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with diabetes, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing diabetes, and (2) establish the National Diabetes Information Clearinghouse to facilitate and enhance knowledge and understanding of diabetes on the part of health professionals, patients, and the public through the effective dissemination of information.

(b) National Digestive Diseases Data System and National Digestive Diseases Information Clearinghouse

The Director of the Institute shall (1) establish the National Digestive Diseases Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with digestive diseases, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing digestive diseases, and (2) establish the National Digestive Diseases Information Clearinghouse to facilitate and enhance knowledge and understanding of digestive diseases on the part of health professionals, patients, and the public through the effective dissemination of information.

(c) National Kidney and Urologic Diseases Data System and National Kidney and Urologic Diseases Information Clearinghouse

The Director of the Institute shall (1) establish the National Kidney and Urologic Diseases Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with kidney and urologic diseases, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing kidney and urologic diseases, and (2) establish the National Kidney and Urologic Diseases Information Clearinghouse to facilitate and enhance knowledge and understanding of kidney and urologic diseases on the part of health professionals, patients, and the public through the effective dissemination of information.

(July 1, 1944, ch. 373, title IV, § 427, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 841.)

§ 285c–2. Division Directors for Diabetes, Endocrinology, and Metabolic Diseases, Digestive Diseases and Nutrition, and Kidney, Urologic, and Hematologic Diseases; functions

(a)(1) In the Institute there shall be a Division Director for Diabetes, Endocrinology, and Metabolic Diseases, a Division Director for Digestive Diseases and Nutrition, and a Division Director for Kidney, Urologic, and Hematologic Diseases. Such Division Directors, under the supervision of the Director of the Institute, shall be responsible for—

(A) developing a coordinated plan (including recommendations for expenditures) for each of the national research institutes within the National Institutes of Health with respect to research and training concerning diabetes, endocrine and metabolic diseases, digestive diseases and nutrition, and kidney, urologic, and hematologic diseases;

(B) assessing the adequacy of management approaches for the activities within such institutes concerning such diseases and nutrition and developing improved approaches if needed;

(C) monitoring and reviewing expenditures by such institutes concerning such diseases and nutrition; and

(D) identifying research opportunities concerning such diseases and nutrition and recommending ways to utilize such opportunities.

(2) The Director of the Institute shall transmit to the Director of NIH the plans, recommendations, and reviews of the Division Directors under subparagraphs (A) through (D) of paragraph (1) together with such comments and recommendations as the Director of the Institute determines appropriate.

(b) The Director of the Institute, acting through the Division Director for Diabetes, Endocrinology, and Metabolic Diseases, the Division Director for Digestive Diseases and Nutrition, and the Division Director for Kidney, Urologic, and Hematologic Diseases, shall—

(1) carry out programs of support for research and training (other than training for which Ruth L. Kirschstein National Research Service Awards may be made under section 288 of this title) in the diagnosis, prevention, and treatment of diabetes mellitus and endocrine and metabolic diseases, digestive diseases and nutritional disorders, and kidney, urologic, and hematologic diseases, including support for training in medical schools, graduate clinical training, graduate training in epidemiology, epidemiology studies, clinical trials, and interdisciplinary research programs; and

(2) establish programs of evaluation, planning, and dissemination of knowledge related to such research and training.

(July 1, 1944, ch. 373, title IV, § 428, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 842; amended Pub. L. 103–43, title XX, § 2008(b)(4), June 10, 1993, 107 Stat. 211; Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards''.

1993—Subsec. (b). Pub. L. 103–43 substituted ''the'' for ''the the'' before ''Division Director for Diabetes'' in introductory provisions.

§ 285c–3. Interagency coordinating committees

(a) Establishment and purpose

For the purpose of—

(1) better coordination of the research activities of all the national research institutes relating to diabetes mellitus, digestive diseases, and kidney, urologic, and hematologic diseases; and

(2) coordinating those aspects of all Federal health programs and activities relating to such diseases to assure the adequacy and technical soundness of such programs and activities and to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities;

the Secretary shall establish a Diabetes Mellitus Interagency Coordinating Committee, a Diges-

tive Diseases Interagency Coordinating Committee, and a Kidney, Urologic, and Hematologic Diseases Coordinating Committee (hereafter in this section individually referred to as a ''Committee'').

(b) Membership; chairman; meetings

Each Committee shall be composed of the Directors of each of the national research institutes and divisions involved in research with respect to the diseases for which the Committee is established, the Division Director of the Institute for the diseases for which the Committee is established, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers) and shall include representation from all other Federal departments and agencies whose programs involve health functions or responsibilities relevant to such diseases, as determined by the Secretary. Each Committee shall be chaired by the Director of NIH (or the designee of the Director). Each Committee shall meet at the call of the chairman, but not less often than four times a year.

(c) Annual report

Each Committee shall prepare an annual report for—

(1) the Secretary;

(2) the Director of NIH; and

(3) the Advisory Board established under section 285c–4 of this title for the diseases for which the Committee was established,

detailing the work of the Committee in carrying out paragraphs (1) and (2) of subsection (a) of this section in the fiscal year for which the report was prepared. Such report shall be submitted not later than 120 days after the end of each fiscal year.

(d) Annual assessment on Federal pancreatic islet cell transplantation

In each annual report prepared by the Diabetes Mellitus Interagency Coordinating Committee pursuant to subsection (c) of this section, the Committee shall include an assessment of the Federal activities and programs related to pancreatic islet cell transplantation. Such assessment shall, at a minimum, address the following:

(1) The adequacy of Federal funding for taking advantage of scientific opportunities relating to pancreatic islet cell transplantation.

(2) Current policies and regulations affecting the supply of pancreata for islet cell transplantation.

(3) The effect of xenotransplantation on advancing pancreatic islet cell transplantation.

(4) The effect of United Network for Organ Sharing policies regarding pancreas retrieval and islet cell transplantation.

(5) The existing mechanisms to collect and coordinate outcomes data from existing islet cell transplantation trials.

(6) Implementation of multiagency clinical investigations of pancreatic islet cell transplantation.

(7) Recommendations for such legislation and administrative actions as the Committee considers appropriate to increase the supply of pancreata available for islet cell transplantation.

(July 1, 1944, ch. 373, title IV, § 429, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 843; amended Pub. L. 100–527, § 10(4), Oct. 25, 1988, 102 Stat. 2641; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 108–362, § 3, Oct. 25, 2004, 118 Stat. 1703.)

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–362 added subsec. (d).

1992—Subsec. (b). Pub. L. 102–405 substituted ''Under Secretary for Health of the Department of Veterans Affairs'' for ''Chief Medical Director of the Department of Veterans Affairs''.

1988—Subsec. (b). Pub. L. 100–527 substituted ''Chief Medical Director of the Department of Veterans Affairs'' for ''Chief Medical Director of the Veterans' Administration''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

§ 285c–4. Advisory boards

(a) Establishment

The Secretary shall establish in the Institute the National Diabetes Advisory Board, the National Digestive Diseases Advisory Board, and the National Kidney and Urologic Diseases Advisory Board (hereafter in this section individually referred to as an ''Advisory Board'').

(b) Membership; ex officio members

Each Advisory Board shall be composed of eighteen appointed members and nonvoting ex officio members as follows:

(1) The Secretary shall appoint—

(A) twelve members from individuals who are scientists, physicians, and other health professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to the diseases with respect to which the Advisory Board is established; and

(B) six members from the general public who are knowledgeable with respect to such diseases, including at least one member who is a person who has such a disease and one member who is a parent of a person who has such a disease.

Of the appointed members at least five shall by virtue of training or experience be knowledgeable in the fields of health education, nursing, data systems, public information, and community program development.

(2)(A) The following shall be ex officio members of each Advisory Board:

(i) The Assistant Secretary for Health, the Director of NIH, the Director of the National Institute of Diabetes and Digestive and Kidney Diseases, the Director of the Centers for Disease Control and Prevention, the Under Secretary for Health of the Department of Veterans Affairs, the Assistant Secretary of Defense for Health Affairs, and the Division Director of the National Institute of Diabetes and Digestive and Kidney Diseases for the diseases for which the Board is established (or the designees of such officers).

(ii) Such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

(B) In the case of the National Diabetes Advisory Board, the following shall also be ex officio members: The Director of the National Heart, Lung, and Blood Institute, the Director of the National Eye Institute, the Director of the National Institute of Child Health and Human Development, and the Administrator of the Health Resources and Services Administration (or the designees of such officers).

(c) Compensation

Members of an Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Board.

(d) Term of office; vacancy

The term of office of an appointed member of an Advisory Board is four years, except that no term of office may extend beyond the expiration of the Advisory Board. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in an Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days from the date the vacancy occurred.

(e) Chairman

The members of each Advisory Board shall select a chairman from among the appointed members.

(f) Executive director; professional and clerical staff; administrative support services and facilities

The Secretary shall, after consultation with and consideration of the recommendations of an Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, such services of consultants, such information, and (through contracts or other arrangements) such administrative support services and facilities, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

(g) Meetings

Each Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

(h) Functions of National Diabetes Advisory Board and National Digestive Diseases Advisory Board

The National Diabetes Advisory Board and the National Digestive Diseases Advisory Board shall—

(1) review and evaluate the implementation of the plan (referred to in section 285c–7 of this title) respecting the diseases with respect to which the Advisory Board was established and periodically update the plan to ensure its continuing relevance;

(2) for the purpose of assuring the most effective use and organization of resources respecting such diseases, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

(3) maintain liaison with other advisory bodies related to Federal agencies involved in the implementation of such plan, the coordinating committee for such diseases, and with key non-Federal entities involved in activities affecting the control of such diseases.

(i) Subcommittees; establishment and membership

In carrying out its functions, each Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

(j) Termination of predecessor boards; time within which to appoint members

The National Diabetes Advisory Board and the National Digestive Diseases Advisory Board in existence on November 20, 1985, shall terminate upon the appointment of a successor Board under subsection (a) of this section. The Secretary shall make appointments to the Advisory Boards established under subsection (a) of this section before the expiration of 90 days after November 20, 1985. The members of the Boards in existence on November 20, 1985, may be appointed, in accordance with subsections (b) and (d) of this section, to the Boards established under subsection (a) of this section for diabetes and digestive diseases, except that at least one-half of the members of the National Diabetes Advisory Board in existence on November 20, 1985, shall be appointed to the National Diabetes Advisory Board first established under subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 430, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 844; amended Pub. L. 100–607, title I, § 131, Nov. 4, 1988, 102 Stat. 3056; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 102–531, title III, § 312(d)(6), Oct. 27, 1992, 106 Stat. 3504; Pub. L. 103–43, title XX, § 2008(b)(5), June 10, 1993, 107 Stat. 211; Pub. L. 105–362, title VI, § 601(a)(1)(C), Nov. 10, 1998, 112 Stat. 3285.)

AMENDMENTS

1998—Subsecs. (j), (k). Pub. L. 105–362 redesignated subsec. (k) as (j) and struck out former subsec. (j)

which read as follows: ''Each Advisory Board shall prepare an annual report for the Secretary which—

''(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

''(2) describes and evaluates the progress made in such fiscal year in research, treatment, education, and training with respect to the diseases with respect to which the Advisory Board was established;

''(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such diseases in such fiscal year; and

''(4) contains the Advisory Board's recommendations (if any) for changes in the plan referred to in section 285c–7 of this title.''

1993—Subsec. (b)(2)(A)(i). Pub. L. 103–43 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsec. (b)(2)(A)(i). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1988—Subsecs. (k), (*l*). Pub. L. 100–607 redesignated subsec. (*l*) as (k) and struck out former subsec. (k) which read as follows: ''Each Advisory Board shall expire on September 30, 1988.''

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 285c–5. Research and training centers; development or expansion

(a) Diabetes mellitus and related endocrine and metabolic diseases

(1) Consistent with applicable recommendations of the National Commission on Diabetes, the Director of the Institute shall provide for the development or substantial expansion of centers for research and training in diabetes mellitus and related endocrine and metabolic diseases. Each center developed or expanded under this subsection shall—

(A) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Secretary; and

(B) conduct—

(i) research in the diagnosis and treatment of diabetes mellitus and related endocrine and metabolic diseases and the complications resulting from such diseases;

(ii) training programs for physicians and allied health personnel in current methods of diagnosis and treatment of such diseases and complications, and in research in diabetes; and

(iii) information programs for physicians and allied health personnel who provide primary care for patients with such diseases or complications.

(2) A center may use funds provided under paragraph (1) to provide stipends for nurses and allied health professionals enrolled in research training programs described in paragraph (1)(B)(ii).

(b) Digestive diseases and related functional, congenital, metabolic disorders, and normal development of digestive tract

Consistent with applicable recommendations of the National Digestive Diseases Advisory Board, the Director shall provide for the development or substantial expansion of centers for research in digestive diseases and related functional, congenital, metabolic disorders, and normal development of the digestive tract. Each center developed or expanded under this subsection—

(1) shall utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research qualifications as may be prescribed by the Secretary;

(2) shall develop and conduct basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of digestive diseases and nutritional disorders and related functional, congenital, or metabolic complications resulting from such diseases or disorders;

(3) shall encourage research into and programs for—

(A) providing information for patients with such diseases and the families of such patients, physicians and others who care for such patients, and the general public;

(B) model programs for cost effective and preventive patient care; and

(C) training physicians and scientists in research on such diseases, disorders, and complications; and

(4) may perform research and participate in epidemiological studies and data collection relevant to digestive diseases and disorders and disseminate such research, studies, and data to the health care profession and to the public.

(c) Kidney and urologic diseases

The Director shall provide for the development or substantial expansion of centers for research in kidney and urologic diseases. Each center developed or expanded under this subsection—

(1) shall utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research qualifications as may be prescribed by the Secretary;

(2) shall develop and conduct basic and clinical research into the cause, diagnosis, early

detection, prevention, control, and treatment of kidney and urologic diseases;

(3) shall encourage research into and programs for—

(A) providing information for patients with such diseases, disorders, and complications and the families of such patients, physicians and others who care for such patients, and the general public;

(B) model programs for cost effective and preventive patient care; and

(C) training physicians and scientists in research on such diseases; and

(4) may perform research and participate in epidemiological studies and data collection relevant to kidney and urologic diseases in order to disseminate such research, studies, and data to the health care profession and to the public.

(d) Nutritional disorders

(1) The Director of the Institute shall, subject to the extent of amounts made available in appropriations Acts, provide for the development or substantial expansion of centers for research and training regarding nutritional disorders, including obesity.

(2) The Director of the Institute shall carry out paragraph (1) in collaboration with the Director of the National Cancer Institute and with the Directors of such other agencies of the National Institutes of Health as the Director of NIH determines to be appropriate.

(3) Each center developed or expanded under paragraph (1) shall—

(A) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Director;

(B) conduct basic and clinical research into the cause, diagnosis, early detection, prevention, control and treatment of nutritional disorders, including obesity and the impact of nutrition and diet on child development;

(C) conduct training programs for physicians and allied health professionals in current methods of diagnosis and treatment of such diseases and complications, and in research in such disorders; and

(D) conduct information programs for physicians and allied health professionals who provide primary care for patients with such disorders or complications.

(e) Geographic distribution; period of support, additional periods

Insofar as practicable, centers developed or expanded under this section should be geographically dispersed throughout the United States and in environments with proven research capabilities. Support of a center under this section may be for a period of not to exceed five years and such period may be extended by the Director of the Institute for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 431, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 846; amended Pub. L. 103–43, title VI, § 601(b), June 10, 1993, 107 Stat. 161.)

AMENDMENTS

1993—Subsecs. (d), (e). Pub. L. 103–43 added subsec. (d) and redesignated former subsec. (d) as (e).

§ 285c–6. Advisory council subcommittees

There are established within the advisory council for the Institute appointed under section 284a of this title a subcommittee on diabetes and endocrine and metabolic diseases, a subcommittee on digestive diseases and nutrition, and a subcommittee on kidney, urologic, and hematologic diseases. The subcommittees shall be composed of members of the advisory council who are outstanding in the diagnosis, prevention, and treatment of the diseases for which the subcommittees are established and members of the advisory council who are leaders in the fields of education and public affairs. The subcommittees are authorized to review applications made to the Director of the Institute for grants for research and training projects relating to the diagnosis, prevention, and treatment of the diseases for which the subcommittees are established and shall recommend to the advisory council those applications and contracts that the subcommittees determine will best carry out the purposes of the Institute. The subcommittees shall also review and evaluate the diabetes and endocrine and metabolic diseases, digestive diseases and nutrition, and kidney, urologic, and hematologic diseases programs of the Institute and recommend to the advisory council such changes in the administration of such programs as the subcommittees determine are necessary.

(July 1, 1944, ch. 373, title IV, § 432, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 847.)

§ 285c–7. Biennial report

The Director of the Institute shall prepare for inclusion in the biennial report made under section 284b of this title a description of the Institute's activities—

(1) under the current diabetes plan under the National Diabetes Mellitus Research and Education Act; and

(2) under the current digestive diseases plan formulated under the Arthritis, Diabetes, and Digestive Diseases Amendments of 1976.

The description submitted by the Director shall include an evaluation of the activities of the centers supported under section 285c–5 of this title.

(July 1, 1944, ch. 373, title IV, § 433, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 848.)

REFERENCES IN TEXT

The National Diabetes Mellitus Research and Education Act, referred to in par. (1), is Pub. L. 93–354, July 23, 1974, 88 Stat. 373, as amended, which enacted former sections 289c–1a, 289c–2, and 289c–3 of this title, amended section 247b and former section 289c–1 of this title, and enacted provisions formerly set out as notes under section 289c–2 of this title. For complete classification of this Act to the Code, see Short Title of 1974 Amend-

ments note set out under section 201 of this title and Tables.

The Arthritis, Diabetes, and Digestive Diseases Amendments of 1976, referred to in par. (2), is Pub. L. 94–562, Oct. 19, 1976, 90 Stat. 2645, as amended, which enacted former sections 289c–3a, 289c–7, and 289c–8 of this title, amended former sections 289c–2, 289c–5, and 289c–6 of this title, and enacted provisions formerly set out as notes under sections 289a, 289c–3a, and 289c–7 of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendments note set out under section 201 of this title and Tables.

§ 285c–8. Nutritional disorders program

(a) Establishment

The Director of the Institute, in consultation with the Director of NIH, shall establish a program of conducting and supporting research, training, health information dissemination, and other activities with respect to nutritional disorders, including obesity.

(b) Support of activities

In carrying out the program established under subsection (a) of this section, the Director of the Institute shall conduct and support each of the activities described in such subsection.

(c) Dissemination of information

In carrying out the program established under subsection (a) of this section, the Director of the Institute shall carry out activities to facilitate and enhance knowledge and understanding of nutritional disorders, including obesity, on the part of health professionals, patients, and the public through the effective dissemination of information.

(July 1, 1944, ch. 373, title IV, § 434, as added Pub. L. 103–43, title VI, § 601[(a)], June 10, 1993, 107 Stat. 161.)

§ 285c–9. Juvenile diabetes

(a) Long-term epidemiology studies

The Director of the Institute shall conduct or support long-term epidemiology studies in which individuals with or at risk for type 1, or juvenile, diabetes are followed for 10 years or more. Such studies shall investigate the causes and characteristics of the disease and its complications.

(b) Clinical trial infrastructure/innovative treatments for juvenile diabetes

The Secretary, acting through the Director of the National Institutes of Health, shall support regional clinical research centers for the prevention, detection, treatment, and cure of juvenile diabetes.

(c) Prevention of type 1 diabetes

The Secretary, acting through the appropriate agencies, shall provide for a national effort to prevent type 1 diabetes. Such effort shall provide for a combination of increased efforts in research and development of prevention strategies, including consideration of vaccine development, coupled with appropriate ability to test the effectiveness of such strategies in large clinical trials of children and young adults.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title IV, § 434A, as added Pub. L. 106–310, div. A, title IV, § 402, Oct. 17, 2000, 114 Stat. 1112.)

SUBPART 4—NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES

§ 285d. Purpose of Institute

The general purpose of the National Institute of Arthritis and Musculoskeletal and Skin Diseases (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research and training, the dissemination of health information, and other programs with respect to arthritis and musculoskeletal and skin diseases (including sports-related disorders), with particular attention to the effect of these diseases on children.

(July 1, 1944, ch. 373, title IV, § 435, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 848; amended Pub. L. 103–43, title VII, § 701(a), June 10, 1993, 107 Stat. 162.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''(including sports-related disorders), with particular attention to the effect of these diseases on children'' for '', including sports-related disorders''.

§ 285d–1. National arthritis and musculoskeletal and skin diseases program

(a) Plan to expand, intensify, and coordinate activities; submission; periodic review and revision

The Director of the Institute, with the advice of the Institute's advisory council, shall prepare and transmit to the Director of NIH a plan for a national arthritis and musculoskeletal and skin diseases program to expand, intensify, and coordinate the activities of the Institute respecting arthritis and musculoskeletal and skin diseases. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The plan shall place particular emphasis upon expanding research into better understanding the causes and the development of effective treatments for arthritis affecting children. The Director of the Institute shall periodically review and revise such plan and shall transmit any revisions of such plan to the Director of NIH.

(b) Coordination of activities with other national research institutes; minimum activities under program

Activities under the national arthritis and musculoskeletal and skin diseases program shall be coordinated with the other national research institutes to the extent that such institutes have responsibilities respecting arthritis and musculoskeletal and skin diseases, and shall, at least, provide for—

(1) investigation into the epidemiology, etiology, and prevention of all forms of arthritis and musculoskeletal and skin diseases, including sports-related disorders, primarily through the support of basic research in such areas as immunology, genetics, biochemistry, microbi-

ology, physiology, bioengineering, and any other scientific discipline which can contribute important knowledge to the treatment and understanding of arthritis and musculoskeletal and skin diseases;

(2) research into the development, trial, and evaluation of techniques, drugs, and devices used in the diagnosis, treatment, including medical rehabilitation, and prevention of arthritis and musculoskeletal and skin diseases;

(3) research on the refinement, development, and evaluation of technological devices that will replace or be a substitute for damaged bone, muscle, and joints and other supporting structures;

(4) the establishment of mechanisms to monitor the causes of athletic injuries and identify ways of preventing such injuries on scholastic athletic fields; and

(5) research into the causes of arthritis affecting children and the development, trial, and evaluation of techniques, drugs and devices used in the diagnosis, treatment (including medical rehabilitation), and prevention of arthritis in children.

(c) Program to be carried out in accordance with plan

The Director of the Institute shall carry out the national arthritis and musculoskeletal and skin diseases program in accordance with the plan prepared under subsection (a) of this section and any revisions of such plan made under such subsection.

(July 1, 1944, ch. 373, title IV, § 436, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 848; amended Pub. L. 100–607, title I, § 136, Nov. 4, 1988, 102 Stat. 3056; Pub. L. 103–43, title VII, § 701(b), June 10, 1993, 107 Stat. 162.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43, § 701(b)(1), inserted after second sentence ''The plan shall place particular emphasis upon expanding research into better understanding the causes and the development of effective treatments for arthritis affecting children.''

Subsec. (b)(5). Pub. L. 103–43, § 701(b)(2), added par. (5).

1988—Pub. L. 100–607 inserted ''and skin'' after ''musculoskeletal'' in section catchline and wherever appearing in text.

§ 285d–2. Research and training

The Director of the Institute shall—

(1) carry out programs of support for research and training (other than training for which Ruth L. Kirschstein National Research Service Awards may be made under section 288 of this title) in the diagnosis, prevention, and treatment of arthritis and musculoskeletal and skin diseases, including support for training in medical schools, graduate clinical training, graduate training in epidemiology, epidemiology studies, clinical trials, and interdisciplinary research programs; and

(2) establish programs of evaluation, planning, and dissemination of knowledge related to such research and training.

(July 1, 1944, ch. 373, title IV, § 437, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 849; amended Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874.)

AMENDMENTS

2002—Par. (1). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards''.

§ 285d–3. Data system and information clearinghouse

(a) The Director of the Institute shall establish the National Arthritis and Musculoskeletal and Skin Diseases Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with arthritis and musculoskeletal and skin diseases, including where possible, data involving general populations for the purpose of detection of individuals with a risk of developing arthritis and musculoskeletal and skin diseases.

(b) The Director of the Institute shall establish the National Arthritis and Musculoskeletal and Skin Diseases Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of arthritis and musculoskeletal and skin diseases, including juvenile arthritis and related conditions, by health professionals, patients, and the public.

(July 1, 1944, ch. 373, title IV, § 438, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 849; amended Pub. L. 106–310, div. A, title III, § 302, Oct. 17, 2000, 114 Stat. 1111.)

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–310 inserted '', including juvenile arthritis and related conditions,'' after ''skin diseases''.

§ 285d–4. Interagency coordinating committees

(a) Establishment and purpose

For the purpose of—

(1) better coordination of the research activities of all the national research institutes relating to arthritis, musculoskeletal diseases, and skin diseases, including sports-related disorders; and

(2) coordinating the aspects of all Federal health programs and activities relating to arthritis, musculoskeletal diseases, and skin diseases in order to assure the adequacy and technical soundness of such programs and activities and in order to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities,

the Secretary shall establish an Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee and a Skin Diseases Interagency Coordinating Committee (hereafter in this section individually referred to as a ''Committee'').

(b) Membership; chairman; meetings

Each Committee shall be composed of the Directors of each of the national research institutes and divisions involved in research regarding the diseases with respect to which the Committee is established, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and representatives of all other Federal depart-

ments and agencies (as determined by the Secretary) whose programs involve health functions or responsibilities relevant to arthritis and musculoskeletal diseases or skin diseases, as the case may be. Each Committee shall be chaired by the Director of NIH (or the designee of the Director). Each Committee shall meet at the call of the chairman, but not less often than four times a year.

(July 1, 1944, ch. 373, title IV, § 439, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 849; amended Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 103–43, title XX, § 2008(b)(6), June 10, 1993, 107 Stat. 211; Pub. L. 105–362, title VI, § 601(a)(1)(D), Nov. 10, 1998, 112 Stat. 3285.)

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–362 struck out subsec. (c) which read as follows: ''Not later than 120 days after the end of each fiscal year, each Committee shall prepare and transmit to the Secretary, the Director of NIH, the Director of the Institute, and the advisory council for the Institute a report detailing the activities of the Committee in such fiscal year in carrying out paragraphs (1) and (2) of subsection (a) of this section.''

1993—Subsec. (b). Pub. L. 103–43 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsec. (b). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

§ 285d–5. Arthritis and musculoskeletal diseases demonstration projects

(a) Grants for establishment and support

The Director of the Institute may make grants to public and private nonprofit entities to establish and support projects for the development and demonstration of methods for screening, detection, and referral for treatment of arthritis and musculoskeletal diseases and for the dissemination of information on such methods to the health and allied health professions. Activities under such projects shall be coordinated with Federal, State, local, and regional health agencies, centers assisted under section 285d–6 of this title, and the data system established under subsection (c) of this section.

(b) Programs included

Projects supported under this section shall include—

(1) programs which emphasize the development and demonstration of new and improved methods of screening and early detection, referral for treatment, and diagnosis of individuals with a risk of developing arthritis and musculoskeletal diseases;

(2) programs which emphasize the development and demonstration of new and improved methods for patient referral from local hospitals and physicians to appropriate centers for early diagnosis and treatment;

(3) programs which emphasize the development and demonstration of new and improved means of standardizing patient data and recordkeeping;

(4) programs which emphasize the development and demonstration of new and improved methods of dissemination of knowledge about the programs, methods, and means referred to in paragraphs (1), (2), and (3) of this subsection to health and allied health professionals;

(5) programs which emphasize the development and demonstration of new and improved methods for the dissemination to the general public of information—

(A) on the importance of early detection of arthritis and musculoskeletal diseases, of seeking prompt treatment, and of following an appropriate regimen; and

(B) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive treatment, and control methods for arthritis and unapproved and ineffective drugs and devices for arthritis and musculoskeletal diseases; and

(6) projects for investigation into the epidemiology of all forms and aspects of arthritis and musculoskeletal diseases, including investigations into the social, environmental, behavioral, nutritional, and genetic determinants and influences involved in the epidemiology of arthritis and musculoskeletal diseases.

(c) Standardization of patient data and recordkeeping

The Director shall provide for the standardization of patient data and recordkeeping for the collection, storage, analysis, retrieval, and dissemination of such data in cooperation with projects assisted under this section, centers assisted under section 285d–6 of this title, and other persons engaged in arthritis and musculoskeletal disease programs.

(July 1, 1944, ch. 373, title IV, § 440, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 850.)

§ 285d–6. Multipurpose arthritis and musculoskeletal diseases centers

(a) Development, modernization, and operation

The Director of the Institute shall, after consultation with the advisory council for the Institute, provide for the development, modernization, and operation (including staffing and other operating costs such as the costs of patient care required for research) of new and existing centers for arthritis and musculoskeletal diseases. For purposes of this section, the term ''modernization'' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

(b) Duties and functions

Each center assisted under this section shall—

(1)(A) use the facilities of a single institution or a consortium of cooperating institutions, and (B) meet such qualifications as may be prescribed by the Secretary; and

(2) conduct—

(A) basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of and rehabilitation from arthritis and musculoskeletal diseases and complications resulting from arthritis and musculoskeletal diseases, including research into implantable biomate-

rials and biomechanical and other orthopedic procedures;

(B) training programs for physicians, scientists, and other health and allied health professionals;

(C) information and continuing education programs for physicians and other health and allied health professionals who provide care for patients with arthritis and musculoskeletal diseases; and

(D) programs for the dissemination to the general public of information—

(i) on the importance of early detection of arthritis and musculoskeletal diseases, of seeking prompt treatment, and of following an appropriate regimen; and

(ii) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive, treatment, and control methods and unapproved and ineffective drugs and devices.

A center may use funds provided under subsection (a) of this section to provide stipends for health professionals enrolled in training programs described in paragraph (2)(B).

(c) Optional programs

Each center assisted under this section may conduct programs to—

(1) establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals with a risk of developing arthritis and musculoskeletal diseases;

(2) disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping; and

(3) develop community consultative services to facilitate the referral of patients to centers for treatment.

(d) Geographical distribution

The Director of the Institute shall, insofar as practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of children affected by arthritis and musculoskeletal diseases.

(e) Period of support; additional periods

Support of a center under this section may be for a period of not to exceed five years. Such period may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(f) Treatment and rehabilitation of children

Not later than October 1, 1993, the Director shall establish a multipurpose arthritis and musculoskeletal disease center for the purpose of expanding the level of research into the cause, diagnosis, early detection, prevention, control, and treatment of, and rehabilitation of children with arthritis and musculoskeletal diseases.

(July 1, 1944, ch. 373, title IV, § 441, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 851; amended Pub. L. 100–607, title I, § 137, Nov. 4, 1988, 102 Stat. 3056; Pub. L. 103–43, title VII, § 701(c), June 10, 1993, 107 Stat. 162.)

AMENDMENTS

1993—Subsec. (f). Pub. L. 103–43 added subsec. (f).

1988—Subsec. (b)(2)(A). Pub. L. 100–607 inserted ''and rehabilitation from'' after ''and treatment of''.

§ 285d–6a. Lupus

(a) In general

The Director of the Institute shall expand and intensify research and related activities of the Institute with respect to lupus.

(b) Coordination with other institutes

The Director of the Institute shall coordinate the activities of the Director under subsection (a) of this section with similar activities conducted by the other national research institutes and agencies of the National Institutes of Health to the extent that such Institutes and agencies have responsibilities that are related to lupus.

(c) Programs for lupus

In carrying out subsection (a) of this section, the Director of the Institute shall conduct or support research to expand the understanding of the causes of, and to find a cure for, lupus. Activities under such subsection shall include conducting and supporting the following:

(1) Research to determine the reasons underlying the elevated prevalence of lupus in women, including African-American women.

(2) Basic research concerning the etiology and causes of the disease.

(3) Epidemiological studies to address the frequency and natural history of the disease and the differences among the sexes and among racial and ethnic groups with respect to the disease.

(4) The development of improved diagnostic techniques.

(5) Clinical research for the development and evaluation of new treatments, including new biological agents.

(6) Information and education programs for health care professionals and the public.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2003.

(July 1, 1944, ch. 373, title IV, § 441A, as added Pub. L. 106–505, title V, § 511, Nov. 13, 2000, 114 Stat. 2342.)

FINDINGS

Pub. L. 106–505, title V, § 502, Nov. 13, 2000, 114 Stat. 2342, provided that: ''The Congress finds that—

''(1) lupus is a serious, complex, inflammatory, autoimmune disease of particular concern to women;

''(2) lupus affects women nine times more often than men;

''(3) there are three main types of lupus: systemic lupus, a serious form of the disease that affects many parts of the body; discoid lupus, a form of the disease that affects mainly the skin; and drug-induced lupus caused by certain medications;

''(4) lupus can be fatal if not detected and treated early;

''(5) the disease can simultaneously affect various areas of the body, such as the skin, joints, kidneys, and brain, and can be difficult to diagnose because the symptoms of lupus are similar to those of many other diseases;

''(6) lupus disproportionately affects African-American women, as the prevalence of the disease among such women is three times the prevalence among white women, and an estimated 1 in 250 African-American women between the ages of 15 and 65 develops the disease;

''(7) it has been estimated that between 1,400,000 and 2,000,000 Americans have been diagnosed with the disease, and that many more have undiagnosed cases;

''(8) current treatments for the disease can be effective, but may lead to damaging side effects;

''(9) many victims of the disease suffer debilitating pain and fatigue, making it difficult to maintain employment and lead normal lives; and

''(10) in fiscal year 1996, the amount allocated by the National Institutes of Health for research on lupus was $33,000,000, which is less than one-half of 1 percent of the budget for such Institutes.''

§ 285d–7. Advisory Board

(a) Establishment

The Secretary shall establish in the Institute the National Arthritis and Musculoskeletal and Skin Diseases Advisory Board (hereafter in this section referred to as the ''Advisory Board'').

(b) Membership; ex officio members

The Advisory Board shall be composed of twenty appointed members and nonvoting, ex officio members, as follows:

(1) The Secretary shall appoint—

(A) twelve members from individuals who are scientists, physicians, and other health professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to arthritis, musculoskeletal diseases, and skin diseases; and

(B) eight members from the general public who are knowledgeable with respect to such diseases, including one member who is a person who has such a disease, one person who is the parent of an adult with such a disease, and two members who are parents of children with arthritis.

Of the appointed members at least five shall by virtue of training or experience be knowledgeable in health education, nursing, data systems, public information, or community program development.

(2) The following shall be ex officio members of the Advisory Board:

(A) the Assistant Secretary for Health, the Director of NIH, the Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the Director of the Centers for Disease Control and Prevention, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

(B) such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

(c) Compensation

Members of the Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Advisory Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Advisory Board.

(d) Term of office; vacancy

The term of office of an appointed member of the Advisory Board is four years. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in the Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days after the date the vacancy occurred.

(e) Chairman

The members of the Advisory Board shall select a chairman from among the appointed members.

(f) Executive director, professional and clerical staff; administrative support services and facilities

The Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, and (through contracts or other arrangements) with such administrative support services and facilities, such information, and such services of consultants, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

(g) Meetings

The Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

(h) Duties and functions

The Advisory Board shall—

(1) review and evaluate the implementation of the plan prepared under section 285d–1(a) of this title and periodically update the plan to ensure its continuing relevance;

(2) for the purpose of assuring the most effective use and organization of resources respecting arthritis, musculoskeletal diseases and skin diseases, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

(3) maintain liaison with other advisory bodies for Federal agencies involved in the implementation of such plan, the interagency coordinating committees for such diseases established under section 285d–4 of this title, and

with key non-Federal entities involved in activities affecting the control of such diseases.

(i) Subcommittees; establishment and membership

In carrying out its functions, the Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

(j) Annual report

The Advisory Board shall prepare an annual report for the Secretary which—

(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

(2) describes and evaluates the progress made in such fiscal year in research, treatment, education, and training with respect to arthritis, musculoskeletal diseases, and skin diseases;

(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such diseases in such fiscal year for which the report is made;

(4) contains the Advisory Board's recommendations (if any) for changes in the plan prepared under section 285d–1 of this title; and

(5) contains recommendations for expanding the Institute's funding of research directly applicable to the cause, diagnosis, early detection, prevention, control, and treatment of, and rehabilitation of children with arthritis and musculoskeletal diseases.

(k) Termination of predecessor board; time within which to appoint members

The National Arthritis Advisory Board in existence on November 20, 1985, shall terminate upon the appointment of a successor Board under subsection (a) of this section. The Secretary shall make appointments to the Advisory Board established under subsection (a) of this section before the expiration of 90 days after November 20, 1985. The member of the Board in existence on November 20, 1985, may be appointed, in accordance with subsections (b) and (d) of this section, to the Advisory Board established under subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 442, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 852; amended Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 102–531, title III, § 312(d)(7), Oct. 27, 1992, 106 Stat. 3504; Pub. L. 103–43, title VII, § 701(d), title XX, § 2008(b)(7), June 10, 1993, 107 Stat. 162, 211.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43, § 701(d)(1), inserted ''and Musculoskeletal and Skin Diseases'' after ''Arthritis''.

Subsec. (b). Pub. L. 103–43, §§ 701(d)(2), 2008(b)(7), substituted ''twenty'' for ''eighteen'' in introductory provisions, ''eight'' for ''six'' and ''including one member who is a person who has such a disease, one person who is the parent of an adult with such a disease, and two members who are parents of children with arthritis'' for ''including at least one member who is a person who has such a disease and one member who is a parent of a person who has such a disease'' in par. (1)(B), and ''Department of Veterans Affairs'' for ''Veterans' Administration'' in par. (2)(A).

Subsec. (j)(5). Pub. L. 103–43, § 701(d)(3), added par. (5).

1992—Subsec. (b)(2)(A). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 285d–8. Juvenile arthritis and related conditions

(a) Expansion and coordination of activities

The Director of the Institute, in coordination with the Director of the National Institute of Allergy and Infectious Diseases, shall expand and intensify the programs of such Institutes with respect to research and related activities concerning juvenile arthritis and related conditions.

(b) Coordination

The Directors referred to in subsection (a) of this section shall jointly coordinate the programs referred to in such subsection and consult with the Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title IV, § 442A, as added Pub. L. 106–310, div. A, title III, § 301(a), Oct. 17, 2000, 114 Stat. 1111.)

SUBPART 5—NATIONAL INSTITUTE ON AGING

§ 285e. Purpose of Institute

The general purpose of the National Institute on Aging (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of biomedical, social, and behavioral research, training, health information dissemination, and

other programs with respect to the aging process and the diseases and other special problems and needs of the aged.

(July 1, 1944, ch. 373, title IV, § 443, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 854.)

STUDY OF MALNUTRITION IN ELDERLY

Pub. L. 103–43, title XIX, § 1902, June 10, 1993, 107 Stat. 201, directed Secretary of Health and Human Services, acting through National Institute on Aging, to conduct a 3-year study on health benefits and cost-effectiveness of nutrition screening and intervention activities of the elderly, and a 3-year study to determine extent of malnutrition in elderly individuals in hospitals and long-term care facilities and in elderly individuals who are living independently, provided for creation of advisory panel to oversee studies, provided for submission to Congress of reports containing findings of such studies, and provided for termination of advisory panel 3 years after June 10, 1993.

STUDY OF PERSONNEL FOR HEALTH NEEDS OF ELDERLY

Section 8 of Pub. L. 99–158 directed Secretary to conduct a study on the adequacy and availability of personnel to meet the current and projected health needs (including needs for home and community-based care) of elderly Americans through the year 2020, and report the results of the study, with recommendations, to Congress by Mar. 1, 1987.

§ 285e–1. Special functions

(a) Education and training of adequate numbers of personnel

In carrying out the training responsibilities under this chapter or any other Act for health and allied health professions personnel, the Secretary shall take appropriate steps to insure the education and training of adequate numbers of allied health, nursing, and paramedical personnel in the field of health care for the aged.

(b) Scientific studies

The Director of the Institute shall conduct scientific studies to measure the impact on the biological, medical, social, and psychological aspects of aging of programs and activities assisted or conducted by the Department of Health and Human Services.

(c) Public information and education programs

The Director of the Institute shall carry out public information and education programs designed to disseminate as widely as possible the findings of research sponsored by the Institute, other relevant aging research and studies, and other information about the process of aging which may assist elderly and near-elderly persons in dealing with, and all Americans in understanding, the problems and processes associated with growing older.

(d) Grants for research relating to Alzheimer's Disease

The Director of the Institute shall make grants to public and private nonprofit institutions to conduct research relating to Alzheimer's Disease.

(July 1, 1944, ch. 373, title IV, § 444, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 854.)

§ 285e–2. Alzheimer's Disease centers

(a) Cooperative agreements and grants for establishing and supporting

(1) The Director of the Institute may enter into cooperative agreements with and make grants to public or private nonprofit entities (including university medical centers) to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support (including staffing) for centers for basic and clinical research (including multidisciplinary research) into, training in, and demonstration of advanced diagnostic, prevention, and treatment methods for Alzheimer's disease.

(2) A cooperative agreement or grant under paragraph (1) shall be entered into in accordance with policies established by the Director of NIH and after consultation with the Institute's advisory council.

(b) Use of Federal payments under cooperative agreement or grant

(1) Federal payments made under a cooperative agreement or grant under subsection (a) of this section may, with respect to Alzheimer's disease, be used for—

(A) diagnostic examinations, patient assessments, patient care costs, and other costs necessary for conducting research;

(B) training, including training for allied health professionals;

(C) diagnostic and treatment clinics designed to meet the special needs of minority and rural populations and other underserved populations;

(D) activities to educate the public; and

(E) the dissemination of information.

(2) For purposes of paragraph (1), the term ''training'' does not include research training for which Ruth L. Kirschstein National Research Service Awards may be provided under section 288 of this title.

(c) Support period; additional periods

Support of a center under subsection (a) of this section may be for a period of not to exceed five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 445, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 855; amended Pub. L. 101–557, title II, § 201, Nov. 15, 1990, 104 Stat. 2767; Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards''.

1990—Subsec. (a)(1). Pub. L. 101–557, § 201(1), inserted ''(including university medical centers)'' after ''nonprofit entities'', ''(including staffing)'' after ''operating support'', and ''(including multidisciplinary research)'' after ''clinical research'' and substituted ''Alzheimer's disease'' for ''Alzheimer's Disease''.

Subsec. (b). Pub. L. 101–557, § 201(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Federal payments made under a cooperative agreement or grant under subsection (a) of this section may be used for—

''(1) construction (notwithstanding any limitation under section 289e of this title);

''(2) staffing and other basic operating costs, including such patient care costs as are required for research;

''(3) training, including training for allied health professionals; and

''(4) demonstration purposes.

As used in this subsection, the term 'construction' does not include the acquisition of land, and the term 'training' does not include research training for which National Research Service Awards may be provided under section 288 of this title.''

ALZHEIMER'S DISEASE RESEARCH

Pub. L. 100–175, title III, Nov. 29, 1987, 101 Stat. 972, provided that:

''SEC. 301. REQUIREMENT FOR CLINICAL TRIALS.

''(a) IN GENERAL.—The Director of the National Institute on Aging shall provide for the conduct of clinical trials on the efficacy of the use of such promising therapeutic agents as have been or may be discovered and recommended for further scientific analysis by the National Institute on Aging and the Food and Drug Administration to treat individuals with Alzheimer's disease, to retard the progression of symptoms of Alzheimer's disease, or to improve the functioning of individuals with such disease.

''(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to affect adversely any research being conducted as of the date of the enactment of this Act [Nov. 29, 1987].

''SEC. 302. AUTHORIZATION OF APPROPRIATIONS.

''For the purpose of carrying out section 301, there is authorized to be appropriated $2,000,000 for fiscal year 1988.''

ALZHEIMER'S DISEASE REGISTRY

Section 12 of Pub. L. 99–158, which was formerly set out as a note under this section, was renumbered section 445G of the Public Health Service Act by Pub. L. 103–43, title VIII, § 801(a), June 10, 1993, 107 Stat. 163, and is classified to section 285e–9 of this title.

§ 285e–3. Claude D. Pepper Older Americans Independence Centers

(a) Development and expansion of centers

The Director of the Institute shall enter into cooperative agreements with, and make grants to, public and private nonprofit entities for the development or expansion of not less than 10 centers of excellence in geriatric research and training of researchers. Each such center shall be known as a Claude D. Pepper Older Americans Independence Center.

(b) Functions of centers

Each center developed or expanded under this section shall—

(1) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Director; and

(2) conduct—

(A) research into the aging processes and into the diagnosis and treatment of diseases, disorders, and complications related to aging, including menopause, which research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals; and

(B) programs to develop individuals capable of conducting research described in subparagraph (A).

(c) Geographic distribution of centers

In making cooperative agreements and grants under this section for the development or expansion of centers, the Director of the Institute shall ensure that, to the extent practicable, any such centers are distributed equitably among the principal geographic regions of the United States.

(d) "Independence" defined

For purposes of this section, the term ''independence'', with respect to diseases, disorders, and complications of aging, means the functional ability of individuals to perform activities of daily living or instrumental activities of daily living without assistance or supervision.

(July 1, 1944, ch. 373, title IV, § 445A, as added Pub. L. 100–607, title I, § 141, Nov. 4, 1988, 102 Stat. 3056; amended Pub. L. 101–557, title II, § 202, Nov. 15, 1990, 104 Stat. 2767.)

AMENDMENTS

1990—Pub. L. 101–557, § 202(a)(1), substituted ''Claude D. Pepper Older Americans Independence Centers'' for ''Centers of geriatric research and training'' in section catchline.

Subsec. (a). Pub. L. 101–557, § 202(a)(2), (b)(1)(A), inserted ''not less than 10'' before ''centers of excellence'' and inserted provision designating centers as Claude D. Pepper Older Americans Independence Centers.

Subsec. (b)(2)(A). Pub. L. 101–557, § 202(b)(1)(B), inserted before semicolon at end '', including menopause, which research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals''.

Subsec. (b)(2)(B). Pub. L. 101–557, § 202(b)(2), substituted ''research described in subparagraph (A)'' for ''research concerning aging and concerning such diseases, disorders, and complications.''

Subsec. (d). Pub. L. 101–557, § 202(c), added subsec. (d).

§ 285e–4. Awards for leadership and excellence in Alzheimer's disease and related dementias

(a) Senior researchers in biomedical research

The Director of the Institute shall make awards to senior researchers who have made distinguished achievements in biomedical research in areas relating to Alzheimer's disease and related dementias. Awards under this section shall be used by the recipients to support research in areas relating to such disease and dementias, and may be used by the recipients to train junior researchers who demonstrate exceptional promise to conduct research in such areas.

(b) Eligible centers

The Director of the Institute may make awards under this section to researchers at centers supported under section 285e–2 of this title and to researchers at other public and nonprofit private entities.

(c) Required recommendation

The Director of the Institute shall make awards under this section only to researchers who have been recommended for such awards by the National Advisory Council on Aging.

(d) Selection procedures

The Director of the Institute shall establish procedures for the selection of the recipients of awards under this section.

(e) Term of award; renewal

Awards under this section shall be made for a one-year period, and may be renewed for not more than six additional consecutive one-year periods.

(July 1, 1944, ch. 373, title IV, § 445B, formerly Pub. L. 99–660, title IX, § 931, Nov. 14, 1986, 100 Stat. 3807; renumbered § 445B of act July 1, 1944; amended Pub. L. 100–607, title I, § 142(a), (d)(1), Nov. 4, 1988, 102 Stat. 3057.)

CODIFICATION

Section was formerly classified to section 11231 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1988—Pub. L. 100–607, § 142(a), renumbered section 11231 of this title as this section.

Subsec. (a). Pub. L. 100–607, § 142(d)(1)(A), substituted ''the Institute'' for ''the National Institute on Aging''.

Subsec. (b). Pub. L. 100–607, § 142(d)(1)(B), substituted ''the Institute'' for ''the National Institute on Aging'' and made technical amendment to reference to section 285e–2 of this title to correct reference to corresponding provision of original act.

Subsecs. (c), (d). Pub. L. 100–607, § 142(d)(1)(C), substituted ''the Institute'' for ''the National Institute on Aging''.

AVAILABILITY OF APPROPRIATIONS

Section 142(b) of Pub. L. 100–607 provided that: ''With respect to amounts made available in appropriation Acts for the purpose of carrying out the programs transferred by subsection (a) to the Public Health Service Act [sections 285e–4 to 285e–8 of this title], such subsection may not be construed to affect the availability of such funds for such purpose.''

§ 285e–5. Research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families

(a) Grants for research

The Director of the Institute shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families.

(b) Preparation of plan; contents; revision

(1) Within 6 months after November 14, 1986, the Director of the Institute shall prepare and transmit to the Chairman of the Council on Alzheimer's Disease (in this section referred to as the ''Council'') a plan for the research to be conducted under subsection (a) of this section. The plan shall—

(A) provide for research concerning—

(i) the epidemiology of, and the identification of risk factors for, Alzheimer's disease and related dementias; and

(ii) the development and evaluation of reliable and valid multidimensional diagnostic and assessment procedures and instruments; and

(B) ensure that research carried out under the plan is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and related dementias, including centers supported under section 285e–2 of this title, centers supported by the National Institute of Mental Health on the psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the Institute shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.

(c) Consultation for preparation and revision of plan

In preparing and revising the plan required by subsection (b) of this section, the Director of the Institute shall consult with the Chairman of the Council and the heads of agencies within the Department.

(d) Grants for promoting independence and preventing secondary disabilities

the[1] Director of the Institute may develop, or make grants to develop—

(1) model techniques to—

(A) promote greater independence, including enhanced independence in performing activities of daily living and instrumental activities of daily living, for persons with Alzheimer's disease and related disorders; and

(B) prevent or reduce the severity of secondary disabilities, including confusional episodes, falls, bladder and bowel incontinence, and adverse effects of prescription and over-the-counter medications, in such persons; and

(2) model curricula for health care professionals, health care paraprofessionals, and family caregivers, for training and application in the use of such techniques.

(e) "Council on Alzheimer's Disease" defined

For purposes of this section, the term ''Council on Alzheimer's Disease'' means the council established in section 11211(a)[2] of this title.

(July 1, 1944, ch. 373, title IV, § 445C, formerly Pub. L. 99–660, title IX, § 941, Nov. 14, 1986, 100 Stat. 3808; renumbered § 445C of act July 1, 1944; amended Pub. L. 100–607, title I, § 142(a), (d)(2), Nov. 4, 1988, 102 Stat. 3057, 3058; Pub. L. 102–507, § 9, Oct. 24, 1992, 106 Stat. 3287; Pub. L. 103–43, title VIII, § 804, June 10, 1993, 107 Stat. 164.)

REFERENCES IN TEXT

Section 11211 of this title, referred to in subsec. (e), was repealed by Pub. L. 105–362, title VI, § 601(a)(2)(E), Nov. 10, 1998, 112 Stat. 3286.

CODIFICATION

Section was formerly classified to section 11241 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–43, § 804(1), inserted ''on Alzheimer's Disease (in this section referred to as the 'Council')'' after ''Council''.

[1] So in original. Probably should be capitalized.

[2] See References in Text note below.

Subsec. (e). Pub. L. 103–43, § 804(2), added subsec. (e).

1992—Subsec. (d). Pub. L. 102–507 added subsec. (d).

1988—Pub. L. 100–607, § 142(a), renumbered section 11241 of this title as this section.

Subsec. (a). Pub. L. 100–607, § 142(d)(2)(A), substituted ''the Institute'' for ''the National Institute on Aging''.

Subsec. (b)(1). Pub. L. 100–607, § 142(d)(2)(B)(i)(I), in introductory provisions, substituted ''the date of enactment of the Alzheimer's Disease and Related Dementias Services Research Act of 1986'' for ''the date of enactment of this Act'', which for purposes of codification was translated as ''November 14, 1986'', thus requiring no change in text.

Pub. L. 100–607, § 142(d)(2)(B)(i)(II), in introductory provisions, substituted ''the Institute'' for ''the National Institute on Aging''.

Subsec. (b)(1)(B). Pub. L. 100–607, § 142(d)(2)(B)(ii), made technical amendment to reference to section 285e–2 of this title to correct reference to corresponding provision of original act.

Subsecs. (b)(2), (c). Pub. L. 100–607, § 142(d)(2)(B)(iii), (C), substituted ''the Institute'' for ''the National Institute on Aging''.

§ 285e–6. Dissemination of research results

The Director of the Institute shall disseminate the results of research conducted under section 285e–5 of this title and this section to appropriate professional entities and to the public.

(July 1, 1944, ch. 373, title IV, § 445D, formerly Pub. L. 99–660, title IX, § 942, Nov. 14, 1986, 100 Stat. 3809; renumbered § 445D of act July 1, 1944; amended Pub. L. 100–607, title I, § 142(a), (d)(3), Nov. 4, 1988, 102 Stat. 3057, 3058.)

CODIFICATION

Section was formerly classified to section 11242 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1988—Pub. L. 100–607, § 142(a), renumbered section 11242 of this title as this section.

Pub. L. 100–607, § 142(d)(3), substituted ''the Institute'' for ''the National Institute on Aging'' and ''section 285e–5 of this title and this section'' for ''this part''.

§ 285e–7. Clearinghouse on Alzheimer's Disease

(a) Establishment; purpose; duties; publication of summary

The Director of the Institute shall establish the Clearinghouse on Alzheimer's Disease (hereinafter referred to as the ''Clearinghouse''). The purpose of the Clearinghouse is the dissemination of information concerning services available for individuals with Alzheimer's disease and related dementias and their families. The Clearinghouse shall—

(1) compile, archive, and disseminate information concerning research, demonstration, evaluation, and training programs and projects concerning Alzheimer's disease and related dementias; and

(2) annually publish a summary of the information compiled under paragraph (1) during the preceding 12-month period, and make such information available upon request to appropriate individuals and entities, including educational institutions, research entities, and Federal and public agencies.

(b) Fee for information

The Clearinghouse may charge an appropriate fee for information provided through the toll-free telephone line established under subsection (a)(3).[1]

(c) Summaries of research findings from other agencies

The Director of the Institute, the Director of the National Institute of Mental Health, and the Director of the National Center for Health Services Research and Health Care Technology Assessment shall provide to the Clearinghouse summaries of the findings of research conducted under part D.

(July 1, 1944, ch. 373, title IV, § 445E, formerly Pub. L. 99–660, title IX, § 951, Nov. 14, 1986, 100 Stat. 3813; renumbered § 445E of act July 1, 1944, and amended Pub. L. 100–607, title I, § 142(a), (d)(4), Nov. 4, 1988, 102 Stat. 3057, 3058.)

REFERENCES IN TEXT

Part D, referred to in subsec. (c), probably means part D of title IX of Pub. L. 99–660, Nov. 14, 1986, 100 Stat. 3808, as amended, which is classified to subchapter IV (§ 11251 et seq.) of chapter 118 of this title. Prior to renumbering by Pub. L. 100–607, this section was part of title IX of Pub. L. 99–660.

CODIFICATION

Section was formerly classified to section 11281 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1988—Pub. L. 100–607, § 142(a), renumbered section 11281 of this title as this section.

Subsec. (a). Pub. L. 100–607, § 142(d)(4)(A), substituted ''the Institute'' for ''the National Institute on Aging'' in introductory provisions.

Subsec. (c). Pub. L. 100–607, § 142(d)(4)(B), substituted ''the Institute'' for ''the National Institute on Aging'' and ''part D'' for ''part E''.

§ 285e–8. Dissemination project

(a) Grant or contract for establishment

The Director of the Institute shall make a grant to, or enter into a contract with, a national organization representing individuals with Alzheimer's disease and related dementias for the conduct of the activities described in subsection (b) of this section.

(b) Project activities

The organization receiving a grant or contract under this section shall—

(1) establish a central computerized information system to—

(A) compile and disseminate information concerning initiatives by State and local governments and private entities to provide programs and services for individuals with Alzheimer's disease and related dementias; and

(B) translate scientific and technical information concerning such initiatives into information readily understandable by the general public, and make such information available upon request; and

(2) establish a national toll-free telephone line to make available the information described in paragraph (1), and information concerning Federal programs, services, and benefits for individuals with Alzheimer's disease and related dementias and their families.

[1] So in original. No subsec. (a)(3) has been enacted.

(c) Fees for information; exception

The organization receiving a grant or contract under this section may charge appropriate fees for information provided through the toll-free telephone line established under subsection (b)(2) of this section, and may make exceptions to such fees for individuals and organizations who are not financially able to pay such fees.

(d) Application for grant or contract; contents

In order to receive a grant or contract under this section, an organization shall submit an application to the Director of the Institute. Such application shall contain—

(1) information demonstrating that such organization has a network of contacts which will enable such organization to receive information necessary to the operation of the central computerized information system described in subsection (b)(1) of this section;

(2) information demonstrating that, by the end of fiscal year 1991, such organization will be financially able to, and will, carry out the activities described in subsection (b) of this section without a grant or contract from the Federal Government; and

(3) such other information as the Director may prescribe.

(July 1, 1944, ch. 373, title IV, § 445F, formerly Pub. L. 99–660, title IX, § 952, Nov. 14, 1986, 100 Stat. 3813; renumbered § 445F of act July 1, 1944, and amended Pub. L. 100–607, title I, § 142(a), (d)(5), Nov. 4, 1988, 102 Stat. 3057, 3058.)

CODIFICATION

Section was formerly classified to section 11282 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1988—Pub. L. 100–607, § 142(a), renumbered section 11282 of this title as this section.

Subsecs. (a), (d). Pub. L. 100–607, § 142(d)(5), substituted ''the Institute'' for ''the National Institute on Aging''.

§ 285e–9. Alzheimer's disease registry

(a) In general

The Director of the Institute may make a grant to develop a registry for the collection of epidemiological data about Alzheimer's disease and its incidence in the United States, to train personnel in the collection of such data, and for other matters respecting such disease.

(b) Qualifications

To qualify for a grant under subsection (a) of this section an applicant shall—

(1) be an accredited school of medicine or public health which has expertise in the collection of epidemiological data about individuals with Alzheimer's disease and in the development of disease registries, and

(2) have access to a large patient population, including a patient population representative of diverse ethnic backgrounds.

(July 1, 1944, ch. 373, title IV, § 445G, formerly Pub. L. 99–158, § 12, Nov. 20, 1985, 99 Stat. 885, as renumbered § 445G and amended Pub. L. 103–43, title VIII, § 801, June 10, 1993, 107 Stat. 163.)

CODIFICATION

Section was formerly set out as a note under section 285e–2 of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Pub. L. 103–43, § 801(b)(1), reenacted section catchline without change.

Subsec. (a). Pub. L. 103–43, § 801(b)(1), substituted in heading ''In general'' for ''Grant authority'' and in text substituted ''Director of the Institute'' for ''Director of the National Institute on Aging''.

Subsec. (c). Pub. L. 103–43, § 801(b)(2), struck out subsec. (c) which authorized appropriations of $2,500,000 for grants to remain available until expended or through fiscal year 1989, whichever occurred first.

§ 285e–10. Aging processes regarding women

(a) The Director of the Institute, in addition to other special functions specified in section 285e–1 of this title and in cooperation with the Directors of the other national research institutes and agencies of the National Institutes of Health, shall conduct research into the aging processes of women, with particular emphasis given to the effects of menopause and the physiological and behavioral changes occurring during the transition from pre- to post-menopause, and into the diagnosis, disorders, and complications related to aging and loss of ovarian hormones in women.

(b) For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1999 through 2003. The authorization of appropriations established in the preceding sentence is in addition to any other authorization of appropriation that is available for such purpose.

(July 1, 1944, ch. 373, title IV, § 445H, as added Pub. L. 103–43, title VIII, § 802, June 10, 1993, 107 Stat. 163; amended Pub. L. 105–340, title I, § 105, Oct. 31, 1998, 112 Stat. 3193.)

AMENDMENTS

1998—Pub. L. 105–340 designated existing provisions as subsec. (a) and added subsec. (b).

§ 285e–10a. Alzheimer's clinical research and training awards

(a) In general

The Director of the Institute is authorized to establish and maintain a program to enhance and promote the translation of new scientific knowledge into clinical practice related to the diagnosis, care and treatment of individuals with Alzheimer's disease.

(b) Support of promising clinicians

In order to foster the application of the most current developments in the etiology, pathogenesis, diagnosis, prevention and treatment of Alzheimer's disease, amounts made available under this section shall be directed to the support of promising clinicians through awards for research, study, and practice at centers of excellence in Alzheimer's disease research and treatment.

(c) Excellence in certain fields

Research shall be carried out under awards made under subsection (b) of this section in environments of demonstrated excellence in neuroscience, neurobiology, geriatric medicine, and psychiatry and shall foster innovation and integration of such disciplines or other environ-

ments determined suitable by the Director of the Institute.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $2,250,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 through 2005.

(July 1, 1944, ch. 373, title IV, § 445I, as added Pub. L. 106–505, title VIII, § 801(2), Nov. 13, 2000, 114 Stat. 2349.)

PRIOR PROVISIONS

A prior section 445I of act July 1, 1944, was renumbered section 445J and is classified to section 285e–11 of this title.

§ 285e–11. Authorization of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $500,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(July 1, 1944, ch. 373, title IV, § 445J, formerly § 445I, as added Pub. L. 103–43, title VIII, § 803, June 10, 1993, 107 Stat. 163; renumbered § 445J, Pub. L. 106–505, title VIII, § 801(1), Nov. 13, 2000, 114 Stat. 2349.)

SUBPART 6—NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

§ 285f. Purpose of Institute

The general purpose of the National Institute of Allergy and Infectious Diseases is the conduct and support of research, training, health information dissemination, and other programs with respect to allergic and immunologic diseases and disorders and infectious diseases, including tropical diseases.

(July 1, 1944, ch. 373, title IV, § 446, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 855; amended Pub. L. 103–43, title IX, § 901, June 10, 1993, 107 Stat. 164.)

AMENDMENTS

1993—Pub. L. 103–43 inserted before period at end ", including tropical diseases".

§ 285f–1. Research centers regarding chronic fatigue syndrome

(a) The Director of the Institute, after consultation with the advisory council for the Institute, may make grants to, or enter into contracts with, public or nonprofit private entities for the development and operation of centers to conduct basic and clinical research on chronic fatigue syndrome.

(b) Each center assisted under this section shall use the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such requirements as may be prescribed by the Director of the Institute.

(July 1, 1944, ch. 373, title IV, § 447, as added Pub. L. 103–43, title IX, § 902(a), June 10, 1993, 107 Stat. 164.)

CODIFICATION

Another section 447 of act July 1, 1944, was renumbered section 447A and is classified to section 285f–2 of this title.

EXTRAMURAL STUDY SECTION

Section 902(b) of Pub. L. 103–43 provided that: "Not later than 6 months after the date of enactment of this Act [June 10, 1993], the Secretary of Health and Human Services shall establish an extramural study section for chronic fatigue syndrome research."

RESEARCH ACTIVITIES ON CHRONIC FATIGUE SYNDROME

Section 1903 of Pub. L. 103–43 directed Secretary of Health and Human Services to, not later than Oct. 1, 1993, and annually thereafter for next 3 years, prepare and submit to Congress a report that summarizes research activities conducted or supported by National Institutes of Health concerning chronic fatigue syndrome, with information concerning grants made, cooperative agreements or contracts entered into, intramural activities, research priorities and needs, and plan to address such priorities and needs.

§ 285f–2. Research and research training regarding tuberculosis

(a) In carrying out section 285f of this title, the Director of the Institute shall conduct or support research and research training regarding the cause, diagnosis, early detection, prevention and treatment of tuberculosis.

(b) For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated $50,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998. Such authorization is in addition to any other authorization of appropriations that is available for such purpose.

(July 1, 1944, ch. 373, title IV, § 447A, formerly § 447, as added Pub. L. 103–183, title III, § 302(a), Dec. 14, 1993, 107 Stat. 2235; renumbered § 447A, Pub. L. 105–392, title IV, § 401(b)(3), Nov. 13, 1998, 112 Stat. 3587.)

RESEARCH THROUGH FOOD AND DRUG ADMINISTRATION

Section 303 of Pub. L. 103–183 provided that: "The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall implement a tuberculosis drug and device research program under which the Commissioner may—

"(1) provide assistance to other Federal agencies for the development of tuberculosis protocols;

"(2) review and evaluate medical devices designed for the diagnosis and control of airborne tuberculosis; and

"(3) conduct research concerning drugs or devices to be used in diagnosing, controlling and preventing tuberculosis."

§ 285f–3. Sexually transmitted disease clinical research and training awards

(a) In general

The Director of the Institute is authorized to establish and maintain a program to enhance and promote the translation of new scientific knowledge into clinical practice related to the diagnosis, care and treatment of individuals with sexually transmitted diseases.

(b) Support of promising clinicians

In order to foster the application of the most current developments in the etiology, pathogenesis, diagnosis, prevention and treatment of sexually transmitted diseases, amounts made available under this section shall be directed to the support of promising clinicians through awards for research, study, and practice at cen-

ters of excellence in sexually transmitted disease research and treatment.

(c) Excellence in certain fields

Research shall be carried out under awards made under subsection (b) of this section in environments of demonstrated excellence in the etiology and pathogenesis of sexually transmitted diseases and shall foster innovation and integration of such disciplines or other environments determined suitable by the Director of the Institute.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $2,250,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 through 2005.

(July 1, 1944, ch. 373, title IV, § 447B, as added Pub. L. 106–505, title IX, § 901, Nov. 13, 2000, 114 Stat. 2349.)

SUBPART 7—NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT

§ 285g. Purpose of Institute

The general purpose of the National Institute of Child Health and Human Development (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to gynecologic health, maternal health, child health, mental retardation, human growth and development, including prenatal development, population research, and special health problems and requirements of mothers and children.

(July 1, 1944, ch. 373, title IV, § 448, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 856; amended Pub. L. 106–554, § 1(a)(1) [title II, § 215], Dec. 21, 2000, 114 Stat. 2763, 2763A–28.)

AMENDMENTS

2000—Pub. L. 106–554 inserted ''gynecologic health,'' after ''with respect to''.

LONG-TERM CHILD DEVELOPMENT STUDY

Pub. L. 106–310, div. A, title X, § 1004, Oct. 17, 2000, 114 Stat. 1130, as amended by Pub. L. 108–446, title III, § 301, Dec. 3, 2004, 118 Stat. 2803, provided that:

''(a) PURPOSE.—It is the purpose of this section to authorize the National Institute of Child Health and Human Development to conduct a national longitudinal study of environmental influences (including physical, chemical, biological, and psychosocial) on children's health and development.

''(b) IN GENERAL.—The Director of the National Institute of Child Health and Human Development shall establish a consortium of representatives from appropriate Federal agencies (including the Centers for Disease Control and Prevention, the Environmental Protection Agency, and the Department of Education) to—

''(1) plan, develop, and implement a prospective cohort study, from birth to adulthood, to evaluate the effects of both chronic and intermittent exposures on child health and human development; and

''(2) investigate basic mechanisms of developmental disorders and environmental factors, both risk and protective, that influence health and developmental processes.

''(c) REQUIREMENT.—The study under subsection (b) shall—

''(1) incorporate behavioral, emotional, educational, and contextual consequences to enable a complete assessment of the physical, chemical, biological and psychosocial environmental influences on children's well-being;

''(2) gather data on environmental influences and outcomes on diverse populations of children, which may include the consideration of prenatal exposures;

''(3) consider health disparities among children which may include the consideration of prenatal exposures; and

''(4) be conducted in compliance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g), including the requirement of prior parental consent for the disclosure of any education records, except without the use of authority or exceptions granted to authorized representatives of the Secretary of Education for the evaluation of Federally-supported education programs or in connection with the enforcement of the Federal legal requirements that relate to such programs.

''(d) REPORT.—Beginning not later than 3 years after the date of the enactment of this Act [Oct. 17, 2000], and periodically thereafter for the duration of the study under this section, the Director of the National Institute of Child Health and Human Development shall prepare and submit to the appropriate committees of Congress a report on the implementation and findings made under the planning and feasibility study conducted under this section.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $18,000,000 for fiscal year 2001, and such sums as may be necessary for each [sic] the fiscal years 2002 through 2005.''

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY; COMPOSITION; VOLUNTARY SERVICES; DURATION

Pub. L. 100–436, title IV, Sept. 20, 1988, 102 Stat. 1709, provided that the National Commission to Prevent Infant Mortality was to be composed of sixteen members, including seven at large members, and that it had power to accept voluntary and uncompensated services, notwithstanding section 1342 of title 31, and was to continue operating, notwithstanding sections 208 and 209 of Pub. L. 99–660 (formerly set out below).

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

Pub. L. 99–660, title II, Nov. 14, 1986, 100 Stat. 3752, known as the National Commission to Prevent Infant Mortality Act of 1986, established National Commission to Prevent Infant Mortality to examine and make recommendation on government and private resources, policies, and programs which impact on infant mortality, required Commission to submit recommendations to President and Congress no later than one year after Nov. 14, 1986, and terminated Commission 90 days after submission of recommendations.

§ 285g–1. Sudden infant death syndrome research

The Director of the Institute shall conduct and support research which specifically relates to sudden infant death syndrome.

(July 1, 1944, ch. 373, title IV, § 449, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 856.)

§ 285g–2. Mental retardation research

The Director of the Institute shall conduct and support research and related activities into the causes, prevention, and treatment of mental retardation.

(July 1, 1944, ch. 373, title IV, § 450, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 856.)

§ 285g–3. Associate Director for Prevention; appointment; function

There shall be in the Institute an Associate Director for Prevention to coordinate and pro-

mote the programs in the Institute concerning the prevention of health problems of mothers and children. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or experience are experts in public health or preventive medicine.

(July 1, 1944, ch. 373, title IV, § 451, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 856; amended Pub. L. 105–362, title VI, § 601(a)(1)(E), Nov. 10, 1998, 112 Stat. 3285.)

AMENDMENTS

1998—Pub. L. 105–362 struck out subsec. (a) designation and struck out subsec. (b) which read as follows: ''The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.''

§ 285g–4. National Center for Medical Rehabilitation Research

(a) Establishment of Center

There shall be in the Institute an agency to be known as the National Center for Medical Rehabilitation Research (hereafter in this section referred to as the ''Center''). The Director of the Institute shall appoint a qualified individual to serve as Director of the Center. The Director of the Center shall report directly to the Director of the Institute.

(b) Purpose

The general purpose of the Center is the conduct and support of research and research training (including research on the development of orthotic and prosthetic devices), the dissemination of health information, and other programs with respect to the rehabilitation of individuals with physical disabilities resulting from diseases or disorders of the neurological, musculoskeletal, cardiovascular, pulmonary, or any other physiological system (hereafter in this section referred to as ''medical rehabilitation'').

(c) Authority of Director

(1) In carrying out the purpose described in subsection (b) of this section, the Director of the Center may—

(A) provide for clinical trials regarding medical rehabilitation;

(B) provide for research regarding model systems of medical rehabilitation;

(C) coordinate the activities of the Center with similar activities of other agencies of the Federal Government, including the other agencies of the National Institutes of Health, and with similar activities of other public entities and of private entities;

(D) support multidisciplinary medical rehabilitation research conducted or supported by more than one such agency;

(E) in consultation with the advisory council for the Institute and with the approval of the Director of NIH—

(i) establish technical and scientific peer review groups in addition to those appointed under section 282(b)(6) of this title; and

(ii) appoint the members of peer review groups established under subparagraph (A); and

(F) support medical rehabilitation research and training centers.

The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under subparagraph (E).

(2) In carrying out this section, the Director of the Center may make grants and enter into cooperative agreements and contracts.

(d) Research Plan

(1) In consultation with the Director of the Center, the coordinating committee established under subsection (e) of this section, and the advisory board established under subsection (f) of this section, the Director of the Institute shall develop a comprehensive plan for the conduct and support of medical rehabilitation research (hereafter in this section referred to as the ''Research Plan'').

(2) The Research Plan shall—

(A) identify current medical rehabilitation research activities conducted or supported by the Federal Government, opportunities and needs for additional research, and priorities for such research; and

(B) make recommendations for the coordination of such research conducted or supported by the National Institutes of Health and other agencies of the Federal Government.

(3)(A) Not later than 18 months after the date of the enactment of the National Institutes of Health Revitalization Amendments of 1990, the Director of the Institute shall transmit the Research Plan to the Director of NIH, who shall submit the Plan to the President and the Congress.

(B) Subparagraph (A) shall be carried out independently of the process of reporting that is required in sections 283 and 284b of this title.

(4) The Director of the Institute shall periodically revise and update the Research Plan as appropriate, after consultation with the Director of the Center, the coordinating committee established under subsection (e) of this section, and the advisory board established under subsection (f) of this section. A description of any revisions in the Research Plan shall be contained in each report prepared under section 284b of this title by the Director of the Institute.

(e) Medical Rehabilitation Coordinating Committee

(1) The Director of NIH shall establish a committee to be known as the Medical Rehabilitation Coordinating Committee (hereafter in this section referred to as the ''Coordinating Committee'').

(2) The Coordinating Committee shall make recommendations to the Director of the Institute and the Director of the Center with respect to the content of the Research Plan and with respect to the activities of the Center that are carried out in conjunction with other agencies of the National Institutes of Health and with other agencies of the Federal Government.

(3) The Coordinating Committee shall be composed of the Director of the Center, the Director of the Institute, and the Directors of the National Institute on Aging, the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Heart, Lung, and Blood In-

stitute, the National Institute of Neurological Disorders and Stroke, and such other national research institutes and such representatives of other agencies of the Federal Government as the Director of NIH determines to be appropriate.

(4) The Coordinating Committee shall be chaired by the Director of the Center.

(f) National Advisory Board on Medical Rehabilitation Research

(1) Not later than 90 days after the date of the enactment of the National Institutes of Health Revitalization Amendments of 1990, the Director of NIH shall establish a National Advisory Board on Medical Rehabilitation Research (hereafter in this section referred to as the ''Advisory Board'').

(2) The Advisory Board shall review and assess Federal research priorities, activities, and findings regarding medical rehabilitation research, and shall advise the Director of the Center and the Director of the Institute on the provisions of the Research Plan.

(3)(A) The Director of NIH shall appoint to the Advisory Board 18 qualified representatives of the public who are not officers or employees of the Federal Government. Of such members, 12 shall be representatives of health and scientific disciplines with respect to medical rehabilitation and 6 shall be individuals representing the interests of individuals undergoing, or in need of, medical rehabilitation.

(B) The following officials shall serve as ex officio members of the Advisory Board:

(i) The Director of the Center.

(ii) The Director of the Institute.

(iii) The Director of the National Institute on Aging.

(iv) The Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases.

(v) The Director of the National Institute on Deafness and Other Communication Disorders.

(vi) The Director of the National Heart, Lung, and Blood Institute.

(vii) The Director of the National Institute of Neurological Disorders and Stroke.

(viii) The Director of the National Institute on Disability and Rehabilitation Research.

(ix) The Commissioner for Rehabilitation Services Administration.

(x) The Assistant Secretary of Defense (Health Affairs).

(xi) The Under Secretary for Health of the Department of Veterans Affairs.

(4) The members of the Advisory Board shall, from among the members appointed under paragraph (3)(A), designate an individual to serve as the chair of the Advisory Board.

(July 1, 1944, ch. 373, title IV, § 452, as added Pub. L. 101–613, § 3(a), Nov. 16, 1990, 104 Stat. 3227; amended Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c)(1), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The date of the enactment of the National Institutes of Health Revitalization Amendments of 1990, referred to in subsecs. (d)(3)(A) and (f)(1), probably means the date of enactment of the National Institutes of Health Amendments of 1990, Pub. L. 101–613, which was approved Nov. 16, 1990.

AMENDMENTS

1992—Subsec. (f)(3)(B)(xi). Pub. L. 102–405 substituted ''Under Secretary for Health of the Department of Veterans Affairs'' for ''Chief Medical Director of the Department of Veterans Affairs''.

PREVENTING DUPLICATIVE PROGRAMS OF MEDICAL REHABILITATION RESEARCH

Section 3(b) of Pub. L. 101–613 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services and the heads of other Federal agencies shall—

''(A) jointly review the programs being carried out (or proposed to be carried out) by each such official with respect to medical rehabilitation research; and

''(B) as appropriate, enter into agreements for preventing duplication among such programs.

''(2) TIME FOR COMPLETION.—The agreements required in paragraph (1)(B) shall be made not later than one year after the date of the enactment of this Act [Nov. 16, 1990].

''(3) DEFINITION OF MEDICAL REHABILITATION.—For purposes of this subsection, the term 'medical rehabilitation' means the rehabilitation of individuals with physical disabilities resulting from diseases or disorders of the neurological, musculoskeletal, cardiovascular, pulmonary, or any other physiological system.''

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 285g–5. Research centers with respect to contraception and infertility

(a) Grants and contracts

The Director of the Institute, after consultation with the advisory council for the Institute, shall make grants to, or enter into contracts with, public or nonprofit private entities for the development and operation of centers to conduct activities for the purpose of improving methods of contraception and centers to conduct activities for the purpose of improving methods of diagnosis and treatment of infertility.

(b) Number of centers

In carrying out subsection (a) of this section, the Director of the Institute shall, subject to the extent of amounts made available in appropriations Acts, provide for the establishment of three centers with respect to contraception and for two centers with respect to infertility.

(c) Duties

(1) Each center assisted under this section shall, in carrying out the purpose of the center involved—

(A) conduct clinical and other applied research, including—

(i) for centers with respect to contraception, clinical trials of new or improved drugs and devices for use by males and females (including barrier methods); and

(ii) for centers with respect to infertility, clinical trials of new or improved drugs and devices for the diagnosis and treatment of infertility in males and females;

(B) develop protocols for training physicians, scientists, nurses, and other health and allied health professionals;

(C) conduct training programs for such individuals;

(D) develop model continuing education programs for such professionals; and

(E) disseminate information to such professionals and the public.

(2) A center may use funds provided under subsection (a) of this section to provide stipends for health and allied health professionals enrolled in programs described in subparagraph (C) of paragraph (1), and to provide fees to individuals serving as subjects in clinical trials conducted under such paragraph.

(d) Coordination of information

The Director of the Institute shall, as appropriate, provide for the coordination of information among the centers assisted under this section.

(e) Facilities

Each center assisted under subsection (a) of this section shall use the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such requirements as may be prescribed by the Director of the Institute.

(f) Period of support

Support of a center under subsection (a) of this section may be for a period not exceeding 5 years. Such period may be extended for one or more additional periods not exceeding 5 years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(g) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $30,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(July 1, 1944, ch. 373, title IV, § 452A, as added Pub. L. 103–43, title X, § 1001, June 10, 1993, 107 Stat. 165.)

§ 285g–6. Program regarding obstetrics and gynecology

The Director of the Institute shall establish and maintain within the Institute an intramural laboratory and clinical research program in obstetrics and gynecology.

(July 1, 1944, ch. 373, title IV, § 452B, as added Pub. L. 103–43, title X, § 1011, June 10, 1993, 107 Stat. 166.)

§ 285g–7. Child health research centers

The Director of the Institute shall develop and support centers for conducting research with respect to child health. Such centers shall give priority to the expeditious transfer of advances from basic science to clinical applications and improving the care of infants and children.

(July 1, 1944, ch. 373, title IV, § 452C, as added Pub. L. 103–43, title X, § 1021, June 10, 1993, 107 Stat. 167.)

§ 285g–8. Prospective longitudinal study on adolescent health

(a) In general

Not later than October 1, 1993, the Director of the Institute shall commence a study for the purpose of providing information on the general health and well-being of adolescents in the United States, including, with respect to such adolescents, information on—

(1) the behaviors that promote health and the behaviors that are detrimental to health; and

(2) the influence on health of factors particular to the communities in which the adolescents reside.

(b) Design of study

(1) In general

The study required in subsection (a) of this section shall be a longitudinal study in which a substantial number of adolescents participate as subjects. With respect to the purpose described in such subsection, the study shall monitor the subjects throughout the period of the study to determine the health status of the subjects and any change in such status over time.

(2) Population-specific analyses

The study required in subsection (a) of this section shall be conducted with respect to the population of adolescents who are female, the population of adolescents who are male, various socioeconomic populations of adolescents, and various racial and ethnic populations of adolescents. The study shall be designed and conducted in a manner sufficient to provide for a valid analysis of whether there are significant differences among such populations in health status and whether and to what extent any such differences are due to factors particular to the populations involved.

(c) Coordination with Women's Health Initiative

With respect to the national study of women being conducted by the Secretary and known as the Women's Health Initiative, the Secretary shall ensure that such study is coordinated with the component of the study required in subsection (a) of this section that concerns adolescent females, including coordination in the design of the 2 studies.

(July 1, 1944, ch. 373, title IV, § 452D, as added Pub. L. 103–43, title X, § 1031, June 10, 1993, 107 Stat. 167.)

§ 285g–9. Fragile X

(a) Expansion and coordination of research activities

The Director of the Institute, after consultation with the advisory council for the Institute, shall expand, intensify, and coordinate the activities of the Institute with respect to research on the disease known as fragile X.

(b) Research centers

(1) In general

The Director of the Institute shall make grants or enter into contracts for the development and operation of centers to conduct research for the purposes of improving the diagnosis and treatment of, and finding the cure for, fragile X.

(2) Number of centers

(A) In general

In carrying out paragraph (1), the Director of the Institute shall, to the extent that amounts are appropriated, and subject to subparagraph (B), provide for the establishment of at least three fragile X research centers.

(B) Peer review requirement

The Director of the Institute shall make a grant to, or enter into a contract with, an entity for purposes of establishing a center under paragraph (1) only if the grant or contract has been recommended after technical and scientific peer review required by regulations under section 289a of this title.

(3) Activities

The Director of the Institute, with the assistance of centers established under paragraph (1), shall conduct and support basic and biomedical research into the detection and treatment of fragile X.

(4) Coordination among centers

The Director of the Institute shall, as appropriate, provide for the coordination of the activities of the centers assisted under this section, including providing for the exchange of information among the centers.

(5) Certain administrative requirements

Each center assisted under paragraph (1) shall use the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such requirements as may be prescribed by the Director of the Institute.

(6) Duration of support

Support may be provided to a center under paragraph (1) for a period not exceeding 5 years. Such period may be extended for one or more additional periods, each of which may not exceed 5 years, if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period be extended.

(7) Authorization of appropriations

For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title IV, § 452E, as added Pub. L. 106–310, div. A, title II, § 201, Oct. 17, 2000, 114 Stat. 1109.)

§ 285g–10. Investment in tomorrow's pediatric researchers

(a) Enhanced support

In order to ensure the future supply of researchers dedicated to the care and research needs of children, the Director of the Institute, after consultation with the Administrator of the Health Resources and Services Administration, shall support activities to provide for—

(1) an increase in the number and size of institutional training grants to institutions supporting pediatric training; and

(2) an increase in the number of career development awards for health professionals who intend to build careers in pediatric basic and clinical research.

(b) Authorization

For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title IV, § 452G, as added Pub. L. 106–310, div. A, title X, § 1002(a), Oct. 17, 2000, 114 Stat. 1128.)

SUBPART 8—NATIONAL INSTITUTE OF DENTAL RESEARCH

§ 285h. Purpose of Institute

The general purpose of the National Institute of Dental Research is the conduct and support of research, training, health information dissemination, and other programs with respect to the cause, prevention, and methods of diagnosis and treatment of dental and oral diseases and conditions.

(July 1, 1944, ch. 373, title IV, § 453, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 856.)

SUBPART 9—NATIONAL EYE INSTITUTE

§ 285i. Purpose of Institute

The general purpose of the National Eye Institute (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to blinding eye diseases, visual disorders, mechanisms of visual function, preservation of sight, and the special health problems and requirements of the blind. Subject to section 285i–1 of this title, the Director of the Institute may carry out a program of grants for public and private nonprofit vision research facilities.

(July 1, 1944, ch. 373, title IV, § 455, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 856; amended Pub. L. 103–43, title XI, § 1101(b), June 10, 1993, 107 Stat. 169.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''Subject to section 285i–1 of this title, the Director'' for ''The Director'' in second sentence.

§ 285i–1. Clinical research on eye care and diabetes

(a) Program of grants

The Director of the Institute, in consultation with the advisory council for the Institute, may award research grants to one or more Diabetes Eye Research Institutions for the support of programs in clinical or health services aimed at—

(1) providing comprehensive eye care services for people with diabetes, including a full complement of preventive, diagnostic and treatment procedures;

(2) developing new and improved techniques of patient care through basic and clinical research;

(3) assisting in translation of the latest research advances into clinical practice; and

(4) expanding the knowledge of the eye and diabetes through further research.

(b) Use of funds

Amounts received under a grant awarded under this section shall be used for the following:

(1) Establishing the biochemical, cellular, and genetic mechanisms associated with diabetic eye disease and the earlier detection of pending eye abnormalities. The focus of work under this paragraph shall require that ophthalmologists have training in the most up-to-date molecular and cell biological methods.

(2) Establishing new frontiers in technology, such as video-based diagnostic and research resources, to—

(A) provide improved patient care;

(B) provide for the evaluation of retinal physiology and its affect on diabetes; and

(C) provide for the assessment of risks for the development and progression of diabetic eye disease and a more immediate evaluation of various therapies aimed at preventing diabetic eye disease.

Such technologies shall be designed to permit evaluations to be performed both in humans and in animal models.

(3) The translation of the results of vision research into the improved care of patients with diabetic eye disease. Such translation shall require the application of institutional resources that encompass patient care, clinical research and basic laboratory research.

(4) The conduct of research concerning the outcomes of eye care treatments and eye health education programs as they relate to patients with diabetic eye disease, including the evaluation of regional approaches to such research.

(c) Authorized expenditures

The purposes for which a grant under subsection (a) of this section may be expended include equipment for the research described in such subsection.

(July 1, 1944, ch. 373, title IV, § 456, as added Pub. L. 103–43, title XI, § 1101(a), June 10, 1993, 107 Stat. 168.)

SUBPART 10—NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE

AMENDMENTS

1988—Pub. L. 100–553, § 2(2), Oct. 28, 1988, 102 Stat. 2769, and Pub. L. 100–607, title I, § 101(2), Nov. 4, 1988, 102 Stat. 3049, made identical amendments to subpart heading, substituting ''Neurological Disorders'' for ''Neurological and Communicative Disorders''. Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238, amended subpart heading to read as if the amendment by Pub. L. 100–607 had not been enacted.

§ 285j. Purpose of Institute

The general purpose of the National Institute of Neurological Disorders and Stroke (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to neurological disease and disorder and stroke.

(July 1, 1944, ch. 373, title IV, § 457, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 857; amended Pub. L. 100–553, § 2(3), Oct. 28, 1988, 102 Stat. 2769; Pub. L. 100–607, title I, § 101(3), Nov. 4, 1988, 102 Stat. 3049; Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238; Pub. L. 101–93, § 5(a), Aug. 16, 1989, 103 Stat. 611.)

AMENDMENTS

1989—Pub. L. 101–93 substituted ''disease and'' for ''disease and and''.

1988—Pub. L. 100–553 and Pub. L. 100–607 made identical amendments, substituting ''Neurological Disorders'' for ''Neurological and Communicative Disorders'' and ''and disorder and stroke'' for ''disorder, stroke, and disorders of human communication''. Pub. L. 100–690 amended this section to read as if the amendments by Pub. L. 100–607 had not been enacted.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285j–1. Spinal cord regeneration research

The Director of the Institute shall conduct and support research into spinal cord regeneration.

(July 1, 1944, ch. 373, title IV, § 458, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 857.)

INTERAGENCY COMMITTEE ON SPINAL CORD INJURY

Section 7 of Pub. L. 99–158 provided that:

''(a) ESTABLISHMENT.—Within 90 days after the date of enactment of this Act [Nov. 20, 1985], the Secretary of Health and Human Services shall establish in the National Institute of Neurological and Communicative Diseases and Stroke an Interagency Committee on Spinal Cord Injury (hereafter in this section referred to as the 'Interagency Committee'). The Interagency Committee shall plan, develop, coordinate, and implement comprehensive Federal initiatives in research on spinal cord injury and regeneration.

''(b) COMMITTEE COMPOSITION AND MEETINGS.—(1) The Interagency Committee shall consist of representatives from—

''(A) the National Institute on Neurological and Communicative Disorders and Stroke;

''(B) the Department of Defense;

''(C) the Department of Education;

''(D) the Veterans' Administration;

''(E) the Office of Science and Technology Policy; and

''(F) the National Science Foundation;

designated by the heads of such entities.

''(2) The Interagency Committee shall meet at least four times. The Secretary of Health and Human Services shall select the Chairman of the Interagency Com-

mittee from the members of the Interagency Committee.

''(c) REPORT.—Within the 18 months after the date of enactment of this Act [Nov. 20, 1985], the Interagency Committee shall prepare and transmit to the Congress a report concerning its activities under this section. The report shall include a description of research projects on spinal cord injury and regeneration conducted or supported by Federal agencies during such 18-month period, the nature and purpose of each such project, the amounts expended for each such project, and an identification of the entity which conducted the research under each such project.

''(d) TERMINATION.—The Interagency Committee shall terminate 90 days after the date on which the Interagency Committee transmits the report required by subsection (c) to the Congress.''

§ 285j–2. Bioengineering research

The Director of the Institute shall make grants or enter into contracts for research on the means to overcome paralysis of the extremities through electrical stimulation and the use of computers.

(July 1, 1944, ch. 373, title IV, § 459, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 857.)

§ 285j–3. Research on multiple sclerosis

The Director of the Institute shall conduct and support research on multiple sclerosis, especially research on effects of genetics and hormonal changes on the progress of the disease.

(July 1, 1944, ch. 373, title IV, § 460, as added Pub. L. 103–43, title XII, § 1201, June 10, 1993, 107 Stat. 169.)

SUBPART 11—NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

§ 285k. Purpose of Institute

The general purpose of the National Institute of General Medical Sciences is the conduct and support of research, training, and, as appropriate, health information dissemination, and other programs with respect to general or basic medical sciences and related natural or behavioral sciences which have significance for two or more other national research institutes or are outside the general area of responsibility of any other national research institute.

(July 1, 1944, ch. 373, title IV, § 461, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 857.)

SUBPART 12—NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

§ 285*l*. Purpose of Institute

The general purpose of the National Institute of Environmental Health Sciences (in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to factors in the environment that affect human health, directly or indirectly.

(July 1, 1944, ch. 373, title IV, § 463, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 857; amended Pub. L. 103–43, title XIII, § 1301(b), June 10, 1993, 107 Stat. 170.)

AMENDMENTS

1993—Pub. L. 103–43 inserted ''(in this subpart referred to as the 'Institute')'' after ''Sciences''.

§ 285*l*–1. Applied Toxicological Research and Testing Program

(a) There is established within the Institute a program for conducting applied research and testing regarding toxicology, which program shall be known as the Applied Toxicological Research and Testing Program.

(b) In carrying out the program established under subsection (a) of this section, the Director of the Institute shall, with respect to toxicology, carry out activities—

(1) to expand knowledge of the health effects of environmental agents;

(2) to broaden the spectrum of toxicology information that is obtained on selected chemicals;

(3) to develop and validate assays and protocols, including alternative methods that can reduce or eliminate the use of animals in acute or chronic safety testing;

(4) to establish criteria for the validation and regulatory acceptance of alternative testing and to recommend a process through which scientifically validated alternative methods can be accepted for regulatory use;

(5) to communicate the results of research to government agencies, to medical, scientific, and regulatory communities, and to the public; and

(6) to integrate related activities of the Department of Health and Human Services.

(July 1, 1944, ch. 373, title IV, § 463A, as added Pub. L. 103–43, title XIII, § 1301(a), June 10, 1993, 107 Stat. 169.)

§ 285*l*–2. Definitions

In sections 285*l*–2 to 285*l*–5 of this title:

(1) Alternative test method

The term ''alternative test method'' means a test method that—

(A) includes any new or revised test method; and

(B)(i) reduces the number of animals required;

(ii) refines procedures to lessen or eliminate pain or distress to animals, or enhances animal well-being; or

(iii) replaces animals with non-animal systems or one animal species with a phylogenetically lower animal species, such as replacing a mammal with an invertebrate.

(2) ICCVAM test recommendation

The term ''ICCVAM test recommendation'' means a summary report prepared by the ICCVAM characterizing the results of a scientific expert peer review of a test method.

(Pub. L. 106–545, § 2, Dec. 19, 2000, 114 Stat. 2721.)

CODIFICATION

Section was enacted as part of the ICCVAM Authorization Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

§ 285*l*–3. Interagency Coordinating Committee on the Validation of Alternative Methods

(a) In general

With respect to the interagency coordinating committee that is known as the Interagency Co-

ordinating Committee on the Validation of Alternative Methods (referred to in sections 285*l*–2 to 285*l*–5 of this title as ''ICCVAM'') and that was established by the Director of the National Institute of Environmental Health Sciences for purposes of section 285*l*–1(b) of this title, the Director of the Institute shall designate such committee as a permanent interagency coordinating committee of the Institute under the National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods. Sections 285*l*–2 to 285*l*–5 of this title may not be construed as affecting the authorities of such Director regarding ICCVAM that were in effect on the day before December 19, 2000, except to the extent inconsistent with sections 285*l*–2 to 285*l*–5 of this title.

(b) Purposes

The purposes of the ICCVAM shall be to—

(1) increase the efficiency and effectiveness of Federal agency test method review;

(2) eliminate unnecessary duplicative efforts and share experiences between Federal regulatory agencies;

(3) optimize utilization of scientific expertise outside the Federal Government;

(4) ensure that new and revised test methods are validated to meet the needs of Federal agencies; and

(5) reduce, refine, or replace the use of animals in testing, where feasible.

(c) Composition

The ICCVAM shall be composed of the heads of the following Federal agencies (or their designees):

(1) Agency for Toxic Substances and Disease Registry.

(2) Consumer Product Safety Commission.

(3) Department of Agriculture.

(4) Department of Defense.

(5) Department of Energy.

(6) Department of the Interior.

(7) Department of Transportation.

(8) Environmental Protection Agency.

(9) Food and Drug Administration.

(10) National Institute for Occupational Safety and Health.

(11) National Institutes of Health.

(12) National Cancer Institute.

(13) National Institute of Environmental Health Sciences.

(14) National Library of Medicine.

(15) Occupational Safety and Health Administration.

(16) Any other agency that develops, or employs tests or test data using animals, or regulates on the basis of the use of animals in toxicity testing.

(d) Scientific Advisory Committee

(1) Establishment

The Director of the National Institute of Environmental Health Sciences shall establish a Scientific Advisory Committee (referred to in sections 285*l*–2 to 285*l*–5 of this title as the ''SAC'') to advise ICCVAM and the National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods regarding ICCVAM activities. The activities of the SAC shall be subject to provisions of the Federal Advisory Committee Act.

(2) Membership

(A) In general

The SAC shall be composed of the following voting members:

(i) At least one knowledgeable representative having a history of expertise, development, or evaluation of new or revised or alternative test methods from each of—

(I) the personal care, pharmaceutical, industrial chemicals, or agriculture industry;

(II) any other industry that is regulated by the Federal agencies specified in subsection (c) of this section; and

(III) a national animal protection organization established under section 501(c)(3) of title 26.

(ii) Representatives (selected by the Director of the National Institute of Environmental Health Sciences) from an academic institution, a State government agency, an international regulatory body, or any corporation developing or marketing new or revised or alternative test methodologies, including contract laboratories.

(B) Nonvoting ex officio members

The membership of the SAC shall, in addition to voting members under subparagraph (A), include as nonvoting ex officio members the agency heads specified in subsection (c) of this section (or their designees).

(e) Duties

The ICCVAM shall, consistent with the purposes described in subsection (b) of this section, carry out the following functions:

(1) Review and evaluate new or revised or alternative test methods, including batteries of tests and test screens, that may be acceptable for specific regulatory uses, including the coordination of technical reviews of proposed new or revised or alternative test methods of interagency interest.

(2) Facilitate appropriate interagency and international harmonization of acute or chronic toxicological test protocols that encourage the reduction, refinement, or replacement of animal test methods.

(3) Facilitate and provide guidance on the development of validation criteria, validation studies and processes for new or revised or alternative test methods and help facilitate the acceptance of such scientifically valid test methods and awareness of accepted test methods by Federal agencies and other stakeholders.

(4) Submit ICCVAM test recommendations for the test method reviewed by the ICCVAM, through expeditious transmittal by the Secretary of Health and Human Services (or the designee of the Secretary), to each appropriate Federal agency, along with the identification of specific agency guidelines, recommendations, or regulations for a test method, including batteries of tests and test screens, for chemicals or class of chemicals within a regulatory framework that may be appropriate for scientific improvement, while seeking to reduce, refine, or replace animal test methods.

(5) Consider for review and evaluation, petitions received from the public that—

(A) identify a specific regulation, recommendation, or guideline regarding a regulatory mandate; and

(B) recommend new or revised or alternative test methods and provide valid scientific evidence of the potential of the test method.

(6) Make available to the public final ICCVAM test recommendations to appropriate Federal agencies and the responses from the agencies regarding such recommendations.

(7) Prepare reports to be made available to the public on its progress under sections 285*l*–2 to 285*l*–5 of this title. The first report shall be completed not later than 12 months after December 19, 2000, and subsequent reports shall be completed biennially thereafter.

(Pub. L. 106–545, § 3, Dec. 19, 2000, 114 Stat. 2721.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d)(1), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was enacted as part of the ICCVAM Authorization Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 285*l*–4. Federal agency action

(a) Identification of tests

With respect to each Federal agency carrying out a program that requires or recommends acute or chronic toxicological testing, such agency shall, not later than 180 days after receiving an ICCVAM test recommendation, identify and forward to the ICCVAM any relevant test method specified in a regulation or industry-wide guideline which specifically, or in practice requires, recommends, or encourages the use of an animal acute or chronic toxicological test method for which the ICCVAM test recommendation may be added or substituted.

(b) Alternatives

Each Federal agency carrying out a program described in subsection (a) of this section shall promote and encourage the development and use of alternatives to animal test methods (including batteries of tests and test screens), where appropriate, for the purpose of complying with Federal statutes, regulations, guidelines, or recommendations (in each instance, and for each chemical class) if such test methods are found to be effective for generating data, in an amount and of a scientific value that is at least equivalent to the data generated from existing tests, for hazard identification, dose-response assessment, or risk assessment purposes.

(c) Test method validation

Each Federal agency carrying out a program described in subsection (a) of this section shall ensure that any new or revised acute or chronic toxicity test method, including animal test methods and alternatives, is determined to be valid for its proposed use prior to requiring, recommending, or encouraging the application of such test method.

(d) Review

Not later than 180 days after receipt of an ICCVAM test recommendation, a Federal agency carrying out a program described in subsection (a) of this section shall review such recommendation and notify the ICCVAM in writing of its findings.

(e) Recommendation adoption

Each Federal agency carrying out a program described in subsection (a) of this section, or its specific regulatory unit or units, shall adopt the ICCVAM test recommendation unless such Federal agency determines that—

(1) the ICCVAM test recommendation is not adequate in terms of biological relevance for the regulatory goal authorized by that agency, or mandated by Congress;

(2) the ICCVAM test recommendation does not generate data, in an amount and of a scientific value that is at least equivalent to the data generated prior to such recommendation, for the appropriate hazard identification, dose-response assessment, or risk assessment purposes as the current test method recommended or required by that agency;

(3) the agency does not employ, recommend, or require testing for that class of chemical or for the recommended test endpoint; or

(4) the ICCVAM test recommendation is unacceptable for satisfactorily fulfilling the test needs for that particular agency and its respective congressional mandate.

(Pub. L. 106–545, § 4, Dec. 19, 2000, 114 Stat. 2723.)

CODIFICATION

Section was enacted as part of the ICCVAM Authorization Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

§ 285*l*–5. Application

(a) Application

Sections 285*l*–2 to 285*l*–5 of this title shall not apply to research, including research performed using biotechnology techniques, or research related to the causes, diagnosis, treatment, control, or prevention of physical or mental diseases or impairments of humans or animals.

(b) Use of test methods

Nothing in sections 285*l*–2 to 285*l*–5 of this title shall prevent a Federal agency from retaining

final authority for incorporating the test methods recommended by the ICCVAM in the manner determined to be appropriate by such Federal agency or regulatory body.

(c) Limitation

Nothing in sections 285*l*–2 to 285*l*–5 of this title shall be construed to require a manufacturer that is currently not required to perform animal testing to perform such tests. Nothing in sections 285*l*–2 to 285*l*–5 of this title shall be construed to require a manufacturer to perform redundant endpoint specific testing.

(d) Submission of tests and data

Nothing in sections 285*l*–2 to 285*l*–5 of this title precludes a party from submitting a test method or scientific data directly to a Federal agency for use in a regulatory program.

(Pub. L. 106–545, § 5, Dec. 19, 2000, 114 Stat. 2724.)

CODIFICATION

Section was enacted as part of the ICCVAM Authorization Act of 2000, and not as part of the Public Health Service Act which comprises this chapter.

§ 285*l*–6. Methods of controlling certain insect and vermin populations

The Director of the Institute shall conduct or support research to identify or develop methods of controlling insect and vermin populations that transmit to humans diseases that have significant adverse health consequences.

(July 1, 1944, ch. 373, title IV, § 463B, as added Pub. L. 108–75, § 3, Aug. 15, 2003, 117 Stat. 902.)

SUBPART 13—NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS

§ 285m. Purpose of Institute

The general purpose of the National Institute on Deafness and Other Communication Disorders (hereafter referred to in this subpart as the ''Institute'') is the conduct and support of research and training, the dissemination of health information, and other programs with respect to disorders of hearing and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell.

(July 1, 1944, ch. 373, title IV, § 464, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2769, and Pub. L. 100–607, title I, § 101(4), Nov. 4, 1988, 102 Stat. 3049; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238.)

CODIFICATION

Pub. L. 100–553 and Pub. L. 100–607 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1988—Pub. L. 100–690 amended this section to read as if the amendments made by Pub. L. 100–607, which enacted this section, had not been enacted. See Codification note above.

SHORT TITLE OF 1988 AMENDMENT

For short title of Pub. L. 100–553 which enacted this subpart and amended sections 281 and 285j of this title as the ''National Deafness and Other Communication Disorders Act of 1988'', see section 1 of Pub. L. 100–553, set out as a note under section 201 of this title.

EFFECT OF ENACTMENT OF SIMILAR PROVISIONS

Section 2613(b) of Pub. L. 100–690 provided that:

''(1) Paragraphs (2) and (3) shall take effect immediately after the enactment of both the bill, S. 1727, of the One Hundredth Congress [Pub. L. 100–553, approved Oct. 28, 1988], and the Health Omnibus Programs Extension of 1988 [Pub. L. 100–607, approved Nov. 4, 1988].

''(2)(A) The provisions of the Public Health Service Act referred to in subparagraph (B), as similarly amended by the enactment of the bill, S. 1727, of the One Hundredth Congress, by subtitle A of title I of the Health Omnibus Programs Extension of 1988, and by subsection (a)(1) of this section, are amended to read as if the amendments made by such subtitle A and such subsection (a)(1) had not been enacted.

''(B) The provisions of the Public Health Service Act referred to in subparagraph (A) are—

''(A) sections 401(b)(1) and 457 [sections 281(b)(1) and 285j of this title];

''(B) part C of title IV [this part]; and

''(C) the heading for subpart 10 of such part C [42 U.S.C. prec. 285j].

''(3) Subsection (a)(2) of this section [set out below] is repealed.''

TRANSITIONAL AND SAVINGS PROVISIONS

Section 3 of Pub. L. 100–553 provided that:

''(a) TRANSFER OF PERSONNEL, ASSETS, AND LIABILITIES.—Personnel employed by the National Institutes of Health in connection with the functions vested under section 2 [enacting this subpart and amending sections 281 and 285j of this title] in the Director of the National Institute on Deafness and Other Communication Disorders, and assets, property, contracts, liabilities, records, unexpended balances of appropriations, authorizations, allocations, and other funds of the National Institutes of Health, arising from or employed, held, used, available to, or to be made available, in connection with such functions shall be transferred to the Director for appropriate allocation. Unexpended funds transferred under this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

''(b) SAVINGS PROVISIONS.—With respect to functions vested under section 1 [probably means section 2, enacting this subpart and amending sections 281 and 285j of this title] in the Director of the National Institute on Deafness and Other Communication Disorders, all orders, rules, regulations, grants, contracts, certificates, licenses, privileges, and other determinations, actions, or official documents, that have been issued, made, granted, or allowed to become effective, and that are effective on the date of the enactment of this Act [Oct. 28, 1988], shall continue in effect according to their terms unless changed pursuant to law.''

Section 2612(a)(2) of Pub. L. 100–690, which enacted provisions that were substantially identical to the transitional and savings provisions above, was repealed by section 2613(b)(3) of Pub. L. 100–690.

§ 285m–1. National Deafness and Other Communication Disorders Program

(a) The Director of the Institute, with the advice of the Institute's advisory council, shall establish a National Deafness and Other Communication Disorders Program (hereafter in this section referred to as the ''Program''). The Director or[1] the Institute shall, with respect to the Program, prepare and transmit to the Director of NIH a plan to initiate, expand, intensify and coordinate activities of the Institute respecting disorders of hearing (including

[1] So in original. Probably should be ''of''.

tinnitus) and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The Director of the Institute shall periodically review and revise the plan and shall transmit any revisions of the plan to the Director of NIH.

(b) Activities under the Program shall include—

(1) investigation into the etiology, pathology, detection, treatment, and prevention of all forms of disorders of hearing and other communication processes, primarily through the support of basic research in such areas as anatomy, audiology, biochemistry, bioengineering, epidemiology, genetics, immunology, microbiology, molecular biology, the neurosciences, otolaryngology, psychology, pharmacology, physiology, speech and language pathology, and any other scientific disciplines that can contribute important knowledge to the understanding and elimination of disorders of hearing and other communication processes;

(2) research into the evaluation of techniques (including surgical, medical, and behavioral approaches) and devices (including hearing aids, implanted auditory and nonauditory prosthetic devices and other communication aids) used in diagnosis, treatment, rehabilitation, and prevention of disorders of hearing and other communication processes;

(3) research into prevention, and early detection and diagnosis, of hearing loss and speech and language disturbances (including stuttering) and research into preventing the effects of such disorders on learning and learning disabilities with extension of programs for appropriate referral and rehabilitation;

(4) research into the detection, treatment, and prevention of disorders of hearing and other communication processes in the growing elderly population with extension of rehabilitative programs to ensure continued effective communication skills in such population;

(5) research to expand knowledge of the effects of environmental agents that influence hearing or other communication processes; and

(6) developing and facilitating intramural programs on clinical and fundamental aspects of disorders of hearing and all other communication processes.

(July 1, 1944, ch. 373, title IV, § 464A, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2769, and Pub. L. 100–607, title I, § 101(4), Nov. 4, 1988, 102 Stat. 3049; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238.)

CODIFICATION

Pub. L. 100–553 and Pub. L. 100–607 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1988—Pub. L. 100–690 amended this section to read as if the amendments made by Pub. L. 100–607, which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285m–2. Data System and Information Clearinghouse

(a) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with disorders of hearing or other communication processes, including where possible, data involving general populations for the purpose of identifying individuals at risk of developing such disorders.

(b) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of disorders of hearing and other communication processes by health professionals, patients, industry, and the public.

(July 1, 1944, ch. 373, title IV, § 464B, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2770, and Pub. L. 100–607, title I, § 101(4), Nov. 4, 1988, 102 Stat. 3050; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238.)

CODIFICATION

Pub. L. 100–553 and Pub. L. 100–607 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1988—Pub. L. 100–690 amended this section to read as if the amendments made by Pub. L. 100–607, which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285m–3. Multipurpose deafness and other communication disorders center

(a) Development, modernization and operation; "modernization" defined

The Director of the Institute shall, after consultation with the advisory council for the Institute, provide for the development, modernization, and operation (including care required for research) of new and existing centers for studies of disorders of hearing and other communication processes. For purposes of this section, the term ''modernization'' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

(b) Use of facilities; qualifications

Each center assisted under this section shall—

(1) use the facilities of a single institution or a consortium of cooperating institutions; and

(2) meet such qualifications as may be prescribed by the Secretary.

(c) Requisite programs

Each center assisted under this section shall, at least, conduct—

(1) basic and clinical research into the cause diagnosis, early detection, prevention, control and treatment of disorders of hearing and other communication processes and complications resulting from such disorders, including research into rehabilitative aids, implantable biomaterials, auditory speech processors, speech production devices, and other otolaryngologic procedures;

(2) training programs for physicians, scientists, and other health and allied health professionals;

(3) information and continuing education programs for physicians and other health and allied health professionals who will provide care for patients with disorders of hearing or other communication processes; and

(4) programs for the dissemination to the general public of information—

(A) on the importance of early detection of disorders of hearing and other communication processes, of seeking prompt treatment, rehabilitation, and of following an appropriate regimen; and

(B) on the importance of avoiding exposure to noise and other environmental toxic agents that may affect disorders of hearing or other communication processes.

(d) Stipends

A center may use funds provided under subsection (a) of this section to provide stipends for health professionals enrolled in training programs described in subsection (c)(2) of this section.

(e) Discretionary programs

Each center assisted under this section may conduct programs—

(1) to establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals at risk of developing disorders of hearing or other communication processes; and

(2) to disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping.

(f) Equitable geographical distribution; needs of elderly and children

The Director of the Institute shall, to the extent practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of the elderly, and of children (particularly with respect to their education and training), affected by disorders of hearing or other communication processes.

(g) Period of support; recommended extensions of peer review group

Support of a center under this section may be for a period not to exceed seven years. Such period may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director, with the advice of the Institute's advisory council, if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 464C, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2771, and Pub. L. 100–607, title I, § 101(4), Nov. 4, 1988, 102 Stat. 3050; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238.)

CODIFICATION

Pub. L. 100–553 and Pub. L. 100–607 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1988—Pub. L. 100–690 amended this section to read as if the amendments made by Pub. L. 100–607, which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285m–4. National Institute on Deafness and Other Communication Disorders Advisory Board

(a) Establishment

The Secretary shall establish in the Institute the National Deafness and Other Communication Disorders Advisory Board (hereafter in this section referred to as the ''Advisory Board'').

(b) Composition; qualifications; appointed and ex officio members

The Advisory Board shall be composed of eighteen appointed members and nonvoting ex officio members as follows:

(1) The Secretary shall appoint—

(A) twelve members from individuals who are scientists, physicians, and other health and rehabilitation professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to deafness and other communication disorders, including not less than two persons with a communication disorder; and

(B) six members from the general public who are knowledgeable with respect to such disorders, including not less than one person with a communication disorder and not less than one person who is a parent of an individual with such a disorder.

Of the appointed members, not less than five shall by virtue of training or experience be knowledgeable in diagnoses and rehabilitation of communication disorders, education of the hearing, speech, or language impaired, public health, public information, community program development, occupational hazards to communications senses, or the aging process.

(2) The following shall be ex officio members of each Advisory Board:

(A) The Assistant Secretary for Health, the Director of NIH, the Director of the Na-

tional Institute on Deafness and Other Communication Disorders, the Director of the Centers for Disease Control and Prevention, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers).

(B) Such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

(c) Compensation

Members of an Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Board.

(d) Term of office; vacancies

The term of office of an appointed member of the Advisory Board is four years, except that no term of office may extend beyond the expiration of the Advisory Board. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in the Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days from the date the vacancy occurred.

(e) Chairman

The members of the Advisory Board shall select a chairman from among the appointed members.

(f) Personnel; executive director; professional and clerical staff members; consultants; information and administrative support services and facilities

The Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, such services of consultants, such information, and (through contracts or other arrangements) such administrative support services and facilities, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

(g) Meetings

The Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

(h) Functions

The Advisory Board shall—

(1) review and evaluate the implementation of the plan prepared under section 285m–1(a) of this title and periodically update the plan to ensure its continuing relevance;

(2) for the purpose of assuring the most effective use and organization of resources respecting deafness and other communication disorders, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

(3) maintain liaison with other advisory bodies related to Federal agencies involved in the implementation of such plan and with key non-Federal entities involved in activities affecting the control of such disorders.

(i) Subcommittee activities; workshops and conferences; collection of data

In carrying out its functions, the Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

(j) Annual report

The Advisory Board shall prepare an annual report for the Secretary which—

(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

(2) describes and evaluates the progress made in such fiscal year in research, treatment, education, and training with respect to the deafness and other communication disorders;

(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such disorders in such fiscal year; and

(4) contains the Advisory Board's recommendations (if any) for changes in the plan prepared under section 285m–1(a) of this title.

(k) Commencement of existence

The National Deafness and Other Communication Disorders Advisory Board shall be established not later than April 1, 1989.

(July 1, 1944, ch. 373, title IV, § 464D, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2772, and Pub. L. 100–690, title II, § 2613(a)(1), Nov. 18, 1988, 102 Stat. 4235; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238; Pub. L. 101–93, § 5(b), Aug. 16, 1989, 103 Stat. 611; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 102–531, title III, § 312(d)(8), Oct. 27, 1992, 106 Stat. 3504; Pub. L. 103–43, title XX, § 2008(b)(8), June 10, 1993, 107 Stat. 211.)

CODIFICATION

Pub. L. 100–553 and section 2613(a)(1) of Pub. L. 100–690 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1993—Subsec. (b)(2)(A). Pub. L. 103–43 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsec. (b)(2)(A). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1989—Subsec. (k). Pub. L. 101–93 substituted ''April 1, 1989'' for ''90 days after the date of the enactment of the National Institute on Deafness and Other Communication Disorders Act''.

1988—Pub. L. 100–690, § 2613(b)(2), amended this section to read as if the amendments made by Pub. L. 100–690, § 2613(a)(1), which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by section 2613(b)(2) of Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 285m–5. Interagency Coordinating Committee

(a) Establishment

The Secretary may establish a committee to be known as the Deafness and Other Communication Disorders Interagency Coordinating Committee (hereafter in this section referred to as the ''Coordinating Committee'').

(b) Functions

The Coordinating Committee shall, with respect to deafness and other communication disorders—

(1) provide for the coordination of the activities of the national research institutes; and

(2) coordinate the aspects of all Federal health programs and activities relating to deafness and other communication disorders in order to assure the adequacy and technical soundness of such programs and activities and in order to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities.

(c) Composition

The Coordinating Committee shall be composed of the directors of each of the national research institutes and divisions involved in research with respect to deafness and other communication disorders and representatives of all other Federal departments and agencies whose programs involve health functions or responsibilities relevant to deafness and other communication disorders.

(d) Chairman; meetings

The Coordinating Committee shall be chaired by the Director of NIH (or the designee of the Director). The Committee shall meet at the call of the chair, but not less often than four times a year.

(e) Annual report; recipients of report

Not later than 120 days after the end of each fiscal year, the Coordinating Committee shall prepare and transmit to the Secretary, the Director of NIH, the Director of the Institute, and the advisory council for the Institute a report detailing the activities of the Committee in such fiscal year in carrying out subsection (b) of this section.

(July 1, 1944, ch. 373, title IV, § 464E, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2774, and Pub. L. 100–690, title II, § 2613(a)(1), Nov. 18, 1988, 102 Stat. 4237; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238; Pub. L. 103–43, title XX, § 2008(b)(9), June 10, 1993, 107 Stat. 211.)

CODIFICATION

Pub. L. 100–553 and section 2613(a)(1) of Pub. L. 100–690 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1993—Subsecs. (d), (e). Pub. L. 103–43 inserted ''Coordinating'' before ''Committee'' in first sentence of subsec. (d) and before first reference to ''Committee'' in subsec. (e).

1988—Pub. L. 100–690, § 2613(b)(2), amended this section to read as if the amendments made by Pub. L. 100–690, § 2613(a)(1), which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by section 2613(b)(2) of Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285m–6. Limitation on administrative expenses

With respect to amounts appropriated for a fiscal year for the National Institutes of Health, the limitation established in section 284c(a)(1) of this title on the expenditure of such amounts for administrative expenses shall apply to administrative expenses of the National Institute on Deafness and Other Communication Disorders.

(July 1, 1944, ch. 373, title IV, § 464F, as added Pub. L. 100–553, § 2(4), Oct. 28, 1988, 102 Stat. 2774, and Pub. L. 100–690, title II, § 2613(a)(1), Nov. 18, 1988, 102 Stat. 4238; amended Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238; Pub. L. 103–43, title IV, § 403(b)(2), June 10, 1993, 107 Stat. 158.)

CODIFICATION

Pub. L. 100–553 and section 2613(a)(1) of Pub. L. 100–690 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1993—Pub. L. 103–43 substituted ''section 284c(a)(1)'' for ''section 284c(b)(1)''.

1988—Pub. L. 100–690, § 2613(b)(2), amended this section to read as if the amendments made by Pub. L. 100–690, § 2613(a)(1), which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by section 2613(b)(2) of Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

SUBPART 14—NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM

§ 285n. Purpose of Institute

(a) In general

The general purpose of the National Institute on Alcohol Abuse and Alcoholism (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of biomedical and behavioral research, health services research, research training, and health information dissemination with respect to the prevention of alcohol abuse and the treatment of alcoholism.

(b) Research program

The research program established under this subpart shall encompass the social, behavioral, and biomedical etiology, mental and physical health consequences, and social and economic consequences of alcohol abuse and alcoholism. In carrying out the program, the Director of the Institute is authorized to—

(1) collect and disseminate through publications and other appropriate means (including the development of curriculum materials), information as to, and the practical application of, the research and other activities under the program;

(2) make available research facilities of the Public Health Service to appropriate public authorities, and to health officials and scientists engaged in special study;

(3) make grants to universities, hospitals, laboratories, and other public or nonprofit institutions, and to individuals for such research projects as are recommended by the National Advisory Council on Alcohol Abuse and Alcoholism, giving special consideration to projects relating to—

(A) the relationship between alcohol abuse and domestic violence,

(B) the effects of alcohol use during pregnancy,

(C) the impact of alcoholism and alcohol abuse on the family, the workplace, and systems for the delivery of health services,

(D) the relationship between the abuse of alcohol and other drugs,

(E) the effect on the incidence of alcohol abuse and alcoholism of social pressures, legal requirements respecting the use of alcoholic beverages, the cost of such beverages, and the economic status and education of users of such beverages,

(F) the interrelationship between alcohol use and other health problems,

(G) the comparison of the cost and effectiveness of various treatment methods for alcoholism and alcohol abuse and the effectiveness of prevention and intervention programs for alcoholism and alcohol abuse,

(H) alcoholism and alcohol abuse among women;

(4) secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

(5) promote the coordination of research programs conducted by the Institute, and similar programs conducted by the National Institute of Drug Abuse and by other departments, agencies, organizations, and individuals, including all National Institutes of Health research activities which are or may be related to the problems of individuals suffering from alcoholism or alcohol abuse or those of their families or the impact of alcohol abuse on other health problems;

(6) conduct an intramural program of biomedical, behavioral, epidemiological, and social research, including research into the most effective means of treatment and service delivery, and including research involving human subjects, which is—

(A) located in an institution capable of providing all necessary medical care for such human subjects, including complete 24-hour medical diagnostic services by or under the supervision of physicians, acute and intensive medical care, including 24-hour emergency care, psychiatric care, and such other care as is determined to be necessary for individuals suffering from alcoholism and alcohol abuse; and

(B) associated with an accredited medical or research training institution;

(7) for purposes of study, admit and treat at institutions, hospitals, and stations of the Public Health Service, persons not otherwise eligible for such treatment;

(8) provide to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical and other scientific research methods to experiments, studies, and surveys in health and medical fields;

(9) enter into contracts under this subchapter without regard to section 3324(a) and (b) of title 31 and section 5 of title 41; and

(10) adopt, upon recommendation of the National Advisory Council on Alcohol Abuse and Alcoholism, such additional means as he deems necessary or appropriate to carry out the purposes of this section.

(c) Collaboration

The Director of the Institute shall collaborate with the Administrator of the Substance Abuse and Mental Health Services Administration in focusing the services research activities of the Institute and in disseminating the results of such research to health professionals and the general public.

(d) Funding

(1) Authorization of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $300,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(2) Allocation for health services research

Of the amounts appropriated under paragraph (1) for a fiscal year, the Director shall obligate not less than 15 percent to carry out health services research relating to alcohol abuse and alcoholism.

(July 1, 1944, ch. 373, title IV, § 464H, as added and amended Pub. L. 102–321, title I, § 122(a), (b), July 10, 1992, 106 Stat. 358, 359; Pub. L. 102–352, § 2(a)(1), Aug. 26, 1992, 106 Stat. 938.)

CODIFICATION

Section 290bb(b) of this title, which was transferred to subsec. (b) of this section and amended by Pub. L. 102–321, was based on act July 1, 1944, ch. 373, title V, § 510, formerly Pub. L. 91–616, title V, § 501(b), as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1038; amended Pub. L. 95–622, title II, § 268(d), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96–180, § 14(b), Jan. 2, 1980, 93 Stat. 1305; renumbered § 510(b) of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(9), 97 Stat. 179; Oct. 19, 1984, Pub. L. 98–509, title II, § 205(a)(1), 98 Stat. 2361.

In subsec. (b)(9), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–352 substituted ''Institute on Alcohol'' for ''Institute of Alcohol''.

Subsec. (b). Pub. L. 102–321, § 122(b)(1), (2)(A), transferred subsec. (b) of section 290bb of this title to subsec. (b) of this section, substituted ''(b) RESEARCH PROGRAM.—The research program established under this subpart shall encompass the social, behavioral, and biomedical etiology, mental and physical health consequences, and social and economic consequences of alcohol abuse and alcoholism. In carrying out the program, the Director of the Institute is authorized'' for ''(b) In carrying out the program described in subsection (a) of this section, the Secretary, acting through the Institute, is authorized'' in introductory provisions, and substituted a semicolon for period at end of par. (3)(H).

Subsecs. (c), (d). Pub. L. 102–321, § 122(b)(2)(B), added subsecs. (c) and (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 3 of Pub. L. 102–352 provided that: ''The amendments made by—

''(1) subsection (a) of section 2 [amending this section and sections 285n–2, 285*o*, 285*o*–2, 285p, 290aa–1, 290aa–3, 300x–7, 300x–27, 300x–33, 300x–53, and 300y of this title], shall take effect immediately upon the effectuation of the amendments made by titles I and II of the ADAMHA Reorganization Act [Pub. L. 102–321, see Effective Date of 1992 Amendment note set out under section 236 of this title]; and

''(2) subsections (b) and (c) of section 2 [amending sections 290cc–21, 290cc–28, and 290cc–30 of this title and provisions set out as notes under sections 290aa and 300x of this title], shall take effect on the date of enactment of this Act [Aug. 26, 1992].''

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

REQUIRED ALLOCATIONS FOR HEALTH SERVICES RESEARCH

Pub. L. 103–43, title XX, § 2016(b), June 10, 1993, 107 Stat. 218, provided that:

''(1) IN GENERAL.—With respect to the allocation for health services research required in each of the provisions of law specified in paragraph (2), the term '15 percent' appearing in each of such provisions is, in the case of allocations for fiscal year 1993, deemed to be 12 percent.

''(2) RELEVANT PROVISIONS OF LAW.—The provisions of law referred to in paragraph (1) are—

''(A) section 464H(d)(2) of the Public Health Service Act, as added by section 122 of Public Law 102–321 (106 Stat. 358) [subsec. (d)(2) of this section];

''(B) section 464L(d)(2) of the Public Health Service Act, as added by section 123 of Public Law 102–321 (106 Stat. 360) [section 285*o*(d)(2) of this title]; and

''(C) section 464R(f)(2) of the Public Health Service Act, as added by section 124 of Public Law 102–321 (106 Stat. 364) [section 285p(f)(2) of this title].''

STUDY ON FETAL ALCOHOL EFFECT AND FETAL ALCOHOL SYNDROME

Section 705 of Pub. L. 102–321 directed Secretary of Health and Human Services to enter into a contract with a public or nonprofit private entity to conduct a study on the prevalence of fetal alcohol effect and fetal alcohol syndrome in the general population of the United States and on the adequacy of Federal efforts to reduce the incidence of such conditions (including efforts regarding appropriate training for health care providers in identifying such effect or syndrome), and to ensure that a report outlining this study be submitted to Congress not later than 18 months after July 10, 1992.

ALCOHOLISM AND ALCOHOL ABUSE TREATMENT STUDY

Pub. L. 99–570, title IV, § 4022, Oct. 27, 1986, 100 Stat. 3207–124, directed Secretary of Health and Human Services, acting through Director of National Institute on Alcohol Abuse and Alcoholism, to conduct a study of alternative approaches for alcoholism and alcohol abuse treatment and rehabilitation and of financing alternatives including policies and experiences of third party insurers and State and municipal governments; to recommend policies and programs for research, planning, administration, and reimbursement for treatment and rehabilitation; to request National Academy of Sciences to conduct such study in consultation with Director of National Institute on Alcohol Abuse and Alcoholism under an arrangement entered into with consent of Academy that actual expenses of Academy will be paid by Secretary and that Academy would submit a final report to Secretary no later than 24 months after the arrangement was entered into; and to transmit a final report to Congress no later than 30 days after receiving Academy's report.

§ 285n–1. Associate Director for Prevention

(a) In general

There shall be in the Institute an Associate Director for Prevention who shall be responsible for the full-time coordination and promotion of the programs in the Institute concerning the prevention of alcohol abuse and alcoholism. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or expertise are experts in alcohol abuse and alcoholism or the prevention of such.

(b) Biennial report

The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 464I, as added Pub. L. 102–321, title I, § 122(c), July 10, 1992, 106 Stat. 359.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285n–2. National Alcohol Research Centers; mandatory grant for research of effects of alcohol on elderly

(a) Designation; procedures applicable for approval of applications

The Secretary acting through the Institute may designate National Alcohol Research Centers for the purpose of interdisciplinary research relating to alcoholism and other biomedical, behavioral, and social issues related to alcoholism and alcohol abuse. No entity may be designated as a Center unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be submitted in such manner and contain such information as the Secretary may reasonably require. The Secretary may not approve such an application unless—

(1) the application contains or is supported by reasonable assurances that—

(A) the applicant has the experience, or capability, to conduct, through biomedical, behavioral, social, and related disciplines, long-term research on alcoholism and other alcohol problems and to provide coordination of such research among such disciplines;

(B) the applicant has available to it sufficient facilities (including laboratory, reference, and data analysis facilities) to carry out the research plan contained in the application;

(C) the applicant has facilities and personnel to provide training in the prevention and treatment of alcoholism and other alcohol problems;

(D) the applicant has the capacity to train predoctoral and postdoctoral students for careers in research on alcoholism and other alcohol problems;

(E) the applicant has the capacity to conduct courses on alcohol problems and research on alcohol problems for undergraduate and graduate students, and for medical and osteopathic, nursing, social work, and other specialized graduate students; and

(F) the applicant has the capacity to conduct programs of continuing education in such medical, legal, and social service fields as the Secretary may require.[1]

(2) the application contains a detailed five-year plan for research relating to alcoholism and other alcohol problems.

(b) Annual grants; amount; limitation on uses

The Secretary shall, under such conditions as the Secretary may reasonably require, make annual grants to Centers which have been designated under this section. No funds provided under a grant under this subsection may be used for the purchase of any land or the purchase, construction, preservation, or repair of any building. For the purposes of the preceding sentence, the term ''construction'' has the meaning given that term by section 292a(1)[2] of this title. The Secretary shall include in the grants made under this section for fiscal years beginning after September 30, 1981, a grant to a designated Center for research on the effects of alcohol on the elderly.

(July 1, 1944, ch. 373, title IV, § 464J, formerly title V, § 511, formerly Pub. L. 91–616, title V, § 503, formerly § 504, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 95–622, title I, § 110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96–180, § 16, Jan. 2, 1980, 93 Stat. 1305; renumbered § 503 of Pub. L. 91–616 and amended Pub. L. 97–35, title IX, § 965(b), (c), Aug. 13, 1981, 95 Stat. 594; renumbered § 511 of act July 1, 1944, and amended Pub. L. 98–24, § 2(b)(9), Apr. 26, 1983, 97 Stat. 179; Pub. L. 99–570, title IV, § 4008, Oct. 27, 1986, 100 Stat. 3207–115; renumbered title IV, § 464J and amended Pub. L. 102–321, title I, § 122(d), July 10, 1992, 106 Stat. 360; Pub. L. 102–352, § 2(a)(2), Aug. 26, 1992, 106 Stat. 938.)

REFERENCES IN TEXT

Section 292a of this title, referred to in subsec. (b), was in the original a reference to section 701 of act July 1, 1944. Section 701 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 701 of act July 1, 1944, relating to statement of purpose, and a new section 702, relating to scope and duration of loan insurance program, which are classified to sections 292 and 292a, respectively, of this title. For provisions relating to definitions, see sections 292*o* and 295p of this title.

CODIFICATION

Section was formerly classified to section 290bb–1 of this title prior to renumbering by Pub. L. 102–321.

Section was formerly classified to section 4587 of this title prior to renumbering by Pub. L. 98–24.

Section was formerly classified to section 4588 of this title prior to renumbering by Pub. L. 97–35.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–352 substituted ''292a(1)'' for ''292a(2)''.

Pub. L. 102–321, § 122(d)(2), struck ''or rental'' before ''of any land''.

1986—Subsec. (b). Pub. L. 99–570, § 4008(1), which directed that subsec. (b) be amended by striking out ''or rental'' before ''any land'', could not be executed because ''or rental'' appeared before ''of any land''.

Pub. L. 99–570, § 4008(2), struck out ''rental,'' before ''purchase''.

1983—Subsec. (a). Pub. L. 98–24, § 2(b)(9)(B)(i), struck out direction that, insofar as practicable, the Secretary approve applications under this subsection in a manner resulting in an equitable geographic distribution of Centers.

Subsec. (b). Pub. L. 98–24, § 2(b)(9)(B)(ii), (iii), struck out provision that no annual grant to any Center might exceed $1,500,000, and made a technical amendment to reference to section 292a of this title to reflect the transfer of this section to the Public Health Service Act.

Subsec. (c). Pub. L. 98–24, § 2(b)(9)(B)(iv), struck out subsec. (c) which authorized $6,000,000 for each of fiscal years ending Sept. 30, 1977, 1978, and 1979, $8,000,000 for fiscal year ending Sept. 30, 1980, and $9,000,000 for fiscal year ending Sept. 30, 1981.

[1] So in original. The period probably should be ''; and''.

[2] See References in Text note below.

1981—Subsec. (b). Pub. L. 97–35, § 965(b), inserted provisions relating to grants made for fiscal years beginning after Sept. 30, 1981.

1980—Subsec. (a). Pub. L. 96–180, § 16(a), substituted: in first sentence ''biomedical, behavioral, and social issues related to alcoholism and alcohol abuse'' for ''alcohol problems''; in par. (1)(B) ''facilities (including laboratory, reference, and data analysis facilities) to carry out the research plan contained in the application'' for ''laboratory facilities and reference services (including reference services that will afford access to scientific alcohol literature)''; and in par. (1)(E) ''medical and osteopathic, nursing, social work, and other specialized graduate students; and'' for ''medical and osteopathic students and physicians;'', and added par. (1)(F).

Subsec. (b). Pub. L. 96–180, § 16(b), increased annual grant limitation to $1,500,000 from $1,000,000.

Subsec. (c). Pub. L. 96–180, § 16(c), authorized appropriation of $8,000,000 and $9,000,000 for fiscal years ending Sept. 30, 1980, and 1981.

1978—Subsec. (a). Pub. L. 95–622 inserted provision following par. (2) relating to approval of applications under this subsection by the Secretary in a manner which results in equitable geographic distribution of Centers.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

SUBPART 15—NATIONAL INSTITUTE ON DRUG ABUSE

§ 285*o*. Purpose of Institute

(a) In general

The general purpose of the National Institute on Drug Abuse (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of biomedical and behavioral research, health services research, research training, and health information dissemination with respect to the prevention of drug abuse and the treatment of drug abusers.

(b) Research program

The research program established under this subpart shall encompass the social, behavioral, and biomedical etiology, mental and physical health consequences, and social and economic consequences of drug abuse. In carrying out the program, the Director of the Institute shall give special consideration to projects relating to drug abuse among women (particularly with respect to pregnant women).

(c) Collaboration

The Director of the Institute shall collaborate with the Substance Abuse and Mental Health Services Administration in focusing the services research activities of the Institute and in disseminating the results of such research to health professionals and the general public.

(d) Funding

(1) Authorization of appropriations

For the purpose of carrying out this subpart, other than section 285*o*–4 of this title, there are authorized to be appropriated $440,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(2) Allocation for health services research

Of the amounts appropriated under paragraph (1) for a fiscal year, the Director shall obligate not less than 15 percent to carry out health services research relating to drug abuse.

(July 1, 1944, ch. 373, title IV, § 464L, as added Pub. L. 102–321, title I, § 123(a), July 10, 1992, 106 Stat. 360; amended Pub. L. 102–352, § 2(a)(3), Aug. 26, 1992, 106 Stat. 938.)

AMENDMENTS

1992—Subsec. (d)(1). Pub. L. 102–352 inserted ''other than section 285*o*–4 of this title,'' after ''this subpart,''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

REQUIRED ALLOCATIONS FOR HEALTH SERVICES RESEARCH

With respect to fiscal year 1993 allocations for health services research required in subsec. (d)(2) of this section, the term ''15 percent'' deemed to be 12 percent, see section 2016(b) of Pub. L. 103–43, set out as a note under section 285n of this title.

§ 285*o*–1. Associate Director for Prevention

(a) In general

There shall be in the Institute an Associate Director for Prevention who shall be responsible for the full-time coordination and promotion of the programs in the Institute concerning the prevention of drug abuse. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or expertise are experts in drug abuse and the prevention of such abuse.

(b) Report

The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 464M, as added Pub. L. 102–321, title I, § 123(b), July 10, 1992, 106 Stat. 361.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285*o*–2. Drug Abuse Research Centers

(a) Authority

The Director of the Institute may designate National Drug Abuse Research Centers for the purpose of interdisciplinary research relating to drug abuse and other biomedical, behavioral, and social issues related to drug abuse. No enti-

ty may be designated as a Center unless an application therefore has been submitted to, and approved by, the Secretary. Such an application shall be submitted in such manner and contain such information as the Secretary may reasonably require. The Secretary may not approve such an application unless—

(1) the application contains or is supported by reasonable assurances that—

(A) the applicant has the experience, or capability, to conduct, through biomedical, behavioral, social, and related disciplines, long-term research on drug abuse and to provide coordination of such research among such disciplines;

(B) the applicant has available to it sufficient facilities (including laboratory, reference, and data analysis facilities) to carry out the research plan contained in the application;

(C) the applicant has facilities and personnel to provide training in the prevention and treatment of drug abuse;

(D) the applicant has the capacity to train predoctoral and postdoctoral students for careers in research on drug abuse;

(E) the applicant has the capacity to conduct courses on drug abuse problems and research on drug abuse for undergraduate and graduate students, and medical and osteopathic, nursing, social work, and other specialized graduate students; and

(F) the applicant has the capacity to conduct programs of continuing education in such medical, legal, and social service fields as the Secretary may require.[1]

(2) the application contains a detailed five-year plan for research relating to drug abuse.

(b) Grants

The Director of the Institute shall, under such conditions as the Secretary may reasonably require, make annual grants to Centers which have been designated under this section. No funds provided under a grant under this subsection may be used for the purchase of any land or the purchase, construction, preservation, or repair of any building. For the purposes of the preceding sentence, the term ''construction'' has the meaning given that term by section 292a(1)[2] of this title.

(c) Drug abuse and addiction research

(1) Grants or cooperative agreements

The Director of the Institute may make grants or enter into cooperative agreements to expand the current and ongoing interdisciplinary research and clinical trials with treatment centers of the National Drug Abuse Treatment Clinical Trials Network relating to drug abuse and addiction, including related biomedical, behavioral, and social issues.

(2) Use of funds

Amounts made available under a grant or cooperative agreement under paragraph (1) for drug abuse and addiction may be used for research and clinical trials relating to—

(A) the effects of drug abuse on the human body, including the brain;

(B) the addictive nature of drugs and how such effects differ with respect to different individuals;

(C) the connection between drug abuse and mental health;

(D) the identification and evaluation of the most effective methods of prevention of drug abuse and addiction;

(E) the identification and development of the most effective methods of treatment of drug addiction, including pharmacological treatments;

(F) risk factors for drug abuse;

(G) effects of drug abuse and addiction on pregnant women and their fetuses; and

(H) cultural, social, behavioral, neurological, and psychological reasons that individuals abuse drugs, or refrain from abusing drugs.

(3) Research results

The Director shall promptly disseminate research results under this subsection to Federal, State, and local entities involved in combating drug abuse and addiction.

(4) Authorization of appropriations

(A) In general

There are authorized to be appropriated to carry out this subsection such sums as may be necessary for each fiscal year.

(B) Supplement not supplant

Amounts appropriated pursuant to the authorization of appropriations in subparagraph (A) for a fiscal year shall supplement and not supplant any other amounts appropriated in such fiscal year for research on drug abuse and addiction.

(July 1, 1944, ch. 373, title IV, § 464N, as added Pub. L. 102–321, title I, § 123(b), July 10, 1992, 106 Stat. 361; amended Pub. L. 102–352, § 2(a)(4), Aug. 26, 1992, 106 Stat. 938; Pub. L. 106–310, div. B, title XXXVI, § 3631, Oct. 17, 2000, 114 Stat. 1235; Pub. L. 107–273, div. B, title II, § 2203, Nov. 2, 2002, 116 Stat. 1794.)

REFERENCES IN TEXT

Section 292a of this title, referred to in subsec. (b), was in the original a reference to section 701 of act July 1, 1944. Section 701 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 701 of act July 1, 1944, relating to statement of purpose, and a new section 702, relating to scope and duration of loan insurance program, which are classified to sections 292 and 292a, respectively, of this title. For provisions relating to definitions, see sections 292*o* and 295p of this title.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–273 amended heading and text of subsec. (c) generally, substituting provisions relating to grants or cooperative agreements for research and clinical trials relating to drug abuse and addiction for similar provisions relating to grants or cooperative agreements for research and clinical trials relating to methamphetamine abuse and addiction.

2000—Subsec. (c). Pub. L. 106–310 added subsec. (c).

1992—Subsec. (b). Pub. L. 102–352 substituted ''292a(1)'' for ''292a(2)''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L.

[1] So in original. The period probably should be ''; and''.

[2] See References in Text note below.

102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285*o*–3. Office on AIDS

The Director of the Institute shall establish within the Institute an Office on AIDS. The Office shall be responsible for the coordination of research and determining the direction of the Institute with respect to AIDS research related to—

(1) primary prevention of the spread of HIV, including transmission via drug abuse;

(2) drug abuse services research; and

(3) other matters determined appropriate by the Director.

(July 1, 1944, ch. 373, title IV, § 464O, as added Pub. L. 102–321, title I, § 123(b), July 10, 1992, 106 Stat. 362.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

STUDY BY NATIONAL ACADEMY OF SCIENCES

Section 706 of Pub. L. 102–321 directed Secretary of Health and Human Services to contract for a study or studies relating to programs that provide both sterile hypodermic needles and bleach to individuals in order to reduce the risk of contracting acquired immune deficiency syndrome or related conditions, in order to determine extent to which such programs promote the abuse of drugs or otherwise altered any behaviors constituting a substantial risk of contracting AIDS or hepatitus, or of transmitting such conditions, and further directed Secretary to ensure that a report is submitted to Congress on the results of this study not later than 18 months after July 10, 1992.

§ 285*o*–4. Medication Development Program

(a) Establishment

There is established in the Institute a Medication Development Program through which the Director of such Institute shall—

(1) conduct periodic meetings with the Commissioner of Food and Drugs to discuss measures that may facilitate the approval process of drug abuse treatments;

(2) encourage and promote (through grants, contracts, international collaboration, or otherwise) expanded research programs, investigations, experiments, community trials, and studies, into the development and use of medications to treat drug addiction;

(3) establish or provide for the establishment of research facilities;

(4) report on the activities of other relevant agencies relating to the development and use of pharmacotherapeutic treatments for drug addiction;

(5) collect, analyze, and disseminate data useful in the development and use of pharmacotherapeutic treatments for drug addiction and collect, catalog, analyze, and disseminate through international channels, the results of such research;

(6) directly or through grants, contracts, or cooperative agreements, support training in the fundamental sciences and clinical disciplines related to the pharmacotherapeutic treatment of drug abuse, including the use of training stipends, fellowships, and awards where appropriate; and

(7) coordinate the activities conducted under this section with related activities conducted within the National Institute on Alcohol Abuse and Alcoholism, the National Institute of Mental Health, and other appropriate institutes and shall consult with the Directors of such Institutes.

(b) Duties

In carrying out the activities described in subsection (a) of this section, the Director of the Institute—

(1) shall collect and disseminate through publications and other appropriate means, information pertaining to the research and other activities under this section;

(2) shall make grants to or enter into contracts and cooperative agreements with individuals and public and private entities to further the goals of the program;

(3) may, in accordance with section 289e of this title, and in consultation with the National Advisory Council on Drug Abuse, acquire, construct, improve, repair, operate, and maintain pharmacotherapeutic research centers, laboratories, and other necessary facilities and equipment, and such other real or personal property as the Director determines necessary, and may, in consultation with such Advisory Council, make grants for the construction or renovation of facilities to carry out the purposes of this section;

(4) may accept voluntary and uncompensated services;

(5) may accept gifts, or donations of services, money, or property, real, personal, or mixed, tangible or intangible; and

(6) shall take necessary action to ensure that all channels for the dissemination and exchange of scientific knowledge and information are maintained between the Institute and the other scientific, medical, and biomedical disciplines and organizations nationally and internationally.

(c) Report

(1) In general

Not later than December 31, 1992, and each December 31 thereafter, the Director of the Institute shall submit to the Office of National Drug Control Policy established under section 1501[1] of title 21 a report, in accordance with paragraph (3), that describes the objectives and activities of the program assisted under this section.

(2) National Drug Control Strategy

The Director of National Drug Control Policy shall incorporate, by reference or otherwise, each report submitted under this subsection in the National Drug Control Strategy submitted the following February 1 under section 1504[1] of title 21.

[1] See References in Text note below.

(d) "Pharmacotherapeutics" defined

For purposes of this section, the term ''pharmacotherapeutics'' means medications used to treat the symptoms and disease of drug abuse, including medications to—

(1) block the effects of abused drugs;

(2) reduce the craving for abused drugs;

(3) moderate or eliminate withdrawal symptoms;

(4) block or reverse the toxic effect of abused drugs; or

(5) prevent relapse in persons who have been detoxified from drugs of abuse.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $85,000,000 for fiscal year 1993, and $95,000,000 for fiscal year 1994.

(July 1, 1944, ch. 373, title IV, § 464P, as added Pub. L. 102–321, title I, § 123(b), July 10, 1992, 106 Stat. 362; amended Pub. L. 103–43, title XX, § 2008(b)(10), June 10, 1993, 107 Stat. 211.)

REFERENCES IN TEXT

Sections 1501 and 1504 of title 21, referred to in subsec. (c), were repealed by Pub. L. 100–690, title I, § 1009, Nov. 18, 1988, 102 Stat. 4188, as amended.

AMENDMENTS

1993—Subsec. (b)(6). Pub. L. 103–43 substituted ''Institute'' for ''Administration''.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

REPORT BY INSTITUTE ON MEDICINE

Section 701 of Pub. L. 102–321 directed Secretary of Health and Human Services to enter into a contract with a public or nonprofit private entity to conduct a study concerning (1) role of the private sector in development of anti-addiction medications, including legislative proposals designed to encourage private sector development of such medications, (2) process by which anti-addiction medications receive marketing approval from Food and Drug Administration, including an assessment of feasibility of expediting marketing approval process in a manner consistent with maintaining safety and effectiveness of such medications, (3) with respect to pharmacotherapeutic treatments for drug addiction (A) recommendations with respect to a national strategy for developing such treatments and improvements in such strategy, (B) state of the scientific knowledge concerning such treatments, and (C) assessment of progress toward development of safe, effective pharmacological treatments for drug addiction, and (4) other related information determined appropriate by the authors of the study, and to submit to Congress a report of the results of such study not later than 18 months after July 10, 1992.

SUBPART 16—NATIONAL INSTITUTE OF MENTAL HEALTH

§ 285p. Purpose of Institute

(a) In general

The general purpose of the National Institute of Mental Health (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of biomedical and behavioral research, health services research, research training, and health information dissemination with respect to the cause, diagnosis, treatment, control and prevention of mental illness.

(b) Research program

The research program established under this subpart shall include support for biomedical and behavioral neuroscience and shall be designed to further the treatment and prevention of mental illness, the promotion of mental health, and the study of the psychological, social and legal factors that influence behavior.

(c) Collaboration

The Director of the Institute shall collaborate with the Administrator of the Substance Abuse and Mental Health Services Administration in focusing the services research activities of the Institute and in disseminating the results of such research to health professionals and the general public.

(d) Information with respect to suicide

(1) In general

The Director of the Institute shall—

(A) develop and publish information with respect to the causes of suicide and the means of preventing suicide; and

(B) make such information generally available to the public and to health professionals.

(2) Youth suicide

Information described in paragraph (1) shall especially relate to suicide among individuals under 24 years of age.

(e) Associate Director for Special Populations

(1) In general

The Director of the Institute shall designate an Associate Director for Special Populations.

(2) Duties

The Associate Director for Special Populations shall—

(A) develop and coordinate research policies and programs to assure increased emphasis on the mental health needs of women and minority populations;

(B) support programs of basic and applied social and behavioral research on the mental health problems of women and minority populations;

(C) study the effects of discrimination on institutions and individuals, including majority institutions and individuals;

(D) support and develop research designed to eliminate institutional discrimination; and

(E) provide increased emphasis on the concerns of women and minority populations in training programs, service delivery programs, and research endeavors of the Institute.

(f) Funding

(1) Authorization of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $675,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(2) Allocation for health services research

Of the amounts appropriated under paragraph (1) for a fiscal year, the Director shall

obligate not less than 15 percent to carry out health services research relating to mental health.

(July 1, 1944, ch. 373, title IV, § 464R, as added Pub. L. 102–321, title I, § 124(a), July 10, 1992, 106 Stat. 364; amended Pub. L. 102–352, § 2(a)(5), Aug. 26, 1992, 106 Stat. 938.)

AMENDMENTS

1992—Subsec. (f)(1). Pub. L. 102–352 struck out ''other than section 285*o*–4 of this title'' after ''this subpart''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

REQUIRED ALLOCATIONS FOR HEALTH SERVICES RESEARCH

With respect to fiscal year 1993 allocations for health services research required in subsec. (f)(2) of this section, the term ''15 percent'' deemed to be 12 percent, see section 2016(b) of Pub. L. 103–43, set out as a note under section 285n of this title.

STUDY OF BARRIERS TO INSURANCE COVERAGE OF TREATMENT FOR MENTAL ILLNESS AND SUBSTANCE ABUSE

Section 704 of Pub. L. 102–321 directed Secretary of Health and Human Services, acting through Director of the National Institute of Mental Health and in consultation with Administrator of Health Care Financing Administration, to conduct a study of the barriers to insurance coverage for the treatment of mental illness and substance abuse and to submit a report to Congress on the results of such study not later than Oct. 1, 1993.

§ 285p–1. Associate Director for Prevention

(a) In general

There shall be in the Institute an Associate Director for Prevention who shall be responsible for the full-time coordination and promotion of the programs in the Institute concerning the prevention of mental disorder. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or expertise are experts in mental disorder and the prevention of such.

(b) Report

The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 464S, as added Pub. L. 102–321, title I, § 124(b), July 10, 1992, 106 Stat. 365.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285p–2. Office of Rural Mental Health Research

(a) In general

There is established within the Institute an office to be known as the Office of Rural Mental Health Research (hereafter in this section referred to as the ''Office''). The Office shall be headed by a director, who shall be appointed by the Director of such Institute from among individuals experienced or knowledgeable in the provision of mental health services in rural areas. The Secretary shall carry out the authorities established in this section acting through the Director of the Office.

(b) Coordination of activities

The Director of the Office, in consultation with the Director of the Institute and with the Director of the Office of Rural Health Policy, shall—

(1) coordinate the research activities of the Department of Health and Human Services as such activities relate to the mental health of residents of rural areas; and

(2) coordinate the activities of the Office with similar activities of public and nonprofit private entities.

(c) Research, demonstrations, evaluations, and dissemination

The Director of the Office may, with respect to the mental health of adults and children residing in rural areas—

(1) conduct research on conditions that are unique to the residents of rural areas, or more serious or prevalent in such residents;

(2) conduct research on improving the delivery of services in such areas; and

(3) disseminate information to appropriate public and nonprofit private entities.

(d) Authority regarding grants and contracts

The Director of the Office may carry out the authorities established in subsection (c) of this section directly and through grants, cooperative agreements, or contracts with public or nonprofit private entities.

(e) Report to Congress

Not later than February 1, 1993, and each fiscal year thereafter, the Director shall submit to the Subcommittee on Health and the Environment of the Committee on Energy and Commerce (of the House of Representatives), and to the Committee on Labor and Human Resources (of the Senate), a report describing the activities of the Office during the preceding fiscal year, including a summary of the activities of demonstration projects and a summary of evaluations of the projects.

(July 1, 1944, ch. 373, title IV, § 464T, as added Pub. L. 102–321, title I, § 124(b), July 10, 1992, 106 Stat. 365.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21

of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285p–3. Office on AIDS

The Director of the Institute shall establish within the Institute an Office on AIDS. The Office shall be responsible for the coordination of research and determining the direction of the Institute with respect to AIDS research related to—

(1) primary prevention of the spread of HIV, including transmission via sexual behavior;

(2) mental health services research; and

(3) other matters determined appropriate by the Director.

(July 1, 1944, ch. 373, title IV, § 464U, as added Pub. L. 102–321, title I, § 124(b), July 10, 1992, 106 Stat. 366.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SUBPART 17—NATIONAL INSTITUTE OF NURSING RESEARCH

§ 285q. Purpose of Institute

The general purpose of the National Institute of Nursing Research (in this subpart referred to as the ''Institute'') is the conduct and support of, and dissemination of information respecting, basic and clinical nursing research, training, and other programs in patient care research.

(July 1, 1944, ch. 373, title IV, § 464V, formerly § 483, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 867; renumbered § 464V and amended Pub. L. 103–43, title XV, § 1511(a)(1), (b)(2), June 10, 1993, 107 Stat. 178, 179.)

CODIFICATION

Section was formerly classified to section 287c of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Pub. L. 103–43, § 1511(a)(1) substituted ''Institute'' for ''Center'' in section catchline and ''National Institute of Nursing Research (in this subpart referred to as the 'Institute')'' for ''National Center for Nursing Research (hereafter in this subpart referred to as the 'Center')'' in text.

STUDY ON ADEQUACY OF NUMBER OF NURSES

Section 1512 of Pub. L. 103–43 directed Secretary of Health and Human Services, acting through Director of National Institute of Nursing Research, to enter into a contract with a public or nonprofit private entity to conduct a study for purpose of determining whether and to what extent there is a need for an increase in the number of nurses in hospitals and nursing homes in order to promote the quality of patient care and reduce the incidence among nurses of work-related injuries and stress and to complete such study and submit a report to Congress not later than 18 months after June 10, 1993.

§ 285q–1. Specific authorities

To carry out section 285q of this title, the Director of the Institute may provide research training and instruction and establish, in the Institute and other nonprofit institutions, research traineeships and fellowships in the study and investigation of the prevention of disease, health promotion, and the nursing care of individuals with and the families of individuals with acute and chronic illnesses. The Director of the Institute may provide individuals receiving such training and instruction or such traineeships or fellowships with such stipends and allowances (including amounts for travel and subsistence and dependency allowances) as the Director determines necessary. The Director may make grants to nonprofit institutions to provide such training and instruction and traineeships and fellowships.

(July 1, 1944, ch. 373, title IV, § 464W, formerly § 484, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 867; renumbered § 464W and amended Pub. L. 103–43, title XV, § 1511(a)(2), (b)(2), (4)(A), June 10, 1993, 107 Stat. 178, 179.)

CODIFICATION

Section was formerly classified to section 287c–1 of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Pub. L. 103–43, § 1511(a)(2), (b)(4)(A), substituted ''section 285q'' for ''section 287c'' and ''Institute'' for ''Center'' wherever appearing.

§ 285q–2. Advisory council

(a) Appointment; functions and duties; acceptance of conditional gifts; subcommittees

(1) The Secretary shall appoint an advisory council for the Institute which shall advise, assist, consult with, and make recommendations to the Secretary and the Director of the Institute on matters related to the activities carried out by and through the Institute and the policies respecting such activities.

(2) The advisory council for the Institute may recommend to the Secretary acceptance, in accordance with section 238 of this title, of conditional gifts for study, investigations, and research and for the acquisition of grounds or construction, equipping, or maintenance of facilities for the Institute.

(3) The advisory council for the Institute—

(A)(i) may make recommendations to the Director of the Institute respecting research conducted at the Institute,

(ii) may review applications for grants and cooperative agreements for research or training and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the Institute;

(B) may collect, by correspondence or by personal investigation, information as to stud-

ies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspects of human health with respect to which the Institute is concerned and with the approval of the Director of the Institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership; ex officio members; compensation

(1) The advisory council shall consist of ex officio members and not more than eighteen members appointed by the Secretary.

(2) The ex officio members of the advisory council shall consist of—

(A) the Secretary, the Director of NIH, the Director of the Institute, the chief nursing officer of the Department of Veterans Affairs, the Assistant Secretary of Defense for Health Affairs, the Director of the Division of Nursing of the Health Resources and Services Administration (or the designees of such officers), and

(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) The members of the advisory council who are not ex officio members shall be appointed as follows:

(A) Two-thirds of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the Institute. Of the members appointed pursuant to this subparagraph, at least seven shall be professional nurses who are recognized experts in the area of clinical practice, education, or research.

(B) One-third of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, law, health policy, economics, and management.

(4) Members of the advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of the advisory council shall receive, for each day (including traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule.

(c) Term of office; vacancy; reappointment

The term of office of an appointed member of the advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of four years may not be reappointed to an advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

(d) Chairman; selection; term of office

The chairman of the advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the Institute to be the chairman of the advisory council. The term of office of the chairman shall be two years.

(e) Meetings

The advisory council shall meet at the call of the chairman or upon the request of the Director of the Institute, but at least three times each fiscal year. The location of the meetings of the advisory council is subject to the approval of the Director of the Institute.

(f) Executive secretary; staff; orientation and training for new members

The Director of the Institute shall designate a member of the staff of the Institute to serve as the executive secretary of the advisory council. The Director of the Institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of the Institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

(g) Material for inclusion in biennial report; additional reports

The advisory council may prepare, for inclusion in the biennial report made under section 285q–3 of this title, (1) comments respecting the activities of the advisory council in the fiscal years respecting which the report is prepared, (2) comments on the progress of the Institute in meeting its objectives, and (3) recommendations respecting the future directions and program and policy emphasis of the Institute. The advisory council may prepare such additional reports as it may determine appropriate.

(July 1, 1944, ch. 373, title IV, §464X, formerly §485, as added Pub. L. 99–158, §2, Nov. 20, 1985, 99 Stat. 867; amended Pub. L. 101–381, title I, §102(4), Aug. 18, 1990, 104 Stat. 586; Pub. L. 102–54, §13(q)(1)(E), June 13, 1991, 105 Stat. 279; renumbered §464X and amended Pub. L. 103–43, title XV, §1511(a)(3), (b)(2), (4)(B), title XX, §§2008(b)(13), 2010(b)(5), June 10, 1993, 107 Stat. 178, 179, 211, 214.)

CODIFICATION

Section was formerly classified to section 285c–2 of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43, §1511(a)(3)(A), substituted ''Institute'' for ''Center'' wherever appearing.

Subsec. (a)(2). Pub. L. 103–43, §2010(b)(5), which directed the substitution of ''section 238'' for ''section

300aaa'' in section 287c–2(a)(2) of this title, was executed to subsec. (a)(2) of this section to reflect the probable intent of Congress and the renumbering of this section. See Codification note above.

Subsec. (b)(2)(A). Pub. L. 103–43, § 2008(b)(13), which directed the substitution of ''Department of Veterans Affairs'' for ''Veterans' Administration'' in section 287c–2(b)(2)(A) of this title could not be executed because the words ''Veterans' Administration'' do not appear in subsec. (b)(2)(A) of this section subsequent to amendment by Pub. L. 102–54 and because of the renumbering of this section. See Codification note above and 1991 Amendment note below.

Pub. L. 103–43, §§ 1511(a)(3)(B)(i), substituted ''Institute'' for ''Center''.

Subsec. (b)(3)(A). Pub. L. 103–43, § 1511(a)(3)(B)(ii), substituted ''Institute'' for ''Center''.

Subsecs. (d) to (f). Pub. L. 103–43, § 1511(a)(3)(C), substituted ''Institute'' for ''Center'' wherever appearing.

Subsec. (g). Pub. L. 103–43, § 1511(a)(3)(C), (b)(4)(B), substituted ''section 285q–3'' for ''section 287c–3'' and ''Institute'' for ''Center'' in two places.

1991—Subsec. (b)(2)(A). Pub. L. 102–54 substituted ''chief nursing officer of the Department of Veterans Affairs'' for ''Chief Nursing Officer of the Veterans' Administration''.

1990—Subsec. (a)(2). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 285q–3. Biennial report

The Director of the Institute after consultation with the advisory council for the Institute, shall prepare for inclusion in the biennial report made under section 283 of this title a biennial report which shall consist of a description of the activities of the Institute and program policies of the Director of the Institute in the fiscal years respecting which the report is prepared. The Director of the Institute may prepare such additional reports as the Director determines appropriate. The Director of the Institute shall provide the advisory council of the Institute an opportunity for the submission of the written comments referred to in section 285q–2(g) of this title.

(July 1, 1944, ch. 373, title IV, § 464Y, formerly § 486, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 869; renumbered § 485A, renumbered § 464Y, and amended Pub. L. 103–43, title I, § 141(a)(1), title XV, § 1511(a)(4), (b)(2), (4)(C), June 10, 1993, 107 Stat. 136, 179.)

CODIFICATION

Section was formerly classified to section 287c–3 of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Pub. L. 103–43, § 1511(a)(4), (b)(4)(C), substituted ''Institute'' for ''Center'' wherever appearing and ''section 285q–2(g)'' for ''section 287c–2(g)''.

SUBPART 18—NATIONAL INSTITUTE OF BIOMEDICAL IMAGING AND BIOENGINEERING

§ 285r. Purpose of the Institute

(a) In general

The general purpose of the National Institute of Biomedical Imaging and Bioengineering (in this section referred to as the ''Institute'') is the conduct and support of research, training, the dissemination of health information, and other programs with respect to biomedical imaging, biomedical engineering, and associated technologies and modalities with biomedical applications (in this section referred to as ''biomedical imaging and bioengineering'').

(b) National Biomedical Imaging and Bioengineering Program

(1) The Director of the Institute, with the advice of the Institute's advisory council, shall establish a National Biomedical Imaging and Bioengineering Program (in this section referred to as the ''Program'').

(2) Activities under the Program shall include the following with respect to biomedical imaging and bioengineering:

(A) Research into the development of new techniques and devices.

(B) Related research in physics, engineering, mathematics, computer science, and other disciplines.

(C) Technology assessments and outcomes studies to evaluate the effectiveness of biologics, materials, processes, devices, procedures, and informatics.

(D) Research in screening for diseases and disorders.

(E) The advancement of existing imaging and bioengineering modalities, including imaging, biomaterials, and informatics.

(F) The development of target-specific agents to enhance images and to identify and delineate disease.

(G) The development of advanced engineering and imaging technologies and techniques for research from the molecular and genetic to the whole organ and body levels.

(H) The development of new techniques and devices for more effective interventional procedures (such as image-guided interventions).

(3)(A) With respect to the Program, the Director of the Institute shall prepare and transmit to the Secretary and the Director of NIH a plan to initiate, expand, intensify, and coordinate activities of the Institute with respect to bio-

medical imaging and bioengineering. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The Director of the Institute shall periodically review and revise the plan and shall transmit any revisions of the plan to the Secretary and the Director of NIH.

(B) The plan under subparagraph (A) shall include the recommendations of the Director of the Institute with respect to the following:

(i) Where appropriate, the consolidation of programs of the National Institutes of Health for the express purpose of enhancing support of activities regarding basic biomedical imaging and bioengineering research.

(ii) The coordination of the activities of the Institute with related activities of the other agencies of the National Institutes of Health and with related activities of other Federal agencies.

(c) Membership

The establishment under section 284a of this title of an advisory council for the Institute is subject to the following:

(1) The number of members appointed by the Secretary shall be 12.

(2) Of such members—

(A) six members shall be scientists, engineers, physicians, and other health professionals who represent disciplines in biomedical imaging and bioengineering and who are not officers or employees of the United States; and

(B) six members shall be scientists, engineers, physicians, and other health professionals who represent other disciplines and are knowledgeable about the applications of biomedical imaging and bioengineering in medicine, and who are not officers or employees of the United States.

(3) In addition to the ex officio members specified in section 284a(b)(2) of this title, the ex officio members of the advisory council shall include the Director of the Centers for Disease Control and Prevention, the Director of the National Science Foundation, and the Director of the National Institute of Standards and Technology (or the designees of such officers).

(d) Authorization of appropriations

(1) Subject to paragraph (2), for the purpose of carrying out this section:

(A) For fiscal year 2001, there is authorized to be appropriated an amount equal to the amount obligated by the National Institutes of Health during fiscal year 2000 for biomedical imaging and bioengineering, except that such amount shall be adjusted to offset any inflation occurring after October 1, 1999.

(B) For each of the fiscal years 2002 and 2003, there is authorized to be appropriated an amount equal to the amount appropriated under subparagraph (A) for fiscal year 2001, except that such amount shall be adjusted for the fiscal year involved to offset any inflation occurring after October 1, 2000.

(2) The authorization of appropriations for a fiscal year under paragraph (1) is hereby reduced by the amount of any appropriation made for such year for the conduct or support by any other national research institute of any program with respect to biomedical imaging and bioengineering.

(July 1, 1944, ch. 373, title IV, §464z, as added Pub. L. 106–580, §3(a), Dec. 29, 2000, 114 Stat. 3089.)

EFFECTIVE DATE

Pub. L. 106–580, §4, Dec. 29, 2000, 114 Stat. 3092, provided that: ''This Act [enacting this subpart, amending section 281 of this title, and enacting provisions set out as notes under this section and section 201 of this title] takes effect October 1, 2000, or upon the date of the enactment of this Act [Dec. 29, 2000], whichever occurs later.''

FINDINGS

Pub. L. 106–580, §2, Dec. 29, 2000, 114 Stat. 3088, provided that: ''The Congress makes the following findings:

''(1) Basic research in imaging, bioengineering, computer science, informatics, and related fields is critical to improving health care but is fundamentally different from the research in molecular biology on which the current national research institutes at the National Institutes of Health ('NIH') are based. To ensure the development of new techniques and technologies for the 21st century, these disciplines therefore require an identity and research home at the NIH that is independent of the existing institute structure.

''(2) Advances based on medical research promise new, more effective treatments for a wide variety of diseases, but the development of new, noninvasive imaging techniques for earlier detection and diagnosis of disease is essential to take full advantage of such new treatments and to promote the general improvement of health care.

''(3) The development of advanced genetic and molecular imaging techniques is necessary to continue the current rapid pace of discovery in molecular biology.

''(4) Advances in telemedicine, and teleradiology in particular, are increasingly important in the delivery of high quality, reliable medical care to rural citizens and other underserved populations. To fulfill the promise of telemedicine and related technologies fully, a structure is needed at the NIH to support basic research focused on the acquisition, transmission, processing, and optimal display of images.

''(5) A number of Federal departments and agencies support imaging and engineering research with potential medical applications, but a central coordinating body, preferably housed at the NIH, is needed to coordinate these disparate efforts and facilitate the transfer of technologies with medical applications.

''(6) Several breakthrough imaging technologies, including magnetic resonance imaging ('MRI') and computed tomography ('CT'), have been developed primarily abroad, in large part because of the absence of a home at the NIH for basic research in imaging and related fields. The establishment of a central focus for imaging and bioengineering research at the NIH would promote both scientific advance and United States economic development.

''(7) At a time when a consensus exists to add significant resources to the NIH in coming years, it is appropriate to modernize the structure of the NIH to ensure that research dollars are expended more effectively and efficiently and that the fields of medical science that have contributed the most to the detection, diagnosis, and treatment of disease in recent years receive appropriate emphasis.

''(8) The establishment of a National Institute of Biomedical Imaging and Bioengineering at the NIH would accelerate the development of new tech-

nologies with clinical and research applications, improve coordination and efficiency at the NIH and throughout the Federal Government, reduce duplication and waste, lay the foundation for a new medical information age, promote economic development, and provide a structure to train the young researchers who will make the pathbreaking discoveries of the next century.''

ESTABLISHMENT OF INSTITUTE AND ADVISORY COUNCIL

Pub. L. 106–580, § 3(b)–(d), Dec. 29, 2000, 114 Stat. 3091, provided that:

''(b) USE OF EXISTING RESOURCES.—In providing for the establishment of the National Institute of Biomedical Imaging and Bioengineering pursuant to the amendment made by subsection (a) [enacting this subpart], the Director of the National Institutes of Health (referred to in this subsection as 'NIH')—

''(1) may transfer to the National Institute of Biomedical Imaging and Bioengineering such personnel of NIH as the Director determines to be appropriate;

''(2) may, for quarters for such Institute, utilize such facilities of NIH as the Director determines to be appropriate; and

''(3) may obtain administrative support for the Institute from the other agencies of NIH, including the other national research institutes.

''(c) CONSTRUCTION OF FACILITIES.—None of the provisions of this Act [enacting this subpart, amending section 281 of this title, and enacting provisions set out as notes under this section and section 201 of this title] or the amendments made by the Act may be construed as authorizing the construction of facilities, or the acquisition of land, for purposes of the establishment or operation of the National Institute of Biomedical Imaging and Bioengineering.

''(d) DATE CERTAIN FOR ESTABLISHMENT OF ADVISORY COUNCIL.—Not later than 90 days after the effective date of this Act [Dec. 29, 2000] under section 4 [set out above], the Secretary of Health and Human Services shall complete the establishment of an advisory council for the National Institute of Biomedical Imaging and Bioengineering in accordance with section 406 of the Public Health Service Act [section 284a of this title] and in accordance with section 464z of such Act (as added by subsection (a) of this section) [this section].''

PART D—NATIONAL LIBRARY OF MEDICINE

SUBPART 1—GENERAL PROVISIONS

§ 286. National Library of Medicine

(a) Purpose and establishment

In order to assist the advancement of medical and related sciences and to aid the dissemination and exchange of scientific and other information important to the progress of medicine and to the public health, there is established the National Library of Medicine (hereafter in this part referred to as the ''Library'').

(b) Functions

The Secretary, through the Library and subject to subsection (d) of this section, shall—

(1) acquire and preserve books, periodicals, prints, films, recordings, and other library materials pertinent to medicine;

(2) organize the materials specified in paragraph (1) by appropriate cataloging, indexing, and bibliographical listings;

(3) publish and disseminate the catalogs, indexes, and bibliographies referred to in paragraph (2);

(4) make available, through loans, photographic or other copying procedures, or otherwise, such materials in the Library as the Secretary determines appropriate;

(5) provide reference and research assistance;

(6) publicize the availability from the Library of the products and services described in any of paragraphs (1) through (5);

(7) promote the use of computers and telecommunications by health professionals (including health professionals in rural areas) for the purpose of improving access to biomedical information for health care delivery and medical research; and

(8) engage in such other activities as the Secretary determines appropriate and as the Library's resources permit.

(c) Exchange, destruction, or disposal of materials not needed

The Secretary may exchange, destroy, or otherwise dispose of any books, periodicals, films, and other library materials not needed for the permanent use of the Library.

(d) Availability of publications, materials, facilities, or services; prescription of rules

(1) The Secretary may, after obtaining the advice and recommendations of the Board of Regents, prescribe rules under which the Library will—

(A) provide copies of its publications or materials,

(B) will make available its facilities for research, or

(C) will make available its bibliographic, reference, or other services,

to public and private entities and individuals.

(2) Rules prescribed under paragraph (1) may provide for making available such publications, materials, facilities, or services—

(A) without charge as a public service,

(B) upon a loan, exchange, or charge basis, or

(C) in appropriate circumstances, under contract arrangements made with a public or other nonprofit entity.

(e) Regional medical libraries; establishment

Whenever the Secretary, with the advice of the Board of Regents, determines that—

(1) in any geographic area of the United States there is no regional medical library adequate to serve such area;

(2) under criteria prescribed for the administration of section 286b–6 of this title, there is a need for a regional medical library to serve such area; and

(3) because there is no medical library located in such area which, with financial assistance under section 286b–6 of this title, can feasibly be developed into a regional medical library adequate to serve such area,

the Secretary may establish, as a branch of the Library, a regional medical library to serve the needs of such area.

(f) Acceptance and administration of gifts; memorials

Section 238 of this title shall be applicable to the acceptance and administration of gifts made for the benefit of the Library or for carrying out any of its functions, and the Board of Regents

shall make recommendations to the Secretary relating to establishment within the Library of suitable memorials to the donors.

(g) "Medicine" and "medical" defined

For purposes of this part, the terms ''medicine'' and ''medical'', except when used in section 286a of this title, include preventive and therapeutic medicine, dentistry, pharmacy, hospitalization, nursing, public health, and the fundamental sciences related thereto, and other related fields of study, research, or activity.

(July 1, 1944, ch. 373, title IV, § 465, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 857; amended Pub. L. 99–660, title III, § 311(b)(1), Nov. 14, 1986, 100 Stat. 3779; Pub. L. 100–202, § 101(h) [title II, § 215], Dec. 22, 1987, 101 Stat. 1329–256, 1329–275; Pub. L. 100–607, title II, § 204(2), Nov. 4, 1988, 102 Stat. 3079; Pub. L. 100–690, title II, § 2620(b)(1), Nov. 18, 1988, 102 Stat. 4244; Pub. L. 101–381, title I, § 102(2), Aug. 18, 1990, 104 Stat. 585; Pub. L. 103–43, title XIV, § 1401(a), (c)(1), title XX, § 2010(b)(3), June 10, 1993, 107 Stat. 170, 214.)

AMENDMENTS

1993—Pub. L. 103–43, § 1401(c)(1), repealed amendment by Pub. L. 100–202. See 1987 Amendment note below.

Subsec. (b)(6) to (8). Pub. L. 103–43, § 1401(a), added pars. (6) and (7) and redesignated former par. (6) as (8).

Subsec. (f). Pub. L. 103–43, § 2010(b)(3), substituted ''Section 238'' for ''Section 300aaa''.

1990—Subsec. (f). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

1988—Subsec. (f). Pub. L. 100–690 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

Pub. L. 100–607 substituted ''300aaa'' for ''300cc''.

1987—Pub. L. 100–202, which directed the amendment of ''Section 465(B) of 42 U.S.C. 286'' by inserting ''between (5) and (6) an additional charge to the Secretary to 'publicize the availability of the above products and services of the National Library of Medicine' '', was repealed by Pub. L. 103–43, § 1401(c)(1).

1986—Subsec. (f). Pub. L. 99–660 substituted ''section 300cc of this title'' for ''section 300aa of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

APPLICABILITY OF CERTAIN NEW AUTHORITY

Section 1401(c)(2) of Pub. L. 103–43 provided that: ''With respect to the authority established for the National Library of Medicine in section 465(b)(6) of the Public Health Service Act, as added by subsection (a) of this section [subsec. (b)(6) of this section], such authority shall be effective as if the authority had been established on December 22, 1987.''

§ 286a. Board of Regents

(a) Membership; ex officio members

(1)(A) The Board of Regents of the National Library of Medicine consists of ex officio members and ten members appointed by the Secretary.

(B) The ex officio members are the Surgeons General of the Public Health Service, the Army, the Navy, and the Air Force, the Under Secretary for Health of the Department of Veterans Affairs, the Dean of the Uniformed Services University of the Health Sciences, the Assistant Director for Biological, Behavioral, and Social Sciences of the National Science Foundation, the Director of the National Agricultural Library, and the Librarian of Congress (or their designees).

(C) The appointed members shall be selected from among leaders in the various fields of the fundamental sciences, medicine, dentistry, public health, hospital administration, pharmacology, health communications technology, or scientific or medical library work, or in public affairs. At least six of the appointed members shall be selected from among leaders in the fields of medical, dental, or public health research or education.

(2) The Board shall annually elect one of the appointed members to serve as chairman until the next election. The Secretary shall designate a member of the Library staff to act as executive secretary of the Board.

(b) Recommendations on matters of policy; recommendations included in annual report; use of services of members by Secretary

The Board shall advise, consult with, and make recommendations to the Secretary on matters of policy in regard to the Library, including such matters as the acquisition of materials for the Library, the scope, content, and organization of the Library's services, and the rules under which its materials, publications, facilities, and services shall be made available to various kinds of users. The Secretary shall include in the annual report of the Secretary to the Congress a statement covering the recommendations made by the Board and the disposition thereof. The Secretary may use the services of any member of the Board in connection with matters related to the work of the Library, for such periods, in addition to conference periods, as the Secretary may determine.

(c) Term of office; vacancy; reappointment

Each appointed member of the Board shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor of such member was appointed shall be appointed for the remainder of such term. None of the appointed members shall be eligible for reappointment within one year after the end of the preceding term of such member.

(July 1, 1944, ch. 373, title IV, § 466, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 859; amended Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 103–43, title XX, § 2008(b)(11), June 10, 1993, 107 Stat. 211.)

AMENDMENTS

1993—Subsec. (a)(1)(B). Pub. L. 103–43 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsec. (a)(1)(B). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

§ 286a–1. Library facilities

There are authorized to be appropriated amounts sufficient for the erection and equipment of suitable and adequate buildings and facilities for use of the Library. The Administrator of General Services may acquire, by purchase, condemnation, donation, or otherwise, a suitable site or sites, selected by the Secretary in accordance with the direction of the Board, for such buildings and facilities and to erect thereon, furnish, and equip such buildings and facilities. The amounts authorized to be appropriated by this section include the cost of preparation of drawings and specifications, supervision of construction, and other administrative expenses incident to the work. The Administrator of General Services shall prepare the plans and specifications, make all necessary contracts, and supervise construction.

(July 1, 1944, ch. 373, title IV, § 467, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 859.)

§ 286a–2. Authorization of appropriations

(a) For the purpose of carrying out this part, there are authorized to be appropriated $150,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(b) Amounts appropriated under subsection (a) of this section and made available for grants or contracts under any of sections 286b–3 through 286b–7 of this title shall remain available until the end of the fiscal year following the fiscal year for which the amounts were appropriated.

(July 1, 1944, ch. 373, title IV, § 468, as added Pub. L. 103–43, title XIV, § 1402(a), June 10, 1993, 107 Stat. 170.)

SUBPART 2—FINANCIAL ASSISTANCE

§ 286b. Repealed. Pub. L. 103–43, title XIV, § 1402(b), June 10, 1993, 107 Stat. 171

Section, act July 1, 1944, ch. 373, title IV, § 469, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 860; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 146(a), 102 Stat. 3058, authorized appropriations for grants and contracts under sections 286b–3 through 286b–7 of this title.

§ 286b–1. Definitions

As used in this subpart—

(1) the term ''medical library'' means a library related to the sciences related to health; and

(2) the term ''sciences related to health'' includes medicine, osteopathy, dentistry, and public health, and fundamental and applied sciences when related thereto.

(July 1, 1944, ch. 373, title IV, § 470, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 860.)

§ 286b–2. National Medical Libraries Assistance Advisory Board

(a) Board of Regents of National Library of Medicine to serve as

The Board of Regents of the National Library of Medicine shall also serve as the National Medical Libraries Assistance Advisory Board (hereafter in this subpart referred to as the ''Board'').

(b) Functions

The Board shall advise and assist the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration of this subpart.

(c) Use of services of members by Secretary

The Secretary may use the services of any member of the Board, in connection with matters related to the administration of this part for such periods, in addition to conference periods, as the Secretary may determine.

(d) Compensation

Appointed members of the Board who are not otherwise in the employ of the United States, while attending conferences of the Board or otherwise serving at the request of the Secretary in connection with the administration of this subpart, shall be entitled to receive compensation, per diem in lieu of subsistence, and travel expenses in the same manner and under the same conditions as that prescribed under section 210(c) of this title when attending conferences, traveling, or serving at the request of the Secretary in connection with the Board's function under this section.

(July 1, 1944, ch. 373, title IV, § 471, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 860.)

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 286b–3. Grants for training in medical library sciences

The Secretary shall make grants—

(1) to individuals to enable them to accept traineeships and fellowships leading to postbaccalaureate academic degrees in the field of medical library science, in related fields pertaining to sciences related to health, or in the field of the communication of information;

(2) to individuals who are librarians or specialists in information on sciences relating to health, to enable them to undergo intensive training or retraining so as to attain greater competence in their occupations (including competence in the fields of automatic data processing and retrieval);

(3) to assist appropriate public and private nonprofit institutions in developing, expanding, and improving training programs in library science and the field of communications

of information pertaining to sciences relating to health; and

(4) to assist in the establishment of internship programs in established medical libraries meeting standards which the Secretary shall prescribe.

(July 1, 1944, ch. 373, title IV, § 472, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 860.)

§ 286b–4. Assistance for projects in sciences related to health, for research and development in medical library science, and for development of education technologies

(a) Compilation of existing and original writings on health

The Secretary shall make grants to physicians and other practitioners in the sciences related to health, to scientists, and to public or nonprofit private institutions on behalf of such physicians, other practitioners, and scientists for the compilation of existing, or the writing of original, contributions relating to scientific, social, or cultural advancements in sciences related to health. In making such grants, the Secretary shall make appropriate arrangements under which the facilities of the Library and the facilities of libraries of public and private nonprofit institutions of higher learning may be made available in connection with the projects for which such grants are made.

(b) Medical library science and related activities

The Secretary shall make grants to appropriate public or private nonprofit institutions and enter into contracts with appropriate persons, for purposes of carrying out projects of research, investigations, and demonstrations in the field of medical library science and related activities and for the development of new techniques, systems, and equipment, for processing, storing, retrieving, and distributing information pertaining to sciences related to health.

(c) Development of education technologies

(1) The Secretary shall make grants to public or nonprofit private institutions for the purpose of carrying out projects of research on, and development and demonstration of, new education technologies.

(2) The purposes for which a grant under paragraph (1) may be made include projects concerning—

(A) computer-assisted teaching and testing of clinical competence at health professions and research institutions;

(B) the effective transfer of new information from research laboratories to appropriate clinical applications;

(C) the expansion of the laboratory and clinical uses of computer-stored research databases; and

(D) the testing of new technologies for training health care professionals.

(3) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees to make the projects available with respect to—

(A) assisting in the training of health professions students; and

(B) enhancing and improving the capabilities of health professionals regarding research and teaching.

(July 1, 1944, ch. 373, title IV, § 473, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 861; amended Pub. L. 103–43, title XIV, § 1411, June 10, 1993, 107 Stat. 171.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 added subsec. (c).

§ 286b–5. Grants for establishing, expanding, and improving basic resources of medical libraries and related instrumentalities

(a) The Secretary shall make grants of money, materials, or both, to public or private nonprofit medical libraries and related scientific communication instrumentalities for the purpose of establishing, expanding, and improving their basic medical library or related resources. A grant under this subsection may be used for—

(1) the acquisition of books, journals, photographs, motion picture and other films, and other similar materials;

(2) cataloging, binding, and other services and procedures for processing library resource materials for use by those who are served by the library or related instrumentality;

(3) the acquisition of duplication devices, facsimile equipment, film projectors, recording equipment, and other equipment to facilitate the use of the resources of the library or related instrumentality by those who are served by it; and

(4) the introduction of new technologies in medical librarianship.

(b)(1) The amount of any grant under this section to any medical library or related instrumentality shall be determined by the Secretary on the basis of the scope of library or related services provided by such library or instrumentality in relation to the population and purposes served by it. In making a determination of the scope of services served by any medical library or related instrumentality, the Secretary shall take into account—

(A) the number of graduate and undergraduate students making use of the resources of such library or instrumentality;

(B) the number of physicians and other practitioners in the sciences related to health utilizing the resources of such library or instrumentality;

(C) the type of supportive staffs, if any, available to such library or instrumentality;

(D) the type, size, and qualifications of the faculty of any school with which such library or instrumentality is affiliated;

(E) the staff of any hospital or hospitals or of any clinic or clinics with which such library or instrumentality is affiliated; and

(F) the geographic area served by such library or instrumentality and the availability within such area of medical library or related services provided by other libraries or related instrumentalities.

(2) Grants to such medical libraries or related instrumentalities under this section shall be in such amounts as the Secretary may by regulation prescribe with a view to assuring adequate continuing financial support for such libraries or instrumentalities from other sources during and after the period for which grants are pro-

vided, except that in no case shall any grant under this section to a medical library or related instrumentality for any fiscal year exceed $1,000,000.

(July 1, 1944, ch. 373, title IV, § 474, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 861; amended Pub. L. 100–607, title I, § 146(b), Nov. 4, 1988, 102 Stat. 3058; Pub. L. 103–43, title XIV, § 1401(b), June 10, 1993, 107 Stat. 170.)

AMENDMENTS

1993—Subsec. (b)(2). Pub. L. 103–43 substituted ''$1,000,000'' for ''$750,000''.

1988—Subsec. (b)(2). Pub. L. 100–607 substituted ''$750,000'' for ''$500,000''.

§ 286b–6. Grants and contracts for establishment of regional medical libraries

(a) Existing public or private nonprofit medical libraries

The Secretary, with the advice of the Board, shall make grants to and enter into contracts with existing public or private nonprofit medical libraries so as to enable each of them to serve as the regional medical library for the geographical area in which it is located.

(b) Uses for grants and contracts

The uses for which grants and contracts under this section may be employed include the—

(1) acquisition of books, journals, and other similar materials;

(2) cataloging, binding, and other procedures for processing library resource materials for use by those who are served by the library;

(3) acquisition of duplicating devices and other equipment to facilitate the use of the resources of the library by those who are served by it;

(4) acquisition of mechanisms and employment of personnel for the speedy transmission of materials from the regional library to local libraries in the geographic area served by the regional library; and

(5) planning for services and activities under this section.

(c) Conditions

(1) Grants and contracts under this section shall only be made to or entered into with medical libraries which agree—

(A) to modify and increase their library resources, and to supplement the resources of cooperating libraries in the region, so as to be able to provide adequate supportive services to all libraries in the region as well as to individual users of library services; and

(B) to provide free loan services to qualified users and make available photoduplicated or facsimile copies of biomedical materials which qualified requesters may retain.

(2) The Secretary, in awarding grants and contracts under this section, shall give priority to medical libraries having the greatest potential of fulfilling the needs for regional medical libraries. In determining the priority to be assigned to any medical library, the Secretary shall consider—

(A) the adequacy of the library (in terms of collections, personnel, equipment, and other facilities) as a basis for a regional medical library; and

(B) the size and nature of the population to be served in the region in which the library is located.

(d) Basic resources materials; limitation on grant or contract

Grants and contracts under this section for basic resource materials to a library may not exceed—

(1) 50 percent of the library's annual operating expense (exclusive of Federal financial assistance under this part) for the preceding year; or

(2) in case of the first year in which the library receives a grant under this section for basic resource materials, 50 percent of its average annual operating expenses over the past three years (or if it had been in operation for less than three years, its annual operating expenses determined by the Secretary in accordance with regulations).

(July 1, 1944, ch. 373, title IV, § 475, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 862.)

§ 286b–7. Financial support of biomedical scientific publications

(a) The Secretary, with the advice of the Board, shall make grants to, and enter into appropriate contracts with, public or private nonprofit institutions of higher education and individual scientists for the purpose of supporting biomedical scientific publications of a nonprofit nature and to procure the compilation, writing, editing, and publication of reviews, abstracts, indices, handbooks, bibliographies, and related matter pertaining to scientific works and scientific developments.

(b) Grants under subsection (a) of this section in support of any single periodical publication may not be made for more than three years, except in those cases in which the Secretary determines that further support is necessary to carry out the purposes of subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 476, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 863.)

§ 286b–8. Grant payments, records, and audit

(a) Payments under grants made under sections 286b–3, 286b–4, 286b–5, 286b–6, and 286b–7 of this title may be made in advance or by way of reimbursement and in such installments as the Secretary shall prescribe by regulation after consultation with the Board.

(b)(1) Each recipient of a grant under this subpart shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such

recipients that are pertinent to any grant received under this subpart.

(July 1, 1944, ch. 373, title IV, § 477, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 863.)

SUBPART 3—NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION

§ 286c. Purpose, establishment, functions, and funding of National Center for Biotechnology Information

(a) Establishment

In order to focus and expand the collection, storage, retrieval, and dissemination of the results of biotechnology research by information systems, and to support and enhance the development of new information technologies to aid in the understanding of the molecular processes that control health and disease, there is established the National Center for Biotechnology Information (hereinafter in this section referred to as the ''Center'') in the National Library of Medicine.

(b) Functions

The Secretary, through the Center and subject to section 286(d) of this title, shall—

(1) design, develop, implement, and manage automated systems for the collection, storage, retrieval, analysis, and dissemination of knowledge concerning human molecular biology, biochemistry, and genetics;

(2) perform research into advanced methods of computer-based information processing capable of representing and analyzing the vast number of biologically important molecules and compounds;

(3) enable persons engaged in biotechnology research and medical care to use systems developed under paragraph (1) and methods described in paragraph (2); and

(4) coordinate, as much as is practicable, efforts to gather biotechnology information on an international basis.

(July 1, 1944, ch. 373, title IV, § 478, as added Pub. L. 100–607, title I, § 105, Nov. 4, 1988, 102 Stat. 3052; amended Pub. L. 103–43, title XIV, § 1402(b), June 10, 1993, 107 Stat. 171.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 struck out subsec. (c) which read as follows: ''For the purpose of performing the duties specified in subsection (b) of this section, there are authorized to be appropriated $8,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990. Funds appropriated under this subsection shall remain available until expended.''

SUBPART 4—NATIONAL INFORMATION CENTER ON HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY

§ 286d. National Information Center

(a) Establishment

There is established within the Library an entity to be known as the National Information Center on Health Services Research and Health Care Technology (in this section referred to as the ''Center'').

(b) Purpose

The purpose of the Center is the collection, storage, analysis, retrieval, and dissemination of information on health services research, clinical practice guidelines, and on health care technology, including the assessment of such technology. Such purpose includes developing and maintaining data bases and developing and implementing methods of carrying out such purpose.

(c) Electronic, convenient format; criteria for inclusion

The Director of the Center shall ensure that information under subsection (b) of this section concerning clinical practice guidelines is collected and maintained electronically and in a convenient format. Such Director shall develop and publish criteria for the inclusion of practice guidelines and technology assessments in the information center database.

(d) Coordination with Director of the Agency for Healthcare Research and Quality

The Secretary, acting through the Center, shall coordinate the activities carried out under this section through the Center with related activities of the Director of the Agency for Healthcare Research and Quality.

(July 1, 1944, ch. 373, title IV, § 478A, as added Pub. L. 103–43, title XIV, § 1421, June 10, 1993, 107 Stat. 171; amended Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

AMENDMENTS

1999—Subsec. (d). Pub. L. 106–129 substituted ''Director of the Agency for Healthcare Research and Quality'' for ''Administrator for Health Care Policy and Research''.

CONSTRUCTION

Section 1422(b) of Pub. L. 103–43 provided that: ''The amendments made by section 3 of Public Law 102–410 (106 Stat. 2094) [amending section 299a–1 of this title], by section 1421 of this Act [enacting this section], and by subsection (a) of this section [amending section 299a–1 of this title] may not be construed as terminating the information center on health care technologies and health care technology assessment established under section 904 of the Public Health Service Act [section 299a–2 of this title], as in effect on the day before the date of the enactment of Public Law 102–410 [Oct. 13, 1992]. Such center shall be considered to be the center established in section 478A of the Public Health Service Act, as added by section 1421 of this Act [this section], and shall be subject to the provisions of such section 478A.''

PART E—OTHER AGENCIES OF NIH

SUBPART 1—NATIONAL CENTER FOR RESEARCH RESOURCES

§ 287. General purpose

The general purpose of the National Center for Research Resources (in this subpart referred to as the ''Center'') is to strengthen and enhance the research environments of entities engaged in health-related research by developing and supporting essential research resources.

(July 1, 1944, ch. 373, title IV, § 479, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 864; amended Pub. L. 103–43, title XV, § 1501(2)(B), June 10, 1993, 107 Stat. 172.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''the National Center for Research Resources (in this subpart referred to as

the 'Center')'' for ''the Division of Research Resources''.

SHARED INSTRUMENTATION GRANT PROGRAM

Pub. L. 106–505, title III, § 305, Nov. 13, 2000, 114 Stat. 2335, provided that:

''(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $100,000,000 for fiscal year 2000, and such sums as may be necessary for each subsequent fiscal year, to enable the Secretary of Health and Human Services, acting through the Director of the National Center for Research Resources, to provide for the continued operation of the Shared Instrumentation Grant Program (initiated in fiscal year 1992 under the authority of section 479 of the Public Health Service Act (42 U.S.C. 287 et seq.)).

''(b) REQUIREMENTS FOR GRANTS.—In determining whether to award a grant to an applicant under the program described in subsection (a), the Director of the National Center for Research Resources shall consider—

''(1) the extent to which an award for the specific instrument involved would meet the scientific needs and enhance the planned research endeavors of the major users by providing an instrument that is unavailable or to which availability is highly limited;

''(2) with respect to the instrument involved, the availability and commitment of the appropriate technical expertise within the major user group or the applicant institution for use of the instrumentation;

''(3) the adequacy of the organizational plan for the use of the instrument involved and the internal advisory committee for oversight of the applicant, including sharing arrangements if any;

''(4) the applicant's commitment for continued support of the utilization and maintenance of the instrument; and

''(5) the extent to which the specified instrument will be shared and the benefit of the proposed instrument to the overall research community to be served.

''(c) PEER REVIEW.—In awarding grants under the program described in subsection (a)[, the] Director of the National Center for Research Resources shall comply with the peer review requirements in section 492 of the Public Health Service Act (42 U.S.C. 289a).''

§ 287a. Advisory council

(a) Appointment; functions and duties; acceptance of conditional gifts; subcommittees

(1) The Secretary shall appoint an advisory council for the Center which shall advise, assist, consult with, and make recommendations to the Secretary and the Director of the Center on matters related to the activities carried out by and through the Center and the policies respecting such activities.

(2) The advisory council for the Center may recommend to the Secretary acceptance, in accordance with section 238 of this title, of conditional gifts for study, investigations, and research and for the acquisition of grounds or construction, equipping, or maintenance of facilities for the Center.

(3) The advisory council for the Center—

(A)(i) may make recommendations to the Director of the Center respecting research conducted at the Center,

(ii) may review applications for grants and cooperative agreements for research or training and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the Center;

(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspects of human health with respect to which the Center is concerned and with the approval of the Director of the Center make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership; ex officio members; compensation

(1) The advisory council shall consist of ex officio members and not more than eighteen members appointed by the Secretary.

(2) The ex officio members of the advisory council shall consist of—

(A) the Secretary, the Director of NIH, the Director of the Center, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) The members of the advisory council who are not ex officio members shall be appointed as follows:

(A) Two-thirds of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the Center.

(B) One-third of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, law, health policy, economics, and management.

(4) Members of the advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of the advisory council shall receive, for each day (including traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule.

(c) Term of office; vacancy; reappointment

The term of office of an appointed member of the advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of four years may not be reappointed to an

advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

(d) Chairman; selection; term of office

The chairman of the advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the Center to be the chairman of the advisory council. The term of office of the chairman shall be two years.

(e) Meetings

The advisory council shall meet at the call of the chairman or upon the request of the Director of the Center, but at least three times each fiscal year. The location of the meetings of the advisory council is subject to the approval of the Director of the Center.

(f) Executive secretary; staff; orientation and training for new members

The Director of the Center shall designate a member of the staff of the Center to serve as the executive secretary of the advisory council. The Director of the Center shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of the Center shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

(g) Material for inclusion in biennial report; additional reports

The advisory council may prepare, for inclusion in the biennial report made under section 287a–1 of this title, (1) comments respecting the activities of the advisory council in the fiscal years respecting which the report is prepared, (2) comments on the progress of the Center in meeting its objectives, and (3) recommendations respecting the future directions and program and policy emphasis of the Center. The advisory council may prepare such additional reports as it may determine appropriate.

(h) Advisory council in existence on November 20, 1985

This section does not terminate the membership of the advisory council for the Center which was in existence on November 20, 1985. After November 20, 1985—

(1) the Secretary shall make appointments to such advisory council in such a manner as to bring about as soon as practicable the composition for such council prescribed by this section;

(2) the advisory council shall organize itself in accordance with this section and exercise the functions prescribed by this section; and

(3) the Director of the Center shall perform for such advisory council the functions prescribed by this section.

(July 1, 1944, ch. 373, title IV, §480, as added Pub. L. 99–158, §2, Nov. 20, 1985, 99 Stat. 864; amended Pub. L. 101–381, title I, §102(3), Aug. 18, 1990, 104 Stat. 586; Pub. L. 102–405, title III, §302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 103–43, title XV, §1501(2)(C), (D), title XX, §§2008(b)(12), 2010(b)(4), June 10, 1993, 107 Stat. 172, 173, 211, 214.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–43, §1501(2)(C), (D), substituted ''the Center'' for ''the Division of Research Resources'' after ''advisory council for'' and substituted ''the Center'' for ''the Division'' in two places.

Subsec. (a)(2). Pub. L. 103–43, §§1501(2)(C), (D), 2010(b)(4), substituted ''the Center'' for ''the Division of Research Resources'' after ''advisory council for'', ''section 238'' for ''section 300aaa'', and ''the Center'' for ''the Division''.

Subsec. (a)(3). Pub. L. 103–43, §1501(2)(D), substituted ''the Center'' for ''the Division'' wherever appearing.

Subsec. (b). Pub. L. 103–43, §§1501(2)(C), (D), 2008(b)(12), in par. (2)(A) substituted ''the Center'' for ''the Division of Research Resources'' and ''Department of Veterans Affairs'' for ''Veterans' Administration'' and in par. (3)(A) substituted ''the Center'' for ''the Division''.

Subsec. (d). Pub. L. 103–43, §1501(2)(C), substituted ''the Center'' for ''the Division of Research Resources''.

Subsec. (e). Pub. L. 103–43, §1501(2)(C), (D), substituted ''the Center'' for ''the Division of Research Resources'' and ''the Center'' for ''the Division''.

Subsec. (f). Pub. L. 103–43, §1501(2)(C), (D), substituted ''the Center'' for ''the Division of Research Resources'' and ''the Center'' for ''the Division'' in three places.

Subsec. (g). Pub. L. 103–43, §1501(2)(C), (D), substituted ''the Center'' for ''the Division of Research Resources'' and ''the Center'' for ''the Division''.

Subsec. (h). Pub. L. 103–43, §1501(2)(C), substituted ''the Center'' for ''the Division of Research Resources'' in introductory provisions and in par. (3).

1992—Subsec. (b)(2)(A). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1990—Subsec. (a)(2). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 287a–1. Biennial report

The Director of the Center, after consultation with the advisory council for the Center, shall prepare for inclusion in the biennial report made

under section 283 of this title a biennial report which shall consist of a description of the activities of the Center and program policies of the Director of the Center in the fiscal years respecting which the report is prepared. The Director of the Center may prepare such additional reports as the Director determines appropriate. The Director of the Center shall provide the advisory council of the Center an opportunity for the submission of the written comments referred to in section 287a(g) of this title.

(July 1, 1944, ch. 373, title IV, § 481, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 866; amended Pub. L. 103–43, title XV, § 1501(2)(C), (D), June 10, 1993, 107 Stat. 172, 173.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''the Center'' for ''the Division of Research Resources'' and ''the Center'' for ''the Division'' wherever appearing.

§ 287a–2. Biomedical and behavioral research facilities

(a) Modernization and construction of facilities

(1) In general

The Director of NIH, acting through the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases, may make grants or contracts to public and nonprofit private entities to expand, remodel, renovate, or alter existing research facilities or construct new research facilities, subject to the provisions of this section.

(2) Construction and cost of construction

For purposes of this section, the terms ''construction'' and ''cost of construction'' include the construction of new buildings and the expansion, renovation, remodeling, and alteration of existing buildings, including architects' fees, but do not include the cost of acquisition of land or off-site improvements.

(b) Scientific and technical review boards for merit-based review of proposals

(1) In general: approval as precondition to grants

(A) Establishment

There is established within the Center a Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities (referred to in this section as the ''Board'').

(B) Requirement

The Director of the Center may approve an application for a grant under subsection (a) of this section only if the Board has under paragraph (2) recommended the application for approval.

(2) Duties

(A) Advice

The Board shall provide advice to the Director of the Center and the advisory council established under section 287a of this title (in this section referred to as the ''Advisory Council'') in carrying out this section.

(B) Determination of merit

In carrying out subparagraph (A), the Board shall make a determination of the merit of each application submitted for a grant under subsection (a) of this section, after consideration of the requirements established in subsection (c) of this section, and shall report the results of the determination to the Director of the Center and the Advisory Council. Such determinations shall be conducted in a manner consistent with procedures established under section 289a of this title.

(C) Amount

In carrying out subparagraph (A), the Board shall, in the case of applications recommended for approval, make recommendations to the Director and the Advisory Council on the amount that should be provided under the grant.

(D) Annual report

In carrying out subparagraph (A), the Board shall prepare an annual report for the Director of the Center and the Advisory Council describing the activities of the Board in the fiscal year for which the report is made. Each such report shall be available to the public, and shall—

(i) summarize and analyze expenditures made under this section;

(ii) provide a summary of the types, numbers, and amounts of applications that were recommended for grants under subsection (a) of this section but that were not approved by the Director of the Center; and

(iii) contain the recommendations of the Board for any changes in the administration of this section.

(3) Membership

(A) In general

Subject to subparagraph (B), the Board shall be composed of 15 members to be appointed by the Director of the Center, and such ad-hoc or temporary members as the Director of the Center determines to be appropriate. All members of the Board, including temporary and ad-hoc members, shall be voting members.

(B) Limitation

Not more than three individuals who are officers or employees of the Federal Government may serve as members of the Board.

(4) Certain requirements regarding membership

In selecting individuals for membership on the Board, the Director of the Center shall ensure that the members are individuals who, by virtue of their training or experience, are eminently qualified to perform peer review functions. In selecting such individuals for such membership, the Director of the Center shall ensure that the members of the Board collectively—

(A) are experienced in the planning, construction, financing, and administration of entities that conduct biomedical or behavioral research sciences;

(B) are knowledgeable in making determinations of the need of entities for bio-

medical or behavioral research facilities, including such facilities for the dentistry, nursing, pharmacy, and allied health professions;

(C) are knowledgeable in evaluating the relative priorities for applications for grants under subsection (a) of this section in view of the overall research needs of the United States; and

(D) are experienced with emerging centers of excellence, as described in subsection (c)(2) of this section.

(5) Certain authorities

(A) Workshops and conferences

In carrying out paragraph (2), the Board may convene workshops and conferences, and collect data as the Board considers appropriate.

(B) Subcommittees

In carrying out paragraph (2), the Board may establish subcommittees within the Board. Such subcommittees may hold meetings as determined necessary to enable the subcommittee to carry out its duties.

(6) Terms

(A) In general

Except as provided in subparagraph (B), each appointed member of the Board shall hold office for a term of 4 years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of the term of the predecessor.

(B) Staggered terms

Members appointed to the Board shall serve staggered terms as specified by the Director of the Center when making the appointments.

(C) Reappointment

No member of the Board shall be eligible for reappointment to the Board until 1 year has elapsed after the end of the most recent term of the member.

(7) Compensation

Members of the Board who are not officers or employees of the United States shall receive for each day the members are engaged in the performance of the functions of the Board compensation at the same rate received by members of other national advisory councils established under this subchapter.

(c) Requirements for grants

(1) In general

The Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases may make a grant under subsection (a) of this section only if the applicant for the grant meets the following conditions:

(A) The applicant is determined by such Director to be competent to engage in the type of research for which the proposed facility is to be constructed.

(B) The applicant provides assurances satisfactory to the Director that—

(i) for not less than 20 years after completion of the construction involved, the facility will be used for the purposes of the research for which it is to be constructed;

(ii) sufficient funds will be available to meet the non-Federal share of the cost of constructing the facility;

(iii) sufficient funds will be available, when construction is completed, for the effective use of the facility for the research for which it is being constructed; and

(iv) the proposed construction will expand the applicant's capacity for research, or is necessary to improve or maintain the quality of the applicant's research.

(C) The applicant meets reasonable qualifications established by the Director with respect to—

(i) the relative scientific and technical merit of the applications, and the relative effectiveness of the proposed facilities, in expanding the capacity for biomedical or behavioral research and in improving the quality of such research;

(ii) the quality of the research or training, or both, to be carried out in the facilities involved;

(iii) the congruence of the research activities to be carried out within the facility with the research and investigator manpower needs of the United States; and

(iv) the age and condition of existing research facilities.

(D) The applicant has demonstrated a commitment to enhancing and expanding the research productivity of the applicant.

(2) Institutions of emerging excellence

From the amount appropriated under subsection (i)(1) of this section for a fiscal year up to $50,000,000, the Director of the Center shall make available 25 percent of such amount, and from the amount appropriated under such subsection for a fiscal year that is over $50,000,000, the Director of the Center shall make available up to 25 percent of such amount, for grants under subsection (a) of this section to applicants that in addition to meeting the requirements established in paragraph (1), have demonstrated emerging excellence in biomedical or behavioral research, as follows:

(A) The applicant has a plan for research or training advancement and possesses the ability to carry out the plan.

(B) The applicant carries out research and research training programs that have a special relevance to a problem, concern, or unmet health need of the United States.

(C) The applicant has been productive in research or research development and training.

(D) The applicant—

(i) has been designated as a center of excellence under section 293c[1] of this title;

(ii) is located in a geographic area whose population includes a significant number of individuals with health status deficit, and the applicant provides health services to such individuals; or

[1] See References in Text note below.

(iii) is located in a geographic area in which a deficit in health care technology, services, or research resources may adversely affect the health status of the population of the area in the future, and the applicant is carrying out activities with respect to protecting the health status of such population.

(d) Requirement of application

The Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Director and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out this section.

(e) Amount of grant; payments

(1) Amount

The amount of any grant awarded under subsection (a) of this section shall be determined by the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases, except that such amount shall not exceed—

(A) 50 percent (or, in the case of the Institute, 75 percent) of the necessary cost of the construction of a proposed facility as determined by the Director; or

(B) in the case of a multipurpose facility, 40 percent (or, in the case of the Institute, 75 percent) of that part of the necessary cost of construction that the Director determines to be proportionate to the contemplated use of the facility.

(2) Reservation of amounts

On the approval of any application for a grant under subsection (a) of this section, the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases shall reserve, from any appropriation available for such grants, the amount of such grant, and shall pay such amount, in advance or by way of reimbursement, and in such installments consistent with the construction progress, as the Director may determine appropriate. The reservation of any amount by the Director under this paragraph may be amended by the Director, either on the approval of an amendment of the application or on the revision of the estimated cost of construction of the facility.

(3) Exclusion of certain costs

In determining the amount of any grant under subsection (a) of this section, there shall be excluded from the cost of construction an amount equal to the sum of—

(A) the amount of any other Federal grant that the applicant has obtained, or is assured of obtaining, with respect to construction that is to be financed in part by a grant authorized under this section; and

(B) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

(4) Waiver of limitations

The limitations imposed under paragraph (1) may be waived at the discretion of the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases for applicants meeting the conditions described in subsection (c) of this section.

(f) Recapture of payments

If, not later than 20 years after the completion of construction for which a grant has been awarded under subsection (a) of this section—

(1) in the case of an award by the Director of the Center, the applicant or other owner of the facility shall cease to be a public or non profit[2] private entity; or

(2) the facility shall cease to be used for the research purposes for which it was constructed (unless the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from obligation to do so),

the United States shall be entitled to recover from the applicant or other owner of the facility the amount bearing the same ratio to the current value (as determined by an agreement between the parties or by action brought in the United States District Court for the district in which such facility is situated) of the facility as the amount of the Federal participation bore to the cost of the construction of such facility.

(g) Guidelines

Not later than 6 months after June 10, 1993, the Director of the Center, after consultation with the Advisory Council, shall issue guidelines with respect to grants under subsection (a) of this section.

(h) Report to Congress

The Director of the Center shall prepare and submit to the appropriate committees of Congress a biennial report concerning the status of the biomedical and behavioral research facilities and the availability and condition of technologically sophisticated laboratory equipment in the United States. Such reports shall be developed in concert with the report prepared by the National Science Foundation on the needs of research facilities of universities as required under section 1886 of this title.

(i) Authorization of appropriations

(1) Center

For the purpose of carrying out this section with respect to the Center, there are authorized to be appropriated $250,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(2) National Institute of Allergy and Infectious Diseases

For the purpose of carrying out this section with respect to the National Institute of Allergy and Infectious Diseases, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.

(July 1, 1944, ch. 373, title IV, § 481A, as added Pub. L. 103–43, title XV, § 1502, June 10, 1993, 107

[2] So in original. Probably should be ''nonprofit''.

Stat. 173; amended Pub. L. 105–392, title I, §101(c), Nov. 13, 1998, 112 Stat. 3537; Pub. L. 106–505, title III, §303, Nov. 13, 2000, 114 Stat. 2330; Pub. L. 108–276, §2(b), July 21, 2004, 118 Stat. 841.)

REFERENCES IN TEXT

Section 293c of this title, referred to in subsec. (c)(2)(D)(i), does not contain provisions relating to designation as a center of excellence. See section 293 of this title.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–276, §2(b)(1), inserted ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''.

Subsec. (c)(1). Pub. L. 108–276, §2(b)(2)(A), inserted ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''.

Subsec. (c)(2). Pub. L. 108–276, §2(b)(2)(B), substituted ''subsection (i)(1)'' for ''subsection (i)'' in introductory provisions.

Subsec. (d). Pub. L. 108–276, §2(b)(3), inserted ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''.

Subsec. (e)(1). Pub. L. 108–276, §2(b)(4)(A)(i), inserted ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center'' in introductory provisions.

Subsec. (e)(1)(A). Pub. L. 108–276, §2(b)(4)(A)(ii), inserted ''(or, in the case of the Institute, 75 percent)'' after ''50 percent''.

Subsec. (e)(1)(B). Pub. L. 108–276, §2(b)(4)(A)(iii), inserted ''(or, in the case of the Institute, 75 percent)'' after ''40 percent''.

Subsec. (e)(2). Pub. L. 108–276, §2(b)(4)(B), inserted ''or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director of the Center''.

Subsec. (e)(4). Pub. L.108–276, §2(b)(4)(C), inserted ''of the Center or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director''.

Subsec. (f)(1). Pub. L. 108–276, §2(b)(5)(A), inserted ''in the case of an award by the Director of the Center,'' before ''the applicant''.

Subsec. (f)(2). Pub. L. 108–276, §2(b)(5)(B), inserted ''of the Center or the Director of the National Institute of Allergy and Infectious Diseases'' after ''Director''.

Subsec. (i). Pub. L. 108–276, §2(b)(6), designated existing provisions as par. (1), inserted heading, substituted ''For the purpose of carrying out this section with respect to the Center,'' for ''For the purpose of carrying out this section,'', and added par. (2).

2000—Pub. L. 106–505 amended section generally, adding provisions requiring the Director to provide Congress with biennial status reports.

1998—Subsec. (c)(3)(D)(i). Pub. L. 105–392 substituted ''part B of subchapter V of this chapter'' for ''section 293c of this title''.

FINDINGS

Pub. L. 106–505, title III, §302, Nov. 13, 2000, 114 Stat. 2330, provided that: ''Congress finds that—

''(1) the National Institutes of Health is the principal source of Federal funding for medical research at universities and other research institutions in the United States;

''(2) the National Institutes of Health has received a substantial increase in research funding from Congress for the purpose of expanding the national investment of the United States in behavioral and biomedical research;

''(3) the infrastructure of our research institutions is central to the continued leadership of the United States in medical research;

''(4) as Congress increases the investment in cutting-edge basic and clinical research, it is critical that Congress also examine the current quality of the laboratories and buildings where research is being conducted, as well as the quality of laboratory equipment used in research;

''(5) many of the research facilities and laboratories in the United States are outdated and inadequate;

''(6) the National Science Foundation found, in a 1998 report on the status of biomedical research facilities, that over 60 percent of research-performing institutions indicated that they had an inadequate amount of medical research space;

''(7) the National Science Foundation reports that academic institutions have deferred nearly $11,000,000,000 in renovation and construction projects because of a lack of funds; and

''(8) future increases in Federal funding for the National Institutes of Health must include increased support for the renovation and construction of extramural research facilities in the United States and the purchase of state-of-the-art laboratory instrumentation.''

§ 287a–3. Construction of regional centers for research on primates

(a) With respect to activities carried out by the National Center for Research Resources to support regional centers for research on primates, the Director of NIH may, for each of the fiscal years 2000 through 2002, reserve from the amounts appropriated under section 287a–2(i) of this title such sums as necessary for the purpose of making awards of grants and contracts to public or nonprofit private entities to construct, renovate, or otherwise improve such regional centers. The reservation of such amounts for any fiscal year is subject to the availability of qualified applicants for such awards.

(b) The Director of NIH may not make a grant or enter into a contract under subsection (a) of this section unless the applicant for such assistance agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such subsection, to make available (directly or through donations from public or private entities) non-Federal contributions in cash toward such costs in an amount equal to not less than $1 for each $4 of Federal funds provided in such assistance.

(July 1, 1944, ch. 373, title IV, §481B, as added Pub. L. 103–43, title XV, §1503, June 10, 1993, 107 Stat. 178; amended Pub. L. 105–392, title IV, §411, Nov. 13, 1998, 112 Stat. 3590; Pub. L. 106–505, title III, §304, Nov. 13, 2000, 114 Stat. 2335.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–505, which directed the amendment of subsec. (a) by substituting ''2000 through 2002, reserve from the amounts appropriated under section 287a–2(i) of this title such sums as necessary'' for '''1994' and all that follows through '$5,000,000' '', was executed by making the substitution for ''1994 through 1996, reserve from the amounts appropriated under section 287a–2(h) of this title up to $2,500,000'', to reflect the probable intent of Congress and the amendment by Pub. L. 105–392. See 1998 Amendment note below.

1998—Subsec. (a). Pub. L. 105–392, in first sentence, substituted ''may'' for ''shall'' and ''up to $2,500,000'' for ''$5,000,000''.

§ 287a–3a. Sanctuary system for surplus chimpanzees

(a) In general

The Secretary shall provide for the establishment and operation in accordance with this section of a system to provide for the lifetime care of chimpanzees that have been used, or were bred or purchased for use, in research conducted

or supported by the National Institutes of Health, the Food and Drug Administration, or other agencies of the Federal Government, and with respect to which it has been determined by the Secretary that the chimpanzees are not needed for such research (in this section referred to as ''surplus chimpanzees'').

(b) Administration of sanctuary system

The Secretary shall carry out this section, including the establishment of regulations under subsection (d) of this section, in consultation with the board of directors of the nonprofit private entity that receives the contract under subsection (e) of this section (relating to the operation of the sanctuary system).

(c) Acceptance of chimpanzees into system

All surplus chimpanzees owned by the Federal Government shall be accepted into the sanctuary system. Subject to standards under subsection (d)(4) of this section, any chimpanzee that is not owned by the Federal Government can be accepted into the system if the owner transfers to the sanctuary system title to the chimpanzee.

(d) Standards for permanent retirement of surplus chimpanzees

(1) In general

Not later than 180 days after December 20, 2000, the Secretary shall by regulation establish standards for operating the sanctuary system to provide for the permanent retirement of surplus chimpanzees. In establishing the standards, the Secretary shall consider the recommendations of the board of directors of the nonprofit private entity that receives the contract under subsection (e) of this section, and shall consider the recommendations of the National Research Council applicable to surplus chimpanzees that are made in the report published in 1997 and entitled ''Chimpanzees in Research—Strategies for Their Ethical Care, Management, and Use''.

(2) Chimpanzees accepted into system

With respect to chimpanzees that are accepted into the sanctuary system, standards under paragraph (1) shall include the following:

(A) A prohibition that the chimpanzees may not be used for research, except as authorized under paragraph (3).

(B) Provisions regarding the housing of the chimpanzees.

(C) Provisions regarding the behavioral well-being of the chimpanzees.

(D) A requirement that the chimpanzees be cared for in accordance with the Animal Welfare Act [7 U.S.C. 2131 et seq.].

(E) A requirement that the chimpanzees be prevented from breeding.

(F) A requirement that complete histories be maintained on the health and use in research of the chimpanzees.

(G) A requirement that the chimpanzees be monitored for the purpose of promptly detecting the presence in the chimpanzees of any condition that may be a threat to the public health or the health of other chimpanzees.

(H) A requirement that chimpanzees posing such a threat be contained in accordance with applicable recommendations of the Director of the Centers for Disease Control and Prevention.

(I) A prohibition that none of the chimpanzees may be subjected to euthanasia, except as in the best interests of the chimpanzee involved, as determined by the system and an attending veterinarian.

(J) A prohibition that the chimpanzees may not be discharged from the system. If any chimpanzee is removed from a sanctuary facility for purposes of research authorized under paragraph (3)(A)(ii), the chimpanzee shall be returned immediately upon the completion of that research. All costs associated with the removal of the chimpanzee from the facility, with the care of the chimpanzee during such absence from the facility, and with the return of the chimpanzee to the facility shall be the responsibility of the entity that obtains approval under such paragraph regarding use of the chimpanzee and removes the chimpanzee from the sanctuary facility.

(K) A provision that the Secretary may, in the discretion of the Secretary, accept into the system chimpanzees that are not surplus chimpanzees.

(L) Such additional standards as the Secretary determines to be appropriate.

(3) Restrictions regarding research

(A) In general

For purposes of paragraph (2)(A), standards under paragraph (1) shall provide that a chimpanzee accepted into the sanctuary system may not be used for studies or research, except as provided in clause (i) or (ii), as follows:

(i) The chimpanzee may be used for noninvasive behavioral studies or medical studies based on information collected during the course of normal veterinary care that is provided for the benefit of the chimpanzee, provided that any such study involves minimal physical and mental harm, pain, distress, and disturbance to the chimpanzee and the social group in which the chimpanzee lives.

(ii) The chimpanzee may be used in research if—

(I) the Secretary finds that there are special circumstances in which there is need for that individual, specific chimpanzee (based on that chimpanzee's prior medical history, prior research protocols, and current status), and there is no chimpanzee with a similar history and current status that is reasonably available among chimpanzees that are not in the sanctuary system;

(II) the Secretary finds that there are technological or medical advancements that were not available at the time the chimpanzee entered the sanctuary system, and that such advancements can and will be used in the research;

(III) the Secretary finds that the research is essential to address an important public health need; and

(IV) the design of the research involves minimal pain and physical harm to the chimpanzee, and otherwise minimizes mental harm, distress, and disturbance to the chimpanzee and the social group in which the chimpanzee lives (including with respect to removal of the chimpanzee from the sanctuary facility involved).

(B) Approval of research design

(i) Evaluation by sanctuary board

With respect to a proposed use in research of a chimpanzee in the sanctuary system under subparagraph (A)(ii), the board of directors of the nonprofit private entity that receives the contract under subsection (e) of this section shall, after consultation with the head of the sanctuary facility in which the chimpanzee has been placed and with the attending veterinarian, evaluate whether the design of the research meets the conditions described in subparagraph (A)(ii)(IV) and shall submit to the Secretary the findings of the evaluation.

(ii) Acceptance of board findings

The Secretary shall accept the findings submitted to the Secretary under clause (i) by the board of directors referred to in such clause unless the Secretary makes a determination that the findings of the board are arbitrary or capricious.

(iii) Public participation

With respect to a proposed use in research of a chimpanzee in the sanctuary system under subparagraph (A)(ii), the proposal shall not be approved until—

(I) the Secretary publishes in the Federal Register the proposed findings of the Secretary under such subparagraph, the findings of the evaluation by the board under clause (i) of this subparagraph, and the proposed evaluation by the Secretary under clause (ii) of this subparagraph; and

(II) the Secretary seeks public comment for a period of not less than 60 days.

(C) Additional restriction

For purposes of paragraph (2)(A), a condition for the use in studies or research of a chimpanzee accepted into the sanctuary system is (in addition to conditions under subparagraphs (A) and (B) of this paragraph) that the applicant for such use has not been fined for, or signed a consent decree for, any violation of the Animal Welfare Act [7 U.S.C. 2131 et seq.].

(4) Non-Federal chimpanzees offered for acceptance into system

With respect to a chimpanzee that is not owned by the Federal Government and is offered for acceptance into the sanctuary system, standards under paragraph (1) shall include the following:

(A) A provision that the Secretary may authorize the imposition of a fee for accepting such chimpanzee into the system, except as follows:

(i) Such a fee may not be imposed for accepting the chimpanzee if, on the day before December 20, 2000, the chimpanzee was owned by the nonprofit private entity that receives the contract under subsection (e) of this section or by any individual sanctuary facility receiving a subcontract or grant under subsection (e)(1) of this section.

(ii) Such a fee may not be imposed for accepting the chimpanzee if the chimpanzee is owned by an entity that operates a primate center, and if the chimpanzee is housed in the primate center pursuant to the program for regional centers for research on primates that is carried out by the National Center for Research Resources.

Any fees collected under this subparagraph are available to the Secretary for the costs of operating the system. Any other fees received by the Secretary for the long-term care of chimpanzees (including any Federal fees that are collected for such purpose and are identified in the report under section 3 of the Chimpanzee Health Improvement, Maintenance, and Protection Act) are available for operating the system, in addition to availability for such other purposes as may be authorized for the use of the fees.

(B) A provision that the Secretary may deny such chimpanzee acceptance into the system if the capacity of the system is not sufficient to accept the chimpanzee, taking into account the physical capacity of the system; the financial resources of the system; the number of individuals serving as the staff of the system, including the number of professional staff; the necessity of providing for the safety of the staff and of the public; the necessity of caring for accepted chimpanzees in accordance with the standards under paragraph (1); and such other factors as may be appropriate.

(C) A provision that the Secretary may deny such chimpanzee acceptance into the system if a complete history of the health and use in research of the chimpanzee is not available to the Secretary.

(D) Such additional standards as the Secretary determines to be appropriate.

(e) Award of contract for operation of system

(1) In general

Subject to the availability of funds pursuant to subsection (g) of this section, the Secretary shall make an award of a contract to a nonprofit private entity under which the entity has the responsibility of operating (and establishing, as applicable) the sanctuary system and awarding subcontracts or grants to individual sanctuary facilities that meet the standards under subsection (d) of this section.

(2) Requirements

The Secretary may make an award under paragraph (1) to a nonprofit private entity only if the entity meets the following requirements:

(A) The entity has a governing board of directors that is composed and appointed in accordance with paragraph (3) and is satisfactory to the Secretary.

(B) The terms of service for members of such board are in accordance with paragraph (3).

(C) The members of the board serve without compensation. The members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the board.

(D) The entity has an executive director meeting such requirements as the Secretary determines to be appropriate.

(E) The entity makes the agreement described in paragraph (4) (relating to non-Federal contributions).

(F) The entity agrees to comply with standards under subsection (d) of this section.

(G) The entity agrees to make necropsy reports on chimpanzees in the sanctuary system available on a reasonable basis to persons who conduct biomedical or behavioral research, with priority given to such persons who are Federal employees or who receive financial support from the Federal Government for research.

(H) Such other requirements as the Secretary determines to be appropriate.

(3) Board of directors

For purposes of subparagraphs (A) and (B) of paragraph (2):

(A) The governing board of directors of the nonprofit private entity involved is composed and appointed in accordance with this paragraph if the following conditions are met:

(i) Such board is composed of not more than 13 voting members.

(ii) Such members include individuals with expertise and experience in the science of managing captive chimpanzees (including primate veterinary care), appointed from among individuals endorsed by organizations that represent individuals in such field.

(iii) Such members include individuals with expertise and experience in the field of animal protection, appointed from among individuals endorsed by organizations that represent individuals in such field.

(iv) Such members include individuals with expertise and experience in the zoological field (including behavioral primatology), appointed from among individuals endorsed by organizations that represent individuals in such field.

(v) Such members include individuals with expertise and experience in the field of the business and management of nonprofit organizations, appointed from among individuals endorsed by organizations that represent individuals in such field.

(vi) Such members include representatives from entities that provide accreditation in the field of laboratory animal medicine.

(vii) Such members include individuals with expertise and experience in the field of containing biohazards.

(viii) Such members include an additional member who serves as the chair of the board, appointed from among individuals who have been endorsed for purposes of clause (ii), (iii), (iv), or (v).

(ix) None of the members of the board has been fined for, or signed a consent decree for, any violation of the Animal Welfare Act [7 U.S.C. 2131 et seq.].

(B) The terms of service for members of the board of directors are in accordance with this paragraph if the following conditions are met:

(i) The term of the chair of the board is 3 years.

(ii) The initial members of the board select, by a random method, one member from each of the six fields specified in subparagraph (A) to serve a term of 2 years and (in addition to the chair) one member from each of such fields to serve a term of 3 years.

(iii) After the initial terms under clause (ii) expire, each member of the board (other than the chair) is appointed to serve a term of 2 years.

(iv) An individual whose term of service expires may be reappointed to the board.

(v) A vacancy in the membership of the board is filled in the manner in which the original appointment was made.

(vi) If a member of the board does not serve the full term applicable to the member, the individual appointed to fill the resulting vacancy is appointed for the remainder of the term of the predecessor member.

(4) Requirement of matching funds

The agreement required in paragraph (2)(E) for a nonprofit private entity (relating to the award of the contract under paragraph (1)) is an agreement that, with respect to the costs to be incurred by the entity in establishing and operating the sanctuary system, the entity will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs, in cash or in kind, in an amount not less than the following, as applicable:

(A) For expenses associated with establishing the sanctuary system (as determined by the Secretary), 10 percent of such costs ($1 for each $9 of Federal funds provided under the contract under paragraph (1)).

(B) For expenses associated with operating the sanctuary system (as determined by the Secretary), 25 percent of such costs ($1 for each $3 of Federal funds provided under such contract).

(5) Establishment of contract entity

If the Secretary determines that an entity meeting the requirements of paragraph (2) does not exist, not later than 60 days after December 20, 2000, the Secretary shall, for purposes of paragraph (1), make a grant for the establishment of such an entity, including pay-

ing the cost of incorporating the entity under the law of one of the States.

(f) Definitions

For purposes of this section:

(1) Permanent retirement

The term ''permanent retirement'', with respect to a chimpanzee that has been accepted into the sanctuary system, means that under subsection (a) of this section the system provides for the lifetime care of the chimpanzee, that under subsection (d)(2) of this section the system does not permit the chimpanzee to be used in research (except as authorized under subsection (d)(3) of this section) or to be euthanized (except as provided in subsection (d)(2)(I) of this section), that under subsection (d)(2) of this section the system will not discharge the chimpanzee from the system, and that under such subsection the system otherwise cares for the chimpanzee.

(2) Sanctuary system

The term ''sanctuary system'' means the system described in subsection (a) of this section.

(3) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(4) Surplus chimpanzees

The term ''surplus chimpanzees'' has the meaning given that term in subsection (a) of this section.

(g) Funding

(1) In general

Of the amount appropriated under this chapter for fiscal year 2001 and each subsequent fiscal year, the Secretary, subject to paragraph (2), shall reserve a portion for purposes of the operation (and establishment, as applicable) of the sanctuary system and for purposes of paragraph (3), except that the Secretary may not for such purposes reserve any further funds from such amount after the aggregate total of the funds so reserved for such fiscal years reaches $30,000,000. The purposes for which funds reserved under the preceding sentence may be expended include the construction and renovation of facilities for the sanctuary system.

(2) Limitation

Funds may not be reserved for a fiscal year under paragraph (1) unless the amount appropriated under this chapter for such year equals or exceeds the amount appropriated under this chapter for fiscal year 1999.

(3) Use of funds for other compliant facilities

With respect to amounts reserved under paragraph (1) for a fiscal year, the Secretary may use a portion of such amounts to make awards of grants or contracts to public or private entities operating facilities that, as determined by the board of directors of the nonprofit private entity that receives the contract under subsection (e) of this section, provide for the retirement of chimpanzees in accordance with the same standards that apply to the sanctuary system pursuant to regulations under subsection (d) of this section. Such an award may be expended for the expenses of operating the facilities involved.

(July 1, 1944, ch. 373, title IV, § 481C, as added Pub. L. 106–551, § 2, Dec. 20, 2000, 114 Stat. 2752.)

REFERENCES IN TEXT

The Animal Welfare Act, referred to in subsecs. (d)(2)(D), (3)(C) and (e)(3)(A)(ix), is Pub. L. 89–544, Aug. 24, 1966, 80 Stat. 350, as amended, which is classified generally to chapter 54 (§ 2131 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2131 of Title 7 and Tables.

Section 3 of the Chimpanzee Health Improvement, Maintenance, and Protection Act, referred to in subsec. (d)(4)(A), is section 3 of Pub. L. 106–551, which is set out as a note below.

CODIFICATION

Another section 481C of act July 1, 1944, is classified to section 287a–4 of this title.

REPORT TO CONGRESS REGARDING NUMBER OF CHIMPANZEES AND FUNDING FOR CARE OF CHIMPANZEES

Pub. L. 106–551, § 3, Dec. 20, 2000, 114 Stat. 2759, provided that:

''With respect to chimpanzees that have been used, or were bred or purchased for use, in research conducted or supported by the National Institutes of Health, the Food and Drug Administration, or other agencies of the Federal Government, the Secretary of Health and Human Services shall, not later than 365 days after the date of the enactment of this Act [Dec. 20, 2000], submit to Congress a report providing the following information:

''(1) The number of such chimpanzees in the United States, whether owned or held by the Federal Government, any of the States, or private entities.

''(2) An identification of any requirement imposed by the Federal Government that, as a condition of the use of such a chimpanzee in research by a non-Federal entity—

''(A) fees be paid by the entity to the Federal Government for the purpose of providing for the care of the chimpanzee (including any fees for long-term care); or

''(B) funds be provided by the entity to a State, unit of local government, or private entity for an endowment or other financial account whose purpose is to provide for the care of the chimpanzee (including any funds provided for long-term care).

''(3) An accounting for fiscal years 1999 and 2000 of all fees paid and funds provided by non-Federal entities pursuant to requirements described in subparagraphs (A) and (B) of paragraph (2).

''(4) In the case of such fees, a specification of whether the fees were available to the Secretary (or other Federal officials) pursuant to annual appropriations Acts or pursuant to permanent appropriations.''

§ 287a–4. General clinical research centers

(a) Grants

The Director of the National Center for Research Resources shall award grants for the establishment of general clinical research centers to provide the infrastructure for clinical research including clinical research training and career enhancement. Such centers shall support clinical studies and career development in all settings of the hospital or academic medical center involved.

(b) Activities

In carrying out subsection (a) of this section, the Director of National Institutes of Health

shall expand the activities of the general clinical research centers through the increased use of telecommunications and telemedicine initiatives.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(July 1, 1944, ch. 373, title IV, § 481C, as added Pub. L. 106–505, title II, § 204(a), Nov. 13, 2000, 114 Stat. 2327.)

CODIFICATION

Another section 481C of act July 1, 1944, is classified to section 287a–3a of this title.

SUBPART 2—JOHN E. FOGARTY INTERNATIONAL CENTER FOR ADVANCED STUDY IN HEALTH SCIENCES

§ 287b. General purpose

The general purpose of the John E. Fogarty International Center for Advanced Study in the Health Sciences is to—

(1) facilitate the assembly of scientists and others in the biomedical, behavioral, and related fields for discussion, study, and research relating to the development of health science internationally;

(2) provide research programs, conferences, and seminars to further international cooperation and collaboration in the life sciences;

(3) provide postdoctorate fellowships for research training in the United States and abroad and promote exchanges of senior scientists between the United States and other countries;

(4) coordinate the activities of the National Institutes of Health concerned with the health sciences internationally; and

(5) receive foreign visitors to the National Institutes of Health.

(July 1, 1944, ch. 373, title IV, § 482, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 866.)

SUBPART 3—NATIONAL CENTER FOR HUMAN GENOME RESEARCH

§ 287c. Purpose of Center

(a) General purpose

The general purpose of the National Center for Human Genome Research (in this subpart referred to as the ''Center'') is to characterize the structure and function of the human genome, including the mapping and sequencing of individual genes. Such purpose includes—

(1) planning and coordinating the research goal of the genome project;

(2) reviewing and funding research proposals;

(3) developing training programs;

(4) coordinating international genome research;

(5) communicating advances in genome science to the public; and

(6) reviewing and funding proposals to address the ethical and legal issues associated with the genome project (including legal issues regarding patents).

(b) Research training

The Director of the Center may conduct and support research training—

(1) for which fellowship support is not provided under section 288 of this title; and

(2) that is not residency training of physicians or other health professionals.

(c) Amount available for ethical and legal issues

(1) Except as provided in paragraph (2), of the amounts appropriated to carry out subsection (a) of this section for a fiscal year, the Director of the Center shall make available not less than 5 percent for carrying out paragraph (6) of such subsection.

(2) With respect to providing funds under subsection (a)(6) of this section for proposals to address the ethical issues associated with the genome project, paragraph (1) shall not apply for a fiscal year if the Director of the Center certifies to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, that the Director has determined that an insufficient number of such proposals meet the applicable requirements of sections 289 and 289a of this title.

(July 1, 1944, ch. 373, title IV, § 485B, as added Pub. L. 103–43, title XV, § 1521(2), June 10, 1993, 107 Stat. 180.)

PRIOR PROVISIONS

A prior section 287c, act July 1, 1944, ch. 373, title IV, § 483, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 867, and amended, which related to purpose of National Center for Nursing Research, was renumbered section 464V of act July 1, 1944, by Pub. L. 103–43, title XV, § 1511(b)(2), June 10, 1993, 107 Stat. 179, and transferred to section 285q of this title.

A prior section 287c–1, act July 1, 1944, ch. 373, title IV, § 484, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 867, and amended, which related to specific authorities of the Director of the Center, was renumbered section 464W of act July 1, 1944, by Pub. L. 103–43, title XV, § 1511(b)(2), June 10, 1993, 107 Stat. 179, and transferred to section 285q–1 of this title.

A prior section 287c–2, act July 1, 1944, ch. 373, title IV, § 485, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 867, and amended, which related to the advisory council for the Center, was renumbered section 464X of act July 1, 1944, by Pub. L. 103–43, title XV, § 1511(b)(2), June 10, 1993, 107 Stat. 179, and transferred to section 285q–2 of this title.

A prior section 287c–3, act July 1, 1944, ch. 373, title IV, § 486, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 869, and amended, which related to biennial report of activities of the Center, was renumbered section 464Y of act July 1, 1944, by Pub. L. 103–43, title XV, § 1511(b)(2), June 10, 1993, 107 Stat. 179, and transferred to section 285q–3 of this title.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

SUBPART 4—OFFICE OF DIETARY SUPPLEMENTS

§ 287c–11. Dietary supplements

(a) Establishment

The Secretary shall establish an Office of Dietary Supplements within the National Institutes of Health.

(b) Purpose

The purposes of the Office are—

(1) to explore more fully the potential role of dietary supplements as a significant part of the efforts of the United States to improve health care; and

(2) to promote scientific study of the benefits of dietary supplements in maintaining health and preventing chronic disease and other health-related conditions.

(c) Duties

The Director of the Office of Dietary Supplements shall—

(1) conduct and coordinate scientific research within the National Institutes of Health relating to dietary supplements and the extent to which the use of dietary supplements can limit or reduce the risk of diseases such as heart disease, cancer, birth defects, osteoporosis, cataracts, or prostatism;

(2) collect and compile the results of scientific research relating to dietary supplements, including scientific data from foreign sources or the Office of Alternative Medicine;

(3) serve as the principal advisor to the Secretary and to the Assistant Secretary for Health and provide advice to the Director of the National Institutes of Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of Food and Drugs on issues relating to dietary supplements including—

(A) dietary intake regulations;

(B) the safety of dietary supplements;

(C) claims characterizing the relationship between—

(i) dietary supplements; and

(ii)(I) prevention of disease or other health-related conditions; and

(II) maintenance of health; and

(D) scientific issues arising in connection with the labeling and composition of dietary supplements;

(4) compile a database of scientific research on dietary supplements and individual nutrients; and

(5) coordinate funding relating to dietary supplements for the National Institutes of Health.

(d) "Dietary supplement" defined

As used in this section, the term ''dietary supplement'' has the meaning given the term in section 321(ff) of title 21.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 1994 and such sums as may be necessary for each subsequent fiscal year.

(July 1, 1944, ch. 373, title IV, § 485C, as added Pub. L. 103–417, § 13(a), Oct. 25, 1994, 108 Stat. 4334.)

SUBPART 5—NATIONAL CENTER FOR COMPLEMENTARY AND ALTERNATIVE MEDICINE

§ 287c–21. Purpose of Center

(a) In general

The general purposes of the National Center for Complementary and Alternative Medicine (in this subpart referred to as the ''Center'') are the conduct and support of basic and applied research (including both intramural and extramural research), research training, the dissemination of health information, and other programs with respect to identifying, investigating, and validating complementary and alternative treatment, diagnostic and prevention modalities, disciplines and systems. The Center shall be headed by a director, who shall be appointed by the Secretary. The Director of the Center shall report directly to the Director of NIH.

(b) Advisory council

The Secretary shall establish an advisory council for the Center in accordance with section 284a of this title, except that at least half of the members of the advisory council who are not ex officio members shall include practitioners licensed in one or more of the major systems with which the Center is concerned, and at least 3 individuals representing the interests of individual consumers of complementary and alternative medicine.

(c) Complement to conventional medicine

In carrying out subsection (a) of this section, the Director of the Center shall, as appropriate, study the integration of alternative treatment, diagnostic and prevention systems, modalities, and disciplines with the practice of conventional medicine as a complement to such medicine and into health care delivery systems in the United States.

(d) Appropriate scientific expertise and coordination with institutes and Federal agencies

The Director of the Center, after consultation with the advisory council for the Center and the division of research grants, shall ensure that scientists with appropriate expertise in research on complementary and alternative medicine are incorporated into the review, oversight, and management processes of all research projects and other activities funded by the Center. In carrying out this subsection, the Director of the Center, as necessary, may establish review groups with appropriate scientific expertise. The Director of the Center shall coordinate efforts with other Institutes and Federal agencies to ensure appropriate scientific input and management.

(e) Evaluation of various disciplines and systems

In carrying out subsection (a) of this section, the Director of the Center shall identify and evaluate alternative and complementary medical treatment, diagnostic and prevention modalities in each of the disciplines and systems with which the Center is concerned, including each discipline and system in which accreditation, national certification, or a State license is available.

(f) Ensuring high quality, rigorous scientific review

In order to ensure high quality, rigorous scientific review of complementary and alternative, diagnostic and prevention modalities, disciplines and systems, the Director of the Center shall conduct or support the following activities:

(1) Outcomes research and investigations.
(2) Epidemiological studies.
(3) Health services research.
(4) Basic science research.
(5) Clinical trials.
(6) Other appropriate research and investigational activities.

The Director of NIH, in coordination with the Director of the Center, shall designate specific personnel in each Institute to serve as full-time liaisons with the Center in facilitating appropriate coordination and scientific input.

(g) Data system; information clearinghouse

(1) Data system

The Director of the Center shall establish a bibliographic system for the collection, storage, and retrieval of worldwide research relating to complementary and alternative treatment, diagnostic and prevention modalities, disciplines and systems. Such a system shall be regularly updated and publicly accessible.

(2) Clearinghouse

The Director of the Center shall establish an information clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of alternative medical treatment, diagnostic and prevention practices by health professionals, patients, industry, and the public.

(h) Research centers

The Director of the Center, after consultation with the advisory council for the Center, shall provide support for the development and operation of multipurpose centers to conduct research and other activities described in subsection (a) of this section with respect to complementary and alternative treatment, diagnostic and prevention modalities, disciplines and systems. The provision of support for the development and operation of such centers shall include accredited complementary and alternative medicine research and education facilities.

(i) Availability of resources

After consultation with the Director of the Center, the Director of NIH shall ensure that resources of the National Institutes of Health, including laboratory and clinical facilities, fellowships (including research training fellowship and junior and senior clinical fellowships), and other resources are sufficiently available to enable the Center to appropriately and effectively carry out its duties as described in subsection (a) of this section. The Director of NIH, in coordination with the Director of the Center, shall designate specific personnel in each Institute to serve as full-time liaisons with the Center in facilitating appropriate coordination and scientific input.

(j) Availability of appropriations

Amounts appropriated to carry out this section for fiscal year 1999 are available for obligation through September 30, 2001. Amounts appropriated to carry out this section for fiscal year 2000 are available for obligation through September 30, 2001.

(July 1, 1944, ch. 373, title IV, § 485D, as added Pub. L. 105–277, div. A, § 101(f) [title VI, § 601(2)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–387.)

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

EXECUTIVE ORDER NO. 13147

Ex. Ord. No. 13147, Mar. 7, 2000, 65 F.R. 13233, as amended by Ex. Ord. No. 13167, Sept. 15, 2000, 65 F.R. 54079 [57079], 65 F.R. 57436, which established White House Commission on Complementary and Alternative Medicine Policy, was revoked by Ex. Ord. No. 13316, § 3(i), Sept. 17, 2003, 68 F.R. 55256, eff. Sept. 30, 2003.

SUBPART 6—NATIONAL CENTER ON MINORITY HEALTH AND HEALTH DISPARITIES

§ 287c–31. Purpose of Center

(a) In general

The general purpose of the National Center on Minority Health and Health Disparities (in this subpart referred to as the ''Center'') is the conduct and support of research, training, dissemination of information, and other programs with respect to minority health conditions and other populations with health disparities.

(b) Priorities

The Director of the Center shall in expending amounts appropriated under this subpart give priority to conducting and supporting minority health disparities research.

(c) Minority health disparities research

For purposes of this subpart:

(1) The term ''minority health disparities research'' means basic, clinical, and behavioral research on minority health conditions (as defined in paragraph (2)), including research to prevent, diagnose, and treat such conditions.

(2) The term ''minority health conditions'', with respect to individuals who are members of minority groups, means all diseases, disorders, and conditions (including with respect to mental health and substance abuse)—

(A) unique to, more serious, or more prevalent in such individuals;

(B) for which the factors of medical risk or types of medical intervention may be dif-

ferent for such individuals, or for which it is unknown whether such factors or types are different for such individuals; or

(C) with respect to which there has been insufficient research involving such individuals as subjects or insufficient data on such individuals.

(3) The term ''minority group'' has the meaning given the term ''racial and ethnic minority group'' in section 300u–6 of this title.

(4) The terms ''minority'' and ''minorities'' refer to individuals from a minority group.

(d) Health disparity populations

For purposes of this subpart:

(1) A population is a health disparity population if, as determined by the Director of the Center after consultation with the Director of the Agency for Healthcare Research and Quality, there is a significant disparity in the overall rate of disease incidence, prevalence, morbidity, mortality, or survival rates in the population as compared to the health status of the general population.

(2) The Director shall give priority consideration to determining whether minority groups qualify as health disparity populations under paragraph (1).

(3) The term ''health disparities research'' means basic, clinical, and behavioral research on health disparity populations (including individual members and communities of such populations) that relates to health disparities as defined under paragraph (1), including the causes of such disparities and methods to prevent, diagnose, and treat such disparities.

(e) Coordination of activities

The Director of the Center shall act as the primary Federal official with responsibility for coordinating all minority health disparities research and other health disparities research conducted or supported by the National Institutes of Health, and—

(1) shall represent the health disparities research program of the National Institutes of Health, including the minority health disparities research program, at all relevant Executive branch task forces, committees and planning activities; and

(2) shall maintain communications with all relevant Public Health Service agencies, including the Indian Health Service, and various other departments of the Federal Government to ensure the timely transmission of information concerning advances in minority health disparities research and other health disparities research between these various agencies for dissemination to affected communities and health care providers.

(f) Collaborative comprehensive plan and budget

(1) In general

Subject to the provisions of this section and other applicable law, the Director of NIH, the Director of the Center, and the directors of the other agencies of the National Institutes of Health in collaboration (and in consultation with the advisory council for the Center) shall—

(A) establish a comprehensive plan and budget for the conduct and support of all minority health disparities research and other health disparities research activities of the agencies of the National Institutes of Health (which plan and budget shall be first established under this subsection not later than 12 months after November 22, 2000);

(B) ensure that the plan and budget establish priorities among the health disparities research activities that such agencies are authorized to carry out;

(C) ensure that the plan and budget establish objectives regarding such activities, describes the means for achieving the objectives, and designates the date by which the objectives are expected to be achieved;

(D) ensure that, with respect to amounts appropriated for activities of the Center, the plan and budget give priority in the expenditure of funds to conducting and supporting minority health disparities research;

(E) ensure that all amounts appropriated for such activities are expended in accordance with the plan and budget;

(F) review the plan and budget not less than annually, and revise the plan and budget as appropriate;

(G) ensure that the plan and budget serve as a broad, binding statement of policies regarding minority health disparities research and other health disparities research activities of the agencies, but do not remove the responsibility of the heads of the agencies for the approval of specific programs or projects, or for other details of the daily administration of such activities, in accordance with the plan and budget; and

(H) promote coordination and collaboration among the agencies conducting or supporting minority health or other health disparities research.

(2) Certain components of plan and budget

With respect to health disparities research activities of the agencies of the National Institutes of Health, the Director of the Center shall ensure that the plan and budget under paragraph (1) provide for—

(A) basic research and applied research, including research and development with respect to products;

(B) research that is conducted by the agencies;

(C) research that is supported by the agencies;

(D) proposals developed pursuant to solicitations by the agencies and for proposals developed independently of such solicitations; and

(E) behavioral research and social sciences research, which may include cultural and linguistic research in each of the agencies.

(3) Minority health disparities research

The plan and budget under paragraph (1) shall include a separate statement of the plan and budget for minority health disparities research.

(g) Participation in clinical research

The Director of the Center shall work with the Director of NIH and the directors of the agencies of the National Institutes of Health to carry out

the provisions of section 289a–2 of this title that relate to minority groups.

(h) Research endowments

(1) In general

The Director of the Center may carry out a program to facilitate minority health disparities research and other health disparities research by providing for research endowments at centers of excellence under section 293 of this title.

(2) Eligibility

The Director of the Center may provide for a research endowment under paragraph (1) only if the institution involved meets the following conditions:

(A) The institution does not have an endowment that is worth in excess of an amount equal to 50 percent of the national average of endowment funds at institutions that conduct similar biomedical research or training of health professionals.

(B) The application of the institution under paragraph (1) regarding a research endowment has been recommended pursuant to technical and scientific peer review and has been approved by the advisory council under subsection (j) of this section.

(i) Certain activities

In carrying out subsection (a) of this section, the Director of the Center—

(1) shall assist the Director of the National Center for Research Resources in carrying out section 287a–1(c)(3)[1] of this title and in committing resources for construction at Institutions of Emerging Excellence;

(2) shall establish projects to promote cooperation among Federal agencies, State, local, tribal, and regional public health agencies, and private entities in health disparities research; and

(3) may utilize information from previous health initiatives concerning minorities and other health disparity populations.

(j) Advisory council

(1) In general

The Secretary shall, in accordance with section 284a of this title, establish an advisory council to advise, assist, consult with, and make recommendations to the Director of the Center on matters relating to the activities described in subsection (a) of this section, and with respect to such activities to carry out any other functions described in section 284a of this title for advisory councils under such section. Functions under the preceding sentence shall include making recommendations on budgetary allocations made in the plan under subsection (f) of this section, and shall include reviewing reports under subsection (k) of this section before the reports are submitted under such subsection.

(2) Membership

With respect to the membership of the advisory council under paragraph (1), a majority of the members shall be individuals with demonstrated expertise regarding minority health disparity and other health disparity issues; representatives of communities impacted by minority and other health disparities shall be included; and a diversity of health professionals shall be represented. The membership shall in addition include a representative of the Office of Behavioral and Social Sciences Research under section 283c of this title.

(k) Annual report

The Director of the Center shall prepare an annual report on the activities carried out or to be carried out by the Center, and shall submit each such report to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Commerce of the House of Representatives, the Secretary, and the Director of NIH. With respect to the fiscal year involved, the report shall—

(1) describe and evaluate the progress made in health disparities research conducted or supported by the national research institutes;

(2) summarize and analyze expenditures made for activities with respect to health disparities research conducted or supported by the National Institutes of Health;

(3) include a separate statement applying the requirements of paragraphs (1) and (2) specifically to minority health disparities research; and

(4) contain such recommendations as the Director considers appropriate.

***(l)* Authorization of appropriations**

For the purpose of carrying out this subpart, there are authorized to be appropriated $100,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 through 2005. Such authorization of appropriations is in addition to other authorizations of appropriations that are available for the conduct and support of minority health disparities research or other health disparities research by the agencies of the National Institutes of Health.

(July 1, 1944, ch. 373, title IV, § 485E, as added Pub. L. 106–525, title I, § 101(a), Nov. 22, 2000, 114 Stat. 2497.)

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

FINDINGS

Pub. L. 106–525, § 2, Nov. 22, 2000, 114 Stat. 2495, provided that: ''The Congress finds as follows:

''(1) Despite notable progress in the overall health of the Nation, there are continuing disparities in the burden of illness and death experienced by African Americans, Hispanics, Native Americans, Alaska Natives, and Asian Pacific Islanders, compared to the United States population as a whole.

''(2) The largest numbers of the medically underserved are white individuals, and many of them have the same health care access problems as do members of minority groups. Nearly 20,000,000 white individ-

[1] So in original. Section 287a–1 of this title does not contain subsections.

uals live below the poverty line with many living in nonmetropolitan, rural areas such as Appalachia, where the high percentage of counties designated as health professional shortage areas (47 percent) and the high rate of poverty contribute to disparity outcomes. However, there is a higher proportion of racial and ethnic minorities in the United States represented among the medically underserved.

''(3) There is a national need for minority scientists in the fields of biomedical, clinical, behavioral, and health services research. Ninety percent of minority physicians educated at Historically Black Medical Colleges live and serve in minority communities.

''(4) Demographic trends inspire concern about the Nation's ability to meet its future scientific, technological, and engineering workforce needs. Historically, non-Hispanic white males have made up the majority of the United States scientific, technological, and engineering workers.

''(5) The Hispanic and Black population will increase significantly in the next 50 years. The scientific, technological, and engineering workforce may decrease if participation by underrepresented minorities remains the same.

''(6) Increasing rates of Black and Hispanic workers can help ensure a strong scientific, technological, and engineering workforce.

''(7) Individuals such as underrepresented minorities and women in the scientific, technological, and engineering workforce enable society to address its diverse needs.

''(8) If there had not been a substantial increase in the number of science and engineering degrees awarded to women and underrepresented minorities over the past few decades, the United States would be facing even greater shortages in scientific, technological, and engineering workers.

''(9) In order to effectively promote a diverse and strong 21st century scientific, technological, and engineering workforce, Federal agencies should expand or add programs that effectively overcome barriers such as educational transition from one level to the next and student requirements for financial resources.

''(10) Federal agencies should work in concert with the private nonprofit sector to emphasize the recruitment and retention of qualified individuals from ethnic and gender groups that are currently underrepresented in the scientific, technological, and engineering workforce.

''(11) Behavioral and social sciences research has increased awareness and understanding of factors associated with health care utilization and access, patient attitudes toward health services, and risk and protective behaviors that affect health and illness. These factors have the potential to then be modified to help close the health disparities gap among ethnic minority populations. In addition, there is a shortage of minority behavioral science researchers and behavioral health care professionals. According to the National Science Foundation, only 15.5 percent of behavioral research-oriented psychology doctorate degrees were awarded to minority students in 1997. In addition, only 17.9 percent of practice-oriented psychology doctorate degrees were awarded to ethnic minorities.''

REPORT REGARDING RESOURCES OF NATIONAL INSTITUTES OF HEALTH DEDICATED TO MINORITY AND OTHER HEALTH DISPARITIES RESEARCH

Pub. L. 106–525, title I, §105, Nov. 22, 2000, 114 Stat. 2504, provided that: ''Not later than December 1, 2003, the Director of the National Center on Minority Health and Health Disparities (established by the amendment made by section 101(a) [enacting this section]), after consultation with the advisory council for such Center, shall submit to the Congress, the Secretary of Health and Human Services, and the Director of the National Institutes of Health a report that provides the following:

''(1) Recommendations for the methodology that should be used to determine the extent of the resources of the National Institutes of Health that are dedicated to minority health disparities research and other health disparities research, including determining the amount of funds that are used to conduct and support such research. With respect to such methodology, the report shall address any discrepancies between the methodology used by such Institutes as of the date of the enactment of this Act [Nov. 22, 2000] and the methodology used by the Institute of Medicine as of such date.

''(2) A determination of whether and to what extent, relative to fiscal year 1999, there has been an increase in the level of resources of the National Institutes of Health that are dedicated to minority health disparities research, including the amount of funds used to conduct and support such research. The report shall include provisions describing whether and to what extent there have been increases in the number and amount of awards to minority serving institutions.''

PUBLIC AWARENESS AND DISSEMINATION OF INFORMATION ON HEALTH DISPARITIES

Pub. L. 106–525, title V, §501, Nov. 22, 2000, 114 Stat. 2510, provided that:

''(a) PUBLIC AWARENESS ON HEALTH DISPARITIES.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall conduct a national campaign to inform the public and health care professionals about health disparities in minority and other underserved populations by disseminating information and materials available on specific diseases affecting these populations and programs and activities to address these disparities. The campaign shall—

''(1) have a specific focus on minority and other underserved communities with health disparities; and

''(2) include an evaluation component to assess the impact of the national campaign in raising awareness of health disparities and information on available resources.

''(b) DISSEMINATION OF INFORMATION ON HEALTH DISPARITIES.—The Secretary shall develop and implement a plan for the dissemination of information and findings with respect to health disparities under titles I, II, III, and IV of this Act [see Tables for classification]. The plan shall—

''(1) include the participation of all agencies of the Department of Health and Human Services that are responsible for serving populations included in the health disparities research; and

''(2) have agency-specific strategies for disseminating relevant findings and information on health disparities and improving health care services to affected communities.''

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 287c–32. Centers of excellence for research education and training

(a) In general

The Director of the Center shall make awards of grants or contracts to designated biomedical and behavioral research institutions under paragraph (1) of subsection (c) of this section, or to consortia under paragraph (2) of such subsection, for the purpose of assisting the institutions in supporting programs of excellence in biomedical and behavioral research training for individuals who are members of minority health disparity populations or other health disparity populations.

(b) Required use of funds

An award may be made under subsection (a) of this section only if the applicant involved agrees that the grant will be expended—

(1) to train members of minority health disparity populations or other health disparity populations as professionals in the area of biomedical or behavioral research or both; or

(2) to expand, remodel, renovate, or alter existing research facilities or construct new research facilities for the purpose of conducting minority health disparities research and other health disparities research.

(c) Centers of excellence

(1) In general

For purposes of this section, a designated biomedical and behavioral research institution is a biomedical and behavioral research institution that—

(A) has a significant number of members of minority health disparity populations or other health disparity populations enrolled as students in the institution (including individuals accepted for enrollment in the institution);

(B) has been effective in assisting such students of the institution to complete the program of education or training and receive the degree involved;

(C) has made significant efforts to recruit minority students to enroll in and graduate from the institution, which may include providing means-tested scholarships and other financial assistance as appropriate; and

(D) has made significant recruitment efforts to increase the number of minority or other members of health disparity populations serving in faculty or administrative positions at the institution.

(2) Consortium

Any designated biomedical and behavioral research institution involved may, with other biomedical and behavioral institutions (designated or otherwise), including tribal health programs, form a consortium to receive an award under subsection (a) of this section.

(3) Application of criteria to other programs

In the case of any criteria established by the Director of the Center for purposes of determining whether institutions meet the conditions described in paragraph (1), this section may not, with respect to minority health disparity populations or other health disparity populations, be construed to authorize, require, or prohibit the use of such criteria in any program other than the program established in this section.

(d) Duration of grant

The period during which payments are made under a grant under subsection (a) of this section may not exceed 5 years. Such payments shall be subject to annual approval by the Director of the Center and to the availability of appropriations for the fiscal year involved to make the payments.

(e) Maintenance of effort

(1) In general

With respect to activities for which an award under subsection (a) of this section is authorized to be expended, the Director of the Center may not make such an award to a designated research institution or consortium for any fiscal year unless the institution, or institutions in the consortium, as the case may be, agree to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the institutions involved for the fiscal year preceding the fiscal year for which such institutions receive such an award.

(2) Use of Federal funds

With respect to any Federal amounts received by a designated research institution or consortium and available for carrying out activities for which an award under subsection (a) of this section is authorized to be expended, the Director of the Center may make such an award only if the institutions involved agree that the institutions will, before expending the award, expend the Federal amounts obtained from sources other than the award.

(f) Certain expenditures

The Director of the Center may authorize a designated biomedical and behavioral research institution to expend a portion of an award under subsection (a) of this section for research endowments.

(g) Definitions

For purposes of this section:

(1) The term ''designated biomedical and behavioral research institution'' has the meaning indicated for such term in subsection (c)(1) of this section. Such term includes any health professions school receiving an award of a grant or contract under section 293 of this title.

(2) The term ''program of excellence'' means any program carried out by a designated biomedical and behavioral research institution with an award under subsection (a) of this section, if the program is for purposes for which the institution involved is authorized in subsection (b) of this section to expend the grant.

(h) Authorization of appropriations

For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title IV, § 485F, as added Pub. L. 106–525, title I, § 102, Nov. 22, 2000, 114 Stat. 2501.)

§ 287c–33. Loan repayment program for minority health disparities research

(a) In general

The Director of the Center shall establish a program of entering into contracts with qualified health professionals under which such health professionals agree to engage in minority health disparities research or other health disparities research in consideration of the Federal Government agreeing to repay, for each year of engaging in such research, not more than $35,000 of the principal and interest of the educational loans of such health professionals.

(b) Service provisions

The provisions of sections 254*l*–1, 254m, and 254*o* of this title shall, except as inconsistent with subsection (a) of this section, apply to the program established in such subsection to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter.

(c) Requirement regarding health disparity populations

The Director of the Center shall ensure that not fewer than 50 percent of the contracts entered into under subsection (a) of this section are for appropriately qualified health professionals who are members of a health disparity population.

(d) Priority

With respect to minority health disparities research and other health disparities research under subsection (a) of this section, the Secretary shall ensure that priority is given to conducting projects of biomedical research.

(e) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(2) Availability of appropriations

Amounts available for carrying out this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were made available.

(July 1, 1944, ch. 373, title IV, § 485G, as added Pub. L. 106–525, title I, § 103, Nov. 22, 2000, 114 Stat. 2503.)

§ 287c–34. General provisions regarding the Center

(a) Administrative support for Center

The Secretary, acting through the Director of the National Institutes of Health, shall provide administrative support and support services to the Director of the Center and shall ensure that such support takes maximum advantage of existing administrative structures at the agencies of the National Institutes of Health.

(b) Evaluation and report

(1) Evaluation

Not later than 5 years after November 22, 2000, the Secretary shall conduct an evaluation to—

(A) determine the effect of this subpart on the planning and coordination of health disparities research programs at the agencies of the National Institutes of Health;

(B) evaluate the extent to which this subpart has eliminated the duplication of administrative resources among such Institutes, centers and divisions; and

(C) provide, to the extent determined by the Secretary to be appropriate, recommendations concerning future legislative modifications with respect to this subpart, for both minority health disparities research and other health disparities research.

(2) Minority health disparities research

The evaluation under paragraph (1) shall include a separate statement that applies subparagraphs (A) and (B) of such paragraph to minority health disparities research.

(3) Report

Not later than 1 year after the date on which the evaluation is commenced under paragraph (1), the Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Commerce of the House of Representatives, a report concerning the results of such evaluation.

(July 1, 1944, ch. 373, title IV, § 485H, as added Pub. L. 106–525, title I, § 104, Nov. 22, 2000, 114 Stat. 2503.)

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

PART F—RESEARCH ON WOMEN'S HEALTH

§ 287d. Office of Research on Women's Health

(a) Establishment

There is established within the Office of the Director of NIH an office to be known as the Office of Research on Women's Health (in this part referred to as the ''Office''). The Office shall be headed by a director, who shall be appointed by the Director of NIH.

(b) Purpose

The Director of the Office shall—

(1) identify projects of research on women's health that should be conducted or supported by the national research institutes;

(2) identify multidisciplinary research relating to research on women's health that should be so conducted or supported;

(3) carry out paragraphs (1) and (2) with respect to the aging process in women, with priority given to menopause;

(4) promote coordination and collaboration among entities conducting research identified under any of paragraphs (1) through (3);

(5) encourage the conduct of such research by entities receiving funds from the national research institutes;

(6) recommend an agenda for conducting and supporting such research;

(7) promote the sufficient allocation of the resources of the national research institutes for conducting and supporting such research;

(8) assist in the administration of section 289a–2 of this title with respect to the inclusion of women as subjects in clinical research; and

(9) prepare the report required in section 287d–2 of this title.

(c) Coordinating Committee

(1) In carrying out subsection (b) of this section, the Director of the Office shall establish a committee to be known as the Coordinating Committee on Research on Women's Health (in this subsection referred to as the ''Coordinating Committee'').

(2) The Coordinating Committee shall be composed of the Directors of the national research institutes (or the designees of the Directors).

(3) The Director of the Office shall serve as the chair of the Coordinating Committee.

(4) With respect to research on women's health, the Coordinating Committee shall assist the Director of the Office in—

(A) identifying the need for such research, and making an estimate each fiscal year of the funds needed to adequately support the research;

(B) identifying needs regarding the coordination of research activities, including intramural and extramural multidisciplinary activities;

(C) supporting the development of methodologies to determine the circumstances in which obtaining data specific to women (including data relating to the age of women and the membership of women in ethnic or racial groups) is an appropriate function of clinical trials of treatments and therapies;

(D) supporting the development and expansion of clinical trials of treatments and therapies for which obtaining such data has been determined to be an appropriate function; and

(E) encouraging the national research institutes to conduct and support such research, including such clinical trials.

(d) Advisory Committee

(1) In carrying out subsection (b) of this section, the Director of the Office shall establish an advisory committee to be known as the Advisory Committee on Research on Women's Health (in this subsection referred to as the ''Advisory Committee'').

(2) The Advisory Committee shall be composed of no fewer than 12, and not more than 18 individuals, who are not officers or employees of the Federal Government. The Director of NIH shall make appointments to the Advisory Committee from among physicians, practitioners, scientists, and other health professionals, whose clinical practice, research specialization, or professional expertise includes a significant focus on research on women's health. A majority of the members of the Advisory Committee shall be women.

(3) The Director of the Office shall serve as the chair of the Advisory Committee.

(4) The Advisory Committee shall—

(A) advise the Director of the Office on appropriate research activities to be undertaken by the national research institutes with respect to—

(i) research on women's health;

(ii) research on gender differences in clinical drug trials, including responses to pharmacological drugs;

(iii) research on gender differences in disease etiology, course, and treatment;

(iv) research on obstetrical and gynecological health conditions, diseases, and treatments; and

(v) research on women's health conditions which require a multidisciplinary approach;

(B) report to the Director of the Office on such research;

(C) provide recommendations to such Director regarding activities of the Office (including recommendations on the development of the methodologies described in subsection (c)(4)(C) of this section and recommendations on priorities in carrying out research described in subparagraph (A)); and

(D) assist in monitoring compliance with section 289a–2 of this title regarding the inclusion of women in clinical research.

(5)(A) The Advisory Committee shall prepare a biennial report describing the activities of the Committee, including findings made by the Committee regarding—

(i) compliance with section 289a–2 of this title;

(ii) the extent of expenditures made for research on women's health by the agencies of the National Institutes of Health; and

(iii) the level of funding needed for such research.

(B) The report required in subparagraph (A) shall be submitted to the Director of NIH for inclusion in the report required in section 283 of this title.

(e) Representation of women among researchers

The Secretary, acting through the Assistant Secretary for Personnel and in collaboration with the Director of the Office, shall determine the extent to which women are represented among senior physicians and scientists of the national research institutes and among physicians and scientists conducting research with funds provided by such institutes, and as appropriate, carry out activities to increase the extent of such representation.

(f) Definitions

For purposes of this part:

(1) The term ''women's health conditions'', with respect to women of all age, ethnic, and racial groups, means all diseases, disorders, and conditions (including with respect to mental health)—

(A) unique to, more serious, or more prevalent in women;

(B) for which the factors of medical risk or types of medical intervention are different for women, or for which it is unknown

whether such factors or types are different for women; or

(C) with respect to which there has been insufficient clinical research involving women as subjects or insufficient clinical data on women.

(2) The term ''research on women's health'' means research on women's health conditions, including research on preventing such conditions.

(July 1, 1944, ch. 373, title IV, § 486, as added Pub. L. 103–43, title I, § 141(a)(3), June 10, 1993, 107 Stat. 136; amended Pub. L. 105–340, title I, § 106, Oct. 31, 1998, 112 Stat. 3193.)

AMENDMENTS

1998—Subsec. (d)(2). Pub. L. 105–340 substituted ''NIH'' for ''the Office''.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 287d–1. National data system and clearinghouse on research on women's health

(a) Data system

(1) The Director of NIH, in consultation with the Director of the Office and the Director of the National Library of Medicine, shall establish a data system for the collection, storage, analysis, retrieval, and dissemination of information regarding research on women's health that is conducted or supported by the national research institutes. Information from the data system shall be available through information systems available to health care professionals and providers, researchers, and members of the public.

(2) The data system established under paragraph (1) shall include a registry of clinical trials of experimental treatments that have been developed for research on women's health. Such registry shall include information on subject eligibility criteria, sex, age, ethnicity or race, and the location of the trial site or sites. Principal investigators of such clinical trials shall provide this information to the registry within 30 days after it is available. Once a trial has been completed, the principal investigator shall provide the registry with information pertaining to the results, including potential toxicities or adverse effects associated with the experimental treatment or treatments evaluated.

(b) Clearinghouse

The Director of NIH, in consultation with the Director of the Office and with the National Library of Medicine, shall establish, maintain, and operate a program to provide information on research and prevention activities of the national research institutes that relate to research on women's health.

(July 1, 1944, ch. 373, title IV, § 486A, as added Pub. L. 103–43, title I, § 141(a)(3), June 10, 1993, 107 Stat. 138.)

§ 287d–2. Biennial report

(a) In general

With respect to research on women's health, the Director of the Office shall, not later than February 1, 1994, and biennially thereafter, prepare a report—

(1) describing and evaluating the progress made during the preceding 2 fiscal years in research and treatment conducted or supported by the National Institutes of Health;

(2) describing and analyzing the professional status of women physicians and scientists of such Institutes, including the identification of problems and barriers regarding advancements;

(3) summarizing and analyzing expenditures made by the agencies of such Institutes (and by such Office) during the preceding 2 fiscal years; and

(4) making such recommendations for legislative and administrative initiatives as the Director of the Office determines to be appropriate.

(b) Inclusion in biennial report of Director of NIH

The Director of the Office shall submit each report prepared under subsection (a) of this section to the Director of NIH for inclusion in the report submitted to the President and the Congress under section 283 of this title.

(July 1, 1944, ch. 373, title IV, § 486B, as added Pub. L. 103–43, title I, § 141(a)(3), June 10, 1993, 107 Stat. 139.)

PART G—AWARDS AND TRAINING

AMENDMENTS

1993—Pub. L. 103–43, title I, § 141(a)(2), June 10, 1993, 107 Stat. 136, redesignated part F ''Awards and Training'' as G. Former part G ''General Provisions'' redesignated H.

§ 288. Ruth L. Kirschstein National Research Service Awards

(a) Biomedical and behavioral research and research training; programs and institutions included; restriction; special consideration

(1) The Secretary shall—

(A) provide Ruth L. Kirschstein National Research Service Awards for—

(i) biomedical and behavioral research at the National Institutes of Health in matters relating to the cause, diagnosis, prevention, and treatment of the diseases or other health problems to which the activities of the National Institutes of Health and Administration[1] are directed;

[1] So in original. Reference to Administration probably should not appear.

(ii) training at the National Institutes of Health and at the Administration[1] of individuals to undertake such research;

(iii) biomedical and behavioral research and health services research (including research in primary medical care) at public and nonprofit private entities; and

(iv) pre-doctoral and post-doctoral training at public and private institutions of individuals to undertake biomedical and behavioral research;

(B) make grants to public and nonprofit private institutions to enable such institutions to make Ruth L. Kirschstein National Research Service Awards for research (and training to undertake biomedical and behavioral research) in the matters described in subparagraph (A)(i) to individuals selected by such institutions; and

(C) provide contracts for scholarships and loan repayments in accordance with sections 288–4 and 288–5 of this title, subject to providing not more than an aggregate 50 such contracts during the fiscal years 1994 through 1996.

A reference in this subsection to the National Institutes of Health shall be considered to include the institutes, agencies, divisions, and bureaus included in the National Institutes of Health or under the Administration,[1] as the case may be.

(2) Ruth L. Kirschstein National Research Service Awards may not be used to support residency training of physicians and other health professionals.

(3) In awarding Ruth L. Kirschstein National Research Service Awards under this section, the Secretary shall take account of the Nation's overall need for biomedical research personnel by giving special consideration to physicians who agree to undertake a minimum of two years of biomedical research.

(4) The Secretary shall carry out paragraph (1) in a manner that will result in the recruitment of women, and individuals from disadvantaged backgrounds (including racial and ethnic minorities), into fields of biomedical or behavioral research and in the provision of research training to women and such individuals.

(b) Prerequisites for Award; review and approval by appropriate advisory councils; Award period; uses for Award; payments to non-Federal public or nonprofit private institutions

(1) No Ruth L. Kirschstein National Research Service Award may be made by the Secretary to any individual unless—

(A) the individual has submitted to the Secretary an application therefor and the Secretary has approved the application;

(B) the individual provides, in such form and manner as the Secretary shall by regulation prescribe, assurances satisfactory to the Secretary that the individual will meet the service requirement of subsection (c) of this section; and

(C) in the case of a Ruth L. Kirschstein National Research Service Award for a purpose described in subsection (a)(1)(A)(iii) of this section, the individual has been sponsored (in such manner as the Secretary may by regulation require) by the institution at which the research or training under the award will be conducted.

An application for an award shall be in such form, submitted in such manner, and contain such information, as the Secretary may by regulation prescribe.

(2) The making of grants under subsection (a)(1)(B) of this section for Ruth L. Kirschstein National Research Service Awards shall be subject to review and approval by the appropriate advisory councils within the Department of Health and Human Services (A) whose activities relate to the research or training under the awards, or (B) for the entity at which such research or training will be conducted.

(3) No grant may be made under subsection (a)(1)(B) of this section unless an application therefor has been submitted to and approved by the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary may by regulation prescribe. Subject to the provisions of this section (other than paragraph (1)), Ruth L. Kirschstein National Research Service Awards made under a grant under subsection (a)(1)(B) of this section shall be made in accordance with such regulations as the Secretary shall prescribe.

(4) The period of any Ruth L. Kirschstein National Research Service Award made to any individual under subsection (a) of this section may not exceed—

(A) five years in the aggregate for pre-doctoral training; and

(B) three years in the aggregate for post-doctoral training;

unless the Secretary for good cause shown waives the application of such limit to such individual.

(5) Ruth L. Kirschstein National Research Service Awards shall provide for such stipends, tuition, fees, and allowances (including travel and subsistence expenses and dependency allowances), adjusted periodically to reflect increases in the cost of living, for the recipients of the awards as the Secretary may deem necessary. A Ruth L. Kirschstein National Research Service Award made to an individual for research or research training at a non-Federal public or nonprofit private institution shall also provide for payments to be made to the institution for the cost of support services (including the cost of faculty salaries, supplies, equipment, general research support, and related items) provided such individual by such institution. The amount of any such payments to any institution shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the institution for establishing and maintaining the quality of its biomedical and behavioral research and training programs.

(c) Health research or teaching; service period; recovery upon noncompliance with service requirement, formula; cancellation or waiver of obligation

(1) Each individual who is awarded a Ruth L. Kirschstein National Research Service Award

for postdoctoral research training shall, in accordance with paragraph (3), engage in research training, research, or teaching that is health-related (or any combination thereof) for the period specified in paragraph (2). Such period shall be served in accordance with the usual patterns of scientific employment.

(2)(A) The period referred to in paragraph (1) is 12 months, or one month for each month for which the individual involved receives a Ruth L. Kirschstein National Research Service Award for postdoctoral research training, whichever is less.

(B) With respect to postdoctoral research training, in any case in which an individual receives a Ruth L. Kirschstein National Research Service Award for more than 12 months, the 13th month and each subsequent month of performing activities under the Award shall be considered to be activities engaged in toward satisfaction of the requirement established in paragraph (1) regarding a period of service.

(3) The requirement of paragraph (1) shall be complied with by any individual to whom it applies within such reasonable period of time, after the completion of such individual's award, as the Secretary shall by regulation prescribe. The Secretary shall by regulation prescribe the type of research and teaching in which an individual may engage to comply with such requirement and such other requirements respecting research and teaching as the Secretary considers appropriate.

(4)(A) If any individual to whom the requirement of paragraph (1) is applicable fails, within the period prescribed by paragraph (3), to comply with such requirements, the United States shall be entitled to recover from such individual an amount determined in accordance with the formula—

$$A=\phi\left(\frac{t-s}{t}\right)$$

in which ''A'' is the amount the United States is entitled to recover; ''ϕ'' is the sum of the total amount paid under one or more Ruth L. Kirschstein National Research Service Awards to such individual; ''t'' is the total number of months in such individual's service obligation; and ''s'' is the number of months of such obligation served by such individual in accordance with paragraphs (1) and (2) of this subsection.

(B) Any amount which the United States is entitled to recover under subparagraph (A) shall, within the three-year period beginning on the date the United States becomes entitled to recover such amount, be paid to the United States. Until any amount due the United States under subparagraph (A) on account of any Ruth L. Kirschstein National Research Service Award is paid, there shall accrue to the United States interest on such amount at a rate fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date the United States becomes entitled to such amount.

(5)(A) Any obligation of an individual under paragraph (1) shall be canceled upon the death of such individual.

(B) The Secretary shall by regulation provide for the waiver or suspension of any such obligation applicable to any individual whenever compliance by such individual is impossible or would involve substantial hardship to such individual or would be against equity and good conscience.

(d) Authorization of appropriations; apportionment

For the purpose of carrying out this section, there are authorized to be appropriated $400,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996. Of the amounts appropriated under this subsection—

(1) not less than 15 percent shall be made available for payments under Ruth L. Kirschstein National Research Service Awards provided by the Secretary under subsection (a)(1)(A) of this section;

(2) not less than 50 percent shall be made available for grants under subsection (a)(1)(B) of this section for Ruth L. Kirschstein National Research Service Awards;

(3) 1 percent shall be made available to the Secretary, acting through the Administrator of the Health Resources and Services Administration, for payments under Ruth L. Kirschstein National Research Service Awards which (A) are made to individuals affiliated with entities which have received grants or contracts under section 293k, 293*l*,[2] or 293m[2] of this title, and (B) are for research in primary medical care; and 1 percent shall be made available for payments under Ruth L. Kirschstein National Research Service Awards made for health services research by the Agency for Healthcare Research and Quality under section 242b(a) of this title; and

(4) not more than 4 percent may be obligated for Ruth L. Kirschstein National Research Service Awards for periods of three months or less.

(July 1, 1944, ch. 373, title IV, § 487, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 869; amended Pub. L. 100–607, title I, § 151, title VI, § 635, Nov. 4, 1988, 102 Stat. 3058, 3148; Pub. L. 101–93, § 5(d), Aug. 16, 1989, 103 Stat. 612; Pub. L. 101–239, title VI, § 6103(e)(7), Dec. 19, 1989, 103 Stat. 2208; Pub. L. 102–321, title I, § 163(b)(4), July 10, 1992, 106 Stat. 376; Pub. L. 103–43, title XVI, §§ 1601, 1602, 1632, 1641, title XX, § 2008(b)(14), June 10, 1993, 107 Stat. 181, 186, 211; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 107–206, title I, § 804(a), (b), Aug. 2, 2002, 116 Stat. 874.)

REFERENCES IN TEXT

Sections 293*l* and 293m of this title, referred to in subsec. (d)(3), were repealed, and a new section 293*l*, relating to different subject matter, was added by Pub. L. 105–392, title I, § 102(4), Nov. 13, 1998, 112 Stat. 3539.

AMENDMENTS

2002—Pub. L. 107–206 inserted ''Ruth L. Kirschstein'' before ''National Research Service Award'' and ''National Research Service Awards'' wherever appearing in section catchline and text.

1999—Subsec. (d)(3). Pub. L. 106–129 substituted ''Agency for Healthcare Research and Quality'' for ''Agency for Health Care Policy and Research''.

1993—Subsec. (a)(1)(C). Pub. L. 103–43, § 1632, added subpar. (C).

[2] See References in Text note below.

Subsec. (a)(4). Pub. L. 103–43, § 1601, added par. (4).

Subsec. (c)(1), (2). Pub. L. 103–43, § 1602, added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) Each individual who is awarded a National Research Service Award (other than an individual who is a pre-baccalaureate student who is awarded a National Research Service Award for research training) shall, in accordance with paragraph (3), engage in health research or teaching or any combination thereof which is in accordance with the usual patterns of academic employment, for a period computed in accordance with paragraph (2).

''(2) For each month for which an individual receives a National Research Service Award which is made for a period in excess of twelve months, such individual shall engage in one month of health research or teaching or any combination thereof which is in accordance with the usual patterns of academic employment.''

Subsec. (d). Pub. L. 103–43, § 1641(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''For the purpose of making payments under National Research Service Awards and under grants for such Awards, there are authorized to be appropriated $300,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.''

Subsec. (d)(3). Pub. L. 103–43, §§ 1641(2), 2008(b)(14), substituted ''1 percent'' for ''one-half of one percent'' in two places, ''293k, 293*l*, or 293m'' for ''295g, 295g–4, or 295g–6'', and ''242b(a)'' for ''242b(a)(3)''.

1992—Subsec. (a)(1). Pub. L. 102–321 struck out ''and the Alcohol, Drug Abuse, and Mental Health Administration'' before ''in matters relating to'' in subpar. (A)(i) and struck out ''or the Alcohol, Drug Abuse, and Mental Health Administration'' before ''shall be considered'' in last sentence.

1989—Subsec. (d)(3). Pub. L. 101–93 directed that par. (3), as similarly amended by sections 151(2) and 635 of Pub. L. 100–607, be amended to read as if the amendment made by such section 635 had not been enacted. See 1988 Amendment note below.

Subsec. (d)(3)(B). Pub. L. 101–239 substituted ''Agency for Health Care Policy and Research'' for ''National Center for Health Services Research and Health Care Technology Assessment''.

1988—Subsec. (d). Pub. L. 100–607, § 151(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''There are authorized to be appropriated to make payments under National Research Service Awards and under grants for such awards $244,000,000 for fiscal year 1986, $260,000,000 for fiscal year 1987, and $275,000,000 for fiscal year 1988.''

Subsec. (d)(3). Pub. L. 100–607, §§ 151(2), 635, made identical amendments, inserting ''to the Secretary, acting through the Administrator of the Health Resources and Services Administration,'' after first reference to ''available''.

CHANGE OF NAME

Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874, provided that: ''Any reference in any law (other than this Act [see Tables for classification]), regulation, document, record, map, or other paper of the United States to 'National Research Service Awards' shall be considered to be a reference to 'Ruth L. Kirschstein National Research Service Awards'.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 288–1. Loan repayment program for research with respect to acquired immune deficiency syndrome

(a) In general

The Secretary shall carry out a program of entering into agreements with appropriately qualified health professionals under which such health professionals agree to conduct, as employees of the National Institutes of Health, research with respect to acquired immune deficiency syndrome in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $35,000 of the principal and interest of the educational loans of such health professionals.

(b) Applicability of certain provisions

With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter, the provisions of such subpart shall, except as inconsistent with subsection (a) of this section, apply to the program established in such subsection (a) of this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program established in such subpart.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 2001.

(July 1, 1944, ch. 373, title IV, § 487A, as added Pub. L. 100–607, title VI, § 634(a), Nov. 4, 1988, 102 Stat. 3148; amended Pub. L. 103–43, title XVI, § 1611(a), June 10, 1993, 107 Stat. 181; Pub. L. 105–392, title IV, § 410(a), Nov. 13, 1998, 112 Stat. 3589.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392, § 410(a)(1), substituted ''$35,000'' for ''$20,000''.

Subsec. (c). Pub. L. 105–392, § 410(a)(2), substituted ''2001'' for ''1996''.

1993—Pub. L. 103–43 amended section generally, in subsec. (a) redesignating former par. (1) as entire subsec., striking out provisions setting a deadline for implementation of the program and former par. (2) containing a limitation that the health professional have a substantial amount of educational loans relative to income and not have been employed at the National Institutes of Health during the 1-year period preceding Nov. 4, 1988, reenacting subsec. (b) without change, and in subsec. (c) redesignating former par. (1) as entire subsec., substituting authorization of appropriations for fiscal years 1994 through 1996 for authorization of appropriations for fiscal years 1989 through 1991, and striking out former par. (2) relating to continued availability of appropriated amounts.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 1611(b) of Pub. L. 103–43 provided that: ''The amendment made by subsection (a) [amending this section] does not apply to any agreement entered into under section 487A of the Public Health Service Act [this section] before the date of the enactment of this Act [June 10, 1993]. Each such agreement continues to be subject to the terms of the agreement in effect on the day before such date.''

§ 288–2. Loan repayment program for research with respect to contraception and infertility

(a) Establishment

The Secretary, in consultation with the Director of the National Institute of Child Health and Human Development, shall establish a program of entering into contracts with qualified health professionals (including graduate students)

under which such health professionals agree to conduct research with respect to contraception, or with respect to infertility, in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $35,000 of the principal and interest of the educational loans of such health professionals.

(b) Contracts, obligated service, breach of contract

The provisions of sections 254*l*–1, 254m, and 254*o* of this title shall, except as inconsistent with subsection (a) of this section, apply to the program established in subsection (a) of this section to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter.

(c) Availability of funds

Amounts available for carrying out this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were made available.

(July 1, 1944, ch. 373, title IV, § 487B, as added Pub. L. 103–43, title X, § 1002, June 10, 1993, 107 Stat. 166; amended Pub. L. 105–392, title IV, § 410(b), Nov. 13, 1998, 112 Stat. 3589.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392 substituted ''$35,000'' for ''$20,000''.

§ 288–3. Loan repayment program for research generally

(a) In general

(1) Authority for program

Subject to paragraph (2), the Secretary shall carry out a program of entering into contracts with appropriately qualified health professionals under which such health professionals agree to conduct research, as employees of the National Institutes of Health, in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $35,000 of the principal and interest of the educational loans of such health professionals.

(2) Limitation

The Secretary may not enter into an agreement with a health professional pursuant to paragraph (1) unless such professional—

(A) has a substantial amount of educational loans relative to income; and

(B) agrees to serve as an employee of the National Institutes of Health for purposes of paragraph (1) for a period of not less than 3 years.

(b) Applicability of certain provisions

With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter, the provisions of such subpart shall, except as inconsistent with subsection (a) of this section, apply to the program established in such subsection (a) of this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program established in such subpart.

(July 1, 1944, ch. 373, title IV, § 487C, as added Pub. L. 103–43, title XVI, § 1621, June 10, 1993, 107 Stat. 182; amended Pub. L. 105–392, title IV, § 410(c), Nov. 13, 1998, 112 Stat. 3589.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–392 substituted ''$35,000'' for ''$20,000''.

§ 288–4. Undergraduate scholarship program regarding professions needed by National Research Institutes

(a) Establishment of program

(1) In general

Subject to section 288(a)(1)(C) of this title, the Secretary, acting through the Director of NIH, may carry out a program of entering into contracts with individuals described in paragraph (2) under which—

(A) the Director of NIH agrees to provide to the individuals scholarships for pursuing, as undergraduates at accredited institutions of higher education, academic programs appropriate for careers in professions needed by the National Institutes of Health; and

(B) the individuals agree to serve as employees of the National Institutes of Health, for the period described in subsection (c) of this section, in positions that are needed by the National Institutes of Health and for which the individuals are qualified.

(2) Individuals from disadvantaged backgrounds

The individuals referred to in paragraph (1) are individuals who—

(A) are enrolled or accepted for enrollment as full-time undergraduates at accredited institutions of higher education; and

(B) are from disadvantaged backgrounds.

(b) Facilitation of interest of students in careers at National Institutes of Health

In providing employment to individuals pursuant to contracts under subsection (a)(1) of this section, the Director of NIH shall carry out activities to facilitate the interest of the individuals in pursuing careers as employees of the National Institutes of Health.

(c) Period of obligated service

(1) Duration of service

For purposes of subparagraph (B) of subsection (a)(1) of this section, the period of service for which an individual is obligated to serve as an employee of the National Institutes of Health is, subject to paragraph (2)(A), 12 months for each academic year for which the scholarship under such subsection is provided.

(2) Schedule for service

(A) Subject to subparagraph (B), the Director of NIH may not provide a scholarship under subsection (a) of this section unless the individual applying for the scholarship agrees that—

(i) the individual will serve as an employee of the National Institutes of Health full-

time for not less than 10 consecutive weeks of each year during which the individual is attending the educational institution involved and receiving such a scholarship;

(ii) the period of service as such an employee that the individual is obligated to provide under clause (i) is in addition to the period of service as such an employee that the individual is obligated to provide under subsection (a)(1)(B) of this section; and

(iii) not later than 60 days after obtaining the educational degree involved, the individual will begin serving full-time as such an employee in satisfaction of the period of service that the individual is obligated to provide under subsection (a)(1)(B) of this section.

(B) The Director of NIH may defer the obligation of an individual to provide a period of service under subsection (a)(1)(B) of this section, if the Director determines that such a deferral is appropriate.

(3) Applicability of certain provisions relating to appointment and compensation

For any period in which an individual provides service as an employee of the National Institutes of Health in satisfaction of the obligation of the individual under subsection (a)(1)(B) of this section or paragraph (2)(A)(i), the individual may be appointed as such an employee without regard to the provisions of title 5 relating to appointment and compensation.

(d) Provisions regarding scholarship

(1) Approval of academic program

The Director of NIH may not provide a scholarship under subsection (a) of this section for an academic year unless—

(A) the individual applying for the scholarship has submitted to the Director a proposed academic program for the year and the Director has approved the program; and

(B) the individual agrees that the program will not be altered without the approval of the Director.

(2) Academic standing

The Director of NIH may not provide a scholarship under subsection (a) of this section for an academic year unless the individual applying for the scholarship agrees to maintain an acceptable level of academic standing, as determined by the educational institution involved in accordance with regulations issued by the Secretary.

(3) Limitation on amount

The Director of NIH may not provide a scholarship under subsection (a) of this section for an academic year in an amount exceeding $20,000.

(4) Authorized uses

A scholarship provided under subsection (a) of this section may be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses incurred in attending the school involved.

(5) Contract regarding direct payments to institution

In the case of an institution of higher education with respect to which a scholarship under subsection (a) of this section is provided, the Director of NIH may enter into a contract with the institution under which the amounts provided in the scholarship for tuition and other educational expenses are paid directly to the institution.

(e) Penalties for breach of scholarship contract

The provisions of section 254*o* of this title shall apply to the program established in subsection (a) of this section to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in section 254*l*–1 of this title.

(f) Requirement of application

The Director of NIH may not provide a scholarship under subsection (a) of this section unless an application for the scholarship is submitted to the Director and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out this section.

(g) Availability of authorization of appropriations

Amounts appropriated for a fiscal year for scholarships under this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were appropriated.

(July 1, 1944, ch. 373, title IV, § 487D, as added Pub. L. 103–43, title XVI, § 1631, June 10, 1993, 107 Stat. 183.)

REFERENCES IN TEXT

The provisions of title 5 relating to appointment and compensation, referred to in subsec. (c)(3), are classified generally to section 3301 et seq. and section 5301 et seq., respectively, of Title 5, Government Organization and Employees.

§ 288–5. Loan repayment program regarding clinical researchers from disadvantaged backgrounds

(a) Implementation of program

(1) In general

Subject to section 288(a)(1)(C) of this title, the Secretary, acting through the Director of NIH may, subject to paragraph (2), carry out a program of entering into contracts with appropriately qualified health professionals who are from disadvantaged backgrounds under which such health professionals agree to conduct clinical research in consideration of the Federal Government agreeing to pay, for each year of such service, not more than $35,000 of the principal and interest of the educational loans of the health professionals.

(2) Limitation

The Director of NIH may not enter into a contract with a health professional pursuant to paragraph (1) unless such professional has a substantial amount of education loans relative to income.

(3) Applicability of certain provisions regarding obligated service

Except to the extent inconsistent with this section, the provisions of sections 254*l*–1, 254m

and 254*o* of this title shall apply to the program established in paragraph (1) to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in section 254*l*–1 of this title.

(b) Availability of authorization of appropriations

Amounts appropriated for a fiscal year for contracts under subsection (a) of this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were appropriated.

(July 1, 1944, ch. 373, title IV, § 487E, as added Pub. L. 103–43, title XVI, § 1631, June 10, 1993, 107 Stat. 185; amended Pub. L. 105–392, title IV, § 410(d), Nov. 13, 1998, 112 Stat. 3589; Pub. L. 106–554, § 1(a)(1) [title II, § 223], Dec. 21, 2000, 114 Stat. 2763, 2763A–30.)

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–554 struck out ''as employees of the National Institutes of Health'' after ''conduct clinical research''.

1998—Subsec. (a)(1). Pub. L. 105–392, § 410(d)(1), substituted ''$35,000'' for ''$20,000''.

Subsec. (a)(3). Pub. L. 105–392, § 410(d)(2), substituted ''254*l*–1, 254m'' for ''254m''.

§ 288–5a. Loan repayment program regarding clinical researchers

(a) In general

The Secretary, acting through the Director of the National Institutes of Health, shall establish a program to enter into contracts with qualified health professionals under which such health professionals agree to conduct clinical research, in consideration of the Federal Government agreeing to repay, for each year of service conducting such research, not more than $35,000 of the principal and interest of the educational loans of such health professionals.

(b) Application of provisions

The provisions of sections 254*l*–1, 254m, and 254*o* of this title shall, except as inconsistent with subsection (a) of this section, apply to the program established under subsection (a) of this section to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter.

(c) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(2) Availability

Amounts appropriated for carrying out this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were made available.

(July 1, 1944, ch. 373, title IV, § 487F, as added Pub. L. 106–505, title II, § 205, Nov. 13, 2000, 114 Stat. 2329.)

CODIFICATION

Another section 487F of act July 1, 1944, is classified to section 288–6 of this title.

§ 288–6. Pediatric research loan repayment program

(a) In general

The Secretary, in consultation with the Director of NIH, may establish a pediatric research loan repayment program. Through such program—

(1) the Secretary shall enter into contracts with qualified health professionals under which such professionals will agree to conduct pediatric research, in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $35,000 of the principal and interest of the educational loans of such professionals; and

(2) the Secretary shall, for the purpose of providing reimbursements for tax liability resulting from payments made under paragraph (1) on behalf of an individual, make payments, in addition to payments under such paragraph, to the individual in an amount equal to 39 percent of the total amount of loan repayments made for the taxable year involved.

(b) Application of other provisions

The provisions of sections 254*l*–1, 254m, and 254*o* of this title shall, except as inconsistent with paragraph (1), apply to the program established under such paragraph to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established under subpart III of part D of subchapter II of this chapter.

(c) Funding

(1) In general

For the purpose of carrying out this section with respect to a national research institute the Secretary may reserve, from amounts appropriated for such institute for the fiscal year involved, such amounts as the Secretary determines to be appropriate.

(2) Availability of funds

Amounts made available to carry out this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which such amounts were made available.

(July 1, 1944, ch. 373, title IV, § 487F, as added Pub. L. 106–310, div. A, title X, § 1002(b), Oct. 17, 2000, 114 Stat. 1129.)

CODIFICATION

Another section 487F of act July 1, 1944, is classified to section 288–5a of this title.

§ 288a. Visiting Scientist Awards

(a) The Secretary may make awards (hereafter in this section referred to as ''Visiting Scientist Awards'') to outstanding scientists who agree to serve as visiting scientists at institutions of postsecondary education which have significant enrollments of disadvantaged students. Visiting Scientist Awards shall be made by the Secretary to enable the faculty and students of such institutions to draw upon the special talents of scientists from other institutions for the purpose of receiving guidance, advice, and instruction with regard to research, teaching, and cur-

riculum development in the biomedical and behavioral sciences and such other aspects of these sciences as the Secretary shall deem appropriate.

(b) The amount of each Visiting Scientist Award shall include such sum as shall be commensurate with the salary or remuneration which the individual receiving the award would have been entitled to receive from the institution with which the individual has, or had, a permanent or immediately prior affiliation. Eligibility for and terms of Visiting Scientist Awards shall be determined in accordance with regulations the Secretary shall prescribe.

(July 1, 1944, ch. 373, title IV, § 488, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 872.)

§ 288b. Studies respecting biomedical and behavioral research personnel

(a) Scope of undertaking

The Secretary shall, in accordance with subsection (b) of this section, arrange for the conduct of a continuing study to—

(1) establish (A) the Nation's overall need for biomedical and behavioral research personnel, (B) the subject areas in which such personnel are needed and the number of such personnel needed in each such area, and (C) the kinds and extent of training which should be provided such personnel;

(2) assess (A) current training programs available for the training of biomedical and behavioral research personnel which are conducted under this chapter, at or through national research institutes under the National Institutes of Health, and (B) other current training programs available for the training of such personnel;

(3) identify the kinds of research positions available to and held by individuals completing such programs;

(4) determine, to the extent feasible, whether the programs referred to in clause (B) of paragraph (2) would be adequate to meet the needs established under paragraph (1) if the programs referred to in clause (A) of paragraph (2) were terminated; and

(5) determine what modifications in the programs referred to in paragraph (2) are required to meet the needs established under paragraph (1).

(b) Arrangement with National Academy of Sciences or other nonprofit private groups or associations

(1) The Secretary shall request the National Academy of Sciences to conduct the study required by subsection (a) of this section under an arrangement under which the actual expenses incurred by such Academy in conducting such study will be paid by the Secretary. If the National Academy of Sciences is willing to do so, the Secretary shall enter into such an arrangement with such Academy for the conduct of such study.

(2) If the National Academy of Sciences is unwilling to conduct such study under such an arrangement, then the Secretary shall enter into a similar arrangement with other appropriate nonprofit private groups or associations under which such groups or associations will conduct such study and prepare and submit the reports thereon as provided in subsection (c) of this section.[1]

(3) The National Academy of Sciences or other group or association conducting the study required by subsection (a) of this section shall conduct such study in consultation with the Director of NIH.

(July 1, 1944, ch. 373, title IV, § 489, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 872; amended Pub. L. 102–321, title I, § 163(b)(5), July 10, 1992, 106 Stat. 376.)

REFERENCES IN TEXT

Subsection (c), referred to in subsec. (b)(2), was omitted from the Code. See Codification note below.

CODIFICATION

Subsec. (c) of this section, which required the Secretary to submit a report on results of the study required under subsec. (a) of this section to certain committees of Congress at least once every four years, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 96 of House Document No. 103–7.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–321 struck out ''and institutes under the Alcohol, Drug Abuse, and Mental Health Administration'' after ''National Institutes of Health''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

PART H—GENERAL PROVISIONS

AMENDMENTS

1993—Pub. L. 103–43, title I, § 141(a)(2), June 10, 1993, 107 Stat. 136, redesignated part G ''General Provisions'' as H. Former part H ''National Foundation for Biomedical Research'' redesignated I.

§ 289. Institutional review boards; ethics guidance program

(a) The Secretary shall by regulation require that each entity which applies for a grant, contract, or cooperative agreement under this chapter for any project or program which involves the conduct of biomedical or behavioral research involving human subjects submit in or with its application for such grant, contract, or cooperative agreement assurances satisfactory to the Secretary that it has established (in accordance with regulations which the Secretary shall prescribe) a board (to be known as an ''Institutional Review Board'') to review biomedical and behavioral research involving human subjects conducted at or supported by such entity in order to protect the rights of the human subjects of such research.

(b)(1) The Secretary shall establish a program within the Department of Health and Human Services under which requests for clarification and guidance with respect to ethical issues raised in connection with biomedical or behav-

[1] See References in Text note below.

ioral research involving human subjects are responded to promptly and appropriately.

(2) The Secretary shall establish a process for the prompt and appropriate response to information provided to the Director of NIH respecting incidences of violations of the rights of human subjects of research for which funds have been made available under this chapter. The process shall include procedures for the receiving of reports of such information from recipients of funds under this chapter and taking appropriate action with respect to such violations.

(July 1, 1944, ch. 373, title IV, § 491, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 873.)

STUDY CONCERNING RESEARCH INVOLVING CHILDREN

Pub. L. 107–109, § 12, Jan. 4, 2002, 115 Stat. 1416, provided that:

''(a) CONTRACT WITH INSTITUTE OF MEDICINE.—The Secretary of Health and Human Services shall enter into a contract with the Institute of Medicine for—

''(1) the conduct, in accordance with subsection (b), of a review of—

''(A) Federal regulations in effect on the date of the enactment of this Act [Jan. 4, 2002] relating to research involving children;

''(B) federally prepared or supported reports relating to research involving children; and

''(C) federally supported evidence-based research involving children; and

''(2) the submission to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, not later than two years after the date of enactment of this Act, of a report concerning the review conducted under paragraph (1) that includes recommendations on best practices relating to research involving children.

''(b) AREAS OF REVIEW.—In conducting the review under subsection (a)(1), the Institute of Medicine shall consider the following:

''(1) The written and oral process of obtaining and defining 'assent', 'permission' and 'informed consent' with respect to child clinical research participants and the parents, guardians, and the individuals who may serve as the legally authorized representatives of such children (as defined in subpart A of part 46 of title 45, Code of Federal Regulations).

''(2) The expectations and comprehension of child research participants and the parents, guardians, or legally authorized representatives of such children, for the direct benefits and risks of the child's research involvement, particularly in terms of research versus therapeutic treatment.

''(3) The definition of 'minimal risk' with respect to a healthy child or a child with an illness.

''(4) The appropriateness of the regulations applicable to children of differing ages and maturity levels, including regulations relating to legal status.

''(5) Whether payment (financial or otherwise) may be provided to a child or his or her parent, guardian, or legally authorized representative for the participation of the child in research, and if so, the amount and type of payment that may be made.

''(6) Compliance with the regulations referred to in subsection (a)(1)(A), the monitoring of such compliance (including the role of institutional review boards), and the enforcement actions taken for violations of such regulations.

''(7) The unique roles and responsibilities of institutional review boards in reviewing research involving children, including composition of membership on institutional review boards.

''(c) REQUIREMENTS OF EXPERTISE.—The Institute of Medicine shall conduct the review under subsection (a)(1) and make recommendations under subsection (a)(2) in conjunction with experts in pediatric medicine, pediatric research, and the ethical conduct of research involving children.''

REQUIREMENT FOR ADDITIONAL PROTECTIONS FOR CHILDREN INVOLVED IN RESEARCH

Pub. L. 106–310, div. A, title XXVII, § 2701, Oct. 17, 2000, 114 Stat. 1167, as amended by Pub. L. 106–505, title X, § 1001(a), Nov. 13, 2000, 114 Stat. 2350, provided that: ''Notwithstanding any other provision of law, not later than 6 months after the date of the enactment of this Act [Oct. 17, 2000], the Secretary of Health and Human Services shall require that all research involving children that is conducted, supported, or regulated by the Department of Health and Human Services be in compliance with subpart D of part 46 of title 45, Code of Federal Regulations.''

[Pub. L. 106–505, title X, § 1001(b), Nov. 13, 2000, 114 Stat. 2350, provided that: ''The amendment made by subsection (a) [amending section 2701 of Pub. L. 106–310, set out above] takes effect on the date of the enactment of the Children's Health Act of 2000 [Oct. 17, 2000].'']

§ 289a. Peer review requirements

(a) Applications for biomedical and behavioral research grants, cooperative agreements, and contracts; regulations

(1) The Secretary, acting through the Director of NIH, shall by regulation require appropriate technical and scientific peer review of—

(A) applications made for grants and cooperative agreements under this chapter for biomedical and behavioral research; and

(B) applications made for biomedical and behavioral research and development contracts to be administered through the National Institutes of Health.

(2) Regulations promulgated under paragraph (1) shall require that the review of applications made for grants, contracts, and cooperative agreements required by the regulations be conducted—

(A) to the extent practical, in a manner consistent with the system for technical and scientific peer review applicable on November 20, 1985, to grants under this chapter for biomedical and behavioral research, and

(B) to the extent practical, by technical and scientific peer review groups performing such review on or before November 20, 1985,

and shall authorize such review to be conducted by groups appointed under sections 282(b)(6) and 284(c)(3) of this title.

(b) Periodic review of research at National Institutes of Health

The Director of NIH shall establish procedures for periodic technical and scientific peer review of research at the National Institutes of Health. Such procedures shall require that—

(1) the reviewing entity be provided a written description of the research to be reviewed, and

(2) the reviewing entity provide the advisory council of the national research institute involved with such description and the results of the review by the entity,

and shall authorize such review to be conducted by groups appointed under sections 282(b)(6) and 284(c)(3) of this title.

(c) Compliance with requirements for inclusion of women and minorities in clinical research

(1) In technical and scientific peer review under this section of proposals for clinical research, the consideration of any such proposal (including the initial consideration) shall, except as provided in paragraph (2), include an evaluation of the technical and scientific merit of the proposal regarding compliance with section 289a–2 of this title.

(2) Paragraph (1) shall not apply to any proposal for clinical research that, pursuant to subsection (b) of section 289a–2 of this title, is not subject to the requirement of subsection (a) of such section regarding the inclusion of women and members of minority groups as subjects in clinical research.

(July 1, 1944, ch. 373, title IV, § 492, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 874; amended Pub. L. 103–43, title I, § 132, June 10, 1993, 107 Stat. 135.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 added subsec. (c).

§ 289a–1. Certain provisions regarding review and approval of proposals for research

(a) Review as precondition to research

(1) Protection of human research subjects

(A) In the case of any application submitted to the Secretary for financial assistance to conduct research, the Secretary may not approve or fund any application that is subject to review under section 289(a) of this title by an Institutional Review Board unless the application has undergone review in accordance with such section and has been recommended for approval by a majority of the members of the Board conducting such review.

(B) In the case of research that is subject to review under procedures established by the Secretary for the protection of human subjects in clinical research conducted by the National Institutes of Health, the Secretary may not authorize the conduct of the research unless the research has, pursuant to such procedures, been recommended for approval.

(2) Peer review

In the case of any proposal for the National Institutes of Health to conduct or support research, the Secretary may not approve or fund any proposal that is subject to technical and scientific peer review under section 289a of this title unless the proposal has undergone such review in accordance with such section and has been recommended for approval by a majority of the members of the entity conducting such review.

(b) Ethical review of research

(1) Procedures regarding withholding of funds

If research has been recommended for approval for purposes of subsection (a) of this section, the Secretary may not withhold funds for the research because of ethical considerations unless—

(A) the Secretary convenes an advisory board in accordance with paragraph (5) to study such considerations; and

(B)(i) the majority of the advisory board recommends that, because of such considerations, the Secretary withhold funds for the research; or

(ii) the majority of such board recommends that the Secretary not withhold funds for the research because of such considerations, but the Secretary finds, on the basis of the report submitted under paragraph (5)(B)(ii), that the recommendation is arbitrary and capricious.

(2) Rules of construction

Paragraph (1) may not be construed as prohibiting the Secretary from withholding funds for research on the basis of—

(A) the inadequacy of the qualifications of the entities that would be involved with the conduct of the research (including the entity that would directly receive the funds from the Secretary), subject to the condition that, with respect to the process of review through which the research was recommended for approval for purposes of subsection (a) of this section, all findings regarding such qualifications made in such process are conclusive; or

(B) the priorities established by the Secretary for the allocation of funds among projects of research that have been so recommended.

(3) Applicability

The limitation established in paragraph (1) regarding the authority to withhold funds because of ethical considerations shall apply without regard to whether the withholding of funds on such basis is characterized as a disapproval, a moratorium, a prohibition, or other characterization.

(4) Preliminary matters regarding use of procedures

(A) If the Secretary makes a determination that an advisory board should be convened for purposes of paragraph (1), the Secretary shall, through a statement published in the Federal Register, announce the intention of the Secretary to convene such a board.

(B) A statement issued under subparagraph (A) shall include a request that interested individuals submit to the Secretary recommendations specifying the particular individuals who should be appointed to the advisory board involved. The Secretary shall consider such recommendations in making appointments to the board.

(C) The Secretary may not make appointments to an advisory board under paragraph (1) until the expiration of the 30-day period beginning on the date on which the statement required in subparagraph (A) is made with respect to the board.

(5) Ethics advisory boards

(A) Any advisory board convened for purposes of paragraph (1) shall be known as an ethics advisory board (in this paragraph referred to as an ''ethics board'').

(B)(i) An ethics board shall advise, consult with, and make recommendations to the Secretary regarding the ethics of the project of

biomedical or behavioral research with respect to which the board has been convened.

(ii) Not later than 180 days after the date on which the statement required in paragraph (4)(A) is made with respect to an ethics board, the board shall submit to the Secretary, and to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report describing the findings of the board regarding the project of research involved and making a recommendation under clause (i) of whether the Secretary should or should not withhold funds for the project. The report shall include the information considered in making the findings.

(C) An ethics board shall be composed of no fewer than 14, and no more than 20, individuals who are not officers or employees of the United States. The Secretary shall make appointments to the board from among individuals with special qualifications and competence to provide advice and recommendations regarding ethical matters in biomedical and behavioral research. Of the members of the board—

(i) no fewer than 1 shall be an attorney;

(ii) no fewer than 1 shall be an ethicist;

(iii) no fewer than 1 shall be a practicing physician;

(iv) no fewer than 1 shall be a theologian; and

(v) no fewer than one-third, and no more than one-half, shall be scientists with substantial accomplishments in biomedical or behavioral research.

(D) The term of service as a member of an ethics board shall be for the life of the board. If such a member does not serve the full term of such service, the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(E) A member of an ethics board shall be subject to removal from the board by the Secretary for neglect of duty or malfeasance or for other good cause shown.

(F) The Secretary shall designate an individual from among the members of an ethics board to serve as the chair of the board.

(G) In carrying out subparagraph (B)(i) with respect to a project of research, an ethics board shall conduct inquiries and hold public hearings.

(H) In carrying out subparagraph (B)(i) with respect to a project of research, an ethics board shall have access to all relevant information possessed by the Department of Health and Human Services, or available to the Secretary from other agencies.

(I) Members of an ethics board shall receive compensation for each day engaged in carrying out the duties of the board, including time engaged in traveling for purposes of such duties. Such compensation may not be provided in an amount in excess of the maximum rate of basic pay payable for GS–18 of the General Schedule.

(J) The Secretary, acting through the Director of the National Institutes of Health, shall provide to each ethics board reasonable staff and assistance to carry out the duties of the board.

(K) An ethics board shall terminate 30 days after the date on which the report required in subparagraph (B)(ii) is submitted to the Secretary and the congressional committees specified in such subparagraph.

(6) "Ethical considerations" defined

For purposes of this subsection, the term ''ethical considerations'' means considerations as to whether the nature of the research involved is such that it is unethical to conduct or support the research.

(July 1, 1944, ch. 373, title IV, § 492A, as added Pub. L. 103–43, title I, § 101, June 10, 1993, 107 Stat. 126.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 289a–2. Inclusion of women and minorities in clinical research

(a) Requirement of inclusion

(1) In general

In conducting or supporting clinical research for purposes of this subchapter, the Director of NIH shall, subject to subsection (b) of this section, ensure that—

(A) women are included as subjects in each project of such research; and

(B) members of minority groups are included as subjects in such research.

(2) Outreach regarding participation as subjects

The Director of NIH, in consultation with the Director of the Office of Research on Women's Health and the Director of the Office of Research on Minority Health, shall conduct or support outreach programs for the recruitment of women and members of minority groups as subjects in projects of clinical research.

(b) Inapplicability of requirement

The requirement established in subsection (a) of this section regarding women and members of

minority groups shall not apply to a project of clinical research if the inclusion, as subjects in the project, of women and members of minority groups, respectively—

(1) is inappropriate with respect to the health of the subjects;

(2) is inappropriate with respect to the purpose of the research; or

(3) is inappropriate under such other circumstances as the Director of NIH may designate.

(c) Design of clinical trials

In the case of any clinical trial in which women or members of minority groups will under subsection (a) of this section be included as subjects, the Director of NIH shall ensure that the trial is designed and carried out in a manner sufficient to provide for a valid analysis of whether the variables being studied in the trial affect women or members of minority groups, as the case may be, differently than other subjects in the trial.

(d) Guidelines

(1) In general

Subject to paragraph (2), the Director of NIH, in consultation with the Director of the Office of Research on Women's Health and the Director of the Office of Research on Minority Health, shall establish guidelines regarding the requirements of this section. The guidelines shall include guidelines regarding—

(A) the circumstances under which the inclusion of women and minorities as subjects in projects of clinical research is inappropriate for purposes of subsection (b) of this section;

(B) the manner in which clinical trials are required to be designed and carried out for purposes of subsection (c) of this section; and

(C) the operation of outreach programs under subsection (a) of this section.

(2) Certain provisions

With respect to the circumstances under which the inclusion of women or members of minority groups (as the case may be) as subjects in a project of clinical research is inappropriate for purposes of subsection (b) of this section, the following applies to guidelines under paragraph (1):

(A)(i) In the case of a clinical trial, the guidelines shall provide that the costs of such inclusion in the trial is not a permissible consideration in determining whether such inclusion is inappropriate.

(ii) In the case of other projects of clinical research, the guidelines shall provide that the costs of such inclusion in the project is not a permissible consideration in determining whether such inclusion is inappropriate unless the data regarding women or members of minority groups, respectively, that would be obtained in such project (in the event that such inclusion were required) have been or are being obtained through other means that provide data of comparable quality.

(B) In the case of a clinical trial, the guidelines may provide that such inclusion in the trial is not required if there is substantial scientific data demonstrating that there is no significant difference between—

(i) the effects that the variables to be studied in the trial have on women or members of minority groups, respectively; and

(ii) the effects that the variables have on the individuals who would serve as subjects in the trial in the event that such inclusion were not required.

(e) Date certain for guidelines; applicability

(1) Date certain

The guidelines required in subsection (d) of this section shall be established and published in the Federal Register not later than 180 days after June 10, 1993.

(2) Applicability

For fiscal year 1995 and subsequent fiscal years, the Director of NIH may not approve any proposal of clinical research to be conducted or supported by any agency of the National Institutes of Health unless the proposal specifies the manner in which the research will comply with this section.

(f) Reports by advisory councils

The advisory council of each national research institute shall prepare biennial reports describing the manner in which the institute has complied with this section. Each such report shall be submitted to the Director of the institute involved for inclusion in the biennial report under section 283 of this title.

(g) Definitions

For purposes of this section:

(1) The term ''project of clinical research'' includes a clinical trial.

(2) The term ''minority group'' includes subpopulations of minority groups. The Director of NIH shall, through the guidelines established under subsection (d) of this section, define the terms ''minority group'' and ''subpopulation'' for purposes of the preceding sentence.

(July 1, 1944, ch. 373, title IV, § 492B, as added Pub. L. 103–43, title I, § 131, June 10, 1993, 107 Stat. 133.)

INAPPLICABILITY TO CURRENT PROJECTS

Section 133 of Pub. L. 103–43 provided that: ''Section 492B of the Public Health Service Act, as added by section 131 of this Act [this section], shall not apply with respect to projects of clinical research for which initial funding was provided prior to the date of the enactment of this Act [June 10, 1993]. With respect to the inclusion of women and minorities as subjects in clinical research conducted or supported by the National Institutes of Health, any policies of the Secretary of Health and Human Services regarding such inclusion that are in effect on the day before the date of the enactment of this Act shall continue to apply to the projects referred to in the preceding sentence.''

§ 289b. Office of Research Integrity

(a) In general

(1) Establishment of Office

Not later than 90 days after June 10, 1993, the Secretary shall establish an office to be known

as the Office of Research Integrity (referred to in this section as the ''Office''), which shall be established as an independent entity in the Department of Health and Human Services.

(2) Appointment of Director

The Office shall be headed by a Director, who shall be appointed by the Secretary, be experienced and specially trained in the conduct of research, and have experience in the conduct of investigations of research misconduct. The Secretary shall carry out this section acting through the Director of the Office. The Director shall report to the Secretary.

(3) Definitions

(A) The Secretary shall by regulation establish a definition for the term ''research misconduct'' for purposes of this section.

(B) For purposes of this section, the term ''financial assistance'' means a grant, contract, or cooperative agreement.

(b) Existence of administrative processes as condition of funding for research

The Secretary shall by regulation require that each entity that applies for financial assistance under this chapter for any project or program that involves the conduct of biomedical or behavioral research submit in or with its application for such assistance—

(1) assurances satisfactory to the Secretary that such entity has established and has in effect (in accordance with regulations which the Secretary shall prescribe) an administrative process to review reports of research misconduct in connection with biomedical and behavioral research conducted at or sponsored by such entity;

(2) an agreement that the entity will report to the Director any investigation of alleged research misconduct in connection with projects for which funds have been made available under this chapter that appears substantial; and

(3) an agreement that the entity will comply with regulations issued under this section.

(c) Process for response of Director

The Secretary shall by regulation establish a process to be followed by the Director for the prompt and appropriate—

(1) response to information provided to the Director respecting research misconduct in connection with projects for which funds have been made available under this chapter;

(2) receipt of reports by the Director of such information from recipients of funds under this chapter;

(3) conduct of investigations, when appropriate; and

(4) taking of other actions, including appropriate remedies, with respect to such misconduct.

(d) Monitoring by Director

The Secretary shall by regulation establish procedures for the Director to monitor administrative processes and investigations that have been established or carried out under this section.

(e) Protection of whistleblowers

(1) In general

In the case of any entity required to establish administrative processes under subsection (b) of this section, the Secretary shall by regulation establish standards for preventing, and for responding to the occurrence of retaliation by such entity, its officials or agents, against an employee in the terms and conditions of employment in response to the employee having in good faith—

(A) made an allegation that the entity, its officials or agents, has engaged in or failed to adequately respond to an allegation of research misconduct; or

(B) cooperated with an investigation of such an allegation.

(2) Monitoring by Secretary

The Secretary shall by regulation establish procedures for the Director to monitor the implementation of the standards established by an entity under paragraph (1) for the purpose of determining whether the procedures have been established, and are being utilized, in accordance with the standards established under such paragraph.

(3) Noncompliance

The Secretary shall by regulation establish remedies for noncompliance by an entity, its officials or agents, which has engaged in retaliation in violation of the standards established under paragraph (1). Such remedies may include termination of funding provided by the Secretary for such project or recovery of funding being provided by the Secretary for such project, or other actions as appropriate.

(July 1, 1944, ch. 373, title IV, § 493, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 874; amended Pub. L. 103–43, title I, §§ 161, 163, June 10, 1993, 107 Stat. 140, 142.)

CODIFICATION

June 10, 1993, referred to in subsec. (a)(1), was in the original ''the date of enactment of this section'' which was translated as meaning the date of enactment of Pub. L. 103–43, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

1993—Pub. L. 103–43, § 161, amended section generally. Prior to amendment, section read as follows:

''(a) The Secretary shall by regulation require that each entity which applies for a grant, contract, or cooperative agreement under this chapter for any project or program which involves the conduct of biomedical or behavioral research submit in or with its application for such grant, contract, or cooperative agreement assurances satisfactory to the Secretary that such entity—

''(1) has established (in accordance with regulations which the Secretary shall prescribe) an administrative process to review reports of scientific fraud in connection with biomedical and behavioral research conducted at or sponsored by such entity; and

''(2) will report to the Secretary any investigation of alleged scientific fraud which appears substantial.

''(b) The Director of NIH shall establish a process for the prompt and appropriate response to information provided the Director of NIH respecting scientific fraud in connection with projects for which funds have been made available under this chapter. The process shall include procedures for the receiving of reports of such

information from recipients of funds under this chapter and taking appropriate action with respect to such fraud.''

Subsec. (e). Pub. L. 103–43, § 163, added subsec. (e).

REGULATIONS

Section 165 of Pub. L. 103–43 provided that:

''(a) ISSUANCE OF FINAL RULES.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [June 10, 1993], the Secretary shall, subject to paragraph (2), issue the final rule for each regulation required in section 493 or 493A of the Public Health Service Act [this section and section 289b–1 of this title].

''(2) DEFINITION OF RESEARCH MISCONDUCT.—Not later than 90 days after the date on which the report required in section 162(e) [107 Stat. 142] is submitted to the Secretary, the Secretary shall issue the final rule for the regulations required in section 493 of the Public Health Service Act with respect to the definition of the term 'research misconduct'.

''(b) APPLICABILITY TO ONGOING INVESTIGATIONS.—The final rule issued pursuant to subsection (a) for investigations under section 493 of the Public Health Service Act [this section] does not apply to investigations commenced before the date of the enactment of this Act [June 10, 1993] under authority of such section as in effect before such date.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'section 493 of the Public Health Service Act' means such section as amended by sections 161 and 163 of this Act [this section], except as indicated otherwise in subsection (b).

''(2) The term 'section 493A of the Public Health Service Act' means such section as added by section 164 of this Act [section 289b–1 of this title].

''(3) The term 'Secretary' means the Secretary of Health and Human Services.''

§ 289b–1. Protection against financial conflicts of interest in certain projects of research

(a) Issuance of regulations

The Secretary shall by regulation define the specific circumstances that constitute the existence of a financial interest in a project on the part of an entity or individual that will, or may be reasonably expected to, create a bias in favor of obtaining results in such project that are consistent with such financial interest. Such definition shall apply uniformly to each entity or individual conducting a research project under this chapter. In the case of any entity or individual receiving assistance from the Secretary for a project of research described in subsection (b) of this section, the Secretary shall by regulation establish standards for responding to, including managing, reducing, or eliminating, the existence of such a financial interest. The entity may adopt individualized procedures for implementing the standards.

(b) Relevant projects

A project of research referred to in subsection (a) of this section is a project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment and for which such entity is receiving assistance from the Secretary.

(c) Identifying and reporting to Secretary

The Secretary shall by regulation require that each entity described in subsection (a) of this section that applies for assistance under this chapter for any project described in subsection (b) of this section submit in or with its application for such assistance—

(1) assurances satisfactory to the Secretary that such entity has established and has in effect an administrative process under subsection (a) of this section to identify financial interests (as defined under subsection (a) of this section) that exist regarding the project; and

(2) an agreement that the entity will report to the Secretary such interests identified by the entity and how any such interests identified by the entity will be managed or eliminated in order that the project in question will be protected from bias that may stem from such interests; and

(3) an agreement that the entity will comply with regulations issued under this section.

(d) Monitoring of process

The Secretary shall monitor the establishment and conduct of the administrative process established by an entity pursuant to subsection (a) of this section.

(e) Response

In any case in which the Secretary determines that an entity has failed to comply with subsection (c) of this section regarding a project of research described in subsection (b) of this section, the Secretary—

(1) shall require that, as a condition of receiving assistance, the entity disclose the existence of a financial interest (as defined under subsection (a) of this section) in each public presentation of the results of such project; and

(2) may take such other actions as the Secretary determines to be appropriate.

(f) Definitions

For purposes of this section:

(1) The term ''financial interest'' includes the receipt of consulting fees or honoraria and the ownership of stock or equity.

(2) The term ''assistance'', with respect to conducting a project of research, means a grant, contract, or cooperative agreement.

(July 1, 1944, ch. 373, title IV, § 493A, as added Pub. L. 103–43, title I, § 164, June 10, 1993, 107 Stat. 142.)

REGULATIONS

Final rule for regulations required in this section to be issued not later than 180 days after June 10, 1993, see section 165 of Pub. L. 103–43, set out as a note under section 289b of this title.

§ 289c. Research on public health emergencies; report to Congressional committees

(a) If the Secretary determines, after consultation with the Director of NIH, the Commissioner of the Food and Drug Administration, or the Director of the Centers for Disease Control and Prevention, that a disease or disorder constitutes a public health emergency, the Secretary, acting through the Director of NIH—

(1) shall expedite the review by advisory councils under section 284a of this title and by peer review groups under section 289a of this title of applications for grants for research on such disease or disorder or proposals for contracts for such research;

(2) shall exercise the authority in section 5 of title 41 respecting public exigencies to

waive the advertising requirements of such section in the case of proposals for contracts for such research;

(3) may provide administrative supplemental increases in existing grants and contracts to support new research relevant to such disease or disorder; and

(4) shall disseminate, to health professionals and the public, information on the cause, prevention, and treatment of such disease or disorder that has been developed in research assisted under this section.

The amount of an increase in a grant or contract provided under paragraph (3) may not exceed one-half the original amount of the grant or contract.

(b) Not later than 90 days after the end of a fiscal year, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on actions taken under subsection (a) of this section in such fiscal year.

(July 1, 1944, ch. 373, title IV, § 494, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 875; amended Pub. L. 102–531, title III, § 312(d)(9), Oct. 27, 1992, 106 Stat. 3504.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (b) of this section is listed on page 96), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 289c–1. Collaborative use of certain health services research funds

The Secretary shall ensure that amounts made available under subparts 14, 15 and 16 of part C for health services research relating to alcohol abuse and alcoholism, drug abuse and mental health be used collaboratively, as appropriate, and in consultation with the Agency for Healthcare Research and Quality.

(July 1, 1944, ch. 373, title IV, § 494A, as added Pub. L. 102–321, title I, § 125, July 10, 1992, 106 Stat. 366; amended Pub. L. 103–43, title XX, § 2016(c), June 10, 1993, 107 Stat. 218; Pub. L. 104–66, title I, § 1062(b), Dec. 21, 1995, 109 Stat. 720; Pub. L. 105–362, title VI, § 601(a)(1)(F), Nov. 10, 1998, 112 Stat. 3285; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

REFERENCES IN TEXT

Subparts 14, 15 and 16 of part C, referred to in text, are classified to sections 285n et seq., 285*o* et seq., and 285p et seq., respectively, of this title.

AMENDMENTS

1999—Pub. L. 106–129, which directed the substitution of ''Agency for Healthcare Research and Quality'' for ''Agency for Health Care Policy and Research'', was executed by making the substitution for ''Agency for Health Care Policy Research'', to reflect the probable intent of Congress.

1998—Pub. L. 105–362 struck out heading and designation of subsec. (a) and heading and text of subsec. (b). Text of subsec. (b) read as follows: ''Not later than December 30, 1993, and each December 30 thereafter, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the activities carried out with the amounts referred to in subsection (a) of this section.''

1995—Subsec. (b). Pub. L. 104–66 substituted ''December 30, 1993, and each December 30 thereafter'' for ''September 30, 1993, and annually thereafter''.

1993—Subsec. (b). Pub. L. 103–43 substituted ''September 30, 1993'' for ''May 3, 1993''.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 289d. Animals in research

(a) Establishment of guidelines

The Secretary, acting through the Director of NIH, shall establish guidelines for the following:

(1) The proper care of animals to be used in biomedical and behavioral research.

(2) The proper treatment of animals while being used in such research. Guidelines under this paragraph shall require—

(A) the appropriate use of tranquilizers, analgesics, anesthetics, paralytics, and euthanasia for animals in such research; and

(B) appropriate pre-surgical and post-surgical veterinary medical and nursing care for animals in such research.

Such guidelines shall not be construed to prescribe methods of research.

(3) The organization and operation of animal care committees in accordance with subsection (b) of this section.

(b) Animal care committees; establishment; membership; functions

(1) Guidelines of the Secretary under subsection (a)(3) of this section shall require animal care committees at each entity which conducts biomedical and behavioral research with funds provided under this chapter (including the National Institutes of Health and the national research institutes) to assure compliance with the guidelines established under subsection (a) of this section.

(2) Each animal care committee shall be appointed by the chief executive officer of the en-

tity for which the committee is established, shall be composed of not fewer than three members, and shall include at least one individual who has no association with such entity and at least one doctor of veterinary medicine.

(3) Each animal care committee of a research entity shall—

(A) review the care and treatment of animals in all animal study areas and facilities of the research entity at least semi-annually to evaluate compliance with applicable guidelines established under subsection (a) of this section for appropriate animal care and treatment;

(B) keep appropriate records of reviews conducted under subparagraph (A); and

(C) for each review conducted under subparagraph (A), file with the Director of NIH at least annually (i) a certification that the review has been conducted, and (ii) reports of any violations of guidelines established under subsection (a) of this section or assurances required under paragraph (1) which were observed in such review and which have continued after notice by the committee to the research entity involved of the violations.

Reports filed under subparagraph (C) shall include any minority views filed by members of the committee.

(c) Assurances required in application or contract proposal; reasons for use of animals; notice and comment requirements for promulgation of regulations

The Director of NIH shall require each applicant for a grant, contract, or cooperative agreement involving research on animals which is administered by the National Institutes of Health or any national research institute to include in its application or contract proposal, submitted after the expiration of the twelve-month period beginning on November 20, 1985—

(1) assurances satisfactory to the Director of NIH that—

(A) the applicant meets the requirements of the guidelines established under paragraphs (1) and (2) of subsection (a) of this section and has an animal care committee which meets the requirements of subsection (b) of this section; and

(B) scientists, animal technicians, and other personnel involved with animal care, treatment, and use by the applicant have available to them instruction or training in the humane practice of animal maintenance and experimentation, and the concept, availability, and use of research or testing methods that limit the use of animals or limit animal distress; and

(2) a statement of the reasons for the use of animals in the research to be conducted with funds provided under such grant or contract.

Notwithstanding subsection (a)(2) of section 553 of title 5, regulations under this subsection shall be promulgated in accordance with the notice and comment requirements of such section.

(d) Failure to meet guidelines; suspension or revocation of grant or contract

If the Director of NIH determines that—

(1) the conditions of animal care, treatment, or use in an entity which is receiving a grant, contract, or cooperative agreement involving research on animals under this subchapter do not meet applicable guidelines established under subsection (a) of this section;

(2) the entity has been notified by the Director of NIH of such determination and has been given a reasonable opportunity to take corrective action; and

(3) no action has been taken by the entity to correct such conditions;

the Director of NIH shall suspend or revoke such grant or contract under such conditions as the Director determines appropriate.

(e) Disclosure of trade secrets or privileged or confidential information

No guideline or regulation promulgated under subsection (a) or (c) of this section may require a research entity to disclose publicly trade secrets or commercial or financial information which is privileged or confidential.

(July 1, 1944, ch. 373, title IV, § 495, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 875.)

PROHIBITION ON FUNDING OF PROJECTS INVOLVING USE OF CHIMPANZEES OBTAINED FROM THE WILD

Pub. L. 102–394, title II, § 213, Oct. 6, 1992, 106 Stat. 1812, provided that: ''No funds appropriated under this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be used by the National Institutes of Health, or any other Federal agency, or recipient of Federal funds on any project that entails the capture or procurement of chimpanzees obtained from the wild. For purposes of this section, the term 'recipient of Federal funds' includes private citizens, corporations, or other research institutions located outside of the United States that are recipients of Federal funds.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, § 213, Nov. 26, 1991, 105 Stat. 1127.

Pub. L. 101–517, title II, § 211, Nov. 5, 1990, 104 Stat. 2209.

Pub. L. 101–166, title II, § 214, Nov. 21, 1989, 103 Stat. 1178.

PLAN FOR RESEARCH INVOLVING ANIMALS

Section 4 of Pub. L. 99–158 directed Director of National Institutes of Health to establish, not later than Oct. 1, 1986, a plan for research into methods of biomedical research and experimentation which reduces the use of animals in research or which produce less pain and distress in animals to develop methods found to be valid and reliable, to train scientists in use of such methods, to disseminate information on such methods and to establish an Interagency Coordinating Committee to assist in development of the plan, prior to repeal by Pub. L. 103–43, title II, § 205(b), June 10, 1993, 107 Stat. 148. See section 283e of this title.

§ 289e. Use of appropriations

(a) Appropriations to carry out the purposes of this subchapter, unless otherwise expressly provided, may be expended in the District of Columbia for—

(1) personal services;

(2) stenographic recording and translating services;

(3) travel expenses (including the expenses of attendance at meetings when specifically authorized by the Secretary);

(4) rental;

(5) supplies and equipment;

(6) purchase and exchange of medical books, books of reference, directories, periodicals, newspapers, and press clippings;

(7) purchase, operation, and maintenance of passenger motor vehicles;

(8) printing and binding (in addition to that otherwise provided by law); and

(9) all other necessary expenses in carrying out this subchapter.

Such appropriations may be expended by contract if deemed necessary, without regard to section 5 of title 41.

(b)(1) None of the amounts appropriated under this chapter for the purposes of this subchapter may be obligated for the construction of facilities (including the acquisition of land) unless a provision of this subchapter establishes express authority for such purpose and unless the Act making appropriations under such provision specifies that the amounts appropriated are available for such purpose.

(2) Any grants, cooperative agreements, or contracts authorized in this subchapter for the construction of facilities may be awarded only on a competitive basis.

(July 1, 1944, ch. 373, title IV, § 496, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 877; amended Pub. L. 101–190, § 8, Nov. 29, 1989, 103 Stat. 1695; Pub. L. 103–43, title XX, § 2008(b)(15), June 10, 1993, 107 Stat. 211.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43 substituted ''Appropriations to carry out the purposes of this subchapter'' for ''Such appropriations''.

1989—Subsec. (a). Pub. L. 101–190 designated existing provisions as subsec. (a), struck out first sentence which read as follows: ''Appropriations to carry out the purposes of this subchapter shall be available for the acquisition of land or the erection of buildings only if so specified.'', and added subsec. (b).

CONSTRUCTION OF BIOMEDICAL FACILITIES FOR DEVELOPMENT AND BREEDING OF SPECIALIZED STRAINS OF MICE

Sections 1 to 7 of Pub. L. 101–190, as amended by Pub. L. 101–374, § 4(a), (c)(1), Aug. 15, 1990, 104 Stat. 458, 459, authorized a reservation of funds for making a grant to construct facilities for development and breeding of specialized strains of mice for use in biomedical research, provided for a competitive grant award process, required applicant for the grant to agree to a twenty-year transferable obligation, restricted grant applicant to public or nonprofit private status, with assurances of sufficient financial resources, set forth other grant requirements, and specified consequences of failure to comply with agreements and violation of the twenty-year obligation.

§ 289f. Gifts and donations; memorials

The Secretary may, in accordance with section 238 of this title, accept conditional gifts for the National Institutes of Health or a national research institute or for the acquisition of grounds or for the erection, equipment, or maintenance of facilities for the National Institutes of Health or a national research institute. Donations of $50,000 or over for the National Institutes of Health or a national research institute for carrying out the purposes of this subchapter may be acknowledged by the establishment within the National Institutes of Health or a national research institute of suitable memorials to the donors.

(July 1, 1944, ch. 373, title IV, § 497, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 877; amended Pub. L. 99–660, title III, § 311(b)(1), Nov. 14, 1986, 100 Stat. 3779; Pub. L. 100–607, title II, § 204(3), Nov. 4, 1988, 102 Stat. 3079; Pub. L. 100–690, title II, § 2620(b)(2), Nov. 18, 1988, 102 Stat. 4244; Pub. L. 101–381, title I, § 102(5), Aug. 18, 1990, 104 Stat. 586; Pub. L. 103–43, title XX, § 2010(b)(6), June 10, 1993, 107 Stat. 214.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''section 238'' for ''section 300aaa''.

1990—Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

1988—Pub. L. 100–690 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

Pub. L. 100–607 substituted ''300aaa'' for ''300cc''.

1986—Pub. L. 99–660 substituted ''section 300cc of this title'' for ''section 300aa of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

§ 289g. Fetal research

(a) Conduct or support by Secretary; restrictions

The Secretary may not conduct or support any research or experimentation, in the United States or in any other country, on a nonviable living human fetus ex utero or a living human fetus ex utero for whom viability has not been ascertained unless the research or experimentation—

(1) may enhance the well-being or meet the health needs of the fetus or enhance the probability of its survival to viability; or

(2) will pose no added risk of suffering, injury, or death to the fetus and the purpose of the research or experimentation is the development of important biomedical knowledge which cannot be obtained by other means.

(b) Risk standard for fetuses intended to be aborted and fetuses intended to be carried to term to be same

In administering the regulations for the protection of human research subjects which—

(1) apply to research conducted or supported by the Secretary;

(2) involve living human fetuses in utero; and

(3) are published in section 46.208 of part 46 of title 45 of the Code of Federal Regulations;

or any successor to such regulations, the Secretary shall require that the risk standard (published in section 46.102(g) of such part 46 or any successor to such regulations) be the same for

fetuses which are intended to be aborted and fetuses which are intended to be carried to term.

(July 1, 1944, ch. 373, title IV, § 498, as added Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 877; amended Pub. L. 100–607, title I, §§ 156, 157(b), Nov. 4, 1988, 102 Stat. 3059; Pub. L. 103–43, title I, § 121(b)(1), June 10, 1993, 107 Stat. 133.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 struck out subsec. (c) which directed Biomedical Ethics Advisory Committee to conduct a study of the nature, advisability, and biomedical and ethical implications of exercising any waiver of the risk standard published in section 46.102(g) of part 46 of title 45 of the Code of Federal Regulations and to report its finding to the Biomedical Ethics Board not later than 24 months after Nov. 4, 1988, which report was to be then transmitted to specified Congressional committees.

1988—Subsec. (c)(1). Pub. L. 100–607, § 157(b), substituted ''24 months after November 4, 1988'' for ''thirty months after November 20, 1985''.

Subsec. (c)(2). Pub. L. 100–607, § 156(1), substituted ''24-month period beginning on November 4, 1988'' for ''thirty-six month period beginning on November 20, 1985''.

Subsec. (c)(3). Pub. L. 100–607, § 156(2), substituted ''1990'' for ''1988''.

NULLIFICATION OF CERTAIN PROVISIONS

Section 121(c) of Pub. L. 103–43 provided that: ''The provisions of Executive Order 12806 (57 Fed. Reg. 21589 (May 21, 1992)) [formerly set out below] shall not have any legal effect. The provisions of section 204(d) of part 46 of title 45 of the Code of Federal Regulations (45 CFR 46.204(d)) shall not have any legal effect.''

EXECUTIVE ORDER NO. 12806. ESTABLISHMENT OF FETAL TISSUE BANK

Ex. Ord. No. 12806, May 19, 1992, 57 F.R. 21589, which established a human fetal tissue bank, was nullified by Pub. L. 103–43, title I, § 121(c), June 10, 1993, 107 Stat. 133, set out above.

FEDERAL FUNDING OF FETAL TISSUE TRANSPLANTATION RESEARCH

Memorandum of President of the United States, Jan. 22, 1993, 58 F.R. 7457, provided:

Memorandum for the Secretary of Health and Human Services

On March 22, 1988, the Assistant Secretary for Health of Health and Human Services (''HHS'') imposed a temporary moratorium on Federal funding of research involving transplantation of fetal tissue from induced abortions. Contrary to the recommendations of a National Institutes of Health advisory panel, on November 2, 1989, the Secretary of Health and Human Services extended the moratorium indefinitely. This moratorium has significantly hampered the development of possible treatments for individuals afflicted with serious diseases and disorders, such as Parkinson's disease, Alzheimer's disease, diabetes, and leukemia. Accordingly, I hereby direct that you immediately lift the moratorium.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 289g–1. Research on transplantation of fetal tissue

(a) Establishment of program

(1) In general

The Secretary may conduct or support research on the transplantation of human fetal tissue for therapeutic purposes.

(2) Source of tissue

Human fetal tissue may be used in research carried out under paragraph (1) regardless of whether the tissue is obtained pursuant to a spontaneous or induced abortion or pursuant to a stillbirth.

(b) Informed consent of donor

(1) In general

In research carried out under subsection (a) of this section, human fetal tissue may be used only if the woman providing the tissue makes a statement, made in writing and signed by the woman, declaring that—

(A) the woman donates the fetal tissue for use in research described in subsection (a) of this section;

(B) the donation is made without any restriction regarding the identity of individuals who may be the recipients of transplantations of the tissue; and

(C) the woman has not been informed of the identity of any such individuals.

(2) Additional statement

In research carried out under subsection (a) of this section, human fetal tissue may be used only if the attending physician with respect to obtaining the tissue from the woman involved makes a statement, made in writing and signed by the physician, declaring that—

(A) in the case of tissue obtained pursuant to an induced abortion—

(i) the consent of the woman for the abortion was obtained prior to requesting or obtaining consent for a donation of the tissue for use in such research;

(ii) no alteration of the timing, method, or procedures used to terminate the pregnancy was made solely for the purposes of obtaining the tissue; and

(iii) the abortion was performed in accordance with applicable State law;

(B) the tissue has been donated by the woman in accordance with paragraph (1); and

(C) full disclosure has been provided to the woman with regard to—

(i) such physician's interest, if any, in the research to be conducted with the tissue; and

(ii) any known medical risks to the woman or risks to her privacy that might be associated with the donation of the tissue and that are in addition to risks of such type that are associated with the woman's medical care.

(c) Informed consent of researcher and donee

In research carried out under subsection (a) of this section, human fetal tissue may be used only if the individual with the principal responsibility for conducting the research involved makes a statement, made in writing and signed by the individual, declaring that the individual—

(1) is aware that—

(A) the tissue is human fetal tissue;

(B) the tissue may have been obtained pursuant to a spontaneous or induced abortion or pursuant to a stillbirth; and

(C) the tissue was donated for research purposes;

(2) has provided such information to other individuals with responsibilities regarding the research;

(3) will require, prior to obtaining the consent of an individual to be a recipient of a transplantation of the tissue, written acknowledgment of receipt of such information by such recipient; and

(4) has had no part in any decisions as to the timing, method, or procedures used to terminate the pregnancy made solely for the purposes of the research.

(d) Availability of statements for audit

(1) In general

In research carried out under subsection (a) of this section, human fetal tissue may be used only if the head of the agency or other entity conducting the research involved certifies to the Secretary that the statements required under subsections (b)(2) and (c) of this section will be available for audit by the Secretary.

(2) Confidentiality of audit

Any audit conducted by the Secretary pursuant to paragraph (1) shall be conducted in a confidential manner to protect the privacy rights of the individuals and entities involved in such research, including such individuals and entities involved in the donation, transfer, receipt, or transplantation of human fetal tissue. With respect to any material or information obtained pursuant to such audit, the Secretary shall—

(A) use such material or information only for the purposes of verifying compliance with the requirements of this section;

(B) not disclose or publish such material or information, except where required by Federal law, in which case such material or information shall be coded in a manner such that the identities of such individuals and entities are protected; and

(C) not maintain such material or information after completion of such audit, except where necessary for the purposes of such audit.

(e) Applicability of State and local law

(1) Research conducted by recipients of assistance

The Secretary may not provide support for research under subsection (a) of this section unless the applicant for the financial assistance involved agrees to conduct the research in accordance with applicable State law.

(2) Research conducted by Secretary

The Secretary may conduct research under subsection (a) of this section only in accordance with applicable State and local law.

(f) Report

The Secretary shall annually submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities carried out under this section during the preceding fiscal year, including a description of whether and to what extent research under subsection (a) of this section has been conducted in accordance with this section.

(g) "Human fetal tissue" defined

For purposes of this section, the term ''human fetal tissue'' means tissue or cells obtained from a dead human embryo or fetus after a spontaneous or induced abortion, or after a stillbirth.

(July 1, 1944, ch. 373, title IV, § 498A, as added Pub. L. 103–43, title I, § 111, June 10, 1993, 107 Stat. 129.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

NULLIFICATION OF MORATORIUM

Section 113 of Pub. L. 103–43 provided that:

''(a) IN GENERAL.—Except as provided in subsection (c), no official of the executive branch may impose a policy that the Department of Health and Human Services is prohibited from conducting or supporting any research on the transplantation of human fetal tissue for therapeutic purposes. Such research shall be carried out in accordance with section 498A of the Public Health Service Act [this section] (as added by section 111 of this Act), without regard to any such policy that may have been in effect prior to the date of the enactment of this Act [June 10, 1993].

''(b) PROHIBITION AGAINST WITHHOLDING OF FUNDS IN CASES OF TECHNICAL AND SCIENTIFIC MERIT.—

''(1) IN GENERAL.—Subject to subsection (b)(2) of section 492A of the Public Health Service Act [section 289a–1(b)(2) of this title] (as added by section 101 of this Act), in the case of any proposal for research on the transplantation of human fetal tissue for therapeutic purposes, the Secretary of Health and Human Services may not withhold funds for the research if—

''(A) the research has been approved for purposes of subsection (a) of such section 492A;

''(B) the research will be carried out in accordance with section 498A of such Act [this section] (as added by section 111 of this Act); and

''(C) there are reasonable assurances that the research will not utilize any human fetal tissue that has been obtained in violation of section 498B(a) of such Act [section 289g–2(a) of this title] (as added by section 112 of this Act).

''(2) STANDING APPROVAL REGARDING ETHICAL STATUS.—In the case of any proposal for research on the transplantation of human fetal tissue for therapeutic purposes, the issuance in December 1988 of the Report of the Human Fetal Tissue Transplantation Research Panel shall be deemed to be a report—

''(A) issued by an ethics advisory board pursuant to section 492A(b)(5)(B)(ii) of the Public Health Service Act (as added by section 101 of this Act); and

''(B) finding, on a basis that is neither arbitrary nor capricious, that the nature of the research is such that it is not unethical to conduct or support the research.

''(c) AUTHORITY FOR WITHHOLDING FUNDS FROM RESEARCH.—In the case of any research on the transplantation of human fetal tissue for therapeutic purposes, the Secretary of Health and Human Services may withhold funds for the research if any of the conditions specified in any of subparagraphs (A) through (C) of subsection (b)(1) are not met with respect to the research.

''(d) DEFINITION.—For purposes of this section, the term 'human fetal tissue' has the meaning given such term in section 498A(f) of the Public Health Service Act [subsec. (f) of this section] (as added by section 111 of this Act).''

REPORT BY GENERAL ACCOUNTING OFFICE ON ADEQUACY OF REQUIREMENTS

Section 114 of Pub. L. 103–43 provided that, with respect to research on the transplantation of human fetal tissue for therapeutic purposes, the Comptroller General of the United States was to conduct an audit for the purpose of determining whether and to what extent such research conducted or supported by Secretary of Health and Human Services had been conducted in accordance with this section and whether and to what extent there have been violations of section 289g–2 of this title and directed the Comptroller General to complete the audit and report the findings to Congress, not later than May 19, 1995.

§ 289g–2. Prohibitions regarding human fetal tissue

(a) Purchase of tissue

It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce.

(b) Solicitation or acceptance of tissue as directed donation for use in transplantation

It shall be unlawful for any person to solicit or knowingly acquire, receive, or accept a donation of human fetal tissue for the purpose of transplantation of such tissue into another person if the donation affects interstate commerce, the tissue will be or is obtained pursuant to an induced abortion, and—

(1) the donation will be or is made pursuant to a promise to the donating individual that the donated tissue will be transplanted into a recipient specified by such individual;

(2) the donated tissue will be transplanted into a relative of the donating individual; or

(3) the person who solicits or knowingly acquires, receives, or accepts the donation has provided valuable consideration for the costs associated with such abortion.

(c) Criminal penalties for violations

(1) In general

Any person who violates subsection (a) or (b) of this section shall be fined in accordance with title 18, subject to paragraph (2), or imprisoned for not more than 10 years, or both.

(2) Penalties applicable to persons receiving consideration

With respect to the imposition of a fine under paragraph (1), if the person involved violates subsection (a) or (b)(3) of this section, a fine shall be imposed in an amount not less than twice the amount of the valuable consideration received.

(d) Definitions

For purposes of this section:

(1) The term ''human fetal tissue'' has the meaning given such term in section 289g–1(f)[1] of this title.

(2) The term ''interstate commerce'' has the meaning given such term in section 321(b) of title 21.

(3) The term ''valuable consideration'' does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.

(July 1, 1944, ch. 373, title IV, § 498B, as added Pub. L. 103–43, title I, § 112, June 10, 1993, 107 Stat. 131.)

§ 289g–3. Breast implant research

(a) In general

The Director of NIH may conduct or support research to examine the long-term health implications of silicone breast implants, both gel and saline filled. Such research studies may include the following:

(1) Developing and examining techniques to measure concentrations of silicone in body fluids and tissues.

(2) Surveillance of recipients of silicone breast implants, including long-term outcomes and local complications.

(b) Definition

For purposes of this section, the term ''breast implant'' means a breast prosthesis that is implanted to augment or reconstruct the female breast.

(July 1, 1944, ch. 373, title IV, § 498C, as added Pub. L. 107–250, title II, § 215(b), Oct. 26, 2002, 116 Stat. 1615.)

BREAST IMPLANTS; STUDY BY COMPTROLLER GENERAL

Pub. L. 107–250, title II, § 214, Oct. 26, 2002, 116 Stat. 1615, provided that:

''(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study to determine the following with respect to breast implants:

''(1) The content of information typically provided by health professionals to women who consult with such professionals on the issue of whether to undergo breast implant surgery.

''(2) Whether such information is provided by physicians or other health professionals, and whether the information is provided verbally or in writing, and at what point in the process of determining whether to undergo surgery is such information provided.

''(3) Whether the information presented, as a whole, provides a complete and accurate discussion of the risks and benefits of breast implants, and the extent to which women who receive such information understand the risks and benefits.

''(4) The number of adverse events that have been reported, and whether such events have been adequately investigated.

''(5) With respect to women who participate as subjects in research being carried out regarding the safety and effectiveness of breast implants:

''(A) The content of information provided to the women during the process of obtaining the informed consent of the women to be subjects, and the extent to which such information is updated.

''(B) Whether such process provides written explanations of the criteria for being subjects in the research.

''(C) The point at which, in the planning or conduct of the research, the women are provided information regarding the provision of informed consent to be subjects.

''(b) REPORT.—The Comptroller General shall submit to the Congress a report describing the findings of the study.

''(c) DEFINITION.—For purposes of this section, the term 'breast implant' means a breast prosthesis that is

[1] So in original. Probably should be section ''289g–1(g)''.

implanted to augment or reconstruct the female breast.''

§ 289h. Repealed. Pub. L. 103–43, title I, § 121(b)(2), June 10, 1993, 107 Stat. 133

Section, act July 1, 1944, ch. 373, title IV, § 499, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 878, related to construction of subchapter.

§ 290. National Institutes of Health Management Fund; establishment; advancements; availability; final adjustments of advances

For the purpose of facilitating the economical and efficient conduct of operations in the National Institutes of Health which are financed by two or more appropriations where the costs of operation are not readily susceptible of distribution as charges to such appropriations, there is established the National Institutes of Health Management Fund. Such amounts as the Director of the National Institutes of Health may determine to represent a reasonable distribution of estimated costs among the various appropriations involved may be advanced each year to this fund and shall be available for expenditure for such costs under such regulations as may be prescribed by said Director, including the operation of facilities for the sale of meals to employees and others at rates to be determined by said Director to be sufficient to cover the reasonable value of the meals served and the proceeds thereof shall be deposited to the credit of this fund: *Provided*, That funds advanced to this fund shall be available only in the fiscal year in which they are advanced: *Provided further*, That final adjustments of advances in accordance with actual costs shall be effected wherever practicable with the appropriations from which such funds are advanced.

(Pub. L. 85–67, title II, § 201, June 29, 1957, 71 Stat. 220; Pub. L. 87–290, title II, § 201, Sept. 22, 1961, 75 Stat. 603.)

CODIFICATION

Section was enacted as a part of the Department of Health, Education, and Welfare Appropriation Act, 1958, and not as a part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1961—Pub. L. 87–290 substituted ''reasonable value of the meals served'' for ''cost of such operation''.

§ 290a. Victims of fire

(a) Research on burns, burn injuries, and rehabilitation

The Secretary of Health and Human Services shall establish, within the National Institutes of Health and in cooperation with the Director, an expanded program of research on burns, treatment of burn injuries, and rehabilitation of victims of fires. The National Institutes of Health shall—

(1) sponsor and encourage the establishment throughout the Nation of twenty-five additional burn centers, which shall comprise separate hospital facilities providing specialized burn treatment and including research and teaching programs and twenty-five additional burn units, which shall comprise specialized facilities in general hospitals used only for burn victims;

(2) provide training and continuing support of specialists to staff the new burn centers and burn units;

(3) sponsor and encourage the establishment of ninety burn programs in general hospitals which comprise staffs of burn injury specialists;

(4) provide special training in emergency care for burn victims;

(5) augment sponsorship of research on burns and burn treatment;

(6) administer and support a systematic program of research concerning smoke inhalation injuries; and

(7) sponsor and support other research and training programs in the treatment and rehabilitation of burn injury victims.

(b) Authorization of appropriations

For purposes of this section, there are authorized to be appropriated not to exceed $5,000,000 for the fiscal year ending June 30, 1975 and not to exceed $8,000,000 for the fiscal year ending June 30, 1976.

(Pub. L. 93–498, § 19, Oct. 29, 1974, 88 Stat. 1547; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 106–503, title I, § 110(a)(2)(B)(vii), Nov. 13, 2000, 114 Stat. 2302.)

CODIFICATION

Section was enacted as part of the Federal Fire Prevention and Control Act of 1974 (which is classified principally to chapter 49 (§ 2201 et seq.) of Title 15), and not as a part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–503 substituted ''in cooperation with the Director'' for ''in cooperation with the Secretary''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DEFINITIONS

For definition of terms used in this section, see section 2203 of Title 15, Commerce and Trade.

PART I—FOUNDATION FOR THE NATIONAL INSTITUTES OF HEALTH

AMENDMENTS

1998—Pub. L. 105–392, title IV, § 418(1), Nov. 13, 1998, 112 Stat. 3591, substituted ''Foundation for the National Institutes of Health'' for ''National Foundation for Biomedical Research'' in part heading.

1993—Pub. L. 103–43, title I, §141(a)(2), June 10, 1993, 107 Stat. 136, redesignated part H ''National Foundation for Biomedical Research'' as I.

§ 290b. Establishment and duties of Foundation

(a) In general

The Secretary shall, acting through the Director of NIH, establish a nonprofit corporation to be known as the Foundation for the National Institutes of Health (hereafter in this section referred to as the ''Foundation''). The Foundation shall not be an agency or instrumentality of the United States Government.

(b) Purpose of Foundation

The purpose of the Foundation shall be to support the National Institutes of Health in its mission (including collection of funds for pediatric pharmacologic research), and to advance collaboration with biomedical researchers from universities, industry, and nonprofit organizations.

(c) Certain activities of Foundation

(1) In general

In carrying out subsection (b) of this section, the Foundation may solicit and accept gifts, grants, and other donations, establish accounts, and invest and expend funds in support of the following activities with respect to the purpose described in such subsection:

(A) A program to provide and administer endowed positions that are associated with the research program of the National Institutes of Health. Such endowments may be expended for the compensation of individuals holding the positions, for staff, equipment, quarters, travel, and other expenditures that are appropriate in supporting the endowed positions.

(B) A program to provide and administer fellowships and grants to research personnel in order to work and study in association with the National Institutes of Health. Such fellowships and grants may include stipends, travel, health insurance benefits and other appropriate expenses. The recipients of fellowships shall be selected by the donors and the Foundation upon the recommendation of the National Institutes of Health employees in the laboratory where the fellow would serve, and shall be subject to the agreement of the Director of the National Institutes of Health and the Executive Director of the Foundation.

(C) A program to collect funds for pediatric pharmacologic research and studies listed by the Secretary pursuant to section 284m(a)(1)(A) of this title and referred under section 355a(d)(4)(C) of title 21.

(D) Supplementary programs to provide for—

(i) scientists of other countries to serve in research capacities in the United States in association with the National Institutes of Health or elsewhere, or opportunities for employees of the National Institutes of Health or other public health officials in the United States to serve in such capacities in other countries, or both;

(ii) the conduct and support of studies, projects, and research, which may include stipends, travel and other support for personnel in collaboration with national and international non-profit and for-profit organizations;

(iii) the conduct and support of forums, meetings, conferences, courses, and training workshops that may include undergraduate, graduate, post-graduate, and post-doctoral accredited courses and the maintenance of accreditation of such courses by the Foundation at the State and national level for college or continuing education credits or for degrees;

(iv) programs to support and encourage teachers and students of science at all levels of education and programs for the general public which promote the understanding of science;

(v) programs for writing, editing, printing, publishing, and vending of books and other materials; and

(vi) the conduct of other activities to carry out and support the purpose described in subsection (b) of this section.

(2) Fees

The Foundation may assess fees for the provision of professional, administrative and management services by the Foundation in amounts determined reasonable and appropriate by the Executive Director.

(3) Authority of Foundation

The Foundation shall be the sole entity responsible for carrying out the activities described in this subsection.

(d) Board of Directors

(1) Composition

(A) The Foundation shall have a Board of Directors (hereafter referred to in this section as the ''Board''), which shall be composed of ex officio and appointed members in accordance with this subsection. All appointed members of the Board shall be voting members.

(B) The ex officio members of the Board shall be—

(i) the Chairman and ranking minority member of the Subcommittee on Health and the Environment (Committee on Energy and Commerce) or their designees, in the case of the House of Representatives;

(ii) the Chairman and ranking minority member of the Committee on Labor and Human Resources or their designees, in the case of the Senate;

(iii) the Director of the National Institutes of Health; and

(iv) the Commissioner of Food and Drugs.

(C) The ex officio members of the Board under subparagraph (B) shall appoint to the Board individuals from among a list of candidates to be provided by the National Academy of Science. Such appointed members shall include—

(i) representatives of the general biomedical field;

(ii) representatives of experts in pediatric medicine and research;

(iii) representatives of the general biobehavioral field, which may include experts in biomedical ethics; and

(iv) representatives of the general public, which may include representatives of affected industries.

(D)(i) Not later than 30 days after June 10, 1993, the Director of the National Institutes of Health shall convene a meeting of the ex officio members of the Board to—

(I) incorporate the Foundation and establish the general policies of the Foundation for carrying out the purposes of subsection (b) of this section, including the establishment of the bylaws of the Foundation; and

(II) appoint the members of the Board in accordance with subparagraph (C).

(ii) Upon the appointment of the members of the Board under clause (i)(II), the terms of service of the ex officio members of the Board as members of the Board shall terminate.

(E) The agreement of not less than three-fifths of the members of the ex officio members of the Board shall be required for the appointment of each member to the initial Board.

(F) No employee of the National Institutes of Health shall be appointed as a member of the Board.

(G) The Board may, through amendments to the bylaws of the Foundation, provide that the number of members of the Board shall be greater than the number specified in subparagraph (C).

(2) Chair

(A) The ex officio members of the Board under paragraph (1)(B) shall designate an individual to serve as the initial Chair of the Board.

(B) Upon the termination of the term of service of the initial Chair of the Board, the appointed members of the Board shall elect a member of the Board to serve as the Chair of the Board.

(3) Terms and vacancies

(A) The term of office of each member of the Board appointed under paragraph (1)(C) shall be 5 years, except that the terms of offices for the initial appointed members of the Board shall expire as determined by the ex officio members and the Chair.

(B) Any vacancy in the membership of the Board shall be filled in the manner in which the original position was made and shall not affect the power of the remaining members to execute the duties of the Board.

(C) If a member of the Board does not serve the full term applicable under subparagraph (A), the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(D) A member of the Board may continue to serve after the expiration of the term of the member until a successor is appointed.

(4) Compensation

Members of the Board may not receive compensation for service on the Board. Such members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Board, as set forth in the bylaws issued by the Board.

(5) Meetings and quorum

A majority of the members of the Board shall constitute a quorum for purposes of conducting the business of the Board.

(6) Certain bylaws

(A) In establishing bylaws under this subsection, the Board shall ensure that the following are provided for:

(i) Policies for the selection of the officers, employees, agents, and contractors of the Foundation.

(ii) Policies, including ethical standards, for the acceptance, solicitation, and disposition of donations and grants to the Foundation and for the disposition of the assets of the Foundation. Policies with respect to ethical standards shall ensure that officers, employees and agents of the Foundation (including members of the Board) avoid encumbrances that would result in a conflict of interest, including a financial conflict of interest or a divided allegiance. Such policies shall include requirements for the provision of information concerning any ownership or controlling interest in entities related to the activities of the Foundation by such officers, employees and agents and their spouses and relatives.

(iii) Policies for the conduct of the general operations of the Foundation.

(iv) Policies for writing, editing, printing, publishing, and vending of books and other materials.

(B) In establishing bylaws under this subsection, the Board shall ensure that such bylaws (and activities carried out under the bylaws) do not—

(i) reflect unfavorably upon the ability of the Foundation or the National Institutes of Health to carry out its responsibilities or official duties in a fair and objective manner; or

(ii) compromise, or appear to compromise, the integrity of any governmental agency or program, or any officer or employee involved in such program.

(e) Incorporation

The initial members of the Board shall serve as incorporators and shall take whatever actions necessary to incorporate the Foundation.

(f) Nonprofit status

The Foundation shall be considered to be a corporation under section 501(c) of title 26, and shall be subject to the provisions of such section.

(g) Executive Director

(1) In general

The Foundation shall have an Executive Director who shall be appointed by the Board and shall serve at the pleasure of the Board. The Executive Director shall be responsible for the day-to-day operations of the Foundation and shall have such specific duties and responsibilities as the Board shall prescribe.

(2) Compensation

The rate of compensation of the Executive Director shall be fixed by the Board.

(h) Powers

In carrying out subsection (b) of this section, the Foundation may—

(1) operate under the direction of its Board;

(2) adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) provide for 1 or more officers, employees, and agents, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

(4) hire, promote, compensate, and discharge officers and employees of the Foundation, and define the duties of the officers and employees;

(5) with the consent of any executive department or independent agency, use the information, services, staff, and facilities of such in carrying out this section;

(6) sue and be sued in its corporate name, and complain and defend in courts of competent jurisdiction;

(7) modify or consent to the modification of any contract or agreement to which it is a party or in which it has an interest under this part;

(8) establish a process for the selection of candidates for positions under subsection (c) of this section;

(9) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

(10) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Foundation and its employees;

(11) solicit, accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation;

(12) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation;

(13) appoint other groups of advisors as may be determined necessary from time to time to carry out the functions of the Foundation;

(14) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation; and

(15) exercise other powers as set forth in this section, and such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with this part.

(i) Administrative control

No participant in the program established under this part shall exercise any administrative control over any Federal employee.

(j) General provisions

(1) Foundation integrity

The members of the Board shall be accountable for the integrity of the operations of the Foundation and shall ensure such integrity through the development and enforcement of criteria and procedures relating to standards of conduct, financial disclosure statements, conflict of interest rules, recusal and waiver rules, audits and other matter determined appropriate by the Board.

(2) Financial conflicts of interest

Any individual who is an officer, employee, or member of the Board of the Foundation may not (in accordance with policies and requirements developed under subsection (d)(2)(B)(i)(II))[1] personally or substantially participate in the consideration or determination by the Foundation of any matter that would directly or predictably affect any financial interest of the individual or a relative (as such term is defined in section 109(16) of the Ethics in Government Act of 1978) of the individual, of any business organization or other entity, or of which the individual is an officer or employee, or is negotiating for employment, or in which the individual has any other financial interest.

(3) Audits; availability of records

The Foundation shall—

(A) provide for annual audits of the financial condition of the Foundation; and

(B) make such audits, and all other records, documents, and other papers of the Foundation, available to the Secretary and the Comptroller General of the United States for examination or audit.

(4) Reports

(A) Not later than 5 months following the end of each fiscal year, the Foundation shall publish a report describing the activities of the Foundation during the preceding fiscal year. Each such report shall include for the fiscal year involved a comprehensive statement of the operations, activities, financial condition, and accomplishments of the Foundation.

(B) With respect to the financial condition of the Foundation, each report under subparagraph (A) shall include the source, and a description of, all gifts or grants to the Foundation of real or personal property, and the source and amount of all gifts or grants to the Foundation of money. Each such report shall include a specification of any restrictions on the purposes for which gifts or grants to the Foundation may be used.

(C) The Foundation shall make copies of each report submitted under subparagraph (A) available for public inspection, and shall upon request provide a copy of the report to any individual for a charge not exceeding the cost of providing the copy.

(D) The Board shall annually hold a public meeting to summarize the activities of the Foundation and distribute written reports concerning such activities and the scientific results derived from such activities.

(5) Service of Federal employees

Federal employees may serve on committees advisory to the Foundation and otherwise cooperate with and assist the Foundation in carrying out its function, so long as the employees do not direct or control Foundation activities.

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[1] So in original. Probably should be subsection ''(d)(6)(A)''.

(6) Relationship with existing entities

The Foundation may, pursuant to appropriate agreements, merge with, acquire, or use the resources of existing nonprofit private corporations with missions similar to the purposes of the Foundation, such as the Foundation for Advanced Education in the Sciences.

(7) Intellectual property rights

The Board shall adopt written standards with respect to the ownership of any intellectual property rights derived from the collaborative efforts of the Foundation prior to the commencement of such efforts.

(8) National Institutes of Health Amendments of 1990

The activities conducted in support of the National Institutes of Health Amendments of 1990 (Public Law 101–613), and the amendments made by such Act, shall not be nullified by the enactment of this section.[2]

(9) Limitation of activities

(A) In general

The Foundation shall exist solely as an entity to work in collaboration with the research programs of the National Institutes of Health. The Foundation may not undertake activities (such as the operation of independent laboratories or competing for Federal research funds) that are independent of those of the National Institutes of Health research programs.

(B) Gifts, grants, and other donations

(i) In general

Gifts, grants, and other donations to the Foundation may be designated for pediatric research and studies on drugs, and funds so designated shall be used solely for grants for research and studies under subsection (c)(1)(C) of this section.

(ii) Other gifts

Other gifts, grants, or donations received by the Foundation and not described in clause (i) may also be used to support such pediatric research and studies.

(iii) Report

The recipient of a grant for research and studies shall agree to provide the Director of the National Institutes of Health and the Commissioner of Food and Drugs, at the conclusion of the research and studies—

(I) a report describing the results of the research and studies; and

(II) all data generated in connection with the research and studies.

(iv) Action by the Commissioner of Food and Drugs

The Commissioner of Food and Drugs shall take appropriate action in response to a report received under clause (iii) in accordance with paragraphs (7) through (12) of section 284m(c) of this title, including negotiating with the holders of approved applications for the drugs studied for any labeling changes that the Commissioner determines to be appropriate and requests the holders to make.

(C) Applicability

Subparagraph (A) does not apply to the program described in subsection (c)(1)(C) of this section.

(10) Transfer of funds

The Foundation may transfer funds to the National Institutes of Health. Any funds transferred under this paragraph shall be subject to all Federal limitations relating to federally-funded research.

(k) Duties of Director

(1) Applicability of certain standards to non-Federal employees

In the case of any individual who is not an employee of the Federal Government and who serves in association with the National Institutes of Health, with respect to financial assistance received from the Foundation, the Foundation may not provide the assistance of, or otherwise permit the work at the National Institutes of Health to begin until a memorandum of understanding between the individual and the Director of the National Institutes of Health, or the designee of such Director, has been executed specifying that the individual shall be subject to such ethical and procedural standards of conduct relating to duties performed at the National Institutes of Health, as the Director of the National Institutes of Health determines is appropriate.

(2) Support services

The Director of the National Institutes of Health may provide facilities, utilities and support services to the Foundation if it is determined by the Director to be advantageous to the research programs of the National Institutes of Health.

(*l*) Funding

(1) Authorization of appropriations

For the purpose of carrying out this part, there is authorized to be appropriated an aggregate $500,000 for each fiscal year.

(2) Limitation regarding other funds

Amounts appropriated under any provision of law other than paragraph (1) may not be expended to establish or operate the Foundation.

(July 1, 1944, ch. 373, title IV, §499, formerly §499A, as added Pub. L. 101–613, §2, Nov. 16, 1990, 104 Stat. 3224; amended Pub. L. 102–170, title II, §216, Nov. 26, 1991, 105 Stat. 1128; Pub. L. 102–321, title I, §163(b)(6), July 10, 1992, 106 Stat. 376; renumbered §499 and amended Pub. L. 103–43, title I, §121(b)(3), title XVII, §1701, June 10, 1993, 107 Stat. 133, 186; Pub. L. 104–316, title I, §122(b), Oct. 19, 1996, 110 Stat. 3836; Pub. L. 105–392, title IV, §418(2), Nov. 13, 1998, 112 Stat. 3591; Pub. L. 107–109, §13, Jan. 4, 2002, 115 Stat. 1417.)

REFERENCES IN TEXT

Section 109(16) of the Ethics in Government Act of 1978, referred to in subsec. (j)(2), is section 109(16) of Pub. L. 95–521, which is set out in the Appendix to Title 5, Government Organization and Employees.

[2] So in original. Probably should be ''subsection''.

The National Institutes of Health Amendments of 1990, referred to in subsec. (j)(8), is Pub. L. 101–613, Nov. 16, 1990, 104 Stat. 3224, as amended, which enacted this section, section 285g–4 of this title, and provisions set out as notes under section 201 and 285g–4 of this title. For complete classification of this Act to the Code, see Short Title of 1990 Amendments note set out under section 201 of this title and Tables.

PRIOR PROVISIONS

A prior section 499 of act July 1, 1944, was classified to section 289h of this title prior to repeal by Pub. L. 103–43.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–109, §13(1), inserted ''(including collection of funds for pediatric pharmacologic research)'' after ''mission''.

Subsec. (c)(1)(C), (D). Pub. L. 107–109, §13(2), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (d)(1)(B)(iv). Pub. L. 107–109, §13(3)(A)(i), added cl. (iv).

Subsec. (d)(1)(C). Pub. L. 107–109, §13(3)(A)(ii), added subpar. (C) and struck out former subpar. (C) which read as follows: ''The ex officio members of the Board under subparagraph (B) shall appoint to the Board 11 individuals from among a list of candidates to be provided by the National Academy of Science. Of such appointed members—

''(i) 4 shall be representative of the general biomedical field;

''(ii) 2 shall be representatives of the general biobehavorial field; and

''(iii) 5 shall be representatives of the general public.''

Subsec. (d)(2)(B). Pub. L. 107–109, §13(3)(B), realigned margin.

Subsec. (e) to (g). Pub. L. 107–109, §13(5), redesignated subsecs. (f) to (h) as (e) to (g), respectively.

Subsec. (h). Pub. L. 107–109, §13(5), (6), redesignated subsec. (i) as (h) and substituted ''solicit,'' for ''solicit'' in par. (11). Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 107–109, §13(5), redesignated subsec. (j) as (i). Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 107–109, §13(5), redesignated subsec. (k) as (j). Former subsec. (j) redesignated (i).

Subsec. (j)(1). Pub. L. 107–109, §13(7), struck out ''(including those developed under subsection (d)(2)(B)(i)(II))'' after ''procedures relating to standards of conduct''.

Subsec. (j)(2). Pub. L. 107–109, §13(7), which directed striking out ''(including those developed under subsection (d)(2)(B)(i)(II))'' in par. (2), could not be executed because those words do not appear in par. (2).

Subsec. (k). Pub. L. 107–109, §13(5), redesignated subsec. (*l*) as (k). Former subsec. (k) redesignated (j).

Subsec. (k)(9). Pub. L. 107–109, §13(4), designated existing provisions as subpar. (A), inserted subpar. heading, and added subpars. (B) and (C).

Subsecs. (*l*), (m). Pub. L. 107–109, §13(5), redesignated subsec. (m) as (*l*). Former subsec. (*l*) redesignated (k).

1998—Subsec. (a). Pub. L. 105–392, §418(2)(A), substituted ''Foundation for the National Institutes of Health'' for ''National Foundation for Biomedical Research''.

Subsec. (k)(10). Pub. L. 105–392, §418(2)(B), struck out ''not'' after ''may'' and inserted at end ''Any funds transferred under this paragraph shall be subject to all Federal limitations relating to federally-funded research.''

Subsec. (m)(1). Pub. L. 105–392, §418(2)(C), substituted ''$500,000 for each fiscal year'' for ''$200,000 for the fiscal years 1994 and 1995''.

1996—Subsec. (n). Pub. L. 104–316 struck out subsec. (n) which required Comptroller General to conduct audit and prepare report to Congress on adequacy of compliance of the Foundation with guidelines established under this section.

1993—Subsec. (a). Pub. L. 103–43, §1701(1), inserted '', acting through the Director of NIH,'' after ''Secretary shall'' and struck out '', except for the purposes of the Ethics in Government Act and the Technology Transfer Act,'' after ''shall not''.

Subsec. (b). Pub. L. 103–43, §1701(3), added subsec. (b) and struck out heading and text of former subsec. (b). Text related to duties of Foundation.

Subsec. (c). Pub. L. 103–43, §1701(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 103–43, §1701(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (f).

Subsec. (d)(1). Pub. L. 103–43, §1701(4)(A), substituted ''appointed members of the Board'' for ''members of the Foundation'' in subpar. (A), ''Board'' for ''Council'' in subpar. (B), and ''appoint to the Board'' for ''appoint to the Council'' in subpar. (C), and added subpars. (D) to (G).

Subsec. (d)(2). Pub. L. 103–43, §1701(4)(B), designated existing provisions as subpar. (A), substituted ''an individual to serve as the initial Chair'' for ''an appointed member of the Board to serve as the Chair'', and added subpar. (B).

Subsec. (d)(3)(A). Pub. L. 103–43, §1701(4)(C), substituted ''(1)(C)'' for ''(2)(C)''.

Subsec. (d)(5), (6). Pub. L. 103–43, §1701(4)(D), added pars. (5) and (6).

Subsec. (e). Pub. L. 103–43, §1701(2), redesignated subsec. (e) as (g).

Subsecs. (f) to (h). Pub. L. 103–43, §1701(2), redesignated subsecs. (d) to (f) as (f) to (h), respectively. Former subsecs. (g) and (h) redesignated (i) and (j), respectively.

Subsec. (i). Pub. L. 103–43, §1701(2), redesignated subsec. (g) as (i). Former subsec. (i) redesignated (m).

Subsec. (i)(4). Pub. L. 103–43, §1701(5)(A), inserted before period at end '', and define the duties of the officers and employees''.

Subsec. (i)(5), (6). Pub. L. 103–43, §1701(5)(B), (C), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''prescribe by its Board its bylaws, that shall be consistent with law, and that shall provide for the manner in which—

''(A) its officers, employees, and agents are selected;

''(B) its property is acquired, held, and transferred;

''(C) its general operations are to be conducted; and

''(D) the privileges granted by law are exercised and enjoyed;''.

Subsec. (i)(7). Pub. L. 103–43, §1701(5)(C), (D), redesignated par. (8) as (7) and substituted ''part'' for ''subtitle''. Former par. (7) redesignated (6).

Subsec. (i)(8). Pub. L. 103–43, §1701(5)(C), (E), redesignated par. (9) as (8) and substituted ''establish a process for the selection of candidates for positions under subsection (c) of this section'' for ''establish a mechanism for the selection of candidates, subject to the approval of the Director of the National Institutes of Health, for the endowed scientific positions within the organizational structure of the intramural research programs of the National Institutes of Health and candidates for participation in the National Institutes of Health Scholars program''.

Subsec. (i)(9), (10). Pub. L. 103–43, §1701(5)(C), redesignated pars. (10) and (11) as (9) and (10), respectively. Former par. (9) redesignated (8).

Subsec. (i)(11). Pub. L. 103–43, §1701(5)(C), (F), redesignated par. (12) as (11) and inserted ''solicit'' before ''accept''. Former par. (11) redesignated (10).

Subsec. (i)(12), (13). Pub. L. 103–43, §1701(5)(C), redesignated pars. (13) and (14) as (12) and (13), respectively. Former par. (12) redesignated (11).

Subsec. (i)(14). Pub. L. 103–43, §1701(5)(G), (H), added par. (14). Former par. (14) redesignated (13).

Subsec. (i)(15). Pub. L. 103–43, §1701(5)(I), substituted ''part'' for ''subtitle''.

Subsec. (j). Pub. L. 103–43, §1701(2), redesignated subsec. (h) as (j).

Subsecs. (k), (*l*). Pub. L. 103–43, §1701(6), added subsecs. (k) and (*l*).

Subsec. (m). Pub. L. 103–43, §1701(7), amended heading and text of subsec. (m) generally. Prior to amendment, text read as follows:

''(1) AUTHORIZATION OF APPROPRIATIONS.—Subject to paragraph (2), for the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1995.

''(2) LIMITATIONS.—

''(A) Amounts appropriated under paragraph (1) or made available under subparagraph (C) may not be provided to the fund established under subsection (b)(1)(A) of this section.

''(B) For the first fiscal year for which amounts are appropriated under paragraph (1), $200,000 is authorized to be appropriated.

''(C) With respect to the first fiscal year for which amounts are appropriated under paragraph (1), the Secretary may, from amounts appropriated for such fiscal year for the programs of the Department of Health and Human Services, make available not more than $200,000 for carrying out this part, subject to subparagraph (A).''

Pub. L. 103–43, §1701(2), redesignated subsec. (i) as (m).

Subsec. (n). Pub. L. 103–43, §1701(8), added subsec. (n).

1992—Subsec. (g)(9). Pub. L. 102–321 struck out ''or the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration'' after ''Director of the National Institutes of Health'' and ''and the Alcohol, Drug Abuse, and Mental Health Administration'' after ''research programs of the National Institutes of Health''.

1991—Subsec. (c)(1)(C). Pub. L. 102–170, §216(1), substituted ''11'' for ''9''.

Subsec. (c)(1)(C)(iii). Pub. L. 102–170, §216(2), substituted ''5'' for ''3''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

SUBCHAPTER III–A—SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

PART A—ORGANIZATION AND GENERAL AUTHORITIES

§ 290aa. Substance Abuse and Mental Health Services Administration

(a) Establishment

The Substance Abuse and Mental Health Services Administration (hereafter referred to in this subchapter as the ''Administration'') is an agency of the Service.

(b) Agencies

The following entities are agencies of the Administration:

(1) The Center for Substance Abuse Treatment.

(2) The Center for Substance Abuse Prevention.

(3) The Center for Mental Health Services.

(c) Administrator and Deputy Administrator

(1) Administrator

The Administration shall be headed by an Administrator (hereinafter in this subchapter referred to as the ''Administrator'') who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Deputy Administrator

The Administrator, with the approval of the Secretary, may appoint a Deputy Administrator and may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to administer the activities to be carried out through the Administration.

(d) Authorities

The Secretary, acting through the Administrator, shall—

(1) supervise the functions of the agencies of the Administration in order to assure that the programs carried out through each such agency receive appropriate and equitable support and that there is cooperation among the agencies in the implementation of such programs;

(2) establish and implement, through the respective agencies, a comprehensive program to improve the provision of treatment and related services to individuals with respect to substance abuse and mental illness and to improve prevention services, promote mental health and protect the legal rights of individuals with mental illnesses and individuals who are substance abusers;

(3) carry out the administrative and financial management, policy development and planning, evaluation, knowledge dissemination, and public information functions that are required for the implementation of this subchapter;

(4) assure that the Administration conduct and coordinate demonstration projects, evaluations, and service system assessments and other activities necessary to improve the availability and quality of treatment, prevention and related services;

(5) support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs;

(6) in cooperation with the National Institutes of Health, the Centers for Disease Control and the Health Resources and Services Administration develop educational materials and intervention strategies to reduce the risks of HIV or tuberculosis among substance abusers and individuals with mental illness and to develop appropriate mental health services for individuals with such illnesses;

(7) coordinate Federal policy with respect to the provision of treatment services for substance abuse utilizing anti-addiction medications, including methadone;

(8) conduct programs, and assure the coordination of such programs with activities of the National Institutes of Health and the Agency

for Healthcare Research and Quality, as appropriate, to evaluate the process, outcomes and community impact of treatment and prevention services and systems of care in order to identify the manner in which such services can most effectively be provided;

(9) collaborate with the Director of the National Institutes of Health in the development of a system by which the relevant research findings of the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism, the National Institute of Mental Health, and, as appropriate, the Agency for Healthcare Research and Quality are disseminated to service providers in a manner designed to improve the delivery and effectiveness of treatment and prevention services;

(10) encourage public and private entities that provide health insurance to provide benefits for substance abuse and mental health services;

(11) promote the integration of substance abuse and mental health services into the mainstream of the health care delivery system of the United States;

(12) monitor compliance by hospitals and other facilities with the requirements of sections 290dd–1 and 290dd–2 of this title;

(13) with respect to grant programs authorized under this subchapter, assure that—

(A) all grants that are awarded for the provision of services are subject to performance and outcome evaluations; and

(B) all grants that are awarded to entities other than States are awarded only after the State in which the entity intends to provide services—

(i) is notified of the pendency of the grant application; and

(ii) is afforded an opportunity to comment on the merits of the application;

(14) assure that services provided with amounts appropriated under this subchapter are provided bilingually, if appropriate;

(15) improve coordination among prevention programs, treatment facilities and nonhealth care systems such as employers, labor unions, and schools, and encourage the adoption of employee assistance programs and student assistance programs;

(16) maintain a clearinghouse for substance abuse and mental health information to assure the widespread dissemination of such information to States, political subdivisions, educational agencies and institutions, treatment providers, and the general public;

(17) in collaboration with the National Institute on Aging, and in consultation with the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism and the National Institute of Mental Health, as appropriate, promote and evaluate substance abuse services for older Americans in need of such services, and mental health services for older Americans who are seriously mentally ill; and

(18) promote the coordination of service programs conducted by other departments, agencies, organizations and individuals that are or may be related to the problems of individuals suffering from mental illness or substance abuse, including liaisons with the Social Security Administration, Centers for Medicare & Medicaid Services, and other programs of the Department, as well as liaisons with the Department of Education, Department of Justice, and other Federal Departments and offices, as appropriate.

(e) Associate Administrator for Alcohol Prevention and Treatment Policy

(1) In general

There may be in the Administration an Associate Administrator for Alcohol Prevention and Treatment Policy to whom the Administrator may delegate the functions of promoting, monitoring, and evaluating service programs for the prevention and treatment of alcoholism and alcohol abuse within the Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment and the Center for Mental Health Services, and coordinating such programs among the Centers, and among the Centers and other public and private entities. The Associate Administrator also may ensure that alcohol prevention, education, and policy strategies are integrated into all programs of the Centers that address substance abuse prevention, education, and policy, and that the Center for Substance Abuse Prevention addresses the Healthy People 2010 goals and the National Dietary Guidelines of the Department of Health and Human Services and the Department of Agriculture related to alcohol consumption.

(2) Plan

(A) The Administrator, acting through the Associate Administrator for Alcohol Prevention and Treatment Policy, shall develop, and periodically review and as appropriate revise, a plan for programs and policies to treat and prevent alcoholism and alcohol abuse. The plan shall be developed (and reviewed and revised) in collaboration with the Directors of the Centers of the Administration and in consultation with members of other Federal agencies and public and private entities.

(B) Not later than 1 year after July 10, 1992, the Administrator shall submit to the Congress the first plan developed under subparagraph (A).

(3) Report

(A) Not less than once during each 2 years, the Administrator, acting through the Associate Administrator for Alcohol Prevention and Treatment Policy, shall prepare a report describing the alcoholism and alcohol abuse prevention and treatment programs undertaken by the Administration and its agencies, and the report shall include a detailed statement of the expenditures made for the activities reported on and the personnel used in connection with such activities.

(B) Each report under subparagraph (A) shall include a description of any revisions in the plan under paragraph (2) made during the preceding 2 years.

(C) Each report under subparagraph (A) shall be submitted to the Administrator for inclusion in the biennial report under subsection (k) of this section.

(f) Associate Administrator for Women's Services

(1) Appointment

The Administrator, with the approval of the Secretary, shall appoint an Associate Administrator for Women's Services.

(2) Duties

The Associate Administrator appointed under paragraph (1) shall—

(A) establish a committee to be known as the Coordinating Committee for Women's Services (hereafter in this subparagraph referred to as the ''Coordinating Committee''), which shall be composed of the Directors of the agencies of the Administration (or the designees of the Directors);

(B) acting through the Coordinating Committee, with respect to women's substance abuse and mental health services—

(i) identify the need for such services, and make an estimate each fiscal year of the funds needed to adequately support the services;

(ii) identify needs regarding the coordination of services;

(iii) encourage the agencies of the Administration to support such services; and

(iv) assure that the unique needs of minority women, including Native American, Hispanic, African-American and Asian women, are recognized and addressed within the activities of the Administration; and

(C) establish an advisory committee to be known as the Advisory Committee for Women's Services, which shall be composed of not more than 10 individuals, a majority of whom shall be women, who are not officers or employees of the Federal Government, to be appointed by the Administrator from among physicians, practitioners, treatment providers, and other health professionals, whose clinical practice, specialization, or professional expertise includes a significant focus on women's substance abuse and mental health conditions, that shall—

(i) advise the Associate Administrator on appropriate activities to be undertaken by the agencies of the Administration with respect to women's substance abuse and mental health services, including services which require a multidisciplinary approach;

(ii) collect and review data, including information provided by the Secretary (including the material referred to in paragraph (3)), and report biannually to the Administrator regarding the extent to which women are represented among senior personnel, and make recommendations regarding improvement in the participation of women in the workforce of the Administration; and

(iii) prepare, for inclusion in the biennial report required pursuant to subsection (k) of this section, a description of activities of the Committee, including findings made by the Committee regarding—

(I) the extent of expenditures made for women's substance abuse and mental health services by the agencies of the Administration; and

(II) the estimated level of funding needed for substance abuse and mental health services to meet the needs of women;

(D) improve the collection of data on women's health by—

(i) reviewing the current data at the Administration to determine its uniformity and applicability;

(ii) developing standards for all programs funded by the Administration so that data are, to the extent practicable, collected and reported using common reporting formats, linkages and definitions; and

(iii) reporting to the Administrator a plan for incorporating the standards developed under clause (ii) in all Administration programs and a plan to assure that the data so collected are accessible to health professionals, providers, researchers, and members of the public; and

(E) shall establish, maintain, and operate a program to provide information on women's substance abuse and mental health services.

(3) Study

(A) The Secretary, acting through the Assistant Secretary for Personnel, shall conduct a study to evaluate the extent to which women are represented among senior personnel at the Administration.

(B) Not later than 90 days after July 10, 1992, the Assistant Secretary for Personnel shall provide the Advisory Committee for Women's Services with a study plan, including the methodology of the study and any sampling frames. Not later than 180 days after July 10, 1992, the Assistant Secretary shall prepare and submit directly to the Advisory Committee a report concerning the results of the study conducted under subparagraph (A).

(C) The Secretary shall prepare and provide to the Advisory Committee for Women's Services any additional data as requested.

(4) Definition

For purposes of this subsection, the term ''women's substance abuse and mental health conditions'', with respect to women of all age, ethnic, and racial groups, means all aspects of substance abuse and mental illness—

(A) unique to or more prevalent among women; or

(B) with respect to which there have been insufficient services involving women or insufficient data.

(g) Services of experts

(1) In general

The Administrator may obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the number of days or the period of service) the services of not more than 20 experts or consultants who have professional qualifications. Such experts and consultants shall be obtained for the Administration and for each of its agencies.

(2) Compensation and expenses

(A) Experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5724, 5724a(a), 5724a(c), and 5726(c) of title 5.

(B) Expenses specified in subparagraph (A) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1), unless and until the expert or consultant agrees in writing to complete the entire period of assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond the control of the expert or consultant that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for the expenses specified in subparagraph (A) is recoverable from the expert or consultant as a debt of the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

(h) Peer review groups

The Administrator shall, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, establish such peer review groups and program advisory committees as are needed to carry out the requirements of this subchapter and appoint and pay members of such groups, except that officers and employees of the United States shall not receive additional compensation for services as members of such groups. The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under this subsection.

(i) Voluntary services

The Administrator may accept voluntary and uncompensated services.

(j) Administration

The Administrator shall ensure that programs and activities assigned under this subchapter to the Administration are fully administered by the respective Centers to which such programs and activities are assigned.

(k) Report concerning activities and progress

Not later than February 10, 1994, and once every 2 years thereafter, the Administrator shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, the report containing—

(1) a description of the activities carried out by the Administration;

(2) a description of any measurable progress made in improving the availability and quality of substance abuse and mental health services;

(3) a description of the mechanisms by which relevant research findings of the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute of Mental Health have been disseminated to service providers or otherwise utilized by the Administration to further the purposes of this subchapter; and

(4) any report required in this subchapter to be submitted to the Adminstrator[1] for inclusion in the report under this subsection.

***(l)* Applications for grants and contracts**

With respect to awards of grants, cooperative agreements, and contracts under this subchapter, the Administrator, or the Director of the Center involved, as the case may be, may not make such an award unless—

(1) an application for the award is submitted to the official involved;

(2) with respect to carrying out the purpose for which the award is to be provided, the application provides assurances of compliance satisfactory to such official; and

(3) the application is otherwise in such form, is made in such manner, and contains such agreements, assurances, and information as the official determines to be necessary to carry out the purpose for which the award is to be provided.

(m) Emergency response

(1) In general

Notwithstanding section 290aa–3 of this title and except as provided in paragraph (2), the Secretary may use not to exceed 2.5 percent of all amounts appropriated under this subchapter for a fiscal year to make noncompetitive grants, contracts or cooperative agreements to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities.

(2) Exceptions

Amounts appropriated under part C of this subchapter shall not be subject to paragraph (1).

(3) Emergencies

The Secretary shall establish criteria for determining that a substance abuse or mental health emergency exists and publish such criteria in the Federal Register prior to providing funds under this subsection.

(n) Limitation on the use of certain information

No information, if an establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under section 290aa–4 of this title may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose. Such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented (as determined under regulations of the Secretary) to its publication or release in other form.

***(o)* Authorization of appropriations**

For the purpose of providing grants, cooperative agreements, and contracts under this sec-

[1] So in original. Probably should be ''Administrator''.

tion, there are authorized to be appropriated $25,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 501, formerly Pub. L. 93–282, title II, § 201, May 14, 1974, 88 Stat. 134, as amended Pub. L. 94–371, § 8, July 26, 1976, 90 Stat. 1040; renumbered § 501 of act July 1, 1944, and amended Pub. L. 98–24, § 2(b)(2), Apr. 26, 1983, 97 Stat. 176; Pub. L. 98–509, title II, § 201, title III, § 301(c)(1), Oct. 19, 1984, 98 Stat. 2359, 2364; Pub. L. 99–570, title IV, § 4003, Oct. 27, 1986, 100 Stat. 3207–106; Pub. L. 100–690, title II, § 2058(a)(2), Nov. 18, 1988, 102 Stat. 4213; Pub. L. 101–93, § 3(f), Aug. 16, 1989, 103 Stat. 611; Pub. L. 102–321, title I, § 101(a), July 10, 1992, 106 Stat. 324; Pub. L. 104–201, div. A, title XVII, § 1723(a)(3)(A), Sept. 23, 1996, 110 Stat. 2759; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 106–310, div. B, title XXXI, § 3102, title XXXIV, § 3401(a), Oct. 17, 2000, 114 Stat. 1170, 1218; Pub. L. 108–173, title IX, § 900(e)(2)(A), Dec. 8, 2003, 117 Stat. 2372.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (h), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

CODIFICATION

Section was formerly classified to section 3511 of this title prior to renumbering by Pub. L. 98–24.

PRIOR PROVISIONS

A prior section 501 of act July 1, 1944, which was classified to section 219 of this title, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

AMENDMENTS

2003—Subsec. (d)(18). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

2000—Subsec. (e)(1). Pub. L. 106–310, § 3401(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''There shall be in the Administration an Associate Administrator for Alcohol Prevention and Treatment Policy to whom the Administrator shall delegate the functions of promoting, monitoring, and evaluating service programs for the prevention and treatment of alcoholism and alcohol abuse within the Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment, and the Center for Mental Health Services, and coordinating such programs among the Centers, and among the Centers and other public and private entities. The Associate Administrator also shall ensure that alcohol prevention, education, and policy strategies are integrated into all programs of the Centers that address substance abuse prevention, education, and policy, and that the Center for Substance Abuse Prevention addresses the Healthy People 2000 goals and the National Dietary Guidelines of the Department of Health and Human Services and the Department of Agriculture related to alcohol consumption.''

Subsecs. (m) to (*o*). Pub. L. 106–310, § 3102, added subsecs. (m) and (n), redesignated former subsec. (m) as (*o*), and substituted ''2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003'' for ''1993, and such sums as may be necessary for fiscal year 1994'' before period at end.

1999—Subsec. (d)(8), (9). Pub. L. 106–129, which directed the substitution of ''Agency for Healthcare Research and Quality'' for ''Agency for Health Care Policy and Research'', was executed by making the substitution for ''Agency for Health Care Policy Research'', to reflect the probable intent of Congress.

1996—Subsec. (g)(2)(A). Pub. L. 104–201 substituted ''5724a(a), 5724a(c)'' for ''5724a(a)(1), 5724a(a)(3)''.

1992—Pub. L. 102–321 amended section generally, substituting provisions relating to the Substance Abuse and Mental Health Services Administration for provisions relating to the Alcohol, Drug Abuse, and Mental Health Administration.

1989—Subsec. (b)(4). Pub. L. 101–93, § 3(f)(1), substituted ''for'' for ''of''.

Subsec. (j). Pub. L. 101–93, § 3(f)(2), substituted ''section 290aa–5 of this title, establish program advisory committees, and pay members of such groups and committees'' for ''section 290aa–5 of this title and appoint and pay members of such groups'' and ''as members of such groups or committees'' for ''as members of such groups''.

1988—Subsec. (b)(4). Pub. L. 100–690, § 2058(a)(2)(A), added par. (4).

Subsec. (e)(2). Pub. L. 100–690, § 2058(a)(2)(B), substituted ''Not less than once each three years, the Administrator'' for ''The Administrator'' and ''shall submit'' for ''shall annually submit''.

Subsec. (f). Pub. L. 100–690, § 2058(a)(2)(C), substituted ''misconduct'' for ''fraud'' in heading and two places in text.

Subsecs. (k) to (m). Pub. L. 100–690, § 2058(a)(2)(D), (E), added subsecs. (k) to (m) and struck out former subsec. (k), which related to Alcohol, Drug Abuse, and Mental Health Advisory Board, including its duties, membership, terms of office, compensation, personnel, chairman, meetings, and reports to Congress.

1986—Pub. L. 99–570 amended section generally, revising and restating former subsecs. (a), (b), (c), (d), (e), (f), (g), and (h) as (c), (d), (k), (h), (e), (f), (g), and (i), respectively, and adding new subsecs. (a), (b), and (j).

1984—Pub. L. 98–509, § 301(c)(1), amended directory language of Pub. L. 98–24, § 2(b)(2). See 1983 Amendment note below.

Subsec. (c). Pub. L. 98–509, § 201(a), substituted provisions relating to the Alcohol, Drug Abuse, and Mental Health Advisory Board for provisions relating to the National Panel on Alcohol, Drug Abuse, and Mental Health.

Subsecs. (g), (h). Pub. L. 98–509, § 201(b), added subsecs. (g) and (h).

1983—Pub. L. 98–24, § 2(b)(2), as amended by Pub. L. 98–509, § 301(c)(1), renumbered section 3511 of this title as this section.

Subsec. (a). Pub. L. 98–24, § 2(b)(2)(A), struck out ''of Health, Education, and Welfare'' after ''The Secretary'' and ''Department''.

Subsec. (c). Pub. L. 98–24, § 2(b)(2)(A), (B), struck out ''of Health, Education, and Welfare'' after ''The Secretary'', and made a technical amendment to reference to section 218 of this title to reflect the transfer of this section to the Public Health Service Act.

Subsec. (d). Pub. L. 98–24, § 2(b)(2)(C), substituted provisions directing the Administrator to distribute information on the hazards of alcoholism and the abuse of alcohol and drugs for provisions directing the Secretary, through the Administration, to evaluate and make recommendations regarding improved, coordinated activities, where appropriate, for public education and other prevention programs with respect to the abuse of alcohol and other substances.

Subsecs. (e), (f). Pub. L. 98–24, § 2(b)(2)(D), added subsecs. (e) and (f).

1976—Subsec. (d). Pub. L. 94–371 added subsec. (d).

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on

Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

Section 161 of Pub. L. 102–321 provided that: ''Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Alcohol, Drug Abuse and Mental Health Administration or to the Administrator of the Alcohol, Drug Abuse and Mental Health Administration shall be deemed to refer to the Substance Abuse and Mental Health Services Administration or to the Administrator of the Substance Abuse and Mental Health Services Administration.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

TRANSFER PROVISIONS

Subtitle D of title I of Pub. L. 102–321, as amended by Pub. L. 102–352, § 2(b)(1), Aug. 26, 1992, 106 Stat. 939, provided that:

''SEC. 141. TRANSFERS.

''(a) SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION.—Except as specifically provided otherwise in this Act [see Tables for classification] or an amendment made by this Act, there are transferred to the Administrator of the Substance Abuse and Mental Health Services Administration all service related functions which the Administrator of the Alcohol, Drug Abuse and Mental Health Administration, or the Director of any entity within the Alcohol, Drug Abuse and Mental Health Administration, exercised before the date of the enactment of this Act [July 10, 1992] and all related functions of any officer or employee of the Alcohol, Drug Abuse and Mental Health Administration.

''(b) NATIONAL INSTITUTES.—Except as specifically provided otherwise in this Act or an amendment made by this Act, there are transferred to the appropriate Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health, through the Director of the National Institutes of Health, all research related functions which the Administrator of the Alcohol, Drug Abuse and Mental Health Administration exercised before the date of the enactment of this Act and all related functions of any officer or employee of the Alcohol, Drug Abuse, and Mental Health Administration.

''(c) ADEQUATE PERSONNEL AND RESOURCES.—The transfers required under this subtitle shall be effectuated in a manner that ensures that the Substance Abuse and Mental Health Services Administration has adequate personnel and resources to carry out its statutory responsibilities and that the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health have adequate personnel and resources to enable such institutes to carry out their respective statutory responsibilities.

''SEC. 142. TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.

''(a) SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION.—Except as otherwise provided in the Public Health Service Act [this chapter], all personnel employed in connection with, and all assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred to the Administrator of the Substance Abuse and Mental Health Services Administration by this subtitle, subject to section 1531 of title 31, United States Code, shall be transferred to the Substance Abuse and Mental Health Services Administration. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

''(b) NATIONAL INSTITUTES.—Except as otherwise provided in the Public Health Service Act, all personnel employed in connection with, and all assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred to the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health by this subtitle, subject to section 1531 of title 31, United States Code, shall be transferred to the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

''(c) CUSTODY OF BALANCES.—The actual transfer of custody of obligation balances is not required in order to implement this section.

''SEC. 143. INCIDENTAL TRANSFERS.

''Prior to October 1, 1992, the Secretary of Health and Human Services is authorized to make such determinations as may be necessary with regard to the functions transferred by this subtitle, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subtitle and the Public Health Service Act [this chapter]. Such Secretary shall provide for the termination of the affairs of all entities terminated by this subtitle and for such further measures and dispositions as may be necessary to effectuate the purposes of this subtitle.

''SEC. 144. EFFECT ON PERSONNEL.

''(a) IN GENERAL.—Except as otherwise provided by this subtitle and the Public Health Service Act [this chapter], the transfer pursuant to this subtitle of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer of such employee under this subtitle.

''(b) EXECUTIVE SCHEDULE POSITIONS.—Any person who, on the day preceding the effective date of this Act [see Effective Date of 1992 Amendment note set out under section 236 of this title], held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Substance Abuse and Mental Health Services Administration to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

''SEC. 145. SAVINGS PROVISIONS.

''(a) EFFECT ON PREVIOUS DETERMINATIONS.—All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges that—

''(1) have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred by this subtitle; and

''(2) are in effect on the date of enactment of this Act [July 10, 1992];

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Director of the National Institutes of Health, or the Administrator of the Substance Abuse and Mental Health Services Administration, as appropriate, a court of competent jurisdiction, or by operation of law.

''(b) CONTINUATION OF PROCEEDINGS.—

''(1) IN GENERAL.—The provisions of this subtitle shall not affect any proceedings, including notices of proposed rule making, or any application for any license, permit, certificate, or financial assistance pending on the date of enactment of this Act before the Department of Health and Human Services, which relates to the Alcohol, Drug Abuse and Mental Health Administration or the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, or the National Institute of Mental Health, or any office thereof with respect to functions transferred by this subtitle. Such proceedings or applications, to the extent that they relate to functions transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made under such orders, as if this Act [see Tables for classification] had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health by a court of competent jurisdiction, or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subtitle had not been enacted.

''(2) REGULATIONS.—The Secretary of Health and Human Services is authorized to issue regulations providing for the orderly transfer of proceedings continued under paragraph (1).

''(c) EFFECT ON LEGAL ACTIONS.—Except as provided in subsection (e)—

''(1) the provisions of this subtitle do not affect actions commenced prior to the date of enactment of this Act [July 10, 1992]; and

''(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

''(d) NO ABATEMENT OF ACTIONS OR PROCEEDINGS.—No action or other proceeding commenced by or against any officer in his official capacity as an officer of the Department of Health and Human Services with respect to functions transferred by this subtitle shall abate by reason of the enactment of this Act [see Tables for classification]. No cause of action by or against the Department of Health and Human Services with respect to functions transferred by this subtitle, or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this Act. Causes of action and actions with respect to a function transferred by this subtitle, or other proceedings may be asserted by or against the United States or the Administrator of the Alcohol, Drug Abuse and Mental Health Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health, as may be appropriate, and, in an action pending when this Act takes effect [see Effective Date of 1992 Amendment note set out under section 236 of this title], the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this subsection.

''(e) SUBSTITUTION.—If, before the date of enactment of this Act [July 10, 1992], the Department of Health and Human Services, or any officer thereof in the official capacity of such officer, is a party to an action, and under this subtitle any function of such Department, Office, or officer is transferred to the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health, then such action shall be continued with the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health, as the case may be, substituted or added as a party.

''(f) JUDICIAL REVIEW.—Orders and actions of the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health in the exercise of functions transferred to the Directors by this subtitle shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the Administrator of the Alcohol, Drug Abuse and Mental Health Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health, or any office or officer thereof, in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this subtitle shall apply to the exercise of such function by the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors.

''SEC. 146. TRANSITION.

''With the consent of the Secretary of Health and Human Services, the Administrator of the Substance Abuse and Mental Health Services Administration and the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health are authorized to utilize—

''(1) the services of such officers, employees, and other personnel of the Department with respect to functions transferred to the Administrator of the Substance Abuse and Mental Health Services Administration and the Director of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health by this subtitle; and

''(2) funds appropriated to such functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this subtitle.

''SEC. 147. PEER REVIEW.

''With respect to fiscal years 1993 through 1996, the peer review systems, advisory councils and scientific advisory committees utilized, or approved for utilization, by the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health prior to the transfer of such Institutes to the National Institute of Health shall be utilized by such Institutes.

''SEC. 148. MERGERS.

''Notwithstanding the provisions of section 401(c)(2) of the Public Health Service Act (42 U.S.C. 281(c)(2)), the Secretary of Health and Human Services may not merge the National Institute on Alcohol Abuse and Al-

coholism, the National Institute on Drug Abuse or the National Institute of Mental Health with any other institute or entity (or with each other) within the national research institutes for a 5-year period beginning on the date of enactment of this Act [July 10, 1992].

''SEC. 149. CONDUCT OF MULTI-YEAR RESEARCH PROJECTS.

''With respect to multi-year grants awarded prior to fiscal year 1993 by the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health with amounts received under section 1911(b) [former section 300x(b) of this title], as such section existed one day prior to the date of enactment of this Act [July 10, 1992], such grants shall be continued for the entire period of the grant through the utilization of funds made available pursuant to sections 464H, 464L, and 464R [sections 285n, 285*o*, 285p of this title], as appropriate, subject to satisfactory performance.

''SEC. 150. SEPARABILITY.

''If a provision of this subtitle or its application to any person or circumstance is held invalid, neither the remainder of this Act [see Tables for classification] nor the application of the provision to other persons or circumstances shall be affected.

''SEC. 151. BUDGETARY AUTHORITY.

''With respect to fiscal years 1994 and 1995, the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health shall notwithstanding section 405(a) [section 284(a) of this title], prepare and submit, directly to the President for review and transmittal to Congress, an annual budget estimate (including an estimate of the number and type of personnel needs for the Institute) for their respective Institutes, after reasonable opportunity for comment (but without change) by the Secretary of Health and Human Services, the Director of the National Institutes of Health, and the Institute's advisory council.''

REPORT BY SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

Section 708 of Pub. L. 102–321 directed Administrator of Substance Abuse and Mental Health Services Administration to submit to Congress an interim report, not later than 6 months after July 10, 1992, and a final report, not later than Oct. 1, 1993, concerning current policies and barriers to provision of substance abuse and mental health services, with emphasis on barriers to health insurance and Medicaid coverage of such services, and further directed Secretary of Health and Human Services to initiate, not later than Jan. 1, 1994, research and demonstration projects which, consistent with information from reports submitted by the Administrator, explore alternative mechanisms of providing health insurance and treatment services for substance abuse and mental illness.

RELATIONSHIP BETWEEN MENTAL ILLNESS AND SUBSTANCE ABUSE

Section 2071 of Pub. L. 100–690 directed Secretary of Health and Human Services to conduct a study for the purpose of determining the relationship between mental illness and substance abuse, and developing recommendations on the most effective methods of treatment for individuals with both mental illness and substance abuse problems, and, not later than 12 months after Nov. 18, 1988, to complete the study and submit to Congress the findings made as a result of the study.

REPORT WITH RESPECT TO ADMINISTRATION OF CERTAIN RESEARCH PROGRAMS

Section 2073 of Pub. L. 100–690 directed Secretary of Health and Human Services to request National Academy of Sciences to conduct a review of research activities of National Institutes of Health and the Alcohol, Drug Abuse, and Mental Health Administration and, not later than 12 months after the date on which any contract requested is entered into, provide for the completion of the review and submit to Congress a report describing the findings made as a result of the review, with Secretary of Health and Human Services authorized to enter into a contract with National Academy of Sciences to carry out the review.

CONGRESSIONAL STATEMENT OF POLICY FOR ALCOHOL AND DRUG ABUSE AMENDMENTS OF 1983

Section 1(b) of Pub. L. 98–24 provided that: ''It is the policy of the United States and the purpose of this Act [see Short Title of 1983 Amendment note set out under section 201 of this title] to provide leadership in the national effort to reduce the incidence of alcoholism and alcohol-related problems and drug abuse through—

''(1) a continued Federal commitment to research into the behavioral and biomedical etiology, the treatment, and the mental and physical health and social and economic consequences of alcohol abuse and alcoholism and drug abuse;

''(2) a commitment to—

''(A) extensive dissemination to States, units of local government, community organizations, and private groups of the most recent information and research findings with respect to alcohol abuse and alcoholism and drug abuse, including information with respect to the application of research findings; and

''(B) the accomplishment of such dissemination through up-to-date publications, demonstrations, educational programs, and other appropriate means;

''(3) the provision of technical assistance to research personnel; services personnel, and prevention personnel in the field of alcohol abuse and alcoholism and drug abuse;

''(4) the development and encouragement of prevention programs designed to combat the spread of alcoholism, alcohol abuse, drug abuse, and the abuse of other legal and illegal substances;

''(5) the development and encouragement of effective occupational prevention and treatment programs within Government and in cooperation with the private sector; and

''(6) the provision of a Federal response to alcohol abuse and alcoholism and drug abuse which encourages the greatest participation by the private sector, both financially and otherwise, and concentrates on carrying out functions relating to alcohol abuse and alcoholism and drug abuse which are truly national in scope.''

ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH REPORTS BY THE SECRETARY

Section 3 of Pub. L. 98–24 directed Secretary of Health and Human Services to submit to Congress, on or before Jan. 15, 1984, a report describing the extent to which Federal and State programs, departments, and agencies are concerned and are dealing effectively with problems of alcohol abuse and alcoholism, problems of drug abuse, and mental illness.

TRANSFER OF BALANCES IN WORKING CAPITAL FUND, NARCOTIC HOSPITALS, TO SURPLUS FUND

Act July 8, 1947, ch. 210, title II, § 201, 61 Stat. 269, provided: ''That as of June 30, 1947, and the end of each fiscal year thereafter any balances in the 'Working capital fund, narcotic hospitals,' in excess of $150,000 shall be transferred to the surplus fund of the Treasury.''

[Section 201 of act July 8, 1947, set out above, was formerly classified to section 258a of this title.]

§ 290aa–1. Advisory councils

(a) Appointment

(1) In general

The Secretary shall appoint an advisory council for—

(A) the Substance Abuse and Mental Health Services Administration;

(B) the Center for Substance Abuse Treatment;

(C) the Center for Substance Abuse Prevention; and

(D) the Center for Mental Health Services.

Each such advisory council shall advise, consult with, and make recommendations to the Secretary and the Administrator or Director of the Administration or Center for which the advisory council is established concerning matters relating to the activities carried out by and through the Administration or Center and the policies respecting such activities.

(2) Function and activities

An advisory council—

(A)(i) may on the basis of the materials provided by the organization respecting activities conducted at the organization, make recommendations to the Administrator or Director of the Administration or Center for which it was established respecting such activities;

(ii) shall review applications submitted for grants and cooperative agreements for activities for which advisory council approval is required under section 290aa–3(d)(2) of this title and recommend for approval applications for projects that show promise of making valuable contributions to the Administration's mission; and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the organization;

(B) may collect, by correspondence or by personal investigation, information as to studies and services that are being carried on in the United States or any other country as to the diseases, disorders, or other aspects of human health with respect to which the organization was established and with the approval of the Administrator or Director, whichever is appropriate, make such information available through appropriate publications for the benefit of public and private health entities and health professions personnel and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership

(1) In general

Each advisory council shall consist of nonvoting ex officio members and not more than 12 members to be appointed by the Secretary under paragraph (3).

(2) Ex officio members

The ex officio members of an advisory council shall consist of—

(A) the Secretary;

(B) the Administrator;

(C) the Director of the Center for which the council is established;

(D) the Under Secretary for Health of the Department of Veterans Affairs;

(E) the Assistant Secretary for Defense for Health Affairs (or the designates of such officers); and

(F) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) Appointed members

Individuals shall be appointed to an advisory council under paragraph (1) as follows:

(A) Nine of the members shall be appointed by the Secretary from among the leading representatives of the health disciplines (including public health and behavioral and social sciences) relevant to the activities of the Administration or Center for which the advisory council is established.

(B) Three of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, public relations, law, health policy economics, or management.

(4) Compensation

Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The remaining members of an advisory council shall receive, for each day (including travel time) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent to the annual rate in effect for grade GS–18 of the General Schedule.

(c) Terms of office

(1) In general

The term of office of a member of an advisory council appointed under subsection (b) of this section shall be 4 years, except that any member appointed to fill a vacancy for an unexpired term shall serve for the remainder of such term. The Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members not all expire in the same year. A member of an advisory council may serve after the expiration of such member's term until a successor has been appointed and taken office.

(2) Reappointments

A member who has been appointed to an advisory council for a term of 4 years may not be reappointed to an advisory council during the 2-year period beginning on the date on which such 4-year term expired.

(3) Time for appointment

If a vacancy occurs in an advisory council among the members under subsection (b) of this section, the Secretary shall make an appointment to fill such vacancy within 90 days from the date the vacancy occurs.

(d) Chair

The Secretary shall select a member of an advisory council to serve as the chair of the council. The Secretary may so select an individual from among the appointed members, or may select the Administrator or the Director of the Center involved. The term of office of the chair shall be 2 years.

(e) Meetings

An advisory council shall meet at the call of the chairperson or upon the request of the Ad-

ministrator or Director of the Administration or Center for which the advisory council is established, but in no event less than 2 times during each fiscal year. The location of the meetings of each advisory council shall be subject to the approval of the Administrator or Director of Administration or Center for which the council was established.

(f) Executive Secretary and staff

The Administrator or Director of the Administration or Center for which the advisory council is established shall designate a member of the staff of the Administration or Center for which the advisory council is established to serve as the Executive Secretary of the advisory council. The Administrator or Director shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Administrator or Director shall provide orientation and training for new members of the advisory council to provide for their effective participation in the functions of the advisory council.

(July 1, 1944, ch. 373, title V, § 502, formerly § 505, as added Pub. L. 99–570, title IV, § 4004(a), Oct. 27, 1986, 100 Stat. 3207–109; amended Pub. L. 100–527, § 10(4), Oct. 25, 1988, 102 Stat. 2641; Pub. L. 101–381, title I, § 102(6), Aug. 18, 1990, 104 Stat. 586; renumbered § 502 and amended Pub. L. 102–321, title I, § 102, July 10, 1992, 106 Stat. 331; Pub. L. 102–352, § 2(a)(6), Aug. 26, 1992, 106 Stat. 938; Pub. L. 103–446, title XII, § 1203(a)(1), Nov. 2, 1994, 108 Stat. 4689; Pub. L. 106–310, div. B, title XXXIV, § 3402, Oct. 17, 2000, 114 Stat. 1219.)

CODIFICATION

Section was formerly classified to section 290aa–3a of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 290aa–1, act July 1, 1944, ch. 373, title V, § 502, formerly Pub. L. 91–616, title I, § 101, Dec. 31, 1970, 84 Stat. 1848, as amended Pub. L. 93–282, title II, § 203(a), May 14, 1974, 88 Stat. 135; Pub. L. 96–180, § 3, Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97–35, title IX, § 966(a), Aug. 13, 1981, 95 Stat. 595; renumbered § 502 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(3), 97 Stat. 177; Oct. 19, 1984, Pub. L. 98–509, title II, § 205(b)(2), 98 Stat. 2361; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(b)(1), 100 Stat. 3207–114, related to National Institute on Alcohol Abuse and Alcoholism, prior to repeal by Pub. L. 102–321, title I, § 101(b), July 10, 1992, 106 Stat. 331. See section 285n of this title.

A prior section 502 of act July 1, 1944, which was classified to section 220 of this title, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–310 substituted ''2 times during each fiscal year'' for ''3 times during each fiscal year''.

1994—Subsec. (b)(2)(D). Pub. L. 103–446 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''the Chief Medical Director of the Veterans Administration; and''.

1992—Pub. L. 102–352 substituted ''or management'' for ''and management'' in subsec. (b)(3)(B).

Pub. L. 102–321 amended section generally, substituting provisions relating to appointment of advisory councils to Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, Center for Substance Abuse Prevention, and Center for Mental Health Services for provisions appointing advisory councils for National Institute on Alcohol Abuse and Alcoholism, National Institute on Drug Abuse, and National Institute of Mental Health.

1990—Subsec. (a)(2). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

1988—Subsec. (b)(2)(A). Pub. L. 100–527 substituted ''Chief Medical Director of the Department of Veterans Affairs'' for ''Chief Medical Director of the Veterans' Administration''.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

CONTINUATION OF EXISTING ADVISORY COUNCILS

Section 4004(b) of Pub. L. 99–570 provided that: ''The amendment made by subsection (a) [enacting this section and renumbering this section and section 290aa–5 of this title] does not terminate the membership of any advisory council for the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, or the National Institute of Mental Health which was in existence on the date of enactment of this Act [Oct. 27, 1986]. After such date—

''(1) the Secretary of Health and Human Services shall make appointments to each such advisory council in such a manner as to bring about as soon as practicable the composition for such council prescribed by section 505 [now 502] of the Public Health Service Act [this section];

''(2) each advisory council shall organize itself in accordance with such section and exercise the functions prescribed by such section; and

''(3) the Director of each such institute shall perform for such advisory council the functions prescribed by such section.''

§ 290aa–2. Omitted

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, § 503, formerly § 505, as added Pub. L. 98–24, § 2(b)(7), Apr. 26, 1983, 97 Stat. 178; renumbered § 506, Pub. L. 99–570, title IV, § 4004(a), Oct. 27, 1986, 100 Stat. 3207–109; renumbered § 503, Pub. L. 102–321, title I, § 103, July 10, 1992, 106 Stat. 333, which required the Secretary of Health and Human Services to submit triennial reports to Congress on the health consequences of using alcoholic beverages, the health consequences and extent of drug abuse in the United States, and current research findings made with respect to drug abuse, including current findings on the health effects of marihuana and the addictive property of tobacco, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, pages 92 and 93 of House Document No. 103–7.

Section was formerly classified to section 290aa–4 of this title prior to renumbering by Pub. L. 102–321.

A prior section 290aa–2, act July 1, 1944, ch. 373, title V, § 503, formerly Pub. L. 92–255, title IV, § 406(a), title V, § 501, Mar. 21, 1972, 86 Stat. 78, 85; amended Pub. L. 93–282, title II, § 204, May 14, 1974, 88 Stat. 136; Pub. L. 94–237, § 12(a), Mar. 19, 1976, 90 Stat. 247; Pub. L. 96–181, § 10, Jan. 2, 1980, 93 Stat. 1314; Pub. L. 97–35, title IX, §§ 968(a), 973(f), Aug. 13, 1981, 95 Stat. 595, 598; renumbered § 503 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(4), (5), 97 Stat. 177; Oct. 19, 1984, Pub. L. 98–509, title II, §§ 202, 205(b)(1), 98 Stat. 2360, 2361; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(b)(2), 100 Stat. 3207–114, related to National Institute on Drug Abuse, prior to repeal by Pub. L. 102–321, title I, § 101(b), July 10, 1992, 106 Stat. 331. See section 285*o* of this title.

A prior section 503 of act July 1, 1944, which was classified to section 221 of this title, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

§ 290aa–2a. Report on individuals with co-occurring mental illness and substance abuse disorders

(a) In general

Not later than 2 years after October 17, 2000, the Secretary shall, after consultation with organizations representing States, mental health and substance abuse treatment providers, prevention specialists, individuals receiving treatment services, and family members of such individuals, prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Commerce of the House of Representatives, a report on prevention and treatment services for individuals who have co-occurring mental illness and substance abuse disorders.

(b) Report content

The report under subsection (a) of this section shall be based on data collected from existing Federal and State surveys regarding the treatment of co-occurring mental illness and substance abuse disorders and shall include—

(1) a summary of the manner in which individuals with co-occurring disorders are receiving treatment, including the most up-to-date information available regarding the number of children and adults with co-occurring mental illness and substance abuse disorders and the manner in which funds provided under sections 300x and 300x–21 of this title are being utilized, including the number of such children and adults served with such funds;

(2) a summary of improvements necessary to ensure that individuals with co-occurring mental illness and substance abuse disorders receive the services they need;

(3) a summary of practices for preventing substance abuse among individuals who have a mental illness and are at risk of having or acquiring a substance abuse disorder; and

(4) a summary of evidenced-based practices for treating individuals with co-occurring mental illness and substance abuse disorders and recommendations for implementing such practices.

(c) Funds for report

The Secretary may obligate funds to carry out this section with such appropriations as are available.

(July 1, 1944, ch. 373, title V, § 503A, as added Pub. L. 106–310, div. B, title XXXIV, § 3406, Oct. 17, 2000, 114 Stat. 1221.)

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 290aa–3. Peer review

(a) In general

The Secretary, after consultation with the Administrator, shall require appropriate peer review of grants, cooperative agreements, and contracts to be administered through the agency which exceed the simple acquisition threshold as defined in section 403(11) of title 41.

(b) Members

The members of any peer review group established under subsection (a) of this section shall be individuals who by virtue of their training or experience are eminently qualified to perform the review functions of the group. Not more than one-fourth of the members of any such peer review group shall be officers or employees of the United States.

(c) Advisory council review

If the direct cost of a grant or cooperative agreement (described in subsection (a) of this section) exceeds the simple acquisition threshold as defined by section 403(11) of title 41, the Secretary may make such a grant or cooperative agreement only if such grant or cooperative agreement is recommended—

(1) after peer review required under subsection (a) of this section; and

(2) by the appropriate advisory council.

(d) Conditions

The Secretary may establish limited exceptions to the limitations contained in this section regarding participation of Federal employees and advisory council approval. The circumstances under which the Secretary may make such an exception shall be made public.

(July 1, 1944, ch. 373, title V, § 504, formerly § 506, as added Pub. L. 98–24, § 2(b)(7), Apr. 26, 1983, 97 Stat. 178; amended Pub. L. 99–158, § 3(c), Nov. 20,

1985, 99 Stat. 879; renumbered § 507 and amended Pub. L. 99–570, title IV, §§ 4004(a), 4007, Oct. 27, 1986, 100 Stat. 3207–109, 3207–115; renumbered § 504 and amended Pub. L. 102–321, title I, § 104, July 10, 1992, 106 Stat. 333; Pub. L. 102–352, § 2(a)(7), Aug. 26, 1992, 106 Stat. 938; Pub. L. 105–392, title IV, § 412, Nov. 13, 1998, 112 Stat. 3590; Pub. L. 106–310, div. B, title XXXIV, § 3401(b), Oct. 17, 2000, 114 Stat. 1218.)

CODIFICATION

Section was formerly classified to section 290aa–5 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 290aa–3, act July 1, 1944, ch. 373, title V, § 504, formerly title IV, § 455, as added May 14, 1974, Pub. L. 93–282, title II, § 202, 88 Stat. 135; amended Oct. 7, 1980, Pub. L. 96–398, title III, § 325, title IV, § 401(a), title VIII, § 804(a), 94 Stat. 1596, 1597, 1608; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(g)(1), 95 Stat. 560; renumbered title V, § 504, Apr. 26, 1983, Pub. L. 98–24, § 2(b)(6), 97 Stat. 177; Oct. 19, 1984, Pub. L. 98–509, title II, §§ 203, 204, 98 Stat. 2360, 2361; Oct. 7, 1985, Pub. L. 99–117, § 11(b), 99 Stat. 495; Oct. 27, 1986, Pub. L. 99–570, title IV, §§ 4011(a), 4012, 4013, 4021(a), (b)(1), 100 Stat. 3207–115, 3207–116, 3207–124; Nov. 14, 1986, Pub. L. 99–660, title V, § 504, 100 Stat. 3797; Nov. 18, 1988, Pub. L. 100–690, title II, § 2057(1), (2), 102 Stat. 4211, related to National Institute of Mental Health, prior to repeal by Pub. L. 102–321, title I, § 101(b), July 10, 1992, 106 Stat. 331. See section 285p of this title.

A prior section 504 of act July 1, 1944, which was classified to section 222 of this title, was renumbered section 2104 of act July 1, 1944, by Pub. L. 98–24 and transferred to section 300aa–3 of this title, renumbered section 2304 of act July 1, 1944, by Pub. L. 99–660 and transferred to section 300cc–3 of this title, prior to repeal by Pub. L. 98–621, § 10(s), Nov. 8, 1984, 98 Stat. 3381.

AMENDMENTS

2000—Pub. L. 106–310 reenacted section catchline without change and amended text generally, substituting, in subsec. (a), provisions requiring, after consultation with the Administrator of the Substance Abuse and Mental Health Services Administration, appropriate peer review of grants, cooperative agreements, and contracts to be administered through the agency that exceed the simple acquisition threshold as defined in section 403 of title 41 for provisions requiring such peer review after consultation with the Directors of the Center for Substance Abuse Treatment, the Center for Substance Abuse Prevention, and the Center for Mental Health Services, in subsec. (b), provisions relating to members of peer groups qualified to perform review functions under subsec. (a) for similar provisions in former subsec. (b) but which included reference to regulatory establishment of such groups, in subsec. (c), provisions relating to advisory council review for provisions relating to requirements and specification of regulations promulgated under subsec. (a), and in subsec. (d), provisions relating to Secretary's authority to establish exceptions to the limitations in section regarding participation of Federal employees and advisory council approval for provisions relating to recommendations.

1998—Subsec. (d)(2). Pub. L. 105–392 substituted ''or cooperative agreement'' for ''cooperative agreement, or contract'' wherever appearing in introductory provisions.

1992—Pub. L. 102–352 struck out ''by regulation'' after ''Center for Mental Health Services, shall'' in subsec. (a).

Pub. L. 102–321 amended section generally, substituting provisions relating to peer review of grants, cooperative agreements, and contracts administered through the Centers for Substance Abuse Treatment, Substance Abuse Prevention, and Mental Health Services for provisions relating to peer review of biomedical and behavioral research and development grants, cooperative agreements, and contracts administered through the National Institutes of Mental Health, Alcohol Abuse and Alcoholism, and Drug Abuse.

1986—Subsec. (b). Pub. L. 99–570, § 4007, inserted ''applications made for'' before ''grants, cooperative'' in introductory text.

1985—Subsec. (e). Pub. L. 99–158 added subsec. (e).

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290aa–3a. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, § 505, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4004(a), 100 Stat. 3207–109, and amended, which related to advisory councils for the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health, was renumbered section 502 of act July 1, 1944, by Pub. L. 102–321, title I, § 102(1), July 10, 1992, 106 Stat. 331, and transferred to section 290aa–1 of this title.

§ 290aa–4. Data collection

(a) Requirement of annual collection of data on mental illness and substance abuse

The Secretary, acting through the Administrator, shall collect data each year on—

(1) the national incidence and prevalence of the various forms of mental illness and substance abuse; and

(2) the incidence and prevalence of such various forms in major metropolitan areas selected by the Administrator.

(b) Requisite areas of data collection on mental health

With respect to the activities of the Administrator under subsection (a) of this section relating to mental health, the Administrator shall ensure that such activities include, at a minimum, the collection of data on—

(1) the number and variety of public and nonprofit private treatment programs;

(2) the number and demographic characteristics of individuals receiving treatment through such programs;

(3) the type of care received by such individuals; and

(4) such other data as may be appropriate.

(c) Requisite areas of data collection on substance abuse

(1) With respect to the activities of the Administrator under subsection (a) of this section relating to substance abuse, the Administrator shall ensure that such activities include, at a minimum, the collection of data on—

(A) the number of individuals admitted to the emergency rooms of hospitals as a result of the abuse of alcohol or other drugs;

(B) the number of deaths occurring as a result of substance abuse, as indicated in reports by coroners;

(C) the number and variety of public and private nonprofit treatment programs, including the number and type of patient slots available;

(D) the number of individuals seeking treatment through such programs, the number and demographic characteristics of individuals receiving such treatment, the percentage of individuals who complete such programs, and, with respect to individuals receiving such treatment, the length of time between an individual's request for treatment and the commencement of treatment;

(E) the number of such individuals who return for treatment after the completion of a prior treatment in such programs and the method of treatment utilized during the prior treatment;

(F) the number of individuals receiving public assistance for such treatment programs;

(G) the costs of the different types of treatment modalities for drug and alcohol abuse and the aggregate relative costs of each such treatment modality provided within a State in each fiscal year;

(H) to the extent of available information, the number of individuals receiving treatment for alcohol or drug abuse who have private insurance coverage for the costs of such treatment;

(I) the extent of alcohol and drug abuse among high school students and among the general population; and

(J) the number of alcohol and drug abuse counselors and other substance abuse treatment personnel employed in public and private treatment facilities.

(2) Annual surveys shall be carried out in the collection of data under this subsection. Summaries and analyses of the data collected shall be made available to the public.

(d) Development of uniform criteria for data collection

After consultation with the States and with appropriate national organizations, the Administrator shall develop uniform criteria for the collection of data, using the best available technology, pursuant to this section.

(July 1, 1944, ch. 373, title V, § 505, formerly § 509D, as added Pub. L. 100–690, title II, § 2052(a), Nov. 18, 1988, 102 Stat. 4207; amended Pub. L. 101–93, § 3(b), Aug. 16, 1989, 103 Stat. 609; renumbered § 505, Pub. L. 102–321, title I, § 105, July 10, 1992, 106 Stat. 334; Pub. L. 103–43, title XX, § 2010(b)(7), June 10, 1993, 107 Stat. 214.)

CODIFICATION

Section was formerly classified to section 290aa–11 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 290aa–4, act July 1, 1944, ch. 373, title V, § 506, formerly § 505, as added Apr. 26, 1983, Pub. L. 98–24, § 2(b)(7), 97 Stat. 178; renumbered § 506, Oct. 27, 1986, Pub. L. 99–570, title IV, § 4004(a), 100 Stat. 3207–109, which related to reports on alcoholism and alcohol and drug abuse, was renumbered section 503 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290aa–2 of this title.

A prior section 505 of act July 1, 1944, was renumbered section 502 by section 102 of Pub. L. 102–321 and is classified to section 290aa–1 of this title.

Another prior section 505 of act July 1, 1944, which was classified to section 223 of this title, was renumbered section 2105 of act July 1, 1944, by Pub. L. 98–24 and transferred to section 300aa–4 of this title, renumbered section 2305 of act July 1, 1944, by Pub. L. 99–660 and transferred to section 300cc–4 of this title, prior to repeal by Pub. L. 99–117, § 12(f), Oct. 7, 1985, 99 Stat. 495.

AMENDMENTS

1993—Pub. L. 103–43, § 2010(b)(7), which directed the substitution of ''section 238 of this title'' for ''section 300aaa of this title'' in section 505(a)(2) of act July 1, 1944 (this section), could not be executed because the language did not appear. Amendment was probably intended for prior section 505 which was renumbered section 502 and amended generally by Pub. L. 102–321, § 102, which is classified to section 290aa–1 of this title.

1989—Subsec. (c)(1)(A). Pub. L. 101–93, § 3(b)(1), substituted ''alcohol or'' for ''alcohol and''.

Subsec. (c)(2). Pub. L. 101–93, § 3(b)(2), substituted ''this subsection'' for ''this section''.

NATIONAL SURVEY ON DRUG USE AND HEALTH

Pub. L. 108–358, § 5, Oct. 22, 2004, 118 Stat. 1664, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall ensure that the National Survey on Drug Use and Health includes questions concerning the use of anabolic steroids.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $1,000,000 for each of fiscal years 2005 through 2010.''

REPORTS ON CONSUMPTION OF METHAMPHETAMINE AND OTHER ILLICIT DRUGS

Pub. L. 106–310, div. B, title XXXVI, § 3641, Oct. 17, 2000, 114 Stat. 1237, provided that: ''The Secretary of Health and Human Services shall include in each National Household Survey on Drug Abuse appropriate prevalence data and information on the consumption of methamphetamine and other illicit drugs in rural areas, metropolitan areas, and consolidated metropolitan areas.''

PUBLIC HEALTH MONITORING OF METHAMPHETAMINE ABUSE

Pub. L. 104–237, title V, § 502, Oct. 3, 1996, 110 Stat. 3112, provided that: ''The Secretary of Health and Human Services shall develop a public health monitoring program to monitor methamphetamine abuse in the United States. The program shall include the collection and dissemination of data related to methamphetamine abuse which can be used by public health officials in policy development.''

§ 290aa–5. Grants for the benefit of homeless individuals

(a) In general

The Secretary shall award grants, contracts and cooperative agreements to community-based public and private nonprofit entities for the purposes of providing mental health and substance abuse services for homeless individuals. In carrying out this section, the Secretary shall consult with the Interagency Council on the Homeless[1], established under section 11311 of this title.

(b) Preferences

In awarding grants, contracts, and cooperative agreements under subsection (a) of this section, the Secretary shall give a preference to—

(1) entities that provide integrated primary health, substance abuse, and mental health services to homeless individuals;

[1] See Change of Name note below.

(2) entities that demonstrate effectiveness in serving runaway, homeless, and street youth;

(3) entities that have experience in providing substance abuse and mental health services to homeless individuals;

(4) entities that demonstrate experience in providing housing for individuals in treatment for or in recovery from mental illness or substance abuse; and

(5) entities that demonstrate effectiveness in serving homeless veterans.

(c) Services for certain individuals

In awarding grants, contracts, and cooperative agreements under subsection (a) of this section, the Secretary shall not—

(1) prohibit the provision of services under such subsection to homeless individuals who are suffering from a substance abuse disorder and are not suffering from a mental health disorder; and

(2) make payments under subsection (a) of this section to any entity that has a policy of—

(A) excluding individuals from mental health services due to the existence or suspicion of substance abuse; or

(B) has a policy of excluding individuals from substance abuse services due to the existence or suspicion of mental illness.

(d) Term of the awards

No entity may receive a grant, contract, or cooperative agreement under subsection (a) of this section for more than 5 years.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $50,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 506, formerly § 512, as added Pub. L. 98–509, title II, § 206(a), Oct. 19, 1984, 98 Stat. 2361; amended Pub. L. 100–77, title VI, § 613(a), (b), July 22, 1987, 101 Stat. 524; renumbered § 506 and amended Pub. L. 102–321, title I, § 106, July 10, 1992, 106 Stat. 334; Pub. L. 106–310, div. B, title XXXII, § 3202, Oct. 17, 2000, 114 Stat. 1190; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675.)

CODIFICATION

Section was formerly classified to section 290bb–1a of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 290aa–5, act July 1, 1944, ch. 373, title V, § 507, formerly § 506, as added Apr. 26, 1983, Pub. L. 98–24, § 2(b)(7), 97 Stat. 178; amended Nov. 20, 1985, Pub. L. 99–158, § 3(c), 99 Stat. 879; renumbered § 507 and amended Oct. 27, 1986, Pub. L. 99–570, title IV, §§ 4004(a), 4007, 100 Stat. 3207–109, 3207–115, which related to peer review of biomedical and behavioral research and development grants, was renumbered section 504 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290aa–3 of this title.

A prior section 506 of act July 1, 1944, which was classified to section 224 of this title, was successively renumbered by subsequent acts, and transferred, see section 238c of this title.

AMENDMENTS

2000—Pub. L. 106–310 amended section catchline and text generally, substituting present provisions for provisions, in subsec. (a), authorizing Secretary to make grants for benefit of homeless individuals through the Administrator of Substance Abuse and Mental Health Services Administration, in subsec. (b), relating to preferences for grants to entities providing integrated primary health, substance abuse, and mental health services, in subsec. (c), relating to services for certain individuals, in subsec. (d), relating to 5-year grants with renewals, and in subsec. (e), authorizing appropriations for fiscal years 1993 and 1994.

Subsec. (a). Pub. L. 106–400 made technical amendment to reference in original act which appears in text as reference to section 11311 of this title.

1992—Pub. L. 102–321 amended section generally, substituting provisions relating to grants for benefit of homeless individuals for provisions relating to alcohol abuse and alcoholism demonstration projects.

1987—Subsecs. (c), (d). Pub. L. 100–77 added subsec. (c), redesignated former subsec. (c) as (d), and substituted ''subsection (a) or (c)'' for ''subsection (a)''.

CHANGE OF NAME

Interagency Council on the Homeless changed to United States Interagency Council on Homelessness by Pub. L. 108–199, div. G, title II, § 216, Jan. 23, 2004, 118 Stat. 394.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290aa–5a. Alcohol and drug prevention or treatment services for Indians and Native Alaskans

(a) In general

The Secretary shall award grants, contracts, or cooperative agreements to public and private nonprofit entities, including Native Alaskan entities and Indian tribes and tribal organizations, for the purpose of providing alcohol and drug prevention or treatment services for Indians and Native Alaskans.

(b) Priority

In awarding grants, contracts, or cooperative agreements under subsection (a) of this section, the Secretary shall give priority to applicants that—

(1) propose to provide alcohol and drug prevention or treatment services on reservations;

(2) propose to employ culturally-appropriate approaches, as determined by the Secretary, in providing such services; and

(3) have provided prevention or treatment services to Native Alaskan entities and Indian tribes and tribal organizations for at least 1 year prior to applying for a grant under this section.

(c) Duration

The Secretary shall award grants, contracts, or cooperative agreements under subsection (a) of this section for a period not to exceed 5 years.

(d) Application

An entity desiring a grant, contract, or cooperative agreement under subsection (a) of this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(e) Evaluation

An entity that receives a grant, contract, or cooperative agreement under subsection (a) of

this section shall submit, in the application for such grant, a plan for the evaluation of any project undertaken with funds provided under this section. Such entity shall provide the Secretary with periodic evaluations of the progress of such project and such evaluation at the completion of such project as the Secretary determines to be appropriate. The final evaluation submitted by such entity shall include a recommendation as to whether such project shall continue.

(f) Report

Not later than 3 years after October 17, 2000, and annually thereafter, the Secretary shall prepare and submit, to the Committee on Health, Education, Labor, and Pensions of the Senate, a report describing the services provided pursuant to this section.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $15,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 506A, as added Pub. L. 106–310, div. B, title XXXIII, § 3306, Oct. 17, 2000, 114 Stat. 1215.)

§ 290aa–5b. Grants for ecstasy and other club drugs abuse prevention

(a) Authority

The Administrator may make grants to, and enter into contracts and cooperative agreements with, public and nonprofit private entities to enable such entities—

(1) to carry out school-based programs concerning the dangers of the abuse of and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other drugs commonly referred to as ''club drugs'' using methods that are effective and science-based, including initiatives that give students the responsibility to create their own anti-drug abuse education programs for their schools; and

(2) to carry out community-based abuse and addiction prevention programs relating to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs that are effective and science-based.

(b) Use of funds

Amounts made available under a grant, contract or cooperative agreement under subsection (a) of this section shall be used for planning, establishing, or administering prevention programs relating to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs.

(c) Use of funds

(1) Discretionary functions

Amounts provided to an entity under this section may be used—

(A) to carry out school-based programs that are focused on those districts with high or increasing rates of abuse and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs and targeted at populations that are most at risk to start abusing these drugs;

(B) to carry out community-based prevention programs that are focused on those populations within the community that are most at-risk for abuse of and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs;

(C) to assist local government entities to conduct appropriate prevention activities relating to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs;

(D) to train and educate State and local law enforcement officials, prevention and education officials, health professionals, members of community anti-drug coalitions and parents on the signs of abuse of and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs and the options for treatment and prevention;

(E) for planning, administration, and educational activities related to the prevention of abuse of and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs;

(F) for the monitoring and evaluation of prevention activities relating to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs and reporting and disseminating resulting information to the public; and

(G) for targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

(2) Priority

The Administrator shall give priority in awarding grants under this section to rural and urban areas that are experiencing a high rate or rapid increases in abuse and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs.

(d) Allocation and report

(1) Prevention program allocation

Not less than $500,000 of the amount appropriated in each fiscal year to carry out this section shall be made available to the Administrator, acting in consultation with other Federal agencies, to support and conduct periodic analyses and evaluations of effective prevention programs for abuse of and addiction to 3,4-methylenedioxy methamphetamine, related drugs, and other club drugs and the development of appropriate strategies for disseminating information about and implementing such programs.

(2) Report

The Administrator shall annually prepare and submit to the Committee on Health, Education, Labor, and Pensions, the Committee on the Judiciary, and the Committee on Appropriations of the Senate, and the Committee on Commerce, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives, a report containing the results of the analyses and evaluations conducted under paragraph (1).

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section—

(1) $10,000,000 for fiscal year 2001; and

(2) such sums as may be necessary for each succeeding fiscal year.

(July 1, 1944, ch. 373, title V, § 506B, as added Pub. L. 106–310, div. B, title XXXVI, § 3665(a), Oct. 17, 2000, 114 Stat. 1244.)

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

FINDINGS

Pub. L. 106–310, div. B, title XXXVI, § 3662, Oct. 17, 2000, 114 Stat. 1241, provided that: ''Congress makes the following findings:

''(1) The illegal importation of 3,4-methylenedioxy methamphetamine, commonly referred to as 'MDMA' or 'Ecstasy' (referred to in this subtitle [subtitle C (§§ 3661–3665) of title XXXVI of div. B of Pub. L. 106–310, see section 3661 of Pub. L. 106–310, set out as a Short Title of 2000 Amendment note under section 201 of this title] as 'Ecstasy'), has increased in recent years, as evidenced by the fact that Ecstasy seizures by the United States Customs Service have increased from less than 500,000 tablets during fiscal year 1997 to more than 9,000,000 tablets during the first 9 months of fiscal year 2000.

''(2) Use of Ecstasy can cause long-lasting, and perhaps permanent, damage to the serotonin system of the brain, which is fundamental to the integration of information and emotion, and this damage can cause long-term problems with learning and memory.

''(3) Due to the popularity and marketability of Ecstasy, there are numerous Internet websites with information on the effects of Ecstasy, the production of Ecstasy, and the locations of Ecstasy use (often referred to as 'raves'). The availability of this information targets the primary users of Ecstasy, who are most often college students, young professionals, and other young people from middle- to high-income families.

''(4) Greater emphasis needs to be placed on—

''(A) penalties associated with the manufacture, distribution, and use of Ecstasy;

''(B) the education of young people on the negative health effects of Ecstasy, since the reputation of Ecstasy as a 'safe' drug is the most dangerous component of Ecstasy;

''(C) the education of State and local law enforcement agencies regarding the growing problem of Ecstasy trafficking across the United States;

''(D) reducing the number of deaths caused by Ecstasy use and the combined use of Ecstasy with other 'club' drugs and alcohol; and

''(E) adequate funding for research by the National Institute on Drug Abuse to—

''(i) identify those most vulnerable to using Ecstasy and develop science-based prevention approaches tailored to the specific needs of individuals at high risk;

''(ii) understand how Ecstasy produces its toxic effects and how to reverse neurotoxic damage;

''(iii) develop treatments, including new medications and behavioral treatment approaches;

''(iv) better understand the effects that Ecstasy has on the developing children and adolescents; and

''(v) translate research findings into useful tools and ensure their effective dissemination.''

§§ 290aa–6 to 290aa–8. Transferred

CODIFICATION

Section 290aa–6, act July 1, 1944, ch. 373, title V, § 508, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(a), 100 Stat. 3207–111, and amended, which related to the Office of Substance Abuse Prevention, was renumbered section 515 of act July 1, 1944, by Pub. L. 102–321, title I, § 113(b), July 10, 1992, 106 Stat. 345, and transferred to section 290bb–21 of this title.

Section 290aa–7, act July 1, 1944, ch. 373, title V, § 509, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(a), 100 Stat. 3207–112, which related to Alcohol and Drug Abuse Information Clearinghouse, was renumbered section 516 of act July 1, 1944, by Pub. L. 102–321, title I, § 113(f)(1)–(3), July 10, 1992, 106 Stat. 345, and transferred to section 290bb–22 of this title.

Section 290aa–8, act July 1, 1944, ch. 373, title V, § 509A, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(a), 100 Stat. 3207–113, and amended, which related to alcohol and drug abuse prevention, treatment, and rehabilitation model projects for high risk youth, was renumbered section 517 of act July 1, 1944, by Pub. L. 102–321, title I, § 114(a), July 10, 1992, 106 Stat. 346, and transferred to section 290bb–23 of this title.

§§ 290aa–9, 290aa–10. Repealed. Pub. L. 102–321, title I, § 120(a), July 10, 1992, 106 Stat. 358

Section 290aa–9, act July 1, 1944, ch. 373, title V, § 509B, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4006, 100 Stat. 3207–114; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(11), 106 Stat. 3505, related to research on public health emergencies.

Section 290aa–10, act July 1, 1944, ch. 373, title V, § 509C, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 420 [4020], 100 Stat. 3207–122, related to guidelines for use of animals in research.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290aa–11. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, § 509D, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2052(a), 102 Stat. 4207, and amended, which related to the collection of data on mental illness and substance abuse, was renumbered section 505 of act July 1, 1944, by Pub. L. 102–321, title I, § 105, July 10, 1992, 106 Stat. 334, and transferred to section 290aa–4 of this title.

§§ 290aa–12 to 290aa–14. Repealed. Pub. L. 102–321, title I, § 120(a), July 10, 1992, 106 Stat. 358

Section 290aa–12, act July 1, 1944, ch. 373, title V, § 509E, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2053, 102 Stat. 4208; amended Aug. 16, 1989, Pub. L. 101–93, § 3(c), 103 Stat. 610; Aug. 15, 1990, Pub. L. 101–374, § 2(a)–(c)(2), 104 Stat. 456, related to reduction of waiting periods for drug abuse treatment.

Section 290aa–13, act July 1, 1944, ch. 373, title V, § 509F, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2054, 102 Stat. 4209, related to model projects for pregnant and post partum women and their infants.

Section 290aa–14, act July 1, 1944, ch. 373, title V, § 509G, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2055, 102 Stat. 4210; amended Aug. 16, 1989, Pub. L. 101–93, § 3(d), 103 Stat. 610, related to drug abuse demonstration projects of national significance.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

PART B—CENTERS AND PROGRAMS

SUBPART 1—CENTER FOR SUBSTANCE ABUSE TREATMENT

§ 290bb. Center for Substance Abuse Treatment

(a) Establishment

There is established in the Administration a Center for Substance Abuse Treatment (hereafter in this section referred to as the ''Center''). The Center shall be headed by a Director (hereafter in this section referred to as the ''Director'') appointed by the Secretary from among individuals with extensive experience or academic qualifications in the treatment of substance abuse or in the evaluation of substance abuse treatment systems.

(b) Duties

The Director of the Center shall—

(1) administer the substance abuse treatment block grant program authorized in section 300x–21 of this title;

(2) ensure that emphasis is placed on children and adolescents in the development of treatment programs;

(3) collaborate with the Attorney General to develop programs to provide substance abuse treatment services to individuals who have had contact with the Justice system, especially adolescents;

(4) collaborate with the Director of the Center for Substance Abuse Prevention in order to provide outreach services to identify individuals in need of treatment services, with emphasis on the provision of such services to pregnant and postpartum women and their infants and to individuals who abuse drugs intravenously;

(5) collaborate with the Director of the National Institute on Drug Abuse, with the Director of the National Institute on Alcohol Abuse and Alcoholism, and with the States to promote the study, dissemination, and implementation of research findings that will improve the delivery and effectiveness of treatment services;

(6) collaborate with the Administrator of the Health Resources and Services Administration and the Administrator of the Centers for Medicare & Medicaid Services to promote the increased integration into the mainstream of the health care system of the United States of programs for providing treatment services;

(7) evaluate plans submitted by the States pursuant to section 300x–32(a)(6) of this title in order to determine whether the plans adequately provide for the availability, allocation, and effectiveness of treatment services;

(8) sponsor regional workshops on improving the quality and availability of treatment services;

(9) provide technical assistance to public and nonprofit private entities that provide treatment services, including technical assistance with respect to the process of submitting to the Director applications for any program of grants or contracts carried out by the Director;

(10) encourage the States to expand the availability (relative to fiscal year 1992) of programs providing treatment services through self-run, self-supported recovery based on the programs of housing operated pursuant to section 300x–25 of this title;

(11) carry out activities to educate individuals on the need for establishing treatment facilities within their communities;

(12) encourage public and private entities that provide health insurance to provide benefits for outpatient treatment services and other nonhospital-based treatment services;

(13) evaluate treatment programs to determine the quality and appropriateness of various forms of treatment, which shall be carried out through grants, contracts, or cooperative agreements provided to public or nonprofit private entities; and

(14) in carrying out paragraph (13), assess the quality, appropriateness, and costs of various treatment forms for specific patient groups.

(c) Grants and contracts

In carrying out the duties established in subsection (b) of this section, the Director may make grants to and enter into contracts and cooperative agreements with public and nonprofit private entities.

(July 1, 1944, ch. 373, title V, § 507, as added Pub. L. 102–321, title I, § 107(2), July 10, 1992, 106 Stat. 335; amended Pub. L. 106–310, div. B, title XXXI, § 3112(a), Oct. 17, 2000, 114 Stat. 1188; Pub. L. 108–173, title IX, § 900(e)(2)(B), Dec. 8, 2003, 117 Stat. 2372.)

PRIOR PROVISIONS

A prior section 290bb, act July 1, 1944, ch. 373, title V, § 510, formerly Pub. L. 91–616, title V, § 501, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1038; amended Pub. L. 95–622, title II, § 268(c), (d), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96–180, § 14, Jan. 2, 1980, 93 Stat. 1305; renumbered § 510 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(9), 97 Stat. 179; Oct. 19, 1984, Pub. L. 98–509, title II, §§ 205(a)(1), 206(c)(1), 98 Stat. 2361, 2362, related to encouragement of alcohol abuse and alcoholism research, prior to repeal by Pub. L. 102–321, § 122(b)(1). Prior to repeal, section 510(b) of act July 1, 1944, was renumbered section 464H(b) by Pub. L. 102–321 and transferred to section 285n(b) of this title.

A prior section 507 of act July 1, 1944, which was classified to section 290aa–5 of this title, was renumbered section 504 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290aa–3 of this title.

AMENDMENTS

2003—Subsec. (b)(6). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

2000—Subsec. (b)(2) to (6). Pub. L. 106–310, § 3112(a)(1), (2), added pars. (2) and (3) and redesignated former pars. (2) to (4) as (4) to (6), respectively. Former pars. (5) and (6) redesignated (7) and (8), respectively.

Subsec. (b)(7). Pub. L. 106–310, § 3112(a)(1), (3), redesignated par. (5) as (7) and substituted ''services'' for ''services, and monitor the use of revolving loan funds pursuant to section 300x–25 of this title''. Former par. (7) redesignated (9).

Subsec. (b)(8) to (12). Pub. L. 106–310, § 3112(a)(1), redesignated pars. (6) to (10) as (8) to (12), respectively. Former pars. (11) and (12) redesignated (13) and (14), respectively.

Subsec. (b)(13). Pub. L. 106–310, § 3112(a)(1), (4), redesignated par. (11) as (13) and substituted ''treatment, which shall'' for ''treatment, including the effect of living in housing provided by programs established under section 300x–25 of this title, which shall''.

Subsec. (b)(14). Pub. L. 106–310, § 3112(a)(1), (5), redesignated par. (12) as (14) and substituted ''paragraph (13)'' for ''paragraph (11)''.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290bb–1. Residential treatment programs for pregnant and postpartum women

(a) In general

The Director of the Center for Substance Abuse Treatment shall provide awards of grants, cooperative agreement, or contracts to public and nonprofit private entities for the purpose of providing to pregnant and postpartum women treatment for substance abuse through programs in which, during the course of receiving treatment—

(1) the women reside in facilities provided by the programs;

(2) the minor children of the women reside with the women in such facilities, if the women so request; and

(3) the services described in subsection (d) of this section are available to or on behalf of the women.

(b) Availability of services for each participant

A funding agreement for an award under subsection (a) of this section for an applicant is that, in the program operated pursuant to such subsection—

(1) treatment services and each supplemental service will be available through the applicant, either directly or through agreements with other public or nonprofit private entities; and

(2) the services will be made available to each woman admitted to the program.

(c) Individualized plan of services

A funding agreement for an award under subsection (a) of this section for an applicant is that—

(1) in providing authorized services for an eligible woman pursuant to such subsection, the applicant will, in consultation with the women, prepare an individualized plan for the provision to the woman of the services; and

(2) treatment services under the plan will include—

(A) individual, group, and family counseling, as appropriate, regarding substance abuse; and

(B) follow-up services to assist the woman in preventing a relapse into such abuse.

(d) Required supplemental services

In the case of an eligible woman, the services referred to in subsection (a)(3) of this section are as follows:

(1) Prenatal and postpartum health care.

(2) Referrals for necessary hospital services.

(3) For the infants and children of the woman—

(A) pediatric health care, including treatment for any perinatal effects of maternal substance abuse and including screenings regarding the physical and mental development of the infants and children;

(B) counseling and other mental health services, in the case of children; and

(C) comprehensive social services.

(4) Providing supervision of children during periods in which the woman is engaged in therapy or in other necessary health or rehabilitative activities.

(5) Training in parenting.

(6) Counseling on the human immunodeficiency virus and on acquired immune deficiency syndrome.

(7) Counseling on domestic violence and sexual abuse.

(8) Counseling on obtaining employment, including the importance of graduating from a secondary school.

(9) Reasonable efforts to preserve and support the family units of the women, including promoting the appropriate involvement of parents and others, and counseling the children of the women.

(10) Planning for and counseling to assist reentry into society, both before and after discharge, including referrals to any public or nonprofit private entities in the community involved that provide services appropriate for the women and the children of the women.

(11) Case management services, including—

(A) assessing the extent to which authorized services are appropriate for the women and their children;

(B) in the case of the services that are appropriate, ensuring that the services are provided in a coordinated manner; and

(C) assistance in establishing eligibility for assistance under Federal, State, and local programs providing health services, mental health services, housing services, employment services, educational services, or social services.

(e) Minimum qualifications for receipt of award

(1) Certification by relevant State agency

With respect to the principal agency of the State involved that administers programs relating to substance abuse, the Director may make an award under subsection (a) of this section to an applicant only if the agency has certified to the Director that—

(A) the applicant has the capacity to carry out a program described in subsection (a) of this section;

(B) the plans of the applicant for such a program are consistent with the policies of such agency regarding the treatment of substance abuse; and

(C) the applicant, or any entity through which the applicant will provide authorized services, meets all applicable State licensure or certification requirements regarding the provision of the services involved.

(2) Status as medicaid provider

(A) Subject to subparagraphs (B) and (C), the Director may make an award under subsection (a) of this section only if, in the case of any authorized service that is available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(i) the applicant for the award will provide the service directly, and the applicant has

entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(ii) the applicant will enter into an agreement with a public or nonprofit private entity under which the entity will provide the service, and the entity has entered into such a participation agreement plan and is qualified to receive such payments.

(B)(i) In the case of an entity making an agreement pursuant to subparagraph (A)(ii) regarding the provision of services, the requirement established in such subparagraph regarding a participation agreement shall be waived by the Director if the entity does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits plan.

(ii) A determination by the Director of whether an entity referred to in clause (i) meets the criteria for a waiver under such clause shall be made without regard to whether the entity accepts voluntary donations regarding the provision of services to the public.

(C) With respect to any authorized service that is available pursuant to the State plan described in subparagraph (A), the requirements established in such subparagraph shall not apply to the provision of any such service by an institution for mental diseases to an individual who has attained 21 years of age and who has not attained 65 years of age. For purposes of the preceding sentence, the term ''institution for mental diseases'' has the meaning given such term in section 1905(i) of the Social Security Act [42 U.S.C. 1396d(i)].

(f) Requirement of matching funds

(1) In general

With respect to the costs of the program to be carried out by an applicant pursuant to subsection (a) of this section, a funding agreement for an award under such subsection is that the applicant will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that—

(A) for the first fiscal year for which the applicant receives payments under an award under such subsection, is not less than $1 for each $9 of Federal funds provided in the award;

(B) for any second such fiscal year, is not less than $1 for each $9 of Federal funds provided in the award; and

(C) for any subsequent such fiscal year, is not less than $1 for each $3 of Federal funds provided in the award.

(2) Determination of amount contributed

Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(g) Outreach

A funding agreement for an award under subsection (a) of this section for an applicant is that the applicant will provide outreach services in the community involved to identify women who are engaging in substance abuse and to encourage the women to undergo treatment for such abuse.

(h) Accessibility of program; cultural context of services

A funding agreement for an award under subsection (a) of this section for an applicant is that—

(1) the program operated pursuant to such subsection will be operated at a location that is accessible to low-income pregnant and postpartum women; and

(2) authorized services will be provided in the language and the cultural context that is most appropriate.

(i) Continuing education

A funding agreement for an award under subsection (a) of this section is that the applicant involved will provide for continuing education in treatment services for the individuals who will provide treatment in the program to be operated by the applicant pursuant to such subsection.

(j) Imposition of charges

A funding agreement for an award under subsection (a) of this section for an applicant is that, if a charge is imposed for the provision of authorized services to on[1] behalf of an eligible woman, such charge—

(1) will be made according to a schedule of charges that is made available to the public;

(2) will be adjusted to reflect the income of the woman involved; and

(3) will not be imposed on any such woman with an income of less than 185 percent of the official poverty line, as established by the Director of the Office for Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(k) Reports to Director

A funding agreement for an award under subsection (a) of this section is that the applicant involved will submit to the Director a report—

(1) describing the utilization and costs of services provided under the award;

(2) specifying the number of women served, the number of infants served, and the type and costs of services provided; and

(3) providing such other information as the Director determines to be appropriate.

***(l)* Requirement of application**

The Director may make an award under subsection (a) of this section only if an application for the award is submitted to the Director containing such agreements, and the application is in such form, is made in such manner, and contains such other agreements and such assurances and information as the Director determines to be necessary to carry out this section.

(m) Equitable allocation of awards

In making awards under subsection (a) of this section, the Director shall ensure that the

[1] So in original. Probably should be preceded by ''or''.

awards are equitably allocated among the principal geographic regions of the United States, subject to the availability of qualified applicants for the awards.

(n) Duration of award

The period during which payments are made to an entity from an award under subsection (a) of this section may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Director of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments. This subsection may not be construed to establish a limitation on the number of awards under such subsection that may be made to an entity.

(*o*) Evaluations; dissemination of findings

The Director shall, directly or through contract, provide for the conduct of evaluations of programs carried out pursuant to subsection (a) of this section. The Director shall disseminate to the States the findings made as a result of the evaluations.

(p) Reports to Congress

Not later than October 1, 1994, the Director shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing programs carried out pursuant to this section. Every 2 years thereafter, the Director shall prepare a report describing such programs carried out during the preceding 2 years, and shall submit the report to the Administrator for inclusion in the biennial report under section 290aa(k) of this title. Each report under this subsection shall include a summary of any evaluations conducted under subsection (m) of this section during the period with respect to which the report is prepared.

(q) Definitions

For purposes of this section:

(1) The term ''authorized services'' means treatment services and supplemental services.

(2) The term ''eligible woman'' means a woman who has been admitted to a program operated pursuant to subsection (a) of this section.

(3) The term ''funding agreement under subsection (a)'' of this section, with respect to an award under subsection (a) of this section, means that the Director may make the award only if the applicant makes the agreement involved.

(4) The term ''treatment services'' means treatment for substance abuse, including the counseling and services described in subsection (c)(2) of this section.

(5) The term ''supplemental services'' means the services described in subsection (d) of this section.

(r) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary to fiscal years 2001 through 2003.

(July 1, 1944, ch. 373, title V, § 508, as added Pub. L. 102–321, title I, § 108(a), July 10, 1992, 106 Stat. 336; amended Pub. L. 106–310, div. B, title XXXIII, § 3301(a), Oct. 17, 2000, 114 Stat. 1207.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 290bb–1, act July 1, 1944, ch. 373, title V, § 511, formerly Pub. L. 91–616, title V, § 503, formerly § 504, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 95–622, title I, § 110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96–180, § 16, Jan. 2, 1980, 93 Stat. 1305; renumbered § 503 of Pub. L. 91–616 and amended Pub. L. 97–35, title IX, § 965(b), (c), Aug. 13, 1981, 95 Stat. 594; renumbered § 511 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(9), 97 Stat. 179; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4008, 100 Stat. 3207–115, which related to National Alcohol Research Centers and a mandatory grant for research of the effects of alcohol on the elderly, was renumbered section 464J of title IV of act July 1, 1944, by Pub. L. 102–321 and transferred to section 285n–2 of this title.

A prior section 508 of act July 1, 1944, which was classified to section 290aa–6 of this title, was renumbered section 515 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290bb–21 of this title.

AMENDMENTS

2000—Subsec. (r). Pub. L. 106–310 reenacted heading without change and amended text generally, substituting provisions authorizing appropriations for fiscal years 2001 to 2003 for provisions authorizing appropriations for fiscal years 1993 and 1994 and authorizing appropriations from the special forfeiture fund of the Director of the Office of National Drug Control Policy.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

TRANSITIONAL AND SAVINGS PROVISIONS

Section 108(b) of Pub. L. 102–321 provided that:

''(1) SAVINGS PROVISION FOR COMPLETION OF CURRENT PROJECTS.—

''(A) Subject to paragraph (2), in the case of any project for which a grant under former section 509F [former 42 U.S.C. 290aa–13] was provided for fiscal year 1992, the Secretary of Health and Human Services may continue in effect the grant for fiscal year 1993 and subsequent fiscal years, subject to the duration of any such grant not exceeding the period determined by the Secretary in first approving the grant. Subject to approval by the Administrator, such

grants may be administered by the Center for Substance Abuse Prevention.

''(B) Subparagraph (A) shall apply with respect to a project notwithstanding that the project is not eligible to receive a grant under current section 508 or 509 [42 U.S.C. 290bb–1, 290bb–2].

''(2) LIMITATION ON FUNDING FOR CERTAIN PROJECTS.—With respect to the amounts appropriated for any fiscal year under current section 508, any such amounts appropriated in excess of the amount appropriated for fiscal year 1992 under former section 509F shall be available only for grants under current section 508.

''(3) DEFINITIONS.—For purposes of this subsection:

''(A) The term 'former section 509F' means section 509F of the Public Health Service Act [former 42 U.S.C. 290aa–13], as in effect for fiscal year 1992.

''(B) The term 'current section 508' means section 508 of the Public Health Service Act [42 U.S.C. 290bb–1], as in effect for fiscal year 1993 and subsequent fiscal years.

''(C) The term 'current section 509' means section 509 of the Public Health Service Act [42 U.S.C. 290bb–2], as in effect for fiscal year 1993 and subsequent fiscal years.''

§ 290bb–1a. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, § 512, as added Oct. 19, 1984, Pub. L. 98–509, title II, § 206(a), 98 Stat. 2361, and amended, which related to alcohol abuse and alcoholism demonstration projects, was renumbered section 506 of act July 1, 1944, by Pub. L. 102–321, title I, § 106(a), July 10, 1992, 106 Stat. 334, and transferred to section 290aa–5 of this title.

§ 290bb–2. Priority substance abuse treatment needs of regional and national significance

(a) Projects

The Secretary shall address priority substance abuse treatment needs of regional and national significance (as determined under subsection (b) of this section) through the provision of or through assistance for—

(1) knowledge development and application projects for treatment and rehabilitation and the conduct or support of evaluations of such projects;

(2) training and technical assistance; and

(3) targeted capacity response programs.

The Secretary may carry out the activities described in this section directly or through grants or cooperative agreements with States, political subdivisions of States, Indian tribes and tribal organizations, other public or nonprofit private entities.

(b) Priority substance abuse treatment needs

(1) In general

Priority substance abuse treatment needs of regional and national significance shall be determined by the Secretary after consultation with States and other interested groups. The Secretary shall meet with the States and interested groups on an annual basis to discuss program priorities.

(2) Special consideration

In developing program priorities under paragraph (1), the Secretary shall give special consideration to promoting the integration of substance abuse treatment services into primary health care systems.

(c) Requirements

(1) In general

Recipients of grants, contracts, or cooperative agreements under this section shall comply with information and application requirements determined appropriate by the Secretary.

(2) Duration of award

With respect to a grant, contract, or cooperative agreement awarded under this section, the period during which payments under such award are made to the recipient may not exceed 5 years.

(3) Matching funds

The Secretary may, for projects carried out under subsection (a) of this section, require that entities that apply for grants, contracts, or cooperative agreements under that project provide non-Federal matching funds, as determined appropriate by the Secretary, to ensure the institutional commitment of the entity to the projects funded under the grant, contract, or cooperative agreement. Such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(4) Maintenance of effort

With respect to activities for which a grant, contract, or cooperative agreement is awarded under this section, the Secretary may require that recipients for specific projects under subsection (a) of this section agree to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the entity for the fiscal year preceding the fiscal year for which the entity receives such a grant, contract, or cooperative agreement.

(d) Evaluation

The Secretary shall evaluate each project carried out under subsection (a)(1) of this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(e) Information and education

The Secretary shall establish comprehensive information and education programs to disseminate and apply the findings of the knowledge development and application, training and technical assistance programs, and targeted capacity response programs under this section to the general public, to health professionals and other interested groups. The Secretary shall make every effort to provide linkages between the findings of supported projects and State agencies responsible for carrying out substance abuse prevention and treatment programs.

(f) Authorization of appropriation

There are authorized to be appropriated to carry out this section, $300,000,000 for fiscal year 2001 and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 509, as added Pub. L. 102–321, title I, § 108(a), July 10, 1992, 106 Stat. 341; amended Pub. L. 106–310, div. B, title XXXIII, § 3301(b), Oct. 17, 2000, 114 Stat. 1207.)

PRIOR PROVISIONS

A prior section 290bb–2, act July 1, 1944, ch. 373, title V, § 513, formerly § 512, formerly Pub. L. 91–616, title V, § 504, formerly § 503, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 96–180, § 15, Jan. 2, 1980, 93 Stat. 1305; renumbered § 504 of Pub. L. 91–616 and amended Pub. L. 97–35, title IX, § 965(a), (c), Aug. 13, 1981, 95 Stat. 594; Pub. L. 97–414, § 9(e), Jan. 4, 1983, 96 Stat. 2064; renumbered § 512 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(9), 97 Stat. 179; renumbered § 513 and amended Oct. 19, 1984, Pub. L. 98–509, title II, §§ 206(a), 207(a), 98 Stat. 2361, 2362; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4010(a), 100 Stat. 3207–115; July 22, 1987, Pub. L. 100–77, title VI, § 613(c), 101 Stat. 524; Nov. 4, 1988, Pub. L. 100–607, title VIII, § 822, 102 Stat. 3171; Nov. 7, 1988, Pub. L. 100–628, title VI, § 622, 102 Stat. 3244; Nov. 18, 1988, Pub. L. 100–690, title II, § 2056(a), 102 Stat. 4211; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), 103 Stat. 615; Nov. 29, 1990, Pub. L. 101–645, title V, § 522, 104 Stat. 4734, authorized appropriations to carry out alcohol abuse and alcoholism research, prior to repeal by Pub. L. 102–321, § 122(d)[(e)].

A prior section 509 of act July 1, 1944, which was classified to section 290aa–7 of this title, was renumbered section 516 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290bb–22 of this title.

AMENDMENTS

2000—Pub. L. 106–310 amended section catchline and text generally, substituting provisions relating to priority substance abuse treatment needs of regional and national significance for provisions relating to outpatient treatment programs for pregnant and postpartum women.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290bb–2a. Medical treatment of narcotics addiction; report to Congress

The Secretary of Health and Human Services, after consultation with the Attorney General and with national organizations representative of persons with knowledge and experience in the treatment of narcotic addicts, shall determine the appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts, and shall report thereon from time to time to the Congress.

(Pub. L. 91–513, title I, § 4, Oct. 27, 1970, 84 Stat. 1241; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was not enacted as part of the Public Health Service Act which comprises this chapter.

Section was formerly classified to section 257a of this title.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§§ 290bb–3 to 290bb–5. Repealed. Pub. L. 106–310, div. B, title XXXIII, § 3301(c)(1)–(3), Oct. 17, 2000, 114 Stat. 1209

Section 290bb–3, act July 1, 1944, ch. 373, title V, § 510, as added Pub. L. 102–321, title I, § 109, July 10, 1992, 106 Stat. 342, related to demonstration projects of national significance.

A prior section 510 of act July 1, 1944, was classified to section 290bb of this title, prior to repeal by Pub. L. 102–321, § 122(b)(1). Prior to repeal, section 510(b) of act July 1, 1944, was renumbered section 464H(b) by Pub. L. 102–321 and transferred to section 285n(b) of this title.

Another prior section 510 of act July 1, 1944, which was classified to section 228 of this title, was successively renumbered by subsequent acts and transferred, see section 238g of this title.

Section 290bb–4, act July 1, 1944, ch. 373, title V, § 511, as added Pub. L. 102–321, title I, § 110, July 10, 1992, 106 Stat. 343, related to grants for substance abuse treatment in State and local criminal justice systems.

A prior section 511 of act July 1, 1944, which was classified to section 290bb–1 of this title, was renumbered section 464J of act July 1, 1944, by Pub. L. 102–321 and transferred to section 285n–2 of this title.

Another prior section 511 of act July 1, 1944, which was classified to section 229 of this title, was successively renumbered by subsequent acts and transferred, see section 238h of this title.

Section 290bb–5, act July 1, 1944, ch. 373, title V, § 512, as added Pub. L. 102–321, title I, § 111, July 10, 1992, 106 Stat. 344, related to training in provision of treatment services.

A prior section 512 of act July 1, 1944, which was classified to section 290bb–1a of this title, was renumbered section 506 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290aa–5 of this title.

Another prior section 512 of act July 1, 1944, was renumbered section 513 by Pub. L. 98–509 and classified to section 290bb–2 of this title, prior to repeal by Pub. L. 102–321, § 122(d)[(e)].

Another prior section 512 of act July 1, 1944, which was classified to section 229a of this title, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

§ 290bb–6. Action by Center for Substance Abuse Treatment and States concerning military facilities

(a) Center for Substance Abuse Treatment

The Director of the Center for Substance Abuse Treatment shall—

(1) coordinate with the agencies represented on the Commission on Alternative Utilization of Military Facilities the utilization of military facilities or parts thereof, as identified by such Commission, established under the National Defense Authorization Act of 1989, that could be utilized or renovated to house nonviolent persons for drug treatment purposes;

(2) notify State agencies responsible for the oversight of drug abuse treatment entities and programs of the availability of space at the installations identified in paragraph (1); and

(3) assist State agencies responsible for the oversight of drug abuse treatment entities and programs in developing methods for adapting the installations described in paragraph (1) into residential treatment centers.

(b) States

With regard to military facilities or parts thereof, as identified by the Commission on Alternative Utilization of Military Facilities established under section 3042 of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988,[1] that could be utilized or renovated to house nonviolent persons for drug treatment purposes, State agencies

[1] See References in Text note below.

responsible for the oversight of drug abuse treatment entities and programs shall—

(1) establish eligibility criteria for the treatment of individuals at such facilities;

(2) select treatment providers to provide drug abuse treatment at such facilities;

(3) provide assistance to treatment providers selected under paragraph (2) to assist such providers in securing financing to fund the cost of the programs at such facilities; and

(4) establish, regulate, and coordinate with the military official in charge of the facility, work programs for individuals receiving treatment at such facilities.

(c) Reservation of space

Prior to notifying States of the availability of space at military facilities under subsection (a)(2) of this section, the Director may reserve space at such facilities to conduct research or demonstration projects.

(July 1, 1944, ch. 373, title V, § 513, formerly § 561, as added Pub. L. 100–690, title II, § 2081(a), Nov. 18, 1988, 102 Stat. 4215; renumbered § 513 and amended Pub. L. 102–321, title I, § 112(a), (b)(1), July 10, 1992, 106 Stat. 344, 345.)

REFERENCES IN TEXT

The National Defense Authorization Act of 1989, referred to in subsec. (a)(1), probably means the National Defense Authorization Act, Fiscal Year 1989, Pub. L. 100–456, Sept. 29, 1988, 102 Stat. 1918. For complete classification of this Act to the Code, see Tables.

Section 3042 of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, referred to in subsec. (b), probably should be a reference to section 2819 of the National Defense Authorization Act, Fiscal Year 1989, Pub. L. 100–456, div. B, title XXVIII, Sept. 29, 1988, 102 Stat. 2119, which established the Commission on Alternative Utilization of Military Facilities and which was set out as a note under section 2391 of Title 10, Armed Forces, prior to repeal by Pub. L. 105–261, div. A, title X, § 1031(b), Oct. 17, 1998, 112 Stat. 2123. The Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988 is subtitle A of title II of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4193, and does not contain a section 3042.

CODIFICATION

Section was formerly classified to section 290ff of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 513 of act July 1, 1944, was classified to section 290bb–2 of this title prior to repeal by Pub. L. 102–321, title I, § 122(d)[(e)], July 10, 1992, 106 Stat. 360.

Another prior section 513 of act July 1, 1944, which was classified to section 229b of this title, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–321, § 112(b)(1), substituted provisions relating to Center for Substance Abuse Treatment for provisions relating to National Institute on Drug Abuse in heading and text.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290bb–7. Substance abuse treatment services for children and adolescents

(a) In general

The Secretary shall award grants, contracts, or cooperative agreements to public and private nonprofit entities, including Native Alaskan entities and Indian tribes and tribal organizations, for the purpose of providing substance abuse treatment services for children and adolescents.

(b) Priority

In awarding grants, contracts, or cooperative agreements under subsection (a) of this section, the Secretary shall give priority to applicants who propose to—

(1) apply evidenced-based and cost effective methods for the treatment of substance abuse among children and adolescents;

(2) coordinate the provision of treatment services with other social service agencies in the community, including educational, juvenile justice, child welfare, and mental health agencies;

(3) provide a continuum of integrated treatment services, including case management, for children and adolescents with substance abuse disorders and their families;

(4) provide treatment that is gender-specific and culturally appropriate;

(5) involve and work with families of children and adolescents receiving treatment;

(6) provide aftercare services for children and adolescents and their families after completion of substance abuse treatment; and

(7) address the relationship between substance abuse and violence.

(c) Duration of grants

The Secretary shall award grants, contracts, or cooperative agreements under subsection (a) of this section for periods not to exceed 5 fiscal years.

(d) Application

An entity desiring a grant, contract, or cooperative agreement under subsection (a) of this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(e) Evaluation

An entity that receives a grant, contract, or cooperative agreement under subsection (a) of this section shall submit, in the application for such grant, contract, or cooperative agreement, a plan for the evaluation of any project undertaken with funds provided under this section. Such entity shall provide the Secretary with periodic evaluations of the progress of such project and such evaluation at the completion of such project as the Secretary determines to be appropriate.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $40,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 514, as added Pub. L. 106–310, div. B, title XXXI, § 3104(a), Oct. 17, 2000, 114 Stat. 1171.)

CODIFICATION

Another section 514 of act July 1, 1944, is classified to section 290bb–9 of this title.

§ 290bb–8. Early intervention services for children and adolescents

(a) In general

The Secretary shall award grants, contracts, or cooperative agreements to public and private nonprofit entities, including local educational agencies (as defined in section 8801 of title 20),[1] for the purpose of providing early intervention substance abuse services for children and adolescents.

(b) Priority

In awarding grants, contracts, or cooperative agreements under subsection (a) of this section, the Secretary shall give priority to applicants who demonstrate an ability to—

(1) screen for and assess substance use and abuse by children and adolescents;

(2) make appropriate referrals for children and adolescents who are in need of treatment for substance abuse;

(3) provide early intervention services, including counseling and ancillary services, that are designed to meet the developmental needs of children and adolescents who are at risk for substance abuse; and

(4) develop networks with the educational, juvenile justice, social services, and other agencies and organizations in the State or local community involved that will work to identify children and adolescents who are in need of substance abuse treatment services.

(c) Condition

In awarding grants, contracts, or cooperative agreements under subsection (a) of this section, the Secretary shall ensure that such grants, contracts, or cooperative agreements are allocated, subject to the availability of qualified applicants, among the principal geographic regions of the United States, to Indian tribes and tribal organizations, and to urban and rural areas.

(d) Duration of grants

The Secretary shall award grants, contracts, or cooperative agreements under subsection (a) of this section for periods not to exceed 5 fiscal years.

(e) Application

An entity desiring a grant, contract, or cooperative agreement under subsection (a) of this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(f) Evaluation

An entity that receives a grant, contract, or cooperative agreement under subsection (a) of this section shall submit, in the application for such grant, contract, or cooperative agreement, a plan for the evaluation of any project undertaken with funds provided under this section. Such entity shall provide the Secretary with periodic evaluations of the progress of such project and such evaluation at the completion of such project as the Secretary determines to be appropriate.

(g) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $20,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 514A, as added Pub. L. 106–310, div. B, title XXXI, § 3104(a), Oct. 17, 2000, 114 Stat. 1172.)

REFERENCES IN TEXT

Section 8801 of title 20, referred to in subsec. (a), was repealed by Pub. L. 107–110, title X, § 1011(5)(C), Jan. 8, 2002, 115 Stat. 1986. See section 7801 of Title 20, Education.

§ 290bb–9. Methamphetamine and amphetamine treatment initiative

(a) Grants

(1) Authority to make grants

The Director of the Center for Substance Abuse Treatment may make grants to States and Indian tribes recognized by the United States that have a high rate, or have had a rapid increase, in methamphetamine or amphetamine abuse or addiction in order to permit such States and Indian tribes to expand activities in connection with the treatment of methamphetamine or amphetamine abuser or addiction in the specific geographical areas of such States or Indian tribes, as the case may be, where there is such a rate or has been such an increase.

(2) Recipients

Any grants under paragraph (1) shall be directed to the substance abuse directors of the States, and of the appropriate tribal government authorities of the Indian tribes, selected by the Director to receive such grants.

(3) Nature of activities

Any activities under a grant under paragraph (1) shall be based on reliable scientific evidence of their efficacy in the treatment of methamphetamine or amphetamine abuse or addiction.

(b) Geographic distribution

The Director shall ensure that grants under subsection (a) of this section are distributed equitably among the various regions of the country and among rural, urban, and suburban areas that are affected by methamphetamine or amphetamine abuse or addiction.

(c) Additional activities

The Director shall—

(1) evaluate the activities supported by grants under subsection (a) of this section;

(2) disseminate widely such significant information derived from the evaluation as the Director considers appropriate to assist States, Indian tribes, and private providers of treatment services for methamphetamine or amphetamine abuser or addiction in the treatment of methamphetamine or amphetamine abuse or addiction; and

(3) provide States, Indian tribes, and such providers with technical assistance in connection with the provision of such treatment.

[1] See References in Text note below.

(d) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 2000 and such sums as may be necessary for each of fiscal years 2001 and 2002.

(2) Use of certain funds

Of the funds appropriated to carry out this section in any fiscal year, the lesser of 5 percent of such funds or $1,000,000 shall be available to the Director for purposes of carrying out subsection (c) of this section.

(July 1, 1944, ch. 373, title V, § 514, as added Pub. L. 106–310, div. B, title XXXVI, § 3632, Oct. 17, 2000, 114 Stat. 1236.)

CODIFICATION

Another section 514 of act July 1, 1944, is classified to section 290bb–7 of this title.

SUBPART 2—CENTER FOR SUBSTANCE ABUSE PREVENTION

§ 290bb–21. Office for Substance Abuse Prevention

(a) Establishment; Director

There is established in the Administration an Office for Substance Abuse Prevention (hereafter referred to in this part as the ''Prevention Center''). The Office[1] shall be headed by a Director appointed by the Secretary from individuals with extensive experience or academic qualifications in the prevention of drug or alcohol abuse.

(b) Duties of Director

The Director of the Prevention Center shall—

(1) sponsor regional workshops on the prevention of drug and alcohol abuse;

(2) coordinate the findings of research sponsored by agencies of the Service on the prevention of drug and alcohol abuse;

(3) develop effective drug and alcohol abuse prevention literature (including literature on the adverse effects of cocaine free base (known as ''crack''));

(4) in cooperation with the Secretary of Education, assure the widespread dissemination of prevention materials among States, political subdivisions, and school systems;

(5) support clinical training programs for substance abuse counselors and other health professionals involved in drug abuse education, prevention,;[2]

(6) in cooperation with the Director of the Centers for Disease Control and Prevention, develop educational materials to reduce the risks of acquired immune deficiency syndrome among intravenous drug abusers;

(7) conduct training, technical assistance, data collection, and evaluation activities of programs supported under the Drug Free Schools and Communities Act of 1986;

(8) support the development of model, innovative, community-based programs to discourage alcohol and drug abuse among young people;

(9) collaborate with the Attorney General of the Department of Justice to develop programs to prevent drug abuse among high risk youth;

(10) prepare for distribution documentary films and public service announcements for television and radio to educate the public, especially adolescent audiences, concerning the dangers to health resulting from the consumption of alcohol and drugs and, to the extent feasible, use appropriate private organizations and business concerns in the preparation of such announcements; and

(11) develop and support innovative demonstration programs designed to identify and deter the improper use or abuse of anabolic steroids by students, especially students in secondary schools.

(c) Grants, contracts and cooperative agreements

The Director may make grants and enter into contracts and cooperative agreements in carrying out subsection (b) of this section.

(d) National data base

The Director of the Prevention Center shall establish a national data base providing information on programs for the prevention of substance abuse. The data base shall contain information appropriate for use by public entities and information appropriate for use by nonprofit private entities.

(July 1, 1944, ch. 373, title V, § 515, formerly § 508, as added Pub. L. 99–570, title IV, § 4005(a), Oct. 27, 1986, 100 Stat. 3207–111; amended Pub. L. 100–690, title II, § 2051(a)–(c), Nov. 18, 1988, 102 Stat. 4206; Pub. L. 101–93, § 3(a), Aug. 16, 1989, 103 Stat. 609; Pub. L. 101–647, title XIX, § 1906, Nov. 29, 1990, 104 Stat. 4854; renumbered § 515 and amended Pub. L. 102–321, title I, § 113(b)–(e), July 10, 1992, 106 Stat. 345; Pub. L. 102–531, title III, § 312(d)(10), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 106–310, div. B, title XXXI, § 3112(b), Oct. 17, 2000, 114 Stat. 1188.)

REFERENCES IN TEXT

The Drug-Free Schools and Communities Act of 1986, referred to in subsec. (b)(7), means title V of Pub. L. 89–10 as added by Pub. L. 100–297, title I, § 1001, Apr. 28, 1988, 102 Stat. 252, which was classified generally to subchapter V (§ 3171 et seq.) of chapter 47 of Title 20, Education, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. For provisions relating to safe and drug-free schools and communities, see section 7101 et seq. of Title 20.

CODIFICATION

Section was formerly classified to section 290aa–6 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 515 of act July 1, 1944, was classified to section 290cc of this title, prior to repeal by Pub. L. 102–321, title I, § 123(c), July 10, 1992, 106 Stat. 363.

Another prior section 515 of act July 1, 1944, which was classified to section 229d of this title, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

AMENDMENTS

2000—Subsec. (b)(9). Pub. L. 106–310, § 3112(b)(2), added par. (9). Former par. (9) redesignated (10).

Subsec. (b)(10). Pub. L. 106–310, § 3112(b)(1), (3), redesignated par. (9) as (10) and substituted ''educate the pub-

[1] So in original. Probably should be ''Prevention Center''.

[2] So in original. Probably should be ''education and prevention;''.

lic, especially adolescent audiences, concerning'' for ''educate the public concerning''. Former par. (10) redesignated (11).

Subsec. (b)(11). Pub. L. 106–310, §3112(b)(1), redesignated par. (10) as (11).

1992—Subsec. (a). Pub. L. 102–321, §113(e)(1), substituted ''(hereafter referred to in this part as the 'Prevention Center')'' for ''(hereafter in this part referred to as the 'Office')''.

Subsec. (b). Pub. L. 102–321, §113(e)(2), substituted ''Prevention Center'' for ''Office'' in introductory provisions.

Subsec. (b)(5). Pub. L. 102–321, §113(c)(1), struck out ''and intervention'' after ''prevention,''.

Subsec. (b)(6). Pub. L. 102–531, which directed the amendment of ''section 508(b)(6) (42 U.S.C. 290aa–6(b)(6))'' of act July 1, 1944, by substituting ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'', was executed to subsec. (b)(6) of this section to reflect the probable intent of Congress and the intervening renumbering of section 508 of act July 1, 1944, as section 515 of that act by Pub. L. 102–321, §113(b)(2).

Subsec. (b)(9). Pub. L. 102–321, §113(c)(4), inserted ''and'' after semicolon at end.

Subsec. (b)(10) to (12). Pub. L. 102–321, §113(c)(2)–(4), redesignated par. (12) as (10) and struck out former pars. (10) and (11) which read as follows:

''(10)(A) provide assistance to communities to develop comprehensive long-term strategies for the prevention of substance abuse; and

''(B) evaluate the success of different community approaches toward the prevention of substance abuse;

''(11) through schools of health professions, schools of allied health professions, schools of nursing, and schools of social work, carry out programs—

''(A) to train individuals in the diagnosis and treatment of alcohol and drug abuse; and

''(B) to develop appropriate curricula and materials for the training described in subparagraph (A); and''.

Subsec. (d). Pub. L. 102–321, §113(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(1) For the purpose of carrying out this section and sections 290aa–7, 290aa–8, and 290aa–13 of this title, there are authorized to be appropriated $95,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

''(2) Of the amounts appropriated pursuant to paragraph (1) for a fiscal year, the Secretary shall make available not less than $5,000,000 to carry out paragraphs (5) and (11) of subsection (b) of this section.''

1990—Subsec. (b)(12). Pub. L. 101–647 added par. (12).

1989—Subsec. (b)(11)(B). Pub. L. 101–93, §3(a)(2), substituted ''subparagraph (A)'' for ''subparagraph (a)''.

Subsec. (d)(1). Pub. L. 101–93, §3(a)(1), inserted a comma after ''290aa–13 of this title''.

1988—Subsec. (b)(5). Pub. L. 100–690, §2051(b)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''support programs of clinical training of substance abuse counselors and other health professionals;''.

Subsec. (b)(10). Pub. L. 100–690, §2051(b)(2) added par. (10).

Subsec. (b)(11). Pub. L. 100–690, §2051(c), added par. (11).

Subsec. (d). Pub. L. 100–690, §2051(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Of the amounts available under the second sentence of section 300y(a) of this title to carry out this section and section 290aa–8 of this title, $20,000,000 shall be available to carry out section 290aa–8 of this title.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290bb–22. Priority substance abuse prevention needs of regional and national significance

(a) Projects

The Secretary shall address priority substance abuse prevention needs of regional and national significance (as determined under subsection (b) of this section) through the provision of or through assistance for—

(1) knowledge development and application projects for prevention and the conduct or support of evaluations of such projects;

(2) training and technical assistance; and

(3) targeted capacity response programs.

The Secretary may carry out the activities described in this section directly or through grants or cooperative agreements with States, political subdivisions of States, Indian tribes and tribal organizations, or other public or nonprofit private entities.

(b) Priority substance abuse prevention needs

(1) In general

Priority substance abuse prevention needs of regional and national significance shall be determined by the Secretary in consultation with the States and other interested groups. The Secretary shall meet with the States and interested groups on an annual basis to discuss program priorities.

(2) Special consideration

In developing program priorities under paragraph (1), the Secretary shall give special consideration to—

(A) applying the most promising strategies and research-based primary prevention approaches; and

(B) promoting the integration of substance abuse prevention information and activities into primary health care systems.

(c) Requirements

(1) In general

Recipients of grants, contracts, and cooperative agreements under this section shall comply with information and application requirements determined appropriate by the Secretary.

(2) Duration of award

With respect to a grant, contract, or cooperative agreement awarded under this section, the period during which payments under such award are made to the recipient may not exceed 5 years.

(3) Matching funds

The Secretary may, for projects carried out under subsection (a) of this section, require that entities that apply for grants, contracts, or cooperative agreements under that project provide non-Federal matching funds, as determined appropriate by the Secretary, to ensure the institutional commitment of the entity to the projects funded under the grant, contract, or cooperative agreement. Such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(4) Maintenance of effort

With respect to activities for which a grant, contract, or cooperative agreement is awarded

under this section, the Secretary may require that recipients for specific projects under subsection (a) of this section agree to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the entity for the fiscal year preceding the fiscal year for which the entity receives such a grant, contract, or cooperative agreement.

(d) Evaluation

The Secretary shall evaluate each project carried out under subsection (a)(1) of this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(e) Information and education

The Secretary shall establish comprehensive information and education programs to disseminate the findings of the knowledge development and application, training and technical assistance programs, and targeted capacity response programs under this section to the general public and to health professionals. The Secretary shall make every effort to provide linkages between the findings of supported projects and State agencies responsible for carrying out substance abuse prevention and treatment programs.

(f) Authorization of appropriation

There are authorized to be appropriated to carry out this section, $300,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 516, formerly § 509, as added Pub. L. 99–570, title IV, § 4005(a), Oct. 27, 1986, 100 Stat. 3207–112; renumbered § 516 and amended Pub. L. 102–321, title I, § 113(f), July 10, 1992, 106 Stat. 345; Pub. L. 106–310, div. B, title XXXIII, § 3302(a), Oct. 17, 2000, 114 Stat. 1209.)

CODIFICATION

Section was formerly classified to section 290aa–7 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 516 of act July 1, 1944, was classified to section 290cc–1 of this title, prior to repeal by Pub. L. 102–321, title I, § 123(c), July 10, 1992, 106 Stat. 363.

AMENDMENTS

2000—Pub. L. 106–310 amended section catchline and text generally, substituting provisions relating to priority substance abuse prevention needs of regional and national significance for provisions relating to community programs.

1992—Pub. L. 102–321, § 113(f)(4), amended section generally, substituting provisions relating to community programs for provisions relating to alcohol and drug abuse information clearinghouse.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290bb–23. Prevention, treatment, and rehabilitation model projects for high risk youth

(a) Grants to public and nonprofit private entities

The Secretary, through the Director of the Prevention Center, shall make grants to public and nonprofit private entities for projects to demonstrate effective models for the prevention, treatment, and rehabilitation of drug abuse and alcohol abuse among high risk youth.

(b) Priority of projects

(1) In making grants for drug abuse and alcohol abuse prevention projects under this section, the Secretary shall give priority to applications for projects directed at children of substance abusers, latchkey children, children at risk of abuse or neglect, preschool children eligible for services under the Head Start Act [42 U.S.C. 9831 et seq.], children at risk of dropping out of school, children at risk of becoming adolescent parents, and children who do not attend school and who are at risk of being unemployed.

(2) In making grants for drug abuse and alcohol abuse treatment and rehabilitation projects under this section, the Secretary shall give priority to projects which address the relationship between drug abuse or alcohol abuse and physical child abuse, sexual child abuse, emotional child abuse, dropping out of school, unemployment, delinquency, pregnancy, violence, suicide, or mental health problems.

(3) In making grants under this section, the Secretary shall give priority to applications from community based organizations for projects to develop innovative models with multiple, coordinated services for the prevention or for the treatment and rehabilitation of drug abuse or alcohol abuse by high risk youth.

(4) In making grants under this section, the Secretary shall give priority to applications for projects to demonstrate effective models with multiple, coordinated services which may be replicated and which are for the prevention or for the treatment and rehabilitation of drug abuse or alcohol abuse by high risk youth.

(5) In making grants under this section, the Secretary shall give priority to applications that employ research designs adequate for evaluating the effectiveness of the program.

(c) Strategies for reducing use

The Secretary shall ensure that projects under subsection (a) of this section include strategies for reducing the use of alcoholic beverages and tobacco products by individuals to whom it is unlawful to sell or distribute such beverages or products.

(d) Regionally equal distribution of grants

To the extent feasible, the Secretary shall make grants under this section in all regions of the United States, and shall ensure the distribution of grants under this section among urban and rural areas.

(e) Application for grants

In order to receive a grant for a project under this section for a fiscal year, a public or nonprofit private entity shall submit an application to the Secretary, acting through the Office.[1] The Secretary may provide to the Governor of the State the opportunity to review and comment on such application. Such application shall be in such form, shall contain such information, and

[1] So in original. Probably should be ''Prevention Center''.

shall be submitted at such time as the Secretary may by regulation prescribe.

(f) Evaluation of projects

The Director of the Office[1] shall evaluate projects conducted with grants under this section.

(g) "High risk youth" defined

For purposes of this section, the term ''high risk youth'' means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

(1) is identified as a child of a substance abuser;

(2) is a victim of physical, sexual, or psychological abuse;

(3) has dropped out of school;

(4) has become pregnant;

(5) is economically disadvantaged;

(6) has committed a violent or delinquent act;

(7) has experienced mental health problems;

(8) has attempted suicide;

(9) has experienced long-term physical pain due to injury; or

(10) has experienced chronic failure in school.

(h) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2003.

(July 1, 1944, ch. 373, title V, § 517, formerly § 509A, as added Pub. L. 99–570, title IV, § 4005(a), Oct. 27, 1986, 100 Stat. 3207–113; amended Pub. L. 100–690, title II, § 2051(d), Nov. 18, 1988, 102 Stat. 4206; renumbered § 517 and amended Pub. L. 102–321, title I, § 114, July 10, 1992, 106 Stat. 346; Pub. L. 106–310, div. B, title XXXI, § 3103, Oct. 17, 2000, 114 Stat. 1171.)

REFERENCES IN TEXT

The Head Start Act, referred to in subsec. (b)(1), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

CODIFICATION

Section was formerly classified to section 290aa–8 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 517 of act July 1, 1944, was classified to section 290cc–2 of this title, prior to repeal by Pub. L. 102–321, title I, § 123(c), July 10, 1992, 106 Stat. 363.

AMENDMENTS

2000—Subsec. (h). Pub. L. 106–310 substituted ''such sums as may be necessary for each of the fiscal years 2001 through 2003'' for ''$70,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994''.

1992—Subsec. (a). Pub. L. 102–321, § 114(d), substituted ''Prevention Center'' for ''Office''.

Subsecs. (c) to (g). Pub. L. 102–321, § 114(b), added subsec. (c) and redesignated former subsecs. (c) through (f) as (d) through (g), respectively.

Subsec. (h). Pub. L. 102–321, § 114(c), added subsec. (h).

1988—Subsec. (b)(5). Pub. L. 100–690, § 2051(d)(1), added par. (5).

Subsec. (f)(9). Pub. L. 100–690, § 2051(d)(2)(B), amended par. (9) generally, substituting ''has experienced long-term physical pain due to injury; or'' for ''is disabled by injuries.''

Subsec. (f)(10). Pub. L. 100–690, § 2051(d)(2)(C), added par. (10).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290bb–24. Repealed. Pub. L. 106–310, div. B, title XXXIII, § 3302(b), Oct. 17, 2000, 114 Stat. 1210

Section, act July 1, 1944, ch. 373, title V, § 518, as added Pub. L. 102–321, title I, § 171, July 10, 1992, 106 Stat. 377, related to employee assistance programs.

A prior section 518 of act July 1, 1944, was classified to section 290cc–11 of this title, prior to repeal by Pub. L. 102–321, § 120(b)(3).

§ 290bb–25. Grants for services for children of substance abusers

(a) Establishment

(1) In general

The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall make grants to public and nonprofit private entities for the purpose of carrying out programs—

(A) to provide the services described in subsection (b) of this section to children of substance abusers;

(B) to provide the applicable services described in subsection (c) of this section to families in which a member is a substance abuser;

(C) to identify such children and such families through youth service agencies, family social services, child care providers, Head Start, schools and after-school programs, early childhood development programs, community-based family resource and support centers, the criminal justice system, health, substance abuse and mental health providers through screenings conducted during regular childhood examinations and other examinations, self and family member referrals, substance abuse treatment services, and other providers of services to children and families; and

(D) to provide education and training to health, substance abuse and mental health professionals, and other providers of services to children and families through youth service agencies, family social services, child care, Head Start, schools and after-school programs, early childhood development programs, community-based family resource and support centers, the criminal justice system, and other providers of services to children and families.

(2) Administrative consultations

The Administrator of the Administration for Children, Youth, and Families and the Administrator of the Health Resources and Services Administration shall be consulted regarding the promulgation of program guidelines and funding priorities under this section.

(3) Requirement of status as medicaid provider

(A) Subject to subparagraph (B), the Secretary may make a grant under paragraph (1) only if, in the case of any service under such paragraph that is covered in the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(i)(I) the entity involved will provide the service directly, and the entity has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(II) the entity will enter into an agreement with an organization under which the organization will provide the service, and the organization has entered into such a participation agreement and is qualified to receive such payments; and

(ii) the entity will identify children who may be eligible for medical assistance under a State program under title XIX or XXI of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.].

(B)(i) In the case of an organization making an agreement under subparagraph (A)(ii)[1] regarding the provision of services under paragraph (1), the requirement established in such subparagraph regarding a participation agreement shall be waived by the Secretary if the organization does not, in providing health or mental health services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(ii) A determination by the Secretary of whether an organization referred to in clause (i) meets the criteria for a waiver under such clause shall be made without regard to whether the organization accepts voluntary donations regarding the provision of services to the public.

(b) Services for children of substance abusers

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees to make available (directly or through agreements with other entities) to children of substance abusers each of the following services:

(1) Periodic evaluation of children for developmental, psychological, alcohol and drug, and medical problems.

(2) Primary pediatric care.

(3) Other necessary health and mental health services.

(4) Therapeutic intervention services for children, including provision of therapeutic child care.

(5) Developmentally and age-appropriate drug and alcohol early intervention, treatment and prevention services.

(6) Counseling related to the witnessing of chronic violence.

(7) Referrals for, and assistance in establishing eligibility for, services provided under—

(A) education and special education programs;

(B) Head Start programs established under the Head Start Act [42 U.S.C. 9831 et seq.];

(C) other early childhood programs;

(D) employment and training programs;

(E) public assistance programs provided by Federal, State, or local governments; and

(F) programs offered by vocational rehabilitation agencies, recreation departments, and housing agencies.

(8) Additional developmental services that are consistent with the provision of early intervention services, as such term is defined in part C of the Individuals with Disabilities Education Act [20 U.S.C. 1431 et seq.].

Services shall be provided under paragraphs (2) through (8) by a public health nurse, social worker, or similar professional, or by a trained worker from the community who is supervised by a professional, or by an entity, where the professional or entity provides assurances that the professional or entity is licensed or certified by the State if required and is complying with applicable licensure or certification requirements.

(c) Services for affected families

The Secretary may make a grant under subsection (a) of this section only if, in the case of families in which a member is a substance abuser, the applicant involved agrees to make available (directly or through agreements with other entities) each of the following services, as applicable to the family member involved:

(1) Services as follows, to be provided by a public health nurse, social worker, or similar professional, or by a trained worker from the community who is supervised by a professional, or by an entity, where the professional or entity provides assurances that the professional or entity is licensed or certified by the State if required and is complying with applicable licensure or certification requirements:

(A) Counseling to substance abusers on the benefits and availability of substance abuse treatment services and services for children of substance abusers.

(B) Assistance to substance abusers in obtaining and using substance abuse treatment services and in obtaining the services described in subsection (b) of this section for their children.

(C) Visiting and providing support to substance abusers, especially pregnant women, who are receiving substance abuse treatment services or whose children are receiving services under subsection (b) of this section.

(D) Aggressive outreach to family members with substance abuse problems.

(E) Inclusion of consumer in the development, implementation, and monitoring of Family Services Plan.

(2) In the case of substance abusers:

(A) Alcohol and drug treatment services, including screening and assessment, diagnosis, detoxification, individual, group and family counseling, relapse prevention, pharmacotherapy treatment, after-care services, and case management.

[1] See References in Text note below.

(B) Primary health care and mental health services, including prenatal and post partum care for pregnant women.

(C) Consultation and referral regarding subsequent pregnancies and life options and counseling on the human immunodeficiency virus and acquired immune deficiency syndrome.

(D) Where appropriate, counseling regarding family violence.

(E) Career planning and education services.

(F) Referrals for, and assistance in establishing eligibility for, services described in subsection (b)(7) of this section.

(3) In the case of substance abusers, spouses of substance abusers, extended family members of substance abusers, caretakers of children of substance abusers, and other people significantly involved in the lives of substance abusers or the children of substance abusers:

(A) An assessment of the strengths and service needs of the family and the assignment of a case manager who will coordinate services for the family.

(B) Therapeutic intervention services, such as parental counseling, joint counseling sessions for families and children, and family therapy.

(C) Child care or other care for the child to enable the parent to attend treatment or other activities and respite care services.

(D) Parenting education services and parent support groups which include child abuse and neglect prevention techniques.

(E) Support services, including, where appropriate, transportation services.

(F) Where appropriate, referral of other family members to related services such as job training.

(G) Aftercare services, including continued support through parent groups and home visits.

(d) Training for providers of services to children and families

The Secretary may make a grant under subsection (a) of this section for the training of health, substance abuse and mental health professionals and other providers of services to children and families through youth service agencies, family social services, child care providers, Head Start, schools and after-school programs, early childhood development programs, community-based family resource centers, the criminal justice system, and other providers of services to children and families. Such training shall be to assist professionals in recognizing the drug and alcohol problems of their clients and to enhance their skills in identifying and understanding the nature of substance abuse, and obtaining substance abuse early intervention, prevention and treatment resources.

(e) Eligible entities

The Secretary shall distribute the grants through the following types of entities:

(1) Alcohol and drug early intervention, prevention or treatment programs, especially those providing treatment to pregnant women and mothers and their children.

(2) Public or nonprofit private entities that provide health or social services to disadvantaged populations, and that have—

(A) expertise in applying the services to the particular problems of substance abusers and the children of substance abusers; or

(B) an affiliation or contractual relationship with one or more substance abuse treatment programs or pediatric health or mental health providers and family mental health providers.

(3) Consortia of public or nonprofit private entities that include at least one substance abuse treatment program.

(4) Indian tribes.

(f) Federal share

The Federal share of a program carried out under subsection (a) of this section shall be 90 percent. The Secretary shall accept the value of in-kind contributions, including facilities and personnel, made by the grant recipient as a part or all of the non-Federal share of grants.

(g) Restrictions on use of grant

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that the grant will not be expended—

(1) to provide inpatient hospital services;

(2) to make cash payments to intended recipients of services;

(3) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

(h) Submission to Secretary of certain information

The Secretary may make a grant under subsection (a) of this section only if the applicant involved submits to the Secretary—

(1) a description of the population that is to receive services under this section and a description of such services that are to be provided and measurable goals and objectives;

(2) a description of the mechanism that will be used to involve the local public agencies responsible for health, including maternal and child health[2] mental health, child welfare, education, juvenile justice, developmental disabilities, and substance abuse in planning and providing services under this section, as well as evidence that the proposal has been coordinated with the State agencies responsible for administering those programs, the State agency responsible for administering alcohol and drug programs, the State lead agency, and the State Interagency Coordinating Council under part H[3] of the Individuals with Disabilities Education Act; and;[4]

[2] So in original. Probably should be followed by a comma.

[3] See References in Text note below.

[4] So in original. The semicolon probably should not appear after ''and''.

(3) such other information as the Secretary determines to be appropriate.

(i) Reports to Secretary

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that for each fiscal year for which the applicant receives such a grant the applicant, in accordance with uniform standards developed by the Secretary, will submit to the Secretary a report containing—

(1) a description of specific services and activities provided under the grant;

(2) information regarding progress toward meeting the program's stated goals and objectives;

(3) information concerning the extent of use of services provided under the grant, including the number of referrals to related services and information on other programs or services accessed by children, parents, and other caretakers;

(4) information concerning the extent to which parents were able to access and receive treatment for alcohol and drug abuse and sustain participation in treatment over time until the provider and the individual receiving treatment agree to end such treatment, and the extent to which parents re-enter treatment after the successful or unsuccessful termination of treatment;

(5) information concerning the costs of the services provided and the source of financing for health care services;

(6) information concerning—

(A) the number and characteristics of families, parents, and children served, including a description of the type and severity of childhood disabilities, and an analysis of the number of children served by age;

(B) the number of children served who remained with their parents during the period in which entities provided services under this section; and

(C) the number of case workers or other professionals trained to identify and address substance abuse issues.

(7) information on hospitalization or emergency room use by the family members participating in the program; and

(8) such other information as the Secretary determines to be appropriate.

(j) Requirement of application

The Secretary may make any grant under subsection (a) of this section only if—

(1) an application for the grant is submitted to the Secretary;

(2) the application contains the agreements required in this section and the information required in subsection (h) of this section; and

(3) the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(k) Evaluations

The Secretary shall periodically conduct evaluations to determine the effectiveness of programs supported under subsection (a) of this section—

(1) in reducing the incidence of alcohol and drug abuse among substance abusers participating in the programs;

(2) in preventing adverse health conditions in children of substance abusers;

(3) in promoting better utilization of health and developmental services and improving the health, developmental, and psychological status of children receiving services under the program; and

(4) in improving parental and family functioning, including increased participation in work or employment-related activities and decreased participation in welfare programs.

***(l)* Report to Congress**

Not later than 2 years after the date on which amounts are first appropriated under subjection[5] (*o*) of this section, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report that contains a description of programs carried out under this section. At a minimum, the report shall contain—

(1) information concerning the number and type of programs receiving grants;

(2) information concerning the type and use of services offered; and

(3) information concerning—

(A) the number and characteristics of families, parents, and children served; and

(B) the number of children served who remained with their parents during or after the period in which entities provided services under this section.

analyzed by the type of entity described in subsection (e) of this section that provided services;[6]

(m) Data collection

The Secretary shall periodically collect and report on information concerning the numbers of children in substance abusing families, including information on the age, gender and ethnicity of the children, the composition and income of the family, and the source of health care finances. The periodic report shall include a quantitative estimate of the prevalence of alcohol and drug problems in families involved in the child welfare system, the barriers to treatment and prevention services facing these families, and policy recommendations for removing the identified barriers, including training for child welfare workers.

(n) Definitions

For purposes of this section:

(1) The term ''caretaker'', with respect to a child of a substance abuser, means any individual acting in a parental role regarding the child (including any birth parent, foster parent, adoptive parent, relative of such a child, or other individual acting in such a role).

(2) The term ''children of substance abusers'' means—

(A) children who have lived or are living in a household with a substance abuser who is

[5] So in original. Probably should be ''subsection''.

[6] So in original. The semicolon probably should be a period.

acting in a parental role regarding the children; and

(B) children who have been prenatally exposed to alcohol or other drugs.

(3) The term ''Indian tribe'' means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(4) The term ''public or nonprofit private entities that provide health or social services to disadvantaged populations'' includes community-based organizations, local public health departments, community action agencies, hospitals, community health centers, child welfare agencies, developmental disabilities service providers, and family resource and support programs.

(5) The term ''substance abuse'' means the abuse of alcohol or other drugs.

(*o*) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $50,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 519, formerly title III, § 399D, as added Pub. L. 102–321, title IV, § 401(a), July 10, 1992, 106 Stat. 419; renumbered § 399A, renumbered title V, § 519, and amended Pub. L. 106–310, div. A, title V, § 502(1), div. B, title XXXI, § 3106(a)–(m), Oct. 17, 2000, 114 Stat. 1115, 1175–1179; Pub. L. 108–446, title III, § 305(i)(1), (3), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Subparagraph (A)(ii), referred to in subsec. (a)(3)(B)(i), meaning subsec. (a)(3)(A)(ii) of this section was redesignated as subsec. (a)(3)(A)(i)(II) and a new subsec. (a)(3)(A)(ii) was added by Pub. L. 106–310, div. B, title XXXI, § 3106(a)(3)(B)(i), (C), Oct. 17, 2000, 114 Stat. 1176.

The Head Start Act, referred to in subsec. (b)(7)(B), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsecs. (b)(8) and (h)(2), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part C of the Act is classified generally to subchapter III (§ 1431 et seq.) of chapter 33 of Title 20, Education. Part H of the Act was classified generally to subchapter VIII (§ 1471 et seq.) of chapter 33 of Title 20, prior to repeal by Pub. L. 105–17, title II, § 203(b), June 4, 1997, 111 Stat. 157, effective July 1, 1998. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (n)(3), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

CODIFICATION

Section was formerly classified to section 280d of this title.

AMENDMENTS

2004—Subsecs. (b)(8), (f). Pub. L. 108–446, § 305(i)(1), (3), which directed amendment of subsecs. (b)(8) and (f) of section 399A of the Public Health Service Act by substituting ''part C'' for ''part H'', was executed to subsec. (b)(8) of this section, which is section 519 of the Public Health Service Act, to reflect the probable intent of Congress and the renumbering of this section and repeal of former subsec. (f). See 2000 Amendments notes below.

2000—Pub. L. 106–310, § 3106(a)–(m), which directed numerous amendments to section 399D of the Public Health Service Act and the subsequent renumbering of that section as section 519 of title V of the Act, was executed by amending this section and renumbering this section as section 519 of title V, to reflect the probable intent of Congress, notwithstanding the intervening renumbering of this section as section 399A of the Act by section 502(1) of Pub. L. 106–310. See source credit above and notes below.

Subsec. (a)(1). Pub. L. 106–310, § 3106(a)(1)(A), substituted ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Administrator of the Health Resources and Services Administration'' in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 106–310, § 3106(a)(2)(A), struck out ''and'' at end.

Subsec. (a)(1)(C). Pub. L. 106–310, § 3106(a)(2)(B), substituted ''through youth service agencies, family social services, child care providers, Head Start, schools and after-school programs, early childhood development programs, community-based family resource and support centers, the criminal justice system, health, substance abuse and mental health providers through screenings conducted during regular childhood examinations and other examinations, self and family member referrals, substance abuse treatment services, and other providers of services to children and families; and'' for period at end.

Subsec. (a)(1)(D). Pub. L. 106–310, § 3106(a)(2)(C), added subpar. (D).

Subsec. (a)(2). Pub. L. 106–310, § 3106(a)(1)(B), substituted ''Administrator of the Health Resources and Services Administration'' for ''Administrator of the Substance Abuse and Mental Health Services Administration''.

Subsec. (a)(3)(A). Pub. L. 106–310, § 3106(a)(3), redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i) and added cl. (ii).

Subsec. (b). Pub. L. 106–310, § 3106(b)(3), inserted concluding provisions.

Subsec. (b)(1). Pub. L. 106–310, § 3106(b)(1), inserted ''alcohol and drug,'' after ''psychological,''.

Subsec. (b)(5). Pub. L. 106–310, § 3106(b)(2), added par. (5) and struck out former par. (5) relating to preventive counseling services.

Subsec. (c)(1). Pub. L. 106–310, § 3106(c)(1)(A), inserted '', or by an entity, where the professional or entity provides assurances that the professional or entity is licensed or certified by the State if required and is complying with applicable licensure or certification requirements'' before colon in introductory provisions.

Subsec. (c)(1)(D), (E). Pub. L. 106–310, § 3106(c)(1)(B), added subpars. (D) and (E).

Subsec. (c)(2)(A). Pub. L. 106–310, § 3106(c)(2)(A), added subpar. (A) and struck out former subpar. (A) relating to encouragement to participate in and referrals to appropriate substance abuse treatment.

Subsec. (c)(2)(C). Pub. L. 106–310, § 3106(c)(2)(B), which directed substitution of ''and counseling on the human

immunodeficiency virus and acquired immune deficiency syndrome'' for '', including educational and career planning'', was executed by making the substitution for '', including education and career planning'' to reflect the probable intent of Congress.

Subsec. (c)(2)(D). Pub. L. 106–310, §3106(c)(2)(C), struck out ''conflict and'' before ''violence''.

Subsec. (c)(2)(E). Pub. L. 106–310, §3106(c)(2)(D), substituted ''Career planning and education services'' for ''Remedial education services''.

Subsec. (c)(3)(D). Pub. L. 106–310, §3106(c)(3), inserted ''which include child abuse and neglect prevention techniques'' before period at end.

Subsec. (d). Pub. L. 106–310, §3106(*l*)(3), (4), added subsec. (d) and redesignated former subsec. (d) as (e).

Pub. L. 106–310, §3106(d)(1), substituted ''Eligible entities'' for ''Considerations in making grants'' in heading and ''The Secretary shall distribute the grants through the following types of entities:'' for ''In making grants under subsection (a) of this section, the Secretary shall ensure that the grants are reasonably distributed among the following types of entities:'' in introductory provisions.

Subsec. (d)(1). Pub. L. 106–310, §3106(d)(2), substituted ''drug early intervention, prevention or treatment programs'' for ''drug treatment programs''.

Subsec. (d)(2)(A). Pub. L. 106–310, §3106(d)(3)(A), substituted ''; or'' for ''; and''.

Subsec. (d)(2)(B). Pub. L. 106–310, §3106(d)(3)(B), inserted ''or pediatric health or mental health providers and family mental health providers'' before period at end.

Subsec. (e). Pub. L. 106–310, §3106(*l*)(3), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106–310, §3106(*l*)(1), (3), redesignated subsec. (e) as (f) and struck out former subsec. (f) relating to coordination with other providers.

Subsec. (h)(2). Pub. L. 106–310, §3106(e)(1), inserted ''including maternal and child health'' before ''mental health'', struck out ''treatment programs'' after ''substance abuse'', and substituted '', the State agency responsible for administering alcohol and drug programs, the State lead agency, and the State Interagency Coordinating Council under part H of the Individuals with Disabilities Education Act; and'' for ''and the State agency responsible for administering public maternal and child health services''.

Subsec. (h)(3), (4). Pub. L. 106–310, §3106(e)(2), redesignated par. (4) as (3) and struck out former par. (3) relating to requirement to submit to Secretary information demonstrating that the applicant has established a collaborative relationship with child welfare agencies and child protective services.

Subsec. (i)(6)(B). Pub. L. 106–310, §3106(f)(1), inserted ''and'' at end.

Subsec. (i)(6)(C). Pub. L. 106–310, §3106(f)(2), added subpar. (C) and struck out former subpar. (C) relating to the number of children served who were placed in out-of-home care during the period in which entities provided services under section.

Subsec. (i)(6)(D), (E). Pub. L. 106–310, §3106(f)(2), struck out subpars. (D) and (E) relating to the number of children described in subparagraph (C) who were reunited with their families and the number of children described in subparagraph (C) for whom a permanent plan has not been made or for whom the permanent plan is other than family reunification, respectively.

Subsec. (k). Pub. L. 106–310, §3106(*l*)(2), (3), redesignated subsec. (*l*) as (k) and struck out former subsec. (k) relating to peer review.

Subsec. (k)(2). Pub. L. 106–310, §3106(*l*)(5), which directed amendment of subsec. (k)(2) of this section by substituting ''(i)'' for ''(h)'', could not be executed because ''(h)'' does not appear in subsec. (k)(2).

Subsec. (*l*). Pub. L. 106–310, §3106(*l*)(3), redesignated subsec. (m) as (*l*). Former subsec. (*l*) redesignated (k).

Subsec. (*l*)(3). Pub. L. 106–310, §3106(*l*)(6), which directed substitution of ''(e)'' for ''(d)'' in subsec. (m)(3)(E), was executed by making the substitution in concluding provisions of subsec. (*l*)(3) to reflect the probable intent of Congress and the amendment by Pub. L. 106–310, §3106(*l*)(3). See above.

Pub. L. 106–310, §3106(g)(1), inserted ''and'' at end.

Subsec. (*l*)(4). Pub. L. 106–310, §3106(g)(2), substituted '', including increased participation in work or employment-related activities and decreased participation in welfare programs.'' for semicolon at end.

Subsec. (*l*)(5), (6). Pub. L. 106–310, §3106(g)(3), struck out pars. (5) and (6) relating to reducing the incidence of out-of-home placement for children whose parents receive services under the program and facilitating the reunification of families after children have been placed in out-of-home care, respectively.

Subsec. (m). Pub. L. 106–310, §3106(*l*)(3), redesignated subsec. (n) as (m). Former subsec. (m) redesignated (*l*).

Subsec. (m)(2). Pub. L. 106–310, §3106(h)(1), inserted ''and'' at end.

Subsec. (m)(3)(A). Pub. L. 106–310, §3106(h)(2)(A), inserted ''and'' at end.

Subsec. (m)(3)(B). Pub. L. 106–310, §3106(h)(2)(B), substituted period for semicolon at end.

Subsec. (m)(3)(C) to (E). Pub. L. 106–310, §3106(h)(2)(C), struck out subpars. (C) to (E) relating to the number of children served who were placed in out-of-home care during the period in which entities provided services under this section, the number of children described in subparagraph (C) who were reunited with their families, and the number of children described in subparagraph (C) who were permanently placed in out-of-home care, respectively.

Subsec. (m)(4). Pub. L. 106–310, §3106(h)(3), struck out par. (4) relating to an analysis of the access provided to, and use of, related services and alcohol and drug treatment through programs carried out under this section.

Subsec. (m)(5). Pub. L. 106–310, §3106(*l*)(6), which directed amendment of subsec. (m)(5) by substituting ''(e)'' for ''(d)'', could not be executed because subsec. (m) did not contain a par. (5) or a reference to ''(d)'' subsequent to the amendments by Pub. L. 106–310, §3106(h)(3), (*l*)(3). See notes above and below.

Pub. L. 106–310, §3106(h)(3), struck out par. (5) relating to a comparison of the costs of providing services through each of the types of entities described in subsection (d) of this section.

Subsec. (n). Pub. L. 106–310, §3106(*l*)(3), redesignated subsec. (*o*) as (n). Former subsec. (n) redesignated (m).

Pub. L. 106–310, §3106(i), inserted at end ''The periodic report shall include a quantitative estimate of the prevalence of alcohol and drug problems in families involved in the child welfare system, the barriers to treatment and prevention services facing these families, and policy recommendations for removing the identified barriers, including training for child welfare workers.''

Subsec. (*o*). Pub. L. 106–310, §3106(*l*)(3), redesignated subsec. (p) as (*o*). Former subsec. (*o*) redesignated (n).

Subsec. (*o*)(2)(B). Pub. L. 106–310, §3106(j), struck out ''dangerous'' before ''drugs''.

Subsec. (p). Pub. L. 106–310, §3106(*l*)(3), redesignated subsec. (p) as (*o*).

Pub. L. 106–310, §3106(k), amended heading and text of subsec. (p) generally, substituting provisions relating to authorization of appropriations for provisions relating to funding for carrying out section.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Com-

mittee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE

Section effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

CONSTRUCTION

Section 401(b) of Pub. L. 102–321 provided that: ''With respect to the program established in section 399D [now 519] of the Public Health Service Act [this section] (as added by subsection (a) of this section), nothing in such section 399D may be construed as establishing for any other Federal program any requirement, authority, or prohibition, including with respect to recipients of funds under such other Federal programs.''

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

§ 290bb–25a. Grants for strengthening families

(a) Program authorized

The Secretary, acting through the Director of the Prevention Center, may make grants to public and nonprofit private entities to develop and implement model substance abuse prevention programs to provide early intervention and substance abuse prevention services for individuals of high-risk families and the communities in which such individuals reside.

(b) Priority

In awarding grants under subsection (a) of this section, the Secretary shall give priority to applicants that—

(1) have proven experience in preventing substance abuse by individuals of high-risk families and reducing substance abuse in communities of such individuals;

(2) have demonstrated the capacity to implement community-based partnership initiatives that are sensitive to the diverse backgrounds of individuals of high-risk families and the communities of such individuals;

(3) have experience in providing technical assistance to support substance abuse prevention programs that are community-based;

(4) have demonstrated the capacity to implement research-based substance abuse prevention strategies; and

(5) have implemented programs that involve families, residents, community agencies, and institutions in the implementation and design of such programs.

(c) Duration of grants

The Secretary shall award grants under subsection (a) of this section for a period not to exceed 5 years.

(d) Use of funds

An applicant that is awarded a grant under subsection (a) of this section shall—

(1) in the first fiscal year that such funds are received under the grant, use such funds to develop a model substance abuse prevention program; and

(2) in the fiscal year following the first fiscal year that such funds are received, use such funds to implement the program developed under paragraph (1) to provide early intervention and substance abuse prevention services to—

(A) strengthen the environment of children of high risk families by targeting interventions at the families of such children and the communities in which such children reside;

(B) strengthen protective factors, such as—

(i) positive adult role models;

(ii) messages that oppose substance abuse;

(iii) community actions designed to reduce accessibility to and use of illegal substances; and

(iv) willingness of individuals of families in which substance abuse occurs to seek treatment for substance abuse;

(C) reduce family and community risks, such as family violence, alcohol or drug abuse, crime, and other behaviors that may effect healthy child development and increase the likelihood of substance abuse; and

(D) build collaborative and formal partnerships between community agencies, institutions, and businesses to ensure that comprehensive high quality services are provided, such as early childhood education, health care, family support programs, parent education programs, and home visits for infants.

(e) Application

To be eligible to receive a grant under subsection (a) of this section, an applicant shall prepare and submit to the Secretary an application that—

(1) describes a model substance abuse prevention program that such applicant will establish;

(2) describes the manner in which the services described in subsection (d)(2) of this section will be provided; and

(3) describe[1] in as much detail as possible the results that the entity expects to achieve in implementing such a program.

(f) Matching funding

The Secretary may not make a grant to a[2] entity under subsection (a) of this section unless that entity agrees that, with respect to the costs to be incurred by the entity in carrying out the program for which the grant was awarded, the entity will make available non-Federal contributions in an amount that is not less than 40 percent of the amount provided under the grant.

(g) Report to Secretary

An applicant that is awarded a grant under subsection (a) of this section shall prepare and

[1] So in original. Probably should be ''describes''.

[2] So in original. Probably should be ''an''.

submit to the Secretary a report in such form and containing such information as the Secretary may require, including an assessment of the efficacy of the model substance abuse prevention program implemented by the applicant and the short, intermediate, and long term results of such program.

(h) Evaluations

The Secretary shall conduct evaluations, based in part on the reports submitted under subsection (g) of this section, to determine the effectiveness of the programs funded under subsection (a) of this section in reducing substance use in high-risk families and in making communities in which such families reside in stronger. The Secretary shall submit such evaluations to the appropriate committees of Congress.

(i) High-risk families

In this section, the term ''high-risk family'' means a family in which the individuals of such family are at a significant risk of using or abusing alcohol or any illegal substance.

(j) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $3,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 519A, as added Pub. L. 106–310, div. B, title XXXI, § 3108, Oct. 17, 2000, 114 Stat. 1180.)

§ 290bb–25b. Programs to reduce underage drinking

(a) In general

The Secretary shall make awards of grants, cooperative agreements, or contracts to public and nonprofit private entities, including Indian tribes and tribal organizations, to enable such entities to develop plans for and to carry out school-based (including institutions of higher education) and community-based programs for the prevention of alcoholic-beverage consumption by individuals who have not attained the legal drinking age.

(b) Eligibility requirements

To be eligible to receive an award under subsection (a) of this section, an entity shall provide any assurances to the Secretary which the Secretary may require, including that the entity will—

(1) annually report to the Secretary on the effectiveness of the prevention approaches implemented by the entity;

(2) use science based and age appropriate approaches; and

(3) involve local public health officials and community prevention program staff in the planning and implementation of the program.

(c) Evaluation

The Secretary shall evaluate each project under subsection (a) of this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(d) Geographical distribution

The Secretary shall ensure that awards will be distributed equitably among the regions of the country and among urban and rural areas.

(e) Duration of award

With respect to an award under subsection (a) of this section, the period during which payments under such award are made to the recipient may not exceed 5 years. The preceding sentence may not be construed as establishing a limitation on the number of awards under such subsection that may be made to the recipient.

(f) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $25,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 519B, as added Pub. L. 106–310, div. B, title XXXI, § 3109, Oct. 17, 2000, 114 Stat. 1182.)

§ 290bb–25c. Services for individuals with fetal alcohol syndrome

(a) In general

The Secretary shall make awards of grants, cooperative agreements, or contracts to public and nonprofit private entities, including Indian tribes and tribal organizations, to provide services to individuals diagnosed with fetal alcohol syndrome or alcohol-related birth defects.

(b) Use of funds

An award under subsection (a) of this section may, subject to subsection (d) of this section, be used to—

(1) screen and test individuals to determine the type and level of services needed;

(2) develop a comprehensive plan for providing services to the individual;

(3) provide mental health counseling;

(4) provide substance abuse prevention services and treatment, if needed;

(5) coordinate services with other social programs including social services, justice system, educational services, health services, mental health and substance abuse services, financial assistance programs, vocational services and housing assistance programs;

(6) provide vocational services;

(7) provide health counseling;

(8) provide housing assistance;

(9) parenting[1] skills training;

(10) overall[1] case management;

(11) supportive[1] services for families of individuals with Fetal Alcohol Syndrome; and

(12) provide other services and programs, to the extent authorized by the Secretary after consideration of recommendations made by the National Task Force on Fetal Alcohol Syndrome.

(c) Requirements

To be eligible to receive an award under subsection (a) of this section, an applicant shall—

(1) demonstrate that the program will be part of a coordinated, comprehensive system of care for such individuals;

(2) demonstrate an established communication with other social programs in the community including social services, justice system,

[1] So in original. Probably should be preceded by ''provide''.

financial assistance programs, health services, educational services, mental health and substance abuse services, vocational services and housing assistance services;

(3) show a history of working with individuals with fetal alcohol syndrome or alcohol-related birth defects;

(4) provide assurance that the services will be provided in a culturally and linguistically appropriate manner; and

(5) provide assurance that at the end of the 5-year award period, other mechanisms will be identified to meet the needs of the individuals and families served under such award.

(d) Relationship to payments under other programs

An award may be made under subsection (a) of this section only if the applicant involved agrees that the award will not be expended to pay the expenses of providing any service under this section to an individual to the extent that payment has been made, or can reasonably be expected to be made, with respect to such expenses—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

(e) Duration of awards

With respect to an award under subsection (a) of this section, the period during which payments under such award are made to the recipient may not exceed 5 years.

(f) Evaluation

The Secretary shall evaluate each project carried out under subsection (a) of this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(g) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $25,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(2) Allocation

Of the amounts appropriated under paragraph (1) for a fiscal year, not less than $300,000 shall, for purposes relating to fetal alcohol syndrome and alcohol-related birth defects, be made available for collaborative, coordinated interagency efforts with the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Child Health and Human Development, the Health Resources and Services Administration, the Agency for Healthcare Research and Quality, the Centers for Disease Control and Prevention, the Department of Education, and the Department of Justice.

(July 1, 1944, ch. 373, title V, § 519C, as added Pub. L. 106–310, div. B, title XXXI, § 3110, Oct. 17, 2000, 114 Stat. 1183.)

§ 290bb–25d. Centers of excellence on services for individuals with fetal alcohol syndrome and alcohol-related birth defects and treatment for individuals with such conditions and their families

(a) In general

The Secretary shall make awards of grants, cooperative agreements, or contracts to public or nonprofit private entities for the purposes of establishing not more than four centers of excellence to study techniques for the prevention of fetal alcohol syndrome and alcohol-related birth defects and adaptations of innovative clinical interventions and service delivery improvements for the provision of comprehensive services to individuals with fetal alcohol syndrome or alcohol-related birth defects and their families and for providing training on such conditions.

(b) Use of funds

An award under subsection (a) of this section may be used to—

(1) study adaptations of innovative clinical interventions and service delivery improvements strategies for children and adults with fetal alcohol syndrome or alcohol-related birth defects and their families;

(2) identify communities which have an exemplary comprehensive system of care for such individuals so that they can provide technical assistance to other communities attempting to set up such a system of care;

(3) provide technical assistance to communities who do not have a comprehensive system of care for such individuals and their families;

(4) train community leaders, mental health and substance abuse professionals, families, law enforcement personnel, judges, health professionals, persons working in financial assistance programs, social service personnel, child welfare professionals, and other service providers on the implications of fetal alcohol syndrome and alcohol-related birth defects, the early identification of and referral for such conditions;

(5) develop innovative techniques for preventing alcohol use by women in child bearing years;

(6) perform other functions, to the extent authorized by the Secretary after consideration of recommendations made by the National Task Force on Fetal Alcohol Syndrome.

(c) Report

(1) In general

A recipient of an award under subsection (a) of this section shall at the end of the period of funding report to the Secretary on any innovative techniques that have been discovered for preventing alcohol use among women of child bearing years.

(2) Dissemination of findings

The Secretary shall upon receiving a report under paragraph (1) disseminate the findings to appropriate public and private entities.

(d) Duration of awards

With respect to an award under subsection (a) of this section, the period during which pay-

ments under such award are made to the recipient may not exceed 5 years.

(e) Evaluation

The Secretary shall evaluate each project carried out under subsection (a) of this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(f) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $5,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 519D, as added Pub. L. 106–310, div. B, title XXXI, § 3110, Oct. 17, 2000, 114 Stat. 1185.)

§ 290bb–25e. Prevention of methamphetamine and inhalant abuse and addiction

(a) Grants

The Director of the Center for Substance Abuse Prevention (referred to in this section as the ''Director'') may make grants to and enter into contracts and cooperative agreements with public and nonprofit private entities to enable such entities—

(1) to carry out school-based programs concerning the dangers of methamphetamine or inhalant abuse and addiction, using methods that are effective and evidence-based, including initiatives that give students the responsibility to create their own anti-drug abuse education programs for their schools; and

(2) to carry out community-based methamphetamine or inhalant abuse and addiction prevention programs that are effective and evidence-based.

(b) Use of funds

Amounts made available under a grant, contract or cooperative agreement under subsection (a) of this section shall be used for planning, establishing, or administering methamphetamine or inhalant prevention programs in accordance with subsection (c) of this section.

(c) Prevention programs and activities

(1) In general

Amounts provided under this section may be used—

(A) to carry out school-based programs that are focused on those districts with high or increasing rates of methamphetamine or inhalant abuse and addiction and targeted at populations which are most at risk to start methamphetamine or inhalant abuse;

(B) to carry out community-based prevention programs that are focused on those populations within the community that are most at-risk for methamphetamine or inhalant abuse and addiction;

(C) to assist local government entities to conduct appropriate methamphetamine or inhalant prevention activities;

(D) to train and educate State and local law enforcement officials, prevention and education officials, members of community anti-drug coalitions and parents on the signs of methamphetamine or inhalant abuse and addiction and the options for treatment and prevention;

(E) for planning, administration, and educational activities related to the prevention of methamphetamine or inhalant abuse and addiction;

(F) for the monitoring and evaluation of methamphetamine or inhalant prevention activities, and reporting and disseminating resulting information to the public; and

(G) for targeted pilot programs with evaluation components to encourage innovation and experimentation with new methodologies.

(2) Priority

The Director shall give priority in making grants under this section to rural and urban areas that are experiencing a high rate or rapid increases in methamphetamine or inhalant abuse and addiction.

(d) Analyses and evaluation

(1) In general

Up to $500,000 of the amount available in each fiscal year to carry out this section shall be made available to the Director, acting in consultation with other Federal agencies, to support and conduct periodic analyses and evaluations of effective prevention programs for methamphetamine or inhalant abuse and addiction and the development of appropriate strategies for disseminating information about and implementing these programs.

(2) Annual reports

The Director shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate and the Committee on Commerce and Committee on Appropriations of the House of Representatives, an annual report with the results of the analyses and evaluation under paragraph (1).

(e) Authorization of appropriations

There is authorized to be appropriated to carry out subsection (a) of this section, $10,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 519E, as added Pub. L. 106–310, div. B, title XXXI, § 3104(c), Oct. 17, 2000, 114 Stat. 1173.)

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 290bb–25f. Prevention and education programs

(a) In general

The Secretary of Health and Human Services (referred to in this Act as the ''Secretary'') shall award grants to public and nonprofit private entities to enable such entities to carry out science-based education programs in elementary

and secondary schools to highlight the harmful effects of anabolic steroids.

(b) Eligibility

(1) Application

To be eligible for grants under subsection (a) of this section, an entity shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(2) Preference

In awarding grants under subsection (a) of this section, the Secretary shall give preference to applicants that intend to use grant funds to carry out programs based on—

(A) the Athletes Training and Learning to Avoid Steroids program;

(B) The Athletes Targeting Healthy Exercise and Nutrition Alternatives program; and

(C) other programs determined to be effective by the National Institute on Drug Abuse.

(c) Use of funds

Amounts received under a grant under subsection (a) of this section shall be used for education programs that will directly communicate with teachers, principals, coaches, as well as elementary and secondary school children concerning the harmful effects of anabolic steroids.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $15,000,000 for each of fiscal years 2005 through 2010.

(Pub. L. 108–358, § 4, Oct. 22, 2004, 118 Stat. 1664.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), means Pub. L. 108–358, October 22, 2004, 92 Stat. 1661, known as the Anabolic Steroid Control Act of 2004. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 801 of Title 21, Food and Drugs, and Tables.

CODIFICATION

Section was enacted as part of the Anabolic Steroid Control Act of 2004, and not as part of the Public Health Service Act which comprises this chapter.

SUBPART 3—CENTER FOR MENTAL HEALTH SERVICES

§ 290bb–31. Center for Mental Health Services

(a) Establishment

There is established in the Administration a Center for Mental Health Services (hereafter in this section referred to as the ''Center''). The Center shall be headed by a Director (hereafter in this section referred to as the ''Director'') appointed by the Secretary from among individuals with extensive experience or academic qualifications in the provision of mental health services or in the evaluation of mental health service systems.

(b) Duties

The Director of the Center shall—

(1) design national goals and establish national priorities for—

(A) the prevention of mental illness; and

(B) the promotion of mental health;

(2) encourage and assist local entities and State agencies to achieve the goals and priorities described in paragraph (1);

(3) collaborate with the Department of Education and the Department of Justice to develop programs to assist local communities in addressing violence among children and adolescents;

(4) develop and coordinate Federal prevention policies and programs and to assure increased focus on the prevention of mental illness and the promotion of mental health;

(5) develop improved methods of treating individuals with mental health problems and improved methods of assisting the families of such individuals;

(6) administer the mental health services block grant program authorized in section 300x of this title;

(7) promote policies and programs at Federal, State, and local levels and in the private sector that foster independence and protect the legal rights of persons with mental illness, including carrying out the provisions of the Protection and Advocacy of Mentally Ill Individuals Act[1] [42 U.S.C. 10801 et seq.];

(8) carry out the programs under part C of this subchapter; and

(9) carry out responsibilities for the Human Resource Development programs;

(10) conduct services-related assessments, including evaluations of the organization and financing of care, self-help and consumer-run programs, mental health economics, mental health service systems, rural mental health, and improve the capacity of State to conduct evaluations of publicly funded mental health programs;

(11) establish a clearinghouse for mental health information to assure the widespread dissemination of such information to States, political subdivisions, educational agencies and institutions, treatment and prevention service providers, and the general public, including information concerning the practical application of research supported by the National Institute of Mental Health that is applicable to improving the delivery of services;

(12) provide technical assistance to public and private entities that are providers of mental health services;

(13) monitor and enforce obligations incurred by community mental health centers pursuant to the Community Mental Health Centers Act (as in effect prior to the repeal of such Act on August 13, 1981, by section 902(e)(2)(B) of Public Law 97–35 (95 Stat. 560));

(14) conduct surveys with respect to mental health, such as the National Reporting Program; and

(15) assist States in improving their mental health data collection.

(c) Grants and contracts

In carrying out the duties established in subsection (b) of this section, the Director may make grants to and enter into contracts and co-

[1] See References in Text note below.

operative agreements with public and nonprofit private entities.

(July 1, 1944, ch. 373, title V, § 520, as added Pub. L. 102–321, title I, § 115(a), July 10, 1992, 106 Stat. 346; amended Pub. L. 106–310, div. B, title XXXI, § 3112(c), Oct. 17, 2000, 114 Stat. 1188.)

REFERENCES IN TEXT

The Protection and Advocacy of Mentally Ill Individuals Act, referred to in subsec. (b)(7), probably means the Protection and Advocacy for Mentally Ill Individuals Act of 1986, which was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

The Community Mental Health Centers Act, referred to in subsec. (b)(13), is title II of Pub. L. 88–164, as added by Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title prior to its repeal by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560.

PRIOR PROVISIONS

A prior section 520 of act July 1, 1944, which was classified to section 290cc–13 of this title, was renumbered section 520A of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290bb–32 of this title.

Another prior section 520 of act July 1, 1944, was renumbered section 519 by Pub. L. 101–93 and classified to section 290cc–12 of this title, prior to repeal by Pub. L. 102–321, § 117.

AMENDMENTS

2000—Subsec. (b)(3) to (7). Pub. L. 106–310, § 3112(c)(1), (2), added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively. Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 106–310, § 3112(c)(1), (3), redesignated par. (7) as (8) and substituted ''programs under part C of this subchapter'' for ''programs authorized under sections 290bb–32 and 290cc–21 of this title, including the Community Support Program and the Child and Adolescent Service System Programs''. Former par. (8) redesignated (9).

Subsec. (b)(9). Pub. L. 106–310, § 3112(c)(4), which directed the amendment of par. (9) by substituting ''programs'' for ''program and programs of clinical training for professional and paraprofessional personnel pursuant to section 242a of this title'' was executed by making the substitution for the phrase which began with the words ''program, and programs'', to reflect the probable intent of Congress.

Pub. L. 106–310, § 3112(c)(1), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Subsec. (b)(10) to (15). Pub. L. 106–310, § 3112(c)(1), redesignated pars. (9) to (14) as (10) to (15), respectively.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

MENTAL HEALTH SERVICES FOR INDIVIDUALS IN CORRECTIONAL FACILITIES

Section 703 of Pub. L. 102–321 directed Secretary of Health and Human Services, acting through Director of Center for Mental Health Services, not later than July 10, 1992, to prepare and submit to Congress a report concerning most effective methods for providing mental health services to individuals who come into contact with the criminal justice system, including those individuals incarcerated in correctional facilities (including local jails and detention facilities), and the obstacles to providing such services, with such study to be carried out in consultation with the National Institute of Mental Health, the Department of Justice, and other appropriate public and private entities.

EXECUTIVE ORDER NO. 13263

Ex. Ord. No. 13263, Apr. 29, 2002, 67 F.R. 22337, which established President's New Freedom Commission on Mental Health, was revoked by Ex. Ord. No. 13316, § 3(g), Sept. 17, 2003, 68 F.R. 55256, eff. Sept. 30, 2003.

§ 290bb–32. Priority mental health needs of regional and national significance

(a) Projects

The Secretary shall address priority mental health needs of regional and national significance (as determined under subsection (b) of this section) through the provision of or through assistance for—

(1) knowledge development and application projects for prevention, treatment, and rehabilitation, and the conduct or support of evaluations of such projects;

(2) training and technical assistance programs;

(3) targeted capacity response programs; and

(4) systems change grants including statewide family network grants and client-oriented and consumer run self-help activities.

The Secretary may carry out the activities described in this subsection directly or through grants or cooperative agreements with States, political subdivisions of States, Indian tribes and tribal organizations, other public or private nonprofit entities.

(b) Priority mental health needs

(1) Determination of needs

Priority mental health needs of regional and national significance shall be determined by the Secretary in consultation with States and other interested groups. The Secretary shall meet with the States and interested groups on an annual basis to discuss program priorities.

(2) Special consideration

In developing program priorities described in paragraph (1), the Secretary shall give special consideration to promoting the integration of mental health services into primary health care systems.

(c) Requirements

(1) In general

Recipients of grants, contracts, and cooperative agreements under this section shall comply with information and application requirements determined appropriate by the Secretary.

(2) Duration of award

With respect to a grant, contract, or cooperative agreement awarded under this section, the period during which payments under such award are made to the recipient may not exceed 5 years.

(3) Matching funds

The Secretary may, for projects carried out under subsection (a) of this section, require

that entities that apply for grants, contracts, or cooperative agreements under this section provide non-Federal matching funds, as determined appropriate by the Secretary, to ensure the institutional commitment of the entity to the projects funded under the grant, contract, or cooperative agreement. Such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(4) Maintenance of effort

With respect to activities for which a grant, contract or cooperative agreement is awarded under this section, the Secretary may require that recipients for specific projects under subsection (a) of this section agree to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the entity for the fiscal year preceding the fiscal year for which the entity receives such a grant, contract, or cooperative agreement.

(d) Evaluation

The Secretary shall evaluate each project carried out under subsection (a)(1) of this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(e) Information and education

(1) In general

The Secretary shall establish information and education programs to disseminate and apply the findings of the knowledge development and application, training, and technical assistance programs, and targeted capacity response programs, under this section to the general public, to health care professionals, and to interested groups. The Secretary shall make every effort to provide linkages between the findings of supported projects and State agencies responsible for carrying out mental health services.

(2) Rural and underserved areas

In disseminating information on evidence-based practices in the provision of children's mental health services under this subsection, the Secretary shall ensure that such information is distributed to rural and medically underserved areas.

(f) Authorization of appropriation

(1) In general

There are authorized to be appropriated to carry out this section, $300,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(2) Data infrastructure

If amounts are not appropriated for a fiscal year to carry out section 300y of this title with respect to mental health, then the Secretary shall make available, from the amounts appropriated for such fiscal year under paragraph (1), an amount equal to the sum of $6,000,000 and 10 percent of all amounts appropriated for such fiscal year under such paragraph in excess of $100,000,000, to carry out such section 300y of this title.

(July 1, 1944, ch. 373, title V, § 520A, as added Pub. L. 100–690, title II, § 2057(3), Nov. 18, 1988, 102 Stat. 4212; renumbered § 520 and amended Pub. L. 101–93, § 3(e), (g), Aug. 16, 1989, 103 Stat. 610, 611; Pub. L. 101–639, § 2, Nov. 28, 1990, 104 Stat. 4600; renumbered § 520A and amended Pub. L. 102–321, title I, § 116, July 10, 1992, 106 Stat. 348; Pub. L. 106–310, div. B, title XXXII, § 3201(a), Oct. 17, 2000, 114 Stat. 1189.)

CODIFICATION

Section was formerly classified to section 290cc–13 of this title prior to renumbering by Pub. L. 102–321.

AMENDMENTS

2000—Pub. L. 106–310 amended section catchline and text generally, substituting provisions relating to priority mental health needs of regional and national significance for provisions relating to establishment of grant programs for demonstration projects.

1992—Subsec. (a)(1). Pub. L. 102–321, § 116(b)(1), substituted ''Center for Mental Health Services'' for ''National Institute of Mental Health''.

Subsec. (c). Pub. L. 102–321, § 116(b)(2), substituted ''five'' for ''three''.

Subsec. (e)(1). Pub. L. 102–321, § 116(b)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purposes of carrying out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.''

1990—Subsec. (a). Pub. L. 101–639, § 2(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary, acting through the Director, may make grants to States, political subdivisions of States, and nonprofit private agencies—

''(1) for mental health services demonstration projects for the planning, coordination, and improvement of community services (including outreach and self-help services) for seriously mentally ill individuals, seriously emotionally disturbed children and youth, elderly individuals, and homeless seriously mentally ill individuals, and for the conduct of research concerning such services;

''(2) for demonstration projects for the prevention of youth suicide;

''(3) for demonstration projects for the improvement of the recognition, assessment, treatment, and clinical management of depressive disorders; and

''(4) for demonstration projects for treatment and prevention relating to sex offenses.''

Subsec. (e)(1). Pub. L. 101–639, § 2(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purposes of carrying out this section, there are authorized to be appropriated $60,000,000 for each of the fiscal years 1989 and 1990.''

1989—Pub. L. 101–93 substituted ''programs'' for ''program'' in section catchline and in subsec. (a) substituted ''seriously mentally ill'' for ''chronically mentally ill'' wherever appearing, redesignated par. (5) as (4), and inserted ''for'' before ''demonstration'' in pars. (2), (3), and (4).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

COMMUNITY MENTAL HEALTH SERVICES DEMONSTRATION PROJECTS FOR HOMELESS INDIVIDUALS WHO ARE CHRONICALLY MENTALLY ILL

Pub. L. 100–77, title VI, § 612, July 22, 1987, 101 Stat. 523, as amended by Pub. L. 100–607, title VIII, § 821, Nov. 4, 1988, 102 Stat. 3171; Pub. L. 100–628, title VI, § 621, Nov. 7, 1988, 102 Stat. 3244; Pub. L. 101–93, § 5(t)(1), (2), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101–645, title V, § 521, Nov. 29, 1990, 104 Stat. 4734, which authorized to be appropriated

for payments under this section such sums as may be necessary for each of the fiscal years 1991 through 1993, in addition to any other amounts authorized to be appropriated for such payments for each of such fiscal years with such additional amounts to be available only for the provision of community-based mental health services to homeless individuals who are chronically mentally ill, and amounts paid to grantees under subsection (a) of this section that remain unobligated at the end of the fiscal year in which the amounts were received to remain available to grantees during the succeeding fiscal year for the purposes for which the payments were made, was repealed by Pub. L. 106–310, div. B, title XXXII, §3201(b)(3), Oct. 17, 2000, 114 Stat. 1190.

§ 290bb–33. Repealed. Pub. L. 106–310, div. B, title XXXII, § 3201(b)(2), Oct. 17, 2000, 114 Stat. 1190

Section, act July 1, 1944, ch. 373, title V, §520B, formerly title XXIV, §2441, as added Pub. L. 100–607, title II, §211, Nov. 4, 1988, 102 Stat. 3092; renumbered title V, §520B, and amended Pub. L. 102–321, title I, §118(a), (b)(2), July 10, 1992, 106 Stat. 348, 349, related to demonstration projects for individuals with positive test results.

§ 290bb–34. Youth interagency research, training, and technical assistance centers

(a) Program authorized

The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, and in consultation with the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of the Bureau of Justice Assistance and the Director of the National Institutes of Health—

(1) shall award grants or contracts to public or nonprofit private entities to establish not more than four research, training, and technical assistance centers to carry out the activities described in subsection (c) of this section; and

(2) shall award a competitive grant to 1 additional research, training, and technical assistance center to carry out the activities described in subsection (d) of this section.

(b) Application

A public or private nonprofit entity desiring a grant or contract under subsection (a) of this section shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) Authorized activities

A center established under a grant or contract under subsection (a)(1) of this section shall—

(1) provide training with respect to state-of-the-art mental health and justice-related services and successful mental health and substance abuse-justice collaborations that focus on children and adolescents, to public policymakers, law enforcement administrators, public defenders, police, probation officers, judges, parole officials, jail administrators and mental health and substance abuse providers and administrators;

(2) engage in research and evaluations concerning State and local justice and mental health systems, including system redesign initiatives, and disseminate information concerning the results of such evaluations;

(3) provide direct technical assistance, including assistance provided through toll-free telephone numbers, concerning issues such as how to accommodate individuals who are being processed through the courts under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), what types of mental health or substance abuse service approaches are effective within the judicial system, and how community-based mental health or substance abuse services can be more effective, including relevant regional, ethnic, and gender-related considerations; and

(4) provide information, training, and technical assistance to State and local governmental officials to enhance the capacity of such officials to provide appropriate services relating to mental health or substance abuse.

(d) Additional center

The additional research, training, and technical assistance center established under subsection (a)(2) of this section shall provide appropriate information, training, and technical assistance to States, political subdivisions of a State, Federally recognized Indian tribes, tribal organizations, institutions of higher education, public organizations, or private nonprofit organizations for—

(1) the development or continuation of statewide or tribal youth suicide early intervention and prevention strategies;

(2) ensuring the surveillance of youth suicide early intervention and prevention strategies;

(3) studying the costs and effectiveness of statewide youth suicide early intervention and prevention strategies in order to provide information concerning relevant issues of importance to State, tribal, and national policymakers;

(4) further identifying and understanding causes and associated risk factors for youth suicide;

(5) analyzing the efficacy of new and existing youth suicide early intervention techniques and technology;

(6) ensuring the surveillance of suicidal behaviors and nonfatal suicidal attempts;

(7) studying the effectiveness of State-sponsored statewide and tribal youth suicide early intervention and prevention strategies on the overall wellness and health promotion strategies related to suicide attempts;

(8) promoting the sharing of data regarding youth suicide with Federal agencies involved with youth suicide early intervention and prevention, and State-sponsored statewide or tribal youth suicide early intervention and prevention strategies for the purpose of identifying previously unknown mental health causes and associated risk factors for suicide in youth;

(9) evaluating and disseminating outcomes and best practices of mental and behavioral health services at institutions of higher education; and

(10) other activities determined appropriate by the Secretary.

(e) Authorization of appropriations

(1) For the purpose of awarding grants or contracts under subsection (a)(1) of this section,

there is authorized to be appropriated $4,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 and 2003.

(2) For the purpose of awarding a grant under subsection (a)(2) of this section, there are authorized to be appropriated $3,000,000 for fiscal year 2005, $4,000,000 for fiscal year 2006, and $5,000,000 for fiscal year 2007.

(July 1, 1944, ch. 373, title V, § 520C, as added Pub. L. 106–310, div. B, title XXXI, § 3104(b), Oct. 17, 2000, 114 Stat. 1173; amended Pub. L. 108–355, § 3(a), Oct. 21, 2004, 118 Stat. 1405.)

REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsec. (c)(3), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§ 12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–355, § 3(a)(1), substituted dash for comma after ''National Institutes of Health'', designated remainder of existing provisions as par. (1), substituted ''; and'' for period, and added par. (2).

Subsec. (c). Pub. L. 108–355, § 3(a)(2), substituted ''(a)(1)'' for ''(a)'' in introductory provisions.

Subsec. (d). Pub. L. 108–355, § 3(a)(5), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 108–355, § 3(a)(3), designated existing provisions as par. (1), substituted ''awarding grants or contracts under subsection (a)(1) of this section'' for ''carrying out this section'', and added par. (2).

Subsec. (e). Pub. L. 108–355, § 3(a)(4), redesignated subsec. (d) as (e).

§ 290bb–35. Services for youth offenders

(a) In general

The Secretary, acting through the Director of the Center for Mental Health Services, and in consultation with the Director of the Center for Substance Abuse Treatment, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, and the Director of the Special Education Programs, shall award grants on a competitive basis to State or local juvenile justice agencies to enable such agencies to provide aftercare services for youth offenders who have been discharged from facilities in the juvenile or criminal justice system and have serious emotional disturbances or are at risk of developing such disturbances.

(b) Use of funds

A State or local juvenile justice agency receiving a grant under subsection (a) of this section shall use the amounts provided under the grant—

(1) to develop a plan describing the manner in which the agency will provide services for each youth offender who has a serious emotional disturbance and has been detained or incarcerated in facilities within the juvenile or criminal justice system;

(2) to provide a network of core or aftercare services or access to such services for each youth offender, including diagnostic and evaluation services, substance abuse treatment services, outpatient mental health care services, medication management services, intensive home-based therapy, intensive day treatment services, respite care, and therapeutic foster care;

(3) to establish a program that coordinates with other State and local agencies providing recreational, social, educational, vocational, or operational services for youth, to enable the agency receiving a grant under this section to provide community-based system of care services for each youth offender that addresses the special needs of the youth and helps the youth access all of the aforementioned services; and

(4) using not more than 20 percent of funds received, to provide planning and transition services as described in paragraph (3) for youth offenders while such youth are incarcerated or detained.

(c) Application

A State or local juvenile justice agency that desires a grant under subsection (a) of this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(d) Report

Not later than 3 years after October 17, 2000, and annually thereafter, the Secretary shall prepare and submit, to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Commerce of the House of Representatives, a report that describes the services provided pursuant to this section.

(e) Definitions

In this section:

(1) Serious emotional disturbance

The term ''serious emotional disturbance'' with respect to a youth offender means an offender who currently, or at any time within the 1-year period ending on the day on which services are sought under this section, has a diagnosable mental, behavioral, or emotional disorder that functionally impairs the offender's life by substantially limiting the offender's role in family, school, or community activities, and interfering with the offender's ability to achieve or maintain one or more developmentally-appropriate social, behavior, cognitive, communicative, or adaptive skills.

(2) Community-based system of care

The term ''community-based system of care'' means the provision of services for the youth offender by various State or local agencies that in an interagency fashion or operating as a network addresses the recreational, social, educational, vocational, mental health, substance abuse, and operational needs of the youth offender.

(3) Youth offender

The term ''youth offender'' means an individual who is 21 years of age or younger who has been discharged from a State or local juvenile or criminal justice system, except that if the individual is between the ages of 18 and 21 years, such individual has had contact with the State or local juvenile or criminal justice system prior to attaining 18 years of age and is under the jurisdiction of such a system at the time services are sought.

(f) Authorization of appropriations

There is authorized to be appropriated to carry out this section $40,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 520D, as added Pub. L. 106–310, div. B, title XXXI, § 3107, Oct. 17, 2000, 114 Stat. 1179.)

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 290bb–36. Youth suicide early intervention and prevention strategies

(a) In general

The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall award grants or cooperative agreements to eligible entities to—

(1) develop and implement State-sponsored statewide or tribal youth suicide early intervention and prevention strategies in schools, educational institutions, juvenile justice systems, substance abuse programs, mental health programs, foster care systems, and other child and youth support organizations;

(2) support public organizations and private nonprofit organizations actively involved in State-sponsored statewide or tribal youth suicide early intervention and prevention strategies and in the development and continuation of State-sponsored statewide youth suicide early intervention and prevention strategies;

(3) provide grants to institutions of higher education to coordinate the implementation of State-sponsored statewide or tribal youth suicide early intervention and prevention strategies;

(4) collect and analyze data on State-sponsored statewide or tribal youth suicide early intervention and prevention services that can be used to monitor the effectiveness of such services and for research, technical assistance, and policy development; and

(5) assist eligible entities, through State-sponsored statewide or tribal youth suicide early intervention and prevention strategies, in achieving targets for youth suicide reductions under title V of the Social Security Act [42 U.S.C. 701 et seq.].

(b) Eligible entity

(1) Definition

In this section, the term ''eligible entity'' means—

(A) a State;

(B) a public organization or private nonprofit organization designated by a State to develop or direct the State-sponsored statewide youth suicide early intervention and prevention strategy; or

(C) a Federally recognized Indian tribe or tribal organization (as defined in the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.]) or an urban Indian organization (as defined in the Indian Health Care Improvement Act [25 U.S.C. 1601 et seq.]) that is actively involved in the development and continuation of a tribal youth suicide early intervention and prevention strategy.

(2) Limitation

In carrying out this section, the Secretary shall ensure that each State is awarded only 1 grant or cooperative agreement under this section. For purposes of the preceding sentence, a State shall be considered to have been awarded a grant or cooperative agreement if the eligible entity involved is the State or an entity designated by the State under paragraph (1)(B). Nothing in this paragraph shall be construed to apply to entities described in paragraph (1)(C).

(c) Preference

In providing assistance under a grant or cooperative agreement under this section, an eligible entity shall give preference to public organizations, private nonprofit organizations, political subdivisions, institutions of higher education, and tribal organizations actively involved with the State-sponsored statewide or tribal youth suicide early intervention and prevention strategy that—

(1) provide early intervention and assessment services, including screening programs, to youth who are at risk for mental or emotional disorders that may lead to a suicide attempt, and that are integrated with school systems, educational institutions, juvenile justice systems, substance abuse programs, mental health programs, foster care systems, and other child and youth support organizations;

(2) demonstrate collaboration among early intervention and prevention services or certify that entities will engage in future collaboration;

(3) employ or include in their applications a commitment to evaluate youth suicide early intervention and prevention practices and strategies adapted to the local community;

(4) provide timely referrals for appropriate community-based mental health care and treatment of youth who are at risk for suicide in child-serving settings and agencies;

(5) provide immediate support and information resources to families of youth who are at risk for suicide;

(6) offer access to services and care to youth with diverse linguistic and cultural backgrounds;

(7) offer appropriate postsuicide intervention services, care, and information to families, friends, schools, educational institutions, juvenile justice systems, substance abuse programs, mental health programs, foster care systems, and other child and youth support organizations of youth who recently completed suicide;

(8) offer continuous and up-to-date information and awareness campaigns that target parents, family members, child care professionals, community care providers, and the general

public and highlight the risk factors associated with youth suicide and the life-saving help and care available from early intervention and prevention services;

(9) ensure that information and awareness campaigns on youth suicide risk factors, and early intervention and prevention services, use effective communication mechanisms that are targeted to and reach youth, families, schools, educational institutions, and youth organizations;

(10) provide a timely response system to ensure that child-serving professionals and providers are properly trained in youth suicide early intervention and prevention strategies and that child-serving professionals and providers involved in early intervention and prevention services are properly trained in effectively identifying youth who are at risk for suicide;

(11) provide continuous training activities for child care professionals and community care providers on the latest youth suicide early intervention and prevention services practices and strategies;

(12) conduct annual self-evaluations of outcomes and activities, including consulting with interested families and advocacy organizations;

(13) provide services in areas or regions with rates of youth suicide that exceed the national average as determined by the Centers for Disease Control and Prevention; and

(14) obtain informed written consent from a parent or legal guardian of an at-risk child before involving the child in a youth suicide early intervention and prevention program.

(d) Requirement for direct services

Not less than 85 percent of grant funds received under this section shall be used to provide direct services, of which not less than 5 percent shall be used for activities authorized under subsection (a)(3) of this section.

(e) Coordination and collaboration

(1) In general

In carrying out this section, the Secretary shall collaborate with relevant Federal agencies and suicide working groups responsible for early intervention and prevention services relating to youth suicide.

(2) Consultation

In carrying out this section, the Secretary shall consult with—

(A) State and local agencies, including agencies responsible for early intervention and prevention services under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], the State Children's Health Insurance Program under title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.], and programs funded by grants under title V of the Social Security Act [42 U.S.C. 701 et seq.];

(B) local and national organizations that serve youth at risk for suicide and their families;

(C) relevant national medical and other health and education specialty organizations;

(D) youth who are at risk for suicide, who have survived suicide attempts, or who are currently receiving care from early intervention services;

(E) families and friends of youth who are at risk for suicide, who have survived suicide attempts, who are currently receiving care from early intervention and prevention services, or who have completed suicide;

(F) qualified professionals who possess the specialized knowledge, skills, experience, and relevant attributes needed to serve youth at risk for suicide and their families; and

(G) third-party payers, managed care organizations, and related commercial industries.

(3) Policy development

In carrying out this section, the Secretary shall—

(A) coordinate and collaborate on policy development at the Federal level with the relevant Department of Health and Human Services agencies and suicide working groups; and

(B) consult on policy development at the Federal level with the private sector, including consumer, medical, suicide prevention advocacy groups, and other health and education professional-based organizations, with respect to State-sponsored statewide or tribal youth suicide early intervention and prevention strategies.

(f) Rule of construction; religious and moral accommodation

Nothing in this section shall be construed to require suicide assessment, early intervention, or treatment services for youth whose parents or legal guardians object based on the parents' or legal guardians' religious beliefs or moral objections.

(g) Evaluations and report

(1) Evaluations by eligible entities

Not later than 18 months after receiving a grant or cooperative agreement under this section, an eligible entity shall submit to the Secretary the results of an evaluation to be conducted by the entity concerning the effectiveness of the activities carried out under the grant or agreement.

(2) Report

Not later than 2 years after October 21, 2004, the Secretary shall submit to the appropriate committees of Congress a report concerning the results of—

(A) the evaluations conducted under paragraph (1); and

(B) an evaluation conducted by the Secretary to analyze the effectiveness and efficacy of the activities conducted with grants, collaborations, and consultations under this section.

(h) Rule of construction; student medication

Nothing in this section or section 290bb–36a of this title shall be construed to allow school personnel to require that a student obtain any medication as a condition of attending school or receiving services.

(i) Prohibition

Funds appropriated to carry out this section, section 290bb–34 of this title, section 290bb–36a of

this title, or section 290bb–36b of this title shall not be used to pay for or refer for abortion.

(j) Parental consent

States and entities receiving funding under this section and section 290bb–36a of this title shall obtain prior written, informed consent from the child's parent or legal guardian for assessment services, school-sponsored programs, and treatment involving medication related to youth suicide conducted in elementary and secondary schools. The requirement of the preceding sentence does not apply in the following cases:

(1) In an emergency, where it is necessary to protect the immediate health and safety of the student or other students.

(2) Other instances, as defined by the State, where parental consent cannot reasonably be obtained.

(k) Relation to education provisions

Nothing in this section or section 290bb–36a of this title shall be construed to supersede section 1232g of title 20, including the requirement of prior parental consent for the disclosure of any education records. Nothing in this section or section 290bb–36a of this title shall be construed to modify or affect parental notification requirements for programs authorized under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.] (as amended by the No Child Left Behind Act of 2001; Public Law 107–110).

***(l)* Definitions**

In this section:

(1) Early intervention

The term ''early intervention'' means a strategy or approach that is intended to prevent an outcome or to alter the course of an existing condition.

(2) Educational institution; institution of higher education; school

The term—

(A) ''educational institution'' means a school or institution of higher education;

(B) ''institution of higher education'' has the meaning given such term in section 1001 of title 20; and

(C) ''school'' means an elementary or secondary school (as such terms are defined in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801]).

(3) Prevention

The term ''prevention'' means a strategy or approach that reduces the likelihood or risk of onset, or delays the onset, of adverse health problems that have been known to lead to suicide.

(4) Youth

The term ''youth'' means individuals who are between 10 and 24 years of age.

(m) Authorization of appropriations

(1) In general

For the purpose of carrying out this section, there are authorized to be appropriated $7,000,000 for fiscal year 2005, $18,000,000 for fiscal year 2006, and $30,000,000 for fiscal year 2007.

(2) Preference

If less than $3,500,000 is appropriated for any fiscal year to carry out this section, in awarding grants and cooperative agreements under this section during the fiscal year, the Secretary shall give preference to States that have rates of suicide that significantly exceed the national average as determined by the Centers for Disease Control and Prevention.

(July 1, 1944, ch. 373, title V, §520E, as added Pub. L. 108–355, §3(c), Oct. 21, 2004, 118 Stat. 1409.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(5) and (e)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V, XIX, and XXI of the Act are classified generally to subchapters V (§701 et seq.), XIX (§1396 et seq.), and XXI (§1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (b)(1)(C), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (b)(1)(C), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§1601 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (k), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§6301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The No Child Left Behind Act of 2001, referred to in subsec. (k), is Pub. L. 107–110, Jan. 8, 2002, 115 Stat. 1425. For complete classification of this Act to the Code, see Short Title of 2002 Amendment note set out under section 6301 of Title 20, Education, and Tables.

PRIOR PROVISIONS

A prior section 290bb–36, act July 1, 1944, ch. 373, title V, §520E, as added Pub. L. 106–310, div. B, title XXXI, §3111, Oct. 17, 2000, 114 Stat. 1186, and amended, which related to suicide prevention for children and adolescents, was renumbered section 520E–1 of act July 1, 1944, by Pub. L. 108–355, §3(b)(2), Oct. 21, 2004, 118 Stat. 1409, and transferred to section 290bb–36a of this title.

CONGRESSIONAL FINDINGS

Pub. L. 108–355, §2, Oct. 21, 2004, 118 Stat. 1404, provided that: ''Congress makes the following findings:

''(1) More children and young adults die from suicide each year than from cancer, heart disease, AIDS, birth defects, stroke, and chronic lung disease combined.

''(2) Over 4,000 children and young adults tragically take their lives every year, making suicide the third overall cause of death between the ages of 10 and 24. According to the Centers for Disease Control and Prevention, suicide is the third overall cause of death among college-age students.

''(3) According to the National Center for Injury Prevention and Control of the Centers for Disease Control and Prevention, children and young adults

accounted for 15 percent of all suicides completed in 2000.

''(4) From 1952 to 1995, the rate of suicide in children and young adults tripled.

''(5) From 1980 to 1997, the rate of suicide among young adults ages 15 to 19 increased 11 percent.

''(6) From 1980 to 1997, the rate of suicide among children ages 10 to 14 increased 109 percent.

''(7) According to the National Center of Health Statistics, suicide rates among Native Americans range from 1.5 to 3 times the national average for other groups, with young people ages 15 to 34 making up 64 percent of all suicides.

''(8) Congress has recognized that youth suicide is a public health tragedy linked to underlying mental health problems and that youth suicide early intervention and prevention activities are national priorities.

''(9) Youth suicide early intervention and prevention have been listed as urgent public health priorities by the President's New Freedom Commission in [probably should be ''on''] Mental Health (2002), the Institute of Medicine's Reducing Suicide: A National Imperative (2002), the National Strategy for Suicide Prevention: Goals and Objectives for Action (2001), and the Surgeon General's Call to Action To Prevent Suicide (1999).

''(10) Many States have already developed comprehensive statewide youth suicide early intervention and prevention strategies that seek to provide effective early intervention and prevention services.

''(11) In a recent report, a startling 85 percent of college counseling centers revealed an increase in the number of students they see with psychological problems. Furthermore, the American College Health Association found that 61 percent of college students reported feeling hopeless, 45 percent said they felt so depressed they could barely function, and 9 percent felt suicidal.

''(12) There is clear evidence of an increased incidence of depression among college students. According to a survey described in the Chronicle of Higher Education (February 1, 2002), depression among freshmen has nearly doubled (from 8.2 percent to 16.3 percent). Without treatment, researchers recently noted that 'depressed adolescents are at risk for school failure, social isolation, promiscuity, self-medication with drugs and alcohol, and suicide—now the third leading cause of death among 10–24 year olds.'.

''(13) Researchers who conducted the study 'Changes in Counseling Center Client Problems Across 13 Years' (1989–2001) at Kansas State University stated that 'students are experiencing more stress, more anxiety, more depression than they were a decade ago.' (The Chronicle of Higher Education, February 14, 2003).

''(14) According to the 2001 National Household Survey on Drug Abuse, 20 percent of full-time undergraduate college students use illicit drugs.

''(15) The 2001 National Household Survey on Drug Abuse also reported that 18.4 percent of adults aged 18 to 24 are dependent on or abusing illicit drugs or alcohol. In addition, the study found that 'serious mental illness is highly correlated with substance dependence or abuse. Among adults with serious mental illness in 2001, 20.3 percent were dependent on or abused alcohol or illicit drugs, while the rate among adults without serious mental illness was only 6.3 percent.'.

''(16) A 2003 Gallagher's Survey of Counseling Center Directors found that 81 percent were concerned about the increasing number of students with more serious psychological problems, 67 percent reported a need for more psychiatric services, and 63 percent reported problems with growing demand for services without an appropriate increase in resources.

''(17) The International Association of Counseling Services accreditation standards recommend 1 counselor per 1,000 to 1,500 students. According to the 2003 Gallagher's Survey of Counseling Center Directors, the ratio of counselors to students is as high as 1 counselor per 2,400 students at institutions of higher education with more than 15,000 students.''

§ 290bb–36a. Suicide prevention for youth

(a) In general

The Secretary shall award grants or cooperative agreements to public organizations, private nonprofit organizations, political subdivisions, consortia of political subdivisions, consortia of States, or Federally recognized Indian tribes or tribal organizations to design early intervention and prevention strategies that will complement the State-sponsored statewide or tribal youth suicide early intervention and prevention strategies developed pursuant to section 290bb–36 of this title.

(b) Collaboration

In carrying out subsection (a) of this section, the Secretary shall ensure that activities under this section are coordinated with the relevant Department of Health and Human Services agencies and suicide working groups.

(c) Requirements

A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or federally recognized Indian tribe or tribal organization desiring a grant, contract, or cooperative agreement under this section shall demonstrate that the suicide prevention program such entity proposes will—

(1)(A) comply with the State-sponsored statewide early intervention and prevention strategy as developed under section 290bb–36 of this title; and

(B) in the case of a consortium of States, receive the support of all States involved;

(2) provide for the timely assessment, treatment, or referral for mental health or substance abuse services of youth at risk for suicide;

(3) be based on suicide prevention practices and strategies that are adapted to the local community;

(4) integrate its suicide prevention program into the existing health care system in the community including general, mental, and behavioral health services, and substance abuse services;

(5) be integrated into other systems in the community that address the needs of youth including the school systems, educational institutions, juvenile justice system, substance abuse programs, mental health programs, foster care systems, and community child and youth support organizations;

(6) use primary prevention methods to educate and raise awareness in the local community by disseminating evidence-based information about suicide prevention;

(7) include suicide prevention, mental health, and related information and services for the families and friends of those who completed suicide, as needed;

(8) offer access to services and care to youth with diverse linguistic and cultural backgrounds;

(9) conduct annual self-evaluations of outcomes and activities, including consulting

with interested families and advocacy organizations;[1]

(10) ensure that staff used in the program are trained in suicide prevention and that professionals involved in the system of care have received training in identifying persons at risk of suicide.

(d) Use of funds

Amounts provided under a grant or cooperative agreement under this section shall be used to supplement, and not supplant, Federal and non-Federal funds available for carrying out the activities described in this section. Applicants shall provide financial information to demonstrate compliance with this section.

(e) Condition

An applicant for a grant or cooperative agreement under subsection (a) of this section shall demonstrate to the Secretary that the application complies with the State-sponsored statewide early intervention and prevention strategy as developed under section 290bb–36 of this title and the applicant has the support of the local community and relevant public health officials.

(f) Special populations

In awarding grants and cooperative agreements under subsection (a) of this section, the Secretary shall ensure that such awards are made in a manner that will focus on the needs of communities or groups that experience high or rapidly rising rates of suicide.

(g) Application

A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or Federally recognized Indian tribe or tribal organization receiving a grant or cooperative agreement under subsection (a) of this section shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. Such application shall include a plan for the rigorous evaluation of activities funded under the grant or cooperative agreement, including a process and outcome evaluation.

(h) Distribution of awards

In awarding grants and cooperative agreements under subsection (a) of this section, the Secretary shall ensure that such awards are distributed among the geographical regions of the United States and between urban and rural settings.

(i) Evaluation

A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or Federally recognized Indian tribe or tribal organization receiving a grant or cooperative agreement under subsection (a) of this section shall prepare and submit to the Secretary at the end of the program period, an evaluation of all activities funded under this section.

(j) Dissemination and education

The Secretary shall ensure that findings derived from activities carried out under this section are disseminated to State, county and local governmental agencies and public and private nonprofit organizations active in promoting suicide prevention and family support activities.

(k) Duration of projects

With respect to a grant, contract, or cooperative agreement awarded under this section, the period during which payments under such award may be made to the recipient may not exceed 3 years.

***(l)* Study**

Within 1 year after October 17, 2000, the Secretary shall, directly or by grant or contract, initiate a study to assemble and analyze data to identify—

(1) unique profiles of children under 13 who attempt or complete suicide;

(2) unique profiles of youths between ages 13 and 24 who attempt or complete suicide; and

(3) a profile of services available to these groups and the use of these services by children and youths from paragraphs (1) and (2).

(m) Definitions

In this section, the terms ''early intervention'', ''educational institution'', ''institution of higher education'', ''prevention'', ''school'', and ''youth'' have the meanings given to those terms in section 290bb–36 of this title.

(n) Authorization of appropriation

For purposes of carrying out this section, there is authorized to be appropriated $75,000,000 for fiscal year 2001 and such sums as may be necessary for each of the fiscal years 2002 through 2003.

(July 1, 1944, ch. 373, title V, § 520E–1, formerly § 520E, as added Pub. L. 106–310, div. B, title XXXI, § 3111, Oct. 17, 2000, 114 Stat. 1186; renumbered § 520E–1 and amended Pub. L. 108–355, § 3(b), Oct. 21, 2004, 118 Stat. 1407.)

CODIFICATION

Section was formerly classified to section 290bb–36 of this title prior to renumbering by Pub. L. 108–355.

AMENDMENTS

2004—Pub. L. 108–355, § 3(b)(1)(A), substituted ''youth'' for ''children and adolescents'' in section catchline.

Subsec. (a). Pub. L. 108–355, § 3(b)(1)(B), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''The Secretary shall award grants, contracts, or cooperative agreements to States, political subdivisions of States, Indian tribes, tribal organizations, public organizations, or private nonprofit organizations to establish programs to reduce suicide deaths in the United States among children and adolescents.''

Subsec. (b). Pub. L. 108–355, § 3(b)(1)(C), substituted ''with the relevant Department of Health and Human Services agencies and suicide working groups.'' for ''among the Substance Abuse and Mental Health Services Administration, the relevant institutes at the National Institutes of Health, the Centers for Disease Control and Prevention, the Health Resources and Services Administration, and the Administration on Children and Families.''

Subsec. (c). Pub. L. 108–355, § 3(b)(1)(D)(i), substituted ''A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or federally recognized Indian tribe or tribal organization desiring'' for ''A State, political subdivision of a State, Indian tribe, tribal or-

[1] So in original. Probably should be followed by ''and''.

ganization, public organization, or private nonprofit organization desiring'' in introductory provisions.

Subsec. (c)(1). Pub. L. 108–355, §3(b)(1)(D)(iii), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 108–355, §3(b)(1)(D)(ii), (iv), redesignated par. (1) as (2) and substituted ''youth'' for ''children and adolescents''. Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 108–355, §3(b)(1)(D)(ii), (v), redesignated par. (2) as (3) and struck out ''best evidence-based,'' after ''based on''. Former par. (3) redesignated (4).

Subsec. (c)(4). Pub. L. 108–355, §3(b)(1)(D)(ii), (vi), redesignated par. (3) as (4) and substituted ''general, mental, and behavioral health services, and substance abuse services;'' for ''primary health care, mental health services, and substance abuse services;''. Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 108–355, §3(b)(1)(D)(ii), (vii), redesignated par. (4) as (5) and substituted ''youth including the school systems, educational institutions, juvenile justice system, substance abuse programs, mental health programs, foster care systems, and community child and youth support organizations;'' for ''children and adolescents including the educational system, juvenile justice system, welfare and child protection systems, and community youth support organizations;''. Former par. (5) redesignated (6).

Subsec. (c)(6), (7). Pub. L. 108–355, §3(b)(1)(D)(ii), redesignated pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (c)(8). Pub. L. 108–355, §3(b)(1)(D)(viii), added par. (8) and struck out former par. (8) which read as follows: ''provide linguistically appropriate and culturally competent services, as needed;''.

Pub. L. 108–355, §3(b)(1)(D)(ii), redesignated par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (c)(9). Pub. L. 108–355, §3(b)(1)(D)(ix), added par. (9) and struck out former par. (9) which read as follows: ''provide a plan for the evaluation of outcomes and activities at the local level, according to standards established by the Secretary, and agree to participate in a national evaluation; and''.

Pub. L. 108–355, §3(b)(1)(D)(ii), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Subsec. (c)(10). Pub. L. 108–355, §3(b)(1)(D)(ii), redesignated par. (9) as (10).

Subsec. (d). Pub. L. 108–355, §3(b)(1)(E), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: ''Amounts provided under grants, contracts, or cooperative agreements under subsection (a) of this section shall be used to supplement and not supplant other Federal, State, and local public funds that are expended to provide services for eligible individuals.''

Subsec. (e). Pub. L. 108–355, §3(b)(1)(F), struck out '', contract,'' after ''grant'' and inserted ''application complies with the State-sponsored statewide early intervention and prevention strategy as developed under section 290bb–36 of this title and the'' after ''Secretary that the''.

Subsec. (f). Pub. L. 108–355, §3(b)(1)(G), struck out '', contracts,'' after ''grants''.

Subsec. (g). Pub. L. 108–355, §3(b)(1)(H), substituted ''A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or Federally recognized Indian tribe or tribal organization receiving'' for ''A State, political subdivision of a State, Indian tribe, tribal organization, public organization, or private nonprofit organization receiving'' and struck out '', contract,'' after ''grant'' in two places.

Subsec. (h). Pub. L. 108–355, §3(b)(1)(I), struck out '', contracts,'' after ''grants''.

Subsec. (i). Pub. L. 108–355, §3(b)(1)(J), substituted ''A public organization, private nonprofit organization, political subdivision, consortium of political subdivisions, consortium of States, or Federally recognized Indian tribe or tribal organization receiving'' for ''A State, political subdivision of a State, Indian tribe, tribal organization, public organization, or private nonprofit organization receiving'' and struck out '', contract,'' after ''grant''.

Subsec. (k). Pub. L. 108–355, §3(b)(1)(K), substituted ''3 years'' for ''5 years''.

Subsec. (*l*)(2). Pub. L. 108–355, §3(b)(1)(L)(i), substituted ''24'' for ''21''.

Subsec. (*l*)(3). Pub. L. 108–355, §3(b)(1)(L)(ii), struck out ''which might have been'' after ''profile of services''.

Subsec. (m). Pub. L. 108–355, §3(b)(1)(O), added subsec. (m). Former subsec. (m) redesignated (n).

Pub. L. 108–355, §3(b)(1)(M), struck out par. (1) designation and heading and struck out heading and text of par. (2). Text read as follows: ''In carrying out this section, the Secretary shall use 1 percent of the amount appropriated under paragraph (1) for each fiscal year for managing programs under this section.''

Subsec. (n). Pub. L. 108–355, §3(b)(1)(N), redesignated subsec. (m) as (n).

TEEN SUICIDE PREVENTION STUDY

Pub. L. 106–386, div. B, title VI, §1602, Oct. 28, 2000, 114 Stat. 1538, provided that:

''(a) SHORT TITLE.—This section may be cited as the 'Teen Suicide Prevention Act of 2000'.

''(b) FINDINGS.—Congress finds that—

''(1) measures that increase public awareness of suicide as a preventable public health problem, and target parents and youth so that suicide risks and warning signs can be recognized, will help to eliminate the ignorance and stigma of suicide as barriers to youth and families seeking preventive care;

''(2) suicide prevention efforts in the year 2000 should—

''(A) target at-risk youth, particularly youth with mental health problems, substance abuse problems, or contact with the juvenile justice system;

''(B) involve—

''(i) the identification of the characteristics of the at-risk youth and other youth who are contemplating suicide, and barriers to treatment of the youth; and

''(ii) the development of model treatment programs for the youth;

''(C) include a pilot study of the outcomes of treatment for juvenile delinquents with mental health or substance abuse problems;

''(D) include a public education approach to combat the negative effects of the stigma of, and discrimination against individuals with, mental health and substance abuse problems; and

''(E) include a nationwide effort to develop, implement, and evaluate a mental health awareness program for schools, communities, and families;

''(3) although numerous symptoms, diagnoses, traits, characteristics, and psychosocial stressors of suicide have been investigated, no single factor or set of factors has ever come close to predicting suicide with accuracy;

''(4) research of United States youth, such as a 1994 study by Lewinsohn, Rohde, and Seeley, has shown predictors of suicide, such as a history of suicide attempts, current suicidal ideation and depression, a recent attempt or completed suicide by a friend, and low self-esteem; and

''(5) epidemiological data illustrate—

''(A) the trend of suicide at younger ages as well as increases in suicidal ideation among youth in the United States; and

''(B) distinct differences in approaches to suicide by gender, with—

''(i) 3 to 5 times as many females as males attempting suicide; and

''(ii) 3 to 5 times as many males as females completing suicide.

''(c) PURPOSE.—The purpose of this section is to provide for a study of predictors of suicide among at-risk and other youth, and barriers that prevent the youth from receiving treatment, to facilitate the develop-

ment of model treatment programs and public education and awareness efforts.

''(d) STUDY.—Not later than 1 year after the date of the enactment of this Act [Oct. 28, 2000], the Secretary of Health and Human Services shall carry out, directly or by grant or contract, a study that is designed to identify—

''(1) the characteristics of at-risk and other youth age 13 through 21 who are contemplating suicide;

''(2) the characteristics of at-risk and other youth who are younger than age 13 and are contemplating suicide; and

''(3) the barriers that prevent youth described in paragraphs (1) and (2) from receiving treatment.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.''

[For definition of ''youth'' as used in section 1602 of Pub. L. 106–386, set out above, see section 1002 of Pub. L. 106–386, set out as a note under section 3796gg–2 of this title.]

§ 290bb–36b. Mental and behavioral health services on campus

(a) In general

The Secretary, acting through the Director of the Center for Mental Health Services, in consultation with the Secretary of Education, may award grants on a competitive basis to institutions of higher education to enhance services for students with mental and behavioral health problems that can lead to school failure, such as depression, substance abuse, and suicide attempts, so that students will successfully complete their studies.

(b) Use of funds

The Secretary may not make a grant to an institution of higher education under this section unless the institution agrees to use the grant only for—

(1) educational seminars;

(2) the operation of hot lines;

(3) preparation of informational material;

(4) preparation of educational materials for families of students to increase awareness of potential mental and behavioral health issues of students enrolled at the institution of higher education;

(5) training programs for students and campus personnel to respond effectively to students with mental and behavioral health problems that can lead to school failure, such as depression, substance abuse, and suicide attempts; or

(6) the creation of a networking infrastructure to link colleges and universities that do not have mental health services with health care providers who can treat mental and behavioral health problems.

(c) Eligible grant recipients

Any institution of higher education receiving a grant under this section may carry out activities under the grant through—

(1) college counseling centers;

(2) college and university psychological service centers;

(3) mental health centers;

(4) psychology training clinics; or

(5) institution of higher education supported, evidence-based, mental health and substance abuse programs.

(d) Application

An institution of higher education desiring a grant under this section shall prepare and submit an application to the Secretary at such time and in such manner as the Secretary may require. At a minimum, the application shall include the following:

(1) A description of identified mental and behavioral health needs of students at the institution of higher education.

(2) A description of Federal, State, local, private, and institutional resources currently available to address the needs described in paragraph (1) at the institution of higher education.

(3) A description of the outreach strategies of the institution of higher education for promoting access to services, including a proposed plan for reaching those students most in need of mental health services.

(4) A plan to evaluate program outcomes, including a description of the proposed use of funds, the program objectives, and how the objectives will be met.

(5) An assurance that the institution will submit a report to the Secretary each fiscal year on the activities carried out with the grant and the results achieved through those activities.

(e) Requirement of matching funds

(1) In general

The Secretary may make a grant under this section to an institution of higher education only if the institution agrees to make available (directly or through donations from public or private entities) non-Federal contributions in an amount that is not less than $1 for each $1 of Federal funds provided in the grant, toward the costs of activities carried out with the grant (as described in subsection (b) of this section) and other activities by the institution to reduce student mental and behavioral health problems.

(2) Determination of amount contributed

Non-Federal contributions required under paragraph (1) may be in cash or in kind. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(3) Waiver

The Secretary may waive the requirement established in paragraph (1) with respect to an institution of higher education if the Secretary determines that extraordinary need at the institution justifies the waiver.

(f) Reports

For each fiscal year that grants are awarded under this section, the Secretary shall conduct a study on the results of the grants and submit to the Congress a report on such results that includes the following:

(1) An evaluation of the grant program outcomes, including a summary of activities carried out with the grant and the results achieved through those activities.

(2) Recommendations on how to improve access to mental and behavioral health services

at institutions of higher education, including efforts to reduce the incidence of suicide and substance abuse.

(g) Definition

In this section, the term ''institution of higher education'' has the meaning given such term in section 1001 of title 20.

(h) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $5,000,000 for fiscal year 2005, $5,000,000 for fiscal year 2006, and $5,000,000 for fiscal year 2007.

(July 1, 1944, ch. 373, title V, § 520E–2, as added Pub. L. 108–355, § 3(d), Oct. 21, 2004, 118 Stat. 1413.)

§ 290bb–37. Grants for emergency mental health centers

(a) Program authorized

The Secretary shall award grants to States, political subdivisions of States, Indian tribes, and tribal organizations to support the designation of hospitals and health centers as Emergency Mental Health Centers.

(b) Health center

In this section, the term ''health center'' has the meaning given such term in section 254b of this title, and includes community health centers and community mental health centers.

(c) Distribution of awards

The Secretary shall ensure that such grants awarded under subsection (a) of this section are equitably distributed among the geographical regions of the United States, between urban and rural populations, and between different settings of care including health centers, mental health centers, hospitals, and other psychiatric units or facilities.

(d) Application

A State, political subdivision of a State, Indian tribe, or tribal organization that desires a grant under subsection (a) of this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including a plan for the rigorous evaluation of activities carried out with funds received under this section.

(e) Use of funds

(1) In general

A State, political subdivision of a State, Indian tribe, or tribal organization receiving a grant under subsection (a) of this section shall use funds from such grant to establish or designate hospitals and health centers as Emergency Mental Health Centers.

(2) Emergency mental health centers

Such emergency mental health centers described in paragraph (1)—

(A) shall—

(i) serve as a central receiving point in the community for individuals who may be in need of emergency mental health services;

(ii) purchase, if needed, any equipment necessary to evaluate, diagnose and stabilize an individual with a mental illness;

(iii) provide training, if needed, to the medical personnel staffing the Emergency Mental Health Center to evaluate, diagnose, stabilize, and treat an individual with a mental illness; and

(iv) provide any treatment that is necessary for an individual with a mental illness or a referral for such individual to another facility where such treatment may be received; and

(B) may establish and train a mobile crisis intervention team to respond to mental health emergencies within the community.

(f) Evaluation

A State, political subdivision of a State, Indian tribe, or tribal organization that receives a grant under subsection (a) of this section shall prepare and submit an evaluation to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, including an evaluation of activities carried out with funds received under this section and a process and outcomes evaluation.

(g) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $25,000,000 for fiscal year 2001 and such sums as may be necessary for each of the fiscal years 2002 through 2003.

(July 1, 1944, ch. 373, title V, § 520F, as added Pub. L. 106–310, div. B, title XXXII, § 3209, Oct. 17, 2000, 114 Stat. 1200.)

§ 290bb–38. Grants for jail diversion programs

(a) Program authorized

The Secretary shall make up to 125 grants to States, political subdivisions of States, Indian tribes, and tribal organizations, acting directly or through agreements with other public or nonprofit entities, to develop and implement programs to divert individuals with a mental illness from the criminal justice system to community-based services.

(b) Administration

(1) Consultation

The Secretary shall consult with the Attorney General and any other appropriate officials in carrying out this section.

(2) Regulatory authority

The Secretary shall issue regulations and guidelines necessary to carry out this section, including methodologies and outcome measures for evaluating programs carried out by States, political subdivisions of States, Indian tribes, and tribal organizations receiving grants under subsection (a) of this section.

(c) Applications

(1) In general

To receive a grant under subsection (a) of this section, the chief executive of a State, chief executive of a subdivision of a State, Indian tribe or tribal organization shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall reasonably require.

(2) Content

Such application shall—

(A) contain an assurance that—

(i) community-based mental health services will be available for the individuals who are diverted from the criminal justice system, and that such services are based on the best known practices, reflect current research findings, include case management, assertive community treatment, medication management and access, integrated mental health and co-occurring substance abuse treatment, and psychiatric rehabilitation, and will be coordinated with social services, including life skills training, housing placement, vocational training, education job placement, and health care;

(ii) there has been relevant interagency collaboration between the appropriate criminal justice, mental health, and substance abuse systems; and

(iii) the Federal support provided will be used to supplement, and not supplant, State, local, Indian tribe, or tribal organization sources of funding that would otherwise be available;

(B) demonstrate that the diversion program will be integrated with an existing system of care for those with mental illness;

(C) explain the applicant's inability to fund the program adequately without Federal assistance;

(D) specify plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support; and

(E) describe methodology and outcome measures that will be used in evaluating the program.

(d) Use of funds

A State, political subdivision of a State, Indian tribe, or tribal organization that receives a grant under subsection (a) of this section may use funds received under such grant to—

(1) integrate the diversion program into the existing system of care;

(2) create or expand community-based mental health and co-occurring mental illness and substance abuse services to accommodate the diversion program;

(3) train professionals involved in the system of care, and law enforcement officers, attorneys, and judges; and

(4) provide community outreach and crisis intervention.

(e) Federal share

(1) In general

The Secretary shall pay to a State, political subdivision of a State, Indian tribe, or tribal organization receiving a grant under subsection (a) of this section the Federal share of the cost of activities described in the application.

(2) Federal share

The Federal share of a grant made under this section shall not exceed 75 percent of the total cost of the program carried out by the State, political subdivision of a State, Indian tribe, or tribal organization. Such share shall be used for new expenses of the program carried out by such State, political subdivision of a State, Indian tribe, or tribal organization.

(3) Non-Federal share

The non-Federal share of payments made under this section may be made in cash or in kind fairly evaluated, including planned equipment or services. The Secretary may waive the requirement of matching contributions.

(f) Geographic distribution

The Secretary shall ensure that such grants awarded under subsection (a) of this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

(g) Training and technical assistance

Training and technical assistance may be provided by the Secretary to assist a State, political subdivision of a State, Indian tribe, or tribal organization receiving a grant under subsection (a) of this section in establishing and operating a diversion program.

(h) Evaluations

The programs described in subsection (a) of this section shall be evaluated not less than one time in every 12-month period using the methodology and outcome measures identified in the grant application.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 through 2003.

(July 1, 1944, ch. 373, title V, § 520G, as added Pub. L. 106–310, div. B, title XXXII, § 3210, Oct. 17, 2000, 114 Stat. 1201.)

§ 290bb–39. Improving outcomes for children and adolescents through services integration between child welfare and mental health services

(a) In general

The Secretary shall award grants, contracts or cooperative agreements to States, political subdivisions of States, Indian tribes, and tribal organizations to provide integrated child welfare and mental health services for children and adolescents under 19 years of age in the child welfare system or at risk for becoming part of the system, and parents or caregivers with a mental illness or a mental illness and a co-occurring substance abuse disorder.

(b) Duration

With respect to a grant, contract or cooperative agreement awarded under this section, the period during which payments under such award are made to the recipient may not exceed 5 years.

(c) Application

(1) In general

To be eligible to receive an award under subsection (a) of this section, a State, political subdivision of a State, Indian tribe, or tribal

organization shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(2) Content

An application submitted under paragraph (1) shall—

(A) describe the program to be funded under the grant, contract or cooperative agreement;

(B) explain how such program reflects best practices in the provision of child welfare and mental health services; and

(C) provide assurances that—

(i) persons providing services under the grant, contract or cooperative agreement are adequately trained to provide such services; and

(ii) the services will be provided in accordance with subsection (d) of this section.

(d) Use of funds

A State, political subdivision of a State, Indian tribe, or tribal organization that receives a grant, contract, or cooperative agreement under subsection (a) of this section shall use amounts made available through such grant, contract or cooperative agreement to—

(1) provide family-centered, comprehensive, and coordinated child welfare and mental health services, including prevention, early intervention and treatment services for children and adolescents, and for their parents or caregivers;

(2) ensure a single point of access for such coordinated services;

(3) provide integrated mental health and substance abuse treatment for children, adolescents, and parents or caregivers with a mental illness and a co-occurring substance abuse disorder;

(4) provide training for the child welfare, mental health and substance abuse professionals who will participate in the program carried out under this section;

(5) provide technical assistance to child welfare and mental health agencies;

(6) develop cooperative efforts with other service entities in the community, including education, social services, juvenile justice, and primary health care agencies;

(7) coordinate services with services provided under the Medicaid program and the State Children's Health Insurance Program under titles XIX and XXI of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.];

(8) provide linguistically appropriate and culturally competent services; and

(9) evaluate the effectiveness and cost-efficiency of the integrated services that measure the level of coordination, outcome measures for parents or caregivers with a mental illness or a mental illness and a co-occurring substance abuse disorder, and outcome measures for children.

(e) Distribution of awards

The Secretary shall ensure that grants, contracts, and cooperative agreements awarded under subsection (a) of this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

(f) Evaluation

The Secretary shall evaluate each program carried out by a State, political subdivision of a State, Indian tribe, or tribal organization under subsection (a) of this section and shall disseminate the findings with respect to each such evaluation to appropriate public and private entities.

(g) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $10,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 520H, as added Pub. L. 106–310, div. B, title XXXII, § 3211, Oct. 17, 2000, 114 Stat. 1203.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(7), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 290bb–40. Grants for the integrated treatment of serious mental illness and co-occurring substance abuse

(a) In general

The Secretary shall award grants, contracts, or cooperative agreements to States, political subdivisions of States, Indian tribes, tribal organizations, and private nonprofit organizations for the development or expansion of programs to provide integrated treatment services for individuals with a serious mental illness and a co-occurring substance abuse disorder.

(b) Priority

In awarding grants, contracts, and cooperative agreements under subsection (a) of this section, the Secretary shall give priority to applicants that emphasize the provision of services for individuals with a serious mental illness and a co-occurring substance abuse disorder who—

(1) have a history of interactions with law enforcement or the criminal justice system;

(2) have recently been released from incarceration;

(3) have a history of unsuccessful treatment in either an inpatient or outpatient setting;

(4) have never followed through with outpatient services despite repeated referrals; or

(5) are homeless.

(c) Use of funds

A State, political subdivision of a State, Indian tribe, tribal organization, or private nonprofit organization that receives a grant, contract, or cooperative agreement under subsection (a) of this section shall use funds received under such grant—

(1) to provide fully integrated services rather than serial or parallel services;

(2) to employ staff that are cross-trained in the diagnosis and treatment of both serious mental illness and substance abuse;

(3) to provide integrated mental health and substance abuse services at the same location;

(4) to provide services that are linguistically appropriate and culturally competent;

(5) to provide at least 10 programs for integrated treatment of both mental illness and substance abuse at sites that previously provided only mental health services or only substance abuse services; and

(6) to provide services in coordination with other existing public and private community programs.

(d) Condition

The Secretary shall ensure that a State, political subdivision of a State, Indian tribe, tribal organization, or private nonprofit organization that receives a grant, contract, or cooperative agreement under subsection (a) of this section maintains the level of effort necessary to sustain existing mental health and substance abuse programs for other populations served by mental health systems in the community.

(e) Distribution of awards

The Secretary shall ensure that grants, contracts, or cooperative agreements awarded under subsection (a) of this section are equitably distributed among the geographical regions of the United States and between urban and rural populations.

(f) Duration

The Secretary shall award grants, contract, or cooperative agreements under this subsection for a period of not more than 5 years.

(g) Application

A State, political subdivision of a State, Indian tribe, tribal organization, or private nonprofit organization that desires a grant, contract, or cooperative agreement under this subsection shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Such application shall include a plan for the rigorous evaluation of activities funded with an award under such subsection, including a process and outcomes evaluation.

(h) Evaluation

A State, political subdivision of a State, Indian tribe, tribal organization, or private nonprofit organization that receives a grant, contract, or cooperative agreement under this subsection shall prepare and submit a plan for the rigorous evaluation of the program funded under such grant, contract, or agreement, including both process and outcomes evaluation, and the submission of an evaluation at the end of the project period.

(i) Authorization of appropriation

There is authorized to be appropriated to carry out this subsection $40,000,000 for fiscal year 2001, and such sums as may be necessary for fiscal years 2002 through 2003.

(July 1, 1944, ch. 373, title V, § 520I, as added Pub. L. 106–310, div. B, title XXXII, § 3212, Oct. 17, 2000, 114 Stat. 1205.)

§ 290bb–41. Training grants

(a) In general

The Secretary shall award grants in accordance with the provisions of this section.

(b) Mental illness awareness training grants

(1) In general

The Secretary shall award grants to States, political subdivisions of States, Indian tribes, tribal organizations, and nonprofit private entities to train teachers and other relevant school personnel to recognize symptoms of childhood and adolescent mental disorders, to refer family members to the appropriate mental health services if necessary, to train emergency services personnel to identify and appropriately respond to persons with a mental illness, and to provide education to such teachers and personnel regarding resources that are available in the community for individuals with a mental illness.

(2) Emergency services personnel

In this subsection, the term ''emergency services personnel'' includes paramedics, firefighters, and emergency medical technicians.

(3) Distribution of awards

The Secretary shall ensure that such grants awarded under this subsection are equitably distributed among the geographical regions of the United States and between urban and rural populations.

(4) Application

A State, political subdivision of a State, Indian tribe, tribal organization, or nonprofit private entity that desires a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including a plan for the rigorous evaluation of activities that are carried out with funds received under a grant under this subsection.

(5) Use of funds

A State, political subdivision of a State, Indian tribe, tribal organization, or nonprofit private entity receiving a grant under this subsection shall use funds from such grant to—

(A) train teachers and other relevant school personnel to recognize symptoms of childhood and adolescent mental disorders and appropriately respond;

(B) train emergency services personnel to identify and appropriately respond to persons with a mental illness; and

(C) provide education to such teachers and personnel regarding resources that are available in the community for individuals with a mental illness.

(6) Evaluation

A State, political subdivision of a State, Indian tribe, tribal organization, or nonprofit private entity that receives a grant under this subsection shall prepare and submit an evaluation to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, includ-

ing an evaluation of activities carried out with funds received under the grant under this subsection and a process and outcome evaluation.

(7) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection, $25,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2003.

(July 1, 1944, ch.373, title V, § 520J, as added Pub. L. 106–310, div. B, title XXXII, § 3213, Oct. 17, 2000, 114 Stat. 1206.)

§§ 290cc to 290cc–12. Repealed. Pub. L. 102–321, title I, §§ 117, 120(b)(3), 123(c), July 10, 1992, 106 Stat. 348, 358, 363

Section 290cc, act July 1, 1944, ch. 373, title V, § 515, formerly Pub. L. 92–255, title V, § 503, as added Pub. L. 94–237, § 13(a), Mar. 19, 1976, 90 Stat. 248; amended Pub. L. 95–461, § 2(c), Oct. 14, 1978, 92 Stat. 1268; Pub. L. 96–181, § 12, Jan. 2, 1980, 93 Stat. 1315; Pub. L. 97–35, title IX, § 972(a), (b), Aug. 13, 1981, 95 Stat. 597; renumbered § 515 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(11), 97 Stat. 180; Oct. 19, 1984, Pub. L. 98–509, title II, §§ 205(a)(2), 206(c)(2), 207(b), 98 Stat. 2361–2363; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4009, 100 Stat. 3207–115; Nov. 18, 1988, Pub. L. 100–690, title II, § 2058(a)(3), 102 Stat. 4214, related to encouraging drug abuse research.

Section 290cc–1, act July 1, 1944, ch. 373, title V, § 516, as added Oct. 19, 1984, Pub. L. 98–509, title II, § 206(b), 98 Stat. 2362; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2058(a)(4), 102 Stat. 4214, related to drug abuse demonstration projects.

Section 290cc–2, act July 1, 1944, ch. 373, title V, § 517, as added Oct. 19, 1984, Pub. L. 98–509, title II, § 207(b), 98 Stat. 2363; amended Oct. 27, 1986, Pub. L. 99–570, title IV, § 4010(b), 100 Stat. 3207–115; Nov. 18, 1988, Pub. L. 100–690, title II, § 2056(b), 102 Stat. 4211; Aug. 15, 1990, Pub. L. 101–374, § 3(a), 104 Stat. 457, authorized appropriations for drug abuse research.

Section 290cc–11, act July 1, 1944, ch. 373, title V, § 518, formerly § 519, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2057(3), 102 Stat. 4212; renumbered § 518, Aug. 16, 1989, Pub. L. 101–93, § 3(e)(1)(A), 103 Stat. 610, related to establishment of a mental health research program.

Section 290cc–12, act July 1, 1944, ch. 373, title V, § 519, formerly § 520, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2057(3), 102 Stat. 4212; renumbered § 519, Aug. 16, 1989, Pub. L. 101–93, § 3(e)(1)(A), 103 Stat. 610, related to National Mental Health Education Program.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290cc–13. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, § 520, formerly § 520A, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2057(3), 102 Stat. 4212, and amended, which related to establishment of grant programs for demonstration projects for drug abuse research, was renumbered section 520A of act July 1, 1944 by Pub. L. 102–321, title I, § 116(a), July 10, 1992, 106 Stat. 348, and transferred to section 290bb–32 of this title.

PART C—PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS

§ 290cc–21. Formula grants to States

For the purpose of carrying out section 290cc–22 of this title, the Secretary, acting through the Director of the Center for Mental Health Services, shall for each of the fiscal years 1991 through 1994 make an allotment for each State in an amount determined in accordance with section 290cc–24 of this title. The Secretary shall make payments, as grants, each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 290cc–29 of this title.

(July 1, 1944, ch. 373, title V, § 521, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 516; amended Pub. L. 100–607, title VIII, § 813(1), Nov. 4, 1988, 102 Stat. 3170; Pub. L. 100–628, title VI, § 613(1), Nov. 7, 1988, 102 Stat. 3243; Pub. L. 101–93, § 5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4726; Pub. L. 102–321, title I, §§ 162(1), 163(a)(1), July 10, 1992, 106 Stat. 375; Pub. L. 102–352, § 2(b)(2), Aug. 26, 1992, 106 Stat. 939.)

PRIOR PROVISIONS

A prior section 521 of act July 1, 1944, was renumbered section 542 by section 611(2) of Pub. L. 100–77 and is classified to section 290dd–1 of this title.

AMENDMENTS

1992—Pub. L. 102–352 repealed Pub. L. 102–321, § 163(a)(1), which directed the substitution of ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Director of the National Institute of Mental Health''.

Pub. L. 102–321, § 162(1), substituted ''Center for Mental Health Services'' for ''National Institute of Mental Health''.

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to formula grants to States for provisions relating to establishment of block grant program for services to homeless individuals who are chronically mentally ill.

1989—Subsec. (a). Pub. L. 101–93 directed that subsec. (a) of this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, amending first sentence generally. Prior to amendment, first sentence read as follows: ''The Secretary shall for fiscal years 1987 and 1988 allot to each State an amount determined in accordance with sections 290cc–28 and 290cc–29 of this title.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 254e of this title.

§ 290cc–22. Purpose of grants

(a) In general

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that the payments will be ex-

pended solely for making grants to political subdivisions of the State, and to nonprofit private entities (including community-based veterans organizations and other community organizations), for the purpose of providing the services specified in subsection (b) of this section to individuals who—

(1)(A) are suffering from serious mental illness; or

(B) are suffering from serious mental illness and from substance abuse; and

(2) are homeless or at imminent risk of becoming homeless.

(b) Specification of services

The services referred to in subsection (a) of this section are—

(1) outreach services;

(2) screening and diagnostic treatment services;

(3) habilitation and rehabilitation services;

(4) community mental health services;

(5) alcohol or drug treatment services;

(6) staff training, including the training of individuals who work in shelters, mental health clinics, substance abuse programs, and other sites where homeless individuals require services;

(7) case management services, including—

(A) preparing a plan for the provision of community mental health services to the eligible homeless individual involved, and reviewing such plan not less than once every 3 months;

(B) providing assistance in obtaining and coordinating social and maintenance services for the eligible homeless individuals, including services relating to daily living activities, personal financial planning, transportation services, and habilitation and rehabilitation services, prevocational and vocational services, and housing services;

(C) providing assistance to the eligible homeless individual in obtaining income support services, including housing assistance, food stamps, and supplemental security income benefits;

(D) referring the eligible homeless individual for such other services as may be appropriate; and

(E) providing representative payee services in accordance with section 1631(a)(2) of the Social Security Act [42 U.S.C. 1383(a)(2)] if the eligible homeless individual is receiving aid under title XVI of such act [42 U.S.C. 1381 et seq.] and if the applicant is designated by the Secretary to provide such services;

(8) supportive and supervisory services in residential settings;

(9) referrals for primary health services, job training, educational services, and relevant housing services;

(10) subject to subsection (h)(1) of this section—

(A) minor renovation, expansion, and repair of housing;

(B) planning of housing;

(C) technical assistance in applying for housing assistance;

(D) improving the coordination of housing services;

(E) security deposits;

(F) the costs associated with matching eligible homeless individuals with appropriate housing situations; and

(G) 1-time rental payments to prevent eviction; and

(11) other appropriate services, as determined by the Secretary.

(c) Coordination

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees to make grants pursuant to subsection (a) of this section only to entities that have the capacity to provide, directly or through arrangements, the services specified in subsection (b) of this section, including coordinating the provision of services in order to meet the needs of eligible homeless individuals who are both mentally ill and suffering from substance abuse.

(d) Special consideration regarding veterans

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that, in making grants to entities pursuant to subsection (a) of this section, the State will give special consideration to entities with a demonstrated effectiveness in serving homeless veterans.

(e) Special rules

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that grants pursuant to subsection (a) of this section will not be made to any entity that—

(1) has a policy of excluding individuals from mental health services due to the existence or suspicion of substance abuse; or

(2) has a policy of excluding individuals from substance abuse services due to the existence or suspicion of mental illness.

(f) Administrative expenses

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that not more than 4 percent of the payments will be expended for administrative expenses regarding the payments.

(g) Maintenance of effort

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that the State will maintain State expenditures for services specified in subsection (b) of this section at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive such payments.

(h) Restrictions on use of funds

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that—

(1) not more than 20 percent of the payments will be expended for housing services under subsection (b)(10) of this section; and

(2) the payments will not be expended—

(A) to support emergency shelters or construction of housing facilities;

(B) for inpatient psychiatric treatment costs or inpatient substance abuse treatment costs; or

(C) to make cash payments to intended recipients of mental health or substance abuse services.

(i) Waiver for territories

With respect to the United States Virgin Islands, Guam, American Samoa, Palau, the Marshall Islands, and the Commonwealth of the Northern Mariana Islands, the Secretary may waive the provisions of this part that the Secretary determines to be appropriate.

(July 1, 1944, ch. 373, title V, § 522, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 516; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4726; Pub. L. 106–310, div. B, title XXXII, § 3203(a), Oct. 17, 2000, 114 Stat. 1191.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(7)(E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVI of the Act is classified generally to subchapter XVI (§ 1381 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 522 of act July 1, 1944, was renumbered section 543 by section 611(2) of Pub. L. 100–77 and is classified to section 290dd–2 of this title.

AMENDMENTS

2000—Subsec. (i). Pub. L. 106–310 added subsec. (i).

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to purpose of grants for provisions relating to requirement of submission of application containing certain agreements.

§ 290cc–23. Requirement of matching funds

(a) In general

The Secretary may not make payments under section 290cc–21 of this title unless, with respect to the costs of providing services pursuant to section 290cc–22 of this title, the State involved agrees to make available, directly or through donations from public or private entities, non-Federal contributions toward such costs in an amount that is not less than $1 for each $3 of Federal funds provided in such payments.

(b) Determination of amount

Non-Federal contributions required in subsection (a) of this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, shall not be included in determining the amount of such non-Federal contributions.

(c) Limitation regarding grants by States

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that the State will not require the entities to which grants are provided pursuant to section 290cc–22(a) of this title to provide non-Federal contributions in excess of the non-Federal contributions described in subsection (a) of this section.

(July 1, 1944, ch. 373, title V, § 523, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 517; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4728.)

PRIOR PROVISIONS

A prior section 523 of act July 1, 1944, was renumbered section 544 by section 611(2) of Pub. L. 100–77 and is classified to section 290dd–3 of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), general requirements; and in subsec. (b), determination of amount of non-Federal contribution.

§ 290cc–24. Determination of amount of allotment

(a) Minimum allotment

The allotment for a State under section 290cc–21 of this title for a fiscal year shall be the greater of—

(1) $300,000 for each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, and $50,000 for each of Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands; and

(2) an amount determined in accordance with subsection (b) of this section.

(b) Determination under formula

The amount referred to in subsection (a)(2) of this section is the product of—

(1) an amount equal to the amount appropriated under section 290cc–35(a) of this title for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) an amount equal to the population living in urbanized areas of the State involved, as indicated by the most recent data collected by the Bureau of the Census; and

(B) an amount equal to the population living in urbanized areas of the United States, as indicated by the sum of the respective amounts determined for the States under subparagraph (A).

(July 1, 1944, ch. 373, title V, § 524, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 517; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4728.)

PRIOR PROVISIONS

A prior section 524 of act July 1, 1944, was renumbered section 545 by section 611(2) of Pub. L. 100–77 and is classified to section 290ee of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to determination of amount of allotment for provisions relating to requiring provision of certain mental health services.

§ 290cc–25. Conversion to categorical program in event of failure of State regarding expenditure of grants

(a) In general

Subject to subsection (c) of this section, the Secretary shall, from the amounts specified in subsection (b) of this section, make grants to public and nonprofit private entities for the purpose of providing to eligible homeless individuals the services specified in section 290cc–22(b) of this title.

(b) Specification of funds

The amounts referred to in subsection (a) of this section are any amounts made available in

appropriations Acts for allotments under section 290cc–21 of this title that are not paid to a State as a result of—

(A) the failure of the State to submit an application under section 290cc–29 of this title;

(B) the failure of the State, in the determination of the Secretary, to prepare the application in accordance with such section or to submit the application within a reasonable period of time; or

(C) the State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

(c) Requirement of provision of services in State involved

With respect to grants under subsection (a) of this section, amounts made available under subsection (b) of this section as a result of the State involved shall be available only for grants to provide services in such State.

(July 1, 1944, ch. 373, title V, § 525, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 518; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4729.)

PRIOR PROVISIONS

A prior section 525 of act July 1, 1944, was renumbered section 546 by section 611(2) of Pub. L. 100–77 and is classified to section 290ee–1 of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to conversion to categorical program in event of failure of State regarding expenditure of grants for provisions relating to restrictions on use of payments.

§ 290cc–26. Provision of certain information from State

The Secretary may not make payments under section 290cc–21 of this title to a State unless, as part of the application required in section 290cc–29 of this title, the State submits to the Secretary a statement—

(1) identifying existing programs providing services and housing to eligible homeless individuals and identify gaps in the delivery systems of such programs;

(2) containing a plan for providing services and housing to eligible homeless individuals, which plan—

(A) describes the coordinated and comprehensive means of providing services and housing to homeless individuals; and

(B) includes documentation that suitable housing for eligible homeless individuals will accompany the provision of services to such individuals;

(3) describes the source of the non-Federal contributions described in section 290cc–23 of this title;

(4) contains assurances that the non-Federal contributions described in section 290cc–23 of this title will be available at the beginning of the grant period;

(5) describe any voucher system that may be used to carry out this part; and

(6) contain such other information or assurances as the Secretary may reasonably require.

(July 1, 1944, ch. 373, title V, § 526, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 519; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4729.)

PRIOR PROVISIONS

A prior section 526 of act July 1, 1944, was renumbered section 547 by section 611(2) of Pub. L. 100–77 and is classified to section 290ee–2 of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to providing certain information from State for provisions relating to requirement of submission of description of intended use of block grant.

§ 290cc–27. Description of intended expenditures of grant

(a) In general

The Secretary may not make payments under section 290cc–21 of this title unless—

(1) as part of the application required in section 290cc–29 of this title, the State involved submits to the Secretary a description of the intended use for the fiscal year of the amounts for which the State is applying pursuant to such section;

(2) such description identifies the geographic areas within the State in which the greatest numbers of homeless individuals with a need for mental health, substance abuse, and housing services are located;

(3) such description provides information relating to the programs and activities to be supported and services to be provided, including information relating to coordinating such programs and activities with any similar programs and activities of public and private entities; and

(4) the State agrees that such description will be revised throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State pursuant to section 290cc–22 of this title.

(b) Opportunity for public comment

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that, in developing and carrying out the description required in subsection (a) of this section, the State will provide public notice with respect to the description (including any revisions) and such opportunities as may be necessary to provide interested persons, such as family members, consumers, and mental health, substance abuse, and housing agencies, an opportunity to present comments and recommendations with respect to the description.

(c) Relationship to State comprehensive mental health services plan

(1) In general

The Secretary may not make payments under section 290cc–21 of this title unless the services to be provided pursuant to the description required in subsection (a) of this section are consistent with the State comprehensive mental health services plan required in subpart 2[1] of part B of subchapter XVII of this chapter.

[1] See References in Text note below.

(2) Special rule

The Secretary may not make payments under section 290cc–21 of this title unless the services to be provided pursuant to the description required in subsection (a) of this section have been considered in the preparation of, have been included in, and are consistent with, the State comprehensive mental health services plan referred to in paragraph (1).

(July 1, 1944, ch. 373, title V, § 527, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 520; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4730.)

REFERENCES IN TEXT

Subpart 2 of part B of subchapter XVII of this chapter, referred to in subsec. (c)(1), which related to State comprehensive mental health services plans and which was classified to section 300x–10 et seq. of this title, was repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378, and a new subpart 2 of part B of subchapter XVII of this chapter, relating to block grants for prevention and treatment of substance abuse, was added by section 202 of Pub. L. 102–321 and classified to section 300x–21 et seq. of this title.

PRIOR PROVISIONS

A prior section 527 of act July 1, 1944, was renumbered section 548 by section 611(2) of Pub. L. 100–77 and is classified to section 290ee–3 of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to description of intended expenditures of grant for provisions relating to requirement of reports by States.

§ 290cc–28. Requirement of reports by States

(a) In general

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that, by not later than January 31 of each fiscal year, the State will prepare and submit to the Secretary a report in such form and containing such information as the Secretary determines (after consultation with the Administrator of the Substance Abuse and Mental Health Services Administration) to be necessary for—

(1) securing a record and a description of the purposes for which amounts received under section 290cc–21 of this title were expended during the preceding fiscal year and of the recipients of such amounts; and

(2) determining whether such amounts were expended in accordance with the provisions of this part.

(b) Availability to public of reports

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees to make copies of the reports described in subsection (a) of this section available for public inspection.

(c) Evaluations

The Administrator of the Substance Abuse and Mental Health Services Administration shall evaluate at least once every 3 years the expenditures of grants under this part by eligible entities in order to ensure that expenditures are consistent with the provisions of this part, and shall include in such evaluation recommendations regarding changes needed in program design or operations.

(July 1, 1944, ch. 373, title V, § 528, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 520; amended Pub. L. 100–607, title VIII, § 812(b), Nov. 4, 1988, 102 Stat. 3170; Pub. L. 100–628, title VI, § 612(b), Nov. 7, 1988, 102 Stat. 3243; Pub. L. 100–690, title II, § 2614(a), Nov. 18, 1988, 102 Stat. 4239; Pub. L. 101–93, § 5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4730; Pub. L. 102–321, title I, § 163(a)(1), formerly § 163(a)(2), July 10, 1992, 106 Stat. 375, renumbered § 163(a)(1), Pub. L. 102–352, § 2(b)(2), Aug. 26, 1992, 106 Stat. 939; Pub. L. 104–316, title I, § 122(c), Oct. 19, 1996, 110 Stat. 3836.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–316, § 122(c)(1), struck out ''the Comptroller General of the United States, and'' after ''(after consultation with''.

Subsec. (c). Pub. L. 104–316, § 122(c)(2), struck out ''Comptroller General of the United States in cooperation with the'' before ''Administrator'' and struck out comma after ''Administration''.

1992—Subsec. (a). Pub. L. 102–321, § 163(a)(1)(A), as renumbered by Pub. L. 102–352, substituted ''and the Administrator of the Substance Abuse and Mental Health Services Administration'' for ''the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse''.

Subsec. (c). Pub. L. 102–321, § 163(a)(1)(B), as renumbered by Pub. L. 102–352, substituted ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''National Institute of Mental Health''.

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to requirement of reports by States for provisions relating to determination of amount of allotments.

1989—Subsec. (a)(1). Pub. L. 101–93 directed that subsec. (a)(1) of this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Subsec. (a)(1). Pub. L. 100–690 substituted ''the Commonwealth of the Northern Mariana Islands'' for ''the Northern Mariana Islands''.

Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, amending par. (1) generally. Prior to amendment, par. (1) read as follows: ''$275,000; and''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 254e of this title.

§ 290cc–29. Requirement of application

The Secretary may not make payments under section 290cc–21 of this title unless the State involved—

(1) submits to the Secretary an application for the payments containing agreements and information in accordance with this part;

(2) the agreements are made through certification from the chief executive officer of the State; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(July 1, 1944, ch. 373, title V, § 529, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 520; amended Pub. L. 100–607, title VIII, § 811(b), Nov. 4, 1988, 102 Stat. 3170; Pub. L. 100–628, title VI, § 611(b), Nov. 7, 1988, 102 Stat. 3243; Pub. L. 101–93, § 5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4731.)

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to requirement of application for provisions relating to conversion to State categorical program in event of failure of State with respect to expending allotment.

1989—Pub. L. 101–93 directed that this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, amending section generally by substituting present provisions for provisions which had related to: in subsec. (a), additional allotments for certain States; in subsec. (b), description of funds; and in subsec. (c), determination of amount of allotment.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 254e of this title.

§ 290cc–30. Technical assistance

The Secretary, through the agencies of the Administration, shall provide technical assistance to eligible entities in developing planning and operating programs in accordance with the provisions of this part.

(July 1, 1944, ch. 373, title V, § 530, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 521; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4731; Pub. L. 102–321, title I, §§ 162(2), 163(a)(3), July 10, 1992, 106 Stat. 375; Pub. L. 102–352, § 2(b)(2), Aug. 26, 1992, 106 Stat. 939.)

AMENDMENTS

1992—Pub. L. 102–352 repealed Pub. L. 102–321, § 163(a)(3), which directed the substitution of ''the Administrator of the Substance Abuse and Mental Health Services Administration'' for ''the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse''.

Pub. L. 102–321, § 162(2), which directed the substitution of ''through the agencies of the Administration'' for ''through the National'' and all that follows through ''Abuse'', was executed by making the substitution for ''through the National Institute of Mental Health, the National Institute of Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse'' to reflect the probable intent of Congress.

1990—Pub. L. 101–645 amended section generally, substituting provision relating to technical assistance for provision relating to disbursement and availability of funds.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290cc–31. Failure to comply with agreements

(a) Repayment of payments

(1) The Secretary may, subject to subsection (c) of this section, require a State to repay any payments received by the State under section 290cc–21 of this title that the Secretary determines were not expended by the State in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 290cc–29 of this title.

(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 290cc–21 of this title.

(b) Withholding of payments

(1) The Secretary may, subject to subsection (c) of this section, withhold payments due under section 290cc–21 of this title if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 290cc–29 of this title.

(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under section 290cc–21 of this title in accordance with the agreements referred to in such paragraph.

(3) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the agreements referred to in such paragraph.

(c) Opportunity for hearing

Before requiring repayment of payments under subsection (a)(1) of this section, or withholding payments under subsection (b)(1) of this section, the Secretary shall provide to the State an opportunity for a hearing.

(d) Rule of construction

Notwithstanding any other provision of this part, a State receiving payments under section 290cc–21 of this title may not, with respect to any agreements required to be contained in the application submitted under section 290cc–29 of this title, be considered to be in violation of any such agreements by reason of the fact that the State, in the regular course of providing services under section 290cc–22(b) of this title to eligible homeless individuals, incidentally provides services to homeless individuals who are not eligible homeless individuals.

(July 1, 1944, ch. 373, title V, § 531, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 521; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4731.)

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to failure to comply with agreements for provision relating to technical assistance.

§ 290cc–32. Prohibition against certain false statements

(a) In general

(1) A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 290cc–21 of this title.

(2) A person with knowledge of the occurrence of any event affecting the right of the person to receive any amounts from payments made to the State under section 290cc–21 of this title may not conceal or fail to disclose any such event with the intent of securing such an amount that the person is not authorized to receive or securing such an amount in an amount greater than the amount the person is authorized to receive.

(b) Criminal penalty for violation of prohibition

Any person who violates a prohibition established in subsection (a) of this section may for each violation be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(July 1, 1944, ch. 373, title V, § 532, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 521; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4732.)

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to prohibition against certain false statements for provisions relating to failure to comply with agreements.

§ 290cc–33. Nondiscrimination

(a) In general

(1) Rule of construction regarding certain civil rights laws

For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under section 290cc–21 of this title shall be considered to be programs and activities receiving Federal financial assistance.

(2) Prohibition

No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under section 290cc–21 of this title.

(b) Enforcement

(1) Referrals to Attorney General after notice

Whenever the Secretary finds that a State, or an entity that has received a payment pursuant to section 290cc–21 of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(B) exercise the powers and functions provided by the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], as may be applicable; or

(C) take such other actions as may be authorized by law.

(2) Authority of Attorney General

When a matter is referred to the Attorney General pursuant to paragraph (1)(A), or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(July 1, 1944, ch. 373, title V, § 533, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 522; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4732.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1) and (b)(1)(B), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to nondiscrimination for

provision relating to establishment of prohibition against making certain false statements.

§ 290cc–34. Definitions

For purposes of this part:

(1) Eligible homeless individual

The term ''eligible homeless individual'' means an individual described in section 290cc–22(a) of this title.

(2) Homeless individual

The term ''homeless individual'' has the meaning given such term in section 254b(h)(5) of this title.

(3) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) Substance abuse

The term ''substance abuse'' means the abuse of alcohol or other drugs.

(July 1, 1944, ch. 373, title V, § 534, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 522; amended Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4733; Pub. L. 107–251, title VI, § 601(b), Oct. 26, 2002, 116 Stat. 1665.)

AMENDMENTS

2002—Par. (2). Pub. L. 107–251 substituted ''254b(h)(5) '' for ''256(r)''.

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to definitions for provisions relating to nondiscrimination.

§ 290cc–35. Funding

(a) Authorization of appropriations

For the purpose of carrying out this part, there is authorized to be appropriated $75,000,000 for each of the fiscal years 2001 through 2003.

(b) Effect of insufficient appropriations for minimum allotments

(1) In general

If the amounts made available under subsection (a) of this section for a fiscal year are insufficient for providing each State with an allotment under section 290cc–21 of this title of not less than the applicable amount under section 290cc–24(a)(1) of this title, the Secretary shall, from such amounts as are made available under such subsection, make grants to the States for providing to eligible homeless individuals the services specified in section 290cc–22(b) of this title.

(2) Rule of construction

Paragraph (1) may not be construed to require the Secretary to make a grant under such paragraph to each State.

(July 1, 1944, ch. 373, title V, § 535, as added Pub. L. 100–77, title VI, § 611(3), July 22, 1987, 101 Stat. 523; amended Pub. L. 100–607, title VIII, § 811(a), Nov. 4, 1988, 102 Stat. 3169; Pub. L. 100–628, title VI, § 611(a), Nov. 7, 1988, 102 Stat. 3242; Pub. L. 101–93, § 5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4733; Pub. L. 106–310, div. B, title XXXII, § 3203(b), Oct. 17, 2000, 114 Stat. 1191.)

PRIOR PROVISIONS

A prior section 290cc–36, act July 1, 1944, ch. 373, title V, § 536, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 523, and amended Nov. 4, 1988, Pub. L. 100–607, title VIII, §§ 802(b)(3), 812(a), 102 Stat. 3169, 3170; Nov. 7, 1988, Pub. L. 100–628, title VI, §§ 602(b)(3), 612(a), 102 Stat. 3242, 3243; Nov. 18, 1988, Pub. L. 100–690, title II, § 2614(b), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), 103 Stat. 615, defined terms used in this part, prior to the general revision of this part by Pub. L. 101–645.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310 substituted ''fiscal years 2001 through 2003'' for ''fiscal years 1991 through 1994''.

1990—Pub. L. 101–645 amended section generally, substituting present provisions for similar provisions authorizing appropriations and providing for minimum allotments.

1989—Pub. L. 101–93 directed that this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, amending section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated to carry out this part $35,000,000 for fiscal year 1987 and such sums as may be necessary for fiscal year 1988.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 254e of this title.

PART D—MISCELLANEOUS PROVISIONS RELATING TO SUBSTANCE ABUSE AND MENTAL HEALTH

§ 290dd. Substance abuse among government and other employees

(a) Programs and services

(1) Development

The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall be responsible for fostering substance abuse prevention and treatment programs and services in State and local governments and in private industry.

(2) Model programs

(A) In general

Consistent with the responsibilities described in paragraph (1), the Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall develop a variety of model programs suitable for replication on a cost-effective basis in different types of business concerns and State and local governmental entities.

(B) Dissemination of information

The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall disseminate information and materials relative to such model programs to the State agencies responsible for the administration of

substance abuse prevention, treatment, and rehabilitation activities and shall, to the extent feasible provide technical assistance to such agencies as requested.

(b) Deprivation of employment

(1) Prohibition

No person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the grounds of prior substance abuse.

(2) Application

This subsection shall not apply to employment in—

(A) the Central Intelligence Agency;

(B) the Federal Bureau of Investigation;

(C) the National Security Agency;

(D) any other department or agency of the Federal Government designated for purposes of national security by the President; or

(E) in any position in any department or agency of the Federal Government, not referred to in subparagraphs (A) through (D), which position is determined pursuant to regulations prescribed by the head of such agency or department to be a sensitive position.

(3) Rehabilitation Act

The inapplicability of the prohibition described in paragraph (1) to the employment described in paragraph (2) shall not be construed to reflect on the applicability of the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] or other anti-discrimination laws to such employment.

(c) Construction

This section shall not be construed to prohibit the dismissal from employment of a Federal civilian employee who cannot properly function in his employment.

(July 1, 1944, ch. 373, title V, § 541, formerly Pub. L. 91–616, title III, § 301, Dec. 31, 1970, 84 Stat. 1849, as amended Pub. L. 92–554, Oct. 25, 1972, 86 Stat. 1167; Pub. L. 93–282, title I, § 105(a), May 14, 1974, 88 Stat. 127; Pub. L. 94–371, § 3(a), July 26, 1976, 90 Stat. 1035; Pub. L. 96–180, § 7, Jan. 2, 1980, 93 Stat. 1303; Pub. L. 97–35, title IX, § 962(a), Aug. 13, 1981, 95 Stat. 592; renumbered § 520 of act July 1, 1944, and amended Pub. L. 98–24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181; Pub. L. 98–509, title III, § 301(c)(2), Oct. 19, 1984, 98 Stat. 2364; renumbered § 541, Pub. L. 100–77, title VI, § 611(2), July 22, 1987, 101 Stat. 516; Pub. L. 100–607, title VIII, § 813(2), Nov. 4, 1988, 102 Stat. 3170; Pub. L. 100–628, title VI, § 613(2), Nov. 7, 1988, 102 Stat. 3243; Pub. L. 101–93, § 5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 102–321, title I, § 131, July 10, 1992, 106 Stat. 366.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (b)(3), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

CODIFICATION

Section was formerly classified to section 4571 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1992—Pub. L. 102–321 amended section generally, substituting provisions relating to substance abuse among government and other employees for provisions relating to technical assistance to States relative to alcohol abuse and alcoholism programs.

1989—Subsec. (a)(4). Pub. L. 101–93 directed that subsec. (a)(4) of this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Subsec. (a)(4). Pub. L. 100–607 and Pub. L. 100–628 made identical technical amendments to reference to section 290dd–2 of this title to reflect renumbering of corresponding section of original act.

1984—Pub. L. 98–509 amended directory language of Pub. L. 98–24, § 2(b)(13). See 1983 Amendment note below.

1983—Pub. L. 98–24, § 2(b)(13), as amended by Pub. L. 98–509 renumbered section 4571 of this title as this section.

Subsec. (a). Pub. L. 98–24, § 2(b)(13)(A)(i), substituted ''the National Institute on Alcohol Abuse and Alcoholism'' for ''the Institute''.

Subsec. (a)(4). Pub. L. 98–24, § 2(b)(13)(A)(ii), substituted ''section 290dd–2 of this title'' for ''section 4581 of this title''.

Subsec. (b). Pub. L. 98–24, § 2(b)(13)(A)(iii), substituted ''this subchapter'' for references to ''this chapter'', meaning chapter 60 (§ 4541 et seq.) of this title, and the Drug Abuse Prevention, Treatment, and Rehabilitation Act [21 U.S.C. 1101 et seq.].

1981—Pub. L. 97–35 restructured provisions and substituted provisions relating to technical assistance for enumerated activities, and improvement of coordination with Drug Abuse Prevention, Treatment, and Rehabilitation Act, for provisions authorizing appropriations through fiscal year ending Sept. 30, 1981, for covered activities.

1980—Pub. L. 96–180 authorized appropriation of $60,000,000 and $65,000,000 for fiscal years ending Sept. 30, 1980, and 1981.

1976—Pub. L. 94–371 struck out ''and'' after ''1975'' and inserted provisions authorizing $70,000,000 to be appropriated for fiscal year ending Sept. 30, 1977, $77,000,000 to be appropriated for fiscal year ending Sept. 30, 1978, and $85,000,000 to be appropriated for fiscal year ending Sept. 30, 1979.

1974—Pub. L. 93–282 authorized appropriation of $80,000,000 for fiscal years ending June 30, 1975 and June 30, 1976.

1972—Pub. L. 92–554 substituted ''for each of the next two fiscal years'' for ''for the fiscal year ending June 30, 1973''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 254e of this title.

§ 290dd–1. Admission of substance abusers to private and public hospitals and outpatient facilities

(a) Nondiscrimination

Substance abusers who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely be-

cause of their substance abuse, by any private or public general hospital, or outpatient facility (as defined in section 300s–3(4) of this title) which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency.

(b) Regulations

(1) In general

The Secretary shall issue regulations for the enforcement of the policy of subsection (a) of this section with respect to the admission and treatment of substance abusers in hospitals and outpatient facilities which receive support of any kind from any program administered by the Secretary. Such regulations shall include procedures for determining (after opportunity for a hearing if requested) if a violation of subsection (a) of this section has occurred, notification of failure to comply with such subsection, and opportunity for a violator to comply with such subsection. If the Secretary determines that a hospital or outpatient facility subject to such regulations has violated subsection (a) of this section and such violation continues after an opportunity has been afforded for compliance, the Secretary may suspend or revoke, after opportunity for a hearing, all or part of any support of any kind received by such hospital from any program administered by the Secretary. The Secretary may consult with the officials responsible for the administration of any other Federal program from which such hospital or outpatient facility receives support of any kind, with respect to the suspension or revocation of such other Federal support for such hospital or outpatient facility.

(2) Department of Veterans Affairs

The Secretary of Veterans Affairs, acting through the Under Secretary for Health, shall, to the maximum feasible extent consistent with their responsibilities under title 38, prescribe regulations making applicable the regulations prescribed by the Secretary under paragraph (1) to the provision of hospital care, nursing home care, domiciliary care, and medical services under such title 38 to veterans suffering from substance abuse. In prescribing and implementing regulations pursuant to this paragraph, the Secretary shall, from time to time, consult with the Secretary of Health and Human Services in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribe.

(July 1, 1944, ch. 373, title V, §542, formerly Pub. L. 91–616, title II, §201, Dec. 31, 1970, 84 Stat. 1849, as amended Pub. L. 96–180, §6(a), (b)(1), (2)(B), Jan. 2, 1980, 93 Stat. 1302, 1303; Pub. L. 97–35, title IX, §§961, 966(d), (e), Aug. 13, 1981, 95 Stat. 592, 595; renumbered §521 of act July 1, 1944, and amended Pub. L. 98–24, §2(b)(13), Apr. 26, 1983, 97 Stat. 181; Pub. L. 98–509, title III, §301(c)(2), Oct. 19, 1984, 98 Stat. 2364; Pub. L. 99–570, title VI, §6002(b)(1), Oct. 27, 1986, 100 Stat. 3207–158; renumbered §542, Pub. L. 100–77, title VI, §611(2), July 22, 1987, 101 Stat. 516; Pub. L. 102–321, title I, §131, July 10, 1992, 106 Stat. 368; Pub. L. 103–446, title XII, §1203(a)(2), Nov. 2, 1994, 108 Stat. 4689.)

CODIFICATION

Section was formerly classified to section 4561 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–446 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1992—Pub. L. 102–321 amended section generally, substituting provisions relating to admission of substance abusers to private and public hospitals and outpatient facilities for provisions relating to programs for government and other employees.

1986—Subsec. (a). Pub. L. 99–570, §6002(b)(1), redesignated subsec. (b) as (a), struck out ''similar'' after ''fostering and encouraging'' in par. (1), and struck out former subsec. (a) which read as follows: ''The Office of Personnel Management shall be responsible for developing and maintaining, in cooperation with the Secretary and with other Federal agencies and departments, and in accordance with the provisions of subpart F of part III of title 5, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among Federal civilian employees, consistent with the purposes of this chapter. Such agencies and departments are encouraged to extend, to the extent feasible, these programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such policies and services shall make optimal use of existing governmental facilities, services, and skills.''

Subsecs. (b) to (d). Pub. L. 99–570, §6002(b)(1)(C), redesignated subsecs. (c) and (d) as (b) and (c), respectively. Former subsec. (b) redesignated (a).

1984—Pub. L. 98–509 amended directory language of Pub. L. 98–24, §2(b)(13). See 1983 Amendment note below.

1983—Pub. L. 98–24, §2(b)(13), as amended by Pub. L. 98–509, renumbered section 4561 of this title as this section.

Subsec. (b)(4). Pub. L. 98–24, §2(b)(13)(B)(i), substituted ''section 290ee–1 of this title'' for ''section 1180(b) of title 21''.

Subsec. (d). Pub. L. 98–24, §2(b)(13)(B)(ii), substituted ''this section'' for ''this subchapter'', meaning subchapter II (§4561 et seq.) of chapter 60 of this title.

1981—Subsec. (b). Pub. L. 97–35, §§961, 966(d), made changes in nomenclature, and substituted provisions relating to responsible State administrative agencies, for provisions relating to single State agencies designated pursuant to section 4573 of this title.

1980—Pub. L. 96–180, §6(b)(2)(A), amended section catchline.

Subsec. (a). Pub. L. 96–180, §6(a), substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and inserted provisions that require compliance with provisions of subpart F of part III of title 5 and encourage agencies and departments to extend the programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics.

Subsec. (b). Pub. L. 96–180, §6(b)(1), designated existing provisions as par. (1), made the Secretary responsible for encouragement of programs and services, required the programs and services to be designed for application to families of employees and to employees who have family members who are alcoholics, and added pars. (2) to (4).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290dd–2. Confidentiality of records

(a) Requirement

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Permitted disclosure

(1) Consent

The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

(2) Method for disclosure

Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Use of records in criminal proceedings

Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Application

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when such individual ceases to be a patient.

(e) Nonapplicability

The prohibitions of this section do not apply to any interchange of records—

(1) within the Uniformed Services or within those components of the Department of Veterans Affairs furnishing health care to veterans; or

(2) between such components and the Uniformed Services.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Penalties

Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined in accordance with title 18.

(g) Regulations

Except as provided in subsection (h) of this section, the Secretary shall prescribe regulations to carry out the purposes of this section. Such regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(h) Application to Department of Veterans Affairs

The Secretary of Veterans Affairs, acting through the Under Secretary for Health, shall, to the maximum feasible extent consistent with their responsibilities under title 38, prescribe regulations making applicable the regulations prescribed by the Secretary of Health and Human Services under subsection (g) of this section to records maintained in connection with the provision of hospital care, nursing home care, domiciliary care, and medical services under such title 38 to veterans suffering from substance abuse. In prescribing and implementing regulations pursuant to this subsection, the Secretary of Veterans Affairs shall, from time to time, consult with the Secretary of Health and Human Services in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribe.

(July 1, 1944, ch. 373, title V, § 543, formerly Pub. L. 91–616, title III, § 321, Dec. 31, 1970, 84 Stat. 1852, as amended Pub. L. 93–282, title I, § 121(a), May 14, 1974, 88 Stat. 130; Pub. L. 94–371, § 11(a), (b), July 26, 1976, 90 Stat. 1041; Pub. L. 94–581, title I, § 111(c)(1), Oct. 21, 1976, 90 Stat. 2852; renumbered § 522 of act July 1, 1944, and amended Pub. L. 98–24, § 2(b)(13), Apr. 26, 1983, 97 Stat. 181; renumbered § 543, Pub. L. 100–77, title VI, § 611(2), July 22, 1987, 101 Stat. 516; Pub. L. 102–321, title I, § 131, July 10, 1992, 106 Stat. 368; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 105–392, title IV, § 402(c), Nov. 13, 1998, 112 Stat. 3588.)

CODIFICATION

Section was formerly classified to section 4581 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1998—Subsec. (e)(1), (2). Pub. L. 105–392 substituted ''Uniformed Services'' for ''Armed Forces''.

1992—Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director'' in subsec. (h).

Pub. L. 102–321 amended section generally, substituting provisions relating to confidentiality of records for provisions relating to admission of alcohol abusers and alcoholics to general hospitals and outpatient facilities.

1983—Pub. L. 98–24, §2(b)(13), renumbered section 4581 of this title as this section.

Subsec. (a). Pub. L. 98–24, §2(b)(13)(C), made a technical amendment to reference to section 300s–3 of this title.

1976—Subsec. (a). Pub. L. 94–371, §11(a), inserted '', or outpatient facility (as defined in section 300s–3(6) of this title)'' after ''hospital''.

Subsec. (b)(1). Pub. L. 94–371, §11(b), inserted ''and outpatient facilities'' after ''hospitals'', and ''or outpatient facility'' after ''hospital'' wherever appearing, and substituted ''shall issue regulations not later than December 31, 1976'' for ''is authorized to make regulations''.

Subsec. (b)(2). Pub. L. 94–581 provided that subsec. (b)(2), which directed the Administrator of Veteran's Affairs, through the Chief Medical Director, to prescribe regulations making applicable the regulations prescribed by the Secretary under subsec. (b)(1) to the provision of hospital care, nursing home care, domiciliary care, and medical services under title 38 to veterans suffering from alcohol abuse or alcoholism and to consult with the Secretary in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribed, was superseded by section 4131 [now 7331] et seq. of Title 38, Veterans' Benefits.

1974—Subsec. (a). Pub. L. 93–282, in revising text, prohibited discrimination because of alcohol abuse, substituted provisions respecting eligibility for admission and treatment based on suffering from medical conditions for former provision based on medical need and ineligibility, because of discrimination, for support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency for former requirement for treatment by a general hospital which received Federal funds, and deleted prohibition against receiving Federal financial assistance for violation of section and for termination of Federal assistance on failure to comply, now incorporated in regulation authorization of subsec. (b) of this section.

Subsec. (b). Pub. L. 93–282 substituted provisions respecting issuance of regulations by the Secretary concerning enforcement procedures and suspension or revocation of Federal support and by the Administrator concerning applicable regulations for veterans, and for coordination of the respective regulations for former provisions respecting judicial review.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–581 effective Oct. 21, 1976, see section 211 of Pub. L. 94–581, set out as a note under section 111 of Title 38, Veterans' Benefits.

REPORT OF ADMINISTRATOR OF VETERANS' AFFAIRS TO CONGRESSIONAL COMMITTEES; PUBLICATION IN FEDERAL REGISTER

Section 121(b) of Pub. L. 93–282, which directed Administrator of Veterans' Affairs to submit to appropriate committees of House of Representatives and Senate a full report (1) on regulations (including guidelines, policies, and procedures thereunder) he had prescribed pursuant to section 321(b)(2) of Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [former subsec. (b)(2) of this section], (2) explaining bases for any inconsistency between such regulations and regulations of Secretary under section 321(b)(1) of such Act [subsec. (b)(1) of this section], (3) on extent, substance, and results of his consultations with Secretary respecting prescribing and implementation of Administrator's regulations, and (4) containing such recommendations for legislation and administrative actions as he determined were necessary and desirable, with Administrator to submit report not later than sixty days after effective date of regulations prescribed by Secretary under such section 321(b)(1) [subsec. (b)(1) of this section], and to publish such report in Federal Register, was characterized by section 111(c)(5) of Pub. L. 94–581 as having been superseded by section 4134 [now 7334] of Title 38, Veterans' Benefits.

§§ 290dd–3 to 290ee–3. Omitted

CODIFICATION

Sections 290dd–3 to 290ee–3 were omitted in the general revision of this part by Pub. L. 102–321.

Section 290dd–3, act July 1, 1944, ch. 373, title V, §544, formerly Pub. L. 91–616, title III, §333, Dec. 31, 1970, 84 Stat. 1853, as amended Pub. L. 93–282, title I, §122(a), May 14, 1974, 88 Stat. 131; Pub. L. 94–581, title I, §111(c)(4), Oct. 21, 1976, 90 Stat. 2852; renumbered §523 of act July 1, 1944, Apr. 26, 1983, Pub. L. 98–24, §2(b)(13), 97 Stat. 181; Aug. 27, 1986, Pub. L. 99–401, title I, §106(a), 100 Stat. 907; renumbered §544, July 22, 1987, Pub. L. 100–77, title VI, §611(2), 101 Stat. 516; June 13, 1991, Pub. L. 102–54, §13(q)(1)(A)(ii), 105 Stat. 278, related to confidentiality of patient records for alcohol abuse and alcoholism programs. See section 290dd–2 of this title.

Section 290ee, act July 1, 1944, ch. 373, title V, §545, formerly Pub. L. 92–255, title V, §502, as added Pub. L. 94–237, §12(b)(1), Mar. 19, 1976, 90 Stat. 247, and amended Pub. L. 95–461, §5, Oct. 14, 1978, 92 Stat. 1269; Pub. L. 96–181, §11, Jan. 2, 1980, 93 Stat. 1315; renumbered §524 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, §2(b)(15), 97 Stat. 181; renumbered §545, July 22, 1987, Pub. L. 100–77, title VI, §611(2), 101 Stat. 516; Nov. 4, 1988, Pub. L. 100–607, title VIII, §813(3), 102 Stat. 3170; Nov. 7, 1988, Pub. L. 100–628, title VI, §613(3), 102 Stat. 3243; Aug. 16, 1989, Pub. L. 101–93, §5(t)(1), 103 Stat. 615, related to technical assistance to State and local agencies by National Institute on Drug Abuse.

Section 290ee–1, act July 1, 1944, ch. 373, title V, §546, formerly Pub. L. 92–255, title IV, §413, Mar. 21, 1972, 86 Stat. 84, as amended Pub. L. 96–181, §8(a), (b)(1), Jan. 2, 1980, 93 Stat. 1313, 1314; Pub. L. 97–35, title IX, §973(e), Aug. 13, 1981, 95 Stat. 598; renumbered §525 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, §2(b)(16)(A), 97 Stat. 182; Oct. 27, 1986, Pub. L. 99–570, title VI, §6002(b)(2), 100 Stat. 3207–159; renumbered §546, July 22, 1987, Pub. L. 100–77, title VI, §611(2), 101 Stat. 516; Nov. 4, 1988, Pub. L. 100–607, title VIII, §813(4), 102 Stat. 3171; Nov. 7, 1988, Pub. L. 100–628, title VI, §613(4), 102 Stat. 3243; Aug. 16, 1989, Pub. L. 101–93, §5(t)(1), 103 Stat. 615, related to drug abuse among government and other employees.

Section 290ee–2, act July 1, 1944, ch. 373, title V, §547, formerly Pub. L. 92–255, title IV, §407, Mar. 21, 1972, 86 Stat. 78, as amended Pub. L. 94–237, §6(a), Mar. 19, 1976, 90 Stat. 244; Pub. L. 94–581, title I, §111(c)(2), Oct. 21, 1976, 90 Stat. 2852; renumbered §526 of act July 1, 1944, Apr. 26, 1983. Pub. L. 98–24, §2(b)(16)(B), 97 Stat. 182; renumbered §547, July 22, 1987, Pub. L. 100–77, title VI, §611(2), 101 Stat. 516, related to admission of drug abusers to private and public hospitals.

Section 290ee–3, act July 1, 1944, ch. 373, title V, §548, formerly Pub. L. 92–255, title IV, §408, Mar. 21, 1972, 86 Stat. 79, as amended Pub. L. 93–282, title III, §303(a), (b), May 14, 1974, 88 Stat. 137, 138; Pub. L. 94–237, §4(c)(5)(A),

Mar. 19, 1976, 90 Stat. 244; Pub. L. 94–581, title I, §111(c)(3), Oct. 21, 1976, 90 Stat. 2852; Pub. L. 97–35, title IX, §973(d), Aug. 13, 1981, 95 Stat. 598; renumbered §527 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, §2(b)(16)(B), 97 Stat. 182; Aug. 27, 1986, Pub. L. 99–401, title I, §106(b), 100 Stat. 907; renumbered §548, July 22, 1987, Pub. L. 100–77, title VI, §611(2), 101 Stat. 516; June 13, 1991, Pub. L. 102–54, §13(q)(1)(A)(iii), (B)(ii), 105 Stat. 278, related to confidentiality of patient records for drug abuse programs. See section 290dd–2 of this title.

PART E—CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCES

§ 290ff. Comprehensive community mental health services for children with serious emotional disturbances

(a) Grants to certain public entities

(1) In general

The Secretary, acting through the Director of the Center for Mental Health Services, shall make grants to public entities for the purpose of providing comprehensive community mental health services to children with a serious emotional disturbance.

(2) "Public entity" defined

For purposes of this part, the term ''public entity'' means any State, any political subdivision of a State, and any Indian tribe or tribal organization (as defined in section 450b(b) and section 450b(c)[1] of title 25).

(b) Considerations in making grants

(1) Requirement of status as grantee under part B of subchapter XVII

The Secretary may make a grant under subsection (a) of this section to a public entity only if—

(A) in the case of a public entity that is a State, the State is a grantee under section 300x of this title;

(B) in the case of a public entity that is a political subdivision of a State, the State in which the political subdivision is located is such a grantee; and

(C) in the case of a public entity that is an Indian tribe or tribal organization, the State in which the tribe or tribal organization is located is such a grantee.

(2) Requirement of status as medicaid provider

(A) Subject to subparagraph (B), the Secretary may make a grant under subsection (a) of this section only if, in the case of any service under such subsection that is covered in the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(i) the public entity involved will provide the service directly, and the entity has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(ii) the public entity will enter into an agreement with an organization under which the organization will provide the service, and the organization has entered into such a participation agreement and is qualified to receive such payments.

(B)(i) In the case of an organization making an agreement under subparagraph (A)(ii) regarding the provision of services under subsection (a) of this section, the requirement established in such subparagraph regarding a participation agreement shall be waived by the Secretary if the organization does not, in providing health or mental health services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(ii) A determination by the Secretary of whether an organization referred to in clause (i) meets the criteria for a waiver under such clause shall be made without regard to whether the organization accepts voluntary donations regarding the provision of services to the public.

(3) Certain considerations

In making grants under subsection (a) of this section, the Secretary shall—

(A) equitably allocate such assistance among the principal geographic regions of the United States;

(B) consider the extent to which the public entity involved has a need for the grant; and

(C) in the case of any public entity that is a political subdivision of a State or that is an Indian tribe or tribal organization—

(i) shall consider any comments regarding the application of the entity for such a grant that are received by the Secretary from the State in which the entity is located; and

(ii) shall give special consideration to the entity if the State agrees to provide a portion of the non-Federal contributions required in subsection (c) of this section regarding such a grant.

(c) Matching funds

(1) In general

A funding agreement for a grant under subsection (a) of this section is that the public entity involved will, with respect to the costs to be incurred by the entity in carrying out the purpose described in such subsection, make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that—

(A) for the first fiscal year for which the entity receives payments from a grant under such subsection, is not less than $1 for each $3 of Federal funds provided in the grant;

(B) for any second or third such fiscal year, is not less than $1 for each $3 of Federal funds provided in the grant;

(C) for any fourth such fiscal year, is not less than $1 for each $1 of Federal funds provided in the grant; and

(D) for any fifth and sixth such fiscal year,[2] is not less than $2 for each $1 of Federal funds provided in the grant.

(2) Determination of amount contributed

(A) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly

[1] See References in Text note below.

[2] So in original. Probably should be ''years,''.

evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) In making a determination of the amount of non-Federal contributions for purposes of subparagraph (A), the Secretary may include only non-Federal contributions in excess of the average amount of non-Federal contributions made by the public entity involved toward the purpose described in subsection (a) of this section for the 2-year period preceding the first fiscal year for which the entity receives a grant under such section.

(July 1, 1944, ch. 373, title V, § 561, as added Pub. L. 102–321, title I, § 119, July 10, 1992, 106 Stat. 349; amended Pub. L. 103–43, title XX, § 2017(1), June 10, 1993, 107 Stat. 218; Pub. L. 106–310, div. B, title XXXI, § 3105(a), Oct. 17, 2000, 114 Stat. 1175.)

REFERENCES IN TEXT

Subsections (b) and (c) of section 450b of title 25, referred to in subsec. (a)(2), do not contain definitions of the terms ''Indian tribe'' and ''tribal organization''. However, such terms are defined elsewhere in section 450b of Title 25, Indians.

The Social Security Act, referred to in subsec. (b)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 290ff, act July 1, 1944, ch. 373, title V, § 561, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2081(a), 102 Stat. 4216, which related to action by National Institute on Drug Abuse and States concerning military facilities, was renumbered section 513 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290bb–6 of this title.

AMENDMENTS

2000—Subsec. (c)(1)(D). Pub. L. 106–310 substituted ''fifth and sixth such fiscal year'' for ''fifth such fiscal year''.

1993—Subsec. (a)(2). Pub. L. 103–43, § 2017(1)(A), substituted ''this part'' for ''this subpart''.

Subsec. (b)(1)(B), (C). Pub. L. 103–43, § 2017(1)(B), substituted ''is such a grantee'' for ''is receiving such payments''.

EFFECTIVE DATE

Part effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

CURRENT GRANTEES

Pub. L. 106–310, div. B, title XXXI, § 3105(e), Oct. 17, 2000, 114 Stat. 1175, provided that:

''(1) IN GENERAL.—Entities with active grants under section 561 of the Public Health Service Act (42 U.S.C. 290ff) on the date of the enactment of this Act [Oct. 17, 2000] shall be eligible to receive a sixth year of funding under the grant in an amount not to exceed the amount that such grantee received in the fifth year of funding under such grant. Such sixth year may be funded without requiring peer and Advisory Council review as required under section 504 of such Act (42 U.S.C. 290aa–3).

''(2) LIMITATION.—Paragraph (1) shall apply with respect to a grantee only if the grantee agrees to comply with the provisions of section 561 as amended by subsection (a).''

§ 290ff–1. Requirements with respect to carrying out purpose of grants

(a) Systems of comprehensive care

(1) In general

A funding agreement for a grant under section 290ff(a) of this title is that, with respect to children with a serious emotional disturbance, the public entity involved will carry out the purpose described in such section only through establishing and operating 1 or more systems of care for making each of the mental health services specified in subsection (c) of this section available to each child provided access to the system. In providing for such a system, the public entity may make grants to, and enter into contracts with, public and nonprofit private entities.

(2) Structure of system

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under paragraph (1) will—

(A) be established in a community selected by the public entity involved;

(B) consist of such public agencies and nonprofit private entities in the community as are necessary to ensure that each of the services specified in subsection (c) of this section is available to each child provided access to the system;

(C) be established pursuant to agreements that the public entity enters into with the agencies and entities described in subparagraph (B);

(D) coordinate the provision of the services of the system; and

(E) establish an office whose functions are to serve as the location through which children are provided access to the system, to coordinate the provision of services of the system, and to provide information to the public regarding the system.

(3) Collaboration of local public entities

A funding agreement for a grant under section 290ff(a) of this title is that, for purposes of the establishment and operation of a system of care under paragraph (1), the public entity involved will seek collaboration among all public agencies that provide human services in the community in which the system is established, including but not limited to those providing mental health services, educational services, child welfare services, or juvenile justice services.

(b) Limitation on age of children provided access to system

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under subsection (a) of this section will not provide an individual with access to the system if the individual is more than 21 years of age.

(c) Required mental health services of system

A funding agreement for a grant under section 290ff(a) of this title is that mental health services provided by a system of care under subsection (a) of this section will include, with re-

spect to a serious emotional disturbance in a child—

(1) diagnostic and evaluation services;

(2) outpatient services provided in a clinic, office, school or other appropriate location, including individual, group and family counseling services, professional consultation, and review and management of medications;

(3) emergency services, available 24-hours a day, 7 days a week;

(4) intensive home-based services for children and their families when the child is at imminent risk of out-of-home placement;

(5) intensive day-treatment services;

(6) respite care;

(7) therapeutic foster care services, and services in therapeutic foster family homes or individual therapeutic residential homes, and groups homes caring for not more than 10 children; and

(8) assisting the child in making the transition from the services received as a child to the services to be received as an adult.

(d) Required arrangements regarding other appropriate services

(1) In general

A funding agreement for a grant under section 290ff(a) of this title is that—

(A) a system of care under subsection (a) of this section will enter into a memorandum of understanding with each of the providers specified in paragraph (2) in order to facilitate the availability of the services of the provider involved to each child provided access to the system; and

(B) the grant under such section 290ff(a) of this title, and the non-Federal contributions made with respect to the grant, will not be expended to pay the costs of providing such non-mental health services to any individual.

(2) Specification of non-mental health services

The providers referred to in paragraph (1) are providers of medical services other than mental health services, providers of educational services, providers of vocational counseling and vocational rehabilitation services, and providers of protection and advocacy services with respect to mental health.

(3) Facilitation of services of certain programs

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under subsection (a) of this section will, for purposes of paragraph (1), enter into a memorandum of understanding regarding facilitation of—

(A) services available pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], including services regarding early periodic screening, diagnosis, and treatment;

(B) services available under parts B and C of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq., 1431 et seq.]; and

(C) services available under other appropriate programs, as identified by the Secretary.

(e) General provisions regarding services of system

(1) Case management services

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under subsection (a) of this section will provide for the case management of each child provided access to the system in order to ensure that—

(A) the services provided through the system to the child are coordinated and that the need of each such child for the services is periodically reassessed;

(B) information is provided to the family of the child on the extent of progress being made toward the objectives established for the child under the plan of services implemented for the child pursuant to section 290ff–2 of this title; and

(C) the system provides assistance with respect to—

(i) establishing the eligibility of the child, and the family of the child, for financial assistance and services under Federal, State, or local programs providing for health services, mental health services, educational services, social services, or other services; and

(ii) seeking to ensure that the child receives appropriate services available under such programs.

(2) Other provisions

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under subsection (a) of this section, in providing the services of the system, will—

(A) provide the services of the system in the cultural context that is most appropriate for the child and family involved;

(B) ensure that individuals providing such services to the child can effectively communicate with the child and family in the most direct manner;

(C) provide the services without discriminating against the child or the family of the child on the basis of race, religion, national origin, sex, disability, or age;

(D) seek to ensure that each child provided access to the system of care remains in the least restrictive, most normative environment that is clinically appropriate; and

(E) provide outreach services to inform individuals, as appropriate, of the services available from the system, including identifying children with a serious emotional disturbance who are in the early stages of such disturbance.

(3) Rule of construction

An agreement made under paragraph (2) may not be construed—

(A) with respect to subparagraph (C) of such paragraph—

(i) to prohibit a system of care under subsection (a) of this section from requiring that, in housing provided by the grantee for purposes of residential treatment services authorized under subsection (c) of this section, males and females be segregated to the extent appropriate in the treatment of the children involved; or

(ii) to prohibit the system of care from complying with the agreement made under subsection (b) of this section; or

(B) with respect to subparagraph (D) of such paragraph, to authorize the system of care to expend the grant under section 290ff(a) of this title (or the non-Federal contributions made with respect to the grant) to provide legal services or any service with respect to which expenditures regarding the grant are prohibited under subsection (d)(1)(B) of this section.

(f) Restrictions on use of grant

A funding agreement for a grant under section 290ff(a) of this title is that the grant, and the non-Federal contributions made with respect to the grant, will not be expended—

(1) to purchase or improve real property (including the construction or renovation of facilities);

(2) to provide for room and board in residential programs serving 10 or fewer children;

(3) to provide for room and board or other services or expenditures associated with care of children in residential treatment centers serving more than 10 children or in inpatient hospital settings, except intensive home-based services and other services provided on an ambulatory or outpatient basis; or

(4) to provide for the training of any individual, except training authorized in section 290ff–3(a)(2) of this title and training provided through any appropriate course in continuing education whose duration does not exceed 2 days.

(g) Waivers

The Secretary may waive one or more of the requirements of subsection (c) of this section for a public entity that is an Indian Tribe or tribal organization, or American Samoa, Guam, the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, or the United States Virgin Islands if the Secretary determines, after peer review, that the system of care is family-centered and uses the least restrictive environment that is clinically appropriate.

(July 1, 1944, ch. 373, title V, § 562, as added Pub. L. 102–321, title I, § 119, July 10, 1992, 106 Stat. 351; amended Pub. L. 106–310, div. B, title XXXI, § 3105(b), Oct. 17, 2000, 114 Stat. 1175; Pub. L. 108–446, title III, § 305(i)(4), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(3)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (d)(3)(B), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Parts B and C of the Act are classified generally to subchapters II (§ 1411 et seq.) and III (§ 1431 et seq.), respectively, of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2004—Subsec. (d)(3)(B). Pub. L. 108–446 substituted ''and C'' for ''and H''.

2000—Subsec. (g). Pub. L. 106–310 added subsec. (g).

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290ff–2. Individualized plan for services

(a) In general

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under section 290ff–1(a) of this title will develop and carry out an individualized plan of services for each child provided access to the system, and that the plan will be developed and carried out with the participation of the family of the child and, unless clinically inappropriate, with the participation of the child.

(b) Multidisciplinary team

A funding agreement for a grant under section 290ff(a) of this title is that the plan required in subsection (a) of this section will be developed, and reviewed and as appropriate revised not less than once each year, by a multidisciplinary team of appropriately qualified individuals who provide services through the system, including as appropriate mental health services, other health services, educational services, social services, and vocational counseling and rehabilitation;[1]

(c) Coordination with services under Individuals with Disabilities Education Act

A funding agreement for a grant under section 290ff(a) of this title is that, with respect to a plan under subsection (a) of this section for a child, the multidisciplinary team required in subsection (b) of this section will—

(1) in developing, carrying out, reviewing, and revising the plan consider any individualized education program in effect for the child pursuant to part B of the Individuals with Disabilities Education Act [42 U.S.C. 1411 et seq.];

(2) ensure that the plan is consistent with such individualized education program and provides for coordinating services under the plan with services under such program; and

(3) ensure that the memorandum of understanding entered into under section 290ff–1(d)(3)(B) of this title regarding such Act [20 U.S.C. 1400 et seq.] includes provisions regarding compliance with this subsection.

(d) Contents of plan

A funding agreement for a grant under section 290ff(a) of this title is that the plan required in subsection (a) of this section for a child will—

(1) identify and state the needs of the child for the services available pursuant to section 290ff–1 of this title through the system;

(2) provide for each of such services that is appropriate to the circumstances of the child, including, except in the case of children who are less than 14 years of age, the provision of appropriate vocational counseling and reha-

[1] So in original. The semicolon probably should be a period.

bilitation, and transition services (as defined in section 602 [20 U.S.C. 1401] of the Individuals with Disabilities Education Act);

(3) establish objectives to be achieved regarding the needs of the child and the methodology for achieving the objectives; and

(4) designate an individual to be responsible for providing the case management required in section 290ff–1(e)(1) of this title or certify that case management services will be provided to the child as part of the individualized education program of the child under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.].

(July 1, 1944, ch. 373, title V, § 563, as added Pub. L. 102–321, title I, § 119, July 10, 1992, 106 Stat. 354; amended Pub. L. 108–446, title III, § 305(i)(5), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsecs. (c)(1), (3) and (d)(4), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. Part B of the Act is classified generally to subchapter II (§ 1411 et seq.) of chapter 33 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2004—Subsec. (d)(2). Pub. L. 108–446 substituted ''section 602'' for ''section 602(a)(19)''.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290ff–3. Additional provisions

(a) Optional services

In addition to services described in subsection (c) of section 290ff–1 of this title, a system of care under subsection (a) of such section may, in expending a grant under section 290ff(a) of this title, provide for—

(1) preliminary assessments to determine whether a child should be provided access to the system;

(2) training in—

(A) the administration of the system;

(B) the provision of intensive home-based services under paragraph (4) of section 290ff–1(c) of this title, intensive day treatment under paragraph (5) of such section, and foster care or group homes under paragraph (7) of such section; and

(C) the development of individualized plans for purposes of section 290ff–2 of this title;

(3) recreational activities for children provided access to the system; and

(4) such other services as may be appropriate in providing for the comprehensive needs with respect to mental health of children with a serious emotional disturbance.

(b) Comprehensive plan

The Secretary may make a grant under section 290ff(a) of this title only if, with respect to the jurisdiction of the public entity involved, the entity has submitted to the Secretary, and has had approved by the Secretary, a plan for the development of a jurisdiction-wide system of care for community-based services for children with a serious emotional disturbance that specifies the progress the public entity has made in developing the jurisdiction-wide system, the extent of cooperation across agencies serving children in the establishment of the system, the Federal and non-Federal resources currently committed to the establishment of the system, and the current gaps in community services and the manner in which the grant under section 290ff(a) of this title will be expended to address such gaps and establish local systems of care.

(c) Limitation on imposition of fees for services

A funding agreement for a grant under section 290ff(a) of this title is that, if a charge is imposed for the provision of services under the grant, such charge—

(1) will be made according to a schedule of charges that is made available to the public;

(2) will be adjusted to reflect the income of the family of the child involved; and

(3) will not be imposed on any child whose family has income and resources of equal to or less than 100 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(d) Relationship to items and services under other programs

A funding agreement for a grant under section 290ff(a) of this title is that the grant, and the non-Federal contributions made with respect to the grant, will not be expended to make payment for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

(e) Limitation on administrative expenses

A funding agreement for a grant under section 290ff(a) of this title is that not more than 2 percent of the grant will be expended for administrative expenses incurred with respect to the grant by the public entity involved.

(f) Reports to Secretary

A funding agreement for a grant under section 290ff(a) of this title is that the public entity involved will annually submit to the Secretary a report on the activities of the entity under the grant that includes a description of the number of children provided access to systems of care operated pursuant to the grant, the demographic characteristics of the children, the types and costs of services provided pursuant to the grant, the availability and use of third-party reimbursements, estimates of the unmet need for such services in the jurisdiction of the entity, and the manner in which the grant has been expended toward the establishment of a jurisdiction-wide system of care for children with a serious emotional disturbance, and such other infor-

mation as the Secretary may require with respect to the grant.

(g) Description of intended uses of grant

The Secretary may make a grant under section 290ff(a) of this title only if—

(1) the public entity involved submits to the Secretary a description of the purposes for which the entity intends to expend the grant;

(2) the description identifies the populations, areas, and localities in the jurisdiction of the entity with a need for services under this section; and

(3) the description provides information relating to the services and activities to be provided, including a description of the manner in which the services and activities will be coordinated with any similar services or activities of public or nonprofit entities.

(h) Requirement of application

The Secretary may make a grant under section 290ff(a) of this title only if an application for the grant is submitted to the Secretary, the application contains the description of intended uses required in subsection (g) of this section, and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(July 1, 1944, ch. 373, title V, § 564, as added Pub. L. 102–321, title I, § 119, July 10, 1992, 106 Stat. 355.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290ff–4. General provisions

(a) Duration of support

The period during which payments are made to a public entity from a grant under section 290ff(a) of this title may not exceed 6 fiscal years.

(b) Technical assistance

(1) In general

The Secretary shall, upon the request of a public entity receiving a grant under section 290ff(a) of this title—

(A) provide technical assistance to the entity regarding the process of submitting to the Secretary applications for grants under section 290ff(a) of this title; and

(B) provide to the entity training and technical assistance with respect to the planning, development, and operation of systems of care pursuant to section 290ff–1 of this title.

(2) Authority for grants and contracts

The Secretary may provide technical assistance under subsection (a) of this section directly or through grants to, or contracts with, public and nonprofit private entities.

(c) Evaluations and reports by Secretary

(1) In general

The Secretary shall, directly or through contracts with public or private entities, provide for annual evaluations of programs carried out pursuant to section 290ff(a) of this title. The evaluations shall assess the effectiveness of the systems of care operated pursuant to such section, including longitudinal studies of outcomes of services provided by such systems, other studies regarding such outcomes, the effect of activities under this part on the utilization of hospital and other institutional settings, the barriers to and achievements resulting from interagency collaboration in providing community-based services to children with a serious emotional disturbance, and assessments by parents of the effectiveness of the systems of care.

(2) Report to Congress

The Secretary shall, not later than 1 year after the date on which amounts are first appropriated under subsection (c) of this section, and annually thereafter, submit to the Congress a report summarizing evaluations carried out pursuant to paragraph (1) during the preceding fiscal year and making such recommendations for administrative and legislative initiatives with respect to this section as the Secretary determines to be appropriate.

(d) Definitions

For purposes of this part:

(1) The term ''child'' means an individual not more than 21 years of age.

(2) The term ''family'', with respect to a child provided access to a system of care under section 290ff–1(a) of this title, means—

(A) the legal guardian of the child; and

(B) as appropriate regarding mental health services for the child, the parents of the child (biological or adoptive, as the case may be) and any foster parents of the child.

(3) The term ''funding agreement'', with respect to a grant under section 290ff(a) of this title to a public entity, means that the Secretary may make such a grant only if the public entity makes the agreement involved.

(4) The term ''serious emotional disturbance'' includes, with respect to a child, any child who has a serious emotional disorder, a serious behavioral disorder, or a serious mental disorder.

(e) Rule of construction

Nothing in this part shall be construed as limiting the rights of a child with a serious emotional disturbance under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.].

(f) Funding

(1) Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $100,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(2) Limitation regarding technical assistance

Not more than 10 percent of the amounts appropriated under paragraph (1) for a fiscal year may be expended for carrying out subsection (b) of this section.

(July 1, 1944, ch. 373, title V, § 565, as added Pub. L. 102–321, title I, § 119, July 10, 1992, 106 Stat.

356; amended Pub. L. 103–43, title XX, § 2017(2), June 10, 1993, 107 Stat. 218; Pub. L. 106–310, div. B, title XXXI, § 3105(c), (d), Oct. 17, 2000, 114 Stat. 1175.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (e), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310, § 3105(c), substituted ''6 fiscal years'' for ''5 fiscal years''.

Subsec. (f)(1). Pub. L. 106–310, § 3105(d), substituted ''2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003'' for ''1993, and such sums as may be necessary for fiscal year 1994''.

1993—Subsec. (c)(1), (d), (f)(1). Pub. L. 103–43, § 2017(2)(A), (B), (C)(i), substituted ''this part'' for ''this subpart''.

Subsec. (f)(2). Pub. L. 103–43, § 2017(2)(C)(ii), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available not less than $3,000,000 for the purpose of carrying out subsection (b) of this section.''

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

PART F—MODEL COMPREHENSIVE PROGRAM FOR TREATMENT OF SUBSTANCE ABUSE

§ 290gg. Repealed. Pub. L. 106–310, div. B, title XXXIII, § 3301(c)(4), Oct. 17, 2000, 114 Stat. 1209

Section, act July 1, 1944, ch. 373, title V, § 571, as added Pub. L. 102–321, title III, § 301, July 10, 1992, 106 Stat. 417, related to demonstration program in national capital area.

PART G—PROJECTS FOR CHILDREN AND VIOLENCE

CODIFICATION

This part is comprised of part G of title V of act July 1, 1944. Another part G of title V of act July 1, 1944, is classified to part J (§ 290kk et seq.) of this subchapter.

§ 290hh. Children and violence

(a) In general

The Secretary, in consultation with the Secretary of Education and the Attorney General, shall carry out directly or through grants, contracts or cooperative agreements with public entities a program to assist local communities in developing ways to assist children in dealing with violence.

(b) Activities

Under the program under subsection (a) of this section, the Secretary may—

(1) provide financial support to enable local communities to implement programs to foster the health and development of children;

(2) provide technical assistance to local communities with respect to the development of programs described in paragraph (1);

(3) provide assistance to local communities in the development of policies to address violence when and if it occurs;

(4) assist in the creation of community partnerships among law enforcement, education systems and mental health and substance abuse service systems; and

(5) establish mechanisms for children and adolescents to report incidents of violence or plans by other children or adolescents to commit violence.

(c) Requirements

An application for a grant, contract or cooperative agreement under subsection (a) of this section shall demonstrate that—

(1) the applicant will use amounts received to create a partnership described in subsection (b)(4) of this section to address issues of violence in schools;

(2) the activities carried out by the applicant will provide a comprehensive method for addressing violence, that will include—

(A) security;

(B) educational reform;

(C) the review and updating of school policies;

(D) alcohol and drug abuse prevention and early intervention services;

(E) mental health prevention and treatment services; and

(F) early childhood development and psychosocial services; and

(3) the applicant will use amounts received only for the services described in subparagraphs (D), (E), and (F) of paragraph (2).

(d) Geographical distribution

The Secretary shall ensure that grants, contracts or cooperative agreements under subsection (a) of this section will be distributed equitably among the regions of the country and among urban and rural areas.

(e) Duration of awards

With respect to a grant, contract or cooperative agreement under subsection (a) of this section, the period during which payments under such an award will be made to the recipient may not exceed 5 years.

(f) Evaluation

The Secretary shall conduct an evaluation of each project carried out under this section and shall disseminate the results of such evaluations to appropriate public and private entities.

(g) Information and education

The Secretary shall establish comprehensive information and education programs to disseminate the findings of the knowledge development and application under this section to the general public and to health care professionals.

(h) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $100,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2002 and 2003.

(July 1, 1944, ch. 373, title V, § 581, as added Pub. L. 106–310, div. B, title XXXI, § 3101, Oct. 17, 2000, 114 Stat. 1168.)

CODIFICATION

Another section 581 of act July 1, 1944, is classified to section 290kk of this title.

§ 290hh–1. Grants to address the problems of persons who experience violence related stress

(a) In general

The Secretary shall award grants, contracts or cooperative agreements to public and nonprofit private entities, as well as to Indian tribes and tribal organizations, for the purpose of developing programs focusing on the behavioral and biological aspects of psychological trauma response and for developing knowledge with regard to evidence-based practices for treating psychiatric disorders of children and youth resulting from witnessing or experiencing a traumatic event.

(b) Priorities

In awarding grants, contracts or cooperative agreements under subsection (a) of this section related to the development of knowledge on evidence-based practices for treating disorders associated with psychological trauma, the Secretary shall give priority to mental health agencies and programs that have established clinical and basic research experience in the field of trauma-related mental disorders.

(c) Geographical distribution

The Secretary shall ensure that grants, contracts or cooperative agreements under subsection (a) of this section with respect to centers of excellence are distributed equitably among the regions of the country and among urban and rural areas.

(d) Evaluation

The Secretary, as part of the application process, shall require that each applicant for a grant, contract or cooperative agreement under subsection (a) of this section submit a plan for the rigorous evaluation of the activities funded under the grant, contract or agreement, including both process and outcomes evaluation, and the submission of an evaluation at the end of the project period.

(e) Duration of awards

With respect to a grant, contract or cooperative agreement under subsection (a) of this section, the period during which payments under such an award will be made to the recipient may not exceed 5 years. Such grants, contracts or agreements may be renewed.

(f) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $50,000,000 for fiscal year 2001, and such sums as may be necessary for each of fiscal years 2003 through 2006.

(g) Short title

This section may be cited as the ''Donald J. Cohen National Child Traumatic Stress Initiative''.

(July 1, 1944, ch. 373, title V, § 582, as added Pub. L. 106–310, div. B, title XXXI, § 3101, Oct. 17, 2000, 114 Stat. 1169; amended Pub. L. 107–116, title II, § 218, Jan. 10, 2002, 115 Stat. 2201; Pub. L. 107–188, title I, § 155, June 12, 2002, 116 Stat. 633.)

CODIFICATION

Another section 582 of act July 1, 1944, is classified to section 290kk–1 of this title.

AMENDMENTS

2002—Subsec. (f). Pub. L. 107–188 substituted ''2003 through 2006'' for ''2002 and 2003''.

Subsec. (g). Pub. L. 107–116 added subsec. (g).

PART H—REQUIREMENT RELATING TO THE RIGHTS OF RESIDENTS OF CERTAIN FACILITIES

§ 290ii. Requirement relating to the rights of residents of certain facilities

(a) In general

A public or private general hospital, nursing facility, intermediate care facility, or other health care facility, that receives support in any form from any program supported in whole or in part with funds appropriated to any Federal department or agency shall protect and promote the rights of each resident of the facility, including the right to be free from physical or mental abuse, corporal punishment, and any restraints or involuntary seclusions imposed for purposes of discipline or convenience.

(b) Requirements

Restraints and seclusion may only be imposed on a resident of a facility described in subsection (a) of this section if—

(1) the restraints or seclusion are imposed to ensure the physical safety of the resident, a staff member, or others; and

(2) the restraints or seclusion are imposed only upon the written order of a physician, or other licensed practitioner permitted by the State and the facility to order such restraint or seclusion, that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(c) Current law

This part shall not be construed to affect or impede any Federal or State law or regulations that provide greater protections than this part regarding seclusion and restraint.

(d) Definitions

In this section:

(1) Restraints

The term ''restraints'' means—

(A) any physical restraint that is a mechanical or personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely, not including devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or any other methods that involves the physical holding of a resident for the purpose of conducting routine physical examinations or tests or to protect the resident from falling out of bed or to permit the resident to participate in activities without the risk of physical harm to the resident (such term does not include a physical escort); and

(B) a drug or medication that is used as a restraint to control behavior or restrict the

resident's freedom of movement that is not a standard treatment for the resident's medical or psychiatric condition.

(2) Seclusion

The term ''seclusion'' means a behavior control technique involving locked isolation. Such term does not include a time out.

(3) Physical escort

The term ''physical escort'' means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location.

(4) Time out

The term ''time out'' means a behavior management technique that is part of an approved treatment program and may involve the separation of the resident from the group, in a non-locked setting, for the purpose of calming. Time out is not seclusion.

(July 1, 1944, ch. 373, title V, § 591, as added Pub. L. 106–310, div. B, title XXXII, § 3207, Oct. 17, 2000, 114 Stat. 1195.)

§ 290ii–1. Reporting requirement

(a) In general

Each facility to which the Protection and Advocacy for Mentally Ill Individuals Act of 1986[1] [42 U.S.C. 10801 et seq.] applies shall notify the appropriate agency, as determined by the Secretary, of each death that occurs at each such facility while a patient is restrained or in seclusion, of each death occurring within 24 hours after the patient has been removed from restraints and seclusion, or where it is reasonable to assume that a patient's death is a result of such seclusion or restraint. A notification under this section shall include the name of the resident and shall be provided not later than 7 days after the date of the death of the individual involved.

(b) Facility

In this section, the term ''facility'' has the meaning given the term ''facilities'' in section 102(3) of the Protection and Advocacy for Mentally Ill Individuals Act of 1986[1] (42 U.S.C. 10802(3)).

(July 1, 1944, ch. 373, title V, § 592, as added Pub. L. 106–310, div. B, title XXXII, § 3207, Oct. 17, 2000, 114 Stat. 1196.)

REFERENCES IN TEXT

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in text, was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

§ 290ii–2. Regulations and enforcement

(a) Training

Not later than 1 year after October 17, 2000, the Secretary, after consultation with appropriate State and local protection and advocacy organizations, physicians, facilities, and other health care professionals and patients, shall promulgate regulations that require facilities to which the Protection and Advocacy for Mentally Ill Individuals Act of 1986[1] (42 U.S.C. 10801 et seq.) applies, to meet the requirements of subsection (b) of this section.

(b) Requirements

The regulations promulgated under subsection (a) of this section shall require that—

(1) facilities described in subsection (a) of this section ensure that there is an adequate number of qualified professional and supportive staff to evaluate patients, formulate written individualized, comprehensive treatment plans, and to provide active treatment measures;

(2) appropriate training be provided for the staff of such facilities in the use of restraints and any alternatives to the use of restraints; and

(3) such facilities provide complete and accurate notification of deaths, as required under section 290ii–1(a) of this title.

(c) Enforcement

A facility to which this part applies that fails to comply with any requirement of this part, including a failure to provide appropriate training, shall not be eligible for participation in any program supported in whole or in part by funds appropriated to any Federal department or agency.

(July 1, 1944, ch. 373, title V, § 593, as added Pub. L. 106–310, div. B, title XXXII, § 3207, Oct. 17, 2000, 114 Stat. 1196.)

REFERENCES IN TEXT

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsec. (a), was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

PART I—REQUIREMENT RELATING TO THE RIGHTS OF RESIDENTS OF CERTAIN NON-MEDICAL, COMMUNITY-BASED FACILITIES FOR CHILDREN AND YOUTH

§ 290jj. Requirement relating to the rights of residents of certain non-medical, community-based facilities for children and youth

(a) Protection of rights

(1) In general

A public or private non-medical, community-based facility for children and youth (as defined in regulations to be promulgated by the Secretary) that receives support in any form from any program supported in whole or in part with funds appropriated under this chapter shall protect and promote the rights of each resident of the facility, including the

[1] See References in Text note below.

[1] See References in Text note below.

right to be free from physical or mental abuse, corporal punishment, and any restraints or involuntary seclusions imposed for purposes of discipline or convenience.

(2) Nonapplicability

Notwithstanding this part, a facility that provides inpatient psychiatric treatment services for individuals under the age of 21, as authorized and defined in subsections (a)(16) and (h) of section 1905 of the Social Security Act [42 U.S.C. 1396d], shall comply with the requirements of part H of this subchapter.

(3) Applicability of Medicaid provisions

A non-medical, community-based facility for children and youth funded under the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] shall continue to meet all existing requirements for participation in such program that are not affected by this part.

(b) Requirements

(1) In general

Physical restraints and seclusion may only be imposed on a resident of a facility described in subsection (a) of this section if—

(A) the restraints or seclusion are imposed only in emergency circumstances and only to ensure the immediate physical safety of the resident, a staff member, or others and less restrictive interventions have been determined to be ineffective; and

(B) the restraints or seclusion are imposed only by an individual trained and certified, by a State-recognized body (as defined in regulation promulgated by the Secretary) and pursuant to a process determined appropriate by the State and approved by the Secretary, in the prevention and use of physical restraint and seclusion, including the needs and behaviors of the population served, relationship building, alternatives to restraint and seclusion, de-escalation methods, avoiding power struggles, thresholds for restraints and seclusion, the physiological and psychological impact of restraint and seclusion, monitoring physical signs of distress and obtaining medical assistance, legal issues, position asphyxia, escape and evasion techniques, time limits, the process for obtaining approval for continued restraints, procedures to address problematic restraints, documentation, processing with children, and follow-up with staff, and investigation of injuries and complaints.

(2) Interim procedures relating to training and certification

(A) In general

Until such time as the State develops a process to assure the proper training and certification of facility personnel in the skills and competencies referred[1] in paragraph (1)(B), the facility involved shall develop and implement an interim procedure that meets the requirements of subparagraph (B).

(B) Requirements

A procedure developed under subparagraph (A) shall—

(i) ensure that a supervisory or senior staff person with training in restraint and seclusion who is competent to conduct a face-to-face assessment (as defined in regulations promulgated by the Secretary), will assess the mental and physical well-being of the child or youth being restrained or secluded and assure that the restraint or seclusion is being done in a safe manner;

(ii) ensure that the assessment required under clause (i) take place as soon as practicable, but in no case later than 1 hour after the initiation of the restraint or seclusion; and

(iii) ensure that the supervisory or senior staff person continues to monitor the situation for the duration of the restraint and seclusion.

(3) Limitations

(A) In general

The use of a drug or medication that is used as a restraint to control behavior or restrict the resident's freedom of movement that is not a standard treatment for the resident's medical or psychiatric condition in nonmedical community-based facilities for children and youth described in subsection (a)(1) of this section is prohibited.

(B) Prohibition

The use of mechanical restraints in nonmedical, community-based facilities for children and youth described in subsection (a)(1) of this section is prohibited.

(C) Limitation

A non-medical, community-based facility for children and youth described in subsection (a)(1) of this section may only use seclusion when a staff member is continuously face-to-face monitoring the resident and when strong licensing or accreditation and internal controls are in place.

(c) Rule of construction

(1) In general

Nothing in this section shall be construed as prohibiting the use of restraints for medical immobilization, adaptive support, or medical protection.

(2) Current law

This part shall not be construed to affect or impede any Federal or State law or regulations that provide greater protections than this part regarding seclusion and restraint.

(d) Definitions

In this section:

(1) Mechanical restraint

The term ''mechanical restraint'' means the use of devices as a means of restricting a resident's freedom of movement.

(2) Physical escort

The term ''physical escort'' means the temporary touching or holding of the hand, wrist,

[1] So in original. Probably should be followed by ''to''.

arm, shoulder or back for the purpose of inducing a resident who is acting out to walk to a safe location.

(3) Physical restraint

The term ''physical restraint'' means a personal restriction that immobilizes or reduces the ability of an individual to move his or her arms, legs, or head freely. Such term does not include a physical escort.

(4) Seclusion

The term ''seclusion'' means a behavior control technique involving locked isolation. Such term does not include a time out.

(5) Time out

The term ''time out'' means a behavior management technique that is part of an approved treatment program and may involve the separation of the resident from the group, in a non-locked setting, for the purpose of calming. Time out is not seclusion.

(July 1, 1944, ch. 373, title V, § 595, as added Pub. L. 106–310, div. B, title XXXII, § 3208, Oct. 17, 2000, 114 Stat. 1197.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 290jj–1. Reporting requirement

Each facility to which this part applies shall notify the appropriate State licensing or regulatory agency, as determined by the Secretary—

(1) of each death that occurs at each such facility. A notification under this section shall include the name of the resident and shall be provided not later than 24 hours after the time of the individuals[1] death; and

(2) of the use of seclusion or restraints in accordance with regulations promulgated by the Secretary, in consultation with the States.

(July 1, 1944, ch. 373, title V, § 595A, as added Pub. L. 106–310, div. B, title XXXII, § 3208, Oct. 17, 2000, 114 Stat. 1199.)

§ 290jj–2. Regulations and enforcement

(a) Training

Not later than 6 months after October 17, 2000, the Secretary, after consultation with appropriate State, local, public and private protection and advocacy organizations, health care professionals, social workers, facilities, and patients, shall promulgate regulations that—

(1) require States that license non-medical, community-based residential facilities for children and youth to develop licensing rules and monitoring requirements concerning behavior management practice that will ensure compliance with Federal regulations and to meet the requirements of subsection (b) of this section;

(2) require States to develop and implement such licensing rules and monitoring requirements within 1 year after the promulgation of the regulations referred to in the matter preceding paragraph (1); and

(3) support the development of national guidelines and standards on the quality, quantity, orientation and training, required under this part, as well as the certification or licensure of those staff responsible for the implementation of behavioral intervention concepts and techniques.

(b) Requirements

The regulations promulgated under subsection (a) of this section shall require—

(1) that facilities described in subsection (a) of this section ensure that there is an adequate number of qualified professional and supportive staff to evaluate residents, formulate written individualized, comprehensive treatment plans, and to provide active treatment measures;

(2) the provision of appropriate training and certification of the staff of such facilities in the prevention and use of physical restraint and seclusion, including the needs and behaviors of the population served, relationship building, alternatives to restraint, de-escalation methods, avoiding power struggles, thresholds for restraints, the physiological impact of restraint and seclusion, monitoring physical signs of distress and obtaining medical assistance, legal issues, position asphyxia, escape and evasion techniques, time limits for the use of restraint and seclusion, the process for obtaining approval for continued restraints and seclusion, procedures to address problematic restraints, documentation, processing with children, and follow-up with staff, and investigation of injuries and complaints; and

(3) that such facilities provide complete and accurate notification of deaths, as required under section 290jj–1(1) of this title.

(c) Enforcement

A State to which this part applies that fails to comply with any requirement of this part, including a failure to provide appropriate training and certification, shall not be eligible for participation in any program supported in whole or in part by funds appropriated under this chapter.

(July 1, 1944, ch. 373, title V, § 595B, as added Pub. L. 106–310, div. B, title XXXII, § 3208, Oct. 17, 2000, 114 Stat. 1199.)

PART J—SERVICES PROVIDED THROUGH RELIGIOUS ORGANIZATIONS

CODIFICATION

This part was, in the original, part G of title V of act July 1, 1944, and has been redesignated as part J for purposes of codification. Another part G of title V of act July 1, 1944, is classified to part G (§ 290hh et seq.) of this subchapter.

§ 290kk. Applicability to designated programs

(a) Designated programs

Subject to subsection (b) of this section, this part applies to discretionary and formula grant programs administered by the Substance Abuse and Mental Health Services Administration that

[1] So in original. Probably should be ''individual's''.

make awards of financial assistance to public or private entities for the purpose of carrying out activities to prevent or treat substance abuse (in this part referred to as a ''designated program''). Designated programs include the program under subpart II of part B of subchapter XVII of this chapter (relating to formula grants to the States).

(b) Limitation

This part does not apply to any award of financial assistance under a designated program for a purpose other than the purpose specified in subsection (a) of this section.

(c) Definitions

For purposes of this part (and subject to subsection (b) of this section):

(1) The term ''designated program'' has the meaning given such term in subsection (a) of this section.

(2) The term ''financial assistance'' means a grant, cooperative agreement, or contract.

(3) The term ''program beneficiary'' means an individual who receives program services.

(4) The term ''program participant'' means a public or private entity that has received financial assistance under a designated program.

(5) The term ''program services'' means treatment for substance abuse, or preventive services regarding such abuse, provided pursuant to an award of financial assistance under a designated program.

(6) The term ''religious organization'' means a nonprofit religious organization.

(July 1, 1944, ch. 373, title V, § 581, as added Pub. L. 106–554, § 1(a)(7) [title I, § 144], Dec. 21, 2000, 114 Stat. 2763, 2763A–619.)

CODIFICATION

Another section 581 of act July 1, 1944, is classified to section 290hh of this title.

§ 290kk–1. Religious organizations as program participants

(a) In general

Notwithstanding any other provision of law, a religious organization, on the same basis as any other nonprofit private provider—

(1) may receive financial assistance under a designated program; and

(2) may be a provider of services under a designated program.

(b) Religious organizations

The purpose of this section is to allow religious organizations to be program participants on the same basis as any other nonprofit private provider without impairing the religious character of such organizations, and without diminishing the religious freedom of program beneficiaries.

(c) Nondiscrimination against religious organizations

(1) Eligibility as program participants

Religious organizations are eligible to be program participants on the same basis as any other nonprofit private organization as long as the programs are implemented consistent with the Establishment Clause and Free Exercise Clause of the First Amendment to the United States Constitution. Nothing in this chapter shall be construed to restrict the ability of the Federal Government, or a State or local government receiving funds under such programs, to apply to religious organizations the same eligibility conditions in designated programs as are applied to any other nonprofit private organization.

(2) Nondiscrimination

Neither the Federal Government nor a State or local government receiving funds under designated programs shall discriminate against an organization that is or applies to be a program participant on the basis that the organization has a religious character.

(d) Religious character and freedom

(1) Religious organizations

Except as provided in this section, any religious organization that is a program participant shall retain its independence from Federal, State, and local government, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) Additional safeguards

Neither the Federal Government nor a State shall require a religious organization to—

(A) alter its form of internal governance; or

(B) remove religious art, icons, scripture, or other symbols,

in order to be a program participant.

(e) Employment practices

Nothing in this section shall be construed to modify or affect the provisions of any other Federal or State law or regulation that relates to discrimination in employment. A religious organization's exemption provided under section 2000e–1 of this title regarding employment practices shall not be affected by its participation in, or receipt of funds from, a designated program.

(f) Rights of program beneficiaries

(1) In general

If an individual who is a program beneficiary or a prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection such program participant shall refer such individual to, and the appropriate Federal, State, or local government that administers a designated program or is a program participant shall provide to such individual (if otherwise eligible for such services), program services that—

(A) are from an alternative provider that is accessible to, and has the capacity to provide such services to, such individual; and

(B) have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection.

Upon referring a program beneficiary to an alternative provider, the program participant

shall notify the appropriate Federal, State, or local government agency that administers the program of such referral.

(2) Notices

Program participants, public agencies that refer individuals to designated programs, and the appropriate Federal, State, or local governments that administer designated programs or are program participants shall ensure that notice is provided to program beneficiaries or prospective program beneficiaries of their rights under this section.

(3) Additional requirements

A program participant making a referral pursuant to paragraph (1) shall—

(A) prior to making such referral, consider any list that the State or local government makes available of entities in the geographic area that provide program services; and

(B) ensure that the individual makes contact with the alternative provider to which the individual is referred.

(4) Nondiscrimination

A religious organization that is a program participant shall not in providing program services or engaging in outreach activities under designated programs discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(g) Fiscal accountability

(1) In general

Except as provided in paragraph (2), any religious organization that is a program participant shall be subject to the same regulations as other recipients of awards of Federal financial assistance to account, in accordance with generally accepted auditing principles, for the use of the funds provided under such awards.

(2) Limited audit

With respect to the award involved, a religious organization that is a program participant shall segregate Federal amounts provided under award into a separate account from non-Federal funds. Only the award funds shall be subject to audit by the government.

(h) Compliance

With respect to compliance with this section by an agency, a religious organization may obtain judicial review of agency action in accordance with chapter 7 of title 5.

(July 1, 1944, ch. 373, title V, § 582, as added Pub. L. 106–554, § 1(a)(7) [title I, § 144], Dec. 21, 2000, 114 Stat. 2763, 2763A–620.)

CODIFICATION

Another section 582 of act July 1, 1944, is classified to section 290hh–1 of this title.

§ 290kk–2. Limitations on use of funds for certain purposes

No funds provided under a designated program shall be expended for sectarian worship, instruction, or proselytization.

(July 1, 1944, ch. 373, title V, § 583, as added Pub. L. 106–554, § 1(a)(7) [title I, § 144], Dec. 21, 2000, 114 Stat. 2763, 2763A–622.)

§ 290kk–3. Educational requirements for personnel in drug treatment programs

(a) Findings

The Congress finds that—

(1) establishing unduly rigid or uniform educational qualification for counselors and other personnel in drug treatment programs may undermine the effectiveness of such programs; and

(2) such educational requirements for counselors and other personnel may hinder or prevent the provision of needed drug treatment services.

(b) Nondiscrimination

In determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training includes basic content substantially equivalent to the content provided by nonreligious organizations that the State or local government would credit for purposes of determining whether the relevant requirements have been satisfied.

(July 1, 1944, ch. 373, title V, § 584, as added Pub. L. 106–554, § 1(a)(7) [title I, § 144], Dec. 21, 2000, 114 Stat. 2763, 2763A–622.)

SUBCHAPTER IV—CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND OTHER MEDICAL FACILITIES

§ 291. Congressional declaration of purpose

The purpose of this subchapter is—

(a) to assist the several States in the carrying out of their programs for the construction and modernization of such public or other nonprofit community hospitals and other medical facilities as may be necessary, in conjunction with existing facilities, to furnish adequate hospital, clinic, or similar services to all their people;

(b) to stimulate the development of new or improved types of physical facilities for medical, diagnostic, preventive, treatment, or rehabilitative services; and

(c) to promote research, experiments, and demonstrations relating to the effective development and utilization of hospital, clinic, or similar services, facilities, and resources, and to promote the coordination of such research, experiments, and demonstrations and the useful application of their results.

(July 1, 1944, ch. 373, title VI, § 600, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 447.)

PRIOR PROVISIONS

A prior section 291, act July 1, 1944, ch. 373, title VI, § 601, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 6, 63 Stat. 900; July 12, 1954, ch. 471, § 4(a), 68 Stat. 464, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

Provisions similar to those comprising this section were contained in former section 291*o*, act July 1, 1944,

ch. 373, title VI, § 641, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, prior to the general amendment of this subchapter by Pub. L. 88–443.

EFFECTIVE DATE

Section 3(b) of Pub. L. 88–443, as amended by Pub. L. 91–296, title I, § 120, June 30, 1970, 84 Stat. 343, provided that: ''The amendment made by subsection (a) [enacting this section and sections 291a to 291j, 291k to 291m, 291n, and 291*o* of this title] shall become effective upon the date of enactment of this Act [Aug. 18, 1964], except that—

''(1) all applications approved by the Surgeon General under title VI of the Public Health Service Act [this subchapter] prior to such date, and allotments of sums appropriated prior to such date, shall be governed by the provisions of such title VI in effect prior to such date;

''(2) allotment percentages promulgated by the Surgeon General under such title VI during 1962 shall continue to be effective for purposes of such title as amended by this Act for the fiscal year ending June 30, 1965;

''(3) the terms of members of the Federal Hospital Council who are serving on such Council prior to such date shall expire on the date they would have expired had this Act not been enacted;

''(4) the provisions of the fourth sentence of section 636(a) of the Public Health Service Act [former section 291n of this title], as in effect prior to the enactment of this Act, shall apply in lieu of the fourth sentence of section 624(a) of the Public Health Service Act [section 291n(a) of this title], as amended by this Act, in the case of any project for construction of a facility or for acquisition of equipment with respect to which a grant for any part thereof or for planning such construction or equipment was made prior to the enactment of this Act;

''(5) no application with respect to a project for modernization of any facility in any State may be approved by the Surgeon General, for purposes of receiving funds from an allotment under section 602(a)(2) of the Public Health Service Act, as amended by this Act [section 291b(a)(2) of this title], before July 1, 1965, or before such State has had a State plan approved by the Surgeon General as meeting the requirements of section 604(a)(4)(E) [section 291d(a)(4)(E) of this title] as well as the other requirements of section 604 of such Act as so amended [section 291d of this title];

''(6) the provisions of clause (b) of section 609 of the Public Health Service Act [section 291i of this title], as amended by this Act, shall apply with respect to any project whether it was approved, and whether the event specified in such clause occurred, before, on, or after the date of enactment of this Act [June 30, 1970], except that it shall not apply in the case of any project with respect to which recovery under title VI of such Act [this subchapter] has been made prior to the enactment of this paragraph.''

PART A—GRANTS AND LOANS FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND OTHER MEDICAL FACILITIES

§ 291a. Authorization of appropriations

In order to assist the States in carrying out the purposes of section 291 of this title, there are authorized to be appropriated—

(a) for the fiscal year ending June 30, 1974—

(1) $20,800,000 for grants for the construction of public or other nonprofit facilities for long-term care;

(2) $70,000,000 for grants for the construction of public or other nonprofit outpatient facilities;

(3) $15,000,000 for grants for the construction of public or other nonprofit rehabilitation facilities;

(b) for grants for the construction of public or other nonprofit hospitals and public health centers, $150,000,000 for the fiscal year ending June 30, 1965, $160,000,000 for the fiscal year ending June 30, 1966, $170,000,000 for the fiscal year ending June 30, 1967, $180,000,000 each for the next two fiscal years, $195,000,000 for the fiscal year ending June 30, 1970, $147,500,000 for the fiscal year ending June 30, 1971, $152,500,000 for the fiscal year ending June 30, 1972, $157,500,000 for the fiscal year ending June 30, 1973, and $41,400,000 for the fiscal year ending June 30, 1974; and

(c) for grants for modernization of the facilities referred to in paragraphs (a) and (b), $65,000,000 for the fiscal year ending June 30, 1971, $80,000,000 for the fiscal year ending June 30, 1972, $90,000,000 for the fiscal year ending June 30, 1973, and $50,000,000 for the fiscal year ending June 30, 1974.

(July 1, 1944, ch. 373, title VI, § 601, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 448; amended Pub. L. 90–574, title IV, § 402(a), Oct. 15, 1968, 82 Stat. 1011; Pub. L. 91–296, title I, §§ 101(a), 102(a), 116(a), June 30, 1970, 84 Stat. 337, 341; Pub. L. 93–45, title I, § 108(a), June 18, 1973, 87 Stat. 92.)

PRIOR PROVISIONS

A prior section 291a, act July 1, 1944, ch. 373, title VI, § 611, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, authorized appropriations for surveys and planning, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291d, act July 1, 1944, ch. 373, title VI, § 621, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 2(a), 63 Stat. 897; July 27, 1953, ch. 243, 67 Stat. 196; Aug. 2, 1956, ch. 871, title IV, § 401, 70 Stat. 929; Aug. 14, 1958, Pub. L. 85–664, § 1(a), 72 Stat. 616, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291p, act July 1, 1944, ch. 373, title VI, § 646, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291s, act July 1, 1944, ch. 373, title VI, § 651, as added July 12, 1954, ch. 471, § 3, 68 Stat. 462; amended Aug. 2, 1956, ch. 871, title IV, § 402, 70 Stat. 929; Aug. 14, 1958, Pub. L. 85–664, § 1(b), 72 Stat. 616; Oct. 5, 1961, Pub. L. 87–395, § 3(a), 75 Stat. 825, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–45, § 108(a)(1), substituted introductory text reading ''fiscal year ending June 30, 1974'' for ''fiscal year ending June 30, 1965, and each of the next eight fiscal years'' and in cl. (1) ''$20,800,000'' for ''$85,000,000''.

Subsec. (b). Pub. L. 93–45, § 108(a)(2), authorized appropriations of $41,400,000 for fiscal year ending June 30, 1974.

Subsec. (c). Pub. L. 93–45, § 108(a)(3), authorized appropriations of $50,000,000 for fiscal year ending June 30, 1974.

1970—Par. (a). Pub. L. 91–296, §§ 101(a)(1), (2), 116(a), substituted ''outpatient facilities'' for ''diagnostic or treatment centers'' in enumeration of facilities eligible for construction grants, extended through fiscal year ending June 30, 1973, authority to appropriate funds for construction grants, increased from $70,000,000 to $85,000,000 annual authority to make grants for public or other nonprofit facilities for long-term care, from $20,000,000 to $70,000,000 authority for public or other nonprofit outpatient facilities, and from $10,000,000 to

$15,000,000 authority for public or other nonprofit rehabilitation facilities.

Par. (b). Pub. L. 91–296, §§101(a)(3), 102(a)(1), struck out provisions authorizing grants for modernization of facilities and inserted provisions authorizing appropriation of $147,500,000 for fiscal year ending June 30, 1971, $152,500,000 for fiscal year ending June 30, 1972, and $157,500,000 for fiscal year ending June 30, 1973, for grants for construction of public or other nonprofit hospitals and public health centers

Par. (c). Pub. L. 91–296, §102(a)(2), added par. (c).

1968—Par. (a). Pub. L. 90–574, §402(a)(1), substituted ''next five'' for ''next four''.

Par. (b). Pub. L. 90–574, §402(a)(2), authorized appropriation of $195,000,000 for fiscal year ending June 30, 1970.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 101(b) of Pub. L. 91–296 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect with respect to appropriations made under such section 601 [this section] for fiscal years beginning after June 30, 1970.''

Section 102(a) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to appropriations made under this section for fiscal years beginning after June 30, 1970.

§ 291b. State allotments

(a) Computation for individual States; formulas for both new construction and modernization

(1) Each State shall be entitled for each fiscal year to an allotment bearing the same ratio to the sums appropriated for such year pursuant to subparagraphs (1), (2), and (3), respectively, of section 291a(a) of this title, and to an allotment bearing the same ratio to the sums appropriated for such year pursuant to section 291a(b) of this title, as the product of—

(A) the population of such State, and

(B) the square of its allotment percentage,

bears to the sum of the corresponding products for all of the States.

(2) For each fiscal year, the Secretary shall, in accordance with regulations, make allotments among the States, from the sums appropriated for such year under section 291a(c) of this title, on the basis of the population, the financial need, and the extent of the need for modernization of the facilities referred to in paragraphs (a) and (b) of section 291a of this title, of the respective States.

(b) Minimum allotments

(1) The allotment to any State under subsection (a) of this section for any fiscal year which is less than—

(A) $50,000 for the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam and $100,000 for any other State, in the case of an allotment for grants for the construction of public or other nonprofit rehabilitation facilities,

(B) $100,000 for the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam and $200,000 for any other State in the case of an allotment for grants for the construction of public or other nonprofit outpatient facilities,

(C) $200,000 for the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam and $300,000 for any other State in the case of an allotment for grants for the construction of public or other nonprofit facilities for long-term care or for the construction of public or other nonprofit hospitals and public health centers, or for the modernization of facilities referred to in paragraph (a) or (b) of section 291a of this title, or

(D) $200,000 for the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam and $300,000 for any other State in the case of an allotment for grants for the modernization of facilities referred to in paragraphs (a) and (b) of section 291a of this title,

shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotment from appropriations under such subparagraph or paragraph to each of the remaining States under subsection (a) of this section, but with such adjustments as may be necessary to prevent the allotment of any of such remaining States from appropriations under such subparagraph or paragraph from being thereby reduced to less than that amount.

(2) An allotment of the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam for any fiscal year may be increased as provided in paragraph (1) only to the extent it satisfies the Surgeon General, at such time prior to the beginning of such year as the Surgeon General may designate, that such increase will be used for payments under and in accordance with the provisions of this part.

(c) Allotment percentages; definitions; determination

For the purposes of this part—

(1) The ''allotment percentage'' for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that (A) the allotment percentage shall in no case be more than 75 per centum or less than 33⅓ per centum, and (B) the allotment percentage for the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands shall be 75 per centum.

(2) The allotment percentages shall be determined by the Surgeon General between July 1 and September 30 of each even-numbered year, on the basis of the average of the per capita incomes of each of the States and of the United States for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce, and the States shall be notified promptly thereof. Such determination shall be conclusive for each of the two fiscal years in the period beginning July 1 next succeeding such determination.

(3) The population of the several States shall be determined on the basis of the latest figures certified by the Department of Commerce.

(4) The term ''United States'' means (but only for purposes of paragraphs (1) and (2)) the fifty States and the District of Columbia.

(d) Availability of allotments in subsequent years

(1) Any sum allotted to a State, other than the Virgin Islands, American Samoa, the Trust Ter-

ritory of the Pacific Islands, and Guam for a fiscal year under this section and remaining unobligated at the end of such year shall remain available to such State, for the purpose for which made, for the next two fiscal years (and for such years only), in addition to the sums allotted to such State for such purposes for such next two fiscal years.

(2) Any sum allotted to the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam for a fiscal year under this section and remaining unobligated at the end of such year shall remain available to it, for the purpose for which made, for the next two fiscal years (and for such years only), in addition to the sums allotted to it for such purpose for each of such next two fiscal years.

(e) Transfer of allotments

(1) Upon the request of any State that a specified portion of any allotment of such State under subsection (a) of this section for any fiscal year be added to any other allotment or allotments of such State under such subsection for such year, the Secretary shall promptly (but after application of subsection (b) of this section) adjust the allotments of such State in accordance with such request and shall notify the State agency; except that the aggregate of the portions so transferred from an allotment for a fiscal year pursuant to this paragraph may not exceed the amount specified with respect to such allotment in clause (A), (B), (C), or (D), as the case may be, of subsection (b)(1) of this section which is applicable to such State.

(2) In addition to the transfer of portions of allotments under paragraph (1), upon the request of any State that a specified portion of any allotment of such State under subsection (a) of this section, other than an allotment for grants for the construction of public or other nonprofit rehabilitation facilities, be added to another allotment of such State under such subsection, other than an allotment for grants for the construction of public or other nonprofit hospitals and public health centers, and upon simultaneous certification to the Secretary by the State agency in such State to the effect that—

(A) it has afforded a reasonable opportunity to make applications for the portion so specified and there have been no approvable applications for such portion, or

(B) in the case of a request to transfer a portion of an allotment for grants for the construction of public or other nonprofit hospitals and public health centers, use of such portion as requested by such State agency will better carry out the purposes of this subchapter,

the Secretary shall promptly (but after application of subsection (b) of this section) adjust the allotments of such State in accordance with such request and shall notify the State agency.

(3) In addition to the transfer of portions of allotments under paragraph (1) or (2), upon the request of any State that a specified portion of an allotment of such State under paragraph (2) of subsection (a) of this section be added to an allotment of such State under paragraph (1) of such subsection for grants for the construction of public or other nonprofit hospitals and public health centers, and upon simultaneous certification by the State agency in such State to the effect that the need for new public or other nonprofit hospitals and public health centers is substantially greater than the need for modernization of facilities referred to in paragraph (a) or (b) of section 291a of this title, the Secretary shall promptly (but after application of subsection (b) of this section) adjust the allotments of such State in accordance with such request and shall notify the State agency.

(4) After adjustment of allotments of any State, as provided in paragraph (1), (2), or (3) of this subsection, the allotments as so adjusted shall be deemed to be the State's allotments under this section.

(f) Request by State to transfer portion of allotment

In accordance with regulations, any State may file with the Surgeon General a request that a specified portion of an allotment to it under this part for grants for construction of any type of facility, or for modernization of facilities, be added to the corresponding allotment of another State for the purpose of meeting a portion of the Federal share of the cost of a project for the construction of a facility of that type in such other State, or for modernization of a facility in such other State, as the case may be. If it is found by the Surgeon General (or, in the case of a rehabilitation facility, by the Surgeon General and the Secretary) that construction or modernization of the facility with respect to which the request is made would meet needs of the State making the request and that use of the specified portion of such State's allotment, as requested by it, would assist in carrying out the purposes of this subchapter, such portion of such State's allotment shall be added to the corresponding allotment of the other State, to be used for the purpose referred to above.

(July 1, 1944, ch. 373, title VI, § 602, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 448; amended Pub. L. 90–574, title IV, § 402(b), Oct. 15, 1968, 82 Stat. 1011; Pub. L. 91–296, title I, §§ 103(a), (b), 104, 116(a), 119(a)–(c), 122, June 30, 1970, 84 Stat. 338, 341, 343, 344.)

PRIOR PROVISIONS

A prior section 291b, act July 1, 1944, ch. 373, title VI, § 612, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, related to a State application for funds, its requirements and its approval, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291c, act July 1, 1944, ch. 373, title VI, § 624, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1941, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291g, act July 1, 1944, ch. 373, title VI, § 624, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 29, 1948, ch. 728, § 1, 62 Stat. 1103; Oct. 25, 1949, ch. 722, §§ 3(b), 7, 63 Stat. 899, 901; Aug. 1, 1956, ch. 852, § 19(c), 70 Stat. 911; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(3), 76 Stat. 587, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291i(a) to (d), act July 1, 1944, ch. 373, title VI, § 631, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 19, 1948, ch. 544, 62 Stat. 531; Aug. 1, 1956, ch. 852, § 19(a), (b), 70 Stat. 911; June 25, 1959, Pub. L. 86–70, § 31(c), 73 Stat. 149; July 12, 1960, Pub. L. 86–624,

§ 29(d), 74 Stat. 419; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(2), 76 Stat. 587, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291n–1, act July 1, 1944, ch. 373, title VI, § 637, formerly § 654(c), as added July 12, 1954, ch. 471, § 3, 68 Stat. 463, renumbered and amended Aug. 14, 1959, Pub. L. 86–158, title II, § 201, 73 Stat. 349, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291r, act July 1, 1944, ch. 373, title VI, § 648, as added July 12, 1954, ch. 471, § 2, 68 Stat. 462, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291t, act July 1, 1944, ch. 373, title VI, § 652, as added July 12, 1954, ch. 471, § 3, 68 Stat. 462; amended Aug. 1, 1956, ch. 852, § 19(c), 70 Stat. 911; Oct. 5, 1961, Pub. L. 87–395, § 3(b), 75 Stat. 825; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(3), 76 Stat. 587, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291v(b), act July 1, 1944, ch. 373, title VI, § 654, as added July 12, 1954, ch. 471, § 3, 68 Stat. 463, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (a)(1). Pub. L. 91–296, § 103(a), substituted ''sums appropriated for such year'' for ''new hospital portion of the sums appropriated for such year'' and struck out provision setting out a formula for determining new hospital portion of sums appropriated pursuant to section 291a(b) of this title.

Subsec. (a)(2). Pub. L. 91–296, § 103(a), substituted ''Secretary'' for ''Surgeon General'', and substituted reference to sums appropriated for such year under section 291a(c) of this title for reference to remainder of sums appropriated pursuant to section 291a(b) of this title (which portion was to be available for grants for modernization of facilities referred to in paragraphs (a) and (b) of section 291a of this title).

Subsec. (b)(1)(A). Pub. L. 91–296, §§ 103(b)(1), 119(a)(1), substituted ''$50,000'' and ''$100,000'' for ''$25,000'' and ''$50,000'', respectively, and inserted reference to Trust Territory of the Pacific Islands.

Subsec. (b)(1)(B). Pub. L. 91–296, §§ 103(b)(2), 116(a), 119(a)(1), substituted ''$100,000'' and ''$200,000'' for ''$50,000'' and ''$100,000'', respectively, substituted ''outpatient facilities'' for ''diagnostic or treatment centers'', and inserted reference to Trust Territory of the Pacific Islands.

Subsec. (b)(1)(C). Pub. L. 91–296, §§ 103(b)(3), 119(a)(1), substituted ''$200,000'' and ''$300,000'' for ''$100,000'' and ''$200,000'', respectively, and inserted reference to Trust Territory of the Pacific Islands.

Subsec. (b)(1)(D). Pub. L. 91–296, § 103(b)(4), added subpar. (D).

Subsecs. (b)(2), (c)(1). Pub. L. 91–296, § 119(a)(2), (b), inserted reference to Trust Territory of the Pacific Islands.

Subsec. (d)(1). Pub. L. 91–296, §§ 119(c), 122, inserted reference to Trust Territory of the Pacific Islands and substituted two years for one year as the time span following a year in which allotted sums remaining unobligated at the end thereof during which such unobligated funds remain available.

Subsec. (d)(2). Pub. L. 91–296, § 119(c), inserted references to Trust Territory of the Pacific Islands.

Subsec. (e). Pub. L. 91–296, § 104, authorized any State to make transfers of any amount up to the minimum amount allotted to any state for a particular category and authorized all amounts above such minimums to be transferred from one category of assistance to another without restriction on the amounts with the exception that no funds could be transferred from rehabilitation facilities category or to new hospital construction category and that all transfers be justified on the basis that either there are no approvable applications in the category from which funds are transferred or, in case of transfers from new hospital construction category, the purposes of the program would be better served by the transfer, and authorized transfers to new hospital construction from modernization category if need is greater.

1968—Subsec. (a)(1). Pub. L. 90–574, § 402(b)(1), inserted provision for two-thirds of the sums appropriated in the case of the fifth fiscal year thereafter.

Subsec. (e)(2)(E). Pub. L. 90–574, § 402(b)(2), added subpar. (E).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 103(a) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to appropriations made pursuant to section 291a of this title for fiscal years beginning after June 30, 1970.

Section 103(b) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to allotments from appropriations made pursuant to section 291a of this title for fiscal years beginning after June 30, 1970.

Section 104 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to allotments made pursuant to section 291a of this title for fiscal years beginning after June 30, 1970.

Section 119(e) of Pub. L. 91–296 provided that: ''The amendments made by this section [amending this section and section 291*o* of this title] shall apply with respect to allotments (and grants therefrom) under part A of title VI of the Public Health Service Act [this part] for fiscal years ending after June 30, 1970, and with respect to loan guarantees and loans under part B of such title [part B of this subchapter] made after June 30, 1970.''

Section 122 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to allotments made from appropriations under section 291a of this title for fiscal years beginning after June 30, 1970.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

AVAILABILITY OF FUNDS FOR OBLIGATION FROM ALLOTMENT FOR ADMINISTRATION OF PLAN

Pub. L. 93–641, § 5(b), Jan. 4, 1975, 88 Stat. 2274, provided that any State having in the fiscal year ending June 30, 1975 or the next fiscal year funds available for obligation from its allotments under section 291a et seq. of this title, may in such fiscal year use for the proper and efficient administration during such year of its State plan an amount of such funds not exceeding 4 percentum of such funds or $100,000, whichever is less.

ALLOTMENT STUDY; REPORT TO CONGRESS

Section 103(c) of Pub. L. 91–296 directed Secretary to study effects of the formula specified in subsec. (a)(1) of this section for allotment among the States for construction of health facilities, with results of such study

together with recommendations for change to be reported to Congress on May 15, 1972.

APPROVAL OF APPLICATION FOR MODERNIZATION PRIOR TO JULY 1, 1965, OR BEFORE APPROVAL OF A STATE PLAN

Section 3(b)(5) of Pub. L. 88–443, providing that no application for modernization of any facility may be approved for purposes of receiving funds before the approval of a State plan, as well as other requirements, is set out as an Effective Date note under section 291 of this title.

§ 291c. General regulations

The Surgeon General, with the approval of the Federal Hospital Council and the Secretary of Health and Human Services shall by general regulations prescribe—

(a) Priority of projects; determination

the general manner in which the State agency shall determine the priority of projects based on the relative need of different areas lacking adequate facilities of various types for which assistance is available under this part, giving special consideration—

(1) in the case of projects for the construction of hospitals, to facilities serving areas with relatively small financial resources and, at the option of the State, rural communities;

(2) in the case of projects for the construction of rehabilitation facilities, to facilities operated in connection with a university teaching hospital which will provide an integrated program of medical, psychological, social, and vocational evaluation and services under competent supervision;

(3) in the case of projects for modernization of facilities, to facilities serving densely populated areas;

(4) in the case of projects for construction or modernization of outpatient facilities, to any outpatient facility that will be located in, and provide services for residents of, an area determined by the Secretary to be a rural or urban poverty area;

(5) to projects for facilities which, alone or in conjunction with other facilities, will provide comprehensive health care, including outpatient and preventive care as well as hospitalization;

(6) to facilities which will provide training in health or allied health professions; and

(7) to facilities which will provide to a significant extent, for the treatment of alcoholism;

(b) Standards of construction and equipment

general standards of construction and equipment for facilities of different classes and in different types of location, for which assistance is available under this part;

(c) Criteria for determining needs for beds, hospitals and other facilities; plans for distribution of beds and facilities

criteria for determining needs for general hospital and long-term care beds, and needs for hospitals and other facilities for which aid under this part is available, and for developing plans for the distribution of such beds and facilities;

(d) Criteria for determining need for modernization

criteria for determining the extent to which existing facilities, for which aid under this part is available, are in need of modernization; and

(e) State plan requirements; assurances necessary for approval of application

that the State plan shall provide for adequate hospitals, and other facilities for which aid under this part is available, for all persons residing in the State, and adequate hospitals (and such other facilities) to furnish needed services for persons unable to pay therefor. Such regulations may also require that before approval of an application for a project is recommended by a State agency to the Surgeon General for approval under this part, assurance shall be received by the State from the applicant that (1) the facility or portion thereof to be constructed or modernized will be made available to all persons residing in the territorial area of the applicant; and (2) there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint.

(July 1, 1944, ch. 373, title VI, § 603, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 451; amended Pub. L. 88–581, § 3(b), Sept. 4, 1964, 78 Stat. 919; Pub. L. 91–296, title I, § 110, June 30, 1970, 84 Stat. 339; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

PRIOR PROVISIONS

A prior section 291c, act July 1, 1944, ch. 373, title VI, § 613, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, related to allotments to States, the determination of their amount, and the disposition of unexpended funds, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291(a), (b) and (d) of this title.

Provisions similar to those comprising this section were contained in a prior section 291e, act July 1, 1944, ch. 373, title VI, § 622, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–296 struck out from cl. (1) provisions requiring that States give special consideration for projects for hospitals serving rural areas but inserted provisions making such preference optional with each State and added cls. (4) to (7).

1964—Subsec. (a)(4). Pub. L. 88–581 struck out cl. (4) relating to hospital facilities which ''will include new or expanded facilities for nurse training''.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 110 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to applications approved under this subchapter after June 30, 1970.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 3(b) of Pub. L. 88–581 provided that the amendments made by such section 3(b) [amending this section and sections 291*o* and 293c of this title] are effective with respect to applications for grants from appropriations for fiscal years beginning after June 30, 1965.

TRANSFER OF FUNCTIONS

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 291d. State plans

(a) Submission; requirements

Any State desiring to participate in this part may submit a State plan. Such plan must—

(1) designate a single State agency as the sole agency for the administration of the plan, or designate such agency as the sole agency for supervising the administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) of this subsection will have authority to carry out such plan in conformity with this part;

(3) provide for the designation of a State advisory council which shall include (A) representatives of nongovernmental organizations or groups, and of public agencies, concerned with the operation, construction, or utilization of hospital or other facilities for diagnosis, prevention, or treatment of illness or disease, or for provision of rehabilitation services, and representatives particularly concerned with education or training of health professions personnel, and (B) an equal number of representatives of consumers familiar with the need for the services provided by such facilities, to consult with the State agency in carrying out the plan, and provide, if such council does not include any representatives of nongovernmental organizations or groups, or State agencies, concerned with rehabilitation, for consultation with organizations, groups, and State agencies so concerned;

(4) set forth, in accordance with criteria established in regulations prescribed under section 291c of this title and on the basis of a statewide inventory of existing facilities, a survey of need, and (except to the extent provided by or pursuant to such regulations) community, area, or regional plans—

(A) the number of general hospital beds and long-term care beds, and the number and types of hospital facilities and facilities for long-term care, needed to provide adequate facilities for inpatient care of people residing in the State, and a plan for the distribution of such beds and facilities in service areas throughout the State;

(B) the public health centers needed to provide adequate public health services for people residing in the State, and a plan for the distribution of such centers throughout the State;

(C) the outpatient facilities needed to provide adequate diagnostic or treatment services to ambulatory patients residing in the State, and a plan for distribution of such facilities throughout the State;

(D) the rehabilitation facilities needed to assure adequate rehabilitation services for disabled persons residing in the State, and a plan for distribution of such facilities throughout the State; and

(E) effective January 1, 1966, the extent to which existing facilities referred to in section 291a(a) or (b) of this title in the State are in need of modernization;

(5) set forth a construction and modernization program conforming to the provisions set forth pursuant to paragraph (4) of this subsection and regulations prescribed under section 291c of this title and providing for construction or modernization of the hospital or long-term care facilities, public health centers, outpatient facilities, and rehabilitation facilities which are needed, as determined under the provisions so set forth pursuant to paragraph (4) of this subsection;

(6) set forth, with respect to each of such types of medical facilities, the relative need, determined in accordance with regulations prescribed under section 291c of this title, for projects for facilities of that type, and provide for the construction or modernization, insofar as financial resources available therefor and for maintenance and operation make possible, in the order of such relative need;

(7) provide minimum standards (to be fixed in the discretion of the State) for the maintenance and operation of facilities providing inpatient care which receive aid under this part and, effective July 1, 1966, provide for enforcement of such standards with respect to projects approved by the Surgeon General under this part after June 30, 1964;

(8) provide such methods of administration of the State plan, including methods relating to the establishment and maintenance of personnel standards on a merit basis (except that the Surgeon General shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods), as are found by the Surgeon General to be necessary for the proper and efficient operation of the plan;

(9) provide for affording to every applicant for a construction or modernization project an opportunity for a hearing before the State agency;

(10) provide that the State agency will make such reports, in such form and containing such information, as the Surgeon General may from time to time reasonably require, and will keep such records and afford such access thereto as the Surgeon General may find necessary to assure the correctness and verification of such reports;

(11) provide that the Comptroller General of the United States or his duly authorized representatives shall have access for the purpose of audit and examination to the records specified in paragraph (10) of this subsection;

(12) provide that the State agency will from time to time, but not less often than annually, review its State plan and submit to the Surgeon General any modifications thereof which it considers necessary; and

(13) Effective July 1, 1971, provide that before any project for construction or modernization of any general hospital is approved by the State agency there will be reasonable assurance of adequate provision for extended care services (as determined in accordance with regulations) to patients of such hospital when such services are medically appropriate for them, with such services being provided in facilities which (A) are structurally part of, physically connected with, or in immediate proximity to, such hospital, and (B) either (i) are under the supervision of the professional staff of such hospital or (ii) have organized medical staffs and have in effect transfer agreements with such hospital; except that the Secretary may, at the request of the State agency, waive compliance with clause (A) or (B), or both such clauses, as the case may be, in the case of any project if the State agency has determined that compliance with such clause or clauses in such case would be inadvisable.

(b) Approval by Surgeon General; hearing after disapproval

The Surgeon General shall approve any State plan and any modification thereof which complies with the provisions of subsection (a) of this section. If any such plan or modification thereof shall have been disapproved by the Surgeon General for failure to comply with subsection (a) of this section, the Federal Hospital Council shall, upon request of the State agency, afford it an opportunity for hearing. If such Council determines that the plan or modification complies with the provisions of such subsection, the Surgeon General shall thereupon approve such plan or modification.

(July 1, 1944, ch. 373, title VI, § 604, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 452; amended Pub. L. 91–296, title I, §§ 115, 116(b), (c), 123, June 30, 1970, 84 Stat. 341, 342, 344.)

PRIOR PROVISIONS

A prior section 291d, act July 1, 1944, ch. 373, title VI, § 621, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 2(a), 63 Stat. 898; July 27, 1953, ch. 243, 67 Stat. 196; Aug. 2, 1956, ch. 871, title IV, § 401, 70 Stat. 929; Aug. 14, 1958, Pub. L. 85–664, § 1(a), 72 Stat. 616, authorized appropriations for construction of hospitals and related facilities, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291a of this title.

Provisions similar to those comprising this section were contained in a prior section 291f(a), (b), act July 1, 1944, ch. 373, title VI, § 623, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (a)(3). Pub. L. 91–296, § 115, inserted requirement that State advisory councils include representatives particularly concerned with education or training of health professions personnel.

Subsec. (a)(4)(C). Pub. L. 91–296, § 116(b), substituted ''outpatient facilities'' for ''diagnostic or treatment centers'' and ''such facilities'' for ''such centers''.

Subsec. (a)(5). Pub. L. 91–296, § 116(c), substituted ''outpatient facilities'' for ''diagnostic or treatment centers''.

Subsec. (a)(13). Pub. L. 91–296, § 123, added par. (13).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 115 of Pub. L. 91–296 provided that the amendment made by that section is effective July 1, 1970.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Health and Human Services under subsec. (a)(8) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(C) of this title.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

FUNDS FOR MODERNIZATION PROJECTS; CONDITIONS TO BE MET BEFORE APPROVAL

Section 3(b)(5) of Pub. L. 88–443 provided that no application with respect to a modernization project may be approved for purposes of receiving funds from an allotment under section 291(a)(2) of this title before July 1, 1965, or before a State plan has been approved, as well as certain other requirements. See Effective Date note under section 291 of this title.

§ 291e. Projects for construction or modernization

(a) Application; contents

For each project pursuant to a State plan approved under this part, there shall be submitted to the Surgeon General, through the State agency, an application by the State or a political subdivision thereof or by a public or other nonprofit agency. If two or more such agencies join in the project, the application may be filed by one or more of such agencies. Such application shall set forth—

(1) a description of the site for such project;

(2) plans and specifications therefor, in accordance with regulations prescribed under section 291c of this title;

(3) reasonable assurance that title to such site is or will be vested in one or more of the agencies filing the application or in a public or other nonprofit agency which is to operate the facility on completion of the project;

(4) reasonable assurance that adequate financial support will be available for the completion of the project and for its maintenance and operation when completed;

(5) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of construction or modernization on the project will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40; and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 3145 of title 40; and

(6) a certification by the State agency of the Federal share for the project.

(b) Approval by Surgeon General; requisites; additional approval by Secretary of Health and Human Services

The Surgeon General shall approve such application if sufficient funds to pay the Federal

share of the cost of such project are available from the appropriate allotment to the State, and if the Surgeon General finds (1) that the application contains such reasonable assurance as to title, financial support, and payment of prevailing rates of wages; (2) that the plans and specifications are in accord with the regulations prescribed pursuant to section 291c of this title; (3) that the application is in conformity with the State plan approved under section 291d of this title and contains an assurance that in the operation of the project there will be compliance with the applicable requirements of the regulations prescribed under section 291c(e) of this title, and with State standards for operation and maintenance; and (4) that the application has been approved and recommended by the State agency, opportunity has been provided, prior to such approval and recommendation, for consideration of the project by the public or nonprofit private agency or organization which has developed the comprehensive regional, metropolitan area, or other local area plan or plans referred to in section 246(b) of this title covering the area in which such project is to be located or, if there is no such agency or organization, by the State agency administering or supervising the administration of the State plan approved under section 246(a) of this title, and the application is for a project which is entitled to priority over other projects within the State in accordance with the regulations prescribed pursuant to section 291c(a) of this title. Notwithstanding the preceding sentence, the Surgeon General may approve such an application for a project for construction or modernization of a rehabilitation facility only if it is also approved by the Secretary of Health and Human Services.

(c) Opportunity for hearing required prior to disapproval

No application shall be disapproved until the Surgeon General has afforded the State agency an opportunity for a hearing.

(d) Amendments subject to same approval as original applications

Amendment of any approved application shall be subject to approval in the same manner as an original application.

(e) Outpatient facilities; requirements of applicants

Notwithstanding any other provision of this subchapter, no application for an outpatient facility shall be approved under this section unless the applicant is (1) a State, political subdivision, or public agency, or (2) a corporation or association which owns and operates a nonprofit hospital (as defined in section 291*o* of this title) or which provides reasonable assurance that the services of a general hospital will be available to patients of such facility who are in need of hospital care.

(July 1, 1944, ch. 373, title VI, § 605, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 453; amended Pub. L. 91–296, title I, §§ 111(a), 116(e), June 30, 1970, 84 Stat. 340, 342; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (a)(5), is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (a) (5), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 291e, act July 1944, ch. 373, title VI, § 622, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, authorized Surgeon General to prescribe general regulations, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291c of this title.

A prior section 291h(a), (c), act July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 8, 63 Stat. 901, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291v(d), act July 1, 1944, ch. 373, title VI, § 654, as added July 12, 1954, ch. 471, § 3, 68 Stat. 463, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (b)(4). Pub. L. 91–296, § 111(a), inserted provisions requiring that the appropriate area wide health planning agency be given an opportunity to consider the project for which an application is made before approval is given.

Subsec. (e). Pub. L. 91–296, § 116(e), substituted ''an outpatient facility'' for ''a diagnostic or treatment center'' and inserted provisions extending coverage to include corporations and associations which, although not owning or operating hospitals offer services of a general hospital to patients in need of hospital care.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 111(a) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to applications approved under this subchapter after June 30, 1970.

Amendment by section 116(e) of Pub. L. 91–296 applicable with respect to applications approved under this subchapter after June 30, 1970, see section 116(g) of Pub. L. 91–296, set out as a note under section 291*o* of this title.

TRANSFER OF FUNCTIONS

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (b) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

APPLICATIONS APPROVED PRIOR TO AUG. 18, 1964

Section 3(b)(1) of Pub. L. 88–443, providing that applications approved, and allotments appropriated prior to

Aug. 18, 1964, shall be governed by this subchapter as in effect prior to such date, is set out as an Effective Date note under section 291 of this title.

FUNDS FOR MODERNIZATION PROJECTS; CONDITIONS TO BE MET BEFORE APPROVAL

Section 3(b)(5) of Pub. L. 88–443 provided that no application with respect to a modernization project may be approved for purposes of receiving funds from an allotment under section 291(a)(2) of this title before July 1, 1965, or before a State plan has been approved, as well as certain other requirements. See Effective Date note set out under section 291 of this title.

§ 291f. Payments for construction or modernization

(a) Certification of work by Surgeon General; conditions affecting payments

Upon certification to the Surgeon General by the State agency, based upon inspection by it, that work has been performed upon a project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment is due to the applicant, such installment shall be paid to the State, from the applicable allotment of such State, except that (1) if the State is not authorized by law to make payments to the applicant, or if the State so requests, the payment shall be made directly to the applicant, (2) if the Surgeon General, after investigation or otherwise, has reason to believe that any act (or failure to act) has occurred requiring action pursuant to section 291g of this title, payment may, after he has given the State agency notice of opportunity for hearing pursuant to such section, be withheld, in whole or in part, pending corrective action or action based on such hearing, and (3) the total of payments under this subsection with respect to such project may not exceed an amount equal to the Federal share of the cost of construction of such project.

(b) Additional payments in cases of amended applications

In case an amendment to an approved application is approved as provided in section 291e of this title or the estimated cost of a project is revised upward, any additional payment with respect thereto may be made from the applicable allotment of the State for the fiscal year in which such amendment or revision is approved.

(c) Administration expenses; use of portion of allotments to defray; manner of payment

(1) At the request of any State, a portion of any allotment or allotments of such State under this part shall be available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Surgeon General for the proper and efficient administration during such year of the State plan approved under this part; except that not more than 4 per centum of the total of the allotments of such State for a year, or $100,000, whichever is less, shall be available for such purpose for such year. Payments of amounts due under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Surgeon General may determine.

(2) Any amount paid under paragraph (1) of this subsection to any State for any fiscal year shall be paid on condition that there shall be expended from State sources for such year for administration of the State plan approved under this part not less than the total amount expended for such purposes from such sources during the fiscal year ending June 30, 1970.

(July 1, 1944, ch. 373, title VI, § 606, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 454; amended Pub. L. 91–296, title I, § 112, June 30, 1970, 84 Stat. 340.)

PRIOR PROVISIONS

A prior section 291f, act July 1, 1944, ch. 373, title VI, § 623, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 19, 1948, ch. 554, 62 Stat. 536; Oct. 25, 1949, ch. 722, § 3(a), 63 Stat. 899, related to State plans, their submission, and their requirements, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291d of this title.

Provisions similar to those comprising subsec. (a) of this section were contained in former section 291h(b), acts July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 3(b), 63 Stat. 899, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (c)(1). Pub. L. 91–296, § 112(1), substituted ''4 per centum'' for ''2 per centum'' and ''$100,000 for $50,000''.

Subsec. (c)(2). Pub. L. 91–296, § 112(2), substituted ''June 30, 1970'' for ''June 30, 1964''.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 112 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to expenditures under a State plan approved under this subchapter which are made for administration of such plan during any fiscal year beginning after June 30, 1970.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 291g. Withholding of payments; noncompliance with requirements

Whenever the Surgeon General, after reasonable notice and opportunity for hearing to the State agency designated as provided in section 291d(a)(1) of this title, finds—

(a) that the State agency is not complying substantially with the provisions required by section 291d of this title to be included in its State plan; or

(b) that any assurance required to be given in an application filed under section 291e of this title is not being or cannot be carried out; or

(c) that there is a substantial failure to carry out plans and specifications approved by the Surgeon General under section 291e of this title; or

(d) that adequate State funds are not being provided annually for the direct administration of the State plan,

the Surgeon General may forthwith notify the State agency that—

(e) no further payments will be made to the State under this part, or

(f) no further payments will be made from the allotments of such State from appropriations under any one or more subparagraphs or paragraphs of section 291a of this title, or for any project or projects, designated by the Surgeon General as being affected by the action or inaction referred to in paragraph (a), (b), (c), or (d) of this section,

as the Surgeon General may determine to be appropriate under the circumstances; and, except with regard to any project for which the application has already been approved and which is not directly affected, further payments may be withheld, in whole or in part, until there is no longer any failure to comply (or carry out the assurance or plans and specifications or provide adequate State funds, as the case may be) or, if such compliance (or other action) is impossible, until the State repays or arranges for the repayment of Federal moneys to which the recipient was not entitled.

(July 1, 1944, ch. 373, title VI, § 607, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 455.)

PRIOR PROVISIONS

A prior section 291g, act July 1, 1944, ch. 373, title VI, § 624, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 29, 1948, ch. 728, § 1, 62 Stat. 1103; Oct. 25, 1949, ch. 722, §§ 3(b), 7, 63 Stat. 899, 901; Aug. 1, 1956, ch. 852, § 19(c), 70 Stat. 911; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(3), 76 Stat. 587, authorized allotments to States for construction, specified their amount, and provided for availability for unexpended funds, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291b of this title.

Provisions similar to those comprising this section were contained in former section 291j(a), acts July 1, 1944, ch. 373, title VI, § 632, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 4, 63 Stat. 900; July 12, 1954, ch. 471, § 4(g), 68 Stat. 466, prior to the general amendment of this subchapter by Pub. L. 88–443.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 291h. Judicial review

(a) Refusal to approve application; procedure; jurisdiction of court of appeals

If the Surgeon General refuses to approve any application for a project submitted under section 291e of this title or section 291j of this title, the State agency through which such application was submitted, or if any State is dissatisfied with his action under section 291g of this title such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose. The Surgeon General shall thereupon file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Surgeon General or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Surgeon General may modify or set aside his order.

(b) Conclusiveness of Surgeon General's findings; remand; new or modified findings

The findings of the Surgeon General as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Review by Supreme Court; stay of Surgeon General's action

The judgment of the court affirming or setting aside, in whole or in part, any action of the Surgeon General shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Surgeon General's action.

(July 1, 1944, ch. 373, title VI, § 608, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 456.)

PRIOR PROVISIONS

A prior section 291h, act July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, §§ 3(b–d), 8, 63 Stat. 899, 901; July 12, 1954, ch. 471, § 4(b), 68 Stat. 464, related to projects for construction, the application required and its contents and approval by the Surgeon General, and provided for a hearing prior to disapproval of the application, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291e of this title.

Provisions similar to those comprising this section were contained in former section 291j(b), act July 1, 1944, ch. 373, title VI, § 632, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 28, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; July 12, 1954, ch. 471, § 4(g), 68 Stat. 466; Aug. 28, 1958, Pub. L. 85–791, § 27, 72 Stat. 950, prior to the general amendment of this subchapter by Pub. L. 88–443.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 291i. Recovery of expenditures under certain conditions

(a) Persons liable

If any facility with respect to which funds have been paid under section 291f of this title

shall, at any time within 20 years after the completion of construction or modernization—

(1) be sold or transferred to any entity (A) which is not qualified to file an application under section 291e of this title, or (B) which is not approved as a transferee by the State agency designated pursuant to section 291d of this title, or its successor, or

(2) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility,

the United States shall be entitled to recover, whether from the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount determined under subsection (c) of this section.

(b) Notice to Secretary

The transferor of a facility which is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which is changed as described in subsection (a)(2) of this section, shall provide the Secretary written notice of such sale, transfer, or change not later than the expiration of 10 days from the date on which such sale, transfer, or change occurs.

(c) Amount of recovery; interest; interest period

(1) Except as provided in paragraph (2), the amount the United States shall be entitled to recover under subsection (a) of this section is an amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district for which the facility involved is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the construction or modernization of such project or projects.

(2)(A) After the expiration of—

(i) 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which is sold or transferred or the use of which changes after July 18, 1984, or

(ii) thirty days after July 18, 1984, or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984.[1]

the amount which the United States is entitled to recover under paragraph (1) with respect to a facility shall be the amount prescribed by paragraph (1) plus interest, during the period described in subparagraph (B), at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly ninety-day Treasury bill auction rate.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984, thirty days after such date or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section,

(ii) in the case of a facility with respect to which notice is provided in accordance with subsection (b) of this section, upon the expiration of 180 days after the receipt of such notice, or

(iii) in the case of a facility with respect to which such notice is not provided as prescribed by subsection (b) of this section, on the date of the sale, transfer, or change of use for which such notice was to be provided,

and ending on the date the amount the United States is entitled to under paragraph (1) is collected.

(d) Waiver

(1) The Secretary may waive the recovery rights of the United States under subsection (a)(1) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that the entity to which the facility was sold or transferred—

(A) has established an irrevocable trust—

(i) in an amount equal to the greater of twice the cost of the remaining obligation of the facility under clause (2) of section 291c(e) of this title or the amount, determined under subsection (c) of this section, that the United States is entitled to recover, and

(ii) which will only be used by the entity to provide the care required by clause (2) of section 291c(e) of this title; and

(B) will meet the obligation of the facility under clause (1) of section 291c(e) of this title.

(2) The Secretary may waive the recovery rights of the United States under subsection (a)(2) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that there is good cause for waiving such rights with respect to such facility.

(e) Lien

The right of recovery of the United States under subsection (a) of this section shall not constitute a lien on any facility with respect to which funds have been paid under section 291f of this title.

(July 1, 1944, ch. 373, title VI, § 609, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 456; amended Pub. L. 91–296, title I § 116(d), June 30, 1970, 84 Stat. 342; Pub. L. 98–369, div. B, title III, § 2381(a), July 18, 1984, 98 Stat. 1112.)

PRIOR PROVISIONS

A prior section 291i, act July 1, 1944, ch. 373, title VI, § 631, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 19, 1948, ch. 544, 62 Stat. 531; Oct. 25, 1949, ch. 722, § 9, 63 Stat. 901; July 12, 1954, ch. 471, § 4(c)–(f), 68 Stat. 465, 466; Aug. 1, 1956, ch. 852, § 19(a), (b), 70 Stat. 911; June 25, 1959, Pub. L. 86–70, § 31(c), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, § 29(d), 74 Stat. 419; Oct. 5, 1961, Pub. L. 87–395, § 5, 75 Stat. 826; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(2), 76 Stat. 587, related to allotment percentages, and contained various definitions, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291b of this title.

Provisions similar to those comprising this section were contained in section 291h(e) of this title, act July

[1] So in original. The period probably should be a comma.

1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 3(c), 63 Stat. 899, 901; July 12, 1954, ch. 471, § 4(b), 68 Stat. 464, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1984—Pub. L. 98–369 amended section generally. Prior to amendment, section read as follows: ''If any facility with respect to which funds have been paid under section 291f of this title shall, at any time within twenty years after the completion of construction—

''(a) be sold or transferred to any person, agency, or organization (1) which is not qualified to file an application under section 291e of this title, or (2) which is not approved as a transferee by the State agency designated pursuant to section 291d of this title, or its successor, or

''(b) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility, unless the Surgeon General determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from this obligation,

the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction or modernization under such project or projects. Such right of recovery shall not constitute a lien upon said facility prior to judgment.''

1970—Cl. (b). Pub. L. 91–296 substituted ''outpatient facility'' for ''diagnostic or treatment center''.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

REGULATIONS AND PERSONNEL

Section 2381(c) of Pub. L. 98–369 provided that: ''Not later than the expiration of the one-hundred-and-eighty-day period beginning on the date of the enactment of this section [July 18, 1984], the Secretary shall have in effect regulations and personnel to place in effect the amendments made by this section [amending sections 291i and 300s–1a of this title].''

§ 291j. Loans

(a) Authorization; conditions

In order further to assist the States in carrying out the purposes of this subchapter, the Surgeon General is authorized to make a loan of funds to the applicant for any project for construction or modernization which meets all of the conditions specified for a grant under this part.

(b) Approval; payments to applicants

Except as provided in this section, an application for a loan with respect to any project under this part shall be submitted, and shall be approved by the Surgeon General, in accordance with the same procedures and subject to the same limitations and conditions as would be applicable to the making of a grant under this part for such project. Any such application may be approved in any fiscal year only if sufficient funds are available from the allotment for the type of project involved. All loans under this section shall be paid directly to the applicant.

(c) Terms

(1) The amount of a loan under this part shall not exceed an amount equal to the Federal share of the estimated cost of construction or modernization under the project. Where a loan and a grant are made under this part with respect to the same project, the aggregate amount of such loan and such grant shall not exceed an amount equal to the Federal share of the estimated cost of construction or modernization under the project. Each loan shall bear interest at the rate arrived at by adding one-quarter of 1 per centum per annum to the rate which the Secretary of the Treasury determines to be equal to the current average yield on all outstanding marketable obligations of the United States as of the last day of the month preceding the date the application for the loan is approved and by adjusting the result so obtained to the nearest one-eighth of 1 per centum. Each loan made under this part shall mature not more than forty years after the date on which such loan is made, except that nothing in this part shall prohibit the payment of all or part of the loan at any time prior to the maturity date. In addition to the terms and conditions provided for, each loan under this part shall be made subject to such terms, conditions, and covenants relating to repayment of principal, payment of interest, and other matters as may be agreed upon by the applicant and the Surgeon General.

(2) The Surgeon General may enter into agreements modifying any of the terms and conditions of a loan made under this part whenever he determines such action is necessary to protect the financial interest of the United States.

(3) If, at any time before a loan for a project has been repaid in full, any of the events specified in clause (a) or clause (b) of section 291i[1] of this title occurs with respect to such project, the unpaid balance of the loan shall become immediately due and payable by the applicant, and any transferee of the facility shall be liable to the United States for such repayment.

(d) Funds; miscellaneous receipts

Any loan under this part shall be made out of the allotment from which a grant for the project concerned would be made. Payments of interest and repayments of principal on loans under this part shall be deposited in the Treasury as miscellaneous receipts.

(July 1, 1944, ch. 373, title VI, § 610, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 457.)

REFERENCES IN TEXT

Section 291i of this title, referred to in subsec. (c)(3), was amended generally by Pub. L. 98–369, div. B, title III, § 2381(a), July 18, 1984, 98 Stat. 1112, and, as so amended, the provisions contained in former cls. (a) and (b) of section 291i are covered by section 291i(a)(1) and (2).

[1] See References in Text note below.

PRIOR PROVISIONS

A prior section 291j, act July 1, 1944, ch. 373, title VI, § 632, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 25, 1949, ch. 722, § 4, 63 Stat. 900; July 12, 1954, ch. 471, § 4(g), 68 Stat. 466; Aug. 28, 1958, Pub. L. 85–791, § 27, 72 Stat. 950, related to withholding of certification for noncompliance with requirements, appeal, conclusiveness of findings, the jurisdiction of the courts of appeals and to review by the Supreme Court, prior to the general amendment of this subchapter by Pub. L. 88–443. See sections 291g and 291h of this title.

Provisions similar to those comprising this section were contained in sections 291w to 291z of this title, prior to the general amendment of this subchapter by Pub. L. 88–443.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

PART B—LOAN GUARANTEES AND LOANS FOR MODERNIZATION AND CONSTRUCTION OF HOSPITALS AND OTHER MEDICAL FACILITIES

§ 291j–1. Loan guarantees and loans

(a) Authority of Secretary

(1) In order to assist nonprofit private agencies to carry out needed projects for the modernization or construction of nonprofit private hospitals, facilities for long-term care, outpatient facilities, and rehabilitation facilities, the Secretary, during the period July 1, 1970, through June 30, 1974, may, in accordance with the provisions of this part, guarantee to non-Federal lenders making loans to such agencies for such projects, payment of principal of and interest on loans, made by such lenders, which are approved under this part.

(2) In order to assist public agencies to carry out needed projects for the modernization or construction of public health centers, and public hospitals, facilities for long-term care, outpatient facilities, and rehabilitation facilities, the Secretary, during the period July 1, 1970, through June 30, 1974, may, in accordance with the provisions of this part, make loans to such agencies which shall be sold and guaranteed in accordance with section 291j–7 of this title.

(b) Cost limitations

(1) No loan guarantee under this part with respect to any modernization or construction project may apply to so much of the principal amount thereof as, when added to the amount of any grant or loan under part A of this subchapter with respect to such project, exceeds 90 per centum of the cost of such project.

(2) No loan to a public agency under this part shall be made in an amount which, when added to the amount of any grant or loan under part A of this subchapter with respect to such project, exceeds 90 per centum of the cost of such project.

(c) Administrative assistance

The Secretary, with the consent of the Secretary of Housing and Urban Development, shall obtain from the Department of Housing and Urban Development such assistance with respect to the administration of this part as will promote efficiency and economy thereof.

(July 1, 1944, ch. 373, title VI, § 621, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 344; amended Pub. L. 93–45, title I, § 108(b)(1), June 18, 1973, 87 Stat. 93.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–45 extended termination date of guarantee and loan making period in pars. (1) and (2) from June 30, 1973, to June 30, 1974.

§ 291j–2. Allocation among States

(a) Allotment regulations

For each fiscal year, the total amount of principal of loans to nonprofit private agencies which may be guaranteed or loans to public agencies which may be directly made under this part shall be allotted by the Secretary among the States, in accordance with regulations, on the basis of each State's relative population, financial need, need for construction of the facilities referred to in section 291j–1(a) of this title, and need for modernization of such facilities.

(b) Reallotment

Any amount allotted under subsection (a) of this section to a State for a fiscal year ending before July 1, 1973, and remaining unobligated at the end of such year shall remain available to such State, for the purpose for which made, for the next two fiscal years (and for such years only), and any such amount shall be in addition to the amounts allotted to such State for such purpose for each of such next two fiscal years; except that, with the consent of any such State, any such amount remaining unobligated at the end of the first of such next fiscal year may be reallotted (on such basis as the Secretary deems equitable and consistent with the purposes of this subchapter) to other States which have need therefor. Any amounts so reallotted to a State shall be available for the purposes for which made until the close of the second such next two fiscal years and shall be in addition to the amount allotted and available to such State for the same period.

(c) Time of availability of amounts for subsequent allotment

Any amount allotted or reallotted to a State under this section for a fiscal year shall not, until the expiration of the period during which it is available for obligation, be considered as available for allotment for a subsequent fiscal year.

(d) Modernization or construction commenced on or after January 1, 1968

The allotments of any State under subsection (a) of this section for the fiscal year ending June 30, 1971, and the succeeding fiscal year shall also be available to guarantee loans with respect to any project, for modernization or construction of a nonprofit private hospital or other health facility referred to in section 291j–1(a)(1) of this title, if the modernization or construction of such facility was not commenced earlier than January 1, 1968, and if the State certifies and the

Secretary finds that without such guaranteed loan such facility could not be completed and begin to operate or could not continue to operate, but with such guaranteed loan would be able to do so: *Provided*, That this subsection shall not apply to more than two projects in any one State.

(July 1, 1944, ch. 373, title VI, § 622, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 345.)

§ 291j–3. Applications and conditions

(a) Contents of applications

For each project for which a guarantee of a loan to a nonprofit private agency or a direct loan to a public agency is sought under this part, there shall be submitted to the Secretary, through the State agency designated in accordance with section 291d of this title, an application by such private nonprofit agency or by such public agency. If two or more private nonprofit agencies, or two or more public agencies, join in the project, the application may be filed by one or more such agencies. Such application shall (1) set forth all of the descriptions, plans, specifications, assurances, and information which are required by the third sentence of section 291e(a) of this title (other than clause (6) thereof) with respect to applications submitted under that section, (2) contain such other information as the Secretary may require to carry out the purposes of this part, and (3) include a certification by the State agency of the total cost of the project and the amount of the loan for which a guarantee is sought under this part, or the amount of the direct loan sought under this part, as the case may be.

(b) Conditions for approval

The Secretary may approve such application only if—

(1) there remains sufficient balance in the allotment determined for such State pursuant to section 291j–2 of this title to cover the amount of the loan for which a guarantee is sought, or the amount of the direct loan sought (as the case may be), in such application,

(2) he makes each of the findings which are required by clauses (1) through (4) of section 291e(b) of this title for the approval of applications for projects thereunder (except that, in the case of the finding required under such clause (4) of entitlement of a project to a priority established under section 291c(a) of this title; such finding shall be made without regard to the provisions of clauses (1) and (3) of such section),

(3) he finds that there is compliance with section 291e(e) of this title,

(4) he obtains assurances that the applicant will keep such records, and afford such access thereto, and make such reports, in such form and containing such information, as the Secretary may reasonably require, and

(5) he also determines, in the case of a loan for which a guarantee is sought, that the terms, conditions, maturity, security (if any), and schedule and amounts of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable and in accord with regulations, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States.

(c) Hearing

No application under this section shall be disapproved until the Secretary has afforded the State agency an opportunity for a hearing.

(d) Amendment of approved applications

Amendment of an approved application shall be subject to approval in the same manner as an original application.

(e) Recovery rights; terms and conditions

(1) In the case of any loan to a nonprofit private agency, the United States shall be entitled to recover from the applicant the amount of any payments made pursuant to any guarantee of such loan under this part, unless the Secretary for good cause waives its right of recovery, and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

(2) Guarantees of loans to nonprofit private agencies under this part shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this part will be achieved, and, to the extent permitted by subsection (f) of this section, any of such terms and conditions may be modified by the Secretary to the extent he determines it to be consistent with the financial interest of the United States.

(f) Incontestable guarantee

Any guarantee of a loan to a nonprofit private agency made by the Secretary pursuant to this part shall be incontestable in the hands of an applicant on whose behalf such guarantee is made, and as to any person who makes or contracts to make a loan to such applicant in reliance thereon, except for fraud or misrepresentation on the part of such applicant or such other person.

(July 1, 1944, ch. 373, title VI, § 623, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 346.)

§ 291j–4. Payment of interest on guaranteed loans

(a) Subject to the provisions of subsection (b) of this section, in the case of a guarantee of any loan to a nonprofit private agency under this part with respect to a hospital or other medical facility, the Secretary shall pay, to the holder of such loan and for and on behalf of such hospital or other medical facility amounts sufficient to reduce by 3 per centum per annum the net effective interest rate otherwise payable on such loan. Each holder of a loan, to a nonprofit private agency, which is guaranteed under this part shall have a contractual right to receive from the United States interest payments required by the preceding sentence.

(b) Contracts to make the payments provided for in this section shall not carry an aggregate amount greater than such amount as may be provided in appropriations Acts.

(July 1, 1944, ch. 373, title VI, § 624, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 347.)

§ 291j–5. Limitation on amounts of loans guaranteed or directly made

The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued, or which have been directly made, under this part may not exceed the lesser of—

(1) such limitations as may be specified in appropriations Acts, or

(2) in the case of loans covered by allotments for the fiscal year ending June 30, 1971, $500,000,000; for the fiscal year ending June 30, 1972, $1,000,000,000; and for each of the fiscal years ending June 30, 1973, and June 30, 1974, $1,500,000,000.

(July 1, 1944, ch. 373, title VI, § 625, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 347; amended Pub. L. 93–45, title I, § 108(b)(2), June 18, 1973, 87 Stat. 93.)

AMENDMENTS

1973—Pub. L. 93–45 provided for a limitation of $1,500,000,000 on amount of loans outstanding in the case of loans covered by allotments for fiscal year ending June 30, 1974.

§ 291j–6. Loan guarantee and loan fund

(a)(1) There is hereby established in the Treasury a loan guarantee and loan fund (hereinafter in this section referred to as the ''fund'') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriations Acts, (i) to enable him to discharge his responsibilities under guarantees issued by him under this part, (ii) for payment of interest on the loans to nonprofit agencies which are guaranteed, (iii) for direct loans to public agencies which are sold and guaranteed, (iv) for payment of interest with respect to such loans, and (v) for repurchase by him of direct loans to public agencies which have been sold and guaranteed. There are authorized to be appropriated to the fund from time to time such amounts as may be necessary to provide capital required for the fund. To the extent authorized from time to time in appropriation Acts, there shall be deposited in the fund amounts received by the Secretary as interest payments or repayments of principal on loans and any other moneys, property, or assets derived by him from his operations under this part, including any moneys derived from the sale of assets.

(2) Of the moneys in the fund, there shall be available to the Secretary for the purpose of making of direct loans to public agencies only such sums as shall have been appropriated for such purpose pursuant to section 291j–7 of this title or sums received by the Secretary from the sale of such loans (in accordance with such section) and authorized in appropriations Acts to be used for such purpose.

(b) If at any time the moneys in the fund are insufficient to enable the Secretary to discharge his responsibilities under this part—

(i) to make payments of interest on loans to nonprofit private agencies which he has guaranteed under this part;

(ii) to otherwise comply with guarantees under this part of loans to nonprofit private agencies;

(iii) to make payments of interest subsidies with respect to loans to public agencies which he has made, sold, and guaranteed under this part;

(iv) in the event of default by public agencies to make payments of principal and interest on loans which the Secretary has made, sold, and guaranteed, under this part, to make such payments to the purchaser of such loan;

(v) to repurchase loans to public agencies which have been sold and guaranteed under this part,

he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, but only in such amounts as may be specified from time to time in appropriations Acts. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this subsection shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from such fund.

(July 1, 1944, ch. 373, title VI, § 626, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 347.)

CODIFICATION

In subsec. (b), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act, as amended'' and ''that Act, as amended'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 291j–7. Loans to public facilities

(a) Interest rates; security; equitable geographical distribution

(1) Any loan made by the Secretary to a public agency under this part for the modernization or

construction of a public hospital or other health facility shall require such public agency to pay interest thereon at a rate comparable to the current rate of interest prevailing with respect to loans, to nonprofit private agencies, which are guaranteed under this part, for the modernization or construction of similar facilities in the same or similar areas, minus 3 per centum per annum.

(2)(A) No loan to a public agency shall be made under this part unless—

(i) the Secretary is reasonably satisfied that such agency will be able to make payments of principal and interest thereon when due, and

(ii) such agency provides the Secretary with reasonable assurances that there will be available to such agency such additional funds as may be necessary to complete the project with respect to which such loan is requested.

(B) Any loan to a public agency shall have such security, have such maturity date, be repayable in such installments, and be subject to such other terms and conditions (including provision for recovery in case of default) as the Secretary determines to be necessary to carry out the purposes of this part while adequately protecting the financial interests of the United States.

(3) In making loans to public agencies under this part, the Secretary shall give due regard to achieving an equitable geographical distribution of such loans.

(b) Sale

(1) The Secretary shall from time to time, but with due regard to the financial interests of the United States, sell loans referred to in subsection (a)(1) of this section either on the private market or to the Federal National Mortgage Association in accordance with section 1717 of title 12.

(2) Any loan so sold shall be sold for an amount which is equal (or approximately equal) to the amount of the unpaid principal of such loan as of the time of sale.

(c) Agreements

(1) The Secretary is authorized to enter into an agreement with the purchaser of any loan sold under this part under which the Secretary agrees—

(A) to guarantee to such purchaser (and any successor in interest to such purchaser) payment of the principal and interest payable under such loan, and

(B) to pay as an interest subsidy to such purchaser (and any successor in interest of such purchaser) amounts which when added to the amount of interest payable on such loan, are equivalent to a reasonable rate of interest on such loan as determined by the Secretary, after taking into account the range of prevailing interest rates in the private market on similar loans and the risks assumed by the United States.

(2) Any such agreement—

(A) may provide that the Secretary shall act as agent of any such purchaser, for the purpose of collecting from the public agency to which such loan was made and paying over to such purchaser, any payments of principal and interest payable by such agency under such loan;

(B) may provide for the repurchase by the Secretary of any such loan on such terms and conditions as may be specified in the agreement;

(C) shall provide that, in the event of any default by the public agency to which such loan was made in payment of principal and interest due on such loan, the Secretary shall, upon notification to the purchaser (or to the successor in interest of such purchaser), have the option to close out such loan (and any obligations of the Secretary with respect thereto) by paying to the purchaser (or his successor in interest) the total amount of outstanding principal and interest due thereon at the time of such notification; and

(D) shall provide that, in the event such loan is closed out as provided in subparagraph (C), or in the event of any other loss incurred by the Secretary by reason of the failure of such public agency to make payments of principal and interest on such loan, the Secretary shall be subrogated to all rights of such purchaser for recovery of such loss from such public agency.

(d) Right of recovery; waiver

The Secretary may, for good cause, waive any right of recovery which he has against a public agency by reason of the failure of such agency to make payments of principal and interest on a loan made to such agency under this part.

(e) Interest and interest subsidies as gross income under Internal Revenue Code

After any loan to a public agency under this part has been sold and guaranteed, interest paid on such loan and any interest subsidy paid by the Secretary with respect to such loan which is received by the purchaser thereof (or his successor in interest) shall be included in gross income for the purposes of chapter 1 of title 26.

(f) Sales proceeds; deposit and use

Amounts received by the Secretary as proceeds from the sale of loans under this section shall be deposited in the loan fund established by section 291j–6 of this title, and shall be available to the Secretary for the making of further loans under this part in accordance with the provisions of subsection (a)(2) of such section.

(g) Authorization of appropriations

There is authorized to be appropriated to the Secretary, for deposit in the loan fund established by section 291j–6 of this title, $30,000,000 to provide initial capital for the making of direct loans by the Secretary to public agencies for the modernization or construction of facilities referred to in subsection (a)(1) of this section.

(July 1, 1944, ch. 373, title VI, § 627, as added Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 349; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsec. (e). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

COMMITMENTS FOR DIRECT LOANS TO PUBLIC AGENCIES

Pub. L. 91–667, title II, § 200, Jan. 11, 1971, 84 Stat. 2007, provided: ''That the Secretary is authorized to issue commitments for direct loans to public agencies in accordance with section 627 of the Public Health Service Act [this section] which shall constitute contractual obligations of the United States, the total of such outstanding commitments not to exceed $30,000,000 at any given time; to sell obligations received pursuant to such commitments as provided in section 627, and the proceeds of any such sale shall be used to make a direct loan pursuant to the outstanding commitment under which the obligations were received.''

PART C—CONSTRUCTION OR MODERNIZATION OF EMERGENCY ROOMS

§ 291j–8. Authorization of appropriations

In order to assist in the provision of adequate emergency room service in various communities of the Nation for treatment of accident victims and handling of other medical emergencies through special project grants for the construction or modernization of emergency rooms of general hospitals, there are authorized to be appropriated $20,000,000 each for the fiscal year ending June 30, 1971, and the next two fiscal years.

(July 1, 1944, ch. 373, title VI, § 631, as added Pub. L. 91–296, title III, § 301, June 30, 1970, 84 Stat. 351.)

§ 291j–9. Eligibility for grants

Funds appropriated pursuant to section 291j–8 of this title shall be available for grants by the Secretary for not to exceed 50 per centum of the cost of construction or modernization of emergency rooms of public or nonprofit general hospitals, including provision or replacement of medical transportation facilities. Such grants shall be made by the Secretary only after consultation with the State agency designated in accordance with section 291d(a)(1) of this title. In order to be eligible for a grant under this part, the project, and the applicant therefor, must meet such criteria as may be prescribed by regulations. Such regulations shall be so designed as to provide aid only with respect to projects for which adequate assistance is not readily available from other Federal, State, local, or other sources, and to assist in providing modern, efficient, and effective emergency room service needed to care for victims of highway, industrial, agricultural, or other accidents and to handle other medical emergencies, and to assist in providing such service in geographical areas which have special need therefor.

(July 1, 1944, ch. 373, title VI, § 632, as added Pub. L. 91–296, title III, § 301, June 30, 1970, 84 Stat. 351.)

§ 291j–10. Payments

Grants under this part shall be paid in advance or by way of reimbursement, in such installments and on such conditions, as in the judgment of the Secretary will best carry out the purposes of this part.

(July 1, 1944, ch. 373, title VI, § 633, as added Pub. L. 91–296, title III, § 301, June 30, 1970, 84 Stat. 351.)

PART D—GENERAL PROVISIONS

§ 291k. Federal Hospital Council

(a) Membership; qualifications

In administering this subchapter, the Surgeon General shall consult with a Federal Hospital Council consisting of the Surgeon General, who shall serve as Chairman ex officio, and twelve members appointed by the Secretary of Health and Human Services. Six of the twelve appointed members shall be persons who are outstanding in fields pertaining to medical facility and health activities, and three of these six shall be authorities in matters relating to the operation of hospitals or other medical facilities, one of them shall be an authority in matters relating to the mentally retarded, and one of them shall be an authority in matters relating to mental health, and the other six members shall be appointed to represent the consumers of the services provided by such facilities and shall be persons familiar with the need for such services in urban or rural areas.

(b) Term of membership

Each appointed member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. An appointed member shall not be eligible to serve continuously for more than two terms (whether beginning before or after August 18, 1964) but shall be eligible for reappointment if he has not served immediately preceding his reappointment.

(c) Meetings; annual or by call of Surgeon General

The Council shall meet as frequently as the Surgeon General deems necessary, but not less than once each year. Upon request by three or more members, it shall be the duty of the Surgeon General to call a meeting of the Council.

(d) Advisory or technical committees

The Council is authorized to appoint such special advisory or technical committees as may be useful in carrying out its functions.

(July 1, 1944, ch. 373, title VI, § 641, formerly § 621, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 458, renumbered § 641, Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 344; amended Pub. L. 91–515, title VI, § 601(b)(2), Oct. 30, 1970, 84 Stat. 1311; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in subsec. (b) of a prior section 291k, act July 1, 1944, ch. 373, title VI, § 633, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 24, 1948, ch. 621, § 6(b), 62 Stat. 602; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (e). Pub. L. 91–515 struck out subsec. (e) which related to payment of compensation and travel expenses of appointed Council members and members of advisory or technical committees while serving on Council business.

TRANSFER OF FUNCTIONS

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

TERMS OF FEDERAL HOSPITAL COUNCIL MEMBERS

Section 3(b)(3) of Pub. L. 88–443 providing that the terms of members serving on the Council prior to Aug. 18, 1964, shall expire on the date they would have expired had Pub. L. 88–443 not been enacted, is set out as an Effective Date note under section 291 of this title.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 291*l*. Conference of State agencies

Whenever in his opinion the purposes of this subchapter would be promoted by a conference, the Surgeon General may invite representatives of as many State agencies, designated in accordance with section 291d of this title, to confer as he deems necessary or proper. A conference of the representatives of all such State agencies shall be called annually by the Surgeon General. Upon the application of five or more of such State agencies, it shall be the duty of the Surgeon General to call a conference of representatives of all State agencies joining in the request.

(July 1, 1944, ch. 373, title VI, § 642, formerly § 622, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 458, and renumbered § 642, Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 344.)

PRIOR PROVISIONS

A prior section 291*l*, act July 1, 1944, ch. 373, title VI, § 634, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, contained provisions similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 291m. State control of operations

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility with respect to which any funds have been or may be expended under this subchapter.

(July 1, 1944, ch. 373, title VI, § 643, formerly § 623, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 458, and renumbered § 643, Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 344.)

PRIOR PROVISIONS

A prior section 291m, act July 1, 1944, ch. 373, title VI, § 635, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended July 12, 1954, ch. 471, § 4(h), 68 Stat. 467, contained provisions similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

§ 291m–1. Loans for certain hospital experimentation projects

(a) Other public or private sources unavailable for alleviation of hardship due to increased construction costs

In order to alleviate hardship on any recipient of a grant under section 291n[1] of this title (as in effect immediately before August 18, 1964) for a project for the construction of an experimental or demonstration facility having as its specific purpose the application of novel means for the reduction of hospital costs with respect to which there has been a substantial increase in the cost of such construction (over the estimated cost of such project on the basis of which such grant was made) through no fault of such recipient, the Secretary is authorized to make a loan to such recipient not exceeding 66⅔ per centum of such increased costs, as determined by the Secretary, if the Secretary determines that such recipient is unable to obtain such an amount for such purpose from other public or private sources.

(b) Application; form; information

Any such loan shall be made only on the basis of an application submitted to the Secretary in such form and containing such information and assurances as he may prescribe.

(c) Interest; repayment period

Each such loan shall bear interest at the rate of 2½ per centum per annum on the unpaid balance thereof and shall be repayable over a period determined by the Secretary to be appropriate, but not exceeding fifty years.

(d) Authorization of appropriation

There are hereby authorized to be appropriated $3,500,000 to carry out the provisions of this section.

(July 1, 1944, ch. 373, title VI, § 643A, formerly § 623A, as added Pub. L. 90–174, § 11, Dec. 5, 1967, 81 Stat. 541, and renumbered § 643A, Pub. L. 91–296, title II, § 201, June 30, 1970, 84 Stat. 344.)

REFERENCES IN TEXT

Section 291n of this title, referred to in subsec. (a), was repealed by Pub. L. 90–174, § 3(b)(1), Dec. 5, 1967, 81 Stat. 535.

§ 291n. Repealed. Pub. L. 90–174, § 3(b)(1), Dec. 5, 1967, 81 Stat. 535

Section, act July 1, 1944, ch. 373, title VI, § 644, formerly § 624, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a),

[1] See References in Text note below.

78 Stat. 459, and renumbered § 644, June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 344, provided for research, experiments and demonstrations in utilization of medical facilities, authorization, grants-in-aid, amounts, payment, conditions, authorization of appropriations, and right of recovery of United States Government. See section 242b of this title.

Provisions similar to those comprising this section were contained in a prior section 291n, act July 1, 1944, ch. 373, title VI, § 636, as added Oct. 25, 1949, ch. 722, § 5, 63 Stat. 900; amended Oct. 6, 1961, Pub. L. 87–395, § 4, 75 Stat. 825, prior to the general amendment of this subchapter by Pub. L. 88–443.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to appropriations for fiscal year ending after June 30, 1967, see section 3(b) of Pub. L. 90–174, set out as an Effective Date of 1967 Amendment note under section 246 of this title.

§ 291n–1. Omitted

CODIFICATION

Section, act July 1, 1944, ch. 373, title VI, § 637, formerly § 654(c), as added July 12, 1954, ch. 471, § 3, 68 Stat. 463; renumbered § 637 and amended Aug. 14, 1959, Pub. L. 86–158, title II, § 201, 73 Stat. 349, related to transfers of allotments between States, prior to the general amendment of this subchapter by Pub. L. 88–443, Aug. 18, 1964, 78 Stat. 447. See section 291b of this title.

§ 291*o*. Definitions

For the purposes of this subchapter—

(a) The term ''State'' includes the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the District of Columbia.

(b)(1) The term ''Federal share'' with respect to any project means the proportion of the cost of such project to be paid by the Federal Government under this subchapter.

(2) With respect to any project in any State for which a grant is made from an allotment from an appropriation under section 291a of this title, the Federal share shall be the amount determined by the State agency designated in accordance with section 291d of this title, but not more than 66⅔ per centum or the State's allotment percentage, whichever is the lower, except that, if the State's allotment percentage is lower than 50 per centum, such allotment percentage shall be deemed to be 50 per centum for purposes of this paragraph.

(3) Prior to the approval of the first project in a State during any fiscal year the State agency designated in accordance with section 291d of this title shall give the Secretary written notification of the maximum Federal share established pursuant to paragraph (2) of this subsection for projects in such State to be approved by the Secretary during such fiscal year and the method for determining the actual Federal share to be paid with respect to such projects; and such maximum Federal share and such method of determination for projects in such State approved during such fiscal year shall not be changed after such approval.

(4) Notwithstanding the provisions of paragraphs (2) and (3) of this subsection, the Federal share shall, at the option of the State agency, be equal to the per centum provided under such paragraphs plus an incentive per centum (which when combined with the per centum provided under such paragraphs shall not exceed 90 per centum) specified by the State agency in the case of (A) projects that will provide services primarily for persons in an area determined by the Secretary to be a rural or urban poverty area, and (B) projects that offer potential for reducing health care costs through shared services among health care facilities, through interfacility cooperation, or through the construction or modernization of free-standing outpatient facilities.

(c) The term ''hospital'' includes general, tuberculosis, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, facilities related to programs for home health services, self-care units, and central service facilities, operated in connection with hospitals, and also includes education or training facilities for health professions personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care.

(d) The term ''public health center'' means a publicly owned facility for the provision of public health services, including related publicly owned facilities such as laboratories, clinics, and administrative offices operated in connection with such a facility.

(e) The term ''nonprofit'' as applied to any facility means a facility which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(f) The term ''outpatient facility'' means a facility (located in or apart from a hospital) for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients)—

(1) which is operated in connection with a hospital, or

(2) in which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the State, or, in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the State; or

(3) which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which provides to its patients a reasonably full-range of diagnostic and treatment services.

(g) The term ''rehabilitation facility'' means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of—

(1) medical evaluation and services, and

(2) psychological, social, or vocational evaluation and services,

under competent professional supervision, and in the case of which—

(3) the major portion of the required evaluation and services is furnished within the facility; and

(4) either (A) the facility is operated in connection with a hospital, or (B) all medical and related health services are prescribed by, or are under the general direction of, persons licensed to practice medicine or surgery in the State.

(h) The term ''facility for long-term care'' means a facility (including an extended care facility) providing in-patient care for convalescent or chronic disease patients who require skilled nursing care and related medical services—

(1) which is a hospital (other than a hospital primarily for the care and treatment of mentally ill or tuberculosis patients) or is operated in connection with a hospital, or

(2) in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine or surgery in the State.

(i) The term ''construction'' includes construction of new buildings, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings (including medical transportation facilities) and, in any case in which it will help to provide a service not previously provided in the community, equipment of any buildings; including architects' fees, but excluding the cost of off-site improvements and, except with respect to public health centers, the cost of the acquisition of land.

(j) The term ''cost'' as applied to construction or modernization means the amount found by the Surgeon General to be necessary for construction and modernization respectively, under a project, except that such term, as applied to a project for modernization of a facility for which a grant or loan is to be made from an allotment under section 291b(a)(2) of this title, does not include any amount found by the Surgeon General to be attributable to expansion of the bed capacity of such facility.

(k) The term ''modernization'' includes alteration, major repair (to the extent permitted by regulations), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and replacement of obsolete, built-in (as determined in accordance with regulations) equipment of existing buildings.

(*l*) The term ''title'', when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Surgeon General finds sufficient to assure for a period of not less than fifty years' undisturbed use and possession for the purposes of construction and operation of the project.

(July 1, 1944, ch. 373, title VI, § 645, formerly § 625, as added Pub. L. 88–443, § 3(a), Aug. 18, 1964, 78 Stat. 460; amended Pub. L. 88–581, § 3(b), Sept. 4, 1964, 78 Stat. 919; renumbered § 645 and amended Pub. L. 91–296, title I, §§ 113, 114(a), 116(f), 117, 118, 119(d), title II, § 201, June 30, 1970, 84 Stat. 340, 341, 342, 343, 344.)

PRIOR PROVISIONS

A prior section 291*o*, act July 1, 1944, ch. 373, title VI, § 641, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, related to a declaration of purpose with respect to diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, and nursing homes, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291 of this title.

Provisions similar to those comprising this section were contained in section 291i(d) to (*o*), act July 1, 1944, ch. 373, title VI, § 631, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 19, 1948, ch. 544, § 1(b), 62 Stat. 531; Oct. 25, 1949, ch. 722, § 9, 63 Stat. 901; July 12, 1954, ch. 471, § 4(c) to (f), 68 Stat. 465, 466; Aug. 1, 1956, ch. 852, § 19(b), 70 Stat. 911; June 25, 1959, Pub. L. 86–70, § 31(c), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, § 29(d), 74 Stat. 419; Oct. 5, 1961, Pub. L. 87–395, § 5, 75 Stat. 826; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(2), 76 Stat. 587, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–296, § 119(d), inserted reference to Trust Territory of the Pacific Islands.

Subsec. (b). Pub. L. 91–296, § 113, provided that Federal share of any project be in such amount, not in excess of two-thirds, as the State agency determined and authorized a higher Federal share of up to 90 per centum, in case of rural or urban poverty projects, and facilities which might reduce health costs through shared services, interfacility cooperation, and free-standing ambulatory care centers.

Subsec. (c). Pub. L. 91–296, § 114(a), inserted references to extended care facilities, facilities related to programs for home health services, and self-care units operated in connection with hospitals and education or training facilities for health professions personnel operated as an integral part of a hospital.

Subsec. (f). Pub. L. 91–296, § 116(f), substituted ''outpatient facility'' for ''diagnostic or treatment center'', inserted ''(located in or apart from a hospital)'' after ''means at facility'', inserted ''(including ambulatory inpatients)'' after ''ambulatory patients'', and added par. (3).

Subsec. (h). Pub. L. 91–296, § 117, inserted ''(including an extended care facility)'' after ''means a facility''.

Subsec. (i). Pub. L. 91–296, § 118, inserted reference to equipment of any buildings in cases in which such equipment will help to provide a service not previously provided in the community.

1964—Subsec. (c). Pub. L. 88–581 substituted ''nurses' home facilities'' for ''nurses' home and training facilities''.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 113 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to projects approved under this subchapter after June 30, 1970.

Section 114(a) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to applications approved under this subchapter after June 30, 1970.

Section 116(g) of Pub. L. 91–296 provided that: ''The amendments made by subsection (e) [amending this section] and paragraphs (2) and (3) of subsection (f) of this section [amending section 291e of this title] shall apply with respect to applications approved under title VI of such Act [this subchapter] after June 30, 1970.''

Section 117 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to applications approved under this subchapter after June 30, 1970.

Section 118 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to projects approved under this subchapter after June 30, 1970.

Amendment by section 119(d) of Pub. L. 91–296 applicable with respect to allotments and grants therefrom under part A of this subchapter for fiscal years ending after June 30, 1970, and with respect to loan guarantees and loans under part B of this subchapter made after June 30, 1970, see section 119(e) of Pub. L. 91–296, set out as a note under section 291b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–581 effective with respect to applications for grants from appropriations for fiscal years beginning after June 30, 1965, see section 3(b) of

Pub. L. 88–581, set out as a note under section 291c of this title.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 291*o*–1. Financial statements

In the case of any facility for which a grant, loan, or loan guarantee has been made under this subchapter, the applicant for such grant, loan, or loan guarantee (or, if appropriate, such other person as the Secretary may prescribe) shall file at least annually with the State agency for the State in which the facility is located a statement which shall be in such form, and contain such information, as the Secretary may require to accurately show—

(1) the financial operations of the facility, and

(2) the costs to the facility of providing health services in the facility and the charges made by the facility for providing such services,

during the period with respect to which the statement is filed.

(July 1, 1944, ch. 373, title VI, § 646, as added Pub. L. 91–296, title I, § 121, June 30, 1970, 84 Stat. 343.)

PRIOR PROVISIONS

Sections 291p to 291z were omitted in the general amendment of this subchapter by Pub. L. 88–443, Aug. 18, 1964, 78 Stat. 447.

Section 291p, act July 1, 1944, ch. 373, title VI, § 646, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, related to appropriations to States for carrying out purposes of section 291*o*(a) of this title.

Section 291q, act July 1, 1944, ch. 373, title VI, § 647, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, related to State application for funds for carrying out purposes of section 291*o*(a) of this title.

Section 291r, act July 1, 1944, ch. 373, title VI, § 648, as added July 12, 1954, ch. 471, § 2, 68 Stat. 462, related to allotments to States of appropriations made pursuant to section 291p of this title.

Section 291s, act July 1, 1944, ch. 373, title VI, § 651, as added July 12, 1954, ch. 471, § 3, 68 Stat. 462; amended Aug. 2, 1956, ch. 871, title IV, § 402, 70 Stat. 929; Aug. 14, 1958, Pub. L. 85–664, § 1(b), 72 Stat. 616; Oct. 5, 1961, Pub. L. 87–395, § 3(a), 75 Stat. 825, related to appropriations for assistance to States in carrying out purposes of section 291*o*(b) of this title.

Section 291t, act July 1, 1944, ch. 373, title VI, 652, as added July 12, 1954, ch. 471, § 3, 68 Stat. 462; amended Aug. 1, 1956, ch. 852, § 19(c), 70 Stat. 911; Oct. 5, 1961, Pub. L. 87–395, § 3(b), 75 Stat. 825; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(3), 76 Stat. 587, related to allotments to States of sums appropriated under section 291s of this title.

Section 291u, act July 1, 1944, ch. 373, title VI, § 653, as added July 12, 1954, ch. 471, § 3, 68 Stat. 463, related to revision of regulations and State plans to cover benefits of sections 291s to 291v of this title.

Section 291v, act July 1, 1944, ch. 373, title VI, § 654, as added July 12, 1954, ch. 471, § 3, 68 Stat. 463; amended Aug. 14, 1959, Pub. L. 86–158, title II, § 201, 73 Stat. 349, related to applications and payments for projects under sections 291s to 291v of this title.

Section 291w, act July 1, 1944, ch. 373, title VI, § 661, as added Aug. 1, 1958, Pub. L. 85–589, 72 Stat. 489; amended Oct. 5, 1961, Pub. L. 87–395, § 6, 75 Stat. 826, related to an authorization of Surgeon General to make loans for construction.

Section 291x, act July 1, 1944, ch. 373, title VI, § 662, as added Aug. 1, 1958, Pub. L. 85–589, 72 Stat. 489, related to approval of construction loans by Surgeon General.

Section 291y, act July 1, 1944, ch. 373, title VI, § 663, as added Aug. 1, 1958, Pub. L. 85–589, 72 Stat. 489, related to terms of the loans with respect to sections 291w to 291z of this title.

Section 291z, act July 1, 1944, ch. 373, title VI, § 664, as added Aug. 1, 1958, Pub. L. 85–589, 72 Stat. 490, related to allotment of funds for loans under this subchapter.

SUBCHAPTER V—HEALTH PROFESSIONS EDUCATION

PART A—STUDENT LOANS

SUBPART I—INSURED HEALTH EDUCATION ASSISTANCE LOANS TO GRADUATE STUDENTS

§ 292. Statement of purpose

The purpose of this subpart is to enable the Secretary to provide a Federal program of student loan insurance for students in (and certain former students of) eligible institutions (as defined in section 292*o* of this title).

(July 1, 1944, ch. 373, title VII, § 701, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.)

PRIOR PROVISIONS

A prior section 292, act July 1, 1944, ch. 373, title VII, § 700, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 201(b), 90 Stat. 2246, set forth limitations on use of appropriations, prior to repeal by Pub. L. 97–35, title XXVII, § 2715, Aug. 13, 1981, 95 Stat. 913.

Another prior section 292, act July 1, 1944, ch. 373, title VII, § 701, as added July 30, 1956, ch. 779, § 2, 70 Stat. 717; amended Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164, stated Congressional findings and declaration of policy respecting grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 701 of act July 1, 1944, was classified to section 292a of this title prior to the general revision of this subchapter by Pub. L. 102–408.

EFFECTIVE DATE

Section 103 of Pub. L. 102–408 provided that: ''The amendment made by section 102 [enacting this subchapter] takes effect on the date of the enactment of this Act [Oct. 13, 1992], except that section 708 of the Public Health Service Act [section 292*g* of this title], as added by section 102 of this Act, takes effect January 1, 1993. Until such date, section 732(c) of the Public Health Service Act [former section 294e(c) of this title], as in effect on the day before the date of the enactment of this Act, continues in effect in lieu of such section 708.''

STUDY ON EFFECTIVENESS OF HEALTH PROFESSIONS PROGRAMS

Pub. L. 102–408, title III, § 309, Oct. 13, 1992, 106 Stat. 2089, directed the Comptroller General to conduct a study of the programs carried out under this subchapter and subchapter VI of this chapter for the purpose of determining the effectiveness of such programs in increasing the number of primary care providers

(physicians, physician assistants, nurse midwives, nurse practitioners and general dentists), nurses and allied health personnel, improving the geographic distribution of health professionals in medically underserved and rural areas, and recruiting and retaining as students in health professions schools individuals who are members of a minority group, and report to the Congress not later than Jan. 1, 1994, on findings and recommendations made as a result of the study relevant to the reauthorization of such programs.

§ 292a. Scope and duration of loan insurance program

(a) In general

The total principal amount of new loans made and installments paid pursuant to lines of credit (as defined in section 292*o* of this title) to borrowers covered by Federal loan insurance under this subpart shall not exceed $350,000,000 for fiscal year 1993, $375,000,000 for fiscal year 1994, and $425,000,000 for fiscal year 1995. If the total amount of new loans made and installments paid pursuant to lines of credit in any fiscal year is less than the ceiling established for such year, the difference between the loans made and installments paid and the ceiling shall be carried over to the next fiscal year and added to the ceiling applicable to that fiscal year, and if in any fiscal year no ceiling has been established, any difference carried over shall constitute the ceiling for making new loans (including loans to new borrowers) and paying installments for such fiscal year. Thereafter, Federal loan insurance pursuant to this subpart may be granted only for loans made (or for loan installments paid pursuant to lines of credit) to enable students, who have obtained prior loans insured under this subpart, to continue or complete their educational program or to obtain a loan under section 292d(a)(1)(B) of this title to pay interest on such prior loans; but no insurance may be granted for any loan made or installment paid after September 30, 1998. The total principal amount of Federal loan insurance available under this subsection shall be granted by the Secretary without regard to any apportionment for the purpose of chapter 15 of title 31 and without regard to any similar limitation.

(b) Certain limitations and priorities

(1) Limitations regarding lenders, States, or areas

The Secretary may, if necessary to assure an equitable distribution of the benefits of this subpart, assign, within the maximum amounts specified in subsection (a) of this section, Federal loan insurance quotas applicable to eligible lenders, or to States or areas, and may from time to time reassign unused portions of these quotas.

(2) Priority for certain lenders

In providing certificates of insurance under section 292e of this title through comprehensive contracts, the Secretary shall give priority to eligible lenders that agree—

(A) to make loans to students at interest rates below the rates prevailing, during the period involved, for loans covered by Federal loan insurance pursuant to this subpart; or

(B) to make such loans under terms that are otherwise favorable to the student relative to the terms under which eligible lenders are generally making such loans during such period.

(c) Authority of Student Loan Marketing Association

(1) In general

Subject to paragraph (2), the Student Loan Marketing Association, established under part B of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.], is authorized to make advances on the security of, purchase, service, sell, consolidate, or otherwise deal in loans which are insured by the Secretary under this subpart, except that if any loan made under this subpart is included in a consolidated loan pursuant to the authority of the Association under part B of title IV of the Higher Education Act of 1965, the interest rate on such consolidated loan shall be set at the weighted average interest rate of all such loans offered for consolidation and the resultant per centum shall be rounded downward to the nearest one-eighth of 1 per centum, except that the interest rate shall be no less than the applicable interest rate of the guaranteed student loan program established under part B of title IV of the Higher Education Act of 1965. In the case of such a consolidated loan, the borrower shall be responsible for any interest which accrues prior to the beginning of the repayment period of the loan, or which accrues during a period in which principal need not be paid (whether or not such principal is in fact paid) by reason of any provision of the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.].

(2) Applicability of certain Federal regulations

With respect to Federal regulations for lenders, this subpart may not be construed to preclude the applicability of such regulations to the Student Loan Marketing Association or to any other entity in the business of purchasing student loans, including such regulations with respect to applications, contracts, and due diligence.

(July 1, 1944, ch. 373, title VII, § 702, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (c)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. Part B of title IV of the Act is classified generally to part B (§ 1071 et seq.) of subchapter IV of chapter 28 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 292a, act July 1, 1944, ch. 373, title VII, § 701, formerly § 724, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 169; amended Oct. 22, 1965, Pub. L. 89–290, § 2(b), 79 Stat. 1056; Nov. 2, 1966, Pub. L. 89–709, § 2(c), 80 Stat. 1103; Aug. 16, 1968, Pub. L. 90–490, title I, § 105(c), 82 Stat. 774; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(c)(1)–(4), (f)(2)(B), 85 Stat. 431, 432, 435; renumbered § 701 and amended Oct. 12, 1976, Pub. L. 94–484, title II, § 201(c), (e), 90 Stat. 2247; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2716, 95 Stat. 913; Oct. 22, 1985, Pub. L. 99–129, title II, §§ 201(a), (b), 202, 203, 204(a), (b), 99 Stat.

525–527; Nov. 4, 1988, Pub. L. 100–607, title VI, §§620(a), 623, 628(1), 629(b)(1), (2), 102 Stat. 3141, 3142, 3145, 3146; Aug. 16, 1989, Pub. L. 101–93, §5(*l*), 103 Stat. 613, defined terms for purposes of this subchapter, prior to the general revision of this subchapter by Pub. L. 102–408. See sections 292*o* and 295p of this title.

Another prior section 292a, act July 1, 1944, ch. 373, title VII, §702, as added July 30, 1956, ch. 779, §2, 70 Stat. 717; amended Sept. 24, 1963, Pub. L. 88–129, §2(a), 77 Stat. 164, defined ''Council'', ''construction'', ''cost of construction'', ''nonprofit institution'', and ''sciences related to health'' as applicable to grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, §201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 702 of act July 1, 1944, was classified to section 292b of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 292b. Limitations on individual insured loans and on loan insurance

(a) In general

The total of the loans made to a student in any academic year or its equivalent (as determined by the Secretary) which may be covered by Federal loan insurance under this subpart may not exceed $20,000 in the case of a student enrolled in a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, or podiatric medicine, and $12,500 in the case of a student enrolled in a school of pharmacy, public health, allied health, or chiropractic, or a graduate program in health administration or behavioral and mental health practice, including clinical psychology. The aggregate insured unpaid principal amount for all such insured loans made to any borrower shall not at any time exceed $80,000 in the case of a borrower who is or was a student enrolled in a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, or podiatric medicine, and $50,000 in the case of a borrower who is or was a student enrolled in a school of pharmacy, public health, allied health, or chiropractic, or a graduate program in health administration or clinical psychology. The annual insurable limit per student shall not be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any year in excess of the annual limit.

(b) Extent of insurance liability

The insurance liability on any loan insured by the Secretary under this subpart shall be 100 percent of the unpaid balance of the principal amount of the loan plus interest. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under the provisions of section 292f or 292m of this title.

(July 1, 1944, ch. 373, title VII, §703, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 1995; amended Pub. L. 105–392, title I, §141(c)(1), Nov. 13, 1998, 112 Stat. 3579.)

PRIOR PROVISIONS

A prior section 292b, act July 1, 1944, ch. 373, title VII, §702, formerly §725, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 169; amended Sept. 4, 1964, Pub. L. 88–581, §3(c), 78 Stat. 919; Nov. 2, 1966, Pub. L. 89–709, §2(d), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, §3(a), 80 Stat. 1230; Dec. 5, 1967, Pub. L. 90–174, §12(c), 81 Stat. 541; Oct. 30, 1970, Pub. L. 91–515, title VI, §601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92–157, title I, §108(a), 85 Stat. 460; renumbered §702 and amended Oct. 12, 1976, Pub. L. 94–484, title II, §§201(c), 202(a)(1), (2), (b), 90 Stat. 2247, 2248; Oct. 22, 1985, Pub. L. 99–129, title II, §205(a), 99 Stat. 527; Nov. 4, 1988, Pub. L. 100–607, title VI, §§620(b), 628(2), 102 Stat. 3141, 3145, related to National Advisory Council on Education for Health Professions, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 292b, act July 1, 1944, ch. 373, title VII, §703, as added July 30, 1956, ch. 779, §2, 70 Stat. 717; amended Sept. 24, 1963, Pub. L. 88–129, §2(a), 77 Stat. 164; Aug. 16, 1968, Pub. L. 90–490, title IV, §403, 82 Stat. 789; Oct. 30, 1970, Pub. L. 91–515, title VI, §601(a)(1), (b)(2), 84 Stat. 1310, 1311; Nov. 18, 1971, Pub. L. 92–157, title I, §102(k)(2)(A), 85 Stat. 437, related to National Advisory Council on Health Research Facilities, providing for its establishment, composition, selection of members; its functions; and use of its services in administration of grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, §201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 703 of act July 1, 1994, was classified to section 292c of this title prior to repeal by Pub. L. 99–129.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392 substituted ''or behavioral and mental health practice, including clinical psychology'' for ''or clinical psychology'' in first sentence.

§ 292c. Sources of funds

Loans made by eligible lenders in accordance with this subpart shall be insurable by the Secretary whether made from funds fully owned by the lender or from funds held by the lender in a trust or similar capacity and available for such loans.

(July 1, 1944, ch. 373, title VII, §704, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 1996.)

PRIOR PROVISIONS

A prior section 292c, act July 1, 1944, ch. 373, title VII, §703, formerly §799, as added Nov. 2, 1970, Pub. L. 91–519, title II, §206, 84 Stat. 1354; amended Nov. 18, 1971, Pub. L. 92–157, title I, §109, 85 Stat. 461; renumbered §703 and amended Oct. 12, 1976, Pub. L. 94–484, title II, §§201(c), 203, 90 Stat. 2247, 2248; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2717, 95 Stat. 914, related to advance funding for grants and contracts, prior to repeal by Pub. L. 99–129, title II, §220(a), Oct. 22, 1985, 99 Stat. 543.

Another prior section 292c, act July 1, 1944, ch. 373, title VII, §704, as added July 30, 1956, 779, §2, 70 Stat. 718; amended Aug. 27, 1958, Pub. L. 85–777, §1(a), 72 Stat. 933; Oct. 5, 1961, Pub. L. 87–395, §8(a), (d), 75 Stat. 827; Oct. 17, 1962, Pub. L. 87–838, §4(a), 76 Stat. 1074; Aug. 9, 1965, Pub. L. 89–115, §2(a), 79 Stat. 448; Aug. 16, 1968, Pub. L. 90–490, title IV, §401(a), 82 Stat. 789, related to authorization of appropriations and availability of funds for grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, §201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 704 of act July 1, 1944, was classified to section 292d of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 292d. Eligibility of borrowers and terms of insured loans

(a) In general

A loan by an eligible lender shall be insurable by the Secretary under the provisions of this subpart only if—

(1) made to—

(A) a student who—

(i)(I) has been accepted for enrollment at an eligible institution, or (II) in the case of a student attending an eligible institution, is in good standing at that institution, as determined by the institution;

(ii) is or will be a full-time student at the eligible institution;

(iii) has agreed that all funds received under such loan shall be used solely for tuition, other reasonable educational expenses, including fees, books, and laboratory expenses, and reasonable living expenses, incurred by such students;

(iv) if required under section 453 of title 50, Appendix, to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section; and

(v) in the case of a pharmacy student, has satisfactorily completed three years of training; or

(B) an individual who—

(i) has previously had a loan insured under this subpart when the individual was a full-time student at an eligible institution;

(ii) is in a period during which, pursuant to paragraph (2), the principal amount of such previous loan need not be paid;

(iii) has agreed that all funds received under the proposed loan shall be used solely for repayment of interest due on previous loans made under this subpart; and

(iv) if required under section 453 of title 50, Appendix, to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section;

(2) evidenced by a note or other written agreement which—

(A) is made without security and without endorsement, except that if the borrower is a minor and such note or other written agreement executed by him would not, under the applicable law, create a binding obligation, an endorsement may be required;

(B) provides for repayment of the principal amount of the loan in installments over a period of not less than 10 years (unless sooner repaid) nor more than 25 years beginning not earlier than 9 months nor later than 12 months after the date of—

(i) the date on which—

(I) the borrower ceases to be a participant in an accredited internship or residency program of not more than four years in duration;

(II) the borrower completes the fourth year of an accredited internship or residency program of more than four years in duration; or

(III) the borrower, if not a participant in a program described in subclause (I) or (II), ceases to carry, at an eligible institution, the normal full-time academic workload as determined by the institution; or

(ii) the date on which a borrower who is a graduate of an eligible institution ceases to be a participant in a fellowship training program not in excess of two years or a participant in a full-time educational activity not in excess of two years, which—

(I) is directly related to the health profession for which the borrower prepared at an eligible institution, as determined by the Secretary; and

(II) may be engaged in by the borrower during such a two-year period which begins within twelve months after the completion of the borrower's participation in a program described in subclause (I) or (II) of clause (i) or prior to the completion of the borrower's participation in such program,

except as provided in subparagraph (C), except that the period of the loan may not exceed 33 years from the date of execution of the note or written agreement evidencing it, and except that the note or other written instrument may contain such provisions relating to repayment in the event of default in the payment of interest or in the payment of the costs of insurance premiums, or other default by the borrower, as may be authorized by regulations of the Secretary in effect at the time the loan is made;

(C) provides that periodic installments of principal and interest need not be paid, but interest shall accrue, during any period (i) during which the borrower is pursuing a full-time course of study at an eligible institution (or at an institution defined by section 1002(a) of title 20); (ii) not in excess of four years during which the borrower is a participant in an accredited internship or residency program (including any period in such a program described in subclause (I) or subclause (II) of subparagraph (B)(i)); (iii) not in excess of three years, during which the borrower is a member of the Armed Forces of the United States; (iv) not in excess of three years during which the borrower is in service as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.]; (v) not in excess of three years during which the borrower is a member of the National Health Service Corps; (vi) not in excess of three years during which the borrower is in service as a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4951 et seq.]; (vii) not in excess of 3 years, for a borrower who has completed an accredited internship or residency training program in osteopathic general practice, family medicine, general internal medicine, preventive medicine, or general pediatrics and who is practicing primary care; (viii) not in excess of 1 year, for borrowers who are graduates of schools of chiropractic; (ix) any period not in excess of two years which is described in subparagraph (B)(ii); (x) not in excess of three years, during which the borrower is providing health care services to Indians through an Indian health program (as defined in section 1616a(a)(2)(A) of title 25;[1] and (xi) in addition to all other deferments for which the bor-

[1] So in original. Probably should be preceded by a closing parenthesis.

rower is eligible under clauses (i) through (x), any period during which the borrower is a member of the Armed Forces on active duty during the Persian Gulf conflict, and any period described in clauses (i) through (xi) shall not be included in determining the 25-year period described in subparagraph (B);

(D) provides for interest on the unpaid principal balance of the loan at a yearly rate, not exceeding the applicable maximum rate prescribed and defined by the Secretary (within the limits set forth in subsection (b) of this section) on a national, regional, or other appropriate basis, which interest shall be compounded not more frequently than annually and payable in installments over the period of the loan except as provided in subparagraph (C), except that the note or other written agreement may provide that payment of any interest may be deferred until not later than the date upon which repayment of the first installment of principal falls due or the date repayment of principal is required to resume (whichever is applicable) and may further provide that, on such date, the amount of the interest which has so accrued may be added to the principal for the purposes of calculating a repayment schedule;

(E) offers, in accordance with criteria prescribed by regulation by the Secretary, a schedule for repayment of principal and interest under which payment of a portion of the principal and interest otherwise payable at the beginning of the repayment period (as defined in such regulations) is deferred until a later time in the period;

(F) entitles the borrower to accelerate without penalty repayment of the whole or any part of the loan;

(G) provides that the check for the proceeds of the loan shall be made payable jointly to the borrower and the eligible institution in which the borrower is enrolled; and

(H) contains such other terms and conditions consistent with the provisions of this subpart and with the regulations issued by the Secretary pursuant to this subpart, as may be agreed upon by the parties to such loan, including, if agreed upon, a provision requiring the borrower to pay to the lender, in addition to principal and interest, amounts equal to the insurance premiums payable by the lender to the Secretary with respect to such loan; and

(3) subject to the consent of the student and subject to applicable law, the eligible lender has obtained from the student appropriate demographic information regarding the student, including racial or ethnic background.

(b) Limitation on rate of interest

The rate of interest prescribed and defined by the Secretary for the purpose of subsection (a)(2)(D) of this section may not exceed the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the previous quarter plus 3 percentage points, rounded to the next higher one-eighth of 1 percent.

(c) Minimum annual payment by borrower

The total of the payments by a borrower during any year or any repayment period with respect to the aggregate amount of all loans to that borrower which are insured under this subpart shall not be less than the annual interest on the outstanding principal, except as provided in subsection (a)(2)(C) of this section, unless the borrower, in the written agreement described in subsection (a)(2) of this section, agrees to make payments during any year or any repayment period in a lesser amount.

(d) Applicability of certain laws on rate or amount of interest

No provision of any law of the United States (other than subsections (a)(2)(D) and (b) of this section) or of any State that limits the rate or amount of interest payable on loans shall apply to a loan insured under this subpart.

(e) Determination regarding forbearance

Any period of time granted to a borrower under this subpart in the form of forbearance on the loan shall not be included in the 25-year total loan repayment period under subsection (a)(2)(C) of this section.

(f) Loan repayment schedule

Lenders and holders under this subpart shall offer borrowers graduated loan repayment schedules that, during the first 5 years of loan repayment, are based on the borrower's debt-to-income ratio.

(g) Rule of construction regarding determination of need of students

With respect to any determination of the financial need of a student for a loan covered by Federal loan insurance under this subpart, this subpart may not be construed to limit the authority of any school to make such allowances for students with special circumstances as the school determines appropriate.

(h) Definitions

For purposes of this section:

(1) The term ''active duty'' has the meaning given such term in section 101(18) of title 37, except that such term does not include active duty for training.

(2) The term ''Persian Gulf conflict'' means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(July 1, 1944, ch. 373, title VII, §705, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 1996; amended Pub. L. 103–43, title XX, §2014(a)(1), June 10, 1993, 107 Stat. 215; Pub. L. 105–244, title I, §102(a)(13)(A), Oct. 7, 1998, 112 Stat. 1620; Pub. L. 105–392, title I, §141(a)(1), (2), Nov. 13, 1998, 112 Stat. 3578.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsec. (a)(2)(C), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (a)(2)(C), is Pub. L. 93–113, Oct. 1, 1973, 87

Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§ 4951 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of this title and Tables.

PRIOR PROVISIONS

A prior section 292d, act July 1, 1944, ch. 373, title VII, § 704, formerly § 799A, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 207, 84 Stat. 1355; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 110(2), 85 Stat. 461; July 12, 1974, Pub. L. 93–348, title I, § 105, 88 Stat. 347; renumbered § 704, Oct. 12, 1976, Pub. L. 94–484, title II, § 201(c), 90 Stat. 2247; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 620(c), 628(3), 629(b)(2), 102 Stat. 3141, 3145, 3146, prohibited discrimination on the basis of sex, prior to the general revision of this subchapter by Pub. L. 102–408. See section 295m of this title.

Another prior section 292d, act July 1, 1944, ch. 373, title VII, § 705, as added July 30, 1956, ch. 779, § 2, 70 Stat. 718; amended Aug. 27, 1958, Pub. L. 85–777, § 1(b), 72 Stat. 933; Oct. 5, 1961, Pub. L. 87–395, § 8(b), (d), 75 Stat. 827; Oct. 17, 1962, Pub. L. 87–838, § 4(b), 76 Stat. 1074; Sept. 24, 1963, Pub. L. 88–129, §§ 2(a), 3(a), 77 Stat. 164, 173; Aug. 9, 1965, Pub. L. 89–115, § 2(b), 79 Stat. 448; Aug. 16, 1968, Pub. L. 90–490, title IV, § 401(b), 82 Stat. 789; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(1), (2)(A), 85 Stat. 437, related to applications for grants for construction of health research facilities, providing for time of filing, eligibility, recommendation and approval and requirement of findings, conditional approval, and matters considered, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 705 of act July 1, 1944, was classified to section 292e of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (a)(2)(C). Pub. L. 105–392 added cl. (x), redesignated former cl. (x) as (xi) and substituted ''(x)'' for ''(ix)'', and substituted ''(xi)'' for ''(x)'' in concluding provisions.

Pub. L. 105–244 substituted ''section 1002(a)'' for ''section 1088(a)'' in cl. (i).

1993—Subsec. (a)(2)(H), (I). Pub. L. 103–43 redesignated subpar. (I) as (H) and struck out former subpar. (H) which read as follows: ''notwithstanding the provisions of the Fair Debt Collection Practices Act, authorizes an institution or postgraduate training program attended by the borrower to assist in the collection of any loan that becomes delinquent, including providing information concerning the borrower to the Secretary and to past and present lenders and holders of the borrower's loans; and''.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–392, title I, § 141(a)(3), Nov. 13, 1998, 112 Stat. 3578, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to services provided on or after the first day of the third month that begins after the date of the enactment of this Act [Nov. 13, 1998].''

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

§ 292e. Certificate of loan insurance; effective date of insurance

(a) In general

(1) Authority for issuance of certificate

If, upon application by an eligible lender, made upon such form, containing such information, and supported by such evidence as the Secretary may require, and otherwise in conformity with this section, the Secretary finds that the applicant has made a loan to an eligible borrower which is insurable under the provisions of this subpart, he may issue to the applicant a certificate of insurance covering the loan and setting forth the amount and terms of the insurance.

(2) Effective date of insurance

Insurance evidenced by a certificate of insurance pursuant to subsection (a)(1) of this section shall become effective upon the date of issuance of the certificate, except that the Secretary is authorized, in accordance with regulations, to issue commitments with respect to proposed loans, or with respect to lines (or proposed lines) of credit, submitted by eligible lenders, and in that event, upon compliance with subsection (a)(1) of this section by the lender, the certificate of insurance may be issued effective as of the date when any loan, or any payment by the lender pursuant to a line of credit, to be covered by such insurance is made to a student described in section 292d(a)(1) of this title. Such insurance shall cease to be effective upon 60 days' default by the lender in the payment of any installment of the premiums payable pursuant to section 292g of this title.

(3) Certain agreements for lenders

An application submitted pursuant to subsection (a)(1) of this section shall contain—

(A) an agreement by the applicant to pay, in accordance with regulations, the premiums fixed by the Secretary pursuant to section 292g of this title; and

(B) an agreement by the applicant that if the loan is covered by insurance the applicant will submit such supplementary reports and statements during the effective period of the loan agreement, upon such forms, at such times, and containing such information as the Secretary may prescribe by or pursuant to regulation.

(b) Authority regarding comprehensive insurance coverage

(1) In general

In lieu of requiring a separate insurance application and issuing a separate certificate of insurance for each loan made by an eligible lender as provided in subsection (a) of this section, the Secretary may, in accordance with regulations consistent with section 292a of this title, issue to any eligible lender applying therefor a certificate of comprehensive insurance coverage which shall, without further action by the Secretary, insure all insurable loans made by that lender, on or after the date of the certificate and before a specified cutoff date, within the limits of an aggregate maximum amount stated in the certificate. Such regulations may provide for conditioning such insurance, with respect to any loan, upon compliance by the lender with such requirements (to be stated or incorporated by reference in the certificate) as in the Secretary's judgment will best achieve the purpose of this subsection while protecting the financial interest of the United States and promoting the objectives of this subpart, including (but not limited to) provisions as to the reporting of such loans and information relevant thereto to the

Secretary and as to the payment of initial and other premiums and the effect of default therein, and including provision for confirmation by the Secretary from time to time (through endorsement of the certificate) of the coverage of specific new loans by such certificate, which confirmation shall be incontestable by the Secretary in the absence of fraud or misrepresentation of fact or patent error.

(2) Lines of credit beyond cutoff date

If the holder of a certificate of comprehensive insurance coverage issued under this subsection grants to a borrower a line of credit extending beyond the cutoff date specified in that certificate, loans or payments thereon made by the holder after that date pursuant to the line of credit shall not be deemed to be included in the coverage of that certificate except as may be specifically provided therein; but, subject to the limitations of section 292a of this title, the Secretary may, in accordance with regulations, make commitments to insure such future loans or payments, and such commitments may be honored either as provided in subsection (a) of this section or by inclusion of such insurance in comprehensive coverage under this subsection for the period or periods in which such future loans or payments are made.

(c) Assignment of insurance rights

The rights of an eligible lender arising under insurance evidenced by a certificate of insurance issued to it under this section may be assigned by such lender, subject to regulation by the Secretary, only to—

(1) another eligible lender (including a public entity in the business of purchasing student loans); or

(2) the Student Loan Marketing Association.

(d) Effect of refinancing or consolidation of obligations

The consolidation of the obligations of two or more federally insured loans obtained by a borrower in any fiscal year into a single obligation evidenced by a single instrument of indebtedness or the refinancing of a single loan shall not affect the insurance by the United States. If the loans thus consolidated are covered by separate certificates of insurance issued under subsection (a) of this section, the Secretary may upon surrender of the original certificates issue a new certificate of insurance in accordance with that subsection upon the consolidated obligation. If the loans thus consolidated are covered by a single comprehensive certificate issued under subsection (b) of this section, the Secretary may amend that certificate accordingly.

(e) Rule of construction regarding consolidation of debts and refinancing

Nothing in this section shall be construed to preclude the lender and the borrower, by mutual agreement, from consolidating all of the borrower's loans insured under this subpart into a single instrument (or, if the borrower obtained only 1 loan insured under this subpart, refinancing the loan 1 time) under the terms applicable to an insured loan made at the same time as the consolidation. The lender or loan holder should provide full information to the borrower concerning the advantages and disadvantages of loan consolidation or refinancing. Nothing in this section shall be construed to preclude the consolidation of the borrower's loans insured under this subpart under section 1078–3 of title 20. Any loans insured pursuant to this subpart that are consolidated under section 1078–3 of title 20 shall not be eligible for special allowance payments under section 1087–1 of title 20.

(July 1, 1944, ch. 373, title VII, §706, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2000; amended Pub. L. 105–392, title I, §145, Nov. 13, 1998, 112 Stat. 3581.)

PRIOR PROVISIONS

A prior section 292e, act July 1, 1944, ch. 373, title VII, §705, as added Oct. 12, 1976, Pub. L. 94–484, title II, §204, 90 Stat. 2248; amended Nov. 9, 1978, Pub. L. 95–623, §11(f), 92 Stat. 3456; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2718, 95 Stat. 914, related to establishment and maintenance of records and annual financial reports and audits, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 292e, act July 1, 1944, ch. 373, title VII, §706, as added July 30, 1956, 779, §2, 70 Stat. 719; amended Oct. 5, 1961, Pub. L. 87–395, §8(c), (d), 75 Stat. 827; Sept. 24, 1963, Pub. L. 88–129, §2(a), 77 Stat. 164; Aug. 16, 1968, Pub. L. 90–490, title IV, §402, 82 Stat. 789; Nov. 18, 1971, Pub. L. 92–157, title I, §102(k)(2)(A), (B), 85 Stat. 437, limited amount of grant available for construction of health research facilities, including provisions relating to its maximum, reservation of amount, manner of payment, and exclusion of amounts granted by certain other funds, prior to repeal by Pub. L. 94–484, title II, §201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 706 of act July 1, 1944, was classified to section 292f of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 706 of act July 1, 1944, was classified to section 230 of this title prior to repeal by act Apr. 27, 1956, ch. 211, §5(e), 70 Stat. 117.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–392, §145(1), in heading, substituted ''refinancing or consolidation'' for ''consolidation'' and, in first sentence, substituted ''indebtedness or the refinancing of a single loan'' for ''indebtedness''.

Subsec. (e). Pub. L. 105–392, §145(2), in heading, substituted ''debts and refinancing'' for ''debts'', in first sentence, substituted ''all of the borrower's loans insured under this subpart into a single instrument (or, if the borrower obtained only 1 loan insured under this subpart, refinancing the loan 1 time)'' for ''all of the borrower's debts into a single instrument'', and in second sentence, substituted ''consolidation or refinancing'' for ''consolidation''.

§ 292f. Default of borrower

(a) Conditions for payment to beneficiary

(1) In general

Upon default by the borrower on any loan covered by Federal loan insurance pursuant to this subpart, and after a substantial collection effort (including, subject to subsection (h) of this section, commencement and prosecution of an action) as determined under regulations of the Secretary, the insurance beneficiary shall promptly notify the Secretary and the Secretary shall, if requested (at that time or after further collection efforts) by the beneficiary, or may on his own motion, if the insurance is still in effect, pay to the beneficiary

the amount of the loss sustained by the insured upon that loan as soon as that amount has been determined, except that, if the insurance beneficiary including any servicer of the loan is not designated for ''exceptional performance'', as set forth in paragraph (2), the Secretary shall pay to the beneficiary a sum equal to 98 percent of the amount of the loss sustained by the insured upon that loan.

(2) Exceptional performance

(A) Authority

Where the Secretary determines that an eligible lender, holder, or servicer has a compliance performance rating that equals or exceeds 97 percent, the Secretary shall designate that eligible lender, holder, or servicer, as the case may be, for exceptional performance.

(B) Compliance performance rating

For purposes of subparagraph (A), a compliance performance rating is determined with respect to compliance with due diligence in the disbursement, servicing, and collection of loans under this subpart for each year for which the determination is made. Such rating shall be equal to the percentage of all due diligence requirements applicable to each loan, on average, as established by the Secretary, with respect to loans serviced during the period by the eligible lender, holder, or servicer.

(C) Annual audits for lenders, holders, and servicers

Each eligible lender, holder, or servicer desiring a designation under subparagraph (A) shall have an annual financial and compliance audit conducted with respect to the loan portfolio of such eligible lender, holder, or servicer, by a qualified independent organization from a list of qualified organizations identified by the Secretary and in accordance with standards established by the Secretary. The standards shall measure the lender's, holder's, or servicer's compliance with due diligence standards and shall include a defined statistical sampling technique designed to measure the performance rating of the eligible lender, holder, or servicer for the purpose of this section. Each eligible lender, holder, or servicer shall submit the audit required by this section to the Secretary.

(D) Secretary's determinations

The Secretary shall make the determination under subparagraph (A) based upon the audits submitted under this paragraph and any information in the possession of the Secretary or submitted by any other agency or office of the Federal Government.

(E) Quarterly compliance audit

To maintain its status as an exceptional performer, the lender, holder, or servicer shall undergo a quarterly compliance audit at the end of each quarter (other than the quarter in which status as an exceptional performer is established through a financial and compliance audit, as described in subparagraph (C)), and submit the results of such audit to the Secretary. The compliance audit shall review compliance with due diligence requirements for the period beginning on the day after the ending date of the previous audit, in accordance with standards determined by the Secretary.

(F) Revocation authority

The Secretary shall revoke the designation of a lender, holder, or servicer under subparagraph (A) if any quarterly audit required under subparagraph (E) is not received by the Secretary by the date established by the Secretary or if the audit indicates the lender, holder, or servicer has failed to meet the standards for designation as an exceptional performer under subparagraph (A). A lender, holder, or servicer receiving a compliance audit not meeting the standard for designation as an exceptional performer may reapply for designation under subparagraph (A) at any time.

(G) Documentation

Nothing in this section shall restrict or limit the authority of the Secretary to require the submission of claims documentation evidencing servicing performed on loans, except that the Secretary may not require exceptional performers to submit greater documentation than that required for lenders, holders, and servicers not designated under subparagraph (A).

(H) Cost of audits

Each eligible lender, holder, or servicer shall pay for all the costs associated with the audits required under this section.

(I) Additional revocation authority

Notwithstanding any other provision of this section, a designation under subparagraph (A) may be revoked at any time by the Secretary if the Secretary determines that the eligible lender, holder, or servicer has failed to maintain an overall level of compliance consistent with the audit submitted by the eligible lender, holder, or servicer under this paragraph or if the Secretary asserts that the lender, holder, or servicer may have engaged in fraud in securing designation under subparagraph (A) or is failing to service loans in accordance with program requirements.

(J) Noncompliance

A lender, holder, or servicer designated under subparagraph (A) that fails to service loans or otherwise comply with applicable program regulations shall be considered in violation of the Federal False Claims Act.

(b) Subrogation

Upon payment by the Secretary of the amount of the loss pursuant to subsection (a) of this section, the United States shall be subrogated for all of the rights of the holder of the obligation upon the insured loan and shall be entitled to an assignment of the note or other evidence of the insured loan by the insurance beneficiary. If the net recovery made by the Secretary on a loan after deduction of the cost of that recovery (in-

cluding reasonable administrative costs) exceeds the amount of the loss, the excess shall be paid over to the insured. The Secretary may sell without recourse to eligible lenders (or other entities that the Secretary determines are capable of dealing in such loans) notes or other evidence of loans received through assignment under the first sentence.

(c) Forbearance

Nothing in this section or in this subpart shall be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the insured loan and approved by the Secretary or to preclude forbearance by the Secretary in the enforcement of the insured obligation after payment on that insurance.

(d) Reasonable care and diligence regarding loans

Nothing in this section or in this subpart shall be construed to excuse the eligible lender or holder of a federally insured loan from exercising reasonable care and diligence in the making of loans under the provisions of this subpart and from exercising a substantial effort in the collection of loans under the provisions of this subpart. If the Secretary, after reasonable notice and opportunity for hearing to an eligible lender, finds that the lender has failed to exercise such care and diligence, to exercise such substantial efforts, to make the reports and statements required under section 292e(a)(3) of this title, or to pay the required Federal loan insurance premiums, he shall disqualify that lender from obtaining further Federal insurance on loans granted pursuant to this subpart until he is satisfied that its failure has ceased and finds that there is reasonable assurance that the lender will in the future exercise necessary care and diligence, exercise substantial effort, or comply with such requirements, as the case may be.

(e) Definitions

For purposes of this section:

(1) The term ''insurance beneficiary'' means the insured or its authorized assignee in accordance with section 292e(c) of this title.

(2) The term ''amount of the loss'' means, with respect to a loan, unpaid balance of the principal amount and interest on such loan, less the amount of any judgment collected pursuant to default proceedings commenced by the eligible lender or holder involved.

(3) The term ''default'' includes only such defaults as have existed for 120 days.

(4) The term ''servicer'' means any agency acting on behalf of the insurance beneficiary.

(f) Reductions in Federal reimbursements or payments for defaulting borrowers

The Secretary shall, after notice and opportunity for a hearing, cause to be reduced Federal reimbursements or payments for health services under any Federal law to borrowers who are practicing their professions and have defaulted on their loans insured under this subpart in amounts up to the remaining balance of such loans. Procedures for reduction of payments under the medicare program are provided under section 1395ccc of this title. Notwithstanding such section 1395ccc of this title, any funds recovered under this subsection shall be deposited in the insurance fund established under section 292i of this title.

(g) Conditions for discharge of debt in bankruptcy

Notwithstanding any other provision of Federal or State law, a debt that is a loan insured under the authority of this subpart may be released by a discharge in bankruptcy under any chapter of title 11, only if such discharge is granted—

(1) after the expiration of the seven-year period beginning on the first date when repayment of such loan is required, exclusive of any period after such date in which the obligation to pay installments on the loan is suspended;

(2) upon a finding by the Bankruptcy Court that the nondischarge of such debt would be unconscionable; and

(3) upon the condition that the Secretary shall not have waived the Secretary's rights to apply subsection (f) of this section to the borrower and the discharged debt.

(h) Requirement regarding actions for default

(1) In general

With respect to the default by a borrower on any loan covered by Federal loan insurance under this subpart, the Secretary shall, under subsection (a) of this section, require an eligible lender or holder to commence and prosecute an action for such default unless—

(A) in the determination of the Secretary—

(i) the eligible lender or holder has made reasonable efforts to serve process on the borrower involved and has been unsuccessful with respect to such efforts, or

(ii) prosecution of such an action would be fruitless because of the financial or other circumstances of the borrower;

(B) for such loans made before November 4, 1988, the loan involved was made in an amount of less than $5,000; or

(C) for such loans made after November 4, 1988, the loan involved was made in an amount of less than $2,500.

(2) Relationship to claim for payment

With respect to an eligible lender or holder that has commenced an action pursuant to subsection (a) of this section, the Secretary shall make the payment required in such subsection, or deny the claim for such payment, not later than 60 days after the date on which the Secretary determines that the lender or holder has made reasonable efforts to secure a judgment and collect on the judgment entered into pursuant to this subsection.

(3) State court judgments

With respect to any State court judgment that is obtained by a lender or holder against a borrower for default on a loan insured under this subpart and that is subrogated to the United States under subsection (b) of this section, any United States attorney may register such judgment with the Federal courts for enforcement.

(i) Inapplicability of Federal and State statute of limitations on actions for loan collection

Notwithstanding any other provision of Federal or State law, there shall be no limitation on the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action may be initiated or taken by the Secretary, the Attorney General, or other administrative head of another Federal agency, as the case may be, for the repayment of the amount due from a borrower on a loan made under this subpart that has been assigned to the Secretary under subsection (b) of this section.

(j) School collection assistance

An institution or postgraduate training program attended by a borrower may assist in the collection of any loan of that borrower made under this subpart which becomes delinquent, including providing information concerning the borrower to the Secretary and to past and present lenders and holders of the borrower's loans, contacting the borrower in order to encourage repayment, and withholding services in accordance with regulations issued by the Secretary under section 292n(a)(7) of this title. The institution or postgraduate training program shall not be subject to section 1692g of title 15 for purposes of carrying out activities authorized by this section.

(July 1, 1944, ch. 373, title VII, §707, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2002; amended Pub. L. 103–43, title XX, §2014(a)(2), June 10, 1993, 107 Stat. 215; Pub. L. 105–392, title I, §§142(a), (b), 144(a), Nov. 13, 1998, 112 Stat. 3579, 3581.)

REFERENCES IN TEXT

The Federal False Claims Act, referred to in subsec. (a)(2)(J), probably means the False Claims Act which was the popular name for sections 231, 232, 233, and 235 of former Title 31, Money and Finance. Sections 231, 232, 233, and 235 were repealed by Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1084, and reenacted by the first section thereof as sections 3729 to 3731 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 292f, act July 1, 1944, ch. 373, title VII, §706, as added Oct. 12, 1976, Pub. L. 94–484, title II, §204, 90 Stat. 2249, authorized contracts under this subchapter without regard to certain provisions, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 292f, act July 1, 1944, ch. 373, title VII, §707, as added July 30, 1956, ch. 779, §2, 70 Stat. 720; amended Oct. 5, 1961, Pub. L. 87–395, §8(d), 75 Stat. 827; Sept. 24, 1963, Pub. L. 88–129, §2(a), 77 Stat. 164; Nov. 18, 1971, Pub. L. 92–157, title I, §102(k)(2)(A), 85 Stat. 437, provided for recapture of payments relating to grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, §201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 707 of act July 1, 1944, was classified to section 292g of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392, §142(a), designated existing provisions as par. (1), inserted heading, substituted ''determined, except that, if the insurance beneficiary including any servicer of the loan is not designated for 'exceptional performance', as set forth in paragraph (2), the Secretary shall pay to the beneficiary a sum equal to 98 percent of the amount of the loss sustained by the insured upon that loan.'' for ''determined.'', struck out at end ''Not later than one year after October 13, 1992, the Secretary shall establish performance standards for lenders and holders of loans under this subpart, including fees to be imposed for failing to meet such standards.'', and added par. (2).

Subsec. (e)(4). Pub. L. 105–392, §142(b), added par. (4).

Subsec. (g). Pub. L. 105–392, §144(a), substituted ''Notwithstanding any other provision of Federal or State law, a debt that is a loan insured'' for ''A debt which is a loan insured'' in introductory provisions.

1993—Subsec. (g)(1). Pub. L. 103–43, §2014(a)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''after the expiration of the five-year period beginning on the first date, as specified in subparagraphs (B) and (C) of section 292d(a)(2) of this title, when repayment of such loan is required;''.

Subsec. (j). Pub. L. 103–43, §2014(a)(2)(B), added subsec. (j).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–392, title I, §142(c), Nov. 13, 1998, 112 Stat. 3581, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to loans submitted to the Secretary for payment on or after the first day of the sixth month that begins after the date of enactment of this Act [Nov. 13, 1998].''

Pub. L. 105–392, title I, §144(b), Nov. 13, 1998, 112 Stat. 3581, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any loan insured under the authority of subpart I of part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) that is listed or scheduled by the debtor in a case under title XI, United States Code [Title 11, Bankruptcy], filed—

''(1) on or after the date of enactment of this Act [Nov. 13, 1998]; or

''(2) prior to such date of enactment in which a discharge has not been granted.''

§ 292g. Risk-based premiums

(a) Authority

With respect to a loan made under this subpart on or after January 1, 1993, the Secretary, in accordance with subsection (b) of this section, shall assess a risk-based premium on an eligible borrower and, if required under this section, an eligible institution that is based on the default rate of the eligible institution involved (as defined in section 292*o* of this title).

(b) Assessment of premium

Except as provided in subsection (d)(2) of this section, the risk-based premium to be assessed under subsection (a) of this section shall be as follows:

(1) Low-risk rate

With respect to an eligible borrower seeking to obtain a loan for attendance at an eligible institution that has a default rate of not to exceed five percent, such borrower shall be assessed a risk-based premium in an amount equal to 6 percent of the principal amount of the loan.

(2) Medium-risk rate

(A) In general

With respect to an eligible borrower seeking to obtain a loan for attendance at an eligible institution that has a default rate of in excess of five percent but not to exceed 10 percent—

(i) such borrower shall be assessed a risk-based premium in an amount equal to 8 percent of the principal amount of the loan; and

(ii) such institution shall be assessed a risk-based premium in an amount equal to 5 percent of the principal amount of the loan.

(B) Default management plan

An institution of the type described in subparagraph (A) shall prepare and submit to the Secretary for approval, an annual default management plan, that shall specify the detailed short-term and long-term procedures that such institution will have in place to minimize defaults on loans to borrowers under this subpart. Under such plan the institution shall, among other measures, provide an exit interview to all borrowers that includes information concerning repayment schedules, loan deferments, forbearance, and the consequences of default.

(3) High-risk rate

(A) In general

With respect to an eligible borrower seeking to obtain a loan for attendance at an eligible institution that has a default rate of in excess of 10 percent but not to exceed 20 percent—

(i) such borrower shall be assessed a risk-based premium in an amount equal to 8 percent of the principal amount of the loan; and

(ii) such institution shall be assessed a risk-based premium in an amount equal to 10 percent of the principal amount of the loan.

(B) Default management plan

An institution of the type described in subparagraph (A) shall prepare and submit to the Secretary for approval a plan that meets the requirements of paragraph (2)(B).

(4) Ineligibility

An individual shall not be eligible to obtain a loan under this subpart for attendance at an institution that has a default rate in excess of 20 percent.

(c) Reduction of risk-based premium

Lenders shall reduce by 50 percent the risk-based premium to eligible borrowers if a credit worthy parent or other responsible party co-signs the loan note.

(d) Administrative waivers

(1) Hearing

The Secretary shall afford an institution not less than one hearing, and may consider mitigating circumstances, prior to making such institution ineligible for participation in the program under this subpart.

(2) Exceptions

In carrying out this section with respect to an institution, the Secretary may grant an institution a waiver of requirements of paragraphs (2) through (4) of subsection (b) of this section if the Secretary determines that the default rate for such institution is not an accurate indicator because the volume of the loans under this subpart made by such institution has been insufficient.

(3) Transition for certain institutions

During the 3-year period beginning on October 13, 1992—

(A) subsection (b)(4) of this section shall not apply with respect to any eligible institution that is a Historically Black College or University; and

(B) any such institution that has a default rate in excess of 20 percent, and any eligible borrower seeking a loan for attendance at the institution, shall be subject to subsection (b)(3) of this section to the same extent and in the same manner as eligible institutions and borrowers described in such subsection.

(e) Payoff to reduce risk category

An institution may pay off the outstanding principal and interest owed by the borrowers of such institution who have defaulted on loans made under this subpart in order to reduce the risk category of the institution.

(July 1, 1944, ch. 373, title VII, § 708, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2004.)

PRIOR PROVISIONS

A prior section 292g, act July 1, 1944, ch. 373, title VII, § 707, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 205, 90 Stat. 2249; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(r), 91 Stat. 395, related to delegation of authority by the Secretary, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 292g, act July 1, 1944, ch. 373, title VII, § 708, as added July 30, 1956, ch. 779, § 2, 70 Stat. 720; amended Oct. 5, 1961, Pub. L. 87–395, § 8(d), 75 Stat. 827; Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164, prohibited Federal interference with administration of institutions where grants were made for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 708 of act July 1, 1944, was classified to section 292h of this title prior to the general revision of this subchapter by Pub. L. 102–408.

EFFECTIVE DATE

Section effective Jan. 1, 1993, and until such date, former section 294e(c) of this title, as in effect on the day before Oct. 13, 1992, to continue in effect in lieu of this section, see section 103 of Pub. L. 102–408, set out as a note under section 292 of this title.

§ 292h. Office for Health Education Assistance Loan Default Reduction

(a) Establishment

The Secretary shall establish, within the Division of Student Assistance of the Bureau of Health Professions, an office to be known as the Office for Health Education Assistance Loan Default Reduction (in this section referred to as the ''Office'').

(b) Purpose and functions

It shall be the purpose of the Office to achieve a reduction in the number and amounts of defaults on loans guaranteed under this subpart. In carrying out such purpose the Office shall—

(1) conduct analytical and evaluative studies concerning loans and loan defaults;

(2) carry out activities designed to reduce loan defaults;

(3) respond to special circumstances that may exist in the financial lending environment that may lead to loan defaults;

(4) coordinate with other Federal entities that are involved with student loan programs, including—

(A) with respect to the Department of Education, in the development of a single student loan application form, a single student loan deferment form, a single disability form, and a central student loan database; and

(B) with respect to the Department of Justice, in the recovery of payments from health professionals who have defaulted on loans guaranteed under this subpart; and

(5) provide technical assistance to borrowers, lenders, holders, and institutions concerning deferments and collection activities.

(c) Additional duties

In conjunction with the report submitted under subsection (b) of this section, the Office shall—

(1) compile, and publish in the Federal Register, a list of the borrowers who are in default under this subpart; and

(2) send the report and notices of default with respect to these borrowers to relevant Federal agencies and to schools, school associations, professional and specialty associations, State licensing boards, hospitals with which such borrowers may be associated, and any other relevant organizations.

(d) Allocation of funds for Office

In the case of amounts reserved under section 292i(a)(2)(B) of this title for obligation under this subsection, the Secretary may obligate the amounts for the purpose of administering the Office, including 7 full-time equivalent employment positions for such Office. With respect to such purpose, amounts made available under the preceding sentence are in addition to amounts made available to the Health Resources and Services Administration for program management for the fiscal year involved. With respect to such employment positions, the positions are in addition to the number of full-time equivalent employment positions that otherwise is authorized for the Department of Health and Human Services for the fiscal year involved.

(July 1, 1944, ch. 373, title VII, § 709, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2006; amended Pub. L. 105–392, title I, § 141(b), Nov. 13, 1998, 112 Stat. 3579.)

PRIOR PROVISIONS

A prior section 292h, act July 1, 1944, ch. 373, title VII, § 708, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 206, 90 Stat. 2250; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(a), 91 Stat. 389; Nov. 9, 1978, Pub. L. 95–623, § 12(a), 92 Stat. 3457; Dec. 11, 1980, Pub. L. 96–511, § 4(c), 94 Stat. 2826; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2719, 95 Stat. 914; Oct. 22, 1985, Pub. L. 99–129, title II, § 220(b), 99 Stat. 543; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 616(c)(1), 626, 102 Stat. 3139, 3144; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(a), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(m), 103 Stat. 613, related to health professions data, prior to the general revision of this subchapter by Pub. L. 102–408. See section 295k of this title.

Another prior section 292h, act July 1, 1944, ch. 373, title VII, § 709, as added July 30, 1956, ch. 779, § 2, 70 Stat. 720; amended Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(2)(C), 85 Stat. 437, provided for issuance of general, administrative, and other regulations for implementation of grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 709 of act July 1, 1944, was classified to section 292i of this title prior to repeal by Pub. L. 97–35, title XXVII, § 2720(a), Aug. 13, 1981, 95 Stat. 915.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–392 inserted ''and'' at end of par. (4)(B), substituted a period for ''; and'' at end of par. (5), and struck out par. (6) which read as follows: ''prepare and submit a report not later than March 31, 1993, and annually, thereafter, to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives concerning—

''(A) the default rates for each—

''(i) institution described in section 292*o*(1) of this title that is participating in the loan programs under this subpart;

''(ii) lender participating in the loan program under this subpart; and

''(iii) loan holder under this subpart;

''(B) the total amounts recovered pursuant to section 292f(b) of this title during the preceding fiscal year; and

''(C) a plan for improving the extent of such recoveries during the current fiscal year.''

§ 292i. Insurance account

(a) In general

(1) Establishment

There is hereby established a student loan insurance account (in this section referred to as the ''Account'') which shall be available without fiscal year limitation to the Secretary for making payments in connection with the collection and default of loans insured under this subpart by the Secretary.

(2) Funding

(A) Except as provided in subparagraph (B), all amounts received by the Secretary as premium charges for insurance and as receipts, earnings, or proceeds derived from any claim or other assets acquired by the Secretary in connection with his operations under this subpart, and any other moneys, property, or assets derived by the Secretary from the operations of the Secretary in connection with this section, shall be deposited in the Account.

(B) With respect to amounts described in subparagraph (A) that are received by the Secretary for fiscal year 1993 and subsequent fiscal years, the Secretary may, before depositing such amounts in the Account, reserve from the amounts each such fiscal year not more than $1,000,000 for obligation under section 292h(d) of this title.

(3) Expenditures

All payments in connection with the default of loans insured by the Secretary under this subpart shall be paid from the Account.

(b) Contingent authority for issuance of notes or other obligations

If at any time the moneys in the Account are insufficient to make payments in connection

with the collection or default of any loan insured by the Secretary under this subpart, the Secretary of the Treasury may lend the Account such amounts as may be necessary to make the payments involved, subject to the Federal Credit Reform Act of 1990 [2 U.S.C. 661 et seq.].

(July 1, 1944, ch. 373, title VII, §710, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2007; amended Pub. L. 105–392, title I, §143, Nov. 13, 1998, 112 Stat. 3581.)

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (b), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 621 of Title 2 and Tables.

PRIOR PROVISIONS

A prior section 292i, act July 1, 1944, ch. 373, title VII, §709, as added Oct. 12, 1976, Pub. L. 94–484, title II, §207, 90 Stat. 2252; amended Nov. 9, 1978, Pub. L. 95–623, §12(b), 92 Stat. 3457, related to shared schedule residency training positions, prior to repeal by Pub. L. 97–35, title XXVII, §2720(a), Aug. 13, 1981, 95 Stat. 915.

Another prior section 292i, act July 1, 1944, ch. 373, title VII, §710, as added July 30, 1956, ch. 779, §2, 70 Stat. 720; amended Sept. 24, 1963, Pub. L. 88–129, §2(a), 77 Stat. 164; Nov. 18, 1971, Pub. L. 92–157, title I, §102(k)(2)(A), 85 Stat. 437, related to preparation and submission of annual reports to the Congress through the President, including its contents, as to grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, §201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 710 of act July 1, 1944, was classified to section 292k of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 710 of act July 1, 1944, was renumbered section 709 by Pub. L. 97–35 and was classified to section 292j of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (a)(2)(B). Pub. L. 105–392 substituted ''fiscal year 1993 and subsequent fiscal years'' for ''any of the fiscal years 1993 through 1996''.

§ 292j. Powers and responsibilities of Secretary

(a) In general

In the performance of, and with respect to, the functions, powers, and duties vested in the Secretary by this subpart, the Secretary is authorized as follows:

(1) To prescribe such regulations as may be necessary to carry out the purposes of this subpart.

(2) To sue and be sued in any district court of the United States. Such district courts shall have jurisdiction of civil actions arising under this subpart without regard to the amount in controversy, and any action instituted under this subsection by or against the Secretary shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in that office. No attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or property under the control of the Secretary. Nothing herein shall be constructed to except litigation arising out of activities under this subpart from the application of sections 517 and 547 of title 28.

(3) To include in any contract for Federal loan insurance such terms, conditions, and covenants relating to repayment of principal and payments of interest, relating to his obligations and rights and to those of eligible lenders, and borrowers in case of default, and relating to such other matters as the Secretary determines to be necessary to assure that the purposes of this subpart will be achieved. Any term, condition, and covenant made pursuant to this paragraph or any other provisions of this subpart may be modified by the Secretary if the Secretary determines that modification is necessary to protect the financial interest of the United States.

(4) Subject to the specific limitations in the subpart, to consent to the modification of any note or other instrument evidencing a loan which has been insured by him under this subpart (including modifications with respect to the rate of interest, time of payment of any installment of principal and interest or any portion thereof, or any other provision).

(5) To enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right or[1] redemption.

(b) Annual budget; accounts

The Secretary shall, with respect to the financial operations arising by reason of this subpart—

(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31; and

(2) maintain with respect to insurance under this subpart an integral set of accounts.

(July 1, 1944, ch. 373, title VII, §711, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2007.)

CODIFICATION

In subsec. (b)(1), ''chapter 91 of title 31'' was substituted for ''the Government Corporation Control Act'' on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 292j, act July 1, 1944, ch. 373, title VII, §709, formerly §710, as added Oct. 12, 1976, Pub. L. 94–484, title II, §208, 90 Stat. 2252; renumbered §709 and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, §§2720(b), 2721, 95 Stat. 915; Oct. 22, 1985, Pub. L. 99–129, title II, §206, 99 Stat. 527, related to payment under grants, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 292j, act July 1, 1944, ch. 373, title VII, §711, as added Sept. 24, 1963, Pub. L. 88–129, §3(b), 77 Stat. 173; amended Nov. 18, 1971, Pub. L. 92–157, title I, §102(k)(2)(A), 85 Stat. 437, provided for technical assistance in connection with grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, §201(a), Oct. 12, 1976, 90 Stat. 2246.

§ 292k. Participation by Federal credit unions in Federal, State, and private student loan insurance programs

Notwithstanding any other provision of law, Federal credit unions shall, pursuant to regula-

[1] So in original. Probably should be ''of''.

tions of the Administrator of the National Credit Union Administration, have power to make insured loans to eligible students in accordance with the provisions of this subpart relating to Federal insured loans.

(July 1, 1944, ch. 373, title VII, §712, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2008.)

PRIOR PROVISIONS

A prior section 292k, act July 1, 1944, ch. 373, title VII, §710, formerly §711, as added Oct. 12, 1976, Pub. L. 94–484, title II, §209, 90 Stat. 2253; renumbered §710 and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, §§2720(b), 2722, 95 Stat. 915, related to differential tuition and fees, prior to the general revision of this subchapter by Pub. L. 102–408.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

§ 292*l*. Determination of eligible students

For purposes of determining eligible students under this part, in the case of a public school in a State that offers an accelerated, integrated program of study combining undergraduate premedical education and medical education leading to advanced entry, by contractual agreement, into an accredited four-year school of medicine which provides the remaining training leading to a degree of doctor of medicine, whenever in this part a provision refers to a student at a school of medicine, such reference shall include only a student enrolled in any of the last four years of such accelerated, integrated program of study.

(July 1, 1944, ch. 373, title VII, §713, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2008.)

§ 292m. Repayment by Secretary of loans of deceased or disabled borrowers

If a borrower who has received a loan dies or becomes permanently and totally disabled (as determined in accordance with regulations of the Secretary), the Secretary shall discharge the borrower's liability on the loan by repaying the amount owed on the loan from the account established under section 292i of this title.

(July 1, 1944, ch. 373, title VII, §714, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2008.)

§ 292n. Additional requirements for institutions and lenders

(a) In general

Notwithstanding any other provision of this subpart, the Secretary is authorized to prescribe such regulations as may be necessary to provide for—

(1) a fiscal audit of an eligible institution with regard to any funds obtained from a borrower who has received a loan insured under this subpart;

(2) the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid with respect to funds obtained from a student who has received a loan insured under this subpart;

(3) the limitation, suspension, or termination of the eligibility under this subpart of any otherwise eligible institution, whenever the Secretary has determined, after notice and affording an opportunity for hearing, that such institution has violated or failed to carry out any regulation prescribed under this subpart;

(4) the collection of information from the borrower, lender, or eligible institution to assure compliance with the provisions of section 292d of this title;

(5) the assessing of tuition or fees to borrowers in amounts that are the same or less than the amount of tuition and fees assessed to nonborrowers;

(6) the submission, by the institution or the lender to the Office of Health Education Assistance Loan Default Reduction, of information concerning each loan made under this subpart, including the date when each such loan was originated, the date when each such loan is sold, the identity of the loan holder and information concerning a change in the borrower's status;

(7) the withholding of services, including academic transcripts, financial aid transcripts, and alumni services, by an institution from a borrower upon the default of such borrower of a loan under this subpart, except in case of a borrower who has filed for bankruptcy; and

(8) the offering, by the lender to the borrower, of a variety of repayment options, including fixed-rate, graduated repayment with negative amortization permitted, and income dependent payments for a limited period followed by level monthly payments.

(b) Recording by institution of information on students

The Secretary shall require an eligible institution to record, and make available to the lender and to the Secretary upon request, the name, address, postgraduate destination, and other reasonable identifying information for each student of such institution who has a loan insured under this subpart.

(c) Workshop for student borrowers

Each participating eligible institution must have, at the beginning of each academic year, a workshop concerning the provisions of this subpart that all student borrowers shall be required to attend.

(July 1, 1944, ch. 373, title VII, §715, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2009.)

§ 292*o*. Definitions

For purposes of this subpart:

(1) The term ''eligible institution'' means, with respect to a fiscal year, a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, or chiropractic, or a graduate program in health

administration or behavioral and mental health practice, including clinical psychology.

(2) The term ''eligible lender'' means an eligible institution that became a lender under this subpart prior to September 15, 1992, an agency or instrumentality of a State, a financial or credit institution (including an insurance company) which is subject to examination and supervision by an agency of the United States or of any State, a pension fund approved by the Secretary for this purpose, or a nonprofit private entity designated by the State, regulated by the State, and approved by the Secretary.

(3) The term ''line of credit'' means an arrangement or agreement between the lender and the borrower whereby a loan is paid out by the lender to the borrower in annual installments, or whereby the lender agrees to make, in addition to the initial loan, additional loans in subsequent years.

(4) The term ''school of allied health'' means a program in a school of allied health (as defined in section 295p of this title) which leads to a masters' degree or a doctoral degree.

(5)(A) The term ''default rate'', in the case of an eligible entity, means the percentage constituted by the ratio of—

(i) the principal amount of loans insured under this subpart—

(I) that are made with respect to the entity and that enter repayment status after April 7, 1987; and

(II) for which amounts have been paid under section 292f(a) of this title to insurance beneficiaries, exclusive of any loan for which amounts have been so paid as a result of the death or total and permanent disability of the borrower; exclusive of any loan for which the borrower begins payments to the Secretary on the loan pursuant to section 292f(b) of this title and maintains payments for 12 consecutive months in accordance with the agreement involved (with the loan subsequently being included or excluded, as the case may be, as amounts paid under section 292f(a) of this title according to whether further defaults occur and whether with respect to the default involved compliance with such requirement regarding 12 consecutive months occurs); and exclusive of any loan on which payments may not be recovered by reason of the obligation under the loan being discharged in bankruptcy under title 11; to

(ii) the total principal amount of loans insured under this subpart that are made with respect to the entity and that enter repayment status after April 7, 1987.

(B) For purposes of subparagraph (A), a loan insured under this subpart shall be considered to have entered repayment status if the applicable period described in subparagraph (B) of section 292d(a)(2) of this title regarding the loan has expired (without regard to whether any period described in subparagraph (C) of such section is applicable regarding the loan).

(C) For purposes of subparagraph (A), the term ''eligible entity'' means an eligible institution, an eligible lender, or a holder, as the case may be.

(D) For purposes of subparagraph (A), a loan is made with respect to an eligible entity if—

(i) in the case of an eligible institution, the loan was made to students of the institution;

(ii) in the case of an eligible lender, the loan was made by the lender; and

(iii) in the case of a holder, the loan was purchased by the holder.

(July 1, 1944, ch. 373, title VII, § 719, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2009; amended Pub. L. 105–392, title I, § 141(c)(2), Nov. 13, 1998, 112 Stat. 3579.)

AMENDMENTS

1998—Par. (1). Pub. L. 105–392 substituted ''or behavioral and mental health practice, including clinical psychology'' for ''or clinical psychology''.

§ 292p. Authorization of appropriations

(a) In general

For fiscal year 1993 and subsequent fiscal years, there are authorized to be appropriated such sums as may be necessary for the adequacy of the student loan insurance account under this subpart and for the purpose of administering this subpart.

(b) Availability of sums

Sums appropriated under subsection (a) of this section shall remain available until expended.

(July 1, 1944, ch. 373, title VII, § 720, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2011.)

PRIOR PROVISIONS

A prior section 720 of act July 1, 1944, was classified to section 293 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

SUBPART II—FEDERALLY-SUPPORTED STUDENT LOAN FUNDS

§ 292q. Agreements for operation of school loan funds

(a) Fund agreements

The Secretary is authorized to enter into an agreement for the establishment and operation of a student loan fund in accordance with this subpart with any public or other nonprofit school of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, or veterinary medicine.

(b) Requirements

Each agreement entered into under this section shall—

(1) provide for establishment of a student loan fund by the school;

(2) provide for deposit in the fund of—

(A) the Federal capital contributions to the fund;

(B) an amount equal to not less than one-ninth of such Federal capital contributions, contributed by such institution;

(C) collections of principal and interest on loans made from the fund;

(D) collections pursuant to section 292r(j) of this title; and

(E) any other earnings of the fund;

(3) provide that the fund shall be used only for loans to students of the school in accordance with the agreement and for costs of collection of such loans and interest thereon;

(4) provide that loans may be made from such funds only to students pursuing a full-time course of study at the school leading to a degree of doctor of medicine, doctor of dentistry or an equivalent degree, doctor of osteopathy, bachelor of science in pharmacy or an equivalent degree, doctor of pharmacy or an equivalent degree, doctor of podiatric medicine or an equivalent degree, doctor of optometry or an equivalent degree, or doctor of veterinary medicine or an equivalent degree;

(5) provide that the school shall advise, in writing, each applicant for a loan from the student loan fund of the provisions of section 292r of this title under which outstanding loans from the student loan fund may be paid (in whole or in part) by the Secretary; and

(6) contain such other provisions as are necessary to protect the financial interests of the United States.

(c) Failure of school to collect loans

(1) In general

Any standard established by the Secretary by regulation for the collection by schools of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, or veterinary medicine of loans made pursuant to loan agreements under this subpart shall provide that the failure of any such school to collect such loans shall be measured in accordance with this subsection. This subsection may not be construed to require such schools to reimburse the student loan fund under this subpart for loans that became uncollectible prior to August 1985 or to penalize such schools with respect to such loans.

(2) Extent of failure

The measurement of a school's failure to collect loans made under this subpart shall be the ratio (stated as a percentage) that the defaulted principal amount outstanding of such school bears to the matured loans of such school.

(3) Definitions

For purposes of this subsection:

(A) The term ''default'' means the failure of a borrower of a loan made under this subpart to—

(i) make an installment payment when due; or

(ii) comply with any other term of the promissory note for such loan,

except that a loan made under this subpart shall not be considered to be in default if the loan is discharged in bankruptcy or if the school reasonably concludes from written contracts with the borrower that the borrower intends to repay the loan.

(B) The term ''defaulted principal amount outstanding'' means the total amount borrowed from the loan fund of a school that has reached the repayment stage (minus any principal amount repaid or canceled) on loans—

(i) repayable monthly and in default for at least 120 days; and

(ii) repayable less frequently than monthly and in default for at least 180 days;

(C) The term ''grace period'' means the period of one year beginning on the date on which the borrower ceases to pursue a full-time course of study at a school of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, or veterinary medicine; and

(D) The term ''matured loans'' means the total principal amount of all loans made by a school under this subpart minus the total principal amount of loans made by such school to students who are—

(i) enrolled in a full-time course of study at such school; or

(ii) in their grace period.

(July 1, 1944, ch. 373, title VII, § 721, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2011.)

PRIOR PROVISIONS

A prior section 721 of act July 1, 1944, was classified to section 293a of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 292r. Loan provisions

(a) Amount of loan

(1) In general

Loans from a student loan fund (established under an agreement with a school under section 292q of this title) may not, subject to paragraph (2), exceed for any student for a school year (or its equivalent) the cost of attendance (including tuition, other reasonable educational expenses, and reasonable living costs) for that year at the educational institution attended by the student (as determined by such educational institution).

(2) Third and fourth years of medical school

For purposes of paragraph (1), the amount of the loan may, in the case of the third or fourth year of a student at a school of medicine or osteopathic medicine, be increased to the extent necessary to pay the balances of loans that, from sources other than the student loan fund under section 292q of this title, were made to the individual for attendance at the school. The authority to make such an increase is subject to the school and the student agreeing that such amount (as increased) will be expended to pay such balances.

(b) Terms and conditions

Subject to section 292s of this title, any such loans shall be made on such terms and conditions as the school may determine, but may be made only to a student—

(1) who is in need of the amount thereof to pursue a full-time course of study at the school leading to a degree of doctor of medicine, doctor of dentistry or an equivalent degree, doctor of osteopathy, bachelor of science in pharmacy or an equivalent degree, doctor of pharmacy or an equivalent degree, doctor of podiatric medicine or an equivalent degree,

doctor of optometry or an equivalent degree, or doctor of veterinary medicine or an equivalent degree; and

(2) who, if required under section 453 of title 50, Appendix, to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section.

(c) Repayment; exclusions from repayment period

Such loans shall be repayable in equal or graduated periodic installments (with the right of the borrower to accelerate repayment) over the period of not less than 10 years nor more than 25 years, at the discretion of the institution, which begins one year after the student ceases to pursue a full-time course of study at a school of medicine, osteopathic medicine, dentistry, pharmacy, podiatry, optometry, or veterinary medicine, excluding from such period—

(1) all periods—

(A) not in excess of three years of active duty performed by the borrower as a member of a uniformed service;

(B) not in excess of three years during which the borrower serves as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.];

(C) during which the borrower participates in advanced professional training, including internships and residencies; and

(D) during which the borrower is pursuing a full-time course of study at such a school; and

(2) a period—

(A) not in excess of two years during which a borrower who is a full-time student in such a school leaves the school, with the intent to return to such school as a full-time student, in order to engage in a full-time educational activity which is directly related to the health profession for which the borrower is preparing, as determined by the Secretary; or

(B) not in excess of two years during which a borrower who is a graduate of such a school is a participant in a fellowship training program or a full-time educational activity which—

(i) is directly related to the health profession for which such borrower prepared at such school, as determined by the Secretary; and

(ii) may be engaged in by the borrower during such a two-year period which begins within twelve months after the completion of the borrower's participation in advanced professional training described in paragraph (1)(C) or prior to the completion of such borrower's participation in such training.

(d) Cancellation of liability

The liability to repay the unpaid balance of such a loan and accrued interest thereon shall be canceled upon the death of the borrower, or if the Secretary determines that he has become permanently, and totally disabled.

(e) Rate of interest

Such loans shall bear interest, on the unpaid balance of the loan, computed only for periods for which the loan is repayable, at the rate of 5 percent per year.

(f) Security or endorsement

Loans shall be made under this subpart without security or endorsement, except that if the borrower is a minor and the note or other evidence of obligation executed by him would not, under the applicable law, create a binding obligation, either security or endorsement may be required.

(g) Transferring and assigning loans

No note or other evidence of a loan made under this subpart may be transferred or assigned by the school making the loan except that, if the borrowers transfer to another school participating in the program under this subpart, such note or other evidence of a loan may be transferred to such other school.

(h) Charge with respect to insurance for certain cancellations

Subject to regulations of the Secretary, a school may assess a charge with respect to loans made this subpart[1] to cover the costs of insuring against cancellation of liability under subsection (d) of this section.

(i) Charge with respect to late payments

Subject to regulations of the Secretary, and in accordance with this section, a school shall assess a charge with respect to a loan made under this subpart for failure of the borrower to pay all or any part of an installment when it is due and, in the case of a borrower who is entitled to deferment of the loan under subsection (c) of this section, for any failure to file timely and satisfactory evidence of such entitlement. No such charge may be made if the payment of such installment or the filing of such evidence is made within 60 days after the date on which such installment or filing is due. The amount of any such charge may not exceed an amount equal to 6 percent of the amount of such installment. The school may elect to add the amount of any such charge to the principal amount of the loan as of the first day after the day on which such installment or evidence was due, or to make the amount of the charge payable to the school not later than the due date of the next installment after receipt by the borrower of notice of the assessment of the charge.

(j) Authority of schools regarding rate of payment

A school may provide, in accordance with regulations of the Secretary, that during the repayment period of a loan from a loan fund established pursuant to an agreement under this subpart payments of principal and interest by the borrower with respect to all the outstanding loans made to him from loan funds so established shall be at a rate equal to not less than $40 per month.

(k) Authority regarding repayments by Secretary

Upon application by a person who received, and is under an obligation to repay, any loan made to such person as a health professions student to enable him to study medicine, osteop-

[1] So in original. Probably should be ''under this subpart''.

athy, dentistry, veterinary medicine, optometry, pharmacy, or podiatry, the Secretary may undertake to repay (without liability to the applicant) all or any part of such loan, and any interest or portion thereof outstanding thereon, upon his determination, pursuant to regulations establishing criteria therefor, that the applicant—

(1) failed to complete such studies leading to his first professional degree;

(2) is in exceptionally needy circumstances;

(3) is from a low-income or disadvantaged family as those terms may be defined by such regulations; and

(4) has not resumed, or cannot reasonably be expected to resume, the study of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, or podiatric medicine, within two years following the date upon which he terminated such studies.

(*l*) Collection efforts by Secretary

The Secretary is authorized to attempt to collect any loan which was made under this subpart, which is in default, and which was referred to the Secretary by a school with which the Secretary has an agreement under this subpart, on behalf of that school under such terms and conditions as the Secretary may prescribe (including reimbursement from the school's student loan fund for expenses the Secretary may reasonably incur in attempting collection), but only if the school has complied with such requirements as the Secretary may specify by regulation with respect to the collection of loans under this subpart. A loan so referred shall be treated as a debt subject to section 5514 of title 5. Amounts collected shall be deposited in the school's student loan fund. Whenever the Secretary desires the institution of a civil action regarding any such loan, the Secretary shall refer the matter to the Attorney General for appropriate action.

(m) Elimination of statute of limitation for loan collections

(1) Purpose

It is the purpose of this subsection to ensure that obligations to repay loans under this section are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced.

(2) Prohibition

Notwithstanding any other provision of Federal or State law, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action may be initiated or taken by a school that has an agreement with the Secretary pursuant to section 292q of this title that is seeking the repayment of the amount due from a borrower on a loan made under this subpart after the default of the borrower on such loan.

(July 1, 1944, ch. 373, title VII, §722, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2012; amended Pub. L. 103–43, title XX, §2014(b), June 10, 1993, 107 Stat. 215; Pub. L. 105–392, title I, §134(a), (b)(1), Nov. 13, 1998, 112 Stat. 3577, 3578.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsec. (c)(1)(B), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

PRIOR PROVISIONS

A prior section 722 of act July 1, 1944, was classified to section 293b of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–392, §134(a)(1), substituted ''the cost of attendance (including tuition, other reasonable educational expenses, and reasonable living costs) for that year at the educational institution attended by the student (as determined by such educational institution).'' for ''the sum of—

''(A) the cost of tuition for such year at such school, and

''(B) $2,500.''

Subsec. (a)(2). Pub. L. 105–392, §134(a)(2), substituted ''the amount of the loan may, in the case of the third or fourth year of a student at a school of medicine or osteopathic medicine, be increased to the extent necessary'' for ''the amount $2,500 may, in the case of the third or fourth year of a student at school of medicine or osteopathic medicine, be increased to the extent necessary (including such $2,500)''.

Subsec. (c). Pub. L. 105–392, §134(a)(3), in heading, substituted ''repayment'' for ''ten-year'' and, in introductory provisions, substituted ''period of not less than 10 years nor more than 25 years, at the discretion of the institution, which begins'' for ''ten-year period which begins'' and ''such period'' for ''such ten-year period''.

Subsec. (j). Pub. L. 105–392, §134(a)(4), substituted ''$40'' for ''$15''.

Subsec. (m). Pub. L. 105–392, §134(b)(1), added subsec. (m).

1993—Subsec. (a). Pub. L. 103–43, §2014(b)(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Loans from a student loan fund (established under an agreement with a school under section 292q of this title) may not exceed for any student for each school year (or its equivalent) the sum of—

''(1) the cost of tuition for such year at such school, and

''(2) $2,500.''

Subsec. (b)(2), (3). Pub. L. 103–43, §2014(b)(2), redesignated par. (3) as (2) and struck out former par. (2), which read as follows: ''who, if pursuing a full-time course of study at the school leading to a degree of doctor of medicine or doctor of osteopathy, is of exceptional financial need (as defined by regulations of the Secretary); and''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–392, title I, §134(b)(2), Nov. 13, 1998, 112 Stat. 3578, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to actions pending on or after the date of enactment of this Act [Nov. 13, 1998].''

§ 292s. Medical schools and primary health care

(a) Requirements for students

(1) In general

Subject to the provisions of this subsection, in the case of student loan funds established under section 292q of this title by schools of medicine or osteopathic medicine, each agreement entered into under such section with such a school shall provide (in addition to the

provisions required in subsection (b) of such section) that the school will make a loan from such fund to a student only if the student agrees—

(A) to enter and complete a residency training program in primary health care not later than 4 years after the date on which the student graduates from such school; and

(B) to practice in such care through the date on which the loan is repaid in full.

(2) Inapplicability to certain students

(A) The requirement established in paragraph (1) regarding the student loan fund of a school does not apply to a student if—

(i) the first loan to the student from such fund is made before July 1, 1993; or

(ii) the loan is made from—

(I) a Federal capital contribution under section 292q of this title that is made from amounts appropriated under section 292t(f)[1] of this title (in this section referred to as an ''exempt Federal capital contribution''); or

(II) a school contribution made under section 292q of this title pursuant to such a Federal capital contribution (in this section referred to as an ''exempt school contribution'').

(B) A Federal capital contribution under section 292q of this title may not be construed as being an exempt Federal capital contribution if the contribution was made from amounts appropriated before October 1, 1990. A school contribution under section 292q of this title may not be construed as being an exempt school contribution if the contribution was made pursuant to a Federal capital contribution under such section that was made from amounts appropriated before such date.

(3) Noncompliance by student

Each agreement entered into with a student pursuant to paragraph (1) shall provide that, if the student fails to comply with such agreement, the loan involved will begin to accrue interest at a rate of 18 percent per year beginning on the date of such noncompliance.

(4) Waivers

(A) With respect to the obligation of an individual under an agreement made under paragraph (1) as a student, the Secretary shall provide for the partial or total waiver or suspension of the obligation whenever compliance by the individual is impossible, or would involve extreme hardship to the individual, and if enforcement of the obligation with respect to the individual would be unconscionable.

(B) For purposes of subparagraph (A), the obligation of an individual shall be waived if—

(i) the status of the individual as a student of the school involved is terminated before graduation from the school, whether voluntarily or involuntarily; and

(ii) the individual does not, after such termination, resume attendance at the school or begin attendance at any other school of medicine or osteopathic medicine.

(C) If an individual resumes or begins attendance for purposes of subparagraph (B), the obligation of the individual under the agreement under paragraph (1) shall be considered to have been suspended for the period in which the individual was not in attendance.

(D) This paragraph may not be construed as authorizing the waiver or suspension of the obligation of a student to repay, in accordance with section 292r of this title, loans from student loan funds under section 292q of this title.

(b) Requirements for schools

(1) In general

Subject to the provisions of this subsection, in the case of student loan funds established under section 292q of this title by schools of medicine or osteopathic medicine, each agreement entered into under such section with such a school shall provide (in addition to the provisions required in subsection (b) of such section) that, for the 1-year period ending on June 30, 1997;[2] and for the 1-year period ending on June 30 of each subsequent fiscal year, the school will meet not less than 1 of the conditions described in paragraph (2) with respect to graduates of the school whose date of graduation from the school occurred approximately 4 years before the end of the 1-year period involved.

(2) Description of conditions

With respect to graduates described in paragraph (1) (in this paragraph referred to as ''designated graduates''), the conditions referred to in such paragraph for a school for a 1-year period are as follows:

(A) Not less than 50 percent of designated graduates of the school meet the criterion of either being in a residency training program in primary health care, or being engaged in a practice in such care (having completed such a program).

(B) Not less than 25 percent of the designated graduates of the school meet such criterion, and such percentage is not less than 5 percentage points above the percentage of such graduates meeting such criterion for the preceding 1-year period.

(C) In the case of schools of medicine or osteopathic medicine with student loans funds under section 292q of this title, the school involved is at or above the 75th percentile of such schools whose designated graduates meet such criterion.

(3) Determinations by Secretary

Not later than 90 days after the close of each 1-year period described in paragraph (1), the Secretary shall make a determination of whether the school involved has for such period complied with such paragraph and shall in writing inform the school of the determination. Such determination shall be made only after consideration of the report submitted to the Secretary by the school under paragraph (6).

(4) Noncompliance by school

(A)(i) Subject to subparagraph (C), each agreement under section 292q of this title with

[1] See References in Text note below.

[2] So in original. The semicolon probably should be a comma.

a school of medicine or osteopathic medicine shall provide that, if the school fails to comply with paragraph (1) for a 1-year period under such paragraph, the school—

(I) will pay to the Secretary the amount applicable under subparagraph (B) for the period; and

(II) will pay such amount not later than 90 days after the school is informed under paragraph (3) of the determination of the Secretary regarding such period.

(ii) Any amount that a school is required to pay under clause (i) may be paid from the student loan fund of the school under section 292q of this title.

(B) For purposes of subparagraph (A), the amount applicable for a school, subject to subparagraph (C), is—

(i) for the 1-year period ending June 30, 1997, an amount equal to 10 percent of the income received during such period by the student loan fund of the school under section 292q of this title;

(ii) for the 1-year period ending June 30, 1998, an amount equal to 20 percent of the income received during such period by the student loan fund; and

(iii) for any subsequent 1-year period under paragraph (1), an amount equal to 30 percent of the income received during such period by the student loan fund.

(C) In determining the amount of income that a student loan fund has received for purposes of subparagraph (B), the Secretary shall exclude any income derived from exempt contributions. Payments made to the Secretary under subparagraph (A) may not be made with such contributions or with income derived from such contributions.

(5) Expenditure of payments

(A) Amounts paid to the Secretary under paragraph (4) shall be expended to make Federal capital contributions to student loan funds under section 292q of this title of schools that are in compliance with paragraph (1).

(B) A Federal capital contribution under section 292q of this title may not be construed as being an exempt Federal capital contribution if the contribution is made from payments under subparagraph (A). A school contribution under such section may not be construed as being an exempt school contribution if the contribution is made pursuant to a Federal capital contribution from such payments.

(6) Reports by schools

Each agreement under section 292q of this title with a school of medicine or osteopathic medicine shall provide that the school will submit to the Secretary a report for each 1-year period under paragraph (1) that provides such information as the Secretary determines to be necessary for carrying out this subsection. Each such report shall include statistics concerning the current training or practice status of all graduates of such school whose date of graduation from the school occurred approximately 4 years before the end of the 1-year period involved.

(c) Definitions

For purposes of this section:

(1) The term ''exempt contributions'' means exempt Federal capital contributions and exempt school contributions.

(2) The term ''exempt Federal capital contribution'' means a Federal capital contribution described in subclause (I) of subsection (a)(2)(A)(ii) of this section.

(3) The term ''exempt school contribution'' means a school contribution described in subclause (II) of subsection (a)(2)(A)(ii) of this section.

(4) The term ''income'', with respect to a student fund under section 292q of this title, means payments of principal and interest on any loan made from the fund, and any other earnings of the fund.

(5) The term ''primary health care'' means family medicine, general internal medicine, general pediatrics, preventive medicine, or osteopathic general practice.

(July 1, 1944, ch. 373, title VII, § 723, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2015; amended Pub. L. 103–43, title XX, § 2014(c), June 10, 1993, 107 Stat. 216; Pub. L. 105–392, title I, § 131, Nov. 13, 1998, 112 Stat. 3574.)

REFERENCES IN TEXT

Section 292t(f) of this title, referred to in subsec. (a)(2)(A)(ii)(I), contained provisions in par. (1) relating to appropriation of funds for Federal capital contributions to student loan funds, prior to repeal by Pub. L. 105–392, title I, § 132(b), Nov. 13, 1998, 112 Stat. 3575, eff. Oct. 1, 2002.

PRIOR PROVISIONS

A prior section 723 of act July 1, 1944, was classified to section 293c of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105–392, § 131(b), reenacted heading without change and amended text of par. (3) generally. Prior to amendment, text read as follows: ''Each agreement entered into with a student pursuant to paragraph (1) shall provide that, if the student fails to comply with the agreement—

''(A) the balance due on the loan involved will be immediately recomputed from the date of issuance at an interest rate of 12 percent per year, compounded annually; and

''(B) the recomputed balance will be paid not later than the expiration of the 3-year period beginning on the date on which the student fails to comply with the agreement.''

Subsec. (b)(1). Pub. L. 105–392, § 131(a), substituted ''4 years before'' for ''3 years before''.

Subsecs. (c), (d). Pub. L. 105–392, § 131(c), redesignated subsec. (d) as (c) and struck out heading and text of subsec. (c). Text read as follows: ''The Secretary shall each fiscal year submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate, a report regarding the administration of this section, including the extent of compliance with the requirements of this section, during the preceding fiscal year.''

1993—Subsec. (a)(4). Pub. L. 103–43, § 2014(c)(1), added par. (4).

Subsec. (b)(1). Pub. L. 103–43, § 2014(c)(2)(A), substituted ''1997;'' for ''1994,'' and ''3 years before'' for ''4 years before''.

Subsec. (b)(2)(B). Pub. L. 103–43, § 2014(c)(2)(B), substituted ''25 percent'' for ''15 percent''.

Subsec. (b)(4)(B). Pub. L. 103–43, § 2014(c)(2)(C), substituted ''1997'' for ''1994'' in cl. (i) and ''1998'' for ''1995'' in cl. (ii).

§ 292t. Individuals from disadvantaged backgrounds

(a) Fund agreements regarding certain amounts

With respect to amounts appropriated under subsection (f) of this section, each agreement entered into under section 292q of this title with a school shall provide (in addition to the provisions required in subsection (b) of such section) that—

(1) any Federal capital contribution made to the student loan fund of the school from such amounts, together with the school contribution appropriate under subsection (b)(2)(B) of such section to the amount of the Federal capital contribution, will be utilized only for the purpose of—

(A) making loans to individuals from disadvantaged backgrounds; and

(B) the costs of the collection of the loans and interest on the loans; and

(2) collections of principal and interest on loans made pursuant to paragraph (1), and any other earnings of the student loan fund attributable to amounts that are in the fund pursuant to such paragraph, will be utilized only for the purpose described in such paragraph.

(b) Minimum qualifications for schools

The Secretary may not make a Federal capital contribution for purposes of subsection (a) of this section for a fiscal year unless the health professions school involved—

(1) is carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including racial and ethnic minorities; and

(2) is carrying out a program for recruiting and retaining minority faculty.

(c) Certain agreements regarding education of students; date certain for compliance

The Secretary may not make a Federal capital contribution for purposes of subsection (a) of this section for a fiscal year unless the health professions school involved agrees—

(1) to ensure that adequate instruction regarding minority health issues is provided for in the curricula of the school;

(2) with respect to health clinics providing services to a significant number of individuals who are from disadvantaged backgrounds, including members of minority groups, to enter into arrangements with 1 or more such clinics for the purpose of providing students of the school with experience in providing clinical services to such individuals;

(3) with respect to public or nonprofit private secondary educational institutions and undergraduate institutions of higher education, to enter into arrangements with 1 or more such institutions for the purpose of carrying out programs regarding the educational preparation of disadvantaged students, including minority students, to enter the health professions and regarding the recruitment of such individuals into the health professions;

(4) to establish a mentor program for assisting disadvantaged students, including minority students, regarding the completion of the educational requirements for degrees from the school;

(5) to be carrying out each of the activities specified in any of paragraphs (1) through (4) by not later than 1 year after the date on which the first Federal capital contribution is made to the school for purposes of subsection (a) of this section; and

(6) to continue carrying out such activities, and the activities specified in paragraphs (1) and (2) of subsection (b) of this section, throughout the period during which the student loan fund established pursuant to section 292q(b) of this title is in operation.

(d) Availability of other amounts

With respect to Federal capital contributions to student loan funds under agreements under section 292q(b) of this title, any such contributions made before October 1, 1990, together with the school contributions appropriate under paragraph (2)(B) of such section to the amount of the Federal capital contributions, may be utilized for the purpose of making loans to individuals from disadvantaged backgrounds, subject to section 292s(a)(2)(B) of this title.

(e) "Disadvantaged" defined

For purposes of this section, the term ''disadvantaged'', with respect to an individual, shall be defined by the Secretary.

(f) Authorization of appropriations

(1) Repealed. Pub. L. 105–392, title I, § 132(b), Nov. 13, 1998, 112 Stat. 3575

(2) Special consideration for certain schools

In making Federal capital contributions to student loan funds for purposes of subsection (a) of this section, the Secretary shall give special consideration to health professions schools that have enrollments of underrepresented minorities above the national average for health professions schools.

(July 1, 1944, ch. 373, title VII, § 724, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2018; amended Pub. L. 105–392, title I, § 132, Nov. 13, 1998, 112 Stat. 3575.)

PRIOR PROVISIONS

A prior section 724 of act July 1, 1944, was classified to section 293d of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (f)(1). Pub. L. 105–392, § 132(b), struck out heading and text of par. (1). Text read as follows: ''With respect to making Federal capital contributions to student loan funds for purposes of subsection (a) of this section, there is authorized to be appropriated for such contributions $8,000,000 for each of the fiscal years 1998 through 2002.''

Pub. L. 105–392, § 132(a), substituted ''$8,000,000 for each of the fiscal years 1998 through 2002'' for ''$15,000,000 for fiscal year 1993''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–392, title I, § 132(b), Nov. 13, 1998, 112 Stat. 3575, provided that the repeal of subsec. (f)(1) of this section is effective Oct. 1, 2002.

§ 292u. Administrative provisions

The Secretary may agree to modifications of agreements or loans made under this subpart, and may compromise, waive, or release any

right, title, claim, or demand of the United States arising or acquired under this subpart.

(July 1, 1944, ch. 373, title VII, § 725, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2019.)

PRIOR PROVISIONS

A prior section 725 of act July 1, 1944, was classified to section 293e of this title prior to the general revision of this subchapter by Pub. L. 102–408.

HEALTH PROFESSIONS EDUCATION FUND; AVAILABILITY OF FUND; DEPOSIT IN FUND OF: INTEREST PAYMENTS OR REPAYMENTS OF PRINCIPAL ON LOANS; TRANSFER OF EXCESS MONEYS TO GENERAL FUND OF THE TREASURY; AUTHORIZATION OF APPROPRIATIONS FOR PAYMENTS UNDER AGREEMENTS

Section 406(b), (c) of Pub. L. 94–484 provided that:

''(b) The health professions education fund created within the Treasury by section 744(d)(1) of the Public Health Service Act (as in effect before the date of enactment of this Act) [former section 294d(d)(1) of this title] shall remain available to the Secretary of Health, Education, and Welfare [now Health and Human Services] for the purpose of meeting his responsibilities respecting participations in obligations acquired under such section. The Secretary shall continue to deposit in such fund all amounts received by him as interest payments or repayments of principal on loans under such section 744 [former section 294d of this title]. If at any time the Secretary determines the moneys in the fund exceed the present and any reasonable prospective future requirements of such fund, such excess may be transferred to the general fund of the Treasury.

''(c) There are authorized to be appropriated without fiscal year limitation such sums as may be necessary to enable the Secretary to make payments under agreements entered into under section 744(b) [former section 294d(b) of this title] of the Public Health Service Act before September 30, 1977.''

§ 292v. Provision by schools of information to students

(a) In general

With respect to loans made by a school under this subpart after June 30, 1986, each school, in order to carry out the provisions of sections 292q and 292r of this title, shall, at any time such school makes such a loan to a student under this subpart, provide thorough and adequate loan information on loans made under this subpart to the student. The loan information required to be provided to the student by this subsection shall include—

(1) the yearly and cumulative maximum amounts that may be borrowed by the student;

(2) the terms under which repayment of the loan will begin;

(3) the maximum number of years in which the loan must be repaid;

(4) the interest rate that will be paid by the borrower and the minimum amount of the required monthly payment;

(5) the amount of any other fees charged to the borrower by the lender;

(6) any options the borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the loan;

(7) a definition of default on the loan and a specification of the consequences which will result to the borrower if the borrower defaults, including a description of any arrangements which may be made with credit bureau organizations;

(8) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(9) a description of the actions that may be taken by the Federal Government to collect the loan, including a description of the type of information concerning the borrower that the Federal Government may disclose to (A) officers, employees, or agents of the Department of Health and Human Services, (B) officers, employees, or agents of schools with which the Secretary has an agreement under this subpart, or (C) any other person involved in the collection of a loan under this subpart.

(b) Statement regarding loan

Each school shall, immediately prior to the graduation from such school of a student who receives a loan under this subpart after June 30, 1986, provide such student with a statement specifying—

(1) each amount borrowed by the student under this subpart;

(2) the total amount borrowed by the student under this subpart; and

(3) a schedule for the repayment of the amounts borrowed under this subpart, including the number, amount, and frequency of payments to be made.

(July 1, 1944, ch. 373, title VII, § 726, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2020.)

PRIOR PROVISIONS

A prior section 726 of act July 1, 1944, was classified to section 293f of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 726 of act July 1, 1944, was classified to section 293f of this title prior to repeal by Pub. L. 94–484.

§ 292w. Procedures for appeal of termination of agreements

In any case in which the Secretary intends to terminate an agreement with a school under this subpart, the Secretary shall provide the school with a written notice specifying such intention and stating that the school may request a formal hearing with respect to such termination. If the school requests such a hearing within 30 days after the receipt of such notice, the Secretary shall provide such school with a hearing conducted by an administrative law judge.

(July 1, 1944, ch. 373, title VII, § 727, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2020.)

PRIOR PROVISIONS

A prior section 727 of act July 1, 1944, was classified to section 294 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 727 of act July 1, 1944, was classified to section 293g of this title prior to renumbering by Pub. L. 94–484.

§ 292x. Distribution of assets from loan funds

(a) Distribution after termination of fund

If a school terminates a loan fund established under an agreement pursuant to section 292q(b)

of this title, or if the Secretary for good cause terminates the agreement with the school, there shall be a capital distribution as follows:

(1) The Secretary shall first be paid an amount which bears the same ratio to such balance in such fund on the date of termination of the fund as the total amount of the Federal capital contributions to such fund by the Secretary pursuant to section 292q(b)(2)(A) of this title bears to the total amount in such fund derived from such Federal capital contributions and from funds deposited therein pursuant to section 292q(b)(2)(B) of this title.

(2) The remainder of such balance shall be paid to the school.

(b) Payment of proportionate share to Secretary

If a capital distribution is made under subsection (a) of this section, the school involved shall, after the capital distribution, pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school in payment of principal or interest on loans made from the loan fund established pursuant to section 292q(b) of this title as was determined by the Secretary under subsection (a) of this section.

(July 1, 1944, ch. 373, title VII, §728, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2021.)

PRIOR PROVISIONS

A prior section 728 of act July 1, 1944, was classified to section 294a of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 728 of act July 1, 1944, was classified to section 293h of this title prior to renumbering by Pub. L. 94–484.

§ 292y. General provisions

(a) Date certain for applications

The Secretary shall from time to time set dates by which schools must file applications for Federal capital contributions.

(b) Contingent reduction in allotments

If the total of the amounts requested for any fiscal year in such applications exceeds the amounts appropriated under this section for that fiscal year, the allotment to the loan fund of each such school shall be reduced to whichever of the following is the smaller: (A) the amount requested in its application; or (B) an amount which bears the same ratio to the amounts appropriated as the number of students estimated by the Secretary to be enrolled in such school during such fiscal year bears to the estimated total number of students in all such schools during such year. Amounts remaining after allotment under the preceding sentence shall be reallotted in accordance with clause (B) of such sentence among schools whose applications requested more than the amounts so allotted to their loan funds, but with such adjustments as may be necessary to prevent the total allotted to any such school's loan fund from exceeding the total so requested by it.

(c) Allotment of excess funds

Funds available in any fiscal year for payment to schools under this subpart which are in excess of the amount appropriated pursuant to this section for that year shall be allotted among schools in such manner as the Secretary determines will best carry out the purposes of this subpart.

(d) Payment of installments to schools

Allotments to a loan fund of a school shall be paid to it from time to time in such installments as the Secretary determines will not result in unnecessary accumulations in the loan fund at such school.

(e) Disposition of funds returned to Secretary

(1) Expenditure for Federal capital contributions

Subject to section 292s(b)(5) of this title, any amounts from student loan funds under section 292q of this title that are returned to the Secretary by health professions schools shall be expended to make Federal capital contributions to such funds.

(2) Date certain for contributions

Amounts described in paragraph (1) that are returned to the Secretary shall be obligated before the end of the succeeding fiscal year.

(3) Preference in making contributions

In making Federal capital contributions to student loans funds under section 292q of this title for a fiscal year from amounts described in paragraph (1), the Secretary shall give preference to health professions schools of the same disciplines as the health professions schools returning such amounts for the period during which the amounts expended for such contributions were received by the Secretary. Any such amounts that, prior to being so returned, were available only for the purpose of loans under this subpart to individuals from disadvantaged backgrounds shall be available only for such purpose.

(f) Funding for certain medical schools

(1) Authorization of appropriations

For the purpose of making Federal capital contributions to student loan funds established under section 292q of this title by schools of medicine or osteopathic medicine, there is authorized to be appropriated $10,000,000 for each of the fiscal years 1994 through 1996.

(2) Minimum requirements

(A) Subject to subparagraph (B), the Secretary may make a Federal capital contribution pursuant to paragraph (1) only if the school of medicine or osteopathic medicine involved meets the conditions described in subparagraph (A) of section 292s(b)(2) of this title or the conditions described in subparagraph (C) of such section.

(B) For purposes of subparagraph (A), the conditions referred to in such subparagraph shall be applied with respect to graduates of the school involved whose date of graduation occurred approximately 3 years before June 30 of the fiscal year preceding the fiscal year for which the Federal capital contribution involved is made.

(July 1, 1944, ch. 373, title VII, §735, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106

Stat. 2021; amended Pub. L. 102–531, title III, § 313(a)(1), Oct. 27, 1992, 106 Stat. 3507; Pub. L. 103–43, title XX, § 2014(d), June 10, 1993, 107 Stat. 217; Pub. L. 105–392, title I, § 134(c), Nov. 13, 1998, 112 Stat. 3578.)

PRIOR PROVISIONS

A prior section 735 of act July 1, 1944, was classified to section 294h of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (e)(2). Pub. L. 105–392 reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: ''Amounts described in paragraph (1) that are returned to the Secretary before the fourth quarter of a fiscal year shall be obligated before the end of such fiscal year, and may not be obligated before the fourth quarter. For purposes of the preceding sentence, amounts returned to the Secretary during the last quarter of a fiscal year are deemed to have been returned during the first three quarters of the succeeding fiscal year.''

1993—Subsec. (f). Pub. L. 103–43 added subsec. (f).

1992—Subsec. (b). Pub. L. 102–531 inserted designations for cls. (A) and (B) in first sentence.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 313(c) of Pub. L. 102–531 provided that: ''The amendments described in this section [amending this section and sections 293j, 293*l*, 294n, 295j, 295*l*, 295n, 295*o*, 296k, and 298b–7 of this title, repealing section 297j of this title, redesignating subpart IV of part B of subchapter VI of this chapter as subpart III, and amending provisions set out as a note under section 295k of this title] are made, and take effect, immediately after the enactment of the bill, H.R. 3508, of the One Hundred Second Congress [Pub. L. 102–408, approved Oct. 13, 1992].''

PART B—HEALTH PROFESSIONS TRAINING FOR DIVERSITY

§ 293. Centers of excellence

(a) In general

The Secretary shall make grants to, and enter into contracts with, designated health professions schools described in subsection (c) of this section, and other public and nonprofit health or educational entities, for the purpose of assisting the schools in supporting programs of excellence in health professions education for under-represented minority individuals.

(b) Required use of funds

The Secretary may not make a grant under subsection (a) of this section unless the designated health professions school involved agrees, subject to subsection (c)(1)(C) of this section, to expend the grant—

(1) to develop a large competitive applicant pool through linkages with institutions of higher education, local school districts, and other community-based entities and establish an education pipeline for health professions careers;

(2) to establish, strengthen, or expand programs to enhance the academic performance of under-represented minority students attending the school;

(3) to improve the capacity of such school to train, recruit, and retain under-represented minority faculty including the payment of such stipends and fellowships as the Secretary may determine appropriate;

(4) to carry out activities to improve the information resources, clinical education, curricula and cultural competence of the graduates of the school, as it relates to minority health issues;

(5) to facilitate faculty and student research on health issues particularly affecting under-represented minority groups, including research on issues relating to the delivery of health care;

(6) to carry out a program to train students of the school in providing health services to a significant number of under-represented minority individuals through training provided to such students at community-based health facilities that—

(A) provide such health services; and

(B) are located at a site remote from the main site of the teaching facilities of the school; and

(7) to provide stipends as the Secretary determines appropriate, in amounts as the Secretary determines appropriate.

(c) Centers of excellence

(1) Designated schools

(A) In general

The designated health professions schools referred to in subsection (a) of this section are such schools that meet each of the conditions specified in subparagraphs (B) and (C), and that—

(i) meet each of the conditions specified in paragraph (2)(A);

(ii) meet each of the conditions specified in paragraph (3);

(iii) meet each of the conditions specified in paragraph (4); or

(iv) meet each of the conditions specified in paragraph (5).

(B) General conditions

The conditions specified in this subparagraph are that a designated health professions school—

(i) has a significant number of under-represented minority individuals enrolled in the school, including individuals accepted for enrollment in the school;

(ii) has been effective in assisting under-represented minority students of the school to complete the program of education and receive the degree involved;

(iii) has been effective in recruiting under-represented minority individuals to enroll in and graduate from the school, including providing scholarships and other financial assistance to such individuals and encouraging under-represented minority students from all levels of the educational pipeline to pursue health professions careers; and

(iv) has made significant recruitment efforts to increase the number of under-represented minority individuals serving in faculty or administrative positions at the school.

(C) Consortium

The condition specified in this subparagraph is that, in accordance with subsection

(e)(1) of this section, the designated health profession school involved has with other health profession schools (designated or otherwise) formed a consortium to carry out the purposes described in subsection (b) of this section at the schools of the consortium.

(D) Application of criteria to other programs

In the case of any criteria established by the Secretary for purposes of determining whether schools meet the conditions described in subparagraph (B), this section may not, with respect to racial and ethnic minorities, be construed to authorize, require, or prohibit the use of such criteria in any program other than the program established in this section.

(2) Centers of excellence at certain historically black colleges and universities

(A) Conditions

The conditions specified in this subparagraph are that a designated health professions school—

(i) is a school described in section 295p(1) of this title; and

(ii) received a contract under section 295g–8b of this title for fiscal year 1987, as such section was in effect for such fiscal year.

(B) Use of grant

In addition to the purposes described in subsection (b) of this section, a grant under subsection (a) of this section to a designated health professions school meeting the conditions described in subparagraph (A) may be expended—

(i) to develop a plan to achieve institutional improvements, including financial independence, to enable the school to support programs of excellence in health professions education for under-represented minority individuals; and

(ii) to provide improved access to the library and informational resources of the school.

(C) Exception

The requirements of paragraph (1)(C) shall not apply to a historically black college or university that receives funding under paragraphs[1] (2) or (5).

(3) Hispanic centers of excellence

The conditions specified in this paragraph are that—

(A) with respect to Hispanic individuals, each of clauses (i) through (iv) of paragraph (1)(B) applies to the designated health professions school involved;

(B) the school agrees, as a condition of receiving a grant under subsection (a) of this section, that the school will, in carrying out the duties described in subsection (b) of this section, give priority to carrying out the duties with respect to Hispanic individuals; and

(C) the school agrees, as a condition of receiving a grant under subsection (a) of this section, that—

(i) the school will establish an arrangement with 1 or more public or nonprofit community based Hispanic serving organizations, or public or nonprofit private institutions of higher education, including schools of nursing, whose enrollment of students has traditionally included a significant number of Hispanic individuals, the purposes of which will be to carry out a program—

(I) to identify Hispanic students who are interested in a career in the health profession involved; and

(II) to facilitate the educational preparation of such students to enter the health professions school; and

(ii) the school will make efforts to recruit Hispanic students, including students who have participated in the undergraduate or other matriculation program carried out under arrangements established by the school pursuant to clause (i)(II) and will assist Hispanic students regarding the completion of the educational requirements for a degree from the school.

(4) Native American centers of excellence

Subject to subsection (e) of this section, the conditions specified in this paragraph are that—

(A) with respect to Native Americans, each of clauses (i) through (iv) of paragraph (1)(B) applies to the designated health professions school involved;

(B) the school agrees, as a condition of receiving a grant under subsection (a) of this section, that the school will, in carrying out the duties described in subsection (b) of this section, give priority to carrying out the duties with respect to Native Americans; and

(C) the school agrees, as a condition of receiving a grant under subsection (a) of this section, that—

(i) the school will establish an arrangement with 1 or more public or nonprofit private institutions of higher education, including schools of nursing, whose enrollment of students has traditionally included a significant number of Native Americans, the purpose of which arrangement will be to carry out a program—

(I) to identify Native American students, from the institutions of higher education referred to in clause (i), who are interested in health professions careers; and

(II) to facilitate the educational preparation of such students to enter the designated health professions school; and

(ii) the designated health professions school will make efforts to recruit Native American students, including students who have participated in the undergraduate program carried out under arrangements established by the school pursuant to clause (i) and will assist Native American students regarding the completion of the educational requirements for a degree from the designated health professions school.

[1] So in original. Probably should be ''paragraph''.

(5) Other centers of excellence

The conditions specified in this paragraph are—

(A) with respect to other centers of excellence, the conditions described in clauses (i) through (iv) of paragraph (1)(B); and

(B) that the health professions school involved has an enrollment of under-represented minorities above the national average for such enrollments of health professions schools.

(d) Designation as center of excellence

(1) In general

Any designated health professions school receiving a grant under subsection (a) of this section and meeting the conditions described in paragraph (2) or (5) of subsection (c) of this section shall, for purposes of this section, be designated by the Secretary as a Center of Excellence in Under-Represented Minority Health Professions Education.

(2) Hispanic centers of excellence

Any designated health professions school receiving a grant under subsection (a) of this section and meeting the conditions described in subsection (c)(3) of this section shall, for purposes of this section, be designated by the Secretary as a Hispanic Center of Excellence in Health Professions Education.

(3) Native American centers of excellence

Any designated health professions school receiving a grant under subsection (a) of this section and meeting the conditions described in subsection (c)(4) of this section shall, for purposes of this section, be designated by the Secretary as a Native American Center of Excellence in Health Professions Education. Any consortium receiving such a grant pursuant to subsection (e) of this section shall, for purposes of this section, be so designated.

(e) Authority regarding Native American centers of excellence

With respect to meeting the conditions specified in subsection (c)(4) of this section, the Secretary may make a grant under subsection (a) of this section to a designated health professions school that does not meet such conditions if—

(1) the school has formed a consortium in accordance with subsection (d)(1) of this section; and

(2) the schools of the consortium collectively meet such conditions, without regard to whether the schools individually meet such conditions.

(f) Duration of grant

The period during which payments are made under a grant under subsection (a) of this section may not exceed 5 years. Such payments shall be subject to annual approval by the Secretary and to the availability of appropriations for the fiscal year involved to make the payments.

(g) Definitions

In this section:

(1) Designated health professions school

(A) In general

The term ''health professions school'' means, except as provided in subparagraph (B), a school of medicine, a school of osteopathic medicine, a school of dentistry, a school of pharmacy, or a graduate program in behavioral or mental health.

(B) Exception

The definition established in subparagraph (A) shall not apply to the use of the term ''designated health professions school'' for purposes of subsection (c)(2) of this section.

(2) Program of excellence

The term ''program of excellence'' means any program carried out by a designated health professions school with a grant made under subsection (a) of this section, if the program is for purposes for which the school involved is authorized in subsection (b) or (c) of this section to expend the grant.

(3) Native Americans

The term ''Native Americans'' means American Indians, Alaskan Natives, Aleuts, and Native Hawaiians.

(h) Funding

(1) Authorization of appropriations

For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $26,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(2) Allocations

Based on the amount appropriated under paragraph (1) for a fiscal year, one of the following subparagraphs shall apply:

(A) In general

If the amounts appropriated under paragraph (1) for a fiscal year are $24,000,000 or less—

(i) the Secretary shall make available $12,000,000 for grants under subsection (a) of this section to health professions schools that meet the conditions described in subsection (c)(2)(A) of this section; and

(ii) and available after grants are made with funds under clause (i), the Secretary shall make available—

(I) 60 percent of such amount for grants under subsection (a) of this section to health professions schools that meet the conditions described in paragraph (3) or (4) of subsection (c) of this section (including meeting the conditions under subsection (e) of this section); and

(II) 40 percent of such amount for grants under subsection (a) of this section to health professions schools that meet the conditions described in subsection (c)(5) of this section.

(B) Funding in excess of $24,000,000

If amounts appropriated under paragraph (1) for a fiscal year exceed $24,000,000 but are less than $30,000,000—

(i) 80 percent of such excess amounts shall be made available for grants under subsection (a) of this section to health professions schools that meet the requirements described in paragraph (3) or (4) of

subsection (c) of this section (including meeting conditions pursuant to subsection (e) of this section); and

(ii) 20 percent of such excess amount shall be made available for grants under subsection (a) of this section to health professions schools that meet the conditions described in subsection (c)(5) of this section.

(C) Funding in excess of $30,000,000

If amounts appropriated under paragraph (1) for a fiscal year are $30,000,000 or more, the Secretary shall make available—

(i) not less than $12,000,000 for grants under subsection (a) of this section to health professions schools that meet the conditions described in subsection (c)(2)(A) of this section;

(ii) not less than $12,000,000 for grants under subsection (a) of this section to health professions schools that meet the conditions described in paragraph (3) or (4) of subsection (c) of this section (including meeting conditions pursuant to subsection (e) of this section);

(iii) not less than $6,000,000 for grants under subsection (a) of this section to health professions schools that meet the conditions described in subsection (c)(5) of this section; and

(iv) after grants are made with funds under clauses (i) through (iii), any remaining funds for grants under subsection (a) of this section to health professions schools that meet the conditions described in paragraph (2)(A), (3), (4), or (5) of subsection (c) of this section.

(3) No limitation

Nothing in this subsection shall be construed as limiting the centers of excellence referred to in this section to the designated amount, or to preclude such entities from competing for other grants under this section.

(4) Maintenance of effort

(A) In general

With respect to activities for which a grant made under this part are authorized to be expended, the Secretary may not make such a grant to a center of excellence for any fiscal year unless the center agrees to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the center for the fiscal year preceding the fiscal year for which the school receives such a grant.

(B) Use of Federal funds

With respect to any Federal amounts received by a center of excellence and available for carrying out activities for which a grant under this part is authorized to be expended, the Secretary may not make such a grant to the center for any fiscal year unless the center agrees that the center will, before expending the grant, expend the Federal amounts obtained from sources other than the grant.

(July 1, 1944, ch. 373, title VII, §736, as added Pub. L. 105–392, title I, §101(a), Nov. 13, 1998, 112 Stat. 3525.)

REFERENCES IN TEXT

Section 295g–8b of this title, referred to in subsec. (c)(2)(A)(ii), was omitted in the general amendment of this subchapter by Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 1994.

PRIOR PROVISIONS

A prior section 293, act July 1, 1944, ch. 373, title VII, §736, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2022, authorized grants to schools of medicine, osteopathic medicine, and dentistry for need-based scholarships, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 293, act July 1, 1944, ch. 373, title VII, §720, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 164; amended Sept. 4, 1964, Pub. L. 88–581, §3(a), 78 Stat. 919; Oct. 22, 1965, Pub. L. 89–290, §3(a), 79 Stat. 1056; Nov. 2, 1966, Pub. L. 89–709, §2(a), 80 Stat. 1103; Aug. 16, 1968, Pub. L. 90–490, title I, §101(a), (b)(1), 82 Stat. 773; Nov. 18, 1971, Pub. L. 92–157, title I, §102(a), 85 Stat. 431; Oct. 12, 1976, Pub. L. 94–484, title I, §101(c), title III, §302, 90 Stat. 2244, 2253; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2723(a), (b), 95 Stat. 915, authorized grants for construction of teaching facilities for medical, dental, and other health personnel, prior to the general revision of this subchapter by Pub. L. 102–408.

A prior section 736 of act July 1, 1944, was classified to section 294i of this title prior to the general revision of this subchapter by Pub. L. 102–408.

SAVINGS PROVISION

Pub. L. 105–392, title I, §110, Nov. 13, 1998, 112 Stat. 3562, provided that: ''In the case of any authority for making awards of grants or contracts that is terminated by the amendments made by this subtitle [subtitle A (§§101–110) of title I of Pub. L. 105–392, see Tables for classification], the Secretary of Health and Human Services may, notwithstanding the termination of the authority, continue in effect any grant or contract made under the authority that is in effect on the day before the date of the enactment of this Act [Nov. 13, 1998], subject to the duration of any such grant or contract not exceeding the period determined by the Secretary in first approving such financial assistance, or in approving the most recent request made (before the date of such enactment) for continuation of such assistance, as the case may be.''

§ 293a. Scholarships for disadvantaged students

(a) In general

The Secretary may make a grant to an eligible entity (as defined in subsection (d)(1) of this section) under this section for the awarding of scholarships by schools to any full-time student who is an eligible individual as defined in subsection (d) of this section. Such scholarships may be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses incurred in the attendance of such school.

(b) Preference in providing scholarships

The Secretary may not make a grant to an entity under subsection (a) of this section unless the health professions and nursing schools involved agree that, in providing scholarships pursuant to the grant, the schools will give preference to students for whom the costs of attending the schools would constitute a severe financial hardship and, notwithstanding other provisions of this section, to former recipients of scholarships under sections 293 and 293d(d)(2)(B) of this title (as such sections existed on the day before November 13, 1998).

(c) Amount of award

In awarding grants to eligible entities that are health professions and nursing schools, the Secretary shall give priority to eligible entities based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities.

(d) Definitions

In this section:

(1) Eligible entities

The term ''eligible entities'' means an entity that—

(A) is a school of medicine, osteopathic medicine, dentistry, nursing (as defined in section 296 of this title), pharmacy, podiatric medicine, optometry, veterinary medicine, public health, chiropractic, or allied health, a school offering a graduate program in behavioral and mental health practice, or an entity providing programs for the training of physician assistants; and

(B) is carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups.

(2) Eligible individual

The term ''eligible individual'' means an individual who—

(A) is from a disadvantaged background;

(B) has a financial need for a scholarship; and

(C) is enrolled (or accepted for enrollment) at an eligible health professions or nursing school as a full-time student in a program leading to a degree in a health profession or nursing.

(July 1, 1944, ch. 373, title VII, §737, as added Pub. L. 105–392, title I, §101(a), Nov. 13, 1998, 112 Stat. 3531.)

PRIOR PROVISIONS

A prior section 293a, act July 1, 1944, ch. 373, title VII, §737, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2023, authorized grants to health professions schools for provision of scholarships and undergraduate assistance, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 293a, act July 1, 1944, ch. 373, title VII, §721, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 165; amended Sept. 4, 1964, Pub. L. 88–581, §3(b), 78 Stat. 919; Oct. 22, 1965, Pub. L. 89–290, §§3(b), (c), 5(a), 79 Stat. 1056–1058; Nov. 2, 1966, Pub. L. 89–709, §2(b), 80 Stat. 1103; Aug. 16, 1968, Pub. L. 90–490, title I, §§103(a)(3), 105(a), (b), 82 Stat. 774; Nov. 18, 1971, Pub. L. 92–157, title I, §§102(e), (f)(1), (2)(A), (g), (h), (j)(2), (3), (7)(A), 108(b)(1), 85 Stat. 434–437, 461; Oct. 12, 1976, Pub. L. 94–484, title III, §§301, 303, 308(a), 90 Stat. 2253, 2254, 2256; Aug. 1, 1977, Pub. L. 95–83, title III, §307(b), 91 Stat. 389; Oct. 17, 1979, Pub. L. 96–88, title III, §301(a)(1), title V, §507, 93 Stat. 677, 692; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §§2723(c), (d), 2724(a), 95 Stat. 916; Nov. 4, 1988, Pub. L. 100–607, title VI, §§628(4), 629(b)(2), 102 Stat. 3145, 3146; Aug. 16, 1989, Pub. L. 101–93, §5(*o*)(1), 103 Stat. 614, related to applications and eligibility for grants for construction of teaching facilities for medical, dental, and other health personnel, prior to the general revision of this subchapter by Pub. L. 102–408.

A prior section 737 of act July 1, 1944, was classified to section 294j of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 293b. Loan repayments and fellowships regarding faculty positions

(a) Loan repayments

(1) Establishment of program

The Secretary shall establish a program of entering into contracts with individuals described in paragraph (2) under which the individuals agree to serve as members of the faculties of schools described in paragraph (3) in consideration of the Federal Government agreeing to pay, for each year of such service, not more than $20,000 of the principal and interest of the educational loans of such individuals.

(2) Eligible individuals

The individuals referred to in paragraph (1) are individuals from disadvantaged backgrounds who—

(A) have a degree in medicine, osteopathic medicine, dentistry, nursing, or another health profession;

(B) are enrolled in an approved graduate training program in medicine, osteopathic medicine, dentistry, nursing, or other health profession; or

(C) are enrolled as full-time students—

(i) in an accredited (as determined by the Secretary) school described in paragraph (3); and

(ii) in the final year of a course of a study or program, offered by such institution and approved by the Secretary, leading to a degree from such a school.

(3) Eligible health professions schools

The schools described in this paragraph are schools of medicine, nursing (as schools of nursing are defined in section 296 of this title), osteopathic medicine, dentistry, pharmacy, allied health, podiatric medicine, optometry, veterinary medicine, or public health, or schools offering graduate programs in behavioral and mental health.

(4) Requirements regarding faculty positions

The Secretary may not enter into a contract under paragraph (1) unless—

(A) the individual involved has entered into a contract with a school described in paragraph (3) to serve as a member of the faculty of the school for not less than 2 years; and

(B) the contract referred to in subparagraph (A) provides that—

(i) the school will, for each year for which the individual will serve as a member of the faculty under the contract with the school, make payments of the principal and interest due on the educational loans of the individual for such year in an amount equal to the amount of such payments made by the Secretary for the year;

(ii) the payments made by the school pursuant to clause (i) on behalf of the individual will be in addition to the pay that the individual would otherwise receive for serving as a member of such faculty; and

(iii) the school, in making a determination of the amount of compensation to be provided by the school to the individual

for serving as a member of the faculty, will make the determination without regard to the amount of payments made (or to be made) to the individual by the Federal Government under paragraph (1).

(5) Applicability of certain provisions

The provisions of sections 254m, 254p, and 254q–1 of this title shall apply to the program established in paragraph (1) to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter, including the applicability of provisions regarding reimbursements for increased tax liability and regarding bankruptcy.

(6) Waiver regarding school contributions

The Secretary may waive the requirement established in paragraph (4)(B) if the Secretary determines that the requirement will impose an undue financial hardship on the school involved.

(b) Fellowships

(1) In general

The Secretary may make grants to and enter into contracts with eligible entities to assist such entities in increasing the number of underrepresented minority individuals who are members of the faculty of such schools.

(2) Applications

To be eligible to receive a grant or contract under this subsection, an entity shall provide an assurance, in the application submitted by the entity, that—

(A) amounts received under such a grant or contract will be used to award a fellowship to an individual only if the individual meets the requirements of paragraphs (3) and (4); and

(B) each fellowship awarded pursuant to the grant or contract will include—

(i) a stipend in an amount not exceeding 50 percent of the regular salary of a similar faculty member for not to exceed 3 years of training; and

(ii) an allowance for other expenses, such as travel to professional meetings and costs related to specialized training.

(3) Eligibility

To be eligible to receive a grant or contract under paragraph (1), an applicant shall demonstrate to the Secretary that such applicant has or will have the ability to—

(A) identify, recruit and select underrepresented minority individuals who have the potential for teaching, administration, or conducting research at a health professions institution;

(B) provide such individuals with the skills necessary to enable them to secure a tenured faculty position at such institution, which may include training with respect to pedagogical skills, program administration, the design and conduct of research, grants writing, and the preparation of articles suitable for publication in peer reviewed journals;

(C) provide services designed to assist such individuals in their preparation for an academic career, including the provision of counselors; and

(D) provide health services to rural or medically underserved populations.

(4) Requirements

To be eligible to receive a grant or contract under paragraph (1) an applicant shall—

(A) provide an assurance that such applicant will make available (directly through cash donations) $1 for every $1 of Federal funds received under this section for the fellowship;

(B) provide an assurance that institutional support will be provided for the individual for the second and third years at a level that is equal to the total amount of institutional funds provided in the year in which the grant or contract was awarded;

(C) provide an assurance that the individual that will receive the fellowship will be a member of the faculty of the applicant school; and

(D) provide an assurance that the individual that will receive the fellowship will have, at a minimum, appropriate advanced preparation (such as a master's or doctoral degree) and special skills necessary to enable such individual to teach and practice.

(5) Definition

For purposes of this subsection, the term ''underrepresented minority individuals'' means individuals who are members of racial or ethnic minority groups that are underrepresented in the health professions including nursing.

(July 1, 1944, ch. 373, title VII, §738, as added Pub. L. 105–392, title I, §101(a), Nov. 13, 1998, 112 Stat. 3532.)

REFERENCES IN TEXT

Subpart III of part D of subchapter II of this chapter, referred to in subsec. (a)(5), is classified to section 254*l* et seq. of this title.

PRIOR PROVISIONS

A prior section 293b, act July 1, 1944, ch. 373, title VII, §738, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2025, related to loan repayments and fellowships regarding faculty positions, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 293b, act July 1, 1944, ch. 373, title VII, §722, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 168; amended Aug. 16, 1968, Pub. L. 90–490, title I, §§102(a), 104(a), 82 Stat. 773, 774; Nov. 18, 1971, Pub. L. 92–157, title I, §102(b), (j)(4), (7), 85 Stat. 431, 436, 437; Oct. 12, 1976, Pub. L. 94–484, title III, §304, 90 Stat. 2255; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2723(e), 95 Stat. 916, related to amounts of grants and grants for multipurpose facilities, prior to the general revision of this subchapter by Pub. L. 102–408.

A prior section 738 of act July 1, 1944, was classified to section 294k of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§293c. Educational assistance in the health professions regarding individuals from disadvantaged backgrounds

(a) In general

(1) Authority for grants

For the purpose of assisting individuals from disadvantaged backgrounds, as determined in

accordance with criteria prescribed by the Secretary, to undertake education to enter a health profession, the Secretary may make grants to and enter into contracts with schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, and podiatric medicine, public and nonprofit private schools that offer graduate programs in behavioral and mental health, programs for the training of physician assistants, and other public or private nonprofit health or educational entities to assist in meeting the costs described in paragraph (2).

(2) Authorized expenditures

A grant or contract under paragraph (1) may be used by the entity to meet the cost of—

(A) identifying, recruiting, and selecting individuals from disadvantaged backgrounds, as so determined, for education and training in a health profession;

(B) facilitating the entry of such individuals into such a school;

(C) providing counseling, mentoring, or other services designed to assist such individuals to complete successfully their education at such a school;

(D) providing, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education and health research training designed to assist them to complete successfully such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education;

(E) publicizing existing sources of financial aid available to students in the education program of such a school or who are undertaking training necessary to qualify them to enroll in such a program;

(F) paying such scholarships as the Secretary may determine for such individuals for any period of health professions education at a health professions school;

(G) paying such stipends as the Secretary may approve for such individuals for any period of education in student-enhancement programs (other than regular courses), except that such a stipend may not be provided to an individual for more than 12 months, and such a stipend shall be in an amount determined appropriate by the Secretary (notwithstanding any other provision of law regarding the amount of stipends);

(H) carrying out programs under which such individuals gain experience regarding a career in a field of primary health care through working at facilities of public or private nonprofit community-based providers of primary health services; and

(I) conducting activities to develop a larger and more competitive applicant pool through partnerships with institutions of higher education, school districts, and other community-based entities.

(3) Definition

In this section, the term ''regular course of education of such a school'' as used in subparagraph (D) includes a graduate program in behavioral or mental health.

(b) Requirements for awards

In making awards to eligible entities under subsection (a)(1) of this section, the Secretary shall give preference to approved applications for programs that involve a comprehensive approach by several public or nonprofit private health or educational entities to establish, enhance and expand educational programs that will result in the development of a competitive applicant pool of individuals from disadvantaged backgrounds who desire to pursue health professions careers. In considering awards for such a comprehensive partnership approach, the following shall apply with respect to the entity involved:

(1) The entity shall have a demonstrated commitment to such approach through formal agreements that have common objectives with institutions of higher education, school districts, and other community-based entities.

(2) Such formal agreements shall reflect the coordination of educational activities and support services, increased linkages, and the consolidation of resources within a specific geographic area.

(3) The design of the educational activities involved shall provide for the establishment of a competitive health professions applicant pool of individuals from disadvantaged backgrounds by enhancing the total preparation (academic and social) of such individuals to pursue a health professions career.

(4) The programs or activities under the award shall focus on developing a culturally competent health care workforce that will serve the unserved and underserved populations within the geographic area.

(c) Equitable allocation of financial assistance

The Secretary, to the extent practicable, shall ensure that services and activities under subsection (a) of this section are adequately allocated among the various racial and ethnic populations who are from disadvantaged backgrounds.

(d) Matching requirements

The Secretary may require that an entity that applies for a grant or contract under subsection (a) of this section, provide non-Federal matching funds, as appropriate, to ensure the institutional commitment of the entity to the projects funded under the grant or contract. As determined by the Secretary, such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in-kind, fairly evaluated, including plant, equipment, or services.

(July 1, 1944, ch. 373, title VII, § 739, as added Pub. L. 105–392, title I, § 101(a), Nov. 13, 1998, 112 Stat. 3534.)

PRIOR PROVISIONS

A prior section 293c, act July 1, 1944, ch. 373, title VII, § 739, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2027, related to centers of excellence in health professions education for minority individuals, prior to the general amendment of this part by Pub. L. 105–392. See section 293 of this title.

Another prior section 293c, act July 1, 1944, ch. 373, title VII, § 723, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 168; amended Aug. 16, 1968, Pub. L. 90–490,

title I, §103(a)(1), (2), 82 Stat. 773; Nov. 18, 1971, Pub. L. 92–157,title I, §102(c)(5), (f)(2)(C), (j)(1), (5), 85 Stat. 432, 435–437; Oct. 12, 1976, Pub. L. 94–484, title III, §305, 90 Stat. 2255; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2723(f), 95 Stat. 916; Oct. 22, 1985, Pub. L. 99–129, title II, §207(a), 99 Stat. 527, related to recovery by United States of grant moneys where facility was no longer owned by a public or nonprofit agency or where it ceased to be used for teaching or training purposes, prior to the general revision of this subchapter by Pub. L. 102–408.

A prior section 739 of act July 1, 1944, was classified to section 294*l* of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 293d. Authorization of appropriation

(a) Scholarships

There are authorized to be appropriated to carry out section 293a of this title, $37,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002. Of the amount appropriated in any fiscal year, the Secretary shall ensure that not less than 16 percent shall be distributed to schools of nursing.

(b) Loan repayments and fellowships

For the purpose of carrying out section 293b of this title, there is authorized to be appropriated $1,100,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(c) Educational assistance in health professions regarding individuals from disadvantaged backgrounds

For the purpose of grants and contracts under section 293c(a)(1) of this title, there is authorized to be appropriated $29,400,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002. The Secretary may use not to exceed 20 percent of the amount appropriated for a fiscal year under this subsection to provide scholarships under section 293c(a)(2)(F) of this title.

(d) Report

Not later than 6 months after November 13, 1998, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the efforts of the Secretary to address the need for a representative mix of individuals from historically minority health professions schools, or from institutions or other entities that historically or by geographic location have a demonstrated record of training or educating underrepresented minorities, within various health professions disciplines, on peer review councils.

(July 1, 1944, ch. 373, title VII, §740, as added Pub. L. 105–392, title I, §101(a), Nov. 13, 1998, 112 Stat. 3536.)

PRIOR PROVISIONS

A prior section 293d, act July 1, 1944, ch. 373, title VII, §740, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2032, related to educational assistance regarding undergraduates, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 293d, act July 1, 1944, ch. 373, title VII, §724, formerly §727, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 170; amended Nov. 18, 1971, Pub. L. 92–157, title I, §102(j)(7)(B), 85 Stat. 437; renumbered §724 and amended Oct. 12, 1976, Pub. L. 94–484, title III, §308(c), (d), 90 Stat. 2257, related to promulgation of regulations by Secretary, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 293d, act July 1, 1944, ch. 373, title VII, §701, formerly §724, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 169; amended Oct. 22, 1965, Pub. L. 89–290, §2(b), 79 Stat. 1056; Nov. 2, 1966, Pub. L. 89–709, §2(c), 80 Stat. 1103; Aug. 16, 1968, Pub. L. 90–490, title I, §105(c), 82 Stat. 774; Nov. 18, 1971, Pub. L. 92–157, title I, §102(c)(1)–(4), (f)(2)(B), 85 Stat. 431, 432, 435, which related to definitions, was renumbered §701 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 292a of this title.

A prior section 740 of act July 1, 1944, was classified to section 294m of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 293e. Grants for health professions education

(a) Grants for health professions education in health disparities and cultural competency

(1) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make awards of grants, contracts, or cooperative agreements to public and nonprofit private entities (including tribal entities) for the purpose of carrying out research and demonstration projects (including research and demonstration projects for continuing health professions education) for training and education of health professionals for the reduction of disparities in health care outcomes and the provision of culturally competent health care.

(2) Eligible entities

Unless specifically required otherwise in this subchapter, the Secretary shall accept applications for grants or contracts under this section from health professions schools, academic health centers, State or local governments, or other appropriate public or private nonprofit entities (or consortia of entities, including entities promoting multidisciplinary approaches) for funding and participation in health professions training activities. The Secretary may accept applications from for-profit private entities as determined appropriate by the Secretary.

(b) Authorization of appropriations

There are authorized to be appropriated to carry out subsection (a) of this section, $3,500,000 for fiscal year 2001, $7,000,000 for fiscal year 2002, $7,000,000 for fiscal year 2003, and $3,500,000 for fiscal year 2004.

(July 1, 1944, ch. 373, title VII, §741, as added Pub. L. 106–525, title IV, §401(a), Nov. 22, 2000, 114 Stat. 2508.)

PRIOR PROVISIONS

A prior section 293e, act July 1, 1944, ch. 373, title VII, §725, formerly §728, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 170; amended Sept. 4, 1964, Pub. L. 88–581, §3(d), 78 Stat. 919; Nov. 18, 1971, Pub. L. 92–157, title I, §102(i), 85 Stat. 436; renumbered §725, Oct. 12, 1976, Pub. L. 94–484, title III, §308(d), 90 Stat. 2257, related to technical assistance to applicants for grants for construction of teaching facilities for medical, dental, and other health personnel, and to States or interstate planning agencies to plan programs for relieving shortages of training of health personnel, prior to the

general amendment of this subchapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.

Another prior section 293e, act July 1, 1944, ch. 373, title VII, § 702, formerly § 725, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 169; amended Sept. 4, 1964, Pub. L. 88–581, § 3(c), 78 Stat. 919; Nov. 2, 1966, Pub. L. 89–709, § 2(d), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 3(a), 80 Stat. 1230; Dec. 5, 1967, Pub. L. 90–174, § 12(c), 81 Stat. 541; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92–157, title I, § 108(a), 85 Stat. 460, was renumbered § 702 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 292b of this title, and subsequently omitted in the general amendment of this subchapter by Pub. L. 102–408.

A prior section 293f, act July 1, 1944, ch. 373, title VII, § 726, formerly § 729, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 102(d), 85 Stat. 432; renumbered § 726 and amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(d), title III, §§ 306, 308(d), 90 Stat. 2244, 2256, 2257; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2725, 95 Stat. 916, related to loan guarantees and interest subsidies, prior to the general amendment of this subchapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.

Another prior section 293f, act July 1, 1944, ch. 373, title VII, § 726, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170, provided for noninterference with administration of institutions, prior to repeal by Pub. L. 94–484, title III, § 308(b), Oct. 12, 1976, 90 Stat. 2257.

A prior section 293g, act July 1, 1944, ch. 373, title VII, § 727, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 102(j)(7)(B), 85 Stat. 437, which related to regulations, was renumbered section 724 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 293d of this title, and subsequently omitted in the general amendment of this subchapter by Pub. L. 102–408.

A prior section 293h, act July 1, 1944, ch. 373, title VII, § 728, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Sept. 4, 1964, Pub. L. 88–581, § 3(d), 78 Stat. 919; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(i), 85 Stat. 436, which related to technical assistance, was renumbered section 726 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 293e of this title, and subsequently omitted in the general amendment of this subchapter by Pub. L. 102–408.

A prior section 293i, act July 1, 1944, ch. 373, title VII, § 729, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 102(d), 85 Stat. 432, which related to loan guarantees and interest subsidies, was renumbered section 726 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 293f of this title, and subsequently omitted in the general amendment of this subchapter by Pub. L. 102–408.

NATIONAL CONFERENCE ON HEALTH PROFESSIONS EDUCATION AND HEALTH DISPARITIES

Pub. L. 106–525, title IV, § 402, Nov. 22, 2000, 114 Stat. 2509, provided that:

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Nov. 22, 2000], the Secretary of Health and Human Services (in this section referred to as the 'Secretary'), acting through the Administrator of the Health Resources and Services Administration, shall convene a national conference on health professions education as a method for reducing disparities in health outcomes.

''(b) PARTICIPANTS.—The Secretary shall include in the national conference convened under subsection (a) advocacy groups and educational entities as described in section 741 of the Public Health Service Act [this section] (as added by section 401), tribal health programs, health centers under section 330 of such Act [section 254b of this title], and other interested parties.

''(c) ISSUES.—The national conference convened under subsection (a) shall include, but is not limited to, issues that address the role and impact of health professions education on the reduction of disparities in health outcomes, including the role of education on cultural competency. The conference shall focus on methods to achieve reductions in disparities in health outcomes through health professions education (including continuing education programs) and strategies for outcomes measurement to assess the effectiveness of education in reducing disparities.

''(d) PUBLICATION OF FINDINGS.—Not later than 6 months after the national conference under subsection (a) has convened, the Secretary shall publish in the Federal Register a summary of the proceedings and findings of the conference.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.''

PART C—TRAINING IN FAMILY MEDICINE, GENERAL INTERNAL MEDICINE, GENERAL PEDIATRICS, PHYSICIAN ASSISTANTS, GENERAL DENTISTRY, AND PEDIATRIC DENTISTRY

§ 293j. Repealed. Pub. L. 105–392, title I, § 102(2), Nov. 13, 1998, 112 Stat. 3537

Section, act July 1, 1944, ch. 373, title VII, § 746, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2034; amended Pub. L. 102–531, title III, § 313(a)(2), Oct. 27, 1992, 106 Stat. 3507; Pub. L. 103–43, title XX, § 2008(i)(3), June 10, 1993, 107 Stat. 213, related to area health education center programs.

A prior section 746 of act July 1, 1944, was classified to section 294q–2 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 293k. Family medicine, general internal medicine, general pediatrics, general dentistry, pediatric dentistry, and physician assistants

(a) Training generally

The Secretary may make grants to, or enter into contracts with, any public or nonprofit private hospital, school of medicine or osteopathic medicine, or to or with a public or private nonprofit entity (which the Secretary has determined is capable of carrying out such grant or contract)—

(1) to plan, develop, and operate, or participate in, an approved professional training program (including an approved residency or internship program) in the field of family medicine, internal medicine, or pediatrics for medical (M.D. and D.O.) students, interns (including interns in internships in osteopathic medicine), residents, or practicing physicians that emphasizes training for the practice of family medicine, general internal medicine, or general pediatrics (as defined by the Secretary);

(2) to provide financial assistance (in the form of traineeships and fellowships) to medical (M.D. and D.O.) students, interns (including interns in internships in osteopathic medicine), residents, practicing physicians, or other medical personnel, who are in need thereof, who are participants in any such program, and who plan to specialize or work in the practice of family medicine, general internal medicine, or general pediatrics;

(3) to plan, develop, and operate a program for the training of physicians who plan to teach in family medicine (including geriatrics), general internal medicine or general pediatrics training programs;

(4) to provide financial assistance (in the form of traineeships and fellowships) to physicians who are participants in any such program and who plan to teach in a family medicine (including geriatrics), general internal

medicine or general pediatrics training program;

(5) to meet the costs of projects to plan, develop, and operate or maintain programs for the training of physician assistants (as defined in section 295p of this title), and for the training of individuals who will teach in programs to provide such training; and

(6) to meet the costs of planning, developing, or operating programs, and to provide financial assistance to residents in such programs, of general dentistry or pediatric dentistry.

For purposes of paragraph (6), entities eligible for such grants or contracts shall include entities that have programs in dental schools, approved residency programs in the general or pediatric practice of dentistry, approved advanced education programs in the general or pediatric practice of dentistry, or approved residency programs in pediatric dentistry.

(b) Academic administrative units

(1) In general

The Secretary may make grants to or enter into contracts with schools of medicine or osteopathic medicine to meet the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine, general internal medicine, or general pediatrics.

(2) Preference in making awards

In making awards of grants and contracts under paragraph (1), the Secretary shall give preference to any qualified applicant for such an award that agrees to expend the award for the purpose of—

(A) establishing an academic administrative unit for programs in family medicine, general internal medicine, or general pediatrics;[1]

(B) substantially expanding the programs of such a unit; or[1]

(3) Priority in making awards

In making awards of grants and contracts under paragraph (1), the Secretary shall give priority to any qualified applicant for such an award that proposes a collaborative project between departments of primary care.

(c) Priority

(1) In general

With respect to programs for the training of interns or residents, the Secretary shall give priority in awarding grants under this section to qualified applicants that have a record of training the greatest percentage of providers, or that have demonstrated significant improvements in the percentage of providers, which enter and remain in primary care practice or general or pediatric dentistry.

(2) Disadvantaged individuals

With respect to programs for the training of interns, residents, or physician assistants, the Secretary shall give priority in awarding grants under this section to qualified applicants that have a record of training individuals who are from disadvantaged backgrounds (including racial and ethnic minorities underrepresented among primary care practice or general or pediatric dentistry).

(3) Special consideration

In awarding grants under this section the Secretary shall give special consideration to projects which prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV-AIDS, substance abusers, homeless, and victims of domestic violence.

(d) Duration of award

The period during which payments are made to an entity from an award of a grant or contract under subsection (a) of this section may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments.

(e) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $78,300,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(2) Allocation

(A) In general

Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available—

(i) not less than $49,300,000 for awards of grants and contracts under subsection (a) of this section to programs of family medicine, of which not less than $8,600,000 shall be made available for awards of grants and contracts under subsection (b) of this section for family medicine academic administrative units;

(ii) not less than $17,700,000 for awards of grants and contracts under subsection (a) of this section to programs of general internal medicine and general pediatrics;

(iii) not less than $6,800,000 for awards of grants and contracts under subsection (a) of this section to programs relating to physician assistants; and

(iv) not less than $4,500,000 for awards of grants and contracts under subsection (a) of this section to programs of general or pediatric dentistry.

(B) Ratable reduction

If amounts appropriated under paragraph (1) for any fiscal year are less than the amount required to comply with subparagraph (A), the Secretary shall ratably reduce the amount to be made available under each of clauses (i) through (iv) of such subparagraph accordingly.

(July 1, 1944, ch. 373, title VII, §747, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2042; amended Pub. L. 105–392, title I, §102(3), Nov. 13, 1998, 112 Stat. 3537.)

[1] So in original.

PRIOR PROVISIONS

A prior section 747 of act July 1, 1944, was classified to section 294q–3 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Pub. L. 105–392, §102(3)(A), substituted ''Family medicine, general internal medicine, general pediatrics, general dentistry, pediatric dentistry, and physician assistants'' for ''Family medicine'' in section catchline.

Subsec. (a). Pub. L. 105–392, §102(3)(B)(iv), (v), (vii), added pars. (5) and (6) and concluding provisions.

Subsec. (a)(1). Pub. L. 105–392, §102(3)(B)(i), inserted '', internal medicine, or pediatrics'' after ''family medicine'' and inserted before semicolon at end ''that emphasizes training for the practice of family medicine, general internal medicine, or general pediatrics (as defined by the Secretary)''.

Subsec. (a)(2). Pub. L. 105–392, §102(3)(B)(ii), inserted '', general internal medicine, or general pediatrics'' before semicolon at end.

Subsec. (a)(3), (4). Pub. L. 105–392, §102(3)(B)(iii), inserted ''(including geriatrics), general internal medicine or general pediatrics'' after ''family medicine''.

Subsec. (b)(1), (2)(A). Pub. L. 105–392, §102(3)(C)(i), inserted '', general internal medicine, or general pediatrics'' after ''family medicine''.

Subsec. (b)(3). Pub. L. 105–392, §102(3)(C)(ii), (iii), added par. (3).

Subsecs. (c) to (e). Pub. L. 105–392, §102(3)(D), (E), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (e)(1). Pub. L. 105–392, §102(3)(F)(i), substituted ''$78,300,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.'' for ''$54,000,000 for each of the fiscal years 1993 through 1995.''

Subsec. (e)(2). Pub. L. 105–392, §102(3)(F)(ii), added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available not less than 20 percent for awards of grants and contracts under subsection (b) of this section.''

§ 293*l*. Advisory Committee on Training in Primary Care Medicine and Dentistry

(a) Establishment

The Secretary shall establish an advisory committee to be known as the Advisory Committee on Training in Primary Care Medicine and Dentistry (in this section referred to as the ''Advisory Committee'').

(b) Composition

(1) In general

The Secretary shall determine the appropriate number of individuals to serve on the Advisory Committee. Such individuals shall not be officers or employees of the Federal Government.

(2) Appointment

Not later than 90 days after November 13, 1998, the Secretary shall appoint the members of the Advisory Committee from among individuals who are health professionals. In making such appointments, the Secretary shall ensure a fair balance between the health professions, that at least 75 percent of the members of the Advisory Committee are health professionals, a broad geographic representation of members and a balance between urban and rural members. Members shall be appointed based on their competence, interest, and knowledge of the mission of the profession involved.

(3) Minority representation

In appointing the members of the Advisory Committee under paragraph (2), the Secretary shall ensure the adequate representation of women and minorities.

(c) Terms

(1) In general

A member of the Advisory Committee shall be appointed for a term of 3 years, except that of the members first appointed—

(A) ⅓ of such members shall serve for a term of 1 year;

(B) ⅓ of such members shall serve for a term of 2 years; and

(C) ⅓ of such members shall serve for a term of 3 years.

(2) Vacancies

(A) In general

A vacancy on the Advisory Committee shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) Filling unexpired term

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) Duties

The Advisory Committee shall—

(1) provide advice and recommendations to the Secretary concerning policy and program development and other matters of significance concerning the activities under section 293k of this title; and

(2) not later than 3 years after November 13, 1998, and annually thereafter, prepare and submit to the Secretary, and the Committee on Labor and Human Resources of the Senate, and the Committee on Commerce of the House of Representatives, a report describing the activities of the Committee, including findings and recommendations made by the Committee concerning the activities under section 293k of this title.

(e) Meetings and documents

(1) Meetings

The Advisory Committee shall meet not less than 2 times each year. Such meetings shall be held jointly with other related entities established under this subchapter where appropriate.

(2) Documents

Not later than 14 days prior to the convening of a meeting under paragraph (1), the Advisory Committee shall prepare and make available an agenda of the matters to be considered by the Advisory Committee at such meeting. At any such meeting, the Advisory Council[1] shall distribute materials with respect to the issues to be addressed at the meeting. Not later than

[1] So in original. Probably should be ''Committee''.

30 days after the adjourning of such a meeting, the Advisory Committee shall prepare and make available a summary of the meeting and any actions taken by the Committee based upon the meeting.

(f) Compensation and expenses

(1) Compensation

Each member of the Advisory Committee shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Committee.

(2) Expenses

The members of the Advisory Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Committee.

(g) FACA

The Federal Advisory Committee Act shall apply to the Advisory Committee under this section only to the extent that the provisions of such Act do not conflict with the requirements of this section.

(July 1, 1944, ch. 373, title VII, §748, as added Pub. L. 105–392, title I, §102(4), Nov. 13, 1998, 112 Stat. 3539.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (g), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

November 13, 1998, referred to in subsec. (b)(2), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 105–392, which enacted this section, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 293*l*, act July 1, 1944, ch. 373, title VII, §748, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2043; amended Pub. L. 102–531, title III, §313(a)(3), Oct. 27, 1992, 106 Stat. 3507, authorized grants and contracts for development of general internal medicine and general pediatrics training programs, prior to repeal by Pub. L. 105–392, title I, §102(4), Nov. 13, 1998, 112 Stat. 3539.

A prior section 748 of act July 1, 1944, was classified to section 294r of this title prior to renumbering by Pub. L. 97–35.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§§ 293m to 293p. Repealed. Pub. L. 105–392, title I, §102(4), Nov. 13, 1998, 112 Stat. 3539

Section 293m, act July 1, 1944, ch. 373, title VII, §749, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2043, authorized grants and contracts for development of programs in general practice of dentistry.

A prior section 749 of act July 1, 1944, was classified to section 294s of this title prior to renumbering by Pub. L. 97–35.

Section 293n, act July 1, 1944, ch. 373, title VII, §750, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2044, authorized grants and contracts for development of training programs for physician assistants.

Section 293*o*, act July 1, 1944, ch. 373, title VII, §751, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2044, authorized grants and contracts for implementation of training projects for podiatric physicians.

Section 293p, act July 1, 1944, ch. 373, title VII, §752, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2045, set forth general provisions relating to traineeships and fellowships.

PART D—INTERDISCIPLINARY, COMMUNITY-BASED LINKAGES

§294. General provisions

(a) Collaboration

To be eligible to receive assistance under this part, an academic institution shall use such assistance in collaboration with 2 or more disciplines.

(b) Activities

An entity shall use assistance under this part to carry out innovative demonstration projects for strategic workforce supplementation activities as needed to meet national goals for interdisciplinary, community-based linkages. Such assistance may be used consistent with this part—

(1) to develop and support training programs;

(2) for faculty development;

(3) for model demonstration programs;

(4) for the provision of stipends for fellowship trainees;

(5) to provide technical assistance; and

(6) for other activities that will produce outcomes consistent with the purposes of this part.

(July 1, 1944, ch. 373, title VII, §750, as added Pub. L. 105–392, title I, §103, Nov. 13, 1998, 112 Stat. 3541.)

PRIOR PROVISIONS

A prior section 294, act July 1, 1944, ch. 373, title VII, §761, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2045; amended Pub. L. 103–43, title XX, §2014(e), June 10, 1993, 107 Stat. 217, authorized grants for traineeships in health professions fields experiencing severe shortages of health professionals, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294, act July 1, 1944, ch. 373, title VII, §727, as added Oct. 12, 1976, Pub. L. 94–484, title IV, §401(b)(3), 90 Stat. 2257; amended Dec. 19, 1977, Pub. L. 95–215, §4(e)(1), 91 Stat. 1506, stated purpose of and authorized appropriations for Federal program of student loan insurance, prior to the general amendment of this subchapter by Pub. L. 102–408. See sections 292 and 292p of this title.

Another prior section 294, act July 1, 1944, ch. 373, title VII, §740, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 170; amended Oct. 13, 1964, Pub. L. 88–654, §1(a), (b), 78 Stat. 1086; Oct. 22, 1965, Pub. L. 89–290, §§2(b), 4(a), (f)(1), (2), 79 Stat. 1056 to 1058; Nov. 2, 1966, Pub. L. 89–709, §3(a), (b), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, §5(c)(1), 80 Stat. 1232; Aug. 16, 1968, Pub. L. 90–490, title I §121(a)(1), (2), (5)(B), 82 Stat. 777, 778; Nov. 18, 1971, Pub. L. 92–157, title I, §105(e)(1), (4), (f)(2), 85 Stat. 451; Aug. 23, 1974, Pub. L. 93–385, §2(b), 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title XI, 1105(b), 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title IV, §402, 90 Stat. 2266, which related to loan agreements for the establishment of student loan funds, was transferred to section 294m of this title.

A prior section 750 of act July 1, 1944, was classified to section 293n of this title prior to repeal by Pub. L. 105–392.

§ 294a. Area health education centers

(a) Authority for provision of financial assistance

(1) Assistance for planning, development, and operation of programs

(A) In general

The Secretary shall award grants to and enter into contracts with schools of medicine and osteopathic medicine, and incorporated consortia made up of such schools, or the parent institutions of such schools, for projects for the planning, development and operation of area health education center programs that—

(i) improve the recruitment, distribution, supply, quality and efficiency of personnel providing health services in underserved rural and urban areas and personnel providing health services to populations having demonstrated serious unmet health care needs;

(ii) increase the number of primary care physicians and other primary care providers who provide services in underserved areas through the offering of an educational continuum of health career recruitment through clinical education concerning underserved areas in a comprehensive health workforce strategy;

(iii) carry out recruitment and health career awareness programs to recruit individuals from underserved areas and underrepresented populations, including minority and other elementary or secondary students, into the health professions;

(iv) prepare individuals to more effectively provide health services to underserved areas or underserved populations through field placements, preceptorships, the conduct of or support of community-based primary care residency programs, and agreements with community-based organizations such as community health centers, migrant health centers, Indian health centers, public health departments and others;

(v) conduct health professions education and training activities for students of health professions schools and medical residents;

(vi) conduct at least 10 percent of medical student required clinical education at sites remote to the primary teaching facility of the contracting institution; and

(vii) provide information dissemination and educational support to reduce professional isolation, increase retention, enhance the practice environment, and improve health care through the timely dissemination of research findings using relevant resources.

(B) Other eligible entities

With respect to a State in which no area health education center program is in operation, the Secretary may award a grant or contract under subparagraph (A) to a school of nursing.

(C) Project terms

(i) In general

Except as provided in clause (ii), the period during which payments may be made under an award under subparagraph (A) may not exceed—

(I) in the case of a project, 12 years or

(II) in the case of a center within a project, 6 years.

(ii) Exception

The periods described in clause (i) shall not apply to projects that have completed the initial period of Federal funding under this section and that desire to compete for model awards under paragraph (2)(A).

(2) Assistance for operation of model programs

(A) In general

In the case of any entity described in paragraph (1)(A) that—

(i) has previously received funds under this section;

(ii) is operating an area health education center program; and

(iii) is no longer receiving financial assistance under paragraph (1);

the Secretary may provide financial assistance to such entity to pay the costs of operating and carrying out the requirements of the program as described in paragraph (1).

(B) Matching requirement

With respect to the costs of operating a model program under subparagraph (A), an entity, to be eligible for financial assistance under subparagraph (A), shall make available (directly or through contributions from State, county or municipal governments, or the private sector) recurring non-Federal contributions in cash toward such costs in an amount that is equal to not less than 50 percent of such costs.

(C) Limitation

The aggregate amount of awards provided under subparagraph (A) to entities in a State for a fiscal year may not exceed the lesser of—

(i) $2,000,000; or

(ii) an amount equal to the product of $250,000 and the aggregate number of area health education centers operated in the State by such entities.

(b) Requirements for centers

(1) General requirement

Each area health education center that receives funds under this section shall encourage

the regionalization of health professions schools through the establishment of partnerships with community-based organizations.

(2) Service area

Each area health education center that receives funds under this section shall specifically designate a geographic area or medically underserved population to be served by the center. Such area or population shall be in a location removed from the main location of the teaching facilities of the schools participating in the program with such center.

(3) Other requirements

Each area health education center that receives funds under this section shall—

(A) assess the health personnel needs of the area to be served by the center and assist in the planning and development of training programs to meet such needs;

(B) arrange and support rotations for students and residents in family medicine, general internal medicine or general pediatrics, with at least one center in each program being affiliated with or conducting a rotating osteopathic internship or medical residency training program in family medicine (including geriatrics), general internal medicine (including geriatrics), or general pediatrics in which no fewer than 4 individuals are enrolled in first-year positions;

(C) conduct and participate in interdisciplinary training that involves physicians and other health personnel including, where practicable, public health professionals, physician assistants, nurse practitioners, nurse midwives, and behavioral and mental health providers; and

(D) have an advisory board, at least 75 percent of the members of which shall be individuals, including both health service providers and consumers, from the area served by the center.

(c) Certain provisions regarding funding

(1) Allocation to center

Not less than 75 percent of the total amount of Federal funds provided to an entity under this section shall be allocated by an area health education center program to the area health education center. Such entity shall enter into an agreement with each center for purposes of specifying the allocation of such 75 percent of funds.

(2) Operating costs

With respect to the operating costs of the area health education center program of an entity receiving funds under this section, the entity shall make available (directly or through contributions from State, county or municipal governments, or the private sector) non-Federal contributions in cash toward such costs in an amount that is equal to not less than 50 percent of such costs, except that the Secretary may grant a waiver for up to 75 percent of the amount of the required non-Federal match in the first 3 years in which an entity receives funds under this section.

(July 1, 1944, ch. 373, title VII, §751, as added Pub. L. 105–392, title I, §103, Nov. 13, 1998, 112 Stat. 3541.)

PRIOR PROVISIONS

A prior section 294a, act July 1, 1944, ch. 373, title VII, §762, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2046, authorized grants and contracts for public health special projects, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294a, act July 1, 1944, ch. 373, title VII, §728, as added Oct. 12, 1976, Pub. L. 94–484, title IV, §401(b)(3), 90 Stat. 2257; amended Dec. 19, 1977, Pub. L. 95–215, §4(e)(2)–(4), 91 Stat. 1506; Dec. 17, 1980, Pub. L. 96–538, title IV, §401, 94 Stat. 3192; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2726, 95 Stat. 916; Oct. 22, 1985, Pub. L. 99–129, title I, §101, title II, §208(h), 99 Stat. 523, 532; Nov. 4, 1988, Pub. L. 100–607, title VI, §§602(a)–(d), 636, title VII, §707, 102 Stat. 3122, 3149, 3159; Nov. 18, 1988, Pub. L. 100–690, title II, §2615(b), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, §5(g)(1), 103 Stat. 612, related to Federal student loan insurance program, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292a of this title.

Another prior section 294a, act July 1, 1944, ch. 373, title VII, §741, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 171; amended Oct. 13, 1964, Pub. L. 88–654, §1(c), (d), 78 Stat. 1086; Oct. 22, 1965, Pub. L. 89–290, §4(b), (f)(3), (4), (g)(1), 79 Stat. 1057, 1058; Nov. 2, 1966, Pub. L. 89–709, §3(c), (d), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, §4, 80 Stat. 1230; Aug. 16, 1968, Pub. L. 90–490, title I, §121(a)(3), (4), (5)(A), 82 Stat. 777; Nov. 18, 1971, Pub. L. 92–157, title I, §105(b)–(d), (e)(4), (f)(2), 85 Stat. 449–451; Oct. 27, 1972, Pub. L. 92–585, §4, 86 Stat. 1293; Oct. 12, 1976, Pub. L. 94–484, title IV, §§403(a), (b), (d), 407(d)(1), 90 Stat. 2266, 2279, which related to loan provisions, was transferred to section 294n of this title.

A prior section 751 of act July 1, 1944, was classified to section 293*o* of this title prior to repeal by Pub. L. 105–392.

Another prior section 751 of act July 1, 1944, was classified to section 294r of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 751 of act July 1, 1944, was classified to section 294t of this title prior to renumbering by Pub. L. 97–35.

§ 294b. Health education and training centers

(a) In general

To be eligible for funds under this section, a health education training center shall be an entity otherwise eligible for funds under section 294a of this title that—

(1) addresses the persistent and severe unmet health care needs in States along the border between the United States and Mexico and in the State of Florida, and in other urban and rural areas with populations with serious unmet health care needs;

(2) establishes an advisory board comprised of health service providers, educators and consumers from the service area;

(3) conducts training and education programs for health professions students in these areas;

(4) conducts training in health education services, including training to prepare community health workers; and

(5) supports health professionals (including nursing) practicing in the area through educational and other services.

(b) Allocation of funds

The Secretary shall make available 50 percent of the amounts appropriated for each fiscal year under this section[1] for the establishment or operation of health education training centers

[1] See References in Text note below.

through projects in States along the border between the United States and Mexico and in the State of Florida.

(July 1, 1944, ch. 373, title VII, § 752, as added Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3544.)

REFERENCES IN TEXT

This section, referred to in subsec. (b), was in the original ''section 752'' meaning section 752 of act July 1, 1944, ch. 373, title VII, as added by Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3544, which is classified to this section. Provisions allocating appropriations for awards of grants and contracts under this section and providing that not less than 50 percent of the amount be made available for centers described in subsection (a)(1) of this section are contained in section 757(b)(1)(B) of act July 1, 1944, which is classified to section 294g(b)(1)(B) of this title.

PRIOR PROVISIONS

A prior section 294b, act July 1, 1944, ch. 373, title VII, § 763, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2047, authorized grants and contracts for development of preventive medicine and dental public health programs, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294b, act July 1, 1944, ch. 373, title VII, § 729, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2258; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(5), 91 Stat. 1506; Sept. 29, 1979, Pub. L. 96–76, title II, § 201, 93 Stat. 582; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2727, 95 Stat. 917; Oct. 22, 1985, Pub. L. 99–129, title II, § 208(g)(1), 99 Stat. 531; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 628(5), 629(b)(2), 102 Stat. 3145, 3146, related to limitations on individually insured loans and loan insurance, prior to the general revision of this subchapter by Pub. L. 102–408. See section 292b of this title.

Another prior section 294b, act July 1, 1944, ch. 373, title VII, § 742, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 172; amended Oct. 22, 1965, Pub. L. 89–290, § 4(c), 79 Stat. 1057; Nov. 2, 1966, Pub. L. 89–709, § 3(e), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 5(b), 80 Stat. 1232; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(b), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, § 1(a), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(a), (f)(2), 85 Stat. 449, 451; Aug. 23, 1974, Pub. L. 93–385, § 2(a), 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title XI, § 1105(a), 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(e), title IV, §§ 404, 406(d), 90 Stat. 2244, 2267, 2268, which related to authorization of appropriations, was transferred to section 294*o* of this title.

A prior section 752 of act July 1, 1944, was classified to section 293p of this title prior to repeal by Pub. L. 105–392.

Another prior section 752 of act July 1, 1944, was classified to section 294u of this title prior to renumbering by Pub. L. 97–35.

§ 294c. Education and training relating to geriatrics

(a) Geriatric education centers

(1) In general

The Secretary shall award grants or contracts under this section to entities described in paragraphs[1] (1), (3), or (4) of section 295p of this title, and section 296(2) of this title, for the establishment or operation of geriatric education centers.

(2) Requirements

A geriatric education center is a program that—

(A) improves the training of health professionals in geriatrics, including geriatric residencies, traineeships, or fellowships;

(B) develops and disseminates curricula relating to the treatment of the health problems of elderly individuals;

(C) supports the training and retraining of faculty to provide instruction in geriatrics;

(D) supports continuing education of health professionals who provide geriatric care; and

(E) provides students with clinical training in geriatrics in nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers.

(b) Geriatric training regarding physicians and dentists

(1) In general

The Secretary may make grants to, and enter into contracts with, schools of medicine, schools of osteopathic medicine, teaching hospitals, and graduate medical education programs, for the purpose of providing support (including residencies, traineeships, and fellowships) for geriatric training projects to train physicians, dentists and behavioral and mental health professionals who plan to teach geriatric medicine, geriatric behavioral or mental health, or geriatric dentistry.

(2) Requirements

Each project for which a grant or contract is made under this subsection shall—

(A) be staffed by full-time teaching physicians who have experience or training in geriatric medicine or geriatric behavioral or mental health;

(B) be staffed, or enter into an agreement with an institution staffed by full-time or part-time teaching dentists who have experience or training in geriatric dentistry;

(C) be staffed, or enter into an agreement with an institution staffed by full-time or part-time teaching behavioral mental health professionals who have experience or training in geriatric behavioral or mental health;

(D) be based in a graduate medical education program in internal medicine or family medicine or in a department of geriatrics or behavioral or mental health;

(E) provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety of service rotations, such as geriatric consultation services, acute care services, dental services, geriatric behavioral or mental health units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals; and

(F) provide training in geriatrics through one or both of the training options described in subparagraphs (A) and (B) of paragraph (3).

(3) Training options

The training options referred to in subparagraph (F) of paragraph (2) shall be as follows:

(A) A 1-year retraining program in geriatrics for—

[1] So in original. Probably should be ''paragraph''.

(i) physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and behavioral or mental health at schools of medicine and osteopathic medicine;

(ii) dentists who are faculty members at schools of dentistry or at hospital departments of dentistry; and

(iii) behavioral or mental health professionals who are faculty members in departments of behavioral or mental health; and

(B) A 2-year internal medicine or family medicine fellowship program providing emphasis in geriatrics, which shall be designed to provide training in clinical geriatrics and geriatrics research for—

(i) physicians who have completed graduate medical education programs in internal medicine, family medicine, behavioral or mental health, neurology, gynecology, or rehabilitation medicine;

(ii) dentists who have demonstrated a commitment to an academic career and who have completed postdoctoral dental training, including postdoctoral dental education programs or who have relevant advanced training or experience; and

(iii) behavioral or mental health professionals who have completed graduate medical education programs in behavioral or mental health.

(4) Definitions

For purposes of this subsection:

(A) The term ''graduate medical education program'' means a program sponsored by a school of medicine, a school of osteopathic medicine, a hospital, or a public or private institution that—

(i) offers postgraduate medical training in the specialties and subspecialties of medicine; and

(ii) has been accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association through its Committee on Postdoctoral Training.

(B) The term ''post-doctoral dental education program'' means a program sponsored by a school of dentistry, a hospital, or a public or private institution that—

(i) offers post-doctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency; and

(ii) has been accredited by the Commission on Dental Accreditation.

(c) Geriatric faculty fellowships

(1) Establishment of program

The Secretary shall establish a program to provide Geriatric Academic Career Awards to eligible individuals to promote the career development of such individuals as academic geriatricians.

(2) Eligible individuals

To be eligible to receive an Award under paragraph (1), an individual shall—

(A) be board certified or board eligible in internal medicine, family practice, or psychiatry;

(B) have completed an approved fellowship program in geriatrics; and

(C) have a junior faculty appointment at an accredited (as determined by the Secretary) school of medicine or osteopathic medicine.

(3) Limitations

No Award under paragraph (1) may be made to an eligible individual unless the individual—

(A) has submitted to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, and the Secretary has approved such application; and

(B) provides, in such form and manner as the Secretary may require, assurances that the individual will meet the service requirement described in subsection (e)[2].

(4) Amount and term

(A) Amount

The amount of an Award under this section shall equal $50,000 for fiscal year 1998, adjusted for subsequent fiscal years to reflect the increase in the Consumer Price Index.

(B) Term

The term of any Award made under this subsection shall not exceed 5 years.

(5) Service requirement

An individual who receives an Award under this subsection shall provide training in clinical geriatrics, including the training of interdisciplinary teams of health care professionals. The provision of such training shall constitute at least 75 percent of the obligations of such individual under the Award.

(July 1, 1944, ch. 373, title VII, §753, as added Pub. L. 105–392, title I, §103, Nov. 13, 1998, 112 Stat. 3544; amended Pub. L. 107–205, title II, §202(b), Aug. 1, 2002, 116 Stat. 817.)

PRIOR PROVISIONS

A prior section 294c, act July 1, 1944, ch. 373, title VII, §765, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2047, authorized appropriations for purpose of carrying out subpart I of this part, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294c, act July 1, 1944, ch. 373, title VII, §730, as added Oct. 12, 1976, Pub. L. 94–484, title IV, §401(b)(3), 90 Stat. 2258, related to sources of funds for eligible student loans, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292c of this title.

Another prior section 294c, act July 1, 1944, ch. 373, title VII, §743, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 172; amended Oct. 22, 1965, Pub. L. 89–290, §4(d), 79 Stat. 1057; Nov. 3, 1966, Pub. L. 89–751, §5(c)(2), (3), 80 Stat. 1233; Aug. 16, 1968, Pub. L. 90–490, title I, §121(c), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, §1(b), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, §105(e)(2), (f)(2), 85 Stat. 451; Oct. 12, 1976, Pub. L. 94–484, title IV, §§405, 406(e), 90 Stat. 2267, 2268, which related to the distribution of assets from loan funds, was transferred to section 294p of this title.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–205 substituted '', and section 296(2) of this title,'' for '', and section 298b(2) of this title,''.

[2] So in original. Probably should be ''paragraph (5)''.

§ 294d. Quentin N. Burdick program for rural interdisciplinary training

(a) Grants

The Secretary may make grants or contracts under this section to help entities fund authorized activities under an application approved under subsection (c) of this section.

(b) Use of amounts

(1) In general

Amounts provided under subsection (a) of this section shall be used by the recipients to fund interdisciplinary training projects designed to—

(A) use new and innovative methods to train health care practitioners to provide services in rural areas;

(B) demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care;

(C) deliver health care services to individuals residing in rural areas;

(D) enhance the amount of relevant research conducted concerning health care issues in rural areas; and

(E) increase the recruitment and retention of health care practitioners from rural areas and make rural practice a more attractive career choice for health care practitioners.

(2) Methods

A recipient of funds under subsection (a) of this section may use various methods in carrying out the projects described in paragraph (1), including—

(A) the distribution of stipends to students of eligible applicants;

(B) the establishment of a post-doctoral fellowship program;

(C) the training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

(D) the purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

(3) Administration

(A) In general

An applicant shall not use more than 10 percent of the funds made available to such applicant under subsection (a) of this section for administrative expenses.

(B) Training

Not more than 10 percent of the individuals receiving training with funds made available to an applicant under subsection (a) of this section shall be trained as doctors of medicine or doctors of osteopathy.

(C) Limitation

An institution that receives a grant under this section shall use amounts received under such grant to supplement, not supplant, amounts made available by such institution for activities of the type described in subsection (b)(1) of this section in the fiscal year preceding the year for which the grant is received.

(c) Applications

Applications submitted for assistance under this section shall—

(1) be jointly submitted by at least two eligible applicants with the express purpose of assisting individuals in academic institutions in establishing long-term collaborative relationships with health care providers in rural areas; and

(2) designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community behavioral and mental health centers, long-term care facilities, Native Hawaiian health centers, or facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(d) Definitions

For the purposes of this section, the term ''rural'' means geographic areas that are located outside of standard metropolitan statistical areas.

(July 1, 1944, ch. 373, title VII, § 754, as added Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3547.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (c)(2), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 294d, act July 1, 1944, ch. 373, title VII, § 766, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2047, authorized grants and contracts for development of advanced training of allied health professionals, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294d, act July 1, 1944, ch. 373, title VII, § 731, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2258; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(c)(1), (2), 91 Stat. 389, 390; Dec. 19, 1977, Pub. L. 95–215, § 4(a)–(d), (e)(6), 91 Stat. 1505, 1506; Dec. 17, 1980, Pub. L. 96–538, title IV, § 402, 94 Stat. 3192; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2728, 95 Stat. 918; Oct. 22, 1985, Pub. L. 99–129, title II, §§ 208(a), (b)(1), (2), (c)(1), (d), (i), 211(a)(2), 99 Stat. 529–532, 539; Nov. 4, 1988, Pub. L. 100–607, title VI, § 602(e), (f), 102 Stat. 3123; Apr. 6, 1991, Pub. L. 102–25, title III, § 374, 105 Stat. 95; July 23, 1992, Pub. L. 102–325, title IV, § 427(b)(2), 106 Stat. 549, related to eligibility of borrowers and terms of insurance, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292d of this title.

Another prior section 294d, act July 1, 1944, ch. 373, title VII, § 744, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 173; amended Oct. 22, 1965, Pub. L. 89–290, § 4(e), 79 Stat. 1057; Nov. 3, 1966, Pub. L. 89–751, § 5(a), 80 Stat. 1230; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(d), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, § 1(c), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(e)(3), (f)(2), 85 Stat. 451, provided for loans to schools to capitalize health professions student loan funds, prior to repeal by Pub. L. 94–484, title IV, § 406(a)(1), Oct. 12, 1976, 90 Stat. 2268.

§ 294e. Allied health and other disciplines

(a) In general

The Secretary may make grants or contracts under this section to help entities fund activities of the type described in subsection (b) of this section.

(b) Activities

Activities of the type described in this subsection include the following:

(1) Assisting entities in meeting the costs associated with expanding or establishing programs that will increase the number of individuals trained in allied health professions. Programs and activities funded under this paragraph may include—

(A) those that expand enrollments in allied health professions with the greatest shortages or whose services are most needed by the elderly;

(B) those that provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences;

(C) those that establish community-based allied health training programs that link academic centers to rural clinical settings;

(D) those that provide career advancement training for practicing allied health professionals;

(E) those that expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained;

(F) those that develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics;

(G) those that expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly;

(H) those that expand or establish demonstration centers to emphasize innovative models to link allied health clinical practice, education, and research;

(I) those that provide financial assistance (in the form of traineeships) to students who are participants in any such program; and

(i) who plan to pursue a career in an allied health field that has a demonstrated personnel shortage; and

(ii) who agree upon completion of the training program to practice in a medically underserved community;

that shall be utilized to assist in the payment of all or part of the costs associated with tuition, fees and such other stipends as the Secretary may consider necessary; and

(J) those to meet the costs of projects to plan, develop, and operate or maintain graduate programs in behavioral and mental health practice.

(2) Planning and implementing projects in preventive and primary care training for podiatric physicians in approved or provisionally approved residency programs that shall provide financial assistance in the form of traineeships to residents who participate in such projects and who plan to specialize in primary care.

(3) Carrying out demonstration projects in which chiropractors and physicians collaborate to identify and provide effective treatment for spinal and lower-back conditions.

(July 1, 1944, ch. 373, title VII, § 755, as added Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3548.)

PRIOR PROVISIONS

A prior section 294e, act July 1, 1944, ch. 373, title VII, § 767, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2048, authorized grants and contracts for establishment of programs to increase number of allied health professionals, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294e, act July 1, 1944, ch. 373, title VII, § 732, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2260; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(c)(3), (4), 91 Stat. 390; Dec. 19, 1977, Pub. L. 95–215, § 4(e)(8), (9), 91 Stat. 1506; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2729, 95 Stat. 918; Oct. 22, 1985, Pub. L. 99–129, title II, § 208(e), 99 Stat. 531; Nov. 4, 1988, Pub. L. 100–607, title VI, § 602(g), 102 Stat. 3123, related to certificates of loan insurance, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292e of this title.

Another prior section 294e, act July 1, 1944, ch. 373, title VII, § 744, formerly § 745, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 173; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 105(f)(2), 85 Stat. 451; renumbered § 744, Oct. 12, 1976, Pub. L. 94–484, title IV, § 406(a)(2), 90 Stat. 2268, which related to administrative provisions, was transferred to section 294q of this title.

§ 294f. Advisory Committee on Interdisciplinary, Community-Based Linkages

(a) Establishment

The Secretary shall establish an advisory committee to be known as the Advisory Committee on Interdisciplinary, Community-Based Linkages (in this section referred to as the ''Advisory Committee'').

(b) Composition

(1) In general

The Secretary shall determine the appropriate number of individuals to serve on the Advisory Committee. Such individuals shall not be officers or employees of the Federal Government.

(2) Appointment

Not later than 90 days after November 13, 1998, the Secretary shall appoint the members of the Advisory Committee from among individuals who are health professionals from schools of the types described in sections 294a(a)(1)(A), 294a(a)(1)(B), 294c(b), 294d(3)(A), and 294e(b) of this title. In making such appointments, the Secretary shall ensure a fair balance between the health professions, that at least 75 percent of the members of the Advisory Committee are health professionals, a broad geographic representation of members and a balance between urban and rural members. Members shall be appointed based on their competence, interest, and knowledge of the mission of the profession involved.

(3) Minority representation

In appointing the members of the Advisory Committee under paragraph (2), the Secretary

shall ensure the adequate representation of women and minorities.

(c) Terms

(1) In general

A member of the Advisory Committee shall be appointed for a term of 3 years, except that of the members first appointed—

(A) ⅓ of the members shall serve for a term of 1 year;

(B) ⅓ of the members shall serve for a term of 2 years; and

(C) ⅓ of the members shall serve for a term of 3 years.

(2) Vacancies

(A) In general

A vacancy on the Advisory Committee shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) Filling unexpired term

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) Duties

The Advisory Committee shall—

(1) provide advice and recommendations to the Secretary concerning policy and program development and other matters of significance concerning the activities under this part; and

(2) not later than 3 years after November 13, 1998, and annually thereafter, prepare and submit to the Secretary, and the Committee on Labor and Human Resources of the Senate, and the Committee on Commerce of the House of Representatives, a report describing the activities of the Committee, including findings and recommendations made by the Committee concerning the activities under this part.

(e) Meetings and documents

(1) Meetings

The Advisory Committee shall meet not less than 3 times each year. Such meetings shall be held jointly with other related entities established under this subchapter where appropriate.

(2) Documents

Not later than 14 days prior to the convening of a meeting under paragraph (1), the Advisory Committee shall prepare and make available an agenda of the matters to be considered by the Advisory Committee at such meeting. At any such meeting, the Advisory Council[1] shall distribute materials with respect to the issues to be addressed at the meeting. Not later than 30 days after the adjourning of such a meeting, the Advisory Committee shall prepare and make available a summary of the meeting and any actions taken by the Committee based upon the meeting.

(f) Compensation and expenses

(1) Compensation

Each member of the Advisory Committee shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Committee.

(2) Expenses

The members of the Advisory Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Committee.

(g) FACA

The Federal Advisory Committee Act shall apply to the Advisory Committee under this section only to the extent that the provisions of such Act do not conflict with the requirements of this section.

(July 1, 1944, ch. 373, title VII, § 756, as added Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3549.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (g), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

November 13, 1998, referred to in subsec. (b)(2), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 105–392, which amended this part generally, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 294f, act July 1, 1944, ch. 373, title VII, § 733, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2262; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(10), 91 Stat. 1506; Nov. 6, 1978, Pub. L. 95–598, title III, § 327, 92 Stat. 2679; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2730, 95 Stat. 919; July 1, 1988, Pub. L. 100–360, title IV, § 411(f)(10)(C)(ii), 102 Stat. 781; Nov. 4, 1988, Pub. L. 100–607, title VI, § 602(h)–(k), 102 Stat. 3123; Aug. 16, 1989, Pub. L. 101–93, § 7, 103 Stat. 615, related to procedures upon default by borrower under student loan insurance program, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292f of this title.

Another prior section 294f, act July 1, 1944, ch. 373, title VII, § 746, as added Aug. 16, 1968, Pub. L. 90–490, title I, § 121(e), 82 Stat. 778; amended Nov. 18, 1971, Pub. L. 92–157, title I, §§ 105(f)(2), 106(b)(5), 85 Stat. 451, 453, provided for transfer of funds to scholarships in relation to loans to students studying in United States, prior to repeal by Pub. L. 94–484, title IV, § 406(a)(1), Oct. 12, 1976, 90 Stat. 2268.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an

[1] So in original. Probably should be ''Committee''.

advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 294g. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this part, $55,600,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(b) Allocation

(1) In general

Of the amounts appropriated under subsection (a) of this section for a fiscal year, the Secretary shall make available—

(A) not less than $28,587,000 for awards of grants and contracts under section 294a of this title;

(B) not less than $3,765,000 for awards of grants and contracts under section 294b of this title, of which not less than 50 percent of such amount shall be made available for centers described in subsection (a)(1) of such section; and

(C) not less than $22,631,000 for awards of grants and contracts under sections 294c, 294d, and 294e of this title.

(2) Ratable reduction

If amounts appropriated under subsection (a) of this section for any fiscal year are less than the amount required to comply with paragraph (1), the Secretary shall ratably reduce the amount to be made available under each of subparagraphs (A) through (C) of such paragraph accordingly.

(3) Increase in amounts

If amounts appropriated for a fiscal year under subsection (a) of this section exceed the amount authorized under such subsection for such fiscal year, the Secretary may increase the amount to be made available for programs and activities under this part without regard to the amounts specified in each of subparagraphs (A) through (C) of paragraph (2).

(c) Obligation of certain amounts

(1) Area health education center programs

Of the amounts made available under subsection (b)(1)(A) of this section for each fiscal year, the Secretary may obligate for awards under section 294a(a)(2) of this title—

(A) not less than 23 percent of such amounts in fiscal year 1998;

(B) not less than 30 percent of such amounts in fiscal year 1999;

(C) not less than 35 percent of such amounts in fiscal year 2000;

(D) not less than 40 percent of such amounts in fiscal year 2001; and

(E) not less than 45 percent of such amounts in fiscal year 2002.

(2) Sense of Congress

It is the sense of the Congress that—

(A) every State have an area health education center program in effect under this section; and

(B) the ratio of Federal funding for the model program under section 294a(a)(2) of this title should increase over time and that Federal funding for other awards under this section shall decrease so that the national program will become entirely comprised of programs that are funded at least 50 percent by State and local partners.

(July 1, 1944, ch. 373, title VII, § 757, as added Pub. L. 105–392, title I, § 103, Nov. 13, 1998, 112 Stat. 3551.)

PRIOR PROVISIONS

A prior section 294g, act July 1, 1944, ch. 373, title VII, § 734, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2263; amended Oct. 22, 1985, Pub. L. 99–129, title II, § 208(f), 99 Stat. 531, related to establishment of a student loan insurance fund, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292i of this title.

Another prior section 294g, act July 1, 1944, ch. 373, title VII, § 747, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 105(f)(4), 85 Stat. 451; amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(f), 90 Stat. 2244, provided for student loans to citizens of United States who were full-time students in schools of medicine located outside United States, prior to repeal by Pub. L. 94–484, title IV, § 401(a), Oct. 12, 1976, 90 Stat. 2257, effective Oct. 1, 1976.

§ 294h. Interdisciplinary training and education on domestic violence and other types of violence and abuse

(a) Grants

The Secretary, acting through the Director of the Health Resources and Services Administration, shall award grants under this section to develop interdisciplinary training and education programs that provide undergraduate, graduate, post-graduate medical, nursing (including advanced practice nursing students), and other health professions students with an understanding of, and clinical skills pertinent to, domestic violence, sexual assault, stalking, and dating violence.

(b) Eligibility

To be eligible to receive a grant under this section an entity shall—

(1) be an accredited school of allopathic or osteopathic medicine;

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including—

(A) information to demonstrate that the applicant includes the meaningful participation of a school of nursing and at least one other school of health professions or graduate program in public health, dentistry, social work, midwifery, or behavioral and mental health;

(B) strategies for the dissemination and sharing of curricula and other educational materials developed under the grant to other interested medical and nursing schools and national resource repositories for materials on domestic violence and sexual assault; and

(C) a plan for consulting with community-based coalitions or individuals who have experience and expertise in issues related to domestic violence, sexual assault, dating violence, and stalking for services provided under the program carried out under the grant.

(c) Use of funds

(1) Required uses

Amounts provided under a grant under this section shall be used to—

(A) fund interdisciplinary training and education projects that are designed to train medical, nursing, and other health professions students and residents to identify and provide health care services (including mental or behavioral health care services and referrals to appropriate community services) to individuals who are or who have experienced domestic violence, sexual assault, and stalking or dating violence; and

(B) plan and develop culturally competent clinical components for integration into approved residency training programs that address health issues related to domestic violence, sexual assault, dating violence, and stalking, along with other forms of violence as appropriate, and include the primacy of victim safety and confidentiality.

(2) Permissive uses

Amounts provided under a grant under this section may be used to—

(A) offer community-based training opportunities in rural areas for medical, nursing, and other students and residents on domestic violence, sexual assault, stalking, and dating violence, and other forms of violence and abuse, which may include the use of distance learning networks and other available technologies needed to reach isolated rural areas; or

(B) provide stipends to students who are underrepresented in the health professions as necessary to promote and enable their participation in clerkships, preceptorships, or other offsite training experiences that are designed to develop health care clinical skills related to domestic violence, sexual assault, dating violence, and stalking.

(3) Requirements

(A) Confidentiality and safety

Grantees under this section shall ensure that all educational programs developed with grant funds address issues of confidentiality and patient safety, and that faculty and staff associated with delivering educational components are fully trained in procedures that will protect the immediate and ongoing security of the patients, patient records, and staff. Advocacy-based coalitions or other expertise available in the community shall be consulted on the development and adequacy of confidentially and security procedures, and shall be fairly compensated by grantees for their services.

(B) Rural programs

Rural training programs carried out under paragraph (2)(A) shall reflect adjustments in protocols and procedures or referrals that may be needed to protect the confidentiality and safety of patients who live in small or isolated communities and who are currently or have previously experienced violence or abuse.

(4) Child and elder abuse

Issues related to child and elder abuse may be addressed as part of a comprehensive programmatic approach implemented under a grant under this section.

(d) Requirements of grantees

(1) Limitation on administrative expenses

A grantee shall not use more than 10 percent of the amounts received under a grant under this section for administrative expenses.

(2) Contribution of funds

A grantee under this section, and any entity receiving assistance under the grant for training and education, shall contribute non-Federal funds, either directly or through in-kind contributions, to the costs of the activities to be funded under the grant in an amount that is not less than 25 percent of the total cost of such activities.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $3,000,000 for each of fiscal years 2007 through 2011. Amounts appropriated under this subsection shall remain available until expended.

(July 1, 1944, ch. 373, title VII, § 758, as added Pub. L. 109–162, title V, § 503, Jan. 5, 2006, 119 Stat. 3024.)

PRIOR PROVISIONS

A prior section 294h, act July 1, 1944, ch. 373, title VII, § 735, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2263; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(c)(5), 91 Stat. 390; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2709(e)(4)(B), 95 Stat. 911; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035, related to functions, powers, and duties of the Secretary under the Federal student loan insurance program, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292j of this title.

A prior section 294i, act July 1, 1944, ch. 373, title VII, § 771, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2049, authorized grants to educational entities offering programs in health administration, hospital administration, or health policy analysis and planning, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294i, act July 1, 1944, ch. 373, title VII, § 736, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2265; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(d), 91 Stat. 390, related to participation by Federal credit unions in Federal, State, and private student loan insurance programs, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292k of this title.

Sections 294j to 294m were omitted in the general amendment of this subchapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.

Section 294j, act July 1, 1944, ch. 373, title VII, § 737, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2265; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(c)(6), 91 Stat. 390; Dec. 19, 1977, Pub. L. 95–215, § 4(f), 91 Stat. 1506; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2731, 95 Stat. 919; Jan. 4, 1983, Pub. L. 97–414, § 8(i), 96 Stat. 2061; Oct. 22, 1985, Pub. L. 99–129, title II, §§ 201(c), 204(c), 208(g)(2), 99 Stat. 525, 527, 531; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 602(*l*), 628(6), 629(b)(2), 102 Stat. 3124, 3145, 3146, defined ''eligible institution'', ''eligible lender'', ''line of credit'', and ''school of allied health''. See section 292*o* of this title.

Section 294j–1, act July 1, 1944, ch. 373, title VII, § 737A, as added Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2732, 95 Stat. 919, related to determination of eligible students. See section 292*l* of this title.

Section 294k, act July 1, 1944, ch. 373, title VII, § 738, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2265; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(12), 91 Stat. 1506, related to repayment of loans of deceased or disabled borrowers from student loan insurance fund. See section 292m of this title.

Section 294*l*, act July 1, 1944, ch. 373, title VII, § 739, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2266; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(13), 91 Stat. 1506; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2733, 95 Stat. 920, related to eligibility of institutions and recordation and availability of information. See section 292n of this title.

Section 294*l*–1, act July 1, 1944, ch. 373, title VII, § 739A, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 602(m), 102 Stat. 3124, related to reissuance and refinancing of certain loans.

Section 294m, act July 1, 1944, ch. 373, title VII, § 740, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Oct. 13, 1964, Pub. L. 88–654, § 1(a), (b), 78 Stat. 1086; Oct. 22, 1965, Pub. L. 89–290, §§ 2(b), 4 (a), (f)(1), (2), 79 Stat. 1056–1058; Nov. 2, 1966, Pub. L. 89–709, § 3(a), (b), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 5(c)(1), 80 Stat. 1232; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(a)(1), (2), (5)(B), 82 Stat. 777, 778; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(e)(1), (4), (f)(2), 85 Stat. 451; Aug. 23, 1974, Pub. L. 93–385, § 2(b), 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title XI, § 1105(b), 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title IV, § 402, 90 Stat. 2266; Oct. 22, 1985, Pub. L. 99–129, title II, § 209(a)(1), (j)(1), 99 Stat. 532, 536; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 603(a), 628(7), 629(b)(2), 102 Stat. 3125, 3145, 3146; Nov. 6, 1990, Pub. L. 101–527, § 5(a), (b), 104 Stat. 2322, 2323, related to loan agreements for establishment of student loan funds. See section 292q of this title.

PART E—HEALTH PROFESSIONS AND PUBLIC HEALTH WORKFORCE

SUBPART 1—HEALTH PROFESSIONS WORKFORCE INFORMATION AND ANALYSIS

§ 294n. Health professions workforce information and analysis

(a) Purpose

It is the purpose of this section to—

(1) provide for the development of information describing the health professions workforce and the analysis of workforce related issues; and

(2) provide necessary information for decision-making regarding future directions in health professions and nursing programs in response to societal and professional needs.

(b) Grants or contracts

The Secretary may award grants or contracts to State or local governments, health professions schools, schools of nursing, academic health centers, community-based health facilities, and other appropriate public or private nonprofit entities to provide for—

(1) targeted information collection and analysis activities related to the purposes described in subsection (a) of this section;

(2) research on high priority workforce questions;

(3) the development of a non-Federal analytic and research infrastructure related to the purposes described in subsection (a) of this section; and

(4) the conduct of program evaluation and assessment.

(c) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section, $750,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(2) Reservation

Of the amounts appropriated under subsection (a) of this section for a fiscal year, the Secretary shall reserve not less than $600,000 for conducting health professions research and for carrying out data collection and analysis in accordance with section 295k of this title.

(3) Availability of additional funds

Amounts otherwise appropriated for programs or activities under this subchapter may be used for activities under subsection (b) of this section with respect to the programs or activities from which such amounts were made available.

(July 1, 1944, ch. 373, title VII, § 761, as added Pub. L. 105–392, title I, § 104(a), Nov. 13, 1998, 112 Stat. 3552.)

PRIOR PROVISIONS

A prior section 294n, act July 1, 1944, ch. 373, title VII, § 776, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2050, and amended, which related to grants and contracts to provide health care for individuals with acquired immune deficiency syndrome, was renumbered section 2692 of title XXVI of act July 1, 1944, by Pub. L. 104–146, § 3(h)(3), May 20, 1996, 110 Stat. 1364, and transferred to section 300ff–111 of this title.

Another prior section 294n, act July 1, 1944, ch. 373, title VII, § 741, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 171; amended Oct. 13, 1964, Pub. L. 88–654, § 1(c), (d), 78 Stat. 1086; Oct. 22, 1965, Pub. L. 89–290, § 4(b), (f)(3), (4), (g)(1), 79 Stat. 1057, 1058; Nov. 2, 1966, Pub. L. 89–709, § 3(c), (d), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 4, 80 Stat. 1230; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(a)(3), (4), (5)(A), 82 Stat. 777; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(b)–(d), (e)(4), (f)(2), 85 Stat. 449–451; Oct. 27, 1972, Pub. L. 92–585, § 4, 86 Stat. 1293; Oct. 12, 1976, Pub. L. 94–484, title IV, §§ 403(a), (b), (d), 407(d)(1), 90 Stat. 2266, 2267, 2279; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(e)(1), (2), 91 Stat. 390; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2735, 95 Stat. 920; Oct. 22, 1985, Pub. L. 99–129, title II, § 209(a)(2), (3), (b), (c)(1), (d)–(f), 99 Stat. 532, 534; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 603(b), (c), 628(8), 629(b)(2), 102 Stat. 3125, 3145, 3146; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035, outlined provisions for loans from a student loan fund, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292r of this title.

A prior section 761 of act July 1, 1944, was classified to section 294 of this title prior to the general amendment of part D of this subchapter by Pub. L. 105–392.

Another prior section 761 of act July 1, 1944, was classified to section 294cc of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 761 of act July 1, 1944, was classified to section 295 of this title prior to repeal by Pub. L. 99–129.

Another prior section 761 of act July 1, 1944, was classified to section 295 of this title prior to the general amendment of part D of this subchapter by Pub. L. 91–696.

§ 294*o*. Advisory Council on Graduate Medical Education

(a) Establishment; duties

There is established the Council on Graduate Medical Education (in this section referred to as the ''Council''). The Council shall—

(1) make recommendations to the Secretary of Health and Human Services (in this section

referred to as the ''Secretary''), and to the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives, with respect to—

(A) the supply and distribution of physicians in the United States;

(B) current and future shortages or excesses of physicians in medical and surgical specialties and subspecialties;

(C) issues relating to foreign medical school graduates;

(D) appropriate Federal policies with respect to the matters specified in subparagraphs (A), (B), and (C), including policies concerning changes in the financing of undergraduate and graduate medical education programs and changes in the types of medical education training in graduate medical education programs;

(E) appropriate efforts to be carried out by hospitals, schools of medicine, schools of osteopathic medicine, and accrediting bodies with respect to the matters specified in subparagraphs (A), (B), and (C), including efforts for changes in undergraduate and graduate medical education programs; and

(F) deficiencies in, and needs for improvements in, existing data bases concerning the supply and distribution of, and postgraduate training programs for, physicians in the United States and steps that should be taken to eliminate those deficiencies; and

(2) encourage entities providing graduate medical education to conduct activities to voluntarily achieve the recommendations of the Council under paragraph (1)(E).

(b) Composition

The Council shall be composed of—

(1) the Assistant Secretary for Health or the designee of the Assistant Secretary;

(2) the Administrator of the Health Care Financing Administration;

(3) the Chief Medical Director of the Department of Veterans Affairs;

(4) 6 members appointed by the Secretary to include representatives of practicing primary care physicians, national and specialty physician organizations, foreign medical graduates, and medical student and house staff associations;

(5) 4 members appointed by the Secretary to include representatives of schools of medicine and osteopathic medicine and public and private teaching hospitals; and

(6) 4 members appointed by the Secretary to include representatives of health insurers, business, and labor.

(c) Terms of appointed members

(1) In general; staggered rotation

Members of the Council appointed under paragraphs (4), (5), and (6) of subsection (b) of this section shall be appointed for a term of 4 years, except that the term of office of the members first appointed shall expire, as designated by the Secretary at the time of appointment, 4 at the end of 1 year, 4 at the end of 2 years, 3 at the end of 3 years, and 3 at the end of 4 years.

(2) Date certain for appointment

The Secretary shall appoint the first members to the Council under paragraphs (4), (5), and (6) of subsection (b) of this section within 60 days after October 13, 1992.

(d) Chair

The Council shall elect one of its members as Chairman of the Council.

(e) Quorum

Nine members of the Council shall constitute a quorum, but a lesser number may hold hearings.

(f) Vacancies

Any vacancy in the Council shall not affect its power to function.

(g) Compensation

Each member of the Council who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate prescribed for GS–18 under the General Schedule under section 5332 of title 5 for each day, including traveltime,[1] such member is engaged in the actual performance of duties as a member of the Council. A member of the Council who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Council shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(h) Certain authorities and duties

(1) Authorities

In order to carry out the provisions of this section, the Council is authorized to—

(A) collect such information, hold such hearings, and sit and act at such times and places, either as a whole or by subcommittee, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Council or such subcommittee may consider available; and

(B) request the cooperation and assistance of Federal departments, agencies, and instrumentalities, and such departments, agencies, and instrumentalities are authorized to provide such cooperation and assistance.

(2) Coordination of activities

The Council shall coordinate its activities with the activities of the Secretary under section 295k of this title. The Secretary shall, in cooperation with the Council and pursuant to the recommendations of the Council, take such steps as are practicable to eliminate deficiencies in the data base established under section 295k of this title and shall make available in its reports such comprehensive data sets as are developed pursuant to this section.

(i) Requirement regarding reports

In the reports required under subsection (a) of this section, the Council shall specify its activities during the period for which the report is made.

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[1] So in original. Probably should be ''travel time,''.

(j) Final report

Not later than April 1, 2002, the Council shall submit a final report under subsection (a) of this section.

(k) Termination

The Council shall terminate September 30, 2003.

***(l)* Funding**

Amounts otherwise appropriated under this subchapter may be utilized by the Secretary to support the activities of the Council.

(July 1, 1944, ch. 373, title VII, § 762, formerly Pub. L. 102–408, title III, § 301, Oct. 13, 1992, 106 Stat. 2080, as amended Pub. L. 102–531, title III, § 313(b), Oct. 27, 1992, 106 Stat. 3507; renumbered § 762 of act July 1, 1944, and amended Pub. L. 105–392, title I, § 104(b), Nov. 13, 1998, 112 Stat. 3552; Pub. L. 107–251, title V, § 502, Oct. 26, 2002, 116 Stat. 1664.)

CODIFICATION

Section was formerly set out as a note under section 295k of this title prior to renumbering by Pub. L. 105–392.

PRIOR PROVISIONS

A prior section 294*o*, act July 1, 1944, ch. 373, title VII, § 777, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2052, authorized grants and contracts for improvement of training in geriatrics, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294*o*, act July 1, 1944, ch. 373, title VII, § 742, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 172; amended Oct. 22, 1965, Pub. L. 89–290, § 4(c), 79 Stat. 1057; Nov. 2, 1966, Pub. L. 89–709, § 3(e), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 5(b), 80 Stat. 1232; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(b), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, § 1(a), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(a), (f)(2), 85 Stat. 449, 451; Aug. 23, 1974, Pub. L. 93–385, § 2(a), 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title XI, § 1105(a), 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(e), title IV, §§ 404, 406(d), 90 Stat. 2244, 2267, 2268; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2734, 95 Stat. 920; Oct. 22, 1985, Pub. L. 99–129, title II, § 209(g), 99 Stat. 534; Nov. 6, 1990, Pub. L. 101–527, § 5(c), 104 Stat. 2323, provided for authorization of appropriations for purpose of making Federal contributions into student loan funds, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292y of this title.

A prior section 762 of act July 1, 1944, was classified to section 295a of this title prior to repeal by Pub. L. 99–129.

Another prior section 762 of act July 1, 1944, was classified to section 295a of this title prior to the general amendment of part D of this subchapter by Pub. L. 91–696.

AMENDMENTS

2002—Subsec. (k). Pub. L. 107–251 substituted ''2003'' for ''2002''.

1998—Subsec. (j). Pub. L. 105–392, § 104(b)(1), substituted ''2002'' for ''1995''.

Subsec. (k). Pub. L. 105–392, § 104(b)(2), substituted ''2002'' for ''1995''.

Subsec. (*l*). Pub. L. 105–392, § 104(b)(3), added subsec. (*l*).

1992—Subsec. (a)(2). Pub. L. 102–531 substituted ''voluntarily'' for ''voluntary''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Reference to Chief Medical Director of Department of Veterans Affairs deemed to refer to Under Secretary for Health of Department of Veterans Affairs pursuant to section 302(e) of Pub. L. 102–405, set out as a note under section 305 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

FUNDING FOR COUNCIL ON GRADUATE MEDICAL EDUCATION

Pub. L. 109–149, title II, § 219, Dec. 30, 2005, 119 Stat. 2861, provided that: ''Notwithstanding any other provisions of law, funds made available in this Act [see Tables for classification] may be used to continue operating the Council on Graduate Medical Education established by section 301 of Public Law 102–408 [now section 762 of act July 1, 1944, which is classified to this section].''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 108–447, div. F, title II, § 218, Dec. 8, 2004, 118 Stat. 3141.

Pub. L. 108–199, div. E, title II, § 219, Jan. 23, 2004, 118 Stat. 255.

§ 294p. Pediatric rheumatology

(a) In general

The Secretary, acting through the appropriate agencies, shall evaluate whether the number of pediatric rheumatologists is sufficient to address the health care needs of children with arthritis and related conditions, and if the Secretary determines that the number is not sufficient, shall develop strategies to help address the shortfall.

(b) Report to Congress

Not later than October 1, 2001, the Secretary shall submit to the Congress a report describing the results of the evaluation under subsection (a) of this section, and as applicable, the strategies developed under such subsection.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title VII, § 763, as added Pub. L. 106–310, div. A, title III, § 301(b), Oct. 17, 2000, 114 Stat. 1111.)

PRIOR PROVISIONS

A prior section 294p, act July 1, 1944, ch. 373, title VII, § 778, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2054, authorized grants and contracts to assist provision of health care in rural areas, prior to the general amendment of this part by Pub. L. 105–392.

Another prior section 294p, act July 1, 1944, ch. 373, title VII, § 743, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 172; amended Oct. 22, 1965, Pub. L. 89–290, § 4(d), 79 Stat. 1057; Nov. 3, 1966, Pub. L. 89–751, § 5(c)(2), (3), 80 Stat. 1233; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(c), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, § 1(b), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(e)(2), (f)(2), 85 Stat. 451; Oct. 12, 1976, Pub. L. 94–484, title IV, §§ 405, 406(e), 90 Stat. 2267, 2268; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2736, 95 Stat. 920; Oct. 22, 1985, Pub. L. 99–129, title II, § 209(i), 99 Stat. 536; Nov. 4, 1988, Pub. L. 100–607, title VI, § 603(d), 102 Stat. 3125, related to distribution of assets from loan funds, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 292x of this title.

A prior section 763 of act July 1, 1944, was classified to section 294b of this title prior to the general amendment of part D of this subchapter by Pub. L. 105–392.

Another prior section 763 of act July 1, 1944, was classified to section 295b of this title prior to repeal by Pub. L. 99–129.

Another prior section 763 of act July 1, 1944, was classified to section 295b of this title prior to the general amendment of former part D of this subchapter by Pub. L. 91–696.

Prior sections 294q to 294r were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 294q, act July 1, 1944, ch. 373, title VII, § 744, formerly § 745, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 173; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 105(f)(2), 85 Stat. 451; renumbered § 744, Oct. 12, 1976, Pub. L. 94–484, title IV, § 406(a)(2), 90 Stat. 2268, related to administrative provisions. See section 292u of this title.

Section 294q–1, act July 1, 1944, ch. 373, title VII, § 745, as added Oct. 22, 1985, Pub. L. 99–129, title II, § 209(h)(2), 99 Stat. 535, related to student loan information to be furnished to students. See section 292v of this title.

Section 294q–2, act July 1, 1944, ch. 373, title VII, § 746, as added Oct. 22, 1985, Pub. L. 99–129, title II, § 209(h)(2), 99 Stat. 536, related to procedures for appeal of terminations of agreements with schools. See section 292w of this title.

Section 294q–3, act July 1, 1944, ch. 373, title VII, § 747, formerly § 745, as added and renumbered § 747, Oct. 22, 1985, Pub. L. 99–129, title II, § 209(a)(4), (h)(1), 99 Stat. 532, 535, defined ''school of pharmacy''.

Section 294r, act July 1, 1944, ch. 373, title VII, § 751, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 604, 102 Stat. 3126, related to establishment of a loan repayment program for allied health personnel.

Another prior section 294r, act July 1, 1944, ch. 373, title VII, § 748, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(a), 90 Stat. 2279; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(f), 91 Stat. 391; Dec. 19, 1977, Pub. L. 95–215, § 3, 91 Stat. 1504; Sept. 29, 1979, Pub. L. 96–76, title II, § 206(a), 93 Stat. 583, which related to traineeships for students in schools of public health, was renumbered section 792 of act July 1, 1944, by Pub. L. 97–35 and transferred to section 295h–1b of this title, and was subsequently omitted in the general amendment of this subchapter by Pub. L. 102–408.

A prior section 294s, act July 1, 1944, ch. 373, title VII, § 749, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(a), 90 Stat. 2280; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(f), 91 Stat. 391, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, which related to traineeships for students in other graduate programs, was renumbered section 791A of act July 1, 1944, by Pub. L. 97–35 and transferred to section 295h–1a of this title, and was subsequently omitted in the general amendment of this subchapter by Pub. L. 102–408.

A prior section 294t, act July 1, 1944, ch. 373, title VII, § 751, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2281; amended Dec. 19, 1977, Pub. L. 95–215, § 5, 91 Stat. 1506; Nov. 9, 1978, Pub. L. 95–623, § 12(c), 92 Stat. 3457; Nov. 10, 1978, Pub. L. 95–626, title I, § 113(b), 92 Stat. 3563; July 10, 1979, Pub. L. 96–32, § 7(i), 93 Stat. 84, which related to National Health Service Corps Scholarships Program, was renumbered section 338A of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254*l* of this title.

A prior section 294u, act July 1, 1944, ch. 373, title VII, § 752, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2284; amended Nov. 10, 1978, Pub. L. 95–626, title I, § 113(b), 92 Stat. 3563; Sept. 29, 1979, Pub. L. 96–76, title II, § 202(a), (b), 93 Stat. 582, which related to obligated service under contract, was renumbered section 338B of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254m of this title, and subsequently renumbered section 338C of act July 1, 1944, by Pub. L. 100–177.

A prior section 294v, act July 1, 1944, ch. 373, title VII, § 753, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2285; amended Dec. 17, 1980, Pub. L. 96–538, title IV, § 403, 94 Stat. 3192, which related to private practice, was renumbered section 338C of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254n of this title, and subsequently renumbered section 338D of act July 1, 1944, by Pub. L. 100–177.

A prior section 294w, act July 1, 1944, ch. 373, title VII, § 754, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2286; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(g), 91 Stat. 391, which related to breach of scholarship contract, was renumbered section 338D of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254*o* of this title, and subsequently renumbered section 338E of act July 1, 1944, by Pub. L. 100–177.

A prior section 294x, act July 1, 1944, ch. 373, title VII, § 755, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2287, which related to special grants for former Corps member to enter private practice, was renumbered section 338E of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254p of this title, and subsequently renumbered section 338F of act July 1, 1944, by Pub. L. 100–177, and section 338G of act July 1, 1944, by Pub. L. 101–597.

A prior section 294y, act July 1, 1944, ch. 373, title VII, § 756, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2288, which related to authorization of appropriations, was renumbered section 338F of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254q of this title, and subsequently renumbered section 338G of act July 1, 1944, prior to repeal by Pub. L. 100–177, title II, §§ 201(2), 203, Dec. 1, 1987, 101 Stat. 992, 999.

A prior section 294y–1, act July 1, 1944, ch. 373, title VII, § 757, as added Aug. 1, 1977, Pub. L. 95–83, title III, § 307(n)(1), 91 Stat. 392; amended Dec. 17, 1980, Pub. L. 96–537, § 3(d), 94 Stat. 3174, which related to Indian Health Scholarships, was renumbered section 338G of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254r of this title, and subsequently renumbered section 338I of act July 1, 1944, by Pub. L. 100–177, prior to repeal by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787.

Prior sections 294z to 294cc were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 294z, act July 1, 1944, ch. 373, title VII, § 758, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(c), 90 Stat. 2289; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(h), 91 Stat. 391; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2737, 95 Stat. 920; Oct. 22, 1985, Pub. L. 99–129, title I, § 102, title II, § 210(a), 99 Stat. 523, 537; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 605, 628(9), 629(b)(2), 102 Stat. 3126, 3146, related to scholarships for students of exceptional financial need.

Section 294aa, act July 1, 1944, ch. 373, title VII, § 759, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(c), 90 Stat. 2289; amended Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035, established a Lister Hill scholarship program of grants for family practice of medicine.

Section 294bb, act July 1, 1944, ch. 373, title VII, § 760, as added Nov. 6, 1990, Pub. L. 101–527, § 6, 104 Stat. 2323,

related to grants and other assistance for students from disadvantaged backgrounds. See section 293a of this title.

Section 294cc, act July 1, 1944, ch. 373, title VII, § 761, as added Nov. 6, 1990, Pub. L. 101–527, § 6, 104 Stat. 2325, related to a loan repayment program regarding service on faculties of certain health professions schools. See section 293b of this title.

SUBPART 2—PUBLIC HEALTH WORKFORCE

§ 295. General provisions

(a) In general

The Secretary may award grants or contracts to eligible entities to increase the number of individuals in the public health workforce, to enhance the quality of such workforce, and to enhance the ability of the workforce to meet national, State, and local health care needs.

(b) Eligibility

To be eligible to receive a grant or contract under subsection (a) of this section an entity shall—

(1) be—

(A) a health professions school, including an accredited school or program of public health, health administration, preventive medicine, or dental public health or a school providing health management programs;

(B) an academic health center;

(C) a State or local government; or

(D) any other appropriate public or private nonprofit entity; and

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(c) Preference

In awarding grants or contracts under this section the Secretary may grant a preference to entities—

(1) serving individuals who are from disadvantaged backgrounds (including underrepresented racial and ethnic minorities); and

(2) graduating large proportions of individuals who serve in underserved communities.

(d) Activities

Amounts provided under a grant or contract awarded under this section may be used for—

(1) the costs of planning, developing, or operating demonstration training programs;

(2) faculty development;

(3) trainee support;

(4) technical assistance;

(5) to meet the costs of projects—

(A) to plan and develop new residency training programs and to maintain or improve existing residency training programs in preventive medicine and dental public health, that have available full-time faculty members with training and experience in the fields of preventive medicine and dental public health; and

(B) to provide financial assistance to residency trainees enrolled in such programs;

(6) the retraining of existing public health workers as well as for increasing the supply of new practitioners to address priority public health, preventive medicine, public health dentistry, and health administration needs;

(7) preparing public health professionals for employment at the State and community levels; or

(8) other activities that may produce outcomes that are consistent with the purposes of this section.

(e) Traineeships

(1) In general

With respect to amounts used under this section for the training of health professionals, such training programs shall be designed to—

(A) make public health education more accessible to the public and private health workforce;

(B) increase the relevance of public health academic preparation to public health practice in the future;

(C) provide education or training for students from traditional on-campus programs in practice-based sites; or

(D) develop educational methods and distance-based approaches or technology that address adult learning requirements and increase knowledge and skills related to community-based cultural diversity in public health education.

(2) Severe shortage disciplines

Amounts provided under grants or contracts under this section may be used for the operation of programs designed to award traineeships to students in accredited schools of public health who enter educational programs in fields where there is a severe shortage of public health professionals, including epidemiology, biostatistics, environmental health, toxicology, public health nursing, nutrition, preventive medicine, maternal and child health, and behavioral and mental health professions.

(July 1, 1944, ch. 373, title VII, § 765, as added Pub. L. 105–392, title I, § 105, Nov. 13, 1998, 112 Stat. 3553.)

PRIOR PROVISIONS

A prior section 295, act July 1, 1944, ch. 373, title VII, § 781, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2055; amended Pub. L. 105–12, § 12(b), Apr. 30, 1997, 111 Stat. 29, authorized grants and contracts for research on certain health professions issues, prior to repeal by Pub. L. 105–392, title I, § 106(a)(1), Nov. 13, 1998, 112 Stat. 3557.

Another prior section 295, act July 1, 1944, ch. 373, title VII, § 761, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–1; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, provided Congressional declaration of purpose for former part D of this subchapter, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 295, act July 1, 1944, ch. 373, title VII, § 761, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 282, related to authorization of appropriations respecting grants for construction of mental retardation facilities, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

A prior section 765 of act July 1, 1944, was classified to section 294c of this title prior to the general amendment of part D of this subchapter by Pub. L. 105–392.

Another prior section 765 of act July 1, 1944, was classified to section 295d of this title prior to repeal by Pub. L. 99–129.

Another prior section 765 of act July 1, 1944, was classified to section 295d of this title prior to the general

amendment of part D of this subchapter by Pub. L. 91–696.

§ 295a. Public health training centers

(a) In general

The Secretary may make grants or contracts for the operation of public health training centers.

(b) Eligible entities

(1) In general

A public health training center shall be an accredited school of public health, or another public or nonprofit private institution accredited for the provision of graduate or specialized training in public health, that plans, develops, operates, and evaluates projects that are in furtherance of the goals established by the Secretary for the year 2000 in the areas of preventive medicine, health promotion and disease prevention, or improving access to and quality of health services in medically underserved communities.

(2) Preference

In awarding grants or contracts under this section the Secretary shall give preference to accredited schools of public health.

(c) Certain requirements

With respect to a public health training center, an award may not be made under subsection (a) of this section unless the program agrees that it—

(1) will establish or strengthen field placements for students in public or nonprofit private health agencies or organizations;

(2) will involve faculty members and students in collaborative projects to enhance public health services to medically underserved communities;

(3) will specifically designate a geographic area or medically underserved population to be served by the center that shall be in a location removed from the main location of the teaching facility of the school that is participating in the program with such center; and

(4) will assess the health personnel needs of the area to be served by the center and assist in the planning and development of training programs to meet such needs.

(July 1, 1944, ch. 373, title VII, § 766, as added Pub. L. 105–392, title I, § 105, Nov. 13, 1998, 112 Stat. 3554.)

PRIOR PROVISIONS

A prior section 295a, act July 1, 1944, ch. 373, title VII, § 782, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2057, authorized grants and contracts for chiropractic demonstration projects, prior to repeal by Pub. L. 105–392, title I, § 106(a)(1), Nov. 13, 1998, 112 Stat. 3557.

Another prior section 295a, act July 1, 1944, ch. 373, title VII, § 762, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–2, authorized appropriations for former part D of this subchapter, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 295a, act July 1, 1944, ch. 373, title VII, § 762, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 282, related to applications for grants for construction of mental retardation facilities, including their approval by Surgeon General and consideration of certain matters, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

A prior section 766 of act July 1, 1944, was classified to section 294d of this title prior to the general amendment of part D of this subchapter by Pub. L. 105–392.

Another prior section 766 of act July 1, 1944, was classified to section 295d–1 of this title prior to repeal by Pub. L. 99–129.

Another prior section 766 of act July 1, 1944, was classified to section 295d–1 of this title prior to the general amendment of part D of this subchapter by Pub. L. 91–696.

§ 295b. Public health traineeships

(a) In general

The Secretary may make grants to accredited schools of public health, and to other public or nonprofit private institutions accredited for the provision of graduate or specialized training in public health, for the purpose of assisting such schools and institutions in providing traineeships to individuals described in subsection (b)(3) of this section.

(b) Certain requirements

(1) Amount

The amount of any grant under this section shall be determined by the Secretary.

(2) Use of grant

Traineeships awarded under grants made under subsection (a) of this section shall provide for tuition and fees and such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the trainees as the Secretary may deem necessary.

(3) Eligible individuals

The individuals referred to in subsection (a) of this section are individuals who are pursuing a course of study in a health professions field in which there is a severe shortage of health professionals (which fields include the fields of epidemiology, environmental health, biostatistics, toxicology, nutrition, and maternal and child health).

(July 1, 1944, ch. 373, title VII, § 767, as added Pub. L. 105–392, title I, § 105, Nov. 13, 1998, 112 Stat. 3555.)

PRIOR PROVISIONS

A prior section 295b, act July 1, 1944, ch. 373, title VII, § 763, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–2, authorized Secretary to make grants and to set limitations and conditions on grants, required applications for grants, limited use of grant funds, set forth method of payment of grants, and provided for protection of financial interests of the United States, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 295b, act July 1, 1944, ch. 373, title VII, § 763, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 283, related to amount of grants for construction of mental retardation facilities, including maximum payments, advances or reimbursement, installments, conditions, and nonduplication of grants, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

A prior section 767 of act July 1, 1944, was classified to section 295e–1 of this title prior to repeal by Pub. L. 99–129.

Another prior section 767 of act July 1, 1944, was classified to section 295d–2 of this title prior to repeal by Pub. L. 99–129.

§ 295c. Preventive medicine; dental public health

(a) In general

The Secretary may make grants to and enter into contracts with schools of medicine, osteopathic medicine, public health, and dentistry to meet the costs of projects—

(1) to plan and develop new residency training programs and to maintain or improve existing residency training programs in preventive medicine and dental public health; and

(2) to provide financial assistance to residency trainees enrolled in such programs.

(b) Administration

(1) Amount

The amount of any grant under subsection (a) of this section shall be determined by the Secretary.

(2) Eligibility

To be eligible for a grant under subsection (a) of this section, the applicant must demonstrate to the Secretary that it has or will have available full-time faculty members with training and experience in the fields of preventive medicine or dental public health and support from other faculty members trained in public health and other relevant specialties and disciplines.

(3) Other funds

Schools of medicine, osteopathic medicine, dentistry, and public health may use funds committed by State, local, or county public health officers as matching amounts for Federal grant funds for residency training programs in preventive medicine.

(July 1, 1944, ch. 373, title VII, § 768, as added Pub. L. 105–392, title I, § 105, Nov. 13, 1998, 112 Stat. 3555.)

PRIOR PROVISIONS

A prior section 295c, act July 1, 1944, ch. 373, title VII, § 764, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–2; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, established requirements of eligibility for grants, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 295c, act July 1, 1944, ch. 373, title VII, § 764, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 283, related to recovery of expenditures under certain conditions respecting grants for construction of mental retardation facilities, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

§ 295d. Health administration traineeships and special projects

(a) In general

The Secretary may make grants to State or local governments (that have in effect preventive medical and dental public health residency programs) or public or nonprofit private educational entities (including graduate schools of social work and business schools that have health management programs) that offer a program described in subsection (b) of this section—

(1) to provide traineeships for students enrolled in such a program; and

(2) to assist accredited programs health administration in the development or improvement of programs to prepare students for employment with public or nonprofit private entities.

(b) Relevant programs

The program referred to in subsection (a) of this section is an accredited program in health administration, hospital administration, or health policy analysis and planning, which program is accredited by a body or bodies approved for such purpose by the Secretary of Education and which meets such other quality standards as the Secretary of Health and Human Services by regulation may prescribe.

(c) Preference in making grants

In making grants under subsection (a) of this section, the Secretary shall give preference to qualified applicants that meet the following conditions:

(1) Not less than 25 percent of the graduates of the applicant are engaged in full-time practice settings in medically underserved communities.

(2) The applicant recruits and admits students from medically underserved communities.

(3) For the purpose of training students, the applicant has established relationships with public and nonprofit providers of health care in the community involved.

(4) In training students, the applicant emphasizes employment with public or nonprofit private entities.

(d) Certain provisions regarding traineeships

(1) Use of grant

Traineeships awarded under grants made under subsection (a) of this section shall provide for tuition and fees and such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the trainees as the Secretary may deem necessary.

(2) Preference for certain students

Each entity applying for a grant under subsection (a) of this section for traineeships shall assure to the satisfaction of the Secretary that the entity will give priority to awarding the traineeships to students who demonstrate a commitment to employment with public or nonprofit private entities in the fields with respect to which the traineeships are awarded.

(July 1, 1944, ch. 373, title VII, § 769, as added Pub. L. 105–392, title I, § 105, Nov. 13, 1998, 112 Stat. 3556.)

PRIOR PROVISIONS

A prior section 295d, act July 1, 1944, ch. 373, title VII, § 765, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–3; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, related to requisites for approval of grants, establishment of separate medical school departments of family medicine, establishment of special hospital programs of family medicine, and supplementation of non-Federal funds, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 295d, act July 1, 1944, ch. 373, title VII, § 765, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 284, related to noninterference with administration of institutions respecting grants

for construction of mental retardation facilities, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

Prior sections 295d–1 and 295d–2 were repealed by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Section 295d–1, act July 1, 1944, ch. 373, title VII, § 766, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–4, related to establishment and funding of planning and developmental grants.

Another prior section 295d–1, act July 1, 1944, ch. 373, title VII, § 766, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 284, related to definitions in connection with grants for construction of mental retardation research facilities, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

Section 295d–2, act July 1, 1944, ch. 373, title VII, § 767, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–4, established Advisory Council on Family Medicine and provided for its composition, term and compensation of its members, and its duties and functions.

§ 295e. Authorization of appropriations

(a) In general

For the purpose of carrying out this subpart, there is authorized to be appropriated $9,100,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(b) Limitation regarding certain program

In obligating amounts appropriated under subsection (a) of this section, the Secretary may not obligate more than 30 percent for carrying out section 295b of this title.

(July 1, 1944, ch. 373, title VII, § 770, as added Pub. L. 105–392, title I, § 105, Nov. 13, 1998, 112 Stat. 3556.)

PRIOR PROVISIONS

A prior section 295e, act July 1, 1944, ch. 373, title VII, § 768, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–5, set forth definitions for former part D of this subchapter, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 295e consisted of section 766 of act July 1, 1944. The classification of section 766 of act July 1, 1944, was changed to section 295d–1 of this title for purposes of codification.

Prior sections 295e–1 to 295e–5 were repealed by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Section 295e–1, act July 1, 1944, ch. 373, title VII, § 767, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 107(b), 85 Stat. 457; amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(g), 90 Stat. 2244, authorized appropriations for grants to public or nonprofit private hospitals for training, traineeships, and fellowships in family medicine.

Section 295e–2, act July 1, 1944, ch. 373, title VII, § 768, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 107(b), 85 Stat. 458; amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(h), 90 Stat. 2244, established grants for postgraduate training programs for physicians and dentists and authorized appropriations for those grants.

Section 295e–3, act July 1, 1944, ch. 373, title VII, § 769, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 107(b), 85 Stat. 459; amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(i), 90 Stat. 2245, authorized the Secretary to make grants for training, traineeships, and fellowships for health professions teaching personnel and authorized appropriations for those grants.

Section 295e–4, act July 1, 1944, ch. 373, title VII, § 769A, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 107(b), 85 Stat. 459; amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(j), 90 Stat. 2245, authorized appropriations for grants for computer technology health care demonstration programs.

Section 295e–5, act July 1, 1944, ch. 373, title VII, § 769B, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 107(b), 85 Stat. 460, required applications for grants and approval of grants by Secretary and set forth payment limitations.

Prior sections 295f to 295f–3 were repealed by act July 1, 1944, ch. 373, title VII, § 773, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 606(b), 102 Stat. 3127, effective Oct. 1, 1990.

Section 295f, act July 1, 1944, ch. 373, title VII, § 770, as added Oct. 22, 1965, Pub. L. 89–290, § 2(a), 79 Stat. 1052; amended Aug. 16, 1968, Pub. L. 90–490, title I, § 111(a), 82 Stat. 774; Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 437; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(k), title V, § 501(a)–(c), 90 Stat. 2245, 2290, 2291; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(a)(1), 95 Stat. 927; Oct. 22, 1985, Pub. L. 99–129, title II, § 211(a)(1), 99 Stat. 537; Nov. 4, 1988, Pub. L. 100–607, title VI, § 606(a), 102 Stat. 3127, related to capitation grants for schools of public health.

Section 295f–1, act July 1, 1944, ch. 373, title VII, § 771, as added Oct. 12, 1976, Pub. L. 94–484, title V, § 502, 90 Stat. 2293; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(i), 91 Stat. 391; Dec. 19, 1977, Pub. L. 95–215, §§ 1(a), 2, 91 Stat. 1503, 1504; Nov. 9, 1978, Pub. L. 95–623, §§ 11(g), 12(d), 92 Stat. 3456, 3457; Sept. 29, 1979, Pub. L. 96–76, title II, § 207, 93 Stat. 583; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(a)(2), 95 Stat. 927; Oct. 22, 1985, Pub. L. 99–129, title II, § 211(b), 99 Stat. 539, related to eligibility for capitation grants.

Another prior section 295f–1, act July 1, 1944, ch. 373, title VII, § 771, as added Oct. 22, 1965, Pub. L. 89–290, § 2(a), 79 Stat. 1052; amended Aug. 16, 1968, Pub. L. 90–490, title I, § 111(a), 82 Stat. 775; Nov. 2, 1970, Pub. L. 91–519, title I, § 101(a), 84 Stat. 1343; Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 443; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(*l*), 90 Stat. 2245, authorized start-up assistance, prior to repeal by Pub. L. 94–484, title V, § 502, Oct. 12, 1976, 90 Stat. 2293, effective with respect to fiscal years beginning after Sept. 30, 1977.

Section 295f–2, act July 1, 1944, ch. 373, title VII, § 772, formerly § 775, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 448; renumbered § 772 and amended Oct. 12, 1976, Pub. L. 94–484, title V, § 503(a), 90 Stat. 2300; Dec. 19, 1977, Pub. L. 95–215, §§ 1(b), 8(c), 91 Stat. 1504, 1507; Nov. 9, 1978, Pub. L. 95–623, § 12(j), 92 Stat. 3457; Oct. 22, 1985, Pub. L. 99–129, title II, § 211(c), 99 Stat. 539, related to applications for capitation grants.

Another prior section 295f–2, act July 1, 1944, ch. 373, title VII, § 772, as added Oct. 22, 1965, Pub. L. 89–290, § 2(a), 79 Stat. 1053; amended Aug. 16, 1968, Pub. L. 90–490, title I, § 111(a), (e), 82 Stat. 776, 777; Nov. 2, 1970, Pub. L. 91–519, title I, § 102(a), 84 Stat. 1343; Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 444; Nov. 16, 1973, Pub. L. 93–154, § 3(b), 87 Stat. 604; July 12, 1974, Pub. L. 93–348, title II, § 215, 88 Stat. 354; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(m), 90 Stat. 2245, provided special project grants and contracts, prior to repeal by Pub. L. 94–484, title V, § 502, Oct. 12, 1976, 90 Stat. 2293, effective with respect to fiscal years beginning after Sept. 30, 1977.

Section 295f–3, act July 1, 1944, ch. 373, title VII, § 773, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 606(b), 102 Stat. 3127, provided for repeal of former part D of this subchapter, effective Oct. 1, 1990.

Another prior section 295f–3, act July 1, 1944, ch. 373, title VII, § 773, as added Oct. 22, 1965, Pub. L. 89–290, § 2(a), 79 Stat. 1053; amended Aug. 16, 1968, Pub. L. 90–490, title I, § 111(b), 82 Stat. 776; Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 446; July 12, 1974, Pub. L. 93–348, title I, § 106, 88 Stat. 347; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(n), 90 Stat. 2245, authorized grants to assist health professions schools which were in financial distress, prior to repeal by Pub. L. 94–484, title V, § 502, Oct. 12, 1976, 90 Stat. 2293, effective with respect to fiscal years beginning after Sept. 30, 1977.

A prior section 295f–4, act July 1, 1944, ch. 373, title VII, § 774, as added Oct. 22, 1965, Pub. L. 89–290, § 2(a), 79 Stat. 1054; amended Aug. 16, 1968, Pub. L. 90–490, title I,

§ 111(c)(1), (2), 82 Stat. 777; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 446; Nov. 16, 1973, Pub. L. 93–154, § 3(c), 87 Stat. 605; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(*o*), 90 Stat. 2245, authorized health manpower education initiative awards prior to repeal by Pub. L. 94–484, title V, § 502, Oct. 12, 1976, 90 Stat. 2293, effective with respect to fiscal years beginning after Sept. 30, 1977.

A prior section 295f–5, act July 1, 1944, ch. 373, title VII, § 775, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 104(a), 85 Stat. 448, which related to applications for capitation, start-up, special project, and financial distress grants, was renumbered section 772 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 295f–2 of this title.

A prior section 295f–6, act July 1, 1944, ch. 373, title VII, § 776, as added Nov. 16, 1973, Pub. L. 93–154, § 3(a), 87 Stat. 604, which related to training in emergency medical services, was renumbered section 789 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 295g–9 of this title.

Prior sections 295g to 295g–2 were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 295g, act July 1, 1944, ch. 373, title VII, § 780, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2311; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2738, 95 Stat. 921; Oct. 22, 1985, Pub. L. 99–129, title I, § 103, title II, § 212, 99 Stat. 523, 540; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 607, 629(b)(1), 102 Stat. 3127, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), 103 Stat. 614, related to project grants for establishment of departments of family medicine.

Another prior section 295g, act July 1, 1944, ch. 373, title VII, § 780, as added Oct. 22, 1965, Pub. L. 89–290, § 2(a), 79 Stat. 1055; amended Aug. 16, 1968, Pub. L. 90–490, title I, §§ 111(c)(4), 122(a) to (c), 82 Stat. 777, 779; July 9, 1971, Pub. L. 92–52, § 2, 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, §§ 106(a), (b)(3), (4), 108(b)(2), title III, § 301(g), 85 Stat. 452, 453, 461, 464; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(p), 90 Stat. 2245, related to scholarship grants for study in United States, prior to repeal by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290, effective Oct. 1, 1976.

Section 295g–1, act July 1, 1944, ch. 373, title VII, § 781, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2312; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(j), 91 Stat. 392; Sept. 29, 1979, Pub. L. 96–76, title II, § 203, 93 Stat. 582; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2739, 95 Stat. 921; Jan. 4, 1983, Pub. L. 97–414, § 8(j), 96 Stat. 2061; Aug. 15, 1985, Pub. L. 99–91, § 7, 99 Stat. 392; Oct. 22, 1985, Pub. L. 99–129, title I, § 104, title II, § 213, 99 Stat. 523, 540; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 608, 629(b)(3), 102 Stat. 3127, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), (5), (6), 103 Stat. 614; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035, related to area health education centers.

Another prior section 295g–1, act July 1, 1944, ch. 373, title VII, § 781, as added Aug. 16, 1968, Pub. L. 90–490, title I, § 122(d), 82 Stat. 779; amended Nov. 18, 1971, Pub. L. 92–157, title I, §§ 105(f)(3), 106(b)(4), 85 Stat. 451, 453, provided for transfer of monies to student loan fund, prior to repeal by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290, effective Oct. 1, 1976.

Section 295g–2, act July 1, 1944, ch. 373, title VII, § 782, formerly § 788A, as added Aug. 18, 1987, Pub. L. 100–97, § 3, 101 Stat. 713; renumbered § 782 and amended Nov. 4, 1988, Pub. L. 100–607, title VI, § 614, 102 Stat. 3136; amended Aug. 16, 1989, Pub. L. 101–93, § 5(i), 103 Stat. 613; Nov. 6, 1990, Pub. L. 101–527, § 4(a), 104 Stat. 2318, provided for programs of excellence in health professions education for minorities. See section 293 of this title.

Another prior section 295g–2, act July 1, 1944, ch. 373, title VII, § 782, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2314; amended Nov. 9, 1978, Pub. L. 95–623, § 12(e), 92 Stat. 3457, authorized Secretary to make grants to schools of medicine and osteopathy for programs to train United States citizens formerly enrolled in medical schools in foreign countries, authorized appropriations for those grants, and set forth reporting requirements, prior to repeal by Pub. L. 99–129, title II, § 220(d), Oct. 22, 1985, 99 Stat. 544.

A prior section 295g–3, act July 1, 1944, ch. 373, title VII, § 783, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2314; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2740, 95 Stat. 922; Oct. 22, 1985, Pub. L. 99–129, title I, § 105, 99 Stat. 524, related to programs for physician assistants, prior to repeal by Pub. L. 100–607, title VI, § 615(b), Nov. 4, 1988, 102 Stat. 3138.

Prior sections 295g–4 to 295g–8 were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 295g–4, act July 1, 1944, ch. 373, title VII, § 784, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2315; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2741, 95 Stat. 922; Jan. 4, 1983, Pub. L. 97–414, § 9(f), 96 Stat. 2064; Oct. 22, 1985, Pub. L. 99–129, title I, § 106, title II, § 214, 99 Stat. 524, 540; Nov. 4, 1988, Pub. L. 100–607, title VI, § 609, 102 Stat. 3130; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(c), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), 103 Stat. 614, related to grants and contracts for training, traineeships, and fellowships in general internal medicine and general pediatrics.

Section 295g–5, act July 1, 1944, ch. 373, title VII, § 785, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 610(a)(2), 102 Stat. 3130, related to residency programs in the general practice of dentistry.

Another prior section 295g–5, act July 1, 1944, ch. 373, title VII, § 785, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2315, established grants to public or private nonprofit colleges or universities for occupational health training and education centers and authorized appropriations for those grants, prior to repeal by Pub. L. 99–129, title II, § 220(e), Oct. 22, 1985, 99 Stat. 544.

Section 295g–6, act July 1, 1944, ch. 373, title VII, § 786, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2316; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2742, 95 Stat. 923; Oct. 22, 1985, Pub. L. 99–129, title I, § 107, title II, § 215, 99 Stat. 524, 540; Nov. 4, 1988, Pub. L. 100–607, title VI, § 610(a)(1), (b), 102 Stat. 3130, 3131; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), (6), 103 Stat. 614, related to grants and contracts for specified family medicine programs. See section 293k of this title.

Section 295g–7, act July 1, 1944, ch. 373, title VII, § 787, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2317; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2743, 95 Stat. 923; Oct. 22, 1985, Pub. L. 99–129, title I, § 108, title II, § 216, 99 Stat. 524, 541; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 611(a)–(e), 628(10), 629(b)(2), 102 Stat. 3131, 3132, 3146; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(d), (e), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(h), (*o*)(2), 103 Stat. 612, 614, related to educational assistance to individuals from disadvantaged backgrounds. See section 293c of this title.

Section 295g–7a, act July 1, 1944, ch. 373, title VII, § 787A, as added and amended Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 612, 629(b)(2), 102 Stat. 3132, 3146, related to a retention program for health professions schools with individuals from disadvantaged backgrounds. See section 293 et seq. of this title.

Section 295g–8, act July 1, 1944, ch. 373, title VII, § 788, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2318; amended Nov. 9, 1978, Pub. L. 95–623, § 12(f), 92 Stat. 3457; Sept. 29, 1979, Pub. L. 96–76, title II, § 205, 93 Stat. 583; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2744(a)(1), (b)–(f), 95 Stat. 923, 924; Oct. 22, 1985, Pub. L. 99–129, title I, § 109, title II, § 217, 99 Stat. 524, 541; Nov. 14, 1986, Pub. L. 99–660, title VI, § 601, 100 Stat. 3797; Dec. 1, 1987, Pub. L. 100–177, title IV, § 401, 101 Stat. 1007; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 613(a), 628(11), 629(b)(2), 102 Stat. 3133, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(2), (3), 103 Stat. 614; July 23, 1992, Pub. L. 102–325, title XV, § 1559, 106 Stat. 841, related to grants and contracts for special projects.

Another prior section 295g–8, act July 1, 1944, ch. 373, title VII, § 788A, as added Aug. 18, 1987, Pub. L. 100–97, § 3, 101 Stat. 713, which related to grants for minority education, was renumbered section 782 of act July 1,

1944, by Pub. L. 100–607 and transferred to section 295g–2 of this title.

A prior section 295g–8a, act July 1, 1944, ch. 373, title VII, § 788A, as added Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2745, 95 Stat. 925, authorized Secretary to make grants or enter into contracts with schools in serious financial distress to assist their operations, under certain terms and conditions, prior to repeal by Pub. L. 99–129, title II, § 220(f)(1), Oct. 22, 1985, 99 Stat. 544.

Prior sections 295g–8b to 295g–10 were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 295g–8b, act July 1, 1944, ch. 373, title VII, § 788A, formerly § 788B, as added Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2745, 95 Stat. 926; amended Oct. 22, 1985, Pub. L. 99–129, title I, § 110, title II, §§ 218, 220(f)(2)–(4), 99 Stat. 524, 543, 544; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 622, 629(b)(2), 102 Stat. 3141, 3146; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(g), 102 Stat. 4239; renumbered § 788A and amended Aug. 16, 1989, Pub. L. 101–93, § 5(k), (*o*)(4), 103 Stat. 613, 614, related to training with respect to acquired immune deficiency syndrome. See section 300ff–111 of this title.

Another prior section 788A of act July 1, 1944, was renumbered section 782 by section 614(a) of Pub. L. 100–607, as amended, and classified to section 295g–2 of this title.

Section 295g–9, act July 1, 1944, ch. 373, title VII, § 789, as added and amended Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 615(a), 629(b)(1), 102 Stat. 3136, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), 103 Stat. 614, related to geriatric education centers and geriatric training.

Another prior section 295g–9, act July 1, 1944, ch. 373, title VII, § 789, formerly § 776, as added Nov. 16, 1973, Pub. L. 93–154, § 3(a), 87 Stat. 604; renumbered § 789, Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(b), 90 Stat. 2322; amended Oct. 21, 1976, Pub. L. 94–573, § 12, 90 Stat. 2717; July 10, 1979, Pub. L. 96–32, § 7(h), 93 Stat. 84; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(k), 91 Stat. 392; Dec. 12, 1979, Pub. L. 96–142, title I, § 102, 93 Stat. 1067, authorized Secretary to make grants and enter into contracts for training in emergency medical services, set forth eligibility requirements and amounts, directed Secretary to use a uniform funding cycle, and authorized appropriations for those grants and contracts, prior to repeal by Pub. L. 99–129, title II, § 220(g), Oct. 22, 1985, 99 Stat. 544.

Section 295g–10, act July 1, 1944, ch. 373, title VII, § 790, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(c), 90 Stat. 2322; amended Nov. 4, 1988, Pub. L. 100–607, title VI, § 616(a), (b), 102 Stat. 3138, provided general provisions.

A prior section 295g–10a, Pub. L. 100–607, title VI, § 633, Nov. 4, 1988, 102 Stat. 3147, required with respect to the application and award process for certain health personnel training programs the semiannual issuance of solicitations for grant applications and the preliminary review of applications for technical sufficiency, prior to repeal by Pub. L. 102–408, title III, § 311, Oct. 13, 1992, 106 Stat. 2091.

A prior section 295g–11, act July 1, 1944, ch. 373, title VII, § 790A, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 617, 102 Stat. 3140, related to public health special projects, prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 295g–11, act July 1, 1944, ch. 373, title VII, § 785, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 106(b)(6), 85 Stat. 453; amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(q), 90 Stat. 2245, provided scholarship grants for study abroad, prior to repeal by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290, effective Oct. 1, 1976.

Prior sections 295g–21 to 295g–23 were repealed by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290, effective Oct. 1, 1976.

Section 295g–21, act July 1, 1944, ch. 373, title VII, § 784, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 106(c), 85 Stat. 455, provided scholarship grants in relation to physician shortage area scholarship program.

Section 295g–22, act July 1, 1944, ch. 373, title VII, § 785, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 106(c), 85 Stat. 457, related to administration of and contractual arrangements for implementation of the physician shortage area scholarship program.

Section 295g–23, act July 1, 1944, ch. 373, title VII, § 786, as added Nov. 18, 1971 Pub. L. 92–157, title I, § 106(c), 85 Stat. 457; amended Apr. 22, 1976, Pub. L. 94–278, title XI, § 1104, 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(r), 90 Stat. 2246, authorized appropriations for physician shortage area scholarships in amount of $2,500,000; $3,000,000; $3,500,000; $3,500,000; and $2,000,000 for fiscal years ending June 30, 1972, through 1976, and for fiscal years ending Sept. 30, 1977, and thereafter such sums necessary to continue making grants to students who prior to July 1, 1976, received grants and were eligible for grants during the succeeding fiscal year.

A prior section 295h, act July 1, 1944, ch. 373, title VII, § 791, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2303; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(b)(1), 95 Stat. 927; Jan. 4, 1983, Pub. L. 97–414, § 8(k)(2), 96 Stat. 2061; Oct. 22, 1985, Pub. L. 99–129, title I, § 111, title II, § 219, 99 Stat. 524, 543; Nov. 4, 1988, Pub. L. 100–607, title VI, § 618, 102 Stat. 3140; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(f), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(j), 103 Stat. 613, related to grants for graduate programs in health administration, prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 295h, act July 1, 1944, ch. 373, title VII, § 791, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1222; amended Aug. 16, 1968, Pub. L. 90–490, title III, § 301(a)(1), 82 Stat. 788; Nov. 2, 1970, Pub. L. 91–519, title II, § 201, 84 Stat. 1344, provided for grants for construction of teaching facilities of allied health professions personnel, prior to the general amendment of this part by Pub. L. 94–484.

A prior section 295h–1, act July 1, 1944, ch. 373, title VII, § 792, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2304; amended Nov. 10, 1978, Pub. L. 95–626, title I, § 121, 92 Stat. 3570; Sept. 29, 1979, Pub. L. 96–76, title II, § 206(b), 93 Stat. 583, related to special projects for accredited schools of public health and graduate programs in health administration, prior to repeal by Pub. L. 97–35, title XXVII, § 2746(c), Aug. 13, 1981, 95 Stat. 927.

Another prior section 295h–1, act July 1, 1944, ch. 373, title VII, § 792, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1226; amended Aug. 16, 1968, Pub. L. 90–490, title III, § 301(a)(2), 82 Stat. 788; Nov. 2, 1970, Pub. L. 91–519, title II, § 202(a), (b), 84 Stat. 1344, 1345; June 18, 1973, Pub. L. 93–45, title I, § 109(a), (b), 87 Stat. 93; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(s)(1), (2), 90 Stat. 2246, provided for grants to improve quality of training centers for allied health professions, prior to the general amendment of this part by Pub. L. 94–484.

Prior sections 295h–1a to 295h–2 were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 295h–1a, act July 1, 1944, ch. 373, title VII, § 791A, formerly § 749, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(a), 90 Stat. 2280; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(f), 91 Stat. 391; Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692; renumbered § 791A and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(b)(2), 95 Stat. 927; Jan. 4, 1983, Pub. L. 97–414, § 8(k)(1), 96 Stat. 2061; Oct. 22, 1985, Pub. L. 99–129, title I, § 112, 99 Stat. 525; Nov. 4, 1988, Pub. L. 100–607, title VI, § 619, 102 Stat. 3140, related to traineeships for students in other graduate programs.

Section 295h–1b, act July 1, 1944, ch. 373, title VII, § 792; formerly § 748, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(a), 90 Stat. 2279; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(f), 91 Stat. 391; Dec. 19, 1977, Pub. L. 95–215, § 3, 91 Stat. 1504; Sept. 29, 1979, Pub. L. 96–76, title II, § 206(a), 93 Stat. 583; renumbered § 792 and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(d), 95 Stat. 927; Oct. 22, 1985, Pub. L. 99–129, title I, § 113, 99 Stat. 525; Nov. 4, 1988, Pub. L. 100–607, title VI,

§ 621, 102 Stat. 3141, related to traineeships for students in schools of public health.

Another prior section 792 of act July 1, 1944, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2304, was classified to section 295h–1 of this title prior to repeal by Pub. L. 97–35, title XXVII, § 2746(c), Aug. 13, 1981, 95 Stat. 927.

Section 295h–1c, act July 1, 1944, ch. 373, title VII, § 793, as added Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(f), 95 Stat. 928; amended Oct. 22, 1985, Pub. L. 99–129, title I, § 114, 99 Stat. 525; Nov. 4, 1988, Pub. L. 100–607, title VI, § 629(b)(2), 102 Stat. 3146, related to training in preventive medicine.

Another prior section 793 of act July 1, 1944, was renumbered section 794 by Pub. L. 97–35, title XXVII, § 2746(f), Aug. 13, 1981, 95 Stat. 928, and classified to section 295h–2 of this title.

Section 295h–2, act July 1, 1944, ch. 373, title VII, § 794, formerly § 793, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2305; amended S. Res. No. 4, Feb. 4, 1977; Nov. 9, 1978, Pub. L. 95–623, § 12(g), 92 Stat. 3457; S. Res. No. 30, Mar. 7, 1979; H. Res. No. 549, Mar. 25, 1980; renumbered § 794, Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(f), 95 Stat. 928, related to statistics and annual report to Congress.

Another prior section 295h–2, act July 1, 1944, ch. 373, title VII, § 793, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1228; amended Aug. 16, 1968, Pub. L. 90–490, title III, § 301(a)(3), 82 Stat. 788; Nov. 2, 1970, Pub. L. 91–519, title II, § 203, 84 Stat. 1436; June 18, 1973, Pub. L. 93–45, title I, § 109(c), 87 Stat. 93; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(s)(3), 90 Stat. 2246, provided traineeships for advanced training of allied health professions personnel, including authorization of appropriations, prior to the general amendment of this part by Pub. L. 94–484.

Another prior section 794 of act July 1, 1944, ch. 373, title VII, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1228, was classified to section 294h–3 of this title prior to repeal by Pub. L. 91–519, title II, § 202(d), Nov. 2, 1970, 84 Stat. 1345.

A prior section 295h–3, act July 1, 1944, ch. 373, title VII, § 794, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1228; amended Aug. 16, 1968, Pub. L. 90–490, title III, § 301(a)(4), (b), 82 Stat. 788, authorized appropriations for grants to public or nonprofit private agencies, institutions, and organizations for projects to develop, demonstrate, or evaluate curriculums and methods for the training of health technologists, prior to repeal by Pub. L. 91–519, title II, § 202(d), Nov. 2, 1970, 84 Stat. 1345, effective with respect to the fiscal year beginning July 1, 1970.

Prior sections 295h–3a to 295h–3d were omitted in the general amendment of this part by Pub. L. 94–484.

Section 295h–3a, act July 1, 1944, ch. 373, title VII, § 794A, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 204, 84 Stat. 1346; amended June 18, 1973, Pub. L. 93–45, title I, § 109(d), 87 Stat. 93; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(s)(4), 90 Stat. 2246, provided for grants and contracts to encourage full utilization of educational talent for allied health professions and authorizing appropriations.

Section 295h–3b, act July 1, 1944, ch. 373, title VII, § 794B, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 204, 84 Stat. 1346, provided for scholarship grants for training in allied health professions.

Section 295h–3c, act July 1, 1944, ch. 373, title VII, § 794C, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 204, 84 Stat. 1347, provided for work-study programs in training in allied health professions.

Section 295h–3d, act July 1, 1944, ch. 373, title VII, § 794D, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 204, 84 Stat. 1349; amended Nov. 18, 1971, Pub. L. 92–157, title III, § 301(e), 85 Stat. 464, provided for loans for students of allied health professions.

Prior sections 295h–4 to 295h–7 were omitted in the general amendment of this subchapter by Pub. L. 102–408.

Section 295h–4, act July 1, 1944, ch. 373, title VII, § 795, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2306; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, defined ''allied health personnel'', ''training center for allied health professions'', and ''nonprofit''. See section 295p of this title.

Another prior section 295h–4, act July 1, 1944, ch. 373, title VII, § 795, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1228; amended Dec. 5, 1967, Pub. L. 90–174, § 12(e), 81 Stat. 542; Nov. 2, 1970, Pub. L. 91–519, title II, § 202(c), 84 Stat. 1344; Nov. 18, 1971, Pub. L. 92–157, title III, § 301(f), 85 Stat. 464, defined ''training center for allied health professions''; ''full-time student''; ''nonprofit''; ''construction'' and ''cost of construction''; and ''affiliated hospital'', prior to the general amendment of this part by Pub. L. 94–484.

Section 295h–5, act July 1, 1944, ch. 373, title VII, § 796, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2307; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(*l*), (m), 91 Stat. 392; Nov. 4, 1988, Pub. L. 100–607, title VI, § 624, 102 Stat. 3143; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(f) [(h)], 102 Stat. 4240, related to project grants and contracts with eligible entities to improve the effectiveness of allied health administration and practitioners. See section 294e of this title.

Another prior section 295h–5, act July 1, 1944, ch. 373, title VII, § 796, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1230, provided for keeping of records and audits in relation to training in allied health professions, prior to the general amendment of this part by Pub. L. 94–484.

Section 295h–6, act July 1, 1944, ch. 373, title VII, § 797, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2308; amended Nov. 4, 1988, Pub. L. 100–607, title VI, § 625, 102 Stat. 3144, related to traineeships for advanced training of allied health personnel.

Another prior section 295h–6, act July 1, 1944, ch. 373, title VII, § 797, as added Aug. 16, 1968, Pub. L. 90–490, title III, § 301(c), 82 Stat. 788, authorized the use of up to one-half of one per centum of appropriated funds for evaluation of programs covered thereby, prior to repeal by Pub. L. 91–296, title IV, § 401(b)(1)(E), June 30, 1970, 84 Stat. 352, effective with respect to appropriations for fiscal years beginning after June 30, 1970.

Section 295h–7, act July 1, 1944, ch. 373, title VII, § 798, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2309, related to educational assistance to disadvantaged individuals in allied health training.

Another prior section 295h–7, act July 1, 1944, ch. 373, title VII, § 798, as added Aug. 16, 1968, Pub. L. 90–490, title III, § 301(d), 82 Stat. 788; amended Nov. 2, 1970, Pub. L. 91–519, title II, § 205, 84 Stat. 1354, directed Secretary to conduct a study of the allied health programs, prior to the general amendment of this part by Pub. L. 94–484.

A prior section 295h–8, act July 1, 1944, ch. 373, title VII, § 799, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 206, 84 Stat. 1354; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 109, 85 Stat. 461, which related to advance funding, was renumbered section 703 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 292c of this title.

A prior section 295h–9, act July 1, 1944, ch. 373, title VII, § 799A, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 207, 84 Stat. 1355, § 704; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 110(2), 85 Stat. 461; July 12, 1974, Pub. L. 93–348, title I, § 105, 88 Stat. 347, which related to sexual discrimination, was renumbered section 704 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 292d of this title.

A prior section 295i, act July 1, 1944, ch. 373, title VII, § 799, as added Apr. 7, 1986, Pub. L. 99–272, title XVII, § 17001, 100 Stat. 357; amended Oct. 25, 1988, Pub. L. 100–527, § 10(4), 102 Stat. 2641; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 627, 629(b)(1), 102 Stat. 3145, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), 103 Stat. 614; Oct. 9, 1992, Pub. L. 102–405, title III, § 302(e)(1), 106 Stat. 1985, established a Council on Graduate Medical Education, prior to the general amendment of this subchapter by Pub. L. 102–408. See section 294*o* of this title.

PART F—GENERAL PROVISIONS

AMENDMENTS

1998—Pub. L. 105–392, title I, §106(a)(2)(A), Nov. 13, 1998, 112 Stat. 3557, redesignated part G as F.

§ 295j. Preferences and required information in certain programs

(a) Preferences in making awards

(1) In general

Subject to paragraph (2), in making awards of grants or contracts under any of sections 293k and 294 of this title, the Secretary shall give preference to any qualified applicant that—

(A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

(2) Limitation regarding peer review

For purposes of paragraph (1), the Secretary may not give an applicant preference if the proposal of the applicant is ranked at or below the 20th percentile of proposals that have been recommended for approval by peer review groups.

(b) "Graduate" defined

For purposes of this section, the term ''graduate'' means, unless otherwise specified, an individual who has successfully completed all training and residency requirements necessary for full certification in the health profession selected by the individual.

(c) Exceptions for new programs

(1) In general

To permit new programs to compete equitably for funding under this section, those new programs that meet at least 4 of the criteria described in paragraph (3) shall qualify for a funding preference under this section.

(2) Definition

As used in this subsection, the term ''new program'' means any program that has graduated less than three classes. Upon graduating at least three classes, a program shall have the capability to provide the information necessary to qualify the program for the general funding preferences described in subsection (a) of this section.

(3) Criteria

The criteria referred to in paragraph (1) are the following:

(A) The mission statement of the program identifies a specific purpose of the program as being the preparation of health professionals to serve underserved populations.

(B) The curriculum of the program includes content which will help to prepare practitioners to serve underserved populations.

(C) Substantial clinical training experience is required under the program in medically underserved communities.

(D) A minimum of 20 percent of the clinical faculty of the program spend at least 50 percent of their time providing or supervising care in medically underserved communities.

(E) The entire program or a substantial portion of the program is physically located in a medically underserved community.

(F) Student assistance, which is linked to service in medically underserved communities following graduation, is available to the students in the program.

(G) The program provides a placement mechanism for deploying graduates to medically underserved communities.

(July 1, 1944, ch. 373, title VII, §791, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2058; amended Pub. L. 102–531, title III, §313(a)(5), Oct. 27, 1992, 106 Stat. 3507; Pub. L. 105–392, title I, §§106(a)(2)(B), 107, Nov. 13, 1998, 112 Stat. 3557, 3560.)

PRIOR PROVISIONS

A prior section 295j, act July 1, 1944, ch. 373, title VII, §799A, as added Nov. 4, 1988, Pub. L. 100–607, title VI, §637(a), 102 Stat. 3149; amended Nov. 18, 1988, Pub. L. 100–690, title II, §2615(g)[(i)], 102 Stat. 4240; Aug. 16, 1989, Pub. L. 101–93, §5(n), 103 Stat. 613, related to grants and contracts to provide health care in rural areas, prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 295j, act July 1, 1944, ch. 373, title VII, §799A, as added Nov. 23, 1988, Pub. L. 100–713, title VII, §714, 102 Stat. 4834, relating to grants and contracts to provide health care in rural areas, prior to repeal by Pub. L. 100–607, title VI, §637(b), Nov. 4, 1988, 102 Stat. 3151. Subsequently, section 637(b) of Pub. L. 100–607 was repealed by Pub. L. 101–93, §5(n)(1), Aug. 16, 1989, 103 Stat. 613, and section 5(n)(2) of Pub. L. 101–93 amended this subchapter to read as if the amendment made by section 714 of Pub. L. 100–713 had not been enacted.

A prior section 791 of act July 1, 1944, was classified to section 295h of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–392, §107(b)(1), substituted ''sections 293k and 294 of this title'' for ''sections 293k through 293*o* of this title, under section 294b of this title, or under section 294d or 294e of this title'' in introductory provisions.

Subsec. (a)(2). Pub. L. 105–392, §107(b)(2), struck out ''under section 295*o*(a) of this title'' before period at end.

Subsec. (b). Pub. L. 105–392, §106(a)(2)(B), redesignated subsec. (c) as (b) and struck out former subsec. (b) which required submission of certain information by applicant.

Subsec. (c). Pub. L. 105–392, §§106(a)(2)(B)(ii), 107(a), added subsec. (c) and redesignated former subsec. (c) as (b).

1992—Subsec. (b). Pub. L. 102–531, in introductory provisions, inserted references to sections 294d and 294e of this title and substituted reference to section 295*o*(f)(2) of this title for reference to section 293p(a) of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

REQUIRED ASSURANCES REGARDING BLOODBORNE DISEASES

Section 308 of Pub. L. 102–408 provided that: ''With respect to awards of grants or contracts under title VII

or VIII of the Public Health Service Act [this subchapter or subchapter VI of this chapter], the Secretary of Health and Human Services may make such an award for the provision of traineeships only if the applicant for the award provides assurances satisfactory to the Secretary that all trainees will, as appropriate, receive instruction in the utilization of universal precautions and infection control procedures for the prevention of the transmission of bloodborne diseases.''

§ 295k. Health professions data

(a) In general

The Secretary shall establish a program, including a uniform health professions data reporting system, to collect, compile, and analyze data on health professions personnel which program shall initially include data respecting all physicians and dentists in the States. The Secretary is authorized to expand the program to include, whenever he determines it necessary, the collection, compilation, and analysis of data respecting pharmacists, optometrists, podiatrists, veterinarians, public health personnel, audiologists, speech pathologists, health care administration personnel, nurses, allied health personnel, medical technologists, chiropractors, clinical psychologists, professional counselors, and any other health personnel in States designated by the Secretary to be included in the program. Such data shall include data respecting the training, licensure status (including permanent, temporary, partial, limited, or institutional), place or places of practice, professional specialty, practice characteristics, place and date of birth, sex, and socioeconomic background of health professions personnel and such other demographic information regarding health professions personnel as the Secretary may require.

(b) Certain authorities and requirements

(1) Sources of information

In carrying out subsection (a) of this section, the Secretary shall collect available information from appropriate local, State, and Federal agencies and other appropriate sources.

(2) Contracts for studies of health professions

The Secretary shall conduct or enter into contracts for the conduct of analytic and descriptive studies of the health professions, including evaluations and projections of the supply of, and requirements for, the health professions by specialty and geographic location. Such studies shall include studies determining by specialty and geographic location the number of health professionals (including allied health professionals and health care administration personnel) who are members of minority groups, including Hispanics, and studies providing by specialty and geographic location evaluations and projections of the supply of, and requirements for, health professionals (including allied health professionals and health care administration personnel) to serve minority groups, including Hispanics.

(3) Grants and contracts regarding States

The Secretary is authorized to make grants and to enter into contracts with States (or an appropriate nonprofit private entity in any State) for the purpose of participating in the program established under subsection (a) of this section. The Secretary shall determine the amount and scope of any such grant or contract. To be eligible for a grant or contract under this paragraph a State or entity shall submit an application in such form and manner and containing such information as the Secretary shall require. Such application shall include reasonable assurance, satisfactory to the Secretary, that—

(A) such State (or nonprofit entity within a State) will establish a program of mandatory annual registration of the health professions personnel described in subsection (a) of this section who reside or practice in such State and of health institutions licensed by such State, which registration shall include such information as the Secretary shall determine to be appropriate;

(B) such State or entity shall collect such information and report it to the Secretary in such form and manner as the Secretary shall prescribe; and

(C) such State or entity shall comply with the requirements of subsection (e) of this section.

(d) [1] Reports to Congress

The Secretary shall submit to the Congress on October 1, 1993, and biennially thereafter, the following reports:

(1) A comprehensive report regarding the status of health personnel according to profession, including a report regarding the analytic and descriptive studies conducted under this section.

(2) A comprehensive report regarding applicants to, and students enrolled in, programs and institutions for the training of health personnel, including descriptions and analyses of student indebtedness, student need for financial assistance, financial resources to meet the needs of students, student career choices such as practice specialty and geographic location and the relationship, if any, between student indebtedness and career choices.

(e) Requirements regarding personal data

(1) In general

The Secretary and each program entity shall in securing and maintaining any record of individually identifiable personal data (hereinafter in this subsection referred to as ''personal data'') for purposes of this section—

(A) inform any individual who is asked to supply personal data whether he is legally required, or may refuse, to supply such data and inform him of any specific consequences, known to the Secretary or program entity, as the case may be, of providing or not providing such data;

(B) upon request, inform any individual if he is the subject of personal data secured or maintained by the Secretary or program entity, as the case may be, and make the data available to him in a form comprehensible to him;

[1] So in original. No subsec. (c) has been enacted.

(C) assure that no use is made of personal data which use is not within the purposes of this section unless an informed consent has been obtained from the individual who is the subject of such data; and

(D) upon request, inform any individual of the use being made of personal data respecting such individual and of the identity of the individuals and entities which will use the data and their relationship to the programs under this section.

(2) Consent as precondition to disclosure

Any entity which maintains a record of personal data and which receives a request from the Secretary or a program entity for such data for purposes of this section shall not transfer any such data to the Secretary or to a program entity unless the individual whose personal data is to be so transferred gives an informed consent for such transfer.

(3) Disclosure by Secretary

(A) Notwithstanding any other provision of law, personal data collected by the Secretary or any program entity under this section may not be made available or disclosed by the Secretary or any program entity to any person other than the individual who is the subject of such data unless (i) such person requires such data for purposes of this section, or (ii) in response to a demand for such data made by means of compulsory legal process. Any individual who is the subject of personal data made available or disclosed under clause (ii) shall be notified of the demand for such data.

(B) Subject to all applicable laws regarding confidentiality, only the data collected by the Secretary under this section which is not personal data shall be made available to bona fide researchers and policy analysts (including the Congress) for the purposes of assisting in the conduct of studies respecting health professions personnel.

(4) "Program entity" defined

For purposes of this subsection, the term ''program entity'' means any public or private entity which collects, compiles, or analyzes health professions data under a grant, contract, or other arrangement with the Secretary under this section.

(g)[2] Technical assistance

The Secretary shall provide technical assistance to the States and political subdivisions thereof in the development of systems (including model laws) concerning confidentiality and comparability of data collected pursuant to this section.

(h) Grants and contracts regarding nonprofit entities

(1) In general

In carrying out subsection (a) of this section, the Secretary may make grants, or enter into contracts and cooperative agreements with, and provide technical assistance to, any nonprofit entity in order to establish a uniform allied health professions data reporting system to collect, compile, and analyze data on the allied health professions personnel.

(2) Reports

With respect to reports required in subsection (d) of this section, each such report made on or after October 1, 1991, shall include a description and analysis of data collected pursuant to paragraph (1).

(July 1, 1944, ch. 373, title VII, § 792, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2058; amended Pub. L. 105–392, title I, § 106(b), Nov. 13, 1998, 112 Stat. 3559.)

PRIOR PROVISIONS

A prior section 792 of act July 1, 1944, was classified to section 295h–1b of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 792 of act July 1, 1944, was classified to section 295h–1 of this title prior to repeal by Pub. L. 97–35.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392 inserted ''professional counselors,'' after ''clinical psychologists,''.

STUDY REGARDING SHORTAGES OF LICENSED PHARMACISTS

Pub. L. 106–129, § 5, Dec. 6, 1999, 113 Stat. 1675, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary'), acting through the appropriate agencies of the Public Health Service, shall conduct a study to determine whether and to what extent there is a shortage of licensed pharmacists. In carrying out the study, the Secretary shall seek the comments of appropriate public and private entities regarding any such shortage.

''(b) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act [Dec. 6, 1999], the Secretary shall complete the study under subsection (a) and submit to the Congress a report that describes the findings made through the study and that contains a summary of the comments received by the Secretary pursuant to such subsection.''

ADVISORY COUNCIL ON GRADUATE MEDICAL EDUCATION

Section 301 of Pub. L. 102–408, as amended by Pub. L. 102–531, title III, § 313(b), Oct. 27, 1992, 106 Stat. 3507; Pub. L. 105–392, title I, § 104(b)(1)–(3), Nov. 13, 1998, 112 Stat. 3552, which was formerly set out as a note under this section, was renumbered section 762 of the Public Health Service Act by Pub. L. 105–392, title I, § 104(b)(4)–(6), Nov. 13, 1998, 112 Stat. 3553, and is classified to section 294*o* of this title.

COMMISSION ON ALLIED HEALTH

Section 302 of Pub. L. 102–408 provided for establishment of a National Commission on Allied Health, charged with (1) making recommendations to the Secretary of Health and Human Services and Congress with respect to nationwide supply and distribution of allied health personnel, current and future shortages of personnel, priority research needs within allied health professions, Federal policies relating to personnel and research as well as undergraduate and graduate financing, concerted efforts on part of allied health facilities and educational institutions to address such matters, and needs with respect to nationwide data bases concerning supply and distribution of allied health personnel, and (2) encouraging entities providing allied health education to voluntarily achieve recommendations of Commission, and further provided for composition of Commission, date certain for appointments to Commission, resources for Commission activities, an interim progress report due not later than Oct. 1, 1993, a final report due not later than Apr. 1, 1994, and termi-

[2] So in original. No subsec. (f) has been enacted.

nation of Commission 60 days after submission of final report.

STUDY REGARDING SHORTAGE OF CLINICAL LABORATORY TECHNOLOGISTS FOR MEDICALLY UNDERSERVED AND RURAL COMMUNITIES

Section 303 of Pub. L. 102–408 directed Secretary of Health and Human Services, with respect to the shortage of clinical laboratory technologists, to conduct a study for the purpose of determining whether there are special or unique factors affecting the supply of clinical laboratory technologists in medically underserved and rural communities, and assessing alternative routes for certification of the competence of individuals to serve as such technologists, with consideration of the role of entities providing such certifications, and, not later than Oct. 1, 1993, complete the study and submit to Committee on Energy and Commerce of House of Representatives, and to Committee on Labor and Human Resources of Senate, a report describing the findings made as result of the study.

NATIONAL ADVISORY COUNCIL ON MEDICAL LICENSURE

Section 307 of Pub. L. 102–408 directed Secretary of Health and Human Services to establish National Advisory Council on Medical Licensure to advise Secretary on American Medical Association's system of verifying and maintaining information regarding qualifications of individuals to practice medicine, as well as advice regarding establishment and operation of any similar system, provided for activities of Council, including review of private credentials verification system and recommendations on how it could be improved, as well as review of State procedures for licensing individuals licensed in other States and procedures for licensing international medical graduates, provided for composition of Council and appointment of members, required submission of an interim report to Congress not later than Sept. 30, 1993, and a final report with recommendations not later than Sept. 30, 1995, provided for termination of Council not later than Sept. 30, 1995, or upon submission of final report, whichever is earlier, and further directed Secretary, in cooperation with Council to submit to Congress, not later than Sept. 30, 1994, study of not less than 10 States for purposes of determining average time required for States to process licensure applications of domestic and international medical graduates as well as percentages of domestic and international licensure applications approved.

§ 295*l*. Repealed. Pub. L. 105–392, title I, § 106(a)(2)(C), Nov. 13, 1998, 112 Stat. 3557

Section, act July 1, 1944, ch. 373, title VII, § 793, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2061; amended Pub. L. 102–531, title III, § 313(a)(6), Oct. 27, 1992, 106 Stat. 3507, required development, publication, dissemination, and biennial report to Congress on statistics respecting public and community health personnel.

A prior section 793 of act July 1, 1944, was classified to section 295h–1c of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 793 of act July 1, 1944, was renumbered section 794 by Pub. L. 97–35 and classified to section 295h–2 of this title.

§ 295m. Prohibition against discrimination on basis of sex

The Secretary may not make a grant, loan guarantee, or interest subsidy payment under this subchapter to, or for the benefit of, any school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, pharmacy, podiatric medicine, or public health or any training center for allied health personnel, or graduate program in clinical psychology, unless the application for the grant, loan guarantee, or interest subsidy payment contains assurances satisfactory to the Secretary that the school or training center will not discriminate on the basis of sex in the admission of individuals to its training programs. The Secretary may not enter into a contract under this subchapter with any such school or training center unless the school, training center, or graduate program furnishes assurances satisfactory to the Secretary that it will not discriminate on the basis of sex in the admission of individuals to its training programs. In the case of a school of medicine which—

(1) on October 13, 1992, is in the process of changing its status as an institution which admits only female students to that of an institution which admits students without regard to their sex, and

(2) is carrying out such change in accordance with a plan approved by the Secretary,

the provisions of the preceding sentences of this section shall apply only with respect to a grant, contract, loan guarantee, or interest subsidy to, or for the benefit of such a school for a fiscal year beginning after June 30, 1979.

(July 1, 1944, ch. 373, title VII, § 794, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2063.)

PRIOR PROVISIONS

A prior section 794 of act July 1, 1944, was classified to section 295h–2 of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 794 of act July 1, 1944, was classified to section 294h–3 of this title prior to repeal by Pub. L. 91–519.

§ 295n. Repealed. Pub. L. 105–392, title I, § 101(b)(1), Nov. 13, 1998, 112 Stat. 3537

Section, act July 1, 1944, ch. 373, title VII, § 795, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2063; amended Pub. L. 102–531, title III, § 313(a)(7), Oct. 27, 1992, 106 Stat. 3507, related to obligated service regarding certain programs.

A prior section 795 of act July 1, 1944, was classified to section 295h–4 of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 795 of act July 1, 1944, was classified to section 295h–4 of this title prior to the general amendment of part G of this subchapter by Pub. L. 94–484.

SAVINGS PROVISION

Pub. L. 105–392, title I, § 101(b)(2), Nov. 13, 1998, 112 Stat. 3537, provided that: "The amendments made by this section [enacting sections 293 to 293d of this title, amending section 287a–2 of this title, and repealing this section and former sections 293 to 293d of this title] shall not be construed to terminate agreements that, on the day before the date of enactment of this Act [Nov. 13, 1998], are in effect pursuant to section 795 of the Public Health Service Act (42 U.S.C. 795 [295n]) as such section existed on such date. Such agreements shall continue in effect in accordance with the terms of the agreements. With respect to compliance with such agreements, any period of practice as a provider of primary health services shall be counted towards the satisfaction of the requirement of practice pursuant to such section 795."

§ 295n–1. Application

(a) In general

To be eligible to receive a grant or contract under this subchapter, an eligible entity shall

prepare and submit to the Secretary an application that meets the requirements of this section, at such time, in such manner, and containing such information as the Secretary may require.

(b) Plan

An application submitted under this section shall contain the plan of the applicant for carrying out a project with amounts received under this subchapter. Such plan shall be consistent with relevant Federal, State, or regional health professions program plans.

(c) Performance outcome standards

An application submitted under this section shall contain a specification by the applicant entity of performance outcome standards that the project to be funded under the grant or contract will be measured against. Such standards shall address relevant health workforce needs that the project will meet. The recipient of a grant or contract under this section shall meet the standards set forth in the grant or contract application.

(d) Linkages

An application submitted under this section shall contain a description of the linkages with relevant educational and health care entities, including training programs for other health professionals as appropriate, that the project to be funded under the grant or contract will establish. To the extent practicable, grantees under this section shall establish linkages with health care providers who provide care for underserved communities and populations.

(July 1, 1944, ch. 373, title VII, §796, as added Pub. L. 105–392, title I, §106(a)(2)(F), Nov. 13, 1998, 112 Stat. 3557.)

§ 295n–2. Use of funds

(a) In general

Amounts provided under a grant or contract awarded under this subchapter may be used for training program development and support, faculty development, model demonstrations, trainee support including tuition, books, program fees and reasonable living expenses during the period of training, technical assistance, workforce analysis, dissemination of information, and exploring new policy directions, as appropriate to meet recognized health workforce objectives, in accordance with this subchapter.

(b) Maintenance of effort

With respect to activities for which a grant awarded under this subchapter is to be expended, the entity shall agree to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the entity for the fiscal year preceding the fiscal year for which the entity receives such a grant.

(July 1, 1944, ch. 373, title VII, §797, as added Pub. L. 105–392, title I, §106(a)(2)(F), Nov. 13, 1998, 112 Stat. 3557.)

§ 295*o*. Matching requirement

The Secretary may require that an entity that applies for a grant or contract under this subchapter provide non-Federal matching funds, as appropriate, to ensure the institutional commitment of the entity to the projects funded under the grant. As determined by the Secretary, such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in-kind, fairly evaluated, including plant, equipment, or services.

(July 1, 1944, ch. 373, title VII, §798, as added Pub. L. 105–392, title I, §106(a)(2)(F), Nov. 13, 1998, 112 Stat. 3558.)

PRIOR PROVISIONS

A prior section 295*o*, act July 1, 1944, ch. 373, title VII, §798, as added Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 2064; amended Pub. L. 102–531, title III, §313(a)(8), Oct. 27, 1992, 106 Stat. 3507, set forth certain general provisions relating to this subchapter, prior to repeal by Pub. L. 105–392, title I, §106(a)(2)(D), Nov. 13, 1998, 112 Stat. 3557.

A prior section 798 of act July 1, 1944, was classified to section 295h–7 of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

Another prior section 798 of act July 1, 1944, was classified to section 295h–7 of this title prior to the general amendment of part G of this subchapter by Pub. L. 94–484.

§ 295*o*–1. Generally applicable provisions

(a) Awarding of grants and contracts

The Secretary shall ensure that grants and contracts under this subchapter are awarded on a competitive basis, as appropriate, to carry out innovative demonstration projects or provide for strategic workforce supplementation activities as needed to meet health workforce goals and in accordance with this subchapter. Contracts may be entered into under this subchapter with public or private entities as may be necessary.

(b) Eligible entities

Unless specifically required otherwise in this subchapter, the Secretary shall accept applications for grants or contracts under this subchapter from health professions schools, academic health centers, State or local governments, or other appropriate public or private nonprofit entities for funding and participation in health professions and nursing training activities. The Secretary may accept applications from for-profit private entities if determined appropriate by the Secretary.

(c) Information requirements

(1) In general

Recipients of grants and contracts under this subchapter shall meet information requirements as specified by the Secretary.

(2) Data collection

The Secretary shall establish procedures to ensure that, with respect to any data collection required under this subchapter, such data is collected in a manner that takes into account age, sex, race, and ethnicity.

(3) Use of funds

The Secretary shall establish procedures to permit the use of amounts appropriated under this subchapter to be used for data collection purposes.

(4) Evaluations

The Secretary shall establish procedures to ensure the annual evaluation of programs and projects operated by recipients of grants or contracts under this subchapter. Such procedures shall ensure that continued funding for such programs and projects will be conditioned upon a demonstration that satisfactory progress has been made by the program or project in meeting the objectives of the program or project.

(d) Training programs

Training programs conducted with amounts received under this subchapter shall meet applicable accreditation and quality standards.

(e) Duration of assistance

(1) In general

Subject to paragraph (2), in the case of an award to an entity of a grant, cooperative agreement, or contract under this subchapter, the period during which payments are made to the entity under the award may not exceed 5 years. The provision of payments under the award shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments. This paragraph may not be construed as limiting the number of awards under the program involved that may be made to the entity.

(2) Limitation

In the case of an award to an entity of a grant, cooperative agreement, or contract under this subchapter, paragraph (1) shall apply only to the extent not inconsistent with any other provision of this subchapter that relates to the period during which payments may be made under the award.

(f) Peer review regarding certain programs

(1) In general

Each application for a grant under this subchapter, except any scholarship or loan program, including those under sections[1] 292, 292q, or 292s of this title, shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval.

(2) Composition

Each peer review group under this subsection shall be composed principally of individuals who are not officers or employees of the Federal Government. In providing for the establishment of peer review groups and procedures, the Secretary shall ensure sex, racial, ethnic, and geographic balance among the membership of such groups.

(3) Administration

This subsection shall be carried out by the Secretary acting through the Administrator of the Health Resources and Services Administration.

(g) Preference or priority considerations

In considering a preference or priority for funding which is based on outcome measures for an eligible entity under this subchapter, the Secretary may also consider the future ability of the eligible entity to meet the outcome preference or priority through improvements in the eligible entity's program design.

(h) Analytic activities

The Secretary shall ensure that—

(1) cross-cutting workforce analytical activities are carried out as part of the workforce information and analysis activities under section 294n of this title; and

(2) discipline-specific workforce information and analytical activities are carried out as part of—

(A) the community-based linkage program under part D of this subchapter; and

(B) the health workforce development program under subpart 2 of part E of this subchapter.

(i) Osteopathic Schools

For purposes of this subchapter, any reference to—

(1) medical schools shall include osteopathic medical schools; and

(2) medical students shall include osteopathic medical students.

(July 1, 1944, ch. 373, title VII, §799, as added Pub. L. 105–392, title I, §106(a)(2)(F), Nov. 13, 1998, 112 Stat. 3558.)

PRIOR PROVISIONS

A prior section 799 of act July 1, 1944, was renumbered section 799B by Pub. L. 105–392 and classified to section 295p of this title.

Another prior section 799 of act July 1, 1944, was classified to section 295i of this title prior to the general amendment of this subchapter by Pub. L. 102–408.

§ 295*o*–2. Technical assistance

Funds appropriated under this subchapter may be used by the Secretary to provide technical assistance in relation to any of the authorities under this subchapter.

(July 1, 1944, ch. 373, title VII, §799A, as added Pub. L. 105–392, title I, §106(a)(2)(F), Nov. 13, 1998, 112 Stat. 3559.)

§ 295p. Definitions

For purposes of this subchapter:

(1)(A) The terms ''school of medicine'', ''school of dentistry'', ''school of osteopathic medicine'', ''school of pharmacy'', ''school of optometry'', ''school of podiatric medicine'', ''school of veterinary medicine'', ''school of public health'', and ''school of chiropractic'' mean an accredited public or nonprofit private school in a State that provides training leading, respectively, to a degree of doctor of medicine, a degree of doctor of dentistry or an equivalent degree, a degree of doctor of osteopathy, a degree of bachelor of science in pharmacy or an equivalent degree or a degree of doctor of pharmacy or an equivalent degree, a degree of doctor of optometry or an equivalent degree, a degree of doctor of podiatric medicine or an equivalent degree, a degree of doctor of veterinary medicine or an equivalent degree, a graduate degree in public health or an equivalent degree, and a degree of doctor of

[1] So in original. Probably should be ''section''.

chiropractic or an equivalent degree, and including advanced training related to such training provided by any such school.

(B) The terms ''graduate program in health administration'' and ''graduate program in clinical psychology'' mean an accredited graduate program in a public or nonprofit private institution in a State that provides training leading, respectively, to a graduate degree in health administration or an equivalent degree and a doctoral degree in clinical psychology or an equivalent degree.

(C) The terms ''graduate program in clinical social work'' and ''graduate program in marriage and family therapy'' and ''graduate program in professional counseling'' mean an accredited graduate program in a public or nonprofit private institution in a State that provides training, respectively, in a concentration in health or mental health care leading to a graduate degree in social work and a concentration leading to a graduate degree in marriage and family therapy and a concentration leading to a graduate degree in counseling.

(D) The term ''graduate program in behavioral health and mental health practice'' means a graduate program in clinical psychology, behavioral health and mental health practice, clinical social work, professional counseling, or marriage and family therapy.

(E) The term ''accredited'', when applied to a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health, or chiropractic, or a graduate program in health administration, clinical psychology, clinical social work, professional counseling, or marriage and family therapy, means a school or program that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, except that a new school or program that, by reason of an insufficient period of operation, is not, at the time of application for a grant or contract under this subchapter, eligible for accreditation by such a recognized body or bodies, shall be deemed accredited for purposes of this subchapter, if the Secretary of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school or program will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of the first entering class in such school or program.

(2) The term ''teaching facilities'' means areas dedicated for use by students, faculty, or administrative or maintenance personnel for clinical purposes, research activities, libraries, classrooms, offices, auditoriums, dining areas, student activities, or other related purposes necessary for, and appropriate to, the conduct of comprehensive programs of education. Such term includes interim facilities but does not include off-site improvements or living quarters.

(3) The term ''program for the training of physician assistants'' means an educational program that—

(A) has as its objective the education of individuals who will, upon completion of their studies in the program, be qualified to provide primary care under the supervision of a physician;

(B) extends for at least one academic year and consists of—

(i) supervised clinical practice; and

(ii) at least four months (in the aggregate) of classroom instruction, directed toward preparing students to deliver health care;

(C) has an enrollment of not less than eight students; and

(D) trains students in primary care, disease prevention, health promotion, geriatric medicine, and home health care.

(4) The term ''school of allied health'' means a public or nonprofit private college, junior college, or university or hospital-based educational entity that—

(A) provides, or can provide, programs of education to enable individuals to become allied health professionals or to provide additional training for allied health professionals;

(B) provides training for not less than a total of twenty persons in the allied health curricula (except that this subparagraph shall not apply to any hospital-based educational entity);

(C) includes or is affiliated with a teaching hospital; and

(D) is accredited by a recognized body or bodies approved for such purposes by the Secretary of Education, or which provides to the Secretary satisfactory assurance by such accrediting body or bodies that reasonable progress is being made toward accreditation.

(5) The term ''allied health professionals'' means a health professional (other than a registered nurse or physician assistant)—

(A) who has received a certificate, an associate's degree, a bachelor's degree, a master's degree, a doctoral degree, or postbaccalaureate training, in a science relating to health care;

(B) who shares in the responsibility for the delivery of health care services or related services, including—

(i) services relating to the identification, evaluation, and prevention of disease and disorders;

(ii) dietary and nutrition services;

(iii) health promotion services;

(iv) rehabilitation services; or

(v) health systems management services; and

(C) who has not received a degree of doctor of medicine, a degree of doctor of osteopathy, a degree of doctor of dentistry or an equivalent degree, a degree of doctor of veterinary medicine or an equivalent degree, a degree of doctor of optometry or an equivalent degree, a degree of doctor of podiatric medicine or an equivalent degree, a degree of bachelor of science in pharmacy or an equivalent degree, a degree of doctor of pharmacy or an equivalent degree, a graduate degree in

public health or an equivalent degree, a degree of doctor of chiropractic or an equivalent degree, a graduate degree in health administration or an equivalent degree, a doctoral degree in clinical psychology or an equivalent degree, or a degree in social work or an equivalent degree or a degree in counseling or an equivalent degree.

(6) The term ''medically underserved community'' means an urban or rural area or population that—

(A) is eligible for designation under section 254e of this title as a health professional shortage area;

(B) is eligible to be served by a migrant health center under section 254b[1] of this title, a community health center under section 254c[1] of this title, a grantee under section 254b(h) of this title (relating to homeless individuals), or a grantee under section 256a[1] of this title (relating to residents of public housing);

(C) has a shortage of personal health services, as determined under criteria issued by the Secretary under section 1395x(aa)(2) of this title (relating to rural health clinics); or

(D) is designated by a State Governor (in consultation with the medical community) as a shortage area or medically underserved community.

(7) The term ''Department'' means the Department of Health and Human Services.

(8) The term ''nonprofit'' refers to the status of an entity owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(9) The term ''State'' includes, in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(10)(A) Subject to subparagraph (B), the term ''underrepresented minorities'' means, with respect to a health profession, racial and ethnic populations that are underrepresented in the health profession relative to the number of individuals who are members of the population involved.

(B) For purposes of subparagraph (A), Asian individuals shall be considered by the various subpopulations of such individuals.

(11) The term ''psychologist'' means an individual who—

(A) holds a doctoral degree in psychology; and

(B) is licensed or certified on the basis of the doctoral degree in psychology, by the State in which the individual practices, at the independent practice level of psychology to furnish diagnostic, assessment, preventive, and therapeutic services directly to individuals.

(July 1, 1944, ch. 373, title VII, § 799B, formerly § 799, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2066; renumbered § 799B and amended Pub. L. 105–392, title I, §§ 106(a)(2)(E), 108, Nov. 13, 1998, 112 Stat. 3557, 3560; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664.)

[1] See References in Text notes below.

REFERENCES IN TEXT

The reference to section 254b of this title the first place appearing and the reference to section 254c of this title, referred to in par. (6)(B), were in the original references to sections 329 and 330, meaning sections 329 and 330 of act July 1, 1944, which were omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of this chapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

Section 256a of this title, referred to in par. (6)(B), was repealed by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

AMENDMENTS

2002—Par. (6)(B). Pub. L. 107–251 substituted ''254b(h)'' for ''256''.

1998—Par. (1)(C). Pub. L. 105–392, § 108(b)(1)(A), inserted ''and 'graduate program in professional counseling'' before ''mean an'' and ''and a concentration leading to a graduate degree in counseling'' before period at end.

Par. (1)(D). Pub. L. 105–392, § 108(a), (b)(1)(B), inserted ''behavioral health and'' before ''mental'', ''behavioral health and mental health practice,'' before ''clinical'', and ''professional counseling,'' after ''social work,''.

Par. (1)(E). Pub. L. 105–392, § 108(b)(1)(C), inserted ''professional counseling,'' after ''social work,''.

Par. (3). Pub. L. 105–392, § 108(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'program for the training of physician assistants' means an educational program that—

''(A) has as its objective the education of individuals who will, upon completion of their studies in the program, be qualified to provide primary health care under the supervision of a physician; and

''(B) meets regulations prescribed by the Secretary in accordance with section 293n(b) of this title.''

Par. (5)(C). Pub. L. 105–392, § 108(b)(2), inserted ''or a degree in counseling or an equivalent degree'' before period at end.

Par. (6)(D). Pub. L. 105–392, § 108(c), added subpar. (D).

Par. (11). Pub. L. 105–392, § 108(e), added par. (11).

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER VI—NURSING WORKFORCE DEVELOPMENT

AMENDMENTS

1998—Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562, added subchapter VI heading and struck out former subchapter VI heading ''NURSE EDUCATION''.

1985—Pub. L. 99–92, § 9(b)(3), Aug. 16, 1985, 99 Stat. 400, substituted ''NURSE EDUCATION'' for ''NURSE TRAINING'' in subchapter VI heading.

PART A—GENERAL PROVISIONS

AMENDMENTS

1998—Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3563, added part A heading and struck out former part A heading ''Special Projects''.

1985—Pub. L. 99–92, § 9(b)(1), (2), Aug. 16, 1985, 99 Stat. 400, substituted ''Special Projects'' for ''Assistance for Expansion and Improvement of Nurse Training'' as part A heading, and struck out headings for subparts I, II, III, and IV of part A which read as follows: ''Subpart I—Construction Assistance'', ''Subpart II—Capitation Grants'', ''Subpart III—Financial Distress Grants'', and ''Subpart IV—Special Projects''.

§ 296. Definitions

As used in this subchapter:

(1) Eligible entities

The term ''eligible entities'' means schools of nursing, nursing centers, academic health centers, State or local governments, and other public or private nonprofit entities determined appropriate by the Secretary that submit to the Secretary an application in accordance with section 296a of this title.

(2) School of nursing

The term ''school of nursing'' means a collegiate, associate degree, or diploma school of nursing in a State.

(3) Collegiate school of nursing

The term ''collegiate school of nursing'' means a department, division, or other administrative unit in a college or university which provides primarily or exclusively a program of education in professional nursing and related subjects leading to the degree of bachelor of arts, bachelor of science, bachelor of nursing, or to an equivalent degree, or to a graduate degree in nursing, or to an equivalent degree, and including advanced training related to such program of education provided by such school, but only if such program, or such unit, college or university is accredited.

(4) Associate degree school of nursing

The term ''associate degree school of nursing'' means a department, division, or other administrative unit in a junior college, community college, college, or university which provides primarily or exclusively a two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or to an equivalent degree, but only if such program, or such unit, college, or university is accredited.

(5) Diploma school of nursing

The term ''diploma school of nursing'' means a school affiliated with a hospital or university, or an independent school, which provides primarily or exclusively a program of education in professional nursing and allied subjects leading to a diploma or to equivalent indicia that such program has been satisfactorily completed, but only if such program, or such affiliated school or such hospital or university or such independent school is accredited.

(6) Accredited

(A) In general

Except as provided in subparagraph (B), the term ''accredited'' when applied to any program of nurse education means a program accredited by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education and when applied to a hospital, school, college, or university (or a unit thereof) means a hospital, school, college, or university (or a unit thereof) which is accredited by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education. For the purpose of this paragraph, the Secretary of Education shall publish a list of recognized accrediting bodies, and of State agencies, which the Secretary of Education determines to be reliable authority as to the quality of education offered.

(B) New programs

A new program of nursing that, by reason of an insufficient period of operation, is not, at the time of the submission of an application for a grant or contract under this subchapter, eligible for accreditation by such a recognized body or bodies or State agency, shall be deemed accredited for purposes of this subchapter if the Secretary of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the program will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of students of the first entering class in such a program.

(7) Nonprofit

The term ''nonprofit'' as applied to any school, agency, organization, or institution means one which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(8) State

The term ''State'' means a State, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

(9) Ambulatory surgical center

The term ''ambulatory surgical center'' has the meaning applicable to such term under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(10) Federally qualified health center

The term ''Federally qualified health center'' has the meaning given such term under section 1861(aa)(4) of the Social Security Act [42 U.S.C. 1395x(aa)(4)].

(11) Health care facility

The term ''health care facility'' means an Indian Health Service health center, a Native Hawaiian health center, a hospital, a Federally qualified health center, a rural health clinic, a nursing home, a home health agency, a hospice program, a public health clinic, a

State or local department of public health, a skilled nursing facility, an ambulatory surgical center, or any other facility designated by the Secretary.

(12) Home health agency

The term ''home health agency'' has the meaning given such term in section 1861(*o*) of the Social Security Act [42 U.S.C. 1395x(*o*)].

(13) Hospice program

The term ''hospice program'' has the meaning given such term in section 1861(dd)(2) of the Social Security Act [42 U.S.C. 1395x(dd)(2)].

(14) Rural health clinic

The term ''rural health clinic'' has the meaning given such term in section 1861(aa)(2) of the Social Security Act [42 U.S.C. 1395x(aa)(2)].

(15) Skilled nursing facility

The term ''skilled nursing facility'' has the meaning given such term in section 1819(a) of the Social Security Act [42 U.S.C. 1395i–3(a)].

(July 1, 1944, ch. 373, title VIII, §801, as added Pub. L. 105–392, title I, §123(4), Nov. 13, 1998, 112 Stat. 3562; amended Pub. L. 107–205, title I, §101, Aug. 1, 2002, 116 Stat. 811.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (9), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 296, act July 1, 1944, ch. 373, title VIII, §801 as added Sept. 4, 1964, Pub. L. 88–581, §2, 78 Stat. 908; amended Nov. 3, 1966, Pub. L. 89–751, §8(a), 80 Stat. 1236; Aug. 16, 1968, Pub. L. 90–490, title II, §201(a), 82 Stat. 780; Nov. 18, 1971, Pub. L. 92–158, §2(a), 85 Stat. 465; July 29, 1975, Pub. L. 94–63, title IX, §§902(a), 910(a)(1), 89 Stat. 354, 355; Sept. 29, 1979, Pub. L. 96–76, title I, §102, 93 Stat. 579, authorized appropriations for construction grants, prior to repeal by Pub. L. 99–92, §§9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

AMENDMENTS

2002—Pars. (9) to (15). Pub. L. 107–205 added pars. (9) to (15).

SAVINGS PROVISION

Pub. L. 105–392, title I, §124, Nov. 13, 1998, 112 Stat. 3574, provided that: ''In the case of any authority for making awards of grants or contracts that is terminated by the amendment made by section 123 [enacting sections 296, 296a to 296f, 296j, 296m, 296p, 297q, and 297t of this title, transferring section 298b–2 of this title to section 296g of this title, and repealing sections 296k to 296m, 296r, 297, 297–1, 297c, 298, 298a, 298b, 298b–1, 298b–3 to 298b–5, and 298b–7 of this title], the Secretary of Health and Human Services may, notwithstanding the termination of the authority, continue in effect any grant or contract made under the authority that is in effect on the day before the date of the enactment of this Act [Nov. 13, 1998], subject to the duration of any such grant or contract not exceeding the period determined by the Secretary in first approving such financial assistance, or in approving the most recent request made (before the date of such enactment) for continuation of such assistance, as the case may be.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

REPORTS BY GOVERNMENT ACCOUNTABILITY OFFICE

Pub. L. 107–205, title II, §204, Aug. 1, 2002, 116 Stat. 818, provided that:

''(a) NATIONAL VARIATIONS.—Not later than 4 years after the date of the enactment of this Act [Aug. 1, 2002], the Comptroller General of the United States shall conduct a survey to determine national variations in the nursing shortage at hospitals, nursing homes, and other health care providers, and submit a report, including recommendations, to the Congress on Federal remedies to ease nursing shortages. The Comptroller General shall submit to the Congress this report describing the findings relating to ownership status and associated remedies.

''(b) HIRING DIFFERENCES AMONG CERTAIN PRIVATE ENTITIES.—The Comptroller General of the United States shall conduct a study to determine differences in the hiring of nurses by nonprofit private entities as compared to the hiring of nurses by private entities that are not nonprofit. In carrying out the study, the Comptroller General shall determine the effect of the inclusion of private entities that are not nonprofit in the program under section 846 of the Public Health Service Act [section 297n of this title]. Not later than 4 years after the date of the enactment of this Act [Aug. 1, 2002], the Comptroller General shall submit to the Congress a report describing the findings of the study.

''(c) NURSING SCHOLARSHIPS.—The Comptroller General of the United States shall conduct an evaluation of whether the program carried out under section 846(d) of the Public Health Service Act [section 297n(d) of this title] has demonstrably increased the number of applicants to schools of nursing and, not later than 4 years after the date of the enactment of this Act [Aug. 1, 2002], submit a report to the Congress on the results of such evaluation.''

PURPOSE

Pub. L. 105–392, title I, §122, Nov. 13, 1998, 112 Stat. 3562, provided that: ''It is the purpose of this subtitle [subtitle B (§§121–124) of title I of Pub. L. 105–392, see Short Title of 1998 Amendment note set out under section 201 of this title] to restructure the nurse education authorities of title VIII of the Public Health Service Act [this subchapter] to permit a comprehensive, flexible, and effective approach to Federal support for nursing workforce development.''

INFORMATION RESPECTING SUPPLY AND DISTRIBUTION OF AND REQUIREMENTS FOR NURSES; DETERMINATION PROCEDURES; SURVEYS AND COLLECTION OF DATES; ANNUAL REPORT TO CONGRESS ON DETERMINATIONS, ETC.; REVIEW BY OFFICE OF MANAGEMENT AND BUDGET OF REPORT PRIOR TO SUBMISSION

Section 951 of Pub. L. 94–63, as amended by Pub. L. 95–623, §12(h), Nov. 9, 1978, 92 Stat. 3457, provided that:

''(a)(1) Using procedures developed in accordance with paragraph (3), the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the 'Secretary') shall determine on a continuing basis—

''(A) the supply (both current and projected and within the United States and within each State) of registered nurses, licensed practical and vocational nurses, nurse's aides, registered nurses with advanced training or graduate degrees, and nurse practitioners;

''(B) the distribution within the United States and within each State, of such nurses so as to determine (i) those areas of the United States which are oversupplied or undersupplied, or which have an adequate supply of such nurses in relation to the population of the area, and (ii) the demand for the services which such nurses provide; and

''(C) the current and future requirements for such nurses, nationally and within each State.

''(2) The Secretary shall survey and gather data, on a continuing basis, on—

''(A) the number and distribution of nurses, by type of employment and location of practice;

''(B) the number of nurses who are practicing full time and those who are employed part time, within the United States and within each State;

''(C) the average rates of compensation for nurses, by type of practice and location of practice;

''(D) the activity status of the total number of registered nurses within the United States and within each State;

''(E) the number of nurses with advanced training or graduate degrees in nursing, by specialty, including nurse practitioners, nurse clinicians, nurse researchers, nurse educators, and nurse supervisors and administrators; and

''(F) the number of registered nurses entering the United States annually from other nations, by country of nurse training and by immigrant status.

''(3) Within six months of the date of the enactment of this Act [July 29, 1975], the Secretary shall develop procedures for determining (on both a current and projected basis) the supply and distribution of and requirements for nurses within the United States and within each State.

''(b) Not later than October 1, 1979, and October 1 of each odd-numbered year thereafter, the Secretary shall report to the Congress—

''(1) his determinations under subsection (a)(1) and the data gathered under subsection (a)(2);

''(2) an analysis of such determination and data; and

''(3) recommendations for such legislation as the Secretary determines, based on such determinations and data, will achieve (A) an equitable distribution of nurses within the United States and within each State, and (B) adequate supplies of nurses within the United States and within each State.

''(c) The Office of Management and Budget may review the Secretary's report under subsection (b) before its submission to the Congress, but the Office may not revise the report or delay its submission, and it may submit to the Congress its comments (and those of other departments or agencies of the Government) respecting such report.''

§ 296a. Application

(a) In general

To be eligible to receive a grant or contract under this subchapter, an eligible entity shall prepare and submit to the Secretary an application that meets the requirements of this section, at such time, in such manner, and containing such information as the Secretary may require.

(b) Plan

An application submitted under this section shall contain the plan of the applicant for carrying out a project with amounts received under this subchapter. Such plan shall be consistent with relevant Federal, State, or regional program plans.

(c) Performance outcome standards

An application submitted under this section shall contain a specification by the applicant entity of performance outcome standards that the project to be funded under the grant or contract will be measured against. Such standards shall address relevant national nursing needs that the project will meet. The recipient of a grant or contract under this section shall meet the standards set forth in the grant or contract application.

(d) Linkages

An application submitted under this section shall contain a description of the linkages with relevant educational and health care entities, including training programs for other health professionals as appropriate, that the project to be funded under the grant or contract will establish.

(July 1, 1944, ch. 373, title VIII, § 802, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3564.)

PRIOR PROVISIONS

A prior section 296a, act July 1, 1944, ch. 373, title VIII, § 802, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 909; amended Aug. 16, 1968, Pub. L. 90–490, title II, § 201(b), 82 Stat. 780; Nov. 18, 1971, Pub. L. 92–158, §§ 2(d)(3), (e), (f), 13, 85 Stat. 468, 480; July 29, 1975, Pub. L. 94–63, title IX, §§ 910(a)(2), 941(a), 89 Stat. 355, 363, related to time of submission, determinations, etc., respecting applications for construction grants, prior to repeal by Pub. L. 99–92, §§ 9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

§ 296b. Use of funds

(a) In general

Amounts provided under a grant or contract awarded under this subchapter may be used for training program development and support, faculty development, model demonstrations, trainee support including tuition, books, program fees and reasonable living expenses during the period of training, technical assistance, workforce analysis, and dissemination of information, as appropriate to meet recognized nursing objectives, in accordance with this subchapter.

(b) Maintenance of effort

With respect to activities for which a grant awarded under this subchapter is to be expended, the entity shall agree to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the entity for the fiscal year preceding the fiscal year for which the entity receives such a grant.

(July 1, 1944, ch. 373, title VIII, § 803, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3564.)

PRIOR PROVISIONS

A prior section 296b, act July 1, 1944, ch. 373, title VIII, § 803, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 911; amended Aug. 16, 1968, Pub. L. 90–490, title II, § 202, 82 Stat. 780; Nov. 18, 1971, Pub. L. 92–158, §§ 2(b), 13, 85 Stat. 465, 480; July 29, 1975, Pub. L. 94–63, title IX, § 941(b), 89 Stat. 364, set forth provisions relating to amount of construction grant, prior to repeal by Pub. L. 99–92, §§ 9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

§ 296c. Matching requirement

The Secretary may require that an entity that applies for a grant or contract under this subchapter provide non-Federal matching funds, as appropriate, to ensure the institutional commitment of the entity to the projects funded under the grant. Such non-Federal matching funds may be provided directly or through donations

from public or private entities and may be in cash or in-kind, fairly evaluated, including plant, equipment, or services.

(July 1, 1944, ch. 373, title VIII, § 804, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3565.)

PRIOR PROVISIONS

A prior section 296c, act July 1, 1944, ch. 373, title VIII, § 804, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 911; amended Nov. 18, 1971, Pub. L. 92–158, §§ 2(d)(3), 13, 85 Stat. 468, 480; July 29, 1975, Pub. L. 94–63, title IX, § 941(c), 89 Stat. 364, which related to recovery of payments of funds by United States for construction of facilities, was renumbered section 858 of act July 1, 1944, by Pub. L. 99–92 and transferred to section 298b–5 of this title.

§ 296d. Preference

In awarding grants or contracts under this subchapter, the Secretary shall give preference to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

(July 1, 1944, ch. 373, title VIII, § 805, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3565.)

PRIOR PROVISIONS

A prior section 296d, act July 1, 1944, ch. 373, title VIII, § 805, formerly § 809, as added Nov. 18, 1971, Pub. L. 92–158, § 2(c), 85 Stat. 465; renumbered § 805 and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 902(d), 910(b)(1)(A), (B)(i), (2), (c), 911(b), 941(d), 89 Stat. 355, 356, 364; Sept. 29, 1979, Pub. L. 96–76, title I, § 103, 93 Stat. 579, related to applications, amounts, etc., for loan guarantees and interest subsidies for construction of training facilities by nonprofit nursing schools, prior to repeal by Pub. L. 99–92, §§ 9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

Another prior section 296d, act July 1, 1944, ch. 373, title VIII, § 805, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 912; amended Aug. 16, 1968, Pub. L. 90–490, title II, §§ 211, 215, 82 Stat. 780, 783; Nov. 18, 1971, Pub. L. 92–158, § 3(b), 85 Stat. 469, relating to special project grants and contracts for nurse training programs, was repealed by Pub. L. 94–63, title IX, § 922, July 29, 1975, 89 Stat. 359, eff. July 1, 1975.

§ 296e. Generally applicable provisions

(a) Awarding of grants and contracts

The Secretary shall ensure that grants and contracts under this subchapter are awarded on a competitive basis, as appropriate, to carry out innovative demonstration projects or provide for strategic workforce supplementation activities as needed to meet national nursing service goals and in accordance with this subchapter. Contracts may be entered into under this subchapter with public or private entities as determined necessary by the Secretary.

(b) Information requirements

(1) In general

Recipients of grants and contracts under this subchapter shall meet information requirements as specified by the Secretary.

(2) Evaluations

The Secretary shall establish procedures to ensure the annual evaluation of programs and projects operated by recipients of grants under this subchapter. Such procedures shall ensure that continued funding for such programs and projects will be conditioned upon a demonstration that satisfactory progress has been made by the program or project in meeting the objectives of the program or project.

(c) Training programs

Training programs conducted with amounts received under this subchapter shall meet applicable accreditation and quality standards.

(d) Duration of assistance

(1) In general

Subject to paragraph (2), in the case of an award to an entity of a grant, cooperative agreement, or contract under this subchapter, the period during which payments are made to the entity under the award may not exceed 5 years. The provision of payments under the award shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments. This paragraph may not be construed as limiting the number of awards under the program involved that may be made to the entity.

(2) Limitation

In the case of an award to an entity of a grant, cooperative agreement, or contract under this subchapter, paragraph (1) shall apply only to the extent not inconsistent with any other provision of this subchapter that relates to the period during which payments may be made under the award.

(e) Peer review regarding certain programs

(1) In general

Each application for a grant under this subchapter, except advanced nurse traineeship grants under section 296j(a)(2) of this title, shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval.

(2) Composition

Each peer review group under this subsection shall be composed principally of individuals who are not officers or employees of the Federal Government. In providing for the establishment of peer review groups and procedures, the Secretary shall, except as otherwise provided, ensure sex, racial, ethnic, and geographic representation among the membership of such groups.

(3) Administration

This subsection shall be carried out by the Secretary acting through the Administrator of the Health Resources and Services Administration.

(f) Analytic activities

The Secretary shall ensure that—

(1) cross-cutting workforce analytical activities are carried out as part of the workforce information and analysis activities under this subchapter; and

(2) discipline-specific workforce information is developed and analytical activities are carried out as part of—

(A) the advanced education nursing activities under part B of this subchapter;

(B) the workforce diversity activities under part C of this subchapter; and

(C) basic nursing education and practice activities under part D of this subchapter.

(g) State and regional priorities

Activities under grants or contracts under this subchapter shall, to the extent practicable, be consistent with related Federal, State, or regional nursing professions program plans and priorities.

(h) Filing of applications

(1) In general

Applications for grants or contracts under this subchapter may be submitted by health professions schools, schools of nursing, academic health centers, State or local governments, or other appropriate public or private nonprofit entities as determined appropriate by the Secretary in accordance with this subchapter.

(2) For-profit entities

Notwithstanding paragraph (1), a for-profit entity may be eligible for a grant or contract under this subchapter as determined appropriate by the Secretary.

(July 1, 1944, ch. 373, title VIII, § 806, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3565.)

PRIOR PROVISIONS

A prior section 296e, act July 1, 1944, ch. 373, title VIII, § 810, formerly § 806, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 912; amended Dec. 5, 1967, Pub. L. 90–174, § 12(a), 81 Stat. 541; Aug. 16, 1968, Pub. L. 90–490, title II, § 211, 82 Stat. 781; Nov. 18, 1971, Pub. L. 92–158, § 4(a), 85 Stat. 470; renumbered § 810 and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 902(b), 915(a)–(c), 916(a), (b), 941(e), 89 Stat. 354, 356, 358, 365; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(*o*)(1)–(4), 91 Stat. 393; Sept. 29, 1979, Pub. L. 96–76, title I, § 104, 93 Stat. 579, set forth provisions relating to computation, requirements, etc., respecting grants for institutional support, prior to repeal by Pub. L. 99–92, §§ 9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

§ 296e–1. Grants for health professions education

(a) Grants for health professions education in health disparities and cultural competency

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make awards of grants, contracts, or cooperative agreements to eligible entities for the purpose of carrying out research and demonstration projects (including research and demonstration projects for continuing health professions education) for training and education for the reduction of disparities in health care outcomes and the provision of culturally competent health care. Grants under this section shall be the same as provided in section 293e of this title.

(b) Authorization of appropriations

There are to be appropriated to carry out subsection (a) of this section such sums as may be necessary for each of the fiscal years 2001 through 2004.

(July 1, 1944, ch. 373, title VIII, § 807, as added Pub. L. 106–525, title IV, § 401(b)(2), Nov. 22, 2000, 114 Stat. 2508.)

PRIOR PROVISIONS

A prior section 807 of act July 1, 1944, was renumbered section 808 by Pub. L. 106–525 and is classified to section 296f of this title.

Another prior section 807 of act July 1, 1944, was renumbered section 811 and classified to section 296f of this title prior to repeal by Pub. L. 99–92, § 9(a)(1), Aug. 16, 1985, 99 Stat. 400.

§ 296f. Technical assistance

Funds appropriated under this subchapter may be used by the Secretary to provide technical assistance in relation to any of the authorities under this subchapter.

(July 1, 1944, ch. 373, title VIII, § 808, formerly § 807, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3566; renumbered § 808, Pub. L. 106–525, title IV, § 401(b)(1), Nov. 22, 2000, 114 Stat. 2508.)

PRIOR PROVISIONS

A prior section 296f, act July 1, 1944, ch. 373, title VIII, § 811, formerly § 807, as added Aug. 16, 1968, Pub. L. 90–490, title II, § 212, 82 Stat. 782; amended Nov. 18, 1971, Pub. L. 92–158, § 4(c), 85 Stat. 475; renumbered § 811 and amended July 29, 1975, Pub. L. 94–63, title IX, § 941(f), 89 Stat. 365, related to filing dates, etc., for applications for grants, prior to repeal by Pub. L. 99–92, §§ 9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

A prior section 808 of act July 1, 1944, was classified to section 296g of this title prior to repeal by Pub. L. 94–63, title IX, § 922, July 29, 1975, 89 Stat. 359.

§ 296g. Prohibition against discrimination by schools on basis of sex

The Secretary may not make a grant, loan guarantee, or interest subsidy payment under this subchapter to, or for the benefit of, any school of nursing unless the application for the grant, loan guarantee, or interest subsidy payment contains assurances satisfactory to the Secretary that the school will not discriminate on the basis of sex in the admission of individuals to its training programs. The Secretary may not enter into a contract under this subchapter with any school unless the school furnishes assurances satisfactory to the Secretary that it will not discriminate on the basis of sex in the admission of individuals to its training programs.

(July 1, 1944, ch. 373, title VIII, § 810, formerly § 845, as added Pub. L. 92–158, § 11, Nov. 18, 1971, 85 Stat. 479; renumbered § 855, Pub. L. 94–63, title IX, § 941(k)(1), July 29, 1975, 89 Stat. 366; renumbered § 810, Pub. L. 105–392, title I, § 123(6), Nov. 13, 1998, 112 Stat. 3574.)

CODIFICATION

Section was formerly classified to section 298b–2 of this title prior to renumbering by Pub. L. 105–392.

Amendment by Pub. L. 105–392, which directed the renumbering of section 855 of act July 1, 1944, as section 810 of that act, and the transfer of that section so as to appear after section 809 of that act, was executed by transferring the renumbered section so as to appear after section 807 of act July 1, 1944, to reflect the probable intent of Congress. No section 809 was enacted.

PRIOR PROVISIONS

A prior section 296g, act July 1, 1944, ch. 373, title VIII, § 808, as added Aug. 16, 1968, Pub. L. 90–490, title II § 212, 82 Stat. 783; amended Nov. 18, 1971, Pub. L. 92–158, § 3(a), 85 Stat. 469; July 29, 1975, Pub. L. 94–63, title IX, § 902(c), 89 Stat. 354, authorized appropriations for special project grants and contracts and financial distress grants from the fiscal year ending June 30, 1972 through the fiscal year ending June 30, 1975, prior to repeal by Pub. L. 94–63, title IX, §§ 905, 922, July 29, 1975, 89 Stat. 355, 359, effective July 1, 1975.

A prior section 296h, act July 1, 1944, ch. 373, title VIII, § 809, as added Nov. 18, 1971, Pub. L. 92–158, § 2(c), 85 Stat. 465, which related to loan guarantees and interest subsidies for construction of training facilities by nonprofit nursing schools, was renumbered section 805 of act July 1, 1944, by Pub. L. 94–63 and transferred to section 296d of this title.

A prior section 296i, act July 1, 1944, ch. 373, title VIII, § 810, as added Nov. 18, 1971, Pub. L. 92–158, § 4(b), 85 Stat. 474; amended July 29, 1975, Pub. L. 94–63, title IX, § 902(e), 89 Stat. 355, authorized grants for start-up programs for new nurse training programs, and set out prerequisites, etc., prior to repeal by Pub. L. 94–63, title IX, §§ 905, 931(b), July 29, 1975, 89 Stat. 355, 362, effective July 1, 1975.

PART B—NURSE PRACTITIONERS, NURSE MIDWIVES, NURSE ANESTHETISTS, AND OTHER ADVANCED EDUCATION NURSES

PRIOR PROVISIONS

A prior part B related to assistance to nursing students and consisted of sections 297 to 297n, prior to the general amendment of this subchapter by Pub. L. 105–392.

§ 296j. Advanced education nursing grants

(a) In general

The Secretary may award grants to and enter into contracts with eligible entities to meet the costs of—

(1) projects that support the enhancement of advanced nursing education and practice; and

(2) traineeships for individuals in advanced nursing education programs.

(b) Definition of advanced education nurses

For purposes of this section, the term ''advanced education nurses'' means individuals trained in advanced degree programs including individuals in combined R.N./Master's degree programs, post-nursing master's certificate programs, or, in the case of nurse midwives, in certificate programs in existence on the date that is one day prior to November 13, 1998, to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators, or public health nurses, or in other nurse specialties determined by the Secretary to require advanced education.

(c) Authorized nurse practitioner and nurse midwifery programs

Nurse practitioner and nurse midwifery programs eligible for support under this section are educational programs for registered nurses (irrespective of the type of school of nursing in which the nurses received their training) that—

(1) meet guidelines prescribed by the Secretary; and

(2) have as their objective the education of nurses who will upon completion of their studies in such programs, be qualified to effectively provide primary health care, including primary health care in homes and in ambulatory care facilities, long-term care facilities, acute care, and other health care settings.

(d) Authorized nurse anesthesia programs

Nurse anesthesia programs eligible for support under this section are education programs that—

(1) provide registered nurses with full-time anesthetist education; and

(2) are accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs.

(e) Other authorized educational programs

The Secretary shall prescribe guidelines as appropriate for other advanced nurse education programs eligible for support under this section.

(f) Traineeships

(1) In general

The Secretary may not award a grant to an applicant under subsection (a) of this section unless the applicant involved agrees that traineeships provided with the grant will only pay all or part of the costs of—

(A) the tuition, books, and fees of the program of advanced nurse education with respect to which the traineeship is provided; and

(B) the reasonable living expenses of the individual during the period for which the traineeship is provided.

(2) Doctoral programs

The Secretary may not obligate more than 10 percent of the traineeships under subsection (a) of this section for individuals in doctorate degree programs.

(3) Special consideration

In making awards of grants and contracts under subsection (a)(2) of this section, the Secretary shall give special consideration to an eligible entity that agrees to expend the award to train advanced education nurses who will practice in health professional shortage areas designated under section 254e of this title.

(July 1, 1944, ch. 373, title VIII, § 811, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3566.)

PRIOR PROVISIONS

A prior section 296j, act July 1, 1944, ch. 373, title VIII, § 815, as added July 29, 1975, Pub. L. 94–63, title IX, § 921, 89 Stat. 358; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2752, 95 Stat. 929, set forth provisions relating to authorization, terms and conditions, etc., respecting grants for operational costs or meeting accreditation requirements, prior to repeal by Pub. L. 99–92, §§ 9(a)(1), 10(a), Aug. 16, 1985, 99 Stat. 400, 402, effective Oct. 1, 1985.

Prior sections 296k and 296*l* were repealed by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

Section 296k, act July 1, 1944, ch. 373, title VIII, § 820, as added Pub. L. 94–63, title IX, § 931(a), July 29, 1975, 89 Stat. 359; amended Pub. L. 96–76, title I, § 105, Sept. 29, 1979, 93 Stat. 579; Pub. L. 97–35, title XXVII, § 2753(a)(1), (b), Aug. 13, 1981, 95 Stat. 929; Pub. L. 99–92, § 3, Aug. 16, 1985, 99 Stat. 393; Pub. L. 99–129, title II, § 227(a), Oct. 22, 1985, 99 Stat. 547; Pub. L. 100–607, title VII, §§ 701(a)(2), (b)–(i), 721(b)(1), Nov. 4, 1988, 102 Stat. 3153–3156, 3165; Pub. L. 102–408, title II, § 202(a), Oct. 13, 1992, 106 Stat.

2069; Pub. L. 102–531, title III, § 313(a)(9), Oct. 27, 1992, 106 Stat. 3507, authorized grants and contracts for special projects.

Section 296*l*, act July 1, 1944, ch. 373, title VIII, § 821, as added Pub. L. 94–63, title IX, § 931(a), July 29, 1975, 89 Stat. 361; amended Pub. L. 96–76, title I, § 106, Sept. 29, 1979, 93 Stat. 579; Pub. L. 97–35, title XXVII, § 2754, Aug. 13, 1981, 95 Stat. 930; Pub. L. 99–92, § 4, Aug. 16, 1985, 99 Stat. 394; Pub. L. 99–129, title II, § 227(b), Oct. 22, 1985, 99 Stat. 548; Pub. L. 100–607, title VII, § 702, Nov. 4, 1988, 102 Stat. 3157; Pub. L. 102–408, title II, § 203, Oct. 13, 1992, 106 Stat. 2072, authorized grants and contracts for advanced nurse education.

PART C—INCREASING NURSING WORKFORCE DIVERSITY

PRIOR PROVISIONS

A prior part C set forth general provisions and consisted of sections 298 to 298b–7, prior to the general amendment of this subchapter by Pub. L. 105–392.

§ 296m. Workforce diversity grants

(a) In general

The Secretary may award grants to and enter into contracts with eligible entities to meet the costs of special projects to increase nursing education opportunities for individuals who are from disadvantaged backgrounds (including racial and ethnic minorities underrepresented among registered nurses) by providing student scholarships or stipends, pre-entry preparation, and retention activities.

(b) Guidance

In carrying out subsection (a) of this section, the Secretary shall take into consideration the recommendations of the First, Second and Third Invitational Congresses for Minority Nurse Leaders on ''Caring for the Emerging Majority,'' in 1992, 1993 and 1997, and consult with nursing associations including the American Nurses Association, the National League for Nursing, the American Association of Colleges of Nursing, the National Black Nurses Association, the National Association of Hispanic Nurses, the Association of Asian American and Pacific Islander Nurses, the Native American Indian and Alaskan Nurses Association, and the National Council of State Boards of Nursing.

(c) Required information and conditions for award recipients

(1) In general

Recipients of awards under this section may be required, where requested, to report to the Secretary concerning the annual admission, retention, and graduation rates for individuals from disadvantaged backgrounds and ethnic and racial minorities in the school or schools involved in the projects.

(2) Falling rates

If any of the rates reported under paragraph (1) fall below the average of the two previous years, the grant or contract recipient shall provide the Secretary with plans for immediately improving such rates.

(3) Ineligibility

A recipient described in paragraph (2) shall be ineligible for continued funding under this section if the plan of the recipient fails to improve the rates within the 1-year period beginning on the date such plan is implemented.

(July 1, 1944, ch. 373, title VIII, § 821, as added Pub. L. 105–392, title I, § 123(4), Nov. 13, 1998, 112 Stat. 3568.)

PRIOR PROVISIONS

A prior section 296m, act July 1, 1944, ch. 373, title VIII, § 822, as added Pub. L. 94–63, title IX, § 931(a), July 29, 1975, 89 Stat. 361; amended Pub. L. 95–83, title III, § 307(*o*)(5)(A), Aug. 1, 1977, 91 Stat. 393; Pub. L. 96–76, title I, § 107, Sept. 29, 1979, 93 Stat. 579; Pub. L. 97–35, title XXVII, § 2755, Aug. 13, 1981, 95 Stat. 930; Pub. L. 99–92, § 5, Aug. 16, 1985, 99 Stat. 394; Pub. L. 99–129, title II, § 227(c), Oct. 22, 1985, 99 Stat. 548; Pub. L. 100–607, title VII, § 703, Nov. 4, 1988, 102 Stat. 3157; Pub. L. 101–93, § 5(q), Aug. 16, 1989, 103 Stat. 614; Pub. L. 101–597, title IV, § 401(b)[(a)], Nov. 16, 1990, 104 Stat. 3035; Pub. L. 102–408, title II, § 204, Oct. 13, 1992, 106 Stat. 2072, authorized grants and contracts for nurse practitioner and nurse midwife programs, prior to repeal by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

A prior section 821 of act July 1, 1944, was classified to section 296*l* of this title prior to repeal by Pub. L. 105–392.

PART D—STRENGTHENING CAPACITY FOR BASIC NURSE EDUCATION AND PRACTICE

PRIOR PROVISIONS

A prior part D related to scholarship grants to schools of nursing and consisted of sections 298c to 298c–8, prior to the general amendment of this subchapter by Pub. L. 105–392.

§ 296p. Nurse education, practice, and retention grants

(a) Education priority areas

The Secretary may award grants to or enter into contracts with eligible entities for—

(1) expanding the enrollment in baccalaureate nursing programs;

(2) developing and implementing internship and residency programs to encourage mentoring and the development of specialties; or

(3) providing education in new technologies, including distance learning methodologies.

(b) Practice priority areas

The Secretary may award grants to or enter into contracts with eligible entities for—

(1) establishing or expanding nursing practice arrangements in noninstitutional settings to demonstrate methods to improve access to primary health care in medically underserved communities;

(2) providing care for underserved populations and other high-risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, the homeless, and victims of domestic violence;

(3) providing managed care, quality improvement, and other skills needed to practice in existing and emerging organized health care systems; or

(4) developing cultural competencies among nurses.

(c) Retention priority areas

The Secretary may award grants to and enter into contracts with eligible entities to enhance the nursing workforce by initiating and maintaining nurse retention programs pursuant to paragraph (1) or (2).

(1) Grants for career ladder programs

The Secretary may award grants to and enter into contracts with eligible entities for programs—

(A) to promote career advancement for nursing personnel in a variety of training settings, cross training or specialty training among diverse population groups, and the advancement of individuals including to become professional nurses, advanced education nurses, licensed practical nurses, certified nurse assistants, and home health aides; and

(B) to assist individuals in obtaining education and training required to enter the nursing profession and advance within such profession, such as by providing career counseling and mentoring.

(2) Enhancing patient care delivery systems

(A) Grants

The Secretary may award grants to eligible entities to improve the retention of nurses and enhance patient care that is directly related to nursing activities by enhancing collaboration and communication among nurses and other health care professionals, and by promoting nurse involvement in the organizational and clinical decisionmaking processes of a health care facility.

(B) Preference

In making awards of grants under this paragraph, the Secretary shall give a preference to applicants that have not previously received an award under this paragraph.

(C) Continuation of an award

The Secretary shall make continuation of any award under this paragraph beyond the second year of such award contingent on the recipient of such award having demonstrated to the Secretary measurable and substantive improvement in nurse retention or patient care.

(d) Other priority areas

The Secretary may award grants to or enter into contracts with eligible entities to address other areas that are of high priority to nurse education, practice, and retention, as determined by the Secretary.

(e) Preference

For purposes of any amount of funds appropriated to carry out this section for fiscal year 2003, 2004, or 2005 that is in excess of the amount of funds appropriated to carry out this section for fiscal year 2002, the Secretary shall give preference to awarding grants or entering into contracts under subsections (a)(2) and (c) of this section.

(f) Report

The Secretary shall submit to the Congress before the end of each fiscal year a report on the grants awarded and the contracts entered into under this section. Each such report shall identify the overall number of such grants and contracts and provide an explanation of why each such grant or contract will meet the priority need of the nursing workforce.

(g) Eligible entity

For purposes of this section, the term ''eligible entity'' includes a school of nursing, a health care facility, or a partnership of such a school and facility.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2003 through 2007.

(July 1, 1944, ch. 373, title VIII, §831, as added Pub. L. 105–392, title I, §123(4), Nov. 13, 1998, 112 Stat. 3568; amended Pub. L. 107–205, title II, §201, Aug. 1, 2002, 116 Stat. 815.)

PRIOR PROVISIONS

A prior section 831 of act July 1, 1944, was classified to section 297–1 of this title prior to repeal by Pub. L. 105–392.

Prior sections 296r, 297, and 297–1 were repealed by Pub. L. 105–392, title I, §123(1), Nov. 13, 1998, 112 Stat. 3562.

Section 296r, act July 1, 1944, ch. 373, title VIII, §827, as added Pub. L. 100–607, title VII, §701(a)(3), Nov. 4, 1988, 102 Stat. 3153; amended Pub. L. 102–408, title II, §205, Oct. 13, 1992, 106 Stat. 2073, authorized grants and contracts for special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds.

Section 297, act July 1, 1944, ch. 373, title VIII, §830, formerly §821, as added Pub. L. 88–581, §2, Sept. 4, 1964, 78 Stat. 913; amended Pub. L. 90–490, title II, §221, Aug. 16, 1968, 82 Stat. 783; Pub. L. 92–52, §5, July 9, 1971, 85 Stat. 145; Pub. L. 92–158, §§5, 13, Nov. 18, 1971, 85 Stat. 475, 480; renumbered §830 and amended Pub. L. 94–63, title IX, §§935, 941(g)(2), July 29, 1975, 89 Stat. 362, 365; Pub. L. 94–484, title IX, §901, Oct. 12, 1976, 90 Stat. 2323; Pub. L. 95–83, title III, §307(*o*)(5)(B), Aug. 1, 1977, 91 Stat. 394; Pub. L. 96–76, title I, §108, Sept. 29, 1979, 93 Stat. 579; Pub. L. 97–35, title XXVII, §2756, Aug. 13, 1981, 95 Stat. 931; Pub. L. 99–92, §6, Aug. 16, 1985, 99 Stat. 395; Pub. L. 100–607, title VII, §711, Nov. 4, 1988, 102 Stat. 3159; Pub. L. 102–408, title II, §206, Oct. 13, 1992, 106 Stat. 2073; Pub. L. 103–43, title XX, §2014(f), June 10, 1993, 107 Stat. 217, authorized grants for traineeships for advanced education of professional nurses.

Section 297–1, act July 1, 1944, ch. 373, title VIII, §831, as added Pub. L. 96–76, title I, §111, Sept. 29, 1979, 93 Stat. 580; amended Pub. L. 97–414, §8(*l*), Jan. 4, 1983, 96 Stat. 2061; Pub. L. 99–92, §7, Aug. 16, 1985, 99 Stat. 396; Pub. L. 100–607, title VII, §712, Nov. 4, 1988, 102 Stat. 3160; Pub. L. 102–408, title II, §207, Oct. 13, 1992, 106 Stat. 2074, authorized grants for training of nurse anesthetists.

AMENDMENTS

2002—Pub. L. 107–205 amended section catchline and text generally. Prior to amendment, text read as follows:

''(a) IN GENERAL.—The Secretary may award grants to and enter into contracts with eligible entities for projects to strengthen capacity for basic nurse education and practice.

''(b) PRIORITY AREAS.—In awarding grants or contracts under this section the Secretary shall give priority to entities that will use amounts provided under such a grant or contract to enhance the educational mix and utilization of the basic nursing workforce by strengthening programs that provide basic nurse education, such as through—

''(1) establishing or expanding nursing practice arrangements in noninstitutional settings to demonstrate methods to improve access to primary health care in medically underserved communities;

''(2) providing care for underserved populations and other high-risk groups such as the elderly, individuals with HIV-AIDS, substance abusers, the homeless, and victims of domestic violence;

''(3) providing managed care, quality improvement, and other skills needed to practice in existing and emerging organized health care systems;

''(4) developing cultural competencies among nurses;

''(5) expanding the enrollment in baccalaureate nursing programs;

''(6) promoting career mobility for nursing personnel in a variety of training settings and cross training or specialty training among diverse population groups;

''(7) providing education in informatics, including distance learning methodologies; or

''(8) other priority areas as determined by the Secretary.''

PART E—STUDENT LOANS

AMENDMENTS

1998—Pub. L. 105–392, title I, § 123(2), Nov. 13, 1998, 112 Stat. 3562, redesignated subpart II of part B as part E.

1975—Pub. L. 94–63, title IX, § 941(g)(3), July 29, 1975, 89 Stat. 365, inserted subpart II heading.

§ 297a. Student loan fund

(a) Agreements to establish and operate fund authorized

The Secretary is authorized to enter into an agreement for the establishment and operation of a student loan fund in accordance with this part[1] with any public or nonprofit private school of nursing which is located in a State.

(b) Provisions of agreements

Each agreement entered into under this section shall—

(1) provide for establishment of a student loan fund by the school;

(2) provide for deposit in the fund, except as provided in section 297h of this title, of (A) the Federal capital contributions paid from allotments under section 297d of this title to the school by the Secretary, (B) an additional amount from other sources equal to not less than one-ninth of such Federal capital contributions, (C) collections of principal and interest on loans made from the fund, (D) collections pursuant to section 297b(f) of this title, and (E) any other earnings of the fund;

(3) provide that the fund, except as provided in section 297h of this title, shall be used only for loans to students of the school in accordance with the agreement and for costs of collection of such loans and interest thereon;

(4) provide that loans may be made from such fund only to students pursuing a fulltime or half-time course of study at the school leading to a baccalaureate or associate degree in nursing or an equivalent degree or a diploma in nursing, or to a graduate degree in nursing;

(5) contain such other provisions as are necessary to protect the financial interests of the United States.

(c) Regulatory standards applicable to collection of loans

(1) Any standard established by the Secretary by regulation for the collection by schools of nursing of loans made pursuant to loan agreements under this part[1] shall provide that the failure of any such school to collect such loans shall be measured in accordance with this subsection. With respect to the student loan fund established pursuant to such agreements, this subsection may not be construed to require such schools to reimburse such loan fund for loans that became uncollectable prior to 1983.

(2) The measurement of a school's failure to collect loans made under this part[1] shall be the ratio (stated as a percentage) that the defaulted principal amount outstanding of such school bears to the matured loans of such school.

(3) For purposes of this subsection—

(A) the term ''default'' means the failure of a borrower of a loan made under this part[1] to—

(i) make an installment payment when due; or

(ii) comply with any other term of the promissory note for such loan,

except that a loan made under this part[1] shall not be considered to be in default if the loan is discharged in bankruptcy or if the school reasonably concludes from written contacts with the borrower that the borrower intends to repay the loan;

(B) the term ''defaulted principal amount outstanding'' means the total amount borrowed from the loan fund of a school that has reached the repayment stage (minus any principal amount repaid or cancelled) on loans—

(i) repayable monthly and in default for at least 120 days; and

(ii) repayable less frequently than monthly and in default for at least 180 days;

(C) the term ''grace period'' means the period of nine months beginning on the date on which the borrower ceases to pursue a full-time or half-time course of study at a school of nursing; and

(D) the term ''matured loans'' means the total principal amount of all loans made by a school of nursing under this part[1] minus the total principal amount of loans made by such school to students who are—

(i) enrolled in a full-time or half-time course of study at such school; or

(ii) in their grace period.

(July 1, 1944, ch. 373, title VIII, § 835, formerly § 822, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 913; amended Pub. L. 90–490, title II, § 222(a), (c)(2), Aug. 16, 1968, 82 Stat. 783, 784; Pub. L. 92–158, § 6(d)(3), (e), Nov. 18, 1971, 85 Stat. 478; Pub. L. 93–385, § 3(b), Aug. 23, 1974, 88 Stat. 741; renumbered § 835 and amended Pub. L. 94–63, title IX, §§ 936(a), 941(h)(1)–(3), (i)(1), (2), July 29, 1975, 89 Stat. 362, 365, 366; Pub. L. 96–76, title I, § 109(a), Sept. 29, 1979, 93 Stat. 579; Pub. L. 97–35, title XXVII, § 2757(a), Aug. 13, 1981, 95 Stat. 931; Pub. L. 99–92, § 8(a), Aug. 16, 1985, 99 Stat. 397; Pub. L. 99–129, title II, § 209(j)(2), Oct. 22, 1985, 99 Stat. 536; Pub. L. 100–607, title VII, § 713(a), Nov. 4, 1988, 102 Stat. 3160.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a) and (c), was in the original ''this subpart'' and was translated to reflect the probable intent of Congress and the redesigna-

[1] See References in Text note below.

tion of subpart II of part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, § 123(2), Nov. 13, 1998, 112 Stat. 3562.

AMENDMENTS

1988—Subsec. (c)(1). Pub. L. 100–607 inserted provisions relating to reimbursement of student loan fund for certain uncollectable loans.

1985—Subsec. (c). Pub. L. 99–92 added subsec. (c).

Subsec. (c)(3)(C). Pub. L. 99–129, § 209(j)(2)(A), substituted provisions defining ''grace period'' as the period of nine months beginning on the date on which the borrower ceases to pursue a full-time or half-time course of study at a school of nursing for former provisions defining ''grace period'' as the period of one year beginning on (i) the date on which the borrower ceased to pursue a full-time or half-time course of study at a school of nursing; or (ii) the date on which ended any period described in clause (A) or (B) of section 297b(b)(2) of this title which was applicable to such borrower, whichever was later.

Subsec. (c)(3)(D)(ii). Pub. L. 99–129, § 209(j)(2)(B), struck out ''first'' before ''grace period.''

1981—Subsec. (b)(4). Pub. L. 97–35 struck out provisions respecting prohibition on loans to students attending school before Oct. 1, 1980.

1979—Subsec. (b)(4). Pub. L. 96–76 substituted ''1980'' for ''1978''.

1975—Subsec. (a). Pub. L. 94–63, § 941(h)(1), (2), substituted ''subpart'' for ''part'' and struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (b). Pub. L. 94–63, §§ 936(a), 941(h)(3), (i)(2), in cl. (2) substituted ''from allotments under section 297d of this title'' for ''under this part'', in cl. (4) substituted ''October 1, 1978'' for ''July 1, 1975'', and in cls. (2) and (3) substituted references to sections 836 and 841 of the Act for references to sections 823 and 829, which had previously been translated as sections 297b and 297h of this title, respectively, requiring no further translations in the text as a result of the renumbering of the Public Health Service Act.

1974—Subsec. (b)(4). Pub. L. 93–385 substituted ''1975'' for ''1974''.

1971—Subsec. (b)(4). Pub. L. 92–158 substituted ''full-time or half-time course of study'' for ''full-time course of study'' and ''1974'' for ''1971''.

1968—Subsec. (b)(2). Pub. L. 90–490, § 222(a)(1), (c)(2), inserted '', except as provided in section 297h of this title,'' after ''fund'' where first appearing and added cl. (D) and redesignated former cl. (D) as (E), respectively.

Subsec. (b)(3). Pub. L. 90–490, § 222(a)(1), inserted '', except as provided in section 297h of this title'' after ''fund'' where first appearing and authorized the cancellation of an additional 50 per centum of a nursery student loan.

Subsec. (b)(4). Pub. L. 90–490, § 222(a)(2), substituted ''1971'' for ''1969''.

EFFECTIVE DATE OF 1985 AMENDMENTS

Amendment by Pub. L. 99–129 effective June 30, 1984, see section 228(b)(5) of Pub. L. 99–129, set out as a note under section 254*l* of this title.

Section 10 of Pub. L. 99–92 provided that:

''(a) Except as provided in subsection (b), this Act [enacting section 297i of this title, transferring section 296c to section 298b–5 of this title, amending this section, sections 296k, 296*l*, 296m, 297, 297–1, 297b, 297d, 297e, 298, 298b, and 298b–5 of this title, sections 1332, 1333, 1336, and 1341 of Title 15, Commerce and Trade, and section 6103 of Title 26, Internal Revenue Code, repealing sections 296 to 296b, 296d to 296f, 296j, 297h, and 297j of this title, and enacting provisions set out as notes under sections 201 and 298b–5 of this title and section 1333 of Title 15] and the amendments and repeals made by this Act shall take effect on October 1, 1985.

''(b)(1) The provisions of section 9(c) of this Act [transferring section 296c of this title to section 298b–5 of this title, amending section 298b–5 of this title, and enacting provisions set out as notes under section 298b–5 of this title] and the amendment made by paragraph (1) of such section shall take effect on the date of enactment of this Act [Aug. 16, 1985].

''(2) The amendment made by section 8(a) of this Act [amending section 297a of this title] shall take effect June 30, 1984.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 905 of Pub. L. 94–63 provided that: ''Except as may otherwise be specifically provided, the amendments made by this part [part B (§§ 905–937) of title IX of Pub. L. 94–63, enacting sections 296j to 296m of this title, amending sections 296, 296a, 296d, 296e, 297 to 297c, 297e, and 297j of this title, repealing sections 296d, 296g, 296i, 297f, and 298c–7 of this title, and enacting provisions set out as notes under sections 296, 296a, 296d, 296e, 296m, 297, 297b, and 297f of this title] shall take effect July 1, 1975. The amendments made by this part to provisions of title VIII of the Public Health Service Act [this subchapter] (hereinafter in this part referred to as the 'Act') are made to such provisions as amended by part A of this title [amending sections 296, 296d, 296e, 296g, 296i, 297j, and 298c–7 of this title].''

Section 942 of Pub. L. 94–63 provided that: ''The amendments made by section 941 [enacting section 298b–3 of this title, amending sections 296a to 296d, 296f, 297a to 297e, 297g to 297k, 298, and 298b of this title, and repealing section 298c–8 of this title] shall take effect July 1, 1975. Except as otherwise specifically provided, the amendments made by section 941 to provisions of title VIII of the Act [this subchapter] are made to such provisions as in effect July 1, 1975, and as amended by part B of this title [see note set out above].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 222(c)(2) of Pub. L. 90–490 applicable with respect to loans made after June 30, 1969, see section 222(i) of Pub. L. 90–490, set out as a note under section 297b of this title.

§ 297b. Loan provisions

(a) Maximum amount per individual per year; preference to first year students

The total of the loans for any academic year (or its equivalent, as determined under regulations of the Secretary) made by schools of nursing from loan funds established pursuant to agreements under this part[1] may not exceed $2,500 in the case of any student, except that for the final two academic years of the program involved, such total may not exceed $4,000. The aggregate of the loans for all years from such funds may not exceed $13,000 in the case of any student. In the granting of such loans, a school shall give preference to licensed practical nurses, to persons with exceptional financial need, and to persons who enter as first-year students after enactment of this subchapter.

(b) Terms and conditions

Loans from any such student loan fund by any school shall be made on such terms and conditions as the school may determine; subject, however, to such conditions, limitations, and requirements as the Secretary may prescribe (by regulation or in the agreement with the school) with a view to preventing impairment of the capital of such fund to the maximum extent practicable in the light of the objective of enabling the student to complete his course of study; and except that—

(1) such a loan may be made only to a student who (A) is in need of the amount of the

[1] See References in Text note below.

loan to pursue a full-time or half-time course of study at the school leading to a baccalaureate or associate degree in nursing or an equivalent degree, or a diploma in nursing, or a graduate degree in nursing, (B) is capable, in the opinion of the school, of maintaining good standing in such course of study, and (C) with respect to any student enrolling in the school after June 30, 1986, is of financial need (as defined in regulations issued by the Secretary);;[2]

(2) such a loan shall be repayable in equal or graduated periodic installments (with the right of the borrower to accelerate repayment) over the ten-year period which begins nine months after the student ceases to pursue a full-time or half-time course of study at a school of nursing, excluding from such 10-year period all (A) periods (up to three years) of (i) active duty performed by the borrower as a member of a uniformed service, or (ii) service as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.], (B) periods (up to ten years) during which the borrower is pursuing a full-time or half-time course of study at a collegiate school of nursing leading to baccalaureate degree in nursing or an equivalent degree, or to graduate degree in nursing, or is otherwise pursuing advanced professional training in nursing (or training to be a nurse anesthetist), and (C) such additional periods under the terms of paragraph (8) of this subsection;

(3) in the case of a student who received such a loan before September 29, 1979, an amount up to 85 per centum of any such loan made before such date (plus interest thereon) shall be canceled for full-time employment as a professional nurse (including teaching in any of the fields of nurse training and service as an administrator, supervisor, or consultant in any of the fields of nursing) in any public or nonprofit private agency, institution, or organization (including neighborhood health centers), at the rate of 15 per centum of the amount of such loan (plus interest) unpaid on the first day of such service for each of the first, second, and third complete year of such service, and 20 per centum of such amount (plus interest) for each complete fourth and fifth year of such service;

(4) the liability to repay the unpaid balance of such loan and accrued interest thereon shall be canceled upon the death of the borrower, or if the Secretary determines that he has become permanently and totally disabled;

(5) such a loan shall bear interest on the unpaid balance of the loan, computed only for periods during which the loan is repayable, at the rate of 5 percent per annum;

(6) such a loan shall be made without security or endorsement, except that if the borrower is a minor and the note or other evidence of obligation executed by him would not, under the applicable law, create a binding obligation, either security or endorsement may be required;

(7) no note or other evidence of any such loan may be transferred or assigned by the school making the loan except that, if the borrower transfers to another school participating in the program under this part[1] such note or other evidence of a loan may be transferred to such other school; and

(8) pursuant to uniform criteria established by the Secretary, the repayment period established under paragraph (2) for any student borrower who during the repayment period failed to make consecutive payments and who, during the last 12 months of the repayment period, has made at least 12 consecutive payments may be extended for a period not to exceed 10 years.

(c) Cancellation

Where all or any part of a loan, or interest, is canceled under this section, the Secretary shall pay to the school an amount equal to the school's proportionate share of the canceled portion, as determined by the Secretary.

(d) Installments

Any loan for any year by a school from a student loan fund established pursuant to an agreement under this part[1] shall be made in such installments as may be provided in regulations of the Secretary or such agreement and, upon notice to the Secretary by the school that any recipient of a loan is failing to maintain satisfactory standing, any or all further installments of his loan shall be withheld, as may be appropriate.

(e) Availability to eligible students in need

An agreement under this part[1] with any school shall include provisions designed to make loans from the student loan fund established thereunder reasonably available (to the extent of the available funds in such fund) to all eligible students in the school in need thereof.

(f) Penalty for late payment

Subject to regulations of the Secretary and in accordance with this section, a school shall assess a charge with respect to a loan from the loan fund established pursuant to an agreement under this part[1] for failure of the borrower to pay all or any part of an installment when it is due and, in the case of a borrower who is entitled to deferment of the loan under subsection (b)(2) of this section or cancellation of part or all of the loan under subsection (b)(3) of this section, for any failure to file timely and satisfactory evidence for such entitlement. No such charge may be made if the payment of such installment or the filing of such evidence is made within 60 days after the date on which such installment or filing is due. The amount of any such charge may not exceed an amount equal to 6 percent of the amount of such installment. The school may elect to add the amount of any such charge to the principal amount of the loan as of the first day after the day on which such installment or evidence was due, or to make the amount of the charge payable to the school not later than the due date of the next installment after receipt by the borrower of notice of the assessment of the charge.

(g) Minimum monthly repayment

A school may provide in accordance with regulations of the Secretary, that during the repayment period of a loan from a loan fund estab-

[2] So in original.

lished pursuant to an agreement under this part[1] payments of principal and interest by the borrower with respect to all the outstanding loans made to him from loan funds so established shall be at a rate equal to not less than $40 per month.

(h) Loan cancellation

Notwithstanding the amendment made by section 6(b) of the Nurse Training Act of 1971 to this section—

(A) any person who obtained one or more loans from a loan fund established under this part,[1] who before November 18, 1971, became eligible for cancellation of all or part of such loans (including accrued interest) under this section (as in effect on the day before such date), and who on such date was not engaged in a service for which loan cancellation was authorized under this section (as so in effect), may at any time elect to receive such cancellation in accordance with this subsection (as so in effect); and

(B) in the case of any person who obtained one or more loans from a loan fund established under this part[1] and who on such date was engaged in a service for which cancellation of all or part of such loans (including accrued interest) was authorized under this section (as so in effect), this section (as so in effect) shall continue to apply to such person for purposes of providing such loan cancellation until he terminates such service.

Nothing in this subsection shall be construed to prevent any person from entering into an agreement for loan cancellation under subsection (h)[1] of this section (as amended by section 6(b)(2) of the Nurse Training Act of 1971).

(i) Loan repayment

Upon application by a person who received, and is under an obligation to repay, any loan made to such person as a nursing student, the Secretary may undertake to repay (without liability to the applicant) all or any part of such loan, and any interest or portion thereof outstanding thereon, upon his determination, pursuant to regulations establishing criteria therefor, that the applicant—

(1) failed to complete the nursing studies with respect to which such loan was made;

(2) is in exceptionally needy circumstances; and

(3) has not resumed, or cannot reasonably be expected to resume, such nursing studies within two years following the date upon which the applicant terminated the studies with respect to which such loan was made.

(j) Collection by Secretary of loan in default; preconditions and procedures applicable

The Secretary is authorized to attempt to collect any loan which was made under this part,[1] which is in default, and which was referred to the Secretary by a school of nursing with which the Secretary has an agreement under this part,[1] on behalf of that school under such terms and conditions as the Secretary may prescribe (including reimbursement from the school's student loan fund for expenses the Secretary may reasonably incur in attempting collection), but only if the school has complied with such requirements as the Secretary may specify by regulation with respect to the collection of loans under this part.[1] A loan so referred shall be treated as a debt subject to section 5514 of title 5. Amounts collected shall be deposited in the school's student loan fund. Whenever the Secretary desires the institution of a civil action regarding any such loan, the Secretary shall refer the matter to the Attorney General for appropriate action.

(k) Redesignated (j)

(*l*) Elimination of statute of limitation for loan collections

(1) Purpose

It is the purpose of this subsection to ensure that obligations to repay loans under this section are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced.

(2) Prohibition

Notwithstanding any other provision of Federal or State law, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action may be initiated or taken by a school of nursing that has an agreement with the Secretary pursuant to section 297a of this title that is seeking the repayment of the amount due from a borrower on a loan made under this part[1] after the default of the borrower on such loan.

(July 1, 1944, ch. 373, title VIII, §836, formerly §823, as added Pub. L. 88–581, §2, Sept. 4, 1964, 78 Stat. 914; amended Pub. L. 89–290, §4(g)(2), Oct. 22, 1965, 79 Stat. 1058; Pub. L. 90–490, title II, §222(b), (c)(1), Aug. 16, 1968, 82 Stat. 783, 784; Pub. L. 92–158, §6(a), (b)(1), (e), Nov. 18, 1971, 85 Stat. 475, 476, 478; renumbered §836 and amended Pub. L. 94–63, title IX, §§936(b), 941(h)(1), (2), (5), (i)(1), July 29, 1975, 89 Stat. 363, 365; Pub. L. 96–76, title I, §112, Sept. 29, 1979, 93 Stat. 580; Pub. L. 97–35, title XXVII, §2757(b), Aug. 13, 1981, 95 Stat. 931; Pub. L. 99–92, §8(b)–(d), Aug. 16, 1985, 99 Stat. 398; Pub. L. 100–607, title VII, §§713(b)–(g), 714(a)–(c), Nov. 4, 1988, 102 Stat. 3160, 3161; Pub. L. 101–93, §5(r), Aug. 16, 1989, 103 Stat. 614; Pub. L. 102–408, title II, §211(a)(1), Oct. 13, 1992, 106 Stat. 2078; Pub. L. 105–392, title I, §133(a)–(c)(1), Nov. 13, 1998, 112 Stat. 3575.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a), (b)(7), (d) to (h), (j), and (*l*)(2), was in the original ''this subpart'' and was translated to reflect the probable intent of Congress and the redesignation of subpart II of part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, §123(2), Nov. 13, 1998, 112 Stat. 3562.

The Peace Corps Act, referred to in subsec. (b)(2), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Subsection (h) of this section, referred to in subsec. (h), was struck out and subsec. (i) was redesignated (h) by Pub. L. 102–408. See 1992 Amendment note below.

Section 6(b) of the Nurse Training Act of 1971, referred to in subsec. (h), is section 6(b) of Pub. L. 92–158,

Nov. 18, 1971, 85 Stat. 477. Section 6(b)(1) amended subsec. (b)(3) of this section, added former subsec. (h) of this section, and enacted the provisions editorially classified to subsec. (i) [now (h)] of this section. Section 6(b)(2) enacted section 297i of this title which was transferred and redesignated as subsec. (j) [now (i)] of this section pursuant to section 941(h)(5) of Pub. L. 94–63.

CODIFICATION

Provisions of subsec. (h) of this section were, in the original, enacted by section 6(b)(1) of Pub. L. 92–158, without directory language with respect to classification in the Code and were editorially set out as subsec. (i) [now (h)] as the probable intent of Congress.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–392, §133(a)(1), substituted semicolon for period at end.

Subsec. (b)(2)(C). Pub. L. 105–392, §133(a)(2), added subpar. (C).

Subsec. (b)(8). Pub. L. 105–392, §133(a)(3), (4), added par. (8).

Subsec. (g). Pub. L. 105–392, §133(b), substituted ''$40'' for ''$15''.

Subsec. (*l*). Pub. L. 105–392, §133(c)(1), added subsec. (*l*).

1992—Subsecs. (h) to (k). Pub. L. 102–408 redesignated subsecs. (i) to (k) as (h) to (j), respectively, and struck out former subsec. (h) which provided for a loan repayment program. See section 297n of this title.

1989—Subsec. (h)(6)(C). Pub. L. 101–93 substituted ''means a skilled nursing facility, as such term is defined in section 1395x(j) of this title, and an intermediate care facility, as such term is defined in section 1396d(c) of this title'' for ''means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1396d of this title''.

1988—Subsec. (a). Pub. L. 100–607, §713(b), (c), inserted in first sentence '', except that for the final two academic years of the program involved, such total may not exceed $4,000'', substituted ''$13,000'' for ''$10,000'' in second sentence, and inserted '', to persons with exceptional financial need,'' after ''nurses'' in third sentence.

Subsec. (b)(1)(C). Pub. L. 100–607, §713(d), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''if a student who will enroll in the school after June 30, 1986, is of exceptional financial need (as defined by regulations of the Secretary)''.

Subsec. (b)(2)(B). Pub. L. 100–607, §713(e), substituted ''ten'' for ''five'' and inserted ''or half-time'' after ''a full-time''.

Subsec. (b)(5). Pub. L. 100–607, §713(f), substituted ''5 percent'' for ''6 per centum''.

Subsec. (h)(1)(C). Pub. L. 100–607, §714(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''who enters into an agreement with the Secretary to serve as a nurse for a period of at least two years in an area in a State determined by the Secretary, after consultation with the appropriate State health authority (as determined by the Secretary by regulations), to have a shortage of and need for nurses;''.

Subsecs. (h)(5), (6). Pub. L. 100–607, §714(b), (c), added pars. (5) and (6).

Subsec. (j)(2) to (4). Pub. L. 100–607, §713(g), redesignated par. (4) as (3) and struck out former par. (3) which related to low-income or disadvantaged family.

1985—Subsec. (b)(1). Pub. L. 99–92, §8(b), which directed that cl. (C) be inserted before period, was executed by inserting cl. (C) before the semicolon as the probable intent of Congress.

Subsec. (f). Pub. L. 99–92, §8(c), substituted ''the Secretary and in accordance with this section, a school shall'' for ''the Secretary, a school may'', and substituted provisions relating to charges not allowed in certain cases and allowed where payment is late for provisions relating to maximum amount of late charges.

Subsec. (k). Pub. L. 99–92, §8(d), added subsec. (k).

1981—Subsec. (b)(5). Pub. L. 97–35 substituted ''6'' for ''3''.

1979—Subsec. (b)(3). Pub. L. 96–76 inserted provisions requiring conditions to be applicable to loans arising prior to Sept. 29, 1979.

1975—Subsec. (a). Pub. L. 94–63, §941(h)(1), substituted ''subpart'' for ''part''.

Subsec. (b). Pub. L. 94–63, §941(h)(2), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (b)(2)(B). Pub. L. 94–63, §936(b), inserted ''(or training to be a nurse anesthetist)'' after ''professional training in nursing''.

Subsec. (b)(7). Pub. L. 94–63, §941(h)(1), substituted ''subpart'' for ''part''.

Subsec. (c). Pub. L. 94–63, §941(h)(2), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsecs. (d) to (i). Pub. L. 94–63, §941(h)(1), substituted ''subpart'' for ''part'' whenever appearing.

Subsec. (j). Pub. L. 94–63, §941(h)(5), added subsec. (j), formerly classified as section 297i of this title pursuant to enactment as section 830 of act July 1, 1944, ch. 373. Section 941(h)(5)(A) of Pub. L. 94–63 transferred such former section to this section and section 941(h)(5)(B) redesignated provision as subsec. (j).

1971—Subsec. (a). Pub. L. 92–158, §6(a), substituted''$2,500'' for ''$1,500'' and ''$10,000'' for ''$60,000''.

Subsec. (b)(1). Pub. L. 92–158, §6(e), substituted ''full-time or half-time course of study'' for ''full-time course of study''.

Subsec. (b)(2). Pub. L. 92–158, §6(e), in text preceding cl. (A), substituted ''full-time or half-time course of study'' for ''full-time course of study''.

Subsec. (b)(3). Pub. L. 92–158, §6(b)(1)(A), substituted provisions cancelling up to 85 per centum of loan, for provisions cancelling up to 50 per centum of loan, where borrower holds full-time employment as a professional nurse, added to areas of possible employment under this par. by inserting reference to any public or nonprofit organization including neighborhood health centers, substituted, with regard to the rate of cancellation of loan, the rate of 15 per centum of the amount unpaid on the first day of service, continuing at such rate with each of the first, second and third complete years of such service and 20 per centum of such amount with each complete fourth and fifth year of service for the rate of 10 per centum of the amount unpaid on the first day of service and to continue with each complete year of service, and struck out reference to 15 per centum rate of cancellation per complete year of service plus, for the purpose of such higher rate, the cancellation of an additional 50 per centum of such loan where such service is in a public or nonprofit hospital in any area which is determined, in accordance with the regulations of the Secretary, to be in an area having a substantial shortage of such nurses at such hospitals.

Subsec. (h). Pub. L. 92–158, §6(b)(1)(B), added subsec. (h).

1968—Subsec. (a). Pub. L. 90–490, §222(b)(1), increased limitation on amount of annual loans per student from $1,000 to $1,500, required preferences in granting of loans to licensed practical nurses, and limited aggregate of loans for all years to any one student to $6,000.

Subsec. (b)(2). Pub. L. 90–490, §222(b)(2), provided for commencement of repayment nine months, rather than one year, after student ceases to pursue full-time course of study, excluded from ten-year repayment period periods (up to three years) of active duty as member of a uniformed service or Peace Corps volunteer service and periods (up to five years) as undergraduate or graduate degree student in nursing, including advanced professional training in nursing, and struck out prohibition against accrual of interest on loans.

Subsec. (b)(3). Pub. L. 90–490, §222(b)(3), authorized cancellation of an additional 50 per centum of a nursing student loan (plus interest) at rate of 15 per centum for each complete year of service in a public or other nonprofit hospital in an area with a substantial shortage of nurses.

Subsec. (b)(5). Pub. L. 90–490, § 222(b)(4), struck out provisions for an interest rate which is the greater of 3 per centum or the going Federal rate at time loan is made, defining going Federal rate, and making rate determined for first loan applicable to any subsequent loan.

Subsecs. (f), (g). Pub. L. 90–490, § 222(c)(1), added subsecs. (f) and (g).

1965—Subsec. (b)(5). Pub. L. 89–290 applied rate of interest for first loan obtained by a student from a loan fund established under this part to any subsequent loan to such student from such fund during his course of study.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–392, title I, § 133(c)(2), Nov. 13, 1998, 112 Stat. 3576, provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to actions pending on or after the date of enactment of this Act [Nov. 13, 1998].''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 297a of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 936(b) of Pub. L. 94–63 provided that the amendment made by that section is effective with respect to periods of training to be a nurse anesthetist undertaken on or after July 29, 1975.

Amendment by section 941(h)(1), (2), (5), (i)(1) of Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 297a of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 6(a)(1) of Pub. L. 92–158 provided that the amendment made by that section is effective with respect to academic years (or their equivalent as determined under regulations of the Secretary of Health, Education, and Welfare under this section) beginning after June 30, 1971.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 222(i) of Pub. L. 90–490 provided that: ''The amendments made by subsection (b)(1) and (2) [amending this section] shall apply with respect to all loans made after June 30, 1969, and with respect to loans made from a student loan fund established under an agreement pursuant to section 822 [section 297a of this title], before July 1, 1969, to the extent agreed to by the school which made the loans and the Secretary (but then only for years beginning after June 30, 1968). The amendments made by subsection (b)(4) [amending this section] and subsection (c) [amending this section and section 297a of this title] shall apply with respect to loans made after June 30, 1969. The amendment made by subsection (h) [enacting section 297h of this title] shall apply with respect to appropriations for fiscal years beginning after June 30, 1969. The amendment made by subsection (b)(3) [amending this section] shall apply with respect to service, specified in section 823(b)(3) of such Act [subsec. (b)(3) of this section] performed during academic years beginning after the enactment of this Act, whether the loan was made before or after such enactment [Aug. 16, 1968].''

CONSTRUCTION OF 1992 AMENDMENT

Section 211(b) of Pub. L. 102–408 provided that: ''With respect to section 836(h) of the Public Health Service Act [former subsec. (h) of this section], as in effect prior to the date of the enactment of this Act [Oct. 13, 1992], any agreement entered into under such section that is in effect on the day before such date remains in effect in accordance with the terms of the agreement, notwithstanding the amendment made by subsection (a) of this section [enacting section 297n of this title, amending this section, and repealing section 297c–1 of this title].''

§ 297c. Repealed. Pub. L. 105–392, title I, § 123(3), Nov. 13, 1998, 112 Stat. 3562

Section, act July 1, 1944, ch. 373, title VIII, § 837, formerly § 824, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 915; amended Pub. L. 89–751, § 6(b), Nov. 3, 1966, 80 Stat. 1235; Pub. L. 90–490, title II, § 222(d), Aug. 16, 1968, 82 Stat. 784; Pub. L. 92–52, § 3(a), July 9, 1971, 85 Stat. 144; Pub. L. 92–158, § 6(c), Nov. 18, 1971, 85 Stat. 477; Pub. L. 93–385, § 3(a), Aug. 23, 1974, 88 Stat. 741; renumbered § 837 and amended Pub. L. 94–63, title IX, §§ 936(c), 941(i)(1), (3), July 29, 1975, 89 Stat. 363, 365, 366; Pub. L. 96–76, title I, § 109(b), Sept. 29, 1979, 93 Stat. 580; Pub. L. 97–35, title XXVII, § 2757(c), Aug. 13, 1981, 95 Stat. 931, authorized appropriations for student loan funds for certain fiscal years.

§ 297c–1. Repealed. Pub. L. 102–408, title II, § 211(a)(2), Oct. 13, 1992, 106 Stat. 2078

Section, act July 1, 1944, ch. 373, title VIII, § 837A, as added Nov. 4, 1988, Pub. L. 100–607, title VII, § 714(d), 102 Stat. 3162, authorized appropriations for educational loan repayments for service in certain health facilities.

§ 297d. Allotments and payments of Federal capital contributions

(a) Application for allotment; reduction or adjustment of amount requested in application; reallotment; continued availability of funds

(1) The Secretary shall from time to time set dates by which schools of nursing must file applications for Federal capital contributions.

(2)(A) If the total of the amounts requested for any fiscal year in such applications exceeds the total amount appropriated under section 297c[1] of this title for that fiscal year, the allotment from such total amount to the loan fund of each school of nursing shall be reduced to whichever of the following is the smaller:

(i) The amount requested in its application.

(ii) An amount which bears the same ratio to the total amount appropriated as the number of students estimated by the Secretary to be enrolled on a full-time basis in such school during such fiscal year bears to the estimated total number of students enrolled in all such schools on a full-time basis during such year.

(B) Amounts remaining after allotment under subparagraph (A) shall be reallotted in accordance with clause (ii) of such subparagraph among schools whose applications requested more than the amounts so allotted to their loan funds, but with such adjustments as may be necessary to prevent the total allotted to any such school's loan fund under this paragraph and paragraph (3) from exceeding the total so requested by it.

(3) Funds which, pursuant to section 297e(c) of this title or pursuant to a loan agreement under section 297a of this title are returned to the Secretary in any fiscal year, shall be available for allotment until expended. Funds described in the preceding sentence shall be allotted among schools of nursing in such manner as the Secretary determines will best carry out this part.[1]

(b) Installment payment of allotments

Allotments to a loan fund of a school shall be paid to it from time to time in such installments as the Secretary determines will not re-

[1] See References in Text note below.

sult in unnecessary accumulations in the loan fund at such school.

(c) Manner of payment

The Federal capital contributions to a loan fund of a school under this part[1] shall be paid to it from time to time in such installments as the Secretary determines will not result in unnecessary accumulations in the loan fund at such school.

(July 1, 1944, ch. 373, title VIII, § 838, formerly § 825, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 915; amended Pub. L. 89–751, § 6(c), Nov. 3, 1966, 80 Stat. 1235; Pub. L. 90–490, title II, § 222(e), Aug. 16, 1968, 82 Stat. 785; renumbered § 838 and amended Pub. L. 94–63, title IX, § 941(h)(1), (2), (4)(A), (i)(1), (4), July 29, 1975, 89 Stat. 365, 366; Pub. L. 99–92, § 8(e), Aug. 16, 1985, 99 Stat. 398; Pub. L. 100–607, title VII, § 713(h)(1), Nov. 4, 1988, 102 Stat. 3161; Pub. L. 102–408, title II, § 208(a), Oct. 13, 1992, 106 Stat. 2075.)

REFERENCES IN TEXT

Section 297c of this title, referred to in subsec. (a)(2)(A), was repealed by Pub. L. 105–392, title I, § 123(3), Nov. 13, 1998, 112 Stat. 3562.

This part, referred to in subsecs. (a)(3) and (c), was in the original ''this subpart'' and was translated to reflect the probable intent of Congress and the redesignation of subpart II of part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, § 123(2), Nov. 13, 1998, 112 Stat. 3562.

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–408 struck out ''(A)'' after ''(3)'', substituted ''available for allotment until expended.'' for ''available for allotment in such fiscal year and in the fiscal year succeeding the fiscal year.'' and ''this subpart.'' for ''this subpart, except that in making such allotments, the Secretary shall give priority to schools of nursing which established student loan funds under this subpart after September 30, 1975.'', and struck out subpar. (B) which read as follows: ''With respect to funds available pursuant to subparagraph (A), any such funds returned to the Secretary and not allotted by the Secretary, during the period of availability specified in such subparagraph, shall be available to carry out section 297j of this title and, for such purpose, shall remain available until expended.''

1988—Subsec. (a)(3). Pub. L. 100–607 designated existing provisions as subpar. (A) and added subpar. (B).

1985—Subsec. (a). Pub. L. 99–92 amended subsec. (a) generally, substituting provisions relating to application for allotment, reduction or adjustment of amount requested in application, reallotment, and availability of funds for allotment during fiscal years for provisions relating to determination of amount of allotment.

Subsec. (b). Pub. L. 99–92 amended subsec. (b) generally, substituting provisions relating to payment to a loan fund of a school of allotments for provisions relating to application for allotment, adjustment or reduction of amount requested in application, and reallotment.

1975—Subsec. (a). Pub. L. 94–63, § 941(h)(1), (4)(A)(i), (i)(4), substituted ''subpart'' for ''part'' wherever appearing, struck out ''(whether as Federal capital contributions or as loans to schools under section 297f of this title)'' before ''which are in excess'', and substituted references to section 847 of the Act for references to section 824, which had previously been translated as section 297c of this title, requiring no further translations in text as a result of renumbering of the Public Health Service Act.

Subsec. (b)(1). Pub. L. 94–63, § 941(h)(4)(A)(ii), struck out '', and for loans pursuant to section 297f of this title,'' after ''contributions''.

Subsec. (b)(2). Pub. L. 94–63, § 941(h)(2), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (c). Pub. L. 94–63, § 941(h)(1), substituted ''subpart'' for ''part''.

1968—Subsec. (a). Pub. L. 90–490 substituted a new formula for distribution of Federal funds among schools of nursing by providing for allotment of funds among the schools entirely on the basis of their relative enrollments for former provisions which allocated funds among the States, 50 per centum on the basis of relative number of high school graduates, and 50 per centum on the basis of relative number of students enrolled in schools of nursing, and provided for determination of number of persons enrolled in such schools for most recent year for which satisfactory data are available to the Secretary.

1966—Subsec. (a). Pub. L. 89–751, § 6(c)(1), authorized allotment of appropriations for payment as Federal capital contributions or as loans to schools under section 297f of this title, and directed that funds available in any fiscal year for payment to schools under this part (whether as Federal capital contributions or as loans to schools under section 297f of this title) which are in excess of the amount appropriated pursuant to section 297c of this title for that year shall be allotted among States and among schools within States in such manner as the Secretary determinates will best carry out the purposes of this part.

Subsec. (b)(1). Pub. L. 89–751, § 6(c)(2), substituted ''schools of nursing in a State must file applications for Federal capital contributions, and for loans pursuant to section 297f of this title, from the allotment of such State under the first two sentences of subsection (a) of this section'' for ''schools of nursing with which he has in effect agreements under this part must file applications for Federal capital contributions to their loan funds pursuant to section 297a(b)(2)(A) of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 713(h)(2) of Pub. L. 100–607 provided that: ''Except as provided in Public Law 100–436 [Sept. 20, 1988, 102 Stat. 1680, see Tables for classification], the amendment made by paragraph (1) [amending this section] shall take effect as if such amendment had been effective on September 30, 1988, and as if section 843 of the Public Health Service Act, as added by section 715 of this title [section 297j of this title], had been effective on such date.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 297a of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 297a of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 6(e)(1) of Pub. L. 89–751 provided that: ''The amendments made by this section [amending this section and sections 297c, 297e, and 297f of this title] shall be effective in the case of payments to student loan funds made after the enactment of this Act [Nov. 3, 1966], except in the case of payments pursuant to commitments (made prior to enactment of this Act) to make loans under section 827 of the Public Health Service Act [section 297f of this title] as in effect prior to the enactment of this Act.''

APPLICABILITY OF REORG. PLAN NO. 3 OF 1966

Section 9 of Pub. L. 89–751 provided that: ''The amendments made by this Act [enacting former sections 295h to 295h–5 and 298c to 298c–8 of this title and amending this section, former sections 292b, 294d, 294n to 294p, 296, and 297c, section 297e, former section 297f, and section 298 of this title, and section 1717 of Title 12, Banks and Banking] shall be subject to the provisions of Reorganization Plan Numbered 3 of 1966 [set out as a note under section 202 of this title].''

§ 297e. Distribution of assets from loan funds

(a) Capital distribution of balance of loan fund

If a school terminates a loan fund established under an agreement pursuant to section 297a(b) of this title, or if the Secretary for good cause terminates the agreement with the school, there shall be a capital distribution as follows:

(1) The Secretary shall first be paid an amount which bears the same ratio to such balance in such fund on the date of termination of the fund as the total amount of the Federal capital contributions to such fund by the Secretary pursuant to section 297a(b)(2)(A) of this title bears to the total amount in such fund derived from such Federal capital contributions and from funds deposited therein pursuant to section 297a(b)(2)(B) of this title.

(2) The remainder of such balance shall be paid to the school.

(b) Payment of principal or interest on loans

If a capital distribution is made under subsection (a) of this section, the school involved shall, after such capital distribution, pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school in payment of principal or interest on loans made from the loan fund established under section 297a(b) of this title as determined by the Secretary under subsection (a) of this section.

(c) Payment of balance of loan fund

(1) Within 90 days after the termination of any agreement with a school under section 297a of this title or the termination in any other manner of a school's participation in the loan program under this part,[1] such school shall pay to the Secretary from the balance of the loan fund of such school established under section 297a of this title, an amount which bears the same ratio to the balance in such fund on the date of such termination as the total amount of the Federal capital contributions to such fund by the Secretary pursuant to section 297a(b)(2)(A) of this title bears to the total amount in such fund on such date derived from such Federal capital contributions and from funds deposited in the fund pursuant to section 297a(b)(2)(B) of this title. The remainder of such balance shall be paid to the school.

(2) A school to which paragraph (1) applies shall pay to the Secretary after the date on which payment is made under such paragraph and not less than quarterly, the same proportionate share of amounts received by the school after the date of termination referred to in paragraph (1) in payment of principal or interest on loans made from the loan fund as was determined for the Secretary under such paragraph.

(July 1, 1944, ch. 373, title VIII, § 839, formerly § 826, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 916; amended Pub. L. 89–751, § 6(d), Nov. 3, 1966, 80 Stat. 1235; Pub. L. 90–490, title II, § 222(f), Aug. 16, 1968, 82 Stat. 785; Pub. L. 92–52, § 3(b), July 9, 1971, 85 Stat. 145; Pub. L. 92–158, § 6(d)(1), Nov. 18, 1971, 85 Stat. 478; renumbered § 839 and amended Pub. L. 94–63, title IX, §§ 936(d), 941(h)(1), (2), (4)(B), (i)(1), (5), July 29, 1975, 89 Stat. 363, 365, 366; Pub. L. 96–32, § 7(j), July 10, 1979, 93 Stat. 84; Pub. L. 96–76, title I, § 109(c), Sept. 29, 1979, 93 Stat. 580; Pub. L. 97–35, title XXVII, § 2757(d), Aug. 13, 1981, 95 Stat. 931; Pub. L. 99–92, § 8(f), Aug. 16, 1985, 99 Stat. 399; Pub. L. 100–607, title VII, § 713(i), Nov. 4, 1988, 102 Stat. 3161; Pub. L. 102–408, title II, § 208(b), Oct. 13, 1992, 106 Stat. 2075; Pub. L. 105–392, title I, § 133(e), Nov. 13, 1998, 112 Stat. 3577.)

[1] See References in Text note below.

REFERENCES IN TEXT

This part, referred to in subsec. (c)(1), was in the original ''this subpart'' and was translated to reflect the probable intent of Congress and the redesignation of subpart II of part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, § 123(2), Nov. 13, 1998, 112 Stat. 3562.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392, § 133(e)(1)(A), added introductory provisions and struck out former introductory provisions which read as follows: ''After September 30, 1996, and not later than December 31, 1999, there shall be a capital distribution of the balance of the loan fund established under an agreement pursuant to section 297a of this title by each school as follows:''.

Subsec. (a)(1). Pub. L. 105–392, § 133(e)(1)(B), substituted ''on the date of termination of the fund'' for ''at the close of September 30, 1999,''.

Subsec. (b). Pub. L. 105–392, § 133(e)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''After December 31, 1999, each school with which the Secretary has made an agreement under this subpart shall pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school after September 30, 1999, in payment of principal or interest on loans made from the loan fund established pursuant to such agreement as was determined for the Secretary under subsection (a) of this section.''

1992—Subsec. (a). Pub. L. 102–408, § 208(b)(2), substituted ''1999'' for ''1994'' in introductory provisions and in par. (1).

Pub. L. 102–408, § 208(b)(1), substituted ''1996'' for ''1991'' in introductory provisions.

Subsec. (b). Pub. L. 102–408, § 208(b)(2), substituted ''1999'' for ''1994'' in two places.

1988—Subsec. (a). Pub. L. 100–607, § 713(i)(1)(A), which directed substitution of ''1994'' for ''1991'' in text preceding par. (1), was executed by making the substitution for ''1991'' the second time appearing to reflect the probable intent of Congress.

Subsec. (a)(1). Pub. L. 100–607, § 713(i)(1)(B), substituted ''1994'' for ''1991''.

Subsec. (b). Pub. L. 100–607, § 713(i)(2), substituted ''1994'' for ''1991'' in two places.

1985—Subsecs. (a), (b). Pub. L. 99–92, § 8(f)(1), substituted ''1991'' for ''1987'' wherever appearing.

Subsec. (c). Pub. L. 99–92, § 8(f)(2), added subsec. (c).

1981—Pub. L. 97–35 substituted ''1987'' for ''1983'' wherever appearing.

1979—Subsec. (a). Pub. L. 96–76, § 109(c)(1), substituted ''September 30, 1983, and not later than December 31, 1983'' for ''September 30, 1980, and not later than December 31, 1981''. Prior to amendment, subsec. (a) referred to ''December 31, 1980'' rather than to ''December 31, 1981'' as cited in directory language of Pub. L. 96–76. See below for explanation of amendment by Pub. L. 96–32.

Pub. L. 96–32 substituted ''December 31, 1980'' for ''September 30, 1977''.

Subsec. (a)(1). Pub. L. 96–76, § 109(c)(2), substituted ''1983'' for ''1980''.

Subsec. (b). Pub. L. 96–76, § 109(c)(3), substituted ''1983'' for ''1980'' wherever appearing.

1975—Subsec. (a). Pub. L. 94–63, §§ 936(d), 941(h)(2), (i)(5), substituted ''September 30, 1980'' for ''June 30,

1977'' wherever appearing, struck out ''of Health, Education, and Welfare'' after ''Secretary'', and substituted references to section 835 of the Act for references to section 822, which had previously been translated as section 297a of this title, requiring no further translations in text as a result of renumbering of the Public Health Service Act.

Subsec. (b). Pub. L. 94–63, §§936(d), 941(h)(1), (4)(B), substituted ''subpart'' for ''part'', ''September 30, 1980'' for ''June 30, 1977'', and ''December 31, 1980'' for ''September 30, 1977'' and struck out provisions relating to payments from revolving fund established by section 297f(d) of this title.

1971—Pub. L. 92–158 substituted ''1977'' for ''1975'' wherever appearing.

Pub. L. 92–52 substituted ''1975'' for ''1974'' wherever appearing.

1968—Pub. L. 90–490 substituted ''1974'' for ''1972'' wherever appearing.

1966—Subsec. (a). Pub. L. 89–751, §6(d)(1), (2), substituted ''an agreement pursuant to section 297a(b) of this title'' for ''this part'' in opening provisions, and in par. (1) substituted ''such balance'' for ''the balance''.

Subsec. (b). Pub. L. 89–751, §6(d)(3), inserted ''(other than so much of such fund as relates to payments from the revolving fund established by section 297f(d) of this title)''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 297a of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 936(d) of Pub. L. 94–63 effective July 1, 1975, see section 905 of Pub. L. 94–63, set out as a note under section 297a of this title.

Amendment by section 941(h)(1), (2), (4)(B), (i)(1), (5) of Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 297a of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–751 effective in the case of payments to student loan funds made after Nov. 3, 1966, except in the case of payments pursuant to commitments (made prior to Nov. 3, 1966) to make loans under section 297f of this title as in effect prior to Nov. 3, 1966, see section 6(e)(1) of Pub. L. 89–751, set out as a note under section 297d of this title.

§ 297f. Repealed. Pub. L. 94–63, title IX, § 936(e)(1), July 29, 1975, 89 Stat. 363

Section, act July 1, 1944, ch. 373, title VIII, §827, as added Sept. 4, 1964, Pub. L. 88–581, §2, 78 Stat. 917; amended Nov. 3, 1966, Pub. L. 89–751, §6(a), 80 Stat. 1233; Aug. 16, 1968, Pub. L. 90–490, title II, §222(g), 82 Stat. 785; July 9, 1971, Pub. L. 92–52, §3(c), 85 Stat. 145; Nov. 18, 1971, Pub. L. 92–158, §6(d)(2), 85 Stat. 478, set out provisions relating to terms, conditions, limitations, manner of payment, etc., of loans to schools of nursing to capitalize student loan funds.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1975, see section 905 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 297a of this title.

AVAILABILITY OF NURSE TRAINING REVOLVING FUND FOR PAYMENT OF OBLIGATIONS DEPOSITS INTO FUND; TRANSFER OF EXCESS AMOUNTS TO GENERAL FUND OF TREASURY AUTHORIZATION OF APPROPRIATIONS

Section 936(e)(2), (3) of Pub. L. 94–63 provided that:

''(2) The nurse training fund created within the Treasury by section 827(d)(1) of the Act [section 297f(d)(1) of this title] shall remain available to the Secretary of Health, Education, and Welfare [now Health and Human Services] for the purpose of meeting his responsibilities respecting participations in obligations acquired under section 827 of the Act [this section]. The Secretary shall continue to deposit in such fund all amounts received by him as interest payments or repayments of principal on loans under such section 27[827]. If at any time the Secretary determines the moneys in the funds exceed the present and any reasonable prospective further requirements of such fund, such excess may be transferred to the general fund of the Treasury.

''(3) There are authorized to be appropriated without fiscal year limitation such sums as may be necessary to enable the Secretary to make payments under agreements entered into under section 827(b) of the Act [section 297f(b) of this title] before the date of the enactment of this Act [July 29, 1975].''

CONVERSION OF FEDERAL CAPITAL CONTRIBUTION TO A LOAN UNDER SECTION 297f OF THIS TITLE

Pub. L. 89–751, §6(e)(2), Nov. 3, 1966, 80 Stat. 1236, authorized the Secretary of Health, Education, and Welfare to convert a Federal capital contribution to a student loan fund of a particular institution, made under this subchapter, from funds appropriated pursuant thereto for the fiscal year ending June 30, 1967, to a loan under section 297f of this title.

§ 297g. Modification of agreements; compromise, waiver or release

The Secretary may agree to modifications of agreements made under this part,[1] and may compromise, waive, or release any right, title, claim, or demand of the United States arising or acquired under this part.[1]

(July 1, 1944, ch. 373, title VIII, §840, formerly §828, as added Pub. L. 88–581, §2, Sept. 4, 1964, 78 Stat. 917; renumbered §840 and amended Pub. L. 94–63, title IX, §941(h)(1), (4)(C), (i)(1), July 29, 1975, 89 Stat. 365.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subpart'' and was translated to reflect the probable intent of Congress and the redesignation of subpart II of part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, §123(2), Nov. 13, 1998, 112 Stat. 3562.

AMENDMENTS

1975—Pub. L. 94–63, §941(h)(1), (4)(C), substituted ''subpart'' for ''part'' wherever appearing and struck out ''or loans'' after ''agreements''.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 297a of this title.

§ 297h. Repealed. Pub. L. 99–92, § 9(a)(1), Aug. 16, 1985, 99 Stat. 400

Section, act July 1, 1944, ch. 373, title VIII, §841, formerly §829, as added Aug. 16, 1968, Pub. L. 90–490, title II, §222(h), 82 Stat. 785; renumbered §841 and amended July 29, 1975, Pub. L. 94–63, title IX, §941(i)(1), (6), 89 Stat. 365, 366, related to transfers to the scholarship program.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as an Effective Date of 1985 Amendment note under section 297a of this title.

§ 297i. Procedures for appeal of terminations

In any case in which the Secretary intends to terminate an agreement with a school of nurs-

[1] See References in Text note below.

ing under this part,[1] the Secretary shall provide the school with a written notice specifying such intention and stating that the school may request a formal hearing with respect to such termination. If the school requests such a hearing within 30 days after the receipt of such notice, the Secretary shall provide such school with a hearing conducted by an administrative law judge.

(July 1, 1944, ch. 373, title VIII, §842, as added Pub. L. 99–92, §8(g), Aug. 16, 1985, 99 Stat. 399.)

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subpart'' and was translated to reflect the probable intent of Congress and the redesignation of subpart II of part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, §123(2), Nov. 13, 1998, 112 Stat. 3562.

PRIOR PROVISIONS

A prior section 297i, act July 1, 1944, ch. 373, title VIII, §830, as added Nov. 18, 1971, Pub. L. 92–158, §6(b)(2), 85 Stat. 477, relating to loan forgiveness, was transferred to and redesignated as subsec. (j) of section 823 of act July 1, 1944, which is classified to section 297b of this title, by Pub. L. 94–63, title IX, §941(h)(5), July 29, 1975, 89 Stat. 365.

A prior section 842 of act July 1, 1944, was renumbered section 852, and was classified to section 298a of this title prior to repeal by Pub. L. 105–392.

A prior section 297j, act July 1, 1944, ch. 373, title VIII, §843, as added Nov. 4, 1988, Pub. L. 100–607, title VII, §715, 102 Stat. 3162; amended Nov. 18, 1988, Pub. L. 100–690, title II, §2616(a), 102 Stat. 4240; Aug. 16, 1989, Pub. L. 101–93, §5(s), 103 Stat. 614, provided grant authority for scholarships for undergraduate education of professional nurses, prior to repeal by Pub. L. 102–531, title III, §313(a)(11), (c), Oct. 27, 1992, 106 Stat. 3507, effective immediately after enactment of Pub. L. 102–408, approved Oct. 13, 1992.

A prior section 843 of act July 1, 1944, was renumbered section 853, and was classified to section 298b of this title prior to repeal by Pub. L. 105–392.

Another prior section 297j, act July 1, 1944, ch. 373, title VIII, §845, formerly §860, as added Aug. 16, 1968, Pub. L. 90–490, title II, §223(a), 82 Stat. 785; amended July 9, 1971, Pub. L. 92–52, §4, 85 Stat. 145; Nov. 18, 1971, Pub. L. 92–158, §7, 85 Stat. 478; renumbered §845 and amended July 29, 1975, Pub. L. 94–63, title IX, §§902(f), 937, 941(j)(1), (2), 89 Stat. 355, 363, 366; Sept. 29, 1979, Pub. L. 96–76, title I, §110(a), (b), 93 Stat. 580; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2758(a), (b), 95 Stat. 932, set forth provisions relating to scholarship grants to schools of nursing, prior to repeal by Pub. L. 99–92, §9(a)(2), Aug. 16, 1985, 99 Stat. 400, eff. Oct. 1, 1985.

A prior section 845 of act July 1, 1944, was renumbered section 855, and was classified to section 298b–2 of this title prior to repeal by Pub. L. 105–392.

A prior section 297k, act July 1, 1944, ch. 373, title VIII, §846, formerly §861, as added Aug. 16, 1968, Pub. L. 90–490, title II, §223(a), 82 Stat. 786; renumbered §846 and amended July 29, 1975, Pub. L. 94–63, title IX, §§941(j)(1), (3), 89 Stat. 366, related to transfers of funds to student loan program, prior to repeal by Pub. L. 97–35, title XXVII, §2758(c), Aug. 13, 1981, 95 Stat. 932.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as an Effective Date of 1985 Amendment note under section 297a of this title.

§297n. Loan repayment and scholarship programs

(a) In general

In the case of any individual—

(1) who has received a baccalaureate or associate degree in nursing (or an equivalent degree), a diploma in nursing, or a graduate degree in nursing;

(2) who obtained (A) one or more loans from a loan fund established under subpart II,[1] or (B) any other educational loan for nurse training costs; and

(3) who enters into an agreement with the Secretary to serve as nurse for a period of not less than two years at a health care facility with a critical shortage of nurses;

the Secretary shall make payments in accordance with subsection (b) of this section, for and on behalf of that individual, on the principal of and interest on any loan of that individual described in paragraph (2) of this subsection which is outstanding on the date the individual begins the service specified in the agreement described in paragraph (3) of this subsection. After fiscal year 2007, the Secretary may not, pursuant to any agreement entered into under this subsection, assign a nurse to any private entity unless that entity is nonprofit.

(b) Manner of payments

The payments described in subsection (a) of this section shall be made by the Secretary as follows:

(1) Upon completion by the individual for whom the payments are to be made of the first year of the service specified in the agreement entered into with the Secretary under subsection (a) of this section, the Secretary shall pay 30 percent of the principal of, and the interest on each loan of such individual described in subsection (a)(2) of this section which is outstanding on the date he began such practice.

(2) Upon completion by that individual of the second year of such service, the Secretary shall pay another 30 percent of the principal of, and the interest on each such loan.

(3) Upon completion by that individual of a third year of such service, the Secretary shall pay another 25 percent of the principal of, and the interest on each such loan.

(c) Payment by due date

Notwithstanding the requirement of completion of practice specified in subsection (b) of this section, the Secretary shall, on or before the due date thereof, pay any loan or loan installment which may fall due within the period of service for which the borrower may receive payments under this subsection, upon the declaration of such borrower, at such times and in such manner as the Secretary may prescribe (and supported by such other evidence as the Secretary may reasonably require), that the borrower is then serving as described by subsection (a)(3) of this section, and that the borrower will continue to so serve for the period required (in the absence of this subsection) to entitle the borrower to have made the payments provided by this subsection for such period; except that not more than 85 percent of the principal of any such loan shall be paid pursuant to this subsection.

[1] See References in Text note below.

[1] See References in Text note below.

(d) Scholarship program

(1) In general

The Secretary shall (for fiscal years 2003 and 2004) and may (for fiscal years thereafter) carry out a program of entering into contracts with eligible individuals under which such individuals agree to serve as nurses for a period of not less than 2 years at a health care facility with a critical shortage of nurses, in consideration of the Federal Government agreeing to provide to the individuals scholarships for attendance at schools of nursing.

(2) Eligible individuals

In this subsection, the term ''eligible individual'' means an individual who is enrolled or accepted for enrollment as a full-time or part-time student in a school of nursing.

(3) Service requirement

(A) In general

The Secretary may not enter into a contract with an eligible individual under this subsection unless the individual agrees to serve as a nurse at a health care facility with a critical shortage of nurses for a period of full-time service of not less than 2 years, or for a period of part-time service in accordance with subparagraph (B).

(B) Part-time service

An individual may complete the period of service described in subparagraph (A) on a part-time basis if the individual has a written agreement that—

(i) is entered into by the facility and the individual and is approved by the Secretary; and

(ii) provides that the period of obligated service will be extended so that the aggregate amount of service performed will equal the amount of service that would be performed through a period of full-time service of not less than 2 years.

(4) Applicability of certain provisions

The provisions of subpart III of part D of subchapter II of this chapter shall, except as inconsistent with this section, apply to the program established in paragraph (1) in the same manner and to the same extent as such provisions apply to the National Health Service Corps Scholarship Program established in such subpart.

(e) Preferences regarding participants

In entering into agreements under subsection (a) or (d) of this section, the Secretary shall give preference to qualified applicants with the greatest financial need.

(f) Condition of agreement

The Secretary may make payments under subsection (a) of this section on behalf of an individual only if the agreement under such subsection provides that section 298b–7(c)[1] of this title is applicable to the individual.

(g) Breach of agreement

(1) In general

In the case of any program under this section under which an individual makes an agreement to provide health services for a period of time in accordance with such program in consideration of receiving an award of Federal funds regarding education as a nurse (including an award for the repayment of loans), the following applies if the agreement provides that this subsection is applicable:

(A) In the case of a program under this section that makes an award of Federal funds for attending an accredited program of nursing (in this section referred to as a ''nursing program''), the individual is liable to the Federal Government for the amount of such award (including amounts provided for expenses related to such attendance), and for interest on such amount at the maximum legal prevailing rate, if the individual—

(i) fails to maintain an acceptable level of academic standing in the nursing program (as indicated by the program in accordance with requirements established by the Secretary);

(ii) is dismissed from the nursing program for disciplinary reasons; or

(iii) voluntarily terminates the nursing program.

(B) The individual is liable to the Federal Government for the amount of such award (including amounts provided for expenses related to such attendance), and for interest on such amount at the maximum legal prevailing rate, if the individual fails to provide health services in accordance with the program under this section for the period of time applicable under the program.

(2) Waiver or suspension of liability

In the case of an individual or health facility making an agreement for purposes of paragraph (1), the Secretary shall provide for the waiver or suspension of liability under such subsection if compliance by the individual or the health facility, as the case may be, with the agreements involved is impossible, or would involve extreme hardship to the individual or facility, and if enforcement of the agreements with respect to the individual or facility would be unconscionable.

(3) Date certain for recovery

Subject to paragraph (2), any amount that the Federal Government is entitled to recover under paragraph (1) shall be paid to the United States not later than the expiration of the 3-year period beginning on the date the United States becomes so entitled.

(4) Availability

Amounts recovered under paragraph (1) with respect to a program under this section shall be available for the purposes of such program, and shall remain available for such purposes until expended.

(h) Reports

Not later than 18 months after August 1, 2002, and annually thereafter, the Secretary shall prepare and submit to the Congress a report describing the programs carried out under this section, including statements regarding—

(1) the number of enrollees, scholarships, loan repayments, and grant recipients;

(2) the number of graduates;

(3) the amount of scholarship payments and loan repayments made;

(4) which educational institution the recipients attended;

(5) the number and placement location of the scholarship and loan repayment recipients at health care facilities with a critical shortage of nurses;

(6) the default rate and actions required;

(7) the amount of outstanding default funds of both the scholarship and loan repayment programs;

(8) to the extent that it can be determined, the reason for the default;

(9) the demographics of the individuals participating in the scholarship and loan repayment programs;

(10) justification for the allocation of funds between the scholarship and loan repayment programs; and

(11) an evaluation of the overall costs and benefits of the programs.

(i) Funding

(1) Authorization of appropriations

For the purpose of payments under agreements entered into under subsection (a) or (d) of this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2003 through 2007.

(2) Allocations

Of the amounts appropriated under paragraph (1), the Secretary may, as determined appropriate by the Secretary, allocate amounts between the program under subsection (a) of this section and the program under subsection (d) of this section.

(July 1, 1944, ch. 373, title VIII, §846, as added Pub. L. 102–408, title II, §211(a)(3), Oct. 13, 1992, 106 Stat. 2078; amended Pub. L. 105–392, title I, §133(d), Nov. 13, 1998, 112 Stat. 3576; Pub. L. 107–205, title I, §103, Aug. 1, 2002, 116 Stat. 813.)

REFERENCES IN TEXT

Subpart II, referred to in subsec. (a)(2), probably should be ''this part'' to reflect the redesignation of subpart II of former part B of this subchapter as part E of this subchapter by Pub. L. 105–392, title I, §123(2), Nov. 13, 1998, 112 Stat. 3562.

Section 298b–7(c) of this title, referred to in subsec. (f), was repealed by Pub. L. 105–392, title I, §123(1), Nov. 13, 1998, 112 Stat. 3562.

PRIOR PROVISIONS

A prior section 297n, act July 1, 1944, ch. 373, title VIII, §847, as added Nov. 4, 1988, Pub. L. 100–607, title VII, §716, 102 Stat. 3163; amended Nov. 18, 1988, Pub. L. 100–690, title II, §2616(b), 102 Stat. 4240, established a demonstration program for student loans with respect to service in certain health care facilities in underserved areas, prior to repeal by Pub. L. 102–408, title II, §210, Oct. 13, 1992, 106 Stat. 2078.

A prior section 846 of act July 1, 1944, was classified to section 297k of this title and was repealed by Pub. L. 97–35.

AMENDMENTS

2002—Pub. L. 107–205, §103(b)(1), substituted ''Loan repayment and scholarship programs'' for ''Loan repayment program'' in section catchline.

Subsec. (a). Pub. L. 107–205, §103(a)(2), inserted at end of concluding provisions ''After fiscal year 2007, the Secretary may not, pursuant to any agreement entered into under this subsection, assign a nurse to any private entity unless that entity is nonprofit.''

Subsec. (a)(3). Pub. L. 107–205, §103(a)(1), substituted ''at a health care facility with a critical shortage of nurses'' for ''in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a rural health clinic, or in a public or nonprofit private health facility determined by the Secretary to have a critical shortage of nurses''.

Subsec. (d). Pub. L. 107–205, §103(b)(4), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 107–205, §103(c), substituted ''under subsection (a) or (d) of this section, the Secretary shall give preference to qualified applicants with the greatest financial need.'' for ''under subsection (a) of this section, the Secretary shall give preference—

''(1) to qualified applicants with the greatest financial need; and

''(2) to qualified applicants that, with respect to health facilities described in such subsection, agree to serve in such health facilities located in geographic areas with a shortage of and need for nurses, as determined by the Secretary.''

Subsec. (f). Pub. L. 107–205, §103(b)(2), (3), redesignated subsec. (d) as (f) and transferred it to appear after subsec. (e). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 107–205, §103(b)(2), (3), redesignated subsec. (h) as (g) and transferred it to appear after subsec. (f). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 107–205, §103(b)(2), (d), redesignated subsec. (f) as (h) and amended it generally. Prior to amendment, text of subsec. read as follows: ''For purposes of this section:

''(1) The term 'community health center' has the meaning given such term in section 254c(a) of this title.

''(2) The term 'migrant health center' has the meaning given such term in section 254b(a)(1) of this title.

''(3) The term 'rural health clinic' has the meaning given such term in section 1395x(aa)(2) of this title.''

Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 107–205, §103(b)(2), (e), redesignated subsec. (g) as (i) and amended it generally. Prior to amendment, text of subsec. read as follows: ''For the purpose of payments under agreements entered into under subsection (a) of this section, there are authorized to be appropriated $5,000,000 for fiscal year 1993, and $6,000,000 for fiscal year 1994.''

1998—Subsec. (h). Pub. L. 105–392 added subsec. (h).

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

§ 297n–1. Nurse faculty loan program

(a) Establishment

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may enter into an agreement with any school of nursing for the establishment and operation of a student loan fund in accordance with this section, to increase the number of qualified nursing faculty.

(b) Agreements

Each agreement entered into under subsection (a) of this section shall—

(1) provide for the establishment of a student loan fund by the school involved;

(2) provide for deposit in the fund of—

(A) the Federal capital contributions to the fund;

(B) an amount equal to not less than one-ninth of such Federal capital contributions, contributed by such school;

(C) collections of principal and interest on loans made from the fund; and

(D) any other earnings of the fund;

(3) provide that the fund will be used only for loans to students of the school in accordance with subsection (c) of this section and for costs of collection of such loans and interest thereon;

(4) provide that loans may be made from such fund only to students pursuing a full-time course of study or, at the discretion of the Secretary, a part-time course of study in an advanced degree program described in section 296j(b) of this title; and

(5) contain such other provisions as are necessary to protect the financial interests of the United States.

(c) Loan provisions

Loans from any student loan fund established by a school pursuant to an agreement under subsection (a) of this section shall be made to an individual on such terms and conditions as the school may determine, except that—

(1) such terms and conditions are subject to any conditions, limitations, and requirements prescribed by the Secretary;

(2) in the case of any individual, the total of the loans for any academic year made by schools of nursing from loan funds established pursuant to agreements under subsection (a) of this section may not exceed $30,000, plus any amount determined by the Secretary on an annual basis to reflect inflation;

(3) an amount up to 85 percent of any such loan (plus interest thereon) shall be canceled by the school as follows:

(A) upon completion by the individual of each of the first, second, and third year of full-time employment, required by the loan agreement entered into under this subsection, as a faculty member in a school of nursing, the school shall cancel 20 percent of the principle of, and the interest on, the amount of such loan unpaid on the first day of such employment; and

(B) upon completion by the individual of the fourth year of full-time employment, required by the loan agreement entered into under this subsection, as a faculty member in a school of nursing, the school shall cancel 25 percent of the principle of, and the interest on, the amount of such loan unpaid on the first day of such employment;

(4) such a loan may be used to pay the cost of tuition, fees, books, laboratory expenses, and other reasonable education expenses;

(5) such a loan shall be repayable in equal or graduated periodic installments (with the right of the borrower to accelerate repayment) over the 10-year period that begins 9 months after the individual ceases to pursue a course of study at a school of nursing; and

(6) such a loan shall—

(A) beginning on the date that is 3 months after the individual ceases to pursue a course of study at a school of nursing, bear interest on the unpaid balance of the loan at the rate of 3 percent per annum; or

(B) subject to subsection (e) of this section, if the school of nursing determines that the individual will not complete such course of study or serve as a faculty member as required under the loan agreement under this subsection, bear interest on the unpaid balance of the loan at the prevailing market rate.

(d) Payment of proportionate share

Where all or any part of a loan, or interest, is canceled under this section, the Secretary shall pay to the school an amount equal to the school's proportionate share of the canceled portion, as determined by the Secretary.

(e) Review by Secretary

At the request of the individual involved, the Secretary may review any determination by a school of nursing under subsection (c)(6)(B) of this section.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2003 through 2007.

(July 1, 1944, ch. 373, title VIII, § 846A, as added Pub. L. 107–205, title II, § 203, Aug. 1, 2002, 116 Stat. 817.)

PART F—FUNDING

§ 297q. Funding

(a) Authorization of appropriations

For the purpose of carrying out parts B, C, and D of this subchapter (subject to section 297t(g) of this title), there are authorized to be appropriated $65,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(b) Allocations for fiscal years 1998 through 2002

(1) Nurse practitioners; nurse midwives

(A) Fiscal year 1998

Of the amount appropriated under subsection (a) of this section for fiscal year 1998, the Secretary shall reserve not less than $17,564,000 for making awards of grants and contracts under section 296m of this title as such section was in effect for fiscal year 1998.

(B) Fiscal years 1999 through 2002

Of the amount appropriated under subsection (a) of this section for fiscal year 1999 or any of the fiscal years 2000 through 2002, the Secretary, subject to subsection (d) of this section, shall reserve for the fiscal year involved, for making awards of grants and contracts under part B of this subchapter with respect to nurse practitioners and nurse midwives, not less than the percentage constituted by the ratio of the amount appropriated under section 296m of this title as such section was in effect for fiscal year 1998 to the total of the amounts appropriated

under this subchapter for such fiscal year. For purposes of the preceding sentence, the Secretary, in determining the amount that has been reserved for the fiscal year involved, shall include any amounts appropriated under subsection (a) of this section for the fiscal year that are obligated by the Secretary to continue in effect grants or contracts under section 296m of this title as such section was in effect for fiscal year 1998.

(2) Nurse anesthetists

(A) Fiscal year 1998

Of the amount appropriated under subsection (a) of this section for fiscal year 1998, the Secretary shall reserve not less than $2,761,000 for making awards of grants and contracts under section 297–1 of this title as such section was in effect for fiscal year 1998.

(B) Fiscal years 1999 through 2002

Of the amount appropriated under subsection (a) of this section for fiscal year 1999 or any of the fiscal years 2000 through 2002, the Secretary, subject to subsection (d) of this section, shall reserve for the fiscal year involved, for making awards of grants and contracts under part B of this subchapter with respect to nurse anesthetists, not less than the percentage constituted by the ratio of the amount appropriated under section 297–1 of this title as such section was in effect for fiscal year 1998 to the total of the amounts appropriated under this subchapter for such fiscal year. For purposes of the preceding sentence, the Secretary, in determining the amount that has been reserved for the fiscal year involved, shall include any amounts appropriated under subsection (a) of this section for the fiscal year that are obligated by the Secretary to continue in effect grants or contracts under section 297–1 of this title as such section was in effect for fiscal year 1998.

(c) Allocations after fiscal year 2002

(1) In general

For fiscal year 2003 and subsequent fiscal years, amounts appropriated under subsection (a) of this section for the fiscal year involved shall be allocated by the Secretary among parts B, C, and D of this subchapter (and programs within such parts) according to a methodology that is developed in accordance with paragraph (2). The Secretary shall enter into a contract with a public or private entity for the purpose of developing the methodology. The contract shall require that the development of the methodology be completed not later than February 1, 2002.

(2) Use of certain factors

The contract under paragraph (1) shall provide that the methodology under such paragraph will be developed in accordance with the following:

(A) The methodology will take into account the need for and the distribution of health services among medically underserved populations, as determined according to the factors that apply under section 254b(b)(3) of this title.

(B) The methodology will take into account the need for and the distribution of health services in health professional shortage areas, as determined according to the factors that apply under section 254e(b) of this title.

(C) The methodology will take into account the need for and the distribution of mental health services among medically underserved populations and in health professional shortage areas.

(D) The methodology will be developed in consultation with individuals in the field of nursing, including registered nurses, nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, nursing educators and educational institutions, nurse executives, pediatric nurse associates and practitioners, and women's health, obstetric, and neonatal nurses.

(E) The methodology will take into account the following factors with respect to the States:

(i) A provider population ratio equivalent to a managed care formula of 1/1,500 for primary care services.

(ii) The use of whole rather than fractional counts in determining the number of health care providers.

(iii) The counting of only employed health care providers in determining the number of health care providers.

(iv) The number of families whose income is less than 200 percent of the official poverty line (as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title).

(v) The rate of infant mortality and the rate of low-birthweight births.

(vi) The percentage of the general population constituted by individuals who are members of racial or ethnic minority groups, stated both by minority group and in the aggregate.

(vii) The percentage of the general population constituted by individuals who are of Hispanic ethnicity.

(viii) The number of individuals residing in health professional shortage areas, and the number of individuals who are members of medically underserved populations.

(ix) The percentage of the general population constituted by elderly individuals.

(x) The extent to which the populations served have a choice of providers.

(xi) The impact of care on hospitalizations and emergency room use.

(xii) The number of individuals who lack proficiency in speaking the English language.

(xiii) Such additional factors as the Secretary determines to be appropriate.

(3) Report to Congress

Not later than 30 days after the completion of the development of the methodology required in paragraph (1), the Secretary shall submit to the Committee on Commerce of the

House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the methodology and explaining the effects of the methodology on the allocation among parts B, C, and D of this subchapter (and programs within such parts) of amounts appropriated under subsection (a) of this section for the first fiscal year for which the methodology will be in effect. Such explanation shall include a comparison of the allocation for such fiscal year with the allocation made under this section for the preceding fiscal year.

(d) Use of methodology before fiscal year 2003

With respect to the fiscal years 1999 through 2002, if the report required in subsection (c)(3) of this section is submitted in accordance with such subsection not later than 90 days before the beginning of such a fiscal year, the Secretary may for such year implement the methodology described in the report (rather than implementing the methodology in fiscal year 2003), in which case subsection (b) of this section ceases to be in effect. The authority under the preceding sentence is subject to the condition that the fiscal year for which the methodology is implemented be the same fiscal year identified in such report as the fiscal year for which the methodology will first be in effect.

(e) Authority for use of additional factors in methodology

(1) In general

The Secretary shall make the determinations specified in paragraph (2). For any fiscal year beginning after the first fiscal year for which the methodology under subsection (c)(1) of this section is in effect, the Secretary may alter the methodology by including the information from such determinations as factors in the methodology.

(2) Relevant determinations

The determinations referred to in paragraph (1) are as follows:

(A) The need for and the distribution of health services among populations for which it is difficult to determine the number of individuals who are in the population, such as homeless individuals; migratory and seasonal agricultural workers and their families; individuals infected with the human immunodeficiency virus, and individuals who abuse drugs.

(B) In the case of a population for which the determinations under subparagraph (A) are made, the extent to which the population includes individuals who are members of racial or ethnic minority groups and a specification of the skills needed to provide health services to such individuals in the language and the educational and cultural context that is most appropriate to the individuals.

(C) Data, obtained from the Director of the Centers for Disease Control and Prevention, on rates of morbidity and mortality among various populations (including data on the rates of maternal and infant mortality and data on the rates of low-birthweight births of living infants).

(D) Data from the Health Plan Employer Data and Information Set, as appropriate.

(July 1, 1944, ch. 373, title VIII, § 841, as added Pub. L. 105–392, title I, § 123(5), Nov. 13, 1998, 112 Stat. 3569.)

REFERENCES IN TEXT

Section 296m of this title, referred to in subsec. (b)(1), was repealed and a new section 296m was enacted by Pub. L. 105–392, title I, § 123(1), (4), Nov. 13, 1998, 112 Stat. 3562, 3568.

Section 297–1 of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

PRIOR PROVISIONS

A prior section 841 of act July 1, 1944, was classified to section 297h of this title prior to repeal by Pub. L. 99–92.

Another prior section 841 of act July 1, 1944, was renumbered section 851, and was classified to section 298 of this title prior to repeal by Pub. L. 105–392.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

PART G—NATIONAL ADVISORY COUNCIL ON NURSE EDUCATION AND PRACTICE

§ 297t. National Advisory Council on Nurse Education and Practice

(a) Establishment

The Secretary shall establish an advisory council to be known as the National Advisory Council on Nurse Education and Practice (in this section referred to as the ''Advisory Council'').

(b) Composition

(1) In general

The Advisory Council shall be composed of—

(A) not less than 21, nor more than 23 individuals, who are not officers or employees of the Federal Government, appointed by the Secretary without regard to the Federal civil service laws, of which—

(i) 2 shall be selected from full-time students enrolled in schools of nursing;

(ii) 2 shall be selected from the general public;

(iii) 2 shall be selected from practicing professional nurses; and

(iv) 9 shall be selected from among the leading authorities in the various fields of nursing, higher, secondary education, and associate degree schools of nursing, and from representatives of advanced education nursing groups (such as nurse practitioners, nurse midwives, and nurse anesthetists), hospitals, and other institutions and organizations which provide nursing services; and

(B) the Secretary (or the delegate of the Secretary (who shall be an ex officio member and shall serve as the Chairperson)).

(2) Appointment

Not later than 90 days after November 13, 1998, the Secretary shall appoint the members of the Advisory Council and each such member shall serve a 4 year term. In making such appointments, the Secretary shall ensure a fair balance between the nursing professions, a broad geographic representation of members and a balance between urban and rural members. Members shall be appointed based on their competence, interest, and knowledge of the mission of the profession involved. A majority of the members shall be nurses.

(3) Minority representation

In appointing the members of the Advisory Council under paragraph (1), the Secretary shall ensure the adequate representation of minorities.

(c) Vacancies

(1) In general

A vacancy on the Advisory Council shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(2) Filling unexpired term

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) Duties

The Advisory Council shall—

(1) provide advice and recommendations to the Secretary and Congress concerning policy matters arising in the administration of this subchapter, including the range of issues relating to the nurse workforce, education, and practice improvement;

(2) provide advice to the Secretary and Congress in the preparation of general regulations and with respect to policy matters arising in the administration of this subchapter, including the range of issues relating to nurse supply, education and practice improvement; and

(3) not later than 3 years after November 13, 1998, and annually thereafter, prepare and submit to the Secretary, the Committee on Labor and Human Resources of the Senate, and the Committee on Commerce of the House of Representatives, a report describing the activities of the Council, including findings and recommendations made by the Council concerning the activities under this subchapter.

(e) Meetings and documents

(1) Meetings

The Advisory Council shall meet not less than 2 times each year. Such meetings shall be held jointly with other related entities established under this subchapter where appropriate.

(2) Documents

Not later than 14 days prior to the convening of a meeting under paragraph (1), the Advisory Council shall prepare and make available an agenda of the matters to be considered by the Advisory Council at such meeting. At any such meeting, the Advisory Council shall distribute materials with respect to the issues to be addressed at the meeting. Not later than 30 days after the adjourning of such a meeting, the Advisory Council shall prepare and make available a summary of the meeting and any actions taken by the Council based upon the meeting.

(f) Compensation and expenses

(1) Compensation

Each member of the Advisory Council shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Council. All members of the Council who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) Expenses

The members of the Advisory Council shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Council.

(g) Funding

Amounts appropriated under this subchapter may be utilized by the Secretary to support the nurse education and practice activities of the Council.

(h) FACA

The Federal Advisory Committee Act shall apply to the Advisory Committee under this section only to the extent that the provisions of such Act do not conflict with the requirements of this section.

(July 1, 1944, ch. 373, title VIII, § 845, as added Pub. L. 105–392, title I, § 123(5), Nov. 13, 1998, 112 Stat. 3572.)

REFERENCES IN TEXT

The Federal civil-service laws, referred to in subsec. (b)(1)(A), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

November 13, 1998, referred to in subsec. (b)(2), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 105–392, which enacted this part, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 845 of act July 1, 1944, was classified to section 297j of this title, prior to repeal by Pub. L. 99–92.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters

relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

PART H—PUBLIC SERVICE ANNOUNCEMENTS

§ 297w. Public service announcements

(a) In general

The Secretary shall develop and issue public service announcements that advertise and promote the nursing profession, highlight the advantages and rewards of nursing, and encourage individuals to enter the nursing profession.

(b) Method

The public service announcements described in subsection (a) of this section shall be broadcast through appropriate media outlets, including television or radio, in a manner intended to reach as wide and diverse an audience as possible.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2003 through 2007.

(July 1, 1944, ch. 373, title VIII, § 851, as added Pub. L. 107–205, title I, § 102, Aug. 1, 2002, 116 Stat. 812.)

PRIOR PROVISIONS

A prior section 851 of act July 1, 1944, was classified to section 298 of this title, prior to repeal by Pub. L. 105–392.

§ 297x. State and local public service announcements

(a) In general

The Secretary may award grants to eligible entities to support State and local advertising campaigns through appropriate media outlets to promote the nursing profession, highlight the advantages and rewards of nursing, and encourage individuals from disadvantaged backgrounds to enter the nursing profession.

(b) Use of funds

An eligible entity that receives a grant under subsection (a) of this section shall use funds received through such grant to acquire local television and radio time, place advertisements in local newspapers, or post information on billboards or on the Internet in a manner intended to reach as wide and diverse an audience as possible, in order to—

(1) advertise and promote the nursing profession;

(2) promote nursing education programs;

(3) inform the public of financial assistance regarding such education programs;

(4) highlight individuals in the community who are practicing nursing in order to recruit new nurses; or

(5) provide any other information to recruit individuals for the nursing profession.

(c) Limitation

An eligible entity that receives a grant under subsection (a) of this section shall not use funds received through such grant to advertise particular employment opportunities.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2003 through 2007.

(July 1, 1944, ch. 373, title VIII, § 852, as added Pub. L. 107–205, title I, § 102, Aug. 1, 2002, 116 Stat. 812.)

PRIOR PROVISIONS

A prior section 852 of act July 1, 1944, was classified to section 298a of this title, prior to repeal by Pub. L. 105–392.

PART I—COMPREHENSIVE GERIATRIC EDUCATION

§ 298. Comprehensive geriatric education

(a) Program authorized

The Secretary shall award grants to eligible entities to develop and implement, in coordination with programs under section 294c of this title, programs and initiatives to train and educate individuals in providing geriatric care for the elderly.

(b) Use of funds

An eligible entity that receives a grant under subsection (a) of this section shall use funds under such grant to—

(1) provide training to individuals who will provide geriatric care for the elderly;

(2) develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(3) train faculty members in geriatrics; or

(4) provide continuing education to individuals who provide geriatric care.

(c) Application

An eligible entity desiring a grant under subsection (a) of this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(d) Eligible entity

For purposes of this section, the term ''eligible entity'' includes a school of nursing, a health care facility, a program leading to certification as a certified nurse assistant, a partnership of such a school and facility, or a partnership of such a program and facility.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2003 through 2007.

(July 1, 1944, ch. 373, title VIII, § 855, as added Pub. L. 107–205, title II, § 202(a), Aug. 1, 2002, 116 Stat. 816.)

PRIOR PROVISIONS

A prior section 298, act July 1, 1944, ch. 373, title VIII, § 851, formerly § 841, as added Pub. L. 88–581, § 2, Sept. 4,

1964, 78 Stat. 917; amended Pub. L. 89–751, § 3(b), Nov. 3, 1966, 80 Stat. 1230; Pub. L. 91–515, title VI, § 601(b)(2), Oct. 30, 1970, 84 Stat. 1311; Pub. L. 92–158, §§ 9, 13, Nov. 18, 1971, 85 Stat. 479, 480; renumbered § 851 and amended Pub. L. 94–63, title IX, § 941(k)(1), (2), July 29, 1975, 89 Stat. 366; Pub. L. 97–35, title XXVII, § 2759(a), Aug. 13, 1981, 95 Stat. 932; Pub. L. 99–92, § 9(d), Aug. 16, 1985, 99 Stat. 402; Pub. L. 100–607, title VII, § 721(a), Nov. 4, 1988, 102 Stat. 3165; Pub. L. 102–408, title II, § 212, Oct. 13, 1992, 106 Stat. 2079, related to Advisory Council on Nurse Education and Practice, prior to repeal by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562. See section 297t of this title.

A prior section 855 of act July 1, 1944, was classified to section 298b–2 of this title, prior to renumbering by Pub. L. 105–392 and transfer to section 296g of this title.

Prior sections 298a to 298b–1 were repealed by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

Section 298a, act July 1, 1944, ch. 373, title VIII, § 852, formerly § 842, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 918; renumbered § 852 and amended Pub. L. 94–63, title IX, § 941(k)(1), July 29, 1975, 89 Stat. 366, directed Federal noninterference with administration of institutions.

Section 298b, act July 1, 1944, ch. 373, title VIII, § 853, formerly § 843, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 918; amended Pub. L. 89–290, § 5(b), Oct. 22, 1965, 79 Stat. 1058; Pub. L. 90–490, title II, §§ 203, 204, 213, 231, Aug. 16, 1968, 82 Stat. 780, 783, 787; Pub. L. 92–158, § 2(d)(1), (2), Nov. 18, 1971, 85 Stat. 467, 468; renumbered § 853 and amended Pub. L. 94–63, title IX, § 941(k)(1), (3), July 29, 1975, 89 Stat. 366, 367; Pub. L. 96–32, § 7(k), July 10, 1979, 93 Stat. 84; Pub. L. 97–35, title XXVII, § 2759(b), Aug. 13, 1981, 95 Stat. 932; Pub. L. 99–92, § 9(e), (f), Aug. 16, 1985, 99 Stat. 402; Pub. L. 102–408, title II, § 202(b), Oct. 13, 1992, 106 Stat. 2071, defined terms.

Section 298b–1, act July 1, 1944, ch. 373, title VIII, § 854, formerly § 844, as added Pub. L. 92–158, § 10, Nov. 18, 1971, 85 Stat. 479; renumbered § 854, Pub. L. 94–63, title IX, § 941(k)(1), July 29, 1975, 89 Stat. 366, authorized advance funding for grants, contracts, or other payments.

A prior section 298b–2, act July 1, 1944, ch. 373, title VIII, § 855, formerly § 845, as added Pub. L. 92–158, § 11, Nov. 18, 1971, 85 Stat. 479; renumbered § 855, Pub. L. 94–63, title IX, § 941(k)(1), July 29, 1975, 89 Stat. 366, which prohibited discrimination by schools on basis of sex, was renumbered section 810 of act July 1, 1944, by Pub. L. 105–392 and transferred to section 296g of this title.

Prior sections 298b–3 to 298b–5 were repealed by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

Section 298b–3, act July 1, 1944, ch. 373, title VIII, § 856, as added Pub. L. 94–63, title IX, § 941(k)(4), July 29, 1975, 89 Stat. 367; amended Pub. L. 97–35, title XXVII, § 2759(c), Aug. 13, 1981, 95 Stat. 932; Pub. L. 100–607, title VII, § 721(b)(2), Nov. 4, 1988, 102 Stat. 3165, related to delegation of authority to administer programs.

Section 298b–4, act July 1, 1944, ch. 373, title VIII, § 857, as added Pub. L. 97–414, § 8(m), Jan. 4, 1983, 96 Stat. 2061, authorized use of funds to provide technical assistance.

Section 298b–5, act July 1, 1944, ch. 373, title VIII, § 858, formerly § 804, as added Pub. L. 88–581, § 2, Sept. 4, 1964, 78 Stat. 911; amended Pub. L. 92–158, §§ 2(d)(3), 13, Nov. 18, 1971, 85 Stat. 468, 480; Pub. L. 94–63, title IX, § 941(c), July 29, 1975, 89 Stat. 364; renumbered § 858 and amended Pub. L. 99–92, § 9(c)(1), Aug. 16, 1985, 99 Stat. 400; Pub. L. 99–129, title II, § 207(e)(1)–(3), Oct. 22, 1985, 99 Stat. 529, described conditions for United States recovery for construction assistance.

A prior section 298b–6, act July 1, 1944, ch. 373, title VIII, § 859, as added Nov. 4, 1988, Pub. L. 100–607, title VII, § 722, 102 Stat. 3165; amended Oct. 13, 1992, Pub. L. 102–408, title II, § 213, 106 Stat. 2080, directed Secretary to provide for evaluations of projects carried out pursuant to this subchapter and submit reports to Congress summarizing evaluations, and made one percent of amount appropriated each fiscal year available to carry out section, prior to repeal by Pub. L. 104–66, title I, § 1061(c), Dec. 21, 1995, 109 Stat. 719.

A prior section 298b–7, act July 1, 1944, ch. 373, title VIII, § 860, as added Pub. L. 102–408, title II, § 209, Oct. 13, 1992, 106 Stat. 2075; amended Pub. L. 102–531, title III, § 313(a)(10), Oct. 27, 1992, 106 Stat. 3507; Pub. L. 103–43, title XX, § 2014(g), June 10, 1993, 107 Stat. 217, set forth certain generally applicable provisions, prior to repeal by Pub. L. 105–392, title I, § 123(1), Nov. 13, 1998, 112 Stat. 3562.

A prior section 298c, act July 1, 1944, ch. 373, title VIII, § 860, as added Aug. 16, 1968, Pub. L. 90–490, title II, § 223(a), 82 Stat. 785; amended July 9, 1971, Pub. L. 92–52, § 4, 85 Stat. 145; Nov. 18, 1971, Pub. L. 92–158, § 7, 85 Stat. 478, which related to scholarship grants, was renumbered section 845 of act July 1, 1944, by Pub. L. 94–63 and transferred to section 297j of this title and subsequently repealed.

Another prior section 298c, act July 1, 1944, ch. 373, title VIII, § 861, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1236, stated the purposes of opportunity grants for nursing education and authorized appropriations of $3,000,000, $5,000,000, and $7,000,000 for fiscal years ending June 30, 1967, 1968, and 1969, respectively, to be available for payments to institutions until close of fiscal year succeeding fiscal year for which appropriated, prior to the reorganization and amendment of this subchapter by Pub. L. 90–490.

A prior section 298c–1, act July 1, 1944, ch. 373, title VIII, § 861, as added Aug. 16, 1968, Pub. L. 90–490, title II, § 223(a), 82 Stat. 786, related to transfers to student loan program, was renumbered section 846 of act July 1, 1944, by Pub. L. 94–63 and transferred to section 297k of this title and subsequently repealed.

Another prior section 298c–1, act July 1, 1944, ch. 373, title VIII, § 862, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1237, prescribed amount of nursing educational opportunity grant and provided for its annual determination, prior to the reorganization and amendment of this subchapter by Pub. L. 90–490.

Sections 298c–2 to 298c–6 were omitted in the reorganization and amendment of this subchapter by Pub. L. 90–490, title II, § 223, Aug. 16, 1968, 82 Stat. 785.

Section 298c–2, act July 1, 1944, ch. 373, title VIII, § 863, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1237, related to duration of a nursing educational opportunity grant.

Section 298c–3, act July 1, 1944, ch. 373, title VIII, § 864, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1238, related to selection of recipients of nursing educational opportunity grants.

Section 298c–4, act July 1, 1944, ch. 373, title VIII, § 865, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1238, related to allotment of nursing educational opportunity grant funds among States.

Section 298c–5, act July 1, 1944, ch. 373, title VIII, § 866, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1238, related to allocation of allotted funds to schools of nursing.

Section 298c–6, act July 1, 1944, ch. 373, title VIII, § 867, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1239, related to agreements with schools of nursing.

A prior section 298c–7, act July 1, 1944, ch. 373, title VIII, § 868, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1239; amended Nov. 18, 1971, Pub. L. 92–158, § 8, 85 Stat. 478; July 29, 1975, Pub. L. 94–63, title IX, § 902(g), 89 Stat. 355, authorized grants and contracts to encourage full utilization of educational talent for nursing profession and authorized appropriations from fiscal year ending June 30, 1972 through fiscal year ending June 30, 1975 for implementation, prior to repeal by Pub. L. 94–63, title IX, §§ 905, 931(b), July 29, 1975, 89 Stat. 355, 362, effective July 1, 1975.

A prior section 298c–8, act July 1, 1944, ch. 373, title VIII, § 869, as added Nov. 3, 1966, Pub. L. 89–751, § 8(b), 80 Stat. 1240, defined ''academic year'', prior to repeal by Pub. L. 94–63, title IX, §§ 941(j)(4), 942, July 29, 1975, 89 Stat. 366, 367, effective July 1, 1975.

SUBCHAPTER VII—AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

PRIOR PROVISIONS

A prior subchapter VII, related to the Agency for Health Care Policy and Research and consisted of sections 299 to 299c–6, prior to the general amendment of this subchapter by Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1653.

Another prior subchapter VII, related to education, research, training, and demonstrations in heart disease, cancer, stroke, and related diseases and consisted of sections 299 to 299j, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

PART A—ESTABLISHMENT AND GENERAL DUTIES

§ 299. Mission and duties

(a) In general

There is established within the Public Health Service an agency to be known as the Agency for Healthcare Research and Quality, which shall be headed by a director appointed by the Secretary. The Secretary shall carry out this subchapter acting through the Director.

(b) Mission

The purpose of the Agency is to enhance the quality, appropriateness, and effectiveness of health services, and access to such services, through the establishment of a broad base of scientific research and through the promotion of improvements in clinical and health system practices, including the prevention of diseases and other health conditions. The Agency shall promote health care quality improvement by conducting and supporting—

(1) research that develops and presents scientific evidence regarding all aspects of health care, including—

(A) the development and assessment of methods for enhancing patient participation in their own care and for facilitating shared patient-physician decision-making;

(B) the outcomes, effectiveness, and cost-effectiveness of health care practices, including preventive measures and long-term care;

(C) existing and innovative technologies;

(D) the costs and utilization of, and access to health care;

(E) the ways in which health care services are organized, delivered, and financed and the interaction and impact of these factors on the quality of patient care;

(F) methods for measuring quality and strategies for improving quality; and

(G) ways in which patients, consumers, purchasers, and practitioners acquire new information about best practices and health benefits, the determinants and impact of their use of this information;

(2) the synthesis and dissemination of available scientific evidence for use by patients, consumers, practitioners, providers, purchasers, policy makers, and educators; and

(3) initiatives to advance private and public efforts to improve health care quality.

(c) Requirements with respect to rural and inner-city areas and priority populations

(1) Research, evaluations and demonstration projects

In carrying out this subchapter, the Director shall conduct and support research and evaluations, and support demonstration projects, with respect to—

(A) the delivery of health care in inner-city areas, and in rural areas (including frontier areas); and

(B) health care for priority populations, which shall include—

(i) low-income groups;

(ii) minority groups;

(iii) women;

(iv) children;

(v) the elderly; and

(vi) individuals with special health care needs, including individuals with disabilities and individuals who need chronic care or end-of-life health care.

(2) Process to ensure appropriate research

The Director shall establish a process to ensure that the requirements of paragraph (1) are reflected in the overall portfolio of research conducted and supported by the Agency.

(3) Office of Priority Populations

The Director shall establish an Office of Priority Populations to assist in carrying out the requirements of paragraph (1).

(July 1, 1944, ch. 373, title IX, § 901, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1653.)

PRIOR PROVISIONS

A prior section 299, act July 1, 1944, ch. 373, title IX, § 901, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2189; amended Pub. L. 102–410, § 2(a), Oct. 13, 1992, 106 Stat. 2094, established the Agency for Health Care Policy and Research, prior to the general amendment of this subchapter by Pub. L. 106–129.

Another prior section 299, act July 1, 1944, ch. 373, title IX, § 900, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 926; amended Oct. 30, 1970, Pub. L. 91–515, title I, § 102, 84 Stat. 1297, set forth Congressional declaration of purpose of this subchapter to encourage and assist regional cooperative arrangements among medical schools, research institutions, and hospitals for research, training and medical data exchange, and to improve quality and capacity of health manpower and facilities available throughout the nation, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

A prior section 901 of act July 1, 1944, was classified to section 299a of this title prior to repeal by Pub. L. 99–117.

CONSTRUCTION

Pub. L. 106–129, § 2(b), Dec. 6, 1999, 113 Stat. 1670, provided that:

''(1) IN GENERAL.—Section 901(a) of the Public Health Service Act [subsec. (a) of this section] (as added by subsection (a) of this section) applies as a redesignation of the agency that carried out title IX of such Act [this subchapter] on the day before the date of the enactment of this Act [Dec. 6, 1999], and not as the termination of such agency and the establishment of a different agency. The amendment made by subsection (a) of this section [enacting this subchapter] does not affect appointments of the personnel of such agency who were employed at the agency on the day before such date, including the appointments of members of advi-

sory councils or study sections of the agency who were serving on the day before such date of enactment.

''(2) REFERENCES.—Any reference in law to the Agency for Health Care Policy and Research is deemed to be a reference to the Agency for Healthcare Research and Quality, and any reference in law to the Administrator for Health Care Policy and Research is deemed to be a reference to the Director of the Agency for Healthcare Research and Quality.''

TRANSITIONAL AND SAVINGS PROVISIONS

Section 6103(f) of Pub. L. 101–239 provided that personnel of the Department of Health and Human Services employed, and Department assets used in connection with Department functions, on Dec. 19, 1989, be transferred to the Administrator for Health Care Policy and Research for appropriate allocation, and provided that orders, rules, regulations, grants, contracts, certificates, licenses, privileges, and other determinations, actions, or official documents would continue in effect according to their terms unless changed pursuant to law.

IOM STUDY ON DRUG SAFETY AND QUALITY

Pub. L. 108–173, title I, §107(c), Dec. 8, 2003, 117 Stat. 2170, provided that:

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall enter into a contract with the Institutes of Medicine of the National Academies of Science (such Institutes referred to in this subsection as the 'IOM') to carry out a comprehensive study (in this subsection referred to as the 'study') of drug safety and quality issues in order to provide a blueprint for system-wide change.

''(2) OBJECTIVES.—

''(A) The study shall develop a full understanding of drug safety and quality issues through an evidence-based review of literature, case studies, and analysis. This review will consider the nature and causes of medication errors, their impact on patients, the differences in causation, impact, and prevention across multiple dimensions of health care delivery-including patient populations, care settings, clinicians, and institutional cultures.

''(B) The study shall attempt to develop credible estimates of the incidence, severity, costs of medication errors that can be useful in prioritizing resources for national quality improvement efforts and influencing national health care policy.

''(C) The study shall evaluate alternative approaches to reducing medication errors in terms of their efficacy, cost-effectiveness, appropriateness in different settings and circumstances, feasibility, institutional barriers to implementation, associated risks, and the quality of evidence supporting the approach.

''(D) The study shall provide guidance to consumers, providers, payers, and other key stakeholders on high-priority strategies to achieve both short-term and long-term drug safety goals, to elucidate the goals and expected results of such initiatives and support the business case for them, and to identify critical success factors and key levers for achieving success.

''(E) The study shall assess the opportunities and key impediments to broad nationwide implementation of medication error reductions, and to provide guidance to policy-makers and government agencies (including the Food and Drug Administration, the Centers for Medicare & Medicaid Services, and the National Institutes of Health) in promoting a national agenda for medication error reduction.

''(F) The study shall develop an applied research agenda to evaluate the health and cost impacts of alternative interventions, and to assess collaborative public and private strategies for implementing the research agenda through AHRQ and other government agencies.

''(3) CONDUCT OF STUDY.—

''(A) EXPERT COMMITTEE.—In conducting the study, the IOM shall convene a committee of leading experts and key stakeholders in pharmaceutical management and drug safety, including clinicians, health services researchers, pharmacists, system administrators, payer representatives, and others.

''(B) COMPLETION.—The study shall be completed within an 18-month period.

''(4) REPORT.—A report on the study shall be submitted to Congress upon the completion of the study.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.''

HEALTH CARE THAT WORKS FOR ALL AMERICANS: CITIZENS HEALTH CARE WORKING GROUP

Pub. L. 108–173, title X, §1014, Dec. 8, 2003, 117 Stat. 2441, provided that:

''(a) FINDINGS.—Congress finds the following:

''(1) In order to improve the health care system, the American public must engage in an informed national public debate to make choices about the services they want covered, what health care coverage they want, and how they are willing to pay for coverage.

''(2) More than a trillion dollars annually is spent on the health care system, yet—

''(A) 41,000,000 Americans are uninsured;

''(B) insured individuals do not always have access to essential, effective services to improve and maintain their health; and

''(C) employers, who cover over 170,000,000 Americans, find providing coverage increasingly difficult because of rising costs and double digit premium increases.

''(3) Despite increases in medical care spending that are greater than the rate of inflation, population growth, and Gross Domestic Product growth, there has not been a commensurate improvement in our health status as a nation.

''(4) Health care costs for even just 1 member of a family can be catastrophic, resulting in medical bills potentially harming the economic stability of the entire family.

''(5) Common life occurrences can jeopardize the ability of a family to retain private coverage or jeopardize access to public coverage.

''(6) Innovations in health care access, coverage, and quality of care, including the use of technology, have often come from States, local communities, and private sector organizations, but more creative policies could tap this potential.

''(7) Despite our Nation's wealth, the health care system does not provide coverage to all Americans who want it.

''(b) PURPOSES.—The purposes of this section are—

''(1) to provide for a nationwide public debate about improving the health care system to provide every American with the ability to obtain quality, affordable health care coverage; and

''(2) to provide for a vote by Congress on the recommendations that result from the debate.

''(c) ESTABLISHMENT.—The Secretary [of Health and Human Services], acting through the Agency for Healthcare Research and Quality, shall establish an entity to be known as the Citizens' Health Care Working Group (referred to in this section as the 'Working Group').

''(d) MEMBERSHIP.—

''(1) NUMBER AND APPOINTMENT.—The Working Group shall be composed of 15 members. One member shall be the Secretary. The Comptroller General of the United States shall appoint 14 members.

''(2) QUALIFICATIONS.—

''(A) IN GENERAL.—The membership of the Working Group shall include—

''(i) consumers of health services that represent those individuals who have not had insurance within 2 years of appointment, that have had chronic illnesses, including mental illness, are

disabled, and those who receive insurance coverage through medicare and medicaid; and

''(ii) individuals with expertise in financing and paying for benefits and access to care, business and labor perspectives, and providers of health care.

The membership shall reflect a broad geographic representation and a balance between urban and rural representatives.

''(B) PROHIBITED APPOINTMENTS.—Members of the Working Group shall not include Members of Congress or other elected government officials (Federal, State, or local). Individuals appointed to the Working Group shall not be paid employees or representatives of associations or advocacy organizations involved in the health care system.

''(e) PERIOD OF APPOINTMENT.—Members of the Working Group shall be appointed for a [sic] life of the Working Group. Any vacancies shall not affect the power and duties of the Working Group but shall be filled in the same manner as the original appointment.

''(f) DESIGNATION OF THE CHAIRPERSON.—Not later than 15 days after the date on which all members of the Working Group have been appointed under subsection (d)(1), the Comptroller General shall designate the chairperson of the Working Group.

''(g) SUBCOMMITTEES.—The Working Group may establish subcommittees if doing so increases the efficiency of the Working Group in completing its tasks.

''(h) DUTIES.—

''(1) HEARINGS.—Not later than 90 days after the date of the designation of the chairperson under subsection (f), the Working Group shall hold hearings to examine—

''(A) the capacity of the public and private health care systems to expand coverage options;

''(B) the cost of health care and the effectiveness of care provided at all stages of disease;

''(C) innovative State strategies used to expand health care coverage and lower health care costs;

''(D) local community solutions to accessing health care coverage;

''(E) efforts to enroll individuals currently eligible for public or private health care coverage;

''(F) the role of evidence-based medical practices that can be documented as restoring, maintaining, or improving a patient's health, and the use of technology in supporting providers in improving quality of care and lowering costs; and

''(G) strategies to assist purchasers of health care, including consumers, to become more aware of the impact of costs, and to lower the costs of health care.

''(2) ADDITIONAL HEARINGS.—The Working Group may hold additional hearings on subjects other than those listed in paragraph (1) so long as such hearings are determined to be necessary by the Working Group in carrying out the purposes of this section. Such additional hearings do not have to be completed within the time period specified in paragraph (1) but shall not delay the other activities of the Working Group under this section.

''(3) THE HEALTH REPORT TO THE AMERICAN PEOPLE.—Not later than 90 days after the hearings described in paragraphs (1) and (2) are completed, the Working Group shall prepare and make available to health care consumers through the Internet and other appropriate public channels, a report to be entitled, 'The Health Report to the American People'. Such report shall be understandable to the general public and include—

''(A) a summary of—

''(i) health care and related services that may be used by individuals throughout their life span;

''(ii) the cost of health care services and their medical effectiveness in providing better quality of care for different age groups;

''(iii) the source of coverage and payment, including reimbursement, for health care services;

''(iv) the reasons people are uninsured or underinsured and the cost to taxpayers, purchasers of health services, and communities when Americans are uninsured or underinsured;

''(v) the impact on health care outcomes and costs when individuals are treated in all stages of disease;

''(vi) health care cost containment strategies; and

''(vii) information on health care needs that need to be addressed;

''(B) examples of community strategies to provide health care coverage or access;

''(C) information on geographic-specific issues relating to health care;

''(D) information concerning the cost of care in different settings, including institutional-based care and home and community-based care;

''(E) a summary of ways to finance health care coverage; and

''(F) the role of technology in providing future health care including ways to support the information needs of patients and providers.

''(4) COMMUNITY MEETINGS.—

''(A) IN GENERAL.—Not later than 1 year after the date on which all the members of the Working Group have been appointed under subsection (d)(1) and appropriations are first made available to carry out this section, the Working Group shall initiate health care community meetings throughout the United States (in this paragraph referred to as 'community meetings'). Such community meetings may be geographically or regionally based and shall be completed within 180 days after the initiation of the first meeting.

''(B) NUMBER OF MEETINGS.—The Working Group shall hold a sufficient number of community meetings in order to receive information that reflects—

''(i) the geographic differences throughout the United States;

''(ii) diverse populations; and

''(iii) a balance among urban and rural populations.

''(C) MEETING REQUIREMENTS.—

''(i) FACILITATOR.—A State health officer may be the facilitator at the community meetings.

''(ii) ATTENDANCE.—At least 1 member of the Working Group shall attend and serve as chair of each community meeting. Other members may participate through interactive technology.

''(iii) TOPICS.—The community meetings shall, at a minimum, address the following questions:

''(I) What health care benefits and services should be provided?

''(II) How does the American public want health care delivered?

''(III) How should health care coverage be financed?

''(IV) What trade-offs are the American public willing to make in either benefits or financing to ensure access to affordable, high quality health care coverage and services?

''(iv) INTERACTIVE TECHNOLOGY.—The Working Group may encourage public participation in community meetings through interactive technology and other means as determined appropriate by the Working Group.

''(D) INTERIM REQUIREMENTS.—Not later than 180 days after the date of completion of the community meetings, the Working Group shall prepare and make available to the public through the Internet and other appropriate public channels, an interim set of recommendations on health care coverage and ways to improve and strengthen the health care system based on the information and preferences expressed at the community meetings. There shall be a 90-day public comment period on such recommendations.

''(i) RECOMMENDATIONS.—Not later than 120 days after the expiration of the public comment period described in subsection (h)(4)(D), the Working Group shall submit to Congress and the President a final set of recommendations.

''(j) ADMINISTRATION.—

''(1) EXECUTIVE DIRECTOR.—There shall be an Executive Director of the Working Group who shall be appointed by the chairperson of the Working Group in consultation with the members of the Working Group.

''(2) COMPENSATION.—While serving on the business of the Working Group (including travel time), a member of the Working Group shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and while so serving away from home and the member's regular place of business, a member may be allowed travel expenses, as authorized by the chairperson of the Working Group. For purposes of pay and employment benefits, rights, and privileges, all personnel of the Working Group shall be treated as if they were employees of the Senate.

''(3) INFORMATION FROM FEDERAL AGENCIES.—The Working Group may secure directly from any Federal department or agency such information as the Working Group considers necessary to carry out this section. Upon request of the Working Group, the head of such department or agency shall furnish such information.

''(4) POSTAL SERVICES.—The Working Group may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

''(k) DETAIL.—Not more than 10 Federal Government employees employed by the Department of Labor and 10 Federal Government employees employed by the Department of Health and Human Services may be detailed to the Working Group under this section without further reimbursement. Any detail of an employee shall be without interruption or loss of civil service status or privilege.

''(*l*) TEMPORARY AND INTERMITTENT SERVICES.—The chairperson of the Working Group may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

''(m) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this Act [Dec. 8, 2003], and annually thereafter during the existence of the Working Group, the Working Group shall report to Congress and make public a detailed description of the expenditures of the Working Group used to carry out its duties under this section.

''(n) SUNSET OF WORKING GROUP.—The Working Group shall terminate on the date that is 2 years after the date on which all the members of the Working Group have been appointed under subsection (d)(1) and appropriations are first made available to carry out this section.

''(*o*) ADMINISTRATION REVIEW AND COMMENTS.—Not later than 45 days after receiving the final recommendations of the Working Group under subsection (i), the President shall submit a report to Congress which shall contain—

''(1) additional views and comments on such recommendations; and

''(2) recommendations for such legislation and administrative actions as the President considers appropriate.

''(p) REQUIRED CONGRESSIONAL ACTION.—Not later than 45 days after receiving the report submitted by the President under subsection (*o*), each committee of jurisdiction of Congress, the Committee on Finance of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Ways and Means of the House of Representatives, the Committee on Energy and Commerce of the House of Representatives, [and the] Committee on Education and the Workforce of the House of Representatives, shall hold at least 1 hearing on such report and on the final recommendations of the Working Group submitted under subsection (i).

''(q) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section, other than subsection (h)(3), $3,000,000 for each of fiscal years 2005 and 2006.

''(2) HEALTH REPORT TO THE AMERICAN PEOPLE.—There are authorized to be appropriated for the preparation and dissemination of the Health Report to the American People described in subsection (h)(3), such sums as may be necessary for the fiscal year in which the report is required to be submitted.''

EXECUTIVE ORDER NO. 13017

Ex. Ord. No. 13017, Sept. 5, 1996, 61 F.R. 47659, as amended by Ex. Ord. No. 13040, Mar. 25, 1997, 62 F.R. 14773; Ex. Ord. No. 13056, July 21, 1997, 62 F.R. 39415, which established the Advisory Commission on Consumer Protection and Quality in the Health Care Industry, was revoked by Ex. Ord. No. 13138, §3(a), Sept. 30, 1999, 64 F.R. 53880, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 299a. General authorities

(a) In general

In carrying out section 299(b) of this title, the Director shall conduct and support research, evaluations, and training, support demonstration projects, research networks, and multidisciplinary centers, provide technical assistance, and disseminate information on health care and on systems for the delivery of such care, including activities with respect to—

(1) the quality, effectiveness, efficiency, appropriateness and value of health care services;

(2) quality measurement and improvement;

(3) the outcomes, cost, cost-effectiveness, and use of health care services and access to such services;

(4) clinical practice, including primary care and practice-oriented research;

(5) health care technologies, facilities, and equipment;

(6) health care costs, productivity, organization, and market forces;

(7) health promotion and disease prevention, including clinical preventive services;

(8) health statistics, surveys, database development, and epidemiology; and

(9) medical liability.

(b) Health services training grants

(1) In general

The Director may provide training grants in the field of health services research related to activities authorized under subsection (a) of this section, to include pre- and post-doctoral fellowships and training programs, young investigator awards, and other programs and activities as appropriate. In carrying out this subsection, the Director shall make use of funds made available under section 288(d)(3) of this title as well as other appropriated funds.

(2) Requirements

In developing priorities for the allocation of training funds under this subsection, the Director shall take into consideration shortages in the number of trained researchers who are addressing health care issues for the priority populations identified in section 299(c)(1)(B) of

this title and in addition, shall take into consideration indications of long-term commitment, amongst applicants for training funds, to addressing health care needs of the priority populations.

(c) Multidisciplinary centers

The Director may provide financial assistance to assist in meeting the costs of planning and establishing new centers, and operating existing and new centers, for multidisciplinary health services research, demonstration projects, evaluations, training, and policy analysis with respect to the matters referred to in subsection (a) of this section.

(d) Relation to certain authorities regarding social security

Activities authorized in this section shall be appropriately coordinated with experiments, demonstration projects, and other related activities authorized by the Social Security Act [42 U.S.C. 301 et seq.] and the Social Security Amendments of 1967. Activities under subsection (a)(2) of this section that affect the programs under titles XVIII, XIX and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.] shall be carried out consistent with section 1142 of such Act [42 U.S.C. 1320b–12].

(e) Disclaimer

The Agency shall not mandate national standards of clinical practice or quality health care standards. Recommendations resulting from projects funded and published by the Agency shall include a corresponding disclaimer.

(f) Rule of construction

Nothing in this section shall be construed to imply that the Agency's role is to mandate a national standard or specific approach to quality measurement and reporting. In research and quality improvement activities, the Agency shall consider a wide range of choices, providers, health care delivery systems, and individual preferences.

(July 1, 1944, ch. 373, title IX, § 902, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1654; amended Pub. L. 106–525, title II, § 201(a)(1), Nov. 22, 2000, 114 Stat. 2505.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Social Security Amendments of 1967, referred to in subsec. (d), is Pub. L. 90–248, Jan. 2, 1968, 81 Stat. 821, as amended. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 299a, act July 1, 1944, ch. 373, title IX, § 902, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2189; amended Pub. L. 101–639, § 3(d), Nov. 28, 1990, 104 Stat. 4603; Pub. L. 102–410, § 2(b), Oct. 13, 1992, 106 Stat. 2094, required Administrator to conduct and support research, demonstration projects, evaluations, training, guideline development, and dissemination of information on health care services and on systems for delivery of such services, prior to the general amendment of this subchapter by Pub. L. 106–129.

Another prior section 299a, act July 1, 1944, ch. 373, title IX, § 901, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 926; amended Oct. 15, 1968, Pub. L. 90–574, title I, §§ 101, 102, 107, 82 Stat. 1005, 1006; June 30, 1970, Pub. L. 91–296, title IV, § 401(b)(1)(F), 84 Stat. 352; Oct. 30, 1970, Pub. L. 91–515, title I, § 103, 84 Stat. 1298; June 18, 1973, Pub. L. 93–45, title I, § 110, 87 Stat. 93, authorized appropriations for grants and contracts to carry out purposes of this subchapter and set forth extent of and limitations on grants, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

A prior section 902 of act July 1, 1944, was classified to section 299b of this title prior to repeal by Pub. L. 99–117.

AMENDMENTS

2000—Subsec. (g). Pub. L. 106–525 struck out heading and text of subsec. (g). Text read as follows: ''Beginning with fiscal year 2003, the Director shall annually submit to the Congress a report regarding prevailing disparities in health care delivery as it relates to racial factors and socioeconomic factors in priority populations.''

REDUCING ADMINISTRATIVE HEALTH CARE COSTS

Pub. L. 103–43, title XIX, § 1909, June 10, 1993, 107 Stat. 205, as amended by Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 108–173, title IX, § 900(e)(6)(F), Dec. 8, 2003, 117 Stat. 2374, provided that: ''The Secretary of Health and Human Services, acting through the Agency for Healthcare Research and Quality and, to the extent possible, in consultation with the Centers for Medicare & Medicaid Services, may fund research to develop a text-based standardized billing process, through the utilization of text-based information retrieval and natural language processing techniques applied to automatic coding and analysis of textual patient discharge summaries and other text-based electronic medical records, within a parallel general purpose (shared memory) high performance computing environment. The Secretary shall determine whether such a standardized approach to medical billing, through the utilization of the text-based hospital discharge summary as well as electronic patient records can reduce the administrative billing costs of health care delivery.''

§ 299a–1. Research on health disparities

(a) In general

The Director shall—

(1) conduct and support research to identify populations for which there is a significant disparity in the quality, outcomes, cost, or use of health care services or access to and satisfaction with such services, as compared to the general population;

(2) conduct and support research on the causes of and barriers to reducing the health disparities identified in paragraph (1), taking into account such factors as socioeconomic status, attitudes toward health, the language spoken, the extent of formal education, the area or community in which the population resides, and other factors the Director determines to be appropriate;

(3) conduct and support research and support demonstration projects to identify, test, and evaluate strategies for reducing or eliminating health disparities, including development or identification of effective service delivery models, and disseminate effective strategies and models;

(4) develop measures and tools for the assessment and improvement of the outcomes, quality, and appropriateness of health care services provided to health disparity populations;

(5) in carrying out section 299a(c) of this title, provide support to increase the number of researchers who are members of health disparity populations, and the health services research capacity of institutions that train such researchers; and

(6) beginning with fiscal year 2003, annually submit to the Congress a report regarding prevailing disparities in health care delivery as it relates to racial factors and socioeconomic factors in priority populations.

(b) Research and demonstration projects

(1) In general

In carrying out subsection (a) of this section, the Director shall conduct and support research and support demonstrations to—

(A) identify the clinical, cultural, socioeconomic, geographic, and organizational factors that contribute to health disparities, including minority health disparity populations, which research shall include behavioral research, such as examination of patterns of clinical decisionmaking, and research on access, outreach, and the availability of related support services (such as cultural and linguistic services);

(B) identify and evaluate clinical and organizational strategies to improve the quality, outcomes, and access to care for health disparity populations, including minority health disparity populations;

(C) test such strategies and widely disseminate those strategies for which there is scientific evidence of effectiveness; and

(D) determine the most effective approaches for disseminating research findings to health disparity populations, including minority populations.

(2) Use of certain strategies

In carrying out this section, the Director shall implement research strategies and mechanisms that will enhance the involvement of individuals who are members of minority health disparity populations or other health disparity populations, health services researchers who are such individuals, institutions that train such individuals as researchers, members of minority health disparity populations or other health disparity populations for whom the Agency is attempting to improve the quality and outcomes of care, and representatives of appropriate tribal or other community-based organizations with respect to health disparity populations. Such research strategies and mechanisms may include the use of—

(A) centers of excellence that can demonstrate, either individually or through consortia, a combination of multi-disciplinary expertise in outcomes or quality improvement research, linkages to relevant sites of care, and a demonstrated capacity to involve members and communities of health disparity populations, including minority health disparity populations, in the planning, conduct, dissemination, and translation of research;

(B) provider-based research networks, including health plans, facilities, or delivery system sites of care (especially primary care), that make extensive use of health care providers who are members of health disparity populations or who serve patients in such populations and have the capacity to evaluate and promote quality improvement;

(C) service delivery models (such as health centers under section 254b of this title and the Indian Health Service) to reduce health disparities; and

(D) innovative mechanisms or strategies that will facilitate the translation of past research investments into clinical practices that can reasonably be expected to benefit these populations.

(c) Quality measurement development

(1) In general

To ensure that health disparity populations, including minority health disparity populations, benefit from the progress made in the ability of individuals to measure the quality of health care delivery, the Director shall support the development of quality of health care measures that assess the experience of such populations with health care systems, such as measures that assess the access of such populations to health care, the cultural competence of the care provided, the quality of the care provided, the outcomes of care, or other aspects of health care practice that the Director determines to be important.

(2) Examination of certain practices

The Director shall examine the practices of providers that have a record of reducing health disparities or have experience in providing culturally competent health services to minority health disparity populations or other health disparity populations. In examining such practices of providers funded under the authorities of this chapter, the Director shall consult with the heads of the relevant agencies of the Public Health Service.

(3) Report

Not later than 36 months after November 22, 2000, the Secretary, acting through the Director, shall prepare and submit to the appropriate committees of Congress a report describing the state-of-the-art of quality measurement for minority and other health disparity populations that will identify critical unmet needs, the current activities of the Department to address those needs, and a description of related activities in the private sector.

(d) Definition

For purposes of this section:

(1) The term ''health disparity population'' has the meaning given such term in section 287c–31 of this title, except that in addition to the meaning so given, the Director may determine that such term includes populations for which there is a significant disparity in the quality, outcomes, cost, or use of health care services or access to or satisfaction with such

services as compared to the general population.

(2) The term ''minority'', with respect to populations, refers to racial and ethnic minority groups as defined in section 300u–6 of this title.

(July 1, 1944, ch. 373, title IX, § 903, as added Pub. L. 106–525, title II, § 201(a)(2), Nov. 22, 2000, 114 Stat. 2505.)

PRIOR PROVISIONS

A prior section 299a–1, act July 1, 1944, ch. 373, title IX, § 903, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2190; amended Pub. L. 102–410, § 3, Oct. 13, 1992, 106 Stat. 2094; Pub. L. 103–43, title XIV, § 1422(a), June 10, 1993, 107 Stat. 172, related to public dissemination of information about studies and projects prior to the general amendment of this subchapter by Pub. L. 106–129. See section 299c–3 of this title.

A prior section 903 of act July 1, 1944, was classified to section 299c of this title prior to repeal by Pub. L. 99–117.

Prior sections 299a–2 and 299a–3 were omitted in the general amendment of this subchapter by Pub. L. 106–129.

Section 299a–2, act July 1, 1944, ch. 373, title IX, § 904, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2191; amended Pub. L. 102–410, § 4(a), Oct. 13, 1992, 106 Stat. 2095; Pub. L. 103–43, title XX, § 2013(1), June 10, 1993, 107 Stat. 214, related to health care technology assessment. See section 299b–5 of this title.

Section 299a–3, act July 1, 1944, ch. 373, title IX, § 905, as added Pub. L. 105–115, title IV, § 409, Nov. 21, 1997, 111 Stat. 2371, established demonstration program regarding centers for education and research on therapeutics. See section 299b–1(b) of this title.

PART B—HEALTH CARE IMPROVEMENT RESEARCH

§ 299b. Health care outcome improvement research

(a) Evidence rating systems

In collaboration with experts from the public and private sector, the Agency shall identify and disseminate methods or systems to assess health care research results, particularly methods or systems to rate the strength of the scientific evidence underlying health care practice, recommendations in the research literature, and technology assessments. The Agency shall make methods or systems for evidence rating widely available. Agency publications containing health care recommendations shall indicate the level of substantiating evidence using such methods or systems.

(b) Health care improvement research centers and provider-based research networks

(1) In general

In order to address the full continuum of care and outcomes research, to link research to practice improvement, and to speed the dissemination of research findings to community practice settings, the Agency shall employ research strategies and mechanisms that will link research directly with clinical practice in geographically diverse locations throughout the United States, including—

(A) health care improvement research centers that combine demonstrated multidisciplinary expertise in outcomes or quality improvement research with linkages to relevant sites of care;

(B) provider-based research networks, including plan, facility, or delivery system sites of care (especially primary care), that can evaluate outcomes and evaluate and promote quality improvement; and

(C) other innovative mechanisms or strategies to link research with clinical practice.

(2) Requirements

The Director is authorized to establish the requirements for entities applying for grants under this subsection.

(July 1, 1944, ch. 373, title IX, § 911, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1656.)

PRIOR PROVISIONS

A prior section 299b, act July 1, 1944, ch. 373, title IX, § 911, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2192; amended Pub. L. 102–410, § 5(b), Oct. 13, 1992, 106 Stat. 2097, related to establishment of Office of the Forum for Quality and Effectiveness in Health Care, prior to the general amendment of this subchapter by Pub. L. 106–129.

Another prior section 299b, act July 1, 1944, ch. 373, title IX, § 902, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 927; amended Oct. 15, 1968, Pub. L. 90–574, title I, § 103, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91–515, title I, §§ 104, 111(b), 84 Stat. 1299, 1301, defined terms for purposes of this subchapter, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

§ 299b–1. Private-public partnerships to improve organization and delivery

(a) Support for efforts to develop information on quality

(1) Scientific and technical support

In its role as the principal agency for health care research and quality, the Agency may provide scientific and technical support for private and public efforts to improve health care quality, including the activities of accrediting organizations.

(2) Role of the Agency

With respect to paragraph (1), the role of the Agency shall include—

(A) the identification and assessment of methods for the evaluation of the health of—

(i) enrollees in health plans by type of plan, provider, and provider arrangements; and

(ii) other populations, including those receiving long-term care services;

(B) the ongoing development, testing, and dissemination of quality measures, including measures of health and functional outcomes;

(C) the compilation and dissemination of health care quality measures developed in the private and public sector;

(D) assistance in the development of improved health care information systems;

(E) the development of survey tools for the purpose of measuring participant and beneficiary assessments of their health care; and

(F) identifying and disseminating information on mechanisms for the integration of information on quality into purchaser and consumer decision-making processes.

(b) Centers for education and research on therapeutics

(1) In general

The Secretary, acting through the Director and in consultation with the Commissioner of

Food and Drugs, shall establish a program for the purpose of making one or more grants for the establishment and operation of one or more centers to carry out the activities specified in paragraph (2).

(2) Required activities

The activities referred to in this paragraph are the following:

(A) The conduct of state-of-the-art research for the following purposes:

(i) To increase awareness of—

(I) new uses of drugs, biological products, and devices;

(II) ways to improve the effective use of drugs, biological products, and devices; and

(III) risks of new uses and risks of combinations of drugs and biological products.

(ii) To provide objective clinical information to the following individuals and entities:

(I) Health care practitioners and other providers of health care goods or services.

(II) Pharmacists, pharmacy benefit managers and purchasers.

(III) Health maintenance organizations and other managed health care organizations.

(IV) Health care insurers and governmental agencies.

(V) Patients and consumers.

(iii) To improve the quality of health care while reducing the cost of health care through—

(I) an increase in the appropriate use of drugs, biological products, or devices; and

(II) the prevention of adverse effects of drugs, biological products, and devices and the consequences of such effects, such as unnecessary hospitalizations.

(B) The conduct of research on the comparative effectiveness, cost-effectiveness, and safety of drugs, biological products, and devices.

(C) Such other activities as the Secretary determines to be appropriate, except that a grant may not be expended to assist the Secretary in the review of new drugs, biological products, and devices.

(c) Reducing errors in medicine

The Director shall, in accordance with part C of this subchapter, conduct and support research and build private-public partnerships to—

(1) identify the causes of preventable health care errors and patient injury in health care delivery;

(2) develop, demonstrate, and evaluate strategies for reducing errors and improving patient safety; and

(3) disseminate such effective strategies throughout the health care industry.

(July 1, 1944, ch. 373, title IX, § 912, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1656; amended Pub. L. 109–41, § 2(a)(1), July 29, 2005, 119 Stat. 424.)

PRIOR PROVISIONS

A prior section 299b–1, act July 1, 1944, ch. 373, title IX, § 912, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2192; amended Pub. L. 102–410, §§ 5(a)(1), (c)(1), 6(b), Oct. 13, 1992, 106 Stat. 2096, 2097, 2100, related to the duties of the Office of the Forum for Quality and Effectiveness in Health Care, prior to the general amendment of this subchapter by Pub. L. 106–129.

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–41 inserted ‘‘, in accordance with part C of this subchapter,’’ after ‘‘The Director shall’’ in introductory provisions.

§ 299b–2. Information on quality and cost of care

(a) In general

The Director shall—

(1) conduct a survey to collect data on a nationally representative sample of the population on the cost, use and, for fiscal year 2001 and subsequent fiscal years, quality of health care, including the types of health care services Americans use, their access to health care services, frequency of use, how much is paid for the services used, the source of those payments, the types and costs of private health insurance, access, satisfaction, and quality of care for the general population including rural residents and also for populations identified in section 299(c) of this title; and

(2) develop databases and tools that provide information to States on the quality, access, and use of health care services provided to their residents.

(b) Quality and outcomes information

(1) In general

Beginning in fiscal year 2001, the Director shall ensure that the survey conducted under subsection (a)(1) of this section will—

(A) identify determinants of health outcomes and functional status, including the health care needs of populations identified in section 299(c) of this title, provide data to study the relationships between health care quality, outcomes, access, use, and cost, measure changes over time, and monitor the overall national impact of Federal and State policy changes on health care;

(B) provide information on the quality of care and patient outcomes for frequently occurring clinical conditions for a nationally representative sample of the population including rural residents; and

(C) provide reliable national estimates for children and persons with special health care needs through the use of supplements or periodic expansions of the survey.

In expanding the Medical Expenditure Panel Survey, as in existence on December 6, 1999, in fiscal year 2001 to collect information on the quality of care, the Director shall take into account any outcomes measurements generally collected by private sector accreditation organizations.

(2) Annual report

Beginning in fiscal year 2003, the Secretary, acting through the Director, shall submit to Congress an annual report on national trends

in the quality of health care provided to the American people.

(July 1, 1944, ch. 373, title IX, § 913, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1658.)

CODIFICATION

December 6, 1999, referred to in subsec. (b)(1), was in the original ''the date of the enactment of this title'', which was translated as meaning the date of enactment of Pub. L. 106–129, which amended this subchapter generally, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 299b–2, act July 1, 1944, ch. 373, title IX, § 913, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2193; amended Pub. L. 102–410, § 5(c)(2), (f)(1)(A), Oct. 13, 1992, 106 Stat. 2097, 2098, related to development of guidelines and standards, prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–3. Information systems for health care improvement

(a) In general

In order to foster a range of innovative approaches to the management and communication of health information, the Agency shall conduct and support research, evaluations, and initiatives to advance—

(1) the use of information systems for the study of health care quality and outcomes, including the generation of both individual provider and plan-level comparative performance data;

(2) training for health care practitioners and researchers in the use of information systems;

(3) the creation of effective linkages between various sources of health information, including the development of information networks;

(4) the delivery and coordination of evidence-based health care services, including the use of real-time health care decision-support programs;

(5) the utility and comparability of health information data and medical vocabularies by addressing issues related to the content, structure, definitions and coding of such information and data in consultation with appropriate Federal, State and private entities;

(6) the use of computer-based health records in all settings for the development of personal health records for individual health assessment and maintenance, and for monitoring public health and outcomes of care within populations; and

(7) the protection of individually identifiable information in health services research and health care quality improvement.

(b) Demonstration

The Agency shall support demonstrations into the use of new information tools aimed at improving shared decision-making between patients and their care-givers.

(c) Facilitating public access to information

The Director shall work with appropriate public and private sector entities to facilitate public access to information regarding the quality of and consumer satisfaction with health care.

(July 1, 1944, ch. 373, title IX, § 914, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1658.)

PRIOR PROVISIONS

A prior section 299b–3, act July 1, 1944, ch. 373, title IX, § 914, as added Pub. L. 101–239, title VI, § 6103(a), Dec. 19, 1989, 103 Stat. 2193; amended Pub. L. 102–410, §§ 5(c)(3), 6(a), 7, Oct. 13, 1992, 106 Stat. 2097, 2099, 2100; Pub. L. 103–43, title XX, § 2013(2), June 10, 1993, 107 Stat. 215, related to creation of an agenda and additional requirements, prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–4. Research supporting primary care and access in underserved areas

(a) Preventive Services Task Force

(1) Establishment and purpose

The Director may periodically convene a Preventive Services Task Force to be composed of individuals with appropriate expertise. Such a task force shall review the scientific evidence related to the effectiveness, appropriateness, and cost-effectiveness of clinical preventive services for the purpose of developing recommendations for the health care community, and updating previous clinical preventive recommendations.

(2) Role of Agency

The Agency shall provide ongoing administrative, research, and technical support for the operations of the Preventive Services Task Force, including coordinating and supporting the dissemination of the recommendations of the Task Force.

(3) Operation

In carrying out its responsibilities under paragraph (1), the Task Force is not subject to the provisions of Appendix 2 of title 5.

(b) Primary care research

(1) In general

There is established within the Agency a Center for Primary Care Research (referred to in this subsection as the ''Center'') that shall serve as the principal source of funding for primary care practice research in the Department of Health and Human Services. For purposes of this paragraph, primary care research focuses on the first contact when illness or health concerns arise, the diagnosis, treatment or referral to specialty care, preventive care, and the relationship between the clinician and the patient in the context of the family and community.

(2) Research

In carrying out this section, the Center shall conduct and support research concerning—

(A) the nature and characteristics of primary care practice;

(B) the management of commonly occurring clinical problems;

(C) the management of undifferentiated clinical problems; and

(D) the continuity and coordination of health services.

(July 1, 1944, ch. 373, title IX, § 915, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1659.)

REFERENCES IN TEXT

Appendix 2 of title 5, referred to in subsec. (a)(3), probably means the Federal Advisory Committee Act,

Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 299b–4a. Studies on preventive interventions in primary care for older Americans

(a) Studies

The Secretary of Health and Human Services, acting through the United States Preventive Services Task Force, shall conduct a series of studies designed to identify preventive interventions that can be delivered in the primary care setting and that are most valuable to older Americans.

(b) Mission statement

The mission statement of the United States Preventive Services Task Force is amended to include the evaluation of services that are of particular relevance to older Americans.

(c) Report

Not later than 1 year after December 21, 2000, and annually thereafter, the Secretary of Health and Human Services shall submit to Congress a report on the conclusions of the studies conducted under subsection (a) of this section, together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(Pub. L. 106–554, §1(a)(6) [title I, §126], Dec. 21, 2000, 114 Stat. 2763, 2763A–479.)

CODIFICATION

Section was enacted as part of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, and also as part of the Consolidated Appropriations Act, 2001, and not as part of the Public Health Service Act which comprises this chapter.

§ 299b–5. Health care practice and technology innovation

(a) In general

The Director shall promote innovation in evidence-based health care practices and technologies by—

(1) conducting and supporting research on the development, diffusion, and use of health care technology;

(2) developing, evaluating, and disseminating methodologies for assessments of health care practices and technologies;

(3) conducting intramural and supporting extramural assessments of existing and new health care practices and technologies;

(4) promoting education and training and providing technical assistance in the use of health care practice and technology assessment methodologies and results; and

(5) working with the National Library of Medicine and the public and private sector to develop an electronic clearinghouse of currently available assessments and those in progress.

(b) Specification of process

(1) In general

Not later than December 31, 2000, the Director shall develop and publish a description of the methods used by the Agency and its contractors for health care practice and technology assessment.

(2) Consultations

In carrying out this subsection, the Director shall cooperate and consult with the Assistant Secretary for Health, the Administrator of the Centers for Medicare & Medicaid Services, the Director of the National Institutes of Health, the Commissioner of Food and Drugs, and the heads of any other interested Federal department or agency, and shall seek input, where appropriate, from professional societies and other private and public entities.

(3) Methodology

The Director shall, in developing the methods used under paragraph (1), consider—

(A) safety, efficacy, and effectiveness;

(B) legal, social, and ethical implications;

(C) costs, benefits, and cost-effectiveness;

(D) comparisons to alternate health care practices and technologies; and

(E) requirements of Food and Drug Administration approval to avoid duplication.

(c) Specific assessments

(1) In general

The Director shall conduct or support specific assessments of health care technologies and practices.

(2) Requests for assessments

The Director is authorized to conduct or support assessments, on a reimbursable basis, for the Centers for Medicare & Medicaid Services, the Department of Defense, the Department of Veterans Affairs, the Office of Personnel Management, and other public or private entities.

(3) Grants and contracts

In addition to conducting assessments, the Director may make grants to, or enter into cooperative agreements or contracts with, entities described in paragraph (4) for the purpose of conducting assessments of experimental, emerging, existing, or potentially outmoded health care technologies, and for related activities.

(4) Eligible entities

An entity described in this paragraph is an entity that is determined to be appropriate by the Director, including academic medical centers, research institutions and organizations, professional organizations, third party payers, governmental agencies, minority institutions of higher education (such as Historically Black Colleges and Universities, and Hispanic institutions), and consortia of appropriate research entities established for the purpose of conducting technology assessments.

(d) Medical examination of certain victims

(1) In general

The Director shall develop and disseminate a report on evidence-based clinical practices for—

(A) the examination and treatment by health professionals of individuals who are victims of sexual assault (including child molestation) or attempted sexual assault; and

(B) the training of health professionals, in consultation with the Health Resources and

Services Administration, on performing medical evidentiary examinations of individuals who are victims of child abuse or neglect, sexual assault, elder abuse, or domestic violence.

(2) Certain considerations

In identifying the issues to be addressed by the report, the Director shall, to the extent practicable, take into consideration the expertise and experience of Federal and State law enforcement officials regarding the victims referred to in paragraph (1), and of other appropriate public and private entities (including medical societies, victim services organizations, sexual assault prevention organizations, and social services organizations).

(July 1, 1944, ch. 373, title IX, § 916, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1660; Pub. L. 108–173, title IX, § 900(e)(2)(C), Dec. 8, 2003, 117 Stat. 2372.)

AMENDMENTS

2003—Subsecs. (b)(2), (c)(2). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

§ 299b–6. Coordination of Federal Government quality improvement efforts

(a) Requirement

(1) In general

To avoid duplication and ensure that Federal resources are used efficiently and effectively, the Secretary, acting through the Director, shall coordinate all research, evaluations, and demonstrations related to health services research, quality measurement and quality improvement activities undertaken and supported by the Federal Government.

(2) Specific activities

The Director, in collaboration with the appropriate Federal officials representing all concerned executive agencies and departments, shall develop and manage a process to—

(A) improve interagency coordination, priority setting, and the use and sharing of research findings and data pertaining to Federal quality improvement programs, technology assessment, and health services research;

(B) strengthen the research information infrastructure, including databases, pertaining to Federal health services research and health care quality improvement initiatives;

(C) set specific goals for participating agencies and departments to further health services research and health care quality improvement; and

(D) strengthen the management of Federal health care quality improvement programs.

(b) Study by the Institute of Medicine

(1) In general

To provide Congress, the Department of Health and Human Services, and other relevant departments with an independent, external review of their quality oversight, quality improvement and quality research programs, the Secretary shall enter into a contract with the Institute of Medicine—

(A) to describe and evaluate current quality improvement, quality research and quality monitoring processes through—

(i) an overview of pertinent health services research activities and quality improvement efforts conducted by all Federal programs, with particular attention paid to those under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.]; and

(ii) a summary of the partnerships that the Department of Health and Human Services has pursued with private accreditation, quality measurement and improvement organizations; and

(B) to identify options and make recommendations to improve the efficiency and effectiveness of quality improvement programs through—

(i) the improved coordination of activities across the medicare, medicaid and child health insurance programs under titles XVIII, XIX and XXI of the Social Security Act and health services research programs;

(ii) the strengthening of patient choice and participation by incorporating state-of-the-art quality monitoring tools and making information on quality available; and

(iii) the enhancement of the most effective programs, consolidation as appropriate, and elimination of duplicative activities within various Federal agencies.

(2) Requirements

(A) In general

The Secretary shall enter into a contract with the Institute of Medicine for the preparation—

(i) not later than 12 months after December 6, 1999, of a report providing an overview of the quality improvement programs of the Department of Health and Human Services for the medicare, medicaid, and CHIP programs under titles XVIII, XIX, and XXI of the Social Security Act; and

(ii) not later than 24 months after December 6, 1999, of a final report containing recommendations.

(B) Reports

The Secretary shall submit the reports described in subparagraph (A) to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Commerce of the House of Representatives.

(July 1, 1944, ch. 373, title IX, § 917, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1661.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

December 6, 1999, referred to in subsec. (b)(2)(A), was in the original ''the date of the enactment of this title'', which was translated as meaning the date of enactment of Pub. L. 106–129, which amended this subchapter generally, to reflect the probable intent of Congress.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 299b–7. Research on outcomes of health care items and services

(a) Research, demonstrations, and evaluations

(1) Improvement of effectiveness and efficiency

(A) In general

To improve the quality, effectiveness, and efficiency of health care delivered pursuant to the programs established under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], the Secretary[1] acting through the Director of the Agency for Healthcare Research and Quality (in this section referred to as the ''Director''), shall conduct and support research to meet the priorities and requests for scientific evidence and information identified by such programs with respect to—

(i) the outcomes, comparative clinical effectiveness, and appropriateness of health care items and services (including prescription drugs); and

(ii) strategies for improving the efficiency and effectiveness of such programs, including the ways in which such items and services are organized, managed, and delivered under such programs.

(B) Specification

To respond to priorities and information requests in subparagraph (A), the Secretary may conduct or support, by grant, contract, or interagency agreement, research, demonstrations, evaluations, technology assessments, or other activities, including the provision of technical assistance, scientific expertise, or methodological assistance.

(2) Priorities

(A) In general

The Secretary shall establish a process to develop priorities that will guide the research, demonstrations, and evaluation activities undertaken pursuant to this section.

(B) Initial list

Not later than 6 months after December 8, 2003, the Secretary shall establish an initial list of priorities for research related to health care items and services (including prescription drugs).

(C) Process

In carrying out subparagraph (A), the Secretary—

(i) shall ensure that there is broad and ongoing consultation with relevant stakeholders in identifying the highest priorities for research, demonstrations, and evaluations to support and improve the programs established under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.];

(ii) may include health care items and services which impose a high cost on such programs, as well as those which may be underutilized or overutilized and which may significantly improve the prevention, treatment, or cure of diseases and conditions (including chronic conditions) which impose high direct or indirect costs on patients or society; and

(iii) shall ensure that the research and activities undertaken pursuant to this section are responsive to the specified priorities and are conducted in a timely manner.

(3) Evaluation and synthesis of scientific evidence

(A) In general

The Secretary shall—

(i) evaluate and synthesize available scientific evidence related to health care items and services (including prescription drugs) identified as priorities in accordance with paragraph (2) with respect to the comparative clinical effectiveness, outcomes, appropriateness, and provision of such items and services (including prescription drugs);

(ii) identify issues for which existing scientific evidence is insufficient with respect to such health care items and services (including prescription drugs);

(iii) disseminate to prescription drug plans and MA–PD plans under part D of title XVIII of the Social Security Act [42 U.S.C. 1395w–101 et seq.], other health plans, and the public the findings made under clauses (i) and (ii); and

(iv) work in voluntary collaboration with public and private sector entities to facilitate the development of new scientific knowledge regarding health care items and services (including prescription drugs).

(B) Initial research

The Secretary shall complete the evaluation and synthesis of the initial research required by the priority list developed under paragraph (2)(B) not later than 18 months after the development of such list.

(C) Dissemination

(i) In general

To enhance patient safety and the quality of health care, the Secretary shall make available and disseminate in appropriate formats to prescription drugs plans under part D, and MA–PD plans under part C, of title XVIII of the Social Security Act [42 U.S.C. 1395w–101 et seq., 1395w–21 et seq.], other health plans, and the public

[1] So in original. Probably should be followed by a comma.

the evaluations and syntheses prepared pursuant to subparagraph (A) and the findings of research conducted pursuant to paragraph (1). In carrying out this clause the Secretary, in order to facilitate the availability of such evaluations and syntheses or findings at every decision point in the health care system, shall—

(I) present such evaluations and syntheses or findings in a form that is easily understood by the individuals receiving health care items and services (including prescription drugs) under such plans and periodically assess that the requirements of this subclause have been met; and

(II) provide such evaluations and syntheses or findings and other relevant information through easily accessible and searchable electronic mechanisms, and in hard copy formats as appropriate.

(ii) Rule of construction

Nothing in this section shall be construed as—

(I) affecting the authority of the Secretary or the Commissioner of Food and Drugs under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] or the Public Health Service Act [42 U.S.C. 201 et seq.]; or

(II) conferring any authority referred to in subclause (I) to the Director.

(D) Accountability

In carrying out this paragraph, the Secretary shall implement activities in a manner that—

(i) makes publicly available all scientific evidence relied upon and the methodologies employed, provided such evidence and method are not protected from public disclosure by section 1905 of title 18 or other applicable law so that the results of the research, analyses, or syntheses can be evaluated or replicated; and

(ii) ensures that any information needs and unresolved issues identified in subparagraph (A)(ii) are taken into account in priority-setting for future research conducted by the Secretary.

(4) Confidentiality

(A) In general

In making use of administrative, clinical, and program data and information developed or collected with respect to the programs established under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], for purposes of carrying out the requirements of this section or the activities authorized under title IX of the Public Health Service Act (42 U.S.C. 299 et seq.), such data and information shall be protected in accordance with the confidentiality requirements of title IX of the Public Health Service Act.

(B) Rule of construction

Nothing in this section shall be construed to require or permit the disclosure of data provided to the Secretary that is otherwise protected from disclosure under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], section 1905 of title 18, or other applicable law.

(5) Evaluations

The Secretary shall conduct and support evaluations of the activities carried out under this section to determine the extent to which such activities have had an effect on outcomes and utilization of health care items and services.

(6) Improving information available to health care providers, patients, and policymakers

Not later than 18 months after December 8, 2003, the Secretary shall identify options that could be undertaken in voluntary collaboration with private and public entities (as appropriate) for the—

(A) provision of more timely information through the programs established under titles XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], regarding the outcomes and quality of patient care, including clinical and patient-reported outcomes, especially with respect to interventions and conditions for which clinical trials would not be feasible or raise ethical concerns that are difficult to address;

(B) acceleration of the adoption of innovation and quality improvement under such programs; and

(C) development of management tools for the programs established under titles XIX and XXI of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.], and with respect to the programs established under such titles, assess the feasibility of using administrative or claims data, to—

(i) improve oversight by State officials;

(ii) support Federal and State initiatives to improve the quality, safety, and efficiency of services provided under such programs; and

(iii) provide a basis for estimating the fiscal and coverage impact of Federal or State program and policy changes.

(b) Recommendations

(1) Disclaimer

In carrying out this section, the Director shall—

(A) not mandate national standards of clinical practice or quality health care standards; and

(B) include in any recommendations resulting from projects funded and published by the Director, a corresponding reference to the prohibition described in subparagraph (A).

(2) Requirement for implementation

Research, evaluation, and communication activities performed pursuant to this section shall reflect the principle that clinicians and patients should have the best available evidence upon which to make choices in health care items and services, in providers, and in health care delivery systems, recognizing that patient subpopulations and patient and physician preferences may vary.

(3) Rule of construction

Nothing in this section shall be construed to provide the Director with authority to mandate a national standard or require a specific approach to quality measurement and reporting.

(c) Research with respect to dissemination

The Secretary, acting through the Director, may conduct or support research with respect to improving methods of disseminating information in accordance with subsection (a)(3)(C) of this section.

(d) Limitation on CMS

The Administrator of the Centers for Medicare & Medicaid Services may not use data obtained in accordance with this section to withhold coverage of a prescription drug.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out this section, $50,000,000 for fiscal year 2004, and such sums as may be necessary for each fiscal year thereafter.

(Pub. L. 108–173, title X, §1013, Dec. 8, 2003, 117 Stat. 2438.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(A), (2)(C)(i), (3)(A)(iii), (C)(i), (4)(A), (6)(A), (C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§1395 et seq.), XIX (§1396 et seq.), and XXI (§1397aa et seq.), respectively, of chapter 7 of this title. Parts C and D of title XVIII of the Act are classified generally to parts C (§1395w–21 et seq.) and D (§1395w–101 et seq.), respectively, of subchapter XVIII of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a)(3)(C)(ii)(I), (4)(B), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Public Health Service Act, referred to in subsec. (a)(3)(C)(ii)(I), (4)(A), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to this chapter. Title IX of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and not as part of the Public Health Service Act which comprises this chapter.

DEFINITION OF ''SECRETARY''

''Secretary'' as meaning the Secretary of Health and Human Services, see section 1(c)(2) of Pub. L. 108–173, set out as a note under section 1301 of this title.

PART C—PATIENT SAFETY IMPROVEMENT

§ 299b–21. Definitions

In this part:

(1) HIPAA confidentiality regulations

The term ''HIPAA confidentiality regulations'' means regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033).

(2) Identifiable patient safety work product

The term ''identifiable patient safety work product'' means patient safety work product that—

(A) is presented in a form and manner that allows the identification of any provider that is a subject of the work product, or any providers that participate in activities that are a subject of the work product;

(B) constitutes individually identifiable health information as that term is defined in the HIPAA confidentiality regulations; or

(C) is presented in a form and manner that allows the identification of an individual who reported information in the manner specified in section 299b–22(e) of this title.

(3) Nonidentifiable patient safety work product

The term ''nonidentifiable patient safety work product'' means patient safety work product that is not identifiable patient safety work product (as defined in paragraph (2)).

(4) Patient safety organization

The term ''patient safety organization'' means a private or public entity or component thereof that is listed by the Secretary pursuant to section 299b–24(d) of this title.

(5) Patient safety activities

The term ''patient safety activities'' means the following activities:

(A) Efforts to improve patient safety and the quality of health care delivery.

(B) The collection and analysis of patient safety work product.

(C) The development and dissemination of information with respect to improving patient safety, such as recommendations, protocols, or information regarding best practices.

(D) The utilization of patient safety work product for the purposes of encouraging a culture of safety and of providing feedback and assistance to effectively minimize patient risk.

(E) The maintenance of procedures to preserve confidentiality with respect to patient safety work product.

(F) The provision of appropriate security measures with respect to patient safety work product.

(G) The utilization of qualified staff.

(H) Activities related to the operation of a patient safety evaluation system and to the provision of feedback to participants in a patient safety evaluation system.

(6) Patient safety evaluation system

The term ''patient safety evaluation system'' means the collection, management, or analysis of information for reporting to or by a patient safety organization.

(7) Patient safety work product

(A) In general

Except as provided in subparagraph (B), the term ''patient safety work product'' means any data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements—

(i) which—

(I) are assembled or developed by a provider for reporting to a patient safety organization and are reported to a patient safety organization; or

(II) are developed by a patient safety organization for the conduct of patient safety activities;

and which could result in improved patient safety, health care quality, or health care outcomes; or

(ii) which identify or constitute the deliberations or analysis of, or identify the fact of reporting pursuant to, a patient safety evaluation system.

(B) Clarification

(i) Information described in subparagraph (A) does not include a patient's medical record, billing and discharge information, or any other original patient or provider record.

(ii) Information described in subparagraph (A) does not include information that is collected, maintained, or developed separately, or exists separately, from a patient safety evaluation system. Such separate information or a copy thereof reported to a patient safety organization shall not by reason of its reporting be considered patient safety work product.

(iii) Nothing in this part shall be construed to limit—

(I) the discovery of or admissibility of information described in this subparagraph in a criminal, civil, or administrative proceeding;

(II) the reporting of information described in this subparagraph to a Federal, State, or local governmental agency for public health surveillance, investigation, or other public health purposes or health oversight purposes; or

(III) a provider's recordkeeping obligation with respect to information described in this subparagraph under Federal, State, or local law.

(8) Provider

The term ''provider'' means—

(A) an individual or entity licensed or otherwise authorized under State law to provide health care services, including—

(i) a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner's office, long term care facility, behavior health residential treatment facility, clinical laboratory, or health center; or

(ii) a physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner; or

(B) any other individual or entity specified in regulations promulgated by the Secretary.

(July 1, 1944, ch. 373, title IX, § 921, as added Pub. L. 109–41, § 2(a)(5), July 29, 2005, 119 Stat. 424.)

REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in par. (1), is section 264(c) of Pub. L. 104–191, title II, Aug. 21, 1996, 110 Stat. 2033, which was formerly set out as a note under section 1320d–2 of this title.

PRIOR PROVISIONS

A prior section 921 of act July 1, 1944, was renumbered section 931 and is classified to section 299c of this title.

Another prior section 921 of act July 1, 1944, was classified to section 299c of this title prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–22. Privilege and confidentiality protections

(a) Privilege

Notwithstanding any other provision of Federal, State, or local law, and subject to subsection (c) of this section, patient safety work product shall be privileged and shall not be—

(1) subject to a Federal, State, or local civil, criminal, or administrative subpoena or order, including in a Federal, State, or local civil or administrative disciplinary proceeding against a provider;

(2) subject to discovery in connection with a Federal, State, or local civil, criminal, or administrative proceeding, including in a Federal, State, or local civil or administrative disciplinary proceeding against a provider;

(3) subject to disclosure pursuant to section 552 of title 5 (commonly known as the Freedom of Information Act) or any other similar Federal, State, or local law;

(4) admitted as evidence in any Federal, State, or local governmental civil proceeding, criminal proceeding, administrative rulemaking proceeding, or administrative adjudicatory proceeding, including any such proceeding against a provider; or

(5) admitted in a professional disciplinary proceeding of a professional disciplinary body established or specifically authorized under State law.

(b) Confidentiality of patient safety work product

Notwithstanding any other provision of Federal, State, or local law, and subject to subsection (c) of this section, patient safety work product shall be confidential and shall not be disclosed.

(c) Exceptions

Except as provided in subsection (g)(3) of this section—

(1) Exceptions from privilege and confidentiality

Subsections (a) and (b) of this section shall not apply to (and shall not be construed to prohibit) one or more of the following disclosures:

(A) Disclosure of relevant patient safety work product for use in a criminal pro-

ceeding, but only after a court makes an in camera determination that such patient safety work product contains evidence of a criminal act and that such patient safety work product is material to the proceeding and not reasonably available from any other source.

(B) Disclosure of patient safety work product to the extent required to carry out subsection (f)(4)(A) of this section.

(C) Disclosure of identifiable patient safety work product if authorized by each provider identified in such work product.

(2) Exceptions from confidentiality

Subsection (b) of this section shall not apply to (and shall not be construed to prohibit) one or more of the following disclosures:

(A) Disclosure of patient safety work product to carry out patient safety activities.

(B) Disclosure of nonidentifiable patient safety work product.

(C) Disclosure of patient safety work product to grantees, contractors, or other entities carrying out research, evaluation, or demonstration projects authorized, funded, certified, or otherwise sanctioned by rule or other means by the Secretary, for the purpose of conducting research to the extent that disclosure of protected health information would be allowed for such purpose under the HIPAA confidentiality regulations.

(D) Disclosure by a provider to the Food and Drug Administration with respect to a product or activity regulated by the Food and Drug Administration.

(E) Voluntary disclosure of patient safety work product by a provider to an accrediting body that accredits that provider.

(F) Disclosures that the Secretary may determine, by rule or other means, are necessary for business operations and are consistent with the goals of this part.

(G) Disclosure of patient safety work product to law enforcement authorities relating to the commission of a crime (or to an event reasonably believed to be a crime) if the person making the disclosure believes, reasonably under the circumstances, that the patient safety work product that is disclosed is necessary for criminal law enforcement purposes.

(H) With respect to a person other than a patient safety organization, the disclosure of patient safety work product that does not include materials that—

(i) assess the quality of care of an identifiable provider; or

(ii) describe or pertain to one or more actions or failures to act by an identifiable provider.

(3) Exception from privilege

Subsection (a) of this section shall not apply to (and shall not be construed to prohibit) voluntary disclosure of nonidentifiable patient safety work product.

(d) Continued protection of information after disclosure

(1) In general

Patient safety work product that is disclosed under subsection (c) of this section shall continue to be privileged and confidential as provided for in subsections (a) and (b) of this section, and such disclosure shall not be treated as a waiver of privilege or confidentiality, and the privileged and confidential nature of such work product shall also apply to such work product in the possession or control of a person to whom such work product was disclosed.

(2) Exception

Notwithstanding paragraph (1), and subject to paragraph (3)—

(A) if patient safety work product is disclosed in a criminal proceeding, the confidentiality protections provided for in subsection (b) of this section shall no longer apply to the work product so disclosed; and

(B) if patient safety work product is disclosed as provided for in subsection (c)(2)(B) of this section (relating to disclosure of nonidentifiable patient safety work product), the privilege and confidentiality protections provided for in subsections (a) and (b) of this section shall no longer apply to such work product.

(3) Construction

Paragraph (2) shall not be construed as terminating or limiting the privilege or confidentiality protections provided for in subsection (a) or (b) of this section with respect to patient safety work product other than the specific patient safety work product disclosed as provided for in subsection (c) of this section.

(4) Limitations on actions

(A) Patient safety organizations

(i) In general

A patient safety organization shall not be compelled to disclose information collected or developed under this part whether or not such information is patient safety work product unless such information is identified, is not patient safety work product, and is not reasonably available from another source.

(ii) Nonapplication

The limitation contained in clause (i) shall not apply in an action against a patient safety organization or with respect to disclosures pursuant to subsection (c)(1) of this section.

(B) Providers

An accrediting body shall not take an accrediting action against a provider based on the good faith participation of the provider in the collection, development, reporting, or maintenance of patient safety work product in accordance with this part. An accrediting body may not require a provider to reveal its communications with any patient safety organization established in accordance with this part.

(e) Reporter protection

(1) In general

A provider may not take an adverse employment action, as described in paragraph (2), against an individual based upon the fact that

the individual in good faith reported information—

(A) to the provider with the intention of having the information reported to a patient safety organization; or

(B) directly to a patient safety organization.

(2) Adverse employment action

For purposes of this subsection, an ''adverse employment action'' includes—

(A) loss of employment, the failure to promote an individual, or the failure to provide any other employment-related benefit for which the individual would otherwise be eligible; or

(B) an adverse evaluation or decision made in relation to accreditation, certification, credentialing, or licensing of the individual.

(f) Enforcement

(1) Civil monetary penalty

Subject to paragraphs (2) and (3), a person who discloses identifiable patient safety work product in knowing or reckless violation of subsection (b) of this section shall be subject to a civil monetary penalty of not more than $10,000 for each act constituting such violation.

(2) Procedure

The provisions of section 1320a–7a of this title, other than subsections (a) and (b) and the first sentence of subsection (c)(1), shall apply to civil money penalties under this subsection in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a of this title.

(3) Relation to HIPAA

Penalties shall not be imposed both under this subsection and under the regulations issued pursuant to section 264(c)(1) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) for a single act or omission.

(4) Equitable relief

(A) In general

Without limiting remedies available to other parties, a civil action may be brought by any aggrieved individual to enjoin any act or practice that violates subsection (e) of this section and to obtain other appropriate equitable relief (including reinstatement, back pay, and restoration of benefits) to redress such violation.

(B) Against State employees

An entity that is a State or an agency of a State government may not assert the privilege described in subsection (a) of this section unless before the time of the assertion, the entity or, in the case of and with respect to an agency, the State has consented to be subject to an action described in subparagraph (A), and that consent has remained in effect.

(g) Rule of construction

Nothing in this section shall be construed—

(1) to limit the application of other Federal, State, or local laws that provide greater privilege or confidentiality protections than the privilege and confidentiality protections provided for in this section;

(2) to limit, alter, or affect the requirements of Federal, State, or local law pertaining to information that is not privileged or confidential under this section;

(3) except as provided in subsection (i) of this section, to alter or affect the implementation of any provision of the HIPAA confidentiality regulations or section 1320d–5 of this title (or regulations promulgated under such section);

(4) to limit the authority of any provider, patient safety organization, or other entity to enter into a contract requiring greater confidentiality or delegating authority to make a disclosure or use in accordance with this section;

(5) as preempting or otherwise affecting any State law requiring a provider to report information that is not patient safety work product; or

(6) to limit, alter, or affect any requirement for reporting to the Food and Drug Administration information regarding the safety of a product or activity regulated by the Food and Drug Administration.

(h) Clarification

Nothing in this part prohibits any person from conducting additional analysis for any purpose regardless of whether such additional analysis involves issues identical to or similar to those for which information was reported to or assessed by a patient safety organization or a patient safety evaluation system.

(i) Clarification of application of HIPAA confidentiality regulations to patient safety organizations

For purposes of applying the HIPAA confidentiality regulations—

(1) patient safety organizations shall be treated as business associates; and

(2) patient safety activities of such organizations in relation to a provider are deemed to be health care operations (as defined in such regulations) of the provider.

(j) Reports on strategies to improve patient safety

(1) Draft report

Not later than the date that is 18 months after any network of patient safety databases is operational, the Secretary, in consultation with the Director, shall prepare a draft report on effective strategies for reducing medical errors and increasing patient safety. The draft report shall include any measure determined appropriate by the Secretary to encourage the appropriate use of such strategies, including use in any federally funded programs. The Secretary shall make the draft report available for public comment and submit the draft report to the Institute of Medicine for review.

(2) Final report

Not later than 1 year after the date described in paragraph (1), the Secretary shall submit a final report to the Congress.

(July 1, 1944, ch. 373, title IX, § 922, as added Pub. L. 109–41, § 2(a)(5), July 29, 2005, 119 Stat. 427.)

REFERENCES IN TEXT

Section 264(c)(1) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (f)(3), is section 264(c)(1) of Pub. L. 104–191, title II, Aug. 21, 1996, 110 Stat. 2033, which was formerly set out as a note under section 1320d–2 of this title.

PRIOR PROVISIONS

A prior section 922 of act July 1, 1944, was renumbered section 932 and is classified to section 299c–1 of this title.

Another prior section 922 of act July 1, 1944, was classified to section 299c–1 of this title prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–23. Network of patient safety databases

(a) In general

The Secretary shall facilitate the creation of, and maintain, a network of patient safety databases that provides an interactive evidence-based management resource for providers, patient safety organizations, and other entities. The network of databases shall have the capacity to accept, aggregate across the network, and analyze nonidentifiable patient safety work product voluntarily reported by patient safety organizations, providers, or other entities. The Secretary shall assess the feasibility of providing for a single point of access to the network for qualified researchers for information aggregated across the network and, if feasible, provide for implementation.

(b) Data standards

The Secretary may determine common formats for the reporting to and among the network of patient safety databases maintained under subsection (a) of this section of nonidentifiable patient safety work product, including necessary work product elements, common and consistent definitions, and a standardized computer interface for the processing of such work product. To the extent practicable, such standards shall be consistent with the administrative simplification provisions of part C of title XI of the Social Security Act [42 U.S.C. 1320d et seq.].

(c) Use of information

Information reported to and among the network of patient safety databases under subsection (a) of this section shall be used to analyze national and regional statistics, including trends and patterns of health care errors. The information resulting from such analyses shall be made available to the public and included in the annual quality reports prepared under section 299b–2(b)(2) of this title.

(July 1, 1944, ch. 373, title IX, § 923, as added Pub. L. 109–41, § 2(a)(5), July 29, 2005, 119 Stat. 431.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part C of title XI of the Act is classified generally to part C (§ 1320d et seq.) of subchapter XI of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 923 of act July 1, 1944, was renumbered section 933 and is classified to section 299c–2 of this title.

Another prior section 923 of act July 1, 1944, was classified to section 299c–2 of this title prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–24. Patient safety organization certification and listing

(a) Certification

(1) Initial certification

An entity that seeks to be a patient safety organization shall submit an initial certification to the Secretary that the entity—

(A) has policies and procedures in place to perform each of the patient safety activities described in section 299b–21(5) of this title; and

(B) upon being listed under subsection (d) of this section, will comply with the criteria described in subsection (b) of this section.

(2) Subsequent certifications

An entity that is a patient safety organization shall submit every 3 years after the date of its initial listing under subsection (d) of this section a subsequent certification to the Secretary that the entity—

(A) is performing each of the patient safety activities described in section 299b–21(5) of this title; and

(B) is complying with the criteria described in subsection (b) of this section.

(b) Criteria

(1) In general

The following are criteria for the initial and subsequent certification of an entity as a patient safety organization:

(A) The mission and primary activity of the entity are to conduct activities that are to improve patient safety and the quality of health care delivery.

(B) The entity has appropriately qualified staff (whether directly or through contract), including licensed or certified medical professionals.

(C) The entity, within each 24-month period that begins after the date of the initial listing under subsection (d) of this section, has bona fide contracts, each of a reasonable period of time, with more than 1 provider for the purpose of receiving and reviewing patient safety work product.

(D) The entity is not, and is not a component of, a health insurance issuer (as defined in section 300gg–91(b)(2) of this title).

(E) The entity shall fully disclose—

(i) any financial, reporting, or contractual relationship between the entity and any provider that contracts with the entity; and

(ii) if applicable, the fact that the entity is not managed, controlled, and operated independently from any provider that contracts with the entity.

(F) To the extent practical and appropriate, the entity collects patient safety work product from providers in a standardized manner that permits valid comparisons of similar cases among similar providers.

(G) The utilization of patient safety work product for the purpose of providing direct

feedback and assistance to providers to effectively minimize patient risk.

(2) Additional criteria for component organizations

If an entity that seeks to be a patient safety organization is a component of another organization, the following are additional criteria for the initial and subsequent certification of the entity as a patient safety organization:

(A) The entity maintains patient safety work product separately from the rest of the organization, and establishes appropriate security measures to maintain the confidentiality of the patient safety work product.

(B) The entity does not make an unauthorized disclosure under this part of patient safety work product to the rest of the organization in breach of confidentiality.

(C) The mission of the entity does not create a conflict of interest with the rest of the organization.

(c) Review of certification

(1) In general

(A) Initial certification

Upon the submission by an entity of an initial certification under subsection (a)(1) of this section, the Secretary shall determine if the certification meets the requirements of subparagraphs (A) and (B) of such subsection.

(B) Subsequent certification

Upon the submission by an entity of a subsequent certification under subsection (a)(2) of this section, the Secretary shall review the certification with respect to requirements of subparagraphs (A) and (B) of such subsection.

(2) Notice of acceptance or non-acceptance

If the Secretary determines that—

(A) an entity's initial certification meets requirements referred to in paragraph (1)(A), the Secretary shall notify the entity of the acceptance of such certification; or

(B) an entity's initial certification does not meet such requirements, the Secretary shall notify the entity that such certification is not accepted and the reasons therefor.

(3) Disclosures regarding relationship to providers

The Secretary shall consider any disclosures under subsection (b)(1)(E) of this section by an entity and shall make public findings on whether the entity can fairly and accurately perform the patient safety activities of a patient safety organization. The Secretary shall take those findings into consideration in determining whether to accept the entity's initial certification and any subsequent certification submitted under subsection (a) of this section and, based on those findings, may deny, condition, or revoke acceptance of the entity's certification.

(d) Listing

The Secretary shall compile and maintain a listing of entities with respect to which there is an acceptance of a certification pursuant to subsection (c)(2)(A) of this section that has not been revoked under subsection (e) of this section or voluntarily relinquished.

(e) Revocation of acceptance of certification

(1) In general

If, after notice of deficiency, an opportunity for a hearing, and a reasonable opportunity for correction, the Secretary determines that a patient safety organization does not meet the certification requirements under subsection (a)(2) of this section, including subparagraphs (A) and (B) of such subsection, the Secretary shall revoke the Secretary's acceptance of the certification of such organization.

(2) Supplying confirmation of notification to providers

Within 15 days of a revocation under paragraph (1), a patient safety organization shall submit to the Secretary a confirmation that the organization has taken all reasonable actions to notify each provider whose patient safety work product is collected or analyzed by the organization of such revocation.

(3) Publication of decision

If the Secretary revokes the certification of an organization under paragraph (1), the Secretary shall—

(A) remove the organization from the listing maintained under subsection (d) of this section; and

(B) publish notice of the revocation in the Federal Register.

(f) Status of data after removal from listing

(1) New data

With respect to the privilege and confidentiality protections described in section 299b–22 of this title, data submitted to an entity within 30 days after the entity is removed from the listing under subsection (e)(3)(A) of this section shall have the same status as data submitted while the entity was still listed.

(2) Protection to continue to apply

If the privilege and confidentiality protections described in section 299b–22 of this title applied to patient safety work product while an entity was listed, or to data described in paragraph (1), such protections shall continue to apply to such work product or data after the entity is removed from the listing under subsection (e)(3)(A) of this section.

(g) Disposition of work product and data

If the Secretary removes a patient safety organization from the listing as provided for in subsection (e)(3)(A) of this section, with respect to the patient safety work product or data described in subsection (f)(1) of this section that the patient safety organization received from another entity, such former patient safety organization shall—

(1) with the approval of the other entity and a patient safety organization, transfer such work product or data to such patient safety organization;

(2) return such work product or data to the entity that submitted the work product or data; or

(3) if returning such work product or data to such entity is not practicable, destroy such work product or data.

(July 1, 1944, ch. 373, title IX, § 924, as added Pub. L. 109–41, § 2(a)(5), July 29, 2005, 119 Stat. 431.)

PRIOR PROVISIONS

A prior section 924 of act July 1, 1944, was renumbered section 934 and is classified to section 299c–3 of this title.

Another prior section 924 of act July 1, 1944, was classified to section 299c–3 of this title prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–25. Technical assistance

The Secretary, acting through the Director, may provide technical assistance to patient safety organizations, including convening annual meetings for patient safety organizations to discuss methodology, communication, data collection, or privacy concerns.

(July 1, 1944, ch. 373, title IX, § 925, as added Pub. L. 109–41, § 2(a)(5), July 29, 2005, 119 Stat. 434.)

PRIOR PROVISIONS

A prior section 925 of act July 1, 1944, was renumbered section 935 and is classified to section 299c–4 of this title.

Another prior section 925 of act July 1, 1944, was classified to section 299c–4 of this title prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299b–26. Severability

If any provision of this part is held to be unconstitutional, the remainder of this part shall not be affected.

(July 1, 1944, ch. 373, title IX, § 926, as added Pub. L. 109–41, § 2(a)(5), July 29, 2005, 119 Stat. 434.)

PRIOR PROVISIONS

A prior section 926 of act July 1, 1944, was renumbered section 936 and is classified to section 299c–5 of this title.

Another prior section 926 of act July 1, 1944, was classified to section 299c–5 of this title prior to the general amendment of this subchapter by Pub. L. 106–129.

PART D—GENERAL PROVISIONS

AMENDMENTS

2005—Pub. L. 109–41, § 2(a)(2), July 29, 2005, 119 Stat. 424, redesignated part C ''General Provisions'' as D.

§ 299c. Advisory Council for Healthcare Research and Quality

(a) Establishment

There is established an advisory council to be known as the National Advisory Council for Healthcare Research and Quality.

(b) Duties

(1) In general

The Advisory Council shall advise the Secretary and the Director with respect to activities proposed or undertaken to carry out the mission of the Agency under section 299(b) of this title.

(2) Certain recommendations

Activities of the Advisory Council under paragraph (1) shall include making recommendations to the Director regarding—

(A) priorities regarding health care research, especially studies related to quality, outcomes, cost and the utilization of, and access to, health care services;

(B) the field of health care research and related disciplines, especially issues related to training needs, and dissemination of information pertaining to health care quality; and

(C) the appropriate role of the Agency in each of these areas in light of private sector activity and identification of opportunities for public-private sector partnerships.

(c) Membership

(1) In general

The Advisory Council shall, in accordance with this subsection, be composed of appointed members and ex officio members. All members of the Advisory Council shall be voting members other than the individuals designated under paragraph (3)(B) as ex officio members.

(2) Appointed members

The Secretary shall appoint to the Advisory Council 21 appropriately qualified individuals. At least 17 members of the Advisory Council shall be representatives of the public who are not officers or employees of the United States and at least 1 member who shall be a specialist in the rural aspects of 1 or more of the professions or fields described in subparagraphs (A) through (G). The Secretary shall ensure that the appointed members of the Council, as a group, are representative of professions and entities concerned with, or affected by, activities under this subchapter and under section 1320b–12 of this title. Of such members—

(A) three shall be individuals distinguished in the conduct of research, demonstration projects, and evaluations with respect to health care;

(B) three shall be individuals distinguished in the fields of health care quality research or health care improvement;

(C) three shall be individuals distinguished in the practice of medicine of which at least one shall be a primary care practitioner;

(D) three shall be individuals distinguished in the other health professions;

(E) three shall be individuals either representing the private health care sector, including health plans, providers, and purchasers or individuals distinguished as administrators of health care delivery systems;

(F) three shall be individuals distinguished in the fields of health care economics, information systems, law, ethics, business, or public policy; and

(G) three shall be individuals representing the interests of patients and consumers of health care.

(3) Ex officio members

The Secretary shall designate as ex officio members of the Advisory Council—

(A) the Assistant Secretary for Health, the Director of the National Institutes of Health, the Director of the Centers for Disease Control and Prevention, the Administrator of the Centers for Medicare & Med-

icaid Services, the Commissioner of the Food and Drug Administration, the Director of the Office of Personnel Management, the Assistant Secretary of Defense (Health Affairs), and the Under Secretary for Health of the Department of Veterans Affairs; and

(B) such other Federal officials as the Secretary may consider appropriate.

(d) Terms

(1) In general

Members of the Advisory Council appointed under subsection (c)(2) of this section shall serve for a term of 3 years.

(2) Staggered terms

To ensure the staggered rotation of one-third of the members of the Advisory Council each year, the Secretary is authorized to appoint the initial members of the Advisory Council for terms of 1, 2, or 3 years.

(3) Service beyond term

A member of the Council appointed under subsection (c)(2) of this section may continue to serve after the expiration of the term of the members until a successor is appointed.

(e) Vacancies

If a member of the Advisory Council appointed under subsection (c)(2) of this section does not serve the full term applicable under subsection (d) of this section, the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(f) Chair

The Director shall, from among the members of the Advisory Council appointed under subsection (c)(2) of this section, designate an individual to serve as the chair of the Advisory Council.

(g) Meetings

The Advisory Council shall meet not less than once during each discrete 4-month period and shall otherwise meet at the call of the Director or the chair.

(h) Compensation and reimbursement of expenses

(1) Appointed members

Members of the Advisory Council appointed under subsection (c)(2) of this section shall receive compensation for each day (including travel time) engaged in carrying out the duties of the Advisory Council unless declined by the member. Such compensation may not be in an amount in excess of the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5 for each day during which such member is engaged in the performance of the duties of the Advisory Council.

(2) Ex officio members

Officials designated under subsection (c)(3) of this section as ex officio members of the Advisory Council may not receive compensation for service on the Advisory Council in addition to the compensation otherwise received for duties carried out as officers of the United States.

(i) Staff

The Director shall provide to the Advisory Council such staff, information, and other assistance as may be necessary to carry out the duties of the Council.

(j) Duration

Notwithstanding section 14(a) of the Federal Advisory Committee Act, the Advisory Council shall continue in existence until otherwise provided by law.

(July 1, 1944, ch. 373, title IX, § 931, formerly § 921, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1663; amended Pub. L. 108–173, title IX, § 900(e)(2)(D), Dec. 8, 2003, 117 Stat. 2372; renumbered § 931, Pub. L. 109–41, § 2(a)(3), July 29, 2005, 119 Stat. 424.)

REFERENCES IN TEXT

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (j), is section 14(a) of Pub. L. 92–463, which is set out in the Appendix to Title 5.

PRIOR PROVISIONS

A prior section 299c, act July 1, 1944, ch. 373, title IX, § 921, as added Pub. L. 101–239, title VI, § 6103(c), Dec. 19, 1989, 103 Stat. 2199; amended Pub. L. 102–410, § 8, Oct. 13, 1992, 106 Stat. 2100, established the Advisory Council for Health Care Policy, Research, and Evaluation, prior to the general amendment of this subchapter by Pub. L. 106–129.

Another prior section 299c, act July 1, 1944, ch. 373, title IX, § 903, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 927; amended Oct. 15, 1968, Pub. L. 90–574, title I, § 104, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91–515, title I, §§ 105, 111(b), 84 Stat. 1299, 1301, authorized Secretary to make planning grants and set forth requirements for grant applications, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

AMENDMENTS

2003—Subsec. (c)(3)(A). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

§ 299c–1. Peer review with respect to grants and contracts

(a) Requirement of review

(1) In general

Appropriate technical and scientific peer review shall be conducted with respect to each application for a grant, cooperative agreement, or contract under this subchapter.

(2) Reports to Director

Each peer review group to which an application is submitted pursuant to paragraph (1) shall report its finding and recommendations respecting the application to the Director in such form and in such manner as the Director shall require.

(b) Approval as precondition of awards

The Director may not approve an application described in subsection (a)(1) of this section unless the application is recommended for approval by a peer review group established under subsection (c) of this section.

(c) Establishment of peer review groups

(1) In general

The Director shall establish such technical and scientific peer review groups as may be

necessary to carry out this section. Such groups shall be established without regard to the provisions of title 5 that govern appointments in the competitive service, and without regard to the provisions of chapter 51, and subchapter III of chapter 53, of such title that relate to classification and pay rates under the General Schedule.

(2) Membership

The members of any peer review group established under this section shall be appointed from among individuals who by virtue of their training or experience are eminently qualified to carry out the duties of such peer review group. Officers and employees of the United States may not constitute more than 25 percent of the membership of any such group. Such officers and employees may not receive compensation for service on such groups in addition to the compensation otherwise received for these duties carried out as such officers and employees.

(3) Duration

Notwithstanding section 14(a) of the Federal Advisory Committee Act, peer review groups established under this section may continue in existence until otherwise provided by law.

(4) Qualifications

Members of any peer review group shall, at a minimum, meet the following requirements:

(A) Such members shall agree in writing to treat information received, pursuant to their work for the group, as confidential information, except that this subparagraph shall not apply to public records and public information.

(B) Such members shall agree in writing to recuse themselves from participation in the peer review of specific applications which present a potential personal conflict of interest or appearance of such conflict, including employment in a directly affected organization, stock ownership, or any financial or other arrangement that might introduce bias in the process of peer review.

(d) Authority for procedural adjustments in certain cases

In the case of applications for financial assistance whose direct costs will not exceed $100,000, the Director may make appropriate adjustments in the procedures otherwise established by the Director for the conduct of peer review under this section. Such adjustments may be made for the purpose of encouraging the entry of individuals into the field of research, for the purpose of encouraging clinical practice-oriented or provider-based research, and for such other purposes as the Director may determine to be appropriate.

(e) Regulations

The Director shall issue regulations for the conduct of peer review under this section.

(July 1, 1944, ch. 373, title IX, § 932, formerly § 922, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1665; renumbered § 932, Pub. L. 109–41, § 2(a)(3), July 29, 2005, 119 Stat. 424.)

REFERENCES IN TEXT

The provisions of title 5 that govern appointments in the competitive service, referred to in subsec. (c)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (c)(3), is section 14(a) of Pub. L. 92–463, which is set out in the Appendix to Title 5.

PRIOR PROVISIONS

A prior section 299c–1, act July 1, 1944, ch. 373, title IX, § 922, as added Pub. L. 101–239, title VI, § 6103(c), Dec. 19, 1989, 103 Stat. 2201; amended Pub. L. 101–508, title IV, § 4118(f)(2)(F), Nov. 5, 1990, 104 Stat. 1388–70; Pub. L. 102–410, § 5(d), Oct. 13, 1992, 106 Stat. 2098, related to peer review with respect to grants and contracts, prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299c–2. Certain provisions with respect to development, collection, and dissemination of data

(a) Standards with respect to utility of data

(1) In general

To ensure the utility, accuracy, and sufficiency of data collected by or for the Agency for the purpose described in section 299(b) of this title, the Director shall establish standard methods for developing and collecting such data, taking into consideration—

(A) other Federal health data collection standards; and

(B) the differences between types of health care plans, delivery systems, health care providers, and provider arrangements.

(2) Relationship with other Department programs

In any case where standards under paragraph (1) may affect the administration of other programs carried out by the Department of Health and Human Services, including the programs under title XVIII, XIX or XXI of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397aa et seq.], or may affect health information that is subject to a standard developed under part C of title XI of the Social Security Act [42 U.S.C. 1320d et seq.], they shall be in the form of recommendations to the Secretary for such program.

(b) Statistics and analyses

The Director shall—

(1) take appropriate action to ensure that statistics and analyses developed under this subchapter are of high quality, timely, and duly comprehensive, and that the statistics are specific, standardized, and adequately analyzed and indexed; and

(2) publish, make available, and disseminate such statistics and analyses on as wide a basis as is practicable.

(c) Authority regarding certain requests

Upon request of a public or private entity, the Director may conduct or support research or analyses otherwise authorized by this subchapter pursuant to arrangements under which such entity will pay the cost of the services provided. Amounts received by the Director under such arrangements shall be available to the Director for obligation until expended.

(July 1, 1944, ch. 373, title IX, § 933, formerly § 923, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1666; renumbered § 933, Pub. L. 109–41, § 2(a)(3), July 29, 2005, 119 Stat. 424.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part C of title XI of the Act is classified generally to part C (§ 1320d et seq.) of title XI of chapter 7 of this title. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 299c–2, act July 1, 1944, ch. 373, title IX, § 923, as added Pub. L. 101–239, title VI, § 6103(c), Dec. 19, 1989, 103 Stat. 2202; amended Pub. L. 102–410, § 5(e), Oct. 12, 1992, 106 Stat. 2098, related to development, collection, and dissemination of data, prior to the general amendment of this subchapter by Pub. L. 106–129.

§ 299c–3. Dissemination of information

(a) In general

The Director shall—

(1) without regard to section 501 of title 44, promptly publish, make available, and otherwise disseminate, in a form understandable and on as broad a basis as practicable so as to maximize its use, the results of research, demonstration projects, and evaluations conducted or supported under this subchapter;

(2) ensure that information disseminated by the Agency is science-based and objective and undertakes consultation as necessary to assess the appropriateness and usefulness of the presentation of information that is targeted to specific audiences;

(3) promptly make available to the public data developed in such research, demonstration projects, and evaluations;

(4) provide, in collaboration with the National Library of Medicine where appropriate, indexing, abstracting, translating, publishing, and other services leading to a more effective and timely dissemination of information on research, demonstration projects, and evaluations with respect to health care to public and private entities and individuals engaged in the improvement of health care delivery and the general public, and undertake programs to develop new or improved methods for making such information available; and

(5) as appropriate, provide technical assistance to State and local government and health agencies and conduct liaison activities to such agencies to foster dissemination.

(b) Prohibition against restrictions

Except as provided in subsection (c) of this section, the Director may not restrict the publication or dissemination of data from, or the results of, projects conducted or supported under this subchapter.

(c) Limitation on use of certain information

No information, if an establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under this subchapter may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Director) to its use for such other purpose. Such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented (as determined under regulations of the Director) to its publication or release in other form.

(d) Penalty

Any person who violates subsection (c) of this section shall be subject to a civil monetary penalty of not more than $10,000 for each such violation involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected.

(July 1, 1944, ch. 373, title IX, § 934, formerly § 924, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1667; renumbered § 934, Pub. L. 109–41, § 2(a)(3), July 29, 2005, 119 Stat. 424.)

PRIOR PROVISIONS

A prior section 299c–3, act July 1, 1944, ch. 373, title IX, § 924, as added Pub. L. 101–239, title VI, § 6103(c), Dec. 19, 1989, 103 Stat. 2202; amended Pub. L. 102–410, § 9, Oct. 13, 1992, 106 Stat. 2100, related to additional provisions with respect to grants and contracts, prior to the general amendment of this subchapter by Pub. L. 106–129. See section 299c–4 of this title.

§ 299c–4. Additional provisions with respect to grants and contracts

(a) Financial conflicts of interest

With respect to projects for which awards of grants, cooperative agreements, or contracts are authorized to be made under this subchapter, the Director shall by regulation define—

(1) the specific circumstances that constitute financial interests in such projects that will, or may be reasonably expected to, create a bias in favor of obtaining results in the projects that are consistent with such interests; and

(2) the actions that will be taken by the Director in response to any such interests identified by the Director.

(b) Requirement of application

The Director may not, with respect to any program under this subchapter authorizing the provision of grants, cooperative agreements, or contracts, provide any such financial assistance unless an application for the assistance is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out the program involved.

(c) Provision of supplies and services in lieu of funds

(1) In general

Upon the request of an entity receiving a grant, cooperative agreement, or contract under this subchapter, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the entity in carrying out the project involved and, for such purpose, may detail to the entity any officer or employee of the Department of Health and Human Services.

(2) Corresponding reduction in funds

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of the financial assistance involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Director. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(d) Applicability of certain provisions with respect to contracts

Contracts may be entered into under this part without regard to section 3324(a) and (b) of title 31 and section 5 of title 41.

(July 1, 1944, ch. 373, title IX, § 935, formerly § 925, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1668; renumbered § 935, Pub. L. 109–41, § 2(a)(3), July 29, 2005, 119 Stat. 424.)

CODIFICATION

In subsec. (d), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 299c–4, act July 1, 1944, ch. 373, title IX, § 925, as added Pub. L. 101–239, title VI, § 6103(c), Dec. 19, 1989, 103 Stat. 2203; amended Pub. L. 104–201, div. A, title XVII, § 1723(a)(3)(B), Sept. 23, 1996, 110 Stat. 2759, related to certain administrative authorities, prior to the general amendment of this subchapter by Pub. L. 106–129. See section 299c–5 of this title.

§ 299c–5. Certain administrative authorities

(a) Deputy director and other officers and employees

(1) Deputy director

The Director may appoint a deputy director for the Agency.

(2) Other officers and employees

The Director may appoint and fix the compensation of such officers and employees as may be necessary to carry out this subchapter. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5.

(b) Facilities

The Secretary, in carrying out this subchapter—

(1) may acquire, without regard to section 8141 of title 40, by lease or otherwise through the Administrator of General Services, buildings or portions of buildings in the District of Columbia or communities located adjacent to the District of Columbia for use for a period not to exceed 10 years; and

(2) may acquire, construct, improve, repair, operate, and maintain laboratory, research, and other necessary facilities and equipment, and such other real or personal property (including patents) as the Secretary deems necessary.

(c) Provision of financial assistance

The Director, in carrying out this subchapter, may make grants to public and nonprofit entities and individuals, and may enter into cooperative agreements or contracts with public and private entities and individuals.

(d) Utilization of certain personnel and resources

(1) Department of Health and Human Services

The Director, in carrying out this subchapter, may utilize personnel and equipment, facilities, and other physical resources of the Department of Health and Human Services, permit appropriate (as determined by the Secretary) entities and individuals to utilize the physical resources of such Department, and provide technical assistance and advice.

(2) Other agencies

The Director, in carrying out this subchapter, may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, or of any foreign government, with or without reimbursement of such agencies.

(e) Consultants

The Secretary, in carrying out this subchapter, may secure, from time to time and for such periods as the Director deems advisable but in accordance with section 3109 of title 5, the assistance and advice of consultants from the United States or abroad.

(f) Experts

(1) In general

The Secretary may, in carrying out this subchapter, obtain the services of not more than 50 experts or consultants who have appropriate scientific or professional qualifications. Such experts or consultants shall be obtained in accordance with section 3109 of title 5, except that the limitation in such section on the duration of service shall not apply.

(2) Travel expenses

(A) In general

Experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5724, 5724a(a), 5724a(c), and 5726(c) of title 5.

(B) Limitation

Expenses specified in subparagraph (A) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless and until the expert agrees in writing to complete the entire period of assignment, or 1 year, whichever is shorter, unless separated or reassigned for reasons that are beyond the control of the expert or consultant and that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for the expenses specified in subparagraph (A) is recoverable from the expert or consultant as a statutory obligation owed to the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

(g) Voluntary and uncompensated services

The Director, in carrying out this subchapter, may accept voluntary and uncompensated services.

(July 1, 1944, ch. 373, title IX, § 936, formerly § 926, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1668; renumbered § 936, Pub. L. 109–41, § 2(a)(3), July 29, 2005, 119 Stat. 424.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(2), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsec. (b)(1), ''section 8141 of title 40'' substituted for ''the Act of March 3, 1877 (40 U.S.C. 34)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 299c–5, act July 1, 1944, ch. 373, title IX, § 926, as added Pub. L. 101–239, title VI, § 6103(c), Dec. 19, 1989, 103 Stat. 2204; amended Pub. L. 101–381, title I, § 102(7), Aug. 18, 1990, 104 Stat. 586; Pub. L. 102–410, § 10, Oct. 13, 1992, 106 Stat. 2101; Pub. L. 103–43, title XX, § 2010(b)(8), June 10, 1993, 107 Stat. 214, authorized appropriations to carry out this subchapter, prior to the general amendment of this subchapter by Pub. L. 106–129. See section 299c–6 of this title.

§ 299c–6. Funding

(a) Intent

To ensure that the United States investment in biomedical research is rapidly translated into improvements in the quality of patient care, there must be a corresponding investment in research on the most effective clinical and organizational strategies for use of these findings in daily practice. The authorization levels in subsections (b) and (c) of this section provide for a proportionate increase in health care research as the United States investment in biomedical research increases.

(b) Authorization of appropriations

For the purpose of carrying out this subchapter, there are authorized to be appropriated $250,000,000 for fiscal year 2000, and such sums as may be necessary for each of the fiscal years 2001 through 2005.

(c) Evaluations

In addition to amounts available pursuant to subsection (b) of this section for carrying out this subchapter, there shall be made available for such purpose, from the amounts made available pursuant to section 238j of this title (relating to evaluations), an amount equal to 40 percent of the maximum amount authorized in such section 238j of this title to be made available for a fiscal year.

(d) Health disparities research

For the purpose of carrying out the activities under section 299a–1 of this title, there are authorized to be appropriated $50,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 through 2005.

(e) Patient safety and quality improvement

For the purpose of carrying out part C of this subchapter, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2006 through 2010.

(July 1, 1944, ch. 373, title IX, § 937, formerly § 927, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1670; amended Pub. L. 106–525, title II, § 201(b), Nov. 22, 2000, 114 Stat. 2507; renumbered § 937 and amended Pub. L. 109–41, § 2(a)(3), (b), July 29, 2005, 119 Stat. 424, 434.)

PRIOR PROVISIONS

A prior section 299c–6, act July 1, 1944, ch. 373, title IX, § 927, as added Pub. L. 101–239, title VI, § 6103(c), Dec. 19, 1989, 103 Stat. 2204, set out definitions, prior to the general amendment of this subchapter by Pub. L. 106–129. See section 299c–7 of this title.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–41, § 2(b), added subsec. (e).

2000—Subsec. (d). Pub. L. 106–525 added subsec. (d).

§ 299c–7. Definitions

In this subchapter:

(1) Advisory Council

The term ''Advisory Council'' means the National Advisory Council on Healthcare Research and Quality established under section 299c of this title.

(2) Agency

The term ''Agency'' means the Agency for Healthcare Research and Quality.

(3) Director

The term ''Director'' means the Director of the Agency for Healthcare Research and Quality.

(July 1, 1944, ch. 373, title IX, § 938, formerly § 928, as added Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1670; renumbered § 938 and amended Pub. L. 109–41, § 2(a)(3), (4), July 29, 2005, 119 Stat. 424.)

PRIOR PROVISIONS

Prior sections 299d to 299j were repealed by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

Section 299d, act July 1, 1944, ch. 373, title IX, § 904, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 928; amended Oct. 15, 1968, Pub. L. 90–574, title I, § 104, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91–515, title I, §§ 106, 111(b), 84 Stat. 1299, 1301, authorized Secretary to make grants for establishment and operation of regional medical programs and set forth requirements for grant applications.

Section 299e, act July 1, 1944, ch. 373, title IX, § 905, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 929; amended Oct. 15, 1968, Pub. L. 90–574, title I, § 105, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91–515, title I, §§ 107(a), 111(b), title VI, § 601(b)(2), (4), 84 Stat. 1299, 1301, 1311; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided for establishment of a National Advisory Council on Regional Medical Programs and its functions.

Section 299f, act July 1, 1944, ch. 373, title IX, § 906, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 930; amended Oct. 30, 1970, Pub. L. 91–515, title I, § 111(b), 84 Stat. 1301, authorized Secretary to establish rules and regulations covering terms of approval of grant applications and coordination of programs.

Section 299g, act July 1, 1944, ch. 373, title IX, § 907, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 930; amended Oct. 30, 1970, Pub. L. 91–515, title I, §§ 108, 111(b), 84 Stat. 1300, 1301, directed Secretary to compile a list of facilities equipped and staffed to provide most advanced methods for diagnosing and treating certain diseases and illnesses.

Section 299h, act July 1, 1944, ch. 373, title IX, § 908, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 930, called for a report to the President and the Congress on or before June 30, 1967, by Surgeon General concerning activities under this subchapter with required statements, appraisals, and recommendations.

Section 299i, act July 1, 1944, ch. 373, title IX, § 909, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 930; amended Oct. 30, 1970, Pub. L. 91–515, title I, §§ 109, 111(b), 84 Stat. 1300, 1301; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided for recordkeeping by grant recipients and for accessibility of records for audit and examination.

Section 299j, act July 1, 1944, ch. 373, title IX, § 910, as added Oct. 15, 1968, Pub. L. 90–574, title I, § 106, 82 Stat. 1005; amended Oct. 30, 1970, Pub. L. 91–515, title I, § 110, 84 Stat. 1300, related to grants and contracts for multiprogram services, costs of special projects, and support of research, studies, investigations, training, and demonstrations.

AMENDMENTS

2005—Par. (1). Pub. L. 109–41, § 2(a)(4), made technical amendment to reference in original act which appears in text as reference to section 299c of this title, requiring no change in text.

SUBCHAPTER VIII—POPULATION RESEARCH AND VOLUNTARY FAMILY PLANNING PROGRAMS

§ 300. Project grants and contracts for family planning services

(a) Authority of Secretary

The Secretary is authorized to make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). To the extent practical, entities which receive grants or contracts under this subsection shall encourage familiy[1] participation in projects assisted under this subsection.

(b) Factors determining awards; establishment and preservation of rights of local and regional entities

In making grants and contracts under this section the Secretary shall take into account the number of patients to be served, the extent to which family planning services are needed locally, the relative need of the applicant, and its capacity to make rapid and effective use of such assistance. Local and regional entities shall be assured the right to apply for direct grants and contracts under this section, and the Secretary shall by regulation fully provide for and protect such right.

(c) Reduction of grant amount

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by the fair market value of any supplies or equipment furnished the grant recipient by the Secretary. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment on which the reduction of such grant is based. Such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(d) Authorization of appropriations

For the purpose of making grants and contracts under this section, there are authorized to be appropriated $30,000,000 for the fiscal year ending June 30, 1971; $60,000,000 for the fiscal year ending June 30, 1972; $111,500,000 for the fiscal year ending June 30, 1973, $111,500,000 each for the fiscal years ending June 30, 1974, and June 30, 1975; $115,000,000 for fiscal year 1976; $115,000,000 for the fiscal year ending September 30, 1977; $136,400,000 for the fiscal year ending September 30, 1978; $200,000,000 for the fiscal year ending September 30, 1979; $230,000,000 for the fiscal year ending September 30, 1980; $264,500,000 for the fiscal year ending September 30, 1981; $126,510,000 for the fiscal year ending September 30, 1982; $139,200,000 for the fiscal year ending September 30, 1983; $150,830,000 for the fiscal year ending September 30, 1984; and $158,400,000 for the fiscal year ending September 30, 1985.

(July 1, 1944, ch. 373, title X, § 1001, as added Pub. L. 91–572, § 6(c), Dec. 24, 1970, 84 Stat. 1506; amended Pub. L. 92–449, title III, § 301, Sept. 30, 1972, 86 Stat. 754; Pub. L. 93–45, title I, § 111(a), June 18, 1973, 87 Stat. 93; Pub. L. 94–63, title II, §§ 202(a), 204(a), (b), title VII, § 701(d), July 29, 1975, 89 Stat. 306–308, 352; Pub. L. 95–83, title III, § 305(a), Aug. 1, 1977, 91 Stat. 388; Pub. L. 95–613, § 1(a)(1), (b)(1), Nov. 8, 1978, 92 Stat. 3093; Pub. L 97–35, title IX, § 931(a)(1), (b)(1), Aug. 13, 1981, 95 Stat. 570; Pub. L. 97–414, §§ 8(n), 9(a), Jan. 4, 1983, 96 Stat. 2061, 2064; Pub. L. 98–512, § 3(a), Oct. 19, 1984, 98 Stat. 2409; Pub. L. 98–555, § 9, Oct. 30, 1984, 98 Stat. 2857.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–555 added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 98–512 inserted provisions authorizing appropriations for the fiscal year ending Sept. 30, 1985.

Subsec. (d). Pub. L. 98–555 redesignated former subsec. (c) as (d).

1983—Subsec. (c). Pub. L. 97–414, § 8(n), substituted a semicolon for a comma after ''1981''.

Pub. L. 97–414, § 9(a), amended directory language of Pub. L. 97–35, § 931(a)(1), to correct a typographical error and did not involve any change in text. See 1981 Amendment note below.

1981—Subsec. (a). Pub. L. 97–35, § 931(b)(1), inserted provisions relating to family participation in projects.

Subsec. (c). Pub. L. 97–35, § 931(a)(1), as amended by Pub. L. 97–414, § 9(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1978—Subsec. (a). Pub. L. 95–613, § 1(a)(1), inserted provisions relating to infertility services and services for adolescents.

Subsec. (c). Pub. L. 95–613, § 1(b)(1), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (c). Pub. L. 95–83 substituted provision authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977.

1975—Subsec. (a). Pub. L. 94–63, § 204(a), inserted provision relating to scope of family planning projects to be offered.

Subsec. (b). Pub. L. 94–63, § 204(b), inserted provision relating to direct grants and contracts for local and regional entities.

Subsec. (c). Pub. L. 94–63, §§ 202(a), 701(d), inserted provisions authorizing appropriations for fiscal years ending June 30, 1975, 1976, and 1977.

[1] So in original. Probably should be ''family''.

1973—Subsec. (c). Pub. L. 93–45 inserted provisions authorizing appropriations for fiscal year ending June 30, 1974.

1972—Subsec. (c). Pub. L. 92–449 increased appropriations authorization for fiscal year ending June 30, 1973, to $111,500,000 from $90,000,000.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by sections 202(a) and 204(a), (b) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

STUDY AS TO DISCRIMINATION BY SCHOOLS OF MEDICINE, NURSING, OR OSTEOPATHY AGAINST APPLICANTS BECAUSE OF RELUCTANCE OR WILLINGNESS TO PARTICIPATE IN ABORTIONS OR STERILIZATIONS; REPORT NOT LATER THAN FEBRUARY 1, 1978

Pub. L. 95–215, § 7, Dec. 19, 1977, 91 Stat. 1507, required Secretary of Health, Education, and Welfare to conduct a study and report to specific committees of Congress not later than Feb. 1, 1978, as to whether schools of medicine, nursing, or osteopathy discriminate against applicants because of applicant's reluctance or unwillingness to participate in performance of abortions or sterilizations contrary to religious beliefs or moral convictions.

CONGRESSIONAL DECLARATION OF PURPOSE

Section 2 of Pub. L. 91–572 provided that: ''It is the purpose of this Act [see Short Title of 1970 Amendment note set out under section 201 of this title]—

''(1) to assist in making comprehensive voluntary family planning services readily available to all persons desiring such services;

''(2) to coordinate domestic population and family planning research with the present and future needs of family planning programs;

''(3) to improve administrative and operational supervision of domestic family planning services and of population research programs related to such services;

''(4) to enable public and nonprofit private entities to plan and develop comprehensive programs of family planning services;

''(5) to develop and make readily available information (including educational materials) on family planning and population growth to all persons desiring such information;

''(6) to evaluate and improve the effectiveness of family planning service programs and of population research;

''(7) to assist in providing trained manpower needed to effectively carry out programs of population research and family planning services; and

''(8) to establish an Office of Population Affairs in the Department of Health, Education, and Welfare as a primary focus within the Federal Government on matters pertaining to population research and family planning, through which the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereafter in this Act referred to as the 'Secretary') shall carry out the purposes of this Act.''

THE TITLE X ''GAG RULE''

Memorandum of President of the United States, Jan. 22, 1993, 58 F.R. 7455, provided:

Memorandum for the Secretary of Health and Human Services

Title X of the Public Health Services Act [42 U.S.C. 300 et seq.] provides Federal funding for family planning clinics to provide services for low-income patients. The Act specifies that Title X funds may not be used for the performance of abortions, but places no restrictions on the ability of clinics that receive Title X funds to provide abortion counseling and referrals or to perform abortions using non-Title X funds. During the first 18 years of the program, medical professionals at Title X clinics provided complete, uncensored information, including nondirective abortion counseling. In February 1988, the Department of Health and Human Services adopted regulations, which have become known as the ''Gag Rule,'' prohibiting Title X recipients from providing their patients with information, counseling, or referrals concerning abortion. Subsequent attempts by the Bush Administration to modify the Gag Rule and ensuing litigation have created confusion and uncertainty about the current legal status of the regulations.

The Gag Rule endangers women's lives and health by preventing them from receiving complete and accurate medical information and interferes with the doctor-patient relationship by prohibiting information that medical professionals are otherwise ethically and legally required to provide to their patients. Furthermore, the Gag Rule contravenes the clear intent of a majority of the members of both the United States Senate and House of Representatives, which twice passed legislation to block the Gag Rule's enforcement but failed to override Presidential vetoes.

For these reasons, you have informed me that you will suspend the Gag Rule pending the promulgation of new regulations in accordance with the ''notice and comment'' procedures of the Administrative Procedure Act [5 U.S.C. 551 et seq.]. I hereby direct you to take that action as soon as possible. I further direct that, within 30 days, you publish in the Federal Register new proposed regulations for public comment.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 300a. Formula grants to States for family planning services

(a) Authority of Secretary; prerequisites

The Secretary is authorized to make grants, from allotments made under subsection (b) of this section, to State health authorities to assist in planning, establishing, maintaining, coordinating, and evaluating family planning services. No grant may be made to a State health authority under this section unless such authority has submitted, and had approved by the Secretary, a State plan for a coordinated and comprehensive program of family planning services.

(b) Factors determining amount of State allotments

The sums appropriated to carry out the provisions of this section shall be allotted to the States by the Secretary on the basis of the population and the financial need of the respective States.

(c) "State" defined

For the purposes of this section, the term ''State'' includes the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, the District of Columbia, and the Trust Territory of the Pacific Islands.

(d) Authorization of appropriations

For the purpose of making grants under this section, there are authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1971; $15,000,000 for the fiscal year ending June 30, 1972; and $20,000,000 for the fiscal year ending June 30, 1973.

(July 1, 1944, ch. 373, title X, § 1002, as added Pub. L. 91–572, § 6(c), Dec. 24, 1970, 84 Stat. 1506; amended Pub. L. 94–484, title IX, § 905(b)(1), Oct. 12, 1976, 90 Stat. 2325.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–484 defined ''State'' to include Northern Mariana Islands.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

STUDY OF STATE DELIVERY OF SERVICES; REPORT TO CONGRESS

Pub. L. 97–35, title IX, §931(c), Aug. 13, 1981, 95 Stat. 570, directed Secretary of Health and Human Services to conduct a study of possible ways of State delivery of services for which assistance is authorized by title X of the Public Health Service Act [this subchapter] and to report to Congress on results of such study 18 months after Aug. 13, 1981.

§ 300a–1. Training grants and contracts; authorization of appropriations

(a) The Secretary is authorized to make grants to public or nonprofit private entities and to enter into contract with public or private entities and individuals to provide the training for personnel to carry out family planning service programs described in section 300 or 300a of this title.

(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $2,000,000 for the fiscal year ending June 30, 1971; $3,000,000 for the fiscal year ending June 30, 1972; $4,000,000 for the fiscal year ending June 30, 1973; $3,000,000 each for the fiscal years ending June 30, 1974 and June 30, 1975; $4,000,000 for fiscal year ending 1976; $5,000,000 for the fiscal year ending September 30, 1977; $3,000,000 for the fiscal year ending September 30, 1978; $3,100,000 for the fiscal year ending September 30, 1979; $3,600,000 for the fiscal year ending September 30, 1980; $4,100,000 for the fiscal year ending September 30, 1981; $2,920,000 for the fiscal year ending September 30, 1982; $3,200,000 for the fiscal year ending September 30, 1983; $3,500,000 for the fiscal year ending September 30, 1984; and $3,500,000 for the fiscal year ending September 30, 1985.

(July 1, 1944, ch. 373, title X, §1003, as added Pub. L. 91–572, §6(c), Dec. 24, 1970, 84 Stat. 1507; amended Pub. L. 93–45, title I, §111(b), June 18, 1973, 87 Stat. 93; Pub. L. 94–63, title II, §202(b), title VII, §701(d), July 29, 1975, 89 Stat. 306, 352; Pub. L. 95–83, title III, §305(b), Aug. 1, 1977, 91 Stat. 389; Pub. L. 95–613, §1(b)(2), Nov. 8, 1978, 92 Stat. 3093; Pub. L. 97–35, title IX, §931(a)(2), Aug. 13, 1981, 95 Stat. 570; Pub. L. 97–414, §§8(n), 9(a), Jan. 4, 1983, 96 Stat. 2061, 2064; Pub. L. 98–512, §3(b), Oct. 19, 1984, 98 Stat. 2410.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–512 inserted provisions authorizing appropriations for fiscal year ending Sept. 30, 1985.

1983—Subsec. (b). Pub. L. 97–414, §8(n), substituted a semicolon for a comma after ''1981''.

Pub. L. 97–414, §9(a), amended directory language of Pub. L. 97–35, §931(a)(2), to correct a typographical error and did not involve any change in text. See 1981 Amendment note below.

1981—Subsec. (b). Pub. L. 97–35, as amended by Pub. L. 97–414, §9(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1978—Subsec. (b). Pub. L. 95–613 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (b). Pub. L. 95–83 substituted provision authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977.

1975—Subsec. (b). Pub. L. 94–63 inserted provisions authorizing appropriations for fiscal years ending June 30, 1975, 1976, and 1977.

1973—Subsec. (b). Pub. L. 93–45 inserted provisions authorizing appropriations for fiscal year ending June 30, 1974.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 202(b) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

§ 300a–2. Conduct, etc., of research activities

The Secretary may—

(1) conduct, and

(2) make grants to public or nonprofit private entities and enter into contracts with public or private entities and individuals for projects for,

research in the biomedical, contraceptive development, behavioral, and program implementation fields related to family planning and population.

(July 1, 1944, ch. 373, title X, §1004, as added Pub. L. 91–572, §6(c), Dec. 24, 1970, 84 Stat. 1507; amended Pub. L. 93–45, title I, §111(c), June 18, 1973, 87 Stat. 93; Pub. L. 94–63, title II, §202(c), title VII, §701(d), July 29, 1975, 89 Stat. 306, 352; Pub. L. 95–83, title III, §305(c), Aug. 1, 1977, 91 Stat. 389; Pub. L. 95–613, §1(b)(3), Nov. 8, 1978, 92 Stat. 3093; Pub. L. 96–32, §1(a), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title IX, §931(b)(2), Aug. 13, 1981, 95 Stat. 570.)

AMENDMENTS

1981—Pub. L. 97–35 redesignated existing subsec. (a) as entire section, and struck out subsec. (b) which related to authorization and availability of appropriations.

1979—Subsec. (b)(1). Pub. L. 95–613, as amended by Pub. L. 96–32, substituted ''$120,800,000'' for ''$3,600,000'' as authorized appropriation for fiscal year ending Sept. 30, 1980.

1978—Subsec. (b)(1). Pub. L. 95–613 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (b). Pub. L. 95–83 in par. (1) substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977, and in par. (2) prohibited use of funds for administration of this section.

1975—Subsec. (a). Pub. L. 94–63, §202(c), revised structure of provisions, inserted authorization for Secretary to conduct research, and struck out authority for grants and contracts in research training in specified fields.

Subsec. (b). Pub. L. 94–63, §§202(c), 701(d), revised structure of provisions and substituted provisions relating to authorization of appropriations for fiscal years 1976 and 1977 and availability of appropriated funds, for provisions authorizing appropriations for fiscal years ending June 30, 1971, through fiscal year ending June 30, 1975.

1973—Subsec. (b). Pub. L. 93–45 inserted provisions authorizing appropriations for fiscal year ending June 30, 1974.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 1(b) of Pub. L. 96–32 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as of November 8, 1978.''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 202(c) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

§ 300a–3. Informational and educational materials development grants and contracts; authorization of appropriations

(a) The Secretary is authorized to make grants to public or nonprofit private entities and to enter into contracts with public or private entities and individuals to assist in developing and making available family planning and population growth information (including educational materials) to all persons desiring such information (or materials).

(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $750,000 for the fiscal year ending June 30, 1971; $1,000,000 for the fiscal year ending June 30, 1972; $1,250,000 for the fiscal year ending June 30, 1973; $909,000 each for the fiscal years ending June 30, 1974, and June 30, 1975; $2,000,000 for fiscal year 1976; $2,500,000 for the fiscal year ending September 30, 1977; $600,000 for the fiscal year ending September 30, 1978; $700,000 for the fiscal year ending September 30, 1979; $805,000 for the fiscal year ending September 30, 1980; $926,000 for the fiscal year ending September 30, 1981; $570,000 for the fiscal year ending September 30, 1982; $600,000 for the fiscal year ending September 30, 1983; $670,000 for the fiscal year ending September 30, 1984; and $700,000 for the fiscal year ending September 30, 1985.

(July 1, 1944, ch. 373, title X, § 1005, as added Pub. L. 91–572, § 6(c), Dec. 24, 1970, 84 Stat. 1507; amended Pub. L. 93–45, title I, § 111(d), June 18, 1973, 87 Stat. 93; Pub. L. 94–63, title II, § 202(d), title VII, § 701(d), July 29, 1975, 89 Stat. 307, 352; Pub. L. 95–83, title III, § 305(d), Aug. 1, 1977, 91 Stat. 389; Pub. L. 95–613, § 1(b)(4), Nov. 8, 1978, 92 Stat. 3093; Pub. L. 97–35, title IX, § 931(a)(3), Aug. 13, 1981, 95 Stat. 570; Pub. L. 97–414, §§ 8(n), 9(a), Jan. 4, 1983, 96 Stat. 2061, 2064; Pub. L. 98–512, § 3(c), Oct. 19, 1984, 98 Stat. 2410.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–512 inserted provisions authorizing appropriations for fiscal year ending Sept. 30, 1985.

1983—Subsec. (b). Pub. L. 97–414, § 8(n), substituted a semicolon for a comma after ''1981''.

Pub. L. 97–414, § 9(a), amended directory language of Pub. L. 97–35, § 931(a)(3), to correct typographical error and did not involve any change in text. See 1981 Amendment note below.

1981—Subsec. (b). Pub. L. 97–35, as amended by Pub. L. 97–414, § 9(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1978—Subsec. (b). Pub. L. 95–613 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (b). Pub. L. 95–83 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977.

1975—Subsec. (b). Pub. L. 94–63 inserted provisions authorizing appropriations for fiscal years ending June 30, 1975, 1976, and 1977.

1973—Subsec. (b). Pub. L. 93–45 inserted provisions authorizing appropriations for fiscal year ending June 30, 1974.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 202(d) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

§ 300a–4. Grants and contracts

(a) Promulgation of regulations governing execution; amount of grants

Grants and contracts made under this subchapter shall be made in accordance with such regulations as the Secretary may promulgate. The amount of any grant under any section of this subchapter shall be determined by the Secretary; except that no grant under any such section for any program or project for a fiscal year beginning after June 30, 1975, may be made for less than 90 per centum of its costs (as determined under regulations of the Secretary) unless the grant is to be made for a program or project for which a grant was made (under the same section) for the fiscal year ending June 30, 1975, for less than 90 per centum of its costs (as so determined), in which case a grant under such section for that program or project for a fiscal year beginning after that date may be made for a percentage which shall not be less than the percentage of its costs for which the fiscal year 1975 grant was made.

(b) Payment of grants

Grants under this subchapter shall be payable in such installments and subject to such conditions as the Secretary may determine to be appropriate to assure that such grants will be effectively utilized for the purposes for which made.

(c) Prerequisites; "low-income family" defined

A grant may be made or contract entered into under section 300 or 300a of this title for a family planning service project or program only upon assurances satisfactory to the Secretary that—

(1) priority will be given in such project or program to the furnishing of such services to persons from low-income families; and

(2) no charge will be made in such project or program for services provided to any person from a low-income family except to the extent that payment will be made by a third party (including a government agency) which is authorized or is under legal obligation to pay such charge.

For purposes of this subsection, the term ''low-income family'' shall be defined by the Secretary in accordance with such criteria as he may prescribe so as to insure that economic status shall not be a deterrent to participation in the programs assisted under this subchapter.

(d) Suitability of informational or educational materials

(1) A grant may be made or a contract entered into under section 300 or 300a–3 of this title only upon assurances satisfactory to the Secretary that informational or educational materials developed or made available under the grant or contract will be suitable for the purposes of this subchapter and for the population or community to which they are to be made available, taking into account the educational and cultural background of the individuals to whom such mate-

rials are addressed and the standards of such population or community with respect to such materials.

(2) In the case of any grant or contract under section 300 of this title, such assurances shall provide for the review and approval of the suitability of such materials, prior to their distribution, by an advisory committee established by the grantee or contractor in accordance with the Secretary's regulations. Such a committee shall include individuals broadly representative of the population or community to which the materials are to be made available.

(July 1, 1944, ch. 373, title X, § 1006, as added Pub. L. 91–572, § 6(c), Dec. 24, 1970, 84 Stat. 1507; amended Pub. L. 94–63, title II, § 204(c), (d), July 29, 1975, 89 Stat. 308; Pub. L. 95–613, § 1(a)(2), Nov. 8, 1978, 92 Stat. 3093.)

AMENDMENTS

1978—Pub. L. 95–613 added subsec. (d).

1975—Subsec. (a). Pub. L. 94–63, § 204(c), inserted provisions relating to amount of grants authorized pursuant to sections of this subchapter.

Subsec. (c). Pub. L. 94–63, § 204(d), inserted provision relating to economic status as part of the criteria to be included within definition of ''low-income family''.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

§ 300a–5. Voluntary participation by individuals; participation not prerequisite for eligibility or receipt of other services and information

The acceptance by any individual of family planning services or family planning or population growth information (including educational materials) provided through financial assistance under this subchapter (whether by grant or contract) shall be voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program of the entity or individual that provided such service or information.

(July 1, 1944, ch. 373, title X, § 1007, as added Pub. L. 91–572, § 6(c), Dec. 24, 1970, 84 Stat. 1508.)

§ 300a–6. Prohibition against funding programs using abortion as family planning method

None of the funds appropriated under this subchapter shall be used in programs where abortion is a method of family planning.

(July 1, 1944, ch. 373, title X, § 1008, as added Pub. L. 91–572, § 6(c), Dec. 24, 1970, 84 Stat. 1508.)

§ 300a–6a. Repealed. Pub. L. 105–362, title VI, § 601(a)(1)(G), Nov. 10, 1998, 112 Stat. 3285

Section, act July 1, 1944, ch. 373, title X, § 1009, as added Pub. L. 94–63, title II, § 203(a), July 29, 1975, 89 Stat. 307; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 104–66, title I, § 1062(c), Dec. 21, 1995, 109 Stat. 720, related to plans and reports concerning family planning services.

§ 300a–7. Sterilization or abortion

(a) Omitted

(b) Prohibition of public officials and public authorities from imposition of certain requirements contrary to religious beliefs or moral convictions

The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6000 et seq.] by any individual or entity does not authorize any court or any public official or other public authority to require—

(1) such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions; or

(2) such entity to—

(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or

(B) provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedures or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

(c) Discrimination prohibition

(1) No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6000 et seq.] after June 18, 1973, may—

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel,

because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.

(2) No entity which receives after July 12, 1974, a grant or contract for biomedical or behavioral research under any program administered by the Secretary of Health and Human Services may—

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel,

because he performed or assisted in the performance of any lawful health service or research activity, because he refused to perform or assist in the performance of any such service or activity on the grounds that his performance or assistance in the performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting any such service or activity.

(d) Individual rights respecting certain requirements contrary to religious beliefs or moral convictions

No individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.

(e) Prohibition on entities receiving Federal grant, etc., from discriminating against applicants for training or study because of refusal of applicant to participate on religious or moral grounds

No entity which receives, after September 29, 1979, any grant, contract, loan, loan guarantee, or interest subsidy under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15001 et seq.] may deny admission or otherwise discriminate against any applicant (including applicants for internships and residencies) for training or study because of the applicant's reluctance, or willingness, to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or consistent with the applicant's religious beliefs or moral convictions.

(Pub. L. 93–45, title IV, § 401, June 18, 1973, 87 Stat. 95; Pub. L. 93–348, title II, § 214, July 12, 1974, 88 Stat. 353; Pub. L. 96–76, title II, § 208, Sept. 29, 1979, 93 Stat. 583; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 106–402, title IV, § 401(b)(5), Oct. 30, 2000, 114 Stat. 1738.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsecs. (b), (c)(1), and (e), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to this chapter (§ 201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Community Mental Health Centers Act, referred to in subsecs. (b), (c)(1), and (e), is title II of Pub. L. 88–164, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title prior to its repeal by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560.

The Developmental Disabilities Services and Facilities Construction Act, referred to in subsecs. (b) and (c)(1), is title I of Pub. L. 88–164, Oct. 31, 1963, 77 Stat. 282, as renamed by Pub. L. 91–518, title II, § 207(a), Oct. 30, 1970, 84 Stat. 1327. Title I of Pub. L. 88–164, which was subsequently renamed the Developmental Disabilities Assistance and Bill of Rights Act by Pub. L. 95–602, title V, § 502, Nov. 6, 1978, 92 Stat. 3003, and amended generally by Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662, was classified generally to chapter 75 (§ 6000 et seq.) of this title, prior to repeal by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737. For complete classification of this Act to the Code, see Tables.

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (e), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677, which is classified principally to chapter 144 (§ 15001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

CODIFICATION

Section was enacted as part of Health Programs Extension Act of 1973, and not as part of Public Health Services Act which comprises this chapter.

Subsec. (a) of this section amended section 601 of Pub. L. 91–296, which is set out as an Availability of Appropriations note under section 201 of this title.

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–402 substituted ''or the Developmental Disabilities Assistance and Bill of Rights Act of 2000 may deny'' for ''or the Developmental Disabilities Assistance and Bill of Rights Act may deny''.

1979—Subsec. (e). Pub. L. 96–76 added subsec. (e).

1974—Subsec. (c). Pub. L. 93–348, § 214, designated existing provisions as par. (1), redesignated pars. (1) and (2) of such provisions as subpars. (A) and (B), and added par. (2).

Subsec. (d). Pub. L. 93–348, § 214(b), added subsec. (d).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsecs. (c)(2) and (d), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 300a–8. Penalty for United States, etc., officer or employee coercing or endeavoring to coerce procedure upon beneficiary of Federal program

Any—

(1) officer or employee of the United States,

(2) officer or employee of any State, political subdivision of a State, or any other entity, which administers or supervises the administration of any program receiving Federal financial assistance, or

(3) person who receives, under any program receiving Federal financial assistance, compensation for services,

who coerces or endeavors to coerce any person to undergo an abortion or sterilization procedure by threatening such person with the loss of, or disqualification for the receipt of, any benefit or service under a program receiving Federal financial assistance shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(Pub. L. 94–63, title II, § 205, July 29, 1975, 89 Stat. 308.)

CODIFICATION

Section was enacted as part of the Family Planning and Population Research Act of 1975, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

SUBCHAPTER VIII–A—ADOLESCENT PREGNANCIES

PART A—GRANT PROGRAM

§§ 300a–21 to 300a–28. Repealed. Pub. L. 97–35, title IX, § 955(b), title XXI, § 2193(f), Aug. 13, 1981, 95 Stat. 592, 828

Section 300a–21, Pub. L. 95–626, title VI, § 601, Nov. 10, 1978, 92 Stat. 3595, set forth Congressional findings and declaration of purpose with respect to grant program.

Section 300a–22, Pub. L. 95–626, title VI, § 602, Nov. 10, 1978, 92 Stat. 3595; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, defined terms ''Secretary'', ''eligible person'', ''eligible grant recipient'', ''core services'', ''supplemental services'', ''adolescent parent''.

Section 300a–23, Pub. L. 95–626, title VI, § 603, Nov. 10, 1978, 92 Stat. 3596, set forth authority to make grants.

Section 300a–24, Pub. L. 95–626, title VI, § 604, Nov. 10, 1978, 92 Stat. 3597, set forth authorized uses for grants.

Section 300a–25, Pub. L. 95–626, title VI, § 605, Nov. 10, 1978, 92 Stat. 3597, set forth provisions respecting priorities, amounts, and duration of grants.

Section 300a–26, Pub. L. 95–626, title VI, § 606, Nov. 10, 1978, 92 Stat. 3598, set forth application, etc., requirements for grant approval.

Section 300a–27, Pub. L. 95–626, title VI, § 607, Nov. 10, 1978, 92 Stat. 3601; Pub. L. 97–35, title XXI, § 2193(a)(2), Aug. 13, 1981, 95 Stat. 827, authorized appropriations from fiscal year ending Sept. 30, 1979, through fiscal year ending Sept. 30, 1982.

Section 300a–28, Pub. L. 95–626, title VI, § 608, Nov. 10, 1978, 92 Stat. 3601, set forth prohibition respecting use of funds to pay for performance of abortion.

See section 300z et seq. of this title.

EFFECTIVE DATE OF REPEAL

Section 955(b) of Pub. L. 97–35 provided that the repeal of sections 300a–21 to 300a–28 of this title is effective Oct. 1, 1981.

For effective date, savings, and transitional provisions relating to the repeal of sections 321a–21 to 321a–28 of this title by section 2193(f) of Pub. L. 97–35, and relating to the amendment of section 300a–27 of this title by section 2193(a)(2) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

STUDY OF ADOLESCENT PREGNANCY; REPORT NOT LATER THAN NOVEMBER 10, 1979

Pub. L. 95–626, title VIII, § 801, Nov. 10, 1978, 92 Stat. 3602, which provided for a study of the problem of adolescent pregnancies and the effectiveness of existing programs and a report, was repealed by section 955(b) of Pub. L. 97–35.

§ 300a–29. Omitted

CODIFICATION

Section, Pub. L. 95–626, title III, § 301, Nov. 10, 1978, 92 Stat. 3590, provided that grants or contracts made under this subchapter would be considered to have been made under this chapter for the purposes of sections 300*l*–2(e) and 300m–3(c)(6) of this title.

PART B—IMPROVING COORDINATION OF FEDERAL AND STATE PROGRAMS

§ 300a–41. Repealed. Pub. L. 97–35, title IX, § 955(b), title XXI, § 2193(f), Aug. 13, 1981, 95 Stat. 592, 828

Section, Pub. L. 95–626, title VII, § 701, Nov. 10, 1978, 92 Stat. 3601; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to improving coordination of Federal and State policies and programs.

EFFECTIVE DATE OF REPEAL

Section 955(b) of Pub. L. 97–35 provided that the repeal of this section is effective Oct. 1, 1981.

For effective date, savings, and transitional provisions relating to the repeal of this section by section 2193(f) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

SUBCHAPTER IX—GENETIC DISEASES, HEMOPHILIA PROGRAMS, AND SUDDEN INFANT DEATH SYNDROME

AMENDMENTS

1976—Pub. L. 94–278, title IV, § 403(b)(3), Apr. 22, 1976, 90 Stat. 409, substituted ''GENETIC DISEASES'' for ''GENETIC BLOOD DISORDERS'' and inserted ''HEMOPHILIA PROGRAMS'' in subchapter heading.

1974—Pub. L. 93–270, § 3(b), Apr. 22, 1974, 88 Stat. 92, inserted ''SUDDEN INFANT DEATH SYNDROME'' in subchapter heading.

1972—Pub. L. 92–414, § 4(1), Aug. 29, 1972, 86 Stat. 652, substituted ''GENETIC BLOOD DISORDERS'' for ''SICKLE CELL ANEMIA PROGRAM'' as subchapter heading and designated former subchapter heading as part A, substituting ''Programs'' for ''Program''.

PART A—GENETIC DISEASES

AMENDMENTS

1976—Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407, substituted ''Genetic Diseases'' for ''Sickle Cell Anemia Programs'' in part A heading.

§ 300b. Repealed. Pub. L. 97–35, title XXI, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827

Section, act July 1, 1944, ch. 373, title XI, § 1101, as added Apr. 22, 1976, Pub. L. 94–278, title IV, § 403(a), 90 Stat. 407; amended Nov. 10, 1978, Pub. L. 95–626, title II, § 205(b), (d)(2), (e), 92 Stat. 3583, 3584; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(1)(B), 95 Stat. 826; Jan. 4, 1983, Pub. L. 97–414, § 8(*o*), 96 Stat. 2061, related to testing, counseling, information and education programs.

A prior section 300b, act July 1, 1944, ch. 373, title XI, § 1101, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 137; amended Aug. 29, 1972, Pub. L. 92–414, § 4(2), 86 Stat. 652, authorized Secretary to make grants and enter contracts with public and nonprofit private entities with respect to establishment of voluntary sickle cell anemia screening and counseling programs and to develop and disseminate informational and educational materials relating to sickle cell anemia, prior to repeal by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

EFFECTIVE DATE OF 1981 AMENDMENT AND REPEAL, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to the amendment and repeal of this section by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300b–1. Research project grants and contracts

In carrying out section 241 of this title, the Secretary may make grants to public and nonprofit private entities, and may enter into contracts with public and private entities and individuals, for projects for (1) basic or applied research leading to the understanding, diagnosis, treatment, and control of genetic diseases, (2) planning, establishing, demonstrating, and developing special programs for the training of genetic counselors, social and behavioral scientists, and other health professionals, (3) the development of programs to educate practicing physicians, other health professionals, and the public regarding the nature of genetic processes, the inheritance patterns of genetic diseases, and

the means, methods, and facilities available to diagnose, control, counsel, and treat genetic diseases, and (4) the development of counseling and testing programs and other programs for the diagnosis, control, and treatment of genetic diseases. In making grants and entering into contracts for projects described in clause (1) of the preceding sentence, the Secretary shall give priority to applications for such grants or contracts which are submitted for research on sickle cell anemia and for research on Cooley's anemia.

(July 1, 1944, ch. 373, title XI, § 1102, as added Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 408.)

PRIOR PROVISIONS

A prior section 300b–1, act July 1, 1944, ch. 373, title XI, § 1102, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 138, authorized Secretary to make grants and enter contracts with public and private entities and individuals for projects concerned with research, research training in diagnosis, treatment and control of sickle cell anemia, informational and educational programs with respect to sickle cell anemia and development of counseling and testing programs, prior to repeal by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

EFFECTIVE DATE

Section 403(c) of Pub. L. 94–278 provided that: ''The amendments made by subsections (a) and (b) [see section 401 of Pub. L. 94–278, set out as a Short Title of 1976 Amendment note under section 201 of this title] shall take effect July 1, 1976.''

SHORT TITLE OF 1976 AMENDMENT

For short title of title IV of Pub. L. 94–278, which enacted this part, omitted former part B of this subchapter, redesignated former parts C and D of this subchapter as parts B and C of this subchapter, respectively, as the ''National Sickle Cell Anemia, Cooley's Anemia, Tay-Sachs, and Genetic Diseases Act'', see section 401 of Pub. L. 94–278, set out as a note under section 201 of this title.

DEMONSTRATION PROGRAM FOR THE DEVELOPMENT AND ESTABLISHMENT OF SYSTEMIC MECHANISMS FOR THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE

Pub. L. 108–357, title VII, § 712(c), Oct. 22, 2004, 118 Stat. 1559, provided that:

''(1) AUTHORITY TO CONDUCT DEMONSTRATION PROGRAM.—

''(A) IN GENERAL.—The Administrator, through the Bureau of Primary Health Care and the Maternal and Child Health Bureau, shall conduct a demonstration program by making grants to up to 40 eligible entities for each fiscal year in which the program is conducted under this section [probably means this subsection] for the purpose of developing and establishing systemic mechanisms to improve the prevention and treatment of Sickle Cell Disease, including through—

''(i) the coordination of service delivery for individuals with Sickle Cell Disease;

''(ii) genetic counseling and testing;

''(iii) bundling of technical services related to the prevention and treatment of Sickle Cell Disease;

''(iv) training of health professionals; and

''(v) identifying and establishing other efforts related to the expansion and coordination of education, treatment, and continuity of care programs for individuals with Sickle Cell Disease.

''(B) GRANT AWARD REQUIREMENTS.—

''(i) GEOGRAPHIC DIVERSITY.—The Administrator shall, to the extent practicable, award grants under this section [probably means this subsection] to eligible entities located in different regions of the United States.

''(ii) PRIORITY.—In awarding grants under this subsection, the Administrator shall give priority to awarding grants to eligible entities that are—

''(I) Federally-qualified health centers that have a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health; or

''(II) Federally-qualified health centers that intend to develop a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health.

''(2) ADDITIONAL REQUIREMENTS.—An eligible entity awarded a grant under this subsection shall use funds made available under the grant to carry out, in addition to the activities described in paragraph (1)(A), the following activities:

''(A) To facilitate and coordinate the delivery of education, treatment, and continuity of care for individuals with Sickle Cell Disease under—

''(i) the entity's collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity that works with individuals who have Sickle Cell Disease;

''(ii) the Sickle Cell Disease newborn screening program for the State in which the entity is located; and

''(iii) the maternal and child health program under title V of the Social Security Act (42 U.S.C. 701 et seq.) for the State in which the entity is located.

''(B) To train nursing and other health staff who provide care for individuals with Sickle Cell Disease.

''(C) To enter into a partnership with adult or pediatric hematologists in the region and other regional experts in Sickle Cell Disease at tertiary and academic health centers and State and county health offices.

''(D) To identify and secure resources for ensuring reimbursement under the medicaid program, State children's health insurance program, and other health programs for the prevention and treatment of Sickle Cell Disease.

''(3) NATIONAL COORDINATING CENTER.—

''(A) ESTABLISHMENT.—The Administrator shall enter into a contract with an entity to serve as the National Coordinating Center for the demonstration program conducted under this subsection.

''(B) ACTIVITIES DESCRIBED.—The National Coordinating Center shall—

''(i) collect, coordinate, monitor, and distribute data, best practices, and findings regarding the activities funded under grants made to eligible entities under the demonstration program;

''(ii) develop a model protocol for eligible entities with respect to the prevention and treatment of Sickle Cell Disease;

''(iii) develop educational materials regarding the prevention and treatment of Sickle Cell Disease; and

''(iv) prepare and submit to Congress a final report that includes recommendations regarding the effectiveness of the demonstration program conducted under this subsection and such direct outcome measures as—

''(I) the number and type of health care resources utilized (such as emergency room visits, hospital visits, length of stay, and physician visits for individuals with Sickle Cell Disease); and

''(II) the number of individuals that were tested and subsequently received genetic counseling for the sickle cell trait.

''(4) APPLICATION.—An eligible entity desiring a grant under this subsection shall submit an application to the Administrator at such time, in such manner, and containing such information as the Administrator may require.

''(5) DEFINITIONS.—In this subsection:

''(A) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Health Resources and Services Administration.

''(B) ELIGIBLE ENTITY.—The term 'eligible entity' means a Federally-qualified health center, a nonprofit hospital or clinic, or a university health center that provides primary health care, that—

''(i) has a collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity with experience in working with individuals who have Sickle Cell Disease; and

''(ii) demonstrates to the Administrator that either the Federally-qualified health center, the nonprofit hospital or clinic, the university health center, the organization or entity described in clause (i), or the experts described in paragraph (2)(C), has at least 5 years of experience in working with individuals who have Sickle Cell Disease.

''(C) FEDERALLY-QUALIFIED HEALTH CENTER.—The term 'Federally-qualified health center' has the meaning given that term in section 1905(*l*)(2)(B) of the Social Security Act (42 U.S.C. 1396d(*l*)(2)(B)).

''(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, $10,000,000 for each of fiscal years 2005 through 2009.''

CONGRESSIONAL DECLARATION OF PURPOSE

Section 402 of Pub. L. 94–278, as amended by Pub. L. 95–626, title II, § 205(a), Nov. 10, 1978, 92 Stat. 3583, provided that: ''In order to preserve and protect the health and welfare of all citizens, it is the purpose of this title [see section 401 of Pub. L. 94–278, set out as a Short Title of 1976 Amendment note under section 201 of this title] to establish a national program to provide for basic and applied research, research training, testing, counseling, and information and education programs with respect to genetic diseases, and genetic conditions, such as Sickle Cell anemia, Cooley's Anemia, Tay–Sachs disease, cystic fibrosis, dysautonomia, hemophilia, retinitis pigmentosa, Huntington's chorea, muscular dystrophy, and genetic conditions leading to mental retardation or genetically caused mental disorders.''

§ 300b–2. Voluntary participation by individuals

The participation by any individual in any program or portion thereof under this part shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program.

(July 1, 1944, ch. 373, title XI, § 1103, as added Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 408.)

PRIOR PROVISIONS

A prior section 300b–2, act July 1, 1944, ch. 373, title XI, § 1103, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 138; amended Aug. 29, 1972, Pub. L. 92–414, § 4(3), 86 Stat. 652, was identical to this section, prior to repeal by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

§ 300b–3. Application; special consideration to prior sickle cell anemia grant recipients

(a) Manner of submission; contents

A grant or contract under this part may be made upon application submitted to the Secretary at such time, in such manner, and containing and accompanied by such information, as the Secretary may require, including assurances for an evaluation whether performed by the applicant or by the Secretary. Such grant or contract may be made available on less than a statewide or regional basis. Each applicant shall—

(1) provide that the programs and activities for which assistance under this part is sought will be administered by or under the supervision of the applicant;

(2) provide for strict confidentiality of all test results, medical records, and other information regarding testing, diagnosis, counseling, or treatment of any person treated, except for (A) such information as the patient (or his guardian) gives informed consent to be released, or (B) statistical data compiled without reference to the identity of any such patient;

(3) provide for community representation where appropriate in the development and operation of voluntary genetic testing or counseling programs funded by a grant or contract under this part; and

(4) establish fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting of Federal funds paid to the applicant under this part.

(b) Considerations for grants and contracts under section 300b–1 of this title

In making grants and entering into contracts for any fiscal year under section 241 of this title for projects described in section 300b–1 of this title the Secretary shall give special consideration to applications from entities that received grants from, or entered into contracts with, the Secretary for the preceding fiscal year for the conduct of comprehensive sickle cell centers or sickle cell screening and education clinics.

(July 1, 1944, ch. 373, title XI, § 1104, as added Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 408; amended Pub. L. 95–626, title II, § 205(c), Nov. 10, 1978, 92 Stat. 3584; Pub. L. 97–35, title XXI, § 2193(b)(2), (3), Aug. 13, 1981, 95 Stat. 827.)

PRIOR PROVISIONS

A prior section 300b–3, act July 1, 1944, ch. 373, title XI, § 1104, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 138; amended Aug. 29, 1972, Pub. L. 92–414, § 4(3), 86 Stat. 652, authorized grants to be made upon application to Secretary and required supervision of programs by applicant, confidentiality of test results, medical records and other information obtained from treated person, community representation in programs, assurances by applicant that priority will be given to persons of child bearing years, and demonstration by applicant of proper fiscal control and accounting procedures, prior to repeal by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

AMENDMENTS

1981—Subsec. (a)(4), (5). Pub. L. 97–35, § 2193(b)(2), redesignated par. (5) as (4). Former par. (4), which related to testing and counseling requirements, was struck out.

Subsec. (b). Pub. L. 97–35, § 2193(b)(3), struck out subsec. (b) which related to grants and contracts under section 300b of this title. Former subsec. (c) was redesignated (b) and, as so redesignated, struck out reference to section 300b of this title.

Subsec. (c). Pub. L. 97–35, § 2193(b)(3), redesignated subsec. (c) as (b).

Subsec. (d). Pub. L. 97–35, § 2193(b)(3), struck out subsec. (d) which related to procedures applicable to grants, etc., under section 300b of this title.

1978—Subsec. (a). Pub. L. 95–626, § 205(c)(1), inserted requirement that application contain assurances for an evaluation whether performed by applicant or by Secretary and that grant or contract be made available on less than a statewide or regional basis.

Subsec. (d). Pub. L. 95–626, § 205(c)(2), added subsec. (d).

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300b–4. Public Health Service facilities

The Secretary shall establish a program within the Service to provide voluntary testing, diagnosis, counseling, and treatment of individuals respecting genetic diseases. Services under such program shall be made available through facilities of the Service to persons requesting such services, and the program shall provide appropriate publicity of the availability and voluntary nature of such services.

(July 1, 1944, ch. 373, title XI, § 1105, as added Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 409.)

PRIOR PROVISIONS

A prior section 300b–4, act July 1, 1944, ch. 373, title XI, § 1105, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 139, authorized Secretary to establish a program within the Public Health Service with respect to sickle cell anemia with such program to be made available through facilities of Public Health Service, prior to repeal by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

§ 300b–5. Repealed. Pub. L. 97–35, title XXI, § 2193(b)(4), Aug. 13, 1981, 95 Stat. 827

Section, act July 1, 1944, ch. 373, title XI, § 1106, as added Apr. 22, 1976, Pub. L. 94–278, title IV, § 403(a), 90 Stat. 409, related to an annual report to President and Congress on administration of this part.

A prior section 300b–5, act July 1, 1944, ch. 373, title XI, § 1106, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 139; amended Aug. 29, 1972, Pub. L. 92–414, § 4(3), 86 Stat. 652, related to an annual report to President and Congress on administration of this part, prior to repeal by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

EFFECTIVE DATE OF REPEAL, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to repeal by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300b–6. Applied technology

The Secretary, acting through an identifiable administrative unit, shall—

(1) conduct epidemiological assessments and surveillance of genetic diseases to define the scope and extent of such diseases and the need for programs for the diagnosis, treatment, and control of such diseases, screening for such diseases, and the counseling of persons with such diseases;

(2) on the basis of the assessments and surveillance described in paragraph (1), develop for use by the States programs which combine in an effective manner diagnosis, treatment, and control of such diseases, screening for such diseases, and counseling of persons with such diseases; and

(3) on the basis of the assessments and surveillance described in paragraph (1), provide technical assistance to States to implement the programs developed under paragraph (2) and train appropriate personnel for such programs.

In carrying out this section, the Secretary may, from funds allotted for use under section 702(a) of this title, make grants to or contracts with public or nonprofit private entities (including grants and contracts for demonstration projects).

(July 1, 1944, ch. 373, title XI, § 1107, as added Pub. L. 95–626, title II, § 205(d)(1), Nov. 10, 1978, 92 Stat. 3584; amended Pub. L. 97–35, title XXI, § 2193(b)(5), Aug. 13, 1981, 95 Stat. 827.)

AMENDMENTS

1981—Pub. L. 97–35 substituted provisions relating to allotments under section 702(a) of this title for provisions relating to appropriations under section 300b(b) of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300b–7. Tourette Syndrome

(a) In general

The Secretary shall develop and implement outreach programs to educate the public, health care providers, educators and community based organizations about the etiology, symptoms, diagnosis and treatment of Tourette Syndrome, with a particular emphasis on children with Tourette Syndrome. Such programs may be carried out by the Secretary directly and through awards of grants or contracts to public or nonprofit private entities.

(b) Certain activities

Activities under subsection (a) of this section shall include—

(1) the production and translation of educational materials, including public service announcements;

(2) the development of training material for health care providers, educators and community based organizations; and

(3) outreach efforts directed at the misdiagnosis and underdiagnosis of Tourette Syndrome in children and in minority groups.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title XI, § 1108, as added Pub. L. 106–310, div. A, title XXIII, § 2301, Oct. 17, 2000, 114 Stat. 1157.)

§ 300b–8. Improved newborn and child screening for heritable disorders

(a) In general

The Secretary shall award grants to eligible entities to enhance, improve or expand the ability of State and local public health agencies to provide screening, counseling or health care services to newborns and children having or at risk for heritable disorders.

(b) Use of funds

Amounts provided under a grant awarded under subsection (a) of this section shall be used to—

(1) establish, expand, or improve systems or programs to provide screening, counseling, testing or specialty services for newborns and children at risk for heritable disorders;

(2) establish, expand, or improve programs or services to reduce mortality or morbidity from heritable disorders;

(3) establish, expand, or improve systems or programs to provide information and counseling on available therapies for newborns and children with heritable disorders;

(4) improve the access of medically underserved populations to screening, counseling, testing and specialty services for newborns and children having or at risk for heritable disorders; or

(5) conduct such other activities as may be necessary to enable newborns and children having or at risk for heritable disorders to receive screening, counseling, testing or specialty services, regardless of income, race, color, religion, sex, national origin, age, or disability.

(c) Eligible entities

To be eligible to receive a grant under subsection (a) of this section an entity shall—

(1) be a State or political subdivision of a State, or a consortium of two or more States or political subdivisions of States; and

(2) prepare and submit to the Secretary an application that includes—

(A) a plan to use amounts awarded under the grant to meet specific health status goals and objectives relative to heritable disorders, including attention to needs of medically underserved populations;

(B) a plan for the collection of outcome data or other methods of evaluating the degree to which amounts awarded under this grant will be used to achieve the goals and objectives identified under subparagraph (A);

(C) a plan for monitoring and ensuring the quality of services provided under the grant;

(D) an assurance that amounts awarded under the grant will be used only to implement the approved plan for the State;

(E) an assurance that the provision of services under the plan is coordinated with services provided under programs implemented in the State under title V, XVIII, XIX, XX, or XXI of the Social Security Act [42 U.S.C. 701 et seq., 1395 et seq., 1396 et seq. 1397 et seq., 1397aa et seq.] (subject to Federal regulations applicable to such programs) so that the coverage of services under such titles is not substantially diminished by the use of granted funds; and

(F) such other information determined by the Secretary to be necessary.

(d) Limitation

An eligible entity may not use amounts received under this section to—

(1) provide cash payments to or on behalf of affected individuals;

(2) provide inpatient services;

(3) purchase land or make capital improvements to property; or

(4) provide for proprietary research or training.

(e) Voluntary participation

The participation by any individual in any program or portion thereof established or operated with funds received under this section shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, another Federal or State program.

(f) Supplement not supplant

Funds appropriated under this section shall be used to supplement and not supplant other Federal, State, and local public funds provided for activities of the type described in this section.

(g) Publication

(1) In general

An application submitted under subsection (c)(2) of this section shall be made public by the State in such a manner as to facilitate comment from any person, including through hearings and other methods used to facilitate comments from the public.

(2) Comments

Comments received by the State after the publication described in paragraph (1) shall be addressed in the application submitted under subsection (c)(2) of this section.

(h) Technical assistance

The Secretary shall provide to entities receiving grants under subsection (a) of this section such technical assistance as may be necessary to ensure the quality of programs conducted under this section.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title XI, § 1109, as added Pub. L. 106–310, div. A, title XXVI, § 2601, Oct. 17, 2000, 114 Stat. 1164.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2)(E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V, XVIII, XIX, XX, and XXI of the Act are classified generally to subchapters V (§ 701 et seq.), XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), XX (§ 1397 et seq.), and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 300b–9. Evaluating the effectiveness of newborn and child screening programs

(a) In general

The Secretary shall award grants to eligible entities to provide for the conduct of demonstra-

tion programs to evaluate the effectiveness of screening, counseling or health care services in reducing the morbidity and mortality caused by heritable disorders in newborns and children.

(b) Demonstration programs

A demonstration program conducted under a grant under this section shall be designed to evaluate and assess, within the jurisdiction of the entity receiving such grant—

(1) the effectiveness of screening, counseling, testing or specialty services for newborns and children at risk for heritable disorders in reducing the morbidity and mortality associated with such disorders;

(2) the effectiveness of screening, counseling, testing or specialty services in accurately and reliably diagnosing heritable disorders in newborns and children; or

(3) the availability of screening, counseling, testing or specialty services for newborns and children at risk for heritable disorders.

(c) Eligible entities

To be eligible to receive a grant under subsection (a) of this section an entity shall be a State or political subdivision of a State, or a consortium of two or more States or political subdivisions of States.

(July 1, 1944, ch. 373, title XI, § 1110, as added Pub. L. 106–310, div. A, title XXVI, § 2601, Oct. 17, 2000, 114 Stat. 1165.)

§ 300b–10. Advisory Committee on Heritable Disorders in Newborns and Children

(a) Establishment

The Secretary shall establish an advisory committee to be known as the ''Advisory Committee on Heritable Disorders in Newborns and Children'' (referred to in this section as the ''Advisory Committee'').

(b) Duties

The Advisory Committee shall—

(1) provide advice and recommendations to the Secretary concerning grants and projects awarded or funded under section 300b–8 of this title;

(2) provide technical information to the Secretary for the development of policies and priorities for the administration of grants under section 300b–8 of this title; and

(3) provide such recommendations, advice or information as may be necessary to enhance, expand or improve the ability of the Secretary to reduce the mortality or morbidity from heritable disorders.

(c) Membership

(1) In general

The Secretary shall appoint not to exceed 15 members to the Advisory Committee. In appointing such members, the Secretary shall ensure that the total membership of the Advisory Committee is an odd number.

(2) Required members

The Secretary shall appoint to the Advisory Committee under paragraph (1)—

(A) the Administrator of the Health Resources and Services Administration;

(B) the Director of the Centers for Disease Control and Prevention;

(C) the Director of the National Institutes of Health;

(D) the Director of the Agency for Healthcare Research and Quality;

(E) medical, technical, or scientific professionals with special expertise in heritable disorders, or in providing screening, counseling, testing or specialty services for newborns and children at risk for heritable disorders;

(F) members of the public having special expertise about or concern with heritable disorders; and

(G) representatives from such Federal agencies, public health constituencies, and medical professional societies as determined to be necessary by the Secretary, to fulfill the duties of the Advisory Committee, as established under subsection (b) of this section.

(July 1, 1944, ch. 373, title XI, § 1111, as added Pub. L. 106–310, div. A, title XXVI, § 2601, Oct. 17, 2000, 114 Stat. 1166.)

PRIOR PROVISIONS

Prior sections 300c to 300c–4 were repealed by Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407.

Section 300c, act July 1, 1944, ch. 373, title XI, § 1111, as added Aug. 29, 1972, Pub. L. 92–414, § 3, 86 Stat. 650, authorized Secretary to make grants and enter contracts with public and private entities for establishment of screening, treatment, and counseling programs with respect to Cooley's Anemia.

Section 300c–1, act July 1, 1944, ch. 373, title XI, § 1112, as added Aug. 29, 1972, Pub. L. 92–414, § 3, 86 Stat. 651, required that any participation by an individual in any Cooley's Anemia programs should be on a purely voluntary basis.

Section 300c–2, act July 1, 1944, ch. 373, title XI, § 1113, as added Aug. 29, 1972, Pub. L. 92–414, § 3, 86 Stat. 651, provided for making of grant upon application to Secretary and listed certain requirements to be met by applicant.

Section 300c–3, act July 1, 1944, ch. 373, title XI, § 1114, as added Aug. 29, 1972, Pub. L. 92–414, § 3, 86 Stat. 652, authorized Secretary to establish a program with Public Health Service to provide for screening, counseling, and treatment with respect to Cooley's Anemia.

Section 300c–4, act July 1, 1944, ch. 373, title XI, § 1115, as added Aug. 29, 1972, Pub. L. 92–414, § 3, 86 Stat. 652, provided for Secretary's submission of a report to President for transmittal to Congress annually.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

PART B—SUDDEN INFANT DEATH SYNDROME

AMENDMENTS

1976—Pub. L. 94–278, title IV, § 403(b)(2), Apr. 22, 1976, 90 Stat. 409, redesignated part C heading as part B.

§ 300c–11. Repealed. Pub. L. 97–35, title XXI, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827

Section, act July 1, 1944, ch. 373, title XI, § 1121, as added Apr. 22, 1974, Pub. L. 93–270, § 3(a), 88 Stat. 91; amended Apr. 22, 1976, Pub. L. 94–278, title IV, § 403(b)(1), 90 Stat. 409; S. Res. 4, Feb. 4, 1977; Aug. 1, 1977, Pub. L. 95–83, title III, § 306(a), 91 Stat. 389; Dec. 19, 1977, Pub. L. 95–215, § 8(a), 91 Stat. 1507; Nov. 8, 1978, Pub. L. 95–613, § 2, 92 Stat. 3094; Dec. 12, 1979, Pub. L. 96–142, title II, § 202, 93 Stat. 1070; H. Res. 549, Mar. 25, 1980; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(1)(C), 95 Stat. 827, related to sudden infant death syndrome counseling, information, educational, and statistical programs.

EFFECTIVE DATE OF 1981 AMENDMENT AND REPEAL, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to the amendment and repeal of this section by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300c–12. Sudden infant death syndrome research and research reports

(a) Adequate amounts for identification and prevention progress

From the sums appropriated to the National Institute of Child Health and Human Development, the Secretary shall assure that there are applied to research of the type described in subparagraphs (A) and (B) of subsection (b)(1) of this section such amounts each year as will be adequate, given the leads and findings then available from such research, in order to make maximum feasible progress toward identification of infants at risk of sudden infant death syndrome and prevention of sudden infant death syndrome.

(b) Reports to Congressional committees; contents: data as to applications and funds for specific and general research, summary of findings and plan for taking advantage of research leads and findings

(1) Not later than ninety days after the close of the fiscal year ending September 30, 1979, and of each fiscal year thereafter, the Secretary shall report to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives specific information for such fiscal year on—

(A) the (i) number of applications approved by the Secretary in the fiscal year reported on for grants and contracts under this chapter for research which relates specifically to sudden infant death syndrome, (ii) total amount requested under such applications, (iii) number of such applications for which funds were provided in such fiscal year, and (iv) total amount of such funds; and

(B) the (i) number of applications approved by the Secretary in such fiscal year for grants and contracts under this chapter for research which relates generally to sudden infant death syndrome, including high-risk pregnancy and high-risk infancy research which directly relates to sudden infant death syndrome, (ii) relationship of the high-risk pregnancy and high-risk infancy research to sudden infant death syndrome, (iii) total amount requested under such applications, (iv) number of such applications for which funds were provided in such fiscal year, and (v) total amount of such funds.

(2) Each report submitted under paragraph (1) of this subsection shall—

(A) contain a summary of the findings of intramural and extramural research supported by the National Institute of Child Health and Human Development relating to sudden infant death syndrome as described in subparagraphs (A) and (B) of such paragraph (1), and the plan of such Institute for taking maximum advantage of such research leads and findings; and

(B) provide an estimate of the need for additional funds over each of the next five fiscal years for grants and contracts under this chapter for research activities described in such subparagraphs.

(c) Reports to Congressional committees; current and past estimates for research

Within five days after the Budget is transmitted by the President to the Congress for each fiscal year after fiscal year 1980, the Secretary shall transmit to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives an estimate of the amounts requested for the National Institute of Child Health and Human Development and any other Institutes of the National Institutes of Health, respectively, for research relating to sudden infant death syndrome as described in subparagraphs (A) and (B) of subsection (b)(1) of this section, and a comparison of such amounts with the amounts requested for the preceding fiscal year.

(July 1, 1944, ch. 373, title XI, § 1122, as added Pub. L. 96–142, title II, § 202, Dec. 12, 1979, 93 Stat. 1072; amended Pub. L. 99–158, § 3(a)(6), Nov. 20, 1985, 99 Stat. 879; Pub. L. 103–437, § 15(a)(1), Nov. 2, 1994, 108 Stat. 4591.)

AMENDMENTS

1994—Subsecs. (b)(1), (c). Pub. L. 103–437 substituted ''Energy and Commerce'' for ''Interstate and Foreign Commerce''.

1985—Subsec. (a). Pub. L. 99–158 struck out ''under section 289d of this title'' before '', the Secretary''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and ex-

changes and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

PART C—HEMOPHILIA PROGRAMS

AMENDMENTS

1976—Pub. L. 94–278, title IV, § 403(b)(2), Apr. 22, 1976, 90 Stat. 409, redesignated part D heading as part C.

§ 300c–21. Repealed. Pub. L. 97–35, title XXI, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827

Section, act July 1, 1944, ch. 373, title XI, § 1131, as added July 29, 1975, Pub. L. 94–63, title VI, § 606, 89 Stat. 350; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 306(b), 91 Stat. 389; Nov. 10, 1978, Pub. L. 95–626, title II, § 206(a), 92 Stat. 3584; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(1)(D), 95 Stat. 827, related to comprehensive hemophilia diagnostic and treatment centers.

EFFECTIVE DATE OF 1981 AMENDMENT AND REPEAL, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to the amendment and repeal of this section by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300c–22. Blood-separation centers

(a) Grants and contracts with public and nonprofit private entities for projects to develop and expand existing facilities; definitions

The Secretary may make grants to and enter into contracts with public and nonprofit private entities for projects to develop and expand, within existing facilities, blood-separation centers to separate and make available for distribution blood components to providers of blood services and manufacturers of blood fractions. For purposes of this section—

(1) the term ''blood components'' means those constituents of whole blood which are used for therapy and which are obtained by physical separation processes which result in licensed products such as red blood cells, platelets, white blood cells, AHF-rich plasma, fresh-frozen plasma, cryoprecipitate, and single unit plasma for infusion; and

(2) the term ''blood fractions'' means those constituents of plasma which are used for therapy and which are obtained by licensed fractionation processes presently used in manufacturing which result in licensed products such as normal serum albumin, plasma, protein fraction, prothrombin complex, fibrinogen, AHF concentrate, immune serum globulin, and hyperimmune globulins.

(b) Grants for alleviation of insufficient supplies of blood fractions

In the event the Secretary finds that there is an insufficient supply of blood fractions available to meet the needs for treatment of persons suffering from hemophilia, and that public and other nonprofit private centers already engaged in the production of blood fractions could alleviate such insufficiency with assistance under this subsection, he may make grants not to exceed $500,000 to such centers for the purposes of alleviating the insufficiency.

(c) Approval of application as prerequisite for grant or contract; form, manner of submission, and contents of application

No grant or contract may be made under subsection (a) or (b) of this section unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information as the Secretary shall by regulation prescribe.

(d) Nonapplicability of statutory provisions to contracts

Contracts may be entered into under subsection (a) of this section without regard to section 3324(a) and (b) of title 31 and section 5 of title 41.

(e) Authorization of appropriations

For the purpose of making payments under grants and contracts under subsections (a) and (b) of this section, there are authorized to be appropriated $4,000,000 for fiscal year 1976, $5,000,000 for the fiscal year ending September 30, 1977, $3,450,000 for the fiscal year ending September 30, 1978, $2,500,000 for the fiscal year ending September 30, 1979, $3,000,000 for the fiscal year ending September 30, 1980, and $3,500,000 for the fiscal year ending September 30, 1981.

(July 1, 1944, ch. 373, title XI, § 1132, as added Pub. L. 94–63, title VI, § 606, July 29, 1975, 89 Stat. 351; amended Pub. L. 95–83, title III, § 306(c), Aug. 1, 1977, 91 Stat. 389; Pub. L. 95–626, title II, § 206(b), Nov. 10, 1978, 92 Stat. 3584.)

CODIFICATION

In subsec. (d), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1978—Subsec. (e). Pub. L. 95–626 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (e). Pub. L. 95–83 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977.

EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

RICKY RAY HEMOPHILIA RELIEF FUND

Pub. L. 105–369, Nov. 12, 1998, 112 Stat. 3368, as amended by Pub. L. 106–554, § 1(a)(6) [title IX, § 932], Dec. 21, 2000, 114 Stat. 2763, 2763A–585, provided that:

''SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

''(a) SHORT TITLE.—This Act may be cited as the 'Ricky Ray Hemophilia Relief Fund Act of 1998'.

''(b) TABLE OF CONTENTS.—[Omitted.]

''TITLE I—HEMOPHILIA RELIEF FUND

''SEC. 101. RICKY RAY HEMOPHILIA RELIEF FUND.

''(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the 'Ricky Ray Hemophilia Relief Fund', which shall be administered by the Secretary of the Treasury.

''(b) INVESTMENT OF AMOUNTS IN FUND.—Amounts in the Fund shall be invested in accordance with section

9702 of title 31, United States Code, and any interest on and proceeds from any such investment shall be credited to and become part of the Fund.

''(c) AVAILABILITY OF FUND.—Amounts in the Fund shall be available only for disbursement by the Secretary of Health and Human Services under section 103.

''(d) TERMINATION.—The Fund shall terminate upon the expiration of the 5-year period beginning on the date of the enactment of this Act [Nov. 12, 1998]. If all of the amounts in the Fund have not been expended by the end of the 5-year period, investments of amounts in the Fund shall be liquidated, the receipts of such liquidation shall be deposited in the Fund, and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury of the United States.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Fund to carry out this title $750,000,000. There is appropriated to the Fund $475,000,000 for fiscal year 2001, to remain available until expended.

''SEC. 102. COMPASSIONATE PAYMENT RELATING TO INDIVIDUALS WITH BLOOD-CLOTTING DISORDERS AND HIV.

''(a) IN GENERAL.—If the conditions described in subsection (b) are met and if there are sufficient amounts in the Fund to make each payment, the Secretary shall make a single payment of $100,000 from the Fund to any individual who has an HIV infection and who is described in one of the following paragraphs:

''(1) The individual has any form of blood-clotting disorder, such as hemophilia, and was treated with antihemophilic factor at any time during the period beginning on July 1, 1982, and ending on December 31, 1987.

''(2) The individual—

''(A) is the lawful spouse of an individual described in paragraph (1); or

''(B) is the former lawful spouse of an individual described in paragraph (1) and was the lawful spouse of the individual at any time after a date, within the period described in such subparagraph, on which the individual was treated as described in such paragraph and through medical documentation can assert reasonable certainty of transmission of HIV from individual described in paragraph (1).

''(3) The individual acquired the HIV infection through perinatal transmission from a parent who is an individual described in paragraph (1) or (2).

''(b) CONDITIONS.—The conditions described in this subsection are, with respect to an individual, as follows:

''(1) SUBMISSION OF MEDICAL DOCUMENTATION OF HIV INFECTION.—The individual submits to the Secretary written medical documentation that the individual has an HIV infection.

''(2) PETITION.—A petition for the payment is filed with the Secretary by or on behalf of the individual.

''(3) DETERMINATION.—The Secretary determines, in accordance with section 103(b), that the petition meets the requirements of this title.

''SEC. 103. DETERMINATION AND PAYMENT.

''(a) ESTABLISHMENT OF FILING PROCEDURES.—The Secretary of Health and Human Services shall establish procedures under which individuals may submit petitions for payment under this title. The procedures shall include a requirement that each petition filed under this Act include written medical documentation that the relevant individual described in section 102(a)(1) has (or had) a blood-clotting disorder, such as hemophilia, and was treated as described in such section.

''(b) DETERMINATION.—For each petition filed under this title, the Secretary shall determine whether the petition meets the requirements of this title.

''(c) PAYMENT.—

''(1) IN GENERAL.—To the extent there are sufficient amounts in the Fund to cover each payment, the Secretary shall pay, from the Fund, each petition that the Secretary determines meets the requirements of this title in the order received.

''(2) PAYMENTS IN CASE OF DECEASED INDIVIDUALS.—

''(A) IN GENERAL.—In the case of an individual referred to in section 102(a) who is deceased at the time that payment is made under this section on a petition filed by or on behalf of the individual, the payment shall be made as follows:

''(i) If the individual is survived by a spouse who is living at the time of payment, the payment shall be made to such surviving spouse.

''(ii) If the individual is not survived by a spouse described in clause (i), the payment shall be made in equal shares to all children of the individual who are living at the time of the payment.

''(iii) If the individual is not survived by a person described in clause (i) or (ii), the payment shall be made in equal shares to the parents of the individual who are living at the time of the payment.

''(iv) If the individual is not survived by a person described in clause (i), (ii), or (iii), the payment shall revert back to the Fund.

''(B) FILING OF PETITION BY SURVIVOR.—If an individual eligible for payment under section 102(a) dies before filing a petition under this title, a survivor of the individual may file a petition for payment under this title on behalf of the individual if the survivor may receive payment under subparagraph (A).

''(C) DEFINITIONS.—For purposes of this paragraph:

''(i) The term 'spouse' means an individual who was lawfully married to the relevant individual at the time of death.

''(ii) The term 'child' includes a recognized natural child, a stepchild who lived with the relevant individual in a regular parent-child relationship, and an adopted child.

''(iii) The term 'parent' includes fathers and mothers through adoption.

''(3) TIMING OF PAYMENT.—The Secretary may not make a payment on a petition under this title before the expiration of the 120-day period beginning on the date of the enactment of this Act [Nov. 12, 1998] or after the expiration of the 5-year period beginning on the date of the enactment of this Act.

''(d) ACTION ON PETITIONS.—The Secretary shall complete the determination required by subsection (b) regarding a petition not later than 120 days after the date the petition is filed under this title.

''(e) HUMANITARIAN NATURE OF PAYMENT.—This Act does not create or admit any claim of or on behalf of the individual against the United States or against any officer, employee, or agent thereof acting within the scope of employment or agency that relate to an HIV infection arising from treatment with antihemophilic factor, at any time during the period beginning on July 1, 1982, and ending on December 31, 1987. A payment under this Act shall, however, when accepted by or on behalf of the individual, be in full satisfaction of all such claims by or on behalf of that individual.

''(f) ADMINISTRATIVE COSTS NOT PAID FROM FUND.—No costs incurred by the Secretary in carrying out this title may be paid from the Fund or set off against, or otherwise deducted from, any payment made under subsection (c)(1).

''(g) TERMINATION OF DUTIES OF SECRETARY.—The duties of the Secretary under this section shall cease when the Fund terminates.

''(h) TREATMENT OF PAYMENTS UNDER OTHER LAWS.—A payment under subsection (c)(1) to an individual—

''(1) shall be treated for purposes of the Internal Revenue Code of 1986 as damages described in section 104(a)(2) of such Code;

''(2) shall not be included as income or resources for purposes of determining the eligibility of the individual to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the

amount of such benefits, and such benefits shall not be secondary to, conditioned upon reimbursement from, or subject to any reduction because of receipt of, any such payment; and

''(3) shall not be treated as a third party payment or payment in relation to a legal liability with respect to such benefits and shall not be subject (whether by subrogation or otherwise) to recovery, recoupment, reimbursement, or collection with respect to such benefits (including the Federal or State governments or any entity that provides such benefits under a contract).

''(i) REGULATORY AUTHORITY.—The Secretary may issue regulations necessary to carry out this title.

''(j) TIME OF ISSUANCE OF PROCEDURES.—The Secretary shall, through the promulgation of appropriate regulations, guidelines, or otherwise, first establish the procedures to carry out this title not later than 120 days after the date of the enactment of this Act [Nov. 12, 1998].

''SEC. 104. LIMITATION ON TRANSFER OF RIGHTS AND NUMBER OF PETITIONS.

''(a) RIGHTS NOT ASSIGNABLE OR TRANSFERABLE.—Any right under this title shall not be assignable or transferable.

''(b) ONE PETITION WITH RESPECT TO EACH VICTIM.—With respect to each individual described in paragraph (1), (2), or (3) of section 102(a), the Secretary may not make payment with respect to more than one petition filed in respect to an individual.

''SEC. 105. TIME LIMITATION.

''The Secretary may not make any payment with respect to any petition filed under this title unless the petition is filed within 3 years after the date of the enactment of this Act [Nov. 12, 1998].

''SEC. 106. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT.

''A payment made under section 103(c)(1) shall not be considered as any form of compensation, or reimbursement for a loss, for purposes of imposing liability on the individual receiving the payment, on the basis of such receipt, to repay any insurance carrier for insurance payments or to repay any person on account of worker's compensation payments. A payment under this title shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

''SEC. 107. LIMITATION ON AGENT AND ATTORNEY FEES.

''Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the petition of an individual under this title, more than 5 percent of a payment made under this title on the petition. Any such representative who violates this section shall be fined not more than $50,000.

''SEC. 108. DEFINITIONS.

''For purposes of this title:

''(1) The term 'AIDS' means acquired immune deficiency syndrome.

''(2) The term 'Fund' means the Ricky Ray Hemophilia Relief Fund.

''(3) The term 'HIV' means human immunodeficiency virus.

''(4) Unless otherwise provided, the term 'Secretary' means Secretary of Health and Human Services.

''TITLE II—TREATMENT OF CERTAIN PAYMENTS IN HEMOPHILIA-CLOTTING-FACTOR SUIT UNDER THE SSI PROGRAM

''SEC. 201. TREATMENT OF CERTAIN PAYMENTS IN HEMOPHILIA-CLOTTING-FACTOR SUIT UNDER THE MEDICAID AND SSI PROGRAMS.

''(a) PRIVATE PAYMENTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the payments described in paragraph (2) shall not be considered income or resources in determining eligibility for, or the amount of—

''(A) medical assistance under title XIX of the Social Security Act [section 1396 et seq. of this title]; or

''(B) supplemental security income benefits under title XVI of the Social Security Act [section 1381 et seq. of this title].

''(2) PRIVATE PAYMENTS DESCRIBED.—The payments described in this subsection are—

''(A) payments made from any fund established pursuant to a class settlement in the case of Susan Walker v. Bayer Corporation, et al., 96–C–5024 (N.D. Ill.); and

''(B) payments made pursuant to a release of all claims in a case—

''(i) that is entered into in lieu of the class settlement referred to in subparagraph (A); and

''(ii) that is signed by all affected parties in such case on or before the later of—

''(I) December 31, 1997; or

''(II) the date that is 270 days after the date on which such release is first sent to the persons (or the legal representative of such persons) to whom the payment is to be made.

''(b) GOVERNMENT PAYMENTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the payments described in paragraph (2) shall not be considered income or resources in determining eligibility for, or the amount of supplemental security income benefits under title XVI of the Social Security Act [section 1381 et seq. of this title].

''(2) GOVERNMENT PAYMENTS DESCRIBED.—The payments described in this subsection are payments made from the Fund established pursuant to section 101 of this Act.''

SUBCHAPTER X—TRAUMA CARE

PART A—GENERAL AUTHORITY AND DUTIES OF SECRETARY

§ 300d. Establishment

(a) In general

The Secretary shall, with respect to trauma care—

(1) conduct and support research, training, evaluations, and demonstration projects;

(2) foster the development of appropriate, modern systems of such care through the sharing of information among agencies and individuals involved in the study and provision of such care;

(3) provide to State and local agencies technical assistance; and

(4) sponsor workshops and conferences.

(b) Grants, cooperative agreements, and contracts

The Secretary may make grants, and enter into cooperative agreements and contracts, for the purpose of carrying out subsection (a) of this section.

(c) Administration

The Administrator of the Health Resources and Services Administration shall ensure that this subchapter is administered by the Division of Trauma and Emergency Medical Systems within such Administration. Such Division shall be headed by a director appointed by the Secretary from among individuals who are knowledgeable by training or experience in the development and operation of trauma and emergency medical systems.

(July 1, 1944, ch. 373, title XII, §1201, as added Pub. L. 101–590, §3, Nov. 16, 1990, 104 Stat. 2916; amended Pub. L. 103–183, title VI, §601(a), Dec. 14, 1993, 107 Stat. 2238; Pub. L. 104–146, §12(b), May 20, 1996, 110 Stat. 1373.)

PRIOR PROVISIONS

A prior section 300d, act July 1, 1944, ch. 373, title XII, §1201, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 594; amended Oct. 12, 1976, Pub. L. 94–484, title IX, §905(b)(1), 90 Stat. 2325; Oct. 21, 1976, Pub. L. 94–573, §§2, 14(2), 90 Stat. 2709, 2718, defined terms applicable to this subchapter, prior to repeal by Pub. L. 97–35, title IX, §902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

A prior section 1201 of act July 1, 1944, ch. 373, title XII, formerly §1205, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 597, was classified to section 300d–4 of this title prior to repeal by Pub. L. 99–117, §12(e), Oct. 7, 1985, 99 Stat. 495.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–146, in introductory provisions, substituted ''The Secretary shall,'' for ''The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall,''.

1993—Subsec. (a). Pub. L. 103–183, §601(a)(1), in introductory provisions inserted '', acting through the Administrator of the Health Resources and Services Administration,'' after ''Secretary''.

Subsec. (c). Pub. L. 103–183, §601(a)(2), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

CONGRESSIONAL STATEMENT OF FINDINGS

Section 2 of Pub. L. 101–590 provided that: ''The Congress finds that—

''(1) the Federal Government and the governments of the States have established a history of cooperation in the development, implementation, and monitoring of integrated, comprehensive systems for the provision of emergency medical services throughout the United States;

''(2) physical trauma is the leading cause of death of Americans between the ages of 1 and 44 and is the third leading cause of death in the general population of the United States;

''(3) physical trauma in the United States results in an aggregate annual cost of $180,000,000,000 in medical expenses, insurance, lost wages, and property damage;

''(4) barriers to the provision of prompt and appropriate emergency medical services exist in many areas of the United States;

''(5) few States and communities have developed and implemented trauma care systems;

''(6) many trauma centers have incurred substantial uncompensated costs in providing trauma care, and such costs have caused many such centers to cease participation in trauma care systems; and

''(7) the number of incidents of physical trauma in the United States is a serious medical and social problem, and the number of deaths resulting from such incidents can be substantially reduced by improving the trauma-care components of the systems for the provision of emergency medical services in the United States.''

§ 300d–1. Repealed. Pub. L. 103–183, title VI, § 601(b)(1), Dec. 14, 1993, 107 Stat. 2238; Pub. L. 105–392, title IV, § 401(a)(1)(A), Nov. 13, 1998, 112 Stat. 3587

Section, act July 1, 1944, ch. 373, title XII, §1202, as added Nov. 16, 1990, Pub. L. 101–590, §3, 104 Stat. 2916, provided for establishment, membership, duties, etc., of Advisory Council on Trauma Care Systems.

A prior section 300d–1, act July 1, 1944, ch. 373, title XII, §1202, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 595; amended Oct. 21, 1976, Pub. L. 94–573, §3, 90 Stat. 2709; Dec. 12, 1979, Pub. L. 96–142, title I, §103, 93 Stat. 1067, set forth provisions relating to grants and contracts for feasibility studies and planning, prior to repeal by Pub. L. 97–35, title IX, §902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

§ 300d–2. Clearinghouse on Trauma Care and Emergency Medical Services

(a) Establishment

The Secretary shall by contract provide for the establishment and operation of a National Clearinghouse on Trauma Care and Emergency Medical Services (hereafter in this section referred to as the ''Clearinghouse'').

(b) Duties

The Clearinghouse shall—

(1) foster the development of appropriate, modern trauma care and emergency medical services (including the development of policies for the notification of family members of individuals involved in medical emergencies) through the sharing of information among agencies and individuals involved in planning, furnishing, and studying such services and care;

(2) collect, compile, and disseminate information on the achievements of, and problems experienced by, State and local agencies and private entities in providing trauma care and emergency medical services and, in so doing, give special consideration of the unique needs of rural areas;

(3) provide technical assistance relating to trauma care and emergency medical services to State and local agencies; and

(4) sponsor workshops and conferences on trauma care and emergency medical services.

(c) Fees and assessments

A contract entered into by the Secretary under this section may provide that the Clearinghouse charge fees or assessments in order to defray, and beginning with fiscal year 1992, to cover, the costs of operating the Clearinghouse.

(July 1, 1944, ch. 373, title XII, §1202, formerly §1203, as added Pub. L. 101–590, §3, Nov. 16, 1990, 104 Stat. 2917; renumbered §1202, Pub. L. 103–183, title VI, §601(b)(2), Dec. 14, 1993, 107 Stat. 2238; amended Pub. L. 105–392, title IV, §401(a)(1)(A), Nov. 13, 1998, 112 Stat. 3587.)

PRIOR PROVISIONS

A prior section 300d–2, act July 1, 1944, ch. 373, title XII, §1203, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 596; amended Oct. 21, 1976, Pub. L. 94–573, §4, 90 Stat. 2710; Nov. 10, 1978, Pub. L. 95–626, title II, §210(a), 92 Stat. 3588; July 10, 1979, Pub. L. 96–32, §7(*l*), 93 Stat. 84, set forth provisions relating to grants and contracts for establishing and initial operation of emergency medical services systems, prior to repeal by Pub. L. 97–35, title IX, §902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

A prior section 1202 of act July 1, 1944, was classified to section 300d–1 of this title prior to repeal by Pub. L. 103–183.

Another prior section 1202 of act July 1, 1944, was classified to section 300d–6 of this title prior to repeal by Pub. L. 99–117.

AMENDMENTS

1998—Pub. L. 105–392 made technical correction to directory language of Pub. L. 103–183, § 601(b)(2), which renumbered this section.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

RECOMMENDATIONS REGARDING RESPONDING TO FOOD-RELATED ALLERGIC RESPONSES

Pub. L. 108–282, title II, § 210, Aug. 2, 2004, 118 Stat. 911, provided that: ''The Secretary of Health and Human Services shall, in providing technical assistance relating to trauma care and emergency medical services to State and local agencies under section 1202(b)(3) of the Public Health Service Act (42 U.S.C. 300d–2(b)(3)), include technical assistance relating to the use of different modes of treatment for and prevention of allergic responses to foods.''

§ 300d–3. Establishment of programs for improving trauma care in rural areas

(a) In general

The Secretary may make grants to public and nonprofit private entities for the purpose of carrying out research and demonstration projects with respect to improving the availability and quality of emergency medical services in rural areas—

(1) by developing innovative uses of communications technologies and the use of new communications technology;

(2) by developing model curricula for training emergency medical services personnel, including first responders, emergency medical technicians, emergency nurses and physicians, and paramedics—

(A) in the assessment, stabilization, treatment, preparation for transport, and resuscitation of seriously injured patients, with special attention to problems that arise during long transports and to methods of minimizing delays in transport to the appropriate facility; and

(B) in the management of the operation of the emergency medical services system;

(3) by making training for original certification, and continuing education, in the provision and management of emergency medical services more accessible to emergency medical personnel in rural areas through telecommunications, home studies, providing teachers and training at locations accessible to such personnel, and other methods;

(4) by developing innovative protocols and agreements to increase access to prehospital care and equipment necessary for the transportation of seriously injured patients to the appropriate facilities; and

(5) by evaluating the effectiveness of protocols with respect to emergency medical services and systems.

(b) Special consideration for certain rural areas

In making grants under subsection (a) of this section, the Secretary shall give special consideration to any applicant for the grant that will provide services under the grant in any rural area identified by a State under section 300d–14(c)(1) of this title.

(c) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(July 1, 1944, ch. 373, title XII, § 1203, formerly § 1204, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2918; renumbered § 1203 and amended Pub. L. 103–183, title VI, § 601(b)(2), (f)(1), Dec. 14, 1993, 107 Stat. 2238, 2239; Pub. L. 105–392, title IV, § 401(a)(1), Nov. 13, 1998, 112 Stat. 3587.)

PRIOR PROVISIONS

A prior section 300d–3, act July 1, 1944, ch. 373, title XII, § 1204, as added Nov. 16, 1973, Pub. L. 93–154, § 2(a), 87 Stat. 597; amended Oct. 21, 1976, Pub. L. 94–573, § 5, 90 Stat. 2711; Nov. 10, 1978, Pub. L. 95–626, title II, § 210(b), 92 Stat. 3588; Dec. 12, 1979, Pub. L. 96–142, title I, § 104(a), (b), 93 Stat. 1067, 1068, set forth provisions relating to grants and contracts for expansion and improvements, prior to repeal by Pub. L. 97–35, title IX, § 902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

A prior section 1203 of act July 1, 1994, was renumbered section 1202 and is classified to section 300d–2 of this title.

AMENDMENTS

1998—Pub. L. 105–392, § 401(a)(1), made technical corrections to directory language of Pub. L. 103–183, § 601(b)(2), which renumbered this section, and to directory language of Pub. L. 103–183, § 601(f)(1). See 1993 Amendment note below.

1993—Subsec. (c). Pub. L. 103–183, § 601(f)(1), as amended by Pub. L. 105–392, § 401(a)(1)(B), inserted ''determines to be necessary to carry out this section'' before period at end.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

§ 300d–4. Emergency medical services

(a)[1] Federal Interagency Committee on Emergency Medical Services

(1) Establishment

The Secretary of Transportation, the Secretary of Health and Human Services, and the Secretary of Homeland Security, acting through the Under Secretary for Emergency Preparedness and Response, shall establish a Federal Interagency Committee on Emergency Medical Services.

(2) Membership

The Interagency Committee shall consist of the following officials, or their designees:

(A) The Administrator, National Highway Traffic Safety Administration.

(B) The Director, Preparedness Division, Directorate of Emergency Preparedness and Response of the Department of Homeland Security.

(C) The Administrator, Health Resources and Services Administration, Department of Health and Human Services.

[1] So in original. No subsec. (b) has been enacted.

(D) The Director, Centers for Disease Control and Prevention, Department of Health and Human Services.

(E) The Administrator, United States Fire Administration, Directorate of Emergency Preparedness and Response of the Department of Homeland Security.

(F) The Administrator, Centers for Medicare and Medicaid Services, Department of Health and Human Services.

(G) The Under Secretary of Defense for Personnel and Readiness.

(H) The Director, Indian Health Service, Department of Health and Human Services.

(I) The Chief, Wireless Telecommunications Bureau, Federal Communications Commission.

(J) A representative of any other Federal agency appointed by the Secretary of Transportation or the Secretary of Homeland Security through the Under Secretary for Emergency Preparedness and Response, in consultation with the Secretary of Health and Human Services, as having a significant role in relation to the purposes of the Interagency Committee.

(K) A State emergency medical services director appointed by the Secretary.

(3) Purposes

The purposes of the Interagency Committee are as follows:

(A) To ensure coordination among the Federal agencies involved with State, local, tribal, or regional emergency medical services and 9–1–1 systems.

(B) To identify State, local, tribal, or regional emergency medical services and 9–1–1 needs.

(C) To recommend new or expanded programs, including grant programs, for improving State, local, tribal, or regional emergency medical services and implementing improved emergency medical services communications technologies, including wireless 9–1–1.

(D) To identify ways to streamline the process through which Federal agencies support State, local, tribal or regional emergency medical services.

(E) To assist State, local, tribal or regional emergency medical services in setting priorities based on identified needs.

(F) To advise, consult, and make recommendations on matters relating to the implementation of the coordinated State emergency medical services programs.

(4) Administration

The Administrator of the National Highway Traffic Safety Administration, in cooperation with the Administrator of the Health Resources and Services Administration of the Department of Health and Human Services and the Director of the Preparedness Division, Directorate of Emergency Preparedness and Response of the Department of Homeland Security, shall provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

(5) Leadership

The members of the Interagency Committee shall select a chairperson of the Committee each year.

(6) Meetings

The Interagency Committee shall meet as frequently as is determined necessary by the chairperson of the Committee.

(7) Annual reports

The Interagency Committee shall prepare an annual report to Congress regarding the Committee's activities, actions, and recommendations.

(Pub. L. 109–59, title X, §10202, Aug. 10, 2005, 119 Stat. 1932.)

CODIFICATION

Section was enacted as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users or SAFETEA–LU, and not as part of the Public Health Service Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 300d–4, act July 1, 1944, ch. 373, title XII, §1201, formerly §1205, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 597; amended Oct. 21, 1976, Pub. L. 94–573, §6, 90 Stat. 2713, renumbered §1201 and amended Aug. 13, 1981, Pub. L. 97–35, title IX, §902(d)(1), (3), 95 Stat. 560, authorized Secretary to make grants and enter into contracts to support research in emergency medical techniques, methods, devices, and delivery, prior to repeal by Pub. L. 99–117, §12(e), Oct. 7, 1985, 99 Stat. 495.

A prior section 300d–5, act July 1, 1944, ch. 373, title XII, §1206, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 598; amended Oct. 21, 1976, Pub. L. 94–573, §§7, 14(2), 90 Stat. 2713, 2718; Nov. 10, 1978, Pub. L. 95–626, title II, §210(c), 92 Stat. 3588; Dec. 12, 1979, Pub. L. 96–142, title I, §104(c), 93 Stat. 1068, set forth general provisions respecting grants and contracts, prior to repeal by Pub. L. 97–35, title IX, §902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

A prior section 300d–6, act July 1, 1944, ch. 373, title XII, §1202, formerly §1207, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 602; amended Oct. 21, 1976, Pub. L. 94–573, §8, 90 Stat. 2714; Nov. 10, 1978, Pub. L. 95–626, title II, §210(d), 92 Stat. 3588; Dec. 12, 1979, Pub. L. 96–142, title I, §105, 93 Stat. 1068; renumbered §1202 and amended Aug. 13, 1981, Pub. L. 97–35, title IX, §902(d)(1), (4), 95 Stat. 560, authorized appropriations for purposes of this subchapter, prior to repeal by Pub. L. 99–117, §12(e), Oct. 7, 1985, 99 Stat. 495.

Prior sections 300d–7 to 300d–9 were repealed by Pub. L. 97–35, title IX, §902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

Section 300d–7, act July 1, 1944, ch. 373, title XII, §1208, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 602; amended Oct. 12, 1976, Pub. L. 94–484, title VIII, §801(b), 90 Stat. 2322; Oct. 21, 1976, Pub. L. 94–573, §9, 90 Stat. 2715, set forth provisions relating to administration of emergency medical services administrative unit.

Section 300d–8, act July 1, 1944, ch. 373, title XII, §1209, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 602; amended Oct. 21, 1976, Pub. L. 94–573, §10, 90 Stat. 2716; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695; Dec. 12, 1979, Pub. L. 96–142, title I, §106, 93 Stat. 1069, related to Interagency Committee on Emergency Medical Services.

Section 300d–9, act July 1, 1944, ch. 373, title XII, §1210, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 603; amended Oct. 21, 1976, Pub. L. 94–573, §11, 90 Stat. 2717, related to annual report to Congress.

PART B—FORMULA GRANTS WITH RESPECT TO MODIFICATIONS OF STATE PLANS

§ 300d–11. Establishment of program

(a) Requirement of allotments for States

The Secretary shall for each fiscal year make an allotment for each State in an amount determined in accordance with section 300d–18 of this title. The Secretary shall make payments, as grants, each fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 300d–17 of this title.

(b) Purpose

Except as provided in section 300d–33[1] of this title, the Secretary may not make payments under this part for a fiscal year unless the State involved agrees that, with respect to the trauma care component of the State plan for the provision of emergency medical services, the payments will be expended only for the purpose of developing, implementing, and monitoring the modifications to such component described in section 300d–13 of this title.

(July 1, 1944, ch. 373, title XII, § 1211, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2919.)

REFERENCES IN TEXT

Section 300d–33 of this title, referred to in subsec. (b), was repealed by Pub. L. 103–183, title VI, § 601(e), Dec. 14, 1993, 107 Stat. 2239.

§ 300d–12. Requirement of matching funds for fiscal years subsequent to first fiscal year of payments

(a) Non-Federal contributions

(1) In general

The Secretary may not make payments under section 300d–11(a) of this title unless the State involved agrees, with respect to the costs described in paragraph (2), to make available non-Federal contributions (in cash or in kind under subsection (b)(1) of this section) toward such costs in an amount equal to—

(A) for the second fiscal year of such payments to the State, not less than $1 for each $1 of Federal funds provided in such payments for such fiscal year; and

(B) for any subsequent fiscal year of such payments to the State, not less than $3 for each $1 of Federal funds provided in such payments for such fiscal year.

(2) Program costs

The costs referred to in paragraph (1) are—

(A) the costs to be incurred by the State in carrying out the purpose described in section 300d–11(b) of this title; or

(B) the costs of improving the quality and availability of emergency medical services in rural areas of the State.

(3) Initial year of payments

The Secretary may not require a State to make non-Federal contributions as a condition of receiving payments under section 300d–11(a) of this title for the first fiscal year of such payments to the State.

(b) Determination of amount of non-Federal contribution

With respect to compliance with subsection (a) of this section as a condition of receiving payments under section 300d–11(a) of this title—

(1) a State may make the non-Federal contributions required in such subsection in cash or in kind, fairly evaluated, including plant, equipment, or services;

(2) the Secretary may not, in making a determination of the amount of non-Federal contributions, include amounts provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government; and

(3) the Secretary shall, in making such a determination, include only non-Federal contributions in excess of the amount of non-Federal contributions made by the State during fiscal year 1990 toward—

(A) the costs of providing trauma care in the State; and

(B) the costs of improving the quality and availability of emergency medical services in rural areas of the State.

(July 1, 1944, ch. 373, title XII, § 1212, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2919; amended Pub. L. 103–183, title VI, § 601(f)(2), Dec. 14, 1993, 107 Stat. 2239.)

AMENDMENTS

1993—Subsec. (a)(2)(A). Pub. L. 103–183 substituted ''section 300d–11(b)'' for ''section 300d–11(c)''.

§ 300d–13. Requirements with respect to carrying out purpose of allotments

(a) Trauma care modifications to State plan for emergency medical services

With respect to the trauma care component of a State plan for the provision of emergency medical services, the modifications referred to in section 300d–11(b) of this title are such modifications to the State plan as may be necessary for the State involved to ensure that the plan provides for access to the highest possible quality of trauma care, and that the plan—

(1) specifies that the modifications required pursuant to paragraphs (2) through (10) will be implemented by the principal State agency with respect to emergency medical services or by the designee of such agency;

(2) specifies any public or private entity that will designate trauma care regions and trauma centers in the State;

(3) subject to subsection (b) of this section, contains standards and requirements for the designation of level I and level II trauma centers, and in the case of rural areas level III trauma centers (including trauma centers with specified capabilities and expertise in the care of the pediatric trauma patient), by such entity, including standards and requirements for—

(A) the number and types of trauma patients for whom such centers must provide care in order to ensure that such centers will

[1] See References in Text note below.

have sufficient experience and expertise to be able to provide quality care for victims of injury;

(B) the resources and equipment needed by such centers; and

(C) the availability of rehabilitation services for trauma patients;

(4) subject to subsection (b) of this section, contains standards and requirements for the implementation of regional trauma care systems, including standards and guidelines (consistent with the provisions of section 1395dd of this title) for medically directed triage and transportation of trauma patients (including patients injured in rural areas) prior to care in designated trauma centers;

(5) subject to subsection (b) of this section, contains standards and requirements for medically directed triage and transport of severely injured children to designated trauma centers with specified capabilities and expertise in the care of the pediatric trauma patient;

(6) specifies procedures for the evaluation of designated trauma centers (including trauma centers described in paragraph (5)) and trauma care systems;

(7) provides for the establishment and collection of data from each designated trauma center in the State of a central data reporting and analysis system—

(A) to identify the number of severely injured trauma patients within regional trauma care systems in the State;

(B) to identify the cause of the injury and any factors contributing to the injury;

(C) to identify the nature and severity of the injury;

(D) to monitor trauma patient care (including prehospital care) in each designated trauma center within regional trauma care systems in the State (including relevant emergency-department discharges and rehabilitation information) for the purpose of evaluating the diagnosis, treatment and treatment outcome of such trauma patients;

(E) to identify the total amount of uncompensated trauma care expenditures for each fiscal year by each designated trauma center in the State; and

(F) to identify patients transferred within a regional trauma system, including reasons for such transfer;

(8) provides for the use of procedures by paramedics and emergency medical technicians to assess the severity of the injuries incurred by trauma patients;

(9) provides for appropriate transportation and transfer policies to ensure the delivery of patients to designated trauma centers and other facilities within and outside of the jurisdiction of such system, including policies to ensure that only individuals appropriately identified as trauma patients are transferred to designated trauma centers, and provides for periodic reviews of the transfers and the auditing of such transfers that are determined to be appropriate;

(10) conducts public education activities concerning injury prevention and obtaining access to trauma care; and

(11) with respect to the requirements established in this subsection, provides for coordination and cooperation between the State and any other State with which the State shares any standard metropolitan statistical area.

(b) Certain standards with respect to trauma care centers and systems

(1) In general

The Secretary may not make payments under section 300d–11(a) of this title for a fiscal year unless the State involved agrees that, in carrying out paragraphs (3) through (5) of subsection (a) of this section, the State will adopt standards for the designation of trauma centers, and for triage, transfer, and transportation policies, and that the State will, in adopting such standards—

(A) take into account national standards concerning such;

(B) consult with medical, surgical, and nursing speciality groups, hospital associations, emergency medical services State and local directors, concerned advocates and other interested parties;

(C) conduct hearings on the proposed standards after providing adequate notice to the public concerning such hearing; and

(D) beginning in fiscal year 1992, take into account the model plan described in subsection (c) of this section.

(2) Quality of trauma care

The highest quality of trauma care shall be the primary goal of State standards adopted under this subsection.

(3) Approval by Secretary

The Secretary may not make payments under section 300d–11(a) of this title to a State if the Secretary determines that—

(A) in the case of payments for fiscal year 1991 and subsequent fiscal years, the State has not taken into account national standards, including those of the American College of Surgeons, the American College of Emergency Physicians and the American Academy of Pediatrics, in adopting standards under this subsection; or

(B) in the case of payments for fiscal year 1992 and subsequent fiscal years, the State has not, in adopting such standards, taken into account the model plan developed under subsection (c) of this section.

(c) Model trauma care plan

Not later than 1 year after November 16, 1990, the Secretary shall develop a model plan for the designation of trauma centers and for triage, transfer and transportation policies that may be adopted for guidance by the State. Such plan shall—

(1) take into account national standards, including those of the American College of Surgeons, American College of Emergency Physicians and the American Academy of Pediatrics;

(2) take into account existing State plans;

(3) be developed in consultation with medical, surgical, and nursing speciality groups, hospital associations, emergency medical services State directors and associations, and other interested parties; and

(4) include standards for the designation of rural health facilities and hospitals best able to receive, stabilize, and transfer trauma patients to the nearest appropriate designated trauma center, and for triage, transfer, and transportation policies as they relate to rural areas.

Standards described in paragraph (4) shall be applicable to all rural areas in the State, including both non-metropolitan areas and frontier areas that have populations of less than 6,000 per square mile.

(d) Rule of construction with respect to number of designated trauma centers

With respect to compliance with subsection (a) of this section as a condition of the receipt of a grant under section 300d–11(a) of this title, such subsection may not be construed to specify the number of trauma care centers designated pursuant to such subsection.

(July 1, 1944, ch. 373, title XII, § 1213, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2920; amended Pub. L. 103–183, title VI, § 601(f)(3), Dec. 14, 1993, 107 Stat. 2239; Pub. L. 105–392, title IV, § 401(b)(4), Nov. 13, 1998, 112 Stat. 3587.)

AMENDMENTS

1998—Subsec. (a)(8). Pub. L. 105–392 substituted ''provides for'' for ''provides for for''.

1993—Subsec. (a)(4). Pub. L. 103–183, § 601(f)(3)(A), substituted ''section 1395dd of this title)'' for ''section 1395dd of this title''.

Subsec. (a)(8), (9). Pub. L. 103–183, § 601(f)(3)(B), substituted ''provides for'' for ''to provide'' wherever appearing.

Subsec. (a)(10). Pub. L. 103–183, § 601(f)(3)(C), substituted ''conducts'' for ''to conduct''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

§ 300d–14. Requirement of submission to Secretary of trauma plan and certain information

(a) Trauma plan

(1) In general

For fiscal year 1991 and subsequent fiscal years, the Secretary may not make payments under section 300d–11(a) of this title unless, subject to paragraph (2), the State involved submits to the Secretary the trauma care component of the State plan for the provision of emergency medical services.

(2) Interim plan or description of efforts

For fiscal year 1991, if a State has not completed the trauma care component of the State plan described in paragraph (1), the State may provide, in lieu of a completed such component, an interim component or a description of efforts made toward the completion of the component.

(b) Information received by State reporting and analysis system

The Secretary may not make payments under section 300d–11(a) of this title for a fiscal year unless the State involved agrees that the State will, not less than once each year, provide to the Secretary the information received by the State pursuant to section 300d–13(a)(7) of this title.

(c) Availability of emergency medical services in rural areas

The Secretary may not make payments under section 300d–11(a) of this title for a fiscal year unless—

(1) the State involved identifies any rural area in the State for which—

(A) there is no system of access to emergency medical services through the telephone number 911;

(B) there is no basic life-support system; or

(C) there is no advanced life-support system; and

(2) the State submits to the Secretary a list of rural areas identified pursuant to paragraph (1) or, if there are no such areas, a statement that there are no such areas.

(July 1, 1944, ch. 373, title XII, § 1214, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2922.)

§ 300d–15. Restrictions on use of payments

(a) In general

The Secretary may not, except as provided in subsection (b) of this section, make payments under section 300d–11(a) of this title for a fiscal year unless the State involved agrees that the payments will not be expended—

(1) subject to section 300d–33[1] of this title, for any purpose other than developing, implementing, and monitoring the modifications required by section 300d–11(b) of this title to be made to the State plan for the provision of emergency medical services.[2]

(2) to make cash payments to intended recipients of services provided pursuant to such section;

(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical or communication equipment, ambulances, or aircraft;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

(b) Exception

If the Secretary finds that the purpose described in section 300d–11(b) of this title cannot otherwise be carried out, the Secretary may, with respect to an otherwise qualified State, waive the restriction established in subsection (a)(3) of this section.

(July 1, 1944, ch. 373, title XII, § 1215, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2923.)

REFERENCES IN TEXT

Section 300d–33 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 103–183, title VI, § 601(e), Dec. 14, 1993, 107 Stat. 2239.

[1] See References in Text note below.

[2] So in original. The period probably should be a semicolon.

§ 300d–16. Requirement of reports by States

(a) In general

The Secretary may not make payments under section 300d–11(a) of this title for a fiscal year unless the State involved agrees to prepare and submit to the Secretary an annual report in such form and containing such information as the Secretary determines (after consultation with the States) to be necessary for—

(1) securing a record and a description of the purposes for which payments received by the State pursuant to such section were expended and of the recipients of such payments; and

(2) determining whether the payments were expended in accordance with the purpose of the program involved.

(b) Availability to public of reports

The Secretary may not make payments under section 300d–11(a) of this title unless the State involved agrees that the State will make copies of the report described in subsection (a) of this section available for public inspection.

(c) Evaluations by Comptroller General

The Comptroller General of the United States shall evaluate the expenditures by States of payments under section 300d–11(a) of this title in order to assure that expenditures are consistent with the provisions of this part, and not later than December 1, 1994, prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report concerning such evaluation.

(July 1, 1944, ch. 373, title XII, § 1216, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2923; amended Pub. L. 103–183, title VI, § 601(c), Dec. 14, 1993, 107 Stat. 2238; Pub. L. 104–316, title I, § 122(d), Oct. 19, 1996, 110 Stat. 3837.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–316 struck out ''and the Comptroller General of the United States'' after ''with the States'' in introductory provisions.

1993—Subsec. (c). Pub. L. 103–183 substituted ''1994'' for ''1993''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 300d–17. Requirement of submission of application containing certain agreements and assurances

The Secretary may not make payments under section 300d–11(a) of this title to a State for a fiscal year unless—

(1) the State submits to the Secretary an application for the payments containing agreements in accordance with this part;

(2) the agreements are made through certification from the chief executive officer of the State;

(3) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

(4) the application contains the plan provisions and the information required to be submitted to the Secretary pursuant to section 300d–14 of this title; and

(5) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(July 1, 1944, ch. 373, title XII, § 1217, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2924.)

§ 300d–18. Determination of amount of allotment

(a) Minimum allotment

Subject to the extent of amounts made available in appropriations Acts, the amount of an allotment under section 300d–11(a) of this title for a State for a fiscal year shall be the greater of—

(1) the amount determined under subsection (b)(1) of this section; and

(2) $250,000 in the case of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, and $50,000 in the case of each of the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) Determination under formula

(1) In general

The amount referred to in subsection (a)(1) of this section for a State for a fiscal year is the sum of—

(A) an amount determined under paragraph (2); and

(B) an amount determined under paragraph (3).

(2) Amount relating to population

The amount referred to in subparagraph (A) of paragraph (1) for a State for a fiscal year is the product of—

(A) an amount equal to 80 percent of the amounts appropriated under section 300d–32(a) of this title for the fiscal year and available for allotment under section 300d–11(a) of this title; and

(B) a percentage equal to the quotient of—

(i) an amount equal to the population of the State; divided by

(ii) an amount equal to the population of all States.

(3) Amount relating to square mileage

The amount referred to in subparagraph (B) of paragraph (1) for a State for a fiscal year is the product of—

(A) an amount equal to 20 percent of the amounts appropriated under section 300d–32(a) of this title for the fiscal year and available for allotment under section 300d–11(a) of this title; and

(B) a percentage equal to the quotient of—

(i) an amount equal to the lesser of 266,807 and the amount of the square mileage of the State; divided by

(ii) an amount equal to the sum of the respective amounts determined for the States under clause (i).

(c) Disposition of certain funds appropriated for allotments

(1) In general

Amounts described in paragraph (2) shall, in accordance with paragraph (3), be allotted by the Secretary to States receiving payments under section 300d–11(a) of this title for the fiscal year (other than any State referred to in paragraph (2)(C)).

(2) Type of amounts

The amounts referred to in paragraph (1) are any amounts made available pursuant to 300d–32(b)(3) of this title that are not paid under section 300d–11(a) of this title to a State as a result of—

(A) the failure of the State to submit an application under section 300d–17 of this title;

(B) the failure, in the determination of the Secretary, of the State to prepare within a reasonable period of time such application in compliance with such section; or

(C) the State informing the Secretary that the State does not intend to expend the full amount of the allotment made for the State.

(3) Amount

The amount of an allotment under paragraph (1) for a State for a fiscal year shall be an amount equal to the product of—

(A) an amount equal to the amount described in paragraph (2) for the fiscal year involved; and

(B) the percentage determined under subsection (b)(2) of this section for the State.

(July 1, 1944, ch. 373, title XII, §1218, as added Pub. L. 101–590, §3, Nov. 16, 1990, 104 Stat. 2924.)

§ 300d–19. Failure to comply with agreements

(a) Repayment of payments

(1) Requirement

The Secretary may, in accordance with subsection (b) of this section, require a State to repay any payments received by the State pursuant to section 300d–11(a) of this title that the Secretary determines were not expended by the State in accordance with the agreements required to be made by the State as a condition of the receipt of payments under such section.

(2) Offset of amounts

If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against any amount due to be paid to the State under section 300d–11(a) of this title.

(b) Opportunity for hearing

Before requiring repayment of payments under subsection (a)(1) of this section, the Secretary shall provide to the State an opportunity for a hearing.

(July 1, 1944, ch. 373, title XII, §1219, as added Pub. L. 101–590, §3, Nov. 16, 1990, 104 Stat. 2925.)

§ 300d–20. Prohibition against certain false statements

(a) In general

(1) False statements or representations

A person may not knowingly and willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payments may be made by a State from amounts paid to the State under section 300d–11(a) of this title.

(2) Concealing or failing to disclose information

A person with knowledge of the occurrence of any event affecting the right of the person to receive any payments from amounts paid to the State under section 300d–11(a) of this title may not conceal or fail to disclose any such event with the intent of fraudulently securing such amount.

(b) Criminal penalty for violation of prohibition

Any person who violates a prohibition established in subsection (a) of this section may for each violation be fined in accordance with title 18, or imprisoned for not more than 5 years, or both.

(July 1, 1944, ch. 373, title XII, §1220, as added Pub. L. 101–590, §3, Nov. 16, 1990, 104 Stat. 2925.)

§ 300d–21. Technical assistance and provision by Secretary of supplies and services in lieu of grant funds

(a) Technical assistance

The Secretary shall, without charge to a State receiving payments under section 300d–11(a) of this title, provide to the State (or to any public or nonprofit private entity designated by the State) technical assistance with respect to the planning, development, and operation of any program carried out pursuant to section 300d–11(b) of this title. The Secretary may provide such technical assistance directly, through contract, or through grants.

(b) Provision by Secretary of supplies and services in lieu of grant funds

(1) In general

Upon the request of a State receiving payments under section 300d–11(a) of this title, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out section 300d–11(b) of this title and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) Reduction in payments

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments to the State under section 300d–11(a) of this title by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Sec-

retary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XII, § 1221, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2926.)

PRIOR PROVISIONS

A prior section 300d–21, act July 1, 1944, ch. 373, title XII, § 1221, as added Oct. 21, 1976, Pub. L. 94–573, § 14(3), 90 Stat. 2718; amended Dec. 12, 1979, Pub. L. 96–142, title I, § 107(a)–(c), 93 Stat. 1069, related to programs for burn, trauma, and poison injuries, prior to repeal by Pub. L. 97–35, title IX, § 902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

§ 300d–22. Report by Secretary

Not later than October 1, 1995, the Secretary shall report to the appropriate committees of Congress on the activities of the States carried out pursuant to section 300d–11 of this title. Such report shall include an assessment of the extent to which Federal and State efforts to develop systems of trauma care and to designate trauma centers have reduced the incidence of mortality, and the incidence of permanent disability, resulting from trauma. Such report may include any recommendations of the Secretary for appropriate administrative and legislative initiatives with respect to trauma care.

(July 1, 1944, ch. 373, title XII, § 1222, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2926; amended Pub. L. 103–183, title VI, § 601(d), Dec. 14, 1993, 107 Stat. 2238.)

AMENDMENTS

1993—Pub. L. 103–183 substituted ''1995'' for ''1992'' and inserted after first sentence ''Such report shall include an assessment of the extent to which Federal and State efforts to develop systems of trauma care and to designate trauma centers have reduced the incidence of mortality, and the incidence of permanent disability, resulting from trauma.''

PART C—GENERAL PROVISIONS REGARDING PARTS A AND B

§ 300d–31. Definitions

For purposes of this part and parts A and B of this subchapter:

(1) Designated trauma center

The term ''designated trauma center'' means a trauma center designated in accordance with the modifications to the State plan described in section 300d–13 of this title.

(2) State plan regarding emergency medical services

The term ''State plan'', with respect to the provision of emergency medical services, means a plan for a comprehensive, organized system to provide for the access, response, triage, field stabilization, transport, hospital stabilization, definitive care, and rehabilitation of patients of all ages with respect to emergency medical services.

(3) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) Trauma

The term ''trauma'' means an injury resulting from exposure to a mechanical force.

(5) Trauma care component of State plan

The term ''trauma care component'', with respect to components of the State plan for the provision of emergency medical services, means a plan for a comprehensive health care system, within rural and urban areas of the State, for the prompt recognition, prehospital care, emergency medical care, acute surgical and medical care, rehabilitation, and outcome evaluation of seriously injured patients.

(July 1, 1944, ch. 373, title XII, § 1231, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2926; amended Pub. L. 102–321, title VI, § 602(2), July 10, 1992, 106 Stat. 436; Pub. L. 103–183, title VI, § 601(f)(4), Dec. 14, 1993, 107 Stat. 2239.)

AMENDMENTS

1993—Par. (3). Pub. L. 103–183 substituted ''Puerto Rico,'' for ''Puerto Rico;''.

1992—Pub. L. 102–321 substituted ''this part and parts A and B of this subchapter'' for ''this subchapter'' in introductory provisions.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective July 10, 1992, with provision for programs providing financial assistance, see section 801(b), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 300d–32. Funding

(a) Authorization of appropriations

For the purpose of carrying out parts A and B of this subchapter, there are authorized to be appropriated $6,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2002.

(b) Allocation of funds by Secretary

(1) General authority

For the purpose of carrying out part A of this subchapter, the Secretary shall make available 10 percent of the amounts appropriated for a fiscal year under subsection (a) of this section.

(2) Rural grants

For the purpose of carrying out section 300d–3[1] of this title, the Secretary shall make available 10 percent of the amounts appropriated for a fiscal year under subsection (a) of this section.

(3) Formula grants

(A) For the purpose of making allotments under section 300d–11(a) of this title, the Secretary shall, subject to subsection (c) of this section, make available 80 percent of the amounts appropriated for a fiscal year pursuant to subsection (a) of this section.

(B) Amounts paid to a State under section 300d–11(a) of this title for a fiscal year shall, for the purposes for which the amounts were paid, remain available for obligation until the end of the fiscal year immediately following the fiscal year for which the amounts were paid.

[1] See References in Text note below.

(c) Effect of insufficient appropriations for minimum allotments

(1) In general

If the amounts made available under subsection (b)(3)(A) of this section for a fiscal year are insufficient for providing each State with an allotment under section 300d–11(a) of this title of not less than the applicable amount under section 300d–18(a)(2) of this title, the Secretary shall, from such amounts as are made available under subsection (b)(3)(A) of this section, make grants to States described in paragraph (2) for carrying out part B of this subchapter.

(2) Eligible States

The States referred to in paragraph (1) are States that—

(A) have the greatest need to develop, implement, and maintain trauma care systems; and

(B) demonstrate in their applications under section 300d–17 of this title the greatest commitment to establishing and maintaining such systems.

(3) Rule of construction

Paragraph (1) may not be construed to require the Secretary to make a grant under such paragraph to each State.

(July 1, 1944, ch. 373, title XII, § 1232, as added Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2927; amended Pub. L. 102–321, title VI, § 602(3), July 10, 1992, 106 Stat. 436; Pub. L. 103–183, title VI, § 602, Dec. 14, 1993, 107 Stat. 2239; Pub. L. 105–392, title IV, §§ 401(a)(2), 413, Nov. 13, 1998, 112 Stat. 3587, 3590.)

REFERENCES IN TEXT

Section 300d–3 of this title, referred to in subsec. (b)(2), was in the original a reference to section 1204, meaning section 1204 of act July 1, 1944. Section 1204 was renumbered section 1203 by Pub. L. 103–183, title VI, § 601(b)(2), Dec. 14, 1993, 107 Stat. 2238.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392, § 413, substituted ''through 2002'' for ''and 1996''.

Pub. L. 105–392, § 401(a)(2), amended directory language of Pub. L. 103–183. See 1993 Amendment note below.

1993—Subsec. (a). Pub. L. 103–183, as amended by Pub. L. 105–392, § 401(a)(2), substituted ''For the purpose of carrying out parts A and B of this subchapter, there are authorized to be appropriated $6,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996'' for ''For the purpose of carrying out parts A and B of this subchapter, there are authorized to be appropriated $60,000,000 for fiscal year 1991 and such sums as may be necessary for each of the fiscal years 1992 and 1993''.

1992—Subsec. (a). Pub. L. 102–321 substituted ''parts A and B of this subchapter'' for ''this subchapter''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 401(a)(2) of Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective July 10, 1992, with provision for programs providing financial assistance, see section 801(b), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 300d–33. Repealed. Pub. L. 103–183, title VI, § 601(e), Dec. 14, 1993, 107 Stat. 2239

Section, act July 1, 1944, ch. 373, title XII, § 1233, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2927, related to waiver of requirement regarding purpose of grants.

PART D—TRAUMA CENTERS OPERATING IN AREAS SEVERELY AFFECTED BY DRUG-RELATED VIOLENCE

§ 300d–41. Grants for certain trauma centers

(a) In general

The Secretary may make grants for the purpose of providing for the operating expenses of trauma centers that have incurred substantial uncompensated costs in providing trauma care in geographic areas with a significant incidence of violence arising directly or indirectly from illicit trafficking in drugs. Grants under this subsection may be made only to such trauma centers.

(b) Minimum qualifications of centers

(1) Significant incidence of treating certain patients

(A) The Secretary may not make a grant under subsection (a) of this section to a trauma center unless the population of patients that has been served by the center for the period specified in subparagraph (B) includes a significant number of patients who were treated for—

(i) trauma resulting from the penetration of the skin by knives, bullets, or any other implement that can be used as a weapon; or

(ii) trauma that the center reasonably believes results from violence arising directly or indirectly from illicit trafficking in drugs.

(B) The period specified in this subparagraph is the 2-year period preceding the fiscal year for which the trauma center involved is applying to receive a grant under subsection (a) of this section.

(2) Participation in trauma care system operating under certain professional guidelines

The Secretary may not make a grant under subsection (a) of this section unless the trauma center involved is a participant in a system that—

(A) provides comprehensive medical care to victims of trauma in the geographic area in which the trauma center is located;

(B) is established by the State or political subdivision in which such center is located; and

(C)(i) has adopted guidelines for the designation of trauma centers, and for triage, transfer, and transportation policies, equivalent to (or more protective than) the applicable guidelines developed by the American College of Surgeons or utilized in the model plan established under section 300d–13(c) of this title; or

(ii) agrees that such guidelines will be adopted by the system not later than 6

months after the date on which the trauma center submits to the Secretary the application for the grant.

(3) Submission and approval of long-term plan

The Secretary may not make a grant under subsection (a) of this section unless the trauma center involved—

(A) submits to the Secretary a plan satisfactory to the Secretary that—

(i) is developed on the assumption that the center will continue to incur substantial uncompensated costs in providing trauma care; and

(ii) provides for the long-term continued operation of the center with an acceptable standard of medical care, notwithstanding such uncompensated costs; and

(B) agrees to implement the plan according to a schedule approved by the Secretary.

(July 1, 1944, ch. 373, title XII, §1241, as added Pub. L. 102–321, title VI, §601, July 10, 1992, 106 Stat. 433.)

EFFECTIVE DATE

Part effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 300d–42. Preferences in making grants

(a) In general

In making grants under section 300d–41(a) of this title, the Secretary shall give preference to any application—

(1) made by a trauma center that, for the purpose specified in such section, will receive financial assistance from the State or political subdivision involved for each fiscal year during which payments are made to the center from the grant, which financial assistance is exclusive of any assistance provided by the State or political subdivision as a non-Federal contribution under any Federal program requiring such a contribution; or

(2) made by a trauma center that, with respect to the system described in section 300d–41(b)(2) of this title in which the center is a participant—

(A) is providing trauma care in a geographic area in which the availability of trauma care has significantly decreased as a result of a trauma center in the area permanently ceasing participation in such system as of a date occurring during the 2-year period specified in section 300d–41(b)(1)(B) of this title; or

(B) will, in providing trauma care during the 1-year period beginning on the date on which the application for the grant is submitted, incur uncompensated costs in an amount rendering the center unable to continue participation in such system, resulting in a significant decrease in the availability of trauma care in the geographic area.

(b) Further preference for certain applications

With respect to applications for grants under section 300d–41 of this title that are receiving preference for purposes of subsection (a) of this section, the Secretary shall give further preference to any such application made by a trauma center for which a disproportionate percentage of the uncompensated costs of the center result from the provision of trauma care to individuals who neither are citizens nor aliens lawfully admitted to the United States for permanent residence.

(July 1, 1944, ch. 373, title XII, §1242, as added Pub. L. 102–321, title VI, §601, July 10, 1992, 106 Stat. 434.)

§ 300d–43. Certain agreements

(a) Commitment regarding continued participation in trauma care system

The Secretary may not make a grant under subsection (a) of section 300d–41 of this title unless the trauma center involved agrees that—

(1) the center will continue participation in the system described in subsection (b) of such section throughout the 3-year period beginning on the date that the center first receives payments under the grant; and

(2) if the agreement made pursuant to paragraph (1) is violated by the center, the center will be liable to the United States for an amount equal to the sum of—

(A) the amount of assistance provided to the center under subsection (a) of such section; and

(B) an amount representing interest on the amount specified in subparagraph (A).

(b) Maintenance of financial support

With respect to activities for which a grant under section 300d–41 of this title is authorized to be expended, the Secretary may not make such a grant unless the trauma center involved agrees that, during the period in which the center is receiving payments under the grant, the center will maintain expenditures for such activities at a level that is not less than the level maintained by the center during the fiscal year preceding the first fiscal year for which the center receives such payments.

(c) Trauma care registry

The Secretary may not make a grant under section 300d–41(a) of this title unless the trauma center involved agrees that—

(1) the center will operate a registry of trauma cases in accordance with the applicable guidelines described in section 300d–41(b)(2)(C) of this title, and will begin operation of the registry not later than 6 months after the date on which the center submits to the Secretary the application for the grant; and

(2) in carrying out paragraph (1), the center will maintain information on the number of trauma cases treated by the center and, for each such case, the extent to which the center incurs uncompensated costs in providing trauma care.

(July 1, 1944, ch. 373, title XII, §1243, as added Pub. L. 102–321, title VI, §601, July 10, 1992, 106 Stat. 434.)

§ 300d–44. General provisions

(a) Application

The Secretary may not make a grant under section 300d–41(a) of this title unless an applica-

tion for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(b) Limitation on duration of support

The period during which a trauma center receives payments under section 300d–41(a) of this title may not exceed 3 fiscal years, except that the Secretary may waive such requirement for the center and authorize the center to receive such payments for 1 additional fiscal year.

(c) Limitation on amount of grant

A grant under section 300d–41 of this title may not be made in an amount exceeding $2,000,000.

(July 1, 1944, ch. 373, title XII, § 1244, as added Pub. L. 102–321, title VI, § 601, July 10, 1992, 106 Stat. 435.)

§ 300d–45. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $100,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994. Such authorization of appropriations is in addition to any other authorization of appropriations or amounts that are available for such purpose.

(July 1, 1944, ch. 373, title XII, § 1245, as added Pub. L. 102–321, title VI, § 601, July 10, 1992, 106 Stat. 435.)

PART E—MISCELLANEOUS PROGRAMS

§ 300d–51. Residency training programs in emergency medicine

(a) In general

The Secretary may make grants to public and nonprofit private entities for the purpose of planning and developing approved residency training programs in emergency medicine.

(b) Identification and referral of domestic violence

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that training programs under subsection (a) of this section will provide education and training in identifying and referring cases of domestic violence.

(c) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $400,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title XII, § 1251, as added Pub. L. 102–408, title III, § 304, Oct. 13, 1992, 106 Stat. 2084.)

§ 300d–52. State grants for projects regarding traumatic brain injury

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to States for the purpose of carrying out projects to improve access to health and other services regarding traumatic brain injury.

(b) State advisory board

(1) In general

The Secretary may make a grant under subsection (a) of this section only if the State involved agrees to establish an advisory board within the appropriate health department of the State or within another department as designated by the chief executive officer of the State.

(2) Functions

An advisory board established under paragraph (1) shall advise and make recommendations to the State on ways to improve services coordination regarding traumatic brain injury. Such advisory boards shall encourage citizen participation through the establishment of public hearings and other types of community outreach programs. In developing recommendations under this paragraph, such boards shall consult with Federal, State, and local governmental agencies and with citizens groups and other private entities.

(3) Composition

An advisory board established under paragraph (1) shall be composed of—

(A) representatives of—

(i) the corresponding State agencies involved;

(ii) public and nonprofit private health related organizations;

(iii) other disability advisory or planning groups within the State;

(iv) members of an organization or foundation representing individuals with traumatic brain injury in that State; and

(v) injury control programs at the State or local level if such programs exist; and

(B) a substantial number of individuals with traumatic brain injury, or the family members of such individuals.

(c) Matching funds

(1) In general

With respect to the costs to be incurred by a State in carrying out the purpose described in subsection (a) of this section, the Secretary may make a grant under such subsection only if the State agrees to make available non-Federal contributions toward such costs in an amount that is not less than $1 for each $2 of Federal funds provided under the grant.

(2) Determination of amount contributed

Non-Federal contributions under paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such contributions.

(d) Application for grant

The Secretary may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) Continuation of previously awarded demonstration projects

A State that received a grant under this section prior to October 17, 2000, may compete for new project grants under this section after October 17, 2000.

(f) Use of State grants

(1) Community services and supports

A State shall (directly or through awards of contracts to nonprofit private entities) use amounts received under a grant under this section for the following:

(A) To develop, change, or enhance community-based service delivery systems that include timely access to comprehensive appropriate services and supports. Such service and supports—

(i) shall promote full participation by individuals with brain injury and their families in decision making regarding the services and supports; and

(ii) shall be designed for children and other individuals with traumatic brain injury.

(B) To focus on outreach to underserved and inappropriately served individuals, such as individuals in institutional settings, individuals with low socioeconomic resources, individuals in rural communities, and individuals in culturally and linguistically diverse communities.

(C) To award contracts to nonprofit entities for consumer or family service access training, consumer support, peer mentoring, and parent to parent programs.

(D) To develop individual and family service coordination or case management systems.

(E) To support other needs identified by the advisory board under subsection (b) of this section for the State involved.

(2) Best practices

(A) In general

State services and supports provided under a grant under this section shall reflect the best practices in the field of traumatic brain injury, shall be in compliance with title II of the Americans with Disabilities Act of 1990 [42 U.S.C. 12131 et seq.], and shall be supported by quality assurance measures as well as state-of-the-art health care and integrated community supports, regardless of the severity of injury.

(B) Demonstration by State agency

The State agency responsible for administering amounts received under a grant under this section shall demonstrate that it has obtained knowledge and expertise of traumatic brain injury and the unique needs associated with traumatic brain injury.

(3) State capacity building

A State may use amounts received under a grant under this section to—

(A) educate consumers and families;

(B) train professionals in public and private sector financing (such as third party payers, State agencies, community-based providers, schools, and educators);

(C) develop or improve case management or service coordination systems;

(D) develop best practices in areas such as family or consumer support, return to work, housing or supportive living personal assistance services, assistive technology and devices, behavioral health services, substance abuse services, and traumatic brain injury treatment and rehabilitation;

(E) tailor existing State systems to provide accommodations to the needs of individuals with brain injury (including systems administered by the State departments responsible for health, mental health, labor/employment, education, mental retardation/developmental disorders, transportation, and correctional systems);

(F) improve data sets coordinated across systems and other needs identified by a State plan supported by its advisory council; and

(G) develop capacity within targeted communities.

(g) Coordination of activities

The Secretary shall ensure that activities under this section are coordinated as appropriate with other Federal agencies that carry out activities regarding traumatic brain injury.

(h) Report

Not later than 2 years after July 29, 1996, the Secretary shall submit to the Committee on Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings and results of the programs established under this section, including measures of outcomes and consumer and surrogate satisfaction.

(i) "Traumatic brain injury" defined

For purposes of this section, the term ''traumatic brain injury'' means an acquired injury to the brain. Such term does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma, but may include brain injuries caused by anoxia due to trauma. The Secretary may revise the definition of such term as the Secretary determines necessary, after consultation with States and other appropriate public or nonprofit private entities.

(j) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title XII, §1252, as added Pub. L. 104–166, §3, July 29, 1996, 110 Stat. 1446; amended Pub. L. 106–310, div. A, title XIII, §1304, Oct. 17, 2000, 114 Stat. 1139.)

REFERENCES IN TEXT

The Americans with Disabilities Act of 1990, referred to in subsec. (f)(2)(A), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended. Title II of the Act is classified generally to subchapter II (§12131 et seq.) of chapter 126 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106–310, §1304(1), struck out ''demonstration'' before ''projects'' in section catchline.

Subsec. (a). Pub. L. 106–310, §1304(2), struck out ''demonstration'' before ''projects''.

Subsec. (b)(3)(A)(iv). Pub. L. 106–310, §1304(3)(A), substituted ''representing individuals with traumatic brain injury'' for ''representing traumatic brain injury survivors''.

Subsec. (b)(3)(B). Pub. L. 106–310, §1304(3)(B), substituted ''with traumatic brain injury'' for ''who are survivors of traumatic brain injury''.

Subsec. (c)(1). Pub. L. 106–310, §1304(4)(A), struck out '', in cash,'' before ''non-Federal contributions''.

Subsec. (c)(2). Pub. L. 106–310, §1304(4)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In determining the amount of non-Federal contributions in cash that a State has provided pursuant to paragraph (1), the Secretary may not include any amounts provided to the State by the Federal Government.''

Subsecs. (e), (f). Pub. L. 106–310, §1304(6), added subsecs. (e) and (f). Former subsecs. (e) and (f) redesignated (g) and (h), respectively.

Subsec. (g). Pub. L. 106–310, §1304(5), (7), redesignated subsec. (e) as (g) and substituted ''Federal agencies'' for ''agencies of the Public Health Service''. Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 106–310, §1304(5), redesignated subsec. (f) as (h). Former subsec. (h) redesignated (j).

Subsec. (i). Pub. L. 106–310, §1304(5), (8), redesignated subsec. (g) as (i), substituted ''anoxia due to trauma'' for ''anoxia due to near drowning'' in second sentence, and inserted before period at end '', after consultation with States and other appropriate public or nonprofit private entities''.

Subsec. (j). Pub. L. 106–310, §1304(9), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For the purpose of carrying out this section, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1997 through 1999.''

Pub. L. 106–310, §1304(5), redesignated subsec. (h) as (j).

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

§ 300d–53. State grants for protection and advocacy services

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration (referred to in this section as the ''Administrator''), shall make grants to protection and advocacy systems for the purpose of enabling such systems to provide services to individuals with traumatic brain injury.

(b) Services provided

Services provided under this section may include the provision of—

(1) information, referrals, and advice;

(2) individual and family advocacy;

(3) legal representation; and

(4) specific assistance in self-advocacy.

(c) Application

To be eligible to receive a grant under this section, a protection and advocacy system shall submit an application to the Administrator at such time, in such form and manner, and accompanied by such information and assurances as the Administrator may require.

(d) Appropriations less than $2,700,000

(1) In general

With respect to any fiscal year in which the amount appropriated under subsection (i) of this section to carry out this section is less than $2,700,000, the Administrator shall make grants from such amount to individual protection and advocacy systems within States to enable such systems to plan for, develop outreach strategies for, and carry out services authorized under this section for individuals with traumatic brain injury.

(2) Amount

The amount of each grant provided under paragraph (1) shall be determined as set forth in paragraphs (2) and (3) of subsection (e) of this section.

(e) Appropriations of $2,700,000 or more

(1) Population basis

Except as provided in paragraph (2), with respect to each fiscal year in which the amount appropriated under subsection (i) of this section to carry out this section is $2,700,000 or more, the Administrator shall make a grant to a protection and advocacy system within each State.

(2) Amount

The amount of a grant provided to a system under paragraph (1) shall be equal to an amount bearing the same ratio to the total amount appropriated for the fiscal year involved under subsection (i) of this section as the population of the State in which the grantee is located bears to the population of all States.

(3) Minimums

Subject to the availability of appropriations, the amount of a grant[1] a protection and advocacy system under paragraph (1) for a fiscal year shall—

(A) in the case of a protection and advocacy system located in American Samoa, Guam, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands, and the protection and advocacy system serving the American Indian consortium, not be less than $20,000; and

(B) in the case of a protection and advocacy system in a State not described in subparagraph (A), not be less than $50,000.

(4) Inflation adjustment

For each fiscal year in which the total amount appropriated under subsection (i) of this section to carry out this section is $5,000,000 or more, and such appropriated amount exceeds the total amount appropriated to carry out this section in the preceding fiscal year, the Administrator shall increase each of the minimum grants amount described in subparagraphs (A) and (B) of para-

[1] So in original. Probably should be followed by ''to''.

graph (3) by a percentage equal to the percentage increase in the total amount appropriated under subsection (i) of this section to carry out this section between the preceding fiscal year and the fiscal year involved.

(f) Carryover

Any amount paid to a protection and advocacy system that serves a State or the American Indian consortium for a fiscal year under this section that remains unobligated at the end of such fiscal year shall remain available to such system for obligation during the next fiscal year for the purposes for which such amount was originally provided.

(g) Direct payment

Notwithstanding any other provision of law, the Administrator shall pay directly to any protection and advocacy system that complies with the provisions of this section, the total amount of the grant for such system, unless the system provides otherwise for such payment.

(h) Annual report

Each protection and advocacy system that receives a payment under this section shall submit an annual report to the Administrator concerning the services provided to individuals with traumatic brain injury by such system.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 2001, and such sums as may be necessary for each[2] the fiscal years 2002 through 2005.

(j) Definitions

In this section:

(1) American Indian consortium

The term ''American Indian consortium'' means a consortium established under part C of the Developmental Disabilities Assistance Bill of Rights Act (42 U.S.C. 6042 et seq.).[3]

(2) Protection and advocacy system

The term ''protection and advocacy system'' means a protection and advocacy system established under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6042 et seq.).[3]

(3) State

The term ''State'', unless otherwise specified, means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(July 1, 1944, ch. 373, title XII, § 1253, as added Pub. L. 106–310, div. A, title XIII, § 1305, Oct. 17, 2000, 114 Stat. 1141.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsec. (j)(1), (2), is title I of Pub. L. 88–164, as added by Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662, as amended, which was repealed by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737. Part C of the Act was classified generally to subchapter III (§ 6041 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Tables.

[2] So in original. Probably should be followed by ''of''.

[3] See References in Text note below.

PART F—INTERAGENCY PROGRAM FOR TRAUMA RESEARCH

§ 300d–61. Establishment of Program

(a) In general

The Secretary, acting through the Director of the National Institutes of Health (in this section referred to as the ''Director''), shall establish a comprehensive program of conducting basic and clinical research on trauma (in this section referred to as the ''Program''). The Program shall include research regarding the diagnosis, treatment, rehabilitation, and general management of trauma.

(b) Plan for Program

(1) In general

The Director, in consultation with the Trauma Research Interagency Coordinating Committee established under subsection (g) of this section, shall establish and implement a plan for carrying out the activities of the Program, including the activities described in subsection (d) of this section. All such activities shall be carried out in accordance with the plan. The plan shall be periodically reviewed, and revised as appropriate.

(2) Submission to Congress

Not later than December 1, 1993, the Director shall submit the plan required in paragraph (1) to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, together with an estimate of the funds needed for each of the fiscal years 1994 through 1996 to implement the plan.

(c) Participating agencies; coordination and collaboration

The Director—

(1) shall provide for the conduct of activities under the Program by the Directors of the agencies of the National Institutes of Health involved in research with respect to trauma;

(2) shall ensure that the activities of the Program are coordinated among such agencies; and

(3) shall, as appropriate, provide for collaboration among such agencies in carrying out such activities.

(d) Certain activities of Program

The Program shall include—

(1) studies with respect to all phases of trauma care, including prehospital, resuscitation, surgical intervention, critical care, infection control, wound healing, nutritional care and support, and medical rehabilitation care;

(2) basic and clinical research regarding the response of the body to trauma and the acute treatment and medical rehabilitation of individuals who are the victims of trauma;

(3) basic and clinical research regarding trauma care for pediatric and geriatric patients; and

(4) the authority to make awards of grants or contracts to public or nonprofit private en-

tities for the conduct of basic and applied research regarding traumatic brain injury, which research may include—

(A) the development of new methods and modalities for the more effective diagnosis, measurement of degree of brain injury, post-injury monitoring and prognostic assessment of head injury for acute, subacute and later phases of care;

(B) the development, modification and evaluation of therapies that retard, prevent or reverse brain damage after acute head injury, that arrest further deterioration following injury and that provide the restitution of function for individuals with long-term injuries;

(C) the development of research on a continuum of care from acute care through rehabilitation, designed, to the extent practicable, to integrate rehabilitation and long-term outcome evaluation with acute care research;

(D) the development of programs that increase the participation of academic centers of excellence in head brain[1] injury treatment and rehabilitation research and training; and

(E) carrying out subparagraphs (A) through (D) with respect to cognitive disorders and neurobehavioral consequences arising from traumatic brain injury, including the development, modification, and evaluation of therapies and programs of rehabilitation toward reaching or restoring normal capabilities in areas such as reading, comprehension, speech, reasoning, and deduction.

(e) Mechanisms of support

In carrying out the Program, the Director, acting through the Directors of the agencies referred to in subsection (c)(1) of this section, may make grants to public and nonprofit entities, including designated trauma centers.

(f) Resources

The Director shall assure the availability of appropriate resources to carry out the Program, including the plan established under subsection (b) of this section (including the activities described in subsection (d) of this section).

(g) Coordinating Committee

(1) In general

There shall be established a Trauma Research Interagency Coordinating Committee (in this section referred to as the ''Coordinating Committee'').

(2) Duties

The Coordinating Committee shall make recommendations regarding—

(A) the activities of the Program to be carried out by each of the agencies represented on the Committee and the amount of funds needed by each of the agencies for such activities; and

(B) effective collaboration among the agencies in carrying out the activities.

(3) Composition

The Coordinating Committee shall be composed of the Directors of each of the agencies that, under subsection (c) of this section, have responsibilities under the Program, and any other individuals who are practitioners in the trauma field as designated by the Director of the National Institutes of Health.

(h) Definitions

For purposes of this section:

(1) The term ''designated trauma center'' has the meaning given such term in section 300d–31(1) of this title.

(2) The term ''Director'' means the Director of the National Institutes of Health.

(3) The term ''trauma'' means any serious injury that could result in loss of life or in significant disability and that would meet prehospital triage criteria for transport to a designated trauma center.

(4) The term ''traumatic brain injury'' means an acquired injury to the brain. Such term does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma, but may include brain injuries caused by anoxia due to trauma. The Secretary may revise the definition of such term as the Secretary determines necessary, after consultation with States and other appropriate public or nonprofit private entities.

(i) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title XII, § 1261, as added Pub. L. 103–43, title III, § 303(a), June 10, 1993, 107 Stat. 151; amended Pub. L. 104–166, § 2, July 29, 1996, 110 Stat. 1445; Pub. L. 106–310, div. A, title XIII, § 1303, Oct. 17, 2000, 114 Stat. 1138.)

AMENDMENTS

2000—Subsec. (d)(4)(A). Pub. L. 106–310, § 1303(a)(1), substituted ''degree of brain injury'' for ''degree of injury''.

Subsec. (d)(4)(B). Pub. L. 106–310, § 1303(a)(2), which directed amendment of subpar. (B) by substituting ''acute brain injury'' for ''acute injury'', could not be executed because the phrase ''acute injury'' does not appear in text.

Subsec. (d)(4)(C). Pub. L. 106–310, § 1303(c)(1), struck out ''and'' after semicolon at end.

Subsec. (d)(4)(D). Pub. L. 106–310, § 1303(a)(3), (c)(2), substituted ''brain injury treatment'' for ''injury treatment'' and ''; and'' for period at end.

Subsec. (d)(4)(E). Pub. L. 106–310, § 1303(c)(3), added subpar. (E).

Subsec. (h)(4). Pub. L. 106–310, § 1303(b), substituted ''anoxia due to trauma'' for ''anoxia due to near drowning'' in second sentence and inserted before period at end '', after consultation with States and other appropriate public or nonprofit private entities''.

Subsec. (i). Pub. L. 106–310, § 1303(d), added subsec. (i).

1996—Subsec. (d)(4). Pub. L. 104–166, § 2(1), added par. (4).

Subsec. (h)(4). Pub. L. 104–166, § 2(2), added par. (4).

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a)

[1] So in original.

of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TRAUMATIC BRAIN INJURY STUDY; CONSENSUS CONFERENCE

Pub. L. 104–166, §4, July 29, 1996, 110 Stat. 1448, as amended by Pub. L. 106–310, div. A, title XIII, §1302, Oct. 17, 2000, 114 Stat. 1138, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary'), acting through the appropriate agencies of the Public Health Service, shall conduct a study for the purpose of carrying out the following with respect to traumatic brain injury:

''(A) In collaboration with appropriate State and local health-related agencies—

''(i)(I) determine the incidence and prevalence of traumatic brain injury in all age groups in the general population of the United States, including institutional settings; and

''(II) determine appropriate methodological strategies to obtain data on the incidence and prevalence of mild traumatic brain injury and report to Congress concerning such within 18 months of the date of the enactment of the Children's Health Act of 2000 [Oct. 17, 2000]; and

''(ii) develop a uniform reporting system under which States report incidents of traumatic brain injury.

''(B) Identify common therapeutic interventions which are used for the rehabilitation of individuals with such injuries, and shall, subject to the availability of information, include an analysis of—

''(i) the effectiveness of each such intervention in improving the functioning, including return to work or school and community participation, of individuals with brain injuries;

''(ii) the comparative effectiveness of interventions employed in the course of rehabilitation of individuals with brain injuries to achieve the same or similar clinical outcome; and

''(iii) the adequacy of existing measures of outcomes and knowledge of factors influencing differential outcomes.

''(C) Develop practice guidelines for the rehabilitation of traumatic brain injury at such time as appropriate scientific research becomes available.

''(2) DATES CERTAIN FOR REPORTS.—

''(A) Not later than 18 months after the date of the enactment of this Act [July 29, 1996], the Secretary shall submit to the Committee on Commerce of the House of Representatives, and to the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate, a report describing the findings made as a result of carrying out paragraph (1)(A).

''(B) Not later than 3 years after the date of the enactment of this Act, the Secretary shall submit to the Committees specified in subparagraph (A) a report describing the findings made as a result of carrying out subparagraphs (B) and (C) of paragraph (1).

''(b) CONSENSUS CONFERENCE.—The Secretary, acting through the Director of the National Center for Medical Rehabilitation Research within the National Institute for Child Health and Human Development, shall conduct a national consensus conference on managing traumatic brain injury and related rehabilitation concerns.

''(c) DEFINITION.—For purposes of this section, the term 'traumatic brain injury' means an acquired injury to the brain. Such term does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma, but may include brain injuries caused by anoxia due to near drowning. The Secretary may revise the definition of such term as the Secretary determines necessary.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2001 through 2005.''

PART G—POISON CONTROL

§ 300d–71. Maintenance of a national toll-free number

(a) In general

The Secretary shall provide coordination and assistance to regional poison control centers for the establishment of a nationwide toll-free phone number to be used to access such centers.

(b) Rule of construction

Nothing in this section shall be construed as prohibiting the establishment or continued operation of any privately funded nationwide toll-free phone number used to provide advice and other assistance for poisonings or accidental exposures.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section $2,000,000 for each of the fiscal years 2000 through 2009. Funds appropriated under this subsection shall not be used to fund any toll-free phone number described in subsection (b) of this section.

(July 1, 1944, ch. 373, title XII, §1271, as added Pub. L. 108–194, §3, Dec. 19, 2003, 117 Stat. 2889.)

FINDINGS

Pub. L. 108–194, §2, Dec. 19, 2003, 117 Stat. 2888, provided that: ''The Congress finds the following:

''(1) Poison control centers are our Nation's primary defense against injury and deaths from poisoning. Twenty-four hours a day, the general public as well as health care practitioners contact their local poison centers for help in diagnosing and treating victims of poisoning and other toxic exposures.

''(2) Poisoning is the third most common form of unintentional death in the United States. In any given year, there will be between 2,000,000 and 4,000,000 poison exposures. More than 50 percent of these exposures will involve children under the age of 6 who are exposed to toxic substances in their home. Poisoning accounts for 285,000 hospitalizations, 1,200,000 days of acute hospital care, and 13,000 fatalities annually.

''(3) Stabilizing the funding structure and increasing accessibility to poison control centers will promote the utilization of poison control centers, and reduce the inappropriate use of emergency medical services and other more costly health care services.

''(4) The tragic events of September 11, 2001, and the anthrax cases of October 2001, have dramatically changed our Nation. During this time period, poison centers in many areas of the country were answering thousands of additional calls from concerned residents. Many poison centers were relied upon as a source for accurate medical information about the disease and the complications resulting from prophylactic antibiotic therapy.

''(5) The 2001 Presidential Task Force on Citizen Preparedness in the War on Terrorism recommended that the Poison Control Centers be used as a source of public information and public education regarding potential biological, chemical, and nuclear domestic terrorism.

''(6) The increased demand placed upon poison centers to provide emergency information in the event of a terrorist event involving a biological, chemical, or nuclear toxin will dramatically increase call volume.''

§ 300d–72. Nationwide media campaign to promote poison control center utilization

(a) In general

The Secretary shall establish a national media campaign to educate the public and health care providers about poison prevention and the availability of poison control resources in local communities and to conduct advertising campaigns concerning the nationwide toll-free number established under section 300d–71 of this title.

(b) Contract with entity

The Secretary may carry out subsection (a) of this section by entering into contracts with one or more nationally recognized media firms for the development and distribution of monthly television, radio, and newspaper public service announcements.

(c) Evaluation

The Secretary shall—

(1) establish baseline measures and benchmarks to quantitatively evaluate the impact of the nationwide media campaign established under this section; and

(2) prepare and submit to the appropriate congressional committees an evaluation of the nationwide media campaign on an annual basis.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $600,000 for each of fiscal years 2000 through 2005 and such sums as may be necessary for each of fiscal years 2006 through 2009.

(July 1, 1944, ch. 373, title XII, § 1272, as added Pub. L. 108–194, § 3, Dec. 19, 2003, 117 Stat. 2889.)

§ 300d–73. Maintenance of the poison control center grant program

(a) Regional poison control centers

The Secretary shall award grants to certified regional poison control centers for the purposes of achieving the financial stability of such centers, and for preventing and providing treatment recommendations for poisonings.

(b) Other improvements

The Secretary shall also use amounts received under this section to—

(1) develop standardized poison prevention and poison control promotion programs;

(2) develop standard patient management guidelines for commonly encountered toxic exposures;

(3) improve and expand the poison control data collection systems, including, at the Secretary's discretion, by assisting the poison control centers to improve data collection activities;

(4) improve national toxic exposure surveillance by enhancing activities at the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry;

(5) expand the toxicologic expertise within poison control centers; and

(6) improve the capacity of poison control centers to answer high volumes of calls during times of national crisis.

(c) Certification

Except as provided in subsection (d) of this section, the Secretary may make a grant to a center under subsection (a) of this section only if—

(1) the center has been certified by a professional organization in the field of poison control, and the Secretary has approved the organization as having in effect standards for certification that reasonably provide for the protection of the public health with respect to poisoning; or

(2) the center has been certified by a State government, and the Secretary has approved the State government as having in effect standards for certification that reasonably provide for the protection of the public health with respect to poisoning.

(d) Waiver of certification requirements

(1) In general

The Secretary may grant a waiver of the certification requirement of subsection (c) of this section with respect to a noncertified poison control center or a newly established center that applies for a grant under this section if such center can reasonably demonstrate that the center will obtain such a certification within a reasonable period of time as determined appropriate by the Secretary.

(2) Renewal

The Secretary may renew a waiver under paragraph (1).

(3) Limitation

In no instance may the sum of the number of years for a waiver under paragraph (1) and a renewal under paragraph (2) exceed 5 years. The preceding sentence shall take effect as if enacted on February 25, 2000.

(e) Supplement not supplant

Amounts made available to a poison control center under this section shall be used to supplement and not supplant other Federal, State, or local funds provided for such center.

(f) Maintenance of effort

A poison control center, in utilizing the proceeds of a grant under this section, shall maintain the expenditures of the center for activities of the center at a level that is not less than the level of such expenditures maintained by the center for the fiscal year preceding the fiscal year for which the grant is received.

(g) Matching requirement

The Secretary may impose a matching requirement with respect to amounts provided under a grant under this section if the Secretary determines appropriate.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 2000 through 2004 and $27,500,000 for each of fiscal years 2005 through 2009.

(July 1, 1944, ch. 373, title XII, § 1273, as added Pub. L. 108–194, § 3, Dec. 19, 2003, 117 Stat. 2889.)

§ 300d–74. Rule of construction

Nothing in this part may be construed to ease any restriction in Federal law applicable to the amount or percentage of funds appropriated to carry out this part that may be used to prepare or submit a report.

(July 1, 1944, ch. 373, title XII, § 1274, as added Pub. L. 108–194, § 3, Dec. 19, 2003, 117 Stat. 2891.)

SUBCHAPTER XI—HEALTH MAINTENANCE ORGANIZATIONS

§ 300e. Requirements of health maintenance organizations

(a) "Health maintenance organization" defined

For purposes of this subchapter, the term ''health maintenance organization'' means a public or private entity which is organized under the laws of any State and which (1) provides basic and supplemental health services to its members in the manner prescribed by subsection (b) of this section, and (2) is organized and operated in the manner prescribed by subsection (c) of this section.

(b) Manner of supplying basic and supplemental health services to members

A health maintenance organization shall provide, without limitations as to time or cost other than those prescribed by or under this subchapter, basic and supplemental health services to its members in the following manner:

(1) Each member is to be provided basic health services for a basic health services payment which (A) is to be paid on a periodic basis without regard to the dates health services (within the basic health services) are provided; (B) is fixed without regard to the frequency, extent, or kind of health service (within the basic health services) actually furnished; (C) except in the case of basic health services provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education, is fixed under a community rating system; and (D) may be supplemented by additional nominal payments which may be required for the provision of specific services (within the basic health services), except that such payments may not be required where or in such a manner that they serve (as determined under regulations of the Secretary) as a barrier to the delivery of health services. Such additional nominal payments shall be fixed in accordance with the regulations of the Secretary. If a health maintenance organization offers to its members the opportunity to obtain basic health services through a physician not described in subsection (b)(3)(A) of this section, the organization may require, in addition to payments described in clause (D) of this paragraph, a reasonable deductible to be paid by a member when obtaining a basic health service from such a physician. A health maintenance organization may include a health service, defined as a supplemental health service by section 300e–1(2) of this title, in the basic health services provided its members for a basic health services payment described in the first sentence. In the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e–9(d)[1] of this title) provided comprehensive health services on a prepaid basis, the requirement of clause (C) shall not apply to such entity until the expiration of the forty-eight month period beginning with the month following the month in which the entity became such a qualified health organization. The requirements of this paragraph respecting the basic health services payment shall not apply to the provision of basic health services to a member for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or an insurance policy but only to the extent such benefits apply to such services. For the provision of such services for an illness or injury for which a member is entitled to benefits under such a law, the health maintenance organization may, if authorized by such law, charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law, the insurance carrier, employer, or other entity which under such law is to pay for the provision of such services or, to the extent that such member has been paid under such law for such services, such member. For the provision of such services for an illness or injury for which a member is entitled to benefits under an insurance policy, a health maintenance organization may charge or authorize the provider of such services to charge the insurance carrier under such policy or, to the extent that such member has been paid under such policy for such services, such member.

(2) For such payment or payments (hereinafter in this subchapter referred to as ''supplemental health services payments'') as the health maintenance organization may require in addition to the basic health services payment, the organization may provide to each of its members any of the health services which are included in supplemental health services (as defined in section 300e–1(2) of this title). Supplemental health services payments which are fixed on a prepayment basis shall be fixed under a community rating system unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education, except that, in the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e–9(d)[1] of this title) provided comprehensive health services on a prepaid basis, the requirement of this sentence shall not apply to such entity during the forty-eight month period beginning with the month following the month in which the entity became such a qualified health maintenance organization.

(3)(A) Except as provided in subparagraph (B), at least 90 percent of the services of a physician which are provided as basic health services shall be provided through—

[1] See References in Text note below.

(i) members of the staff of the health maintenance organization,

(ii) a medical group (or groups),

(iii) an individual practice association (or associations),

(iv) physicians or other health professionals who have contracted with the health maintenance organization for the provision of such services, or

(v) any combination of such staff, medical group (or groups), individual practice association (or associations) or physicians or other health professionals under contract with the organization.

(B) Subparagraph (A) does not apply to the provision of the services of a physician—

(i) which the health maintenance organization determines, in conformity with regulations of the Secretary, are unusual or infrequently used, or

(ii) which are provided a member of the organization in a manner other than that prescribed by subparagraph (A) because of an emergency which made it medically necessary that the service be provided to the member before it could be provided in a manner prescribed by subparagraph (A).

(C) Contracts between a health maintenance organization and health professionals for the provision of basic and supplemental health services shall include such provisions as the Secretary may require, but only to the extent that such requirements are designed to insure the delivery of quality health care services and sound fiscal management.

(D) For purposes of this paragraph the term ''health professional'' means physicians, dentists, nurses, podiatrists, optometrists, and such other individuals engaged in the delivery of health services as the Secretary may by regulation designate.

(4) Basic health services (and only such supplemental health services as members have contracted for) shall within the area served by the health maintenance organization be available and accessible to each of its members with reasonable promptness and in a manner which assures continuity, and when medically necessary be available and accessible twenty-four hours a day and seven days a week, except that a health maintenance organization which has a service area located wholly in a nonmetropolitan area may make a basic health service available outside its service area if that basic health service is not a primary care or emergency health care service and if there is an insufficient number of providers of that basic health service within the service area who will provide such service to members of the health maintenance organization. A member of a health maintenance organization shall be reimbursed by the organization for his expenses in securing basic and supplemental health services other than through the organization if the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition.

(5) To the extent that a natural disaster, war, riot, civil insurrection, or any other similar event not within the control of a health maintenance organization (as determined under regulations of the Secretary) results in the facilities, personnel, or financial resources of a health maintenance organization not being available to provide or arrange for the provision of a basic or supplemental health service in accordance with the requirements of paragraphs (1) through (4) of this subsection, such requirements only require the organization to make a good-faith effort to provide or arrange for the provision of such service within such limitation on its facilities, personnel, or resources.

(6) A health maintenance organization that otherwise meets the requirements of this subchapter may offer a high-deductible health plan (as defined in section 220(c)(2) of title 26).

(c) Organizational requirements

Each health maintenance organization shall—

(1)(A) have—

(i) a fiscally sound operation, and

(ii) adequate provision against the risk of insolvency,

which is satisfactory to the Secretary, and (B) have administrative and managerial arrangements satisfactory to the Secretary;

(2) assume full financial risk on a prospective basis for the provision of basic health services, except that a health maintenance organization may (A) obtain insurance or make other arrangements for the cost of providing to any member basic health services the aggregate value of which exceeds $5,000 in any year, (B) obtain insurance or make other arrangements for the cost of basic health services provided to its members other than through the organization because medical necessity required their provision before they could be secured through the organization, (C) obtain insurance or make other arrangements for not more than 90 per centum of the amount by which its costs for any of its fiscal years exceed 115 per centum of its income for such fiscal year, and (D) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions;

(3)(A) enroll persons who are broadly representative of the various age, social, and income groups within the area it serves, except that in the case of a health maintenance organization which has a medically underserved population located (in whole or in part) in the area it serves, not more than 75 per centum of the members of that organization may be enrolled from the medically underserved population unless the area in which such population resides is also a rural area (as designated by the Secretary), and (B) carry out enrollment of members who are entitled to medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] in accordance with procedures approved under regulations promulgated by the Secretary;

(4) not expel or refuse to re-enroll any member because of his health status or his requirements for health services;

(5) be organized in such a manner that provides meaningful procedures for hearing and resolving grievances between the health maintenance organization (including the medical group or groups and other health delivery entities providing health services for the organization) and the members of the organization;

(6) have organizational arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for its health services which program (A) stresses health outcomes, and (B) provides review by physicians and other health professionals of the process followed in the provision of health services;

(7) adopt at least one of the following arrangements to protect its members from incurring liability for payment of any fees which are the legal obligation of such organization—

(A) a contractual arrangement with any hospital that is regularly used by the members of such organization prohibiting such hospital from holding any such member liable for payment of any fees which are the legal obligation of such organization;

(B) insolvency insurance, acceptable to the Secretary;

(C) adequate financial reserve, acceptable to the Secretary; and

(D) other arrangements, acceptable to the Secretary, to protect members,

except that the requirements of this paragraph shall not apply to a health maintenance organization if applicable State law provides the members of such organization with protection from liability for payment of any fees which are the legal obligation of such organization; and

(8) provide, in accordance with regulations of the Secretary (including safeguards concerning the confidentiality of the doctor-patient relationship), and effective procedure for developing, compiling, evaluating, and reporting to the Secretary, statistics and other information (which the Secretary shall publish and disseminate on an annual basis and which the health maintenance organization shall disclose, in a manner acceptable to the Secretary, to its members and the general public) relating to (A) the cost of its operations, (B) the patterns of utilization of its services, (C) the availability, accessibility, and acceptability of its services, (D) to the extent practical, developments in the health status of its members, and (E) such other matters as the Secretary may require.

The Secretary shall issue regulations stating the circumstances under which the Secretary, in administering paragraph (1)(A), will consider the resources of an organization which owns or controls a health maintenance organization. Such regulations shall require as a condition to consideration of resources that an organization which owns or controls a health maintenance organization shall provide satisfactory assurances that it will assume the financial obligations of the health maintenance organization.

(d) Application of rules by certain health maintenance organizations

An organization that offers health benefits coverage shall not be considered as failing to meet the requirements of this section notwithstanding that it provides, with respect to coverage offered in connection with a group health plan in the small or large group market (as defined in section 300gg–91(e) of this title), an affiliation period consistent with the provisions of section 300gg(g) of this title.

(July 1, 1944, ch. 373, title XIII, §1301, as added Pub. L. 93–222, §2, Dec. 29, 1973, 87 Stat. 914; amended Pub. L. 94–460, title I, §§101, 102(a), 103, 105(a), Oct. 8, 1976, 90 Stat. 1945–1947; Pub. L. 95–559, §§9(b), 10, 11(a)–(d), Nov. 1, 1978, 92 Stat. 2137–2139; Pub. L. 96–32, §2(b), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title IX, §942(a)(1), (2), (b)–(e), Aug. 13, 1981, 95 Stat. 573, 574; Pub. L. 100–517, §§2–4(a), 5(a)(1), (2), (b), Oct. 24, 1988, 102 Stat. 2578, 2579; Pub. L. 104–191, title I, §§102(b), 193, Aug. 21, 1996, 110 Stat. 1976, 1988.)

REFERENCES IN TEXT

Section 300e–9(d) of this title, referred to in subsec. (b)(1), (2), was redesignated section 300e–9(c) of this title by Pub. L. 100–517, §7(b), Oct. 24, 1988, 102 Stat. 2580.

The Social Security Act, referred to in subsec. (c)(3)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1996—Subsec. (b)(6). Pub. L. 104–191, §193, added par. (6).

Subsec. (d). Pub. L. 104–191, §102(b), added subsec. (d).

1988—Subsec. (a). Pub. L. 100–517, §2, substituted ''public or private entity which is organized under the laws of any State and'' for ''legal entity''.

Subsec. (b)(1). Pub. L. 100–517, §3, inserted after second sentence ''If a health maintenance organization offers to its members the opportunity to obtain basic health services through a physician not described in subsection (b)(3)(A) of this section, the organization may require, in addition to payments described in clause (D) of this paragraph, a reasonable deductible to be paid by a member when obtaining a basic health service from such a physician.''

Subsec. (b)(3)(A). Pub. L. 100–517, §4(a), substituted ''at least 90 percent of the services of a physician'' for ''the services of a physician''.

Subsec. (c). Pub. L. 100–517, §5(a)(2), inserted at end ''The Secretary shall issue regulations stating the circumstances under which the Secretary, in administering paragraph (1)(A), will consider the resources of an organization which owns or controls a health maintenance organization. Such regulations shall require as a condition to consideration of resources that an organization which owns or controls a health maintenance organization shall provide satisfactory assurances that it will assume the financial obligations of the health maintenance organization.''

Subsec. (c)(1)(A). Pub. L. 100–517, §5(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''have a fiscally sound operation and adequate provision against the risk of insolvency which is satisfactory to the Secretary, and''.

Subsec. (c)(5) to (9). Pub. L. 100–517, §5(b), redesignated pars. (6) to (9) as (5) to (8), respectively, and struck out former par. (5) which read as follows: ''(A) in the case of a private health maintenance organization, be organized in such a manner that assures that (i) at

least one-third of the membership of the policymaking body of the health maintenance organization will be members of the organization, and (ii) there will be equitable representation on such body of members from medically underserved populations served by the organization, and (B) in the case of a public health maintenance organization, have an advisory board to the policymaking body of the public entity operating the organization which board meets the requirements of clause (A) of this paragraph and to which may be delegated policymaking authority for the organization;''.

1981—Subsec. (b). Pub. L. 97–35, § 942(a)(1), (2), (b), (c), in par. (3)(A)(iv) struck out reference to subpar. (C), in par. (3)(B) substituted ''(B)'' for ''(B)(i)'', ''(i)'' for ''(I)'', ''(ii)'' for ''(II)'', and struck out cl. (ii) which related to forty-eight-month period after qualification as an organization, struck out par. (3)(C) which related to expiration of first four fiscal years as a qualified organization, redesignated par. (3)(D) as (3)(C) and substituted requirements respecting delivery and fiscal management, for requirements respecting appropriate continuing education, redesignated par. (3)(E) as (3)(D), and in par. (4) inserted provisions relating to service areas located in nonmetropolitan area, and substituted ''with reasonable promptness'' for ''promptly as appropriate''.

Subsec. (c). Pub. L. 97–35, § 942(d)(1), (e), in par. (2) substituted provisions specifying requirements with respect to insurance, etc., for provisions generalizing such insurance, etc., requirements, and added cl. (D), struck out par. (4) which related to open enrollment period, redesignated pars. (5) to (8) as (4) to (7), respectively, added par. (8), struck out pars. (9) and (10) which related to medical social and health education services, and continuing education, respectively, and redesignated par. (11) as (9).

Subsec. (d). Pub. L. 97–35, § 942(d)(2), struck out subsec. (d) which related to requirements, etc., respecting open enrollment period.

1979—Subsec. (b)(3). Pub. L. 96–32 amended directory language of section 11(a) of Pub. L. 95–559 by substituting reference to section ''1301'' for ''1310'' of the Public Health Service Act, as section to be amended, and required no change in text because amendment made by Pub. L. 95–559 had been executed to this section as the probable intent of Congress.

1978—Subsec. (b)(1). Pub. L. 95–559, §§ 10(a), 11(b), inserted ''except in the case of basic health services provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education,'' after ''the requirement of clause (C)'' and inserted provisions permitting the health maintenance organization to seek reimbursement for the cost of services provided to a member who is entitled to benefits under a workmen's compensation law or insurance policy.

Subsec. (b)(2). Pub. L. 95–559, § 10(a), inserted ''unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education,'' after ''community rating system''.

Subsec. (b)(3). Pub. L. 95–559, § 11(a), as amended by Pub. L. 96–32, inserted provisions limiting the health maintenance organization from entering into contracts for health services with physicians other than members of the staff of the health maintenance organization, medical groups, or individual practice associations.

Subsec. (b)(4). Pub. L. 95–559, § 11(c), substituted ''basic and supplemental'' for ''basic or supplemental'' and ''if the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition'' for ''if it was medically necessary that the services be provided before it could secure them through the organization''.

Subsec. (b)(5). Pub. L. 95–559, § 11(d), added par. (5).

Subsec. (c)(1). Pub. L. 95–559, § 10(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(3). Pub. L. 95–559, § 9(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(6). Pub. L. 95–559, § 10(c), designated existing provisions as subpar. (A), inserted ''in the case of a private health maintenance organization,'' before ''be organized in such'', and substituted ''(i)'' for ''(A)'' and ''(ii)'' for ''(B)'', and added subpar. (B).

1976—Subsec. (b)(1). Pub. L. 94–460, §§ 101(a), 105(a)(1), provided that a health maintenance organization may include a health service, defined as a supplemental health service by section 300e–1(2) of this title, in the basic health services provided its members for a basic health service payment described in the first sentence, and also provided that, in the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e–9(d) of this title) provided comprehensive health services on a prepaid basis, the requirement of clause (C) would not apply to such entity until the expiration of the forty-eight month period beginning with the month following the month in which the entity became such a qualified health organization.

Subsec. (b)(2). Pub. L. 94–460, §§ 101(b), 105(a)(2), substituted ''the organization may provide to each of its members any of the health services which are included in supplemental health services (as defined in section 300e–1(2) of this title)'' for ''the organization shall provide to each of its members each health service (A) which is included in supplemental health services (as defined in section 300e–1(2) of this title), (B) for which the required health manpower are available in the area served by the organization, and (C) for the provision of which the member has contracted with the organization'' and inserted ''except that, in the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e–9(d) of this title) provided comprehensive health services on a prepaid basis, the requirement of this sentence shall not apply to such entity during the forty-eight month period beginning with the month following the month in which the entity became such a qualified health maintenance organization'' after ''Supplemental health services payments which are fixed on a prepayment basis shall be fixed under a community rating system''.

Subsec. (b)(3). Pub. L. 94–460, § 102(a), inserted references to health professionals who have contracted with the health maintenance organization for the provision of such services and to the combination of staff, medical groups, individual practice associations, or health professionals under contract with the health maintenance organization, and inserted provisions allowing a health maintenance organization, during the thirty-six month period beginning with the month following the month in which the organization becomes a qualified health maintenance organization (within the meaning of section 300e–9(d) of this title), to provide basic and supplemental health services through an entity which but for the requirement of section 300e–1(4)(C)(i) of this title would be a medical group for purposes of this subchapter, directing that after the expiration of such period, the organization may provide basic or supplemental health services through such an entity only if authorized by the Secretary in accordance with regulations which take into consideration the unusual circumstances of such entity, directing that a health maintenance organization may not, in any of its fiscal years, enter into contracts with health professionals or entities other than medical groups or individual practice associations if the amounts paid under such contracts for basic and supplemental health services exceed fifteen percent of the total amount to be paid in such fiscal year by the health maintenance organization to physicians for the provision of basic and supplemental health services, or, if the health maintenance organization principally serves a rural area, thirty percent of such amount, except that the sentence would not apply to the entering into of contracts for the purchase of basic and supplemental health services through an entity which but for the requirements of section 300e–1(4)(C)(i) of this title would be a medical group for purposes of this subchapter, and

directing that contracts between a health maintenance organization and health professionals for the provision of basic and supplemental health services include such provisions as the Secretary may require (including provisions requiring appropriate continuing education).

Subsec. (b)(4). Pub. L. 94–460, § 101(c), substituted ''and only such supplemental health services as members have contracted for'' for ''and supplemental health services in the case of the members who have contracted therefor''.

Subsec. (c)(4). Pub. L. 94–460, § 103(a), substituted provisions making a simple reference to an open enrollment period in accordance with the provisions of subsec. (d) of this section for provisions spelling out in detail the requirements for a health maintenance organization with regard to an open enrollment period.

Subsec. (d). Pub. L. 94–460, § 103(b), added subsec. (d).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 118 of title I of Pub. L. 94–460 provided that: ''(a) Except as provided in subsection (b), the amendments made by this title [enacting section 300e–15 of this title and amending this section, sections 300e–1 to 300e–11, 300e–13, and 300n–1 of this title, and section 8902 of Title 5, Government Organization and Employees] shall take effect on the date of the enactment of this Act [Oct. 8, 1976].

''(b)(1) The amendments made by sections 101 [amending this section], 102 [amending this section and section 300e–1 of this title], 103 [amending this section], 104 [amending section 300e–1 of this title], and 106 [amending section 300e–1 of this title] shall (A) apply with respect to grants, contracts, loans, and loan guarantees made under sections 1303, 1304, and 1305 of the Public Health Service Act [sections 300e–2, 300e–3, and 300e–4 of this title] for fiscal years beginning after September 30, 1976, (B) apply with respect to health benefit plans offered under section 1310 of such Act [section 300e–9 of this title] after such date, and (C) for purposes of section 1312 [section 300e–11 of this title] take effect October 1, 1976.

''(2) Subsection (d) of section 1301 of the Public Health Service Act [subsec. (d) of this section] (added by section 103(b) of this Act) shall take effect with respect to fiscal years of health maintenance organizations beginning on or after the date of the enactment of this Act [Oct. 8, 1976].

''(3) The amendments made by section 107 [amending sections 300e–2, 300e–3, and 300e–4 of this title] shall apply with respect to grants, contracts, loans, and loan guarantees made under sections 1303, 1304, and 1305 of the Public Health Service Act [sections 300e–2, 300e–3 and 300e–4 of this title] for fiscal years beginning after September 30, 1976.

''(4) The amendments made by sections 109(a)(1) [amending section 300e–4 of this title] and 109(c) [amending section 300e–7 of this title] shall apply with respect to loan guarantees made under section 1305 of the Public Health Service Act [section 300e–4 of this title] after September 30, 1976.

''(5) The amendment made by section 109(e) [amending section 300e–3 of this title] shall apply with respect to projects assisted under section 1304 of the Public Health Service Act [section 300e–3 of this title] after September 30, 1976.

''(6) The amendments made by paragraphs (1) and (2) of section 110(a) [amending section 300e–9 of this title] shall apply with respect to calendar quarters which begin after the date of the enactment of this Act [Oct. 8, 1976].

''(7) The amendments made by paragraphs (3) and (4) of section 110 [amending section 300e–9 of this title] shall apply with respect to failures of employers to comply with section 1310(a) of the Public Health Service Act [section 300e–9 of this title] after the date of the enactment of this Act [Oct. 8, 1976].

''(8) The amendment made by section 111 [amending section 300e–11 of this title] shall apply with respect to determinations of the Secretary of Health, Education, and Welfare described in section 1312(a) of the Public Health Service Act [section 300e–11(a) of this title] and made after the date of the enactment of this Act [Oct. 8, 1976].''

SHORT TITLE OF 1978 AMENDMENT

For short title of Pub. L. 95–559 as the ''Health Maintenance Organization Amendments of 1978'', see section 1 of Pub. L. 95–559, set out as a note under section 201 of this title.

SHORT TITLE OF 1976 AMENDMENT

For short title of Pub. L. 94–460 which substantially amended this subchapter, as the ''Health Maintenance Organization Amendments of 1976'', see section 1(a) of Pub. L. 94–460, set out as a note under section 201 of this title.

SHORT TITLE

For short title of Pub. L. 93–222, which enacted this subchapter, as the ''Health Maintenance Organization Act of 1973'', see section 1 of Pub. L. 93–222, set out as a Short Title of 1973 Amendments note under section 201 of this title.

QUALIFICATION OF HEALTH MAINTENANCE ORGANIZATION CONTINGENT UPON CONTROLLING ORGANIZATION'S ASSUMPTION OF FINANCIAL OBLIGATIONS AND MEETING OTHER REQUIREMENTS

Section 5(a)(3) of Pub. L. 100–517 provided that: ''During the period prior to the effective date of regulations issued under section 1301(c) of the Public Health Service Act [subsec. (c) of this section] (as amended by paragraph (2)), the Secretary of Health and Human Services shall consider the application for qualification under section 1301(c)(1)(A) of such Act of a health maintenance organization—

''(A) which is owned or controlled by another organization, and

''(B) which requests that the resources of the other organization be considered in determining its qualification under such section,

if the Secretary receives satisfactory assurances from the other organization that it will assume the financial obligations of the health maintenance organization and if the Secretary determines that the other organization meets such other requirements as the Secretary determines are necessary.''

STUDY ON HEALTH MAINTENANCE ORGANIZATION PROGRAM

Pub. L. 99–660, title VIII, § 813, Nov. 14, 1986, 100 Stat. 3801, which provided for a study to assess the operation and impact of the provisions of this subchapter and a report to Congress on the findings and conclusions of such study within 18 months after Nov. 14, 1986, was repealed by Pub. L. 102–531, title III, § 311(a), Oct. 27, 1992, 106 Stat. 3503, effective as if such repeal was enacted on Nov. 14, 1986.

HEALTH CARE QUALITY ASSURANCE PROGRAMS STUDY

Section 4 of Pub. L. 93–222 required Secretary of Health, Education, and Welfare to contract for conduct of a study of health care quality assurance programs and submit a final report to specific committees of Congress by Jan. 31, 1976.

§ 300e–1. Definitions

For purposes of this subchapter:

(1) The term ''basic health services'' means—

(A) physician services (including consultant and referral services by a physician);

(B) inpatient and outpatient hospital services;

(C) medically necessary emergency health services;

(D) short-term (not to exceed twenty visits), outpatient evaluative and crisis intervention mental health services;

(E) medical treatment and referral services (including referral services to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs;

(F) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(G) home health services; and

(H) preventive health services (including (i) immunizations, (ii) well-child care from birth, (iii) periodic health evaluations for adults, (iv) voluntary family planning services, (v) infertility services, and (vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction).

Such term does not include a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for the protection of individual health. The Secretary shall publish in the Federal Register each determination made by him under the preceding sentence. If a service of a physician described in the preceding sentence may also be provided under applicable State law by a dentist, optometrist, podiatrist, psychologist, or other health care personnel, a health maintenance organization may provide such service through a dentist, optometrist, podiatrist, psychologist, or other health care personnel (as the case may be) licensed to provide such service. Such term includes a health service directly associated with an organ transplant only if such organ transplant was required to be included in basic health services on April 15, 1985. For purposes of this paragraph, the term ''home health services'' means health services provided at a member's home by health care personnel, as prescribed or directed by the responsible physician or other authority designated by the health maintenance organization.

(2) The term ''supplemental health services'' means any health service which is not included as a basic health service under paragraph (1) of this section. If a health service provided by a physician may also be provided under applicable State law by a dentist, optometrist, podiatrist, psychologist, or other health care personnel, a health maintenance organization may provide such service through an optometrist, dentist, podiatrist, psychologist, or other health care personnel (as the case may be) licensed to provide such service.

(3) The term ''member'' when used in connection with a health maintenance organization means an individual who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with the organization under which the organization assumes the responsibility for the provision to such individual of basic health services and of such supplemental health services as may be contracted for.

(4) The term ''medical group'' means a partnership, association, or other group—

(A) which is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, podiatrists, and psychologists) as are necessary for the provision of health services for which the group is responsible;

(B) a majority of the members of which are licensed to practice medicine or osteopathy; and

(C) the members of which (i) as their principal professional activity engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility for the delivery of health services to members of a health maintenance organization, except that this clause does not apply before the end of the forty-eight month period beginning after the month in which the health maintenance oranization[1] becomes a qualified health maintenance organization as defined in section 300e–9(d)[2] of this title, or as authorized by the Secretary in accordance with regulations that take into consideration the unusual circumstances of the group; (ii) pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other similar plan unrelated to the provision of specific health services; (iii) share medical and other records and substantial portions of major equipment and of professional, technical, and administrative staff; (iv) arrange for and encourage continuing education in the field of clinical medicine and related areas for the members of the group; and (v) establish an arrangement whereby a member's enrollment status is not known to the health professional who provides health services to the member.

(5) The term ''individual practice association'' means a partnership, corporation, association, or other legal entity which has entered into a services arrangement (or arrangements) with persons who are licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, psychology, or other health profession in a State and a majority of whom are licensed to practice medicine or osteopathy. Such an arrangement shall provide—

(A) that such persons shall provide their professional services in accordance with a compensation arrangement established by the entity; and

(B) to the extent feasible, for the sharing by such persons of medical and other records, equipment, and professional, technical, and administrative staff.

(6) The term ''health systems agency'' means an entity which is designated in accordance with section 300*l*–4 of this title.

(7) The term ''medically underserved population'' means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services. Such a designation may be made by the Secretary only after consideration of the comments (if any) of (A) each State health planning and development agency which covers (in whole or in part) such urban or rural area or the area in which such population group resides, and (B) each health systems agency designated for a health service area which covers (in whole or in

[1] So in original. Probably should be ''organization''.

[2] See References in Text note below.

part) such urban or rural area or the area in which such population group resides.

(8)(A) The term ''community rating system'' means the systems, described in subparagraphs (B) and (C), of fixing rates of payments for health services. A health maintenance organization may fix its rates of payments under the system described in subparagraph (B) or (C) or under both such systems, but a health maintenance organization may use only one such system for fixing its rates of payments for any one group.

(B) A system of fixing rates of payment for health services may provide that the rates shall be fixed on a per-person or per-family basis and may authorize the rates to vary with the number of persons in a family, but, except as authorized in subparagraph (D), such rates must be equivalent for all individuals and for all families of similar composition.

(C) A system of fixing rates of payment for health services may provide that the rates shall be fixed for individuals and families by groups. Except as authorized in subparagraph (D), such rates must be equivalent for all individuals in the same group and for all families of similar composition in the same group. If a health maintenance organization is to fix rates of payment for individuals and families by groups, it shall—

(i)(I) classify all of the members of the organization into classes based on factors which the health maintenance organization determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary,

(II) determine its revenue requirements for providing services to the members of each class established under subclause (I), and

(III) fix the rates of payments for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under subclause (II) for providing services to them as members of the classes established under subclause (I), or

(ii) fix the rates of payments for the individuals and families of a group on the basis of the organization's revenue requirements for providing services to the group, except that the rates of payments for the individuals and families of a group of less than 100 persons may not be fixed at rates greater than 110 percent of the rate that would be fixed for such individuals and families under subparagraph (B) or clause (i) of this subparagraph.

The Secretary shall review the factors used by each health maintenance organization to establish classes under clause (i). If the Secretary determines that any such factor may not reasonably be used to predict the use of the health services by individuals and families, the Secretary shall disapprove such factor for such purpose. If a health maintenance organization is to fix rates of payment for a group under clause (ii), it shall, upon request of the entity with which it contracts to provide services to such group, disclose to that entity the method and data used in calculating the rates of payment.

(D) The following differentials in rates of payments may be established under the systems described in subparagraphs (B) and (C):

(i) Nominal differentials in such rates may be established to reflect differences in marketing costs and the different administrative costs of collecting payments from the following categories of members:

(I) Individual members (including their families).

(II) Small groups of members (as determined under regulations of the Secretary).

(III) Large groups of members (as determined under regulations of the Secretary).

(ii) Nominal differentials in such rates may be established to reflect the compositing of the rates of payment in a systematic manner to accommodate group purchasing practices of the various employers.

(iii) Differentials in such rates may be established for members enrolled in a health maintenance organization pursuant to a contract with a governmental authority under section 1079 or 1086 of title 10 or under any other governmental program (other than the health benefits program authorized by chapter 89 of title 5) or any health benefits program for employees of States, political subdivision of States, and other public entities.

(9) The term ''non-metropolitan area'' means an area no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget and which does not contain a city whose population exceeds fifty thousand individuals.

(July 1, 1944, ch. 373, title XIII, §1302, as added Pub. L. 93–222, §2, Dec. 29, 1973, 87 Stat. 917; amended Pub. L. 94–460, title I, §§102(b), 104, 105(b), (c), 106, 117(b)(1), (2), Oct. 8, 1976, 90 Stat. 1946–1948, 1955; Pub. L. 95–559, §11(e), Nov. 1, 1978, 92 Stat. 2139; Pub. L. 97–35, title IX, §942(f)–(j), Aug. 13, 1981, 95 Stat. 574, 575; Pub. L. 97–414, §9(c), Jan. 4, 1983, 96 Stat. 2064; Pub. L. 99–660, title VIII, §§812(a), 814, Nov. 14, 1986, 100 Stat. 3801, 3802; Pub. L. 100–517, §6(b), Oct. 24, 1988, 102 Stat. 2579.)

REFERENCES IN TEXT

Section 300e–9(d) of this title, referred to in par. (4)(C), was redesignated section 300e–9(c) of this title by Pub. L. 100–517, §7(b), Oct. 24, 1988, 102 Stat. 2580.

AMENDMENTS

1988—Par. (8)(C). Pub. L. 100–517, §6(b)(1), amended third sentence generally. Prior to amendment, third sentence read as follows: ''If a health maintenance organization is to fix rates of payment for individuals and families by groups, it shall—

''(i) classify all of the members of the organization into classes based on factors which the health maintenance organization determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary,

''(ii) determine its revenue requirements for providing services to the members of each class established under clause (i), and

''(iii) fix the rates of payment for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under clause (ii) for providing services to them as members of the classes established under clause (i).''

Pub. L. 100–517, §6(b)(2), inserted at end ''If a health maintenance organization is to fix rates of payment for a group under clause (ii), it shall, upon request of the

entity with which it contracts to provide services to such group, disclose to that entity the method and data used in calculating the rates of payment.''

1986—Par. (1). Pub. L. 99–660, §814(a), inserted ''psychologist,'' in two places in fourth sentence.

Pub. L. 99–660, §812(a), (b)(1), temporarily inserted ''Such term includes a health service directly associated with an organ transplant only if such organ transplant was required to be included in basic health services on April 15, 1985.'' in closing provisions. See Effective and Termination Dates of 1986 Amendment note below.

Par. (2). Pub. L. 99–660, §814(a), inserted ''psychologist,'' in two places.

Par. (4)(A). Pub. L. 99–660, §814(b), substituted ''podiatrists, and psychologists'' for ''and podiatrists''.

Par. (5). Pub. L. 99–660, §814(c), inserted ''psychology,''.

1983—Par. (5)(B). Pub. L. 97–414 amended directory language of Pub. L. 97–35, §942(i), to correct a typographical error, and did not involve any change in text. See 1981 Amendment note below.

1981—Par. (1). Pub. L. 97–35, §942(f), struck out provisions authorizing health maintenance organizations to maintain, etc., drug use profiles of members.

Par. (2). Pub. L. 97–35, §942(g), substituted provisions to include services not included under par. (1), for provisions enumerating specific services, substituted ''health service provided by a physician'' for ''service of a physician described in the preceding sentence'', and struck out provisions authorizing health maintenance organizations to maintain, etc., drug use profiles of members.

Par. (4)(C)(i). Pub. L. 97–35, §942(h), inserted provisions relating to applicability to qualified organizations.

Par. (5)(B). Pub. L. 97–35, §942(i), as amended by Pub. L. 97–414, §9(c), struck out ''(i)'' after ''feasible'', and struck out cl. (ii) which related to continuing education.

Par. (8). Pub. L. 97–35, §942(j), reorganized and restructured provisions and, among many changes, provided for determinations based upon subpars. (B) and (C), and set out determinations respecting differentials contained in former subpars. (B) and (C) as subpar. (D).

1978—Par. (1). Pub. L. 95–559 inserted provisions to exclude a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for protection of individual health and that the Secretary publish in Federal Register each determination made by him under preceding sentence.

1976—Par. (1). Pub. L. 94–460, §104(a), substituted reference to immunization, well-child care from birth, periodic health evaluations for adults, and children's ear examinations conducted to determine need for hearing correction for reference to preventive dental care for children in (H) and, in the provisions following subpar. (H), inserted reference to ''other health care personnel''.

Par. (2). Pub. L. 94–460, §104(b), substituted ''basic health service'' for ''basic health service under paragraph (1)(A) or (1)(H)'' in subpars. (B) and (C), added subpar. (G), and inserted reference to ''other health care personnel'' in provisions following subpar. (G).

Par. (4)(C). Pub. L. 94–460, §§102(b)(1), 106, substituted ''as their principal professional activity engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility for the delivery of health services to members of a health maintenance organization'' for ''as their principal professional activity and as a group responsibility engage in the coordinated practice of their profession for a health maintenance organization'' in cl. (i), substituted ''similar plan unrelated to the provision of specific health services'' for ''plan'' in cl. (ii), struck out former cl. (iv) which covered the utilization of additional professional personnel, allied health professions personnel, and other health personnel as are available and appropriate for the effective and efficient delivery of the services of the members of the group, redesignated former cl. (v) as (iv), and added cl. (v).

Par. (5)(B). Pub. L. 94–460, §102(b)(2), struck out former cl. (i) which covered the utilization of additional professional personnel, allied health professions personnel, and other personnel as are available and appropriate for the effective and efficient delivery of the services of the persons who are parties to the arrangement, and redesignated former cls. (ii) and (iii) as (i) and (ii), respectively.

Par. (6). Pub. L. 94–460, §117(b)(1), substituted provisions defining ''health systems agency'' for provisions defining ''section 314(a) State health planning agency'' and ''section 314(b) areawide health planning agency''.

Par. (7). Pub. L. 94–460, §117(b)(2), substituted ''State health planning and development agency which'' for ''section 314(a) State health planning agency whose section 314(a) plan'' and ''health systems agency designated for a health service area which'' for ''section 314(b) areawide health planning agency whose section 314(b) plan''.

Par. (8). Pub. L. 94–460, §105(b), (c), substituted ''to reflect differences in marketing costs and the different administrative costs'' for ''to reflect the different administrative costs'' in subpar. (A) preceding cl. (i), added subpar. (B), and redesignated former subpar. (B) as (C).

EFFECTIVE AND TERMINATION DATES OF 1986 AMENDMENT

Section 812(b)(1) of Pub. L. 99–660, which provided that amendment by subsection (a), amending this section, was to take effect on Oct. 1, 1985, and was to cease to be in effect on Apr. 1, 1988, was repealed by Pub. L. 100–517, §6(a), Oct. 24, 1988, 102 Stat. 2579.

Section 815 of title VIII of Pub. L. 99–660 provided that:

''(a) Except as provided in subsection (b) and section 812(b) [enacting provisions set out as notes above and below], this title and the amendments made by this title [amending this section and sections 300e–4, 300e–5 to 300e–10, 300e–16, and 300e–17 of this title, repealing sections 300e–2, 300e–3, and 300e–4a of this title, and enacting provisions set out as notes under this section and sections 201, 300e, 300e–4, and 300e–5 of this title] shall take effect on October 1, 1985.

''(b) Section 813 [enacting provisions set out as a note under section 300e of this title] shall take effect on the date of enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, except that amendment of pars. (1) and (2) of this section by section 104 of Pub. L. 94–460 and the amendment of pars. (4)(C) and (5)(B) of this section by sections 102 and 106 of Pub. L. 94–460 applicable with respect to grants, contracts, loans, and loan guarantees made under sections 300e–2, 300e–3, and 300e–4 of this title for fiscal years beginning after Sept. 30, 1976, applicable with respect to health benefit plans offered under section 300e–9 of this title after Sept. 30, 1976, and effective for purposes of section 300e–11 of this title on Oct. 1, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

CONSTRUCTION

Section 816 of title VIII of Pub. L. 99–660 provided that: ''The provisions of this title and of the amendments made by this title [amending this section and sections 300e–4, 300e–5 to 300e–10, 300e–16, and 300e–17 of this title, repealing sections 300e–2, 300e–3, and 300e–4a of this title, and enacting provisions set out as notes under this section and sections 201, 300e, 300e–4, and 300e–5 of this title] do not authorize the appropriation of any funds for fiscal year 1986.''

BASIC HEALTH SERVICE STATUS OF CERTAIN ORGAN TRANSPLANT SERVICES AFTER APRIL 1, 1988

Section 812(b)(2) of Pub. L. 99–660, which provided that after Apr. 1, 1988, for purposes of this subchapter,

no health service directly associated with an organ transplant was to be considered to be a basic health service if such service would otherwise have been added as a basic health service between Apr. 15, 1985, and Apr. 1, 1988, was repealed by Pub. L. 100–517, §6(a), Oct. 24, 1988, 102 Stat. 2579.

REPORTS RESPECTING MEDICALLY UNDERSERVED AREAS AND POPULATION GROUPS AND NON-METROPOLITAN AREAS

Section 5 of Pub. L. 93–222 directed Secretary of Health, Education, and Welfare to report to Congress the criteria used in the designation of medically underserved areas and population groups for purposes of par. (7) of this section by Dec. 29, 1973, and report to Congress the areas and population groups designated under par. (7) of this section, the comments of State and areawide health planning agencies, and areas which meet the definitional standards of par. (9) of this section for non-metropolitan areas by Dec. 29, 1974, and that the Office of Management and Budget may review such reports before their submission to Congress.

§§ 300e–2, 300e–3. Repealed. Pub. L. 99–660, title VIII, § 803(a), Nov. 14, 1986, 100 Stat. 3799

Section 300e–2, act July 1, 1944, ch. 373, title XIII, §1303, as added Dec. 29, 1973, Pub. L. 93–222, §2, 87 Stat. 920; amended Oct. 8, 1976, Pub. L. 94–460, title I, §§107(a), 109(d)(1), 117(b)(3), 90 Stat. 1948, 1950, 1955; Aug. 13, 1981, Pub. L. 97–35, title IX, §947(a), 95 Stat. 577, provided for grants and contracts for feasibility surveys.

Section 300e–3, act July 1, 1944, ch. 373, title XIII, §1304, as added Dec. 29, 1973, Pub. L. 93–222, §2, 87 Stat. 921; amended Apr. 21, 1976, Pub. L. 94–273, §40, 90 Stat. 381; Oct. 8, 1976, Pub. L. 94–460, title I, §§107(b), 108(a), (b), (d)(1), 109(d)(2), (3), (e), 113(a), 117(b)(4), 90 Stat. 1948–1950, 1953, 1955; Nov. 1, 1978, Pub. L. 95–559, §§2(a), 3(a)–(c), 6, 92 Stat. 2131, 2134; July 10, 1979, Pub. L. 96–32, §2(a), 93 Stat. 82; Aug. 13, 1981, Pub. L. 97–35, title IX, §§941(c), 947(b), 95 Stat. 573, 577, provided for grants, contracts, and loan guarantees for planning and for initial development costs.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99–660, set out as an Effective Date of 1986 Amendment note under section 300e–5 of this title.

Repeal effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

§ 300e–4. Loans and loan guarantees for initial operation costs

(a) Authority

The Secretary may—

(1) make loans to public or private health maintenance organizations to assist them in meeting the amount by which their costs of operation during a period not to exceed the first sixty months of their operation exceed their revenues in that period;

(2) make loans to public or private health maintenance organizations to assist them in meeting the amount by which their costs of operation, which the Secretary determines are attributable to significant expansion in their membership or area served and which are incurred during a period not to exceed the first sixty months of their operation after such expansion, exceed their revenues in that period which the Secretary determines are attributable to such expansion; and

(3) guarantee to non-Federal lenders payment of the principal of and the interest on loans made to private health maintenance organizations for the amounts referred to in paragraphs (1) and (2).

No loan or loan guarantee may be made under this subsection for the costs of operation of a health maintenance organization unless the Secretary determines that the organization has made all reasonable attempts to meet such costs, and unless the Secretary has made a grant or loan to, entered into a contract with, or guaranteed a loan for, the organization in fiscal year 1981, 1982, 1983, 1984, or 1985 under this section or section 300e–3(b)[1] of this title (as in effect before October 1, 1985).

(b) Limitations

(1) Except as provided in paragraph (2), the aggregate amount of principal of loans made or guaranteed, or both, under subsection (a) of this section for a health maintenance organization may not exceed $7,000,000. In any twelve-month period the amount disbursed to a health maintenance organization under this section (either directly by the Secretary, by an escrow agent under the terms of an escrow agreement, or by a lender under a guaranteed loan) may not exceed $3,000,000.

(2) The cumulative total of the principal of the loans outstanding at any time which have been directly made, or with respect to which guarantees have been issued, under subsection (a) of this section may not exceed such limitations as may be specified in appropriation Acts.

(c) Source of loan funds

Loans under this section shall be made from the fund established under section 300e–7(e) of this title.

(d) Time limit on loans and loan guarantees

No loan may be made or guaranteed under this section after September 30, 1986.

(e) Repealed. Pub. L. 97–35, title IX, § 947(c), Aug. 13, 1981, 95 Stat. 577

(f) Medically underserved populations

In considering applications for loan guarantees under this section, the Secretary shall give special consideration to applications for health maintenance organizations which will serve medically underserved populations.

(July 1, 1944, ch. 373, title XIII, §1305, as added Pub. L. 93–222, §2, Dec. 29, 1973, 87 Stat. 924; amended Pub. L. 93–641, §8, Jan. 4, 1975, 88 Stat. 2276; Pub. L. 94–273, §2(21), Apr. 21, 1976, 90 Stat. 376; Pub. L. 94–460, title I, §§107(c), 108(c), (d)(2), 109(a)(1), (2), 113(b), Oct. 8, 1976, 90 Stat. 1949, 1953; Pub. L. 95–559, §§2(b), 4(a), (b), Nov. 1, 1978, 92 Stat. 2131, 2132; Pub. L. 96–32, §2(d), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title IX, §§943(a)–(c), 947(c), Aug. 13, 1981, 95 Stat. 576, 577; Pub. L. 99–660, title VIII, §804(a), Nov. 14, 1986, 100 Stat. 3800.)

REFERENCES IN TEXT

Section 300e–3(b) of this title, referred to in subsec. (a), was repealed by Pub. L. 99–660, title VIII, §803(a), Nov. 14, 1986, 100 Stat. 3799.

[1] See References in Text note below.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–660 inserted '', and unless the Secretary has made a grant or loan to, entered into a contract with, or guaranteed a loan for, the organization in fiscal year 1981, 1982, 1983, 1984, or 1985 under this section or section 300e–3(b) of this title (as in effect before October 1, 1985)'' at end of last sentence.

1981—Subsec. (a). Pub. L. 97–35, § 943(a), in pars. (1) and (2) struck out ''nonprofit'' before ''private'', and in par. (3) substituted provisions respecting guarantees for private health maintenance organizations, for guarantees for nonprofit private health maintenance organizations.

Subsec. (b)(1). Pub. L. 97–35, § 943(b), generally revised limitations and, among many changes, increased amounts subject to coverage, and struck out requirements respecting Congressional oversight for increases in amounts.

Subsec. (d). Pub. L. 97–35, § 943(c), substituted ''1986'' for ''1981''.

Subsec. (e). Pub. L. 97–35, § 947(c), struck out subsec. (e) which related to projects in nonmetropolitan areas.

1979—Subsec. (b)(1). Pub. L. 96–32 substituted ''$4,500,000'' for ''$4,000,000'' in two places.

1978—Subsec. (a). Pub. L. 95–559, § 4(b)(1), substituted ''costs of operation'' for ''operating costs'' wherever appearing.

Subsec. (b)(1). Pub. L. 95–559, § 4(a), (b)(2), inserted ''(or $4,000,000 if the Secretary makes a written determination that such loans or loan guarantees are necessary to preserve the fiscally sound operation of the health maintenance organization and to protect against the risk of insolvency of the health maintenance organization and, within 30 days of the making of such loans or loan guarantees, furnishes the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives with written notification of the making of the loans or loan guarantees and a copy of the written determination made with respect to the loans or loan guarantees and the reasons for the determination) through September 30, 1979, and $4,000,000 thereafter'' after ''$2,500,000'' and ''(or $2,000,000 if the Secretary makes a written determination that such disbursements are necessary to preserve the fiscally sound operation of the health maintenance organization and protect against the risk of insolvency of the health maintenance organization and, within 30 days of such disbursement, furnishes the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives with written notification of the making of the disbursement and a copy of the written determination made with respect to it and the reasons for the determination) through September 30, 1979, and $2,000,000 thereafter'' after ''$1,000,000'' and substituted ''any twelve-month period'' for ''any fiscal year''.

Subsec. (d). Pub. L. 95–559, § 2(b), substituted ''September 30, 1981'' for ''September 30, 1980''.

1976—Subsec. (a)(1), (2). Pub. L. 94–460, §§ 107(c), 109(a)(1), substituted ''during a period not to exceed the first sixty months'' for ''in the period of the first thirty-six months''.

Subsec. (a)(3). Pub. L. 94–460, § 108(c), substituted reference to loans made to nonprofit private health maintenance organizations for the amounts referred to in paragraph (1) or (2), or to other private health maintenance organizations for such amounts but only if the health maintenance organization will serve a medically underserved population for reference to loans made to any private health maintenance organization (other than a private nonprofit health maintenance organization) for the amounts referred to in paragraph (1) or (2), but only if such health maintenance organization will serve a medically underserved population.

Subsec. (b)(1). Pub. L. 94–460, § 109(a)(2), substituted ''In any fiscal year the amount disbursed to a health maintenance organization under this section (either directly by the Secretary or by an escrow agent under the terms of an escrow agreement or by a lender under a loan guaranteed under this section) may not exceed $1,000,000'' for ''In any fiscal year, the amount disbursed under a loan or loans made or guaranteed under this section for a health maintenance organization may not exceed $1,000,000,000''.

Subsec. (d). Pub. L. 94–460, § 113(b), substituted ''No loan may be made or guaranteed under this section after September 30, 1980'' for ''A loan or loan guarantee may be made under this section through the fiscal year ending June 30, 1978''.

Pub. L. 94–273 substituted ''September'' for ''June''.

Subsec. (f). Pub. L. 94–460, § 108(d)(2), added subsec. (f).

1975—Subsec. (b)(1). Pub. L. 93–641 substituted provisions that amount disbursed under a loan or loans made or guaranteed under this section for a health maintenance organization may not exceed $1,000,000,000 for provisions that principal amount of any loan made or guaranteed under subsec. (a) of this section for a health maintenance organization may not exceed $1,000,000.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 804(b) of Pub. L. 99–660 provided that: ''The amendment made by subsection (a) [amending this section] does not apply to any loan or loan guarantee for the initial costs of operation of a health maintenance organization made under title XIII of the Public Health Service Act [this subchapter] before October 1, 1985.''

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(d) of Pub. L. 95–559 provided that: ''The amendments made by this section [amending this section and section 300e–7 of this title] shall only be effective for fiscal years beginning on or after October 1, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, except that the amendment of subsec. (a)(1), (2) of this section by section 107(c) of Pub. L. 94–460 applicable with respect to grants, contracts, loans, and loan guarantees made under this section and sections 300e–2 and 300e–3 of this title for fiscal years beginning after Sept. 30, 1976, and except that the amendment of subsec. (a)(1), (2) of this section by section 109(a)(1) of Pub. L. 94–460 applicable with respect to loan guarantees made under this section after Sept. 30, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–4a. Repealed. Pub. L. 99–660, title VIII, § 805(a), Nov. 14, 1986, 100 Stat. 3800

Section, act July 1, 1944, ch. 373, title XIII, § 1305A, as added Nov. 1, 1978, Pub. L. 95–559, § 5(a), 92 Stat. 2133; amended July 10, 1979, Pub. L. 96–32, § 2(e), 93 Stat. 82; Aug. 13, 1981, Pub. L. 97–35, title IX, § 944, 95 Stat. 576, related to loans and loan guarantees for acquisition and construction of ambulatory health care facilities.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to any loan or loan guarantee made under this section before Oct. 1, 1985, see section 805(c) of Pub. L. 99–660, set out as an Effective Date of 1986 Amendment note under section 300e–5 of this title.

Repeal effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

§ 300e–5. Application requirements

(a) Submission to and approval by Secretary required for making loans and loan guarantees

No loan or loan guarantee may be made under this subchapter unless an application therefor

has been submitted to, and approved by, the Secretary.

(b) Application contents

The Secretary may not approve an application for a loan or loan guarantee under this subchapter unless—

(1) such application meets the requirements of section 300e–7 of this title;

(2) in the case of an application for assistance under section 300e–4 of this title, he determines that the applicant making the application would not be able to complete the project or undertaking for which the application is submitted without the assistance applied for;

(3) the application contains satisfactory specification of the existing or anticipated (A) population group or groups to be served by the proposed or existing health maintenance organization described in the application, (B) membership of such organization, (C) methods, terms, and periods of the enrollment of members of such organization, (D) estimated costs per member of the health and educational services to be provided by such organization and the nature of such costs, (E) sources of professional services for such organization, and organizational arrangements of such organization for providing health and educational services, (F) organizational arrangements of such organization for an ongoing quality assurance program in conformity with the requirements of section 300e(c) of this title, (G) sources of prepayment and other forms of payment for the services to be provided by such organization, (H) facilities, and additional capital investments and sources of financing therefor, available to such organization to provide the level and scope of services proposed, (I) administrative, managerial, and financial arrangements and capabilities of such organization, (J) role for members in the planning and policymaking for such organization, (K) grievance procedures for members of such organization, and (L) evaluations of the support for and acceptance of such organization by the population to be served, the sources of operating support, and the professional groups to be involved or affected thereby;

(4) contains or is supported by assurances satisfactory to the Secretary that the applicant making the application will, in accordance with such criteria as the Secretary shall by regulation prescribe, enroll, and maintain an enrollment of the maximum number of members that its available and potential resources (as determined under regulations of the Secretary) will enable it to effectively serve;

(5) in the case of an application made for a project which previously received a grant, contract, loan, or loan guarantee under this subchapter, such application contains or is supported by assurances satisfactory to the Secretary that the applicant making the application has the financial capability to adequately carry out the purposes of such project and has developed and operated such project in accordance with the requirements of this subchapter and with the plans contained in previous applications for such assistance;

(6) the application contains such assurances as the Secretary may require respecting the intent and the ability of the applicant to meet the requirements of paragraphs (1) and (2) of section 300e(b) of this title respecting the fixing of basic health services payments and supplemental health services payments under a community rating system; and

(7) the application is submitted in such form and manner, and contains such additional information, as the Secretary shall prescribe in regulations.

An organization making multiple applications for more than one loan or loan guarantee under this subchapter, simultaneously or over the course of time, shall not be required to submit duplicate or redundant information but shall be required to update the specifications (required by paragraph (3)) respecting the existing or proposed health maintenance organization in such manner and with such frequency as the Secretary may by regulation prescribe. In determining, for purposes of paragraph (2), whether an applicant would be able to complete a project or undertaking without the assistance applied for, the Secretary shall not consider any asset of the applicant the obligation of which for such undertaking or project would jeopardize the fiscal soundness of the applicant.

(c) Regulations

The Secretary shall by regulation establish standards and procedures for health systems agencies to follow in reviewing and commenting on applications for loans and loan guarantees under this subchapter.

(July 1, 1944, ch. 373, title XIII, §1306, as added Pub. L. 93–222, §2, Dec. 29, 1973, 87 Stat. 925; amended Pub. L. 94–460, title I, §§105(a)(3), 117(b)(5), (6), Oct. 8, 1976, 90 Stat. 1948, 1955; Pub. L. 95–559, §12(b), (c), Nov. 1, 1978, 92 Stat. 2140; Pub. L. 99–660, title VIII, §§803(b)(1), 805(b), 806, Nov. 14, 1986, 100 Stat. 3799, 3800.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–660, §803(b)(1)(A), substituted ''loan'' for ''grant, contract, loan,''.

Subsec. (b). Pub. L. 99–660, §803(b)(1)(A), substituted ''loan'' for ''grant, contract, loan,'' in introductory text and in second sentence.

Subsec. (b)(1). Pub. L. 99–660, §803(b)(1)(B), struck out ''in the case of an application for assistance under section 300e–2 or 300e–3 of this title, such application meets the application requirements of such section and in the case of an application for a loan or loan guarantee,'' before ''such application''.

Subsec. (b)(2). Pub. L. 99–660, §805(b), struck out reference to section 300e–4a.

Pub. L. 99–660, §803(b)(1)(C), struck out reference to section 300e–3.

Subsec. (b)(5) to (8). Pub. L. 99–660, §806, redesignated pars. (6), (7), and (8) as (5), (6), and (7), respectively, and struck out former par. (5) which read as follows: ''each health systems agency designated for a health service area which covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted;''.

Subsec. (c). Pub. L. 99–660, §803(b)(1)(D), substituted ''loans'' for ''grants, contracts, loans,''.

1978—Subsec. (b). Pub. L. 95–559 in par. (2) inserted ''in the case of an application for assistance under section 300e–3, 300e–4, or 300e–4a of this title,'' before ''he determines'' and in provisions following par. (8) inserted provision that in determining, for purposes of

par. (2), whether an applicant would be able to complete a project or undertaking without the assistance applied for, the Secretary not consider any asset of the applicant the obligation of which for such undertaking or project would jeopardize the fiscal soundness of the applicant.

1976—Subsec. (b)(5). Pub. L. 94–460, § 117(b)(5), substituted ''each health systems agency designated for a health service area which covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted;'' for ''the section 314(b) areawide health planning agency whose section 314(b) plan covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted, or if there is no such agency, the section 314(a) State health planning agency whose section 314(a) plan covers (in whole or in part) such area, has, in accordance with regulations of the Secretary under subsection (c) of this section, been provided an opportunity to review the application and to submit to the Secretary for his consideration its recommendations respecting approval of the application or if under applicable State law such an application may not be submitted without the approval of the section 314(b) areawide health planning agency or the section 314(a) State health planning agency, the required approval has been obtained;''.

Subsec. (b)(7), (8). Pub. L. 94–460, § 105(a)(3), added par. (7) and redesignated former par. (7) as (8).

Subsec. (c). Pub. L. 94–460, § 117(b)(6), substituted ''health systems agencies'' for ''section 314(b) areawide health planning agencies and section 314(a) State health planning agencies''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 803(c) of Pub. L. 99–660 provided that: ''The amendments made by this section [amending this section and sections 300e–6, 300e–8, and 300e–16 of this title and repealing sections 300e–2 and 300e–3 of this title] do not apply to any grant made or contract entered into under title XIII of the Public Health Service Act [this subchapter] before October 1, 1985.''

Section 805(c) of Pub. L. 99–660 provided that: ''The amendments made by this section [amending this section and repealing section 300e–4a of this title] do not apply to any loan or loan guarantee made under section 1305A of the Public Health Service Act [former section 300e–4a of this title] before October 1, 1985.''

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–6. Administration of assistance programs

(a) Recordkeeping; audit and examination

(1) Each recipient of a loan or loan guarantee under this subchapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of the loan (directly made or guaranteed), the total cost of the undertaking in connection with which the loan was given or used, the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary, or any of his duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of a loan or loan guarantee under this subchapter which relate to such assistance.

(b) Report upon expiration of period

Upon expiration of the period for which a loan or loan guarantee was provided an entity under this subchapter, such entity shall make a full and complete report to the Secretary in such manner as he may by regulation prescribe. Each such report shall contain, among such other matters as the Secretary may by regulation require, descriptions of plans, developments, and operations relating to the matters referred to in section 300e–5(b)(3) of this title.

(c) Repealed. Pub. L. 99–660, title VIII, § 803(a), Nov. 14, 1986, 100 Stat. 3799

(d) Other entities considered health maintenance organizations

An entity which provides health services to a defined population on a prepaid basis and which has members who are entitled to insurance benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] or to medical assistance under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.] may be considered as a health maintenance organization for purposes of receiving assistance under this subchapter if—

(1) with respect to its members who are entitled to such insurance benefits or to such medical assistance it (A) provides health services in accordance with section 300e(b) of this title, except that (i) it does not furnish to those members the health services (within the basic health services) for which it may not be compensated under such title XVIII [42 U.S.C. 1395 et seq.] or such State plan, and (ii) it does not fix the basic or supplemental health services payment for such members under a community rating system, and (B) is organized and operated in the manner prescribed by section 300e(c) of this title, except that it does not assume full financial risk on a prospective basis for the provision to such members of basic or supplemental health services with respect to which it is not required under such title XVIII or such State plan to assume such financial risk; and

(2) with respect to its other members it provides health services in accordance with section 300e(b) of this title and is organized and operated in the manner prescribed by section 300e(c) of this title.

An entity which provides health services to a defined population on a prepaid basis and which has members who are enrolled under the health benefits program authorized by chapter 89 of title 5, may be considered as a health maintenance organization for purposes of receiving assistance under this subchapter if with respect to its other members it provides health services in accordance with section 300e(b) of this title and is organized and operated in the manner prescribed by section 300e(c) of this title.

(July 1, 1944, ch. 373, title XIII, § 1307, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 926; amended Pub. L. 94–460, title I, §§ 109(b)(1), 112, Oct. 8, 1976, 90 Stat. 1950, 1953; Pub. L. 97–35, title IX, § 943(d), Aug. 13, 1981, 95 Stat. 576; Pub. L. 99–660, title VIII, § 803(a), (b)(2), Nov. 14, 1986, 100 Stat. 3799, 3800.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–660, § 803(b)(2), substituted ''loan or loan guarantee'' for ''grant, contract, loan, or loan guarantee'', ''proceeds of the loan'' for ''proceeds of the grant, contract, or loan'', and ''with which the loan was given'' for ''with which such assistance was given''.

Subsecs. (a)(2), (b). Pub. L. 99–660, § 803(b)(2)(A), substituted ''loan or loan guarantee'' for ''grant, contract, loan, or loan guarantee''.

Subsec. (c). Pub. L. 99–660, § 803(a), struck out subsec. (c) which read as follows: ''If in any fiscal year the funds appropriated under section 300e–8 of this title are insufficient to fund all applications approved under this subchapter for that fiscal year, the Secretary shall, after applying the applicable priorities under sections 300e–2 and 300e–3 of this title, give priority to the funding of applications for projects which the Secretary determines are the most likely to be economically viable.''

1981—Subsec. (e). Pub. L. 97–35 struck out subsec. (e) which related to limitation on cumulative total of loan guarantees in any fiscal year.

1976—Subsec. (d). Pub. L. 94–460, § 112, inserted sentence at end setting conditions upon which an entity providing health services to a defined population on a prepaid basis may be considered as a health maintenance organization for purposes of receiving assistance under this subchapter.

Subsec. (e). Pub. L. 94–460, § 109(b)(1), inserted ''for a private health maintenance organization (other than a private nonprofit health maintenance organization)'' after ''may be made'', and ''for private health maintenance organizations (other than private nonprofit health maintenance organizations)'' after ''guaranteed''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99–660, set out as a note under section 300e–5 of this title.

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–7. General provisions relating to loan guarantees and loans

(a) Conditions

(1) The Secretary may not approve an application for a loan guarantee under this subchapter unless he determines that (A) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for loans with similar maturities, terms, conditions, and security and the risks assumed by the United States, and (B) the loan would not be available on reasonable terms and conditions without the guarantee under this subchapter.

(2)(A) The United States shall be entitled to recover from the applicant for a loan guarantee under this subchapter the amount of any payment made pursuant to such guarantee, unless the Secretary for good cause waives such right of recovery; and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

(B) To the extent permitted by subparagraph (C), any terms and conditions applicable to a loan guarantee under this subchapter (including terms and conditions imposed under subparagraph (D)) may be modified by the Secretary to the extent he determines it to be consistent with the financial interest of the United States.

(C) Any loan guarantee made by the Secretary under this subchapter shall be incontestable (i) in the hands of an applicant on whose behalf such guarantee is made unless the applicant engaged in fraud or misrepresentation in securing such guarantee, and (ii) as to any person (or his successor in interest) who makes or contracts to make a loan to such applicant in reliance thereon unless such person (or his successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

(D) Guarantees of loans under this subchapter shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this subchapter will be achieved.

(b) Application requirements

(1) The Secretary may not approve an application for a loan under this subchapter unless—

(A) the Secretary is reasonably satisfied that the applicant therefor will be able to make payments of principal and interest thereon when due, and

(B) the applicant provides the Secretary with reasonable assurances that there will be available to it such additional funds as may be necessary to complete the project or undertaking with respect to which such loan is requested.

(2) Any loan made under this subchapter shall (A) have such security, (B) have such maturity date, (C) be repayable in such installments, (D) on the date the loan is made, bear interest at a rate comparable to the rate of interest prevailing on such date with respect to marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges, and (E) be subject to such other terms and conditions (including provisions for recovery in case of default) as the Secretary determines to be necessary to carry out the purposes of this subchapter while adequately protecting the financial interests of the United States. On the date disbursements are made under a loan after the initial disbursement under the loan, the Secretary may change the rate of interest on the amount of the loan dis-

bursed on that date to a rate which is comparable to the rate of interest prevailing on the date the subsequent disbursement is made with respect to marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges.

(3) The Secretary may, for good cause but with due regard to the financial interests of the United States, waive any right of recovery which he has by reason of the failure of a borrower to make payments of principal of and interest on a loan made under this subchapter, except that if such loan is sold and guaranteed, any such waiver shall have no effect upon the Secretary's guarantee of timely payment of principal and interest.

(c) Sale of loans

(1) The Secretary may from time to time, but with due regard to the financial interests of the United States, sell loans made by him under this subchapter.

(2) The Secretary may agree, prior to his sale of any such loan, to guarantee to the purchaser (and any successor in interest of the purchaser) compliance by the borrower with the terms and conditions of such loan. Any such agreement shall contain such terms and conditions as the Secretary considers necessary to protect the financial interests of the United States or as otherwise appropriate. Any such agreement may (A) provide that the Secretary shall act as agent of any such purchaser for the purpose of collecting from the borrower to which such loan was made and paying over to such purchaser, any payments of principal and interest payable by such organization under such loan; and (B) provide for the repurchase by the Secretary of any such loan on such terms and conditions as may be specified in the agreement. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this paragraph.

(3) After any loan under this subchapter to a public health maintenance organization has been sold and guaranteed under this subsection, interest paid on such loan which is received by the purchaser thereof (or his successor in interest) shall be included in the gross income of the purchaser of the loan (or his successor in interest) for the purpose of chapter 1 of title 26.

(4) Amounts received by the Secretary as proceeds from the sale of loans under this subsection shall be deposited in the loan fund established under subsection (e) of this section.

(5) Any reference in this subchapter (other than in this subsection and in subsection (d) of this section) to a loan guarantee under this subchapter does not include a loan guarantee made under this subsection.

(d) Loan guarantee fund

(1) There is established in the Treasury a loan guarantee fund (hereinafter in this subsection referred to as the ''fund'') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, to enable him to discharge his responsibilities under loan guarantees issued by him under this subchapter and to take the action authorized by subsection (f) of this section. There are authorized to be appropriated from time to time such amounts as may be necessary to provide the sums required for the fund. To the extent authorized in appropriation Acts, there shall also be deposited in the fund amounts received by the Secretary in connection with loan guarantees under this subchapter and other property or assets derived by him from his operations respecting such loan guarantees, including any money derived from the sale of assets.

(2) If at any time the sums in the funds are insufficient to enable the Secretary to discharge his responsibilities under guarantees issued by him before October 1, 1986, under this subchapter and to take the action authorized by subsection (f) of this section, he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued under this paragraph and for that purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which the securities may be issued under that chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this paragraph shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from the fund.

(e) Loan fund

There is established in the Treasury a loan fund (hereinafter in this subsection referred to as the ''fund'') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, to enable him to make loans under this subchapter and to take the action authorized by subsection (f) of this section. There shall also be deposited in the fund amounts received by the Secretary as interest payments and repayment of principal on loans made under this subchapter and other property or assets derived by him from his operations respecting such loans, from the sale of loans under subsection (c) of this section, or from the sale of assets.

(f) Actions to protect interest of United States in event of default

The Secretary may take such action as he deems appropriate to protect the interest of the United States in the event of a default on a loan

made or guaranteed under this subchapter, including taking possession of, holding, and using real property pledged as security for such a loan or loan guarantee.

(July 1, 1944, ch. 373, title XIII, § 1308, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 927; amended Pub. L. 94–460, title I, § 109(b)(2), (c), Oct. 8, 1976, 90 Stat. 1950; Pub. L. 95–559, § 4(c), Nov. 1, 1978, 92 Stat. 2132; Pub. L. 97–35, title IX, § 945, Aug. 13, 1981, 95 Stat. 577; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–660, title VIII, § 807, Nov. 14, 1986, 100 Stat. 3800.)

CODIFICATION

In subsec. (d)(2), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act'' and ''that Act'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Subsec. (c)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (d)(2). Pub. L. 99–660 inserted ''before October 1, 1986,'' after ''guarantees issued by him''.

1981—Subsec. (b)(2). Pub. L. 97–35 inserted provisions relating to changes in the rate of interest by the Secretary, and in cl. (D) made changes in nomenclature.

1978—Subsec. (d). Pub. L. 95–559, § 4(c)(2)(A), in pars. (1) and (2) inserted ''and to take the action authorized by subsection (f) of this section'' after ''by him under this subchapter''.

Subsec. (e). Pub. L. 95–559, § 4(c)(2)(B), inserted ''and to take the action authorized by subsection (f) of this section'' after ''loans under this subchapter''.

Subsec. (f). Pub. L. 95–559, § 4(c)(1), added subsec. (f).

1976—Subsec. (a)(1)(A). Pub. L. 94–460, § 109(c)(1), substituted ''for loans with similar maturities, terms, conditions, and security'' for ''for similar loans''.

Subsec. (b)(2)(D). Pub. L. 94–460, § 109(c)(2), substituted ''marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges'' for ''loans guaranteed under this subchapter''.

Subsec. (c)(5). Pub. L. 94–460, § 109(b)(2), added par. (5).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–559 effective only for fiscal years beginning on or after October 1, 1978, see section 4(d) of Pub. L. 95–559, set out as a note under section 300e–4 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, except that the amendment by section 109(c) of Pub. L. 94–460 applicable with respect to loan guarantees made under section 300e–4 of this title after Sept. 30, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–8. Authorization of appropriations

(a) For grants under section 300e–16 of this title there is authorized to be appropriated $1,000,000 for each of the fiscal years 1982, 1983, and 1984.

(b) To meet the obligations of the loan fund established under section 300e–7(e) of this title resulting from defaults on loans made from the fund and to meet the other obligations of the fund, there is authorized to be appropriated to the loan fund for fiscal years 1987, 1988, and 1989, such sums as may be necessary.

(July 1, 1944, ch. 373, title XIII, § 1309, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 930; amended Pub. L. 94–460, title I, § 113(c), Oct. 8, 1976, 90 Stat. 1954; Pub. L. 95–83, title I, § 105(b), Aug. 1, 1977, 91 Stat. 384; Pub. L. 95–559, §§ 2(c), 7(b), Nov. 1, 1978, 92 Stat. 2131, 2135; Pub. L. 97–35, title IX, § 941(a), (b), Aug. 13, 1981, 95 Stat. 572; Pub. L. 99–660, title VIII, §§ 803(b)(3), 811, Nov. 14, 1986, 100 Stat. 3800, 3801.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–660, § 803(b)(3), struck out par. (2) designation and struck out par. (1) which read as follows: ''For grants and contracts under sections 300e–2 and 300e–3 of this title there is authorized to be appropriated $20,000,000 for the fiscal years 1982, 1983, and 1984. No funds appropriated under this paragraph may be expended or obligated for a grant or contract unless the entity received a grant or contract under section 242a or 242b of this title during or before the fiscal year 1981.''

Subsec. (b). Pub. L. 99–660, § 811, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''To maintain in the loan fund established under section 300e–7(e) of this title for the purpose of making new loans a balance of at least $5,000,000 at the end of each fiscal year and to meet the obligations of the loan fund resulting from defaults on loans made from the fund and to meet the other obligations of the fund, there is authorized to be appropriated to the loan fund for fiscal years 1982, 1983, and 1984, such sums as may be necessary to assure such balance and meet such obligations.''

1981—Subsec. (a). Pub. L. 97–35, § 941(a), substituted provisions authorizing appropriations for fiscal years 1982, 1983, and 1984, and provisions respecting prior receipt of funds, for provisions authorizing appropriations for fiscal years ending June 30, 1974, 1975, and 1976, and Sept. 30, 1977, 1978, 1979, 1980, and 1981.

Subsec. (b). Pub. L. 97–35, § 941(b), substituted provisions relating to maintenance of the loan fund for fiscal years 1982, 1983, and 1984, for provisions relating to maintenance of the loan fund for fiscal years ending June 30, 1974, and 1975.

1978—Subsec. (a). Pub. L. 95–559 substituted ''300e–3(b) and 300e–16 of this title'' for ''and 300e–3(b) of this title'' and '', $31,000,000 for the fiscal year ending September 30, 1979, $65,000,000 for the fiscal year ending September 30, 1980, and $68,000,000 for the fiscal year ending September 30, 1981'' for ''; and for the purpose of making payments under grants and contracts under section 300e–3(b) of this title for the fiscal year ending September 30, 1979, there is authorized to be appropriated $50,000,000''.

1977—Subsec. (a). Pub. L. 95–83 substituted, where appearing the second time, ''September 30, 1979'' for ''September 30, 1977''.

1976—Subsec. (a). Pub. L. 94–460 substituted ''$40,000,000 for the fiscal year ending June 30, 1976, $45,000,000 for the fiscal year ending September 30, 1977, and $45,000,000 for the fiscal year ending September 30, 1978;'' for ''and $85,000,000 for the fiscal year ending June 30, 1976;'' and ''for the fiscal year ending September 30, 1977, there is authorized to be appropriated $50,000,000'' for ''for the fiscal year ending June 30, 1977, there is authorized to be appropriated $85,000,000''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 803(b)(3) of Pub. L. 99–660 not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99–660, set out as a note under section 300e–5 of this title.

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 7(b) of Pub. L. 95–559 effective only for fiscal years beginning on or after Oct. 1, 1978, see section 7(c) of Pub. L. 95–559, set out as an Effective Date note under section 300e–16 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–9. Employees' health benefits plans

(a) Regulations; membership option

In accordance with regulations which the Secretary shall prescribe—

(1) each employer—

(A) which is required during any calendar quarter to pay its employees the minimum wage prescribed by section 206 of title 29 (or would be required to pay its employees such wage but for section 213(a) of title 29), and

(B) which during such calendar quarter employed an average number of employees of not less than 25, and

(2) any State and each political subdivision thereof which during any calendar quarter employed an average number of employees of not less than 25, as a condition of payment to the State of funds under section 247b, 247c, or 300a of this title,

which offers to its employees in the calendar year beginning after such calendar quarter the option of membership in a qualified health maintenance organization which is engaged in the provision of basic health services in a health maintenance organization service area in which at least 25 of such employees reside shall meet the requirements of subsection (b) of this section with respect to any qualified health maintenance organization offered by the employer or State or political subdivision.

(b) Nondiscriminatory contributions for services; payroll deductions; effect on costs

(1) If a health benefits plan offered by an employer or a State or political subdivision includes contributions for services offered under the plan, the employer or State or political subdivision shall make a contribution under the plan for services offered by a qualified health maintenance organization in an amount which does not financially discriminate against an employee who enrolls in such organization. For purposes of the preceding sentence, an employer's or a State's or political subdivision's contribution does not financially discriminate if the employer's or State's or political subdivision's method of determining the contributions on behalf of all employees is reasonable and is designed to assure employees a fair choice among health benefits plans.

(2) Each employer or State or political subdivision which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required shall, with the consent of an employee who exercises option of membership in a qualified health maintenance organization, arrange for the employee's contribution for membership in the organization to be paid through payroll deductions.

(3) No employer or State or political subdivision shall be required to pay more for health benefits as a result of the application of this subsection than would otherwise be required by any prevailing collective bargaining agreement or other legally enforceable contract for the provision of health benefits between the employer or State or political subdivision and its employees.

(c) "Qualified health maintenance organization" defined

For purposes of this section, the term ''qualified health maintenance organization'' means (1) a health maintenance organization which has provided assurances satisfactory to the Secretary that it provides basic and supplemental health services to its members in the manner prescribed by section 300e(b) of this title and that it is organized and operated in the manner prescribed by section 300e(c) of this title, and (2) an entity which proposes to become a health maintenance organization and which the Secretary determines will when it becomes operational provide basic and supplemental health services to its members in the manner prescribed by section 300e(b) of this title and will be organized and operated in the manner prescribed by section 300e(c) of this title.

(d) Civil penalty; notice and presentation of views; review

(1) Any employer who knowingly does not comply with one or more of the requirements of paragraph (1) or (2) of subsection (b) of this section shall be subject to a civil penalty of not more than $10,000. If such noncompliance continues, a civil penalty may be assessed and collected under this subsection for each thirty-day period such noncompliance continues. Such penalty may be assessed by the Secretary and collected in a civil action brought by the United States in a United States district court.

(2) In any proceeding by the Secretary to assess a civil penalty under this subsection, no penalty shall be assessed until the employer charged shall have been given notice and an opportunity to present its views on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the Secretary shall consider the gravity of the noncompliance and the demonstrated good faith of the employer charged in attempting to achieve rapid compliance after notification by the Secretary of a noncompliance.

(3) In any civil action brought to review the assessment of a civil penalty assessed under this subsection, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty and in any civil action to collect such a civil penalty, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty unless in a prior civil action to review the assessment of such penalty the court held a trial de novo on such assessment.

(e) "Employer" defined

For purposes of this section, the term ''employer'' does not include (1) the Government of the United States, the government of the District of Columbia or any territory or possession of the United States, a State or any political subdivision thereof, or any agency or instrumentality (including the United States Postal Service and Postal Rate Commission) of any of the foregoing, except that such term includes nonappropriated fund instrumentalities of the Government of the United States; or (2) a church, convention or association of churches, or any organization operated, supervised or controlled by a church, convention or association of churches which organization (A) is an organization described in section 501(c)(3) of title 26, and (B) does not discriminate (i) in the employment, compensation, promotion, or termination of employment of any personnel, or (ii) in the extension of staff or other privileges to any physician or other health personnel, because such persons seek to obtain or obtained health care, or participate in providing health care, through a health maintenance organization.

(f) Termination of payment for failure to comply

If the Secretary, after reasonable notice and opportunity for a hearing to a State, finds that it or any of its political subdivisions has failed to comply with paragraph (1) or (2) of subsection (b) of this section, the Secretary shall terminate payments to such State under sections 247b, 247c, and 300a of this title and notify the Governor of such State that further payments under such sections will not be made to the State until the Secretary is satisfied that there will no longer be any such failure to comply.

(July 1, 1944, ch. 373, title XIII, §1310, as added Pub. L. 93–222, §2, Dec. 29, 1973, 87 Stat. 930; amended Pub. L. 94–460, title I, §110(a), Oct. 8, 1976, 90 Stat. 1950; Pub. L. 95–559, §§8, 12(a)(1), Nov. 1, 1978, 92 Stat. 2135, 2140; Pub. L. 96–32, §2(f), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title IX, §§942(a)(3), (4), 946, Aug. 13, 1981, 95 Stat. 573, 577; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–660, title VIII, §808, Nov. 14, 1986, 100 Stat. 3801; Pub. L. 100–517, §§4(b), 7(a)(1), (2), (b), Oct. 24, 1988, 102 Stat. 2578, 2580.)

AMENDMENTS

1988—Pub. L. 100–517, §7(b), amended section generally, substituting subsecs. (a) to (f) for former subsecs. (a) to (g).

Subsec. (b). Pub. L. 100–517, §§4(b), 7(a)(1)(A), in introductory provisions, substituted ''or a State or political subdivision'' for ''subject to subsection (a) of this section'', in par. (1), inserted ''and provides at least 90 percent of such services through physicians described in section 300e(b)(3)(A) of this title'', in par. (2), inserted ''and provides no more than 10 percent of such services through physicians who are not described in section 300e(b)(3)(A) of this title'', and in concluding provisions, substituted ''employer or State or political subdivision pursuant'' for ''employer pursuant''.

Subsec. (c). Pub. L. 100–517, §7(a)(1)(B), (2), substituted ''No employer or State or political subdivision'' for ''No employer'', ''between the employer or State or political subdivision'' for ''between the employer'', and ''Each employer or State or political subdivision'' for ''Each employer'', and inserted at end ''If a health benefits plan offered by an employer or a State or political subdivision under subsection (a) of this section includes contributions for services offered under the plan, the employer or State or political subdivision shall make a contribution under the plan for services offered by a qualified health maintenance organization in an amount which does not financially discriminate against an employee who enrolls in such organization. For purposes of the preceding sentence, an employer's or a State's or political subdivision's contribution does not financially discriminate if the employer's or State's or political subdivision's method of determining the contributions on behalf of all employees is reasonable and is designed to assure employees a fair choice among health benefits plans.''

1986—Subsec. (d). Pub. L. 99–660 struck out last sentence which read as follows: ''Every two years (or such longer period as the Secretary may by regulation prescribe) after the date a health maintenance organization becomes a qualified health maintenance organization under this subsection, the health maintenance organization must demonstrate to the Secretary that it is qualified within the meaning of this subsection.''

Subsec. (f). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1981—Subsec. (b)(1). Pub. L. 97–35, §942(a)(3)(A), substituted provisions respecting provision of more than one-half of the basic services provided by physicians, for provisions respecting provision of basic services.

Subsec. (b)(2). Pub. L. 97–35, §942(a)(3)(B), (4), inserted reference to provision by physicians, added cl. (B), and redesignated former cl. (B) as (C).

Subsec. (d). Pub. L. 97–35, §946(a), inserted provisions relating to demonstration of continued qualification of organization.

Subsec. (f)(1). Pub. L. 97–35, §946(b), inserted reference to United States nonappropriated fund instrumentalities.

1979—Subsec. (e)(1). Pub. L. 96–32 substituted ''subsection (a), (b), or (c)'' for ''subsection (a)''.

1978—Subsec. (b). Pub. L. 95–559, §8(b), substituted in par. (1) ''through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups)'' for ''(A) without the use of an individual practice association and (B) without the use of contracts (except for contracts for unusual or infrequently used services) with health professionals'' and in par. (2) ''(B) a combination of such association (or associations), medical group (or groups), staff, and individual physicians and other health professionals under contract with the organization'' for ''(B) health professionals who have contracted with the health maintenance organization for the provision of such services, or (C) a combination of such association (or associations) or health professionals under contract with the organization''.

Subsec. (c). Pub. L. 95–559, §8(a), inserted provision that each employer which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required and which is required by subsection (a) of this section to offer his employees the option of membership in a qualified health maintenance organization shall, with the consent of an employee who exercises such option, arrange for the employee's contribution for such membership to be paid through payroll deductions.

Subsec. (h). Pub. L. 95–559, §12(a)(1), struck out subsec. (h) which provided that the duties and functions of the Secretary, insofar as they involve determinations as to whether an organization is a qualified health maintenance organization within the meaning of subsection (d) of this section, be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions be integrated with the administration of section 300e–11(a) of this title.

1976—Subsec. (a). Pub. L. 94–460, §110(a)(1), substituted reference to each employer which is now or hereafter required for reference to each employer which

is required, reference to basic health services in health maintenance organization service areas in which at least 25 of such employees reside for reference to basic and supplemental health services in the areas in which such employees reside, and inserted provisions requiring certain States and political subdivisions thereof to include in any health benefits plan the option of membership in qualified health maintenance organizations as a condition of payment to the State of funds under section 246(d), 247b, 247c, 300a, 300m–4, or 300p–3 of this title, and that the offer of membership in such an organization be first made to the employees' representative, if any, and then be made to each employee if the offer is accepted by the representative.

Subsec. (b)(1). Pub. L. 94–460, §110(a)(2), substituted ''(A) without the use of an individual practice association and (B) without the use of contracts (except for contracts for unusual or infrequently used services) with health professionals'' for ''through professionals who are members of the staff of the organization or a medical group (or groups)''.

Subsec. (b)(2). Pub. L. 94–460, §110(a)(2), substituted ''basic health services through (A) an individual practice association (or associations), (B) health professionals who have contracted with the health maintenance organization for the provision of such services, or (C) a combination of such association (or associations) or health professionals under contract with the organization'' for ''such services through an individual practice association (or associations)''.

Subsec. (c). Pub. L. 94–460, §110(a)(3), struck out provision that failure of any employer to comply with the requirements of subsection (a) of this section be considered a willful violation of section 215 of title 29.

Subsecs. (e) to (h). Pub. L. 94–460, §110(a)(4), added subsecs. (e) to (h).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7(b) of Pub. L. 100–517 provided that the amendment made by section 7(b) is effective 7 years after Oct. 24, 1988.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 942(a)(5) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (3)(A) [amending this section] shall apply with respect to the offering of a health maintenance organization in accordance with section 1310(b)(1) of the Public Health Service Act [subsec. (b)(1) of this section] after four years after the date the organization becomes a qualified health maintenance organization for purposes of section 1310 of such Act [this section] if the health maintenance organization provides assurances satisfactory to the Secretary that upon the expiration of such four years it will provide more than one half of its basic health services which are provided by physicians through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups).''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 110(a)(1), (2) of Pub. L. 94–460 applicable with respect to calendar quarters which began after Oct. 8, 1976, and amendment by section 110(a)(3), (4) of Pub. L. 94–460 applicable with respect to failures of employers to comply with section 300e–9 of this title after Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

COLLECTIVE BARGAINING AGREEMENTS IN EFFECT ON OCTOBER 24, 1988, UNAFFECTED

Section 7(a)(3) of Pub. L. 100–517 provided that: ''Nothing in section 1310 of the Public Health Service Act (42 U.S.C. 300e–9), as amended by this Act, shall be construed to supersede any provision of a collective bargaining agreement in effect on the date of enactment of this Act [Oct. 24, 1988].''

§ 300e–10. Restrictive State laws and practices

(a) Entities operating as health maintenance organizations

In the case of any entity—

(1) which cannot do business as a health maintenance organization in a State in which it proposes to furnish basic and supplemental health services because that State by law, regulation, or otherwise—

(A) requires as a condition to doing business in that State that a medical society approve the furnishing of services by the entity,

(B) requires that physicians constitute all or a percentage of its governing body,

(C) requires that all physicians or a percentage of physicians in the locale participate or be permitted to participate in the provision of services for the entity,

(D) requires that the entity meet requirements for insurers of health care services doing business in that State respecting initial capitalization and establishment of financial reserves against insolvency, or

(E) imposes requirements which would prohibit the entity from complying with the requirements of this subchapter, and

(2) for which a grant, contract, loan, or loan guarantee was made under this subchapter or which is a qualified health maintenance organization for purposes of section 300e–9 of this title (relating to employees' health benefits plans),

such requirements shall not apply to that entity so as to prevent it from operating as a health maintenance organization in accordance with section 300e of this title.

(b) Advertising

No State may establish or enforce any law which prevents a health maintenance organization for which a grant, contract, loan, or loan guarantee was made under this subchapter or which is a qualified health maintenance organization for purposes of section 300e–9 of this title (relating to employees' health benefits plans), from soliciting members through advertising its services, charges, or other nonprofessional aspects of its operation. This subsection does not authorize any advertising which identifies, refers to, or makes any qualitative judgement concerning, any health professional who provides services for a health maintenance organization.

(c) Digest of State laws, regulations, and practices; legal consultative assistance

The Secretary shall, within 6 months after October 8, 1976, develop a digest of State laws, regulations, and practices pertaining to development, establishment, and operation of health maintenance organizations which shall be updated at least annually and relevant sections of which shall be provided to the Governor of each State annually. Such digest shall indicate which State laws, regulations, and practices appear to

be inconsistent with the operation of this section. The Secretary shall also insure that appropriate legal consultative assistance is available to the States for the purpose of complying with the provisions of this section.

(July 1, 1944, ch. 373, title XIII, § 1311, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 931; amended Pub. L. 94–460, title I, § 114, Oct. 8, 1976, 90 Stat. 1954; Pub. L. 99–660, title VIII, § 809, Nov. 14, 1986, 100 Stat. 3801; Pub. L. 100–517, § 8, Oct. 24, 1988, 102 Stat. 2583.)

PRIOR PROVISIONS

A prior section 1311 of act July 1, 1944, was classified to section 211a of this title prior to repeal by Pub. L. 93–222, § 7(b).

AMENDMENTS

1988—Subsec. (a)(1)(E). Pub. L. 100–517 added subpar. (E).

1986—Subsec. (c). Pub. L. 99–660 substituted ''annually'' for ''quarterly'' after ''at least''.

1976—Subsec. (c). Pub. L. 94–460 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–11. Continued regulation of health maintenance organizations

(a) Determination of deficiency

If the Secretary determines that an entity which received a grant, contract, loan, or loan guarantee under this subchapter as a health maintenance organization or which was included in a health benefits plan offered to employees pursuant to section 300e–9 of this title—

(1) fails to provide basic and supplemental services to its members,

(2) fails to provide such services in the manner prescribed by section 300e(b) of this title, or

(3) is not organized or operated in the manner prescribed by section 300e(c) of this title,

the Secretary may take the action authorized by subsection (b) of this section.

(b) Action by Secretary upon determination

(1) If the Secretary makes, with respect to any entity which provided assurances to the Secretary under section 300e–9(d)(1)[1] of this title, a determination described in subsection (a) of this section, the Secretary shall notify the entity in writing of the determination. Such notice shall specify the manner in which the entity has not complied with such assurances and direct that the entity initiate (within 30 days of the date the notice is issued by the Secretary or within such longer period as the Secretary determines is reasonable) such action as may be necessary to bring (within such period as the Secretary shall prescribe) the entity into compliance with the assurances. If the entity fails to initiate corrective action within the period prescribed by the notice or fails to comply with the assurances within such period as the Secretary prescribes, then after the Secretary provides the entity a reasonable opportunity for reconsideration of his determination, including, at the entity's election, a fair hearing (A) the entity shall not be a qualified health maintenance organization for purposes of section 300e–9 of this title until such date as the Secretary determines that it is in compliance with the assurances, and (B) each employer which has offered membership in the entity in compliance with section 300e–9 of this title, each lawfully recognized collective bargaining representative or other employee representative which represents the employees of each such employer, and the members of such entity shall be notified by the entity that the entity is not a qualified health maintenance organization for purposes of such section. The notice required by clause (B) of the preceding sentence shall contain, in readily understandable language, the reasons for the determination that the entity is not a qualified health maintenance organization. The Secretary shall publish in the Federal Register each determination referred to in this paragraph.

(2) If the Secretary makes, with respect to an entity which has received a grant, contract, loan, or loan guarantee under this subchapter, a determination described in subsection (a) of this section, the Secretary may, in addition to any other remedies available to him, bring a civil action in the United States district court for the district in which such entity is located to enforce its compliance with the assurances it furnished respecting the provision of basic and supplemental health services or its organization or operation, as the case may be, which assurances were made in connection with its application under this subchapter for the grant, contract, loan, or loan guarantee.

(July 1, 1944, ch. 373, title XIII, § 1312, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 931; amended Pub. L. 94–460, title I, § 111, Oct. 8, 1976, 90 Stat. 1952; Pub. L. 95–559, § 12(a)(2), Nov. 1, 1978, 92 Stat. 2140; Pub. L. 97–35, title IX, § 949(a), Aug. 13, 1981, 95 Stat. 578.)

REFERENCES IN TEXT

Section 300e–9(d)(1) of this title, referred to in subsec. (b)(1), was redesignated section 300e–9(c)(1) of this title by Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

PRIOR PROVISIONS

A prior section 1312 of act July 1, 1944, was classified to section 212a of this title prior to repeal by Pub. L. 93–222, § 7(b).

AMENDMENTS

1981—Subsec. (b)(1). Pub. L. 97–35 inserted provisions relating to opportunity for reconsideration of determination of Secretary.

1978—Subsec. (c). Pub. L. 95–559 struck out subsec. (c) which provided that the Secretary, acting through the Assistant Secretary for Health, administer subsections (a) and (b) of this section in the Office of the Assistant Secretary for Health.

1976—Subsec. (a). Pub. L. 94–460, § 111(a), substituted ''the Secretary may take the action authorized by subsection (b) of this section'' for ''the Secretary may, in

[1] See References in Text note below.

addition to any other remedies available to him, bring a civil action in the United States district court for the district in which such entity is located to enforce its compliance with any assurances it furnished him respecting the provision of basic and supplemental health services or its organization or operation, as the case may be, which assurances were made under section 300e–9 of this title or when application was made under this subchapter for a grant, contract, loan, or loan guarantee''.

Subsecs. (b), (c). Pub. L. 94–460, § 111(b), (c), added subsec. (b), redesignated former subsec. (b) as (c), and substituted ''acting through the Assistant Secretary for Health, shall administer subsections (a) and (b) of this section'' for ''through the Assistant Secretary for Health, shall administer subsection (a) of this section''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 applicable with respect to determinations of the Secretary of Health, Education, and Welfare described in subsec. (a) of this section and made after Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–12. Limitation on source of funding for health maintenance organizations

No funds appropriated under any provision of this chapter (except as provided in sections 254b[1] and 254b of this title) other than this subchapter may be used—

(1) for grants or contracts for surveys or other activities to determine the feasibility of developing or expanding health maintenance organizations or other entities which provide, directly or indirectly, health services to a defined population on a prepaid basis;

(2) for grants or contracts, or for payments under loan guarantees, for planning projects for the establishment or expansion of such organizations or entities;

(3) for grants or contracts, or for payments under loan guarantees, for projects for the initial development or expansion of such organizations or entities; or

(4) for loans, or for payments under loan guarantees, to assist in meeting the costs of the initial operation after establishment or expansion of such organizations or entities or in meeting the costs of such organizations in acquiring or constructing ambulatory health care facilities.

(July 1, 1944, ch. 373, title XIII, § 1313, as added Pub. L. 93–222, § 2, Dec. 29, 1973, 87 Stat. 932; amended Pub. L. 95–559, § 5(b), Nov. 1, 1978, 92 Stat. 2133; Pub. L. 95–626, title I, § 107, Nov. 10, 1978, 92 Stat. 3562; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664; Pub. L. 108–163, § 2(m)(2), Dec. 6, 2003, 117 Stat. 2023.)

REFERENCES IN TEXT

The reference to section 254b of this title the first place appearing in text was in the original a reference to section 329, meaning section 329 of act July 1, 1944, which was omitted in the general amendment of subpart I (§ 254b et seq.) of part D of this subchapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626.

AMENDMENTS

2003—Pub. L. 108–163 substituted ''254b and 254b'' for ''254b, 254c, and 254b(h)'' in introductory provisions.

2002—Pub. L. 107–251 substituted ''254b(h)'' for ''256'' in introductory provisions.

1978—Pub. L. 95–626 inserted ''(except as provided in sections 254b, 254c, and 256 of this title)'' after ''under any provision of this chapter'' in provisions preceding par. (1).

Par. (4). Pub. L. 95–559 inserted ''or in meeting the costs of such organizations in acquiring or constructing ambulatory health care facilities'' after ''or entities''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

§ 300e–13. Repealed. Pub. L. 97–35, title IX, § 949(b), Aug. 13, 1981, 95 Stat. 578

Section, acts July 1, 1944, ch. 373, title XIII, § 1314, as added Dec. 29, 1973, Pub. L. 93–222, § 2, 87 Stat. 932; amended Oct. 8, 1976, Pub. L. 94–460, title I, § 115, 90 Stat. 1954; Nov. 1, 1978, Pub. L. 95–559, § 13, 92 Stat. 2140, required the Comptroller General to: (a) evaluate the operations, particularly, specified aspects of the operations, of at least ten or one-half, whichever is greater, of the health maintenance organizations for which assistance was provided under sections 300e–2, 300e–3, and 300e–4 of this title, and which, by Dec. 31, 1976, were designated by the Secretary under section 300e–9(d) of this title as qualified health maintenance organizations, to Congress by June 30, 1978; (b) conduct a study of the economic effects on employers resulting from their compliance with the requirements of section 300e–9 of this title and report to Congress not later than 36 months after Dec. 29, 1973; (c) evaluate the operations of health maintenance organizations in comparison with others in distinct categories, in comparison with alternative forms of health care delivery, and their impact on the health of the public and report to Congress not later than 36 months after Dec. 29, 1973; and (d) evaluate the adequacy and effectiveness of the policies and procedures of the Secretary for the management of the grant and loan programs established by this subchapter and the adequacy of the amounts of assistance available under these programs and report to Congress not later than May 1, 1979.

§ 300e–14. Annual report

(a) The Secretary shall periodically review the programs of assistance authorized by this subchapter and make an annual report to the Congress of a summary of the activities under each program. The Secretary shall include in such summary—

(1) a summary of each grant, contract, loan, or loan guarantee made under this subchapter in the period covered by the report and a list of the health maintenance organizations which during such period became qualified health maintenance organizations for purposes of section 300e–9 of this title;

(2) the statistics and other information reported in such period to the Secretary in accordance with section 300e(c)(11)[1] of this title;

(3) findings with respect to the ability of the health maintenance organizations assisted under this subchapter—

(A) to operate on a fiscally sound basis without continued Federal financial assistance,

(B) to meet the requirements of section 300e(c) of this title respecting their organization and operation,

[1] See References in Text notes below.

[1] See References in Text note below.

(C) to provide basic and supplemental health services in the manner prescribed by section 300e(b) of this title,

(D) to include indigent and high-risk individuals in their membership, and

(E) to provide services to medically underserved populations; and

(4) findings with respect to—

(A) the operation of distinct categories of health maintenance organizations in comparison with each other,

(B) health maintenance organizations as a group in comparison with alternative forms of health care delivery, and

(C) the impact that health maintenance organizations, individually, by category, and as a group, have on the health of the public.

(b) The Office of Management and Budget may review the Secretary's report under subsection (a) of this section before its submission to the Congress, but the Office may not revise the report or delay its submission, and it may submit to the Congress its comments (and those of other departments or agencies of the Government) respecting such report.

(July 1, 1944, ch. 373, title XIII, §1315, as added Pub. L. 93–222, §2, Dec. 29, 1973, 87 Stat. 933.)

REFERENCES IN TEXT

Section 300e(c)(11) of this title, referred to in subsec. (a)(2), was redesignated section 300e(c)(9) of this title by Pub. L. 97–35, title IX, §942(d)(1), Aug. 13, 1981, 95 Stat. 574, and redesignated section 300e(c)(8) of this title by Pub. L. 100–517, §5(b), Oct. 24, 1988, 102 Stat. 2579.

§ 300e–14a. Health services for Indians and domestic agricultural migratory and seasonal workers

The Secretary of Health and Human Services, in connection with existing authority (except section 254b[1] of this title) for the provisions of health services to domestic agricultural migratory workers, to persons who perform seasonal agricultural services similar to the services performed by such workers, and to the families of such workers and persons, is authorized to arrange for the provision of health services to such workers and persons and their families through health maintenance organizations. In carrying out this section the Secretary may only use sums appropriated after December 29, 1973.

(Pub. L. 93–222, §6(b), Dec. 29, 1973, 87 Stat. 936; Pub. L. 95–626, title I, §102(b)(2), Nov. 10, 1978, 92 Stat. 3551; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Section 254b of this title, referred to in text, was in the original a reference to section 329 of the Public Health Service Act, act July 1, 1944, which was omitted in the general amendment of subpart I (§254b et seq.) of part D of subchapter II of this chapter by Pub. L. 104–299, §2, Oct. 11, 1996, 110 Stat. 3626. Section 2 of Pub. L. 104–299 enacted a new section 330 of act July 1, 1944, which is classified to section 254b of this title.

CODIFICATION

Section was enacted as part of the Health Maintenance Organization Act of 1973, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1978—Pub. L. 95–626 substituted ''section 254b'' for ''section 247d''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in text, pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

[1] See References in Text note below.

§ 300e–15. Repealed. Pub. L. 97–35, title IX, § 949(b), Aug. 13, 1981, 95 Stat. 578

Section, act July 1, 1944, ch. 373, title XIII, §1316, as added Oct. 8, 1976, Pub. L. 94–460, title I, §116, 90 Stat. 1954, related to administration of programs.

§ 300e–16. Training and technical assistance

(a) National Health Maintenance Organization Intern Program

(1) The Secretary shall establish a National Health Maintenance Organization Intern Program (hereinafter in this subsection referred to as the ''Program'') for the purpose of providing training to individuals to become administrators and medical directors of health maintenance organizations or to assume other managerial positions with health maintenance organizations. Under the Program the Secretary may directly provide internships for such training and may make grants to or enter into contracts with health maintenance organizations and other entities to provide such internships.

(2) No internship may be provided by the Secretary and no grant may be made or contract entered into by the Secretary for the provision of internships unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be in such form and contain such information, and be submitted to the Secretary in such manner, as the Secretary shall prescribe. Section 300e–5 of this title does not apply to an application submitted under this section.

(3) Internships under the Program shall provide for such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the recipients of the internships as the Secretary deems necessary. An internship provided an individual for training at a health maintenance organization or any other entity shall also provide for payments to be made to the organization or other entity for the cost of support services (including the cost of salaries, supplies, equipment, and related items) provided such individual by such organization or other entity. The amount of any such payments to any organization or other entity shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the organization or other entity for establishing and maintaining its training programs.

(4) Payments under grants under the Program may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary.

(b) Technical assistance

The Secretary shall provide technical assistance (1) to entities intending to become a quali-

fied health maintenance organization within the meaning of section 300e–9(d)[1] of this title, and (2) to health maintenance organizations. The Secretary may provide such technical assistance through grants to public and nonprofit private entities and contracts with public and private entities.

(c) Amounts provided in advance in appropriation acts

The authority of the Secretary to enter into contracts under subsections (a) and (b) of this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(July 1, 1944, ch. 373, title XIII, § 1317, as added Pub. L. 95–559, § 7(a), Nov. 1, 1978, 92 Stat. 2134; amended Pub. L. 99–660, title VIII, § 803(b)(4), Nov. 14, 1986, 100 Stat. 3800.)

REFERENCES IN TEXT

Section 300e–9(d) of this title, referred to in subsec. (b), was redesignated section 300e–9(c) of this title by Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–660 redesignated cls. (2) and (3) as (1) and (2), respectively, and struck out former cl. (1) which read as follows: ''to entities in connection with projects for which assistance is being provided under section 300e–2 or 300e–3 of this title,''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99–660, set out as a note under section 300e–5 of this title.

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE

Section 7(c) of Pub. L. 95–559 provided that: ''The amendments made by this section [enacting this section and amending section 300e–8 of this title] shall only be effective for fiscal years beginning on or after October 1, 1978.''

§ 300e–17. Financial disclosure

(a) Financial information reported to Secretary

Each health maintenance organization shall, in accordance with regulations of the Secretary, report to the Secretary financial information which shall include the following:

(1) Such information as the Secretary may require demonstrating that the health maintenance organization has a fiscally sound operation.

(2) A copy of the report, if any, filed with the Centers for Medicare & Medicaid Services containing the information required to be reported under section 1320a–3 of this title by disclosing entities and the information required to be supplied under section 1396a(a)(38) of this title.

(3) A description of transactions, as specified by the Secretary, between the health maintenance organization and a party in interest. Such transactions shall include—

(A) any sale or exchange, or leasing of any property between the health maintenance organization and a party in interest;

(B) any furnishing for consideration of goods, services (including management services), or facilities between the health maintenance organization and a party in interest, but not including salaries paid to employees for services provided in the normal course of their employment and health services provided to members by hospitals and other providers and by staff, medical group (or groups), individual practice association (or associations), or any combination thereof; and

(C) any lending of money or other extension of credit between a health maintenance organization and a party in interest.

The Secretary may require that information reported respecting a health maintenance organization which controls, is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(b) "Party in interest" defined

For the purposes of this section the term ''party in interest'' means:

(1) any director, officer, partner, or employee responsible for management or administration of a health maintenance organization, any person who is directly or indirectly the beneficial owner of more than 5 per centum of the equity of the organization, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 per centum of the health maintenance organization, and, in the case of a health maintenance organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law;

(2) any entity in which a person described in paragraph (1)—

(A) is an officer or director;

(B) is a partner (if such entity is organized as a partnership);

(C) has directly or indirectly a beneficial interest of more than 5 per centum of the equity; or

(D) has a mortgage, deed of trust, note, on other interest valuing more than 5 per centum of the assets of such entity;

(3) any person directly or indirectly controlling, controlled by, or under common control with a health maintenance organization; and

(4) any spouse, child, or parent of an individual described in paragraph (1).

(c) Information availability

Each health maintenance organization shall make the information reported pursuant to subsection (a) of this section available to its enrollees upon reasonable request.

(d) Evaluation of transactions

The Secretary shall, as he deems necessary, conduct an evaluation of transactions reported to the Secretary under subsection (a)(3) of this section for the purpose of determining their adverse impact, if any, on the fiscal soundness and

[1] See References in Text note below.

reasonableness of charges to the health maintenance organization with respect to which they transpired. The Secretary shall evaluate the reported transactions of not less than five, or if there are more than twenty health maintenance organizations reporting such transactions, not less than one-fourth of the health maintenance organizations reporting any such transactions under subsection (a)(3) of this section.

(e) Repealed. Pub. L. 99–660, title VIII, § 810, Nov. 14, 1986, 100 Stat. 3801

(f) Rates

Nothing in this section shall be construed to confer upon the Secretary any authority to approve or disapprove the rates charged by any health maintenance organization.

(g) Annual financial statement

Any health maintenance organization failing to file with the Secretary the annual financial statement required in subsection (a) of this section shall be ineligible for any Federal assistance under this subchapter until such time as such statement is received by the Secretary and shall not be a qualified health maintenance organization for purposes of section 300e–9 of this title.

(h) Penalties

Whoever knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any statement filed pursuant to this section shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(July 1, 1944, ch. 373, title XIII, § 1318, as added Pub. L. 95–559, § 9(a), Nov. 1, 1978, 92 Stat. 2135; amended Pub. L. 97–35, title IX, § 948, Aug. 13, 1981, 95 Stat. 577; Pub. L. 99–660, title VIII, § 810, Nov. 14, 1986, 100 Stat. 3801; Pub. L. 108–173, title IX, § 900(e)(2)(E), Dec. 8, 2003, 117 Stat. 2372.)

AMENDMENTS

2003—Subsec. (a)(2). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

1986—Subsec. (e). Pub. L. 99–660 struck out subsec. (e) which read as follows: ''The Secretary shall file an annual report with the Congress on the operation of this section. Such report shall include—

''(1) an enumeration of standards and norms utilized to make the evaluations required under subsection (d) of this section;

''(2) an assessment of the degree of conformity or nonconformity of each health maintenance organization evaluated by the Secretary under subsection (d) of this section with such standards and norms;

''(3) what action, if any, the Secretary considers necessary under section 300e–11 of this title with respect to health maintenance organizations evaluated under subsection (d) of this section.''

1981—Subsec. (a). Pub. L. 97–35, § 948(a), (b), in par. (2) inserted reference to copy of the report, if any, filed with the Health Care Financing Administration, and in par. (3)(B) reorganized excluding provisions and, among revisions, inserted salaries paid to employees for services.

Subsec. (b)(1). Pub. L. 97–35, § 948(c), inserted ''responsible for management or administration'' after ''employee''.

Subsec. (b)(4). Pub. L. 97–35, § 948(d), substituted ''spouse, child, or parent'' for ''member of the immediate family''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

SUBCHAPTER XII—SAFETY OF PUBLIC WATER SYSTEMS

PART A—DEFINITIONS

§ 300f. Definitions

For purposes of this subchapter:

(1) The term ''primary drinking water regulation'' means a regulation which—

(A) applies to public water systems;

(B) specifies contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons;

(C) specifies for each such contaminant either—

(i) a maximum contaminant level, if, in the judgment of the Administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

(ii) if, in the judgment of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1 of this title; and

(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems.

At any time after promulgation of a regulation referred to in this paragraph, the Administrator may add equally effective quality control and testing procedures by guidance published in the Federal Register. Such procedures shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation.

(2) The term ''secondary drinking water regulation'' which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Administrator, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water (A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use, or (B) which may otherwise adversely affect the public welfare. Such regulations may vary accordingly to geographic and other circumstances.

(3) The term ''maximum contaminant level'' means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(4) PUBLIC WATER SYSTEM.—

(A) IN GENERAL.—The term ''public water system'' means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(B) CONNECTIONS.—

(i) IN GENERAL.—For purposes of subparagraph (A), a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if—

(I) the water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

(II) the Administrator or the State (in the case of a State exercising primary enforcement responsibility for public water systems) determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(III) the Administrator or the State (in the case of a State exercising primary enforcement responsibility for public water systems) determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(ii) IRRIGATION DISTRICTS.—An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subclause (II) or (III) of clause (i).

(C) TRANSITION PERIOD.—A water supplier that would be a public water system only as a result of modifications made to this paragraph by the Safe Drinking Water Act Amendments of 1996 shall not be considered a public water system for purposes of the Act until the date that is two years after August 6, 1996. If a water supplier does not serve 15 service connections (as defined in subparagraphs (A) and (B)) or 25 people at any time after the conclusion of the 2-year period, the water supplier shall not be considered a public water system.

(5) The term ''supplier of water'' means any person who owns or operates a public water system.

(6) The term ''contaminant'' means any physical, chemical, biological, or radiological substance or matter in water.

(7) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(8) The term ''Agency'' means the Environmental Protection Agency.

(9) The term ''Council'' means the National Drinking Water Advisory Council established under section 300j–5 of this title.

(10) The term ''municipality'' means a city, town, or other public body created by or pursuant to State law, or an Indian Tribe.

(11) The term ''Federal agency'' means any department, agency, or instrumentality of the United States.

(12) The term ''person'' means an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency).

(13)(A) Except as provided in subparagraph (B), the term ''State'' includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(B) For purposes of section 300j–12 of this title, the term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(14) The term ''Indian Tribe'' means any Indian tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over any area. For purposes of section 300j–12 of this title, the term includes any Native village (as defined in section 1602(c) of title 43).

(15) COMMUNITY WATER SYSTEM.—The term ''community water system'' means a public water system that—

(A) serves at least 15 service connections used by year-round residents of the area served by the system; or

(B) regularly serves at least 25 year-round residents.

(16) NONCOMMUNITY WATER SYSTEM.—The term ''noncommunity water system'' means a public water system that is not a community water system.

(July 1, 1944, ch. 373, title XIV, § 1401, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1660; amended Pub. L. 94–317, title III, § 301(b)(2), June 23, 1976, 90 Stat. 707; Pub. L. 94–484, title IX, § 905(b)(1), Oct. 12, 1976, 90 Stat. 2325; Pub. L. 95–190, § 8(b), Nov. 16, 1977, 91 Stat. 1397; Pub. L. 99–339, title III, § 302(b), June 19, 1986, 100 Stat. 666; Pub. L. 104–182, title I, § 101(a), (b)(1), Aug. 6, 1996, 110 Stat. 1615, 1616.)

REFERENCES IN TEXT

The Safe Drinking Water Act Amendments of 1996, referred to in par. (4)(C), is Pub. L. 104–182, Aug. 6, 1996, 110 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 201 of this title and Tables.

AMENDMENTS

1996—Par. (1). Pub. L. 104–182, §101(a)(1)(B), inserted at end ''At any time after promulgation of a regulation referred to in this paragraph, the Administrator may add equally effective quality control and testing procedures by guidance published in the Federal Register. Such procedures shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation.''

Par. (1)(D). Pub. L. 104–182, §101(a)(1)(A), inserted ''accepted methods for'' before ''quality control''.

Par. (4). Pub. L. 104–182, §101(b)(1), designated existing provisions as subpar. (A), inserted par. and subpar. headings, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, substituted ''water for human consumption through pipes or other constructed conveyances'' for ''piped water for human consumption'' in first sentence, and added subpars. (B) and (C).

Par. (13). Pub. L. 104–182, §101(a)(2), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), the term'' for ''The term'', and added subpar. (B).

Par. (14). Pub. L. 104–182, §101(a)(3), inserted at end ''For purposes of section 300j–12 of this title, the term includes any Native village (as defined in section 1602(c) of title 43).''

Pars. (15), (16). Pub. L. 104–182, §101(a)(4), added pars. (15) and (16).

1986—Par. (10). Pub. L. 99–339, §302(b)(2), substituted ''Indian Tribe'' for ''Indian tribal organization authorized by law''.

Par. (14). Pub. L. 99–339, §302(b)(1), added par. (14).

1977—Par. (12). Pub. L. 95–190 expanded definition of ''person'' to include Federal agency, and officers, employees, and agents of any corporation, company, etc.

1976—Par. (13). Pub. L. 94–484 defined ''State'' to include Northern Mariana Islands.

Pub. L. 94–317 added par. (13).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2(b) of Pub. L. 104–182 provided that: ''Except as otherwise specified in this Act [enacting sections 300g–7 to 300g–9, 300h–8, 300j–3c, and 300j–12 to 300j–18 of this title and section 1263a of Title 33, Navigation and Navigable Waters, amending this section, sections 300g–1 to 300g–6, 300h, 300h–5 to 300h–7, 300i, 300i–1, 300j to 300j–2, 300j–4 to 300j–8, 300j–11, and 300j–21 to 300j–25 of this title, sections 4701 and 4721 of Title 16, Conservation, and section 349 of Title 21, Food and Drugs, repealing section 13551 of this title, enacting provisions set out as notes under this section, sections 201, 300g–1, 300j–1, and 300j–12 of this title, section 1281 of Title 33, and section 45 of former Title 40, Public Buildings, Property, and Works, and amending provisions set out as a note under section 201 of this title] or in the amendments made by this Act, this Act and the amendments made by this Act shall take effect on the date of enactment of this Act [Aug. 6, 1996].''

SHORT TITLE

This subchapter is known as the ''Safe Drinking Water Act'', see note set out under section 201 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

EFFECT OF PUBLIC LAW 104–182 ON FEDERAL WATER POLLUTION CONTROL ACT

Section 2(c) of Pub. L. 104–182 provided that: ''Except for the provisions of section 302 [42 U.S.C. 300j–12 note] (relating to transfers of funds), nothing in this Act [see Effective Date of 1996 Amendment note above] or in any amendments made by this Act to title XIV of the Public Health Service Act [this subchapter] (commonly known as the 'Safe Drinking Water Act') or any other law shall be construed by the Administrator of the Environmental Protection Agency or the courts as affecting, modifying, expanding, changing, or altering—

''(1) the provisions of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.];

''(2) the duties and responsibilities of the Administrator under that Act; or

''(3) the regulation or control of point or nonpoint sources of pollution discharged into waters covered by that Act.

The Administrator shall identify in the agency's annual budget all funding and full-time equivalents administering such title XIV separately from funding and staffing for the Federal Water Pollution Control Act.''

CONGRESSIONAL FINDINGS

Section 3 of Pub. L. 104–182 provided that: ''The Congress finds that—

''(1) safe drinking water is essential to the protection of public health;

''(2) because the requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.) now exceed the financial and technical capacity of some public water systems, especially many small public water systems, the Federal Government needs to provide assistance to communities to help the communities meet Federal drinking water requirements;

''(3) the Federal Government commits to maintaining and improving its partnership with the States in the administration and implementation of the Safe Drinking Water Act;

''(4) States play a central role in the implementation of safe drinking water programs, and States need increased financial resources and appropriate flexibility to ensure the prompt and effective development and implementation of drinking water programs;

''(5) the existing process for the assessment and selection of additional drinking water contaminants needs to be revised and improved to ensure that there is a sound scientific basis for setting priorities in establishing drinking water regulations;

''(6) procedures for assessing the health effects of contaminants establishing drinking water standards should be revised to provide greater opportunity for public education and participation;

''(7) in considering the appropriate level of regulation for contaminants in drinking water, risk assessment, based on sound and objective science, and benefit-cost analysis are important analytical tools for improving the efficiency and effectiveness of drinking water regulations to protect human health;

''(8) more effective protection of public health requires—

''(A) a Federal commitment to set priorities that will allow scarce Federal, State, and local resources to be targeted toward the drinking water problems of greatest public health concern;

''(B) maximizing the value of the different and complementary strengths and responsibilities of the Federal and State governments in those States that have primary enforcement responsibility for the Safe Drinking Water Act; and

''(C) prevention of drinking water contamination through well-trained system operators, water systems with adequate managerial, technical, and financial capacity, and enhanced protection of source waters of public water systems;

''(9) compliance with the requirements of the Safe Drinking Water Act continues to be a concern at public water systems experiencing technical and financial limitations, and Federal, State, and local governments need more resources and more effective authority to attain the objectives of the Safe Drinking Water Act; and

''(10) consumers served by public water systems should be provided with information on the source of the water they are drinking and its quality and safety, as well as prompt notification of any violation of drinking water regulations.''

GAO STUDY

Section 101(b)(2) of Pub. L. 104–182 provided that: ''The Comptroller General of the United States shall undertake a study to—

''(A) ascertain the numbers and locations of individuals and households relying for their residential water needs, including drinking, bathing, and cooking (or other similar uses) on irrigation water systems, mining water systems, industrial water systems, or other water systems covered by section 1401(4)(B) of the Safe Drinking Water Act [par. (4)(B) of this section] that are not public water systems subject to the Safe Drinking Water Act [this subchapter];

''(B) determine the sources and costs and affordability (to users and systems) of water used by such populations for their residential water needs; and

''(C) review State and water system compliance with the exclusion provisions of section 1401(4)(B) of such Act.

The Comptroller General shall submit a report to the Congress within 3 years after the date of enactment of this Act [Aug. 6, 1996] containing the results of such study.''

SAFE DRINKING WATER AMENDMENTS OF 1977 RESTRICTIONS ON APPROPRIATIONS FOR RESEARCH

Section 2(e) of Pub. L. 95–190 provided that: ''Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to authorize the appropriation of any amount for research under title XIV of the Public Health Service Act [this subchapter] (relating to safe drinking water).''

SAFE DRINKING WATER AMENDMENTS OF 1977 AS NOT AFFECTING AUTHORITY OF ADMINISTRATOR WITH RESPECT TO CONTAMINANTS

Section 3(e)(2) of Pub. L. 95–190 provided that: ''Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to alter or affect the Administrator's authority or duty under title 14 of the Public Health Service Act [this subchapter] to promulgate regulations or take other action with respect to any contaminant.''

RURAL WATER SURVEY; REPORT TO PRESIDENT AND CONGRESS; AUTHORIZATION OF APPROPRIATIONS

Section 3 of Pub. L. 93–523, as amended by Pub. L. 95–190, §§2(d), 3(d), Nov. 16, 1977, 91 Stat. 1393, 1394, directed Administrator of Environmental Protection Agency, after consultation with Secretary of Agriculture and the several States, to enter into arrangements with public or private entities to conduct a survey of quantity, quality, and availability of rural drinking water supplies, which survey was to include, but not be limited to, consideration of number of residents in each rural area who presently are being inadequately served by a public or private drinking water supply system, or by an individual home drinking water supply system, or who presently have limited or otherwise inadequate access to drinking water, or who, due to absence or inadequacy of a drinking water supply system, are exposed to an increased health hazard, and who have experienced incidents of chronic or acute illness, which may be attributed to inadequacy of a drinking water supply system. Survey to be completed within eighteen months of Dec. 16, 1974, and a final report thereon submitted, not later than six months after completion of survey, to President and to Congress.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

PART B—PUBLIC WATER SYSTEMS

§ 300g. Coverage

Subject to sections 300g–4 and 300g–5 of this title, national primary drinking water regulations under this part shall apply to each public water system in each State; except that such regulations shall not apply to a public water system—

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(3) which does not sell water to any person; and

(4) which is not a carrier which conveys passengers in interstate commerce.

(July 1, 1944, ch. 373, title XIV, §1411, as added Pub. L. 93–523, §2(a), Dec. 16, 1974, 88 Stat. 1662.)

§ 300g–1. National drinking water regulations

(a) National primary drinking water regulations; maximum contaminant level goals; simultaneous publication of regulations and goals

(1) Effective on June 19, 1986, each national interim or revised primary drinking water regulation promulgated under this section before June 19, 1986, shall be deemed to be a national primary drinking water regulation under subsection (b) of this section. No such regulation shall be required to comply with the standards set forth in subsection (b)(4) of this section unless such regulation is amended to establish a different maximum contaminant level after June 19, 1986.

(2) After June 19, 1986, each recommended maximum contaminant level published before June 19, 1986, shall be treated as a maximum contaminant level goal.

(3) Whenever a national primary drinking water regulation is proposed under subsection (b) of this section for any contaminant, the maximum contaminant level goal for such contaminant shall be proposed simultaneously. Whenever a national primary drinking water regulation is promulgated under subsection (b) of this section for any contaminant, the maximum contaminant level goal for such contaminant shall be published simultaneously.

(4) Paragraph (3) shall not apply to any recommended maximum contaminant level published before June 19, 1986.

(b) Standards

(1) IDENTIFICATION OF CONTAMINANTS FOR LISTING.—

(A) GENERAL AUTHORITY.—The Administrator shall, in accordance with the procedures estab-

lished by this subsection, publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for a contaminant (other than a contaminant referred to in paragraph (2) for which a national primary drinking water regulation has been promulgated as of August 6, 1996) if the Administrator determines that—

(i) the contaminant may have an adverse effect on the health of persons;

(ii) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and

(iii) in the sole judgment of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems.

(B) REGULATION OF UNREGULATED CONTAMINANTS.—

(i) LISTING OF CONTAMINANTS FOR CONSIDERATION.—(I) Not later than 18 months after August 6, 1996, and every 5 years thereafter, the Administrator, after consultation with the scientific community, including the Science Advisory Board, after notice and opportunity for public comment, and after considering the occurrence data base established under section 300j–4(g) of this title, shall publish a list of contaminants which, at the time of publication, are not subject to any proposed or promulgated national primary drinking water regulation, which are known or anticipated to occur in public water systems, and which may require regulation under this subchapter.

(II) The unregulated contaminants considered under subclause (I) shall include, but not be limited to, substances referred to in section 9601(14) of this title, and substances registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

(III) The Administrator's decision whether or not to select an unregulated contaminant for a list under this clause shall not be subject to judicial review.

(ii) DETERMINATION TO REGULATE.—(I) Not later than 5 years after August 6, 1996, and every 5 years thereafter, the Administrator shall, after notice of the preliminary determination and opportunity for public comment, for not fewer than 5 contaminants included on the list published under clause (i), make determinations of whether or not to regulate such contaminants.

(II) A determination to regulate a contaminant shall be based on findings that the criteria of clauses (i), (ii), and (iii) of subparagraph (A) are satisfied. Such findings shall be based on the best available public health information, including the occurrence data base established under section 300j–4(g) of this title.

(III) The Administrator may make a determination to regulate a contaminant that does not appear on a list under clause (i) if the determination to regulate is made pursuant to subclause (II).

(IV) A determination under this clause not to regulate a contaminant shall be considered final agency action and subject to judicial review.

(iii) REVIEW.—Each document setting forth the determination for a contaminant under clause (ii) shall be available for public comment at such time as the determination is published.

(C) PRIORITIES.—In selecting unregulated contaminants for consideration under subparagraph (B), the Administrator shall select contaminants that present the greatest public health concern. The Administrator, in making such selection, shall take into consideration, among other factors of public health concern, the effect of such contaminants upon subgroups that comprise a meaningful portion of the general population (such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations) that are identifiable as being at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population.

(D) URGENT THREATS TO PUBLIC HEALTH.—The Administrator may promulgate an interim national primary drinking water regulation for a contaminant without making a determination for the contaminant under paragraph (4)(C), or completing the analysis under paragraph (3)(C), to address an urgent threat to public health as determined by the Administrator after consultation with and written response to any comments provided by the Secretary of Health and Human Services, acting through the director of the Centers for Disease Control and Prevention or the director of the National Institutes of Health. A determination for any contaminant in accordance with paragraph (4)(C) subject to an interim regulation under this subparagraph shall be issued, and a completed analysis meeting the requirements of paragraph (3)(C) shall be published, not later than 3 years after the date on which the regulation is promulgated and the regulation shall be repromulgated, or revised if appropriate, not later than 5 years after that date.

(E) REGULATION.—For each contaminant that the Administrator determines to regulate under subparagraph (B), the Administrator shall publish maximum contaminant level goals and promulgate, by rule, national primary drinking water regulations under this subsection. The Administrator shall propose the maximum contaminant level goal and national primary drinking water regulation for a contaminant not later than 24 months after the determination to regulate under subparagraph (B), and may publish such proposed regulation concurrent with the determination to regulate. The Administrator shall publish a maximum contaminant level goal and promulgate a national primary drinking water regulation within 18 months after the proposal thereof. The Administrator, by notice in the Federal Register, may extend the deadline for such promulgation for up to 9 months.

(F) HEALTH ADVISORIES AND OTHER ACTIONS.—The Administrator may publish health advisories (which are not regulations) or take

other appropriate actions for contaminants not subject to any national primary drinking water regulation.

(2) SCHEDULES AND DEADLINES.—

(A) IN GENERAL.—In the case of the contaminants listed in the Advance Notice of Proposed Rulemaking published in volume 47, Federal Register, page 9352, and in volume 48, Federal Register, page 45502, the Administrator shall publish maximum contaminant level goals and promulgate national primary drinking water regulations—

(i) not later than 1 year after June 19, 1986, for not fewer than 9 of the listed contaminants;

(ii) not later than 2 years after June 19, 1986, for not fewer than 40 of the listed contaminants; and

(iii) not later than 3 years after June 19, 1986, for the remainder of the listed contaminants.

(B) SUBSTITUTION OF CONTAMINANTS.—If the Administrator identifies a drinking water contaminant the regulation of which, in the judgment of the Administrator, is more likely to be protective of public health (taking into account the schedule for regulation under subparagraph (A)) than a contaminant referred to in subparagraph (A), the Administrator may publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for the identified contaminant in lieu of regulating the contaminant referred to in subparagraph (A). Substitutions may be made for not more than 7 contaminants referred to in subparagraph (A). Regulation of a contaminant identified under this subparagraph shall be in accordance with the schedule applicable to the contaminant for which the substitution is made.

(C) DISINFECTANTS AND DISINFECTION BYPRODUCTS.—The Administrator shall promulgate an Interim Enhanced Surface Water Treatment Rule, a Final Enhanced Surface Water Treatment Rule, a Stage I Disinfectants and Disinfection Byproducts Rule, and a Stage II Disinfectants and Disinfection Byproducts Rule in accordance with the schedule published in volume 59, Federal Register, page 6361 (February 10, 1994), in table III.13 of the proposed Information Collection Rule. If a delay occurs with respect to the promulgation of any rule in the schedule referred to in this subparagraph, all subsequent rules shall be completed as expeditiously as practicable but no later than a revised date that reflects the interval or intervals for the rules in the schedule.

(3) RISK ASSESSMENT, MANAGEMENT, AND COMMUNICATION.—

(A) USE OF SCIENCE IN DECISIONMAKING.—In carrying out this section, and, to the degree that an Agency action is based on science, the Administrator shall use—

(i) the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and

(ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).

(B) PUBLIC INFORMATION.—In carrying out this section, the Administrator shall ensure that the presentation of information on public health effects is comprehensive, informative, and understandable. The Administrator shall, in a document made available to the public in support of a regulation promulgated under this section, specify, to the extent practicable—

(i) each population addressed by any estimate of public health effects;

(ii) the expected risk or central estimate of risk for the specific populations;

(iii) each appropriate upper-bound or lower-bound estimate of risk;

(iv) each significant uncertainty identified in the process of the assessment of public health effects and studies that would assist in resolving the uncertainty; and

(v) peer-reviewed studies known to the Administrator that support, are directly relevant to, or fail to support any estimate of public health effects and the methodology used to reconcile inconsistencies in the scientific data.

(C) HEALTH RISK REDUCTION AND COST ANALYSIS.—

(i) MAXIMUM CONTAMINANT LEVELS.—When proposing any national primary drinking water regulation that includes a maximum contaminant level, the Administrator shall, with respect to a maximum contaminant level that is being considered in accordance with paragraph (4) and each alternative maximum contaminant level that is being considered pursuant to paragraph (5) or (6)(A), publish, seek public comment on, and use for the purposes of paragraphs (4), (5), and (6) an analysis of each of the following:

(I) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur as the result of treatment to comply with each level.

(II) Quantifiable and nonquantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur from reductions in co-occurring contaminants that may be attributed solely to compliance with the maximum contaminant level, excluding benefits resulting from compliance with other proposed or promulgated regulations.

(III) Quantifiable and nonquantifiable costs for which there is a factual basis in the rulemaking record to conclude that such costs are likely to occur solely as a result of compliance with the maximum contaminant level, including monitoring, treatment, and other costs and excluding costs resulting from compliance with other proposed or promulgated regulations.

(IV) The incremental costs and benefits associated with each alternative maximum contaminant level considered.

(V) The effects of the contaminant on the general population and on groups within the general population such as infants,

children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population.

(VI) Any increased health risk that may occur as the result of compliance, including risks associated with co-occurring contaminants.

(VII) Other relevant factors, including the quality and extent of the information, the uncertainties in the analysis supporting subclauses (I) through (VI), and factors with respect to the degree and nature of the risk.

(ii) TREATMENT TECHNIQUES.—When proposing a national primary drinking water regulation that includes a treatment technique in accordance with paragraph (7)(A), the Administrator shall publish and seek public comment on an analysis of the health risk reduction benefits and costs likely to be experienced as the result of compliance with the treatment technique and alternative treatment techniques that are being considered, taking into account, as appropriate, the factors described in clause (i).

(iii) APPROACHES TO MEASURE AND VALUE BENEFITS.—The Administrator may identify valid approaches for the measurement and valuation of benefits under this subparagraph, including approaches to identify consumer willingness to pay for reductions in health risks from drinking water contaminants.

(iv) AUTHORIZATION.—There are authorized to be appropriated to the Administrator, acting through the Office of Ground Water and Drinking Water, to conduct studies, assessments, and analyses in support of regulations or the development of methods, $35,000,000 for each of fiscal years 1996 through 2003.

(4) GOALS AND STANDARDS.—

(A) MAXIMUM CONTAMINANT LEVEL GOALS.—Each maximum contaminant level goal established under this subsection shall be set at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety.

(B) MAXIMUM CONTAMINANT LEVELS.—Except as provided in paragraphs (5) and (6), each national primary drinking water regulation for a contaminant for which a maximum contaminant level goal is established under this subsection shall specify a maximum contaminant level for such contaminant which is as close to the maximum contaminant level goal as is feasible.

(C) DETERMINATION.—At the time the Administrator proposes a national primary drinking water regulation under this paragraph, the Administrator shall publish a determination as to whether the benefits of the maximum contaminant level justify, or do not justify, the costs based on the analysis conducted under paragraph (3)(C).

(D) DEFINITION OF FEASIBLE.—For the purposes of this subsection, the term ''feasible'' means feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purpose of this paragraph, granular activated carbon is feasible for the control of synthetic organic chemicals, and any technology, treatment technique, or other means found to be the best available for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as granular activated carbon.

(E) FEASIBLE TECHNOLOGIES.—

(i) IN GENERAL.—Each national primary drinking water regulation which establishes a maximum contaminant level shall list the technology, treatment techniques, and other means which the Administrator finds to be feasible for purposes of meeting such maximum contaminant level, but a regulation under this subsection shall not require that any specified technology, treatment technique, or other means be used for purposes of meeting such maximum contaminant level.

(ii) LIST OF TECHNOLOGIES FOR SMALL SYSTEMS.—The Administrator shall include in the list any technology, treatment technique, or other means that is affordable, as determined by the Administrator in consultation with the States, for small public water systems serving—

(I) a population of 10,000 or fewer but more than 3,300;

(II) a population of 3,300 or fewer but more than 500; and

(III) a population of 500 or fewer but more than 25;

and that achieves compliance with the maximum contaminant level or treatment technique, including packaged or modular systems and point-of-entry or point-of-use treatment units. Point-of-entry and point-of-use treatment units shall be owned, controlled and maintained by the public water system or by a person under contract with the public water system to ensure proper operation and maintenance and compliance with the maximum contaminant level or treatment technique and equipped with mechanical warnings to ensure that customers are automatically notified of operational problems. The Administrator shall not include in the list any point-of-use treatment technology, treatment technique, or other means to achieve compliance with a maximum contaminant level or treatment technique requirement for a microbial contaminant (or an indicator of a microbial contaminant). If the American National Standards Institute has issued product standards applicable to a specific type of point-of-entry or point-of-use treatment unit, individual units of that type shall not be accepted for compliance with a maximum contaminant level or treatment technique requirement unless they are independently certified in accordance with such standards. In listing

any technology, treatment technique, or other means pursuant to this clause, the Administrator shall consider the quality of the source water to be treated.

(iii) LIST OF TECHNOLOGIES THAT ACHIEVE COMPLIANCE.—Except as provided in clause (v), not later than 2 years after August 6, 1996, and after consultation with the States, the Administrator shall issue a list of technologies that achieve compliance with the maximum contaminant level or treatment technique for each category of public water systems described in subclauses (I), (II), and (III) of clause (ii) for each national primary drinking water regulation promulgated prior to June 19, 1986.

(iv) ADDITIONAL TECHNOLOGIES.—The Administrator may, at any time after a national primary drinking water regulation has been promulgated, supplement the list of technologies describing additional or new or innovative treatment technologies that meet the requirements of this paragraph for categories of small public water systems described in subclauses (I), (II), and (III) of clause (ii) that are subject to the regulation.

(v) TECHNOLOGIES THAT MEET SURFACE WATER TREATMENT RULE.—Within one year after August 6, 1996, the Administrator shall list technologies that meet the Surface Water Treatment Rule for each category of public water systems described in subclauses (I), (II), and (III) of clause (ii).

(5) ADDITIONAL HEALTH RISK CONSIDERATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (4), the Administrator may establish a maximum contaminant level for a contaminant at a level other than the feasible level, if the technology, treatment techniques, and other means used to determine the feasible level would result in an increase in the health risk from drinking water by—

(i) increasing the concentration of other contaminants in drinking water; or

(ii) interfering with the efficacy of drinking water treatment techniques or processes that are used to comply with other national primary drinking water regulations.

(B) ESTABLISHMENT OF LEVEL.—If the Administrator establishes a maximum contaminant level or levels or requires the use of treatment techniques for any contaminant or contaminants pursuant to the authority of this paragraph—

(i) the level or levels or treatment techniques shall minimize the overall risk of adverse health effects by balancing the risk from the contaminant and the risk from other contaminants the concentrations of which may be affected by the use of a treatment technique or process that would be employed to attain the maximum contaminant level or levels; and

(ii) the combination of technology, treatment techniques, or other means required to meet the level or levels shall not be more stringent than is feasible (as defined in paragraph (4)(D)).

(6) ADDITIONAL HEALTH RISK REDUCTION AND COST CONSIDERATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (4), if the Administrator determines based on an analysis conducted under paragraph (3)(C) that the benefits of a maximum contaminant level promulgated in accordance with paragraph (4) would not justify the costs of complying with the level, the Administrator may, after notice and opportunity for public comment, promulgate a maximum contaminant level for the contaminant that maximizes health risk reduction benefits at a cost that is justified by the benefits.

(B) EXCEPTION.—The Administrator shall not use the authority of this paragraph to promulgate a maximum contaminant level for a contaminant, if the benefits of compliance with a national primary drinking water regulation for the contaminant that would be promulgated in accordance with paragraph (4) experienced by—

(i) persons served by large public water systems; and

(ii) persons served by such other systems as are unlikely, based on information provided by the States, to receive a variance under section 300g–4(e) of this title (relating to small system variances);

would justify the costs to the systems of complying with the regulation. This subparagraph shall not apply if the contaminant is found almost exclusively in small systems eligible under section 300g–4(e) of this title for a small system variance.

(C) DISINFECTANTS AND DISINFECTION BYPRODUCTS.—The Administrator may not use the authority of this paragraph to establish a maximum contaminant level in a Stage I or Stage II national primary drinking water regulation (as described in paragraph (2)(C)) for contaminants that are disinfectants or disinfection byproducts, or to establish a maximum contaminant level or treatment technique requirement for the control of cryptosporidium. The authority of this paragraph may be used to establish regulations for the use of disinfection by systems relying on ground water sources as required by paragraph (8).

(D) JUDICIAL REVIEW.—A determination by the Administrator that the benefits of a maximum contaminant level or treatment requirement justify or do not justify the costs of complying with the level shall be reviewed by the court pursuant to section 300j–7 of this title only as part of a review of a final national primary drinking water regulation that has been promulgated based on the determination and shall not be set aside by the court under that section unless the court finds that the determination is arbitrary and capricious.

(7)(A) The Administrator is authorized to promulgate a national primary drinking water regulation that requires the use of a treatment technique in lieu of establishing a maximum contaminant level, if the Administrator makes a finding that it is not economically or technologically feasible to ascertain the level of the contaminant. In such case, the Administrator shall identify those treatment techniques which, in the Administrator's judgment, would prevent known or anticipated adverse effects on the

health of persons to the extent feasible. Such regulations shall specify each treatment technique known to the Administrator which meets the requirements of this paragraph, but the Administrator may grant a variance from any specified treatment technique in accordance with section 300g–4(a)(3) of this title.

(B) Any schedule referred to in this subsection for the promulgation of a national primary drinking water regulation for any contaminant shall apply in the same manner if the regulation requires a treatment technique in lieu of establishing a maximum contaminant level.

(C)(i) Not later than 18 months after June 19, 1986, the Administrator shall propose and promulgate national primary drinking water regulations specifying criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems supplied by surface water sources. In promulgating such rules, the Administrator shall consider the quality of source waters, protection afforded by watershed management, treatment practices (such as disinfection and length of water storage) and other factors relevant to protection of health.

(ii) In lieu of the provisions of section 300g–4 of this title the Administrator shall specify procedures by which the State determines which public water systems within its jurisdiction shall adopt filtration under the criteria of clause (i). The State may require the public water system to provide studies or other information to assist in this determination. The procedures shall provide notice and opportunity for public hearing on this determination. If the State determines that filtration is required, the State shall prescribe a schedule for compliance by the public water system with the filtration requirement. A schedule shall require compliance within 18 months of a determination made under clause (iii).

(iii) Within 18 months from the time that the Administrator establishes the criteria and procedures under this subparagraph, a State with primary enforcement responsibility shall adopt any necessary regulations to implement this subparagraph. Within 12 months of adoption of such regulations the State shall make determinations regarding filtration for all the public water systems within its jurisdiction supplied by surface waters.

(iv) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to make the determination in clause (ii) in such State as the State would have under that clause. Any filtration requirement or schedule under this subparagraph shall be treated as if it were a requirement of a national primary drinking water regulation.

(v) As an additional alternative to the regulations promulgated pursuant to clauses (i) and (iii), including the criteria for avoiding filtration contained in 40 CFR 141.71, a State exercising primary enforcement responsibility for public water systems may, on a case-by-case basis, and after notice and opportunity for public comment, establish treatment requirements as an alternative to filtration in the case of systems having uninhabited, undeveloped watersheds in consolidated ownership, and having control over access to, and activities in, those watersheds, if the State determines (and the Administrator concurs) that the quality of the source water and the alternative treatment requirements established by the State ensure greater removal or inactivation efficiencies of pathogenic organisms for which national primary drinking water regulations have been promulgated or that are of public health concern than would be achieved by the combination of filtration and chlorine disinfection (in compliance with this section).

(8) DISINFECTION.—At any time after the end of the 3-year period that begins on August 6, 1996, but not later than the date on which the Administrator promulgates a Stage II rulemaking for disinfectants and disinfection byproducts (as described in paragraph (2)(C)), the Administrator shall also promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems. After consultation with the States, the Administrator shall (as part of the regulations) promulgate criteria that the Administrator, or a State that has primary enforcement responsibility under section 300g–2 of this title, shall apply to determine whether disinfection shall be required as a treatment technique for any public water system served by ground water. The Administrator shall simultaneously promulgate a rule specifying criteria that will be used by the Administrator (or delegated State authorities) to grant variances from this requirement according to the provisions of sections 300g–4(a)(1)(B) and 300g–4(a)(3) of this title. In implementing section 300j–1(e) of this title the Administrator or the delegated State authority shall, where appropriate, give special consideration to providing technical assistance to small public water systems in complying with the regulations promulgated under this paragraph.

(9) REVIEW AND REVISION.—The Administrator shall, not less often than every 6 years, review and revise, as appropriate, each national primary drinking water regulation promulgated under this subchapter. Any revision of a national primary drinking water regulation shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater, protection of the health of persons.

(10) EFFECTIVE DATE.—A national primary drinking water regulation promulgated under this section (and any amendment thereto) shall take effect on the date that is 3 years after the date on which the regulation is promulgated unless the Administrator determines that an earlier date is practicable, except that the Administrator, or a State (in the case of an individual system), may allow up to 2 additional years to comply with a maximum contaminant level or treatment technique if the Administrator or State (in the case of an individual system) determines that additional time is necessary for capital improvements.

(11) No national primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

(12) CERTAIN CONTAMINANTS.—

(A) ARSENIC.—

(i) SCHEDULE AND STANDARD.—Notwithstanding the deadlines set forth in paragraph (1), the Administrator shall promulgate a national primary drinking water regulation for arsenic pursuant to this subsection, in accordance with the schedule established by this paragraph.

(ii) STUDY PLAN.—Not later than 180 days after August 6, 1996, the Administrator shall develop a comprehensive plan for study in support of drinking water rulemaking to reduce the uncertainty in assessing health risks associated with exposure to low levels of arsenic. In conducting such study, the Administrator shall consult with the National Academy of Sciences, other Federal agencies, and interested public and private entities.

(iii) COOPERATIVE AGREEMENTS.—In carrying out the study plan, the Administrator may enter into cooperative agreements with other Federal agencies, State and local governments, and other interested public and private entities.

(iv) PROPOSED REGULATIONS.—The Administrator shall propose a national primary drinking water regulation for arsenic not later than January 1, 2000.

(v) FINAL REGULATIONS.—Not later than January 1, 2001, after notice and opportunity for public comment, the Administrator shall promulgate a national primary drinking water regulation for arsenic.

(vi) AUTHORIZATION.—There are authorized to be appropriated $2,500,000 for each of fiscal years 1997 through 2000 for the studies required by this paragraph.

(B) SULFATE.—

(i) ADDITIONAL STUDY.—Prior to promulgating a national primary drinking water regulation for sulfate, the Administrator and the Director of the Centers for Disease Control and Prevention shall jointly conduct an additional study to establish a reliable dose-response relationship for the adverse human health effects that may result from exposure to sulfate in drinking water, including the health effects that may be experienced by groups within the general population (including infants and travelers) that are potentially at greater risk of adverse health effects as the result of such exposure. The study shall be conducted in consultation with interested States, shall be based on the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices, and shall be completed not later than 30 months after August 6, 1996.

(ii) DETERMINATION.—The Administrator shall include sulfate among the 5 or more contaminants for which a determination is made pursuant to paragraph (3)(B) not later than 5 years after August 6, 1996.

(iii) PROPOSED AND FINAL RULE.—Notwithstanding the deadlines set forth in paragraph (2), the Administrator may, pursuant to the authorities of this subsection and after notice and opportunity for public comment, promulgate a final national primary drinking water regulation for sulfate. Any such regulation shall include requirements for public notification and options for the provision of alternative water supplies to populations at risk as a means of complying with the regulation in lieu of a best available treatment technology or other means.

(13) RADON IN DRINKING WATER.—

(A) NATIONAL PRIMARY DRINKING WATER REGULATION.—Notwithstanding paragraph (2), the Administrator shall withdraw any national primary drinking water regulation for radon proposed prior to August 6, 1996, and shall propose and promulgate a regulation for radon under this section, as amended by the Safe Drinking Water Act Amendments of 1996.

(B) RISK ASSESSMENT AND STUDIES.—

(i) ASSESSMENT BY NAS.—Prior to proposing a national primary drinking water regulation for radon, the Administrator shall arrange for the National Academy of Sciences to prepare a risk assessment for radon in drinking water using the best available science in accordance with the requirements of paragraph (3). The risk assessment shall consider each of the risks associated with exposure to radon from drinking water and consider studies on the health effects of radon at levels and under conditions likely to be experienced through residential exposure. The risk assessment shall be peer-reviewed.

(ii) STUDY OF OTHER MEASURES.—The Administrator shall arrange for the National Academy of Sciences to prepare an assessment of the health risk reduction benefits associated with various mitigation measures to reduce radon levels in indoor air. The assessment may be conducted as part of the risk assessment authorized by clause (i) and shall be used by the Administrator to prepare the guidance and approve State programs under subparagraph (G).

(iii) OTHER ORGANIZATION.—If the National Academy of Sciences declines to prepare the risk assessment or studies required by this subparagraph, the Administrator shall enter into a contract or cooperative agreement with another independent, scientific organization to prepare such assessments or studies.

(C) HEALTH RISK REDUCTION AND COST ANALYSIS.—Not later than 30 months after August 6, 1996, the Administrator shall publish, and seek public comment on, a health risk reduction and cost analysis meeting the requirements of paragraph (3)(C) for potential maximum contaminant levels that are being considered for radon in drinking water. The Administrator shall include a response to all significant public comments received on the analysis with the preamble for the proposed rule published under subparagraph (D).

(D) PROPOSED REGULATION.—Not later than 36 months after August 6, 1996, the Administrator shall propose a maximum contaminant level goal and a national primary drinking water regulation for radon pursuant to this section.

(E) FINAL REGULATION.—Not later than 12 months after the date of the proposal under subparagraph (D), the Administrator shall publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for radon pursuant to this section based on the risk assessment prepared pursuant to subparagraph (B) and the health risk reduction and cost analysis published pursuant to subparagraph (C). In considering the risk assessment and the health risk reduction and cost analysis in connection with the promulgation of such a standard, the Administrator shall take into account the costs and benefits of control programs for radon from other sources.

(F) ALTERNATIVE MAXIMUM CONTAMINANT LEVEL.—If the maximum contaminant level for radon in drinking water promulgated pursuant to subparagraph (E) is more stringent than necessary to reduce the contribution to radon in indoor air from drinking water to a concentration that is equivalent to the national average concentration of radon in outdoor air, the Administrator shall, simultaneously with the promulgation of such level, promulgate an alternative maximum contaminant level for radon that would result in a contribution of radon from drinking water to radon levels in indoor air equivalent to the national average concentration of radon in outdoor air. If the Administrator promulgates an alternative maximum contaminant level under this subparagraph, the Administrator shall, after notice and opportunity for public comment and in consultation with the States, publish guidelines for State programs, including criteria for multimedia measures to mitigate radon levels in indoor air, to be used by the States in preparing programs under subparagraph (G). The guidelines shall take into account data from existing radon mitigation programs and the assessment of mitigation measures prepared under subparagraph (B).

(G) MULTIMEDIA RADON MITIGATION PROGRAMS.—

(i) IN GENERAL.—A State may develop and submit a multimedia program to mitigate radon levels in indoor air for approval by the Administrator under this subparagraph. If, after notice and the opportunity for public comment, such program is approved by the Administrator, public water systems in the State may comply with the alternative maximum contaminant level promulgated under subparagraph (F) in lieu of the maximum contaminant level in the national primary drinking water regulation promulgated under subparagraph (E).

(ii) ELEMENTS OF PROGRAMS.—State programs may rely on a variety of mitigation measures including public education, testing, training, technical assistance, remediation grant and loan or incentive programs, or other regulatory or nonregulatory measures. The effectiveness of elements in State programs shall be evaluated by the Administrator based on the assessment prepared by the National Academy of Sciences under subparagraph (B) and the guidelines published by the Administrator under subparagraph (F).

(iii) APPROVAL.—The Administrator shall approve a State program submitted under this paragraph if the health risk reduction benefits expected to be achieved by the program are equal to or greater than the health risk reduction benefits that would be achieved if each public water system in the State complied with the maximum contaminant level promulgated under subparagraph (E). The Administrator shall approve or disapprove a program submitted under this paragraph within 180 days of receipt. A program that is not disapproved during such period shall be deemed approved. A program that is disapproved may be modified to address the objections of the Administrator and be resubmitted for approval.

(iv) REVIEW.—The Administrator shall periodically, but not less often than every 5 years, review each multimedia mitigation program approved under this subparagraph to determine whether it continues to meet the requirements of clause (iii) and shall, after written notice to the State and an opportunity for the State to correct any deficiency in the program, withdraw approval of programs that no longer comply with such requirements.

(v) EXTENSION.—If, within 90 days after the promulgation of an alternative maximum contaminant level under subparagraph (F), the Governor of a State submits a letter to the Administrator committing to develop a multimedia mitigation program under this subparagraph, the effective date of the national primary drinking water regulation for radon in the State that would be applicable under paragraph (10) shall be extended for a period of 18 months.

(vi) LOCAL PROGRAMS.—In the event that a State chooses not to submit a multimedia mitigation program for approval under this subparagraph or has submitted a program that has been disapproved, any public water system in the State may submit a program for approval by the Administrator according to the same criteria, conditions, and approval process that would apply to a State program. The Administrator shall approve a multimedia mitigation program if the health risk reduction benefits expected to be achieved by the program are equal to or greater than the health risk reduction benefits that would result from compliance by the public water system with the maximum contaminant level for radon promulgated under subparagraph (E).

(14) RECYCLING OF FILTER BACKWASH.—The Administrator shall promulgate a regulation to govern the recycling of filter backwash water within the treatment process of a public water system. The Administrator shall promulgate such regulation not later than 4 years after August 6, 1996, unless such recycling has been addressed by the Administrator's Enhanced Surface Water Treatment Rule prior to such date.

(15) VARIANCE TECHNOLOGIES.—

(A) IN GENERAL.—At the same time as the Administrator promulgates a national primary drinking water regulation for a contaminant pursuant to this section, the Adminis-

trator shall issue guidance or regulations describing the best treatment technologies, treatment techniques, or other means (referred to in this paragraph as ''variance technology'') for the contaminant that the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available and affordable, as determined by the Administrator in consultation with the States, for public water systems of varying size, considering the quality of the source water to be treated. The Administrator shall identify such variance technologies for public water systems serving—

(i) a population of 10,000 or fewer but more than 3,300;

(ii) a population of 3,300 or fewer but more than 500; and

(iii) a population of 500 or fewer but more than 25,

if, considering the quality of the source water to be treated, no treatment technology is listed for public water systems of that size under paragraph (4)(E). Variance technologies identified by the Administrator pursuant to this paragraph may not achieve compliance with the maximum contaminant level or treatment technique requirement of such regulation, but shall achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of the source water. The guidance or regulations shall not require the use of a technology from a specific manufacturer or brand.

(B) LIMITATION.—The Administrator shall not identify any variance technology under this paragraph, unless the Administrator has determined, considering the quality of the source water to be treated and the expected useful life of the technology, that the variance technology is protective of public health.

(C) ADDITIONAL INFORMATION.—The Administrator shall include in the guidance or regulations identifying variance technologies under this paragraph any assumptions supporting the public health determination referred to in subparagraph (B), where such assumptions concern the public water system to which the technology may be applied, or its source waters. The Administrator shall provide any assumptions used in determining affordability, taking into consideration the number of persons served by such systems. The Administrator shall provide as much reliable information as practicable on performance, effectiveness, limitations, costs, and other relevant factors including the applicability of variance technology to waters from surface and underground sources.

(D) REGULATIONS AND GUIDANCE.—Not later than 2 years after August 6, 1996, and after consultation with the States, the Administrator shall issue guidance or regulations under subparagraph (A) for each national primary drinking water regulation promulgated prior to August 6, 1996, for which a variance may be granted under section 300g–4(e) of this title. The Administrator may, at any time after a national primary drinking water regulation has been promulgated, issue guidance or regulations describing additional variance technologies. The Administrator shall, not less often than every 7 years, or upon receipt of a petition supported by substantial information, review variance technologies identified under this paragraph. The Administrator shall issue revised guidance or regulations if new or innovative variance technologies become available that meet the requirements of this paragraph and achieve an equal or greater reduction or inactivation efficiency than the variance technologies previously identified under this subparagraph. No public water system shall be required to replace a variance technology during the useful life of the technology for the sole reason that a more efficient variance technology has been listed under this subparagraph.

(c) Secondary regulations; publication of proposed regulations; promulgation; amendments

The Administrator shall publish proposed national secondary drinking water regulations within 270 days after December 16, 1974. Within 90 days after publication of any such regulation, he shall promulgate such regulation with such modifications as he deems appropriate. Regulations under this subsection may be amended from time to time.

(d) Regulations; public hearings; administrative consultations

Regulations under this section shall be prescribed in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary and the National Drinking Water Advisory Council.

(e) Science Advisory Board comments

The Administrator shall request comments from the Science Advisory Board (established under the Environmental Research, Development, and Demonstration Act of 1978) prior to proposal of a maximum contaminant level goal and national primary drinking water regulation. The Board shall respond, as it deems appropriate, within the time period applicable for promulgation of the national primary drinking water standard concerned. This subsection shall, under no circumstances, be used to delay final promulgation of any national primary drinking water standard.

(July 1, 1944, ch. 373, title XIV, § 1412, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1662; amended Pub. L. 95–190, §§ 3(c), 12(a), Nov. 16, 1977, 91 Stat. 1394, 1398; Pub. L. 99–339, title I, § 101(a)–(c)(1), (d), (e), June 19, 1986, 100 Stat. 642–646; Pub. L. 104–182, title I, §§ 102(a), (c)(2), 103, 104(a), (c), 105–111(a), title V, § 501(a)(1), (2), Aug. 6, 1996, 110 Stat. 1617, 1621–1623, 1625–1631, 1691.)

REFERENCES IN TEXT

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (b)(1)(B)(i)(II), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally

to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Safe Drinking Water Act Amendments of 1996, referred to in subsec. (b)(13)(A), is Pub. L. 104–182, Aug. 6, 1996, 110 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 201 of this title and Tables.

The Environmental Research, Development, and Demonstration Act of 1978, referred to in subsec. (e), probably means the Environmental Research, Development, and Demonstration Authorization Act of 1978 which is Pub. L. 95–155, Nov. 8, 1977, 91 Stat. 1257, as amended. Provisions of the Act establishing the Science Advisory Board are classified to section 4365 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–182, § 102(c)(2), struck out ''paragraph (1), (2), or (3) of'' before ''subsection (b)'' in two places.

Subsec. (b). Pub. L. 104–182, § 102(a), inserted heading.

Subsec. (b)(1), (2). Pub. L. 104–182, § 102(a), added pars. (1) and (2) and struck out former pars. (1) and (2) which related to publication of maximum contaminant level goals and promulgation of national primary drinking water regulations for certain listed contaminants or substituted contaminants.

Subsec. (b)(3). Pub. L. 104–182, § 103, added par. (3).

Pub. L. 104–182, § 102(a), struck out par. (3) which related to publication of maximum contaminant level goals and promulgation of national primary drinking water regulations for contaminants, other than those referred to in pars. (1) or (2), which may have an adverse effect on human health and are known to occur in public water systems.

Subsec. (b)(4). Pub. L. 104–182, § 104(a)(1), designated first sentence as subpar. (A), inserted par. and subpar. (A) headings, designated second sentence as subpar. (B), inserted subpar. (B) heading, substituted ''Except as provided in paragraphs (5) and (6), each national'' for ''Each national'' and ''specify a maximum contaminant level'' for ''specify a maximum level'', and added subpar. (C).

Subsec. (b)(4)(D). Pub. L. 104–182, § 104(a)(2), (3), redesignated par. (5) as subpar. (D) of par. (4), inserted subpar. heading, and substituted ''this paragraph'' for ''paragraph (4)''.

Subsec. (b)(4)(E). Pub. L. 104–182, §§ 104(a)(4), (5), 105, redesignated par. (6) as subpar. (E)(i) of par. (4), inserted subpar. and cl. headings, substituted ''this subsection'' for ''this paragraph'', and added cls. (ii) to (v).

Subsec. (b)(5), (6). Pub. L. 104–182, § 104(a)(6), added pars. (5) and (6). Former pars. (5) and (6) redesignated subpars. (D) and (E)(i), respectively, of par. (4).

Subsec. (b)(7)(C)(v). Pub. L. 104–182, § 106, added cl. (v).

Subsec. (b)(8). Pub. L. 104–182, § 501(a)(2), substituted ''section 300j–1(e)'' for ''section 300j–1(g)''.

Pub. L. 104–182, § 107, inserted heading, realigned margins, and substituted ''At any time after the end of the 3-year period that begins on August 6, 1996, but not later than the date on which the Administrator promulgates a Stage II rulemaking for disinfectants and disinfection byproducts (as described in paragraph (2)(C)), the Administrator shall also promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems. After consultation with the States, the Administrator shall (as part of the regulations) promulgate criteria that the Administrator, or a State that has primary enforcement responsibility under section 300g–2 of this title, shall apply to determine whether disinfection shall be required as a treatment technique for any public water system served by ground water.'' for ''Not later than 36 months after June 19, 1986, the Administrator shall propose and promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems.''

Subsec. (b)(9). Pub. L. 104–182, § 104(c), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''National primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every 3 years. Such review shall include an analysis of innovations or changes in technology, treatment techniques or other activities that have occurred over the previous 3-year period and that may provide for greater protection of the health of persons. The findings of such review shall be published in the Federal Register. If, after opportunity for public comment, the Administrator concludes that the technology, treatment techniques, or other means resulting from such innovations or changes are not feasible within the meaning of paragraph (5), an explanation of such conclusion shall be published in the Federal Register.''

Subsec. (b)(10). Pub. L. 104–182, § 108, amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''National primary drinking water regulations promulgated under this subsection (and amendments thereto) shall take effect eighteen months after the date of their promulgation. Regulations under subsection (a) of this section shall be superseded by regulations under this subsection to the extent provided by the regulations under this subsection.''

Subsec. (b)(11). Pub. L. 104–182, § 501(a)(1), realigned margins.

Subsec. (b)(12). Pub. L. 104–182, § 109(a), added par. (12).

Subsec. (b)(13). Pub. L. 104–182, § 109(b), added par. (13).

Subsec. (b)(14). Pub. L. 104–182, § 110, added par. (14).

Subsec. (b)(15). Pub. L. 104–182, § 111(a), added par. (15).

1986—Subsec. (a). Pub. L. 99–339, § 101(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after December 16, 1974. Within 180 days after December 16, 1974, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

''(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on December 16, 1974.

''(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.''

Subsec. (b)(1). Pub. L. 99–339, § 101(b), substituted provisions establishing standard setting schedules and deadlines for provisions relating to establishment of maximum contaminant levels and a list of contaminants with adverse effect but of undetermined levels.

Subsec. (b)(2). Pub. L. 99–339, § 101(b), substituted provisions authorizing the Administrator to substitute contaminants for those referred to in par. (1) and to supply a list of the contaminants proposed for substitution, with the decision of the Administrator to regulate such contaminant not subject to judicial review, for provisions which authorized the Administrator to publish in the Federal Register proposed revised national interim primary drinking water regulations and 180 days after the date of such proposed regulations to promulgate such revised regulations with modification as deemed appropriate.

Subsec. (b)(3). Pub. L. 99–339, § 101(b), substituted provisions directing the Administrator to publish maximum contaminant level goals and promulgate national primary drinking water regulations for contaminants, other than specified in par. (1) or (2), which may have an adverse effect on health and are known or anticipated to occur in public water systems, to establish an advisory working group to aid in establishing a list

of such contaminants, and to publish, within a specified time, both proposed and final goals and regulations for provisions which required that revised national primary drinking water regulations specify a maximum contaminant level or require the use of treatment techniques for each contaminant, which level or technique was to be as close to the recommended level or technique as feasible, and defined the term ''feasible''.

Subsec. (b)(4) to (11). Pub. L. 99–339, § 101(b), (c)(1), (d), added pars. (4) to (8), redesignated former pars. (4) to (6) as pars. (9) to (11), respectively, in par. (9) substituted ''National'' for ''Revised National'' and inserted provision that review include analysis, and publication in Federal Register, of innovations in technology, treatment techniques or other activities occurring during previous three years and their feasibility, and in par. (10) substituted ''National'' for ''Revised National''.

Subsec. (e). Pub. L. 99–339, § 101(e), amended subsec. (e) generally, substituting provisions which relate to the request by the Administrator of comments by the Science Advisory Board prior to proposal of a maximum contaminant level goal and national primary drinking water regulation for provisions which related to study by the National Academy of Sciences to determine the maximum contaminant levels, report to Congress, and funding therefor.

1977—Subsec. (e)(2). Pub. L. 95–190 inserted provisions relating to revisions of the required report and cl. (G).

NATIONAL PRIMARY DRINKING WATER REGULATION FOR ARSENIC

Pub. L. 106–377, § 1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–41, provided in part: ''That notwithstanding section 1412(b)(12)(A)(v) of the Safe Drinking Water Act, as amended [subsec. (b)(12)(A)(v) of this section], the Administrator shall promulgate a national primary drinking water regulation for arsenic not later than June 22, 2001.''

APPLICABILITY OF PRIOR REQUIREMENTS

Section 102(b) of Pub. L. 104–182 provided that: ''The requirements of subparagraphs (C) and (D) of section 1412(b)(3) of the Safe Drinking Water Act [subsec. (b)(3)(C), (D) of this section] as in effect before the date of enactment of this Act [Aug. 6, 1996], and any obligation to promulgate regulations pursuant to such subparagraphs not promulgated as of the date of enactment of this Act, are superseded by the amendments made by subsection (a) [amending this section].''

DISINFECTANTS AND DISINFECTION BYPRODUCTS

Section 104(b) of Pub. L. 104–182 provided that: ''The Administrator of the Environmental Protection Agency may use the authority of section 1412(b)(5) of the Safe Drinking Water Act [subsec. (b)(5) of this section] (as amended by this Act) to promulgate the Stage I and Stage II Disinfectants and Disinfection Byproducts Rules as proposed in volume 59, Federal Register, page 38668 (July 29, 1994). The considerations used in the development of the July 29, 1994, proposed national primary drinking water regulation on disinfectants and disinfection byproducts shall be treated as consistent with such section 1412(b)(5) for purposes of such Stage I and Stage II rules.''

§ 300g–2. State primary enforcement responsibility

(a) In general

For purposes of this subchapter, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b) of this section) that such State—

(1) has adopted drinking water regulations that are no less stringent than the national primary drinking water regulations promulgated by the Administrator under subsections (a) and (b) of section 300g–1 of this title not later than 2 years after the date on which the regulations are promulgated by the Administrator, except that the Administrator may provide for an extension of not more than 2 years if, after submission and review of appropriate, adequate documentation from the State, the Administrator determines that the extension is necessary and justified;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and the manner in which variances and exemptions may be granted under sections 300g–4 and 300g–5 of this title;

(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances including earthquakes, floods, hurricanes, and other natural disasters, as appropriate; and

(6) has adopted authority for administrative penalties (unless the constitution of the State prohibits the adoption of the authority) in a maximum amount—

(A) in the case of a system serving a population of more than 10,000, that is not less than $1,000 per day per violation; and

(B) in the case of any other system, that is adequate to ensure compliance (as determined by the State);

except that a State may establish a maximum limitation on the total amount of administrative penalties that may be imposed on a public water system per violation.

(b) Regulations

(1) The Administrator shall, by regulation (proposed within 180 days of December 16, 1974), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) of this section are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the

Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall specify a State's authority under this subchapter when it is determined to have primary enforcement responsibility for public water systems.

(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial.

(c) Interim primary enforcement authority

A State that has primary enforcement authority under this section with respect to each existing national primary drinking water regulation shall be considered to have primary enforcement authority with respect to each new or revised national primary drinking water regulation during the period beginning on the effective date of a regulation adopted and submitted by the State with respect to the new or revised national primary drinking water regulation in accordance with subsection (b)(1) of this section and ending at such time as the Administrator makes a determination under subsection (b)(2)(B) of this section with respect to the regulation.

(July 1, 1944, ch. 373, title XIV, § 1413, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1665; amended Pub. L. 99–339, title I, § 101(c)(2), June 19, 1986, 100 Stat. 646; Pub. L. 104–182, title I, §§ 112, 113(b), Aug. 6, 1996, 110 Stat. 1633, 1635.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–182, § 112(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations in effect under sections 300g–1(a) and 300g–1(b) of this title;''.

Subsec. (a)(5). Pub. L. 104–182, § 112(b), inserted ''including earthquakes, floods, hurricanes, and other natural disasters, as appropriate'' after ''emergency circumstances''.

Subsec. (a)(6). Pub. L. 104–182, § 113(b), added par. (6).

Subsec. (c). Pub. L. 104–182, § 112(a)(2), added subsec. (c).

1986—Subsec. (a)(1). Pub. L. 99–339 substituted ''are no less stringent than the national primary drinking water regulations in effect under sections 300g–1(a) and 300g–1(b) of this title'' for subpars. (A) and (B) which related to stringency of State drinking water regulations between period of promulgation and effective date of national interim drinking water regulations and during the period after such effective date.

§ 300g–3. Enforcement of drinking water regulations

(a) Notice to State and public water system; issuance of administrative order; civil action

(1)(A) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems (within the meaning of section 300g–2(a) of this title) that any public water system—

(i) for which a variance under section 300g–4 or an exemption under section 300g–5 of this title is not in effect, does not comply with any applicable requirement, or

(ii) for which a variance under section 300g–4 or an exemption under section 300g–5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

he shall so notify the State and such public water system and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with the requirement by the earliest feasible time.

(B) If, beyond the thirtieth day after the Administrator's notification under subparagraph (A), the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such applicable requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(2) ENFORCEMENT IN NONPRIMACY STATES.—

(A) IN GENERAL.—If, on the basis of information available to the Administrator, the Administrator finds, with respect to a period in which a State does not have primary enforcement responsibility for public water systems, that a public water system in the State—

(i) for which a variance under section 300g–4 of this title or an exemption under section 300g–5 of this title is not in effect, does not comply with any applicable requirement; or

(ii) for which a variance under section 300g–4 of this title or an exemption under section 300g–5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant to the variance or exemption;

the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with the requirement, or commence a civil action under subsection (b) of this section.

(B) NOTICE.—If the Administrator takes any action pursuant to this paragraph, the Administrator shall notify an appropriate local elected official, if any, with jurisdiction over the public water system of the action prior to the time that the action is taken.

(b) Judicial determinations in appropriate Federal district courts; civil penalties, separate violations

The Administrator may bring a civil action in the appropriate United States district court to require compliance with any applicable requirement with an order issued under subsection (g) of this section, or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 300g–4 or 300g–5 of this title if—

(1) authorized under paragraph (1) or (2) of subsection (a) of this section, or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdic-

tion over compliance by public water systems in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter, in an action brought under this subsection, such judgement as protection of public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed $25,000 for each day in which such violation occurs.

(c) Notice to persons served

(1) In general

Each owner or operator of a public water system shall give notice of each of the following to the persons served by the system:

(A) Notice of any failure on the part of the public water system to—

(i) comply with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a national primary drinking water regulation; or

(ii) perform monitoring required by section 300j–4(a) of this title.

(B) If the public water system is subject to a variance granted under subsection (a)(1)(A), (a)(2), or (e) of section 300g–4 of this title for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 300g–5 of this title, notice of—

(i) the existence of the variance or exemption; and

(ii) any failure to comply with the requirements of any schedule prescribed pursuant to the variance or exemption.

(C) Notice of the concentration level of any unregulated contaminant for which the Administrator has required public notice pursuant to paragraph (2)(E).

(2) Form, manner, and frequency of notice

(A) In general

The Administrator shall, by regulation, and after consultation with the States, prescribe the manner, frequency, form, and content for giving notice under this subsection. The regulations shall—

(i) provide for different frequencies of notice based on the differences between violations that are intermittent or infrequent and violations that are continuous or frequent; and

(ii) take into account the seriousness of any potential adverse health effects that may be involved.

(B) State requirements

(i) In general

A State may, by rule, establish alternative notification requirements—

(I) with respect to the form and content of notice given under and in a manner in accordance with subparagraph (C); and

(II) with respect to the form and content of notice given under subparagraph (D).

(ii) Contents

The alternative requirements shall provide the same type and amount of information as required pursuant to this subsection and regulations issued under subparagraph (A).

(iii) Relationship to section 300g–2

Nothing in this subparagraph shall be construed or applied to modify the requirements of section 300g–2 of this title.

(C) Violations with potential to have serious adverse effects on human health

Regulations issued under subparagraph (A) shall specify notification procedures for each violation by a public water system that has the potential to have serious adverse effects on human health as a result of short-term exposure. Each notice of violation provided under this subparagraph shall—

(i) be distributed as soon as practicable after the occurrence of the violation, but not later than 24 hours after the occurrence of the violation;

(ii) provide a clear and readily understandable explanation of—

(I) the violation;

(II) the potential adverse effects on human health;

(III) the steps that the public water system is taking to correct the violation; and

(IV) the necessity of seeking alternative water supplies until the violation is corrected;

(iii) be provided to the Administrator or the head of the State agency that has primary enforcement responsibility under section 300g–2 of this title as soon as practicable, but not later than 24 hours after the occurrence of the violation; and

(iv) as required by the State agency in general regulations of the State agency, or on a case-by-case basis after the consultation referred to in clause (iii), considering the health risks involved—

(I) be provided to appropriate broadcast media;

(II) be prominently published in a newspaper of general circulation serving the area not later than 1 day after distribution of a notice pursuant to clause (i) or the date of publication of the next issue of the newspaper; or

(III) be provided by posting or door-to-door notification in lieu of notification by means of broadcast media or newspaper.

(D) Written notice

(i) In general

Regulations issued under subparagraph (A) shall specify notification procedures

for violations other than the violations covered by subparagraph (C). The procedures shall specify that a public water system shall provide written notice to each person served by the system by notice (I) in the first bill (if any) prepared after the date of occurrence of the violation, (II) in an annual report issued not later than 1 year after the date of occurrence of the violation, or (III) by mail or direct delivery as soon as practicable, but not later than 1 year after the date of occurrence of the violation.

(ii) Form and manner of notice

The Administrator shall prescribe the form and manner of the notice to provide a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps that the system is taking to seek alternative water supplies, if any, until the violation is corrected.

(E) Unregulated contaminants

The Administrator may require the owner or operator of a public water system to give notice to the persons served by the system of the concentration levels of an unregulated contaminant required to be monitored under section 300j–4(a) of this title.

(3) Reports

(A) Annual report by State

(i) In general

Not later than January 1, 1998, and annually thereafter, each State that has primary enforcement responsibility under section 300g–2 of this title shall prepare, make readily available to the public, and submit to the Administrator an annual report on violations of national primary drinking water regulations by public water systems in the State, including violations with respect to (I) maximum contaminant levels, (II) treatment requirements, (III) variances and exemptions, and (IV) monitoring requirements determined to be significant by the Administrator after consultation with the States.

(ii) Distribution

The State shall publish and distribute summaries of the report and indicate where the full report is available for review.

(B) Annual report by Administrator

Not later than July 1, 1998, and annually thereafter, the Administrator shall prepare and make available to the public an annual report summarizing and evaluating reports submitted by States pursuant to subparagraph (A) and notices submitted by public water systems serving Indian Tribes provided to the Administrator pursuant to subparagraph (C) or (D) of paragraph (2) and making recommendations concerning the resources needed to improve compliance with this subchapter. The report shall include information about public water system compliance on Indian reservations and about enforcement activities undertaken and financial assistance provided by the Administrator on Indian reservations, and shall make specific recommendations concerning the resources needed to improve compliance with this subchapter on Indian reservations.

(4) Consumer confidence reports by community water systems

(A) Annual reports to consumers

The Administrator, in consultation with public water systems, environmental groups, public interest groups, risk communication experts, and the States, and other interested parties, shall issue regulations within 24 months after August 6, 1996, to require each community water system to mail to each customer of the system at least once annually a report on the level of contaminants in the drinking water purveyed by that system (referred to in this paragraph as a ''consumer confidence report''). Such regulations shall provide a brief and plainly worded definition of the terms ''maximum contaminant level goal'', ''maximum contaminant level'', ''variances'', and ''exemptions'' and brief statements in plain language regarding the health concerns that resulted in regulation of each regulated contaminant. The regulations shall also include a brief and plainly worded explanation regarding contaminants that may reasonably be expected to be present in drinking water, including bottled water. The regulations shall also provide for an Environmental Protection Agency toll-free hotline that consumers can call for more information and explanation.

(B) Contents of report

The consumer confidence reports under this paragraph shall include, but not be limited to, each of the following:

(i) Information on the source of the water purveyed.

(ii) A brief and plainly worded definition of the terms ''maximum contaminant level goal'', ''maximum contaminant level'', ''variances'', and ''exemptions'' as provided in the regulations of the Administrator.

(iii) If any regulated contaminant is detected in the water purveyed by the public water system, a statement setting forth (I) the maximum contaminant level goal, (II) the maximum contaminant level, (III) the level of such contaminant in such water system, and (IV) for any regulated contaminant for which there has been a violation of the maximum contaminant level during the year concerned, the brief statement in plain language regarding the health concerns that resulted in regulation of such contaminant, as provided by the Administrator in regulations under subparagraph (A).

(iv) Information on compliance with national primary drinking water regulations, as required by the Administrator, and notice if the system is operating under a variance or exemption and the basis on which the variance or exemption was granted.

(v) Information on the levels of unregulated contaminants for which monitoring is required under section 300j–4(a)(2) of this title (including levels of cryptosporidium and radon where States determine they may be found).

(vi) A statement that the presence of contaminants in drinking water does not necessarily indicate that the drinking water poses a health risk and that more information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency hotline.

A public water system may include such additional information as it deems appropriate for public education. The Administrator may, for not more than 3 regulated contaminants other than those referred to in subclause (IV) of clause (iii), require a consumer confidence report under this paragraph to include the brief statement in plain language regarding the health concerns that resulted in regulation of the contaminant or contaminants concerned, as provided by the Administrator in regulations under subparagraph (A).

(C) Coverage

The Governor of a State may determine not to apply the mailing requirement of subparagraph (A) to a community water system serving fewer than 10,000 persons. Any such system shall—

(i) inform, in the newspaper notice required by clause (iii) or by other means, its customers that the system will not be mailing the report as required by subparagraph (A);

(ii) make the consumer confidence report available upon request to the public; and

(iii) publish the report referred to in subparagraph (A) annually in one or more local newspapers serving the area in which customers of the system are located.

(D) Alternative to publication

For any community water system which, pursuant to subparagraph (C), is not required to meet the mailing requirement of subparagraph (A) and which serves 500 persons or fewer, the community water system may elect not to comply with clause (i) or (iii) of subparagraph (C). If the community water system so elects, the system shall, at a minimum—

(i) prepare an annual consumer confidence report pursuant to subparagraph (B); and

(ii) provide notice at least once per year to each of its customers by mail, by door-to-door delivery, by posting or by other means authorized by the regulations of the Administrator that the consumer confidence report is available upon request.

(E) Alternative form and content

A State exercising primary enforcement responsibility may establish, by rule, after notice and public comment, alternative requirements with respect to the form and content of consumer confidence reports under this paragraph.

(d) Notice of noncompliance with secondary drinking water regulations

Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water regulations have been promulgated, one or more public water systems in a State do not comply with such secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public water systems throughout such State meet such secondary regulations, he shall so notify the State.

(e) State authority to adopt or enforce laws or regulations respecting drinking water regulations or public water systems unaffected

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.

(f) Notice and public hearing; availability of recommendations transmitted to State and public water system

If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1) of this section) with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical or other experts, Federal, State, or other public officials, representatives of such public water system, persons served by such system, and other interested persons on—

(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water system and shall be made available to the public and communications media.

(g) Administrative order requiring compliance; notice and hearing; civil penalty; civil actions

(1) In any case in which the Administrator is authorized to bring a civil action under this section or under section 300j–4 of this title with respect to any applicable requirement, the Administrator also may issue an order to require compliance with such applicable requirement.

(2) An order issued under this subsection shall not take effect, in the case of a State having pri-

mary enforcement responsibility for public water systems in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the order. A copy of any order issued under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

(3)(A) Any person who violates, or fails or refuses to comply with, an order under this subsection shall be liable to the United States for a civil penalty of not more than $25,000 per day of violation.

(B) In a case in which a civil penalty sought by the Administrator under this paragraph does not exceed $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a public hearing (unless the person against whom the penalty is assessed requests a hearing on the record in accordance with section 554 of title 5). In a case in which a civil penalty sought by the Administrator under this paragraph exceeds $5,000, but does not exceed $25,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.

(C) Whenever any civil penalty sought by the Administrator under this subsection for a violation of an applicable requirement exceeds $25,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court (as determined under the provisions of title 28).

(D) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Administrator, the Attorney General shall recover the amount for which such person is liable in any appropriate district court of the United States. In any such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(h) Consolidation incentive

(1) In general

An owner or operator of a public water system may submit to the State in which the system is located (if the State has primary enforcement responsibility under section 300g–2 of this title) or to the Administrator (if the State does not have primary enforcement responsibility) a plan (including specific measures and schedules) for—

(A) the physical consolidation of the system with 1 or more other systems;

(B) the consolidation of significant management and administrative functions of the system with 1 or more other systems; or

(C) the transfer of ownership of the system that may reasonably be expected to improve drinking water quality.

(2) Consequences of approval

If the State or the Administrator approves a plan pursuant to paragraph (1), no enforcement action shall be taken pursuant to this part with respect to a specific violation identified in the approved plan prior to the date that is the earlier of the date on which consolidation is completed according to the plan or the date that is 2 years after the plan is approved.

(i) "Applicable requirement" defined

In this section, the term ''applicable requirement'' means—

(1) a requirement of section 300g–1, 300g–3, 300g–4, 300g–5, 300g–6[1] 300i–2, 300j, or 300j–4 of this title;

(2) a regulation promulgated pursuant to a section referred to in paragraph (1);

(3) a schedule or requirement imposed pursuant to a section referred to in paragraph (1); and

(4) a requirement of, or permit issued under, an applicable State program for which the Administrator has made a determination that the requirements of section 300g–2 of this title have been satisfied, or an applicable State program approved pursuant to this part.

(July 1, 1944, ch. 373, title XIV, §1414, as added Pub. L. 93–523, §2(a), Dec. 16, 1974, 88 Stat. 1666; amended Pub. L. 95–190, §12(b), Nov. 16, 1977, 91 Stat. 1398; Pub. L. 99–339, title I, §§102, 103, June 19, 1986, 100 Stat. 647, 648; Pub. L. 104–182, title I, §§113(a), 114(a), Aug. 6, 1996, 110 Stat. 1634, 1636; Pub. L. 107–188, title IV, §403(1), June 12, 2002, 116 Stat. 687.)

AMENDMENTS

2002—Subsec. (i)(1). Pub. L. 107–188 inserted ''300i–2'' after ''300g–6''.

1996—Subsec. (a)(1)(A). Pub. L. 104–182, §113(a)(1)(A)(i)(II), substituted ''with the requirement'' for ''with such regulation or requirement'' in concluding provisions.

Subsec. (a)(1)(A)(i). Pub. L. 104–182, §113(a)(1)(A)(i)(I), substituted ''any applicable requirement'' for ''any national primary drinking water regulation in effect under section 300g–1 of this title''.

Subsec. (a)(1)(B). Pub. L. 104–182, §113(a)(1)(A)(ii), substituted ''such applicable requirement'' for ''such regulation or requirement''.

Subsec. (a)(2). Pub. L. 104–182, §113(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: ''Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State—

''(A) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5(f) of this title is not in effect, does not comply with any national primary drinking water regulation in effect under section 300g–1 of this title, or

''(B) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5(f) of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section.''

Subsec. (b). Pub. L. 104–182, §113(a)(2), substituted ''any applicable requirement'' for ''a national primary drinking water regulation'' in introductory provisions.

[1] So in original. There probably should be a comma.

Subsec. (c). Pub. L. 104–182, §114(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to notice of owner or operator of public water system to persons served, regulations for form, manner, and frequency of notice, amendment of regulations to provide different types and frequencies of notice, and penalties.

Subsec. (g)(1). Pub. L. 104–182, §113(a)(3)(A), substituted ''applicable requirement'' for ''regulation, schedule, or other requirement'' in two places.

Subsec. (g)(2). Pub. L. 104–182, §113(a)(3)(B), substituted ''effect, in the case'' for ''effect until after notice and opportunity for public hearing and, in the case'' and ''regarding the order'' for ''regarding the proposed order'' and struck out ''proposed to be'' after ''A copy of any order''.

Subsec. (g)(3)(B). Pub. L. 104–182, §113(a)(3)(C)(i), added subpar. (B) and struck out former subpar. (B) which read as follows: ''Whenever any civil penalty sought by the Administrator under this paragraph does not exceed a total of $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.''

Subsec. (g)(3)(C). Pub. L. 104–182, §113(a)(3)(C)(ii), substituted ''subsection for a violation of an applicable requirement exceeds $25,000'' for ''paragraph exceeds $5,000''.

Subsecs. (h), (i). Pub. L. 104–182, §113(a)(4), added subsecs. (h) and (i).

1986—Pub. L. 99–339, §102(d)(2), substituted ''Enforcement'' for ''Failure of State to assure enforcement'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 99–339, §102(a), inserted ''and such public water system'' after ''notify the State'' in provisions following cl. (ii).

Subsec. (a)(1)(B). Pub. L. 99–339, §102(b)(1), amended subpar. (B) generally, substituting provisions which relate to issuance of an order to public water system to comply with regulations, or commencement of civil action if the State has not commenced appropriate enforcement action for provisions which related to public notice of noncompliance and commencement of civil action by Administrator if State failed to take steps to obtain compliance by public water system.

Subsec. (a)(2). Pub. L. 99–339, §102(b)(2), substituted ''the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section'' for ''he may commence a civil action under subsection (b) of this section''.

Subsec. (b). Pub. L. 99–339, §102(c), inserted '', with an order issued under subsection (g) of this section,'' before ''or with any schedule'' and substituted ''there has been a violation'' for ''there has been a willful violation'' and ''$25,000'' for ''$5,000''.

Subsec. (c). Pub. L. 99–339, §103, substituted provisions relating to amendment of regulations within fifteen months after June 19, 1986, to provide different types and frequencies of notice based on the differences between violations which are intermittent or continuous, manner and content of notices, notice required to public served by owner or operator of public water system, and civil penalty of $25,000, for provisions relating to form, manner, and frequency of notice based on three month billing period for water bills, notice required to public served by owner or operator of public water system, and civil penalty of $5,000.

Subsec. (g). Pub. L. 99–339, §102(d), added subsec. (g).

1977—Subsec. (c). Pub. L. 95–190 inserted provisions relating to frequency of required notice, and notice respecting contaminant levels, and substituted ''issued under this subsection'' for ''thereunder''.

§ 300g–4. Variances

(a) Characteristics of raw water sources; specific treatment technique; notice to Administrator, reasons for variance; compliance, enforcement; approval or revision of schedules and revocation of variances; review of variances and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting variances or failing to prescribe schedules; State corrective action; authority of Administrator in a State without primary enforcement responsibility; alternative treatment techniques

Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

(1)(A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may be issued to a system on condition that the system install the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration), and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system. The Administrator shall propose and promulgate his finding of the best available technology, treatment techniques or other means available for each contaminant for purposes of this subsection at the time he proposes and promulgates a maximum contaminant level for each such contaminant. The Administrator's finding of best available technology, treatment techniques or other means for purposes of this subsection may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator. Before a State may grant a variance under this subparagraph, the State must find that the variance will not result in an unreasonable risk to health. If a State grants a public water system a variance under this subparagraph, the State shall prescribe at the the[1] time the variance is granted, a schedule for—

(i) compliance (including increments of progress) by the public water system with each containment level requirement with respect to which the variance was granted, and

(ii) implementation by the public water system of such additional control measures as the State may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

[1] So in original.

Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonably determine).

(B) A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of the national primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

(C) Before a variance proposed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The State shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under subparagraph (A), the basis for the finding required by that subparagraph before the granting of the variance) and documentation of the need for the variance.

(D) Each public water system's variance granted by a State under subparagraph (A) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to that subparagraph. The requirements of each schedule prescribed by a State pursuant to that subparagraph shall be enforceable by the State under its laws. Any requirement of a schedule on which a variance granted under that subparagraph is conditioned may be enforced under section 300g–3 of this title as if such requirement was part of a national primary drinking water regulation.

(E) Each schedule prescribed by a State pursuant to subparagraph (A) shall be deemed approved by the Administrator unless the variance for which it was prescribed is revoked by the Administrator under subparagraph (G) or the schedule is revised by the Administrator under such subparagraph.

(F) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the variances granted under subparagraph (A) (and schedules prescribed pursuant thereto) and under subparagraph (B) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of variances and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (i) provide information respecting the location of data and other information respecting the variances to be reviewed (including data and other information concerning new scientific matters bearing on such variances), and (ii) advise of the opportunity to submit comments on the variances reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with findings responsive to comments submitted in connection with such review.

(G)(i) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances under subparagraph (A) or (B) or that in a substantial number of cases the State has failed to prescribe schedules in accordance with subparagraph (A), the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting variances in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the variances and if the requirements applicable to the granting of the variances were complied with. A notice under this clause shall—

(I) identify each public water system with respect to which the finding was made,

(II) specify the reasons for the finding, and

(III) as appropriate, propose revocations of specific variances or propose revised schedules or other requirements for specific public water systems granted variances, or both.

(ii) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to clause (i) of this subparagraph. After a hearing on a notice pursuant to such clause, the Administrator shall (I) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (II) promulgate (with such modifications as he deems appropriate) such variance revocations and revised schedules or other requirements proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to clause (i) of this subparagraph, the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(iii) If a State is notified under clause (i) of this subparagraph of a finding of the Adminis-

trator made with respect to a variance granted a public water system within that State or to a schedule or other requirement for a variance and if, before a revocation of such variance or a revision of such schedule or other requirement promulgated by the Administrator takes effect, the State takes corrective action with respect to such variance or schedule or other requirement which the Administrator determines makes his finding inapplicable to such variance or schedule or other requirement, the Administrator shall rescind the application of his finding to that variance on schedule or other requirement. No variance revocation or revised schedule or other requirement may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule or other requirement was proposed.

(2) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to grant variances in such State as the State would have under paragraph (1) if it had primary enforcement responsibility.

(3) The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

(b) Enforcement of schedule or other requirement

Any schedule or other requirement on which a variance granted under paragraph (1)(B) or (2) of subsection (a) of this section is conditioned may be enforced under section 300g–3 of this title as if such schedule or other requirement was part of a national primary drinking water regulation.

(c) Applications for variances; regulations: reasonable time for acting

If an application for a variance under subsection (a) of this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(d) "Treatment technique requirement" defined

For purposes of this section, the term ''treatment technique requirement'' means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1(b) of this title.

(e) Small system variances

(1) In general

A State exercising primary enforcement responsibility for public water systems under section 300g–2 of this title (or the Administrator in nonprimacy States) may grant a variance under this subsection for compliance with a requirement specifying a maximum contaminant level or treatment technique contained in a national primary drinking water regulation to—

(A) public water systems serving 3,300 or fewer persons; and

(B) with the approval of the Administrator pursuant to paragraph (9), public water systems serving more than 3,300 persons but fewer than 10,000 persons,

if the variance meets each requirement of this subsection.

(2) Availability of variances

A public water system may receive a variance pursuant to paragraph (1), if—

(A) the Administrator has identified a variance technology under section 300g–1(b)(15) of this title that is applicable to the size and source water quality conditions of the public water system;

(B) the public water system installs, operates, and maintains, in accordance with guidance or regulations issued by the Administrator, such treatment technology, treatment technique, or other means; and

(C) the State in which the system is located determines that the conditions of paragraph (3) are met.

(3) Conditions for granting variances

A variance under this subsection shall be available only to a system—

(A) that cannot afford to comply, in accordance with affordability criteria established by the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title), with a national primary drinking water regulation, including compliance through—

(i) treatment;

(ii) alternative source of water supply; or

(iii) restructuring or consolidation (unless the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title) makes a written determination that restructuring or consolidation is not practicable); and

(B) for which the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title) determines that the terms of the variance ensure adequate protection of human health, considering the quality of the source water for the system and the removal efficiencies and expected useful life of the treatment technology required by the variance.

(4) Compliance schedules

A variance granted under this subsection shall require compliance with the conditions of the variance not later than 3 years after the date on which the variance is granted, except that the Administrator (or the State in the case of a State that has primary enforcement

responsibility under section 300g–2 of this title) may allow up to 2 additional years to comply with a variance technology, secure an alternative source of water, restructure or consolidate if the Administrator (or the State) determines that additional time is necessary for capital improvements, or to allow for financial assistance provided pursuant to section 300j–12 of this title or any other Federal or State program.

(5) Duration of variances

The Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g–2 of this title) shall review each variance granted under this subsection not less often than every 5 years after the compliance date established in the variance to determine whether the system remains eligible for the variance and is conforming to each condition of the variance.

(6) Ineligibility for variances

A variance shall not be available under this subsection for—

(A) any maximum contaminant level or treatment technique for a contaminant with respect to which a national primary drinking water regulation was promulgated prior to January 1, 1986; or

(B) a national primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

(7) Regulations and guidance

(A) In general

Not later than 2 years after August 6, 1996, and in consultation with the States, the Administrator shall promulgate regulations for variances to be granted under this subsection. The regulations shall, at a minimum, specify—

(i) procedures to be used by the Administrator or a State to grant or deny variances, including requirements for notifying the Administrator and consumers of the public water system that a variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the variance before the variance is granted;

(ii) requirements for the installation and proper operation of variance technology that is identified (pursuant to section 300g–1(b)(15) of this title) for small systems and the financial and technical capability to operate the treatment system, including operator training and certification;

(iii) eligibility criteria for a variance for each national primary drinking water regulation, including requirements for the quality of the source water (pursuant to section 300g–1(b)(15)(A) of this title); and

(iv) information requirements for variance applications.

(B) Affordability criteria

Not later than 18 months after August 6, 1996, the Administrator, in consultation with the States and the Rural Utilities Service of the Department of Agriculture, shall publish information to assist the States in developing affordability criteria. The affordability criteria shall be reviewed by the States not less often than every 5 years to determine if changes are needed to the criteria.

(8) Review by the Administrator

(A) In general

The Administrator shall periodically review the program of each State that has primary enforcement responsibility for public water systems under section 300g–2 of this title with respect to variances to determine whether the variances granted by the State comply with the requirements of this subsection. With respect to affordability, the determination of the Administrator shall be limited to whether the variances granted by the State comply with the affordability criteria developed by the State.

(B) Notice and publication

If the Administrator determines that variances granted by a State are not in compliance with affordability criteria developed by the State and the requirements of this subsection, the Administrator shall notify the State in writing of the deficiencies and make public the determination.

(9) Approval of variances

A State proposing to grant a variance under this subsection to a public water system serving more than 3,300 and fewer than 10,000 persons shall submit the variance to the Administrator for review and approval prior to the issuance of the variance. The Administrator shall approve the variance if it meets each of the requirements of this subsection. The Administrator shall approve or disapprove the variance within 90 days. If the Administrator disapproves a variance under this paragraph, the Administrator shall notify the State in writing of the reasons for disapproval and the variance may be resubmitted with modifications to address the objections stated by the Administrator.

(10) Objections to variances

(A) By the Administrator

The Administrator may review and object to any variance proposed to be granted by a State, if the objection is communicated to the State not later than 90 days after the State proposes to grant the variance. If the Administrator objects to the granting of a variance, the Administrator shall notify the State in writing of each basis for the objection and propose a modification to the variance to resolve the concerns of the Administrator. The State shall make the recommended modification or respond in writing to each objection. If the State issues the variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with this subsection.

(B) Petition by consumers

Not later than 30 days after a State exercising primary enforcement responsibility for public water systems under section 300g–2 of this title proposes to grant a variance for a public water system, any person served by the system may petition the Administrator to object to the granting of a variance. The Administrator shall respond to the petition and determine whether to object to the variance under subparagraph (A) not later than 60 days after the receipt of the petition.

(C) Timing

No variance shall be granted by a State until the later of the following:

(i) 90 days after the State proposes to grant a variance.

(ii) If the Administrator objects to the variance, the date on which the State makes the recommended modifications or responds in writing to each objection.

(July 1, 1944, ch. 373, title XIV, § 1415, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1669; amended Pub. L. 99–339, title I, § 104, June 19, 1986, 100 Stat. 649; Pub. L. 104–182, title I, §§ 102(c)(1), 115, 116, title V, § 501(a)(3), Aug. 6, 1996, 110 Stat. 1621, 1641, 1691.)

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104–182, § 501(a)(3), inserted ''the'' before ''time the variance is granted,'' in introductory provisions.

Pub. L. 104–182, § 115, in second sentence, substituted ''be issued to a system on condition that the system install'' for ''only be issued to a system after the system's application of'' and inserted '', and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system'' after ''(taking costs into consideration)''.

Subsec. (d). Pub. L. 104–182, § 102(c)(1), substituted ''section 300g–1(b)'' for ''section 300g–1(b)(3)''.

Subsec. (e). Pub. L. 104–182, § 116, added subsec. (e).

1986—Subsec. (a)(1)(A). Pub. L. 99–339, § 104(1)–(3), substituted ''such drinking water regulation. A variance may only be issued to a system after the system's application'' for ''such drinking water regulation despite application'', struck out ''generally'' after ''finds are'', inserted provisions relating to proposal and promulgation by Administrator of a finding on best available technology, treatment techniques or other means available for each contaminant at time of proposal and promulgation of maximum contaminant levels, and substituted ''at the time'' for ''within one year of the date''.

Subsec. (a)(1)(A)(ii). Pub. L. 99–339, § 104(4), substituted ''water system of such additional control'' for ''water system of such control''.

§ 300g–5. Exemptions

(a) Requisite findings

A State which has primary enforcement responsibility may exempt any public water system within the State's jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—

(1) due to compelling factors (which may include economic factors, including qualification of the public water system as a system serving a disadvantaged community pursuant to section 300j–12(d) of this title), the public water system is unable to comply with such contaminant level or treatment technique requirement, or to implement measures to develop an alternative source of water supply,

(2) the public water system was in operation on the effective date of such contaminant level or treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system,

(3) the granting of the exemption will not result in an unreasonable risk to health;[1] and

(4) management or restructuring changes (or both) cannot reasonably be made that will result in compliance with this subchapter or, if compliance cannot be achieved, improve the quality of the drinking water.

(b) Compliance schedule and implementation of control measures; notice and hearing; dates for compliance with schedule; compliance, enforcement; approval or revision of schedules and revocation of exemptions

(1) If a State grants a public water system an exemption under subsection (a) of this section, the State shall prescribe, at the time the exemption is granted, a schedule for—

(A) compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement or treatment technique requirement with respect to which the exemption was granted, and

(B) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(2)(A) A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) of this section shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but not later than 3 years after the otherwise applicable compliance date established in section 300g–1(b)(10) of this title.

(B) No exemption shall be granted unless the public water system establishes that—

(i) the system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to section 300g–1(b)(10) of this title;

[1] So in original. The semicolon probably should be a comma.

(ii) in the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance or assistance pursuant to section 300j–12 of this title, or any other Federal or State program is reasonably likely to be available within the period of the exemption; or

(iii) the system has entered into an enforceable agreement to become a part of a regional public water system; and

the system is taking all practicable steps to meet the standard.

(C) In the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under clause (i) or (ii) of subparagraph (B) may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 years, if the system establishes that it is taking all practicable steps to meet the requirements of subparagraph (B).

(D) LIMITATION.—A public water system may not receive an exemption under this section if the system was granted a variance under section 300g–4(e) of this title.

(3) Each public water system's exemption granted by a State under subsection (a) of this section shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 300g–3 of this title as if such requirement was part of a national primary drinking water regulation.

(4) Each schedule prescribed by a State pursuant to this subsection shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under subsection (d)(2) of this section or the schedule is revised by the Administrator under such subsection.

(c) Notice to Administrator; reasons for exemption

Each State which grants an exemption under subsection (a) of this section shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption (including the basis for the finding required by subsection (a)(3) of this section before the exemption may be granted) and document the need for the exemption.

(d) Review of exemptions and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting exemptions or failing to prescribe schedules; State corrective action

(1) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (A) provide information respecting the location of data and other information respecting the exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such exemptions), and (B) advise of the opportunity to submit comments on the exemptions reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review, together with findings responsive to comments submitted in connection with such review.

(2)(A) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions under subsection (a) of this section or failed to prescribe schedules in accordance with subsection (b) of this section, the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting exemptions in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the exemptions and if the requirements applicable to the granting of the exemptions were complied with. A notice under this subparagraph shall—

(i) identify each exempt public water system with respect to which the finding was made,

(ii) specify the reasons for the finding, and

(iii) as appropriate, propose revocations of specific exemptions or propose revised schedules for specific exempt public water systems, or both.

(B) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on notice pursuant to subparagraph (A), the Administrator shall (i) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (ii) promulgate (with such modifications as he deems appropriate) such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(C) If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes corrective action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall re-

scind the application of his finding to that exemption or schedule. No exemption revocation or revised schedule may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule was proposed.

(e) "Treatment technique requirement" defined

For purposes of this section, the term ''treatment technique requirement'' means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1(b) of this title.

(f) Authority of Administrator in a State without primary enforcement responsibility

If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and treatment technique requirements under the same conditions and in the same manner as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

(g) Applications for exemptions; regulations; reasonable time for acting

If an application for an exemption under this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(July 1, 1944, ch. 373, title XIV, § 1416, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1672; amended Pub. L. 95–190, § 10(a), Nov. 16, 1977, 91 Stat. 1398; Pub. L. 96–502, §§ 1, 4(b), Dec. 5, 1980, 94 Stat. 2737, 2738; Pub. L. 99–339, title I, §§ 101(c)(4), 105, June 19, 1986, 100 Stat. 646, 649; Pub. L. 104–182, title I, § 117(a), Aug. 6, 1996, 110 Stat. 1644.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–182, § 117(a)(1), inserted '', including qualification of the public water system as a system serving a disadvantaged community pursuant to section 300j–12(d) of this title'' after ''(which may include economic factors'' and ''or to implement measures to develop an alternative source of water supply,'' after ''treatment technique requirement,''.

Subsec. (a)(4). Pub. L. 104–182, § 117(a)(2), added par. (4).

Subsec. (b)(1)(A). Pub. L. 104–182, § 117(a)(3), substituted ''(including increments of progress or measures to develop an alternative source of water supply)'' for ''(including increments of progress)'' and ''requirement or treatment'' for ''requirement and treatment''.

Subsec. (b)(2)(A). Pub. L. 104–182, § 117(a)(4)(A), substituted ''not later than 3 years after the otherwise applicable compliance date established in section 300g–1(b)(10) of this title.'' for ''(except as provided in subparagraph (B))—

''(i) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the national primary drinking water regulations promulgated under section 300g–1(a) of this title, not later than 12 months after June 19, 1986; and

''(ii) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by national primary drinking water regulations, other than a regulation referred to in section 300g–1(a) of this title, 12 months after the date of the issuance of the exemption.''

Subsec. (b)(2)(B). Pub. L. 104–182, § 117(a)(4)(A), substituted ''No exemption shall be granted unless'' for ''The final date for compliance provided in any schedule in the case of any exemption may be extended by the State (in the case of a State which has primary enforcement responsibility) or by the Administrator (in any other case) for a period not to exceed 3 years after the date of the issuance of the exemption if'' in introductory provisions.

Subsec. (b)(2)(B)(i). Pub. L. 104–182, § 117(a)(4)(B), substituted ''prior to the date established pursuant to section 300g–1(b)(10) of this title'' for ''within the period of such exemption''.

Subsec. (b)(2)(B)(ii). Pub. L. 104–182, § 117(a)(4)(C), inserted ''or assistance pursuant to section 300j–12 of this title, or any other Federal or State program is reasonably likely to be available within the period of the exemption'' after ''such financial assistance''.

Subsec. (b)(2)(C). Pub. L. 104–182, § 117(a)(4)(D), substituted ''a population of 3,300'' for ''500 service connections'' and inserted '', but not to exceed a total of 6 years,'' after ''for one or more additional 2-year periods''.

Subsec. (b)(2)(D). Pub. L. 104–182, § 117(a)(4)(E), added subpar. (D).

1986—Subsec. (b)(1). Pub. L. 99–339, § 105(a)(1), substituted ''at the time'' for ''within one year of the date''.

Subsec. (b)(2)(A)(i). Pub. L. 99–339, § 105(a)(2), struck out ''interim'' before ''national primary'' and substituted ''not later than 12 months after June 19, 1986'' for ''not later than January 1, 1984''.

Subsec. (b)(2)(A)(ii). Pub. L. 99–339, § 105(a)(3), struck out ''revised'' before ''national primary'' and substituted ''other than a regulation referred to in section 300g–1(a) of this title, 12 months after the date of the issuance of the exemption'' for ''not later than seven years after the date such requirement takes effect''.

Subsec. (b)(2)(B). Pub. L. 99–339, § 105(a)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Notwithstanding clauses (i) and (ii) of subparagraph (A) of this paragraph, the final date for compliance prescribed in a schedule prescribed pursuant to this subsection for an exemption granted for a public water system which (as determined by the State granting the exemption) has entered into an enforceable agreement to become a part of a regional public water system shall—

''(i) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by interim national primary drinking water regulations, be not later than January 1, 1986; and

''(ii) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, be not later than nine years after such requirement takes effect.''

Subsec. (b)(2)(C). Pub. L. 99–339, § 105(a)(4), added subpar. (C).

Subsec. (e). Pub. L. 99–339, § 101(c)(4), substituted ''300g–1(b)'' for ''300g–1(b)(3)''.

1980—Subsec. (a)(2). Pub. L. 96–502, § 4(b), substituted ''treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system, and'' for ''treatment technique requirement, and''.

Subsec. (b)(2)(A)(i). Pub. L. 96–502, § 1, substituted ''January 1, 1984'' for ''January 1, 1981''.

Subsec. (b)(2)(B)(i). Pub. L. 96–502, § 1, substituted ''January 1, 1986'' for ''January 1, 1983''.

1977—Subsec. (b)(1). Pub. L. 95–190 substituted ''contaminant'' for ''containment'' wherever appearing.

§ 300g–6. Prohibition on use of lead pipes, solder, and flux

(a) In general

(1) Prohibitions

(A) In general

No person may use any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux, after June 19, 1986, in the installation or repair of—

(i) any public water system; or

(ii) any plumbing in a residential or nonresidential facility providing water for human consumption,

that is not lead free (within the meaning of subsection (d) of this section).

(B) Leaded joints

Subparagraph (A) shall not apply to leaded joints necessary for the repair of cast iron pipes.

(2) Public notice requirements

(A) In general

Each owner or operator of a public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

The notice shall be provided in such manner and form as may be reasonably required by the Administrator. Notice under this paragraph shall be provided notwithstanding the absence of a violation of any national drinking water standard.

(B) Contents of notice

Notice under this paragraph shall provide a clear and readily understandable explanation of—

(i) the potential sources of lead in the drinking water,

(ii) potential adverse health effects,

(iii) reasonably available methods of mitigating known or potential lead content in drinking water,

(iv) any steps the system is taking to mitigate lead content in drinking water, and

(v) the necessity for seeking alternative water supplies, if any.

(3) Unlawful acts

Effective 2 years after August 6, 1996, it shall be unlawful—

(A) for any person to introduce into commerce any pipe, or any pipe or plumbing fitting or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing;

(B) for any person engaged in the business of selling plumbing supplies, except manufacturers, to sell solder or flux that is not lead free; or

(C) for any person to introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

(b) State enforcement

(1) Enforcement of prohibition

The requirements of subsection (a)(1) of this section shall be enforced in all States effective 24 months after June 19, 1986. States shall enforce such requirements through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

(2) Enforcement of public notice requirements

The requirements of subsection (a)(2) of this section shall apply in all States effective 24 months after June 19, 1986.

(c) Penalties

If the Administrator determines that a State is not enforcing the requirements of subsection (a) of this section as required pursuant to subsection (b) of this section, the Administrator may withhold up to 5 percent of Federal funds available to that State for State program grants under section 300j–2(a) of this title.

(d) "Lead free" defined

For purposes of this section, the term ''lead free''—

(1) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead;

(2) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead; and

(3) when used with respect to plumbing fittings and fixtures, refers to plumbing fittings and fixtures in compliance with standards established in accordance with subsection (e) of this section.

(e) Plumbing fittings and fixtures

(1) In general

The Administrator shall provide accurate and timely technical information and assistance to qualified third-party certifiers in the development of voluntary standards and testing protocols for the leaching of lead from new plumbing fittings and fixtures that are intended by the manufacturer to dispense water for human ingestion.

(2) Standards

(A) In general

If a voluntary standard for the leaching of lead is not established by the date that is 1 year after August 6, 1996, the Administrator shall, not later than 2 years after August 6, 1996, promulgate regulations setting a health-effects-based performance standard establishing maximum leaching levels from new plumbing fittings and fixtures that are intended by the manufacturer to dispense water for human ingestion. The standard

shall become effective on the date that is 5 years after the date of promulgation of the standard.

(B) Alternative requirement

If regulations are required to be promulgated under subparagraph (A) and have not been promulgated by the date that is 5 years after August 6, 1996, no person may import, manufacture, process, or distribute in commerce a new plumbing fitting or fixture, intended by the manufacturer to dispense water for human ingestion, that contains more than 4 percent lead by dry weight.

(July 1, 1944, ch. 373, title XIV, § 1417, as added Pub. L. 99–339, title I, § 109(a), June 19, 1986, 100 Stat. 651; amended Pub. L. 104–182, title I, § 118, title V, § 501(f)(1), Aug. 6, 1996, 110 Stat. 1645, 1691.)

AMENDMENTS

1996—Pub. L. 104–182, § 501(f)(1), made technical amendment to section catchline and subsec. (a) designation.

Subsec. (a)(1). Pub. L. 104–182, § 118(1), substituted ''Prohibitions'' for ''Prohibition'' in heading and amended text generally. Prior to amendment, text read as follows: ''Any pipe, solder, or flux, which is used after June 19, 1986, in the installation or repair of—

''(A) any public water system, or

''(B) any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system,

shall be lead free (within the meaning of subsection (d) of this section). This paragraph shall not apply to leaded joints necessary for the repair of cast iron pipes.''

Subsec. (a)(2)(A). Pub. L. 104–182, § 118(2), inserted ''owner or operator of a'' after ''Each'' in introductory provisions.

Subsec. (a)(3). Pub. L. 104–182, § 118(3), added par. (3).

Subsec. (d)(3). Pub. L. 104–182, § 118(4), added par. (3).

Subsec. (e). Pub. L. 104–182, § 118(5), added subsec. (e).

NOTIFICATION TO STATES

Section 109(b) of Pub. L. 99–339 provided that: ''The Administrator of the Environmental Protection Agency shall notify all States with respect to the requirements of section 1417 of the Public Health Service Act [this section] within 90 days after the enactment of this Act [June 19, 1986].''

BAN ON LEAD WATER PIPES, SOLDER, AND FLUX IN VA AND HUD INSURED OR ASSISTED PROPERTY

Section 109(c) of Pub. L. 99–339, as amended by Pub. L. 102–54, § 13(q)(2), June 13, 1991, 105 Stat. 279, provided that:

''(1) PROHIBITION.—The Secretary of Housing and Urban Development and the Secretary of Veterans Affairs may not insure or guarantee a mortgage or furnish assistance with respect to newly constructed residential property which contains a potable water system unless such system uses only lead free pipe, solder, and flux.

''(2) DEFINITION OF LEAD FREE.—For purposes of paragraph (1) the term 'lead free'—

''(A) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

''(B) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

''(3) EFFECTIVE DATE.—Paragraph (1) shall become effective 24 months after the enactment of this Act [June 19, 1986].''

§ 300g–7. Monitoring of contaminants

(a) Interim monitoring relief authority

(1) In general

A State exercising primary enforcement responsibility for public water systems may modify the monitoring requirements for any regulated or unregulated contaminants for which monitoring is required other than microbial contaminants (or indicators thereof), disinfectants and disinfection byproducts or corrosion byproducts for an interim period to provide that any public water system serving 10,000 persons or fewer shall not be required to conduct additional quarterly monitoring during an interim relief period for such contaminants if—

(A) monitoring, conducted at the beginning of the period for the contaminant concerned and certified to the State by the public water system, fails to detect the presence of the contaminant in the ground or surface water supplying the public water system; and

(B) the State, considering the hydrogeology of the area and other relevant factors, determines in writing that the contaminant is unlikely to be detected by further monitoring during such period.

(2) Termination; timing of monitoring

The interim relief period referred to in paragraph (1) shall terminate when permanent monitoring relief is adopted and approved for such State, or at the end of 36 months after August 6, 1996, whichever comes first. In order to serve as a basis for interim relief, the monitoring conducted at the beginning of the period must occur at the time determined by the State to be the time of the public water system's greatest vulnerability to the contaminant concerned in the relevant ground or surface water, taking into account in the case of pesticides the time of application of the pesticide for the source water area and the travel time for the pesticide to reach such waters and taking into account, in the case of other contaminants, seasonality of precipitation and contaminant travel time.

(b) Permanent monitoring relief authority

(1) In general

Each State exercising primary enforcement responsibility for public water systems under this subchapter and having an approved source water assessment program may adopt, in accordance with guidance published by the Administrator, tailored alternative monitoring requirements for public water systems in such State (as an alternative to the monitoring requirements for chemical contaminants set forth in the applicable national primary drinking water regulations) where the State concludes that (based on data available at the time of adoption concerning susceptibility, use, occurrence, or wellhead protection, or from the State's drinking water source water assessment program) such alternative monitoring would provide assurance that it complies with the Administrator's guidelines. The State program must be adequate to assure

compliance with, and enforcement of, applicable national primary drinking water regulations. Alternative monitoring shall not apply to regulated microbiological contaminants (or indicators thereof), disinfectants and disinfection byproducts, or corrosion byproducts. The preceding sentence is not intended to limit other authority of the Administrator under other provisions of this subchapter to grant monitoring flexibility.

(2) Guidelines

(A) In general

The Administrator shall issue, after notice and comment and at the same time as guidelines are issued for source water assessment under section 300j–13 of this title, guidelines for States to follow in proposing alternative monitoring requirements under paragraph (1) for chemical contaminants. The Administrator shall publish such guidelines in the Federal Register. The guidelines shall assure that the public health will be protected from drinking water contamination. The guidelines shall require that a State alternative monitoring program apply on a contaminant-by-contaminant basis and that, to be eligible for such alternative monitoring program, a public water system must show the State that the contaminant is not present in the drinking water supply or, if present, it is reliably and consistently below the maximum contaminant level.

(B) Definition

For purposes of subparagraph (A), the phrase ''reliably and consistently below the maximum contaminant level'' means that, although contaminants have been detected in a water supply, the State has sufficient knowledge of the contamination source and extent of contamination to predict that the maximum contaminant level will not be exceeded. In determining that a contaminant is reliably and consistently below the maximum contaminant level, States shall consider the quality and completeness of data, the length of time covered and the volatility or stability of monitoring results during that time, and the proximity of such results to the maximum contaminant level. Wide variations in the analytical results, or analytical results close to the maximum contaminant level, shall not be considered to be reliably and consistently below the maximum contaminant level.

(3) Effect of detection of contaminants

The guidelines issued by the Administrator under paragraph (2) shall require that if, after the monitoring program is in effect and operating, a contaminant covered by the alternative monitoring program is detected at levels at or above the maximum contaminant level or is no longer reliably or consistently below the maximum contaminant level, the public water system must either—

(A) demonstrate that the contamination source has been removed or that other action has been taken to eliminate the contamination problem; or

(B) test for the detected contaminant pursuant to the applicable national primary drinking water regulation.

(4) States not exercising primary enforcement responsibility

The Governor of any State not exercising primary enforcement responsibility under section 300g–2 of this title on August 6, 1996, may submit to the Administrator a request that the Administrator modify the monitoring requirements established by the Administrator and applicable to public water systems in that State. After consultation with the Governor, the Administrator shall modify the requirements for public water systems in that State if the request of the Governor is in accordance with each of the requirements of this subsection that apply to alternative monitoring requirements established by States that have primary enforcement responsibility. A decision by the Administrator to approve a request under this clause shall be for a period of 3 years and may subsequently be extended for periods of 5 years.

(c) Treatment as NPDWR

All monitoring relief granted by a State to a public water system for a regulated contaminant under subsection (a) or (b) of this section shall be treated as part of the national primary drinking water regulation for that contaminant.

(d) Other monitoring relief

Nothing in this section shall be construed to affect the authority of the States under applicable national primary drinking water regulations to alter monitoring requirements through waivers or other existing authorities. The Administrator shall periodically review and, as appropriate, revise such authorities.

(July 1, 1944, ch. 373, title XIV, § 1418, as added Pub. L. 104–182, title I, § 125(b), Aug. 6, 1996, 110 Stat. 1654.)

§ 300g–8. Operator certification

(a) Guidelines

Not later than 30 months after August 6, 1996, and in cooperation with the States, the Administrator shall publish guidelines in the Federal Register, after notice and opportunity for comment from interested persons, including States and public water systems, specifying minimum standards for certification (and recertification) of the operators of community and nontransient noncommunity public water systems. Such guidelines shall take into account existing State programs, the complexity of the system, and other factors aimed at providing an effective program at reasonable cost to States and public water systems, taking into account the size of the system.

(b) State programs

Beginning 2 years after the date on which the Administrator publishes guidelines under subsection (a) of this section, the Administrator shall withhold 20 percent of the funds a State is otherwise entitled to receive under section 300j–12 of this title unless the State has adopted and is implementing a program for the certifi-

cation of operators of community and nontransient noncommunity public water systems that meets the requirements of the guidelines published pursuant to subsection (a) of this section or that has been submitted in compliance with subsection (c) of this section and that has not been disapproved.

(c) Existing programs

For any State exercising primary enforcement responsibility for public water systems or any other State which has an operator certification program, the guidelines under subsection (a) of this section shall allow the State to enforce such program in lieu of the guidelines under subsection (a) of this section if the State submits the program to the Administrator within 18 months after the publication of the guidelines unless the Administrator determines (within 9 months after the State submits the program to the Administrator) that such program is not substantially equivalent to such guidelines. In making this determination, an existing State program shall be presumed to be substantially equivalent to the guidelines, notwithstanding program differences, based on the size of systems or the quality of source water, providing the State program meets the overall public health objectives of the guidelines. If disapproved, the program may be resubmitted within 6 months after receipt of notice of disapproval.

(d) Expense reimbursement

(1) In general

The Administrator shall provide reimbursement for the costs of training, including an appropriate per diem for unsalaried operators, and certification for persons operating systems serving 3,300 persons or fewer that are required to undergo training pursuant to this section.

(2) State grants

The reimbursement shall be provided through grants to States with each State receiving an amount sufficient to cover the reasonable costs for training all such operators in the State, as determined by the Administrator, to the extent required by this section. Grants received by a State pursuant to this paragraph shall first be used to provide reimbursement for training and certification costs of persons operating systems serving 3,300 persons or fewer. If a State has reimbursed all such costs, the State may, after notice to the Administrator, use any remaining funds from the grant for any of the other purposes authorized for grants under section 300j–12 of this title.

(3) Authorization

There are authorized to be appropriated to the Administrator to provide grants for reimbursement under this section $30,000,000 for each of fiscal years 1997 through 2003.

(4) Reservation

If the appropriation made pursuant to paragraph (3) for any fiscal year is not sufficient to satisfy the requirements of paragraph (1), the Administrator shall, prior to any other allocation or reservation, reserve such sums as necessary from the funds appropriated pursuant to section 300j–12(m) of this title to provide reimbursement for the training and certification costs mandated by this subsection.

(July 1, 1944, ch. 373, title XIV, § 1419, as added Pub. L. 104–182, title I, § 123, Aug. 6, 1996, 110 Stat. 1652.)

§ 300g–9. Capacity development

(a) State authority for new systems

A State shall receive only 80 percent of the allotment that the State is otherwise entitled to receive under section 300j–12 of this title (relating to State loan funds) unless the State has obtained the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.

(b) Systems in significant noncompliance

(1) List

Beginning not later than 1 year after August 6, 1996, each State shall prepare, periodically update, and submit to the Administrator a list of community water systems and nontransient, noncommunity water systems that have a history of significant noncompliance with this subchapter (as defined in guidelines issued prior to August 6, 1996, or any revisions of the guidelines that have been made in consultation with the States) and, to the extent practicable, the reasons for noncompliance.

(2) Report

Not later than 5 years after August 6, 1996, and as part of the capacity development strategy of the State, each State shall report to the Administrator on the success of enforcement mechanisms and initial capacity development efforts in assisting the public water systems listed under paragraph (1) to improve technical, managerial, and financial capacity.

(3) Withholding

The list and report under this subsection shall be considered part of the capacity development strategy of the State required under subsection (c) of this section for purposes of the withholding requirements of section 300j–12(a)(1)(G)(i) of this title (relating to State loan funds).

(c) Capacity development strategy

(1) In general

Beginning 4 years after August 6, 1996, a State shall receive only—

(A) 90 percent in fiscal year 2001;

(B) 85 percent in fiscal year 2002; and

(C) 80 percent in each subsequent fiscal year,

of the allotment that the State is otherwise entitled to receive under section 300j–12 of this title (relating to State loan funds), unless the State is developing and implementing a strat-

egy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity.

(2) Content

In preparing the capacity development strategy, the State shall consider, solicit public comment on, and include as appropriate—

(A) the methods or criteria that the State will use to identify and prioritize the public water systems most in need of improving technical, managerial, and financial capacity;

(B) a description of the institutional, regulatory, financial, tax, or legal factors at the Federal, State, or local level that encourage or impair capacity development;

(C) a description of how the State will use the authorities and resources of this subchapter or other means to—

(i) assist public water systems in complying with national primary drinking water regulations;

(ii) encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and

(iii) assist public water systems in the training and certification of operators;

(D) a description of how the State will establish a baseline and measure improvements in capacity with respect to national primary drinking water regulations and State drinking water law; and

(E) an identification of the persons that have an interest in and are involved in the development and implementation of the capacity development strategy (including all appropriate agencies of Federal, State, and local governments, private and nonprofit public water systems, and public water system customers).

(3) Report

Not later than 2 years after the date on which a State first adopts a capacity development strategy under this subsection, and every 3 years thereafter, the head of the State agency that has primary responsibility to carry out this subchapter in the State shall submit to the Governor a report that shall also be available to the public on the efficacy of the strategy and progress made toward improving the technical, managerial, and financial capacity of public water systems in the State.

(4) Review

The decisions of the State under this section regarding any particular public water system are not subject to review by the Administrator and may not serve as the basis for withholding funds under section 300j–12 of this title.

(d) Federal assistance

(1) In general

The Administrator shall support the States in developing capacity development strategies.

(2) Informational assistance

(A) In general

Not later than 180 days after August 6, 1996, the Administrator shall—

(i) conduct a review of State capacity development efforts in existence on August 6, 1996, and publish information to assist States and public water systems in capacity development efforts; and

(ii) initiate a partnership with States, public water systems, and the public to develop information for States on recommended operator certification requirements.

(B) Publication of information

The Administrator shall publish the information developed through the partnership under subparagraph (A)(ii) not later than 18 months after August 6, 1996.

(3) Promulgation of drinking water regulations

In promulgating a national primary drinking water regulation, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems.

(4) Guidance for new systems

Not later than 2 years after August 6, 1996, the Administrator shall publish guidance developed in consultation with the States describing legal authorities and other means to ensure that all new community water systems and new nontransient, noncommunity water systems demonstrate technical, managerial, and financial capacity with respect to national primary drinking water regulations.

(e) Variances and exemptions

Based on information obtained under subsection (c)(3) of this section, the Administrator shall, as appropriate, modify regulations concerning variances and exemptions for small public water systems to ensure flexibility in the use of the variances and exemptions. Nothing in this subsection shall be interpreted, construed, or applied to affect or alter the requirements of section 300g–4 or 300g–5 of this title.

(f) Small public water systems technology assistance centers

(1) Grant program

The Administrator is authorized to make grants to institutions of higher learning to establish and operate small public water system technology assistance centers in the United States.

(2) Responsibilities of the centers

The responsibilities of the small public water system technology assistance centers established under this subsection shall include the conduct of training and technical assistance relating to the information, performance, and technical needs of small public water systems or public water systems that serve Indian Tribes.

(3) Applications

Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) Selection criteria

The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The small public water system technology assistance center shall be located in a State that is representative of the needs of the region in which the State is located for addressing the drinking water needs of small and rural communities or Indian Tribes.

(B) The grant recipient shall be located in a region that has experienced problems, or may reasonably be foreseen to experience problems, with small and rural public water systems.

(C) The grant recipient shall have access to expertise in small public water system technology management.

(D) The grant recipient shall have the capability to disseminate the results of small public water system technology and training programs.

(E) The projects that the grant recipient proposes to carry out under the grant are necessary and appropriate.

(F) The grant recipient has regional support beyond the host institution.

(5) Consortia of States

At least 2 of the grants under this subsection shall be made to consortia of States with low population densities.

(6) Authorization of appropriations

There are authorized to be appropriated to make grants under this subsection $2,000,000 for each of the fiscal years 1997 through 1999, and $5,000,000 for each of the fiscal years 2000 through 2003.

(g) Environmental finance centers

(1) In general

The Administrator shall provide initial funding for one or more university-based environmental finance centers for activities that provide technical assistance to State and local officials in developing the capacity of public water systems. Any such funds shall be used only for activities that are directly related to this subchapter.

(2) National capacity development clearinghouse

The Administrator shall establish a national public water system capacity development clearinghouse to receive and disseminate information with respect to developing, improving, and maintaining financial and managerial capacity at public water systems. The Administrator shall ensure that the clearinghouse does not duplicate other federally supported clearinghouse activities.

(3) Capacity development techniques

The Administrator may request an environmental finance center funded under paragraph (1) to develop and test managerial, financial, and institutional techniques for capacity development. The techniques may include capacity assessment methodologies, manual and computer based public water system rate models and capital planning models, public water system consolidation procedures, and regionalization models.

(4) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection $1,500,000 for each of the fiscal years 1997 through 2003.

(5) Limitation

No portion of any funds made available under this subsection may be used for lobbying expenses.

(July 1, 1944, ch. 373, title XIV, § 1420, as added Pub. L. 104–182, title I, § 119, Aug. 6, 1996, 110 Stat. 1647.)

PART C—PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

§ 300h. Regulations for State programs

(a) Publication of proposed regulations; promulgation; amendments; public hearings; administrative consultations

(1) The Administrator shall publish proposed regulations for State underground injection control programs within 180 days after December 16, 1974. Within 180 days after publication of such proposed regulations, he shall promulgate such regulations with such modifications as he deems appropriate. Any regulation under this subsection may be amended from time to time.

(2) Any regulation under this section shall be proposed and promulgated in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section the Administrator shall consult with the Secretary, the National Drinking Water Advisory Council, and other appropriate Federal entities and with interested State entities.

(b) Minimum requirements; restrictions

(1) Regulations under subsection (a) of this section for State underground injection programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d)(2) of this section. Such regulations shall require that a State program, in order to be approved under section 300h–1 of this title—

(A) shall prohibit, effective on the date on which the applicable underground injection control program takes effect, any underground injection in such State which is not authorized by a permit issued by the State (except that the regulations may permit a State to authorize underground injection by rule);

(B) shall require (i) in the case of a program which provides for authorization of underground injection by permit, that the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources, and (ii) in the case of a program which provides for such an authorization by rule, that no rule may be promulgated which authorizes any underground injection which endangers drinking water sources;

(C) shall include inspection, monitoring, recordkeeping, and reporting requirements; and

(D) shall apply (i) as prescribed by section 300j–6(b)[1] of this title, to underground injections by Federal agencies, and (ii) to underground injections by any other person whether or not occurring on property owned or leased by the United States.

(2) Regulations of the Administrator under this section for State underground injection control programs may not prescribe requirements which interfere with or impede—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

(3)(A) The regulations of the Administrator under this section shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.

(B)(i) In prescribing regulations under this section the Administrator shall, to the extent feasible, avoid promulgation of requirements which would unnecessarily disrupt State underground injection control programs which are in effect and being enforced in a substantial number of States.

(ii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed to disrupt a State underground injection control program only if it would be infeasible to comply with both such regulation and the State underground injection control program.

(iii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed unnecessary only if, without such regulation, underground sources of drinking water will not be endangered by an underground injection.

(C) Nothing in this section shall be construed to alter or affect the duty to assure that underground sources of drinking water will not be endangered by any underground injection.

(c) Temporary permits; notice and hearing

(1) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section) temporary permits for underground injection which may be effective until the, expiration of four years after December 16, 1974, if—

(A) the Administrator finds that the State has demonstrated that it is unable and could not reasonably have been able to process all permit applications within the time available;

(B) the Administrator determines the adverse effect on the environment of such temporary permits is not unwarranted;

(C) such temporary permits will be issued only with respect to injection wells in operation on the date on which such State's permit program approved under this part first takes effect and for which there was inadequate time to process its permit application; and

(D) the Administrator determines the temporary permits require the use of adequate safeguards established by rules adopted by him.

(2) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section), but after reasonable notice and hearing, one or more temporary permits each of which is applicable to a particular injection well and to the underground injection of a particular fluid and which may be effective until the expiration of four years after December 16, 1974, if the State finds, on the record of such hearing—

(A) that technology (or other means) to permit safe injection of the fluid in accordance with the applicable underground injection control program is not generally available (taking costs into consideration);

(B) that injection of the fluid would be less harmful to health than the use of other available means of disposing of waste or producing the desired product; and

(C) that available technology or other means have been employed (and will be employed) to reduce the volume and toxicity of the fluid and to minimize the potentially adverse effect of the injection on the public health.

(d) "Underground injection" defined; underground injection endangerment of drinking water sources

For purposes of this part:

(1) UNDERGROUND INJECTION.—The term ''underground injection''—

(A) means the subsurface emplacement of fluids by well injection; and

(B) excludes—

(i) the underground injection of natural gas for purposes of storage; and

(ii) the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

(2) Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

(July 1, 1944, ch. 373, title XIV, § 1421, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1674; amended Pub. L. 95–190, § 6(b), Nov. 16, 1977, 91 Stat. 1396; Pub. L. 96–502, §§ 3, 4(c), Dec. 5, 1980, 94 Stat. 2738; Pub. L. 99–339, title II, § 201(a), June 19, 1986, 100 Stat. 653; Pub. L. 104–182, title V, § 501(b)(1), Aug. 6, 1996, 110 Stat. 1691; Pub. L. 109–58, title III, § 322, Aug. 8, 2005, 119 Stat. 694.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 300j–6(b) of this title, referred to in subsec. (b)(1)(D), was repealed, and a new section 300j–6(b) relating to administrative penalty orders was added, by Pub. L. 104–182, title I, §129(a), Aug. 6, 1996, 110 Stat. 1660.

AMENDMENTS

2005—Subsec. (d)(1). Pub. L. 109–58 inserted heading and amended text of par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'underground injection' means the subsurface emplacement of fluids by well injection. Such term does not include the underground injection of natural gas for purposes of storage.''

1996—Subsec. (b)(3)(B)(i). Pub. L. 104–182 substituted ''number of States'' for ''number or States''.

1986—Subsec. (b)(2)(A). Pub. L. 99–339 inserted ''or natural gas storage operations'' after ''production''.

1980—Subsec. (b)(1)(A). Pub. L. 96–502, §4(c), substituted ''effective on the date on which the applicable underground injection control program takes effect'' for ''effective three years after December 16, 1974''.

Subsec. (d)(1). Pub. L. 96–502, §3, inserted provision that such term does not include the underground injection of natural gas for purposes of storage.

1977—Subsec. (b)(3). Pub. L. 95–190 added par. (3).

§ 300h–1. State primary enforcement responsibility

(a) List of States in need of a control program; amendment of list

Within 180 days after December 16, 1974, the Administrator shall list in the Federal Register each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources. Such list may be amended from time to time.

(b) State applications; notice to Administrator of compliance with revised or added requirements; approval or disapproval by Administrator; duration of State primary enforcement responsibility; public hearing

(1)(A) Each State listed under subsection (a) of this section shall within 270 days after the date of promulgation of any regulation under section 300h of this title (or, if later, within 270 days after such State is first listed under subsection (a) of this section) submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State—

(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section 300h of this title; and

(ii) will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation.

The Administrator may, for good cause, extend the date for submission of an application by any State under this subparagraph for a period not to exceed an additional 270 days.

(B) Within 270 days of any amendment of a regulation under section 300h of this title revising or adding any requirement respecting State underground injection control programs, each State listed under subsection (a) of this section shall submit (in such form and manner as the Administrator may require) a notice to the Administrator containing a showing satisfactory to him that the State underground injection control program meets the revised or added requirement.

(2) Within ninety days after the State's application under paragraph (1)(A) or notice under paragraph (1)(B) and after reasonable opportunity for presentation of views, the Administrator shall by rule either approve, disapprove, or approve in part and disapprove in part, the State's underground injection control program.

(3) If the Administrator approves the State's program under paragraph (2), the State shall have primary enforcement responsibility for underground water sources until such time as the Administrator determines, by rule, that such State no longer meets the requirements of clause (i) or (ii) of paragraph (1)(A) of this subsection.

(4) Before promulgating any rule under paragraph (2) or (3) of this subsection, the Administrator shall provide opportunity for public hearing respecting such rule.

(c) Program by Administrator for State without primary enforcement responsibility; restrictions

If the Administrator disapproves a State's program (or part thereof) under subsection (b)(2) of this section, if the Administrator determines under subsection (b)(3) of this section that a State no longer meets the requirements of clause (i) or (ii) of subsection (b)(1)(A) of this section, or if a State fails to submit an application or notice before the date of expiration of the period specified in subsection (b)(1) of this section, the Administrator shall by regulation within 90 days after the date of such disapproval, determination, or expiration (as the case may be) prescribe (and may from time to time by regulation revise) a program applicable to such State meeting the requirements of section 300h(b) of this title. Such program may not include requirements which interfere with or impede—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection. Such program shall apply in such State to the extent that a program adopted by such State which the Administrator determines meets such requirements is not in effect. Before promulgating any regulation under this section, the Administrator shall provide opportunity for public hearing respecting such regulation.

(d) "Applicable underground injection control program" defined

For purposes of this subchapter, the term ''applicable underground injection control program'' with respect to a State means the program (or most recent amendment thereof) (1) which has been adopted by the State and which has been approved under subsection (b) of this

section, or (2) which has been prescribed by the Administrator under subsection (c) of this section.

(e) Primary enforcement responsibility by Indian Tribe

An Indian Tribe may assume primary enforcement responsibility for underground injection control under this section consistent with such regulations as the Administrator has prescribed pursuant to this part and section 300j–11 of this title. The area over which such Indian Tribe exercises governmental jurisdiction need not have been listed under subsection (a) of this section, and such Tribe need not submit an application to assume primary enforcement responsibility within the 270-day deadline noted in subsection (b)(1)(A) of this section. Until an Indian Tribe assumes primary enforcement responsibility, the currently applicable underground injection control program shall continue to apply. If an applicable underground injection control program does not exist for an Indian Tribe, the Administrator shall prescribe such a program pursuant to subsection (c) of this section, and consistent with section 300h(b) of this title, within 270 days after June 19, 1986, unless an Indian Tribe first obtains approval to assume primary enforcement responsibility for underground injection control.

(July 1, 1944, ch. 373, title XIV, § 1422, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1676; amended Pub. L. 95–190, § 6(a), Nov. 16, 1977, 91 Stat. 1396; Pub. L. 99–339, title II, § 201(a), title III, § 302(c), June 19, 1986, 100 Stat. 653, 666.)

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99–339, § 201(a), inserted ''or natural gas storage operations, or'' after ''production''.

Subsec. (e). Pub. L. 99–339, § 302(c), added subsec. (e).

1977—Subsec. (b)(1)(A). Pub. L. 95–190 inserted provisions relating to extension of date for submission of applications by any State.

§ 300h–2. Enforcement of program

(a) Notice to State and violator; issuance of administrative order; civil action

(1) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for underground water sources (within the meaning of section 300h–1(b)(3) of this title or section 300h–4(c) of this title) that any person who is subject to a requirement of an applicable underground injection control program in such State is violating such requirement, he shall so notify the State and the person violating such requirement. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (c) of this section requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(2) Whenever the Administrator finds during a period during which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program in such State is violating such requirement, the Administrator shall issue an order under subsection (c) of this section requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(b) Civil and criminal actions

Civil actions referred to in paragraphs (1) and (2) of subsection (a) of this section shall be brought in the appropriate United States district court. Such court shall have jurisdiction to require compliance with any requirement of an applicable underground injection program or with an order issued under subsection (c) of this section. The court may enter such judgment as protection of public health may require. Any person who violates any requirement of an applicable underground injection control program or an order requiring compliance under subsection (c) of this section—

(1) shall be subject to a civil penalty of not more than $25,000 for each day of such violation, and

(2) if such violation is willful, such person may, in addition to or in lieu of the civil penalty authorized by paragraph (1), be imprisoned for not more than 3 years, or fined in accordance with title 18, or both.

(c) Administrative orders

(1) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation or other requirement of this part other than those relating to—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $10,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(2) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation, or other requirement of this part relating to—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $5,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(3)(A) An order under this subsection shall be issued by the Administrator after opportunity

(provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator shall give to the person to whom it is directed written notice of the Administrator's proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the order. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) The Administrator shall provide public notice of, and reasonable opportunity to comment on, any proposed order.

(C) Any citizen who comments on any proposed order under subparagraph (B) shall be given notice of any hearing under this subsection and of any order. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence.

(D) Any order issued under this subsection shall become effective 30 days following its issuance unless an appeal is taken pursuant to paragraph (6).

(4)(A) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and may specify a reasonable time for compliance.

(B) In assessing any civil penalty under this subsection, the Administrator shall take into account appropriate factors, including (i) the seriousness of the violation; (ii) the economic benefit (if any) resulting from the violation; (iii) any history of such violations; (iv) any good-faith efforts to comply with the applicable requirements; (v) the economic impact of the penalty on the violator; and (vi) such other matters as justice may require.

(5) Any violation with respect to which the Administrator has commenced and is diligently prosecuting an action, or has issued an order under this subsection assessing a penalty, shall not be subject to an action under subsection (b) of this section or section 300h–3(c) or 300j–8 of this title, except that the foregoing limitation on civil actions under section 300j–8 of this title shall not apply with respect to any violation for which—

(A) a civil action under section 300j–8(a)(1) of this title has been filed prior to commencement of an action under this subsection, or

(B) a notice of violation under section 300j–8(b)(1) of this title has been given before commencement of an action under this subsection and an action under section 300j–8(a)(1) of this title is filed before 120 days after such notice is given.

(6) Any person against whom an order is issued or who commented on a proposed order pursuant to paragraph (3) may file an appeal of such order with the United States District Court for the District of Columbia or the district in which the violation is alleged to have occurred. Such an appeal may only be filed within the 30-day period beginning on the date the order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator and to the Attorney General. The Administrator shall promptly file in such court a certified copy of the record on which such order was imposed. The district court shall not set aside or remand such order unless there is not substantial evidence on the record, taken as a whole, to support the finding of a violation or, unless the Administrator's assessment of penalty or requirement for compliance constitutes an abuse of discretion. The district court shall not impose additional civil penalties for the same violation unless the Administrator's assessment of a penalty constitutes an abuse of discretion. Notwithstanding section 300j–7(a)(2) of this title, any order issued under paragraph (3) shall be subject to judicial review exclusively under this paragraph.

(7) If any person fails to pay an assessment of a civil penalty—

(A) after the order becomes effective under paragraph (3), or

(B) after a court, in an action brought under paragraph (6), has entered a final judgment in favor of the Administrator,

the Administrator may request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date the order is effective or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(8) The Administrator may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanction.

(d) State authority to adopt or enforce laws or regulations respecting underground injection unaffected

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.

(July 1, 1944, ch. 373, title XIV, § 1423, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1677; amended Pub. L. 96–502, § 2(b), Dec. 5, 1980, 94 Stat. 2738; Pub. L. 99–339, title II, § 202, June 19, 1986, 100 Stat. 654.)

AMENDMENTS

1986—Pub. L. 99–339, § 202(d), substituted ''Enforcement'' for ''Failure of State to assure enforcement'' in section catchline.

Subsec. (a)(1). Pub. L. 99–339, § 202(a)(1), substituted provisions which related to issuance of an order of compliance or commencement of a civil action by the Administrator if the State has not commenced enforcement against the violator for provisions directing the Administrator to give public notice and request that the State report within 15 days thereafter as to steps taken to enforce compliance and authorizing the Administrator to commence a civil action upon failure by the State to comply timely.

Subsec. (a)(2). Pub. L. 99–339, § 202(a)(2), substituted provision that the Administrator issue an order under

subsec. (c) of this section or commence a civil action under subsec. (b) of this section for provision that he commence a civil action under subsec. (b)(1) of this section.

Subsec. (b). Pub. L. 99–339, § 202(b), amended subsec. (b) generally, substituting provisions relating to jurisdiction of the appropriate Federal district court, entry of judgment, civil penalty of $25,000 per day, criminal liability and fine for willful violation for provisions which related to judicial determinations in appropriate Federal district courts, civil penalties of $5,000 per day, and fines of $10,000 per day for willful violations.

Subsecs. (c), (d). Pub. L. 99–339, § 202(c), added subsec. (c) and redesignated former subsec. (c) as (d).

1980—Subsec. (a)(1). Pub. L. 96–502 inserted reference to section 300h–4(c) of this title.

§ 300h–3. Interim regulation of underground injections

(a) Necessity for well operation permit; designation of one aquifer areas

(1) Any person may petition the Administrator to have an area of a State (or States) designated as an area in which no new underground injection well may be operated during the period beginning on the date of the designation and ending on the date on which the applicable underground injection control program covering such area takes effect unless a permit for the operation of such well has been issued by the Administrator under subsection (b) of this section. The Administrator may so designate an area within a State if he finds that the area has one aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

(2) Upon receipt of a petition under paragraph (1) of this subsection, the Administrator shall publish it in the Federal Register and shall provide an opportunity to interested persons to submit written data, views, or arguments thereon. Not later than the 30th day following the date of the publication of a petition under this paragraph in the Federal Register, the Administrator shall either make the designation for which the petition is submitted or deny the petition.

(b) Well operation permits; publication in Federal Register; notice and hearing; issuance or denial; conditions for issuance

(1) During the period beginning on the date an area is designated under subsection (a) of this section and ending on the date the applicable underground injection control program covering such area takes effect, no new underground injection well may be operated in such area unless the Administrator has issued a permit for such operation.

(2) Any person may petition the Administrator for the issuance of a permit for the operation of such a well in such an area. A petition submitted under this paragraph shall be submitted in such manner and contain such information as the Administrator may require by regulation. Upon receipt of such a petition, the Administrator shall publish it in the Federal Register. The Administrator shall give notice of any proceeding on a petition and shall provide opportunity for agency hearing. The Administrator shall act upon such petition on the record of any hearing held pursuant to the preceding sentence respecting such petition. Within 120 days of the publication in the Federal Register of a petition submitted under this paragraph, the Administrator shall either issue the permit for which the petition was submitted or shall deny its issuance.

(3) The Administrator may issue a permit for the operation of a new underground injection well in an area designated under subsection (a) of this section only, if he finds that the operation of such well will not cause contamination of the aquifer of such area so as to create a significant hazard to public health. The Administrator may condition the issuance of such a permit upon the use of such control measures in connection with the operation of such well, for which the permit is to be issued, as he deems necessary to assure that the operation of the well will not contaminate the aquifer of the designated area in which the well is located so as to create a significant hazard to public health.

(c) Civil penalties; separate violations; penalties for willful violations; temporary restraining order or injunction

Any person who operates a new underground injection well in violation of subsection (b) of this section, (1) shall be subject to a civil penalty of not more than $5,000 for each day in which such violation occurs, or (2) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (1), be fined not more than $10,000 for each day in which such violation occurs. If the Administrator has reason to believe that any person is violating or will violate subsection (b) of this section, he may petition the United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce such subsection.

(d) "New underground injection well" defined

For purposes of this section, the term ''new underground injection well'' means an underground injection well whose operation was not approved by appropriate State and Federal agencies before December 16, 1974.

(e) Areas with one aquifer; publication in Federal Register; commitments for Federal financial assistance

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

(July 1, 1944, ch. 373, title XIV, § 1424, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1678.)

§ 300h–4. Optional demonstration by States relating to oil or natural gas

(a) Approval of State underground injection control program; alternative showing of effectiveness of program by State

For purposes of the Administrator's approval or disapproval under section 300h–1 of this title of that portion of any State underground injection control program which relates to—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas,

in lieu of the showing required under subparagraph (A) of section 300h–1(b)(1) of this title the State may demonstrate that such portion of the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(b) Revision or amendment of requirements of regulation; showing of effectiveness of program by State

If the Administrator revises or amends any requirement of a regulation under section 300h of this title relating to any aspect of the underground injection referred to in subsection (a) of this section, in the case of that portion of a State underground injection control program for which the demonstration referred to in subsection (a) of this section has been made, in lieu of the showing required under section 300h–1(b)(1)(B) of this title the State may demonstrate that, with respect to that aspect of such underground injection, the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(c) Primary enforcement responsibility of State; voiding by Administrator under duly promulgated rule

(1) Section 300h–1(b)(3) of this title shall not apply to that portion of any State underground injection control program approved by the Administrator pursuant to a demonstration under subsection (a) of this section (and under subsection (b) of this section where applicable).

(2) If pursuant to such a demonstration, the Administrator approves such portion of the State program, the State shall have primary enforcement responsibility with respect to that portion until such time as the Administrator determines, by rule, that such demonstration is no longer valid. Following such a determination, the Administrator may exercise the authority of subsection (c) of section 300h–1 of this title in the same manner as provided in such subsection with respect to a determination described in such subsection.

(3) Before promulgating any rule under paragraph (2), the Administrator shall provide opportunity for public hearing respecting such rule.

(July 1, 1944, ch. 373, title XIV, § 1425, as added Pub. L. 96–502, § 2(a), Dec. 5, 1980, 94 Stat. 2737; amended Pub. L. 99–339, title II, § 201(a), June 19, 1986, 100 Stat. 653.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–339 inserted ''or natural gas storage operations, or'' after ''production''.

§ 300h–5. Regulation of State programs

Not later than 18 months after June 19, 1986, the Administrator shall modify regulations issued under this chapter for Class I injection wells to identify monitoring methods, in addition to those in effect on November 1, 1985, including groundwater monitoring. In accordance with such regulations, the Administrator, or delegated State authority, shall determine the applicability of such monitoring methods, wherever appropriate, at locations and in such a manner as to provide the earliest possible detection of fluid migration into, or in the direction of, underground sources of drinking water from such wells, based on its assessment of the potential for fluid migration from the injection zone that may be harmful to human health or the environment. For purposes of this subsection, a class I injection well is defined in accordance with 40 CFR 146.05 as in effect on November 1, 1985.

(July 1, 1944, ch. 373, title XIV, § 1426, as added Pub. L. 99–339, title II, § 201(b), June 19, 1986, 100 Stat. 653; amended Pub. L. 104–66, title II, § 2021(f), Dec. 21, 1995, 109 Stat. 727; Pub. L. 104–182, title V, § 501(f)(2), Aug. 6, 1996, 110 Stat. 1691.)

AMENDMENTS

1996—Pub. L. 104–182 directed technical amendment of section catchline and subsec. (a) designation. The provision directing amendment of subsec. (a) designation could not be executed because section does not contain a subsec. (a).

1995—Pub. L. 104–66 struck out subsec. (a) designation and heading before ''Not later than'' and struck out heading and text of subsec. (b). Text read as follows: ''The Administrator shall submit a report to Congress, no later than September 1987, summarizing the results of State surveys required by the Administrator under this section. The report shall include each of the following items of information:

''(1) The numbers and categories of class V wells which discharge nonhazardous waste into or above an underground source of drinking water.

''(2) The primary contamination problems associated with different categories of these disposal wells.

''(3) Recommendations for minimum design, construction, installation, and siting requirements that should be applied to protect underground sources of drinking water from such contamination wherever necessary.''

§ 300h–6. Sole source aquifer demonstration program

(a) Purpose

The purpose of this section is to establish procedures for development, implementation, and assessment of demonstration programs designed to protect critical aquifer protection areas located within areas designated as sole or principal source aquifers under section 300h–3(e) of this title.

(b) "Critical aquifer protection area" defined

For purposes of this section, the term ''critical aquifer protection area'' means either of the following:

(1) All or part of an area located within an area for which an application or designation as a sole or principal source aquifer pursuant to section 300h–3(e) of this title, has been submitted and approved by the Administrator and which satisfies the criteria established by the Administrator under subsection (d) of this section.

(2) All or part of an area which is within an aquifer designated as a sole source aquifer as of June 19, 1986, and for which an areawide ground water quality protection plan has been approved under section 208 of the Clean Water Act [33 U.S.C. 1288] prior to June 19, 1986.

(c) Application

Any State, municipal or local government or political subdivision thereof or any planning entity (including any interstate regional planning entity) that identifies a critical aquifer protection area over which it has authority or jurisdiction may apply to the Administrator for the selection of such area for a demonstration program under this section. Any applicant shall consult with other government or planning entities with authority or jurisdiction in such area prior to application. Applicants, other than the Governor, shall submit the application for a demonstration program jointly with the Governor.

(d) Criteria

Not later than 1 year after June 19, 1986, the Administrator shall, by rule, establish criteria for identifying critical aquifer protection areas under this section. In establishing such criteria, the Administrator shall consider each of the following:

(1) The vulnerability of the aquifer to contamination due to hydrogeologic characteristics.

(2) The number of persons or the proportion of population using the ground water as a drinking water source.

(3) The economic, social and environmental benefits that would result to the area from maintenance of ground water of high quality.

(4) The economic, social and environmental costs that would result from degradation of the quality of the ground water.

(e) Contents of application

An application submitted to the Administrator by any applicant for a demonstration program under this section shall meet each of the following requirements:

(1) The application shall propose boundaries for the critical aquifer protection area within its jurisdiction.

(2) The application shall designate or, if necessary, establish a planning entity (which shall be a public agency and which shall include representation of elected local and State governmental officials) to develop a comprehensive management plan (hereinafter in this section referred to as the ''plan'') for the critical protection area. Where a local government planning agency exists with adequate authority to carry out this section with respect to any proposed critical protection area, such agency shall be designated as the planning entity.

(3) The application shall establish procedures for public participation in the development of the plan, for review, approval, and adoption of the plan, and for assistance to municipalities and other public agencies with authority under State law to implement the plan.

(4) The application shall include a hydrogeologic assessment of surface and ground water resources within the critical protection area.

(5) The application shall include a comprehensive management plan for the proposed protection area.

(6) The application shall include the measures and schedule proposed for implementation of such plan.

(f) Comprehensive plan

(1) The objective of a comprehensive management plan submitted by an applicant under this section shall be to maintain the quality of the ground water in the critical protection area in a manner reasonably expected to protect human health, the environment and ground water resources. In order to achieve such objective, the plan may be designed to maintain, to the maximum extent possible, the natural vegetative and hydrogeological conditions. Each of the following elements shall be included in such a protection plan:

(A) A map showing the detailed boundary of the critical protection area.

(B) An identification of existing and potential point and nonpoint sources of ground water degradation.

(C) An assessment of the relationship between activities on the land surface and ground water quality.

(D) Specific actions and management practices to be implemented in the critical protection area to prevent adverse impacts on ground water quality.

(E) Identification of authority adequate to implement the plan, estimates of program costs, and sources of State matching funds.

(2) Such plan may also include the following:

(A) A determination of the quality of the existing ground water recharged through the special protection area and the natural recharge capabilities of the special protection area watershed.

(B) Requirements designed to maintain existing underground drinking water quality or improve underground drinking water quality if prevailing conditions fail to meet drinking water standards, pursuant to this chapter and State law.

(C) Limits on Federal, State, and local government, financially assisted activities and projects which may contribute to degradation of such ground water or any loss of natural surface and subsurface infiltration of purification capability of the special protection watershed.

(D) A comprehensive statement of land use management including emergency contin-

gency planning as it pertains to the maintenance of the quality of underground sources of drinking water or to the improvement of such sources if necessary to meet drinking water standards pursuant to this chapter and State law.

(E) Actions in the special protection area which would avoid adverse impacts on water quality, recharge capabilities, or both.

(F) Consideration of specific techniques, which may include clustering, transfer of development rights, and other innovative measures sufficient to achieve the objectives of this section.

(G) Consideration of the establishment of a State institution to facilitate and assist funding a development transfer credit system.

(H) A program for State and local implementation of the plan described in this subsection in a manner that will insure the continued, uniform, consistent protection of the critical protection area in accord with the purposes of this section.

(I) Pollution abatement measures, if appropriate.

(g) Plans under section 208 of Clean Water Act

A plan approved before June 19, 1986, under section 208 of the Clean Water Act [33 U.S.C. 1288] to protect a sole source aquifer designated under section 300h–3(e) of this title shall be considered a comprehensive management plan for the purposes of this section.

(h) Consultation and hearings

During the development of a comprehensive management plan under this section, the planning entity shall consult with, and consider the comments of, appropriate officials of any municipality and State or Federal agency which has jurisdiction over lands and waters within the special protection area, other concerned organizations and technical and citizen advisory committees. The planning entity shall conduct public hearings at places within the special protection area for the purpose of providing the opportunity to comment on any aspect of the plan.

(i) Approval or disapproval

Within 120 days after receipt of an application under this section, the Administrator shall approve or disapprove the application. The approval or disapproval shall be based on a determination that the critical protection area satisfies the criteria established under subsection (d) of this section and that a demonstration program for the area would provide protection for ground water quality consistent with the objectives stated in subsection (f) of this section. The Administrator shall provide to the Governor a written explanation of the reasons for the disapproval of any such application. Any petitioner may modify and resubmit any application which is not approved. Upon approval of an application, the Administrator may enter into a cooperative agreement with the applicant to establish a demonstration program under this section.

(j) Grants and reimbursement

Upon entering a cooperative agreement under subsection (i) of this section, the Administrator may provide to the applicant, on a matching basis, a grant of 50 per centum of the costs of implementing the plan established under this section. The Administrator may also reimburse the applicant of an approved plan up to 50 per centum of the costs of developing such plan, except for plans approved under section 208 of the Clean Water Act [33 U.S.C. 1288]. The total amount of grants under this section for any one aquifer, designated under section 300h–3(e) of this title, shall not exceed $4,000,000 in any one fiscal year.

(k) Activities funded under other law

No funds authorized under this section may be used to fund activities funded under other sections of this chapter or the Clean Water Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.] or other environmental laws.

***(l)* Savings provision**

Nothing under this section shall be construed to amend, supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws; or any requirement imposed or right provided under any Federal or State environmental or public health statute.

(m) Authorization of appropriations

There are authorized to be appropriated to carry out this section not more than the following amounts:

Fiscal year:	*Amount*
1987	$10,000,000
1988	15,000,000
1989	17,500,000
1990	17,500,000
1991	17,500,000
1992–2003	15,000,000.

Matching grants under this section may also be used to implement or update any water quality management plan for a sole or principal source aquifer approved (before June 19, 1986) by the Administrator under section 208 of the Federal Water Pollution Control Act [33 U.S.C. 1288].

(July 1, 1944, ch. 373, title XIV, § 1427, as added and amended Pub. L. 99–339, title II, § 203, title III, § 301(f), June 19, 1986, 100 Stat. 657, 664; Pub. L. 104–66, title II, § 2021(g), Dec. 21, 1995, 109 Stat. 727; Pub. L. 104–182, title I, § 120(a), title V, § 501(b)(2), (f)(3), Aug. 6, 1996, 110 Stat. 1650, 1691.)

REFERENCES IN TEXT

The Clean Water Act, referred to in subsec. (k), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (k), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in sub-

sec. (k), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104–182, § 501(f)(3), made technical amendment to section catchline and subsec. (a) designation.

Subsec. (b)(1). Pub. L. 104–182, § 120(a)(1), struck out ''not later than 24 months after June 19, 1986,'' after ''by the Administrator''.

Subsec. (k). Pub. L. 104–182, § 501(b)(2), substituted ''this section'' for ''this subsection''.

Subsec. (m). Pub. L. 104–182, § 120(a)(2), inserted table item relating to fiscal years 1992 through 2003.

1995—Subsecs. (*l*) to (n). Pub. L. 104–66 redesignated subsecs. (m) and (n) as (*l*) and (m), respectively, and struck out heading and text of former subsec. (*l*). Text read as follows: ''Not later than December 31, 1989, each State shall submit to the Administrator a report assessing the impact of the program on ground water quality and identifying those measures found to be effective in protecting ground water resources. No later than September 30, 1990, the Administrator shall submit to Congress a report summarizing the State reports, and assessing the accomplishments of the sole source aquifer demonstration program including an identification of protection methods found to be most effective and recommendations for their application to protect ground water resources from contamination whenever necessary.''

1986—Subsec. (n). Pub. L. 99–339 added subsec. (n).

§ 300h–7. State programs to establish wellhead protection areas

(a) State programs

The Governor or Governor's designee of each State shall, within 3 years of June 19, 1986, adopt and submit to the Administrator a State program to protect wellhead areas within their jurisdiction from contaminants which may have any adverse effect on the health of persons. Each State program under this section shall, at a minimum—

(1) specify the duties of State agencies, local governmental entities, and public water supply systems with respect to the development and implementation of programs required by this section;

(2) for each wellhead, determine the wellhead protection area as defined in subsection (e) of this section based on all reasonably available hydrogeologic information on ground water flow, recharge and discharge and other information the State deems necessary to adequately determine the wellhead protection area;

(3) identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have any adverse effect on the health of persons;

(4) describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply within wellhead protection areas from such contaminants;

(5) include contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or wellfield contamination by such contaminants; and

(6) include a requirement that consideration be given to all potential sources of such contaminants within the expected wellhead area of a new water well which serves a public water supply system.

(b) Public participation

To the maximum extent possible, each State shall establish procedures, including but not limited to the establishment of technical and citizens' advisory committees, to encourage the public to participate in developing the protection program for wellhead areas and source water assessment programs under section 300j–13 of this title. Such procedures shall include notice and opportunity for public hearing on the State program before it is submitted to the Administrator.

(c) Disapproval

(1) In general

If, in the judgment of the Administrator, a State program or portion thereof under subsection (a) of this section is not adequate to protect public water systems as required by subsection (a) of this section or a State program under section 300j–13 of this title or section 300g–7(b) of this title does not meet the applicable requirements of section 300j–13 of this title or section 300g–7(b) of this title, the Administrator shall disapprove such program or portion thereof. A State program developed pursuant to subsection (a) of this section shall be deemed to be adequate unless the Administrator determines, within 9 months of the receipt of a State program, that such program (or portion thereof) is inadequate for the purpose of protecting public water systems as required by this section from contaminants that may have any adverse effect on the health of persons. A State program developed pursuant to section 300j–13 of this title or section 300g–7(b) of this title shall be deemed to meet the applicable requirements of section 300j–13 of this title or section 300g–7(b) of this title unless the Administrator determines within 9 months of the receipt of the program that such program (or portion thereof) does not meet such requirements. If the Administrator determines that a proposed State program (or any portion thereof) is disapproved, the Administrator shall submit a written statement of the reasons for such determination to the Governor of the State.

(2) Modification and resubmission

Within 6 months after receipt of the Administrator's written notice under paragraph (1) that any proposed State program (or portion thereof) is disapproved, the Governor or Governor's designee, shall modify the program based upon the recommendations of the Administrator and resubmit the modified program to the Administrator.

(d) Federal assistance

After the date 3 years after June 19, 1986, no State shall receive funds authorized to be appropriated under this section except for the purpose of implementing the program and requirements of paragraphs (4) and (6) of subsection (a) of this section.

(e) "Wellhead protection area" defined

As used in this section, the term ''wellhead protection area'' means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. The extent of a wellhead protection area, within a State, necessary to provide protection from contaminants which may have any adverse effect on the health of persons is to be determined by the State in the program submitted under subsection (a) of this section. Not later than one year after June 19, 1986, the Administrator shall issue technical guidance which States may use in making such determinations. Such guidance may reflect such factors as the radius of influence around a well or wellfield, the depth of drawdown of the water table by such well or wellfield at any given point, the time or rate of travel of various contaminants in various hydrologic conditions, distance from the well or wellfield, or other factors affecting the likelihood of contaminants reaching the well or wellfield, taking into account available engineering pump tests or comparable data, field reconnaissance, topographic information, and the geology of the formation in which the well or wellfield is located.

(f) Prohibitions

(1) Activities under other laws

No funds authorized to be appropriated under this section may be used to support activities authorized by the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.], or other sections of this chapter.

(2) Individual sources

No funds authorized to be appropriated under this section may be used to bring individual sources of contamination into compliance.

(g) Implementation

Each State shall make every reasonable effort to implement the State wellhead area protection program under this section within 2 years of submitting the program to the Administrator. Each State shall submit to the Administrator a biennial status report describing the State's progress in implementing the program. Such report shall include amendments to the State program for water wells sited during the biennial period.

(h) Federal agencies

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any potential source of contaminants identified by a State program pursuant to the provisions of subsection (a)(3) of this section shall be subject to and comply with all requirements of the State program developed according to subsection (a)(4) of this section applicable to such potential source of contaminants, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable charges and fees. The President may exempt any potential source under the jurisdiction of any department, agency, or instrumentality in the executive branch if the President determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to the lack of an appropriation unless the President shall have specifically requested such appropriation as part of the budgetary process and the Congress shall have failed to make available such requested appropriations.

(i) Additional requirement

(1) In general

In addition to the provisions of subsection (a) of this section, States in which there are more than 2,500 active wells at which annular injection is used as of January 1, 1986, shall include in their State program a certification that a State program exists and is being adequately enforced that provides protection from contaminants which may have any adverse effect on the health of persons and which are associated with the annular injection or surface disposal of brines associated with oil and gas production.

(2) "Annular injection" defined

For purposes of this subsection, the term ''annular injection'' means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well.

(3) Review

The Administrator shall conduct a review of each program certified under this subsection.

(4) Disapproval

If a State fails to include the certification required by this subsection or if in the judgment of the Administrator the State program certified under this subsection is not being adequately enforced, the Administrator shall disapprove the State program submitted under subsection (a) of this section.

(j) Coordination with other laws

Nothing in this section shall authorize or require any department, agency, or other instrumentality of the Federal Government or State or local government to apportion, allocate or otherwise regulate the withdrawal or beneficial use of ground or surface waters, so as to abrogate or modify any existing rights to water established pursuant to State or Federal law, including interstate compacts.

(k) Authorization of appropriations

Unless the State program is disapproved under this section, the Administrator shall make grants to the State for not less than 50 or more than 90 percent of the costs incurred by a State (as determined by the Administrator) in developing and implementing each State program under this section. For purposes of making such grants there is authorized to be appropriated not more than the following amounts:

Fiscal year:	*Amount*
1987	$20,000,000

Fiscal year:	*Amount*
1988	20,000,000
1989	35,000,000
1990	35,000,000
1991	35,000,000
1992–2003	30,000,000.

(July 1, 1944, ch. 373, title XIV, § 1428, as added and amended Pub. L. 99–339, title II, § 205, title III, § 301(e), June 19, 1986, 100 Stat. 660, 664; Pub. L. 104–182, title I, §§ 120(b), 132(b), title V, § 501(f)(4), Aug. 6, 1996, 110 Stat. 1650, 1674, 1692.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (f)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (f)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (f)(1), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104–182, § 501(f)(4), made technical amendment to section catchline and subsec. (a) designation.

Subsec. (b). Pub. L. 104–182, § 132(b)(4), inserted before period at end of first sentence ''and source water assessment programs under section 300j–13 of this title''.

Subsec. (c)(1). Pub. L. 104–182, § 132(b)(3), which directed substitution of ''is disapproved'' for ''is inadequate'' in third sentence, was executed by making the substitution in fourth sentence to reflect the probable intent of Congress and the amendment by Pub. L. 104–182, § 132(b)(2). See below.

Pub. L. 104–182, § 132(b)(2), inserted after second sentence ''A State program developed pursuant to section 300j–13 of this title or section 300g–7(b) of this title shall be deemed to meet the applicable requirements of section 300j–13 of this title or section 300g–7(b) of this title unless the Administrator determines within 9 months of the receipt of the program that such program (or portion thereof) does not meet such requirements.''

Pub. L. 104–182, § 132(b)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''If, in the judgment of the Administrator, a State program (or portion thereof, including the definition of a wellhead protection area), is not adequate to protect public water systems as required by this section, the Administrator shall disapprove such program (or portion thereof).''

Subsec. (c)(2). Pub. L. 104–182, § 132(b)(3), substituted ''is disapproved'' for ''is inadequate''.

Subsec. (k). Pub. L. 104–182, § 120(b), inserted table item relating to fiscal years 1992 through 2003.

1986—Subsec. (k). Pub. L. 99–339, § 301(e), added subsec. (k).

§ 300h–8. State ground water protection grants

(a) In general

The Administrator may make a grant to a State for the development and implementation of a State program to ensure the coordinated and comprehensive protection of ground water resources within the State.

(b) Guidance

Not later than 1 year after August 6, 1996, and annually thereafter, the Administrator shall publish guidance that establishes procedures for application for State ground water protection program assistance and that identifies key elements of State ground water protection programs.

(c) Conditions of grants

(1) In general

The Administrator shall award grants to States that submit an application that is approved by the Administrator. The Administrator shall determine the amount of a grant awarded pursuant to this paragraph on the basis of an assessment of the extent of ground water resources in the State and the likelihood that awarding the grant will result in sustained and reliable protection of ground water quality.

(2) Innovative program grants

The Administrator may also award a grant pursuant to this subsection for innovative programs proposed by a State for the prevention of ground water contamination.

(3) Allocation of funds

The Administrator shall, at a minimum, ensure that, for each fiscal year, not less than 1 percent of funds made available to the Administrator by appropriations to carry out this section are allocated to each State that submits an application that is approved by the Administrator pursuant to this section.

(4) Limitation on grants

No grant awarded by the Administrator may be used for a project to remediate ground water contamination.

(d) Amount of grants

The amount of a grant awarded pursuant to paragraph (1) shall not exceed 50 percent of the eligible costs of carrying out the ground water protection program that is the subject of the grant (as determined by the Administrator) for the 1-year period beginning on the date that the grant is awarded. The State shall pay a State share to cover the costs of the ground water protection program from State funds in an amount that is not less than 50 percent of the cost of conducting the program.

(e) Evaluations and reports

Not later than 3 years after August 6, 1996, and every 3 years thereafter, the Administrator shall evaluate the State ground water protection programs that are the subject of grants awarded pursuant to this section and report to the Congress on the status of ground water quality in the United States and the effectiveness of State programs for ground water protection.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 1997 through 2003.

(July 1, 1944, ch. 373, title XIV, § 1429, as added Pub. L. 104–182, title I, § 131, Aug. 6, 1996, 110 Stat. 1672.)

PART D—EMERGENCY POWERS

§ 300i. Emergency powers

(a) Actions authorized against imminent and substantial endangerment to health

Notwithstanding any other provision of this subchapter the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment, and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) Penalties for violations; separate offenses

Any person who violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) of this section may, in an action brought in the appropriate United States district court to enforce such order, be subject to a civil penalty of not to exceed $15,000 for each day in which such violation occurs or failure to comply continues.

(July 1, 1944, ch. 373, title XIV, § 1431, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1680; amended Pub. L. 99–339, title II, § 204, June 19, 1986, 100 Stat. 660; Pub. L. 104–182, title I, § 113(d), Aug. 6, 1996, 110 Stat. 1636; Pub. L. 107–188, title IV, § 403(2), June 12, 2002, 116 Stat. 687.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–188, in first sentence, inserted '', or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which'' after ''drinking water''.

1996—Subsec. (b). Pub. L. 104–182 substituted ''$15,000'' for ''$5,000''.

1986—Subsec. (a). Pub. L. 99–339, § 204(1), (2), inserted ''or an underground source of drinking water'' after ''to enter a public water system'' and ''including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment,'' after ''including travelers),''.

Subsec. (b). Pub. L. 99–339, § 204(3), struck out ''willfully'' after ''person who'' and substituted ''subject to a civil penalty of not to exceed'' for ''fined not more than''.

§ 300i–1. Tampering with public water systems

(a) Tampering

Any person who tampers with a public water system shall be imprisoned for not more than 20 years, or fined in accordance with title 18, or both.

(b) Attempt or threat

Any person who attempts to tamper, or makes a threat to tamper, with a public drinking water system be imprisoned for not more than 10 years, or fined in accordance with title 18, or both.

(c) Civil penalty

The Administrator may bring a civil action in the appropriate United States district court (as determined under the provisions of title 28) against any person who tampers, attempts to tamper, or makes a threat to tamper with a public water system. The court may impose on such person a civil penalty of not more than $1,000,000 for such tampering or not more than $100,000 for such attempt or threat.

(d) "Tamper" defined

For purposes of this section, the term ''tamper'' means—

(1) to introduce a contaminant into a public water system with the intention of harming persons; or

(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.

(July 1, 1944, ch. 373, title XIV, § 1432, as added Pub. L. 99–339, title I, § 108, June 19, 1986, 100 Stat. 651; amended Pub. L. 104–182, title V, § 501(f)(5), Aug. 6, 1996, 110 Stat. 1692; Pub. L. 107–188, title IV, § 403(3), June 12, 2002, 116 Stat. 687.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–188, § 403(3)(A), substituted ''20 years'' for ''5 years''.

Subsec. (b). Pub. L. 107–188, § 403(3)(B), substituted ''10 years'' for ''3 years''.

Subsec. (c). Pub. L. 107–188, § 403(3)(C), (D), substituted ''$1,000,000'' for ''$50,000'' and ''$100,000'' for ''$20,000''.

1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

§ 300i–2. Terrorist and other intentional acts

(a) Vulnerability assessments

(1) Each community water system serving a population of greater than 3,300 persons shall conduct an assessment of the vulnerability of its system to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water. The vulnerability assessment shall include, but not be limited to, a review of pipes and constructed conveyances, physical barriers, water collection,

pretreatment, treatment, storage and distribution facilities, electronic, computer or other automated systems which are utilized by the public water system, the use, storage, or handling of various chemicals, and the operation and maintenance of such system. The Administrator, not later than August 1, 2002, after consultation with appropriate departments and agencies of the Federal Government and with State and local governments, shall provide baseline information to community water systems required to conduct vulnerability assessments regarding which kinds of terrorist attacks or other intentional acts are the probable threats to—

(A) substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water; or

(B) otherwise present significant public health concerns.

(2) Each community water system referred to in paragraph (1) shall certify to the Administrator that the system has conducted an assessment complying with paragraph (1) and shall submit to the Administrator a written copy of the assessment. Such certification and submission shall be made prior to:

(A) March 31, 2003, in the case of systems serving a population of 100,000 or more.

(B) December 31, 2003, in the case of systems serving a population of 50,000 or more but less than 100,000.

(C) June 30, 2004, in the case of systems serving a population greater than 3,300 but less than 50,000.

(3) Except for information contained in a certification under this subsection identifying the system submitting the certification and the date of the certification, all information provided to the Administrator under this subsection and all information derived therefrom shall be exempt from disclosure under section 552 of title 5.

(4) No community water system shall be required under State or local law to provide an assessment described in this section to any State, regional, or local governmental entity solely by reason of the requirement set forth in paragraph (2) that the system submit such assessment to the Administrator.

(5) Not later than November 30, 2002, the Administrator, in consultation with appropriate Federal law enforcement and intelligence officials, shall develop such protocols as may be necessary to protect the copies of the assessments required to be submitted under this subsection (and the information contained therein) from unauthorized disclosure. Such protocols shall ensure that—

(A) each copy of such assessment, and all information contained in or derived from the assessment, is kept in a secure location;

(B) only individuals designated by the Administrator may have access to the copies of the assessments; and

(C) no copy of an assessment, or part of an assessment, or information contained in or derived from an assessment shall be available to anyone other than an individual designated by the Administrator.

At the earliest possible time prior to November 30, 2002, the Administrator shall complete the development of such protocols for the purpose of having them in place prior to receiving any vulnerability assessments from community water systems under this subsection.

(6)(A) Except as provided in subparagraph (B), any individual referred to in paragraph (5)(B) who acquires the assessment submitted under paragraph (2), or any reproduction of such assessment, or any information derived from such assessment, and who knowingly or recklessly reveals such assessment, reproduction, or information other than—

(i) to an individual designated by the Administrator under paragraph (5),

(ii) for purposes of section 300j–4 of this title or for actions under section 300i of this title, or

(iii) for use in any administrative or judicial proceeding to impose a penalty for failure to comply with this section,

shall upon conviction be imprisoned for not more than one year or fined in accordance with the provisions of chapter 227 of title 18 applicable to class A misdemeanors, or both, and shall be removed from Federal office or employment.

(B) Notwithstanding subparagraph (A), an individual referred to in paragraph (5)(B) who is an officer or employee of the United States may discuss the contents of a vulnerability assessment submitted under this section with a State or local official.

(7) Nothing in this section authorizes any person to withhold any information from Congress or from any committee or subcommittee of Congress.

(b) Emergency response plan

Each community water system serving a population greater than 3,300 shall prepare or revise, where necessary, an emergency response plan that incorporates the results of vulnerability assessments that have been completed. Each such community water system shall certify to the Administrator, as soon as reasonably possible after the enactment of this section, but not later than 6 months after the completion of the vulnerability assessment under subsection (a) of this section, that the system has completed such plan. The emergency response plan shall include, but not be limited to, plans, procedures, and identification of equipment that can be implemented or utilized in the event of a terrorist or other intentional attack on the public water system. The emergency response plan shall also include actions, procedures, and identification of equipment which can obviate or significantly lessen the impact of terrorist attacks or other intentional actions on the public health and the safety and supply of drinking water provided to communities and individuals. Community water systems shall, to the extent possible, coordinate with existing Local Emergency Planning Committees established under the Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001 et seq.) when preparing or revising an emergency response plan under this subsection.

(c) Record maintenance

Each community water system shall maintain a copy of the emergency response plan com-

pleted pursuant to subsection (b) of this section for 5 years after such plan has been certified to the Administrator under this section.

(d) Guidance to small public water systems

The Administrator shall provide guidance to community water systems serving a population of less than 3,300 persons on how to conduct vulnerability assessments, prepare emergency response plans, and address threats from terrorist attacks or other intentional actions designed to disrupt the provision of safe drinking water or significantly affect the public health or significantly affect the safety or supply of drinking water provided to communities and individuals.

(e) Funding

(1) There are authorized to be appropriated to carry out this section not more than $160,000,000 for the fiscal year 2002 and such sums as may be necessary for the fiscal years 2003 through 2005.

(2) The Administrator, in coordination with State and local governments, may use funds made available under paragraph (1) to provide financial assistance to community water systems for purposes of compliance with the requirements of subsections (a) and (b) of this section and to community water systems for expenses and contracts designed to address basic security enhancements of critical importance and significant threats to public health and the supply of drinking water as determined by a vulnerability assessment conducted under subsection (a) of this section. Such basic security enhancements may include, but shall not be limited to the following:

(A) the purchase and installation of equipment for detection of intruders;

(B) the purchase and installation of fencing, gating, lighting, or security cameras;

(C) the tamper-proofing of manhole covers, fire hydrants, and valve boxes;

(D) the rekeying of doors and locks;

(E) improvements to electronic, computer, or other automated systems and remote security systems;

(F) participation in training programs, and the purchase of training manuals and guidance materials, relating to security against terrorist attacks;

(G) improvements in the use, storage, or handling of various chemicals; and

(H) security screening of employees or contractor support services.

Funding under this subsection for basic security enhancements shall not include expenditures for personnel costs, or monitoring, operation, or maintenance of facilities, equipment, or systems.

(3) The Administrator may use not more than $5,000,000 from the funds made available under paragraph (1) to make grants to community water systems to assist in responding to and alleviating any vulnerability to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water (including sources of water for such systems) which the Administrator determines to present an immediate and urgent security need.

(4) The Administrator may use not more than $5,000,000 from the funds made available under paragraph (1) to make grants to community water systems serving a population of less than 3,300 persons for activities and projects undertaken in accordance with the guidance provided to such systems under subsection (d) of this section.

(July 1, 1944, ch. 373, title XIV, § 1433, as added Pub. L. 107–188, title IV, § 401, June 12, 2002, 116 Stat. 682.)

REFERENCES IN TEXT

The Emergency Planning and Community Right-to-Know Act, referred to in subsec. (b), probably means the Emergency Planning and Community Right-to-Know Act of 1986, Pub. L. 99–499, title III, Oct. 17, 1986, 100 Stat. 1728, which is classified generally to chapter 116 (§ 11001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11001 of this title and Tables.

§ 300i–3. Contaminant prevention, detection and response

(a) In general

The Administrator, in consultation with the Centers for Disease Control and, after consultation with appropriate departments and agencies of the Federal Government and with State and local governments, shall review (or enter into contracts or cooperative agreements to provide for a review of) current and future methods to prevent, detect and respond to the intentional introduction of chemical, biological or radiological contaminants into community water systems and source water for community water systems, including each of the following:

(1) Methods, means and equipment, including real time monitoring systems, designed to monitor and detect various levels of chemical, biological, and radiological contaminants or indicators of contaminants and reduce the likelihood that such contaminants can be successfully introduced into public water systems and source water intended to be used for drinking water.

(2) Methods and means to provide sufficient notice to operators of public water systems, and individuals served by such systems, of the introduction of chemical, biological or radiological contaminants and the possible effect of such introduction on public health and the safety and supply of drinking water.

(3) Methods and means for developing educational and awareness programs for community water systems.

(4) Procedures and equipment necessary to prevent the flow of contaminated drinking water to individuals served by public water systems.

(5) Methods, means, and equipment which could negate or mitigate deleterious effects on public health and the safety and supply caused by the introduction of contaminants into water intended to be used for drinking water, including an examination of the effectiveness of various drinking water technologies in removing, inactivating, or neutralizing biological, chemical, and radiological contaminants.

(6) Biomedical research into the short-term and long-term impact on public health of various chemical, biological and radiological contaminants that may be introduced into public

water systems through terrorist or other intentional acts.

(b) Funding

For the authorization of appropriations to carry out this section, see section 300i–4(e) of this title.

(July 1, 1944, ch. 373, title XIV, § 1434, as added Pub. L. 107–188, title IV, § 402, June 12, 2002, 116 Stat. 685.)

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

§ 300i–4. Supply disruption prevention, detection and response

(a) Disruption of supply or safety

The Administrator, in coordination with the appropriate departments and agencies of the Federal Government, shall review (or enter into contracts or cooperative agreements to provide for a review of) methods and means by which terrorists or other individuals or groups could disrupt the supply of safe drinking water or take other actions against water collection, pretreatment, treatment, storage and distribution facilities which could render such water significantly less safe for human consumption, including each of the following:

(1) Methods and means by which pipes and other constructed conveyances utilized in public water systems could be destroyed or otherwise prevented from providing adequate supplies of drinking water meeting applicable public health standards.

(2) Methods and means by which collection, pretreatment, treatment, storage and distribution facilities utilized or used in connection with public water systems and collection and pretreatment storage facilities used in connection with public water systems could be destroyed or otherwise prevented from providing adequate supplies of drinking water meeting applicable public health standards.

(3) Methods and means by which pipes, constructed conveyances, collection, pretreatment, treatment, storage and distribution systems that are utilized in connection with public water systems could be altered or affected so as to be subject to cross-contamination of drinking water supplies.

(4) Methods and means by which pipes, constructed conveyances, collection, pretreatment, treatment, storage and distribution systems that are utilized in connection with public water systems could be reasonably protected from terrorist attacks or other acts intended to disrupt the supply or affect the safety of drinking water.

(5) Methods and means by which information systems, including process controls and supervisory control and data acquisition and cyber systems at community water systems could be disrupted by terrorists or other groups.

(b) Alternative sources

The review under this section shall also include a review of the methods and means by which alternative supplies of drinking water could be provided in the event of the destruction, impairment or contamination of public water systems.

(c) Requirements and considerations

In carrying out this section and section 300i–3 of this title—

(1) the Administrator shall ensure that reviews carried out under this section reflect the needs of community water systems of various sizes and various geographic areas of the United States; and

(2) the Administrator may consider the vulnerability of, or potential for forced interruption of service for, a region or service area, including community water systems that provide service to the National Capital area.

(d) Information sharing

As soon as practicable after reviews carried out under this section or section 300i–3 of this title have been evaluated, the Administrator shall disseminate, as appropriate as determined by the Administrator, to community water systems information on the results of the project through the Information Sharing and Analysis Center, or other appropriate means.

(e) Funding

There are authorized to be appropriated to carry out this section and section 300i–3 of this title not more than $15,000,000 for the fiscal year 2002 and such sums as may be necessary for the fiscal years 2003 through 2005.

(July 1, 1944, ch. 373, title XIV, § 1435, as added Pub. L. 107–188, title IV, § 402, June 12, 2002, 116 Stat. 686.)

PART E—GENERAL PROVISIONS

§ 300j. Assurances of availability of adequate supplies of chemicals necessary for treatment of water

(a) Certification of need application

If any person who uses chlorine, activated carbon, lime, ammonia, soda ash, potassium permanganate, caustic soda, or other chemical or substance for the purpose of treating water in any public water system or in any public treatment works determines that the amount of such chemical or substance necessary to effectively treat such water is not reasonably available to him or will not be so available to him when required for the effective treatment of such water, such person may apply to the Administrator for a certification (hereinafter in this section referred to as a ''certification of need'') that the amount of such chemical or substance which such person requires to effectively treat such water is not reasonably available to him or will not be so available when required for the effective treatment of such water.

(b) Application requirements; publication in Federal Register; waiver; certification, issuance or denial

(1) An application for a certification of need shall be in such form and submitted in such manner as the Administrator may require and shall (A) specify the persons the applicant determines are able to provide the chemical or sub-

stance with respect to which the application is submitted, (B) specify the persons from whom the applicant has sought such chemical or substance, and (C) contain such other information as the Administrator may require.

(2) Upon receipt of an application under this section, the Administrator shall (A) publish in the Federal Register a notice of the receipt of the application and a brief summary of it, (B) notify in writing each person whom the President or his delegate (after consultation with the Administrator) determines could be made subject to an order required to be issued upon the issuance of the certification of need applied for in such application, and (C) provide an opportunity for the submission of written comments on such application. The requirements of the preceding sentence of this paragraph shall not apply when the Administrator for good cause finds (and incorporates the finding with a brief statement of reasons therefor in the order issued) that waiver of such requirements is necessary in order to protect the public health.

(3) Within 30 days after—

(A) the date a notice is published under paragraph (2) in the Federal Register with respect to an application submitted under this section for the issuance of a certification of need, or

(B) the date on which such application is received if as authorized by the second sentence of such paragraph no notice is published with respect to such application,

the Administrator shall take action either to issue or deny the issuance of a certification of need.

(c) Certification of need; issuance; executive orders; implementation of orders; equitable apportionment of orders; factors considered

(1) If the Administrator finds that the amount of a chemical or substance necessary for an applicant under an application submitted under this section to effectively treat water in a public water system or in a public treatment works is not reasonably available to the applicant or will not be so available to him when required for the effective treatment of such water, the Administrator shall issue a certification of need. Not later than seven days following the issuance of such certification, the President or his delegate shall issue an order requiring the provision to such person of such amounts of such chemical or substance as the Administrator deems necessary in the certification of need issued for such person. Such order shall apply to such manufactures, producers, processors, distributors, and repackagers of such chemical or substance as the President or his delegate deems necessary and appropriate, except that such order may not apply to any manufacturer, producer, or processor of such chemical or substance who manufactures, produces, or processes (as the case may be) such chemical or substance solely for its own use. Persons subject to an order issued under this section shall be given a reasonable opportunity to consult with the President or his delegate with respect to the implementation of the order.

(2) Orders which are to be issued under paragraph (1) to manufacturers, producers, and processors of a chemical or substance shall be equitably apportioned, as far as practicable, among all manufacturers, producers, and processors of such chemical or substance; and orders which are to be issued under paragraph (1) to distributors and repackagers of a chemical or substance shall be equitably apportioned, as far as practicable, among all distributors and repackagers of such chemical or substance. In apportioning orders issued under paragraph (1) to manufacturers, producers, processors, distributors, and repackagers of chlorine, the President or his delegate shall, in carrying out the requirements of the preceding sentence, consider—

(A) the geographical relationships and established commercial relationships between such manufacturers, producers, processors, distributors, and repackagers and the persons for whom the orders are issued;

(B) in the case of orders to be issued to producers of chlorine, the (i) amount of chlorine historically supplied by each such producer to treat water in public water systems and public treatment works, and (ii) share of each such producer of the total annual production of chlorine in the United States; and

(C) such other factors as the President or his delegate may determine are relevant to the apportionment of orders in accordance with the requirements of the preceding sentence.

(3) Subject to subsection (f) of this section, any person for whom a certification of need has been issued under this subsection may upon the expiration of the order issued under paragraph (1) upon such certification apply under this section for additional certifications.

(d) Breach of contracts; defense

There shall be available as a defense to any action brought for breach of contract in a Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange a chemical or substance subject to an order issued pursuant to subsection (c)(1) of this section, that such delay or failure was caused solely by compliance with such order.

(e) Penalties for noncompliance with orders; temporary restraining orders and preliminary or permanent injunctions

(1) Whoever knowingly fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be fined not more than $5,000 for each such failure to comply.

(2) Whoever fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be subject to a civil penalty of not more than $2,500 for each such failure to comply.

(3) Whenever the Administrator or the President or his delegate has reason to believe that any person is violating or will violate any order issued pursuant to subsection (c)(1) of this section, he may petition a United States district court to issue a temporary restraining order or preliminary or permanent injunction (including a mandatory injunction) to enforce the provision of such order.

(f) Termination date

No certification of need or order issued under this section may remain in effect for more than one year.

(July 1, 1944, ch. 373, title XIV, § 1441, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1680; amended Pub. L. 95–190, § 7, Nov. 16, 1977, 91 Stat. 1396; Pub. L. 96–63, § 3, Sept. 6, 1979, 93 Stat. 411; Pub. L. 99–339, title III, § 301(d), June 19, 1986, 100 Stat. 664; Pub. L. 104–182, title V, § 501(c), Aug. 6, 1996, 110 Stat. 1691.)

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–182 inserted a period after ''year''.

1986—Subsec. (f). Pub. L. 99–339 substituted ''in effect for more than one year'' for ''in effect— (1) for more than one year, or (2) September 30, 1982, whichever occurs first.''

1979—Subsec. (f)(2). Pub. L. 96–63 substituted ''September 30, 1982'' for ''September 30, 1979''.

1977—Subsec. (f). Pub. L. 95–190 substituted ''September 30, 1979'' for ''June 30, 1977''.

EX. ORD. NO. 11879. DELEGATION OF FUNCTIONS TO SECRETARY OF COMMERCE RELATING TO ORDERS FOR PROVISION OF CHEMICALS OR SUBSTANCES NECESSARY FOR TREATMENT OF WATER

Ex. Ord. No. 11879, Sept. 17, 1975, 40 F.R. 43197, provided:

By virtue of the authority vested in me by Section 1441 of the Public Health Service Act, as amended by the Safe Drinking Water Act [now Safe Drinking Water Act of 1974] (88 Stat. 1680, 42 U.S.C. 300j), and as President of the United States, the Secretary of Commerce is hereby delegated, with power to redelegate to agencies, officers and employees of the Government, the functions of the President contained in said section 1441 [this section]. Those functions shall be administered under regulations or agreements which are identical or compatible with other regulations and agreements, including those provided pursuant to Executive Order No. 10480, as amended [formerly set out as a note under section 2153 of Title 50, Appendix, War and National Defense], for the allocation of similar chemicals or substances.

GERALD R. FORD.

§ 300j–1. Research, technical assistance, information, training of personnel

(a) Specific powers and duties of Administrator

(1) The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including—

(A) improved methods (i) to identify and measure the existence of contaminants in drinking water (including methods which may be used by State and local health and water officials), and (ii) to identify the source of such contaminants;

(B) improved methods to identify and measure the health effects of contaminants in drinking water;

(C) new methods of treating raw water to prepare it for drinking, so as to improve the efficiency of water treatment and to remove contaminants from water;

(D) improved methods for providing a dependably safe supply of drinking water, including improvements in water purification and distribution, and methods of assessing the health related hazards of drinking water; and

(E) improved methods of protecting underground water sources of public water systems from contamination.

(2) INFORMATION AND RESEARCH FACILITIES.—In carrying out this subchapter, the Administrator is authorized to—

(A) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water, together with appropriate recommendations in connection with the information; and

(B) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to this subchapter.

(3) The Administrator shall carry out a study of polychlorinated biphenyl contamination of actual or potential sources of drinking water, contamination of such sources by other substances known or suspected to be harmful to public health, the effects of such contamination, and means of removing, treating, or otherwise controlling such contamination. To assist in carrying out this paragraph, the Administrator is authorized to make grants to public agencies and private nonprofit institutions.

(4) The Administrator shall conduct a survey and study of—

(A) disposal of waste (including residential waste) which may endanger underground water which supplies, or can reasonably be expected to supply, any public water systems, and

(B) means of control of such waste disposal.

Not later than one year after December 16, 1974, he shall transmit to the Congress the results of such survey and study, together with such recommendations as he deems appropriate.

(5) The Administrator shall carry out a study of methods of underground injection which do not result in the degradation of underground drinking water sources.

(6) The Administrator shall carry out a study of methods of preventing, detecting, and dealing with surface spills of contaminants which may degrade underground water sources for public water systems.

(7) The Administrator shall carry out a study of virus contamination of drinking water sources and means of control of such contamination.

(8) The Administrator shall carry out a study of the nature and extent of the impact on underground water which supplies or can reasonably be expected to supply public water systems of (A) abandoned injection or extraction wells; (B) intensive application of pesticides and fertilizers in underground water recharge areas; and (C) ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas.

(9) The Administrator shall conduct a comprehensive study of public water supplies and drinking water sources to determine the nature, extent, sources of and means of control of contamination by chemicals or other substances suspected of being carcinogenic. Not later than six months after December 16, 1974, he shall transmit to the Congress the initial results of such study, together with such recommendations for further review and corrective action as he deems appropriate.

(10) The Administrator shall carry out a study of the reaction of chlorine and humic acids and the effects of the contaminants which result from such reaction on public health and on the safety of drinking water, including any carcinogenic effect.

(b) Emergency situations

The Administrator is authorized to provide technical assistance and to make grants to States, or publicly owned water systems to assist in responding to and alleviating any emergency situation affecting public water systems (including sources of water for such systems) which the Administrator determines to present substantial danger to the public health. Grants provided under this subsection shall be used only to support those actions which (i) are necessary for preventing, limiting or mitigating danger to the public health in such emergency situation and (ii) would not, in the judgment of the Administrator, be taken without such emergency assistance. The Administrator may carry out the program authorized under this subsection as part of, and in accordance with the terms and conditions of, any other program of assistance for environmental emergencies which the Administrator is authorized to carry out under any other provision of law. No limitation on appropriations for any such other program shall apply to amounts appropriated under this subsection.

(c) Establishment of training programs and grants for training; training fees

The Administrator shall—

(1) provide training for, and make grants for training (including postgraduate training) of (A) personnel of State agencies which have primary enforcement responsibility and of agencies or units of local government to which enforcement responsibilities have been delegated by the State, and (B) personnel who manage or operate public water systems, and

(2) make grants for postgraduate training of individuals (including grants to educational institutions for traineeships) for purposes of qualifying such individuals to work as personnel referred to in paragraph (1).

(3) make grants to, and enter into contracts with, any public agency, educational institution, and any other organization, in accordance with procedures prescribed by the Administrator, under which he may pay all or part of the costs (as may be determined by the Administrator) of any project or activity which is designed—

(A) to develop, expand, or carry out a program (which may combine training education and employment) for training persons for occupations involving the public health aspects of providing safe drinking water;

(B) to train inspectors and supervisory personnel to train or supervise persons in occupations involving the public health aspects of providing safe drinking water; or

(C) to develop and expand the capability of programs of States and municipalities to carry out the purposes of this subchapter (other than by carrying out State programs of public water system supervision or underground water source protection (as defined in section 300j–2(c) of this title)).

Reasonable fees may be charged for training provided under paragraph (1)(B) to persons other than personnel of State or local agencies but such training shall be provided to personnel of State or local agencies without charge.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out subsection (b) of this section not more than $35,000,000 for the fiscal year 2002 and such sums as may be necessary for each fiscal year thereafter.

(e) Technical assistance

The Administrator may provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with applicable national primary drinking water regulations. Such assistance may include circuit-rider and multi-State regional technical assistance programs, training, and preliminary engineering evaluations. The Administrator shall ensure that technical assistance pursuant to this subsection is available in each State. Each nonprofit organization receiving assistance under this subsection shall consult with the State in which the assistance is to be expended or otherwise made available before using assistance to undertake activities to carry out this subsection. There are authorized to be appropriated to the Administrator to be used for such technical assistance $15,000,000 for each of the fiscal years 1997 through 2003. No portion of any State loan fund established under section 300j–12 of this title (relating to State loan funds) and no portion of any funds made available under this subsection may be used for lobbying expenses. Of the total amount appropriated under this subsection, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.

(July 1, 1944, ch. 373, title XIV, § 1442, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1682; amended Pub. L. 95–190, §§ 2(a), 3(a), (b), (e)(1), 4, 9, 10(b), 13, Nov. 16, 1977, 91 Stat. 1393–1395, 1397–1399; Pub. L. 96–63, § 1, Sept. 6, 1979, 93 Stat. 411; Pub. L. 96–502, § 5, Dec. 5, 1980, 94 Stat. 2738; Pub. L. 99–339, title I, § 107, title III, §§ 301(a), (g), 304(a), June 19, 1986, 100 Stat. 651, 663, 665, 667; Pub. L. 104–66, title II, § 2021(h), Dec. 21, 1995, 109 Stat. 727; Pub. L. 104–182, title I, §§ 121, 122, Aug. 6, 1996, 110 Stat. 1651; Pub. L. 107–188, title IV, § 403(4), June 12, 2002, 116 Stat. 687.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–188, § 403(4)(A), which directed substitution of ''this subsection'' for ''this subparagraph'', was executed by making the substitution in three places to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 107–188, § 403(4)(B), amended subsec. (d) generally, substituting provisions relating to authorization of appropriations to carry out subsec. (b) in fiscal year 2002 and subsequent fiscal years for provisions relating to authorization of appropriations to carry out this section in fiscal year 1991 and earlier.

1996—Subsec. (a)(2). Pub. L. 104–182, § 121(4)(A), added heading and text of par. (2) and struck out former par. (2) which read as follows: ''(2)(A) The Administrator shall, to the maximum extent feasible, provide technical assistance to the States and municipalities in the establishment and administration of public water system supervision programs (as defined in section 300j–2(c)(1) of this title).''

Subsec. (a)(2)(B). Pub. L. 104–182, §121(3), redesignated subpar. (B) as subsec. (b) and transferred that subsec. to appear after subsec. (a).

Subsec. (a)(3), (11). Pub. L. 104–182, §121(4)(B), (C), redesignated par. (11) as (3), transferred that par. to appear before par. (4), and struck out former par. (3) which provided that the Administrator was to conduct studies, and make periodic reports to Congress, on the costs of carrying out regulations prescribed under section 300g–1 of this title.

Subsec. (b). Pub. L. 104–182, §121(2), (3), redesignated subsec. (a)(2)(B) as subsec. (b), transferred that subsec. to appear after subsec. (a), and struck out former subsec. (b) which read as follows: ''In carrying out this subchapter, the Administrator is authorized to—

''(1) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water together with appropriate recommendations in connection therewith;

''(2) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to the purposes of this subchapter;''.

Subsecs. (b)(3), (c)(3). Pub. L. 104–182, §121(1), which directed redesignation of subsec. (b)(3) as par. (3) of subsec. (d) and transfer of that par. to follow par. (2) of subsec. (d), was executed by redesignating subsec. (b)(3) as par. (3) of subsec. (c) and transferring that par. to follow par. (2) of subsec. (c) to reflect the probable intent of Congress and the redesignation of subsec. (d) as (c) by Pub. L. 104–66. See 1995 Amendment note below. Moreover, subsec. (d) does not have any pars.

Subsec. (e). Pub. L. 104–182, §122, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The Administrator is authorized to provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with national drinking water regulations. Such assistance may include 'circuit-rider' programs, training, and preliminary engineering studies. There are authorized to be appropriated to carry out this subsection $10,000,000 for each of the fiscal years 1987 through 1991. Not less than the greater of—

''(1) 3 percent of the amounts appropriated under this subsection, or

''(2) $280,000

shall be utilized for technical assistance to public water systems owned or operated by Indian tribes.''

1995—Subsecs. (c) to (g). Pub. L. 104–66 redesignated subsecs. (d), (f), and (g) as (c), (d), and (e), respectively, and struck out former subsec. (c) which read as follows: ''Not later than eighteen months after November 16, 1977, the Administrator shall submit a report to Congress on the present and projected future availability of an adequate and dependable supply of safe drinking water to meet present and projected future need. Such report shall include an analysis of the future demand for drinking water and other competing uses of water, the availability and use of methods to conserve water or reduce demand, the adequacy of present measures to assure adequate and dependable supplies of safe drinking water, and the problems (financial, legal, or other) which need to be resolved in order to assure the availability of such supplies for the future. Existing information and data complied by the National Water Commission and others shall be utilized to the extent possible.''

1986—Subsec. (e). Pub. L. 99–339, §304(a), struck out subsec. (e) which authorized the Administrator to make grants to public water systems which are required, under State or local law, to meet standards relating to drinking turbidity which are more stringent than the standards in effect under this subchapter.

Subsec. (f). Pub. L. 99–339, §301(a), authorized appropriations to carry out subsec. (a)(2)(B) of this section for fiscal years 1987 to 1991 and to carry out provisions of this section other than subsecs. (a)(2)(B) and (g) and provisions relating to research for fiscal years 1987 to 1991.

Subsec. (g). Pub. L. 99–339, §301(g), authorized appropriations to carry out this subsection of $10,000,000 for each of fiscal years 1987 through 1991 and specified amount to be utilized for public water systems owned or operated by Indian tribes.

Pub. L. 99–339, §107 added subsec. (g).

1980—Subsecs. (e), (f). Pub. L. 96–502 added subsec. (e) and redesignated former subsec. (e) as (f).

1979—Subsec. (e). Pub. L. 96–63 authorized appropriations of $21,405,000 for fiscal year ending Sept. 30, 1980, $30,000,000 for fiscal year ending Sept. 30, 1981, and $35,000,000 for fiscal year ending Sept. 30, 1982 for purposes other than those of subsec. (a)(2)(B) of this section and for purposes of subsec. (a)(2)(B) of this section, $8,000,000 for fiscal years 1980 through 1982.

1977—Subsec. (a)(2). Pub. L. 95–190, §§9, 13, designated existing provisions as subpar. (A), added subpar. (B) and, in subpar. (B) as added, substituted provisions authorizing Administrator to make grants and provide technical assistance for any emergency situation affecting public water systems and criteria for such grants and assistance for provisions authorizing Administrator to make grants and provide technical assistance for any emergency situation respecting drinking water and criteria for determination of such situations.

Subsec. (a)(3). Pub. L. 95–190, §3(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10), (11). Pub. L. 95–190, §3(e)(1), added pars. (10) and (11).

Subsec. (b)(3)(C). Pub. L. 95–190, §10(b), substituted ''300j–2(c)'' for ''300j–2(d)''.

Subsecs. (c), (d). Pub. L. 95–190, §§3(b), 4, added subsecs. (c) and (d). Former subsec. (c) redesignated (e).

Subsec. (e). Pub. L. 95–190, §§2(a), 3(b), redesignated former subsec. (c) as (e) and inserted provisions authorizing appropriations for fiscal years 1978 and 1979, and provisions relating to appropriations for subsec. (a)(2)(B) of this section and for research.

SCIENTIFIC RESEARCH REVIEW

Section 202 of Pub. L. 104–182 provided that:

''(a) IN GENERAL.—The Administrator shall—

''(1) develop a strategic plan for drinking water research activities throughout the Environmental Protection Agency (in this section referred to as the 'Agency');

''(2) integrate that strategic plan into ongoing Agency planning activities; and

''(3) review all Agency drinking water research to ensure the research—

''(A) is of high quality; and

''(B) does not duplicate any other research being conducted by the Agency.

''(b) PLAN.—The Administrator shall transmit the plan to the Committees on Commerce and Science of the House of Representatives and the Committee on Environment and Public Works of the Senate and the plan shall be made available to the public.''

NATIONAL CENTER FOR GROUND WATER RESEARCH

Section 203 of Pub. L. 104–182 provided that: ''The Administrator of the Environmental Protection Agency, acting through the Robert S. Kerr Environmental Research Laboratory, is authorized to reestablish a partnership between the Laboratory and the National Center for Ground Water Research, a university consortium, to conduct research, training, and technology transfer for ground water quality protection and restoration. No funds are authorized by this section.''

COMPARATIVE HEALTH EFFECTS ASSESSMENT

Section 304(b) of Pub. L. 99–339 provided that: ''The Administrator of the Environmental Protection Agency shall conduct a comparative health effects assessment, using available data, to compare the public health effects (both positive and negative) associated with water treatment chemicals and their byproducts to the public health effects associated with contami-

nants found in public water supplies. Not later than 18 months after the date of the enactment of this Act [June 19, 1986], the Administrator shall submit a report to the Congress setting forth the results of such assessment.''

§ 300j–2. Grants for State programs

(a) Public water systems supervision programs; applications for grants; allotment of sums; waiver of grant restrictions; notice of approval or disapproval of application; authorization of appropriations

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out public water system supervision programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within one year from the date of such grant a public water system supervision program, and

(B) will, within that one year, assume primary enforcement responsibility for public water systems within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than one year after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for public water systems within the State. The prohibitions contained in the preceding two sentences shall not apply to such grants when made to Indian Tribes.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, a public water system supervision program.

(4) In each fiscal year the Administrator shall, in accordance, with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, number of public water systems, and other relevant factors. No State shall receive less than 1 per centum of the annual appropriation for grants under paragraph (1): *Provided*, That the Administrator may, by regulation, reduce such percentage in accordance with the criteria specified in this paragraph: *And provided further*, That such percentage shall not apply to grants allotted to Guam, American Samoa, or the Virgin Islands.

(5) The prohibition contained in the last sentence of paragraph (2) may be waived by the Administrator with respect to a grant to a State through fiscal year 1979 but such prohibition may only be waived if, in the judgment of the Administrator—

(A) the State is making a diligent effort to assume and maintain primary enforcement responsibility for public water systems within the State;

(B) the State has made significant progress toward assuming and maintaining such primary enforcement responsibility; and

(C) there is reason to believe the State will assume such primary enforcement responsibility by October 1, 1979.

The amount of any grant awarded for the fiscal years 1978 and 1979 pursuant to a waiver under this paragraph may not exceed 75 per centum of the allotment which the State would have received for such fiscal year if it had assumed and maintained such primary enforcement responsibility. The remaining 25 per centum of the amount allotted to such State for such fiscal year shall be retained by the Administrator, and the Administrator may award such amount to such State at such time as the State assumes such responsibility before the beginning of fiscal year 1980. At the beginning of each fiscal years 1979 and 1980 the amounts retained by the Administrator for any preceding fiscal year and not awarded by the beginning of fiscal year 1979 or 1980 to the States to which such amounts were originally allotted may be removed from the original allotment and reallotted for fiscal year 1979 or 1980 (as the case may be) to States which have assumed primary enforcement responsibility by the beginning of such fiscal year.

(6) The Administrator shall notify the State of the approval or disapproval of any application for a grant under this section—

(A) within ninety days after receipt of such application, or

(B) not later than the first day of the fiscal year for which the grant application is made,

whichever is later.

(7) AUTHORIZATION.—For the purpose of making grants under paragraph (1), there are authorized to be appropriated $100,000,000 for each of fiscal years 1997 through 2003.

(8) RESERVATION OF FUNDS BY THE ADMINISTRATOR.—If the Administrator assumes the primary enforcement responsibility of a State public water system supervision program, the Administrator may reserve from funds made available pursuant to this subsection an amount equal to the amount that would otherwise have been provided to the State pursuant to this subsection. The Administrator shall use the funds reserved pursuant to this paragraph to ensure the full and effective administration of a public water system supervision program in the State.

(9) STATE LOAN FUNDS.—

(A) RESERVATION OF FUNDS.—For any fiscal year for which the amount made available to the Administrator by appropriations to carry out this subsection is less than the amount that the Administrator determines is necessary to supplement funds made available pursuant to paragraph (8) to ensure the full and effective administration of a public water system supervision program in a State, the Administrator may reserve from the funds made available to the State under section 300j–12 of this title (relating to State loan funds) an amount that is equal to the amount of the shortfall. This paragraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of August 6, 1996.

(B) DUTY OF ADMINISTRATOR.—If the Administrator reserves funds from the allocation of a State under subparagraph (A), the Adminis-

trator shall carry out in the State each of the activities that would be required of the State if the State had primary enforcement authority under section 300g–2 of this title.

(b) Underground water source protection programs; applications for grants; allotment of sums; authorization of appropriations

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out underground water source protection programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. No grant may be made to any State under paragraph (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 300h of this title. The prohibition contained in the preceding sentence shall not apply to such grants when made to Indian Tribes.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's cost (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, and underground water source protection program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, and other relevant factors.

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, $7,500,000 for the fiscal year ending June 30, 1977, $10,000,000 for each of the fiscal years 1978 and 1979, $7,795,000 for the fiscal year ending September 30, 1980, $18,000,000 for the fiscal year ending September 30, 1981, and $21,000,000 for the fiscal year ending September 30, 1982. For the purpose of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

Fiscal year:	*Amount*
1987	$19,700,000
1988	19,700,000
1989	20,850,000
1990	20,850,000
1991	20,850,000
1992–2003	15,000,000.

(c) Definitions

For purposes of this section:

(1) The term ''public water system supervision program'' means a program for the adoption and enforcement of drinking water regulations (with such variances and exemptions from such regulations under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 300g–4 and 300g–5 of this title) which are no less stringent than the national primary drinking water regulations under section 300g–1 of this title, and for keeping records and making reports required by section 300g–2(a)(3) of this title.

(2) The term ''underground water source protection program'' means a program for the adoption and enforcement of a program which meets the requirements of regulations under section 300h of this title, and for keeping records and making reports required by section 300h–1(b)(1)(A)(ii) of this title. Such term includes, where applicable, a program which meets the requirements of section 300h–4 of this title.

(d) New York City watershed protection program

(1) In general

The Administrator is authorized to provide financial assistance to the State of New York for demonstration projects implemented as part of the watershed program for the protection and enhancement of the quality of source waters of the New York City water supply system, including projects that demonstrate, assess, or provide for comprehensive monitoring and surveillance and projects necessary to comply with the criteria for avoiding filtration contained in 40 CFR 141.71. Demonstration projects which shall be eligible for financial assistance shall be certified to the Administrator by the State of New York as satisfying the purposes of this subsection. In certifying projects to the Administrator, the State of New York shall give priority to monitoring projects that have undergone peer review.

(2) Report

Not later than 5 years after the date on which the Administrator first provides assistance pursuant to this paragraph, the Governor of the State of New York shall submit a report to the Administrator on the results of projects assisted.

(3) Matching requirements

Federal assistance provided under this subsection shall not exceed 50 percent of the total cost of the protection program being carried out for any particular watershed or ground water recharge area.

(4) Authorization

There are authorized to be appropriated to the Administrator to carry out this subsection for each of fiscal years 2003 through 2010, $15,000,000 for the purpose of providing assistance to the State of New York to carry out paragraph (1).

(July 1, 1944, ch. 373, title XIV, §1443, as added Pub. L. 93–523, §2(a), Dec. 16, 1974, 88 Stat. 1684; amended Pub. L. 95–190, §§2(b), (c), 5(a), Nov. 16, 1977, 91 Stat. 1393, 1395; Pub. L. 96–63, §2, Sept. 6, 1979, 93 Stat. 411; Pub. L. 96–502, §§2(c), 4(d), Dec. 5, 1980, 94 Stat. 2738; Pub. L. 99–339, title III, §§301(b), (c), 302(d), June 19, 1986, 100 Stat. 664, 666; Pub. L. 104–182, title I, §§120(c), 124, 128, Aug. 6, 1996, 110 Stat. 1651, 1653, 1659; Pub. L. 108–328, §1, Oct. 16, 2004, 118 Stat. 1273.)

AMENDMENTS

2004—Subsec. (d)(4). Pub. L. 108–328 substituted ''2003 through 2010'' for ''1997 through 2003''.

1996—Subsec. (a)(7). Pub. L. 104–182, §124(1), inserted heading and amended text generally. Prior to amend-

ment, text read as follows: ''For purposes of making grants under paragraph (1) there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1976, $25,000,000 for the fiscal year ending June 30, 1977, $35,000,000 for fiscal year 1978, $45,000,000 for fiscal year 1979, $29,450,000 for the fiscal year ending September 30, 1980, $32,000,000 for the fiscal year ending September 30, 1981, and $34,000,000 for the fiscal year ending September 30, 1982. For the purposes of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

''Fiscal year:	*Amount*
1987	$37,200,000
1988	37,200,000
1989	40,150,000
1990	40,150,000
1991	40,150,000''.

Subsec. (a)(8), (9). Pub. L. 104–182, §124(2), added pars. (8) and (9).

Subsec. (b)(5). Pub. L. 104–182, §120(c), inserted table item relating to fiscal years 1992 through 2003.

Subsec. (d). Pub. L. 104–182, §128, added subsec. (d).

1986—Subsec. (a)(2). Pub. L. 99–339, §302(d)(1), inserted provision that prohibitions contained in preceding two sentences not apply to such grants when made to Indian Tribes.

Subsec. (a)(7). Pub. L. 99–339, §301(b), authorized appropriations for grants under par. (1) of not more than $37,200,000 for fiscal years 1987 and 1988 and of not more than $40,150,000 for fiscal years 1989 to 1991.

Subsec. (b)(2). Pub. L. 99–339, §302(d)(2), inserted provision that prohibition contained in preceding sentence not apply to such grants when made to Indian Tribes.

Subsec. (b)(5). Pub. L. 99–339, §301(c), authorized appropriations for grants under par. (1) of not more than $19,700,000 for fiscal years 1987 and 1988 and of not more than $20,850,000 for fiscal years 1989 to 1991.

1980—Subsec. (b)(2). Pub. L. 96–502, §4(d), substituted provisions that no grant may be made to any State under par. (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 300h of this title for provisions that the Administrator may not approve an application of a State for its first grant under par. (1) unless he determines that the State has established or will establish within two years from the date of such grant an underground water source protection, and will, within such two years, assume primary enforcement responsibility for underground water sources within the State and that no grant may be made to a State under par. (1) for any period beginning more than two years after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for underground water sources within the State.

Subsec. (c)(2). Pub. L. 96–502, §2(c), inserted provision that such term includes, where applicable, a program which meets requirements of section 300h–4 of this title.

1979—Subsec. (a)(7). Pub. L. 96–63, §2(a), authorized appropriation of $29,450,000, $32,000,000, and $34,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

Subsec. (b)(5). Pub. L. 96–63, §2(b), authorized appropriation of $7,795,000, $18,000,000, and $21,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

1977—Subsec. (a)(5), (6). Pub. L. 95–190, §5(a), added pars. (5) and (6). Former par. (5) redesignated (7).

Subsec. (a)(7). Pub. L. 95–190, §§2(b), 5(a), redesignated former par. (5) as (7) and authorized appropriations for fiscal years 1978 and 1979.

Subsec. (b)(5). Pub. L. 95–190, §2(c), inserted provisions authorizing appropriations for fiscal years 1978 and 1979.

§ 300j–3. Special project grants and guaranteed loans

(a) Special study and demonstration project grants

The Administrator may make grants to any person for the purposes of—

(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology, for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health implications involved in the reclamation, recycling, and reuse of waste waters for drinking and the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations

Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(4) Priority for grants under this section shall be given where there are known or potential public health hazards which require advanced technology for the removal of particles which are too small to be removed by ordinary treatment technology.

(c) Authorization of appropriations

For the purposes of making grants under subsections (a) and (b) of this section there are authorized to be appropriated $7,500,000 for the fiscal year ending June 30, 1975; and $7,500,000 for the fiscal year ending June 30, 1976; and $10,000,000 for the fiscal year ending June 30, 1977.

(d) Loan guarantees to public water systems; conditions; indebtedness limitation; regulations

The Administrator during the fiscal years ending June 30, 1975, and June 30, 1976, shall carry out a program of guaranteeing loans made by private lenders to small public water systems for the purpose of enabling such systems to

meet national primary drinking water regulations prescribed under section 300g–1 of this title. No such guarantee may be made with respect to a system unless (1) such system cannot reasonably obtain financial assistance necessary to comply with such regulations from any other source, and (2) the Administrator determines that any facilities constructed with a loan guaranteed under this subsection is not likely to be made obsolete by subsequent changes in primary regulations. The aggregate amount of indebtedness guaranteed with respect to any system may not exceed $50,000. The aggregate amount of indebtedness guaranteed under this subsection may not exceed $50,000,000. The Administrator shall prescribe regulations to carry out this subsection.

(July 1, 1944, ch. 373, title XIV, § 1444, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1685; amended Pub. L. 99–339, title I, § 101(c)(3), June 19, 1986, 100 Stat. 646.)

AMENDMENTS

1986—Subsec. (d). Pub. L. 99–339 struck out ''(including interim regulations)'' before ''prescribed'' in first sentence.

§ 300j–3a. Grants to public sector agencies

(a) Assistance for development and demonstration projects

The Administrator of the Environmental Protection Agency shall offer grants to public sector agencies for the purposes of—

(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health and conservation implications involved in the reclamation, recycling, and reuse of wastewaters for drinking and agricultural use or the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations

Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consultation, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(c) Authorization of appropriations

There are authorized to be appropriated for the purposes of this section $25,000,000 for fiscal year 1978.

(Pub. L. 95–155, § 5, Nov. 8, 1977, 91 Stat. 1258; Pub. L. 95–477, § 7(a)(1), Oct. 18, 1978, 92 Stat. 1511.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95–477 inserted ''agricultural use or'' after ''drinking and''.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 7(a)(2) of Pub. L. 95–477 provided that: ''This subsection [amending this section] shall become effective October 1, 1978.''

§ 300j–3b. Contaminant standards or treatment technique guidelines

(1) Not later than nine months after October 18, 1978, the Administrator shall promulgate guidelines establishing supplemental standards or treatment technique requirements for microbiological, viral, radiological, organic, and inorganic contaminants, which guidelines shall be conditions, as provided in paragraph (2), of any grant for a demonstration project for water reclamation, recycling, and reuse funded under section 300j–3a of this title or under section 300j–3(a)(2) of this title, where such project involves direct human consumption of treated wastewater. Such guidelines shall provide for sufficient control of each such contaminant, such that in the Administrator's judgement, no adverse effects on the health of persons may reasonably be anticipated to occur, allowing an adequate margin of safety.

(2) A grant referred to in paragraph (1) for a project which involves direct human consumption of treated wastewater may be awarded on or after the date of promulgation of guidelines under this section only if the applicant demonstrates to the satisfaction of the Administrator that the project—

(A) will comply with all national primary drinking water regulations under section 300g–1 of this title;

(B) will comply with all guidelines under this section; and

(C) will in other respects provide safe drinking water.

Any such grant awarded before the date of promulgation of such guidelines shall be conditioned on the applicant's agreement to comply to the maximum feasible extent with such guidelines as expeditiously as practicable following the date of promulgation thereof.

(3) Guidelines under this section may, in the discretion of the Administrator—

(A) be nationally and uniformly applicable to all projects funded under section 300j–3a of this title or section 300j–1(a)(2)[1] of this title;

(B) vary for different classes or categories of such projects (as determined by the Administrator);

(C) be established and applicable on a project-by-project basis; or

(D) any combination of the above.

(4) Nothing in this section shall be construed to prohibit or delay the award of any grant referred to in paragraph (1) prior to the date of promulgation of such guidelines.

(Pub. L. 95–477, § 7(b), Oct. 18, 1978, 92 Stat. 1511.)

REFERENCES IN TEXT

Section 300j–1(a)(2) of this title, referred to in par. (3)(A), was amended by Pub. L. 104–182, title I, § 121(3), (4)(A), Aug. 6, 1996, 110 Stat. 1651, to redesignate par. (2)(B) as subsec. (b) of section 300j–1, strike par. (2)(A), and add a new par. (2) relating to information and research facilities.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the Public Health Service Act which comprises this chapter.

§ 300j–3c. National assistance program for water infrastructure and watersheds

(a) Technical and financial assistance

The Administrator of the Environmental Protection Agency may provide technical and financial assistance in the form of grants to States (1) for the construction, rehabilitation, and improvement of water supply systems, and (2) consistent with nonpoint source management programs established under section 1329 of title 33, for source water quality protection programs to address pollutants in navigable waters for the purpose of making such waters usable by water supply systems.

(b) Limitation

Not more than 30 percent of the amounts appropriated to carry out this section in a fiscal year may be used for source water quality protection programs described in subsection (a)(2) of this section.

(c) Condition

As a condition to receiving assistance under this section, a State shall ensure that such assistance is carried out in the most cost-effective manner, as determined by the State.

(d) Authorization of appropriations

(1) Unconditional authorization

There are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 1997 through 2003. Such sums shall remain available until expended.

(2) Conditional authorization

In addition to amounts authorized under paragraph (1), there are authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 1997 through 2003, provided that such authorization shall be in effect for a fiscal year only if at least 75 percent of the total amount of funds authorized to be appropriated for such fiscal year by section 300j–12(m) of this title are appropriated.

(e) Acquisition of lands

Assistance provided with funds made available under this section may be used for the acquisition of lands and other interests in lands; however, nothing in this section authorizes the acquisition of lands or other interests in lands from other than willing sellers.

(f) Federal share

The Federal share of the cost of activities for which grants are made under this section shall be 50 percent.

(g) Definitions

In this section, the following definitions apply:

(1) State

The term ''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(2) Water supply system

The term ''water supply system'' means a system for the provision to the public of piped water for human consumption if such system has at least 15 service connections or regularly serves at least 25 individuals and a draw and fill system for the provision to the public of water for human consumption. Such term does not include a system owned by a Federal agency. Such term includes (A) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (B) any collection or pretreatment facilities not under such control that are used primarily in connection with such system.

(Pub. L. 104–182, title IV, § 401, Aug. 6, 1996, 110 Stat. 1690.)

CODIFICATION

Section was enacted as part of the Safe Drinking Water Act Amendments of 1996, and not as part of the Public Health Service Act which comprises this chapter.

§ 300j–4. Records and inspections

(a) Provision of information to Administrator; monitoring program for unregulated contaminants

(1)(A) Every person who is subject to any requirement of this subchapter or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist the Administrator in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter, in administering any program of financial assistance under this subchapter, in evaluating the health

[1] See References in Text note below.

risks of unregulated contaminants, or in advising the public of such risks. In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system's drinking water.

(B) Every person who is subject to a national primary drinking water regulation under section 300g–1 of this title shall provide such information as the Administrator may reasonably require, after consultation with the State in which such person is located if such State has primary enforcement responsibility for public water systems, on a case-by-case basis, to determine whether such person has acted or is acting in compliance with this subchapter.

(C) Every person who is subject to a national primary drinking water regulation under section 300g–1 of this title shall provide such information as the Administrator may reasonably require to assist the Administrator in establishing regulations under section 300g–1 of this title, after consultation with States and suppliers of water. The Administrator may not require under this subparagraph the installation of treatment equipment or process changes, the testing of treatment technology, or the analysis or processing of monitoring samples, except where the Administrator provides the funding for such activities. Before exercising this authority, the Administrator shall first seek to obtain the information by voluntary submission.

(D) The Administrator shall not later than 2 years after August 6, 1996, after consultation with public health experts, representatives of the general public, and officials of State and local governments, review the monitoring requirements for not fewer than 12 contaminants identified by the Administrator, and promulgate any necessary modifications.

(2) MONITORING PROGRAM FOR UNREGULATED CONTAMINANTS.—

(A) ESTABLISHMENT.—The Administrator shall promulgate regulations establishing the criteria for a monitoring program for unregulated contaminants. The regulations shall require monitoring of drinking water supplied by public water systems and shall vary the frequency and schedule for monitoring requirements for systems based on the number of persons served by the system, the source of supply, and the contaminants likely to be found, ensuring that only a representative sample of systems serving 10,000 persons or fewer are required to monitor.

(B) MONITORING PROGRAM FOR CERTAIN UNREGULATED CONTAMINANTS.—

(i) INITIAL LIST.—Not later than 3 years after August 6, 1996, and every 5 years thereafter, the Administrator shall issue a list pursuant to subparagraph (A) of not more than 30 unregulated contaminants to be monitored by public water systems and to be included in the national drinking water occurrence data base maintained pursuant to subsection (g) of this section.

(ii) GOVERNORS' PETITION.—The Administrator shall include among the list of contaminants for which monitoring is required under this paragraph each contaminant recommended in a petition signed by the Governor of each of 7 or more States, unless the Administrator determines that the action would prevent the listing of other contaminants of a higher public health concern.

(C) MONITORING PLAN FOR SMALL AND MEDIUM SYSTEMS.—

(i) IN GENERAL.—Based on the regulations promulgated by the Administrator, each State may develop a representative monitoring plan to assess the occurrence of unregulated contaminants in public water systems that serve a population of 10,000 or fewer in that State. The plan shall require monitoring for systems representative of different sizes, types, and geographic locations in the State.

(ii) GRANTS FOR SMALL SYSTEM COSTS.—From funds reserved under section 300j–12(*o*) of this title or appropriated under subparagraph (H), the Administrator shall pay the reasonable cost of such testing and laboratory analysis as are necessary to carry out monitoring under the plan.

(D) MONITORING RESULTS.—Each public water system that conducts monitoring of unregulated contaminants pursuant to this paragraph shall provide the results of the monitoring to the primary enforcement authority for the system.

(E) NOTIFICATION.—Notification of the availability of the results of monitoring programs required under paragraph (2)(A) shall be given to the persons served by the system.

(F) WAIVER OF MONITORING REQUIREMENT.—The Administrator shall waive the requirement for monitoring for a contaminant under this paragraph in a State, if the State demonstrates that the criteria for listing the contaminant do not apply in that State.

(G) ANALYTICAL METHODS.—The State may use screening methods approved by the Administrator under subsection (i) of this section in lieu of monitoring for particular contaminants under this paragraph.

(H) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph $10,000,000 for each of the fiscal years 1997 through 2003.

(b) Entry of establishments, facilities, or other property; inspections; conduct of certain tests; audit and examination of records; entry restrictions; prohibition against informing of a proposed entry

(1) Except as provided in paragraph (2), the Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to any supplier of water or other person subject to (A) a national primary drinking water regulation prescribed under section 300g–1 of this title, (B) an applicable underground injection control program, or (C) any requirement to monitor an unregulated contaminant pursuant to subsection (a) of this section, or person in charge of any of the property of such supplier or other person referred to in clause (A), (B), or (C), is authorized to enter any establishment, facility, or other property of such supplier or other person

in order to determine whether such supplier or other person has acted or is acting in compliance with this subchapter, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. The Administrator or the Comptroller General (or any representative designated by either) shall have access for the purpose of audit and examination to any records, reports, or information of a grantee which are required to be maintained under subsection (a) of this section or which are pertinent to any financial assistance under this subchapter.

(2) No entry may be made under the first sentence of paragraph (1) in an establishment, facility, or other property of a supplier of water or other person subject to a national primary drinking water regulation if the establishment, facility, or other property is located in a State which has primary enforcement responsibility for public water systems unless, before written notice of such entry is made, the Administrator (or his representative) notifies the State agency charged with responsibility for safe drinking water of the reasons for such entry. The Administrator shall, upon a showing by the State agency that such an entry will be detrimental to the administration of the State's program of primary enforcement responsibility, take such showing into consideration in determining whether to make such entry. No State agency which receives notice under this paragraph of an entry proposed to be made under paragraph (1) may use the information contained in the notice to inform the person whose property is proposed to be entered of the proposed entry; and if a State agency so uses such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency has provided him satisfactory assurances that it will no longer so use information contained in a notice under this paragraph.

(c) Penalty

Whoever fails or refuses to comply with any requirement of subsection (a) of this section or to allow the Administrator, the Comptroller General, or representatives of either, to enter and conduct any audit or inspection authorized by subsection (b) of this section shall be subject to a civil penalty of not to exceed $25,000.

(d) Confidential information; trade secrets and secret processes; information disclosure; "information required under this section" defined

(1) Subject to paragraph (2), upon a showing satisfactory to the Administrator by any person that any information required under this section from such person, if made public, would divulge trade secrets or secret processes of such person, the Administrator shall consider such information confidential in accordance with the purposes of section 1905 of title 18. If the applicant fails to make a showing satisfactory to the Administrator, the Administrator shall give such applicant thirty days' notice before releasing the information to which the application relates (unless the public health or safety requires an earlier release of such information).

(2) Any information required under this section (A) may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this subchapter or to committees of the Congress, or when relevant in any proceeding under this subchapter, and (B) shall be disclosed to the extent it deals with the level of contaminants in drinking water. For purposes of this subsection the term ''information required under this section'' means any papers, books, documents, or information, or any particular part thereof, reported to or otherwise obtained by the Administrator under this section.

(e) "Grantee" and "person" defined

For purposes of this section, (1) the term ''grantee'' means any person who applies for or receives financial assistance, by grant, contract, or loan guarantee under this subchapter, and (2) the term ''person'' includes a Federal agency.

(f) Information regarding drinking water coolers

The Administrator may utilize the authorities of this section for purposes of part F of this subchapter. Any person who manufactures, imports, sells, or distributes drinking water coolers in interstate commerce shall be treated as a supplier of water for purposes of applying the provisions of this section in the case of persons subject to part F of this subchapter.

(g) Occurrence data base

(1) In general

Not later than 3 years after August 6, 1996, the Administrator shall assemble and maintain a national drinking water contaminant occurrence data base, using information on the occurrence of both regulated and unregulated contaminants in public water systems obtained under subsection (a)(1)(A) of this section or subsection (a)(2) of this section and reliable information from other public and private sources.

(2) Public input

In establishing the occurrence data base, the Administrator shall solicit recommendations from the Science Advisory Board, the States, and other interested parties concerning the development and maintenance of a national drinking water contaminant occurrence data base, including such issues as the structure and design of the data base, data input parameters and requirements, and the use and interpretation of data.

(3) Use

The data shall be used by the Administrator in making determinations under section 300g–1(b)(1) of this title with respect to the occurrence of a contaminant in drinking water at a level of public health concern.

(4) Public recommendations

The Administrator shall periodically solicit recommendations from the appropriate officials of the National Academy of Sciences and the States, and any person may submit recommendations to the Administrator, with respect to contaminants that should be included in the national drinking water contaminant occurrence data base, including recommenda-

tions with respect to additional unregulated contaminants that should be listed under subsection (a)(2) of this section. Any recommendation submitted under this clause shall be accompanied by reasonable documentation that—

(A) the contaminant occurs or is likely to occur in drinking water; and

(B) the contaminant poses a risk to public health.

(5) Public availability

The information from the data base shall be available to the public in readily accessible form.

(6) Regulated contaminants

With respect to each contaminant for which a national primary drinking water regulation has been established, the data base shall include information on the detection of the contaminant at a quantifiable level in public water systems (including detection of the contaminant at levels not constituting a violation of the maximum contaminant level for the contaminant).

(7) Unregulated contaminants

With respect to contaminants for which a national primary drinking water regulation has not been established, the data base shall include—

(A) monitoring information collected by public water systems that serve a population of more than 10,000, as required by the Administrator under subsection (a) of this section;

(B) monitoring information collected from a representative sampling of public water systems that serve a population of 10,000 or fewer; and

(C) other reliable and appropriate monitoring information on the occurrence of the contaminants in public water systems that is available to the Administrator.

(h) Availability of information on small system technologies

For purposes of sections 300g–1(b)(4)(E) and 300g–4(e) of this title (relating to small system variance program), the Administrator may request information on the characteristics of commercially available treatment systems and technologies, including the effectiveness and performance of the systems and technologies under various operating conditions. The Administrator may specify the form, content, and submission date of information to be submitted by manufacturers, States, and other interested persons for the purpose of considering the systems and technologies in the development of regulations or guidance under sections 300g–1(b)(4)(E) and 300g–4(e) of this title.

(i) Screening methods

The Administrator shall review new analytical methods to screen for regulated contaminants and may approve such methods as are more accurate or cost-effective than established reference methods for use in compliance monitoring.

(July 1, 1944, ch. 373, title XIV, § 1445, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1686; amended Pub. L. 95–190, § 12(c), (d), Nov. 16, 1977, 91 Stat. 1398; Pub. L. 99–339, title I, § 106, title III, § 301(h), June 19, 1986, 100 Stat. 650, 665; Pub. L. 100–572, § 5, Oct. 31, 1988, 102 Stat. 2889; Pub. L. 104–182, title I, §§ 111(b), 125(a), (c), (d), 126, Aug. 6, 1996, 110 Stat. 1633, 1653, 1656–1658.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–182, § 125(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 300g–1 of this title or to an applicable underground injection control program (as defined in section 300h–1(c) of this title), who is or may be subject to the permit requirement of section 300h–3 of this title, or to an order issued under section 300j of this title, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter in administering any program of financial assistance under this subchapter, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks. In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system's drinking water.''

Subsec. (a)(2) to (8). Pub. L. 104–182, § 125(c), added heading and text of par. (2) and struck out former pars. (2) to (8) which directed Administrator, not later than 18 months after June 19, 1986, to promulgate regulations requiring every public water system to conduct a monitoring program for unregulated contaminants, specified contents of regulations, provided for reporting and notification of availability of results of monitoring, waiver of monitoring requirements, and compliance by small systems, and authorized appropriations for fiscal year ending Sept. 30, 1987.

Subsec. (g). Pub. L. 104–182, § 126, added subsec. (g).

Subsec. (h). Pub. L. 104–182, § 111(b), added subsec. (h).

Subsec. (i). Pub. L. 104–182, § 125(d), added subsec. (i).

1988—Subsec. (f). Pub. L. 100–572 added subsec. (f).

1986—Subsec. (a)(1). Pub. L. 99–339, § 106(a), (b), designated existing provisions as par. (1) and inserted provisions permitting Administrator to consider size of system and contaminants likely to be found.

Subsec. (a)(2) to (7). Pub. L. 99–339, § 106(b), added pars. (2) to (7).

Subsec. (a)(8). Pub. L. 99–339, § 301(h), added par. (8).

Subsec. (c). Pub. L. 99–339, § 106(c), substituted ''shall be subject to a civil penalty of not to exceed $25,000'' for ''may be fined not more than $5,000''.

1977—Subsec. (a). Pub. L. 95–190, § 12(c), inserted provisions relating to evaluating and advising of health risks of unregulated contaminants.

Subsec. (b)(1). Pub. L. 95–190, § 12(d), designated existing provisions as cls. (A) and (B) and added cl. (C) and reference to such cls. (A) to (C).

§ 300j–5. National Drinking Water Advisory Council

(a) Establishment; membership; representation of interests; term of office, vacancies; reappointment

There is established a National Drinking Water Advisory Council which shall consist of fifteen members appointed by the Administrator after consultation with the Secretary. Five members shall be appointed from the general public; five members shall be appointed from appropriate State and local agencies concerned

with water hygiene and public water supply; and five members shall be appointed from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply, of which two such members shall be associated with small, rural public water systems. Each member of the Council shall hold office for a term of three years, except that—

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(2) the terms of the members first taking office shall expire as follows: Five shall expire three years after December 16, 1974, five shall expire two years after such date, and five shall expire one year after such date, as designated by the Administrator at the time of appointment.

The members of the Council shall be eligible for reappointment.

(b) Functions

The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this subchapter.

(c) Compensation and allowances; travel expenses

Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b)[1] of title 5.

(d) Advisory committee termination provision inapplicable

Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

(July 1, 1944, ch. 373, title XIV, § 1446, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1688; amended Pub. L. 104–182, title I, § 127, Aug. 6, 1996, 110 Stat. 1659.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (c), was amended generally by Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (d), is section 14(a) of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

[1] See References in Text note below.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–182 inserted ‘‘, of which two such members shall be associated with small, rural public water systems’’ before period at end of second sentence.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 300j–6. Federal agencies

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government—

(1) owning or operating any facility in a wellhead protection area;

(2) engaged in any activity at such facility resulting, or which may result, in the contamination of water supplies in any such area;

(3) owning or operating any public water system; or

(4) engaged in any activity resulting, or which may result in, underground injection which endangers drinking water (within the meaning of section 300h(d)(2) of this title),

shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting the protection of such wellhead areas, respecting such public water systems, and respecting any underground injection in the same manner and to the same extent as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of

plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local regulatory program respecting the protection of wellhead areas or public water systems or respecting any underground injection. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court[1] with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning the protection of wellhead areas or public water systems or concerning underground injection with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State requirement adopted pursuant to this subchapter, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods not to exceed 1 year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Administrative penalty orders

(1) In general

If the Administrator finds that a Federal agency has violated an applicable requirement under this subchapter, the Administrator may issue a penalty order assessing a penalty against the Federal agency.

(2) Penalties

The Administrator may, after notice to the agency, assess a civil penalty against the agency in an amount not to exceed $25,000 per day per violation.

(3) Procedure

Before an administrative penalty order issued under this subsection becomes final, the Administrator shall provide the agency an opportunity to confer with the Administrator and shall provide the agency notice and an opportunity for a hearing on the record in accordance with chapters 5 and 7 of title 5.

(4) Public review

(A) In general

Any interested person may obtain review of an administrative penalty order issued under this subsection. The review may be obtained in the United States District Court for the District of Columbia or in the United States District Court for the district in which the violation is alleged to have occurred by the filing of a complaint with the court within the 30-day period beginning on the date the penalty order becomes final. The person filing the complaint shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General.

(B) Record

The Administrator shall promptly file in the court a certified copy of the record on which the order was issued.

(C) Standard of review

The court shall not set aside or remand the order unless the court finds that there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.

(D) Prohibition on additional penalties

The court may not impose an additional civil penalty for a violation that is subject to the order unless the court finds that the assessment constitutes an abuse of discretion by the Administrator.

(c) Limitation on State use of funds collected from Federal Government

Unless a State law in effect on August 6, 1996, or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) of this section shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

(d) Indian rights and sovereignty as unaffected; "Federal agency" defined

(1) Nothing in the Safe Drinking Water Amendments of 1977 shall be construed to alter or affect the status of American Indian lands or water rights nor to waive any sovereignty over Indian lands guaranteed by treaty or statute.

(2) For the purposes of this chapter, the term ''Federal agency'' shall not be construed to refer to or include any American Indian tribe, nor to the Secretary of the Interior in his capacity as trustee of Indian lands.

(e) Washington Aqueduct

The Secretary of the Army shall not pass the cost of any penalty assessed under this subchapter on to any customer, user, or other purchaser of drinking water from the Washington Aqueduct system, including finished water from the Dalecarlia or McMillan treatment plant.

[1] So in original. Probably should not be capitalized.

(July 1, 1944, ch. 373, title XIV, § 1447, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1688; amended Pub. L. 95–190, § 8(a), (d), Nov. 16, 1977, 91 Stat. 1396, 1397; Pub. L. 104–182, title I, § 129(a), (c), Aug. 6, 1996, 110 Stat. 1660, 1662.)

REFERENCES IN TEXT

The Safe Drinking Water Amendments of 1977, referred to in subsec. (d)(1), is Pub. L. 95–190, Nov. 16, 1977, 91 Stat. 1393. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 201 of this title and Tables.

AMENDMENTS

1996—Subsecs. (a) to (d). Pub. L. 104–182, § 129(a), added subsecs. (a) to (c), redesignated former subsec. (c) as (d), and struck out former subsecs. (a) and (b) which related to compliance by Federal agencies with Federal, State, and local requirements respecting provision of safe drinking water and respecting underground injection programs, liability for civil penalties, and waiver of compliance requirements when necessary in interest of national security.

Subsec. (e). Pub. L. 104–182, § 129(c), added subsec. (e).

1977—Subsec. (a). Pub. L. 95–190, § 8(a), substituted provisions relating to compliance by Federal agencies having jurisdiction over federally owned or maintained public water systems, or engaged in underground injection activities with Federal, State, and local requirements, etc., for provisions relating to compliance by Federal agencies having jurisdiction over federally owned or maintained public water systems with national primary drinking water regulations.

Subsec. (c). Pub. L. 95–190, § 8(d), added subsec. (c).

§ 300j–7. Judicial review

(a) Courts of appeals; petition for review: actions respecting regulations; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

A petition for review of—

(1) actions pertaining to the establishment of national primary drinking water regulations (including maximum contaminant level goals) may be filed only in the United States Court of Appeals for the District of Columbia circuit; and

(2) any other final action of the Administrator under this chapter may be filed in the circuit in which the petitioner resides or transacts business which is directly affected by the action.

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or any other final Agency action with respect to which review is sought or on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement. In any petition concerning the assessment of a civil penalty pursuant to section 300g–3(g)(3)(B) of this title, the petitioner shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General. The court shall set aside and remand the penalty order if the court finds that there is not substantial evidence in the record to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.

(b) District courts; petition for review: actions respecting variances or exemptions; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

The United States district courts shall have jurisdiction of actions brought to review (1) the granting of, or the refusing to grant, a variance or exemption under section 300g–4 or 300g–5 of this title or (2) the requirements of any schedule prescribed for a variance or exemption under such section or the failure to prescribe such a schedule. Such an action may only be brought upon a petition for review filed with the court within the 45-day period beginning on the date the action sought to be reviewed is taken or, in the case of a petition to review the refusal to grant a variance or exemption or the failure to prescribe a schedule, within the 45-day period beginning on the date action is required to be taken on the variance, exemption, or schedule, as the case may be. A petition for such review may be filed after the expiration of such period if the petition is based solely on grounds arising after the expiration of such period. Action with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(c) Judicial order for additional evidence before Administrator; modified or new findings; recommendation for modification or setting aside of original determination

In any judicial proceeding in which review is sought of a determination under this subchapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such term and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(July 1, 1944, ch. 373, title XIV, § 1448, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1689; amended Pub. L. 99–339, title III, § 303, June 19, 1986, 100 Stat. 667; Pub. L. 104–182, title I, § 113(c), Aug. 6, 1996, 110 Stat. 1636.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–182, § 113(c)(2), (3), in concluding provisions, substituted ''or any other final Agency action'' for ''or issuance of the order'' and inserted at end ''In any petition concerning the assessment of a civil penalty pursuant to section

300g–3(g)(3)(B) of this title, the petitioner shall simultaneously send a copy of the complaint by certified mail to the Administrator and the Attorney General. The court shall set aside and remand the penalty order if the court finds that there is not substantial evidence in the record to support the finding of a violation or that the assessment of the penalty by the Administrator constitutes an abuse of discretion.''

Subsec. (a)(2). Pub. L. 104–182, § 113(c)(1), substituted ''any other final action'' for ''any other action''.

1986—Subsec. (a)(1). Pub. L. 99–339, § 303(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''action of the Administrator in promulgating any national primary drinking water regulation under section 300g–1 of this title, any regulation under section 300g–2(b)(1) of this title, any regulation under section 300g–3(c) of this title, any regulation for State underground injection control programs under section 300h of this title, or any general regulation for the administration of this subchapter may be filed only in the United States Court of Appeals for the District of Columbia Circuit; and''.

Subsec. (a)(2). Pub. L. 99–339, § 303(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''action of the Administrator in promulgating any other regulation under this subchapter, issuing any order under this subchapter, or making any determination under this subchapter may be filed only in the United States court of appeals for the appropriate circuit.''

§ 300j–8. Citizen's civil action

(a) Persons subject to civil action; jurisdiction of enforcement proceedings

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement prescribed by or under this subchapter;

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this subchapter which is not discretionary with the Administrator; or

(3) for the collection of a penalty by the United States Government (and associated costs and interest) against any Federal agency that fails, by the date that is 18 months after the effective date of a final order to pay a penalty assessed by the Administrator under section 300h–8(b)[1] of this title, to pay the penalty.

No action may be brought under paragraph (1) against a public water system for a violation of a requirement prescribed by or under this subchapter which occurred within the 27-month period beginning on the first day of the month in which this subchapter is enacted. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement prescribed by or under this subchapter or to order the Administrator to perform an act or duty described in paragraph (2), as the case may be.

[1] So in original. Probably should be section ''300j–6(b)''.

(b) Conditions for commencement of civil action; notice

No civil action may be commenced—

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this subchapter—

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator; or

(3) under subsection (a)(3) of this section prior to 60 days after the plaintiff has given notice of such action to the Attorney General and to the Federal agency.

Notice required by this subsection shall be given in such manner as the Administrator shall prescribe by regulation. No person may commence a civil action under subsection (a) of this section to require a State to prescribe a schedule under section 300g–4 or 300g–5 of this title for a variance or exemption, unless such person shows to the satisfaction of the court that the State has in a substantial number of cases failed to prescribe such schedules.

(c) Intervention of right

In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) Costs; attorney fees; expert witness fees; filing of bond

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Availability of other relief

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement prescribed by or under this subchapter or to seek any other relief. Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State or local government from—

(1) bringing any action or obtaining any remedy or sanction in any State or local court, or

(2) bringing any administrative action or obtaining any administrative remedy or sanction,

against any agency of the United States under State or local law to enforce any requirement respecting the provision of safe drinking water or respecting any underground injection control program. Nothing in this section shall be construed to authorize judicial review of regulations or orders of the Administrator under this subchapter, except as provided in section 300j–7 of this title. For provisions providing for application of certain requirements to such agencies in the same manner as to nongovernmental entities, see section 300j–6 of this title.

(July 1, 1944, ch. 373, title XIV, § 1449, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1690; amended Pub. L. 95–190, § 8(c), Nov. 16, 1977, 91 Stat. 1397; Pub. L. 104–182, title I, § 129(b), Aug. 6, 1996, 110 Stat. 1662.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–182, § 129(b)(1), added par. (3).

Subsec. (b)(3). Pub. L. 104–182, § 129(b)(2), added par. (3).

1977—Subsec. (e). Pub. L. 95–190 inserted provisions relating to suits by State or local governments for enforcement of safe drinking water, etc., requirements.

§ 300j–9. General provisions

(a) Regulations; delegation of functions

(1) The Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this subchapter.

(2) The Administrator may delegate any of his functions under this subchapter (other than prescribing regulations) to any officer or employee of the Agency.

(b) Utilization of officers and employees of Federal agencies

The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as he deems necessary to assist him in carrying out the purposes of this subchapter.

(c) Assignment of Agency personnel to State or interstate agencies

Upon the request of a State or interstate agency, the Administrator may assign personnel of the Agency to such State or interstate agency for the purposes of carrying out the provisions of this subchapter.

(d) Payments of grants; adjustments; advances; reimbursement; installments; conditions; eligibility for grants; "nonprofit agency or institution" defined

(1) The Administrator may make payments of grants under this subchapter (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as he may determine.

(2) Financial assistance may be made available in the form of grants only to individuals and nonprofit agencies or institutions. For purposes of this paragraph, the term ''nonprofit agency or institution'' means an agency or institution no part of the net earnings of which inure, or may lawfully inure, to the benefit of any private shareholder or individual.

(e) Labor standards

The Administrator shall take such action as may be necessary to assure compliance with provisions of sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 3145 of title 40.

(f) Appearance and representation of Administrator through Attorney General or attorney appointees

The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this subchapter to which the Administrator is a party. Unless, within a reasonable time, the Attorney General notifies the Administrator that he will appear in such action, attorneys appointed by the Administrator shall appear and represent him.

(g) Authority of Administrator under other provisions unaffected

The provisions of this subchapter shall not be construed as affecting any authority of the Administrator under part G of subchapter II of this chapter.

(h) Reports to Congressional committees; review by Office of Management and Budget: submittal of comments to Congressional committees

Not later than April 1 of each year, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report respecting the activities of the Agency under this subchapter and containing such recommendations for legislation as he considers necessary. The report of the Administrator under this subsection which is due not later than April 1, 1975, and each subsequent report of the Administrator under this subsection shall include a statement on the actual and anticipated cost to public water systems in each State of compliance with the requirements of this subchapter. The Office of Management and Budget may review any report required by this subsection before its submission to such committees of Congress, but the Office may not revise any such report, require any revision in any such report, or delay its submission beyond the day prescribed for its submission, and may submit to such committees of Congress its comments respecting any such report.

(i) Discrimination prohibition; filing of complaint; investigation; orders of Secretary; notice and hearing; settlements; attorneys' fees; judicial review; filing of petition; procedural requirements; stay of orders; exclusiveness of remedy; civil actions for enforcement of orders; appropriate relief; mandamus proceedings; prohibition inapplicable to undirected but deliberate violations

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this subchapter or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State,

(B) testified or is about to testify in any such proceeding, or

(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this subchapter.

(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the ''Secretary'') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall file a civil action in the United States District Court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(5) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceeding brought under section 1361 of title 28.

(6) Paragraph (1) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this subchapter.

(July 1, 1944, ch. 373, title XIV, § 1450, as added Pub. L. 93–523, § 2(a), Dec. 16, 1974, 88 Stat. 1691; amended Pub. L. 98–620, title IV, § 402(38), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 103–437, § 15(a)(2), Nov. 2, 1994, 108 Stat. 4591.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), referred to in subsec. (e), is set out in the Appendix to Title 5, Government Organization and Employees.

Part G of subchapter II of this chapter, referred to in subsec. (g), is classified to section 264 of this title.

CODIFICATION

In subsec. (e), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a—276a(5))'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934 (40 U.S.C. 276c)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1994—Subsec. (h). Pub. L. 103–437 substituted ''Committee on Commerce, Science, and Transportation of

the Senate and the Committee on Energy and Commerce of the House'' for ''Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House''.

1984—Subsec. (i)(4). Pub. L. 98–620 struck out provision which required civil actions filed under par. (4) to be heard and decided expeditiously.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 300j–10. Appointment of scientific, etc., personnel by Administrator of Environmental Protection Agency for implementation of responsibilities; compensation

To the extent that the Administrator of the Environmental Protection Agency deems such action necessary to the discharge of his functions under title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.] (relating to safe drinking water) and under other provisions of law, he may appoint personnel to fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS–18 of the General Schedule under section 5332 of title 5.

(Pub. L. 95–190, § 11(b), Nov. 16, 1977, 91 Stat. 1398.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XIV of the Public Health Service Act is classified generally to this subchapter (§ 300f et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The civil service laws, referred to in text, are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

Section was enacted as part of the Safe Drinking Water Amendments of 1977, and not as part of the Public Health Service Act which comprises this chapter.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 300j–11. Indian Tribes

(a) In general

Subject to the provisions of subsection (b) of this section, the Administrator—

(1) is authorized to treat Indian Tribes as States under this subchapter,

(2) may delegate to such Tribes primary enforcement responsibility for public water systems and for underground injection control, and

(3) may provide such Tribes grant and contract assistance to carry out functions provided by this subchapter.

(b) EPA regulations

(1) Specific provisions

The Administrator shall, within 18 months after June 19, 1986, promulgate final regulations specifying those provisions of this subchapter for which it is appropriate to treat Indian Tribes as States. Such treatment shall be authorized only if:

(A) the Indian Tribe is recognized by the Secretary of the Interior and has a governing body carrying out substantial governmental duties and powers;

(B) the functions to be exercised by the Indian Tribe are within the area of the Tribal Government's jurisdiction; and

(C) the Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this subchapter and of all applicable regulations.

(2) Provisions where treatment as State inappropriate

For any provision of this subchapter where treatment of Indian Tribes as identical to States is inappropriate, administratively infeasible or otherwise inconsistent with the purposes of this subchapter, the Administrator may include in the regulations promulgated under this section, other means for administering such provision in a manner that will achieve the purpose of the provision. Nothing in this section shall be construed to allow Indian Tribes to assume or maintain primary enforcement responsibility for public water systems or for underground injection control in a manner less protective of the health of persons than such responsibility may be assumed or maintained by a State. An Indian tribe[1] shall not be required to exercise criminal enforcement jurisdiction for purposes of complying with the preceding sentence.

(July 1, 1944, ch. 373, title XIV, § 1451, as added Pub. L. 99–339, title III, § 302(a), June 19, 1986, 100 Stat. 665; amended Pub. L. 104–182, title V, § 501(f)(6), Aug. 6, 1996, 110 Stat. 1692.)

AMENDMENTS

1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

[1] So in original. Probably should be capitalized.

§ 300j–12. State revolving loan funds

(a) General authority

(1) Grants to States to establish State loan funds

(A) In general

The Administrator shall offer to enter into agreements with eligible States to make capitalization grants, including letters of credit, to the States under this subsection to further the health protection objectives of this subchapter, promote the efficient use of fund resources, and for other purposes as are specified in this subchapter.

(B) Establishment of fund

To be eligible to receive a capitalization grant under this section, a State shall establish a drinking water treatment revolving loan fund (referred to in this section as a ''State loan fund'') and comply with the other requirements of this section. Each grant to a State under this section shall be deposited in the State loan fund established by the State, except as otherwise provided in this section and in other provisions of this subchapter. No funds authorized by other provisions of this subchapter to be used for other purposes specified in this subchapter shall be deposited in any State loan fund.

(C) Extended period

The grant to a State shall be available to the State for obligation during the fiscal year for which the funds are authorized and during the following fiscal year, except that grants made available from funds provided prior to fiscal year 1997 shall be available for obligation during each of the fiscal years 1997 and 1998.

(D) Allotment formula

Except as otherwise provided in this section, funds made available to carry out this section shall be allotted to States that have entered into an agreement pursuant to this section (other than the District of Columbia) in accordance with—

(i) for each of fiscal years 1995 through 1997, a formula that is the same as the formula used to distribute public water system supervision grant funds under section 300j–2 of this title in fiscal year 1995, except that the minimum proportionate share established in the formula shall be 1 percent of available funds and the formula shall be adjusted to include a minimum proportionate share for the State of Wyoming and the District of Columbia; and

(ii) for fiscal year 1998 and each subsequent fiscal year, a formula that allocates to each State the proportional share of the State needs identified in the most recent survey conducted pursuant to subsection (h) of this section, except that the minimum proportionate share provided to each State shall be the same as the minimum proportionate share provided under clause (i).

(E) Reallotment

The grants not obligated by the last day of the period for which the grants are available shall be reallotted according to the appropriate criteria set forth in subparagraph (D), except that the Administrator may reserve and allocate 10 percent of the remaining amount for financial assistance to Indian Tribes in addition to the amount allotted under subsection (i) of this section and none of the funds reallotted by the Administrator shall be reallotted to any State that has not obligated all sums allotted to the State pursuant to this section during the period in which the sums were available for obligation.

(F) Nonprimacy States

The State allotment for a State not exercising primary enforcement responsibility for public water systems shall not be deposited in any such fund but shall be allotted by the Administrator under this subparagraph. Pursuant to section 300j–2(a)(9)(A) of this title such sums allotted under this subparagraph shall be reserved as needed by the Administrator to exercise primary enforcement responsibility under this subchapter in such State and the remainder shall be reallotted to States exercising primary enforcement responsibility for public water systems for deposit in such funds. Whenever the Administrator makes a final determination pursuant to section 300g–2(b) of this title that the requirements of section 300g–2(a) of this title are no longer being met by a State, additional grants for such State under this subchapter shall be immediately terminated by the Administrator. This subparagraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of August 6, 1996.

(G) Other programs

(i) New system capacity

Beginning in fiscal year 1999, the Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section to a State unless the State has met the requirements of section 300g–9(a) of this title (relating to capacity development) and shall withhold 10 percent for fiscal year 2001, 15 percent for fiscal year 2002, and 20 percent for fiscal year 2003 if the State has not complied with the provisions of section 300g–9(c) of this title (relating to capacity development strategies). Not more than a total of 20 percent of the capitalization grants made to a State in any fiscal year may be withheld under the preceding provisions of this clause. All funds withheld by the Administrator pursuant to this clause shall be reallotted by the Administrator on the basis of the same ratio as is applicable to funds allotted under subparagraph (D). None of the funds reallotted by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 300g–9 of this title (relating to capacity development).

(ii) Operator certification

The Administrator shall withhold 20 percent of each capitalization grant made

pursuant to this section unless the State has met the requirements of 300g–8[1] of this title (relating to operator certification). All funds withheld by the Administrator pursuant to this clause shall be reallotted by the Administrator on the basis of the same ratio as applicable to funds allotted under subparagraph (D). None of the funds reallotted by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 300g–8 of this title (relating to operator certification).

(2) Use of funds

Except as otherwise authorized by this subchapter, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and nonprofit noncommunity water systems, other than systems owned by Federal agencies. Financial assistance under this section may be used by a public water system only for expenditures (not including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 300g–1 of this title or otherwise significantly further the health protection objectives of this subchapter. The funds may also be used to provide loans to a system referred to in section 300f(4)(B) of this title for the purpose of providing the treatment described in section 300f(4)(B)(i)(III) of this title. The funds shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this paragraph and the purchase is from a willing seller. Of the amount credited to any State loan fund established under this section in any fiscal year, 15 percent shall be available solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.

(3) Limitation

(A) In general

Except as provided in subparagraph (B), no assistance under this section shall be provided to a public water system that—

(i) does not have the technical, managerial, and financial capability to ensure compliance with the requirements of this subchapter; or

(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance.

(B) Restructuring

A public water system described in subparagraph (A) may receive assistance under this section if—

(i) the use of the assistance will ensure compliance; and

(ii) if subparagraph (A)(i) applies to the system, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) if the State determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of this subchapter over the long term.

(C) Review

Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance, the State shall conduct a review to determine whether subparagraph (A)(i) applies to the system.

(b) Intended use plans

(1) In general

After providing for public review and comment, each State that has entered into a capitalization agreement pursuant to this section shall annually prepare a plan that identifies the intended uses of the amounts available to the State loan fund of the State.

(2) Contents

An intended use plan shall include—

(A) a list of the projects to be assisted in the first fiscal year that begins after the date of the plan, including a description of the project, the expected terms of financial assistance, and the size of the community served;

(B) the criteria and methods established for the distribution of funds; and

(C) a description of the financial status of the State loan fund and the short-term and long-term goals of the State loan fund.

(3) Use of funds

(A) In general

An intended use plan shall provide, to the maximum extent practicable, that priority for the use of funds be given to projects that—

(i) address the most serious risk to human health;

(ii) are necessary to ensure compliance with the requirements of this subchapter (including requirements for filtration); and

(iii) assist systems most in need on a per household basis according to State affordability criteria.

(B) List of projects

Each State shall, after notice and opportunity for public comment, publish and periodically update a list of projects in the State that are eligible for assistance under this

[1] So in original. Probably should be preceded by ''section''.

section, including the priority assigned to each project and, to the extent known, the expected funding schedule for each project.

(c) Fund management

Each State loan fund under this section shall be established, maintained, and credited with repayments and interest. The fund corpus shall be available in perpetuity for providing financial assistance under this section. To the extent amounts in the fund are not required for current obligation or expenditure, such amounts shall be invested in interest bearing obligations.

(d) Assistance for disadvantaged communities

(1) Loan subsidy

Notwithstanding any other provision of this section, in any case in which the State makes a loan pursuant to subsection (a)(2) of this section to a disadvantaged community or to a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization (including forgiveness of principal).

(2) Total amount of subsidies

For each fiscal year, the total amount of loan subsidies made by a State pursuant to paragraph (1) may not exceed 30 percent of the amount of the capitalization grant received by the State for the year.

(3) "Disadvantaged community" defined

In this subsection, the term ''disadvantaged community'' means the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.

(e) State contribution

Each agreement under subsection (a) of this section shall require that the State deposit in the State loan fund from State moneys an amount equal to at least 20 percent of the total amount of the grant to be made to the State on or before the date on which the grant payment is made to the State, except that a State shall not be required to deposit such amount into the fund prior to the date on which each grant payment is made for fiscal years 1994, 1995, 1996, and 1997 if the State deposits the State contribution amount into the State loan fund prior to September 30, 1999.

(f) Types of assistance

Except as otherwise limited by State law, the amounts deposited into a State loan fund under this section may be used only—

(1) to make loans, on the condition that—

(A) the interest rate for each loan is less than or equal to the market interest rate, including an interest free loan;

(B) principal and interest payments on each loan will commence not later than 1 year after completion of the project for which the loan was made, and each loan will be fully amortized not later than 20 years after the completion of the project, except that in the case of a disadvantaged community (as defined in subsection (d)(3) of this section), a State may provide an extended term for a loan, if the extended term—

(i) terminates not later than the date that is 30 years after the date of project completion; and

(ii) does not exceed the expected design life of the project;

(C) the recipient of each loan will establish a dedicated source of revenue (or, in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loan; and

(D) the State loan fund will be credited with all payments of principal and interest on each loan;

(2) to buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the State at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(3) to guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this section) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;

(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the State loan fund; and

(5) to earn interest on the amounts deposited into the State loan fund.

(g) Administration of State loan funds

(1) Combined financial administration

Notwithstanding subsection (c) of this section, a State may (as a convenience and to avoid unnecessary administrative costs) combine, in accordance with State law, the financial administration of a State loan fund established under this section with the financial administration of any other revolving fund established by the State if otherwise not prohibited by the law under which the State loan fund was established and if the Administrator determines that—

(A) the grants under this section, together with loan repayments and interest, will be separately accounted for and used solely for the purposes specified in subsection (a) of this section; and

(B) the authority to establish assistance priorities and carry out oversight and related activities (other than financial administration) with respect to assistance remains with the State agency having primary responsibility for administration of the State program under section 300g–2 of this title, after consultation with other appropriate State agencies (as determined by the State): *Provided*, That in nonprimacy States eligible to receive assistance under this section, the Governor shall determine which State agency will have authority to establish priorities for financial assistance from the State loan fund.

(2) Cost of administering fund

Each State may annually use up to 4 percent of the funds allotted to the State under this section to cover the reasonable costs of administration of the programs under this section, including the recovery of reasonable costs expended to establish a State loan fund which are incurred after August 6, 1996, and to provide technical assistance to public water systems within the State. For fiscal year 1995 and each fiscal year thereafter, each State may use up to an additional 10 percent of the funds allotted to the State under this section—

(A) for public water system supervision programs under section 300j–2(a) of this title;

(B) to administer or provide technical assistance through source water protection programs;

(C) to develop and implement a capacity development strategy under section 300g–9(c) of this title; and

(D) for an operator certification program for purposes of meeting the requirements of section 300g–8 of this title,

if the State matches the expenditures with at least an equal amount of State funds. At least half of the match must be additional to the amount expended by the State for public water supervision in fiscal year 1993. An additional 2 percent of the funds annually allotted to each State under this section may be used by the State to provide technical assistance to public water systems serving 10,000 or fewer persons in the State. Funds utilized under subparagraph (B) shall not be used for enforcement actions.

(3) Guidance and regulations

The Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

(A) provisions to ensure that each State commits and expends funds allotted to the State under this section as efficiently as possible in accordance with this subchapter and applicable State laws;

(B) guidance to prevent waste, fraud, and abuse; and

(C) guidance to avoid the use of funds made available under this section to finance the expansion of any public water system in anticipation of future population growth.

The guidance and regulations shall also ensure that the States, and public water systems receiving assistance under this section, use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards.

(4) State report

Each State administering a loan fund and assistance program under this subsection shall publish and submit to the Administrator a report every 2 years on its activities under this section, including the findings of the most recent audit of the fund and the entire State allotment. The Administrator shall periodically audit all State loan funds established by, and all other amounts allotted to, the States pursuant to this section in accordance with procedures established by the Comptroller General.

(h) Needs survey

The Administrator shall conduct an assessment of water system capital improvement needs of all eligible public water systems in the United States and submit a report to the Congress containing the results of the assessment within 180 days after August 6, 1996, and every 4 years thereafter.

(i) Indian Tribes

(1) In general

1½ percent of the amounts appropriated annually to carry out this section may be used by the Administrator to make grants to Indian Tribes and Alaska Native villages that have not otherwise received either grants from the Administrator under this section or assistance from State loan funds established under this section. The grants may only be used for expenditures by tribes and villages for public water system expenditures referred to in subsection (a)(2) of this section.

(2) Use of funds

Funds reserved pursuant to paragraph (1) shall be used to address the most significant threats to public health associated with public water systems that serve Indian Tribes, as determined by the Administrator in consultation with the Director of the Indian Health Service and Indian Tribes.

(3) Alaska Native villages

In the case of a grant for a project under this subsection in an Alaska Native village, the Administrator is also authorized to make grants to the State of Alaska for the benefit of Native villages. An amount not to exceed 4 percent of the grant amount may be used by the State of Alaska for project management.

(4) Needs assessment

The Administrator, in consultation with the Director of the Indian Health Service and Indian Tribes, shall, in accordance with a schedule that is consistent with the needs surveys conducted pursuant to subsection (h) of this section, prepare surveys and assess the needs of drinking water treatment facilities to serve Indian Tribes, including an evaluation of the public water systems that pose the most significant threats to public health.

(j) Other areas

Of the funds annually available under this section for grants to States, the Administrator shall make allotments in accordance with section 300j–2(a)(4) of this title for the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam. The grants allotted as provided in this subsection may be provided by the Administrator to the governments of such areas, to public water systems in such areas, or to both, to be used for the public water system expenditures referred to in subsection (a)(2) of this section. The grants, and grants for the District of Columbia, shall not be deposited in State loan funds. The total allotment of grants under this section for all areas described in this subsection in any fiscal year

shall not exceed 0.33 percent of the aggregate amount made available to carry out this section in that fiscal year.

(k) Other authorized activities

(1) In general

Notwithstanding subsection (a)(2) of this section, a State may take each of the following actions:

(A) Provide assistance, only in the form of a loan, to one or more of the following:

(i) Any public water system described in subsection (a)(2) of this section to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations.

(ii) Any community water system to implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to section 300j–13 of this title, in order to facilitate compliance with national primary drinking water regulations applicable to the system under section 300g–1 of this title or otherwise significantly further the health protection objectives of this subchapter. Funds authorized under this clause may be used to fund only voluntary, incentive-based mechanisms.

(iii) Any community water system to provide funding in accordance with section 300j–14(a)(1)(B)(i) of this title.

(B) Provide assistance, including technical and financial assistance, to any public water system as part of a capacity development strategy developed and implemented in accordance with section 300g–9(c) of this title.

(C) Make expenditures from the capitalization grant of the State for fiscal years 1996 and 1997 to delineate and assess source water protection areas in accordance with section 300j–13 of this title, except that funds set aside for such expenditure shall be obligated within 4 fiscal years.

(D) Make expenditures from the fund for the establishment and implementation of wellhead protection programs under section 300h–7 of this title.

(2) Limitation

For each fiscal year, the total amount of assistance provided and expenditures made by a State under this subsection may not exceed 15 percent of the amount of the capitalization grant received by the State for that year and may not exceed 10 percent of that amount for any one of the following activities:

(A) To acquire land or conservation easements pursuant to paragraph (1)(A)(i).

(B) To provide funding to implement voluntary, incentive-based source water quality protection measures pursuant to clauses (ii) and (iii) of paragraph (1)(A).

(C) To provide assistance through a capacity development strategy pursuant to paragraph (1)(B).

(D) To make expenditures to delineate or assess source water protection areas pursuant to paragraph (1)(C).

(E) To make expenditures to establish and implement wellhead protection programs pursuant to paragraph (1)(D).

(3) Statutory construction

Nothing in this section creates or conveys any new authority to a State, political subdivision of a State, or community water system for any new regulatory measure, or limits any authority of a State, political subdivision of a State or community water system.

(*l*) Savings

The failure or inability of any public water system to receive funds under this section or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of this subchapter.

(m) Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this section $599,000,000 for the fiscal year 1994 and $1,000,000,000 for each of the fiscal years 1995 through 2003. To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subsequent fiscal year (prior to the fiscal year 2004). Such sums shall remain available until expended.

(n) Health effects studies

From funds appropriated pursuant to this section for each fiscal year, the Administrator shall reserve $10,000,000 for health effects studies on drinking water contaminants authorized by the Safe Drinking Water Act Amendments of 1996. In allocating funds made available under this subsection, the Administrator shall give priority to studies concerning the health effects of cryptosporidium (as authorized by section 300j–18(c) of this title), disinfection byproducts (as authorized by section 300j–18(c) of this title), and arsenic (as authorized by section 300g–1(b)(12)(A) of this title), and the implementation of a plan for studies of subpopulations at greater risk of adverse effects (as authorized by section 300j–18(a) of this title).

(*o*) Monitoring for unregulated contaminants

From funds appropriated pursuant to this section for each fiscal year beginning with fiscal year 1998, the Administrator shall reserve $2,000,000 to pay the costs of monitoring for unregulated contaminants under section 300j–4(a)(2)(C) of this title.

(p) Demonstration project for State of Virginia

Notwithstanding the other provisions of this section limiting the use of funds deposited in a State loan fund from any State allotment, the State of Virginia may, as a single demonstration and with the approval of the Virginia General Assembly and the Administrator, conduct a program to demonstrate alternative approaches to intergovernmental coordination to assist in the financing of new drinking water facilities in the following rural communities in southwestern Virginia where none exists on August 6, 1996, and where such communities are experi-

encing economic hardship: Lee County, Wise County, Scott County, Dickenson County, Russell County, Buchanan County, Tazewell County, and the city of Norton, Virginia. The funds allotted to that State and deposited in the State loan fund may be loaned to a regional endowment fund for the purpose set forth in this subsection under a plan to be approved by the Administrator. The plan may include an advisory group that includes representatives of such counties.

(q) Small system technical assistance

The Administrator may reserve up to 2 percent of the total funds appropriated pursuant to subsection (m) of this section for each of the fiscal years 1997 through 2003 to carry out the provisions of section 300j–1(e) of this title (relating to technical assistance for small systems), except that the total amount of funds made available for such purpose in any fiscal year through appropriations (as authorized by section 300j–1(e) of this title) and reservations made pursuant to this subsection shall not exceed the amount authorized by section 300j–1(e) of this title.

(r) Evaluation

The Administrator shall conduct an evaluation of the effectiveness of the State loan funds through fiscal year 2001. The evaluation shall be submitted to the Congress at the same time as the President submits to the Congress, pursuant to section 1108 of title 31, an appropriations request for fiscal year 2003 relating to the budget of the Environmental Protection Agency.

(July 1, 1944, ch. 373, title XIV, § 1452, as added Pub. L. 104–182, title I, § 130, Aug. 6, 1996, 110 Stat. 1662.)

REFERENCES IN TEXT

The Safe Drinking Water Act Amendments of 1996, referred to in subsec. (n), is Pub. L. 104–182, Aug. 6, 1996, 110 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 201 of this title and Tables.

COMBINING FUND ASSETS FOR ENHANCEMENT OF LENDING CAPACITY

Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2498, provided in part: ''That, consistent with section 1452(g) of the Safe Drinking Water Act (42 U.S.C. 300j–12(g)), section 302 of the Safe Drinking Water Act Amendments of 1996 (Public Law 104–182) [set out as a note below] and the accompanying joint explanatory statement of the committee of conference (H. Rept. No. 104–741 to accompany S. 1316, the Safe Drinking Water Act Amendments of 1996), and notwithstanding any other provision of law, beginning in fiscal year 1999 and thereafter, States may combine the assets of State Revolving Funds (SRFs) established under section 1452 of the Safe Drinking Water Act, as amended, and title VI of the Federal Water Pollution Control Act [33 U.S.C. 1381 et seq.], as amended, as security for bond issues to enhance the lending capacity of one or both SRFs, but not to acquire the state match for either program, provided that revenues from the bonds are allocated to the purposes of the Safe Drinking Water Act [this subchapter] and the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] in the same portion as the funds are used as security for the bonds''.

TRANSFER OF FUNDS

Pub. L. 109–54, title II, Aug. 2, 2005, 119 Stat. 530, provided in part: ''That for fiscal year 2006 and thereafter, State authority under section 302(a) of Public Law 104–182 [set out as a note below] shall remain in effect''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. I, title III, Dec. 8, 2004, 118 Stat. 3330.

Pub. L. 108–199, div. G, title III, Jan. 23, 2004, 118 Stat. 406.

Pub. L. 108–7, div. K, title III, Feb. 20, 2003, 117 Stat. 512.

Pub. L. 107–73, title III, Nov. 26, 2001, 115 Stat. 685.

Section 302 of Pub. L. 104–182 provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, at any time after the date 1 year after a State establishes a State loan fund pursuant to section 1452 of the Safe Drinking Water Act [this section] but prior to fiscal year 2002, a Governor of the State may—

''(1) reserve up to 33 percent of a capitalization grant made pursuant to such section 1452 and add the funds reserved to any funds provided to the State pursuant to section 601 of the Federal Water Pollution Control Act (33 U.S.C. 1381); and

''(2) reserve in any year a dollar amount up to the dollar amount that may be reserved under paragraph (1) for that year from capitalization grants made pursuant to section 601 of such Act (33 U.S.C. 1381) and add the reserved funds to any funds provided to the State pursuant to section 1452 of the Safe Drinking Water Act.

''(b) REPORT.—Not later than 4 years after the date of enactment of this Act [Aug. 6, 1996], the Administrator shall submit a report to the Congress regarding the implementation of this section, together with the Administrator's recommendations, if any, for modifications or improvement.

''(c) STATE MATCH.—Funds reserved pursuant to this section shall not be considered to be a State match of a capitalization grant required pursuant to section 1452 of the Safe Drinking Water Act or the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).''

§ 300j–13. Source water quality assessment

(a) Source water assessment

(1) Guidance

Within 12 months after August 6, 1996, after notice and comment, the Administrator shall publish guidance for States exercising primary enforcement responsibility for public water systems to carry out directly or through delegation (for the protection and benefit of public water systems and for the support of monitoring flexibility) a source water assessment program within the State's boundaries. Each State adopting modifications to monitoring requirements pursuant to section 300g–7(b) of this title shall, prior to adopting such modifications, have an approved source water assessment program under this section and shall carry out the program either directly or through delegation.

(2) Program requirements

A source water assessment program under this subsection shall—

(A) delineate the boundaries of the assessment areas in such State from which one or more public water systems in the State receive supplies of drinking water, using all reasonably available hydrogeologic information on the sources of the supply of drinking water in the State and the water flow, recharge, and discharge and any other reliable information as the State deems necessary to adequately determine such areas; and

(B) identify for contaminants regulated under this subchapter for which monitoring

is required under this subchapter (or any unregulated contaminants selected by the State, in its discretion, which the State, for the purposes of this subsection, has determined may present a threat to public health), to the extent practical, the origins within each delineated area of such contaminants to determine the susceptibility of the public water systems in the delineated area to such contaminants.

(3) Approval, implementation, and monitoring relief

A State source water assessment program under this subsection shall be submitted to the Administrator within 18 months after the Administrator's guidance is issued under this subsection and shall be deemed approved 9 months after the date of such submittal unless the Administrator disapproves the program as provided in section 300h–7(c) of this title. States shall begin implementation of the program immediately after its approval. The Administrator's approval of a State program under this subsection shall include a timetable, established in consultation with the State, allowing not more than 2 years for completion after approval of the program. Public water systems seeking monitoring relief in addition to the interim relief provided under section 300g–7(a) of this title shall be eligible for monitoring relief, consistent with section 300g–7(b) of this title, upon completion of the assessment in the delineated source water assessment area or areas concerned.

(4) Timetable

The timetable referred to in paragraph (3) shall take into consideration the availability to the State of funds under section 300j–12 of this title (relating to State loan funds) for assessments and other relevant factors. The Administrator may extend any timetable included in a State program approved under paragraph (3) to extend the period for completion by an additional 18 months.

(5) Demonstration project

The Administrator shall, as soon as practicable, conduct a demonstration project, in consultation with other Federal agencies, to demonstrate the most effective and protective means of assessing and protecting source waters serving large metropolitan areas and located on Federal lands.

(6) Use of other programs

To avoid duplication and to encourage efficiency, the program under this section may make use of any of the following:

(A) Vulnerability assessments, sanitary surveys, and monitoring programs.

(B) Delineations or assessments of ground water sources under a State wellhead protection program developed pursuant to this section.

(C) Delineations or assessments of surface or ground water sources under a State pesticide management plan developed pursuant to the Pesticide and Ground Water State Management Plan Regulation (subparts I and J of part 152 of title 40, Code of Federal Regulations), promulgated under section 136a(d) of title 7.

(D) Delineations or assessments of surface water sources under a State watershed initiative or to satisfy the watershed criterion for determining if filtration is required under the Surface Water Treatment Rule (section 141.70 of title 40, Code of Federal Regulations).

(E) Delineations or assessments of surface or ground water sources under programs or plans pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].

(7) Public availability

The State shall make the results of the source water assessments conducted under this subsection available to the public.

(b) Approval and disapproval

For provisions relating to program approval and disapproval, see section 300h–7(c) of this title.

(July 1, 1944, ch. 373, title XIV, § 1453, as added Pub. L. 104–182, title I, § 132(a), Aug. 6, 1996, 110 Stat. 1673.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a)(6)(E), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

§ 300j–14. Source water petition program

(a) Petition program

(1) In general

(A) Establishment

A State may establish a program under which an owner or operator of a community water system in the State, or a municipal or local government or political subdivision of a State, may submit a source water quality protection partnership petition to the State requesting that the State assist in the local development of a voluntary, incentive-based partnership, among the owner, operator, or government and other persons likely to be affected by the recommendations of the partnership, to—

(i) reduce the presence in drinking water of contaminants that may be addressed by a petition by considering the origins of the contaminants, including to the maximum extent practicable the specific activities that affect the drinking water supply of a community;

(ii) obtain financial or technical assistance necessary to facilitate establishment of a partnership, or to develop and implement recommendations of a partnership for the protection of source water to assist in the provision of drinking water that complies with national primary drinking water regulations with respect to contaminants addressed by a petition; and

(iii) develop recommendations regarding voluntary and incentive-based strategies

for the long-term protection of the source water of community water systems.

(B) Funding

Each State may—

(i) use funds set aside pursuant to section 300j–12(k)(1)(A)(iii) of this title by the State to carry out a program described in subparagraph (A), including assistance to voluntary local partnerships for the development and implementation of partnership recommendations for the protection of source water such as source water quality assessment, contingency plans, and demonstration projects for partners within a source water area delineated under section 300j–13(a) of this title; and

(ii) provide assistance in response to a petition submitted under this subsection using funds referred to in subsection (b)(2)(B) of this section.

(2) Objectives

The objectives of a petition submitted under this subsection shall be to—

(A) facilitate the local development of voluntary, incentive-based partnerships among owners and operators of community water systems, governments, and other persons in source water areas; and

(B) obtain assistance from the State in identifying resources which are available to implement the recommendations of the partnerships to address the origins of drinking water contaminants that may be addressed by a petition (including to the maximum extent practicable the specific activities contributing to the presence of the contaminants) that affect the drinking water supply of a community.

(3) Contaminants addressed by a petition

A petition submitted to a State under this subsection may address only those contaminants—

(A) that are pathogenic organisms for which a national primary drinking water regulation has been established or is required under section 300g–1 of this title; or

(B) for which a national primary drinking water regulation has been promulgated or proposed and that are detected by adequate monitoring methods in the source water at the intake structure or in any collection, treatment, storage, or distribution facilities by the community water systems at levels—

(i) above the maximum contaminant level; or

(ii) that are not reliably and consistently below the maximum contaminant level.

(4) Contents

A petition submitted under this subsection shall, at a minimum—

(A) include a delineation of the source water area in the State that is the subject of the petition;

(B) identify, to the maximum extent practicable, the origins of the drinking water contaminants that may be addressed by a petition (including to the maximum extent practicable the specific activities contributing to the presence of the contaminants) in the source water area delineated under section 300j–13 of this title;

(C) identify any deficiencies in information that will impair the development of recommendations by the voluntary local partnership to address drinking water contaminants that may be addressed by a petition;

(D) specify the efforts made to establish the voluntary local partnership and obtain the participation of—

(i) the municipal or local government or other political subdivision of the State with jurisdiction over the source water area delineated under section 300j–13 of this title; and

(ii) each person in the source water area delineated under section 300j–13 of this title—

(I) who is likely to be affected by recommendations of the voluntary local partnership; and

(II) whose participation is essential to the success of the partnership;

(E) outline how the voluntary local partnership has or will, during development and implementation of recommendations of the voluntary local partnership, identify, recognize and take into account any voluntary or other activities already being undertaken by persons in the source water area delineated under section 300j–13 of this title under Federal or State law to reduce the likelihood that contaminants will occur in drinking water at levels of public health concern; and

(F) specify the technical, financial, or other assistance that the voluntary local partnership requests of the State to develop the partnership or to implement recommendations of the partnership.

(b) Approval or disapproval of petitions

(1) In general

After providing notice and an opportunity for public comment on a petition submitted under subsection (a) of this section, the State shall approve or disapprove the petition, in whole or in part, not later than 120 days after the date of submission of the petition.

(2) Approval

The State may approve a petition if the petition meets the requirements established under subsection (a) of this section. The notice of approval shall, at a minimum, include for informational purposes—

(A) an identification of technical, financial, or other assistance that the State will provide to assist in addressing the drinking water contaminants that may be addressed by a petition based on—

(i) the relative priority of the public health concern identified in the petition with respect to the other water quality needs identified by the State;

(ii) any necessary coordination that the State will perform of the program established under this section with programs implemented or planned by other States under this section; and

(iii) funds available (including funds available from a State revolving loan fund

established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.)) or section 300j–12 of this title;

(B) a description of technical or financial assistance pursuant to Federal and State programs that is available to assist in implementing recommendations of the partnership in the petition, including—

(i) any program established under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(ii) the program established under section 1455b of title 16;

(iii) the agricultural water quality protection program established under chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838 et seq.);

(iv) the sole source aquifer protection program established under section 300h–6 of this title;

(v) the community wellhead protection program established under section 300h–7 of this title;

(vi) any pesticide or ground water management plan;

(vii) any voluntary agricultural resource management plan or voluntary whole farm or whole ranch management plan developed and implemented under a process established by the Secretary of Agriculture; and

(viii) any abandoned well closure program; and

(C) a description of activities that will be undertaken to coordinate Federal and State programs to respond to the petition.

(3) Disapproval

If the State disapproves a petition submitted under subsection (a) of this section, the State shall notify the entity submitting the petition in writing of the reasons for disapproval. A petition may be resubmitted at any time if—

(A) new information becomes available;

(B) conditions affecting the source water that is the subject of the petition change; or

(C) modifications are made in the type of assistance being requested.

(c) Grants to support State programs

(1) In general

The Administrator may make a grant to each State that establishes a program under this section that is approved under paragraph (2). The amount of each grant shall not exceed 50 percent of the cost of administering the program for the year in which the grant is available.

(2) Approval

In order to receive grant assistance under this subsection, a State shall submit to the Administrator for approval a plan for a source water quality protection partnership program that is consistent with the guidance published under subsection (d) of this section. The Administrator shall approve the plan if the plan is consistent with the guidance published under subsection (d) of this section.

(d) Guidance

(1) In general

Not later than 1 year after August 6, 1996, the Administrator, in consultation with the States, shall publish guidance to assist—

(A) States in the development of a source water quality protection partnership program; and

(B) municipal or local governments or political subdivisions of a State and community water systems in the development of source water quality protection partnerships and in the assessment of source water quality.

(2) Contents of the guidance

The guidance shall, at a minimum—

(A) recommend procedures for the approval or disapproval by a State of a petition submitted under subsection (a) of this section;

(B) recommend procedures for the submission of petitions developed under subsection (a) of this section;

(C) recommend criteria for the assessment of source water areas within a State; and

(D) describe technical or financial assistance pursuant to Federal and State programs that is available to address the contamination of sources of drinking water and to develop and respond to petitions submitted under subsection (a) of this section.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for each of the fiscal years 1997 through 2003. Each State with a plan for a program approved under subsection (b) of this section shall receive an equitable portion of the funds available for any fiscal year.

(f) Statutory construction

Nothing in this section—

(1)(A) creates or conveys new authority to a State, political subdivision of a State, or community water system for any new regulatory measure; or

(B) limits any authority of a State, political subdivision, or community water system; or

(2) precludes a community water system, municipal or local government, or political subdivision of a government from locally developing and carrying out a voluntary, incentive-based, source water quality protection partnership to address the origins of drinking water contaminants of public health concern.

(July 1, 1944, ch. 373, title XIV, § 1454, as added Pub. L. 104–182, title I, § 133(a), Aug. 6, 1996, 110 Stat. 1675.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (b)(2)(A)(iii), (B)(i), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. Title VI of the Act is classified generally to subchapter VI (§ 1381 et seq.) of chapter 26 of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Food Security Act of 1985, referred to in subsec. (b)(2)(B)(iii), is Pub. L. 99–198, Dec. 23, 1985, 99 Stat. 1354,

as amended. Chapter 2 of subtitle D of title XII of the Act was classified generally to part II (§ 3838 et seq.) of subchapter IV of chapter 58 of Title 16, Conservation, prior to repeal by Pub. L. 104–127, title III, § 336(h), Apr. 4, 1996, 110 Stat. 1007. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of Title 7, Agriculture, and Tables.

§ 300j–15. Water conservation plan

(a) Guidelines

Not later than 2 years after August 6, 1996, the Administrator shall publish in the Federal Register guidelines for water conservation plans for public water systems serving fewer than 3,300 persons, public water systems serving between 3,300 and 10,000 persons, and public water systems serving more than 10,000 persons, taking into consideration such factors as water availability and climate.

(b) Loans or grants

Within 1 year after publication of the guidelines under subsection (a) of this section, a State exercising primary enforcement responsibility for public water systems may require a public water system, as a condition of receiving a loan or grant from a State loan fund under section 300j–12 of this title, to submit with its application for such loan or grant a water conservation plan consistent with such guidelines.

(July 1, 1944, ch. 373, title XIV, § 1455, as added Pub. L. 104–182, title I, § 134, Aug. 6, 1996, 110 Stat. 1679.)

§ 300j–16. Assistance to colonias

(a) Definitions

As used in this section:

(1) Border State

The term ''border State'' means Arizona, California, New Mexico, and Texas.

(2) Eligible community

The term ''eligible community'' means a low-income community with economic hardship that—

(A) is commonly referred to as a colonia;

(B) is located along the United States-Mexico border (generally in an unincorporated area); and

(C) lacks a safe drinking water supply or adequate facilities for the provision of safe drinking water for human consumption.

(b) Grants to alleviate health risks

The Administrator of the Environmental Protection Agency and the heads of other appropriate Federal agencies are authorized to award grants to a border State to provide assistance to eligible communities to facilitate compliance with national primary drinking water regulations or otherwise significantly further the health protection objectives of this subchapter.

(c) Use of funds

Each grant awarded pursuant to subsection (b) of this section shall be used to provide assistance to one or more eligible communities with respect to which the residents are subject to a significant health risk (as determined by the Administrator or the head of the Federal agency making the grant) attributable to the lack of access to an adequate and affordable drinking water supply system.

(d) Cost sharing

The amount of a grant awarded pursuant to this section shall not exceed 50 percent of the costs of carrying out the project that is the subject of the grant.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 1997 through 1999.

(July 1, 1944, ch. 373, title XIV, § 1456, as added Pub. L. 104–182, title I, § 135, Aug. 6, 1996, 110 Stat. 1679.)

§ 300j–17. Estrogenic substances screening program

In addition to the substances referred to in section 346a(p)(3)(B) of title 21 the Administrator may provide for testing under the screening program authorized by section 346a(p) of title 21, in accordance with the provisions of section 346a(p) of title 21, of any other substance that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.

(July 1, 1944, ch. 373, title XIV, § 1457, as added Pub. L. 104–182, title I, § 136, Aug. 6, 1996, 110 Stat. 1680.)

§ 300j–18. Drinking water studies

(a) Subpopulations at greater risk

(1) In general

The Administrator shall conduct a continuing program of studies to identify groups within the general population that may be at greater risk than the general population of adverse health effects from exposure to contaminants in drinking water. The study shall examine whether and to what degree infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that can be identified and characterized are likely to experience elevated health risks, including risks of cancer, from contaminants in drinking water.

(2) Report

Not later than 4 years after August 6, 1996, and periodically thereafter as new and significant information becomes available, the Administrator shall report to the Congress on the results of the studies.

(b) Biological mechanisms

The Administrator shall conduct biomedical studies to—

(1) understand the mechanisms by which chemical contaminants are absorbed, distributed, metabolized, and eliminated from the human body, so as to develop more accurate physiologically based models of the phenomena;

(2) understand the effects of contaminants and the mechanisms by which the contaminants cause adverse effects (especially non-

cancer and infectious effects) and the variations in the effects among humans, especially subpopulations at greater risk of adverse effects, and between test animals and humans; and

(3) develop new approaches to the study of complex mixtures, such as mixtures found in drinking water, especially to determine the prospects for synergistic or antagonistic interactions that may affect the shape of the dose-response relationship of the individual chemicals and microbes, and to examine noncancer endpoints and infectious diseases, and susceptible individuals and subpopulations.

(c) Studies on harmful substances in drinking water

(1) Development of studies

The Administrator shall, not later than 180 days after August 6, 1996, and after consultation with the Secretary of Health and Human Services, the Secretary of Agriculture, and, as appropriate, the heads of other Federal agencies, conduct the studies described in paragraph (2) to support the development and implementation of the most current version of each of the following:

(A) Enhanced Surface Water Treatment Rule (59 Fed. Reg. 38832 (July 29, 1994)).

(B) Disinfectant and Disinfection Byproducts Rule (59 Fed. Reg. 38668 (July 29, 1994)).

(C) Ground Water Disinfection Rule (availability of draft summary announced at (57 Fed. Reg. 33960; July 31, 1992)).

(2) Contents of studies

The studies required by paragraph (1) shall include, at a minimum, each of the following:

(A) Toxicological studies and, if warranted, epidemiological studies to determine what levels of exposure from disinfectants and disinfection byproducts, if any, may be associated with developmental and birth defects and other potential toxic end points.

(B) Toxicological studies and, if warranted, epidemiological studies to quantify the carcinogenic potential from exposure to disinfection byproducts resulting from different disinfectants.

(C) The development of dose-response curves for pathogens, including cryptosporidium and the Norwalk virus.

(3) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection $12,500,000 for each of fiscal years 1997 through 2003.

(d) Waterborne disease occurrence study

(1) System

The Director of the Centers for Disease Control and Prevention, and the Administrator shall jointly—

(A) within 2 years after August 6, 1996, conduct pilot waterborne disease occurrence studies for at least 5 major United States communities or public water systems; and

(B) within 5 years after August 6, 1996, prepare a report on the findings of the pilot studies, and a national estimate of waterborne disease occurrence.

(2) Training and education

The Director and Administrator shall jointly establish a national health care provider training and public education campaign to inform both the professional health care provider community and the general public about waterborne disease and the symptoms that may be caused by infectious agents, including microbial contaminants. In developing such a campaign, they shall seek comment from interested groups and individuals, including scientists, physicians, State and local governments, environmental groups, public water systems, and vulnerable populations.

(3) Funding

There are authorized to be appropriated for each of the fiscal years 1997 through 2001, $3,000,000 to carry out this subsection. To the extent funds under this subsection are not fully appropriated, the Administrator may use not more than $2,000,000 of the funds from amounts reserved under section 300j–12(n) of this title for health effects studies for purposes of this subsection. The Administrator may transfer a portion of such funds to the Centers for Disease Control and Prevention for such purposes.

(July 1, 1944, ch. 373, title XIV, § 1458, as added Pub. L. 104–182, title I, § 137, Aug. 6, 1996, 110 Stat. 1680.)

PUBLIC HEALTH ASSESSMENT OF EXPOSURE TO PERCHLORATE

Pub. L. 108–136, div. A, title III, § 323, Nov. 24, 2003, 117 Stat. 1440, provided that:

''(a) EPIDEMIOLOGICAL STUDY OF EXPOSURE TO PERCHLORATE.—The Secretary of Defense shall provide for an independent epidemiological study of exposure to perchlorate in drinking water. The entity conducting the study shall—

''(1) assess the incidence of thyroid disease and measurable effects of thyroid function in relation to exposure to perchlorate;

''(2) ensure that the study is of sufficient scope and scale to permit the making of meaningful conclusions of the measurable public health threat associated with exposure to perchlorate, especially the threat to sensitive subpopulations; and

''(3) examine thyroid function, including measurements of urinary iodine and thyroid hormone levels, in a sufficient number of pregnant women, neonates, and infants exposed to perchlorate in drinking water and match measurements of perchlorate levels in the drinking water of each study participant in order to permit the development of meaningful conclusions on the public health threat to individuals exposed to perchlorate.

''(b) REVIEW OF EFFECTS OF PERCHLORATE ON ENDOCRINE SYSTEM.—The Secretary shall provide for an independent review of the effects of perchlorate on the human endocrine system. The entity conducting the review shall assess—

''(1) available data on human exposure to perchlorate, including clinical data and data on exposure of sensitive subpopulations, and the levels at which health effects were observed; and

''(2) available data on other substances that have endocrine effects similar to perchlorate to which the public is frequently exposed.

''(c) PERFORMANCE OF STUDY AND REVIEW.—(1) The Secretary shall provide for the performance of the study under subsection (a) through the Centers for Disease Control and Prevention, the National Institutes of Health, or another Federal entity with experience in environmental toxicology selected by the Secretary.

''(2) The Secretary shall provide for the performance of the review under subsection (b) through the Centers for Disease Control and Prevention, the National Insti-

tutes of Health, or another appropriate Federal research entity with experience in human endocrinology selected by the Secretary. The Secretary shall ensure that the panel conducting the review is composed of individuals with expertise in human endocrinology.

''(d) REPORTING REQUIREMENTS.—Not later than June 1, 2005, the Federal entities conducting the study and review under this section shall submit to the Secretary reports containing the results of the study and review.''

PART F—ADDITIONAL REQUIREMENTS TO REGULATE SAFETY OF DRINKING WATER

§ 300j–21. Definitions

As used in this part—

(1) Drinking water cooler

The term ''drinking water cooler'' means any mechanical device affixed to drinking water supply plumbing which actively cools water for human consumption.

(2) Lead free

The term ''lead free'' means, with respect to a drinking water cooler, that each part or component of the cooler which may come in contact with drinking water contains not more than 8 percent lead, except that no drinking water cooler which contains any solder, flux, or storage tank interior surface which may come in contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead. The Administrator may establish more stringent requirements for treating any part or component of a drinking water cooler as lead free for purposes of this part whenever he determines that any such part may constitute an important source of lead in drinking water.

(3) Local educational agency

The term ''local educational agency'' means—

(A) any local educational agency as defined in section 7801 of title 20,

(B) the owner of any private, nonprofit elementary or secondary school building, and

(C) the governing authority of any school operating under the defense dependent's education system provided for under the Defense Dependent's Education Act of 1978 (20 U.S.C. 921 and following).

(4) Repair

The term ''repair'' means, with respect to a drinking water cooler, to take such corrective action as is necessary to ensure that water cooler is lead free.

(5) Replacement

The term ''replacement'', when used with respect to a drinking water cooler, means the permanent removal of the water cooler and the installation of a lead free water cooler.

(6) School

The term ''school'' means any elementary school or secondary school as defined in section 7801 of title 20 and any kindergarten or day care facility.

(7) Lead-lined tank

The term ''lead-lined tank'' means a water reservoir container in a drinking water cooler which container is constructed of lead or which has an interior surface which is not lead free.

(July 1, 1944, ch. 373, title XIV, § 1461, as added Pub. L. 100–572, § 2(a), Oct. 31, 1988, 102 Stat. 2884; amended Pub. L. 103–382, title III, § 391(p), Oct. 20, 1994, 108 Stat. 4024; Pub. L. 104–182, title V, § 501(f)(7), Aug. 6, 1996, 110 Stat. 1692; Pub. L. 107–110, title X, § 1076(x), Jan. 8, 2002, 115 Stat. 2093.)

REFERENCES IN TEXT

The Defense Dependent's Education Act of 1978, referred to in par. (3)(C), probably means the Defense Dependents' Education Act of 1978, title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§ 921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

AMENDMENTS

2002—Pars. (3)(A), (6). Pub. L. 107–110 substituted ''section 7801 of title 20'' for ''section 8801 of title 20''.

1996—Pub. L. 104–182 made technical amendment to section catchline and first word of text.

1994—Par. (3)(A). Pub. L. 103–382, § 391(p)(1), substituted ''section 8801 of title 20'' for ''section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381)''.

Par. (6). Pub. L. 103–382, § 391(p)(2), substituted ''section 8801 of title 20'' for ''section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854)''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

§ 300j–22. Recall of drinking water coolers with lead-lined tanks

For purposes of the Consumer Product Safety Act [15 U.S.C. 2051 et seq.], all drinking water coolers identified by the Administrator on the list under section 300j–23 of this title as having a lead-lined tank shall be considered to be imminently hazardous consumer products within the meaning of section 12 of such Act (15 U.S.C. 2061). After notice and opportunity for comment, including a public hearing, the Consumer Product Safety Commission shall issue an order requiring the manufacturers and importers of such coolers to repair, replace, or recall and provide a refund for such coolers within 1 year after October 31, 1988. For purposes of enforcement, such order shall be treated as an order under section 15(d) of that Act (15 U.S.C. 2064(d)).

(July 1, 1944, ch. 373, title XIV, § 1462, as added Pub. L. 100–572, § 2(a), Oct. 31, 1988, 102 Stat. 2885; amended Pub. L. 104–182, title V, § 501(f)(8), Aug. 6, 1996, 110 Stat. 1692.)

REFERENCES IN TEXT

The Consumer Product Safety Act, referred to in text, is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, as amended, which is classified generally to chapter 47 (§ 2051 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of Title 15 and Tables.

AMENDMENTS

1996—Pub. L. 104–182 made technical amendment to section catchline and first word of text.

§ 300j–23. Drinking water coolers containing lead

(a) Publication of lists

The Administrator shall, after notice and opportunity for public comment, identify each brand and model of drinking water cooler which is not lead free, including each brand and model of drinking water cooler which has a lead-lined tank. For purposes of identifying the brand and model of drinking water coolers under this subsection, the Administrator shall use the best information available to the Environmental Protection Agency. Within 100 days after October 31, 1988, the Administrator shall publish a list of each brand and model of drinking water cooler identified under this subsection. Such list shall separately identify each brand and model of cooler which has a lead-lined tank. The Administrator shall continue to gather information regarding lead in drinking water coolers and shall revise and republish the list from time to time as may be appropriate as new information or analysis becomes available regarding lead contamination in drinking water coolers.

(b) Prohibition

No person may sell in interstate commerce, or manufacture for sale in interstate commerce, any drinking water cooler listed under subsection (a) of this section or any other drinking water cooler which is not lead free, including a lead-lined drinking water cooler.

(c) Criminal penalty

Any person who knowingly violates the prohibition contained in subsection (b) of this section shall be imprisoned for not more than 5 years, or fined in accordance with title 18, or both.

(d) Civil penalty

The Administrator may bring a civil action in the appropriate United States District Court (as determined under the provisions of title 28) to impose a civil penalty on any person who violates subsection (b) of this section. In any such action the court may impose on such person a civil penalty of not more than $5,000 ($50,000 in the case of a second or subsequent violation).

(July 1, 1944, ch. 373, title XIV, § 1463, as added Pub. L. 100–572, § 2(a), Oct. 31, 1988, 102 Stat. 2885; amended Pub. L. 104–182, title V, § 501(f)(9), Aug. 6, 1996, 110 Stat. 1692.)

AMENDMENTS

1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

§ 300j–24. Lead contamination in school drinking water

(a) Distribution of drinking water cooler list

Within 100 days after October 31, 1988, the Administrator shall distribute to the States a list of each brand and model of drinking water cooler identified and listed by the Administrator under section 300j–23(a) of this title.

(b) Guidance document and testing protocol

The Administrator shall publish a guidance document and a testing protocol to assist schools in determining the source and degree of lead contamination in school drinking water supplies and in remedying such contamination. The guidance document shall include guidelines for sample preservation. The guidance document shall also include guidance to assist States, schools, and the general public in ascertaining the levels of lead contamination in drinking water coolers and in taking appropriate action to reduce or eliminate such contamination. The guidance document shall contain a testing protocol for the identification of drinking water coolers which contribute to lead contamination in drinking water. Such document and protocol may be revised, republished and redistributed as the Administrator deems necessary. The Administrator shall distribute the guidance document and testing protocol to the States within 100 days after October 31, 1988.

(c) Dissemination to schools, etc.

Each State shall provide for the dissemination to local educational agencies, private nonprofit elementary or secondary schools and to day care centers of the guidance document and testing protocol published under subsection (b) of this section, together with the list of drinking water coolers published under section 300j–23(a) of this title.

(d) Remedial action program

(1) Testing and remedying lead contamination

Within 9 months after October 31, 1988, each State shall establish a program, consistent with this section, to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

(2) Public availability

A copy of the results of any testing under paragraph (1) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such testing results.

(3) Coolers

In the case of drinking water coolers, such program shall include measures for the reduction or elimination of lead contamination from those water coolers which are not lead free and which are located in schools. Such measures shall be adequate to ensure that within 15 months after October 31, 1988, all such water coolers in schools under the jurisdiction of such agencies are repaired, replaced, permanently removed, or rendered inoperable unless the cooler is tested and found (within the limits of testing accuracy) not to contribute lead to drinking water.

(July 1, 1944, ch. 373, title XIV, § 1464, as added Pub. L. 100–572, § 2(a), Oct. 31, 1988, 102 Stat. 2886; amended Pub. L. 104–182, title V, § 501(f)(10), Aug. 6, 1996, 110 Stat. 1692.)

AMENDMENTS

1996—Pub. L. 104–182 made technical amendment to section catchline and subsec. (a) designation.

§ 300j–25. Federal assistance for State programs regarding lead contamination in school drinking water

(a) School drinking water programs

The Administrator shall make grants to States to establish and carry out State programs under section 300j–24 of this title to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from drinking water coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies. Such grants may be used by States to reimburse local educational agencies for expenses incurred after October 31, 1988, for such testing and remedial action.

(b) Limits

Each grant under this section shall be used by the State for testing water coolers in accordance with section 300j–24 of this title, for testing for lead contamination in other drinking water supplies under section 300j–24 of this title, or for remedial action under State programs under section 300j–24 of this title. Not more than 5 percent of the grant may be used for program administration.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section not more than $30,000,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, and $30,000,000 for fiscal year 1991.

(July 1, 1944, ch. 373, title XIV, § 1465, as added Pub. L. 100–572, § 2(a), Oct. 31, 1988, 102 Stat. 2887; amended Pub. L. 104–182, title V, § 501(d), (f)(11), Aug. 6, 1996, 110 Stat. 1691, 1692.)

AMENDMENTS

1996—Pub. L. 104–182, § 501(f)(11), made technical amendment to section catchline and subsec. (a) designation.

Subsec. (b). Pub. L. 104–182, § 501(d), substituted ''by the State'' for ''as by the State''.

§ 300j–26. Certification of testing laboratories

The Administrator of the Environmental Protection Agency shall assure that programs for the certification of testing laboratories which test drinking water supplies for lead contamination certify only those laboratories which provide reliable accurate testing. The Administrator (or the State in the case of a State to which certification authority is delegated under this subsection) shall publish and make available to the public upon request the list of laboratories certified under this subsection.[1]

(Pub. L. 100–572, § 4, Oct. 31, 1988, 102 Stat. 2889.)

CODIFICATION

Section enacted as part of the Lead Contamination Control Act of 1988, and not as part of the Public Health Service Act which comprises this chapter.

[1] So in original. Probably should be ''section.''

SUBCHAPTER XIII—PREVENTIVE HEALTH MEASURES WITH RESPECT TO BREAST AND CERVICAL CANCERS

§ 300k. Establishment of program of grants to States

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States on the basis of an established competitive review process for the purpose of carrying out programs—

(1) to screen women for breast and cervical cancer as a preventive health measure;

(2) to provide appropriate referrals for medical treatment of women screened pursuant to paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services and support services such as case management;

(3) to develop and disseminate public information and education programs for the detection and control of breast and cervical cancer;

(4) to improve the education, training, and skills of health professionals (including allied health professionals) in the detection and control of breast and cervical cancer;

(5) to establish mechanisms through which the States can monitor the quality of screening procedures for breast and cervical cancer, including the interpretation of such procedures; and

(6) to evaluate activities conducted under paragraphs (1) through (5) through appropriate surveillance or program-monitoring activities.

(b) Grant and contract authority of States

(1) In general

A State receiving a grant under subsection (a) of this section may, subject to paragraphs (2) and (3), expend the grant to carry out the purpose described in such subsection through grants to public and nonprofit private entities and through contracts with public and private entities.

(2) Certain applications

If a nonprofit private entity and a private entity that is not a nonprofit entity both submit applications to a State to receive an award of a grant or contract pursuant to paragraph (1), the State may give priority to the application submitted by the nonprofit private entity in any case in which the State determines that the quality of such application is equivalent to the quality of the application submitted by the other private entity.

(3) Payments for screenings

The amount paid by a State to an entity under this subsection for a screening procedure under subsection (a)(1) of this section may not exceed the amount that would be paid under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] if payment were made under such part for furnishing the procedure to a woman enrolled under such part.

(c) Special consideration for certain States

In making grants under subsection (a) of this section to States whose initial grants under

such subsection are made for fiscal year 1995 or any subsequent fiscal year, the Secretary shall give special consideration to any State whose proposal for carrying out programs under such subsection—

(1) has been approved through a process of peer review; and

(2) is made with respect to geographic areas in which there is—

(A) a substantial rate of mortality from breast or cervical cancer; or

(B) a substantial incidence of either of such cancers.

(d) Coordinating committee regarding year 2000 health objectives

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish a committee to coordinate the activities of the agencies of the Public Health Service (and other appropriate Federal agencies) that are carried out toward achieving the objectives established by the Secretary for reductions in the rate of mortality from breast and cervical cancer in the United States by the year 2000. Such committee shall be comprised of Federal officers or employees designated by the heads of the agencies involved to serve on the committee as representatives of the agencies, and such representatives from other public or private entities as the Secretary determines to be appropriate.

(July 1, 1944, ch. 373, title XV, §1501, as added Pub. L. 101–354, §2, Aug. 10, 1990, 104 Stat. 409; amended Pub. L. 103–43, title XX, §2008(c)(1), June 10, 1993, 107 Stat. 211; Pub. L. 103–183, title I, §101(a), (b), (f), (g)(1), Dec. 14, 1993, 107 Stat. 2227–2229; Pub. L. 105–340, title II, §203(a), (b), Oct. 31, 1998, 112 Stat. 3194; Pub. L. 105–392, title IV, §401(b)(5), Nov. 13, 1998, 112 Stat. 3587.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part B of title XVIII of the Act is classified generally to part B (§1395j et seq.) of subchapter XVIII of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 300k, Pub. L. 93–641, §2, Jan. 4, 1975, 88 Stat. 2226, set forth Congressional findings relating to national health planning and development, prior to omission in connection with repeal of former section 300k–1 et seq. of this title.

A prior section 1501 of act July 1, 1944, ch. 373, title XV, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2227; amended Oct. 4, 1979, Pub. L. 96–79, title I, §101(a)(1)(A), (2), (3), 93 Stat. 593; Dec. 17, 1980, Pub. L. 96–538, title III, §301, 94 Stat. 3190, which related to guidelines for national health policy, was classified to section 300k–1 of this title, prior to repeal by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Prior sections 300k–2 and 300k–3 were repealed by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Section 300k–2, act July 1, 1944, ch. 373, title XV, §1502, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2227; amended Nov. 9, 1978, Pub. L. 95–619, title III, §303(a), 92 Stat. 3248; Oct. 4, 1979, Pub. L. 96–79, title I, §§102(a), 103(a), (b), 93 Stat. 594, 595, related to national health priorities and strengthening competition in supply of services.

Section 300k–3, act July 1, 1944, ch. 373, title XV, §1503, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2228; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(a), 91 Stat. 384; July 10, 1979, Pub. L. 96–32, §7(g), 93 Stat. 84; Oct. 4, 1979, Pub. L. 96–79, title I, §102(b), 93 Stat. 594; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695, related to National Council on Health Planning and Development.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–340, §203(a), inserted ''and support services such as case management'' before semicolon at end.

Subsec. (b)(1). Pub. L. 105–340, §203(b)(1), substituted ''through grants to public and nonprofit private entities and through contracts with public and private entities.'' for ''through grants to, and contracts with, public or nonprofit private entities.''

Subsec. (b)(2). Pub. L. 105–340, §203(b)(2), added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''In addition to the authority established in paragraph (1) for a State with respect to grants and contracts, the State may provide for screenings under subsection (a)(1) of this section through entering into contracts with private entities that are not nonprofit entities.''

Subsecs. (c), (d). Pub. L. 105–392 redesignated subsec. (c), relating to coordinating committee regarding year 2000 health objectives, as (d).

1993—Subsec. (a). Pub. L. 103–183, §101(g)(1), substituted ''Control and Prevention'' for ''Control'' in introductory provisions.

Subsec. (b). Pub. L. 103–183, §101(a), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)'' in par. (1), added pars. (2) and (3), and struck out heading and text of former par. (2). Text read as follows: ''In addition to the authority established in paragraph (1) for a State with respect to grants and contracts, the State may provide for screenings under subsection (a)(1) of this section through entering into contracts with private entities. The amount paid by a State to a private entity under the preceding sentence for a screening procedure may not exceed the amount that would be paid under part B of title XVIII of the Social Security Act if payment were made under such part for furnishing the procedure to a woman enrolled under such part.''

Pub. L. 103–43, §2008(c)(1), designated existing provisions as par. (1), inserted par. heading, substituted ''may, subject to paragraph (2), expend'' for ''may expend'', and added par. (2).

Subsec. (c). Pub. L. 103–183, §101(f), added subsec. (c) relating to coordinating committee regarding year 2000 health objectives.

Pub. L. 103–183, §101(b), added subsec. (c) relating to special consideration for certain States.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

§300*l*. Requirement of matching funds

(a) In general

The Secretary may not make a grant under section 300k of this title unless the State involved agrees, with respect to the costs to be incurred by the State in carrying out the purpose described in such section, to make available non-Federal contributions (in cash or in kind under subsection (b) of this section) toward such costs in an amount equal to not less than $1 for each $3 of Federal funds provided in the grant. Such contributions may be made directly or through donations from public or private entities.

(b) Determination of amount of non-Federal contribution

(1) In general

Non-Federal contributions required in subsection (a) of this section may be in cash or in kind, fairly evaluated, including equipment or services (and excluding indirect or overhead costs). Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(2) Maintenance of effort

In making a determination of the amount of non-Federal contributions for purposes of subsection (a) of this section, the Secretary may include only non-Federal contributions in excess of the average amount of non-Federal contributions made by the State involved toward the purpose described in section 300k of this title for the 2-year period preceding the first fiscal year for which the State is applying to receive a grant under such section.

(3) Inclusion of relevant non-Federal contributions for medicaid

In making a determination of the amount of non-Federal contributions for purposes of subsection (a) of this section, the Secretary shall, subject to paragraphs (1) and (2) of this subsection, include any non-Federal amounts expended pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] by the State involved toward the purpose described in paragraphs (1) and (2) of section 300k(a) of this title.

(July 1, 1944, ch. 373, title XV, §1502, as added Pub. L. 101–354, §2, Aug. 10, 1990, 104 Stat. 410.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 300*l*, act July 1, 1944, ch. 373, title XV, §1511, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2229; amended Apr. 22, 1976, Pub. L. 94–278, title XI, §1106(a), 90 Stat. 416; Aug. 1, 1977, Pub. L. 95–83, title I, §106(b), 91 Stat. 384; Oct. 4, 1979, Pub. L. 96–79, title I, §104(a)(1), (b), 93 Stat. 595, 596, related to establishment of health service areas, prior to repeal by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

A prior section 1502 of act July 1, 1944, ch. 373, title XV, was classified to section 300k–2 of this title prior to repeal by Pub. L. 99–660.

§ 300*l*–1. Requirement regarding medicaid

The Secretary may not make a grant under section 300k of this title for a program in a State unless the State plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State includes the screening procedures specified in subparagraphs (A) and (B) of section 300m(a)(2) of this title as medical assistance provided under the plan.

(July 1, 1944, ch. 373, title XV, §1502A, as added Pub. L. 102–531, title III, §307, Oct. 27, 1992, 106 Stat. 3495.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

Prior sections 300*l*–1 to 300*l*–5 were repealed by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Section 300*l*–1, act July 1, 1944, ch. 373, title XV, §1512, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2232; amended Mar. 19, 1976, Pub. L. 94–237, §14(b), 90 Stat. 249; Oct. 12, 1976, Pub. L. 94–484, title IX, §902(a), 90 Stat. 2324; Aug. 1, 1977, Pub. L. 95–83, title I, §106(c), (d), 91 Stat. 384; Oct. 4, 1979, Pub. L. 96–79, title I, §§108(a)–(d)(1), (e), 109, 110(a)–(d)(1), (e)(1), (2)(A), (3), 111(a), (b), 112, 113(a), 114, 93 Stat. 601–607; Aug. 13, 1981, Pub. L. 97–35, title IX, §935(d), 95 Stat. 571; Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095, related to composition and operation of health systems agencies.

Section 300*l*–2, act July 1, 1944, ch. 373, title XV, §1513, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2235; amended Mar. 19, 1976, Pub. L. 94–237, §14(a), 90 Stat. 249; Aug. 1, 1977, Pub. L. 95–83, title I, §106(e)–(i), 91 Stat. 384, 385; July 10, 1979, Pub. L. 96–32, §7(m), 93 Stat. 84; Oct. 4, 1979, Pub. L. 96–79, title I, §§101(b)(1), 103(c), 107(a), 110(e)(4), (f), 115(b)(1), (2), (c)(2), (d)(1), (2), (e), (f), (h), (i)(1), 118(a)(1), (b)(1), (c), 119(b), 120(a), 121, 122(a), 123(c)(1)(B), 93 Stat. 593, 595, 600, 604, 607–610, 620–625; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695; Jan. 2, 1980, Pub. L. 96–181, §15(b), 93 Stat. 1316; Oct. 7, 1980, Pub. L. 96–398, title VIII, §804(d), 94 Stat. 1608; Aug. 13, 1981, Pub. L. 97–35, title IX, §902(g)(4), 95 Stat. 561, related to functions of health systems agencies.

Section 300*l*–3, act July 1, 1944, ch. 373, title XV, §1514, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2239; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(j), 91 Stat. 385; Oct. 4, 1979, Pub. L. 96–79, title I, §105(f), 93 Stat. 598, provided for assistance to entities desiring to be designated as health systems agencies.

Section 300*l*–4, act July 1, 1944, ch. 373, title XV, §1515, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2239; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(k), 91 Stat. 385; Dec. 19, 1977, Pub. L. 95–215, §6(a)(1), 91 Stat. 1507; Oct. 4, 1979, Pub. L. 96–79, title I, §105(a)–(d)(1)(A), (2), (e), (g), (h), 93 Stat. 596–598; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695, provided for designation of health systems agencies.

Section 300*l*–5, act July 1, 1944, ch. 373, title XV, §1516, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2241; amended Aug. 1, 1977, Pub. L. 95–83, title I, §102(a), 91 Stat. 383; Dec. 19, 1977, Pub. L. 95–215, §6(a)(2), 91 Stat. 1507; Oct. 4, 1979, Pub. L. 96–79, title I, §§106, 107(b), 127(a), 93 Stat. 598, 600, 629; Dec. 17, 1980, Pub. L. 96–538, title III, §302, 94 Stat. 3190; Aug. 13, 1981, Pub. L. 97–35, title IX, §§933(a)(1), 934(a), 95 Stat. 570, 571, provided for planning grants to health systems agencies.

§ 300m. Requirements with respect to type and quality of services

(a) Requirement of provision of all services by date certain

The Secretary may not make a grant under section 300k of this title unless the State involved agrees—

(1) to ensure that, initially and throughout the period during which amounts are received pursuant to the grant, not less than 60 percent of the grant is expended to provide each of the services or activities described in paragraphs (1) and (2) of section 300k(a) of this title, including making available screening procedures for both breast and cervical cancers;

(2) subject to subsection (b) of this section, to ensure that—

(A) in the case of breast cancer, both a physical examination of the breasts and the screening procedure known as a mammography are conducted; and

(B) in the case of cervical cancer, both a pelvic examination and the screening procedure known as a pap smear are conducted;

(3) to ensure that, by the end of any second fiscal year of payments pursuant to the grant, each of the services or activities described in section 300k(a) of this title is provided; and

(4) to ensure that not more than 40 percent of the grant is expended to provide the services or activities described in paragraphs (3) through (6) of such section.

(b) Use of improved screening procedures

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that, if any screening procedure superior to a procedure described in subsection (a)(2) of this section becomes commonly available and is recommended for use, any entity providing screening procedures pursuant to the grant will utilize the superior procedure rather than the procedure described in such subsection.

(c) Quality assurance regarding screening procedures

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that the State will, in accordance with applicable law, assure the quality of screening procedures conducted pursuant to such section.

(July 1, 1944, ch. 373, title XV, §1503, as added Pub. L. 101–354, §2, Aug. 10, 1990, 104 Stat. 410; amended Pub. L. 103–183, title I, §101(c)(1), Dec. 14, 1993, 107 Stat. 2227.)

PRIOR PROVISIONS

Prior sections 300m to 300m–6 were repealed by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Section 300m, act July 1, 1944, ch. 373, title XV, §1521, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2242; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(*l*), (m), 91 Stat. 385; Dec. 19, 1977, Pub. L. 95–215, §6(b), 91 Stat. 1507; July 16, 1979, Pub. L. 96–33, 93 Stat. 86; Oct. 4, 1979, Pub. L. 96–79, title I, §123(a), (b)(1)(A), (2), (d), (f), (g)(2), 93 Stat. 624–627; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695; Jan. 2, 1980, Pub. L. 96–181, §15(b), 93 Stat. 1316; Dec. 17, 1980, Pub. L. 96–538, title III, §303(b), 94 Stat. 3190; Aug. 13, 1981, Pub. L. 97–35, title IX, §§902(g)(5), 936(b), 95 Stat. 561, 572; Jan. 4, 1983, Pub. L. 97–414, §9(b), 96 Stat. 2064, provided for designation of State health planning and development agencies.

A prior section 1503 of act July 1, 1944, ch. 373, title XV, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2228; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(a), 91 Stat. 384; July 10, 1979, Pub. L. 96–32, §7(g), 93 Stat. 84; Oct. 4, 1979, Pub. L. 96–79, title I, §102(b), 93 Stat. 594; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695, which related to National Council on Health Planning and Development, was classified to section 300k–3 of this title.

Section 300m–1, act July 1, 1944, ch. 373, title XV, §1522, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2244; amended 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Oct. 4, 1979, Pub. L. 96–79, title I, §§101(b)(2), 111(c), 115(b)(3), 117(b)(4), 120(b), 122(b), 123(c)(1)(A), (e)(1), 93 Stat. 594, 605, 607, 620, 622, 624, 625, 626; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695, related to State administrative programs.

Section 300m–2, act July 1, 1944, ch. 373, title XV, §1523, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2246; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(n), 91 Stat. 385; Oct. 4, 1979, Pub. L. 96–79, title I, §§115(c)(1)(A)–(C), (i)(2), 117(b)(1), (2), 118(a)(2), (b)(2), 123(c)(2), (3), (e)(2), (g)(1), 93 Stat. 607, 608, 610, 618, 619, 621, 625–627; Oct. 7, 1980, Pub. L. 96–398, title III, §303, 94 Stat. 1588, related to State health planning and development functions.

Section 300m–3, act July 1, 1944, ch. 373, title XV, §1524, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2247; amended Oct. 4, 1979, Pub. L. 96–79, title I, §§110(d)(2), 113(b), 115(a), (c)(1)(D), (d)(3), (g), (i)(2)–(4), 119(a), 124, 93 Stat. 604, 606–610, 621, 627; Jan. 2, 1980, Pub. L. 96–181, §15(b), 93 Stat. 1316; Dec. 17, 1980, Pub. L. 96–538, title III, §§304, 305, 94 Stat. 3191; Aug. 13, 1981, Pub. L. 97–35, title IX, §902(g)(6), 95 Stat. 561, related to composition and functions of Statewide Health Coordinating Councils.

Section 300m–4, act July 1, 1944, ch. 373, title XV, §1525, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2249; amended Aug. 1, 1977, Pub. L. 95–83, title I, §102(b), 91 Stat. 383; Oct. 4, 1979, Pub. L. 96–79, title I, §§107(c), 127(b), 93 Stat. 600, 629; Aug. 13, 1981, Pub. L. 97–35, title IX, §933(a)(2), 95 Stat. 570, provided for grants for State health planning and development.

Section 300m–5, act July 1, 1944, ch. 373, title XV, §1526, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2249; amended Aug. 1, 1977, Pub. L. 95–83, title I, §§102(c), 106(*o*), 91 Stat. 383, 385; Oct. 4, 1979, Pub. L. 96–79, title I, §§107(d), 120(c), 127(c), 93 Stat. 600, 622, 629, provided for grants for rate regulation.

Section 300m–6, act July 1, 1944, ch. 373, title XV, §1527, as added Oct. 4, 1979, Pub. L. 96–79, title I, §117(a), 93 Stat. 614; amended Dec. 17, 1980, Pub. L. 96–538, title III, §§306, 307, 94 Stat. 3191; Aug. 13, 1981, Pub. L. 97–35, title IX, §949(c), 95 Stat. 578, related to certificate of need program.

AMENDMENTS

1993—Subsecs. (c) to (e). Pub. L. 103–183 added subsec. (c) and struck out former subsecs. (c) which related to quality assurance regarding screening for breast cancer, (d) which related to quality assurance regarding screening for cervical cancer, and (e) which related to issuance by Secretary of guidelines with respect to quality of mammography and cytological services.

TRANSITION RULE REGARDING MAMMOGRAPHIES

Section 101(c)(2) of Pub. L. 103–183 provided that: ''With respect to the screening procedure for breast cancer known as a mammography, the requirements in effect on the day before the date of the enactment of this Act [Dec. 14, 1993] under section 1503(c) of the Public Health Service Act [subsec. (c) of this section] remain in effect (for an individual or facility conducting such procedures pursuant to a grant to a State under section 1501 of such Act [section 300k of this title]) until there is in effect for the facility a certificate (or provisional certificate) issued under section 354 of such Act [section 263b of this title].''

§ 300n. Additional required agreements

(a) Priority for low-income women

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that low-income women will be given priority in the provision of services and activities pursuant to paragraphs (1) and (2) of section 300k(a) of this title.

(b) Limitation on imposition of fees for services

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that, if a charge is imposed for the

provision of services or activities under the grant, such charge—

(1) will be made according to a schedule of charges that is made available to the public;

(2) will be adjusted to reflect the income of the woman involved; and

(3) will not be imposed on any woman with an income of less than 100 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(c) Statewide provision of services

(1) In general

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that services and activities under the grant will be made available throughout the State, including availability to members of any Indian tribe or tribal organization (as such terms are defined in section 450b of title 25).

(2) Waiver

The Secretary may waive the requirement established in paragraph (1) for a State if the Secretary determines that compliance by the State with the requirement would result in an inefficient allocation of resources with respect to carrying out the purpose described in section 300k(a) of this title.

(3) Grants to tribes and tribal organizations

(A) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to tribes and tribal organizations (as such terms are used in paragraph (1)) for the purpose of carrying out programs described in section 300k(a) of this title. This subchapter applies to such a grant (in relation to the jurisdiction of the tribe or organization) to the same extent and in the same manner as such subchapter applies to a grant to a State under section 300k of this title (in relation to the jurisdiction of the State).

(B) If a tribe or tribal organization is receiving a grant under subparagraph (A) and the State in which the tribe or organization is located is receiving a grant under section 300k of this title, the requirement established in paragraph (1) for the State regarding the tribe or organization is deemed to have been waived under paragraph (2).

(d) Relationship to items and services under other programs

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that the grant will not be expended to make payment for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

(e) Coordination with other breast and cervical cancer programs

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that the services and activities funded through the grant shall be coordinated with other Federal, State, and local breast and cervical cancer programs.

(f) Limitation on administrative expenses

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that not more than 10 percent of the grant will be expended for administrative expenses with respect to the grant.

(g) Restrictions on use of grant

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that the grant will not be expended to provide inpatient hospital services for any individual.

(h) Records and audits

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that—

(1) the State will establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the State under such section; and

(2) upon request, the State will provide records maintained pursuant to paragraph (1) to the Secretary or the Comptroller of the United States for purposes of auditing the expenditures by the State of the grant.

(i) Reports to Secretary

The Secretary may not make a grant under section 300k of this title unless the State involved agrees to submit to the Secretary such reports as the Secretary may require with respect to the grant.

(July 1, 1944, ch. 373, title XV, § 1504, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 412; amended Pub. L. 103–183, title I, § 101(d), Dec. 14, 1993, 107 Stat. 2228.)

PRIOR PROVISIONS

A prior section 300n, act July 1, 1944, ch. 373, title XV, § 1531, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2250; amended Mar. 19, 1976, Pub. L. 94–237, § 14(c), 90 Stat. 249; Oct. 12, 1976, Pub. L. 94–484, title IX, § 902(b), 90 Stat. 2324; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 104(c)(2), 108(d)(2), 117(b)(3), 126(a)(1), (b), 93 Stat. 596, 602, 619, 628; Dec. 17, 1980, Pub. L. 96–538, title III, §§ 308, 309, 94 Stat. 3192; Aug. 13, 1981, Pub. L. 97–35, title IX, § 936(a), 95 Stat. 572, defined terms applicable to this subchapter, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

AMENDMENTS

1993—Subsec. (c)(3). Pub. L. 103–183 added par. (3).

§ 300n–1. Description of intended uses of grant

The Secretary may not make a grant under section 300k of this title unless—

(1) the State involved submits to the Secretary a description of the purposes for which the State intends to expend the grant;

(2) the description identifies the populations, areas, and localities in the State with a need for the services or activities described in section 300k(a) of this title;

(3) the description provides information relating to the services and activities to be pro-

vided, including a description of the manner in which the services and activities will be coordinated with any similar services or activities of public and private entities; and

(4) the description provides assurances that the grant funds will be used in the most cost-effective manner.

(July 1, 1944, ch. 373, title XV, § 1505, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 414; amended Pub. L. 103–43, title XX, § 2008(c)(2), June 10, 1993, 107 Stat. 211; Pub. L. 103–183, title I, § 101(g)(2), Dec. 14, 1993, 107 Stat. 2229; Pub. L. 105–392, title IV, § 401(b)(6), Nov. 13, 1998, 112 Stat. 3587.)

PRIOR PROVISIONS

A prior section 300n–1, act July 1, 1944, ch. 373, title XV, § 1532, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2251; amended Oct. 8, 1976, Pub. L. 94–460, title I, § 117(a), 90 Stat. 1954; Nov. 9, 1978, Pub. L. 95–619, title III, § 303(b), (c), 92 Stat. 3248; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 103(d), 116, 117(b)(5), 93 Stat. 595, 610, 620; Dec. 17, 1980, Pub. L. 96–538, title III, § 310, 94 Stat. 3192, provided for procedures and criteria for review of proposed health system changes, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

AMENDMENTS

1998—Par. (3). Pub. L. 105–392 struck out ''nonprofit'' before ''private entities''.

1993—Par. (3). Pub. L. 103–183, § 101(g)(2)(A), substituted ''public and nonprofit private entities; and'' for ''public or nonprivate entities (and additionally, in the case of services and activities under section 300k(a)(1) of this title, with any similar services or activities of private entities); and''.

Pub. L. 103–43 inserted before semicolon ''(and additionally, in the case of services and activities under section 300k(a)(1) of this title, with any similar services or activities of private entities)''.

Par. (4). Pub. L. 103–183, § 101(g)(2)(B), inserted ''will'' after ''grant funds''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–392 deemed to have taken effect immediately after enactment of Pub. L. 103–183, see section 401(e) of Pub. L. 105–392, set out as a note under section 242m of this title.

§ 300n–2. Requirement of submission of application

The Secretary may not make a grant under section 300k of this title unless an application for the grant is submitted to the Secretary, the application contains the description of intended uses required in section 300n–1 of this title, and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subchapter.

(July 1, 1944, ch. 373, title XV, § 1506, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 414.)

PRIOR PROVISIONS

A prior section 300n–2, act July 1, 1944, ch. 373, title XV, § 1533, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2253, provided for technical assistance to health systems agencies and State agencies, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

§ 300n–3. Technical assistance and provision of supplies and services in lieu of grant funds

(a) Technical assistance

The Secretary may provide training and technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to section 300k of this title. The Secretary may provide such technical assistance directly or through grants to, or contracts with, public and private entities.

(b) Provision of supplies and services in lieu of grant funds

(1) In general

Upon the request of a State receiving a grant under section 300k of this title, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out such section and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) Corresponding reduction in payments

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the grant under section 300k of this title to the State involved by an amount equal to the costs of detailing personnel (including pay, allowances, and travel expenses) and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XV, § 1507, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 414.)

PRIOR PROVISIONS

A prior section 300n–3, act July 1, 1944, ch. 373, title XV, § 1534, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2255; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 102(d), 91 Stat. 383; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 125, 127(d), 93 Stat. 628, 629; Aug. 13, 1981, Pub. L. 97–35, title IX, § 933(a)(3), 95 Stat. 570, provided for developing new centers for health planning, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

§ 300n–4. Evaluations and reports

(a) Evaluations

The Secretary shall, directly or through contracts with public or private entities, provide for annual evaluations of programs carried out pursuant to section 300k of this title. Such evaluations shall include evaluations of the extent to which States carrying out such programs are in compliance with section 300k(a)(2) of this title and with section 300n(c) of this title.

(b) Report to Congress

The Secretary shall, not later than 1 year after the date on which amounts are first appropriated pursuant to section 300n–5(a)[1] of this title, and annually thereafter, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a

[1] See References in Text note below.

report summarizing evaluations carried out pursuant to subsection (a) of this section during the preceding fiscal year and making such recommendations for administrative and legislative initiatives with respect to this subchapter as the Secretary determines to be appropriate, including recommendations regarding compliance by the States with section 300k(a)(2) of this title and with section 300n(c) of this title.

(July 1, 1944, ch. 373, title XV, § 1508, as added Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 415; amended Pub. L. 103–183, title I, § 101(e), Dec. 14, 1993, 107 Stat. 2228.)

REFERENCES IN TEXT

Section 300n–5(a) of this title, referred to in subsec. (b), was in the original a reference to section 1509(a), meaning section 1509(a) of act July 1, 1944. Section 1509 was renumbered section 1510 by Pub. L. 103–183, title I, § 102(a)(1), Dec. 14, 1993, 107 Stat. 2229.

PRIOR PROVISIONS

A prior section 300n–4, act July 1, 1944, ch. 373, title XV, § 1535, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2256, provided for review by Secretary of operations of designated health systems agencies and State agencies, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–183, § 101(e)(1), inserted at end ''Such evaluations shall include evaluations of the extent to which States carrying out such programs are in compliance with section 300k(a)(2) of this title and with section 300n(c) of this title.''

Subsec. (b). Pub. L. 103–183, § 101(e)(2), inserted before period at end '', including recommendations regarding compliance by the States with section 300k(a)(2) of this title and with section 300n(c) of this title''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 300n–4a. Supplemental grants for additional preventive health services

(a) Demonstration projects

In the case of States receiving grants under section 300k of this title, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to not more than 3 such States to carry out demonstration projects for the purpose of—

(1) providing preventive health services in addition to the services authorized in such section, including screenings regarding blood pressure and cholesterol, and including health education;

(2) providing appropriate referrals for medical treatment of women receiving services pursuant to paragraph (1) and ensuring, to the extent practicable, the provision of appropriate follow-up services; and

(3) evaluating activities conducted under paragraphs (1) and (2) through appropriate surveillance or program-monitoring activities.

(b) Status as participant in program regarding breast and cervical cancer

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that services under the grant will be provided only through entities that are screening women for breast or cervical cancer pursuant to a grant under section 300k of this title.

(c) Applicability of provisions of general program

This subchapter applies to a grant under subsection (a) of this section to the same extent and in the same manner as such subchapter applies to a grant under section 300k of this title.

(d) Funding

(1) In general

Subject to paragraph (2), for the purpose of carrying out this section, there are authorized to be appropriated $3,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2003.

(2) Limitation regarding funding with respect to breast and cervical cancer

The authorization of appropriations established in paragraph (1) is not effective for a fiscal year unless the amount appropriated under section 300n–5(a) of this title for the fiscal year is equal to or greater than $100,000,000.

(July 1, 1944, ch. 373, title XV, § 1509, as added Pub. L. 103–183, title I, § 102(a)(2), Dec. 14, 1993, 107 Stat. 2229; amended Pub. L. 105–340, title II, § 203(c)(1), Oct. 31, 1998, 112 Stat. 3194.)

PRIOR PROVISIONS

A prior section 1509 of act July 1, 1944, was renumbered section 1510 and is classified to section 300n–5 of this title.

AMENDMENTS

1998—Subsec. (d)(1). Pub. L. 105–340 substituted ''2003'' for ''1998''.

§ 300n–5. Funding for general program

(a) Authorization of appropriations

For the purpose of carrying out this subchapter, there are authorized to be appropriated $50,000,000 for fiscal year 1991, such sums as may be necessary for each of the fiscal years 1992 and 1993, $150,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 2003.

(b) Set-aside for technical assistance and provision of supplies and services

Of the amounts appropriated under subsection (a) of this section for a fiscal year, the Secretary shall reserve not more than 20 percent for carrying out section 300n–3 of this title.

(July 1, 1944, ch. 373, title XV, § 1510, formerly § 1509, as added Pub. L. 101–354, § 2, Aug. 10, 1990,

104 Stat. 415; renumbered §1510 and amended Pub. L. 103–183, title I, §§102(a)(1), (b), 103, Dec. 14, 1993, 107 Stat. 2229, 2230; Pub. L. 105–340, title II, §203(c)(2), Oct. 31, 1998, 112 Stat. 3194.)

PRIOR PROVISIONS

Prior sections 300n–5 and 300n–6 were repealed by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Section 300n–5, act July 1, 1944, ch. 373, title XV, §1536, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2257; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(p), (q), 91 Stat. 385; Oct. 4, 1979, Pub. L. 96–79, title I, §104(c)(1), 93 Stat. 596; Aug. 13, 1981, Pub. L. 97–35, title IX, §935(a), 95 Stat. 571; Jan. 4, 1983, Pub. L. 97–414, §8(p), 96 Stat. 2062, made special provisions for certain States and territories.

Section 300n–6, act July 1, 1944, ch. 373, title XV, §1537, as added Aug. 13, 1981, Pub. L. 97–35, title IX, §933(b), 95 Stat. 570, authorized appropriations for grants and contracts under former sections 300*l*–5(a), 300m–4(a), and 300n–3(a) of this title.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–340 substituted ''2003'' for ''1998''.

1993—Pub. L. 103–183, §102(b), inserted ''for general program'' after ''Funding'' in section catchline.

Subsec. (a). Pub. L. 103–183, §103, struck out ''and'' after ''1991,'' and inserted before period at end '', $150,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998''.

SUBCHAPTER XIV—HEALTH RESOURCES DEVELOPMENT

§§ 300*o* to 300*o*–3. Repealed. Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632

Sections 300*o* to 300*o*–3, act July 1, 1944, ch. 373, title XVI, §§1601–1604, as added Jan. 4, 1975, Pub. L. 93–641, §4, 88 Stat. 2258–2260; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(r)–(v), 91 Stat. 385, were repealed by Pub. L. 96–79, title II, §202(a), Oct. 4, 1979, 93 Stat. 632.

Section 300*o* related to statement of purpose.

Section 300*o*–1 provided for promulgation of regulations and required provisions.

Section 300*o*–2 related to State medical facilities plans, submission and approval of plans as prerequisite for approval of project assistance applications, required provisions, and procedure upon disapproval of plans.

Section 300*o*–3 provided for medical facility project applications, covering in submission of applications, required provisions, waivers, and projects subject to requirements, criteria for approval, procedure for disapproval, amendment of approved applications, and review by health systems agencies.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§§ 300p to 300p–3. Repealed. Pub. L. 96–79, title II, § 201(a), Oct. 4, 1979, 93 Stat. 630

Sections 300p to 300p–3, act July 1, 1944, ch. 373, title XVI, §§1610–1613, as added Jan. 4, 1975, Pub. L. 93–641, §4, 88 Stat. 2262–2264; amended Apr. 22, 1976, Pub. L. 94–278, title XI, §1106(b), 90 Stat. 416; Aug. 1, 1977, Pub. L. 95–83, title I, §§103(a), 106(w), 91 Stat. 383, 385, were repealed by Pub. L. 96–79, title II, §201(a), Oct. 4, 1979, 93 Stat. 632.

Section 300p related to allotments to States for health resources development.

Section 300p–1 related to payments to States for approved medical facility projects.

Section 300p–2 related to compliance provisions and withholding of payments for noncompliance.

Section 300p–3 authorized appropriations for allotments to States.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

PART A—LOANS AND LOAN GUARANTEES

AMENDMENTS

1979—Pub. L. 96–79, title II, §202(a), Oct. 4, 1979, 93 Stat. 632, repealed part A relating to purpose, State plan, and project approval, and comprising former sections 300*o* to 300*o*–3 of this title, and redesignated former part C as part A relating to loans and loan guarantees.

§ 300q. Loan and loan guarantee authority

(a) Covered projects: duration; payment of principal and interest on loans for covered projects: duration; payments for reduction of interest rate

(1) The Secretary, during the period ending September 30, 1982, may, in accordance with this part, make loans from the fund established under section 300q–2(d) of this title to any public or nonprofit private entity for projects for—

(A) the discontinuance of unneeded hospital services or facilities,

(B) the conversion of unneeded hospital services and facilities to needed health services and medical facilities, including outpatient medical facilities and facilities for long-term care;

(C) the renovation and modernization of medical facilities, particularly projects for the prevention or elimination of safety hazards, projects to avoid noncompliance with licensure or accreditation standards, or projects to replace obsolete facilities;

(D) the construction of new outpatient medical facilities; and

(E) the construction of new inpatient medical facilities in areas which have experienced (as determined by the Secretary) recent rapid population growth.

(2)(A) The Secretary, during the period ending September 30, 1982, may, in accordance with this part, guarantee to—

(i) non-Federal lenders for their loans to public and nonprofit private entities for medical facilities projects described in paragraph (1), and

(ii) the Federal Financing Bank for its loans to public and nonprofit private entities for such projects,

payment of principal and interest on such loans.

(B) In the case of a guarantee of any loan to a public or nonprofit private entity under subparagraph (A)(i) which is located in an urban or rural poverty area, the Secretary may pay, to the holder of such loan and for and on behalf of the project for which the loan was made, amounts sufficient to reduce by not more than one half the net effective interest rate otherwise payable on such loan if the Secretary finds that without such assistance the project could not be undertaken.

(b) Amount of loans for medical facilities projects and such projects in urban or rural poverty areas

The principal amount of a loan directly made or guaranteed under subsection (a) of this section for a medical facilities project, when added to any other assistance provided such project under part B, may not exceed 90 per centum of the cost of such project unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the principal amount, when added to other assistance under part B, may cover up to 100 per centum of such costs.

(c) Limitation on cumulative total of principal of outstanding loans

The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued, or which have been directly made, may not exceed such limitations as may be specified in appropriation Acts.

(d) Administrative assistance of Department of Housing and Urban Development

The Secretary, with the consent of the Secretary of Housing and Urban Development, shall obtain from the Department of Housing and Urban Development such assistance with respect to the administration of this part as will promote efficiency and economy thereof.

(July 1, 1944, ch. 373, title XVI, § 1601, formerly § 1620, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2264; amended Pub. L. 94–273, § 2(21), Apr. 21, 1976, 90 Stat. 376; Pub. L. 95–83, title I, § 106(x)(1), Aug. 1, 1977, 91 Stat. 385; renumbered § 1601 and amended Pub. L. 96–79, title II, §§ 201(b)(1), 203(a)(1), (2), Oct. 4, 1979, 93 Stat. 630, 635.)

PRIOR PROVISIONS

A prior section 1601 of act July 1, 1944, ch. 373, title XVI, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2258, was classified to section 300*o* of this title, prior to repeal by Pub. L. 96–79, § 202(a).

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–79, §§ 201(b)(1), 203(a)(2), added par. (1); substituted reference to section 1602(d) for 1622(d), set out in text as ''section 300q–2(d) of this title''; incorporated in par. (2) former subsec. (b) provisions made applicable for period ending Sept. 30, 1982, previously covering period beginning July 1, 1974, and ending Sept. 30, 1978, extended provisions to public entities, struck out existing condition that applications for assistance under subchapter be approved under former section 300*o*–3 of this title, substituted in subpar. (2)(B) provision for payment of amounts sufficient to reduce by not more than one half net effective interest otherwise payable on the loan for prior provision for amounts sufficient to reduce by 3 per centum per annum net effective interest rate on the loan, and struck out provision granting contractual right of holder of a guaranteed loan to receive from the United States such interest payments.

Subsec. (b). Pub. L. 96–79, § 201(b)(1), added subsec. (b) and incorporated existing provisions of subsec. (b) relating to loan guarantee authority for payment of principal and interest on loans for approved projects, their duration, and payments for reduction of interest rate in subsec. (a)(2) of this section.

1977—Subsecs. (a), (b)(1). Pub. L. 95–83 substituted ''September 30, 1978'' for ''September 30, 1977''.

1976—Subsecs. (a), (b)(1). Pub. L. 94–273 substituted ''September'' for ''June''.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 204 of Pub. L. 96–79 provided that: ''The amendments made by this title [enacting sections 300s, 300s–1, and 300s–6, amending this section and sections 201, 300q–2, 300r, 300s–1a, 300s–3, and 300s–5, and repealing sections 300*o* to 300*o*–3, 300p to 300p–3, 300q–1, and 300s of this title] shall take effect October 1, 1979, except that the amendments made by section 201(b) [amending this section and section 300q–2 of this title] respecting the payment of an interest subsidy for a loan or loan guarantee made under part A of title XVI of the Public Health Service Act [this part] shall apply only with respect to loans and loan guarantees made after October 1, 1979, and with respect to loans and loan guarantees made under such part before such date the Secretary shall continue to pay the interest subsidy authorized for such loans and loan guarantees before such date.''

§ 300q–1. Repealed. Pub. L. 96–79, title II, § 203(a)(1), Oct. 4, 1979, 93 Stat. 635

Section, act July 1, 1944, ch. 373, title XVI, § 1621, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2265, related to allocation among States of total amount of principal, criteria, availability of unobligated amounts, and reallotments.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§ 300q–2. General provisions

(a) Loan guarantees; criteria for approval; recovery of payments by United States; modification, etc., of terms and conditions; incontestability

(1) The Secretary may not approve a loan guarantee for a project under this part unless he determines that (A) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States, and (B) the loan would not be available on reasonable terms and conditions without the guarantee under this part.

(2)(A) The United States shall be entitled to recover from the applicant for a loan guarantee under this part the amount of any payment made pursuant to such guarantee, unless the Secretary for good cause waives such right of recovery; and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

(B) To the extent permitted by subparagraph (C), any terms and conditions applicable to a loan guarantee under this part (including terms and conditions imposed under subparagraph (D)) may be modified by the Secretary to the extent he determines it to be consistent with the financial interest of the United States.

(C) Any loan guarantee made by the Secretary under this part shall be incontestable (i) in the

hands of an applicant on whose behalf such guarantee is made unless the applicant engaged in fraud or misrepresentation in securing such guarantee, and (ii) as to any person (or his successor in interest) who makes or contracts to make a loan to such applicant in reliance thereon unless such person (or his successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

(D) Guarantees of loans under this part shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this subchapter will be achieved.

(b) Loans; criteria for approval; terms and conditions; waiver of recovery of payments by United States

(1) The Secretary may not approve a loan under this part unless—

(A) the Secretary is reasonably satisfied that the applicant under the project for which the loan would be made will be able to make payments of principal and interest thereon when due, and

(B) the applicant provides the Secretary with reasonable assurances that there will be available to it such additional funds as may be necessary to complete the project or undertaking with respect to which such loan is requested.

(2) Any loan made under this part shall (A) have such security, (B) have such maturity date, (C) be repayable in such installments, (D) bear interest at a rate comparable to the current rate of interest prevailing, on the date the loan is made, with respect to loans guaranteed under this part, minus any interest subsidy made in accordance with section 300q(a)(2)(B) of this title with respect to a loan made for a project located in an urban or rural poverty area, and (E) be subject to such other terms and conditions (including provisions for recovery in case of default), as the Secretary determines to be necessary to carry out the purposes of this subchapter while adequately protecting the financial interests of the United States.

(3) The Secretary may, for good cause but with due regard to the financial interests of the United States, waive any right of recovery which he has by reasons of the failure of a borrower to make payments of principal of and interest on a loan made under this part, except that if such loan is sold and guaranteed, any such waiver shall have no effect upon the Secretary's guarantee of timely payment of principal and interest.

(c) Sale of loans; authority; amount; agreements with purchasers; deposit of proceeds

(1) The Secretary shall from time to time, but with due regard to the financial interests of the United States, sell loans made under this part either on the private market or to the Federal National Mortgage Association in accordance with section 1717 of title 12 or to the Federal Financing Bank.

(2) Any loan so sold shall be sold for an amount which is equal (or approximately equal) to the amount of the unpaid principal of such loans as of time of sale.

(3)(A) The Secretary is authorized to enter into an agreement with the purchaser of any loan sold under this part under which the Secretary agrees—

(i) to guarantee to such purchaser (and any successor in interest to such purchaser) payments of the principal and interest payable under such loan, and

(ii) to pay as an interest subsidy to such purchaser (and any successor in interest of such purchaser) amounts which, when added to the amount of interest payable on such loan, are equivalent to a reasonable rate of interest on such loan as determined by the Secretary after taking into account the range of prevailing interest rates in the private market on similar loans and the risks assumed by the United States.

(B) Any agreement under subparagraph (A)—

(i) may provide that the Secretary shall act as agent of any such purchaser, for the purpose of collecting from the entity to which such loan was made and paying over to such purchaser any payments of principal and interest payable by such entity under such loan;

(ii) may provide for the repurchase by the Secretary of any such loan on such terms and conditions as may be specified in the agreement;

(iii) shall provide that, in the event of any default by the entity to which such loan was made in payment of principal or interest due on such loan, the Secretary shall, upon notification to the purchaser (or to the successor in interest of such purchaser), have the option to close out such loan (and any obligations of the Secretary with respect thereto) by paying to the purchaser (or his successor in interest) the total amount of outstanding principal and interest due thereon at the time of such notification; and

(iv) shall provide that, in the event such loan is closed out as provided in clause (iii), or in the event of any other loss incurred by the Secretary by reason of the failure of such entity to make payments of principal or interest on such loan, the Secretary shall be subrogated to all rights of such purchaser for recovery of such loss from such entity.

(4) Amounts received by the Secretary as proceeds from the sale of loans under this subsection shall be deposited in the fund established under subsection (d) of this section.

(5) If any loan to a public entity under this part is sold and guaranteed by the Secretary under this subsection, interest paid on such loan after its sale and any interest subsidy paid, under paragraph (3)(A)(ii), by the Secretary with respect to such loan which is received by the purchaser of the loan (or the purchaser's successor in interest) shall be included in the gross income of the purchaser or successor for the purpose of chapter 1 of title 26.

(d) Loan and loan guarantee fund; establishment; amounts authorized to be appropriated; issuance, purchase, and sale of notes, obligations, etc.; interest rates; public debt transactions

(1) There is established in the Treasury a loan and loan guarantee fund (hereinafter in this sub-

section referred to as the ''fund'') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriations Acts—

(A) to enable him to make loans under this part,

(B) to enable him to discharge his responsibilities under loan guarantees issued by him under this part,

(C) for payment of interest under section 300q(a)(2)(B) of this title on loans guaranteed under this part,

(D) for repurchase of loans under subsection (c)(3)(B) of this section,

(E) for payment of interest on loans which are sold and guaranteed, and

(F) to enable the Secretary to take the action authorized by subsection (f) of this section.

There are authorized to be appropriated from time to time such amounts as may be necessary to provide the sums required for the fund. There shall also be deposited in the fund amounts received by the Secretary in connection with loans and loan guarantees under this part and other property or assets derived by him from his operations respecting such loans and loan guarantees, including any money derived from the sale of assets.

(2) If at any time the sums in the funds are insufficient to enable the Secretary—

(A) to make payments of interest under section 300q(a)(2)(B) of this title,

(B) to otherwise comply with guarantees under this part of loans to nonprofit private entities,

(C) in the case of a loan which was made, sold, and guaranteed under this part, to make to the purchaser of such loan payments of principal and interest on such loan after default by the entity to which the loan was made, or

(D) to repurchase loans under subsection (c)(3)(B) of this section,

(E) to make payments of interest on loans which are sold and guaranteed, and

(F) to enable the Secretary to take the action authorized by subsection (f) of this section,

he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued under this paragraph and for that purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which the securities may be issued under that chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this paragraph shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from the fund.

(e) Transfers to and additional capitalization of loan and loan guarantee fund

(1) The assets, commitments, obligations, and outstanding balances of the loan guarantee and loan fund established in the Treasury by section 291j–6 of this title shall be transferred to the fund established by subsection (d) of this section.

(2) To provide additional capitalization for the fund established under subsection (d) of this section there are authorized to be appropriated to the fund, such sums as may be necessary for the fiscal years ending June 30, 1975, June 30, 1976, September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982.

(f) Default prevention measures; terms and conditions; implementation of reforms; foreclosures; protection of Federal interest on default

(1) The Secretary may take such action as may be necessary to prevent a default on a loan made or guaranteed under this part or under subchapter IV of this chapter, including the waiver of regulatory conditions, deferral of loan payments, renegotiation of loans, and the expenditure of funds for technical and consultative assistance, for the temporary payment of the interest and principal on such a loan, and for other purposes. Any such expenditure made under the preceding sentence on behalf of a medical facility shall be made under such terms and conditions as the Secretary shall prescribe, including the implementation of such organizational, operational, and financial reforms as the Secretary determines are appropriate and the disclosure of such financial or other information as the Secretary may require to determine the extent of the implementation of such reforms.

(2) The Secretary may take such action, consistent with State law respecting foreclosure procedures, as he deems appropriate to protect the interest of the United States in the event of a default on a loan made or guaranteed under this part or under subchapter IV of this chapter, including selling real property pledged as security for such a loan or loan guarantee and for a reasonable period of time taking possession of, holding, and using real property pledged as security for such a loan or loan guarantee.

(July 1, 1944, ch. 373, title XVI, § 1602, formerly § 1622, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2265; amended Pub. L. 95–83, title I, § 106(x)(2), (y), Aug. 1, 1977, 91 Stat. 385; renumbered § 1602 and amended Pub. L. 96–79, title II, §§ 201(b)(2), (3), 203(a)(1), (3), (g), Oct. 4, 1979, 93 Stat. 631, 635; Pub. L. 97–414, § 8(q), Jan. 4, 1983, 96 Stat. 2062; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Subchapter IV of this chapter, referred to in subsec. (f), is classified to section 291 et seq. of this title.

CODIFICATION

In subsec. (d), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act'' and ''that Act'', respectively, on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 1602 of act July 1, 1944, ch. 373, title XVI, as added Jan. 4, 1975, Pub. L. 93–641, §4, 88 Stat. 2258; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(r), (s), 91 Stat. 385, was classified to section 300*o*–1 of this title, prior to repeal by Pub. L. 96–79, title II, §202(a), Oct. 4, 1979, 93 Stat. 632.

AMENDMENTS

1986—Subsec. (c)(5). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1983—Subsec. (f)(2). Pub. L. 97–414 inserted ''selling real property pledged as security for such a loan or loan guarantee and'' after ''including''.

1979—Subsec. (b)(2)(D). Pub. L. 96–79, §201(b)(2), substituted ''minus any interest subsidy made in accordance with section 300q(a)(2)(B) of this title (with respect to a loan made for a project located in an urban or rural poverty area'' for ''minus 3 per centum per annum''.

Subsec. (d)(1). Pub. L. 96–79, §203(a)(3), (g)(2), substituted in subpar. (C) reference to section ''300q(a)(2)(B)'' for ''300q(b)(2)'' of this title, and added subpar. (F).

Subsec. (d)(2). Pub. L. 96–79, §203(a)(3), (g)(3), substituted in subpar. (A) reference to section ''300q(a)(2)(B)'' for ''300q(b)(2)'' of this title, and added subpar. (F).

Subsec. (e)(2). Pub. L. 96–79, §201(b)(3), authorized appropriations for fiscal years ending Sept. 30, 1979 through 1982.

Subsec. (f). Pub. L. 96–79, §203(g)(1), added subsec. (f).

1977—Subsec. (c)(5). Pub. L. 95–83, §106(y), added subsec. (c)(5).

Subsec. (e)(2). Pub. L. 95–83, §106(x)(2), substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year ending June 30, 1977.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, except that amendment of subsec. (b)(2)(D) respecting interest subsidy payments for loans or loan guarantees applicable only with respect to loans and loan guarantees made after Oct. 1, 1979, and that subsidies for such commitments made before Oct. 1, 1979, payable as authorized before Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

PART B—PROJECT GRANTS

AMENDMENTS

1979—Pub. L. 96–79, title II, §§201(a), 202(a), Oct. 4, 1979, 93 Stat. 630, 632, repealed part B relating to allotments, and comprising former sections 300p to 300p–3 of this title, and redesignated former part D as part B relating to project grants.

§ 300r. Grants for construction or modernization projects

(a) Authority; objectives; eligible grantees; maximum amounts; authorization of appropriations; availability of unobligated funds

(1)(A) The Secretary may make grants for construction or modernization projects designed to—

(i) eliminate or prevent in medical facilities imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or

(ii) avoid noncompliance by medical facilities with State or voluntary licensure or accreditation standards.

(B) A grant under subparagraph (A) may only be made to—

(i) a State or political subdivision of a State, including any city, town, county, borough, hospital district authority, or public or quasi-public corporation, for any medical facility owned or operated by the State or political subdivision; and

(ii) a nonprofit private entity for any medical facility owned or operated by the entity but only if the Secretary determines—

(I) the level of community service provided by the facility and the proportion of its patients who are unable to pay for services rendered in the facility is similar to such level and proportion in a medical facility of a State or political subdivision, and

(II) that without a grant under subparagraph (A) there would be a disruption of the provision of health care to low-income individuals.

(2) The amount of any grant under paragraph (1) may not exceed 75 per centum of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 100 per centum of such costs.

(3) There are authorized to be appropriated for grants under paragraph (1) $40,000,000 for the fiscal year ending September 30, 1980, $50,000,000 for the fiscal year ending September 30, 1981, and $50,000,000 for the fiscal year ending September 30, 1982. Funds available for obligation under this subsection (as in effect before October 4, 1979) in the fiscal year ending September 30, 1979, shall remain available for obligation under this subsection in the succeeding fiscal year.

(b) Projects for medically underserved populations; eligible grantees; maximum amounts; authorization of appropriations

(1) The Secretary may make grants to public and nonprofit private entities for projects for (A) construction or modernization of outpatient medical facilities which are located apart from hospitals and which will provide services for medically underserved populations, and (B) conversion of existing facilities into outpatient medical facilities or facilities for long-term care to provide services for such populations.

(2) The amount of any grant under paragraph (1) may not exceed 80 per centum of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 100 per centum of such costs.

(3) There are authorized to be appropriated for grants under paragraph (1) $15,000,000 for the fiscal year ending September 30, 1981, and $15,000,000 for the fiscal year ending September 30, 1982.

(July 1, 1944, ch. 373, title XVI, § 1610, formerly § 1625, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2268; amended Pub. L. 95–83, title I, § 103(b), Aug. 1, 1977, 91 Stat. 383; renumbered § 1610 and amended Pub. L. 96–79, title II, §§ 201(c), 203(b), Oct. 4, 1979, 93 Stat. 631, 635.)

PRIOR PROVISIONS

A prior section 1610 of act July 1, 1944, ch. 373, title XVI, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2262; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(w), 91 Stat. 385, was classified to section 300p of this title, prior to repeal by Pub. L. 96–79, title II, § 201(a), Oct. 4, 1979, 93 Stat. 630.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–79, § 201(c), incorporated existing provisions in par. (1); inserted in subpar. (A) in cls. (i) and (ii) the phrases ''in medical facilities'' and ''by medical facilities''; substituted in subpar. (B)(i) ''for any medical facility owned or operated by the State or political subdivision'' for ''for a project described in the preceding sentence for any medical facility owned or operated by it''; added cl. (a)(1)(B)(ii); redesignated former subsec. (c) as par. (2); and added par. (3).

Subsec. (b). Pub. L. 96–79, § 201(c), inserted provisions respecting projects for medically underserved populations and struck out provisions respecting criteria for approval of applications under former section 300*o*–3 of this title.

Subsec. (c). Pub. L. 96–79, § 201(c), redesignated subsec. (c) as par. (2) of subsec. (a).

Subsec. (d). Pub. L. 96–79, § 201(c), struck out subsec. (d) which related to provisions making available 22 per centum of sums appropriated under former section 300p–3 of this title for subsec. (a) grants, including an additional appropriations authorization of $67,500,000 for such grants for fiscal year ending Sept. 30, 1978.

1977—Subsec. (d). Pub. L. 95–83 authorized additional grant appropriations of $67,500,000 for fiscal year ending Sept. 30, 1978.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

PART C—GENERAL PROVISIONS

AMENDMENTS

1979—Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632, redesignated former part E as part C relating to general provisions and former part C as part A.

§ 300s. General regulations

The Secretary shall by regulation—

(1) prescribe the manner in which he shall determine the priority among projects for which assistance is available under part A or B, based on the relative need of different areas for such projects and giving special consideration—

(A) to projects for medical facilities serving areas with relatively small financial resources and for medical facilities serving rural communities,

(B) in the case of projects for modernization of medical facilities, to projects for facilities serving densely populated areas,

(C) in the case of projects for construction of outpatient medical facilities, to projects that will be located in, and provide services for residents of, areas determined by the Secretary to be rural or urban poverty areas,

(D) to projects designed to (i) eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or (ii) avoid noncompliance with State or voluntary licensure or accreditation standards, and

(E) to projects for medical facilities which, alone or in conjunction with other facilities, will provide comprehensive health care, including outpatient and preventive care as well as hospitalization;

(2) prescribe for medical facilities projects assisted under part A or B general standards of construction, modernization, and equipment, which standards may vary on the basis of the class of facilities and their location; and

(3) prescribe the general manner in which each entity which receives financial assistance under part A or B or has received financial assistance under part A or B or subchapter IV of this chapter shall be required to comply with the assurances required to be made at the time such assistance was received and the means by which such entity shall be required to demonstrate compliance with such assurances.

An entity subject to the requirements prescribed pursuant to paragraph (3) respecting compliance with assurances made in connection with receipt of financial assistance shall submit periodically to the Secretary data and information which reasonably supports the entity's compliance with such assurances. The Secretary may not waive the requirement of the preceding sentence.

(July 1, 1944, ch. 373, title XVI, § 1620, as added Pub. L. 96–79, title II, § 202(b), Oct. 4, 1979, 93 Stat. 632.)

PRIOR PROVISIONS

A prior section 300s, act July 1, 1944, ch. 373, title XVI, § 1630, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2269, provided for judicial review by the United States Court of Appeals, prior to repeal by Pub. L. 96–79, § 202(b), eff. Oct. 1, 1979.

A prior section 1620 of act July 1, 1944, was renumbered section 1601 by Pub. L. 96–79, title II, § 203(a)(1), Oct. 4, 1979, 93 Stat. 635, and is classified to section 300q of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§ 300s–1. Medical facility project applications

(a) Submissions

No loan, loan guarantee, or grant may be made under part A or B for a medical facilities project unless an application for such project has been submitted to and approved by the Secretary. If two or more entities join in a project, an application for such project may be filed by any of such entities or by all of them.

(b) Form; required provisions; waiver; projects subject to requirements

(1) An application for a medical facilities project shall be submitted in such form and manner as the Secretary shall by regulation prescribe and shall, except as provided in paragraph (2), set forth—

(A) in the case of a modernization project for a medical facility for continuation of existing health services, a finding by the State Agency of a continued need for such services, and, in the case of any other project for a medical facility, a finding by the State Agency of the need for the new health services to be provided through the medical facility upon completion of the project;

(B) in the case of an application for a grant, assurances satisfactory to the Secretary that (i) the applicant making the application would not be able to complete the project for which the application is submitted without the grant applied for, and (ii) in the case of a project to construct a new medical facility, it would be inappropriate to convert an existing medical facility to provide the services to be provided through the new medical facility;

(C) in the case of a project for the discontinuance of a service or facility or the conversion of a service or a facility, an evaluation of the impact of such discontinuance or conversion on the provision of health care in the health service area in which such service was provided or facility located;

(D) a description of the site of such project;

(E) plans and specifications therefor which meet the requirements of the regulations prescribed under section 300s(2) of this title;

(F) reasonable assurance that title to such site is or will be vested in one or more of the entities filing the application or in a public or other nonprofit entity which is to operate the facility on completion of the project;

(G) reasonable assurance that adequate financial support will be available for the completion of the project and for its maintenance and operation when completed, and, for the purpose of determining if the requirements of this subparagraph are met, Federal assistance provided directly to a medical facility which is located in an area determined by the Secretary to be an urban or rural poverty area or through benefits provided individuals served at such facility shall be considered as financial support;

(H) the type of assistance being sought under part A or B for the project;

(I) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on a project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40, and the Secretary of Labor shall have with respect to such labor standards the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 5 U.S.C. Appendix) and section 3145 of title 40;

(J) in the case of a project for the construction or modernization of an outpatient facility, reasonable assurance that the services of a general hospital will be available to patients at such facility who are in need of hospital care; and

(K) reasonable assurance that at all times after such application is approved (i) the facility or portion thereof to be constructed, modernized, or converted will be made available to all persons residing or employed in the area served by the facility, and (ii) there will be made available in the facility or portion thereof to be constructed, modernized, or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from a financial viewpoint.

(2)(A) The Secretary may waive—

(i) the requirements of subparagraph (D) of paragraph (1) for compliance with modernization and equipment standards prescribed pursuant to section 300s(2) of this title, and

(ii) the requirement of subparagraph (E) of paragraph (1) respecting title to a project site,

in the case of an application for a project described in subparagraph (B) of this paragraph.

(B) A project referred to in subparagraph (A) is a project—

(i) for the modernization of an outpatient medical facility which will provide general purpose health services, which is not part of a hospital, and which will serve a medically underserved population as defined in section 300s–3 of this title or as designated by a health systems agency, and

(ii) for which the applicant seeks a loan under part A the principal amount of which does not exceed $20,000.

(July 1, 1944, ch. 373, title XVI, § 1621, as added Pub. L. 96–79, title II, § 202(b), Oct. 4, 1979, 93 Stat. 633.)

CODIFICATION

In subsec. (b)(1)(I), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934 (40 U.S.C. 276c)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 300s–1 was redesignated 300s–1a and amended as part of the general revision of this subchapter by Pub. L. 96–79.

A prior section 1621 of act July 1, 1944, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2265, which related to the allocation among States of the total amount of principal of loans and loan guarantees, was classified to section 300q–1 of this title, prior to repeal as part of the general revision of this subchapter by Pub. L. 96–79.

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§ 300s–1a. Recovery of expenditures under certain conditions

(a) Persons liable

If any facility with respect to which funds have been paid under this subchapter shall, at any time within 20 years after the completion of construction or modernization—

(1) be sold or transferred to any entity (A) which is not qualified to file an application

under section 300s–1 or 300t–12 of this title or (B) which is not approved as a transferee by the State Agency of the State in which such facility is located, or its successor, or

(2) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility,

the United States shall be entitled to recover, whether from the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount determined under subsection (c) of this section.

(b) Notice to Secretary

The transferor of a facility which is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which is changed as described in subsection (a)(2) of this section, shall provide the Secretary written notice of such sale, transfer, or change not later than the expiration of 10 days from the date on which such sale, transfer, or change occurs.

(c) Amount of recovery; interest; interest period

(1) Except as provided in paragraph (2), the amount the United States shall be entitled to recover under subsection (a) of this section is an amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district for which the facility involved is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the construction or modernization of such project or projects.

(2)(A) After the expiration of—

(i) 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section in the case of a facility which is sold or transferred or the use of which changes after July 18, 1984, or

(ii) thirty days after July 18, 1984, or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984,

the amount which the United States is entitled to recover under paragraph (1) with respect to a facility shall be the amount prescribed by paragraph (1) plus interest, during the period described in subparagraph (B), at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rate.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984, thirty days after such date or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section.[1]

(ii) in the case of a facility with respect to which notice is provided in accordance with subsection (b) of this section, upon the expiration of 180 days after the receipt of such notice, or

(iii) in the case of a facility with respect to which such notice is not provided as prescribed by subsection (b) of this section, on the date of the sale, transfer, or changes of use for which such notice was to be provided,

and ending on the date the amount the United States is entitled to under paragraph (1) is collected.

(d) Waiver

(1) The Secretary may waive the recovery rights of the United States under subsection (a)(1) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that the entity to which the facility was sold or transferred—

(A) has established an irrevocable trust—

(i) in an amount equal to the greater of twice the cost of the remaining obligation of the facility under clause (ii) of section 300s–1(b)(1)(K) of this title or the amount, determined under subsection (c) of this section, that the United States is entitled to recover, and

(ii) which will only be used by the entity to provide the care required by clause (ii) of section 300s–1(b)(1)(K) of this title; and

(B) will meet the obligation of the facility under clause (i) of section 300s–1(b)(1)(K) of this title.

(2) The Secretary may waive the recovery rights of the United States under subsection (a)(2) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that there is good cause for waiving such rights with respect to such facility.

(e) Lien

The right of recovery of the United States under subsection (a) of this section shall not constitute a lien on any facility with respect to which funds have been paid under this subchapter.

(July 1, 1944, ch. 373, title XVI, § 1622, formerly § 1631, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2269; amended Pub. L. 94–278, title XI, § 1106(c), Apr. 22, 1976, 90 Stat. 416; renumbered § 1622 and amended Pub. L. 96–79, title II, §§ 202(b), 203(c), Oct. 4, 1979, 93 Stat. 632, 635; Pub. L. 98–369, div. B. title III, § 2381(b), July 18, 1984, 98 Stat. 1114.)

CODIFICATION

Section was formerly classified to section 300s–1 of this title prior to the general revision of this subchapter by Pub. L. 96–79.

PRIOR PROVISIONS

A prior section 1622 of act July 1, 1944, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2265, was renumbered section 1602 as part of the general revision of this subchapter by Pub. L. 96–79 and is classified to section 300q–2 of this title.

AMENDMENTS

1984—Pub. L. 98–369 amended section generally. Prior to the amendment, section read as follows:

[1] So in original. The period probably should be a comma.

''(a) If any facility constructed, modernized, or converted with funds provided under this subchapter is, at any time within twenty years after the completion of such construction, modernization, or conversion with such funds—

''(1) sold or transferred to any person or entity (A) which is not qualified to file an application under section 300s–1 or 300t–12 of this title or (B) which is not approved as a transferee by the State Agency of the State in which such facility is located, or its successor; or

''(2) not used as a medical facility, and the Secretary has not determined that there is good cause for termination of such use,

the United States shall be entitled to recover from either the transferor or the transferee in the case of a sale or transfer or from the owner in the case of termination of use an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of such facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction, modernization, or conversion of such project or projects. Such right of recovery shall not constitute a lien upon such facility prior to judgment.

''(b) The Secretary may waive the recovery rights of the United States under subsection (a) of this section with respect to a facility in any State—

''(1) if (as determined under regulations prescribed by the Secretary) the amount which could be recovered under subsection (a) of this section with respect to such facility is applied to the development, expansion, or support of another medical facility located in such State which has been approved by the Statewide Health Coordinating Council for such State as consistent with the State health plan established pursuant to section 300m–3(c) of this title; or

''(2) if the Secretary determines, in accordance with regulations, that there is good cause for waiving such requirement with respect to such facility.

If the amount which the United States is entitled to recover under subsection (a) of this section exceeds 90 per centum of the total cost of the construction or modernization project for a facility, a waiver under this subsection shall only apply with respect to an amount which is not more than 90 per centum of such total cost.''

1979—Subsec. (a)(1)(A). Pub. L. 96–79, §203(c), substituted ''section 300s–1 or 300t–12 of this title'' for ''section 300*o*–3 of this title''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

REGULATIONS AND PERSONNEL

Requirements for regulations and personnel to implement this section, see section 2381(c) of Pub. L. 98–369, set out as a note under section 291i of this title.

§ 300s–2. State supervision or control of operations of facilities receiving funds

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee, the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility with respect to which any funds have been or may be expended under this subchapter.

(July 1, 1944, ch. 373, title XVI, §1623, formerly §1632, as added Pub. L. 93–641, §4, Jan. 4, 1975, 88 Stat. 2270; renumbered §1623, Pub. L. 96–79, title II, §202(b), Oct. 4, 1979, 93 Stat. 632.)

§ 300s–3. Definitions

Except as provided in section 300t–12(e) of this title, for purposes of this subchapter—

(1) The term ''hospital'' includes general, tuberculosis, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, facilities related to programs for home health services, self-care units, and central service facilities, operated in connection with hospitals, and also includes education or training facilities for health professonal[1] personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care.

(2) The term ''public health center'' means a publicly owned facility for the provision of public health services, including related publicly owned facilities such as laboratories, clinics, and administrative offices operated in connection with such a facility.

(3) The term ''nonprofit'' as applied to any facility means a facility which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(4) The term ''outpatient medical facility'' means a medical facility (located in or apart from a hospital) for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients)—

(A) which is operated in connection with a hospital,

(B) in which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the State, or in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the State; or

(C) which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which provides to its patients a reasonably full-range of diagnostic and treatment services.

(5) The term ''rehabilitation facility'' means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of—

(A) medical evaluation and services, and

(B) psychological, social, or vocational evaluation and services,

under competent professional supervision, and in the case of which the major portion of the required evaluation and services is furnished within the facility; and either the facility is operated in connection with a hospital, or all medical and related health services are prescribed by, or are under the general direction of, persons licensed to practice medicine or surgery in the State.

(6) The term ''facility for long-term care'' means a facility (including a skilled nursing or intermediate care facility) providing in-patient care for convalescent or chronic disease patients who required skilled nursing or intermediate care and related medical services—

[1] So in original. Probably should be ''professional''.

(A) which is a hospital (other than a hospital primarily for the care and treatment of mentally ill or tuberculous patients) or is operated in connection with a hospital, or

(B) in which such care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine or surgery in the State.

(7) The term ''construction'' means construction of new buildings and initial equipment of such buildings and, in any case in which it will help to provide a service not previously provided in the community, equipment of any buildings; including architects' fees, but excluding the cost of off-site improvements and, except with respect to public health centers, the cost of the acquisition of land.

(8) The term ''cost'' as applied to construction, modernization, or conversion means the amount found by the Secretary to be necessary for construction, modernization, or conversion, respectively, under a project, except that, in the case of a modernization project or a project assisted under part B of this subchapter, such term does not include any amount found by the Secretary to be attributable to expansion of the bed capacity of any facility.

(9) The term ''modernization'' includes the alteration, expansion, major repair (to the extent permitted by regulations), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment of existing buildings.

(10) The term ''title,''[2] when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Secretary finds sufficient to assure for a period of not less than twenty-five years' undisturbed use and possession for the purposes of construction, modernization, or conversion and operation of the project for a period of not less than (A) twenty years in the case of a project assisted under an allotment or grant under this subchapter, or (B) the term of repayment of a loan made or guaranteed under this subchapter in the case of a project assisted by a loan or loan guarantee.

(11) The term ''medical facility'' means a hospital, public health center, outpatient medical facility, rehabilitation facility, facility for long-term care, or other facility (as may be designated by the Secretary) for the provision of health care to ambulatory patients.

(12) The term ''State Agency'' means the State health planning and development agency of a State designated under subchapter XIII of this chapter.[3]

(13) The term ''urban or rural poverty area'' means an urban or rural geographical area (as defined by the Secretary) in which a percentage (as defined by the Secretary in accordance with the next sentence) of the residents of the area have incomes below the poverty level (as defined by the Secretary of Commerce). The percentage referred to in the preceding sentence shall be defined so that the percentage of the population of the United States residing in urban and rural poverty areas is—

(A) not more than the percentage of the total population of the United States with incomes below the poverty level (as so defined) plus five per centum, and

(B) not less than such percentage minus five per centum.

(14) The term ''medically underserved population'' means the population of an urban or rural area designated by the Secretary as an area with a shortage of health facilities or a population group designated by the Secretary as having a shortage of such facilities.

(July 1, 1944, ch. 373, title XVI, § 1624, formerly § 1633, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2270; amended Pub. L. 94–484, title IX, § 905(b)(1), Oct. 12, 1976, 90 Stat. 2325; Pub. L. 95–83, title I, § 106(z), Aug. 1, 1977, 91 Stat. 386; renumbered § 1624 and amended Pub. L. 96–79, title II, §§ 202(b), 203(e)(1), title III, § 301(b), Oct. 4, 1979, 93 Stat. 632, 635, 640.)

REFERENCES IN TEXT

Subchapter XIII of this chapter, referred to in par. (12), was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

CODIFICATION

''Part B of this subchapter'' substituted for ''Part D of this subchapter'' in par. (8) pursuant to the redesignation of former part D of this subchapter as B by Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632.

AMENDMENTS

1979—Pub. L. 96–79, § 301(b), inserted ''Except as provided in section 300t–12(e) of this title''.

Pars. (1) to (16). Pub. L. 96–79, § 203(e)(1), struck out pars. (1) and (2) which defined ''State'' and ''Federal share'' and redesignated pars. (3) through (16) as pars. (1) through (14), respectively.

1977—Par. (14). Pub. L. 95–83 substituted ''subchapter XIII'' for ''subchapter XII''.

1976—Par. (1). Pub. L. 94–484 defined ''State'' to include Northern Mariana Islands.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

§ 300s–4. Reporting and audit requirements for recipients

(a) Filing of financial statement with appropriate State Agency; form and contents

In the case of any facility for which an allotment payment, grant, loan, or loan guarantee has been made under this subchapter, the applicant for such payment, grant, loan, or loan guarantee (or, if appropriate, such other person as the Secretary may prescribe) shall file at least annually with the State Agency for the State in which the facility is located a statement which shall be in such form, and contain such information, as the Secretary may require to accurately show—

(1) the financial operations of the facility, and

(2) the costs of the facility of providing health services in the facility and the charges

[2] So in original. The comma probably should follow the ending quotations.

[3] See References in Text note below.

made by the facility for providing such services,

during the period with respect to which the statement is filed.

(b) Maintenance of records; access to books, etc., for audit and examination

(1) Each entity receiving Federal assistance under this subchapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such entity of the proceeds of such assistance, the total cost of the project in connection with which such assistance is given or used, the amount of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such entities which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the assistance referred to in paragraph (1).

(c) Filing of financial statement with Secretary; form and contents

Each such entity shall file at least annually with the Secretary a statement which shall be in such form, and contain such information, as the Secretary may require to accurately show—

(1) the financial operations of the facility constructed or modernized with such assistance, and

(2) the costs to such facility of providing health services in such facility, and the charges made for such services, during the period with respect to which the statement is filed.

(July 1, 1944, ch. 373, title XVI, § 1625, formerly § 1634, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2273; renumbered § 1625, Pub. L. 96–79, title II, § 202(b), Oct. 4, 1979, 93 Stat. 632.)

PRIOR PROVISIONS

A prior section 1625 of act July 1, 1944, was renumbered section 1610 by Pub. L. 96–79, title II, § 203(b), Oct. 4, 1979, 93 Stat. 635, and is classified to section 300r of this title.

§ 300s–5. Availability of technical and other nonfinancial assistance to eligible applicants

The Secretary shall provide (either through the Department of Health and Human Services or by contract) all necessary technical and other nonfinancial assistance to any public or other entity which is eligible to apply for assistance under this subchapter to assist such entity in developing applications to be submitted to the Secretary under section 300s–1 or 300t–12 of this title. The Secretary shall make every effort to inform eligible applicants of the availability of assistance under this subchapter.

(July 1, 1944, ch. 373, title XVI, § 1626, formerly § 1635, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2273; renumbered § 1626 and amended Pub. L. 96–79, title II, §§ 202(b), 203(f), Oct. 4, 1979, 93 Stat. 632, 635; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1979—Pub. L. 96–79, § 203(f), substituted ''other entity'' for ''other nonprofit entity'' and ''section 300s–1 or 300t–12 of this title'' for ''section 300*o*–3 of this title.''

CHANGE OF NAME

''Department of Health and Human Services'' substituted in text for ''Department of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

§ 300s–6. Enforcement of assurances

The Secretary shall investigate and ascertain, on a periodic basis, with respect to each entity which is receiving financial assistance under this subchapter or which has received financial assistance under subchapter IV of this chapter or this subchapter, the extent of compliance by such entity with the assurances required to be made at the time such assistance was received. If the Secretary finds that such an entity has failed to comply with any such assurance, the Secretary shall report such noncompliance to the health systems agency for the health service area in which such entity is located and the State health planning and development agency of the State in which the entity is located and shall take any action authorized by law (including an action for specific performance brought by the Attorney General upon request of the Secretary) which will effect compliance by the entity with such assurances. An action to effectuate compliance with any such assurance may be brought by a person other than the Secretary only if a complaint has been filed by such person with the Secretary and the Secretary has dismissed such complaint or the Attorney General has not brought a civil action for compliance with such assurance within six months after the date on which the complaint was filed with the Secretary.

(July 1, 1944, ch. 373, title XVI, § 1627, as added Pub. L. 96–79, title II, § 202(c), Oct. 4, 1979, 93 Stat. 634.)

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

PART D—AREA HEALTH SERVICES DEVELOPMENT FUNDS

AMENDMENTS

1979—Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632, redesignated former part F as part D relating to area health services development funds and former part D as part B.

§ 300t. Development grants for health systems agencies

(a) Eligible recipients; purpose of grants

The Secretary shall make in each fiscal year a grant to each health system agency—

(1) with which there is in effect a designation agreement under section 300*l*–4(c)[1] of this title,

(2) which has in effect an HSP and AIP reviewed by the Statewide Health Coordinating Council, and

(3) which, as determined under the review made under section 300n–4(c)[1] of this title, is organized and operated in the manner prescribed by section 300*l*–1(b)[1] of this title and is performing its functions under section 300*l*–2[1] of this title in a manner satisfactory to the Secretary,

to enable the agency to establish and maintain an Area Health Service Development Fund from which it may make grants and enter into contracts in accordance with section 300*l*–2(c)(3)[1] of this title.

(b) Determination of amounts; maximum amounts

(1) Except as provided in paragraph (2), the amount of any grant under subsection (a) of this section shall be determined by the Secretary after taking into consideration the population of the health service area for which the health systems agency is designated, the average family income of the area, and the supply of health services in the area.

(2) The amount of any grant under subsection (a) of this section to a health systems agency for any fiscal year may not exceed the product of $1 and the population of the health service area for which such agency is designated.

(c) Applications; submission and approval as prerequisite; form and contents

No grant may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and contain such information as the Secretary may require.

(d) Authorization of appropriations

For the purpose of making payments pursuant to grants under subsection (a) of this section, there are authorized to be appropriated $25,000,000 for the fiscal year ending June 30, 1975, $75,000,000 for the fiscal year ending June 30, 1976, $120,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, $20,000,000 for the fiscal year ending September 30, 1981, and $30,000,000 for the fiscal year ending September 30, 1982.

(July 1, 1944, ch. 373, title XVI, § 1640, as added Pub. L. 93–641, § 4, Jan. 4, 1975, 88 Stat. 2273; amended Pub. L. 95–83, title I, § 103(c), Aug. 1, 1977, 91 Stat. 383; Pub. L. 96–79, title I, § 127(e), Oct. 4, 1979, 93 Stat. 629.)

REFERENCES IN TEXT

Sections 300*l*–2, 300*l*–4, and 300n–4 of this title, referred to in subsec. (a), were repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 300*l*–1 of this title, referred to in subsec. (a)(3), was in the original a reference to section 1512 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 102–531, title III, § 307, Oct. 27, 1992, 106 Stat. 3495, enacted section 1502A of act July 1, 1944, which is classified to section 300*l*–1 of this title.

AMENDMENTS

1979—Subsec. (d). Pub. L. 96–79 authorized appropriations of $20,000,000 for fiscal year ending Sept. 30, 1981, and $30,000,000 for fiscal year ending Sept. 30, 1982.

1977—Subsec. (d). Pub. L. 95–83 substituted ''each for the fiscal years ending September 30, 1977, and September 30, 1978'' for ''for the fiscal year ending June 30, 1977''.

PART E—PROGRAM TO ASSIST AND ENCOURAGE VOLUNTARY DISCONTINUANCE OF UNNEEDED HOSPITAL SERVICES AND CONVERSION OF UNNEEDED HOSPITAL SERVICES TO OTHER HEALTH SERVICES NEEDED BY COMMUNITY

AMENDMENTS

1979—Pub. L. 96–79, title II, § 202(a), title III, § 301(a), Oct. 4, 1979, 93 Stat. 632, 636, added part E relating to program to assist and encourage voluntary discontinuance of unneeded hospital services and conversion of unneeded hospital services to other health services needed by the community and redesignated former part E as part C.

§ 300t–11. Grants and assistance for establishment of program

The Secretary shall, by April 1, 1980, establish a program under which—

(1) grants and technical assistance may be provided to hospitals in operation on October 4, 1979, (A) for the discontinuance of unneeded hospital services, and (B) for the conversion of unneeded hospital services to other health services needed by the community; and

(2) grants may be provided to State Agencies designated under section 300m(b)(3)[1] of this title for reducing excesses in resources and facilities of hospitals.

(July 1, 1944, ch. 373, title XVI, § 1641, as added Pub. L. 96–79, title III, § 301(a), Oct. 4, 1979, 93 Stat. 636.)

REFERENCES IN TEXT

Section 300m of this title, referred to in par. (2), was in the original a reference to section 1521 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 410, enacted section 1503 of act July 1, 1944, which is classified to section 300m of this title.

UNNEEDED HOSPITAL SERVICES; STUDY AND REPORT OF EFFECT OF ELIMINATION

Section 302 of Pub. L. 96–79, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which provided that the Secretary of Health and Human Services conduct a study of the effect on the elimination of unneeded hospital services made during the two fiscal year period ending Sept. 30, 1981, by the program authorized by this part, and not later than Jan. 1, 1982, report the results of the study to Congress, was repealed by Pub. L. 97–414, § 9(h), Jan. 4, 1983, 96 Stat. 2064.

§ 300t–12. Grants for discontinuance and conversion

(a) Terms and conditions; determination of amount; authorized uses

(1) A grant to a hospital under the program shall be subject to such terms and conditions as

[1] See References in Text note below.

[1] See References in Text note below.

the Secretary may by regulation prescribe to assure that the grant is used for the purpose for which it was made.

(2) The amount of any such grant shall be determined by the Secretary. The recipient of such a grant may use the grant—

(A) in the case of a grantee which discontinues the provision of all hospital services or all inpatient hospital services or an identifiable part of a hospital facility which provides inpatient hospital services, for the liquidation of the outstanding debt on the facilities of the grantee used for the provision of the services or for the liquidation of the outstanding debt of the grantee on such identifiable part;

(B) in the case of a grantee which in discontinuing the provision of an inpatient hospital service converts or proposes to convert an identifiable part of a hospital facility used in the provision of the discontinued service to the delivery of other health services, for the planning, development (including construction and acquisition of equipment), and delivery of the health service;

(C) to provide reasonable termination pay for personnel of the grantee who will lose employment because of the discontinuance of hospital services made by the grantee, retraining of such personnel, assisting such personnel in securing employment, and other costs of implementing arrangements described in subsection (c) of this section; and

(D) for such other costs which the Secretary determines may need to be incurred by the grantee in discontinuing hospital services.

(b) Application; submission and approval; form; required provisions; review by health systems agency; basis of State Agency's recommendations; urban or rural poverty population considerations; approval by Secretary; restrictions and special considerations

(1) No grant may be made to a hospital unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form and submitted in such manner as the Secretary may prescribe and shall include—

(A) a description of each service to be discontinued and, if a part of a hospital is to be discontinued or converted to another use in connection with such discontinuance, a description of such part;

(B) an evaluation of the impact of such discontinuance and conversion on the provision of health care in the health service area in which such service is provided;

(C) an estimate of the change in the applicant's costs which will result from such discontinuance and conversion; and

(D) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on a project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40, and the Secretary of Labor shall have with respect to such labor standards the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 5 U.S.C. Appendix) and section 3145 of title 40;

(E) such other information as the Secretary may require.

(2)(A) The health systems agency for the health service area in which is located a hospital applying for a grant under the program shall (i) in making the review of the applicant's application under section 300*l*–2(e)[1] of this title, determine the need for each service or part proposed to be discontinued by the applicant, (ii) in the case of an application for the conversion of a facility, determine the need for each service which will be provided as a result of the conversion, and (iii) make a recommendation to the State Agency for the State in which the applicant is located respecting approval by the Secretary of the applicant's application.

(B) A State Agency which has received a recommendation from a health systems agency under subparagraph (A) respecting an application shall, after consideration of such recommendation, make a recommendation to the Secretary respecting the approval by the Secretary of the application. A State Agency's recommendation under this subparagraph respecting the approval of an application (i) shall be based upon (I) the need for each service or part proposed to be discontinued by the applicant, (II) in the case of an application for the conversion of a facility, the need for each service which will be provided as a result of the conversion, and (III) such other criteria as the Secretary may prescribe, and (ii) shall be accompanied by the health systems agency's recommendation made with respect to the approval of the application.

(C) In determining, under subparagraphs (A) and (B), the need for the service (or services) or part proposed to be discontinued or converted by an applicant for a grant, a health systems agency and State Agency shall give special consideration to the unmet needs and existing access patterns of urban or rural poverty populations.

(3)(A) The Secretary may not approve an application of a hospital for a grant—

(i) if a State Agency recommended that the application not be approved, or

(ii) if the Secretary is unable to determine that the cost of providing inpatient health services in the health service area in which the applicant is located will be less than if the inpatient health services proposed to be discontinued were not discontinued.

(B) In considering applications of hospitals for grants the Secretary shall consider the recommendations of health systems agencies and State Agencies and shall give special consideration to applications (i) which will assist health systems agencies and State Agencies to meet the goals in their health systems plans and State health plans, or (ii) which will result in the greatest reduction in hospital costs within a health service area.

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[1] See References in Text note below.

(c) Certification of protective arrangements for employment benefits and interests; guidelines; satisfactory arrangement determinations

(1) Except as provided in paragraph (3), the Secretary may not approve an application submitted under subsection (b) of this section unless the Secretary of Labor has certified that fair and equitable arrangements have been made to protect the interests of employees affected by the discontinuance of services against a worsening of their positions with respect to their employment, including arrangements to preserve the rights of employees under collective-bargaining agreements, continuation of collective-bargaining rights consistent with the provisions of the National Labor Relations Act [29 U.S.C. 151 et seq.], reassignment of affected employees to other jobs, retraining programs, protecting pension, health benefits, and other fringe benefits of affected employees, and arranging adequate severance pay, if necessary.

(2) The Secretary of Labor shall by regulation prescribe guidelines for arrangements for the protection of the interests of employees affected by the discontinuance of hospital services. The Secretary of Labor shall consult with the Secretary of Health and Human Services in the promulgation of such guidelines. Such guidelines shall first be promulgated not later than the promulgation of regulations by the Secretary for the administration of the grants authorized by section 300t–11 of this title.

(3) The Secretary of Labor shall review each application submitted under subsection (b) of this section to determine if the arrangements described in paragraph (1) have been made and if they are satisfactory and shall notify the Secretary respecting his determination. Such review shall be completed within—

(A) ninety days from the date of the receipt of the application from the Secretary of Health and Human Services, or

(B) one hundred and twenty days from such date if the Secretary of Labor has by regulation prescribed the circumstances under which the review will require at least one hundred and twenty days.

If within the applicable period, the Secretary of Labor does not notify the Secretary of Health and Human Services respecting his determination, the Secretary of Health and Human Services shall review the application to determine if the applicant has made the arrangements described in paragraph (1) and if such arrangements are satisfactory. The Secretary may not approve the application unless he determines that such arrangements have been made and that they are satisfactory.

(d) Records and audits requirements

The records and audits requirements of section 292e[2] of this title shall apply with respect to grants made under subsection (a) of this section.

(e) "Hospital" defined

For purposes of this part, the term ''hospital'' means, with respect to any fiscal year, an institution (including a distinct part of an institution participating in the programs established under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.])—

(1) which satisfies paragraphs (1) and (7) of section 1861(e) of such Act [42 U.S.C. 1395x(e)],

(2) imposes charges or accepts payments for services provided to patients, and

(3) the average duration of a patient's stay in which was thirty days or less in the preceding fiscal year,

but such term does not include a Federal hospital or a psychiatric hospital (as described in section 1861(f)(1) of the Social Security Act [42 U.S.C. 1395x(f)(1)]).

(July 1, 1944, ch. 373, title XVI, § 1642, as added Pub. L. 96–79, title III, § 301(a), Oct. 4, 1979, 93 Stat. 637; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Section 300*l*–2, of this title, referred to in subsec. (b)(2)(A), was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

The National Labor Relations Act, referred to in subsec. (c)(1), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

Section 292e of this title, referred to in subsec. (d), was in the original a reference to section 705 of act July 1, 1944. Section 705 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 705 of act July 1, 1944, relating to eligibility of borrowers and terms of insured loans, and a new section 706, relating to certificates of loan insurance, which are classified to sections 292d and 292e, respectively, of this title.

The Social Security Act, referred to in subsec. (e), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In subsec. (b)(1)(D), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934 (40 U.S.C. 276c)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (c)(2) and (3), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 300t–13. Grants to States for reduction of excess hospital capacity

(a) "Excess hospital capacity" defined; particular activities

For the purpose of demonstrating the effectiveness of various means for reducing excesses in resources and facilities of hospitals (referred to in this section as ''excess hospital capacity''), the Secretary may make grants to State Agen-

[2] See References in Text note below.

cies designated under section 300m(b)(3)[1] of this title to assist such Agencies in—

(1) identifying (by geographic region or by health service) excess hospital capacity,

(2) developing programs to inform the public of the costs associated with excess hospital capacity,

(3) developing programs to reduce excess hospital capacity in a manner which will produce the greatest savings in the cost of health care delivery,

(4) developing means to overcome barriers to the reduction of excess hospital capacity,

(5) in planning, evaluating, and carrying out programs to decertify health care facilities providing health services that are not appropriate, and

(6) any other activity related to the reduction of excess hospital capacity.

(b) Terms and conditions

Grants under subsection (a) of this section shall be made on such terms and conditions as the Secretary may prescribe.

(July 1, 1944, ch. 373, title XVI, § 1643, as added Pub. L. 96–79, title III, § 301(a), Oct. 4, 1979, 93 Stat. 639.)

REFERENCES IN TEXT

Section 300m of this title, referred to in subsec. (a), was in the original a reference to section 1521 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 410, enacted section 1503 of act July 1, 1944, which is classified to section 300m of this title.

§ 300t–14. Authorization of appropriations

To make payments under grants under sections 300t–12 and 300t–13 of this title there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1980, $50,000,000 for the fiscal year ending September 30, 1981, and $75,000,000 for the fiscal year ending September 30, 1982, except that in any fiscal year not more than 10 percent of the amount appropriated under this section may be obligated for grants under section 300t–13 of this title.

(July 1, 1944, ch. 373, title XVI, § 1644, as added Pub. L. 96–79, title III, § 301(a), Oct. 4, 1979, 93 Stat. 640.)

SUBCHAPTER XV—HEALTH INFORMATION AND HEALTH PROMOTION

§ 300u. General authority of Secretary

(a) Development, support, and implementation of programs, activities, etc.

The Secretary shall—

(1) formulate national goals, and a strategy to achieve such goals, with respect to health information and health promotion, preventive health services, and education in the appropriate use of health care;

(2) analyze the necessary and available resources for implementing the goals and strategy formulated pursuant to paragraph (1), and recommend appropriate educational and quality assurance policies for the needed manpower resources identified by such analysis;

(3) undertake and support necessary activities and programs to—

(A) incorporate appropriate health education components into our society, especially into all aspects of education and health care,

(B) increase the application and use of health knowledge, skills, and practices by the general population in its patterns of daily living, and

(C) establish systematic processes for the exploration, development, demonstration, and evaluation of innovative health promotion concepts;

(4) undertake and support research and demonstrations respecting health information and health promotion, preventive health services, and education in the appropriate use of health care;

(5) undertake and support appropriate training in, and undertake and support appropriate training in[1] the operation of programs concerned with, health information and health promotion, preventive health services, and education in the appropriate use of health care;

(6) undertake and support, through improved planning and implementation of tested models and evaluation of results, effective and efficient programs respecting health information and health promotion, preventive health services, and education in the appropriate use of health care;

(7)(A) develop model programs through which employers in the public sector, and employers that are small businesses (as defined in section 632 of title 15), can provide for their employees a program to promote healthy behaviors and to discourage participation in unhealthy behaviors;

(B) provide technical assistance to public and private employers in implementing such programs (including private employers that are not small businesses and that will implement programs other than the programs developed by the Secretary pursuant to subparagraph (A)); and

(C) in providing such technical assistance, give preference to small businesses;

(8) foster the exchange of information respecting, and foster cooperation in the conduct of, research, demonstration, and training programs respecting health information and health promotion, preventive health services, and education in the appropriate use of health care;

(9) provide technical assistance in the programs referred to in paragraph (8);

(10) use such other authorities for programs respecting health information and health promotion, preventive health services, and education in the appropriate use of health care as are available and coordinate such use with programs conducted under this subchapter; and

(11) establish in the Office of the Assistant Secretary for Health an Office of Disease Prevention and Health Promotion, which shall—

[1] See References in Text note below.

[1] So in original.

(A) coordinate all activities within the Department which relate to disease prevention, health promotion, preventive health services, and health information and education with respect to the appropriate use of health care;

(B) coordinate such activities with similar activities in the private sector;

(C) establish a national information clearinghouse to facilitate the exchange of information concerning matters relating to health information and health promotion, preventive health services (which may include information concerning models and standards for insurance coverage of such services), and education in the appropriate use of health care, to facilitate access to such information, and to assist in the analysis of issues and problems relating to such matters; and

(D) support projects, conduct research, and disseminate information relating to preventive medicine, health promotion, and physical fitness and sports medicine.

The Secretary shall appoint a Director for the Office of Disease Prevention and Health Promotion established pursuant to paragraph (11) of this subsection. The Secretary shall administer this subchapter in cooperation with health care providers, educators, voluntary organizations, businesses, and State and local health agencies in order to encourage the dissemination of health information and health promotion activities.

(b) Authorization of appropriations

For the purpose of carrying out this section and sections 300u–1 through 300u–4 of this title, there are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 2002.

(c) Application; submission and approval as prerequisite; form and content

No grant may be made or contract entered into under this subchapter unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and contain such information as the Secretary may prescribe. Contracts may be entered into under this subchapter without regard to section 3324(a) and (b) of title 31 and section 5 of title 41.

(July 1, 1944, ch. 373, title XVII, § 1701, as added Pub. L. 94–317, title I, § 102, June 23, 1976, 90 Stat. 695; amended Pub. L. 96–32, § 7(n), July 10, 1979, 93 Stat. 85; Pub. L. 96–76, title II, § 209, Sept. 29, 1979, 93 Stat. 584; Pub. L. 98–551, § 2(a), Oct. 30, 1984, 98 Stat. 2815; Pub. L. 100–607, title III, § 312(a)(1), (b)(1), (c), Nov. 4, 1988, 102 Stat. 3113, 3114; Pub. L. 102–168, title I, § 101, Nov. 26, 1991, 105 Stat. 1102; Pub. L. 102–531, title III, § 311(b)(1), Oct. 27, 1992, 106 Stat. 3503; Pub. L. 105–392, title IV, § 414, Nov. 13, 1998, 112 Stat. 3590.)

CODIFICATION

In subsec. (c), ''section 3324(a) and (b) of title 31'' substituted for ''section 3648 of the Revised Statutes (31 U.S.C. 529)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–392 substituted ''2002'' for ''1996''.

1992—Subsec. (a)(11)(C). Pub. L. 102–531 substituted ''preventive health services (which may include information concerning models and standards for insurance coverage of such services),'' for ''preventive health services,''.

1991—Subsec. (b). Pub. L. 102–168 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''To carry out sections 300u through 300u–4 of this title, there are authorized to be appropriated $9,000,000 for the fiscal year ending September 30, 1985, $9,500,000 for the fiscal year ending September 30, 1986, $10,000,000 for the fiscal year ending September 30, 1987, and $10,000,000 for each of the fiscal years 1989 through 1991.''

1988—Subsec. (a). Pub. L. 100–607, § 312(c)(2), in concluding provisions, struck out ''The Secretary shall administer this subchapter in a manner consistent with the national health priorities set forth in section 300k–2 of this title.'' before ''The Secretary shall appoint'', and substituted ''paragraph (11)'' for ''paragraph (10)''.

Subsec. (a)(7), (8). Pub. L. 100–607, § 312(b)(1), added par. (7) and redesignated former par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (a)(9). Pub. L. 100–607, § 312(c)(1), substituted ''paragraph (8)'' for ''paragraph (7)''.

Pub. L. 100–607, § 312(b)(1)(A), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Subsec. (a)(10), (11). Pub. L. 100–607, § 312(b)(1)(A), redesignated pars. (9) and (10) as (10) and (11), respectively.

Subsec. (b). Pub. L. 100–607, § 312(a)(1), substituted ''sections 300u through 300u–4 of this title'' for ''this subchapter'', struck out ''and'' after ''September 30, 1986,'', and inserted '', and $10,000,000 for each of the fiscal years 1989 through 1991''.

1984—Subsec. (a). Pub. L. 98–551, § 2(a)(1), added par. (10), and in provisions following par. (10) struck out ''and with health planning and resource development activities undertaken under subchapters XIII and XIV of this chapter'' after ''section 300k–2 of this title'' and inserted provisions for appointment of a Director for Office of Disease Prevention and Health Promotion and cooperation in administration of this subchapter.

Subsec. (b). Pub. L. 98–551, § 2(a)(2), substituted ''To carry out this subchapter, there are authorized to be appropriated $9,000,000 for the fiscal year ending September 30, 1985, $9,500,000 for the fiscal year ending September 30, 1986, and $10,000,000 for the fiscal year ending September 30, 1987'' for ''For payments under grants and contracts under this subchapter (other than grants and contracts under sections 300u–6, 300u–7, and 300u–8 of this title) there are authorized to be appropriated $7,000,000 for the fiscal year ending September 30, 1977, $10,000,000 for the fiscal year ending September 30, 1978, $14,000,000 for the fiscal year ending September 30, 1979, $14,000,000 for the fiscal year ending September 30, 1980, $15,000,000 for the fiscal year ending September 30, 1981, and $16,000,000 for the fiscal year ending September 30, 1982.''

1979—Subsec. (b). Pub. L. 96–76 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1980, Sept. 30, 1981, and Sept. 30, 1982.

Pub. L. 96–32 inserted ''(other than grants and contracts under sections 300u–6, 300u–7, and 300u–8 of this title)'' after ''grants and contracts under this subchapter''.

SHORT TITLE

For short title of title I of Pub. L. 94–317, which enacted this subchapter as the ''National Consumer Health Information and Health Promotion Act of 1976'', see section 101 of Pub. L. 94–317, set out as a Short Title of 1976 Amendments note under section 201 of this title.

MODEL PROGRAMS FOR EMPLOYEE HEALTH PROMOTION AND DISEASE PREVENTION; DEVELOPMENT COMPLETION

Section 312(b)(2) of Pub. L. 100–607 required Secretary of Health and Human Services, not later than 18

months after Nov. 4, 1988, to complete development of model programs required in section 1701(a)(7)(A) of the Public Health Service Act (subsec. (a)(7)(A) of this section).

EXECUTIVE ORDER NO. 12345

Ex. Ord. No. 12345, Feb. 2, 1982, 47 F.R. 5189, as amended by Ex. Ord. No. 12539, Dec. 3, 1985, 50 F.R. 49829; Ex. Ord. No. 12694, Oct. 11, 1989, 54 F.R. 42285; Ex. Ord. No. 12709, Apr. 4, 1990, 55 F.R. 13097; Ex. Ord. No. 13138, §8, Sept. 30, 1999, 64 F.R. 53881, which provided for the Secretary of Health and Human Services to develop and coordinate a national program for physical fitness and sports, continued the President's Council on Physical Fitness and Sports, and provided for termination of the Council on Dec. 31, 1982, was revoked by Ex. Ord. No. 13265, §5(c), June 6, 2002, 67 F.R. 39842, set out below.

EX. ORD. NO. 13265. PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS

Ex. Ord. No. 13265, June 6, 2002, 67 F.R. 39841, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to expand the executive branch's program for physical fitness and sports and establish the President's Council on Physical Fitness and Sports (the ''Council''), it is hereby ordered as follows:

SECTION 1. *Purpose.* The Secretary of Health and Human Services (Secretary) shall, in carrying out his responsibilities for public health and human services, develop and coordinate a national program to enhance physical activity and sports participation. Through this program, the Secretary shall seek to:

(a) expand national interest in and awareness of the benefits of regular physical activity and active sports participation;

(b) stimulate and enhance coordination of programs within and among the private and public sectors that promote participation in, and safe and easy access to, physical activity and sports;

(c) expand availability of quality information and guidance regarding physical activity and sports participation;

(d) integrate physical activity into a broader health-promotion and disease-prevention effort through Federal agencies and the private sector; and

(e) target all Americans, with particular emphasis on children and adolescents, as well as populations or communities in which specific risks or disparities in participation in, access to, or knowledge about the benefits of physical activity have been identified.

SEC. 2. *The President's Council on Physical Fitness and Sports.*

(a) There is hereby established the President's Council on Physical Fitness and Sports.

(b) The Council shall be composed of up to 20 members appointed by the President. The President may designate one or more members to be Chair or Vice Chair. Each member shall serve for a term of 2 years and may continue to serve after the expiration of that term until a successor is appointed.

SEC. 3. *Functions of the Council.*

(a) The Council shall advise the President, through the Secretary, concerning progress made in carrying out the provisions of this order and shall recommend to the President, through the Secretary, actions to accelerate progress.

(b) The Council shall advise the Secretary on ways to enhance opportunities for participation in physical fitness and sports. Recommendations may address, but are not necessarily limited to, public awareness campaigns, Federal, State, and local physical activity initiatives, and partnership opportunities between public- and private-sector health-promotion entities.

(c) The Council shall function as a liaison to relevant State, local, and private entities in order to advise the Secretary regarding opportunities to extend and improve physical activity programs and services at both the local and national levels.

(d) The Council shall monitor the need for the enhancement of programs and educational and promotional materials sponsored, overseen, or disseminated by the Council, and shall advise the Secretary as necessary concerning such need.

SEC. 4. *Administration.*

(a) Each Federal agency shall, to the extent permitted by law and subject to available funds, furnish such information and assistance to the Secretary and the Council as they may request.

(b) The members of the Council shall serve without compensation for their work on the Council. Members of the Council may, however, receive travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government (5 U.S.C. 5701–5707).

(c) To the extent permitted by law, the Secretary shall furnish the Council with necessary staff, supplies, facilities, and other administrative services. The expenses of the Council shall be paid from funds available to the Secretary.

(d) The Secretary shall appoint an Executive Director of the Council who shall serve as a liaison to the Secretary and the White House on matters and activities pertaining to the Council.

(e) The Council may establish subcommittees as appropriate to aid in its work. Such subcommittees shall meet on a voluntary basis and be defined by objectives established in coordination with and agreed upon by the Secretary and the President.

(f) The seal prescribed by Executive Order 10830 of July 24, 1959, as amended, shall be the seal of the President's Council on Physical Fitness and Sports established by this order.

SEC. 5. *General Provisions.*

(a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the Administration of any portion of this order, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Secretary in accordance with the guidelines and procedures issued by the Administrator of General Services.

(b) In accordance with the Act, the Council shall terminate 2 years from the date of this order, unless extended by the President.

(c) Executive Order 12345 of February 2, 1982, as amended, is revoked.

GEORGE W. BUSH.

EXTENSION OF TERM OF PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1993, by Ex. Ord. No.

12774, Sept. 27, 1991, 56 F.R. 49835, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1995, by Ex. Ord. No. 12869, Sept. 30, 1993, 58 F.R. 51751, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1999, by Ex. Ord. No. 13062, Sept. 29, 1997, 62 F.R. 51755, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

EX. ORD. NO. 13266. ACTIVITIES TO PROMOTE PERSONAL FITNESS

Ex. Ord. No. 13266, June 20, 2002, 67 F.R. 42467, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the efficiency and coordination of Federal policies related to personal fitness of the general public, it is hereby ordered as follows:

SECTION 1. *Policy*. This order is issued consistent with the following findings and principles:

(a) Growing scientific evidence indicates that an increasing number of Americans are suffering from negligible physical activity, poor dietary habits, insufficient utilization of preventive health screenings, and engaging in risky behaviors such as abuse of alcohol, tobacco, and drugs.

(b) Existing information on the importance of appropriate physical activity, diet, preventive health screenings, and avoiding harmful substances is often not received by the public, or, if received, is not acted on sufficiently.

(c) Individuals of all ages, locations, and levels of personal fitness can benefit from some level of appropriate physical activity, dietary guidance, preventive health screening, and making healthy choices.

(d) While personal fitness is an individual responsibility, the Federal Government may, within the authority and funds otherwise available, expand the opportunities for individuals to empower themselves to improve their general health. Such opportunities may include improving the flow of information about personal fitness, assisting in the utilization of that information, increasing the accessibility of resources for physical activity, and reducing barriers to achieving good personal fitness.

SEC. 2. *Agency Responsibilities in Promoting Personal Fitness*.

(a) The Secretaries of Agriculture, Education, Health and Human Services (HHS), Housing and Urban Development, Interior, Labor, Transportation, and Veterans Affairs, and the Director of the Office of National Drug Policy shall review and evaluate the policies, programs, and regulations of their respective departments and offices that in any way relate to the personal fitness of the general public. Based on that review, the Secretaries and the Director shall determine whether existing policies, programs, and regulations of their respective departments and offices should be modified or whether new policies or programs could be implemented. These new policies and programs shall be consistent with otherwise available authority and appropriated funds, and shall improve the Federal Government's assistance of individuals, private organizations, and State and local governments to (i) increase physical activity; (ii) promote responsible dietary habits; (iii) increase utilization of preventive health screenings; and (iv) encourage healthy choices concerning alcohol, tobacco, drugs, and safety among the general public.

(b) Each department and office included in section 2(a) shall report to the President, through the Secretary of Health and Human Services, its proposed actions within 90 days of the date of this order.

(c) There shall be a Personal Fitness Interagency Working Group (Working Group), composed of the Secretaries or Director of the departments and office included in section 2(a) (or their designees) and chaired by the Secretary of HHS or his designee. In order to improve efficiency through information sharing and to eliminate waste and overlap, the Working Group shall work to ensure the cooperation of Federal agencies in coordinating Federal personal fitness activities. The Working Group shall meet subject to the call of the Chair, but not less than twice a year. The Department of Health and Human Services shall provide such administrative support to the Working Group as the Secretary of HHS deems necessary. Each member of the Working Group shall be a full-time or permanent part-time officer or employee of the Federal Government.

SEC. 3. *General Provisions*. This order is intended only to improve the internal management of the executive branch and it is not intended to, and does not, create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies or entities, its officers or employees, or any person.

GEORGE W. BUSH.

EX. ORD. NO. 13335. INCENTIVES FOR THE USE OF HEALTH INFORMATION TECHNOLOGY AND ESTABLISHING THE POSITION OF THE NATIONAL HEALTH INFORMATION TECHNOLOGY COORDINATOR

Ex. Ord. No. 13335, Apr. 27, 2004, 69 F.R. 24059, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to provide leadership for the development and nationwide implementation of an interoperable health information technology infrastructure to improve the quality and efficiency of health care, it is hereby ordered as follows:

SECTION 1. *Establishment*. (a) The Secretary of Health and Human Services (Secretary) shall establish within the Office of the Secretary the position of National Health Information Technology Coordinator.

(b) The National Health Information Technology Coordinator (National Coordinator), appointed by the Secretary in consultation with the President or his designee, will report directly to the Secretary.

(c) The Secretary shall provide the National Coordinator with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) The Secretary shall ensure that the National Coordinator begins operations within 90 days of the date of this order.

SEC. 2. *Policy*. In fulfilling its responsibilities, the work of the National Coordinator shall be consistent

with a vision of developing a nationwide interoperable health information technology infrastructure that:

(a) Ensures that appropriate information to guide medical decisions is available at the time and place of care;

(b) Improves health care quality, reduces medical errors, and advances the delivery of appropriate, evidence-based medical care;

(c) Reduces health care costs resulting from inefficiency, medical errors, inappropriate care, and incomplete information;

(d) Promotes a more effective marketplace, greater competition, and increased choice through the wider availability of accurate information on health care costs, quality, and outcomes;

(e) Improves the coordination of care and information among hospitals, laboratories, physician offices, and other ambulatory care providers through an effective infrastructure for the secure and authorized exchange of health care information; and

(f) Ensures that patients' individually identifiable health information is secure and protected.

SEC. 3. *Responsibilities of the National Health Information Technology Coordinator*. (a) The National Coordinator shall, to the extent permitted by law, develop, maintain, and direct the implementation of a strategic plan to guide the nationwide implementation of interoperable health information technology in both the public and private health care sectors that will reduce medical errors, improve quality, and produce greater value for health care expenditures. The National Coordinator shall report to the Secretary regarding progress on the development and implementation of the strategic plan within 90 days after the National Coordinator begins operations and periodically thereafter. The plan shall:

(i) Advance the development, adoption, and implementation of health care information technology standards nationally through collaboration among public and private interests, and consistent with current efforts to set health information technology standards for use by the Federal Government;

(ii) Ensure that key technical, scientific, economic, and other issues affecting the public and private adoption of health information technology are addressed;

(iii) Evaluate evidence on the benefits and costs of interoperable health information technology and assess to whom these benefits and costs accrue;

(iv) Address privacy and security issues related to interoperable health information technology and recommend methods to ensure appropriate authorization, authentication, and encryption of data for transmission over the Internet;

(v) Not assume or rely upon additional Federal resources or spending to accomplish adoption of interoperable health information technology; and

(vi) Include measurable outcome goals.

(b) The National Coordinator shall:

(i) Serve as the Secretary's principal advisor on the development, application, and use of health information technology, and direct the Department of Health and Human Service's health information technology programs;

(ii) Ensure that health information technology policy and programs of the Department of Health and Human Services (HHS) are coordinated with those of relevant executive branch agencies (including Federal commissions) with a goal of avoiding duplication of efforts and of helping to ensure that each agency undertakes activities primarily within the areas of its greatest expertise and technical capability;

(iii) To the extent permitted by law, coordinate outreach and consultation by the relevant executive branch agencies (including Federal commissions) with public and private parties of interest, including consumers, providers, payers, and administrators; and

(iv) At the request of the Office of Management and Budget, provide comments and advice regarding specific Federal health information technology programs.

SEC. 4. *Reports*. To facilitate the development of interoperable health information technologies, the Secretary of Health and Human Services shall report to the President within 90 days of this order on options to provide incentives in HHS programs that will promote the adoption of interoperable health information technology. In addition, the following reports shall be submitted to the President through the Secretary:

(a) The Director of the Office of Personnel Management shall report within 90 days of this order on options to provide incentives in the Federal Employee Health Benefit Program that will promote the adoption of interoperable health information technology; and

(b) Within 90 days, the Secretary of Veterans Affairs and the Secretary of Defense shall jointly report on the approaches the Departments could take to work more actively with the private sector to make their health information systems available as an affordable option for providers in rural and medically underserved communities.

SEC. 5. *Administration and Judicial Review*. (a) The actions directed by this order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

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

GEORGE W. BUSH.

§ 300u–1. Grants and contracts for research programs; authority of Secretary; review of applications; additional functions; periodic public survey

(a) The Secretary is authorized to conduct and support by grant or contract (and encourage others to support) research in health information and health promotion, preventive health services, and education in the appropriate use of health care. Applications for grants and contracts under this section shall be subject to appropriate peer review. The Secretary shall also—

(1) provide consultation and technical assistance to persons who need help in preparing research proposals or in actually conducting research;

(2) determine the best methods of disseminating information concerning personal health behavior, preventive health services and the appropriate use of health care and of affecting behavior so that such information is applied to maintain and improve health, and prevent disease, reduce its risk, or modify its course or severity;

(3) determine and study environmental, occupational, social, and behavioral factors which affect and determine health and ascertain those programs and areas for which educational and preventive measures could be implemented to improve health as it is affected by such factors;

(4) develop (A) methods by which the cost and effectiveness of activities respecting health information and health promotion, preventive health services, and education in the appropriate use of health care, can be measured, including methods for evaluating the effectiveness of various settings for such activities and the various types of persons engaged in such activities, (B) methods for reimbursement or payment for such activities, and (C)

models and standards for the conduct of such activities, including models and standards for the education, by providers of institutional health services, of individuals receiving such services respecting the nature of the institutional health services provided the individuals and the symptoms, signs, or diagnoses which led to provision of such services;

(5) develop a method for assessing the cost and effectiveness of specific medical services and procedures under various conditions of use, including the assessment of the sensitivity and specificity of screening and diagnostic procedures; and

(6) enumerate and assess, using methods developed under paragraph (5), preventive health measures and services with respect to their cost and effectiveness under various conditions of use (which measures and services may include blood pressure screening, cholesterol screening and control, smoking cessation programs, substance abuse programs, cancer screening, dietary and nutritional counseling, diabetes screening and education, intraocular pressure screening, and stress management).

(b) The Secretary shall make a periodic survey of the needs, interest, attitudes, knowledge, and behavior of the American public regarding health and health care. The Secretary shall take into consideration the findings of such surveys and the findings of similar surveys conducted by national and community health education organizations, and other organizations and agencies for formulating policy respecting health information and health promotion, preventive health services, and education in the appropriate use of health care.

(July 1, 1944, ch. 373, title XVII, § 1702, as added Pub. L. 94–317, title I, § 102, June 23, 1976, 90 Stat. 696; amended Pub. L. 102–531, title III, § 311(b)(2), Oct. 27, 1992, 106 Stat. 3504.)

AMENDMENTS

1992—Subsec. (a)(6). Pub. L. 102–531 inserted before period ''(which measures and services may include blood pressure screening, cholesterol screening and control, smoking cessation programs, substance abuse programs, cancer screening, dietary and nutritional counseling, diabetes screening and education, intraocular pressure screening, and stress management)''.

§ 300u–2. Grants and contracts for community health programs

(a) Authority of Secretary; particular activities

The Secretary is authorized to conduct and support by grant or contract (and encourage others to support) new and innovative programs in health information and health promotion, preventive health services, and education in the appropriate use of health care, and may specifically—

(1) support demonstration and training programs in such matters which programs (A) are in hospitals, ambulatory care settings, home care settings, schools, day care programs for children, and other appropriate settings representative of broad cross sections of the population, and include public education activities of voluntary health agencies, professional medical societies, and other private nonprofit health organizations, (B) focus on objectives that are measurable, and (C) emphasize the prevention or moderation of illness or accidents that appear controllable through individual knowledge and behavior;

(2) provide consultation and technical assistance to organizations that request help in planning, operating, or evaluating programs in such matters;

(3) develop health information and health promotion materials and teaching programs including (A) model curriculums for the training of educational and health professionals and paraprofessionals in health education by medical, dental, and nursing schools, schools of public health, and other institutions engaged in training of educational or health professionals, (B) model curriculums to be used in elementary and secondary schools and institutions of higher learning, (C) materials and programs for the continuing education of health professionals and paraprofessionals in the health education of their patients, (D) materials for public service use by the printed and broadcast media, and (E) materials and programs to assist providers of health care in providing health education to their patients; and

(4) support demonstration and evaluation programs for individual and group self-help programs designed to assist the participant in using his individual capacities to deal with health problems, including programs concerned with obesity, hypertension, and diabetes.

(b) Grants to States and other public and nonprofit private entities; costs of demonstrating and evaluating programs; development of models

The Secretary is authorized to make grants to States and other public and nonprofit private entities to assist them in meeting the costs of demonstrating and evaluating programs which provide information respecting the costs and quality of health care or information respecting health insurance policies and prepaid health plans, or information respecting both. After the development of models pursuant to section 300u–3(4) and 300u–3(5) of this title for such information, no grant may be made under this subsection for a program unless the information to be provided under the program is provided in accordance with one of such models applicable to the information.

(c) Private nonprofit entities; limitation on amount of grant or contract

The Secretary is authorized to support by grant or contract (and to encourage others to support) private nonprofit entities working in health information and health promotion, preventive health services, and education in the appropriate use of health care. The amount of any grant or contract for a fiscal year beginning after September 30, 1978, for an entity may not exceed 25 per centum of the expenses of the entity for such fiscal year for health information and health promotion, preventive health services, and education in the appropriate use of health care.

(July 1, 1944, ch. 373, title XVII, § 1703, as added Pub. L. 94–317, title I, § 102, June 23, 1976, 90 Stat. 697.)

§ 300u–3. Grants and contracts for information programs; authority of Secretary; particular activities

The Secretary is authorized to conduct and support by grant or contract (and encourage others to support) such activities as may be required to make information respecting health information and health promotion, preventive health services, and education in the appropriate use of health care available to the consumers of medical care, providers of such care, schools, and others who are or should be informed respecting such matters. Such activities may include at least the following:

(1) The publication of information, pamphlets, and other reports which are specially suited to interest and instruct the health consumer, which information, pamphlets, and other reports shall be updated annually, shall pertain to the individual's ability to improve and safeguard his own health; shall include material, accompanied by suitable illustrations, on child care, family life and human development, disease prevention (particularly prevention of pulmonary disease, cardiovascular disease, and cancer), physical fitness, dental health, environmental health, nutrition, safety and accident prevention, drug abuse and alcoholism, mental health, management of chronic diseases (including diabetes and arthritis), and venereal diseases; and shall be designed to reach populations of different languages and of different social and economic backgrounds.

(2) Securing the cooperation of the communications media, providers of health care, schools, and others in activities designed to promote and encourage the use of health maintaining information and behavior.

(3) The study of health information and promotion in advertising and the making to concerned Federal agencies and others such recommendations respecting such advertising as are appropriate.

(4) The development of models and standards for the publication by States, insurance carriers, prepaid health plans, and others (except individual health practitioners) of information for use by the public respecting the cost and quality of health care, including information to enable the public to make comparisons of the cost and quality of health care.

(5) The development of models and standards for the publication by States, insurance carriers, prepaid health plans, and others of information for use by the public respecting health insurance policies and prepaid health plans, including information on the benefits provided by the various types of such policies and plans, the premium charges for such policies and plans, exclusions from coverage or eligibility for coverage, cost sharing requirements, and the ratio of the amounts paid as benefits to the amounts received as premiums and information to enable the public to make relevant comparisons of the costs and benefits of such policies and plans.

(July 1, 1944, ch. 373, title XVII, §1704, as added Pub. L. 94–317, title I, §102, June 23, 1976, 90 Stat. 698; amended Pub. L. 98–551, §2(b), Oct. 30, 1984, 98 Stat. 2816.)

AMENDMENTS

1984—Par. (6). Pub. L. 98–551 struck out par. (6) which provided grant authority to the Secretary to assess, with respect to the effectiveness, safety, cost, and required training for and conditions of use, of new aspects of health care, and new activities, programs, and services designed to improve human health and publish in readily understandable language for public and professional use such assessments and, in the case of controversial aspects of health care, activities, programs, or services, publish differing views or opinions respecting the effectiveness, safety, cost, and required training for and conditions of use, of such aspects of health care, activities, programs, or services.

§ 300u–4. Status reports to President and Congress; study of health education and preventive health services with respect to insurance coverage

(a) The Secretary shall, not later than two years after June 23, 1976, and biannually thereafter, submit to the President for transmittal to Congress a report on the status of health information and health promotion, preventive health services, and education in the appropriate use of health care. Each such report shall include—

(1) a statement of the activities carried out under this subchapter since the last report and the extent to which each such activity achieves the purposes of this subchapter;

(2) an assessment of the manpower resources needed to carry out programs relating to health information and health promotion, preventive health services, and education in the appropriate use of health care, and a statement describing the activities currently being carried out under this subchapter designed to prepare teachers and other manpower for such programs;

(3) the goals and strategy formulated pursuant to section 300u(a)(1) of this title, the models and standards developed under this subchapter, and the results of the study required by subsection (b) of this section; and

(4) such recommendations as the Secretary considers appropriate for legislation respecting health information and health promotion, preventive health services, and education in the appropriate use of health care, including recommendations for revisions to and extension of this subchapter.

(b) The Secretary shall conduct a study of health education services and preventive health services to determine the coverage of such services under public and private health insurance programs, including the extent and nature of such coverage and the cost sharing requirements required by such programs for coverage of such services.

(July 1, 1944, ch. 373, title XVII, §1705, as added Pub. L. 94–317, title I, §102, June 23, 1976, 90 Stat. 699; amended Pub. L. 104–66, title I, §1062(d), Dec. 21, 1995, 109 Stat. 720.)

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–66 substituted ''biannually'' for ''annually'' in introductory provisions.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual,

semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 4 on page 96 identifies a reporting provision which, as subsequently amended, is contained in subsec. (a) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 300u–5. Centers for research and demonstration of health promotion and disease prevention

(a) Establishment; grants; contracts; research and demonstration projects

The Secretary shall make grants or enter into contracts with academic health centers for the establishment, maintenance, and operation of centers for research and demonstration with respect to health promotion and disease prevention. Centers established, maintained, or operated under this section shall undertake research and demonstration projects in health promotion, disease prevention, and improved methods of appraising health hazards and risk factors, and shall serve as demonstration sites for the use of new and innovative research in public health techniques to prevent chronic diseases.

(b) Location; types of research and projects

Each center established, maintained, or operated under this section shall—

(1) be located in an academic health center with—

(A) a multidisciplinary faculty with expertise in public health and which has working relationships with relevant groups in such fields as medicine, psychology, nursing, social work, education and business;

(B) graduate training programs relevant to disease prevention;

(C) a core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental health sciences, and health administration;

(D) a demonstrated curriculum in disease prevention;

(E) a capability for residency training in public health or preventive medicine; and

(F) such other qualifications as the Secretary may prescribe;

(2) conduct—

(A) health promotion and disease prevention research, including retrospective studies and longitudinal prospective studies in population groups and communities;

(B) demonstration projects for the delivery of services relating to health promotion and disease prevention to defined population groups using, as appropriate, community outreach and organization techniques and other methods of educating and motivating communities; and

(C) evaluation studies on the efficacy of demonstration projects conducted under subparagraph (B) of this paragraph.

The design of any evaluation study conducted under subparagraph (C) shall be established prior to the commencement of the demonstration project under subparagraph (B) for which the evaluation will be conducted.

(c) Equitable geographic distribution of centers; procedures

(1) In making grants and entering into contracts under this section, the Secretary shall provide for an equitable geographical distribution of centers established, maintained, and operated under this section and for the distribution of such centers among areas containing a wide range of population groups which exhibit incidences of diseases which are most amenable to preventive intervention.

(2) The Secretary, through the Director of the Centers for Disease Control and Prevention and in consultation with the Director of the National Institutes of Health, shall establish procedures for the appropriate peer review of applications for grants and contracts under this section by peer review groups composed principally of non-Federal experts.

(d) "Academic health center" defined

For purposes of this section, the term ''academic health center'' means a school of medicine, a school of osteopathy, or a school of public health, as such terms are defined in section 292a(4)[1] of this title.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 2003.

(July 1, 1944, ch. 373, title XVII, § 1706, as added Pub. L. 98–551, § 2(d), Oct. 30, 1984, 98 Stat. 2816; amended Pub. L. 100–607, title III, § 312(a)(2), Nov. 4, 1988, 102 Stat. 3113; Pub. L. 102–168, title I, § 102, Nov. 26, 1991, 105 Stat. 1102; Pub. L. 102–531, title III, § 312(d)(12), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 103–183, title VII, § 705(d), Dec. 14, 1993, 107 Stat. 2241; Pub. L. 105–340, title II, § 204, Oct. 31, 1998, 112 Stat. 3195.)

REFERENCES IN TEXT

Section 292a of this title, referred to in subsec. (d), was in the original a reference to section 701 of act July 1, 1944. Section 701 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 701 of act July 1, 1944, relating to statement of purpose, and a new section 702, relating to scope and duration of loan insurance program, which are classified to sections 292 and 292a, respectively, of this title. For provisions relating to definitions, see section 295p of this title.

PRIOR PROVISIONS

A prior section 300u–5, act July 1, 1944, ch. 373, title XVII, § 1706, as added June 23, 1976, Pub. L. 94–317, title I, § 102, 90 Stat. 700; amended Nov. 10, 1978, Pub. L. 95–626, title V, § 501, 92 Stat. 3592; Jan. 4, 1983, Pub. L. 97–414, § 8(r), 96 Stat. 2062, related to establishment of the Office of Health Promotion, prior to repeal by Pub. L. 98–551, § 2(c), Oct. 30, 1984, 98 Stat. 2816.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–340 substituted ''2003'' for ''1998''.

1993—Subsec. (e). Pub. L. 103–183 substituted ''through 1998'' for ''through 1996''.

1992—Subsec. (c)(2). Pub. L. 102–531, which directed amendment of subsec. (c)(2)(B) by substituting ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'', was executed by making the substitution in subsec. (c)(2) to reflect the probable intent of Congress and the redesignation of subsec. (c)(2)(B) as

[1] See References in Text note below.

subsec. (c)(2) by Pub. L. 102–168. See 1991 Amendment note below.

1991—Subsec. (c). Pub. L. 102–168, § 102(b), redesignated subpars. (A) and (B) of par. (2) as pars. (1) and (2), respectively, and struck out former par. (1), which read as follows: ''During fiscal year 1985, the Secretary shall make grants or enter into contracts for the establishment of three centers under this section. During fiscal year 1986, the Secretary shall make grants and enter into contracts for the establishment of five centers under this section and the maintenance and operation of the three centers established under this section in fiscal year 1985. During fiscal year 1987, the Secretary shall make grants and enter into contracts for the establishment of five centers under this section and the operation and maintenance of the eight centers established under this section in fiscal years 1985 and 1986.''

Subsec. (e). Pub. L. 102–168, § 102(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''To carry out this section, there are authorized to be appropriated $3,000,000 for the fiscal year ending September 30, 1985, $8,000,000 for the fiscal year ending September 30, 1986, $13,000,000 for the fiscal year ending September 30, 1987, $6,000,000 for fiscal year 1989, $8,000,000 for fiscal year 1990, and $10,000,000 for fiscal year 1991.''

1988—Subsec. (e). Pub. L. 100–607 struck out ''and'' after ''1986,'' and inserted '', $6,000,000 for fiscal year 1989, $8,000,000 for fiscal year 1990, and $10,000,000 for fiscal year 1991'' before period at end.

§ 300u–6. Office of Minority Health

(a) In general

There is established an Office of Minority Health within the Office of Public Health and Science. There shall be in the Department of Health and Human Services a Deputy Assistant Secretary for Minority Health, who shall be the head of the Office of Minority Health. The Secretary, acting through such Deputy Assistant Secretary, shall carry out this section.

(b) Duties

With respect to improving the health of racial and ethnic minority groups, the Secretary, acting through the Deputy Assistant Secretary for Minority Health (in this section referred to as the ''Deputy Assistant Secretary''), shall carry out the following:

(1) Establish short-range and long-range goals and objectives and coordinate all other activities within the Public Health Service that relate to disease prevention, health promotion, service delivery, and research concerning such individuals. The heads of each of the agencies of the Service shall consult with the Deputy Assistant Secretary to ensure the coordination of such activities.

(2) Enter into interagency agreements with other agencies of the Public Health Service.

(3) Support research, demonstrations and evaluations to test new and innovative models.

(4) Increase knowledge and understanding of health risk factors.

(5) Develop mechanisms that support better information dissemination, education, prevention, and service delivery to individuals from disadvantaged backgrounds, including individuals who are members of racial or ethnic minority groups.

(6) Ensure that the National Center for Health Statistics collects data on the health status of each minority group.

(7) With respect to individuals who lack proficiency in speaking the English language, enter into contracts with public and nonprofit private providers of primary health services for the purpose of increasing the access of the individuals to such services by developing and carrying out programs to provide bilingual or interpretive services.

(8) Support a national minority health resource center to carry out the following:

(A) Facilitate the exchange of information regarding matters relating to health information and health promotion, preventive health services, and education in the appropriate use of health care.

(B) Facilitate access to such information.

(C) Assist in the analysis of issues and problems relating to such matters.

(D) Provide technical assistance with respect to the exchange of such information (including facilitating the development of materials for such technical assistance).

(9) Carry out programs to improve access to health care services for individuals with limited proficiency in speaking the English language. Activities under the preceding sentence shall include developing and evaluating model projects.

(10) Advise in matters related to the development, implementation, and evaluation of health professions education in decreasing disparities in health care outcomes, including cultural competency as a method of eliminating health disparities.

(c) Advisory Committee

(1) In general

The Secretary shall establish an advisory committee to be known as the Advisory Committee on Minority Health (in this subsection referred to as the ''Committee'').

(2) Duties

The Committee shall provide advice to the Deputy Assistant Secretary carrying out this section, including advice on the development of goals and specific program activities under paragraphs (1) through (10) of subsection (b) of this section for each racial and ethnic minority group.

(3) Chair

The chairperson of the Committee shall be selected by the Secretary from among the members of the voting members of the Committee. The term of office of the chairperson shall be 2 years.

(4) Composition

(A) The Committee shall be composed of 12 voting members appointed in accordance with subparagraph (B), and nonvoting, ex officio members designated in subparagraph (C).

(B) The voting members of the Committee shall be appointed by the Secretary from among individuals who are not officers or employees of the Federal Government and who have expertise regarding issues of minority health. The racial and ethnic minority groups shall be equally represented among such members.

(C) The nonvoting, ex officio members of the Committee shall be such officials of the De-

partment of Health and Human Services as the Secretary determines to be appropriate.

(5) Terms

Each member of the Committee shall serve for a term of 4 years, except that the Secretary shall initially appoint a portion of the members to terms of 1 year, 2 years, and 3 years.

(6) Vacancies

If a vacancy occurs on the Committee, a new member shall be appointed by the Secretary within 90 days from the date that the vacancy occurs, and serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy shall not affect the power of the remaining members to execute the duties of the Committee.

(7) Compensation

Members of the Committee who are officers or employees of the United States shall serve without compensation. Members of the Committee who are not officers or employees of the United States shall receive compensation, for each day (including travel time) they are engaged in the performance of the functions of the Committee. Such compensation may not be in an amount in excess of the daily equivalent of the annual maximum rate of basic pay payable under the General Schedule (under title 5) for positions above GS–15.

(d) Certain requirements regarding duties

(1) Recommendations regarding language

(A) Proficiency in speaking English

The Deputy Assistant Secretary shall consult with the Director of the Office of International and Refugee Health, the Director of the Office of Civil Rights, and the Directors of other appropriate departmental entities regarding recommendations for carrying out activities under subsection (b)(9) of this section.

(B) Health professions education regarding health disparities

The Deputy Assistant Secretary shall carry out the duties under subsection (b)(10) of this section in collaboration with appropriate personnel of the Department of Health and Human Services, other Federal agencies, and other offices, centers, and institutions, as appropriate, that have responsibilities under the Minority Health and Health Disparities Research and Education Act of 2000.

(2) Equitable allocation regarding activities

In carrying out subsection (b) of this section, the Secretary shall ensure that services provided under such subsection are equitably allocated among all groups served under this section by the Secretary.

(3) Cultural competency of services

The Secretary shall ensure that information and services provided pursuant to subsection (b) of this section are provided in the language, educational, and cultural context that is most appropriate for the individuals for whom the information and services are intended.

(e) Grants and contracts regarding duties

(1) In general

In carrying out subsection (b) of this section, the Secretary acting through the Deputy Assistant Secretary may make awards of grants, cooperative agreements, and contracts to public and nonprofit private entities.

(2) Process for making awards

The Deputy Assistant Secretary shall ensure that awards under paragraph (1) are made, to the extent practical, only on a competitive basis, and that a grant is awarded for a proposal only if the proposal has been recommended for such an award through a process of peer review.

(3) Evaluation and dissemination

The Deputy Assistant Secretary, directly or through contracts with public and private entities, shall provide for evaluations of projects carried out with awards made under paragraph (1) during the preceding 2 fiscal years. The report shall be included in the report required under subsection (f) of this section for the fiscal year involved.

(f) Reports

(1) In general

Not later than February 1 of fiscal year 1999 and of each second year thereafter, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities carried out under this section during the preceding 2 fiscal years and evaluating the extent to which such activities have been effective in improving the health of racial and ethnic minority groups. Each such report shall include the biennial reports submitted under subsections (e)(3) and (f)(2)[1] of this section for such years by the heads of the Public Health Service agencies.

(2) Agency reports

Not later than February 1, 1999, and biennially thereafter, the heads of the Public Health Service agencies shall submit to the Deputy Assistant Secretary a report summarizing the minority health activities of each of the respective agencies.

(g) Definitions

For purposes of this section:

(1) The term ''racial and ethnic minority group'' means American Indians (including Alaska Natives, Eskimos, and Aleuts); Asian Americans; Native Hawaiians and other Pacific Islanders; Blacks; and Hispanics.

(2) The term ''Hispanic'' means individuals whose origin is Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish-speaking country.

(h) Funding

(1)[2] AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $30,000,000 for

[1] See References in Text note below.

[2] So in original. No par. (2) has been enacted.

fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

(July 1, 1944, ch. 373, title XVII, § 1707, as added Pub. L. 101–527, § 2, Nov. 6, 1990, 104 Stat. 2312; amended Pub. L. 101–557, title IV, § 401(a)(1), Nov. 15, 1990, 104 Stat. 2770; Pub. L. 105–392, title II, § 201(a), (c), Nov. 13, 1998, 112 Stat. 3582, 3585; Pub. L. 106–525, title IV, § 403, title VI, § 601, Nov. 22, 2000, 114 Stat. 2509, 2511.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (c)(7), is set out under section 5332 of Title 5, Government Organization and Employees.

The Minority Health and Health Disparities Research and Education Act of 2000, referred to in subsec. (d)(1)(B), is Pub. L. 106–525, Nov. 22, 2000, 114 Stat. 2495. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 201 of this title and Tables.

Subsections (e)(3) and (f)(2) of this section, referred to in subsec. (f)(1), was in the original ''sections 201(e)(3) and 201(f)(2)'', and was translated to reflect the probable intent of Congress, because section 201 of act July 1, 1944, which is classified to section 202 of this title, does not contain subsections, and subsections (e)(3) and (f)(2) of this section require biennial reporting.

PRIOR PROVISIONS

A prior section 300u–6, act July 1, 1944, ch. 373, title XVII, § 1707, as added Nov. 10, 1978, Pub. L. 95–626, title V, § 502, 92 Stat. 3593; amended July 10, 1979, Pub. L. 96–32, § 6(k), 93 Stat. 84, related to project grants to State Councils on Physical Fitness for physical fitness improvement, prior to repeal by Pub. L. 98–551, § 2(c), Oct. 30, 1984, 98 Stat. 2816.

AMENDMENTS

2000—Subsec. (b)(10). Pub. L. 106–525, § 403(1), added par. (10).

Subsec. (c)(2). Pub. L. 106–525, § 403(2), substituted ''paragraphs (1) through (10)'' for ''paragraphs (1) through (9)''.

Subsec. (d)(1). Pub. L. 106–525, § 403(3), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The Deputy Assistant Secretary for Minority Health shall consult with the Director of the Office of International and Refugee Health, the Director of the Office of Civil Rights, and the Directors of other appropriate departmental entities regarding recommendations for carrying out activities under subsection (b)(9) of this section.''

Subsec. (g)(1). Pub. L. 106–525, § 601, substituted ''Asian Americans;'' for ''Asian Americans and'' and inserted ''Native Hawaiians and other'' before ''Pacific Islanders;''.

1998—Pub. L. 105–392, § 201(c)(1), struck out ''Establishment of'' before ''Office'' in section catchline.

Subsec. (a). Pub. L. 105–392, § 201(c)(2), substituted ''Public Health and Science'' for ''the Assistant Secretary for Health''.

Subsecs. (b) to (h). Pub. L. 105–392, § 201(a), added subsecs. (b) to (h) and struck out former subsecs. (b) to (f), which related, respectively, to duties of Secretary, certain requirements regarding duties, grants and contracts regarding duties, reports, and funding.

1990—Subsec. (b)(8). Pub. L. 101–557 added par. (8).

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 401(a)(2) of Pub. L. 101–557 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of the Disadvantaged Minority Health Improvement Act of 1990 [Nov. 6, 1990].''

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

CONGRESSIONAL FINDINGS

Section 1(b) of Pub. L. 101–527 provided that: ''The Congress finds that—

''(1) racial and ethnic minorities are disproportionately represented among individuals from disadvantaged backgrounds;

''(2) the health status of individuals from disadvantaged backgrounds, including racial and ethnic minorities, in the United States is significantly lower than the health status of the general population of the United States;

''(3) minorities suffer disproportionately high rates of cancer, stroke, heart diseases, diabetes, substance abuse, acquired immune deficiency syndrome, and other diseases and disorders;

''(4) the incidence of infant mortality among minorities is almost double that for the general population;

''(5) Blacks, Hispanics, and Native Americans constitute approximately 12 percent, 7.9 percent, and 0.01 percent, respectively, of the population of the United States;

''(6) Blacks, Hispanics, and Native Americans in the United States constitute approximately 3 percent, 4 percent, and less than 0.01 percent, respectively, of physicians, 2.7 percent, 1.7 percent, and less than 0.01 percent, respectively, of dentists, and 4.5 percent, 1.6 percent, and less than 0.01 percent, respectively, of nurses;

''(7) the number of individuals who are from disadvantaged backgrounds in health professions should be increased for the purpose of improving the access of other such individuals to health services;

''(8) minority health professionals have historically tended to practice in low-income areas and to serve minorities;

''(9) minority health professionals have historically tended to engage in the general practice of medicine and specialties providing primary care;

''(10) reports published in leading medical journals indicate that access to health care among minorities can be substantially improved by increasing the number of minority health professionals;

''(11) increasing the number of minorities serving on the faculties of health professions schools can be an important factor in attracting minorities to pursue a career in the health professions;

''(12) diversity in the faculty and student body of health professions schools enhances the quality of education for all students attending the schools;

''(13) the Report of the Secretary's Task Force on Black and Minority Health (prepared for the Secretary of Health and Human Services and issued in 1985) described the health status problems of minorities, and made recommendations concerning measures that should be implemented by the Secretary with respect to improving the health status of minorities through programs for providing health information and education; and

''(14) the Office of Minority Health, created in 1985 by the Secretary of Health and Human Services, should be authorized pursuant to statute and should receive increased funding to support efforts to improve the health of individuals from disadvantaged backgrounds, including minorities, including the implementation of the recommendations made by the Secretary's Task Force on Black and Minority Health.''

§ 300u–7. Office of Adolescent Health

(a) In general

There is established an Office of Adolescent Health within the Office of the Assistant Secretary for Health, which office[1] shall be headed by a director[1] appointed by the Secretary. The Secretary shall carry out this section acting through the Director of such Office.

(b) Duties

With respect to adolescent health, the Secretary shall—

(1) coordinate all activities within the Department of Health and Human Services that relate to disease prevention, health promotion, preventive health services, and health information and education with respect to the appropriate use of health care, including coordinating—

(A) the design of programs, support for programs, and the evaluation of programs;

(B) the monitoring of trends;

(C) projects of research (including multidisciplinary projects) on adolescent health; and

(D) the training of health providers who work with adolescents, particularly nurse practitioners, physician assistants, and social workers;

(2) coordinate the activities described in paragraph (1) with similar activities in the private sector; and

(3) support projects, conduct research, and disseminate information relating to preventive medicine, health promotion, and physical fitness and sports medicine.

(c) Certain demonstration projects

(1) In general

In carrying out subsection (b)(3) of this section, the Secretary may make grants to carry out demonstration projects for the purpose of improving adolescent health, including projects to train health care providers in providing services to adolescents and projects to reduce the incidence of violence among adolescents, particularly among minority males.

(2) Authorization of appropriations

For the purpose of carrying out paragraph (1), there are authorized to be appropriated $5,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1997.

(d) Information clearinghouse

In carrying out subsection (b) of this section, the Secretary shall establish and maintain a National Information Clearinghouse on Adolescent Health to collect and disseminate to health professionals and the general public information on adolescent health.

(e) National plan

In carrying out subsection (b) of this section, the Secretary shall develop a national plan for improving adolescent health. The plan shall be consistent with the applicable objectives established by the Secretary for the health status of the people of the United States for the year 2000, and shall be periodically reviewed, and as appropriate, revised. The plan, and any revisions in the plan, shall be submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(f) Adolescent health

For purposes of this section, the term ''adolescent health'', with respect to adolescents of all ethnic and racial groups, means all diseases, disorders, and conditions (including with respect to mental health)—

(1) unique to adolescents, or more serious or more prevalent in adolescents;

(2) for which the factors of medical risk or types of medical intervention are different for adolescents, or for which it is unknown whether such factors or types are different for adolescents; or

(3) with respect to which there has been insufficient clinical research involving adolescents as subjects or insufficient clinical data on adolescents.

(July 1, 1944, ch. 373, title XVII, § 1708, as added Pub. L. 102–531, title III, § 302, Oct. 27, 1992, 106 Stat. 3483.)

PRIOR PROVISIONS

A prior section 300u–7, act July 1, 1944, ch. 373, title XVII, § 1708, as added Nov. 10, 1978, Pub. L. 95–626, title V, § 502, 92 Stat. 3594; amended July 10, 1979, Pub. L. 96–32, § 6(*l*), 93 Stat. 84, related to project grants for physical fitness improvement and research projects, prior to repeal by Pub. L. 98–551, § 2(c), Oct. 30, 1984, 98 Stat. 2816.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and

[1] So in original. Probably should be capitalized.

jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 300u–8. Biennial report regarding nutrition and health

(a) Biennial report

The Secretary shall require the Surgeon General of the Public Health Service to prepare biennial reports on the relationship between nutrition and health. Such reports may, with respect to such relationship, include any recommendations of the Secretary and the Surgeon General.

(b) Submission to Congress

The Secretary shall ensure that, not later than February 1 of 1995 and of every second year thereafter, a report under subsection (a) of this section is submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(July 1, 1944, ch. 373, title XVII, § 1709, as added Pub. L. 103–183, title VII, § 704, Dec. 14, 1993, 107 Stat. 2240.)

PRIOR PROVISIONS

A prior section 300u–8, act July 1, 1944, ch. 373, title XVII, § 1709, as added Nov. 10, 1978, Pub. L. 95–626, title V, § 502, 92 Stat. 3594, related to establishment of national program on sports medicine research, prior to repeal by Pub. L. 98–551, § 2(c), Oct. 30, 1984, 98 Stat. 2816.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 300u–9. Education regarding DES

(a) In general

The Secretary, acting through the heads of the appropriate agencies of the Public Health Service, shall carry out a national program for the education of health professionals and the public with respect to the drug diethylstilbestrol (commonly known as DES). To the extent appropriate, such national program shall use methodologies developed through the education demonstration program carried out under section 283a of this title. In developing and carrying out the national program, the Secretary shall consult closely with representatives of nonprofit private entities that represent individuals who have been exposed to DES and that have expertise in community-based information campaigns for the public and for health care providers. The implementation of the national program shall begin during fiscal year 1999.

(b) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1999 through 2003. The authorization of appropriations established in the preceding sentence is in addition to any other authorization of appropriation that is available for such purpose.

(July 1, 1944, ch. 373, title XVII, § 1710, as added Pub. L. 105–340, title I, § 101(b), Oct. 31, 1998, 112 Stat. 3191.)

PRIOR PROVISIONS

A prior section 300u–9, act July 1, 1944, ch. 373, title XVII, § 1710, as added Nov. 10, 1978, Pub. L. 95–626, title V, § 502, 92 Stat. 3594; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(b)(2), title V, § 507, 93 Stat. 678, 692, related to Conference on Education in Lifetime Sports, prior to repeal by Pub. L. 98–551, § 2(c), Oct. 30, 1984, 98 Stat. 2816.

SUBCHAPTER XVI—PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIOR RESEARCH

§ 300v. Commission

(a) Establishment; composition; appointment of members; vacancies

(1) There is established the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (hereinafter in this subchapter referred to as the ''Commission'') which shall be composed of eleven members appointed by the President. The members of the Commission shall be appointed as follows:

(A) Three of the members shall be appointed from individuals who are distinguished in biomedical or behavioral research.

(B) Three of the members shall be appointed from individuals who are distinguished in the practice of medicine or otherwise distinguished in the provision of health care.

(C) Five of the members shall be appointed from individuals who are distinguished in one or more of the fields of ethics, theology, law, the natural sciences (other than a biomedical or behavioral science), the social sciences, the humanities, health administration, government, and public affairs.

(2) No individual who is a full–time officer or employee of the United States may be appointed as a member of the Commission. The Secretary of Health and Human Services, the Secretary of Defense, the Director of Central Intelligence, the Director of the Office of Science and Technology Policy, the Secretary of Veterans Affairs, and the Director of the National Science Foundation shall each designate an individual to provide liaison with the Commission.

(3) No individual may be appointed to serve as a member of the Commission if the individual has served for two terms of four years each as such a member.

(4) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(b) Terms of members

(1) Except as provided in paragraphs (2) and (3), members shall be appointed for terms of four years.

(2) Of the members first appointed—

(A) four shall be appointed for terms of three years, and

(B) three shall be appointed for terms of two years,

as designated by the President at the time of appointment.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(c) Chairman

The Chairman of the Commission shall be appointed by the President, by and with the advice and consent of the Senate, from members of the Commission.

(d) Meetings

(1) Seven members of the Commission shall constitute a quorum for business, but a lesser number may conduct hearings.

(2) The Commission shall meet at the call of the Chairman or at the call of a majority of its members.

(e) Compensation; travel expenses, etc.

(1) Members of the Commission shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

(July 1, 1944, ch. 373, title XVIII, § 1801, as added Pub. L. 95–622, title III, § 301, Nov. 9, 1978, 92 Stat. 3437; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100–527, § 10(1), Oct. 25, 1988, 102 Stat. 2640.)

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100–527 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(2) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

APPOINTMENT OF INITIAL MEMBERS

Section 302(a) of Pub. L. 95–622 directed President to initially appoint members to President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (established under the amendment made by section 301) [enacting this subchapter] not later than 90 days after Nov. 9, 1978.

EXECUTIVE ORDER NO. 12184

Ex. Ord. No. 12184, Dec. 17, 1979, 44 F.R. 75091, which established the President's Special Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 300v–1. Duties of Commission

(a) Studies and investigations; priority and order; report to President and Congress

(1) The Commission shall undertake studies of the ethical and legal implications of—

(A) the requirements for informed consent to participation in research projects and to otherwise undergo medical procedures;

(B) the matter of defining death, including the advisability of developing a uniform definition of death;

(C) voluntary testing, counseling, and information and education programs with respect to genetic diseases and conditions, taking into account the essential equality of all human beings, born and unborn;

(D) the differences in the availability of health services as determined by the income or residence of the persons receiving the services;

(E) current procedures and mechanisms designed (i) to safeguard the privacy of human subjects of behavioral and biomedical research, (ii) to ensure the confidentiality of individually identifiable patient records, and (iii) to ensure appropriate access of patients to information continued[1] in such records,[2] and

(F) such other matters relating to medicine or biomedical or behavioral research as the President may designate for study by the Commission.

The Commission shall determine the priority and order of the studies required under this paragraph.

[1] So in original. Probably should be ''contained''.

[2] So in original. The comma probably should be a semicolon.

(2) The Commission may undertake an investigation or study of any other appropriate matter which relates to medicine or biomedical or behavioral research (including the protection of human subjects of biomedical or behavioral research) and which is consistent with the purposes of this subchapter on its own initiative or at the request of the head of a Federal agency.

(3) In order to avoid duplication of effort, the Commission may, in lieu of, or as part of, any study or investigation required or otherwise conducted under this subsection, use a study or investigation conducted by another entity if the Commission sets forth its reasons for such use.

(4) Upon the completion of each investigation or study undertaken by the Commission under this subsection (including a study or investigation which merely uses another study or investigation), it shall report its findings (including any recommendations for legislation or administrative action) to the President and the Congress and to each Federal agency to which a recommendation in the report applies.

(b) Recommendations to agencies; subsequent administrative requirements

(1) Within 60 days of the date a Federal agency receives a recommendation from the Commission that the agency take any action with respect to its rules, policies, guidelines, or regulations, the agency shall publish such recommendation in the Federal Register and shall provide opportunity for interested persons to submit written data, views, and arguments with respect to adoption of the recommendation.

(2) Within the 180-day period beginning on the date of such publication, the agency shall determine whether the action proposed by such recommendation is appropriate, and, to the extent that it determines that—

(A) such action is not appropriate, the agency shall, within such time period, provide the Commission with, and publish in the Federal Register, a notice of such determination (including an adequate statement of the reasons for the determination), or

(B) such action is appropriate, the agency shall undertake such action as expeditiously as feasible and shall notify the Commission of the determination and the action undertaken.

(c) Report on protection of human subjects; scope; submission to President, etc.

The Commission shall biennially report to the President, the Congress, and appropriate Federal agencies on the protection of human subjects of biomedical and behavioral research. Each such report shall include a review of the adequacy and uniformity (1) of the rules, policies, guidelines, and regulations of all Federal agencies regarding the protection of human subjects of biomedical or behavioral research which such agencies conduct or support, and (2) of the implementation of such rules, policies, guidelines, and regulations by such agencies, and may include such recommendations for legislation and administrative action as the Commission deems appropriate.

(d) Annual report; scope; submission to President, etc.

Not later than December 15 of each year (beginning with 1979) the Commission shall report to the President, the Congress, and appropriate Federal agencies on the activities of the Commission during the fiscal year ending in such year. Each such report shall include a complete list of all recommendations described in subsection (b)(1) of this section made to Federal agencies by the Commission during the fiscal year and the actions taken, pursant[3] to subsection (b)(2) of this section, by the agencies upon such recommendations, and may include such recommendations for legislation and administrative action as the Commission deems appropriate.

(e) Publication and dissemination of reports

The Commission may at any time publish and disseminate to the public reports respecting its activities.

(f) Definitions

For purposes of this section:

(1) The term ''Federal agency'' means an authority of the government of the United States, but does not include (A) the Congress, (B) the courts of the United States, and (C) the government of the Commonwealth of Puerto Rico, the government of the District of Columbia, or the government of any territory or possession of the United States.

(2) The term ''protection of human subjects'' includes the protection of the health, safety, and privacy of individuals.

(July 1, 1944, ch. 373, title XVIII, § 1802, as added Pub. L. 95–622, title III, § 301, Nov. 9, 1978, 92 Stat. 3439; amended Pub. L. 96–32, § 4, July 10, 1979, 93 Stat. 82.)

AMENDMENTS

1979—Subsec. (f). Pub. L. 96–32 redesignated definitions subsection following subsec. (e) as (f), which in original was designated as ''(b)''.

§ 300v–2. Administrative provisions

(a) Hearings

The Commission may for the purpose of carrying out this subchapter hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may deem advisable.

(b) Appointment and compensation of staff personnel; procurement and compensation of temporary and intermittent services; detail of personnel from other Federal agencies

(1) The Commission may appoint and fix the pay of such staff personnel as it deems desirable. Such personnel shall be appointed subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

[3] So in original. Probably should be ''pursuant''.

(3) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under this subchapter.

(c) Contracting authority

The Commission, in performing its duties and functions under this subchapter, may enter into contracts with appropriate public or nonprofit private entities. The authority of the Commission to enter into such contracts is effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(d) Informational requirements and prohibitions

(1) The Commission may secure directly from any Federal agency information necessary to enable it to carry out this subchapter. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

(2) The Commission shall promptly arrange for such security clearances for its members and appropriate staff as are necessary to obtain access to classified information needed to carry out its duties under this subchapter.

(3) The Commission shall not disclose any information reported to or otherwise obtained by the Commission which is exempt from disclosure under subsection (a) of section 552 of title 5 by reason of paragraphs (4) and (6) of subsection (b) of such section.

(e) Support services from Administrator of General Services

The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(July 1, 1944, ch. 373, title XVIII, § 1803, as added Pub. L. 95–622, title III, § 301, Nov. 9, 1978, 92 Stat. 3440.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b)(1), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 300v–3. Authorization of appropriations; termination of Commission

(a) To carry out this subchapter there are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, $5,000,000 for the fiscal year ending September 30, 1981, and $5,000,000 for the fiscal year ending September 30, 1982.

(b) The Commission shall be subject to the Federal Advisory Committee Act, except that, under section 14(a)(1)(B) of such Act, the Commission shall terminate on December 31, 1982.

(July 1, 1944, ch. 373, title XVIII, § 1804, as added Pub. L. 95–622, title III, § 301, Nov. 9, 1978, 92 Stat. 3441.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER XVII—BLOCK GRANTS

PART A—PREVENTIVE HEALTH AND HEALTH SERVICES BLOCK GRANTS

§ 300w. Authorization of appropriations

(a) For the purpose of allotments under section 300w–1 of this title, there are authorized to be appropriated $205,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1998.

(b) Of the amount appropriated for any fiscal year under subsection (a) of this section, at least $7,000,000 shall be made available for allotments under section 300w–1(b) of this title.

(July 1, 1944, ch. 373, title XIX, § 1901, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 535; amended Pub. L. 98–555, § 4, Oct. 30, 1984, 98 Stat. 2855; Pub. L. 100–607, title III, § 301(a), Nov. 4, 1988, 102 Stat. 3111; Pub. L. 102–531, title I, § 101, Oct. 27, 1992, 106 Stat. 3469; Pub. L. 103–183, title VII, § 705(e), Dec. 14, 1993, 107 Stat. 2241.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–183 substituted ''through 1998'' for ''through 1997''.

1992—Subsec. (a). Pub. L. 102–531, § 101(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For the purpose of allotments under section 300w–1 of this title, there is authorized to be appropriated $95,000,000 for fiscal year 1982, $96,500,000 for fiscal year 1983, $98,500,000 for fiscal year 1984, $98,500,000 for the fiscal year ending September 30, 1985, $98,500,000 for the fiscal year ending September 30, 1986, $98,500,000 for the fiscal year ending September 30, 1987, $110,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991.''

Subsec. (b). Pub. L. 102–531, § 101(b), substituted ''$7,000,000'' for ''$3,500,000''.

1988—Subsec. (a). Pub. L. 100–607 struck out ''and'' after ''1986,'' and inserted '', $110,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991'' before period at end.

1984—Subsec. (a). Pub. L. 98–555, § 4(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

Subsec. (b). Pub. L. 98–555, § 4(b), substituted ''$3,500,000'' for ''$3,000,000''.

EFFECTIVE DATE

Section 901 of Pub. L. 97–35 provided in part that this subchapter is effective Oct. 1, 1981.

§ 300w–1. Allotments

(a) Availability based upon prior year distributions

(1) From the amounts appropriated under section 300w of this title for any fiscal year and available for allotment under this subsection, the Secretary shall allot to each State an amount which bears the same ratio to the available amounts for that fiscal year as the amounts provided by the Secretary under the provisions

of law listed in paragraph (2) to the State and entities in the State for fiscal year 1981 bore to the total amount appropriated for such provisions of law for fiscal year 1981.

(2) The provisions of law referred to in paragraph (1) are the following provisions of law as in effect on September 30, 1981:

(A) The authority for grants under section 247b of this title for preventive health service programs for the control of rodents.

(B) The authority for grants under section 247b of this title for establishing and maintaining community and school-based fluoridation programs.

(C) The authority for grants under section 247b of this title for preventive health service programs for hypertension.

(D) Sections 247b–1[1] and 247b–2 of this title.

(E) Section 246(d)[1] of this title.

(F) Section 255(a)[1] of this title.

(G) Sections 300d–1,[1] 300d–2,[1] and 300d–3[1] of this title.

(b) Population

From the amount required to be made available under section 300w(b) of this title for allotments under this subsection for any fiscal year, the Secretary shall make allotments to each State on the basis of the population of the State.

(c) Distribution of appropriated funds not allotted

To the extent that all the funds appropriated under section 300w of this title for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

(1) one or more States have not submitted an application or description of activities in accordance with section 300w–4 of this title for the fiscal year;

(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

(3) some State allotments are offset or repaid under section 300w–5(b)(3) of this title;

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subsection.

(d) Distributions to Indian tribes

(1) If the Secretary—

(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this part be provided directly by the Secretary to such tribe or organization, and

(B) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this part,

the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) of this section for the fiscal year the amount determined under paragraph (2).

(2) The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to such State under subsection (a) of this section an amount equal to the amount which bears the same ratio to the State's allotment for the fiscal year involved as the total amount provided or allotted for fiscal year 1981 by the Secretary to such tribe or tribal organization under the provisions of law referred to in subsection (a) of this section bore to the total amount provided or allotted for such fiscal year by the Secretary to the State and entities (including Indian tribes and tribal organizations) in the State under such provisions of law.

(3) The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(4) In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.

(5) The terms ''Indian tribe'' and ''tribal organization'' have the same meaning given such terms in section 450b(b) and (c)[2] of title 25.

(e) Report on equitable distribution of available funds

The Secretary shall conduct a study for the purpose of devising a formula for the equitable distribution of funds available for allotment to the States under this section. In conducting the study, the Secretary shall take into account—

(1) the financial resources of the various States,

(2) the populations of the States, and

(3) any other factor which the Secretary may consider appropriate.

Before June 30, 1982, the Secretary shall submit a report to the Congress respecting the development of a formula and make such recommendations as the Secretary may deem appropriate in order to ensure the most equitable distribution of funds under allotments under this section.

(July 1, 1944, ch. 373, title XIX, § 1902, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 535.)

REFERENCES IN TEXT

Section 247b–1 of this title, referred to in subsec. (a)(2)(D), was in the original a reference to section 401 of the Health Services and Centers Amendments of 1978, Pub. L. 95–626, which was repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(a), (h), Aug. 13, 1981, 95 Stat. 559, 561. Pub. L. 100–572, § 3, Oct. 31, 1988, 102 Stat. 2887, enacted section 317A of act July 1, 1944, which is classified to section 247b–1 of this title.

Section 247b–2 of this title, referred to in subsec. (a)(2)(D), was repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(a), (h), Aug. 13, 1981, 95 Stat. 559, 561.

Section 246(d) of this title, referred to in subsec. (a)(2)(E), was repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(b), (h), Aug. 13, 1981, 95 Stat. 559, 561.

Section 255 of this title, referred to in subsec. (a)(2)(F), was in the original a reference to section 339 of act July 1, 1944, which was repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(b), (h), Aug. 13, 1981, 95 Stat. 559, 561. Pub. L. 97–414, § 6(a), Jan. 4, 1983, 96 Stat. 2057, added a new section 339 of act July 1, 1944, which is classified to section 255 of this title.

[1] See References in Text note below.

[2] See References in Text note below.

Sections 300d–1, 300d–2, and 300d–3 of this title, referred to in subsec. (a)(2)(G), were in the original references to sections 1202, 1203, and 1204, respectively, of act July 1, 1944, which were repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561. Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2916–2918, enacted new sections 1202, 1203, and 1204 of act July 1, 1944, which were classified to sections 300d–1, 300d–2, and 300d–3, respectively, of this title. Pub. L. 103–183, title VI, § 601(b), Dec. 14, 1983, 107 Stat. 2238, repealed section 1202 and renumbered sections 1203 and 1204 as 1202 and 1203, respectively.

Section 450b of title 25, referred to in subsec. (d)(5), has been amended, and subsecs. (b) and (c) of section 450b no longer define the terms ''Indian tribe'' and ''tribal organization''. However, such terms are defined elsewhere in that section.

§ 300w–2. Payments under allotments to States

(a)(1) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, to each State from its allotment under section 300w–1 of this title (other than any amount reserved under section 300w–1(d) of this title) from amounts appropriated for that fiscal year.

(2) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

(b) The Secretary, at the request of a State, may reduce the amount of payments under subsection (a) of this section by—

(1) the fair market value of any supplies or equipment furnished the State, and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of supplies or equipment or the detail of an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 300w–3 of this title. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which the reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.

(July 1, 1944, ch. 373, title XIX, § 1903, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 537.)

CODIFICATION

In subsec. (a)(1), ''section 6503(a) of title 31'' substituted for ''section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 300w–3. Use of allotments

(a) Preventive health services, comprehensive public health services, emergency medical services, etc.

(1) Except as provided in subsections (b) and (c) of this section, payments made to a State under section 300w–2 of this title may be used for the following:

(A) Activities consistent with making progress toward achieving the objectives established by the Secretary for the health status of the population of the United States for the year 2000 (in this part referred to as ''year 2000 health objectives'').

(B) Preventive health service programs for the control of rodents and for community and school-based fluoridation programs.

(C) Feasibility studies and planning for emergency medical services systems and the establishment, expansion, and improvement of such systems. Amounts for such systems may not be used for the costs of the operation of the systems or the purchase of equipment for the systems, except that such amounts may be used for the payment of not more than 50 percent of the costs of purchasing communications equipment for the systems. Amounts may be expended for feasibility studies or planning for the trauma-care components of such systems only if the studies or planning, respectively, is consistent with the requirements of section 300d–13(a) of this title.

(D) Providing services to victims of sex offenses and for prevention of sex offenses.

(E) The establishment, operation, and coordination of effective and cost-efficient systems to reduce the prevalence of illness due to asthma and asthma-related illnesses, especially among children, by reducing the level of exposure to cockroach allergen or other known asthma triggers through the use of integrated pest management, as applied to cockroaches or other known allergens. Amounts expended for such systems may include the costs of building maintenance and the costs of programs to promote community participation in the carrying out at such sites of integrated pest management, as applied to cockroaches or other known allergens. For purposes of this subparagraph, the term ''integrated pest management'' means an approach to the management of pests in public facilities that combines biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks.

(F) With respect to activities described in any of subparagraphs (A) through (E), related planning, administration, and educational activities.

(G) Monitoring and evaluation of activities carried out under any of subparagraphs (A) through (F).

(2) Except as provided in subsection (b) of this section, amounts paid to a State under section 300w–2 of this title from its allotment under section 300w–1(b) of this title may only be used for providing services to rape victims and for rape prevention.

(3) The Secretary may provide technical assistance to States in planning and operating activities to be carried out under this part.

(b) Prohibited uses

A State may not use amounts paid to it under section 300w–2 of this title to—

(1) provide inpatient services,

(2) make cash payments to intended recipients of health services,

(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment,

(4) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds, or

(5) provide financial assistance to any entity other than a public or nonprofit private entity.

Except as provided in subsection (a)(1)(E) of this section, the Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this part.

(c) Transfer of funds

A State may transfer not more than 7 percent of the amount allotted to the State under section 300w–1(a) of this title for any fiscal year for use by the State under part B of this subchapter and title V of the Social Security Act [42 U.S.C. 701 et seq.] in such fiscal year as follows: At any time in the first three quarters of the fiscal year a State may transfer not more than 3 percent of the allotment of the State for the fiscal year for such use, and in the last quarter of a fiscal year a State may transfer for such use not more than the remainder of the amount of its allotment which may be transferred.

(d) Limitation on administrative costs

Of the amount paid to any State under section 300w–2 of this title, not more than 10 percent paid from each of its allotments under subsections (a) and (b) of section 300w–1 of this title may be used for administering the funds made available under section 300w–2 of this title. The State will pay from non-Federal sources the remaining costs of administering such funds.

(July 1, 1944, ch. 373, title XIX, §1904, as added Pub. L. 97–35, title IX, §901, Aug. 13, 1981, 95 Stat. 537; amended Pub. L. 97–414, §8(s), Jan. 4, 1983, 96 Stat. 2062; Pub. L. 99–646, §87(d)(1)(A), Nov. 10, 1986, 100 Stat. 3623; Pub. L. 99–654, §3(b)(1)(A), Nov. 14, 1986, 100 Stat. 3663; Pub. L. 100–607, title III, §301(b), Nov. 4, 1988, 102 Stat. 3111; Pub. L. 102–531, title I, §102, Oct. 27, 1992, 106 Stat. 3470; Pub. L. 106–310, div. A, title V, §511, Oct. 17, 2000, 114 Stat. 1116.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title V of the Social Security Act is classified generally to subchapter V (§701 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(1)(E). Pub. L. 106–310, §511(3), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (a)(1)(F). Pub. L. 106–310, §511(1), (4), redesignated subpar. (E) as (F) and substituted ''subparagraphs (A) through (E)'' for ''subparagraphs (A) through (D)''. Former subpar. (F) redesignated (G).

Subsec. (a)(1)(G). Pub. L. 106–310, §511(1), (2), (5), redesignated subpar. (F) as (G) and substituted ''subparagraphs (A) through (F).'' for ''subparagraphs (A) through (E)''.

1992—Subsec. (a)(1). Pub. L. 102–531, §102(a), amended par. (1) generally, substituting present provisions for provisions authorizing, except as provided in subsecs. (b) and (c), use of the amounts paid to a State under section 300w–2 of this title from its allotment under section 300w–1(a) of this title and amounts transferred by the State, for use in preventive health service programs, including hypertension and high cholesterol services, health-risk reduction programs, immunization services, home health agencies, emergency medical services, services to victims of sex offenses, and uterine cancer and breast cancer services.

Subsec. (c). Pub. L. 102–531, §102(b), substituted ''part B'' for ''parts B and C''.

1988—Subsec. (a)(1)(B). Pub. L. 100–607, §301(b)(1), inserted ''and elevated serum cholesterol'' before period at end.

Subsec. (a)(1)(C). Pub. L. 100–607, §301(b)(2), inserted '', including programs designed to reduce the incidence of chronic diseases'' before period at end.

Subsec. (a)(1)(D). Pub. L. 100–607, §301(b)(3), inserted '', including immunization services'' before period at end.

Subsec. (a)(1)(F). Pub. L. 100–607, §301(b)(4), substituted ''systems, except that such amounts may be used for the payment of not more than 50 percent of the costs of purchasing communications equipment for the systems'' for ''systems (other than systems with respect to which grants were made as prescribed by section 300w–4(c)(2) of this title)''.

Subsec. (a)(1)(H). Pub. L. 100–607, §301(b)(5), added subpar. (H).

1986—Subsec. (a)(1)(G). Pub. L. 99–646 and Pub. L. 99–654 amended subpar. (G) identically, substituting ''victims of sex offenses and for prevention of sex offenses'' for ''rape victims and for rape prevention''.

1983—Subsec. (a)(1)(F). Pub. L. 97–414 inserted ''(other than systems with respect to which grants were made as prescribed by section 300w–4(c)(2) of this title)'' after ''equipment for the systems''.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99–646 and Pub. L. 99–654 effective 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, respectively, see section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of Title 18, Crimes and Criminal Procedure.

§300w–4. Application for payments; State plan

(a) In general

The Secretary may make payments under section 300w–2 of this title to a State for a fiscal year only if—

(1) the State submits to the Secretary an application for the payments;

(2) the application contains a State plan in accordance with subsection (b) of this section;

(3) the application contains the certification described in subsection (c) of this section;

(4) the application contains such assurances as the Secretary may require regarding the compliance of the State with the requirements of this part (including assurances regarding compliance with the agreements described in subsection (c) of this section); and

(5) the application is in such form and is submitted by such date as the Secretary may require.

(b) State plan

A State plan required in subsection (a)(2) of this section for a fiscal year is in accordance with this subsection if the plan meets the following conditions:

(1) The plan is developed by the State agency with principal responsibility for public health programs, in consultation with the ad-

visory committee established pursuant to subsection (c)(2) of this section.

(2) The plan specifies the activities authorized in section 300w–3 of this title that are to be carried out with payments made to the State under section 300w–2 of this title, including a specification of the year 2000 health objectives for which the State will expend the payments.

(3) The plan specifies the populations in the State for which such activities are to be carried out.

(4) The plan specifies any populations in the State that have a disparate need for such activities.

(5) With respect to each population specified under paragraph (3), the plan contains a strategy for expending such payments to carry out such activities to make progress toward improving the health status of the population, which strategy includes—

(A) a description of the programs and projects to be carried out;

(B) an estimate of the number of individuals to be served by the programs and projects; and

(C) an estimate of the number of public health personnel needed to carry out the strategy.

(6) The plan specifies the amount of such payments to be expended for each of such activities and, with respect to the activity involved—

(A) the amount to be expended for each population specified under paragraph (3); and

(B) the amount to be expended for each population specified under paragraph (4).

(c) State certification

The certification referred to in subsection (a)(3) of this section for a fiscal year is a certification to the Secretary by the chief executive officer of the State involved as follows:

(1)(A) In the development of the State plan required in subsection (a)(2) of this section—

(i) the chief health officer of the State held public hearings on the plan; and

(ii) proposals for the plan were made public in a manner that facilitated comments from public and private entities (including Federal and other public agencies).

(B) The State agrees that, if any revisions are made in such plan during the fiscal year, the State will, with respect to the revisions, hold hearings and make proposals public in accordance with subparagraph (A), and will submit to the Secretary a description of the revisions.

(2) The State has established an advisory committee in accordance with subsection (d) of this section.

(3) The State agrees to expend payments under section 300w–2 of this title only for the activities authorized in section 300w–3 of this title.

(4) The State agrees to expend such payments in accordance with the State plan submitted under subsection (a)(2) of this section (with any revisions submitted to the Secretary under paragraph (1)(B)), including making expenditures to carry out the strategy contained in the plan pursuant to subsection (b)(5) of this section.

(5)(A) The State agrees that, in the case of each population for which such strategy is carried out, the State will measure the extent of progress being made toward improving the health status of the population.

(B) The State agrees that—

(i) the State will collect and report data in accordance with section 300w–5(a) of this title; and

(ii) for purposes of subparagraph (A), progress will be measured through use of each of the applicable uniform data items developed by the Secretary under paragraph (2) of such section, or if no such items are applicable, through use of the uniform criteria developed by the Secretary under paragraph (3) of such section.

(6) With respect to the activities authorized in section 300w–3 of this title, the State agrees to maintain State expenditures for such activities at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments under section 300w–2 of this title.

(7) The State agrees to establish reasonable criteria to evaluate the effective performance of entities that receive funds from such payments and procedures for procedural and substantive independent State review of the failure by the State to provide funds for any such entity.

(8) The State agrees to permit and cooperate with Federal investigations undertaken in accordance with section 300w–6 of this title.

(9) The State has in effect a system to protect from inappropriate disclosure patient and sex offense victim records maintained by the State in connection with an activity funded under this part or by any entity which is receiving payments from the allotment of the State under this part.

(10) The State agrees to provide the officer of the State government responsible for the administration of the State highway safety program with an opportunity to—

(A) participate in the development of any plan by the State relating to emergency medical services, as such plan relates to highway safety; and

(B) review and comment on any proposal by any State agency to use any Federal grant or Federal payment received by the State for the provision of emergency medical services as such proposal relates to highway safety.

(d) State Advisory Committee

(1) In general

For purposes of subsection (c)(2) of this section, an advisory committee is in accordance with this subsection if such committee is known as the State Preventive Health Advisory Committee (in this subsection referred to as the ''Committee'') and the Committee meets the conditions described in the subsequent paragraphs of this subsection.

(2) Duties

A condition under paragraph (1) for a State is that the duties of the Committee are—

(A) to hold public hearings on the State plan required in subsection (a)(2) of this section; and

(B) to make recommendations pursuant to subsection (b)(1) of this section regarding the development and implementation of such plan, including recommendations on—

(i) the conduct of assessments of the public health;

(ii) which of the activities authorized in section 300w–3 of this title should be carried out in the State;

(iii) the allocation of payments made to the State under section 300w–2 of this title;

(iv) the coordination of activities carried out under such plan with relevant programs of other entities; and

(v) the collection and reporting of data in accordance with section 300w–5(a) of this title.

(3) Composition

(A) A condition under paragraph (1) for a State is that the Committee is composed of such members of the general public, and such officials of the health departments of political subdivisions of the State, as may be necessary to provide adequate representation of the general public and of such health departments.

(B) With respect to compliance with subparagraph (A), the membership of advisory committees established pursuant to subsection (c)(2) of this section may include representatives of community-based organizations (including minority community-based organizations), schools of public health, and entities to which the State involved awards grants or contracts to carry out activities authorized in section 300w–3 of this title.

(4) Chair; meetings

A condition under paragraph (1) for a State is that the State public health officer serves as the chair of the Committee, and that the Committee meets not less than twice each fiscal year.

(July 1, 1944, ch. 373, title XIX, § 1905, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 538; amended Pub. L. 98–555, § 5(a), (d), Oct. 30, 1984, 98 Stat. 2855, 2856; Pub. L. 99–646, § 87(d)(1)(B), Nov. 10, 1986, 100 Stat. 3624; Pub. L. 99–654, § 3(b)(1)(B), Nov. 14, 1986, 100 Stat. 3663; Pub. L. 100–607, title III, § 301(c), Nov. 4, 1988, 102 Stat. 3112; Pub. L. 101–590, § 4, Nov. 16, 1990, 104 Stat. 2928; Pub. L. 102–531, title I, § 103(a), Oct. 27, 1992, 106 Stat. 3470.)

AMENDMENTS

1992—Pub. L. 102–531 amended section generally, substituting present provisions for provisions relating to submission and form of application for assistance under this part as well as required assurances, public hearings on proposed use and distribution of funds, certifications by chief executive officer of State, and a description of intended use of funds as well as public access to and revision of such description.

1990—Subsec. (c). Pub. L. 101–590, which directed amendment of subsec. (c) by adding at the end thereof a new par. (7), was executed by adding par. (7) after par. (6) and before the last sentence to reflect the probable intent of Congress.

1988—Subsec. (d). Pub. L. 100–607 inserted at end ''The description shall include a statement of the public health objectives expected to be achieved by the State through the use of the payments the State will receive under section 300w–2 of this title.''

1986—Subsec. (c)(6). Pub. L. 99–646 and Pub. L. 99–654 amended par. (6) identically, substituting ''sex offense'' for ''rape''.

1984—Subsec. (c)(2). Pub. L. 98–555, § 5(a), redesignated par. (3) as (2). Former par. (2), which related to grants for fiscal year 1982, was struck out.

Subsec. (c)(3). Pub. L. 98–555, § 5(a), redesignated par. (5) as (3). Former par. (3) redesignated (2).

Subsec. (c)(4). Pub. L. 98–555, § 5(a), redesignated par. (6) as (4). Former par. (4), which related to grants for preventive health service programs for hypertension, was struck out.

Subsec. (c)(5) to (8). Pub. L. 98–555, § 5(a), redesignated pars. (7) and (8) as (5) and (6), respectively. Former pars. (5) and (6) redesignated (3) and (4), respectively.

Subsec. (e). Pub. L. 98–555, § 5(d), struck out subsec. (e) which related to grants by States.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99–646 and Pub. L. 99–654 effective 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, respectively, see section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of Title 18, Crimes and Criminal Procedure.

DELAYED APPLICABILITY OF REQUIREMENT REGARDING ADVISORY COMMITTEES

Section 103(b) of Pub. L. 102–531 provided that: ''With respect to compliance with the requirement established in subsection (c)(2) of section 1905 of the Public Health Service Act [subsec. (c)(2) of this section] (as amended by subsection (a) of this section), a State is deemed, notwithstanding such section, to be in compliance with such requirement if the State establishes an advisory committee in accordance with subsection (d) of such section not later than 180 days after the date of the enactment of this Act [Oct. 27, 1992].''

§ 300w–5. Reports, data, and audits

(a) Annual reports; contents; data collection; copies

(1) For purposes of section 300w–4(c)(5)(B)(i) of this title, a State is collecting and reporting data for a fiscal year in accordance with this subsection if the State submits to the Secretary, not later than February 1 of the succeeding fiscal year, a report that—

(A) describes the purposes for which the State expended payments made to the State under section 300w–2 of this title;

(B) pursuant to section 300w–4(c)(5)(A) of this title, describes the extent of progress made by the State for purposes of such section;

(C) meets the conditions described in the subsequent paragraphs of this subsection; and

(D) contains such additional information regarding activities authorized in section 300w–3 of this title, and is submitted in such form, as the Secretary may require.

(2)(A) The Secretary, in consultation with the States, shall develop sets of data for uniformly defining health status for purposes of the year 2000 health objectives (which sets are in this subsection referred to as ''uniform data sets''). Each of such sets shall consist of one or more

categories of information (in this subsection individually referred to as a ''uniform data item''). The Secretary shall develop formats for the uniform collecting and reporting of information on such items.

(B) A condition under paragraph (1)(C) for a fiscal year is that the State involved will, in accordance with the applicable format under subparagraph (A), collect during such year, and include in the report under paragraph (1), the necessary information for one uniform data item from each of the uniform data sets, which items are selected for the State by the Secretary.

(C) In the case of fiscal year 1995 and each subsequent fiscal year, a condition under paragraph (1) for a State is that the State will, in accordance with the applicable format under subparagraph (A), collect during such year, and include in the report under paragraph (1), the necessary information for each of the uniform data sets appropriate to the year 2000 health objectives that the State has, in the State plan submitted under section 300w–4 of this title for the fiscal year, specified as a purpose for which payments under section 300w–2 of this title are to be expended.

(3) The Secretary, in consultation with the States, shall establish criteria for the uniform collection and reporting of data on activities authorized in section 300w–3 of this title with respect to which no uniform data items exist.

(4) A condition under paragraph (1) for a fiscal year is that the State involved will make copies of the report submitted under such paragraph for the fiscal year available for public inspection, and will upon request provide a copy of the report to any individual for a charge not exceeding the cost of providing the copy.

(b) Fiscal control; accounting procedures; annual audits; repayments and offsets; public inspection; Comptroller General evaluations; report to Congress

(1) Each State shall establish fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under section 300w–2 of this title and funds transferred under section 300w–3(c) of this title for use under this part.

(2) Each State shall annually audit its expenditures from payments received under section 300w–2 of this title. Such State audits shall be conducted by an entity independent of any agency administering a program funded under this part and, in so far as practical, in accordance with the Comptroller General's standards for auditing governmental organizations, programs, activities, and functions. Within 30 days following the date each audit is completed, the chief executive officer of the State shall transmit a copy of that audit to the Secretary.

(3) Each State shall, after being provided by the Secretary with adequate notice and opportunity for a hearing within the State, repay to the United States amounts found not to have been expended in accordance with the requirements of this part or the certification provided by the State under section 300w–4 of this title. If such repayment is not made, the Secretary shall, after providing the State with adequate notice and opportunity for a hearing within the State, offset such amounts against the amount of any allotment to which the State is or may become entitled under this part.

(4) The State shall make copies of the reports and audits required by this section available for public inspection within the State.

(5) The Comptroller General of the United States shall, from time to time, evaluate the expenditures by States of grants under this part in order to assure that expenditures are consistent with the provisions of this part and the certification provided by the State under section 300w–4 of this title.

(6) Not later than October 1, 1990, the Secretary shall report to the Congress on the activities of the States that have received funds under this part and may include in the report any recommendations for appropriate changes in legislation.

(c) Inapplicability of title XVII of Omnibus Budget Reconciliation Act of 1981

Title XVII of the Omnibus Budget Reconciliation Act of 1981 shall not apply with respect to audits of funds allotted under this part.

(July 1, 1944, ch. 373, title XIX, § 1906, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 540; amended Pub. L. 98–555, § 5(b), (c), Oct. 30, 1984, 98 Stat. 2855, 2856; Pub. L. 100–607, title III, § 301(d), Nov. 4, 1988, 102 Stat. 3112; Pub. L. 102–531, title I, § 104, Oct. 27, 1992, 106 Stat. 3473.)

REFERENCES IN TEXT

The Omnibus Budget Reconciliation Act of 1981, referred to in subsec. (c), is Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 357, as amended. Title XVII of the Omnibus Budget Reconciliation Act of 1981 enacted sections 3595, and 4511 to 4514 of Title 5, Government Organization and Employees, amended sections 3393, 3593, 3596, 4501, 4502, 4505, 4506, 7542, 7543, 8340, and 8345 of Title 5, and sections 2003 and 2401 of Title 39, Postal Service, and enacted provisions set out as notes under sections 3595, 4501, 5303, 5343, 8340, and 8345 of Title 5, section 1243 of former Title 31, Money and Finance, and sections 403, 2003, 2004, and 2401 of Title 39. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1992—Pub. L. 102–531, § 104(b)(1), substituted ''Reports, data, and audits'' for ''Reports and audits'' in section catchline.

Subsec. (a). Pub. L. 102–531, § 104(a), amended subsec. (a) generally, substituting present provisions for provisions requiring an annual report by each State of its activities under this part, outlining the contents of such report, and for providing copies of the report to interested persons.

Subsec. (d). Pub. L. 102–531, § 104(b)(2), struck out subsec. (d) which provided for development of model criteria and forms for collection of data and information on services provided under this part.

1988—Subsec. (a)(3). Pub. L. 100–607, § 301(d)(1), added par. (3).

Subsec. (b)(6). Pub. L. 100–607, § 301(d)(2), substituted ''1990'' for ''1983''.

1984—Subsec. (a)(1)(B). Pub. L. 98–555, § 5(b), substituted ''preventive health and preventive health services programs in the State assisted by funds from allotments under this part, including a summary of the services which were provided, the providers of such services, and the individuals who received such services'' for ''activities of the State under this part''.

Subsec. (d). Pub. L. 98–555, § 5(c), added subsec. (d).

§ 300w–6. Withholding of funds

(a) Prerequisites

(1) The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not use its allotment in accordance with the requirements of this part or the certification provided under section 300w–4 of this title. The Secretary shall withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(2) The Secretary may not institute proceedings to withhold funds under paragraph (1) unless the Secretary has conducted an investigation concerning whether the State has used its allotment in accordance with the requirements of this part or the certification provided under section 300w–4 of this title. Investigations required by this paragraph shall be conducted within the affected State by qualified investigators.

(3) The Secretary shall respond in an expeditious manner to complaints of a substantial or serious nature that a State has failed to use funds in accordance with the requirements of this part or certifications provided under section 300w–4 of this title.

(4) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the requirements of this part or certifications provided under section 300w–4 of this title.

(b) Investigations

(1) The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this part in order to evaluate compliance with the requirements of this part and certifications provided under section 300w–4 of this title.

(2) The Comptroller General of the United States may conduct investigations of the use of funds received under this part by a State in order to insure compliance with the requirements of this part and certifications provided under section 300w–4 of this title.

(c) Availability of books, documents, papers, and records

Each State, and each entity which has received funds from an allotment made to a State under this part, shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(d) Information not readily available

(1) In conducting any investigation in a State, the Secretary or the Comptroller General of the United States may not make a request for any information not readily available to such State or an entity which has received funds from an allotment made to the State under this part or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

(2) Paragraph (1) does not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

(July 1, 1944, ch. 373, title XIX, § 1907, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 541.)

§ 300w–7. Nondiscrimination provisions

(a) Programs and activities receiving Federal financial assistance

(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under this part are considered to be programs and activities receiving Federal financial assistance.

(2) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this part.

(b) Failure to comply

Whenever the Secretary finds that a State, or an entity that has received a payment from an allotment to a State under section 300w–1 of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], as may be applicable, or

(3) take such other action as may be provided by law.

(c) Civil actions by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whenever he has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(July 1, 1944, ch. 373, title XIX, § 1908, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 542.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1) and (b)(2), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1) and (b)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 300w–8. Criminal penalty for false statements

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payment may be made by a State from funds allotted to the State under this part, or

(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(July 1, 1944, ch. 373, title XIX, § 1909, as added Pub. L. 97–35, title IX, § 901, Aug. 13, 1981, 95 Stat. 542.)

§ 300w–9. Emergency medical services for children

(a) Grant authority

For activities in addition to the activities which may be carried out by States under section 300w–3(a)(1)(F)[1] of this title, the Secretary may make grants to States or accredited schools of medicine in States to support a program of demonstration projects for the expansion and improvement of emergency medical services for children who need treatment for trauma or critical care. Any grant made under this subsection shall be for not more than a 3-year period (with an optional 4th year based on performance), subject to annual evaluation by the Secretary. Only 3 grants under this subsection may be made in a State (to a State or to a school of medicine in such State) in any fiscal year.

(b) Renewals

The Secretary may renew a grant made under subsection (a) of this section for one additional one-year period only if the Secretary determines that renewal of such grant will provide significant benefits through the collection, analysis, and dissemination of information or data which will be useful to States in which grants under such subsection have not been made.

(c) Definitions

For purposes of this section—

(1) the term ''school of medicine'' has the same meaning as in section 292a(4)[1] of this title; and

(2) the term ''accredited'' has the same meaning as in section 292a(5)[1] of this title.

(d) Authorization of appropriations

To carry out this section, there are authorized to be appropriated $2,000,000 for fiscal year 1985 and for each of the two succeeding fiscal years, $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, $5,000,000 for each of the fiscal years 1991 and 1992, and such sums as may be necessary for each of the fiscal years 1993 through 2005.

(July 1, 1944, ch. 373, title XIX, § 1910, as added Pub. L. 98–555, § 7, Oct. 30, 1984, 98 Stat. 2856; amended Pub. L. 99–272, title XVII, § 17004, Apr. 7, 1986, 100 Stat. 360; Pub. L. 100–607, title III, § 302, Nov. 4, 1988, 102 Stat. 3112; Pub. L. 101–590, § 5, Nov. 16, 1990, 104 Stat. 2928; Pub. L. 102–410, § 11, Oct. 13, 1992, 106 Stat. 2101; Pub. L. 105–392, title IV, § 415, Nov. 13, 1998, 112 Stat. 3590.)

REFERENCES IN TEXT

Section 300w–3(a)(1) of this title, referred to in subsec. (a), was amended generally by Pub. L. 102–531, title I, § 102(a), Oct. 27, 1992, 106 Stat. 3470, and, as so amended, provisions formerly appearing in subpar. (F) are contained in subpar. (C).

Section 292a of this title, referred to in subsec. (c), was in the original a reference to section 701 of act July 1, 1944. Section 701 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 701 of act July 1, 1944, relating to statement of purpose, and a new section 702, relating to scope and duration of loan insurance program, which are classified to sections 292 and 292a, respectively, of this title. For provisions relating to definitions, see section 295p of this title.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–392, § 415(1), substituted ''3-year period (with an optional 4th year based on performance)'' for ''two-year period'' and ''3 grants'' for ''one grant''.

Subsec. (d). Pub. L. 105–392, § 415(2), substituted ''2005'' for ''1997''.

1992—Subsec. (a). Pub. L. 102–410, § 11(1), substituted ''grants'' for ''not more than four grants in any fiscal year'' after ''Secretary may make'' in first sentence.

Subsec. (d). Pub. L. 102–410, § 11(2), substituted ''$5,000,000'' for ''and $5,000,000'' and inserted before period '', and such sums as may be necessary for each of the fiscal years 1993 through 1997''.

1990—Subsec. (a). Pub. L. 101–590, § 5(1)(A), which directed the substitution of ''grants'' for ''not more that four grants in any fiscal year'' could not be executed because the language to be stricken did not appear in text.

Pub. L. 101–590, § 5(1)(B), struck out ''in such States'' after ''demonstration projects'' in first sentence.

Subsec. (d). Pub. L. 101–590, § 5(2), substituted ''each of the fiscal years 1991 and 1992'' for ''fiscal year 1991''.

1988—Subsec. (a). Pub. L. 100–607, § 302(a), substituted ''shall be for not more than a two-year period, subject

[1] See References in Text note below.

to annual evaluation by the Secretary'' for ''shall be for a one-year period''.

Subsec. (d). Pub. L. 100–607, §302(b), inserted '', $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, and $5,000,000 for fiscal year 1991'' before period at end.

1986—Subsec. (a). Pub. L. 99–272, §17004(1), which directed substitution of ''not more than four grants in any fiscal year to States or accredited schools of medicine in States'' for ''grant to not more than four States in any fiscal year'' was made by substituting former phrase for ''grants to not more than four States in any fiscal year'', as the probable intent of Congress.

Pub. L. 99–272, §17004(2), inserted at end ''Only one grant under this subsection may be made in a State (to a State or to a school of medicine in such State) in any fiscal year.''

Subsec. (b). Pub. L. 99–272, §17004(3), substituted ''States in which grants under such subsection have not been made'' for ''other States''.

Subsecs. (c), (d). Pub. L. 99–272, §17004(4), (5), added subsec. (c) and redesignated former subsec. (c) as (d).

§ 300w–10. Repealed. Pub. L. 106–386, div. B, title IV, § 1401(b), Oct. 28, 2000, 114 Stat. 1513

Section, act July 1, 1944, ch. 373, title XIX, §1910A, as added Pub. L. 103–322, title IV, §40151, Sept. 13, 1994, 108 Stat. 1920, related to use of allotments for rape prevention education. See section 280b–1c of this title.

A prior section 300w–10, act July 1, 1944, ch. 373, title XIX, §1910A, as added Oct. 30, 1984, Pub. L. 98–555, §8, 98 Stat. 2856, related to State planning grants, prior to repeal by Pub. L. 100–607, title III, §303, Nov. 4, 1988, 102 Stat. 3112.

PART B—BLOCK GRANTS REGARDING MENTAL HEALTH AND SUBSTANCE ABUSE

SUBPART I—BLOCK GRANTS FOR COMMUNITY MENTAL HEALTH SERVICES

§ 300x. Formula grants to States

(a) In general

For the purpose described in subsection (b) of this section, the Secretary, acting through the Director of the Center for Mental Health Services, shall make an allotment each fiscal year for each State in an amount determined in accordance with section 300x–7 of this title. The Secretary shall make a grant to the State of the allotment made for the State for the fiscal year if the State submits to the Secretary an application in accordance with section 300x–6 of this title.

(b) Purpose of grants

A funding agreement for a grant under subsection (a) of this section is that, subject to section 300x–5 of this title, the State involved will expend the grant only for the purpose of—

(1) carrying out the plan submitted under section 300x–1(a) of this title by the State for the fiscal year involved;

(2) evaluating programs and services carried out under the plan; and

(3) planning, administration, and educational activities related to providing services under the plan.

(July 1, 1944, ch. 373, title XIX, §1911, as added Pub. L. 102–321, title II, §201(2), July 10, 1992, 106 Stat. 378.)

PRIOR PROVISIONS

A prior section 300x, act July 1, 1944, ch. 373, title XIX, §1911, as added Aug. 13, 1981, Pub. L. 97–35, title IX, §901, 95 Stat. 543; amended Oct. 19, 1984, Pub. L. 98–509, title I, §§101, 106(a), 98 Stat. 2353, 2358; Nov. 18, 1988, Pub. L. 100–690, title II, §2021, 102 Stat. 4194, authorized appropriations in fiscal years 1990 and 1991 for purpose of carrying out this subpart and section 290aa–11 of this title, prior to repeal by Pub. L. 102–321, §201(2).

EFFECTIVE DATE

Part effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, and with provision that section 205(a) of Pub. L. 102–321, set out below, regarding allotments made for fiscal year 1992 under this part as in effect on the day before July 10, 1992, applies with respect to the program established in this part, see section 801(b), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

TEMPORARY PROVISIONS REGARDING FUNDING

Section 205 of Pub. L. 102–321, as amended by Pub. L. 102–352, §2(c), Aug. 26, 1992, 106 Stat. 939; Pub. L. 102–408, title III, §312, Oct. 13, 1992, 106 Stat. 2091, provided that, with respect to allotments made for fiscal year 1992 under this part, as in effect on the day before July 10, 1992, any portion of the total of such allotments that has not been paid to the States as of the first day of the fourth quarter of such fiscal year be reallotted with the result that the total allotment made for a State for fiscal year 1992 be the amount indicated for the State in a specified table, authorized Secretary of Health and Human Services to make a grant to a State of the reallotment if the State agrees that the grant be subject to all conditions upon which allotments and payments under this part, as in effect on the day before July 10, 1992, are made for fiscal 1992, with specified exceptions, permitted transfers of allotments made in fiscal years 1993 and 1994 between this part and subpart II, section 300x–21 of this title, under certain circumstances, defined terms as used, and directed funding, subject to a limitation, of a program for pregnant and postpartum women for fiscal year 1993.

REPORT ON ALLOTMENT FORMULA

Section 707 of Pub. L. 102–321 directed Secretary of Health and Human Services to enter into a contract with National Academy of Sciences, or if such Academy declines, with another public or nonprofit private agency, for purpose of conducting a study or studies concerning statutory formulae under which funds made available under this section and section 300x–21 of this title are allocated among States and territories, specified findings to be made by the study or studies, directed Secretary to ensure that not later than 6 months after July 10, 1992, the study was completed and a report submitted to Committee on Energy and Commerce of House of Representatives and Committee on Labor and Human Resources of Senate, and directed entity preparing the report to consult with Comptroller General with Comptroller General to review the study after its submittal and within three months make appropriate recommendations concerning such report to such committees.

§ 300x–1. State plan for comprehensive community mental health services for certain individuals

(a) In general

The Secretary may make a grant under section 300x of this title only if—

(1) the State involved submits to the Secretary a plan for providing comprehensive community mental health services to adults with a serious mental illness and to children with a serious emotional disturbance;

(2) the plan meets the criteria specified in subsection (b) of this section; and

(3) the plan is approved by the Secretary.

(b) Criteria for plan

With respect to the provision of comprehensive community mental health services to individuals who are either adults with a serious mental illness or children with a serious emotional disturbance, the criteria referred to in subsection (a) of this section regarding a plan are as follows:

(1) Comprehensive community-based mental health systems

The plan provides for an organized community-based system of care for individuals with mental illness and describes available services and resources in a comprehensive system of care, including services for dually diagnosed individuals. The description of the system of care shall include health and mental health services, rehabilitation services, employment services, housing services, educational services, substance abuse services, medical and dental care, and other support services to be provided to individuals with Federal, State and local public and private resources to enable such individuals to function outside of inpatient or residential institutions to the maximum extent of their capabilities, including services to be provided by local school systems under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]. The plan shall include a separate description of case management services and provide for activities leading to reduction of hospitalization.

(2) Mental health system data and epidemiology

The plan contains an estimate of the incidence and prevalence in the State of serious mental illness among adults and serious emotional disturbance among children and presents quantitative targets to be achieved in the implementation of the system described in paragraph (1).

(3) Children's services

In the case of children with serious emotional disturbance, the plan—

(A) subject to subparagraph (B), provides for a system of integrated social services, educational services, juvenile services, and substance abuse services that, together with health and mental health services, will be provided in order for such children to receive care appropriate for their multiple needs (such system to include services provided under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]);

(B) provides that the grant under section 300x of this title for the fiscal year involved will not be expended to provide any service under such system other than comprehensive community mental health services; and

(C) provides for the establishment of a defined geographic area for the provision of the services of such system.

(4) Targeted services to rural and homeless populations

The plan describes the State's outreach to and services for individuals who are homeless and how community-based services will be provided to individuals residing in rural areas.

(5) Management systems

The plan describes the financial resources, staffing and training for mental health providers that is necessary to implement the plan, and provides for the training of providers of emergency health services regarding mental health. The plan further describes the manner in which the State intends to expend the grant under section 300x of this title for the fiscal year involved.

Except as provided for in paragraph (3), the State plan shall contain the information required under this subsection with respect to both adults with serious mental illness and children with serious emotional disturbance.

(c) Definitions regarding mental illness and emotional disturbance; methods for estimate of incidence and prevalence

(1) Establishment by Secretary of definitions; dissemination

For purposes of this subpart, the Secretary shall establish definitions for the terms ''adults with a serious mental illness'' and ''children with a serious emotional disturbance''. The Secretary shall disseminate the definitions to the States.

(2) Standardized methods

The Secretary shall establish standardized methods for making the estimates required in subsection (b)(11)[1] of this section with respect to a State. A funding agreement for a grant under section 300x of this title for the State is that the State will utilize such methods in making the estimates.

(3) Date certain for compliance by Secretary

Not later than 90 days after July 10, 1992, the Secretary shall establish the definitions described in paragraph (1), shall begin dissemination of the definitions to the States, and shall establish the standardized methods described in paragraph (2).

(d) Requirement of implementation of plan

(1) Complete implementation

Except as provided in paragraph (2), in making a grant under section 300x of this title to a State for a fiscal year, the Secretary shall make a determination of the extent to which the State has implemented the plan required in subsection (a) of this section. If the Secretary determines that a State has not completely implemented the plan, the Secretary shall reduce the amount of the allotment under section 300x of this title for the State for the fiscal year involved by an amount equal to 10 percent of the amount determined under section 300x–7 of this title for the State for the fiscal year.

(2) Substantial implementation and good faith effort regarding fiscal year 1993

(A) In making a grant under section 300x of this title to a State for fiscal year 1993, the Secretary shall make a determination of the extent to which the State has implemented the plan required in subsection (a) of this sec-

[1] See References in Text note below.

tion. If the Secretary determines that the State has not substantially implemented the plan, the Secretary shall, subject to subparagraph (B), reduce the amount of the allotment under section 300x of this title for the State for such fiscal year by an amount equal to 10 percent of the amount determined under section 300x–7 of this title for the State for the fiscal year.

(B) In carrying out subparagraph (A), if the Secretary determines that the State is making a good faith effort to implement the plan required in subsection (a) of this section, the Secretary may make a reduction under such subparagraph in an amount that is less than the amount specified in such subparagraph, except that the reduction may not be made in an amount that is less than 5 percent of the amount determined under section 300x–7 of this title for the State for fiscal year 1993.

(July 1, 1944, ch. 373, title XIX, § 1912, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 379; amended Pub. L. 106–310, div. B, title XXXII, § 3204(a), Oct. 17, 2000, 114 Stat. 1192.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(1), (3)(A), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

Subsection (b)(11) of this section, referred to in subsec. (c)(2), was repealed by Pub. L. 106–310, div. B, title XXXII, § 3204(a), Oct. 17, 2000, 114 Stat. 1192. Provisions relating to estimates formerly contained in subsec. (b)(11) are now contained in subsec. (b)(2) of this section.

PRIOR PROVISIONS

Prior sections 300x–1 to 300x–1b were repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

Section 300x–1, act July 1, 1944, ch. 373, title XIX, § 1912, as added Oct. 19, 1984, Pub. L. 98–509, title I, § 102(a), 98 Stat. 2353, authorized grants for training of employees adversely affected by changes in delivery of mental health services and for providing assistance in securing employment.

Another prior section 300x–1, act July 1, 1944, ch. 373, title XIX, § 1912, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 543; amended Jan. 4, 1983, Pub. L. 97–414, § 8(t), 96 Stat. 2062; Oct. 19, 1984, Pub. L. 98–509, title I, § 106(e), 98 Stat. 2358, contained provisions relating to grants and allotment of grants for alcohol, drug abuse, and mental health services, prior to repeal by section 102(a) of Pub. L. 98–509.

Section 300x–1a, act July 1, 1944, ch. 373, title XIX, § 1912A, as added and amended Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2022(a)–(c), 2023, 102 Stat. 4194, 4196, 4197; Aug. 16, 1989, Pub. L. 101–93, § 2(a), 103 Stat. 603, related to allotments of grants for alcohol, drug abuse, and mental health services.

Another prior section 300x–1a, act July 1, 1944, ch. 373, title XIX, § 1913, as added Oct. 19, 1984, Pub. L. 98–509, title I, § 102(a), 98 Stat. 2353, was transferred to section 300x–1b of this title.

Section 300x–1b, act July 1, 1944, ch. 373, title XIX, § 1913, as added Oct. 19, 1984, Pub. L. 98–509, title I, § 102(a), 98 Stat. 2353; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2022(d), 102 Stat. 4197; Aug. 16, 1989, Pub. L. 101–93, § 2(b), 103 Stat. 605, related to allotments to States and Indian tribes or tribal organizations for alcohol, drug abuse, and mental health services.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–310 added pars. (1) to (5) and concluding provisions and struck out former pars. (1) to (12) relating to criteria for plan.

§ 300x–2. Certain agreements

(a) Allocation for systems of integrated services for children

(1) In general

With respect to children with a serious emotional disturbance, a funding agreement for a grant under section 300x of this title is that—

(A) in the case of a grant for fiscal year 1993, the State involved will expend not less than 10 percent of the grant to increase (relative to fiscal year 1992) funding for the system of integrated services described in section 300x–1(b)(9)[1] of this title;

(B) in the case of a grant for fiscal year 1994, the State will expend not less than 10 percent of the grant to increase (relative to fiscal year 1993) funding for such system; and

(C) in the case of a grant for any subsequent fiscal year, the State will expend for such system not less than an amount equal to the amount expended by the State for fiscal year 1994.

(2) Waiver

(A) Upon the request of a State, the Secretary may provide to the State a waiver of all or part of the requirement established in paragraph (1) if the Secretary determines that the State is providing an adequate level of comprehensive community mental health services for children with a serious emotional distrubance,[2] as indicated by a comparison of the number of such children for which such services are sought with the availability in the State of the services.

(B) The Secretary shall approve or deny a request for a waiver under subparagraph (A) not later than 120 days after the date on which the request is made.

(C) Any waiver provided by the Secretary under subparagraph (A) shall be applicable only to the fiscal year involved.

(b) Providers of services

A funding agreement for a grant under section 300x of this title for a State is that, with respect to the plan submitted under section 300x–1(a) of this title for the fiscal year involved—

(1) services under the plan will be provided only through appropriate, qualified community programs (which may include community mental health centers, child mental-health programs, psychosocial rehabilitation programs, mental health peer-support programs, and mental-health primary consumer-directed programs); and

(2) services under the plan will be provided through community mental health centers only if the centers meet the criteria specified in subsection (c) of this section.

(c) Criteria for mental health centers

The criteria referred to in subsection (b)(2) of this section regarding community mental health centers are as follows:

(1) With respect to mental health services, the centers provide services as follows:

(A) Services principally to individuals residing in a defined geographic area (here-

[1] See References in Text note below.

[2] So in original. Probably should be ''disturbance,''.

after in this subsection referred to as a ''service area'').

(B) Outpatient services, including specialized outpatient services for children, the elderly, individuals with a serious mental illness, and residents of the service areas of the centers who have been discharged from inpatient treatment at a mental health facility.

(C) 24-hour-a-day emergency care services.

(D) Day treatment or other partial hospitalization services, or psychosocial rehabilitation services.

(E) Screening for patients being considered for admission to State mental health facilities to determine the appropriateness of such admission.

(2) The mental health services of the centers are provided, within the limits of the capacities of the centers, to any individual residing or employed in the service area of the center regardless of ability to pay for such services.

(3) The mental health services of the centers are available and accessible promptly, as appropriate and in a manner which preserves human dignity and assures continuity and high quality care.

(July 1, 1944, ch. 373, title XIX, § 1913, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 381.)

REFERENCES IN TEXT

Section 300x–1(b)(9) of this title, referred to in subsec. (a)(1)(A), was repealed by Pub. L. 106–310, div. B, title XXXII, § 3204(a), Oct. 17, 2000, 114 Stat. 1192. Provisions relating to a system of integrated social services formerly contained in section 300x–1(b)(9) are now contained in section 300x–1(b)(3) of this title.

PRIOR PROVISIONS

A prior section 300x–2, act July 1, 1944, ch. 373, title XIX, § 1914, formerly § 1913, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 545; renumbered § 1914 and amended Oct. 19, 1984, Pub. L. 98–509, title I, § 106(a), (c)–(e), (g), 98 Stat. 2358, 2359; Nov. 18, 1988, Pub. L. 100–690, title II, § 2022(e), 102 Stat. 4197; Aug. 16, 1989, Pub. L. 101–93, § 2(c)(1), 103 Stat. 605, related to payment to States of allotments of grants for alcohol, drug abuse, and mental health services, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1913 of act July 1, 1944, was classified to section 300x–1b of this title and repealed by Pub. L. 102–321.

§ 300x–3. State mental health planning council

(a) In general

A funding agreement for a grant under section 300x of this title is that the State involved will establish and maintain a State mental health planning council in accordance with the conditions described in this section.

(b) Duties

A condition under subsection (a) of this section for a Council is that the duties of the Council are—

(1) to review plans provided to the Council pursuant to section 300x–4(a) of this title by the State involved and to submit to the State any recommendations of the Council for modifications to the plans;

(2) to serve as an advocate for adults with a serious mental illness, children with a severe emotional disturbance, and other individuals with mental illnesses or emotional problems; and

(3) to monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the State.

(c) Membership

(1) In general

A condition under subsection (a) of this section for a Council is that the Council be composed of residents of the State, including representatives of—

(A) the principal State agencies with respect to—

(i) mental health, education, vocational rehabilitation, criminal justice, housing, and social services; and

(ii) the development of the plan submitted pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.];

(B) public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;

(C) adults with serious mental illnesses who are receiving (or have received) mental health services; and

(D) the families of such adults or families of children with emotional disturbance.

(2) Certain requirements

A condition under subsection (a) of this section for a Council is that—

(A) with respect to the membership of the Council, the ratio of parents of children with a serious emotional disturbance to other members of the Council is sufficient to provide adequate representation of such children in the deliberations of the Council; and

(B) not less than 50 percent of the members of the Council are individuals who are not State employees or providers of mental health services.

(d) "Council" defined

For purposes of this section, the term ''Council'' means a State mental health planning council.

(July 1, 1944, ch. 373, title XIX, § 1914, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 382.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(1)(A)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 300x–3, act July 1, 1944, ch. 373, title XIX, § 1915, formerly § 1914, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 545; renumbered § 1915 and amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 105(b), 106(a), (b), (d), (g), 98 Stat. 2358, 2359; Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2024–2026, 102 Stat. 4198, 4199; Aug. 16, 1989, Pub. L. 101–93, § 2(d), 103 Stat. 606; Nov. 28, 1990, Pub. L. 101–639, § 3(a)(2), 104 Stat. 4601, related to the use of grant allotments for alcohol, drug

abuse, and mental health services, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1914 of act July 1, 1944, was classified to section 300x–2 of this title prior to repeal by Pub. L. 102–321.

§ 300x–4. Additional provisions

(a) Review of State plan by mental health planning council

The Secretary may make a grant under section 300x of this title to a State only if—

(1) the plan submitted under section 300x–1(a) of this title with respect to the grant and the report of the State under section 300x–52(a) of this title concerning the preceding fiscal year has been reviewed by the State mental health planning council under section 300x–3 of this title; and

(2) the State submits to the Secretary any recommendations received by the State from such council for modifications to the plan (without regard to whether the State has made the recommended modifications) and any comments concerning the annual report.

(b) Maintenance of effort regarding State expenditures for mental health

(1) In general

A funding agreement for a grant under section 300x of this title is that the State involved will maintain State expenditures for community mental health services at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying for the grant.

(2) Exclusion of certain funds

The Secretary may exclude from the aggregate State expenditures under subsection (a) of this section, funds appropriated to the principle agency for authorized activities which are of a non-recurring nature and for a specific purpose.

(3) Waiver

The Secretary may, upon the request of a State, waive the requirement established in paragraph (1) if the Secretary determines that extraordinary economic conditions in the State justify the waiver.

(4) Noncompliance by State

(A) In making a grant under section 300x of this title to a State for a fiscal year, the Secretary shall make a determination of whether, for the previous fiscal year, the State maintained material compliance with the agreement made under paragraph (1). If the Secretary determines that a State has failed to maintain such compliance, the Secretary shall reduce the amount of the allotment under section 300x of this title for the State for the fiscal year for which the grant is being made by an amount equal to the amount constituting such failure for the previous fiscal year.

(B) The Secretary may make a grant under section 300x of this title for a fiscal year only if the State involved submits to the Secretary information sufficient for the Secretary to make the determination required in subparagraph (A).

(July 1, 1944, ch. 373, title XIX, § 1915, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 383; amended Pub. L. 106–310, div. B, title XXXII, § 3204(b), (c), Oct. 17, 2000, 114 Stat. 1193.)

PRIOR PROVISIONS

Prior sections 300x–4 and 300x–4a were repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

Section 300x–4, act July 1, 1944, ch. 373, title XIX, § 1916, formerly § 1915, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 546; amended Jan. 4, 1983, Pub. L. 97–414, § 8(u), 96 Stat. 2063; renumbered § 1916 and amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 103, 106(a)–(c), (f), (g), 98 Stat. 2355, 2358, 2359; Oct. 7, 1985, Pub. L. 99–117, § 7(a), 99 Stat. 492; Nov. 14, 1986, Pub. L. 99–660, title V, § 503, 100 Stat. 3797; Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2027–2035, 2037(a)(2), 102 Stat. 4199–4201, 4203; Aug. 16, 1989, Pub. L. 101–93, § 2(e)–(*l*), (p)(1), (q)(1), 103 Stat. 606–609; Aug. 15, 1990, Pub. L. 101–374, § 4(b), 104 Stat. 459, required States to make application and describe their activities in relation to allotments for grants for alcohol, drug abuse, and mental health services.

A prior section 1915 of act July 1, 1944, was classified to section 300x–3 of this title prior to repeal by Pub. L. 102–321.

Section 300x–4a, act July 1, 1944, ch. 373, title XIX, § 1916A, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2036, 102 Stat. 4202; amended Aug. 16, 1989, Pub. L. 101–93, § 2(m), 103 Stat. 608, related to group homes for recovering substance abusers.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–310, § 3204(b)(1), inserted ''and the report of the State under section 300x–52(a) of this title concerning the preceding fiscal year'' after ''to the grant''.

Subsec. (a)(2). Pub. L. 106–310, § 3204(b)(2), inserted ''and any comments concerning the annual report'' before period at end.

Subsec. (b)(2) to (4). Pub. L. 106–310, § 3204(c), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

§ 300x–5. Restrictions on use of payments

(a) In general

A funding agreement for a grant under section 300x of this title is that the State involved will not expend the grant—

(1) to provide inpatient services;

(2) to make cash payments to intended recipients of health services;

(3) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

(b) Limitation on administrative expenses

A funding agreement for a grant under section 300x of this title is that the State involved will not expend more than 5 percent of the grant for administrative expenses with respect to the grant.

(July 1, 1944, ch. 373, title XIX, § 1916, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 384.)

PRIOR PROVISIONS

A prior section 300x–5, act July 1, 1944, ch. 373, title XIX, § 1917, formerly § 1916, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 549; renumbered § 1917 and amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 104, 106(a), (b), (d), (g), 98 Stat. 2357–2359; Oct. 7, 1985, Pub. L. 99–117, § 7(b), 99 Stat. 493; Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2037(a)(1), (b), 2052(b), 102 Stat. 4203, 4208; Aug. 16, 1989, Pub. L. 101–93, § 2(p)(2), 103 Stat. 609, related to reports and audits relative to grants for alcohol, drug abuse, and mental health services, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1916 of act July 1, 1944, was classified to section 300x–4 of this title prior to repeal by Pub. L. 102–321.

§ 300x–6. Application for grant

(a) In general

For purposes of section 300x of this title, an application for a grant under such section for a fiscal year in accordance with this section if, subject to subsection (b) of this section—

(1) the plan is received by the Secretary not later than September 1 of the fiscal year prior to the fiscal year for which a State is seeking funds, and the report from the previous fiscal year as required under section 300x–51 of this title is received by December 1 of the fiscal year of the grant;

(2) the application contains each funding agreement that is described in this subpart or subpart III for such a grant (other than any such agreement that is not applicable to the State);

(3) the agreements are made through certification from the chief executive officer of the State;

(4) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

(5) the application contains the plan required in section 300x–1(a) of this title, the information required in section 300x–4(b)(3)(B)[1] of this title, and the report required in section 300x–52(a) of this title;

(6) the application contains recommendations in compliance with section 300x–4(a) of this title, or if no such recommendations are received by the State, the application otherwise demonstrates compliance with such section; and

(7) the application (including the plan under section 300x–1(a) of this title) is otherwise in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subpart.

(b) Waivers regarding certain territories

In the case of any territory of the United States except Puerto Rico, the Secretary may waive such provisions of this subpart and subpart III as the Secretary determines to be appropriate, other than the provisions of section 300x–5 of this title.

(July 1, 1944, ch. 373, title XIX, § 1917, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 384; amended Pub. L. 106–310, div. B, title XXXII, § 3204(d), (e), Oct. 17, 2000, 114 Stat. 1193.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 300x–4(b)(3)(B) of this title, referred to in subsec. (a)(5), was redesignated section 300x–4(b)(4)(B) by Pub. L. 106–310, div. B, title XXXII, § 3204(c)(1), Oct. 17, 2000, 114 Stat. 1193.

PRIOR PROVISIONS

A prior section 300x–6, act July 1, 1944, ch. 373, title XIX, § 1918, formerly § 1917, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 550; renumbered § 1918 and amended Oct. 19, 1984, Pub. L. 98–509, title I, § 106(d), (g), 98 Stat. 2358, 2359, authorized withholding funds from States which did not use allotments of grants for alcohol, drug abuse, and mental health services in accordance with requirements, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1917 of act July 1, 1944, was classified to section 300x–5 of this title prior to repeal by Pub. L. 102–321.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–310, § 3204(d), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the State involved submits the application not later than the date specified by the Secretary as being the date after which applications for such a grant will not be considered (in any case in which the Secretary specifies such a date);''.

Subsec. (b). Pub. L. 106–310, § 3204(e), substituted ''except Puerto Rico'' for ''whose allotment under section 300x of this title for the fiscal year is the amount specified in section 300x–7(c)(2)(B) of this title''.

§ 300x–7. Determination of amount of allotment

(a) States

(1) Determination under formula

Subject to subsection (b) of this section, the Secretary shall determine the amount of the allotment required in section 300x of this title for a State for a fiscal year in accordance with the following formula:

$$A\left(\frac{X}{U}\right)$$

(2) Determination of term "A"

For purposes of paragraph (1), the term ''A'' means the difference between—

(A) the amount appropriated under section 300x–9(a) of this title for allotments under section 300x of this title for the fiscal year involved; and

(B) an amount equal to 1.5 percent of the amount referred to in subparagraph (A).

(3) Determination of term "U"

For purposes of paragraph (1), the term ''U'' means the sum of the respective terms ''X'' determined for the States under paragraph (4).

(4) Determination of term "X"

For purposes of paragraph (1), the term ''X'' means the product of—

(A) an amount equal to the product of—

(i) the term ''P'', as determined for the State involved under paragraph (5); and

(ii) the factor determined under paragraph (8) for the State; and

(B) the greater of—

(i) 0.4; and

(ii) an amount equal to an amount determined for the State in accordance with the following formula:

$$1 - .35 \left(\frac{R\%}{P\%} \right)$$

(5) Determination of term "P"

(A) For purposes of paragraph (4), the term ''P'' means the sum of—

(i) an amount equal to the product of 0.107 and the number of individuals in the State who are between 18 and 24 years of age (inclusive);

(ii) an amount equal to the product of 0.166 and the number of individuals in the State who are between 25 and 44 years of age (inclusive);

(iii) an amount equal to the product of 0.099 and the number of individuals in the State who are between 45 and 64 years of age (inclusive); and

(iv) an amount equal to the product of 0.082 and the number of individuals in the State who are 65 years of age or older.

(B) With respect to data on population that is necessary for purposes of making a determination under subparagraph (A), the Secretary shall use the most recent data that is available from the Secretary of Commerce pursuant to the decennial census and pursuant to reasonable estimates by such Secretary of changes occurring in the data in the ensuing period.

(6) Determination of term "R%"

(A) For purposes of paragraph (4), the term ''R%'', except as provided in subparagraph (D), means the percentage constituted by the ratio of the amount determined under subparagraph (B) for the State involved to the amount determined under subparagraph (C).

(B) The amount determined under this subparagraph for the State involved is the quotient of—

(i) the most recent 3-year arithmetic mean of the total taxable resources of the State, as determined by the Secretary of the Treasury; divided by

(ii) the factor determined under paragraph (8) for the State.

(C) The amount determined under this subparagraph is the sum of the respective amounts determined for the States under subparagraph (B) (including the District of Columbia).

(D)(i) In the case of the District of Columbia, for purposes of paragraph (4), the term ''R%'' means the percentage constituted by the ratio of the amount determined under clause (ii) for such District to the amount determined under clause (iii).

(ii) The amount determined under this clause for the District of Columbia is the quotient of—

(I) the most recent 3-year arithmetic mean of total personal income in such District, as determined by the Secretary of Commerce; divided by

(II) the factor determined under paragraph (8) for the District.

(iii) The amount determined under this clause is the sum of the respective amounts determined for the States (including the District of Columbia) by making, for each State, the same determination as is described in clause (ii) for the District of Columbia.

(7) Determination of term "P%"

For purposes of paragraph (4), the term ''P%'' means the percentage constituted by the ratio of the term ''P'' determined under paragraph (5) for the State involved to the sum of the respective terms ''P'' determined for the States.

(8) Determination of certain factor

(A) The factor determined under this paragraph for the State involved is a factor whose purpose is to adjust the amount determined under clause (i) of paragraph (4)(A), and the amounts determined under each of subparagraphs (B)(i) and (D)(ii)(I) of paragraph (6), to reflect the differences that exist between the State and other States in the costs of providing comprehensive community mental health services to adults with a serious mental illness and to children with a serious emotional disturbance.

(B) Subject to subparagraph (C), the factor determined under this paragraph and in effect for the fiscal year involved shall be determined according to the methodology described in the report entitled ''Adjusting the Alcohol, Drug Abuse and Mental Health Services Block Grant Allocations for Poverty Populations and Cost of Service'', dated March 30, 1990, and prepared by Health Economics Research, a corporation, pursuant to a contract with the National Institute on Drug Abuse.

(C) The factor determined under this paragraph for the State involved may not for any fiscal year be greater than 1.1 or less than 0.9.

(D)(i) Not later than October 1, 1992, the Secretary, after consultation with the Comptroller General, shall in accordance with this section make a determination for each State of the factor that is to be in effect for the State under this paragraph. The factor so determined shall remain in effect through fiscal year 1994, and shall be recalculated every third fiscal year thereafter.

(ii) After consultation with the Comptroller General, the Secretary shall, through publication in the Federal Register, periodically make such refinements in the methodology referred to in subparagraph (B) as are consistent with the purpose described in subparagraph (A).

(b) Minimum allotments for States

With respect to fiscal year 2000, and subsequent fiscal years, the amount of the allotment of a State under section 300x of this title shall not be less than the amount the State received under such section for fiscal year 1998.

(c) Territories

(1) Determination under formula

Subject to paragraphs (2) and (4), the amount of an allotment under section 300x of this title for a territory of the United States for a fiscal year shall be the product of—

(A) an amount equal to the amounts reserved under paragraph (3) for the fiscal year; and

(B) a percentage equal to the quotient of—

(i) the civilian population of the territory, as indicated by the most recently available data; divided by

(ii) the aggregate civilian population of the territories of the United States, as indicated by such data.

(2) Minimum allotment for territories

The amount of an allotment under section 300x of this title for a territory of the United States for a fiscal year shall be the greater of—

(A) the amount determined under paragraph (1) for the territory for the fiscal year;

(B) $50,000; and

(C) with respect to fiscal years 1993 and 1994, an amount equal to 20.6 percent of the amount received by the territory from allotments made pursuant to this part for fiscal year 1992.

(3) Reservation of amounts

The Secretary shall each fiscal year reserve for the territories of the United States 1.5 percent of the amounts appropriated under section 300x–9(a) of this title for allotments under section 300x of this title for the fiscal year.

(4) Availability of data on population

With respect to data on the civilian population of the territories of the United States, if the Secretary determines for a fiscal year that recent such data for purposes of paragraph (1)(B) do not exist regarding a territory, the Secretary shall for such purposes estimate the civilian population of the territory by modifying the data on the territory to reflect the average extent of change occurring during the ensuing period in the population of all territories with respect to which recent such data do exist.

(5) Applicability of certain provisions

For purposes of subsection (a) of this section, the term ''State'' does not include the territories of the United States.

(July 1, 1944, ch. 373, title XIX, § 1918, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 385; amended Pub. L. 102–352, § 2(a)(8), (9), Aug. 26, 1992, 106 Stat. 938; Pub. L. 105–277, div. A, § 101(f) [title II, § 218(a)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–362; Pub. L. 106–113, div. B, § 1000(a)(4) [title II, § 212(a)], Nov. 29, 1999, 113 Stat. 1535, 1501A–239; Pub. L. 106–310, div. B, title XXXII, § 3205, Oct. 17, 2000, 114 Stat. 1193.)

PRIOR PROVISIONS

A prior section 300x–7, act July 1, 1944, ch. 373, title XIX, § 1919, formerly § 1918, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 551; renumbered § 1919 and amended Oct. 19, 1984, Pub. L. 98–509, title I, § 106(a), (g), 98 Stat. 2358, 2359, related to nondiscrimination provisions with respect to alcohol, drug abuse, and mental health programs, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1918 of act July 1, 1944, was classified to section 300x–6 of this title prior to repeal by Pub. L. 102–321.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–310 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''With respect to fiscal year 2000, the amount of the allotment of a State under section 300x of this title shall not be less than the amount the State received under section 300x of this title for fiscal year 1998.''

1999—Subsec. (b). Pub. L. 106–113 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''For each of the fiscal years 1993 and 1994, the amount of the allotment required in section 300x of this title for a State for the fiscal year involved shall be the greater of—

''(1) the amount determined under subsection (a) of this section for the State for the fiscal year; and

''(2) an amount equal to 20.6 percent of the amount received by the State from allotments made pursuant to this part for fiscal year 1992 (including reallotments under section 205(a) of the ADAMHA Reorganization Act).''

1998—Subsec. (b). Pub. L. 105–277, temporarily amended subsec. (b) to read as follows: ''(b) MINIMUM ALLOTMENTS FOR STATES.—

''(1) IN GENERAL.—With respect to fiscal year 1999, the amount of the allotment of a State under section 300x of this title shall not be less than the amount the State received under section 300x of this title for fiscal year 1998.''

See Effective and Termination Dates of 1998 Amendment note below.

1992—Subsec. (a)(5)(A)(iii). Pub. L. 102–352, § 2(a)(8), substituted ''45'' for ''25''.

Subsec. (c)(2)(C). Pub. L. 102–352, § 2(a)(9), added subpar. (C).

EFFECTIVE AND TERMINATION DATES OF 1998 AMENDMENT

Pub. L. 105–277, div. A, § 101(f) [title II, § 218(c)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–363, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section and section 300x–33 of this title] shall become effective as if enacted on October 1, 1998 and shall only apply during fiscal year 1999.

''(2) APPLICATION.—Upon the expiration of the fiscal year described in paragraph (1), the provisions of sections 1918(b) and 1933(b) of the Public Health Service Act (42 U.S.C. 300x–7(b) and 300x–33(b)), as in effect on September 30, 1998, shall be applied as if the amendments made by this section had not been enacted.''

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

§ 300x–8. Definitions

For purposes of this subpart:

(1) The terms ''adults with a serious mental illness'' and ''children with a serious emotional disturbance'' have the meanings given such terms under section 300x–1(c)(1) of this title.

(2) The term ''funding agreement'', with respect to a grant under section 300x of this title to a State, means that the Secretary may make such a grant only if the State makes the agreement involved.

(July 1, 1944, ch. 373, title XIX, § 1919, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 388.)

PRIOR PROVISIONS

A prior section 300x–8, act July 1, 1944, ch. 373, title XIX, § 1920, formerly § 1919, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552; renumbered § 1920, Oct. 19, 1984, Pub. L. 98–509, title I, § 106(g), 98 Stat. 2359,

authorized criminal penalty for false statements in connection with services furnished relative to alcohol, drug abuse, and mental health services block grant, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1919 of act July 1, 1944, was classified to section 300x–7 of this title prior to repeal by Pub. L. 102–321.

§ 300x–9. Funding

(a) Authorization of appropriations

For the purpose of carrying out this subpart, and subpart III and section 290aa–4 of this title with respect to mental health, there are authorized to be appropriated $450,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(b) Allocations for technical assistance, data collection, and program evaluation

(1) In general

For the purpose of carrying out section 300x–58(a) of this title with respect to mental health and the purposes specified in paragraphs (2) and (3), the Secretary shall obligate 5 percent of the amounts appropriated under subsection (a) of this section for a fiscal year.

(2) Data collection

The purpose specified in this paragraph is carrying out sections 290aa–4 and 300y of this title with respect to mental health.

(3) Program evaluation

The purpose specified in this paragraph is the conduct of evaluations of prevention and treatment programs and services with respect to mental health to determine methods for improving the availability and quality of such programs and services.

(July 1, 1944, ch. 373, title XIX, § 1920, as added Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 388; amended Pub. L. 106–310, div. B, title XXXII, § 3204(f), Oct. 17, 2000, 114 Stat. 1193.)

PRIOR PROVISIONS

Prior sections 300x–9 to 300x–13 were repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

Section 300x–9, act July 1, 1944, ch. 373, title XIX, § 1921, formerly § 1920, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552; renumbered § 1920A and amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 105(a), 106(g), 98 Stat. 2358, 2359; Oct. 7, 1985, Pub. L. 99–117, § 7(c), 99 Stat. 493; renumbered § 1921 and amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2038(2), (6), 102 Stat. 4203, authorized technical assistance with respect to development of services under alcohol, drug abuse, and mental health services block grants.

A prior section 1920 of act July 1, 1944, was classified to section 300x–8 of this title and repealed by Pub. L. 102–321.

Section 300x–9a, act July 1, 1944, ch. 373, title XIX, § 1922, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2039(a), 102 Stat. 4204; amended Aug. 16, 1989, Pub. L. 101–93, § 2(n)(1), 103 Stat. 608, related to service research on community-based alcohol and drug abuse treatment programs.

Section 300x–9b, act July 1, 1944, ch. 373, title XIX, § 1923, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2040, 102 Stat. 4204; amended Aug. 16, 1989, Pub. L. 101–93, § 2(q)(2), 103 Stat. 609, related to service research on community-based mental health treatment programs.

Section 300x–10, act July 1, 1944, ch. 373, title XIX, § 1924, formerly § 1920B, as added Nov. 14, 1986, Pub. L. 99–660, title V, § 502(2), 100 Stat. 3795; renumbered § 1924 and amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2038(3), (4), 102 Stat. 4203; Nov. 28, 1990, Pub. L. 101–639, § 3(a)(1), 104 Stat. 4601, related to development grants for State comprehensive mental health services plans.

Section 300x–11, act July 1, 1944, ch. 373, title XIX, § 1925, formerly § 1920C, as added Nov. 14, 1986, Pub. L. 99–660, title V, § 502(2), 100 Stat. 3795; renumbered § 1925 and amended Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2038(3), 2041(a), 102 Stat. 4203, 4205; Aug. 16, 1989, Pub. L. 101–93, § 2(*o*)(1), 103 Stat. 608; Nov. 28, 1990, Pub. L. 101–639, § 3(b), 104 Stat. 4601, related to State comprehensive mental health services plans.

Section 300x–12, act July 1, 1944, ch. 373, title XIX, § 1926, formerly § 1920D, as added Nov. 14, 1986, Pub. L. 99–660, title V, § 502(2), 100 Stat. 3796; renumbered § 1926 and amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2038(3), (5), 102 Stat. 4203; Aug. 16, 1989, Pub. L. 101–93, § 2(*o*)(2), 103 Stat. 609; Nov. 28, 1990, Pub. L. 101–639, § 3(c), 104 Stat. 4602, related to enforcement of requirement of developing State comprehensive mental health services plans.

Section 300x–13, act July 1, 1944, ch. 373, title XIX, § 1927, formerly § 1920E, as added Nov. 14, 1986, Pub. L. 99–660, title V, § 502(2), 100 Stat. 3797; renumbered § 1927, Nov. 18, 1988, Pub. L. 100–690, title II, § 2038(3), 102 Stat. 4203, related to development of model standards for provision of care to chronically mentally ill persons.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310, § 3204(f)(1), substituted ''$450,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003'' for ''$450,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994''.

Subsec. (b)(2). Pub. L. 106–310, § 3204(f)(2), substituted ''sections 290aa–4 and 300y of this title'' for ''section 290aa–4 of this title''.

SUBPART II—BLOCK GRANTS FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

§ 300x–21. Formula grants to States

(a) In general

For the purpose described in subsection (b) of this section, the Secretary, acting through the Center for Substance Abuse Treatment, shall make an allotment each fiscal year for each State in an amount determined in accordance with section 300x–33 of this title. The Secretary shall make a grant to the State of the allotment made for the State for the fiscal year if the State submits to the Secretary an application in accordance with section 300x–32 of this title.

(b) Authorized activities

A funding agreement for a grant under subsection (a) of this section is that, subject to section 300x–31 of this title, the State involved will expend the grant only for the purpose of planning, carrying out, and evaluating activities to prevent and treat substance abuse and for related activities authorized in section 300x–24 of this title.

(July 1, 1944, ch. 373, title XIX, § 1921, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 388.)

PRIOR PROVISIONS

A prior section 1921 of act July 1, 1944, was classified to section 300x–9 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1921 of act July 1, 1944, was classified to section 300y of this title prior to repeal by Pub. L. 100–690.

§ 300x–22. Certain allocations

(a) Allocation regarding primary prevention programs

A funding agreement for a grant under section 300x–21 of this title is that, in expending the grant, the State involved—

(1) will expend not less than 20 percent for programs for individuals who do not require treatment for substance abuse, which programs—

(A) educate and counsel the individuals on such abuse; and

(B) provide for activities to reduce the risk of such abuse by the individuals;

(2) will, in carrying out paragraph (1)—

(A) give priority to programs for populations that are at risk of developing a pattern of such abuse; and

(B) ensure that programs receiving priority under subparagraph (A) develop community-based strategies for the prevention of such abuse, including strategies to discourage the use of alcoholic beverages and tobacco products by individuals to whom it is unlawful to sell or distribute such beverages or products.

(b) Allocations regarding women

(1) In general

Subject to paragraph (2), a funding agreement for a grant under section 300x–21 of this title for a fiscal year is that—

(A) in the case of a grant for fiscal year 1993, the State involved will expend not less than 5 percent of the grant to increase (relative to fiscal year 1992) the availability of treatment services designed for pregnant women and women with dependent children (either by establishing new programs or expanding the capacity of existing programs);

(B) in the case of a grant for fiscal year 1994, the State will expend not less than 5 percent of the grant to so increase (relative to fiscal year 1993) the availability of such services for such women; and

(C) in the case of a grant for any subsequent fiscal year, the State will expend for such services for such women not less than an amount equal to the amount expended by the State for fiscal year 1994.

(2) Waiver

(A) Upon the request of a State, the Secretary may provide to the State a waiver of all or part of the requirement established in paragraph (1) if the Secretary determines that the State is providing an adequate level of treatments services for women described in such paragraph, as indicated by a comparison of the number of such women seeking the services with the availability in the State of the services.

(B) The Secretary shall approve or deny a request for a waiver under subparagraph (A) not later than 120 days after the date on which the request is made.

(C) Any waiver provided by the Secretary under subparagraph (A) shall be applicable only to the fiscal year involved.

(3) Childcare and prenatal care

A funding agreement for a grant under section 300x–21 of this title for a State is that each entity providing treatment services with amounts reserved under paragraph (1) by the State will, directly or through arrangements with other public or nonprofit private entities, make available prenatal care to women receiving such services and, while the women are receiving the services, childcare.

(July 1, 1944, ch. 373, title XIX, § 1922, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 389; amended Pub. L. 106–310, div. B, title XXXIII, § 3303(a), (f)(2)(A), Oct. 17, 2000, 114 Stat. 1210, 1211.)

AMENDMENT OF SUBSECTION (b)(2), (3)

Pub. L. 106–310, div. B, title XXXIII, § 3303(f)(2), Oct. 17, 2000, 114 Stat. 1211, provided that, effective upon publication of regulations developed in accordance with section 300x–32(e)(1) of this title, subsection (c) of this section [now subsection (b)] is amended by striking out paragraph (2) and redesignating paragraph (3) as paragraph (2).

PRIOR PROVISIONS

A prior section 1922 of act July 1, 1944, was classified to section 300x–9a of this title prior to repeal by Pub. L. 102–321.

Another prior section 1922 of act July 1, 1944, was classified to section 300y–1 of this title prior to repeal by Pub. L. 100–690.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310, § 3303(a), redesignated subsec. (b) as (a) and struck out heading and text of former subsec. (a). Text read as follows: ''A funding agreement for a grant under section 300x–21 of this title is that, in expending the grant, the State involved will expend—

''(1) not less than 35 percent for prevention and treatment activities regarding alcohol; and

''(2) not less than 35 percent for prevention and treatment activities regarding other drugs.''

Subsec. (b). Pub. L. 106–310, § 3303(a)(2), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 106–310, § 3303(a)(2), redesignated subsec. (c) as (b).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–310, div. B, title XXXIII, § 3303(f)(2), Oct. 17, 2000, 114 Stat. 1211, provided that the amendment made by section 3303(f)(2) is effective upon the publication of the regulations developed in accordance with section 300x–32(e)(1) of this title.

§ 300x–23. Intravenous substance abuse

(a) Capacity of treatment programs

(1) Notification of reaching capacity

A funding agreement for a grant under section 300x–21 of this title is that the State involved will, in the case of programs of treatment for intravenous drug abuse, require that any such program receiving amounts from the grant, upon reaching 90 percent of its capacity to admit individuals to the program, provide to the State a notification of such fact.

(2) Provision of treatment

A funding agreement for a grant under section 300x–21 of this title is that the State involved will, with respect to notifications under paragraph (1), ensure that each individual who requests and is in need of treatment for intravenous drug abuse is admitted

to a program of such treatment not later than—

(A) 14 days after making the request for admission to such a program; or

(B) 120 days after the date of such request, if no such program has the capacity to admit the individual on the date of such request and if interim services are made available to the individual not later than 48 hours after such request.

(b) Outreach regarding intravenous substance abuse

A funding agreement for a grant under section 300x–21 of this title is that the State involved, in providing amounts from the grant to any entity for treatment services for intravenous drug abuse, will require the entity to carry out activities to encourage individuals in need of such treatment to undergo treatment.

(July 1, 1944, ch. 373, title XIX, § 1923, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 390.)

PRIOR PROVISIONS

A prior section 1923 of act July 1, 1944, was classified to section 300x–9b of this title prior to repeal by Pub. L. 102–321.

Another prior section 1923 of act July 1, 1944, was classified to section 300y–2 of this title prior to repeal by Pub. L. 100–690.

§ 300x–24. Requirements regarding tuberculosis and human immunodeficiency virus

(a) Tuberculosis

(1) In general

A funding agreement for a grant under section 300x–21 of this title is that the State involved will require that any entity receiving amounts from the grant for operating a program of treatment for substance abuse—

(A) will, directly or through arrangements with other public or nonprofit private entities, routinely make available tuberculosis services to each individual receiving treatment for such abuse; and

(B) in the case of an individual in need of such treatment who is denied admission to the program on the basis of the lack of the capacity of the program to admit the individual, will refer the individual to another provider of tuberculosis services.

(2) Tuberculosis services

For purposes of paragraph (1), the term ''tuberculosis services'', with respect to an individual, means—

(A) counseling the individual with respect to tuberculosis;

(B) testing to determine whether the individual has contracted such disease and testing to determine the form of treatment for the disease that is appropriate for the individual; and

(C) providing such treatment to the individual.

(b) Human immunodeficiency virus

(1) Requirement for certain States

In the case of a State described in paragraph (2), a funding agreement for a grant under section 300x–21 of this title is that—

(A) with respect to individuals undergoing treatment for substance abuse, the State will, subject to paragraph (3), carry out 1 or more projects to make available to the individuals early intervention services for HIV disease at the sites at which the individuals are undergoing such treatment;

(B) for the purpose of providing such early intervention services through such projects, the State will make available from the grant the percentage that is applicable for the State under paragraph (4); and

(C) the State will, subject to paragraph (5), carry out such projects only in geographic areas of the State that have the greatest need for the projects.

(2) Designated States

For purposes of this subsection, a State described in this paragraph is any State whose rate of cases of acquired immune deficiency syndrome is 10 or more such cases per 100,000 individuals (as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control for the most recent calendar year for which such data are available).

(3) Use of existing programs regarding substance abuse

With respect to programs that provide treatment services for substance abuse, a funding agreement for a grant under section 300x–21 of this title for a designated State is that each such program participating in a project under paragraph (1) will be a program that began operation prior to the fiscal year for which the State is applying to receive the grant. A program that so began operation may participate in a project under paragraph (1) without regard to whether the program has been providing early intervention services for HIV disease.

(4) Applicable percentage regarding expenditures for services

(A)(i) For purposes of paragraph (1)(B), the percentage that is applicable under this paragraph for a designated State is, subject to subparagraph (B), the percentage by which the amount of the grant under section 300x–21 of this title for the State for the fiscal year involved is an increase over the amount specified in clause (ii).

(ii) The amount specified in this clause is the amount that was reserved by the designated State involved from the allotment of the State under section 300x–1a[1] of this title for fiscal year 1991 in compliance with section 300x–4(c)(6)(A)(ii)[1] of this title (as such sections were in effect for such fiscal year).

(B) If the percentage determined under subparagraph (A) for a designated State for a fiscal year is less than 2 percent (including a negative percentage, in the case of a State for which there is no increase for purposes of such subparagraph), the percentage applicable under this paragraph for the State is 2 percent. If the percentage so determined is 2 percent or more, the percentage applicable under

[1] See References in Text note below.

this paragraph for the State is the percentage determined under subparagraph (A), subject to not exceeding 5 percent.

(5) Requirement regarding rural areas

(A) A funding agreement for a grant under section 300x–21 of this title for a designated State is that, if the State will carry out 2 or more projects under paragraph (1), the State will carry out 1 such project in a rural area of the State, subject to subparagraph (B).

(B) The Secretary shall waive the requirement established in subparagraph (A) if the State involved certifies to the Secretary that—

(i) there is insufficient demand in the State to carry out a project under paragraph (1) in any rural area of the State; or

(ii) there are no rural areas in the State.

(6) Manner of providing services

With respect to the provision of early intervention services for HIV disease to an individual, a funding agreement for a grant under section 300x–21 of this title for a designated State is that—

(A) such services will be undertaken voluntarily by, and with the informed consent of, the individual; and

(B) undergoing such services will not be required as a condition of receiving treatment services for substance abuse or any other services.

(7) Definitions

For purposes of this subsection:

(A) The term ''designated State'' means a State described in paragraph (2).

(B) The term ''early intervention services'', with respect to HIV disease, means—

(i) appropriate pretest counseling;

(ii) testing individuals with respect to such disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;

(iii) appropriate post-test counseling; and

(iv) providing the therapeutic measures described in clause (ii).

(C) The term ''HIV disease'' means infection with the etiologic agent for acquired immune deficiency syndrome.

(c) Expenditure of grant for compliance with agreements

(1) In general

A grant under section 300x–21 of this title may be expended for purposes of compliance with the agreements required in this section, subject to paragraph (2).

(2) Limitation

A funding agreement for a grant under section 300x–21 of this title for a State is that the grant will not be expended to make payment for any service provided for purposes of compliance with this section to the extent that payment has been made, or can reasonably be expected to be made, with respect to such service—

(A) under any State compensation program, under any insurance policy, or under any Federal or State health benefits program (including the program established in title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] and the program established in title XIX of such Act [42 U.S.C. 1396 et seq.]); or

(B) by an entity that provides health services on a prepaid basis.

(d) Maintenance of effort

With respect to services provided for by a State for purposes of compliance with this section, a funding agreement for a grant under section 300x–21 of this title is that the State will maintain expenditures of non-Federal amounts for such services at a level that is not less than average level of such expenditures maintained by the State for 2-year period preceding the first fiscal year for which the State receives such a grant.

(e) Applicability of certain provision

Section 300x–31 of this title applies to this section (and to each other provision of this subpart).

(July 1, 1944, ch. 373, title XIX, § 1924, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 391.)

REFERENCES IN TEXT

Section 300x–1a of this title, referred to in subsec. (b)(4)(A)(ii), was repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

Section 300x–4 of this title, referred to in subsec. (b)(4)(A)(ii), was in the original a reference to section 1916 of act July 1, 1944, which was repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378. Section 201(2) of Pub. L. 102–321 enacted new sections 1915 and 1916 of act July 1, 1944, which are classified to sections 300x–4 and 300x–5, respectively, of this title.

The Social Security Act, referred to in subsec. (c)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 1924 of act July 1, 1944, was classified to section 300x–10 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1924 of act July 1, 1944, was classified to section 300y–3 of this title prior to repeal by Pub. L. 99–280.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

§ 300x–25. Group homes for recovering substance abusers

(a) State revolving funds for establishment of homes

A State, using funds available under section 300x–21 of this title, may establish and maintain

the ongoing operation of a revolving fund in accordance with this section to support group homes for recovering substance abusers as follows:

(1) The purpose of the fund is to make loans for the costs of establishing programs for the provision of housing in which individuals recovering from alcohol or drug abuse may reside in groups of not less than 6 individuals. The fund is established directly by the State or through the provision of a grant or contract to a nonprofit private entity.

(2) The programs are carried out in accordance with guidelines issued under subsection (b) of this section.

(3) Not less than $100,000 is available for the fund.

(4) Loans made from the revolving fund do not exceed $4,000 and each such loan is repaid to the revolving fund by the residents of the housing involved not later than 2 years after the date on which the loan is made.

(5) Each such loan is repaid by such residents through monthly installments, and a reasonable penalty is assessed for each failure to pay such periodic installments by the date specified in the loan agreement involved.

(6) Such loans are made only to nonprofit private entities agreeing that, in the operation of the program established pursuant to the loan—

(A) the use of alcohol or any illegal drug in the housing provided by the program will be prohibited;

(B) any resident of the housing who violates such prohibition will be expelled from the housing;

(C) the costs of the housing, including fees for rent and utilities, will be paid by the residents of the housing; and

(D) the residents of the housing will, through a majority vote of the residents, otherwise establish policies governing residence in the housing, including the manner in which applications for residence in the housing are approved.

(b) Issuance by Secretary of guidelines

The Secretary shall ensure that there are in effect guidelines under this subpart for the operation of programs described in subsection (a) of this section.

(c) Applicability to territories

The requirements established in subsection (a) of this section shall not apply to any territory of the United States other than the Commonwealth of Puerto Rico.

(July 1, 1944, ch. 373, title XIX, § 1925, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 393; amended Pub. L. 106–310, div. B, title XXXIII, § 3303(b), Oct. 17, 2000, 114 Stat. 1210.)

PRIOR PROVISIONS

A prior section 1925 of act July 1, 1944, was classified to section 300x–11 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1925 of act July 1, 1944, was classified to section 300y–4 of this title prior to repeal by Pub. L. 99–280.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310, in introductory provisions, substituted ''A State, using funds available under section 300x–21 of this title, may establish and maintain the ongoing operation of a revolving fund in accordance with this section to support group homes for recovering substance abusers as follows:'' for ''For fiscal year 1993 and subsequent fiscal years, the Secretary may make a grant under section 300x–21 of this title only if the State involved has established, and is providing for the ongoing operation of, a revolving fund as follows:''.

§ 300x–26. State law regarding sale of tobacco products to individuals under age of 18

(a) Relevant law

(1) In general

Subject to paragraph (2), for fiscal year 1994 and subsequent fiscal years, the Secretary may make a grant under section 300x–21 of this title only if the State involved has in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18.

(2) Delayed applicability for certain States

In the case of a State whose legislature does not convene a regular session in fiscal year 1993, and in the case of a State whose legislature does not convene a regular session in fiscal year 1994, the requirement described in paragraph (1) as a condition of a receipt of a grant under section 300x–21 of this title shall apply only for fiscal year 1995 and subsequent fiscal years.

(b) Enforcement

(1) In general

For the first applicable fiscal year and for subsequent fiscal years, a funding agreement for a grant under section 300x–21 of this title is that the State involved will enforce the law described in subsection (a) of this section in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18.

(2) Activities and reports regarding enforcement

For the first applicable fiscal year and for subsequent fiscal years, a funding agreement for a grant under section 300x–21 of this title is that the State involved will—

(A) annually conduct random, unannounced inspections to ensure compliance with the law described in subsection (a) of this section; and

(B) annually submit to the Secretary a report describing—

(i) the activities carried out by the State to enforce such law during the fiscal year preceding the fiscal year for which the State is seeking the grant;

(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18; and

(iii) the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

(c) Noncompliance of State

Before making a grant under section 300x–21 of this title to a State for the first applicable fiscal

year or any subsequent fiscal year, the Secretary shall make a determination of whether the State has maintained compliance with subsections (a) and (b) of this section. If, after notice to the State and an opportunity for a hearing, the Secretary determines that the State is not in compliance with such subsections, the Secretary shall reduce the amount of the allotment under such section for the State for the fiscal year involved by an amount equal to—

(1) in the case of the first applicable fiscal year, 10 percent of the amount determined under section 300x–33 of this title for the State for the fiscal year;

(2) in the case of the first fiscal year following such applicable fiscal year, 20 percent of the amount determined under section 300x–33 of this title for the State for the fiscal year;

(3) in the case of the second such fiscal year, 30 percent of the amount determined under section 300x–33 of this title for the State for the fiscal year; and

(4) in the case of the third such fiscal year or any subsequent fiscal year, 40 percent of the amount determined under section 300x–33 of this title for the State for the fiscal year.

(d) "First applicable fiscal year" defined

For purposes of this section, the term ''first applicable fiscal year'' means—

(1) fiscal year 1995, in the case of any State described in subsection (a)(2) of this section; and

(2) fiscal year 1994, in the case of any other State.

(July 1, 1944, ch. 373, title XIX, § 1926, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 394.)

PRIOR PROVISIONS

A prior section 1926 of act July 1, 1944, was classified to section 300x–12 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1926 of act July 1, 1944, was classified to section 300y–5 of this title prior to repeal by Pub. L. 99–280.

§ 300x–27. Treatment services for pregnant women

(a) In general

A funding agreement for a grant under section 300x–21 of this title is that the State involved—

(1) will ensure that each pregnant woman in the State who seeks or is referred for and would benefit from such services is given preference in admissions to treatment facilities receiving funds pursuant to the grant; and

(2) will, in carrying out paragraph (1), publicize the availability to such women of services from the facilities and the fact that the women receive such preference.

(b) Referrals regarding States

A funding agreement for a grant under section 300x–21 of this title is that, in carrying out subsection (a)(1) of this section—

(1) the State involved will require that, in the event that a treatment facility has insufficient capacity to provide treatment services to any woman described in such subsection who seeks the services from the facility, the facility refer the woman to the State; and

(2) the State, in the case of each woman for whom a referral under paragraph (1) is made to the State—

(A) will refer the woman to a treatment facility that has the capacity to provide treatment services to the woman; or

(B) will, if no treatment facility has the capacity to admit the woman, make interim services available to the woman not later than 48 hours after the women[1] seeks the treatment services.

(July 1, 1944, ch. 373, title XIX, § 1927, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 395; amended Pub. L. 102–352, § 2(a)(10), Aug. 26, 1992, 106 Stat. 938.)

PRIOR PROVISIONS

A prior section 1927 of act July 1, 1944, was classified to section 300x–12 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1927 of act July 1, 1944, was classified to section 300y–6 of this title prior to repeal by Pub. L. 99–280.

AMENDMENTS

1992—Subsec. (b)(2)(B). Pub. L. 102–352 struck out ''available'' before ''interim services available''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

§ 300x–28. Additional agreements

(a) Improvement of process for appropriate referrals for treatment

With respect to individuals seeking treatment services, a funding agreement for a grant under section 300x–21 of this title is that the State involved will improve (relative to fiscal year 1992) the process in the State for referring the individuals to treatment facilities that can provide to the individuals the treatment modality that is most appropriate for the individuals.

(b) Continuing education

With respect to any facility for treatment services or prevention actitivities[1] that is receiving amounts from a grant under section 300x–21 of this title, a funding agreement for a State for a grant under such section is that continuing education in such services or activities (or both, as the case may be) will be made available to employees of the facility who provide the services or activities.

(c) Coordination of various activities and services

A funding agreement for a grant under section 300x–21 of this title is that the State involved will coordinate prevention and treatment activities with the provision of other appropriate services (including health, social, correctional and criminal justice, educational, vocational rehabilitation, and employment services).

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[1] So in original. Probably should be ''woman''.

[1] So in original. Probably should be ''activities''.

(d) Waiver of requirement

(1) In general

Upon the request of a State, the Secretary may provide to a State a waiver of any or all of the requirements established in this section if the Secretary determines that, with respect to services for the prevention and treatment of substance abuse, the requirement involved is unnecessary for maintaining quality in the provision of such services in the State.

(2) Date certain for acting upon request

The Secretary shall approve or deny a request for a waiver under paragraph (1) not later than 120 days after the date on which the request is made.

(3) Applicability of waiver

Any waiver provided by the Secretary under paragraph (1) shall be applicable only to the fiscal year involved.

(July 1, 1944, ch. 373, title XIX, § 1928, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 396; amended Pub. L. 106–310, div. B, title XXXIII, § 3303(f)(2)(B), Oct. 17, 2000, 114 Stat. 1211.)

REPEAL OF SUBSECTION (d)

Pub. L. 106–310, div. B, title XXXIII, § 3303(f)(2), Oct. 17, 2000, 114 Stat. 1211, provided that, effective upon publication of regulations developed in accordance with section 300x–32(e)(1) of this title, subsection (d) of this section is repealed.

PRIOR PROVISIONS

A prior section 1928 of act July 1, 1944, was classified to section 300y–7 of this title prior to repeal by Pub. L. 99–280.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–310, div. B, title XXXIII, § 3303(f)(2), Oct. 17, 2000, 114 Stat. 1211, provided that the amendment made by section 3303(f)(2) is effective upon the publication of the regulations developed in accordance with section 300x–32(e)(1) of this title.

§ 300x–29. Submission to Secretary of statewide assessment of needs

The Secretary may make a grant under section 300x–21 of this title only if the State submits to the Secretary an assessment of the need in the State for authorized activities (which assessment is conducted in accordance with criteria issued by the Secretary), both by locality and by the State in general, which assessment includes a description of—

(1) the incidence and prevalence in the State of drug abuse and the incidence and prevalence in the State of alcohol abuse and alcoholism;

(2) current prevention and treatment activities in the State;

(3) the need of the State for technical assistance to carry out such activities;

(4) efforts by the State to improve such activities; and

(5) the extent to which the availability of such activities is insufficient to meet the need for the activities, the interim services to be made available under sections 300x–23(a) and 300x–27(b) of this title, and the manner in which such services are to be so available.

(July 1, 1944, ch. 373, title XIX, § 1929, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 396.)

PRIOR PROVISIONS

A prior section 1929 of act July 1, 1944, was classified to section 300y–8 of this title prior to repeal by Pub. L. 99–280.

§ 300x–30. Maintenance of effort regarding State expenditures

(a) In general

With respect to the principal agency of a State for carrying out authorized activities, a funding agreement for a grant under section 300x–21 of this title for the State for a fiscal year is that such agency will for such year maintain aggregate State expenditures for authorized activities at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying for the grant.

(b) Exclusion of certain funds

The Secretary may exclude from the aggregate State expenditures under subsection (a) of this section, funds appropriated to the principle agency for authorized activities which are of a non-recurring nature and for a specific purpose.

(c) Waiver

(1) In general

Upon the request of a State, the Secretary may waive all or part of the requirement established in subsection (a) of this section if the Secretary determines that extraordinary economic conditions in the State justify the waiver.

(2) Date certain for acting upon request

The Secretary shall approve or deny a request for a waiver under paragraph (1) not later than 120 days after the date on which the request is made.

(3) Applicability of waiver

Any waiver provided by the Secretary under paragraph (1) shall be applicable only to the fiscal year involved.

(d) Noncompliance by State

(1) In general

In making a grant under section 300x–21 of this title to a State for a fiscal year, the Secretary shall make a determination of whether, for the previous fiscal year, the State maintained material compliance with any agreement made under subsection (a) of this section. If the Secretary determines that a State has failed to maintain such compliance, the Secretary shall reduce the amount of the allotment under section 300x–21 of this title for the State for the fiscal year for which the grant is being made by an amount equal to the amount constituting such failure for the previous fiscal year.

(2) Submission of information to Secretary

The Secretary may make a grant under section 300x–21 of this title for a fiscal year only if the State involved submits to the Secretary information sufficient for the Secretary to

make the determination required in paragraph (1).

(July 1, 1944, ch. 373, title XIX, § 1930, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 397; amended Pub. L. 106–310, div. B, title XXXIII, § 3303(c), Oct. 17, 2000, 114 Stat. 1210.)

PRIOR PROVISIONS

A prior section 1930 of act July 1, 1944, was classified to section 300y–9 of this title prior to repeal by Pub. L. 99–280.

AMENDMENTS

2000—Subsecs. (b) to (d). Pub. L. 106–310 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

§ 300x–31. Restrictions on expenditure of grant

(a) In general

(1) Certain restrictions

A funding agreement for a grant under section 300x–21 of this title is that the State involved will not expend the grant—

(A) to provide inpatient hospital services, except as provided in subsection (b) of this section;

(B) to make cash payments to intended recipients of health services;

(C) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(D) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds;

(E) to provide financial assistance to any entity other than a public or nonprofit private entity; or

(F) to carry out any program prohibited by section 300ee–5 of this title.

(2) Limitation on administrative expenses

A funding agreement for a grant under section 300x–21 of this title is that the State involved will not expend more than 5 percent of the grant to pay the costs of administering the grant.

(3) Limitation regarding penal and correctional institutions

A funding agreement for a State for a grant under section 300x–21 of this title is that, in expending the grant for the purpose of providing treatment services in penal or correctional institutions of the State, the State will not expend more than an amount equal to the amount expended for such purpose by the State from the grant made under section 300x–1a[1] of this title to the State for fiscal year 1991 (as section 300x–1a[1] of this title was in effect for such fiscal year).

(b) Exception regarding inpatient hospital services

(1) Medical necessity as precondition

With respect to compliance with the agreement made under subsection (a) of this section, a State may expend a grant under section 300x–21 of this title to provide inpatient hospital services as treatment for substance abuse only if it has been determined, in accordance with guidelines issued by the Secretary, that such treatment is a medical necessity for the individual involved, and that the individual cannot be effectively treated in a community-based, nonhospital, residential program of treatment.

(2) Rate of payment

In the case of an individual for whom a grant under section 300x–21 of this title is expended to provide inpatient hospital services described in paragraph (1), a funding agreement for the grant for the State involved is that the daily rate of payment provided to the hospital for providing the services to the individual will not exceed the comparable daily rate provided for community-based, nonhospital, residential programs of treatment for substance abuse.

(c) Waiver regarding construction of facilities

(1) In general

The Secretary may provide to any State a waiver of the restriction established in subsection (a)(1)(C) of this section for the purpose of authorizing the State to expend a grant under section 300x–21 of this title for the construction of a new facility or rehabilitation of an existing facility, but not for land acquisition.

(2) Standard regarding need for waiver

The Secretary may approve a waiver under paragraph (1) only if the State demonstrates to the Secretary that adequate treatment cannot be provided through the use of existing facilities and that alternative facilities in existing suitable buildings are not available.

(3) Amount

In granting a waiver under paragraph (1), the Secretary shall allow the use of a specified amount of funds to construct or rehabilitate a specified number of beds for residential treatment and a specified number of slots for outpatient treatment, based on reasonable estimates by the State of the costs of construction or rehabilitation. In considering waiver applications, the Secretary shall ensure that the State has carefully designed a program that will minimize the costs of additional beds.

(4) Matching funds

The Secretary may grant a waiver under paragraph (1) only if the State agrees, with respect to the costs to be incurred by the State in carrying out the purpose of the waiver, to make available non-Federal contributions in cash toward such costs in an amount equal to not less than $1 for each $1 of Federal funds provided under section 300x–21 of this title.

(5) Date certain for acting upon request

The Secretary shall act upon a request for a waiver under paragraph (1) not later than 120 days after the date on which the request is made.

(July 1, 1944, ch. 373, title XIX, § 1931, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 397.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 300x–1a of this title, referred to in subsec. (a)(3), was repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

PRIOR PROVISIONS

A prior section 1931 of act July 1, 1944, was classified to section 300y–21 of this title and subsequently omitted from the Code.

Another prior section 1931 of act July 1, 1944, was classified to section 300y–10 of this title prior to repeal by Pub. L. 99–280.

§ 300x–32. Application for grant; approval of State plan

(a) In general

For purposes of section 300x–21 of this title, an application for a grant under such section for a fiscal year is in accordance with this section if, subject to subsections (c) and (d)(2) of this section—

(1) the application is received by the Secretary not later than October 1 of the fiscal year for which the State is seeking funds;

(2) the application contains each funding agreement that is described in this subpart or subpart III for such a grant (other than any such agreement that is not applicable to the State);

(3) the agreements are made through certification from the chief executive officer of the State;

(4) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

(5) the application contains the information required in section 300x–29 of this title, the information required in section 300x–30(c)(2)[1] of this title, and the report required in section 300x–52(a) of this title;

(6)(A) the application contains a plan in accordance with subsection (b) of this section and the plan is approved by the Secretary; and

(B) the State provides assurances satisfactory to the Secretary that the State complied with the provisions of the plan under subparagraph (A) that was approved by the Secretary for the most recent fiscal year for which the State received a grant under section 300x–21 of this title; and

(7) the application (including the plan under paragraph (6)) is otherwise in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subpart.

(b) State plan

(1) In general

A plan submitted by a State under subsection (a)(6) of this section is in accordance with this subsection if the plan contains detailed provisions for complying with each funding agreement for a grant under section 300x–21 of this title that is applicable to the State, including a description of the manner in which the State intends to expend the grant.

[1] See References in Text note below.

(2) Authority of Secretary regarding modifications

As a condition of making a grant under section 300x–21 of this title to a State for a fiscal year, the Secretary may require that the State modify any provision of the plan submitted by the State under subsection (a)(6) of this section (including provisions on priorities in carrying out authorized activities). If the Secretary approves the plan and makes the grant to the State for the fiscal year, the Secretary may not during such year require the State to modify the plan.

(3) Authority of Center for Substance Abuse Prevention

With respect to plans submitted by the States under subsection (a)(6) of this section, the Secretary, acting through the Director of the Center for Substance Abuse Prevention, shall review and approve or disapprove the provisions of the plans that relate to prevention activities.

(c) Waivers regarding certain territories

In the case of any territory of the United States except Puerto Rico, the Secretary may waive such provisions of this subpart and subpart III as the Secretary determines to be appropriate, other than the provisions of section 300x–31 of this title.

(d) Issuance of regulations; precondition to making grants

(1) Regulations

Not later than August 25, 1992, the Secretary, acting as appropriate through the Director of the Center for Treatment Improvement or the Director of the Center for Substance Abuse Prevention, shall by regulation establish standards specifying the circumstances in which the Secretary will consider an application for a grant under section 300x–21 of this title to be in accordance with this section.

(2) Issuance as precondition to making grants

The Secretary may not make payments under any grant under section 300x–21 of this title for fiscal year 1993 on or after January 1, 1993, unless the Secretary has issued standards under paragraph (1).

(e) Waiver authority for certain requirements

(1) In general

Upon the request of a State, the Secretary may waive the requirements of all or part of the sections described in paragraph (2) using objective criteria established by the Secretary by regulation after consultation with the States and other interested parties including consumers and providers.

(2) Sections

The sections described in paragraph (1) are sections 300x–22(c)[1], 300x–23, 300x–24 and 300x–28 of this title.

(3) Date certain for acting upon request

The Secretary shall approve or deny a request for a waiver under paragraph (1) and inform the State of that decision not later than

120 days after the date on which the request and all the information needed to support the request are submitted.

(4) Annual reporting requirement

The Secretary shall annually report to the general public on the States that receive a waiver under this subsection.

(July 1, 1944, ch. 373, title XIX, § 1932, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 399; amended Pub. L. 106–310, div. B, title XXXIII, § 3303(d)–(f)(1), Oct. 17, 2000, 114 Stat. 1211.)

REFERENCES IN TEXT

Section 300x–30(c) of this title, referred to in subsec. (a)(5), was redesignated section 300x–30(d) of this title by Pub. L. 106–310, div. B, title XXXIII, § 3303(c)(1), Oct. 17, 2000, 114 Stat. 1211.

Section 300x–22(c) of this title, referred to in subsec. (e)(2), was redesignated section 300x–22(b) of this title by Pub. L. 106–310, div. B, title XXXIII, § 3303(a)(2), Oct. 17, 2000, 114 Stat. 1210.

PRIOR PROVISIONS

A prior section 1932 of act July 1, 1944, was classified to section 300y–22 of this title and subsequently omitted from the Code.

Another prior section 1932 of act July 1, 1944, was classified to section 300y–11 of this title prior to repeal by Pub. L. 99–280.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–310, § 3303(d), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the State involved submits the application not later than the date specified by the Secretary;''.

Subsec. (c). Pub. L. 106–310, § 3303(e), substituted ''except Puerto Rico'' for ''whose allotment under section 300x–21 of this title for the fiscal year is the amount specified in section 300x–33(c)(2)(B) of this title''.

Subsec. (e). Pub. L. 106–310, § 3303(f)(1), added subsec. (e).

§ 300x–33. Determination of amount of allotment

(a) States

(1) In general

Subject to subsection (b) of this section, the Secretary shall determine the amount of the allotment required in section 300x–21 of this title for a State for a fiscal year as follows:

(A) The formula established in paragraph (1) of section 300x–7(a) of this title shall apply to this subsection to the same extent and in the same manner as the formula applies for purposes of section 300x–7(a) of this title, except that, in the application of such formula for purposes of this subsection, the modifications described in subparagraph (B) shall apply.

(B) For purposes of subparagraph (A), the modifications described in this subparagraph are as follows:

(i) The amount specified in paragraph (2)(A) of section 300x–7(a) of this title is deemed to be the amount appropriated under section 300x–35(a) of this title for allotments under section 300x–21 of this title for the fiscal year involved.

(ii) The term ''P'' is deemed to have the meaning given in paragraph (2) of this subsection. Section 300x–7(a)(5)(B) of this title applies to the data used in determining such term for the States.

(iii) The factor determined under paragraph (8) of section 300x–7(a) of this title is deemed to have the purpose of reflecting the differences that exist between the State involved and other States in the costs of providing authorized services.

(2) Determination of term "P"

For purposes of this subsection, the term ''P'' means the percentage that is the arithmetic mean of the percentage determined under subparagraph (A) and the percentage determined under subparagraph (B), as follows:

(A) The percentage constituted by the ratio of—

(i) an amount equal to the sum of the total number of individuals who reside in the State involved and are between 18 and 24 years of age (inclusive) and the number of individuals in the State who reside in urbanized areas of the State and are between such years of age; to

(ii) an amount equal to the total of the respective sums determined for the States under clause (i).

(B) The percentage constituted by the ratio of—

(i) the total number of individuals in the State who are between 25 and 64 years of age (inclusive); to

(ii) an amount equal to the sum of the respective amounts determined for the States under clause (i).

(b) Minimum allotments for States

(1) In general

With respect to fiscal year 2000, and each subsequent fiscal year, the amount of the allotment of a State under section 300x–21 of this title shall not be less than the amount the State received under such section for the previous fiscal year increased by an amount equal to 30.65 percent of the percentage by which the aggregate amount allotted to all States for such fiscal year exceeds the aggregate amount allotted to all States for the previous fiscal year.

(2) Limitations

(A) In general

Except as provided in subparagraph (B), a State shall not receive an allotment under section 300x–21 of this title for a fiscal year in an amount that is less than an amount equal to 0.375 percent of the amount appropriated under section 300x–35(a) of this title for such fiscal year.

(B) Exception

In applying subparagraph (A), the Secretary shall ensure that no State receives an increase in its allotment under section 300x–21 of this title for a fiscal year (as compared to the amount allotted to the State in the prior fiscal year) that is in excess of an amount equal to 300 percent of the percentage by which the amount appropriated under section 300x–35(a) of this title for such fiscal year exceeds the amount appropriated for the prior fiscal year.

(3) Decrease in or equal appropriations

If the amount appropriated under section 300x–35(a) of this title for a fiscal year is equal

to or less than the amount appropriated under such section for the prior fiscal year, the amount of the State allotment under section 300x–21 of this title shall be equal to the amount that the State received under section 300x–21 of this title in the prior fiscal year decreased by the percentage by which the amount appropriated for such fiscal year is less than the amount appropriated or[1] such section for the prior fiscal year.

(c) Territories

(1) Determination under formula

Subject to paragraphs (2) and (4), the amount of an allotment under section 300x–21 of this title for a territory of the United States for a fiscal year shall be the product of—

(A) an amount equal to the amounts reserved under paragraph (3) for the fiscal year; and

(B) a percentage equal to the quotient of—

(i) the civilian population of the territory, as indicated by the most recently available data; divided by

(ii) the aggregate civilian population of the territories of the United States, as indicated by such data.

(2) Minimum allotment for territories

The amount of an allotment under section 300x–21 of this title for a territory of the United States for a fiscal year shall be the greater of—

(A) the amount determined under paragraph (1) for the territory for the fiscal year;

(B) $50,000; and

(C) with respect to fiscal years 1993 and 1994, an amount equal to 79.4 percent of the amount received by the territory from allotments made pursuant to this part for fiscal year 1992.

(3) Reservation of amounts

The Secretary shall each fiscal year reserve for the territories of the United States 1.5 percent of the amounts appropriated under section 300x–35(a) of this title for allotments under section 300x–21 of this title for the fiscal year.

(4) Availability of data on population

With respect to data on the civilian population of the territories of the United States, if the Secretary determines for a fiscal year that recent such data for purposes of paragraph (1)(B) do not exist regarding a territory, the Secretary shall for such purposes estimate the civilian population of the territory by modifying the data on the territory to reflect the average extent of change occurring during the ensuing period in the population of all territories with respect to which recent such data do exist.

(5) Applicability of certain provisions

For purposes of subsections (a) and (b) of this section, the term ''State'' does not include the territories of the United States.

(d) Indian tribes and tribal organizations

(1) In general

If the Secretary—

(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this subpart be provided directly by the Secretary to such tribe or organization; and

(B) makes a determination that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this;[2]

the Secretary shall reserve from the allotment under section 300x–21 of this title for the State for the fiscal year involved an amount that bears the same ratio to the allotment as the amount provided under this subpart to the tribe or tribal organization for fiscal year 1991 for activities relating to the prevention and treatment of the abuse of alcohol and other drugs bore to the amount of the portion of the allotment under this subpart for the State for such fiscal year that was expended for such activities.

(2) Tribe or tribal organization as grantee

The amount reserved by the Secretary on the basis of a determination under this paragraph[3] shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(3) Application

In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this paragraph,[3] it shall submit to the Secretary a plan for such fiscal year that meets such criteria as the Secretary may prescribe.

(4) Definitions

The terms ''Indian tribe'' and ''tribal organization'' have the same meaning given such terms in subsections (b) and (c)[4] of section 450b of title 25.

(July 1, 1944, ch. 373, title XIX, § 1933, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 400; amended Pub. L. 102–352, § 2(a)(11), Aug. 26, 1992, 106 Stat. 938; Pub. L. 105–277, div. A, § 101(f) [title II, § 218(b)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–362; Pub. L. 106–113, div. B, § 1000(a)(4) [title II, § 212(b)], Nov. 29, 1999, 113 Stat. 1535, 1501A–239; Pub. L. 106–310, div. B, title XXXIII, § 3304, Oct. 17, 2000, 114 Stat. 1212.)

REFERENCES IN TEXT

Section 450b of title 25, referred to in subsec. (d)(4), was amended, and subsecs. (b) and (c) of section 450 no longer define the terms ''Indian tribe'' and ''tribal organization''. However, such terms are defined elsewhere in that section.

PRIOR PROVISIONS

A prior section 1933 of act July 1, 1944, was classified to section 300y–23 of this title and subsequently omitted from the Code.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–310 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Each State's allot-

[1] So in original. Probably should be ''for''.

[2] So in original. Probably should be ''this subpart;''.

[3] So in original. Probably should be ''subsection''.

[4] See References in Text note below.

ment for fiscal year 2000 for programs under this subpart shall be equal to such State's allotment for such programs for fiscal year 1999, except that, if the amount appropriated in fiscal year 2000 is less than the amount appropriated in fiscal year 1999, then the amount of a State's allotment under section 300x–21 of this title shall be equal to the amount that the State received under section 300x–21 of this title in fiscal year 1999 decreased by the percentage by which the amount appropriated for fiscal year 2000 is less than the amount appropriated for such section for fiscal year 1999.''

1999—Subsec. (b). Pub. L. 106–113 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''For each of the fiscal years 1993 and 1994, the amount of the allotment required in section 300x–21 of this title for a State for the fiscal year involved shall be the greater of—

''(1) the amount determined under subsection (a) of this section for the State for the fiscal year; and

''(2) an amount equal to 79.4 percent of the amount received by the State from allotments made pursuant to this part for fiscal year 1992 (including reallotments under section 205(a) of the ADAMHA Reorganization Act).''

1998—Subsec. (b). Pub. L. 105–277, temporarily amended subsec. (b) to read as follows: ''(b) MINIMUM ALLOTMENTS FOR STATES.—

''(1) IN GENERAL.—With respect to fiscal year 1999, the amount of the allotment of a State under section 300x–21 of this title shall not be less than the amount the State received under section 300x–21 of this title for fiscal year 1998 increased by 30.65 percent of the percentage by which the amount allotted to the States for fiscal year 1999 exceeds the amount allotted to the States for fiscal year 1998.

''(2) LIMITATION

''(A) IN GENERAL.—Except as provided in subparagraph (B), a State shall not receive an allotment under section 300x–21 of this title for fiscal year 1999 in an amount that is less than an amount equal to 0.375 percent of the amount appropriated under section 300x–35(a) of this title for such fiscal year.

''(B) EXCEPTION.—In applying subparagraph (A), the Secretary shall ensure that no State receives an increase in its allotment under section 300x–21 of this title for fiscal year 1999 (as compared to the amount allotted to the State in the fiscal year 1998) that is in excess of an amount equal to 300 percent of the percentage by which the amount appropriated under section 300x–35(a) of this title for fiscal year 1999 exceeds the amount appropriated for the prior fiscal year.

''(3) Only for the purposes of calculating minimum allotments under this subsection, any reference to the amount appropriated under section 300x–35(a) of this title for fiscal year 1998, allotments to States under section 300x–21 of this title and any references to amounts received by States in fiscal year 1998 shall include amounts appropriated or received under the amendments made by section 105 of the Contract with America Advancement Act of 1996 (Public Law 104–121).''

See Effective and Termination Dates of 1998 Amendment note below.

1992—Subsec. (c)(2)(C). Pub. L. 102–352 added subpar. (C).

EFFECTIVE AND TERMINATION DATES OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if enacted on Oct. 1, 1998, and applicable only during fiscal year 1999, and upon expiration of fiscal year 1999, subsec. (b) of this section, as in effect on Sept. 30, 1998, to be applied as if such amendment had not been enacted, see section 101(f) [title II, § 218(c)] of Pub. L. 105–277, set out as a note under section 300x–7 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

§ 300x–34. Definitions

For purposes of this subpart:

(1) The term ''authorized activities'', subject to section 300x–31 of this title, means the activities described in section 300x–21(b) of this title.

(2) The term ''funding agreement'', with respect to a grant under section 300x–21 of this title to a State, means that the Secretary may make such a grant only if the State makes the agreement involved.

(3) The term ''prevention activities'', subject to section 300x–31 of this title, means activities to prevent substance abuse.

(4) The term ''substance abuse'' means the abuse of alcohol or other drugs.

(5) The term ''treatment activities'' means treatment services and, subject to section 300x–31 of this title, authorized activities that are related to treatment services.

(6) The term ''treatment facility'' means an entity that provides treatment services.

(7) The term ''treatment services'', subject to section 300x–31 of this title, means treatment for substance abuse.

(July 1, 1944, ch. 373, title XIX, § 1934, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 402.)

PRIOR PROVISIONS

A prior section 1934 of act July 1, 1944, was classified to section 300y–24 of this title and subsequently omitted from the Code.

§ 300x–35. Funding

(a) Authorization of appropriations

For the purpose of carrying out this subpart, subpart III and section 290aa–4 of this title with respect to substance abuse, and section 290bb–21(d) of this title, there are authorized to be appropriated $2,000,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003.

(b) Allocations for technical assistance, national data base, data collection, and program evaluations

(1) In general

(A) For the purpose of carrying out section 300x–58(a) of this title with respect to substance abuse, section 290bb–21(d) of this title, and the purposes specified in subparagraphs (B) and (C), the Secretary shall obligate 5 percent of the amounts appropriated under subsection (a) of this section each fiscal year.

(B) The purpose specified in this subparagraph is the collection of data in this paragraph[1] is carrying out sections 290aa–4 and 300y of this title with respect to substance abuse.

(C) The purpose specified in this subparagraph is the conduct of evaluations of authorized activities to determine methods for improving the availability and quality of such activities.

[1] So in original. The words ''is the collection of data in this paragraph'' probably should not appear.

(2) Activities of Center for Substance Abuse Prevention

Of the amounts reserved under paragraph (1) for a fiscal year, the Secretary, acting through the Director of the Center for Substance Abuse Prevention, shall obligate 20 percent for carrying out paragraph (1)(C), section 300x–58(a) of this title with respect to prevention activities, and section 290bb–21(d) of this title.

(3) Core data set

A State that receives a new grant, contract, or cooperative agreement from amounts available to the Secretary under paragraph (1), for the purposes of improving the data collection, analysis and reporting capabilities of the State, shall be required, as a condition of receipt of funds, to collect, analyze, and report to the Secretary for each fiscal year subsequent to receiving such funds a core data set to be determined by the Secretary in conjunction with the States.

(July 1, 1944, ch. 373, title XIX, § 1935, as added Pub. L. 102–321, title II, § 202, July 10, 1992, 106 Stat. 403; amended Pub. L. 106–310, div. B, title XXXIII, § 3303(g), Oct. 17, 2000, 114 Stat. 1211.)

PRIOR PROVISIONS

A prior section 1935 of act July 1, 1944, was classified to section 300y–25 of this title and subsequently omitted from the Code.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–310, § 3303(g)(1), substituted ''$2,000,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 and 2003'' for ''$1,500,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994''.

Subsec. (b)(1)(B). Pub. L. 106–310, § 3303(g)(2), substituted ''sections 290aa–4 and 300y of this title'' for ''section 290aa–4 of this title''.

Subsec. (b)(2). Pub. L. 106–310, § 3303(g)(3), made technical amendment to reference in original act which appears in text as reference to section 300x–58(a) of this title.

Subsec. (b)(3). Pub. L. 106–310, § 3303(g)(4), added par. (3).

SUBPART III—GENERAL PROVISIONS

§ 300x–51. Opportunity for public comment on State plans

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State involved will make the plan required in section 300x–1 of this title, and the plan required in section 300x–32 of this title, respectively, public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during the development of the plan (including any revisions) and after the submission of the plan to the Secretary.

(July 1, 1944, ch. 373, title XIX, § 1941, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 403.)

§ 300x–52. Requirement of reports and audits by States

(a) Report

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State involved will submit to the Secretary a report in such form and containing such information as the Secretary determines (after consultation with the States) to be necessary for securing a record and a description of—

(1) the purposes for which the grant received by the State for the preceding fiscal year under the program involved were expended and a description of the activities of the State under the program; and

(2) the recipients of amounts provided in the grant.

(b) Audits

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State will, with respect to the grant, comply with chapter 75 of title 31.

(c) Availability to public

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State involved will—

(1) make copies of the reports and audits described in this section available for public inspection within the State; and

(2) provide copies of the report under subsection (a) of this section, upon request, to any interested person (including any public agency).

(July 1, 1944, ch. 373, title XIX, § 1942, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 403; amended Pub. L. 104–316, title I, § 122(e), Oct. 19, 1996, 110 Stat. 3837.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–316 struck out ''and the Comptroller General'' after ''with the States'' in introductory provisions.

§ 300x–53. Additional requirements

(a) In general

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State involved will—

(1)(A) for the fiscal year for which the grant involved is provided, provide for independent peer review to assess the quality, appropriateness, and efficacy of treatment services provided in the State to individuals under the program involved; and

(B) ensure that, in the conduct of such peer review, not fewer than 5 percent of the entities providing services in the State under such program are reviewed (which 5 percent is representative of the total population of such entities);

(2) permit and cooperate with Federal investigations undertaken in accordance with section 300x–55 of this title; and

(3) provide to the Secretary any data required by the Secretary pursuant to section 290aa–4 of this title and will cooperate with the Secretary in the development of uniform criteria for the collection of data pursuant to such section.

(b) Patient records

The Secretary may make a grant under section 300x or 300x–21 of this title only if the State involved has in effect a system to protect from

inappropriate disclosure patient records maintained by the State in connection with an activity funded under the program involved or by any entity which is receiving amounts from the grant.

(July 1, 1944, ch. 373, title XIX, § 1943, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 404; amended Pub. L. 102–352, § 2(a)(12), Aug. 26, 1992, 106 Stat. 939.)

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–352 substituted ''section 290aa–4 of this title'' for ''section 290bb–21 of this title''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

§ 300x–54. Disposition of certain funds appropriated for allotments

(a) In general

Amounts described in subsection (b) of this section and available for a fiscal year pursuant to section 300x or 300x–21 of this title, as the case may be, shall be allotted by the Secretary and paid to the States receiving a grant under the program involved, other than any State referred to in subsection (b) of this section with respect to such program. Such amounts shall be allotted in a manner equivalent to the manner in which the allotment under the program involved was determined.

(b) Specification of amounts

The amounts referred to in subsection (a) of this section are any amounts that—

(1) are not paid to States under the program involved as a result of—

(A) the failure of any State to submit an application in accordance with the program;

(B) the failure of any State to prepare such application in compliance with the program; or

(C) any State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State under the program;

(2) are terminated, repaid, or offset under section 300x–55 of this title;

(3) in the case of the program established in section 300x of this title, are available as a result of reductions in allotments under such section pursuant to section 300x–1(d) or 300x–4(b) of this title; or

(4) in the case of the program established in section 300x–21 of this title, are available as a result of reductions in allotments under such section pursuant to section 300x–26 or 300x–30 of this title.

(July 1, 1944, ch. 373, title XIX, § 1944, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 404.)

§ 300x–55. Failure to comply with agreements

(a) Suspension or termination of payments

Subject to subsection (e) of this section, if the Secretary determines that a State has materially failed to comply with the agreements or other conditions required for the receipt of a grant under the program involved, the Secretary may in whole or in part suspend payments under the grant, terminate the grant for cause, or employ such other remedies (including the remedies provided for in subsections (b) and (c) of this section) as may be legally available and appropriate in the circumstances involved.

(b) Repayment of payments

(1) In general

Subject to subsection (e) of this section, the Secretary may require a State to repay with interest any payments received by the State under section 300x or 300x–21 of this title that the Secretary determines were not expended by the State in accordance with the agreements required under the program involved.

(2) Offset against payments

If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under the program involved.

(c) Withholding of payments

(1) In general

Subject to subsections (e) and (g)(3) of this section, the Secretary may withhold payments due under section 300x or 300x–21 of this title if the Secretary determines that the State involved is not expending amounts received under the program involved in accordance with the agreements required under the program.

(2) Termination of withholding

The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under the program involved in accordance with the agreements required under the program.

(d) Applicability of remedies to certain violations

(1) In general

With respect to agreements or other conditions for receiving a grant under the program involved, in the case of the failure of a State to maintain material compliance with a condition referred to in paragraph (2), the provisions for noncompliance with the condition that are provided in the section establishing the condition shall apply in lieu of subsections (a) through (c) of this section.

(2) Relevant conditions

For purposes of paragraph (1):

(A) In the case of the program established in section 300x of this title, a condition referred to in this paragraph is the condition established in section 300x–1(d) of this title and the condition established in section 300x–4(b) of this title.

(B) In the case of the program established in section 300x–21 of this title, a condition referred to in this paragraph is the condition established in section 300x–26 of this title and the condition established in section 300x–30 of this title.

(e) Opportunity for hearing

Before taking action against a State under any of subsections (a) through (c) of this section (or under a section referred to in subsection (d)(2) of this section, as the case may be), the Secretary shall provide to the State involved adequate notice and an opportunity for a hearing.

(f) Requirement of hearing in certain circumstances

(1) In general

If the Secretary receives a complaint that a State has failed to maintain material compliance with the agreements or other conditions required for receiving a grant under the program involved (including any condition referred to for purposes of subsection (d) of this section), and there appears to be reasonable evidence to support the complaint, the Secretary shall promptly conduct a hearing with respect to the complaint.

(2) Finding of material noncompliance

If in a hearing under paragraph (1) the Secretary finds that the State involved has failed to maintain material compliance with the agreement or other condition involved, the Secretary shall take such action under this section as may be appropriate to ensure that material compliance is so maintained, or such action as may be required in a section referred to in subsection (d)(2) of this section, as the case may be.

(g) Certain investigations

(1) Requirement regarding Secretary

The Secretary shall in fiscal year 1994 and each subsequent fiscal year conduct in not less than 10 States investigations of the expenditure of grants received by the States under section 300x or 300x–21 of this title in order to evaluate compliance with the agreements required under the program involved.

(2) Provision of records, etc., upon request

Each State receiving a grant under section 300x or 300x–21 of this title, and each entity receiving funds from the grant, shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(3) Limitations on authority

The Secretary may not institute proceedings under subsection (c) of this section unless the Secretary has conducted an investigation concerning whether the State has expended payments under the program involved in accordance with the agreements required under the program. Any such investigation shall be conducted within the State by qualified investigators.

(July 1, 1944, ch. 373, title XIX, §1945, as added Pub. L. 102–321, title II, §203(a), July 10, 1992, 106 Stat. 405.)

§ 300x–56. Prohibitions regarding receipt of funds

(a) Establishment

(1) Certain false statements and representations

A person shall not knowingly and willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payments may be made by a State from a grant made to the State under section 300x or 300x–21 of this title.

(2) Concealing or failing to disclose certain events

A person with knowledge of the occurrence of any event affecting the initial or continued right of the person to receive any payments from a grant made to a State under section 300x or 300x–21 of this title shall not conceal or fail to disclose any such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such amount is due.

(b) Criminal penalty for violation of prohibition

Any person who violates any prohibition established in subsection (a) of this section shall for each violation be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(July 1, 1944, ch. 373, title XIX, §1946, as added Pub. L. 102–321, title II, §203(a), July 10, 1992, 106 Stat. 406.)

§ 300x–57. Nondiscrimination

(a) In general

(1) Rule of construction regarding certain civil rights laws

For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under section 300x or 300x–21 of this title shall be considered to be programs and activities receiving Federal financial assistance.

(2) Prohibition

No person shall on the ground of sex (including, in the case of a woman, on the ground that the woman is pregnant), or on the ground of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under section 300x or 300x–21 of this title.

(b) Enforcement

(1) Referrals to Attorney General after notice

Whenever the Secretary finds that a State, or an entity that has received a payment pur-

suant to section 300x or 300x–21 of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(B) exercise the powers and functions provided by the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], as may be applicable; or

(C) take such other actions as may be authorized by law.

(2) Authority of Attorney General

When a matter is referred to the Attorney General pursuant to paragraph (1)(A), or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(July 1, 1944, ch. 373, title XIX, § 1947, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 407.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1) and (b)(1)(B), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 300x–58. Technical assistance and provision of supplies and services in lieu of grant funds

(a) Technical assistance

The Secretary shall, without charge to a State receiving a grant under section 300x or 300x–21 of this title, provide to the State (or to any public or nonprofit private entity within the State) technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to the program involved. The Secretary may provide such technical assistance directly, through contract, or through grants.

(b) Provision of supplies and services in lieu of grant funds

(1) In general

Upon the request of a State receiving a grant under section 300x or 300x–21 of this title, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out the program involved and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) Corresponding reduction in payments

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the program involved to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XIX, § 1948, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 408.)

§ 300x–59. Plans for performance partnerships

(a) Development

The Secretary in conjunction with States and other interested groups shall develop separate plans for the programs authorized under subparts I and II for creating more flexibility for States and accountability based on outcome and other performance measures. The plans shall each include—

(1) a description of the flexibility that would be given to the States under the plan;

(2) the common set of performance measures that would be used for accountability, including measures that would be used for the program under subpart II for pregnant addicts, HIV transmission, tuberculosis, and those with a co-occurring substance abuse and mental disorders, and for programs under subpart I for children with serious emotional disturbance and adults with serious mental illness and for individuals with co-occurring mental health and substance abuse disorders;

(3) the definitions for the data elements to be used under the plan;

(4) the obstacles to implementation of the plan and the manner in which such obstacles would be resolved;

(5) the resources needed to implement the performance partnerships under the plan; and

(6) an implementation strategy complete with recommendations for any necessary legislation.

(b) Submission

Not later than 2 years after October 17, 2000, the plans developed under subsection (a) of this

section shall be submitted to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Commerce of the House of Representatives.

(c) Information

As the elements of the plans described in subsection (a) of this section are developed, States are encouraged to provide information to the Secretary on a voluntary basis.

(d) Participants

The Secretary shall include among those interested groups that participate in the development of the plan consumers of mental health or substance abuse services, providers, representatives of political divisions of States, and representatives of racial and ethnic groups including Native Americans.

(July 1, 1944, ch. 373, title XIX, § 1949, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 408; amended Pub. L. 106–310, div. B, title XXXIV, § 3403(a), Oct. 17, 2000, 114 Stat. 1219.)

CODIFICATION

October 17, 2000, referred to in subsec. (b), was in the original ''the date of the enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 106–310, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2000—Pub. L. 106–310 amended section catchline and text generally. Prior to amendment, text read as follows: ''Not later than January 24, 1994, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report on the activities of the States carried out pursuant to the programs established in sections 300x and 300x–21 of this title. Such report may include any recommendations of the Secretary for appropriate changes in legislation.''

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 300x–60. Rule of construction regarding delegation of authority to States

With respect to States receiving grants under section 300x or 300x–21 of this title, this part may not be construed to authorize the Secretary to delegate to the States the primary responsibility for interpreting the governing provisions of this part.

(July 1, 1944, ch. 373, title XIX, § 1950, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 408.)

§ 300x–61. Solicitation of views of certain entities

In carrying out this part, the Secretary, as appropriate, shall solicit the views of the States and other appropriate entities.

(July 1, 1944, ch. 373, title XIX, § 1951, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 408.)

§ 300x–62. Availability to States of grant payments

Any amounts paid to a State for a fiscal year under section 300x or 300x–21 of this title shall be available for obligation and expenditure until the end of the fiscal year following the fiscal year for which the amounts were paid.

(July 1, 1944, ch. 373, title XIX, § 1952, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 409; amended Pub. L. 106–310, div. B, title XXXIV, § 3403(b), Oct. 17, 2000, 114 Stat. 1220.)

AMENDMENTS

2000—Pub. L. 106–310 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

''(a) IN GENERAL.—Subject to subsection (b) of this section, any amounts paid to a State under the program involved shall be available for obligation until the end of the fiscal year for which the amounts were paid, and if obligated by the end of such year, shall remain available for expenditure until the end of the succeeding fiscal year.

''(b) EXCEPTION REGARDING NONCOMPLIANCE OF SUBGRANTEES.—If a State has in accordance with subsection (a) of this section obligated amounts paid to the State under the program involved, in any case in which the Secretary determines that the obligation consists of a grant or contract awarded by the State, and that the State has terminated or reduced the amount of such financial assistance on the basis of the failure of the recipient of the assistance to comply with the terms upon which the assistance was conditioned—

''(1) the amounts involved shall be available for reobligation by the State through September 30 of the fiscal year following the fiscal year for which the amounts were paid to the State; and

''(2) any of such amounts that are obligated by the State in accordance with paragraph (1) shall be available for expenditure through such date.''

§ 300x–63. Continuation of certain programs

(a) In general

Of the amount allotted to the State of Hawaii under section 300x of this title, and the amount allotted to such State under section 300x–21 of this title, an amount equal to the proportion of Native Hawaiians residing in the State to the total population of the State shall be available, respectively, for carrying out the program involved for Native Hawaiians.

(b) Expenditure of amounts

The amount made available under subsection (a) of this section may be expended only through contracts entered into by the State of Hawaii with public and private nonprofit organizations to enable such organizations to plan, conduct, and administer comprehensive substance abuse and treatment programs for the benefit of Native Hawaiians. In entering into contracts under this section, the State of Hawaii shall give preference to Native Hawaiian organizations and Native Hawaiian health centers.

(c) Definitions

For the purposes of this subsection,[1] the terms ''Native Hawaiian'', ''Native Hawaiian organization'', and ''Native Hawaiian health center''

[1] So in original. Probably should be ''section,''.

have the meaning given such terms in section 11707 of this title.

(July 1, 1944, ch. 373, title XIX, § 1953, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 409.)

§ 300x–64. Definitions

(a) Definitions for this subpart

For purposes of this subpart:

(1) The term ''program involved'' means the program of grants established in section 300x or 300x–21 of this title, or both, as indicated by whether the State involved is receiving or is applying to receive a grant under section 300x or 300x–21 of this title, or both.

(2)(A) The term ''funding agreement'', with respect to a grant under section 300x of this title, has the meaning given such term in section 300x–8 of this title.

(B) The term ''funding agreement'', with respect to a grant under section 300x–21 of this title, has the meaning given such term in section 300x–34 of this title.

(b) Definitions for this part

For purposes of this part:

(1) The term ''Comptroller General'' means the Comptroller General of the United States.

(2) The term ''State'', except as provided in sections 300x–7(c)(5) of this title and 300x–33(c)(5) of this title, means each of the several States, the District of Columbia, and each of the territories of the United States.

(3) The term ''territories of the United States'' means each of the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Palau, the Marshall Islands, and Micronesia.

(4) The term ''interim services'', in the case of an individual in need of treatment for substance abuse who has been denied admission to a program of such treatment on the basis of the lack of the capacity of the program to admit the individual, means services for reducing the adverse health effects of such abuse, for promoting the health of the individual, and for reducing the risk of transmission of disease, which services are provided until the individual is admitted to such a program.

(July 1, 1944, ch. 373, title XIX, § 1954, as added Pub. L. 102–321, title II, § 203(a), July 10, 1992, 106 Stat. 409.)

§ 300x–65. Services provided by nongovernmental organizations

(a) Purposes

The purposes of this section are—

(1) to prohibit discrimination against nongovernmental organizations and certain individuals on the basis of religion in the distribution of government funds to provide substance abuse services under this subchapter and subchapter III–A of this chapter, and the receipt of services under such subchapters; and

(2) to allow the organizations to accept the funds to provide the services to the individuals without impairing the religious character of the organizations or the religious freedom of the individuals.

(b) Religious organizations included as nongovernmental providers

(1) In general

A State may administer and provide substance abuse services under any program under this subchapter or subchapter III–A of this chapter through grants, contracts, or cooperative agreements to provide assistance to beneficiaries under such subchapters with nongovernmental organizations.

(2) Requirement

A State that elects to utilize nongovernmental organizations as provided for under paragraph (1) shall consider, on the same basis as other nongovernmental organizations, religious organizations to provide services under substance abuse programs under this subchapter or subchapter III–A of this chapter, so long as the programs under such subchapters are implemented in a manner consistent with the Establishment Clause of the first amendment to the Constitution. Neither the Federal Government nor a State or local government receiving funds under such programs shall discriminate against an organization that provides services under, or applies to provide services under, such programs, on the basis that the organization has a religious character.

(c) Religious character and independence

(1) In general

A religious organization that provides services under any substance abuse program under this subchapter or subchapter III–A of this chapter shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) Additional safeguards

Neither the Federal Government nor a State or local government shall require a religious organization—

(A) to alter its form of internal governance; or

(B) to remove religious art, icons, scripture, or other symbols,

in order to be eligible to provide services under any substance abuse program under this subchapter or subchapter III–A of this chapter.

(d) Employment practices

(1) Substance abuse

A religious organization that provides services under any substance abuse program under this subchapter or subchapter III–A of this chapter may require that its employees providing services under such program adhere to rules forbidding the use of drugs or alcohol.

(2) Title VII exemption

The exemption of a religious organization provided under section 702 or 703(e)(2) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1, 2000e–2(e)(2)) regarding employment practices shall not be affected by the religious organiza-

tion's provision of services under, or receipt of funds from, any substance abuse program under this subchapter or subchapter III–A of this chapter.

(e) Rights of beneficiaries of assistance

(1) In general

If an individual described in paragraph (3) has an objection to the religious character of the organization from which the individual receives, or would receive, services funded under any substance abuse program under this subchapter or subchapter III–A of this chapter, the appropriate Federal, State, or local governmental entity shall provide to such individual (if otherwise eligible for such services) within a reasonable period of time after the date of such objection, services that—

(A) are from an alternative provider that is accessible to the individual; and

(B) have a value that is not less than the value of the services that the individual would have received from such organization.

(2) Notice

The appropriate Federal, State, or local governmental entity shall ensure that notice is provided to individuals described in paragraph (3) of the rights of such individuals under this section.

(3) Individual described

An individual described in this paragraph is an individual who receives or applies for services under any substance abuse program under this subchapter or subchapter III–A of this chapter.

(f) Nondiscrimination against beneficiaries

A religious organization providing services through a grant, contract, or cooperative agreement under any substance abuse program under this subchapter or subchapter III–A of this chapter shall not discriminate, in carrying out such program, against an individual described in subsection (e)(3) of this section on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

(g) Fiscal accountability

(1) In general

Except as provided in paragraph (2), any religious organization providing services under any substance abuse program under this subchapter or subchapter III–A of this chapter shall be subject to the same regulations as other nongovernmental organizations to account in accord with generally accepted accounting principles for the use of such funds provided under such program.

(2) Limited audit

Such organization shall segregate government funds provided under such substance abuse program into a separate account. Only the government funds shall be subject to audit by the government.

(h) Compliance

Any party that seeks to enforce such party's rights under this section may assert a civil action for injunctive relief exclusively in an appropriate Federal or State court against the entity, agency or official that allegedly commits such violation.

(i) Limitations on use of funds for certain purposes

No funds provided through a grant or contract to a religious organization to provide services under any substance abuse program under this subchapter or subchapter III–A of this chapter shall be expended for sectarian worship, instruction, or proselytization.

(j) Effect on State and local funds

If a State or local government contributes State or local funds to carry out any substance abuse program under this subchapter or subchapter III–A of this chapter, the State or local government may segregate the State or local funds from the Federal funds provided to carry out the program or may commingle the State or local funds with the Federal funds. If the State or local government commingles the State or local funds, the provisions of this section shall apply to the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

(k) Treatment of intermediate contractors

If a nongovernmental organization (referred to in this subsection as an ''intermediate organization''), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide services under any substance abuse program under this subchapter or subchapter III–A of this chapter, the intermediate organization shall have the same duties under this section as the government but shall retain all other rights of a nongovernmental organization under this section.

(July 1, 1944, ch. 373, title XIX, §1955, as added Pub. L. 106–310, div. B, title XXXIII, §3305, Oct. 17, 2000, 114 Stat. 1212.)

§300x–66. Services for individuals with co-occurring disorders

States may use funds available for treatment under sections 300x and 300x–21 of this title to treat persons with co-occurring substance abuse and mental disorders as long as funds available under such sections are used for the purposes for which they were authorized by law and can be tracked for accounting purposes.

(July 1, 1944, ch. 373, title XIX, §1956, as added Pub. L. 106–310, div. B, title XXXIV, §3407, Oct. 17, 2000, 114 Stat. 1222.)

PART C—CERTAIN PROGRAMS REGARDING MENTAL HEALTH AND SUBSTANCE ABUSE

AMENDMENTS

2000—Pub. L. 106–310, div. B, title XXXIV, §3404(1), Oct. 17, 2000, 114 Stat. 1220, added part C heading and struck out former part C heading ''Certain Programs Regarding Substance Abuse''.

SUBPART I—DATA INFRASTRUCTURE DEVELOPMENT

AMENDMENTS

2000—Pub. L. 106–310, div. B, title XXXIV, §3404(1), Oct. 17, 2000, 114 Stat. 1220, added subpart I heading and

struck out former subpart I heading ''Expansion of Capacity for Providing Treatment''.

§ 300y. Data infrastructure development

(a) In general

The Secretary may make grants to, and enter into contracts or cooperative agreements with States for the purpose of developing and operating mental health or substance abuse data collection, analysis, and reporting systems with regard to performance measures including capacity, process, and outcomes measures.

(b) Projects

The Secretary shall establish criteria to ensure that services will be available under this section to States that have a fundamental basis for the collection, analysis, and reporting of mental health and substance abuse performance measures and States that do not have such basis. The Secretary will establish criteria for determining whether a State has a fundamental basis for the collection, analysis, and reporting of data.

(c) Condition of receipt of funds

As a condition of the receipt of an award under this section a State shall agree to collect, analyze, and report to the Secretary within 2 years of the date of the award on a core set of performance measures to be determined by the Secretary in conjunction with the States.

(d) Matching requirement

(1) In general

With respect to the costs of the program to be carried out under subsection (a) of this section by a State, the Secretary may make an award under such subsection only if the applicant agrees to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 50 percent of such costs.

(2) Determination of amount contributed

Non-Federal contributions under paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such contributions.

(e) Duration of support

The period during which payments may be made for a project under subsection (a) of this section may be not less than 3 years nor more than 5 years.

(f) Authorization of appropriation

(1) In general

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001, 2002 and 2003.

(2) Allocation

Of the amounts appropriated under paragraph (1) for a fiscal year, 50 percent shall be expended to support data infrastructure development for mental health and 50 percent shall be expended to support data infrastructure development for substance abuse.

(July 1, 1944, ch. 373, title XIX, § 1971, as added Pub. L. 106–310, div. B, title XXXIV, § 3404(2), Oct. 17, 2000, 114 Stat. 1220.)

PRIOR PROVISIONS

A prior section 300y, act July 1, 1944, ch. 373, title XIX, § 1971, as added Pub. L. 102–321, title II, § 204, July 10, 1992, 106 Stat. 410; amended Pub. L. 102–352, § 2(a)(13), Aug. 26, 1992, 106 Stat. 939, related to categorical grants to States for programs regarding substance abuse, prior to repeal by Pub. L. 106–310, div. B, title XXXIV, § 3404(2), Oct. 17, 2000, 114 Stat. 1220.

Another prior section 300y, act July 1, 1944, ch. 373, title XIX, § 1921, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4002, 100 Stat. 3207–103, related to establishment of special alcohol abuse and drug abuse programs, prior to repeal by Pub. L. 100–690, title II, § 2038(1), Nov. 18, 1988, 102 Stat. 4203.

Another prior section 300y, act July 1, 1944, ch. 373, title XIX, § 1921, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552, related to planning grants, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Prior sections 300y–1 and 300y–2 were repealed by Pub. L. 100–690, title II, § 2038(1), Nov. 18, 1988, 102 Stat. 4203.

Section 300y–1, act July 1, 1944, ch. 373, title XIX, § 1922, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4002, 100 Stat. 3207–106, related to transfer of funds to Administrator of Veterans' Affairs.

Another prior section 300y–1, act July 1, 1944, ch. 373, title XIX, § 1922, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552, authorized appropriations, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Section 300y–2, act July 1, 1944, ch. 373, title XIX, § 1923, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4002, 100 Stat. 3207–106, related to evaluation of treatment programs.

Another prior section 300y–2, act July 1, 1944, ch. 373, title XIX, § 1923, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552, provided for grants under section 254c of this title, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Prior sections 300y–3 to 300y–10 were repealed by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Section 300y–3, act July 1, 1944, ch. 373, title XIX, § 1924, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 553, provided that allotments be based upon prior year distributions and provided for direct distributions to Indian tribes.

Section 300y–4, act July 1, 1944, ch. 373, title XIX, § 1925, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 553, related to payments under allotments to States.

Section 300y–5, act July 1, 1944, ch. 373, title XIX, § 1926, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 554, related to State grants to community health centers from allotments.

Section 300y–6, act July 1, 1944, ch. 373, title XIX, § 1927, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 556, related to application requirements and submittal, availability for public comment, and revision of a description of intended use of funds.

Section 300y–7, act July 1, 1944, ch. 373, title XIX, § 1928, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 557, related to reporting and auditing requirements.

Section 300y–8, act July 1, 1944, ch. 373, title XIX, § 1929, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 558, related to withholding of funds from a State not in compliance.

Section 300y–9, act July 1, 1944, ch. 373, title XIX, § 1930, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 558, related to nondiscrimination requirements.

Section 300y–10, act July 1, 1944, ch. 373, title XIX, § 1931, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901,

95 Stat. 559, provided criminal penalty for false statements.

SUBPART II—INTERIM MAINTENANCE TREATMENT OF NARCOTICS DEPENDENCE

§ 300y–11. Interim maintenance treatment

(a) Requirement regarding Secretary

Subject to the following subsections of this section, for the purpose of reducing the incidence of the transmission of HIV disease pursuant to the intravenous abuse of heroin or other morphine-like drugs, the Secretary, in establishing conditions for the use of methadone in public or nonprofit private programs of treatment for dependence on such drugs, shall authorize such programs—

(1) to dispense methadone for treatment purposes to individuals who—

(A) meet the conditions for admission to such programs that dispense methadone as part of comprehensive treatment for such dependence; and

(B) are seeking admission to such programs that so dispense methadone, but as a result of the limited capacity of the programs, will not gain such admission until 14 or more days after seeking admission to the programs; and

(2) in dispensing methadone to such individuals, to provide only minimum ancillary services during the period in which the individuals are waiting for admission to programs of comprehensive treatment.

(b) Inapplicability of requirement in certain circumstances

(1) In general

The requirement established in subsection (a) of this section for the Secretary does not apply if any or all of the following conditions are met:

(A) The preponderance of scientific research indicates that the risk of the transmission of HIV disease pursuant to the intravenous abuse of drugs is minimal.

(B) The preponderance of scientific research indicates that the medically supervised dispensing of methadone is not an effective method of reducing the extent of dependence on heroin and other morphine-like drugs.

(C) The preponderance of available data indicates that, of treatment programs that dispense methadone as part of comprehensive treatment, a substantial majority admit all individuals seeking services to the programs not later than 14 days after the individuals seek admission to the programs.

(2) Evaluation by Secretary

In evaluating whether any or all of the conditions described in paragraph (1) have been met, the Secretary shall consult with the National Commission on Acquired Immune Deficiency Syndrome.

(c) Conditions for obtaining authorization from Secretary

(1) In general

In carrying out the requirement established in subsection (a) of this section, the Secretary shall, after consultation with the National Commission on Acquired Immune Deficiency Syndrome, by regulation issue such conditions for treatment programs to obtain authorization from the Secretary to provide interim maintenance treatment as may be necessary to carry out the purpose described in such subsection. Such conditions shall include conditions for preventing the unauthorized use of methadone.

(2) Counseling on HIV disease

The regulations issued under paragraph (1) shall provide that an authorization described in such paragraph may not be issued to a treatment program unless the program provides to recipients of the treatment counseling on preventing exposure to and the transmission of HIV disease.

(3) Permission of relevant State as condition of authorization

The regulations issued under paragraph (1) shall provide that the Secretary may not provide an authorization described in such paragraph to any treatment program in a State unless the chief public health officer of the State has certified to the Secretary that—

(A) such officer does not object to the provision of such authorizations to treatment programs in the State; and

(B) the provision of interim maintenance services in the State will not reduce the capacity of comprehensive treatment programs in the State to admit individuals to the programs (relative to the date on which such officer so certifies).

(4) Date certain for issuance of regulations; failure of Secretary

The Secretary shall issue the final rule for purposes of the regulations required in paragraph (1), and such rule shall be effective, not later than the expiration of the 180-day period beginning on July 10, 1992. If the Secretary fails to meet the requirement of the preceding sentence, the proposed rule issued on March 2, 1989, with respect to part 291 of title 21, Code of Federal Regulations (docket numbered 88N–0444; 54 Fed. Reg. 8973 et seq.) is deemed to take effect as a final rule upon the expiration of such period, and the provisions of paragraph (3) of this subsection are deemed to be incorporated into such rule.

(d) Definitions

For purposes of this section:

(1) The term ''interim maintenance services'' means the provision of methadone in a treatment program under the circumstances described in paragraphs (1) and (2) of subsection (a) of this section.

(2) The term ''HIV disease'' means infection with the etiologic agent for acquired immune deficiency syndrome.

(3) The term ''treatment program'' means a public or nonprofit private program of treatment for dependence on heroin or other morphine-like drugs.

(July 1, 1944, ch. 373, title XIX, § 1976, as added Pub. L. 102–321, title II, § 204, July 10, 1992, 106 Stat. 412.)

PRIOR PROVISIONS

A prior section 300y–11, act July 1, 1944, ch. 373, title XIX, § 1932, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 559; amended Jan. 4, 1983, Pub. L. 97–414, § 8(v), 96 Stat. 2063, related to applicability of other provisions and promulgation of regulations, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Sections 300y–21 to 300y–27 terminated Jan. 1, 1991, pursuant to section 300y–27 and were omitted from the Code.

Section 300y–21, act July 1, 1944, ch. 373, title XIX, § 1931, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3117, provided definitions for this part.

A prior section 1931 of act July 1, 1944, ch. 373, title XIX, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 559, provided criminal penalty for false statements and was classified to former section 300y–10 of this title, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Section 300y–22, act July 1, 1944, ch. 373, title XIX, § 1932, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3117, authorized appropriations for this part.

A prior section 1932 of act July 1, 1944, ch. 373, title XIX, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 559; amended Jan. 4, 1983, Pub. L. 97–414, § 8(v), 96 Stat. 2063, related to applicability of other provisions and promulgation of regulations and was classified to former section 300y–11 of this title, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Section 300y–23, act July 1, 1944, ch. 373, title XIX, § 1933, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3117, provided for allotments under this part.

Section 300y–24, act July 1, 1944, ch. 373, title XIX, § 1934, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3118, provided for payments under allotments to States.

Section 300y–25, act July 1, 1944, ch. 373, title XIX, § 1935, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3118, specified use of allotments.

Section 300y–26, act July 1, 1944, ch. 373, title XIX, § 1936, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3119, provided for applications, requirements of the application, and description of activities.

Section 300y–27, act July 1, 1944, ch. 373, title XIX, § 1937, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3120; amended Aug. 16, 1989, Pub. L. 101–93, § 5(f)(1)(B), 103 Stat. 612, provided for termination of this part effective Jan. 1, 1991.

EFFECTIVE DATE

Section effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SUBCHAPTER XVIII—ADOLESCENT FAMILY LIFE DEMONSTRATION PROJECTS

§ 300z. Findings and purposes

(a) The Congress finds that—

(1) in 1978, an estimated one million one hundred thousand teenagers became pregnant, more than five hundred thousand teenagers carried their babies to term, and over one-half of the babies born to such teenagers were born out of wedlock;

(2) adolescents aged seventeen and younger accounted for more than one-half of the out of wedlock births to teenagers;

(3) in a high proportion of cases, the pregnant adolescent is herself the product of an unmarried parenthood during adolescence and is continuing the pattern in her own lifestyle;

(4) it is estimated that approximately 80 per centum of unmarried teenagers who carry their pregnancies to term live with their families before and during their pregnancy and remain with their families after the birth of the child;

(5) pregnancy and childbirth among unmarried adolescents, particularly young adolescents, often results in severe adverse health, social, and economic consequences including: a higher percentage of pregnancy and childbirth complications; a higher incidence of low birth weight babies; a higher infant mortality and morbidity; a greater likelihood that an adolescent marriage will end in divorce; a decreased likelihood of completing schooling; and higher risks of unemployment and welfare dependency; and therefore, education, training, and job research services are important for adolescent parents;

(6)(A) adoption is a positive option for unmarried pregnant adolescents who are unwilling or unable to care for their children since adoption is a means of providing permanent families for such children from available approved couples who are unable or have difficulty in conceiving or carrying children of their own to term; and

(B) at present, only 4 per centum of unmarried pregnant adolescents who carry their babies to term enter into an adoption plan or arrange for their babies to be cared for by relatives or friends;

(7) an unmarried adolescent who becomes pregnant once is likely to experience recurrent pregnancies and childbearing, with increased risks;

(8)(A) the problems of adolescent premarital sexual relations, pregnancy, and parenthood are multiple and complex and are frequently associated with or are a cause of other troublesome situations in the family; and

(B) such problems are best approached through a variety of integrated and essential services provided to adolescents and their families by other family members, religious and charitable organizations, voluntary associations, and other groups in the private sector as well as services provided by publicly sponsored initiatives;

(9) a wide array of educational, health, and supportive services are not available to adolescents with such problems or to their families, or when available frequently are fragmented and thus are of limited effectiveness in discouraging adolescent premarital sexual relations and the consequences of such relations;

(10)(A) prevention of adolescent sexual activity and adolescent pregnancy depends primarily upon developing strong family values and close family ties, and since the family is the basic social unit in which the values and attitudes of adolescents concerning sexuality and pregnancy are formed, programs designed to deal with issues of sexuality and pregnancy will be successful to the extent that such programs encourage and sustain the role of the family in dealing with adolescent sexual activity and adolescent pregnancy;

(B) Federal policy therefore should encourage the development of appropriate health,

educational, and social services where such services are now lacking or inadequate, and the better coordination of existing services where they are available; and

(C) services encouraged by the Federal Government should promote the involvement of parents with their adolescent children, and should emphasize the provision of support by other family members, religious and charitable organizations, voluntary associations, and other groups in the private sector in order to help adolescents and their families deal with complex issues of adolescent premarital sexual relations and the consequences of such relations; and

(11)(A) there has been limited research concerning the societal causes and consequences of adolescent pregnancy;

(B) there is limited knowledge concerning which means of intervention are effective in mediating or eliminating adolescent premarital sexual relations and adolescent pregnancy; and

(C) it is necessary to expand and strengthen such knowledge in order to develop an array of approaches to solving the problems of adolescent premarital sexual relations and adolescent pregnancy in both urban and rural settings.

(b) Therefore, the purposes of this subchapter are—

(1) to find effective means, within the context of the family, of reaching adolescents before they become sexually active in order to maximize the guidance and support available to adolescents from parents and other family members, and to promote self discipline and other prudent approaches to the problem of adolescent premarital sexual relations, including adolescent pregnancy;

(2) to promote adoption as an alternative for adolescent parents;

(3) to establish innovative, comprehensive, and integrated approaches to the delivery of care services both for pregnant adolescents, with primary emphasis on unmarried adolescents who are seventeen years of age or under, and for adolescent parents, which shall be based upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration, and linkages among such existing programs in order to—

(A) enable pregnant adolescents to obtain proper care and assist pregnant adolescents and adolescent parents to become productive independent contributors to family and community life; and

(B) assist families of adolescents to understand and resolve the societal causes which are associated with adolescent pregnancy;

(4) to encourage and support research projects and demonstration projects concerning the societal causes and consequences of adolescent premarital sexual relations, contraceptive use, pregnancy, and child rearing;

(5) to support evaluative research to identify effective services which alleviate, eliminate, or resolve any negative consequences of adolescent premarital sexual relations and adolescent childbearing for the parents, the child, and their families; and

(6) to encourage and provide for the dissemination of results, findings, and information from programs and research projects relating to adolescent premarital sexual relations, pregnancy, and parenthood.

(July 1, 1944, ch. 373, title XX, §2001, as added Pub. L. 97–35, title IX, §955(a), Aug. 13, 1981, 95 Stat. 578; amended Pub. L. 98–512, §2(b), (c), Oct. 19, 1984, 98 Stat. 2409.)

AMENDMENTS

1984—Subsec. (a)(5). Pub. L. 98–512, §2(b), struck out reference relating to developmental disabilities and inserted provision relating to importance of education, training, and job research services for adolescent parents.

Subsec. (b)(3). Pub. L. 98–512, §2(c), inserted ''both'' before ''for pregnant adolescents''.

§ 300z–1. Definitions; regulations applicable

(a) For the purposes of this subchapter, the term—

(1) ''Secretary'' means the Secretary of Health and Human Services;

(2) ''eligible person'' means—

(A) with regard to the provision of care services, a pregnant adolescent, an adolescent parent, or the family of a pregnant adolescent or an adolescent parent; or

(B) with regard to the provision of prevention services and referral to such other services which may be appropriate, a nonpregnant adolescent;

(3) ''eligible grant recipient'' means a public or nonprofit private organization or agency which demonstrates, to the satisfaction of the Secretary—

(A) in the case of an organization which will provide care services, the capability of providing all core services in a single setting or the capability of creating a network through which all core services would be provided; or

(B) in the case of an organization which will provide prevention services, the capability of providing such services;

(4) ''necessary services'' means services which may be provided by grantees which are—

(A) pregnancy testing and maternity counseling;

(B) adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(C) primary and preventive health services including prenatal and postnatal care;

(D) nutrition information and counseling;

(E) referral for screening and treatment of venereal disease;

(F) referral to appropriate pediatric care;

(G) educational services relating to family life and problems associated with adolescent premarital sexual relations, including—

(i) information about adoption;

(ii) education on the responsibilities of sexuality and parenting;

(iii) the development of material to support the role of parents as the provider of sex education; and

(iv) assistance to parents, schools, youth agencies, and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(H) appropriate educational and vocational services;

(I) referral to licensed residential care or maternity home services; and

(J) mental health services and referral to mental health services and to other appropriate physical health services;

(K) child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(L) consumer education and homemaking;

(M) counseling for the immediate and extended family members of the eligible person;

(N) transportation;

(O) outreach services to families of adolescents to discourage sexual relations among unemancipated minors;

(P) family planning services; and

(Q) such other services consistent with the purposes of this subchapter as the Secretary may approve in accordance with regulations promulgated by the Secretary;

(5) ''core services'' means those services which shall be provided by a grantee, as determined by the Secretary by regulation;

(6) ''supplemental services'' means those services which may be provided by a grantee, as determined by the Secretary by regulation;

(7) ''care services'' means necessary services for the provision of care to pregnant adolescents and adolescent parents and includes all core services with respect to the provision of such care prescribed by the Secretary by regulation;

(8) ''prevention services'' means necessary services to prevent adolescent sexual relations, including the services described in subparagraphs (A), (D), (E), (G), (H), (M), (N), (O), and (Q) of paragraph (4);

(9) ''adolescent'' means an individual under the age of nineteen; and

(10) ''unemancipated minor'' means a minor who is subject to the control, authority, and supervision of his or her parents or guardians, as determined under State law.

(b) Until such time as the Secretary promulgates regulations pursuant to the second sentence of this subsection, the Secretary shall use the regulations promulgated under title VI of the Health Services and Centers Amendments of 1978 [42 U.S.C. 300a–21 et seq.] which were in effect on August 13, 1981, to determine which necessary services are core services for purposes of this subchapter. The Secretary may promulgate regulations to determine which necessary services are core services for purposes of this subchapter based upon an evaluation of and information concerning which necessary services are essential to carry out the purposes of this subchapter and taking into account (1) factors such as whether services are to be provided in urban or rural areas, the ethnic groups to be served, and the nature of the populations to be served, and (2) the results of the evaluations required under section 300z–5(b) of this title. The Secretary may from time to time revise such regulations.

(July 1, 1944, ch. 373, title XX, § 2002, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 580; amended Pub. L. 98–512, § 2(d), Oct. 19, 1984, 98 Stat. 2409.)

REFERENCES IN TEXT

The Health Services and Centers Amendments of 1978, referred to in subsec. (b), is Pub. L. 95–626, Nov. 10, 1978, 92 Stat. 3551, as amended. Title VI of the Health Services and Centers Amendments of 1978 was classified generally to part A (§ 300a–21 et seq.) of subchapter VIII–A of this chapter prior to its repeal by Pub. L. 97–35, title IX, § 955(b), title XXI, § 2193(f), Aug. 13, 1981, 95 Stat. 592, 828. For complete classification of this Act to the Code, see Short Title of 1978 Amendments note set out under section 201 of this title and Tables.

AMENDMENTS

1984—Subsec. (a)(4)(H). Pub. L. 98–512 struck out ''and referral to such services'' after ''vocational services''.

§ 300z–2. Demonstration projects; grant authorization, etc.

(a) The Secretary may make grants to further the purposes of this subchapter to eligible grant recipients which have submitted an application which the Secretary finds meets the requirements of section 300z–5 of this title for demonstration projects which the Secretary determines will help communities provide appropriate care and prevention services in easily accessible locations. Demonstration projects shall, as appropriate, provide, supplement, or improve the quality of such services. Demonstration projects shall use such methods as will strengthen the capacity of families to deal with the sexual behavior, pregnancy, or parenthood of adolescents and to make use of support systems such as other family members, friends, religious and charitable organizations, and voluntary associations.

(b) Grants under this subchapter for demonstration projects may be for the provision of—

(1) care services;

(2) prevention services; or

(3) a combination of care services and prevention services.

(July 1, 1944, ch. 373, title XX, § 2003, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 582.)

§ 300z–3. Uses of grants for demonstration projects for services

(a) Covered projects

Except as provided in subsection (b) of this section, funds provided for demonstration projects for services under this subchapter may be used by grantees only to—

(1) provide to eligible persons—

(A) care services;

(B) prevention services; or

(C) care and prevention services (in the case of a grantee who is providing a combination of care and prevention services);

(2) coordinate, integrate, and provide linkages among providers of care, prevention, and other services for eligible persons in furtherance of the purposes of this subchapter;

(3) provide supplemental services where such services are not adequate or not available to eligible persons in the community and which are essential to the care of pregnant adolescents and to the prevention of adolescent premarital sexual relations and adolescent pregnancy;

(4) plan for the administration and coordination of pregnancy prevention services and programs of care for pregnant adolescents and adolescent parents which will further the objectives of this subchapter; and

(5) fulfill assurances required for grant approval by section 300z–5 of this title.

(b) Family planning services; availability in community

(1) No funds provided for a demonstration project for services under this subchapter may be used for the provision of family planning services (other than counseling and referral services) to adolescents unless appropriate family planning services are not otherwise available in the community.

(2) Any grantee who receives funds for a demonstration project for services under this subchapter and who, after determining under paragraph (1) that appropriate family planning services are not otherwise available in the community, provides family planning services (other than counseling and referral services) to adolescents may only use funds provided under this subchapter for such family planning services if all funds received by such grantee from all other sources to support such family planning services are insufficient to support such family planning services.

(c) Fees for services: criteria

Grantees who receive funds for a demonstration project for services under this subchapter shall charge fees for services pursuant to a fee schedule approved by the Secretary as a part of the application described in section 300z–5 of this title which bases fees charged by the grantee on the income of the eligible person or the parents or legal guardians of the eligible person and takes into account the difficulty adolescents face in obtaining resources to pay for services. A grantee who receives funds for a demonstration project for services under this subchapter may not, in any case, discriminate with regard to the provision of services to any individual because of that individual's inability to provide payment for such services, except that in determining the ability of an unemancipated minor to provide payment for services, the income of the family of an unemancipated minor shall be considered in determining the ability of such minor to make such payments unless the parents or guardians of the unemancipated minor refuse to make such payments.

(July 1, 1944, ch. 373, title XX, § 2004, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 583.)

§ 300z–4. Grants for demonstration projects for services

(a) Priorities

In approving applications for grants for demonstration projects for services under this subchapter, the Secretary shall give priority to applicants who—

(1) serve an area where there is a high incidence of adolescent pregnancy;

(2) serve an area with a high proportion of low-income families and where the availability of programs of care for pregnant adolescents and adolescent parents is low;

(3) show evidence—

(A) in the case of an applicant who will provide care services, of having the ability to bring together a wide range of needed core services and, as appropriate, supplemental services in comprehensive single-site projects, or to establish a well-integrated network of such services (appropriate for the target population and geographic area to be served including the special needs of rural areas) for pregnant adolescents or adolescent parents; or

(B) in the case of an applicant who will provide prevention services, of having the ability to provide prevention services for adolescents and their families which are appropriate for the target population and the geographic area to be served, including the special needs of rural areas;

(4) will utilize to the maximum extent feasible existing available programs and facilities such as neighborhood and primary health care centers, maternity homes which provide or can be equipped to provide services to pregnant adolescents, agencies serving families, youth, and children with established programs of service to pregnant adolescents and vulnerable families, licensed adoption agencies, children and youth centers, maternal and infant health centers, regional rural health facilities, school and other educational programs, mental health programs, nutrition programs, recreation programs, and other ongoing pregnancy prevention services and programs of care for pregnant adolescents and adolescent parents;

(5) make use, to the maximum extent feasible, of other Federal, State, and local funds, programs, contributions, and other third-party reimbursements;

(6) can demonstrate a community commitment to the program by making available to the demonstration project non-Federal funds, personnel, and facilities;

(7) have involved the community to be served, including public and private agencies, adolescents, and families, in the planning and implementation of the demonstration project; and

(8) will demonstrate innovative and effective approaches in addressing the problems of adolescent premarital sexual relations, pregnancy, or parenthood, including approaches to provide pregnant adolescents with adequate information about adoption.

(b) Factors to be considered in making grants; special needs of rural areas

(1) The amount of a grant for a demonstration project for services under this subchapter shall be determined by the Secretary, based on factors such as the incidence of adolescent pregnancy in the geographic area to be served, and the adequacy of pregnancy prevention services and programs of care for pregnant adolescents and adolescent parents in such area.

(2) In making grants for demonstration projects for services under this subchapter, the Secretary shall consider the special needs of rural areas and, to the maximum extent practicable, shall distribute funds taking into consideration the relative number of adolescents in such areas in need of such services.

(c) Duration; Federal share

(1) A grantee may not receive funds for a demonstration project for services under this subchapter for a period in excess of 5 years.

(2)(A) Subject to paragraph (3), a grant for a demonstration project for services under this subchapter may not exceed—

(i) 70 per centum of the costs of the project for the first and second years of the project;

(ii) 60 per centum of such costs for the third year of the project;

(iii) 50 per centum of such costs for the fourth year of the project; and

(iv) 40 per centum of such costs for the fifth year of the project.

(B) Non-Federal contributions required by subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(3) The Secretary may waive the limitation specified in paragraph (2)(A) for any year in accordance with criteria established by regulation.

(July 1, 1944, ch. 373, title XX, § 2005, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 584.)

§ 300z–5. Requirements for applications

(a) Form, content, and assurances

An application for a grant for a demonstration project for services under this subchapter shall be in such form and contain such information as the Secretary may require, and shall include—

(1) an identification of the incidence of adolescent pregnancy and related problems;

(2) a description of the economic conditions and income levels in the geographic area to be served;

(3) a description of existing pregnancy prevention services and programs of care for pregnant adolescents and adolescent parents (including adoption services), and including where, how, by whom, and to which population groups such services are provided, and the extent to which they are coordinated in the geographic area to be served;

(4) a description of the major unmet needs for services for adolescents at risk of initial or recurrent pregnancies and an estimate of the number of adolescents not being served in the area;

(5)(A) in the case of an applicant who will provide care services, a description of how all core services will be provided in the demonstration project using funds under this subchapter or will otherwise be provided by the grantee in the area to be served, the population to which such services will be provided, how such services will be coordinated, integrated, and linked with other related programs and services and the source or sources of funding of such core services in the public and private sectors; or

(B) in the case of an applicant who will provide prevention services, a description of the necessary services to be provided and how the applicant will provide such services;

(6) a description of the manner in which adolescents needing services other than the services provided directly by the applicant will be identified and how access and appropriate referral to such other services (such as medicaid; licensed adoption agencies; maternity home services; public assistance; employment services; child care services for adolescent parents; and other city, county, and State programs related to adolescent pregnancy) will be provided, including a description of a plan to coordinate such other services with the services supported under this subchapter;

(7) a description of the applicant's capacity to continue services as Federal funds decrease and in the absence of Federal assistance;

(8) a description of the results expected from the provision of services, and the procedures to be used for evaluating those results;

(9) a summary of the views of public agencies, providers of services, and the general public in the geographic area to be served, concerning the proposed use of funds provided for a demonstration project for services under this subchapter and a description of procedures used to obtain those views, and, in the case of applicants who propose to coordinate services administered by a State, the written comments of the appropriate State officials responsible for such services;

(10) assurances that the applicant will have an ongoing quality assurance program;

(11) assurances that, where appropriate, the applicant shall have a system for maintaining the confidentiality of patient records in accordance with regulations promulgated by the Secretary;

(12) assurances that the applicant will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(13) assurances that the applicant (A) has or will have a contractual or other arrangement with the agency of the State (in which the applicant provides services) that administers or supervises the administration of a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the payment of all or a part of the applicant's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (B) has made or will make every reasonable effort to enter into such an arrangement;

(14) assurances that the applicant has made or will make and will continue to make every

reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to benefits under title V of the Social Security Act [42 U.S.C. 701 et seq.], to medical assistance under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.], or to assistance for medical expenses under any other public assistance program or private health insurance program;

(15) assurances that the applicant has or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing services to persons entitled to services under parts B and E of title IV [42 U.S.C. 620 et seq., 670 et seq.] and title XX of the Social Security Act [42 U.S.C. 1397 et seq.];

(16)(A) a description of—

(i) the schedule of fees to be used in the provision of services, which shall comply with section 300z–3(c) of this title and which shall be designed to cover all reasonable direct and indirect costs incurred by the applicant in providing services; and

(ii) a corresponding schedule of discounts to be applied to the payment of such fees, which shall comply with section 300z–3(c) of this title and which shall be adjusted on the basis of the ability of the eligible person to pay;

(B) assurances that the applicant has made and will continue to make every reasonable effort—

(i) to secure from eligible persons payment for services in accordance with such schedules;

(ii) to collect reimbursement for health or other services provided to persons who are entitled to have payment made on their behalf for such services under any Federal or other government program or private insurance program; and

(iii) to seek such reimbursement on the basis of the full amount of fees for services without application of any discount; and

(C) assurances that the applicant has submitted or will submit to the Secretary such reports as the Secretary may require to determine compliance with this paragraph;

(17) assurances that the applicant will make maximum use of funds available under subchapter VIII of this chapter;

(18) assurances that the acceptance by any individual of family planning services or family planning information (including educational materials) provided through financial assistance under this subchapter shall be voluntary and shall not be a prerequisite to eligibility for or receipt of any other service furnished by the applicant;

(19) assurances that fees collected by the applicant for services rendered in accordance with this subchapter shall be used by the applicant to further the purposes of this subchapter;

(20) assurances that the applicant, if providing both prevention and care services will not exclude or discriminate against any adolescent who receives prevention services and subsequently requires care services as a pregnant adolescent;

(21) a description of how the applicant will, as appropriate in the provision of services—

(A) involve families of adolescents in a manner which will maximize the role of the family in the solution of problems relating to the parenthood or pregnancy of the adolescent;

(B) involve religious and charitable organizations, voluntary associations, and other groups in the private sector as well as services provided by publicly sponsored initiatives;

(22)(A) assurances that—

(i) except as provided in subparagraph (B) and subject to clause (ii), the applicant will notify the parents or guardians of any unemancipated minor requesting services from the applicant and, except as provided in subparagraph (C), will obtain the permission of such parents or guardians with respect to the provision of such services; and

(ii) in the case of a pregnant unemancipated minor requesting services from the applicant, the applicant will notify the parents or guardians of such minor under clause (i) within a reasonable period of time;

(B) assurances that the applicant will not notify or request the permission of the parents or guardian of any unemancipated minor without the consent of the minor—

(i) who solely is requesting from the applicant pregnancy testing or testing or treatment for venereal disease;

(ii) who is the victim of incest involving a parent; or

(iii) if an adult sibling of the minor or an adult aunt, uncle, or grandparent who is related to the minor by blood certifies to the grantee that notification of the parents or guardians of such minor would result in physical injury to such minor; and

(C) assurances that the applicant will not require, with respect to the provision of services, the permission of the parents or guardians of any pregnant unemancipated minor if such parents or guardians are attempting to compel such minor to have an abortion;

(23) assurances that primary emphasis for services supported under this subchapter shall be given to adolescents seventeen and under who are not able to obtain needed assistance through other means;

(24) assurances that funds received under this subchapter shall supplement and not supplant funds received from any other Federal, State, or local program or any private sources of funds; and

(25) a plan for the conduct of, and assurances that the applicant will conduct, evaluations of the effectiveness of the services supported under this subchapter in accordance with subsection (b) of this section.

(b) Evaluations: amount, conduct, and technical assistance

(1) Each grantee which receives funds for a demonstration project for services under this

subchapter shall expend at least 1 per centum but not in excess of 5 per centum of the amounts received under this subchapter for the conduct of evaluations of the services supported under this subchapter. The Secretary may, for a particular grantee upon good cause shown, waive the provisions of the preceding sentence with respect to the amounts to be expended on evaluations, but may not waive the requirement that such evaluations be conducted.

(2) Evaluations required by paragraph (1) shall be conducted by an organization or entity which is independent of the grantee providing services supported under this subchapter. To assist in conducting the evaluations required by paragraph (1), each grantee shall develop a working relationship with a college or university located in the grantee's State which will provide or assist in providing monitoring and evaluation of services supported under this subchapter unless no college or university in the grantee's State is willing or has the capacity to provide or assist in providing such monitoring and assistance.

(3) The Secretary may provide technical assistance with respect to the conduct of evaluations required under this subsection to any grantee which is unable to develop a working relationship with a college or university in the applicant's State for the reasons described in paragraph (2).

(c) Reports

Each grantee which receives funds for a demonstration project for services under this subchapter shall make such reports concerning its use of Federal funds as the Secretary may require. Reports shall include, at such times as are considered appropriate by the Secretary, the results of the evaluations of the services supported under this subchapter.

(d) Notification of parents; "adult" defined

(1) A grantee shall periodically notify the Secretary of the exact number of instances in which a grantee does not notify the parents or guardians of a pregnant unemancipated minor under subsection (a)(22)(B)(iii) of this section.

(2) For purposes of subsection (a)(22)(B)(iii) of this section, the term ''adult'' means an adult as defined by State law.

(e) Submission of applications to Governor; comments by Governor

Each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to the Secretary for a grant for a demonstration project for services under this subchapter. The Governor shall submit to the applicant comments on any such application within the period of sixty days beginning on the day when the Governor receives such copy. The applicant shall include the comments of the Governor with such application.

(f) Availability of core services

No application submitted for a grant for a demonstration project for care services under this subchapter may be approved unless the Secretary is satisfied that core services shall be available through the applicant within a reasonable time after such grant is received.

(July 1, 1944, ch. 373, title XX, § 2006, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 585.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(13) to (15), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts B and E of title IV of the Social Security Act are classified generally to part B (§ 620 et seq.) and part E (§ 670 et seq.) of subchapter IV of chapter 7 of this title. Titles V, XIX, and XX of the Social Security Act are classified generally to subchapters V (§ 701 et seq.), XIX (§ 1396 et seq.), and XX (§ 1397 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 300z–6. Coordination of programs

(a) The Secretary shall coordinate Federal policies and programs providing services relating to the prevention of adolescent sexual relations and initial and recurrent adolescent pregnancies and providing care services for pregnant adolescents. In achieving such coordination, the Secretary shall—

(1) require grantees who receive funds for demonstration projects for services under this subchapter to report periodically to the Secretary concerning Federal, State, and local policies and programs that interfere with the delivery of and coordination of pregnancy prevention services and other programs of care for pregnant adolescents and adolescent parents;

(2) provide technical assistance to facilitate coordination by State and local recipients of Federal assistance;

(3) review all programs administered by the Department of Health and Human Services which provide prevention services or care services to determine if the policies of such programs are consistent with the policies of this subchapter, consult with other departments and agencies of the Federal Government who administer programs that provide such services, and encourage such other departments and agencies to make recommendations, as appropriate, for legislation to modify such programs in order to facilitate the use of all Government programs which provide such services as a basis for delivery of more comprehensive prevention services and more comprehensive programs of care for pregnant adolescents and adolescent parents;

(4) give priority in the provision of funds, where appropriate, to applicants using single or coordinated grant applications for multiple programs; and

(5) give priority, where appropriate, to the provision of funds under Federal programs administered by the Secretary (other than the program established by this subchapter) to projects providing comprehensive prevention services and comprehensive programs of care for pregnant adolescents and adolescent parents.

(b) Any recipient of a grant for a demonstration project for services under this subchapter shall coordinate its activities with any other recipient of such a grant which is located in the same locality.

(July 1, 1944, ch. 373, title XX, § 2007, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 589.)

§ 300z–7. Research

(a) Grants and contracts; duration; renewal; amount

(1) The Secretary may make grants and enter into contracts with public agencies or private organizations or institutions of higher education to support the research and dissemination activities described in paragraphs (4), (5), and (6) of section 300z(b) of this title.

(2) The Secretary may make grants or enter into contracts under this section for a period of one year. A grant or contract under this section for a project may be renewed for four additional one-year periods, which need not be consecutive.

(3) A grant or contract for any one-year period under this section may not exceed $100,000 for the direct costs of conducting research or disemination[1] activities under this section and may include such additional amounts for the indirect costs of conducting such activities as the Secretary determines appropriate. The Secretary may waive the preceding sentence with respect to a specific project if he determines that—

(A) exceptional circumstances warrant such waiver and that the project will have national impact; or

(B) additional amounts are necessary for the direct costs of conducting limited demonstration projects for the provision of necessary services in order to provide data for research carried out under this subchapter.

(4) The amount of any grant or contract made under this section may remain available for obligation or expenditure after the close of the one-year period for which such grant or contract is made in order to assist the recipient in preparing the report required by subsection (f)(1) of this section.

(b) Scope of permissible activities

(1) Funds provided for research under this section may be used for descriptive or explanatory surveys, longitudinal studies, or limited demonstration projects for services that are for the purpose of increasing knowledge and understanding of the matters described in paragraphs (4) and (5) of section 300z(b) of this title.

(2) Funds provided under this section may not be used for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility.

(c) Applications

The Secretary may not make any grant or enter into any contract to support research or dissemination activities under this section unless—

(1) the Secretary has received an application for such grant or contract which is in such form and which contains such information as the Secretary may by regulation require;

(2) the applicant has demonstrated that the applicant is capable of conducting one or more of the types of research or dissemination activities described in paragraph (4), (5), or (6) of section 300z(b) of this title; and

(3) in the case of an application for a research project, the panel established by subsection (e)(2) of this section has determined that the project is of scientific merit.

(d) Coordination with National Institutes of Health

The Secretary shall, where appropriate, coordinate research and dissemination activities carried out under this section with research and dissemination activities carried out by the National Institutes of Health.

(e) Review of applications for grants and contracts; establishment of review panel

(1) The Secretary shall establish a system for the review of applications for grants and contracts under this section. Such system shall be substantially similar to the system for scientific peer review of the National Institutes of Health and shall meet the requirements of paragraphs (2) and (3).

(2) In establishing the system required by paragraph (1), the Secretary shall establish a panel to review applications under this section. Not more than 25 per centum of the members of the panel shall be physicians. The panel shall meet as often as may be necessary to facilitate the expeditious review of applications under this section, but not less than once each year. The panel shall review each project for which an application is made under this section, evaluate the scientific merit of the project, determine whether the project is of scientific merit, and make recommendations to the Secretary concerning whether the application for the project should be approved.

(3) The Secretary shall make grants under this section from among the projects which the panel established by paragraph (2) has determined to be of scientific merit and may only approve an application for a project if the panel has made such determination with respect to such a project. The Secretary shall make a determination with respect to an application within one month after receiving the determinations and recommendations of such panel with respect to the application.

(f) Reports

(1)(A) The recipient of a grant or contract for a research project under this section shall prepare and transmit to the Secretary a report describing the results and conclusions of such research. Except as provided in subparagraph (B), such report shall be transmitted to the Secretary not later than eighteen months after the end of the year for which funds are provided under this section. The recipient may utilize reprints of articles published or accepted for publication in professional journals to supplement or replace such report if the research contained in such articles was supported under this section during the year for which the report is required.

(B) In the case of any research project for which assistance is provided under this section for two or more consecutive one-year periods, the recipient of such assistance shall prepare and transmit the report required by subpara-

[1] So in original. Probably should be ''dissemination''.

graph (A) to the Secretary not later than twelve months after the end of each one-year period for which such funding is provided.

(2) Recipients of grants and contracts for dissemination under this section shall submit to the Secretary such reports as the Secretary determines appropriate.

(July 1, 1944, ch. 373, title XX, § 2008, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 589; amended Pub. L. 98–512, § 2(e), Oct. 19, 1984, 98 Stat. 2409.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98–512 struck out subsec. (g) which provided for collection of survey data used primarily for generation of national population estimates.

§ 300z–8. Evaluation and administration

(a) Of the funds appropriated under this subchapter, the Secretary shall reserve not less than 1 per centum and not more than 3 per centum for the evaluation of activities carried out under this subchapter. The Secretary shall submit to the appropriate committees of the Congress a summary of each evaluation conducted under this section.

(b) The officer or employee of the Department of Health and Human Services designated by the Secretary to carry out the provisions of this subchapter shall report directly to the Assistant Secretary for Health with respect to the activities of such officer or employee in carrying out such provisions.

(July 1, 1944, ch. 373, title XX, § 2009, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 591.)

§ 300z–9. Authorization of appropriations

(a) For the purpose of carrying out this subchapter, there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1982, $30,000,000 for the fiscal year ending September 30, 1983, $30,000,000 for the fiscal year ending September 30, 1984, and $30,000,000 for the fiscal year ending September 30, 1985.

(b) At least two-thirds of the amounts appropriated to carry out this subchapter shall be used to make grants for demonstration projects for services.

(c) Not more than one-third of the amounts specified under subsection (b) of this section for use for grants for demonstration projects for services shall be used for grants for demonstration projects for prevention services.

(July 1, 1944, ch. 373, title XX, § 2010, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 591; amended Pub. L. 98–512, § 2(a), Oct. 19, 1984, 98 Stat. 2409.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–509 inserted provisions authorizing appropriations for fiscal year ending Sept. 30, 1985.

§ 300z–10. Restrictions

(a) Grants or payments may be made only to programs or projects which do not provide abortions or abortion counseling or referral, or which do not subcontract with or make any payment to any person who provides abortions or abortion counseling or referral, except that any such program or project may provide referral for abortion counseling to a pregnant adolescent if such adolescent and the parents or guardians of such adolescent request such referral; and grants may be made only to projects or programs which do not advocate, promote, or encourage abortion.

(b) The Secretary shall ascertain whether programs or projects comply with subsection (a) of this section and take appropriate action if programs or projects do not comply with such subsection, including withholding of funds.

(July 1, 1944, ch. 373, title XX, § 2011, as added Pub. L. 97–35, title IX, § 955(a), Aug. 13, 1981, 95 Stat. 592.)

SUBCHAPTER XIX—VACCINES

PRIOR PROVISIONS

A prior subchapter XIX (§ 300aa et seq.), comprised of title XXI of the Public Health Service Act, act July 1, 1944, ch. 373, §§ 2101 to 2116, was renumbered title XXIII, §§ 2301 to 2316, of the Public Health Service Act, and transferred to subchapter XXI (§ 300cc et seq.) of this chapter, renumbered title XXV, §§ 2501 to 2514, of the Public Health Service Act, and transferred to subchapter XXV (§ 300aaa et seq.) of this chapter, renumbered title XXVI, §§ 2601 to 2614, of the Public Health Service Act, renumbered title XXVII, §§ 2701 to 2714, of the Public Health Service Act, and renumbered title II, part B, §§ 231 to 244, of the Public Health Service Act, and transferred to part B (§ 238 et seq.) of subchapter I of this chapter.

PART 1—NATIONAL VACCINE PROGRAM

§ 300aa–1. Establishment

The Secretary shall establish in the Department of Health and Human Services a National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The Program shall be administered by a Director selected by the Secretary.

(July 1, 1944, ch. 373, title XXI, § 2101, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3756.)

PRIOR PROVISIONS

A prior section 300aa–1, act July 1, 1944, § 2102, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

A prior section 2101 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

EFFECTIVE DATE

Section 323 of title III of Pub. L. 99–660, as amended by Pub. L. 100–203, title IV, § 4302(a), Dec. 22, 1987, 101 Stat. 1330–221; Pub. L. 102–168, title II, § 201(a), Nov. 26, 1991, 105 Stat. 1102, provided that: ''Subtitle 1 of title XXI of the Public Health Service Act [part 1 of this subchapter (42 U.S.C. 300aa–1 to 300aa–6)] shall take effect on the date of the enactment of this Act [Nov. 14, 1986] and parts A and B of subtitle 2 of such title [subparts A and B of part 2 of this subchapter (42 U.S.C. 300aa–10 to 300aa–23)] shall take effect on October 1, 1988 and parts C and D of such title [subparts C and D of part 2 of this subchapter (42 U.S.C. 300aa–25 to 300aa–33)] and this title [probably means provisions of title III of Pub. L. 99–660 other than those that enacted

this subchapter and redesignated former sections 300aa to 300aa–15 of this title as sections 300cc to 300cc–15 of this title; these other provisions amended sections 218, 242c, 262, 286, and 289f of this title and enacted provisions set out as notes under sections 201, 300aa–1, and 300aa–4 of this title] shall take effect on the date of the enactment of the Vaccine Compensation Amendments of 1987 [Dec. 22, 1987].''

SEVERABILITY

Section 322 of title III of Pub. L. 99–660, as amended by Pub. L. 101–239, title VI, § 6602, Dec. 19, 1989, 103 Stat. 2293; Pub. L. 101–502, § 5(g)(1), Nov. 3, 1990, 104 Stat. 1288, provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), if any provision [of] part A or B of subtitle 2 of title XXI of the Public Health Service Act [subparts A and B of part 2 of this subchapter], as added by section 311(a), or the application of such a provision to any person or circumstance is held invalid by reason of a violation of the Constitution, both such parts shall be considered invalid.

''(b) SPECIAL RULE.—If any amendment made by section 6601 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, amending sections 300aa–10 to 300aa–17, 300aa–21, 300aa–23, 300aa–26, and 300aa–27 of this title] to title XXI of the Public Health Service Act [this subchapter] or the application of such a provision to any person or circumstance is held invalid by reason of the Constitution, subsection (a) shall not apply and such title XXI of the Public Health Service Act without such amendment shall continue in effect.''

[Amendment by section 5(g)(1) of Pub. L. 101–502 to section 322(a) of Pub. L. 99–660, set out above, effective Nov. 14, 1986, see section 5(h) of Pub. L. 101–502, set out as an Effective Date of 1990 Amendment note under section 300aa–11 of this title.]

EVALUATION OF PROGRAM; STUDY AND REPORT TO CONGRESS

Pub. L. 101–239, title VI, § 6601(t), Dec. 19, 1989, 103 Stat. 2293, as amended by Pub. L. 102–168, title II, § 201(b), Nov. 26, 1991, 105 Stat. 1103, directed the Secretary of Health and Human Services to evaluate the National Vaccine Injury Compensation Program under this subchapter and report results of such study to Committee on Energy and Commerce of House of Representatives and Committee on Labor and Human Resources of Senate not later than Jan. 1, 1993.

RELATED STUDIES

Section 312 of title III of Pub. L. 99–660 directed Secretary of Health and Human Services, not later than 3 years after the effective date of this title (see Effective Date note above), to conduct, through studies by the Institute of Medicine of the National Academy of Sciences or other appropriate nonprofit private groups or associations, a review of pertussis vaccines and related illnesses and conditions and MMR vaccines, vaccines containing material intended to prevent or confer immunity against measles, mumps, and rubella disease, and related illnesses and conditions, make specific findings and report these findings in the Federal Register not later than 3 years after the effective date of this title, and at the same time these findings are published in the Federal Register, propose regulations as a result of such findings, and not later than 42 months after the effective date of this title, promulgate such proposed regulations with such modifications as may be necessary after opportunity for public hearing.

STUDY OF OTHER VACCINE RISKS

Section 313 of title III of Pub. L. 99–660 provided that:

''(a) STUDY.—

''(1) Not later than 3 years after the effective date of this title [see Effective Date note above], the Secretary shall, after consultation with the Advisory Commission on Childhood Vaccines established under section 2119 of the Public Health Service Act [section 300aa–19 of this title]—

''(A) arrange for a broad study of the risks (other than the risks considered under section 102 [21 U.S.C. 382]) to children associated with each vaccine set forth in the Vaccine Injury Table under section 2114 of such Act [section 300aa–14 of this title], and

''(B) establish guidelines, after notice and opportunity for public hearing and consideration of all relevant medical and scientific information, respecting the administration of such vaccines which shall include—

''(i) the circumstances under which any such vaccine should not be administered,

''(ii) the circumstances under which administration of any such vaccine should be delayed beyond its usual time of administration, and

''(iii) the groups, categories, or characteristics of potential recipients of such vaccine who may be at significantly higher risk of major adverse reactions to such vaccine than the general population of potential recipients.

''(2)(A) The Secretary shall request the Institute of Medicine of the National Academy of Sciences to conduct the study required by paragraph (1) under an arrangement by which the actual expenses incurred by such Academy in conducting such study will be paid by the Secretary.

''(B) If the Institute of Medicine is unwilling to conduct such study under such an arrangement, the Secretary shall enter into a similar arrangement with other appropriate nonprofit private groups or associations under which such groups or associations will conduct such study.

''(C) The Institute of Medicine or other group or association conducting the study required by paragraph (1) shall conduct such studies in consultation with the Advisory Commission on Childhood Vaccines established under section 2119 of the Public Health Service Act [section 300aa–19 of this title].

''(b) REVISION OF GUIDELINES.—The Secretary shall periodically, but at least every 3 years after establishing guidelines under subsection (a), review and revise such guidelines after notice and opportunity for public hearing and consideration of all relevant medical and scientific information, unless the Secretary finds that on the basis of all relevant information no revision of such guidelines is warranted and publishes such finding in the Federal Register.

''(c) FACTORS AFFECTING GUIDELINES.—Guidelines under subsection (a) shall take into account—

''(1) the risk to potential recipients of the vaccines with respect to which the guidelines are established,

''(2) the medical and other characteristics of such potential recipients, and

''(3) the risks to the public of not having such vaccines administered.

''(d) DISSEMINATION.—The Secretary shall widely disseminate the guidelines established under subsection (a) to—

''(1) physicians and other health care providers,

''(2) professional health associations,

''(3) State and local governments and agencies, and

''(4) other relevant entities.''

REVIEW OF WARNINGS, USE INSTRUCTIONS, AND PRECAUTIONARY INFORMATION

Section 314 of title III of Pub. L. 99–660 directed Secretary of Health and Human Services, not later than 1 year after the effective date of this title (see Effective Date note above) and after consultation with Advisory Commission on Childhood Vaccines and with other appropriate entities, to review the warnings, use instructions, and precautionary information presently issued by manufacturers of vaccines set forth in the Vaccine Injury Table set out in section 300aa–14 of this title and by rule determine whether such warnings, instructions, and information adequately warn health care providers of the nature and extent of dangers posed by such vaccines, and, if any such warning, instruction, or information is determined to be inadequate for such purpose

in any respect, require at the same time that the manufacturers revise and reissue such warning, instruction, or information as expeditiously as practical, but not later than 18 months after the effective date of this title.

STUDY OF IMPACT ON SUPPLY OF VACCINES

Pub. L. 99–660, title III, § 316, Nov. 14, 1986, 100 Stat. 3786, provided that: ''On June 30, 1987, and on June 30 of each second year thereafter, the Secretary of Health and Human Services shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate—

''(1) an assessment of the impact of the amendments made by this title [enacting this subchapter, amending sections 218, 242c, 262, 286, and 289f of this title, redesignating former sections 300aa to 300aa–15 of this title as sections 300cc to 300cc–15 of this title, and enacting provisions set out as notes under this section and sections 201 and 300aa–1 of this title] on the supply of vaccines listed in the Vaccine Injury Table under section 2114 of the Public Health Service Act [section 300aa–14 of this title], and

''(2) an assessment of the ability of the administrators of vaccines (including public clinics and private administrators) to provide such vaccines to children.''

WAIVER OF PAPERWORK REDUCTION

Section 321 of title III of Pub. L. 99–660 provided that: ''Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this title and implementing the amendments made by this title [enacting this subchapter, amending sections 218, 242c, 262, 286, and 289f of this title, redesignating former sections 300aa to 300aa–15 of this title as sections 300cc to 300cc–15 of this title, and enacting provisions set out as notes under sections 201, 300aa–1, and 300aa–4 of this title].''

§ 300aa–2. Program responsibilities

(a) The Director of the Program shall have the following responsibilities:

(1) Vaccine research

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction for research carried out in or through the National Institutes of Health, the Centers for Disease Control and Prevention, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development on means to induce human immunity against naturally occurring infectious diseases and to prevent adverse reactions to vaccines.

(2) Vaccine development

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction for activities carried out in or through the National Institutes of Health, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development to develop the techniques needed to produce safe and effective vaccines.

(3) Safety and efficacy testing of vaccines

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction for safety and efficacy testing of vaccines carried out in or through the National Institutes of Health, the Centers for Disease Control and Prevention, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development.

(4) Licensing of vaccine manufacturers and vaccines

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction for the allocation of resources in the implementation of the licensing program under section 263a of this title.

(5) Production and procurement of vaccines

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, ensure that the governmental and nongovernmental production and procurement of safe and effective vaccines by the Public Health Service, the Department of Defense, and the Agency for International Development meet the needs of the United States population and fulfill commitments of the United States to prevent human infectious diseases in other countries.

(6) Distribution and use of vaccines

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction to the Centers for Disease Control and Prevention and assistance to States, localities, and health practitioners in the distribution and use of vaccines, including efforts to encourage public acceptance of immunizations and to make health practitioners and the public aware of potential adverse reactions and contraindications to vaccines.

(7) Evaluating the need for and the effectiveness and adverse effects of vaccines and immunization activities

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction to the National Institutes of Health, the Centers for Disease Control and Prevention, the Office of Biologics Research and Review of the Food and Drug Administration, the National Center for Health Statistics, the National Center for Health Services Research and Health Care Technology Assessment, and the Centers for Medicare & Medicaid Services in monitoring the need for and the effectiveness and adverse effects of vaccines and immunization activities.

(8) Coordinating governmental and non-governmental activities

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, provide for the exchange of information between Federal agencies involved in the implementation of the Program and non-governmental entities engaged in the development and production of vaccines and in vaccine research and encourage the investment of nongovernmental resources complementary to the governmental activities under the Program.

(9) Funding of Federal agencies

The Director of the Program shall make available to Federal agencies involved in the implementation of the plan issued under section 300aa–3 of this title funds appropriated under section 300aa–6 of this title to supplement the funds otherwise available to such agencies for activities under the plan.

(b) In carrying out subsection (a) of this section and in preparing the plan under section 300aa–3 of this title, the Director shall consult with all Federal agencies involved in research on and development, testing, licensing, production, procurement, distribution, and use of vaccines.

(July 1, 1944, ch. 373, title XXI, § 2102, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3756; amended Pub. L. 102–531, title III, § 312(d)(13), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 108–173, title IX, § 900(e)(2)(F), Dec. 8, 2003, 117 Stat. 2372.)

PRIOR PROVISIONS

A prior section 300aa–2, act July 1, 1944, § 2103, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

A prior section 2102 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

AMENDMENTS

2003—Subsec. (a)(7). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

1992—Subsec. (a)(1), (3), (6), (7). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

DEMONSTRATION PROJECTS FOR OUTREACH PROGRAMS

Pub. L. 101–502, § 2(b), Nov. 3, 1990, 104 Stat. 1285, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, may make grants to public and nonprofit private entities for the purpose of carrying out demonstration projects—

''(A) to provide, without charge, immunizations against vaccine-preventable diseases to children not more than 2 years of age who reside in communities whose population includes a significant number of low-income individuals; and

''(B) to provide outreach services to identify such children and to inform the parents (or other guardians) of the children of the availability from the entities of the immunizations specified in subparagraph (A).

''(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraph (1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1993.''

[Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.]

SUPPLY OF VACCINES

Pub. L. 101–502, § 3, Nov. 3, 1990, 104 Stat. 1285, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall acquire and maintain a supply of vaccines sufficient to provide vaccinations throughout a 6-month period. Any proceeds received by the Secretary from the sale of vaccines from such supply shall be available to the Secretary for the purpose of purchasing vaccines for the supply. Such proceeds shall remain available for such purpose until expended.

''(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out subsection (a), there are authorized to be appropriated $5,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995.''

[Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.]

Pub. L. 100–177, title I, § 110(b), Dec. 1, 1987, 101 Stat. 991, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall acquire and maintain a supply of vaccines sufficient to provide vaccinations throughout a 6-month period.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out paragraph (1) $5,000,000 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989 and 1990.''

[Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.]

§ 300aa–3. Plan

The Director of the Program shall prepare and issue a plan for the implementation of the responsibilities of the Director under section 300aa–2 of this title. The plan shall establish priorities in research and the development, testing, licensing, production, procurement, distribution, and effective use of vaccines, describe an optimal use of resources to carry out such priorities, and describe how each of the various departments and agencies will carry out their vaccine functions in consultation and coordination with the Program and in conformity with such priorities. The first plan under this section shall be prepared not later than January 1, 1987, and shall be revised not later than January 1 of each succeeding year.

(July 1, 1944, ch. 373, title XXI, § 2103, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3757.)

PRIOR PROVISIONS

A prior section 300aa–3, act July 1, 1944, § 2104, which was renumbered section 2304 by Pub. L. 99–660, was transferred to section 300cc–3 of this title, prior to repeal by Pub. L. 98–621, § 10(s), Nov. 8, 1984, 98 Stat. 3381.

A prior section 2103 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

§ 300aa–4. Repealed. Pub. L. 105–362, title VI, § 601(a)(1)(H), Nov. 10, 1998, 112 Stat. 3285

Section, act July 1, 1944, ch. 373, title XXI, § 2104, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3757, related to national vaccine program report.

A prior section 300aa–4, act July 1, 1944, § 2105, was repealed by Pub. L. 99–117, § 12(f), Oct. 7, 1985, 99 Stat. 495. See section 300cc–4 of this title.

A prior section 2104 of act July 1, 1944, was renumbered section 2304 by Pub. L. 99–660 and classified to section 300cc–3 of this title, and was repealed by Pub. L. 98–621, § 10(s), Nov. 8, 1984, 98 Stat. 3381.

§ 300aa–5. National Vaccine Advisory Committee

(a) There is established the National Vaccine Advisory Committee. The members of the Committee shall be appointed by the Director of the Program, in consultation with the National Academy of Sciences, from among individuals who are engaged in vaccine research or the manufacture of vaccines or who are physicians,

members of parent organizations concerned with immunizations, or representatives of State or local health agencies or public health organizations.

(b) The Committee shall—

(1) study and recommend ways to encourage the availability of an adequate supply of safe and effective vaccination products in the States,

(2) recommend research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines,

(3) advise the Director of the Program in the implementation of sections 300aa–2, 300aa–3, and 300aa–4[1] of this title, and

(4) identify annually for the Director of the Program the most important areas of government and non-government cooperation that should be considered in implementing sections 300aa–2, 300aa–3, and 300aa–4[1] of this title.

(July 1, 1944, ch. 373, title XXI, § 2105, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3758.)

REFERENCES IN TEXT

Section 300aa–4 of this title, referred to in subsec. (b)(3), (4), was repealed by Pub. L. 105–362, title VI, § 601(a)(1)(H), Nov. 10, 1998, 112 Stat. 3285.

PRIOR PROVISIONS

A prior section 300aa–5, act July 1, 1944, § 2106, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

A prior section 2105 of act July 1, 1944, was repealed by Pub. L. 99–117, § 12(f), Oct. 7, 1985, 99 Stat. 495. See section 300cc–4 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 300aa–6. Authorization of appropriations

(a) To carry out this part other than section 300aa–2(9) of this title there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.

(b) To carry out section 300aa–2(9) of this title there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 and 2005.

(July 1, 1944, ch. 373, title XXI, § 2106, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3758; amended Pub. L. 101–502, § 4, Nov. 3, 1990, 104 Stat. 1286; Pub. L. 108–276, § 2(c), July 21, 2004, 118 Stat. 842.)

[1] See References in Text note below.

PRIOR PROVISIONS

A prior section 300aa–6, act July 1, 1944, § 2107, was successively renumbered by subsequent acts and transferred, see section 238d of this title.

A prior section 2106 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

Prior sections 300aa–7 to 300aa–9, act July 1, 1944, §§ 2108–2110, respectively, were successively renumbered by subsequent acts and transferred, see sections 238e to 238g, respectively, of this title.

AMENDMENTS

2004—Pub. L. 108–276 substituted provisions authorizing appropriations for fiscal years 2004 and 2005 for provisions authorizing appropriations for fiscal years 1991 through 1995 in subsecs. (a) and (b).

1990—Pub. L. 101–502 substituted provisions authorizing appropriations for fiscal years 1991 through 1995 for provisions authorizing appropriations for fiscal years 1987 through 1991 in subsecs. (a) and (b).

PART 2—NATIONAL VACCINE INJURY COMPENSATION PROGRAM

SUBPART A—PROGRAM REQUIREMENTS

§ 300aa–10. Establishment of program

(a) Program established

There is established the National Vaccine Injury Compensation Program to be administered by the Secretary under which compensation may be paid for a vaccine-related injury or death.

(b) Attorney's obligation

It shall be the ethical obligation of any attorney who is consulted by an individual with respect to a vaccine-related injury or death to advise such individual that compensation may be available under the program[1] for such injury or death.

(c) Publicity

The Secretary shall undertake reasonable efforts to inform the public of the availability of the Program.

(July 1, 1944, ch. 373, title XXI, § 2110, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3758; amended Pub. L. 101–239, title VI, § 6601(b), Dec. 19, 1989, 103 Stat. 2285.)

PRIOR PROVISIONS

A prior section 300aa–10, act July 1, 1944, § 2111, was successively renumbered by subsequent acts and transferred, see section 238h of this title.

A prior section 2110 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238g of this title.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–239 added subsec. (c).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6601(s) of Pub. L. 101–239, as amended by Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 300aa–11 to 300aa–17, 300aa–21, 300aa–23, 300aa–26, and 300aa–27 of this title] shall apply as follows:

[1] So in original. Probably should be capitalized.

''(A) Petitions filed after the date of enactment of this section [Dec. 19, 1989] shall proceed under the National Vaccine Injury Compensation Program under title XXI of the Public Health Service Act [this subchapter] as amended by this section.

''(B) Petitions currently pending in which the evidentiary record is closed shall continue to proceed under the Program in accordance with the law in effect before the date of the enactment of this section, except that if the United States Court of Federal Claims is to review the findings of fact and conclusions of law of a special master on such a petition, the court may receive further evidence in conducting such review.

''(C) Petitions currently pending in which the evidentiary record is not closed shall proceed under the Program in accordance with the law as amended by this section.

All pending cases which will proceed under the Program as amended by this section shall be immediately suspended for 30 days to enable the special masters and parties to prepare for proceeding under the Program as amended by this section. In determining the 240-day period prescribed by section 2112(d) of the Public Health Service Act [42 U.S.C. 300aa–12(d)], as amended by this section, or the 420-day period prescribed by section 2121(b) of such Act [42 U.S.C. 300aa–21(b)], as so amended, any period of suspension under the preceding sentence shall be excluded.

''(2) The amendments to section 2115 of the Public Health Service Act [42 U.S.C. 300aa–15] shall apply to all pending and subsequently filed petitions.''

EFFECTIVE DATE

Subpart effective Oct. 1, 1988, see section 323 of Pub. L. 99–660, as amended, set out as a note under section 300aa–1 of this title.

§ 300aa–11. Petitions for compensation

(a) General rule

(1) A proceeding for compensation under the Program for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition containing the matter prescribed by subsection (c) of this section with the United States Court of Federal Claims. The clerk of the United States Court of Federal Claims shall immediately forward the filed petition to the chief special master for assignment to a special master under section 300aa–12(d)(1) of this title.

(2)(A) No person may bring a civil action for damages in an amount greater than $1,000 or in an unspecified amount against a vaccine administrator or manufacturer in a State or Federal court for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, and no such court may award damages in an amount greater than $1,000 in a civil action for damages for such a vaccine-related injury or death, unless a petition has been filed, in accordance with section 300aa–16 of this title, for compensation under the Program for such injury or death and—

(i)(I) the United States Court of Federal Claims has issued a judgment under section 300aa–12 of this title on such petition, and

(II) such person elects under section 300aa–21(a) of this title to file such an action, or

(ii) such person elects to withdraw such petition under section 300aa–21(b) of this title or such petition is considered withdrawn under such section.

(B) If a civil action which is barred under subparagraph (A) is filed in a State or Federal court, the court shall dismiss the action. If a petition is filed under this section with respect to the injury or death for which such civil action was brought, the date such dismissed action was filed shall, for purposes of the limitations of actions prescribed by section 300aa–16 of this title, be considered the date the petition was filed if the petition was filed within one year of the date of the dismissal of the civil action.

(3) No vaccine administrator or manufacturer may be made a party to a civil action (other than a civil action which may be brought under paragraph (2)) for damages for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988.

(4) If in a civil action brought against a vaccine administrator or manufacturer before October 1, 1988, damages were denied for a vaccine-related injury or death or if such civil action was dismissed with prejudice, the person who brought such action may file a petition under subsection (b) of this section for such injury or death.

(5)(A) A plaintiff who on October 1, 1988, has pending a civil action for damages for a vaccine-related injury or death may, at any time within 2 years after October 1, 1988, or before judgment, whichever occurs first, petition to have such action dismissed without prejudice or costs and file a petition under subsection (b) of this section for such injury or death.

(B) If a plaintiff has pending a civil action for damages for a vaccine-related injury or death, such person may not file a petition under subsection (b) of this section for such injury or death.

(6) If a person brings a civil action after November 15, 1988[1] for damages for a vaccine-related injury or death associated with the administration of a vaccine before November 15, 1988, such person may not file a petition under subsection (b) of this section for such injury or death.

(7) If in a civil action brought against a vaccine administrator or manufacturer for a vaccine-related injury or death damages are awarded under a judgment of a court or a settlement of such action, the person who brought such action may not file a petition under subsection (b) of this section for such injury or death.

(8) If on October 1, 1988, there was pending an appeal or rehearing with respect to a civil action brought against a vaccine administrator or manufacturer and if the outcome of the last appellate review of such action or the last rehearing of such action is the denial of damages for a vaccine-related injury or death, the person who brought such action may file a petition under subsection (b) of this section for such injury or death.

(9) This subsection applies only to a person who has sustained a vaccine-related injury or death and who is qualified to file a petition for compensation under the Program.

(10) The Clerk of the United States Claims Court[2] is authorized to continue to receive, and

[1] So in original. Probably should be followed by a comma.

[2] See Change of Name note below.

forward, petitions for compensation for a vaccine-related injury or death associated with the administration of a vaccine on or after October 1, 1992.

(b) Petitioners

(1)(A) Except as provided in subparagraph (B), any person who has sustained a vaccine-related injury, the legal representative of such person if such person is a minor or is disabled, or the legal representative of any person who died as the result of the administration of a vaccine set forth in the Vaccine Injury Table may, if the person meets the requirements of subsection (c)(1) of this section, file a petition for compensation under the Program.

(B) No person may file a petition for a vaccine-related injury or death associated with a vaccine administered before October 1, 1988, if compensation has been paid under this part for 3500 petitions for such injuries or deaths.

(2) Only one petition may be filed with respect to each administration of a vaccine.

(c) Petition content

A petition for compensation under the Program for a vaccine-related injury or death shall contain—

(1) except as provided in paragraph (3), an affidavit, and supporting documentation, demonstrating that the person who suffered such injury or who died—

(A) received a vaccine set forth in the Vaccine Injury Table or, if such person did not receive such a vaccine, contracted polio, directly or indirectly, from another person who received an oral polio vaccine,

(B)(i) if such person received a vaccine set forth in the Vaccine Injury Table—

(I) received the vaccine in the United States or in its trust territories,

(II) received the vaccine outside the United States or a trust territory and at the time of the vaccination such person was a citizen of the United States serving abroad as a member of the Armed Forces or otherwise as an employee of the United States or a dependent of such a citizen, or

(III) received the vaccine outside the United States or a trust territory and the vaccine was manufactured by a vaccine manufacturer located in the United States and such person returned to the United States not later than 6 months after the date of the vaccination,

(ii) if such person did not receive such a vaccine but contracted polio from another person who received an oral polio vaccine, was a citizen of the United States or a dependent of such a citizen,

(C)(i) sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table in association with the vaccine referred to in subparagraph (A) or died from the administration of such vaccine, and the first symptom or manifestation of the onset or of the significant aggravation of any such illness, disability, injury, or condition or the death occurred within the time period after vaccine administration set forth in the Vaccine Injury Table, or

(ii)(I) sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by a vaccine referred to in subparagraph (A), or

(II) sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine referred to in subparagraph (A),

(D)(i) suffered the residual effects or complications of such illness, disability, injury, or condition for more than 6 months after the administration of the vaccine, or (ii) died from the administration of the vaccine, or (iii) suffered such illness, disability, injury, or condition from the vaccine which resulted in inpatient hospitalization and surgical intervention, and

(E) has not previously collected an award or settlement of a civil action for damages for such vaccine-related injury or death,

(2) except as provided in paragraph (3), maternal prenatal and delivery records, newborn hospital records (including all physicians' and nurses' notes and test results), vaccination records associated with the vaccine allegedly causing the injury, pre- and post-injury physician or clinic records (including all relevant growth charts and test results), all post-injury inpatient and outpatient records (including all provider notes, test results, and medication records), if applicable, a death certificate, and if applicable, autopsy results, and

(3) an identification of any records of the type described in paragraph (1) or (2) which are unavailable to the petitioner and the reasons for their unavailability.

(d) Additional information

A petition may also include other available relevant medical records relating to the person who suffered such injury or who died from the administration of the vaccine.

(e) Schedule

The petitioner shall submit in accordance with a schedule set by the special master assigned to the petition assessments, evaluations, and prognoses and such other records and documents as are reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the person who suffered such injury or who died from the administration of the vaccine.

(July 1, 1944, ch. 373, title XXI, § 2111, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3758; amended Pub. L. 100–203, title IV, §§ 4302(b), 4304(a), (b), 4306, 4307(1), (2), Dec. 22, 1987, 101 Stat. 1330–221, 1330–223, 1330–224; Pub. L. 101–239, title VI, § 6601(c)(1)–(7), Dec. 19, 1989, 103 Stat. 2285, 2286; Pub. L. 101–502, § 5(a), Nov. 3, 1990, 104 Stat. 1286; Pub. L. 102–168, title II, § 201(h)(1), Nov. 26, 1991, 105 Stat. 1104; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–43, title XX, § 2012, June 10, 1993, 107 Stat. 214; Pub. L. 105–277, div. C, title XV, § 1502, Oct. 21, 1998, 112 Stat. 2681–741; Pub. L.

106–310, div. A, title XVII, §1701(a), Oct. 17, 2000, 114 Stat. 1151.)

CODIFICATION

In subsecs. (a)(2)(A), (3), (4), (5)(A), (8), and (b)(1)(B), ''October 1, 1988'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

PRIOR PROVISIONS

A prior section 300aa–11, act July 1, 1944, §2112, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

A prior section 2111 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238h of this title.

AMENDMENTS

2000—Subsec. (c)(1)(D)(iii). Pub. L. 106–310 added cl. (iii).

1998—Subsec. (c)(1)(D)(i). Pub. L. 105–277 struck out ''and incurred unreimbursable expenses due in whole or in part to such illness, disability, injury, or condition in an amount greater than $1,000'' before '', or (ii) died''.

1993—Subsec. (a)(10). Pub. L. 103–43 added par. (10).

1992—Subsec. (a)(1), (2)(A)(i)(I). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' wherever appearing.

1991—Subsec. (a)(2)(A)(i), (ii). Pub. L. 102–168 realigned margins of cls. (i) and (ii).

1990—Subsec. (a)(2)(A). Pub. L. 101–502, §5(a)(1), substituted ''unless a petition has been filed, in accordance with section 300aa–16 of this title, for compensation under the Program for such injury or death and—'' and cls. (i) and (ii) for ''unless—

''(i) a petition has been filed, in accordance with section 300aa–16 of this title, for compensation under the Program for such injury or death,

''(ii) the United States Claims Court has issued a judgment under section 300aa–12 of this title on such petition, and

''(iii) such person elects under section 300aa–21(a) of this title to file such an action.''

Subsec. (a)(5)(A). Pub. L. 101–502, §5(a)(2), struck out ''without prejudice'' after ''without prejudice or costs''.

Subsec. (a)(5)(B). Pub. L. 101–502, §5(a)(3), substituted ''plaintiff'' for ''plaintiff who''.

Subsec. (d). Pub. L. 101–502, §5(a)(4), struck out ''(d) except as provided in paragraph (3),'' before ''(d) Additional information''.

Subsec. (e). Pub. L. 101–502, §5(a)(5), substituted ''(e) Schedule'' for ''(e)(e) Schedule''.

1989—Subsec. (a)(1). Pub. L. 101–239, §6601(c)(1), substituted ''filing of a petition containing the matter prescribed in subsection (c) of this section'' for ''filing of a petition'' and inserted at end ''The clerk of the United States Claims Court shall immediately forward the filed petition to the chief special master for assignment to a special master under section 300aa–12(d)(1) of this title.''

Subsec. (a)(2)(A)(i). Pub. L. 101–239, §6601(c)(2), struck out ''under subsection (b) of this section'' after ''section 300aa–16 of this title,''.

Subsec. (a)(5)(A). Pub. L. 101–239, §6601(c)(3)(A), substituted ''petition to have such action dismissed without prejudice or costs'' for ''elect to withdraw such action''.

Subsec. (a)(5)(B). Pub. L. 101–239, §6601(c)(3)(B), substituted ''has pending'' for ''on October 1, 1988, had pending'' and struck out ''does not withdraw the action under subparagraph (A)'' after ''vaccine-related injury or death''.

Subsec. (a)(6). Pub. L. 101–239, §6601(c)(4), substituted ''November 15, 1988'' for ''the effective date of this subpart'' in two places.

Subsec. (a)(8). Pub. L. 101–239, §6601(c)(5), added par. (8). Former par. (8) redesignated (9).

Subsec. (a)(9). Pub. L. 101–239, §6601(c)(5), (7), redesignated par. (8) as (9) and realigned margin.

Subsec. (c)(1). Pub. L. 101–239, §6601(c)(6)(A), inserted ''except as provided in paragraph (3),'' after ''(1)'' in introductory provisions.

Subsec. (c)(2). Pub. L. 101–239, §6601(c)(6)(B), (C), added par. (2) and redesignated former par. (2) as subsec. (d).

Pub. L. 101–239, §6601(c)(6)(A), inserted ''except as provided in paragraph (3),'' after ''(2)''.

Subsec. (c)(3). Pub. L. 101–239, §6601(c)(6)(C), (D), added par. (3). Former par. (3) redesignated subsec. (e).

Subsec. (d). Pub. L. 101–239, §6601(c)(6)(B), redesignated former subsec. (c)(2) as subsec. (d), expanded margin to full measure, inserted subsec. designation and heading, substituted ''A petition may also include other available'' for ''all available'', struck out ''(including autopsy reports, if any)'' after ''relevant medical records'', and substituted ''administration of the vaccine.'' for ''administration of the vaccine and an identification of any unavailable records known to the petitioner and the reasons for their unavailability, and''.

Subsec. (e). Pub. L. 101–239, §6601(c)(6)(D), redesignated former subsec. (c)(3) as subsec. (e), expanded margin to full measure, inserted subsec. designation and heading, and substituted ''The petitioner shall submit in accordance with a schedule set by the special master assigned to the petition'' for ''appropriate''.

1987—Subsec. (a)(1). Pub. L. 100–203, §4307(1), which directed that par. (1) be amended by substituting ''with the United States Claims Court'' for ''with the United States district court for the district in which the petitioner resides or the injury or death occurred'', was executed making the substitution for ''with the United States district court for the district in which the petitioner resides or in which the injury or death occurred'', as the probable intent of Congress.

Subsec. (a)(2)(A). Pub. L. 100–203, §4306, substituted ''vaccine administrator or manufacturer'' for ''vaccine manufacturer''.

Pub. L. 100–203, §4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (a)(2)(A)(ii). Pub. L. 100–203, §4307(2), substituted ''the United States Claims Court'' for ''a district court of the United States''.

Subsec. (a)(3). Pub. L. 100–203, §4306, substituted ''vaccine administrator or manufacturer'' for ''vaccine manufacturer''.

Pub. L. 100–203, §4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (a)(4). Pub. L. 100–203, §4306, substituted ''vaccine administrator or manufacturer'' for ''vaccine manufacturer''.

Pub. L. 100–203, §4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (a)(5)(A). Pub. L. 100–203, §4302(b)(2), substituted ''after the effective date of this subpart'' for ''after the effective date of this subchapter''.

Pub. L. 100–203, §4302(b)(1), substituted ''who on the effective date of this subpart'' for ''who on the effective date of this part''.

Subsec. (a)(5)(B). Pub. L. 100–203, §4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (a)(6). Pub. L. 100–203, §4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part'' in two places.

Subsec. (a)(7). Pub. L. 100–203, §4306, substituted ''vaccine administrator or manufacturer'' for ''vaccine manufacturer''.

Subsec. (a)(8). Pub. L. 100–203, §4304(a), added par. (8).

Subsec. (b)(1)(A). Pub. L. 100–203, §4304(b)(1), substituted ''may, if the person meets the requirements of subsection (c)(1) of this section, file'' for ''may file''.

Subsec. (b)(1)(B). Pub. L. 100–203, §4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (c)(1)(D). Pub. L. 100–203, §4304(b)(2), substituted ''for more than 6 months'' for ''for more than

1 year'', ''and incurred'' for '', (ii) incurred'', and ''(ii)'' for ''(iii)''.

CHANGE OF NAME

References to United States Claims Court deemed to refer to United States Court of Federal Claims, see section 902(b) of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–310, div. A, title XVII, § 1701(b), Oct. 17, 2000, 114 Stat. 1151, provided that: ''The amendment made by subsection (a) [amending this section] takes effect upon the date of the enactment of this Act [Oct. 17, 2000], including with respect to petitions under section 2111 of the Public Health Service Act [this section] that are pending on such date.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 201(i) of Pub. L. 102–168 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 300aa–12, 300aa–15, 300aa–16, 300aa–19, and 300aa–21 of this title and provisions set out as a note under section 300aa–1 of this title] shall take effect on the date of the enactment of this Act [Nov. 26, 1991].

''(2) The amendments made by subsections (d) and (f) [amending sections 300aa–12, 300aa–15, 300aa–16, and 300aa–21 of this title] shall take effect as if the amendments had been in effect on and after October 1, 1988.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5(h) of Pub. L. 101–502 provided that: ''The amendments made by subsections (f)(1) and (g) [amending section 300aa–21 of this title and provisions set out as a note under section 300aa–1 of this title and enacting provisions set out as a note under section 300aa–12 of this title] shall take effect as of November 14, 1986, and the amendments made by subsections (a) through (e) and subsection (f)(2) [amending this section and sections 300aa–12, 300aa–13, 300aa–15, 300aa–16, and 300aa–21 of this title] shall take effect as of September 30, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§ 300aa–12. Court jurisdiction

(a) General rule

The United States Court of Federal Claims and the United States Court of Federal Claims special masters shall, in accordance with this section, have jurisdiction over proceedings to determine if a petitioner under section 300aa–11 of this title is entitled to compensation under the Program and the amount of such compensation. The United States Court of Federal Claims may issue and enforce such orders as the court deems necessary to assure the prompt payment of any compensation awarded.

(b) Parties

(1) In all proceedings brought by the filing of a petition under section 300aa–11(b) of this title, the Secretary shall be named as the respondent, shall participate, and shall be represented in accordance with section 518(a) of title 28.

(2) Within 30 days after the Secretary receives service of any petition filed under section 300aa–11 of this title the Secretary shall publish notice of such petition in the Federal Register. The special master designated with respect to such petition under subsection (c) of this section shall afford all interested persons an opportunity to submit relevant, written information—

(A) relating to the existence of the evidence described in section 300aa–13(a)(1)(B) of this title, or

(B) relating to any allegation in a petition with respect to the matters described in section 300aa–11(c)(1)(C)(ii) of this title.

(c) United States Court of Federal Claims special masters

(1) There is established within the United States Court of Federal Claims an office of special masters which shall consist of not more than 8 special masters. The judges of the United States Court of Federal Claims shall appoint the special masters, 1 of whom, by designation of the judges of the United States Court of Federal Claims, shall serve as chief special master. The appointment and reappointment of the special masters shall be by the concurrence of a majority of the judges of the court.

(2) The chief special master and other special masters shall be subject to removal by the judges of the United States Court of Federal Claims for incompetency, misconduct, or neglect of duty or for physical or mental disability or for other good cause shown.

(3) A special master's office shall be terminated if the judges of the United States Court of Federal Claims determine, upon advice of the chief special master, that the services performed by that office are no longer needed.

(4) The appointment of any individual as a special master shall be for a term of 4 years, subject to termination under paragraphs (2) and (3). Individuals serving as special masters on December 19, 1989, shall serve for 4 years from the date of their original appointment, subject to termination under paragraphs (2) and (3). The chief special master in office on December 19, 1989, shall continue to serve as chief special master for the balance of the master's term, subject to termination under paragraphs (2) and (3).

(5) The compensation of the special masters shall be determined by the judges of the United States Court of Federal Claims, upon advice of the chief special master. The salary of the chief special master shall be the annual rate of basic pay for level IV of the Executive Schedule, as prescribed by section 5315, title 5. The salaries of the other special masters shall not exceed the annual rate of basic pay of level V of the Executive Schedule, as prescribed by section 5316, title 5.

(6) The chief special master shall be responsible for the following:

(A) Administering the office of special masters and their staff, providing for the efficient, expeditious, and effective handling of peti-

tions, and performing such other duties related to the Program as may be assigned to the chief special master by a concurrence of a majority of the United States Claims Courts[1] judges.

(B) Appointing and fixing the salary and duties of such administrative staff as are necessary. Such staff shall be subject to removal for good cause by the chief special master.

(C) Managing and executing all aspects of budgetary and administrative affairs affecting the special masters and their staff, subject to the rules and regulations of the Judicial Conference of the United States. The Conference rules and regulations pertaining to United States magistrate judges shall be applied to the special masters.

(D) Coordinating with the United States Court of Federal Claims the use of services, equipment, personnel, information, and facilities of the United States Court of Federal Claims without reimbursement.

(E) Reporting annually to the Congress and the judges of the United States Court of Federal Claims on the number of petitions filed under section 300aa–11 of this title and their disposition, the dates on which the vaccine-related injuries and deaths for which the petitions were filed occurred, the types and amounts of awards, the length of time for the disposition of petitions, the cost of administering the Program, and recommendations for changes in the Program.

(d) Special masters

(1) Following the receipt and filing of a petition under section 300aa–11 of this title, the clerk of the United States Court of Federal Claims shall forward the petition to the chief special master who shall designate a special master to carry out the functions authorized by paragraph (3).

(2) The special masters shall recommend rules to the Court of Federal Claims and, taking into account such recommended rules, the Court of Federal Claims shall promulgate rules pursuant to section 2071 of title 28. Such rules shall—

(A) provide for a less-adversarial, expeditious, and informal proceeding for the resolution of petitions,

(B) include flexible and informal standards of admissibility of evidence,

(C) include the opportunity for summary judgment,

(D) include the opportunity for parties to submit arguments and evidence on the record without requiring routine use of oral presentations, cross examinations, or hearings, and

(E) provide for limitations on discovery and allow the special masters to replace the usual rules of discovery in civil actions in the United States Court of Federal Claims.

(3)(A) A special master to whom a petition has been assigned shall issue a decision on such petition with respect to whether compensation is to be provided under the Program and the amount of such compensation. The decision of the special master shall—

(i) include findings of fact and conclusions of law, and

(ii) be issued as expeditiously as practicable but not later than 240 days, exclusive of suspended time under subparagraph (C), after the date the petition was filed.

The decision of the special master may be reviewed by the United States Court of Federal Claims in accordance with subsection (e) of this section.

(B) In conducting a proceeding on a petition a special master—

(i) may require such evidence as may be reasonable and necessary,

(ii) may require the submission of such information as may be reasonable and necessary,

(iii) may require the testimony of any person and the production of any documents as may be reasonable and necessary,

(iv) shall afford all interested persons an opportunity to submit relevant written information—

(I) relating to the existence of the evidence described in section 300aa–13(a)(1)(B) of this title, or

(II) relating to any allegation in a petition with respect to the matters described in section 300aa–11(c)(1)(C)(ii) of this title, and

(v) may conduct such hearings as may be reasonable and necessary.

There may be no discovery in a proceeding on a petition other than the discovery required by the special master.

(C) In conducting a proceeding on a petition a special master shall suspend the proceedings one time for 30 days on the motion of either party. After a motion for suspension is granted, further motions for suspension by either party may be granted by the special master, if the special master determines the suspension is reasonable and necessary, for an aggregate period not to exceed 150 days.

(D) If, in reviewing proceedings on petitions for vaccine-related injuries or deaths associated with the administration of vaccines before October 1, 1988, the chief special master determines that the number of filings and resultant workload place an undue burden on the parties or the special master involved in such proceedings, the chief special master may, in the interest of justice, suspend proceedings on any petition for up to 30 months (but for not more than 6 months at a time) in addition to the suspension time under subparagraph (C).

(4)(A) Except as provided in subparagraph (B), information submitted to a special master or the court in a proceeding on a petition may not be disclosed to a person who is not a party to the proceeding without the express written consent of the person who submitted the information.

(B) A decision of a special master or the court in a proceeding shall be disclosed, except that if the decision is to include information—

(i) which is trade secret or commercial or financial information which is privileged and confidential, or

(ii) which are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy,

[1] So in original. Probably should be a reference to the United States Court of Federal Claims.

and if the person who submitted such information objects to the inclusion of such information in the decision, the decision shall be disclosed without such information.

(e) Action by United States Court of Federal Claims

(1) Upon issuance of the special master's decision, the parties shall have 30 days to file with the clerk of the United States Court of Federal Claims a motion to have the court review the decision. If such a motion is filed, the other party shall file a response with the clerk of the United States Court of Federal Claims no later than 30 days after the filing of such motion.

(2) Upon the filing of a motion under paragraph (1) with respect to a petition, the United States Court of Federal Claims shall have jurisdiction to undertake a review of the record of the proceedings and may thereafter—

(A) uphold the findings of fact and conclusions of law of the special master and sustain the special master's decision,

(B) set aside any findings of fact or conclusion of law of the special master found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and issue its own findings of fact and conclusions of law, or

(C) remand the petition to the special master for further action in accordance with the court's direction.

The court shall complete its action on a petition within 120 days of the filing of a response under paragraph (1) excluding any days the petition is before a special master as a result of a remand under subparagraph (C). The court may allow not more than 90 days for remands under subparagraph (C).

(3) In the absence of a motion under paragraph (1) respecting the special master's decision or if the United States Court of Federal Claims takes the action described in paragraph (2)(A) with respect to the special master's decision, the clerk of the United States Court of Federal Claims shall immediately enter judgment in accordance with the special master's decision.

(f) Appeals

The findings of fact and conclusions of law of the United States Court of Federal Claims on a petition shall be final determinations of the matters involved, except that the Secretary or any petitioner aggrieved by the findings or conclusions of the court may obtain review of the judgment of the court in the United States court of appeals for the Federal Circuit upon petition filed within 60 days of the date of the judgment with such court of appeals within 60 days of the date of entry of the United States Claims Court's[2] judgment with such court of appeals.

(g) Notice

If—

(1) a special master fails to make a decision on a petition within the 240 days prescribed by subsection (d)(3)(A)(ii) of this section (excluding (A) any period of suspension under subsection (d)(3)(C) or (d)(3)(D) of this section, and (B) any days the petition is before a special master as a result of a remand under subsection (e)(2)(C) of this section), or

(2) the United States Court of Federal Claims fails to enter a judgment under this section on a petition within 420 days (excluding (A) any period of suspension under subsection (d)(3)(C) or (d)(3)(D) of this section, and (B) any days the petition is before a special master as a result of a remand under subsection (e)(2)(C) of this section) after the date on which the petition was filed,

the special master or court shall notify the petitioner under such petition that the petitioner may withdraw the petition under section 300aa–21(b) of this title or the petitioner may choose under section 300aa–21(b) of this title to have the petition remain before the special master or court, as the case may be.

(July 1, 1944, ch. 373, title XXI, § 2112, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3761; amended Pub. L. 100–203, title IV, §§ 4303(d)(2)(A), 4307(3), 4308(a), (b), Dec. 22, 1987, 101 Stat. 1330–222, 1330–224; Pub. L. 100–360, title IV, § 411(*o*)(2), (3)(A), July 1, 1988, 102 Stat. 808; Pub. L. 101–239, title VI, § 6601(d)–(i), Dec. 19, 1989, 103 Stat. 2286–2290; Pub. L. 101–502, § 5(b), Nov. 3, 1990, 104 Stat. 1286; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–168, title II, § 201(c), (d)(1), (h)(2), (3), Nov. 26, 1991, 105 Stat. 1103, 1104; Pub. L. 102–572, title IX, § 902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–66, title XIII, § 13632(c), Aug. 10, 1993, 107 Stat. 646.)

CODIFICATION

In subsec. (c)(4), ''on December 19, 1989,'' substituted for ''upon the date of the enactment of this subsection'' and ''on the date of the enactment of this subsection''.

In subsec. (d)(3)(D), ''October 1, 1988,'' substituted for ''the effective date of this part''.

PRIOR PROVISIONS

A prior section 300aa–12, act July 1, 1944, § 2113, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

A prior section 2112 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

AMENDMENTS

1993—Subsec. (d)(3)(D). Pub. L. 103–66 substituted ''30 months (but for not more than 6 months at a time)'' for ''540 days''.

1992—Subsecs. (a), (c) to (g). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' and ''Court of Federal Claims'' for ''Claims Court'', wherever appearing.

1991—Subsec. (d)(3)(D). Pub. L. 102–168, § 201(c), (h)(2), realigned margin and substituted ''540 days'' for ''180 days''.

Subsec. (g). Pub. L. 102–168, § 201(h)(3), made technical amendment to underlying provisions of original Act.

Pub. L. 102–168, § 201(d)(1), substituted ''or the petitioner may choose under section 300aa–21(b) of this title to have the petition remain before the special master or court, as the case may be'' for ''and the petition will be considered withdrawn under such section if the petitioner, the special master, or the court do not take certain actions'' before period at end.

1990—Subsec. (d)(3)(D). Pub. L. 101–502, § 5(b)(1), added subpar. (D).

Subsec. (g). Pub. L. 101–502, § 5(b)(2), added subsec. (g).

1989—Subsec. (a). Pub. L. 101–239, § 6601(d), substituted ''and the United States Claims Court special masters

[2] So in original. Probably should be a reference to the United States Court of Federal Claims.

shall, in accordance with this section, have jurisdiction'' for ''shall have jurisdiction (1)'', ''. The United States Claims Court may issue'' for '', and (2) to issue'', and ''deems'' for ''deem''.

Subsec. (b)(1). Pub. L. 101–239, § 6601(f), substituted ''In all proceedings brought by the filing of a petition under section 300aa–11(b) of this title, the Secretary shall be named as the respondent, shall participate, and shall be represented in accordance with section 518(a) of title 28.'' for ''The Secretary shall be named as the respondent in all proceedings brought by the filing of a petition under section 300aa–11(b) of this title. Except as provided in paragraph (2), no other person may intervene in any such proceeding.''

Subsec. (c). Pub. L. 101–239, § 6601(e)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 101–239, § 6601(e)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 101–239, § 6601(g)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Following receipt of a petition under subsection (a) of this section, the United States Claims Court shall designate a special master to carry out the functions authorized by paragraph (2).''

Subsec. (d)(2) to (4). Pub. L. 101–239, § 6601(g)(2), added pars. (2) to (4) and struck out former par. (2) which prescribed functions of special masters.

Subsec. (e). Pub. L. 101–239, § 6601(h), substituted ''Action by United States Claims Court'' for ''Action by court'' as heading and amended text generally. Prior to amendment, text read as follows:

''(1) Upon objection by the petitioner or respondent to the proposed findings of fact or conclusions of law prepared by the special master or upon the court's own motion, the court shall undertake a review of the record of the proceedings and may thereafter make a de novo determination of any matter and issue its judgment accordingly, including findings of fact and conclusions of law, or remand for further proceedings.

''(2) If no objection is filed under paragraph (1) or if the court does not choose to review the proceeding, the court shall adopt the proposed findings of fact and conclusions of law of the special master as its own and render judgment thereon.

''(3) The court shall render its judgment on any petition filed under the Program as expeditiously as practicable but not later than 365 days after the date on which the petition was filed.''

Pub. L. 101–239, § 6601(e)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101–239, § 6601(i), inserted ''within 60 days of the date of entry of the United States Claims Court's judgment with such court of appeals'' after ''with such court of appeals''.

Pub. L. 101–239, § 6601(e)(1), redesignated subsec. (e) as (f).

1988—Subsec. (c)(2). Pub. L. 100–360, § 411(*o*)(3)(A), added Pub. L. 100–203, § 4308(a), see 1987 Amendment note below.

Subsec. (e). Pub. L. 100–360, § 411(*o*)(2), made technical amendment to directory language of Pub. L. 100–203, § 4307(3)(C), see 1987 Amendment note below.

Pub. L. 100–360, § 411(*o*)(3)(A), added Pub. L. 100–203, § 4308(b), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–203, § 4307(3)(A), substituted ''United States Claims Court'' for ''district courts of the United States'' and ''the court'' for ''the courts''.

Subsec. (c)(1). Pub. L. 100–203, § 4307(3)(B), substituted ''the United States Claims Court'' for ''the district court of the United States in which the petition is filed''.

Subsec. (c)(2). Pub. L. 100–203, § 4308(a), as added by Pub. L. 100–360, § 411(*o*)(3)(A), inserted '', shall prepare and submit to the court proposed findings of fact and conclusions of law,'' in introductory provisions and struck out subpar. (E) which read as follows: ''prepare and submit to the court proposed findings of fact and conclusions of law.''

Subsec. (e). Pub. L. 100–203, § 4308(b), as added by Pub. L. 100–360, § 411(*o*)(3)(A), inserted ''within 60 days of the date of the judgment'' after ''petition filed''.

Pub. L. 100–203, § 4307(3)(C), as amended by Pub. L. 100–360, § 411(*o*)(2), substituted ''the United States Claims Court'' for ''a district court of the United States'' and ''for the Federal Circuit'' for ''for the circuit in which the court is located''.

Pub. L. 100–203, § 4303(d)(2)(A), redesignated subsec. (g) as (e) and struck out former subsec. (e) relating to administration of an award.

Subsec. (f). Pub. L. 100–203, § 4303(d)(2)(A), struck out subsec. (f) which related to revision of an award.

Subsec. (g). Pub. L. 100–203, § 4303(d)(2)(A), redesignated subsec. (g) as (e).

CHANGE OF NAME

''United States magistrate judges'' substituted for ''United States magistrates'' in subsec. (c)(6)(C) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 201(d)(1) of Pub. L. 102–168 effective as if in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102–168, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, except that such suspension be excluded in determining the 240-day period prescribed in subsec. (d) of this section, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c)(6)(E) of this section relating to reporting annually to the Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 13 of House Document No. 103–7.

REVIEW BY 3-JUDGE PANEL

Section 322(c) of Pub. L. 99–660, as added by Pub. L. 101–502, § 5(g)(2), Nov. 3, 1990, 104 Stat. 1288, and amended by Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516, provided that: ''If the review authorized by section 2112(f) [subsec. (f) of this section] is held invalid because the judgment of the United States Court of Federal Claims being reviewed did not arise from a case or controversy under Article III of the Constitution, such judgment shall be reviewed by a 3-judge panel of the United States Court of Federal Claims. Such panel

shall not include the judge who participated in such judgment.''

[Enactment of section 322(c) of Pub. L. 99–660 by section 5(g)(2) of Pub. L. 101–502, set out above, effective Nov. 14, 1986, see section 5(h) of Pub. L. 101–502, set out as an Effective Date of 1990 Amendment note under section 300aa–11 of this title.]

§ 300aa–13. Determination of eligibility and compensation

(a) General rule

(1) Compensation shall be awarded under the Program to a petitioner if the special master or court finds on the record as a whole—

(A) that the petitioner has demonstrated by a preponderance of the evidence the matters required in the petition by section 300aa–11(c)(1) of this title, and

(B) that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition.

The special master or court may not make such a finding based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.

(2) For purposes of paragraph (1), the term ''factors unrelated to the administration of the vaccine''—

(A) does not include any idiopathic, unexplained, unknown, hypothetical, or undocumentable cause, factor, injury, illness, or condition, and

(B) may, as documented by the petitioner's evidence or other material in the record, include infection, toxins, trauma (including birth trauma and related anoxia), or metabolic disturbances which have no known relation to the vaccine involved, but which in the particular case are shown to have been the agent or agents principally responsible for causing the petitioner's illness, disability, injury, condition, or death.

(b) Matters to be considered

(1) In determining whether to award compensation to a petitioner under the Program, the special master or court shall consider, in addition to all other relevant medical and scientific evidence contained in the record—

(A) any diagnosis, conclusion, medical judgment, or autopsy or coroner's report which is contained in the record regarding the nature, causation, and aggravation of the petitioner's illness, disability, injury, condition, or death, and

(B) the results of any diagnostic or evaluative test which are contained in the record and the summaries and conclusions.

Any such diagnosis, conclusion, judgment, test result, report, or summary shall not be binding on the special master or court. In evaluating the weight to be afforded to any such diagnosis, conclusion, judgment, test result, report, or summary, the special master or court shall consider the entire record and the course of the injury, disability, illness, or condition until the date of the judgment of the special master or court.

(2) The special master or court may find the first symptom or manifestation of onset or significant aggravation of an injury, disability, illness, condition, or death described in a petition occurred within the time period described in the Vaccine Injury Table even though the occurrence of such symptom or manifestation was not recorded or was incorrectly recorded as having occurred outside such period. Such a finding may be made only upon demonstration by a preponderance of the evidence that the onset or significant aggravation of the injury, disability, illness, condition, or death described in the petition did in fact occur within the time period described in the Vaccine Injury Table.

(c) "Record" defined

For purposes of this section, the term ''record'' means the record established by the special masters of the United States Court of Federal Claims in a proceeding on a petition filed under section 300aa–11 of this title.

(July 1, 1944, ch. 373, title XXI, § 2113, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3763; amended Pub. L. 100–203, title IV, § 4307(4), Dec. 22, 1987, 101 Stat. 1330–224; Pub. L. 101–239, title VI, § 6601(j), Dec. 19, 1989, 103 Stat. 2290; Pub. L. 101–502, § 5(c), Nov. 3, 1990, 104 Stat. 1287; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

PRIOR PROVISIONS

A prior section 300aa–13, act July 1, 1944, § 2114, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

A prior section 2113 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1990—Subsec. (c). Pub. L. 101–502 inserted ''the'' after ''special masters of''.

1989—Subsecs. (a)(1), (b). Pub. L. 101–239, § 6601(j)(1), substituted ''special master or court'' for ''court'' wherever appearing.

Subsec. (c). Pub. L. 101–239, § 6601(j)(2), inserted ''special masters of'' after ''established by the''.

1987—Subsec. (c). Pub. L. 100–203 substituted ''the United States Claims Court'' for ''a district court of the United States''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§ 300aa–14. Vaccine Injury Table

(a) Initial table

The following is a table of vaccines, the injuries, disabilities, illnesses, conditions, and

deaths resulting from the administration of such vaccines, and the time period in which the first symptom or manifestation of onset or of the significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths is to occur after vaccine administration for purposes of receiving compensation under the Program:

VACCINE INJURY TABLE

I.	DTP; P; DTP/Polio Combination; or Any Other Vaccine Containing Whole Cell Pertussis Bacteria, Extracted or Partial Cell Bacteria, or Specific Pertussis Antigen(s).	
	Illness, disability, injury, or condition covered:	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration:
	A. Anaphylaxis or anaphylactic shock	24 hours
	B. Encephalopathy (or encephalitis)	3 days
	C. Shock-collapse or hypotonic-hyporesponsive collapse	3 days
	D. Residual seizure disorder in accordance with subsection (b)(2)	3 days
	E. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable
II.	Measles, mumps, rubella, or any vaccine containing any of the foregoing as a component; DT; Td; or Tetanus Toxoid.	
	A. Anaphylaxis or anaphylactic shock	24 hours
	B. Encephalopathy (or encephalitis)	15 days (for mumps, rubella, measles, or any vaccine containing any of the foregoing as a component). 3 days (for DT, Td, or tetanus toxoid).
	C. Residual seizure disorder in accordance with subsection (b)(2)	15 days (for mumps, rubella, measles, or any vaccine containing any of the foregoing as a component). 3 days (for DT, Td, or tetanus toxoid).
	D. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable
III.	Polio Vaccines (other than Inactivated Polio Vaccine).	
	A. Paralytic polio	
	—in a non-immunodeficient recipient	30 days
	—in an immunodeficient recipient	6 months
	—in a vaccine-associated community case	Not applicable
	B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable
IV.	Inactivated Polio Vaccine.	
	A. Anaphylaxis or anaphylactic shock	24 hours
	B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable

(b) Qualifications and aids to interpretation

The following qualifications and aids to interpretation shall apply to the Vaccine Injury Table in subsection (a) of this section:

(1) A shock-collapse or a hypotonic-hyporesponsive collapse may be evidenced by indicia or symptoms such as decrease or loss of muscle tone, paralysis (partial or complete), hemiplegia or hemiparesis, loss of color or turning pale white or blue, unresponsiveness to environmental stimuli, depression of consciousness, loss of consciousness, prolonged sleeping with difficulty arousing, or cardiovascular or respiratory arrest.

(2) A petitioner may be considered to have suffered a residual seizure disorder if the petitioner did not suffer a seizure or convulsion unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit before the first seizure or convulsion after the administration of the vaccine involved and if—

(A) in the case of a measles, mumps, or rubella vaccine or any combination of such vaccines, the first seizure or convulsion occurred within 15 days after administration of the vaccine and 2 or more seizures or convulsions occurred within 1 year after the administration of the vaccine which were unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit, and

(B) in the case of any other vaccine, the first seizure or convulsion occurred within 3 days after administration of the vaccine and 2 or more seizures or convulsions occurred within 1 year after the administration of the vaccine which were unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit.

(3)(A) The term ''encephalopathy'' means any significant acquired abnormality of, or injury to, or impairment of function of the brain. Among the frequent manifestations of encephalopathy are focal and diffuse neurologic signs, increased intracranial pressure, or changes lasting at least 6 hours in level of consciousness, with or without convulsions. The neurological signs and symptoms of encephalopathy may be temporary with complete recovery, or may result in various degrees of permanent impairment. Signs and symptoms such as high pitched and unusual screaming, persistent unconsolable crying, and bulging fontanel are compatible with an encephalopathy, but in and of themselves are not conclusive evidence of encephalopathy. Encephalopathy usually can be documented by slow wave activity on an electroencephalogram.

(B) If in a proceeding on a petition it is shown by a preponderance of the evidence that an encephalopathy was caused by infection, toxins, trauma, or metabolic disturbances the

encephalopathy shall not be considered to be a condition set forth in the table. If at the time a judgment is entered on a petition filed under section 300aa–11 of this title for a vaccine-related injury or death it is not possible to determine the cause, by a preponderance of the evidence, of an encephalopathy, the encephalopathy shall be considered to be a condition set forth in the table. In determining whether or not an encephalopathy is a condition set forth in the table, the court shall consider the entire medical record.

(4) For purposes of paragraphs (2) and (3), the terms ''seizure'' and ''convulsion'' include grand mal, petit mal, absence, myoclonic, tonic-clonic, and focal motor seizures and signs. If a provision of the table to which paragraph (1), (2), (3), or (4) applies is revised under subsection (c) or (d) of this section, such paragraph shall not apply to such provision after the effective date of the revision unless the revision specifies that such paragraph is to continue to apply.

(c) Administrative revision of table

(1) The Secretary may promulgate regulations to modify in accordance with paragraph (3) the Vaccine Injury Table. In promulgating such regulations, the Secretary shall provide for notice and opportunity for a public hearing and at least 180 days of public comment.

(2) Any person (including the Advisory Commission on Childhood Vaccines) may petition the Secretary to propose regulations to amend the Vaccine Injury Table. Unless clearly frivolous, or initiated by the Commission, any such petition shall be referred to the Commission for its recommendations. Following—

(A) receipt of any recommendation of the Commission, or

(B) 180 days after the date of the referral to the Commission,

whichever occurs first, the Secretary shall conduct a rulemaking proceeding on the matters proposed in the petition or publish in the Federal Register a statement of reasons for not conducting such proceeding.

(3) A modification of the Vaccine Injury Table under paragraph (1) may add to, or delete from, the list of injuries, disabilities, illnesses, conditions, and deaths for which compensation may be provided or may change the time periods for the first symptom or manifestation of the onset or the significant aggravation of any such injury, disability, illness, condition, or death.

(4) Any modification under paragraph (1) of the Vaccine Injury Table shall apply only with respect to petitions for compensation under the Program which are filed after the effective date of such regulation.

(d) Role of Commission

Except with respect to a regulation recommended by the Advisory Commission on Childhood Vaccines, the Secretary may not propose a regulation under subsection (c) of this section or any revision thereof, unless the Secretary has first provided to the Commission a copy of the proposed regulation or revision, requested recommendations and comments by the Commission, and afforded the Commission at least 90 days to make such recommendations.

(e) Additional vaccines

(1) Vaccines recommended before August 1, 1993

By August 1, 1995, the Secretary shall revise the Vaccine Injury Table included in subsection (a) of this section to include—

(A) vaccines which are recommended to the Secretary by the Centers for Disease Control and Prevention before August 1, 1993, for routine administration to children,

(B) the injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines, and

(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.

(2) Vaccines recommended after August 1, 1993

When after August 1, 1993, the Centers for Disease Control and Prevention recommends a vaccine to the Secretary for routine administration to children, the Secretary shall, within 2 years of such recommendation, amend the Vaccine Injury Table included in subsection (a) of this section to include—

(A) vaccines which were recommended for routine administration to children,

(B) the injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines, and

(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.

(July 1, 1944, ch. 373, title XXI, § 2114, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3764; amended Pub. L. 101–239, title VI, § 6601(k), Dec. 19, 1989, 103 Stat. 2290; Pub. L. 103–66, title XIII, § 13632(a)(2), Aug. 10, 1993, 107 Stat. 645.)

PRIOR PROVISIONS

A prior section 300aa–14, act July 1, 1944, § 2115, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

A prior section 2114 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

AMENDMENTS

1993—Subsec. (e). Pub. L. 103–66 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''The Secretary may recommend to Congress revisions of the table to change the vaccines covered by the table.''

1989—Subsec. (a). Pub. L. 101–239, § 6601(k)(1), substituted ''(b)(2)'' for ''(c)(2)'' in items I.D. and II.C. in table.

Subsec. (b)(3)(B). Pub. L. 101–239, § 6601(k)(2), substituted ''300aa–11 of this title'' for ''300aa–11(b) of this title''.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate

suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

REVISIONS OF VACCINE INJURY TABLE

The Vaccine Injury Table as modified by regulations promulgated by the Secretary of Health and Human Services is set out at 42 CFR 100.3.

Section 13632(a)(3) of Pub. L. 103–66 provided that: ''A revision by the Secretary under section 2114(e) of the Public Health Service Act (42 U.S.C. 300aa–14(e)) (as amended by paragraph (2)) shall take effect upon the effective date of a tax enacted to provide funds for compensation paid with respect to the vaccine to be added to the vaccine injury table in section 2114(a) of the Public Health Service Act (42 U.S.C. 300aa–14(a)).''

§ 300aa–15. Compensation

(a) General rule

Compensation awarded under the Program to a petitioner under section 300aa–11 of this title for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, shall include the following:

(1)(A) Actual unreimbursable expenses incurred from the date of the judgment awarding such expenses and reasonable projected unreimbursable expenses which—

(i) result from the vaccine-related injury for which the petitioner seeks compensation,

(ii) have been or will be incurred by or on behalf of the person who suffered such injury, and

(iii)(I) have been or will be for diagnosis and medical or other remedial care determined to be reasonably necessary, or

(II) have been or will be for rehabilitation, developmental evaluation, special education, vocational training and placement, case management services, counseling, emotional or behavioral therapy, residential and custodial care and service expenses, special equipment, related travel expenses, and facilities determined to be reasonably necessary.

(B) Subject to section 300aa–16(a)(2) of this title, actual unreimbursable expenses incurred before the date of the judgment awarding such expenses which—

(i) resulted from the vaccine-related injury for which the petitioner seeks compensation,

(ii) were incurred by or on behalf of the person who suffered such injury, and

(iii) were for diagnosis, medical or other remedial care, rehabilitation, developmental evaluation, special education, vocational training and placement, case management services, counseling, emotional or behavioral therapy, residential and custodial care and service expenses, special equipment, related travel expenses, and facilities determined to be reasonably necessary.

(2) In the event of a vaccine-related death, an award of $250,000 for the estate of the deceased.

(3)(A) In the case of any person who has sustained a vaccine-related injury after attaining the age of 18 and whose earning capacity is or has been impaired by reason of such person's vaccine-related injury for which compensation is to be awarded, compensation for actual and anticipated loss of earnings determined in accordance with generally recognized actuarial principles and projections.

(B) In the case of any person who has sustained a vaccine-related injury before attaining the age of 18 and whose earning capacity is or has been impaired by reason of such person's vaccine-related injury for which compensation is to be awarded and whose vaccine-related injury is of sufficient severity to permit reasonable anticipation that such person is likely to suffer impaired earning capacity at age 18 and beyond, compensation after attaining the age of 18 for loss of earnings determined on the basis of the average gross weekly earnings of workers in the private, non-farm sector, less appropriate taxes and the average cost of a health insurance policy, as determined by the Secretary.

(4) For actual and projected pain and suffering and emotional distress from the vaccine-related injury, an award not to exceed $250,000.

(b) Vaccines administered before effective date

Compensation awarded under the Program to a petitioner under section 300aa–11 of this title for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, may include the compensation described in paragraphs (1)(A) and (2) of subsection (a) of this section and may also include an amount, not to exceed a combined total of $30,000, for—

(1) lost earnings (as provided in paragraph (3) of subsection (a) of this section),

(2) pain and suffering (as provided in paragraph (4) of subsection (a) of this section), and

(3) reasonable attorneys' fees and costs (as provided in subsection (e) of this section.[1]

(c) Residential and custodial care and service

The amount of any compensation for residential and custodial care and service expenses under subsection (a)(1) of this section shall be sufficient to enable the compensated person to remain living at home.

(d) Types of compensation prohibited

Compensation awarded under the Program may not include the following:

(1) Punitive or exemplary damages.

(2) Except with respect to compensation payments under paragraphs (2) and (3) of subsection (a) of this section, compensation for other than the health, education, or welfare of the person who suffered the vaccine-related injury with respect to which the compensation is paid.

(e) Attorneys' fees

(1) In awarding compensation on a petition filed under section 300aa–11 of this title the special master or court shall also award as part of such compensation an amount to cover—

(A) reasonable attorneys' fees, and

(B) other costs,

incurred in any proceeding on such petition. If the judgment of the United States Court of Fed-

[1] So in original. Probably should be preceded by a closing parenthesis.

eral Claims on such a petition does not award compensation, the special master or court may award an amount of compensation to cover petitioner's reasonable attorneys' fees and other costs incurred in any proceeding on such petition if the special master or court determines that the petition was brought in good faith and there was a reasonable basis for the claim for which the petition was brought.

(2) If the petitioner, before October 1, 1988, filed a civil action for damages for any vaccine-related injury or death for which compensation may be awarded under the Program, and petitioned under section 300aa–11(a)(5) of this title to have such action dismissed and to file a petition for compensation under the Program, in awarding compensation on such petition the special master or court may include an amount of compensation limited to the costs and expenses incurred by the petitioner and the attorney of the petitioner before October 1, 1988, in preparing, filing, and prosecuting such civil action (including the reasonable value of the attorney's time if the civil action was filed under contingent fee arrangements).

(3) No attorney may charge any fee for services in connection with a petition filed under section 300aa–11 of this title which is in addition to any amount awarded as compensation by the special master or court under paragraph (1).

(f) Payment of compensation

(1) Except as provided in paragraph (2), no compensation may be paid until an election has been made, or has been deemed to have been made, under section 300aa–21(a) of this title to receive compensation.

(2) Compensation described in subsection (a)(1)(A)(iii) of this section shall be paid from the date of the judgment of the United States Court of Federal Claims under section 300aa–12 of this title awarding the compensation. Such compensation may not be paid after an election under section 300aa–21(a) of this title to file a civil action for damages for the vaccine-related injury or death for which such compensation was awarded.

(3) Payments of compensation under the Program and the costs of carrying out the Program shall be exempt from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 900 et seq.].

(4)(A) Except as provided in subparagraph (B), payment of compensation under the Program shall be determined on the basis of the net present value of the elements of the compensation and shall be paid from the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26 in a lump sum of which all or a portion may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner.

(B) In the case of a payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, the compensation shall be determined on the basis of the net present value of the elements of compensation and shall be paid from appropriations made available under subsection (j) of this section in a lump sum of which all or a portion may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner. Any reasonable attorneys' fees and costs shall be paid in a lump sum. If the appropriations under subsection (j) of this section are insufficient to make a payment of an annual installment, the limitation on civil actions prescribed by section 300aa–21(a) of this title shall not apply to a civil action for damages brought by the petitioner entitled to the payment.

(C) In purchasing an annuity under subparagraph (A) or (B), the Secretary may purchase a guarantee for the annuity, may enter into agreements regarding the purchase price for and rate of return of the annuity, and may take such other actions as may be necessary to safeguard the financial interests of the United States regarding the annuity. Any payment received by the Secretary pursuant to the preceding sentence shall be paid to the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26, or to the appropriations account from which the funds were derived to purchase the annuity, whichever is appropriate.

(g) Program not primarily liable

Payment of compensation under the Program shall not be made for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program (other than under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]), or (2) by an entity which provides health services on a prepaid basis.

(h) Liability of health insurance carriers, prepaid health plans, and benefit providers

No policy of health insurance may make payment of benefits under the policy secondary to the payment of compensation under the Program and—

(1) no State, and

(2) no entity which provides health services on a prepaid basis or provides health benefits,

may make the provision of health services or health benefits secondary to the payment of compensation under the Program, except that this subsection shall not apply to the provision of services or benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(i) Source of compensation

(1) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, shall be made by the Secretary from appropriations under subsection (j) of this section.

(2) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine on or after October 1, 1988, shall be made from the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26.

(j) Authorization

For the payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, there are authorized to be appropriated to the Department of Health and Human Services $80,000,000 for fiscal year 1989, $80,000,000 for fiscal year 1990, $80,000,000 for fiscal year 1991, $80,000,000 for fiscal year 1992, $110,000,000 for fiscal year 1993, and $110,000,000 for each succeeding fiscal year in which a payment of compensation is required under subsection (f)(4)(B) of this section. Amounts appropriated under this subsection shall remain available until expended.

(July 1, 1944, ch. 373, title XXI, §2115, as added Pub. L. 99–660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3767; amended Pub. L. 100–203, title IV, §§4302(b), 4303(a)–(d)(1), (e), (g), 4307(5), (6), Dec. 22, 1987, 101 Stat. 1330–221 to 1330–223, 1330–225; Pub. L. 100–360, title IV, §411(*o*)(1), July 1, 1988, 102 Stat. 808; Pub. L. 101–239, title VI, §6601(c)(8), (*l*), Dec. 19, 1989, 103 Stat. 2286, 2290; Pub. L. 101–502, §5(d), Nov. 3, 1990, 104 Stat. 1287; Pub. L. 102–168, title II, §201(e), (f), Nov. 26, 1991, 105 Stat. 1103; Pub. L. 102–531, title III, §314, Oct. 27, 1992, 106 Stat. 3508; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–66, title XIII, §13632(b), Aug. 10, 1993, 107 Stat. 646.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (f)(3), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038. Part C of the Act is classified generally to subchapter I (§900 et seq.) of chapter 20 of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

The Social Security Act, referred to in subsecs. (g) and (h), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In subsecs. (a), (b), (e)(2), (f)(4)(B), (i), and (j), ''October 1, 1988'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

PRIOR PROVISIONS

A prior section 300aa–15, act July 1, 1944, §2116, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

A prior section 2115 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

AMENDMENTS

1993—Subsec. (j). Pub. L. 103–66 substituted ''$110,000,000 for each succeeding fiscal year'' for ''$80,000,000 for each succeeding fiscal year''.

1992—Subsecs. (e)(1), (f)(2). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (j). Pub. L. 102–531 increased authorization for fiscal year 1993 from $80,000,000 to $110,000,000.

1991—Subsec. (f)(4)(A). Pub. L. 102–168, §201(e)(1)(A), (2), struck out ''of the proceeds'' after ''portion'' and substituted ''Vaccine Injury Compensation Trust Fund established under section 9510 of title 26'' for ''trust fund''.

Subsec. (f)(4)(B). Pub. L. 102–168, §201(e)(1)(B), which directed substitution of ''shall be paid from appropriations made available under subsection (j) of this section in a lump sum of which all or a portion'' for ''paid in 4 equal installments of which all or portion of the proceeds'' was executed by making the substitution for ''paid in 4 equal annual installments of which all or a portion of the proceeds'' to reflect the probable intent of Congress.

Subsec. (f)(4)(C). Pub. L. 102–168, §201(f), added subpar. (C).

1990—Subsec. (e)(2). Pub. L. 101–502, §5(d)(1), inserted ''of compensation'' before ''limited to the costs''.

Subsec. (f)(2). Pub. L. 101–502, §5(d)(2)(A), substituted ''section 300aa–21(a)'' for ''section 300aa–21(b)''.

Subsec. (f)(4)(B). Pub. L. 101–502, §5(d)(2)(B), substituted ''subsection (j)'' for ''subsection (i)'' and ''the limitation on civil actions prescribed by section 300aa–21(a) of this title'' for ''section 300aa–11(a) of this title''.

Subsec. (j). Pub. L. 101–502, §5(d)(3), inserted before period at end of first sentence '', and $80,000,000 for each succeeding fiscal year in which a payment of compensation is required under subsection (f)(4)(B) of this section''.

1989—Subsec. (b). Pub. L. 101–239, §6601(*l*)(1), substituted ''may include the compensation described in paragraphs (1)(A) and (2) of subsection (a) of this section and may also include an amount, not to exceed a combined total of $30,000, for—'' and cls. (1) to (3) for ''may not include the compensation described in paragraph (1)(B) of subsection (a) of this section and may include attorneys' fees and other costs included in a judgment under subsection (e) of this section, except that the total amount that may be paid as compensation under paragraphs (3) and (4) of subsection (a) of this section and included as attorneys' fees and other costs under subsection (e) of this section may not exceed $30,000.''

Subsec. (e)(1). Pub. L. 101–239, §6601(*l*)(2)(A), substituted ''In awarding compensation on a petition filed under section 300aa–11 of this title the special master or court shall also award as part of such compensation an amount to cover'' for ''The judgment of the United States Claims Court on a petition filed under section 300aa–11 of this title awarding compensation shall include an amount to cover''.

Pub. L. 101–239, §6601(*l*)(2)(B), (C), substituted ''the special master or court may award an amount of compensation to cover'' for ''the court may include in the judgment an amount to cover'' and ''the special master or court determines that the petition was brought in good faith and there was a reasonable basis for the claim for which the petition'' for ''the court determines that the civil action was brought in good faith and there was a reasonable basis for the claim for which the civil action''.

Subsec. (e)(2). Pub. L. 101–239, §6601(*l*)(2)(D), which directed amendment of par. (2) by substituting ''the special master or court may also award an amount of compensation'' for ''the judgment of the court on such petition may include an amount'', could not be executed because of the prior amendment by Pub. L. 101–239, §6601(c)(8)(B), see Amendment note below.

Pub. L. 101–239, §6601(c)(8), substituted ''and petitioned under section 300aa–11(a)(5) of this title to have such action dismissed'' for ''and elected under section 300aa–11(a)(4) of this title to withdraw such action'' and ''in awarding compensation on such petition the special master or court may include'' for ''the judgment of the court on such petition may include''.

Subsec. (e)(3). Pub. L. 101–239, §6601(*l*)(2)(E), substituted ''awarded as compensation by the special master or court under paragraph (1)'' for ''included under paragraph (1) in a judgment on such petition''.

Subsec. (f)(3). Pub. L. 101–239, §6601(*l*)(3)(A), inserted ''under the Program and the costs of carrying out the Program'' after ''Payments of compensation''.

Subsec. (f)(4)(A). Pub. L. 101–239, § 6601(*l*)(3)(B), struck out ''made in a lump sum'' after ''the Program shall be'' and inserted ''and shall be paid from the trust fund in a lump sum of which all or a portion of the proceeds may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner'' after ''elements of the compensation''.

Subsec. (f)(4)(B). Pub. L. 101–239, § 6601(*l*)(3)(C), substituted ''determined on the basis of the net present value of the elements of compensation and paid in 4 equal annual installments of which all or a portion of the proceeds may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner. Any reasonable attorneys' fees and costs shall be paid in a lump sum'' for ''paid in 4 equal annual installments''.

Subsec. (g). Pub. L. 101–239, § 6601(*l*)(4)(A), inserted ''(other than under title XIX of the Social Security Act)'' after ''State health benefits program''.

Subsec. (h). Pub. L. 101–239, § 6601(*l*)(4)(B), inserted before period at end '', except that this subsection shall not apply to the provision of services or benefits under title XIX of the Social Security Act''.

Subsec. (i)(1). Pub. L. 101–239, § 6601(*l*)(5), which directed amendment of par. (1) by substituting ''(j)'' for ''(i)'', could not be executed because ''(i)'' did not appear.

Subsec. (j). Pub. L. 101–239, § 6601(*l*)(6), struck out ''and'' after ''fiscal year 1991,'' and inserted '', $80,000,000 for fiscal year 1993'' after ''fiscal year 1992''.

1988—Subsec. (i)(1). Pub. L. 100–360, § 411(*o*)(1)(A), substituted ''by the Secretary from appropriations under subsection (j)'' for ''from appropriations under subsection (i)''.

Subsec. (j). Pub. L. 100–360, § 411(*o*)(1)(B), inserted ''to the Department of Health and Human Services''.

1987—Subsec. (a). Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Pub. L. 100–203, § 4303(d)(1)(A), struck out last two sentences which read as follows: ''Payments for projected expenses shall be paid on a periodic basis (but no payment may be made for a period in excess of 1 year). Payments for pain and suffering and emotional distress and incurred expenses may be paid in a lump sum.''

Subsec. (a)(1). Pub. L. 100–203, § 4303(c), struck out last sentence of subpars. (A) and (B) each of which read as follows: ''The amount of unreimbursable expenses which may be recovered under this subparagraph shall be limited to the amount in excess of the amount set forth in section 300aa–11(c)(1)(D)(ii) of this title.''

Subsec. (b). Pub. L. 100–203, § 4303(e), substituted ''may not include the compensation described in paragraph (1)(B) of subsection (a) of this section and may include attorneys' fees and other costs included in a judgment under subsection (e) of this section, except that the total amount that may be paid as compensation under paragraphs (3) and (4) of subsection (a) of this section and included as attorneys' fees and other costs under subsection (e) of this section may not exceed $30,000'' for ''shall only include the compensation described in paragraphs (1)(A) and (2) of subsection (a) of this section''.

Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (e)(1). Pub. L. 100–203, § 4307(5), substituted ''of the United States Claims Court'' for ''of a court'' in two places.

Subsec. (e)(2). Pub. L. 100–203, § 4302(b), substituted ''effective date of this subpart, filed a'' for ''effective date of this subchapter, filed a'' and ''effective date of this subpart in preparing'' for ''effective date of this part in preparing''.

Subsec. (f). Pub. L. 100–203, § 4303(d)(1)(B), (g), added par. (4) and redesignated a second subsec. (f), relating to the Program not being primarily liable, as subsec. (g).

Subsec. (f)(2). Pub. L. 100–203, § 4307(6), substituted ''United States Claims Court'' for ''district court of the United States''.

Subsecs. (g), (h). Pub. L. 100–203, § 4303(g), redesignated a second subsec. (f), relating to the Program not being liable, as (g) and redesignated former subsec. (g) as (h).

Subsecs. (i), (j). Pub. L. 100–203, § 4303(a), (b), added subsecs. (i) and (j).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 201(f) of Pub. L. 102–168 effective as if in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102–168, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to all pending and subsequently filed petitions, see section 6601(s)(2) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

§ 300aa–16. Limitations of actions

(a) General rule

In the case of—

(1) a vaccine set forth in the Vaccine Injury Table which is administered before October 1, 1988, if a vaccine-related injury or death occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury or death after the expiration of 28 months after October 1, 1988, and no such petition may be filed if the first symptom or manifestation of onset or of the significant aggravation of such injury occurred more than 36 months after the date of administration of the vaccine,

(2) a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a vaccine-related injury occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury, and

(3) a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a death occurred as a result of the ad-

ministration of such vaccine, no petition may be filed for compensation under the Program for such death after the expiration of 24 months from the date of the death and no such petition may be filed more than 48 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of the injury from which the death resulted.

(b) Effect of revised table

If at any time the Vaccine Injury Table is revised and the effect of such revision is to permit an individual who was not, before such revision, eligible to seek compensation under the Program, or to significantly increase the likelihood of obtaining compensation, such person may, notwithstanding section 300aa–11(b)(2) of this title, file a petition for such compensation not later than 2 years after the effective date of the revision, except that no compensation may be provided under the Program with respect to a vaccine-related injury or death covered under the revision of the table if—

(1) the vaccine-related death occurred more than 8 years before the date of the revision of the table, or

(2) the vaccine-related injury occurred more than 8 years before the date of the revision of the table.

(c) State limitations of actions

If a petition is filed under section 300aa–11 of this title for a vaccine-related injury or death, limitations of actions under State law shall be stayed with respect to a civil action brought for such injury or death for the period beginning on the date the petition is filed and ending on the date (1) an election is made under section 300aa–21(a) of this title to file the civil action or (2) an election is made under section 300aa–21(b) of this title to withdraw the petition.

(July 1, 1944, ch. 373, title XXI, § 2116, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3769; amended Pub. L. 100–203, title IV, § 4302(b)(2), Dec. 22, 1987, 101 Stat. 1330–221; Pub. L. 101–239, title VI, § 6601(m)(1), Dec. 19, 1989, 103 Stat. 2291; Pub. L. 101–502, § 5(e), Nov. 3, 1990, 104 Stat. 1287; Pub. L. 102–168, title II, § 201(d)(2), Nov. 26, 1991, 105 Stat. 1103; Pub. L. 103–66, title XIII, § 13632(a)(1), Aug. 10, 1993, 107 Stat. 645.)

CODIFICATION

In subsec. (a)(1) to (3), ''October 1, 1988'' and ''October 1, 1988,'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

PRIOR PROVISIONS

A prior section 2116 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–66 substituted ''or to significantly increase the likelihood of obtaining compensation, such person may, notwithstanding section 300aa–11(b)(2) of this title, file'' for ''such person may file''.

1991—Subsec. (c). Pub. L. 102–168 substituted ''or (2)'' for '', (2)'' and struck out '', or (3) the petition is considered withdrawn under section 300aa–21(b) of this title.''

1990—Subsec. (a)(1). Pub. L. 101–502, § 5(e)(1), substituted ''28 months'' for ''24 months'' and inserted before comma at end ''and no such petition may be filed if the first symptom or manifestation of onset or of the significant aggravation of such injury occurred more than 36 months after the date of administration of the vaccine''.

Subsec. (c). Pub. L. 101–502, § 5(e)(2), substituted ''and ending on the date (1) an election is made under section 300aa–21(a) of this title to file the civil action, (2) an election is made under section 300aa–21(b) of this title to withdraw the petition, or (3) the petition is considered withdrawn under section 300aa–21(b) of this title'' for ''and ending on the date a final judgment is entered on the petition''.

1989—Subsec. (c). Pub. L. 101–239 substituted ''300aa–11 of this title'' for ''300aa–11(b) of this title''.

1987—Subsec. (a). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this subchapter'' in pars. (1) to (3).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–168 effective as if in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102–168, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§ 300aa–17. Subrogation

(a) General rule

Upon payment of compensation to any petitioner under the Program, the trust fund which has been established to provide such compensation shall be subrograted[1] to all rights of the petitioner with respect to the vaccine-related injury or death for which compensation was paid, except that the trust fund may not recover under such rights an amount greater than the amount of compensation paid to the petitioner.

(b) Disposition of amounts recovered

Amounts recovered under subsection (a) of this section shall be collected on behalf of, and deposited in, the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26.

(July 1, 1944, ch. 373, title XXI, § 2117, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3770; amended Pub. L. 100–203, title IV, § 4307(7), Dec. 22, 1987, 101 Stat. 1330–225; Pub. L. 101–239, title VI, § 6601(m)(2), Dec. 19, 1989, 103 Stat. 2291.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted ''the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26'' for ''the trust fund which has been established to provide compensation under the Program''.

[1] So in original. Probably should be ''subrogated''.

1987—Subsec. (a). Pub. L. 100–203 struck out par. (1) designation before ''Upon'' and struck out par. (2) which read as follows: ''In any case in which it deems such action appropriate, a district court of the United States may, after entry of a final judgment providing for compensation to be paid under section 300aa–15 of this title for a vaccine-related injury or death, refer the record of such proceeding to the Secretary and the Attorney General with such recommendation as the court deems appropriate with respect to the investigation or commencement of a civil action by the Secretary under paragraph (1).''

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§ 300aa–18. Repealed. Pub. L. 100–203, title IV, § 4303(d)(2)(B), Dec. 22, 1987, 101 Stat. 1330–222

Section, act July 1, 1944, ch. 373, title XXI, § 2118, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3771, provided for annual increases for inflation of compensation under subsections (a)(2) and (a)(4) of section 300aa–15 of this title and civil penalty under section 300aa–27(b) of this title.

§ 300aa–19. Advisory Commission on Childhood Vaccines

(a) Establishment

There is established the Advisory Commission on Childhood Vaccines. The Commission shall be composed of:

(1) Nine members appointed by the Secretary as follows:

(A) Three members who are health professionals, who are not employees of the United States, and who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom at least two shall be pediatricians.

(B) Three members from the general public, of whom at least two shall be legal representatives of children who have suffered a vaccine-related injury or death.

(C) Three members who are attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death and of whom one shall be an attorney whose specialty includes representation of vaccine manufacturers.

(2) The Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of Food and Drugs (or the designees of such officials), each of whom shall be a nonvoting ex officio member.

The Secretary shall select members of the Commission within 90 days of October 1, 1988. The members of the Commission shall select a Chair from among the members.

(b) Term of office

Appointed members of the Commission shall be appointed for a term of office of 3 years, except that of the members first appointed, 3 shall be appointed for a term of 1 year, 3 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of 3 years, as determined by the Secretary.

(c) Meetings

The Commission shall first meet within 60 days after all members of the Commission are appointed, and thereafter shall meet not less often than four times per year and at the call of the chair. A quorum for purposes of a meeting is 5. A decision at a meeting is to be made by a ballot of a majority of the voting members of the Commission present at the meeting.

(d) Compensation

Members of the Commission who are officers or employees of the Federal Government shall serve as members of the Commission without compensation in addition to that received in their regular public employment. Members of the Commission who are not officers or employees of the Federal Government shall be compensated at a rate not to exceed the daily equivalent of the rate in effect for grade GS–18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Commission. All members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5 for employees serving intermittently.

(e) Staff

The Secretary shall provide the Commission with such professional and clerical staff, such information, and the services of such consultants as may be necessary to assist the Commission in carrying out effectively its functions under this section.

(f) Functions

The Commission shall—

(1) advise the Secretary on the implementation of the Program,

(2) on its own initiative or as the result of the filing of a petition, recommend changes in the Vaccine Injury Table,

(3) advise the Secretary in implementing the Secretary's responsibilities under section 300aa–27 of this title regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions,

(4) survey Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 300aa–25(b) of this title, and advise the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and

(5) recommend to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out this part.

(July 1, 1944, ch. 373, title XXI, § 2119, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3771; amended Pub. L. 100–203, title IV, § 4302(b)(1), Dec. 22, 1987, 101 Stat. 1330–221; Pub. L. 102–168, title II, § 201(g), Nov. 26, 1991, 105 Stat. 1104; Pub. L. 102–531, title III, § 312(d)(14), Oct. 27, 1992, 106 Stat. 3505.)

CODIFICATION

In subsec. (a), ''October 1, 1988'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1991—Subsec. (c). Pub. L. 102–168 inserted ''present at the meeting'' before period at end.

1987—Subsec. (a). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part'' in last sentence.

TERMINATION OF ADVISORY COMMISSIONS

Advisory commissions established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a commission established by the President or an officer of the Federal Government, such commission is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a commission established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SUBPART B—ADDITIONAL REMEDIES

§ 300aa–21. Authority to bring actions

(a) Election

After judgment has been entered by the United States Court of Federal Claims or, if an appeal is taken under section 300aa–12(f) of this title, after the appellate court's mandate is issued, the petitioner who filed the petition under section 300aa–11 of this title shall file with the clerk of the United States Court of Federal Claims—

(1) if the judgment awarded compensation, an election in writing to receive the compensation or to file a civil action for damages for such injury or death, or

(2) if the judgment did not award compensation, an election in writing to accept the judgment or to file a civil action for damages for such injury or death.

An election shall be filed under this subsection not later than 90 days after the date of the court's final judgment with respect to which the election is to be made. If a person required to file an election with the court under this subsection does not file the election within the time prescribed for filing the election, such person shall be deemed to have filed an election to accept the judgment of the court. If a person elects to receive compensation under a judgment of the court in an action for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, or is deemed to have accepted the judgment of the court in such an action, such person may not bring or maintain a civil action for damages against a vaccine administrator or manufacturer for the vaccine-related injury or death for which the judgment was entered. For limitations on the bringing of civil actions for vaccine-related injuries or deaths associated with the administration of a vaccine after October 1, 1988, see section 300aa–11(a)(2) of this title.

(b) Continuance or withdrawal of petition

A petitioner under a petition filed under section 300aa–11 of this title may submit to the United States Court of Federal Claims a notice in writing choosing to continue or to withdraw the petition if—

(1) a special master fails to make a decision on such petition within the 240 days prescribed by section 300aa–12(d)(3)(A)(ii) of this title (excluding (i) any period of suspension under section 300aa–12(d)(3)(C) or 300aa–12(d)(3)(D) of this title, and (ii) any days the petition is before a special master as a result of a remand under section 300aa–12(e)(2)(C) of this title), or

(2) the court fails to enter a judgment under section 300aa–12 of this title on the petition within 420 days (excluding (i) any period of suspension under section 300aa–12(d)(3)(C) or 300aa–12(d)(3)(D) of this title, and (ii) any days the petition is before a special master as a result of a remand under section 300aa–12(e)(2)(C) of this title) after the date on which the petition was filed.

Such a notice shall be filed within 30 days of the provision of the notice required by section 300aa–12(g) of this title.

(c) Limitations of actions

A civil action for damages arising from a vaccine-related injury or death for which a petition was filed under section 300aa–11 of this title shall, except as provided in section 300aa–16(c) of this title, be brought within the period prescribed by limitations of actions under State law applicable to such civil action.

(July 1, 1944, ch. 373, title XXI, § 2121, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3772; amended Pub. L. 100–203, title IV, §§ 4304(c), 4307(8), 4308(c), Dec. 22, 1987, 101 Stat. 1330–224, 1330–225; Pub. L. 100–360, title IV, § 411(*o*)(3)(A), July 1, 1988, 102 Stat. 808; Pub. L. 101–239, title VI, § 6601(n), Dec. 19, 1989, 103 Stat. 2291; Pub. L. 101–502, § 5(f), Nov. 3, 1990, 104 Stat. 1287; Pub. L. 102–168, title II, § 201(d)(3), Nov. 26, 1991, 105 Stat. 1103; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

CODIFICATION

In subsec. (a), ''October 1, 1988,'' and ''October 1, 1988'' substituted for ''the effective date of this part''.

AMENDMENTS

1992—Subsecs. (a), (b). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' wherever appearing.

1991—Subsec. (b). Pub. L. 102–168 substituted ''Continuance or withdrawal of petition'' for ''Withdrawal of petition'' in heading, redesignated introductory provisions of par. (1) as introductory provisions of subsec. (b) and substituted ''a notice in writing choosing to continue or to withdraw the petition'' for ''a notice in writing withdrawing the petition'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and realigned margins, struck out at end of former par. (1) ''If such a notice is not filed before the expiration of such 30 days, the petition with respect to which the notice was to be filed shall be considered withdrawn under this paragraph.'', and struck out par. (2) which read as follows: ''If a special master or the court does not enter a decision or make a judgment on a petition filed under section 300aa–11 of this title within 30 days of the provision of the notice in accordance with section 300aa–12(g) of this title, the special master or court shall no longer have jurisdiction over such petition and such petition shall be considered as withdrawn under paragraph (1).''

1990—Subsec. (a). Pub. L. 101–502, § 5(f)(1), in closing provisions, inserted after second sentence ''If a person elects to receive compensation under a judgment of the court in an action for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, or is deemed to have accepted the judgment of the court in such an action, such person may not bring or maintain a civil action for damages against a vaccine administrator or manufacturer for the vaccine-related injury or death for which the judgment was entered.'' and inserted ''for vaccine-related injuries or deaths associated with the administration of a vaccine after October 1, 1988'' after ''actions'' in last sentence.

Subsec. (b). Pub. L. 101–502, § 5(f)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''If the United States Claims Court fails to enter a judgment under section 300aa–12 of this title on a petition filed under section 300aa–11 of this title within 420 days (excluding any period of suspension under section 300aa–12(d) of this title and excluding any days the petition is before a special master as a result of a remand under section 300aa–12(e)(2)(C) of this title) after the date on which the petition was filed, the petitioner may submit to the court a notice in writing withdrawing the petition. An election shall be filed under this subsection not later than 90 days after the date of the entry of the Claims Court's judgment or the appellate court's mandate with respect to which the election is to be made. A person who has submitted a notice under this subsection may, notwithstanding section 300aa–11(a)(2) of this title, thereafter maintain a civil action for damages in a State or Federal court without regard to this subpart and consistent with otherwise applicable law.''

1989—Subsec. (a). Pub. L. 101–239, § 6601(n)(1)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''After the judgment of the United States Claims Court under section 300aa–11 of this title on a petition filed for compensation under the Program for a vaccine-related injury or death has become final, the person who filed the petition shall file with the court—''.

Pub. L. 101–239, § 6601(n)(1)(B), amended last sentence generally. Prior to amendment, last sentence read as follows: ''If a person elects to receive compensation under a judgment of the court or is deemed to have accepted the judgment of the court, such person may not bring or maintain a civil action for damages against a vaccine manufacturer for the vaccine-related injury or death for which the judgment was entered.''

Subsec. (b). Pub. L. 101–239, § 6601(n)(2), substituted ''within 420 days (excluding any period of suspension under section 300aa–12(d) of this title and excluding any days the petition is before a special master as a result of a remand under section 300aa–12(e)(2)(C) of this title)'' for ''within 365 days'' in first sentence and amended second sentence generally. Prior to amendment, second sentence read as follows: ''Such a notice shall be filed not later than 90 days after the expiration of such 365-day period.''

1988—Subsec. (a). Pub. L. 100–360 added Pub. L. 100–203, § 4308(c), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–203, § 4308(c), as added by Pub. L. 100–360, substituted ''the court's final judgment'' for ''the entry of the court's judgment'' in concluding provisions.

Pub. L. 100–203, § 4307(8), substituted ''the United States Claims Court'' for ''a district court of the United States'' and ''the court'' for ''a court'' in three places.

Subsecs. (b), (c). Pub. L. 100–203, § 4304(c), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–168 effective as in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102–168, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5(f)(1) of Pub. L. 101–502 effective Nov. 14, 1986, and amendment by section 5(f)(2) of Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, except that such suspension be excluded in determining the 420-day period prescribed in subsec. (b) of this section, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Subpart effective Oct. 1, 1988, see section 323 of Pub. L. 99–660, set out as a note under section 300aa–1 of this title.

§ 300aa–22. Standards of responsibility

(a) General rule

Except as provided in subsections (b), (c), and (e) of this section State law shall apply to a civil action brought for damages for a vaccine-related injury or death.

(b) Unavoidable adverse side effects; warnings

(1) No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the

administration of a vaccine after October 1, 1988, if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings.

(2) For purposes of paragraph (1), a vaccine shall be presumed to be accompanied by proper directions and warnings if the vaccine manufacturer shows that it complied in all material respects with all requirements under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] and section 262 of this title (including regulations issued under such provisions) applicable to the vaccine and related to vaccine-related injury or death for which the civil action was brought unless the plaintiff shows—

(A) that the manufacturer engaged in the conduct set forth in subparagraph (A) or (B) of section 300aa–23(d)(2) of this title, or

(B) by clear and convincing evidence that the manufacturer failed to exercise due care notwithstanding its compliance with such Act and section (and regulations issued under such provisions).

(c) Direct warnings

No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, solely due to the manufacturer's failure to provide direct warnings to the injured party (or the injured party's legal representative) of the potential dangers resulting from the administration of the vaccine manufactured by the manufacturer.

(d) Construction

The standards of responsibility prescribed by this section are not to be construed as authorizing a person who brought a civil action for damages against a vaccine manufacturer for a vaccine-related injury or death in which damages were denied or which was dismissed with prejudice to bring a new civil action against such manufacturer for such injury or death.

(e) Preemption

No State may establish or enforce a law which prohibits an individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-related injury or death if such civil action is not barred by this part.

(July 1, 1944, ch. 373, title XXI, § 2122, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3773; amended Pub. L. 100–203, title IV, § 4302(b)(1), Dec. 22, 1987, 101 Stat. 1330–221.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(2), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsecs. (b)(1), (c), ''October 1, 1988'' was substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1987—Subsecs. (b)(1), (c). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

§ 300aa–23. Trial

(a) General rule

A civil action against a vaccine manufacturer for damages for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, which is not barred by section 300aa–11(a)(2) of this title shall be tried in three stages.

(b) Liability

The first stage of such a civil action shall be held to determine if a vaccine manufacturer is liable under section 300aa–22 of this title.

(c) General damages

The second stage of such a civil action shall be held to determine the amount of damages (other than punitive damages) a vaccine manufacturer found to be liable under section 300aa–22 of this title shall be required to pay.

(d) Punitive damages

(1) If sought by the plaintiff, the third stage of such an action shall be held to determine the amount of punitive damages a vaccine manufacturer found to be liable under section 300aa–22 of this title shall be required to pay.

(2) If in such an action the manufacturer shows that it complied, in all material respects, with all requirements under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] and this chapter applicable to the vaccine and related to the vaccine injury or death with respect to which the action was brought, the manufacturer shall not be held liable for punitive damages unless the manufacturer engaged in—

(A) fraud or intentional and wrongful withholding of information from the Secretary during any phase of a proceeding for approval of the vaccine under section 262 of this title,

(B) intentional and wrongful withholding of information relating to the safety or efficacy of the vaccine after its approval, or

(C) other criminal or illegal activity relating to the safety and effectiveness of vaccines,

which activity related to the vaccine-related injury or death for which the civil action was brought.

(e) Evidence

In any stage of a civil action, the Vaccine Injury Table, any finding of fact or conclusion of law of the United States Court of Federal Claims or a special master in a proceeding on a petition filed under section 300aa–11 of this title and the final judgment of the United States Court of Federal Claims and subsequent appellate review on such a petition shall not be admissible.

(July 1, 1944, ch. 373, title XXI, § 2123, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3774; amended Pub. L. 100–203, title IV, §§ 4302(b)(1), 4307(9), Dec. 22, 1987, 101 Stat. 1330–221, 1330–225; Pub. L. 101–239, title VI, § 6601(*o*), Dec. 19, 1989, 103 Stat. 2292; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (d)(2), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (a), ''October 1, 1988'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1992—Subsec. (e). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in two places.

1989—Subsec. (e). Pub. L. 101–239 substituted ''finding of fact or conclusion of law'' for ''finding'', ''special master'' for ''master appointed by such court'', and directed substitution of ''the United States Claims Court and subsequent appellate review'' for ''a district court of the United States'' which was executed by inserting ''and subsequent appellate review'' after ''the United States Claims Court'' the second place it appeared to reflect the probable intent of Congress and the amendment by Pub. L. 100–203, § 4307(a), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (e). Pub. L. 100–203, § 4307(9), substituted ''the United States Claims Court'' for ''a district court of the United States'' in two places.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

SUBPART C—ASSURING A SAFER CHILDHOOD VACCINATION PROGRAM IN UNITED STATES

§ 300aa–25. Recording and reporting of information

(a) General rule

Each health care provider who administers a vaccine set forth in the Vaccine Injury Table to any person shall record, or ensure that there is recorded, in such person's permanent medical record (or in a permanent office log or file to which a legal representative shall have access upon request) with respect to each such vaccine—

(1) the date of administration of the vaccine,

(2) the vaccine manufacturer and lot number of the vaccine,

(3) the name and address and, if appropriate, the title of the health care provider administering the vaccine, and

(4) any other identifying information on the vaccine required pursuant to regulations promulgated by the Secretary.

(b) Reporting

(1) Each health care provider and vaccine manufacturer shall report to the Secretary—

(A) the occurrence of any event set forth in the Vaccine Injury Table, including the events set forth in section 300aa–14(b) of this title which occur within 7 days of the administration of any vaccine set forth in the Table or within such longer period as is specified in the Table or section,

(B) the occurrence of any contraindicating reaction to a vaccine which is specified in the manufacturer's package insert, and

(C) such other matters as the Secretary may by regulation require.

Reports of the matters referred to in subparagraphs (A) and (B) shall be made beginning 90 days after December 22, 1987. The Secretary shall publish in the Federal Register as soon as practicable after such date a notice of the reporting requirement.

(2) A report under paragraph (1) respecting a vaccine shall include the time periods after the administration of such vaccine within which vaccine-related illnesses, disabilities, injuries, or conditions, the symptoms and manifestations of such illnesses, disabilities, injuries, or conditions, or deaths occur, and the manufacturer and lot number of the vaccine.

(3) The Secretary shall issue the regulations referred to in paragraph (1)(C) within 180 days of December 22, 1987.

(c) Release of information

(1) Information which is in the possession of the Federal Government and State and local governments under this section and which may identify an individual shall not be made available under section 552 of title 5, or otherwise, to any person except—

(A) the person who received the vaccine, or

(B) the legal representative of such person.

(2) For purposes of paragraph (1), the term ''information which may identify an individual'' shall be limited to the name, street address, and telephone number of the person who received the vaccine and of that person's legal representative and the medical records of such person relating to the administration of the vaccine, and shall not include the locality and State of vaccine administration, the name of the health care provider who administered the vaccine, the date of the vaccination, or information concerning any reported illness, disability, injury, or condition resulting from the administration of the vaccine, any symptom or manifestation of such illness, disability, injury, or condition, or death resulting from the administration of the vaccine.

(3) Except as provided in paragraph (1), all information reported under this section shall be available to the public.

(July 1, 1944, ch. 373, title XXI, § 2125, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3774; amended Pub. L. 100–203, title IV, § 4302(b)(1), Dec. 22, 1987, 101 Stat. 1330–221.)

CODIFICATION

In subsec. (b)(1), (3), ''December 22, 1987'' was substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1987—Subsec. (b)(1), (3). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

EFFECTIVE DATE

Subpart effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, set out as a note under section 300aa–1 of this title.

§ 300aa–26. Vaccine information

(a) General rule

Not later than 1 year after December 22, 1987, the Secretary shall develop and disseminate vaccine information materials for distribution by health care providers to the legal representatives of any child or to any other individual receiving a vaccine set forth in the Vaccine Injury Table. Such materials shall be published in the Federal Register and may be revised.

(b) Development and revision of materials

Such materials shall be developed or revised—

(1) after notice to the public and 60 days of comment thereon, and

(2) in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care providers and parent organizations, the Centers for Disease Control and Prevention, and the Food and Drug Administration.

(c) Information requirements

The information in such materials shall be based on available data and information, shall be presented in understandable terms and shall include—

(1) a concise description of the benefits of the vaccine,

(2) a concise description of the risks associated with the vaccine,

(3) a statement of the availability of the National Vaccine Injury Compensation Program, and

(4) such other relevant information as may be determined by the Secretary.

(d) Health care provider duties

On and after a date determined by the Secretary which is—

(1) after the Secretary develops the information materials required by subsection (a) of this section, and

(2) not later than 6 months after the date such materials are published in the Federal Register,

each health care provider who administers a vaccine set forth in the Vaccine Injury Table shall provide to the legal representatives of any child or to any other individual to whom such provider intends to administer such vaccine a copy of the information materials developed pursuant to subsection (a) of this section, supplemented with visual presentations or oral explanations, in appropriate cases. Such materials shall be provided prior to the administration of such vaccine.

(July 1, 1944, ch. 373, title XXI, § 2126, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3775; amended Pub. L. 100–203, title IV, § 4302(b)(1), Dec. 22, 1987, 101 Stat. 1330–221; Pub. L. 101–239, title VI, § 6601(p), Dec. 19, 1989, 103 Stat. 2292; Pub. L. 102–531, title III, § 312(d)(15), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 103–183, title VII, § 708, Dec. 14, 1993, 107 Stat. 2242.)

CODIFICATION

In subsec. (a), ''December 22, 1987'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–183, § 708(c), inserted ''or to any other individual'' after ''to the legal representatives of any child''.

Subsec. (b). Pub. L. 103–183, § 708(a), struck out ''by rule'' after ''revised'' in introductory provisions and substituted ''and 60'' for '', opportunity for a public hearing, and 90'' in par. (1).

Subsec. (c). Pub. L. 103–183, § 708(b), inserted in introductory provisions ''shall be based on available data and information,'' after ''such materials'', added pars. (1) to (4), and struck out former pars. (1) to (10) which read as follows:

''(1) the frequency, severity, and potential long-term effects of the disease to be prevented by the vaccine,

''(2) the symptoms or reactions to the vaccine which, if they occur, should be brought to the immediate attention of the health care provider,

''(3) precautionary measures legal representatives should take to reduce the risk of any major adverse reactions to the vaccine that may occur,

''(4) early warning signs or symptoms to which legal representatives should be alert as possible precursors to such major adverse reactions,

''(5) a description of the manner in which legal representatives should monitor such major adverse reactions, including a form on which reactions can be recorded to assist legal representatives in reporting information to appropriate authorities,

''(6) a specification of when, how, and to whom legal representatives should report any major adverse reaction,

''(7) the contraindications to (and bases for delay of) the administration of the vaccine,

''(8) an identification of the groups, categories, or characteristics of potential recipients of the vaccine who may be at significantly higher risk of major adverse reaction to the vaccine than the general population,

''(9) a summary of—

''(A) relevant Federal recommendations concerning a complete schedule of childhood immunizations, and

''(B) the availability of the Program, and

''(10) such other relevant information as may be determined by the Secretary.''

Subsec. (d). Pub. L. 103–183, § 708(c), (d), in concluding provisions, inserted ''or to any other individual'' after ''to the legal representatives of any child'', substituted ''supplemented with visual presentations or oral explanations, in appropriate cases'' for ''or other written information which meets the requirements of this section'', and struck out ''or other information'' after ''Such materials''.

1992—Subsec. (b)(2). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1989—Subsec. (c)(9). Pub. L. 101–239 amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''a summary of relevant State and Federal laws concerning the vaccine, including information on—

''(A) the number of vaccinations required for school attendance and the schedule recommended for such vaccinations, and

''(B) the availability of the Program, and''.

1987—Subsec. (a). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently

pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§ 300aa–27. Mandate for safer childhood vaccines

(a) General rule

In the administration of this part and other pertinent laws under the jurisdiction of the Secretary, the Secretary shall—

(1) promote the development of childhood vaccines that result in fewer and less serious adverse reactions than those vaccines on the market on December 22, 1987, and promote the refinement of such vaccines, and

(2) make or assure improvements in, and otherwise use the authorities of the Secretary with respect to, the licensing, manufacturing, processing, testing, labeling, warning, use instructions, distribution, storage, administration, field surveillance, adverse reaction reporting, and recall of reactogenic lots or batches, of vaccines, and research on vaccines, in order to reduce the risks of adverse reactions to vaccines.

(b) Task force

(1) The Secretary shall establish a task force on safer childhood vaccines which shall consist of the Director of the National Institutes of Health, the Commissioner of the Food and Drug Administration, and the Director of the Centers for Disease Control.

(2) The Director of the National Institutes of Health shall serve as chairman of the task force.

(3) In consultation with the Advisory Commission on Childhood Vaccines, the task force shall prepare recommendations to the Secretary concerning implementation of the requirements of subsection (a) of this section.

(c) Report

Within 2 years after December 22, 1987, and periodically thereafter, the Secretary shall prepare and transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report describing the actions taken pursuant to subsection (a) of this section during the preceding 2-year period.

(July 1, 1944, ch. 373, title XXI, § 2127, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3777; amended Pub. L. 100–203, title IV, § 4302(b)(1), Dec. 22, 1987, 101 Stat. 1330–221; Pub. L. 101–239, title VI, § 6601(q), Dec. 19, 1989, 103 Stat. 2292.)

CODIFICATION

In subsecs. (a)(1), (c), ''December 22, 1987'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1989—Subsecs. (b), (c). Pub. L. 101–239 added subsec. (b) and redesignated former subsec. (b) as (c).

1987—Subsecs. (a)(1), (b). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§ 300aa–28. Manufacturer recordkeeping and reporting

(a) General rule

Each vaccine manufacturer of a vaccine set forth in the Vaccine Injury Table or any other vaccine the administration of which is mandated by the law or regulations of any State, shall, with respect to each batch, lot, or other quantity manufactured or licensed after December 22, 1987—

(1) prepare and maintain records documenting the history of the manufacturing, processing, testing, repooling, and reworking of each batch, lot, or other quantity of such vaccine, including the identification of any significant problems encountered in the production, testing, or handling of such batch, lot, or other quantity,

(2) if a safety test on such batch, lot, or other quantity indicates a potential imminent or substantial public health hazard is presented, report to the Secretary within 24 hours of such safety test which the manufacturer (or manufacturer's representative) conducted, including the date of the test, the type of vaccine tested, the identity of the batch, lot, or other quantity tested, whether the batch, lot, or other quantity tested is the product of repooling or reworking of previous batches, lots, or other quantities (and, if so, the identity of the previous batches, lots, or other quantities which were repooled or reworked), the complete test results, and the name and address of the person responsible for conducting the test,

(3) include with each such report a certification signed by a responsible corporate official that such report is true and complete, and

(4) prepare, maintain, and upon request submit to the Secretary product distribution records for each such vaccine by batch, lot, or other quantity number.

(b) Sanction

Any vaccine manufacturer who intentionally destroys, alters, falsifies, or conceals any record

or report required under paragraph (1) or (2) of subsection (a) of this section shall—

(1) be subject to a civil penalty of up to $100,000 per occurrence, or

(2) be fined $50,000 or imprisoned for not more than 1 year, or both.

Such penalty shall apply to the person who intentionally destroyed, altered, falsified, or concealed such record or report, to the person who directed that such record or report be destroyed, altered, falsified, or concealed, and to the vaccine manufacturer for which such person is an agent, employee, or representative. Each act of destruction, alteration, falsification, or concealment shall be treated as a separate occurrence.

(July 1, 1944, ch. 373, title XXI, § 2128, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3777; amended Pub. L. 100–203, title IV, § 4302(b)(1), Dec. 22, 1987, 101 Stat. 1330–221.)

CODIFICATION

In subsec. (a), ''December 22, 1987'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

SUBPART D—GENERAL PROVISIONS

§ 300aa–31. Citizen's actions

(a) General rule

Except as provided in subsection (b) of this section, any person may commence in a district court of the United States a civil action on such person's own behalf against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this part.

(b) Notice

No action may be commenced under subsection (a) of this section before the date which is 60 days after the person bringing the action has given written notice of intent to commence such action to the Secretary.

(c) Costs of litigation

The court, in issuing any final order in any action under this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any plaintiff who substantially prevails on one or more significant issues in the action.

(July 1, 1944, ch. 373, title XXI, § 2131, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3778; amended Pub. L. 100–203, title IV, § 4305, Dec. 22, 1987, 101 Stat. 1330–224.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–203, which directed that subsec. (c) be amended by substituting ''to any plaintiff who substantially prevails on one or more significant issues in the action'' for ''to any party, whenever the court determines that such award is appropriate'', was executed by making the substitution for ''to any party, whenever the court determines such award is appropriate'', to reflect the probable intent of Congress.

EFFECTIVE DATE

Subpart effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, set out as a note under section 300aa–1 of this title.

§ 300aa–32. Judicial review

A petition for review of a regulation under this part may be filed in a court of appeals of the United States within 60 days from the date of the promulgation of the regulation or after such date if such petition is based solely on grounds arising after such 60th day.

(July 1, 1944, ch. 373, title XXI, § 2132, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3778.)

§ 300aa–33. Definitions

For purposes of this part:

(1) The term ''health care provider'' means any licensed health care professional, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities) under whose authority a vaccine set forth in the Vaccine Injury Table is administered.

(2) The term ''legal representative'' means a parent or an individual who qualifies as a legal guardian under State law.

(3) The term ''manufacturer'' means any corporation, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities), which manufactures, imports, processes, or distributes under its label any vaccine set forth in the Vaccine Injury Table, except that, for purposes of section 300aa–28 of this title, such term shall include the manufacturer of any other vaccine covered by that section. The term ''manufacture'' means to manufacture, import, process, or distribute a vaccine.

(4) The term ''significant aggravation'' means any change for the worse in a preexisting condition which results in markedly greater disability, pain, or illness accompanied by substantial deterioration of health.

(5) The term ''vaccine-related injury or death'' means an illness, injury, condition, or death associated with one or more of the vaccines set forth in the Vaccine Injury Table, except that the term does not include an illness, injury, condition, or death associated with an adulterant or contaminant intentionally added to such a vaccine.

(6)(A) The term ''Advisory Commission on Childhood Vaccines'' means the Commission established under section 300aa–19 of this title.

(B) The term ''Vaccine Injury Table'' means the table set out in section 300aa–14 of this title.

(July 1, 1944, ch. 373, title XXI, § 2133, as added Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3778; amended Pub. L. 107–296, title XVII, §§ 1714–1716, Nov. 25, 2002, 116 Stat. 2320, 2321; Pub. L. 108–7, div. L, § 102(a), Feb. 20, 2003, 117 Stat. 528.)

AMENDMENTS

2003—Pars. (3), (5), (7). Pub. L. 108–7 repealed Pub. L. 107–296, §§ 1714–1717, and provided that this chapter shall be applied as if the sections repealed had never been enacted. See 2002 Amendment notes below.

2002—Par. (3). Pub. L. 107–296, § 1714, which directed amendment of first sentence by substituting ''any vaccine set forth in the Vaccine Injury table, including

any component or ingredient of any such vaccine'' for ''under its label any vaccine set forth in the Vaccine Injury Table'' and of second sentence by inserting ''including any component or ingredient of any such vaccine'' before period at end, was repealed by Pub. L. 108–7.

Par. (5). Pub. L. 107–296, § 1715, which directed insertion of ''For purposes of the preceding sentence, an adulterant or contaminant shall not include any component or ingredient listed in a vaccine's product license application or product label.'' at end, was repealed by Pub. L. 108–7.

Par. (7). Pub. L. 107–296, § 1716, which directed addition of par. (7), was repealed by Pub. L. 108–7, § 102(a). Par. (7) read as follows: ''The term 'vaccine' means any preparation or suspension, including but not limited to a preparation or suspension containing an attenuated or inactive microorganism or subunit thereof or toxin, developed or administered to produce or enhance the body's immune response to a disease or diseases and includes all components and ingredients listed in the vaccines's product license application and product label.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–296, title XVII, § 1717, Nov. 25, 2002, 116 Stat. 2321, which provided that the amendments made by sections 1714, 1715, and 1716 (amending this section) shall apply to all actions or proceedings pending on or after Nov. 25, 2002, unless a court of competent jurisdiction has entered judgment (regardless of whether the time for appeal has expired) in such action or proceeding disposing of the entire action or proceeding, was repealed by Pub. L. 108–7, div. L, § 102(a), Feb. 20, 2003, 117 Stat. 528.

CONSTRUCTION OF AMENDMENTS

Pub. L. 108–7, div. L, § 102(b), (c), Feb. 20, 2003, 117 Stat. 528, provided that:

''(b) APPLICATION OF THE PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act (42 U.S.C. 201 et seq.) shall be applied and administered as if the sections repealed by subsection (a) [repealing sections 1714 to 1717 of Pub. L. 107–296, which amended this section and enacted provisions set out as a note under this section] had never been enacted.

''(c) RULE OF CONSTRUCTION.—No inference shall be drawn from the enactment of sections 1714 through 1717 of the Homeland Security Act of 2002 (Public Law 107–296), or from this repeal [repealing sections 1714 to 1717 of Pub. L. 107–296], regarding the law prior to enactment of sections 1714 through 1717 of the Homeland Security Act of 2002 (Public Law 107–296) [Nov. 25, 2002]. Further, no inference shall be drawn that subsection (a) or (b) affects any change in that prior law, or that Leroy v. Secretary of Health and Human Services, Office of Special Master, No. 02–392V (October 11, 2002), was incorrectly decided.''

§ 300aa–34. Termination of program

(a) Reviews

The Secretary shall review the number of awards of compensation made under the program to petitioners under section 300aa–11 of this title for vaccine-related injuries and deaths associated with the administration of vaccines on or after December 22, 1987, as follows:

(1) The Secretary shall review the number of such awards made in the 12-month period beginning on December 22, 1987.

(2) At the end of each 3-month period beginning after the expiration of the 12-month period referred to in paragraph (1) the Secretary shall review the number of such awards made in the 3-month period.

(b) Report

(1) If in conducting a review under subsection (a) of this section the Secretary determines that at the end of the period reviewed the total number of awards made by the end of that period and accepted under section 300aa–21(a) of this title exceeds the number of awards listed next to the period reviewed in the table in paragraph (2)—

(A) the Secretary shall notify the Congress of such determination, and

(B) beginning 180 days after the receipt by Congress of a notification under paragraph (1), no petition for a vaccine-related injury or death associated with the administration of a vaccine on or after December 22, 1987, may be filed under section 300aa–11 of this title.

Section 300aa–11(a) of this title and subpart B of this part shall not apply to civil actions for damages for a vaccine-related injury or death for which a petition may not be filed because of subparagraph (B).

(2) The table referred to in paragraph (1) is as follows:

Period reviewed:	Total number of awards by the end of the period reviewed
12 months after December 22, 1987	150
13th through the 15th month after December 22, 1987	188
16th through the 18th month after December 22, 1987	225
19th through the 21st month after December 22, 1987	263
22nd through the 24th month after December 22, 1987	300
25th through the 27th month after December 22, 1987	338
28th through the 30th month after December 22, 1987	375
31st through the 33rd month after December 22, 1987	413
34th through the 36th month after December 22, 1987	450
37th through the 39th month after December 22, 1987	488
40th through the 42nd month after December 22, 1987	525
43rd through the 45th month after December 22, 1987	563
46th through the 48th month after December 22, 1987	600.

(July 1, 1944, ch. 373, title XXI, § 2134, as added Pub. L. 100–203, title IV, § 4303(f), Dec. 22, 1987, 101 Stat. 1330–222.)

CODIFICATION

In subsecs. (a) and (b), ''December 22, 1987'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

SUBCHAPTER XX—REQUIREMENTS FOR CERTAIN GROUP HEALTH PLANS FOR CERTAIN STATE AND LOCAL EMPLOYEES

§ 300bb–1. State and local governmental group health plans must provide continuation coverage to certain individuals

(a) In general

In accordance with regulations which the Secretary shall prescribe, each group health plan that is maintained by any State that receives funds under this chapter, by any political sub-

division of such a State, or by any agency or instrumentality of such a State or political subdivision, shall provide, in accordance with this subchapter, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

(b) Exception for certain plans

Subsection (a) of this section shall not apply to—

(1) any group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year, or

(2) any group health plan maintained for employees by the government of the District of Columbia or any territory or possession of the United States or any agency or instrumentality.

(July 1, 1944, ch. 373, title XXII, § 2201, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 232; amended Pub. L. 101–239, title VI, § 6801(a)(1), Dec. 19, 1989, 103 Stat. 2296.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 struck out at end ''Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 of title 26 (relating to employers under common control) shall apply for purposes of paragraph (1).''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6801(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to years beginning after December 31, 1986.''

EFFECTIVE DATE

Section 10003(b) of Pub. L. 99–272 provided that:

''(1) GENERAL RULE.—The amendments made by this section [enacting this subchapter] shall apply to plan years beginning on or after July 1, 1986.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this section shall not apply to plan years beginning before the later of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

''(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

§ 300bb–2. Continuation coverage

For purposes of section 300bb–1 of this title, the term ''continuation coverage'' means coverage under the plan which meets the following requirements:

(1) Type of benefit coverage

The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part[1] in connection with such group.

(2) Period of coverage

The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(A) Maximum required period

(i) General rule for terminations and reduced hours

In the case of a qualifying event described in section 300bb–3(2) of this title, except as provided in clause (ii), the date which is 18 months after the date of the qualifying event.

(ii) Special rule for multiple qualifying events

If a qualifying event occurs during the 18 months after the date of a qualifying event described in section 300bb–3(2) of this title, the date which is 36 months after the date of the qualifying event described in section 300bb–3(2) of this title.

(iii) General rule for other qualifying events

In the case of a qualifying event not described in section 300bb–3(2) of this title, the date which is 36 months after the date of the qualifying event.

(iv) Medicare entitlement followed by qualifying event

In the case of a qualifying event described in section 300bb–3(2) of this title that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this subparagraph before the close of the 36-month period beginning on the date the covered employee became so entitled.

In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], to have been disabled at any time during the first 60 days of continuation coverage under this subchapter, any reference in clause (i) or (ii) to 18 months is deemed a reference to 29 months (with respect to all qualified beneficiaries), but only if the qualified beneficiary has provided notice of such determination under section 300bb–6(3) of this title before the end of such 18 months.

[1] So in original. This subchapter is not divided into parts.

(B) End of plan

The date on which the employer ceases to provide any group health plan to any employee.

(C) Failure to pay premium

The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

(D) Group health plan coverage or medicare entitlement

The date on which the qualified beneficiary first becomes, after the date of the election—

(i) covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary (other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of title 26, part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1181 et seq.], or subchapter XXV of this chapter), or

(ii) entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(E) Termination of extended coverage for disability

In the case of a qualified beneficiary who is disabled at any time during the first 60 days of continuation coverage under this subchapter, the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.] that the qualified beneficiary is no longer disabled.

(3) Premium requirements

The plan may require payment of a premium for any period of continuation coverage, except that such premium—

(A) shall not exceed 102 percent of the applicable premium for such period, and

(B) may, at the election of the payor, be made in monthly installments.

In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage.[2] In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to ''102 percent'' is deemed a reference to ''150 percent'' for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).

[2] See 1989 Amendment note below.

(4) No requirement of insurability

The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(5) Conversion option

In the case of a qualified beneficiary whose period of continuation coverage expires under paragraph (2)(A), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

(July 1, 1944, ch. 373, title XXII, § 2202, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 233; amended Pub. L. 99–514, title XVIII, § 1895(d)(1)(C), (2)(C), (3)(C), (4)(C), Oct. 22, 1986, 100 Stat. 2937–2939; Pub. L. 101–239, title VI, §§ 6702(a), (b), 6801(b)(1)(A), (2)(A), (3)(A), Dec. 19, 1989, 103 Stat. 2295, 2297; Pub. L. 104–188, title I, § 1704(g)(1)(C), Aug. 20, 1996, 110 Stat. 1880; Pub. L. 104–191, title IV, § 421(a)(1), Aug. 21, 1996, 110 Stat. 2087.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (2)(A), (D)(ii), and (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II, XVI, and XVIII of the Social Security Act are classified generally to subchapters II (§ 401 et seq.), XVI (§ 1381 et seq.), and XVIII (§ 1395 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Employee Retirement Income Security Act of 1974, referred to in par. (2)(D)(i), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 7 of subtitle B of title I of the Act is classified generally to part 7 (§ 1181 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

1996—Par. (2)(A). Pub. L. 104–191, § 421(a)(1)(A)(ii)(IV), inserted ''(with respect to all qualified beneficiaries)'' after ''29 months'' in concluding provisions.

Pub. L. 104–191, § 421(a)(1)(A)(ii)(III), which directed amendment of concluding provisions by striking ''with respect to such event,'', was executed by striking that phrase, which did not contain a comma at end, before ''is deemed a reference'' to reflect the probable intent of Congress.

Pub. L. 104–191, § 421(a)(1)(A)(ii)(I), (II), in concluding provisions, substituted ''a qualified beneficiary'' for ''an individual'' and ''at any time during the first 60 days of continuation coverage under this subchapter'' for ''at the time of a qualifying event described in section 300bb–3(2) of this title''.

Pub. L. 104–191, § 421(a)(1)(A)(i), transferred sentence following cl. (iii) to appear as concluding provisions following cl. (iv).

Par. (2)(A)(iv). Pub. L. 104–188 amended heading and text of cl. (iv) generally. Prior to amendment, text read as follows: ''In the case of an event described in section 300bb–3(4) of this title (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 36-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act.''

Par. (2)(D)(i). Pub. L. 104–191, § 421(a)(1)(B), inserted ''(other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of title 26, part 7 of subtitle B of

title I of the Employee Retirement Income Security Act of 1974, or subchapter XXV of this chapter)'' before '', or''.

Par. (2)(E). Pub. L. 104–191, § 421(a)(1)(C), substituted ''at any time during the first 60 days of continuation coverage under this subchapter'' for ''at the time of a qualifying event described in section 300bb–3(2) of this title''.

1989—Par. (2)(A). Pub. L. 101–239, § 6702(a)(1), inserted after cl. (iii) ''In the case of an individual who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 300bb–3(2) of this title, any reference in clause (i) or (ii) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under section 300bb–6(3) of this title before the end of such 18 months.''

Par. (2)(A)(iv). Pub. L. 101–239, § 6801(b)(1)(A), added cl. (iv).

Par. (2)(D). Pub. L. 101–239, § 6801(b)(2)(A), substituted ''entitlement'' for ''eligibility'' in heading and inserted ''which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary'' after ''or otherwise)'' in cl. (i).

Par. (2)(E). Pub. L. 101–239, § 6702(a)(2), added subpar. (E).

Par. (3). Pub. L. 101–239, § 6801(b)(3)(A), which directed the general amendment of the concluding provision was executed by amending the first sentence of the concluding provision generally to reflect the probable intent of Congress and amendment of concluding provision by Pub. L. 101–239, § 6702(b). Prior to amendment, first sentence of the concluding provision read as follows: ''If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.''

Pub. L. 101–239, § 6702(b), inserted at end of concluding provision ''In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to '102 percent' is deemed a reference to '150 percent' for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).'' See Amendment note above.

1986—Par. (1). Pub. L. 99–514, § 1895(d)(1)(C), inserted at end ''If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part in connection with such group.''

Par. (2)(A). Pub. L. 99–514, § 1895(d)(2)(C), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''MAXIMUM PERIOD.—In the case of—

''(i) a qualifying event described in section 300bb–3(2) of this title (relating to terminations and reduced hours), the date which is 18 months after the date of the qualifying event, and

''(ii) any qualifying event not described in clause (i), the date which is 36 months after the date of the qualifying event.''

Par. (2)(C). Pub. L. 99–514, § 1895(d)(3)(C), inserted at end ''The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.''

Par. (2)(D). Pub. L. 99–514, § 1895(d)(4)(C)(ii), (iii), substituted ''Group health plan coverage'' for ''Reemployment'' in heading, added cl. (i), and struck out former cl. (i) which read as follows: ''a covered employee under any other group health plan, or''.

Par. (2)(E). Pub. L. 99–514, § 1895(d)(4)(C)(i), struck out subpar. (E), remarriage of spouse, which read as follows: ''In the case of an individual who is a qualified beneficiary by reason of being the spouse of a covered employee, the date on which the beneficiary remarries and becomes covered under a group health plan.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–191 effective Jan. 1, 1997, regardless of whether the qualifying event occurred before, on, or after such date, see section 421(d) of Pub. L. 104–191, set out as a note under section 4980B of Title 26, Internal Revenue Code.

Amendment by Pub. L. 104–188 applicable to plan years beginning after Dec. 31, 1989, see section 1704(g)(2) of Pub. L. 104–188, set out as a note under section 4980B of Title 26.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6702(d) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 300bb–6 of this title] shall apply to plan years beginning on or after the date of the enactment of this Act [Dec. 19, 1989], regardless of whether the qualifying event occurred before, on, or after such date.''

Section 6801(b)(1)(B) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section] shall apply to plan years beginning after December 31, 1989.''

Section 6801(b)(2)(B) of Pub. L. 101–239 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to—

''(i) qualifying events occurring after December 31, 1989, and

''(ii) in the case of qualified beneficiaries who elected continuation coverage after December 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such).''

Section 6801(b)(3)(B) of Pub. L. 101–239 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to plan years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 300bb–3. Qualifying event

For purposes of this subchapter, the term ''qualifying event'' means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this subchapter, would result in the loss of coverage of a qualified beneficiary:

(1) The death of the covered employee.

(2) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

(3) The divorce or legal separation of the covered employee from the employee's spouse.

(4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(July 1, 1944, ch. 373, title XXII, § 2203, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 234.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 300bb–4. Applicable premium

For purposes of this subchapter—

(1) In general

The term ''applicable premium'' means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

(2) Special rule for self-insured plans

To the extent that a plan is a self-insured plan—

(A) In general

Except as provided in subparagraph (B), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

(i) is determined on an actuarial basis, and

(ii) takes into account such factors as the Secretary may prescribe in regulations.

(B) Determination on basis of past cost

If a plan administrator elects to have this subparagraph apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

(i) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under paragraph (3), adjusted by

(ii) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

(C) Subparagraph (B) not to apply where significant change

A plan administrator may not elect to have subparagraph (B) apply in any case in which there is any significant difference, between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under paragraph (3).

(3) Determination period

The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

(July 1, 1944, ch. 373, title XXII, § 2204, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 234.)

§ 300bb–5. Election

(a) In general

For purposes of this subchapter—

(1) Election period

The term ''election period'' means the period which—

(A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

(B) is of at least 60 days' duration, and

(C) ends not earlier than 60 days after the later of—

(i) the date described in subparagraph (A), or

(ii) in the case of any qualified beneficiary who receives notice under section 300bb–6(4) of this title, the date of such notice.

(2) Effect of election on other beneficiaries

Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of section 300bb–8(3) of this title shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

(b) Temporary extension of COBRA election period for certain individuals

(1) In general

In the case of a nonelecting TAA-eligible individual and notwithstanding subsection (a) of this section, such individual may elect continuation coverage under this subchapter during the 60-day period that begins on the first day of the month in which the individual becomes a TAA-eligible individual, but only if such election is made not later than 6 months after the date of the TAA-related loss of coverage.

(2) Commencement of coverage; no reach-back

Any continuation coverage elected by a TAA-eligible individual under paragraph (1) shall commence at the beginning of the 60-day election period described in such paragraph and shall not include any period prior to such 60-day election period.

(3) Preexisting conditions

With respect to an individual who elects continuation coverage pursuant to paragraph (1), the period—

(A) beginning on the date of the TAA-related loss of coverage, and

(B) ending on the first day of the 60-day election period described in paragraph (1),

shall be disregarded for purposes of determining the 63-day periods referred to in section 300gg(c)(2) of this title, section 1181(c)(2) of title 29, and section 9801(c)(2) of title 26.

(4) Definitions

For purposes of this subsection:

(A) Nonelecting TAA-eligible individual

The term ''nonelecting TAA-eligible individual'' means a TAA-eligible individual who—

(i) has a TAA-related loss of coverage; and

(ii) did not elect continuation coverage under this part[1] during the TAA-related election period.

(B) TAA-eligible individual

The term ''TAA-eligible individual'' means—

(i) an eligible TAA recipient (as defined in paragraph (2) of section 35(c) of title 26), and

(ii) an eligible alternative TAA recipient (as defined in paragraph (3) of such section).

(C) TAA-related election period

The term ''TAA-related election period'' means, with respect to a TAA-related loss of coverage, the 60-day election period under this part[1] which is a direct consequence of such loss.

(D) TAA-related loss of coverage

The term ''TAA-related loss of coverage'' means, with respect to an individual whose separation from employment gives rise to being an TAA-eligible individual, the loss of health benefits coverage associated with such separation.

(July 1, 1944, ch. 373, title XXII, §2205, as added Pub. L. 99–272, title X, §10003(a), Apr. 7, 1986, 100 Stat. 235; amended Pub. L. 99–514, title XVIII, §1895(d)(5)(C), Oct. 22, 1986, 100 Stat. 2939; Pub. L. 107–210, div. A, title II, §203(e)(2), Aug. 6, 2002, 116 Stat. 970.)

AMENDMENTS

2002—Pub. L. 107–210 designated existing provisions as subsec. (a), inserted subsec. heading, and added subsec. (b).

1986—Par. (2). Pub. L. 99–514 inserted ''of continuation coverage'' after ''any election'' and inserted at end ''If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of Title 19, Customs Duties, on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of Title 19.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

CONSTRUCTION OF 2002 AMENDMENT

Nothing in amendment by Pub. L. 107–210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a note under section 2918 of Title 29, Labor.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§300bb–6. Notice requirements

In accordance with regulations prescribed by the Secretary—

(1) the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection,[1]

(2) the employer of an employee under a plan must notify the plan administrator of a qualifying event described in paragraph (1), (2), or (4) of section 300bb–3 of this title within 30 days of the date of the qualifying event,

(3) each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in paragraph (3) or (5) of section 300bb–3 of this title within 60 days after the date of the qualifying event and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], to have been disabled at any time during the first 60 days of continuation coverage under this subchapter is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled, and

(4) the plan administrator shall notify—

(A) in the case of a qualifying event described in paragraph (1), (2), or (4) of section 300bb–3 of this title, any qualified beneficiary with respect to such event, and

(B) in the case of a qualifying event described in paragraph (3) or (5) of section 300bb–3 of this title where the covered employee notifies the plan administrator under paragraph (3), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.[1]

For purposes of paragraph (4), any notification shall be made within 14 days of the date on

[1] So in original. This subchapter is not divided into parts.

[1] So in original. Probably should be ''subchapter''.

which the plan administrator is notified under paragraph (2) or (3), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

(July 1, 1944, ch. 373, title XXII, § 2206, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 235; amended Pub. L. 99–514, title XVIII, § 1895(d)(6)(C), Oct. 22, 1986, 100 Stat. 2939; Pub. L. 100–203, title IV, § 4009(j)(8), Dec. 22, 1987, 101 Stat. 1330–59; Pub. L. 101–239, title VI, § 6702(c), Dec. 19, 1989, 103 Stat. 2295; Pub. L. 104–191, title IV, § 421(a)(2), Aug. 21, 1996, 110 Stat. 2088.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVI of the Social Security Act are classified generally to subchapters II (§ 401 et seq.) and XVI (§ 1381 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1996—Par. (3). Pub. L. 104–191 substituted ''at any time during the first 60 days of continuation coverage under this subchapter'' for ''at the time of a qualifying event described in section 300bb–3(2) of this title''.

1989—Par. (3). Pub. L. 101–239 inserted ''and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 300bb–3(2) of this title is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled'' after ''date of the qualifying event''.

1987—Par. (3). Pub. L. 100–203 amended directory language of Pub. L. 99–514, see 1986 Amendment note below.

1986—Par. (3). Pub. L. 99–514, as amended by Pub. L. 100–203, inserted ''within 60 days after the date of the qualifying event''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 effective Jan. 1, 1997, regardless of whether the qualifying event occurred before, on, or after such date, see section 421(d) of Pub. L. 104–191, set out as a note under section 4980B of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to plan years beginning on or after Dec. 19, 1989, regardless of whether the qualifying event occurred before, on, or after such date, see section 6702(d) of Pub. L. 101–239, set out as a note under section 300bb–2 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4009(j)(8) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in Pub. L. 99–514.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable only with respect to qualifying events occurring after Oct. 22, 1986, see section 1895(d)(6)(D) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

NOTIFICATION TO COVERED EMPLOYEES

Section 10003(c) of Pub. L. 99–272 provided that: ''At the time that the amendments made by this section [enacting this subchapter] apply to a group health plan (covered under section 2201 of the Public Health Service Act [section 300bb–1 of this title]), the plan shall notify each covered employee, and spouse of the employee (if any), who is covered under the plan at that time of the continuation coverage required under title XXII of such Act [this subchapter]. The notice furnished under this subsection is in lieu of notice that may otherwise be required under section 2206(1) of such Act [par. (1) of this section] with respect to such individuals.''

§ 300bb–7. Enforcement

Any individual who is aggrieved by the failure of a State, political subdivision, or agency or instrumentality thereof, to comply with the requirements of this subchapter may bring an action for appropriate equitable relief.

(July 1, 1944, ch. 373, title XXII, § 2207, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 236.)

CONTINUED COVERAGE OF COSTS OF PEDIATRIC VACCINE UNDER CERTAIN GROUP HEALTH PLANS

Pub. L. 103–66, title XIII, § 13631(d), Aug. 10, 1993, 107 Stat. 643, provided that:

''(1) REQUIREMENT.—The requirement of this paragraph, with respect to a group health plan for plan years beginning after the date of the enactment of this Act [Aug. 10, 1993], is that the group health plan not reduce its coverage of the costs of pediatric vaccines (as defined under section 1928(h)(6) of the Social Security Act [section 1396s(h)(6) of this title]) below the coverage it provided as of May 1, 1993.

''(2) ENFORCEMENT.—For purposes of section 2207 of the Public Health Service Act [this section], the requirement of paragraph (1) is deemed a requirement of title XXII of such Act [this subchapter].''

§ 300bb–8. Definitions

For purposes of this subchapter—

(1) Group health plan

The term ''group health plan'' has the meaning given such term in 5000(b)[1] of title 26. Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c) of title 26).

(2) Covered employee

The term ''covered employee'' means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of title 26).

(3) Qualified beneficiary

(A) In general

The term ''qualified beneficiary'' means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

(i) as the spouse of the covered employee, or

(ii) as the dependent child of the employee.

Such term shall also include a child who is born to or placed for adoption with the cov-

[1] So in original. Probably should be preceded by ''section''.

ered employee during the period of continuation coverage under this subchapter.

(B) Special rule for terminations and reduced employment

In the case of a qualifying event described in section 300bb–3(2) of this title, the term ''qualified beneficiary'' includes the covered employee.

(4) Plan administrator

The term ''plan administrator'' has the meaning given the term ''administrator'' by section 1002(16)(A) of title 29.

(July 1, 1944, ch. 373, title XXII, § 2208, as added Pub. L. 99–272, title X, § 10003(a), Apr. 7, 1986, 100 Stat. 236; amended Pub. L. 100–647, title III, § 3011(b)(7), Nov. 10, 1988, 102 Stat. 3625; Pub. L. 101–239, title VI, § 6801(c)(1), Dec. 19, 1989, 103 Stat. 2297; Pub. L. 104–191, title I, § 102(d), title III, § 321(d)(3), title IV, § 421(a)(3), Aug. 21, 1996, 110 Stat. 1978, 2059, 2088.)

AMENDMENTS

1996—Par. (1). Pub. L. 104–191, § 321(d)(3), inserted at end ''Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c) of title 26).''

Pub. L. 104–191, § 102(d), substituted ''5000(b)'' for ''section 162(i)(2)''.

Par. (3)(A). Pub. L. 104–191, § 421(a)(3), inserted at end ''Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this subchapter.''

1989—Par. (2). Pub. L. 101–239 substituted ''the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of title 26)'' for ''the individual's employment or previous employment with an employer''.

1988—Par. (1). Pub. L. 100–647 substituted ''section 162(i)(2) of the Internal Revenue Code of 1986'' for ''section 162(i)(3) of the Internal Revenue Code of 1954'', which for purposes of codification was translated as ''section 162(i)(2) of title 26''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 321(d)(3) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of Title 26, Internal Revenue Code.

Amendment by section 421(a)(3) of Pub. L. 104–191 effective Jan. 1, 1997, regardless of whether the qualifying event occurred before, on, or after such date, see section 421(d) of Pub. L. 104–191, set out as a note under section 4980B of Title 26.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6801(c)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to plan years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of Title 26, Internal Revenue Code (as in effect on the day before Nov. 10, 1988), did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of Title 26.

SUBCHAPTER XXI—RESEARCH WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

PRIOR PROVISIONS

A prior subchapter XXI (§ 300cc et seq.), comprised of title XXIII of the Public Health Service Act, act July 1, 1944, ch. 373, 2301–2316, was renumbered title XXV, §§ 2501–2514, of the Public Health Service Act, and transferred to subchapter XXV (§ 300aaa et seq.) of this chapter, renumbered title XXVI, §§ 2601–2614, of the Public Health Service Act, renumbered title XXVII, §§ 2701–2714, of the Public Health Service Act, and renumbered title II, part B, §§ 231–244, of the Public Health Service Act, and transferred to part B (§ 238 et seq.) of subchapter I of this chapter.

PART A—ADMINISTRATION OF RESEARCH PROGRAMS

§ 300cc. Requirement of annual comprehensive report on all expenditures by Secretary with respect to acquired immune deficiency syndrome

(a) In general

Not later than December 1 of each fiscal year, the Secretary shall prepare and submit to the Congress a report on the expenditures by the Secretary of amounts appropriated for the preceding fiscal year with respect to acquired immune deficiency syndrome.

(b) Inclusion of certain information

The report required in subsection (a) of this section shall, with respect to acquired immune deficiency syndrome, include—

(1) for each program, project, or activity with respect to such syndrome, a specification of the amount obligated by each office and agency of the Department of Health and Human Services;

(2) a summary description of each such program, project, or activity;

(3) a list of such programs, projects, or activities that are directed towards members of minority groups;

(4) a description of the extent to which programs, projects, and activities described in paragraph (3) have been coordinated between the Director of the Office of Minority Health and the Director of the Centers for Disease Control and Prevention;

(5) a summary of the progress made by each such program, project, or activity with respect to the prevention and control of acquired immune deficiency syndrome;

(6) a summary of the evaluations conducted under this subchapter; and

(7) any report required in this chapter to be submitted to the Secretary for inclusion in the report required in subsection (a) of this section.

(July 1, 1944, ch. 373, title XXIII, § 2301, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3063; amended Pub. L. 102–531, title III, § 312(d)(16), Oct. 27, 1992, 106 Stat. 3505.)

PRIOR PROVISIONS

A prior section 300cc, act July 1, 1944, § 2301, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

AMENDMENTS

1992—Subsec. (b)(4). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under this section is listed on page 94), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, § 1402(1)] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

DEVELOPMENT OF RAPID HIV TEST

Pub. L. 106–345, title V, § 502, Oct. 20, 2000, 114 Stat. 1353, provided that:

''(a) EXPANSION, INTENSIFICATION, AND COORDINATION OF RESEARCH AND OTHER ACTIVITIES.—

''(1) IN GENERAL.—The Director of NIH shall expand, intensify, and coordinate research and other activities of the National Institutes of Health with respect to the development of reliable and affordable tests for HIV disease that can rapidly be administered and whose results can rapidly be obtained (in this section referred to as 'rapid HIV test').

''(2) REPORT TO CONGRESS.—The Director of NIH shall periodically submit to the appropriate committees of Congress a report describing the research and other activities conducted or supported under paragraph (1).

''(3) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

''(b) PREMARKET REVIEW OF RAPID HIV TESTS.—

''(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act [Oct. 20, 2000], the Secretary, in consultation with the Director of the Centers for Disease Control and Prevention and the Commissioner of Food and Drugs, shall submit to the appropriate committees of the Congress a report describing the progress made towards, and barriers to, the premarket review and commercial distribution of rapid HIV tests. The report shall—

''(A) assess the public health need for and public health benefits of rapid HIV tests, including the minimization of false positive results through the availability of multiple rapid HIV tests;

''(B) make recommendations regarding the need for the expedited review of rapid HIV test applications submitted to the Center for Biologics Evaluation and Research and, if such recommendations are favorable, specify criteria and procedures for such expedited review; and

''(C) specify whether the barriers to the premarket review of rapid HIV tests include the unnecessary application of requirements—

''(i) necessary to ensure the efficacy of devices for donor screening to rapid HIV tests intended for use in other screening situations; or

''(ii) for identifying antibodies to HIV subtypes of rare incidence in the United States to rapid HIV tests intended for use in screening situations other than donor screening.

''(c) GUIDELINES OF CENTERS FOR DISEASE CONTROL AND PREVENTION.—Promptly after commercial distribution of a rapid HIV test begins, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish or update guidelines that include recommendations for States, hospitals, and other appropriate entities regarding the ready availability of such tests for administration to pregnant women who are in labor or in the late stage of pregnancy and whose HIV status is not known to the attending obstetrician.''

LIMITATION ON EXPENDITURES FOR AIDS AND HIV ACTIVITIES

Pub. L. 104–146, § 11, May 20, 1996, 110 Stat. 1373, provided that: ''Notwithstanding any other provision of law, the total amounts of Federal funds expended in any fiscal year for AIDS and HIV activities may not exceed the total amounts expended in such fiscal year for activities related to cancer.''

VACCINES FOR HUMAN IMMUNODEFICIENCY VIRUS

Pub. L. 103–43, title XIX, § 1901(b), June 10, 1993, 107 Stat. 200, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the National Institutes of Health, shall develop a plan for the appropriate inclusion of HIV-infected women, including pregnant women, HIV-infected infants, and HIV-infected children in studies conducted by or through the National Institutes of Health concerning the safety and efficacy of HIV vaccines for the treatment and prevention of HIV infection. Such plan shall ensure the full participation of other Federal agencies currently conducting HIV vaccine studies and require that such studies conform fully to the requirements of part 46 of title 45, Code of Federal Regulations.

''(2) REPORT.—Not later than 180 days after the date of the enactment of this Act [June 10, 1993], the Secretary of Health and Human Services shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate, a report concerning the plan developed under paragraph (1).

''(3) IMPLEMENTATION.—Not later than 12 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall implement the plan developed under paragraph (1), including measures for the full participation of other Federal agencies currently conducting HIV vaccine studies.

''(4) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 1996.''

REQUIREMENT OF CERTAIN RESEARCH STUDIES

Section 203 of Pub. L. 100–607 provided that after consultation with Director of National Center for Health Services Research and Health Care Technology Assessment, the Secretary of Health and Human Services, acting through the Director of Centers for Disease Control, was to conduct a study for purpose of determining mortality rates with respect to acquired immune deficiency syndrome among individuals of various groups at risk of such syndrome, among various geographic areas, and among individuals with varying financial resources for payment of health care services, with a report to be submitted to Congress not later than 18 months after Nov. 4, 1988, and further directed Secretary to request the National Academy of Sciences and other similar appropriate nonprofit institutions to report to the Secretary findings made by such institutions with respect to the manner in which research on, and the development of, vaccines and drugs for the prevention and treatment of acquired immune deficiency syndrome and related conditions can be enhanced by the establishment of consortia designed to combine and share resources needed for such research and development, consisting of businesses involved in such research and development, of nonprofit research institutions, or of combinations of such businesses and such institutions, and the appropriate participation, if any, of the Federal Government in such consortia, with a report to be submitted to Congress not later than 1 year after Nov. 4, 1988.

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Subtitle D (§§ 241–249) of title II of Pub. L. 100–607, as amended by Pub. L. 100–690, title II, § 2602(a), Nov. 18,

1988, 102 Stat. 4233, established National Commission on Acquired Immune Deficiency Syndrome for the purpose of promoting the development of a national consensus on policy concerning acquired immune deficiency syndrome and of studying and making recommendations for a consistent national policy concerning such syndrome, including financing of health care needs and research, dissemination of information to prevent spread of such syndrome, behavioral changes needed to combat such syndrome, and related civil rights issues, provided for membership of Commission, reports, executive director and staff of Commission, powers, and appropriations, and provided for termination of Commission 30 days after submission of its final report.

EX. ORD. NO. 12963. PRESIDENTIAL ADVISORY COUNCIL ON HIV/AIDS

Ex. Ord. No. 12963, June 14, 1995, 60 F.R. 31905, as amended by Ex. Ord. No. 13009, June 14, 1996, 61 F.R. 39799 [30799], provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the Secretary of Health and Human Services to exercise her discretion as follows:

SECTION 1. *Establishment*. (a) The Secretary of Health and Human Services (the ''Secretary'') shall establish an HIV/AIDS Advisory Council (the ''Advisory Council'' or the ''Council''), to be known as the Presidential Advisory Council on HIV/AIDS. The Advisory Council shall be composed of not more than 35 members to be appointed or designated by the Secretary. The Advisory Council shall comply with the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

(b) The Secretary shall designate a Chairperson from among the members of the Advisory Council.

SEC. 2. *Functions*. The Advisory Council shall provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. The functions of the Advisory Council shall be solely advisory in nature. The Secretary shall provide the President with copies of all written reports provided to the Secretary by the Advisory Council.

SEC. 3. *Administration*. (a) The heads of executive departments and agencies shall, to the extent permitted by law, provide the Advisory Council with such information as it may require for purposes of carrying out its functions.

(b) Any members of the Advisory Council that receive compensation shall be compensated in accordance with Federal law. Committee members may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. section 5701–5707).

(c) To the extent permitted by law, and subject to the availability of appropriations, the Department of Health and Human Services shall provide the Advisory Council with such funds and support as may be necessary for the performance of its functions.

SEC. 4. *General Provisions*. (a) Notwithstanding the provisions of any other Executive order, any functions of the President under the Federal Advisory Committee Act that are applicable to the Advisory Council, except that of reporting annually to the Congress, shall be performed by the Department of Health and Human Services, in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) This order is intended only to improve the internal management of the executive branch, and it is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, it officers, or any person.

WILLIAM J. CLINTON.

§ 300cc–1. Requirement of expediting awards of grants and contracts for research

(a) In general

The Secretary shall expedite the award of grants, contracts, and cooperative agreements for research projects relating to acquired immune deficiency syndrome (including such research projects initiated independently of any solicitation by the Secretary for proposals for such research projects).

(b) Time limitations with respect to certain applications

(1) With respect to programs of grants, contracts, and cooperative agreements described in subsection (a) of this section, any application submitted in response to a solicitation by the Secretary for proposals pursuant to such a program—

(A) may not be approved if the application is submitted after the expiration of the 3-month period beginning on the date on which the solicitation is issued; and

(B) shall be awarded, or otherwise finally acted upon, not later than the expiration of the 6-month period beginning on the expiration of the period described in subparagraph (A).

(2) If the Secretary makes a determination that it is not practicable to administer a program referred to in paragraph (1) in accordance with the time limitations described in such paragraph, the Secretary may adjust the time limitations accordingly.

(c) Requirements with respect to adjustments in time limitations

With respect to any program for which a determination described in subsection (b)(2) of this section is made, the Secretary shall—

(1) if the determination is made before the Secretary issues a solicitation for proposals pursuant to the program, ensure that the solicitation describes the time limitations as adjusted by the determination; and

(2) if the determination is made after the Secretary issues such a solicitation for proposals, issue a statement describing the time limitations as adjusted by the determination and individually notify, with respect to the determination, each applicant whose application is submitted before the expiration of the 3-month period beginning on the date on which the solicitation was issued.

(d) Annual reports to Congress

Except as provided in subsection (e) of this section, the Secretary shall annually prepare, for inclusion in the comprehensive report required in section 300cc of this title, a report—

(A) summarizing programs for which the Secretary has made a determination described in subsection (b)(2) of this section, including a description of the time limitations as adjusted by the determination and including a summary of the solicitation issued by the Secretary for proposals pursuant to the program; and

(B) summarizing applications that—

(i) were submitted pursuant to a program of grants, contracts, or cooperative agree-

ments referred to in paragraph (1) of subsection (b) of this section for which a determination described in paragraph (2) of such subsection has not been made; and

(ii) were not processed in accordance with the time limitations described in such paragraph (1).

(e) Quarterly reports for fiscal year 1989

For fiscal year 1989, the report required in subsection (d) of this section shall, not less than quarterly, be prepared and submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(July 1, 1944, ch. 373, title XXIII, § 2302, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3063.)

PRIOR PROVISIONS

A prior section 300cc–1, act July 1, 1944, § 2302, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 300cc–2. Requirements with respect to processing of requests for personnel and administrative support

(a) In general

The Director of the Office of Personnel Management or the Administrator of General Services, as the case may be, shall respond to any priority request made by the Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, or the Director of the National Institutes of Health, not later than 21 days after the date on which such request is made. If the Director of the Office of Personnel Management or the Administrator of General Services, as the case may be, does not disapprove a priority request during the 21-day period, the request shall be deemed to be approved.

(b) Notice to Secretary and to Assistant Secretary for Health

The Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, and the Director of the National Institutes of Health, shall, respectively, transmit to the Secretary and the Assistant Secretary for Health a copy of each priority request made under this section by the agency head involved. The copy shall be transmitted on the date on which the priority request involved is made.

(c) "Priority request" defined

For purposes of this section, the term ''priority request'' means any request that—

(1) is designated as a priority request by the Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, or the Director of the National Institutes of Health; and

(2)(A) is made to the Director of the Office of Personnel Management for the allocation of personnel to carry out activities with respect to acquired immune deficiency syndrome; or

(B) is made to the Administrator of General Services for administrative support or space in carrying out such activities.

(July 1, 1944, ch. 373, title XXIII, § 2303, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3064; amended Pub. L. 102–321, title I, §§ 161, 163(b)(7), July 10, 1992, 106 Stat. 375, 376; Pub. L. 102–531, title III, § 312(d)(17), Oct. 27, 1992, 106 Stat. 3505.)

PRIOR PROVISIONS

A prior section 300cc–2, act July 1, 1944, § 2303, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–321, § 161, substituted ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Administrator of the Alcohol, Drug Abuse, and Mental Health Administration''.

Subsec. (b). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–321, § 163(b)(7)(A), substituted ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Administrator of the Alcohol, Drug Abuse, and Mental Health Administration''.

Subsec. (c)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–321, § 163(b)(7)(B), substituted ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Administrator of the Alcohol, Drug Abuse, and Mental Health Administration''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, see section 801(c) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 300cc–3. Establishment of Research Advisory Committee

(a) In general

After consultation with the Commissioner of Food and Drugs, the Secretary, acting through the Director of the National Institute of Allergy and Infectious Diseases, shall establish within such Institute an advisory committee to be known as the AIDS Research Advisory Committee (hereafter in this section referred to as the ''Committee'').

(b) Composition

The Committee shall be composed of physicians whose clinical practice includes a signifi-

cant number of patients with acquired immune deficiency syndrome.

(c) Duties

The Committee shall—

(1) advise the Director of such Institute (and may provide advice to the Directors of other agencies of the National Institutes of Health, as appropriate) on appropriate research activities to be undertaken with respect to clinical treatment of such syndrome, including advice with respect to—

(A) research on drugs for preventing or minimizing the development of symptoms or conditions arising from infection with the etiologic agent for such syndrome, including recommendations on the projects of research with respect to diagnosing immune deficiency and with respect to predicting, diagnosing, preventing, and treating opportunistic cancers and infectious diseases; and

(B) research on the effectiveness of treating such symptoms or conditions with drugs that—

(i) are not approved by the Commissioner of Food and Drugs for the purpose of treating such symptoms or conditions; and

(ii) are being utilized for such purpose by individuals infected with such etiologic agent;

(2)(A) review ongoing publicly and privately supported research on clinical treatment for acquired immune deficiency syndrome, including research on drugs described in paragraph (1); and

(B) periodically issue, and make available to health care professionals, reports describing and evaluating such research;

(3) conduct studies and convene meetings for the purpose of determining the recommendations among physicians in clinical practice on clinical treatment of acquired immune deficiency syndrome, including treatment with the drugs described in paragraph (1); and

(4) conduct a study for the purpose of developing, with respect to individuals infected with the etiologic agent for acquired immune deficiency syndrome, a consensus among health care professionals on clinical treatments for preventing or minimizing the development of symptoms or conditions arising from infection with such etiologic agent.

(July 1, 1944, ch. 373, title XXIII, §2304, as added Pub. L. 100–607, title II, §201(4), Nov. 4, 1988, 102 Stat. 3065; amended Pub. L. 100–690, title II, §2617(a), Nov. 18, 1988, 102 Stat. 4240; Pub. L. 103–43, title XVIII, §1811(1), title XX, §2008(d)(1), June 10, 1993, 107 Stat. 199, 212.)

PRIOR PROVISIONS

A prior section 300cc–3, acts July 1, 1944, ch. 373, title XXIII, §2304, formerly title V, §504, 58 Stat. 710; June 25, 1948, ch. 654, §6, 62 Stat. 1018; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, §2104, Apr. 26, 1983, Pub. L. 98–24, §2(a)(1), 97 Stat. 176; renumbered title XXIII, §2304, Nov. 14, 1986, Pub. L. 99–660, title III, §311(a), 100 Stat. 3755, related to care of Service patients at Saint Elizabeths Hospital, prior to repeal by Pub. L. 98–621, §10(s), Nov. 8, 1984, 98 Stat. 3381, effective Oct. 1, 1987. Subsequent to repeal, section 2104 of title XXI of act July 1, 1944, was renumbered section 2304 of title XXIII of that act by section 311(a) of Pub. L. 99–660.

A prior section 300cc–4, acts July 1, 1944, ch. 373, title XXI, §2105, formerly title V, §505, 58 Stat. 710; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, §2105, Apr. 26, 1983, Pub. L. 98–24, §2(a)(1), 97 Stat. 176, provided procedures under which the Secretary could settle claims for damages from collisions or incident to the operation of vessels within a year of the accrual of such claims and not to exceed $3,000, prior to repeal by Pub. L. 99–117, §12(f), Oct. 7, 1985, 99 Stat. 495. Subsequent to repeal, section 2105 of title XXI of act July 1, 1944, was renumbered section 2305 of title XXIII of that act by Pub. L. 99–660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3755.

Prior sections 300cc–5 to 300cc–10, act July 1, 1944, §§2306 to 2311, respectively, were successively renumbered by subsequent acts and transferred, see sections 238c to 238h of this title.

AMENDMENTS

1993—Pub. L. 103–43, §2008(d)(1)(A), substituted ''Research Advisory Committee'' for ''Clinical Research Review Committee'' in section catchline.

Subsec. (a). Pub. L. 103–43, §2008(d)(1)(B), substituted ''AIDS Research Advisory Committee'' for ''AIDS Clinical Research Review Committee''.

Subsec. (c)(1). Pub. L. 103–43, §1811(1), in introductory provisions inserted ''(and may provide advice to the Directors of other agencies of the National Institutes of Health, as appropriate)'' after ''Director of such Institute'' and in subpar. (A) inserted before semicolon at end '', including recommendations on the projects of research with respect to diagnosing immune deficiency and with respect to predicting, diagnosing, preventing, and treating opportunistic cancers and infectious diseases''.

1988—Subsec. (c)(2)(B). Pub. L. 100–690 substituted semicolon for period.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

PART B—RESEARCH AUTHORITY

§300cc–11. Clinical evaluation units at National Institutes of Health

(a) In general

The Secretary, acting through the Director of the National Cancer Institute and the Director of the National Institute of Allergy and Infectious Diseases, shall for each such Institute establish a clinical evaluation unit at the Clinical Center at the National Institutes of Health. Each of the clinical evaluation units—

(1) shall conduct clinical evaluations of experimental treatments for acquired immune

deficiency syndrome developed within the preclinical drug development program, including evaluations of methods of diagnosing immune deficiency and evaluations of methods of predicting, diagnosing, preventing, and treating opportunistic cancers and infectious diseases; and

(2) may conduct clinical evaluations of experimental treatments for such syndrome that are developed by any other national research institute of the National Institutes of Health or by any other entity.

(b) Personnel and administrative support

(1) For the purposes described in subsection (a) of this section, the Secretary, acting through the Director of the National Institutes of Health, shall provide each of the clinical evaluation units required in such subsection—

(A)(i) with not less than 50 beds; or

(ii) with an outpatient clinical capacity equal to not less than twice the outpatient clinical capacity, with respect to acquired immune deficiency syndrome, possessed by the Clinical Center of the National Institutes of Health on June 1, 1988; and

(B) with such personnel, such administrative support, and such other support services as may be necessary.

(2) Facilities, personnel, administrative support, and other support services provided pursuant to paragraph (1) shall be in addition to the number or level of facilities, personnel, administrative support, and other support services that otherwise would be available at the Clinical Center at the National Institutes of Health for the provision of clinical care for individuals with diseases or disorders.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(July 1, 1944, ch. 373, title XXIII, § 2311, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3066; amended Pub. L. 103–43, title XVIII, § 1811(2), June 10, 1993,107 Stat. 199.)

PRIOR PROVISIONS

A prior section 300cc–11, act July 1, 1944, § 2312, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–43 inserted before semicolon at end ‘‘, including evaluations of methods of diagnosing immune deficiency and evaluations of methods of predicting, diagnosing, preventing, and treating opportunistic cancers and infectious diseases’’.

§ 300cc–12. Use of investigational new drugs with respect to acquired immune deficiency syndrome

(a) Encouragement of applications with respect to clinical trials

(1) If, in the determination of the Secretary, there is preliminary evidence that a new drug has effectiveness in humans with respect to the prevention or treatment of acquired immune deficiency syndrome, the Secretary shall, through statements published in the Federal Register—

(A) announce the fact of such determination; and

(B) with respect to the new drug involved, encourage an application for an exemption for investigational use of the new drug under regulations issued under section 355(i) of title 21.

(2)(A) The AIDS Research Advisory Committee established pursuant to section 300cc–3 of this title shall make recommendations to the Secretary with respect to new drugs appropriate for determinations described in paragraph (1).

(B) The Secretary shall, as soon as is practicable, determine the merits of recommendations received by the Secretary pursuant to subparagraph (A).

(b) Encouragement of applications with respect to treatment use in circumstances other than clinical trials

(1) In the case of a new drug with respect to which the Secretary has made a determination described in subsection (a) of this section and with respect to which an exemption is in effect for purposes of section 355(i) of title 21, the Secretary shall—

(A) as appropriate, encourage the sponsor of the investigation of the new drug to submit to the Secretary, in accordance with regulations issued under such section, an application to use the drug in the treatment of individuals—

(i) who are infected with the etiologic agent for acquired immune deficiency syndrome; and

(ii) who are not participating in the clinical trials conducted pursuant to such exemption; and

(B) if such an application is approved, encourage, as appropriate, licensed medical practitioners to obtain, in accordance with such regulations, the new drug from such sponsor for the purpose of treating such individuals.

(2) If the sponsor of the investigation of a new drug described in paragraph (1) does not submit to the Secretary an application described in such paragraph (relating to treatment use), the Secretary shall, through statements published in the Federal Register, encourage, as appropriate, licensed medical practitioners to submit to the Secretary such applications in accordance with regulations described in such paragraph.

(c) Technical assistance with respect to treatment use

In the case of a new drug with respect to which the Secretary has made a determination described in subsection (a) of this section, the Secretary may, directly or through grants or contracts, provide technical assistance with respect to the process of—

(1) submitting to the Secretary applications for exemptions described in paragraph (1)(B) of such subsection;

(2) submitting to the Secretary applications described in subsection (b) of this section; and

(3) with respect to sponsors of investigations of new drugs, facilitating the transfer of new drugs from such sponsors to licensed medical practitioners.

(d) “New drug” defined

For purposes of this section, the term ‘‘new drug’’ has the meaning given such term in section 321 of title 21.

(July 1, 1944, ch. 373, title XXIII, § 2312, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3066; amended Pub. L. 103–43, title XX, § 2008(d)(2), June 10, 1993, 107 Stat. 212.)

PRIOR PROVISIONS

A prior section 300cc–12, act July 1, 1944, § 2313, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

AMENDMENTS

1993—Subsec. (a)(2)(A). Pub. L. 103–43 substituted ''AIDS Research Advisory Committee'' for ''AIDS Clinical Research Review Committee''.

§ 300cc–13. Terry Beirn Community-Based AIDS Research Initiative

(a) In general

After consultation with the Commissioner of Food and Drugs, the Director of the National Institutes of Health, acting through the Director of the National Institute of Allergy and Infectious Diseases, may make grants to public entities and nonprofit private entities concerned with acquired immune deficiency syndrome, and may enter into contracts with public and private such[1] entities, for the purpose of planning and conducting, in the community involved, clinical trials of experimental treatments for infection with the etiologic agent for such syndrome that are approved by the Commissioner of Food and Drugs for investigational use under regulations issued under section 355 of title 21.

(b) Requirement of certain projects

(1) Financial assistance under subsection (a) of this section shall include such assistance to community-based organizations and community health centers for the purpose of—

(A) retaining appropriate medical supervision;

(B) assisting with administration, data collection and record management; and

(C) conducting training of community physicians, nurse practitioners, physicians' assistants and other health professionals for the purpose of conducting clinical trials.

(2)(A) Financial assistance under subsection (a) of this section shall include such assistance for demonstration projects designed to implement and conduct community-based clinical trials in order to provide access to the entire scope of communities affected by infections with the etiologic agent for acquired immune deficiency syndrome, including minorities, hemophiliacs and transfusion-exposed individuals, women, children, users of intravenous drugs, and individuals who are asymptomatic with respect to such infection.

(B) The Director of the National Institutes of Health may not provide financial assistance under this paragraph unless the application for such assistance is approved—

(i) by the Commissioner of Food and Drugs;

(ii) by a duly constituted Institutional Review Board that meets the requirements of part 56 of title 21, Code of Federal Regulations; and

(iii) by the Director of the National Institute of Allergy and Infectious Diseases.

[1] So in original.

(c) Participation of private industry, schools of medicine and primary providers

Programs carried out with financial assistance provided under subsection (a) of this section shall be designed to encourage private industry and schools of medicine, osteopathic medicine, and existing consortia of primary care providers organized to conduct clinical research concerning acquired immune deficiency syndrome to participate in, and to support, the clinical trials conducted pursuant to the programs.

(d) Requirement of application

The Secretary may not provide financial assistance under subsection (a) of this section unless—

(1) an application for the assistance is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the assistance is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) Authorization of appropriations

(1) For the purpose of carrying out subsection (b)(1) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1996.

(2) For the purpose of carrying out subsection (b)(2) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1996.

(July 1, 1944, ch. 373, title XXIII, § 2313, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3068; amended Pub. L. 100–690, title II, § 2617(b), Nov. 18, 1988, 102 Stat. 4240; Pub. L. 101–93, § 6, Aug. 16, 1989, 103 Stat. 615; Pub. L. 102–96, § 3, Aug. 14, 1991, 105 Stat. 481.)

PRIOR PROVISIONS

A prior section 300cc–13, act July 1, 1944, § 2314, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

AMENDMENTS

1991—Pub. L. 102–96, § 3(1), substituted ''Terry Beirn Community-Based AIDS Research Initiative'' for ''Community-based evaluations of experimental therapies'' in section catchline.

Subsec. (c). Pub. L. 102–96, § 3(2), substituted '', schools of medicine and primary providers'' for ''and schools of medicine'' in heading and substituted ''schools of medicine, osteopathic medicine, and existing consortia of primary care providers organized to conduct clinical research concerning acquired immune deficiency syndrome'' for ''schools of medicine and osteopathic medicine''.

Subsec. (e). Pub. L. 102–96, § 3(3), substituted ''1996'' for ''1991'' in pars. (1) and (2).

1989—Subsec. (c). Pub. L. 101–93 inserted ''and osteopathic medicine'' after ''schools of medicine''.

1988—Subsec. (a). Pub. L. 100–690, § 2617(b)(1), which directed substitution of ''through the Director of the National Institute of Allergy'' for ''through the National Institutes of Allergy'', was executed by making substitution for ''through the National Institute of Allergy'' as the probable intent of Congress.

Subsec. (b)(2)(B)(iii). Pub. L. 100–690, § 2617(b)(2), which directed substitution of ''Institute'' for ''Insti-

tutes'', could not be executed because ''Institute'' was singular in original.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

FINDINGS AND SENSE OF CONGRESS

Section 2 of Pub. L. 102–96 provided that:

''(a) FINDINGS.—Congress finds that—

''(1) community-based clinical trials complement the National Institute of Allergy and Infectious Diseases' university-based research in order to provide increased access to experimental therapies;

''(2) community-based clinical trials provide an efficient and cost-effective means to develop new HIV-related treatments, benefiting all people living with HIV disease and other illnesses; and

''(3) because the community-based clinical trials model has a proven ability to conduct rapid trials that meet the very highest standards of scientific inquiry, this program should be reauthorized and significantly expanded.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that, because of Terry Beirn's tireless efforts to foster a partnership among all parties invested in AIDS research (including the National Institutes of Health university-based research system, primary care physicians practicing in the community, and patients), the community-based clinical trials program should be renamed as the 'Terry Beirn Community-Based AIDS Research Initiative' in his honor.''

§ 300cc–14. Evaluation of certain treatments

(a) Establishment of program

(1) After consultation with the AIDS Research Advisory Committee established pursuant to section 300cc–3 of this title, the Secretary shall establish a program for the evaluation of drugs that—

(A) are not approved by the Commissioner of Food and Drugs for the purpose of treatments with respect to acquired immune deficiency syndrome; and

(B) are being utilized for such purpose by individuals infected with the etiologic agent for such syndrome.

(2) The program established under paragraph (1) shall include evaluations of the effectiveness and the risks of the treatment involved, including the risks of foregoing treatments with respect to acquired immune deficiency syndrome that are approved by the Commissioner of Food and Drugs.

(b) Authority with respect to grants and contracts

(1) For the purpose of conducting evaluations required in subsection (a) of this section, the Secretary may make grants to, and enter into cooperative agreements and contracts with, public and nonprofit private entities.

(2) Nonprofit private entities under paragraph (1) may include nonprofit private organizations that—

(A) are established for the purpose of evaluating treatments with respect to acquired immune deficiency syndrome; and

(B) consist primarily of individuals infected with the etiologic agent for such syndrome.

(c) Scientific and ethical guidelines

(1) The Secretary shall establish appropriate scientific and ethical guidelines for the conduct of evaluations carried out pursuant to this section. The Secretary may not provide financial assistance under subsection (b)(1) of this section unless the applicant for such assistance agrees to comply with such guidelines.

(2) The Secretary may establish the guidelines described in paragraph (1) only after consulting with—

(A) physicians whose clinical practice includes a significant number of individuals with acquired immune deficiency syndrome;

(B) individuals who are infected with the etiologic agent for such syndrome; and

(C) other individuals with appropriate expertise or experience.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(July 1, 1944, ch. 373, title XXIII, § 2314, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3069; amended Pub. L. 103–43, title XX, § 2008(d)(3), June 10, 1993, 107 Stat. 212.)

PRIOR PROVISIONS

A prior section 300cc–14, act July 1, 1944, § 2315, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–43 substituted ''AIDS Research Advisory Committee'' for ''Clinical Research Review Committee'' in introductory provisions.

§ 300cc–15. Support of international efforts

(a) Grants and contracts for research

(1) Under section 242*l* of this title, the Secretary, acting through the Director of the National Institutes of Health—

(A) shall, for the purpose described in paragraph (2), make grants to, enter into cooperative agreements and contracts with, and provide technical assistance to, international organizations concerned with public health; and

(B) may, for such purpose, provide technical assistance to foreign governments.

(2) The purpose referred to in paragraph (1) is promoting and expediting international research and training concerning the natural history and pathogenesis of the human immunodeficiency virus and the development and evaluation of vaccines and treatments for acquired immune deficiency syndrome and opportunistic infections.

(b) Grants and contracts for additional purposes

After consultation with the Administrator of the Agency for International Development, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall under section 242*l* of this title make grants

to, enter into contracts with, and provide technical assistance to, international organizations concerned with public health and may provide technical assistance to foreign governments, in order to support—

(1) projects for training individuals with respect to developing skills and technical expertise for use in the prevention, diagnosis, and treatment of acquired immune deficiency syndrome; and

(2) epidemiological research relating to acquired immune deficiency syndrome.

(c) Special Programme of World Health Organization

Support provided by the Secretary pursuant to this section shall be in furtherance of the global strategy of the World Health Organization Special Programme on Acquired Immunodeficiency Syndrome.

(d) Preferences

In providing grants, cooperative agreements, contracts, and technical assistance under subsections (a) and (b) of this section, the Secretary shall—

(1) give preference to activities under such subsections conducted by, or in cooperation with, the World Health Organization; and

(2) with respect to activities carried out under such subsections in the Western Hemisphere, give preference to activities conducted by, or in cooperation with, the Pan American Health Organization or the World Health Organization.

(e) Requirement of application

The Secretary may not make a grant or enter into a cooperative agreement or contract under this section unless—

(1) an application for such assistance is submitted to the Secretary;

(2) with respect to carrying out the purpose for which such assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(f) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(July 1, 1944, ch. 373, title XXIII, §2315, as added Pub. L. 100–607, title II, §201(4), Nov. 4, 1988, 102 Stat. 3070; amended Pub. L. 102–531, title III, §312(d)(18), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 103–43, title XVIII, §1811(3), June 10, 1993, 107 Stat. 199.)

PRIOR PROVISIONS

A prior section 300cc–15, act July 1, 1944, §2316, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

AMENDMENTS

1993—Subsec. (a)(2). Pub. L. 103–43, §1811(3)(A), substituted ''international research and training concerning the natural history and pathogenesis of the human immunodeficiency virus and the development and evaluation of vaccines and treatments for acquired immune deficiency syndrome and opportunistic infections'' for ''international research concerning the development and evaluation of vaccines and treatments for acquired immune deficiency syndrome''.

Subsec. (f). Pub. L. 103–43, §1811(3)(B), substituted ''such sums as may be necessary for each fiscal year'' for ''there are authorized to be appropriated $40,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991''.

1992—Subsec. (b). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

§ 300cc–16. Research centers

(a) In general

(1) The Secretary, acting through the Director of the National Institute of Allergy and Infectious Diseases, may make grants to, and enter into contracts with, public and nonprofit private entities to assist such entities in planning, establishing, or strengthening, and providing basic operating support for, centers for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immune deficiency syndrome.

(2) A grant or contract under paragraph (1) shall be provided in accordance with policies established by the Secretary, acting through the Director of the National Institutes of Health, and after consultation with the advisory council for the National Institute of Allergy and Infectious Diseases.

(3) The Secretary shall ensure that, as appropriate, clinical research programs carried out under paragraph (1) include as research subjects women, children, hemophiliacs, and minorities.

(b) Use of financial assistance

(1) Financial assistance under subsection (a) of this section may be expended for—

(A) the renovation or leasing of space;

(B) staffing and other basic operating costs, including such patient care costs as are required for clinical research;

(C) clinical training with respect to acquired immune deficiency syndrome (including such training for allied health professionals); and

(D) demonstration purposes, including projects in the long-term monitoring and outpatient treatment of individuals infected with the etiologic agent for such syndrome.

(2) Financial assistance under subsection (a) of this section may not be expended to provide research training for which Ruth L. Kirschstein National Research Service Awards may be provided under section 288 of this title.

(c) Duration of support

Support of a center under subsection (a) of this section may be for not more than five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(July 1, 1944, ch. 373, title XXIII, § 2316, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3071; amended Pub. L. 107–206, title I, § 804(c), Aug. 2, 2002, 116 Stat. 874.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–206 substituted ''Ruth L. Kirschstein National Research Service Awards'' for ''National Research Service Awards''.

§ 300cc–17. Information services

(a) Establishment of program

The Secretary shall establish, maintain, and operate a program with respect to information on research, treatment, and prevention activities relating to infection with the etiologic agent for acquired immune deficiency syndrome. The program shall, with respect to the agencies of the Department of Health and Human Services, be integrated and coordinated.

(b) Toll-free telephone communications for health care entities

(1) After consultation with the Director of the Office of AIDS Research, the Administrator of the Health Resources and Services Administration, and the Director of the Centers for Disease Control and Prevention, the Secretary shall provide for toll-free telephone communications to provide medical and technical information with respect to acquired immune deficiency syndrome to health care professionals, allied health care providers, and to professionals providing emergency health services.

(2) Information provided pursuant to paragraph (1) shall include—

(A) information on prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome; and

(B) information contained in the data banks established in subsections (c) and (d) of this section.

(c) Data bank on research information

(1) After consultation with the Director of the Office of AIDS Research, the Director of the Centers for Disease Control and Prevention, and the National Library of Medicine, the Secretary shall establish a data bank of information on the results of research with respect to acquired immune deficiency syndrome conducted in the United States and other countries.

(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. To the extent practicable, the Secretary shall make such information available to researchers, physicians, and other appropriate individuals, of countries other than the United States.

(d) Data bank on clinical trials and treatments

(1) After consultation with the Commissioner of Food and Drugs, the AIDS Research Advisory Committee established under section 300cc–3 of this title, and the Director of the Office of AIDS Research, the Secretary shall, in carrying out subsection (a) of this section, establish a data bank of information on clinical trials and treatments with respect to infection with the etiologic agent for acquired immune deficiency syndrome (hereafter in this section referred to as the ''Data Bank'').

(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. The Secretary shall disseminate such information through information systems available to individuals infected with the etiologic agent for acquired immune deficiency syndrome, to other members of the public, to health care providers, and to researchers.

(e) Requirements with respect to data bank on clinical trials and treatments

The Data Bank shall include the following:

(1) A registry of clinical trials of experimental treatments for acquired immune deficiency syndrome and related illnesses conducted under regulations promulgated pursuant to section 355 of title 21 that provides a description of the purpose of each experimental drug protocol either with the consent of the protocol sponsor, or when a trial to test efficacy begins. Information provided shall include eligibility criteria and the location of trial sites, and must be forwarded to the Data Bank by the sponsor of the trial not later than 21 days after the approval by the Food and Drug Administration.

(2) Information pertaining to experimental treatments for acquired immune deficiency syndrome that may be available under a treatment investigational new drug application that has been submitted to the Food and Drug Administration pursuant to part 312 of title 21, Code of Federal Regulations. The Data Bank shall also include information pertaining to the results of clinical trials of such treatments, with the consent of the sponsor, of such experimental treatments, including information concerning potential toxicities or adverse effects associated with the use or administration of such experimental treatment.

(July 1, 1944, ch. 373, title XXIII, § 2317, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3071; amended Pub. L. 100–690, title II, § 2617(c), Nov. 18, 1988, 102 Stat. 4240; Pub. L. 102–531, title III, § 312(d)(19), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 103–43, title XX, § 2008(d)(4), June 10, 1993, 107 Stat. 212.)

AMENDMENTS

1993—Subsec. (d)(1). Pub. L. 103–43 substituted ''AIDS Research Advisory Committee established under section 300cc–3 of this title'' for ''Clinical Research Review Committee''.

1992—Subsecs. (b)(1), (c)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1988—Subsec. (e). Pub. L. 100–690 substituted ''data bank on clinical trials and treatments'' for ''data bank'' in heading.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300cc–18. Development of model protocols for clinical care of infected individuals

(a) In general

(1) The Secretary, acting through the Director of the National Institutes of Health and after

consultation with the Director of the Agency for Healthcare Research and Quality, may make grants to public and nonprofit private entities for the establishment of projects to develop model protocols for the clinical care of individuals infected with the etiologic agent for acquired immune deficiency syndrome, including treatment and prevention of HIV infection and related conditions among women.

(2) The Secretary may not make a grant under paragraph (1) unless—

(A) the applicant for the grant is a provider of comprehensive primary care; or

(B) the applicant for the grant agrees, with respect to the project carried out pursuant to paragraph (1), to enter into a cooperative arrangement with an entity that is a provider of comprehensive primary care.

(b) Requirement of provision of certain services

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees that, with respect to patients participating in the project carried out with the grant, services provided pursuant to the grant will include—

(1) monitoring, in clinical laboratories, of the condition of such patients;

(2) clinical intervention for infection with the etiologic agent for acquired immune deficiency syndrome, including measures for the prevention of conditions arising from the infection;

(3) information and counseling on the availability of treatments for such infection approved by the Commissioner of Food and Drugs, on the availability of treatments for such infection not yet approved by the Commissioner, and on the reports issued by the AIDS Research Advisory Committee under section 300cc–3(c)(2)(B) of this title;

(4) support groups; and

(5) information on, and referrals to, entities providing appropriate social support services.

(c) Limitation on imposition of charges for services

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees that, if the applicant will routinely impose a charge for providing services pursuant to the grant, the applicant will not impose the charge on any individual seeking such services who is unable to pay the charge.

(d) Evaluation and reports

(1) The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees, with respect to the project carried out pursuant to subsection (a) of this section, to submit to the Secretary—

(A) information sufficient to assist in the replication of the model protocol developed pursuant to the project; and

(B) such reports as the Secretary may require.

(2) The Secretary shall provide for evaluations of projects carried out pursuant to subsection (a) of this section and shall annually submit to the Congress a report describing such projects. The report shall include the findings made as a result of such evaluations and may include any recommendations of the Secretary for appropriate administrative and legislative initiatives with respect to the program established in this section.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991, and such sums as may be necessary for each of the fiscal years 1994 through 1996.

(July 1, 1944, ch. 373, title XXIII, § 2318, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3073; amended Pub. L. 103–43, title XVIII, § 1811(4), title XX, § 2008(d)(5), June 10, 1993, 107 Stat. 199, 212; Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670.)

AMENDMENTS

1999—Subsec. (a)(1). Pub. L. 106–129 substituted ''Director of the Agency for Healthcare Research and Quality'' for ''Administrator for Health Care Policy and Research''.

1993—Subsec. (a)(1). Pub. L. 103–43, § 1811(4)(A), inserted '', acting through the Director of the National Institutes of Health and after consultation with the Administrator for Health Care Policy and Research,'' after ''The Secretary'' and '', including treatment and prevention of HIV infection and related conditions among women'' after ''syndrome''.

Subsec. (b)(3). Pub. L. 103–43, § 2008(d)(5), substituted ''AIDS Research Advisory Committee'' for ''Clinical Research Review Committee''.

Subsec. (e). Pub. L. 103–43, § 1811(4)(B), inserted before period at end '', and such sums as may be necessary for each of the fiscal years 1994 through 1996''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d)(2) of this section relating to annual submission to Congress of reports describing projects carried out pursuant to subsec. (a) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 94 of House Document No. 103–7.

§ 300cc–19. National blood resource education program

After consultation with the Director of the National Heart, Lung, and Blood Institute and the Commissioner of Food and Drugs, the Secretary shall establish a program of research and education regarding blood donations and transfusions to maintain and improve the safety of the blood supply. Education programs shall be directed at health professionals, patients, and the community to—

(1) in the case of the public and patients undergoing treatment—

(A) increase awareness that the process of donating blood is safe;

(B) promote the concept that blood donors are contributors to a national need to maintain an adequate and safe blood supply;

(C) encourage blood donors to donate more than once a year; and

(D) encourage repeat blood donors to recruit new donors;

(2) in the case of health professionals—

(A) improve knowledge, attitudes, and skills of health professionals in the appropriate use of blood and blood components;

(B) increase the awareness and understanding of health professionals regarding the risks versus benefits of blood transfusion; and

(C) encourage health professionals to consider alternatives to the administration of blood or blood components for their patients; and

(3) in the case of the community, increase coordination, communication, and collaboration among community, professional, industry, and government organizations regarding blood donation and transfusion issues.

(July 1, 1944, ch. 373, title XXIII, § 2319, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3074.)

§ 300cc–20. Additional authority with respect to research

(a) Data collection with respect to national prevalence

(1) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may, through representative sampling and other appropriate methodologies, provide for the continuous collection of data on the incidence in the United States of cases of acquired immune deficiency syndrome and of cases of infection with the etiologic agent for such syndrome. The Secretary may carry out the program of data collection directly or through cooperative agreements and contracts with public and nonprofit private entities.

(2) The Secretary shall encourage each State to enter into a cooperative agreement or contract under paragraph (1) with the Secretary in order to facilitate the prompt collection of the most recent accurate data on the incidence of cases described in such paragraph.

(3) The Secretary shall ensure that data collected under paragraph (1) includes data on the demographic characteristics of the population of individuals with cases described in paragraph (1), including data on specific subpopulations at risk of infection with the etiologic agent for acquired immune deficiency syndrome.

(4) In carrying out this subsection, the Secretary shall, for the purpose of assuring the utility of data collected under this section, request entities with expertise in the methodologies of data collection to provide, as soon as is practicable, assistance to the Secretary and to the States with respect to the development and utilization of uniform methodologies of data collection.

(5) The Secretary shall provide for the dissemination of data collected pursuant to this subsection. In carrying out this paragraph, the Secretary may publish such data as frequently as the Secretary determines to be appropriate with respect to the protection of the public health. The Secretary shall publish such data not less than once each year.

(b) Epidemiological and demographic data

(1) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop an epidemiological data base and shall provide for long-term studies for the purposes of—

(A) collecting information on the demographic characteristics of the population of individuals infected with the etiologic agent for acquired immune deficiency syndrome and the natural history of such infection; and

(B) developing models demonstrating the long-term domestic and international patterns of the transmission of such etiologic agent.

(2) The Secretary may carry out paragraph (1) directly or through grants to, or cooperative agreeements[1] or contracts with, public and nonprofit private entities, including Federal agencies.

(c) Long-term research

The Secretary may make grants to public and nonprofit private entities for the purpose of assisting grantees in conducting long-term research into treatments for acquired immune deficiency syndrome developed from knowledge of the genetic nature of the etiologic agent for such syndrome.

(d) Social sciences research

The Secretary, acting through the Director of the National Institute of Mental Health, may make grants to public and nonprofit private entities for the purpose of assisting grantees in conducting scientific research into the psychological and social sciences as such sciences relate to acquired immune deficiency syndrome.

(e) Authorization of appropriations

(1) For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(2) Amounts appropriated pursuant to paragraph (1) to carry out subsection (c) of this section shall remain available until expended.

(July 1, 1944, ch. 373, title XXIII, § 2320, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3074; amended Pub. L. 100–690, title II, § 2617(d), Nov. 18, 1988, 102 Stat. 4240; Pub. L. 102–531, title III, § 312(d)(20), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 103–43, title XVIII, § 1811(5), (6), June 10, 1993, 107 Stat. 200.)

AMENDMENTS

1993—Subsec. (b)(1)(A). Pub. L. 103–43, § 1811(5), inserted ''and the natural history of such infection'' after ''syndrome''.

Subsec. (e)(1). Pub. L. 103–43, § 1811(6), substituted ''fiscal year'' for ''of the fiscal years 1989 through 1991''.

1992—Subsecs. (a)(1), (b)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1988—Subsec. (a)(5). Pub. L. 100–690 substituted ''subsection'' for ''section''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

PART C—RESEARCH TRAINING

§ 300cc–31. Fellowships and training

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention,

[1] So in original.

shall establish fellowship and training programs to be conducted by the Centers for Disease Control and Prevention to train individuals to develop skills in epidemiology, surveillance, testing, counseling, education, information, and laboratory analysis relating to acquired immune deficiency syndrome. Such programs shall be designed to enable health professionals and health personnel trained under such programs to work, after receiving such training, in national and international efforts toward the prevention, diagnosis, and treatment of acquired immune deficiency syndrome.

(b) Programs conducted by National Institute of Mental Health

The Secretary, acting through the Director of the National Institute of Mental Health, shall conduct or support fellowship and training programs for individuals pursuing graduate or postgraduate study in order to train such individuals to conduct scientific research into the psychological and social sciences as such sciences relate to acquired immune deficiency syndrome.

(c) Relationship to limitation on number of employees

Any individual receiving a fellowship or receiving training under subsection (a) or (b) of this section shall not be included in any determination of the number of full-time equivalent employees of the Department of Health and Human Services for the purpose of any limitation on the number of such employees established by law prior to, on, or after November 4, 1988.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(July 1, 1944, ch. 373, title XXIII, § 2341, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3076; amended Pub. L. 100–690, title II, § 2617(e), Nov. 18, 1988, 102 Stat. 4240; Pub. L. 102–531, title III, § 312(d)(21), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 103–43, title XVIII, § 1811(7), June 10, 1993, 107 Stat. 200.)

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–43 substituted ''fiscal year'' for ''of the fiscal years 1989 through 1991''.

1992—Subsec. (a). Pub. L. 102–531, which directed the substitution of ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'', was executed by making the substitution in two places to reflect the probable intent of Congress.

1988—Subsec. (c). Pub. L. 100–690 substituted ''date of the enactment of the AIDS Amendments of 1988'' for ''date of the enactment of the AIDS Federal Policy Act of 1988'' which for purposes of codification was translated as ''November 4, 1988''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

PART D—OFFICE OF AIDS RESEARCH

SUBPART I—INTERAGENCY COORDINATION OF ACTIVITIES

AMENDMENTS

1993—Pub. L. 103–43, title XVIII, § 1801(a)(1), (3), June 10, 1993, 107 Stat. 192, added part D designation and heading and subpart I heading and struck out former part D designation and heading ''Special Authorities of the Director of the National Institutes of Health''.

§ 300cc–40. Establishment of Office

(a) In general

There is established within the National Institutes of Health an office to be known as the Office of AIDS Research. The Office shall be headed by a director, who shall be appointed by the Secretary.

(b) Duties

(1) Interagency coordination of AIDS activities

With respect to acquired immune deficiency syndrome, the Director of the Office shall plan, coordinate, and evaluate research and other activities conducted or supported by the agencies of the National Institutes of Health. In carrying out the preceding sentence, the Director of the Office shall evaluate the AIDS activities of each of such agencies and shall provide for the periodic reevaluation of such activities.

(2) Consultations

The Director of the Office shall carry out this subpart (including developing and revising the plan required in section 300cc–40b of this title) in consultation with the heads of the agencies of the National Institutes of Health, with the advisory councils of the agencies, and with the advisory council established under section 300cc–40a of this title.

(3) Coordination

The Director of the Office shall act as the primary Federal official with responsibility for overseeing all AIDS research conducted or supported by the National Institutes of Health, and

(A) shall serve to represent the National Institutes of Health AIDS Research Program at all relevant Executive branch task forces and committees; and

(B) shall maintain communications with all relevant Public Health Service agencies and with various other departments of the Federal Government, to ensure the timely transmission of information concerning advances in AIDS research and the clinical treatment of acquired immune deficiency syndrome and its related conditions, between these various agencies for dissemination to affected communities and health care providers.

(July 1, 1944, ch. 373, title XXIII, § 2351, as added Pub. L. 103–43, title XVIII, § 1801(a)(3), June 10, 1993, 107 Stat. 192.)

§ 300cc–40a. Advisory Council; coordinating committees

(a) Advisory Council

(1) In general

The Secretary shall establish an advisory council for the purpose of providing advice to the Director of the Office on carrying out this part. (Such council is referred to in this subsection as the ''Advisory Council''.)

(2) Composition, compensation, terms, chair, etc.

Subsections (b) through (g) of section 284a of this title apply to the Advisory Council to the same extent and in the same manner as such subsections apply to advisory councils for the national research institutes, except that—

(A) in addition to the ex officio members specified in section 284a(b)(2) of this title, there shall serve as such members of the Advisory Council a representative from the advisory council of each of the National Cancer Institute and the National Institute on Allergy and Infectious Diseases; and

(B) with respect to the other national research institutes, there shall serve as ex officio members of such Council, in addition to such members specified in subparagraph (A), a representative from the advisory council of each of the 2 institutes that receive the greatest funding for AIDS activities.

(b) Individual coordinating committees regarding research disciplines

(1) In general

The Director of the Office shall establish, for each research discipline in which any activity under the plan required in section 300cc–40b of this title is carried out, a committee for the purpose of providing advice to the Director of the Office on carrying out this part with respect to such discipline. (Each such committee is referred to in this subsection as a ''coordinating committee''.)

(2) Composition

Each coordinating committee shall be composed of representatives of the agencies of the National Institutes of Health with significant responsibilities regarding the research discipline involved.

(July 1, 1944, ch. 373, title XXIII, § 2352, as added Pub. L. 103–43, title XVIII, § 1801(a)(3), June 10, 1993, 107 Stat. 193.)

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 300cc–40b. Comprehensive plan for expenditure of appropriations

(a) In general

Subject to the provisions of this section and other applicable law, the Director of the Office, in carrying out section 300cc–40 of this title, shall—

(1) establish a comprehensive plan for the conduct and support of all AIDS activities of the agencies of the National Institutes of Health (which plan shall be first established under this paragraph not later than 12 months after June 10, 1993);

(2) ensure that the Plan establishes priorities among the AIDS activities that such agencies are authorized to carry out;

(3) ensure that the Plan establishes objectives regarding such activities, describes the means for achieving the objectives, and designates the date by which the objectives are expected to be achieved;

(4) ensure that all amounts appropriated for such activities are expended in accordance with the Plan;

(5) review the Plan not less than annually, and revise the Plan as appropriate; and

(6) ensure that the Plan serves as a broad, binding statement of policies regarding AIDS activities of the agencies, but does not remove the responsibility of the heads of the agencies for the approval of specific programs or projects, or for other details of the daily administration of such activities, in accordance with the Plan.

(b) Certain components of Plan

With respect to AIDS activities of the agencies of the National Institutes of Health, the Director of the Office shall ensure that the Plan—

(1) provides for basic research;

(2) provides for applied research;

(3) provides for research that is conducted by the agencies;

(4) provides for research that is supported by the agencies;

(5) provides for proposals developed pursuant to solicitations by the agencies and for proposals developed independently of such solicitations; and

(6) provides for behavioral research and social sciences research.

(c) Budget estimates

(1) Full-funding budget

(A) With respect to a fiscal year, the Director of the Office shall prepare and submit directly to the President, for review and transmittal to the Congress, a budget estimate for carrying out the Plan for the fiscal year, after reasonable opportunity for comment (but without change) by the Secretary, the Director of the National Institutes of Health, and the advisory council established under section 300cc–40a of this title. The budget estimate shall include an estimate of the number and type of personnel needs for the Office.

(B) The budget estimate submitted under subparagraph (A) shall estimate the amounts

necessary for the agencies of the National Institutes of Health to carry out all AIDS activities determined by the Director of the Office to be appropriate, without regard to the probability that such amounts will be appropriated.

(2) Alternative budgets

(A) With respect to a fiscal year, the Director of the Office shall prepare and submit to the Secretary and the Director of the National Institutes of Health the budget estimates described in subparagraph (B) for carrying out the Plan for the fiscal year. The Secretary and such Director shall consider each of such estimates in making recommendations to the President regarding a budget for the Plan for such year.

(B) With respect to the fiscal year involved, the budget estimates referred to in subparagraph (A) for the Plan are as follows:

(i) The budget estimate submitted under paragraph (1).

(ii) A budget estimate developed on the assumption that the amounts appropriated will be sufficient only for—

(I) continuing the conduct by the agencies of the National Institutes of Health of existing AIDS activities (if approved for continuation), and continuing the support of such activities by the agencies in the case of projects or programs for which the agencies have made a commitment of continued support; and

(II) carrying out, of activities that are in addition to activities specified in subclause (I), only such activities for which the Director determines there is the most substantial need.

(iii) Such other budget estimates as the Director of the Office determines to be appropriate.

(d) Funding

(1) Authorization of appropriations

For the purpose of carrying out AIDS activities under the Plan, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 1996.

(2) Receipt of funds

For the first fiscal year beginning after the date on which the Plan first established under subsection (a)(1) of this section has been in effect for 12 months, and for each subsequent fiscal year, the Director of the Office shall receive directly from the President and the Director of the Office of Management and Budget all funds available for AIDS activities of the National Institutes of Health.

(3) Allocations for agencies

(A) Each fiscal year the Director of the Office shall, from the amounts received under paragraph (2) for the fiscal year, allocate to the agencies of the National Institutes of Health (in accordance with the Plan) all amounts available for such year for carrying out the AIDS activities specified in subsection (c)(2)(B)(ii)(I) of this section for such year. Such allocation shall, to the extent practicable, be made not later than 15 days after the date on which the Director receives amounts under paragraph (2).

(B) Each fiscal year the Director of the Office shall, from the amounts received under paragraph (2) for the fiscal year, allocate to the agencies of the National Institutes of Health (in accordance with the Plan) all amounts available for such year for carrying out AIDS activities that are not referred to in subparagraph (A). Such allocation shall, to the extent practicable, be made not later than 30 days after the date on which the Director receives amounts under paragraph (2).

(July 1, 1944, ch. 373, title XXIII, § 2353, as added Pub. L. 103–43, title XVIII, § 1801(a)(3), June 10, 1993, 107 Stat. 194.)

§ 300cc–41. Additional authorities

(a) In general

In carrying out AIDS research, the Director of the Office—

(1) shall develop and expand clinical trials of treatments and therapies for infection with the etiologic agent for acquired immune deficiency syndrome, including such clinical trials for women, infants, children, hemophiliacs, and minorities;

(2) may establish or support the large-scale development and preclinical screening, production, or distribution of specialized biological materials and other therapeutic substances for AIDS research and set standards of safety and care for persons using such materials;

(3) may support—

(A) AIDS research conducted outside the United States by qualified foreign professionals if such research can reasonably be expected to benefit the people of the United States;

(B) collaborative research involving American and foreign participants; and

(C) the training of American scientists abroad and foreign scientists in the United States;

(4) may encourage and coordinate AIDS research conducted by any industrial concern that evidences a particular capability for the conduct of such research;

(5)(A) may acquire, improve, repair, operate, and maintain laboratories, other research facilities, equipment, and such other real or personal property as the Director of the Office determines necessary;

(B) may make grants for the construction or renovation of facilities; and

(C) may acquire, without regard to section 8141 of title 40 by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the National Institutes of Health for a period not to exceed ten years; and

(6) subject to section 284(b)(2) of this title and without regard to section 3324 of title 31 and section 5 of title 41, may enter into such contracts and cooperative agreements with any public agency, or with any person, firm,

association, corporation, or educational institution, as may be necessary to expedite and coordinate research relating to acquired immune deficiency syndrome.

(b) Report to Secretary

The Director of the Office shall each fiscal year prepare and submit to the Secretary, for inclusion in the comprehensive report required in section 300cc(a) of this title, a report—

(1) describing and evaluating the progress made in such fiscal year in research, treatment, and training with respect to acquired immune deficiency syndrome conducted or supported by the Institutes;

(2) summarizing and analyzing expenditures made in such fiscal year for activities with respect to acquired immune deficiency syndrome conducted or supported by the National Institutes of Health; and

(3) containing such recommendations as the Director considers appropriate.

(c) Projects for cooperation among public and private health entities

In carrying out subsection (a) of this section, the Director of the Office shall establish projects to promote cooperation among Federal agencies, State, local, and regional public health agencies, and private entities, in research concerning the diagnosis, prevention, and treatment of acquired immune deficiency syndrome.

(July 1, 1944, ch. 373, title XXIII, § 2354, formerly § 2351, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3076; renumbered § 2354 and amended Pub. L. 103–43, title XVIII, § 1801(a)(2), (b), June 10, 1993, 107 Stat. 192, 196.)

CODIFICATION

In subsec. (a)(5)(C), ''section 8141 of title 40'' substituted for ''the Act of March 3, 1877 (40 U.S.C. 34)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1993—Pub. L. 103–43, § 1801(b)(1), substituted ''Additional'' for ''Establishment of'' in section catchline.

Subsec. (a). Pub. L. 103–43, § 1801(b)(2)(A), in introductory provisions substituted ''AIDS research, the Director of the Office'' for ''research with respect to acquired immune deficiency syndrome, the Secretary, acting through the Director of the National Institutes of Health''.

Subsec. (a)(1). Pub. L. 103–43, § 1801(b)(2)(B), redesignated par. (3) as (1) and struck out former par. (1) which read as follows:

''(A) shall establish an office to be known as the Office of AIDS Research, which Office shall be headed by a Director appointed by the Director of the National Institutes of Health; and

''(B) shall provide administrative support and support services to the Director of such Office;''.

Subsec. (a)(2). Pub. L. 103–43, § 1801(b)(2)(B), (E), redesignated par. (4) as (2), substituted ''AIDS research'' for ''research relating to acquired immune deficiency syndrome'', and struck out former par. (2) which read as follows: ''shall coordinate activities relating to acquired immune deficiency syndrome conducted by the national research institutes and the agencies of the National Institutes of Health;''.

Subsec. (a)(3). Pub. L. 103–43, § 1801(b)(2)(B), (C), (E), redesignated par. (5) as (3), struck out '', in consultation with the advisory council for the appropriate national research institute of the National Institutes of Health,'' after ''may'' in introductory provisions, and substituted ''AIDS research'' for ''research relating to acquired immune deficiency syndrome'' in subpar. (A). Former par. (3) redesignated (1).

Subsec. (a)(4). Pub. L. 103–43, § 1801(b)(2)(B), (E), redesignated par. (6) as (4) and substituted ''AIDS research'' for ''research relating to acquired immune deficiency syndrome''. Former par. (4) redesignated (2).

Subsec. (a)(5). Pub. L. 103–43, § 1801(b)(2)(B), (D), redesignated par. (7) as (5), in subpar. (A) struck out '', in consultation with such advisory council,'' after ''may'' and substituted ''Director of the Office determines'' for ''Director of the National Institutes of Health determines'', and in subpars. (B) and (C) struck out '', in consultation with such advisory council,'' after ''may''. Former par. (5) redesignated (3).

Subsec. (a)(6) to (8). Pub. L. 103–43, § 1801(b)(2)(B), redesignated pars. (6) to (8) as (4) to (6), respectively.

Subsec. (b). Pub. L. 103–43, § 1801(b)(3), substituted ''The Director of the Office shall'' for ''The Director of the National Institutes of Health, acting through the Director of the Office of AIDS Research, shall''.

Subsec. (c). Pub. L. 103–43, § 1801(b)(4), substituted ''the Director of the Office shall'' for ''the Director of the National Institutes of Health shall''.

SUBPART II—EMERGENCY DISCRETIONARY FUND

§ 300cc–43. Emergency Discretionary Fund

(a) In general

(1) Establishment

There is established a fund consisting of such amounts as may be appropriated under subsection (g) of this section. Subject to the provisions of this section, the Director of the Office, after consultation with the advisory council established under section 300cc–40a of this title, may expend amounts in the Fund for the purpose of conducting and supporting such AIDS activities, including projects of AIDS research, as may be authorized in this chapter for the National Institutes of Health.

(2) Preconditions to use of Fund

Amounts in the Fund may be expended only if—

(A) the Director identifies the particular set of AIDS activities for which such amounts are to be expended;

(B) the set of activities so identified constitutes either a new project or additional AIDS activities for an existing project;

(C) the Director of the Office has made a determination that there is a significant need for such set of activities; and

(D) as of June 30 of the fiscal year preceding the fiscal year in which the determination is made, such need was not provided for in any appropriations Act passed by the House of Representatives to make appropriations for the Departments of Labor, Health and Human Services (including the National Institutes of Health), Education, and related agencies for the fiscal year in which the determination is made.

(3) Two-year use of Fund for project involved

In the case of an identified set of AIDS activities, obligations of amounts in the Fund may not be made for such set of activities after the expiration of the 2-year period beginning on the date on which the initial obligation of such amounts is made for such set.

(b) Peer review

With respect to an identified set of AIDS activities carried out with amounts in the Fund,

this section may not be construed as waiving applicable requirements for peer review.

(c) Limitations on use of Fund

(1) Construction of facilities

Amounts in the Fund may not be used for the construction, renovation, or relocation of facilities, or for the acquisition of land.

(2) Congressional disapproval of projects

(A) Amounts in the Fund may not be expended for the fiscal year involved for an identified set of AIDS activities, or a category of AIDS activities, for which—

(i)(I) amounts were made available in an appropriations Act for the preceding fiscal year; and

(II) amounts are not made available in any appropriations Act for the fiscal year involved; or

(ii) amounts are by law prohibited from being expended.

(B) A determination under subparagraph (A)(i) of whether amounts have been made available in appropriations Acts for a fiscal year shall be made without regard to whether such Acts make available amounts for the Fund.

(3) Investment of Fund amounts

Amounts in the Fund may not be invested.

(d) Applicability of limitation regarding number of employees

The purposes for which amounts in the Fund may be expended include the employment of individuals necessary to carry out identified sets of AIDS activities approved under subsection (a) of this section. Any individual employed under the preceding sentence may not be included in any determination of the number of full-time equivalent employees for the Department of Health and Human Services for the purpose of any limitation on the number of such employees established by law prior to, on, or after June 10, 1993.

(e) Report to Congress

Not later than February 1 of each fiscal year, the Director of the Office shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report on the identified sets of AIDS activities carried out during the preceding fiscal year with amounts in the Fund. The report shall provide a description of each such set of activities and an explanation of the reasons underlying the use of the Fund for the set.

(f) Definitions

For purposes of this section:

(1) The term ''Fund'' means the fund established in subsection (a) of this section.

(2) The term ''identified set of AIDS activities'' means a particular set of AIDS activities identified under subsection (a)(2)(A) of this section.

(g) Funding

(1) Authorization of appropriations

For the purpose of providing amounts for the Fund, there is authorized to be appropriated $100,000,000 for each of the fiscal years 1994 through 1996.

(2) Availability

Amounts appropriated for the Fund are available until expended.

(July 1, 1944, ch. 373, title XXIII, § 2356, as added Pub. L. 103–43, title XVIII, § 1802, June 10, 1993, 107 Stat. 196.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

SUBPART III—GENERAL PROVISIONS

§ 300cc–45. General provisions regarding Office

(a) Administrative support for Office

The Secretary, acting through the Director of the National Institutes of Health, shall provide administrative support and support services to the Director of the Office and shall ensure that such support takes maximum advantage of existing administrative structures at the agencies of the National Institutes of Health.

(b) Evaluation and report

(1) Evaluation

Not later than 5 years after June 10, 1993, the Secretary shall conduct an evaluation to—

(A) determine the effect of this section on the planning and coordination of the AIDS research programs at the institutes, centers and divisions of the National Institutes of Health;

(B) evaluate the extent to which this part has eliminated the duplication of administrative resources among such Institutes, centers and divisions; and

(C) provide recommendations concerning future alterations with respect to this part.

(2) Report

Not later than 1 year after the date on which the evaluation is commenced under paragraph (1), the Secretary shall prepare and submit to the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives, a report concerning the results of such evaluation.

(c) Definitions

For purposes of this part:

(1) The term ''AIDS activities'' means AIDS research and other activities that relate to acquired immune deficiency syndrome.

(2) The term ''AIDS research'' means research with respect to acquired immune deficiency syndrome.

(3) The term ''Office'' means the Office of AIDS Research.

(4) The term ''Plan'' means the plan required in section 300cc–40b(a)(1) of this title.

(July 1, 1944, ch. 373, title XXIII, § 2359, as added Pub. L. 103–43, title XVIII, § 1803, June 10, 1993, 107 Stat. 198.)

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

PART E—GENERAL PROVISIONS

§ 300cc–51. Definitions

For purposes of this subchapter:

(1) The term ''infection'', with respect to the etiologic agent for acquired immune deficiency syndrome, includes opportunistic cancers and infectious diseases and any other conditions arising from infection with such etiologic agent.

(2) The term ''treatment'', with respect to the etiologic agent for acquired immune deficiency syndrome, includes primary and secondary prophylaxis.

(July 1, 1944, ch. 373, title XXIII, § 2361, as added Pub. L. 100–607, title II, § 201(4), Nov. 4, 1988, 102 Stat. 3078; amended Pub. L. 103–43, title XVIII, § 1811(8), June 10, 1993, 107 Stat. 200.)

AMENDMENTS

1993—Pub. L. 103–43 substituted provisions defining ''infection'' and ''treatment'' for former provisions which read as follows: ''For purposes of this subchapter, the term 'infection with the etiologic agent for acquired immune deficiency syndrome' includes any condition arising from infection with such etiologic agent''.

SUBCHAPTER XXII—HEALTH SERVICES WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

PART A—FORMULA GRANTS TO STATES FOR HOME AND COMMUNITY-BASED HEALTH SERVICES

§§ 300dd to 300dd–14. Repealed. July 1, 1944, ch. 373, title XXIV, § 2415, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3088; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(g), 102 Stat. 4241

Section 300dd, act July 1, 1944, ch. 373, title XXIV, § 2401, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3079, established program of formula grants for home and community-based health services.

Section 300dd–1, act July 1, 1944, ch. 373, title XXIV, § 2402, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3080; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(a), 102 Stat. 4240, provided requirements for carrying out purpose of grants.

Section 300dd–2, act July 1, 1944, ch. 373, title XXIV, § 2403, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3081, required submission of description of intended uses of grant.

Section 300dd–3, act July 1, 1944, ch. 373, title XXIV, § 2404, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3081; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(b), 102 Stat. 4240, restricted use of grants.

Section 300dd–4, act July 1, 1944, ch. 373, title XXIV, § 2405, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3082, required reports and audits by States.

Section 300dd–5, act July 1, 1944, ch. 373, title XXIV, § 2406, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3083, required additional agreements.

Section 300dd–6, act July 1, 1944, ch. 373, title XXIV, § 2407, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3084, required submission of application containing certain agreements and assurances.

Section 300dd–7, act July 1, 1944, ch. 373, title XXIV, § 2408, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3084, provided for determination of amount of allotments for States.

Section 300dd–8, act July 1, 1944, ch. 373, title XXIV, § 2409, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3085; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(c), 102 Stat. 4241, related to failure to comply with agreements.

Section 300dd–9, act July 1, 1944, ch. 373, title XXIV, § 2410, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3087, prohibited certain false statements.

Section 300dd–10, act July 1, 1944, ch. 373, title XXIV, § 2411, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3087; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(d), 102 Stat. 4241, authorized the Secretary to provide technical assistance and supplies and services in lieu of grant funds.

Section 300dd–11, act July 1, 1944, ch. 373, title XXIV, § 2412, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3087, required report by Secretary.

Section 300dd–12, act July 1, 1944, ch. 373, title XXIV, § 2413, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3087; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(e), 102 Stat. 4241, defined terms for this part.

Section 300dd–13, act July 1, 1944, ch. 373, title XXIV, § 2414, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3088; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(f), 102 Stat. 4241, provided funding.

Section 300dd–14, act July 1, 1944, ch. 373, title XXIV, § 2415, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3088; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(g), 102 Stat. 4241, repealed this part effective with respect to appropriations made for any period after fiscal year 1990.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to appropriations made for any period after fiscal year 1990, see section 2415 of act July 1, 1944, which was classified to former section 300dd–14 of this title.

PART B—SUBACUTE CARE

§ 300dd–21. Demonstration projects

(a) Definitions

As used in this section:

(1) The term ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' means individuals who have a disease, or are recovering from a disease, attributable to the infection of such individuals with such etiologic agent, and as a result of the effects of such disease, are in need of subacute-care services.

(2) The term ''subacute care'' means medical and health care services that are required for individuals recovering from acute care episodes that are less intensive than the level of care provided in acute-care hospitals, and includes skilled nursing care, hospice care, and other types of health services provided in other long-term-care facilities.

(b) Authorization to conduct three projects

The Secretary shall conduct three demonstration projects to determine the effectiveness and cost of providing the subacute-care services described in subsection (b) of this section to individuals infected with the etiologic agent for acquired immune deficiency syndrome, and the impact of such services on the health status of such individuals.

(c) Services

(1) The services provided under each demonstration project shall be designed to meet the specific needs of individuals infected with the etiologic agent for acquired immune deficiency syndrome, and shall include—

(A) the care and treatment of such individuals by providing—

(i) subacute care;

(ii) emergency medical care and specialized diagnostic and therapeutic services as needed and where appropriate, either directly or through affiliation with a hospital that has experience in treating individuals with acquired immune deficiency syndrome; and

(iii) case management services to ensure, through existing services and programs whenever possible, appropriate discharge planning for such individuals; and

(B) technical assistance, to other facilities in the region served by such facility, that is directed toward education and training of physicians, nurses, and other health-care professionals in the subacute care and treatment of individuals infected with the etiologic agent for acquired immune deficiency syndrome.

(2) Services provided under each demonstration project may also include—

(A) hospice services;

(B) outpatient care; and

(C) outreach activities in the surrounding community to hospitals and other health-care facilities that serve individuals infected with the etiologic agent for acquired immune deficiency syndrome.

(d) Time and place

The demonstration projects shall be conducted—

(1) during a 4-year period beginning not later than 9 months after November 4, 1988; and

(2) at sites that—

(A) are geographically diverse and located in areas that are appropriate for the provision of the required and authorized services; and

(B) have the highest incidence of cases of acquired immune deficiency syndrome and the greatest need for subacute-care services.

(e) Evaluation and report

The Secretary shall evaluate the operations of the demonstration projects and shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate—

(1) not later than 18 months after the beginning of the first project, a preliminary report that contains—

(A) a description of the sites at which the projects are being conducted and of the services being provided in each project; and

(B) a preliminary evaluation of the experience of the projects in the first 12 months of operation; and

(2) not later than 6 months after the completion of the last project, a final report that contains—

(A) an assessment of the costs of subacute care for individuals infected with the etiologic agent for acquired immune deficiency syndrome, including a breakdown of all other sources of funding for the care provided to cover subacute care; and

(B) recommendations for appropriate legislative changes.

(f) Other research

Each demonstration project shall provide for other research to be carried out at the site of such demonstration project including—

(1) clinical research on acquired immune deficiency syndrome, concentrating on research on the neurological manifestations resulting from infection with the etiologic agent for such syndrome; and

(2) the study of the psychological and mental health issues related to such syndrome.

(g) Authorization of appropriations

(1) To carry out this section, there are authorized to be appropriated $10,000,000 for fiscal year 1989 and such sums as are necessary for each of the fiscal years 1990 through 1992.

(2) Amounts appropriated pursuant to paragraph (1) shall remain available until September 10, 1992.

(h) Services to veterans

The Secretary shall enter into an agreement with the Secretary of the Department of Veterans Affairs to ensure that appropriate provision will be made for the furnishing, through demonstration projects, of services to eligible veterans, under contract with the Department of Veterans Affairs pursuant to section 1720 of title 38.

(July 1, 1944, ch. 373, title XXIV, § 2421, as added Pub. L. 100–607, title II, § 211, Nov. 4, 1988, 102 Stat. 3088; amended Pub. L. 100–527, § 10(1), (2), Oct. 25, 1988, 102 Stat. 2640, 2641; Pub. L. 100–690, title II, § 2618(h), Nov. 18, 1988, 102 Stat. 4241; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Subsec. (h). Pub. L. 102–83 substituted ''section 1720 of title 38'' for ''section 620 of title 38''.

1988—Subsec. (a)(1). Pub. L. 100–690, § 2618(h)(1), substituted '' 'individuals infected with the etiologic agent for acquired immune deficiency syndrome' means individuals who'' for '' 'patients infected with the human immunodeficiency virus' means persons who'' and ''such individuals with such etiologic agent'' for ''such person with the human immunodeficiency virus''.

Subsec. (a)(2). Pub. L. 100–690, § 2618(h)(2), substituted ''individuals'' for ''persons''.

Subsec. (b). Pub. L. 100–690, § 2618(h)(3), substituted ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' for ''patients infected with the human immunodeficiency virus'' and ''such individuals'' for ''such patients''.

Subsec. (c)(1). Pub. L. 100–690, § 2618(h)(4)(A), in introductory provisions substituted ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' for ''patients infected with the human immunodeficiency virus''.

Subsec. (c)(1)(A). Pub. L. 100–690, § 2618(h)(4)(B), substituted in introductory provisions ''such individuals'' for ''such patients'', in cl. (ii) ''individuals with acquired immune deficiency syndrome'' for ''AIDS patients'', and in cl. (iii) ''such individuals'' for ''patients''.

Subsec. (c)(1)(B), (2)(C). Pub. L. 100–690, § 2618(h)(4)(C), (5), substituted ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' for ''patients infected with the human immunodeficiency virus''.

Subsec. (d)(2)(B). Pub. L. 100–690, § 2618(h)(6), substituted ''cases of acquired immune deficiency syndrome'' for ''AIDS cases''.

Subsec. (e)(2)(A). Pub. L. 100–690, § 2618(h)(7), substituted ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' for ''patients infected with the human immunodeficiency virus''.

Subsec. (f)(1). Pub. L. 100–690, § 2618(h)(8), substituted ''acquired immune deficiency syndrome'' for ''the acquired immunodeficiency syndrome'' and ''etiologic agent for such syndrome'' for ''human immunodeficiency virus''.

Subsec. (f)(2). Pub. L. 100–690, § 2618(h)(9), substituted ''such syndrome'' for ''the acquired immunodeficiency syndrome''.

Subsec. (g)(1). Pub. L. 100–690, § 2618(h)(10), substituted ''fiscal year 1989'' for ''fiscal year 1988'' and ''fiscal years 1990 through 1992'' for ''fiscal years 1989 through 1991''.

Subsec. (h). Pub. L. 100–527 substituted ''Secretary of the Department of Veterans Affairs'' and ''Department of Veterans Affairs'' for ''Administrator of the Veterans' Administration'' and ''Veterans' Administration'', respectively.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

PART C—OTHER HEALTH SERVICES

CODIFICATION

Prior to revision by Pub. L. 102–321, this part was comprised of subpart I, consisting of sections 300dd–31 to 300dd–33, and subpart II, consisting of section 300dd–41.

§ 300dd–31. Grants for anonymous testing

The Secretary may make grants to the States for the purpose of providing opportunities for individuals—

(1) to undergo counseling and testing with respect to the etiologic agent for acquired immune deficiency syndrome without being required to provide any information relating to the identity of the individuals; and

(2) to undergo such counseling and testing through the use of a pseudonym.

(July 1, 1944, ch. 373, title XXIV, § 2431, as added Pub. L. 100–607, title II, § 211, Nov. 4, 1988, 102 Stat. 3090.)

§ 300dd–32. Requirement of provision of certain counseling services

(a) Counseling before testing

The Secretary may not make a grant under section 300dd–31 of this title to a State unless the State agrees that, before testing an individual pursuant to such section, the State will provide to the individual appropriate counseling with respect to acquired immune deficiency syndrome (based on the most recent scientific data relating to such syndrome), including—

(1) measures for the prevention of exposure to, and the transmission of, the etiologic agent for such syndrome;

(2) the accuracy and reliability of the results of such testing;

(3) the significance of the results of such testing, including the potential for developing acquired immune deficiency syndrome; and

(4) encouraging individuals, as appropriate, to undergo testing for such etiologic agent and providing information on the benefits of such testing.

(b) Counseling of individuals with negative test results

The Secretary may not make a grant under section 300dd–31 of this title to a State unless the State agrees that, if the results of testing conducted pursuant to such section indicate that an individual is not infected with the etiologic agent for acquired immune deficiency syndrome, the State will review for the individual the information provided pursuant to subsection (a) of this section with respect to such syndrome, including—

(1) the information described in paragraphs (1) through (3) of such subsection; and

(2) the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome.

(c) Counseling of individuals with positive test results

The Secretary may not make a grant under section 300dd–31 of this title to a State unless the State agrees that, if the results of testing conducted pursuant to such section indicate that an individual is infected with the etiologic agent for acquired immune deficiency syndrome, the State will provide to the individual appro-

priate counseling with respect to such syndrome, including—

(1) reviewing the information described in paragraphs (1) through (3) of subsection (a) of this section;

(2) reviewing the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome;

(3) the importance of not exposing others to the etiologic agent for acquired immune deficiency syndrome;

(4) the availability in the geographic area of any appropriate services with respect to health care, including mental health care and social and support services;

(5) the benefits of locating and counseling any individual by whom the infected individual may have been exposed to the etiologic agent for acquired immune deficiency syndrome and any individual whom the infected individual may have exposed to such etiologic agent; and

(6) the availability, if any, of the services of public health authorities with respect to locating and counseling any individual described in paragraph (5).

(d) Rule of construction with respect to counseling without testing

Agreements entered into pursuant to subsections (a) through (c) of this section may not be construed to prohibit any grantee under section 300dd–31 of this title from expending the grant for the purpose of providing counseling services described in such subsections to an individual who will not undergo testing described in such section as a result of the grantee or the individual determining that such testing of the individual is not appropriate.

(e) Use of funds

(1) The purpose of this subpart[1] is to provide for counseling and testing services to prevent and reduce exposure to, and transmission of, the etiologic agent for acquired immune deficiency syndrome.

(2) All individuals receiving counseling pursuant to this subpart[1] are to be counseled about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(3) None of the fund appropriated to carry out this subpart[1] may be used to provide counseling that is designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous drug abuse.

(4) Paragraph (3) may not be construed to prohibit a counselor who has already performed the counseling of an individual required by paragraph (2), to provide accurate information about means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.

(July 1, 1944, ch. 373, title XXIV, § 2432, as added Pub. L. 100–607, title II, § 211, Nov. 4, 1988, 102 Stat. 3090; amended Pub. L. 100–690, title II, § 2618(i), Nov. 18, 1988, 102 Stat. 4242; Pub. L. 102–321, title I, § 118(b)(1)(B), July 10, 1992, 106 Stat. 348.)

[1] So in original. Probably should be ''part''.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–321, which directed the substitution of ''part'' for ''subpart'' wherever appearing in subsec. (a), could not be executed because the word ''subpart'' does not appear in subsec. (a).

1988—Subsec. (c). Pub. L. 100–690, § 2618(i)(1), substituted ''indicate that an individual'' for ''indicate that the individual'' in introductory provisions and ''paragraph (5)'' for ''paragraph (4)'' in par. (6).

Subsec. (e)(1) to (3). Pub. L. 100–690, § 2618(i)(2), substituted ''subpart'' for ''part''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300dd–33. Funding

For the purpose of grants under section 300dd–31 of this title, there are authorized to be appropriated $100,000,000 for each of the fiscal years 1989 and 1990.

(July 1, 1944, ch. 373, title XXIV, § 2433, as added Pub. L. 100–607, title II, § 211, Nov. 4, 1988, 102 Stat. 3091.)

§ 300dd–41. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title XXIV, § 2441, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3092, which related to demonstration projects for individuals with positive AIDS test results, was renumbered section 520B of act July 1, 1944, by Pub. L. 102–321, title I, § 118(a), July 10, 1992, 106 Stat. 348, and was transferred to section 290bb–33 of this title, prior to repeal by Pub. L. 106–310, div. B, title XXXII, § 3201(b)(2), Oct. 17, 2000, 114 Stat. 1190.

SUBCHAPTER XXIII—PREVENTION OF ACQUIRED IMMUNE DEFICIENCY SYNDROME

§ 300ee. Use of funds

(a) In general

The purpose of this subchapter is to provide for the establishment of education and information programs to prevent and reduce exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

(b) Contents of programs

All programs of education and information receiving funds under this subchapter shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(c) Limitation

None of the funds appropriated to carry out this subchapter may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

(d) Construction

Subsection (c) of this section may not be construed to restrict the ability of an education program that includes the information required in subsection (b) of this section to provide accurate information about various means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2500, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3093; amended Pub. L. 100–690, title II, § 2619(a), Nov. 18, 1988, 102 Stat. 4242; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690 substituted ''this subchapter'' for ''this part''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–1. Establishment of office with respect to minority health and acquired immune deficiency syndrome

The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention, shall establish an office for the purpose of ensuring that, in carrying out the duties of the Secretary with respect to prevention of acquired immune deficiency syndrome, the Secretary develops and implements prevention programs targeted at minority populations and provides appropriate technical assistance in the implementation of such programs.

(Pub. L. 100–607, title II, § 252, Nov. 4, 1988, 102 Stat. 3108; Pub. L. 102–531, title III, § 312(e)(2), Oct. 27, 1992, 106 Stat. 3506.)

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Extension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1992—Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

REQUIREMENT OF STUDY WITH RESPECT TO MINORITY HEALTH AND ACQUIRED IMMUNE DEFICIENCY SYNDROME

Section 251 of Pub. L. 100–607, as amended by Pub. L. 100–690, title II, § 2602(b), Nov. 18, 1988, 102 Stat. 4234, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Office of Minority Health, shall conduct a study for the purpose of determining—

''(1) the level of knowledge within minority communities concerning acquired immune deficiency syndrome, the risks of the transmission of the etiologic agent for such syndrome, and the means of reducing such risk; and

''(2) the effectiveness of Federal, State, and local prevention programs with respect to acquired immune deficiency syndrome in minority communities.

''(b) REPORT.—The Secretary shall, not later than 12 months after the date of the enactment of this title [Nov. 4, 1988], complete the study required in subsection (a) and submit to the Congress a report describing the findings made as a result of the study.''

§ 300ee–2. Information for health and public safety workers

(a) Development and dissemination of guidelines

Not later than 90 days after November 4, 1988, the Secretary of Health and Human Services (hereafter in this section referred to as the ''Secretary''), acting through the Director of the Centers for Disease Control and Prevention, shall develop, issue, and disseminate emergency guidelines to all health workers and public safety workers (including emergency response employees) in the United States concerning—

(1) methods to reduce the risk in the workplace of becoming infected with the etiologic agent for acquired immune deficiency syndrome; and

(2) circumstances under which exposure to such etiologic agent may occur.

(b) Use in occupational standards

The Secretary shall transmit the guidelines issued under subsection (a) of this section to the Secretary of Labor for use by the Secretary of Labor in the development of standards to be issued under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.].

(c) Development and dissemination of model curriculum for emergency response employees

(1) Not later than 90 days after November 4, 1988, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop a model curriculum for emergency response employees with respect to the prevention of exposure to the etiologic agent for acquired immune deficiency syndrome during the process of responding to emergencies.

(2) In carrying out paragraph (1), the Secretary shall consider the guidelines issued by the Secretary under subsection (a) of this section.

(3) The model curriculum developed under paragraph (1) shall, to the extent practicable, include—

(A) information with respect to the manner in which the etiologic agent for acquired immune deficiency syndrome is transmitted; and

(B) information that can assist emergency response employees in distinguishing between conditions in which such employees are at risk with respect to such etiologic agent and conditions in which such employees are not at risk with respect[1] such etiologic agent.

(4) The Secretary shall establish a task force to assist the Secretary in developing the model curriculum required in paragraph (1). The Secretary shall appoint to the task force representatives of the Centers for Disease Control and Prevention, representatives of State governments, and representatives of emergency response employees.

(5) The Secretary shall—

(A) transmit to State public health officers copies of the guidelines and the model cur-

[1] So in original. Probably should be ''respect to''.

riculum developed under paragraph (1) with the request that such officers disseminate such copies as appropriate throughout the State; and

(B) make such copies available to the public.

(Pub. L. 100–607, title II, § 253, Nov. 4, 1988, 102 Stat. 3108; Pub. L. 100–690, title II, § 2602(c), Nov. 18, 1988, 102 Stat. 4234; Pub. L. 102–531, title III, § 312(e)(3), Oct. 27, 1992, 106 Stat. 3506.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (b), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Extension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1992—Subsecs. (a), (c)(1), (4). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1988—Subsec. (a). Pub. L. 100–690 substituted ''health workers and public safety workers'' for ''health workers, public safety workers''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

GUIDELINES FOR PREVENTION OF TRANSMISSION OF HUMAN IMMUNODEFICIENCY AND HEPATITIS B VIRUSES DURING INVASIVE PROCEDURES

Pub. L. 102–141, title VI, § 633, Oct. 28, 1991, 105 Stat. 876, provided that: ''Notwithstanding any other provision of law, each State Public Health Official shall, not later than one year after the date of enactment of this Act [Oct. 28, 1991], certify to the Secretary of Health and Human Services that guidelines issued by the Centers for Disease Control, or guidelines which are equivalent to those promulgated by the Centers for Disease Control concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure prone invasive procedures, except for emergency situations when the patient's life or limb is in danger, have been instituted in the State. State guidelines shall apply to health professionals practicing within the State and shall be consistent with Federal law. Compliance with such guidelines shall be the responsibility of the State Public Health Official. Said responsibilities shall include a process for determining what appropriate disciplinary or other actions shall be taken to ensure compliance. If such certification is not provided under this section within the one-year period, the State shall be ineligible to receive assistance under the Public Health Service Act (42 U.S.C. 301 [201] et seq.) until such certification is provided, except that the Secretary may extend the time period for a State, upon application of such State, that additional time is required for instituting said guidelines.''

[Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.]

§ 300ee–3. Continuing education for health care providers

(a) In general

The Secretary of Health and Human Services (hereafter in this section referred to as the ''Secretary'') may make grants to nonprofit organizations composed of, or representing, health care providers to assist in the payment of the costs of projects to train such providers concerning—

(1) appropriate infection control procedures to reduce the transmission of the etiologic agent for acquired immune deficiency syndrome; and

(2) the provision of care and treatment to individuals with such syndrome or related illnesses.

(b) Limitation

The Secretary may make a grant under subsection (a) of this section to an entity only if the entity will provide services under the grant in a geographic area, or to a population of individuals, not served by a program substantially similar to the program described in subsection (a) of this section.

(c) Requirement of matching funds

(1) The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such subsection, to make available, directly or through donations from public or private entities, non-Federal contributions (in cash or in kind under paragraph (2)) toward such costs in an amount equal to not less than $2 for each $1 of Federal funds provided in such payments.

(2) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(d) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless—

(1) an application for the grant is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

(Pub. L. 100–607, title II, § 254, Nov. 4, 1988, 102 Stat. 3109.)

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Ex-

tension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

§ 300ee–4. Technical assistance

The Secretary of Health and Human Services shall provide technical assistance to public and nonprofit private entities carrying out programs, projects, and activities relating to acquired immune deficiency syndrome.

(Pub. L. 100–607, title II, § 255, Nov. 4, 1988, 102 Stat. 3110.)

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Extension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

§ 300ee–5. Use of funds to supply hypodermic needles or syringes for illegal drug use; prohibition

None of the funds provided under this Act or an amendment made by this Act shall be used to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for acquired immune deficiency syndrome.

(Pub. L. 100–607, title II, § 256(b), Nov. 4, 1988, 102 Stat. 3110; Pub. L. 100–690, title II, § 2602(d)(1), Nov. 18, 1988, 102 Stat. 4234.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 100–607, Nov. 4, 1988, 102 Stat. 3048, as amended, known as the ''Health Omnibus Programs Extension of 1988''. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Extension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1988—Pub. L. 100–690 substituted ''Surgeon General of the Public Health Service'' for ''Surgeon General of the United States''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–6. Transferred

CODIFICATION

Section, Pub. L. 100–607, title IX, § 902, Nov. 4, 1988, 102 Stat. 3171; Pub. L. 100–690, title II, § 2605(a), Nov. 18, 1988, 102 Stat. 4234, which provided for testing of State prisoners, was renumbered section 2648 of the Public Health Service Act by Pub. L. 101–381, title III, § 301(b)(1), Aug. 18, 1990, 104 Stat. 615, and transferred to section 300ff–48 of this title, prior to repeal by Pub. L. 106–345, title III, § 301(a), Oct. 20, 2000, 114 Stat. 1345.

PART A—FORMULA GRANTS TO STATES

§ 300ee–11. Establishment of program

(a) Allotments for States

For the purpose described in subsection (b) of this section, the Secretary shall for each of the fiscal years 1989 through 1991 make an allotment for each State in an amount determined in accordance with section 300ee–17 of this title. The Secretary shall make payments each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 300ee–13 of this title.

(b) Purpose of grants

The Secretary may not make payments under subsection (a) of this section for a fiscal year unless the State involved agrees to expend the payments only for the purpose of carrying out, in accordance with section 300ee–12 of this title, public information activities with respect to acquired immune deficiency syndrome.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2501, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3093; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2501 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238 of this title.

§ 300ee–12. Provisions with respect to carrying out purpose of grants

A State may expend payments received under section 300ee–11(a) of this title—

(1) to develop, establish, and conduct public information activities relating to the prevention and diagnosis of acquired immune deficiency syndrome for those populations or communities in the State in which there are a significant number of individuals at risk of infection with the etiologic agent for such syndrome;

(2) to develop, establish, and conduct such public information activities for the general public relating to the prevention and diagnosis of such syndrome;

(3) to develop, establish, and conduct activities to reduce risks relating to such syndrome, including research into the prevention of such syndrome;

(4) to conduct demonstration projects for the prevention of such syndrome;

(5) to provide technical assistance to public entities, to nonprofit private entities concerned with such syndrome, to schools, and to employers, for the purpose of developing information programs relating to such syndrome;

(6) with respect to education and training programs for the prevention of such syndrome, to conduct such programs for health professionals (including allied health professionals), public safety workers (including emergency response employees), teachers, school administrators, and other appropriate education personnel;

(7) to conduct appropriate programs for educating school-aged children with respect to

such syndrome, after consulting with local school boards;

(8) to make available to physicians and dentists in the State information with respect to acquired immune deficiency syndrome, including measures for the prevention of exposure to, and the transmission of, the etiologic agent for such syndrome (which information is updated not less than annually with the most recently available scientific date[1] relating to such syndrome);

(9) to carry out the initial implementation of recommendations contained in the guidelines and the model curriculum developed under section 300ee–2 of this title; and

(10) to make grants to public entities, and to nonprofit private entities concerned with acquired immune deficiency syndrome, for the purpose of the development, establishment, and expansion of programs for education directed toward individuals at increased risk of infection with the etiologic agent for such syndrome and activities to reduce the risks of exposure to such etiologic agent, with preference to programs directed toward populations in which there is significant evidence of such infection.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2502, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3094; amended Pub. L. 100–690, title II, § 2619(b), Nov. 18, 1988, 102 Stat. 4242; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2502 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238a of this title.

AMENDMENTS

1988—Par. (9). Pub. L. 100–690 made technical amendment to reference to section 300ee–2 of this title to correct reference to corresponding provision of original act.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–13. Requirement of submission of application containing certain agreements and assurances

(a) In general

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless—

(1) the State involved submits to the Secretary a description of the purposes for which the State intends to expend the payments for the fiscal year;

(2) the description identifies the populations, areas, and localities in the State with a need for the services for which amounts may be provided by the State under this part;

(3) the description provides information relating to the programs and activities to be supported and services to be provided, including a description of the manner in which such programs and activities will be coordinated with any similar programs and activities of public and private entities;

(4) the State submits to the Secretary an application for the payments containing agreements in accordance with this part;

(5) the agreements are made through certification from the chief executive officer of the State;

(6) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary; and

(7) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(b) Opportunity for public comment

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that, in developing and carrying out the description required in subsection (a) of this section, the State will provide public notice with respect to the description (including any revisions) and will facilitate comments from interested persons.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2503, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3095; amended Pub. L. 100–690, title II, § 2619(c), Nov. 18, 1988, 102 Stat. 4242; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2503 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238b of this title.

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100–690 struck out ''and'' after semicolon.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–14. Restrictions on use of grant

(a) In general

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that the payments will not be expended—

(1) to provide inpatient services;

(2) to make cash payments to intended recipients of services;

(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment; or

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

(b) Limitation on administrative expenses

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that the State will not expend more than 5 percent of the pay-

[1] So in original. Probably should be ''data''.

ments for administrative expenses with respect to carrying out the purpose described in section 300ee–11(b) of this title.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2504, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3095; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2504 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238c of this title.

§ 300ee–15. Requirement of reports and audits by States

(a) Reports

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees to prepare and submit to the Secretary an annual report in such form and containing such information as the Secretary determines to be necessary for—

(1) securing a record and a description of the purposes for which payments received by the State pursuant to such section were expended and of the recipients of such payments;

(2) determining whether the payments were expended in accordance with the needs within the State required to be identified pursuant to section 300ee–13(a)(2) of this title;

(3) determining whether the payments were expended in accordance with the purpose described in section 300ee–11(b) of this title; and

(4) determining the percentage of payments received pursuant to such section that were expended by the State for administrative expenses during the preceding fiscal year.

(b) Audits

(1) The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees to establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the State under such section.

(2) The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that—

(A) the State will provide for—

(i) a financial and compliance audit of such payments; or

(ii) a single financial and compliance audit of each entity administering such payments;

(B) the audit will be performed biennially and will cover expenditures in each fiscal year; and

(C) the audit will be conducted in accordance with standards established by the Comptroller General of the United States for the audit of governmental organizations, programs, activities, and functions.

(3) The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that, not later than 30 days after the completion of an audit under paragraph (2), the State will provide a copy of the audit report to the State legislature.

(4) For purposes of paragraph (2), the term ''financial and compliance audit'' means an audit to determine whether the financial statements of an audited entity present fairly the financial position, and the results of financial operations, of the entity in accordance with generally accepted accounting principles, and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

(c) Availability to public

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees to make copies of the reports and audits described in this section available for public inspection.

(d) Evaluations by Comptroller General

The Comptroller General of the United States shall, from time to time, evaluate the expenditures by States of payments received under section 300ee–11(a) of this title in order to ensure that expenditures are consistent with the provisions of this part.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2505, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3095; amended Pub. L. 100–690, title II, § 2619(d), Nov. 18, 1988, 102 Stat. 4242; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2505 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238d of this title.

AMENDMENTS

1988—Subsec. (b)(1), (2). Pub. L. 100–690 substituted ''make payments'' for ''payments''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–16. Additional required agreements

(a) In general

The Secretary may not, except as provided in subsection (b) of this section, make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that—

(1) all programs conducted or supported by the State with such payments will establish objectives for the program and will determine the extent to which the objectives are met;

(2) information provided under this part will be scientifically accurate and factually correct;

(3) in carrying out section 300ee–11(b) of this title, the State will give priority to programs described in section 300ee–12(10) of this title for individuals described in such section;

(4) with respect to a State in which there is a substantial number of individuals who are intravenous substance abusers, the State will place priority on activities under this part directed at such substance abusers;

(5) with respect to a State in which there is a significant incidence of reported cases of acquired immune deficiency syndrome, the State will—

(A) for the purpose described in subsection (b) of section 300ee–11 of this title, expend not less than 50 percent of payments received under subsection (a) of such section for a fiscal year—

(i) to make grants to public entities, to migrant health centers (as defined in section 254b(a)[1] of this title), to community health centers (as defined in section 254c(a)[1] of this title), and to nonprofit private entities concerned with acquired immune deficiency syndrome; or

(ii) to enter into contracts with public and private entities; and

(B) of the amounts reserved for a fiscal year by the State for expenditures required in subparagraph (A), expend not less than 50 percent to carry out section 300ee–12(10) of this title through grants to nonprofit private entities, including minority entities, concerned with acquired immune deficiency syndrome located in and representative of communities and subpopulations reflecting the local incidence of such syndrome;

(6) with respect to programs carried out pursuant to section 300ee–12(10) of this title, the State will ensure that any applicant for a grant under such section agrees—

(A) that any educational or informational materials developed with a grant pursuant to such section will contain material, and be presented in a manner, that is specifically directed toward the group for which such materials are intended;

(B) to provide a description of the manner in which the applicant has planned the program in consultation with, and of the manner in which such applicant will consult during the conduct of the program with—

(i) appropriate local officials and community groups for the area to be served by the program;

(ii) organizations comprised of, and representing, the specific population to which the education or prevention effort is to be directed; and

(iii) individuals having expertise in health education and in the needs of the population to be served;

(C) to provide information demonstrating that the applicant has continuing relationships, or will establish continuing relationships, with a portion of the population in the service area that is at risk of infection with the etiologic agent for acquired immune deficiency syndrome and with public and private entities in such area that provide health or other support services to individuals with such infection;

(D) to provide a description of—

(i) the objectives established by the applicant for the conduct of the program; and

(ii) the methods the applicant will use to evaluate the activities conducted under the program to determine if such objectives are met; and

(E) such other information as the Secretary may prescribe;

(7) with respect to programs carried out pursuant to section 300ee–12(10) of this title, the State will give preference to any applicant for a grant pursuant to such section that is located in, has a history of service in, and will serve under the program, any geographic area in which—

(A) there is a significant incidence of acquired immune deficiency syndrome;

(B) there has been a significant increase in the incidence of such syndrome; or

(C) there is a significant risk of becoming infected with the etiologic agent for such syndrome;

(8) the State will establish reasonable criteria to evaluate the effective performance of entities that receive funds from payments made to the State under section 300ee–11(a) of this title and will establish procedures for procedural and substantive independent State review of the failure by the State to provide funds for any such entity;

(9) the State will permit and cooperate with Federal investigations undertaken in accordance with section 300ee–18(e) of this title;

(10) the State will maintain State expenditures for services provided pursuant to section 300ee–11 of this title at a level equal to not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments.

(b) "Significant percentage" defined

For purposes of subsection (a)(5) of this section, the term ''significant percentage'' means at least a percentage of 1 percent of the number of reported cases of acquired immune deficiency syndrome in the United States.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2506, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3097; amended Pub. L. 100–690, title II, § 2619(d) [(e)], Nov. 18, 1988, 102 Stat. 4243; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

REFERENCES IN TEXT

Sections 254b and 254c of this title, referred to in subsec. (a)(5)(A)(i), were in the original references to sections 329 and 330, meaning sections 329 and 330 of act July 1, 1944, which were omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of this chapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

PRIOR PROVISIONS

A prior section 2506 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238e of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690, § 2619(d)(1) [(e)(1)], designated existing provisions as subsec. (a).

Subsec. (a)(5). Pub. L. 100–690, § 2619(d)(2) [(e)(2)], struck out concluding provisions which read as follows: ''(For purposes of this section, the term 'significant percentage' means at least a percentage of 1 percent of the number of reported cases of such syndrome in the United States);''.

Subsec. (a)(8). Pub. L. 100–690, § 2619(d)(3) [(e)(3)], substituted ''funds from payments'' for ''funds from to payments'' and struck out ''and'' after semicolon.

[1] See References in Text note below.

Subsec. (a)(9). Pub. L. 100–690, § 2619(d)(4) [(e)(4)], substituted ''section 300ee–18(e) of this title'' for ''section 300ee–19(e) of this title''.

Subsec. (b). Pub. L. 100–690, § 2619(d)(5) [(e)(5)], added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

§ 300ee–17. Determination of amount of allotments for States

(a) Minimum allotment

Subject to the extent of amounts made available in appropriation Acts, the allotment for a State under section 300ee–11(a) of this title for a fiscal year shall be the greater of—

(1) the applicable amount specified in subsection (b) of this section; or

(2) the amount determined in accordance with subsection (c) of this section.

(b) Determination of minimum allotment

(1) If the total amount appropriated under section 300ee–24(a) of this title for a fiscal year exceeds $100,000,000, the amount referred to in subsection (a)(1) of this section shall be $300,000 for the fiscal year.

(2) If the total amount appropriated under section 300ee–24(a) of this title for a fiscal year equals or exceeds $50,000,000, but is less than $100,000,000, the amount referred to in subsection (a)(1) of this section shall be $200,000 for the fiscal year.

(3) If the total amount appropriated under section 300ee–24(a) of this title for a fiscal year is less than $50,000,000, the amount referred to in subsection (a)(1) of this section shall be $100,000 for the fiscal year.

(c) Determination under formula

(1) The amount referred to in subsection (a)(2) of this section is the sum of—

(A) the amount determined under paragraph (2); and

(B) the amount determined under paragraph (3).

(2) The amount referred to in paragraph (1)(A) is the product of—

(A) an amount equal to 50 percent of the amounts appropriated pursuant to section 300ee–24(a) of this title; and

(B) a percentage equal to the quotient of—

(i) the population of the State involved; divided by

(ii) the population of the United States.

(3) The amount referred to in paragraph (1)(B) is the product of—

(A) an amount equal to 50 percent of the amounts appropriated pursuant to section 300ee–24(a) of this title; and

(B) a percentage equal to the quotient of—

(i) the number of additional cases of acquired immune deficiency syndrome reported to and confirmed by the Secretary for the State involved for the most recent fiscal year for which such data is available; divided by

(ii) the number of additional cases of such syndrome reported to and confirmed by the Secretary for the United States for such fiscal year.

(d) Disposition of certain funds appropriated for allotments

(1) Amounts described in paragraph (2) shall be allotted by the Secretary to States receiving payments under section 300ee–11(a) of this title for the fiscal year (other than any State referred to in paragraph (2)(C)). Such amounts shall be allotted according to a formula established by the Secretary. The formula shall be equivalent to the formula described in this section under which the allotment under section 300ee–11(a) of this title for the State for the fiscal year involved was determined.

(2) The amounts referred to in paragraph (1) are any amounts that are not paid to States under section 300ee–11(a) of this title as a result of—

(A) the failure of any State to submit an application under section 300ee–13 of this title;

(B) the failure, in the determination of the Secretary, of any State to prepare within a reasonable period of time such application in compliance with such section; or

(C) any State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2507, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3098; amended Pub. L. 100–690, title II, § 2619(e) [(f)], Nov. 18, 1988, 102 Stat. 4243; renumbered title XXV and amended Pub. L. 101–93, § 5(e)(1), (2), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2507 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238f of this title.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–93, § 5(e)(2), substituted ''Subject to the extent of amounts made available in appropriation Acts, the allotment'' for ''The allotment''.

1988—Subsec. (a)(1). Pub. L. 100–690, § 2619(e)(1) [(f)(1)], substituted ''applicable amount specified'' for ''amount described''.

Subsec. (b)(1). Pub. L. 100–690, § 2619(e)(2)(A)(i) [(f)(2)(A)(i)], made technical amendment to reference to section 300ee–24(a) of this title to correct reference to corresponding provision of original act.

Pub. L. 100–690, § 2619(e)(2)(A)(ii) [(f)(2)(A)(ii)], substituted ''subsection (a)(1) of this section shall be'' for ''subsection (a)(1) of this section is''.

Subsec. (b)(2), (3). Pub. L. 100–690, § 2619(e)(2)(B), (C) [(f)(2)(B), (C)], substituted ''subsection (a)(1) of this section shall be'' for ''subsection (a)(1) of this section is''.

Subsec. (d). Pub. L. 100–690, § 2619(e)(3) [(f)(3)], substituted ''allotment under section 300ee–11(a) of this title'' for ''allotment'' in par. (1) and ''section 300ee–13 of this title'' for ''section 300ee–17 of this title'' in par. (2)(A).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–18. Failure to comply with agreements

(a) Repayment of payments

(1) The Secretary may, subject to subsection (c) of this section, require a State to repay any payments received by the State under section 300ee–11(a) of this title that the Secretary determines were not expended by the State in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 300ee–13 of this title.

(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 300ee–11(a) of this title.

(b) Withholding of payments

(1) The Secretary may, subject to subsection (c) of this section, withhold payments due under section 300ee–11(a) of this title if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 300ee–13 of this title.

(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under section 300ee–11(a) of this title in accordance with the agreements referred to in such paragraph.

(3) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the agreements referred to in such paragraph.

(c) Opportunity for hearing

Before requiring repayment of payments under subsection (a)(1) of this section, or withholding payments under subsection (b)(1) of this section, the Secretary shall provide to the State an opportunity for a hearing conducted within the State.

(d) Prompt response to serious allegations

The Secretary shall promptly respond to any complaint of a substantial or serious nature that a State has failed to expend amounts received under section 300ee–11(a) of this title in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 300ee–13 of this title.

(e) Investigations

(1) The Secretary shall conduct in several States in each fiscal year investigations of the expenditure of payments received by the States under section 300ee–11(a) of this title in order to evaluate compliance with the agreements required to be contained in the applications submitted to the Secretary pursuant to section 300ee–13 of this title.

(2) The Comptroller General of the United States may conduct investigations of the expenditure of funds received under section 300ee–11(a) of this title by a State in order to ensure compliance with the agreements referred to in paragraph (1).

(3) Each State, and each entity receiving funds from payments made to a State under section 300ee–11(a) of this title, shall make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(4)(A) In conducting any investigation in a State, the Secretary and the Comptroller General of the United States may not make a request for any information not readily available to the State, or to an entity receiving funds from payments made to the State under section 300ee–11(a) of this title, or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

(B) Subparagraph (A) shall not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2508, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3099; amended Pub. L. 100–690, title II, § 2619(f) [(g)], Nov. 18, 1988, 102 Stat. 4243; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2508 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238g of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690, § 2619(f)(1) [(g)(1)], substituted ''300ee–13 of this title'' for ''300ee–17 of this title''.

Subsec. (b). Pub. L. 100–690, § 2619(f)(2) [(g)(2)], inserted ''of payments'' after ''Withholding'' in heading and substituted ''300ee–13 of this title'' for ''300ee–17 of this title'' in par. (1).

Subsecs. (d), (e)(1). Pub. L. 100–690, § 2619(f)(3), (4) [(g)(3), (4)], substituted ''300ee–13 of this title'' for ''300ee–17 of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–19. Prohibition against certain false statements

(a) In general

(1) A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 300ee–11(a) of this title.

(2) A person with knowledge of the occurrence of any event affecting the right of the person to receive any amounts from payments made to the State under section 300ee–11(a) of this title may not conceal or fail to disclose any such event with the intent of fraudulently securing such amounts.

(b) Criminal penalty for violation of prohibition

Any person who violates a prohibition established in subsection (a) of this section may for each violation be fined in accordance with title 18, or imprisoned for not more than 5 years, or both.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2509, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3101; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2509 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238h of this title.

§ 300ee–20. Technical assistance and provision by Secretary of supplies and services in lieu of grant funds

(a) Technical assistance

The Secretary may provide training and technical assistance to States with respect to the planning, development, and operation of any program or service carried out pursuant to this part. The Secretary may provide such technical assistance directly or through grants or contracts.

(b) Provision by Secretary of supplies and services in lieu of grant funds

(1) Upon the request of a State receiving payments under this part, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out such part and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under section 300ee–11(a) of this title to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2510, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3101; amended Pub. L. 100–690, title II, § 2619(g) [(h)], Nov. 18, 1988, 102 Stat. 4243; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2510 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238i of this title.

AMENDMENTS

1988—Subsec. (b)(2). Pub. L. 100–690 substituted ''section 300ee–11(a) of this title'' for ''the program involved''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–21. Evaluations

The Secretary shall, directly or through grants or contracts, evaluate the services provided and activities carried out with payments to States under this part.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2511, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3101; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2511 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238j of this title.

§ 300ee–22. Report by Secretary

The Secretary shall annually prepare a report on the activities of the States carried out pursuant to this part. Such report may include any recommendations of the Secretary for appropriate administrative and legislative initiatives. The report shall be submitted to the Congress through inclusion in the comprehensive report required in section 300cc(a) of this title.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2512, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3101; amended Pub. L. 100–690, title II, § 2619(h) [(i)], Nov. 18, 1988, 102 Stat. 4243; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2512 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238k of this title.

AMENDMENTS

1988—Pub. L. 100–690 substituted ''section 300cc(a)'' for ''section 300cc''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–23. Definition

For purposes of this part, the term ''infection with the etiologic agent for acquired immune deficiency syndrome'' includes any condition arising from such etiologic agent.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2513, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3102; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2513 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238*l* of this title.

§ 300ee–24. Funding

(a) Authorization of appropriations

For the purpose of making allotments under section 300ee–11(a) of this title, there are authorized to be appropriated $165,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

(b) Availability to States

Any amounts paid to a State under section 300ee–11(a) of this title shall remain available to the State until the expiration of the 1-year period beginning on the date on which the State receives such amounts.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2514, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3102; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2514 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238m of this title.

PART B—NATIONAL INFORMATION PROGRAMS

§ 300ee–31. Availability of information to general public

(a) Comprehensive information plan

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall annually prepare a comprehensive plan, including a budget, for a National Acquired Immune Deficiency Syndrome Information Program. The plan shall contain provisions to implement the provisions of this subchapter. The Director shall submit such plan to the Secretary. The authority established in this subsection may not be construed to be the exclusive authority for the Director to carry out information activities with respect to acquired immune deficiency syndrome.

(b) Clearinghouse

(1) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may establish a clearinghouse to make information concerning acquired immune deficiency syndrome available to Federal agencies, States, public and private entities, and the general public.

(2) The clearinghouse may conduct or support programs—

(A) to develop and obtain educational materials, model curricula, and methods directed toward reducing the transmission of the etiologic agent for acquired immune deficiency syndrome;

(B) to provide instruction and support for individuals who provide instruction in methods and techniques of education relating to the prevention of acquired immune deficiency syndrome and instruction in the use of the materials and curricula described in subparagraph (A); and

(C) to conduct, or to provide for the conduct of, the materials, curricula, and methods described in paragraph (1) and the efficacy of such materials, curricula, and methods in preventing infection with the the[1] etiologic agent for acquired immune deficiency syndrome.

(c) Toll-free telephone communications

The Secretary shall provide for the establishment and maintenance of toll-free telephone communications to provide information to, and respond to queries from, the public concerning acquired immune deficiency syndrome. Such communications shall be available on a 24-hour basis.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2521, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3102; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612; amended Pub. L. 102–531, title III, § 312(d)(22), Oct. 27, 1992, 106 Stat. 3505.)

AMENDMENTS

1992—Subsecs. (a), (b)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

§ 300ee–32. Public information campaigns

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to public entities, and to nonprofit private entities concerned with acquired immune deficiency syndrome, and shall enter into contracts with public and private entities, for the development and delivery of public service announcements and paid advertising messages that warn individuals about activities which place them at risk of infection with the etiologic agent for such syndrome.

(b) Requirement of application

The Secretary may not provide financial assistance under subsection (a) of this section unless—

(1) an application for such assistance is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2522, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3103; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612; amended Pub. L. 102–531, title III, § 312(d)(23), Oct. 27, 1992, 106 Stat. 3505.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

§ 300ee–33. Provision of information to underserved populations

(a) In general

The Secretary may make grants to public entities, to migrant health centers (as defined in section 254b(a)[1] of this title), to community health centers (as defined in section 254c(a)[1] of this title), and to nonprofit private entities concerned with acquired immune deficiency syndrome, for the purpose of assisting grantees in providing services to populations of individuals

[1] So in original.

[1] See References in Text note below.

that are underserved with respect to programs providing information on the prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

(b) Preferences in making grants

In making grants under subsection (a) of this section, the Secretary shall give preference to any applicant for such a grant that has the ability to disseminate rapidly the information described in subsection (a) of this section (including any national organization with such ability).

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2523, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3103; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612.)

REFERENCES IN TEXT

Sections 254b and 254c of this title, referred to in subsec. (a), were in the original references to sections 329 and 330, meaning sections 329 and 330 of act July 1, 1944, which were omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of this chapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

§ 300ee–34. Authorization of appropriations

(a) In general

For the purpose of carrying out sections 300ee–31 through 300ee–33 of this title, there are authorized to be appropriated $105,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

(b) Allocations

(1) Of the amounts appropriated pursuant to subsection (a) of this section, the Secretary shall make available $45,000,000 to carry out section 300ee–32 of this title and $30,000,000 to carry out this part through financial assistance to minority entities for the provision of services to minority populations.

(2) After consultation with the Director of the Office of Minority Health and with the Indian Health Service, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, not later than 90 days after November 4, 1988, publish guidelines to provide procedures for applications for funding pursuant to paragraph (1) and for public comment.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2524, as added Pub. L. 100–607, title II, § 221, Nov. 4, 1988, 102 Stat. 3103; amended Pub. L. 100–690, title II, § 2619(i) [(j)], Nov. 18, 1988, 102 Stat. 4244; renumbered title XXV, Pub. L. 101–93, § 5(e)(1), Aug. 16, 1989, 103 Stat. 612; Pub. L. 102–531, title III, § 312(d)(24), Oct. 27, 1992, 106 Stat. 3505.)

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1988—Subsec. (b)(2). Pub. L. 100–690 substituted ''the date of the enactment of the AIDS Amendments of 1988'' for ''the date of the enactment of this section'', which for purposes of codification was translated as ''November 4, 1988''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

SUBCHAPTER XXIV—HIV HEALTH CARE SERVICES PROGRAM

§ 300ff. Purpose

It is the purpose of this Act to provide emergency assistance to localities that are disproportionately affected by the Human Immunodeficiency Virus epidemic and to make financial assistance available to States and other public or private nonprofit entities to provide for the development, organization, coordination and operation of more effective and cost efficient systems for the delivery of essential services to individuals and families with HIV disease.

(Pub. L. 101–381, § 2, Aug. 18, 1990, 104 Stat. 576.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–381, Aug. 18, 1990, 104 Stat. 576, known as the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, which enacted this subchapter, transferred section 300ee–6 of this title to section 300ff–48 of this title, amended sections 284a, 286, 287a, 287c–2, 289f, 290aa–3a, 299c–5, 300ff–48, and 300aaa to 300aaa–13 [now 238 to 238m] of this title, and enacted provisions set out as notes under sections 201, 300x–4, 300ff–11, 300ff–46, and 300ff–80 of this title. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, and not as part of the Public Health Service Act which comprises this chapter.

§ 300ff–1. Prohibition on use of funds

None of the funds made available under this Act, or an amendment made by this Act, shall be used to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs.

(Pub. L. 101–381, title IV, § 422, Aug. 18, 1990, 104 Stat. 628.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–381, Aug. 18, 1990, 104 Stat. 576, known as the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, which enacted this subchapter, transferred section 300ee–6 of this title to section 300ff–48 of this title, amended sections 284a, 286, 287a, 287c–2, 289f, 290aa–3a, 299c–5, 300ff–48, and 300aaa to 300aaa–13 [now 238 to 238m] of this title, and enacted provisions set out as notes under sections 201, 300x–4, 300ff–11, 300ff–46, and 300ff–80 of this title. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, and not as part of the Public Health Service Act which comprises this chapter.

PART A—EMERGENCY RELIEF FOR AREAS WITH SUBSTANTIAL NEED FOR SERVICES

§ 300ff–11. Establishment of program of grants

(a) Eligible areas

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall, subject to subsections (b) through (d) of this section, make grants in accordance with section 300ff–13 of this title for the purpose of assisting in the provision of the services specified in section 300ff–14 of this title in any metropolitan area for which there has been reported to the Director of the Centers for Disease Control and Prevention a cumulative total of more than 2,000 cases of acquired immune deficiency syndrome for the most recent period of 5 calendar years for which such data are available.

(b) Requirement regarding confirmation of cases

The Secretary may not make a grant under subsection (a) of this section for a metropolitan area unless, before making any payments under the grant, the cases of acquired immune deficiency syndrome reported for purposes of such subsection have been confirmed by the Secretary, acting through the Director of the Centers for Disease Control and Prevention.

(c) Requirements regarding population

(1) Number of individuals

(A) In general

Except as provided in subparagraph (B), the Secretary may not make a grant under this section for a metropolitan area unless the area has a population of 500,000 or more individuals.

(B) Limitation

Subparagraph (A) does not apply to any metropolitan area that was an eligible area under this part for fiscal year 1995 or any prior fiscal year.

(2) Geographic boundaries

For purposes of eligibility under this part, the boundaries of each metropolitan area are the boundaries that were in effect for the area for fiscal year 1994.

(d) Continued status as eligible area

Notwithstanding any other provision of this section, a metropolitan area that was an eligible area under this part for fiscal year 1996 is an eligible area for fiscal year 1997 and each subsequent fiscal year.

(July 1, 1944, ch. 373, title XXVI, § 2601, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 576; amended Pub. L. 102–531, title III, § 312(d)(25), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 104–146, §§ 3(a)(1), (2), 12(c)(1), May 20, 1996, 110 Stat. 1346, 1373.)

PRIOR PROVISIONS

A prior section 2601 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–146, § 12(c)(1), inserted ''section'' before ''300ff–14''.

Pub. L. 104–146, § 3(a)(1)(B), substituted ''metropolitan area for which there has been reported to the Director of the Centers for Disease Control and Prevention a cumulative total of more than 2,000 cases of acquired immune deficiency syndrome for the most recent period of 5 calendar years for which such data are available.'' for ''metropolitan area for which, as of June 30, 1990, in the case of grants for fiscal year 1991, and as of March 31 of the most recent fiscal year for which such data is available in the case of a grant for any subsequent fiscal year—

''(1) there has been reported to and confirmed by the Director of the Centers for Disease Control and Prevention a cumulative total of more than 2,000 cases of acquired immune deficiency syndrome; or

''(2) the per capita incidence of cumulative cases of such syndrome (computed on the basis of the most recently available data on the population of the area) is not less than 0.0025.''

Pub. L. 104–146, § 3(a)(1)(A), substituted ''subject to subsections (b) through (d)'' for ''subject to subsection (b)''.

Subsecs. (c), (d). Pub. L. 104–146, § 3(a)(2), added subsecs. (c) and (d).

1992—Subsecs. (a)(1), (b). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 13 of Pub. L. 104–146 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), this Act [enacting sections 300ff–27a, 300ff–31, 300ff–33 to 300ff–37, 300ff–77, 300ff–78, and 300ff–101 of this title, amending this section and sections 294n, 300d, 300ff–12 to 300ff–17, 300ff–21 to 300ff–23, 300ff–26 to 300ff–29, 300ff–47 to 300ff–49, 300ff–51, 300ff–52, 300ff–54, 300ff–55, 300ff–64, 300ff–71, 300ff–74, 300ff–76, and 300ff–84 of this title, transferring section 294n of this title to section 300ff–111 of this title, repealing sections 300ff–18 and 300ff–30 of this title, and enacting provisions set out as notes under sections 201, 300cc, and 300ff–33 of this title and section 4103 of Title 5, Government Organization and Employees], and the amendments made by this Act, shall become effective on October 1, 1996.

''(b) EXCEPTION.—The amendments made by sections 3(a), 5, 6, and 7 of this Act to sections 2601(c), 2601(d), 2603(a), 2618(b), 2626, 2677, and 2691 of the Public Health Service Act [sections 300ff–11(c), (d), 300ff–13(a), 300ff–28(b), 300ff–34, 300ff–77, and 300ff–101 of this title], shall become effective on the date of enactment of this Act [May 20, 1996].''

STUDIES BY INSTITUTE OF MEDICINE

Pub. L. 106–345, title V, § 501, Oct. 20, 2000, 114 Stat. 1352, provided that:

''(a) STATE SURVEILLANCE SYSTEMS ON PREVALENCE OF HIV.—The Secretary of Health and Human Services (referred to in this section as the 'Secretary') shall request the Institute of Medicine to enter into an agreement with the Secretary under which such Institute conducts a study to provide the following:

''(1) A determination of whether the surveillance system of each of the States regarding the human immunodeficiency virus provides for the reporting of cases of infection with the virus in a manner that is sufficient to provide adequate and reliable information on the number of such cases and the demographic characteristics of such cases, both for the State in general and for specific geographic areas in the State.

''(2) A determination of whether such information is sufficiently accurate for purposes of formula grants under parts A and B of title XXVI of the Public Health Service Act [this part and part B of this subchapter].

''(3) With respect to any State whose surveillance system does not provide adequate and reliable infor-

mation on cases of infection with the virus, recommendations regarding the manner in which the State can improve the system.

''(b) RELATIONSHIP BETWEEN EPIDEMIOLOGICAL MEASURES AND HEALTH CARE FOR CERTAIN INDIVIDUALS WITH HIV DISEASE.—

''(1) IN GENERAL.—The Secretary shall request the Institute of Medicine to enter into an agreement with the Secretary under which such Institute conducts a study concerning the appropriate epidemiological measures and their relationship to the financing and delivery of primary care and health-related support services for low-income, uninsured, and under-insured individuals with HIV disease.

''(2) ISSUES TO BE CONSIDERED.—The Secretary shall ensure that the study under paragraph (1) considers the following:

''(A) The availability and utility of health outcomes measures and data for HIV primary care and support services and the extent to which those measures and data could be used to measure the quality of such funded services.

''(B) The effectiveness and efficiency of service delivery (including the quality of services, health outcomes, and resource use) within the context of a changing health care and therapeutic environment, as well as the changing epidemiology of the epidemic, including determining the actual costs, potential savings, and overall financial impact of modifying the program under title XIX of the Social Security Act [section 1396 et seq. of this title] to establish eligibility for medical assistance under such title on the basis of infection with the human immunodeficiency virus rather than providing such assistance only if the infection has progressed to acquired immune deficiency syndrome.

''(C) Existing and needed epidemiological data and other analytic tools for resource planning and allocation decisions, specifically for estimating severity of need of a community and the relationship to the allocations process.

''(D) Other factors determined to be relevant to assessing an individual's or community's ability to gain and sustain access to quality HIV services.

''(c) OTHER ENTITIES.—If the Institute of Medicine declines to conduct a study under this section, the Secretary shall enter into an agreement with another appropriate public or nonprofit private entity to conduct the study.

''(d) REPORT.—The Secretary shall ensure that—

''(1) not later than 3 years after the date of the enactment of this Act [Oct. 20, 2000], the study required in subsection (a) is completed and a report describing the findings made in the study is submitted to the appropriate committees of the Congress; and

''(2) not later than 2 years after the date of the enactment of this Act, the study required in subsection (b) is completed and a report describing the findings made in the study is submitted to such committees.''

STUDY REGARDING HIV DISEASE IN RURAL AREAS

Pub. L. 101–381, title IV, § 403, Aug. 18, 1990, 104 Stat. 622 directed Secretary of Health and Human Services, after consultation with Director of the Office of Rural Health Policy, to conduct study for purpose of estimating incidence and prevalence in rural areas of cases of acquired immune deficiency syndrome and cases of infection with etiologic agent for such syndrome and determine adequacy in rural areas of services for diagnosing and providing treatment for such cases that are in early stages of infection, and provided that, not later than 1 year after Aug. 18, 1990, Secretary was to submit report to Congress.

§ 300ff–12. Administration and planning council

(a) Administration

(1) In general

Assistance made available under grants awarded under this part shall be directed to the chief elected official of the city or urban county that administers the public health agency that provides outpatient and ambulatory services to the greatest number of individuals with AIDS, as reported to and confirmed by the Centers for Disease Control and Prevention, in the eligible area that is awarded such a grant.

(2) Requirements

(A) In general

To receive assistance under section 300ff–11(a) of this title, the chief elected official of the eligible area involved shall—

(i) establish, through intergovernmental agreements with the chief elected officials of the political subdivisions described in subparagraph (B), an administrative mechanism to allocate funds and services based on—

(I) the number of AIDS cases in such subdivisions;

(II) the severity of need for outpatient and ambulatory care services in such subdivisions; and

(III) the health and support services personnel needs of such subdivisions; and

(ii) establish an HIV health services planning council in accordance with subsection (b) of this section.

(B) Local political subdivision

The political subdivisions referred to in subparagraph (A) are those political subdivisions in the eligible area—

(i) that provide HIV-related health services; and

(ii) for which the number of cases reported for purposes of section 300ff–11(a) of this title constitutes not less than 10 percent of the number of such cases reported for the eligible area.

(b) HIV health services planning council

(1) Establishment

To be eligible for assistance under this part, the chief elected official described in subsection (a)(1) of this section shall establish or designate an HIV health services planning council that shall reflect in its composition the demographics of the population of individuals with HIV disease in the eligible area involved, with particular consideration given to disproportionately affected and historically underserved groups and subpopulations. Nominations for membership on the council shall be identified through an open process and candidates shall be selected based on locally delineated and publicized criteria. Such criteria shall include a conflict-of-interest standard that is in accordance with paragraph (5).

(2) Representation

The HIV health services planning council shall include representatives of—

(A) health care providers, including federally qualified health centers;

(B) community-based organizations serving affected populations and AIDS service organizations;

(C) social service providers, including providers of housing and homeless services;

(D) mental health and substance abuse providers;

(E) local public health agencies;

(F) hospital planning agencies or health care planning agencies;

(G) affected communities, including people with HIV disease and historically underserved groups and subpopulations;

(H) nonelected community leaders;

(I) State government (including the State medicaid agency and the agency administering the program under part B) of this subchapter;

(J) grantees under subpart II[1] of part C of this subchapter;

(K) grantees under section 300ff–71 of this title, or, if none are operating in the area, representatives of organizations with a history of serving children, youth, women, and families living with HIV and operating in the area;

(L) grantees under other Federal HIV programs, including but not limited to providers of HIV prevention services; and

(M) representatives of individuals who formerly were Federal, State, or local prisoners, were released from the custody of the penal system during the preceding 3 years, and had HIV disease as of the date on which the individuals were so released.

(3) Method of providing for council

(A) In general

In providing for a council for purposes of paragraph (1), a chief elected official receiving a grant under section 300ff–11(a) of this title may establish the council directly or designate an existing entity to serve as the council, subject to subparagraph (B).

(B) Consideration regarding designation of council

In making a determination of whether to establish or designate a council under subparagraph (A), a chief elected official receiving a grant under section 300ff–11(a) of this title shall give priority to the designation of an existing entity that has demonstrated experience in planning for the HIV health care service needs within the eligible area and in the implementation of such plans in addressing those needs. Any existing entity so designated shall be expanded to include a broad representation of the full range of entities that provide such services within the geographic area to be served.

(4) Duties

The planning council established or designated under paragraph (1) shall—

(A) determine the size and demographics of the population of individuals with HIV disease;

(B) determine the needs of such population, with particular attention to—

(i) individuals with HIV disease who know their HIV status and are not receiving HIV-related services; and

(ii) disparities in access and services among affected subpopulations and historically underserved communities;

(C) establish priorities for the allocation of funds within the eligible area, including how best to meet each such priority and additional factors that a grantee should consider in allocating funds under a grant based on the—

(i) size and demographics of the population of individuals with HIV disease (as determined under subparagraph (A)) and the needs of such population (as determined under subparagraph (B));

(ii) demonstrated (or probable) cost effectiveness and outcome effectiveness of proposed strategies and interventions, to the extent that data are reasonably available;

(iii) priorities of the communities with HIV disease for whom the services are intended;

(iv) coordination in the provision of services to such individuals with programs for HIV prevention and for the prevention and treatment of substance abuse, including programs that provide comprehensive treatment for such abuse;

(v) availability of other governmental and non-governmental resources, including the State medicaid plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and the State Children's Health Insurance Program under title XXI of such Act [42 U.S.C. 1397aa et seq.] to cover health care costs of eligible individuals and families with HIV disease; and

(vi) capacity development needs resulting from disparities in the availability of HIV-related services in historically underserved communities;

(D) develop a comprehensive plan for the organization and delivery of health and support services described in section 300ff–14 of this title that—

(i) includes a strategy for identifying individuals who know their HIV status and are not receiving such services and for informing the individuals of and enabling the individuals to utilize the services, giving particular attention to eliminating disparities in access and services among affected subpopulations and historically underserved communities, and including discrete goals, a timetable, and an appropriate allocation of funds;

(ii) includes a strategy to coordinate the provision of such services with programs for HIV prevention (including outreach and early intervention) and for the prevention and treatment of substance abuse (including programs that provide comprehensive treatment services for such abuse); and

(iii) is compatible with any State or local plan for the provision of services to individuals with HIV disease;

(E) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area, and at the discretion of the planning council, assess the effectiveness, either directly or through contractual arrange-

[1] See References in Text note below.

ments, of the services offered in meeting the identified needs;

(F) participate in the development of the statewide coordinated statement of need initiated by the State public health agency responsible for administering grants under part B of this subchapter;

(G) establish methods for obtaining input on community needs and priorities which may include public meetings (in accordance with paragraph (7)), conducting focus groups, and convening ad-hoc panels; and

(H) coordinate with Federal grantees that provide HIV-related services within the eligible area.

(5) Conflicts of interest

(A) In general

The planning council under paragraph (1) may not be directly involved in the administration of a grant under section 300ff–11(a) of this title. With respect to compliance with the preceding sentence, the planning council may not designate (or otherwise be involved in the selection of) particular entities as recipients of any of the amounts provided in the grant.

(B) Required agreements

An individual may serve on the planning council under paragraph (1) only if the individual agrees that if the individual has a financial interest in an entity, if the individual is an employee of a public or private entity, or if the individual is a member of a public or private organization, and such entity or organization is seeking amounts from a grant under section 300ff–11(a) of this title, the individual will not, with respect to the purpose for which the entity seeks such amounts, participate (directly or in an advisory capacity) in the process of selecting entities to receive such amounts for such purpose.

(C) Composition of council

The following applies regarding the membership of a planning council under paragraph (1):

(i) Not less than 33 percent of the council shall be individuals who are receiving HIV-related services pursuant to a grant under section 300ff–11(a) of this title, are not officers, employees, or consultants to any entity that receives amounts from such a grant, and do not represent any such entity, and reflect the demographics of the population of individuals with HIV disease as determined under paragraph (4)(A). For purposes of the preceding sentence, an individual shall be considered to be receiving such services if the individual is a parent of, or a caregiver for, a minor child who is receiving such services.

(ii) With respect to membership on the planning council, clause (i) may not be construed as having any effect on entities that receive funds from grants under any of parts B through F of this subchapter but do not receive funds from grants under section 300ff–11(a) of this title, on officers or employees of such entities, or on individuals who represent such entities.

(6) Grievance procedures

A planning council under paragraph (1) shall develop procedures for addressing grievances with respect to funding under this part, including procedures for submitting grievances that cannot be resolved to binding arbitration. Such procedures shall be described in the bylaws of the planning council and be consistent with the requirements of subsection (c) of this section.

(7) Public deliberations

With respect to a planning council under paragraph (1), the following applies:

(A) The council may not be chaired solely by an employee of the grantee under section 300ff–11(a) of this title.

(B) In accordance with criteria established by the Secretary:

(i) The meetings of the council shall be open to the public and shall be held only after adequate notice to the public.

(ii) The records, reports, transcripts, minutes, agenda, or other documents which were made available to or prepared for or by the council shall be available for public inspection and copying at a single location.

(iii) Detailed minutes of each meeting of the council shall be kept. The accuracy of all minutes shall be certified to by the chair of the council.

(iv) This subparagraph does not apply to any disclosure of information of a personal nature that would constitute a clearly unwarranted invasion of personal privacy, including any disclosure of medical information or personnel matters.

(c) Grievance procedures

(1) Federal responsibility

(A) Models

The Secretary shall, through a process that includes consultations with grantees under this part and public and private experts in grievance procedures, arbitration, and mediation, develop model grievance procedures that may be implemented by the planning council under subsection (b)(1) of this section and grantees under this part. Such model procedures shall describe the elements that must be addressed in establishing local grievance procedures and provide grantees with flexibility in the design of such local procedures.

(B) Review

The Secretary shall review grievance procedures established by the planning council and grantees under this part to determine if such procedures are adequate. In making such a determination, the Secretary shall assess whether such procedures permit legitimate grievances to be filed, evaluated, and resolved at the local level.

(2) Grantees

To be eligible to receive funds under this part, a grantee shall develop grievance procedures that are determined by the Secretary to be consistent with the model procedures devel-

oped under paragraph (1)(A). Such procedures shall include a process for submitting grievances to binding arbitration.

(d) Process for establishing allocation priorities

Promptly after the date of the submission of the report required in section 501(b) of the Ryan White CARE Act Amendments of 2000 (relating to the relationship between epidemiological measures and health care for certain individuals with HIV disease), the Secretary, in consultation with planning councils and entities that receive amounts from grants under section 300ff–11(a) or 300ff–21 of this title, shall develop epidemiologic measures—

(1) for establishing the number of individuals living with HIV disease who are not receiving HIV-related health services; and

(2) for carrying out the duties under subsection (b)(4) of this section and section 300ff–27(b) of this title.

(e) Training guidance and materials

The Secretary shall provide to each chief elected official receiving a grant under section 300ff–11(a) of this title guidelines and materials for training members of the planning council under paragraph (1) regarding the duties of the council.

(July 1, 1944, ch. 373, title XXVI, § 2602, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 577; amended Pub. L. 102–531, title III, § 312(d)(26), Oct. 27, 1992, 106 Stat. 3505; Pub. L. 104–146, § 3(b)(1), May 20, 1996, 110 Stat. 1347; Pub. L. 106–345, title I, §§ 101–102(c), 103, Oct. 20, 2000, 114 Stat. 1320–1323.)

REFERENCES IN TEXT

Subpart II of part C of this subchapter, referred to in subsec. (b)(2)(J), was redesignated subpart I of part C of this subchapter by Pub. L. 106–345, title III, § 301(b)(1), Oct. 20, 2000, 114 Stat. 1345, and is classified to section 300ff–51 et seq. of this title.

The Social Security Act, referred to in subsec. (b)(4)(C)(v), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 501 of the Ryan White CARE Act Amendments of 2000, referred to in subsec. (d), is section 501 of Pub. L. 106–345, which is set out as a note under section 300ff–11 of this title. Provisions relating to a report are contained in section 501(d) of Pub. L. 106–345.

PRIOR PROVISIONS

A prior section 2602 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106–345, § 101(a)(1), substituted ''demographics of the population of individuals with HIV disease in the eligible area involved,'' for ''demographics of the epidemic in the eligible area involved,''.

Subsec. (b)(2)(C). Pub. L. 106–345, § 101(a)(2)(A), inserted before semicolon at end '', including providers of housing and homeless services''.

Subsec. (b)(2)(G). Pub. L. 106–345, § 101(a)(2)(B), struck out ''or AIDS'' after ''HIV disease''.

Subsec. (b)(2)(K). Pub. L. 106–345, § 101(a)(2)(C), struck out ''and'' after semicolon.

Subsec. (b)(2)(L). Pub. L. 106–345, § 101(a)(2)(D), substituted '', including but not limited to providers of HIV prevention services; and'' for period at end.

Subsec. (b)(2)(M). Pub. L. 106–345, § 101(a)(2)(E), added subpar. (M).

Subsec. (b)(3)(C). Pub. L. 106–345, § 103(1), struck out heading and text of subpar. (C). Text read as follows: ''A planning council may not be chaired solely by an employee of the grantee.''

Subsec. (b)(4)(A), (B). Pub. L. 106–345, § 102(a)(2), added subpars. (A) and (B). Former subpars. (A) and (B) redesignated (C) and (D), respectively.

Subsec. (b)(4)(C). Pub. L. 106–345, § 102(a)(1), redesignated subpar. (A) as (C). Former subpar. (C) redesignated (E).

Subsec. (b)(4)(C)(i) to (vi). Pub. L. 106–345, § 102(a)(3), added cls. (i) to (vi) and struck out former cls. (i) to (iv) which read as follows:

''(i) documented needs of the HIV-infected population;

''(ii) cost and outcome effectiveness of proposed strategies and interventions, to the extent that such data are reasonably available (either demonstrated or probable);

''(iii) priorities of the HIV-infected communities for whom the services are intended; and

''(iv) availability of other governmental and nongovernmental resources;''.

Subsec. (b)(4)(D). Pub. L. 106–345, § 102(a)(4), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''develop a comprehensive plan for the organization and delivery of health services described in section 300ff–14 of this title that is compatible with any existing State or local plan regarding the provision of health services to individuals with HIV disease;''.

Pub. L. 106–345, § 102(a)(1), redesignated subpar. (B) as (D). Former subpar. (D) redesignated (F).

Subsec. (b)(4)(E), (F). Pub. L. 106–345, § 102(a)(1), redesignated subpars. (C) and (D) as (E) and (F), respectively. Former subpar. (E) redesignated (G).

Subsec. (b)(4)(G). Pub. L. 106–345, § 102(a)(1), (6)(A), redesignated subpar. (E) as (G) and substituted ''public meetings (in accordance with paragraph (7)),'' for ''public meetings,''.

Subsec. (b)(4)(H). Pub. L. 106–345, § 102(a)(5), (6)(B), (7), added subpar. (H).

Subsec. (b)(5)(C). Pub. L. 106–345, § 101(b), added subpar. (C).

Subsec. (b)(7). Pub. L. 106–345, § 103(2), added par. (7).

Subsec. (d). Pub. L. 106–345, § 102(b), added subsec. (d).

Subsec. (e). Pub. L. 106–345, § 102(c), added subsec. (e).

1996—Subsec. (b)(1). Pub. L. 104–146, § 3(b)(1)(A)(ii), inserted at end ''Nominations for membership on the council shall be identified through an open process and candidates shall be selected based on locally delineated and publicized criteria. Such criteria shall include a conflict-of-interest standard that is in accordance with paragraph (5).''

Pub. L. 104–146, § 3(b)(1)(A)(i), substituted ''reflect in its composition the demographics of the epidemic in the eligible area involved, with particular consideration given to disproportionately affected and historically underserved groups and subpopulations.'' for ''include representatives of—

''(A) health care providers;

''(B) community-based and AIDS service organizations;

''(C) social service providers;

''(D) mental health care providers;

''(E) local public health agencies;

''(F) hospital planning agencies or health care planning agencies;

''(G) affected communities, including individuals with HIV disease;

''(H) non-elected community leaders;

''(I) State government;

''(J) grantees under subpart II of part C of this subchapter; and

''(K) the lead agency of any Health Resources and Services Administration adult and pediatric HIV-related care demonstration project operating in the area to be served.''

Subsec. (b)(2). Pub. L. 104–146, § 3(b)(1)(E), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(2)(C). Pub. L. 104–146, §3(b)(1)(B), added subpar. (C).

Subsec. (b)(3). Pub. L. 104–146, §3(b)(1)(D), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (b)(3)(A). Pub. L. 104–146, §3(b)(1)(C)(i), substituted ''area, including how best to meet each such priority and additional factors that a grantee should consider in allocating funds under a grant based on the—'' for ''area;'' and added cls. (i) to (iv).

Subsec. (b)(3)(B). Pub. L. 104–146, §3(b)(1)(C)(ii), struck out ''and'' at end.

Subsec. (b)(3)(C). Pub. L. 104–146, §3(b)(1)(C)(iii), substituted '', and at the discretion of the planning council, assess the effectiveness, either directly or through contractual arrangements, of the services offered in meeting the identified needs;'' for period at end.

Subsec. (b)(3)(D), (E). Pub. L. 104–146, §3(b)(1)(C)(iv), added subpars. (D) and (E).

Subsec. (b)(4). Pub. L. 104–146, §3(b)(1)(D), redesignated par. (3) as (4).

Subsec. (b)(5), (6). Pub. L. 104–146, §3(b)(1)(F), added pars. (5) and (6).

Subsec. (c). Pub. L. 104–146, §3(b)(1)(F), added subsec. (c).

1992—Subsec. (a)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–345, title VI, §601, Oct. 20, 2000, 114 Stat. 1355, provided that: ''This Act [see section 1 of Pub. L. 106–345, set out as a Short Title of 2000 Amendments note under section 201 of this title] and the amendments made by this Act take effect October 1, 2000, or upon the date of the enactment of this Act [Oct. 20, 2000], whichever occurs later.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–13. Type and distribution of grants

(a) Grants based on relative need of area

(1) In general

In carrying out section 300ff–11(a) of this title, the Secretary shall make a grant for each eligible area for which an application under section 300ff–15(a) of this title has been approved. Each such grant shall be made in an amount determined in accordance with paragraph (3).

(2) Expedited distribution

Not later than 60 days after an appropriation becomes available to carry out this part for a fiscal year, the Secretary shall, except in the case of waivers granted under section 300ff–15(c)[1] of this title, disburse 50 percent of the amount appropriated under section 300ff–77 of this title for such fiscal year through grants to eligible areas under section 300ff–11(a) of this title, in accordance with paragraph (3). The Secretary shall reserve an additional percentage of the amount appropriated under section 300ff–77 of this title for a fiscal year for grants under this part to make grants to eligible areas under section 300ff–11(a) of this title in accordance with paragraph (4).

(3) Amount of grant

(A) In general

Subject to the extent of amounts made available in appropriations Acts, a grant made for purposes of this paragraph to an eligible area shall be made in an amount equal to the product of—

(i) an amount equal to the amount available for distribution under paragraph (2) for the fiscal year involved; and

(ii) the percentage constituted by the ratio of the distribution factor for the eligible area to the sum of the respective distribution factors for all eligible areas.

(B) Distribution factor

For purposes of subparagraph (A)(ii), the term ''distribution factor'' means an amount equal to the estimated number of living cases of acquired immune deficiency syndrome in the eligible area involved, as determined under subparagraph (C).

(C) Estimate of living cases

The amount determined in this subparagraph is an amount equal to the product of—

(i) the number of cases of acquired immune deficiency syndrome in the eligible area during each year in the most recent 120-month period for which data are available with respect to all eligible areas, as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control and Prevention for each year during such period, except that (subject to subparagraph (D)), for grants made pursuant to this paragraph for fiscal year 2005 and subsequent fiscal years, the cases counted for each 12-month period beginning on or after July 1, 2004, shall be cases of HIV disease (as reported to and confirmed by such Director) rather than cases of acquired immune deficiency syndrome; and

(ii) with respect to—

(I) the first year during such period, .06;

(II) the second year during such period, .06;

(III) the third year during such period, .08;

(IV) the fourth year during such period, .10;

(V) the fifth year during such period, .16;

(VI) the sixth year during such period, .16;

(VII) the seventh year during such period, .24;

(VIII) the eighth year during such period, .40;

(IX) the ninth year during such period, .57; and

(X) the tenth year during such period, .88.

The yearly percentage described in subparagraph (ii) shall be updated biennially by the Secretary, after consultation with the Centers for Disease Control and Prevention, and shall be reported to the congressional committees of jurisdiction. The first such update shall occur prior to the determination of grant awards under this part for fiscal year 1998. Updates shall as applicable take into account the counting of cases of HIV disease pursuant to clause (i).

[1] See References in Text note below.

(D) Determination of Secretary regarding data on HIV cases

(i) In general

Not later than July 1, 2004, the Secretary shall determine whether there is data on cases of HIV disease from all eligible areas (reported to and confirmed by the Director of the Centers for Disease Control and Prevention) sufficiently accurate and reliable for use for purposes of subparagraph (C)(i). In making such a determination, the Secretary shall take into consideration the findings of the study under section 501(b) of the Ryan White CARE Act Amendments of 2000 (relating to the relationship between epidemiological measures and health care for certain individuals with HIV disease).

(ii) Effect of adverse determination

If under clause (i) the Secretary determines that data on cases of HIV disease is not sufficiently accurate and reliable for use for purposes of subparagraph (C)(i), then notwithstanding such subparagraph, for any fiscal year prior to fiscal year 2007 the references in such subparagraph to cases of HIV disease do not have any legal effect.

(iii) Grants and technical assistance regarding counting of HIV cases

Of the amounts appropriated under section 247c–2 of this title for a fiscal year, the Secretary shall reserve amounts to make grants and provide technical assistance to States and eligible areas with respect to obtaining data on cases of HIV disease to ensure that data on such cases is available from all States and eligible areas as soon as is practicable but not later than the beginning of fiscal year 2007.

(E) Unexpended funds

The Secretary may, in determining the amount of a grant for a fiscal year under this paragraph, adjust the grant amount to reflect the amount of unexpended and uncanceled grant funds remaining at the end of the fiscal year preceding the year for which the grant determination is to be made. The amount of any such unexpended funds shall be determined using the financial status report of the grantee.

(4) Increases in grant

(A) In general

For each fiscal year in a protection period for an eligible area, the Secretary shall increase the amount of the grant made pursuant to paragraph (2) for the area to ensure that—

(i) for the first fiscal year in the protection period, the grant is not less than 98 percent of the amount of the grant made for the eligible area pursuant to such paragraph for the base year for the protection period;

(ii) for any second fiscal year in such period, the grant is not less than 95 percent of the amount of such base year grant;

(iii) for any third fiscal year in such period, the grant is not less than 92 percent of the amount of the base year grant;

(iv) for any fourth fiscal year in such period, the grant is not less than 89 percent of the amount of the base year grant; and

(v) for any fifth or subsequent fiscal year in such period, if, pursuant to paragraph (3)(D)(ii), the references in paragraph (3)(C)(i) to HIV disease do not have any legal effect, the grant is not less than 85 percent of the amount of the base year grant.

(B) Special rule

If for fiscal year 2005, pursuant to paragraph (3)(D)(ii), data on cases of HIV disease are used for purposes of paragraph (3)(C)(i), the Secretary shall increase the amount of a grant made pursuant to paragraph (2) for an eligible area to ensure that the grant is not less than 98 percent of the amount of the grant made for the area in fiscal year 2004.

(C) Base year; protection period

With respect to grants made pursuant to paragraph (2) for an eligible area:

(i) The base year for a protection period is the fiscal year preceding the trigger grant-reduction year.

(ii) The first trigger grant-reduction year is the first fiscal year (after fiscal year 2000) for which the grant for the area is less than the grant for the area for the preceding fiscal year.

(iii) A protection period begins with the trigger grant-reduction year and continues until the beginning of the first fiscal year for which the amount of the grant determined pursuant to paragraph (2) for the area equals or exceeds the amount of the grant determined under subparagraph (A).

(iv) Any subsequent trigger grant-reduction year is the first fiscal year, after the end of the preceding protection period, for which the amount of the grant is less than the amount of the grant for the preceding fiscal year.

(b) Supplemental grants

(1) In general

Not later than 150 days after the date on which appropriations are made under section 300ff–77 of this title for a fiscal year, the Secretary shall disburse the remainder of amounts not disbursed under subsection (a)(2) of this section for such fiscal year for the purpose of making grants under section 300ff–11(a) of this title to eligible areas whose application under section 300ff–15(b) of this title—

(A) contains a report concerning the dissemination of emergency relief funds under subsection (a) of this section and the plan for utilization of such funds;

(B) demonstrates the severe need in such area for supplemental financial assistance to combat the HIV epidemic;

(C) demonstrates the existing commitment of local resources of the area, both financial and in-kind, to combating the HIV epidemic;

(D) demonstrates the ability of the area to utilize such supplemental financial re-

sources in a manner that is immediately responsive and cost effective;

(E) demonstrates that resources will be allocated in accordance with the local demographic incidence of AIDS including appropriate allocations for services for infants, children, youth, women, and families with HIV disease;

(F) demonstrates the inclusiveness of the planning council membership, with particular emphasis on affected communities and individuals with HIV disease; and

(G) demonstrates the manner in which the proposed services are consistent with the local needs assessment and the statewide coordinated statement of need.

(2) Amount of grant

(A) In general

The amount of each grant made for purposes of this subsection shall be determined by the Secretary based on a weighting of factors under paragraph (1), with severe need under subparagraph (B) of such paragraph counting one-third.

(B) Severe need

In determining severe need in accordance with paragraph (1)(B), the Secretary shall consider the ability of the qualified applicant to expend funds efficiently and the impact of relevant factors on the cost and complexity of delivering health care and support services to individuals with HIV disease in the eligible area, including factors such as—

(i) sexually transmitted diseases, substance abuse, tuberculosis, severe mental illness, or other comorbid factors determined relevant by the Secretary;

(ii) new or growing subpopulations of individuals with HIV disease;

(iii) homelessness;

(iv) the current prevalence of HIV disease;

(v) an increasing need for HIV-related services, including relative rates of increase in the number of cases of HIV disease; and

(vi) unmet need for such services, as determined under section 300ff–12(b)(4) of this title.

(C) Prevalence

In determining the impact of the factors described in subparagraph (B), the Secretary shall, to the extent practicable, use national, quantitative incidence data that are available for each eligible area. Not later than 18 months after October 20, 2000, the Secretary shall develop a mechanism to utilize such data. Such a mechanism shall be modified to reflect the findings of the study under section 501(b) of the Ryan White CARE Act Amendments of 2000 (relating to the relationship between epidemiological measures and health care for certain individuals with HIV disease). In the absence of such data, the Secretary may consider a detailed description and qualitative analysis of severe need, as determined under subparagraph (B), including any local prevalence data gathered and analyzed by the eligible area.

(D) Priority

Subsequent to the development of the quantitative mechanism described in subparagraph (C), the Secretary shall phase in, over a 3-year period beginning in fiscal year 1998, the use of such a mechanism to determine the severe need of an eligible area compared to other eligible areas and to determine, in part, the amount of supplemental funds awarded to the eligible area under this part.

(3) Remainder of amounts

In determining the amount of funds to be obligated under paragraph (1), the Secretary shall include amounts that are not paid to the eligible areas under expedited procedures under subsection (a)(2) of this section as a result of—

(A) the failure of any eligible area to submit an application under section 300ff–15(c)[2] of this title; or

(B) any eligible area informing the Secretary that such eligible area does not intend to expend the full amount of its grant under such section.

(4) Failure to submit

(A) In general

The failure of an eligible area to submit an application for an expedited grant under subsection (a)(2) of this section shall not result in such area being ineligible for a grant under this subsection.

(B) Application

The application of an eligible area submitted under section 300ff–15(b) of this title shall contain the assurances required under subsection (a) of such section if such eligible area fails to submit an application for an expedited grant under subsection (a)(2) of this section.

(c) Compliance with priorities of HIV planning council

Notwithstanding any other provision of this part, the Secretary, in carrying out section 300ff–11(a) of this title, may not make any grant under subsection (a) or (b) of this section to an eligible area unless the application submitted by such area under section 300ff–15 of this title for the grant involved demonstrates that the grants made under subsections (a) and (b) of this section to the area for the preceding fiscal year (if any) were expended in accordance with the priorities applicable to such year that were established, pursuant to section 300ff–12(b)(4)(C) of this title, by the planning council serving the area.

(July 1, 1944, ch. 373, title XXVI, § 2603, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 578; amended Pub. L. 101–502, § 6(a), Nov. 3, 1990, 104 Stat. 1289; Pub. L. 102–531, title III, § 312(d)(27), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 104–146, §§ 3(b)(2), (3), 4, 6(c)(1), 12(c)(2), May 20, 1996, 110 Stat. 1349, 1350, 1364, 1367, 1373; Pub. L. 106–345, title I, §§ 102(d), 111, 112, Oct. 20, 2000, 114 Stat. 1323, 1326.)

[2] See References in Text note below.

REFERENCES IN TEXT

Section 300ff–15 of this title, referred to in subsecs. (a)(2) and (b)(3)(A), was amended by Pub. L. 104–146, §3(b)(5)(C), (D), May 20, 1996, 110 Stat. 1353, to add a new subsec. (c), relating to single application and grant awards, and redesignate former subsec. (c), relating to date for submission of grant applications, as (d).

Section 501(b) of the Ryan White CARE Act Amendments of 2000, referred to in subsecs. (a)(3)(D)(i) and (b)(2)(C), is section 501(b) of Pub. L. 106–345, which is set out in a note under section 300ff–11 of this title.

PRIOR PROVISIONS

A prior section 2603 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–345, §111(a), substituted ''for a fiscal year'' for ''for each of the fiscal years 1996 through 2000'' in first sentence.

Subsec. (a)(3)(C)(i). Pub. L. 106–345, §111(b)(1)(A), inserted before semicolon '', except that (subject to subparagraph (D)), for grants made pursuant to this paragraph for fiscal year 2005 and subsequent fiscal years, the cases counted for each 12-month period beginning on or after July 1, 2004, shall be cases of HIV disease (as reported to and confirmed by such Director) rather than cases of acquired immune deficiency syndrome''.

Subsec. (a)(3)(C). Pub. L. 106–345, §111(b)(1)(B), in concluding provisions, inserted before period at end of first sentence '', and shall be reported to the congressional committees of jurisdiction'' and inserted at end ''Updates shall as applicable take into account the counting of cases of HIV disease pursuant to clause (i).''

Subsec. (a)(3)(D), (E). Pub. L. 106–345, §111(b)(2), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (a)(4). Pub. L. 106–345, §111(c), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''With respect to an eligible area under section 300ff–11(a) of this title, the Secretary shall increase the amount of a grant under paragraph (2) for a fiscal year to ensure that such eligible area receives not less than—

''(A) with respect to fiscal year 1996, 100 percent;

''(B) with respect to fiscal year 1997, 99 percent;

''(C) with respect to fiscal year 1998, 98 percent;

''(D) with respect to fiscal year 1999, 96.5 percent; and

''(E) with respect to fiscal year 2000, 95 percent;

of the amount allocated for fiscal year 1995 to such entity under this subsection.''

Subsec. (b)(1)(E). Pub. L. 106–345, §112(b), inserted ''youth,'' after ''children,''.

Subsec. (b)(2). Pub. L. 106–345, §112(a)(1), substituted ''Amount of grant'' for ''Definition'' in heading.

Subsec. (b)(2)(A). Pub. L. 106–345, §112(a)(3), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (b)(2)(B). Pub. L. 106–345, §112(a)(2), (4), redesignated subpar. (A) as (B) and added cls. (iv) to (vi). Former subpar. (B) redesignated (C).

Subsec. (b)(2)(C). Pub. L. 106–345, §112(a)(5)(C), inserted after second sentence ''Such a mechanism shall be modified to reflect the findings of the study under section 501(b) of the Ryan White CARE Act Amendments of 2000 (relating to the relationship between epidemiological measures and health care for certain individuals with HIV disease).''

Pub. L. 106–345, §112(a)(5)(B), in second sentence, substituted ''18 months after October 20, 2000'' for ''2 years after May 20, 1996''.

Pub. L. 106–345, §112(a)(5)(A), substituted ''subparagraph (B)'' for ''subparagraph (A)'' in two places.

Pub. L. 106–345, §112(a)(2), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (b)(2)(D). Pub. L. 106–345, §112(a)(2), (6), redesignated subpar. (C) as (D) and substituted ''subparagraph (C)'' for ''subparagraph (B)''.

Subsec. (b)(4). Pub. L. 106–345, §112(c)(1), (2), redesignated par. (5) as (4) and struck out heading and text of former par. (4). Text read as follows: ''The amount of each grant made for purposes of this subsection shall be determined by the Secretary based on the application submitted by the eligible area under section 300ff–15(b) of this title.''

Subsec. (b)(4)(B). Pub. L. 106–345, §112(c)(3), substituted ''an expedited grant'' for ''an expedited grants''.

Subsec. (b)(5). Pub. L. 106–345, §112(c)(2), redesignated par. (5) as (4).

Subsec. (c). Pub. L. 106–345, §102(d), substituted ''section 300ff–12(b)(4)(C) of this title'' for ''section 300ff–12(b)(3)(A) of this title''.

1996—Subsec. (a)(2). Pub. L. 104–146, §6(c)(1)(A), substituted ''section 300ff–77'' for ''section 300ff–18''.

Pub. L. 104–146, §3(b)(3)(A), inserted '', in accordance with paragraph (3)'' after ''section 300ff–11(a) of this title'' and ''The Secretary shall reserve an additional percentage of the amount appropriated under section 300ff–77 of this title for a fiscal year for grants under this part to make grants to eligible areas under section 300ff–11(a) of this title in accordance with paragraph (4).'' at end.

Pub. L. 104–146, §3(b)(2)(A), substituted ''Not later than 60 days after an appropriation becomes available to carry out this part for each of the fiscal years 1996 through 2000, the Secretary shall'' for ''Not later than—

''(A) 90 days after an appropriation becomes available to carry out this part for fiscal year 1991; and

''(B) 60 days after an appropriation becomes available to carry out this part for each of fiscal years 1992 through 1995;

the Secretary shall''.

Subsec. (a)(3). Pub. L. 104–146, §4, amended par. (3) generally, revising and restating provisions of former subpars. (A) to (C) relating to amount of grants under par. (3) as subpars. (A) to (D).

Subsec. (a)(4). Pub. L. 104–146, §3(b)(3)(B), added par. (4).

Subsec. (b)(1). Pub. L. 104–146, §6(c)(1)(B), substituted ''section 300ff–77'' for ''section 300ff–18'' in introductory provisions.

Subsec. (b)(1)(F), (G). Pub. L. 104–146, §3(b)(2)(B)(i), added subpars. (F) and (G).

Subsec. (b)(2) to (4). Pub. L. 104–146, §3(b)(2)(B)(ii), (iii), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (b)(4)(B). Pub. L. 104–146, §12(c)(2), which directed substitution of ''an expedited grant'' for ''an expedited grants'' in par. (4)(B), could not be executed because the words ''an expedited grants'' did not appear in par. (4)(B) subsequent to redesignation of par. (4) as (5) by Pub. L. 104–146, §3(b)(2)(B)(ii). See above.

Subsec. (b)(5). Pub. L. 104–146, §3(b)(2)(B)(ii), redesignated par. (4) as (5).

Subsec. (c). Pub. L. 104–146, §3(b)(3)(C), added subsec. (c).

1992—Subsec. (a)(3)(B)(i). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1990—Subsec. (a)(3). Pub. L. 101–502 amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(A) IN GENERAL.—Subject to the extent of amounts made available in appropriations Acts, a grant made for purposes of this paragraph for an eligible area shall be made in an amount equal to the sum of—

''(i) an amount determined in accordance with subparagraph (B); and

''(ii) an amount determined in accordance with subparagraph (C).

''(B) AMOUNT RELATING TO CUMULATIVE NUMBER OF CASES.—The amount referred to in clause (i) of subparagraph (A) is an amount equal to the product of—

''(i) an amount equal to 75 percent of the amounts available for distribution under paragraph (2) for the fiscal year involved; and

''(ii) a percentage equal to the quotient of—

''(I) the cumulative number of cases of acquired immune deficiency syndrome in the eligible area

involved, as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control on the applicable date described in section 300ff–11(a) of this title; divided by

''(II) the sum of the cumulative number of such cases in all eligible areas for which an application for a grant under paragraph (1) has been approved.

''(C) AMOUNT RELATING TO PER CAPITA INCIDENCE OF CASES.—The amount referred to in clause (ii) of subparagraph (A) is an amount equal to the product of—

''(i) an amount equal to 25 percent of the amounts available for distribution under paragraph (2) for the fiscal year involved; and

''(ii) a percentage developed by the Secretary through consideration of the ratio of—

''(I) the per capita incidence of cumulative cases of acquired immune deficiency syndrome in the eligible area involved (computed on the basis of the most recently available data on the population of the area); to

''(II) the per capita incidence of such cumulative cases in all eligible areas for which an application for a grant under paragraph (1) has been approved (computed on the basis of the most recently available data on the population of such areas).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 3(b)(2), (3), 4, 6(c)(1)(B), and 12(c)(2) of Pub. L. 104–146 effective Oct. 1, 1996, and amendment by section 6(c)(1)(A) of Pub. L. 104–146 effective May 20, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–14. Use of amounts

(a) Requirements

The Secretary may not make a grant under section 300ff–11(a) of this title to the chief elected official of an eligible area unless such political subdivision agrees that—

(1) subject to paragraph (2), the allocation of funds and services within the eligible area will be made in accordance with the priorities established, pursuant to section 300ff–12(b)(3)(A)[1] of this title, by the HIV health services planning council that serves such eligible area; and

(2) funds provided under section 300ff–11 of this title will be expended only for the purposes described in subsections (b) and (c)[1] of this section.

(b) Primary purposes

(1) In general

The chief elected official shall use amounts received under a grant under section 300ff–11 of this title to provide direct financial assistance to entities described in paragraph (2) for the purpose of delivering or enhancing HIV-related services, as follows:

(A) Outpatient and ambulatory health services, including substance abuse treatment, mental health treatment, and comprehensive treatment services, which shall include treatment education and prophylactic treatment for opportunistic infections, for individuals and families with HIV disease.

(B) Outpatient and ambulatory support services (including case management), to the extent that such services facilitate, enhance, support, or sustain the delivery, continuity, or benefits of health services for individuals and families with HIV disease.

(C) Inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities.

(D) Outreach activities that are intended to identify individuals with HIV disease who know their HIV status and are not receiving HIV-related services, and that are—

(i) necessary to implement the strategy under section 300ff–12(b)(4)(D) of this title, including activities facilitating the access of such individuals to HIV-related primary care services at entities described in paragraph (3)(A);

(ii) conducted in a manner consistent with the requirements under sections 300ff–15(a)(3) and 300ff–51(b)(2) of this title; and

(iii) supplement, and do not supplant, such activities that are carried out with amounts appropriated under section 247b of this title.

(2) Appropriate entities

(A) In general

Subject to subparagraph (B), direct financial assistance may be provided under paragraph (1) to public or nonprofit private entities,,[2] or private for-profit entities if such entities are the only available provider of quality HIV care in the area, including hospitals (which may include Department of Veterans Affairs facilities), community-based organizations, hospices, ambulatory care facilities, community health centers, migrant health centers, homeless health centers, substance abuse treatment programs, and mental health programs.

(B) Priority

In providing direct financial assistance under paragraph (1) the chief elected official shall give priority to entities that are currently participating in Health Resources and Services Administration HIV health care demonstration projects.

(3) Early intervention services

(A) In general

The purposes for which a grant under section 300ff–11 of this title may be used include providing to individuals with HIV disease early intervention services described in section 300ff–51(b)(2) of this title, with follow-up referral provided for the purpose of facilitating the access of individuals receiving the services to HIV-related health services. The entities through which such services may be provided under the grant include public health departments, emergency rooms, substance abuse and mental health treatment programs, detoxification centers, detention facilities, clinics regarding sexually transmitted diseases, homeless shelters, HIV disease counseling and testing sites, health care points of entry specified by eligible areas, federally qualified health centers, and

[1] See References in Text note below.

[2] So in original.

entities described in section 300ff–52(a) of this title that constitute a point of access to services by maintaining referral relationships.

(B) Conditions

With respect to an entity that proposes to provide early intervention services under subparagraph (A), such subparagraph applies only if the entity demonstrates to the satisfaction of the chief elected official for the eligible area involved that—

(i) Federal, State, or local funds are otherwise inadequate for the early intervention services the entity proposes to provide; and

(ii) the entity will expend funds pursuant to such subparagraph to supplement and not supplant other funds available to the entity for the provision of early intervention services for the fiscal year involved.

(4) Priority for women, infants and children

(A) In general

For the purpose of providing health and support services to infants, children, youth, and women with HIV disease, including treatment measures to prevent the perinatal transmission of HIV, the chief elected official of an eligible area, in accordance with the established priorities of the planning council, shall for each of such populations in the eligible area use, from the grants made for the area under section 300ff–11(a) of this title for a fiscal year, not less than the percentage constituted by the ratio of the population involved (infants, children, youth, or women in such area) with acquired immune deficiency syndrome to the general population in such area of individuals with such syndrome.

(B) Waiver

With respect to the population involved, the Secretary may provide to the chief elected official of an eligible area a waiver of the requirement of subparagraph (A) if such official demonstrates to the satisfaction of the Secretary that the population is receiving HIV-related health services through the State medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], the State children's health insurance program under title XXI of such Act [42 U.S.C. 1397aa et seq.], or other Federal or State programs.

(c) Quality management

(1) Requirement

The chief elected official of an eligible area that receives a grant under this part shall provide for the establishment of a quality management program to assess the extent to which HIV health services provided to patients under the grant are consistent with the most recent Public Health Service guidelines for the treatment of HIV disease and related opportunistic infection, and as applicable, to develop strategies for ensuring that such services are consistent with the guidelines for improvement in the access to and quality of HIV health services.

(2) Use of funds

From amounts received under a grant awarded under this part for a fiscal year, the chief elected official of an eligible area may (in addition to amounts to which subsection (f)(1) of this section applies) use for activities associated with the quality management program required in paragraph (1) not more than the lesser of—

(A) 5 percent of amounts received under the grant; or

(B) $3,000,000.

(d) Limited expenditures for personnel needs

(1) In general

A chief elected official, in accordance with paragraph (3), may use not to exceed 10 percent of amounts received under a grant under section 300ff–11 of this title to provide financial assistance or services, for the purposes described in paragraph (2), to any public or nonprofit private entity, including hospitals (which may include Veterans Administration facilities), nursing homes, subacute and transitional care facilities, and hospices that—

(A) provide HIV-related care or services to a disproportionate share of low-income individuals and families with HIV disease;

(B) incur uncompensated costs in the provision of such care or services to such individuals and families;

(C) have established, and agree to implement, a plan to evaluate the utilization of services provided in the care of individuals and families with HIV disease; and

(D) have established a system designed to ensure that such individuals and families are referred to the most medically appropriate level of care as soon as such referral is medically indicated.

(2) Use

A chief elected official may use amounts referred to in paragraph (1) to—

(A) provide direct financial assistance to institutions and entities of the type referred to in such paragraph to assist such institutions and entities in recruiting or training and paying compensation to qualified personnel determined, under paragraph (3), to be necessary by the HIV health services planning council, specifically for the care of individuals with HIV disease; or

(B) in lieu of providing direct financial assistance, make arrangements for the provision of the services of such qualified personnel to such institutions and entities.

(3) Requirement of determination by council

A chief elected official shall not use any of the amounts received under a grant under section 300ff–11(a) of this title to provide assistance or services under paragraph (2) unless the HIV health services planning council of the eligible area has made a determination that, with respect to the care of individuals with HIV disease—

(A) a shortage of specific health, mental health or support service personnel exists within specific institutions or entities in the eligible area;

(B) the shortage of such personnel has resulted in the inappropriate utilization of inpatient services within the area; and

(C) assistance or services provided to an institution or entity under paragraph (2), will not be used to supplant the existing resources devoted by such institution or entity to the uses described in such paragraph.

(e) Requirement of status as medicaid provider

(1) Provision of service

Subject to paragraph (2), the Secretary may not make a grant under section 300ff–11(a) of this title for the provision of services under this section in a State unless, in the case of any such service that is available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State—

(A) the political subdivision involved will provide the service directly, and the political subdivision has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(B) the political subdivision will enter into an agreement with a public or nonprofit private entity under which the entity will provide the service, and the entity has entered into such a participation agreement and is qualified to receive such payments.

(2) Waiver

(A) In general

In the case of an entity making an agreement pursuant to paragraph (1)(B) regarding the provision of services, the requirement established in such paragraph shall be waived by the HIV health services planning council for the eligible area if the entity does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(B) Determination

A determination by the HIV health services planning council of whether an entity referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the entity accepts voluntary donations for the purpose of providing services to the public.

(f) Administration

(1) In general

The chief executive officer of an eligible area shall not use in excess of 5 percent of amounts received under a grant awarded under this part for administration,.[3] In the case of entities and subcontractors to which such officer allocates amounts received by the officer under the grant, the officer shall ensure that, of the aggregate amount so allocated, the total of the expenditures by such entities for administrative expenses does not exceed 10 percent (without regard to whether particular entities expend more than 10 percent for such expenses).

(2) Administrative activities

For the purposes of paragraph (1), amounts may be used for administrative activities that include—

(A) routine grant administration and monitoring activities, including the development of applications for part A funds, the receipt and disbursal of program funds, the development and establishment of reimbursement and accounting systems, the preparation of routine programmatic and financial reports, and compliance with grant conditions and audit requirements; and

(B) all activities associated with the grantee's contract award procedures, including the development of requests for proposals, contract proposal review activities, negotiation and awarding of contracts, monitoring of contracts through telephone consultation, written documentation or onsite visits, reporting on contracts, and funding reallocation activities.

(3) Subcontractor administrative costs

For the purposes of this subsection, subcontractor administrative activities include—

(A) usual and recognized overhead, including established indirect rates for agencies;

(B) management oversight of specific programs funded under this subchapter; and

(C) other types of program support such as quality assurance, quality control, and related activities.

(g) Construction

A State may not use amounts received under a grant awarded under this part to purchase or improve land, or to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or to make cash payments to intended recipients of services.

(July 1, 1944, ch. 373, title XXVI, § 2604, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 580; amended Pub. L. 103–446, title XII, § 1203(a)(3), Nov. 2, 1994, 108 Stat. 4689; Pub. L. 104–146, § 3(b)(4), May 20, 1996, 110 Stat. 1351; Pub. L. 106–345, title I, § 121, Oct. 20, 2000, 114 Stat. 1326.)

REFERENCES IN TEXT

Section 300ff–12(b) of this title, referred to in subsec. (a)(1), was amended by Pub. L. 104–146, § 3(b)(1)(D), May 20, 1996, 110 Stat. 1348, to redesignate pars. (2) and (3) as (3) and (4), respectively. As so redesignated, par. (3)(A) relates to establishment or designation of councils and par. (4)(A) relates to establishment of priorities by planning councils.

Subsection (c) of this section, referred to in subsec. (a)(2), was redesignated subsec. (d), and a new subsec. (c) was added, by Pub. L. 106–345, title I, § 121(d), Oct. 20, 2000, 114 Stat. 1328.

The Social Security Act, referred to in subsecs. (b)(4)(B) and (e)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

[3] So in original. The comma probably should not appear.

PRIOR PROVISIONS

A prior section 2604 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106–345, §121(a)(1), substituted ''HIV-related services, as follows:'' for ''HIV-related—'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 106–345, §121(a)(2), substituted ''Outpatient and ambulatory health services, including substance abuse treatment,'' for ''outpatient and ambulatory health and support services, including case management, substance abuse treatment and'' and substituted a period for ''; and'' at end.

Subsec. (b)(1)(B). Pub. L. 106–345, §121(a)(4), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (b)(1)(C). Pub. L. 106–345, §121(a)(3), redesignated subpar. (B) as (C) and substituted ''Inpatient'' for ''inpatient''.

Subsec. (b)(1)(D). Pub. L. 106–345, §121(a)(5), added subpar. (D).

Subsec. (b)(3). Pub. L. 106–345, §121(b)(2), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 106–345, §121(b)(1), (c), redesignated par. (3) as (4) and amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''For the purpose of providing health and support services to infants, children, and women with HIV disease, including treatment measures to prevent the perinatal transmission of HIV, the chief elected official of an eligible area, in accordance with the established priorities of the planning council, shall use, from the grants made for the area under section 300ff–11(a) of this title for a fiscal year, not less than the percentage constituted by the ratio of the population in such area of infants, children, and women with acquired immune deficiency syndrome to the general population in such area of individuals with such syndrome.''

Subsecs. (c) to (g). Pub. L. 106–345, §121(d), added subsec. (c) and redesignated former subsecs. (c) to (f) as (d) to (g), respectively.

1996—Subsec. (b)(1)(A). Pub. L. 104–146, §3(b)(4)(A), inserted '', substance abuse treatment and mental health treatment,'' after ''case management'' and ''which shall include treatment education and prophylactic treatment for opportunistic infections,'' after ''treatment services,''.

Subsec. (b)(2)(A). Pub. L. 104–146, §3(b)(4)(B), inserted '', or private for-profit entities if such entities are the only available provider of quality HIV care in the area,'' after ''nonprofit private entities,'' and substituted ''homeless health centers, substance abuse treatment programs, and mental health programs'' for ''and homeless health centers''.

Subsec. (b)(3). Pub. L. 104–146, §3(b)(4)(C), added par. (3).

Subsec. (e). Pub. L. 104–146, §3(b)(4)(C), struck out ''and planning'' after ''Administration'' in heading, designated existing provisions as par. (1), inserted par. heading, struck out ''accounting, reporting, and program oversight functions'' after ''for administration,'', inserted at end ''In the case of entities and subcontractors to which such officer allocates amounts received by the officer under the grant, the officer shall ensure that, of the aggregate amount so allocated, the total of the expenditures by such entities for administrative expenses does not exceed 10 percent (without regard to whether particular entities expend more than 10 percent for such expenses).'', and added pars. (2) and (3).

1994—Subsec. (b)(2)(A). Pub. L. 103–446 substituted ''Department of Veterans Affairs facilities'' for ''Veterans Administration facilities''.

CHANGE OF NAME

Reference to Veterans Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

§ 300ff–15. Application

(a) In general

To be eligible to receive a grant under section 300ff–11 of this title, an eligible area shall prepare and submit to the Secretary an application, in accordance with subsection (c) of this section regarding a single application and grant award, at such time, in such form, and containing such information as the Secretary shall require, including assurances adequate to ensure—

(1)(A) that funds received under a grant awarded under this part will be utilized to supplement not supplant State funds made available in the year for which the grant is awarded to provide HIV-related services as described in section 300ff–14(b)(1) of this title;

(B) that the political subdivisions within the eligible area will maintain the level of expenditures by such political subdivisions for HIV-related services as described in section 300ff–14(b)(1) of this title at a level that is equal to the level of such expenditures by such political subdivisions for the preceding fiscal year; and

(C) that political subdivisions within the eligible area will not use funds received under a grant awarded under this part in maintaining the level of expenditures for HIV-related services as required in subparagraph (B);

(2) that the eligible area has an HIV health services planning council and has entered into intergovernmental agreements pursuant to section 300ff–12 of this title, and has developed or will develop the comprehensive plan in accordance with section 300ff–12(b)(3)(B)[1] of this title;

(3) that entities within the eligible area that receive funds under a grant under this part will maintain appropriate relationships with entities in the eligible area served that constitute key points of access to the health care system for individuals with HIV disease (including emergency rooms, substance abuse treatment programs, detoxification centers, adult and juvenile detention facilities, sexually transmitted disease clinics, HIV counseling and testing sites, mental health programs, and homeless shelters), and other entities under section[2] 300ff–14(b)(3) and 300ff–52(a) of this title, for the purpose of facilitating early intervention for individuals newly diagnosed with HIV disease and individuals knowledgeable of their HIV status but not in care;

(4) that the chief elected official of the eligible area will satisfy all requirements under section 300ff–14(c) of this title;

[1] See References in Text note below.

[2] So in original. Probably should be ''sections''.

(5) that entities within the eligible area that will receive funds under a grant provided under section 300ff–11(a) of this title shall participate in an established HIV community-based continuum of care if such continuum exists within the eligible area;

(6) that funds received under a grant awarded under this part will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(B) by an entity that provides health services on a prepaid basis;

(7) to the maximum extent practicable, that—

(A) HIV health care and support services provided with assistance made available under this part will be provided without regard—

(i) to the ability of the individual to pay for such services; and

(ii) to the current or past health condition of the individual to be served;

(B) such services will be provided in a setting that is accessible to low-income individuals with HIV-disease; and

(C) a program of outreach will be provided to low-income individuals with HIV-disease to inform such individuals of such services;

(8) that the applicant has participated, or will agree to participate, in the statewide coordinated statement of need process where it has been initiated by the State public health agency responsible for administering grants under part B of this subchapter, and ensure that the services provided under the comprehensive plan are consistent with the statewide coordinated statement of need; and

(9) that the eligible area has procedures in place to ensure that services provided with funds received under this part meet the criteria specified in section 300ff–14(b)(1) of this title.

(b) Application

An eligible area that desires to receive a grant under section 300ff–13(b) of this title shall prepare and submit to the Secretary an application, in accordance with subsection (c) of this section regarding a single application and grant award, at such time, in such form, and containing such information as the Secretary shall require, including the information required under such subsection and information concerning—

(1) the number of individuals to be served within the eligible area with assistance provided under the grant;

(2) demographic data on the population of such individuals;

(3) the average cost of providing each category of HIV-related health services and the extent to which such cost is paid by third-party payors; and

(4) the aggregate amounts expended for each such category of services.

(c) Single application and grant award

(1) Application

The Secretary may phase in the use of a single application that meets the requirements of subsections (a) and (b) of section 300ff–13 of this title with respect to an eligible area that desires to receive grants under section 300ff–13 of this title for a fiscal year.

(2) Grant award

The Secretary may phase in the awarding of a single grant to an eligible area that submits an approved application under paragraph (1) for a fiscal year.

(d) Date certain for submission

(1) Requirement

Except as provided in paragraph (2), to be eligible to receive a grant under section 300ff–11(a) of this title for a fiscal year, an application under subsection (a) of this section shall be submitted not later than 45 days after the date on which appropriations are made under section 300ff–77 of this title for the fiscal year.

(2) Exception

The Secretary may extend the time for the submission of an application under paragraph (1) for a period of not to exceed 60 days if the Secretary determines that the eligible area has made a good faith effort to comply with the requirement of such paragraph but has otherwise been unable to submit its application.

(3) Distribution by Secretary

Not later than 45 days after receiving an application that meets the requirements of subsection (a) of this section from an eligible area, the Secretary shall distribute to such eligible area the amounts awarded under the grant for which the application was submitted.

(4) Redistribution

Any amounts appropriated in any fiscal year under this part and not obligated to an eligible entity as a result of the failure of such entity to submit an application shall be redistributed by the Secretary to other eligible entities in proportion to the original grants made to such eligible areas under section 300ff–11(a) of this title.

(e) Requirements regarding imposition of charges for services

(1) In general

The Secretary may not make a grant under section 300ff–11 of this title to an eligible area unless the eligible area provides assurances that in the provision of services with assistance provided under the grant—

(A) in the case of individuals with an income less than or equal to 100 percent of the official poverty line, the provider will not impose charges on any such individual for the provision of services under the grant;

(B) in the case of individuals with an income greater than 100 percent of the official poverty line, the provider—

(i) will impose a charge on each such individual for the provision of such services; and

(ii) will impose the charge according to a schedule of charges that is made available to the public;

(C) in the case of individuals with an income greater than 100 percent of the official poverty line and not exceeding 200 percent of such poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 5 percent of the annual gross income of the individual involved;

(D) in the case of individuals with an income greater than 200 percent of the official poverty line and not exceeding 300 percent of such poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 7 percent of the annual gross income of the individual involved; and

(E) in the case of individuals with an income greater than 300 percent of the official poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

(2) Assessment of charge

With respect to compliance with the assurance made under paragraph (1), a grantee or entity receiving assistance under this part may, in the case of individuals subject to a charge for purposes of such paragraph—

(A) assess the amount of the charge in the discretion of the grantee, including imposing only a nominal charge for the provision of services, subject to the provisions of such paragraph regarding public schedules and regarding limitations on the maximum amount of charges; and

(B) take into consideration the medical expenses of individuals in assessing the amount of the charge, subject to such provisions.

(3) Applicability of limitation on amount of charge

The Secretary may not make a grant under section 300ff–11 of this title to an eligible area unless the eligible area agrees that the limitations established in subparagraphs (C), (D) and (E) of paragraph (1) regarding the imposition of charges for services applies to the annual aggregate of charges imposed for such services, without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, copayments, coinsurance, or other charges.

(4) Waiver regarding secondary agreements

The requirements established in paragraphs (1) through (3) shall be waived in accordance with section 300ff–14(d)(2)[1] of this title.

(July 1, 1944, ch. 373, title XXVI, § 2605, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 582; amended Pub. L. 104–146, §§ 3(b)(5), 6(c)(2), May 20, 1996, 110 Stat. 1352, 1368; Pub. L. 106–345, title I, § 122, title V, § 503(a)(1), Oct. 20, 2000, 114 Stat. 1329, 1354.)

REFERENCES IN TEXT

Section 300ff–12(b) of this title, referred to in subsec. (a)(2), was amended by Pub. L. 104–146, § 3(b)(1)(D), May 20, 1996, 110 Stat. 1348, to redesignate pars. (2) and (3) as (3) and (4), respectively. As so redesignated, par. (3)(B) relates to consideration regarding designation of councils and par. (4)(B) relates to development of a comprehensive plan.

Section 300ff–14(d)(2) of this title, referred to in subsec. (e)(4), was redesignated section 300ff–14(e)(2) of this title by Pub. L. 106–345, title I, § 121(d)(1), Oct. 20, 2000, 114 Stat. 1328.

PRIOR PROVISIONS

A prior section 2605 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238d of this title.

AMENDMENTS

2000—Subsec. (a)(1)(A). Pub. L. 106–345, § 122(b)(1)(A), substituted ''services as described in section 300ff–14(b)(1) of this title'' for ''services to individuals with HIV disease''.

Subsec. (a)(1)(B). Pub. L. 106–345, § 122(b)(1)(B), substituted ''services as described in section 300ff–14(b)(1) of this title'' for ''services for individuals with HIV disease''.

Subsec. (a)(3) to (8). Pub. L. 106–345, § 122(a), added pars. (3) and (4) and redesignated former pars. (3) to (6) as (5) to (8), respectively.

Subsec. (a)(9). Pub. L. 106–345, § 122(b)(2)–(4), added par. (9).

Subsec. (d)(1). Pub. L. 106–345, § 503(a)(1)(A), made technical amendment to reference in original act which appears in text as reference to section 300ff–77 of this title.

Subsec. (d)(4). Pub. L. 106–345, § 503(a)(1)(B), inserted ''section'' before ''300ff–11(a) of this title''.

1996—Subsec. (a). Pub. L. 104–146, § 3(b)(5)(A)(i), inserted '', in accordance with subsection (c) of this section regarding a single application and grant award,'' after ''application'' in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 104–146, § 3(b)(5)(A)(ii), substituted ''preceding fiscal year'' for ''1-year period preceding the first fiscal year for which a grant is received by the eligible area''.

Subsec. (a)(6). Pub. L. 104–146, § 3(b)(5)(A)(iii)–(v), added par. (6).

Subsec. (b). Pub. L. 104–146, § 3(b)(5)(B), substituted ''Application'' for ''Additional application'' in heading and substituted ''application, in accordance with subsection (c) of this section regarding a single application and grant award,'' for ''additional application'' in introductory provisions.

Subsec. (c). Pub. L. 104–146, § 3(b)(5)(D), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 104–146, § 6(c)(2), which directed substitution of ''section 300ff–77 of this title'' for ''section 300ff–18 of this title'' in subsec. (c)(1), could not be executed because phrase ''section 300ff–18 of this title'' did not appear in text of subsec. (c)(1) subsequent to redesignation of subsec. (c) as (d) by Pub. L. 104–146, § 3(b)(5)(C). See below.

Subsec. (d). Pub. L. 104–146, § 3(b)(5)(C), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–146, § 3(b)(5)(C), redesignated subsec. (d) as (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–16. Technical assistance

The Administrator of the Health Resources and Services Administration shall, beginning on August 18, 1990, provide technical assistance, including assistance from other grantees, contractors or subcontractors under this subchapter to assist newly eligible metropolitan areas in the establishment of HIV health services planning councils and, to assist entities in complying

with the requirements of this part in order to make such entities eligible to receive a grant under this part. The Administrator may make planning grants available to metropolitan areas, in an amount not to exceed $75,000 for any metropolitan area, projected to be eligible for funding under section 300ff–11 of this title in the following fiscal year. Such grant amounts shall be deducted from the first year formula award to eligible areas accepting such grants. Not to exceed 1 percent of the amount appropriated for a fiscal year under section 300ff–77 of this title for grants under this part may be used to carry out this section.

(July 1, 1944, ch. 373, title XXVI, § 2606, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 585; amended Pub. L. 104–146, § 3(b)(6), May 20, 1996, 110 Stat. 1353.)

PRIOR PROVISIONS

A prior section 2606 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238e of this title.

AMENDMENTS

1996—Pub. L. 104–146 substituted ''Administration shall'' for ''Administration may'', inserted '', including assistance from other grantees, contractors or subcontractors under this subchapter to assist newly eligible metropolitan areas in the establishment of HIV health services planning councils and,'' after ''technical assistance'', and inserted at end ''The Administrator may make planning grants available to metropolitan areas, in an amount not to exceed $75,000 for any metropolitan area, projected to be eligible for funding under section 300ff–11 of this title in the following fiscal year. Such grant amounts shall be deducted from the first year formula award to eligible areas accepting such grants. Not to exceed 1 percent of the amount appropriated for a fiscal year under section 300ff–77 of this title for grants under this part may be used to carry out this section.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–17. Definitions

For purposes of this part:

(1) Eligible area

The term ''eligible area'' means a metropolitan area meeting the requirements of section 300ff–11 of this title that are applicable to the area.

(2) Metropolitan area

The term ''metropolitan area'' means an area referred to in the HIV/AIDS Surveillance Report of the Centers for Disease Control and Prevention as a metropolitan area.

(July 1, 1944, ch. 373, title XXVI, § 2607, as added Pub. L. 101–381, title I, § 101(3), Aug. 18, 1990, 104 Stat. 585; amended Pub. L. 101–557, title IV, § 401(b)(1), Nov. 15, 1990, 104 Stat. 2771; Pub. L. 102–531, title III, § 312(d)(28), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 104–146, § 3(a)(3), May 20, 1996, 110 Stat. 1347.)

PRIOR PROVISIONS

A prior section 2607 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238f of this title.

AMENDMENTS

1996—Par. (1). Pub. L. 104–146 substituted ''The term 'eligible area' means a metropolitan area meeting the requirements of section 300ff–11 of this title that are applicable to the area.'' for ''The term 'eligible area' means a metropolitan area described in section 300ff–11(a) of this title.''

1992—Par. (2). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1990—Par. (1). Pub. L. 101–557 substituted ''300ff–11(a)'' for ''300ff–11(a)(1)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–18. Repealed. Pub. L. 104–146, § 6(b), May 20, 1996, 110 Stat. 1367

Section, act July 1, 1944, ch. 373, title XXVI, § 2608, as added Aug. 18, 1990, Pub. L. 101–381, title I, § 101(3), 104 Stat. 585, authorized appropriations for fiscal years 1991 through 1995.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as an Effective Date of 1996 Amendment note under section 300ff–11 of this title.

PART B—CARE GRANT PROGRAM

SUBPART I—GENERAL GRANT PROVISIONS

AMENDMENTS

1996—Pub. L. 104–146, § 7(b)(1), May 20, 1996, 110 Stat. 1368, added heading ''SUBPART I—GENERAL GRANT PROVISIONS''.

§ 300ff–21. Grants

(a) In general

The Secretary shall, subject to the availability of appropriations, make grants to States to enable such States to improve the quality, availability and organization of health care and support services for individuals and families with HIV disease. The authority of the Secretary to provide grants under this part is subject to section 300ff–34(e)(2)[1] of this title (relating to the decrease in perinatal transmission of HIV disease).

(b) Priority for women, infants and children

(1) In general

For the purpose of providing health and support services to infants, children, youth, and women with HIV disease, including treatment measures to prevent the perinatal transmission of HIV, a State shall for each of such populations use, of the funds allocated under this part to the State for a fiscal year, not less than the percentage constituted by the ratio of the population involved (infants, children, youth, or women in the State) with acquired immune deficiency syndrome to the general population in the State of individuals with such syndrome.

(2) Waiver

With respect to the population involved, the Secretary may provide to a State a waiver of

[1] See References in Text note below.

the requirement of paragraph (1) if the State demonstrates to the satisfaction of the Secretary that the population is receiving HIV-related health services through the State medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], the State children's health insurance program under title XXI of such Act [42 U.S.C. 1397aa et seq.], or other Federal or State programs.

(July 1, 1944, ch. 373, title XXVI, § 2611, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 586; amended Pub. L. 104–146, §§ 3(c)(1), 7(b)(2), May 20, 1996, 110 Stat. 1353, 1368; Pub. L. 106–345, title II, § 201, Oct. 20, 2000, 114 Stat. 1329.)

REFERENCES IN TEXT

Section 300ff–34(e)(2) of this title, referred to in subsec. (a), was repealed by Pub. L. 106–345, title II, § 211(1), Oct. 20, 2000, 114 Stat. 1339.

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 2611 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–345 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''For the purpose of providing health and support services to infants, children, and women with HIV disease, including treatment measures to prevent the perinatal transmission of HIV, a State shall use, of the funds allocated under this part to the State for a fiscal year, not less than the percentage constituted by the ratio of the population in the State of infants, children, and women with acquired immune deficiency syndrome to the general population in the State of individuals with such syndrome.''

1996—Pub. L. 104–146, § 3(c)(1), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Subsec. (a). Pub. L. 104–146, § 7(b)(2), inserted at end ''The authority of the Secretary to provide grants under this part is subject to section 300ff–34(e)(2) of this title (relating to the decrease in perinatal transmission of HIV disease).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–22. General use of grants

(a) In general

A State may use amounts provided under grants made under this part—

(1) to provide the services described in section 300ff–14(b)(1) of this title for individuals with HIV disease;

(2) to establish and operate HIV care consortia within areas most affected by HIV disease that shall be designed to provide a comprehensive continuum of care to individuals and families with HIV disease in accordance with section 300ff–23 of this title;

(3) to provide home- and community-based care services for individuals with HIV disease in accordance with section 300ff–24 of this title;

(4) to provide assistance to assure the continuity of health insurance coverage for individuals with HIV disease in accordance with section 300ff–25 of this title; and

(5) to provide therapeutics to treat HIV disease to individuals with HIV disease in accordance with section 300ff–26 of this title.

Services described in paragraph (1) shall be delivered through consortia designed as described in paragraph (2), where such consortia exist, unless the State demonstrates to the Secretary that delivery of such services would be more effective when other delivery mechanisms are used. In making a determination regarding the delivery of services, the State shall consult with appropriate representatives of service providers and recipients of services who would be affected by such determination, and shall include in its demonstration to the Secretary the findings of the State regarding such consultation.

(b) Support services; outreach

The purposes for which a grant under this part may be used include delivering or enhancing the following:

(1) Outpatient and ambulatory support services under section 300ff–21(a) of this title (including case management) to the extent that such services facilitate, enhance, support, or sustain the delivery, continuity, or benefits of health services for individuals and families with HIV disease.

(2) Outreach activities that are intended to identify individuals with HIV disease who know their HIV status and are not receiving HIV-related services, and that are—

(A) necessary to implement the strategy under section 300ff–27(b)(4)(B) of this title, including activities facilitating the access of such individuals to HIV-related primary care services at entities described in subsection (c)(1) of this section;

(B) conducted in a manner consistent with the requirement under section[1] 300ff–27(b)(6)(G) and 300ff–51(b)(2) of this title; and

(C) supplement, and do not supplant, such activities that are carried out with amounts appropriated under section 247b of this title.

(c) Early intervention services

(1) In general

The purposes for which a grant under this part may be used include providing to individuals with HIV disease early intervention services described in section 300ff–51(b)(2) of this title, with follow-up referral provided for the purpose of facilitating the access of individuals receiving the services to HIV-related health services. The entities through which such services may be provided under the grant include public health departments, emergency rooms, substance abuse and mental health treatment programs, detoxification centers, detention facilities, clinics regarding sexually transmitted diseases, homeless shelters, HIV disease counseling and testing sites, health

[1] So in original. Probably should be ''sections''.

care points of entry specified by States or eligible areas, federally qualified health centers, and entities described in section 300ff–52(a) of this title that constitute a point of access to services by maintaining referral relationships.

(2) Conditions

With respect to an entity that proposes to provide early intervention services under paragraph (1), such paragraph applies only if the entity demonstrates to the satisfaction of the State involved that—

(A) Federal, State, or local funds are otherwise inadequate for the early intervention services the entity proposes to provide; and

(B) the entity will expend funds pursuant to such paragraph to supplement and not supplant other funds available to the entity for the provision of early intervention services for the fiscal year involved.

(d) Quality management

(1) Requirement

Each State that receives a grant under this part shall provide for the establishment of a quality management program to assess the extent to which HIV health services provided to patients under the grant are consistent with the most recent Public Health Service guidelines for the treatment of HIV disease and related opportunistic infection, and as applicable, to develop strategies for ensuring that such services are consistent with the guidelines for improvement in the access to and quality of HIV health services.

(2) Use of funds

From amounts received under a grant awarded under this part for a fiscal year, the State may (in addition to amounts to which section 300ff–28(b)(5) of this title applies) use for activities associated with the quality management program required in paragraph (1) not more than the lesser of—

(A) 5 percent of amounts received under the grant; or

(B) $3,000,000.

(July 1, 1944, ch. 373, title XXVI, § 2612, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 586; amended Pub. L. 104–146, § 3(c)(2), May 20, 1996, 110 Stat. 1354; Pub. L. 106–345, title II, § 202, title V, § 503(b), Oct. 20, 2000, 114 Stat. 1330, 1355.)

CODIFICATION

Another section 3(c)(2) of Pub. L. 104–146 amended section 300ff–23 of this title.

PRIOR PROVISIONS

A prior section 2612 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

AMENDMENTS

2000—Pub. L. 106–345, § 202(1), designated existing provisions as subsec. (a) and inserted heading.

Subsec. (a)(1). Pub. L. 106–345, § 503(b), made technical amendment to directory language of Pub. L. 104–146, § 3(c)(2)(A)(iii). See 1996 Amendment note below.

Subsec. (b) to (d). Pub. L. 106–345, § 202(2), added subsecs. (b) to (d).

1996—Pub. L. 104–146, § 3(c)(2)(A), as amended by Pub. L. 106–345, § 503(b), struck out ''(a) In general'' before ''A State may use amounts'', added par. (1), redesignated former pars. (1) to (4) as (2) to (5), respectively, substituted ''therapeutics to treat HIV disease'' for ''treatments, that have been determined to prolong life or prevent serious deterioration of health,'' in par. (5), and inserted after par. (5) ''Services described in paragraph (1) shall be delivered through consortia designed as described in paragraph (2), where such consortia exist, unless the State demonstrates to the Secretary that delivery of such services would be more effective when other delivery mechanisms are used. In making a determination regarding the delivery of services, the State shall consult with appropriate representatives of service providers and recipients of services who would be affected by such determination, and shall include in its demonstration to the Secretary the findings of the State regarding such consultation.''

Subsec. (b). Pub. L. 104–146, § 3(c)(2)(B), struck out heading and text of subsec. (b). Text read as follows: ''A State shall use not less than 15 percent of funds allocated under this part to provide health and support services to infants, children, women, and families with HIV disease.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–23. Grants to establish HIV care consortia

(a) Consortia

A State may use amounts provided under a grant awarded under this part to provide assistance under section 300ff–22(a)(1)[1] of this title to an entity that—

(1) is an association of one or more public, and one or more nonprofit private,[2] (or private for-profit providers or organizations if such entities are the only available providers of quality HIV care in the area)[2] health care and support service providers and community based organizations operating within areas determined by the State to be most affected by HIV disease; and

(2) agrees to use such assistance for the planning, development and delivery, through the direct provision of services or through entering into agreements with other entities for the provision of such services, of comprehensive outpatient health and support services for individuals with HIV disease, that may include—

(A) essential health services such as case management services, medical, nursing, substance abuse treatment, mental health treatment, and dental care, diagnostics, monitoring, prophylactic treatment for opportunistic infections, treatment education to take place in the context of health care delivery, and medical follow-up services, mental health, developmental, and rehabilitation services, home health and hospice care; and

(B) essential support services such as transportation services, attendant care, homemaker services, day or respite care, benefits advocacy, advocacy services provided through public and nonprofit private entities, and services that are incidental to the provision of health care services for indi-

[1] See References in Text note below.

[2] So in original. The comma probably should follow parenthetical phrase.

viduals with HIV disease including nutrition services, housing referral services, and child welfare and family services (including foster care and adoption services).

An entity or entities of the type described in this subsection shall hereinafter be referred to in this subchapter as a ''consortium'' or ''consortia''.

(b) Assurances

(1) Requirement

To receive assistance from a State under subsection (a) of this section, an applicant consortium shall provide the State with assurances that—

(A) within any locality in which such consortium is to operate, the populations and subpopulations of individuals and families with HIV disease have been identified by the consortium, particularly those experiencing disparities in access and services and those who reside in historically underserved communities;

(B) the service plan established under subsection (c)(2) of this section by such consortium is consistent with the comprehensive plan under section 300ff–27(b)(4) of this title and addresses the special care and service needs of the populations and subpopulations identified under subparagraph (A); and

(C) except as provided in paragraph (2), the consortium will be a single coordinating entity that will integrate the delivery of services among the populations and subpopulations identified under subparagraph (A).

(2) Exception

Subparagraph (C) of paragraph (1) shall not apply to any applicant consortium that the State determines will operate in a community or locality in which it has been demonstrated by the applicant consortium that—

(A) subpopulations exist within the community to be served that have unique service requirements; and

(B) such unique service requirements cannot be adequately and efficiently addressed by a single consortium serving the entire community or locality.

(c) Application

(1) In general

To receive assistance from the State under subsection (a) of this section, a consortium shall prepare and submit to the State, an application that—

(A) demonstrates that the consortium includes agencies and community-based organizations—

(i) with a record of service to populations and subpopulations with HIV disease requiring care within the community to be served; and

(ii) that are representative of populations and subpopulations reflecting the local incidence of HIV and that are located in areas in which such populations reside;

(B) demonstrates that the consortium has carried out an assessment of service needs within the geographic area to be served and, after consultation with the entities described in paragraph (2), has established a plan to ensure the delivery of services to meet such identified needs that shall include—

(i) assurances that service needs will be addressed through the coordination and expansion of existing programs before new programs are created;

(ii) assurances that, in metropolitan areas, the geographic area to be served by the consortium corresponds to the geographic boundaries of local health and support services delivery systems to the extent practicable;

(iii) assurances that, in the case of services for individuals residing in rural areas, the applicant consortium shall deliver case management services that link available community support services to appropriate specialized medical services; and

(iv) assurances that the assessment of service needs and the planning of the delivery of services will include participation by individuals with HIV disease;

(C) demonstrates that adequate planning has occurred to meet the special needs of families with HIV disease, including family centered and youth centered care;

(D) demonstrates that the consortium has created a mechanism to evaluate periodically—

(i) the success of the consortium in responding to identified needs; and

(ii) the cost-effectiveness of the mechanisms employed by the consortium to deliver comprehensive care;

(E) demonstrates that the consortium will report to the State the results of the evaluations described in subparagraph (D) and shall make available to the State or the Secretary, on request, such data and information on the program methodology that may be required to perform an independent evaluation; and

(F) demonstrates that adequate planning occurred to address disparities in access and services and historically underserved communities.

(2) Consultation

In establishing the plan required under paragraph (1)(B), the consortium shall consult with—

(A)(i) the public health agency that provides or supports ambulatory and outpatient HIV-related health care services within the geographic area to be served; or

(ii) in the case of a public health agency that does not directly provide such HIV-related health care services such agency shall consult with an entity or entities that directly provide ambulatory and outpatient HIV-related health care services within the geographic area to be served;

(B) not less than one community-based organization that is organized solely for the purpose of providing HIV-related support services to individuals with HIV disease;

(C) grantees under section 300ff–71 of this title, or, if none are operating in the area,

representatives in the area of organizations with a history of serving children, youth, women, and families living with HIV; and

(D) the types of entities described in section 300ff–12(b)(2) of this title.

The organization to be consulted under subparagraph (B) shall be at the discretion of the applicant consortium.

(d) "Family centered care" defined

As used in this part, the term ''family centered care'' means the system of services described in this section that is targeted specifically to the special needs of infants, children, women, and families. Family centered care shall be based on a partnership between parents, professionals, and the community designed to ensure an integrated, coordinated, culturally sensitive, and community-based continuum of care for children, women, and families with HIV disease.

(e) Priority

In providing assistance under subsection (a) of this section, the State shall, among applicants that meet the requirements of this section, give priority—

(1) first to consortia that are receiving assistance from the Health Resources and Services Administration for adult and pediatric HIV-related care demonstration projects; and then

(2) to any other existing HIV care consortia.

(July 1, 1944, ch. 373, title XXVI, § 2613, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 586; amended Pub. L. 104–146, § 3(c)(2), May 20, 1996, 110 Stat. 1354; Pub. L. 106–345, title II, § 203, Oct. 20, 2000, 114 Stat. 1331.)

REFERENCES IN TEXT

Section 300ff–22 of this title, referred to in subsec. (a), was amended by Pub. L. 104–146, § 3(c)(2)(A)(i), (ii), May 20, 1996, 110 Stat. 1354, and Pub. L. 106–345, title II, § 202(1), Oct. 20, 2000, 114 Stat. 1330, and as so amended, provisions formerly contained in section 300ff–22(a)(1) are now contained in section 300ff–22(a)(2).

CODIFICATION

Another section 3(c)(2) of Pub. L. 104–146 amended section 300ff–22 of this title.

PRIOR PROVISIONS

A prior section 2613 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

AMENDMENTS

2000—Subsec. (b)(1)(A). Pub. L. 106–345, § 203(1)(A), inserted '', particularly those experiencing disparities in access and services and those who reside in historically underserved communities'' before semicolon.

Subsec. (b)(1)(B). Pub. L. 106–345, § 203(1)(B), inserted ''is consistent with the comprehensive plan under section 300ff–27(b)(4) of this title and'' after ''by such consortium''.

Subsec. (c)(1)(F). Pub. L. 106–345, § 203(2), added subpar. (F).

Subsec. (c)(2)(D). Pub. L. 106–345, § 203(3), added subpar. (D).

1996—Subsec. (a)(1). Pub. L. 104–146, § 3(c)(2)(A)(i), inserted ''(or private for-profit providers or organizations if such entities are the only available providers of quality HIV care in the area)'' after ''nonprofit private,''.

Subsec. (a)(2)(A). Pub. L. 104–146, § 3(c)(2)(A)(ii), inserted ''substance abuse treatment, mental health treatment,'' after ''nursing,'' and ''prophylactic treatment for opportunistic infections, treatment education to take place in the context of health care delivery,'' after ''monitoring,''.

Subsec. (c)(1)(C). Pub. L. 104–146, § 3(c)(2)(B)(i), inserted ''and youth centered'' after ''family centered''.

Subsec. (c)(2)(C). Pub. L. 104–146, § 3(c)(2)(B)(ii), added subpar. (C).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–24. Grants for home- and community-based care

(a) Uses

A State may use amounts provided under a grant awarded under this part to make grants under section 300ff–22(a)(2)[1] of this title to entities to—

(1) provide home- and community-based health services for individuals with HIV disease pursuant to written plans of care prepared by a case management team, that shall include appropriate health care professionals, in such State for providing such services to such individuals;

(2) provide outreach services to individuals with HIV disease, including those individuals in rural areas; and

(3) provide for the coordination of the provision of services under this section with the provision of HIV-related health services provided by public and private entities.

(b) Priority

In awarding grants under subsection (a) of this section, a State shall give priority to entities that provide assurances to the State that—

(1) such entities will participate in HIV care consortia if such consortia exist within the State; and

(2) such entities will utilize amounts provided under such grants for the provision of home- and community-based services to low-income individuals with HIV disease.

(c) "Home- and community-based health services" defined

As used in this part, the term ''home- and community-based health services''—

(1) means, with respect to an individual with HIV disease, skilled health services furnished to the individual in the individual's home pursuant to a written plan of care established by a case management team, that shall include appropriate health care professionals, for the provision of such services and items described in paragraph (2);

(2) includes—

(A) durable medical equipment;

(B) homemaker or home health aide services and personal care services furnished in the home of the individual;

(C) day treatment or other partial hospitalization services;

(D) home intravenous and aerosolized drug therapy (including prescription drugs administered as part of such therapy);

[1] See References in Text note below.

(E) routine diagnostic testing administered in the home of the individual; and

(F) appropriate mental health, developmental, and rehabilitation services; and

(3) does not include—

(A) inpatient hospital services; and

(B) nursing home and other long term care facilities.

(July 1, 1944, ch. 373, title XXVI, § 2614, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 589.)

REFERENCES IN TEXT

Section 300ff–22 of this title, referred to in subsec. (a), was amended by Pub. L. 104–146, § 3(c)(2)(A)(i), (ii), May 20, 1996, 110 Stat. 1354, and Pub. L. 106–345, title II, § 202(1), Oct. 20, 2000, 114 Stat. 1330, and as so amended, provisions formerly contained in section 300ff–22(a)(2) are now contained in section 300ff–22(a)(3).

PRIOR PROVISIONS

A prior section 2614 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

§ 300ff–25. Continuum of health insurance coverage

(a) In general

A State may use amounts received under a grant awarded under this part to establish a program of financial assistance under section 300ff–22(a)(3)[1] of this title to assist eligible low-income individuals with HIV disease in—

(1) maintaining a continuity of health insurance; or

(2) receiving medical benefits under a health insurance program, including risk-pools.

(b) Limitations

Assistance shall not be utilized under subsection (a) of this section—

(1) to pay any costs associated with the creation, capitalization, or administration of a liability risk pool (other than those costs paid on behalf of individuals as part of premium contributions to existing liability risk pools); and

(2) to pay any amount expended by a State under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(July 1, 1944, ch. 373, title XXVI, § 2615, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 590.)

REFERENCES IN TEXT

Section 300ff–22 of this title, referred to in subsec. (a), was amended by Pub. L. 104–146, § 3(c)(2)(A)(i), (ii), May 20, 1996, 110 Stat. 1354, and Pub. L. 106–345, title II, § 202(1), Oct. 20, 2000, 114 Stat. 1330, and as so amended, provisions formerly contained in section 300ff–22(a)(3) are now contained in section 300ff–22(a)(4).

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

§ 300ff–26. Provision of treatments

(a) In general

A State shall use a portion of the amounts provided under a grant awarded under this part to establish a program under section 300ff–22(a)(5) of this title to provide therapeutics to treat HIV disease or prevent the serious deterioration of health arising from HIV disease in eligible individuals, including measures for the prevention and treatment of opportunistic infections.

(b) Eligible individual

To be eligible to receive assistance from a State under this section an individual shall—

(1) have a medical diagnosis of HIV disease; and

(2) be a low-income individual, as defined by the State.

(c) State duties

In carrying out this section the State shall—

(1) determine, in accordance with guidelines issued by the Secretary, which treatments are eligible to be included under the program established under this section;

(2) provide assistance for the purchase of treatments determined to be eligible under paragraph (1), and the provision of such ancillary devices that are essential to administer such treatments;

(3) provide outreach to individuals with HIV disease, and as appropriate to the families of such individuals;

(4) facilitate access to treatments for such individuals;

(5) document the progress made in making therapeutics described in subsection (a) of this section available to individuals eligible for assistance under this section; and

(6) encourage, support, and enhance adherence to and compliance with treatment regimens, including related medical monitoring.

Of the amount reserved by a State for a fiscal year for use under this section, the State may not use more than 5 percent to carry out services under paragraph (6), except that the percentage applicable with respect to such paragraph is 10 percent if the State demonstrates to the Secretary that such additional services are essential and in no way diminish access to the therapeutics described in subsection (a) of this section.

(d) Duties of Secretary

In carrying out this section, the Secretary shall review the current status of State drug reimbursement programs established under section 300ff–22(2)[1] of this title and assess barriers to the expanded availability of the treatments described in subsection (a) of this section. The Secretary shall also examine the extent to which States coordinate with other grantees under this subchapter to reduce barriers to the expanded availability of the treatments described in subsection (a) of this section.

(e) Use of health insurance and plans

(1) In general

In carrying out subsection (a) of this section, a State may expend a grant under this part to provide the therapeutics described in such subsection by paying on behalf of individ-

[1] See References in Text note below.

[1] See References in Text note below.

uals with HIV disease the costs of purchasing or maintaining health insurance or plans whose coverage includes a full range of such therapeutics and appropriate primary care services.

(2) Limitation

The authority established in paragraph (1) applies only to the extent that, for the fiscal year involved, the costs of the health insurance or plans to be purchased or maintained under such paragraph do not exceed the costs of otherwise providing therapeutics described in subsection (a) of this section.

(July 1, 1944, ch. 373, title XXVI, § 2616, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 590; amended Pub. L. 104–146, § 3(c)(3), May 20, 1996, 110 Stat. 1355; Pub. L. 106–345, title II, § 204, Oct. 20, 2000, 114 Stat. 1332.)

REFERENCES IN TEXT

Section 300ff–22(2) of this title, referred to in subsec. (d), was redesignated section 300ff–22(a)(2) of this title by Pub. L. 106–345, title II, § 202(1), Oct. 20, 2000, 114 Stat. 1330.

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–345, § 204(a), added par. (6) and concluding provisions.

Subsec. (e). Pub. L. 106–345, § 204(b), added subsec. (e).

1996—Subsec. (a). Pub. L. 104–146, § 3(c)(3)(A), substituted ''shall use a portion of the amounts'' for ''may use amounts'' and ''section 300ff–22(a)(5) of this title to provide therapeutics to treat HIV disease'' for ''section 300ff–22(a)(4) of this title to provide treatments that have been determined to prolong life'' and inserted before period '', including measures for the prevention and treatment of opportunistic infections''.

Subsec. (c)(5). Pub. L. 104–146, § 3(c)(3)(B), added par. (5).

Subsec. (d). Pub. L. 104–146, § 3(c)(3)(C), added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–27. State application

(a) In general

The Secretary shall not make a grant to a State under this part for a fiscal year unless the State prepares and submits, to the Secretary, an application at such time, in such form, and containing such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(b) Description of intended uses and agreements

The application submitted under subsection (a) of this section shall contain—

(1) a detailed description of the HIV-related services provided in the State to individuals and families with HIV disease during the year preceding the year for which the grant is requested, and the number of individuals and families receiving such services, that shall include—

(A) a description of the types of programs operated or funded by the State for the provision of HIV-related services during the year preceding the year for which the grant is requested and the methods utilized by the State to finance such programs;

(B) an accounting of the amount of funds that the State has expended for such services and programs during the year preceding the year for which the grant is requested; and

(C) information concerning—

(i) the number of individuals to be served with assistance provided under the grant;

(ii) demographic data on the population of the individuals to be served;

(iii) the average cost of providing each category of HIV-related health services and the extent to which such cost is paid by third-party payors; and

(iv) the aggregate amounts expended for each such category of services;

(2) a determination of the size and demographics of the population of individuals with HIV disease in the State;

(3) a determination of the needs of such population, with particular attention to—

(A) individuals with HIV disease who know their HIV status and are not receiving HIV-related services; and

(B) disparities in access and services among affected subpopulations and historically underserved communities;

(4) a comprehensive plan that describes the organization and delivery of HIV health care and support services to be funded with assistance received under this part that shall include a description of the purposes for which the State intends to use such assistance, and that—

(A) establishes priorities for the allocation of funds within the State based on—

(i) size and demographics of the population of individuals with HIV disease (as determined under paragraph (2)) and the needs of such population (as determined under paragraph (3));

(ii) availability of other governmental and non-governmental resources, including the State medicaid plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and the State Children's Health Insurance Program under title XXI of such Act [42 U.S.C. 1397aa et seq.] to cover health care costs of eligible individuals and families with HIV disease;

(iii) capacity development needs resulting from disparities in the availability of HIV-related services in historically underserved communities and rural communities; and

(iv) the efficiency of the administrative mechanism of the State for rapidly allocating funds to the areas of greatest need within the State;

(B) includes a strategy for identifying individuals who know their HIV status and are not receiving such services and for informing the individuals of and enabling the individuals to utilize the services, giving particular attention to eliminating disparities in access and services among affected subpopulations and historically underserved communities, and including discrete goals, a timetable, and an appropriate allocation of funds;

(C) includes a strategy to coordinate the provision of such services with programs for HIV prevention (including outreach and early intervention) and for the prevention and treatment of substance abuse (including programs that provide comprehensive treatment services for such abuse);

(D) describes the services and activities to be provided and an explanation of the manner in which the elements of the program to be implemented by the State with such assistance will maximize the quality of health and support services available to individuals with HIV disease throughout the State;

(E) provides a description of the manner in which services funded with assistance provided under this part will be coordinated with other available related services for individuals with HIV disease; and

(F) provides a description of how the allocation and utilization of resources are consistent with the statewide coordinated statement of need (including traditionally underserved populations and subpopulations) developed in partnership with other grantees in the State that receive funding under this subchapter; and[1]

(5) an assurance that the public health agency administering the grant for the State will periodically convene a meeting of individuals with HIV disease, representatives of grantees under each part under this subchapter, providers, and public agency representatives for the purpose of developing a statewide coordinated statement of need; and

(6) an assurance by the State that—

(A) the public health agency that is administering the grant for the State engages in a public advisory planning process, including public hearings, that includes the participants under paragraph (5), and the types of entities described in section 300ff–12(b)(2) of this title, in developing the comprehensive plan under paragraph (4) and commenting on the implementation of such plan;

(B) the State will—

(i) to the maximum extent practicable, ensure that HIV-related health care and support services delivered pursuant to a program established with assistance provided under this part will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual with HIV disease;

(ii) ensure that such services will be provided in a setting that is accessible to low-income individuals with HIV disease;

(iii) provide outreach to low-income individuals with HIV disease to inform such individuals of the services available under this part; and

(iv) in the case of a State that intends to use amounts provided under the grant for purposes described in section 300ff–25 of this title, submit a plan to the Secretary that demonstrates that the State has established a program that assures that—

(I) such amounts will be targeted to individuals who would not otherwise be able to afford health insurance coverage; and

(II) income, asset, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance under such program, and information concerning such criteria shall be made available to the public;

(C) the State will provide for periodic independent peer review to assess the quality and appropriateness of health and support services provided by entities that receive funds from the State under this part;

(D) the State will permit and cooperate with any Federal investigations undertaken regarding programs conducted under this part;

(E) the State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State is applying to receive a grant under this part;

(F) the State will ensure that grant funds are not utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service—

(i) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(ii) by an entity that provides health services on a prepaid basis; and

(G) entities within areas in which activities under the grant are carried out will maintain appropriate relationships with entities in the area served that constitute key points of access to the health care system for individuals with HIV disease (including emergency rooms, substance abuse treatment programs, detoxification centers, adult and juvenile detention facilities, sexually transmitted disease clinics, HIV counseling and testing sites, mental health programs, and homeless shelters), and other entities under section[2] 300ff–22(c) and 300ff–52(a) of this title, for the purpose of facilitating early intervention for individuals newly diagnosed with HIV disease and individuals knowledgeable of their HIV status but not in care.

(c) Requirements regarding imposition of charges for services

(1) In general

The Secretary may not make a grant under section 300ff–21 of this title to a State unless the State provides assurances that in the provision of services with assistance provided under the grant—

(A) in the case of individuals with an income less than or equal to 100 percent of the official poverty line, the provider will not

[1] So in original. The word ''and'' probably should not appear.

[2] So in original. Probably should be ''sections''.

impose charges on any such individual for the provision of services under the grant;

(B) in the case of individuals with an income greater than 100 percent of the official poverty line, the provider—

(i) will impose charges on each such individual for the provision of such services; and

(ii) will impose charges according to a schedule of charges that is made available to the public;

(C) in the case of individuals with an income greater than 100 percent of the official poverty line and not exceeding 200 percent of such poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 5 percent of the annual gross income of the individual involved;

(D) in the case of individuals with an income greater than 200 percent of the official poverty line and not exceeding 300 percent of such poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 7 percent of the annual gross income of the individual involved; and

(E) in the case of individuals with an income greater than 300 percent of the official poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

(2) Assessment of charge

With respect to compliance with the assurance made under paragraph (1), a grantee under this part may, in the case of individuals subject to a charge for purposes of such paragraph—

(A) assess the amount of the charge in the discretion of the grantee, including imposing only a nominal charge for the provision of services, subject to the provisions of such paragraph regarding public schedules regarding limitation on the maximum amount of charges; and

(B) take into consideration the medical expenses of individuals in assessing the amount of the charge, subject to such provisions.

(3) Applicability of limitation on amount of charge

The Secretary may not make a grant under section 300ff–21 of this title unless the applicant of the grant agrees that the limitations established in subparagraphs (C), (D), and (E) of paragraph (1) regarding the imposition of charges for services applies to the annual aggregate of charges imposed for such services, without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, copayments, coinsurance, or other charges.

(4) Waiver

(A) In general

The State shall waive the requirements established in paragraphs (1) through (3) in the case of an entity that does not, in providing health care services, impose a charge or accept reimbursement from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(B) Determination

A determination by the State of whether an entity referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the entity accepts voluntary donations regarding the provision of services to the public.

(d) Requirement of matching funds regarding State allotments

(1) In general

In the case of any State to which the criterion described in paragraph (3) applies, the Secretary may not make a grant under this part unless the State agrees that, with respect to the costs to be incurred by the State in carrying out the program for which the grant was awarded, the State will, subject to subsection (b)(2)[3] of this section, make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount equal to—

(A) for the first fiscal year of payments under the grant, not less than 16⅔ percent of such costs ($1 for each $5 of Federal funds provided in the grant);

(B) for any second fiscal year of such payments, not less than 20 percent of such costs ($1 for each $4 of Federal funds provided in the grant);

(C) for any third fiscal year of such payments, not less than 25 percent of such costs ($1 for each $3 of Federal funds provided in the grant);

(D) for any fourth fiscal year of such payments, not less than 33⅓ percent of such costs ($1 for each $2 of Federal funds provided in the grant); and

(E) for any subsequent fiscal year of such payments, not less than 33⅓ percent of such costs ($1 for each $2 of Federal funds provided in the grant).

(2) Determination of amount of non-Federal contribution

(A) In general

Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, and any portion of any service subsidized by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) Inclusion of certain amounts

(i) In making a determination of the amount of non-Federal contributions made by a State for purposes of paragraph (1), the Secretary shall, subject to clause (ii), include any non-Federal contributions provided by the State for HIV-related services, without regard to whether the contributions are made for programs established pursuant to this subchapter;

[3] See References in Text note below.

(ii) In making a determination for purposes of clause (i), the Secretary may not include any non-Federal contributions provided by the State as a condition of receiving Federal funds under any program under this subchapter (except for the program established in this part) or under other provisions of law.

(3) Applicability of requirement

(A) Number of cases

A State referred to in paragraph (1) is any State for which the number of cases of acquired immune deficiency syndrome reported to and confirmed by the Director of the Centers for Disease Control and Prevention for the period described in subparagraph (B) constitutes in excess of 1 percent of the aggregate number of such cases reported to and confirmed by the Director for such period for the United States.

(B) Period of time

The period referred to in subparagraph (A) is the 2-year period preceding the fiscal year for which the State involved is applying to receive a grant under subsection (a) of this section.

(C) Puerto Rico

For purposes of paragraph (1), the number of cases of acquired immune deficiency syndrome reported and confirmed for the Commonwealth of Puerto Rico for any fiscal year shall be deemed to be less than 1 percent.

(4) Diminished State contribution

With respect to a State that does not make available the entire amount of the non-Federal contribution referred to in paragraph (1), the State shall continue to be eligible to receive Federal funds under a grant under this part, except that the Secretary in providing Federal funds under the grant shall provide such funds (in accordance with the ratios prescribed in paragraph (1)) only with respect to the amount of funds contributed by such State.

(July 1, 1944, ch. 373, title XXVI, §2617, as added Pub. L. 101–381, title II, §201, Aug. 18, 1990, 104 Stat. 590; amended Pub. L. 102–531, title III, §312(d)(29), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 104–146, §§3(c)(4), 12(c)(3), May 20, 1996, 110 Stat. 1355, 1373; Pub. L. 106–345, title II, §205, Oct. 20, 2000, 114 Stat. 1332.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(4)(A)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§1396 et seq.) and XXI (§1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Subsection (b)(2) of this section, referred to in subsec. (d)(1), was redesignated subsec. (b)(4) by Pub. L. 106–345, title II, §205(a)(1), Oct. 20, 2000, 114 Stat. 1332.

AMENDMENTS

2000—Subsec. (b)(2), (3). Pub. L. 106–345, §205(a)(2), added pars. (2) and (3). Former pars. (2) and (3) redesignated (4) and (5), respectively.

Subsec. (b)(4). Pub. L. 106–345, §205(a)(3)(A), (B), in introductory provisions substituted ''comprehensive plan that describes the organization'' for ''comprehensive plan for the organization'' and '', and that—'' for '', including—''.

Pub. L. 106–345, §205(a)(1), redesignated par. (2) as (4). Former par. (4) redesignated (6).

Subsec. (b)(4)(A) to (C). Pub. L. 106–345, §205(a)(3)(D), which directed the amendment of par. (4) by adding subpars. (A) to (C) ''before subparagraph (C)'', was executed by adding them before subpar. (D), to reflect the probable intent of Congress. Former subpars. (A) to (C) redesignated (D) to (F), respectively.

Subsec. (b)(4)(D). Pub. L. 106–345, §205(a)(3)(C), (E), redesignated subpar. (A) as (D) and inserted ''describes'' before ''the services and activities''.

Subsec. (b)(4)(E). Pub. L. 106–345, §205(a)(3)(C), (F), redesignated subpar. (B) as (E) and inserted ''provides'' before ''a description''.

Subsec. (b)(4)(F). Pub. L. 106–345, §205(a)(3)(C), (G), redesignated subpar. (C) as (F) and inserted ''provides'' before ''a description''.

Subsec. (b)(5). Pub. L. 106–345, §205(a)(1), (b)(1), redesignated par. (3) as (5) and substituted ''HIV disease'' for ''HIV''.

Subsec. (b)(6). Pub. L. 106–345, §205(a)(1), redesignated par. (4) as (6).

Subsec. (b)(6)(A). Pub. L. 106–345, §205(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the public health agency that is administering the grant for the State will conduct public hearings concerning the proposed use and distribution of the assistance to be received under this part;''.

Subsec. (b)(6)(G). Pub. L. 106–345, §205(c), added subpar. (G).

1996—Subsec. (b)(2)(C). Pub. L. 104–146, §3(c)(4)(A), added subpar. (C).

Subsec. (b)(3). Pub. L. 104–146, §3(c)(4)(C), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 104–146, §3(c)(4)(B), redesignated par. (3) as (4).

Subsec. (b)(4)(B)(iv). Pub. L. 104–146, §12(c)(3), which directed amendment of par. (3)(B)(iv) by inserting ''section'' before ''300ff–25'', was executed by making the amendment in par. (4)(B)(iv) to reflect the probable intent of Congress and the redesignation of par. (3) as (4) by Pub. L. 104–146, §3(c)(4)(B). See above.

1992—Subsec. (d)(3)(A). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–27a. Spousal notification

(a) In general

The Secretary of Health and Human Services shall not make a grant under part B of title XXVI of the Public Health Service Act (42 U.S.C. 300ff–21 et seq.) to any State unless such State takes administrative or legislative action to require that a good faith effort be made to notify a spouse of a known HIV-infected patient that such spouse may have been exposed to the human immunodeficiency virus and should seek testing.

(b) Definitions

For purposes of this section:

(1) Spouse

The term ''spouse'' means any individual who is the marriage partner of an HIV-infected patient, or who has been the marriage partner of that patient at any time within the

10-year period prior to the diagnosis of HIV infection.

(2) HIV-infected patient

The term ''HIV-infected patient'' means any individual who has been diagnosed to be infected with the human immunodeficiency virus.

(3) State

The term ''State'' means any of the 50 States, the District of Columbia, or any territory of the United States.

(Pub. L. 104–146, § 8, May 20, 1996, 110 Stat. 1372.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (a), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part B of title XXVI of the Act is classified generally to this part. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Ryan White CARE Act Amendments of 1996, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as an Effective Date of 1996 Amendment note under section 300ff–11 of this title.

§ 300ff–28. Distribution of funds

(a) Amount of grant to State

(1) Minimum allotment

Subject to the extent of amounts made available under section 300ff–77 of this title, the amount of a grant to be made under this part for—

(A) each of the several States and the District of Columbia for a fiscal year shall be the greater of—

(i)(I) with respect to a State or District that has less than 90 living cases of acquired immune deficiency syndrome, as determined under paragraph (2)(D), $200,000; or

(II) with respect to a State or District that has 90 or more living cases of acquired immune deficiency syndrome, as determined under paragraph (2)(D), $500,000;

(ii) an amount determined under paragraph (2) and then, as applicable, increased under paragraph (2)(H); and

(B) each territory of the United States, as defined in paragraph (3), shall be the greater of $50,000 or an amount determined under paragraph (2).

(2) Determination

(A) Formula

The amount referred to in paragraph (1)(A)(ii) for a State and paragraph (1)(B) for a territory of the United States shall be the product of—

(i) an amount equal to the amount appropriated under section 300ff–77 of this title for the fiscal year involved for grants under this part, subject to subparagraphs (H) and (I); and

(ii) the percentage constituted by the sum of—

(I) the product of .80 and the ratio of the State distribution factor for the State or territory (as determined under subsection (B)) to the sum of the respective State distribution factors for all States or territories; and

(II) the product of .20 and the ratio of the non-EMA distribution factor for the State or territory (as determined under subparagraph (C)) to the sum of the respective distribution factors for all States or territories.

(B) State distribution factor

For purposes of subparagraph (A)(ii)(I), the term ''State distribution factor'' means an amount equal to the estimated number of living cases of acquired immune deficiency syndrome in the eligible area involved, as determined under subparagraph (D).

(C) Non-EMA distribution factor

For purposes of subparagraph (A)(ii)(II), the term ''non-ema[1] distribution factor'' means an amount equal to the sum of—

(i) the estimated number of living cases of acquired immune deficiency syndrome in the State or territory involved, as determined under subparagraph (D); less

(ii) the estimated number of living cases of acquired immune deficiency syndrome in such State or territory that are within an eligible area (as determined under part A of this subchapter).

(D) Estimate of living cases

The amount determined in this subparagraph is an amount equal to the product of—

(i) the number of cases of acquired immune deficiency syndrome in the State or territory during each year in the most recent 120-month period for which data are available with respect to all States and territories, as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control and Prevention for each year during such period, except that (subject to subparagraph (E)), for grants made pursuant to this paragraph or section 300ff–30 of this title for fiscal year 2005 and subsequent fiscal years, the cases counted for each 12-month period beginning on or after July 1, 2004, shall be cases of HIV disease (as reported to and confirmed by such Director) rather than cases of acquired immune deficiency syndrome; and

(ii) with respect to each of the first through the tenth year during such period, the amount referred to in section 300ff–13(a)(3)(C)(ii) of this title.

(E) Determination of Secretary regarding data on HIV cases

If under section 300ff–13(a)(3)(D)(i) of this title the Secretary determines that data on cases of HIV disease are not sufficiently accurate and reliable, then notwithstanding

[1] So in original. Probably should be ''non-EMA''.

subparagraph (D) of this paragraph, for any fiscal year prior to fiscal year 2007 the references in such subparagraph to cases of HIV disease do not have any legal effect.

(F) Puerto Rico, Virgin Islands, Guam

For purposes of subparagraph (D), the cost index for Puerto Rico, the Virgin Islands, and Guam shall be 1.0.

(G) Unexpended funds

The Secretary may, in determining the amount of a grant for a fiscal year under this subsection, adjust the grant amount to reflect the amount of unexpended and uncanceled grant funds remaining at the end of the fiscal year preceding the year for which the grant determination is to be made. The amount of any such unexpended funds shall be determined using the financial status report of the grantee.

(H) Limitation

(i) In general

The Secretary shall ensure that the amount of a grant awarded to a State or territory under section 300ff–21 of this title or subparagraph (I)(i) for a fiscal year is not less than—

(I) with respect to fiscal year 2001, 99 percent;

(II) with respect to fiscal year 2002, 98 percent;

(III) with respect to fiscal year 2003, 97 percent;

(IV) with respect to fiscal year 2004, 96 percent; and

(V) with respect to fiscal year 2005, 95 percent,

of the amount such State or territory received for fiscal year 2000 under section 300ff–21 of this title or subparagraph (I)(i), respectively (notwithstanding such subparagraph). In administering this subparagraph, the Secretary shall, with respect to States or territories that will under such section receive grants in amounts that exceed the amounts that such States received under such section or subparagraph for fiscal year 2000, proportionally reduce such amounts to ensure compliance with this subparagraph. In making such reductions, the Secretary shall ensure that no such State receives less than that State received for fiscal year 2000.

(ii) Ratable reduction

If the amount appropriated under section 300ff–77 of this title for a fiscal year and available for grants under section 300ff–21 of this title or subparagraph (I)(i) is less than the amount appropriated and available for fiscal year 2000 under section 300ff–21 of this title or subparagraph (I)(i), respectively, the limitation contained in clause (i) for the grants involved shall be reduced by a percentage equal to the percentage of the reduction in such amounts appropriated and available.

(I) Appropriations for treatment drug program

(i) Formula grants

With respect to the fiscal year involved, if under section 300ff–77 of this title an appropriations Act provides an amount exclusively for carrying out section 300ff–26 of this title, the portion of such amount allocated to a State shall be the product of—

(I) 100 percent of such amount, less the percentage reserved under clause (ii)(V); and

(II) the percentage constituted by the ratio of the State distribution factor for the State (as determined under subparagraph (B)) to the sum of the State distribution factors for all States.

(ii) Supplemental treatment drug grants

(I) In general

From amounts made available under subclause (V), the Secretary shall make supplemental grants to States described in subclause (II) to enable such States to increase access to therapeutics described in section 300ff–26(a) of this title, as provided by the State under section 300ff–26(c)(2) of this title.

(II) Eligible States

For purposes of subclause (I), a State described in this subclause is a State that, in accordance with criteria established by the Secretary, demonstrates a severe need for a grant under such subclause. In developing such criteria, the Secretary shall consider eligibility standards, formulary composition, and the number of eligible individuals at or below 200 percent of the official poverty line to whom the State is unable to provide therapeutics described in section 300ff–26(a) of this title.

(III) State requirements

The Secretary may not make a grant to a State under this clause unless the State agrees that—

(aa) the State will make available (directly or through donations from public or private entities) non-Federal contributions toward the activities to be carried out under the grant in an amount equal to $1 for each $4 of Federal funds provided in the grant; and

(bb) the State will not impose eligibility requirements for services or scope of benefits limitations under section 300ff–26(a) of this title that are more restrictive than such requirements in effect as of January 1, 2000.

(IV) Use and coordination

Amounts made available under a grant under this clause shall only be used by the State to provide HIV/AIDS-related medications. The State shall coordinate the use of such amounts with the amounts otherwise provided under section 300ff–26(a) of this title in order to maximize drug coverage.

(V) Funding

For the purpose of making grants under this clause, the Secretary shall each fiscal year reserve 3 percent of the amount referred to in clause (i) with respect to section 300ff–26 of this title, subject to subclause (VI).

(VI) Limitation

In reserving amounts under subclause (V) and making grants under this clause for a fiscal year, the Secretary shall ensure for each State that the total of the grant under section 300ff–21 of this title for the State for the fiscal year and the grant under clause (i) for the State for the fiscal year is not less than such total for the State for the preceding fiscal year.

(3) Definitions

As used in this subsection—

(A) the term ''State'' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam; and

(B) the term ''territory of the United States'' means,[2] American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, and only for purposes of paragraph (1) the Commonwealth of Puerto Rico.

(b) Allocation of assistance by States

(1) Repealed. Pub. L. 104–146, § 3(c)(5)(A), May 20, 1996, 110 Stat. 1355

(2) Allowances

Prior to allocating assistance under this subsection, a State shall consider the unmet needs of those areas that have not received financial assistance under part A of this subchapter.

(3) Planning and evaluations

Subject to paragraph (5) and except as provided in paragraph (6), a State may not use more than 10 percent of amounts received under a grant awarded under this part for planning and evaluation activities.

(4) Administration

(A) In general

Subject to paragraph (5) and except as provided in paragraph (6), a State may not use more than 10 percent of amounts received under a grant awarded under this part for administration. In the case of entities and subcontractors to which the State allocates amounts received by the State under the grant (including consortia under section 300ff–23 of this title), the State shall ensure that, of the aggregate amount so allocated, the total of the expenditures by such entities for administrative expenses does not exceed 10 percent (without regard to whether particular entities expend more than 10 percent for such expenses).

(B) Administrative activities

For the purposes of subparagraph (A), amounts may be used for administrative activities that include routine grant administration and monitoring activities.

(C) Subcontractor administrative costs

For the purposes of this paragraph, subcontractor administrative activities include—

(i) usual and recognized overhead, including established indirect rates for agencies;

(ii) management oversight of specific programs funded under this subchapter; and

(iii) other types of program support such as quality assurance, quality control, and related activities.

(5) Limitation on use of funds

Except as provided in paragraph (6), a State may not use more than a total of 15 percent of amounts received under a grant awarded under this part for the purposes described in paragraphs (3) and (4).

(6) Exception

With respect to a State that receives the minimum allotment under subsection (a)(1) of this section for a fiscal year, such State, from the amounts received under a grant awarded under this part for such fiscal year for the activities described in paragraphs (3) and (4), may, notwithstanding paragraphs (3), (4), and (5), use not more than that amount required to support one full-time-equivalent employee.

(7) Construction

A State may not use amounts received under a grant awarded under this part to purchase or improve land, or to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or to make cash payments to intended recipients of services.

(c) Expedited distribution

(1) In general

Not less than 75 percent of the amounts received under a grant awarded to a State under this part shall be obligated to specific programs and projects and made available for expenditure not later than—

(A) in the case of the first fiscal year for which amounts are received, 150 days after the receipt of such amounts by the State; and

(B) in the case of succeeding fiscal years, 120 days after the receipt of such amounts by the State.

(2) Public comment

Within the time periods referred to in paragraph (1), the State shall invite and receive public comment concerning methods for the utilization of such amounts.

(d) Reallocation

Any amounts appropriated in any fiscal year and made available to a State under this part that have not been obligated as described in subsection (d)[3] of this section shall be repaid to the

[2] So in original. The comma probably should not appear.

[3] See References in Text note below.

Secretary and reallotted to other States in proportion to the original grants made to such States.

(July 1, 1944, ch. 373, title XXVI, § 2618, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 595; amended Pub. L. 102–531, title III, § 312(d)(30), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 104–146, §§ 3(c)(5), (g)(2), 5, 6(c)(3), May 20, 1996, 110 Stat. 1355, 1363, 1365, 1368; Pub. L. 105–392, title IV, § 417, Nov. 13, 1998, 112 Stat. 3591; Pub. L. 106–345, title II, § 206, Oct. 20, 2000, 114 Stat. 1334.)

REFERENCES IN TEXT

Subsection (d) of this section, referred to in subsec. (d), was redesignated subsection (c) by Pub. L. 106–345, title II, § 206(a)(1), Oct. 20, 2000, 114 Stat. 1334.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–345, § 206(a)(1), redesignated subsec. (b) as (a).

Subsec. (a)(1)(A)(i). Pub. L. 106–345, § 206(a)(2), substituted ''$200,000'' for ''$100,000'' in subcl. (I) and ''$500,000'' for ''$250,000'' in subcl. (II).

Subsec. (a)(1)(A)(ii). Pub. L. 106–345, § 206(c)(1), inserted ''and then, as applicable, increased under paragraph (2)(H)'' before semicolon.

Subsec. (a)(1)(B). Pub. L. 106–345, § 206(d), inserted ''the greater of $50,000 or'' after ''shall be''.

Subsec. (a)(2)(A)(i). Pub. L. 106–345, § 206(c)(2)(A), substituted ''subparagraphs (H) and (I)'' for ''subparagraph (H)''.

Subsec. (a)(2)(D)(i). Pub. L. 106–345, § 206(b)(1), inserted before semicolon '', except that (subject to subparagraph (E)), for grants made pursuant to this paragraph or section 300ff–30 of this title for fiscal year 2005 and subsequent fiscal years, the cases counted for each 12-month period beginning on or after July 1, 2004, shall be cases of HIV disease (as reported to and confirmed by such Director) rather than cases of acquired immune deficiency syndrome''.

Subsec. (a)(2)(E) to (G). Pub. L. 106–345, § 206(b)(2), (3), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively. Former subpar. (G) redesignated (H).

Subsec. (a)(2)(H). Pub. L. 106–345, § 206(c)(2)(B), amended heading and text of subpar. (H) generally. Prior to amendment, text related to limitations on the amount of a grant awarded for fiscal years 1996 to 2000 to a State or territory under this part in relation to the amount received by the State or territory for fiscal year 1995.

Pub. L. 106–345, § 206(b)(2), redesignated subpar. (G) as (H). Former subpar. (H) redesignated (I).

Subsec. (a)(2)(I). Pub. L. 106–345, § 206(e), reenacted heading without change, designated existing provisions as cl. (i), inserted cl. (i) heading, redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, in subcl. (I) inserted '', less the percentage reserved under clause (ii)(V)'' before semicolon, and added cl. (ii).

Pub. L. 106–345, § 206(b)(2), redesignated subpar. (H) as (I).

Subsec. (a)(3)(B). Pub. L. 106–345, § 206(f), substituted ''the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, and only for purposes of paragraph (1) the Commonwealth of Puerto Rico'' for ''and the Republic of the Marshall Islands''.

Subsecs. (b) to (e). Pub. L. 106–345, § 206(a)(1), redesignated subsecs. (c) to (e) as (b) to (d), respectively.

1998—Subsec. (b)(3)(A). Pub. L. 105–392, § 417(1), substituted '', the Commonwealth of Puerto Rico, the Virgin Islands, and Guam'' for ''and the Commonwealth of Puerto Rico''.

Subsec. (b)(3)(B). Pub. L. 105–392, § 417(2), struck out ''the Virgin Islands, Guam'' after ''means''.

1996—Subsec. (a). Pub. L. 104–146, § 3(g)(2), struck out subsec. (a) which related to special projects of national significance.

Subsec. (a)(1). Pub. L. 104–146, § 6(c)(3)(A), which directed amendment of subsec. (a)(1) by substituting ''section 300ff–77'' for ''section 300ff–30'', could not be executed because of the repeal of subsec. (a) by Pub. L. 104–146, § 3(g)(2). See above.

Subsec. (b)(1). Pub. L. 104–146, § 6(c)(3)(B), which directed amendment of subsec. (b)(1) by substituting ''section 300ff–77 of this title'' for ''section 300ff–30 of this title'', could not be executed because the words ''section 300ff–30 of this title'' did not appear subsequent to the general amendment of subsec. (b)(1) by Pub. L. 104–146, § 5. See below.

Pub. L. 104–146, § 5, amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''Subject to the extent of amounts made available under section 300ff–30 of this title, the amount of a grant to be made under this part for—

''(A) each of the several States and the District of Columbia for a fiscal year shall be the greater of—

''(i) $100,000, and

''(ii) an amount determined under paragraph (2); and

''(B) each territory of the United States, as defined in paragraph 3, shall be an amount determined under paragraph (2).''

Subsec. (b)(2). Pub. L. 104–146, § 5, amended par. (2) generally, substituting subpars. (A) to (H) for former subpars. (A) and (B) relating to determination of amount of allotments.

Subsec. (c)(1). Pub. L. 104–146, § 3(c)(5)(A), struck out heading and text of par. (1). Text read as follows: ''In a State that has reported 1 percent or more of all AIDS cases reported to and confirmed by the Centers for Disease Control and Prevention in all States, not less than 50 percent of the amount received by the State under a grant awarded under this part shall be utilized for the creation and operation of community-based comprehensive care consortia under section 300ff–23 of this title, in those areas within the State in which the largest number of individuals with HIV disease reside.''

Subsec. (c)(3), (4). Pub. L. 104–146, § 3(c)(5)(B), amended pars. (3) and (4) generally. Prior to amendment, pars. (3) and (4) read as follows:

''(3) PLANNING AND EVALUATIONS.—A State may not use in excess of 5 percent of amounts received under a grant awarded under this part for planning and evaluation activities.

''(4) ADMINISTRATION.—A State may not use in excess of 5 percent of amounts received under a grant awarded under this part for administration, accounting, reporting, and program oversight functions.''

Subsec. (c)(5) to (7). Pub. L. 104–146, § 3(c)(5)(C), (D), added pars. (5) and (6) and redesignated former par. (5) as (7).

1992—Subsec. (c)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 3(c)(5), (g)(2) and 6(c)(3)(A) of Pub. L. 104–146 effective Oct. 1, 1996, and amendment by sections 5 and 6(c)(3)(B) of Pub. L. 104–146 effective May 20, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–29. Technical assistance

The Secretary shall provide technical assistance in administering and coordinating the activities authorized under section 300ff–22 of this title, including technical assistance for the development and implementation of statewide coordinated statements of need.

(July 1, 1944, ch. 373, title XXVI, § 2619, as added Pub. L. 101–381, title II, § 201, Aug. 18, 1990, 104 Stat. 597; amended Pub. L. 104–146, § 3(c)(6), May 20, 1996, 110 Stat. 1356.)

AMENDMENTS

1996—Pub. L. 104–146 substituted ''shall'' for ''may'' and inserted '', including technical assistance for the

development and implementation of statewide coordinated statements of need'' before period at end.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, and amendment by section 6(c)(1)(A) of Pub. L. 104–146 effective May 20, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–30. Supplemental grants

(a) In general

The Secretary shall award supplemental grants to States determined to be eligible under subsection (b) of this section to enable such States to provide comprehensive services of the type described in section 300ff–22(a) of this title to supplement the services otherwise provided by the State under a grant under this subpart in emerging communities within the State that are not eligible to receive grants under part A of this subchapter.

(b) Eligibility

To be eligible to receive a supplemental grant under subsection (a) of this section, a State shall—

(1) be eligible to receive a grant under this subpart;

(2) demonstrate the existence in the State of an emerging community as defined in subsection (d)(1) of this section; and

(3) submit the information described in subsection (c) of this section.

(c) Reporting requirements

A State that desires a grant under this section shall, as part of the State application submitted under section 300ff–27 of this title, submit a detailed description of the manner in which the State will use amounts received under the grant and of the severity of need. Such description shall include—

(1) a report concerning the dissemination of supplemental funds under this section and the plan for the utilization of such funds in the emerging community;

(2) a demonstration of the existing commitment of local resources, both financial and inkind;

(3) a demonstration that the State will maintain HIV-related activities at a level that is equal to not less than the level of such activities in the State for the 1-year period preceding the fiscal year for which the State is applying to receive a grant under this part;

(4) a demonstration of the ability of the State to utilize such supplemental financial resources in a manner that is immediately responsive and cost effective;

(5) a demonstration that the resources will be allocated in accordance with the local demographic incidence of AIDS including appropriate allocations for services for infants, children, women, and families with HIV disease;

(6) a demonstration of the inclusiveness of the planning process, with particular emphasis on affected communities and individuals with HIV disease; and

(7) a demonstration of the manner in which the proposed services are consistent with local needs assessments and the statewide coordinated statement of need.

(d) Definition of emerging community

In this section, the term ''emerging community'' means a metropolitan area—

(1) that is not eligible for a grant under part A of this subchapter; and

(2) for which there has been reported to the Director of the Centers for Disease Control and Prevention a cumulative total of between 500 and 1,999 cases of acquired immune deficiency syndrome for the most recent period of 5 calendar years for which such data are available (except that, for fiscal year 2005 and subsequent fiscal years, cases of HIV disease shall be counted rather than cases of acquired immune deficiency syndrome if cases of HIV disease are being counted for purposes of section 300ff–28(a)(2)(D)(i) of this title).

(e) Funding

(1) In general

Subject to paragraph (2), with respect to each fiscal year beginning with fiscal year 2001, the Secretary, to carry out this section, shall utilize—

(A) the greater of—

(i) 25 percent of the amount appropriated under section 300ff–77 of this title to carry out this part, excluding the amount appropriated under section 300ff–28(a)(2)(I) of this title, for such fiscal year that is in excess of the amount appropriated to carry out this part in the fiscal year preceding the fiscal year involved; or

(ii) $5,000,000,

to provide funds to States for use in emerging communities with at least 1,000, but less than 2,000, cases of AIDS as reported to and confirmed by the Director of the Centers for Disease Control and Prevention for the five year period preceding the year for which the grant is being awarded; and

(B) the greater of—

(i) 25 percent of the amount appropriated under section 300ff–77 of this title to carry out this part, excluding the amount appropriated under section 300ff–28(a)(2)(I) of this title, for such fiscal year that is in excess of the amount appropriated to carry out such part in the fiscal year preceding the fiscal year involved; or

(ii) $5,000,000,

to provide funds to States for use in emerging communities with at least 500, but less than 1,000, cases of AIDS reported to and confirmed by the Director of the Centers for Disease Control and Prevention for the five year period preceding the year for which the grant is being awarded.

(2) Trigger of funding

This section shall be effective only for fiscal years beginning in the first fiscal year in which the amount appropriated under section 300ff–77 of this title to carry out this part, excluding the amount appropriated under section 300ff–28(a)(2)(I) of this title, exceeds by at least $20,000,000 the amount appropriated under section 300ff–77 of this title to carry out this part in fiscal year 2000, excluding the amount appropriated under section 300ff–28(a)(2)(I) of this title.

(3) Minimum amount in future years

Beginning with the first fiscal year in which amounts provided for emerging communities under paragraph (1)(A) equals $5,000,000 and under paragraph (1)(B) equals $5,000,000, the Secretary shall ensure that amounts made available under this section for the types of emerging communities described in each such paragraph in subsequent fiscal years is at least $5,000,000.

(4) Distribution

Grants under this section for emerging communities shall be formula grants. There shall be two categories of such formula grants, as follows:

(A) One category of such grants shall be for emerging communities for which the cumulative total of cases for purposes of subsection (d)(2) of this section is 999 or fewer cases. The grant made to such an emerging community for a fiscal year shall be the product of—

(i) an amount equal to 50 percent of the amount available pursuant to this subsection for the fiscal year involved; and

(ii) a percentage equal to the ratio constituted by the number of cases for such emerging community for the fiscal year over the aggregate number of such cases for such year for all emerging communities to which this subparagraph applies.

(B) The other category of formula grants shall be for emerging communities for which the cumulative total of cases for purposes of subsection (d)(2) of this section is 1,000 or more cases. The grant made to such an emerging community for a fiscal year shall be the product of—

(i) an amount equal to 50 percent of the amount available pursuant to this subsection for the fiscal year involved; and

(ii) a percentage equal to the ratio constituted by the number of cases for such community for the fiscal year over the aggregate number of such cases for the fiscal year for all emerging communities to which this subparagraph applies.

(July 1, 1944, ch. 373, title XXVI, § 2620, as added Pub. L. 106–345, title II, § 207(2), Oct. 20, 2000, 114 Stat. 1337.)

PRIOR PROVISIONS

A prior section 300ff–30, act July 1, 1944, ch. 373, title XXVI, § 2620, as added Aug. 18, 1990, Pub. L. 101–381, title II, § 201, 104 Stat. 597, authorized appropriations for fiscal years 1991 through 1995, prior to repeal by Pub. L. 104–146, §§ 6(b), 13, May 20, 1996, 110 Stat. 1367, 1374, effective Oct. 1, 1996.

§ 300ff–31. Repealed. Pub. L. 106–345, title II, § 207(1), Oct. 20, 2000, 114 Stat. 1337

Section, act July 1, 1944, ch. 373, title XXVI, § 2621, as added Pub. L. 104–146, § 3(c)(7), May 20, 1996, 110 Stat. 1356, related to coordination of planning and implementation of Federal HIV programs to facilitate the local development of a complete continuum of HIV-related services for individuals with HIV disease and those at risk of such disease and required a biennial report to Congress on coordination efforts.

SUBPART II—PROVISIONS CONCERNING PREGNANCY AND PERINATAL TRANSMISSION OF HIV

§ 300ff–33. CDC guidelines for pregnant women

(a) Requirement

Notwithstanding any other provision of law, a State shall, not later than 120 days after May 20, 1996, certify to the Secretary that such State has in effect regulations or measures to adopt the guidelines issued by the Centers for Disease Control and Prevention concerning recommendations for human immunodeficiency virus counseling and voluntary testing for pregnant women.

(b) Noncompliance

If a State does not provide the certification required under subsection (a) of this section within the 120-day period described in such subsection, such State shall not be eligible to receive assistance for HIV counseling and testing under this section until such certification is provided.

(c) Additional funds regarding women and infants

(1) In general

If a State provides the certification required in subsection (a) of this section and is receiving funds under this part for a fiscal year, the Secretary may (from the amounts available pursuant to paragraph (2)) make a grant to the State for the fiscal year for the following purposes:

(A) Making available to pregnant women appropriate counseling on HIV disease.

(B) Making available outreach efforts to pregnant women at high risk of HIV who are not currently receiving prenatal care.

(C) Making available to such women voluntary HIV testing for such disease.

(D) Offsetting other State costs associated with the implementation of this section and subsections (a) and (b) of section 300ff–34 of this title.

(E) Offsetting State costs associated with the implementation of mandatory newborn testing in accordance with this subchapter or at an earlier date than is required by this subchapter.

(F) Making available to pregnant women with HIV disease, and to the infants of women with such disease, treatment services for such disease in accordance with applicable recommendations of the Secretary.

(2) Funding

(A) Authorization of appropriations

For the purpose of carrying out this subsection, there are authorized to be appropriated $30,000,000 for each of the fiscal years 2001 through 2005. Amounts made available under section 300ff–77 of this title for carrying out this part are not available for carrying out this section unless otherwise authorized.

(B) Allocations for certain States

(i) In general

Of the amounts appropriated under subparagraph (A) for a fiscal year in excess of $10,000,000—

(I) the Secretary shall reserve the applicable percentage under clause (iv) for making grants under paragraph (1) both to States described in clause (ii) and States described in clause (iii); and

(II) the Secretary shall reserve the remaining amounts for other States, taking into consideration the factors described in subparagraph (C)(iii), except that this subclause does not apply to any State that for the fiscal year involved is receiving amounts pursuant to subclause (I).

(ii) Required testing of newborns

For purposes of clause (i)(I), the States described in this clause are States that under law (including under regulations or the discretion of State officials) have—

(I) a requirement that all newborn infants born in the State be tested for HIV disease and that the biological mother of each such infant, and the legal guardian of the infant (if other than the biological mother), be informed of the results of the testing; or

(II) a requirement that newborn infants born in the State be tested for HIV disease in circumstances in which the attending obstetrician for the birth does not know the HIV status of the mother of the infant, and that the biological mother of each such infant, and the legal guardian of the infant (if other than the biological mother), be informed of the results of the testing.

(iii) Most significant reduction in cases of perinatal transmission

For purposes of clause (i)(I), the States described in this clause are the following (exclusive of States described in clause (ii)), as applicable:

(I) For fiscal years 2001 and 2002, the two States that, relative to other States, have the most significant reduction in the rate of new cases of the perinatal transmission of HIV (as indicated by the number of such cases reported to the Director of the Centers for Disease Control and Prevention for the most recent periods for which the data are available).

(II) For fiscal years 2003 and 2004, the three States that have the most significant such reduction.

(III) For fiscal year 2005, the four States that have the most significant such reduction.

(iv) Applicable percentage

For purposes of clause (i), the applicable amount for a fiscal year is as follows:

(I) For fiscal year 2001, 33 percent.

(II) For fiscal year 2002, 50 percent.

(III) For fiscal year 2003, 67 percent.

(IV) For fiscal year 2004, 75 percent.

(V) For fiscal year 2005, 75 percent.

(C) Certain provisions

With respect to grants under paragraph (1) that are made with amounts reserved under subparagraph (B) of this paragraph:

(i) Such a grant may not be made in an amount exceeding $4,000,000.

(ii) If pursuant to clause (i) or pursuant to an insufficient number of qualifying applications for such grants (or both), the full amount reserved under subparagraph (B) for a fiscal year is not obligated, the requirement under such subparagraph to reserve amounts ceases to apply.

(iii) In the case of a State that meets the conditions to receive amounts reserved under subparagraph (B)(i)(II), the Secretary shall in making grants consider the following factors:

(I) The extent of the reduction in the rate of new cases of the perinatal transmission of HIV.

(II) The extent of the reduction in the rate of new cases of perinatal cases of acquired immune deficiency syndrome.

(III) The overall incidence of cases of infection with HIV among women of childbearing age.

(IV) The overall incidence of cases of acquired immune deficiency syndrome among women of childbearing age.

(V) The higher acceptance rate of HIV testing of pregnant women.

(VI) The extent to which women and children with HIV disease are receiving HIV-related health services.

(VII) The extent to which HIV-exposed children are receiving health services appropriate to such exposure.

(3) Priority

In awarding grants under this subsection the Secretary shall give priority to States that have the greatest proportion of HIV seroprevalance among child bearing women using the most recent data available as determined by the Centers for Disease Control and Prevention.

(4) Maintenance of effort

A condition for the receipt of a grant under paragraph (1) is that the State involved agree that the grant will be used to supplement and not supplant other funds available to the State to carry out the purposes of the grant.

(July 1, 1944, ch. 373, title XXVI, § 2625, as added Pub. L. 104–146, § 7(b)(3), May 20, 1996, 110 Stat. 1369; amended Pub. L. 106–345, title II, § 212(a), Oct. 20, 2000, 114 Stat. 1339.)

AMENDMENTS

2000—Subsec. (c)(1)(F). Pub. L. 106–345, § 212(a)(1), added subpar. (F).

Subsec. (c)(2). Pub. L. 106–345, § 212(a)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''For purposes of carrying out this subsection, there are authorized to be appropriated $10,000,000 for each of the fiscal years 1996 through 2000. Amounts made available under section 300ff–77 of this title for carrying out this part are not available for carrying out this section unless otherwise authorized.''

Subsec. (c)(4). Pub. L. 106–345, § 212(a)(3), added par. (4).

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as an Effective Date of 1996 Amendment note under section 300ff–11 of this title.

PERINATAL TRANSMISSION OF HIV DISEASE; CONGRESSIONAL FINDINGS

Section 7(a) of Pub. L. 104–146 provided that: ''The Congress finds as follows:

''(1) Research studies and statewide clinical experiences have demonstrated that administration of antiretroviral medication during pregnancy can significantly reduce the transmission of the human immunodeficiency virus (commonly known as HIV) from an infected mother to her baby.

''(2) The Centers for Disease Control and Prevention have recommended that all pregnant women receive HIV counseling; voluntary, confidential HIV testing; and appropriate medical treatment (including antiretroviral therapy) and support services.

''(3) The provision of such testing without access to such counseling, treatment, and services will not improve the health of the woman or the child.

''(4) The provision of such counseling, testing, treatment, and services can reduce the number of pediatric cases of acquired immune deficiency syndrome, can improve access to and provision of medical care for the woman, and can provide opportunities for counseling to reduce transmission among adults, and from mother to child.

''(5) The provision of such counseling, testing, treatment, and services can reduce the overall cost of pediatric cases of acquired immune deficiency syndrome.

''(6) The cancellation or limitation of health insurance or other health coverage on the basis of HIV status should be impermissible under applicable law. Such cancellation or limitation could result in disincentives for appropriate counseling, testing, treatment, and services.

''(7) For the reasons specified in paragraphs (1) through (6)—

''(A) routine HIV counseling and voluntary testing of pregnant women should become the standard of care; and

''(B) the relevant medical organizations as well as public health officials should issue guidelines making such counseling and testing the standard of care.''

§ 300ff–34. Perinatal transmission of HIV disease; contingent requirement regarding State grants under this part

(a) Annual determination of reported cases

A State shall annually determine the rate of reported cases of AIDS as a result of perinatal transmission among residents of the State.

(b) Causes of perinatal transmission

In determining the rate under subsection (a) of this section, a State shall also determine the possible causes of perinatal transmission. Such causes may include—

(1) the inadequate provision within the State of prenatal counseling and testing in accordance with the guidelines issued by the Centers for Disease Control and Prevention;

(2) the inadequate provision or utilization within the State of appropriate therapy or failure of such therapy to reduce perinatal transmission of HIV, including—

(A) that therapy is not available, accessible or offered to mothers; or

(B) that available therapy is offered but not accepted by mothers; or

(3) other factors (which may include the lack of prenatal care) determined relevant by the State.

(c) CDC reporting system

Not later than 4 months after May 20, 1996, the Director of the Centers for Disease Control and Prevention shall develop and implement a system to be used by States to comply with the requirements of subsections (a) and (b) of this section. The Director shall issue guidelines to ensure that the data collected is statistically valid.

(July 1, 1944, ch. 373, title XXVI, § 2626, as added Pub. L. 104–146, § 7(b)(3), May 20, 1996, 110 Stat. 1369; amended Pub. L. 104–166, § 5(1), July 29, 1996, 110 Stat. 1449; Pub. L. 106–345, title II, § 211(1), Oct. 20, 2000, 114 Stat. 1339.)

AMENDMENTS

2000—Subsecs. (d) to (f). Pub. L. 106–345 struck out subsecs. (d) to (f), which related, respectively, to determination by Secretary, contingent applicability, and limitation regarding availability of funds.

1996—Subsec. (d). Pub. L. 104–166, § 5(1)(A), substituted ''(1) through (4)'' for ''(1) through (5)''.

Subsec. (f). Pub. L. 104–166, § 5(1)(B), substituted ''(1) through (4)'' for ''(1) through (5)'' in introductory provisions.

EFFECTIVE DATE

Section effective May 20, 1996, see section 13(b) of Pub. L. 104–146, set out as an Effective Date of 1996 Amendment note under section 300ff–11 of this title.

§§ 300ff–35, 300ff–36. Repealed. Pub. L. 106–345, title II, § 211(2), Oct. 20, 2000, 114 Stat. 1339

Section 300ff–35, act July 1, 1944, ch. 373, title XXVI, § 2627, as added Pub. L. 104–146, § 7(b)(3), May 20, 1996, 110 Stat. 1371, related to testing of pregnant women and newborn infants for HIV disease.

Section 300ff–36, act July 1, 1944, ch. 373, title XXVI, § 2628, as added Pub. L. 104–146, § 7(b)(3), May 20, 1996, 110 Stat. 1372, related to report to Congress by Institute of Medicine.

§ 300ff–37. State HIV testing programs established prior to or after May 20, 1996

Nothing in this subpart shall be construed to disqualify a State from receiving grants under this subchapter if such State has established at any time prior to or after May 20, 1996, a program of mandatory HIV testing.

(July 1, 1944, ch. 373, title XXVI, § 2627, formerly § 2629, as added Pub. L. 104–146, § 7(b)(3), May 20, 1996, 110 Stat. 1372; renumbered § 2627, Pub. L. 106–345, title II, § 211(3), Oct. 20, 2000, 114 Stat. 1339.)

PRIOR PROVISIONS

A prior section 2627 of act July 1, 1944, was classified to section 300ff–35 of this title prior to repeal by Pub. L. 106–345.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as an Effective Date of 1996 Amendment note under section 300ff–11 of this title.

§ 300ff–37a. Recommendations for reducing incidence of perinatal transmission

(a) Study by Institute of Medicine

(1) In general

The Secretary shall request the Institute of Medicine to enter into an agreement with the Secretary under which such Institute conducts a study to provide the following:

(A) For the most recent fiscal year for which the information is available, a deter-

mination of the number of newborn infants with HIV born in the United States with respect to whom the attending obstetrician for the birth did not know the HIV status of the mother.

(B) A determination for each State of any barriers, including legal barriers, that prevent or discourage an obstetrician from making it a routine practice to offer pregnant women an HIV test and a routine practice to test newborn infants for HIV disease in circumstances in which the obstetrician does not know the HIV status of the mother of the infant.

(C) Recommendations for each State for reducing the incidence of cases of the perinatal transmission of HIV, including recommendations on removing the barriers identified under subparagraph (B).

If such Institute declines to conduct the study, the Secretary shall enter into an agreement with another appropriate public or nonprofit private entity to conduct the study.

(2) Report

The Secretary shall ensure that, not later than 18 months after the effective date of this section, the study required in paragraph (1) is completed and a report describing the findings made in the study is submitted to the appropriate committees of the Congress, the Secretary, and the chief public health official of each of the States.

(b) Progress toward recommendations

In fiscal year 2004, the Secretary shall collect information from the States describing the actions taken by the States toward meeting the recommendations specified for the States under subsection (a)(1)(C) of this section.

(c) Submission of reports to Congress

The Secretary shall submit to the appropriate committees of the Congress reports describing the information collected under subsection (b) of this section.

(July 1, 1944, ch. 373, title XXVI, § 2628, as added Pub. L. 106–345, title II, § 213, Oct. 20, 2000, 114 Stat. 1342.)

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (a)(2), is Oct. 20, 2000. See section 601 of Pub. L. 106–345, set out as an Effective Date of 2000 Amendment note under section 300ff–12 of this title.

PRIOR PROVISIONS

A prior section 2628 of act July 1, 1944, was classified to section 300ff–36 of this title prior to repeal by Pub. L. 106–345.

SUBPART III—CERTAIN PARTNER NOTIFICATION PROGRAMS

§ 300ff–38. Grants for partner notification programs

(a) In general

In the case of States whose laws or regulations are in accordance with subsection (b) of this section, the Secretary, subject to subsection (c)(2) of this section, may make grants to the States for carrying out programs to provide partner counseling and referral services.

(b) Description of compliant State programs

For purposes of subsection (a) of this section, the laws or regulations of a State are in accordance with this subsection if under such laws or regulations (including programs carried out pursuant to the discretion of State officials) the following policies are in effect:

(1) The State requires that the public health officer of the State carry out a program of partner notification to inform partners of individuals with HIV disease that the partners may have been exposed to the disease.

(2)(A) In the case of a health entity that provides for the performance on an individual of a test for HIV disease, or that treats the individual for the disease, the State requires, subject to subparagraph (B), that the entity confidentially report the positive test results to the State public health officer in a manner recommended and approved by the Director of the Centers for Disease Control and Prevention, together with such additional information as may be necessary for carrying out such program.

(B) The State may provide that the requirement of subparagraph (A) does not apply to the testing of an individual for HIV disease if the individual underwent the testing through a program designed to perform the test and provide the results to the individual without the individual disclosing his or her identity to the program. This subparagraph may not be construed as affecting the requirement of subparagraph (A) with respect to a health entity that treats an individual for HIV disease.

(3) The program under paragraph (1) is carried out in accordance with the following:

(A) Partners are provided with an appropriate opportunity to learn that the partners have been exposed to HIV disease, subject to subparagraph (B).

(B) The State does not inform partners of the identity of the infected individuals involved.

(C) Counseling and testing for HIV disease are made available to the partners and to infected individuals, and such counseling includes information on modes of transmission for the disease, including information on prenatal and perinatal transmission and preventing transmission.

(D) Counseling of infected individuals and their partners includes the provision of information regarding therapeutic measures for preventing and treating the deterioration of the immune system and conditions arising from the disease, and the provision of other prevention-related information.

(E) Referrals for appropriate services are provided to partners and infected individuals, including referrals for support services and legal aid.

(F) Notifications under subparagraph (A) are provided in person, unless doing so is an unreasonable burden on the State.

(G) There is no criminal or civil penalty on, or civil liability for, an infected individual if the individual chooses not to iden-

tify the partners of the individual, or the individual does not otherwise cooperate with such program.

(H) The failure of the State to notify partners is not a basis for the civil liability of any health entity who under the program reported to the State the identity of the infected individual involved.

(I) The State provides that the provisions of the program may not be construed as prohibiting the State from providing a notification under subparagraph (A) without the consent of the infected individual involved.

(4) The State annually reports to the Director of the Centers for Disease Control and Prevention the number of individuals from whom the names of partners have been sought under the program under paragraph (1), the number of such individuals who provided the names of partners, and the number of partners so named who were notified under the program.

(5) The State cooperates with such Director in carrying out a national program of partner notification, including the sharing of information between the public health officers of the States.

(c) Reporting system for cases of HIV disease; preference in making grants

In making grants under subsection (a) of this section, the Secretary shall give preference to States whose reporting systems for cases of HIV disease produce data on such cases that is sufficiently accurate and reliable for use for purposes of section 300ff–28(a)(2)(D)(i) of this title.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $30,000,000 for fiscal year 2001, and such sums as may be necessary for each of the fiscal years 2002 through 2005.

(July 1, 1944, ch. 373, title XXVI, §2631, as added Pub. L. 106–345, title II, §221, Oct. 20, 2000, 114 Stat. 1343.)

PART C—EARLY INTERVENTION SERVICES

§§ 300ff–41 to 300ff–50. Repealed. Pub. L. 106–345, title III, §301(a), Oct. 20, 2000, 114 Stat. 1345

Section 300ff–41, act July 1, 1944, ch. 373, title XXVI, §2641, as added Pub. L. 101–381, title III, §301(a), Aug. 18, 1990, 104 Stat. 597; amended Pub. L. 102–531, title III, §312(d)(31), Oct. 27, 1992, 106 Stat. 3506, established program of formula grants to States.

Section 300ff–42, act July 1, 1944, ch. 373, title XXVI, §2642, as added Pub. L. 101–381, title III, §301(a), Aug. 18, 1990, 104 Stat. 599, related to provision of services through medicaid providers.

Section 300ff–43, act July 1, 1944, ch. 373, title XXVI, §2643, as added Pub. L. 101–381, title III, §301(a), Aug. 18, 1990, 104 Stat. 600; amended Pub. L. 102–531, title III, §312(d)(32), Oct. 27, 1992, 106 Stat. 3506, related to requirement of matching funds.

Section 300ff–44, act July 1, 1944, ch. 373, title XXVI, §2644, as added Pub. L. 101–381, title III, §301(a), Aug. 18, 1990, 104 Stat. 601, related to the offering and encouraging of early intervention services.

Section 300ff–45, act July 1, 1944, ch. 373, title XXVI, §2645, as added Pub. L. 101–381, title III, §301(a), Aug. 18, 1990, 104 Stat. 602, related to notification of certain individuals receiving blood transfusions.

Section 300ff–46, act July 1, 1944, ch. 373, title XXVI, §2646, as added Pub. L. 101–381, title III, §301(a), Aug. 18, 1990, 104 Stat. 602, related to reporting and partner notification.

Section 300ff–47, act July 1, 1944, ch. 373, title XXVI, §2647, as added Pub. L. 101–381, title III, §301(a), Aug. 18, 1990, 104 Stat. 603; amended Pub. L. 101–502, §6(c), Nov. 3, 1990, 104 Stat. 1291; Pub. L. 104–146, §12(c)(4), May 20, 1996, 110 Stat. 1373, related to requirement of State law protection against intentional transmission.

Section 300ff–48, act July 1, 1944, ch. 373, title XXVI, §2648, formerly Pub. L. 100–607, title IX, §902, Nov. 4, 1988, 102 Stat. 3171; amended Pub. L. 100–690, title II, §2605(a), Nov. 18, 1988, 102 Stat. 4234; renumbered §2648 and amended Pub. L. 101–381, title III, §301(b), Aug. 18, 1990, 104 Stat. 614; Pub. L. 104–146, §12(c)(5), May 20, 1996, 110 Stat. 1374, related to testing and other early intervention services for State prisoners.

Section 300ff–49, act July 1, 1944, ch. 373, title XXVI, §2649, as added Pub. L. 101–381, title III, §301(a), Aug. 18, 1990, 104 Stat. 604; amended Pub. L. 101–502, §6(b), Nov. 3, 1990, 104 Stat. 1290; Pub. L. 102–531, title III, §312(d)(33), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 104–146, §12(c)(6), May 20, 1996, 110 Stat. 1374, related to determination of amount of allotments.

Section 300ff–49a, act July 1, 1944, ch. 373, title XXVI, §2649A, as added Pub. L. 101–381, title III, §301(a), Aug. 18, 1990, 104 Stat. 605, related to miscellaneous prerequisites for the Secretary to make a grant.

Section 300ff–50, act July 1, 1944, ch. 373, title XXVI, §2650, as added Pub. L. 101–381, title III, §301(a), Aug. 18, 1990, 104 Stat. 606, authorized appropriations.

SUBPART I—CATEGORICAL GRANTS

AMENDMENTS

Pub. L. 106–345, title III, §301(b)(1), Oct. 20, 2000, 114 Stat. 1345, redesignated subpart II as subpart I.

PRIOR PROVISIONS

A prior subpart I, consisting of sections 300ff–41 to 300ff–50, related to formula grants to States, prior to repeal by Pub. L. 106–345, title III, §301(a), Oct. 20, 2000, 114 Stat. 1345.

§ 300ff–51. Establishment of program

(a) In general

For the purposes described in subsection (b) of this section, the Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to public and nonprofit private entities specified in section 300ff–52(a) of this title.

(b) Purposes of grants

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees to expend the grant for the purposes of providing, on an outpatient basis, each of the early intervention services specified in paragraph (2) with respect to HIV disease, and unless the applicant agrees to expend not less than 50 percent of the grant for such services that are specified in subparagraphs (B) through (E) of such paragraph for individuals with HIV disease.

(2) Specification of early intervention services

The early intervention services referred to in paragraph (1) are—

(A) counseling individuals with respect to HIV disease in accordance with section 300ff–62 of this title;

(B) testing individuals with respect to such disease, including tests to confirm the presence of the disease, tests to diagnose the

extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;

(C) referrals described in paragraph (3);

(D) other clinical and diagnostic services regarding HIV disease, and periodic medical evaluations of individuals with the disease;

(E) providing the therapeutic measures described in subparagraph (B).

(3) Referrals

The services referred to in paragraph (2)(C) are referrals of individuals with HIV disease to appropriate providers of health and support services, including, as appropriate—

(A) to entities receiving amounts under part A or B of this subchapter for the provision of such services;

(B) to biomedical research facilities of institutions of higher education that offer experimental treatment for such disease, or to community-based organizations or other entities that provide such treatment; or

(C) to grantees under section 300ff–71 of this title, in the case of a pregnant woman.

(4) Requirement of availability of all early intervention services through each grantee

(A) In general

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees that each of the early intervention services specified in paragraph (2) will be available through the grantee. With respect to compliance with such agreement, such a grantee may expend the grant to provide the early intervention services directly, and may expend the grant to enter into agreements with public or nonprofit private entities, or private for-profit entities if such entities are the only available provider of quality HIV care in the area, under which the entities provide the services.

(B) Other requirements

Grantees described in—

(i) paragraphs (1), (2), (5), and (6) of section 300ff–52(a) of this title shall use not less than 50 percent of the amount of such a grant to provide the services described in subparagraphs (A), (B), (D), and (E) of paragraph (2) directly and on-site or at sites where other primary care services are rendered; and

(ii) paragraphs (3) and (4) of section 300ff–52(a) of this title shall ensure the availability of early intervention services through a system of linkages to community-based primary care providers, and to establish mechanisms for the referrals described in paragraph (2)(C), and for follow-up concerning such referrals.

(5) Optional services

A grantee under subsection (a) of this section—

(A) may expend the grant to provide outreach services to individuals who may have HIV disease or may be at risk of the disease, and who may be unaware of the availability and potential benefits of early treatment of the disease, and to provide outreach services to health care professionals who may be unaware of such availability and potential benefits; and

(B) may, in the case of individuals who seek early intervention services from the grantee, expend the grant—

(i) for case management to provide coordination in the provision of health care services to the individuals and to review the extent of utilization of the services by the individuals; and

(ii) to provide assistance to the individuals regarding establishing the eligibility of the individuals for financial assistance and services under Federal, State, or local programs providing for health services, mental health services, social services, or other appropriate services.

(c) Participation in certain consortium

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees to make reasonable efforts to participate in a consortium established with a grant under section 300ff–22(a)(1)[1] of this title regarding comprehensive services to individuals with HIV disease, if such a consortium exists in the geographic area with respect to which the applicant is applying to receive such a grant.

(July 1, 1944, ch. 373, title XXVI, § 2651, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 606; amended Pub. L. 101–557, title IV, § 401(b)(2), Nov. 15, 1990, 104 Stat. 2771; Pub. L. 104–146, §§ 3(d)(1), 12(c)(7), May 20, 1996, 110 Stat. 1357, 1374.)

REFERENCES IN TEXT

Section 300ff–22 of this title, referred to in subsec. (c), was amended by Pub. L. 104–146, § 3(c)(2)(A)(i), (ii), May 20, 1996, 110 Stat. 1354, and Pub. L. 106–345, title II, § 202(1), Oct. 20, 2000, 114 Stat. 1330, and as so amended, provisions formerly contained in section 300ff–22(a)(1) are now contained in section 300ff–22(a)(2).

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–146, § 3(d)(1)(A), inserted before period ‘‘, and unless the applicant agrees to expend not less than 50 percent of the grant for such services that are specified in subparagraphs (B) through (E) of such paragraph for individuals with HIV disease’’.

Subsec. (b)(3)(B). Pub. L. 104–146, § 12(c)(7)(A), substituted ‘‘facilities’’ for ‘‘facility’’.

Subsec. (b)(4). Pub. L. 104–146, § 3(d)(1)(B), designated existing provisions as subpar. (A) and inserted heading, inserted ‘‘, or private for-profit entities if such entities are the only available provider of quality HIV care in the area,’’ after ‘‘nonprofit private entities’’, realigned margin, and added subpar. (B).

Subsec. (c). Pub. L. 104–146, § 12(c)(7)(B), substituted ‘‘exists’’ for ‘‘exist’’.

1990—Subsec. (a). Pub. L. 101–557 substituted ‘‘section 300ff–52(a)’’ for ‘‘section 300ff–52(a)(1)’’.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

[1] See References in Text note below.

§ 300ff–52. Minimum qualifications of grantees

(a) In general

The entities referred to in section 300ff–51(a) of this title are public entities and nonprofit private entities that are—

(1) migrant health centers under section 254b[1] of this title or community health centers under section 254c[1] of this title;

(2) grantees under section 254b(h) of this title (regarding health services for the homeless);

(3) grantees under section 300 of this title (regarding family planning) other than States;

(4) comprehensive hemophilia diagnostic and treatment centers;

(5) Federally-qualified health centers under section 1905(*l*)(2)(B) of the Social Security Act [42 U.S.C. 1396d(*l*)(2)(B)]; or

(6) nonprofit private entities that provide comprehensive primary care services to populations at risk of HIV disease.

(b) Status as medicaid provider

(1) In general

Subject to paragraph (2), the Secretary may not make a grant under section 300ff–51 of this title for the provision of services described in subsection (b) of such section in a State unless, in the case of any such service that is available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State—

(A) the applicant for the grant will provide the service directly, and the applicant has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(B) the applicant for the grant will enter into an agreement with a public or nonprofit private entity, or a private for-profit entity if such entity is the only available provider of quality HIV care in the area, under which the entity will provide the service, and the entity has entered into such a participation agreement and is qualified to receive such payments.

(2) Waiver regarding certain secondary agreements

(A) In the case of an entity making an agreement pursuant to paragraph (1)(B) regarding the provision of services, the requirement established in such paragraph regarding a participation agreement shall be waived by the Secretary if the entity does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(B) A determination by the Secretary of whether an entity referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the entity accepts voluntary donations regarding the provision of services to the public.

(July 1, 1944, ch. 373, title XXVI, § 2652, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 607; amended Pub. L. 101–557, title IV, § 401(b)(3), Nov. 15, 1990, 104 Stat. 2771; Pub. L. 104–146, § 3(d)(2), May 20, 1996, 110 Stat. 1357; Pub. L. 107–251, title VI, § 601(a), Oct. 26, 2002, 116 Stat. 1664; Pub. L. 108–163, § 2(m)(3), Dec. 6, 2003, 117 Stat. 2023.)

[1] See References in Text note below.

REFERENCES IN TEXT

Sections 254b and 254c of this title, referred to in subsec. (a)(1), were in the original references to sections 329 and 330, meaning sections 329 and 330 of act July 1, 1944, which were omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of this chapter by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

The Social Security Act, referred to in subsec. (b)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2003—Subsec. (a)(2). Pub. L. 108–163 substituted ''254b(h)'' for ''256''.

2002—Pub. L. 107–251, which directed the substitution of ''254b(h)'' for ''256'' in subsec. (2), could not be executed because section does not contain a subsec. (2).

1996—Subsec. (b)(1)(B). Pub. L. 104–146 inserted '', or a private for-profit entity if such entity is the only available provider of quality HIV care in the area,'' after ''nonprofit private entity''.

1990—Subsec. (a). Pub. L. 101–557 substituted ''referred to in section 300ff–51(a) of this title'' for ''referred to in subsection (b) of this section'', redesignated pars. (A) to (F) as (1) to (6), respectively, and substituted ''nonprofit private entities that provide'' for ''a nonprofit private entity that provides'' in par. (6).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–163 deemed to have taken effect immediately after the enactment of Pub. L. 107–251, see section 3 of Pub. L. 108–163, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

§ 300ff–53. Preferences in making grants

(a) In general

In making grants under section 300ff–51 of this title, the Secretary shall give preference to any qualified applicant experiencing an increase in the burden of providing services regarding HIV disease, as indicated by the factors specified in subsection (b) of this section.

(b) Specification of factors

(1) In general

In the case of the geographic area with respect to which the entity involved is applying

for a grant under section 300ff–51 of this title, the factors referred to in subsection (a) of this section, as determined for the period specified in paragraph (2), are—

(A) the number of cases of acquired immune deficiency syndrome;

(B) the rate of increase in such cases;

(C) the lack of availability of early intervention services;

(D) the number of other cases of sexually transmitted diseases, and the number of cases of tuberculosis and of drug abuse;

(E) the rate of increase in each of the cases specified in subparagraph (D);

(F) the lack of availability of primary health services from providers other than such applicant; and

(G) the distance between such area and the nearest community that has an adequate level of availability of appropriate HIV-related services, and the length of time required to travel such distance.

(2) Relevant period of time

The period referred to in paragraph (1) is the 2-year period preceding the fiscal year for which the entity involved is applying to receive a grant under section 300ff–51 of this title.

(c) Equitable allocations

In providing preferences for purposes of subsection (b) of this section, the Secretary shall equitably allocate the preferences among urban and rural areas.

(d) Certain areas

Of the applicants who qualify for preference under this section—

(1) the Secretary shall give preference to applicants that will expend the grant under section 300ff–51 of this title to provide early intervention under such section in rural areas; and

(2) the Secretary shall give special consideration to areas that are underserved with respect to such services.

(July 1, 1944, ch. 373, title XXVI, § 2653, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 608; amended Pub. L. 106–345, title III, § 311, Oct. 20, 2000, 114 Stat. 1345.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–345 added subsec. (d).

§ 300ff–54. Miscellaneous provisions

(a) Services for individuals with hemophilia

In making grants under section 300ff–51 of this title, the Secretary shall ensure that any such grants made regarding the provision of early intervention services to individuals with hemophilia are made through the network of comprehensive hemophilia diagnostic and treatment centers.

(b) Technical assistance

The Secretary may, directly or through grants or contracts, provide technical assistance to nonprofit private entities regarding the process of submitting to the Secretary applications for grants under section 300ff–51 of this title, and may provide technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to such section.

(c) Planning and development grants

(1) In general

The Secretary may provide planning grants to public and nonprofit private entities for purposes of—

(A) enabling such entities to provide HIV early intervention services; and

(B) assisting the entities in expanding their capacity to provide HIV-related health services, including early intervention services, in low-income communities and affected subpopulations that are underserved with respect to such services (subject to the condition that a grant pursuant to this subparagraph may not be expended to purchase or improve land, or to purchase, construct, or permanently improve, other than minor remodeling, any building or other facility).

(2) Requirement

The Secretary may only award a grant to an entity under paragraph (1) if the Secretary determines that the entity will use such grant to assist the entity in qualifying for a grant under section 300ff–51 of this title.

(3) Preference

In awarding grants under paragraph (1), the Secretary shall give preference to entities that provide primary care services in rural or underserved communities.

(4) Amount and duration of grants

(A) Early intervention services

A grant under paragraph (1)(A) may be made in an amount not to exceed $50,000.

(B) Capacity development

(i) Amount

A grant under paragraph (1)(B) may be made in an amount not to exceed $150,000.

(ii) Duration

The total duration of a grant under paragraph (1)(B), including any renewal, may not exceed 3 years.

(5) Limitation

Not to exceed 5 percent of the amount appropriated for a fiscal year under section 300ff–55 of this title may be used to carry out this section.

(July 1, 1944, ch. 373, title XXVI, § 2654, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 608; amended Pub. L. 104–146, § 3(d)(3), May 20, 1996, 110 Stat. 1357; Pub. L. 106–345, title III, § 312, Oct. 20, 2000, 114 Stat. 1345.)

AMENDMENTS

2000—Subsec. (c)(1). Pub. L. 106–345, § 312(a), substituted ''planning grants to public and nonprofit private entities for purposes of—'' and subpars. (A) and (B) for ''planning grants, in an amount not to exceed $50,000 for each such grant, to public and nonprofit private entities for the purpose of enabling such entities to provide HIV early intervention services.''

Subsec. (c)(4). Pub. L. 106–345, § 312(b)(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 106–345, § 312(b)(1), (c), redesignated par. (4) as (5) and substituted ''5 percent'' for ''1 percent''.

1996—Subsec. (c). Pub. L. 104–146 added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–55. Authorization of appropriations

For the purpose of making grants under section 300ff–51 of this title, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title XXVI, § 2655, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 609; amended Pub. L. 104–146, § 3(d)(4), May 20, 1996, 110 Stat. 1358; Pub. L. 106–345, title III, § 313, Oct. 20, 2000, 114 Stat. 1346.)

AMENDMENTS

2000—Pub. L. 106–345 substituted ''for each of the fiscal years 2001 through 2005'' for ''in each of the fiscal years 1996, 1997, 1998, 1999, and 2000''.

1996—Pub. L. 104–146 substituted ''such sums as may be necessary in each of the fiscal years 1996, 1997, 1998, 1999, and 2000.'' for ''$75,000,000 for fiscal years 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

SUBPART II—GENERAL PROVISIONS

PRIOR PROVISIONS

A prior subpart II, consisting of sections 300ff–51 to 300ff–55, was redesignated subpart I of this part by Pub. L. 106–345, title III, § 301(b)(1), Oct. 20, 2000, 114 Stat. 1345.

AMENDMENTS

Pub. L. 106–345, title III, § 301(b)(1), Oct. 20, 2000, 114 Stat. 1345, redesignated subpart III as subpart II.

§ 300ff–61. Confidentiality and informed consent

(a) Confidentiality

The Secretary may not make a grant under this part unless, in the case of any entity applying for a grant under section 300ff–51 of this title, the entity agrees to ensure that information regarding the receipt of early intervention services pursuant to the grant is maintained confidentially in a manner not inconsistent with applicable law.

(b) Informed consent

(1) In general

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, in testing an individual for HIV disease, the applicant will test an individual only after obtaining from the individual a statement, made in writing and signed by the individual, declaring that the individual has undergone the counseling described in section 300ff–62(a) of this title and that the decision of the individual with respect to undergoing such testing is voluntarily made.

(2) Provisions regarding anonymous testing

(A) If, pursuant to section 300ff–64(b) of this title, an individual will undergo testing pursuant to this part through the use of a pseudonym, a grantee under such section shall be considered to be in compliance with the agreement made under paragraph (1) if the individual signs the statement described in such subsection using the pseudonym.

(B) If, pursuant to section 300ff–64(b) of this title, an individual will undergo testing pursuant to this part without providing any information relating to the identity of the individual, a grantee under such section shall be considered to be in compliance with the agreement made under paragraph (1) if the individual orally provides the declaration described in such paragraph.

(July 1, 1944, ch. 373, title XXVI, § 2661, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 609; amended Pub. L. 106–345, title III, § 301(b)(2), Oct. 20, 2000, 114 Stat. 1345.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–345 struck out par. (1) and par. (2) designation. Prior to amendment, par. (1) read as follows: ''in the case of any State applying for a grant under section 300ff–41 of this title, the State agrees to ensure that information regarding the receipt of early intervention services is maintained confidentially pursuant to law or regulations in a manner not inconsistent with applicable law; and''.

§ 300ff–62. Provision of certain counseling services

(a) Counseling before testing

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, before testing an individual for HIV disease, the applicant will provide to the individual appropriate counseling regarding the disease (based on the most recently available scientific data), including counseling on—

(1) measures for the prevention of exposure to, and the transmission of, HIV;

(2) the accuracy and reliability of the results of testing for HIV disease;

(3) the significance of the results of such testing, including the potential for developing acquired immune deficiency syndrome;

(4) encouraging the individual, as appropriate, to undergo such testing;

(5) the benefits of such testing, including the medical benefits of diagnosing HIV disease in the early stages and the medical benefits of receiving early intervention services during such stages;

(6) provisions of law relating to the confidentiality of the process of receiving such services, including information regarding any disclosures that may be authorized under applicable law and information regarding the availability of anonymous counseling and testing pursuant to section 300ff–64(b) of this title; and

(7) provisions of applicable law relating to discrimination against individuals with HIV disease.

(b) Counseling of individuals with negative test results

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, if the results of testing conducted for HIV disease indicate that an individual does

not have the disease, the applicant will review for the individual the information provided pursuant to subsection (a) of this section, including—

(1) the information described in paragraphs (1) through (3) of such subsection; and

(2) the appropriateness of further counseling, testing, and education of the individual regarding such disease.

(c) Counseling of individuals with positive test results

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, if the results of testing for HIV disease indicate that the individual has the disease, the applicant will provide to the individual appropriate counseling regarding such disease, including—

(1) reviewing the information described in paragraphs (1) through (3) of subsection (a) of this section;

(2) reviewing the appropriateness of further counseling, testing, and education of the individual regarding such disease; and

(3) providing counseling—

(A) on the availability, through the applicant, of early intervention services;

(B) on the availability in the geographic area of appropriate health care, mental health care, and social and support services, including providing referrals for such services, as appropriate;

(C)(i) that explains the benefits the benefits of locating and counseling any individual by whom the infected individual may have been exposed to HIV and any individual whom the infected individual may have exposed to HIV; and

(ii) that emphasizes it is the duty of infected individuals to disclose their infected status to their sexual partners and their partners in the sharing of hypodermic needles; that provides advice to infected individuals on the manner in which such disclosures can be made; and that emphasizes that it is the continuing duty of the individuals to avoid any behaviors that will expose others to HIV.[1]

(D) on the availability of the services of public health authorities with respect to locating and counseling any individual described in subparagraph (C).

(d) Additional requirements regarding appropriate counseling

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, in counseling individuals with respect to HIV disease, the applicant will ensure that the counseling is provided under conditions appropriate to the needs of the individuals.

(e) Counseling of emergency response employees

The Secretary may not make a grant under this part to a State unless the State agrees that, in counseling individuals with respect to HIV disease, the State will ensure that, in the case of emergency response employees, the counseling is provided to such employees under conditions appropriate to the needs of the employees regarding the counseling.

(f) Rule of construction regarding counseling without testing

Agreements made pursuant to this section may not be construed to prohibit any grantee under this part from expending the grant for the purpose of providing counseling services described in this section to an individual who does not undergo testing for HIV disease as a result of the grantee or the individual determining that such testing of the individual is not appropriate.

(July 1, 1944, ch. 373, title XXVI, § 2662, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 610; amended Pub. L. 106–345, title III, § 321, Oct. 20, 2000, 114 Stat. 1346.)

AMENDMENTS

2000—Subsec. (c)(3). Pub. L. 106–345, § 321(1), in introductory provisions struck out ''on'' after ''counseling''.

Subsec. (c)(3)(A), (B). Pub. L. 106–345, § 321(2), inserted ''on'' before ''the availability''.

Subsec. (c)(3)(C). Pub. L. 106–345, § 321(3), designated existing provisions as cl. (i), inserted ''that explains'' before ''the benefits'', and added cl. (ii).

Subsec. (c)(3)(D). Pub. L. 106–345, § 321(2), inserted ''on'' before ''the availability''.

§ 300ff–63. Applicability of requirements regarding confidentiality, informed consent, and counseling

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, with respect to testing for HIV disease, any such testing carried out by the applicant will, without regard to whether such testing is carried out with Federal funds, be carried out in accordance with conditions described in sections 300ff–61 and 300ff–62 of this title.

(July 1, 1944, ch. 373, title XXVI, § 2663, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 611.)

§ 300ff–64. Additional required agreements

(a) Reports to Secretary

The Secretary may not make a grant under this part unless—

(1) the applicant submits to the Secretary—

(A) a specification of the expenditures made by the applicant for early intervention services for the fiscal year preceding the fiscal year for which the applicant is applying to receive the grant; and

(B) an estimate of the number of individuals to whom the applicant has provided such services for such fiscal year; and

(2) the applicant agrees to submit to the Secretary a report providing—

(A) the number of individuals to whom the applicant provides early intervention services pursuant to the grant;

(B) epidemiological and demographic data on the population of such individuals;

(C) the extent to which the costs of HIV-related health care for such individuals are paid by third-party payors;

(D) the average costs of providing each category of early intervention service; and

[1] So in original. The period probably should be ''; and''.

(E) the aggregate amounts expended for each such category.

(b) Provision of opportunities for anonymous counseling and testing

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, to the extent permitted under State law, regulation or rule, the applicant will offer substantial opportunities for an individual—

(1) to undergo counseling and testing regarding HIV disease without being required to provide any information relating to the identity of the individual; and

(2) to undergo such counseling and testing through the use of a pseudonym.

(c) Prohibition against requiring testing as condition of receiving other health services

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, with respect to an individual seeking health services from the applicant, the applicant will not require the individual to undergo testing for HIV as a condition of receiving any health services unless such testing is medically indicated in the provision of the health services sought by the individual.

(d) Maintenance of support

The Secretary may not make a grant under this part unless the applicant for the grant agrees to maintain the expenditures of the applicant for early intervention services at a level equal to not less than the level of such expenditures maintained by the State for the fiscal year preceding the fiscal year for which the applicant is applying to receive the grant.

(e) Requirements regarding imposition of charges for services

(1) In general

The Secretary may not make a grant under this part unless, subject to paragraph (5), the applicant for the grant agrees that—

(A) in the case of individuals with an income less than or equal to 100 percent of the official poverty line, the applicant will not impose a charge on any such individual for the provision of early intervention services under the grant;

(B) in the case of individuals with an income greater than 100 percent of the official poverty line, the applicant—

(i) will impose a charge on each such individual for the provision of such services; and

(ii) will impose the charge according to a schedule of charges that is made available to the public.

(2) Limitation on charges regarding individuals subject to charges

With respect to the imposition of a charge for purposes of paragraph (1)(B)(ii), the Secretary may not make a grant under this part unless, subject to paragraph (5), the applicant for the grant agrees that—

(A) in the case of individuals with an income greater than 100 percent of the official poverty line and not exceeding 200 percent of such poverty line, the applicant will not, for any calendar year, impose charges in an amount exceeding 5 percent of the annual gross income of the individual involved;

(B) in the case of individuals with an income greater than 200 percent of the official poverty line and not exceeding 300 percent of such poverty line, the applicant will not, for any calendar year, impose charges in an amount exceeding 7 percent of the annual gross income of the individual involved; and

(C) in the case of individuals with an income greater than 300 percent of the official poverty line, the applicant will not, for any calendar year, impose charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

(3) Assessment of charge

With respect to compliance with the agreement made under paragraph (1), a grantee under this part may, in the case of individuals subject to a charge for purposes of such paragraph—

(A) assess the amount of the charge in the discretion of the grantee, including imposing only a nominal charge for the provision of services, subject to the provisions of such paragraph regarding public schedules and of paragraph (2) regarding limitations on the maximum amount of charges; and

(B) take into consideration the medical expenses of individuals in assessing the amount of the charge, subject to such provisions.

(4) Applicability of limitation on amount of charge

The Secretary may not make a grant under this part unless the applicant for the grant agrees that the limitations established in paragraph (2) regarding the imposition of charges for services applies to the annual aggregate of charges imposed for such services, without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, copayments, coinsurance, or similar charges.

(5) Waiver regarding certain secondary agreements

The requirement established in paragraph (1)(B)(i) shall be waived by the Secretary in the case of any entity for whom the Secretary has granted a waiver under section 300ff–52(b)(2) of this title.

(f) Relationship to items and services under other programs

(1) In general

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, subject to paragraph (2), the grant will not be expended by the applicant, or by any entity receiving amounts from the applicant for the provision of early intervention services, to make payment for any such service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such service—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(B) by an entity that provides health services on a prepaid basis.

(2) Applicability to certain secondary agreements for provision of services

An agreement made under paragraph (1) shall not apply in the case of an entity through which a grantee under this part provides early intervention services if the Secretary has provided a waiver under section 300ff–52(b)(2) of this title regarding the entity.

(g) Administration of grant

The Secretary may not make a grant under this part unless the applicant for the grant agrees that—

(1) the applicant will not expend amounts received pursuant to this part for any purpose other than the purposes described in the subpart under which the grant involved is made;

(2) the applicant will establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant;

(3) the applicant will not expend more than 10 percent including planning and evaluation of the grant for administrative expenses with respect to the grant;

(4) the applicant will submit evidence that the proposed program is consistent with the statewide coordinated statement of need and agree to participate in the ongoing revision of such statement of need; and

(5) the applicant will provide for the establishment of a quality management program—

(A) to assess the extent to which medical services funded under this subchapter that are provided to patients are consistent with the most recent Public Health Service guidelines for the treatment of HIV disease and related opportunistic infections, and as applicable, to develop strategies for ensuring that such services are consistent with the guidelines; and

(B) to ensure that improvements in the access to and quality of HIV health services are addressed.

(July 1, 1944, ch. 373, title XXVI, § 2664, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 611; amended Pub. L. 104–146, § 3(d)(5), May 20, 1996, 110 Stat. 1358; Pub. L. 106–345, title III, §§ 301(b)(3), 322, Oct. 20, 2000, 114 Stat. 1345, 1346.)

AMENDMENTS

2000—Subsecs. (e)(5), (f)(2). Pub. L. 106–345, § 301(b)(3)(A), (B), struck out ''300ff–42(b) or'' after ''a waiver under section''.

Subsec. (g)(3). Pub. L. 106–345, § 322(1)(A), substituted ''10 percent'' for ''7.5 percent''.

Subsec. (g)(5). Pub. L. 106–345, § 322(1)(B), (2), (3), added par. (5).

Subsec. (h). Pub. L. 106–345, § 301(b)(3)(C), struck out heading and text of subsec. (h). Text read as follows: ''A State may not use amounts received under a grant awarded under section 300ff–41 of this title to purchase or improve land, or to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or to make cash payments to intended recipients of services.''

1996—Subsec. (g)(3). Pub. L. 104–146, § 3(d)(5)(B)(i), substituted ''7.5 percent including planning and evaluation'' for ''5 percent''.

Subsec. (g)(4). Pub. L. 104–146, § 3(d)(5)(A), (B)(ii), (C), added par. (4).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–65. Requirement of submission of application containing certain agreements and assurances

The Secretary may not make a grant under this part unless—

(1) an application for the grant is submitted to the Secretary containing agreements and assurances in accordance with this part and containing the information specified in section 300ff–64(a)(1) of this title;

(2) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(July 1, 1944, ch. 373, title XXVI, § 2665, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 614.)

§ 300ff–66. Provision by Secretary of supplies and services in lieu of grant funds

(a) In general

Upon the request of a grantee under this part, the Secretary may, subject to subsection (b) of this section, provide supplies, equipment, and services for the purpose of aiding the grantee in providing early intervention services and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(b) Limitation

With respect to a request described in subsection (a) of this section, the Secretary shall reduce the amount of payments under the grant involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XXVI, § 2666, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 614.)

§ 300ff–67. Use of funds

Counseling programs carried out under this part—

(1) shall not be designed to promote or encourage, directly, intravenous drug abuse or sexual activity, homosexual or heterosexual;

(2) shall be designed to reduce exposure to and transmission of HIV disease by providing accurate information; and

(3) shall provide information on the health risks of promiscuous sexual activity and intravenous drug abuse.

(July 1, 1944, ch. 373, title XXVI, § 2667, as added Pub. L. 101–381, title III, § 301(a), Aug. 18, 1990, 104 Stat. 614.)

PART D—GENERAL PROVISIONS

§ 300ff–71. Grants for coordinated services and access to research for women, infants, children, and youth

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration and in consultation with the Director of the National Institutes of Health, shall make grants to public and nonprofit private entities that provide primary care (directly or through contracts) for the following purposes:

(1) Providing through such entities, in accordance with this section, opportunities for women, infants, children, and youth to be voluntary participants in research of potential clinical benefit to individuals with HIV disease.

(2) In the case of women, infants, children, and youth with HIV disease, and the families of such individuals, providing to such individuals—

(A) health care on an outpatient basis; and

(B) additional services in accordance with subsection (d) of this section.

(b) Provisions regarding participation in research

(1) In general

With respect to the projects of research with which an applicant under subsection (a) of this section is concerned, the Secretary may make a grant under such subsection to the applicant only if the following conditions are met:

(A) The applicant agrees to make reasonable efforts—

(i) to identify which of the patients of the applicant are women, infants, children, and youth who would be appropriate participants in the projects;

(ii) to carry out clause (i) through the use of criteria provided for such purpose by the entities that will be conducting the projects of research; and

(iii) to offer women, infants, children, and youth the opportunity to participate in the projects (as appropriate), including the provision of services under subsection (d)(3) of this section.

(B) The applicant agrees that, in the case of the research-related functions to be carried out by the applicant pursuant to subsection (a)(1) of this section, the applicant will comply with accepted standards that are applicable to such functions (including accepted standards regarding informed consent and other protections for human subjects).

(C) The applicant will demonstrate linkages to research and how access to such research is being offered to patients.

(2) Prohibition

Receipt of services by a patient shall not be conditioned upon the consent of the patient to participate in research.

(c) Provisions regarding conduct of research

(1) In general

With respect to eligibility for a grant under subsection (a) of this section:

(A) A project of research for which subjects are sought pursuant to such subsection may be conducted by the applicant for the grant, or by an entity with which the applicant has made arrangements for purposes of the grant. The grant may not be expended for the conduct of any project of research, except for such research-related functions as are appropriate for providing opportunities under subsection (a)(1) of this section (including the functions specified in subsection (b)(1) of this section).

(B) The grant may be made only if the Secretary makes the following determinations:

(i) The applicant or other entity (as the case may be under subparagraph (A)) is appropriately qualified to conduct the project of research. An entity shall be considered to be so qualified if any research protocol of the entity has been recommended for funding under this chapter pursuant to technical and scientific peer review through the National Institutes of Health.

(ii) The project of research is being conducted in accordance with a research protocol to which the Secretary gives priority regarding the prevention or treatment of HIV disease in women, infants, children, or youth, subject to paragraph (2).

(2) List of research protocols

(A) In general

From among the research protocols described in paragraph (1)(B)(ii), the Secretary shall establish a list of research protocols that are appropriate for purposes of subsection (a)(1) of this section. Such list shall be established only after consultation with public and private entities that conduct such research, and with providers of services under subsection (a) of this section and recipients of such services.

(B) Discretion of Secretary

The Secretary may authorize the use, for purposes of subsection (a)(1) of this section, of a research protocol that is not included on the list under subparagraph (A). The Secretary may waive the requirement specified in paragraph (1)(B)(ii) in such circumstances as the Secretary determines to be appropriate.

(d) Additional services for patients and families

A grant under subsection (a) of this section may be made only if the applicant for the grant agrees as follows:

(1) The applicant will provide for the case management of the patient involved and the family of the patient.

(2) The applicant will provide for the patient and the family of the patient—

(A) referrals for inpatient hospital services, treatment for substance abuse, and mental health services; and

(B) referrals for other social and support services, as appropriate.

(3) The applicant will provide the patient and the family of the patient with such transportation, child care, and other incidental

services as may be necessary to enable the patient and the family to participate in the program established by the applicant pursuant to such subsection.

(4) The applicant will provide individuals with information and education on opportunities to participate in HIV/AIDS-related clinical research.

(e) Coordination with other entities

A grant under subsection (a) of this section may be made only if the applicant for the grant agrees as follows:

(1) The applicant will coordinate activities under the grant with other providers of health care services under this chapter, and under title V of the Social Security Act [42 U.S.C. 701 et seq.].

(2) The applicant will participate in the statewide coordinated statement of need under part B of this subchapter (where it has been initiated by the public health agency responsible for administering grants under part B of this subchapter) and in revisions of such statement.

(f) Administration

(1) Application

A grant under subsection (a) of this section may be made only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(2) Quality management program

A grantee under this section shall implement a quality management program to assess the extent to which HIV health services provided to patients under the grant are consistent with the most recent Public Health Service guidelines for the treatment of HIV disease and related opportunistic infection, and as applicable, to develop strategies for ensuring that such services are consistent with the guidelines for improvement in the access to and quality of HIV health services.

(g) Coordination with National Institutes of Health

The Secretary shall develop and implement a plan that provides for the coordination of the activities of the National Institutes of Health with the activities carried out under this section. In carrying out the preceding sentence, the Secretary shall ensure that projects of research conducted or supported by such Institutes are made aware of applicants and grantees under subsection (a) of this section, shall require that the projects, as appropriate, enter into arrangements for purposes of such subsection, and shall require that each project entering into such an arrangement inform the applicant or grantee under such subsection of the needs of the project for the participation of women, infants, children, and youth. The Secretary acting through the Director of NIH, shall examine the distribution and availability of ongoing and appropriate HIV/AIDS-related research projects to existing sites under this section for purposes of enhancing and expanding voluntary access to HIV-related research, especially within communities that are not reasonably served by such projects. Not later than 12 months after October 20, 2000, the Secretary shall prepare and submit to the appropriate committees of Congress a report that describes the findings made by the Director and the manner in which the conclusions based on those findings can be addressed.

(h) Annual review of programs; evaluations

(1) Review regarding access to and participation in programs

With respect to a grant under subsection (a) of this section for an entity for a fiscal year, the Secretary shall, not later than 180 days after the end of the fiscal year, provide for the conduct and completion of a review of the operation during the year of the program carried out under such subsection by the entity. The purpose of such review shall be the development of recommendations, as appropriate, for improvements in the following:

(A) Procedures used by the entity to allocate opportunities and services under subsection (a) of this section among patients of the entity who are women, infants, children, or youth.

(B) Other procedures or policies of the entity regarding the participation of such individuals in such program.

(2) Evaluations

The Secretary shall, directly or through contracts with public and private entities, provide for evaluations of programs carried out pursuant to subsection (a) of this section.

(i) Limitation on administrative expenses

(1) Determination by Secretary

Not later than 12 months after October 20, 2000, the Secretary, in consultation with grantees under this part, shall conduct a review of the administrative, program support, and direct service-related activities that are carried out under this part to ensure that eligible individuals have access to quality, HIV-related health and support services and research opportunities under this part, and to support the provision of such services.

(2) Requirements

(A) In general

Not later than 180 days after the expiration of the 12-month period referred to in paragraph (1) the Secretary, in consultation with grantees under this part, shall determine the relationship between the costs of the activities referred to in paragraph (1) and the access of eligible individuals to the services and research opportunities described in such paragraph.

(B) Limitation

After a final determination under subparagraph (A), the Secretary may not make a grant under this part unless the grantee complies with such requirements as may be included in such determination.

(j) Training and technical assistance

Of the amounts appropriated under subsection (j) of this section for a fiscal year, the Secretary

may use not more than five percent to provide, directly or through contracts with public and private entities (which may include grantees under subsection (a) of this section), training and technical assistance to assist applicants and grantees under subsection (a) of this section in complying with the requirements of this section.

(k) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title XXVI, § 2671, as added Pub. L. 101–381, title IV, § 401, Aug. 18, 1990, 104 Stat. 617; amended Pub. L. 104–146, § 3(e), May 20, 1996, 110 Stat. 1358; Pub. L. 106–345, title IV, § 401, Oct. 20, 2000, 114 Stat. 1347.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title V of the Act is classified generally to subchapter V (§ 701 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

2000—Pub. L. 106–345, § 401(a)–(d), which directed amendments to subsecs. (b), (d), (f), and (g) of ''section 2671'', without indicating the act to be amended, was executed by making the amendments to this section, which is section 2671 of the Public Health Service Act, to reflect the probable intent of Congress. See below.

Subsec. (b)(1)(C), (D). Pub. L. 106–345, § 401(a)(1), added subpar. (C) and struck out former subpars. (C) and (D) which read as follows:

''(C) For the first and second fiscal years for which grants under subsection (a) of this section are to be made to the applicant, the applicant agrees that, not later than the end of the second fiscal year of receiving such a grant, a significant number of women, infants, children, and youth who are patients of the applicant will be participating in the projects of research.

''(D) Except as provided in paragraph (3) (and paragraph (4), as applicable), for the third and subsequent fiscal years for which such grants are to be made to the applicant, the Secretary has determined that a significant number of such individuals are participating in the projects.''

Subsec. (b)(3). Pub. L. 106–345, § 401(a)(2), struck out heading and text of par. (3). Text read as follows: ''In administering the requirement of paragraph (1)(D), the Secretary shall take into account circumstances in which a grantee under subsection (a) of this section is temporarily unable to comply with the requirement for reasons beyond the control of the grantee, and shall in such circumstances provide to the grantee a reasonable period of opportunity in which to reestablish compliance with the requirement.''

Subsec. (b)(4). Pub. L. 106–345, § 401(a)(2), struck out heading and text of par. (4). Text consisted of subpars. (A) and (B) relating to a temporary waiver of requirement of significant participation for original grantees.

Subsec. (d)(4). Pub. L. 106–345, § 401(b), added par. (4).

Subsec. (f). Pub. L. 106–345, § 401(c), substituted ''Administration'' for ''Application'' in subsec. heading, designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Subsec. (g). Pub. L. 106–345, § 401(d), inserted at end ''The Secretary acting through the Director of NIH, shall examine the distribution and availability of ongoing and appropriate HIV/AIDS-related research projects to existing sites under this section for purposes of enhancing and expanding voluntary access to HIV-related research, especially within communities that are not reasonably served by such projects. Not later than 12 months after October 20, 2000, the Secretary shall prepare and submit to the appropriate committees of Congress a report that describes the findings made by the Director and the manner in which the conclusions based on those findings can be addressed.''

Subsecs. (i), (j). Pub. L. 106–345, § 401(e), added subsec. (i) and redesignated former subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 106–345, § 401(f), substituted ''fiscal years 2001 through 2005'' for ''fiscal years 1996 through 2000''.

Pub. L. 106–345, § 401(e)(1), redesignated subsec. (j) as (k).

1996—Pub. L. 104–146 amended section generally, substituting provisions authorizing grants for coordinated services and access to research for women, infants, children, and youth living with the HIV virus for provisions authorizing demonstration grants for research and services for pediatric patients regarding AIDS.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–72. Provisions relating to blood banks

(a) Informational and training programs

The Secretary shall—

(1) develop and make available to technical and supervisory personnel employed at blood banks and facilities that produce blood products, materials and information concerning measures that may be implemented to protect the safety of the blood supply with respect to the activities of such personnel, including—

(A) state-of-the-art diagnostic and testing procedures relating to pathogens in the blood supply; and

(B) quality assurance procedures relating to the safety of the blood supply and of blood products; and

(2) develop and implement a training program that is designed to increase the number of employees of the Department of Health and Human Services who are qualified to conduct inspections of blood banks and facilities that produce blood products.

(b) Updates

The Secretary shall periodically review and update the materials and information made available under informational or training programs conducted under subsection (a) of this section.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $1,500,000 for fiscal year 1991, and such sums as may be necessary in each of the fiscal years 1992 through 1995.

(July 1, 1944, ch. 373, title XXVI, § 2672, as added Pub. L. 101–381, title IV, § 401, Aug. 18, 1990, 104 Stat. 618.)

§ 300ff–73. Research, evaluation, and assessment program

(a) Establishment

The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall establish a program to enable independent research to be conducted by individuals

and organizations with appropriate expertise in the fields of health, health policy, and economics (particularly health care economics) to develop—

(1) a comparative assessment of the impact and cost-effectiveness of major models for organizing and delivering HIV-related health care, mental health care, early intervention, and support services, that shall include a report concerning patient outcomes, satisfaction, perceived quality of care, and total cumulative cost, and a review of the appropriateness of such models for the delivery of health and support services to infants, children, women, and families with HIV disease;

(2) through a review of private sector financing mechanisms for the delivery of HIV-related health and support services, an assessment of strategies for maintaining private health benefits for individuals with HIV disease and an assessment of specific business practices or regulatory barriers that could serve to reduce access to private sector benefit programs;

(3) an assessment of the manner in which different points-of-entry to the health care system affect the cost, quality, and outcome of the care and treatment of individuals and families with HIV disease; and

(4) a summary report concerning the major and continuing unmet needs in health care, mental health care, early intervention, and support services for individuals and families with HIV disease in urban and rural areas.

(b) Report

Not later than 2 years after August 18, 1990, and periodically thereafter, the Secretary shall prepare and submit, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a progress report that contains the findings and assessments developed under subsection (a) of this section.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section, such sums as may be necessary for each of the fiscal years 1991 through 1995.

(July 1, 1944, ch. 373, title XXVI, § 2673, as added Pub. L. 101–381, title IV, § 401, Aug. 18, 1990, 104 Stat. 619; amended Pub. L. 106–345, title V, § 503(a)(2), Oct. 20, 2000, 114 Stat. 1354.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–345 substituted ''the Director of the Agency for Healthcare Research and Quality'' for ''the Agency for Health Care Policy and Research'' in introductory provisions.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 300ff–74. Evaluations and reports

(a) Evaluations

The Secretary shall, directly or through grants and contracts, evaluate programs carried out under this subchapter.

(b) Report to Congress

The Secretary shall, not later than October 1, 1996, and annually thereafter, prepare and submit to the appropriate Committees of Congress a report—

(1) evaluating the programs carried out under this subchapter; and

(2) making such recommendations for administrative and legislative initiatives with respect to this subchapter as the Secretary determines to be appropriate.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section, such sums as may be necessary for each of the fiscal years 2001 through 2005.

(d) Allocation of funds

The Secretary shall carry out this section with amounts available under section 238j of this title. Such amounts are in addition to any other amounts that are available to the Secretary for such purpose.

(July 1, 1944, ch. 373, title XXVI, § 2674, as added Pub. L. 101–381, title IV, § 401, Aug. 18, 1990, 104 Stat. 620; amended Pub. L. 104–146, § 3(f), May 20, 1996, 110 Stat. 1362; Pub. L. 106–345, title IV, § 411, Oct. 20, 2000, 114 Stat. 1350.)

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–345 substituted ''2001 through 2005'' for ''1991 through 1995''.

1996—Subsec. (b). Pub. L. 104–146, § 3(f)(1)(A), substituted ''not later than October 1, 1996,'' for ''not later than 1 year after the date on which amounts are first appropriated under this subchapter,'' in introductory provisions.

Subsec. (b)(1). Pub. L. 104–146, § 3(f)(1)(B), added par. (1) and struck out former par. (1) which read as follows: ''summarizing all of the reports that are required to be submitted to the Secretary under this subchapter;''.

Subsec. (b)(2) to (4). Pub. L. 104–146, § 3(f)(1)(B), (C), redesignated par. (4) as (2) and struck out former pars. (2) and (3) which read as follows:

''(2) recommending criteria to be used in determining the geographic areas with the most substantial need for HIV-related health services;

''(3) summarizing all of the evaluations carried out pursuant to subsection (a) of this section during the period for which the report under this subsection is prepared; and''.

Subsec. (d). Pub. L. 104–146, § 3(f)(2), added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–75. Coordination

(a) Requirement

The Secretary shall ensure that the Health Resources and Services Administration, the

Centers for Disease Control and Prevention, the Substance Abuse and Mental Health Services Administration, and the Centers for Medicare & Medicaid Services coordinate the planning, funding, and implementation of Federal HIV programs to enhance the continuity of care and prevention services for individuals with HIV disease or those at risk of such disease. The Secretary shall consult with other Federal agencies, including the Department of Veterans Affairs, as needed and utilize planning information submitted to such agencies by the States and entities eligible for support.

(b) Report

The Secretary shall biennially prepare and submit to the appropriate committees of the Congress a report concerning the coordination efforts at the Federal, State, and local levels described in this section, including a description of Federal barriers to HIV program integration and a strategy for eliminating such barriers and enhancing the continuity of care and prevention services for individuals with HIV disease or those at risk of such disease.

(c) Integration by State

As a condition of receipt of funds under this subchapter, a State shall assure the Secretary that health support services funded under this subchapter will be integrated with each other, that programs will be coordinated with other available programs (including Medicaid) and that the continuity of care and prevention services of individuals with HIV disease is enhanced.

(d) Integration by local or private entities

As a condition of receipt of funds under this subchapter, a local government or private nonprofit entity shall assure the Secretary that services funded under this subchapter will be integrated with each other, that programs will be coordinated with other available programs (including Medicaid) and that the continuity of care and prevention services of individuals with HIV is enhanced.

(e) Recommendations regarding release of prisoners

After consultation with the Attorney General and the Director of the Bureau of Prisons, with States, with eligible areas under part A of this subchapter, and with entities that receive amounts from grants under part A or B of this subchapter, the Secretary, consistent with the coordination required in subsection (a) of this section, shall develop a plan for the medical case management of and the provision of support services to individuals who were Federal or State prisoners and had HIV disease as of the date on which the individuals were released from the custody of the penal system. The Secretary shall submit the plan to the Congress not later than 2 years after October 20, 2000.

(July 1, 1944, ch. 373, title XXVI, § 2675, as added Pub. L. 101–381, title IV, § 401, Aug. 18, 1990, 104 Stat. 620; amended Pub. L. 102–531, title III, § 312(d)(34), Oct. 27, 1992, 106 Stat. 3506; Pub. L. 106–345, title IV, §§ 413, 414, Oct. 20, 2000, 114 Stat. 1350, 1351; Pub. L. 108–173, title IX, § 900(e)(2)(G), Dec. 8, 2003, 117 Stat. 2372.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in first sentence.

2000—Subsec. (a). Pub. L. 106–345, § 413(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary shall assure that the Health Resources and Services Administration and the Centers for Disease Control and Prevention will coordinate the planning of the funding of programs authorized under this subchapter to assure that health support services for individuals with HIV disease are integrated with each other and that the continuity of care of individuals with HIV disease is enhanced. In coordinating the allocation of funds made available under this subchapter the Health Resources and Services Administration and the Centers for Disease Control and Prevention shall utilize planning information submitted to such agencies by the States and entities eligible for support.''

Subsec. (b). Pub. L. 106–345, § 413(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsecs. (c), (d). Pub. L. 106–345, § 413(2), (4), redesignated subsecs. (b) and (c) as (c) and (d), respectively, and inserted ''and prevention services'' after ''continuity of care''.

Subsec. (e). Pub. L. 106–345, § 414, added subsec. (e).

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'' in two places.

§ 300ff–75a. Audits

For fiscal year 2002 and subsequent fiscal years, the Secretary may reduce the amounts of grants under this subchapter to a State or political subdivision of a State for a fiscal year if, with respect to such grants for the second preceding fiscal year, the State or subdivision fails to prepare audits in accordance with the procedures of section 7502 of title 31. The Secretary shall annually select representative samples of such audits, prepare summaries of the selected audits, and submit the summaries to the Congress.

(July 1, 1944, ch. 373, title XXVI, § 2675A, as added Pub. L. 106–345, title IV, § 415, Oct. 20, 2000, 114 Stat. 1351.)

§ 300ff–75b. Administrative simplification regarding parts A and B

(a) Coordinated disbursement

After consultation with the States, with eligible areas under part A of this subchapter, and with entities that receive amounts from grants under part A or B of this subchapter, the Secretary shall develop a plan for coordinating the disbursement of appropriations for grants under part A of this subchapter with the disbursement of appropriations for grants under part B of this subchapter in order to assist grantees and other recipients of amounts from such grants in complying with the requirements of such parts. The Secretary shall submit the plan to the Congress not later than 18 months after October 20, 2000. Not later than 2 years after the date on which the plan is so submitted, the Secretary shall complete the implementation of the plan, notwithstanding any provision of this subchapter that is inconsistent with the plan.

(b) Biennial applications

After consultation with the States, with eligible areas under part A of this subchapter, and

with entities that receive amounts from grants under part A or B of this subchapter, the Secretary shall make a determination of whether the administration of parts A and B of this subchapter by the Secretary, and the efficiency of grantees under such parts in complying with the requirements of such parts, would be improved by requiring that applications for grants under such parts be submitted biennially rather than annually. The Secretary shall submit such determination to the Congress not later than 2 years after October 20, 2000.

(c) Application simplification

After consultation with the States, with eligible areas under part A of this subchapter, and with entities that receive amounts from grants under part A or B of this subchapter, the Secretary shall develop a plan for simplifying the process for applications under parts A and B of this subchapter. The Secretary shall submit the plan to the Congress not later than 18 months after October 20, 2000. Not later than 2 years after the date on which the plan is so submitted, the Secretary shall complete the implementation of the plan, notwithstanding any provision of this subchapter that is inconsistent with the plan.

(July 1, 1944, ch. 373, title XXVI, § 2675B, as added Pub. L. 106–345, title IV, § 416, Oct. 20, 2000, 114 Stat. 1351.)

§ 300ff–76. Definitions

For purposes of this subchapter:

(1) Counseling

The term ''counseling'' means such counseling provided by an individual trained to provide such counseling.

(2) Designated officer of emergency response employees

The term ''designated officer of emergency response employees'' means an individual designated under section 300ff–86 of this title by the public health officer of the State involved.

(3) Emergency

The term ''emergency'' means an emergency involving injury or illness.

(4) Emergency response employees

The term ''emergency response employees'' means firefighters, law enforcement officers, paramedics, emergency medical technicians, funeral-service practitioners, and other individuals (including employees of legally organized and recognized volunteer organizations, without regard to whether such employees receive nominal compensation) who, in the course of professional duties, respond to emergencies in the geographic area involved.

(5) Employer of emergency response employees

The term ''employer of emergency response employees'' means an organization that, in the course of professional duties, responds to emergencies in the geographic area involved.

(6) Exposed

The term ''exposed'', with respect to HIV disease or any other infectious disease, means to be in circumstances in which there is a significant risk of becoming infected with the etiologic agent for the disease involved.

(7) Families with HIV disease

The term ''families with HIV disease'' means families in which one or more members have HIV disease.

(8) HIV

The term ''HIV'' means infection with the etiologic agent for acquired immune deficiency syndrome.

(9) HIV disease

The term ''HIV disease'' means infection with the etiologic agent for acquired immune deficiency syndrome, and includes any condition arising from such syndrome.

(10) Official poverty line

The term ''official poverty line'' means the poverty line established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(11) Person

The term ''person'' includes one or more individuals, governments (including the Federal Government and the governments of the States), governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, receivers, trustees, and trustees in cases under title 11.

(12) State

The term ''State'', except as otherwise specifically provided, means each of the 50 States, the District of Columbia, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the Republic of the Marshall Islands.

(July 1, 1944, ch. 373, title XXVI, § 2676, as added Pub. L. 101–381, title IV, § 401, Aug. 18, 1990, 104 Stat. 620; amended Pub. L. 104–146, § 12(a), (c)(8), May 20, 1996, 110 Stat. 1373, 1374.)

AMENDMENTS

1996—Par. (2). Pub. L. 104–146, § 12(c)(8)(A), substituted ''section 300ff–86 of this title by the'' for ''section'' and all that followed through ''by the''.

Par. (4). Pub. L. 104–146, § 12(a), inserted ''funeral-service practitioners,'' after ''emergency medical technicians,''.

Par. (10). Pub. L. 104–146, § 12(c)(8)(B), substituted ''section 9902(2)'' for ''section 9902(a)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–77. Authorization of appropriations

(a) Part A

For the purpose of carrying out part A of this subchapter, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(b) Part B

For the purpose of carrying out part B of this subchapter, there are authorized to be appro-

priated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title XXVI, § 2677, as added Pub. L. 104–146, § 6(a), May 20, 1996, 110 Stat. 1367; amended Pub. L. 106–345, title IV, § 417, Oct. 20, 2000, 114 Stat. 1352.)

AMENDMENTS

2000—Pub. L. 106–345 amended section catchline and text generally, substituting provisions authorizing appropriations for parts A and B of this subchapter for fiscal years 2001 through 2005 for provisions authorizing appropriations to make grants under parts A and B of this subchapter for fiscal years 1996 through 2000 and directing the Secretary to develop a methodology, to be implemented if possible, for adjusting allocations to account for grants to new eligible areas under part A of this subchapter and other relevant factors and to report to Congress on the methodology.

EFFECTIVE DATE

Section effective May 20, 1996, see section 13(b) of Pub. L. 104–146, set out as an Effective Date of 1996 Amendment note under section 300ff–11 of this title.

§ 300ff–78. Prohibition on promotion of certain activities

None of the funds authorized under this subchapter shall be used to fund AIDS programs, or to develop materials, designed to promote or encourage, directly, intravenous drug use or sexual activity, whether homosexual or heterosexual. Funds authorized under this subchapter may be used to provide medical treatment and support services for individuals with HIV.

(July 1, 1944, ch. 373, title XXVI, § 2678, as added Pub. L. 104–146, § 10, May 20, 1996, 110 Stat. 1373.)

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as an Effective Date of 1996 Amendment note under section 300ff–11 of this title.

PART E—EMERGENCY RESPONSE EMPLOYEES

SUBPART I—GUIDELINES AND MODEL CURRICULUM

AMENDMENTS

1996—Pub. L. 104–146, § 12(c)(9), May 20, 1996, 110 Stat. 1374, made technical amendment to subpart heading.

§ 300ff–80. Grants for implementation

(a) In general

With respect to the recommendations contained in the guidelines and the model curriculum developed under section 300ee–2 of this title, the Secretary shall make grants to States and political subdivisions of States for the purpose of assisting grantees regarding the initial implementation of such portions of the recommendations as are applicable to emergency response employees.

(b) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(c) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1991 through 1995.

(July 1, 1944, ch. 373, title XXVI, § 2680, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 622.)

EFFECTIVE DATE

Section 411(b) of Pub. L. 101–381 provided that: ''Sections 2680 and 2681 of part E of title XXVI of the Public Health Service Act [sections 300ff–80 and 300ff–81 of this title], as added by subsection (a) of this section, shall take effect upon the date of the enactment of this Act [Aug. 18, 1990]. Such part shall otherwise take effect upon the expiration of the 30-day period beginning on the date on which the Secretary issues guidelines under section 2681(a).''

SUBPART II—NOTIFICATIONS OF POSSIBLE EXPOSURE TO INFECTIOUS DISEASES

AMENDMENTS

1996—Pub. L. 104–146, § 12(c)(9), May 20, 1996, 110 Stat. 1374, made technical amendment to heading.

§ 300ff–81. Infectious diseases and circumstances relevant to notification requirements

(a) In general

Not later than 180 days after August 18, 1990, the Secretary shall complete the development of—

(1) a list of potentially life-threatening infectious diseases to which emergency response employees may be exposed in responding to emergencies;

(2) guidelines describing the circumstances in which such employees may be exposed to such diseases, taking into account the conditions under which emergency response is provided; and

(3) guidelines describing the manner in which medical facilities should make determinations for purposes of section 300ff–83(d) of this title.

(b) Specification of airborne infectious diseases

The list developed by the Secretary under subsection (a)(1) of this section shall include a specification of those infectious diseases on the list that are routinely transmitted through airborne or aerosolized means.

(c) Dissemination

The Secretary shall—

(1) transmit to State public health officers copies of the list and guidelines developed by the Secretary under subsection (a) of this section with the request that the officers disseminate such copies as appropriate throughout the States; and

(2) make such copies available to the public.

(July 1, 1944, ch. 373, title XXVI, § 2681, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 623.)

§ 300ff–82. Routine notifications with respect to airborne infectious diseases in victims assisted

(a) Routine notification of designated officer

(1) Determination by treating facility

If a victim of an emergency is transported by emergency response employees to a medical

facility and the medical facility makes a determination that the victim has an airborne infectious disease, the medical facility shall notify the designated officer of the emergency response employees who transported the victim to the medical facility of the determination.

(2) Determination by facility ascertaining cause of death

If a victim of an emergency is transported by emergency response employees to a medical facility and the victim dies at or before reaching the medical facility, the medical facility ascertaining the cause of death shall notify the designated officer of the emergency response employees who transported the victim to the initial medical facility of any determination by the medical facility that the victim had an airborne infectious disease.

(b) Requirement of prompt notification

With respect to a determination described in paragraph (1) or (2), the notification required in each of such paragraphs shall be made as soon as is practicable, but not later than 48 hours after the determination is made.

(July 1, 1944, ch. 373, title XXVI, § 2682, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 623.)

§ 300ff–83. Request for notifications with respect to victims assisted

(a) Initiation of process by employee

If an emergency response employee believes that the employee may have been exposed to an infectious disease by a victim of an emergency who was transported to a medical facility as a result of the emergency, and if the employee attended, treated, assisted, or transported the victim pursuant to the emergency, then the designated officer of the employee shall, upon the request of the employee, carry out the duties described in subsection (b) of this section regarding a determination of whether the employee may have been exposed to an infectious disease by the victim.

(b) Initial determination by designated officer

The duties referred to in subsection (a) of this section are that—

(1) the designated officer involved collect the facts relating to the circumstances under which, for purposes of subsection (a) of this section, the employee involved may have been exposed to an infectious disease; and

(2) the designated officer evaluate such facts and make a determination of whether, if the victim involved had any infectious disease included on the list issued under paragraph (1) of section 300ff–81(a) of this title, the employee would have been exposed to the disease under such facts, as indicated by the guidelines issued under paragraph (2) of such section.

(c) Submission of request to medical facility

(1) In general

If a designated officer makes a determination under subsection (b)(2) of this section that an emergency response employee may have been exposed to an infectious disease, the designated officer shall submit to the medical facility to which the victim involved was transported a request for a response under subsection (d) of this section regarding the victim of the emergency involved.

(2) Form of request

A request under paragraph (1) shall be in writing and be signed by the designated officer involved, and shall contain a statement of the facts collected pursuant to subsection (b)(1) of this section.

(d) Evaluation and response regarding request to medical facility

(1) In general

If a medical facility receives a request under subsection (c) of this section, the medical facility shall evaluate the facts submitted in the request and make a determination of whether, on the basis of the medical information possessed by the facility regarding the victim involved, the emergency response employee was exposed to an infectious disease included on the list issued under paragraph (1) of section 300ff–81(a) of this title, as indicated by the guidelines issued under paragraph (2) of such section.

(2) Notification of exposure

If a medical facility makes a determination under paragraph (1) that the emergency response employee involved has been exposed to an infectious disease, the medical facility shall, in writing, notify the designated officer who submitted the request under subsection (c) of this section of the determination.

(3) Finding of no exposure

If a medical facility makes a determination under paragraph (1) that the emergency response employee involved has not been exposed to an infectious disease, the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of this section of the determination.

(4) Insufficient information

(A) If a medical facility finds in evaluating facts for purposes of paragraph (1) that the facts are insufficient to make the determination described in such paragraph, the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of this section of the insufficiency of the facts.

(B)(i) If a medical facility finds in making a determination under paragraph (1) that the facility possesses no information on whether the victim involved has an infectious disease included on the list under section 300ff–81(a) of this title, the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of this section of the insufficiency of such medical information.

(ii) If after making a response under clause (i) a medical facility determines that the victim involved has an infectious disease, the medical facility shall make the determination described in paragraph (1) and provide the applicable response specified in this subsection.

(e) Time for making response

After receiving a request under subsection (c) of this section (including any such request resubmitted under subsection (g)(2) of this section), a medical facility shall make the applicable response specified in subsection (d) of this section as soon as is practicable, but not later than 48 hours after receiving the request.

(f) Death of victim of emergency

(1) Facility ascertaining cause of death

If a victim described in subsection (a) of this section dies at or before reaching the medical facility involved, and the medical facility receives a request under subsection (c) of this section, the medical facility shall provide a copy of the request to the medical facility ascertaining the cause of death of the victim, if such facility is a different medical facility than the facility that received the original request.

(2) Responsibility of facility

Upon the receipt of a copy of a request for purposes of paragraph (1), the duties otherwise established in this subpart regarding medical facilities shall apply to the medical facility ascertaining the cause of death of the victim in the same manner and to the same extent as such duties apply to the medical facility originally receiving the request.

(g) Assistance of public health officer

(1) Evaluation of response of medical facility regarding insufficient facts

(A) In the case of a request under subsection (c) of this section to which a medical facility has made the response specified in subsection (d)(4)(A) of this section regarding the insufficiency of facts, the public health officer for the community in which the medical facility is located shall evaluate the request and the response, if the designated officer involved submits such documents to the officer with the request that the officer make such an evaluation.

(B) As soon as is practicable after a public health officer receives a request under paragraph (1), but not later than 48 hours after receipt of the request, the public health officer shall complete the evaluation required in such paragraph and inform the designated officer of the results of the evaluation.

(2) Findings of evaluation

(A) If an evaluation under paragraph (1)(A) indicates that the facts provided to the medical facility pursuant to subsection (c) of this section were sufficient for purposes of determinations under subsection (d)(1) of this section—

(i) the public health officer shall, on behalf of the designated officer involved, resubmit the request to the medical facility; and

(ii) the medical facility shall provide to the designated officer the applicable response specified in subsection (d) of this section.

(B) If an evaluation under paragraph (1)(A) indicates that the facts provided in the request to the medical facility were insufficient for purposes of determinations specified in subsection (c) of this section—

(i) the public health officer shall provide advice to the designated officer regarding the collection and description of appropriate facts; and

(ii) if sufficient facts are obtained by the designated officer—

(I) the public health officer shall, on behalf of the designated officer involved, resubmit the request to the medical facility; and

(II) the medical facility shall provide to the designated officer the appropriate response under subsection (c) of this section.

(July 1, 1944, ch. 373, title XXVI, § 2683, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 624.)

§ 300ff–84. Procedures for notification of exposure

(a) Contents of notification to officer

In making a notification required under section 300ff–82 of this title or section 300ff–83(d)(2) of this title, a medical facility shall provide—

(1) the name of the infectious disease involved; and

(2) the date on which the victim of the emergency involved was transported by emergency response employees to the medical facility involved.

(b) Manner of notification

If a notification under section 300ff–82 of this title or section 300ff–83(d)(2) of this title is mailed or otherwise indirectly made—

(1) the medical facility sending the notification shall, upon sending the notification, inform the designated officer to whom the notification is sent of the fact that the notification has been sent; and

(2) such designated officer shall, not later than 10 days after being informed by the medical facility that the notification has been sent, inform such medical facility whether the designated officer has received the notification.

(July 1, 1944, ch. 373, title XXVI, § 2684, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 626; amended Pub. L. 104–146, § 12(c)(10), May 20, 1996, 110 Stat. 1374.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–146 substituted ''section 300ff–83(d)(2)'' for ''section 300ff–82(d)(2)'' in introductory provisions.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

§ 300ff–85. Notification of employee

(a) In general

After receiving a notification for purposes of section 300ff–82 or 300ff–83(d)(2) of this title, a designated officer of emergency response employees shall, to the extent practicable, immediately notify each of such employees who—

(1) responded to the emergency involved; and

(2) as indicated by guidelines developed by the Secretary, may have been exposed to an infectious disease.

(b) Certain contents of notification to employee

A notification under this subsection to an emergency response employee shall inform the employee of—

(1) the fact that the employee may have been exposed to an infectious disease and the name of the disease involved;

(2) any action by the employee that, as indicated by guidelines developed by the Secretary, is medically appropriate; and

(3) if medically appropriate under such criteria, the date of such emergency.

(c) Responses other than notification of exposure

After receiving a response under paragraph (3) or (4) of subsection (d) of section 300ff–83 of this title, or a response under subsection (g)(1) of such section, the designated officer for the employee shall, to the extent practicable, immediately inform the employee of the response.

(July 1, 1944, ch. 373, title XXVI, § 2685, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 626.)

§ 300ff–86. Selection of designated officers

(a) In general

For the purposes of receiving notifications and responses and making requests under this subpart on behalf of emergency response employees, the public health officer of each State shall designate 1 official or officer of each employer of emergency response employees in the State.

(b) Preference in making designations

In making the designations required in subsection (a) of this section, a public health officer shall give preference to individuals who are trained in the provision of health care or in the control of infectious diseases.

(July 1, 1944, ch. 373, title XXVI, § 2686, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 627.)

§ 300ff–87. Limitations with respect to duties of medical facilities

The duties established in this subpart for a medical facility—

(1) shall apply only to medical information possessed by the facility during the period in which the facility is treating the victim for conditions arising from the emergency, or during the 60-day period beginning on the date on which the victim is transported by emergency response employees to the facility, whichever period expires first; and

(2) shall not apply to any extent after the expiration of the 30-day period beginning on the expiration of the applicable period referred to in paragraph (1), except that such duties shall apply with respect to any request under section 300ff–83(c) of this title received by a medical facility before the expiration of such 30-day period.

(July 1, 1944, ch. 373, title XXVI, § 2687, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 627.)

§ 300ff–88. Rules of construction

(a) Liability of medical facilities and designated officers

This subpart may not be construed to authorize any cause of action for damages or any civil penalty against any medical facility, or any designated officer, for failure to comply with the duties established in this subpart.

(b) Testing

This subpart may not, with respect to victims of emergencies, be construed to authorize or require a medical facility to test any such victim for any infectious disease.

(c) Confidentiality

This subpart may not be construed to authorize or require any medical facility, any designated officer of emergency response employees, or any such employee, to disclose identifying information with respect to a victim of an emergency or with respect to an emergency response employee.

(d) Failure to provide emergency services

This subpart may not be construed to authorize any emergency response employee to fail to respond, or to deny services, to any victim of an emergency.

(July 1, 1944, ch. 373, title XXVI, § 2688, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 627.)

§ 300ff–89. Injunctions regarding violation of prohibition

(a) In general

The Secretary may, in any court of competent jurisdiction, commence a civil action for the purpose of obtaining temporary or permanent injunctive relief with respect to any violation of this subpart.

(b) Facilitation of information on violations

The Secretary shall establish an administrative process for encouraging emergency response employees to provide information to the Secretary regarding violations of this subpart. As appropriate, the Secretary shall investigate alleged such violations and seek appropriate injunctive relief.

(July 1, 1944, ch. 373, title XXVI, § 2689, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 628.)

§ 300ff–90. Applicability of subpart

This subpart shall not apply in a State if the chief executive officer of the State certifies to the Secretary that the law of the State is in substantial compliance with this subpart.

(July 1, 1944, ch. 373, title XXVI, § 2690, as added Pub. L. 101–381, title IV, § 411(a), Aug. 18, 1990, 104 Stat. 628.)

PART F—DEMONSTRATION AND TRAINING

SUBPART I—SPECIAL PROJECTS OF NATIONAL SIGNIFICANCE

§ 300ff–101. Special projects of national significance

(a) In general

Of the amount appropriated under each of parts A, B, C, and D of this subchapter for each fiscal year, the Secretary shall use the greater of $20,000,000 or 3 percent of such amount appropriated under each such part, but not to exceed $25,000,000, to administer a special projects of national significance program to award direct grants to public and nonprofit private entities including community-based organizations to fund special programs for the care and treatment of individuals with HIV disease.

(b) Grants

The Secretary shall award grants under subsection (a) of this section based on—

(1) the need to assess the effectiveness of a particular model for the care and treatment of individuals with HIV disease;

(2) the innovative nature of the proposed activity; and

(3) the potential replicability of the proposed activity in other similar localities or nationally.

(c) Special projects

Special projects of national significance shall include the development and assessment of innovative service delivery models that are designed to—

(1) address the needs of special populations;

(2) assist in the development of essential community-based service delivery infrastructure; and

(3) ensure the ongoing availability of services for Native American communities to enable such communities to care for Native Americans with HIV disease.

(d) Special populations

Special projects of national significance may include the delivery of HIV health care and support services to traditionally underserved populations including—

(1) individuals and families with HIV disease living in rural communities;

(2) adolescents with HIV disease;

(3) Indian individuals and families with HIV disease;

(4) homeless individuals and families with HIV disease;

(5) hemophiliacs with HIV disease; and

(6) incarcerated individuals with HIV disease.

(e) Service development grants

Special projects of national significance may include the development of model approaches to delivering HIV care and support services including—

(1) programs that support family-based care networks and programs that build organizational capacity critical to the delivery of care in minority communities;

(2) programs designed to prepare AIDS service organizations and grantees under this subchapter for operation within the changing health care environment; and

(3) programs designed to integrate the delivery of mental health and substance abuse treatment with HIV services.

(f) Coordination

The Secretary may not make a grant under this section unless the applicant submits evidence that the proposed program is consistent with the statewide coordinated statement of need, and the applicant agrees to participate in the ongoing revision process of such statement of need.

(g) Replication

The Secretary shall make information concerning successful models developed under this part available to grantees under this subchapter for the purpose of coordination, replication, and integration. To facilitate efforts under this subsection, the Secretary may provide for peer-based technical assistance from grantees funded under this part.

(July 1, 1944, ch. 373, title XXVI, § 2691, as added Pub. L. 104–146, § 3(g)(1), May 20, 1996, 110 Stat. 1362.)

EFFECTIVE DATE

For effective date, see section 13 of Pub. L. 104–146, set out as an Effective Date of 1996 Amendment note under section 300ff–11 of this title.

SUBPART II—AIDS EDUCATION AND TRAINING CENTERS

§ 300ff–111. HIV/AIDS communities, schools, and centers

(a) Schools; centers

(1) In general

The Secretary may make grants and enter into contracts to assist public and nonprofit private entities and schools and academic health science centers in meeting the costs of projects—

(A) to train health personnel, including practitioners in programs under this subchapter and other community providers, in the diagnosis, treatment, and prevention of HIV disease, including the prevention of the perinatal transmission of the disease, including measures for the prevention and treatment of opportunistic infections, and including (as applicable to the type of health professional involved), prenatal and other gynecological care for women with HIV disease;

(B) to train the faculty of schools of, and graduate departments or programs of, medicine, nursing, osteopathic medicine, dentistry, public health, allied health, and mental health practice to teach health professions students to provide for the health care needs of individuals with HIV disease;

(C) to develop and disseminate curricula and resource materials relating to the care and treatment of individuals with such disease and the prevention of the disease among individuals who are at risk of contracting the disease; and

(D) to develop protocols for the medical care of women with HIV disease, including

prenatal and other gynecological care for such women.

(2) Preference in making grants

In making grants under paragraph (1), the Secretary shall give preference to qualified projects which will—

(A) train, or result in the training of, health professionals who will provide treatment for minority individuals with HIV disease and other individuals who are at high risk of contracting such disease; and

(B) train, or result in the training of, minority health professionals and minority allied health professionals to provide treatment for individuals with such disease.

(3) Application

No grant or contract may be made under paragraph (1) unless an application is submitted to the Secretary in such form, at such time, and containing such information, as the Secretary may prescribe.

(b) Dental schools

(1) In general

(A) Grants

The Secretary may make grants to dental schools and programs described in subparagraph (B) to assist such schools and programs with respect to oral health care to patients with HIV disease.

(B) Eligible applicants

For purposes of this subsection, the dental schools and programs referred to in this subparagraph are dental schools and programs that were described in section 294*o*(b)(4)(B) of this title as such section was in effect on the day before November 13, 1998, and in addition dental hygiene programs that are accredited by the Commission on Dental Accreditation.

(2) Application

Each dental school or program described in section[1] the section referred to in paragraph (1)(B) may annually submit an application documenting the unreimbursed costs of oral health care provided to patients with HIV disease by that school or hospital during the prior year.

(3) Distribution

The Secretary shall distribute the available funds among all eligible applicants, taking into account the number of patients with HIV disease served and the unreimbursed oral health care costs incurred by each institution as compared with the total number of patients served and costs incurred by all eligible applicants.

(4) Maintenance of effort

The Secretary shall not make a grant under this subsection if doing so would result in any reduction in State funding allotted for such purposes.

(5) Community-based care

The Secretary may make grants to dental schools and programs described in paragraph (1)(B) that partner with community-based dentists to provide oral health care to patients with HIV disease in unserved areas. Such partnerships shall permit the training of dental students and residents and the participation of community dentists as adjunct faculty.

(c) Authorization of appropriations

(1) Schools; centers

For the purpose of grants under subsection (a) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(2) Dental schools

(A) In general

For the purpose of grants under paragraphs (1) through (4) of subsection (b) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(B) Community-based care

For the purpose of grants under subsection (b)(5) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2001 through 2005.

(July 1, 1944, ch. 373, title XXVI, § 2692, formerly title VII, § 776, as added Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 2050; amended Pub. L. 102–531, title III, § 313(a)(4), Oct. 27, 1992, 106 Stat. 3507; renumbered title XXVI, § 2692, and amended Pub. L. 104–146, § 3(h), May 20, 1996, 110 Stat. 1363; Pub. L. 104–166, § 5(2), July 29, 1996, 110 Stat. 1449; Pub. L. 106–345, title IV, § 402(a)(1), (b), (c), Oct. 20, 2000, 114 Stat. 1348, 1349.)

CODIFICATION

Section was formerly classified to section 294n of this title prior to renumbering by Pub. L. 104–146.

AMENDMENTS

2000—Subsec. (a)(1)(A). Pub. L. 106–345, § 402(a)(1)(A), substituted ''to train'' for ''training'', substituted '', including'' for ''and including'' after ''transmission of the disease'', and inserted '', and including (as applicable to the type of health professional involved), prenatal and other gynecological care for women with HIV disease'' before semicolon at end.

Subsec. (a)(1)(D). Pub. L. 106–345, § 402(a)(1)(B)–(D), added subpar. (D).

Subsec. (b)(1). Pub. L. 106–345, § 402(b)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The Secretary may make grants to assist dental schools and programs described in section 294*o*(b)(4)(B) of this title with respect to oral health care to patients with HIV disease.''

Subsec. (b)(2). Pub. L. 106–345, § 402(b)(2), substituted ''the section referred to in paragraph (1)(B)'' for ''294*o*(b)(4)(B) of this title''.

Subsec. (b)(5). Pub. L. 106–345, § 402(b)(3), added par. (5).

Subsec. (c)(1). Pub. L. 106–345, § 402(c)(1), substituted ''fiscal years 2001 through 2005'' for ''fiscal years 1996 through 2000''.

Subsec. (c)(2). Pub. L. 106–345, § 402(c)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''For the purpose of grants under subsection (b) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1996 through 2000.''

1996—Pub. L. 104–146, § 3(h)(1), (2)(A), substituted ''HIV/AIDS communities, schools, and centers'' for ''Acquired immune deficiency syndrome'' as section catchline.

[1] So in original.

Subsec. (a)(1)(A). Pub. L. 104–166, § 5(2)(A), substituted ''in programs under this subchapter'' for ''in subchapter XXIV programs'' and struck out ''infection and'' after ''prevention of HIV''.

Pub. L. 104–146, § 3(h)(2)(B)(iii), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (a)(1)(B). Pub. L. 104–146, § 3(h)(2)(B)(iv), inserted ''and'' after semicolon.

Pub. L. 104–146, § 3(h)(2)(B)(i), (ii), redesignated subpar. (A) as (B) and struck out former subpar. (B) which read as follows: ''to train practitioners to provide for the health care needs of such individuals;''.

Subsec. (a)(1)(C), (D). Pub. L. 104–146, § 3(h)(2)(B)(i), (ii), redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: ''with respect to improving clinical skills in the diagnosis, treatment, and prevention of such disease, to educate and train the health professionals and clinical staff of schools of medicine, osteopathic medicine, and dentistry; and''.

Subsec. (c). Pub. L. 104–166, § 5(2)(B), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: ''For purposes of this section:

''(1) The term 'HIV disease' means infection with the human immunodeficiency virus, and includes any condition arising from such infection.

''(2) The term 'human immunodeficiency virus' means the etiologic agent for acquired immune deficiency syndrome.''

Subsec. (d). Pub. L. 104–166, § 5(2)(B), struck out heading and text of subsec. (d) relating to authorization of appropriations for fiscal years 1996 through 2000. Text read as follows: ''There are authorized to be appropriated to carry out this section, such sums as may be necessary for each of the fiscal years 1996 through 2000.''

Pub. L. 104–166, § 5(2)(B), struck out heading and text of subsec. (d) relating to authorization of appropriations for fiscal years 1993 through 1995. Text read as follows:

''(1) SCHOOLS; CENTERS.—For the purpose of grants under subsection (a) of this section, there is authorized to be appropriated $23,000,000 for each of the fiscal years 1993 through 1995.

''(2) DENTAL SCHOOLS.—For the purpose of grants under subsection (b) of this section, there is authorized to be appropriated $7,000,000 for each of the fiscal years 1993 through 1995.''

Pub. L. 104–146, § 3(h)(4), added subsec. (d) relating to authorization of appropriations for fiscal years 1996 through 2000.

1992—Subsec. (a)(3). Pub. L. 102–531, which directed the substitution of ''No grant'' for ''no grant'' in par. (3), could not be executed because the words ''no grant'' did not appear in par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–146 effective Oct. 1, 1996, see section 13 of Pub. L. 104–146, set out as a note under section 300ff–11 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

DISSEMINATION OF TREATMENT GUIDELINES; MEDICAL CONSULTATION ACTIVITIES

Pub. L. 106–345, title IV, § 402(a)(2), Oct. 20, 2000, 114 Stat. 1349, provided that: ''Not later than 90 days after the date of the enactment of this Act [Oct. 20, 2000], the Secretary of Health and Human Services shall issue and begin implementation of a strategy for the dissemination of HIV treatment information to health care providers and patients.''

SUBCHAPTER XXV—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

AMENDMENTS

1996—Pub. L. 104–204, title VI, § 604(a)(1), Sept. 26, 1996, 110 Stat. 2938, substituted ''REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE'' for ''ASSURING PORTABILITY, AVAILABILITY, AND RENEWABILITY OF HEALTH INSURANCE COVERAGE'' as subchapter heading.

PART A—GROUP MARKET REFORMS

SUBPART 1—PORTABILITY, ACCESS, AND RENEWABILITY REQUIREMENTS

§ 300gg. Increased portability through limitation on preexisting condition exclusions

(a) Limitation on preexisting condition exclusion period; crediting for periods of previous coverage

Subject to subsection (d) of this section, a group health plan, and a health insurance issuer offering group health insurance coverage, may, with respect to a participant or beneficiary, impose a preexisting condition exclusion only if—

(1) such exclusion relates to a condition (whether physical or mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the enrollment date;

(2) such exclusion extends for a period of not more than 12 months (or 18 months in the case of a late enrollee) after the enrollment date; and

(3) the period of any such preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage (if any, as defined in subsection (c)(1) of this section) applicable to the participant or beneficiary as of the enrollment date.

(b) Definitions

For purposes of this part—

(1) Preexisting condition exclusion

(A) In general

The term ''preexisting condition exclusion'' means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

(B) Treatment of genetic information

Genetic information shall not be treated as a condition described in subsection (a)(1) of this section in the absence of a diagnosis of the condition related to such information.

(2) Enrollment date

The term ''enrollment date'' means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for such enrollment.

(3) Late enrollee

The term ''late enrollee'' means, with respect to coverage under a group health plan, a participant or beneficiary who enrolls under the plan other than during—

(A) the first period in which the individual is eligible to enroll under the plan, or

(B) a special enrollment period under subsection (f) of this section.

(4) Waiting period

The term ''waiting period'' means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

(c) Rules relating to crediting previous coverage

(1) "Creditable coverage" defined

For purposes of this subchapter, the term ''creditable coverage'' means, with respect to an individual, coverage of the individual under any of the following:

(A) A group health plan.

(B) Health insurance coverage.

(C) Part A or part B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395j et seq.].

(D) Title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], other than coverage consisting solely of benefits under section 1928 [42 U.S.C. 1396s].

(E) Chapter 55 of title 10.

(F) A medical care program of the Indian Health Service or of a tribal organization.

(G) A State health benefits risk pool.

(H) A health plan offered under chapter 89 of title 5.

(I) A public health plan (as defined in regulations).

(J) A health benefit plan under section 2504(e) of title 22.

Such term does not include coverage consisting solely of coverage of excepted benefits (as defined in section 300gg–91(c) of this title).

(2) Not counting periods before significant breaks in coverage

(A) In general

A period of creditable coverage shall not be counted, with respect to enrollment of an individual under a group health plan, if, after such period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.

(B) Waiting period not treated as a break in coverage

For purposes of subparagraph (A) and subsection (d)(4) of this section, any period that an individual is in a waiting period for any coverage under a group health plan (or for group health insurance coverage) or is in an affiliation period (as defined in subsection (g)(2) of this section) shall not be taken into account in determining the continuous period under subparagraph (A).

(3) Method of crediting coverage

(A) Standard method

Except as otherwise provided under subparagraph (B), for purposes of applying subsection (a)(3) of this section, a group health plan, and a health insurance issuer offering group health insurance coverage, shall count a period of creditable coverage without regard to the specific benefits covered during the period.

(B) Election of alternative method

A group health plan, or a health insurance issuer offering group health insurance, may elect to apply subsection (a)(3) of this section based on coverage of benefits within each of several classes or categories of benefits specified in regulations rather than as provided under subparagraph (A). Such election shall be made on a uniform basis for all participants and beneficiaries. Under such election a group health plan or issuer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within such class or category.

(C) Plan notice

In the case of an election with respect to a group health plan under subparagraph (B) (whether or not health insurance coverage is provided in connection with such plan), the plan shall—

(i) prominently state in any disclosure statements concerning the plan, and state to each enrollee at the time of enrollment under the plan, that the plan has made such election, and

(ii) include in such statements a description of the effect of this election.

(D) Issuer notice

In the case of an election under subparagraph (B) with respect to health insurance coverage offered by an issuer in the small or large group market, the issuer—

(i) shall prominently state in any disclosure statements concerning the coverage, and to each employer at the time of the offer or sale of the coverage, that the issuer has made such election, and

(ii) shall include in such statements a description of the effect of such election.

(4) Establishment of period

Periods of creditable coverage with respect to an individual shall be established through presentation of certifications described in subsection (e) of this section or in such other manner as may be specified in regulations.

(d) Exceptions

(1) Exclusion not applicable to certain newborns

Subject to paragraph (4), a group health plan, and a health insurance issuer offering group health insurance coverage, may not impose any preexisting condition exclusion in the case of an individual who, as of the last day of the 30-day period beginning with the date of birth, is covered under creditable coverage.

(2) Exclusion not applicable to certain adopted children

Subject to paragraph (4), a group health plan, and a health insurance issuer offering group health insurance coverage, may not impose any preexisting condition exclusion in the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence shall not apply to coverage before the date of such adoption or placement for adoption.

(3) Exclusion not applicable to pregnancy

A group health plan, and health insurance issuer offering group health insurance coverage, may not impose any preexisting condition exclusion relating to pregnancy as a preexisting condition.

(4) Loss if break in coverage

Paragraphs (1) and (2) shall no longer apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage.

(e) Certifications and disclosure of coverage

(1) Requirement for certification of period of creditable coverage

(A) In general

A group health plan, and a health insurance issuer offering group health insurance coverage, shall provide the certification described in subparagraph (B)—

(i) at the time an individual ceases to be covered under the plan or otherwise becomes covered under a COBRA continuation provision,

(ii) in the case of an individual becoming covered under such a provision, at the time the individual ceases to be covered under such provision, and

(iii) on the request on behalf of an individual made not later than 24 months after the date of cessation of the coverage described in clause (i) or (ii), whichever is later.

The certification under clause (i) may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

(B) Certification

The certification described in this subparagraph is a written certification of—

(i) the period of creditable coverage of the individual under such plan and the coverage (if any) under such COBRA continuation provision, and

(ii) the waiting period (if any) (and affiliation period, if applicable) imposed with respect to the individual for any coverage under such plan.

(C) Issuer compliance

To the extent that medical care under a group health plan consists of group health insurance coverage, the plan is deemed to have satisfied the certification requirement under this paragraph if the health insurance issuer offering the coverage provides for such certification in accordance with this paragraph.

(2) Disclosure of information on previous benefits

In the case of an election described in subsection (c)(3)(B) of this section by a group health plan or health insurance issuer, if the plan or issuer enrolls an individual for coverage under the plan and the individual provides a certification of coverage of the individual under paragraph (1)—

(A) upon request of such plan or issuer, the entity which issued the certification provided by the individual shall promptly disclose to such requesting plan or issuer information on coverage of classes and categories of health benefits available under such entity's plan or coverage, and

(B) such entity may charge the requesting plan or issuer for the reasonable cost of disclosing such information.

(3) Regulations

The Secretary shall establish rules to prevent an entity's failure to provide information under paragraph (1) or (2) with respect to previous coverage of an individual from adversely affecting any subsequent coverage of the individual under another group health plan or health insurance coverage.

(f) Special enrollment periods

(1) Individuals losing other coverage

A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if each of the following conditions is met:

(A) The employee or dependent was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent.

(B) The employee stated in writing at such time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor or issuer (if applicable) required such a statement at such time and provided the employee with notice of such requirement (and the consequences of such requirement) at such time.

(C) The employee's or dependent's coverage described in subparagraph (A)—

(i) was under a COBRA continuation provision and the coverage under such provision was exhausted; or

(ii) was not under such a provision and either the coverage was terminated as a result of loss of eligibility for the coverage (including as a result of legal separation, divorce, death, termination of employ-

ment, or reduction in the number of hours of employment) or employer contributions toward such coverage were terminated.

(D) Under the terms of the plan, the employee requests such enrollment not later than 30 days after the date of exhaustion of coverage described in subparagraph (C)(i) or termination of coverage or employer contribution described in subparagraph (C)(ii).

(2) For dependent beneficiaries

(A) In general

If—

(i) a group health plan makes coverage available with respect to a dependent of an individual,

(ii) the individual is a participant under the plan (or has met any waiting period applicable to becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to enroll during a previous enrollment period), and

(iii) a person becomes such a dependent of the individual through marriage, birth, or adoption or placement for adoption,

the group health plan shall provide for a dependent special enrollment period described in subparagraph (B) during which the person (or, if not otherwise enrolled, the individual) may be enrolled under the plan as a dependent of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if such spouse is otherwise eligible for coverage.

(B) Dependent special enrollment period

A dependent special enrollment period under this subparagraph shall be a period of not less than 30 days and shall begin on the later of—

(i) the date dependent coverage is made available, or

(ii) the date of the marriage, birth, or adoption or placement for adoption (as the case may be) described in subparagraph (A)(iii).

(C) No waiting period

If an individual seeks to enroll a dependent during the first 30 days of such a dependent special enrollment period, the coverage of the dependent shall become effective—

(i) in the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

(ii) in the case of a dependent's birth, as of the date of such birth; or

(iii) in the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption.

(g) Use of affiliation period by HMOs as alternative to preexisting condition exclusion

(1) In general

A health maintenance organization which offers health insurance coverage in connection with a group health plan and which does not impose any preexisting condition exclusion allowed under subsection (a) of this section with respect to any particular coverage option may impose an affiliation period for such coverage option, but only if—

(A) such period is applied uniformly without regard to any health status-related factors; and

(B) such period does not exceed 2 months (or 3 months in the case of a late enrollee).

(2) Affiliation period

(A) "Affiliation period" defined

For purposes of this subchapter, the term ''affiliation period'' means a period which, under the terms of the health insurance coverage offered by the health maintenance organization, must expire before the health insurance coverage becomes effective. The organization is not required to provide health care services or benefits during such period and no premium shall be charged to the participant or beneficiary for any coverage during the period.

(B) Beginning

Such period shall begin on the enrollment date.

(C) Runs concurrently with waiting periods

An affiliation period under a plan shall run concurrently with any waiting period under the plan.

(3) Alternative methods

A health maintenance organization described in paragraph (1) may use alternative methods, from those described in such paragraph, to address adverse selection as approved by the State insurance commissioner or official or officials designated by the State to enforce the requirements of this part for the State involved with respect to such issuer.

(July 1, 1944, ch. 373, title XXVII, § 2701, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1955.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(1)(C), (D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A and B of title XVIII of the Act are classified generally to parts A (§ 1395c et seq.) and B (§ 1395j et seq.) of subchapter XVIII of chapter 7 of this title. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 2701 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

EFFECTIVE DATE

Section 102(c) of Pub. L. 104–191 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, part A of title XXVII of the Public Health Service Act [this part] (as added by subsection (a)) shall apply with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997.

''(2) DETERMINATION OF CREDITABLE COVERAGE.—

''(A) PERIOD OF COVERAGE.—

''(i) IN GENERAL.—Subject to clause (ii), no period before July 1, 1996, shall be taken into account

under part A of title XXVII of the Public Health Service Act [this part] (as added by this section) in determining creditable coverage.

''(ii) SPECIAL RULE FOR CERTAIN PERIODS.—The Secretary of Health and Human Services, consistent with section 104 [set out as a note under section 300gg–92 of this title], shall provide for a process whereby individuals who need to establish creditable coverage for periods before July 1, 1996, and who would have such coverage credited but for clause (i) may be given credit for creditable coverage for such periods through the presentation of documents or other means.

''(B) CERTIFICATIONS, ETC.—

''(i) IN GENERAL.—Subject to clauses (ii) and (iii), subsection (e) of section 2701 of the Public Health Service Act [subsec. (e) of this section] (as added by this section) shall apply to events occurring after June 30, 1996.

''(ii) NO CERTIFICATION REQUIRED TO BE PROVIDED BEFORE JUNE 1, 1997.—In no case is a certification required to be provided under such subsection before June 1, 1997.

''(iii) CERTIFICATION ONLY ON WRITTEN REQUEST FOR EVENTS OCCURRING BEFORE OCTOBER 1, 1996.—In the case of an event occurring after June 30, 1996, and before October 1, 1996, a certification is not required to be provided under such subsection unless an individual (with respect to whom the certification is otherwise required to be made) requests such certification in writing.

''(C) TRANSITIONAL RULE.—In the case of an individual who seeks to establish creditable coverage for any period for which certification is not required because it relates to an event occurring before June 30, 1996—

''(i) the individual may present other credible evidence of such coverage in order to establish the period of creditable coverage; and

''(ii) a group health plan and a health insurance issuer shall not be subject to any penalty or enforcement action with respect to the plan's or issuer's crediting (or not crediting) such coverage if the plan or issuer has sought to comply in good faith with the applicable requirements under the amendments made by this section [enacting this section and sections 300gg–1, 300gg–11 to 300gg–13, 300gg–21 to 300gg–23, 300gg–91, and 300gg–92 of this title and amending sections 300e and 300bb–8 of this title].

''(3) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—Except as provided in paragraph (2)(B), in the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Aug. 21, 1996], part A of title XXVII of the Public Health Service Act [this part] (other than section 2701(e) thereof [subsec. (e) of this section]) shall not apply to plan years beginning before the later of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

''(B) July 1, 1997.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement of such part shall not be treated as a termination of such collective bargaining agreement.

''(4) TIMELY REGULATIONS.—The Secretary of Health and Human Services, consistent with section 104 [set out as a note under section 300gg–92 of this title], shall first issue by not later than April 1, 1997, such regulations as may be necessary to carry out the amendments made by this section [enacting this section and sections 300gg–1, 300gg–11 to 300gg–13, 300gg–21 to 300gg–23, 300gg–91, and 300gg–92 of this title and amending sections 300e and 300bb–8 of this title] and section 111 [enacting sections 300gg–41 to 300gg–44 and 300gg–61 to 300gg–63 of this title].

''(5) LIMITATION ON ACTIONS.—No enforcement action shall be taken, pursuant to the amendments made by this section, against a group health plan or health insurance issuer with respect to a violation of a requirement imposed by such amendments before January 1, 1998, or, if later, the date of issuance of regulations referred to in paragraph (4), if the plan or issuer has sought to comply in good faith with such requirements.''

CONGRESSIONAL FINDINGS RELATING TO EXERCISE OF COMMERCE CLAUSE AUTHORITY; SEVERABILITY

Section 195 of title I of Pub. L. 104–191 provided that: ''(a) FINDINGS RELATING TO EXERCISE OF COMMERCE CLAUSE AUTHORITY.—Congress finds the following in relation to the provisions of this title [enacting this subchapter and sections 1181 to 1183 and 1191 to 1191c of Title 29, Labor, amending sections 233, 300e, and 300bb–8 of this title and sections 1003, 1021, 1022, 1024, 1132, 1136, and 1144 of Title 29, and enacting provisions set out as notes under this section, section 300gg–92 of this title, and section 1181 of Title 29]:

''(1) Provisions in group health plans and health insurance coverage that impose certain preexisting condition exclusions impact the ability of employees to seek employment in interstate commerce, thereby impeding such commerce.

''(2) Health insurance coverage is commercial in nature and is in and affects interstate commerce.

''(3) It is a necessary and proper exercise of Congressional authority to impose requirements under this title on group health plans and health insurance coverage (including coverage offered to individuals previously covered under group health plans) in order to promote commerce among the States.

''(4) Congress, however, intends to defer to States, to the maximum extent practicable, in carrying out such requirements with respect to insurers and health maintenance organizations that are subject to State regulation, consistent with the provisions of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.].

''(b) SEVERABILITY.—If any provision of this title or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this title and the application of the provisions of such to any person or circumstance shall not be affected thereby.''

HEALTH COVERAGE AVAILABILITY STUDIES

Section 191 of title I of Pub. L. 104–191 provided that: ''(a) STUDIES.—

''(1) STUDY ON EFFECTIVENESS OF REFORMS.—The Secretary of Health and Human Services shall provide for a study on the effectiveness of the provisions of this title [enacting this subchapter and sections 1181 to 1183 and 1191 to 1191c of Title 29, Labor, amending sections 233, 300e, and 300bb–8 of this title and sections 1003, 1021, 1022, 1024, 1132, 1136, and 1144 of Title 29, and enacting provisions set out as notes under this section, section 300gg–92 of this title, and section 1181 of Title 29] and the various State laws, in ensuring the availability of reasonably priced health coverage to employers purchasing group coverage and individuals purchasing coverage on a non-group basis.

''(2) STUDY ON ACCESS AND CHOICE.—The Secretary also shall provide for a study on—

''(A) the extent to which patients have direct access to, and choice of, health care providers, including specialty providers, within a network plan, as well as the opportunity to utilize providers outside of the network plan, under the various types of coverage offered under the provisions of this title; and

''(B) the cost and cost-effectiveness to health insurance issuers of providing access to out-of-network providers, and the potential impact of pro-

viding such access on the cost and quality of health insurance coverage offered under provisions of this title.

''(3) CONSULTATION.—The studies under this subsection shall be conducted in consultation with the Secretary of Labor, representatives of State officials, consumers, and other representatives of individuals and entities that have expertise in health insurance and employee benefits.

''(b) REPORTS.—Not later than January 1, 2000, the Secretary shall submit to the appropriate committees of Congress a report on each of the studies under subsection (a).''

§ 300gg–1. Prohibiting discrimination against individual participants and beneficiaries based on health status

(a) In eligibility to enroll

(1) In general

Subject to paragraph (2), a group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any of the following health status-related factors in relation to the individual or a dependent of the individual:

(A) Health status.

(B) Medical condition (including both physical and mental illnesses).

(C) Claims experience.

(D) Receipt of health care.

(E) Medical history.

(F) Genetic information.

(G) Evidence of insurability (including conditions arising out of acts of domestic violence).

(H) Disability.

(2) No application to benefits or exclusions

To the extent consistent with section 300gg[1] of this title, paragraph (1) shall not be construed—

(A) to require a group health plan, or group health insurance coverage, to provide particular benefits other than those provided under the terms of such plan or coverage, or

(B) to prevent such a plan or coverage from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage.

(3) Construction

For purposes of paragraph (1), rules for eligibility to enroll under a plan include rules defining any applicable waiting periods for such enrollment.

(b) In premium contributions

(1) In general

A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, may not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution which is greater than such premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health status-related factor in relation to the individual or to an individual enrolled under the plan as a dependent of the individual.

(2) Construction

Nothing in paragraph (1) shall be construed—

(A) to restrict the amount that an employer may be charged for coverage under a group health plan; or

(B) to prevent a group health plan, and a health insurance issuer offering group health insurance coverage, from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

(July 1, 1944, ch. 373, title XXVII, § 2702, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1961.)

REFERENCES IN TEXT

Section 300gg of this title, referred to in subsec. (a)(2), was in the original ''section 701'' and was translated as reading ''section 2701'' meaning section 2701 of act July 1, 1944, as added by Pub. L. 104–191, § 102(a), to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 2702 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

SUBPART 2—OTHER REQUIREMENTS

§ 300gg–4. Standards relating to benefits for mothers and newborns

(a) Requirements for minimum hospital stay following birth

(1) In general

A group health plan, and a health insurance issuer offering group health insurance coverage, may not—

(A) except as provided in paragraph (2)—

(i) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a normal vaginal delivery, to less than 48 hours, or

(ii) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a cesarean section, to less than 96 hours, or

(B) require that a provider obtain authorization from the plan or the issuer for prescribing any length of stay required under subparagraph (A) (without regard to paragraph (2)).

[1] See References in Text note below.

(2) Exception

Paragraph (1)(A) shall not apply in connection with any group health plan or health insurance issuer in any case in which the decision to discharge the mother or her newborn child prior to the expiration of the minimum length of stay otherwise required under paragraph (1)(A) is made by an attending provider in consultation with the mother.

(b) Prohibitions

A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not—

(1) deny to the mother or her newborn child eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

(2) provide monetary payments or rebates to mothers to encourage such mothers to accept less than the minimum protections available under this section;

(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

(5) subject to subsection (c)(3) of this section, restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) of this section in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

(c) Rules of construction

(1) Nothing in this section shall be construed to require a mother who is a participant or beneficiary—

(A) to give birth in a hospital; or

(B) to stay in the hospital for a fixed period of time following the birth of her child.

(2) This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with childbirth for a mother or her newborn child.

(3) Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with childbirth for a mother or newborn child under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) of this section may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

(d) Notice

A group health plan under this part shall comply with the notice requirement under section 1185(d) of title 29 with respect to the requirements of this section as if such section applied to such plan.

(e) Level and type of reimbursements

Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(f) Preemption; exception for health insurance coverage in certain States

(1) In general

The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 300gg–23(d)(1) of this title) for a State that regulates such coverage that is described in any of the following subparagraphs:

(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a normal vaginal delivery and at least a 96-hour hospital length of stay following a cesarean section.

(B) Such State law requires such coverage to provide for maternity and pediatric care in accordance with guidelines established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, or other established professional medical associations.

(C) Such State law requires, in connection with such coverage for maternity care, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the mother.

(2) Construction

Section 300gg–23(a)(1) of this title shall not be construed as superseding a State law described in paragraph (1).

(July 1, 1944, ch. 373, title XXVII, § 2704, as added Pub. L. 104–204, title VI, § 604(a)(3), Sept. 26, 1996, 110 Stat. 2939.)

PRIOR PROVISIONS

A prior section 2704 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

EFFECTIVE DATE

Section 604(c) of Pub. L. 104–204 provided that: ''The amendments made by this section [enacting this section and amending sections 300gg–21 and 300gg–23 of this title] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.''

CONGRESSIONAL FINDINGS

Section 602 of title VI of Pub. L. 104–204 provided that: ''Congress finds that—

''(1) the length of post-delivery hospital stay should be based on the unique characteristics of each mother and her newborn child, taking into consideration the health of the mother, the health and stability of the newborn, the ability and confidence of the mother and the father to care for their newborn, the adequacy of support systems at home, and the access of the mother and her newborn to appropriate follow-up health care; and

''(2) the timing of the discharge of a mother and her newborn child from the hospital should be made by

the attending provider in consultation with the mother.''

REPORTS TO CONGRESS CONCERNING CHILDBIRTH

Pub. L. 104–204, title VI, § 606, Sept. 26, 1996, 110 Stat. 2942, directed the Secretary of Health and Human Services to establish an advisory panel and conduct a study of the factors determining the length of hospital stay following childbirth, the diversity of negative or positive outcomes affecting mothers, infants, and families, the manner in which post natal care changed over time and the manner in which that care adapted or related to changes in the length of hospital stay, and the financial incentives that impact the health of newborns and mothers and influence the clinical decision making of health care providers, and to submit a final report to Congress not later than 5 years after Sept. 26, 1996, summarizing the study and the best practices used in the public and private sectors for the care of newborns and mothers, and making recommendations for improvements in prenatal care, post natal care, delivery and follow-up care, and whether the implementation of such improvements should be accomplished by the private health care sector, Federal or State governments, or any combination thereof.

§ 300gg–5. Parity in application of certain limits to mental health benefits

(a) In general

(1) Aggregate lifetime limits

In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health benefits—

(A) No lifetime limit

If the plan or coverage does not include an aggregate lifetime limit on substantially all medical and surgical benefits, the plan or coverage may not impose any aggregate lifetime limit on mental health benefits.

(B) Lifetime limit

If the plan or coverage includes an aggregate lifetime limit on substantially all medical and surgical benefits (in this paragraph referred to as the ''applicable lifetime limit''), the plan or coverage shall either—

(i) apply the applicable lifetime limit both to the medical and surgical benefits to which it otherwise would apply and to mental health benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health benefits; or

(ii) not include any aggregate lifetime limit on mental health benefits that is less than the applicable lifetime limit.

(C) Rule in case of different limits

In the case of a plan or coverage that is not described in subparagraph (A) or (B) and that includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan or coverage with respect to mental health benefits by substituting for the applicable lifetime limit an average aggregate lifetime limit that is computed taking into account the weighted average of the aggregate lifetime limits applicable to such categories.

(2) Annual limits

In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health benefits—

(A) No annual limit

If the plan or coverage does not include an annual limit on substantially all medical and surgical benefits, the plan or coverage may not impose any annual limit on mental health benefits.

(B) Annual limit

If the plan or coverage includes an annual limit on substantially all medical and surgical benefits (in this paragraph referred to as the ''applicable annual limit''), the plan or coverage shall either—

(i) apply the applicable annual limit both to medical and surgical benefits to which it otherwise would apply and to mental health benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health benefits; or

(ii) not include any annual limit on mental health benefits that is less than the applicable annual limit.

(C) Rule in case of different limits

In the case of a plan or coverage that is not described in subparagraph (A) or (B) and that includes no or different annual limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan or coverage with respect to mental health benefits by substituting for the applicable annual limit an average annual limit that is computed taking into account the weighted average of the annual limits applicable to such categories.

(b) Construction

Nothing in this section shall be construed—

(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any mental health benefits; or

(2) in the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides mental health benefits, as affecting the terms and conditions (including cost sharing, limits on numbers of visits or days of coverage, and requirements relating to medical necessity) relating to the amount, duration, or scope of mental health benefits under the plan or coverage, except as specifically provided in subsection (a) of this section (in regard to parity in the imposition of aggregate lifetime limits and annual limits for mental health benefits).

(c) Exemptions

(1) Small employer exemption

This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

(2) Increased cost exemption

This section shall not apply with respect to a group health plan (or health insurance cov-

erage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least 1 percent.

(d) Separate application to each option offered

In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

(e) Definitions

For purposes of this section—

(1) Aggregate lifetime limit

The term ''aggregate lifetime limit'' means, with respect to benefits under a group health plan or health insurance coverage, a dollar limitation on the total amount that may be paid with respect to such benefits under the plan or health insurance coverage with respect to an individual or other coverage unit.

(2) Annual limit

The term ''annual limit'' means, with respect to benefits under a group health plan or health insurance coverage, a dollar limitation on the total amount of benefits that may be paid with respect to such benefits in a 12-month period under the plan or health insurance coverage with respect to an individual or other coverage unit.

(3) Medical or surgical benefits

The term ''medical or surgical benefits'' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include mental health benefits.

(4) Mental health benefits

The term ''mental health benefits'' means benefits with respect to mental health services, as defined under the terms of the plan or coverage (as the case may be), but does not include benefits with respect to treatment of substance abuse or chemical dependency.

(f) Sunset

This section shall not apply to benefits for services furnished after December 31, 2006.

(July 1, 1944, ch. 373, title XXVII, § 2705, as added Pub. L. 104–204, title VII, § 703(a), Sept. 26, 1996, 110 Stat. 2947; amended Pub. L. 107–116, title VII, § 701(b), Jan. 10, 2002, 115 Stat. 2228; Pub. L. 107–313, § 2(b), Dec. 2, 2002, 116 Stat. 2457; Pub. L. 108–197, § 2(b), Dec. 19, 2003, 117 Stat. 2898; Pub. L. 108–311, title III, § 302(c), Oct. 4, 2004, 118 Stat. 1179; Pub. L. 109–151, § 1(b), Dec. 30, 2005, 119 Stat. 2886.)

PRIOR PROVISIONS

A prior section 2705 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238d of this title.

AMENDMENTS

2005—Subsec. (f). Pub. L. 109–151 substituted ''December 31, 2006'' for ''December 31, 2005''.

2004—Subsec. (f). Pub. L. 108–311 substituted ''after December 31, 2005'' for ''on or after December 31, 2004''.

2003—Subsec. (f). Pub. L. 108–197 substituted ''December 31, 2004'' for ''December 31, 2003''.

2002—Subsec. (f). Pub. L. 107–313 substituted ''December 31, 2003'' for ''December 31, 2002''.

Pub. L. 107–116 substituted ''December 31, 2002'' for ''September 30, 2001''.

EFFECTIVE DATE

Section 703(b) of Pub. L. 104–204 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.''

§ 300gg–6. Required coverage for reconstructive surgery following mastectomies

The provisions of section 1185b of title 29 shall apply to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans, as if included in this subpart.

(July 1, 1944, ch. 373, title XXVII, § 2706, as added Pub. L. 105–277, div. A, § 101(f) [title IX, § 903(a)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–438.)

EFFECTIVE DATE

Pub. L. 105–277, div. A, § 101(f) [title IX, § 903(c)(1)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–438, provided that:

''(A) IN GENERAL.—The amendment made by subsection (a) [enacting this section] shall apply to group health plans for plan years beginning on or after the date of enactment of this Act [Oct. 21, 1998].

''(B) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by the amendment made by subsection (a) shall not be treated as a termination of such collective bargaining agreement.''

SUBPART 3—PROVISIONS APPLICABLE ONLY TO HEALTH INSURANCE ISSUERS

AMENDMENTS

1996—Pub. L. 104–204, title VI, § 604(a)(2), Sept. 26, 1996, 110 Stat. 2939, redesignated subpart 2 as 3.

§ 300gg–11. Guaranteed availability of coverage for employers in group market

(a) Issuance of coverage in small group market

(1) In general

Subject to subsections (c) through (f) of this section, each health insurance issuer that offers health insurance coverage in the small group market in a State—

(A) must accept every small employer (as defined in section 300gg–91(e)(4) of this title) in the State that applies for such coverage; and

(B) must accept for enrollment under such coverage every eligible individual (as defined in paragraph (2)) who applies for enrollment during the period in which the individual first becomes eligible to enroll under the terms of the group health plan and may not place any restriction which is inconsistent with section 300gg–1 of this title on an eligible individual being a participant or beneficiary.

(2) "Eligible individual" defined

For purposes of this section, the term ''eligible individual'' means, with respect to a

health insurance issuer that offers health insurance coverage to a small employer in connection with a group health plan in the small group market, such an individual in relation to the employer as shall be determined—

(A) in accordance with the terms of such plan,

(B) as provided by the issuer under rules of the issuer which are uniformly applicable in a State to small employers in the small group market, and

(C) in accordance with all applicable State laws governing such issuer and such market.

(b) Assuring access in large group market

(1) Reports to HHS

The Secretary shall request that the chief executive officer of each State submit to the Secretary, by not later December 31, 2000, and every 3 years thereafter a report on—

(A) the access of large employers to health insurance coverage in the State, and

(B) the circumstances for lack of access (if any) of large employers (or one or more classes of such employers) in the State to such coverage.

(2) Triennial reports to Congress

The Secretary, based on the reports submitted under paragraph (1) and such other information as the Secretary may use, shall prepare and submit to Congress, every 3 years, a report describing the extent to which large employers (and classes of such employers) that seek health insurance coverage in the different States are able to obtain access to such coverage. Such report shall include such recommendations as the Secretary determines to be appropriate.

(3) GAO report on large employer access to health insurance coverage

The Comptroller General shall provide for a study of the extent to which classes of large employers in the different States are able to obtain access to health insurance coverage and the circumstances for lack of access (if any) to such coverage. The Comptroller General shall submit to Congress a report on such study not later than 18 months after August 21, 1996.

(c) Special rules for network plans

(1) In general

In the case of a health insurance issuer that offers health insurance coverage in the small group market through a network plan, the issuer may—

(A) limit the employers that may apply for such coverage to those with eligible individuals who live, work, or reside in the service area for such network plan; and

(B) within the service area of such plan, deny such coverage to such employers if the issuer has demonstrated, if required, to the applicable State authority that—

(i) it will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees, and

(ii) it is applying this paragraph uniformly to all employers without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to such employees and dependents.

(2) 180-day suspension upon denial of coverage

An issuer, upon denying health insurance coverage in any service area in accordance with paragraph (1)(B), may not offer coverage in the small group market within such service area for a period of 180 days after the date such coverage is denied.

(d) Application of financial capacity limits

(1) In general

A health insurance issuer may deny health insurance coverage in the small group market if the issuer has demonstrated, if required, to the applicable State authority that—

(A) it does not have the financial reserves necessary to underwrite additional coverage; and

(B) it is applying this paragraph uniformly to all employers in the small group market in the State consistent with applicable State law and without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to such employees and dependents.

(2) 180-day suspension upon denial of coverage

A health insurance issuer upon denying health insurance coverage in connection with group health plans in accordance with paragraph (1) in a State may not offer coverage in connection with group health plans in the small group market in the State for a period of 180 days after the date such coverage is denied or until the issuer has demonstrated to the applicable State authority, if required under applicable State law, that the issuer has sufficient financial reserves to underwrite additional coverage, whichever is later. An applicable State authority may provide for the application of this subsection on a service-area-specific basis.

(e) Exception to requirement for failure to meet certain minimum participation or contribution rules

(1) In general

Subsection (a) of this section shall not be construed to preclude a health insurance issuer from establishing employer contribution rules or group participation rules for the offering of health insurance coverage in connection with a group health plan in the small group market, as allowed under applicable State law.

(2) Rules defined

For purposes of paragraph (1)—

(A) the term ''employer contribution rule'' means a requirement relating to the minimum level or amount of employer contribution toward the premium for enrollment of participants and beneficiaries; and

(B) the term ''group participation rule'' means a requirement relating to the minimum number of participants or beneficiaries that must be enrolled in relation to

a specified percentage or number of eligible individuals or employees of an employer.

(f) Exception for coverage offered only to bona fide association members

Subsection (a) of this section shall not apply to health insurance coverage offered by a health insurance issuer if such coverage is made available in the small group market only through one or more bona fide associations (as defined in section 300gg–91(d)(3) of this title).

(July 1, 1944, ch. 373, title XXVII, § 2711, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1962.)

PRIOR PROVISIONS

A prior section 2711 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

§ 300gg–12. Guaranteed renewability of coverage for employers in group market

(a) In general

Except as provided in this section, if a health insurance issuer offers health insurance coverage in the small or large group market in connection with a group health plan, the issuer must renew or continue in force such coverage at the option of the plan sponsor of the plan.

(b) General exceptions

A health insurance issuer may nonrenew or discontinue health insurance coverage offered in connection with a group health plan in the small or large group market based only on one or more of the following:

(1) Nonpayment of premiums

The plan sponsor has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or the issuer has not received timely premium payments.

(2) Fraud

The plan sponsor has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage.

(3) Violation of participation or contribution rules

The plan sponsor has failed to comply with a material plan provision relating to employer contribution or group participation rules, as permitted under section 300gg–11(e) of this title in the case of the small group market or pursuant to applicable State law in the case of the large group market.

(4) Termination of coverage

The issuer is ceasing to offer coverage in such market in accordance with subsection (c) of this section and applicable State law.

(5) Movement outside service area

In the case of a health insurance issuer that offers health insurance coverage in the market through a network plan, there is no longer any enrollee in connection with such plan who lives, resides, or works in the service area of the issuer (or in the area for which the issuer is authorized to do business) and, in the case of the small group market, the issuer would deny enrollment with respect to such plan under section 300gg–11(c)(1)(A) of this title.

(6) Association membership ceases

In the case of health insurance coverage that is made available in the small or large group market (as the case may be) only through one or more bona fide associations, the membership of an employer in the association (on the basis of which the coverage is provided) ceases but only if such coverage is terminated under this paragraph uniformly without regard to any health status-related factor relating to any covered individual.

(c) Requirements for uniform termination of coverage

(1) Particular type of coverage not offered

In any case in which an issuer decides to discontinue offering a particular type of group health insurance coverage offered in the small or large group market, coverage of such type may be discontinued by the issuer in accordance with applicable State law in such market only if—

(A) the issuer provides notice to each plan sponsor provided coverage of this type in such market (and participants and beneficiaries covered under such coverage) of such discontinuation at least 90 days prior to the date of the discontinuation of such coverage;

(B) the issuer offers to each plan sponsor provided coverage of this type in such market, the option to purchase all (or, in the case of the large group market, any) other health insurance coverage currently being offered by the issuer to a group health plan in such market; and

(C) in exercising the option to discontinue coverage of this type and in offering the option of coverage under subparagraph (B), the issuer acts uniformly without regard to the claims experience of those sponsors or any health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for such coverage.

(2) Discontinuance of all coverage

(A) In general

In any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the small group market or the large group market, or both markets, in a State, health insurance coverage may be discontinued by the issuer only in accordance with applicable State law and if—

(i) the issuer provides notice to the applicable State authority and to each plan sponsor (and participants and beneficiaries covered under such coverage) of such discontinuation at least 180 days prior to the date of the discontinuation of such coverage; and

(ii) all health insurance issued or delivered for issuance in the State in such market (or markets) are discontinued and coverage under such health insurance coverage in such market (or markets) is not renewed.

(B) Prohibition on market reentry

In the case of a discontinuation under subparagraph (A) in a market, the issuer may not provide for the issuance of any health insurance coverage in the market and State involved during the 5-year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed.

(d) Exception for uniform modification of coverage

At the time of coverage renewal, a health insurance issuer may modify the health insurance coverage for a product offered to a group health plan—

(1) in the large group market; or

(2) in the small group market if, for coverage that is available in such market other than only through one or more bona fide associations, such modification is consistent with State law and effective on a uniform basis among group health plans with that product.

(e) Application to coverage offered only through associations

In applying this section in the case of health insurance coverage that is made available by a health insurance issuer in the small or large group market to employers only through one or more associations, a reference to ''plan sponsor'' is deemed, with respect to coverage provided to an employer member of the association, to include a reference to such employer.

(July 1, 1944, ch. 373, title XXVII, § 2712, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1964.)

PRIOR PROVISIONS

A prior section 2712 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

§ 300gg–13. Disclosure of information

(a) Disclosure of information by health plan issuers

In connection with the offering of any health insurance coverage to a small employer, a health insurance issuer—

(1) shall make a reasonable disclosure to such employer, as part of its solicitation and sales materials, of the availability of information described in subsection (b) of this section, and

(2) upon request of such a small employer, provide such information.

(b) Information described

(1) In general

Subject to paragraph (3), with respect to a health insurance issuer offering health insurance coverage to a small employer, information described in this subsection is information concerning—

(A) the provisions of such coverage concerning issuer's right to change premium rates and the factors that may affect changes in premium rates;

(B) the provisions of such coverage relating to renewability of coverage;

(C) the provisions of such coverage relating to any preexisting condition exclusion; and

(D) the benefits and premiums available under all health insurance coverage for which the employer is qualified.

(2) Form of information

Information under this subsection shall be provided to small employers in a manner determined to be understandable by the average small employer, and shall be sufficient to reasonably inform small employers of their rights and obligations under the health insurance coverage.

(3) Exception

An issuer is not required under this section to disclose any information that is proprietary and trade secret information under applicable law.

(July 1, 1944, ch. 373, title XXVII, § 2713, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1966.)

PRIOR PROVISIONS

A prior section 2713 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

SUBPART 4—EXCLUSION OF PLANS; ENFORCEMENT; PREEMPTION

AMENDMENTS

1996—Pub. L. 104–204, title VI, § 604(a)(2), Sept. 26, 1996, 110 Stat. 2939, redesignated subpart 3 as 4.

§ 300gg–21. Exclusion of certain plans

(a) Exception for certain small group health plans

The requirements of subparts 1 and 3 shall not apply to any group health plan (and health insurance coverage offered in connection with a group health plan) for any plan year if, on the first day of such plan year, such plan has less than 2 participants who are current employees.

(b) Limitation on application of provisions relating to group health plans

(1) In general

The requirements of subparts 1 through 3 shall apply with respect to group health plans only—

(A) subject to paragraph (2), in the case of a plan that is a nonfederal[1] governmental plan, and

[1] So in original. Probably should be ''non-Federal''.

(B) with respect to health insurance coverage offered in connection with a group health plan (including such a plan that is a church plan or a governmental plan).

(2) Treatment of non-Federal governmental plans

(A) Election to be excluded

If the plan sponsor of a nonfederal[1] governmental plan which is a group health plan to which the provisions of subparts 1 through 3 otherwise apply makes an election under this subparagraph (in such form and manner as the Secretary may by regulations prescribe), then the requirements of such subparts insofar as they apply directly to group health plans (and not merely to group health insurance coverage) shall not apply to such governmental plans for such period except as provided in this paragraph.

(B) Period of election

An election under subparagraph (A) shall apply—

(i) for a single specified plan year, or

(ii) in the case of a plan provided pursuant to a collective bargaining agreement, for the term of such agreement.

An election under clause (i) may be extended through subsequent elections under this paragraph.

(C) Notice to enrollees

Under such an election, the plan shall provide for—

(i) notice to enrollees (on an annual basis and at the time of enrollment under the plan) of the fact and consequences of such election, and

(ii) certification and disclosure of creditable coverage under the plan with respect to enrollees in accordance with section 300gg(e) of this title.

(c) Exception for certain benefits

The requirements of subparts 1 through 3 shall not apply to any group health plan (or group health insurance coverage) in relation to its provision of excepted benefits described in section 300gg–91(c)(1) of this title.

(d) Exception for certain benefits if certain conditions met

(1) Limited, excepted benefits

The requirements of subparts 1 through 3 shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) in relation to its provision of excepted benefits described in section 300gg–91(c)(2) of this title if the benefits—

(A) are provided under a separate policy, certificate, or contract of insurance; or

(B) are otherwise not an integral part of the plan.

(2) Noncoordinated, excepted benefits

The requirements of subparts 1 through 3 shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) in relation to its provision of excepted benefits described in section 300gg–91(c)(3) of this title if all of the following conditions are met:

(A) The benefits are provided under a separate policy, certificate, or contract of insurance.

(B) There is no coordination between the provision of such benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor.

(C) Such benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor.

(3) Supplemental excepted benefits

The requirements of this part shall not apply to any group health plan (and group health insurance coverage) in relation to its provision of excepted benefits described in section 300gg–91(c)(4)[2] of this title if the benefits are provided under a separate policy, certificate, or contract of insurance.

(e) Treatment of partnerships

For purposes of this part—

(1) Treatment as a group health plan

Any plan, fund, or program which would not be (but for this subsection) an employee welfare benefit plan and which is established or maintained by a partnership, to the extent that such plan, fund, or program provides medical care (including items and services paid for as medical care) to present or former partners in the partnership or to their dependents (as defined under the terms of the plan, fund, or program), directly or through insurance, reimbursement, or otherwise, shall be treated (subject to paragraph (2)) as an employee welfare benefit plan which is a group health plan.

(2) Employer

In the case of a group health plan, the term ''employer'' also includes the partnership in relation to any partner.

(3) Participants of group health plans

In the case of a group health plan, the term ''participant'' also includes—

(A) in connection with a group health plan maintained by a partnership, an individual who is a partner in relation to the partnership, or

(B) in connection with a group health plan maintained by a self-employed individual (under which one or more employees are participants), the self-employed individual,

if such individual is, or may become, eligible to receive a benefit under the plan or such individual's beneficiaries may be eligible to receive any such benefit.

(July 1, 1944, ch. 373, title XXVII, § 2721, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1967; amended Pub. L. 104–204, title VI, § 604(b)(1), Sept. 26, 1996, 110 Stat. 2940.)

REFERENCES IN TEXT

Section 300gg–91(c)(4) of this title, referred to in subsec. (d)(3), was in the original ''section 27971(c)(4)'' and

[2] See References in Text note below.

was translated as reading ''section 2791(c)(4)'', meaning section 2791(c)(4) of act July 1, 1944, as added by Pub. L. 104–191, § 102(a), to reflect the probable intent of Congress. Act July 1, 1944, does not contain a section 27971.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–204, § 604(b)(1)(A), substituted ''subparts 1 and 3'' for ''subparts 1 and 2''.

Subsec. (b) to (d). Pub. L. 104–204, § 604(b)(1)(B), substituted ''subparts 1 through 3'' for ''subparts 1 and 2'' wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–204 applicable with respect to group health plans for plan years beginning on or after Jan. 1, 1998, see section 604(c) of Pub. L. 104–204 set out as an Effective Date note under section 300gg–4 of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

§ 300gg–22. Enforcement

(a) State enforcement

(1) State authority

Subject to section 300gg–23 of this title, each State may require that health insurance issuers that issue, sell, renew, or offer health insurance coverage in the State in the small or large group markets meet the requirements of this part with respect to such issuers.

(2) Failure to implement provisions

In the case of a determination by the Secretary that a State has failed to substantially enforce a provision (or provisions) in this part with respect to health insurance issuers in the State, the Secretary shall enforce such provision (or provisions) under subsection (b) of this section insofar as they relate to the issuance, sale, renewal, and offering of health insurance coverage in connection with group health plans in such State.

(b) Secretarial enforcement authority

(1) Limitation

The provisions of this subsection shall apply to enforcement of a provision (or provisions) of this part only—

(A) as provided under subsection (a)(2) of this section; and

(B) with respect to group health plans that are non-Federal governmental plans.

(2) Imposition of penalties

In the cases described in paragraph (1)—

(A) In general

Subject to the succeeding provisions of this subsection, any non-Federal governmental plan that is a group health plan and any health insurance issuer that fails to meet a provision of this part applicable to such plan or issuer is subject to a civil money penalty under this subsection.

(B) Liability for penalty

In the case of a failure by—

(i) a health insurance issuer, the issuer is liable for such penalty, or

(ii) a group health plan that is a non-Federal governmental plan which is—

(I) sponsored by 2 or more employers, the plan is liable for such penalty, or

(II) not so sponsored, the employer is liable for such penalty.

(C) Amount of penalty

####### (i) In general

The maximum amount of penalty imposed under this paragraph is $100 for each day for each individual with respect to which such a failure occurs.

####### (ii) Considerations in imposition

In determining the amount of any penalty to be assessed under this paragraph, the Secretary shall take into account the previous record of compliance of the entity being assessed with the applicable provisions of this part and the gravity of the violation.

####### (iii) Limitations

######## (I) Penalty not to apply where failure not discovered exercising reasonable diligence

No civil money penalty shall be imposed under this paragraph on any failure during any period for which it is established to the satisfaction of the Secretary that none of the entities against whom the penalty would be imposed knew, or exercising reasonable diligence would have known, that such failure existed.

######## (II) Penalty not to apply to failures corrected within 30 days

No civil money penalty shall be imposed under this paragraph on any failure if such failure was due to reasonable cause and not to willful neglect, and such failure is corrected during the 30-day period beginning on the first day any of the entities against whom the penalty would be imposed knew, or exercising reasonable diligence would have known, that such failure existed.

(D) Administrative review

####### (i) Opportunity for hearing

The entity assessed shall be afforded an opportunity for hearing by the Secretary upon request made within 30 days after the date of the issuance of a notice of assessment. In such hearing the decision shall be made on the record pursuant to section 554 of title 5. If no hearing is requested, the assessment shall constitute a final and unappealable order.

####### (ii) Hearing procedure

If a hearing is requested, the initial agency decision shall be made by an administrative law judge, and such decision shall become the final order unless the Secretary modifies or vacates the decision. Notice of intent to modify or vacate the decision of the administrative law judge shall be issued to the parties within 30 days after the date of the decision of the

judge. A final order which takes effect under this paragraph shall be subject to review only as provided under subparagraph (E).

(E) Judicial review

(i) Filing of action for review

Any entity against whom an order imposing a civil money penalty has been entered after an agency hearing under this paragraph may obtain review by the United States district court for any district in which such entity is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within 30 days from the date of such order, and simultaneously sending a copy of such notice by registered mail to the Secretary.

(ii) Certification of administrative record

The Secretary shall promptly certify and file in such court the record upon which the penalty was imposed.

(iii) Standard for review

The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

(iv) Appeal

Any final decision, order, or judgment of the district court concerning such review shall be subject to appeal as provided in chapter 83 of title 28.

(F) Failure to pay assessment; maintenance of action

(i) Failure to pay assessment

If any entity fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General who shall recover the amount assessed by action in the appropriate United States district court.

(ii) Nonreviewability

In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(G) Payment of penalties

Except as otherwise provided, penalties collected under this paragraph shall be paid to the Secretary (or other officer) imposing the penalty and shall be available without appropriation and until expended for the purpose of enforcing the provisions with respect to which the penalty was imposed.

(July 1, 1944, ch. 373, title XXVII, § 2722, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1968.)

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

§ 300gg–23. Preemption; State flexibility; construction

(a) Continued applicability of State law with respect to health insurance issuers

(1) In general

Subject to paragraph (2) and except as provided in subsection (b) of this section, this part and part C of this subchapter insofar as it relates to this part shall not be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement of this part.

(2) Continued preemption with respect to group health plans

Nothing in this part shall be construed to affect or modify the provisions of section 1144 of title 29 with respect to group health plans.

(b) Special rules in case of portability requirements

(1) In general

Subject to paragraph (2), the provisions of this part relating to health insurance coverage offered by a health insurance issuer supersede any provision of State law which establishes, implements, or continues in effect a standard or requirement applicable to imposition of a preexisting condition exclusion specifically governed by section 300gg of this title[1] which differs from the standards or requirements specified in such section.

(2) Exceptions

Only in relation to health insurance coverage offered by a health insurance issuer, the provisions of this part do not supersede any provision of State law to the extent that such provision—

(i) substitutes for the reference to ''6-month period'' in section 300gg(a)(1) of this title a reference to any shorter period of time;

(ii) substitutes for the reference to ''12 months'' and ''18 months'' in section 300gg(a)(2) of this title a reference to any shorter period of time;

(iii) substitutes for the references to ''63'' days in sections 300gg(c)(2)(A) and 300gg(d)(4)(A)[2] of this title a reference to any greater number of days;

(iv) substitutes for the reference to ''30-day period'' in sections 300gg(b)(2) and 300gg(d)(1) of this title a reference to any greater period;

(v) prohibits the imposition of any preexisting condition exclusion in cases not described in section 300gg(d) of this title or expands the exceptions described in such section;

(vi) requires special enrollment periods in addition to those required under section 300gg(f) of this title; or

[1] See References in Text note below.

[2] So in original. Probably should be ''300gg(d)(4)''.

(vii) reduces the maximum period permitted in an affiliation period under section 300gg(g)(1)(B) of this title.

(c) Rules of construction

Nothing in this part (other than section 300gg–4 of this title) shall be construed as requiring a group health plan or health insurance coverage to provide specific benefits under the terms of such plan or coverage.

(d) Definitions

For purposes of this section—

(1) State law

The term ''State law'' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) State

The term ''State'' includes a State (including the Northern Mariana Islands), any political subdivisions of a State or such Islands, or any agency or instrumentality of either.

(July 1, 1944, ch. 373, title XXVII, § 2723, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1971; amended Pub. L. 104–204, title VI, § 604(b)(2), Sept. 26, 1996, 110 Stat. 2941.)

REFERENCES IN TEXT

Section 300gg of this title, referred to in subsec. (b)(1), was in the original ''section 701'' and was translated as reading ''section 2701'' meaning section 2701 of act July 1, 1944, as added by Pub. L. 104–191, § 102(a), to reflect the probable intent of Congress.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–204 inserted ''(other than section 300gg–4 of this title)'' after ''part''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–204 applicable with respect to group health plans for plan years beginning on or after Jan. 1, 1998, see section 604(c) of Pub. L. 104–204 set out as an Effective Date note under section 300gg–4 of this title.

EFFECTIVE DATE

Section applicable with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, except as otherwise provided, see section 102(c) of Pub. L. 104–191, set out as a note under section 300gg of this title.

PART B—INDIVIDUAL MARKET RULES

SUBPART 1—PORTABILITY, ACCESS, AND RENEWABILITY REQUIREMENTS

§ 300gg–41. Guaranteed availability of individual health insurance coverage to certain individuals with prior group coverage

(a) Guaranteed availability

(1) In general

Subject to the succeeding subsections of this section and section 300gg–44 of this title, each health insurance issuer that offers health insurance coverage (as defined in section 300gg–91(b)(1) of this title) in the individual market in a State may not, with respect to an eligible individual (as defined in subsection (b) of this section) desiring to enroll in individual health insurance coverage—

(A) decline to offer such coverage to, or deny enrollment of, such individual; or

(B) impose any preexisting condition exclusion (as defined in section 300gg(b)(1)(A) of this title) with respect to such coverage.

(2) Substitution by State of acceptable alternative mechanism

The requirement of paragraph (1) shall not apply to health insurance coverage offered in the individual market in a State in which the State is implementing an acceptable alternative mechanism under section 300gg–44 of this title.

(b) "Eligible individual" defined

In this part, the term ''eligible individual'' means an individual—

(1)(A) for whom, as of the date on which the individual seeks coverage under this section, the aggregate of the periods of creditable coverage (as defined in section 300gg(c) of this title) is 18 or more months and (B) whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan (or health insurance coverage offered in connection with any such plan);

(2) who is not eligible for coverage under (A) a group health plan, (B) part A or part B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395j et seq.], or (C) a State plan under title XIX of such Act [42 U.S.C. 1396 et seq.] (or any successor program), and does not have other health insurance coverage;

(3) with respect to whom the most recent coverage within the coverage period described in paragraph (1)(A) was not terminated based on a factor described in paragraph (1) or (2) of section 300gg–12(b) of this title (relating to nonpayment of premiums or fraud);

(4) if the individual had been offered the option of continuation coverage under a COBRA continuation provision or under a similar State program, who elected such coverage; and

(5) who, if the individual elected such continuation coverage, has exhausted such continuation coverage under such provision or program.

(c) Alternative coverage permitted where no State mechanism

(1) In general

In the case of health insurance coverage offered in the individual market in a State in which the State is not implementing an acceptable alternative mechanism under section 300gg–44 of this title, the health insurance issuer may elect to limit the coverage offered under subsection (a) of this section so long as it offers at least two different policy forms of health insurance coverage both of which—

(A) are designed for, made generally available to, and actively marketed to, and enroll both eligible and other individuals by the issuer; and

(B) meet the requirement of paragraph (2) or (3), as elected by the issuer.

For purposes of this subsection, policy forms which have different cost-sharing arrangements or different riders shall be considered to be different policy forms.

(2) Choice of most popular policy forms

The requirement of this paragraph is met, for health insurance coverage policy forms offered by an issuer in the individual market, if the issuer offers the policy forms for individual health insurance coverage with the largest, and next to largest, premium volume of all such policy forms offered by the issuer in the State or applicable marketing or service area (as may be prescribed in regulation) by the issuer in the individual market in the period involved.

(3) Choice of 2 policy forms with representative coverage

(A) In general

The requirement of this paragraph is met, for health insurance coverage policy forms offered by an issuer in the individual market, if the issuer offers a lower-level coverage policy form (as defined in subparagraph (B)) and a higher-level coverage policy form (as defined in subparagraph (C)) each of which includes benefits substantially similar to other individual health insurance coverage offered by the issuer in that State and each of which is covered under a method described in section 300gg–44(c)(3)(A) of this title (relating to risk adjustment, risk spreading, or financial subsidization).

(B) Lower-level of coverage described

A policy form is described in this subparagraph if the actuarial value of the benefits under the coverage is at least 85 percent but not greater than 100 percent of a weighted average (described in subparagraph (D)).

(C) Higher-level of coverage described

A policy form is described in this subparagraph if—

(i) the actuarial value of the benefits under the coverage is at least 15 percent greater than the actuarial value of the coverage described in subparagraph (B) offered by the issuer in the area involved; and

(ii) the actuarial value of the benefits under the coverage is at least 100 percent but not greater than 120 percent of a weighted average (described in subparagraph (D)).

(D) Weighted average

For purposes of this paragraph, the weighted average described in this subparagraph is the average actuarial value of the benefits provided by all the health insurance coverage issued (as elected by the issuer) either by that issuer or by all issuers in the State in the individual market during the previous year (not including coverage issued under this section), weighted by enrollment for the different coverage.

(4) Election

The issuer elections under this subsection shall apply uniformly to all eligible individuals in the State for that issuer. Such an election shall be effective for policies offered during a period of not shorter than 2 years.

(5) Assumptions

For purposes of paragraph (3), the actuarial value of benefits provided under individual health insurance coverage shall be calculated based on a standardized population and a set of standardized utilization and cost factors.

(d) Special rules for network plans

(1) In general

In the case of a health insurance issuer that offers health insurance coverage in the individual market through a network plan, the issuer may—

(A) limit the individuals who may be enrolled under such coverage to those who live, reside, or work within the service area for such network plan; and

(B) within the service area of such plan, deny such coverage to such individuals if the issuer has demonstrated, if required, to the applicable State authority that—

(i) it will not have the capacity to deliver services adequately to additional individual enrollees because of its obligations to existing group contract holders and enrollees and individual enrollees, and

(ii) it is applying this paragraph uniformly to individuals without regard to any health status-related factor of such individuals and without regard to whether the individuals are eligible individuals.

(2) 180-day suspension upon denial of coverage

An issuer, upon denying health insurance coverage in any service area in accordance with paragraph (1)(B), may not offer coverage in the individual market within such service area for a period of 180 days after such coverage is denied.

(e)[1] Application of financial capacity limits

(1) In general

A health insurance issuer may deny health insurance coverage in the individual market to an eligible individual if the issuer has demonstrated, if required, to the applicable State authority that—

(A) it does not have the financial reserves necessary to underwrite additional coverage; and

(B) it is applying this paragraph uniformly to all individuals in the individual market in the State consistent with applicable State law and without regard to any health status-related factor of such individuals and without regard to whether the individuals are eligible individuals.

(2) 180-day suspension upon denial of coverage

An issuer upon denying individual health insurance coverage in any service area in accordance with paragraph (1) may not offer such coverage in the individual market within such service area for a period of 180 days after the date such coverage is denied or until the issuer has demonstrated, if required under ap-

[1] So in original. Two subsecs. (e) have been enacted.

plicable State law, to the applicable State authority that the issuer has sufficient financial reserves to underwrite additional coverage, whichever is later. A State may provide for the application of this paragraph on a service-area-specific basis.

(e)[1] Market requirements

(1) In general

The provisions of subsection (a) of this section shall not be construed to require that a health insurance issuer offering health insurance coverage only in connection with group health plans or through one or more bona fide associations, or both, offer such health insurance coverage in the individual market.

(2) Conversion policies

A health insurance issuer offering health insurance coverage in connection with group health plans under this subchapter shall not be deemed to be a health insurance issuer offering individual health insurance coverage solely because such issuer offers a conversion policy.

(f) Construction

Nothing in this section shall be construed—

(1) to restrict the amount of the premium rates that an issuer may charge an individual for health insurance coverage provided in the individual market under applicable State law; or

(2) to prevent a health insurance issuer offering health insurance coverage in the individual market from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

(July 1, 1944, ch. 373, title XXVII, § 2741, as added Pub. L. 104–191, title I, § 111(a), Aug. 21, 1996, 110 Stat. 1978.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A and B of title XVIII of the Act are classified generally to parts A (§ 1395c et seq.) and B (§ 1395j et seq.) of subchapter XVIII of chapter 7 of this title. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

EFFECTIVE DATE

Section 111(b) of Pub. L. 104–191 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, part B of title XXVII of the Public Health Service Act [this part] (as inserted by subsection (a)) shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs.

''(2) APPLICATION OF CERTIFICATION RULES.—The provisions of section 102(d)(2) [102(c)(2)] of this Act [set out as a note under section 300gg of this title] shall apply to section 2743 of the Public Health Service Act [section 300gg–43 of this title] in the same manner as it applies to section 2701(e) of such Act [section 300gg(e) of this title].''

§ 300gg–42. Guaranteed renewability of individual health insurance coverage

(a) In general

Except as provided in this section, a health insurance issuer that provides individual health insurance coverage to an individual shall renew or continue in force such coverage at the option of the individual.

(b) General exceptions

A health insurance issuer may nonrenew or discontinue health insurance coverage of an individual in the individual market based only on one or more of the following:

(1) Nonpayment of premiums

The individual has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or the issuer has not received timely premium payments.

(2) Fraud

The individual has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage.

(3) Termination of plan

The issuer is ceasing to offer coverage in the individual market in accordance with subsection (c) of this section and applicable State law.

(4) Movement outside service area

In the case of a health insurance issuer that offers health insurance coverage in the market through a network plan, the individual no longer resides, lives, or works in the service area (or in an area for which the issuer is authorized to do business) but only if such coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals.

(5) Association membership ceases

In the case of health insurance coverage that is made available in the individual market only through one or more bona fide associations, the membership of the individual in the association (on the basis of which the coverage is provided) ceases but only if such coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals.

(c) Requirements for uniform termination of coverage

(1) Particular type of coverage not offered

In any case in which an issuer decides to discontinue offering a particular type of health insurance coverage offered in the individual market, coverage of such type may be discontinued by the issuer only if—

(A) the issuer provides notice to each covered individual provided coverage of this type in such market of such discontinuation at least 90 days prior to the date of the discontinuation of such coverage;

(B) the issuer offers to each individual in the individual market provided coverage of this type, the option to purchase any other individual health insurance coverage cur-

rently being offered by the issuer for individuals in such market; and

(C) in exercising the option to discontinue coverage of this type and in offering the option of coverage under subparagraph (B), the issuer acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for such coverage.

(2) Discontinuance of all coverage

(A) In general

Subject to subparagraph (C), in any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the individual market in a State, health insurance coverage may be discontinued by the issuer only if—

(i) the issuer provides notice to the applicable State authority and to each individual of such discontinuation at least 180 days prior to the date of the expiration of such coverage, and

(ii) all health insurance issued or delivered for issuance in the State in such market are discontinued and coverage under such health insurance coverage in such market is not renewed.

(B) Prohibition on market reentry

In the case of a discontinuation under subparagraph (A) in the individual market, the issuer may not provide for the issuance of any health insurance coverage in the market and State involved during the 5-year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed.

(d) Exception for uniform modification of coverage

At the time of coverage renewal, a health insurance issuer may modify the health insurance coverage for a policy form offered to individuals in the individual market so long as such modification is consistent with State law and effective on a uniform basis among all individuals with that policy form.

(e) Application to coverage offered only through associations

In applying this section in the case of health insurance coverage that is made available by a health insurance issuer in the individual market to individuals only through one or more associations, a reference to an ''individual'' is deemed to include a reference to such an association (of which the individual is a member).

(July 1, 1944, ch. 373, title XXVII, §2742, as added Pub. L. 104–191, title I, §111(a), Aug. 21, 1996, 110 Stat. 1982.)

EFFECTIVE DATE

Section applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs, see section 111(b) of Pub. L. 104–191, set out as a note under section 300gg–41 of this title.

§ 300gg–43. Certification of coverage

The provisions of section 300gg(e) of this title shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

(July 1, 1944, ch. 373, title XXVII, §2743, as added Pub. L. 104–191, title I, §111(a), Aug. 21, 1996, 110 Stat. 1983.)

EFFECTIVE DATE

Section applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs, and provisions of section 102(c)(2) of Pub. L. 104–191, set out as a note under section 300gg of this title, applicable to this section in the same manner as it applies to section 300gg(e) of this title, see section 111(b) of Pub. L. 104–191, set out as a note under section 300gg–41 of this title.

§ 300gg–44. State flexibility in individual market reforms

(a) Waiver of requirements where implementation of acceptable alternative mechanism

(1) In general

The requirements of section 300gg–41 of this title shall not apply with respect to health insurance coverage offered in the individual market in the State so long as a State is found to be implementing, in accordance with this section and consistent with section 300gg–62(b) of this title, an alternative mechanism (in this section referred to as an ''acceptable alternative mechanism'')—

(A) under which all eligible individuals are provided a choice of health insurance coverage;

(B) under which such coverage does not impose any preexisting condition exclusion with respect to such coverage;

(C) under which such choice of coverage includes at least one policy form of coverage that is comparable to comprehensive health insurance coverage offered in the individual market in such State or that is comparable to a standard option of coverage available under the group or individual health insurance laws of such State; and

(D) in a State which is implementing—

(i) a model act described in subsection (c)(1) of this section,

(ii) a qualified high risk pool described in subsection (c)(2) of this section, or

(iii) a mechanism described in subsection (c)(3) of this section.

(2) Permissible forms of mechanisms

A private or public individual health insurance mechanism (such as a health insurance coverage pool or programs, mandatory group conversion policies, guaranteed issue of one or more plans of individual health insurance coverage, or open enrollment by one or more health insurance issuers), or combination of such mechanisms, that is designed to provide access to health benefits for individuals in the individual market in the State in accordance with this section may constitute an acceptable alternative mechanism.

(b) Application of acceptable alternative mechanisms

(1) Presumption

(A) In general

Subject to the succeeding provisions of this subsection, a State is presumed to be implementing an acceptable alternative mechanism in accordance with this section as of July 1, 1997, if, by not later than April 1, 1997, the chief executive officer of a State—

(i) notifies the Secretary that the State has enacted or intends to enact (by not later than January 1, 1998, or July 1, 1998, in the case of a State described in subparagraph (B)(ii)) any necessary legislation to provide for the implementation of a mechanism reasonably designed to be an acceptable alternative mechanism as of January 1, 1998,[1] (or, in the case of a State described in subparagraph (B)(ii), July 1, 1998); and

(ii) provides the Secretary with such information as the Secretary may require to review the mechanism and its implementation (or proposed implementation) under this subsection.

(B) Delay permitted for certain States

(i) Effect of delay

In the case of a State described in clause (ii) that provides notice under subparagraph (A)(i), for the presumption to continue on and after July 1, 1998, the chief executive officer of the State by April 1, 1998—

(I) must notify the Secretary that the State has enacted any necessary legislation to provide for the implementation of a mechanism reasonably designed to be an acceptable alternative mechanism as of July 1, 1998; and

(II) must provide the Secretary with such information as the Secretary may require to review the mechanism and its implementation (or proposed implementation) under this subsection.

(ii) States described

A State described in this clause is a State that has a legislature that does not meet within the 12-month period beginning on August 21, 1996.

(C) Continued application

In order for a mechanism to continue to be presumed to be an acceptable alternative mechanism, the State shall provide the Secretary every 3 years with information described in subparagraph (A)(ii) or (B)(i)(II) (as the case may be).

(2) Notice

If the Secretary finds, after review of information provided under paragraph (1) and in consultation with the chief executive officer of the State and the insurance commissioner or chief insurance regulatory official of the State, that such a mechanism is not an acceptable alternative mechanism or is not (or no longer) being implemented, the Secretary—

(A) shall notify the State of—

(i) such preliminary determination, and

(ii) the consequences under paragraph (3) of a failure to implement such a mechanism; and

(B) shall permit the State a reasonable opportunity in which to modify the mechanism (or to adopt another mechanism) in a manner so that may be an acceptable alternative mechanism or to provide for implementation of such a mechanism.

(3) Final determination

If, after providing notice and opportunity under paragraph (2), the Secretary finds that the mechanism is not an acceptable alternative mechanism or the State is not implementing such a mechanism, the Secretary shall notify the State that the State is no longer considered to be implementing an acceptable alternative mechanism and that the requirements of section 300gg–41 of this title shall apply to health insurance coverage offered in the individual market in the State, effective as of a date specified in the notice.

(4) Limitation on secretarial authority

The Secretary shall not make a determination under paragraph (2) or (3) on any basis other than the basis that a mechanism is not an acceptable alternative mechanism or is not being implemented.

(5) Future adoption of mechanisms

If a State, after January 1, 1997, submits the notice and information described in paragraph (1), unless the Secretary makes a finding described in paragraph (3) within the 90-day period beginning on the date of submission of the notice and information, the mechanism shall be considered to be an acceptable alternative mechanism for purposes of this section, effective 90 days after the end of such period, subject to the second sentence of paragraph (1).

(c) Provision related to risk

(1) Adoption of NAIC models

The model act referred to in subsection (a)(1)(D)(i) of this section is the Small Employer and Individual Health Insurance Availability Model Act (adopted by the National Association of Insurance Commissioners on June 3, 1996) insofar as it applies to individual health insurance coverage or the Individual Health Insurance Portability Model Act (also adopted by such Association on such date).

(2) Qualified high risk pool

For purposes of subsection (a)(1)(D)(ii) of this section, a ''qualified high risk pool'' described in this paragraph is a high risk pool that—

(A) provides to all eligible individuals health insurance coverage (or comparable coverage) that does not impose any preexisting condition exclusion with respect to such coverage for all eligible individuals, and

(B) provides for premium rates and covered benefits for such coverage consistent with standards included in the NAIC Model

[1] So in original. The comma probably should not appear.

Health Plan for Uninsurable Individuals Act (as in effect as of August 21, 1996).

(3) Other mechanisms

For purposes of subsection (a)(1)(D)(iii) of this section, a mechanism described in this paragraph—

(A) provides for risk adjustment, risk spreading, or a risk spreading mechanism (among issuers or policies of an issuer) or otherwise provides for some financial subsidization for eligible individuals, including through assistance to participating issuers; or

(B) is a mechanism under which each eligible individual is provided a choice of all individual health insurance coverage otherwise available.

(July 1, 1944, ch. 373, title XXVII, § 2744, as added Pub. L. 104–191, title I, § 111(a), Aug. 21, 1996, 110 Stat. 1984; amended Pub. L. 104–204, title VI, § 605(b)(1), Sept. 26, 1996, 110 Stat. 2942.)

CODIFICATION

August 21, 1996, referred to in subsec. (b)(1)(B)(ii), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 104–191, which enacted this subchapter, to reflect the probable intent of Congress.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–204 made technical amendment to reference in original act which appears in text as reference to section 300gg–62(b) of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 605(c) of Pub. L. 104–204 provided that: ''The amendments made by this section [enacting section 300gg–51 of this title and amending this section and sections 300gg–61 and 300gg–62 of this title] shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after January 1, 1998.''

EFFECTIVE DATE

Section applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs, see section 111(b) of Pub. L. 104–191, set out as a note under section 300gg–41 of this title.

§ 300gg–45. Promotion of qualified high risk pools

(a) Seed grants to States

The Secretary shall provide from the funds appropriated under subsection (c)(1) of this section a grant of up to $1,000,000 to each State that has not created a qualified high risk pool as of August 6, 2002, for the State's costs of creation and initial operation of such a pool.

(b) Matching funds for operation of pools

(1) In general

In the case of a State that has established a qualified high risk pool that—

(A) restricts premiums charged under the pool to no more than 150 percent of the premium for applicable standard risk rates;

(B) offers a choice of two or more coverage options through the pool; and

(C) has in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State after the end of fiscal year 2004 in connection with operation of the pool;

the Secretary shall provide, from the funds appropriated under subsection (c)(2) of this section and allotted to the State under paragraph (2), a grant of up to 50 percent of the losses incurred by the State in connection with the operation of the pool.

(2) Allotment

The amounts appropriated under subsection (c)(2) of this section for a fiscal year shall be made available to the States in accordance with a formula that is based upon the number of uninsured individuals in the States.

(c) Funding

Out of any money in the Treasury of the United States not otherwise appropriated, there are authorized and appropriated—

(1) $20,000,000 for fiscal year 2003 to carry out subsection (a) of this section; and

(2) $40,000,000 for each of fiscal years 2003 and 2004 to carry out subsection (b) of this section.

Funds appropriated under this subsection for a fiscal year shall remain available for obligation through the end of the following fiscal year. Nothing in this section shall be construed as providing a State with an entitlement to a grant under this section.

(d) Qualified high risk pool and State defined

For purposes of this section, the term ''qualified high risk pool'' has the meaning given such term in section 300gg–44(c)(2) of this title and the term ''State'' means any of the 50 States and the District of Columbia.

(July 1, 1944, ch. 373, title XXVII, § 2745, as added Pub. L. 107–210, div. A, title II, § 201(b), Aug. 6, 2002, 116 Stat. 959.)

CONSTRUCTION

Nothing in the amendments made by title II of Pub. L. 107–210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating a new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a Construction of 2002 Amendment note under section 2918 of Title 29, Labor.

SUBPART 2—OTHER REQUIREMENTS

CODIFICATION

This subpart was, in the original, subpart 3 of part B of title XXVII of act July 1, 1944, and has been redesignated as subpart 2 for purposes of codification. Another subpart 3 of part B of title XXVII of act July 1, 1944, is classified to subpart 3 (§ 300gg–61 et seq.) of part B of this subchapter.

§ 300gg–51. Standards relating to benefits for mothers and newborns

(a) In general

The provisions of section 300gg–4 of this title (other than subsections (d) and (f)) shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

(b) Notice requirement

A health insurance issuer under this part shall comply with the notice requirement under section 1185(d) of title 29 with respect to the requirements referred to in subsection (a) of this section as if such section applied to such issuer and such issuer were a group health plan.

(c) Preemption; exception for health insurance coverage in certain States

(1) In general

The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 300gg–23(d)(1) of this title) for a State that regulates such coverage that is described in any of the following subparagraphs:

(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a normal vaginal delivery and at least a 96-hour hospital length of stay following a cesarean section.

(B) Such State law requires such coverage to provide for maternity and pediatric care in accordance with guidelines established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, or other established professional medical associations.

(C) Such State law requires, in connection with such coverage for maternity care, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the mother.

(2) Construction

Section 300gg–62(a) of this title shall not be construed as superseding a State law described in paragraph (1).

(July 1, 1944, ch. 373, title XXVII, § 2751, as added Pub. L. 104–204, title VI, § 605(a)(4), Sept. 26, 1996, 110 Stat. 2941.)

EFFECTIVE DATE

Section applicable to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after Jan. 1, 1998, see section 605(c) of Pub. L. 104–204, set out as an Effective Date of 1996 Amendment note under section 300gg–44 of this title.

§ 300gg–52. Required coverage for reconstructive surgery following mastectomies

The provisions of section 300gg–6 of this title shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as they apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

(July 1, 1944, ch. 373, title XXVII, § 2752, as added Pub. L. 105–277, div. A, § 101(f) [title IX, § 903(b)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–438.)

EFFECTIVE DATE

Pub. L. 105–277, div. A, § 101(f) [title IX, § 903(c)(2)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–438, provided that: ''The amendment made by subsection (b) [enacting this section] shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after the date of enactment of this Act [Oct. 21, 1998].''

SUBPART 3—GENERAL PROVISIONS

CODIFICATION

Another subpart 3 of part B of title XXVII of act July 1, 1944, is classified to subpart 3 (§ 300gg–51) of part B of this subchapter.

§ 300gg–61. Enforcement

(a) State enforcement

(1) State authority

Subject to section 300gg–62 of this title, each State may require that health insurance issuers that issue, sell, renew, or offer health insurance coverage in the State in the individual market meet the requirements established under this part with respect to such issuers.

(2) Failure to implement requirements

In the case of a State that fails to substantially enforce the requirements set forth in this part with respect to health insurance issuers in the State, the Secretary shall enforce the requirements of this part under subsection (b) of this section insofar as they relate to the issuance, sale, renewal, and offering of health insurance coverage in the individual market in such State.

(b) Secretarial enforcement authority

The Secretary shall have the same authority in relation to enforcement of the provisions of this part with respect to issuers of health insurance coverage in the individual market in a State as the Secretary has under section 300gg–22(b)(2) of this title in relation to the enforcement of the provisions of part A of this subchapter with respect to issuers of health insurance coverage in the small group market in the State.

(July 1, 1944, ch. 373, title XXVII, § 2761, formerly § 2745, as added Pub. L. 104–191, title I, § 111(a), Aug. 21, 1996, 110 Stat. 1986; renumbered § 2761 and amended Pub. L. 104–204, title VI, § 605(a)(2), (b)(2), Sept. 26, 1996, 110 Stat. 2941, 2942.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–204 made technical amendment to reference in original act which appears in text as reference to section 300gg–62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–204 applicable to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after Jan. 1, 1998, see section 605(c) of Pub. L. 104–204, set out as a note under section 300gg–44 of this title.

EFFECTIVE DATE

Section applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs, see section 111(b) of Pub. L. 104–191, set out as a note under section 300gg–41 of this title.

§ 300gg–62. Preemption

(a) In general

Subject to subsection (b) of this section, nothing in this part (or part C of this subchapter in-

sofar as it applies to this part) shall be construed to prevent a State from establishing, implementing, or continuing in effect standards and requirements unless such standards and requirements prevent the application of a requirement of this part.

(b) Rules of construction

(1) Nothing in this part (or part C of this subchapter insofar as it applies to this part) shall be construed to affect or modify the provisions of section 1144 of title 29.

(2) Nothing in this part (other than section 300gg–51 of this title) shall be construed as requiring health insurance coverage offered in the individual market to provide specific benefits under the terms of such coverage.

(July 1, 1944, ch. 373, title XXVII, § 2762, formerly § 2746, as added Pub. L. 104–191, title I, § 111(a), Aug. 21, 1996, 110 Stat. 1987; renumbered § 2762 and amended, Pub. L. 104–204, title VI, § 605(a)(2), (b)(3), Sept. 26, 1996, 110 Stat. 2941, 2942.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–204, § 605(b)(3), designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–204 applicable to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after Jan. 1, 1998, see section 605(c) of Pub. L. 104–204, set out as a note under section 300gg–44 of this title.

EFFECTIVE DATE

Section applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs, see section 111(b) of Pub. L. 104–191, set out as a note under section 300gg–41 of this title.

§ 300gg–63. General exceptions

(a) Exception for certain benefits

The requirements of this part shall not apply to any health insurance coverage in relation to its provision of excepted benefits described in section 300gg–91(c)(1) of this title.

(b) Exception for certain benefits if certain conditions met

The requirements of this part shall not apply to any health insurance coverage in relation to its provision of excepted benefits described in paragraph (2), (3), or (4) of section 300gg–91(c) of this title if the benefits are provided under a separate policy, certificate, or contract of insurance.

(July 1, 1944, ch. 373, title XXVII, § 2763, formerly § 2747, as added Pub. L. 104–191, title I, § 111(a), Aug. 21, 1996, 110 Stat. 1987; renumbered § 2763, Pub. L. 104–204, title VI, § 605(a)(2), Sept. 26, 1996, 110 Stat. 2941.)

EFFECTIVE DATE

Section applicable with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997, regardless of when a period of creditable coverage occurs, see section 111(b) of Pub. L. 104–191, set out as a note under section 300gg–41 of this title.

PART C—DEFINITIONS; MISCELLANEOUS PROVISIONS

§ 300gg–91. Definitions

(a) Group health plan

(1) Definition

The term ''group health plan'' means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(1)]) to the extent that the plan provides medical care (as defined in paragraph (2)) and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

(2) Medical care

The term ''medical care'' means amounts paid for—

(A) the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body,

(B) amounts paid for transportation primarily for and essential to medical care referred to in subparagraph (A), and

(C) amounts paid for insurance covering medical care referred to in subparagraphs (A) and (B).

(3) Treatment of certain plans as group health plan for notice provision

A program under which creditable coverage described in subparagraph (C), (D), (E), or (F) of section 300gg(c)(1) of this title is provided shall be treated as a group health plan for purposes of applying section 300gg(e) of this title.

(b) Definitions relating to health insurance

(1) Health insurance coverage

The term ''health insurance coverage'' means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

(2) Health insurance issuer

The term ''health insurance issuer'' means an insurance company, insurance service, or insurance organization (including a health maintenance organization, as defined in paragraph (3)) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1144(b)(2)]). Such term does not include a group health plan.

(3) Health maintenance organization

The term ''health maintenance organization'' means—

(A) a Federally qualified health maintenance organization (as defined in section 300e(a) of this title),

(B) an organization recognized under State law as a health maintenance organization, or

(C) a similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization.

(4) Group health insurance coverage

The term ''group health insurance coverage'' means, in connection with a group health plan, health insurance coverage offered in connection with such plan.

(5) Individual health insurance coverage

The term ''individual health insurance coverage'' means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance.

(c) Excepted benefits

For purposes of this subchapter, the term ''excepted benefits'' means benefits under one or more (or any combination thereof) of the following:

(1) Benefits not subject to requirements

(A) Coverage only for accident, or disability income insurance, or any combination thereof.

(B) Coverage issued as a supplement to liability insurance.

(C) Liability insurance, including general liability insurance and automobile liability insurance.

(D) Workers' compensation or similar insurance.

(E) Automobile medical payment insurance.

(F) Credit-only insurance.

(G) Coverage for on-site medical clinics.

(H) Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(2) Benefits not subject to requirements if offered separately

(A) Limited scope dental or vision benefits.

(B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

(C) Such other similar, limited benefits as are specified in regulations.

(3) Benefits not subject to requirements if offered as independent, noncoordinated benefits

(A) Coverage only for a specified disease or illness.

(B) Hospital indemnity or other fixed indemnity insurance.

(4) Benefits not subject to requirements if offered as separate insurance policy

Medicare supplemental health insurance (as defined under section 1395ss(g)(1) of this title), coverage supplemental to the coverage provided under chapter 55 of title 10, and similar supplemental coverage provided to coverage under a group health plan.

(d) Other definitions

(1) Applicable State authority

The term ''applicable State authority'' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of this subchapter for the State involved with respect to such issuer.

(2) Beneficiary

The term ''beneficiary'' has the meaning given such term under section 3(8) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(8)].

(3) Bona fide association

The term ''bona fide association'' means, with respect to health insurance coverage offered in a State, an association which—

(A) has been actively in existence for at least 5 years;

(B) has been formed and maintained in good faith for purposes other than obtaining insurance;

(C) does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee);

(D) makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to such members (or individuals eligible for coverage through a member);

(E) does not make health insurance coverage offered through the association available other than in connection with a member of the association; and

(F) meets such additional requirements as may be imposed under State law.

(4) COBRA continuation provision

The term ''COBRA continuation provision'' means any of the following:

(A) Section 4980B of title 26, other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines.

(B) Part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1161 et seq.], other than section 609 of such Act [29 U.S.C. 1169].

(C) Subchapter XX of this chapter.

(5) Employee

The term ''employee'' has the meaning given such term under section 3(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(6)].

(6) Employer

The term ''employer'' has the meaning given such term under section 3(5) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(5)], except that such term shall include only employers of two or more employees.

(7) Church plan

The term ''church plan'' has the meaning given such term under section 3(33) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(33)].

(8) Governmental plan

(A) The term ''governmental plan'' has the meaning given such term under section 3(32) of

the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(32)] and any Federal governmental plan.

(B) FEDERAL GOVERNMENTAL PLAN.—The term ''Federal governmental plan'' means a governmental plan established or maintained for its employees by the Government of the United States or by any agency or instrumentality of such Government.

(C) NON-FEDERAL GOVERNMENTAL PLAN.—The term ''non-Federal governmental plan'' means a governmental plan that is not a Federal governmental plan.

(9) Health status-related factor

The term ''health status-related factor'' means any of the factors described in section 300gg–1(a)(1) of this title.

(10) Network plan

The term ''network plan'' means health insurance coverage of a health insurance issuer under which the financing and delivery of medical care (including items and services paid for as medical care) are provided, in whole or in part, through a defined set of providers under contract with the issuer.

(11) Participant

The term ''participant'' has the meaning given such term under section 3(7) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(7)].

(12) Placed for adoption defined

The term ''placement'', or being ''placed'', for adoption, in connection with any placement for adoption of a child with any person, means the assumption and retention by such person of a legal obligation for total or partial support of such child in anticipation of adoption of such child. The child's placement with such person terminates upon the termination of such legal obligation.

(13) Plan sponsor

The term ''plan sponsor'' has the meaning given such term under section 3(16)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(16)(B)].

(14) State

The term ''State'' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(e) Definitions relating to markets and small employers

For purposes of this subchapter:

(1) Individual market

(A) In general

The term ''individual market'' means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

(B) Treatment of very small groups

(i) In general

Subject to clause (ii), such terms[1] includes coverage offered in connection with a group health plan that has fewer than two participants as current employees on the first day of the plan year.

(ii) State exception

Clause (i) shall not apply in the case of a State that elects to regulate the coverage described in such clause as coverage in the small group market.

(2) Large employer

The term ''large employer'' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

(3) Large group market

The term ''large group market'' means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a large employer.

(4) Small employer

The term ''small employer'' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

(5) Small group market

The term ''small group market'' means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer.

(6) Application of certain rules in determination of employer size

For purposes of this subsection—

(A) Application of aggregation rule for employers

all[2] persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 of title 26 shall be treated as 1 employer.

(B) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small or large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(C) Predecessors

Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

[1] So in original. Probably should be ''term''.

[2] So in original. Probably should be capitalized.

(July 1, 1944, ch. 373, title XXVII, § 2791, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1972.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(4)(B), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 6 of subtitle B of title I of the Act is classified generally to part 6 (§ 1161 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

§ 300gg–92. Regulations

The Secretary, consistent with section 104 of the Health Care Portability and Accountability Act of 1996, may promulgate such regulations as may be necessary or appropriate to carry out the provisions of this subchapter. The Secretary may promulgate any interim final rules as the Secretary determines are appropriate to carry out this subchapter.

(July 1, 1944, ch. 373, title XXVII, § 2792, as added Pub. L. 104–191, title I, § 102(a), Aug. 21, 1996, 110 Stat. 1976.)

REFERENCES IN TEXT

Section 104 of the Health Care Portability and Accountability Act of 1996, referred to in text, probably means section 104 of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, set out below.

ASSURING COORDINATION AMONG DEPARTMENTS OF TREASURY, HEALTH AND HUMAN SERVICES, AND LABOR

Section 104 of Pub. L. 104–191 provided that: ''The Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

''(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which two or more such Secretaries have responsibility under this subtitle [subtitle A (§§ 101–104) of title I of Pub. L. 104–191, enacting this section, sections 300gg, 300gg–1, 300gg–11 to 300gg–13, 300gg–21 to 300gg–23, and 300gg–91 of this title, and sections 1181 to 1183 and 1191 to 1191c of Title 29, Labor, amending sections 300e and 300bb–8 of this title and sections 1003, 1021, 1022, 1024, 1132, 1136, and 1144 of Title 29, and enacting provisions set out as notes under section 300gg of this title and section 1181 of Title 29] (and the amendments made by this subtitle and section 401 [enacting sections 9801 to 9806 of Title 26, Internal Revenue Code]) are administered so as to have the same effect at all times; and

''(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.''

SUBCHAPTER XXVI—NATIONAL PREPAREDNESS FOR BIOTERRORISM AND OTHER PUBLIC HEALTH EMERGENCIES

PART A—NATIONAL PREPAREDNESS AND RESPONSE PLANNING, COORDINATING, AND REPORTING

§ 300hh. National preparedness plan

(a) In general

(1) Preparedness and response regarding public health emergencies

The Secretary shall further develop and implement a coordinated strategy, building upon the core public health capabilities established pursuant to section 247d–1 of this title, for carrying out health-related activities to prepare for and respond effectively to bioterrorism and other public health emergencies, including the preparation of a plan under this section. The Secretary shall periodically thereafter review and, as appropriate, revise the plan.

(2) National approach

In carrying out paragraph (1), the Secretary shall collaborate with the States toward the goal of ensuring that the activities of the Secretary regarding bioterrorism and other public health emergencies are coordinated with activities of the States, including local governments.

(3) Evaluation of progress

The plan under paragraph (1) shall provide for specific benchmarks and outcome measures for evaluating the progress of the Secretary and the States, including local governments, with respect to the plan under paragraph (1), including progress toward achieving the goals specified in subsection (b) of this section.

(b) Preparedness goals

The plan under subsection (a) of this section should include provisions in furtherance of the following:

(1) Providing effective assistance to State and local governments in the event of bioterrorism or other public health emergency.

(2) Ensuring that State and local governments have appropriate capacity to detect and respond effectively to such emergencies, including capacities for the following:

(A) Effective public health surveillance and reporting mechanisms at the State and local levels.

(B) Appropriate laboratory readiness.

(C) Properly trained and equipped emergency response, public health, and medical personnel.

(D) Health and safety protection of workers responding to such an emergency.

(E) Public health agencies that are prepared to coordinate health services (including mental health services) during and after such emergencies.

(F) Participation in communications networks that can effectively disseminate relevant information in a timely and secure manner to appropriate public and private entities and to the public.

(3) Developing and maintaining medical countermeasures (such as drugs, vaccines and other biological products, medical devices, and other supplies) against biological agents and toxins that may be involved in such emergencies.

(4) Ensuring coordination and minimizing duplication of Federal, State, and local planning, preparedness, and response activities, including during the investigation of a suspicious disease outbreak or other potential public health emergency.

(5) Enhancing the readiness of hospitals and other health care facilities to respond effectively to such emergencies.

(c) Reports to Congress

(1) In general

Not later than one year after June 12, 2002, and biennially thereafter, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, a report concerning progress with respect to the plan under subsection (a) of this section, including progress toward achieving the goals specified in subsection (b) of this section.

(2) Additional authority

Reports submitted under paragraph (1) by the Secretary (other than the first report) shall make recommendations concerning—

(A) any additional legislative authority that the Secretary determines is necessary for fully implementing the plan under subsection (a) of this section, including meeting the goals under subsection (b) of this section; and

(B) any additional legislative authority that the Secretary determines is necessary under section 247d of this title to protect the public health in the event of an emergency described in section 247d(a) of this title.

(d) Rule of construction

This section may not be construed as expanding or limiting any of the authorities of the Secretary that, on the day before June 12, 2002, were in effect with respect to preparing for and responding effectively to bioterrorism and other public health emergencies.

(July 1, 1944, ch. 373, title XXVIII, §2801, as added Pub. L. 107–188, title I, §101(a), June 12, 2002, 116 Stat. 596.)

GOVERNMENT ACCOUNTABILITY OFFICE REPORT

Pub. L. 107–188, title I, §157, June 12, 2002, 116 Stat. 633, provided that:

''(a) IN GENERAL [sic].—The Comptroller General shall submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Appropriations of the Senate, and to the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives, a report that describes—

''(1) Federal activities primarily related to research on, preparedness for, and the management of the public health and medical consequences of a bioterrorist attack against the civilian population;

''(2) the coordination of the activities described in paragraph (1);

''(3) the effectiveness of such efforts in preparing national, State, and local authorities to address the public health and medical consequences of a potential bioterrorist attack against the civilian population;

''(4) the activities and costs of the Civil Support Teams of the National Guard in responding to biological threats or attacks against the civilian population;

''(5) the activities of the working group under subsection (a) and the efforts made by such group to carry out the activities described in such subsection; and

''(6) the ability of private sector contractors to enhance governmental responses to biological threats or attacks.''

PART B—EMERGENCY PREPAREDNESS AND RESPONSE

§ 300hh–11. Coordination of preparedness for and response to bioterrorism and other public health emergencies

(a) Assistant Secretary for Public Health Emergency Preparedness

(1) In general

There is established within the Department of Health and Human Services the position of Assistant Secretary for Public Health Emergency Preparedness. The President shall appoint an individual to serve in such position. Such Assistant Secretary shall report to the Secretary.

(2) Duties

Subject to the authority of the Secretary, the Assistant Secretary for Public Health Emergency Preparedness shall carry out the following duties with respect to bioterrorism and other public health emergencies:

(A) Coordinate on behalf of the Secretary—

(i) interagency interfaces between the Department of Health and Human Services (referred to in this paragraph as the ''Department'') and other departments, agencies, and offices of the United States; and

(ii) interfaces between the Department and State and local entities with responsibility for emergency preparedness.

(B) Coordinate the operations of the National Disaster Medical System and any other emergency response activities within the Department of Health and Human Services that are related to bioterrorism and other public health emergencies.

(C) Coordinate the efforts of the Department to bolster State and local emergency preparedness for a bioterrorist attack or other public health emergency, and evaluate the progress of such entities in meeting the benchmarks and other outcome measures contained in the national plan and in meeting the core public health capabilities established pursuant to 247d–1[1] of this title.

(D) Any other duties determined appropriate by the Secretary.

(b) National Disaster Medical System

(1) In general

The Secretary shall provide for the operation in accordance with this section of a sys-

[1] So in original. Probably should be preceded by ''section''.

tem to be known as the National Disaster Medical System. The Secretary shall designate the Assistant Secretary for Public Health Emergency Preparedness as the head of the National Disaster Medical System, subject to the authority of the Secretary.

(2) Federal and State collaborative System

(A) In general

The National Disaster Medical System shall be a coordinated effort by the Federal agencies specified in subparagraph (B), working in collaboration with the States and other appropriate public or private entities, to carry out the purposes described in paragraph (3).

(B) Participating Federal agencies

The Federal agencies referred to in subparagraph (A) are the Department of Health and Human Services, the Federal Emergency Management Agency, the Department of Defense, and the Department of Veterans Affairs.

(3) Purpose of System

(A) In general

The Secretary may activate the National Disaster Medical System to—

(i) provide health services, health-related social services, other appropriate human services, and appropriate auxiliary services to respond to the needs of victims of a public health emergency (whether or not determined to be a public health emergency under section 247d of this title); or

(ii) be present at locations, and for limited periods of time, specified by the Secretary on the basis that the Secretary has determined that a location is at risk of a public health emergency during the time specified.

(B) Ongoing activities

The National Disaster Medical System shall carry out such ongoing activities as may be necessary to prepare for the provision of services described in subparagraph (A) in the event that the Secretary activates the National Disaster Medical System for such purposes.

(C) Test for mobilization of System

During the one-year period beginning on June 12, 2002, the Secretary shall conduct an exercise to test the capability and timeliness of the National Disaster Medical System to mobilize and otherwise respond effectively to a bioterrorist attack or other public health emergency that affects two or more geographic locations concurrently. Thereafter, the Secretary may periodically conduct such exercises regarding the National Disaster Medical System as the Secretary determines to be appropriate.

(c) Criteria

(1) In general

The Secretary shall establish criteria for the operation of the National Disaster Medical System.

(2) Participation agreements for non-Federal entities

In carrying out paragraph (1), the Secretary shall establish criteria regarding the participation of States and private entities in the National Disaster Medical System, including criteria regarding agreements for such participation. The criteria shall include the following:

(A) Provisions relating to the custody and use of Federal personal property by such entities, which may in the discretion of the Secretary include authorizing the custody and use of such property to respond to emergency situations for which the National Disaster Medical System has not been activated by the Secretary pursuant to subsection (b)(3)(A) of this section. Any such custody and use of Federal personal property shall be on a reimbursable basis.

(B) Provisions relating to circumstances in which an individual or entity has agreements with both the National Disaster Medical System and another entity regarding the provision of emergency services by the individual. Such provisions shall address the issue of priorities among the agreements involved.

(d) Intermittent disaster-response personnel

(1) In general

For the purpose of assisting the National Disaster Medical System in carrying out duties under this section, the Secretary may appoint individuals to serve as intermittent personnel of such System in accordance with applicable civil service laws and regulations.

(2) Liability

For purposes of section 233(a) of this title and the remedies described in such section, an individual appointed under paragraph (1) shall, while acting within the scope of such appointment, be considered to be an employee of the Public Health Service performing medical, surgical, dental, or related functions. With respect to the participation of individuals appointed under paragraph (1) in training programs authorized by the Assistant Secretary for Public Health Emergency Preparedness or a comparable official of any Federal agency specified in subsection (b)(2)(B) of this section, acts of individuals so appointed that are within the scope of such participation shall be considered within the scope of the appointment under paragraph (1) (regardless of whether the individuals receive compensation for such participation).

(e) Certain employment issues regarding intermittent appointments

(1) Intermittent disaster-response appointee

For purposes of this subsection, the term ''intermittent disaster-response appointee'' means an individual appointed by the Secretary under subsection (d) of this section.

(2) Compensation for work injuries

An intermittent disaster-response appointee shall, while acting in the scope of such appointment, be considered to be an employee of

the Public Health Service performing medical, surgical, dental, or related functions, and an injury sustained by such an individual shall be deemed ''in the performance of duty'', for purposes of chapter 81 of title 5 pertaining to compensation for work injuries. With respect to the participation of individuals appointed under subsection (d) of this section in training programs authorized by the Assistant Secretary for Public Health Emergency Preparedness or a comparable official of any Federal agency specified in subsection (b)(2)(B) of this section, injuries sustained by such an individual, while acting within the scope of such participation, also shall be deemed ''in the performance of duty'' for purposes of chapter 81 of title 5 (regardless of whether the individuals receive compensation for such participation). In the event of an injury to such an intermittent disaster-response appointee, the Secretary of Labor shall be responsible for making determinations as to whether the claimant is entitled to compensation or other benefits in accordance with chapter 81 of title 5.

(3) Employment and reemployment rights

(A) In general

Service as an intermittent disaster-response appointee when the Secretary activates the National Disaster Medical System or when the individual participates in a training program authorized by the Assistant Secretary for Public Health Emergency Preparedness or a comparable official of any Federal agency specified in subsection (b)(2)(B) of this section shall be deemed ''service in the uniformed services'' for purposes of chapter 43 of title 38 pertaining to employment and reemployment rights of individuals who have performed service in the uniformed services (regardless of whether the individual receives compensation for such participation). All rights and obligations of such persons and procedures for assistance, enforcement, and investigation shall be as provided for in chapter 43 of title 38.

(B) Notice of absence from position of employment

Preclusion of giving notice of service by necessity of Service as an intermittent disaster-response appointee when the Secretary activates the National Disaster Medical System shall be deemed preclusion by ''military necessity'' for purposes of section 4312(b) of title 38 pertaining to giving notice of absence from a position of employment. A determination of such necessity shall be made by the Secretary, in consultation with the Secretary of Defense, and shall not be subject to judicial review.

(4) Limitation

An intermittent disaster-response appointee shall not be deemed an employee of the Department of Health and Human Services for purposes other than those specifically set forth in this section.

(f) Rule of construction regarding use of commissioned corps

If the Secretary assigns commissioned officers of the Regular or Reserve Corps to serve with the National Disaster Medical System, such assignments do not affect the terms and conditions of their appointments as commissioned officers of the Regular or Reserve Corps, respectively (including with respect to pay and allowances, retirement, benefits, rights, privileges, and immunities).

(g) Definition

For purposes of this section, the term ''auxiliary services'' includes mortuary services, veterinary services, and other services that are determined by the Secretary to be appropriate with respect to the needs referred to in subsection (b)(3)(A) of this section.

(h) Authorization of appropriations

For the purpose of providing for the Assistant Secretary for Public Health Emergency Preparedness and the operations of the National Disaster Medical System, other than purposes for which amounts in the Public Health Emergency Fund under section 247d of this title are available, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2002 through 2006.

(July 1, 1944, ch. 373, title XXVIII, § 2811, as added Pub. L. 107–188, title I, § 102(a), June 12, 2002, 116 Stat. 599.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (d)(1), are classified generally to Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the National Disaster Medical System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(5), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 300hh–12. Transferred

CODIFICATION

Section, Pub. L. 107–188, title I, § 121, June 12, 2002, 116 Stat. 611, as amended, which related to Strategic National Stockpile, was renumbered section 319F–2 of the Public Health Service Act by Pub. L. 108–276, § 3(a)(1), July 21, 2004, 118 Stat. 842 and is classified to section 247d–6b of this title.

§ 300hh–13. Evaluation of new and emerging technologies regarding bioterrorist attack and other public health emergencies

(a) In general

The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall promptly carry out a program to periodically evaluate new and emerging technologies that, in the determination of the Secretary, are designed to improve or enhance the ability of public health or safety officials to conduct public health surveillance activities relating to a bioterrorist attack or other public health emergency.

(b) Certain activities

In carrying out this subsection, the Secretary shall, to the extent practicable—

(1) survey existing technology programs funded by the Federal Government for potentially useful technologies;

(2) promptly issue a request, as necessary, for information from non-Federal public and private entities for ongoing activities in this area; and

(3) evaluate technologies identified under paragraphs (1) and (2) pursuant to subsection (c) of this section.

(c) Consultation and evaluation

In carrying out subsection (b)(3) of this section, the Secretary shall consult with the working group under section 247d–6(a) of this title, as well as other appropriate public, nonprofit, and private entities, to develop criteria for the evaluation of such technologies and to conduct such evaluations.

(d) Report

Not later than 180 days after June 12, 2002, and periodically thereafter, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate, a report on the activities under this section.

(Pub. L. 107–188, title I, § 126, June 12, 2002, 116 Stat. 615.)

CODIFICATION

Section was enacted as part of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, and not as part of the Public Health Service Act which comprises this chapter.

§§ 300aaa to 300aaa–13. Transferred

CODIFICATION

Former title XXVII of the Public Health Service Act was renumbered part B of title II by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and is classified to part B (§ 238 et seq.) of subchapter I of this chapter.

Section 300aaa, act July 1, 1944, ch. 373, title XXVII, § 2701, formerly title V, § 501, 58 Stat. 709, as amended, which related to gifts for benefit of Service, was renumbered section 231 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238 of this title.

Section 300aaa–1, act July 1, 1944, ch. 373, title XXVII, § 2702, formerly title V, § 502, 58 Stat. 710, as amended, which related to use of immigration station hospitals, was renumbered section 232 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238a of this title.

Section 300aaa–2, act July 1, 1944, ch. 373, title XXVII, § 2703, formerly title V, § 503, 58 Stat. 710, as amended, which related to disposition of money collected for care of patients, was renumbered section 233 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238b of this title.

Section 300aaa–3, act July 1, 1944, ch. 373, title XXVII, § 2704, formerly title V, § 506, 58 Stat. 710, as amended, which related to transportation of remains of officers, was renumbered section 234 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238c of this title.

Section 300aaa–4, act July 1, 1944, ch. 373, title XXVII, § 2705, formerly title V, § 507, as added June 24, 1967, Pub. L. 90–31, § 5, 81 Stat. 79, and amended, which related to availability of appropriations for grants to Federal institutions, was renumbered section 235 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238d of this title.

Section 300aaa–5, act July 1, 1944, ch. 373, title XXVII, § 2706, formerly title V, § 508, 58 Stat. 711, as amended, which related to transfer of funds for continuance of transferred functions, was renumbered section 236 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238e of this title.

Section 300aaa–6, act July 1, 1944, ch. 373, title XXVII, § 2707, formerly title V, § 509, 58 Stat. 711, as amended, which related to availability of appropriations, was renumbered section 237 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238f of this title.

Section 300aaa–7, act July 1, 1944, ch. 373, title XXVII, § 2708, formerly title V, § 510, 58 Stat. 711, as amended, which related to wearing of uniforms, was renumbered section 238 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238g of this title.

Section 300aaa–8, act July 1, 1944, ch. 373, title XXVII, § 2709, formerly title V, § 511, 58 Stat. 711, as amended, which related to annual report of Surgeon General, was renumbered section 239 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238h of this title.

Section 300aaa–9, act July 1, 1944, ch. 373, title XXVII, § 2710, formerly title V, § 512, as added Oct. 15, 1968, Pub. L. 90–574, title V, § 503(a), 82 Stat. 1012, and amended, which related to memorials and other acknowledgements for contributions to the health of the Nation, was renumbered section 240 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238i of this title.

Section 300aaa–10, act July 1, 1944, ch. 373, title XXVII, § 2711, formerly title V, § 513, as added June 30, 1970, Pub. L. 91–296, title IV, § 401(a), 84 Stat. 351, and amended, which related to evaluation of programs, was renumbered section 241 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238j of this title.

Section 300aaa–11, act July 1, 1944, ch. 373, title XXVII, § 2712, formerly title V, § 514, as added Nov. 9, 1978, Pub. L. 95–623, § 11(e), 92 Stat. 3456, and amended, which related to contract authority, was renumbered section 242 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238k of this title.

Section 300aaa–12, act July 1, 1944, ch. 373, title XXVII, § 2713, formerly title V, § 515, formerly Pub. L. 88–164, title II, § 225, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 326, and amended, which related to recovery by United States of base amount plus interest in certain circumstances, was renumbered section 243 of title II of act July 1, 1944, by Pub. L. 103–43,

title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238*l* of this title.

Section 300aaa–13, act July 1, 1944, ch. 373, title XXVII, §2714, formerly title XXI, §2116, as added Apr. 7, 1986, Pub. L. 99–272, title XVII, §17003, 100 Stat. 359, and amended, which related to use of fiscal agents, was renumbered section 244 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238m of this title.

CHAPTER 7—SOCIAL SECURITY

SUBCHAPTER I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE

SUBCHAPTER II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

SUBCHAPTER I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE

REPEAL OF SUBCHAPTER I OF THIS CHAPTER; INAPPLICABILITY OF REPEAL TO PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this subchapter is repealed effective January 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1960—Pub. L. 86–778, title VI, § 601(a), Sept. 13, 1960, 74 Stat. 987, included medical assistance for the aged in subchapter heading.

§ 301. Authorization of appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such

State, to furnish financial assistance to aged needy individuals, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health and Human Services (hereinafter referred to as the ''Secretary''), State plans for old-age assistance.

(Aug. 14, 1935, ch. 531, title I, §1, 49 Stat. 620; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(a), 64 Stat. 558; Aug. 1, 1956, ch. 836, title III, §311(a), 70 Stat. 848; Pub. L. 86–778, title VI, §601(b), Sept. 13, 1960, 74 Stat. 987; Pub. L. 87–543, title I, §104(c)(1), July 25, 1962, 76 Stat. 185; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXI, §2184(a)(2), Aug. 13, 1981, 95 Stat. 816.)

REPEAL OF SECTION

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 substituted ''purpose of enabling'' for ''purpose (a) of enabling'', struck out provisions designated as cls. (b) and (c) which authorized appropriations for the purpose of enabling each State to furnish medical assistance to aged individuals who are not recipients of old-age assistance but whose income and resources are insufficient to meet the cost of necessary medical care and of encouraging each State to furnish rehabilitation and other services to individuals to attain and retain capability for self-care, and struck out '', or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged'' after ''plans for old-age assistance''.

1962—Pub. L. 87–543 amended first sentence generally, striking from cl. (a) provision relating to the purpose of encouraging each State, as far as practicable under the conditions in the State, to help aged needy individuals attain self-care, and adding cl. (c) incorporating the struck out provision.

1960—Pub. L. 86–778 amended section generally, authorizing appropriations for the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish medical assistance on behalf of aged individuals who are not recipients of old-age assistance but whose income and resources are insufficient to meet the costs of necessary medical services.

1956—Act Aug. 1, 1956, struck out specific appropriation for fiscal year ending June 30, 1956, and inserted provisions relating to attainment of self-care by individuals.

1950—Act Aug. 28, 1950, §361(a), substituted ''Federal Security Administrator (hereinafter referred to as the 'Administrator')'' for ''Social Security Board established by subchapter I of this chapter (hereinafter referred to as the 'Board')''.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 604 of Pub. L. 86–778 provided that: ''The amendments made by section 601 of this Act [amending this section and sections 302, 303, 304, and 306 of this title] shall take effect October 1, 1960, and the amendments made by section 602 [amending section 1308 of this title] shall be effective with respect to fiscal years ending after 1960.''

CHANGE OF NAME

Secretary of Health and Human Services substituted in text for Secretary of Health, Education, and Welfare pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SHORT TITLE

For short title of this chapter and of amendments thereto, see section 1305 of this title and Short Title notes set out thereunder.

DECLARATION OF PURPOSE OF TITLE III OF ACT AUGUST 1, 1956

Section 300 of act Aug. 1, 1956, provided that: ''It is the purpose of this title [enacting sections 906 and 1310 of this title and amending this section and sections 302, 303, 601, 602, 603, 606, 1201, 1202, 1203, 1301, 1308, 1351, 1352, and 1353 of this title] (a) to promote the health of the Nation by assisting States to extend and broaden their provisions for meeting the costs of medical care for persons eligible for public assistance by providing for separate matching of assistance expenditures for medical care, (b) to promote the well-being of the Nation by encouraging the States to place greater emphasis on helping to strengthen family life and helping needy families and individuals attain the maximum economic and personal independence of which they are capable, (c) to assist in improving the administration of public assistance programs (1) through making grants and contracts, and entering into jointly financed cooperative arrangements, for research or demonstration projects and (2) through Federal-State programs of grants to institutions and traineeships and fellowships so as to provide training of public welfare personnel, thereby securing more adequately trained personnel, and (d) to improve aid to dependent children.''

PUERTO RICO, GUAM, AND THE VIRGIN ISLANDS

Pub. L. 92–603, title III, §303(b), Oct. 30, 1972, 86 Stat. 1484, provided that: ''The amendments made by sections 301 [enacting sections 1381 to 1383c of this title] and 302 [enacting sections 801 to 805 of this title] and the repeals made by subsection (a) [repealing this section and sections 302 to 306, 1201 to 1206, and 1351 to 1355 of this title] shall not be applicable in the case of Puerto Rico, Guam, and the Virgin Islands.''

§ 302. State old-age plans

(a) Contents

A State plan for old-age assistance must—

(1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for assistance under the plan is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing;

(5) provide (A) such methods of administration (including methods relating to the estab-

lishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;

(8) provide that all individuals wishing to make application for assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes assistance for or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) if the State plan includes old-age assistance—

(A) provide that the State agency shall, in determining need for such assistance, take into consideration any other income and resources of an individual claiming old-age assistance, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (i) the State agency may disregard not more than $7.50 per month of any income and (ii) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder;

(B) include reasonable standards, consistent with the objectives of this subchapter, for determining eligibility for and the extent of such assistance; and

(C) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of such assistance to help them attain self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and

(11) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(b) Approval by Secretary

The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which (A) in the case of applicants for old-age assistance, excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application, and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State; or

(3) any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this subchapter.

(c) Limitation on number of plans

Nothing in this subchapter shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this subchapter.

(Aug. 14, 1935, ch. 531, title I, § 2, 49 Stat. 620; Aug. 10, 1939, ch. 666, title I, § 101, 53 Stat. 1360; Aug. 28, 1950, ch. 809, title III, pt. 1, § 301(a), (b), pt. 6, § 361(c), (d), 64 Stat. 548, 558; Aug. 1, 1956, ch. 836, title III, § 311(b), 70 Stat. 848; Pub. L. 85–840, title V, § 510, Aug. 28, 1958, 72 Stat. 1051; Pub. L. 86–778, title VI, § 601(b), Sept. 13, 1960, 74 Stat. 987; Pub. L. 87–543, title I, §§ 106(a)(1), 157, July 25, 1962, 76 Stat. 188, 207; Pub. L. 89–97, title II, § 221(a)(3), title IV, § 403(a), July 30, 1965, 79 Stat. 357, 418; Pub. L. 90–248, title II, §§ 210(a)(1), 213(a)(1), Jan. 2, 1968, 81 Stat. 895, 898; Pub. L. 92–603, title IV, §§ 405(a), 406(a), 407(a), 410(a), 413(a), Oct. 30, 1972, 86 Stat. 1488, 1489, 1491, 1492; Pub. L. 97–35, title XXI, § 2184(a)(3), Aug. 13, 1981, 95 Stat. 816; Pub. L. 98–369, div. B, title VI, § 2651(e), July 18, 1984, 98 Stat. 1149.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1984—Subsec. (a)(11). Pub. L. 98–369 added par. (11).

1981—Subsec. (a). Pub. L. 97–35 struck out in provision preceding par. (1) '', or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged'' par. (11) which specified the contents the State plan must contain if it includes medical assistance for the aged, par. (12) which specified the contents the State plan must contain if it includes assistance to or in behalf of individuals who are patients in institutions for mental diseases, and par. (13) which provided that if the State plan includes assistance to or in behalf of patients in public institutions for mental diseases, it show that the State is making satisfactory progress towards developing and implementing a comprehensive mental health program.

1972—Subsec. (a)(1). Pub. L. 92–603, § 410(a), inserted ''except to the extent permitted by the Secretary with respect to services'' before ''provide''.

Subsec. (a)(4). Pub. L. 92–603, § 407(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(7). Pub. L. 92–603, § 413(a), substituted provisions permitting use or disclosure of information concerning applicants or recipients to public officials requiring such information in connection with their official duties and to other persons for purposes directly connected with administration of the State plan, for provisions restricting use or disclosure of such information to purposes directly connected with administration of the State plan.

Subsec. (a)(10)(C). Pub. L. 92–603, § 405(a), inserted provision relating to use of whatever internal organizational arrangement found appropriate.

Subsec. (b). Pub. L. 92–603, § 406(a), inserted provision relating to furnishing of manuals and other policy issuances to persons without charge and at option of the State.

1968—Subsec. (a)(5). Pub. L. 90–248, § 210(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10)(A)(i). Pub. L. 90–248, § 213(a)(1), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.

1965—Subsec. (a)(10)(A). Pub. L. 89–97, § 403(a), placed a ceiling of $5 on amount of any income which the State may disregard in making its determination of need and substituted ''$80'' and ''$20'' for ''$50'' and ''$10'' respectively.

Subsec. (a)(12), (13). Pub. L. 89–97, § 221(a)(3), added pars. (12) and (13).

1962—Subsec. (a)(10)(A). Pub. L. 87–543 inserted ''as well as any expenses reasonably attributable to the earning of any such income'' and exception provision.

1960—Subsec. (a). Pub. L. 86–778 amended subsec. (a) generally, inserting provisions relating to plans for medical assistance, and required plans that include old-age assistance to include reasonable standards, consistent with objectives of this subchapter, for determining eligibility for and extent of such assistance.

Subsec. (b). Pub. L. 86–778 amended subsec. (b) generally, substituting ''eligibility for assistance under the plan'' for ''eligibility for old-age assistance under the plan'' in opening provisions, struck out provisions from par. (1) which permitted plan to impose an age requirement of as much as 70 years until Jan. 1, 1940, and inserted provisions in par. (2) requiring the Secretary to disapprove any plan, in the case of applicants for medical assistance for the aged, which excludes any individual who resides in the State.

Subsec. (c). Pub. L. 86–778 added subsec. (c).

1958—Subsec. (a)(11). Pub. L. 85–840 inserted provisions in par. (11) requiring the State plan to include a description of the steps taken to assure, in provision of such services, maximum utilization of other agencies providing similar or related services.

1956—Subsec. (a)(11). Act Aug. 1, 1956, added par. (11).

1950—Subsec. (a). Act Aug. 28, 1950, substituted ''provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for old-age assistance is denied or is not acted upon with reasonable promptness'' for ''provide for granting to any individual, whose claim for old-age assistance is denied, an opportunity for a fair hearing before such State agency'' in par. (4), ''Administrator'' for ''Board'' wherever appearing, and ''he'', ''him'', or ''his'' for ''it'' or ''its'' wherever appearing, and added pars. (9) and (10).

1939—Subsec. (a). Act Aug. 10, 1939, amended subsec. (a) generally commencing with par. (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 210(b) of Pub. L. 90–248 provided that: ''Each of the amendments made by subsection (a) [amending this section and sections 602, 1202, 1352, 1382, and 1396a of this title] shall become effective July 1, 1969, or, if earlier (with respect to a State's plan approved under title [subchapter] I, X, XIV, XVI, or XIX, or part A of title IV [of this chapter]) on the date as of which the modification of the State plan to comply with such amendment is approved.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 221(e) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 303, 306, 1206, 1355, 1382, 1383, and 1385 of this title] shall apply in the case of expenditures made after December 31, 1965, under a State plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter].''

Section 403(a) of Pub. L. 89–97 provided that the amendment made by that section is effective Oct. 1, 1965.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 202(a) of Pub. L. 87–543 provided that: ''The amendments made by sections 102(b)(1), 103, 106, and 134 [amending this section and sections 602, 607, 723, 1202, and 1352 of this title] shall become effective July 1, 1963.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Oct. 1, 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–840 effective Oct. 1, 1958, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 314 [315] of act Aug. 1, 1956, provided that: ''The amendments made by sections 311(b), 312(b), 313(b), and 314(b) [amending this section and sections 602, 1202, and 1352 of this title] shall become effective July 1, 1957.''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 301(c) of act Aug. 28, 1950, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect July 1, 1951.''

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary under subsec. (a)(5)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.

DISREGARDING OF INCOME OF OASDI RECIPIENTS IN DETERMINING NEED FOR PUBLIC ASSISTANCE

Section 306 of Pub. L. 92–603 provided that: ''In addition to the requirements imposed by law as a condition

of approval of a State plan to provide aid or assistance in the form of money payments to individuals under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter], there is hereby imposed the requirement (and the plan shall be deemed to require) that, in the case of any individual receiving aid or assistance for any month after October 1972, or, at the option of the State, September 1972, and before January 1974 who also receives in such month a monthly insurance benefit under title II of such Act [subchapter II of this chapter] which was increased as a result of the enactment of Public Law 92–336, the sum of the aid or assistance received by him for such month, plus the monthly insurance benefit received by him in such month (not including any part of such benefit which is disregarded under such plan), shall exceed the sum of the aid or assistance which would have been received by him for such month under such plan as in effect for October 1972, plus the monthly insurance benefit which would have been received by him in such month, by an amount equal to $4 or (if less) to such increase in his monthly insurance benefit under such title II (whether such excess is brought about by disregarding a portion of such monthly insurance benefit or otherwise).''

§ 303. Payments to States and certain territories; computation of amount; eligibility of State to receive payment

(a) Computation of amounts

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing October 1, 1960—

(1) Repealed. Pub. L. 97–35, title XXI, § 2184(a)(4)(A), Aug. 13, 1981, 95 Stat. 816.

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as old-age assistance under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of old-age assistance for such month; plus

(3) Repealed. Pub. L. 97–35, title XXI, § 2184(a)(4)(A), Aug. 13, 1981, 95 Stat. 816.

(4) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) Method of computing and paying amounts

The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health and Human Services shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Secretary of Health and Human Services may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to assistance furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the Government Accountability Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

(Aug. 14, 1935, ch. 531, title I, § 3, 49 Stat. 621; Aug. 10, 1939, ch. 666, title I, § 102, 53 Stat. 1361; 1940 Reorg. Plan No. III, § 1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; Aug. 10, 1946, ch. 951, title V, § 501, 60 Stat. 991; June 14, 1948, ch. 468, § 3(a), 62 Stat. 439; Aug. 28, 1950, ch. 809, title III, pt. 1, § 302(a), pt. 6, § 361(c), (d), 64 Stat. 548, 558; July 18, 1952, ch. 945, § 8(a), 66 Stat. 778; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 1, 1954, ch. 1206, title III, § 303, 68 Stat. 1097; Aug. 1, 1956, ch. 836, title III, §§ 301, 311(c), 341, 70 Stat. 846, 848, 852; Pub. L. 85–840, title V, § 501, Aug. 28, 1958, 72 Stat. 1047; Pub. L. 86–778, title VI, § 601(c), (d), Sept. 13, 1960, 74 Stat. 989, 990; Pub. L. 87–31, § 5(a), (b), May 8, 1961, 75 Stat. 77; Pub. L. 87–64, title III, § 303(a), June 30, 1961, 75 Stat. 143; Pub. L. 87–543, title I, §§ 101(a)(1), (b)(1), 132(a), July 25, 1962, 76 Stat. 173, 179, 193; Pub. L. 89–97, title I, § 122, title II, § 221(a)(4), title IV, § 401(a), July 30, 1965, 79 Stat. 353, 357, 414; Pub. L. 90–248, title II, § 212(a), Jan. 2, 1968, 81 Stat. 897; Pub. L. 92–512, title III, § 301(b), (d), Oct. 20, 1972, 86 Stat. 946, 947; Pub. L. 93–647, §§ 3(e)(2), 5(a), Jan. 4, 1975, 88 Stat. 2349, 2350; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXI, § 2184(a)(4), title XXIII, § 2353(a), Aug. 13, 1981, 95 Stat. 816, 871; Pub. L. 99–603, title I, § 121(b)(4), Nov. 6, 1986, 100 Stat. 3391; Pub. L. 103–66, title XIII, § 13741(b), Aug. 10, 1993, 107 Stat. 663; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1993—Subsec. (a)(4). Pub. L. 103–66 substituted ''50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.'' for ''the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

''(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

''(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title; plus

''(C) one-half of the remainder of such expenditures.''

1986—Subsec. (a)(4)(B), (C). Pub. L. 99–603 added subpar. (B) and redesignated former subpar. (B) as (C).

1981—Subsec. (a)(1). Pub. L. 97–35, § 2184(a)(4)(A), struck out par. (1) which provided for computation of amount of payments in case of any State other than Puerto Rico, the Virgin Islands, and Guam.

Subsec. (a)(2). Pub. L. 97–35, § 2184(a)(4)(B), amended par. (2) generally, striking out provisions including as old-age assistance under the State plan expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care and increasing amount payable by larger of two specifically computable amounts.

Subsec. (a)(3). Pub. L. 97–35, § 2184(a)(4)(A), struck out par. (3) which provided for payment, in the case of any State, of an amount equal to the Federal medical percentage of total amounts expended for each quarter as medical assistance for the aged under the State plan, including expenditures for insurance premiums for medical or any other type of remedial care or cost thereof.

Subsec. (a)(4). Pub. L. 97–35, § 2353(a)(1)(A), substituted provision making payments available to any State for provision making payments available to any State whose State plan approved under section 302 of this title meets the requirements of subsec. (c)(1) of this section and ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', inserted provision including within the meaning of training both short and long term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions, and struck out provisions which included in the computation of the amount payable services and provisions which specified what services were includable.

Subsec. (a)(5). Pub. L. 97–35, § 2353(a)(1)(B), struck out par. (5) which provided payment, in the case of any State whose State plan approved under section 302 of this title which did not meet the requirements of subsec. (c)(1) of this section, of an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

Subsec. (c). Pub. L. 97–35, § 2353(a)(2), struck out subsec. (c) which provided for an eligibility requirement in order for a State to qualify for payments under subsec. (a)(4) of this section and prescribed action to be taken by the Secretary upon failure of the State to comply.

Subsec. (d). Pub. L. 97–35, § 2184(a)(4)(C), struck out subsec. (d) which provided that the amount determined for any State for any quarter which is attributable to expenditures with respect to patients in institutions for mental diseases be paid only to the extent that the State makes a satisfactory showing that the total expenditures in the State from Federal, State, and local sources for mental health services under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures in the State from such sources for such services under such programs for each quarter of fiscal year ending June 30, 1965.

1975—Subsec. (a). Pub. L. 93–647, § 3(e)(2), struck out ''(subject to section 1320b of this title)'' after ''the Secretary of the Treasury shall''.

Subsec. (a)(4)(A)(iv). Pub. L. 93–647, § 5(a), inserted ''(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)'' after ''training''.

1972—Subsec. (a). Pub. L. 92–512, § 301(d), substituted ''shall (subject to section 1320b of this title) pay'' for ''shall pay'' in text preceding par. (1).

Subsec. (a)(4)(E). Pub. L. 92–512, § 301(b), substituted ''under conditions which shall be'' for ''subject to limitations''.

1968—Subsec. (a)(4)(D). Pub. L. 90–248 inserted '', except to the extent specified by the Secretary'' after ''shall'' in introductory text to subpar. (D).

1965—Subsec. (a)(1). Pub. L. 89–97, §§ 122, 401(a), inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase appearing in so much of par. (1) as precedes cl. (A); and changed first step of formula for determining Federal payments to States with approved plans for old-age assistance under this subchapter, contained in cl. (A), by providing Federal sharing in 31/37ths of first $37 of the average monthly assistance payment instead of 29/35ths of first $35 of the average monthly assistance payment, extended the application of the Federal percentage in second step of formula to an additional $38 of the State's average payment, restated formula for second and third steps by striking out cl. (C) and combining such steps in cl. (B) and making provision therein to give recognition to the State's expenditures for medical care before applying the Federal percentage to remaining expenditures for which Federal participation is available, respectively.

Subsec. (a)(2)(A). Pub. L. 89–97, § 122, inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase.

Subsec. (d). Pub. L. 89–97, § 221(a)(4), added subsec. (d).

1962—Subsec. (a)(1). Pub. L. 87–543, § 132(a), substituted ''29/35'' and ''$35'' for ''four-fifths'' and ''$31'', respectively, in subpar. (A), ''$70'' for ''$66'' in subpar. (B), and ''$85'' and ''$70'' for ''$81'' and ''$66'', respectively, in subpar. (C).

Subsec. (a)(2). Pub. L. 87–543, § 132(a), substituted ''$37.50'' for ''$35.50'', in subpar. (A) and ''$45'' and ''$37.50'' for ''$43'' and ''$35.50'', respectively, in subpar. (B).

Subsec. (a)(4). Pub. L. 87–543, § 101(a)(1), (b)(1)(A), inserted in opening provisions ''whose State plan approved under section 302 of this title meets the requirements of subsection (c) of this section'' after ''any State'', and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per centum of the quarterly ex-

penses for certain prescribed services to help attain and retain capability for self-care, services likely to prevent or reduce dependency, and services appropriate for individuals who were or are likely to become applicants for or recipients of assistance and request such services, and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff services of State or local public assistance agencies to applicants for and recipients of old-age assistance to help them attain self-care.

Subsec. (a)(5). Pub. L. 87–543, § 101(b)(1)(B), added par. (5).

Subsec. (c). Pub. L. 87–543, § 101(b)(1)(C), added subsec. (c).

1961—Subsec. (a)(1). Pub. L. 87–64, § 303(a)(1), substituted ''$31'' for ''$30'' in subpar. (A), ''$66'' for ''$65'' in subpar. (B), and ''$81'' for ''$80'' and ''$66'' for ''$65'' in subpar. (C).

Pub. L. 87–31, § 5(a), substituted ''$80'' and ''$15'' for ''$77'' and ''$12'', respectively, in subpar. (C).

Subsec. (a)(2). Pub. L. 87–64, § 303(a)(2), substituted ''$35.50'' for ''$35'' in subpar. (A), and ''$35.50'' for ''$35'' and ''$43'' for ''$42.50'' in subpar. (B).

Pub. L. 87–31, § 5(b), substituted ''$42.50'' and ''$7.50'' for ''$41'' and ''$6'', respectively, in subpar. (B).

1960—Subsec. (a). Pub. L. 86–778, § 601(c), added pars. (1)(C), (2)(B), and (3).

Subsec. (b)(2). Pub. L. 86–778, § 601(d), substituted ''assistance furnished under the State plan'' for ''old-age assistance furnished under the State plan'' in cl. (B).

1958—Subsec. (a). Pub. L. 85–840 increased payments to the States to four-fifths of the first $30 of the average monthly payment per recipient, including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, increased average monthly payment to Puerto Rico and the Virgin Islands from $30 to $35, excluded Guam from provisions which authorize an average monthly payment of $65 and included Guam within provisions which authorize an average monthly payment of $35, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956—Subsec. (a). Act Aug. 1, 1956, § 301, substituted ''during such quarter as old-age assistance in the form of money payments under the State plan'' for ''during such quarter as old-age assistance under the State plan'' in cls. (1) and (2), ''who received old-age assistance in the form of money payments for such month'' for ''who received old-age assistance for such month'' in par. (A) of cl. (1), and inserted cl. (4).

Act Aug. 1, 1956, § 311(c), struck out '', which shall be used exclusively as old-age assistance,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), and substituted ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of old-age assistance to help them attain self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for old-age assistance, or both, and for no other purpose'' in cl. (3).

Act Aug. 1, 1956, § 341, substituted ''October 1, 1956'' for ''October 1, 1952'', struck out '', which shall be used exclusively as old-age assistance,'' after ''the Virgin Islands, an amount'', and substituted ''$60'' for ''$55'', in cl. (1), substituted ''the product of $30'' for ''the product of $25'' in par. (A) of cl. (1), and ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of old-age assistance to help them attain self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for old-age assistance, or both, and for no other purpose'' in cl. (3).

1954—Subsec. (b). Act Sept. 1, 1954, § 303(b), substituted ''subsection (a)'' for ''clause (1) of subsection (a)'', wherever appearing, substituted ''such subsection'' for ''such clause'' in par. (1), and struck out ''increased by five per centum'' at end of par. (3).

Subsec. (b)(1). Act Sept. 1, 1954, § 303(a), substituted ''the State's proportionate share'' for ''one-half''.

1952—Subsec. (a). Act July 18, 1952, increased Federal share of State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing Federal share of public assistance for Puerto Rico and Virgin Islands.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'', and ''he'', ''him'' or ''his'' for ''it'', or ''its'' wherever appearing and in subsec. (a) changed basis for computation of Federal portion of old-age assistance.

1948—Subsec. (a). Act June 14, 1948, substituted $50 for $45 and $20 for $15.

1946—Subsec. (a). Act Aug. 10, 1946, § 501(a), temporarily increased maximum monthly State expenditure for an individual to which Federal Government will contribute from $40 to $45, increased Federal contribution for assistance from one-half the State's expenditure to two-thirds the State's expenditure up to $15 monthly per individual plus one-half the State's expenditure over $15 and changed the Federal contribution for administration from 5 percent of Federal contribution for assistance to one-half the State expenditure for administration. See Effective and Termination Date of 1946 Amendment note below.

Subsec. (b). Act Aug. 10, 1946, § 501(b), temporarily changed references to cl. (1) of subsec. (a) to refer to entire subsection, substituted ''the State's proportionate share'' for ''one-half'' in par. (1) and struck out ''increased by 5 per centum'' at end of par. (3). See Effective and Termination Date of 1986 Amendment note below.

1939—Act Aug. 10, 1939, amended section generally, including substitution of $40 for $30 in subsec. (a).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13741(c) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, the amendments made by subsections (a) and (b) [amending this section and sections 603, 1203, and 1353 of this title and provisions set out as a note under section 1383 of this title] shall be effective with respect to calendar quarters beginning on or after April 1, 1994.

''(2) SPECIAL RULE.—In the case of a State whose legislature meets biennially, and does not have a regular session scheduled in calendar year 1994, the amendments made by subsections (a) and (b) shall be effective no later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(a) of Pub. L. 97–35 effective, except as otherwise specifically provided, Oct. 1, 1981, see section 2354 of Pub. L. 97–35, set out as a note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 7 of Pub. L. 93–647, as amended by Pub. L. 94–120, § 3, Oct. 21, 1975, 89 Stat. 609; Pub. L. 94–401, § 2, Sept. 7, 1976, 90 Stat. 1215, eff. Feb. 1, 1976; Pub. L. 95–171, § 1(d), Nov. 12, 1977, 91 Stat. 1353; eff. Oct. 1, 1977, provided that:

''(a)(1) The amendments made by sections 2 and 5 of this Act [enacting sections 1397 to 1397f of this title and amending this section, sections 603, 1203, and 1353 of this title, and provisions set out as a note under section 1383 of this title] shall be effective with respect to payments for quarters commencing after September 30, 1975.

''(2) Notwithstanding the provisions of section 2004 of the Social Security Act, as amended by this Act [section 1397c of this title], the first services program year of each State shall begin on October 1, 1975, and end with the close of, at the option of the State—

''(A) the day in the twelve-month period beginning October 1, 1975, or

''(B) the day in the twelve-month period beginning October 1, 1976,

which is the last day of the twelve-month period established by the State as its services program year under that section. Notwithstanding the provisions of subsection (b) of section 2003 of the Social Security Act, as amended by this Act [section 1397b(b) of this title], the aggregate expenditures required by that subsection with respect to the first services program year of each State shall be the amount which bears the same ratio to the amount that would otherwise be required under that subsection as the number of months in the State's first services program year bears to twelve.

''(3) Notwithstanding paragraph (1) of this subsection or section 3(f) [set out as a note under section 1397a of this title], payments under title IV [subchapter IV of this chapter] or section 2002(a)(1) of the Social Security Act [section 1397a(a)(1) of this title] with respect to expenditures made prior to October 1, 1978, in connection with the provision of child day care services in day care centers and group day care homes, in the case of children between the ages of six weeks and six years, may be made without regard to the requirements relating to staffing standards which are imposed by or under section 2002(a)(9)(A)(ii) of such Act [section 1397a(a)(9)(A)(ii) of this title], so long as the staffing standards actually being applied in the provision of the services involved (A) comply with applicable State law (as in effect at the time the services are provided), (B) are no lower than the corresponding staffing standards which were imposed or required by applicable State law on September 15, 1975, and (C) are no lower, in the case of any day care center or group day care home, than the corresponding standards actually being applied in such center or home on September 15, 1975.

''(b) The amendments made by section 3 of this Act [amending this section and sections 602, 603, 606, 622, 1203, 1308, 1315, 1316, 1320b note, and 1383 note of this title, repealing sections 801 to 805 and 1320b of this title, and enacting provisions set out as notes under section 1320b and 1397a of this title] shall be effective with respect to payments under sections 403 and 603 of the Social Security Act [sections 603 and 803 of this title] for quarters commencing after September 30, 1975, except that the amendments made by section 3(a) [amending sections 602, 603, 606, and 623 of this title] shall not be effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 301(e) of Pub. L. 92–512 provided that: ''The amendments made by this section (other than by subsection (b)) [enacting section 1320b of this title and amending this section and sections 603, 1203, 1253, and 1383] shall be effective July 1, 1972, and the amendments made by subsection (b) [amending this section and sections 603, 1203, 1353, and 1383 of this title] shall be effective January 1, 1973.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 212(e) of Pub. L. 90–248 provided that: ''The amendments made by the preceding subsections of this section [amending this section and sections 1203, 1353, and 1383 of this title] shall take effect January 1, 1968.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221 of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 302 of this title.

Section 401(f) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 603, 1203, 1353, and 1383 of this title] shall apply in the case of expenditures made after December 31, 1965, under a State plan approved under title I, IV, X, XIV, or XVI of the Social Security Act [subchapter I, IV, X, XIV, or XVI of this chapter].''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 202(d) of Pub. L. 87–543 provided that: ''The amendments made by sections 109 and 132 (other than subsections (d) and (e) thereof) [amending this section and sections 606, 1203, and 1353 of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter], as the case may be, made after September 30, 1962.''

Section 202(f) of Pub. L. 87–543 provided that: ''The amendments made by section 101(a) [amending this section and sections 603, 1203, and 1353 of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter], as the case may be, made after August 31, 1962. The amendments made by section 101(b) [amending this section and sections 603, 608, 609, 1203, and 1353 of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, IV, X, or XIV of the Social Security Act, as the case may be, made after June 30, 1963.''

EFFECTIVE DATE OF 1961 AMENDMENTS

Section 303(e) of Pub. L. 87–64, as amended by Pub. L. 87–543, title I, § 132(e), provided that: ''The amendments made by subsections (a), (b), and (c) of this section [amending this section and sections 1203 and 1353 of this title] shall apply only in the case of expenditures made after September 30, 1961, and before October 1, 1962, under a State plan approved under title I, X, or XIV, as the case may be, of the Social Security Act [subchapter I, X, or XIV of this chapter].''

Section 5(c) of Pub. L. 87–31 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply in the case of expenditures made after June 30, 1961, under a State plan approved under title I of the Social Security Act [this subchapter].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Oct. 1, 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 512 of Pub. L. 85–840 provided that: ''Notwithstanding the provisions of sections 305 and 345 of the Social Security Amendments of 1956, as amended [set out as notes below], the amendments made by sections 501, 502, 503, 504, 505, and 506 [amending this section and sections 603, 1203, 1301, and 1353 of this title] shall be effective—

''(1) in the case of money payments, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter], for months after September 1958, and

''(2) in the case of assistance in the form of medical or any other type of remedial care, under such a plan,

with respect to expenditures made after September 1958.

The amendment made by section 506 [amending section 1301 of this title] shall also become effective, for purposes of title V of the Social Security Act [subchapter V of this chapter], for fiscal years ending after June 30, 1959. The amendments made by section 507 [amending section 1308 of this title] shall be effective for fiscal years ending after June 30, 1958. The amendment made by section 508 [amending section 1304 of this title] shall be effective for fiscal years ending after June 30, 1959. The amendment made by section 510 shall become effective October 1, 1958.''

EFFECTIVE AND TERMINATION DATE OF 1956 AMENDMENT

Section 345 of act Aug. 1, 1956, provided that: ''The amendments made by this part [part V (§§ 341–345) of title III of act Aug. 1, 1956, amending this section and sections 603, 1203, and 1353 of this title] shall be effective for the period beginning October 1, 1956, and ending with the close of June 30, 1959, and after such amendments cease to be in effect any provision of law amended thereby shall be in full force and effect as though this part had not been enacted.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 305 of act Aug. 1, 1956, as amended by Pub. L. 85–110, July 17, 1957, 71 Stat. 308, provided that:

''(a) Except as provided in subsection (b), the amendments made by this part [part I (§§ 301–305) of title III of act Aug. 1, 1956, amending this section and sections 603, 1203, and 1353 of this title] shall become effective July 1, 1957.

''(b) The amendments made by any section of this part shall not apply to any State (as defined in section 1101 of the Social Security Act [section 1301 of this title] for purposes of title I thereof [subchapter I of this chapter]) for any fiscal year for which there is in effect an election by it not to have the amendments made by such section apply to it. Any such election shall be in effect for a fiscal year only if notice of the election has been filed with the Secretary of Health, Education, and Welfare at some time prior to May 16 of the preceding fiscal year, except that any such election shall be in effect for the fiscal year beginning July 1, 1957, if notice of the election is filed with the Secretary prior to August 1, 1957. An election by a State under this subsection shall continue in effect until the close of any fiscal year designated in a notice of termination of such election which is filed with the Secretary of Health, Education, and Welfare prior to May 16 of such year. Elections hereunder shall be made, and notices thereof and notices of termination shall be filed, on such form or forms and in such manner as the Secretary of Health, Education, and Welfare may prescribe.''

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

Section 8(e) of act July 18, 1952, as amended by act Sept. 1, 1954, title III, § 301, provided that: ''The amendments made by this section [amending this section and sections 603, 1203, and 1353 of this title] shall be effective for the period beginning October 1, 1952, and ending with the close of September 30, 1956, and after such amendments cease to be in effect any provision of law amended thereby shall be in full force and effect as though this Act [July 18, 1952] had not been enacted.''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 302(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950.''

EFFECTIVE DATE OF 1948 AMENDMENT

Section 3(d) of act June 14, 1948, provided that: ''The amendments made by this section [amending this section and sections 603 and 1203 of this title] shall become effective on October 1, 1948.''

EFFECTIVE AND TERMINATION DATE OF 1946 AMENDMENT

Section 504 of act Aug. 10, 1946, as amended by act Aug. 6, 1947, ch. 510, § 3, 61 Stat. 794, provided that: ''Sections 501, 502, and 503 [amending this section and sections 603 and 1203 of this title] shall be effective with respect to the period commencing October 1, 1946, and ending on June 30, 1950.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 102 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Fiscal Service'' substituted for ''Division of Disbursement'' in subsec. (b)(3) on authority of section 1(a)(1) of Reorg. Plan No. III of 1940, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees, which consolidated such division into Fiscal Service of Treasury Department. See section 306 of Title 31, Money and Finance.

NONDUPLICATION OF PAYMENTS TO STATES: PROHIBITION OF PAYMENTS AFTER DECEMBER 31, 1969

Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89–97, set out as a note under section 1396b of this title.

§ 304. Stopping payment on deviation from required provisions of plan or failure to comply therewith

In the case of any State plan which has been approved under this subchapter by the Secretary, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 302(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 302(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply.

Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title I, § 4, 49 Stat. 622; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 86–778, title VI, § 601(e), Sept. 13, 1960, 74 Stat. 991; Pub. L. 90–248, title II, § 245, Jan. 2, 1968, 81 Stat. 918; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1968—Pub. L. 90–248 inserted ''(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)'' after ''further payments will not be made to the State'' and substituted in last sentence ''further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)'' for ''further certification to the Secretary of the Treasury with respect to such State''.

1960—Pub. L. 86–778 substituted ''State plan which has been approved under this subchapter'' for ''State plan for old-age assistance which has been approved''.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'', and ''he'', ''him'', or ''his'' for ''it'', or ''its'', wherever appearing.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Oct. 1, 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 305. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title I, § 5, 49 Stat. 622, made an appropriation for the fiscal year ending June 30, 1936.

§ 306. Definitions

(a) For the purposes of this subchapter, the term ''old-age assistance'' means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for assistance) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are 65 years of age or older, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution). Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 302 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such assistance through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of old-age assistance to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) of this subsection for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of 90 consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for 30 consecutive days in the case of such an individual who has maintained his residence in such State during such period or 90 consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of assistance under such plan.

(b), (c) Repealed. Pub. L. 97–35, title XXI, § 2184(a)(5), Aug. 13, 1981, 95 Stat. 817.

(Aug. 14, 1935, ch. 531, title I, § 6, 49 Stat. 622; Aug. 10, 1939, ch. 666, title I, § 103, 53 Stat. 1362; Aug. 28, 1950, ch. 809, title III, pt. 1, § 303(a), 64 Stat. 549; Pub. L. 86–778, title VI, § 601(f), Sept. 13, 1960, 74 Stat. 991; Pub. L. 87–543, title I,

§ 156(a), July 25, 1962, 76 Stat. 207; Pub. L. 89–97, title II, §§ 221(a)(1), (2), 222(a), title IV, § 402(a), July 30, 1965, 79 Stat. 356, 360, 415; Pub. L. 92–603, title IV, §§ 408(a), 409(a), Oct. 30, 1972, 86 Stat. 1489, 1490; Pub. L. 97–35, title XXI, § 2184(a)(5), Aug. 13, 1981, 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Subsecs. (b), (c). Pub. L. 97–35 struck out subsecs. (b) and (c) which defined ''medical assistance for the aged'' and ''Federal medical percentage'', respectively.

1972—Subsec. (a). Pub. L. 92–603 authorized the State, at its option, to include within term ''old-age assistance'' provisions relating to money payments to an individual absent from such State for more than 90 consecutive days, and provisions relating to rent payments made directly to a public housing agency.

1965—Subsec. (a). Pub. L. 89–97, § 221(a)(1), struck out from definition of ''old-age assistance'' the exclusion of (1) payments to or medical care in behalf of any individual who is a patient in an institution for tuberculosis or mental diseases, or (2) payments to any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof, or (3) medical care in behalf of any individual, who is a patient in a medical institution as a result of a diagnosis that he has tuberculosis or psychosis, with respect to any period after the individual has been a patient in such an institution, as a result of such diagnosis, for forty-two days.

Pub. L. 89–97, § 402(a), extended definition of ''old-age assistance'' to include payments made on behalf of the recipient to an individual who (as determined in accordance with the standards prescribed by the Secretary) is interested in or concerned with the welfare of the recipient and inserted an enumeration of the five characteristics required of State plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs, special efforts to protect welfare, periodic review, and opportunity for fair hearing.

Subsec. (b). Pub. L. 89–97, §§ 221(a)(2), 222(a), struck out from provision at end of cl. (12) excluding certain payments from definition of ''medical assistance for the aged'' payments with respect to care or services for any individual who is a patient in an institution for tuberculosis or mental diseases or for any individual who is a patient in a medical institution as a result of a diagnosis of tuberculosis or psychosis, with respect to any period after the individual has been a patient in such an institution, for forty-two days and inserted in text preceding cl. (1) ''(except, for any month, for recipients of old-age assistance who are admitted to or discharged from a medical institution during such month)'' after ''who are not recipients of old-age assistance'', respectively.

1962—Subsec. (a). Pub. L. 87–543, § 156(a)(1), inserted ''(if provided in or after the third month before the month in which the recipient makes application for assistance)'' before ''medical care''.

Subsec. (b). Pub. L. 87–543, § 156(a)(2), inserted ''(if provided in or after the third month before the month in which the recipient makes application for assistance)'' after ''care and services''.

1960—Subsec. (a). Pub. L. 86–778, § 601(f)(1), (2), designated existing provisions as subsec. (a) and inserted provisions excluding from definition of ''old-age assistance'' any care in behalf of any individual, who is a patient in a medical institution as a result of a diagnosis that he has tuberculosis or psychosis, with respect to any period after the individual has been a patient in an institution, as a result of such diagnosis, for forty-two days.

Subsecs. (b), (c). Pub. L. 86–778, § 601(f)(2), added subsecs. (b) and (c).

1950—Act Aug. 28, 1950, redefined ''old-age assistance''.

1939—Act Aug. 10, 1939, inserted ''needy'' before ''individuals who''.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221 of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 302 of this title.

Section 222(c) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and section 1385 of this title] shall apply in the case of expenditures under a State plan approved under title I or XVI of the Social Security Act [subchapter I or XVI of this chapter] with respect to care and services provided under such plan after June 1965.''

Section 402(e) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 1206, 1355, and 1385 of this title] shall apply in the case of expenditures made after December 31, 1965, under a State plan approved under title I, X, XIV or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter].''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 156(e) of Pub. L. 87–543 provided that: ''The amendments made by this section [amending this section and sections 606, 1206, and 1355 of this title] shall apply in the case of applications made after September 30, 1962, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Oct. 1, 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 303(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950, except that the exclusion of money payments to needy individuals described in clause (a) or (b) of section 6 of the Social Security Act as so amended [clauses (a) or (b) of this section] shall, in the case of any of such individuals who are not patients in a public institution, be effective July 1, 1952.''

SUBCHAPTER II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

AMENDMENTS

1956—Act Aug. 1, 1956, ch. 836, title I, § 103(i), 70 Stat. 824, included disability insurance benefits in subchapter heading.

§ 401. Trust Funds

(a) Federal Old-Age and Survivors Insurance Trust Fund

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ''Federal Old-Age and Survivors Insurance Trust Fund''. The Federal Old-Age and Survivors Insurance Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old-Age Reserve Account and the amount standing to the credit of the

Old-Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is authorized and directed to transfer to the Federal Old-Age and Survivors Insurance Trust Fund, and, in addition, such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and such amounts as may be appropriated to, or deposited in, the Federal Old-Age and Survivors Insurance Trust Fund as hereinafter provided. There is hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes (including interest, penalties, and additions to the taxes) received under subchapter A of chapter 9 of the Internal Revenue Code of 1939 (and covered into the Treasury) which are deposited into the Treasury by collectors of internal revenue before January 1, 1951; and

(2) the taxes certified each month by the Commissioner of Internal Revenue as taxes received under subchapter A of chapter 9 of such Code which are deposited into the Treasury by collectors of internal revenue after December 31, 1950, and before January 1, 1953, with respect to assessments of such taxes made before January 1, 1951; and

(3) the taxes imposed by subchapter A of chapter 9 of such Code with respect to wages (as defined in section 1426 of such Code), and by chapter 21 (other than sections 3101(b) and 3111(b)) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 3121 of such Code) reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 after December 31, 1950, or to the Secretary of the Treasury or his delegates pursuant to subtitle F of the Internal Revenue Code of 1954 after December 31, 1954, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such subchapter or chapter 21 (other than sections 3101(b) and 3111(b)) to such wages, which wages shall be certified by the Commissioner of Social Security on the basis of the records of wages established and maintained by such Commissioner in accordance with such reports, less the amounts specified in clause (1) of subsection (b) of this section; and

(4) the taxes imposed by subchapter E of chapter 1 of the Internal Revenue Code of 1939, with respect to self-employment income (as defined in section 481 of such Code), and by chapter 2 (other than section 1401(b)) of the Internal Revenue Code of 1954 with respect to self-employment income (as defined in section 1402 of such Code) reported to the Commissioner of Internal Revenue on tax returns under such subchapter or to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter or chapter (other than section 1401(b)) to such self-employment income, which self-employment income shall be certified by the Commissioner of Social Security on the basis of the records of self-employment income established and maintained by the Commissioner of Social Security in accordance with such returns, less the amounts specified in clause (2) of subsection (b) of this section.

The amounts appropriated by clauses (3) and (4) of this subsection shall be transferred from time to time from the general fund in the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) of this section shall be transferred from time to time from the general fund in the Treasury to the Federal Disability Insurance Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in clauses (3) and (4) of this subsection, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such clauses (3) and (4) of this subsection. All amounts transferred to either Trust Fund under the preceding sentence shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of such Trust Fund. Notwithstanding the preceding sentence, in any case in which the Secretary of the Treasury determines that the assets of either such Trust Fund would otherwise be inadequate to meet such Fund's obligations for any month, the Secretary of the Treasury shall transfer to such Trust Fund on the first day of such month the amount which would have been transferred to such Fund under this section as in effect on October 1, 1990; and such Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of such Fund in the same month under subsection (d) of this section.

(b) Federal Disability Insurance Trust Fund

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ''Federal Disability Insurance Trust Fund''. The Federal Disability Insurance Trust Fund shall consist of such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is hereby appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, 1957, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1)(A) ½ of 1 per centum of the wages (as defined in section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegate pur-

suant to subtitle F of the Internal Revenue Code of 1954, (B) 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January 1, 1968, and so reported, (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967, and before January 1, 1970, and so reported, (D) 1.10 per centum of the wages (as so defined) paid after December 31, 1969, and before January 1, 1973, and so reported, (E) 1.1 per centum of the wages (as so defined) paid after December 31, 1972, and before January 1, 1974, and so reported, (F) 1.15 per centum of the wages (as so defined) paid after December 31, 1973, and before January 1, 1978, and so reported, (G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported, (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1980, and so reported, (I) 1.12 per centum of the wages (as so defined) paid after December 31, 1979, and before January 1, 1981, and so reported, (J) 1.30 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1982, and so reported, (K) 1.65 per centum of the wages (as so defined) paid after December 31, 1981, and before January 1, 1983, and so reported, (L) 1.25 per centum of the wages (as so defined) paid after December 31, 1982, and before January 1, 1984, and so reported, (M) 1.00 per centum of the wages (as so defined) paid after December 31, 1983, and before January 1, 1988, and so reported, (N) 1.06 per centum of the wages (as so defined) paid after December 31, 1987, and before January 1, 1990, and so reported, (O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 1994, and so reported, (P) 1.88 per centum of the wages (as so defined) paid after December 31, 1993, and before January 1, 1997, and so reported, (Q) 1.70 per centum of the wages (as so defined) paid after December 31, 1996, and before January 1, 2000, and so reported, and (R) 1.80 per centum of the wages (as so defined) paid after December 31, 1999, and so reported, which wages shall be certified by the Commissioner of Social Security on the basis of the records of wages established and maintained by such Commissioner in accordance with such reports; and

(2)(A) 3/8 of 1 per centum of the amount of self-employment income (as defined in section 1402 of the Internal Revenue Code of 1954) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of the Internal Revenue Code of 1954 for any taxable year beginning after December 31, 1956, and before January 1, 1966, (B) 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965, and before January 1, 1968, (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, and before January 1, 1970, (D) 0.825 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1969, and before January 1, 1973, (E) 0.795 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1972, and before January 1, 1974, (F) 0.815 of 1 per centum of the amount of self-employment income (as so defined) as reported for any taxable year beginning after December 31, 1973, and before January 1, 1978, (G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, (H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1980, (I) 0.7775 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1979, and before January 1, 1981, (J) 0.9750 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1982, (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1981, and before January 1, 1983, (L) 0.9375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1982, and before January 1, 1984, (M) 1.00 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1983, and before January 1, 1988, (N) 1.06 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1987, and before January 1, 1990, (O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 1994, (P) 1.88 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1993, and before January 1, 1997, (Q) 1.70 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1996, and before January 1, 2000, and (R) 1.80 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999, which self-employment income shall be certified by the Commissioner of Social Security on the basis of the records of self-employment income established and maintained by the Commissioner of Social Security in accordance with such returns.

(c) Board of Trustees; duties; reports to Congress

With respect to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (hereinafter in this subchapter called the ''Trust Funds'') there is hereby created a body to be known as the Board of Trustees of the Trust Funds (hereinafter in this subchapter called the ''Board of Trustees'') which Board of Trustees shall be composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and

Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this subchapter called the ''Managing Trustee''). The Deputy Commissioner of Social Security shall serve as Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Funds;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Funds during the preceding fiscal year and on their expected operation and status during the next ensuing five fiscal years;

(3) Report immediately to the Congress whenever the Board of Trustees is of the opinion that the amount of either of the Trust Funds is unduly small;

(4) Recommend improvements in administrative procedures and policies designed to effectuate the proper coordination of the old-age and survivors insurance and Federal-State unemployment compensation program; and

(5) Review the general policies followed in managing the Trust Funds, and recommend changes in such policies, including necessary changes in the provisions of the law which govern the way in which the Trust Funds are to be managed.

The report provided for in paragraph (2) of this subsection shall include a statement of the assets of, and the disbursements made from, the Trust Funds during the preceding fiscal year, an estimate of the expected future income to, and disbursements to be made from, the Trust Funds during each of the next ensuing five fiscal years, and a statement of the actuarial status of the Trust Funds. Such statement shall include a finding by the Board of Trustees as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, individually and collectively, are in close actuarial balance (as defined by the Board of Trustees). Such report shall include an actuarial opinion by the Chief Actuary of the Social Security Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall also include an actuarial analysis of the benefit disbursements made from the Federal Old-Age and Survivors Insurance Trust Fund with respect to disabled beneficiaries. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Funds.

(d) Investments

It shall be the duty of the Managing Trustee to invest such portion of the Trust Funds as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Funds. Such obligations issued for purchase by the Trust Funds shall have maturities fixed with due regard for the needs of the Trust Funds and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. Each obligation issued for purchase by the Trust Funds under this subsection shall be evidenced by a paper instrument in the form of a bond, note, or certificate of indebtedness issued by the Secretary of the Treasury setting forth the principal amount, date of maturity, and interest rate of the obligation, and stating on its face that the obligation shall be incontestable in the hands of the Trust Fund to which it is issued, that the obligation is supported by the full faith and credit of the United States, and that the United States is pledged to the payment of the obligation with respect to both principal and interest. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(e) Sale of acquired obligations

Any obligations acquired by the Trust Funds (except public-debt obligations issued exclusively to the Trust Funds) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(f) Proceeds from sale or redemption of obligations; interest

The interest on, and the proceeds from the sale or redemption of, any obligations held in

the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall be credited to and form a part of the Federal Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund, respectively. Payment from the general fund of the Treasury to either of the Trust Funds of any such interest or proceeds shall be in the form of paper checks drawn on such general fund to the order of such Trust Fund.

(g) Payments into Treasury

(1)(A) The Managing Trustee of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by subchapter XVIII of this chapter) is directed to pay from the Trust Funds into the Treasury—

(i)[1] the amounts estimated by the Managing Trustee, the Commissioner of Social Security, and the Secretary of Health and Human Services which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of Health and Human Services for the administration of subchapter XVIII of this chapter, and by the Department of the Treasury for the administration of subchapters II and XVIII of this chapter and chapters 2 and 21 of the Internal Revenue Code of 1986, less

(ii)[1] the amounts estimated (pursuant to the applicable method prescribed under paragraph (4) of this subsection) by the Commissioner of Social Security which will be expended, out of moneys made available for expenditures from the Trust Funds, during such three-month period to cover the cost of carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee.

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in connection with the administration of subchapters II and XVIII of this chapter and chapters 2 and 21 of the Internal Revenue Code of 1986. A final accounting of such payments for any fiscal year shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this subchapter, subchapter VIII of this chapter, subchapter XVI of this chapter, and subchapter XVIII of this chapter for which the Commissioner of Social Security is responsible, the costs of subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible, and the costs of carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) of the first sentence of this subparagraph and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee. Of the amounts authorized to be made available out of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under the preceding sentence, there are hereby authorized to be made available from either or both of such Trust Funds for continuing disability reviews—

(i)[1] for fiscal year 1996, $260,000,000;
(ii)[1] for fiscal year 1997, $360,000,000;
(iii) for fiscal year 1998, $570,000,000;
(iv) for fiscal year 1999, $720,000,000;
(v) for fiscal year 2000, $720,000,000;
(vi) for fiscal year 2001, $720,000,000; and
(viii)[2] for fiscal year 2002, $720,000,000.

For purposes of this subparagraph, the term ''continuing disability review'' means a review conducted pursuant to section 421(i) of this title and a review or disability eligibility redetermination conducted to determine the continuing disability and eligibility of a recipient of benefits under the supplemental security income program under subchapter XVI of this chapter, including any review or redetermination conducted pursuant to section 207 or 208 of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296).

(B) After the close of each fiscal year—

(i) the Commissioner of Social Security shall determine—

(I) the portion of the costs, incurred during such fiscal year, of administration of this subchapter, subchapter VIII of this chapter, subchapter XVI of this chapter, and subchapter XVIII of this chapter for which the Commissioner is responsible and of carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)) and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee, which should have been borne by the general fund of the Treasury,

(II) the portion of such costs which should have been borne by the Federal Old-Age and Survivors Insurance Trust Fund,

(III) the portion of such costs which should have been borne by the Federal Disability Insurance Trust Fund,

(IV) the portion of such costs which should have been borne by the Federal Hospital Insurance Trust Fund, and

[1] So in original. Two cls. (i) and (ii) have been enacted.

[2] So in original. Probably should be ''(vii)''.

(V) the portion of such costs which should have been borne by the Federal Supplementary Medical Insurance Trust Fund (and, of such portion, the portion of such costs which should have been borne by the Medicare Prescription Drug Account in such Trust Fund), and

(ii) the Secretary of Health and Human Services shall determine—

(I) the portion of the costs, incurred during such fiscal year, of the administration of subchapter XVIII of this chapter for which the Secretary is responsible, which should have been borne by the general fund of the Treasury,

(II) the portion of such costs which should have been borne by the Federal Hospital Insurance Trust Fund, and

(III) the portion of such costs which should have been borne by the Federal Supplementary Medical Insurance Trust Fund (and, of such portion, the portion of such costs which should have been borne by the Medicare Prescription Drug Account in such Trust Fund).

(C) After the determinations under subparagraph (B) have been made for any fiscal year, the Commisioner[3] of Social Security and the Secretary shall each certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other such Trust Funds and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund of the Treasury, in order to ensure that each of the Trust Funds and the general fund of the Treasury have borne their proper share of the costs, incurred during such fiscal year, for—

(i) the parts of the administration of this subchapter, subchapter VIII of this chapter, subchapter XVI of this chapter, and subchapter XVIII of this chapter for which the Commissioner of Social Security is responsible,

(ii) the parts of the administration of subchapter XVIII of this chapter for which the Secretary is responsible, and

(iii) carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)) and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee.

The Managing Trustee shall transfer any such amounts in accordance with any certification so made.

(D) The determinations required under subclauses (IV) and (V) of subparagraph (B)(i) shall be made in accordance with the cost allocation methodology in existence on August 15, 1994, until such time as the methodology for making the determinations required under such subclauses is revised by agreement of the Commissioner and the Secretary, except that the determination of the amounts to be borne by the general fund of the Treasury with respect to expenditures incurred in carrying out the functions of the Social Security Administration specified in section 432 of this title and the functions of the Social Security Administration in connection with the withholding of taxes from benefits as described in section 407(c) of this title shall be made pursuant to the applicable method prescribed under paragraph (4).

(2) The Managing Trustee is directed to pay from time to time from the Trust Funds into the Treasury the amount estimated by him as taxes imposed under section 3101(a) of the Internal Revenue Code of 1986 which are subject to refund under section 6413(c) of such Code with respect to wages (as defined in section 3121 of such Code). Such taxes shall be determined on the basis of the records of wages maintained by the Commissioner of Social Security in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code, and the Commissioner of Social Security shall furnish the Managing Trustee such information as may be required by the Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections. Payments pursuant to the first sentence of this paragraph shall be made from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in the ratio in which amounts were appropriated to such Trust Funds under clause (3) of subsection (a) of this section and clause (1) of subsection (b) of this section.

(3) Repayments made under paragraph (1) or (2) of this subsection shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under either such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(4) The Commissioner of Social Security shall utilize the method prescribed pursuant to this paragraph, as in effect immediately before August 15, 1994, for determining the costs which should be borne by the general fund of the Treasury of carrying out the functions of the Commissioner, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). The Board of Trustees of such Trust Funds shall prescribe the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee. If at any time or times thereafter the Boards of Trustees of such Trust Funds consider such action advisable, they may modify the method of determining such costs.

[3] So in original. Probably should be ''Commissioner''.

(h) Benefit payments

Benefit payments required to be made under section 423 of this title, and benefit payments required to be made under subsection (b), (c), or (d) of section 402 of this title to individuals entitled to benefits on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits, shall be made only from the Federal Disability Insurance Trust Fund. All other benefit payments required to be made under this subchapter (other than section 426 of this title) shall be made only from the Federal Old-Age and Survivors Insurance Trust Fund.

(i) Gifts and bequests

(1) The Managing Trustee may accept on behalf of the United States money gifts and bequests made unconditionally to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund (and for the Medicare Prescription Drug Account and the Transitional Assistance Account in such Trust Fund) or to the Social Security Administration, the Department of Health and Human Services, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.

(2) Any such gift accepted pursuant to the authority granted in paragraph (1) of this subsection shall be deposited in—

(A) the specific trust fund designated by the donor or

(B) if the donor has not so designated, the Federal Old-Age and Survivors Insurance Trust Fund.

(j) Travel expenses

There are authorized to be made available for expenditure, out of the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund (as determined appropriate by the Commissioner of Social Security), such amounts as are required to pay travel expenses, either on an actual cost or commuted basis, to individuals for travel incident to medical examinations requested by the Commissioner of Social Security in connection with disability determinations under this subchapter, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 410(i) of this title) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Commissioner of Social Security) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations. The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.

(k) Experiment and demonstration project expenditures

Expenditures made for experiments and demonstration projects under section 434 of this title shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security.

(*l*) Interfund borrowing

(1) If at any time prior to January 1988 the Managing Trustee determines that borrowing authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee may borrow such amounts as he determines to be appropriate from the other such Trust Fund, or, subject to paragraph (5), from the Federal Hospital Insurance Trust Fund established under section 1395i of this title, for transfer to and deposit in the Trust Fund whose need for financing is involved.

(2) In any case where a loan has been made to a Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made, from the borrowing Trust Fund to the lending Trust Fund, the total interest accrued to such day with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (d) of this section (even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan).

(3)(A) If in any month after a loan has been made to a Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Hospital Insurance Trust Fund to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee determines that the OASDI trust fund ratio exceeds 15 percent, he shall transfer from the borrowing Trust Fund to the Federal Hospital Insurance Trust Fund an amount that—

(I) together with any amounts transferred from another borrowing Trust Fund under this paragraph for such year, will reduce the OASDI trust fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year in which the determination described in clause (i) is made.

(iii) For purposes of this subparagraph, the term ''OASDI trust fund ratio'' means, with respect to any calendar year, the ratio of—

(I) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as of the last day of such calendar year, to

(II) the amount estimated by the Commissioner of Social Security to be the total amount to be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the calendar year following such calendar year for all purposes authorized by this section (other than payments of interest on, and repayments of, loans from the Federal Hospital Insurance Trust Fund under paragraph (1), but excluding any transfer payments between such trust funds and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account).

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987, and before January 1, 1990, the Managing Trustee shall transfer each month to the Federal Hospital Insurance Trust Fund from any Trust Fund with any amount outstanding on a loan made from the Federal Hospital Insurance Trust Fund under paragraph (1) an amount not less than an amount equal to (I) the amount owed to the Federal Hospital Insurance Trust Fund by such Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsing after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.

(4) The Board of Trustees shall make a timely report to the Congress of any amounts transferred (including interest payments) under this subsection.

(5)(A) No amounts may be borrowed from the Federal Hospital Insurance Trust Fund under paragraph (1) during any month if the Hospital Insurance Trust Fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term ''Hospital Insurance Trust Fund ratio'' means, with respect to any month, the ratio of—

(i) the balance in the Federal Hospital Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under this subsection, as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the total amount which (as estimated by the Secretary) will be paid from the Federal Hospital Insurance Trust Fund during the month for which such ratio is to be determined (other than payments of interest on, or repayments of loans from another Trust Fund under this subsection), and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfer into the Hospital Insurance Trust Fund from that Account.

(m) Accounting for unnegotiated benefit checks

(1) The Secretary of the Treasury shall implement procedures to permit the identification of each check issued for benefits under this subchapter that has not been presented for payment by the close of the sixth month following the month of its issuance.

(2) The Secretary of the Treasury shall, on a monthly basis, credit each of the Trust Funds for the amount of all benefit checks (including interest thereon) drawn on such Trust Fund more than 6 months previously but not presented for payment and not previously credited to such Trust Fund, to the extent provided in advance in appropriation Acts.

(3) If a benefit check is presented for payment to the Treasury and the amount thereof has been previously credited pursuant to paragraph (2) to one of the Trust Funds, the Secretary of the Treasury shall nevertheless pay such check, if otherwise proper, recharge such Trust Fund, and notify the Commissioner of Social Security.

(4) A benefit check bearing a current date may be issued to an individual who did not negotiate the original benefit check and who surrenders such check for cancellation if the Secretary of the Treasury determines it is necessary to effect proper payment of benefits.

(n) Payments to Funds in satisfaction of obligations

Not later than July 1, 2004, the Secretary of the Treasury shall transfer, from amounts in the general fund of the Treasury that are not otherwise appropriated—

(1) $624,971,854 to the Federal Old-Age and Survivors Insurance Trust Fund;

(2) $105,379,671 to the Federal Disability Insurance Trust Fund; and

(3) $173,306,134 to the Federal Hospital Insurance Trust Fund.

Amounts transferred in accordance with this subsection shall be in satisfaction of certain outstanding obligations for deemed wage credits for 2000 and 2001.

(Aug. 14, 1935, ch. 531, title II, § 201, 49 Stat. 622; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362; Feb. 25, 1944, ch. 63, title IX, § 902, 58 Stat. 93; Aug. 28, 1950, ch. 809, title I, § 109(a), 64 Stat. 521; Aug. 1, 1956, ch. 836, title I, § 103(e), 70 Stat. 819; Pub. L. 85–840, title II, § 205(a), Aug. 28, 1958, 72 Stat. 1021; Pub. L. 86–346, title I, § 104(2), Sept. 22, 1959, 73 Stat. 622; Pub. L. 86–778, title VII, § 701(a)–(e), Sept. 13, 1960, 74 Stat. 992, 993; Pub. L. 89–97, title I, § 108(a), title III, §§ 305, 327, July 30, 1965, 79 Stat. 338, 370, 400; Pub. L. 90–248, title I, §§ 110, 169, Jan. 2, 1968, 81 Stat. 837, 875; Pub. L. 91–172, title X, § 1005, Dec. 30, 1969, 83 Stat. 741; Pub. L. 92–336, title II, § 205, July 1, 1972, 86 Stat. 422; Pub. L. 92–603, title I, §§ 132(a)–(c), 136, title III, § 305(a), Oct. 30, 1972, 86 Stat. 1360, 1364, 1484;

Pub. L. 93–233, § 7, Dec. 31, 1973, 87 Stat. 955; Pub. L. 94–202, § 8(d), Jan. 2, 1976, 89 Stat. 1137; Pub. L. 95–216, title I, § 102(a), Dec. 20, 1977, 91 Stat. 1513; Pub. L. 96–265, title III, § 310(a), title V, § 505(a)(5), June 9, 1980, 94 Stat. 459, 474; Pub. L. 96–403, § 1, Oct. 9, 1980, 94 Stat. 1709; Pub. L. 97–123, § 1(a), Dec. 29, 1981, 95 Stat. 1659; Pub. L. 98–21, title I, §§ 126, 141(a), 142(a)(1), (2)(A), (3), (4), 152(a), 154(a), title III, § 341(a), Apr. 20, 1983, 97 Stat. 91, 98–100, 105, 107, 135; Pub. L. 98–369, div. B, title VI, §§ 2661(a), 2663(a)(1), (j)(2)(A)(i), July 18, 1984, 98 Stat. 1156, 1160, 1170; Pub. L. 99–272, title IX, § 9213(a), Apr. 7, 1986, 100 Stat. 180; Pub. L. 100–360, title II, § 212(c)(1), July 1, 1988, 102 Stat. 741; Pub. L. 100–647, title VIII, § 8005(a), Nov. 10, 1988, 102 Stat. 3781; Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–508, title V, §§ 5106(c), 5115(a), title XIII, § 13304, Nov. 5, 1990, 104 Stat. 1388–268, 1388–274, 1388–627; Pub. L. 103–296, title I, § 107(b), title III, §§ 301(a), (b), 321(a)(1), (c)(1)(A)(i), (B)(i), (C), Aug. 15, 1994, 108 Stat. 1478, 1517, 1535, 1537; Pub. L. 103–387, § 3(a), (b), Oct. 22, 1994, 108 Stat. 4074, 4075; Pub. L. 104–121, title I, § 103(a), Mar. 29, 1996, 110 Stat. 848; Pub. L. 105–277, div. J, title IV, § 4005(b), Oct. 21, 1998, 112 Stat. 2681–911; Pub. L. 106–169, title II, § 251(b)(1), Dec. 14, 1999, 113 Stat. 1854; Pub. L. 106–170, title III, § 301(b)(1)(B), Dec. 17, 1999, 113 Stat. 1902; Pub. L. 108–173, title I, § 101(e)(3)(A), (B), Dec. 8, 2003, 117 Stat. 2150, 2151; Pub. L. 108–203, title IV, § 420(a), Mar. 2, 2004, 118 Stat. 535.)

REFERENCES IN TEXT

Subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1) to (3), was comprised of sections 1400 to 1432, and was repealed (subject to certain exceptions) by section 7851(a)(3) of the Internal Revenue Code of 1986.

Sections 1426 and 1420(c) of the Internal Revenue Code of 1939, referred to in subsec. (a)(3), were a part of subchapter A of chapter 9 of the 1939 Code. See above.

Internal Revenue Code of 1954, referred to in subsecs. (a)(3), (4) and (b)(1)(A), (2)(A), redesignated Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

Subchapter E of chapter 1 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), was comprised of sections 480 to 482, and was repealed (subject to certain exceptions) by section 7851(a)(1)(A) of the Internal Revenue Code of 1986.

Section 481 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), was a part of subchapter E of chapter 1 of the 1939 Code. See above.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provision of the 1986 Code, see section 7852(b) if the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Chapters 2 and 21 and subtitle F of the Internal Revenue Code of 1986, referred to in subsec. (g)(1)(A), (2), are classified to sections 1401 et seq., 3101 et seq., and 6001 et seq., respectively, of Title 26, Internal Revenue Code.

Section 207 or 208 of the Social Security Independence and Program Improvements Act of 1994, referred to in subsec. (g)(1)(A), are sections 207 and 208 of Pub. L. 103–296. Section 208 of Pub. L. 103–296 is set out as a note under section 1382 of this title. Section 207 of Pub. L. 103–296 was set out as a note under section 1382 of this title prior to repeal by Pub. L. 104–193, title II, § 212(b)(2), (d), Aug. 22, 1996, 110 Stat. 2193, 2194.

AMENDMENTS

2004—Subsec. (n). Pub. L. 108–203 added subsec. (n).

2003—Subsec. (g)(1)(B)(i)(V), (ii)(III). Pub. L. 108–173, § 101(e)(3)(A), inserted ''(and, of such portion, the portion of such costs which should have been borne by the Medicare Prescription Drug Account in such Trust Fund)'' after ''Trust Fund''.

Subsec. (i)(1). Pub. L. 108–173, § 101(e)(3)(B), inserted ''(and for the Medicare Prescription Drug Account and the Transitional Assistance Account in such Trust Fund)'' after ''Federal Supplementary Medical Insurance Trust Fund''.

1999—Subsec. (g)(1)(A). Pub. L. 106–169, § 251(b)(1)(A), inserted ''subchapter VIII of this chapter,'' after ''this subchapter,'' in fourth sentence.

Subsec. (g)(1)(B)(i)(I). Pub. L. 106–169, § 251(b)(1)(B), inserted ''subchapter VIII of this chapter,'' after ''this subchapter,''.

Subsec. (g)(1)(C)(i). Pub. L. 106–169, § 251(b)(1)(C), inserted ''subchapter VIII of this chapter,'' after ''this subchapter,''.

Subsec. (k). Pub. L. 106–170 substituted ''section 434 of this title'' for ''section 505(a) of the Social Security Disability Amendments of 1980''.

1998—Subsec. (g)(1)(A). Pub. L. 105–277, § 4005(b)(2), which directed the amendment of subsec. (g) by inserting ''and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee'' before period at end of paragraph (1)(A), was executed by inserting this material after ''the first sentence of this subparagraph'' in provisions following cl. (ii) to reflect the probable intent of Congress.

Subsec. (g)(1)(A)(ii). Pub. L. 105–277, § 4005(b)(1), inserted before period at end ''and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee''.

Subsec. (g)(1)(B)(i)(I). Pub. L. 105–277, § 4005(b)(3), substituted ''subparagraph (A)) and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee,'' for ''subparagraph (A)),''.

Subsec. (g)(1)(C)(iii). Pub. L. 105–277, § 4005(b)(4), inserted before period at end ''and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee''.

Subsec. (g)(1)(D). Pub. L. 105–277, § 4005(b)(5), inserted ''and the functions of the Social Security Administration in connection with the withholding of taxes from benefits as described in section 407(c) of this title'' after ''section 432 of this title''.

Subsec. (g)(4). Pub. L. 105–277, § 4005(b)(6), inserted after first sentence ''The Board of Trustees of such Trust Funds shall prescribe the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee.''

1996—Subsec. (g)(1)(A). Pub. L. 104–121 inserted at end ''Of the amounts authorized to be made available out of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under the preceding sentence, there are hereby authorized to be made available from either or both of such Trust Funds for continuing disability reviews—

''(i) for fiscal year 1996, $260,000,000;

''(ii) for fiscal year 1997, $360,000,000;

''(iii) for fiscal year 1998, $570,000,000;

''(iv) for fiscal year 1999, $720,000,000;

''(v) for fiscal year 2000, $720,000,000;
''(vi) for fiscal year 2001, $720,000,000; and
''(viii) for fiscal year 2002, $720,000,000.
For purposes of this subparagraph, the term 'continuing disability review' means a review conducted pursuant to section 421(i) of this title and a review or disability eligibility redetermination conducted to determine the continuing disability and eligibility of a recipient of benefits under the supplemental security income program under subchapter XVI of this chapter, including any review or redetermination conducted pursuant to section 207 or 208 of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296).''

1994—Subsec. (a). Pub. L. 103–296, §321(a)(1), in closing provisions substituted ''and'' for ''and and'' before ''such Trust Fund shall pay''.

Subsec. (a)(3). Pub. L. 103–296, §107(b)(1), (2), substituted ''Commissioner of Social Security'' and ''such Commissioner'' for ''Secretary of Health and Human Services'' and ''such Secretary'', respectively.

Subsec. (a)(4). Pub. L. 103–296, §107(b)(1), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

Subsec. (b)(1). Pub. L. 103–296, §107(b)(1), (2), substituted ''Commissioner of Social Security'' and ''such Commissioner'' for ''Secretary of Health and Human Services'' and ''such Secretary'', respectively.

Subsec. (b)(1)(O) to (R). Pub. L. 103–387, §3(a), substituted ''(O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 1994, and so reported, (P) 1.88 per centum of the wages (as so defined) paid after December 31, 1993, and before January 1, 1997, and so reported, (Q) 1.70 per centum of the wages (as so defined) paid after December 31, 1996, and before January 1, 2000, and so reported, and (R) 1.80 per centum of the wages (as so defined) paid after December 31, 1999, and so reported,'' for ''(O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 2000, and so reported, and (P) 1.42 per centum of the wages (as so defined) paid after December 31, 1999, and so reported,''.

Subsec. (b)(2). Pub. L. 103–296, §107(b)(1), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

Subsec. (b)(2)(O) to (R). Pub. L. 103–387, §3(b), substituted ''(O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 1994, (P) 1.88 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1993, and before January 1, 1997, (Q) 1.70 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1996, and before January 1, 2000, and (R) 1.80 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999,'' for ''(O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 2000, and (P) 1.42 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999,''.

Subsec. (c). Pub. L. 103–296, §107(b)(3), in introductory provisions, inserted ''the Commissioner of Social Security,'' after ''shall be composed of'' and inserted ''Deputy'' before ''Commissioner of Social Security shall serve''.

Subsec. (d). Pub. L. 103–296, §301(a), inserted after fifth sentence ''Each obligation issued for purchase by the Trust Funds under this subsection shall be evidenced by a paper instrument in the form of a bond, note, or certificate of indebtedness issued by the Secretary of the Treasury setting forth the principal amount, date of maturity, and interest rate of the obligation, and stating on its face that the obligation shall be incontestable in the hands of the Trust Fund to which it is issued, that the obligation is supported by the full faith and credit of the United States, and that the United States is pledged to the payment of the obligation with respect to both principal and interest.''

Subsec. (f). Pub. L. 103–296, §301(b), inserted at end ''Payment from the general fund of the Treasury to either of the Trust Funds of any such interest or proceeds shall be in the form of paper checks drawn on such general fund to the order of such Trust Fund.''

Subsec. (g)(1)(A). Pub. L. 103–296, §107(b)(4)(C), in text as amended by Pub. L. 103–296, §321(c)(1)(A)(i)(III), substituted ''subchapters II and XVIII'' for ''subchapters II, XVI, and XVIII'' in second sentence and amended last sentence generally. Prior to amendment, last sentence read as follows: ''There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) of the first sentence of this subparagraph.''

Pub. L. 103–296, §321(c)(1)(A)(i)(III), substituted ''chapters 2 and 21 of the Internal Revenue Code of 1986'' for ''subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954'' in second sentence and ''1986 other'' for ''1954 other'' in last sentence.

Subsec. (g)(1)(A)(i). Pub. L. 103–296, §321(c)(1)(A)(i)(I), substituted ''and chapters 2 and 21 of the Internal Revenue Code of 1986'' for ''and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954''.

Pub. L. 103–296, §107(b)(4)(A), substituted ''by the Managing Trustee, the Commissioner of Social Security, and the Secretary of Health and Human Services'' for ''by him and the Secretary of Health and Human Services'' and ''by the Department of Health and Human Services for the administration of subchapter XVIII of this chapter, and by the Department of the Treasury for the administration of subchapters II and XVIII of this chapter'' for ''by the Department of Health and Human Services and the Treasury Department for the administration of subchapters II, XVI, and XVIII of this chapter''.

Subsec. (g)(1)(A)(ii). Pub. L. 103–296, §321(c)(1)(A)(i)(II), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Pub. L. 103–296, §107(b)(4)(B), substituted ''applicable method prescribed under paragraph (4)'' for ''method prescribed by the Board of Trustees under paragraph (4)'', ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'', and ''Social Security Administration'' for ''Department of Health and Human Services''.

Subsec. (g)(1)(B). Pub. L. 103–296, §107(b)(4)(A), added subpar. (B) and struck out former subpar. (B), as amended by Pub. L. 103–296, §321(c)(1)(A)(i)(IV), which read as follows: ''After the close of each fiscal year the Secretary of Health and Human Services shall determine the portion of the costs, incurred during such fiscal year, of administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury and the portion of such costs which should have been borne by each of the Trust Funds; except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying

out such functions specified in section 432 of this title shall be made pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection. After such determination has been made, the Secretary of Health and Human Services shall certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other of such Trust Funds and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund in the Treasury, in order to insure that each of the Trust Funds and the general fund in the Treasury have borne their proper share of the costs, incurred during such fiscal year, for the part of the administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.''

Pub. L. 103–296, § 321(c)(1)(A)(i)(IV), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in two places.

Subsec. (g)(1)(C), (D). Pub. L. 103–296, § 107(b)(4)(A), added subpars. (C) and (D).

Subsec. (g)(2). Pub. L. 103–296, § 321(c)(1)(B)(i), in first sentence substituted ''section 3101(a) of the Internal Revenue Code of 1986 which are subject to refund under section 6413(c) of such Code with respect to wages (as defined in section 3121 of such Code).'' for ''section 3101(a) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 1426 of the Internal Revenue Code of 1939 and section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1950.'' and in second sentence substituted ''wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code,'' for ''wages reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 and to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954,''.

Pub. L. 103–296, § 107(b)(5), in second sentence substituted ''maintained by the Commissioner of Social Security'' for ''established and maintained by the Secretary of Health and Human Services'' and ''Commissioner of Social Security shall furnish'' for ''Secretary shall furnish''.

Subsec. (g)(4). Pub. L. 103–296, § 107(b)(6), amended generally par. (4) as amended by Pub. L. 103–296, § 321(c)(1)(C). Prior to amendment, par. (4) read as follows: ''If at any time or times the Boards of Trustees of such Trust Funds deem such action advisable, they may modify the method prescribed by such Boards of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)).''

Pub. L. 103–296, § 321(c)(1)(C), substituted ''If at any time or times the Boards of Trustees of such Trust Funds deem such action advisable, they may modify the method prescribed by such Boards'' for ''The Board of Trustees shall prescribe before January 1, 1981, the method'' and ''Code of 1986'' for ''Code of 1954'' and struck out at end ''If at any time or times thereafter the Boards of Trustees of such Trust Funds deem such action advisable they may modify the method so determined.''

Subsec. (i)(1). Pub. L. 103–296, § 107(b)(7), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to any one or more of such Trust Funds or to the Department of Health and Human Services, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.''

Subsec. (j). Pub. L. 103–296, § 107(b)(8), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (k). Pub. L. 103–296, § 107(b)(8), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (*l*)(3)(B)(iii)(II). Pub. L. 103–296, § 107(b)(9), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (m)(3). Pub. L. 103–296, § 107(b)(10), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

1990—Subsec. (a). Pub. L. 101–508, § 5115(a), in first sentence following cl. (4), substituted ''from time to time'' for ''monthly on the first day of each calendar month'' in two places and ''paid to or deposited into the Treasury'' for ''to be paid to or deposited into the Treasury during such month'', and in last sentence substituted ''Fund. Notwithstanding the preceding sentence, in any case in which the Secretary of the Treasury determines that the assets of either such Trust Fund would otherwise be inadequate to meet such Fund's obligations for any month, the Secretary of the Treasury shall transfer to such Trust Fund on the first day of such month the amount which would have been transferred to such Fund under this section as in effect on October 1, 1990; and'' for ''Fund;''.

Subsec. (c). Pub. L. 101–508, § 13304, inserted after first sentence following cl. (5) ''Such statement shall include a finding by the Board of Trustees as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, individually and collectively, are in close actuarial balance (as defined by the Board of Trustees).''

Subsec. (j). Pub. L. 101–508, § 5106(c), inserted at end ''The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.''

1989—Subsecs. (g)(1)(A), (i)(1). Pub. L. 101–234 repealed Pub. L. 100–360, § 212(c)(1), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (c). Pub. L. 100–647 inserted after first sentence ''A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term.''

Subsec. (g)(1)(A). Pub. L. 100–360, § 212(c)(1)(A), substituted '', Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund'' for ''and the Federal Supplementary Medical Insurance Trust Fund''.

Subsec. (i)(1). Pub. L. 100–360, § 212(c)(1)(B), substituted '', Federal Hospital Insurance Catastrophic Coverage Reserve Fund, Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund'' for ''and the Federal Supplementary Medical Insurance Trust Fund''.

1986—Subsec. (c). Pub. L. 99–272, in provisions following par. (5), substituted ''. Such report shall'' for '': *Provided*, That the certification shall not refer to

economic assumptions underlying the Trustee's report, and shall''.

1984—Subsecs. (a)(3), (4), (b)(1), (2). Pub. L. 98–369, §2663(j)(2)(A)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d). Pub. L. 98–369, §2663(a)(1)(A), substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended'' and ''public-debt obligations'' for ''public-debt obligation''.

Subsec. (g)(1). Pub. L. 98–369, §2663(j)(2)(A)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (g)(1)(B). Pub. L. 98–369, §2663(a)(1)(B), substituted ''clause'' for ''clauses'' in first sentence.

Subsecs. (g)(2), (4), (i)(1). Pub. L. 98–369, §2663(j)(2)(A)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (*l*)(3)(B)(i). Pub. L. 98–369, §2661(a), inserted ''Insurance'' after ''Survivors''.

1983—Subsec. (a). Pub. L. 98–21, §141(a), in provisions following par. (4), substituted ''monthly on the first day of each calendar month'' for ''from time to time'', wherever appearing, and ''to be paid or deposited into the Treasury during such month'' for ''paid to or deposited into the Treasury'', and inserted provision that all amounts transferred to either Trust Fund under the preceding sentence shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of such Trust Fund; and such Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on Jan. 1, 1983) equal to the rate earned by the investments of such Fund in the same month under subsection (d) of this section.

Subsec. (b)(1)(K) to (P). Pub. L. 98–21, §126(a), substituted, in cls. (K), (L), and (M), appropriations equivalent to 100 per centum of (K) 1.65 per centum of the wages (as so defined) paid after Dec. 31, 1981, and before Jan. 1, 1983, and so reported, (L) 1.25 per centum of the wages (as so defined) paid after Dec. 31, 1982, and before Jan. 1, 1984, and so reported, (M) 1.00 per centum of the wages (as so defined) paid after Dec. 31, 1983, and before Jan. 1, 1988, and so reported, for such appropriations of (K) 1.65 per centum of the wages (as so defined) paid after Dec. 31, 1981, and before Jan. 1, 1985, and so reported, (L) 1.90 per centum of the wages (as so defined) paid Dec. 31, 1984, and before Jan. 1, 1990, and so reported, and (M) 2.20 per centum of the wages (as so defined) paid after Dec. 31, 1989, and so reported, and added cls. (N) to (P).

Subsec. (b)(2)(K) to (P). Pub. L. 98–21, §126(b), substituted, in cls. (K), (L), and (M), appropriations equivalent to 100 per centum of (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1981, and before Jan. 1, 1983, (L) 0.9375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1982, and before Jan. 1, 1984, (M) 1.00 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1983, and before Jan. 1, 1988, for such appropriations of (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1981, and before Jan. 1, 1985, (L) 1.4250 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1984, and before Jan. 1, 1990, and (M) 1.6500 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1989, and added cls. (N) to (P).

Subsec. (c). Pub. L. 98–21, §341(a), substituted ''Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate'' for ''Secretary of Health, Education, and Welfare, all ex officio'' in provisions preceding par. (1), and inserted provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Funds, in provisions following par. (5).

Pub. L. 98–21, §154(a), in provisions following par. (5), inserted provision that the report referred to in par. (2) shall include an actuarial opinion by the Chief Actuary of the Social Security Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable, and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Subsec. (*l*)(1). Pub. L. 98–21, §142(a)(1), substituted reference to January 1988 for reference to January 1983, and inserted '', subject to paragraph (5),'' after ''such Trust Fund, or''.

Subsec. (*l*)(2). Pub. L. 98–21, §142(a)(2)(A), substituted ''on the last day of each month after such loan is made'' for ''from time to time'', substituted ''the total interest accrued to such day'' for ''interest'', and inserted ''(even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan)''.

Subsec. (*l*)(3). Pub. L. 98–21, §142(a)(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (*l*)(5). Pub. L. 98–21, §142(a)(4), added par. (5).

Subsec. (m). Pub. L. 98–21, §152(a), added subsec. (m).

1981—Subsec. (*l*). Pub. L. 97–123 added subsec. (*l*).

1980—Subsec. (b)(1)(H) to (M). Pub. L. 96–403, §1(a), substituted in cl. (H) reference to Jan. 1, 1980, for Jan. 1, 1981; added cls. (I) and (J); redesignated as cl. (K) former cl. (I) substituting reference to Dec. 31, 1981, for Dec. 31, 1980; and redesignated as cls. (L) and (M) former cls. (J) and (K).

Subsec. (b)(2)(H) to (M). Pub. L. 96–403, §1(b), substituted in cl. (H) reference to Jan. 1, 1980, for Jan. 1, 1981; added cls. (I) and (J); redesignated as cl. (K) former cl. (I) substituting reference to Dec. 31, 1981, for Dec. 31, 1980; and redesignated as cls. (L) and (M) former cls. (J) and (K).

Subsec. (j). Pub. L. 96–265, §310(a), added subsec. (j).

Subsec. (k). Pub. L. 96–265, §505(a)(5), added subsec. (k).

1977—Subsec. (b)(1)(G) to (K). Pub. L. 95–216, §102(a)(1), substituted ''(G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported, (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1981, and so reported, (I) 1.65 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1985, and so reported, (J) 1.90 per centum of the wages (as so defined) paid after December 31, 1984, and before January 1, 1990, and so reported, and (K) 2.20 per centum of the wages (as so defined) paid after December 31, 1989, and so reported'' for ''(G) 1.2 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1981, and so reported, (H) 1.3 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1986, and so reported, (I) 1.4 per centum of the wages (as so defined) paid after December 31, 1985, and before January 1, 2011, and so reported, and (J) 1.7 per centum of the wages (as so defined) paid after December 31, 2010, and so reported''.

Subsec. (b)(2)(G) to (K). Pub. L. 95–216, §102(a)(2), substituted ''(G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, (H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1981, (I) 1.2375 per centum

of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1985, (J) 1.4250 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1984, and before January 1, 1990, and (K) 1.650 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989'' for ''(G) 0.850 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1981, (H) 0.920 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1986, (I) 0.990 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1985, and before January 1, 2011, and (J) 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 2010''.

1976—Subsec. (g)(1). Pub. L. 94–202, § 8(d)(1), incorporated changes in the operations and responsibilities of the Managing Trustee of the Trust Funds and the Secretary of Health, Education, and Welfare occasioned by changes in the annual method of reporting wages for social security purposes, by directing that estimated amounts paid from the Trust Funds into the Treasury, to replace amounts expended from the general fund in the Treasury, be estimated by both the Managing Trustee and the Secretary and that the Secretary determine the portion of costs attributable to the general fund in the Treasury and the portion attributable to the Trust Funds at the close of the fiscal year, by striking out reference to section 1381 of this title, and by inserting reference to par. (4) of this section, section 432 of this title, and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939.

Subsec. (g)(4). Pub. L. 94–202, § 8(d)(2), added par. (4).

1973—Subsec. (b)(1)(E) to (J). Pub. L. 93–233, § 7(a), substituted in: cl. (E) ''January 1, 1974'' for ''January 1, 1978''; cl. (F) ''December 31, 1973'' and ''January 1, 1978'' for ''December 31, 1977'' and ''January 1, 2011''; cl. (G) ''1.2'' for ''1.5'' per centum and ''paid after December 31, 1977, and before January 1, 1981'' for ''paid after December 31, 2010,'' and added cls. (H) to (J).

Subsec. (b)(2)(E) to (J). Pub. L. 93–233, § 7(b), substituted in: cl. (E) ''January 1, 1974'' for ''January 1, 1978''; cl. (F) ''0.815 of 1 per centum'' for ''0.84 per centum'' and ''as reported for any taxable year beginning after December 31, 1973, and before January 1, 1978'' for ''so reported for any taxable year beginning after December 31, 1977, and before January 1, 2011''; cl. (G) ''0.850 of 1 percentum'' for ''0.895 per centum'' and ''taxable year beginning after December 31, 1977, and before January 1, 1981'' for ''taxable year beginning after December 31, 2010''; and added cls. (H) to (J).

1972—Subsec. (a). Pub. L. 92–603, § 132(a), inserted ''such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and'' after ''in addition,'' in provisions preceding par. (1).

Subsec. (b). Pub. L. 92–603, § 132(b), inserted ''such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and'' after ''consist of'' in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 92–603, § 136(a), substituted ''1.1'' for ''1.0'' in cl. (E), ''1.15'' for ''1.1'' in cl. (F), and ''1.5'' for ''1.4'' in cl. (G).

Pub. L. 92–336, § 205(a), struck out ''and'' before ''(D)'', inserted reference to wages paid before January 1, 1973, in cl. (D), and added cls. (E), (F), and (G).

Subsec. (b)(2). Pub. L. 92–603, § 136(b), substituted ''0.795'' for ''0.75'' in cl. (E), ''0.84'' for ''0.825'' in cl. (F), and ''0.895'' for ''0.915'' in cl. (G).

Pub. L. 92–336, § 205(b), struck out ''and'' before ''(D)'', inserted reference to self-employment income before January 1, 1973, in cl. (D), and added cls. (E), (F), and (G).

Subsec. (g)(1)(A). Pub. L. 92–603, § 305(a), inserted references to subchapter XVI of this chapter and provisions relating to the general revenues of the United States with respect to subchapter XVI of this chapter and to the appropriations made pursuant to section 1381 of this title.

Subsec. (i). Pub. L. 92–603, § 132(c), added subsec. (i).

1969—Subsec. (b)(1). Pub. L. 91–172, § 1005(a), inserted reference to wages paid before Jan. 1, 1969, and inserted provision for the appropriation of amounts equal to 1.10 per centum of wages paid after Dec. 31, 1969.

Subsec. (b)(2). Pub. L. 91–172, § 1005(b), inserted reference to self-employment income before Jan. 1, 1970, and inserted provision for the appropriation of 0.825 of 1 percent of the amount of self-employment income for taxable years beginning after Dec. 31, 1969.

1968—Subsec. (b)(1). Pub. L. 90–248, § 110(a), designated existing provisions as cls. (A) and (B), inserted ''and before January 1, 1968,'' after ''1965,'' in cl. (B), and added cl. (C).

Subsec. (b)(2). Pub. L. 90–248, § 110(b), designated existing provisions as cls. (A) and (B), inserted ''and before January 1, 1968, and'' after ''1965,'' in cl. (B), and added cl. (C).

Subsec. (c)(2). Pub. L. 90–248, § 169(a), substituted ''April'' for ''March''.

Subsec. (c). Pub. L. 90–248, § 169(b), inserted penultimate sentence for inclusion in reports of board of trustees to Congress of an actuarial analysis of the benefit disbursements made from the Federal Old-Age and Survivors Insurance Trust Fund with respect to disabled beneficiaries.

1965—Subsec. (a)(3). Pub. L. 89–97, § 108(a)(1), inserted ''(other than sections 3101(b) and 3111(b))'' after ''chapter 21'' in two places.

Subsec. (a)(4). Pub. L. 89–97, § 108(a)(2), inserted ''(other than section 1401(b))'' after ''chapter 2'' and ''such subchapter or chapter''.

Subsec. (b)(1). Pub. L. 89–97, § 305(a), inserted ''and before January 1, 1966,'' after ''December 31, 1956,'' and ''and 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and so reported,'' after ''1954,''.

Subsec. (b)(2). Pub. L. 89–97, § 305(b), inserted ''and before January 1, 1966, and 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965,'' after ''December 31, 1956,''.

Subsec. (c). Pub. L. 89–97, § 327, extended from once each six months to once each calendar year the minimum number of times the Board of Trustees must meet.

Subsec. (g)(1). Pub. L. 89–97, § 108(a)(3), included the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund among the Trust Funds available for reimbursement of the Treasury for administrative costs of this subchapter and subchapter XVIII of this chapter, deleted references to administrative costs of subchapter VIII of this chapter and subchapter E of chapter 1 and subchapter 9 of the Internal Revenue Code of 1939, and also provided for adjustment among the Trust Funds during each fiscal year so that the Funds bear the proportionate share of the administration costs.

Subsec. (g)(2). Pub. L. 89–97, § 108(a)(4), inserted ''imposed under section 3101(a)'' after ''the amount estimated by him as taxes''.

Subsec. (h). Pub. L. 89–97, § 108(a)(5), inserted ''(other than section 426 of this title)'' after ''this subchapter''.

1960—Subsec. (c). Pub. L. 86–778, § 701(a)–(c), required the Board of Trustees to meet not less frequently than once each six months, struck out provisions from cl. (3) which required the Board to report immediately to the Congress whenever the Board is of the opinion that during the ensuing five fiscal years either of the Trust Funds will exceed three times the highest annual expenditures from such Trust Fund anticipated during that five-fiscal-year period, and added cl. (5).

Subsec. (d). Pub. L. 86–778, § 701(d), substituted ''shall bear interest at a rate equal to the average market

yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month'' for ''bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the Public Debt that are not due or callable until after the expiration of five years from the date of original issue'', and substituted provisions authorizing the purchase of other interest-bearing obligations when the Managing Trustee determines that it is in the public interest for provisions which authorized the issuance of obligations by the Trust Funds only if the Managing Trustee determined that the purchase of other obligations was not in the public interest.

Subsec. (e). Pub. L. 86–778, §701(e), substituted ''public-debt obligations'' for ''special obligations'' in two places.

1959—Subsec. (d). Pub. L. 86–346 substituted ''on original issue at the issue price'' for ''on original issue at par''.

1958—Subsec. (h). Pub. L. 85–840 provided that benefit payments required to be made under subsection (b), (c), or (d) of section 402 of this title to individuals entitled to benefits on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits be made only from the Federal Disability Insurance Trust Fund.

1956—Act Aug. 1, 1956, amended section generally, inserting references to taxes imposed by the Internal Revenue Code of 1954, substituting ''Secretary of Health, Education, and Welfare'' for ''Federal Security Administrator,'' creating the Federal Disability Insurance Trust Fund, requiring obligations issued for purchase by the Trust Funds to have maturities fixed with due regard for the needs of the Trust Funds, authorizing to be made available for expenditure out of the Trust Funds such amounts as Congress deems necessary to pay costs of administration of subchapter, and requiring the Secretary of Health, Education, and Welfare to analyze costs of administration so that each Trust Fund may be charged with its proper share.

1950—Subsec. (a). Act Aug. 28, 1950, §109(a)(1)–(3), substituted ''such amounts as may be appropriated to, or deposited in, the Trust Fund'' for ''such amounts as may be appropriated to the Trust Fund'' in second sentence, simplified the accounting and collection processes required for determining the amounts appropriated to the trust fund, as set out in third sentence, and struck out fourth sentence authorizing appropriation of additional funds.

Subsec. (b). Act Aug. 28, 1950, §109(a)(4)–(8), substituted ''Federal Security Administrator'' for ''Chairman of the Social Security Board'', changed filing date for annual report from first day of each regular session of Congress to March 1 of each year, added par. (4), inserted sentence to require report to be printed as a House document, and made Commissioner of Social Security the Secretary of the Board of Trustees.

Subsec. (f). Act. Aug. 28, 1950, §109(a)(9), changed reference in text from Title II of the Federal Insurance Contributions Act to subchapter A of chapter 9 and subchapter E of chapter 1 of the Internal Revenue Code of 1939 to avoid confusion and to include the new provisions of such Code relating to the collection of taxes from the self-employed.

1944—Subsec. (a). Act Feb. 25, 1944, inserted sentence authorizing appropriation of additional funds.

1939—Act Aug. 10, 1939, amended section generally.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title IV, §4005(c), Oct. 21, 1998, 112 Stat. 2681–912, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to benefits paid on or after the first day of the second month beginning after the month in which this Act is enacted [October 1998].''

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 3(c) of Pub. L. 103–387 provided that: ''The amendments made by this section [amending this section] shall apply with respect to wages paid after December 31, 1993, and self-employment income for taxable years beginning after such date.''

Section 110 of title I of Pub. L. 103–296 provided that:

''(a) IN GENERAL.—Except as otherwise provided in this title, this title [see Tables for classification], and the amendments made by such title, shall take effect March 31, 1995.

''(b) TRANSITION RULES.—Section 106 [amending section 5315 of Title 5, Government Organization and Employees, and enacting provisions set out as a note under section 901 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].

''(c) EXCEPTIONS.—The amendments made by section 103 [amending section 903 of this title], subsections (b)(4) and (c) of section 105 [enacting provisions set out in a note under section 901 of this title], and subsections (a)(1), (e)(1), (e)(2), (e)(3), and (*l*)(2) of section 108 [enacting section 913 of this title and amending sections 5312, 5313, and 5315 of Title 5 and section 11 of Pub. L. 95–452, Inspector General Act of 1978, set out in the Appendix to Title 5] shall take effect on the date of the enactment of this Act.''

Section 301(c) of Pub. L. 103–296 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply with respect to obligations issued, and payments made, after 60 days after the date of the enactment of this Act [Aug. 15, 1994].

''(2) TREATMENT OF OUTSTANDING OBLIGATIONS.—Not later than 60 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as applicable, a paper instrument, in the form of a bond, note, or certificate of indebtedness, for each obligation which has been issued to the Trust Fund under section 201(d) of the Social Security Act [subsec. (d) of this section] and which is outstanding as of such date. Each such document shall set forth the principal amount, date of maturity, and interest rate of the obligation, and shall state on its face that the obligation shall be incontestable in the hands of the Trust Fund to which it was issued, that the obligation is supported by the full faith and credit of the United States, and that the United States is pledged to the payment of the obligation with respect to both principal and interest.''

Section 321(c)(1)(A)(ii) of Pub. L. 103–296 provided that: ''The amendments made by clause (i) [amending this section] shall apply only with respect to periods beginning on or after the date of the enactment of this Act [Aug. 15, 1994].''

Section 321(c)(1)(B)(ii) of Pub. L. 103–296 provided that: ''The amendments made by clause (i) [amending this section] shall apply only with respect to wages paid on or after January 1, 1995.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5106(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 406, 1320a–6, 1383, and 1395i of this title] shall apply with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after April 1, 1991.''

Section 5115(c)[(b)] of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall become effective on the first day of the month following the month in which this Act is enacted [November 1991].''

Amendment by section 13304 of Pub. L. 101–508 effective for annual reports of the Board of Trustees issued in or after calendar year 1991, see section 13306 of Pub. L. 101–508, set out as a note under section 632 of Title 2, The Congress.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 202(b) of Pub. L. 101–234 provided that: ''The provisions of subsection (a) [set out below] shall take effect January 1, 1990, and the repeal of section 211 of MCCA [Pub. L. 100–360, which amended sections 1395r, 1395w, and 1395mm of this title and enacted provisions set out as a note under section 1395r of this title] shall apply to premiums for months beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8005(b) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall apply to members of the Boards of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, of the Federal Hospital Insurance Trust Fund, and of the Federal Supplementary Medical Insurance Trust Fund serving on such Boards of Trustees as members of the public on or after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9213(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2664 of Pub. L. 98–369 provided that:

''(a) Except as otherwise specifically provided, the amendments made by sections 2661 and 2662 [amending this section and sections 402, 403, 405, 409, 410, 415, 416, 423, 428, and 429 of this title and sections 86, 134, 422A, 3121, 3306, and 6334 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 402 and 403 of this title and sections 3121 and 3306 of Title 26, and amending provisions set out as notes under sections 415 and 902 of this title, section 3121 of Title 26, and section 3023 [now 5123] of Title 38, Veterans' Benefits] shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 (Public Law 98–21).

''(b) Except to the extent otherwise specifically provided in this subtitle [subtitle D (§§ 2661–2664) of Pub. L. 98–369], the amendments made by section 2663 [amending this section and sections 402, 403, 405, 408–410, 411, 413, 415, 416–418, 421–423, 426, 428, 430, 431, 433, 502, 503, 602, 603, 606, 607, 609, 610, 614, 615, 620, 631, 632, 633, 634, 636, 641, 643–645, 652–654, 656, 660, 662, 674, 902, 903, 907, 1101, 1104, 1108, 1301, 1302, 1306, 1307, 1314–1316, 1320, 1320a–5, 1320b–1, 1381a–1382a, 1382c, 1382d, 1382g, 1382j, 1383, 1395i, 1395s–1395u, 1396, 1397a, and 1397e of this title and sections 51, 1402, 3121, 6057, 6103, and 6511 of Title 26, repealing sections 1331–1336 of this title, and enacting provisions set out as notes under sections 1301 and 1307 of this title] shall be effective on the date of the enactment of this Act [July 18, 1984]; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 141(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and section 1395i of this title] shall become effective on the first day of the month following the month in which this Act is enacted [April 1983].''

Section 142(a)(2)(B) of Pub. L. 98–21 provided that: ''The amendment made by this paragraph [amending this section] shall apply with respect to months beginning more than thirty days after the date of enactment of this Act [Apr. 20, 1983].''

Section 152(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to all checks for benefits under title II of the Social Security Act [this subchapter] which are issued on or after the first day of the twenty-fourth month following the month in which this Act is enacted [April 1983].''

Section 154(e) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall take effect on the date of the enactment of this Act [Apr. 20, 1983].''

Section 341(d) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall become effective on the date of enactment of this Act [Apr. 20, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1(c) of Pub. L. 97–123 provided that: ''The amendments made by this section [amending this section and section 1395i of this title] shall be effective on the date of the enactment of this Act [Dec. 29, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 2 of Pub. L. 96–403 provided that: ''The amendments made by the first section of this Act [amending this section] shall apply with respect to remuneration paid, and taxable years beginning after December 31, 1979.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to remuneration paid or received, and taxable years beginning after 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 132(f) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall apply with respect to gifts and bequests received after the date of enactment of this Act [Oct. 30, 1972].''

Section 305(c) of Pub. L. 92–603 provided that: ''The provisions of this section [amending this section and enacting provisions set out as a note under this section] shall become effective on the date of enactment of this Act [Oct. 30, 1972].''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 701(f) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section] shall take effect on the first day of the first month beginning after the date of the enactment of this Act [Sept. 13, 1960].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

CONSTRUCTION OF 1994 AMENDMENT

Section 321(d) of Pub. L. 103–296 provided that:

''(1) The preceding provisions of this section [amending this section and sections 402, 403, 405, 408 to 411, 413, 415, 416, 418, 423, 429, 430, and 432 of this title, and enacting provisions set out as notes under this section and sections 402 and 430 of this title] shall be construed only as technical and clerical corrections and as reflecting the original intent of the provisions amended thereby.

''(2) Any reference in title II of the Social Security Act [this subchapter] to the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] shall be construed to include a reference to the Internal Revenue Code of 1954 to the extent necessary to carry out the provisions of paragraph (1).''

NO IMPACT ON SOCIAL SECURITY TRUST FUNDS

Pub. L. 107–147, title V, §501, Mar. 9, 2002, 116 Stat. 58, provided that:

''(a) IN GENERAL.—Nothing in this Act [see Tables for classification] (or an amendment made by this Act) shall be construed to alter or amend title II of the Social Security Act [this subchapter] (or any regulation promulgated under that Act [this chapter]).

''(b) TRANSFERS.—

''(1) ESTIMATE OF SECRETARY.—The Secretary of the Treasury shall annually estimate the impact that the enactment of this Act has on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401).

''(2) TRANSFER OF FUNDS.—If, under paragraph (1), the Secretary of the Treasury estimates that the enactment of this Act has a negative impact on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401), the Secretary shall transfer, not less frequently than quarterly, from the general revenues of the Federal Government an amount sufficient so as to ensure that the income and balances of such trust funds are not reduced as a result of the enactment of this Act.''

IMPACT OF PUB. L. 107–134 ON SOCIAL SECURITY TRUST FUNDS

Pub. L. 107–134, title III, §301, Jan. 23, 2002, 115 Stat. 2444, provided that:

''(a) IN GENERAL.—Nothing in this Act [see Short Title of 2002 Amendment note set out under section 1 of Title 26, Internal Revenue Code] (or an amendment made by this Act) shall be construed to alter or amend title II of the Social Security Act [this subchapter] (or any regulation promulgated under that Act [this chapter]).

''(b) TRANSFERS.—

''(1) ESTIMATE OF SECRETARY.—The Secretary of the Treasury shall annually estimate the impact that the enactment of this Act has on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401).

''(2) TRANSFER OF FUNDS.—If, under paragraph (1), the Secretary of the Treasury estimates that the enactment of this Act has a negative impact on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401), the Secretary shall transfer, not less frequently than quarterly, from the general revenues of the Federal Government an amount sufficient so as to ensure that the income and balances of such trust funds are not reduced as a result of the enactment of this Act.''

STUDY BY GENERAL ACCOUNTING OFFICE OF EXISTING COORDINATION OF THE DI AND SSI PROGRAMS AS THEY RELATE TO INDIVIDUALS ENTERING OR LEAVING CONCURRENT ENTITLEMENT

Pub. L. 106–170, title III, §303(b), Dec. 17, 1999, 113 Stat. 1904, provided that, as soon as practicable after Dec. 17, 1999, the Comptroller General was to undertake a study to evaluate the coordination of the disability insurance program under title II of the Social Security Act (42 U.S.C. 401 et seq.) and the supplemental security income program under title XVI (42 U.S.C. 1381 et seq.) of that Act, as such programs related to individuals entering or leaving concurrent entitlement under such programs, specifically addressing the effectiveness of work incentives under such programs and the effectiveness of coverage of such individuals under titles XVIII and XIX of that Act (42 U.S.C. 1395 et seq., 1396 et seq.), and not later than 3 years after Dec. 17, 1999, was to transmit to the appropriate congressional committees a report presenting the results of the study and any appropriate recommendations for legislative or administrative changes.

USE OF CONTINUING DISABILITY REVIEW FUNDS AND REPORT REQUIREMENT

Section 103(d) of Pub. L. 104–121, as amended by Pub. L. 104–193, title II, §211(d)(5)(D), Aug. 22, 1996, 110 Stat. 2192, provided that:

''(1) IN GENERAL.—The Commissioner of Social Security shall ensure that funds made available for continuing disability reviews (as defined in section 201(g)(1)(A) of the Social Security Act [subsec. (g)(1)(A) of this section]) are used, to the greatest extent practicable, to maximize the combined savings in the old-age, survivors, and disability insurance, supplemental security income, Medicare, and medicaid programs, except that the amounts appropriated pursuant to the authorization and discretionary spending allowance provisions in section 211(d)(2)(5) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [probably means section 211(d)(5) of Pub. L. 104–193, which amended sections 665e and 901 of Title 2, The Congress, enacted provisions set out as a note under section 1382c of this title, and amended this note] shall be used only for continuing disability reviews and redeterminations under title XVI of the Social Security Act [subchapter XVI of this chapter].

''(2) REPORT.—The Commissioner of Social Security shall provide annually (at the conclusion of each of the fiscal years 1996 through 2002) to the Congress a report on continuing disability reviews which includes—

''(A) the amount spent on continuing disability reviews in the fiscal year covered by the report, and the number of reviews conducted, by category of review;

''(B) the results of the continuing disability reviews in terms of cessations of benefits or determinations of continuing eligibility, by program; and

''(C) the estimated savings over the short-, medium-, and long-term to the old-age, survivors, and disability insurance, supplemental security income, Medicare, and medicaid programs from continuing disability reviews which result in cessations of benefits and the estimated present value of such savings.''

REPEAL OF CHANGES IN MEDICARE PART B MONTHLY PREMIUM AND FINANCING

Section 202(a) of Pub. L. 101–234 provided that: ''Sections 211 through 213 (other than sections 211(b) and 211(c)(3)(B)) of MCCA [Pub. L. 100–360, which enacted sections 1395t–1 and 1395t–2 of this title, amended this section and sections 1395i, 1395*l*, 1395r, 1395s, 1395t, 1395w, and 1395mm of this title, and enacted provisions set out as a note under section 1395r of this title] are repealed and the provisions of law amended or repealed by such sections are restored or revised as if such sections had not been enacted.''

TRANSFER OF EQUIVALENT OF 1983 TAX INCREASES TO PAYOR FUNDS; REPORTS

Section 121(e) of Pub. L. 98–21, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–66, title XIII, §13215(c), Aug. 10, 1993, 107 Stat. 476; Pub. L. 104–188, title I, §1703(n)(12), Aug. 20, 1996, 110 Stat. 1877, provided that:

''(1) IN GENERAL.—(A) There are hereby appropriated to each payor fund amounts equivalent to (i) the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] which is attributable to the application of sections 86 and 871(a)(3) of such Code (as added by this section) [26 U.S.C. 86, 871(a)(3)] to payments from such payor fund, less (ii) the amounts equivalent to the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 which is attributable to the amendments to section 86 of such Code made by section 13215 of the Revenue Reconciliation Act of 1993 [Pub. L. 103–66].

''(B) There are hereby appropriated to the hospital insurance trust fund amounts equal to the increase in tax

liabilities described in subparagraph (A)(ii). Such appropriated amounts shall be transferred from the general fund of the Treasury on the basis of estimates of such tax liabilities made by the Secretary of the Treasury. Transfers shall be made pursuant to a schedule made by the Secretary of the Treasury that takes into account estimated timing of collection of such liabilities.

''(2) TRANSFERS.—The amounts appropriated by paragraph (1)(A) to any payor fund shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such paragraph. Any such quarterly payment shall be made on the first day of such quarter and shall take into account social security benefits estimated to be received during such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) PAYOR FUND.—The term 'payor fund' means any trust fund or account from which payments of social security benefits are made.

''(B) HOSPITAL INSURANCE TRUST FUND.—The term 'hospital insurance trust fund' means the fund established pursuant to section 1817 of the Social Security Act [section 1395i of this title].

''(C) SOCIAL SECURITY BENEFITS.—The term 'social security benefits' has the meaning given such term by section 86(d)(1) of the Internal Revenue Code of 1986 [26 U.S.C. 86(d)(1)].

''(4) REPORTS.—The Secretary of the Treasury shall submit annual reports to the Congress and to the Secretary of Health and Human Services and the Railroad Retirement Board on—

''(A) the transfers made under this subsection during the year, and the methodology used in determining the amount of such transfers and the funds or account to which made, and

''(B) the anticipated operation of this subsection during the next 5 years.''

[For termination, effective May 15, 2000, of provisions relating to submission of annual reports to Congress in section 121(e)(4) of Pub. L. 98–21, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 17 on page 143 of House Document No. 103–7.]

REIMBURSEMENT TO TRUST FUNDS FOR UNNEGOTIATED BENEFIT CHECKS

Section 152(c) of Pub. L. 98–21 provided that:

''(1) The Secretary of the Treasury shall transfer from the general fund of the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund and to the Federal Disability Insurance Trust Fund, in the month following the month in which this Act is enacted [April 1983] and in each of the succeeding 30 months, such sums as may be necessary to reimburse such Trust Funds in the total amount of all checks (including interest thereof) which he and the Secretary of Health and Human Services jointly determine to be unnegotiated benefit checks, to the extent provided in advance in appropriation Acts. After any amounts authorized by this subsection have been transferred to a Trust Fund with respect to any benefit check, the provisions of paragraphs (3) and (4) of section 201(m) of the Social Security Act [subsec. (m)(3), (4) of this section] (as added by subsection (a) of this section) shall be applicable to such check.

''(2) As used in paragraph (1), the term 'unnegotiated benefit checks' means checks for benefits under title II of the Social Security Act [this subchapter] which are issued prior to the twenty-fourth month following the month in which this Act is enacted [April 1983], which remain unnegotiated after the sixth month following the date on which they were issued, and with respect to which no transfers have previously been made in accordance with the first sentence of such paragraph.''

STUDY OF FLOAT PERIOD OF MONTHLY INSURANCE BENEFIT CHECKS

Section 153 of Pub. L. 98–21 directed Secretary of Health and Human Services and Secretary of the Treasury jointly to undertake a thorough study with respect to period of time (referred to as ''float period'') between issuance of checks from general fund of Treasury in payment of monthly insurance benefits under title II of the Social Security Act [this subchapter] and transfer to general fund from Federal Old-Age and Survivors Insurance Trust Fund or Federal Disability Insurance Trust Fund, as applicable, of amounts necessary to compensate general fund for issuance of such checks, with Secretaries to submit a report to President an Congress not later than twelve months after Apr. 20, 1983, on their findings as to necessity of making adjustments in procedures governing payment of monthly insurance benefits.

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Section 154(d) of Pub. L. 98–21 provided that notwithstanding sections 401(c)(2), 1395i(b)(2), and 1395t(b)(2) of this title, the annual reports of the Boards of Trustees of the Trust Funds which are required in calendar year 1983 under those sections may be filed at any time not later than forty-five days after Apr. 20, 1983.

STUDY RELATING TO ESTABLISHMENT OF TIME LIMITATIONS FOR DECISIONS ON CLAIMS FOR BENEFITS; REPORT

Section 308 of Pub. L. 96–265 directed Secretary of Health and Human Services to submit to Congress, no later than July 1, 1980, a report recommending establishment of appropriate time limitations governing decisions on claims for benefits under this subchapter, taking into account both need for expeditious processing of claims for benefits and need to assure that all such claims will be thoroughly considered and accurately determined.

EFFECTS OF CERTAIN AMENDMENTS BY PUB. L. 96–265; REPORT

Section 312 of Pub. L. 96–265 directed Secretary of Health and Human Services to submit to Congress, not later than Jan. 1, 1985, a full and complete report as to effects produced by reason of preceding provisions of this Act and amendments made thereby (see Tables for classification).

APPOINTMENT AND COMPENSATION OF INDIVIDUALS NECESSARY TO ASSIST THE BOARD OF TRUSTEES

Section 8(e) of Pub. L. 94–202 provided that: ''Any persons the Board of Trustees finds necessary to employ to assist it in performing its functions under section 201(g)(4) of the Social Security Act [subsec. (g)(4) of this section] may be appointed without regard to the civil service or classification laws, shall be compensated, while so employed at rates fixed by the Board of Trustees, but not exceeding $100 per day, and, while away from their homes or regular places of business, they may be allowed traveling expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.''

METHOD OF DETERMINING COSTS PRESCRIBED BY THE BOARD OF TRUSTEES CERTIFICATION AND TRANSFER OF FUNDS

Section 8(f) of Pub. L. 94–202, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The Secretary shall not make any estimates pursuant to section 201(g)(1)(A)(ii) of the Social Security Act [subsec. (g)(1)(A)(ii) of this section] before the Board of Trustees prescribes the method of determining costs as provided in section 201(g)(4) of such Act [subsec. (g)(4) of this section]. The determinations pursuant to section 201(g)(1)(B) of the Social Security Act [subsec.

(g)(1)(B) of this section] with respect to the carrying out of the functions of the Department of Health, Education, and Welfare [now Health and Human Services] specified in section 232 of such Act [section 432 of this title], which relate to the administration of provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (other than those referred to in clause (i) of the first sentence of section 201(g)(1)(A) of the Social Security Act [subsec. (g)(1)(A) of this section]), during fiscal years ending before the Board of Trustees prescribes the method of making such determinations, shall be made after the Board of Trustees has prescribed such method. The Secretary of Health, Education, and Welfare [now Health and Human Services] shall certify to the Managing Trustee the amounts that should be transferred from the general fund in the Treasury to the Trust Funds (as referred to in section 201(g)(1)(A) of the Social Security Act [subsec. (g)(1)(A) of this section]) to insure that the general fund in the Treasury bears its proper share of the costs of carrying out such functions in such fiscal years. The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.''

ADVANCES FROM TRUST FUNDS FOR ADMINISTRATIVE EXPENSES

Section 305(b) of Pub. L. 92–603 provided that:

''(1) Sums appropriated pursuant to section 1601 of the Social Security Act [section 1381 of this title] shall be utilized from time to time, in amounts certified under the second sentence of section 201(g)(1)(A) of such Act [subsec. (g)(1)(A) of this section], to repay the Trust Funds for expenditures made from such Funds in any fiscal year under section 201(g)(1)(A) of such Act (as amended by subsection (a) of this section) [amending subsec. (g)(1)(A) of this section] on account of the costs of administration of title XVI of such Act [subchapter XVI of this chapter] (as added by section 301 of this Act).

''(2) If the Trust Funds have not theretofore been repaid for expenditures made in any fiscal year (as described in paragraph (1)) to the extent necessary on account of—

''(A) expenditures made from such Funds prior to the end of such fiscal year to the extent that the amount of such expenditures exceeded the amount of the expenditures which would have been made from such Funds if subsection (a) had not been enacted,

''(B) the additional administrative expenses, if any, resulting from the excess expenditures described in subparagraph (A), and

''(C) any loss in interest to such Funds resulting from such excess expenditures and such administrative expenses,

in order to place each such Fund in the same position (at the end of such fiscal year) as it would have been in if such excess expenditures had not been made, the amendments made by subsection (a) shall cease to be effective at the close of the fiscal year following such fiscal year.

''(3) As used in this subsection, the term 'Trust Funds' has the meaning given it in section 201(g)(1)(A) of the Social Security Act [subsec. (g)(1)(A) of this section].''

ADVANCES FROM TRUST FUNDS FOR ADMINISTRATIVE PURPOSES; FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976, THROUGH SEPTEMBER 30, 1976, DEEMED FISCAL YEAR

Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed fiscal year for purposes of section 305(b) of Pub. L. 92–603, set out as a note above, relating to advances from trust funds for administrative purposes, see section 201(11) of Pub. L. 94–274, title II, Apr. 21, 1976, 90 Stat. 390, set out as a note under section 343 of Title 7, Agriculture.

GIFTS AND BEQUESTS FOR THE USE OF THE UNITED STATES AND FOR EXCLUSIVELY PUBLIC PURPOSES

Section 132(g) of Pub. L. 92–603 provided that: ''For the purpose of Federal income, estate, and gift taxes, any gift or bequest to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund, or to the Department of Health, Education, and Welfare [now Health and Human Services], or any part or officer thereof, for the benefit of any of such Funds or any activity financed through any of such Funds, which is accepted by the Managing Trustee of such Trust Funds under the authority of section 201(i) of the Social Security Act [subsec. (i) of this section], shall be considered as a gift or bequest to or for the use of the United States and as made for exclusively public purposes.''

TAXES ON SERVICES RENDERED BY EMPLOYEES OF INTERNATIONAL ORGANIZATIONS PRIOR TO JAN. 1, 1946

Section 5(b) of act Dec. 29, 1945, ch. 652, title I, 59 Stat. 671, prohibited collection of tax under title VIII or IX of the Social Security Act or under the Federal Insurance Contributions Act or the Federal Unemployment Tax Act with respect to services rendered prior to January 1, 1946, which were described in paragraph (16) of sections 1426(b) and 1607(c) of the Internal Revenue Code of 1939, and authorized refund of taxes collected.

EXECUTIVE ORDER NO. 12335

Ex. Ord. No. 12335, Dec. 16, 1981, 46 F.R. 61633, as amended by Ex. Ord. No. 12397, Dec. 23, 1982, 47 F.R. 57651; Ex. Ord. No. 12402, Jan. 15, 1983, 48 F.R. 2311, which established the National Commission on Social Security Reform and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 401a. Omitted

CODIFICATION

Section, acts Aug. 1, 1956, ch. 836, title I, § 116, 70 Stat. 833; Sept. 13, 1966, Pub. L. 86–778, title VII, § 704, 74 Stat. 994; July 30, 1965, Pub. L. 89–97, title I, § 109(b), 79 Stat. 340, which established an initial Advisory Council on Social Security Financing to review the status of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in relation to long term commitments to old-age, survivors, and disability insurance programs, appointed personnel and provided for their compensation, required a report of the findings and recommendations of the Council to be submitted to the Secretary of the Board of Trustees of the abovementioned Trust Funds not later than Jan. 1, 1959, at which time the Council terminated, provided for subsequent Advisory Councils to be appointed in 1963, 1966, and every fifth year thereafter and to submit reports to Congress, and required additional information be included in these reports, was omitted in view of the termination of the initial Advisory Council on submission of their report not later than Jan. 1, 1959, the repeal of subsec. (e) by Pub. L. 89–97, title I, § 109(b), July 30, 1965, 79 Stat. 340, which provided for the subsequent Advisory Councils, and the obsolescence of subsec. (f), which provided for additional information in reports to Congress, upon the repeal of subsec. (e).

§ 402. Old-age and survivors insurance benefit payments

(a) Old-age insurance benefits

Every individual who—

(1) is a fully insured individual (as defined in section 414(a) of this title),

(2) has attained age 62, and

(3) has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in

which he attained retirement age (as defined in section 416(*l*) of this title),

shall be entitled to an old-age insurance benefit for each month, beginning with—

(A) in the case of an individual who has attained retirement age (as defined in section 416(*l*) of this title), the first month in which such individual meets the criteria specified in paragraphs (1), (2), and (3), or

(B) in the case of an individual who has attained age 62, but has not attained retirement age (as defined in section 416(*l*) of this title), the first month throughout which such individual meets the criteria specified in paragraphs (1) and (2) (if in that month he meets the criterion specified in paragraph (3)),

and ending with the month preceding the month in which he dies. Except as provided in subsection (q) and subsection (w) of this section, such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount (as defined in section 415(a) of this title) for such month.

(b) Wife's insurance benefits

(1) The wife (as defined in section 416(b) of this title) and every divorced wife (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

(A) has filed application for wife's insurance benefits,

(B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced wife, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection (s) of this section) be entitled to a wife's insurance benefit for each month, beginning with—

(i) in the case of a wife or divorced wife (as so defined) of an individual entitled to old-age benefits, if such wife or divorced wife has attained retirement age (as defined in section 416(*l*) of this title), the first month in which she meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a wife or divorced wife (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such wife or divorced wife has not attained retirement age (as defined in section 416(*l*) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which she is such a wife or divorced wife and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month she meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs—

(E) she dies,

(F) such individual dies,

(G) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been married to such individual for a period of 10 years immediately before the date the divorce became effective,

(H) in the case of a divorced wife, she marries a person other than such individual,

(I) in the case of a wife who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) she becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2) Except as provided in subsections (k)(5) and (q) of this section, such wife's insurance benefit for each month shall be equal to one-half of the primary insurance amount of her husband (or, in the case of a divorced wife, her former husband) for such month.

(3) In the case of any divorced wife who marries—

(A) an individual entitled to benefits under subsection (c), (f), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d) of this section,

such divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) (but subject to subsection (s) of this section), not be terminated by reason of such marriage.

(4)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced wife of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced wife—

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a wife's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Commissioner of Social Security) in the manner otherwise provided for wife's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced wife first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A wife's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which

the insured individual is no longer a fully insured individual.

(c) Husband's insurance benefits

(1) The husband (as defined in section 416(f) of this title) and every divorced husband (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such husband or such divorced husband—

(A) has filed application for husband's insurance benefits,

(B) has attained age 62 or (in the case of a husband) has in his care (individually or jointly with such individual) at the time of filing such application a child entitled to child's insurance benefits on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced husband, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection(s) of this section) be entitled to a husband's insurance benefit for each month, beginning with—

(i) in the case of a husband or divorced husband (as so defined) of an individual who is entitled to an old-age insurance benefit, if such husband or divorced husband has attained retirement age (as defined in section 416(*l*) of this title), the first month in which he meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a husband or divorced husband (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such husband or divorced husband has not attained retirement age (as defined in section 416(*l*) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which he is such a husband or divorced husband and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs:

(E) he dies,

(F) such individual dies,

(G) in the case of a husband, they are divorced and either (i) he has not attained age 62, or (ii) he has attained age 62 but has not been married to such individual for a period of 10 years immediately before the divorce became effective,

(H) in the case of a divorced husband, he marries a person other than such individual,

(I) in the case of a husband who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) he becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2) Except as provided in subsections (k)(5) and (q) of this section, such husband's insurance benefit for each month shall be equal to one-half of the primary insurance amount of his wife (or, in the case of a divorced husband, his former wife) for such month.

(3) In the case of any divorced husband who marries—

(A) an individual entitled to benefits under subsection (b), (e), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d) of this section, by reason of paragraph (1)(B)(ii) thereof,

such divorced husband's entitlement to benefits under this subsection, notwithstanding the provisions of paragraph (1) (but subject to subsection (s) of this section), shall not be terminated by reason of such marriage.

(4)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced husband of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced husband—

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a husband's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Commissioner of Social Security) in the manner otherwise provided for husband's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced husband first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A husband's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.

(d) Child's insurance benefits

(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time elementary or secondary school student and had not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with—

(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in the case of a child (as so defined) of an individual entitled to an old-age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in subparagraphs (B) and (C) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding whichever of the following first occurs—

(D) the month in which such child dies, or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time elementary or secondary school student during any part of such month,

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month;

(G) if such child was under a disability (as so defined) at the time he attained the age of 18 or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22—

(i) the termination month, subject to section 423(e) of this title (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity),

or (if later) the earlier of—

(ii) the first month during no part of which he is a full-time elementary or secondary school student, or

(iii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month; or

(H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child's natural parent, the month after the month in which such divorce becomes final.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 423(d) of this title except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

(2) Such child's insurance benefit for each month shall, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the end of such month, be equal to one-half of the primary insurance amount of such individual for such month. Such child's insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection unless, at such time, such individual was not living with or contributing to the support of such child and—

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 416(h)(2)(B) or section 416(h)(3) of this title shall be deemed to be the legitimate child of such individual.

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1)(C) of this subsection if, at such time, the child was receiving at least one-half of his support from such stepfather or stepmother.

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (c), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,

such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he—

(A)(i) is a full-time elementary or secondary school student and has not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) and has not attained the age of 22, or

(B) is under a disability (as so defined) which began (i) before the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability, or (ii) after the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability due to performance of substantial gainful activity,

but only if he has filed application for such reentitlement. Such reentitlement shall end with the month preceding whichever of the following first occurs:

(C) the first month in which an event specified in paragraph (1)(D) occurs;

(D) the earlier of (i) the first month during no part of which he is a full-time elementary or secondary school student or (ii) the month in which he attains the age of 19, but only if he is not under a disability (as so defined) in such earlier month; or

(E) if he was under a disability (as so defined), the termination month (as defined in paragraph (1)(G)(i)), subject to section 423(e) of this title, or (if later) the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19.

(7) For the purposes of this subsection—

(A) A ''full-time elementary or secondary school student'' is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner of Social Security (in accordance with regulations prescribed by the Commissioner) in the light of the standards and practices of the schools involved, except that no individual shall be considered a ''full-time elementary or secondary school student'' if he is paid by his employer while attending an elementary or secondary school at the request, or pursuant to a requirement, of his employer. An individual shall not be considered a ''full-time elementary or secondary school student'' for the purpose of this section while that individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after the effective date of this sentence[1]) which constituted a felony under applicable law. An individual who is determined to be a full-time elementary or secondary school student shall be deemed to be such a student throughout the month with respect to which such determination is made.

(B) Except to the extent provided in such regulations, an individual shall be deemed to be a full-time elementary or secondary school student during any period of nonattendance at an elementary or secondary school at which he has been in full-time attendance if (i) such period is 4 calendar months or less, and (ii) he shows to the satisfaction of the Commissioner of Social Security that he intends to continue to be in full-time attendance at an elementary or secondary school immediately following such period. An individual who does not meet the requirement of clause (ii) with respect to such period of nonattendance shall be deemed to have met such requirement (as of the beginning of such period) if he is in full-time attendance at an elementary or secondary school immediately following such period.

(C)(i) An ''elementary or secondary school'' is a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located.

(ii) For the purpose of determining whether a child is a ''full-time elementary or secondary school student'' or ''intends to continue to be in full-time attendance at an elementary or secondary school'', within the meaning of this subsection, there shall be disregarded any education provided, or to be provided, beyond grade 12.

(D) A child who attains age 19 at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of this paragraph and without application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in subparagraph (C)(i)) shall be deemed (for purposes of determining whether his entitlement to benefits under this subsection has terminated under paragraph (1)(F) and for purposes of determining his initial entitlement to such benefits under clause (i) of paragraph (1)(B)) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school (as defined in this paragraph) in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is so enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(8) In the case of—

(A) an individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or

[1] See References in Text note below.

(B) an individual entitled to disability insurance benefits, or an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,

a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child—

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States, and

(ii) in the case of a child who attained the age of 18 prior to the commencement of proceedings for adoption, the child was living with or receiving at least one-half of the child's support from such individual for the year immediately preceding the month in which the adoption is decreed.

(9)(A) A child who is a child of an individual under clause (3) of the first sentence of section 416(e) of this title and is not a child of such individual under clause (1) or (2) of such first sentence shall be deemed not to be dependent on such individual at the time specified in subparagraph (1)(C) of this subsection unless (i) such child was living with such individual in the United States and receiving at least one-half of his support from such individual (I) for the year immediately before the month in which such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (II) if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, or disability insurance benefits, or died, for the year immediately before the month in which such period of disability began, and (ii) the period during which such child was living with such individual began before the child attained age 18.

(B) In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of such child's birth.

(10) For purposes of paragraph (1)(H)—

(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and

(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).

(e) Widow's insurance benefits

(1) The widow (as defined in section 416(c) of this title) and every surviving divorced wife (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of this title) which began before the end of the period specified in paragraph (4),

(C)(i) has filed application for widow's insurance benefits,

(ii) was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and—

(I) has attained retirement age (as defined in section 416(*l*) of this title),

(II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or

(III) has in effect a certificate (described in paragraph (8)) filed by her with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which she elects to receive widow's insurance benefits (subject to reduction as provided in subsection (q) of this section), or

(iii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained retirement age (as defined in section 416(*l*) of this title), and

(D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual,

shall be entitled to a widow's insurance benefit for each month, beginning with—

(E) if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or

(F) if she satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after her waiting period (as defined in paragraph (5)) in which she becomes so entitled to such insurance benefits, or

(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (4) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual, or, if she became entitled to such benefits before she attained age 60, subject to section 423(e) of this

title, the termination month (unless she attains retirement age (as defined in section 416(*l*) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which her disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which she engages or is determined able to engage in substantial gainful activity.

(2)(A) Except as provided in subsection (k)(5) of this section, subsection (q) of this section, and subparagraph (D) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual's primary insurance amount—

(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii)(I) of this title, and

(III) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insurance amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of—

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had he lived to that age, or

(II) the second year preceding the year in which the widow or surviving divorced wife first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.

(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of such subsection (w) of this section.

(D) If the deceased individual (on the basis of whose wages and self-employment income a widow or surviving divorced wife is entitled to widow's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widow's insurance benefit of such widow or surviving divorced wife for any month shall, if the amount of the widow's insurance benefit of such widow or surviving divorced wife (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q) of this section) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable, and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C)) of such deceased individual,

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3) For purposes of paragraph (1), if—

(A) a widow or surviving divorced wife marries after attaining age 60 (or after attaining age 50 if she was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widow or disabled surviving divorced wife described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.

(4) The period referred to in paragraph (1)(B)(ii), in the case of any widow or surviving divorced wife, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in

paragraph (1) on whose wages and self-employment income her benefits are or would be based, or

(B) the last month for which she was entitled to mother's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widow's insurance benefits on the basis of such wages and self-employment income terminated because her disability had ceased,

and ending with the month before the month in which she attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(5)(A) The waiting period referred to in paragraph (1)(F), in the case of any widow or surviving divorced wife, is the earliest period of five consecutive calendar months—

(i) throughout which she has been under a disability, and

(ii) which begins not earlier than with whichever of the following is the later: (I) the first day of the seventeenth month before the month in which her application is filed, or (II) the first day of the fifth month before the month in which the period specified in paragraph (4) begins.

(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widow or surviving divorced wife is first eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.

(6) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972, such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 415(i)(3) of this title) or any increase in benefits made under or pursuant to section 415(i) of this title, including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(7) Any certificate filed pursuant to paragraph (1)(C)(ii)(III) shall be effective for purposes of this subsection—

(A) for the month in which it is filed and for any month thereafter, and

(B) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which she attains age 62.

(8) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.

(f) Widower's insurance benefits

(1) The widower (as defined in section 416(g) of this title) and every surviving divorced husband (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widower or such surviving divorced husband—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of the title) which began before the end of the period specified in paragraph (4),

(C)(i) has filed application for widower's insurance benefits,

(ii) was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and—

(I) has attained retirement age (as defined in section 416(*l*) of this title),

(II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or

(III) has in effect a certificate (described in paragraph (8)) filed by him with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which he elects to receive widower's insurance benefits (subject to reduction as provided in subsection (q) of this section), or

(iii) was entitled, on the basis of such wages and self-employment income, to father's insurance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(*l*) of this title), and

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3)) of such deceased individual,

shall be entitled to a widower's insurance benefit for each month, beginning with—

(E) if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or

(F) if he satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after his waiting period (as defined in paragraph (5)) in which he be-

comes so entitled to such insurance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (4) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3))[1] of such deceased individual, or, if he became entitled to such benefits before he attained age 60, subject to section 423(e) of this title, the termination month (unless he attains retirement age (as defined in section 416(*l*) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

(2)(A) Except as provided in subsection (k)(5) of this section, subsection (q) of this section, and subparagraph (D) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual's primary insurance amount—

(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii)(I) of this title, and

(III) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insurance amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of—

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had she lived to that age, or

(II) the second year preceding the year in which the widower or surviving divorced husband first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.

(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of such subsection (w) of this section.

(D) If the deceased individual (on the basis of whose wages and self-employment income a widower or surviving divorced husband is entitled to widower's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widower's insurance benefit of such widower or surviving divorced husband for any month shall, if the amount of the widower's insurance benefit of such widower or surviving divorced husband (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q) of this section) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable, and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C)) of such deceased individual;

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3) For purposes of paragraph (1), if—

(A) a widower or surviving divorced husband marries after attaining age 60 (or after attaining age 50 if he was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widower or surviving divorced husband described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.

(4) The period referred to in paragraph (1)(B)(ii), in the case of any widower or surviving divorced husband, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income his benefits are or would be based,

(B) the last month for which he was entitled to father's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widower's insurance benefits on the basis of such wages and self-employment income terminated because his disability had ceased,

and ending with the month before the month in which he attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(5)(A) The waiting period referred to in paragraph (1)(F), in the case of any widower or surviving divorced husband, is the earliest period of five consecutive calendar months—

(i) throughout which he has been under a disability, and

(ii) which begins not earlier than with whichever of the following is the later: (I) the first day of the seventeenth month before the month in which his application is filed, or (II) the first day of the fifth month before the month in which the period specified in paragraph (4) begins.

(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widower or surviving divorced husband is first eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.

(6) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972, such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 415(i)(3) of this title) or any increase in benefits made under or pursuant to section 415(i) of this title, including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(7) Any certificate filed pursuant to paragraph (1)(C)(ii)(III) shall be effective for purposes of this subsection—

(A) for the month in which it is filed and for any month thereafter, and

(B) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he attains age 62.

(8) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in such section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.

(g) Mother's and father's insurance benefits

(1) The surviving spouse and every surviving divorced parent (as defined in section 416(d) of this title) of an individual who died a fully or currently insured individual, if such surviving spouse or surviving divorced parent—

(A) is not married,

(B) is not entitled to a surviving spouse's insurance benefit,

(C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of such individual,

(D) has filed application for mother's or father's insurance benefits, or was entitled to a spouse's insurance benefit on the basis of the wages and self-employment income of such individual for the month preceding the month in which such individual died,

(E) at the time of filing such application has in his or her care a child of such individual entitled to a child's insurance benefit, and

(F) in the case of a surviving divorced parent—

(i) the child referred to in subparagraph (E) is his or her son, daughter, or legally adopted child, and

(ii) the benefits referred to in such subparagraph are payable on the basis of such individual's wages and self-employment income,

shall (subject to subsection (s) of this section) be entitled to a mother's or father's insurance ben-

efit for each month, beginning with the first month in which he or she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child's insurance benefit, such surviving spouse or surviving divorced parent becomes entitled to an old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, he or she becomes entitled to a surviving spouse's insurance benefit, he or she remarries, or he or she dies. Entitlement to such benefits shall also end, in the case of a surviving divorced parent, with the month immediately preceding the first month in which no son, daughter, or legally adopted child of such surviving divorced parent is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased individual.

(2) Such mother's or father's insurance benefit for each month shall be equal to three-fourths of the primary insurance amount of such deceased individual.

(3) In the case of a surviving spouse or surviving divorced parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (a), (b), (c), (e), (f), or (h) of this section, or under section 423(a) of this title, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

the entitlement of such surviving spouse or surviving divorced parent to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(h) Parent's insurance benefits

(1) Every parent (as defined in this subsection) of an individual who died a fully insured individual, if such parent—

(A) has attained age 62,

(B)(i) was receiving at least one-half of his support from such individual at the time of such individual's death or, if such individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and (ii) filed proof of such support within two years after the date of such death, or, if such individual had such a period of disability, within two years after the month in which such individual filed application with respect to such period of disability or two years after the date of such death, as the case may be,

(C) has not married since such individual's death,

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case), and

(E) has filed application for parent's insurance benefits,

shall be entitled to a parent's insurance benefit for each month beginning with the first month after August 1950 in which such parent becomes so entitled to such parent's insurance benefits and ending with the month preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to an old-age insurance benefit equal to or exceeding 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case).

(2)(A) Except as provided in subparagraphs (B) and (C), such parent's insurance benefit for each month shall be equal to 82½ percent of the primary insurance amount of such deceased individual.

(B) For any month for which more than one parent is entitled to parent's insurance benefits on the basis of such deceased individual's wages and self-employment income, such benefit for each such parent for such month shall (except as provided in subparagraph (C)) be equal to 75 percent of the primary insurance amount of such deceased individual.

(C) In any case in which—

(i) any parent is entitled to a parent's insurance benefit for a month on the basis of a deceased individual's wages and self-employment income, and

(ii) another parent of such deceased individual is entitled to a parent's insurance benefit for such month on the basis of such wages and self-employment income, and on the basis of an application filed after such month and after the month in which the application for the parent's benefits referred to in clause (i) was filed,

the amount of the parent's insurance benefit of the parent referred to in clause (i) for the month referred to in such clause shall be determined under subparagraph (A) instead of subparagraph (B) and the amount of the parent's insurance benefit of a parent referred to in clause (ii) for such month shall be equal to 150 percent of the primary insurance amount of the deceased individual minus the amount (before the application of section 403(a) of this title) of the benefit for such month of the parent referred to in clause (i).

(3) As used in this subsection, the term ''parent'' means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he attained the age of sixteen.

(4) In the case of a parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (b), (c), (e), (f), or (g) of this section, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

such parent's entitlement to benefits under this subsection shall, notwithstanding the provisions

of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(i) Lump-sum death payments

Upon the death, after August 1950, of an individual who died a fully or currently insured individual, an amount equal to three times such individual's primary insurance amount (as determined without regard to the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981, relating to the repeal of the minimum benefit provisions), or an amount equal to $255, whichever is the smaller, shall be paid in a lump sum to the person, if any, determined by the Commissioner of Social Security to be the widow or widower of the deceased and to have been living in the same household with the deceased at the time of death. If there is no such person, or if such person dies before receiving payment, then such amount shall be paid—

(1) to a widow (as defined in section 416(c) of this title) or widower (as defined in section 416(g) of this title) who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (e), (f), or (g) of this section for the month in which occurred such individual's death; or

(2) if no person qualifies for payment under paragraph (1), or if such person dies before receiving payment, in equal shares to each person who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (d) of this section for the month in which occurred such individual's death.

No payment shall be made to any person under this subsection unless application therefor shall have been filed, by or on behalf of such person (whether or not legally competent), prior to the expiration of two years after the date of death of such insured individual, or unless such person was entitled to wife's or husband's insurance benefits, on the basis of the wages and self-employment income of such insured individual, for the month preceding the month in which such individual died. In the case of any individual who died outside the forty-eight States and the District of Columbia after December 1953 and before January 1, 1957, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the provisions of the preceding sentence shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment. In the case of any individual who died outside the fifty States and the District of Columbia after December 1956 while he was performing service, as a member of a uniformed service, to which the provisions of section 410(*l*)(1) of this title are applicable, and who is returned to any State, or to any Territory or possession of the United States, for interment or reinterment, the provisions of the third sentence of this subsection shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.

(j) Application for monthly insurance benefits

(1) Subject to the limitations contained in paragraph (4), an individual who would have been entitled to a benefit under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of this section for any month after August 1950 had he filed application therefor prior to the end of such month shall be entitled to such benefit for such month if he files application therefor prior to—

(A) the end of the twelfth month immediately succeeding such month in any case where the individual (i) is filing application for a benefit under subsection (e) or (f) of this section, and satisfies paragraph (1)(B) of such subsection by reason of clause (ii) thereof, or (ii) is filing application for a benefit under subsection (b), (c), or (d) of this section on the basis of the wages and self-employment income of a person entitled to disability insurance benefits, or

(B) the end of the sixth month immediately succeeding such month in any case where subparagraph (A) does not apply.

Any benefit under this subchapter for a month prior to the month in which application is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such application, the Commissioner of Social Security has certified for payment for such prior month.

(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security).

(3) Notwithstanding the provisions of paragraph (1), an individual may, at his option, waive entitlement to any benefit referred to in paragraph (1) for any one or more consecutive months (beginning with the earliest month for which such individual would otherwise be entitled to such benefit) which occur before the month in which such individual files application for such benefit; and, in such case, such individual shall not be considered as entitled to

such benefits for any such month or months before such individual filed such application. An individual shall be deemed to have waived such entitlement for any such month for which such benefit would, under the second sentence of paragraph (1), be reduced to zero.

(4)(A) Except as provided in subparagraph (B), no individual shall be entitled to a monthly benefit under subsection (a), (b), (c), (e), or (f) of this section for any month prior to the month in which he or she files an application for benefits under that subsection if the amount of the monthly benefit to which such individual would otherwise be entitled for any such month would be subject to reduction pursuant to subsection (q) of this section.

(B)(i) If the individual applying for retroactive benefits is a widow, surviving divorced wife, or widower and is under a disability (as defined in section 423(d) of this title), and such individual would, except for subparagraph (A), be entitled to retroactive benefits as a disabled widow or widower or disabled surviving divorced wife for any month before attaining the age of 60, then subparagraph (A) shall not apply with respect to such month or any subsequent month.

(ii) Subparagraph (A) does not apply to a benefit under subsection (e) or (f) of this section for the month immediately preceding the month of application, if the insured individual died in that preceding month.

(iii) As used in this subparagraph, the term ''retroactive benefits'' means benefits to which an individual becomes entitled for a month prior to the month in which application for such benefits is filed.

(5) In any case in which it is determined to the satisfaction of the Commissioner of Social Security that an individual failed as of any date to apply for monthly insurance benefits under this subchapter by reason of misinformation provided to such individual by any officer or employee of the Social Security Administration relating to such individual's eligibility for benefits under this subchapter, such individual shall be deemed to have applied for such benefits on the later of—

(A) the date on which such misinformation was provided to such individual, or

(B) the date on which such individual met all requirements for entitlement to such benefits (other than application therefor).

(k) Simultaneous entitlement to benefits

(1) A child, entitled to child's insurance benefits on the basis of the wages and self-employment income of an insured individual, who would be entitled, on filing application, to child's insurance benefits on the basis of the wages and self-employment income of some other insured individual, shall be deemed entitled, subject to the provisions of paragraph (2) of this subsection, to child's insurance benefits on the basis of the wages and self-employment income of such other individual if an application for child's insurance benefits on the basis of the wages and self-employment income of such other individual has been filed by any other child who would, on filing application, be entitled to child's insurance benefits on the basis of the wages and self-employment income of both such insured individuals.

(2)(A) Any child who under the preceding provisions of this section is entitled for any month to child's insurance benefits on the wages and self-employment income of more than one insured individual shall, notwithstanding such provisions, be entitled to only one of such child's insurance benefits for such month. Such child's insurance benefits for such month shall be the benefit based on the wages and self-employment income of the insured individual who has the greatest primary insurance amount, except that such child's insurance benefits for such month shall be the largest benefit to which such child could be entitled under subsection (d) of this section (without the application of section 403(a) of this title) or subsection (m) of this section if entitlement to such benefit would not, with respect to any person, result in a benefit lower (after the application of section 403(a) of this title) than the benefit which would be applicable if such child were entitled on the wages and self-employment income of the individual with the greatest primary insurance amount. Where more than one child is entitled to child's insurance benefits pursuant to the preceding provisions of this paragraph, each such child who is entitled on the wages and self-employment income of the same insured individuals shall be entitled on the wages and self-employment income of the same such insured individual.

(B) Any individual (other than an individual to whom subsection (e)(3) or (f)(3) of this section applies) who, under the preceding provisions of this section and under the provisions of section 423 of this title, is entitled for any month to more than one monthly insurance benefit (other than an old-age or disability insurance benefit) under this subchapter shall be entitled to only one such monthly benefit for such month, such benefit to be the largest of the monthly benefits to which he (but for this subparagraph) would otherwise be entitled for such month. Any individual who is entitled for any month to more than one widow's or widower's insurance benefit to which subsection (e)(3) or (f)(3) of this section applies shall be entitled to only one such benefit for such month, such benefit to be the largest of such benefits.

(3)(A) If an individual is entitled to an old-age or disability insurance benefit for any month and to any other monthly insurance benefit for such month, such other insurance benefit for such month, after any reduction under subsection (q), subsection (e)(2) or (f)(2) of this section, and any reduction under section 403(a) of this title, shall be reduced, but not below zero, by an amount equal to such old-age or disability insurance benefit (after reduction under such subsection (q) of this section).

(B) If an individual is entitled for any month to a widow's or widower's insurance benefit to which subsection (e)(3) or (f)(3) of this section applies and to any other monthly insurance benefit under this section (other than an old-age insurance benefit), such other insurance benefit for such month, after any reduction under subparagraph (A) of this paragraph, any reduction under subsection (q) of this section, and any reduction under section 403(a) of this title, shall be reduced, but not below zero, by an amount

equal to such widow's or widower's insurance benefit after any reduction or reductions under such subparagraph (A) and such section 403(a).

(4) Any individual who, under this section and section 423 of this title, is entitled for any month to both an old-age insurance benefit and a disability insurance benefit under this subchapter shall be entitled to only the larger of such benefits for such month, except that, if such individual so elects, he shall instead be entitled to only the smaller of such benefits for such month.

(5)(A) The amount of a monthly insurance benefit of any individual for each month under subsection (b), (c), (e), (f), or (g) of this section (as determined after application of the provisions of subsection (q) of this section and the preceding provisions of this subsection) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, during any portion of the last 60 months of such service ending with the last day such individual was employed by such entity—

(i) such service did not constitute ''employment'' as defined in section 410 of this title, or

(ii) such service was being performed while in the service of the Federal Government, and constituted ''employment'' as so defined solely by reason of—

(I) clause (ii) or (iii) of subparagraph (G) of section 410(a)(5) of this title, where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

(II) an election to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 [22 U.S.C. 4071 et seq.] made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

(B)(i) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title).

(ii) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted ''employment'' as defined in section 410 of this title if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which such individual is eligible for benefits under this subsection and has made a valid application for such benefits.

(C) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Commissioner of Social Security) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term ''periodic benefit'' includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(*l*) Entitlement to survivor benefits under railroad retirement provisions

If any person would be entitled, upon filing application therefor to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], or to a lump-sum payment under section 6(b) of such Act [45 U.S.C. 231e(b)], with respect to the death of an employee (as defined in such Act) no lump-sum death payment, and no monthly benefit for the month in which such employee died or for any month thereafter, shall be paid under this section to any person on the basis of the wages and self-employment income of such employee.

(m) Repealed. Pub. L. 97–35, title XXII, § 2201(b)(10), Aug. 13, 1981, 95 Stat. 831

(n) Termination of benefits upon removal of primary beneficiary

(1) If any individual is (after September 1, 1954) removed under section 1227(a) of title 8 (other than under paragraph (1)(C) of such section) or under section 1182(a)(6)(A) of title 8, then, notwithstanding any other provisions of this subchapter—

(A) no monthly benefit under this section or section 423 of this title shall be paid to such individual, on the basis of his wages and self-employment income, for any month occurring (i) after the month in which the Commissioner of Social Security is notified by the Attorney General or the Secretary of Homeland Security that such individual has been so removed, and (ii) before the month in which such individual is thereafter lawfully admitted to the United States for permanent residence,

(B) if no benefit could be paid to such individual (or if no benefit could be paid to him if he were alive) for any month by reason of subparagraph (A), no monthly benefit under this section shall be paid, on the basis of his wages and self-employment income, for such month to any other person who is not a citizen of the United States and is outside the United States for any part of such month, and

(C) no lump-sum death payment shall be made on the basis of such individual's wages and self-employment income if he dies (i) in or after the month in which such notice is received, and (ii) before the month in which he is thereafter lawfully admitted to the United States for permanent residence.

Section 403(b), (c), and (d) of this title shall not apply with respect to any such individual for any month for which no monthly benefit may be paid to him by reason of this paragraph.

(2) As soon as practicable after the removal of any individual under any of the paragraphs of

section 1227(a) of title 8 (other than under paragraph (1)(C) of such section) or under section 1182(a)(6)(A) of title 8, the Attorney General or the Secretary of Homeland Security shall notify the Commissioner of Social Security of such removal.

(3) For purposes of paragraphs (1) and (2) of this subsection, an individual against whom a final order of removal has been issued under paragraph (4)(D) of section 1227(a) of title 8 (relating to participating in Nazi persecutions or genocide) shall be considered to have been removed under such paragraph (4)(D) as of the date on which such order became final.

(*o*) Application for benefits by survivors of members and former members of uniformed services

In the case of any individual who would be entitled to benefits under subsection (d), (e), (g), or (h) of this section upon filing proper application therefor, the filing with the Administrator of Veterans' Affairs by or on behalf of such individual of an application for such benefits, on the form described in section 5105 of title 38, shall satisfy the requirement of such subsection (d), (e), (g), or (h) that an application for such benefits be filed.

(p) Extension of period for filing proof of support and applications for lump-sum death payment

In any case in which there is a failure—

(1) to file proof of support under subparagraph (B) of subsection (h)(1) of this section, or under clause (B) of subsection (f)(1) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subparagraph or clause, or

(2) to file, in the case of a death after 1946, application for a lump-sum death payment under subsection (i) of this section, or under subsection (g) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subsection,

any such proof or application, as the case may be, which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Commissioner of Social Security that there was good cause for failure to file such proof or application within such period. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Commissioner of Social Security.

(q) Reduction of benefit amounts for certain beneficiaries

(1) Subject to paragraph (9), if the first month for which an individual is entitled to an old-age, wife's, husband's, widow's, or widower's insurance benefit is a month before the month in which such individual attains retirement age, the amount of such benefit for such month and for any subsequent month shall, subject to the succeeding paragraphs of this subsection, be reduced by—

(A) 5/9 of 1 percent of such amount if such benefit is an old-age insurance benefit, 25/36 of 1 percent of such amount if such benefit is a wife's or husband's insurance benefit, or 19/40 of 1 percent of such amount if such benefit is a widow's or widower's insurance benefit, multiplied by

(B)(i) the number of months in the reduction period for such benefit (determined under paragraph (6)), if such benefit is for a month before the month in which such individual attains retirement age, or

(ii) if less, the number of such months in the adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is (I) for the month in which such individual attains age 62, or (II) for the month in which such individual attains retirement age.

(2) If an individual is entitled to a disability insurance benefit for a month after a month for which such individual was entitled to an old-age insurance benefit, such disability insurance benefit for each month shall be reduced by the amount such old-age insurance benefit would be reduced under paragraphs (1) and (4) for such month had such individual attained retirement age (as defined in section 416(*l*) of this title) in the first month for which he most recently became entitled to a disability insurance benefit.

(3)(A) If the first month for which an individual both is entitled to a wife's, husband's, widow's, or widower's insurance benefit and has attained age 62 (in the case of a wife's or husband's insurance benefit) or age 50 (in the case of a widow's or widower's insurance benefit) is a month for which such individual is also entitled to—

(i) an old-age insurance benefit (to which such individual was first entitled for a month before he attains retirement age (as defined in section 416(*l*) of this title)), or

(ii) a disability insurance benefit,

then in lieu of any reduction under paragraph (1) (but subject to the succeeding paragraphs of this subsection) such wife's, husband's, widow's, or widower's insurance benefit for each month shall be reduced as provided in subparagraph (B), (C), or (D).

(B) For any month for which such individual is entitled to an old-age insurance benefit and is not entitled to a disability insurance benefit, such individual's wife's or husband's insurance benefit shall be reduced by the sum of—

(i) the amount by which such old-age insurance benefit is reduced under paragraph (1) for such month, and

(ii) the amount by which such wife's or husband's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's or husband's insurance benefit (before reduction under this subsection) over such old-age insurance benefit (before reduction under this subsection).

(C) For any month for which such individual is entitled to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the sum of—

(i) the amount by which such disability insurance benefit is reduced under paragraph (2) for such month (if such paragraph applied to such benefit), and

(ii) the amount by which such wife's, husband's, widow's, or widower's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's, husband's, widow's, or widower's insurance benefit (before reduction under this subsection) over such disability insurance benefit (before reduction under this subsection).

(D) For any month for which such individual is entitled neither to an old-age insurance benefit nor to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the amount by which it would be reduced under paragraph (1).

(E) Notwithstanding subparagraph (A) of this paragraph, if the first month for which an individual is entitled to a widow's or widower's insurance benefit is a month for which such individual is also entitled to an old-age insurance benefit to which such individual was first entitled for that month or for a month before she or he became entitled to a widow's or widower's benefit, the reduction in such widow's or widower's insurance benefit shall be determined under paragraph (1).

(4) If—

(A) an individual is or was entitled to a benefit subject to reduction under paragraph (1) or (3) of this subsection, and

(B) such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based,

then the amount of the reduction of such benefit (after the application of any adjustment under paragraph (7)) for each month beginning with the month of such increase in the primary insurance amount shall be computed under paragraph (1) or (3), whichever applies, as though the increased primary insurance amount had been in effect for and after the month for which the individual first became entitled to such monthly benefit reduced under such paragraph (1) or (3).

(5)(A) No wife's or husband's insurance benefit shall be reduced under this subsection—

(i) for any month before the first month for which there is in effect a certificate filed by him or her with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which he or she elects to receive wife's or husband's insurance benefits reduced as provided in this subsection, or

(ii) for any month in which he or she has in his or her care (individually or jointly with the person on whose wages and self-employment income the wife's or husband's insurance benefit is based) a child of such person entitled to child's insurance benefits.

(B) Any certificate described in subparagraph (A)(i) shall be effective for purposes of this subsection (and for purposes of preventing deductions under section 403(c)(2) of this title)—

(i) for the month in which it is filed and for any month thereafter, and

(ii) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he or she attains age 62, nor shall it be effective for any month to which subparagraph (A)(ii) applies.

(C) If an individual does not have in his or her care a child described in subparagraph (A)(ii) in the first month for which he or she is entitled to a wife's or husband's insurance benefit, and if such first month is a month before the month in which he or she attains retirement age (as defined in section 416(*l*) of this title), he or she shall be deemed to have filed in such first month the certificate described in subparagraph (A)(i).

(D) No widow's or widower's insurance benefit for a month in which he or she has in his or her care a child of his or her deceased spouse (or deceased former spouse) entitled to child's insurance benefits shall be reduced under this subsection below the amount to which he or she would have been entitled had he or she been entitled for such month to mother's or father's insurance benefits on the basis of his or her deceased spouse's (or deceased former spouse's) wages and self-employment income.

(6) For purposes of this subsection, the ''reduction period'' for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the period—

(A) beginning—

(i) in the case of an old-age insurance benefit, with the first day of the first month for which such individual is entitled to such benefit,

(ii) in the case of a wife's or husband's insurance benefit, with the first day of the first month for which a certificate described in paragraph (5)(A)(i) is effective, or

(iii) in the case of a widow's or widower's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit or the first day of the month in which such individual attains age 60, whichever is the later, and

(B) ending with the last day of the month before the month in which such individual attains retirement age.

(7) For purposes of this subsection, the ''adjusted reduction period'' for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the reduction period prescribed in paragraph (6) for such benefit, excluding—

(A) any month in which such benefit was subject to deductions under section 403(b), 403(c)(1), 403(d)(1), or 422(b) of this title,

(B) in the case of wife's or husband's insurance benefits, any month in which such individual had in his or her care (individually or jointly with the person on whose wages and self-employment income such benefit is based) a child of such person entitled to child's insurance benefits,

(C) in the case of wife's or husband's insurance benefits, any month for which such individual was not entitled to such benefits because of the occurrence of an event that terminated her or his entitlement to such benefits,

(D) in the case of widow's or widower's insurance benefits, any month in which the reduc-

tion in the amount of such benefit was determined under paragraph (5)(D),

(E) in the case of widow's or widower's insurance benefits, any month before the month in which she or he attained age 62, and also for any later month before the month in which she or he attained retirement age, for which she or he was not entitled to such benefit because of the occurrence of an event that terminated her or his entitlement to such benefits, and

(F) in the case of old-age insurance benefits, any month for which such individual was entitled to a disability insurance benefit.

(8) This subsection shall be applied after reduction under section 403(a) of this title and before application of section 415(g) of this title. If the amount of any reduction computed under paragraph (1), (2), or (3) is not a multiple of $0.10, it shall be increased to the next higher multiple of $0.10.

(9) The amount of the reduction for early retirement specified in paragraph (1)—

(A) for old-age insurance benefits, wife's insurance benefits, and husband's insurance benefits, shall be the amount specified in such paragraph for the first 36 months of the reduction period (as defined in paragraph (6)) or adjusted reduction period (as defined in paragraph (7)), and five-twelfths of 1 percent for any additional months included in such periods; and

(B) for widow's insurance benefits and widower's insurance benefits, shall be periodically revised by the Commissioner of Social Security such that—

(i) the amount of the reduction at early retirement age as defined in section 416(*l*) of this title shall be 28.5 percent of the full benefit; and

(ii) the amount of the reduction for each month in the reduction period (specified in paragraph (6)) or the adjusted reduction period (specified in paragraph (7)) shall be established by linear interpolation between 28.5 percent at the month of attainment of early retirement age and 0 percent at the month of attainment of retirement age.

(10) For purposes of applying paragraph (4), with respect to monthly benefits payable for any month after December 1977 to an individual who was entitled to a monthly benefit as reduced under paragraph (1) or (3) prior to January 1978, the amount of reduction in such benefit for the first month for which such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based and for all subsequent months (and similarly for all subsequent increases) shall be increased by a percentage equal to the percentage increase in such primary insurance amount (such increase being made in accordance with the provisions of paragraph (8)). In the case of an individual whose reduced benefit under this section is increased as a result of the use of an adjusted reduction period (in accordance with paragraphs (1) and (3) of this subsection), then for the first month for which such increase is effective, and for all subsequent months, the amount of such reduction (after the application of the previous sentence, if applicable) shall be determined—

(A) in the case of old-age, wife's, and husband's insurance benefits, by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period to (ii) the number of months in the reduction period,

(B) in the case of widow's and widower's insurance benefits for the month in which such individual attains age 62, by multiplying such amount by the ratio of (i) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent to (ii) the number of months in the reduction period multiplied by 19/40 of 1 percent, and

(C) in the case of widow's and widower's insurance benefits for the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period multiplied by 19/40 of 1 percent to (ii) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent,

such determination being made in accordance with the provisions of paragraph (8).

(11) When an individual is entitled to more than one monthly benefit under this subchapter and one or more of such benefits are reduced under this subsection, paragraph (10) shall apply separately to each such benefit reduced under this subsection before the application of subsection (k) of this section (pertaining to the method by which monthly benefits are offset when an individual is entitled to more than one kind of benefit) and the application of this paragraph shall operate in conjunction with paragraph (3).

(r) Presumed filing of application by individuals eligible for old-age insurance benefits and for wife's or husband's insurance benefits

(1) If the first month for which an individual is entitled to an old-age insurance benefit is a month before the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), and if such individual is eligible for a wife's or husband's insurance benefit for such first month, such individual shall be deemed to have filed an application in such month for wife's or husband's insurance benefits.

(2) If the first month for which an individual is entitled to a wife's or husband's insurance benefit reduced under subsection (q) of this section is a month before the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), and if such individual is eligible (but for subsection (k)(4) of this section) for an old-age insurance benefit for such first month, such individual shall be deemed to have filed an application for old-age insurance benefits—

(A) in such month, or

(B) if such individual is also entitled to a disability insurance benefit for such month, in the first subsequent month for which such individual is not entitled to a disability insurance benefit.

(3) For purposes of this subsection, an individual shall be deemed eligible for a benefit for a month if, upon filing application therefor in such month, he would be entitled to such benefit for such month.

(s) Child over specified age to be disregarded for certain benefit purposes unless disabled

(1) For the purposes of subsections (b)(1), (c)(1), (g)(1), (q)(5), and (q)(7) of this section and paragraphs (2), (3), and (4) of section 403(c) of this title, a child who is entitled to child's insurance benefits under subsection (d) of this section for any month, and who has attained the age of 16 but is not in such month under a disability (as defined in section 423(d) of this title), shall be deemed not entitled to such benefits for such month, unless he was under such a disability in the third month before such month.

(2) So much of subsections (b)(3), (c)(4),[1] (d)(5), (g)(3), and (h)(4) of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability (as defined in section 423(d) of this title) or had been under such a disability in the third month before the month in which such marriage occurred.

(3) The last sentence of subsection (c) of section 403 of this title, subsection (f)(1)(C) of section 403 of this title, and subsections (b)(3)(B), (c)(6)(B),[1] (f)(3)(B), and (g)(6)(B)[1] of section 416 of this title shall not apply in the case of any child with respect to any month referred to therein unless in such month or the third month prior thereto such child was under a disability (as defined in section 423(d) of this title).

(t) Suspension of benefits of aliens who are outside United States; residency requirements for dependents and survivors

(1) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual who is not a citizen or national of the United States for any month which is—

(A) after the sixth consecutive calendar month during all of which the Commissioner of Social Security finds, on the basis of information furnished to the Commissioner by the Attorney General or information which otherwise comes to the Commissioner's attention, that such individual is outside the United States, and

(B) prior to the first month thereafter for all of which such individual has been in the United States.

For purposes of the preceding sentence, after an individual has been outside the United States for any period of thirty consecutive days he shall be treated as remaining outside the United States until he has been in the United States for a period of thirty consecutive days.

(2) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any individual who is a citizen of a foreign country which the Commissioner of Social Security finds has in effect a social insurance or pension system which is of general application in such country and under which—

(A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and

(B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

(3) Paragraph (1) of this subsection shall not apply in any case where its application would be contrary to any treaty obligation of the United States in effect on August 1, 1956.

(4) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any benefit for any month if—

(A) not less than forty of the quarters elapsing before such month are quarters of coverage for the individual on whose wages and self-employment income such benefit is based, or

(B) the individual on whose wages and self-employment income such benefit is based has, before such month, resided in the United States for a period or periods aggregating ten years or more, or

(C) the individual entitled to such benefit is outside the United States while in the active military or naval service of the United States, or

(D) the individual on whose wages and self-employment income such benefit is based died, before such month, either (i) while on active duty or inactive duty training (as those terms are defined in section 410(*l*) (2) and (3) of this title) as a member of a uniformed service (as defined in section 410(m) of this title), or (ii) as the result of a disease or injury which the Secretary of Veterans Affairs determines was incurred or aggravated in line of duty while on active duty (as defined in section 410(*l*)(2) of this title), or an injury which he determines was incurred or aggravated in line of duty while on inactive duty training (as defined in section 410(*l*)(3) of this title), as a member of a uniformed service (as defined in section 410(m) of this title), if the Secretary of Veterans Affairs determines that such individual was discharged or released from the period of such active duty or inactive duty training under conditions other than dishonorable, and if the Secretary of Veterans Affairs certifies to the Commissioner of Social Security his determinations with respect to such individual under this clause, or

(E) the individual on whose employment such benefit is based had been in service covered by the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which was treated as employment covered by this chapter pursuant to the provisions of section 5(k)(1) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(k)(1)] or section 18(2) of the Railroad Retirement Act of 1974 [45 U.S.C. 231q(2)];

except that subparagraphs (A) and (B) of this paragraph shall not apply in the case of any individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies subparagraph (A) but not subparagraph (B) of paragraph (2), or who is a citizen of a foreign country that has no social insurance or pension system of general application if at any time within five years prior to the month in which the Social Security Amendments of 1967 are enacted (or the first month thereafter for which his benefits are subject to suspension under paragraph (1)) payments to individuals residing in such country were withheld by the Treasury Department under sections 3329(a) and 3330(a) of title 31.

(5) No person who is, or upon application would be, entitled to a monthly benefit under this section for December 1956 shall be deprived, by reason of paragraph (1) of this subsection, of such benefit or any other benefit based on the wages and self-employment income of the individual on whose wages and self-employment income such monthly benefit for December 1956 is based.

(6) If an individual is outside the United States when he dies and no benefit may, by reason of paragraph (1) or (10) of this subsection, be paid to him for the month preceding the month in which he dies, no lump-sum death payment may be made on the basis of such individual's wages and self-employment income.

(7) Subsections (b), (c), and (d) of section 403 of this title shall not apply with respect to any individual for any month for which no monthly benefit may be paid to him by reason of paragraph (1) of this subsection.

(8) The Attorney General shall certify to the Commissioner of Social Security such information regarding aliens who depart from the United States to any foreign country (other than a foreign country which is territorially contiguous to the continental United States) as may be necessary to enable the Commissioner of Social Security to carry out the purposes of this subsection and shall otherwise aid, assist, and cooperate with the Commissioner of Social Security in obtaining such other information as may be necessary to enable the Commissioner of Social Security to carry out the purposes of this subsection.

(9) No payments shall be made under part A of subchapter XVIII of this chapter with respect to items or services furnished to an individual in any month for which the prohibition in paragraph (1) against payment of benefits to him is applicable (or would be if he were entitled to any such benefits).

(10) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title, for any month beginning after June 30, 1968, to an individual who is not a citizen or national of the United States and who resides during such month in a foreign country if payments for such month to individuals residing in such country are withheld by the Treasury Department under sections 3329(a) and 3330(a) of title 31.

(11)(A) Paragraph (2) and subparagraphs (A), (B), (C), and (E) of paragraph (4) shall apply with respect to an individual's monthly benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of this section only if such individual meets the residency requirements of this paragraph with respect to those benefits.

(B) An individual entitled to benefits under subsection (b), (c), (e), (f), or (g) of this section meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing bore a spousal relationship to the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years. For purposes of this subparagraph, a period of time for which an individual bears a spousal relationship to another person consists of a period throughout which the individual has been, with respect to such other person, a wife, a husband, a widow, a widower, a divorced wife, a divorced husband, a surviving divorced wife, a surviving divorced husband, a surviving divorced mother, a surviving divorced father, or (as applicable in the course of such period) any two or more of the foregoing.

(C) An individual entitled to benefits under subsection (d) of this section meets the residency requirements of this paragraph with respect to those benefits only if—

(i)(I) such individual has resided in the United States (as the child of the person on whose wages and self-employment income such entitlement is based) for a total period of not less than 5 years, or

(II) the person on whose wages and self-employment income such entitlement is based, and the individual's other parent (within the meaning of subsection (h)(3) of this section), if any, have each resided in the United States for a total period of not less than 5 years (or died while residing in the United States), and

(ii) in the case of an individual entitled to such benefits as an adopted child, such individual was adopted within the United States by the person on whose wages and self-employment income such entitlement is based, and has lived in the United States with such person and received at least one-half of his or her support from such person for a period (beginning before such individual attained age 18) consisting of—

(I) the year immediately before the month in which such person became eligible for old-age insurance benefits or disability insurance benefits or died, whichever occurred first, or

(II) if such person had a period of disability which continued until he or she became entitled to old-age insurance benefits or disability insurance benefits or died, the year immediately before the month in which such period of disability began.

(D) An individual entitled to benefits under subsection (h) of this section meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing was a parent (within the meaning of subsection (h)(3) of this section) of the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years.

(E) This paragraph shall not apply with respect to any individual who is a citizen or resident of a foreign country with which the United States has an agreement in force concluded pursuant to section 433 of this title, except to the extent provided by such agreement.

(u) Conviction of subversive activities, etc.

(1) If any individual is convicted of any offense (committed after August 1, 1956) under—

(A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18, or

(B) section 783 of title 50,

then the court may, in addition to all other penalties provided by law, impose a penalty that in determining whether any monthly insurance benefit under this section or section 423 of this title is payable to such individual for the month in which he is convicted or for any month thereafter, in determining the amount of any such benefit payable to such individual for any such month, and in determining whether such individual is entitled to insurance benefits under part A of subchapter XVIII of this chapter for any such month, there shall not be taken into account—

(C) any wages paid to such individual or to any other individual in the calendar year in which such conviction occurs or in any prior calendar year, and

(D) any net earnings from self-employment derived by such individual or by any other individual during a taxable year in which such conviction occurs or during any prior taxable year.

(2) As soon as practicable after an additional penalty has, pursuant to paragraph (1) of this subsection, been imposed with respect to any individual, the Attorney General shall notify the Commissioner of Social Security of such imposition.

(3) If any individual with respect to whom an additional penalty has been imposed pursuant to paragraph (1) of this subsection is granted a pardon of the offense by the President of the United States, such additional penalty shall not apply for any month beginning after the date on which such pardon is granted.

(v) Waiver of benefits

(1) Notwithstanding any other provisions of this subchapter, and subject to paragraph (3), in the case of any individual who files a waiver pursuant to section 1402(g) of the Internal Revenue Code of 1986 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this subchapter to him, no payments shall be made on his behalf under part A of subchapter XVIII of this chapter, and no benefits or other payments under this subchapter shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver.

(2) Notwithstanding any other provision of this subchapter, and subject to paragraph (3), in the case of any individual who files a waiver pursuant to section 3127 of the Internal Revenue Code of 1986 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this subchapter to him, no payments shall be made on his behalf under part A of subchapter XVIII of this chapter, and no benefits or other payments under this subchapter shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver.

(3) If, after an exemption referred to in paragraph (1) or (2) is granted to an individual, such exemption ceases to be effective, the waiver referred to in such paragraph shall cease to be applicable in the case of benefits and other payments under this subchapter and part A of subchapter XVIII of this chapter to the extent based on—

(A) his wages for and after the calendar year following the calendar year in which occurs the failure to meet the requirements of section 1402(g) or 3127 of the Internal Revenue Code of 1986 on which the cessation of such exemption is based, and

(B) his self-employment income for and after the taxable year in which occurs such failure.

(w) Increase in old-age insurance benefit amounts on account of delayed retirement

(1) The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title as in effect in December 1978 or section 415(a)(1)(C)(i) of this title as in effect thereafter) which is payable without regard to this subsection to an individual shall be increased by—

(A) the applicable percentage (as determined under paragraph (6)) of such amount, multiplied by

(B) the number (if any) of the increment months for such individual.

(2) For purposes of this subsection, the number of increment months for any individual shall be a number equal to the total number of the months—

(A) which have elapsed after the month before the month in which such individual attained retirement age (as defined in section 416(*l*) of this title) or (if later) December 1970 and prior to the month in which such individual attained age 70, and

(B) with respect to which—

(i) such individual was a fully insured individual (as defined in section 414(a) of this title),

(ii) such individual either was not entitled to an old-age insurance benefit or, if so entitled, did not receive benefits pursuant to a request by such individual that benefits not be paid, and

(iii) such individual was not subject to a penalty imposed under section 1320a–8a of this title.

(3) For purposes of applying the provisions of paragraph (1), a determination shall be made under paragraph (2) for each year, beginning with 1972, of the total number of an individual's increment months through the year for which the determination is made and the total so determined shall be applicable to such individual's old-age insurance benefits beginning with benefits for January of the year following the year

for which such determination is made; except that the total number applicable in the case of an individual who attains age 70 after 1972 shall be determined through the month before the month in which he attains such age and shall be applicable to his old-age insurance benefit beginning with the month in which he attains such age.

(4) This subsection shall be applied after reduction under section 403(a) of this title.

(5) If an individual's primary insurance amount is determined under paragraph (3) of section 415(a) of this title as in effect in December 1978, or section 415(a)(1)(C)(i) of this title as in effect thereafter, and, as a result of this subsection, he would be entitled to a higher old-age insurance benefit if his primary insurance amount were determined under section 415(a) of this title (whether before, in, or after December 1978) without regard to such paragraph, such individual's old-age insurance benefit based upon his primary insurance amount determined under such paragraph shall be increased by an amount equal to the difference between such benefit and the benefit to which he would be entitled if his primary insurance amount were determined under such section without regard to such paragraph.

(6) For purposes of paragraph (1)(A), the ''applicable percentage'' is—

(A) 1/12 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year before 1979;

(B) 1/4 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year after 1978 and before 1987;

(C) in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 1986 and before 2005, a percentage equal to the applicable percentage in effect under this paragraph for persons who first became eligible for an old-age insurance benefit in the preceding calendar year (as increased pursuant to this subparagraph), plus 1/24 of 1 percent if the calendar year in which that particular individual first becomes eligible for such benefit is not evenly divisible by 2; and

(D) 2/3 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 2004.

(x) Limitation on payments to prisoners, certain other inmates of publicly funded institutions, fugitives, probationers, and parolees

(1)(A) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual for any month ending with or during or beginning with or during a period of more than 30 days throughout all of which such individual—

(i) is confined in a jail, prison, or other penal institution or correctional facility pursuant to his conviction of a criminal offense,

(ii) is confined by court order in an institution at public expense in connection with—

(I) a verdict or finding that the individual is guilty but insane, with respect to a criminal offense,

(II) a verdict or finding that the individual is not guilty of such an offense by reason of insanity,

(III) a finding that such individual is incompetent to stand trial under an allegation of such an offense, or

(IV) a similar verdict or finding with respect to such an offense based on similar factors (such as a mental disease, a mental defect, or mental incompetence),

(iii) immediately upon completion of confinement as described in clause (i) pursuant to conviction of a criminal offense an element of which is sexual activity, is confined by court order in an institution at public expense pursuant to a finding that the individual is a sexually dangerous person or a sexual predator or a similar finding,

(iv) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or

(v) is violating a condition of probation or parole imposed under Federal or State law.

(B)(i) For purposes of clause (i) of subparagraph (A), an individual shall not be considered confined in an institution comprising a jail, prison, or other penal institution or correctional facility during any month throughout which such individual is residing outside such institution at no expense (other than the cost of monitoring) to such institution or the penal system or to any agency to which the penal system has transferred jurisdiction over the individual.

(ii) For purposes of clauses (ii) and (iii) of subparagraph (A), an individual confined in an institution as described in such clause (ii) shall be treated as remaining so confined until—

(I) he or she is released from the care and supervision of such institution, and

(II) such institution ceases to meet the individual's basic living needs.

(iii) Notwithstanding subparagraph (A), the Commissioner shall, for good cause shown, pay the individual benefits that have been withheld or would otherwise be withheld pursuant to clause (iv) or (v) of subparagraph (A) if the Commissioner determines that—

(I) a court of competent jurisdiction has found the individual not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the individual for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action), or

(II) the individual was erroneously implicated in connection with the criminal offense by reason of identity fraud.

(iv) Notwithstanding subparagraph (A), the Commissioner may, for good cause shown based on mitigating circumstances, pay the individual benefits that have been withheld or would otherwise be withheld pursuant to clause (iv) or (v) of

subparagraph (A) if the Commissioner determines that—

(I) the offense described in clause (iv) or underlying the imposition of the probation or parole described in clause (v) was nonviolent and not drug-related, and

(II) in the case of an individual from whom benefits have been withheld or otherwise would be withheld pursuant to subparagraph (A)(v), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.

(2) Benefits which would be payable to any individual (other than a confined individual to whom benefits are not payable by reason of paragraph (1)) under this subchapter on the basis of the wages and self-employment income of such a confined individual but for the provisions of paragraph (1), shall be payable as though such confined individual were receiving such benefits under this section or section 423 of this title.

(3)(A) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law, any agency of the United States Government or of any State (or political subdivision thereof) shall make available to the Commissioner of Social Security, upon written request, the name and social security account number of any individual who is confined as described in paragraph (1) if the confinement is under the jurisdiction of such agency and the Commissioner of Social Security requires such information to carry out the provisions of this section.

(B)(i) The Commissioner shall enter into an agreement under this subparagraph with any interested State or local institution comprising a jail, prison, penal institution, or correctional facility, or comprising any other institution a purpose of which is to confine individuals as described in paragraph (1)(A)(ii). Under such agreement—

(I) the institution shall provide to the Commissioner, on a monthly basis and in a manner specified by the Commissioner, the names, Social Security account numbers, dates of birth, confinement commencement dates, and, to the extent available to the institution, such other identifying information concerning the individuals confined in the institution as the Commissioner may require for the purpose of carrying out paragraph (1) and other provisions of this subchapter; and

(II) the Commissioner shall pay to the institution, with respect to information described in subclause (I) concerning each individual who is confined therein as described in paragraph (1)(A), who receives a benefit under this subchapter for the month preceding the first month of such confinement, and whose benefit under this subchapter is determined by the Commissioner to be not payable by reason of confinement based on the information provided by the institution, $400 (subject to reduction under clause (ii)) if the institution furnishes the information to the Commissioner within 30 days after the date such individual's confinement in such institution begins, or $200 (subject to reduction under clause (ii)) if the institution furnishes the information after 30 days after such date but within 90 days after such date.

(ii) The dollar amounts specified in clause (i)(II) shall be reduced by 50 percent if the Commissioner is also required to make a payment to the institution with respect to the same individual under an agreement entered into under section 1382(e)(1)(I) of this title.

(iii) There are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate, such sums as may be necessary to enable the Commissioner to make payments to institutions required by clause (i)(II).

(iv) The Commissioner shall maintain, and shall provide on a reimbursable basis, information obtained pursuant to agreements entered into under this paragraph to any agency administering a Federal or federally-assisted cash, food, or medical assistance program for eligibility and other administrative purposes under such program.

(C) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this subchapter, if the officer furnishes the Commissioner with the name of the beneficiary, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissioner that—

(i) the beneficiary is described in clause (iv) or (v) of paragraph (1)(A); and

(ii) the location or apprehension of the beneficiary is within the officer's official duties.

(y) Limitation on payments to aliens

Notwithstanding any other provision of law, no monthly benefit under this subchapter shall be payable to any alien in the United States for any month during which such alien is not lawfully present in the United States as determined by the Attorney General.

(Aug. 14, 1935, ch. 531, title II, § 202, 49 Stat. 623; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1363; Aug. 10, 1946, ch. 951, title IV, §§ 402, 403(a), 404(a), 405(a), 60 Stat. 986, 987; Aug. 28, 1950, ch. 809, title I, § 101(a), 64 Stat. 482; Aug. 14, 1953, ch. 483, § 2, 67 Stat. 580; Sept. 1, 1954, ch. 1206, title I, §§ 102(i), 105(a), 107, 110, 68 Stat. 1073, 1079, 1083, 1085; Aug. 9, 1955, ch. 685, § 2, 69 Stat. 621; Aug. 1, 1956, ch. 836, title I, §§ 101(a)–(c), 102(c), (d)(1)–(10), 103(c)(1)–(3), 113, 114(a), 118(a), 121(a), 70 Stat. 807, 810–814, 818, 831, 832, 835, 838; Aug. 1, 1956, ch. 837, title IV, §§ 403(a), 407, 70 Stat. 871, 876; Pub. L. 85–238, §§ 1, 3(a)–(g), Aug. 30, 1957, 71 Stat. 518; Pub. L. 85–798, § 1, Aug. 28, 1958, 72 Stat. 964; Pub. L. 85–840, title I, § 101(e), title II, § 205(b)–(i), title III, §§ 301(a)(1), (b)(1), (c)(1), 303, 304(a)(1), 305(a), 306(a), 307(a)–(e), Aug. 28, 1958, 72 Stat. 1017, 1021–1024, 1026, 1027, 1029–1032; Pub. L. 85–857, § 13(i)(1), Sept. 2, 1958, 72 Stat. 1265; Pub. L. 85–927, § 301, Sept. 6, 1958, 72 Stat. 1783; Pub. L. 86–70, § 32(c)(1), June 25, 1959, 73 Stat. 149; Pub. L. 86–624, § 30(c)(1), July 12, 1960, 74 Stat. 420; Pub. L. 86–778, title I, § 103(a)(1), (j)(2)(C), (D), title II,

§§ 201(a), (b), 202(a), 203(a), 205(a), (b), 208(d), 211(i)–(*l*), title III, § 301(a), title IV, § 403(d), Sept. 13, 1960, 74 Stat. 936, 937, 946, 947, 949, 952, 957–959, 1969; Pub. L. 87–64, title I, §§ 102(a), (b)(1), (2)(A), (3), (e), 104(a)–(d), June 30, 1961, 75 Stat. 131, 134–136, 138, 139; Pub. L. 89–97, title I, § 104(a), title III, §§ 303(d), 304(a)–(j), 306(a), (b), (c)(1)–(9), 307(a), (b), 308(a), (b), (d)(1), (2)(A), (3)–(5), (12), (13), 319(d), 323(a), 324(a), 328(a), 333(a)–(c), 334(e), (f), 339(b), 343(a), July 30, 1965, 79 Stat. 334, 367–379, 392, 397, 398, 400, 403–405, 410, 412; Pub. L. 90–248, title I, §§ 103(a)–(d), 104(a)–(c), 112(a), 151(a)–(d)(1), (2), 157(a), (b), 158(c)(1), (2), 162(a)(1), (b)(1), (c)(1), (2), Jan. 2, 1968, 81 Stat. 828–830, 838, 860, 867, 868, 871; Pub. L. 91–172, title X, § 1004(a)–(c), Dec. 30, 1969, 83 Stat. 741; Pub. L. 92–223, § 1, Dec. 28, 1971, 85 Stat. 802; Pub. L. 92–603, title I, §§ 102(a), (b), (d)–(f), 103(a), (b), 107(a), 108(a)–(e), 109(a), 110(a), 111(a), 112(a), 113(b), 114(a)–(c), 116(b), (c), Oct. 30, 1972, 86 Stat. 1335, 1336, 1338–1340, 1343–1348, 1350; Pub. L. 93–66, title II, § 240(a), July 9, 1973, 87 Stat. 161; Pub. L. 93–233, §§ 1(f), (g), 18(b), Dec. 31, 1973, 87 Stat. 947, 948, 967; Pub. L. 93–445, title III, § 301, Oct. 16, 1974, 88 Stat. 1357; Pub. L. 95–216, title II, §§ 203, 204(a)–(d), 205(a), (b), title III, §§ 331(a)–(c), 332(a)(1), (2), 334(a)–(d)(4)(A), (5), (6), (e), 336(a), (b), 337(b), 353(f)(1), Dec. 20, 1977, 91 Stat. 1527–1529, 1541–1548, 1554; Pub. L. 95–600, title VII, § 703(j)(14)(A), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 96–265, title III, §§ 303(b)(1)(B)–(D), 306(a), June 9, 1980, 94 Stat. 451, 452, 457; Pub. L. 96–473, §§ 5(b), 6(a), Oct. 19, 1980, 94 Stat. 2265; Pub. L. 96–499, title X, § 1011(a), Dec. 5, 1980, 94 Stat. 2655; Pub. L. 97–35, title XXII, §§ 2201(b)(10), (11), (d), (f), 2202(a)(1), 2203(a), (b)(1), (c)(1), (d)(1), (2), 2205(a), 2206(b)(1), 2210(a), Aug. 13, 1981, 95 Stat. 831–838, 841; Pub. L. 97–123, § 2(e), Dec. 29, 1981, 95 Stat. 1660; Pub. L. 97–455, § 7(c), Jan. 12, 1983, 96 Stat. 2501; Pub. L. 98–21, title I, §§ 111(a)(7), 113(d), 114(a)–(c)(1), 131(a)(1)–(3)(G), (b)(1)–(3)(F), (c), 132(a), 133(a), (b), 134(a), (b), title II, § 201(b), (c)(1)(A), title III, §§ 301(a), (b), 302, 306(a), (b), (d)–(h), 307(a), 309(a)–(e), 334(a), 337(a), 339(a), 340(a), (b), Apr. 20, 1983, 97 Stat. 72, 79, 92, 93, 95–98, 108, 111–116, 130, 131, 133–135; Pub. L. 98–369, div. B, title VI, §§ 2661(b)–(f), 2662(c)(1), 2663(a)(2), July 18, 1984, 98 Stat. 1156, 1159, 1160; Pub. L. 99–272, title XII, §§ 12104(a), 12107(a), Apr. 7, 1986, 100 Stat. 285, 286; Pub. L. 99–514, title XVIII, § 1883(a)(1)–(3), Oct. 22, 1986, 100 Stat. 2916; Pub. L. 100–203, title IX, §§ 9007(a)–(e), 9010(b)–(d), Dec. 22, 1987, 101 Stat. 1330–289 to 1330–293; Pub. L. 100–647, title VIII, §§ 8004(a), (b), 8007(b), 8010(a), (b), 8014(a), Nov. 10, 1988, 102 Stat. 3780, 3782, 3788, 3790; Pub. L. 101–239, title X, §§ 10203(a), 10301(a), (b), 10302(a)(1), Dec. 19, 1989, 103 Stat. 2473, 2481; Pub. L. 101–508, title V, §§ 5103(c)(2)(A), (B), (d), 5116(a), Nov. 5, 1990, 104 Stat. 1388–252, 1388–253, 1388–274; Pub. L. 101–649, title VI, § 603(b)(5), Nov. 29, 1990, 104 Stat. 5085; Pub. L. 102–40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–54, § 13(q)(3)(C), June 13, 1991, 105 Stat. 279; Pub. L. 103–296, title I, § 107(a)(4), title III, §§ 308(a), 321(a)(2)–(5), (b)(1), (c)(2), Aug. 15, 1994, 108 Stat. 1478, 1522, 1535–1538; Pub. L. 103–387, § 4(a), Oct. 22, 1994, 108 Stat. 4076; Pub. L. 104–121, title I, § 104(a)(1), (b)(1), (2), Mar. 29, 1996, 110 Stat. 851, 852; Pub. L. 104–208, div. C, title III, § 308(g)(1), title V, § 503(a), Sept. 30, 1996, 110 Stat. 3009–622, 3009–671; Pub. L. 106–169, title II, § 207(b), Dec. 14, 1999, 113 Stat. 1838; Pub. L. 106–170, title IV, § 402(a)(1), (b)(1), (d)(1), (2), 113 Stat. 1907–1909; Pub. L. 106–182, § 4(b), Apr. 7, 2000, 114 Stat. 199; Pub. L. 108–203, title II, § 203(a), title IV, §§ 412(a), (b), 418(a)–(b)(4)(B)(vi), (5), 420A(a), Mar. 2, 2004, 118 Stat. 509, 527, 528, 531–533, 535.)

REFERENCES IN TEXT

The effective date of this sentence, referred to in subsec. (d)(7)(A), is the effective date of section 5 of Pub. L. 96–473, which added such sentence effective with respect to benefits payable for months beginning on or after October 1, 1980. See Effective Date of 1980 Amendments note below.

Section 212 of Public Law 93–66, referred to in subsecs. (e)(5)(B), (8) and (f)(5)(B), (8), is set out as a note under section 1382 of this title.

Section 102(g) of the Social Security Amendments of 1972, referred to in subsecs. (e)(6) and (f)(6), is section 102(g) of Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a Redetermination of Widow's and Widower's Benefits note under this section.

Paragraph (3) of subsec. (f) of this section, referred to in subsec. (f)(1), was redesignated par. (2) of subsec. (f) by Pub. L. 108–203, § 418(b)(4)(A)(i). See 2004 Amendment note below.

Section 2201 of the Omnibus Budget Reconciliation Act of 1981, referred to in subsec. (i), is Pub. L. 97–35, title XXII, § 2201, Aug. 13, 1981, 95 Stat. 830, which enacted section 1382k of this title, amended sections 402, 403, 415, 417, and 433 of this title, and enacted provisions set out as notes under sections 415 and 1382k of this title.

The Foreign Service Act of 1980, referred to in subsec. (k)(5)(A)(ii)(II), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Subchapter II of chapter 8 of title I of the Act is classified generally to part II (§ 4071 et seq.) of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

Clause (B) of subsection (f)(1) of this section as in effect prior to the Social Security Act Amendments of 1950, and subsection (g) of this section as in effect prior to the Social Security Act Amendments of 1950, referred to in subsec. (p), means such subsections as in effect prior to September 1, 1950, which was the effective date of section 101(a) of act Aug. 28, 1950. See section 101(b), (1), (3) of act Aug. 28, 1950, set out as an Effective Date of 1950 Amendment note below.

Subsection (c)(4) of this section, referred to in subsec. (s)(2), was redesignated subsec. (c)(3) by Pub. L. 108–203, § 418(b)(2)(A). See 2004 Amendment note below.

Subsection (c)(6)(B) of section 416 of this title, referred to in subsec. (s)(3), was redesignated subsec. (c)(1)(F)(ii) of section 416 of this title by Pub. L. 108–203, § 414(a)(1), (2), (4).

Subsection (g)(6)(B) of section 416 of this title, referred to in subsec. (s)(3), was redesignated subsec. (g)(1)(F)(ii) of section 416 of this title by Pub. L. 108–203, § 414(b)(1), (2), (4).

The Railroad Retirement Act of 1937, referred to in subsec. (t)(4)(E), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsec. (t)(4)(E), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Pub. L. 93–445 completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the

Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45. For further details and complete classification of these Acts to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The month in which the Social Security Amendments of 1967 were enacted, referred to in the provisions following subsec. (t)(4)(E), is Jan. 1968, date of approval of Pub. L. 90–248.

Part A of subchapter XVIII of this chapter, referred to in subsecs. (t)(9), (u)(1), and (v)(2), (3), is classified to section 1395c et seq. of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (v) and (x)(3)(C), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

In subsec. (t)(4), (10), ''sections 3329(a) and 3330(a) of title 31'' substituted for ''the first section of the Act of October 9, 1940 (31 U.S.C. 123)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108–203, § 418(b)(1)(A), substituted ''subsections (k)(5) and (q) of this section'' for ''subsection (q) of this section and paragraph (4) of this subsection''.

Subsec. (b)(4), (5). Pub. L. 108–203, § 418(b)(1)(B), redesignated par. (5) as (4) and struck out former par. (4), which related to reduction of a wife's insurance benefit for each month, in certain circumstances, by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the wife for such month which is based upon her earnings while in the service of the Federal Government or any State or political subdivision thereof.

Subsec. (c)(2). Pub. L. 108–203, § 418(b)(2), redesignated par. (3) as (2), substituted ''subsections (k)(5) and (q) of this section'' for ''subsection (q) of this section and paragraph (2) of this subsection'', and struck out former par. (2), which related to reduction of a husband's insurance benefit for each month, in certain circumstances, by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the husband for such month which is based upon his earnings while in the service of the Federal Government or any State or political subdivision thereof.

Subsec. (c)(3) to (5). Pub. L. 108–203, § 418(b)(2)(A), redesignated pars. (4) and (5) as (3) and (4), respectively. Former par. (3) redesignated (2).

Subsec. (d)(6)(B). Pub. L. 108–203, § 420A(a), inserted ''(i)'' after ''began'' and added cl. (ii).

Subsec. (e)(2)(A). Pub. L. 108–203, § 418(b)(3)(A), substituted ''subsection (k)(5) of this section, subsection (q) of this section,'' for ''subsection (q) of this section, paragraph (7) of this subsection,''.

Subsec. (e)(7) to (9). Pub. L. 108–203, § 418(b)(3)(B), redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7), which related to reduction of a widow's insurance benefit for each month, in certain circumstances, by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widow for such month which is based upon her earnings while in the service of the Federal Government or any State or political subdivision thereof.

Subsec. (f)(1)(B)(ii). Pub. L. 108–203, § 418(b)(4)(B)(i), substituted ''paragraph (4)'' for ''paragraph (5)''.

Subsec. (f)(1)(F). Pub. L. 108–203, § 418(b)(4)(B)(ii), in cl. (i), substituted ''paragraph (5)'' for ''paragraph (6)'' and, in cl. (ii), substituted ''paragraph (4)'' for ''paragraph (5)''.

Subsec. (f)(2). Pub. L. 108–203, § 418(b)(4)(A)(i), redesignated par. (3) as (2) and struck out former par. (2), which related to reduction of a widower's insurance benefit for each month, in certain circumstances, by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widower for such month which is based upon his earnings while in the service of the Federal Government or any State or political subdivision thereof.

Subsec. (f)(2)(A). Pub. L. 108–203, § 418(b)(4)(A)(ii), substituted ''subsection (k)(5) of this section, subsection (q) of this section,'' for ''subsection (q) of this section, paragraph (2) of this subsection,''.

Subsec. (f)(3), (4). Pub. L. 108–203, § 418(b)(4)(A)(i), redesignated pars. (4) and (5) as (3) and (4), respectively. Former par. (3) redesignated (2).

Subsec. (f)(5). Pub. L. 108–203, § 418(b)(4)(A)(i), (B)(iii), redesignated par. (6) as (5) and substituted ''paragraph (4)'' for ''paragraph (5)'' in subpar. (A)(ii). Former par. (5) redesignated (4).

Subsec. (f)(6) to (9). Pub. L. 108–203, § 418(b)(4)(A)(i), redesignated pars. (7) to (9) as (6) to (8), respectively. Former par. (6) redesignated (5).

Subsec. (g)(2). Pub. L. 108–203, § 418(b)(5)(A), substituted ''Such'' for ''Except as provided in paragraph (4) of this subsection, such''.

Subsec. (g)(4). Pub. L. 108–203, § 418(b)(5)(B), struck out par. (4), which related to reduction of a mother's or father's insurance benefit for each month, in certain circumstances, by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the individual for such month which is based upon the individual's earnings while in the service of the Federal Government or any State or political subdivision thereof.

Subsec. (k)(2)(B). Pub. L. 108–203, § 418(b)(4)(B)(iv), substituted ''or (f)(3)'' for ''or (f)(4)'' in two places.

Subsec. (k)(3)(A). Pub. L. 108–203, § 418(b)(4)(B)(v), substituted ''or (f)(2)'' for ''or (f)(3)''.

Subsec. (k)(3)(B). Pub. L. 108–203, § 418(b)(4)(B)(vi), substituted ''or (f)(3)'' for ''or (f)(4)''.

Subsec. (k)(5). Pub. L. 108–203, § 418(a), added par. (5).

Subsec. (n). Pub. L. 108–203, § 412(b)(1)(C), substituted ''removal'' for ''deportation'' in heading.

Subsec. (n)(1). Pub. L. 108–203, § 412(b)(1)(B), substituted ''removed'' for ''deported'' in introductory provisions.

Pub. L. 108–203, § 412(a)(1), substituted ''section 1227(a) of title 8 (other than under paragraph (1)(C) of such section) or under section 1182(a)(6)(A) of title 8'' for ''section 1227(a) of title 8 (other than under paragraph (1)(C) or (1)(E) thereof)'' in introductory provisions.

Subsec. (n)(1)(A). Pub. L. 108–203, § 412(b)(2), inserted ''or the Secretary of Homeland Security'' after ''the Attorney General''.

Pub. L. 108–203, § 412(b)(1)(B), substituted ''removed'' for ''deported''.

Subsec. (n)(2). Pub. L. 108–203, § 412(b)(2), inserted ''or the Secretary of Homeland Security'' after ''the Attorney General''.

Pub. L. 108–203, § 412(b)(1)(A), substituted ''removal'' for ''deportation'' in two places.

Pub. L. 108–203, § 412(a)(2), substituted ''section 1227(a) of title 8 (other than under paragraph (1)(C) of such section) or under section 1182(a)(6)(A) of title 8'' for ''section 1227(a) of title 8 (other than under paragraph (1)(C) or (1)(E) thereof)''.

Subsec. (n)(3). Pub. L. 108–203, § 412(a)(4), (b)(1)(A), (B), substituted ''removed'' for ''deported'' and ''removal'' for ''deportation'' and made technical amendment to reference in original act which appears in text as reference to section 1227(a) of title 8.

Pub. L. 108–203, § 412(a)(3), substituted ''paragraph (4)(D) of section 1227(a) of title 8 (relating to participating in Nazi persecutions or genocide) shall be considered to have been deported under such paragraph (4)(D)'' for ''paragraph (19) of section 1227(a) of title 8 (relating to persecution of others on account of race, religion, national origin, or political opinion, under the direction of or in association with the Nazi government of Germany or its allies) shall be considered to have been deported under such paragraph (19)''.

Subsec. (x). Pub. L. 108–203, §203(a)(1), substituted ''prisoners, certain other inmates of publicly funded institutions, fugitives, probationers, and parolees'' for ''prisoners and certain other inmates of publicly funded institutions'' in heading.

Subsec. (x)(1)(A)(iv), (v). Pub. L. 108–203, §203(a)(2)–(4), added cls. (iv) and (v).

Subsec. (x)(1)(B)(iii), (iv). Pub. L. 108–203, §203(a)(5), added cls. (iii) and (iv).

Subsec. (x)(3)(C). Pub. L. 108–203, §203(a)(6), added subpar. (C).

2000—Subsec. (w)(2)(B)(ii). Pub. L. 106–182 substituted ''or, if so entitled, did not receive benefits pursuant to a request by such individual that benefits not be paid'' for ''or suffered deductions under section 403(b) or 403(c) of this title in amounts equal to the amount of such benefit''.

1999—Subsec. (w)(2)(B)(iii). Pub. L. 106–169 added cl. (iii).

Subsec. (x)(1)(A). Pub. L. 106–170, §402(b)(1)(A), substituted ''ending with or during or beginning with or during a period of more than 30 days throughout all of which'' for ''during which'' in introductory provisions.

Subsec. (x)(1)(A)(i). Pub. L. 106–170, §402(d)(1)(A), struck out ''or'' at end.

Pub. L. 106–170, §402(b)(1)(B), substituted ''a criminal offense'' for ''an offense punishable by imprisonment for more than 1 year (regardless of the actual sentence imposed)''.

Subsec. (x)(1)(A)(ii)(I). Pub. L. 106–170, §402(b)(1)(C), substituted ''a criminal offense'' for ''an offense punishable by imprisonment for more than 1 year''.

Subsec. (x)(1)(A)(ii)(IV). Pub. L. 106–170, §402(d)(1)(B), substituted '', or'' for period at end.

Subsec. (x)(1)(A)(iii). Pub. L. 106–170, §402(d)(1)(C), added cl. (iii).

Subsec. (x)(1)(B)(ii). Pub. L. 106–170, §402(d)(2), substituted ''clauses (ii) and (iii)'' for ''clause (ii)''.

Subsec. (x)(3). Pub. L. 106–170, §402(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

1996—Subsec. (d)(1)(H). Pub. L. 104–121, §104(b)(1), added subpar. (H).

Subsec. (d)(4). Pub. L. 104–121, §104(a)(1), struck out ''was living with or'' before ''was receiving at least one-half of his support''.

Subsec. (d)(10). Pub. L. 104–121, §104(b)(2), added par. (10).

Subsec. (n). Pub. L. 104–208, §308(g)(1), substituted ''section 1227(a)'' for ''section 1251(a)'' in pars. (1) to (3).

Subsec. (y). Pub. L. 104–208, §503(a), added subsec. (y).

1994—Subsec. (b)(4)(A). Pub. L. 103–296, §308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (b)(4)(B). Pub. L. 103–296, §308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (b)(4)(C), (5)(A). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(A). Pub. L. 103–296, §308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (c)(2)(B). Pub. L. 103–296, §308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (c)(2)(C), (5)(A). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(7)(A). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner'' for ''him''.

Subsec. (d)(7)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(8)(D)(ii). Pub. L. 103–296, §321(a)(2), inserted period at end and realigned margin.

Subsec. (e)(1)(C)(ii)(III), (5)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (e)(7)(A). Pub. L. 103–296, §308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (e)(7)(B). Pub. L. 103–296, §308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (e)(7)(C), (9). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (f)(1)(C)(ii)(III). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (f)(2)(A). Pub. L. 103–296, §308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (f)(2)(B). Pub. L. 103–296, §308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (f)(2)(C), (6)(B), (9). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (g)(4)(A). Pub. L. 103–296, §308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (g)(4)(B). Pub. L. 103–296, §308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (g)(4)(C). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsecs. (i), (j)(1), (2), (5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (n)(1). Pub. L. 103–296, §321(b)(1), made technical amendment to directory language of Pub. L. 101–649, §603(b)(5)(A). See 1990 Amendment note below.

Subsecs. (n)(1)(A), (2), (p). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (q)(1)(A). Pub. L. 103–296, §321(a)(3), struck out dash after ''multiplied by'' at end.

Subsec. (q)(5)(A)(i). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (q)(9). Pub. L. 103–296, §321(a)(4), in introductory provisions substituted ''paragraph (1)'' for ''parargaph (1)''.

Subsec. (q)(9)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (t)(1)(A). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'', ''the Commissioner by'' for ''him by'', and ''the Commissioner's attention'' for ''his attention''.

Subsec. (t)(2). Pub. L. 103–296, §107(a)(4), in introductory provisions substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (t)(4)(D). Pub. L. 103–296, §321(a)(5), inserted ''if the'' before ''Secretary of Veterans Affairs determines that such'' and before ''Secretary of Veterans Affairs certifies to the''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' before ''his determinations with''.

Subsecs. (t)(8), (u)(2). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (v)(1). Pub. L. 103–296, §321(c)(2)(A), substituted ''Code of 1986'' for ''Code of 1954''.

Subsec. (v)(3)(A). Pub. L. 103–296, §321(c)(2)(B), inserted ''of the Internal Revenue Code of 1986'' after ''3127''.

Subsec. (x). Pub. L. 103–387, §4(a)(1), inserted ''and certain other inmates of publicly funded institutions'' in heading.

Subsec. (x)(1). Pub. L. 103–387, §4(a)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual for any month during which such individual is confined in a jail, prison, or other penal institution or

correctional facility, pursuant to his conviction of an offense which constituted a felony under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for such individual by a court of law and, as determined by the Commissioner of Social Security, is expected to result in such individual being able to engage in substantial gainful activity upon release and within a reasonable time.''

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (x)(3). Pub. L. 103–387, § 4(a)(3), substituted ''any individual who is confined as described in paragraph (1) if the confinement is under the jurisdiction of such agency and the Commissioner of Social Security requires such information to carry out the provisions of this section'' for ''any individual who is confined in a jail, prison, or other penal institution or correctional facility under the jurisdiction of such agency, pursuant to his conviction of an offense which constituted a felony under applicable law, which the Commissioner of Social Security may require to carry out the provisions of this subsection''.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

1991—Subsec. (*o*). Pub. L. 102–40 substituted ''section 5105 of title 38'' for ''section 3005 of title 38''.

Subsec. (t)(4)(D). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' before ''determines was'', ''Secretary of Veterans Affairs'' for ''if the Administrator'' before ''determines that'', and ''Secretary of Veterans Affairs'' for ''if the Administrator'' before ''certifies''.

1990—Subsec. (e)(5). Pub. L. 101–508, § 5103(c)(2)(A), designated existing provision as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, in cl. (ii) substituted ''(I)'' and ''(II)'' for ''(i)'' and ''(ii)'', respectively, and added subpar. (B).

Subsec. (e)(9). Pub. L. 101–508, § 5103(d)(1), added par. (9).

Subsec. (f)(6). Pub. L. 101–508, § 5103(c)(2)(B), designated existing provision as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, in cl. (ii) substituted ''(I)'' and ''(II)'' for ''(i)'' and ''(ii)'', respectively, and added subpar. (B).

Subsec. (f)(9). Pub. L. 101–508, § 5103(d)(2), added par. (9).

Subsec. (j)(4)(A). Pub. L. 101–508, § 5116(a)(1), substituted ''if the amount of the monthly benefit to which such individual would otherwise be entitled for any such month would be subject to reduction pursuant to subsection (q) of this section'' for ''if the effect of entitlement to such benefit would be to reduce, pursuant to subsection (q) of this section, the amount of the monthly benefit to which such individual would otherwise be entitled for the month in which such application is filed''.

Subsec. (j)(4)(B)(i). Pub. L. 101–508, § 5116(a)(2), redesignated cl. (ii) as (i) and struck out former cl. (i) which read as follows: ''If the individual applying for retroactive benefits is applying for such benefits under subsection (a) of this section, and there are one or more other persons who would (except for subparagraph (A)) be entitled for any month, on the basis of the wages and self-employment income of such individual and because of such individual's entitlement to such retroactive benefits, to retroactive benefits under subsection (b), (c), or (d) of this section not subject to reduction under subsection (q) of this section, then subparagraph (A) shall not apply with respect to such month or any subsequent month.''

Subsec. (j)(4)(B)(ii) to (v). Pub. L. 101–508, § 5116(a)(2), redesignated cls. (iii) and (v) as (ii) and (iii), respectively, and struck out cl. (iv) which read as follows: ''If the individual applying for retroactive benefits has excess earnings (as defined in section 403(f) of this title) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible.'' Former cl. (ii) redesignated (i).

Subsec. (n)(1). Pub. L. 101–649, § 603(b)(5)(A), as amended by Pub. L. 103–296, § 321(b)(1), substituted ''under section 1251(a) of title 8 (other than under paragraph (1)(C) or (1)(E) thereof)'' for ''under paragraph (1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), (18), or (19) of section 1251(a) of title 8''.

Subsec. (n)(2). Pub. L. 101–649, § 603(b)(5)(B), substituted ''(other than under paragraph (1)(C) or (1)(E) thereof)'' for ''enumerated in paragraph (1) in this subsection''.

1989—Subsec. (d)(8). Pub. L. 101–239, § 10301(b), struck out at end ''In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of birth of such child.''

Subsec. (d)(8)(D). Pub. L. 101–239, § 10301(a), inserted ''and'' after comma at end of cl. (i), added cl. (ii), and struck out former cls. (ii) and (iii) which related to children living with such individual in the United States and receiving at least one-half of support from such individual and who had not attained the age of 18 before living with such individual.

Subsec. (j)(5). Pub. L. 101–239, § 10302(a)(1), added par. (5).

Subsec. (q)(3). Pub. L. 101–239, § 10203(a), redesignated subpar. (H) as (E) and struck out former subpars. (E), (F), and (G) which related to reductions in benefits for individuals entitled to both old-age and widow's or widower's insurance, reductions in benefits for individuals age 62 or over who are entitled to both disability insurance and widow's or widower's insurance, and reductions in benefits for individuals under age 62 who are entitled to both disability insurance and widow's or widower's insurance.

1988—Subsecs. (b)(4)(A)(ii)(II), (c)(2)(A)(ii)(II). Pub. L. 100–647, § 8014(a), substituted ''the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980'' for ''chapter 84 of title 5''.

Subsec. (e)(1)(C). Pub. L. 100–647, § 8010(a)(1), (2), redesignated former cl. (ii) as (iii), added cls. (i) and (ii), and struck out former cl. (i) which read as follows: ''has filed application for widow's insurance benefits, or was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which he died, and (I) has attained retirement age (as defined in section 416(*l*) of this title) or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or''.

Subsec. (e)(7)(A)(ii)(II). Pub. L. 100–647, § 8014(a), substituted ''the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980'' for ''chapter 84 of title 5''.

Subsec. (e)(8). Pub. L. 100–647, § 8010(a)(3), added par. (8).

Subsec. (f)(1)(C). Pub. L. 100–647, § 8010(b)(1), (2), redesignated former cl. (ii) as (iii), added cls. (i) and (ii), and struck out former cl. (i) which read as follows: ''has filed application for widower's insurance benefits or was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which she died, and (I) has attained retirement age (as defined in section 416(*l*) of this title) or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or''.

Subsec. (f)(2)(A)(ii)(II). Pub. L. 100–647, § 8014(a), substituted ''the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980'' for ''chapter 84 of title 5''.

Subsec. (f)(8). Pub. L. 100–647, § 8010(b)(3), added par. (8).

Subsec. (g)(4)(A)(ii)(II). Pub. L. 100–647, § 8014(a), substituted ''the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980'' for ''chapter 84 of title 5''.

Subsec. (n)(1). Pub. L. 100–647, § 8004(a), inserted reference to par. (19) of section 1251(a) of title 8 in introductory provisions.

Subsec. (n)(3). Pub. L. 100–647, § 8004(b), added par. (3).

Subsec. (v). Pub. L. 100–647, § 8007(b), designated existing provisions as par. (1), inserted ''and subject to paragraph (3),'' after ''Notwithstanding any other provisions of this subchapter,'', struck out ''; except that, if thereafter such individual's tax exemption under such section 1402(g) ceases to be effective, such waiver shall cease to be applicable in the case of benefits and other payments under this subchapter and part A of subchapter XVIII of this chapter to the extent based on his self-employment income for and after the first taxable year for which such tax exemption ceases to be effective and on his wages for and after the calendar year (if any) which begins in or with the beginning of such taxable year'' after ''the filing of such waiver'', and added pars. (2) and (3).

1987—Subsec. (b)(4). Pub. L. 100–203, § 9007(a), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a wife's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) of this section shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

Subsec. (c)(2). Pub. L. 100–203, § 9007(b), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a husband's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) of this section shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such husband (or divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

Subsec. (d)(1)(G)(i). Pub. L. 100–203, § 9010(b), substituted ''36 months'' for ''15 months''.

Subsec. (e)(1). Pub. L. 100–203, § 9010(c), substituted ''36 months'' for ''15 months'' in subcl. (II) of last sentence.

Subsec. (e)(7). Pub. L. 100–203, § 9007(c), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a widow's insurance benefit for each month as determined (after application of the provisions of subsections (q) and (k) of this section, paragraph (2)(D), and paragraph (3)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

Subsec. (f)(1). Pub. L. 100–203, § 9010(d), substituted ''36 months'' for ''15 months'' in subcl. (II) of last sentence.

Subsec. (f)(2). Pub. L. 100–203, § 9007(d), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a widower's insurance benefit for each month (as determined after application of the provisions of subsections (k) and (q) of this section, paragraph (3)(D), and paragraph (4)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such widower for such month which is based upon his earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

Subsec. (g)(4). Pub. L. 100–203, § 9007(e), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a mother's or father's insurance benefit for each month to which any individual is entitled under this subsection (as determined after application of subsection (k) of this section) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day such individual was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

1986—Subsec. (c)(5)(B). Pub. L. 99–514, § 1883(a)(1), substituted ''or (J)'' for ''or (I)''.

Subsec. (d)(6)(E). Pub. L. 99–272, § 12107(a), substituted ''the termination month (as defined in paragraph (1)(G)(i)), subject to section 423(e) of this title,'' for ''the third month following the month in which he ceases to be under such disability''.

Subsec. (d)(8)(D)(ii)(III). Pub. L. 99–272, § 12104(a), inserted ''or great-grandchild'' after ''grandchild''.

Subsec. (q)(5)(A)(i). Pub. L. 99–514, § 1883(a)(2), substituted ''prescribed by the Secretary'' for ''prescribed by him''.

Subsec. (q)(5)(C). Pub. L. 99–514, § 1883(a)(3), which directed substitution of ''he or she shall be deemed'' for ''she shall be deemed'' was not executed because of prior amendment substituting ''he or she'' for ''she'' by Pub. L. 98–21, § 309(c)(4). See 1983 Amendment note below.

1984—Subsec. (a). Pub. L. 98–369, § 2662(c)(1), made a clarifying amendment to Pub. L. 98–21, § 201(c)(1)(A). See 1983 Amendment note below.

Subsec. (c)(1). Pub. L. 98–369, § 2661(b)(1)(A), (B), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65'' in cls. (i) and (ii)(I) of provisions following subpar. (D) and preceding subpar. (E).

Pub. L. 98–369, § 2661(b)(1)(C), substituted ''in which'' for ''to which'' in provisions following cl. (ii) of provisions following subpar. (D) and preceding subpar. (E).

Subsec. (c)(5)(A). Pub. L. 98–369, § 2661(b)(2), substituted ''clauses (i) and (ii)'' for ''classes (i) and (ii)''.

Subsec. (d)(1). Pub. L. 98–369, § 2663(a)(2)(A)(i), substituted ''subparagraphs'' for ''paragraphs'' and ''subparagraph'' for ''paragraph'' in cl. (ii) of provisions following subpar. (C) and preceding subpar. (D).

Subsec. (d)(1)(G). Pub. L. 98–369, § 2663(a)(2)(A)(ii), in restructuring subpar. (G), struck out the comma after ''age of 18'', substituted a dash for a comma after ''the age of 22'', substituted ''(i) the termination month, subject to section 423(e) of this title (and for purposes'' for '', or, subject to section 423(e) of this title, the termination month (and for purposes'', and inserted closing parenthesis after ''activity'' and substituted ''(ii)'' and ''(iii)'' for ''(III)'' and ''(IV)'', respectively.

Subsec. (d)(7)(A). Pub. L. 98–369, § 2663(a)(2)(A)(iii), substituted ''the effective date of this sentence'' for ''the date of enactment of this paragraph''.

Subsec. (e)(1). Pub. L. 98–369, § 2663(a)(2)(B), in provisions following subpar. (F)(ii), struck out first of two commas following ''age 60'' and substituted ''she engages'' for ''he engages''.

Subsec. (e)(2)(A). Pub. L. 98–369, § 2661(c)(1), substituted ''paragraph (7) of this subsection'' for ''paragraph (8) of this subsection''.

Subsec. (e)(2)(C). Pub. L. 98–369, § 2661(c)(2), struck out the period after ''If such deceased individual'' and inserted a closing parenthesis after ''paragraph (3) of such subsection (w) of this section''.

Subsec. (e)(7)(A). Pub. L. 98–369, § 2661(c)(3), substituted ''paragraph (2)(D)'' for ''paragraph (2)(B)''.

Subsec. (f)(1). Pub. L. 98–369, § 2663(a)(2)(C), struck out the first of two commas after ''age 60'' in provisions following subpar. (F).

Subsec. (f)(1)(C)(ii). Pub. L. 98–369, § 2661(d)(1), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65''.

Subsec. (f)(2)(A). Pub. L. 98–369, § 2661(d)(2), substituted ''paragraph (3)(D)'' for ''paragraph (3)(B)''.

Subsec. (f)(3)(C). Pub. L. 98–369, § 2661(d)(3), struck out the period after ''If such deceased individual''.

Subsec. (f)(3)(D)(i). Pub. L. 98–369, § 2663(a)(2)(D), struck out the semicolon after ''applicable,''.

Subsec. (i). Pub. L. 98–369, § 2663(a)(2)(E), amended language being deleted by Pub. L. 97–35, § 2202(a)(1). See 1981 Amendment note below.

Subsec. (q)(3)(E). Pub. L. 98–369, § 2662(c)(1), made a clarifying amendment to Pub. L. 98–21, § 201(c)(1)(A). See 1983 Amendment note below.

Subsec. (q)(3)(G). Pub. L. 98–369, § 2663(a)(2)(F)(i), substituted ''if the period'' for ''as if the period''.

Subsec. (q)(7)(E). Pub. L. 98–369, § 2663(a)(2)(F)(ii), substituted ''she or he attained retirement age'' for ''he attained retirement age''.

Subsec. (q)(9)(B)(i). Pub. L. 98–369, § 2661(e), substituted ''section 416(*l*) of this title'' for ''section 416(a) of this title''.

Subsec. (t)(4)(E). Pub. L. 98–369, § 2663(a)(2)(G), inserted ''of 1937 or 1974'' after ''Railroad Retirement Act'' the first place it appears and substituted references to section 5(k)(1) of the Railroad Retirement Act of 1937 and section 18(2) of the Railroad Retirement Act of 1974 for reference to section 5(k)(1) of the Railroad Retirement Act.

Subsec. (u)(1)(B). Pub. L. 98–369, § 2663(a)(2)(H), struck out '', 822, or 823'' after ''section 783''.

1983—Subsec. (a). Pub. L. 98–21, § 201(c)(1)(A), as amended by Pub. L. 98–369, § 2662(c)(1), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 or the age of 65, wherever appearing.

Subsec. (b)(1). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (b)(3). Pub. L. 98–21, § 307(a), struck out exception in provisions following subpar. (B) that, in the case of such a marriage to an individual entitled to benefits under subsection (d) of this section, the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsection (d) of this section unless he ceased to be so entitled by reason of his death.

Subsec. (b)(3)(A). Pub. L. 98–21, §§ 301(a)(7), 309(a), inserted references to subsecs. (c) and (g), respectively.

Subsec. (b)(4)(A). Pub. L. 98–21, § 337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 97–455, § 7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (b)(5). Pub. L. 98–21, § 132(a), added par. (5).

Subsec. (c)(1). Pub. L. 98–21, § 301(a)(1), inserted ''and every divorced husband (as defined in section 416(d) of this title)'' before ''of an individual'', and ''or such divorced husband'' after ''if such husband'' in provisions preceding subpar. (A).

Pub. L. 98–21, § 306(d), in provisions following subpar. (D) and preceding subpar. (E), inserted ''(subject to subsection (s) of this section)'' after ''be entitled to''.

Pub. L. 98–21, § 201(c)(1)(A), which directed the substitution of ''retirement age (as defined in section 416(*l*) of this title'' for ''age 65'' in provisions following subpar. (D) and preceding subpar. (E) was executed to those provisions after the execution of the amendment by section 301(a)(2)(C) of Pub. L. 98–21 as the probable intent of Congress.

Pub. L. 98–21, § 301(a)(2)(C), amended provisions following subpar. (D) generally, inserting references to a divorced husband and to subpar. (D), designating existing provisions as subpars. (E) to (G) and (I) and (J), adding subpar. (H), and revising subpar. (G).

Subsec. (c)(1)(B). Pub. L. 98–21, § 306(e), inserted alternative provisions relating to the case of a husband.

Subsec. (c)(1)(C). Pub. L. 98–21, § 301(a)(2)(A), (B), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c)(1)(D). Pub. L. 98–21, § 301(a)(8), substituted ''such individual'' for ''his wife'' after ''amount of''.

Pub. L. 98–21, § 301(a)(2)(B), redesignated former subpar. (C) as (D).

Subsec. (c)(1)(I) to (K). Pub. L. 98–21, § 306(f), added subpar. (I), and redesignated subpars. (I) and (J), as added by section 301(a)(2)(C) of Pub. L. 98–21, as (J) and (K).

Subsec. (c)(2)(A). Pub. L. 98–21, § 337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98–21, § 301(a)(6), inserted ''(or divorced husband)'' after ''payable to such husband''.

Pub. L. 97–455, § 7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (c)(3). Pub. L. 98–21, § 301(a)(3), inserted ''(or, in the case of a divorced husband, his former wife)'' before ''for such month''.

Subsec. (c)(4), (5). Pub. L. 98–21, § 301(a)(4), (5), added pars. (4) and (5).

Subsec. (d)(5). Pub. L. 98–21, § 307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to a male individual entitled to benefits under section 423(a) of this title or this subsection, the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under section 423(a) of this title or this subsection unless he ceased to be so entitled by reason of

his death, or in the case of an individual entitled to benefits under section 423(a) of this title, he was entitled, for the month following such last month, to benefits under subsection (a) of this section.

Subsec. (d)(5)(A). Pub. L. 98–21, §301(a)(9), inserted reference to subsec. (c).

Subsec. (d)(8)(D)(ii)(II). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (e)(1). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in provisions following subpar. (F).

Pub. L. 98–21, §133(a)(2)(A), inserted ''(as determined after application of subparagraphs (B) and (C) of paragraph (2))'' after ''primary insurance amount'' in provisions following subpar. (F).

Subsec. (e)(1)(B)(ii). Pub. L. 98–21, §131(a)(3)(B), substituted reference to par. (4) for reference to par. (5).

Subsec. (e)(1)(C). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (e)(1)(D). Pub. L. 98–21, §133(a)(2)(A), inserted ''(as determined after application of subparagraphs (B) and (C) of paragraph (2))'' after ''primary insurance amount''.

Subsec. (e)(1)(F)(i). Pub. L. 98–21, §131(a)(3)(C), substituted reference to par. (5) for reference to par. (6).

Subsec. (e)(1)(F)(ii). Pub. L. 98–21, §131(a)(3)(C), substituted reference to par. (4) for reference to par. (5).

Subsec. (e)(2)(A). Pub. L. 98–21, §133(a)(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Except as provided in subsection (q) of this section, paragraph (7) of this subsection, and subparagraph (B) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of such deceased individual. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of subsection (w) of this section.''

Pub. L. 98–21, §131(a)(3)(D), substituted reference to par. (7) for reference to par. (8).

Pub. L. 98–21, §113(d), substituted ''section 415(f)(5), 415(f)(6), or 415(f)(9)(B)'' for ''section 415(f)(5) or (6)''.

Subsec. (e)(2)(B). Pub. L. 98–21, §133(a)(1)(A), added subpar. (B) and redesignated former subpar. (B) as (D).

Subsec. (e)(2)(B)(i). Pub. L. 98–21, §113(d), substituted ''section 415(f)(5), 415(f)(6), or 415(f)(9)(B)'' for ''section 415(f)(5) or (6)''.

Subsec. (e)(2)(C), (D). Pub. L. 98–21, §133(a)(1), added subpar. (C) and redesignated former subpar. (B) as (D).

Subsec. (e)(2)(D)(ii). Pub. L. 98–21, §133(a)(2)(B), inserted ''(as determined without regard to subparagraph (C))'' after ''primary insurance amount''.

Subsec. (e)(3). Pub. L. 98–21, §131(a)(1)–(3)(A), redesignated par. (4) as (3) and substituted provision that, for purposes of par. (1), if (A) a widow or surviving divorced wife marries after attaining age 60 (or after attaining age 50 if she was entitled before such marriage occurred to benefits based on disability under this subsection, or (B) a disabled widow or disabled surviving divorced wife described in paragraph (1)(B)(ii) marries after attaining age 50, such marriage shall be deemed not to have occurred, for provision that if a widow, after attaining age 60, married, such marriage would for purposes of par. (1) be deemed not to have occurred. Former par. (3), which provided that if a widow before attaining age 60, or a surviving divorced wife, married (A) an individual entitled to benefits under subsec. (f) or (h), or (B) an individual who had attained the age of eighteen and was entitled to benefits under subsec. (d), such widow's or surviving divorced wife's entitlement to benefits under this subsection would, notwithstanding the provisions of par. (1) of this subsection, but subject to subsec. (s), not be terminated by reason of such marriage, except that, in the case of such a marriage to an individual entitled to benefits under subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsec. (d) unless he ceased to be so entitled by reason of his death, was struck out.

Subsec. (e)(4). Pub. L. 98–21, §131(a)(3)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(5). Pub. L. 98–21, §131(a)(3)(A), (E), redesignated par. (6) as (5) and substituted reference to par. (4) for reference to par. (5). Former par. (5) redesignated (4).

Subsec. (e)(6). Pub. L. 98–21, §131(a)(3)(A), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (e)(7). Pub. L. 98–21, §131(a)(3)(A), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (e)(7)(A). Pub. L. 98–21, §337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98–21, §131(a)(3)(F), substituted reference to par. (3) for reference to par. (4).

Subsec. (e)(8). Pub. L. 98–21, §131(a)(3)(A), redesignated par. (8) as (7).

Subsec. (e)(8)(A). Pub. L. 97–455, §7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (f)(1). Pub. L. 98–21, §301(b)(1), inserted ''and every surviving divorced husband (as defined in section 416(d) of this title)'' before ''of an individual'', and ''or such surviving divorced husband'' after ''if such widower'' in provisions preceding subpar. (A).

Pub. L. 98–21, §301(b)(2), substituted ''such deceased individual'' for ''his deceased wife'' in provisions following subpar. (F).

Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in provisions following subpar. (F).

Pub. L. 98–21, §133(b)(2)(A), inserted ''(as determined after application of subparagraphs (B) and (C) of paragraph (3))'' after ''primary insurance amount'' in provisions following subpar. (F).

Subsec. (f)(1)(A). Pub. L. 98–21, §302, substituted ''is not married'' for ''has not remarried''.

Subsec. (f)(1)(B)(ii). Pub. L. 98–21, §131(b)(3)(B), substituted reference to par. (5) for reference to par. (6).

Subsec. (f)(1)(C)(i). Pub. L. 98–21, §306(g), designated existing provisions as cl. (i).

Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (f)(1)(C)(ii). Pub. L. 98–21, §201(c)(1)(A), which directed the substitution of ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65'' in cl. (ii) was executed to those provisions after the execution of section 306(g) of Pub. L. 98–21 as the probable intent of Congress.

Pub. L. 98–21, §306(g), added cl. (ii).

Subsec. (f)(1)(D). Pub. L. 98–21, §301(b)(2), substituted ''such deceased individual'' for ''his deceased wife''.

Pub. L. 98–21, § 133(b)(2)(A), inserted ''(as determined after application of subparagraphs (B) and (C) of paragraph (3))'' after ''primary insurance amount''.

Subsec. (f)(1)(F)(i). Pub. L. 98–21, § 131(b)(3)(C), substituted reference to par. (6) for reference to par. (7).

Subsec. (f)(1)(F)(ii)(I). Pub. L. 98–21, § 131(b)(3)(C), substituted reference to par. (5) for reference to par. (6).

Subsec. (f)(2)(A). Pub. L. 98–21, § 337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98–21, § 131(b)(3)(D), substituted reference to par. (4) for reference to par. (5).

Pub. L. 97–455, § 7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (f)(3)(A). Pub. L. 98–21, § 133(b)(1)(B), amended subpar. (A) generally. Prior to the amendment subpar. (A) read as follows: ''Except as provided in subsection (q) of this section, paragraph (2) of this subsection, and subparagraph (B) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of his deceased wife. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of subsection (w) of this section.''

Pub. L. 98–21, § 113(d), substituted ''section 415(f)(5), 415(f)(6), or 415(f)(9)(B)'' for ''section 415(f)(5) or (6)''.

Subsec. (f)(3)(B). Pub. L. 98–21, § 133(b)(1), added subpar. (B) and redesignated former subpar. (B) as (D).

Pub. L. 98–21, § 113(d), substituted ''section 415(f)(5), 415(f)(6), or 415(f)(9)'' for ''section 415(f)(5) or (6)''.

Subsec. (f)(3)(B)(ii)(II). Pub. L. 98–21, § 301(b)(3), inserted ''or surviving divorced husband'' after ''widower''.

Subsec. (f)(3)(C). Pub. L. 98–21, § 133(b)(1)(B), added subpar. (C).

Subsec. (f)(3)(D). Pub. L. 98–21, § 301(b)(4), inserted ''or surviving divorced husband'' after ''widower'' wherever appearing.

Pub. L. 98–21, § 301(b)(5), substituted ''individual'' for ''wife'' wherever appearing.

Pub. L. 98–21, § 133(b)(1)(A), redesignated former subpar. (B) as (D).

Subsec. (f)(3)(D)(ii). Pub. L. 98–21, § 133(b)(2)(B), inserted ''(as determined without regard to subparagraph (C))'' after ''primary insurance amount''.

Subsec. (f)(4). Pub. L. 98–21, § 301(b)(4), inserted ''or surviving divorced husband'' after ''widower'' in two places.

Pub. L. 98–21, § 131(b)(1)–(3)(A), redesignated par. (5) as (4), and amended par. (4) as so redesignated generally, substituting provision that for purposes of par. (1), if a widower married after attaining age 60 (or after attaining age 50 if entitled before such marriage occurred to benefits based on disability under this subsection), or a disabled widower described in paragraph (1)(B)(ii) married after attaining age 50, such marriage would be deemed not to have occurred, for provision that if a widower married after attaining age 60, such marriage would be deemed not to have occurred for purposes of par. (1). Former par. (4), which had provided that if a widower, before attaining age 60, remarried an individual entitled to benefits under subsec. (b), (e), (g), or (h) or an individual who had attained the age of eighteen and was entitled to benefits under subsec. (d), such widower's entitlement to benefits under this subsection would, notwithstanding the provisions of par. (1) of this subsection but subject to subsec. (s), not be terminated by reason of such marriage, was struck out.

Subsec. (f)(5). Pub. L. 98–21, § 301(b)(4), inserted ''or surviving divorced husband'' after ''widower'' in provisions preceding subpar. (A).

Pub. L. 98–21, § 131(b)(3)(A), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (f)(5)(B), (C). Pub. L. 98–21, § 306(h), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(6). Pub. L. 98–21, § 301(b)(4), inserted ''or surviving divorced husband'' after ''widower''.

Pub. L. 98–21, § 131(b)(3)(A), (E), redesignated par. (7) as (6) and substituted reference to par. (5) for reference to par. (6). Former par. (6) redesignated (5).

Subsec. (f)(7), (8). Pub. L. 98–21, § 131(b)(3)(A), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (g). Pub. L. 98–21, § 306(a)(7), inserted ''or father's'' after ''mother's'' wherever appearing.

Subsec. (g)(1). Pub. L. 98–21, § 306(a)(8), struck out ''after August 1950'' after ''beginning with the first month'' in provisions following subpar. (F).

Pub. L. 98–21, § 306(a)(1), (2), (5), (6), substituted ''surviving spouse'' for ''widow'', ''surviving spouse's'' for ''widow's'', ''he or she'' for ''she'', and ''parent'' for ''mother'', wherever appearing.

Subsec. (g)(1)(D). Pub. L. 98–21, § 306(a)(3), substituted ''a spouse's insurance benefit'' for ''wife's insurance benefits'' and ''such individual'' for ''he''.

Subsec. (g)(1)(E), (F)(i). Pub. L. 98–21, § 306(a)(4), substituted ''his or her'' for ''her''.

Subsec. (g)(3). Pub. L. 98–21, § 307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to an individual entitled to benefits under section 423(a) of this title or subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under section 423(a) of this title or subsec. (d) unless he ceased to be so entitled by reason of his death, or in the case of an individual entitled to benefits under section 423(a) of this title, he was entitled, for the month following such last month, to benefits under subsec. (a).

Pub. L. 98–21, § 306(a)(1), (6), substituted ''surviving spouse'' for ''widow'' and ''parent'' for ''mother'' wherever appearing.

Subsec. (g)(3)(A). Pub. L. 98–21, § 306(a)(9)(B), inserted reference to this subsection and subsecs. (b) and (e).

Pub. L. 98–21, § 301(b)(6), inserted reference to subsec. (c).

Subsec. (g)(4)(A). Pub. L. 98–21, § 337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 97–455, § 7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (h)(4). Pub. L. 98–21, § 307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to a male individual entitled to benefits under subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsec. (d) unless he ceased to be so entitled by reason of his death.

Subsec. (h)(4)(A). Pub. L. 98–21, § 301(b)(7), inserted reference to subsec. (c).

Subsec. (j)(4)(B)(iii) to (v). Pub. L. 98–21, §334(a), added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

Subsec. (k)(2)(B), (3)(B). Pub. L. 98–21, §131(b)(3)(F), (G), substituted references to subsecs. (e)(3) and (f)(4) for references to subsecs. (e)(4) and (f)(5), respectively, wherever appearing.

Subsec. (m). Pub. L. 98–21, §§111(a)(7), 134(b), in par. (1) substituted ''November'' for ''May'' and in par. (2)(B) substituted ''subsection (q)(6)(B)'' for ''subsection (q)(6)(A)(ii)'', as subsec. (m) [notwithstanding its repeal by Pub. L. 97–35] continues to apply in certain cases by reason of section 2(j)(2)–(4) of Pub. L. 97–123, set out as an Effective Date of 1981 Amendment note under section 415 of this title. As thus amended subsec. (m) would read as follows:

''(1) In any case in which an individual is entitled to a monthly benefit under this section on the basis of a primary insurance amount computed under section 415(a) or (d) of this title, as in effect after December 1978, on the basis of the wages and self-employment income of a deceased individual for any month and no other person is (without the application of subsection (j)(1) of this section) entitled to a monthly benefit under this section for that month on the basis of such wages and self-employment income, the individual's benefit amount for that month, prior to reduction under subsection (k)(3) of this section, shall not be less than that provided by subparagraph (C)(1)(I) of section 415(a)(1) of this title and increased under section 415(i) of this title for months after November of the year in which the insured individual died as though such benefit were a primary insurance amount.

''(2) In the case of any such individual who is entitled to a monthly benefit under subsection (e) or (f) of this section, such individual's benefit amount, after reduction under subsection (q)(1) of this section, shall be not less than—

''(A) $84.50, if his first month of entitlement to such benefit is the month in which such individual attained age 62 or a subsequent month, or

''(B) $84.50 reduced under subsection (q)(1) of this section as if retirement age as specified in subsection (q)(6)(B) of this section were age 62 instead of the age specified in subsection (q)(9) of this section, if his first month of entitlement to such benefit is before the month in which he attained age 62.

''(3) In the case of any individual whose benefit amount was computed (or recomputed) under the provisions of paragraph (2) and such individual was entitled to benefits under subsection (e) or (f) of this section for a month prior to any month after 1972 for which a general benefit increase under this subchapter (as defined in section 415(i)(3) of this title) or a benefit increase under section 415(i) of this title becomes effective, the benefit amount of such individual as computed under paragraph (2) without regard to the reduction specified in subparagraph (B) thereof shall be increased by the percentage increase applicable for such benefit increase, prior to the application of subsection (q)(1) of this section pursuant to paragraph (2)(B) and subsection (q)(4) of this section.''

Subsec. (q)(1). Pub. L. 98–21, §201(b)(2), substituted ''Subject to paragraph (9), if'' for ''If'' at beginning of par. (1).

Pub. L. 98–21, §134(a)(1), struck out provisions following subpar. (B)(ii) which directed that in the case of a widow or widower whose first month of entitlement to a widow's or widower's insurance benefit was a month before the month in which such widow or widower attained age 60, such benefit, reduced pursuant to preceding provisions of this paragraph (and before the application of the second sentence of paragraph (8)), had to be further reduced by 43/240 of 1 percent of the amount of such benefit, multiplied by the number of months in the additional reduction period for such benefit (determined under paragraph (6)(B)), if such benefit was for a month before the month in which such individual attained age 62, or if less, the number of months in the additional adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit was for the month in which such individual attained age 62 or any month thereafter.

Subsec. (q)(1)(B)(i). Pub. L. 98–21, §134(a)(2)(C), substituted ''paragraph (6)'' for ''paragraph (6)(A)''.

Subsec. (q)(2). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(3)(A)(i). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(3)(E). Pub. L. 98–21, §309(b), inserted ''or surviving divorced husband'' after ''widower''.

Pub. L. 98–21, §201(c)(1)(A), as amended by Pub. L. 98–369, §2662(c)(1), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to the age of 65.

Subsec. (q)(3)(E)(ii). Pub. L. 98–21, §134(a)(2)(C), substituted ''paragraph (6)'' for ''paragraph (6)(A)''.

Subsec. (q)(3)(F). Pub. L. 98–21, §309(b), inserted ''or surviving divorced husband'' after ''widower''.

Subsec. (q)(3)(F)(ii)(I). Pub. L. 98–21, §134(a)(2)(C), substituted ''paragraph (6)'' for ''paragraph (6)(A)''.

Subsec. (q)(3)(G). Pub. L. 98–21, §309(b), inserted ''or surviving divorced husband'' after ''widower''.

Pub. L. 98–21, §134(a)(2)(B), substituted ''paragraph (6)'' for ''paragraph (6)(A) (or, if such paragraph does not apply, the period specified in paragraph (6)(B))''.

Subsec. (q)(5). Pub. L. 98–21, §309(c)(4), substituted ''he or she'' for ''she'' wherever appearing.

Pub. L. 98–21, §309(c)(1), inserted ''or husband's'' after ''wife's'' wherever appearing.

Subsec. (q)(5)(A)(i). Pub. L. 98–21, §309(c)(2), substituted ''him or her'' for ''her''.

Subsec. (q)(5)(A)(ii). Pub. L. 98–21, §309(c)(3), substituted ''the'' for ''her'' after ''income''.

Subsec. (q)(5)(B)(ii). Pub. L. 98–21, §309(c)(6), substituted ''the individual'' for ''the woman''.

Subsec. (q)(5)(C). Pub. L. 98–21, §309(c)(6), substituted ''an individual'' for ''a woman''.

Pub. L. 98–21, §309(c)(5), substituted ''his or her'' for ''her''.

Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 wherever appearing.

Subsec. (q)(5)(D). Pub. L. 98–21, §309(c)(7), inserted ''or widower's'' after ''widow's'', substituted ''spouse'' for ''husband'' wherever appearing, substituted ''spouse's'' for ''husband's'' wherever appearing, and inserted ''or father's'' after ''mother's''.

Pub. L. 98–21, §309(c)(5), substituted ''his or her'' for ''her'' in three places.

Subsec. (q)(6). Pub. L. 98–21, §134(a)(2)(A), amended par. (6) generally, striking out subpar. designation ''(A)'' after ''this subsection'' and redesignated cl. (i) as subpar. (A), in subpar. (A) as so redesignated, redesignated subcls. (I) to (III) as cls. (i) to (iii), respectively, redesignated former cl. (ii) as subpar. (B), and struck out former subpar. (B), which had provided that the ''additional reduction period'' for an individual's widow's or widower's insurance benefit was the period beginning with the first day of the first month for which such individual was entitled to such benefit, but only if such individual had not attained age 60 in such first month, and ending with the last day of the month before the month in which such individual attained age 60.

Subsec. (q)(6)(A)(i). Pub. L. 98–21, §309(d)(1), struck out ''or husband's'' after ''old-age''.

Subsec. (q)(6)(A)(ii). Pub. L. 98–21, §309(d)(1), inserted ''or husband's'' after ''wife's''.

Subsec. (q)(7). Pub. L. 98–21, §134(a)(3), amended provisions preceding subpar. (A) generally, substituting reference to par. (6) for reference to par. (6)(A), and striking out provision that the additional adjusted reduction period for an individual's, widow's, or widower's insurance benefit was the additional reduction period prescribed by par. (6)(B) for such benefit, with the same exclusions as from the adjusted reduction period.

Subsec. (q)(7)(B). Pub. L. 98–21, §309(d)(2)(A), inserted ''or husband's'' after ''wife's'', substituted ''such individual'' for ''she'', and inserted ''his or'' before ''her''.

Subsec. (q)(7)(D). Pub. L. 98–21, § 309(d)(2)(B), inserted ''or widower's'' after ''widow's''.

Subsec. (q)(9). Pub. L. 98–21, § 201(b)(1), amended par. (9) generally, substituting provisions defining the amount of reduction for early retirement specified in par. (1) for provision that, for purposes of this subsection, the term ''retirement age'' meant age 65.

Subsec. (q)(10). Pub. L. 98–21, § 134(a)(4)(A), in that part of second sentence preceding cl. (A) struck out ''or an additional adjusted reduction period'' after ''the use of an adjusted reduction period''.

Subsec. (q)(10)(B)(i). Pub. L. 98–21, § 134(a)(4)(B), struck out '', plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent'' before ''to (ii)''.

Subsec. (q)(10)(B)(ii). Pub. L. 98–21, § 134(a)(4)(C), struck out ''plus the number of months in the additional reduction period multiplied by 43/240 of 1 percent,'' after ''1 percent''.

Subsec. (q)(10)(C). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(10(C)(i). Pub. L. 98–21, § 134(a)(4)(B), struck out '', plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent'' before ''to (ii)''.

Subsec. (q)(10)(C)(ii). Pub. L. 98–21, § 134(a)(4)(D), struck out ''plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent.'' after ''1 percent,''.

Subsec. (r)(1), (2). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (s)(1). Pub. L. 98–21, § 309(e)(1), inserted reference to subsec. (c)(1).

Subsec. (s)(2). Pub. L. 98–21, § 309(e)(2), inserted reference to subsec. (c)(4).

Pub. L. 98–21, § 131(c)(1), substituted ''So much of subsections (b)(3), (d)(5), (g)(3), and (h)(4)'' for ''Subsection (f)(4), and so much of subsections (b)(3), (d)(5), (e)(3), (g)(3), and (h)(4)''.

Subsec. (s)(3). Pub. L. 98–21, § 309(e)(3), substituted ''The last sentence'' for ''So much of subsections (b)(3), (d)(5), (g)(3), and (h)(4) of this section as follows the semicolon, the last sentence''.

Pub. L. 98–21, § 131(c)(2), struck out ''(e)(3),'' after ''(d)(5),''.

Subsec. (t)(2), (4). Pub. L. 98–21, § 340(b), substituted ''Subject to paragraph (11), paragraph (1)'' for ''Paragraph (1)''.

Subsec. (t)(11). Pub. L. 98–21, § 340(a)(2), added par. (11).

Subsec. (w)(1)(A). Pub. L. 98–21, § 114(a), substituted a definition of the multiplicand as the applicable percentage (as determined under paragraph (6)) of such amount for a definition of the multiplicand as 1/12 of 1 percent of such amount, or, in the case of an individual who first becomes eligible for an old-age insurance benefit after December 1978, one-quarter of 1 percent of such amount.

Subsec. (w)(2)(A). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Pub. L. 98–21, § 114(c)(1), substituted ''age 70'' for ''age 72''.

Subsec. (w)(3). Pub. L. 98–21, § 114(c)(1), substituted ''age 70'' for ''age 72''.

Subsec. (w)(6). Pub. L. 98–21, § 114(b), added par. (6).

Subsec. (x). Pub. L. 98–21, § 339(a), added subsec. (x).

1981—Subsec. (a). Pub. L. 97–35, § 2203(a), substituted in provision following par. (3) provision specifying the beginning month of entitlement in the case of an individual who has attained age 65 and in the case of an individual who has attained the age of 62, but not the age of 65, for provision specifying the beginning month of entitlement as the first month after August 1950 in which the individual becomes entitled.

Subsec. (b)(1). Pub. L. 97–35, § 2203(b)(1), substituted in provision following subpar. (D) provision specifying the beginning month of entitlement in the case of a wife or divorced wife who has attained the age of 65 and in the case of a wife or divorced wife who has not attained the age of 65 or of an individual entitled to disability insurance benefits for provision specifying the beginning month of entitlement as the first month the wife or divorced wife becomes so entitled to such benefits.

Subsec. (c)(1). Pub. L. 97–35, § 2203(c)(1), substituted in provision following subpar. (C) provision specifying the beginning month of entitlement in the case of a husband who has attained the age of 65 and in the case of a husband who has not attained the age of 65 or of an individual entitled to disability benefits for provision specifying the beginning month of entitlement as the first month after August 1950 in which he becomes entitled to benefits.

Subsec. (d)(1). Pub. L. 97–35, §§ 2203(d)(1), 2210(a)(1), (5)(A), substituted in subpars. (B)(i), (E)(ii), (F)(i), and (G)(III) ''full-time elementary or secondary school student'' for ''full-time student'', in subpars. (B)(i), (F)(ii), and (G)(IV) ''19'' for ''22'', and in provision following subpar. (C) provision specifying the beginning month of entitlement in the case of a child of an individual who has died and of a child of an individual entitled to an old-age insurance benefit or a disability insurance benefit for provision specifying the beginning month of entitlement as the first month after August 1950 in which such child becomes entitled to benefits.

Subsec. (d)(6)(A). Pub. L. 97–35, § 2210(a)(5)(B), substituted ''full-time elementary or secondary school student and has not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) and has not attained the age of 22'' for ''full-time student or is under a disability (as defined in section 423(d) of this title), and (ii) had not attained the age of 22''.

Subsec. (d)(6)(D), (E). Pub. L. 97–35, § 2210(a)(1), (5)(A), substituted in cl. (i) ''full-time elementary or secondary school student'' for ''full-time student'' and in cl. (ii) ''19'' for ''22''.

Subsec. (d)(7)(A). Pub. L. 97–35, §§ 2203(d)(2), 2210(a)(1), (2), substituted ''full-time elementary or secondary school student'' for ''full-time student'' wherever appearing, ''elementary or secondary school'' for ''educational institution'' wherever appearing, and ''schools involved'' for ''institutions involved'' and inserted provision that an individual who is determined to be a full-time elementary or secondary school student be deemed to be such a student throughout the month with respect to which such determination is made.

Subsec. (d)(7)(B). Pub. L. 97–35, § 2210(a)(1), (2)(A), substituted ''full-time elementary or secondary school student'' for ''full-time student'' and ''elementary or secondary school'' for ''educational institution'' wherever appearing.

Subsec. (d)(7)(C). Pub. L. 97–35, § 2210(a)(3), substituted provision defining ''elementary or secondary school'' and provision that for the purpose of determining whether a child is a ''full-time elementary or secondary school student'' or ''intends to continue to be in full-time attendance at an elementary or secondary school'' there be disregarded any education provided, or to be provided, beyond grade 12 for provision defining the term ''educational institution''.

Subsec. (d)(7)(D). Pub. L. 97–35, § 2210(a)(1), (2)(A), (4), (5)(A), substituted ''19'' for ''22'', ''full-time elementary or secondary school student'' for ''full-time student'', ''diploma or equivalent certificate from a secondary school (as defined in subparagraph (C)(i))'' for ''degree from a four-year college or university'', and ''elementary or secondary school'' for ''educational institution''.

Subsec. (i). Pub. L. 97–35, § 2201(f), inserted in provision preceding par. (1) ''(as determined without regard to the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981, relating to repeal of the minimum benefit provisions)''.

Pub. L. 97–35, § 2202(a)(1), as amended by Pub. L. 98–369, § 2663(a)(2)(E), substituted in par. (1) provision that a qualifying widow or widower be paid for provision that unpaid burial expenses to a funeral home be paid and in par. (2) provision for payment in the event

that no one qualifies or if the person entitled dies before receiving payment for provision for payment if all burial expenses incurred by or through a funeral home were paid, and struck out pars. (3) and (4), which provided for payment if the body of the insured is not available for burial but expenses were incurred for a memorial marker, service, etc., and for distribution of any amounts remaining available after payments under this subsection were made, respectively, and struck out ''(except a payment authorized pursuant to clause (1)(A) of the preceding sentence)'' after ''No payment''.

Subsec. (m). Pub. L. 97–35, §2201(b)(10), struck out subsec. (m) which related to the minimum survivor's benefit.

Subsec. (q)(4). Pub. L. 97–123, §2(e)(1), substituted ''increased'' and ''increase'' for ''changed'' and ''change'', respectively, wherever appearing.

Pub. L. 97–35, §2201(d)(1), substituted ''changed'' and ''change'' for ''increased'' and ''increase'', respectively, wherever appearing.

Subsec. (q)(8). Pub. L. 97–35, §2206(b)(1), substituted ''before application of'' for ''after application of'' and ''increased to the next higher'' for ''reduced to the next lower''.

Subsec. (q)(10). Pub. L. 97–123, §2(e)(2), substituted ''increased'', ''increase'', and ''increases'' for ''changed'', ''change'', and ''changes'', respectively, wherever appearing.

Pub. L. 97–35, §2201(d)(2), substituted ''changed'', ''change'', and ''changes'' for ''increased'', ''increase'' and ''increases'', respectively, wherever appearing.

Subsec. (s)(1). Pub. L. 97–35, §2205(a)(1), substituted ''the age of 16'' for ''the age of 18''.

Subsec. (w)(1), (5). Pub. L. 97–35, §2201(b)(11), substituted ''section 415(a)(1)(C)(i) of this title'' for ''section 415(a)(1)(C)(i)(II) of this title''.

1980—Subsec. (d)(1)(G). Pub. L. 96–265, §303(b)(1)(B), inserted provisions relating to an individual's termination month, including cls. (I) and (II), and redesignated existing cls. (i) and (ii) as cls. (III) and (IV), respectively.

Subsec. (d)(7)(A). Pub. L. 96–473, §5(b), inserted provisions relating to individuals confined in a jail, prison, or other penal institutional or correctional facility.

Subsec. (e)(1). Pub. L. 96–265, §303(b)(1)(C), in provisions following subpar. (F)(ii), inserted provisions relating to the termination month.

Subsec. (e)(2)(B)(i). Pub. L. 96–473, §6(a), struck out second comma after ''where applicable'', which had been inserted by Pub. L. 95–216, §204(b). See 1977 Amendment note below.

Subsec. (f)(1). Pub. L. 96–265, §303(b)(1)(D), in provisions following subpar. (F)(ii), inserted provisions relating to the termination month.

Subsec. (j)(1). Pub. L. 96–499 designated existing provisions in part as subpar. (A) and expanded such provisions and added subpar. (B).

Subsec. (j)(2). Pub. L. 96–265, §306(a), inserted provisions relating to limitations on the prospective effects of applications.

1978—Subsec. (v). Pub. L. 95–600 substituted ''1402(g)'' for ''1402(h)''.

1977—Subsec. (b)(1)(G). Pub. L. 95–216, §337(b), substituted ''10'' for ''20''.

Subsec. (b)(2). Pub. L. 95–216, §334(a)(1), inserted reference to par. (4) of this subsection.

Subsec. (b)(4). Pub. L. 95–216, §334(a)(2), added par. (4).

Subsec. (c)(1). Pub. L. 95–216, §334(b)(1), in subpar. (B) inserted ''and'' after ''62,'', struck out subpar. (C) which related to support payment requirements for the husband, and redesignated former subpar. (D) as (C).

Subsec. (c)(2). Pub. L. 95–216, §334(b)(2), substituted provisions relating to reduction of the amount of the husband's insurance benefit for each month as determined after application of the provisions of subsecs. (q) and (k) of this section for provisions relating to applicability of provisions of former subsec. (c)(1)(C) of this section, as subject to subsec. (s) of this section.

Subsec. (c)(3). Pub. L. 95–216, §334(b)(3), inserted reference to par. (2) of this subsection.

Subsec. (e)(2)(A). Pub. L. 95–216, §§204(a), 334(c)(1), 336(a)(1), inserted ''(as determined after application of the following sentence)'' after ''primary insurance amount'', provisions relating to entitlement of the deceased to an old-age insurance benefit which was increased or was to be increased on account of delayed retirement, and reference to par. (8) of this subsection, and struck out reference to par. (4) of this subsection.

Subsec. (e)(2)(B)(i). Pub. L. 95–216, §204(b), substituted ''living and section 415(f)(5) or (6) of this title were applied, where applicable,, and'' for ''living, and''. See 1980 Amendment note above.

Subsec. (e)(3). Pub. L. 95–216, §336(a)(2), substituted ''If a widow, before attaining age 60, or a surviving divorced wife,'' for ''In the case of a widow or surviving divorced wife who''.

Subsec. (e)(4). Pub. L. 95–216, §336(a)(3), struck out reference to an individual (other than one described in subsec. (e)(3)(A) or (B) of this section) as the husband, and provisions relating to benefits during the marriage.

Subsec. (e)(8). Pub. L. 95–216, §334(c)(2), added par. (8).

Subsec. (f)(1). Pub. L. 95–216, §334(d)(1), struck out subpar. (D) which related to receipt of support by the widower in accordance with regulations promulgated by the Secretary, and redesignated former subpars. (E) to (G) as (D) to (F), respectively.

Subsec. (f)(2). Pub. L. 95–216, §334(d)(2), substituted provisions relating to reduction of the amount of the widower's insurance benefit for each month as determined after application of the provisions of subsecs. (k) and (q) of this section and pars. (3)(B) and (5) of this subsec., for provisions relating to applicability of former subsec. (f)(1)(D) of this section, as subject to subsec. (s) of this section.

Subsec. (f)(3)(A). Pub. L. 95–216, §§204(c), 334(d)(3), 336(b)(1), inserted ''(as determined after application of the following sentence)'' after ''primary insurance amount'', inserted provisions relating to entitlement of the deceased to an old-age insurance benefit which was increased or was to be increased on account of delayed retirement, and substituted reference to par. (2) of this subsection for reference to par. (5) of this subsection.

Subsec. (f)(3)(B). Pub. L. 95–216, §204(d), inserted reference to section 415(f)(5) or (6) of this title in cl. (i).

Subsec. (f)(4). Pub. L. 95–216, §336(b)(2), substituted ''If a widower, before attaining age 60,'' for ''In the case of a widower who''.

Subsec. (f)(5). Pub. L. 95–216, §336(b)(3), struck out reference to an individual (other than one described in subsec. (f)(4)(A) or (B) of this section) as the wife, and provisions relating to benefits during the marriage.

Subsec. (f)(7). Pub. L. 95–216, §334(d)(4)(A), substituted ''(F)'' for ''(G)''.

Subsec. (g)(2). Pub. L. 95–216, §334(e)(1), substituted ''Except as provided in paragraph (4) of this subsection, such'' for ''Such''.

Subsec. (g)(4). Pub. L. 95–216, §334(e)(2), added par. (4).

Subsec. (j)(1). Pub. L. 95–216, §332(a)(1), substituted ''Subject to the limitations contained in paragraph (4), an'' for ''An''.

Subsec. (j)(4). Pub. L. 95–216, §332(a)(2), added par. (4).

Subsec. (m)(1). Pub. L. 95–216, §205(a), substituted provisions relating to entitlement to monthly benefits under this section on the basis of primary insurance amounts computed under section 415(a) or (d) of this title as in effect after Dec., 1978, for provisions relating to entitlement to monthly benefits under this section on the basis of wages and self-employment income of deceased individuals for any month.

Subsec. (p)(1). Pub. L. 95–216, §334(d)(5), struck out references to subsecs. (c)(1)(C) and (f)(1)(D)(i) or (ii) of this section.

Subsec. (q)(3)(H). Pub. L. 95–216, §331(c)(2), inserted ''for that month or'' after ''first entitled''.

Subsec. (q)(4). Pub. L. 95–216, §331(a), substituted provisions setting forth factors for the computation of the amount of the reduction of the benefit for each month beginning with the month of the increase in the primary insurance amount, after application of any adjustment under par. (7) of this subsec., for provisions

setting forth factors for the computation of the amount of the reduction of the benefit for each month.

Subsec. (q)(7)(C). Pub. L. 95–216, § 331(c)(1), substituted ''of the occurrence of an event that terminated her or his entitlement to such benefits'' for ''the spouse on whose wages and self-employment income such benefits were based ceased to be under a disability''.

Subsec. (q)(10), (11). Pub. L. 95–216, § 331(b), added pars. (10) and (11).

Subsec. (s)(3). Pub. L. 95–216, § 334(d)(6), substituted ''So'' for ''Subsections (c)(2)(B) and (f)(2)(B) of this section, so''.

Subsec. (u)(1)(C). Pub. L. 95–216, § 353(f)(1), substituted ''year'' for ''quarter'' wherever appearing.

Subsec. (w)(1). Pub. L. 95–216, §§ 203(1), 205(b)(1), substituted ''The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title as in effect in December 1978 or section 415(a)(1)(C)(i)(II) of this title as in effect thereafter) which is payable without regard to this subsection to an individual'' for ''If the first month for which an old-age insurance benefit becomes payable to an individual is not earlier than the month in which such individual attains age 65 (or his benefit payable at such age is not reduced under subsection (q) of this section), the amount of the old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title) which is payable without regard to this subsection to such individual''.

Subsec. (w)(1)(A). Pub. L. 95–216, § 203(2), inserted provision relating to individuals eligible after Dec., 1978.

Subsec. (w)(5). Pub. L. 95–216, § 205(b)(2), (3), inserted ''as in effect in December 1978, or section 415(a)(1)(C)(i)(II) of this title as in effect thereafter,'' after ''(3) of section 415(a) of this title'' and ''(whether before, in, or after December 1978)'' after ''under section 415(a) of this title''.

1974—Subsec. (*l*). Pub. L. 93–445 substituted ''annuity under section 2 of the Railroad Retirement Act of 1974, or to a lump-sum payment under section 6(b) of such Act, with respect to the death of an employee (as defined in such Act)'' for ''annuity under section 5 of the Railroad Retirement Act of 1937 or to a lump-sum payment under subsection (f)(1) of such section with respect to the death of an employee (as defined in such Act)''.

1973—Subsec. (d)(8)(D)(ii). Pub. L. 93–66 added item (III).

Subsec. (e)(7). Pub. L. 93–233, § 1(f), added par. (7).

Subsec. (f)(8). Pub. L. 93–233, § 1(g), added par. (8).

Subsec. (w)(5). Pub. L. 93–233, § 18(b), added par. (5).

1972—Subsec. (a). Pub. L. 92–603, § 103(b), inserted reference to subsection (w) of this section.

Subsec. (b)(1). Pub. L. 92–603, § 114(a), struck out subpar. (D) which covered support aspects involved with a divorced wife and redesignated subpars. (E) through (L) and subpars. (D) through (K), respectively.

Subsec. (d)(1). Pub. L. 92–603, §§ 108(a)–(c), 112(a), substituted ''age of 22'' for ''age of eighteen'' in subpar. (B)(ii), struck out provisions covering adoption in subpar. (D), inserted ''but only if he was not under a disability (as so defined) in such earlier month'' in subpar. (F), substituted ''age of 18, or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22'' for ''age of 18'' and inserted ''but only if he was not under a disability (as so defined) in such earlier month'' after ''attains the age of 22'' in subpar. (G), and inserted provision prohibiting payments under par. (1) to a child who would not meet the definition of disability in section 423(d) of this title except for par. (1)(B) thereof for any month in which he engages in substantial gainful activity.

Subsec. (d)(6). Pub. L. 92–603, § 108(d), designated existing provisions as subpars. (A), (C), and (D), added subpars. (B) and (E), inserted ''or is under a disability (as defined in section 423(d) of this title)'' in subpar. (A)(i) as so redesignated, and inserted ''but only if he is not under a disability (as so defined) in such earlier month'' in subpar. (D)(ii) as so redesignated.

Subsec. (d)(7). Pub. L. 92–603, § 109(a), added subpar. (D).

Subsec. (d)(8). Pub. L. 92–603, § 111(a), combined into par. (8) the provisions formerly set out in both pars. (8) and (9) covering adoptions by disability and old-age insurance beneficiaries and struck out provisions covering supervision of an adoption by a public or private child placement agency and provisions covering a special category of adoptions during the 24–month period beginning with the month after the month in which the individual most recently became entitled to disability insurance benefits or became entitled to old-age insurance benefits.

Subsec. (d)(9). Pub. L. 92–603, § 113(b), added par. (9). Former par. (9) incorporated, as amended, into par. (8).

Subsec. (e)(1). Pub. L. 92–603, §§ 102(a)(1), 114(b)(1), struck out subpar. (D) which covered support aspects involved with a surviving divorced wife and redesignated subpars. (E) through (G) as subpars. (D) through (F), respectively, substituted ''the primary insurance amount'' for ''82½ percent of the primary insurance amount'' in subpar. (D) and in the provisions following subpar. (F), substituted ''entitled to wife's insurance benefits,'' for ''entitled, after attainment of age 62, to wife's insurance benefits,'' in subpar. (C)(i), inserted ''and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title,'' at end of subpar. (C)(i), and substituted ''age 65'' for ''age 62'' in subpar. (C)(ii) and in provisions following subpar. (F).

Subsec. (e)(2). Pub. L. 92–603, § 102(a)(2), designated existing provisions as subpar. (A), added subpar. (B), in subpar. (A) as so designated inserted reference to subpar. (B) of this par., and substituted ''the primary insurance amount'' for ''82½ percent of the primary amount''.

Subsec. (e)(6). Pub. L. 92–603, §§ 114(b)(2), 116(b), substituted ''five'', ''seventeenth'', and ''fifth'' for ''six'', ''eighteenth'', and ''sixth'', respectively, and ''paragraph (1)(F)'' for ''paragraph (1)(G)''.

Subsec. (f)(1). Pub. L. 92–603, §§ 102(b)(1), 107(a)(1), (2), substituted ''age 60'' for ''age 62'' in subpar. (B), substituted ''the primary insurance amount'' for ''82½ percent of the primary insurance amount'' in subpar. (E) and provisions following subpar. (G), inserted ''and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title,'' at end of subpar. (C), and substituted ''age 65'' for ''age 62'' and inserted '', if he became entitled to such benefits before he attained age 60,'' before ''the third month'' in provisions following subpar. (G).

Subsec. (f)(3). Pub. L. 92–603, § 102(b)(2), designated existing provisions as subpar. (A), added subpar. (B), in subpar. (A) as so designated inserted reference to subpar. (B) of this par., and substituted ''the primary insurance amount'' for ''82½ percent of the primary amount''.

Subsec. (f)(5). Pub. L. 92–603, § 107(a)(3), substituted ''the age of 60'' for ''the age of 62''.

Subsec. (f)(6). Pub. L. 92–603, § 107(a)(1), substituted ''age 60'' for ''age 62''.

Subsec. (f)(7). Pub. L. 92–603, § 116(c), substituted ''five'', ''seventeenth'', and ''fifth'' for ''six'', ''eighteenth'', and ''sixth'', respectively.

Subsec. (g)(1)(F). Pub. L. 92–603, § 114(c), struck out cl. (i) covering the support aspects of a surviving divorced mother and redesignated cl. (ii) and (iii) as cl. (i) and (ii), respectively.

Subsec. (k)(2)(A). Pub. L. 92–603, § 110(a), inserted provisions establishing exceptions to rule that a child's benefits in the case where the child is entitled on more than one wage record shall be based on wages and self-employment of the insured individual with greatest primary insurance amount.

Subsec. (k)(3)(A). Pub. L. 92–603, § 102(d), inserted reference to subsection (e)(2) or (f)(3) of this section.

Subsec. (m). Pub. L. 92–603, § 102(f), amended subsec. (m) generally to increase the minimums on survivor's benefits.

Subsec. (q)(1). Pub. L. 92–603, §102(e)(1), generally provided for an increase in widow's and widower's insurance benefits through the insertion of provisions covering such benefits in subpar. (A), and in provisions preceding subpar. (C), and through the substitution of a 43/240 fraction in subpar. (C) for a 43/198 fraction.

Subsec. (q)(3). Pub. L. 92–603, §102(e)(2), (5), redesignated existing provisions of subpars. (E)(ii) and (F)(ii) as subcls. (I) and (II) and in subcls. (I) of each such subpar. as so redesignated substituted ''would be reduced under paragraph (1) if the period specified in paragraph (6)(A) ended with the month before the month in which she or he attained age 62'' for ''was reduced for the month in which such individual attained retirement age'', substituted in subpar. (G) ''as if the period specified in paragraph (6)(A) (or, if such paragraph does not apply, the period specified in paragraph (6)(B)) ended with the month before'' for ''had such individual attained age 62 in'', and added subpar. (H).

Subsec. (q)(7). Pub. L. 92–603, §102(e)(3), divided existing source references for ''adjusted reduction period'' and ''additional adjusted reduction period'' into separate references to subpars. (A) and (B) of par. (6) in the provisions preceding subpar. (A) and, in subpar. (E), substituted ''attained age 62, and also for any later month before the month in which he attained retirement age,'' for ''attained retirement age''.

Subsec. (q)(9). Pub. L. 92–603, §102(e)(4), struck out provisions which had set age 62 as the meaning of ''retirement age'' with respect to a widow's and widower's insurance benefits.

Subsec. (s). Pub. L. 92–603, §108(e), struck out ''which began before he attained such age'' after ''disability (as defined in section 423(d) of this title)'' in par. (1) and struck out ''which began before such child attained the age of 18'' after ''disability (as defined in section 423(d) of this title)'' in pars. (2) and (3).

Subsec. (w). Pub. L. 92–603, §103(a), added subsec. (w).

1971—Subsec. (i)(3). Pub. L. 92–223, §1(a), added cl. (3).

Subsec. (i)(4). Pub. L. 92–223, §1(a), (b), redesignated former cl. (3) as (4) and included reference to cl. (3) in the second sentence.

1969—Subsec. (b)(2). Pub. L. 91–172, §1004(a), removed $105 ceiling on insurance benefits of wives.

Subsec. (c)(3). Pub. L. 91–172, §1004(b), removed $105 ceiling on insurance benefits of husbands.

Subsec. (e)(4). Pub. L. 91–172, §1004(c), removed $105 ceiling on insurance benefits of widows.

Subsec. (f)(5). Pub. L. 91–172, §1004(c), removed $105 ceiling on insurance benefits of widowers.

1968—Subsec. (b)(2). Pub. L. 90–248, §103(a), provided that a wife's insurance benefit may not exceed $105.

Subsec. (c)(1). Pub. L. 90–248, §157(a)(1), substituted in text preceding subpar. (A) ''an individual'' for ''a currently insured individual (as defined in section 414(b) of this title)''.

Subsec. (c)(2). Pub. L. 90–248, §157(a)(2), substituted in text preceding subpar. (A) ''The provisions of subparagraph (C) of paragraph (1) of this subsection'' for ''The requirement in paragraph (1) of this subsection that the individual entitled to old-age or disability insurance benefits be a currently insured individual, and the provisions of subparagraph (C) of such paragraph''.

Subsec. (c)(3). Pub. L. 90–248, §103(b), provided that a husband's insurance benefit may not exceed $105.

Subsec. (d)(1)(B). Pub. L. 90–248, §158(c)(1), substituted ''section 423(d)'' for ''section 423(c)''.

Subsec. (d)(3). Pub. L. 90–248, §151(a), inserted in first sentence ''or his mother or adopting mother'' after ''adopting father'', and struck out in second sentence, ''if such individual is the child's father,'' after ''title shall''.

Subsec. (d)(4). Pub. L. 90–248, §151(b), inserted, ''or stepmother'' after ''stepfather'' in two places.

Subsec. (d)(5) to (8). Pub. L. 90–248, §151(c), struck out former par. (5) which provided that (1) a child is deemed dependent on his mother or adopting mother if she is currently insured, and (2) a child is deemed dependent on a mother who is not currently insured only if she is contributing one-half of the child's support or, if the child is not living with his father nor being supported by him, only if she is then living with or supporting the child, and redesignated former pars. (6) to (9) as (5) to (8), respectively.

Subsec. (d)(8). Pub. L. 90–248, §§112(a), 151(c), added subpar. (E) and redesignated former par. (9) as (8), respectively. Former par. (8) redesignated (7).

Subsec. (d)(9). Pub. L. 90–248, §151(c), (d)(1), redesignated former par. (10) as (9) and substituted ''paragraph (8)'' for ''paragraph (9)''. Former par. (9) redesignated (8).

Subsec. (d)(10). Pub. L. 90–248, §151(c), redesignated former par. (10) as (9).

Subsec. (e)(1). Pub. L. 90–248, §104(a)(2), set out part of text formerly following subpar. (E) after subpar. (G) and inserted therein: ''or, if she became entitled to such benefits before she attained age 60, the third month following the month in which her disability ceases (unless she attains age 62 on or before the last day of such third month)''.

Subsec. (e)(1)(B). Pub. L. 90–248, §104(a)(1), provided that a widow or surviving divorced wife may become entitled to widow's insurance benefits if she is disabled and her disability began within the period specified in subsec. (e)(5) even though she has not attained age 60.

Subsec. (e)(1)(F). Pub. L. 90–248, §104(a)(2), designated part of material formerly following subpar. (E) as subpar. (F) and inserted provision requiring satisfaction with subpar. (B) clause (i).

Subsec. (e)(1)(G). Pub. L. 90–248, §104(a)(2), added subpar. (G).

Subsec. (e)(4). Pub. L. 90–248, §103(c), provided that a remarried widow's insurance benefit may not exceed $105.

Subsec. (e)(5), (6). Pub. L. 90–248, §104(a)(3), added pars. (5) and (6).

Subsec. (f)(1). Pub. L. 90–248, §157(b)(1), struck out in text preceding subpar. (A) ''and currently'' before ''insured individual'' and in cl. (ii) of subpar. (D) '', and she was a currently insured individual,'' after ''from such individual''.

Subsec. (f)(1)(B). Pub. L. 90–248, §104(b)(1), provided that a dependent widower may become entitled to widower's insurance benefits if he is disabled and his disability began within the specified period even though such individual has not attained age 62.

Subsec. (f)(1). Pub. L. 90–248, §104(b)(2), set out part of text formerly following subpar. (E) after subpar. (G) and inserted: ''or the third month following the month in which his disability ceases (unless he attains age 62 on or before the last day of such third month)''.

Subsec. (f)(1)(F). Pub. L. 90–248, §104(b)(2), designated part of text formerly following subpar. (F) as subpar. (F) and inserted provision requiring satisfaction with subpar. (B) clause (i).

Subsec. (f)(1)(G). Pub. L. 90–248, §104(b)(2), added subpar. (G).

Subsec. (f)(2). Pub. L. 90–248, §157(b)(2), substituted in text preceding subpar. (A) ''The provisions of subparagraph (D) of paragraph (1) of this subsection'' for ''The requirement in paragraph (1) of this subsection that the deceased fully insured individual also be a currently insured individual, and the provisions of subparagraph (D) of such paragraph,''.

Subsec. (f)(3). Pub. L. 90–248, §104(b)(3), inserted reference to subsec. (q).

Subsec. (f)(5). Pub. L. 90–248, §103(d), provided that a remarried widower's insurance benefit may not exceed $105.

Subsec. (f)(6), (7). Pub. L. 90–248, §104(b)(4), added pars. (6) and (7).

Subsec. (q). Pub. L. 90–248, §104(c)(1), substituted ''Reduction of benefit amounts for certain beneficiaries'' for ''Reduction of old-age, disability, wife's, husband's, or widow's insurance benefit amounts'' in heading.

Subsec. (q)(1). Pub. L. 90–248, §104(c)(2)–(4), substituted ''widow's, or widower's'' for ''or widow's'' in text preceding subpar. (A), '', widow's, or widower's'' for ''or widow's'' in subpar. (A), and added subpar. (C) and (D) provisions for further reduction of a widow's or widower's insurance benefit.

Subsec. (q)(3)(A). Pub. L. 90–248, § 104(c)(5), substituted ''widow's, or widower's'' for ''or widow's'' wherever appearing, ''50'' for ''60'', and inserted ''or widower's'' after ''(in the case of a widow's)''.

Subsec. (q)(3)(C). Pub. L. 90–248, § 104(c)(6), substituted ''widow's, or widower's'' for ''or widow's'' wherever appearing.

Subsec. (q)(3)(D). Pub. L. 90–248, § 104(c)(7), substituted ''widow's, or widower's'' for ''or widow's''.

Subsec. (q)(3)(E). Pub. L. 90–248, § 104(c)(8), inserted ''in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower'' after ''(e)(1) of this section'', and ''or he'' after ''she'', and substituted ''widow's or widower's'' for ''widow's'' wherever appearing.

Subsec. (q)(3)(F). Pub. L. 90–248, § 104(c)(9), inserted ''in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower'' after ''(e)(1) of this section'', and ''or he'' after ''she'', and substituted ''widow's or widower's'' for ''widow's''.

Subsec. (q)(3)(G). Pub. L. 90–248, § 104(c)(10), inserted ''in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower'' before ''(e)(1) of this section'', and ''she or'' before ''he'', and substituted ''widow's or widower's'' for ''widow's'' wherever appearing.

Subsec. (q)(6). Pub. L. 90–248, § 104(c)(11), extended definition of ''reduction period'' to apply to widower's insurance benefit, inserted second alternative in subpar. (A)(i)(III) that the reduction period for a widow's or widower's insurance benefit begins with the ''first day of the month in which such individual attains age 60, whichever is the later'', substituted paragraph ''(5)'' for ''(4)'' in item (II) of subpar. (A)(i), and added subpar. (B).

Subsec. (q)(7). Pub. L. 90–248, § 104(c)(12), in text preceding subpar. (A), inserted ''or 'additional adjusted reduction period' '' after ''the 'adjusted reduction period' '', ''or additional reduction period (as the case may be)'' after ''the reduction period'', and substituted ''widow's, or widower's'' for ''or widow's'', and in subpar. (E) substituted ''widow's or widower's'', ''she or he'', and ''her or his'' for ''widow's'', ''she'', and ''her'', respectively.

Subsec. (q)(9). Pub. L. 90–248, § 104(c)(13), inserted reference to widowers.

Subsec. (s). Pub. L. 90–248, § 158(c)(2), substituted ''section 423(d)'' for ''section 423(c)'' in pars. (1) to (3).

Subsec. (s)(2), (3). Pub. L. 90–248, § 151(d)(2), substituted ''(d)(5)'' for ''(d)(6)'' in pars. (2), (3).

Subsec. (t)(1). Pub. L. 90–248, § 162(a)(1), provided that ''For purposes of the preceding sentence, after an individual has been outside the United States for any period of thirty consecutive days he shall be treated as remaining outside the United States until he has been in the United States for a period of thirty consecutive days.''

Subsec. (t)(4). Pub. L. 90–248, § 162(b)(1), provided for exception to application of subpars. (A) and (B) of par. (4).

Subsec. (t)(6). Pub. L. 90–248, § 162(c)(2), included reference to par. (10).

Subsec. (t)(10). Pub. L. 90–248, § 162(c)(1), added par. (10).

1965—Subsec. (b)(1). Pub. L. 89–97, § 308(a), made provisions applicable to divorced wife by inclusion of references to divorced wife in provisions preceding subpar. (A), substituted ''such individual'' for ''her husband'' in subpars. (B), (E), (G), (J) to (L); inserted in subpar. (B) ''(in the case of a wife)'' after ''age 62 or''; added subpars. (C) and (D); redesignated former subpar. (C) as (E); in provisions after subpar. (E), inserted ''(subject to subsection (s) of this section)'' and struck out ''after August 1950'' after ''beginning with the first month''; designated existing provisions as subpars. (F), (G), (J) to (L); and substituted provisions designated as subpars. (H) and (I) for former provisions reading ''they are divorced from vinculo matrimonii''.

Subsec. (b)(2). Pub. L. 89–97, § 308(a), inserted ''(or, in the case of a divorced wife, her former husband)''.

Subsec. (b)(3). Pub. L. 89–97, § 308(a), added par. (3).

Subsec. (c)(1). Pub. L. 89–97, § 308(d)(1), substituted ''divorced'' for ''divorced a vinculo matrimonii'' in provisions following subpar. (D).

Subsec. (c)(2). Pub. L. 89–97, §§ 306(c)(2), 334(e), inserted in text preceding subpar. (A) ''(subject to subsection (s) of this section)'' after ''shall'', and added subpar. (C).

Subsec. (d)(1). Pub. L. 89–97, §§ 306(a), (b)(1), (2), 323(a)(1), 343(a), inserted in subpar. (B)(i) and (ii) ''or was a full-time student and had not attained the age of 22'' and ''which began before he attained the age of 22'', respectively, and substituted ''is'' for ''was'' in cl. (ii) substituted ''preceding whichever of the following first occurs'' for ''preceding the first month in which any of the following occurs'' following provisions of subpar. (C), incorporated existing provisions in subpar. (D) and (E), substituting in such subpar. (E) ''but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time student during any part of such month'' for former provision and is not under a disability (as defined in section 423(c) of this title), which began before he attained such age'', added subpars. (F) and (G), and repealed the second sentence which provided for the termination of entitlement of any child to benefits under this subsection with the month preceding the third month following the month in which he ceases to be under a disability after the month in which he attains age eighteen; struck out the last sentence which related to adoptions by disabled workers; and substituted ''uncle, brother, or sister'' for ''or uncle'' in subpar. (D), respectively.

Subsec. (d)(3). Pub. L. 89–97, § 339(b), inserted ''or section 416(h)(3)'' after ''section 416(h)(2)(B)''.

Subsec. (d)(6). Pub. L. 89–97, § 306(c)(3), inserted in text following subpar. (B) ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1) of this subsection''.

Subsec. (d)(6)(A). Pub. L. 89–97, § 308(d)(2)(A), inserted reference to subsec. (b) of this section.

Subsec. (d)(7), (8). Pub. L. 89–97, § 306(b)(3), added pars. (7) and (8).

Subsec. (d)(9), (10). Pub. L. 89–97, § 323(a)(2), added pars. (9) and (10).

Subsec. (e)(1). Pub. L. 89–97, §§ 307(a)(1), 308(b)(1), substituted ''age 60'' for ''age 62'' in subpar. (B); and inserted references to surviving divorced wife in the provisions preceding subpar. (A), substituted in subpar. (A) ''is not married'' for ''has not remarried'', added subpar. (D), redesignated former subpar. (D) as (E) substituted in subpar. (E) and following provision ''such deceased individual'' ''her deceased husband'', and struck out from provisions following subpar. (E) ''after August 1950'' after ''beginning with the first month'', respectively.

Subsec. (e)(2). Pub. L. 89–97, §§ 307(a)(2), 308(b)(1), 333(a)(2), inserted introductory phrase ''Except as provided in subsection (q) of this section''; substituted ''such deceased individual'' for ''her deceased husband''; and inserted ''and paragraph (4) of this subsection'' before the comma, respectively.

Subsec. (e)(3). Pub. L. 89–97, §§ 306(c)(4), 308(b) (2), (3), inserted ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1)'' following subpar. (B); repealed former par. (3) which provided for reinstatement of benefits to a widow if she married a person who died within one year and was not a fully insured individual; and redesignated former par. (4) as (3), and substituted ''widow or surviving divorced wife'' and ''widow's or surviving divorced wife's'' for ''widow'' and ''widow's'', respectively.

Subsec. (e)(4). Pub. L. 89–97, § 333(a)(1), added par. (4). Former par. (4) redesignated (3).

Subsec. (f)(2). Pub. L. 89–97, §§ 306(c)(5), 334(f), inserted in text preceding subpar. (A) ''(subject to subsection (s) of this section)'' after ''shall'', and added subpar. (C).

Subsec. (f)(3). Pub. L. 89–97, § 333(b)(2), substituted ''Except as provided in paragraph (5), such'' for ''Such''.

Subsec. (f)(4). Pub. L. 89–97, § 306(c)(6), inserted in text following subpar. (B) ''but subject to subsection (s) of

this section'' after ''notwithstanding the provisions of paragraph (1) of this subsection''.

Subsec. (f)(4)(A). Pub. L. 89–97, §308(d)(2)(A), inserted reference to subsec. (b) of this section.

Subsec. (f)(5). Pub. L. 89–97, §333(b)(1), added par. (5).

Subsec. (g)(1). Pub. L. 89–97, §§306(c)(7), 308(d) (3)–(5), inserted ''(subject to subsection (s) of this section)'' after ''shall'' in provisions following subpar. (F); substituted in subpar. (A) ''is not married'' for ''has not remarried''; in subpar. (F), substituted ''surviving divorced mother'' for ''former wife divorced'', incorporated existing provisions in cls. (i) (other than (I) to (III)), (ii), and (iii), and substituted provisions of cl. (i)(I) to (III) for receipt of one-half of support under administrative regulations and substantial contributions pursuant to written agreement or court order for former provision for receipt of one-half of support pursuant to agreements or court order; and substituted ''surviving divorced mother'' for ''former wife divorced'' twice in provisions before subpar. (A) and thrice in provisions following subpar. (F), respectively.

Subsec. (g)(3). Pub. L. 89–97, §§306(c)(8), 308(d)(5), (13), inserted ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1)'' following subpar. (B), substituted ''surviving divorced mother'' for ''former wife divorced'' in two places, and redesignated former par. (4) as (3), respectively. Pub. L. 89–97, §308(d)(12), repealed former par. (3) which had provided that:

''In the case of any widow or former wife divorced of an individual—

''(A) who marries another individual, and

''(B) whose marriage to the individual referred to in subparagraph (A) is terminated by his death but she is not, and upon filing application therefor in the month in which he died would not be, entitled to benefits for such month on the basis of his wages and self-employment income,

the marriage to the individual referred to in clause (A) shall, for purpose of paragraph (1), be deemed not to have occurred. No benefits shall be payable under this subsection by reason of the preceding sentence for any month prior to whichever of the following is the latest: (i) the month in which the death referred to in subparagraph (B) of the preceding sentence occurs, (ii) the twelfth month before the month in which such widow or former wife divorced files application for purposes of this paragraph or (ii) September 1958.''

Subsec. (g)(4). Pub. L. 89–97, §308(d)(13), redesignated former par. (4) as (3).

Subsec. (h)(4). Pub. L. 89–97, §306(c)(9), inserted in text following subpar. (B) ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1) of this subsection''.

Subsec. (h)(4)(A). Pub. L. 89–97, §308(d)(2)(A), inserted reference to subsec. (b) of this section.

Subsec. (j)(1). Pub. L. 89–97, §303(d), inserted ''under this subchapter'' after ''any benefit''.

Subsec. (j)(2). Pub. L. 89–97, §328(a), provided that an application for monthly benefits filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application and that the application shall be deemed to have been filed in the first month if the applicant is found to satisfy the requirements for entitlement.

Subsec. (k)(2)(B). Pub. L. 89–97, §333(c)(1), inserted ''(other than an individual to whom subsection (e)(4) or (f)(5) of this section applies)'' after ''Any individual'' and inserted provision limiting to the largest of such benefits any individual who is entitled for any month to more than one widow's or widower's benefits to which subsections (e)(4) or (f)(5) of this section applies.

Subsec. (k)(3). Pub. L. 89–97, §333(c)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (k)(4). Pub. L. 89–97, §304(a), added par. (4).

Subsec. (p). Pub. L. 89–97, §324(a), removed the 2-year limit on the allowed extension during which, for good cause shown, applications or proof may be filed and still be deemed filed within the prescribed period for filing applications or proof.

Subsec. (q). Pub. L. 89–97, §304(b), substituted ''Reduction of old-age, disability, wife's, husband's, or widow's insurance benefit amounts'' for ''Adjustment of old-age, wife's or husband's insurance benefit amounts in accordance with age of beneficiary'' in heading.

Subsec. (q)(1). Pub. L. 89–97, §307(b)(1), made provisions preceding subpar. (A) and the 5/9 of 1 percent reduction in subpar. (A) applicable to widow's insurance benefit, substituted ''retirement age'' for ''age 65'' in provisions preceding subpar. (A) and subpar. (B)(i) and (ii), substituted ''(6)'' and ''(7)'' for ''(5)'' and ''(6)'' in subpar. (B)(i) and (ii) and ''any month'' for ''any other month'' in subpar. (B)(ii).

Subsec. (q)(2). Pub. L. 89–97, §304(c), added par. (2) and redesignated former par. (2) as (3).

Subsec. (q)(3)(A). Pub. L. 89–97, §§304(c), 307(b)(2), redesignated former par. (2) as (3), and made provisions of subpar. (A) applicable to widow's insurance benefit and inserted ''(in the case of a wife's or husband's insurance benefit) or age 60 (in the case of a widow's insurance benefit)'' after ''age 62'', respectively. Former par. (3) redesignated (4).

Subsec. (q)(3)(B). Pub. L. 89–97, §304(c), (d), redesignated former par. (2) as (3), and substituted ''benefit and is not entitled to a disability insurance benefit'' for ''benefit'' the first time it appeared and inserted in cls. (i) and (ii) ''for such month'' after ''paragraph (1)'', respectively. Former par. (3) redesignated (4).

Subsec. (q)(3)(C). Pub. L. 89–97, §304(c), (e), redesignated former par. (2) as (3), and made provisions of subpar. (C) applicable to widow's insurance benefit, inserted cl. (i), incorporated existing provisions in cl. (ii), and inserted in such cl. (ii) ''for such month'' and ''(before reduction under this subsection)'' after ''disability insurance benefit'', respectively. Former par. (3) redesignated (4).

Subsec. (q)(3)(D), (E). Pub. L. 89–97, §§304(c), 307(b), (3), (4), redesignated former par. (2) as (3), made provisions of subpar. (D) applicable to widow's insurance benefit, and added subpar. (E), respectively. Former par. (3) redesignated (4).

Subsec. (q)(3)(F), (G). Pub. L. 89–97, §304(c), (f), redesignated former par. (2) as (3) and added subpars. (F) and (G), respectively. Former par. (3) redesignated (4).

Subsec. (q)(4). Pub. L. 89–97, §304(c), (g), redesignated former par. (3) as (4) and renumbered in text following subpar. (B) cross references to par. (2) as (3) in three places, and substituted in subpar. (A) ''under paragraph (1) or (3) of this subsection'' for ''under this subsection'', respectively. Former par. (4) redesignated (5).

Subsec. (q)(5)(D). Pub. L. 89–97, §§304(c), 307(b)(5), redesignated former par. (4) as (5) and added subpar. (D), respectively. Former par. (5) redesignated (6).

Subsec. (q)(6). Pub. L. 89–97, §§304(c), 307(b)(6), redesignated former par. (5) as (6) and renumbered in subpar. (A)(ii) cross reference to par. (4) as (5), and made provisions preceding subpar. (A) and provisions of subpar. (A)(i) applicable to widow's insurance benefit and substituted in subpar. (B) ''retirement age'' for ''age 65'', respectively. Former par. (6) redesignated (7).

Subsec. (q)(7). Pub. L. 89–97, §§304(c), (h), 307(b)(7), redesignated former par. (6) as (7) and renumbered in text preceding subpar. (A) cross reference to par. (5) as (6), added subpar. (F), and made provisions preceding subpar. (A) applicable to widow's insurance benefit and added subpars. (D), (E), respectively. Former par. (7), redesignated (8).

Subsec. (q)(8). Pub. L. 89–97, §304(c), (i), redesignated former par. (7) and (8) and renumbered cross reference to par. (2) as (3), and substituted ''(1), (2),'' for ''(1)'', respectively.

Subsec. (q)(9). Pub. L. 89–97, §307(b)(8), added par. (9).

Subsec. (r)(2). Pub. L. 89–97, §304(j), inserted ''(but for subsection (k)(4) of this section)'' after ''eligible''.

Subsec. (s). Pub. L. 89–97, §306(c)(1), added subsec. (s).

Subsec. (t)(9). Pub. L. 89–97, §104(a)(1), added par. (9).

Subsec. (u). Pub. L. 89–97, §104(a)(2), inserted ''in determining whether such individual is entitled to insur-

ance benefits under part A of subchapter XVII of this chapter for any such month,''.

Subsec. (v). Pub. L. 89–97, § 319(d), added subsec. (v).

1961—Subsec. (a)(2). Pub. L. 87–64, § 102(a), substituted ''has attained age 62'' for ''has attained retirement age (as defined in section 416(a) of this title)''.

Subsec. (b)(1). Pub. L. 87–64, § 102(a), (e), (1), (2), substituted ''age 62'' for ''retirement age'' in two places, ''less than one-half of the primary insurance amount of her husband'' for ''less than one-half of an old-age or disability insurance benefit of her husband'', and ''equal to or exceeds one-half of the primary insurance amount of her husband'' for ''equal to or exceeds one-half of an old-age or disability insurance benefit of her husband''.

Subsec. (b)(2). Pub. L. 87–64, § 102(e)(3), substituted ''primary insurance amount'' for ''old-age or disability insurance benefit.''

Subsec. (c)(1). Pub. L. 87–64, § 102(a), (e), (4), (5), substituted ''has attained age 62'' for ''has attained retirement age'' in cl. (B), ''based on a primary insurance amount which is less than one-half'' for ''each of which is less than one-half'' in cl. (D), and ''based on a primary insurance amount which is equal to or exceeds one-half'' for ''equal to or exceeding one-half'' in closing provisions.

Subsec. (c)(2)(A). Pub. L. 87–64, § 102(a), substituted ''attainment of age 62'' for ''attainment of retirement age''.

Subsec. (c)(3). Pub. L. 87–64, § 102(e)(6), substituted ''Except as provided in subsection (q) of this section, such'' for ''Such''.

Subsec. (e)(1). Pub. L. 87–64, §§ 102(a), 104(d)(1), substituted ''has attained age 62'' for ''has attained retirement age'' in subpar. (B), ''attainment of age 62'' for ''attainment of retirement age'' and ''attained age 62'' for ''attained retirement age'' in subpar. (C), and ''82½ percent'' for ''three-fourths'' in subpar. (D) and in closing provisions.

Subsec. (e)(2). Pub. L. 87–64, § 104(a), substituted ''82½ percent'' for ''three-fourths''.

Subsec. (f)(1). Pub. L. 87–64, §§ 102(a), 104(d)(1), substituted ''has attained age 62'' for ''has attained retirement age'' in subpar. (B), and ''82½ percent'' for ''three-fourths'' in subpar. (E) and in closing provisions.

Subsec. (f)(2)(A). Pub. L. 87–64, § 102(a), substituted ''attainment of age 62'' for ''attainment of retirement age''.

Subsec. (f)(3). Pub. L. 87–64, § 104(b), substituted ''82½ percent'' for ''three-fourths''.

Subsec. (h)(1). Pub. L. 87–64, §§ 102(a), 104(d)(2), substituted ''has attained age 62'' for ''has attained retirement age'' in subpar. (A), and ''82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case)'' for ''three-fourths of the primary insurance amount of such deceased individual'' in subpar. (D) and in closing provisions.

Subsec. (h)(2). Pub. L. 87–64, § 104(c), designated existing provisions as subpar. (A), increased the benefit from three-fourths to 82½ percent of the primary insurance amount, and added subpars. (B) and (C).

Subsec. (j). Pub. L. 87–64, § 102(b)(3), extended provisions which formerly authorized waiver of old-age benefits or wife's benefits by a woman to permit waiver of any benefit by any individual.

Subsec. (q). Pub. L. 87–64, § 102(b)(1), among other changes, authorized adjustment of the old-age insurance benefits for men and of the husband's insurance benefits for months prior to the month in which the individual attains age 65, simplified the formula for reducing benefits, and, in cases where an individual is entitled to a reduced benefit and such benefit is increased by reason of an increase in the primary insurance amount, required separate computation of the increase for and after the first month for which such increase is effective.

Subsec. (r). Pub. L. 87–64, § 102(b)(1), extended application of the subsection to men, and provided in cases where an individual is entitled to a disability insurance benefit for the same month for which an application for a reduced wife's or husband's insurance benefit is effective, that the individual will be deemed to have filed an application for old-age insurance benefit in the first subsequent month for which the individual is not entitled to a disability insurance benefit.

Subsec. (s). Pub. L. 87–64, § 102(b)(2)(A), repealed subsec. (s) which related to female disability insurance beneficiaries.

1960—Subsec. (d)(1). Pub. L. 86–778, §§ 201(a), (b), 205(a), 403(d), among other changes, struck out ''after 1939'' after ''fully or currently insured individual'' in opening clause, substituted ''a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits'' for ''a period of disability which did not end prior to the month in which he became entitled to old-age or disability insurance benefits or (if he has died) prior to the month in which he died, at the beginning of such period or at the time he became entitled to such benefits or died)'' in subpar. (C), and inserted provisions making subpar. (C)(1) inapplicable, in the case of an individual entitled to disability insurance benefits, to a child of such individual unless he is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual) or was legally adopted by such individual before the end of the 24–month period beginning with the month after the month in which such individual most recently became entitled to disability insurance benefits, and substituted provisions authorizing the payment of benefits until the month preceding the third month following the month in which a child ceases to be under a disability (as so defined) after the month in which he attains age 18 for provisions which authorized payment of benefits until the child ceases to be under a disability (as so defined) on or after the day on which he attains age 18.

Subsec. (d)(2). Pub. L. 86–778, § 301(a), struck out provisions which required each child's insurance benefit, if there is more than one child entitled to benefits on the basis of an individual's wages and self-employment income, to be equal to the sum of (A) one-half of the primary insurance amount of the individual, and (B) one-fourth of the primary insurance amount divided by the number of such children.

Subsec. (d)(3). Pub. L. 86–778, §§ 202(a), 208(d), inserted provisions requiring that for purposes of such paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 416(h)(2)(B) of this title, shall, if such individual is the child's father, be deemed to be the legitimate child of such individual, and struck out subpar. (C) which related to a child living with and receiving more than one-half of his support from his stepfather.

Subsec. (e)(1). Pub. L. 86–778, § 205(a), struck out ''after 1939'' after ''died a fully insured individual'' in opening clause.

Subsec. (f)(1). Pub. L. 86–778, § 205(b), struck out ''after August 1950'' after ''died a fully and currently insured individual'' in opening clause.

Subsecs. (g)(1), (h)(1). Pub. L. 86–778, § 205(a), struck out ''after 1939'' after ''died a fully or currently insured individual'' in opening clause.

Subsec. (i). Pub. L. 86–778, §§ 103(a), (j)(2)(C), 203(a), amended second and third sentences to require payment to the funeral home to the extent of the unpaid expenses if all or part of the burial expenses remain unpaid, and to prescribe the manner of payment of any balance that may remain after the funeral home and the persons equitably entitled thereto have received payment, and substituted ''the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa'' for ''Puerto Rico, or the Virgin Islands'', ''section 410(*l*)(1) of this title'' for ''section 410(m)(1) of this title'', and ''is returned to any State'' for ''is returned to any of such States, or the District of Columbia''.

Pub. L. 86–624 substituted ''fifty States'' for ''forty-nine States''.

Subsec. (n). Pub. L. 86–778, §211(i), substituted ''Section 403(b), (c), and (d) of this title'' for ''Section 403 (b) and (c) of this title'' in last sentence of cl. (1).

Subsec. (q)(5). Pub. L. 86–778, §211(j), substituted ''under section 403(b) of this title or paragraph (1) of section 403(c) of this title'' for ''under paragraph (1) or (2) of section 403(b) of this title'' in cl. (A), and ''section 403(b), under section 403(c)(1), under section 403(d)(1), or under section 422(b) of this title'' for ''paragraph (1) or (2) of section 403(b) of this title, under section 403(c) of this title, or under section 422(b) of this title'' in cl. (B).

Subsec. (q)(6). Pub. L. 86–778, §211(k), substituted ''section 403(b), under section 403(c)(1), under section 403(d)(1), or under section 422(b) of this title'' for ''section 403(b) (1) or (2), under section 403(c), or under section 422(b) of this title'' in cl. (A), and ''under section 403(b) of this title or paragraph (1) of section 403(c) of this title'' for ''under paragraph (1) or (2) of section 403(b) of this title'' in cl. (D).

Subsec. (t)(4)(D). Pub. L. 86–778, §103(j)(2)(D), substituted ''section 410(*l*)(2)'' for ''section 410(m)(2)'', ''section 410(*l*)(3)'' for ''section 410(m)(3)'', and ''section 410(m)'' for ''section 410(n)'', wherever appearing.

Subsec. (t)(7). Pub. L. 86–778, §211(*l*), substituted ''Subsections (b), (c), and (d) of section 403 of this title'' for ''Subsections (b) and (c) of section 403 of this title''.

1959—Subsec. (i). Pub. L. 86–70 substituted ''forty-nine States'' for ''forty-eight States''.

1958—Subsec. (b). Pub. L. 85–840, §205(b), substituted ''old-age or disability insurance'' for ''old-age insurance'' in seven places, and inserted provisions terminating the wife's insurance benefit the month preceding the first month in which her husband is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

Subsec. (c)(1). Pub. L. 85–840, §205(c), substituted ''old-age or disability insurance'' for ''old-age insurance'' wherever appearing, inserted provisions in subpar. (C) entitling the husband to an insurance benefit if he was receiving at least one-half of his support from the individual if she had a period of disability which did not end prior to the month in which she became entitled to old-age or disability insurance benefits, at the beginning of such period or at the time she became entitled to such benefits provided he filed proof of such support within two years after the month in which she filed application with respect to such period of disability or after the month in which she became entitled to such benefits, and inserted provisions terminating the husband's insurance benefit the month preceding the first month in which his wife is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

Subsec. (c)(2), (3). Pub. L. 85–840, §301(a)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(1). Pub. L. 85–840, §205(d), inserted provisions entitling the child of an individual entitled to disability insurance benefits to insurance benefits if the child was dependent upon such individual if such individual had a period of disability which did not end prior to the month in which he became entitled to old-age or disability insurance benefits or (if he has died) prior to the month in which he died, at the beginning of such period or at the time he became entitled to such benefits or died, and providing that the benefits to a child of a disability insurance beneficiary shall cease with the month before the first month for which the individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month.

Subsec. (d)(3) to (5). Pub. L. 85–840, §306(a), struck out ''who has not attained the age of eighteen'' after ''A child'' wherever appearing.

Subsec. (d)(6). Pub. L. 85–840, §307(a), added par. (6), and Pub. L. 85–840, §306(a), repealed former par. (6), which related to dependency of a child who has attained the age of eighteen and who is under a disability which began before he attained the age of eighteen.

Subsec. (e)(3)(B). Pub. L. 85–840, §301(b)(1), substituted ''which occurs within one year after such marriage and he did not die a fully insured individual'' for ''but she is not his widow (as defined in section 416(c) of this title)''.

Subsec. (e)(4). Pub. L. 85–840, §307(b), added par. (4).

Subsec. (f)(1)(D). Pub. L. 85–840, §205(e), inserted provisions entitling a widower to an insurance benefit if he was receiving at least one-half of his support from the individual, if the individual had a period of disability which did not end prior to the month in which she died, at the time such period began, or at the time of her death, or at the time she became entitled to old-age or disability insurance benefits, and he filed proof of such support within two years after the month in which she filed application with respect to the period of disability or two years after the date of her entitlement to old-age or disability insurance benefits or her death.

Subsec. (f)(2), (3). Pub. L. 85–840, §301(c)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f)(4). Pub. L. 85–840, §307(c), added par. (4).

Subsec. (g)(1)(F). Pub. L. 85–840, §205(f), inserted provisions entitling a former wife divorced to an insurance benefit, if she was receiving at least one-half of her support from an individual, if the individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of his death.

Subsec. (g)(3). Pub. L. 85–840, §303(a), added par. (3). Another par. (3), which was added by Pub. L. 85–798, was repealed by Pub. L. 85–840, §303(b), effective with respect to benefits payable for any month following August 1958.

Subsec. (g)(4). Pub. L. 85–840, §307(d), added par. (4).

Subsec. (h)(1). Pub. L. 85–840, §304(a)(1), struck out from opening clause provisions which prevented payment of a parent's benefit if the deceased individual left a widow who met the conditions in subsec. (e)(1)(D) of this section, a widower who met the conditions in subsec. (f)(1)(D) of this section, an unmarried child under the age of eighteen deemed dependent on such individual under subsec. (d)(3), (4), or (5) of this section, or an unmarried child who had attained the age of eighteen and was under a disability which began before he attained such age and who is deemed dependent on such individual under subsec. (d)(6) of this section.

Subsec. (h)(1)(B). Pub. L. 85–840, §205(g), inserted provisions entitling a parent to an insurance benefit if the parent was receiving at least one-half of his support from the individual, if the individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and the parent filed proof of such support within two years after the month in which the individual filed application with respect to such period of disability or two years after the date of such death.

Subsec. (h)(4). Pub. L. 85–840, §307(e), added par. (4).

Subsec. (i). Pub. L. 85–840, §305(a), required a widow or widower to be living in the same household with the deceased at the time of death in order to receive a lump-sum death payment.

Subsec. (k). Pub. L. 85–840, §205(h), substituted ''old-age or disability insurance'' for ''old-age insurance'' wherever appearing.

Subsec. (m). Pub. L. 85–840, §101(e), substituted ''less than the first figure in column IV of the table in section 415(a) of this title'' for ''less than $30'', and ''increased to the first figure in column IV of the table in section 415(a) of this title'' for ''increased to $30''.

Subsec. (*o*). Pub. L. 85–857 substituted ''described in section 3005 of Title 38'' for ''prescribed under section 601 of the Servicemen's and Veterans' Survivor Benefits Act''.

Subsec. (q)(5). Pub. L. 85–840, §205(i)(1), (2), inserted reference to section 422(b) of this title in subpar. (B), added subpar. (D), and substituted ''clauses (A), (B), (C), and (D)'' for ''clauses (A), (B), and (C)'' in closing provisions.

Subsec. (q)(6). Pub. L. 85–840, §205(i)(3), (4), inserted reference to section 422(b) of this title in subpar. (A),

added subpar. (C), redesignated former subpar. (C) as (D), and substituted ''clauses (A), (B), (C), and (D))'' for ''clauses (A), (B), and (C)'' in closing provisions.

Subsec. (t)(4)(E). Pub. L. 85–927 added par. (E).

1957—Subsec. (b)(1). Pub. L. 85–238, § 3(a), redesignated subpar. (D) as (C), and repealed former subpar. (C) which required the wife to be living with her husband at the time the application for benefits was filed.

Subsec. (c)(1). Pub. L. 85–238, § 3(b), redesignated subpars. (D) and (E) as (C) and (D), respectively, and repealed former subpar. (C) which required the husband to be living with his wife at the time the application for benefits was filed.

Subsec. (e)(1). Pub. L. 85–238, § 3(c), redesignated subpar. (E) as (D), and repealed former subpar. (D) which required the widow to be living with her husband at the time of his death.

Subsec. (f)(1). Pub. L. 85–238, § 3(d), redesignated subpars. (E) and (F) as (D) and (E), respectively, and repealed former subpar. (D) which required the widower to be living with his wife at the time of her death.

Subsec. (g)(1)(F). Pub. L. 85–238, § 3(e), struck out provisions which required the widow to be living with her husband at the time of his death.

Subsec. (h)(1). Pub. L. 85–238, § 3(f), struck out references to subpar. (E) of subsec. (e)(1) of this section and to subpar. (F) of subsec. (f)(1) of this section.

Subsec. (p)(1). Pub. L. 85–238, § 3(g), substituted ''subparagraph (C) of subsection (c)(1)'' for ''subparagraph (D) of subsection (c)(1)'' and ''subparagraph (D) of subsection (f)(1)'' for ''subparagraph (E) of subsection (f)(1)''.

Subsec. (t)(4)(D). Pub. L. 85–238, § 1, added subpar. (D).

1956—Subsec. (a). Act Aug. 1, 1956, ch. 836, § 102(d)(1), inserted ''Except as provided in subsection (q) of this section''.

Subsec. (a)(3). Act Aug. 1, 1956, ch. 836, § 103(c)(1), included an individual entitled to disability insurance benefits for the month preceding the month in which he attained the age of 65.

Subsec. (b)(1). Act Aug. 1, 1956, ch. 836, § 102(d)(2), (3), substituted ''old-age insurance benefits based on a primary insurance amount which'' for ''old-age insurance benefits each of which'' in cl. (D), and ''old-age insurance benefit based on a primary insurance amount which is equal to or exceeds'' for ''old-age insurance benefit equal to or exceeding'' in provisions following cl. (D).

Subsec. (b)(2). Act Aug. 1, 1956, ch. 836, § 102(d)(4), inserted ''Except as provided in subsection (q) of this section''.

Subsec. (c)(1). Act. Aug. 1, 1956, ch. 836, § 102(d)(5), (6), substituted ''the primary insurance amount of his wife'' for ''an old-age insurance benefit of his wife'' in cl. (E), and in provisions following cl. (E).

Subsec. (c)(2). Act Aug. 1, 1956, ch. 836, § 102(d)(7), substituted ''primary insurance amount'' for ''old-age insurance benefit''.

Subsec. (d)(1). Act Aug. 1, 1956, ch. 836, § 101(a), authorized child's insurance benefit for children, who at the time of filing application, are under a disability which began before they attained the age of 18, and permitted payment of such benefit until such disability ceases.

Subsec. (d)(2). Act Aug. 1, 1956, ch. 836, § 102(d)(7), substituted ''primary insurance amount'' for ''old-age insurance benefit''.

Subsec. (d)(3) to (5). Act Aug. 1, 1956, ch. 836, § 101(b)(1), substituted ''A child who has not attained the age of eighteen'' for ''A child'' wherever appearing in such paragraphs.

Subsec. (d)(6). Act Aug. 1, 1956, ch. 836, § 101(b)(2), added par. (6).

Subsec. (e)(3). Act Aug. 1, 1956, ch. 836, § 113, added par. (3).

Subsec. (h)(1). Act Aug. 1, 1956, ch. 836, § 101(c), precluded payment of parent's benefit if an individual dies leaving an unmarried child over 18 who is under a disability which began before the age of 18 and who is deemed dependent on such individual.

Subsec. (i). Act Aug. 1, 1956, ch. 837, § 403(a), substituted ''January 1, 1957'' for ''April 1956'', and inserted provisions authorizing payment of lump-sum death payment in the case of any individual who died outside the United States and the District of Columbia after December 1956 while performing service, as a member of a uniformed service, to which the provisions of section 410(m)(1) of this title are applicable.

Subsec. (j)(3). Act Aug. 1, 1956, ch. 836, § 102(d)(8), added par. (3).

Subsec. (k)(2)(B). Act Aug. 1, 1956, ch. 836, § 103(c)(2), inserted reference to section 423 of this title.

Subsec. (k)(3). Act Aug. 1, 1956, ch. 836, § 102(d)(9), inserted provisions requiring reduction under subsection (q) of this section, and provided that the reduction should be not below zero.

Subsec. (m). Act Aug. 1, 1956, ch. 836, § 102(d)(10), inserted references to subsection (q) of this section.

Subsec. (n)(1)(A). Act Aug. 1, 1956, ch. 836, § 103(c)(3), inserted reference to section 423 of this title.

Subsec. (*o*). Act Aug. 1, 1956, ch. 837, § 407, added subsec. (*o*).

Subsec. (p). Act Aug. 1, 1956, ch. 836, § 114(a), added subsec. (p).

Subsecs. (q) to (s). Act Aug. 1, 1956, ch. 836, § 102(c), added subsecs. (q) to (s).

Subsecs. (t), (u). Act Aug. 1, 1956, ch. 836, §§ 118(a), 121(a), added subsecs. (t) and (u), respectively.

1955—Subsec. (i). Act Aug. 9, 1955, made subsection applicable to cases of deaths occurring before April 1956.

1954—Subsec. (e)(1)(C). Act Sept. 1, 1954, § 110(a), provided that applications for widow's insurance benefits would not be required if the widow was entitled to a mother's insurance benefit in the month prior to the month in which she attained retirement age.

Subsec. (g)(1)(D). Act Sept. 1, 1954, § 110(b), provided that applications for mother's insurance benefits would not be required if the widow was entitled to a wife's insurance benefit for the month preceding the month in which the insured individual died.

Subsec. (i). Act Sept. 1, 1954, §§ 102(i)(2), 110(c), inserted '', or an amount equal to $255, whichever is the smaller'' after ''primary insurance amount.'', and provided that an application for a lump-sum death payment would not be required from an individual who was entitled to wife's or husband's insurance benefits for the month preceding the month in which the insured individual died.

Subsec. (j)(1). Act Sept. 1, 1954, § 105(a), substituted ''twelfth'' for ''sixth''.

Subsecs. (m), (n). Act Sept. 1, 1954, §§ 102(i)(1), 107, added subsecs. (m) and (n), respectively.

1953—Subsec. (i). Act Aug. 14, 1953, made subsec. (i) applicable to cases of deaths occurring before July 1955.

1950—Subsec. (a). Act Aug. 28, 1950, changed the name of the benefit provided by this subsection from ''primary insurance benefit'' to ''old-age insurance benefit'', and continued the conditions under which an individual becomes entitled to the benefits.

Subsec. (b). Act Aug. 28, 1950, continued the conditions required for the wife to be entitled to benefits.

Subsec. (c). Act Aug. 28, 1950, provided benefits for the dependent husband of a female old-age insurance beneficiary who was currently insured at the time of her entitlement to the old-age insurance benefit.

Subsec. (d). Act Aug. 28, 1950, increased the total amount of the family benefits in a survivor family in which there is at least one entitled child by one-fourth of the worker's old-age benefit and restates the circumstances under which a child is deemed dependent upon an individual.

Subsec. (e). Act Aug. 28, 1950, permitted a wife entitled to wife's insurance benefits to become entitled to widow's insurance benefits upon the husband's death without filing a new application.

Subsec. (f). Act Aug. 28, 1950, provided benefits for the dependent widower of a woman who is fully and currently insured at the time of her death.

Subsec. (g). Act Aug. 28, 1950, changed title of widow's current insurance benefits to mother's insurance bene-

fits and provided for payment of such benefits to the divorced wife of a deceased insured worker if she had been receiving at least half her support from the worker, and if she is caring for her son, daughter, or legally adopted child who is receiving benefits on the worker's wage record.

Subsec. (h). Act Aug. 28, 1950, changed the requirement that a parent must have been chiefly dependent upon and supported by the wage earner to the requirement that the parent only need have been receiving one-half his support in order for the parent to be found a dependent.

Subsec. (i). Act Aug. 28, 1950, limited the amount of the lump-sum death payment to three times the worker's primary insurance amount instead of six times the amount.

Subsec. (j). Act Aug. 28, 1950, increased from 3 to 6 the number of months for which benefits may be paid retroactively to individuals who failed to file their applications as soon as they were otherwise eligible.

Subsecs. (k), (*l*). Act Aug. 28, 1950, added subsecs. (k) and (*l*).

1946—Subsec. (c). Act Aug. 10, 1946, § 402, changed par. (1) to prevent termination of benefits on adoption by a stepparent, grandparent, aunt or uncle and changed par. (3)(C) to omit qualification as to the time of such individual's death and to require the child to be chiefly supported by the stepfather.

Subsec. (f)(1). Act Aug. 10, 1946, § 403(a), provided that benefit payments to parents are prevented only if the individual leaves a widow or child who could become entitled to benefits and required parents to be chiefly instead of wholly dependent.

Subsec. (g). Act Aug. 10, 1946, § 404(a), required that a widow or widower must have been living with deceased at time of death to be entitled to a lump sum payment and provided that if there was no such spouse, the payment will be made to the person or persons equitably entitled thereto in the proportion and to the extent that he or they have paid the burial expenses.

Subsec. (h). Act Aug. 10, 1946, § 405(a), extended provision for payment of benefits retroactively for three months to the primary beneficiary and provided that retroactive benefits shall be reduced so as not to render erroneous any benefit previously paid.

1939—Act Aug. 10, 1939, amended section generally.

CHANGE OF NAME

Reference to Administrator of Veterans' Affairs deemed to refer to Secretary of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, § 203(d), Mar. 2, 2004, 118 Stat. 511, provided that: ''The amendments made by this section [amending this section and sections 1004 and 1382 of this title] shall take effect on the first day of the first month that begins on or after the date that is 9 months after the date of enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title IV, § 412(c), Mar. 2, 2004, 118 Stat. 528, provided that:

''(1) IN GENERAL.—The amendment made by—

''(A) subsection (a)(1) [amending this section] shall apply to individuals with respect to whom the Commissioner of Social Security receives a removal notice after the date of the enactment of this Act [Mar. 2, 2004];

''(B) subsection (a)(2) [amending this section] shall apply with respect to notifications of removals received by the Commissioner of Social Security after the date of enactment of this Act; and

''(C) subsection (a)(3) [amending this section] shall be effective as if enacted on March 1, 1991.

''(2) SUBSEQUENT CORRECTION OF CROSS-REFERENCE AND TERMINOLOGY.—The amendments made by subsections (a)(4) and (b)(1) [amending this section] shall be effective as if enacted on April 1, 1997.

''(3) REFERENCES TO THE SECRETARY OF HOMELAND SECURITY.—The amendment made by subsection (b)(2) [amending this section] shall be effective as if enacted on March 1, 2003.''

Pub. L. 108–203, title IV, § 418(c), Mar. 2, 2004, 118 Stat. 533, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 426 of this title] shall apply with respect to applications for benefits under title II of the Social Security Act [this subchapter] filed on or after the first day of the first month that begins after the date of enactment of this Act [Mar. 2, 2004], except that such amendments shall not apply in connection with monthly periodic benefits of any individual based on earnings while in service described in section 202(k)(5)(A) of the Social Security Act [subsec. (k)(5)(A) of this section] (in the matter preceding clause (i) thereof) if the last day of such service occurs before July 1, 2004.

''(2) TRANSITIONAL RULE.—In the case of any individual whose last day of service described in subparagraph (A) of section 202(k)(5) of the Social Security Act (as added by subsection (a) of this section) occurs within 5 years after the date of enactment of this Act—

''(A) the 60-month period described in such subparagraph (A) shall be reduced (but not to less than 1 month) by the number of months of such service (in the aggregate and without regard to whether such months of service were continuous) which—

''(i) were performed by the individual under the same retirement system on or before the date of enactment of this Act, and

''(ii) constituted 'employment' as defined in section 210 of the Social Security Act [section 410 of this title]; and

''(B) months of service necessary to fulfill the 60-month period as reduced by subparagraph (A) of this paragraph must be performed after the date of enactment of this Act.''

Pub. L. 108–203, title IV, § 420A(b), Mar. 2, 2004, 118 Stat. 535, provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to benefits payable for months beginning with the 7th month that begins after the date of enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–182, § 5, Apr. 7, 2000, 114 Stat. 199, provided that: ''The amendments made by this Act [amending this section and section 403 of this title] shall apply with respect to taxable years ending after December 31, 1999.''

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–170, title IV, § 402(a)(4), Dec. 17, 1999, 113 Stat. 1908, provided that: ''The amendments made by this subsection [amending this section, section 1382 of this title, and section 552a of Title 5, Government Organization and Employees] shall apply to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after the month in which this Act is enacted [Dec. 1999].''

Pub. L. 106–170, title IV, § 402(b)(2), Dec. 17, 1999, 113 Stat. 1908, provided that: ''The amendments made by this subsection [amending this section] shall apply to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after the month in which this Act is enacted [Dec. 1999].''

Pub. L. 106–170, title IV, § 402(d)(3), Dec. 17, 1999, 113 Stat. 1909, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to benefits for months ending after the date of the enactment of this Act [Dec. 17, 1999].''

Pub. L. 106–169, title II, § 207(e), Dec. 14, 1999, 113 Stat. 1839, provided that: ''The amendments made by this section [enacting section 1320a–8a of this title, amending this section and section 1382 of this title, and enact-

ing provisions set out as a note under section 1320a–8a of this title] shall apply to statements and representations made on or after the date of the enactment of this Act [Dec. 14, 1999].''

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 308(g)(1) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Section 503(b) of div. C of Pub. L. 104–208 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for which applications are filed on or after the first day of the first month that begins at least 60 days after the date of the enactment of this Act [Sept. 30, 1996].''

Section 104(a)(2) of Pub. L. 104–121 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted [March 1996].''

Section 104(b)(3) of Pub. L. 104–121 provided that:

''(A) The amendments made by paragraph (1) [amending this section] shall apply with respect to final divorces occurring after the third month following the month in which this Act is enacted [March 1996].

''(B) The amendment made by paragraph (2) [amending this section] shall take effect on the date of the enactment of this Act [Mar. 29, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 4(b) of Pub. L. 103–387 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits for months commencing after 90 days after the date of the enactment of this Act [Oct. 22, 1994].''

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 308(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply (notwithstanding section 215(f) of the Social Security Act [section 415(f) of this title]) with respect to benefits payable for months after December 1994.''

Section 321(b)(1) of Pub. L. 103–296 provided that the amendment made by that section is effective as if included in section 603(b)(5)(A) of Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–649 not applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 602(d) of Pub. L. 101–649, set out as a note under section 1227 of Title 8, Aliens and Nationality.

Section 5103(e) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 416, 423, 426, and 1383c of this title] (other than paragraphs (1) and (2)(C) of subsection (c) [amending sections 426 and 1383c of this title]) shall apply with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after January 1, 1991, or are pending on such date. The amendments made by subsection (c)(1) [amending section 1383c of this title] shall apply with respect to medical assistance provided after December 1990. The amendments made by subsection (c)(2)(C) [amending section 426 of this title] shall apply with respect to items and services furnished after December 1990.

''(2) APPLICATION REQUIREMENTS FOR CERTAIN INDIVIDUALS ON BENEFIT ROLLS.—In the case of any individual who—

''(A) is entitled to disability insurance benefits under section 223 of the Social Security Act [section 423 of this title] for December 1990 or is eligible for supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter], or State supplementary payments of the type referred to in section 1616(a) of such Act [section 1382e(a) of this title] (or payments of the type described in section 212(a) of Public Law 93–66 [set out as a note under section 1382 of this title]) which are paid by the Secretary under an agreement referred to in such section 1616(a) (or in section 212(b) of Public Law 93–66 [set out as a note under section 1382 of this title]), for January 1991,

''(B) applied for widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act during 1990 [subsec. (e) or (f) of this section], and

''(C) is not entitled to such benefits under such subsection (e) or (f) for any month on the basis of such application by reason of the definition of disability under section 223(d)(2)(B) of the Social Security Act (as in effect immediately before the date of the enactment of this Act [Nov. 5, 1990]), and would have been so entitled for such month on the basis of such application if the amendments made by this section had been applied with respect to such application,

for purposes of determining such individual's entitlement to such benefits under subsection (e) or (f) of section 202 of the Social Security Act for months after December 1990, the requirement of paragraph (1)(C)(i) of such subsection shall be deemed to have been met.''

Section 5116(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply with respect to applications for benefits filed on or after January 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10203(b) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply—

''(1) in the case of any individual's old-age insurance benefit referred to in section 202(q)(3)(E) of the Social Security Act [subsec. (q)(3)(E) of this section] (as in effect before the amendments made by this section), only if such individual attains age 62 on or after January 1, 1990, and

''(2) in the case of any individual's disability insurance benefit referred to in section 202(q)(3)(F) or (G) of such Act (as so in effect), only if such individual both attains age 62 and becomes disabled on or after such date.''

Section 10301(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits payable for months after December 1989, but only on the basis of applications filed on or after January 1, 1990.''

Section 10302(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to misinformation furnished after December 1982 and to benefits for months after December 1982.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8004(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply only in the case of deportations occurring, and final orders of deportation issued, on or after the date of enactment of this Act [Nov. 10, 1988], and only to benefits for months beginning (and deaths occurring) on or after such date.''

Amendment by section 8007(b) of Pub. L. 100–647 applicable to benefits paid for (and items and services furnished in) months after December 1988, see section 8007(d) of Pub. L. 100–647, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Section 8010(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to benefits payable under section 202(e) or section 202(f) of the Social Security Act [subsec. (e) or (f) of this section] on the basis of the wages and self-employment income of an individual who dies

after the month in which this Act is enacted [Nov. 10, 1988].''

Section 8014(c) of Pub. L. 100–647 provided that: ''The preceding provisions of this section (including the amendments made by subsection (a)) [amending this section and enacting provisions set out below] shall apply as if they had been included or reflected in the provisions of section 9007 of the Omnibus Budget Reconciliation Act of 1987 (101 Stat. 1330–289) [Pub. L. 100–203, amending this section and enacting provisions set out below] at the time of its enactment [Dec. 22, 1987].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9007(f) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to benefits for months after December 1987; except that nothing in such amendments shall affect any exemption (from the application of the pension offset provisions contained in subsection (b)(4), (c)(2), (e)(7), (f)(2), or (g)(4) of section 202 of the Social Security Act [this section]) which any individual may have by reason of subsection (g) or (h) of section 334 of the Social Security Amendments of 1977 [section 334(g), (h) of Pub. L. 95–216, set out as notes below].''

Section 9010(f) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 416, 423, and 426 of this title] shall take effect January 1, 1988, and shall apply with respect to—

''(1) individuals who are entitled to benefits which are payable under subsection (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 202 of the Social Security Act [this section] or subsection (a)(1) of section 223 of such Act [section 423 of this title] for any month after December 1987, and

''(2) individuals who are entitled to benefits which are payable under any provision referred to in paragraph (1) for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by this section has not elapsed as of January 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1883(f) of Pub. L. 99–514 provided that: ''Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 410, 411, 415, 418, 421, 423, 602, 657, 658, 664, 674, 1301, 1320b–6, 1382a, 1383, and 1397b of this title and sections 1402 and 3121 of Title 26, Internal Revenue Code, repealing section 1397f of this title, enacting provisions set out as notes under sections 602 and 678 of this title, and amending provisions set out as a note under section 410 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].''

Section 12104(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for which application is filed after the date of the enactment of this Act [Apr. 7, 1986].''

Section 12107(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 423 of this title] are effective December 1, 1980, and shall apply with respect to any individual who is under a disability (as defined in section 223(d) of the Social Security Act [section 423(d) of this title]) on or after that date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by sections 2661(b)–(f) and 2662(c)(1) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(2) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 111(a)(8) of Pub. L. 98–21 provided that: ''The amendments made by this subsection [amending this section and sections 403, 415, and 430 of this title] shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [section 415(i) of this title] for years after 1982.''

Section 114(c)(2) of Pub. L. 98–21 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to increment months in calendar years after 1983.''

Section 131(d) of Pub. L. 98–21 provided that:

''(1) The amendments made by this section [amending this section and section 426 of this title] shall be effective with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1983.

''(2) In the case of an individual who was not entitled to a monthly benefit of the type involved under title II of such Act for December 1983, no benefit shall be paid under such title by reason of such amendments unless proper application for such benefit is made.''

Section 132(c)(1) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to monthly insurance benefits for months after December 1984, but only on the basis of applications filed on or after January 1, 1985.''

Section 133(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly insurance benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under section 202(e) or (f) of the Social Security Act [subsec. (e) or (f) of this section] (other than making application for such benefits) after December 1984.''

Section 134(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits for months after December 1983.''

Section 301(a)(5) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title VI, §2662(d), July 18, 1984, 98 Stat. 1159, provided that the amendment made by that section is effective with respect to monthly insurance benefits for months after December 1984 (but only on the basis of applications filed on or after January 1, 1985).

Section 307(b) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [April 1983], but only in cases in which the 'last month' referred to in the provision amended is a month after the month in which this Act is enacted.''

Section 310 of title III of Pub. L. 98–21 provided that:

''(a) Except as otherwise specifically provided in this title, the amendments made by this part [part A (§§301–310) of title III of Pub. L. 98–21, amending this section and sections 403, 405, 416, 417, 422, 423, 425, 426, 427, and 428 of this title] apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [April 1983].

''(b) Nothing in any amendment made by this part shall be construed as affecting the validity of any benefit which was paid, prior to the effective date of such amendment, as a result of a judicial determination.''

Section 334(b) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to survivors whose applications for monthly benefits are filed after the second month following the month in which this Act is enacted [April 1983].''

Section 337(b) of Pub. L. 98–21, as amended by Pub. L. 98–617, §2(a)(1), Nov. 8, 1984, 98 Stat. 3294, provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply only with re-

spect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months after June 1983.''

[Section 2(a)(2) of Pub. L. 98–617 provided that: ''The amendments made by this subsection [amending section 337(b) of Pub. L. 98–21, set out above] shall apply to benefits payable under title II of the Social Security Act [this subchapter] for months beginning after the month of enactment of this Act [November 1984].'']

Section 339(c) of Pub. L. 98–21 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 423 of this title] shall apply with respect to monthly benefits payable for months beginning on or after the date of enactment of this Act [Apr. 20, 1983].''

Section 340(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section] shall apply with respect to any individual who initially becomes eligible for benefits under section 202 or 223 [this section or section 423 of this title] after December 31, 1984.''

Section 7(d) of Pub. L. 97–455 provided that: ''The amendments made by subsections (a) [enacting and amending provisions set out as notes under this section] and (c) [amending this section] of this section shall be effective with respect to monthly insurance benefits for months after November 1982.''

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by section 2201(b)(10), (11), (d)(1), (2) of Pub. L. 97–35 and amendment by section 2(e) of Pub. L. 97–123 applicable with respect to benefits for months after December 1981, and amendment by section 2201(f) of Pub. L. 97–35 applicable with respect to deaths occurring after December 1981, with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

Section 2202(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section and section 416 of this title] shall apply only with respect to deaths occurring after August 1981.''

Section 2203(f)(1), (2) of Pub. L. 97–35 provided that:

''(1) The amendments made by subsections (a), (b), and (c) [amending this section and section 416 of this title] of this section shall apply only to monthly insurance benefits payable to individuals who attain age 62 after August 1981.

''(2) The amendments made by subsection (d) of this section [amending this section and section 416 of this title] shall apply to monthly insurance benefits for months after August 1981, and only in the case of individuals who were not entitled to such insurance benefits for August 1981 or any preceding month.''

Section 2205(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to wife's and mother's insurance benefits for months after the month in which this Act is enacted [August 1981], except that, in the case of an individual who is entitled to such a benefit (on the basis of having a child in her care) for the month in which this Act is enacted [August 1981], such amendments shall not take effect until the first day of the first month which begins 2 years or more after the date of the enactment of this Act [Aug. 13, 1981].''

Section 2206(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 403 and 415 of this title] shall apply only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981.''

Section 2210(b) of Pub. L. 97–35 provided that: ''Except as provided in subsection (c) [section 2210(c) of Pub. L. 97–35, set out below], the amendments made by subsection (a) [amending this section] shall apply to child's insurance benefits under section 202(d) of the Social Security Act [subsec. (d) of this section] for months after July 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 1011(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to applications filed on or after the first day of the first month which begins 60 days or more after the date of the enactment of this Act [Dec. 5, 1980].''

Section 5(d) of Pub. L. 96–473 provided that: ''The amendments made by this section [amending this section and sections 416 and 423 of this title] shall be effective with respect to benefits payable for months beginning on or after October 1, 1980.''

Section 303(d) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 416, 422, 423, 1382, and 1382c of this title] shall become effective on the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980], and shall apply with respect to any individual whose disability has not been determined to have ceased prior to such first day.''

Section 306(d) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 416 and 423 of this title] shall apply to applications filed after the month in which this Act is enacted [June 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 206 of title II of Pub. L. 95–216 provided that: ''The amendments made by the provisions of this title other than sections 201(d), 204, and 205(a) [amending this section and sections 403, 415, 417, 424a, and 1395r of this title] shall be effective with respect to monthly benefits under title II of the Social Security Act [this subchapter] payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after such month. The amendments made by section 201(d) [amending section 415 of this title] shall be effective with respect to monthly benefits of an individual who becomes eligible for an old-age or disability insurance benefit, or dies, after December 1977. The amendments made by section 204 [amending this section and section 403 of this title] shall be effective with respect to monthly benefits for months after May 1978. The amendment made by section 205(a) [amending this section] shall be effective with respect to monthly benefits payable for months after December 1978 based on the wages and self-employment income of individuals who die after December 1978.''

Section 331(d) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to monthly benefits payable for months after December 1977.''

Section 332(b) of Pub. L. 95–216 provided that: ''The amendments made by subsection (a) [amending this section and section 426 of this title] shall be effective with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] to which an individual becomes entitled on the basis of an application filed on or after January 1, 1978.''

Section 334(f) of Pub. L. 95–216 as amended by section 7(a)(2) of Pub. L. 97–455, provided that: ''Subject to subsections (g) and (h) [section 334(g) and (h) of Pub. L. 95–216, set out as notes below], the amendments made by this section [amending this section and section 426 of this title and enacting provisions set out as notes under this section] shall apply with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months beginning with the month in which this Act is enacted [December 1977], on the basis of applications filed in or after the month in which this Act is enacted.''

Section 336(c)(1) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1978, and, in the

case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979.''

Section 337(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979.''

Section 353(f)(1) of Pub. L. 95–216 provided that the amendment made by that section is effective with respect to convictions after Dec. 31, 1977.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 603 of Pub. L. 93–445 provided that: ''The provision of title II of this Act [set out as a note under section 231 of Title 45, Railroads] and the amendments made by title III and title IV of this Act [amending this section and sections 405, 410, 416, 426, 1395s, 1395u, 1395v, 1395gg, and 1395kk of this title and sections 352, 354, 360, 361, and 362 of Title 45] shall become effective on January 1, 1975.''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 240(b) of Pub. L. 93–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [July 1973] on the basis of applications for such benefits filed in or after the month in which this Act is enacted.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 102(i) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 403 of this title and enacting provisions set out as notes under this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972.''

Section 103(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall be applicable with respect to old-age insurance benefits payable under title II of the Social Security Act [this subchapter] for months beginning after 1972.''

Section 107(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 403, 422, and 425 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972, except that in the case of an individual who was not entitled to a monthly benefit under title II of such Act for December 1972 such amendments shall apply only on the basis of an application filed in or after the month in which this Act is enacted [October 1972].''

Section 108(f) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1972 except that in the case of an individual who was not entitled to a monthly benefit under such section 202 for December 1972 such amendments shall apply only on the basis of an application filed after September 30, 1972.''

Section 109(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972.''

Section 110(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972.''

Section 111(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1967 on the basis of an application filed in or after the month in which this Act is enacted [October 1972], except that such amendments shall not apply with respect to benefits for any month before the month in which this Act is enacted unless such application is filed before the close of the sixth month after the month in which this Act is enacted.''

Section 112(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months beginning with the month in which this Act is enacted [October 1972].''

Section 113(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972, but only on the basis of applications filed on or after the date of the enactment of this Act [Oct. 30, 1972].''

Section 114(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972 on the basis of applications filed on or after the date of enactment of this Act [Oct. 30, 1972].''

Amendment by section 116(b), (c) of Pub. L. 92–603 effective with respect to applications for widow's and widower's insurance benefits based on disability under this section filed in or after October 1972 or before October 1972 under specified conditions, see section 116(e) of Pub. L. 92–603, set out as a note under section 423 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 92–223 provided that: ''The amendments made by the first section of this Act [amending this section] shall be effective only in the case of lump-sum death payments under title II of the Social Security Act [this subchapter] made with respect to deaths which occur after December 31, 1970.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 1004(d) of Pub. L. 91–172 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1969.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 103(e) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968.''

Section 104(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and sections 403, 416, 422, and 425 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after the month in which this Act is enacted [January 1968].''

Section 112(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of applications filed after the date of enactment of this Act [Jan. 2, 1968].''

Section 151(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this sec-

tion and section 228e of Title 45, Railroads] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] (and annuities accruing under the Railroad Retirement Act of 1937 [section 228a et seq. of Title 45]) for months after January 1968, but only on the basis of applications filed in or after the month in which this Act is enacted [January 1968].''

Section 157(d) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of applications filed in or after the month in which this Act is enacted [January 1968].''

Amendment by section 158(c)(1), (2) of Pub. L. 90–248, applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

Section 162(a)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to six-month periods (within the meaning of section 202(t)(1)(A) of the Social Security Act [subsec. (t)(1)(A) of this section]) which begin after the date of the enactment of this Act [Jan. 2, 1968].''

Section 162(b)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months beginning after June 30, 1968.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 303(d) of Pub. L. 89–97 effective with respect to applications for disability insurance benefits under section 423 of this title, and for disability determinations under section 416(i) of this title, filed in or after July 1965 or before July 1965, if the applicant has not died before such month and notice of final administrative decision has not been given to the applicant before such month, see section 303(f)(1), of Pub. L. 89–97, set out as a note under section 423 of this title.

Section 304(*o*) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 415, 416, and 423 of this title] shall apply with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] for and after the second month following the month [July 1965] in which this Act is enacted, but only on the basis of applications filed in or after the month in which this Act is enacted.''

Section 306(d) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 403, 416, 422, and 425 of this title] shall apply with respect to monthly insurance benefits under section 202 of the Social Security Act [this section] for months after December 1964; except that—

''(1) in the case of an individual who was not entitled to a child's insurance benefit under subsection (d) of such section [subsec. (d) of this section] for the month in which this Act is enacted [July 1965], such amendments shall apply only on the basis of an application filed in or after the month in which this Act is enacted, and

''(2) no monthly insurance benefit shall be payable for any month before the second month following the month in which this Act is enacted [July 1965] by reason of section 202(d)(1)(B)(ii) of the Social Security Act [subsec. (d)(1)(B)(ii) of this section] as amended by this section.''

Section 307(c) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly insurance benefits under section 202 of the Social Security Act [this section] for and after the second month following the month [July 1965] in which this Act is enacted, but only on the basis of applications filed in or after the month in which this Act is enacted.''

Section 308(e) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 403, 405, 416, and 422 of this title] shall be applicable with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] beginning with the second month following the month in which this Act is enacted [July 1965]; but, in the case of an individual who was not entitled to a monthly insurance benefit under section 202 of such Act [this section] for the first month following the month in which this Act is enacted [July 1965], only on the basis of an application filed in or after the month in which this Act is enacted.''

Amendment by section 319(d) of Pub. L. 89–97 applicable with respect to taxable years beginning after December 31, 1950, see section 319(e) of Pub. L. 89–97, set out as a note under section 1402 of Title 26.

Section 323(b) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall be applicable to persons who file applications, or on whose behalf applications are filed, for benefits under section 202(d) of the Social Security Act [subsec. (d) of this section] on or after the date this section is enacted [July 30, 1965]. The time limit provided by section 202(d)(10)(B) of such Act [subsec. (d)(10)(B) of this section] as amended by this section for legally adopting a child shall not apply in the case of any child who is adopted before the end of the 12-month period following the month in which this section is enacted.''

Section 324(b) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to (1) applications for lump-sum death payments filed in or after the month [July 1965] in which this Act is enacted, and (2) monthly benefits based on applications filed in or after such month.''

Amendment by section 328(a) of Pub. L. 89–97 applicable with respect to applications filed on or after July 30, 1965, applications as to which the Secretary has not made a final decision before July 30, 1965, and, if a civil action with respect to a final decision of the Secretary has been commenced under section 405(g) of this title before July 30, 1965, applications as to which there has been no final judicial decision before July 30, 1965, see section 328(d) of Pub. L. 89–97, set out as a note under section 416 of this title.

Section 333(d) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly insurance benefits under section 202 of the Social Security Act [this section] beginning with the second month following the month in which this Act is enacted [July 1965]; but, in the case of an individual who was not entitled to a monthly insurance benefit under section 203(e) or (f) of such Act [subsec. (e) or (f) of this section] for the first month following the month in which this Act is enacted, only on the basis of an application filed in or after the month in which this Act is enacted.''

Section 334(g) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall be applicable only with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] beginning with the second month following the month in which this Act is enacted [July 1965], but only on the basis of applications filed in or after the month in which this Act is enacted.''

Amendment by section 339(b) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under subchapter II of this chapter beginning with September 1965 but only on the basis of an application filed in or after July 1965, see section 339(c) of Pub. L. 89–97, set out as a note under section 416 of this title.

Section 343(b) of Pub. L. 89–97 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [July 1965]; except that, in the case

of an individual who was not entitled to child's insurance benefits under section 202(d) of such Act [subsec. (d) of this section] for the month in which this Act was enacted, such amendment shall apply only on the basis of an application filed in or after the month in which this Act is enacted.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 102(f) of title I of Pub. L. 87–64 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above] based on applications filed in or after March 1961.

''(2)(A) Except as provided in subparagraphs (B), (C), and (D), section 202(q) of such Act [subsec. (q) of this section], as amended by subsection (b)(1), shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(B) Section 202(q)(3) of such Act, as amended by subsection (b)(1), shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above], but only if the increase described in such section 202(q)(3)—

''(i) is not effective for any month beginning before the effective date of this title, or

''(ii) is based on an application for a recomputation filed on or after the effective date of this title.

''(C) In the case of any individual who attained age 65 before the effective date of this title, the adjustment in such individual's reduction period provided for in section 202(q)(6) of such Act [subsec. (q)(6) of this section], as amended by subsection (b)(1), shall not apply to such individual unless the total of the months specified in subparagraphs (A), (B), and (C) of such section 202(q)(6) is not less than 3.

''(D) In the case of any individual entitled to a monthly benefit for the last month beginning before the effective date of this title, if the amount of such benefit for any month thereafter is, solely by reason of the change in section 202(q) of such Act [subsec. (q) of this section] made by subsection (b)(1), lower than the amount of such benefit for such last month, then it shall be increased to the amount of such benefit for such last month.

''(3) Section 202(r) of such Act [subsec. (r) of this section], as amended by subsection (b)(1), shall apply only with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above], except that subparagraph (B) of section 202(r)(2) (as so amended) shall apply only if the first subsequent month described in such subparagraph (B) is a month beginning on or after the effective date of this title.

''(4) The amendments made by subsection (b)(2) [amending this section and sections 416 and 423 of this title] shall take effect on the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(5) The amendments made by subsection (b)(3) [amending this section] shall apply with respect to applications for monthly benefits filed on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(6) The amendments made by subsections (c) and (d)(1) and (2) [amending sections 409, 413, 415, 416, and 423 of this title] shall apply with respect to—

''(A) monthly benefits for months beginning on or after the Effective Date of this title [see Effective Date of 1961 Amendment note set out above] based on applications filed in or after March 1961, and

''(B) lump-sum death payments under title II of the Social Security Act [this subchapter] in the case of deaths on or after the effective date of this title.

''(7) The amendment made by subsection (d)(3) [amending section 415 of this title] shall take effect on the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(8) The amendments made by subsection (e) [amending this section] shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(9) For purposes of this subsection, the term 'monthly benefits' means monthly insurance benefits under title II of the Social Security Act [this subchapter].''

Section 104(e) of title I of Pub. L. 87–64 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above].''

Section 109 of title I of Pub. L. 87–64 provided that: ''Except as otherwise provided, the effective date of this title [see Tables for classifications] is the first day of the first calendar month which begins on or after the 30th day after the date of the enactment of this Act [June 30, 1961].''

EFFECTIVE DATE OF 1960 AMENDMENTS

Section 103(v) of Pub. L. 86–778, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsection (a) [amending this section and provisions set out as notes under this section] shall apply only with respect to reinterments after the date of the enactment of this Act [Sept. 13, 1960]. The amendments made by subsections (b), (e), and (f) [amending sections 403 and 410 of this title] shall apply only with respect to service performed after 1960; except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, such amendments shall apply only in the case of taxable years beginning after 1960. The amendments made by subsections (d), (i), (*o*), and (p) [amending section 410 of this title and section 3121 of Title 26, Internal Revenue Code, and amending section 418 of this title and section 3121 of Title 26] shall apply only with respect to service performed after 1960. The amendments made by subsections (h) and (*l*) [amending section 411 of this title and section 1402 of Title 26] shall apply only in the case of taxable years beginning after 1960. The amendments made by subsections (c), (n), (q), and (r) [enacting section 3125 of Title 26 and amending section 410 of this title and sections 3121, 6205, and 6413 of Title 26] shall apply only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act [this subchapter] extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by such title II extended to the officers and employees of such Government and such political subdivisions and instrumentalities. The amendments made by subsections (g) and (k) [amending section 411 of this title and section 1402 of Title 26] shall apply only in the case of taxable years beginning after 1960, except that, insofar as they involve the nonapplication of section 932 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 932 of Title 26] to the Virgin Islands for purposes of chapter 2 of such Code and section 211 of the Social Security Act [section 411 of this title], such amendments shall be effective in the case of all

taxable years with respect to which such chapter 2 (and corresponding provisions of prior law) and such section 211 [section 411 of this title] are applicable. The amendments made by subsections (j), (s), and (t) [amending this section and sections 405, 409, 410, 411, 415, 417, and 418 of this title and sections 7213 and 7701 of Title 26 and repealing section 419 of this title] shall take effect on the date of the enactment of this Act [Sept. 13, 1960]; and there are authorized to be appropriated such sums as may be necessary for the performance by any officer or employee of functions delegated to him by the Secretary of the Treasury in accordance with the amendment made by such subsection (t) [amending section 7701 of Title 26].

''(2) The amendments made by subsections (c) and (n) [amending section 410 of this title and section 3121 of Title 26] shall have application only as expressly provided therein, and determinations as to whether an officer or employee of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, is an employee of the United States or any agency or instrumentality thereof within the meaning of any provision of law not affected by such amendments, shall be made without any inferences drawn from such amendments.

''(3) The repeal (by subsection (j)(1)) of section 219 of the Social Security Act [section 419 of this title], and the elimination (by subsections (e), (f), (h), (j)(2), and (j)(3)) of other provisions of such Act [from sections 410 and 411 of this title] making reference to such section 219 [section 419 of this title], shall not be construed as changing or otherwise affecting the effective date specified in such section for the extension to the Commonwealth of Puerto Rico of the insurance system under title II of such Act [this subchapter], the manner or consequences of such extension, or the status of any individual with respect to whom the provisions so eliminated are applicable.''

Section 201(c) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section] shall apply as though this Act had been enacted on August 28, 1958, and with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after August 1958 based on applications for such benefits filed on or after August 28, 1958.''

Section 202(b) of Pub. L. 86–778 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning with the month in which this Act is enacted [September 1960], but only if an application for such benefits is filed in or after such month.''

Section 203(b) of Pub. L. 86–778 provided that: ''The amendment made by subsection (a) [amending this section] shall apply—

''(1) in the case of the death of an individual occurring on or after the date of the enactment of this Act [Sept. 13, 1960], and

''(2) in the case of the death of an individual occurring prior to such date, but only if no application for a lump-sum death payment under section 202(i) of the Social Security Act [subsec. (i) of this section] is filed on the basis of such individual's wages and self-employment income prior to the third calendar month beginning after such date.''

Section 205(d) of Pub. L. 86–778 provided that: ''The preceding provisions of this section and the amendments made thereby [amending this section] shall apply only in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [September 1960], on the basis of applications filed in or after such month.''

Amendment by section 208(d) of Pub. L. 86–778 applicable (1) with respect to monthly benefits under this subchapter for months beginning with September 1960 on the basis of an application filed in or after such month, and (2) in the case of a lump-sum death payment under this subchapter based on an application filed in or after September 1960, but only if no person, other than the person filing such application, has filed an application for a lump-sum death payment under this subchapter prior to Sept. 13, 1960 with respect to the death of the same individual, see section 208(f) of Pub. L. 86–778, set out as a note under section 416 of this title.

Amendment by section 211(i)–(*l*) of Pub. L. 86–778 effective in the manner provided in section 211(p) and (q) of Pub. L. 86–778, see section 211(p)–(s) of Pub. L. 86–778 set out as a note under section 403 of this title.

Section 301(b) of Pub. L. 86–778 provided that: ''The amendment made by this section [amending this section] shall apply only with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after the second month following the month in which this Act is enacted [September 1960].''

Amendment by section 403(d) of Pub. L. 86–778 applicable only with respect to benefits under subsec. (d) of this section for months after September 1960, in the case of individuals who, without regard to such amendment, would have been entitled to such benefits for September 1960, or for any succeeding month, see section 403(e) of Pub. L. 86–778, set out as a note under section 422 of this title.

Section 47(e) of Pub. L. 86–624 provided that: ''The amendment made by section 30(c)(1) [amending this section] shall be applicable in the case of deaths occurring on or after August 21, 1959.''

EFFECTIVE DATE OF 1959 AMENDMENT

Section 47(e) of Pub. L. 86–70 provided that: ''The amendment made by paragraph (1) of subsection (c) of section 32 [amending this section] shall apply in the case of deaths occurring on or after January 3, 1959.''

EFFECTIVE DATE OF 1958 AMENDMENTS

Section 302 of Pub. L. 85–927 provided that: ''The amendments made by section 301 of this Act [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1956, and with respect to lump-sum death payments under such section 202 in the case of deaths occurring after December 1956.''

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding section 101 of Title 38, Veterans' Benefits.

Amendment by section 101(e) of Pub. L. 85–840 applicable in the case of monthly benefits under subchapter II of this chapter for months after December 1958, and in the case of lump-sum death payments under subchapter II of this chapter, with respect to deaths occurring after such month, see section 101(g) of Pub. L. 85–840, set out as a note under section 415 of this title.

Amendment by section 205(b)–(i) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

Section 301(f) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.''

Section 304(a)(2) of Pub. L. 85–840 provided that: ''The amendment made by this subsection [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.''

Section 305(c) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall apply in the case of lump-sum death payments under such section 202(i) [subsec. (i) of this section] on the basis of the wages and self-employment income of any individual who dies after the month in which this Act is enacted [August 1958].''

Section 306(b) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.''

Section 307(h)(1) of Pub. L. 85–840 provided that: ''The amendments made by this section (other than by subsections (f) and (g) [amending this section]) shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months following the month in which this Act is enacted [August 1958]; except that in any case in which benefits were terminated with the close of the month in which this Act is enacted or any prior month and, if the amendments made by this section had been in effect for such month, such benefits would not have been terminated, the amendments made by this section shall apply with respect to monthly benefits under section 202 of the Social Security Act for months beginning after the date of enactment of this Act, but only if an application for such benefits is filed after such date.''

EFFECTIVE DATE OF 1957 AMENDMENT

Section 2 of Pub. L. 85–238 provided that: ''The amendments made by the first section of this Act [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1956, and with respect to lump-sum death payments under such section 202 in the case of deaths occurring after December 1956.''

Section 3(i) of Pub. L. 85–238 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 416 of this title] shall apply in the case of monthly benefits under section 202 of the Social Security Act [this section] for months after the month in which this Act is enacted [August 1957].

''(2) The amendment made by subsection (f) [amending this section] shall not apply in the case of benefits under section 202(h) of the Social Security Act [subsec. (h) of this section], based on the wages and self-employment income of a deceased individual who died in or prior to the month in which this Act is enacted [August 1957] for any parent who files the proof of support, required by such section 202(h), in or prior to the month in which this Act is enacted; and the amendment to section 216(h)(1) of such Act [section 416(h)(1) of this title] made by subsection (h) of this section shall not operate to deprive any such parent of benefits to which he would otherwise be entitled under section 202(h) of such Act.''

EFFECTIVE DATE OF 1956 AMENDMENTS

Section 403(b) of act Aug. 1, 1956, ch. 837, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as though it had been enacted on March 31, 1956.''

Section 101(h) of act Aug. 1, 1956, ch. 836, provided that:

''(1) The amendments made by this section [amending this section and section 403 of this title], other than subsection (c) [amending this section], shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1956, but only, except as provided in paragraph (2), on the basis of an application filed after September 1956. For purposes of title II of the Social Security Act, as amended by this Act [this subchapter], an application for wife's, child's, or mother's insurance benefits under such title II filed, by reason of this paragraph, by an individual who was entitled to benefits prior to, but not for, December 1956 and whose entitlement terminated as a result of a child's attainment of age eighteen shall be treated as the application referred to in subsection (b), (d), and (g), respectively, of section 202 of such Act.

''(2) In the case of an individual who was entitled, without the application of subsection (j)(1) of such section 202 [subsec. (j)(1) of this section], to a child's insurance benefit under subsection (d) of such section [subsec. (d) of this section] for December 1956, such amendments shall apply with respect to benefits under such section 202 [this section] for months after December 1956.

''(3) The amendment made by subsection (c) [amending this section] shall apply in the case of benefits under section 202(h) of the Social Security Act [subsec. (h) of this section] based on the wages and self-employment income of an individual who dies after August 1956.''

Section 114(b) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of lump-sum death payments under title II of the Social Security Act [this subchapter], and monthly benefits under such title for months after August 1956, based on applications filed after August 1956.''

Section 118(b) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1956 and in the case of lump-sum death payments under section 202(i) of such Act [subsec. (i) of this section] with respect to deaths occurring after December 1956.''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 105(b) of act Sept. 1, 1954, provided that: ''The amendment made by subsection (a) [amending this section] shall be applicable only in the case of applications for monthly benefits under section 202 of the Social Security Act [this section] filed after August 1954; except that no individual shall, by reason of such amendment, be entitled to any benefit for any month prior to February 1954.''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 101(b)(1), (3) of act Aug. 28, 1950, provided that:

''(1) Except as provided in paragraph (3), the amendment made by subsection (a) of this section [amending this section] shall take effect September 1, 1950.

''(3) Section 202(j)(2) of the Social Security Act [subsec. (j)(2) of this section], as amended by this Act, shall take effect on the date of enactment of this Act [Aug. 28, 1950].''

EFFECTIVE DATE OF 1946 AMENDMENT

Section 403(b) of act Aug. 10, 1946, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases of applications for benefits under that Act filed after December 31, 1946.''

Section 404(b) of act Aug. 10, 1946, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases where the death of the insured individual occurs after December 31, 1946.''

Subsec. 405(b) of act Aug. 10, 1946, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases of applications for benefits under this title [this subchapter] filed after December 31, 1946.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

CONSTRUCTION OF 1994 AMENDMENTS

Section 7 of Pub. L. 103–387 provided that: ''Until March 31, 1995, any reference in this Act [see Short Title of 1994 Amendments note, set out under section 1 of Title 26, Internal Revenue Code] (other than section 3(d) [108 Stat. 4075]) or any amendment made by this Act to the Commissioner of Social Security shall be deemed a reference to the Secretary of Health and Human Services.''

PILOT STUDY OF EFFICACY OF PROVIDING INDIVIDUALIZED INFORMATION TO RECIPIENTS OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS

Section 106 of Pub. L. 104–121 provided that:

''(a) IN GENERAL.—During a 2-year period beginning as soon as practicable in 1996, the Commissioner of Social Security shall conduct a pilot study of the efficacy of providing certain individualized information to recipients of monthly insurance benefits under section 202 of the Social Security Act [this section], designed to promote better understanding of their contributions and benefits under the social security system. The study shall involve solely beneficiaries whose entitlement to such benefits first occurred in or after 1984 and who have remained entitled to such benefits for a continuous period of not less than 5 years. The number of such recipients involved in the study shall be of sufficient size to generate a statistically valid sample for purposes of the study, but shall not exceed 600,000 beneficiaries.

''(b) ANNUALIZED STATEMENTS.—During the course of the study, the Commissioner shall provide to each of the beneficiaries involved in the study one annualized statement, setting forth the following information:

''(1) an estimate of the aggregate wages and self-employment income earned by the individual on whose wages and self-employment income the benefit is based, as shown on the records of the Commissioner as of the end of the last calendar year ending prior to the beneficiary's first month of entitlement;

''(2) an estimate of the aggregate of the employee and self-employment contributions, and the aggregate of the employer contributions (separately identified), made with respect to the wages and self-employment income on which the benefit is based, as shown on the records of the Commissioner as of the end of the calendar year preceding the beneficiary's first month of entitlement; and

''(3) an estimate of the total amount paid as benefits under section 202 of the Social Security Act [this section] based on such wages and self-employment income, as shown on the records of the Commissioner as of the end of the last calendar year preceding the issuance of the statement for which complete information is available.

''(c) INCLUSION WITH MATTER OTHERWISE DISTRIBUTED TO BENEFICIARIES.—The Commissioner shall ensure that reports provided pursuant to this section are, to the maximum extent practicable, included with other reports currently provided to beneficiaries on an annual basis.

''(d) REPORT TO THE CONGRESS.—The Commissioner shall report to each House of the Congress regarding the results of the pilot study conducted pursuant to this section not later than 60 days after the completion of such study.''

TREATMENT OF EMPLOYEES WHOSE FEDERAL EMPLOYMENT TERMINATED AFTER MAKING ELECTION INTO SOCIAL SECURITY COVERAGE BUT BEFORE EFFECTIVE DATE OF ELECTION

Section 8014(b) of Pub. L. 100–647 provided that: ''Subsections (b)(4)(A)(i), (c)(2)(A)(i), (e)(7)(A)(i), (f)(2)(A)(i), and (g)(4)(A)(i) of section 202 of the Social Security Act (42 U.S.C. 402(b)(4)(A)(i), (c)(2)(A)(i), (e)(7)(A)(i), (f)(2)(A)(i), (g)(4)(A)(i)) shall not apply with respect to monthly periodic benefits of any individual based solely on service which was performed while in the service of the Federal Government if—

''(1) such person made, before January 1, 1988, an election pursuant to law to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 [22 U.S.C. 4071 et seq.] (or such person made such an election on or after January 1, 1988, and before July 1, 1988, pursuant to regulations of the Office of Personnel Management relating to belated elections and correction of administrative errors (5 CFR 846.204) as in effect on the date of the enactment of this Act [Nov. 10, 1988]), and

''(2) such service terminated before the date on which such election became effective.''

MONTHLY PAYMENTS TO SURVIVING SPOUSE OF MEMBER OR FORMER MEMBER OF ARMED FORCES WHERE SUCH PERSON HAS IN CARE A CHILD OF SUCH MEMBER; AMOUNT, CRITERIA, ETC.

Pub. L. 97–377, title I, § 156, Dec. 21, 1982, 96 Stat. 1920, as amended by Pub. L. 98–94, title IX, § 943, Sept. 24, 1983, 97 Stat. 654; Pub. L. 100–322, title III, § 314, May 20, 1988, 102 Stat. 535; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406, provided that:

''(a)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

''(A) who is the surviving spouse of a member or former member of the Armed Forces described in subsection (c);

''(B) who has in such person's care a child of such member or former member who has attained sixteen years of age but not eighteen years of age and is entitled to a child's insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) for such month or who meets the requirements for entitlement to the equivalent of such benefit provided under section 1312(a) of title 38, United States Code; and

''(C) who is not entitled for such month to a mother's insurance benefit under section 202(g) of the Social Security Act (42 U.S.C. 402(g)), or to the equivalent of such benefit based on meeting the requirements of section 1312(a) of title 38, United States Code, by reason of having such child (or any other child of such member or former member) in her care.

''(2) A payment under paragraph (1) for any month shall be in the amount of the mother's insurance benefit, if any, that such person would receive for such month under section 202(g) of the Social Security Act [subsec. (g) of this section] if such child were under sixteen years of age, disregarding any adjustments made under section 215(i) of the Social Security Act [section 415(i) of this title] after August 1981. However, if such person is entitled for such month to a mother's insurance benefit under section 202(g) of such Act by reason of having the child of a person other than such member or former member of the Armed Forces in such person's care, the amount of the payment under the preceding sentence for such month shall be reduced (but not below zero) by the amount of the benefit payable by reason of having such child in such person's care.

''(b)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

''(A) who is the child of a member or former member of the Armed Forces described in subsection (c);

''(B) who has attained eighteen years of age but not twenty-two years of age and is not under a disability as defined in section 223(d) of the Social Security Act (42 U.S.C. 423(d));

''(C) who is a full-time student at a postsecondary school, college, or university that is an educational institution (as such terms were defined in section 202(d)(7)(A) and (C) of the Social Security Act [subsec. (d)(7)(A) and (C) of this section] as in effect before the amendments made by section 2210(a) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35; 95 Stat. 841)); and

''(D) who is not entitled for such month to a child's insurance benefit under section 202(d) of the Social

Security Act (42 U.S.C. 402(d)) or is entitled for such month to such benefit only by reason of section 2210(c) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 842) [section 2210(c) of Pub. L. 97–35, set out below].

''(2) A payment under paragraph (1) for any month shall be in the amount that the person concerned would have been entitled to receive for such month as a child's insurance benefit under section 202(d) of the Social Security Act [subsec. (d) of this section] (as in effect before the amendments made by section 2210(a) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 841) [section 2210(a) of Pub. L. 97–35]), disregarding any adjustments made under section 215(i) of the Social Security Act [section 415(i) of this title] after August 1981, but reduced for any month by any amount payable to such person for such month under section 2210(c) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 842).

''(c) A member or former member of the Armed Forces referred to in subsection (a) or (b) as described in this subsection is a member or former member of the Armed Forces who died on active duty before August 13, 1981, or died from a service-connected disability incurred or aggravated before such date.

''(d)(1) The Secretary of Health and Human Services shall provide to the head of the agency such information as the head of the agency may require to carry out this section.

''(2) The head of the agency shall carry out this section under regulations which the head of the agency shall prescribe. Such regulations shall be prescribed not later than ninety days after the date of the enactment of this section [Dec. 21, 1982].

''(e)(1) Unless otherwise provided by law—

''(A) each time after December 31, 1981, that an increase is made by law in the dependency and indemnity compensation paid under section 1311 of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (a) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the dependency and indemnity compensation rates under section 1311 of such title are increased above the rates as in effect immediately before such increase; and

''(B) each time after December 31, 1981, that an increase is made by law in the rates of educational assistance allowances provided for under section 3531(b) of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (b) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the educational assistance allowance rates provided for under section 3531(b) of such title are increased above the rates as in effect immediately before such increase.

''(2) The amount of the benefit payable to any person under subsection (a) or (b) and the amount of any increase in any such benefit made pursuant to clause (1) or (2) of this subsection, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

''(f) Payments under subsections (a) and (b) shall be made only for months after the month in which this section is enacted.

''(g)(1) During each fiscal year the Secretary of Defense shall transfer from time to time to the head of the agency such amounts as the head of the agency determines to be necessary to pay the benefits provided for under subsections (a) and (b) during such fiscal year and to pay the administrative expenses incurred in paying such benefits during such fiscal year. During fiscal year 1983, transfers under this subsection shall be made from the 'Retired Pay, Defense' account of the Department of Defense. During subsequent fiscal years, such transfers shall be made from such account or from funds otherwise available to the Secretary for the purpose of the payment of such benefits and expenses. The Secretary of Defense may transfer funds under this subsection in advance of the payment of benefits and expenses by the head of the agency.

''(2) The head of the agency shall establish on the books of the agency over which he exercises jurisdiction a new account to be used for the payment of benefits under subsections (a) and (b) and shall credit to such account all funds transferred to him for such purpose by the Secretary of Defense.

''(h) The head of the agency and the Secretary of Health and Human Services may enter into an agreement to provide for the payment by the Secretary or the head of the agency of benefits provided for under subsection (a) and benefits provided for under section 202(g) of the Social Security Act (42 U.S.C. 402(g)) in a single monthly payment and for the payment by the Secretary or the head of the agency of benefits provided for under subsection (b) and benefits provided for under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) in a single monthly payment, if the head of the agency and the Secretary agree that such action would be practicable and cost effective to the Government.

''(i) For the purposes of this section:

''(1) The term 'head of the agency' means the head of such department or agency of the Government as the President shall designate to administer the provisions of this section.

''(2) The terms 'active military, naval, or air service' and 'service-connected' have the meanings given those terms in paragraphs (24) and (16), respectively, of section 101 of title 38, United States Code, except that for the purposes of this section such terms do not apply to any service in the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration.''

CHILD'S INSURANCE BENEFITS; CONTINUED ELIGIBILITY OF CERTAIN INDIVIDUALS; LIMITATIONS

Section 2210(c) of Pub. L. 97–35 provided that:

''(1) Notwithstanding the provisions of section 202(d) of the Social Security Act [subsec. (d) of this section] (as in effect prior to or after the amendments made by subsection (a)), any individual who—

''(A) has attained the age of 18;

''(B) is not under a disability (as defined in section 223(d) of such Act) [section 423(d) of this title];

''(C) is entitled to a child's insurance benefit under such section 202(d) [subsec. (d) of this section] for August 1981; and

''(D) is a full-time student at a postsecondary school, college, or university that is an educational institution (as such terms are defined in section 202(d)(7)(A) and (C) of such Act as in effect prior to the amendments made by subsection (a)) for any month prior to May 1982;

shall be entitled to a child's benefit under section 202(d) of such Act in accordance with the provisions of such section as in effect prior to the amendments made by subsection (a) for any month after July 1981 and prior to August 1985 if such individual would be entitled to such child's benefit for such month under such section 202(d) if subsections (a) and (b) of this section [amending subsec. (d) of this section and enacting a provision set out as a note under this section] had not been enacted, but such benefits shall be subject to the limitations set forth in this subsection.

''(2) No benefit described in paragraph (1) shall be paid to an individual to whom paragraph (1) applies for the months of May, June, July, and August, beginning with benefits otherwise payable for May 1982.

''(3) The amount of the monthly benefit payable under paragraph (1) to an individual to whom paragraph (1) applies for any month after July 1982 (prior to deductions on account of work required by section 203 of such Act) [section 403 of this title] shall not exceed the amount of the benefit to which such individual was entitled for August 1981 (prior to deductions on account

of work required by section 203 of such Act), less an amount—

''(A) during the months after July 1982 and before August 1983, equal to 25 percent of such benefit for August 1981;

''(B) during the months after July 1983 and before August 1984, equal to 50 percent of such benefit for August 1981; and

''(C) during the months after July 1984 and before August 1985, equal to 75 percent of such benefit for August 1981.

''(4) Any individual to whom the provisions of paragraph (1) apply and whose entitlement to benefits under paragraph (1) ends after July 1982 shall not subsequently become entitled, or reentitled, to benefits under paragraph (1) or under section 202(d) of the Social Security Act [subsec. (d) of this section] as in effect after the amendments made by subsection (a) unless he meets the requirements of section 202(d)(1)(B)(ii) of that Act as so in effect.''

NONAPPLICABILITY OF AMENDMENTS BY SECTION 334 OF PUB. L. 95–216 TO MONTHLY INSURANCE BENEFITS PAYABLE TO INDIVIDUALS ELIGIBLE FOR MONTHLY PERIODIC BENEFITS; SAVINGS PROVISION

Section 334(g) of Pub. L. 95–216, as amended by Pub. L. 98–617, § 2(b)(1), Nov. 8, 1984, 98 Stat. 3294, provided that:

''(1) The amendments made by the preceding provisions of this section [see section 334(f) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note above] shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act [this section], to an individual—

''(A)(i) to whom there is payable for any month within the 60-month period beginning with the month in which this Act [December 1977] is enacted (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act) [section 418(b)(2) of this title], or (ii) who would have been eligible for such a monthly periodic benefit (within the meaning of paragraph (2)) before the close of such 60-month period, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

''(B) who at time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g) meets the requirements of that subsection as it was in effect and being administered in January 1977.

''(2) For purposes of paragraph (1)(A), an individual is eligible for a monthly periodic benefit for any month if such benefit would be payable to such individual for that month if such individual were not employed during that month and had made proper application for such benefit.

''(3) If any provision of this subsection, or the application thereof to any person or circumstance, is held invalid, the remainder of this section shall not be affected thereby, but the application of this subsection to any other persons or circumstances shall also be considered invalid.''

[Section 2(b)(3) of Pub. L. 98–617 provided that: ''The amendments made by this subsection [amending above note and provisions set out as an Offset Against Spouses' Benefits on Account of Public Pensions note below] shall apply with respect to benefits payable under title II of the Social Security Act [this subchapter] for months beginning after the month of enactment of this Act [November 1984].'']

OFFSET AGAINST SPOUSES' BENEFITS ON ACCOUNT OF PUBLIC PENSIONS

Section 334(h) of Pub. L. 95–216, as added by Pub. L. 97–455, § 7(a)(1), Jan. 12, 1983, 96 Stat. 2501, and amended by Pub. L. 98–617, § 2(b)(2), Nov. 8, 1984, 98 Stat. 3294, provided that: ''In addition, the amendments made by the preceding provisions of this section [see section 334(f) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note above] shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act [this section], to an individual—

''(1)(A) to whom there is payable for any month prior to July 1983 (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act [section 418(b)(2) of this title]), or (B) who would have been eligible for such a monthly periodic benefit (within the meaning of subsection (g)(2) [set out as a note above]) before the close of June 1983, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

''(2) who at the time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g)—

''(A) meets the dependency test of one-half support set forth in paragraph (1)(C) of such subsection (c) as it read prior to the enactment of the amendments made by this section [see section 334(f) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note above], or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (b) or (c), or

''(B) meets the dependency test of one-half support set forth in paragraph (1)(D) of such subsection (f) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (e), (f), or (g).''

REDETERMINATION OF WIDOW'S AND WIDOWER'S MONTHLY INSURANCE BENEFITS FOR MONTHS AFTER DECEMBER 1978

Section 336(c)(2) of Pub. L. 95–216 provided that: ''In the case of an individual who was entitled for the month of December 1978 to monthly insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act [subsec. (e) or (f) of this section] to which the provisions of subsection (e)(4) or (f)(5) applied, the Secretary shall, if such benefits would be increased by the amendments made by this section [amending this section] redetermine the amount of such benefits for months after December 1978 as if such amendments had been in effect for the first month for which the provisions of section 202(e)(4) or 202(f)(5) became applicable.''

MINIMUM MONTHLY INSURANCE BENEFITS FOR MONTHS AFTER DECEMBER 1978, FOR WIDOW OR WIDOWER AND OTHER JOINTLY ENTITLED INDIVIDUALS

Section 336(d) of Pub. L. 95–216 provided that: ''Where—

''(1) two or more persons are entitled to monthly benefits under section 202 of the Social Security Act [this section] for December 1978 on the basis of the wages and self-employment income of a deceased individual, and one or more of such persons is so entitled under subsection (e) or (f) of such section 202 [subsec. (e) or (f) of this section], and

''(2) one or more of such persons is entitled on the basis of such wages and self-employment income to monthly benefits under subsection (e) or (f) of such section 202 (as amended by this section) for January 1979, and

''(3) the total of benefits to which all persons are entitled under section 202 of such Act on the basis of

such wages and self-employment income for January 1979 is reduced by reason of section 203(a) of such Act as amended by this Act [section 403(a) of this title] (or would, but for the first sentence of section 203(a)(4), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after December 1978 shall in no case be less after the application of this section [see section 336(c)(1) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note under this section] and such section 203(a) [section 403(a) of this title] than the amount it would have been without the application of this section.''

TERMINATION OF SPECIAL $50 PAYMENTS UNDER TAX REDUCTION ACT OF 1975

Pub. L. 95–30, title IV, § 406, May 23, 1977, 91 Stat. 156, provided that: ''Notwithstanding the provisions of section 702(a) of the Tax Reduction Act of 1975 [see Pub. L. 94–12, § 702, set out as a note under this section], no payment shall, after the date of the enactment of this Act [May 23, 1977], be made under that section.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Pub. L. 94–12, title VII, § 702, Mar. 29, 1975, 89 Stat. 66, provided that the Secretary of the Treasury, at the earliest practicable date after Mar. 29, 1975, make a $50 payment to each individual, who for the month of March, 1975, was entitled, without regard to section 402(j)(1) or 423(b) of this title or section 231d(a)(ii) of Title 45, Railroads, to a monthly insurance benefit payable under this subchapter, a monthly annuity or pension payment under the Railroad Retirement Act of 1935, the Railroad Retirement Act of 1937, or the Railroad Retirement Act of 1974, or a benefit under the supplemental security income benefits program under subchapter XVI of this title, except that payment be made only to individuals who were paid a benefit for March 1975 in a check issued no later than Aug. 31, 1975, that no payment be made to any individual who is not a resident of the United States as defined in section 410(i) of this title, and if an individual is entitled under two or more programs, this individual receive only one $50 payment, and that this payment received not be considered as income, or for the calendar year 1975, as a resource, for purposes of any Federal or State program which undertakes to furnish aid or assistance to individuals or families, where eligibility for the program is based upon need of the individual or family involved or as income for federal income tax purposes.

MARCH THROUGH MAY 1974 MONTHLY INSURANCE BENEFIT FOR ONLY INDIVIDUAL ENTITLED TO BENEFIT ON BASIS OF WAGES AND SELF-EMPLOYMENT INCOME OF DECEASED INDIVIDUAL

Section 1(i) of Pub. L. 93–233 provided that: ''In the case of an individual to whom monthly benefits are payable under title II of the Social Security Act [this subchapter] for February 1974 (without the application of section 202(j)(1) or 223(b) of such Act [subsec. (j)(1) of this section or section 423(b) of this title]), and to whom section 202(m) of such Act [subsec. (m) of this section] is applicable for such month, such section shall continue to be applicable to such benefits for the months of March through May 1974 for which such individual remains the only individual entitled to a monthly benefit on the basis of the wages and self-employment income of the deceased insured individual.''

COST-OF-LIVING INCREASE IN SOCIAL SECURITY BENEFITS; EFFECTIVE DATE; CONSUMER PRICE INDEX PERCENTAGE

Section 201 of Pub. L. 93–66, as amended by Pub. L. 93–233, § 1(a)–(e), Dec. 30, 1973, 87 Stat. 947, provided that:

''(a)(1) The Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the 'Secretary') shall, in accordance with the provisions of this section, increase the monthly benefits and lump-sum death payments payable under title II of the Social Security Act [this subchapter] by 7 per centum.

''(2) The provisions of this section (and the increase in benefits made hereunder) shall be effective, in the case of monthly benefits under title II of the Social Security Act [this subchapter] only for months after February 1974 and prior to June 1974, and, in the case of lump-sum death payments under such title [this subchapter], only with respect to deaths which occur after February 1974 and prior to June 1974.

''(b) The increase in social security benefits authorized under this section shall be provided, and any determinations by the Secretary in connection with the provision of such increase in benefits shall be made, in the manner prescribed in section 215(i) of the Social Security Act [section 415(i) of this title] for the implementation of cost-of-living increases authorized under title II of such Act [this subchapter] except that—

''(1) the amount of such increase shall be 7 per centum,

''(2) in the case of any individual entitled to monthly insurance benefits payable pursuant to section 202(e) of such Act [subsec. (e) of this section] for February 1974 (without the application of section 202(j)(1) or 223(b) of such Act [subsec. (j)(1) of this section or section 423(f) of this title]), including such benefits based on a primary insurance amount determined under section 215(a)(3) of such Act [section 415(a)(3) of this title] as amended by this section, such increase shall be determined without regard to paragraph (2)(B) of such section 202(e), and

''(3) in the case of any individual entitled to monthly insurance benefits payable pursuant to section 202(f) of such Act for February 1974 (without the application of section 202(j)(1) or 223(b) of such Act), including such benefits based on a primary insurance amount determined under section 215(a)(3) of such Act as amended by this section, such increase shall be determined without regard to paragraph (3)(B) of such section 202(f).

''(c) The increase in social security benefits provided by this section shall—

''(1) not be considered to be an increase in benefits made under or pursuant to section 215(i) of the Social Security Act [section 415(i) of this title], and

''(2) not (except for purposes of section 203(a)(2) of such Act [section 403(a)(2) of this title], as in effect after February 1974) be considered to be a 'general benefit increase under this title' [this subchapter] (as such term is defined in section 215(i)(3) of such Act) [section 415(i)(3) of this title];

and nothing in this section shall be construed as authorizing any increase in the 'contribution and benefit base' (as that term is employed in section 230 of such Act) [section 430 of this title], or any increase in the 'exempt amount' (as such term is used in section 203(f)(8) of such Act [section 403(f)(8) of this title]).

''(d) Nothing in this section shall be construed to authorize (directly or indirectly) any increase in monthly benefits under title II of the Social Security Act [this subchapter] for any month after May 1974, or any increase in lump-sum death payments payable under such title in the case of deaths occurring after May 1974. The recognition of the existence of the increase in benefits authorized by the preceding subsections of this section (during the period it was in effect) in the application, after May 1974, of the provisions of sections 202(q) and 203(a) of such Act [subsec. (q) of this section and section 403(a) of this title] shall not, for purposes of the preceding sentence, be considered to be an increase in a monthly benefit for a month after May 1974.''

REDETERMINATION OF WIDOW'S AND WIDOWER'S BENEFITS FOR DECEMBER 1972 AND AFTER TO PROVIDE FOR 1972 INCREASES

Section 102(g) of Pub. L. 92–603 provided that:

''(1) In the case of an individual who is entitled to widow's or widower's insurance benefits for the month

of December 1972 the Secretary shall, if it would increase such benefits, redetermine the amount of such benefits for months after December 1972 under title II of the Social Security Act [this subchapter] as if the amendments made by this section [amending this section and section 403 of this title] had been in effect for the first month of such individual's entitlement to such benefits.

''(2) For purposes of paragraph (1)—

''(A) any deceased individual on whose wages and self-employment income the benefits of an individual referred to in paragraph (1) are based, shall be deemed not to have been entitled to benefits if the record, of insured individuals who were entitled to benefits, that is readily available to the Secretary contains no entry for such deceased individual; and

''(B) any deductions under subsections (b) and (c) of section 203 of such Act [section 403 of this title], applicable to the benefits of an individual referred to in paragraph (1) for any month prior to September 1965, shall be disregarded in applying the provisions of section 202(q)(7) of such Act [subsec. (q)(7) of this section] (as amended by this Act) [Pub. L. 92–603].''

ADJUSTMENT OF BENEFITS BASED ON DISABILITY WHICH BEGAN BETWEEN AGE 18 AND 22

Section 108(g) of Pub. L. 92–603 provided that: ''Where—

''(1) one or more persons are entitled (without the application of sections 202(j)(1) and 223(b) of the Social Security Act) [subsec. (j)(1) of this section and section 423(b) of this title] to monthly benefits under section 202 or 223 of such Act for December 1972 on the basis of the wages and self-employment income of an insured individual, and

''(2) one or more persons (not included in paragraph (1)) are entitled to monthly benefits under such section 202 or 223 [this section or section 423 of this title] for January 1973 solely by reason of the amendments made by this section on the basis of such wages and self-employment income, and

''(3) the total of benefits to which all persons are entitled under such sections 202 and 223 [this section and section 423 of this title] on the basis of such wages and self-employment income for January 1973 is reduced by reason of section 203(a) of such Act [section 403(a) of this title] as amended by this Act, or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each person referred to in paragraph (1) of this subsection is entitled for months after December 1972 shall be adjusted, after the application of such section 203(a) [section 403(a) of this title], to an amount no less than the amount it would have been if the person or persons referred to in paragraph (2) of this subsection were not entitled to a benefit referred to in such paragraph (2).''

TERMINATION OF CHILD'S INSURANCE BENEFITS BY REASON OF ADOPTION

Section 112(c) of Pub. L. 92–603 provided that: ''Any child—

''(1) whose entitlement to child's insurance benefits under section 202(d) of the Social Security Act [subsec. (d) of this section] was terminated by reason of his adoption, prior to the date of the enactment of this Act [Oct. 30, 1972], and

''(2) who, except for such adoption, would be entitled to child's insurance benefits under such section for a month after the month in which this Act is enacted [October 1972],

may, upon filing application for child's insurance benefits under the Social Security Act after the date of enactment of this Act, become reentitled to such benefits; except that no child shall, by reason of the enactment of this section, become reentitled to such benefits for any month prior to the month after the month in which this Act is enacted.''

SAVINGS PROVISION

1972—Section 102(h) of Pub. L. 92–603 provided that: ''Where—

''(1) two or more persons are entitled to monthly benefits under section 202 of the Social Security Act [this section] for December 1972 on the basis of the wages and self-employment income of a deceased individual, and one or more of such persons is so entitled under subsection (e) or (f) of such section 202, and

''(2) one or more of such persons is entitled on the basis of such wages and self-employment income to monthly benefits under subsection (e) or (f) of such section 202 (as amended by this section) for January 1973, and

''(3) the total of benefits to which all persons are entitled under section 202 of such Act [this section] on the basis of such wages and self-employment income for January 1973 is reduced by reason of section 203(a) of such Act [section 403(a) of this title], as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after December 1972 shall in no case be less after the application of this section and such section 203(a) than the amount it would have been without the application of this section.''

Section 114(e) of Pub. L. 92–603 provided that: ''Where—

''(1) one or more persons are entitled (without the application of sections 202(j)(1) and 223(b) of the Social Security Act) [subsec. (j)(1) of this section and section 423(b) of this title] to monthly benefits under section 202 or 223 of such Act for December 1972 on the basis of the wages and self-employment income of an insured individual, and

''(2) one or more persons (not included in paragraph (1)) are entitled to monthly benefits under such section 202(g) as a surviving divorced mother (as defined in section 216(d)(3) [section 416(d)(3) of this title]) for a month after December 1972 on the basis of such wages and self-employment income, and

''(3) the total of benefits to which all persons are entitled under such section 202 and 223 [this section and section 423 of this title] on the basis of such wages and self-employment income for any month after December 1972 is reduced by reason of section 203(a) of such Act [section 403(a) of this title] as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced)

then the amount of the benefit to which each person referred to in paragraph (1) of this subsection is entitled beginning with the first month after December 1972 for which any person referred to in paragraph (2) becomes entitled shall be adjusted, after the application of such section 203(a), to an amount no less than the amount it would have been if the person or persons referred to in paragraph (2) of this subsection were not entitled to a benefit referred to in such paragraph (2).''

1961—Section 104(f) of Pub. L. 87–64 provided that: ''Where—

''(1) two or more persons were entitled (without the application of subsection (j)(1) of section 202 of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under such section 202 for the last month beginning before the effective date of this title [see Effective Date of 1961 Amendment note set out above] on the basis of the wages and self-employment income of a deceased individual, and one or more of such persons is entitled to a monthly insurance benefit under subsection (e), (f), or (h) of such section 202 for such last month; and

''(2) no person, other than the persons referred to in paragraph (1) of this subsection, is entitled to benefits under such section 202 on the basis of such individual's wages and self-employment income for a subsequent month or for any month after such last month and before such subsequent month; and

''(3) the total of the benefits to which all persons are entitled under such section 202 on the basis of such individual's wages and self-employment income for such subsequent month is reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title],

then the amount of the benefit to which each such person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall be determined without regard to this Act if, after the application of this Act, such benefit for such month is less than the amount of such benefit for such last month. The preceding provisions of this subsection shall not apply to any monthly benefit of any person for any month beginning after the effective date of this title [see Effective Date note of 1961 Amendment note set out above] unless paragraph (3) also applies to such benefit for the month beginning on such effective date (or would so apply but for the next to the last sentence of section 203(a) of the Social Security Act).''

1960—Section 208(e) of Pub. L. 86–778 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under section 202 of such Act for the month before the month in which this Act is enacted [September 1960] on the basis of the wages and self-employment income of an individual; and

''(2) any person is entitled to benefits under subsection (b), (c), (d), (e), (f), or (g) of section 202 of the Social Security Act for any subsequent month on the basis of such individual's wages and self-employment income and such person would not be entitled to such benefits but for the enactment of this section; and

''(3) the total of the benefits to which all persons are entitled under section 202 of the Social Security Act on the basis of such individual's wages and self-employment income for such subsequent month is reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title],

then the amount of the benefit to which each person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall not, after the application of such section 203(a), be less than the amount it would have been (determined without regard to section 301 [section 501 of this title]) if no person referred to in paragraph (2) of this subsection was entitled to a benefit referred to in such paragraph for such subsequent month on the basis of such wages and self-employment income of such individual.''

Section 301(c) of Pub. L. 86–778 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under section 202 of such Act for the second month following the month in which this Act is enacted [September 1960] on the basis of the wages and self-employment income of a deceased individual (but not including any person who became so entitled by reason of section 208 of this Act [section 408 of this title]); and

''(2) no person, other than (i) those persons referred to in paragraph (1) of this subsection (ii) those persons who are entitled to benefits under section 202(d), (e), (f), or (g) of the Social Security Act but would not be so entitled except for the enactment of section 208 of this Act [section 408 of this title], is entitled to benefits under such section 202 [this section] on the basis of such individual's wages and self-employment income for any subsequent month or for any month after the second month following the month in which this Act is enacted [September 1960] and prior to such subsequent month; and

''(3) the total of the benefits to which all persons referred to in paragraph (1) of this subsection are entitled under section 202 of the Social Security Act on the basis of such individual's wages and self-employment income for such subsequent month exceeds the maximum of benefits payable, as provided in section 203(a) of such Act [section 403(a) of this title], on the basis of such wages and self-employment income,

then the amount of the benefit to which each such person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall be determined—

''(4) in case such person is entitled to benefits under section 202(e), (f), (g), or (h), as though this section and section 208 [section 408 of this title] had not been enacted, or

''(5) in case such person is entitled to benefits under section 202(d), as though (i) no person is entitled to benefits under section 202(e), (f), (g), or (h) for such subsequent month, and (ii) the maximum of benefits payable, as described in paragraph (3), is such maximum less the amount of each person's benefit for such month determined pursuant to paragraph (4).''

1958—Section 304(b) of Pub. L. 85–840 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under section 202 of such Act for the month in which this Act is enacted [August 1958] on the basis of the wages and self-employment income of an individual; and

''(2) a person is entitled to a parent's insurance benefit under section 202(h) of the Social Security Act for any subsequent month on the basis of such wages and self-employment income and such person would not be entitled to such benefit but for the enactment of this section; and

''(3) the total of the benefits to which all persons are entitled under section 202 of the Social Security Act on the basis of such wages and self-employment income for such subsequent month are reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title].

then the amount of the benefit to which each such person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall be increased, after the application of such section 203(a), to the amount it would have been if no person referred to in paragraph (2) of this subsection was entitled to a parent's insurance benefit for such subsequent month on the basis of such wages and self-employment income.''

1957—Section 5 of Pub. L. 85–238 provided that: ''Where—

''(a) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to parent's insurance benefits under section 202(h) of such Act for the month in which this Act [August 1957] is enacted on the basis of the wages and self-employment income of an individual;

''(b) a person becomes entitled to a widow's, widower's or mother's insurance benefit under section 202(e), (f), or (g) of the Social Security Act for any subsequent month on the basis of such wages and self-employment income;

''(c) the total of the benefits to which all persons are entitled under section 202 of the Social Security Act, on the basis of such wages and self-employment income for such subsequent month are reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title];

then the amount of the benefit to which each such person referred to in paragraph (a) or (b) is entitled for such subsequent month shall be increased, after the application of such section 203(a), to the amount it would have been—

''(d) if, in the case of a parent's insurance benefit, the person referred to in paragraph (b) was not entitled to the benefit referred to in such paragraph, or

''(e) if, in the case of a benefit referred to in paragraph (b), no person was entitled to a parent's insurance benefit for such subsequent month on the basis of such wages and self-employment income.''

FILING OF PROOF OF SUPPORT

1968—Section 157(c) of Pub. L. 90–248 provided that: ''In the case of any husband who would not be entitled to husband's insurance benefits under section 202(c) of the Social Security Act [subsec. (c) of this section] or any widower who would not be entitled to widower's insurance benefits under section 202(f) of such Act except

for the enactment of this section, the requirement in section 202(c)(1)(C) or 202(f)(1)(D) of such Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month following the month in which this Act is enacted [January 1968].''

1961—Section 103(c) of title I of Pub. L. 87–64 provided that: ''In the case of any widower or parent who would not be entitled to widower's insurance benefits under section 202(f) [subsec. (f) of this section], or parent's insurance benefits under section 202(h), of the Social Security Act except for the enactment of this Act (other than this subsection), the requirement in sections 202(f)(1)(D) and 202(h)(1)(B), respectively, of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed before the close of the 2–year period which begins on the effective date of this title [see Effective Date of 1961 Amendment note set out above].''

1958—Section 207(b) of Pub. L. 85–840 provided that: ''In the case of any husband, widower, or parent who would not be entitled to benefits under section 202(c), section 202(f), and section 202(h), respectively, of the Social Security Act [subsecs. (c), (f), and (h) of this section] except for the enactment of section 205 of this Act [amending this section and sections 401, 403, 414, 415, 422, and 425 of this title], the requirement in such section 202(c), section 202(f), or section 202(h), as the case may be, that proof of support be filed within a two-year period shall not apply if such proof is filed within two years after the month in which this Act is enacted [August 1958].''

Section 304(c) of Pub. L. 85–840 provided that: ''In the case of any parent who would not be entitled to parent's benefits under section 202(h) of the Social Security Act [subsec. (h) of this section] except for the enactment of this section, the requirement in such section 202(h) that proof of support be filed within two years of the date of death of the insured individual referred to therein shall not apply if such proof is filed within the two-year period beginning with the first day of the month after the month in which this Act is enacted [August 1958].''

1954—Section 113 of act Sept. 1, 1954, provided that:

''(a) For the purpose of determining the entitlement of any individual to husband's insurance benefits under subsection (c) of section 202 of the Social Security Act [subsec. (c) of this section] on the basis of his wife's wages and self-employment income, the requirements of paragraph (1)(D) of such subsection shall be deemed to be met if—

''(1) such individual was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secretary of Health, Education, and Welfare, from his wife on the first day of the first month (A) for which she was entitled to a monthly benefit under subsection (a) of such section 202, and (B) in which an event described in paragraph (1) or (2) of section 203(b) of such Act [section 403(b) of this title] (as in effect before or after the enactment of this Act [Sept. 1, 1954]) did not occur.

''(2) such individual has filed proof of such support within two years after such first month, and

''(3) such wife was, without the application of subsection (j)(1) of such section 202, entitled to a primary insurance benefit under such Act for August 1950.

''(b) For the purpose of determining the entitlement of any individual to widower's insurance benefits under subsection (f) of section 202 of the Social Security Act on the basis of his deceased wife's wages and self-employment income, the requirements of paragraph (1)(E)(ii) of such subsection shall be deemed to be met if—

''(1) such individual was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secretary of Health, Education, and Welfare, from his wife, and she was a currently insured individual, on the first day of the first month (A) for which she was entitled to a monthly benefit under subsection (a) of such section 202, and (B) in which an event described in paragraph (1) or (2) of section 203(b) of such Act (as in effect before or after the enactment of this Act [Sept. 1, 1954]) did not occur.

''(2) such individual has filed proof of such support within two years after such first month, and

''(3) such wife was, without the application of subsection (j)(1) of such section 202, entitled to a primary insurance benefit under such Act for August 1950.

''(c) For purposes of subsection (b)(1) of this section, and for purposes of section 202(c)(1) of the Social Security Act in cases to which subsection (a) of this section is applicable, the wife of an individual shall be deemed a currently insured individual if she had not less than six quarters of coverage (as determined under section 213 of the Social Security Act) [section 413 of this title] during the thirteen-quarter period ending with the calendar quarter in which occurs the first month (1) for which such wife was entitled to a monthly benefit under section 202(a) of such Act, and (2) in which an event described in paragraph (1) or (2) of section 203(b) of such Act (as in effect before or after the enactment of this Act [Sept. 1, 1954]) did not occur.

''(d) This section shall apply only with respect to husband's insurance benefits under section 202(c) of the Social Security Act [subsec. (c) of this section], and widower's insurance benefits under section 202(f) of such Act [subsec. (f) of this section], for months after August 1954, and only with respect to benefits based on applications filed after such month.''

1950—Section 101(c) of act Aug. 28, 1950, provided that:

''(1) Any individual entitled to primary insurance benefits or widow's current insurance benefits under section 202 of the Social Security Act [this section] as in effect prior to its amendment by this Act who would, but for the enactment of this Act, be entitled to such benefits for September 1950 shall be deemed to be entitled to old-age insurance benefits or mother's insurance benefits (as the case may be) under section 202 of the Social Security Act, as amended by this Act, as though such individual became entitled to such benefits in such month.

''(2) Any individual entitled to any other monthly insurance benefits under section 202 of the Social Security Act as in effect prior to its amendment by this Act who would, but for the enactment of this Act, be entitled to such benefits for September 1950 shall be deemed to be entitled to such benefits under section 202 of the Social Security Act, as amended by this Act, as though such individual became entitled to such benefits in such month.

''(3) Any individual who files application after August 1950 for monthly benefits under any subsection of section 202 of the Social Security Act who would, but for the enactment of this Act, be entitled to benefits under such subsection (as in effect prior to such enactment) for any month prior to September 1950 shall be deemed entitled to such benefits for such month prior to September 1950 to the same extent and in the same amounts as though this Act had not been enacted.''

EXTENSION OF FILING PERIOD FOR HUSBAND'S, WIDOWER'S, OR PARENT'S BENEFITS IN CERTAIN CASES

Section 210 of Pub. L. 86–778 provided that:

''(a) In the case of any husband who would not be entitled to husband's insurance benefits under section 202(c) of the Social Security Act [subsec. (c) of this section] except for the enactment of this Act, the requirement in section 202(c)(1)(C) of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month in which this Act is enacted [September 1960].

''(b) In the case of any widower who would not be entitled to widower's insurance benefits under section 202(f) of the Social Security Act except for the enactment of this Act, the requirement in section 202(f)(1)(D) of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month in which this Act is enacted.

''(c) In the case of any parent who would not be entitled to parent's insurance benefits under section 202(h) of the Social Security Act except for the enactment of this Act, the requirement in section 202(h)(1)(B) of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month in which this Act is enacted.''

DISREGARDING OASDI BENEFIT INCREASES AND CHILD'S INSURANCE BENEFIT PAYMENTS BEYOND AGE 18 TO THE EXTENT ATTRIBUTABLE TO RETROACTIVE EFFECTIVE DATE OF 1965 AMENDMENTS

Authorization to disregard, in determining need for aid or assistance under an approved State plan, amounts paid under this subchapter for months occurring after December 1964 and before October 1965 to the extent to which payment is attributable to the payment of child's insurance benefits under the old-age, survivors, and disability insurance system after attainment of age 18, in the case of individuals attending school, resulting from enactment of section 306 of Pub. L. 89–97, see section 406 of Pub. L. 89–97, set out as a note under section 415 of this title.

LUMP-SUM PAYMENTS WHERE DEATH OCCURRED PRIOR TO SEPTEMBER 1, 1950

Section 101(d) of act Aug. 28, 1950, as amended July 18, 1952, ch. 945, §5(e)(1), 66 Stat. 775; Sept. 13, 1960, Pub. L. 86–778, title I, §103(a)(2), 74 Stat. 936, provided that: ''Lump-sum death payments shall be made in the case of individuals who died prior to September 1950 as though this Act had not been enacted; except that in the case of any individual who died outside the forty-eight States and the District of Columbia after December 6, 1941, and prior to August 10, 1946, the last sentence of section 202(g) of the Social Security Act [subsec. (g) of this section] as in effect prior to the enactment of this Act shall not be applicable if application for a lump-sum death payment is filed prior to September 1952, and except that in the case of any individual who died outside the forty-eight States and the District of Columbia on or after June 25, 1950, and prior to September 1950, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the last sentence of section 202(g) of the Social Security Act as in effect prior to the enactment of this Act [July 18, 1952] shall not prevent payment to any person under the second sentence thereof if application for a lump-sum death payment under such section with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.''

LUMP-SUM PAYMENTS FOR DEATHS BEFORE 1940; TIME LIMITATION

Lump-sum payments of 3½ percent of total wages paid with respect to employment after Dec. 31, 1936 and before reaching the age of 65 were provided for persons who were not qualified individuals upon reaching that age by section 204 of act Aug. 14, 1935, before amendment in 1939. Such lump-sum payments, except to the estate of an individual who died prior to Jan. 1, 1940, were prohibited after Aug. 10, 1939, by section 902(g) of act Aug. 10, 1939. Section 415 of act Aug. 10, 1946, provided that no lump-sum payments shall be made under section 204 of the 1935 act or section 902(g) of the 1939 act unless application therefor has been filed prior to the expiration of six months after Aug. 10, 1946.

DEATH OUTSIDE U.S.; EXTENSION OF FILING TIME FOR LUMP-SUM PAYMENTS

Section 5(e)(2) of act July 18, 1952, ch. 945, 66 Stat. 775, as amended by Pub. L. 86–778, title I, §103(a)(2), Sept. 13, 1960, 74 Stat. 936, provided that: ''In the case of any individual who died outside the forty-eight States and the District of Columbia after August 1950 and prior to January 1954, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the last sentence of section 202(i) of the Social Security Act [subsec. (i) of this section] shall not prevent payment to any person under the second sentence thereof if application for a lump-sum death payment with respect to such deceased individual is filed under such section by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.''

PAYMENT OF ANNUITIES TO OFFICERS AND EMPLOYEES OF THE UNITED STATES CONVICTED OF CERTAIN OFFENSES

Section 121(b) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall not be construed to restrict or otherwise affect any of the provisions of the Act entitled 'An Act to prohibit payments of annuities to officers and employees of the United States convicted of certain offenses, and for other purposes', approved September 1, 1954 (Public Law 769, Eighty-third Congress) [sections 2281 to 2288 of former Title 5, Executive Departments and Government Officers and Employees, and are covered by section 8311 et seq. of Title 5, Government Organization and Employees].''

APPLICATION FOR BENEFITS BY SURVIVORS OF MEMBERS AND FORMER MEMBERS OF UNIFORMED SERVICES

Forms for use by survivors of members and former members of the uniformed services in filing applications for benefits under this subchapter to be prescribed jointly by the Secretary of Veterans Affairs and the Secretary of Health and Human Services, see section 5105 of Title 38, Veterans' Benefits.

PAYMENTS OF ALIENS' BENEFITS WITHHELD UNDER FOREIGN DELIVERY RESTRICTION OF CHECKS AGAINST FEDERAL FUNDS

Section 162(c)(3) of Pub. L. 90–248 provided that: ''Whenever benefits which an individual who is not a citizen or national of the United States was entitled to receive under title II of the Social Security Act [this subchapter] are, on June 30, 1968, being withheld by the Treasury Department under the first section of the Act of October 9, 1940 (31 U.S.C. 123) [31 U.S.C. 3329(a) and 3330(a)], any such benefits, payable to such individual for months after the month in which the determination by the Treasury Department that the benefits should be so withheld was made, shall not be paid—

''(A) to any person other than such individual, or, if such individual dies before such benefits can be paid, to any person other than an individual who was entitled for the month in which the deceased individual died (with the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to a monthly benefit under title II of such Act [this subchapter] on the basis of the same wages and self-employment income as such deceased individual, or

''(B) in excess of the equivalent of the last twelve months' benefits that would have been payable to such individual.''

STUDY OF RETIREMENT TEST AND OF DRUG STANDARDS AND COVERAGE

Section 405 of Pub. L. 90–248 authorized the Secretary of Health, Education, and Welfare to make a study of the existing retirement test and proposals for the modification of the test, the quality and cost standards for drugs for which payments are made under this chapter, and the coverage of drugs under part B of subchapter XVIII of this chapter, and submit a report to the Presi-

dent and to Congress concerning his findings and recommendations on or before Jan. 1, 1969.

EX. ORD. NO. 12436. PAYMENT OF CERTAIN BENEFITS TO SURVIVORS OF PERSONS WHO DIED IN OR AS A RESULT OF MILITARY SERVICE

Ex. Ord. No. 12436, July 29, 1983, 48 F.R. 34931, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 156 of Public Law 97–377 (96 Stat. 1920; 42 U.S.C. 402 note), in order to provide certain benefits to the surviving spouses and children of certain persons who died in or as a result of military service, it is hereby ordered as follows:

SECTION 1. The Administrator of Veterans' Affairs is designated to administer the provisions of Section 156 of Public Law 97–377.

SEC. 2. The Secretary of Health and Human Services shall provide to the Administrator of Veterans' Affairs such information and such technical assistance as the Administrator may reasonably require to discharge his responsibilities under Section 156. The Administrator of Veterans' Affairs shall reimburse the Department of Health and Human Services for all expenses it incurs in providing such information and technical assistance to the Veterans' Administration. Such expenses shall be paid from the Veterans' Administration account described in Section 3 of this Order.

SEC. 3. During fiscal year 1983 and each succeeding fiscal year, the Secretary of Defense shall transfer, from time to time, from the ''Retired Pay, Defense'' account of the Department of Defense to an account established in the Veterans' Administration, such amounts as the Administrator of Veterans' Affairs determines to be necessary to pay the benefits authorized by Section 156 during fiscal year 1983 and each succeeding fiscal year, and the expenses incurred by the Veterans' Administration in paying such benefits during fiscal year 1983 and each succeeding fiscal year. Such transfers shall, to the extent feasible, be made in advance of the payment of benefits and expenses by the Veterans' Administration.

SEC. 4. This Order shall be effective as of January 1, 1983.

RONALD REAGAN.

§ 403. Reduction of insurance benefits

(a) Maximum benefits

(1) In the case of an individual whose primary insurance amount has been computed or recomputed under section 415(a)(1) or (4) of this title, or section 415(d) of this title, as in effect after December 1978, the total monthly benefits to which beneficiaries may be entitled under section 402 or 423 of this title for a month on the basis of the wages and self-employment income of such individual shall, except as provided by paragraphs (3) and (6) (but prior to any increases resulting from the application of paragraph (2)(A)(ii)(III) of section 415(i) of this title), be reduced as necessary so as not to exceed—

(A) 150 percent of such individual's primary insurance amount to the extent that it does not exceed the amount established with respect to this subparagraph by paragraph (2),

(B) 272 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (A) but does not exceed the amount established with respect to this subparagraph by paragraph (2),

(C) 134 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (B) but does not exceed the amount established with respect to this subparagraph by paragraph (2), and

(D) 175 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (C).

Any such amount that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

(2)(A) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming so eligible for such benefits), in the calendar year 1979, the amounts established with respect to subparagraphs (A), (B), and (C) of paragraph (1) shall be $230, $332, and $433, respectively.

(B) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming so eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established for the calendar year 1979 by subparagraph (A) of this paragraph and the quotient obtained under subparagraph (B)(ii) of section 415(a)(1) of this title, with such product being rounded in the manner prescribed by section 415(a)(1)(B)(iii) of this title.

(C) In each calendar year after 1978 the Commissioner of Social Security shall publish in the Federal Register, on or before November 1, the formula which (except as provided in section 415(i)(2)(D) of this title) is to be applicable under this paragraph to individuals who become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the following calendar year.

(D) A year shall not be counted as the year of an individual's death or eligibility for purposes of this paragraph or paragraph (8) in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefits to which he was entitled during such 12 months).

(3)(A) When an individual who is entitled to benefits on the basis of the wages and self-employment income of any insured individual and to whom this subsection applies would (but for the provisions of section 402(k)(2)(A) of this title) be entitled to child's insurance benefits for a month on the basis of the wages and self-employment income of one or more other insured individuals, the total monthly benefits to which all beneficiaries are entitled on the basis of such wages and self-employment income shall not be reduced under this subsection to less than the smaller of—

(i) the sum of the maximum amounts of benefits payable on the basis of the wages and self-employment income of all such insured individuals, or

(ii) an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title, for January of the year determined for purposes of this clause under the following two sentences, with respect to aver-

age indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and (II) thereafter increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title.

The year established for purposes of clause (ii) shall be 1983 or, if it occurs later with respect to any individual, the year in which occurred the month that the application of the reduction provisions contained in this subparagraph began with respect to benefits payable on the basis of the wages and self-employment income of the insured individual. If for any month subsequent to the first month for which clause (ii) applies (with respect to benefits payable on the basis of the wages and self-employment income of the insured individual) the reduction under this subparagraph ceases to apply, then the year determined under the preceding sentence shall be redetermined (for purposes of any subsequent application of this subparagraph with respect to benefits payable on the basis of such wages and self-employment income) as though this subparagraph had not been previously applicable.

(B) When two or more persons were entitled (without the application of section 402(j)(1) of this title and section 423(b) of this title) to monthly benefits under section 402 or 423 of this title for January 1971 or any prior month on the basis of the wages and self-employment income of such insured individual and the provisions of this subsection as in effect for any such month were applicable in determining the benefit amount of any persons on the basis of such wages and self-employment income, the total of benefits for any month after January 1971 shall not be reduced to less than the largest of—

(i) the amount determined under this subsection without regard to this subparagraph,

(ii) the largest amount which has been determined for any month under this subsection for persons entitled to monthly benefits on the basis of such insured individual's wages and self-employment income, or

(iii) if any persons are entitled to benefits on the basis of such wages and self-employment income for the month before the effective month (after September 1972) of a general benefit increase under this title (as defined in section 415(i)(3) of this title) or a benefit increase under the provisions of section 415(i) of this title, an amount equal to the sum of amounts derived by multiplying the benefit amount determined under this subchapter (excluding any part thereof determined under section 402(w) of this title) for the month before such effective month (including this subsection, but without the application of section 422(b)[1] of this title, section 402(q) of this title, and subsections (b), (c), and (d) of this section), for each such person for such month, by a percentage equal to the percentage of the increase provided under such benefit increase (with any such increased amount which is not a multiple of $0.10 being rounded to the next lower multiple of $0.10);

but in any such case (I) subparagraph (A) of this paragraph shall not be applied to such total of benefits after the application of clause (ii) or (iii), and (II) if section 402(k)(2)(A) of this title was applicable in the case of any such benefits for a month, and ceases to apply for a month after such month, the provisions of clause (ii) or (iii) shall be applied, for and after the month in which section 402(k)(2)(A) of this title ceases to apply, as though subparagraph (A) of this paragraph had not been applicable to such total of benefits for the last month for which clause (ii) or (iii) was applicable.

(C) When any of such individuals is entitled to monthly benefits as a divorced spouse under section 402(b) or (c) of this title or as a surviving divorced spouse under section 402(e) or (f) of this title for any month, the benefit to which he or she is entitled on the basis of the wages and self-employment income of such insured individual for such month shall be determined without regard to this subsection, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the wages and self-employment income of such insured individual shall be determined as if no such divorced spouse or surviving divorced spouse were entitled to benefits for such month.

(D) In any case in which—

(i) two or more individuals are entitled to monthly benefits for the same month as a spouse under subsection (b) or (c) of section 402 of this title, or as a surviving spouse under subsection (e), (f), or (g) of section 402 of this title,

(ii) at least one of such individuals is entitled by reason of subparagraph (A)(ii) or (B) of section 416(h)(1) of this title, and

(iii) such entitlements are based on the wages and self-employment income of the same insured individual,

the benefit of the entitled individual whose entitlement is based on a valid marriage (as determined without regard to subparagraphs (A)(ii) and (B) of section 416(h)(1) of this title) to such insured individual shall, for such month and all months thereafter, be determined without regard to this subsection, and the benefits of all other individuals who are entitled, for such month or any month thereafter, to monthly benefits under section 402 of this title based on the wages and self-employment income of such insured individual shall be determined as if such entitled individual were not entitled to benefits for such month.

(4) In any case in which benefits are reduced pursuant to the provisions of this subsection, the reduction shall be made after any deductions under this section and after any deductions under section 422(b)[1] of this title. Notwithstanding the preceding sentence, any reduction under this subsection in the case of an individual who is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for any month on the basis of the same wages and self-employment income as another person—

(A) who also is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for such month,

(B) who does not live in the same household as such individual, and

[1] See References in Text note below.

(C) whose benefit for such month is suspended (in whole or in part) pursuant to subsection (h)(3) of this section,

shall be made before the suspension under subsection (h)(3) of this section. Whenever a reduction is made under this subsection in the total of monthly benefits to which individuals are entitled for any month on the basis of the wages and self-employment income of an insured individual, each such benefit other than the old-age or disability insurance benefit shall be proportionately decreased.

(5) Notwithstanding any other provision of law, when—

(A) two or more persons are entitled to monthly benefits for a particular month on the basis of the wages and self-employment income of an insured individual and (for such particular month) the provisions of this subsection are applicable to such monthly benefits, and

(B) such individual's primary insurance amount is increased for the following month under any provision of this subchapter,

then the total of monthly benefits for all persons on the basis of such wages and self-employment income for such particular month, as determined under the provisions of this subsection, shall for purposes of determining the total monthly benefits for all persons on the basis of such wages and self-employment income for months subsequent to such particular month be considered to have been increased by the smallest amount that would have been required in order to assure that the total of monthly benefits payable on the basis of such wages and self-employment income for any such subsequent month will not be less (after the application of the other provisions of this subsection and section 402(q) of this title) than the total of monthly benefits (after the application of the other provisions of this subsection and section 402(q) of this title) payable on the basis of such wages and self-employment income for such particular month.

(6) Notwithstanding any of the preceding provisions of this subsection other than paragraphs (3)(A), (3)(C), (3)(D), (4), and (5) (but subject to section 415(i)(2)(A)(ii) of this title), the total monthly benefits to which beneficiaries may be entitled under sections 402 and 423 of this title for any month on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall be reduced (before the application of section 424a of this title) to the smaller of—

(A) 85 percent of such individual's average indexed monthly earnings (or 100 percent of his primary insurance amount, if larger), or

(B) 150 percent of such individual's primary insurance amount.

(7) In the case of any individual who is entitled for any month to benefits based upon the primary insurance amounts of two or more insured individuals, one or more of which primary insurance amounts were determined under section 415(a) or (d) of this title as in effect (without regard to the table contained therein) prior to January 1979 and one or more of which primary insurance amounts were determined under section 415(a)(1) or (4) of this title, or section 415(d) of this title, as in effect after December 1978, the total benefits payable to that individual and all other individuals entitled to benefits for that month based upon those primary insurance amounts shall be reduced to an amount equal to the amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7).

(8) Subject to paragraph (7) and except as otherwise provided in paragraph (10)(C), this subsection as in effect in December 1978 shall remain in effect with respect to a primary insurance amount computed under section 415(a) or (d) of this title, as in effect (without regard to the table contained therein) in December 1978 and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990, except that a primary insurance amount so computed with respect to an individual who first becomes eligible for an old-age or disability insurance benefit, or dies (before becoming eligible for such a benefit), after December 1978, shall instead be governed by this section as in effect after December 1978. For purposes of the preceding sentence, the phrase ''rounded to the next higher multiple of $0.10'', as it appeared in subsection (a)(2)(C) of this section as in effect in December 1978, shall be deemed to read ''rounded to the next lower multiple of $0.10''.

(9) When—

(A) one or more persons were entitled (without the application of section 402(j)(1) of this title) to monthly benefits under section 402 of this title for May 1978 on the basis of the wages and self-employment income of an individual,

(B) the benefit of at least one such person for June 1978 is increased by reason of the amendments made by section 204 of the Social Security Amendments of 1977; and

(C) the total amount of benefits to which all such persons are entitled under such section 402 of this title are reduced under the provisions of this subsection (or would be so reduced except for the first sentence of subsection (a)(4) of this section),

then the amount of the benefit to which each such person is entitled for months after May 1978 shall be increased (after such reductions are made under this subsection) to the amount such benefits would have been if the benefit of the person or persons referred to in subparagraph (B) had not been so increased.

(10)(A) Subject to subparagraphs (B) and (C)—

(i) the total monthly benefits to which beneficiaries may be entitled under sections 402 and 423 of this title for a month on the basis of the wages and self-employment income of an individual whose primary insurance amount is computed under section 415(a)(2)(B)(i) of this title shall equal the total monthly benefits which were authorized by this section with respect to such individual's primary insurance amount for the last month of his prior entitlement to disability insurance benefits, increased for this purpose by the general benefit increases and other increases

under section 415(i) of this title that would have applied to such total monthly benefits had the individual remained entitled to disability insurance benefits until the month in which he became entitled to old-age insurance benefits or reentitled to disability insurance benefits or died, and

(ii) the total monthly benefits to which beneficiaries may be entitled under sections 402 and 423 of this title for a month on the basis of the wages and self-employment income of an individual whose primary insurance amount is computed under section 415(a)(2)(C) of this title shall equal the total monthly benefits which were authorized by this section with respect to such individual's primary insurance amount for the last month of his prior entitlement to disability insurance benefits.

(B) In any case in which—

(i) the total monthly benefits with respect to such individual's primary insurance amount for the last month of his prior entitlement to disability insurance benefits was computed under paragraph (6), and

(ii) the individual's primary insurance amount is computed under subparagraph (B)(i) or (C) of section 415(a)(2) of this title by reason of the individual's entitlement to old-age insurance benefits or death,

the total monthly benefits shall equal the total monthly benefits that would have been authorized with respect to the primary insurance amount for the last month of his prior entitlement to disability insurance benefits if such total monthly benefits had been computed without regard to paragraph (6).

(C) This paragraph shall apply before the application of paragraph (3)(A), and before the application of subsection (a)(1) of this section as in effect in December 1978.

(b) Deductions on account of work

(1) Deductions, in such amounts and at such time or times as the Commissioner of Social Security shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual's wages and self-employment income, until the total of such deductions equals—

(A) such individual's benefit or benefits under section 402 of this title for any month, and

(B) if such individual was entitled to old-age insurance benefits under section 402(a) of this title for such month, the benefit or benefits of all other persons for such month under section 402 of this title based on such individual's wages and self-employment income,

if for such month he is charged with excess earnings, under the provisions of subsection (f) of this section, equal to the total of benefits referred to in clauses (A) and (B). If the excess earnings so charged are less than such total of benefits, such deductions with respect to such month shall be equal only to the amount of such excess earnings. If a child who has attained the age of 18 and is entitled to child's insurance benefits, or a person who is entitled to mother's or father's insurance benefits, is married to an individual entitled to old-age insurance benefits under section 402(a) of this title, such child or such person, as the case may be, shall, for the purposes of this subsection and subsection (f) of this section, be deemed to be entitled to such benefits on the basis of the wages and self-employment income of such individual entitled to old-age insurance benefits. If a deduction has already been made under this subsection with respect to a person's benefit or benefits under section 402 of this title for a month, he shall be deemed entitled to payments under such section for such month for purposes of further deductions under this subsection, and for purposes of charging of each person's excess earnings under subsection (f) of this section, only to the extent of the total of his benefits remaining after such earlier deductions have been made. For purposes of this subsection and subsection (f) of this section—

(i) an individual shall be deemed to be entitled to payments under section 402 of this title equal to the amount of the benefit or benefits to which he is entitled under such section after the application of subsection (a) of this section, but without the application of the first sentence of paragraph (4) thereof; and

(ii) if a deduction is made with respect to an individual's benefit or benefits under section 402 of this title because of the occurrence in any month of an event specified in subsection (c) or (d) of this section or in section 422(b)[1] of this title, such individual shall not be considered to be entitled to any benefits under such section 402 for such month.

(2)(A) Except as provided in subparagraph (B), in any case in which—

(i) any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 402(b) or (c) of this title for any month, and

(ii) such person has been divorced for not less than 2 years,

the benefit to which he or she is entitled on the basis of the wages and self-employment income of the individual referred to in paragraph (1) for such month shall be determined without regard to deductions under this subsection as a result of excess earnings of such individual, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the basis of the wages and self-employment income of such individual referred to in paragraph (1) shall be determined as if no such divorced spouse were entitled to benefits for such month.

(B) Clause (ii) of subparagraph (A) shall not apply with respect to any divorced spouse in any case in which the individual referred to in paragraph (1) became entitled to old-age insurance benefits under section 402(a) of this title before the date of the divorce.

(c) Deductions on account of noncovered work outside United States or failure to have child in care

Deductions, in such amounts and at such time or times as the Commissioner of Social Security

shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, until the total of such deductions equals such individual's benefits or benefit under section 402 of this title for any month—

(1) in which such individual is under retirement age (as defined in section 416(*l*) of this title) and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States;

(2) in which such individual, if a wife or husband under retirement age (as defined in section 416(*l*) of this title) entitled to a wife's or husband's insurance benefit, did not have in his or her care (individually or jointly with his or her spouse) a child of such spouse entitled to a child's insurance benefit and such wife's or husband's insurance benefit for such month was not reduced under the provisions of section 402(q) of this title;

(3) in which such individual, if a widow or widower entitled to a mother's or father's insurance benefit, did not have in his or her care a child of his or her deceased spouse entitled to a child's insurance benefit; or

(4) in which such an individual, if a surviving divorced mother or father entitled to a mother's or father's insurance benefit, did not have in his or her care a child of his or her deceased former spouse who (A) is his or her son, daughter, or legally adopted child and (B) is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased former spouse.

For purposes of paragraphs (2), (3), and (4) of this subsection, a child shall not be considered to be entitled to a child's insurance benefit for any month in which paragraph (1) of section 402(s) of this title applies or an event specified in section 422(b)[1] of this title occurs with respect to such child. Subject to paragraph (3) of such section 402(s) of this title, no deduction shall be made under this subsection from any child's insurance benefit for the month in which the child entitled to such benefit attained the age of eighteen or any subsequent month; nor shall any deduction be made under this subsection from any widow's or widower's insurance benefit if the widow, surviving divorced wife, widower, or surviving divorced husband involved became entitled to such benefit prior to attaining age 60.

(d) Deductions from dependents' benefits on account of noncovered work outside United States by old-age insurance beneficiary

(1)(A) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to old-age insurance benefits, to which a wife, divorced wife, husband, divorced husband, or child is entitled, until the total of such deductions equals such wife's, husband's, or child's insurance benefit or benefits under section 402 of this title for any month in which such individual is under retirement age (as defined in section 416(*l*) of this title) and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States.

(B)(i) Except as provided in clause (ii), in any case in which—

(I) a divorced spouse is entitled to monthly benefits under section 402(b) or (c) of this title for any month, and

(II) such divorced spouse has been divorced for not less than 2 years,

the benefit to which he or she is entitled for such month on the basis of the wages and self-employment income of the individual entitled to old-age insurance benefits referred to in subparagraph (A) shall be determined without regard to deductions under this paragraph as a result of excess earnings of such individual, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the basis of the wages and self-employment income of such individual referred to in subparagraph (A) shall be determined as if no such divorced spouse were entitled to benefits for such month.

(ii) Subclause (II) of clause (i) shall not apply with respect to any divorced spouse in any case in which the individual entitled to old-age insurance benefits referred to in subparagraph (A) became entitled to such benefits before the date of the divorce.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled, or from any mother's or father's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or mother's or father's insurance benefit or benefits under section 402 of this title for any month in which such child or person entitled to mother's or father's insurance benefits is married to an individual under retirement age (as defined in section 416(*l*) of this title) who is entitled to old-age insurance benefits and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States.

(e) Occurrence of more than one event

If more than one of the events specified in subsections (c) and (d) of this section and section 422(b)[1] of this title occurs in any one month which would occasion deductions equal to a benefit for such month, only an amount equal to such benefit shall be deducted.

(f) Months to which earnings are charged

For purposes of subsection (b) of this section—

(1) The amount of an individual's excess earnings (as defined in paragraph (3)) shall be charged to months as follows: There shall be charged to the first month of such taxable year an amount of his excess earnings equal to the sum of the payments to which he and all other persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled for such month under section 402 of this title on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum), and the balance, if any, of such excess earnings shall be charged to each succeeding month in such year to the extent, in the case of each such month, of the sum of the payments to which such individual and all

such other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income, until the total of such excess has been so charged. Where an individual is entitled to benefits under section 402(a) of this title and other persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled to benefits under section 402(b), (c), or (d) of this title on the basis of the wages and self-employment income of such individual, the excess earnings of such individual for any taxable year shall be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Notwithstanding the preceding provisions of this paragraph but subject to section 402(s) of this title, no part of the excess earnings of an individual shall be charged to any month (A) for which such individual was not entitled to a benefit under this subchapter, (B) in which such individual was at or above retirement age (as defined in section 416(*l*) of this title), (C) in which such individual, if a child entitled to child's insurance benefits, has attained the age of 18, (D) for which such individual is entitled to widow's or widower's insurance benefits if such individual became so entitled prior to attaining age 60, (E) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), if such month is in the taxable year in which occurs the first month after December 1977 that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applicable exempt amount as determined under paragraph (8), or (F) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), in the case of an individual entitled to benefits under section 402(b) or (c) of this title (but only by reason of having a child in his or her care within the meaning of paragraph (1)(B) of subsection (b) or (c) of this section, as may be applicable) or under section 402(d) or (g) of this title, if such month is in a year in which such entitlement ends for a reason other than the death of such individual, and such individual is not entitled to any benefits under this subchapter for the month following the month during which such entitlement under section 402(b), (d), or (g) of this title ended.

(2) As used in paragraph (1), the term ''first month of such taxable year'' means the earliest month in such year to which the charging of excess earnings described in such paragraph is not prohibited by the application of clauses (A), (B), (C), (D), (E), and (F) thereof.

(3) For purposes of paragraph (1) and subsection (h) of this section, an individual's excess earnings for a taxable year shall be 33⅓ percent of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8) in the case of an individual who has attained (or, but for the individual's death, would have attained) retirement age (as defined in section 416(*l*) of this title) before the close of such taxable year, or 50 percent of his earnings for such year in excess of such product in the case of any other individual, multiplied by the number of months in such year, except that, in determining an individual's excess earnings for the taxable year in which he attains retirement age (as defined in section 416(*l*) of this title), there shall be excluded any earnings of such individual for the month in which he attains such age and any subsequent month (with any net earnings or net loss from self-employment in such year being prorated in an equitable manner under regulations of the Commissioner of Social Security). For purposes of the preceding sentence, notwithstanding section 411(e) of this title, the number of months in the taxable year in which an individual dies shall be 12. The excess earnings as derived under the first sentence of this paragraph, if not a multiple of $1, shall be reduced to the next lower multiple of $1.

(4) For purposes of clause (E) of paragraph (1)—

(A) An individual will be presumed, with respect to any month, to have been engaged in self-employment in such month until it is shown to the satisfaction of the Commissioner of Social Security that such individual rendered no substantial services in such month with respect to any trade or business the net income or loss of which is includible in computing (as provided in paragraph (5) of this subsection) his net earnings or net loss from self-employment for any taxable year. The Commissioner of Social Security shall by regulations prescribe the methods and criteria for determining whether or not an individual has rendered substantial services with respect to any trade or business.

(B) An individual will be presumed, with respect to any month, to have rendered services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8) until it is shown to the satisfaction of the Commissioner of Social Security that such individual did not render such services in such month for more than such amount.

(5)(A) An individual's earnings for a taxable year shall be (i) the sum of his wages for services rendered in such year and his net earnings from self-employment for such year, minus (ii) any net loss from self-employment for such year.

(B) For purposes of this section—

(i) an individual's net earnings from self-employment for any taxable year shall be

determined as provided in section 411 of this title, except that paragraphs (1), (4), and (5) of section 411(c) of this title shall not apply and the gross income shall be computed by excluding the amounts provided by subparagraph (D) of this paragraph, and

(ii) an individual's net loss from self-employment for any taxable year is the excess of the deductions (plus his distributive share of loss described in section 702(a)(8) of the Internal Revenue Code of 1986) taken into account under clause (i) over the gross income (plus his distributive share of income so described) taken into account under clause (i).

(C) For purposes of this subsection, an individual's wages shall be computed without regard to the limitations as to amounts of remuneration specified in paragraphs (1), (6)(B), (6)(C), (7)(B), and (8) of section 409(a) of this title; and in making such computation services which do not constitute employment as defined in section 410 of this title, performed within the United States by the individual as an employee or performed outside the United States in the active military or naval service of the United States, shall be deemed to be employment as so defined if the remuneration for such services is not includible in computing his net earnings or net loss from self-employment. The term ''wages'' does not include—

(i) the amount of any payment made to, or on behalf of, an employee or any of his dependents (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement, or

(ii) any payment or series of payments by an employer to an employee or any of his dependents upon or after the termination of the employee's employment relationship because of retirement after attaining an age specified in a plan referred to in section 409(a)(11)(B) of this title or in a pension plan of the employer.

(D) In the case of—

(i) an individual who has attained retirement age (as defined in section 416(*l*) of this title) on or before the last day of the taxable year, and who shows to the satisfaction of the Commissioner of Social Security that he or she is receiving royalties attributable to a copyright or patent obtained before the taxable year in which he or she attained such age and that the property to which the copyright or patent relates was created by his or her own personal efforts, or

(ii) an individual who has become entitled to insurance benefits under this subchapter, other than benefits under section 423 of this title or benefits payable under section 402(d) of this title by reason of being under a disability, and who shows to the satisfaction of the Commissioner of Social Security that he or she is receiving, in a year after his or her initial year of entitlement to such benefits, any other income not attributable to services performed after the month in which he or she initially became entitled to such benefits,

there shall be excluded from gross income any such royalties or other income.

(E) For purposes of this section, any individual's net earnings from self-employment which result from or are attributable to the performance of services by such individual as a director of a corporation during any taxable year shall be deemed to have been derived (and received) by such individual in that year, at the time the services were performed, regardless of when the income, on which the computation of such net earnings from self-employment is based, is actually paid to or received by such individual (unless such income was actually paid and received prior to that year).

(6) For purposes of this subsection, wages (determined as provided in paragraph (5)(C)) which, according to reports received by the Commissioner of Social Security, are paid to an individual during a taxable year shall be presumed to have been paid to him for services performed in such year until it is shown to the satisfaction of the Commissioner of Social Security that they were paid for services performed in another taxable year. If such reports with respect to an individual show his wages for a calendar year, such individual's taxable year shall be presumed to be a calendar year for purposes of this subsection until it is shown to the satisfaction of the Commissioner of Social Security that his taxable year is not a calendar year.

(7) Where an individual's excess earnings are charged to a month and the excess earnings so charged are less than the total of the payments (without regard to such charging) to which all persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled under section 402 of this title for such month on the basis of his wages and self-employment income, the difference between such total and the excess so charged to such month shall be paid (if it is otherwise payable under this subchapter) to such individual and other persons in the proportion that the benefit to which each of them is entitled (without regard to such charging, without the application of section 402(k)(3) of this title, and prior to the application of section 403(a) of this title) bears to the total of the benefits to which all of them are entitled.

(8)(A) Whenever the Commissioner of Social Security pursuant to section 415(i) of this title increases benefits effective with the month of December following a cost-of-living computation quarter[2] the Commissioner shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C)) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year in which such benefit increase is effective (or, in the case of an individual who dies during the calendar year after

[2] So in original. Probably should be followed by a comma.

the calendar year in which the benefit increase is effective, with respect to such individual's taxable year which ends, upon his death, during such year).

(B) Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals, for each month of a particular taxable year, shall each be whichever of the following is the larger—

(i) the corresponding exempt amount which is in effect with respect to months in the taxable year in which the determination under subparagraph (A) is made, or

(ii) the product of the corresponding exempt amount which is in effect with respect to months in the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals), and the ratio of—

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subparagraph (A) is made, to

(II) the national average wage index (as so defined) for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals),

with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

Whenever the Commissioner of Social Security determines that an exempt amount is to be increased in any year under this paragraph, the Commissioner shall notify the House Committee on Ways and Means and the Senate Committee on Finance within 30 days after the close of the base quarter (as defined in section 415(i)(1)(A) of this title) in such year of the estimated amount of such increase, indicating the new exempt amount, the actuarial estimates of the effect of the increase, and the actuarial assumptions and methodology used in preparing such estimates.

(C) Notwithstanding the determination of a new exempt amount by the Commissioner of Social Security under subparagraph (A) (and notwithstanding any publication thereof under such subparagraph or any notification thereof under the last sentence of subparagraph (B)), such new exempt amount shall not take effect pursuant thereto if during the calendar year in which such determination is made a law increasing the exempt amount is enacted.

(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 416(*l*) of this title) before the close of the taxable year involved shall be—

(i) for each month of any taxable year ending after 1995 and before 1997, $1,041.66⅔,

(ii) for each month of any taxable year ending after 1996 and before 1998, $1,125.00,

(iii) for each month of any taxable year ending after 1997 and before 1999, $1,208.33⅓,

(iv) for each month of any taxable year ending after 1998 and before 2000, $1,291.66⅔,

(v) for each month of any taxable year ending after 1999 and before 2001, $1,416.66⅔,

(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33⅓, and

(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.

(E) Notwithstanding subparagraph (D), no deductions in benefits shall be made under subsection (b) of this section with respect to the earnings of any individual in any month beginning with the month in which the individual attains retirement age (as defined in section 416(*l*) of this title).

(9) For purposes of paragraphs (3), (5)(D)(i), (8)(D), and (8)(E), the term ''retirement age (as defined in section 416(*l*) of this title)'', with respect to any individual entitled to monthly insurance benefits under section 402 of this title, means the retirement age (as so defined) which is applicable in the case of old-age insurance benefits, regardless of whether or not the particular benefits to which the individual is entitled (or the only such benefits) are old-age insurance benefits.

(g) Penalty for failure to report certain events

Any individual in receipt of benefits subject to deduction under subsection (c) of this section, (or who is in receipt of such benefits on behalf of another individual), because of the occurrence of an event specified therein, who fails to report such occurrence to the Commissioner of Social Security prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred, shall suffer deductions in addition to those imposed under subsection (c) of this section as follows:

(1) if such failure is the first one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than one month;

(2) if such failure is the second one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to two times his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than two months; and

(3) if such failure is the third or a subsequent one for which an additional deduction is imposed under this subsection, such additional deduction shall be equal to three times his benefit or benefits for the first month of the period for which there is a failure to report even though the failure to report is with respect to more than three months;

except that the number of additional deductions required by this subsection shall not exceed the number of months in the period for which there

is a failure to report. As used in this subsection, the term ''period for which there is a failure to report'' with respect to any individual means the period for which such individual received and accepted insurance benefits under section 402 of this title without making a timely report and for which deductions are required under subsection (c) of this section.

(h) Report of earnings to Commissioner

(1)(A) If an individual is entitled to any monthly insurance benefit under section 402 of this title during any taxable year in which he has earnings or wages, as computed pursuant to paragraph (5) of subsection (f) of this section, in excess of the product of the applicable exempt amount as determined under subsection (f)(8) of this section times the number of months in such year, such individual (or the individual who is in receipt of such benefit on his behalf) shall make a report to the Commissioner of Social Security of his earnings (or wages) for such taxable year. Such report shall be made on or before the fifteenth day of the fourth month following the close of such year, and shall contain such information and be made in such manner as the Commissioner of Social Security may by regulations prescribe. Such report need not be made for any taxable year—

(i) beginning with or after the month in which such individual attained retirement age (as defined in section 416(*l*) of this title), or

(ii) if benefit payments for all months (in such taxable year) in which such individual is under retirement age (as defined in section 416(*l*) of this title) have been suspended under the provisions of the first sentence of paragraph (3) of this subsection, unless—

(I) such individual is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title,

(II) such benefits are reduced under subsection (a) of this section for any month in such taxable year, and

(III) in any such month there is another person who also is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title on the basis of the same wages and self-employment income and who does not live in the same household as such individual.

The Commissioner of Social Security may grant a reasonable extension of time for making the report of earnings required in this paragraph if the Commissioner finds that there is valid reason for a delay, but in no case may the period be extended more than four months.

(B) If the benefit payments of an individual have been suspended for all months in any taxable year under the provisions of the first sentence of paragraph (3) of this subsection, no benefit payment shall be made to such individual for any such month in such taxable year after the expiration of the period of three years, three months, and fifteen days following the close of such taxable year unless within such period the individual, or some other person entitled to benefits under this subchapter on the basis of the same wages and self-employment income, files with the Commissioner of Social Security information showing that a benefit for such month is payable to such individual.

(2) If an individual fails to make a report required under paragraph (1) of this subsection, within the time prescribed by or in accordance with such paragraph, for any taxable year and any deduction is imposed under subsection (b) of this section by reason of his earnings for such year, he shall suffer additional deductions as follows:

(A) if such failure is the first one with respect to which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 402 of this title, except that if the deduction imposed under subsection (b) of this section by reason of his earnings for such year is less than the amount of his benefit (or benefits) for the last month of such year for which he was entitled to a benefit under section 402 of this title, the additional deduction shall be equal to the amount of the deduction imposed under subsection (b) of this section but not less than $10;

(B) if such failure is the second one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to two times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 402 of this title;

(C) if such failure is the third or a subsequent one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to three times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 402 of this title;

except that the number of the additional deductions required by this paragraph with respect to a failure to report earnings for a taxable year shall not exceed the number of months in such year for which such individual received and accepted insurance benefits under section 402 of this title and for which deductions are imposed under subsection (b) of this section by reason of his earnings. In determining whether a failure to report earnings is the first or a subsequent failure for any individual, all taxable years ending prior to the imposition of the first additional deduction under this paragraph, other than the latest one of such years, shall be disregarded.

(3) If the Commissioner of Social Security determines, on the basis of information obtained by or submitted to the Commissioner, that it may reasonably be expected that an individual entitled to benefits under section 402 of this title for any taxable year will suffer deductions imposed under subsection (b) of this section by reason of his earnings for such year, the Commissioner of Social Security may, before the close of such taxable year, suspend the total or less than the total payment for each month in such year (or for only such months as the Commissioner of Social Security may specify) of the benefits payable on the basis of such individual's wages and self-employment income; and such suspension shall remain in effect with respect to the benefits for any month until the Commissioner of Social Security has determined wheth-

er or not any deduction is imposed for such month under subsection (b) of this section. The Commissioner of Social Security is authorized, before the close of the taxable year of an individual entitled to benefits during such year, to request of such individual that he make, at such time or times as the Commissioner of Social Security may specify, a declaration of his estimated earnings for the taxable year and that he furnish to the Commissioner of Social Security such other information with respect to such earnings as the Commissioner of Social Security may specify. A failure by such individual to comply with any such request shall in itself constitute justification for a determination under this paragraph that it may reasonably be expected that the individual will suffer deductions imposed under subsection (b) of this section by reason of his earnings for such year. If, after the close of a taxable year of an individual entitled to benefits under section 402 of this title for such year, the Commissioner of Social Security requests such individual to furnish a report of his earnings (as computed pursuant to paragraph (5) of subsection (f) of this section) for such taxable year or any other information with respect to such earnings which the Commissioner of Social Security may specify, and the individual fails to comply with such request, such failure shall in itself constitute justification for a determination that such individual's benefits are subject to deductions under subsection (b) of this section for each month in such taxable year (or only for such months thereof as the Commissioner of Social Security may specify) by reason of his earnings for such year.

(4) The Commissioner of Social Security shall develop and implement procedures in accordance with this subsection to avoid paying more than the correct amount of benefits to any individual under this subchapter as a result of such individual's failure to file a correct report or estimate of earnings or wages. Such procedures may include identifying categories of individuals who are likely to be paid more than the correct amount of benefits and requesting that they estimate their earnings or wages more frequently than other persons subject to deductions under this section on account of earnings or wages.

(i) Repealed. Pub. L. 103–296, title III, § 309(a), Aug. 15, 1994, 108 Stat. 1523

(j) Attainment of retirement age

For the purposes of this section, an individual shall be considered as having attained retirement age (as defined in section 416(*l*) of this title) during the entire month in which he attains such age.

(k) Noncovered remunerative activity outside United States

An individual shall be considered to be engaged in noncovered remunerative activity outside the United States if he performs services outside the United States as an employee and such services do not constitute employment as defined in section 410 of this title and are not performed in the active military or naval service of the United States, or if he carries on a trade or business outside the United States (other than the performance of service as an employee) the net income or loss of which (1) is not includible in computing his net earnings from self-employment for a taxable year and (2) would not be excluded from net earnings from self-employment, if carried on in the United States, by any of the numbered paragraphs of section 411(a) of this title. When used in the preceding sentence with respect to a trade or business (other than the performance of service as an employee), the term ''United States'' does not include the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa in the case of an alien who is not a resident of the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa); and the term ''trade or business'' shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1986.

(*l*) Good cause for failure to make reports required

The failure of an individual to make any report required by subsection (g) or (h)(1)(A) of this section within the time prescribed therein shall not be regarded as such a failure if it is shown to the satisfaction of the Commissioner of Social Security that he had good cause for failing to make such report within such time. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Commissioner of Social Security, except that in making any such determination, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).

(Aug. 14, 1935, ch. 531, title II, § 203, 49 Stat. 623; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1367; Aug. 10, 1946, ch. 951, title IV, § 406, 60 Stat. 988; Aug. 28, 1950, ch. 809, title I, §§ 102(a), 103(a), 64 Stat. 489; July 18, 1952, ch. 945, §§ 2(b)(2), 4(a)–(d), 66 Stat. 768, 773; Sept. 1, 1954, ch. 1206, title I, §§ 102(e)(7), 103(a)–(h), (i)(3), 112(a), 68 Stat. 1070, 1073–1077, 1078, 1085; Aug. 1, 1956, ch. 836, title I, §§ 101(d)–(g), 102(d)(11), 107(a), 112 (a), (b), 70 Stat. 808, 814, 829, 831; Pub. L. 85–840, title I, § 101(f), title II, § 205(j), (k), title III, §§ 307(f), 308(a)–(e), Aug. 28, 1958, 72 Stat. 1017, 1024, 1032, 1033; Pub. L. 86–778, title I, § 103(b), title II, §§ 209(a), 211(a)–(h), title III, § 302(a), Sept. 13, 1960, 74 Stat. 936, 953–957, 960; Pub. L. 87–64, title I, § 108(a), June 30, 1961, 75 Stat. 140; Pub. L. 89–97, title III, §§ 301(c), 306(c)(10)–(12), 308(d)(6)–(8), 310(a), 325(a), July 30, 1965, 79 Stat. 363, 373, 378–380, 399; Pub. L. 90–248, title I, §§ 101(b), 104(d)(1), 107(a), 160, 161(a), (b), 163(a)(1), Jan. 2, 1968, 81 Stat. 826, 832, 834, 870, 872; Pub. L. 91–172, title X, § 1002(b)(1), Dec. 30, 1969, 83 Stat. 739; Pub. L. 92–5, title II, § 201(b), Mar. 17, 1971, 85 Stat. 8; Pub. L. 92–336, title II, §§ 201(b), (h)(1), 202(a)(2)(A), (B), July 1, 1972, 86 Stat. 410, 411, 415; Pub. L. 92–603, title I, §§ 101(b), 102(c), 103(c), 105(a), (b), 106(a), 107(b)(1), (2), 144(a)(2), (3), Oct. 30, 1972, 86 Stat. 1334, 1336, 1340–1343, 1370; Pub. L. 93–66, title II, § 202(a)–(c), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §§ 3(k), 18(a), Dec. 31, 1973, 87

Stat. 953, 967; Pub. L. 94–202, § 8(i), Jan. 2, 1976, 89 Stat. 1140; Pub. L. 95–216, title II, §§ 202, 204(e), title III, §§ 301(a), (b), (c)(1), (d), 302(a)–(d), 303(a), 353(a), Dec. 20, 1977, 91 Stat. 1524, 1528, 1530, 1531, 1552; Pub. L. 96–265, title I, § 101(a)–(b)(2), June 9, 1980, 94 Stat. 442; Pub. L. 96–473, §§ 1(a), 3(a), 4(a), 6(b), Oct. 19, 1980, 94 Stat. 2263–2265; Pub. L. 97–35, title XXII, §§ 2201(c)(6), 2206(b)(2)–(4), Aug. 13, 1981, 95 Stat. 831, 838; Pub. L. 97–123, § 2(f), Dec. 29, 1981, 95 Stat. 1661; Pub. L. 98–21, title I, §§ 111(a)(4), 132(b), title II, § 201(c)(1)(B), (2), title III, §§ 306(i), 309(f)–(h), 324(c)(4), 331(a), (b), 347(a), Apr. 20, 1983, 97 Stat. 72, 94, 109, 114, 116, 117, 125, 128, 129, 138; Pub. L. 98–369, div. B, title VI, §§ 2602(a), 2661(g)(1)(A), (2)(A), 2662(c)(1), 2663(a)(3), July 18, 1984, 98 Stat. 1127, 1157, 1159, 1161; Pub. L. 99–272, title XII, § 12108(a), Apr. 7, 1986, 100 Stat. 286; Pub. L. 100–647, title VIII, § 8002(a), (b), Nov. 10, 1988, 102 Stat. 3779; Pub. L. 101–239, title X, §§ 10208(b)(1)(A), (B), (d)(2)(A)(i), (ii), (vi), 10305(a), Dec. 19, 1989, 103 Stat. 2477, 2480, 2481, 2483; Pub. L. 101–508, title V, §§ 5117(a)(3)(B), 5119(c), (d), 5123(a)(1), (2), 5127(a), (b), Nov. 5, 1990, 104 Stat. 1388–277, 1388–279, 1388–280, 1388–284, 1388–286; Pub. L. 103–296, title I, § 107(a)(4), title III, §§ 309(a)–(c), 310(a), (b), 314(a), 321(a)(6), (c)(6)(A), (g)(2), Aug. 15, 1994, 108 Stat. 1478, 1523, 1524, 1530, 1536, 1538, 1543; Pub. L. 104–121, title I, § 102(a), (b)(1), Mar. 29, 1996, 110 Stat. 847, 848; Pub. L. 106–182, §§ 2–4(a), Apr. 7, 2000, 114 Stat. 198, 199.)

REFERENCES IN TEXT

Section 422(b) of this title, referred to in subsecs. (a)(3)(B)(iii), (4), (b)(1)(ii), (c), (e), was repealed by Pub. L. 106–170, title I, § 101(b)(1)(C), Dec. 17, 1999, 113 Stat. 1873.

Section 5117 of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (a)(8), is section 5117 of Pub. L. 101–508, title V, Nov. 5, 1990, 104 Stat. 1388–274.

The amendments made by section 204 of the Social Security Amendments of 1977, referred to in subsec. (a)(9)(B), means the amendments made by section 204 of Pub. L. 95–216, which enacted subsec. (a)(9) of this section and amended section 402(e)(2)(A), (e)(2)(B)(i), (f)(3)(A), and (f)(3)(B)(i) of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (f)(5)(B)(ii) and (k), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–182, § 4(a)(1), in last sentence of concluding provisions substituted ''nor shall any deduction be made under this subsection from any widow's or widower's insurance benefit if the widow, surviving divorced wife, widower, or surviving divorced husband involved became entitled to such benefit prior to attaining age 60'' for ''nor shall any deduction be made under this subsection from any widow's insurance benefit for any month in which the widow or surviving divorced wife is entitled and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower or surviving divorced husband is entitled and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if he became so entitled prior to attaining age 60)''.

Subsec. (c)(1). Pub. L. 106–182, § 2(1), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''the age of seventy''.

Subsec. (d)(1)(A), (2). Pub. L. 106–182, § 2(2), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''the age of seventy''.

Subsec. (f)(1)(B). Pub. L. 106–182, § 2(3), substituted ''was at or above retirement age (as defined in section 416(*l*) of this title)'' for ''was age seventy or over''.

Subsec. (f)(1)(D). Pub. L. 106–182, § 4(a)(2), added cl. (D) and struck out former cl. (D) which read as follows: ''for which such individual is entitled to widow's insurance benefits and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if she became so entitled prior to attaining age 60), or widower's insurance benefits and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if he became so entitled prior to attaining age 60),''.

Subsec. (f)(3). Pub. L. 106–182, § 2(4), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 70''.

Subsec. (f)(8)(E). Pub. L. 106–182, § 3(a), added subpar. (E).

Subsec. (f)(9). Pub. L. 106–182, § 3(b), substituted ''(8)(D), and (8)(E),'' for ''and (8)(D),''.

Subsec. (h)(1)(A)(i), (ii). Pub. L. 106–182, § 2(5), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 70''.

Subsec. (j). Pub. L. 106–182, § 2(6), substituted ''retirement age'' for ''age seventy'' in heading and ''having attained retirement age (as defined in section 416(*l*) of this title)'' for ''seventy years of age''.

1996—Subsec. (f)(8)(B)(ii). Pub. L. 104–121, § 102(b)(1)(A), substituted ''the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals)'' for ''the taxable year ending after 1993 and before 1995''.

Subsec. (f)(8)(B)(ii)(II). Pub. L. 104–121, § 102(b)(1)(B), substituted ''for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals)'' for ''for 1992''.

Subsec. (f)(8)(D). Pub. L. 104–121, § 102(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 416(*l*) of this title) before the close of the taxable year involved—

''(i) shall be $333.33⅓ for each month of any taxable year ending after 1977 and before 1979,

''(ii) shall be $375 for each month of any taxable year ending after 1978 and before 1980,

''(iii) shall be $416.66⅔ for each month of any taxable year ending after 1979 and before 1981,

''(iv) shall be $458.33⅓ for each month of any taxable year ending after 1980 and before 1982, and

''(v) shall be $500 for each month of any taxable year ending after 1981 and before 1983.''

1994—Subsec. (a)(2)(C). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(4). Pub. L. 103–296, § 309(b), substituted ''section 422(b) of this title. Notwithstanding the preceding sentence, any reduction under this subsection in the case of an individual who is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for any month on the basis of the same wages and self-employment income as another person—

''(A) who also is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for such month,

''(B) who does not live in the same household as such individual, and

''(C) whose benefit for such month is suspended (in whole or in part) pursuant to subsection (h)(3) of this section,

shall be made before the suspension under subsection (h)(3) of this section. Whenever'' for ''section 422(b) of this title. Whenever''.

Subsec. (a)(8). Pub. L. 103–296, § 310(b), substituted ''Subject to paragraph (7) and except as otherwise provided in paragraph (10)(C)'' for ''Subject to paragraph (7)''.

Subsec. (a)(10). Pub. L. 103–296, § 310(a), added par. (10).

Subsecs. (b)(1), (c), (f)(3), (4). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (f)(5)(B)(ii). Pub. L. 103–296, §321(c)(6)(A), substituted ''Code of 1986'' for ''Code of 1954''.

Subsec. (f)(5)(C)(i), (ii). Pub. L. 103–296, §321(a)(6), realigned margins.

Subsec. (f)(5)(D), (6). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (f)(8)(A). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner'' for ''he''.

Subsec. (f)(8)(B). Pub. L. 103–296, §107(a)(4), in closing provisions substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner shall'' for ''he shall''.

Subsec. (f)(8)(B)(ii). Pub. L. 103–296, §321(g)(2), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the product of the exempt amount described in clause (i) and the ratio of (I) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subparagraph (A) is made to (II) the deemed average total wages (as so defined) for the calendar year before the most recent calendar year in which an increase in the exempt amount was enacted or a determination resulting in such an increase was made under subparagraph (A), with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.''

Subsecs. (f)(8)(C), (g). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (h)(1)(A). Pub. L. 103–296, §314(a), substituted ''four months'' for ''three months'' in last sentence.

Pub. L. 103–296, §107(a)(4), in subpar. (A) as amended by Pub. L. 103–296, §309(c), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner'' for ''he'' before ''finds''.

Pub. L. 103–296, §309(c), substituted ''Such report need not be made for any taxable year—

''(i) beginning with or after the month in which such individual attained age 70, or

''(ii) if benefit payments for all months (in such taxable year) in which such individual is under age 70 have been suspended under the provisions of the first sentence of paragraph (3) of this subsection, unless—

''(I) such individual is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title,

''(II) such benefits are reduced under subsection (a) of this section for any month in such taxable year, and

''(III) in any such month there is another person who also is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title on the basis of the same wages and self-employment income and who does not live in the same household as such individual.

The Secretary may grant'' for ''Such report need not be made for any taxable year (i) beginning with or after the month in which such individual attained age 70, or (ii) if benefit payments for all months (in such taxable year) in which such individual is under age 70 have been suspended under the provisions of the first sentence of paragraph (3) of this subsection. The Secretary may grant''.

Subsec. (h)(1)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (h)(3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''submitted to the Commissioner'' for ''submitted to him''.

Subsec. (h)(4). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (i). Pub. L. 103–296, §309(a), struck out subsec. (i) which read as follows: ''In the case of any individual, deductions by reason of the provisions of subsection (b), (c), (g), or (h) of this section, or the provisions of section 422(b) of this title, shall, notwithstanding such provisions, be made from the benefits to which such individual is entitled only to the extent that such deductions reduce the total amount which would otherwise be paid, on the basis of the same wages and self-employment income, to such individual and the other individuals living in the same household.''

Subsec. (k). Pub. L. 103–296, §321(c)(6)(A), substituted ''Code of 1986'' for ''Code of 1954''.

Subsec. (*l*). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1990—Subsec. (a)(3)(D). Pub. L. 101–508, §5119(c), added subpar. (D).

Subsec. (a)(6). Pub. L. 101–508, §5119(d), inserted ''(3)(D),'' after ''(3)(C),''.

Subsec. (a)(8). Pub. L. 101–508, §5117(a)(3)(B), inserted ''and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990,'' after second reference to ''December 1978''.

Subsec. (b)(2). Pub. L. 101–508, §5127(a), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), in any case in which—'' and cls. (i) and (ii) for ''When any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 402(b) or (c) of this title for any month and such person has been so divorced for not less than 2 years,'', and added subpar. (B).

Subsec. (d)(1)(B). Pub. L. 101–508, §5127(b), designated existing provisions as cl. (i), substituted ''Except as provided in clause (ii), in any case in which—'' and subcls. (I) and (II) for ''When any divorced spouse is entitled to monthly benefits under section 402(b) or (c) of this title for any month and such divorced spouse has been so divorced for not less than 2 years,'', and added cl. (ii).

Subsec. (f)(5)(E). Pub. L. 101–508, §5123(a)(1), (2), redesignated last undesignated par. of section 411(a) of this title as subpar. (E) and substituted ''For purposes of this section, any individual's net earnings from self-employment which result from or are attributable to'' for ''Any income of an individual which results from or is attributable to'', ''the income, on which the computation of such net earnings from self-employment is based, is actually paid'' for ''the income is actually paid'', and ''unless such income was'' for ''unless it was''.

1989—Subsec. (f)(5)(C). Pub. L. 101–239, §10208(d)(2)(A)(ii), (vi), substituted ''paragraphs (1), (6)(B), (6)(C), (7)(B), and (8) of section 409(a)'' for ''subsections (a), (g)(2), (g)(3), (h)(2), and (j) of section 409'' in introductory provisions and ''409(a)(11)(B)'' for ''409(m)(2)'' in cl. (ii).

Subsec. (f)(8)(B)(ii)(I). Pub. L. 101–239, §10208(b)(1)(A), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, §10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (f)(8)(B)(ii)(II). Pub. L. 101–239, §10208(b)(1)(B), substituted ''the deemed average total wages (as so defined)'' for ''the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate''.

Subsec. (*l*). Pub. L. 101–239, §10305(a), substituted ''Secretary, except that in making any such determination, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language)'' for ''Secretary'' in last sentence.

1988—Subsec. (f)(3). Pub. L. 100–647 inserted ''(or, but for the individual's death, would have attained)'' after ''who has attained'' in first sentence, inserted after first sentence ''For purposes of the preceding sentence, notwithstanding section 411(e) of this title, the number

of months in the taxable year in which an individual dies shall be 12.'', and substituted ''first sentence of this paragraph'' for ''preceding sentence'' in last sentence.

1986—Subsec. (a)(4). Pub. L. 99–272, § 12108(a)(1), struck out ''preceding'' after ''pursuant to the'' in first sentence.

Subsec. (a)(6). Pub. L. 99–272, § 12108(a)(2), substituted ''(4), and (5)'' for ''and (5)'' and ''shall be reduced'' for ''whether or not such total benefits are otherwise subject to reduction under this subsection but after any reduction under this subsection which would otherwise be applicable, shall be, reduced or further reduced''.

1984—Subsec. (a)(8). Pub. L. 98–369, § 2663(a)(3)(A), inserted a period at end of par. (8).

Subsec. (d)(1)(A). Pub. L. 98–369, § 2661(g)(1)(A)(i), substituted ''for more than forty-five hours of which such individual engaged'' for ''on seven or more different calendar days of which he engaged''.

Subsec. (d)(2). Pub. L. 98–369, § 2663(a)(3)(B), substituted ''an individual under the age of seventy who is entitled'' for ''an individual who is entitled''.

Pub. L. 98–369, § 2661(g)(1)(A)(ii), substituted ''for more than forty-five hours'' for ''on seven or more different calendar days''.

Subsec. (f)(5)(B)(ii). Pub. L. 98–369, § 2663(a)(3)(C), substituted ''702(a)(8)'' for ''702(a)(9)''.

Subsec. (f)(5)(D)(i). Pub. L. 98–369, § 2662(c)(1), made a clarifying amendment to Pub. L. 98–21, § 201(c)(1)(B). See 1983 Amendment note below.

Subsec. (f)(8)(B), (C). Pub. L. 98–369, § 2663(a)(3)(D), realigned margins of subpars. (B) and (C).

Subsec. (f)(9). Pub. L. 98–369, § 2661(g)(2)(A), added par. (9).

Subsec. (h)(4). Pub. L. 98–369, § 2602(a), added par. (4).

1983—Subsec. (a)(3)(A). Pub. L. 98–21, § 331(a)(1), amended cl. (ii) generally, substituting provisions relating to an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title, for January of the year determined for purposes of this clause under the following two sentences, with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and (II) thereafter increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title, for provisions relating to an amount equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and inserted provisions following cl. (ii).

Subsec. (a)(7). Pub. L. 98–21, § 331(a)(2), substituted ''the amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7)'' for ''the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined under section 430 of this title for the year in which that month occurs''.

Subsec. (b)(1). Pub. L. 98–21, § 309(f), inserted ''or father's'' after ''mother's'' in provisions following subpar. (B).

Pub. L. 98–21, § 132(b)(1)(A)(iii), substituted ''clauses (A) and (B)'' for ''clauses (1) and (2)'' in provisions following subpar. (B).

Pub. L. 98–21, § 132(b)(1)(A)(i), (ii), (iv), designated existing provisions of subsec. (b) as par. (1), and in par. (1), as so designated, redesignated cls. (1) and (2) as (A) and (B), respectively, and cls. (A) and (B) as (i) and (ii), respectively.

Subsec. (b)(1)(i). Pub. L. 98–21, § 331(b), substituted ''first sentence of paragraph (4)'' for ''penultimate sentence''.

Subsec. (b)(2). Pub. L. 98–21, § 132(b)(1)(A)(v), added par. (2).

Subsec. (c). Pub. L. 98–21, § 201(c)(2), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age sixty-five''.

Pub. L. 98–21, § 201(c)(1)(B), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65'' wherever appearing in provisions following par. (4).

Pub. L. 98–21, § 309(g), amended subsec. (c) generally, substituting in par. (1) specification of more than forty-five hours of nonrecovered remunerative activity for specification of seven or more different days of such activity, and in pars. (2) to (4) provisions not distinguishing between the sexes for provisions relating only to the entitlements of women, and in provisions following par. (4) inserting ''or surviving divorced husband'' after ''widower''.

Subsec. (d)(1). Pub. L. 98–21, § 309(h), inserted ''divorced husband,'' after ''husband,''.

Pub. L. 98–21, § 132(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(2). Pub. L. 98–21, § 309(h), inserted ''or father's'' after ''mother's'' in three places.

Subsec. (f)(1). Pub. L. 98–21, § 132(b)(1)(B)(i), inserted ''(excluding divorced spouses referred to in subsection (b)(2) of this section)'' after ''and all other persons'' and after ''other persons'' and inserted ''such'' after ''payments to which such individual and all'' in first sentence.

Subsec. (f)(1)(D). Pub. L. 98–21, § 201(c)(1)(B), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65'' in two places.

Subsec. (f)(1)(F). Pub. L. 98–21, § 306(i), substituted ''section 402(b) or (c) of this title (but only by reason of having a child in his or her care within the meaning of paragraph (1)(B) of subsection (b) or (c) of this section, as may be applicable)'' for ''section 402(b) of this title (but only by reason of having a child in her care within the meaning of paragraph (1)(B) of that subsection)''.

Subsec. (f)(3). Pub. L. 98–21, § 347(a), substituted ''33⅓ percent of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8) in the case of an individual who has attained retirement age (as defined in section 416(*l*) of this title) before the close of such taxable year, or 50 percent of his earnings for such year in excess of such product in the case of any other individual'' for ''50 per centum of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8)''.

Subsec. (f)(5)(C). Pub. L. 98–21, § 324(c)(4), inserted provision excluding from ''wages'' certain payments on account of retirement or under a pension plan of the employer.

Subsec. (f)(5)(D)(i). Pub. L. 98–21, § 201(c)(1)(B), as amended by Pub. L. 98–369, § 2662(c)(1), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''the age of 65''.

Subsec. (f)(7). Pub. L. 98–21, § 132(b)(1)(B)(ii), inserted ''(excluding divorced spouses referred to in subsection (b)(2) of this section)'' after ''all persons''.

Subsec. (f)(8)(A). Pub. L. 98–21, § 111(a)(4), substituted ''December'' for ''June''.

Subsec. (f)(8)(D). Pub. L. 98–21, § 201(c)(1)(B), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2206(b)(2), substituted in provisions following subpar. (D) ''decreased to the next lower'' for ''increased to the next higher''.

Subsec. (a)(3)(B)(iii). Pub. L. 97–35, § 2206(b)(3), substituted ''next lower multiple'' for ''next higher multiple''.

Subsec. (a)(8). Pub. L. 97–123, § 2(f), struck out '', modified by the application of section 415(a)(6) of this title''.

Pub. L. 97–35, §§ 2201(c)(6), 2206(b)(4), inserted '', modified by the application of section 415(a)(6) of this title'' and inserted provision that for the purposes of the preceding sentence, the phrase ''rounded to the next higher multiple of $0.10'', as it appeared in subsec.

(a)(2)(C) of this section as in effect in December 1978, be deemed to read ''rounded to the next lower multiple of $0.10''.

1980—Subsec. (a). Pub. L. 96–265 added par. (6), redesignated former pars. (6) to (8) as (7) to (9), respectively, and made conforming amendments to pars. (1), (2)(D), and (8).

Subsec. (a)(3)(A). Pub. L. 96–473, §6(b)(1), substituted ''entitled on the basis'' for ''entitled on the bases''.

Subsec. (a)(7). Pub. L. 96–473, §6(b)(2), substituted ''benefit base'' for ''benefits base''.

Subsec. (f)(1). Pub. L. 96–473, §§1(a)(1), 4(a), inserted reference to December 1977 in cl. (E) and added cl. (F).

Subsec. (f)(2)(F). Pub. L. 96–473, §1(a)(2), inserted reference to cl. (F).

Subsec. (f)(5)(D). Pub. L. 96–473, §3(a), revised former cls. (i) and (ii) into cl. (i), inserted reference to women, and added cl. (ii).

1977—Subsec. (a)(1) to (7). Pub. L. 95–216, §202, generally restated the provisions of existing pars. (1) to (5) with changes to take into account the revised system for computing primary insurance amounts based on wage-indexed earnings and redistributed those existing provisions as thus restated into pars. (1) to (7).

Subsec. (a)(8). Pub. L. 95–216, §204(e), added par. (8).

Subsecs. (c)(1), (d)(1), (f)(1)(B). Pub. L. 95–216, §302(a), substituted ''seventy'' for ''seventy-two''.

Subsec. (f)(1)(E). Pub. L. 95–216, §§301(d), 303(a), substituted ''the applicable exempt amount'' for ''$200 or the exempt amount'' and inserted '', if such month is in the taxable year in which occurs the first month that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applicable exempt amount as determined under paragraph (8)'' after ''as determined under paragraph (8)''.

Subsec. (f)(3). Pub. L. 95–216, §301(d), substituted ''the applicable exempt amount'' for ''$200 or the exempt amount''.

Pub. L. 95–216, §302(b), substituted ''age 70'' for ''age 72''.

Subsec. (f)(4)(B). Pub. L. 95–216, §301(d), substituted ''the applicable exempt amount'' for ''$200 or the exempt amount''.

Subsec. (f)(8)(A). Pub. L. 95–216, §301(a), substituted ''the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year'' for ''a new exempt amount which shall be effective (unless such new exempt amount is prevented from becoming effective by subparagraph (C) of this paragraph) with respect to any individual's taxable year which ends after the calendar year''.

Subsec. (f)(8)(B). Pub. L. 95–216, §§301(b), 353(a), applicable with respect to taxable years ending after Dec. 1977, substituted ''Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals for each month of a particular taxable year, shall each be'' for ''The exempt amount for each month of a particular taxable year shall be'' in provisions preceding cl. (i), substituted ''the corresponding exempt amount'' for ''the exempt amount'' in cl. (i), and, in provisions following cl. (ii), substituted ''an exempt amount'' for ''the exempt amount'', and effective Jan. 1, 1979, substituted ''is'' for ''was'' in cl. (i) and, in cl. (ii), substituted ''(I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the calendar year in which the determination under subparagraph (A) is made to (II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before the most recent calendar year'' for ''(I) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year in which the determination under subparagraph (A) was made to (II) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973, or, if later, the calendar year preceding the most recent calendar year'' and struck out reference to wages for calendar year 1978.

Subsec. (f)(8)(D). Pub. L. 95–216, §301(c)(1), added subpar. (D).

Subsec. (h)(1)(A). Pub. L. 95–216, §301(d), substituted ''the applicable exempt amount'' for ''$200 or the exempt amount''.

Pub. L. 95–216, §302(c), substituted ''age 70'' for ''the age of 72'' and for ''age 72''.

Subsec. (j). Pub. L. 95–216, §302(a), (d), substituted ''seventy'' for ''seventy-two'' in heading and in text.

1976—Subsec. (f)(8)(B)(ii). Pub. L. 94–202 substituted ''wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year'' for ''taxable wages of all employees as reported to the Secretary for the first calendar quarter of the calendar year'' in cl. (I), substituted ''wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973, or, if later, the calendar year preceding'' for ''taxable wages of all employees as reported to the Secretary for the first calendar quarter of 1973, or, if later, the first calendar quarter of'' in cl. (II), and directed that the average wages for calendar year 1978, or any prior calendar year, be deemed equal to 400% of the average wages reported for the first quarter of that year.

1973—Subsec. (f). Pub. L. 93–66, §202(a), (b), substituted in pars. (1), (3), first sentence, and (4)(B), ''$200'' for ''$175''.

Subsec. (f)(8)(A). Pub. L. 93–233, §3(k)(1), substituted: ''with the month of June following'' for ''with the first month of the calendar year following'', ''which ends after the calendar year in which such benefit increase is effective'' for ''which ends with the close of or after the calendar year with the first month of which such benefit increase is effective'', and ''during the calendar year after the calendar year in which the benefit increase is effective'' for ''during such calendar year''; and struck out after ''such quarter occurs'' and before ''a new exempt amount'' parenthetical ''(along with the publication of such benefit increased as required by section 415(i)(2)(D) of this title)''.

Subsec. (f)(8)(B)(ii). Pub. L. 93–233, §18(a), substituted ''exempt amount'' for ''contribution and benefit base'' and ''subparagraph (A)'' for ''section 430(a) of this title'', respectively.

Subsec. (f)(8)(B) foll. (ii). Pub. L. 93–233, §3(k)(2), substituted ''within 30 days after the close of the base quarter (as defined in section 415(i)(1)(A) of this title) in such year'' for ''no later than August 15 of such year''.

Subsec. (f)(8)(C). Pub. L. 93–233, §3(k)(3), struck out ''or providing a general benefit increase under this subchapter (as defined in section 415(i)(3) of this title)'' after ''law increasing the exempt amount''.

Subsec. (h)(1)(A). Pub. L. 93–66, §202(c), substituted ''$200'' for ''$175''.

1972—Subsec. (a). Pub. L. 92–336, §202(a)(2)(A), inserted ''in or deemed to be'' after ''the table''.

Subsec. (a)(2). Pub. L. 92–336, §202(a)(2)(B), as amended by Pub. L. 92–603, §§103(c), 144(a)(3), substituted provisions relating to the reduction in the total benefits for any month after January 1971 where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for January 1971 or any prior month, for provisions relating to the reduction in the total of benefits for September 1972 or any subsequent month where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for August, 1972.

Pub. L. 92–336, § 201(b), substituted provisions relating to the reduction in the total of benefits for September 1972 or any subsequent month where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for August 1972, for provisions relating to the reduction in the total of benefits for January 1971 or any subsequent month where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for January 1971.

Subsec. (a)(2)(B). Pub. L. 92–603, § 144(a)(2), inserted ''such'' before ''person''.

Subsec. (a)(4). Pub. L. 92–336, § 201(h)(1), added par. (4).

Subsec. (a)(5). Pub. L. 92–603, § 101(b), added par. (5).

Subsec. (c). Pub. L. 92–603, §§ 102(c)(1), 107(b)(1), substituted ''attained age 65 (but only if she became so entitled prior to attaining age (60), or from any widower's insurance benefit for any month in which the widower is entitled and has not attained age 65 (but only if he became so entitled prior to attaining age 60)'' for ''attained age 62 (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower is entitled and has not attained age 62''.

Subsec. (f)(1). Pub. L. 92–603, §§ 102(c)(2), 105(a)(1), 107(b)(2), substituted ''attained age 65 (but only if she became so entitled prior to attaining age 60), or widower's insurance benefits and has not attained age 65 (but only if she became so entitled prior to attaining age 60)'' for ''attained age 62 (but only if she became so entitled prior to attaining age 60), or widower's insurance benefits and has not attained age 62'' in cl. (D) and substituted ''$175 or the exempt amount as determined under paragraph (8)'' for ''$140'' in cl. (E).

Subsec. (f)(3). Pub. L. 92–603, §§ 105(a)(3), 106(a), substituted ''shall be 50 per centum of his earnings for such year in excess of the product of $175 or the exempt amount as determined under paragraph (8),'' for ''shall be his earnings for such year in excess of the product of $140'' and struck out '', except that of the first $1,200 of such excess (or all of such excess if it is less than $1,200), an amount equal to one-half thereof shall not be included'' after ''number of months in such year'' and inserted provisions for the exclusion of certain earnings in the year of attaining age 72.

Subsec. (f)(4)(B). Pub. L. 92–603, § 105(a)(1), substituted ''$175 or the exempt amount as determined under paragraph (8)'' for ''$140''.

Subsec. (f)(8). Pub. L. 92–603, § 105(b), added par. (8).

Subsec. (h)(1)(A). Pub. L. 92–603, § 105(a)(2), substituted ''$175 or the exempt amount as determined under subsection (f)(8) of this section'' for ''$140''.

1971—Subsec. (a)(2). Pub. L. 92–5 substituted references to January 1971 for references to January 1970, substituted ''December 1970'' for ''December 1969'', and, in subpar. (B), substituted ''prior to March 17, 1971'' for ''prior to December 30, 1969 (and prior to January 1, 1970)'', and lowered the multiple of the benefit amount from 115 percent to 110 percent.

1969—Subsec. (a)(2). Pub. L. 91–172 substituted references to January 1970 for references to February 1968, and, in subpar. (B), substituted ''prior to December 30, 1969 (and prior to January 1, 1970)'' for ''prior to February 1968'', and raised the multiple of the benefit amount from 113 percent to 115 percent.

1968—Subsec. (a). Pub. L. 90–248, § 163(a)(1), provided for reduction of benefits in the total of monthly benefits to which individuals are entitled for any month on the basis of the wages and self-employment income of an insured individual and that where such total of benefits for such month includes any benefit or benefits under section 402(d) of this title which are payable solely by reason of section 416(h)(3) of this title, the reduction shall be first applied to reduce (proportionately where there is more than one benefit so payable) the benefits so payable (but not below zero).

Subsec. (a)(2). Pub. L. 90–248, § 101(b), substituted references to February 1968 for former references to December 1964 and for former references to the enactment of the Social Security Amendments of 1965, increased the multiple of the benefit amount from 107 to 113 percent, and struck out former cl. (ii) which provided that the total of monthly benefits shall not be reduced to less than the larger of the amount determined under subpar. (A) or with respect to any month after the month in which the Social Security Amendments of 1965 are enacted, an amount equal to the sum of the amounts derived by multiplying the benefit amount determined under this subchapter (including subsection (a) of this section, but without the application of section 422(b) of this title, section 402(q) of this title, and subsections (b), (c) and (d) of this section), as in effect prior to the enactment of such Amendments, for each such person (other than a person who would not be entitled to such benefits for such month without the application of the amendments made by section 306 of the Social Security Amendments of 1965) for the month of enactment, by 107 percent and raising each such increased amount, if it is not a multiple of $0.10, to the next higher multiple of $0.10.

Subsec. (c). Pub. L. 90–248, § 104(d)(1)(A), inserted after ''any subsequent month'' in third sentence ''; nor shall any deduction be made under this subsection from any widow's insurance benefit for any month in which the widow or surviving divorced wife is entitled and has not attained age 62 (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower is entitled and has not attained age 62''.

Subsec. (f)(1). Pub. L. 90–248, §§ 104(d)(1)(B), 107(a)(1), inserted in third sentence subpar. (D) and redesignated existing provisions as subpar. (E), and substituted ''$140'' for ''125''.

Subsec. (f)(2). Pub. L. 90–248, § 104(d)(1)(C), substituted ''(D), and (E)'' for ''and (D)''.

Subsec. (f)(3). Pub. L. 90–248, § 107(a)(1), substituted ''$140'' for ''$125''.

Subsec. (f)(4). Pub. L. 90–248, § 104(d)(1)(D), substituted ''(E)'' for ''(D)''.

Subsec. (f)(4)(B). Pub. L. 90–248, § 107(a)(1), substituted ''$140'' for ''$125''.

Subsec. (g). Pub. L. 90–248, § 161(b), substituted provisions that the penalty for the first failure to report will equal one month's benefit, for the second failure to report—two month's benefits, for the third or a subsequent failure to report—three month's benefits but in no case will the penalty exceed the number of months in the period for which there is a failure to report, and defining ''period for which there is a failure to report'' for present provisions that the penalty for the first failure to report is one month's benefit and for subsequent failures, the penalty is an amount equal to the total amount of the benefits for all the months in which the event occurred but was not reported within the prescribed time.

Subsec. (h)(1)(A). Pub. L. 90–248, §§ 107(a)(2), 160(a), inserted last sentence authorizing the Secretary to extend time to report earnings up to three months if there is a valid reason for delay, and substituted ''$140'' for ''$125''.

Subsec. (h)(2). Pub. L. 90–248, § 160(b), substituted in text preceding subpar. (A) ''by or in accordance with such paragraph'' for ''therein''.

Subsec. (h)(2)(A). Pub. L. 90–248, § 161(a), inserted exception provision that if the deduction is less than the amount of his benefits for the last month for which he was entitled to benefits, the additional deduction will be the amount of the deduction under subsec. (b) but not less than ten dollars.

1965—Subsec. (a)(2). Pub. L. 89–97, § 301(c), substituted provisions to assure an increase in the family benefits for families who were on the benefit rolls after December 1964 and whose benefits were determined under former provisions by providing that the maximum family benefit of each month after December 1964 will be the larger of (1) the family maximum specified in column V of the new table or (2) the sum of all family members' benefits after each such benefit has been increased by seven percent (and rounded to the next higher ten cents if it is not already a multiple of ten cents), for former provisions restricting the reduction of total

benefits to individuals entitled to monthly benefits under section 402 or 423 of this title for December 1958.

Subsec. (a)(3). Pub. L. 89–97, §§ 301(c), 308(d)(6), struck out par. (3) which was a special saving clause for maximum family benefits of people who became disabled before 1959 since families whose benefits were determined under such par. (3) are now covered by subsec. (a)(2) of this section, and added par. (3), respectively.

Subsec. (c). Pub. L. 89–97, § 306(c)(10), (11), inserted in penultimate sentence ''paragraph (1) of section 402(s) of this title applies or'' after ''for any month in which'' and in last sentence the introductory phrase ''Subject to paragraph (3) of such section 402(s)''.

Subsec. (c)(4). Pub. L. 89–97, § 308(d)(7), substituted ''surviving divorced mother'' for ''former wife divorced''.

Subsec. (d)(1). Pub. L. 89–97, § 308(d)(8), inserted ''divorced wife,'' after ''wife,''.

Subsec. (f)(1). Pub. L. 89–97, §§ 306(c)(12), 310(a)(1), inserted ''but subject to section 402(s) of this title'' after ''Notwithstanding the preceding provisions of this paragraph'' in last sentence and substituted ''$125'' for ''$100''.

Subsec. (f)(3). Pub. L. 89–97, § 310(a)(1), (2), substituted ''$125'' for ''$100'' and ''$1,200'' for ''$500'' in two places.

Subsec. (f)(4)(B). Pub. L. 89–97, § 310(a)(1), substituted ''$125'' for ''$100''.

Subsec. (f)(5)(B). Pub. L. 89–97, § 325(a)(1), broke down existing provisions into cls. (i) and (ii), provided, in cl. (ii), for exclusion from gross income of amounts provided by subpar. (D) of this par., and, in cl. (ii), inserted reference to distributive share of loss described in section 702(a)(9) of Title 26.

Subsec. (f)(5)(D). Pub. L. 89–97, § 325(a)(2), added subpar. (D).

Subsec. (h)(1)(A). Pub. L. 89–97, § 310(a)(3), substituted ''$125'' for ''$100''.

1961—Subsec. (f)(3). Pub. L. 87–64 substituted ''$500'' for ''$300'' in two places.

1960—Subsec. (a)(3). Pub. L. 86–778, § 302(a), substituted '', then such total of benefits shall not be reduced to less than $99.10 if such primary insurance amount is $66, to less than $102.40 if such primary insurance amount is $67, to less than $106.50 if such primary insurance amount is $68, or, if such primary insurance amount is higher than $68, to less than the smaller of'' for ''and is not less than $68, then such total of benefits shall not be reduced to less than the smaller of'' in the provisions following cl. (B), and ''the amount determined under this subsection without regard to this paragraph, or $206.60, whichever is larger'' for ''the last figure in column V of the table appearing in section 415(a) of this title'' in cl. (C).

Subsec. (b). Pub. L. 86–778, § 211(a), amended subsec. (b) generally, and among other changes, authorized deductions from payments to which any other persons are entitled on the basis of an individual's wages and self-employed income, substituted provisions requiring deductions for months in which an individual is charged with excess earnings under the provisions of subsec. (f) of this section for provisions which required deductions for months in which an individual is charged with any earnings under the provisions of subsec. (e) of this section, and inserted the second, third, fourth and fifth sentences. Former cls. (2)–(5) and the closing paragraph of subsec. (b) are covered by subsec. (c) of this section.

Subsec. (c). Pub. L. 86–778, § 211(b), redesignated the opening provisions, cls. (2) to (5) and the closing provisions of former subsec. (b) of this section as the opening provisions, cls. (1) to (4) and the closing provisions of subsec. (c), respectively. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86–778, § 211(c), added subsec. (d) and redesignated former subsec. (d) as (e). Provisions of subsec. (d) were formerly contained in subsec. (c) of this section.

Subsec. (e). Pub. L. 86–778, § 211(c), (d), redesignated former subsec. (d) as (e), substituted ''subsections (c) and (d) of this section'' for ''subsections (b) and (c) of this section'', and struck out provisions which required the charging of any earnings to any month to be treated as an event occurring in such month. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 86–778, § 211(c), (e), redesignated former subsec. (e) as (f), and amended such subsection by inserting pars. (3) and (7), substituting provisions requiring an amount of an individual's excess earnings equal to the sum of the payments to which he and all other persons are entitled for the month under section 402 of this title on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum) to be charged to the first month of the taxable year, and the balance, if any, of such excess earnings to be charged to each succeeding month in such year to the extent, in the case of each month, of the sum of the payments to which such individual and all other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income, until the total of such excess has been so charged, for provisions which required the first $80 of earnings in excess of $1,200 to be charged to the first month of the taxable year, and the balance, if any, at the rate of $80 per month to each succeeding month in such year until all of the balance has been applied, and inserting provisions requiring the excess earnings of an individual for any taxable year, where an individual is entitled to benefits under section 402(a) of this title and other persons are entitled to benefits under section 402 (b), (c), or (d) of this title on the basis of the wages and self-employment income of such individual, to be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 86–778, §§ 209(a), 211(c), redesignated former subsec. (f) as (g), and substituted therein ''subsection (c) of this section'' for ''subsection (b) or (c) of this section'' in two places, and struck out ''(other than an event specified in subsection (b)(1) or (c)(1) of this section)'' after ''of an event specified therein.'' Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 86–778, § 211(c), (f), redesignated former subsec. (g) as (h), and substituted therein ''paragraph (5) of subsection (f) of this section'' for ''paragraph (4) of subsection (e) of this section'' in two places, ''paragraph (3) of this subsection'' for ''paragraph (3) of subsection (g) of this section'', ''subsection (b) of this section'' for ''subsection (b)(1) of this section'' in five places, and ''suspend the total or less than the total payment'' for ''suspend the payment.'' Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 86–778, § 211(c), (g), redesignated former subsec. (h) as (i) and substituted therein ''subsection (b), (c), (g), or (h) of this section'' for ''subsection (b), (f), or (g) of this section.'' Former subsec. (i) was repealed by Act Sept. 1, 1954, ch. 1206, title I, § 112(a), 68 Stat. 1085.

Subsec. (k). Pub. L. 86–778, § 103(b), substituted ''the Commonwealth of Puerto Rico, the Virgin Islands, Guam or American Samoa'' for ''Puerto Rico or the Virgin Islands'', and ''the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa'' for ''Puerto Rico and the Virgin Islands''.

Subsec. (*l*). Pub. L. 86–778, § 211(h), substituted ''subsection (g) or (h)(1)(A) of this section'' for ''subsection (f) or (g)(1)(A) of this section''.

1958—Subsec. (a). Pub. L. 85–840, § 101(f), substituted provisions limiting the total of monthly benefits under sections 402 and 423 of this title to the amount provided in column V of the table in section 415(a) of this title for provisions which limited the total of monthly benefits under section 402 of this title to $50, or 80% of the average monthly wage, or one and one-half times the primary insurance amount, whichever is greater, with a maximum amount of $200 and inserted provisions limiting the reduction for individuals who were entitled to monthly benefits under section 402 or 423 of this title for December 1958, and for individuals entitled to monthly benefits with respect to whom a period of dis-

ability began prior to January 1959 and continued until he became entitled to benefits under section 402 or 423 of this title, or he died, whichever first occurred.

Subsec. (c). Pub. L. 85–840, §205(j), inserted '', based on the wages and self-employment income of an individual entitled to old-age insurance benefits,'' before ''to which a wife'' in opening provisions of par. (1), and Pub. L. 85–840, §307(f), designated existing provisions of subsec. (c) as par. (1), redesignated subpars. (1) and (2) of par. (1) as subpars. (A) and (B), substituted in subpar. (B) of par. (1) ''subparagraph (A)'' for ''paragraph (1)'', and added par. (2).

Subsec. (e)(2). Pub. L. 85–840, §308(a), (c), substituted ''first month'' for ''last month'' and ''succeeding month'' for ''preceding month'' wherever appearing, and ''$100'' for ''$80'' in cl. (D).

Subsec. (e)(3). Pub. L. 85–840, §308(b), (c), substituted ''the term 'first month of such taxable year' means the earliest month'' for ''the term 'last month of such taxable year' means the latest month'' in cl. (A), and ''$100'' for ''$80'' in cl. (B)(ii).

Subsec. (g)(1). Pub. L. 85–840, §308(d), designated existing provisions thereof as subpar. (A) and inserted provisions therein dispensing with the need for a report for any taxable year if benefit payments for all months (in such taxable year) in which such individual is under age 72 have been suspended under the provisions of the first sentence of par. (3) of this subsection, and added subpar. (B).

Subsec. (h). Pub. L. 85–840, §205(k), struck out provisions that related to reductions by reason of the provisions of section 424 of this title.

Subsec. (*l*). Pub. L. 85–840, §308(e), substituted ''(g)(1)(A) of this section'' for ''(g) of this section''.

1956—Subsec. (a). Act Aug. 1, 1956, §101(d), inserted ''after any deductions under section 422(b) of this title, and after any reduction under section 424 of this title'' in two places.

Subsec. (b). Act Aug. 1, 1956, §101(e), inserted paragraph providing that a child should not be considered to be entitled to a child's insurance benefit for any month in which an event specified in section 422(b) of this title occurs with respect to such child, and prohibiting any deduction from any child's insurance benefit for the month in which the child entitled to such benefit attained the age of 18 or any subsequent month.

Subsec. (b)(3). Act Aug. 1, 1956, §102(d)(11), substituted ''age 65'' for ''retirement age'' and inserted ''any such wife's insurance benefit for such month was not reduced under the provisions of section 402(q) of this title''.

Subsec. (d). Act Aug. 1, 1956, §101(f), included events specified in section 422(b) of this title.

Subsec. (e)(4)(C). Act Aug. 1, 1956, §112(a), inserted ''or performed outside the United States in the active military or naval service of the United States'' after ''performed within the United States by the individual as an employee''.

Subsec. (g)(1). Act Aug. 1, 1956, §107(a), permitted reports to be made on or before the fifteenth day of the fourth month following the close of the year.

Subsec. (h). Act Aug. 1, 1956, §101(g), included deductions by reason of the provisions of section 422(b) of this title, and reductions by reason of the provisions of section 424 of this title.

Subsec. (k). Act Aug. 1, 1956, §112(b), inserted ''and are not performed in the active military or naval service of the United States'' after ''section 410 of this title''.

1954—Subsec. (a). Act Sept. 1, 1954, §102(e)(7), increased maximum limitations on the total monthly amount of benefits.

Subsec. (b)(1), (2). Act Sept. 1, 1954, §103(a), (i)(3), put into effect an annual retirement test for beneficiaries whether they have wage or self-employment earnings, or both, inserted provision for making deductions on account of nonrecovered remunerative activity outside the United States, and provided that deductions because of such provisions be made from an individual's benefits only for months in which he is under the age of 72, rather than 75.

Subsec. (c). Act Sept. 1, 1954, §103(b), (i)(3), provided that deductions be made from a dependent's benefits for any month in which the primary beneficiary was under the age of 72, and for which he was charged with any earnings for work deduction purposes under subsec. (e) or on 7 or more different calendar days of which he engaged in noncovered remunerative activity outside the United States.

Subsec. (d). Act Sept. 1, 1954, §103(c), provided that the charging of earnings shall be treated as an event occurring in the month to which such earnings are charged.

Subsec. (e)(1), (2). Act Sept. 1, 1942, §103(d)(1), (2), (i)(3), provided a method for charging earnings to particular months of the year for purposes of determining the deductions required under subsecs. (b) and (c).

Subsec. (e)(3)(B). Act Sept. 1, 1954, §103(d)(3), provided authority to presume, for purposes of charging earnings to calendar months, that an individual rendered services for wages of more than $80 in any month.

Subsec. (e)(4), (5). Act Sept. 1, 1954, §103(d)(4), added pars. (4) and (5).

Subsec. (f). Act Sept. 1, 1954, §103(e), clarified the penalty provisions.

Subsec. (g). Act Sept. 1, 1954, §103(f)(1), amended heading.

Subsec. (g)(1). Act Sept. 1, 1954, §103(f)(2), (3), provided that if an individual entitled to any monthly benefit in a taxable year has earnings or wages in excess of $100 times the number of months in such year, he must make a report to the Secretary of his earnings for such taxable year, and substituted ''seventy-two'' for ''seventy-five''.

Subsec. (g)(2). Act Sept. 1, 1954, §103(f)(4), provided a schedule of penalty deductions for failure to make required reports within the time prescribed by subsec. (g)(1) if any deduction is imposed because of earnings in such year.

Subsec. (g)(3). Act Sept. 1, 1954, §103(f)(5), substituted ''subsection (b)(1)'' for ''subsection (b)(2)'', ''earnings'' for ''net earnings from self-employment'', and ''such earnings'' for ''such net earnings'', and added a new sentence at the end.

Subsec. (i). Act Sept. 1, 1954, §112(a), repealed subsec. (i), effective Sept. 1, 1954, and also provided that no deductions should be made pursuant to such subsec. (i) from any benefits for any month after August 1954.

Subsec. (j). Act Sept. 1, 1954, §103(f)(6), (i)(3), substituted ''seventy-two'' for ''seventy-five''.

Subsec. (k). Act Sept. 1, 1954, §103(g), added subsec. (k).

Subsec. (*l*). Act Sept. 1, 1954, §103(h), added subsec. (*l*).

1952—Subsec. (a). Act July 18, 1952, §2(b)(2), increased the maximum and minimum monthly benefits payable a family.

Subsecs. (b)(1), (2), (c)(1), (2), (e), (g). Act July 18, 1952, §4(a)–(d), substituted $75 for $50 wherever appearing.

1950—Subsec. (a). Act Aug. 28, 1950, §102(a), amended subsec. (a) generally to consolidate provisions of former subsecs. (a) to (c) of this section and to liberalize the maximum amount of monthly benefits payable.

Subsec. (b). Act Aug. 28, 1950, §103(a), provided that deductions are to be made from benefits for any month in which a beneficiary is under age 75 and either renders services for wages of more than $50, or is charged with net earnings from self-employment of more than $50, and provided that deductions are to be made for any month in which a wife, widow or divorced wife does not have in her care a child or her husband or former husband entitled to a child's insurance benefit.

Subsec. (c). Act Aug. 28, 1950, §103(a), provided for the making of deductions from dependents benefits for any month in which the old-age beneficiary suffers a reduction in his benefit.

Subsec. (d). Act Aug. 28, 1950, §103(a), inserted second sentence.

Subsec. (e). Act Aug. 28, 1950, §103(a), provided the method for charging net earnings from self-employment to the particular months of the taxable year for

the purpose of determining deductions under subsecs. (b)(2) and (c)(2) of this section.

Subsec. (f). Act Aug. 28, 1950, § 103(a), continued provisions requiring the reporting of any event which causes a deduction from benefits.

Subsec. (g). Act Aug. 28, 1950, § 103(a), outlined circumstances under which beneficiaries with net earnings from self-employment are required to file report with the Federal Security Administrator.

Subsec. (h). Act Aug. 28, 1950, § 103(a), pointed out circumstances under which deductions otherwise required under subsecs. (b), (f), and (g) of this section will not be made.

Subsecs. (i), (j). Act Aug. 28, 1950, § 103(a), added subsecs. (i) and (j).

1946—Subsec. (g). Act Aug. 10, 1946, § 406(b), inserted exception limiting the first deduction for failure to report to one month's benefit.

Subsec. (d)(2). Act Aug. 10, 1946, § 406(a), struck out par. (2) which related to deductions for failure to attend school.

1939—Act Aug. 10, 1939, amended section generally.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–182 applicable with respect to taxable years ending after Dec. 31, 1999, see section 5 of Pub. L. 106–182, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 102(c) of Pub. L. 104–121 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall apply with respect to taxable years ending after 1995.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 309(e)(1) of Pub. L. 103–296 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section] shall apply with respect to benefits payable for months after December 1995.''

Section 310(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section] shall apply for the purpose of determining the total monthly benefits to which beneficiaries may be entitled under sections 202 and 223 of the Social Security Act [sections 402 and 423 of this title] based on the wages and self-employment income of an individual who—

''(1) becomes entitled to an old-age insurance benefit under section 202(a) of such Act,

''(2) becomes reentitled to a disability insurance benefit under section 223 of such Act, or

''(3) dies,

after December 1995.''

Section 314(b) of Pub. L. 103–296 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to reports of earnings for taxable years ending on or after December 31, 1994.''

Section 321(g)(3)(B) of Pub. L. 103–296 provided that: ''The amendment made by paragraph (2) [amending this section] shall be effective with respect to the determination of the exempt amounts applicable to any taxable year ending after 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5117(a)(4) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and section 415 of this title] shall apply with respect to the computation of the primary insurance amount of any insured individual in any case in which a person becomes entitled to benefits under section 202 or 223 [section 402 or 423 of this title] on the basis of such insured individual's wages and self-employment income for months after the 18-month period following the month in which this Act is enacted [November 1990], except that such amendments shall not apply if any person is entitled to benefits based on the wages and self-employment income of such insured individual for the month preceding the initial month of such person's entitlement to such benefits under section 202 or 223.

''(B) RECOMPUTATIONS.—The amendments made by this subsection shall apply with respect to any primary insurance amount upon the recomputation of such primary insurance amount if such recomputation is first effective for monthly benefits for months after the 18-month period following the month in which this Act is enacted.''

Section 5119(e) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 416 of this title] shall apply with respect to benefits for months after December 1990.

''(2) APPLICATION REQUIREMENT.—

''(A) GENERAL RULE.—Except as provided in subparagraph (B), the amendments made by this section shall apply only with respect to benefits for which application is filed with the Secretary of Health and Human Services after December 31, 1990.

''(B) EXCEPTION FROM APPLICATION REQUIREMENT.—Subparagraph (A) shall not apply with respect to the benefits of any individual if such individual is entitled to a benefit under subsection (b), (c), (e), or (f) of section 202 of the Social Security Act [section 402(b), (c), (e), or (f) of this title] for December 1990 and the individual on whose wages and self-employment income such benefit for December 1990 is based is the same individual on the basis of whose wages and self-employment income application would otherwise be required under subparagraph (A).''

Section 5123(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section, section 411 of this title, and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to income received for services performed in taxable years beginning after December 31, 1990.''

Section 5127(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits for months after December 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10208(b)(1)(A), (B) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

Section 10305(f) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and sections 404, 423, and 1383 of this title] shall apply with respect to determinations made on or after July 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8002(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to deaths after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12108(b) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(a), Oct. 22, 1986, 100 Stat. 2931, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits payable for months after December 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2602(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective upon the date of the enactment of this Act [July 18, 1984].''

Section 2661(g)(1)(B) of Pub. L. 98–369 provided that: ''The amendments made by subparagraph (A) [amend-

ing this section] shall apply only with respect to months beginning with the second month after the month in which this Act is enacted [July 1984].''

Section 2661(g)(2)(B) of Pub. L. 98–369 provided that: ''The amendment made by subparagraph (A) [amending this section] shall be effective as though it had been enacted on April 20, 1983, as a part of section 201 of the Social Security Amendments of 1983 [section 201 of Pub. L. 98–21].''

Amendment by section 2662(c)(1) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(3) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 111(a)(4) of Pub. L. 98–21 applicable with respect to cost-of-living increases determined under section 415(i) of this title for years after 1982, see section 111(a)(8) of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 132(c)(2) of Pub. L. 98–21 provided that: ''The amendments made by subsection (b) [amending this section] shall apply with respect to monthly insurance benefits for months after December 1984.''

Amendment by sections 306(i) and 309(f)–(h) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Amendment by section 324(c)(4) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98–21, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Section 331(c) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to payments made for months after December 1983.''

Section 347(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years beginning after December 1989, and only in the case of individuals who have attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)].''

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by section 2201(c)(6) of Pub. L. 97–35 and by section 2(f) of Pub. L. 97–123, applicable with respect to benefits for months after December 1981 with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

Amendment by section 2206(b)(2)–(4) of Pub. L. 97–35 applicable only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981, see section 2206(c) of Pub. L. 97–35, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 1(b) of Pub. L. 96–473 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable for months after December 1977.''

Section 3(b) of Pub. L. 96–473 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1977, but only with respect to benefits payable for months after December 1977.''

Section 4(b) of Pub. L. 96–473 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable for months after December 1977.''

Section 101(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes eligible for benefits (determined under sections 215(a)(3)(B) and 215(a)(2)(A) of the Social Security Act [section 415(a)(3)(B) and (2)(A) of this title], as applied for this purpose) after 1978, and who first becomes entitled to disability insurance benefits after June 30, 1980.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 202 of Pub. L. 95–216 effective with respect to monthly benefits under this subchapter payable for months after Dec. 1978 and with respect to lump-sum death payments with respect to deaths occurring after such month, and amendment by section 204(e) of Pub. L. 95–216 effective with respect to monthly benefits for months after May 1978, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

Section 301(e) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall apply with respect to taxable years ending after December 1977.''

Section 302(e) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to taxable years ending after December 31, 1981.''

Section 303(b) of Pub. L. 95–216 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to monthly benefits payable for months after December 1977.''

Amendment by section 353(a) of Pub. L. 95–216 effective Jan. 1, 1979, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 202(d) of Pub. L. 93–66 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to taxable years beginning after December 31, 1973.''

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by section 101(b) of Pub. L. 92–603 applicable with respect to monthly insurance benefits under this subchapter for months after December 1972 and with respect to lump-sum death payments under this subchapter in the case of deaths occurring after such month, see section 101(g) of Pub. L. 92–603, set out as a note under section 415 of this title.

Section 202(a)(2)(A), (B) of Pub. L. 92–336 provided that the amendments made by that section are effective Jan. 1, 1974.

Amendment by section 201(b) of Pub. L. 92–336 applicable with respect to monthly benefits under subchapter II of this chapter for months after August 1972 and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after such month, see section 201(i) of Pub. L. 92–336, set out as a note under section 415 of this title.

Section 144(b) of Pub. L. 92–603 provided that: ''The amendments made by each of the paragraphs in subsection (a) [amending this section and sections 415 and 430 of this title] shall be effective in like manner as if such amendment had been included in title II of Public Law 92–336 in the particular provision of such title referred to in such paragraph.''

Amendment by section 201(h)(1) of Pub. L. 92–336 applicable with respect to monthly benefits under subchapter II of this chapter for months after December 1971, see section 201(i) of Pub. L. 92–336, set out as a note under section 415 of this title.

Amendment by section 102(c) of Pub. L. 92–603 applicable with respect to monthly benefits under this sub-

chapter for months after December 1972, see section 102(i) of Pub. L. 92–603, set out as a note under section 402 of this title.

Amendment by section 107(b)(1), (2) of Pub. L. 92–603 applicable with respect to monthly benefits under this subchapter for months after December 1972, with specified exceptions, see section 107(c) of Pub. L. 92–603, set out as a note under section 402 of this title.

Section 105(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply with respect to taxable years ending after December 1972.''

Section 106(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section to provide for the exclusion of certain earnings in year of attaining age 72] shall apply with respect to taxable years ending after December 1972.''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable with respect to monthly benefits under subchapter II of this chapter for months after December 1970 and with respect to lump-sum death payments under such subchapter in the case of deaths occurring in and after March 1971, see section 201(e) of Pub. L. 92–5, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to monthly benefits under this subchapter for months after December 1969 and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after December 1969, see section 1002(e) of Pub. L. 91–172, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 101(b) of Pub. L. 90–248 applicable with respect to monthly benefits and lump-sum death benefits in the case of deaths occurring after January 1968, under this subchapter for months after January 1968, see section 101(e) of Pub. L. 90–248, set out as a note under section 415 of this title.

Amendment by section 104(d)(1) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

Section 107(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 1967.''

Section 163(a)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] with respect to individuals who become entitled to benefits under section 202(d) of such Act [section 402(d) of this title] solely by reason of section 216(h)(3) of such Act [section 416(h)(3) of this title] in or after January 1968 (but without regard to section 202(j)(1) of such Act [section 402(j)(1) of this title]). The provisions of section 170 of this Act [set out as Savings Provisions note below] shall not apply with respect to any such individual.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 301(c) of Pub. L. 89–97 applicable with respect to monthly benefits under this subchapter for months after December 1964 and with respect to lump-sum death benefits payments under this subchapter in the case of deaths occurring in or after July 1965, see section 301(d) of Pub. L. 89–97, set out as a note under section 415 of this title.

Amendment by section 308(d)(6)–(8) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

Section 310(b) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1965.''

Section 325(b) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to the computation of net earnings from self-employment and the net loss from self-employment for taxable years beginning after 1964.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 108(b) of Pub. L. 87–64 provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of taxable years ending after the enactment of this Act [June 30, 1961].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 103(b) of Pub. L. 86–778 applicable only with respect to service performed after 1960, except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, the amendment shall be applicable only in the case of taxable years beginning after 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Section 211(p)–(s) of Pub. L. 86–778 provided that:

''(p) Section 203(c), (d), (e), (g), and (i) of the Social Security Act [subsecs. (c), (d), (e), (g), and (i) of this section] as amended by this Act shall be effective with respect to monthly benefits for months after December 1960.

''(q) Section 203(b), (f), and (h) of the Social Security Act [subsecs. (b), (f), and (h) of this section] as amended by this Act shall be effective with respect to taxable years beginning after December 1960.

''(r) Section 203(*l*) of the Social Security Act [subsec. (*l*) of this section] as amended by this Act, to the extent that it applies to section 203(g) of the Social Security Act as amended by this Act, shall be effective with respect to monthly benefits for months after December 1960 and, to the extent that it applies to section 203(h)(1)(A) of the Social Security Act as amended by this Act, shall be effective with respect to taxable years beginning after December 1960.

''(s) The amendments made by subsections (i), (j), (k), (*l*), (m), (n), and (*o*) [amending sections 402, 408, and 415 of this title and sections 228c and 228e of Title 45, Railroads], to the extent that they make changes in references to provisions of section 203 of the Social Security Act [this section], shall take effect in the manner provided in subsections (p) and (q) of this section for the provisions of such section 203 to which the respective references so changed relate.''

Section 302(b) of Pub. L. 86–778 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only in the case of monthly benefits under section 202 or section 223 of the Social Security Act [section 402 or section 423 of this title] for months after the month following the month in which this Act is enacted [September 1960], and then only (1) if the insured individual on the basis of whose wages and self-employment income such monthly benefits are payable became entitled (without the application of section 202(j)(1) or section 223(b) of such Act) to benefits under section 202(a) or section 223 of such Act after the month following the month in which this Act is enacted, or (2) if such insured individual died before becoming so entitled and no person was entitled (without the application of section 202(j)(1) or section 223(b) of such Act) on the basis of such wages and self-employment income to monthly benefits under title II of the Social Security Act [this subchapter] for the month fol-

lowing the month in which this Act is enacted [September 1960] or any prior month.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 101(f) of Pub. L. 85–840 applicable in the case of monthly benefits under subchapter II of this chapter for months after December 1958, and in the case of lump-sum death payments under subchapter II of this chapter, with respect to deaths occurring after such month, see section 101(g) of Pub. L. 85–840, set out as a note under section 415 of this title.

Amendment by section 205(j) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, and amendment by section 205(k) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for August 1958 and succeeding months, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

Section 307(h)(2) of Pub. L. 85–840 provided that: ''The amendments made by subsection (f) [amending this section] shall apply with respect to monthly benefits under subsection (d) or (g) of section 202 of the Social Security Act [section 402 of this title] for months in any taxable year, of the individual to whom the person entitled to such benefits is married, beginning after the month in which this Act is enacted [August 1958].''

Section 308(f) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section] shall be applicable with respect to taxable years beginning after the month in which this Act is enacted [August 1958].''

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by section 101(d)–(g) of act Aug. 1, 1956, applicable with respect to monthly benefits under section 402 of this title for months after December 1956, but only on the basis of an application filed after September 1956, see section 101(h) of act Aug. 1, 1956, set out as a note under section 402 of this title.

Section 107(a) of act Aug. 1, 1956, provided that the amendment made by that section is applicable in the case of monthly benefits under this subchapter for months in any taxable year (of the individual entitled to such benefits) beginning after 1954.

Section 112(c) of act Aug. 1, 1956, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall be applicable with respect to taxable years ending after 1955.''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 103(i)(3) of act Sept. 1, 1954, provided that: ''Subsections (b)(1), (b)(2), (c), (e), and (j) of section 203 of the Social Security Act [this section] as in effect prior to the enactment of this Act, to the extent they are in effect with respect to months after 1954, are each amended by striking out 'seventy-five' and inserting in lieu thereof 'seventy-two', but only with respect to such months after 1954.''

Amendment by section 102(e)(7) of act Sept. 1, 1954, applicable in the case of lump-sum death payments under section 402 of this title with respect to deaths occurring, and in the case of monthly benefits under such section for months after, August 1954, see section 102(f) of act Sept. 1, 1954, as amended, set out as a note under section 415 of this title.

Section 103(i)(1), (2) of act Sept. 1, 1954, provided that:

''(1) The amendments made by subsection (f) and by paragraph (1) of subsection (a) of this section [amending this section] shall be applicable in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months in any taxable year (of the individual entitled to such benefits) beginning after December 1954. The amendments made by paragraph (1) of subsection (b) of this section [amending this section] shall be applicable in the case of monthly benefits under such title II for months in any taxable year (of the individual on the basis of whose wages and self-employment income such benefits are payable) beginning after December 1954. The amendments made by subsections (e) and (g), and by paragraph (2) of subsection (a) and paragraph (2) of subsection (b) [amending this section] shall be applicable in the case of monthly benefits under such title II for months after December 1954. The remaining amendments made by this section (other than subsection (h)) [amending this section] shall be applicable, insofar as they are related to the monthly benefits of an individual which are based on his wages and self-employment income, in the case of monthly benefits under such title II for months in any taxable year (of such individual) beginning after December 1954 and, insofar as they are related to the monthly benefits of an individual which are based on the wages and self-employment income of someone else, in the case of monthly benefits under such title II for months in any taxable year (of the individual on whose wages and self-employment income such benefits are based) beginning after December 1954.

''(2) No deduction shall be imposed on or after the date of the enactment of this Act [Sept. 1, 1954] under subsection (f) or (g) of section 203 of the Social Security Act [subsec. (f) or (g) of this section], as in effect prior to such date, on account of failure to file a report of an event described in subsection (b)(1), (b)(2), or (c)(1) of such section (as in effect prior to such date); and no such deduction imposed prior to such date shall be collected after such date. In determining whether, under section 203(g)(2) of the Social Security Act, as amended by this Act, a failure to file a report is a first or subsequent failure, any failure with respect to a taxable year which began prior to January 1955 shall be disregarded.''

EFFECTIVE DATE OF 1952 AMENDMENT

For effective date of amendment by section 2(b)(2) of act July 18, 1952, see section 2(c)(2) of act July 18, 1952, set out as a note under section 415 of this title.

Section 4(e) of act July 18, 1952, provided that: ''The amendments made by subsection (a) [amending this section] shall apply in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after August 1952. The amendments made by subsection (b) [amending this section] shall apply in the case of monthly benefits under such title II for months in any taxable year (of the individual entitled to such benefits) ending after August 1952. The amendments made by subsection (c) [amending this section] shall apply in the case of monthly benefits under such title II for months in any taxable year (of the individual on the basis of whose wages and self-employment income such benefits are payable) ending after August 1952. The amendments made by subsection (d) [amending this section] shall apply in the case of taxable years ending after August 1952. As used in this subsection, the term ''taxable year'' shall have the meaning assigned to it by section 211(e) of the Social Security Act [section 411(e) of this title].''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 102(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable with respect to benefits for months after August 1950.''

Section 103(b) of act Aug. 28, 1950, provided that: ''The amendments made by this section [amending this section] shall take effect September 1, 1950, except that the provisions of subsections (d), (e), and (f) of section 203 of the Social Security Act [this section] as in effect prior to the enactment of this Act [Aug. 28, 1950] shall be applicable for months prior to September 1950.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

SAVINGS PROVISION

Section 201(h)(2) of Pub. L. 92–336 provided that: ''In any case in which the provisions of section 1002(b)(2) of

the Social Security Amendments of 1969 [set out as a note under this section] were applicable with respect to benefits for any month in 1970, the total of monthly benefits as determined under section 203(a) of the Social Security Act [subsec. (a) of this section] shall, for months after 1970, be increased to the amount that would be required in order to assure that the total of such monthly benefits (after the application of section 202(q) of such Act [section 402(q) of this title]) will not be less than the total of monthly benefits that was applicable (after the application of such sections 203(a) and 202(q)) for the first month for which the provisions of such section 1002(b)(2) applied.''

Section 1002(b)(2) of Pub. L. 91–172 provided that: ''Notwithstanding any other provisions of law, when two or more persons are entitled to monthly insurance benefits under title II of the Social Security Act [this subchapter] for any month after 1969 on the basis of the wages and self-employment income of an insured individual (and at least one of such persons was so entitled for a month before January 1971 on the basis of an application filed before 1971), the total of the benefits to which such persons are entitled under such title of such month (after the application of sections 203(a) and 202(q) of such Act [subsec. (a) of this section and section 402(q) of this title]) shall be not less than the total of the monthly insurance benefits to which such persons would be entitled under such title for such month (after the application of such sections 203(a) and 202(q)) without regard to the amendment made by subsection (a) of this section [amending section 415 of this title].''

Section 170 of Pub. L. 90–248 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to monthly benefits under section 202 or 223 of such Act [section 402 or 423 of this title] for January 1968 on the basis of the wages and self-employment income of an individual, and

''(2) one or more persons (not included in paragraph (1)) become entitled to monthly benefits under such section 202 [section 402 of this title] for February 1968 on the basis of such wages and self-employment by reason of the amendments made to such Act [this chapter] by sections 104 [amending this section and sections 402, 416, 422, and 425 of this title], 112 [amending section 402 of this title], 150 [amending section 416 of this title], 151 [amending section 402 of this title and section 228 of Title 45, Railroads], 156 [amending section 416 of this title], and 157 of this Act [amending section 402 and 402 note of this title], and

''(3) the total of benefits to which all persons are entitled under such section 202 or 223 [section 402 or 423 of this title] on the basis of such wages and self-employment for February 1968 are reduced by reason of section 203(a) of such Act, as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after January 1968 shall be increased, after the application of such section 203(a) [subsec. (a) of this section], to the amount it would have been if the person or persons referred to in paragraph (2) were not entitled to a benefit referred to in such paragraph.''

Section 102(h) of act Sept. 1, 1954, provided that:

''(1) Where—

''(A) an individual was entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to an old-age insurance benefit under title II of such Act [this subchapter] for August 1954;

''(B) one or more other persons were entitled (without the application of such section 202(j)(1) [section 402(j)(1) of this title]) to monthly benefits under such title for such month on the basis of the wages and self-employment income of such individual; and

''(C) the total of the benefits to which all persons are entitled under such title on the basis of such individual's wages and self-employment income for any subsequent month for which he is entitled to an old-age insurance benefit under such title, would (but for the provisions of this paragraph) be reduced by reason of the application of section 203(a) of the Social Security Act [subsec. (a) of this section], as amended by this Act,

then the total of benefits referred to in clause (C) for such subsequent month shall be reduced to whichever of the following is the larger—

''(D) the amount determined pursuant to section 203(a) of the Social Security Act [subsec. (a) of this section], as amended by this Act; or

''(E) the amount determined pursuant to such section, as in effect prior to the enactment of this Act [Sept. 1, 1954], for August 1954 plus the excess of (i) the amount of his old-age insurance benefit for such month computed as if the amendments made by the preceding subsections of this section [amending this section and section 415 of this title] had been applicable in the case of such benefit for such month over (ii) the amount of his old-age insurance benefit for such month, or

''(F) the amount determined pursuant to section 2(d)(1) of the Social Security Act Amendments of 1952 [set out as a note under section 415 of this title] for August 1954 plus the excess of (i) the amount of his old-age insurance benefit for such month computed as if the amendments made by the preceding subsections of this section had been applicable in the case of such benefit for such month over (ii) the amount of his old-age insurance benefit for such month.

''(2) Where—

''(A) two or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to monthly benefits under title II of such Act [this subchapter] for August 1954 on the basis of the wages and self-employment income of a deceased individual; and

''(B) to total of the benefits to which all such persons are entitled on the basis of such deceased individual's wages and self-employment income for any subsequent month would (but for the provisions of this paragraph) be reduced by reason of the application of the first sentence of section 203(a) of the Social Security Act [subsec. (a) of this section], as amended by this Act,

then, notwithstanding any other provision in title II of the Social Security Act [this subchapter], such deceased individual's average monthly wage shall, for purposes of such section 203(a), be whichever of the following is the larger:

''(C) his average monthly wage determined pursuant to section 215 of such Act [section 415 of this title], as amended by this Act; or

''(D) his average monthly wage determined under such section 215, as in effect prior to the enactment of this Act [Sept. 1, 1954], plus $7.''

TEMPORARY EXTENSION OF EARNINGS LIMITATIONS TO INCLUDE ALL PERSONS AGED LESS THAN SEVENTY-TWO

Section 2204 of Pub. L. 97–35 provided that:

''(a) Notwithstanding subsection (e) of section 302 of the Social Security Amendments of 1977 (91 Stat. 1531; Public Law 95–216) [set out as an Effective Date of 1977 Amendment note above], the amendments made to section 203 of the Social Security Act [this section] by subsections (a) through (d) of such section 302 shall, except as provided in subsection (b) of this section, apply only with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months after December 1982.

''(b) In the case of any individual whose first taxable year (as in effect on the date of the enactment of this Act [Aug. 13, 1981]) ending after December 31, 1981, begins before January 1, 1982, the amendments made by section 302 of the Social Security Amendments of 1977

[amending this section] shall apply with respect to taxable years beginning with such taxable year.''

INCREASED EXEMPT AMOUNTS FOR INDIVIDUALS DESCRIBED IN SUBSEC. (f)(8)(D); NOTIFICATION IN 1977 TO 1981; INDIVIDUALS OTHER THAN THOSE DESCRIBED IN SUBSEC. (f)(8)(D)

Section 301(c)(2) of Pub. L. 95–216 provided that: ''No notification with respect to an increased exempt amount for individuals described in section 203(f)(8)(D) of the Social Security Act [subsec. (f)(8)(D) of this section] (as added by paragraph (1) of this subsection) shall be required under the last sentence of section 203(f)(8)(B) of such Act in 1977, 1978, 1979, 1980, or 1981; and section 203(f)(8)(C) of such Act shall not prevent the new exempt amount determined and published under section 203(f)(8)(A) in 1977 from becoming effective to the extent that such new exempt amount applies to individuals other than those described in section 203(f)(8)(D) of such Act (as so added).''

RETIREMENT TEST EXEMPT AMOUNT FOR 1976

By notice of the Secretary of Health, Education, and Welfare, Oct. 22, 1975, 40 F.R. 50556, it was determined and announced that, pursuant to authority contained in subsec. (f)(8) of this section, the monthly exempt amount under the retirement test would be $230 with respect to taxable years ending in calendar year 1976.

COST-OF-LIVING INCREASE IN BENEFITS

For purposes of subsec. (f)(8) of this section, the increase in benefits provided by section 2 of Pub. L. 93–233, revising benefits table of section 415(a) of this title and amending sections 427(a), (b) and 428(b)(1), (2), (c)(3)(A), (B) of this title considered an increase under section 415(i) of this title, see section 3(i) of Pub. L. 93–233, set out as a note under section 415 of this title.

PENALTIES FOR FAILURE TO FILE TIMELY REPORTS OF EARNINGS AND OTHER EVENTS

Section 161(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to any deductions imposed on or after the date of the enactment of this Act [Jan. 2, 1968] under subsections (g) and (h) of section 203 of the Social Security Act [this section] on account of failure to make a report required thereby.''

COMPUTATION OF BENEFITS FOR CERTAIN CHILDREN

Section 163(b) of Pub. L. 90–248 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to monthly benefits under section 202 or 223 of such Act [section 402 or 423 of this title] for January 1968 on the basis of the wages and self-employment income of an individual, and

''(2) one or more persons became entitled to monthly benefits before January 1968 under section 202(d) of such Act [section 402(d) of this title] by reason of section 216(h)(3) of such Act [section 416(h)(3) of this section] (but without regard to section 202(j)(1)), on the basis of such wages and self-employment income and are so entitled for January 1968, and

''(3) the total of benefits to which all persons are entitled under such section 202 or 223 of such Act [section 402 or 423 of this title] on the basis of such wages and self-employment for January 1968 are reduced by reason of section 203(a) of such Act [subsec. (a) of this section], as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) above (but not including persons referred to in paragraph (2) above) is entitled for months after January 1968 shall be increased, after the application of such section 203(a), to the amount it would have been if the person or persons referred to in paragraph (2) were not entitled to a benefit referred to in such paragraph (2).''

PROHIBITION ON IMPOSITION OF DEDUCTION FOR FAILURE TO FILE CERTAIN REPORTS OF EVENTS

Section 209(b) of Pub. L. 86–778 provided that: ''No deduction shall be imposed on or after the date of the enactment of this Act [Sept. 13, 1960] under section 203(f) of the Social Security Act [subsec. (f) of this section], as in effect prior to such date, on account of failure to file a report of an event described in section 203(c) of such Act, as in effect prior to such date; and no such deduction imposed prior to such date shall be collected after such date.''

PROHIBITION ON PAYMENT OF BENEFITS TO CERTAIN SPOUSES OR CHILDREN

Section 211(t) of Pub. L. 86–778 provided that: ''In any case where—

''(1) an individual has earnings (as defined in section 203(e)(4) of the Social Security Act [subsec. (e)(4) of this section] as in effect prior to the enactment of this Act [Sept. 13, 1960]) in a taxable year which begins before 1961 and ends in 1961 (but not on December 31, 1961), and

''(2) such individual's spouse or child entitled to monthly benefits on the basis of such individual's self-employment income has excess earnings (as defined in section 203(f)(3) of the Social Security Act as amended by this Act) in a taxable year which begins after 1960, and

''(3) one or more months in the taxable year specified in paragraph (2) are included in the taxable year specified in paragraph (1),

then, if a deduction is imposed against the benefits payable to such individual with respect to a month described in paragraph (3), such spouse or child, as the case may be, shall not, for purposes of subsections (b) and (f) of section 203 of the Social Security Act as amended by this Act, be entitled to a payment for such month.''

§ 404. Overpayments and underpayments

(a) Procedure for adjustment or recovery

(1) Whenever the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, under regulations prescribed by the Commissioner of Social Security, as follows:

(A) With respect to payment to a person of more than the correct amount, the Commissioner of Social Security shall decrease any payment under this subchapter to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this subchapter payable to his estate or to any other person on the basis of the wages and self-employment income which were the basis of the payments to such overpaid person, or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31, or shall apply any combination of the foregoing. A payment made under this subchapter on the basis of an erroneous report of death by the Department of Defense of an individual in the line of duty while he is a member of the uniformed services (as defined in section 410(m) of this title) on active duty (as defined in section 410(*l*) of this title) shall not be con-

sidered an incorrect payment for any month prior to the month such Department notifies the Commissioner of Social Security that such individual is alive.

(B) With respect to payment to a person of less than the correct amount, the Commissioner of Social Security shall make payment of the balance of the amount due such underpaid person, or, if such person dies before payments are completed or before negotiating one or more checks representing correct payments, disposition of the amount due shall be made in accordance with subsection (d) of this section.

(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

(C) such other person was entitled to a monthly benefit on the basis of the same wages and self-employment income as the deceased individual for the month preceding the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person. If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual's death, the representative payee shall be liable for the repayment of the overpayment, and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee.

(b) No recovery from persons without fault

In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience. In making for purposes of this subsection any determination of whether any individual is without fault, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).

(c) Nonliability of certifying and disbursing officers

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

(d) Payment to survivors or heirs when eligible person is deceased

If an individual dies before any payment due him under this subchapter is completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) to the person, if any, who is determined by the Commissioner of Social Security to be the surviving spouse of the deceased individual and who either (i) was living in the same household with the deceased at the time of his death or (ii) was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

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

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

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

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

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

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

(e) Adjustments due to supplemental security income payments

For payments which are adjusted by reason of payment of benefits under the supplemental security income program established by subchapter XVI of this chapter, see section 1320a–6 of this title.

(f) Collection of delinquent amounts

(1) With respect to any deliquent[1] amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, 3717, and 3718 of title 31 and in section 5514 of title 5, all as in effect immediately after April 26, 1996.

(2) For purposes of paragraph (1), the term ''delinquent amount'' means an amount—

(A) in excess of the correct amount of payment under this subchapter;

(B) paid to a person after such person has attained 18 years of age; and

(C) determined by the Commissioner of Social Security, under regulations, to be otherwise unrecoverable under this section after such person ceases to be a beneficiary under this subchapter.

(g) Cross-program recovery of overpayments

For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1320b–17 of this title.

(Aug. 14, 1935, ch. 531, title II, § 204, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1368; Aug. 28, 1950, ch. 809, title I, § 109(b)(1), 64 Stat. 523; Sept. 1, 1954, ch. 1206, title I, § 111(a), 68 Stat. 1085; Pub. L. 89–97, title III, § 329, July 30, 1965, 79 Stat. 401; Pub. L. 90–248, title I, §§ 152, 153(a), 154(a), Jan. 2, 1968, 81 Stat. 860, 861; Pub. L. 96–265, title V, § 501(b), June 9, 1980, 94 Stat. 470; Pub. L. 99–272, title XII, § 12113(a), Apr. 7, 1986, 100 Stat. 288; Pub. L. 101–239, title X, § 10305(b), Dec. 19, 1989, 103 Stat. 2483; Pub. L. 101–508, title V, § 5129(a), Nov. 5, 1990, 104 Stat. 1388–287; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 103–387, § 5(a), Oct. 22, 1994, 108 Stat. 4077; Pub. L. 104–134, title III, § 31001(z)(2)(A), Apr. 26, 1996, 110 Stat. 1321–379; Pub. L. 104–316, title I, § 115(g)(2)(E), Oct. 19, 1996, 110 Stat. 3835; Pub. L. 105–306, § 8(b)(1), Oct. 28, 1998, 112 Stat. 2929; Pub. L. 106–169, title II, §§ 201(a), 203(c), Dec. 14, 1999, 113 Stat. 1831, 1832; Pub. L. 108–203, title II, § 210(b)(1), Mar. 2, 2004, 118 Stat. 517.)

AMENDMENTS

2004—Subsec. (g). Pub. L. 108–203 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''For payments which are adjusted or withheld to recover an overpayment of supplemental security income benefits paid under subchapter XVI of this chapter (including State supplementary payments paid under an agreement pursuant to section 1382e(a) of this title or section 212(b) of Public Law 93–66), see section 1320b–17 of this title.''

1999—Subsec. (a)(2). Pub. L. 106–169, § 201(a), inserted at end ''If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual's death, the representative payee shall be liable for the repayment of the overpayment, and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee.''

Subsec. (f)(1). Pub. L. 106–169, § 203(c), substituted ''3711(f)'' for ''3711(e)'' and inserted ''all'' before ''as in effect''.

1998—Subsec. (g). Pub. L. 105–306 added subsec. (g).

1996—Subsec. (f). Pub. L. 104–134, which directed that subsec. (f) be amended to read as follows: ''(f)(1) With respect to any deliquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, 3717, and 3718 of title 31 and in section 5514 of title 5, as in effect immediately after April 26, 1996.'', was executed by substituting the new language for par. (1) only to reflect the probable intent of Congress. Prior to amendment, par. (1) read as follows: ''With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, and 3718 of title 31 as in effect on October 1, 1994.''

Subsec. (f)(1). Pub. L. 104–316 substituted ''sections 3711(e)'' for ''sections 3711(f)''.

1994—Subsecs. (a)(1), (b), (d)(1), (4), (5). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (f). Pub. L. 103–387 added subsec. (f).

1990—Subsec. (a)(1)(A). Pub. L. 101–508 inserted ''or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31,'' after ''payments to such overpaid person,''.

1989—Subsec. (b). Pub. L. 101–239 inserted at end ''In making for purposes of this subsection any determination of whether any individual is without fault, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).''

1986—Subsec. (a). Pub. L. 99–272 redesignated existing subsec. (a) as (a)(1) and pars. (1) and (2) thereof as subpars. (A) and (B), respectively, and added par. (2).

1980—Subsec. (e). Pub. L. 96–265 added subsec. (e).

1968—Subsec. (a). Pub. L. 90–248, § 152(a), incorporated in text preceding par. (1) part of existing provisions and broadened the Secretary's authority to include recovery of overpayments.

Subsec. (a)(1). Pub. L. 90–248, § 153(a), inserted last sentence which provided that payments made on an erroneous report by the Defense Department of the death, in the line of duty, of a member of the uniformed services on active duty are not to be deemed incorrect payments until the Department notifies the Secretary that he is alive.

Subsec. (a)(2). Pub. L. 90–248, § 152(a), incorporated in par. (2) part of existing provisions and broadened Secretary's authority to provide that in the case of underpayments, the Secretary is to pay the balance due the underpaid person but if he dies before receiving the full amount due him or before negotiating checks representing the correct payments, the balance due or the amount for which the checks were issued but not negotiated are to be paid under subsec. (d) of this section.

Subsec. (b). Pub. L. 90–248, § 152(b), authorized the Secretary to waive adjustment or recovery of overpayments from any person who is without fault, even where he is not the overpaid person and the latter is at fault, whereas heretofore a condition for waiver was that the overpaid person be without fault.

Subsec. (d). Pub. L. 90–248, § 154(a), struck out, in text preceding par. (1), provision excepting subsec. (d) from subsec. (a) and provision that the total amount due at the time of death may not exceed the amount of the monthly insurance benefit to which an individual was entitled for the month preceding the month in which he died, added cl. (ii) in par. (1), added pars. (2) to (6), designated existing provisions as par. (7) and inserted therein references to pars. (1) to (6).

1965—Subsec. (d). Pub. L. 89–97 added subsec. (d).

1954—Subsec. (a). Act Sept. 1, 1954, inserted ''and self-employment income'' after ''wages'' in second sentence.

[1] So in original. Probably should be ''delinquent''.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''board''.

1939—Act Aug. 10, 1939, omitted former provisions relating to payments to aged individuals not qualified for benefits and substituted the present section relating to overpayments and underpayments.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, § 210(c), Mar. 2, 2004, 118 Stat. 517, provided that: ''The amendments and repeal made by this section [amending this section and sections 1008, 1320b–17, and 1383 of this title and repealing section 1320b–18 of this title] shall take effect on the date of enactment of this Act [Mar. 2, 2004], and shall be effective with respect to overpayments under titles II, VIII, and XVI of the Social Security Act [subchapters II, VIII, and XVI of this chapter] that are outstanding on or after such date.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–169, title II, § 201(c), Dec. 14, 1999, 113 Stat. 1831, provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply to overpayments made 12 months or more after the date of the enactment of this Act [Dec. 14, 1999].''

Amendment by section 203(c) of Pub. L. 106–169 applicable to debt outstanding on or after Dec. 14, 1999, see section 203(d) of Pub. L. 106–169, set out as a note under section 3701 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–306, § 8(c), Oct. 28, 1998, 112 Stat. 2930, provided that: ''The amendments made by this section [enacting section 1320b–17 of this title and amending this section and section 1383 of this title] shall take effect on the date of the enactment of this Act [Oct. 28, 1998] and shall apply to amounts incorrectly paid which remain outstanding on or after such date.''

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–387 applicable to collection activities begun on or after Oct. 22, 1994, see section 5(c) of Pub. L. 103–387, as amended, set out as a note under section 3701 of Title 31, Money and Finance.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Jan. 1, 1991, and inapplicable to refunds to which the amendments made by section 2653 of the Deficit Reduction Act of 1984, Pub. L. 98–369, do not apply, see section 5129(d) of Pub. L. 101–508, set out as a note under section 6402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable with respect to determinations made on or after July 1, 1990, see section 10305(f) of Pub. L. 101–239, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12113(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply only in the case of deaths of which the Secretary is first notified on or after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 applicable in the case of payments of monthly insurance benefits under this subchapter, entitlement for which is determined on or after July 1, 1981, see section 501(d) of Pub. L. 96–265, set out as an Effective Date note under section 1320a–6 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 153(b) of Pub. L. 90–248 provided that: ''The amendment made by this section [amending this section] shall apply with respect to benefits under title II of the Social Security Act [this subchapter] if the individual to whom such benefits were paid would have been entitled to such benefits in or after the month in which this Act was enacted [January 1968] if the report mentioned in the amendment made by subsection (a) of this section had been correct (but without regard to the provisions of section 202(j)(1) of such Act [section 402(j)(1) of this title]).''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

§ 405. Evidence, procedure, and certification for payments

(a) Rules and regulations; procedures

The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

(b) Administrative determination of entitlement to benefits; findings of fact; hearings; investigations; evidentiary hearings in reconsiderations of disability benefit terminations; subsequent applications

(1) The Commissioner of Social Security is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this subchapter. Any such decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, surviving divorced father, husband, divorced husband, widower, surviving divorced husband, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Commissioner of Social Security has rendered, the Commissioner shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse the Commissioner's findings of fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. The Commissioner of Social Security is further authorized, on the Commissioner's own motion, to hold such hearings and to conduct such investigations and other proceedings as the Commis-

sioner may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under rules of evidence applicable to court procedure.

(2) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Commissioner of Social Security not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Commissioner of Social Security (before any hearing under paragraph (1) on the issue of such entitlement) of the Commissioner's determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Commissioner of Social Security where the finding was originally made by the State agency, and shall be made by the Commissioner of Social Security where the finding was originally made by the Commissioner of Social Security. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Commissioner of Social Security of a finding described in subparagraph (B) which was originally made by the Commissioner of Social Security, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).

(3)(A) A failure to timely request review of an initial adverse determination with respect to an application for any benefit under this subchapter or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any benefit under this subchapter if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for benefits in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 421 of this title.

(B) In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Commissioner of Social Security shall describe in clear and specific language the effect on possible entitlement to benefits under this subchapter of choosing to reapply in lieu of requesting review of the determination.

(c) Wage records

(1) For the purposes of this subsection—

(A) The term ''year'' means a calendar year when used with respect to wages and a taxable year when used with respect to self-employment income.

(B) The term ''time limitation'' means a period of three years, three months, and fifteen days.

(C) The term ''survivor'' means an individual's spouse, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent, who survives such individual.

(D) The term ''period'' when used with respect to self-employment income means a taxable year and when used with respect to wages means—

(i) a quarter if wages were reported or should have been reported on a quarterly basis on tax returns filed with the Secretary of the Treasury or his delegate under section 6011 of the Internal Revenue Code of 1986 or regulations thereunder (or on reports filed by a State under section 418(e)[1] of this title (as in effect prior to December 31, 1986) or regulations thereunder),

(ii) a year if wages were reported or should have been reported on a yearly basis on such tax returns or reports, or

(iii) the half year beginning January 1 or July 1 in the case of wages which were reported or should have been reported for calendar year 1937.

(2)(A) On the basis of information obtained by or submitted to the Commissioner of Social Security, and after such verification thereof as the Commissioner deems necessary, the Commissioner of Social Security shall establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived and, upon request, shall inform any individual or his survivor, or the legal representative of such individual or his estate, of the amounts of wages and self-employment income of such individual and the periods during which such wages were paid and such income was derived, as shown by such records at the time of such request.

(B)(i) In carrying out the Commissioner's duties under subparagraph (A) and subparagraph (F), the Commissioner of Social Security shall take affirmative measures to assure that social security account numbers will, to the maximum extent practicable, be assigned to all members of appropriate groups or categories of individuals by assigning such numbers (or ascertaining that such numbers have already been assigned):

(I) to aliens at the time of their lawful admission to the United States either for perma-

[1] See References in Text note below.

nent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment;

(II) to any individual who is an applicant for or recipient of benefits under any program financed in whole or in part from Federal funds including any child on whose behalf such benefits are claimed by another person; and

(III) to any other individual when it appears that he could have been but was not assigned an account number under the provisions of subclauses (I) or (II) but only after such investigation as is necessary to establish to the satisfaction of the Commissioner of Social Security, the identity of such individual, the fact that an account number has not already been assigned to such individual, and the fact that such individual is a citizen or a noncitizen who is not, because of his alien status, prohibited from engaging in employment;

and, in carrying out such duties, the Commissioner of Social Security is authorized to take affirmative measures to assure the issuance of social security numbers:

(IV) to or on behalf of children who are below school age at the request of their parents or guardians; and

(V) to children of school age at the time of their first enrollment in school.

(ii) The Commissioner of Social Security shall require of applicants for social security account numbers such evidence as may be necessary to establish the age, citizenship, or alien status, and true identity of such applicants, and to determine which (if any) social security account number has previously been assigned to such individual. With respect to an application for a social security account number for an individual who has not attained the age of 18 before such application, such evidence shall include the information described in subparagraph (C)(ii).

(iii) In carrying out the requirements of this subparagraph, the Commissioner of Social Security shall enter into such agreements as may be necessary with the Attorney General and other officials and with State and local welfare agencies and school authorities (including nonpublic school authorities).

(C)(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

(ii) In the administration of any law involving the issuance of a birth certificate, each State shall require each parent to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if the parent has more than one such number) issued to the parent unless the State (in accordance with regulations prescribed by the Commissioner of Social Security) finds good cause for not requiring the furnishing of such number. The State shall make numbers furnished under this subclause available to the Commissioner of Social Security and the agency administering the State's plan under part D of subchapter IV of this chapter in accordance with Federal or State law and regulation. Such numbers shall not be recorded on the birth certificate. A State shall not use any social security account number, obtained with respect to the issuance by the State of a birth certificate, for any purpose other than for the enforcement of child support orders in effect in the State, unless section 7(a) of the Privacy Act of 1974 does not prohibit the State from requiring the disclosure of such number, by reason of the State having adopted, before January 1, 1975, a statute or regulation requiring such disclosure.

(iii)(I) In the administration of section 9 of the Food Stamp Act of 1977 (7 U.S.C. 2018) involving the determination of the qualifications of applicants under such Act [7 U.S.C. 2011 et seq.], the Secretary of Agriculture may require each applicant retail store or wholesale food concern to furnish to the Secretary of Agriculture the social security account number of each individual who is an officer of the store or concern and, in the case of a privately owned applicant, furnish the social security account numbers of the owners of such applicant. No officer or employee of the Department of Agriculture shall have access to any such number for any purpose other than the establishment and maintenance of a list of the names and social security account numbers of such individuals for use in determining those applicants who have been previously sanctioned or convicted under section 12 or 15 of such Act (7 U.S.C. 2021 or 2024).

(II) The Secretary of Agriculture may share any information contained in any list referred to in subclause (I) with any other agency or instrumentality of the United States which otherwise has access to social security account numbers in accordance with this subsection or other applicable Federal law, except that the Secretary of Agriculture may share such information only to the extent that such Secretary determines such sharing would assist in verifying and matching such information against information maintained by such other agency or instrumentality. Any such information shared pursuant to this subclause may be used by such other agency or instrumentality only for the purpose of effective administration and enforcement of the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.] or for the purpose of investigation of violations of other Federal laws or enforcement of such laws.

(III) The Secretary of Agriculture, and the head of any other agency or instrumentality referred to in this subclause, shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers

obtained pursuant to this clause only to officers and employees of the United States whose duties or responsibilities require access for the purposes described in subclause (II).

(IV) The Secretary of Agriculture, and the head of any agency or instrumentality with which information is shared pursuant to clause [2] (II), shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.

(iv) In the administration of section 506 of the Federal Crop Insurance Act [7 U.S.C. 1506], the Federal Crop Insurance Corporation may require each policyholder and each reinsured company to furnish to the insurer or to the Corporation the social security account number of such policyholder, subject to the requirements of this clause. No officer or employee of the Federal Crop Insurance Corporation shall have access to any such number for any purpose other than the establishment of a system of records necessary for the effective administration of such Act [7 U.S.C. 1501 et seq.]. The Manager of the Corporation may require each policyholder to provide to the Manager, at such times and in such manner as prescribed by the Manager, the social security account number of each individual that holds or acquires a substantial beneficial interest in the policyholder. For purposes of this clause, the term ''substantial beneficial interest'' means not less than 5 percent of all beneficial interest in the policyholder. The Secretary of Agriculture shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States or authorized persons whose duties or responsibilities require access for the administration of the Federal Crop Insurance Act. The Secretary of Agriculture shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of such social security account numbers. For purposes of this clause the term ''authorized person'' means an officer or employee of an insurer whom the Manager of the Corporation designates by rule, subject to appropriate safeguards including a prohibition against the release of such social security account number (other than to the Corporation) by such person.

(v) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i), such provision shall, on and after October 4, 1976, be null, void, and of no effect. If and to the extent that any such provision is inconsistent with the requirement set forth in clause (ii), such provision shall, on and after October 13, 1988, be null, void, and of no effect.

(vi)(I) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency administering a program funded under part A of subchapter IV of this chapter or an agency operating pursuant to the provisions of part D of such subchapter.

(II) Any State or political subdivision thereof (and any person acting as an agent of such an agency or instrumentality), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, may not display a social security account number issued by the Commissioner of Social Security (or any derivative of such number) on any driver's license, motor vehicle registration, or personal identification card (as defined in section 7212(a)(2) of the 9/11 Commission Implementation Act of 2004), or include, on any such license, registration, or personal identification card, a magnetic strip, bar code, or other means of communication which conveys such number (or derivative thereof).

(vii) For purposes of this subparagraph, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(viii)(I) Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.

(II) Paragraphs (1), (2), and (3) of section 7213(a) of the Internal Revenue Code of 1986 shall apply with respect to the unauthorized willful disclosure to any person of social security account numbers and related records obtained or maintained by an authorized person pursuant to a provision of law enacted on or after October 1, 1990, in the same manner and to the same extent as such paragraphs apply with respect to unauthorized disclosures of return and return information described in such paragraphs. Paragraph (4) of section 7213(a) of such Code shall apply with respect to the willful offer of any item of material value in exchange for any such social security account number or related record in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

(III) For purposes of this clause, the term ''authorized person'' means an officer or employee of the United States, an officer or employee of any State, political subdivision of a State, or agency of a State or political subdivision of a State, and any other person (or officer or employee thereof), who has or had access to social security account numbers or related records pursuant to any provision of law enacted on or after October 1, 1990. For purposes of this subclause, the term ''officer or employee'' includes a former officer or employee.

(IV) For purposes of this clause, the term ''related record'' means any record, list, or compila-

[2] So in original. Probably should be ''subclause''.

tion that indicates, directly or indirectly, the identity of any individual with respect to whom a social security account number or a request for a social security account number is maintained pursuant to this clause.

(ix) In the administration of the provisions of chapter 81 of title 5 and the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.), the Secretary of Labor may require by regulation that any person filing a notice of injury or a claim for benefits under such provisions provide as part of such notice or claim such person's social security account number, subject to the requirements of this clause. No officer or employee of the Department of Labor shall have access to any such number for any purpose other than the establishment of a system of records necessary for the effective administration of such provisions. The Secretary of Labor shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause to officers and employees of the United States whose duties or responsibilities require access for the administration or enforcement of such provisions. The Secretary of Labor shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.

(D)(i) It is the policy of the United States that—

(I) any State (or any political subdivision of a State) and any authorized blood donation facility may utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of identifying blood donors, and

(II) any State (or political subdivision of a State) may require any individual who donates blood within such State (or political subdivision) to furnish to such State (or political subdivision), to any agency thereof having related administrative responsibility, or to any authorized blood donation facility the social security account number (or numbers, if the donor has more than one such number) issued to the donor by the Commissioner of Social Security.

(ii) If and to the extent that any provision of Federal law enacted before November 10, 1988, is inconsistent with the policy set forth in clause (i), such provision shall, on and after November 10, 1988, be null, void, and of no effect.

(iii) For purposes of this subparagraph—

(I) the term ''authorized blood donation facility'' means an entity described in section 1320b–11(h)(1)(B) of this title, and

(II) the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(E)(i) It is the policy of the United States that—

(I) any State (or any political subdivision of a State) may utilize the social security account numbers issued by the Commissioner of Social Security for the additional purposes described in clause (ii) if such numbers have been collected and are otherwise utilized by such State (or political subdivision) in accordance with applicable law, and

(II) any district court of the United States may use, for such additional purposes, any such social security account numbers which have been so collected and are so utilized by any State.

(ii) The additional purposes described in this clause are the following:

(I) Identifying duplicate names of individuals on master lists used for jury selection purposes.

(II) Identifying on such master lists those individuals who are ineligible to serve on a jury by reason of their conviction of a felony.

(iii) To the extent that any provision of Federal law enacted before August 15, 1994, is inconsistent with the policy set forth in clause (i), such provision shall, on and after August 15, 1994, be null, void, and of no effect.

(iv) For purposes of this subparagraph, the term ''State'' has the meaning such term has in subparagraph (D).

(F) The Commissioner of Social Security shall require, as a condition for receipt of benefits under this subchapter, that an individual furnish satisfactory proof of a social security account number assigned to such individual by the Commissioner of Social Security or, in the case of an individual to whom no such number has been assigned, that such individual make proper application for assignment of such a number.

(G) The Commissioner of Social Security shall issue a social security card to each individual at the time of the issuance of a social security account number to such individual. The social security card shall be made of banknote paper, and (to the maximum extent practicable) shall be a card which cannot be counterfeited.

(H) The Commissioner of Social Security shall share with the Secretary of the Treasury the information obtained by the Commissioner pursuant to the second sentence of subparagraph (B)(ii) and to subparagraph (C)(ii) for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children.

(3) The Commissioner's records shall be evidence for the purpose of proceedings before the Commissioner of Social Security or any court of the amounts of wages paid to, and self-employment income derived by, an individual and of the periods in which such wages were paid and such income was derived. The absence of an entry in such records as to wages alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual in any period shall be evidence that no such alleged wages were paid to, or that no such alleged income was derived by, such individual during such period.

(4) Prior to the expiration of the time limitation following any year the Commissioner of Social Security may, if it is brought to the Commissioner's attention that any entry of wages or self-employment income in the Commissioner's records for such year is erroneous or that any item of wages or self-employment income for

such year has been omitted from such records, correct such entry or include such omitted item in the Commissioner's records, as the case may be. After the expiration of the time limitation following any year—

(A) the Commissioner's records (with changes, if any, made pursuant to paragraph (5) of this subsection) of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purposes of this subchapter;

(B) the absence of an entry in the Commissioner's records as to the wages alleged to have been paid by an employer to an individual during any period in such year shall be presumptive evidence for the purposes of this subchapter that no such alleged wages were paid to such individual in such period; and

(C) the absence of an entry in the Commissioner's records as to the self-employment income alleged to have been derived by an individual in such year shall be conclusive for the purposes of this subchapter that no such alleged self-employment income was derived by such individual in such year unless it is shown that he filed a tax return of his self-employment income for such year before the expiration of the time limitation following such year, in which case the Commissioner of Social Security shall include in the Commissioner's records the self-employment income of such individual for such year.

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-employment income was derived or alleged to have been derived by, an individual, the Commissioner of Social Security may change or delete any entry with respect to wages or self-employment income in the Commissioner's records of such year for such individual or include in the Commissioner's records of such year for such individual any omitted item of wages or self-employment income but only—

(A) if an application for monthly benefits or for a lump-sum death payment was filed within the time limitation following such year; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon the application for monthly benefits or lump-sum death payment;

(B) if within the time limitation following such year an individual or his survivor makes a request for a change or deletion, or for an inclusion of an omitted item, and alleges in writing that the Commissioner's records of the wages paid to, or the self-employment income derived by, such individual in such year are in one or more respects erroneous; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon such request. Written notice of the Commissioner's decision on any such request shall be given to the individual who made the request;

(C) to correct errors apparent on the face of such records;

(D) to transfer items to records of the Railroad Retirement Board if such items were credited under this subchapter when they should have been credited under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.], or to enter items transferred by the Railroad Retirement Board which have been credited under the Railroad Retirement Act of 1937 or 1974 when they should have been credited under this subchapter;

(E) to delete or reduce the amount of any entry which is erroneous as a result of fraud;

(F) to conform the Commissioner's records to—

(i) tax returns or portions thereof (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act, under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939, under chapter 2 or 21 of the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986, or under regulations made under authority of such title, subchapter, or chapter;

(ii) wage reports filed by a State pursuant to an agreement under section 418 of this title or regulations of the Commissioner of Social Security thereunder; or

(iii) assessments of amounts due under an agreement pursuant to section 418 of this title (as in effect prior to December 31, 1986), if such assessments are made within the period specified in subsection (q)[3] of such section (as so in effect), or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section;

except that no amount of self-employment income of an individual for any taxable year (if such return or statement was filed after the expiration of the time limitation following the taxable year) shall be included in the Commissioner's records pursuant to this subparagraph;

(G) to correct errors made in the allocation, to individuals or periods, of wages or self-employment income entered in the records of the Commissioner of Social Security;

(H) to include wages paid during any period in such year to an individual by an employer;

(I) to enter items which constitute remuneration for employment under subsection (o) of this section, such entries to be in accordance with certified reports of records made by the Railroad Retirement Board pursuant to section 5(k)(3) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(k)(3)] or section 7(b)(7) of the Railroad Retirement Act of 1974 [45 U.S.C. 231f(b)(7)]; or

(J) to include self-employment income for any taxable year, up to, but not in excess of, the amount of wages deleted by the Commissioner of Social Security as payments erroneously included in such records as wages paid to such individual, if such income (or net earnings from self-employment), not already included in such records as self-employment income, is included in a return or statement (referred to in subparagraph (F) of this sub-

[3] See References in Text note below.

section) filed before the expiration of the time limitation following the taxable year in which such deletion of wages is made.

(6) Written notice of any deletion or reduction under paragraph (4) or (5) of this subsection shall be given to the individual whose record is involved or to his survivor, except that (A) in the case of a deletion or reduction with respect to any entry of wages such notice shall be given to such individual only if he has previously been notified by the Commissioner of Social Security of the amount of his wages for the period involved, and (B) such notice shall be given to such survivor only if he or the individual whose record is involved has previously been notified by the Commissioner of Social Security of the amount of such individual's wages and self-employment income for the period involved.

(7) Upon request in writing (within such period, after any change or refusal of a request for a change of the Commissioner's records pursuant to this subsection, as the Commissioner of Social Security may prescribe), opportunity for hearing with respect to such change or refusal shall be afforded to any individual or his survivor. If a hearing is held pursuant to this paragraph the Commissioner of Social Security shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall include any omitted items, or change or delete any entry, in the Commissioner's records as may be required by such findings and decision.

(8) A translation into English by a third party of a statement made in a foreign language by an applicant for or beneficiary of monthly insurance benefits under this subchapter shall not be regarded as reliable for any purpose under this subchapter unless the third party, under penalty of perjury—

(A) certifies that the translation is accurate; and

(B) discloses the nature and scope of the relationship between the third party and the applicant or recipient, as the case may be.

(9) Decisions of the Commissioner of Social Security under this subsection shall be reviewable by commencing a civil action in the United States district court as provided in subsection (g) of this section.

(d) Issuance of subpenas in administrative proceedings

For the purpose of any hearing, investigation, or other proceeding authorized or directed under this subchapter, or relative to any other matter within the Commissioner's jurisdiction hereunder, the Commissioner of Social Security shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Commissioner of Social Security. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceeding may be required from any place in the United States or in any Territory or possession thereof. Subpenas of the Commissioner of Social Security shall be served by anyone authorized by the Commissioner (1) by delivering a copy thereof to the individual named therein, or (2) by registered mail or by certified mail addressed to such individual at his last dwelling place or principal place of business. A verified return by the individual so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post-office receipt therefor signed by the individual so served, shall be proof of service. Witnesses so subpenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(e) Judicial enforcement of subpenas; contempt

In case of contumacy by, or refusal to obey a subpena duly served upon, any person, any district court of the United States for the judicial district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Commissioner of Social Security, shall have jurisdiction to issue an order requiring such person to appear and give testimony, or to appear and produce evidence, or both; any failure to obey such order of the court may be punished by said court as contempt thereof.

(f) Repealed. Pub. L. 91–452, title II, § 236, Oct. 15, 1970, 84 Stat. 930

(g) Judicial review

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of the Commissioner's answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Commissioner of Social Security or a decision is rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Commissioner of Social Security, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files

the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Commissioner of Social Security shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm the Commissioner's findings of fact or the Commissioner's decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript of the additional record and testimony upon which the Commissioner's action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.

(h) Finality of Commissioner's decision

The findings and decision of the Commissioner of Social Security after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of title 28 to recover on any claim arising under this subchapter.

(i) Certification for payment

Upon final decision of the Commissioner of Social Security, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this subchapter, the Commissioner of Social Security shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Fiscal Service of the Department of the Treasury, and prior to any action thereon by the Government Accountability Office, shall make payment in accordance with the certification of the Commissioner of Social Security (except that in the case of (A) an individual who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) creditable under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] or the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], (B) the wife or husband of such an individual, (C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], and (D) any other person entitled to benefits under section 402 of this title on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry, as defined in the Railroad Retirement Act of 1974, at the time of his death), such certification shall be made to the Railroad Retirement Board which shall provide for such payment or payments to such person on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974): *Provided*, That where a review of the Commissioner's decision is or may be sought under subsection (g) of this section the Commissioner of Social Security may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Commissioner of Social Security.

(j) Representative payees

(1)(A) If the Commissioner of Social Security determines that the interest of any individual under this subchapter would be served thereby, certification of payment of such individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's ''representative payee''). If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee has misused any individual's benefit paid to such representative payee pursuant to this subsection or section 1007 or 1383(a)(2) of this title, the Commissioner of Social Security shall promptly revoke certification for payment of benefits to such representative payee pursuant to this subsection and certify payment to an alternative representative payee or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(2)(A) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of—

(i) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

(ii) adequate evidence that such certification is in the interest of such individual (as deter-

mined by the Commissioner of Social Security in regulations).

(B)(i) As part of the investigation referred to in subparagraph (A)(i), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity has been submitted with an application for benefits under this subchapter, subchapter VIII of this chapter, or subchapter XVI of this chapter,

(II) verify such person's social security account number (or employer identification number),

(III) determine whether such person has been convicted of a violation of section 408, 1011, or 1383a of this title,

(IV) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,

(V) obtain information concerning whether such person is a person described in section 402(x)(1)(A)(iv) of this title, and

(VI) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection, the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or payment of benefits to such person has been terminated pursuant to section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter VIII of this chapter, or subchapter XVI of this chapter.

(ii) The Commissioner of Social Security shall establish and maintain a centralized file, which shall be updated periodically and which shall be in a form which renders it readily retrievable by each servicing office of the Social Security Administration. Such file shall consist of—

(I) a list of the names and social security account numbers (or employer identification numbers) of all persons with respect to whom certification of payment of benefits has been revoked on or after January 1, 1991, pursuant to this subsection, whose designation as a representative payee has been revoked pursuant to section 1007(a) of this title, or with respect to whom payment of benefits has been terminated on or after such date pursuant to section 1383(a)(2)(A)(iii) of this title, by reason of misuse of funds paid as benefits under this subchapter, subchapter VIII of this chapter, or subchapter XVI of this chapter, and

(II) a list of the names and social security account numbers (or employer identification numbers) of all persons who have been convicted of a violation of section 408, 1011, or 1383a of this title.

(iii) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this paragraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

(I) such person is described in section 402(x)(1)(A)(iv) of this title,

(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

(III) the location or apprehension of such person is within the officer's official duties.

(C)(i) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if—

(I) such person has previously been convicted as described in subparagraph (B)(i)(III),

(II) except as provided in clause (ii), certification of payment of benefits to such person under this subsection has previously been revoked as described in subparagraph (B)(i)(VI)[4] the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or payment of benefits to such person pursuant to section 1383(a)(2)(A)(ii) of this title has previously been terminated as described in section 1383(a)(2)(B)(ii)(VI) of this title,

(III) except as provided in clause (iii), such person is a creditor of such individual who provides such individual with goods or services for consideration,

(IV) such person has previously been convicted as described in subparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction, or

(V) such person is a person described in section 402(x)(1)(A)(iv) of this title.

(ii) The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant exemptions to any person from the provisions of clause (i)(II) on a case-by-case basis if such exemption is in the best interest of the individual whose benefits would be paid to such person pursuant to this subsection.

(iii) Clause (i)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual,

(II) a legal guardian or legal representative of such individual,

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State,

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the certification of payment to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative rep-

[4] So in original. Probably should be followed by a comma.

resentative payee to whom such certification of payment would serve the best interests of such individual, or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(iv) The procedures referred to in clause (iii)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary,

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest, and

(III) no other more suitable representative payee can be found.

(v) In the case of an individual described in paragraph (1)(B), when selecting such individual's representative payee, preference shall be given to—

(I) a certified community-based nonprofit social service agency (as defined in paragraph (10)),

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities,

(III) a State or local government agency with fiduciary responsibilities, or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate,

unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(D)(i) Subject to clause (ii), if the Commissioner of Social Security makes a determination described in the first sentence of paragraph (1) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subsection.

(ii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (i) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual is, as of the date of the Commissioner's determination, legally incompetent, under the age of 15 years, or described in paragraph (1)(B).

(iii) Payment pursuant to this subsection of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual or the representative payee as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interest of the individual entitled to such benefits.

(E)(i) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to certify payment of such individual's benefit to a representative payee under paragraph (1) or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Commissioner of Social Security to the same extent as is provided in subsection (b) of this section, and to judicial review of the Commissioner's final decision as is provided in subsection (g) of this section.

(ii) In advance of the certification of payment of an individual's benefit to a representative payee under paragraph (1), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to certify such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(iii) Any notice described in clause (ii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (i) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(3)(A) In any case where payment under this subchapter is made to a person other than the individual entitled to such payment, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(C) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

(D) Notwithstanding subparagraphs (A), (B), and (C), the Commissioner of Social Security may require a report at any time from any person receiving payments on behalf of another, if

the Commissioner of Social Security has reason to believe that the person receiving such payments is misusing such payments.

(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A) or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.

(F) The Commissioner of Social Security shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of—

(i) the address and the social security account number (or employer identification number) of each representative payee who is receiving benefit payments pursuant to this subsection, section 1007 of this title, or section 1383(a)(2) of this title, and

(ii) the address and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this subsection, section 1007 of this title, or section 1383(a)(2) of this title.

(G) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and certified community-based nonprofit social service agencies (as defined in paragraph (10)) which are qualified to serve as representative payees pursuant to this subsection or section 1007 or 1383(a)(2) of this title and which are located in the area served by such servicing office.

(4)(A)(i) Except as provided in the next sentence, a qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which the individual is described in paragraph (1)(B)).

A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of paragraphs (5) and (6). The Commissioner shall adjust annually (after 1995) each dollar amount set forth in subclause (II) under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00. Any agreement providing for a fee in excess of the amount permitted under this subparagraph shall be void and shall be treated as misuse by such organization of such individual's benefits.

(ii) In the case of an individual who is no longer currently entitled to monthly insurance benefits under this subchapter but to whom all past-due benefits have not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I).

(B) For purposes of this paragraph, the term ''qualified organization'' means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any certified community-based nonprofit social service agency (as defined in paragraph (10)), if such agency, in accordance with any applicable regulations of the Commissioner of Social Security—

(i) regularly provides services as the representative payee, pursuant to this subsection or section 1007 or 1383(a)(2) of this title, concurrently to 5 or more individuals,[5]

(ii) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from clause (ii) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(C) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under subparagraph (A) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, or imprisoned not more than 6 months, or both.

(5) In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to such misused benefits. In any case in which a representative payee that—

(A) is not an individual (regardless of whether it is a ''qualified organization'' within the meaning of paragraph (4)(B)); or

(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this subchapter, subchapter VIII of this chapter, subchapter XVI of this chapter, or any combination of such subchapters;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's al-

[5] So in original. Probably should be followed by ''and''.

ternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B). The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(6)(A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under this subchapter (alone or in combination with benefits payable under subchapter VIII of this chapter or subchapter XVI of this chapter) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 1007 of this title, or section 1383(a)(2) of this title in any case in which—

(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

(ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (10) of this subsection or section 1383(a)(2)(I) of this title); or

(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this subchapter. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

(i) the number of such reviews;

(ii) the results of such reviews;

(iii) the number of cases in which the representative payee was changed and why;

(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(v) the number of cases discovered in which there was a misuse of funds;

(vi) how any such cases of misuse of funds were dealt with by the Commissioner;

(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(viii) such other information as the Commissioner deems appropriate.

(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual's alternative representative payee.

(B) The total of the amount certified for payment to such individual or such individual's alternative representative payee under subparagraph (A) and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual.

(8) For purposes of this subsection, the term ''benefit based on disability'' of an individual means a disability insurance benefit of such individual under section 423 of this title or a child's, widow's, or widower's insurance benefit of such individual under section 402 of this title based on such individual's disability.

(9) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this subchapter for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term ''use and benefit'' for purposes of this paragraph.

(10) For purposes of this subsection, the term ''certified community-based nonprofit social service agency'' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.

(k) Payments to incompetents

Any payment made after December 31, 1939, under conditions set forth in subsection (j) of this section, any payment made before January 1, 1940, to, or on behalf of, a legally incompetent individual, and any payment made after December 31, 1939, to a legally incompetent individual without knowledge by the Commissioner of Social Security of incompetency prior to certification of payment, if otherwise valid under this subchapter, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(*l*) Delegation of powers and duties by Commissioner

The Commissioner of Social Security is authorized to delegate to any member, officer, or employee of the Social Security Administration designated by the Commissioner any of the powers conferred upon the Commissioner by this section, and is authorized to be represented by the Commissioner's own attorneys in any court in any case or proceeding arising under the provisions of subsection (e) of this section.

(m) Repealed. Aug. 28, 1950, ch. 809, title I, § 101(b)(2), 64 Stat. 488

(n) Joint payments

The Commissioner of Social Security may, in the Commissioner's discretion, certify to the Managing Trustee any two or more individuals of the same family for joint payment of the total benefits payable to such individuals for any month, and if one of such individuals dies before a check representing such joint payment is negotiated, payment of the amount of such unnegotiated check to the surviving individual or individuals may be authorized in accordance with regulations of the Secretary of the Treasury; except that appropriate adjustment or recovery shall be made under section 404(a) of this title with respect to so much of the amount of such check as exceeds the amount to which such surviving individual or individuals are entitled under this subchapter for such month.

(*o*) Crediting of compensation under Railroad Retirement Act

If there is no person who would be entitled, upon application therefor, to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], or to a lump-sum payment under section 6(b) of such Act [45 U.S.C. 231e(b)], with respect to the death of an employee (as defined in such Act), then, notwithstanding section 410(a)(9) of this title, compensation (as defined in such Railroad Retirement Act, but excluding compensation attributable as having been paid during any month on account of military service creditable under section 3(i) of such Act [45 U.S.C. 231b(i)] if wages are deemed to have been paid to such employee during such month under subsection (a) or (e) of section 417 of this title) of such employee shall constitute remuneration for employment for purposes of determining (A) entitlement to and the amount of any lump-sum death payment under this subchapter on the basis of such employee's wages and self-employment income and (B) entitlement to and the amount of any monthly benefit under this subchapter, for the month in which such employee died or for any month thereafter, on the basis of such wages and self-employment income. For such purposes, compensation (as so defined) paid in a calendar year before 1978 shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee rendered services for such compensation.

(p) Special rules in case of Federal service

(1) With respect to service included as employment under section 410 of this title which is performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, to which the provisions of subsection (*l*)(1) of such section are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.], to which the provisions of section 410(*o*) of this title are applicable, the Commissioner of Social Security shall not make determinations as to the amounts of remuneration for such service, or the periods in which or for which such remuneration was paid, but shall accept the determinations with respect thereto of the head of the appropriate Federal agency or instrumentality, and of such agents as such head may designate, as evidenced by returns filed in accordance with the provisions of section 3122 of the Internal Revenue Code of 1954 and certifications made pursuant to this subsection. Such determinations shall be final and conclusive. Nothing in this paragraph shall be construed to affect the Commissioner's authority to determine under sections 409 and 410 of this title whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages.

(2) The head of any such agency or instrumentality is authorized and directed, upon written request of the Commissioner of Social Security, to make certification to the Commissioner with respect to any matter determinable for the Commissioner of Social Security by such head or his agents under this subsection, which the Commissioner of Social Security finds necessary in administering this subchapter.

(3) The provisions of paragraphs (1) and (2) of this subsection shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of paragraphs (1) and (2) of this subsection the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of paragraphs (1) and (2) shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of paragraphs (1) and (2) the Secretary of Transportation shall be deemed to be the head of such instrumentality.

(q) Expedited benefit payments

(1) The Commissioner of Social Security shall establish and put into effect procedures under

which expedited payment of monthly insurance benefits under this subchapter will, subject to paragraph (4) of this subsection, be made as set forth in paragraphs (2) and (3) of this subsection.

(2) In any case in which—

(A) an individual makes an allegation that a monthly benefit under this subchapter was due him in a particular month but was not paid to him, and

(B) such individual submits a written request for the payment of such benefit—

(i) in the case of an individual who received a regular monthly benefit in the month preceding the month with respect to which such allegation is made, not less than 30 days after the 15th day of the month with respect to which such allegation is made (and in the event that such request is submitted prior to the expiration of such 30-day period, it shall be deemed to have been submitted upon the expiration of such period), and

(ii) in any other case, not less than 90 days after the later of (I) the date on which such benefit is alleged to have been due, or (II) the date on which such individual furnished the last information requested by the Commissioner of Social Security (and such written request will be deemed to be filed on the day on which it was filed, or the ninetieth day after the first day on which the Commissioner of Social Security has evidence that such allegation is true, whichever is later),

the Commissioner of Social Security shall, if the Commissioner finds that benefits are due, certify such benefits for payment, and payment shall be made within 15 days immediately following the date on which the written request is deemed to have been filed.

(3) In any case in which the Commissioner of Social Security determines that there is evidence, although additional evidence might be required for a final decision, that an allegation described in paragraph (2)(A) is true, the Commissioner may make a preliminary certification of such benefit for payment even though the 30-day or 90-day periods described in paragraph (2)(B)(i) and (B)(ii) have not elapsed.

(4) Any payment made pursuant to a certification under paragraph (3) of this subsection shall not be considered an incorrect payment for purposes of determining the liability of the certifying or disbursing officer.

(5) For purposes of this subsection, benefits payable under section 428 of this title shall be treated as monthly insurance benefits payable under this subchapter. However, this subsection shall not apply with respect to any benefit for which a check has been negotiated, or with respect to any benefit alleged to be due under either section 423 of this title, or section 402 of this title to a wife, husband, or child of an individual entitled to or applying for benefits under section 423 of this title, or to a child who has attained age 18 and is under a disability, or to a widow or widower on the basis of being under a disability.

(r) Use of death certificates to correct program information

(1) The Commissioner of Social Security shall undertake to establish a program under which—

(A) States (or political subdivisions thereof) voluntarily contract with the Commissioner of Social Security to furnish the Commissioner of Social Security periodically with information (in a form established by the Commissioner of Social Security in consultation with the States) concerning individuals with respect to whom death certificates (or equivalent documents maintained by the States or subdivisions) have been officially filed with them; and

(B) there will be (i) a comparison of such information on such individuals with information on such individuals in the records being used in the administration of this chapter, (ii) validation of the results of such comparisons, and (iii) corrections in such records to accurately reflect the status of such individuals.

(2) Each State (or political subdivision thereof) which furnishes the Commissioner of Social Security with information on records of deaths in the State or subdivision under this subsection may be paid by the Commissioner of Social Security from amounts available for administration of this chapter the reasonable costs (established by the Commissioner of Social Security in consultations with the States) for transcribing and transmitting such information to the Commissioner of Social Security.

(3) In the case of individuals with respect to whom federally funded benefits are provided by (or through) a Federal or State agency other than under this chapter, the Commissioner of Social Security shall to the extent feasible provide such information through a cooperative arrangement with such agency, for ensuring proper payment of those benefits with respect to such individuals if—

(A) under such arrangement the agency provides reimbursement to the Commissioner of Social Security for the reasonable cost of carrying out such arrangement, and

(B) such arrangement does not conflict with the duties of the Commissioner of Social Security under paragraph (1).

(4) The Commissioner of Social Security may enter into similar agreements with States to provide information for their use in programs wholly funded by the States if the requirements of subparagraphs (A) and (B) of paragraph (3) are met.

(5) The Commissioner of Social Security may use or provide for the use of such records as may be corrected under this section, subject to such safeguards as the Commissioner of Social Security determines are necessary or appropriate to protect the information from unauthorized use or disclosure, for statistical and research activities conducted by Federal and State agencies.

(6) Information furnished to the Commissioner of Social Security under this subsection may not be used for any purpose other than the purpose described in this subsection and is exempt from disclosure under section 552 of title 5 and from the requirements of section 552a of such title.

(7) The Commissioner of Social Security shall include information on the status of the program established under this section and impediments to the effective implementation of the

program in the 1984 report required under section 904 of this title.

(8)(A) The Commissioner of Social Security shall, upon the request of the official responsible for a State driver's license agency pursuant to the Help America Vote Act of 2002—

(i) enter into an agreement with such official for the purpose of verifying applicable information, so long as the requirements of subparagraphs (A) and (B) of paragraph (3) are met; and

(ii) include in such agreement safeguards to assure the maintenance of the confidentiality of any applicable information disclosed and procedures to permit such agency to use the applicable information for the purpose of maintaining its records.

(B) Information provided pursuant to an agreement under this paragraph shall be provided at such time, in such place, and in such manner as the Commissioner determines appropriate.

(C) The Commissioner shall develop methods to verify the accuracy of information provided by the agency with respect to applications for voter registration, for whom the last 4 digits of a social security number are provided instead of a driver's license number.

(D) For purposes of this paragraph—

(i) the term ''applicable information'' means information regarding whether—

(I) the name (including the first name and any family forename or surname), the date of birth (including the month, day, and year), and social security number of an individual provided to the Commissioner match the information contained in the Commissioner's records, and

(II) such individual is shown on the records of the Commissioner as being deceased; and

(ii) the term ''State driver's license agency'' means the State agency which issues driver's licenses to individuals within the State and maintains records relating to such licensure.

(E) Nothing in this paragraph may be construed to require the provision of applicable information with regard to a request for a record of an individual if the Commissioner determines there are exceptional circumstances warranting an exception (such as safety of the individual or interference with an investigation).

(F) Applicable information provided by the Commission pursuant to an agreement under this paragraph or by an individual to any agency that has entered into an agreement under this paragraph shall be considered as strictly confidential and shall be used only for the purposes described in this paragraph and for carrying out an agreement under this paragraph. Any officer or employee or former officer or employee of a State, or any officer or employee or former officer or employee of a contractor of a State who, without the written authority of the Commissioner, publishes or communicates any applicable information in such individual's possession by reason of such employment or position as such an officer, shall be guilty of a felony and upon conviction thereof shall be fined or imprisoned, or both, as described in section 408 of this title.

(s) Notice requirements

The Commissioner of Social Security shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this subchapter by the Commissioner of Social Security or by a State agency—

(1) is written in simple and clear language, and

(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.

(t) Same-day personal interviews at field offices in cases where time is of essence

In any case in which an individual visits a field office of the Social Security Administration and represents during the visit to an officer or employee of the Social Security Administration in the office that the individual's visit is occasioned by—

(1) the receipt of a notice from the Social Security Administration indicating a time limit for response by the individual, or

(2) the theft, loss, or nonreceipt of a benefit payment under this subchapter,

the Commissioner of Social Security shall ensure that the individual is granted a face-to-face interview at the office with an officer or employee of the Social Security Administration before the close of business on the day of the visit.

(u) Redetermination of entitlement

(1)(A) The Commissioner of Social Security shall immediately redetermine the entitlement of individuals to monthly insurance benefits under this subchapter if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that such action by the Commissioner of Social Security with regard to beneficiaries in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.

(B) When redetermining the entitlement, or making an initial determination of entitlement, of an individual under this subchapter, the Commissioner of Social Security shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.

(2) For purposes of paragraph (1), similar fault is involved with respect to a determination if—

(A) an incorrect or incomplete statement that is material to the determination is knowingly made; or

(B) information that is material to the determination is knowingly concealed.

(3) If, after redetermining pursuant to this subsection the entitlement of an individual to monthly insurance benefits, the Commissioner of Social Security determines that there is insufficient evidence to support such entitlement, the Commissioner of Social Security may terminate such entitlement and may treat benefits paid on the basis of such insufficient evidence as overpayments.

(Aug. 14, 1935, ch. 531, title II, § 205, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1368; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 28, 1950, ch. 809, title I, §§ 101(b)(2), 108(a)–(c), 109(b), 64 Stat. 488, 518, 523; July 18, 1952, ch. 945, § 5(b), 66 Stat. 775; Sept. 1, 1954, ch. 1206, title I, § 101(a)(5), (c)(3), 68 Stat. 1052, 1054; Aug. 1, 1956, ch. 836, title I, §§ 107(b), 111(a), 117, 70 Stat. 829, 831, 834; Aug. 1, 1956, ch. 837, title IV, § 402(b), 70 Stat. 871; Pub. L. 86–507, § 1(35), June 11, 1960, 74 Stat. 202; Pub. L. 86–778, title I, §§ 102(f)(2), 103(j)(2)(E), title VII, § 702(a), Sept. 13, 1960, 74 Stat. 933, 938, 993; Pub. L. 87–293, title II, § 202(b)(3), Sept. 21, 1961, 75 Stat. 626; Pub. L. 89–97, title III, §§ 308(d)(9), (10), 330, July 30, 1965, 79 Stat. 379, 401; Pub. L. 90–248, title I, § 171(a), Jan. 2, 1968, 81 Stat. 876; Pub. L. 91–452, title II, § 236, Oct. 15, 1970, 84 Stat. 930; Pub. L. 92–603, title I, § 137, Oct. 30, 1972, 86 Stat. 1364; Pub. L. 93–445, title III, §§ 302(a), 303, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 94–202, § 4, Jan. 2, 1976, 89 Stat. 1136; Pub. L. 94–455, title XII, § 1211(b), Oct. 4, 1976, 90 Stat. 1711; Pub. L. 95–216, title III, § 353(f)(2), Dec. 20, 1977, 91 Stat. 1554; Pub. L. 95–600, title VII, § 703(j)(14)(B), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 96–265, title III, §§ 305(a), 307, June 9, 1980, 94 Stat. 457, 458; Pub. L. 97–455, § 4(a), Jan. 12, 1983, 96 Stat. 2499; Pub. L. 98–21, title III, §§ 301(d), 309(i), 336, 345(a), Apr. 20, 1983, 97 Stat. 111, 117, 130, 137; Pub. L. 98–369, div. B, title VI, §§ 2661(h), 2663(a)(4), (j)(4), July 18, 1984, 98 Stat. 1157, 1162, 1171; Pub. L. 98–460, § 16(a), Oct. 9, 1984, 98 Stat. 1809; Pub. L. 99–509, title IX, § 9002(c)(2)(A), (B), Oct. 21, 1986, 100 Stat. 1971; Pub. L. 100–485, title I, § 125(a), Oct. 13, 1988, 102 Stat. 2353; Pub. L. 100–647, title VIII, §§ 8008(a), 8009(a), 8015(a)(1), 8016(a)(1), Nov. 10, 1988, 102 Stat. 3783, 3787, 3790, 3792; Pub. L. 101–239, title X, §§ 10303(a), 10304, Dec. 19, 1989, 103 Stat. 2482, 2483; Pub. L. 101–508, title V, §§ 5105(a)(1)(A), (2)(A)(i), (3)(A)(i), (b)(1)(A), (c)(1), (d)(1)(A), 5107(a)(1), 5109(a)(1), Nov. 5, 1990, 104 Stat. 1388–254, 1388–255, 1388–260, 1388–263, 1388–265, 1388–269, 1388–271; Pub. L. 101–624, title XVII, § 1735(a), (b), title XXII, § 2201(b), (c), Nov. 28, 1990, 104 Stat. 3791, 3792, 3951, 3952; Pub. L. 103–296, title I, § 107(a)(1), (2), (4), title II, §§ 201(a)(1)(A), (B), (2)(A)–(C), 206(a)(1), (d)(1), title III, §§ 304(a), 316(a), 318, 321(a)(7)–(11), (c)(3), (6)(B), (f)(2)(A), Aug. 15, 1994, 108 Stat. 1477, 1478, 1490–1493, 1509, 1514, 1520, 1531, 1533, 1536, 1538, 1541; Pub. L. 104–121, title I, § 105(a)(2), Mar. 29, 1996, 110 Stat. 852; Pub. L. 104–193, title I, § 108(a)(1), Aug. 22, 1996, 110 Stat. 2164; Pub. L. 105–34, title X, § 1090(b)(1), Aug. 5, 1997, 111 Stat. 962; Pub. L. 106–169, title II, § 251(b)(2), Dec. 14, 1999, 113 Stat. 1854; Pub. L. 107–90, title I, § 103(i)(3), Dec. 21, 2001, 115 Stat. 882; Pub. L. 107–252, title III, § 303(a)(5)(C), Oct. 29, 2002, 116 Stat. 1711; Pub. L. 108–203, title I, §§ 101(a), 102(a)(1), (b)(1), 103(a), 104(a), 105(a), 106(a), title IV, § 411(a), Mar. 2, 2004, 118 Stat. 495, 497, 498, 500, 503–505, 527; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 108–458, title VII, § 7214(a), Dec. 17, 2004, 118 Stat. 3832.)

REFERENCES IN TEXT

Subsecs. (e) and (q) of section 418 of this title, referred to in subsec. (c)(1)(D)(i), (5)(F)(iii), which related to payments and reports by States, and to time limitation on assessments, respectively, were repealed, and subsec. (f) of section 418 of this title was redesignated as subsec. (e), by Pub. L. 99–509, title IX, § 9002(c)(1), Oct. 21, 1986, 100 Stat. 1971.

Parts A and D of subchapter IV of this chapter, referred to in subsec. (c)(2)(C)(ii), (vi)(I), are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

Section 7(a) of the Privacy Act of 1974, referred to in subsec. (c)(2)(C)(ii), is section 7(a) of Pub. L. 93–579, which is set out as a note under section 552a of Title 5, Government Organization and Employees.

The Food Stamp Act of 1977, referred to in subsec. (c)(2)(C)(iii)(I), (II), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Federal Crop Insurance Act, referred to in subsec. (c)(2)(C)(iv), is title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, as amended, which is classified generally to chapter 36 (§ 1501 et seq.) of Title 7. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

Section 7212(a)(2) of the 9/11 Commission Implementation Act of 2004, referred to in subsec. (c)(2)(C)(vi)(II), is section 7212(a)(2) of Pub. L. 108–458, which was formerly set out as a note under section 30301 of Title 49, Transportation.

The Internal Revenue Code of 1986, referred to in subsecs. (c)(2)(C)(viii)(II), (H) and (j)(2)(B)(iii), is classified generally to Title 26, Internal Revenue Code.

The Longshore and Harbor Workers' Compensation Act, referred to in subsec. (c)(2)(C)(ix), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

The Railroad Retirement Act of 1937, referred to in subsecs. (c)(5)(D) and (i), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsecs. (c)(5)(D), (i), and (*o*), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Pub. L. 93–445 completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45. For further details and complete classification of these Acts to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Title VIII of the Social Security Act, referred to in subsec. (c)(5)(F)(i), probably means former title VIII of the Social Security Act, which was classified to sub-

chapter VIII (§ 1001 et seq.) of this chapter, and was omitted from the Code as superseded by the provisions of the Internal Revenue Code of 1939 and the Internal Revenue Code of 1986.

Subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (c)(5)(F)(i), were comprised of sections 480 to 482 and 1400 to 1432, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of the Internal Revenue Code of 1986.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Chapters 2 and 21 of the Internal Revenue Code of 1954, referred to in subsec. (c)(5)(F)(i), were redesignated chapters 2 and 21 of the Internal Revenue Code of 1986, and are classified to sections 1401 et seq. and 3101 et seq., respectively, of Title 26.

The Peace Corps Act, referred to in subsec. (p)(1), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Section 3122 of the Internal Revenue Code of 1954, referred to in subsec. (p)(1), redesignated section 3122 of the Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, and is classified to section 3122 of Title 26, Internal Revenue Code.

The Help America Vote Act of 2002, referred to in subsec. (r)(8)(A), is Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

CODIFICATION

August 15, 1994, referred to in subsec. (c)(2)(E)(iii), was in the original ''the date of the enactment of this subparagraph'' and ''that date'', which were translated as meaning the date of enactment of Pub. L. 103–296, which added subsec. (c)(2)(E) and redesignated former subsec. (c)(2)(E) as (c)(2)(F).

In subsec. (g), act June 25, 1948, as amended by act May 24, 1949, substituted United States District Court for the District of Columbia, for District Court of the United States for the District of Columbia.

AMENDMENTS

2004—Subsec. (c)(2)(C)(vi). Pub. L. 108–458 designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (g). Pub. L. 108–203, § 411(a), substituted ''and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript of the additional record and testimony'' for ''and a transcript of the additional record and testimony''.

Subsec. (i). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

Subsec. (j)(2)(B)(i)(IV) to (VI). Pub. L. 108–203, § 103(a)(1), added subcls. (IV) and (V) and redesignated former subcl. (IV) as (VI).

Subsec. (j)(2)(B)(iii). Pub. L. 108–203, § 103(a)(2), added cl. (iii).

Subsec. (j)(2)(C)(i)(II). Pub. L. 108–203, § 103(a)(3), substituted ''subparagraph (B)(i)(VI)'' for ''subparagraph (B)(i)(IV),,'' and ''section 1383(a)(2)(B)(ii)(VI)'' for ''section 1383(a)(2)(B)(ii)(IV)''.

Subsec. (j)(2)(C)(i)(IV), (V). Pub. L. 108–203, § 103(a)(4), added subcls. (IV) and (V).

Subsec. (j)(2)(C)(v)(I). Pub. L. 108–203, § 105(a)(2), substituted ''paragraph (10)'' for ''paragraph (9)''.

Pub. L. 108–203, § 102(a)(1)(A), substituted ''a certified community-based nonprofit social service agency (as defined in paragraph (9))'' for ''a community-based nonprofit social service agency licensed or bonded by the State''.

Subsec. (j)(3)(E). Pub. L. 108–203, § 106(a)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (j)(3)(F). Pub. L. 108–203, § 106(a)(1), redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 108–203, § 105(a)(2), substituted ''paragraph (10)'' for ''paragraph (9)''.

Pub. L. 108–203, § 102(a)(1)(B), substituted ''certified community-based nonprofit social service agencies (as defined in paragraph (9))'' for ''community-based nonprofit social service agencies''.

Subsec. (j)(3)(G). Pub. L. 108–203, § 106(a)(1), redesignated subpar. (F) as (G).

Subsec. (j)(4)(A)(i). Pub. L. 108–203, § 104(a)(2), which directed amendment of cl. (i) in concluding provisions by substituting ''A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of paragraphs (5) and (6). The Commissioner'' for ''The Secretary'', was executed by making the substitution for ''The Commissioner of Social Security'' to reflect the probable intent of Congress. See 1994 Amendment note below.

Pub. L. 108–203, § 104(a)(1), substituted ''Except as provided in the next sentence, a'' for ''A'' in introductory provisions.

Subsec. (j)(4)(B). Pub. L. 108–203, § 105(a)(2), substituted ''paragraph (10)'' for ''paragraph (9)'' in introductory provisions.

Pub. L. 108–203, § 102(a)(1)(C), substituted ''any certified community-based nonprofit social service agency (as defined in paragraph (9))'' for ''any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee'' in introductory provisions.

Subsec. (j)(5). Pub. L. 108–203, § 101(a)(1), designated first sentence of existing provisions as introductory provisions and inserted ''In any case in which a representative payee that—'' after ''misused benefits.'', added subpars (A) and (B), and designated second sentence of existing provisions as concluding provisions and inserted ''misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B).'' before ''The Commissioner of Social Security shall make''.

Subsec. (j)(6). Pub. L. 108–203, § 102(b)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''The Commissioner of Social Security shall include as a part of the annual report required under section 904 of this title information with respect to the implementation of the preceding provisions of this subsection, including the number of cases in which the representative payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Commissioner of Social Security, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Commissioner of Social Security determines to be appropriate.''

Subsec. (j)(6)(A)(ii). Pub. L. 108–203, § 105(a)(3), substituted ''paragraph (10)'' for ''paragraph (9)''.

Subsec. (j)(7). Pub. L. 108–203, § 105(a)(1), (4), added par. (7) and redesignated former par. (7) as (8).

Subsec. (j)(8). Pub. L. 108–203, § 105(a)(1), redesignated par. (7) as (8). Former par. (8) redesignated (9).

Pub. L. 108–203, § 101(a)(2), added par. (8).

Subsec. (j)(9). Pub. L. 108–203, § 105(a)(1), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Pub. L. 108–203, § 102(a)(1)(D), added par. (9).

Subsec. (j)(10). Pub. L. 108–203, § 105(a)(1), redesignated par. (9) as (10).

2002—Subsec. (r)(8). Pub. L. 107–252 added par. (8).

2001—Subsec. (i). Pub. L. 107–90 inserted ''(or five or more years of service, all of which accrues after December 31, 1995)'' after ''ten years of service''.

1999—Subsec. (j)(1)(A). Pub. L. 106–169, § 251(b)(2)(A), inserted ''1007 or'' before ''1383(a)(2)''.

Subsec. (j)(2)(B)(i)(I). Pub. L. 106–169, § 251(b)(2)(B), inserted '', subchapter VIII of this chapter,'' before ''or subchapter XVI of this chapter''.

Subsec. (j)(2)(B)(i)(III). Pub. L. 106–169, § 251(b)(2)(C), inserted '', 1011,'' before ''or 1383a''.

Subsec. (j)(2)(B)(i)(IV). Pub. L. 106–169, § 251(b)(2)(D), inserted '', the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title,'' before ''or payment of benefits'' and '', subchapter VIII of this chapter,'' before ''or subchapter XVI of this chapter''.

Subsec. (j)(2)(B)(ii)(I). Pub. L. 106–169, § 251(b)(2)(E), inserted ''whose designation as a representative payee has been revoked pursuant to section 1007(a) of this title,'' before ''or with respect to whom'' and '', subchapter VIII of this chapter,'' before ''or subchapter XVI of this chapter''.

Subsec. (j)(2)(B)(ii)(II). Pub. L. 106–169, § 251(b)(2)(F), inserted '', 1011,'' before ''or 1383a''.

Subsec. (j)(2)(C)(i)(II). Pub. L. 106–169, § 251(b)(2)(G), inserted '', the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title,'' before ''or payment of benefits''.

Subsec. (j)(3)(E)(i), (ii). Pub. L. 106–169, § 251(b)(2)(H), inserted '', section 1007 of this title,'' before ''or section 1383(a)(2) of this title''.

Subsec. (j)(3)(F). Pub. L. 106–169, § 251(b)(2)(I), inserted ''1007 or'' before ''1383(a)(2)''.

Subsec. (j)(4)(B)(i). Pub. L. 106–169, § 251(b)(2)(J), inserted ''1007 or'' before ''1383(a)(2)''.

1997—Subsec. (c)(2)(B)(ii). Pub. L. 105–34, § 1090(b)(1)(A), inserted at end ''With respect to an application for a social security account number for an individual who has not attained the age of 18 before such application, such evidence shall include the information described in subparagraph (C)(ii).''

Subsec. (c)(2)(C)(ii). Pub. L. 105–34, § 1090(b)(1)(B), inserted ''the Commissioner of Social Security and'' after ''available to'' in second sentence.

Subsec. (c)(2)(H). Pub. L. 105–34, § 1090(b)(1)(C), added subpar. (H).

1996—Subsec. (c)(2)(C)(vi). Pub. L. 104–193 inserted ''an agency administering a program funded under part A of subchapter IV of this chapter or'' before ''an agency operating'' and substituted ''part D of such subchapter'' for ''part A or D of subchapter IV of this chapter''.

Subsec. (j)(1)(B). Pub. L. 104–121, § 105(a)(2)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''In the case of an individual entitled to benefits based on disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability, certification of payment of such benefits to a representative payee shall be deemed to serve the interest of such individual under this subchapter. In any case in which such certification is so deemed under this subparagraph to serve the interest of an individual, the Commissioner of Social Security shall include, in such individual's notification of entitlement, a notice that alcoholism or drug addiction is a contributing factor material to the Commissioner's determination of such individual's disability and that the Commissioner of Social Security is therefore required to make a certification of payment of such individual's benefits to a representative payee.''

Subsec. (j)(2)(C)(v). Pub. L. 104–121, § 105(a)(2)(B), substituted ''described in paragraph (1)(B)'' for ''entitled to benefits based on disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability''.

Subsec. (j)(2)(D)(ii)(II). Pub. L. 104–121, § 105(a)(2)(C), substituted ''described in paragraph (1)(B).'' for ''(if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability) is eligible for benefits under this subchapter by reason of disability..''

Subsec. (j)(4)(A)(i)(II). Pub. L. 104–121, § 105(a)(2)(D), substituted ''described in paragraph (1)(B)'' for ''entitled to benefits based on disability and alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability''.

1994—Subsec. (a). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (b)(1), (2). Pub. L. 103–296, § 107(a)(4), substituted wherever appearing ''Commissioner of Social Security'' for ''Secretary'', ''Commissioner's'' for ''Secretary's'', ''the Commissioner may'' for ''he may'', ''the Commissioner shall'' for ''he shall'', and ''the Commissioner's'' for ''his'' except in the phrase ''his or her rights''.

Subsec. (b)(3)(A). Pub. L. 103–296, § 321(a)(7), realigned margin.

Subsec. (b)(3)(B). Pub. L. 103–296, § 321(a)(7), realigned margin.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(1)(D)(i). Pub. L. 103–296, § 321(c)(6)(B), substituted ''Code of 1986'' for ''Code of 1954''.

Subsec. (c)(2)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places and ''the Commissioner deems'' for ''he deems''.

Subsec. (c)(2)(B)(i). Pub. L. 103–296, § 304(a)(1), substituted ''(F)'' for ''(E)'' in introductory provisions.

Pub. L. 103–296, § 107(a)(4), substituted ''In carrying out the Commissioner's duties'' for ''In carrying out his duties'' in introductory provisions and ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (c)(2)(B)(ii). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(B)(iii). Pub. L. 103–296, § 321(a)(8), substituted ''nonpublic'' for ''non-public''.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(C)(i), (ii). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (c)(2)(C)(iii). Pub. L. 103–296, § 321(a)(9)(B), redesignated the cl. (iii) as added by Pub. L. 101–624, § 2201(b)(3), as cl. (iv).

Pub. L. 103–296, § 316(a), amended cl. (iii) as added by Pub. L. 101–624, § 1735(a)(3), by inserting subcl. (I) designation before ''In the administration'' and by substituting subcls. (II) to (IV) for ''The Secretary of Agriculture shall restrict, to the satisfaction of the Secretary of Health and Human Services, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States whose duties or responsibilities require access for the administration or enforcement of the Food Stamp Act of 1977. The Secretary of Agriculture shall provide such other safeguards as the Secretary of Health and Human Services determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.''

Subsec. (c)(2)(C)(iii)(III), (IV). Pub. L. 103–296, § 107(a)(1), in cl. (iii) as amended by Pub. L. 103–296, § 316(a), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

Subsec. (c)(2)(C)(iv). Pub. L. 103–296, § 321(a)(9)(B), redesignated the cl. (iii) as added by Pub. L. 101–624, § 2201(b)(3), as cl. (iv). Former cl. (iv) redesignated (v).

Pub. L. 103–296, § 107(a)(1), in cl. (iv) as redesignated by Pub. L. 103–296, § 321(a)(9)(B), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

Subsec. (c)(2)(C)(v). Pub. L. 103–296, §321(a)(9)(B), (C), redesignated cl. (iv) as (v), and substituted ''policy set forth in clause (i)'' for ''policy set forth in subclause (I) of clause (i)'' and ''clause (ii)'' for ''subclause (II) of clause (i)''. Former cl. (v) redesignated (vi).

Subsec. (c)(2)(C)(vi). Pub. L. 103–296, §321(a)(9)(B), redesignated cl. (v) as (vi). Former cl. (vi) redesignated (vii).

Subsec. (c)(2)(C)(vii). Pub. L. 103–296, §321(a)(9)(B), redesignated cl. (vi) as (vii). Former cl. (vii) added by Pub. L. 101–624, §1735(b), redesignated (viii).

Pub. L. 103–296, §321(a)(9)(A), struck out cl. (vii) added by Pub. L. 101–624, §2201(c), which was substantially identical to the cl. (vii) added by Pub. L. 101–624, §1735(b).

Subsec. (c)(2)(C)(viii). Pub. L. 103–296, §321(a)(9)(B), (D), redesignated the cl. (vii) added by Pub. L. 101–624, §1735(b), as (viii) and inserted ''a social security account number or'' before ''a request for'' in subcl. (IV).

Subsec. (c)(2)(C)(ix). Pub. L. 103–296, §318, added cl. (ix).

Pub. L. 103–296, §107(a)(1), amended cl. (ix) as added by Pub. L. 103–296, §318, by substituting ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

Subsec. (c)(2)(D)(i)(I), (II). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(E). Pub. L. 103–296, §304(a)(3), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 103–296, §107(a)(4), in subpar. (E) added by Pub. L. 103–296, §304(a)(3), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(F), (G). Pub. L. 103–296, §304(a)(2), redesignated subpars. (E) and (F) as (F) and (G), respectively.

Pub. L. 103–296, §107(a)(4), in subpars. (F) and (G) as redesignated by Pub. L. 103–296, §304(a)(2), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (c)(3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner's'' for ''Secretary's'' and ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(4). Pub. L. 103–296, §107(a)(4), in introductory provisions, substituted ''Commissioner of Social Security'' for ''Secretary'' and substituted ''the Commissioner's'' for ''his'' wherever appearing, in subpars. (A) and (B), substituted ''Commissioner's'' for ''Secretary's'', and in subpar. (C), substituted ''Commissioner's records as'' for ''Secretary's records as'', ''Commissioner of Social Security'' for ''Secretary'', and ''the Commissioner's records the'' for ''his records the''.

Subsec. (c)(5). Pub. L. 103–296, §107(a)(4), in introductory provisions substituted ''Commissioner of Social Security'' for ''Secretary'' and substituted ''the Commissioner's'' for ''his'' in two places.

Subsec. (c)(5)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner's'' for ''Secretary's'' in two places.

Subsec. (c)(5)(F). Pub. L. 103–296, §107(a)(4), substituted ''the Commissioner's'' for ''his'' in introductory provisions, ''Commissioner of Social Security'' for ''Secretary'' in cl. (ii), and ''Commissioner's'' for ''Secretary's'' in closing provisions.

Subsec. (c)(5)(F)(i). Pub. L. 103–296, §321(c)(3), inserted ''or the Internal Revenue Code of 1986'' after ''Code of 1954''.

Subsec. (c)(5)(G), (J), (6), (7). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner's'' for ''his'' before ''records'' in two places in par. (7).

Subsec. (c)(8). Pub. L. 103–296, §206(a)(1)(B), added par. (8). Former par. (8) redesignated (9).

Subsec. (c)(9). Pub. L. 103–296, §206(a)(1)(A), redesignated par. (8) as (9).

Pub. L. 103–296, §107(a)(4), in par. (9) as redesignated by Pub. L. 103–296, §206(a)(1)(A), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' before ''jurisdiction'', and ''by the Commissioner'' for ''by him''.

Subsec. (e). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (g). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' wherever appearing except in second sentence, and ''the Commissioner files'' for ''he files''.

Subsec. (h). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (i). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's''.

Subsec. (j). Pub. L. 103–296, §321(a)(10), made technical amendment to heading.

Subsec. (j)(1). Pub. L. 103–296, §201(a)(1)(A), designated existing provisions as subpar. (A), in last sentence inserted '', if the interest of the individual under this subchapter would be served thereby,'' after ''payee or'', and added subpar. (B).

Pub. L. 103–296, §107(a)(4), in par. (1) as amended by Pub. L. 103–296, §201(a)(1)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in two places in subpar. (B).

Subsec. (j)(2)(A) to (C)(iv). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (j)(2)(C)(v). Pub. L. 103–296, §201(a)(2)(A), added cl. (v).

Pub. L. 103–296, §107(a)(4), in cl. (v) as added by Pub. L. 103–296, §201(a)(2)(A), substituted ''Commissioner's'' for ''Secretary's'' in introductory provisions and ''Commissioner of Social Security'' for ''Secretary'' in subcl. (IV) and closing provisions.

Subsec. (j)(2)(D)(i). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (j)(2)(D)(ii)(II). Pub. L. 103–296, §201(a)(1)(B), substituted '', under the age of 15 years, or (if alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is under a disability) is eligible for benefits under this subchapter by reason of disability.'' for ''or under the age of 15''.

Pub. L. 103–296, §107(a)(4), in subcl. (II) as amended by Pub. L. 103–296, §201(a)(1)(B), substituted ''Commissioner's'' for ''Secretary's'' in two places.

Subsec. (j)(2)(D)(iii), (E), (3)(A), (B), (D), (E). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in par. (2)(E)(i) and (ii).

Subsec. (j)(4)(A). Pub. L. 103–296, §201(a)(2)(B)(i), designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, added new subcl. (II) and struck out former subcl. (II) (as redesignated) which read ''$25.00 per month.'', inserted ''The Secretary shall adjust annually (after 1995) each dollar amount set forth in subclause (II) under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00.'' before ''Any agreement'' in concluding provisions, and added cl. (ii).

Pub. L. 103–296, §107(a)(4), in subpar. (A) as amended by Pub. L. 103–296, §201(a)(2)(B)(i), substituted ''Commissioner's'' for ''Secretary's'' and ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (j)(4)(B). Pub. L. 103–296, §201(a)(2)(B)(ii), in introductory provisions, inserted ''State or local gov-

ernment agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any'' after ''means any'', substituted ''representative payee, if such agency,'' for ''representative payee and which,'', substituted a period for '', and'' at end of cl. (ii), and struck out cl. (iii) which read as follows: ''was in existence on October 1, 1988.''

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (j)(4)(D). Pub. L. 103–296, § 201(a)(2)(B)(iii), struck out subpar. (D) which read as follows: ''This paragraph shall cease to be effective on July 1, 1994.''

Subsec. (j)(5). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (j)(6). Pub. L. 103–296, § 321(f)(2)(A), made technical correction to Pub. L. 101–508, § 5105(d)(1)(A). See 1990 Amendment note below.

Pub. L. 103–296, § 107(a)(4), in par. (6) as amended by Pub. L. 103–296, § 321(f)(2)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (j)(7). Pub. L. 103–296, § 201(a)(2)(C), added par. (7).

Subsec. (k). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (*l*). Pub. L. 103–296, § 107(a)(2), (4), substituted ''Commissioner of Social Security'' for ''Secretary'', ''Social Security Administration'' for ''Department of Health and Human Services'', ''by the Commissioner'' for ''by him'', ''upon the Commissioner'' for ''upon him'', and ''the Commissioner's'' for ''his''.

Subsec. (n). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security may, in the Commissioner's discretion'' for ''Secretary may, in his discretion''.

Subsec. (p)(1), (2). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''Secretary's'' in par. (1), and ''to the Commissioner'' for ''to him'' in par. (2).

Subsecs. (q), (r). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner finds'' for ''he finds'' in subsec. (q)(2), and ''the Commissioner may'' for ''he may'' in subsec. (q)(3).

Subsec. (s). Pub. L. 103–296, § 321(a)(11), made technical amendment to heading.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places in introductory provisions.

Subsec. (t). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in closing provisions.

Subsec. (u). Pub. L. 103–296, § 206(d)(1), added subsec. (u).

Pub. L. 103–296, § 107(a)(4), in subsec. (u) added by Pub. L. 103–296, § 206(d)(1), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1990—Subsec. (b)(3). Pub. L. 101–508, § 5107(a)(1), added par. (3).

Subsec. (c)(2)(C). Pub. L. 101–624, §§ 1735(a), (b), 2201(b), (c), made similar amendments redesignating subcls. (I) and (II) of former cl. (i) as cls. (i) and (ii), respectively, adding two cls. (iii) which are different, redesignating former cls. (ii) to (iv) as (iv) to (vi), respectively, and adding two substantially identical cls. (vii). Cls. (iii) and (vii), as added by § 1735 of Pub. L. 101–624, are set out first and cls. (iii) and (vii), as added by § 2201 of Pub. L. 101–624, are set out second.

Subsec. (j). Pub. L. 101–508, § 5105(a)(1)(A), inserted heading ''Representative payees''.

Subsec. (j)(1). Pub. L. 101–508, § 5105(a)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.''

Subsec. (j)(2). Pub. L. 101–508, § 5105(a)(2)(A)(i), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed.''

Subsec. (j)(3)(B), (C). Pub. L. 101–508, § 5105(b)(1)(A)(i), (ii), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: ''Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.''

Subsec. (j)(3)(D). Pub. L. 101–508, § 5105(b)(1)(A)(ii), (iii), redesignated subpar. (E) as (D) and substituted ''(A), (B), and (C)'' for ''(A), (B), (C), and (D)''. Former subpar. (D) redesignated (C).

Subsec. (j)(3)(E), (F). Pub. L. 101–508, § 5105(b)(1)(A)(ii), (iv), added subpars. (E) and (F) and redesignated former subpar. (E) as (D).

Subsec. (j)(4). Pub. L. 101–508, § 5105(a)(3)(A)(i), added par. (4). Former par. (4) redesignated (5).

Subsec. (j)(5). Pub. L. 101–508, § 5105(c)(1), added par. (5) relating to negligent failure of the Secretary to investigate or monitor. Former par. (5), relating to annual report, redesignated (6).

Pub. L. 101–508, § 5105(a)(3)(A)(i), redesignated par. (4), relating to annual report, as (5).

Subsec. (j)(6). Pub. L. 101–508, § 5105(d)(1)(A), as amended by Pub. L. 103–296, § 321(f)(2)(A), amended par. (6) generally. Prior to amendment, par. (6) read as follows:

''(A) The Secretary shall make an initial report to each House of the Congress on the implementation of paragraphs (2) and (3) within 270 days after October 9, 1984.

''(B) The Secretary shall include as a part of the annual report required under section 904 of this title, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.''

Pub. L. 101–508, § 5105(c)(1), redesignated par. (5), relating to annual report, as (6).

Subsec. (s). Pub. L. 101–508, § 5109(a)(1), added subsec. (s).

1989—Subsec. (c)(5)(H). Pub. L. 101–239, § 10304, struck out ''if there is an absence of an entry in the Secretary's records of wages having been paid by such employer to such individual in such period'' before semicolon at end.

Subsec. (t). Pub. L. 101–239, § 10303(a), added subsec. (t).

1988—Subsec. (c)(2)(B)(i). Pub. L. 100–647, § 8009(a)(1), inserted ''and subparagraph (E)'' after ''subparagraph (A)''.

Subsec. (c)(2)(C)(i). Pub. L. 100–485, § 125(a)(1), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (c)(2)(C)(ii). Pub. L. 100–485, § 125(a)(2), substituted ''subclause (I) of clause (i)'' for ''clause (i) of this subparagraph'' and inserted at end ''If and to the

extent that any such provision is inconsistent with the requirement set forth in subclause (II) of clause (i), such provision shall, on and after October 13, 1988, be null, void, and of no effect.''

Subsec. (c)(2)(C)(iii). Pub. L. 100–647, §8016(a)(1), substituted ''of this Act'' for ''of the Social Security Act'', which for purposes of codification was translated as ''of this chapter''.

Subsec. (c)(2)(D). Pub. L. 100–647, §8008(a)(2), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (c)(2)(E). Pub. L. 100–647, §8009(a)(3), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 100–647, §8008(a)(1), redesignated former subpar. (D) as (E).

Subsec. (c)(2)(F). Pub. L. 100–647, §8009(a)(2), redesignated former subpar. (E) as (F).

Subsec. (p)(1). Pub. L. 100–647, §8015(a)(1), substituted ''the Secretary shall not make determinations as to the amounts of remuneration for such service, or the periods in which or for which such remuneration was paid'' for ''the Secretary shall not make determinations as to whether an individual has performed such service, the periods of such service, the amounts of remuneration for such service which constitute wages under the provisions of section 409 of this title, or the periods in which or for which such wages were paid'' and inserted at end ''Nothing in this paragraph shall be construed to affect the Secretary's authority to determine under sections 409 and 410 of this title whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages.''

1986—Subsec. (c)(1)(D)(i). Pub. L. 99–509, §9002(c)(2)(A), inserted ''(as in effect prior to December 31, 1986)''.

Subsec. (c)(5)(F)(iii). Pub. L. 99–509, §9002(c)(2)(B), inserted ''(as in effect prior to December 31, 1986)'' and ''(as so in effect)''.

1984—Subsec. (c)(5)(D). Pub. L. 98–369, §2663(a)(4)(A), inserted ''of 1937 or 1974'' after ''Railroad Retirement Act'' in two places.

Subsec. (c)(5)(I). Pub. L. 98–369, §2663(a)(4)(B), inserted ''or section 7(b)(7) of the Railroad Retirement Act of 1974''.

Subsec. (e). Pub. L. 98–369, §2663(a)(4)(C), substituted ''an order'' for ''on order''.

Subsec. (h). Pub. L. 98–369, §2663(a)(4)(D), substituted ''section 1331 or 1346 of title 28'' for ''section 24 of the Judicial Code of the United States''.

Subsec. (i). Pub. L. 98–369, §2663(a)(4)(E), substituted ''the Fiscal Service of the Department of the Treasury'' for ''the Division of Disbursement of the Treasury Department''.

Subsec. (j). Pub. L. 98–460 designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (*l*). Pub. L. 98–369, §2663(j)(4), substituted ''Department of Health and Human Services'' for ''Federal Security Agency''.

Subsec. (p)(1). Pub. L. 98–369, §2663(a)(4)(F), substituted ''section 3122 of the Internal Revenue Code of 1954'' for ''section 1420(e) of the Internal Revenue Code of 1939''.

Subsec. (r)(4). Pub. L. 98–369, §2661(h)(1), substituted ''subparagraphs (A) and (B) of paragraph (3)'' for ''paragraph (3)(A) and (B)''.

Subsec. (r)(7). Pub. L. 98–369, §2661(h)(2), substituted ''this Act'' for ''the Act'' which was translated as ''this title''.

1983—Subsec. (b). Pub. L. 98–21, §§301(d)(1), 309(i)(1), in par. (1) inserted ''divorced husband,'' after ''husband,'', ''surviving divorced husband,'' after ''widower,'', and ''surviving divorced father,'' after ''surviving divorced mother,''.

Pub. L. 97–455 designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1)(C). Pub. L. 98–21, §§301(d)(2), 309(i)(2), inserted ''surviving divorced husband,'' after ''wife,'' and ''surviving divorced father,'' after ''surviving divorced mother,''.

Subsec. (c)(2)(D). Pub. L. 98–21, §345(a), added subpar. (D).

Subsec. (r). Pub. L. 98–21, §336, added subsec. (r).

1980—Subsec. (b). Pub. L. 96–265, §305(a), inserted provisions relating to the information that must accompany a decision by the Secretary.

Subsec. (g). Pub. L. 96–265, §307, substituted ''The court may, on motion of the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding;'' for ''The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary,''.

1978—Subsec. (p)(3). Pub. L. 95–600 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'' in two places.

1977—Subsec. (c)(1)(A). Pub. L. 95–216, §353(f)(2)(A), struck out ''(as defined in section 411(e) of this title)'' after ''taxable year''.

Subsec. (c)(1)(D). Pub. L. 95–216, §353(f)(2)(B), added subpar. (D).

Subsec. (*o*). Pub. L. 95–216, §353(f)(2)(C), inserted ''before 1978'' after ''calendar year''.

1976—Subsec. (b). Pub. L. 94–202 substituted provisions that a request for a hearing following the decision of the Secretary be made within sixty days after notice of such decision is received for provisions which authorized the Secretary to prescribe by regulation the period within which to file a request, including the limitation that the period so prescribed be not less than six months after notice of the decision was mailed.

Subsec. (c)(2)(C). Pub. L. 94–455 added subpar. (C).

1974—Subsec. (i). Pub. L. 93–445, §302(a), inserted parenthetical provision covering service under the Railroad Retirement Acts of 1937 and 1974 and certification to the Railroad Retirement Board and payment on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974.

Subsec. (*o*). Pub. L. 93–445, §303, substituted ''annuity under section 2 of the Railroad Retirement Act of 1974'' for ''section 5 of the Railroad Retirement Act of 1937'', ''section 6(b) of such Act'' for ''subsection (f)(1) of such section'', and ''section 3(i) of such Act'' for ''section 4 of such Act''.

1972—Subsec. (c)(2). Pub. L. 92–603 designated existing provisions as par. (A) and added par. (B).

1970—Subsec. (f). Pub. L. 91–452 struck out subsec. (f) which related to the immunity from prosecution of any person compelled to testify or produce evidence after claiming his privilege against self-incrimination.

1968—Subsec. (q). Pub. L. 90–248, §171(a), added subsec. (q).

1965—Subsec. (b). Pub. L. 89–97, §308(d)(9), substituted in second sentence ''wife, divorced wife, widow, surviving divorced wife, surviving divorced mother,'' for ''wife, widow, former wife divorced,''.

Subsec. (c)(1)(C). Pub. L. 89–97, §308(d)(10), substituted ''surviving divorced wife, surviving divorced mother,'' for ''former wife divorced,''.

Subsec. (n). Pub. L. 89–97, §330, provided that Secretary of the Treasury may authorize surviving payee or payees of a combined benefit check to cash one or more such checks which were not negotiated before one of payees died, provided that part of proceeds from each check that represents an overpayment is to be adjusted or recovered as provided in section 404(a) of this title.

1961—Subsec. (p)(1). Pub. L. 87–293 provided that head of Federal agency having control of service or such agents as the head may designate would make determinations with respect to employment and wages in case of service performed by volunteers and volunteer leaders in Peace Corps.

1960—Subsec. (c)(5)(F). Pub. L. 86–778, §102(f)(2), authorized the Secretary to add, change, or delete entries to conform his records to assessments of amounts due

under an agreement pursuant to section 418 of this title, if such assessments are made within the period specified in subsection (q) of such section, or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section, and inserted references to chapters 2 and 21 of the Internal Revenue Code of 1954.

Subsec. (d). Pub. L. 86–507 inserted ''or by certified mail'' after ''registered mail'' in two places.

Subsec. (g). Pub. L. 86–778, §702(a), inserted sentence providing that any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

Subsec. (p)(1). Pub. L. 86–778, §103(j)(2)(E), substituted ''subsection (*l*)(1)'' for ''subsection (m)(1)''.

1956—Subsec. (b). Act Aug. 1, 1956, ch. 836, §111(a), required requests with respect to decisions to be filed within such period as the Secretary prescribes by regulation, which period may not be less than six months after notice of the decision is mailed.

Subsec. (c)(1)(B). Act Aug. 1, 1956, ch. 836, §107(b), substituted ''three months'' for ''two months''.

Subsec. (c)(5)(F). Act Aug. 1, 1956, ch. 836, §117, struck out provisions prohibiting inclusion in records of amount of self-employment income in excess of the amount which had been deleted as payments erroneously included in such records as wages paid to such individual in such taxable year, which provisions are now covered by subsec. (c)(5)(J) of this section.

Subsec. (c)(5)(J). Act Aug. 1, 1956, ch. 836, §117, added subpar. (J).

Subsec. (p)(1). Act Aug. 1, 1956, ch. 837, provided for determinations with respect to service performed as a member of a uniformed service to which the provisions of section 410(m)(1) of this title are applicable.

1954—Subsec. (*o*). Act Sept. 1, 1954, §101(a)(5), substituted ''section 410(a)(9)'' for ''section 410(a)(10)''.

Subsec. (p)(3). Act Sept. 1, 1954, §101(c)(3), inserted provisions making subsec. (p)(1) and (2) applicable to services performed by a civilian employee in the Coast Guard Exchanges or certain other activities at Coast Guard installations.

1952—Subsec. (*o*). Act July 18, 1952, substituted ''subsection (a) or (e) of section 417 of this title'' for ''section 417(a) of this title''.

1950—Act Aug. 28, 1950, §109(b)(1), substituted ''Administrator'' for ''Board'', ''Administrator's'' for ''Board's'', ''he'', ''him'', and ''his'' for ''it'', and ''its'', wherever appearing.

Subsec. (b). Act Aug. 28, 1950, §108(a), inserted ''former wife divorced, husband, widower,'' after ''widow''.

Subsec. (c). Act Aug. 28, 1950, §108(b), amended subsec. (c) generally to include definitions, to provide for the maintaining of records of self-employed persons, to allow for the revision of the Administrator's record, to authorize corrections after the times limitations if an application for monthly benefits or a lump-sum death payment is filed within the time limitation and no final decision has been made on it, to continue the requirement that written notice of any deletion or reduction of wages be given to the individual whose record is involved, to give the Administrator discretion to prescribe the period, after any change or refusal to change his records, within which an individual may be granted a hearing, and to provide for judicial review.

Subsec. (*l*). Act Aug. 28, 1950, §109(b)(2), amended subsec. (*l*) generally.

Subsecs. (*o*), (p). Act Aug. 28, 1950, §108(c), added subsecs. (*o*) and (p).

1939—Act Aug. 10, 1939, omitted former section 405 relating to payments of $500 or less to estates, and added subsecs. (a) to (n).

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–458, title VII, §7214(b), Dec. 17, 2004, 118 Stat. 3832, provided that: ''The amendment made by subsection (a)(2) [amending this section] shall apply with respect to licenses, registrations, and identification cards issued or reissued 1 year after the date of enactment of this Act [Dec. 17, 2004].''

Amendment by Pub. L. 108–458 effective Dec. 17, 2004, notwithstanding any other provision of such Act, see section 7219 of Pub. L. 108–458, set out as a note under section 1202 of Title 8, Aliens and Nationality.

Pub. L. 108–203, title I, §101(d), Mar. 2, 2004, 118 Stat. 497, provided that: ''The amendments made by this section [amending this section and sections 1007, 1382b, and 1383 of this title] shall apply to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after January 1, 1995.''

Pub. L. 108–203, title I, §102(a)(3), Mar. 2, 2004, 118 Stat. 498, provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title I, §103(d), Mar. 2, 2004, 118 Stat. 503, provided that: ''The amendments made by this section [amending this section and sections 1007 and 1383 of this title] shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title I, §104(c), Mar. 2, 2004, 118 Stat. 504, provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title I, §105(d), Mar. 2, 2004, 118 Stat. 505, provided that: ''The amendments made by this section [amending this section and sections 1007 and 1383 of this title] shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title I, §106(d), Mar. 2, 2004, 118 Stat. 506, provided that: ''The amendments made by this section [amending this section and sections 1007 and 1383 of this title] shall take effect 180 days after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title IV, §411(b), Mar. 2, 2004, 118 Stat. 527, provided that: ''The amendment made by this section [amending this section] shall apply with respect to final determinations issued (upon remand) on or after the date of the enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–90, title I, §103(j), Dec. 21, 2001, 115 Stat. 882, provided that: ''The amendments made by this section [amending this section and sections 231a to 231f, 231q, and 231r of Title 45, Railroads] shall take effect on January 1, 2002.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1090(b)(2) of Pub. L. 105–34 provided that:

''(A) The amendment made by paragraph (1)(A) [amending this section] shall apply to applications made after the date which is 180 days after the date of the enactment of this Act [Aug. 5, 1997].

''(B) The amendments made by subparagraphs (B) and (C) of paragraph (1) [amending this section] shall apply to information obtained on, before, or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of

Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Section 105(a)(5) of Pub. L. 104–121, as amended by Pub. L. 106–170, title IV, § 401(a), (b), Dec. 17, 1999, 113 Stat. 1906, provided that:

''(A) The amendments made by paragraphs (1) and (4) [amending sections 423 and 425 of this title] shall apply to any individual who applies for, or whose claim is finally adjudicated with respect to, benefits under title II of the Social Security Act [this subchapter] based on disability on or after the date of the enactment of this Act [Mar. 29, 1996], and, in the case of any individual who has applied for, and whose claim has been finally adjudicated with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

''(B) The amendments made by paragraphs (2) and (3) [amending this section and section 422 of this title] shall take effect on July 1, 1996, with respect to any individual—

''(i) whose claim for benefits is finally adjudicated on or after the date of the enactment of this Act [Mar. 29, 1996]; or

''(ii) whose entitlement to benefits is based upon an entitlement redetermination made pursuant to subparagraph (C).

''(C) Within 90 days after the date of the enactment of this Act [Mar. 29, 1996], the Commissioner of Social Security shall notify each individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection [amending this section and sections 422, 423, and 425 of this title]. If such an individual reapplies for benefits under title II of such Act (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

''(D) For purposes of this paragraph, an individual's claim, with respect to benefits under title II based on disability, which has been denied in whole before the date of the enactment of this Act, may not be considered to be finally adjudicated before such date if, on or after such date—

''(i) there is pending a request for either administrative or judicial review with respect to such claim; or

''(ii) there is pending, with respect to such claim, a readjudication by the Commissioner of Social Security pursuant to relief in a class action or implementation by the Commissioner of a court remand order.

''(E) Notwithstanding the provisions of this paragraph, with respect to any individual for whom the Commissioner of Social Security does not perform the entitlement redetermination before the date prescribed in subparagraph (C), the Commissioner shall perform such entitlement redetermination in lieu of a continuing disability review whenever the Commissioner determines that the individual's entitlement is subject to redetermination based on the preceding provisions of this paragraph, and the provisions of section 223(f) [section 423(f) of this title] shall not apply to such redetermination.''

[Pub. L. 106–170, title IV, § 401(c), Dec. 17, 1999, 113 Stat. 1907, provided that: ''The amendments made by this section [amending section 105(a)(5) of Pub. L. 104–121, set out above] shall take effect as if included in the enactment of section 105 of the Contract with America Advancement Act of 1996 (Public Law 104–121; 110 Stat. 852 et seq.).'']

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(1), (2), (4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(a)(1)(D) of Pub. L. 103–296 provided that:

''(i) GENERAL RULE.—Except as provided in clause (ii), the amendments made by this paragraph [amending this section] shall apply with respect to benefits paid in months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994].''

''(ii) TREATMENT OF CURRENT BENEFICIARIES.—In any case in which—

''(I) an individual is entitled to benefits based on disability (as defined in section 205(j)(7) of the Social Security Act [subsec. (j)(7) of this section], as amended by this section),

''(II) the determination of disability was made by the Secretary of Health and Human Services during or before the 180-day period following the date of the enactment of this Act, and

''(III) alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is under a disability,

the amendments made by this paragraph shall apply with respect to benefits paid in months after the month in which such individual is notified by the Secretary in writing that alcoholism or drug addiction is a contributing factor material to the Secretary's determination and that the Secretary is therefore required to make a certification of payment of such individual's benefits to a representative payee.''

Section 201(a)(2)(B)(iii) of Pub. L. 103–296 provided that the amendment made by that section is effective July 1, 1994.

Section 201(a)(2)(D) of Pub. L. 103–296 provided that: ''Except as provided in subparagraph (B)(iii) [set out above], the amendments made by this paragraph [amending this section] shall apply with respect to months beginning after 90 days after the date of the enactment of this Act [Aug. 15, 1994].''

Section 206(a)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall apply to translations made on or after October 1, 1994.''

Section 206(d)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect on October 1, 1994, and shall apply to determinations made before, on, or after such date.''

Section 304(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section and section 1320b–10 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].''

Section 321(f)(5) of Pub. L. 103–296 provided that: ''Each amendment made by this subsection [amending this section and sections 406, 423, 1320a–6, and 1383 of this title] shall take effect as if included in the provisions of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508] to which such amendment relates, except that the amendments made by paragraph (3)(B) [amending sections 406 and 1320a–6 of this title] shall apply with respect to favorable judgments made after 180 days after the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by section 1735(a), (b) of Pub. L. 101–624 effective and implemented first day of month beginning 120 days after publication of implementing regulations to be promulgated not later than Oct. 1, 1991, see section 1781(a) of Pub. L. 101–624, set out as a note under section 2012 of Title 7, Agriculture.

Section 5105(a)(5) of Pub. L. 101–508 provided that:

''(A) USE AND SELECTION OF REPRESENTATIVE PAYEES.—The amendments made by paragraphs (1) and (2) [amending this section and section 1383 of this title] shall take effect July 1, 1991, and shall apply only with respect to—

''(i) certifications of payment of benefits under title II of the Social Security Act [this subchapter] to representative payees made on or after such date; and

''(ii) provisions for payment of benefits under title XVI of such Act [subchapter XVI of this chapter] to representative payees made on or after such date.

''(B) COMPENSATION OF REPRESENTATIVE PAYEES.—The amendments made by paragraph (3) [amending this section and section 1383 of this title] shall take effect July 1, 1991, and the Secretary of Health and Human Services shall prescribe initial regulations necessary to carry out such amendments not later than such date.''

Section 5105(b)(1)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect October 1, 1992, and the Secretary of Health and Human Services shall take such actions as are necessary to ensure that the requirements of section 205(j)(3)(E) of the Social Security Act [subsec. (j)(3)(E) of this section] (as amended by subparagraph (A) of this paragraph) are satisfied as of such date.''

Section 5105(d)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section and section 1383 of this title] shall apply with respect to annual reports issued for years after 1991.''

Section 5107(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply with respect to adverse determinations made on or after July 1, 1991.''

Section 5109(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply with respect to notices issued on or after July 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10303(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply to visits to field offices of the Social Security Administration on or after January 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8009(b) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to benefits entitlement to which commences after the sixth month following the month in which this Act is enacted [November 1988].''

Amendment by section 8015(a)(1) of Pub. L. 100–647 applicable to determinations relating to service commenced in any position on or after Nov. 10, 1988, see section 8015(a)(3) of Pub. L. 100–647, set out as a note under section 3122 of Title 26, Internal Revenue Code.

Amendment by section 8016(a)(1) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to Title 26, as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of Title 26.

Section 125(b) of Pub. L. 100–485 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the first day of the 25th month which begins on or after the date of the enactment of this Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of this title prior to Oct. 21, 1986, with certain exceptions, see section 9002(d) of Pub. L. 99–509 set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 16(d) of Pub. L. 98–460 provided that: ''The amendments made by this section [amending this section and sections 408, 1383, and 1383a of this title] shall become effective on the date of the enactment of this Act [Oct. 9, 1984], and, in the case of the amendments made by subsection (c) [amending sections 408 and 1383a of this title], shall apply with respect to violations occurring on or after such date.''

Amendment by section 2661(h) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(4), (j)(4) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by sections 301(d) and 309(i) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 345(b) of Pub. L. 98–21 provided that: ''The amendment made by this section [amending this section] shall apply with respect to all new and replacement social security cards issued more than 193 days after the date of the enactment of this Act [Apr. 20, 1983].''

Section 4(b) of Pub. L. 97–455 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to reconsiderations (of findings described in section 205(b)(2)(B) of the Social Security Act [subsec. (b)(2)(B) of this section]) which are requested on or after such date as the Secretary of Health and Human Services may specify, but in any event not later than January 1, 1984.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 305(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply with respect to decisions made on or after the first day of the 13th month following the month in which this Act is enacted [June, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective Jan. 1, 1978, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 5 of Pub. L. 94–202 provided that: ''The amendments made by the first two sections of this Act [amending section 1383 of this title], and the provisions of section 3 [enacting provisions set out as a note under section 1383 of this title], shall take effect on the date of the enactment of this Act [Jan. 2, 1976]. The amendment made by section 4 of this Act [amending this section] shall apply with respect to any decision or determination of which notice is received, by the individual requesting the hearing involved, after February 29, 1976. The amendment made by the first section of this Act [amending section 1383 of this title], to the extent that it changes the period within which hearings must be requested, shall apply with respect to any decision or determination of which notice is received, by the individual requesting the hearing involved, on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 302(b) of Pub. L. 93–445 provided that: ''The amendment made by this section [amending this section] shall apply only with respect to benefits payable to individuals who first become entitled to benefits under title II of the Social Security Act [this subchapter] after 1974.''

Amendment by section 303 of Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 171(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be effective with respect to written requests filed under section 205(q) of the Social Security Act [subsec. (q) of this section] after June 30, 1968.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 308(d)(9), (10) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 102(f)(2) of Pub. L. 86–778 effective on first day of second calendar year following 1960, see section 102(f)(3) of Pub. L. 86–778, set out as a note under section 418 of this title.

Amendment by section 103(j)(2)(E) of Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Section 702(b) of Pub. L. 86–778 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to actions which are pending in court on the date of the enactment of this Act or are commenced after such date.''

EFFECTIVE DATE OF 1956 AMENDMENTS

Section 111(b) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective upon enactment [Aug. 1, 1956]; except that the period of time prescribed by the Secretary pursuant to the third sentence of section 205(b) of the Social Security Act [subsec. (b) of this section], as amended by subsection (a) of this section, with respect to decisions notice of which has been mailed by him to any individual prior to the enactment of this Act may not terminate for such individual less than six months after the date of enactment of this Act.''

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 101(n) of act Sept. 1, 1954, provided that: ''The amendment made by paragraph (3) of subsection (g) [amending section 411 of this title] shall be applicable only with respect to taxable years beginning after 1950. The amendments made by paragraphs (1), (2), and (4) of such subsection [amending section 411 of this title] and by subsection (d) [amending section 411 of this title] shall, except for purposes of section 203 of the Social Security Act [section 403 of this title], be applicable only with respect to taxable years ending after 1954. The amendments made by paragraphs (1), (2), and (3) of subsection (a) [amending section 409 of this title] shall be applicable only with respect to remuneration paid after 1954. The amendments made by paragraphs (4), (5), and (6) of subsection (a) [amending sections 410 and 418 of this title] shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954. The amendment made by paragraph (3) of subsection (c) [amending this section] shall become effective January 1, 1955. The other amendments made by this section (other than the amendments made by subsections (h), (i), (j) and (m)[)] [amending section 410 of this title] shall be applicable only with respect to services performed after 1954. For purposes of section 203 of the Social Security Act [section 403 of this title], the amendments made by paragraphs (1), (2), and (4) of subsection (g) [amending section 411 of this title] and by subsection (d) [amending section 411 of this title] shall be effective with respect to net earnings from self-employment derived after 1954. The amount of net earnings from self-employment derived during any taxable year ending in, and not with the close of, 1955 shall be credited equally to the calendar quarter in which such taxable year ends and to each of the three or fewer preceding quarters any part of which is in such taxable year; and, for purposes of the preceding sentence of this subsection, net earnings from self-employment so credited to calendar quarters in 1955 shall be deemed to have been derived after 1954.''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 108(d) of act Aug. 28, 1950, provided that: ''The amendments made by subsections (a) and (c) of this section [amending this section] shall take effect on September 1, 1950. The amendment made by subsection (b) of this section [amending this section] shall take effect January 1, 1951, except that, effective on September 1, 1950, the husband or former wife divorced of an individual shall be treated the same as a parent of such individual, and the legal representative of an individual or his estate shall be treated the same as the individual, for purposes of section 205(c) of the Social Security Act [subsec. (c) of this section] as in effect prior to the enactment of this Act [Aug. 28, 1950].''

Section 101(b)(2) of act Aug. 28, 1950, provided that: ''Section 205(m) of the Social Security Act [subsec. (m) of this section] is repealed effective with respect to monthly payments under section 202 of the Social Security Act [this section], as amended by this Act, for months after August 1950.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

REPEALS: AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(b)(3) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulation, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions,

see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SOCIAL SECURITY CARDS AND NUMBERS

Pub. L. 108–458, title VII, § 7213, Dec. 17, 2004, 118 Stat. 3830, provided that:

''(a) SECURITY ENHANCEMENTS.—The Commissioner of Social Security shall—

''(1) not later than 1 year after the date of enactment of this Act [Dec. 17, 2004]—

''(A) restrict the issuance of multiple replacement social security cards to any individual to 3 per year and 10 for the life of the individual, except that the Commissioner may allow for reasonable exceptions from the limits under this paragraph on a case-by-case basis in compelling circumstances;

''(B) establish minimum standards for the verification of documents or records submitted by an individual to establish eligibility for an original or replacement social security card, other than for purposes of enumeration at birth; and

''(C) require independent verification of any birth record submitted by an individual to establish eligibility for a social security account number, other than for purposes of enumeration at birth, except that the Commissioner may allow for reasonable exceptions from the requirement for independent verification under this subparagraph on a case by case basis in compelling circumstances; and

''(2) notwithstanding section 205(r) of the Social Security Act (42 U.S.C. 405(r)) and any agreement entered into thereunder, not later than 18 months after the date of enactment of this Act with respect to death indicators and not later than 36 months after the date of enactment of this Act with respect to fraud indicators, add death and fraud indicators to the social security number verification systems for employers, State agencies issuing driver's licenses and identity cards, and other verification routines that the Commissioner determines to be appropriate.

''(b) INTERAGENCY SECURITY TASK FORCE.—The Commissioner of Social Security, in consultation with the Secretary of Homeland Security, shall form an interagency task force for the purpose of further improving the security of social security cards and numbers. Not later than 18 months after the date of enactment of this Act [Dec. 17, 2004], the task force shall establish, and the Commissioner shall provide for the implementation of, security requirements, including—

''(1) standards for safeguarding social security cards from counterfeiting, tampering, alteration, and theft;

''(2) requirements for verifying documents submitted for the issuance of replacement cards; and

''(3) actions to increase enforcement against the fraudulent use or issuance of social security numbers and cards.

''(c) ENUMERATION AT BIRTH.—

''(1) IMPROVEMENT OF APPLICATION PROCESS.—As soon as practicable after the date of enactment of this Act [Dec. 17, 2004], the Commissioner of Social Security shall undertake to make improvements to the enumeration at birth program for the issuance of social security account numbers to newborns. Such improvements shall be designed to prevent—

''(A) the assignment of social security account numbers to unnamed children;

''(B) the issuance of more than 1 social security account number to the same child; and

''(C) other opportunities for fraudulently obtaining a social security account number.

''(2) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Commissioner shall transmit to each House of Congress a report specifying in detail the extent to which the improvements required under paragraph (1) have been made.

''(d) STUDY REGARDING PROCESS FOR ENUMERATION AT BIRTH.—

''(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act [Dec. 17, 2004], the Commissioner of Social Security shall conduct a study to determine the most efficient options for ensuring the integrity of the process for enumeration at birth. This study shall include an examination of available methods for reconciling hospital birth records with birth registrations submitted to agencies of States and political subdivisions thereof and with information provided to the Commissioner as part of the process for enumeration at birth.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Commissioner shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study conducted under paragraph (1).

''(B) CONTENTS.—The report submitted under subparagraph (A) shall contain such recommendations for legislative changes as the Commissioner considers necessary to implement needed improvements in the process for enumeration at birth.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commissioner of Social Security for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out this section.''

DEVELOPMENT OF PROTOTYPE OF COUNTERFEIT-RESISTANT SOCIAL SECURITY CARD

Pub. L. 104–208, div. C, title VI, § 657, Sept. 30, 1996, 110 Stat. 3009–719, provided that:

''(a) DEVELOPMENT.—

''(1) IN GENERAL.—The Commissioner of Social Security (in this section referred to as the 'Commissioner') shall, in accordance with the provisions of this section, develop a prototype of a counterfeit-resistant social security card. Such prototype card—

''(A) shall be made of a durable, tamper-resistant material such as plastic or polyester;

''(B) shall employ technologies that provide security features, such as magnetic stripes, holograms, and integrated circuits; and

''(C) shall be developed so as to provide individuals with reliable proof of citizenship or legal resident alien status.

''(2) ASSISTANCE BY ATTORNEY GENERAL.—The Attorney General shall provide such information and assistance as the Commissioner deems necessary to achieve the purposes of this section.

''(b) STUDIES AND REPORTS.—

''(1) IN GENERAL.—The Comptroller General and the Commissioner of Social Security shall each conduct a study, and issue a report to the Congress, that examines different methods of improving the social security card application process.

''(2) ELEMENTS OF STUDIES.—The studies shall include evaluations of the cost and work load implications of issuing a counterfeit-resistant social security card for all individuals over a 3, 5, and 10 year period. The studies shall also evaluate the feasibility and

cost implications of imposing a user fee for replacement cards and cards issued to individuals who apply for such a card prior to the scheduled 3, 5, and 10 year phase-in options.

''(3) DISTRIBUTION OF REPORTS.—Copies of the reports described in this subsection, along with facsimiles of the prototype cards as described in subsection (a), shall be submitted to the Committees on Ways and Means and Judiciary of the House of Representatives and the Committees on Finance and Judiciary of the Senate not later than 1 year after the date of the enactment of this Act [Sept. 30, 1996].''

Similar provisions were contained in the following prior act:

Pub. L. 104–193, title I, §111, Aug. 22, 1996, 110 Stat. 2176.

NINETY-DAY DELAY IN DEFERRAL OR SUSPENSION OF BENEFITS FOR CURRENT BENEFICIARIES

Section 201(a)(1)(C) of Pub. L. 103–296 provided that: ''In the case of an individual who, as of 180 days after the date of the enactment of this Act [Aug. 15, 1994], has been determined to be under a disability, if alcoholism or drug addiction is a contributing factor material to the determination of the Secretary of Health and Human Services that the individual is under a disability, the Secretary may, notwithstanding clauses (i) and (ii) of section 205(j)(2)(D) of the Social Security Act [subsec. (j)(2)(D) of this section], make direct payment of benefits to such individual during the 90-day period commencing with the date on which such individual is provided the notice described in subparagraph (D)(ii) of this paragraph [set out above], until such time during such period as the selection of a representative payee is made pursuant to section 205(j) of such Act [subsec. (j) of this section].''

STUDY REGARDING FEASIBILITY, COST, AND EQUITY OF REQUIRING REPRESENTATIVE PAYEES FOR ALL DISABILITY BENEFICIARIES SUFFERING FROM ALCOHOLISM OR DRUG ADDICTION

Section 201(a)(1)(E) of Pub. L. 103–296 provided that:

''(i) STUDY.—As soon as practicable after the date of the enactment of this Act [Aug. 15, 1994], the Secretary of Health and Human Services shall conduct a study of the representative payee program. In such study, the Secretary shall examine—

''(I) the feasibility, cost, and equity of requiring representative payees for all individuals entitled to benefits based on disability under title II or XVI of the Social Security Act [this subchapter and subchapter XVI of this chapter] who suffer from alcoholism or drug addiction, irrespective of whether the alcoholism or drug addiction was material in any case to the Secretary's determination of disability,

''(II) the feasibility, cost, and equity of providing benefits through non-cash means, including (but not limited to) vouchers, debit cards, and electronic benefits transfer systems,

''(III) the extent to which child beneficiaries are afflicted by drug addition or alcoholism and ways of addressing such affliction, including the feasibility of requiring treatment, and

''(IV) the extent to which children's representative payees are afflicted by drug addiction or alcoholism, and methods to identify children's representative payees afflicted by drug addition or alcoholism and to ensure that benefits continue to be provided to beneficiaries appropriately.

''(ii) REPORT.—Not later than December 31, 1995, the Secretary shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report setting forth the findings of the Secretary based on such study. Such report shall include such recommendations for administrative or legislative changes as the Secretary considers appropriate.''

ANNUAL REPORTS ON REVIEWS OF OASDI AND SSI CASES

Section 206(g) of Pub. L. 103–296, as amended by Pub. L. 103–296, title I, §108(b)(10)(B), Aug. 15, 1994, 108 Stat. 1483, provided that: ''The Commissioner of Social Security shall annually submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the extent to which the Commissioner has exercised his authority to review cases of entitlement to monthly insurance benefits under title II of the Social Security Act [this subchapter] and supplemental security income cases under title XVI of such Act [subchapter XVI of this chapter], and the extent to which the cases reviewed were those that involved a high likelihood or probability of fraud.''

REPORT ON FEASIBILITY OF OBTAINING READY ACCESS TO CERTAIN CRIMINAL FRAUD RECORDS

Section 5105(a)(2)(B) of Pub. L. 101–508 provided that: ''As soon as practicable after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services, in consultation with the Attorney General of the United States and the Secretary of the Treasury, shall study the feasibility of establishing and maintaining a current list, which would be readily available to local offices of the Social Security Administration for use in investigations undertaken pursuant to section 205(j)(2) or 1631(a)(2)(B) of the Social Security Act [subsec. (j)(2) of this section or section 1383(a)(2)(B) of this title], of the names and social security account numbers of individuals who have been convicted of a violation of section 495 of title 18, United States Code. The Secretary of Health and Human Services shall, not later than July 1, 1992, submit the results of such study, together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

REPORTS ON ORGANIZATIONS SERVING AS REPRESENTATIVE PAYEES AND FEES FOR SERVICES

Section 5105(a)(3)(B) of Pub. L. 101–508 provided that:

''(i) REPORT BY SECRETARY OF HEALTH AND HUMAN SERVICES.—Not later than January 1, 1993, the Secretary of Health and Human Services shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the number and types of qualified organizations which have served as representative payees and have collected fees for such service pursuant to any amendment made by subparagraph (A) [amending this section and section 1383 of this title].

''(ii) REPORT BY COMPTROLLER GENERAL.—Not later than July 1, 1992, the Comptroller General of the United States shall conduct a study of the advantages and disadvantages of allowing qualified organizations serving as representative payees to charge fees pursuant to the amendments made by subparagraph (A) and shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the results of such study.''

STUDY RELATING TO FEASIBILITY OF SCREENING OF INDIVIDUALS WITH CRIMINAL RECORDS

Section 5105(a)(4) of Pub. L. 101–508 provided that: ''As soon as practicable after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall conduct a study of the feasibility of determining the type of representative payee applicant most likely to have a felony or misdemeanor conviction, the suitability of individuals with prior convictions to serve as representative payees, and the circumstances under which such applicants could be allowed to serve as representative payees. The Secretary shall transmit the results of such study to the Committee on Ways and Means of the House of Representa-

tives and the Committee on Finance of the Senate not later than July 1, 1992.''

STUDY RELATING TO MORE STRINGENT OVERSIGHT OF HIGH-RISK REPRESENTATIVE PAYEES

Section 5105(b)(2) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—As soon as practicable after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall conduct a study of the need for a more stringent accounting system for high-risk representative payees than is otherwise generally provided under section 205(j)(3) or 1631(a)(2)(C) of the Social Security Act [subsec. (j)(3) of this section or section 1383(a)(2)(C) of this title], which would include such additional reporting requirements, record maintenance requirements, and other measures as the Secretary considers necessary to determine whether services are being appropriately provided by such payees in accordance with such sections 205(j) and 1631(a)(2).

''(B) SPECIAL PROCEDURES.—In such study, the Secretary shall determine the appropriate means of implementing more stringent, statistically valid procedures for—

''(i) reviewing reports which would be submitted to the Secretary under any system described in subparagraph (A), and

''(ii) periodic, random audits of records which would be kept under such a system,

in order to identify any instances in which high-risk representative payees are misusing payments made pursuant to section 205(j) or 1631(a)(2) of the Social Security Act.

''(C) HIGH-RISK REPRESENTATIVE PAYEE.—For purposes of this paragraph, the term 'high-risk representative payee' means a representative payee under section 205(j) or 1631(a)(2) of the Social Security Act (42 U.S.C. 405(j) and 1383(a)(2), respectively) (other than a Federal or State institution) who—

''(i) regularly provides concurrent services as a representative payee under such section 205(j), such section 1631(a)(2), or both such sections, for 5 or more individuals who are unrelated to such representative payee,

''(ii) is neither related to an individual on whose behalf the payee is being paid benefits nor living in the same household with such individual,

''(iii) is a creditor of such individual, or

''(iv) is in such other category of payees as the Secretary may determine appropriate.

''(D) REPORT.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing stricter accounting and review procedures for high-risk representative payees in all servicing offices of the Social Security Administration (together with proposed legislative language).''

DEMONSTRATION PROJECTS RELATING TO PROVISION OF INFORMATION TO LOCAL AGENCIES PROVIDING CHILD AND ADULT PROTECTIVE SERVICES

Section 5105(b)(3) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—As soon as practicable after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall implement a demonstration project under this paragraph in all or part of not fewer than 2 States. Under each such project, the Secretary shall enter into an agreement with the State in which the project is located to make readily available, for the duration of the project, to the appropriate State agency, a listing of addresses of multiple benefit recipients.

''(B) LISTING OF ADDRESSES OF MULTIPLE BENEFIT RECIPIENTS.—The list referred to in subparagraph (A) shall consist of a current list setting forth each address within the State at which benefits under title II [this subchapter], benefits under title XVI [subchapter XVI of this chapter], or any combination of such benefits are being received by 5 or more individuals. For purposes of this subparagraph, in the case of benefits under title II, all individuals receiving benefits on the basis of the wages and self-employment income of the same individual shall be counted as 1 individual.

''(C) APPROPRIATE STATE AGENCY.—The appropriate State agency referred to in subparagraph (A) is the agency of the State which the Secretary determines is primarily responsible for regulating care facilities operated in such State or providing for child and adult protective services in such State.

''(D) REPORT.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing the programs established pursuant to this paragraph on a permanent basis.

''(E) STATE.—For purposes of this paragraph, the term 'State' means a State, including the entities included in such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).''

COUNTERFEITING OF SOCIAL SECURITY ACCOUNT NUMBER CARDS

Pub. L. 99–603, title I, §101(f), Nov. 6, 1986, 100 Stat. 3373, provided that:

''(1) The Comptroller General of the United States, upon consultation with the Attorney General and the Secretary of Health and Human Services as well as private sector representatives (including representatives of the financial, banking, and manufacturing industries), shall inquire into technological alternatives for producing and issuing social security account number cards that are more resistant to counterfeiting than social security account number cards being issued on the date of enactment of this Act [Nov. 6, 1986] by the Social Security Administration, including the use of encoded magnetic, optical, or active electronic media such as magnetic stripes, holograms, and integrated circuit chips. Such inquiry should focus on technologies that will help ensure the authenticity of the card, rather than the identity of the bearer.

''(2) The Comptroller General of the United States shall explore additional actions that could be taken to reduce the potential for fraudulently obtaining and using social security account number cards.

''(3) Not later than one year after the date of enactment of this Act [Nov. 6, 1986], the Comptroller General of the United States shall prepare and transmit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and the Committee on the Judiciary and the Committee on Finance of the Senate a report setting forth his findings and recommendations under this subsection.''

CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES

Section 5 of Pub. L. 97–455 provided that: ''The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act [subsec. (b)(2) of this section] (as added by section 4 of this Act). For this purpose the Secretary shall—

''(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

''(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so

established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsiderations.''

INCLUSION OF SELF-EMPLOYMENT INCOME IN RECORDS OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE

Section 331(c) of Pub. L. 89–97 provided that: ''Notwithstanding any provision of section 205(c)(5)(F) of the Social Security Act [subsec. (c)(5)(F) of this section], the Secretary of Health, Education, and Welfare may conform, before April 16, 1970, his records to tax returns or statements of earnings which constitute self-employment income solely by reason of the filing of a certificate which is effective under section 1402(e)(5) of such Code [section 1402(e)(5) of Title 26, Internal Revenue Code].''

Section 101(e) of Pub. L. 86–778, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The provisions of section 205(c)(5)(F) of the Social Security Act [subsec. (c)(5)(F) of this section], insofar as they prohibit inclusion in the records of the Secretary of Health, Education, and Welfare of self-employment income for a taxable year when the return or statement including such income is filed after the time limitation following such taxable year, shall not be applicable to earnings which are derived in any taxable year ending before 1960 and which constitute self-employment income solely by reason of the filing of a certificate which is effective under section 1402(e)(3)(B) or (5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 1402(e)(3)(B) or (5) of Title 26].''

§ 405a. Regulations pertaining to frequency or due dates of payments and reports under voluntary agreements covering State and local employees; effective date

Notwithstanding any other provision of law, no regulation and no modification of any regulation, promulgated by the Secretary of Health and Human Services, after January 2, 1976, shall become effective prior to the end of the eighteen-month period which begins with the first day of the first calendar month which begins after the date on which such regulation or modification of a regulation is published in the Federal Register, if and insofar as such regulation or modification of a regulation pertains, directly or indirectly, to the frequency or due dates for payments and reports required under section 418(e)[1] of this title.

(Pub. L. 94–202, § 7, Jan. 2, 1976, 89 Stat. 1137; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Subsec. (e) of section 418 of this title, referred to in text, which related to payments and reports by States, was repealed, and subsec. (f) of section 418 of this title was redesignated as subsec. (e), by Pub. L. 99–509, title IX, § 9002(c)(1), Oct. 21, 1986, 100 Stat. 1971.

CODIFICATION

Section was not enacted as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in text pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TIME FOR MAKING SOCIAL SECURITY CONTRIBUTIONS WITH RESPECT TO COVERED STATE AND LOCAL EMPLOYEES

Pub. L. 96–265, title V, § 503(c), June 9, 1980, 94 Stat. 471, provided that: ''The provisions of section 7 of Public Law 94–202 [this section] shall not be applicable to any regulation which becomes effective on or after July 1, 1980, and which is designed to carry out the purposes of subsection (a) of this section [amending section 418 of this title].''

§ 406. Representation of claimants before Commissioner

(a) Recognition of representatives; fees for representation before Commissioner

(1) The Commissioner of Social Security may prescribe rules and regulations governing recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Commissioner of Social Security, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Commissioner of Social Security. Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe. The Commissioner of Social Security may, after due notice and opportunity for hearing, suspend or prohibit from further practice before the Commissioner any such person, agent, or attorney who refuses to comply with the Commissioner's rules and regulations or who violates any provision of this section for which a penalty is prescribed. The Commissioner of Social Security may, by rule and regulation, prescribe the maximum fees which may be charged

[1] See References in Text note below.

for services performed in connection with any claim before the Commissioner of Social Security under this subchapter, and any agreement in violation of such rules and regulations shall be void. Except as provided in paragraph (2)(A), whenever the Commissioner of Social Security, in any claim before the Commissioner for benefits under this subchapter, makes a determination favorable to the claimant, the Commissioner shall, if the claimant was represented by an attorney in connection with such claim, fix (in accordance with the regulations prescribed pursuant to the preceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim.

(2)(A) In the case of a claim of entitlement to past-due benefits under this subchapter, if—

(i) an agreement between the claimant and another person regarding any fee to be recovered by such person to compensate such person for services with respect to the claim is presented in writing to the Commissioner of Social Security prior to the time of the Commissioner's determination regarding the claim,

(ii) the fee specified in the agreement does not exceed the lesser of—

(I) 25 percent of the total amount of such past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title), or

(II) $4,000, and

(iii) the determination is favorable to the claimant,

then the Commissioner of Social Security shall approve that agreement at the time of the favorable determination, and (subject to paragraph (3)) the fee specified in the agreement shall be the maximum fee. The Commissioner of Social Security may from time to time increase the dollar amount under clause (ii)(II) to the extent that the rate of increase in such amount, as determined over the period since January 1, 1991, does not at any time exceed the rate of increase in primary insurance amounts under section 415(i) of this title since such date. The Commissioner of Social Security shall publish any such increased amount in the Federal Register.

(B) For purposes of this subsection, the term ''past-due benefits'' excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 423 of this title.

(C) In any case involving—

(i) an agreement described in subparagraph (A) with any person relating to both a claim of entitlement to past-due benefits under this subchapter and a claim of entitlement to past-due benefits under subchapter XVI of this chapter, and

(ii) a favorable determination made by the Commissioner of Social Security with respect to both such claims,

the Commissioner of Social Security may approve such agreement only if the total fee or fees specified in such agreement does not exceed, in the aggregate, the dollar amount in effect under subparagraph (A)(ii)(II).

(D) In the case of a claim with respect to which the Commissioner of Social Security has approved an agreement pursuant to subparagraph (A), the Commissioner of Social Security shall provide the claimant and the person representing the claimant a written notice of—

(i) the dollar amount of the past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title) and the dollar amount of the past-due benefits payable to the claimant,

(ii) the dollar amount of the maximum fee which may be charged or recovered as determined under this paragraph, and

(iii) a description of the procedures for review under paragraph (3).

(3)(A) The Commissioner of Social Security shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(D)—

(i) the claimant, or the administrative law judge or other adjudicator who made the favorable determination, submits a written request to the Commissioner of Social Security to reduce the maximum fee, or

(ii) the person representing the claimant submits a written request to the Commissioner of Social Security to increase the maximum fee.

Any such review shall be conducted after providing the claimant, the person representing the claimant, and the adjudicator with reasonable notice of such request and an opportunity to submit written information in favor of or in opposition to such request. The adjudicator may request the Commissioner of Social Security to reduce the maximum fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the claimant's interest or on the basis of evidence that the fee is clearly excessive for services rendered.

(B)(i) In the case of a request for review under subparagraph (A) by the claimant or by the person representing the claimant, such review shall be conducted by the administrative law judge who made the favorable determination or, if the Commissioner of Social Security determines that such administrative law judge is unavailable or if the determination was not made by an administrative law judge, such review shall be conducted by another person designated by the Commissioner of Social Security for such purpose.

(ii) In the case of a request by the adjudicator for review under subparagraph (A), the review shall be conducted by the Commissioner of Social Security or by an administrative law judge or other person (other than such adjudicator) who is designated by the Commissioner of Social Security.

(C) Upon completion of the review, the administrative law judge or other person conducting the review shall affirm or modify the amount which would otherwise be the maximum fee. Any such amount so affirmed or modified shall be considered the amount of the maximum fee which may be recovered under paragraph (2). The decision of the administrative law judge or other person conducting the review shall not be subject to further review.

(4) Subject to subsection (d) of this section, if the claimant is determined to be entitled to past-due benefits under this subchapter and the person representing the claimant is an attorney, the Commissioner of Social Security shall, notwithstanding section 405(i) of this title, certify for payment out of such past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title) to such attorney an amount equal to so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title).

(5) Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this subchapter by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Commissioner of Social Security shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both. The Commissioner of Social Security shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Commissioner of Social Security, of the identity of any person representing such claimant in accordance with this subsection.

(b) Fees for representation before court

(1)(A) Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Commissioner of Social Security may, notwithstanding the provisions of section 405(i) of this title, but subject to subsection (d) of this section, certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits. In case of any such judgment, no other fee may be payable or certified for payment for such representation except as provided in this paragraph.

(B) For purposes of this paragraph—

(i) the term ''past-due benefits'' excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 423 of this title, and

(ii) amounts of past-due benefits shall be determined before any applicable reduction under section 1320a–6(a) of this title.

(2) Any attorney who charges, demands, receives, or collects for services rendered in connection with proceedings before a court to which paragraph (1) of this subsection is applicable any amount in excess of that allowed by the court thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500, or imprisonment for not more than one year, or both.

(c) Notification of options for obtaining attorneys

The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

(d) Assessment on attorneys

(1) In general

Whenever a fee for services is required to be certified for payment to an attorney from a claimant's past-due benefits pursuant to subsection (a)(4) or (b)(1) of this section, the Commissioner shall impose on the attorney an assessment calculated in accordance with paragraph (2).

(2) Amount

(A) The amount of an assessment under paragraph (1) shall be equal to the product obtained by multiplying the amount of the representative's fee that would be required to be so certified by subsection (a)(4) or (b)(1) of this section before the application of this subsection, by the percentage specified in subparagraph (B), except that the maximum amount of the assessment may not exceed the greater of $75 or the adjusted amount as provided pursuant to the following two sentences. In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003[1] take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(i)(2)(A)(ii) of this title, except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.

(B) The percentage specified in this subparagraph is—

(i) for calendar years before 2001, 6.3 percent, and

(ii) for calendar years after 2000, such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and certifying fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

(3) Collection

The Commissioner may collect the assessment imposed on an attorney under paragraph (1) by offset from the amount of the fee otherwise required by subsection (a)(4) or (b)(1) of

[1] See References in Text note below.

this section to be certified for payment to the attorney from a claimant's past-due benefits.

(4) Prohibition on claimant reimbursement

An attorney subject to an assessment under paragraph (1) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

(5) Disposition of assessments

Assessments on attorneys collected under this subsection shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate.

(6) Authorization of appropriations

The assessments authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this subchapter and related laws.

(Aug. 14, 1935, ch. 531, title II, § 206, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1372; Aug. 28, 1950, ch. 809, title I, § 109(b)(1), 64 Stat. 523; Pub. L. 85–840, title III, § 309, Aug. 28, 1958, 72 Stat. 1034; Pub. L. 89–97, title III, § 332, July 30, 1965, 79 Stat. 403; Pub. L. 90–248, title I, § 173, Jan. 2, 1968, 81 Stat. 877; Pub. L. 101–239, title X, § 10307(a)(1), (b)(1), Dec. 19, 1989, 103 Stat. 2484, 2485; Pub. L. 98–369, title VI, § 2663(*l*)(1), July 18, 1984, 98 Stat. 1171; Pub. L. 101–508, title V, § 5106(a)(1), Nov. 5, 1990, 104 Stat. 1388–266; Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(f)(3)(B)(i), (4), Aug. 15, 1994, 108 Stat. 1478, 1541, 1542; Pub. L. 106–170, title IV, § 406(a), (b), Dec. 17, 1999, 113 Stat. 1911, 1912; Pub. L. 108–203, title II, § 205, title III, § 301(a), Mar. 2, 2004, 118 Stat. 512, 519.)

REFERENCES IN TEXT

Section 301 of the Social Security Protection Act of 2003, referred to in subsec. (d)(2)(A), probably means section 301 of the Social Security Protection Act of 2004, Pub. L. 108–203, which amended this section and enacted provisions set out as a note below.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–203, § 205, inserted ''Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe.'' after ''claimants before the Commissioner of Social Security.''.

Subsec. (d)(2)(A). Pub. L. 108–203, § 301(a), inserted '', except that the maximum amount of the assessment may not exceed the greater of $75 or the adjusted amount as provided pursuant to the following two sentences'' after ''subparagraph (B)'' and inserted at end ''In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(i)(2)(A)(ii) of this title, except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.''

1999—Subsec. (a)(4). Pub. L. 106–170, § 406(a)(2)(A), (b), struck out ''(A)'' after ''(4)'', substituted ''subsection (d) of this section'' for ''subparagraph (B)'', and struck out subpar. (B) which read as follows: ''The Commissioner of Social Security shall not in any case certify any amount for payment to the attorney pursuant to this paragraph before the expiration of the 15-day period referred to in paragraph (3)(A) or, in the case of any review conducted under paragraph (3), before the completion of such review.''

Subsec. (b)(1)(A). Pub. L. 106–170, § 406(a)(2)(B), inserted '', but subject to subsection (d) of this section'' after ''section 405(i) of this title''.

Subsec. (d). Pub. L. 106–170, § 406(a)(1), added subsec. (d).

1994—Subsec. (a)(1), (2)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''before the Commissioner'' for ''before him'' in two places, ''Commissioner's'' for ''Secretary's'' in two places, and ''the Commissioner shall, if the'' for ''he shall, if the'' in par. (1).

Subsec. (a)(2)(C). Pub. L. 103–296, § 321(f)(4)(A)(ii), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 103–296, § 107(a)(4), in subpar. (C) as added by Pub. L. 103–296, § 321(f)(4)(A)(ii), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (a)(2)(D). Pub. L. 103–296, § 321(f)(4)(A)(i), redesignated subpar. (C) as (D).

Pub. L. 103–296, § 107(a)(4), in subpar. (D) as redesignated by Pub. L. 103–296, § 321(f)(4)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places in introductory provisions.

Subsec. (a)(3)(A). Pub. L. 103–296, § 321(f)(4)(B), substituted ''paragraph (2)(D)'' for ''paragraph (2)(C)'' in introductory provisions.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(3)(B), (4), (5). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (b)(1). Pub. L. 103–296, § 321(f)(3)(B)(i), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(1)(A). Pub. L. 103–296, § 107(a)(4), in subpar. (A) as designated by Pub. L. 103–296, § 321(f)(3)(B)(i), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

1990—Subsec. (a). Pub. L. 101–508 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2)(A), whenever'' for ''Whenever'' in fifth sentence, substituted pars. (2) to (4) for ''If as a result of such determination, such claimant is entitled to past-due benefits under this subchapter, the Secretary shall, notwithstanding section 405(i) of this title, certify for payment (out of such past-due benefits) to such

attorney an amount equal to whichever of the following is the smaller: (A) 25 per centum of the total amount of such past-due benefits, (B) the amount of the attorney's fee so fixed, or (C) the amount agreed upon between the claimant and such attorney as the fee for such attorney's services.'', and inserted ''(5)'' before ''Any person who''.

1989—Subsec. (a). Pub. L. 101–239, § 10307(a)(1), inserted at end ''The Secretary shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Secretary, of the identity of any person representing such claimant in accordance with this subsection.''

Subsec. (c). Pub. L. 101–239, § 10307(b)(1), added subsec. (c).

1984—Pub. L. 98–369 substituted ''Secretary'' and ''Secretary's'' for ''Administrator'' and ''Administrator's'', respectively, wherever appearing.

1968—Subsec. (a). Pub. L. 90–248 provided for fixing of attorneys fees for claimants and for certification of amount for payment out of past-due benefits.

1965—Pub. L. 89–97 designated existing provisions as subsec. (a) and added subsec. (b).

1958—Pub. L. 85–840 struck out provisions which required attorneys to file a certificate of their right to practice.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' and ''Administrator's'' for ''Board's''.

1939—Act Aug. 10, 1939, substituted the provisions of this section for former provisions relating to overpayments during life, now covered by section 404 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title III, § 301(b), Mar. 2, 2004, 118 Stat. 519, provided that: ''The amendments made by this section [amending this section] shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 206 of the Social Security Act [this section] on or after the first day of the first month that begins after 180 days after the date of the enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title IV, § 406(d), Dec. 17, 1999, 113 Stat. 1913, provided that: ''The amendments made by this section [amending this section and enacting provisions set out as a note under this section] shall apply in the case of any attorney with respect to whom a fee for services is required to be certified for payment from a claimant's past-due benefits pursuant to subsection (a)(4) or (b)(1) of section 206 of the Social Security Act [this section] after the later of—

''(1) December 31, 1999, or

''(2) the last day of the first month beginning after the month in which this Act is enacted [Dec. 1999].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 321(f)(3)(B)(i), (4) of Pub. L. 103–296 effective as if included in the provisions of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, to which such amendment relates, except that amendment by section 321(f)(3)(B)(i) applicable with respect to favorable judgments made after 180 days after Aug. 15, 1994, see section 321(f)(5) of Pub. L. 103–296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d) of Pub. L. 101–508, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10307(a)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect June 1, 1991.''

Section 10307(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall apply with respect to adverse determinations made on or after January 1, 1991.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

NATIONWIDE DEMONSTRATION PROJECT PROVIDING FOR EXTENSION OF FEE WITHHOLDING PROCEDURES TO NON-ATTORNEY REPRESENTATIVES

Pub. L. 108–203, title III, § 303, Mar. 2, 2004, 118 Stat. 521, provided that:

''(a) IN GENERAL.—The Commissioner of Social Security (hereafter in this section referred to as the 'Commissioner') shall develop and carry out a nationwide demonstration project under this section with respect to agents and other persons, other than attorneys, who represent claimants under titles II and XVI of the Social Security Act [subchapters II and XVI of this chapter] before the Commissioner. The demonstration project shall be designed to determine the potential results of extending to such representatives the fee withholding procedures and assessment procedures that apply under sections 206 and section [sic] 1631(d)(2) of such Act [sections 406 and 1383(d)(2) of this title] to attorneys seeking direct payment out of past due benefits under such titles and shall include an analysis of the effect of such extension on claimants and program administration.

''(b) STANDARDS FOR INCLUSION IN DEMONSTRATION PROJECT.—Fee-withholding procedures may be extended under the demonstration project carried out pursuant to subsection (a) to any non-attorney representative only if such representative meets at least the following prerequisites:

''(1) The representative has been awarded a bachelor's degree from an accredited institution of higher education, or has been determined by the Commissioner to have equivalent qualifications derived from training and work experience.

''(2) The representative has passed an examination, written and administered by the Commissioner, which tests knowledge of the relevant provisions of the Social Security Act [this chapter] and the most recent developments in agency and court decisions affecting titles II and XVI of such Act [subchapters II and XVI of this chapter].

''(3) The representative has secured professional liability insurance, or equivalent insurance, which the Commissioner has determined to be adequate to protect claimants in the event of malpractice by the representative.

''(4) The representative has undergone a criminal background check to ensure the representative's fitness to practice before the Commissioner.

''(5) The representative demonstrates ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, which are designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under titles II and XVI of such Act. Such continuing education, and the instructors providing such education, shall meet such standards as the Commissioner may prescribe.

''(c) ASSESSMENT OF FEES.—

''(1) IN GENERAL.—The Commissioner may assess representatives reasonable fees to cover the cost to the Social Security Administration of administering the prerequisites described in subsection (b).

''(2) DISPOSITION OF FEES.—Fees collected under paragraph (1) shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal

Disability Insurance Trust Fund, or deposited as miscellaneous receipts in the general fund of the Treasury, based on such allocations as the Commissioner of Social Security determines appropriate.

''(3) AUTHORIZATION OF APPROPRIATIONS.—The fees authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended for administering the prerequisites described in subsection (b).

''(d) NOTICE TO CONGRESS AND APPLICABILITY OF FEE WITHHOLDING PROCEDURES.—Not later than 1 year after the date of enactment of this Act [Mar. 2, 2004], the Commissioner shall complete such actions as are necessary to fully implement the requirements for full operation of the demonstration project and shall submit to each House of Congress a written notice of the completion of such actions [Such notices submitted Feb. 28, 2005.]. The applicability under this section to non-attorney representatives of the fee withholding procedures and assessment procedures under sections 206 and 1631(d)(2) of the Social Security Act [sections 406 and 1383(d)(2) of this title] shall be effective with respect to fees for representation of claimants in the case of claims for benefits with respect to which the agreement for representation is entered into by such non-attorney representatives during the period beginning with the date of the submission of such notice by the Commissioner to Congress and ending with the termination date of the demonstration project.

''(e) REPORTS BY THE COMMISSIONER; TERMINATION.—

''(1) INTERIM REPORTS.—On or before the date which is 1 year after the date of enactment of this Act [Mar. 2, 2004], and annually thereafter, the Commissioner shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate an annual interim report on the progress of the demonstration project carried out under this section, together with any related data and materials that the Commissioner may consider appropriate.

''(2) TERMINATION DATE AND FINAL REPORT.—The termination date of the demonstration project under this section is the date which is 5 years after the date of the submission of the notice by the Commissioner to each House of Congress pursuant to subsection (d). The authority under the preceding provisions of this section shall not apply in the case of claims for benefits with respect to which the agreement for representation is entered into after the termination date. Not later than 90 days after the termination date, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a final report with respect to the demonstration project.''

GAO STUDY REGARDING THE FEE PAYMENT PROCESS FOR CLAIMANT REPRESENTATIVES

Pub. L. 108–203, title III, § 304, Mar. 2, 2004, 118 Stat. 523, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Comptroller General of the United States shall study and evaluate the appointment and payment of claimant representatives appearing before the Commissioner of Social Security in connection with benefit claims under titles II and XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) in each of the following groups:

''(A) Attorney claimant representatives who elect fee withholding under section 206 or 1631(d)(2) of such Act [sections 406 and 1383(d)(2) of this title].

''(B) Attorney claimant representatives who do not elect such fee withholding.

''(C) Non-attorney claimant representatives who are eligible for, and elect, such fee withholding.

''(D) Non-attorney claimant representatives who are eligible for, but do not elect, such fee withholding.

''(E) Non-attorney claimant representatives who are not eligible for such fee withholding.

''(2) MATTERS TO BE STUDIED.—In conducting the study under this subsection, the Comptroller General shall, for each of group of claimant representatives described in paragraph (1)—

''(A) conduct a survey of the relevant characteristics of such claimant representatives including—

''(i) qualifications and experience;

''(ii) the type of employment of such claimant representatives, such as with an advocacy group, State or local government, or insurance or other company;

''(iii) geographical distribution between urban and rural areas;

''(iv) the nature of claimants' cases, such as whether the cases are for disability insurance benefits only, supplemental security income benefits only, or concurrent benefits;

''(v) the relationship of such claimant representatives to claimants, such as whether the claimant is a friend, family member, or client of the claimant representative; and

''(vi) the amount of compensation (if any) paid to the claimant representatives and the method of payment of such compensation;

''(B) assess the quality and effectiveness of the services provided by such claimant representatives, including a comparison of claimant satisfaction or complaints and benefit outcomes, adjusted for differences in claimant representatives' caseload, claimants' diagnostic group, level of decision, and other relevant factors;

''(C) assess the interactions between fee withholding under sections 206 and 1631(d)(2) of such Act (including under the amendments made by section 302 of this Act [amending section 1383 of this title] and under the demonstration project conducted under section 303 of this Act [set out above]), the windfall offset under section 1127 of such Act [section 1320a–6 of this title], and interim assistance reimbursements under section 1631(g) of such Act;

''(D) assess the potential results of making permanent the fee withholding procedures under sections 206 and 1631(d)(2) of such Act under the amendments made by section 302 of this Act and under the demonstration project conducted under section 303 of this Act with respect to program administration and claimant outcomes, and assess whether the rules and procedures employed by the Commissioner of Social Security to evaluate the qualifications and performance of claimant representatives should be revised prior to making such procedures permanent; and

''(E) make such recommendations for administrative and legislative changes as the Comptroller General of the United States considers necessary or appropriate.

''(3) CONSULTATION REQUIRED.—The Comptroller General of the United States shall consult with beneficiaries under title II of such Act, beneficiaries under title XVI of such Act, claimant representatives of beneficiaries under such titles, and other interested parties, in conducting the study and evaluation required under paragraph (1).

''(b) REPORT.—Not later than 3 years after the date of the submission by the Commissioner of Social Security to each House of Congress pursuant to section 303(d) of this Act [set out above] of written notice of completion of full implementation of the requirements for operation of the demonstration project under section 303 of this Act, the Comptroller General of the United States shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of the study and evaluation conducted pursuant to subsection (a).''

GAO STUDY AND REPORT

Pub. L. 106–170, title IV, § 406(c), Dec. 17, 1999, 113 Stat. 1912, provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study that—

''(A) examines the costs incurred by the Social Security Administration in administering the provisions of subsection (a)(4) and (b)(1) of section 206 of the Social Security Act (42 U.S.C. 406) and itemizes the components of such costs, including the costs of determining fees to attorneys from the past-due benefits of claimants before the Commissioner of Social Security and of certifying such fees;

''(B) identifies efficiencies that the Social Security Administration could implement to reduce such costs;

''(C) examines the feasibility and advisability of linking the payment of, or the amount of, the assessment under section 206(d) of the Social Security Act (42 U.S.C. 406(d)) to the timeliness of the payment of the fee to the attorney as certified by the Commissioner of Social Security pursuant to subsection (a)(4) or (b)(1) of section 206 of such Act (42 U.S.C. 406);

''(D) determines whether the provisions of subsection (a)(4) and (b)(1) of section 206 of such Act (42 U.S.C. 406) should be applied to claimants under title XVI of such Act (42 U.S.C 1381 et seq.);

''(E) determines the feasibility and advisability of stating fees under section 206(d) of such Act (42 U.S.C. 406(d)) in terms of a fixed dollar amount as opposed to a percentage;

''(F) determines whether the dollar limit specified in section 206(a)(2)(A)(ii)(II) of such Act (42 U.S.C. 406(a)(2)(A)(ii)(II)) should be raised; and

''(G) determines whether the assessment on attorneys required under section 206(d) of such Act (42 U.S.C. 406(d)) (as added by subsection (a)(1) of this section) impairs access to legal representation for claimants.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General of the United States shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the study conducted under paragraph (1), together with any recommendations for legislation that the Comptroller General determines to be appropriate as a result of such study.''

§ 407. Assignment of benefits

(a) In general

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) Amendment of section

No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Withholding of taxes

Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this subchapter, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 by the person entitled to such benefit or such person's representative payee.

(Aug. 14, 1935, ch. 531, title II, § 207, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1372; Pub. L. 98–21, title III, § 335(a), Apr. 20, 1983, 97 Stat. 130; Pub. L. 105–277, div. J, title IV, § 4005(a), Oct. 21, 1998, 112 Stat. 2681–911.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (c), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

In subsec. (b), ''April 20, 1983'' substituted for ''the date of the enactment of this section'', which was translated as meaning the date of enactment of this subsection, as the probable intent of Congress.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–277 added subsec. (c).

1983—Pub. L. 98–21 designated existing provisions as subsec. (a) and added subsec. (b).

1939—Act Aug. 10, 1939, amended section generally, incorporating provisions of former section 408 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 335(c) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to benefits payable or rights existing under the Social Security Act [this chapter] on or after the date of the enactment of this Act [Apr. 20, 1983].''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

§ 408. Penalties

(a) In general

Whoever—

(1) for the purpose of causing an increase in any payment authorized to be made under this subchapter, or for the purpose of causing any payment to be made where no payment is authorized under this subchapter, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to—

(A) whether wages were paid or received for employment (as said terms are defined in this subchapter and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

(B) whether net earnings from self-employment (as such term is defined in this subchapter and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(C) whether a person entitled to benefits under this subchapter had earnings in or for a particular period (as determined under section 403(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(2) makes or causes to be made any false statement or representation of a material fact in any application for any payment or for a disability determination under this subchapter; or

(3) at any time makes or causes to be made any false statement or representation of a ma-

terial fact for use in determining rights to payment under this subchapter; or

(4) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this subchapter, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(5) having made application to receive payment under this subchapter for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(6) willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title; or

(7) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—

(A) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Commissioner of Social Security (in the exercise of the Commissioner's authority under section 405(c)(2) of this title to establish and maintain records) on the basis of false information furnished to the Commissioner of Social Security by him or by any other person; or

(B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person; or

(C) knowingly alters a social security card issued by the Commissioner of Social Security, buys or sells a card that is, or purports to be, a card so issued, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it; or

(8) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States;

shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than five years, or both.

(b) Restitution

(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a) of this section, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the victims of such offense specified in paragraph (4).

(2) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution to victims of such offense under this subsection.

(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

(4) For purposes of paragraphs (1) and (2), the victims of an offense under subsection (a) of this section are the following:

(A) Any individual who suffers a financial loss as a result of the defendant's violation of subsection (a) of this section.

(B) The Commissioner of Social Security, to the extent that the defendant's violation of subsection (a) of this section results in—

(i) the Commissioner of Social Security making a benefit payment that should not have been made; or

(ii) an individual suffering a financial loss due to the defendant's violation of subsection (a) of this section in his or her capacity as the individual's representative payee appointed pursuant to section 405(j) of this title.

(5)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund, as appropriate.

(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (4)(B)(ii), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss, except that such amount may be reduced by the amount of any overpayments of benefits owed under this subchapter, subchapter VIII of this chapter, or subchapter XVI of this chapter by the individual.

(c) Violations by certified payees

Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined under title 18 or imprisoned for not more than five years, or both.

(d) Effect upon certification as payee; definitions

Any individual or entity convicted of a felony under this section or under section 1383a(b)[1] of this title may not be certified as a payee under section 405(j) of this title. For the purpose of subsection (a)(7) of this section, the terms ''social security number'' and ''social security account number'' mean such numbers as are assigned by the Commissioner of Social Security under section 405(c)(2) of this title whether or not, in actual use, such numbers are called social security numbers.

(e) Application of subsection (a)(6) and (7) to certain aliens

(1) Except as provided in paragraph (2), an alien—

(A) whose status is adjusted to that of lawful temporary resident under section 1160 or 1255a of title 8 or under section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,

(B) whose status is adjusted to that of permanent resident—

(i) under section 202 of the Immigration Reform and Control Act of 1986, or

(ii) pursuant to section 1259 of title 8, or

(C) who is granted special immigrant status under section 1101(a)(27)(I) of title 8,

shall not be subject to prosecution for any alleged conduct described in paragraph (6) or (7) of subsection (a) of this section if such conduct is alleged to have occurred prior to 60 days after November 5, 1990.

(2) Paragraph (1) shall not apply with respect to conduct (described in subsection (a)(7)(C) of this section) consisting of—

(A) selling a card that is, or purports to be, a social security card issued by the Commissioner of Social Security,

(B) possessing a social security card with intent to sell it, or

(C) counterfeiting a social security card with intent to sell it.

(3) Paragraph (1) shall not apply with respect to any criminal conduct involving both the conduct described in subsection (a)(7) of this section to which paragraph (1) applies and any other criminal conduct if such other conduct would be criminal conduct if the conduct described in subsection (a)(7) of this section were not committed.

(Aug. 14, 1935, ch. 531, title II, §208, 49 Stat. 625; Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, 1372; Aug. 28, 1950, ch. 809, title I, §109(c), 64 Stat. 523; Sept. 1, 1954, ch. 1206, title I, §111(b), 68 Stat. 1085; Pub. L. 85–840, title III, §310, Aug. 28, 1958, 72 Stat. 1034; Pub. L. 86–778, title II, §211(m), Sept. 13, 1960, 74 Stat. 958; Pub. L. 92–603, title I, §130(a), Oct. 30, 1972, 86 Stat. 1359; Pub. L. 94–455, title XII, §1211(a), (d), Oct. 4, 1976, 90 Stat. 1711, 1712; Pub. L. 97–123, §4(a), (b), Dec. 29, 1981, 95 Stat. 1663, 1664; Pub. L. 98–369, div. B, title VI, §2663(a)(5), July 18, 1984, 98 Stat. 1162; Pub. L. 98–460, §16(c)(2), Oct. 9, 1984, 98 Stat. 1811; Pub. L. 100–690, title VII, §7088, Nov. 18, 1988, 102 Stat. 4409; Pub. L. 101–508, title V, §§5121, 5130(a)(1), Nov. 5, 1990, 104 Stat. 1388–283, 1388–289; Pub. L. 103–296, title I, §107(a)(4), title III, §321(a)(12), Aug. 15, 1994, 108 Stat. 1478, 1536; Pub. L. 106–553, §1(a)(2) [title VI, §635(c)(2)(1), (2)], Dec. 21, 2000, 114 Stat. 2762, 2762A–117; Pub. L. 106–554, §1(a)(4) [div. A, §213(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180; Pub. L. 108–203, title II, §209(a), Mar. 2, 2004, 118 Stat. 513.)

[1] See References in Text note below.

REFERENCES IN TEXT

Subchapter E of chapter 1 and subchapters A and E of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1), were comprised of sections 480–482, 1400–1432, and 1630–1636, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Chapters 2 and 21 and subtitle F of the Internal Revenue Code of 1954, referred to in subsec. (a)(1), were redesignated chapters 2 and 21 and subtitle F of the Internal Revenue Code of 1986, and are classified to sections 1401 et seq., 3101 et seq., and 6001 et seq., respectively, of Title 26.

Section 1383a(b) of this title, referred to in subsec. (d), was redesignated section 1383a(c) of this title and amended by Pub. L. 108–203, title II, §209(c), Mar. 2, 2004, 118 Stat. 515.

Section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, referred to in subsec. (e)(1)(A), is section 902 of Pub. L. 100–204, which is set out as a note under section 1255a of Title 8, Aliens and Nationality.

Section 202 of the Immigration Reform and Control Act of 1986, referred to in subsec. (e)(1)(B)(i), is section 202 of Pub. L. 99–603, which is set out as a note under section 1255a of Title 8.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–203, §209(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108–203, §209(a)(1), (3), redesignated subsec. (b) as (c) and struck out at end: ''In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.'' Former subsec. (c) redesignated (d).

Subsecs. (d), (e). Pub. L. 108–203, §209(a)(1), redesignated subsecs. (c) and (d) as (d) and (e), respectively.

2000—Subsec. (a)(8) to (10). Pub. L. 106–553, which inserted ''or'' at end of par. (8) and added pars. (9) and (10), was repealed by Pub. L. 106–554, effective as if included in Pub. L. 106–553 on Dec. 21, 2000. Pars. (9) and (10) read as follows:

''(9) except as provided in section 1320b–23(d) of this title, knowingly and willfully displays or sells to the general public (as defined in section 1320b–23(g) of this title) any individual's social security number, or any identifiable derivative of such number, without the affirmatively expressed consent (as defined in section 1320b–23(c) of this title), electronically or in writing, of such individual; or

''(10) obtains any individual's social security number, or any identifiable derivative of such number, for purposes of locating or identifying an individual with the intent to physically injure, harm, or use the identity of the individual for illegal purposes;''.

1994—Subsec. (a)(6), (7). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner's authority'' for ''his authority'' in par. (7)(A).

Subsec. (c). Pub. L. 103–296, § 321(a)(12), substituted ''subsection (a)(7)'' for ''subsection (g)''.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(2)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

1990—Pub. L. 101–508, § 5121, inserted ''(a)'' before ''Whoever—'', redesignated former subsecs. (a) to (h) as pars. (1) to (8), respectively, of subsec. (a), in pars. (1) and (7) redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, inserted ''(b)'' before ''Any person or other entity who is convicted'', inserted ''(c)'' before ''Any individual or entity convicted of a felony'', and added subsec. (d).

Pub. L. 101–508, § 5130(a)(1), in the last undesignated paragraph substituted ''section 405(c)(2) of this title'' for ''section 605(c)(2) of this title''.

1988—Pub. L. 100–690 substituted ''under title 18'' for ''not more than $5,000'' in first undesignated par., substituted ''under title 18'' for ''not more than $25,000'' in second undesignated par., and inserted provisions at end defining for purposes of subsec. (g) ''social security number'' and ''social security account number''.

1984—Pub. L. 98–460 inserted provisions imposing a penalty of $25,000 or imprisonment for not more than five years, or both, on any person or other entity convicted for a second or subsequent violation of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title, and also granting the court discretion, in any case, including a first offense, involving a willful misuse of funds, to require full or partial restitution, and prohibiting the certification of any individual or entity convicted of a felony under this section or under section 1383a(b) of this title.

Subsecs. (f) to (h). Pub. L. 98–369 realigned margins of subsecs. (f) to (h).

1981—Pub. L. 97–123 substituted provisions making violation of section a felony for provisions making it a misdemeanor, increased the punishment from one to five years and penalty from $1,000 to $5,000, and in subsec. (g), in opening paragraph, substituted ''or for the purpose of obtaining anything of value from any person, or for any other purpose'' for ''or for any other purpose'', and added par. (3).

1976—Subsec. (g). Pub. L. 94–455, § 1211(a), inserted '', or for any other purpose'' after ''entitled'' in provisions preceding cl. (1).

Subsec. (h). Pub. L. 94–455, § 1211(d)(1), added subsec. (h).

1972—Subsecs. (f), (g). Pub. L. 92–603 added subsecs. (f) and (g).

1960—Subsec. (a)(3). Pub. L. 86–778 substituted ''section 403(f) of this title'' for ''section 403(e) of this title''.

1958—Pub. L. 85–840 amended section generally, by, among other changes, inserting references to the Internal Revenue Code of 1954, and making penalty provisions applicable to cases (1) where false statements or representations as to whether wages were paid or received for employment, or whether net earnings from self-employment were derived, or whether a person entitled to benefits under this subchapter had earnings in or for a particular period, or as to the amount thereof, are made for the purpose of obtaining or increasing benefits; (2) where false statements or representations are made in any application for disability determination; (3) where a person intentionally conceals or fails to disclose knowledge of any event affecting his or another's initial or continued right to payment, and (4) where a person converts a payment that he received for the use and benefit of another.

1954—Act Sept. 1, 1954, made it clear that the penalty provisions of the section extend to cases of false statements or representations as to the amount of net earnings from self-employment derived or the period during which derived.

1950—Act Aug. 28, 1950, substituted ''subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939'' for ''the Federal Insurance Contributions Act''.

1939—Act Aug. 10, 1939, amended section generally, incorporating provisions of section 409 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, § 209(d), Mar. 2, 2004, 118 Stat. 516, provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and sections 1011 and 1383a of this title] shall apply with respect to violations occurring on or after the date of enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(4) [div. A, § 213(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, provided that: ''The amendments made by this section [amending this section, section 10601 of this title, and section 2709 of Title 22, Foreign Relations and Intercourse, repealing section 1320b–23 of this title, amending provisions set out as notes under sections 4001 and 4013 of Title 18, Crimes and Criminal Procedure, and section 524 of Title 28, Judiciary and Judicial Procedure, and repealing provisions set out as notes under this section and sections 1305 and 1320b–23 of this title] shall take effect as if included in H.R. 4942 of the 106th Congress [Pub. L. 106–553] on the date of its enactment [Dec. 21, 2000].''

Pub. L. 106–553, § 1(a)(2) [title VI, § 635(c)(2)(3)], Dec. 21, 2000, 114 Stat. 2762, 2762A–117, which provided that the amendments made by § 1(a)(2) [title VI, § 635(c)] of Pub. L. 106–553, enacting section 1320b–23 of this title and amending this section, would apply with respect to violations occurring on and after the date that is 2 years after Dec. 21, 2000, was repealed by Pub. L. 106–554, § 1(a)(4) [div. A, § 213(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, see above.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5130(a)(1) of Pub. L. 101–508 effective as if included in the enactment of Pub. L. 100–690, § 7088, see section 5130(b) of Pub. L. 101–508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–460 effective Oct. 9, 1984, and applicable with respect to violations occurring on or after such date, see section 16(d) of Pub. L. 98–460, set out as a note under section 405 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 4(c) of Pub. L. 97–123 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall be effective with respect to violations committed after the date of the enactment of this Act [Dec. 29, 1981].''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 130(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to information furnished to the Secretary after the date of the enactment of this Act [Oct. 30, 1972].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective in the manner provided in section 211(p), (q) of Pub. L. 86–778, section 211(s) of Pub. L. 86–778, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

§ 409. "Wages" defined

(a) In general

For the purposes of this subchapter, the term ''wages'' means remuneration paid prior to 1951 which was wages for the purposes of this subchapter under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

(1)(A) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $3,600 with respect to employment has been paid to an individual during any calendar year prior to 1955, is paid to such individual during such calendar year;

(B) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $4,200 with respect to employment has been paid to an individual during any calendar year after 1954 and prior to 1959, is paid to such individual during such calendar year;

(C) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $4,800 with respect to employment has been paid to an individual during any calendar year after 1958 and prior to 1966, is paid to such individual during such calendar year;

(D) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $6,600 with respect to employment has been paid to an individual during any calendar year after 1965 and prior to 1968, is paid to such individual during such calendar year;

(E) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $7,800 with respect to employment has been paid to an individual during any calendar year after 1967 and prior to 1972, is paid to such individual during such calendar year;

(F) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $9,000 with respect to employment has been paid to an individual during any calendar year after 1971 and prior to 1973, is paid to such individual during any such calendar year;

(G) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $10,800 with respect to employment has been paid to an individual during any calendar year after 1972 and prior to 1974, is paid to such individual during such calendar year;

(H) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $13,200 with respect to employment has been paid to an individual during any calendar year after 1973 and prior to 1975, is paid to such individual during such calendar year;

(I) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to the contribution and benefit base (determined under section 430 of this title) with respect to employment has been paid to an individual during any calendar year after 1974 with respect to which such contribution and benefit base is effective, is paid to such individual during such calendar year;

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term ''wages'' only payments which are received under a workmen's compensation law), or (B) medical or hospitalization expenses in connection with sickness or accident disability, or (C) death, except that this subsection does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee under the Internal Revenue Code of 1986;

(3) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(4) Any payment made to, or on behalf of, an employee or his beneficiary (A) from or to a trust exempt from tax under section 165(a) of the Internal Revenue Code of 1939 at the time of such payment or, in the case of a payment after 1954, under sections 401 and 501(a) of the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1939 or, in the case of a pay-

ment after 1954 and prior to 1963, the requirements of section 401(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1954, or (C) under or to an annuity plan which, at the time of any such payment after 1962, is a plan described in section 403(a) of the Internal Revenue Code of 1986, or (D) under or to a bond purchase plan which, at the time of any such payment after 1962, is a qualified bond purchase plan described in section 405(a) of the Internal Revenue Code of 1954 (as in effect before July 18, 1984), or (E) under or to an annuity contract described in section 403(b) of the Internal Revenue Code of 1986, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise), or (F) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3) of such Code), or (G) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subsection to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(2)(B)(ii)], or (H) under a simplified employee pension (as defined in section 408(k)(1) of such Code), other than any contributions described in section 408(k)(6) of such Code, or (I) under a cafeteria plan (within the meaning of section 125 of the Internal Revenue Code of 1986) if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received; or (J) under an arrangement to which section 408(p) of such Code applies, other than any elective contributions under paragraph (2)(A)(i) thereof; or (K) under a plan described in section 457(e)(11)(A)(ii) of the Internal Revenue Code of 1986 and maintained by an eligible employer (as defined in section 457(e)(1) of such Code);

(5) The payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101 of the Internal Revenue Code of 1986, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(6)(A) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(B) Cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer (including domestic service on a farm operated for profit), if the cash remuneration paid in such year by the employer to the employee for such service is less than the applicable dollar threshold (as defined in section 3121(x) of the Internal Revenue Code of 1986) for such year;

(C) Cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such year by the employer to the employee for such service is less than $100. As used in this paragraph, the term ''service not in the course of the employer's trade or business'' does not include domestic service in a private home of the employer and does not include service described in section 410(f)(5) of this title;

(7)(A) Remuneration paid in any medium other than cash for agricultural labor;

(B) Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

(i) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or

(ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500,

except that clause (ii) shall not apply in determining whether remuneration paid to an employee constitutes ''wages'' under this section if such employee (I) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (II) commutes daily from his permanent residence to the farm on which he is so employed, and (III) has been employed in agriculture less than 13 weeks during the preceding calendar year;

(8) Remuneration paid by an employer in any year to an employee for service described in section 410(j)(3)(C) of this title (relating to home workers), if the cash remuneration paid in such year by the employer to the employee for such service is less than $100;

(9) Remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the Internal Revenue Code of 1986 (determined without regard to section 274(n) of such Code);

(10)(A) Tips paid in any medium other than cash;

(B) Cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more;

(11) Any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (A)[1] death, or (B)[1] retirement for disability, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his

[1] So in original. Probably should be designated cls. (i) and (ii), respectively.

employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(12) Any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(13) Any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 423(a) of this title and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(14)(A) Remuneration paid by an organization exempt from income tax under section 501 of the Internal Revenue Code of 1986 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100;

(B) Any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 of the Internal Revenue Code of 1986 (relating to amounts received under qualified group legal services plans);

(15) Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129 of the Internal Revenue Code of 1986;

(16) The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the Internal Revenue Code of 1986;

(17) Any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132 of the Internal Revenue Code of 1986;

(18) Remuneration consisting of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights); or

(19) Remuneration on account of—

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b) of the Internal Revenue Code of 1986) or under an employee stock purchase plan (as defined in section 423(b) of such Code), or

(B) any disposition by the individual of such stock.

(b) Regulations providing exclusions from term

Nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1986 (relating to income tax withholding) which provides an exclusion from ''wages'' as used in such chapter shall be construed to require a similar exclusion from ''wages'' in the regulations prescribed for purposes of this subchapter.

(c) Individuals performing domestic services

For purposes of this subchapter, in the case of domestic service described in subsection (a)(6)(B) of this section, any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this subchapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a)(6)(B) of this section.

(d) Members of uniformed services

For purposes of this subchapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 410(*l*)(1) of this title are applicable, the term ''wages'' shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only (1) his basic pay as described in chapter 3 and section 1009 of title 37 in the case of an individual performing service to which subparagraph (A) of such section 410(*l*)(1) of this title applies, or (2) his compensation for such service as determined under section 206(a) of title 37 in the case of an individual performing service to which subparagraph (B) of such section 410(*l*)(1) of this title applies.

(e) Peace Corps volunteers

For purposes of this subchapter, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.], to which the provisions of section 410(*o*) of this title are applicable, (1) the term ''wages'' shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only amounts certified as payable pursuant to section 5(c) or 6(1) of the Peace Corps Act [22 U.S.C. 2504(c) or 2505(1)], and (2) any such amount shall be deemed to have been paid to such individual at the time the service, with respect to which it is paid, is performed.

(f) Tips

For purposes of this subchapter, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1986 or (if no statement including such tips is so furnished) at the time received.

(g) Members of religious orders

For purposes of this subchapter, in any case where an individual is a member of a religious order (as defined in section 3121(r)(2) of the Internal Revenue Code of 1986) performing service in the exercise of duties required by such order, and an election of coverage under section 3121(r) of such Code is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term ''wages'' shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than $100 a month.

(h) Retired justices and judges

For purposes of this subchapter, in the case of an individual performing service under the provisions of section 294 of title 28 (relating to assignment of retired justices and judges to active duty), the term ''wages'' shall not include any payment under section 371(b) of such title 28 which is received during the period of such service.

(i) Employer contributions under sections 401(k) and 414(h)(2) of Internal Revenue Code

Nothing in any of the foregoing provisions of this section (other than subsection (a) of this section) shall exclude from the term ''wages''—

(1) Any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) to the extent not included in gross income by reason of section 402(a)(8) of such Code, or

(2) Any amount which is treated as an employer contribution under section 414(h)(2) of such Code where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

(j) Amounts deferred under nonqualified deferred compensation plans

Any amount deferred under a nonqualified deferred compensation plan (within the meaning of section 3121(v)(2)(C) of the Internal Revenue Code of 1986) shall be taken into account for purposes of this subchapter as of the later of when the services are performed, or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of the preceding sentence (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this subchapter.

(k) "National average wage index" and "deferred compensation amount" defined

(1) For purposes of sections 403(f)(8)(B)(ii), 413(d)(2)(B), 415(a)(1)(B)(ii), 415(a)(1)(C)(ii), 415(a)(1)(D), 415(b)(3)(A)(ii), 415(i)(1)(E), 415(i)(2)(C)(ii), 424a(f)(2)(B), and 430(b)(2) (and 430(b)(2) of this title as in effect immediately prior to the enactment of the Social Security Amendments of 1977), the term 'national average wage index' for any particular calendar year means, subject to regulations of the Commissioner of Social Security under paragraph (2), the average of the total wages for such particular calendar year.

(2) The Commissioner of Social Security shall prescribe regulations under which the national average wage index for any calendar year shall be computed—

(A) on the basis of amounts reported to the Secretary of the Treasury or his delegate for such year,

(B) by disregarding the limitation on wages specified in subsection (a)(1) of this section,

(C) with respect to calendar years after 1990, by incorporating deferred compensation amounts and factoring in for such years the rate of change from year to year in such amounts, in a manner consistent with the requirements of section 10208 of the Omnibus Budget Reconciliation Act of 1989, and

(D) with respect to calendar years before 1978, in a manner consistent with the manner in which the average of the total wages for each of such calendar years was determined as provided by applicable law as in effect for such years.

(3) For purposes of this subsection, the term ''deferred compensation amount'' means—

(A) any amount excluded from gross income under chapter 1 of the Internal Revenue Code of 1986 by reason of section 402(a)(8),[2] 402(h)(1)(B), or 457(a) of such Code or by reason of a salary reduction agreement under section 403(b) of such Code,

(B) any amount with respect to which a deduction is allowable under chapter 1 of such Code by reason of a contribution to a plan described in section 501(c)(18) of such Code, and

(C) to the extent provided in regulations of the Commissioner of Social Security, deferred compensation provided under any arrangement, agreement, or plan referred to in subsection (i) or (j) of this section.

(Aug. 14, 1935, ch. 531, title II, § 209, 49 Stat. 625; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1373; Mar. 24, 1943, ch. 26, § 1(b)(2), 57 Stat. 47; Apr. 4, 1944, ch. 161, § 2, 58 Stat. 188; Oct. 23, 1945, ch. 433, § 7(b), 59 Stat. 548; Dec. 29, 1945, ch. 652, title I, § 5(a), 59 Stat. 671; Aug. 10, 1946, ch. 951, title IV, §§ 407(a), 408(a), 409(a), 410, 411, 414, 60 Stat. 988, 989, 990; Apr. 20, 1948, ch. 222, § 1(a), 62 Stat. 195; Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492; Sept. 1, 1954, ch. 1206, title I, §§ 101(a)(1)–(3), 104(a), 68 Stat. 1052, 1078; Aug. 1, 1956, ch. 836, title I, § 105(a), 70 Stat. 828; Aug. 1, 1956, ch. 837, title IV, § 401, 70 Stat. 869; Pub. L. 85–786, § 1, Aug. 27, 1958, 72 Stat. 938; Pub. L. 85–840, title I, § 102(a), Aug. 28, 1958, 72 Stat. 1019; Pub. L. 86–778, title I, § 103(j)(2)(C), (F), Sept. 13, 1960, 74 Stat. 937, 938; Pub. L. 87–64, title I, § 102(c)(3)(A), June 30, 1961, 75 Stat. 134; Pub. L. 87–293, title II, § 202(b)(2), Sept. 22, 1961, 75 Stat. 626; Pub. L. 88–272, title II, § 220(c)(3), Feb. 26, 1964, 78 Stat. 63; Pub. L. 88–650, § 4(a), Oct. 13, 1964, 78 Stat. 1077; Pub. L. 89–97, title III,

[2] See References in Text note below.

§§ 313(a), 320(a)(1), July 30, 1965, 79 Stat. 382, 393; Pub. L. 90–248, title I, § 108(a)(1), title V, § 504(c), Jan. 2, 1968, 81 Stat. 834, 935; Pub. L. 92–5, title II, § 203(a)(1), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, § 203(a)(1), July 1, 1972, 86 Stat. 417; Pub. L. 92–603, title I, §§ 104(g), 122(a), 123(c)(1), 138(a), Oct. 30, 1972, 86 Stat. 1341, 1354, 1356, 1365; Pub. L. 93–66, title II, § 203(a)(1), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, § 5(a)(1), Dec. 31, 1973, 87 Stat. 953; Pub. L. 95–216, title III, § 351(a)(1)–(3)(A), Dec. 20, 1977, 91 Stat. 1549; Pub. L. 95–472, § 3(c), Oct. 17, 1978, 92 Stat. 1333; Pub. L. 95–600, title I, § 164(b)(4), Nov. 6, 1978, 92 Stat. 2814; Pub. L. 96–499, title XI, § 1141(a)(2), Dec. 5, 1980, 94 Stat. 2693; Pub. L. 97–34, title I, § 124(e)(2)(B), Aug. 13, 1981, 95 Stat. 201; Pub. L. 97–123, § 3(a), Dec. 29, 1981, 95 Stat. 1662; Pub. L. 98–21, title I, § 101(c)(1), title III, §§ 324(c)(1)–(3), 327(a)(2), (b)(2), 328(b), Apr. 20, 1983, 97 Stat. 70, 124, 125, 127, 128; Pub. L. 98–369, div. A, title IV, § 491(d)(39), title V, § 531(d)(1)(B), div. B, title VI, §§ 2661(i), 2663(a)(6), July 18, 1984, 98 Stat. 851, 884, 1157, 1162; Pub. L. 99–272, title XII, § 12112(a), Apr. 7, 1986, 100 Stat. 288; Pub. L. 99–514, title I, § 122(e)(5), title XI, § 1151(d)(2)(C), Oct. 22, 1986, 100 Stat. 2112, 2505; Pub. L. 100–203, title IX, §§ 9001(a)(2), 9002(a), 9003(a)(1), Dec. 22, 1987, 101 Stat. 1330–286, 1330–287; Pub. L. 100–647, title I, §§ 1001(g)(4)(C), 1011(f)(8), 1011B(a)(22)(E), (23)(B), title III, § 3043(a), title VIII, § 8017(a), Nov. 10, 1988, 102 Stat. 3352, 3463, 3486, 3641, 3793; Pub. L. 101–140, title II, § 203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title X, § 10208(a), (d)(1), Dec. 19, 1989, 103 Stat. 2476, 2479; Pub. L. 101–508, title V, § 5130(a)(5), Nov. 5, 1990, 104 Stat. 1388–289; Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(c)(4), (e)(1), Aug. 15, 1994, 108 Stat. 1478, 1538, 1539; Pub. L. 103–387, § 2(a)(2)(A), Oct. 22, 1994, 108 Stat. 4072; Pub. L. 104–188, title I, §§ 1421(b)(8)(B), 1458(b)(2), Aug. 20, 1996, 110 Stat. 1798, 1820; Pub. L. 108–203, title IV, § 423(b), Mar. 2, 2004, 118 Stat. 536; Pub. L. 108–357, title II, § 251(a)(1)(B), title III, § 320(b)(5), Oct. 22, 2004, 118 Stat. 1458, 1473.)

References in Text

Section 165 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4)(A), (B), was a part of chapter 1 of the 1939 Code, and was repealed by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). Internal Revenue Code of 1954 redesignated Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

Section 405(a) of the Internal Revenue Code of 1954, referred to in subsec. (a)(4)(D), was repealed by Pub. L. 98–369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Internal Revenue Code of 1954, referred to in text, redesignated Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

Internal Revenue Code of 1986, referred to in text, is classified to Title 26.

The Peace Corps Act, referred to in subsec. (e), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

The enactment of the Social Security Amendments of 1977, referred to in subsec. (k)(1), means the enactment of Pub. L. 95–216, which was approved Dec. 20, 1977.

Section 10208 of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (k)(2)(C), is section 10208 of Pub. L. 101–239, title X, Dec. 19, 1989, 103 Stat. 2476, which amended this section, sections 403, 413, 415, 417, 418, 424a, and 430 of this title, section 206 of Title 29, Labor, and section 231 of Title 45, Railroads, and enacted provisions set out as a note under section 430 of this title.

Section 402 of the Internal Revenue Code of 1986, referred to in subsec. (k)(3)(A), was amended by Pub. L. 102–318, § 521, and, as so amended, provisions formerly contained in section 402(a)(8) are contained in section 402(e)(3).

Amendments

2004—Subsec. (a)(6)(B). Pub. L. 108–203 substituted ''on a farm operated for profit'' for ''described in section 410(f)(5) of this title''.

Subsec. (a)(17). Pub. L. 108–357, § 320(b)(5), inserted ''108(f)(4),'' after ''74(c),''.

Subsec. (a)(19). Pub. L. 108–357, § 251(a)(1)(B), added par. (19).

1996—Subsec. (a)(4)(J). Pub. L. 104–188, § 1421(b)(8)(B), added subpar. (J).

Subsec. (a)(4)(K). Pub. L. 104–188, § 1458(b)(2), added subpar. (K).

1994—Subsec. (a)(4)(A). Pub. L. 103–296, § 321(c)(4)(A), substituted ''Internal Revenue Code of 1954 or the Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (a)(4)(C), (E), (5)(A). Pub. L. 103–296, § 321(c)(4)(B)(i), (ii), substituted ''1986'' for ''1954'' after ''Code of''.

Subsec. (a)(6)(B). Pub. L. 103–387 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this paragraph, the term 'domestic service in a private home of the employer' does not include service described in section 410(f)(5) of this title;''.

Subsecs. (a)(14)(A), (B), (15) to (17), (b), (f), (g), (i)(1), (j). Pub. L. 103–296, § 321(c)(4)(B)(iii)–(vi), (C), substituted ''1986'' for ''1954'' after ''Code of''.

Subsec. (k). Pub. L. 103–296, § 321(e)(1), added par. (1) and struck out former par. (1) which defined ''deemed average total wages'', added par. (2), and redesignated former par. (2) as (3) and in introductory provisions of par. (3) substituted ''this subsection'' for ''paragraph (1)''.

Pub. L. 103–296, § 107(a)(4), in subsec. (k) as amended by Pub. L. 103–296, § 321(e)(1), substituted ''Commissioner of Social Security'' for ''Secretary'' in par. (1), in introductory provisions of par. (2), and in par. (3)(C).

1990—Subsec. (a)(7)(B). Pub. L. 101–508 substituted ''clause (ii)'' for ''subparagraph (B)'' in concluding provisions.

1989—Subsec. (a). Pub. L. 101–239, § 10208(d)(1)(A)–(K), inserted ''(a)'' at beginning of text and in subsec. (a) as so designated, redesignated, respectively, former subsec. (a)(1) to (9) as par. (1)(A) to (I), former subsec. (b)(1) to (3) as par. (2)(A) to (C), former subsec. (d) as par. (3), former subsec. (e)(1) to (9) as par. (4)(A) to (I), former subsec. (f)(1) and (2) as par. (5)(A) and (B), former subsec. (g)(1) to (3) as par. (6)(A) to (C), former subsec. (h)(1), (2)(A) and (B), and (i) to (iii) as par. (7)(A), (B)(i) and (ii), and (I) to (III), former subsecs. (j) and (k) as pars. (8) and (9), former subsec. (*l*)(1) and (2) as par. (10)(A) and (B), former subsec. (m)(1) and (2) as par. (11)(A) and (B), former subsecs. (n) and (*o*) as pars. (12) and (13), former subsec. (p)(1) and (2) as par. (14)(A) and (B), and former subsecs. (q) to (t) as pars. (15) to (18).

Subsec. (b). Pub. L. 101–239, § 10208(d)(1)(L), designated par. beginning with ''Nothing in the regulations'' as subsec. (b). Former subsec. (b) redesignated subsec. (a)(2).

Subsec. (c). Pub. L. 101–239, § 10208(d)(1)(M), designated par. beginning with ''For purposes of this subchapter, in the case of domestic service'' as subsec. (c) and substituted ''subsection (a)(6)(B)'' for ''subsection (g)(2)'' in two places.

Subsec. (d). Pub. L. 101–239, § 10208(d)(1)(N), designated par. beginning with ''For purposes of this subchapter, in the case of an individual performing service, as a member'' as subsec. (d) and substituted ''subsection (a)(1)'' for ''subsection (a)'' in introductory provisions. Former subsec. (d) redesignated subsec. (a)(3).

Subsecs. (e) to (h). Pub. L. 101–239, § 10208(d)(1)(O)–(R), designated pars. beginning with ''For purposes of this subchapter, in the case of an individual performing service, as a volunteer'', ''For purposes of this subchapter, tips received'', ''For purposes of this subchapter, in any case where'', and ''For purposes of this subchapter, in the case of an individual performing service under the provisions'', as subsecs. (e) to (h), respectively. Former subsecs. (e) to (h) redesignated subsec. (a)(4) to (7), respectively.

Subsec. (i). Pub. L. 101–239, § 10208(d)(1)(S), designated par. beginning with ''Nothing in any of the foregoing'' as subsec. (i).

Pub. L. 101–140 amended cls. (2) and (3) of next to last indented par. of closing provisions [now subsec. (i)] to read as if amendment by Pub. L. 100–647, § 1011B(a)(22)(E), had not been enacted, see 1988 Amendment note below.

Subsec. (j). Pub. L. 101–239, § 10208(d)(1)(T), designated par. beginning with ''Any amount deferred'' as subsec. (j). Former subsec. (j) redesignated subsec. (a)(8).

Subsec. (k). Pub. L. 101–239, § 10208(a), added subsec. (k).

1988—Pub. L. 100–647, § 1011B(a)(22)(E), in next to last indented par. of closing provisions, substituted '', or'' for period at end of cl. (2) and added cl. (3).

Subsec. (e)(8). Pub. L. 100–647, § 1011(f)(8), amended cl. (8) generally. Prior to amendment, cl. (8) read as follows: ''under a simplified employee pension (as defined in section 408(k) of the Internal Revenue Code of 1986) if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) of such Code for such payment,''.

Subsec. (e)(9). Pub. L. 100–647, § 1011B(a)(23)(B), inserted ''if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received'' after ''1986)''.

Subsec. (h)(2). Pub. L. 100–647, § 8017(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless (A) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or (B) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;''.

Subsec. (k). Pub. L. 100–647, § 1001(g)(4)(C), substituted ''section 217 of the Internal Revenue Code of 1986 (determined without regard to section 274(n) of such Code)'' for ''section 217 of the Internal Revenue Code of 1954''.

Subsec. (t). Pub. L. 100–647, § 3043(a), added subsec. (t).

1987—Pub. L. 100–203, § 9001(a)(2), in second indented par. of closing provisions, substituted ''only (1) his basic pay as described in chapter 3 and section 1009 of title 37 in the case of an individual performing service to which subparagraph (A) of such section 410(*l*)(1) of this title applies, or (2) his compensation for such service as determined under section 206(a) of title 37 in the case of an individual performing service to which subparagraph (B) of such section 410(*l*)(1) of this title applies.'' for ''only his basic pay as described in chapter 3 and section 1009 of title 37.''

Subsec. (b)(3). Pub. L. 100–203, § 9003(a)(1), substituted ''death, except that this subsection does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee under the Internal Revenue Code of 1986'' for ''death''.

Subsec. (h)(2)(B). Pub. L. 100–203, § 9002(a), added cl. (B) and struck out former cl. (B) which read as follows: ''the employee performs agricultural labor for the employer on twenty days or more during such year for cash remuneration computed on a time basis;''.

1986—Subsec. (e). Pub. L. 99–514, § 1151(d)(2)(C), added cl. (9).

Subsec. (s). Pub. L. 99–514, § 122(e)(5), substituted ''74(c), 117, or'' for ''117 or''.

Pub. L. 99–272 in third to last undesignated paragraph, substituted ''shall not include'' for ''shall, subject to the provisions of subsection (a) of this section, include''.

1984—Pub. L. 98–369, § 531(d)(1)(B)(i), inserted in introductory text ''(including benefits)'' before ''paid in any medium''.

Subsec. (a)(5) to (9). Pub. L. 98–369, § 2663(a)(6)(A)(i), realigned margins of pars. (5) to (9).

Subsec. (e). Pub. L. 98–369, § 2663(a)(6)(A)(v), realigned margin of subsec. (e).

Subsec. (e)(4). Pub. L. 98–369, § 491(d)(39), inserted ''(as in effect before July 18, 1984)'' after ''section 405(a) of the Internal Revenue Code of 1954''.

Subsec. (e)(7). Pub. L. 98–369, § 2661(i)(1), struck out the semicolon after ''Act of 1974''.

Subsecs. (f), (k) to (p). Pub. L. 98–369, § 2663(a)(6)(A)(v), realigned margins of subsecs. (f) and (k) to (p).

Subsec. (p). Pub. L. 98–369, § 2663(a)(6)(A)(ii)–(iv), redesignated the subsec. (p) enacted by Pub. L. 95–216 as par. (1) and the subsec. (p) enacted by Pub. L. 95–472 as par. (2), and substituted a semicolon for a period in par. (1) as so redesignated.

Subsecs. (q), (r). Pub. L. 98–369, § 2663(a)(6)(A)(v), realigned margins of subsecs. (q) and (r).

Subsec. (s). Pub. L. 98–369, § 531(d)(1)(B)(ii), added subsec. (s).

Pub. L. 98–369, § 2663(a)(6)(B), in undesignated par. relating to the meaning of ''wages'' in the case of a member of a uniformed service to which section 410(*l*)(1) of this title is applicable, substituted ''chapter 3 and section 1009 of title 37'' for ''section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act''.

Pub. L. 98–369, § 2661(i)(2), in undesignated par. relating to employer contributions as not being excluded from ''wages'', inserted ''where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)''.

1983—Subsec. (b). Pub. L. 98–21, § 324(c)(3)(A), struck out cl. (1) which read ''retirement'', and redesignated cls. (2) to (4) as (1) to (3), respectively.

Subsec. (c). Pub. L. 98–21, § 324(c)(3)(B), struck out subsec. (c) which related to any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement.

Subsec. (e)(5) to (7). Pub. L. 98–21, § 324(c)(2), added cls. (5) to (7).

Subsec. (e)(8). Pub. L. 98–21, § 328(b), added cl. (8).

Subsec. (i). Pub. L. 98–21, § 324(c)(3)(B), struck out subsec. (i) which related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained age 62, if he did not work for the employer in the period for which such payment was made, and provided for this subsection that ''sick pay'' included remuneration for service in the employ of a State, a political subdivision (as defined in section 418(b)(2) of this title) of a State, or an instrumentality of two or more States, paid to an employee thereof for a period during which he was absent from work because of sickness.

Subsec. (m)(1)(C). Pub. L. 98–21, § 324(c)(3)(C), struck out subpar. (C) which related to retirement after attaining an age specified in the plan referred to in par. (2) or in a pension plan of the employer.

Subsec. (r). Pub. L. 98–21, § 327(a)(2), added subsec. (r).

Pub. L. 98–21, § 327(b)(2), inserted, immediately following subsec. (r), provision that nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1954 (relating to income tax with-

holding) which provides an exclusion from ''wages'' as used in such chapter shall be construed to require a similar exclusion from ''wages'' in the regulations prescribed for purposes of this subchapter.

Pub. L. 98–21, §324(c)(1), inserted, at end of section, two undesignated pars. specifying the inclusion of certain employer contributions as ''wages'' and directing that any amount deferred under a nonqualified deferred compensation plan be taken into account under certain conditions but not treated as wages thereafter for purposes of this subchapter.

Pub. L. 98–21, §101(c)(1), inserted, at end of section, undesignated par. defining ''wages'' for purposes of this subchapter in the case of an individual performing service under provisions of section 294 of title 28 (relating to assignment of retired justices and judges to active duty) to include payments under section 371(b) of title 28 that is received during the period of such service.

1981—Subsec. (b)(2). Pub. L. 97–123 inserted ''(but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term 'wages' only payments which are received under a workmen's compensation law)'' after ''sickness or accident disability''.

Subsec. (q). Pub. L. 97–34 substituted ''section 127 or 129'' for ''section 127''.

1980—Subsec. (f). Pub. L. 96–499 substituted ''section 3101 of the Internal Revenue Code of 1954'' for ''section 1400 of the Internal Revenue Code of 1939'' in subpar. (1) and inserted ''with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor''.

1978—Subsec. (p). Pub. L. 95–472 added a second subsec. (p).

Subsec. (q). Pub. L. 95–600 added subsec. (q).

1977—Subsecs. (g)(3), (j). Pub. L. 95–216, §351(a)(1), (2), substituted ''year'' for ''quarter'' wherever appearing and ''$100'' for ''$50''.

Subsec. (n). Pub. L. 95–216, §351(a)(3)(A), struck out ''or'' after ''such employee died''.

Subsec. (*o*). Pub. L. 95–216, §351(a)(3)(A), substituted ''payment is made; or'' for ''payment is made.''.

Subsec. (p). Pub. L. 95–216, §351(a)(3)(A), added subsec. (p).

1973—Subsec. (a)(8). Pub. L. 93–233 substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000''.

1972—Subsec. (a)(6). Pub. L. 92–336, §203(a)(1)(A), inserted ''and prior to 1973'' after ''1971''.

Subsec. (a)(7) to (9). Pub. L. 92–336, §203(a)(1)(B), added pars. (7) to (9).

Subsec. (i). Pub. L. 92–603, §104(g), struck out ''(if a woman) and age 65 (if a man)'' after ''attains age 62''.

Subsec. (n). Pub. L. 92–603, §122(a), added subsec. (n).

Subsec. (*o*). Pub. L. 92–603, §138(a), added subsec. (*o*).

Pub. L. 92–603, §123(c)(1), added par. at end defining ''wages'' in the case of members of a religious order when an election under section 3121(r) of the Internal Revenue Code of 1954 is in effect.

1971—Subsec. (a)(5). Pub. L. 92–5, §203(a)(1)(A), inserted ''and prior to 1972'' after ''1967''.

Subsec. (a)(6). Pub. L. 92–5, §203(a)(i)(B), added par. (6).

1968—Subsec. (a)(4), (5). Pub. L. 90–248, §108(a)(1)(A), (B), inserted ''and prior to 1968'' after ''1965'' and added par. (5), respectively.

Subsec. (m). Pub. L. 90–248, §504(c), added subsec. (m).

1965—Subsec. (a)(3). Pub. L. 89–97, §320(a)(1)(A), inserted ''and prior to 1966'' after ''1958''.

Subsec. (a)(4). Pub. L. 89–97, §320(a)(1)(B), added par. (4).

Subsec. (*l*). Pub. L. 89–97, §313(a)(1), added subsec. (*l*).

Pub. L. 89–97, §313(a)(2), added paragraph at end providing that tips be considered remuneration and that such remuneration be deemed paid as of the filing of a written statement or as of the time received.

1964—Subsec. (e). Pub. L. 88–272 included as ''wages'' payments after 1954 under or to trust exempt under sections 401 and 501(a), I.R.C. 1954, under annuity plans after 1954 and prior to 1963, under section 401(a)(3), (4), (5), and (6), I.R.C. 1954, under or to annuity plans which at time of payment after 1962, are described in section 403(a), I.R.C. 1954, and under or to a bond purchase plan which at time of any payment after 1962, is a qualified bond purchase plan described in section 405(a), I.R.C. 1954.

Subsec. (k). Pub. L. 88–650 added subsec. (k).

1961—Subsec. (i). Pub. L. 87–64 substituted ''attains age 62 (if a woman) or age 65 (if a man)'' for ''attains retirement age (as defined in section 416(a) of this title)''.

Pub. L. 87–293 added last paragraph providing for computation of wages for Peace Corps volunteer service.

1960—Subsec. (j). Pub. L. 86–778, §103(j)(2)(F), substituted ''section 410(j)(3)(C)'' for ''section 410(k)(3)(C)''.

Pub. L. 86–778, §103(j)(2)(C), substituted ''section 410(*l*)(1) of this title'' for ''section 410(m)(1) of this title'' in last par.

1958—Subsec. (a). Pub. L. 85–840 inserted ''and prior to 1959'' after ''any calendar year after 1954'' in cl. (2), and added cl. (3).

Subsec. (i). Pub. L. 85–786 inserted sentence to include remuneration for service in State employment paid to employee for period he was absent for illness in term ''sick pay''.

1956—Subsec. (h)(2). Act Aug. 1, 1956, ch. 836, included within definition of ''wages'' cash remuneration of $150 or more, and cash remuneration computed on a time basis where the employee performs agricultural labor for the employer on 20 days or more during the calendar year.

Act Aug. 1, 1956, ch. 837, added penultimate par. to define ''wages'' in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 410(m)(1) of this title are applicable.

1954—Subsec. (a). Act Sept. 1, 1954, §104(a), provided that for years after 1954 ''wages'' would exclude any remuneration in excess of $4,200 paid to an individual with respect to employment during a calendar year.

Subsec. (g)(2). Act Sept. 1, 1954, §101(a)(1), made coverage of domestic service depend solely on receipt by the employee, in a quarter, of $50 in cash remuneration from one employer for such service.

Subsec. (g)(3). Act Sept. 1, 1954, §101(a)(2), added par. (3).

Subsec. (h). Act Sept. 1, 1954, §101(a)(3), redesignated subsection as cl. (1) and added cl. (2).

1950—Act Aug. 28, 1950, amended section generally.

1948—Subsec. (b)(15). Act Apr. 20, 1948, inserted subpar. (B).

1946—Subsec. (a). Act Aug. 10, 1946, §414, in amending subsec. (a), made pars. (1) and (2) applicable only to payments before Jan. 1, 1947, added a new par. (3), applicable to payments after that date, and renumbered former pars. (3) to (6) to be pars. (4) to (7), respectively.

Subsec. (h). Act Aug. 10, 1946, §407(a), in amending subsec. (h), required a currently insured individual to have not less than six quarters of coverage during the period consisting of the quarter in which he died and the twelve preceding quarters.

Subsec. (i). Act Aug. 10, 1946, §408(a), in amending subsec. (i), required only that a wife be married to the insured individual for 36 months instead of requiring that they be married before Jan. 1, 1939, or before he became 60 years of age, as was formerly the case.

Subsec. (k). Act Aug. 10, 1946, §409(a), in amending subsec. (k), changed requirement that a stepchild or adopted child must have been such before the individual reached age 60 to require, in the case of a living individual, that the child must have been a stepchild or adopted child for 36 months.

Subsec. (q). Act Aug. 10, 1946, §410, added subsec. (q).

Subsec. (r). Act Aug. 10, 1946, §411, added subsec. (r).

1945—Subsec. (b)(16). Act Dec. 29, 1945, added par. (16).

Subsec. (p). Act Oct. 23, 1945, added subsec. (p).

1944—Subsec. (*o*)(1). Act Apr. 4, 1944, §2, inserted ''but shall not include any such service performed (1) under

a contract entered into without the United States and during the performance of which the vessel does not touch at a port in the United States, or (2) on a vessel documented under the laws of any foreign country and bareboat chartered to the War Shipping Administration''.

1943—Subsec. (*o*). Act Mar. 24, 1943, added subsec. (*o*).

1939—Act Aug. 10, 1939, amended section generally.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 251(a)(1)(B) of Pub. L. 108–357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108–357, set out as a note under section 421 of Title 26, Internal Revenue Code.

Amendment by section 320(b)(5) of Pub. L. 108–357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108–357, set out as a note under section 108 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(8)(B) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of Title 26, Internal Revenue Code.

Amendment by section 1458(b)(2) of Pub. L. 104–188 applicable to remuneration paid after Dec. 31, 1996, see section 1458(c)(2) of Pub. L. 104–188, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–387 applicable to remuneration paid after Dec. 31, 1993, see section 2(a)(3) of Pub. L. 103–387, set out as a note under section 3102 of Title 26, Internal Revenue Code.

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the enactment of Pub. L. 101–239, § 10208, see section 5130(b) of Pub. L. 101–508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 10208(a) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1001(g)(4)(C), 1011(f)(8), and 1011B(a)(23)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 1011B(a)(22)(E) of Pub. L. 100–647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(22)(F) of Pub. L. 100–647, set out as a note under section 3121 of Title 26.

Amendment by section 3043(a) of Pub. L. 100–647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100–647, set out as an Effective Date note under section 7873 of Title 26.

Amendment by section 8017(a) of Pub. L. 100–647 effective as if included in amendments made by section 9002 of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 8017(c) of Pub. L. 100–647, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9001(a)(2) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9001(d) of Pub. L. 100–203, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 9002(a) of Pub. L. 100–203 applicable with respect to remuneration for agricultural labor paid after Dec. 31, 1987, see section 9002(c) of Pub. L. 100–203, set out as a note under section 3121 of Title 26.

Amendment by section 9003(a)(1) of Pub. L. 100–203 applicable with respect to group-term life insurance coverage in effect after Dec. 31, 1987, with exception for employer's group-term life insurance payments for certain former employees, see section 9003(b) of Pub. L. 100–203, as amended, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 122(e)(5) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 1151(d)(2)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1983, see section 1151(k)(5) of Pub. L. 99–514, set out as a note under section 79 of Title 26.

Section 12112(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall be effective with respect to service performed after December 31, 1983.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(39) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of Title 26, Internal Revenue Code.

Amendment by section 531(d)(1)(B) of Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of Title 26.

Amendment by section 2661(i) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(6) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 101(c)(1) of Pub. L. 98–21 effective with respect to services performed after Dec. 31, 1983, see section 101(d) of Pub. L. 98–21, as amended, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 324(c)(1)–(3) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

Amendment by section 327(a)(2) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, see section 327(d)(1) of Pub. L. 98–21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 327(b)(2) of Pub. L. 98–21 applicable to remuneration (other than amounts excluded under 26 U.S.C. 119) paid after Mar. 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid, see section 327(d)(2) of Pub. L. 98–21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 328(b) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, see section 328(d)(1) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by Pub. L. 97–123 applicable, except as otherwise provided, to remuneration paid after Dec. 31, 1981, see section 3(g) of Pub. L. 97–123, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 97–34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f) of Pub. L. 97–34, set out as a note under section 21 of Title 26.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–499, see section 1141(c) of Pub. L. 96–499, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. 95–600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95–600, set out as an Effective Date note under section 127 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 95–472 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 3(d) of Pub. L. 95–472, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 351(d) of Pub. L. 95–216 provided that: ''The amendments made by subsection (a) [amending this section and section 410 of this title] shall apply with respect to remuneration paid and services rendered after December 31, 1977. The amendments made by subsections (b) and (c) [amending sections 412 and 413 of this title] shall be effective January 1, 1978.''

EFFECTIVE DATE OF 1973 AMENDMENTS

Section 5(e) of Pub. L. 93–233 provided that: ''The amendments made by this section [amending this section and sections 411, 413, and 430 of this title and sections 3121, 3122, 3125, 6413, and 6654 of Title 26, Internal Revenue Code], except subsection (a)(4), shall apply only with respect to remuneration paid after, and taxable years beginning after, 1973. The amendments made by subsection (a)(4) [amending section 415 of this title] shall apply with respect to calendar years after 1973.''

Section 203(e) of Pub. L. 93–66 provided that: ''The amendments made by this section [amending this section and sections 411, 415, and 430 of this title and sections 3121, 3122, 3125, 6413, and 6654 of Title 26] except subsection (a)(4), shall apply only with respect to remuneration paid after, and taxable years beginning after, 1973. The amendments made by subsection (a)(4) [amending section 415 of this title] shall apply with respect to calendar years after 1973.''

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by section 104(g) of Pub. L. 92–603 applicable only with respect to payments after 1974, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

Section 122(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply in the case of any payment made after December 1972.''

Section 138(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply in the case of any payment made after December 1972.''

Section 203(c) of Pub. L. 92–336 provided that: ''The amendments made by subsections (a)(1) and (a)(3)(A) [amending this section and section 413 of this title], and the amendments made by subsection (b) [amending sections 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code] (except paragraphs (1) and (7) thereof), shall apply only with respect to remuneration paid after December 1972. The amendments made by subsections (a)(2), (a)(3)(B), (b)(1), and (b)(7) [amending sections 411 and 413 of this title and sections 1402 and 6654 of Title 26] shall apply only with respect to taxable years beginning after 1972. The amendment made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1972.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 203(c) of Pub. L. 92–5 provided that: ''The amendments made by subsections (a)(1) and (a)(3)(A) [amending this section and section 413 of this title], and the amendments made by subsection (b) (except paragraphs (1) and (7) thereof) [amending sections 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code], shall apply only with respect to remuneration paid after December 1971. The amendments made by subsections (a)(2), (a)(3)(B), (b)(1), and (b)(7) [amending sections 411 and 413 of this title and sections 1402 and 6654 of Title 26] shall apply only with respect to taxable years beginning after 1971. The amendment made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1971.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 108(c) of Pub. L. 90–248 provided that: ''The amendment made by subsections (a)(1) and (a)(3)(A) [amending this section and section 423 of this title], and the amendments made by subsection (b) (except paragraph (1) thereof) [amending sections 1402, 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code], shall apply only with respect to remuneration paid after December 1967. The amendments made by subsections (a)(2), (a)(3)(B), and (b)(1) [amending sections 411 and 413 of this title and section 1402 of Title 26] shall apply only with respect to taxable years ending after 1967. The amendment made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1967.''

Amendment by section 504(c) of Pub. L. 90–248 applicable with respect to remuneration paid after Jan. 2, 1968, see section 504(d) of Pub. L. 90–248, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 313(a) of Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of Title 26, Internal Revenue Code.

Amendment by section 320(a)(1) of Pub. L. 89–97 applicable with respect to remuneration paid after December 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88–650 applicable with respect to remuneration paid on or after the first day of the first calendar month which begins more than ten days after Oct. 13, 1964, see section 4(d) of Pub. L. 88–650, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 88–272 applicable to remuneration paid after Dec. 31, 1962, see section 220(d) of Pub. L. 88–272, set out as an Effective Date note under section 406 of Title 26.

EFFECTIVE DATE OF 1961 AMENDMENTS

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(f) and 109 of Pub. L. 87–64, set out as 1961 Increase in Monthly Benefits; Effective Date, and Effective Date of 1961 Amendment notes, respectively, under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2 of Pub. L. 85–786 provided that: ''The amendment made by section 1 [amending this section] shall be applicable to remuneration paid after the enactment of this Act [Aug. 27, 1958], except that, in the case of any coverage group which is included under the agreement of a State under section 218 of the Social Security Act [section 418 of this title], the amendment made by section 1 shall also be applicable to remuneration for any member of such coverage group with respect to services performed after the effective date, specified in such agreement, for such coverage group, if such State has paid or agrees, prior to January 1, 1959, to pay, prior to such date, the amounts which under section 218(e) [section 418(e) of this title] would have been payable with respect to remuneration of all members of such coverage group had the amendment made by section 1 been in effect on and after January 1, 1951. Failure by a State to make such payments prior to January 1, 1959, shall be treated the same as failure to make payments when due under section 218(e).''

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

Section 105(d) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall apply with respect to remuneration paid after 1956, and the amendment made by subsection (b) of this section [amending section 410 of this title] shall apply with respect to service performed after 1956.''

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 101(a)(1)–(3) of act Sept. 1, 1954, applicable only with respect to remuneration paid after 1954, see section 101(m) of act Sept. 1, 1954, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 104(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect January 1, 1951, except that sections 214, 215, and 216 of the Social Security Act [sections 414 to 416 of this title] shall be applicable (1) in the case of monthly benefits for months after August 1950, and (2) in the case of lump-sum death payments with respect to deaths after August 1950.''

EFFECTIVE DATE OF 1948 AMENDMENT

Section 1(b) of act Apr. 20, 1948, provided in part that: ''The amendment made by subsection (a) [amending this section] shall be applicable with respect to services performed after the date of the enactment of this Act [Apr. 20, 1948].''

EFFECTIVE DATE OF 1946 AMENDMENT

Sections 407(b), 408(b), and 409(b) of act Aug. 10, 1946, each provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases of applications for benefits under this title [this subchapter] filed after December 31, 1946.''

EFFECTIVE DATE OF 1945 AMENDMENT

Section 5(a) of act Dec. 29, 1945, provided that the amendment made by that section is effective Jan. 1, 1946.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

REPEALS: AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(b)(2) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this subchapter, the term ''wages'' shall not include the amount of any refund required under section 421 of Pub. L. 100–360 [42 U.S.C. 1395b note], see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514; MONIES APPROPRIATED FOR FISCAL YEAR 1990 NOT TO BE USED FOR ENFORCEMENT OR IMPLEMENTATION OF AMENDMENT

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of Title 26, Internal Revenue Code.

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

Notwithstanding section 101(d) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note above, the amendment of this section by section 101(c)(1) of Pub. L. 98–21 is applicable only with respect to remuneration paid after Dec. 31, 1985, with remuneration paid prior to Jan. 1, 1986, under section 371(b) of Title 28, Judiciary and Judicial Procedure, to an individual performing service under section 294 of Title 28 not to be included in the term ''wages'' for purposes of this section or section 3121(a) of Title 26, Internal Revenue Code, see section 4 of Pub. L. 98–118, set out as a note under section 3121 of Title 26.

PAYMENTS UNDER STATE TEMPORARY DISABILITY LAW TO BE TREATED AS REMUNERATION FOR SERVICE

For purposes of applying this section with respect to the parenthetical matter contained in subsec. (b)(2) of this section, payments under a State temporary disability law to be treated as remuneration for service, see section 3(e) of Pub. L. 97–123, set out as a note under section 3121 of Title 26, Internal Revenue Code.

SERVICES FOR COOPERATIVES PRIOR TO 1951

Section 110 of act Aug. 28, 1950, provided that: ''In any case in which—

''(1) an individual has been employed at any time prior to 1951 by organizations enumerated in the first sentence of section 101(12) of the Internal Revenue Code [1939].

''(2) the service performed by such individual during the time he was so employed constituted agricultural labor as defined in section 209(*l*) of the Social Security Act [former subsec. (*l*) of this section] and section 1426(h) of the Internal Revenue Code [1939], as in effect prior to the enactment of this Act [Aug. 28, 1950], and such service would, but for the provisions of such sections, have constituted employment for the purposes of title II of the Social Security Act [this subchapter] and subchapter A of chapter 9 of such Code [1939].

''(3) the taxes imposed by sections 1400 and 1410 of the Internal Revenue Code [1939] have been paid with respect to any part of the remuneration paid to such individual by such organization for such service and the payment of such taxes by such organization has been made in good faith upon the assumption that such service did not constitute agricultural labor as so defined, and

''(4) no refund of such taxes has been obtained,

the amount of such remuneration with respect to which such taxes have been paid shall be deemed to constitute remuneration for employment as defined in section 209(b) of the Social Security Act [former subsec. (b) of this section] as in effect prior to the enactment of this Act [Aug. 28, 1950] (but it shall not constitute wages for purposes of deductions under section 203 of such Act [section 403 of this title] for months for which benefits under title II of such Act [this subchapter] have been certified and paid prior to the enactment of this act.''

REFUNDS OR CREDITS FOR OVERPAYMENTS

Section 3 of act Apr. 20, 1948, provided that: ''If any amount paid prior to the date of the enactment of this Act [Apr. 20, 1948] constitutes an overpayment of tax solely by reason of an amendment made by this Act [amending this section], no refund or credit shall be made or allowed with respect to the amount of such overpayment.''

§ 410. Definitions relating to employment

For the purposes of this subchapter—

(a) Employment

The term ''employment'' means any service performed after 1936 and prior to 1951 which was employment for the purposes of this subchapter under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee (i) of an American employer (as defined in subsection (e) of this section), or (ii) of a foreign affiliate (as defined in section 3121(*l*)(6) of the Internal Revenue Code of 1986) of an American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(*l*) of such Code, with respect to such affiliate, or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 433 of this title; except that, in the case of service performed after 1950, such term shall not include—

(1) Service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) Domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3)(A) Service performed by a child under the age of 18 in the employ of his father or mother;

(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual under the age of 21 in the employ of his father or mother, or performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

(4) Service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft when outside the United States and (B)(i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) Service performed in the employ of the United States or any instrumentality of the United States, if such service—

(A) would be excluded from the term ''employment'' for purposes of this subchapter if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who—

(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—

(I) if an individual performing service described in subparagraph (A) returns to

the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5 or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being separated from such service for the purpose of accepting employment with the American Institute of Taiwan as provided under section 3310 of title 22, then the service performed for that Institute shall be considered service described in subparagraph (A),

(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A), and

(V) if an individual performing service described in subparagraph (A) returns to the performance of such service after employment (by a tribal organization) to which section 450i(e)(2) of title 25 applies, then the service performed for that tribal organization shall be considered service described in subparagraph (A); or

(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);

except that this paragraph shall not apply with respect to any such service performed on or after any date on which such individual performs—

(C) service performed as the President or Vice President of the United States,

(D) service performed—

(i) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5,

(ii) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(iii) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107(a)(1) or (b)(1) of title 3, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(E) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Court of Federal Claims, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate judge, or a referee in bankruptcy or United States bankruptcy judge,

(F) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress,

(G) any other service in the legislative branch of the Federal Government if such service—

(i) is performed by an individual who was not subject to subchapter III of chapter 83 of title 5 or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5 or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983,

and for purposes of this subparagraph (G) an individual is subject to such subchapter III or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under section 8334(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (b) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), or

(H) service performed by an individual—

(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees' Retirement System Act of 1986, section 2157 of title 50, or the Federal Employees' Retirement System Open Enrollment Act of 1997[1] to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, or

(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980 [22 U.S.C. 4071i], to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act [22 U.S.C. 4071 et seq.];

(6) Service performed in the employ of the United States or any instrumentality of the United States if such service is performed—

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service included under an agreement under section 418 of this title,

(B) service which, under subsection (k) of this section, constitutes covered transportation service,

(C) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this subchapter—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an officer or employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(D) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States (other than the Federal Employees Retirement System provided in chapter 84 of title 5); except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis,

(E) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (C) shall apply, or

(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed—

(i) by an individual who is employed to relieve such individual from unemployment;

(ii) in a hospital, home, or other institution by a patient or inmate thereof;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted

[1] So in original. Probably should be followed by a comma.

amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year; or

(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 411(c)(2)(E) of this title as a trade or business for purposes of inclusion of such fees in net earnings from self employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary of the Treasury, the term ''retirement system'' has the meaning given such term by section 418(b)(4) of this title;

(8)(A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under section 3121(r) of the Internal Revenue Code of 1986 is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) Service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under section 3121(w) of the Internal Revenue Code of 1986, other than service in an unrelated trade or business (within the meaning of section 513(a) of such Code);

(9) Service performed by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1986;

(10) Service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) of the Internal Revenue Code of 1986 if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 418(c)(5) of this title are covered under the agreement between the Commissioner of Social Security and such State entered into pursuant to section 418 of this title;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14)(A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) Service performed in the employ of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669) [22 U.S.C. 288 et seq.], except service which constitutes ''employment'' under subsection (r) of this section;

(16) Service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and furbearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) Service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended [50 U.S.C. 781 et seq.], as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

(18) Service performed in Guam by a resident of the Republic of the Philippines while in

Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 1101(a)(15)(H)(ii) of title 8;

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 1101(a)(15) of title 8, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q) as the case may be;

(20) Service (other than service described in paragraph (3)(A)) performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which—

(A) such individual does not receive any additional compensation other than as provided in subparagraph (B) and other than cash remuneration—

(i) which does not exceed $100 per trip;

(ii) which is contingent on a minimum catch; and

(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual's share depends on the amount of the boat's (or boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life,

but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals; or

(21) Domestic service in a private home of the employer which—

(A) is performed in any year by an individual under the age of 18 during any portion of such year; and

(B) is not the principal occupation of such employee.

For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.

(b) Included and excluded service

If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term ''pay period'' means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (a) of this section.

(c) American vessel

The term ''American vessel'' means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

(d) American aircraft

The term ''American aircraft'' means an aircraft registered under the laws of the United States.

(e) American employer

The term ''American employer'' means an employer which is (1) the United States or any instrumentality thereof, (2) a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing, (3) an individual who is a resident of the United States, (4) a partnership, if two-thirds or more of the partners are residents of the United States, (5) a trust, if all of the trustees are residents of the United States, or (6) a corporation organized under the laws of the United States or of any State.

(f) Agricultural labor

The term ''agricultural labor'' includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141j(g) of title 12, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(4)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to

a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A) of this paragraph, but only if such operators produced all of the commodity with respect to which such service is performed. For the purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than twenty at any time during the calendar year in which such service is performed.

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business.

The provisions of subparagraphs (A) and (B) of paragraph (4) of this subsection shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(g) Farm

The term ''farm'' includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(h) State

The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(i) United States

The term ''United States'' when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(j) Employee

The term ''employee'' means—

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term ''employee'' under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

(k) Covered transportation service

(1) Except as provided in paragraph (2) of this subsection, all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system is, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall

constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C) of this paragraph.

(3) All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) For the purposes of this subsection—

(A) The term ''general retirement system'' means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this subchapter, and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term ''political subdivision'' includes an instrumentality of (i) a State, (ii) one or more political subdivisions of a State, or (iii) a State and one or more of its political subdivisions.

(*l*) Service in uniformed services

(1) Except as provided in paragraph (4), the term ''employment'' shall, notwithstanding the provisions of subsection (a) of this section, include—

(A) service performed after December 1956 by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

(B) service performed after December 1987 by an individual as a member of a uniformed service on inactive duty training.

(2) The term ''active duty'' means ''active duty'' as described in paragraph (21) of section 101 of title 38, except that it shall also include ''active duty for training'' as described in paragraph (22) of such section.

(3) The term ''inactive duty training'' means ''inactive duty training'' as described in paragraph (23) of such section 101.

(4)(A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 231b(i) of title 45. The Railroad Retirement Board shall notify the Commissioner of Social Security,[2] with respect to all such service which is so creditable.

(B) In any case where benefits under this subchapter are already payable on the basis of such individual's wages and self-employment income at the time such notification (with respect to such individual) is received by the Commissioner of Social Security, the Commissioner of Social Security shall certify no further benefits for payment under this subchapter on the basis of such individual's wages and self-employment income, or shall recompute the amount of any further benefits payable on the basis of such wages and self-employment income, as may be required as a consequence of subparagraph (A) of this paragraph. No payment of a benefit to any person on the basis of such individual's wages and self-employment income, certified by the Commissioner of Social Security prior to the end of the month in which the Commissioner receives such notification from the Railroad Retirement Board, shall be deemed by reason of this subparagraph to have been an erroneous payment or a payment to which such person was not entitled. The Commissioner of Social Security shall, as soon as possible after the receipt of such notification from the Railroad Retirement Board, advise such Board whether or not any such benefit will be reduced or terminated by reason of subparagraph (A) of this paragraph, and if any such benefit will be so reduced or terminated, specify the first month with respect to which such reduction or termination will be effective.

(m) Member of a uniformed service

The term ''member of a uniformed service'' means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component as defined in section 101(27) of title 38), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, the National Oceanic and Atmospheric Administration Corps, or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry

[2] So in original. The comma probably should not appear.

upon active duty in the military, naval, or air service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Military Selective Service Act [50 App. U.S.C. 451 et seq.], has been selected for active military, naval, or air service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

(n) Crew leader

The term ''crew leader'' means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. A crew leader shall, with respect to services performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

***(o)* Peace Corps volunteer service**

The term ''employment'' shall, notwithstanding the provisions of subsection (a) of this section, include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.].

(p) Medicare qualified government employment

(1) For purposes of sections 426 and 426–1 of this title, the term ''medicare qualified government employment'' means any service which would constitute ''employment'' as defined in subsection (a) of this section but for the application of the provisions of—

(A) subsection (a)(5) of this section, or

(B) subsection (a)(7) of this section, except as provided in paragraphs (2) and (3).

(2) Service shall not be treated as employment by reason of paragraph (1)(B) if the service is performed—

(A) by an individual who is employed by a State or political subdivision thereof to relieve him from unemployment,

(B) in a hospital, home, or other institution by a patient or inmate thereof as an employee of a State or political subdivision thereof or of the District of Columbia,

(C) by an individual, as an employee of a State or political subdivision thereof or of the District of Columbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency,

(D) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or a medical or dental resident in training, or

(E) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year.

As used in this paragraph, the terms ''State'' and ''political subdivision'' have the meanings given those terms in section 418(b) of this title.

(3) Service performed for an employer shall not be treated as employment by reason of paragraph (1)(B) if—

(A) such service would be excluded from the term ''employment'' for purposes of this section if paragraph (1)(B) did not apply;

(B) such service is performed by an individual—

(i) who was performing substantial and regular service for remuneration for that employer before April 1, 1986,

(ii) who is a bona fide employee of that employer on March 31, 1986, and

(iii) whose employment relationship with that employer was not entered into for purposes of meeting the requirements of this subparagraph; and

(C) the employment relationship with that employer has not been terminated after March 31, 1986.

(4) For purposes of paragraph (3), under regulations (consistent with regulations established under section 3121(u)(2)(D) of the Internal Revenue Code of 1986)—

(A) all agencies and instrumentalities of a State (as defined in section 418(b) of this title) or of the District of Columbia shall be treated as a single employer, and

(B) all agencies and instrumentalities of a political subdivision of a State (as so defined) shall be treated as a single employer and shall not be treated as described in subparagraph (A).

(q) Treatment of real estate agents and direct sellers

Notwithstanding any other provision of this subchapter, the rules of section 3508 of the Internal Revenue Code of 1986 shall apply for purposes of this subchapter.

(r) Service in employ of international organizations by certain transferred Federal employees

(1) For purposes of this subchapter, service performed in the employ of an international organization by an individual pursuant to a transfer of such individual to such international organization pursuant to section 3582 of title 5 shall constitute ''employment'' if—

(A) immediately before such transfer, such individual performed service with a Federal agency which constituted ''employment'' as defined in subsection (a) of this section, and

(B) such individual would be entitled, upon separation from such international organization and proper application, to reemployment with such Federal agency under such section 3582.

(2) For purposes of this subsection:

(A) The term ''Federal agency'' means an agency, as defined in section 3581(1) of title 5.

(B) The term ''international organization'' has the meaning provided such term by section 3581(3) of title 5.

(Aug. 14, 1935, ch. 531, title II, § 210, as added Aug. 10, 1946, ch. 951, title II, § 201, 60 Stat. 979; amended, Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 494; Oct. 31, 1949, ch. 792, title V, § 506(a), formerly § 505(a), as added July 12, 1951, ch. 223, 65 Stat. 120, and renumbered Pub. L. 87–345, § 3, Oct. 3, 1961, 75 Stat. 761; Sept. 1, 1954, ch. 1206, title I, § 101(a)(4), (5), (b), (c)(1), (2), (e), (f), (m), 68 Stat. 1052, 1061; Aug. 1, 1956, ch. 836, title I, §§ 104(a), (b), (c)(1), 105(b), 121(c), 70 Stat. 824, 828, 839; Aug. 1, 1956, ch. 837, title IV, § 402(a), 70 Stat. 870; Pub. L. 85–840, title III, § 311(a), 312(a), Aug. 28, 1958, 72 Stat. 1035; Pub. L. 86–70, § 32(c)(2), June 25, 1959, 73 Stat. 149; Pub. L. 86–168, title I, § 104(h), title II, § 202(a), Aug. 18, 1959, 73 Stat. 387, 389; Pub. L. 86–624, § 30(c)(2), July 12, 1960, 74 Stat. 420; Pub. L. 86–778, title I, §§ 103(c)–(f), (j)(2)(A), (B), 104(a), Sept. 13, 1960, 74 Stat. 936, 937, 942; Pub. L. 87–256, § 110(e)(2), Sept. 21, 1961, 75 Stat. 537; Pub. L. 87–293, title II, § 202(b)(1), Sept. 22, 1961, 75 Stat. 626; Pub. L. 89–97, title III, §§ 311(a)(3), (4), 317(a), July 30, 1965, 79 Stat. 380, 381, 388; Pub. L. 90–248, title I, § 123(a), title IV, § 403(a), Jan. 2, 1968, 81 Stat. 844, 931; Pub. L. 92–603, title I, §§ 123(a)(1), 128(a), 129(a)(1), Oct. 30, 1972, 86 Stat. 1354, 1358, 1359; Pub. L. 93–445, title III, § 311, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 94–455, title XII, § 1207(e)(2)(A), Oct. 4, 1976, 90 Stat. 1707; Pub. L. 94–563, § 1(a), Oct. 19, 1976, 90 Stat. 2655; Pub. L. 95–216, title III, § 351(a)(1), (3)(B), Dec. 20, 1977, 91 Stat. 1549; Pub. L. 95–600, title VII, § 703(j)(14)(C), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 97–248, title II, §§ 269(b), 278(b)(1), Sept. 3, 1982, 96 Stat. 552, 560; Pub. L. 97–448, title III, § 309(b)(23), Jan. 12, 1983, 96 Stat. 2410; Pub. L. 98–21, title I, §§ 101(a), 102(a), title III, §§ 321(b), 322(a)(1), 323(a)(2), Apr. 20, 1983, 97 Stat. 67, 70, 118, 120, 121; Pub. L. 98–369, div. B, title VI, §§ 2601(a), 2603(a)(1), 2661(j), 2663(a)(7), (j)(3)(A)(i), July 18, 1984, 98 Stat. 1122, 1128, 1157, 1162, 1170; Pub. L. 99–221, § 3(b), Dec. 26, 1985, 99 Stat. 1735; Pub. L. 99–272, title XIII, §§ 13205(b)(1), 13303(c)(2), Apr. 7, 1986, 100 Stat. 316, 327; Pub. L. 99–335, title III, § 304(a), June 6, 1986, 100 Stat. 606; Pub. L. 99–514, title XVIII, §§ 1883(a)(4), 1895(b)(18)(B), (19), Oct. 22, 1986, 100 Stat. 2916, 2935; Pub. L. 100–203, title IX, §§ 9001(a)(1), 9004(a), 9005(a), 9023(a), Dec. 22, 1987, 101 Stat. 1330–286 to 1330–288, 1330–295; Pub. L. 100–647, title I, § 1001(d)(2)(E), title VIII, §§ 8015(b)(1), (c)(1), 8016(a)(4)(B), (C), Nov. 10, 1988, 102 Stat. 3351, 3791–3793; Pub. L. 101–239, title X, § 10201(b)(1), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 101–508, title XI, § 11332(a), Nov. 5, 1990, 104 Stat. 1388–469; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–178, title II, § 204(d), Dec. 3, 1993, 107 Stat. 2033; Pub. L. 103–296, title I, § 107(a)(4), title III, §§ 303(a)(1), (b)(1), 319(b)(1), (3), 320(b), 321(a)(13), (c)(6)(C), (D), Aug. 15, 1994, 108 Stat. 1478, 1518, 1519, 1534–1536, 1538; Pub. L. 103–387, § 2(a)(2)(B), Oct. 22, 1994, 108 Stat. 4072; Pub. L. 104–188, title I, § 1116(a)(2), Aug. 20, 1996, 110 Stat. 1762; Pub. L. 105–61, title VI, § 642(d)(1), Oct. 10, 1997, 111 Stat. 1319; Pub. L. 105–33, title XI, § 11246(b)(2)(B), as added Pub. L. 105–277, div. A, § 101(h) [title VIII, § 802(a)(2)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–532; Pub. L. 108–203, title IV, § 423(c), Mar. 2, 2004, 118 Stat. 536.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is classified to Title 26, Internal Revenue Code.

The Civil Service Retirement and Disability Fund, referred to in subsec. (a)(5)(B)(ii), (G), is provided for in section 8348 of Title 5, Government Organization and Employees.

Section 301 of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (a)(5)(H)(i), is section 301 of Pub. L. 99–335, which is set out as a note under section 8331 of Title 5.

The Federal Employees' Retirement System Open Enrollment Act of 1997, referred to in subsec. (a)(5)(H)(i), is section 642 of Pub. L. 105–61, title VI, Oct. 10, 1997, 111 Stat. 1318, which amended this section and section 3121 of Title 26, Internal Revenue Code, and enacted provisions set out as a note under section 8331 of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Tables.

The Foreign Service Act of 1980, referred to in subsec. (a)(5)(H)(ii), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Subchapter II of chapter 8 of title I of the Act is classified generally to part II (§ 4071 et seq.) of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

The International Organizations Immunities Act, referred to in subsec. (a)(15), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§ 288 et seq.) of chapter 7 of Title 22. For complete classification of that Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

The Internal Security Act of 1950, as amended, referred to in subsec. (a)(17), is act Sept. 23, 1950, ch. 1024, 64 Stat. 987, as amended, which is classified principally to chapter 23 (§ 781 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 50 and Tables.

The Military Selective Service Act, referred to in subsec. (m)(5)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

The Peace Corps Act, referred to in subsec. (*o*), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of that Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

2004—Subsec. (f)(5). Pub. L. 108–203 struck out ''or is domestic service in a private home of the employer'' before period at end.

1998—Subsec. (a)(7)(D). Pub. L. 105–277 added Pub. L. 105–33, § 11246(b)(2)(B). See 1997 Amendment note below.

1997—Subsec. (a)(5)(H)(i). Pub. L. 105–61 substituted ''1986,'' for ''1986 or'' and inserted ''or the Federal Employees' Retirement System Open Enrollment Act of 1997'' after ''section 2157 of title 50,''.

Subsec. (a)(7)(D). Pub. L. 105–33, § 11246(b)(2)(B), as added by Pub. L. 105–277, inserted ''(other than the Federal Employees Retirement System provided in chapter 84 of title 5)'' after ''United States'' in introductory provisions.

1996—Subsec. (a). Pub. L. 104–188, § 1116(a)(2)(A), inserted at end ''For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.''

Subsec. (a)(20)(A). Pub. L. 104–188, § 1116(a)(2)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''such individual does not receive any cash remuneration (other than as provided in subparagraph (B)),''.

1994—Subsec. (a). Pub. L. 103–296, § 321(c)(6)(C), substituted ''1986'' for ''1954'' after ''Code of'' in introductory provisions.

Subsec. (a)(5)(B)(i)(V). Pub. L. 103–296, § 321(a)(13), made technical amendment to reference to section 450i(e)(2) of title 25 to reflect renumbering of corresponding section of original act.

Subsec. (a)(7)(F)(iv). Pub. L. 103–296, § 303(a)(1), substituted ''$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year'' for ''$100''.

Subsec. (a)(8)(A), (B), (9). Pub. L. 103–296, § 321(c)(6)(C), substituted ''1986'' for ''1954'' after ''Code of''.

Subsec. (a)(10)(B). Pub. L. 103–296, § 321(c)(6)(C), substituted ''1986'' for ''1954'' after ''Code of''.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(15). Pub. L. 103–296, § 319(b)(3), inserted before semicolon at end '', except service which constitutes 'employment' under subsection (r) of this section''.

Subsec. (a)(19). Pub. L. 103–296, § 320(b), substituted ''(J), (M), or (Q)'' for ''(J), or (M)'' in two places.

Subsec. (a)(21). Pub. L. 103–387 added par. (21).

Subsec. (*l*)(4). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner receives'' for ''he receives'' in subpar. (B).

Subsec. (p)(2)(E). Pub. L. 103–296, § 303(b)(1), substituted ''$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year'' for ''$100''.

Subsecs. (p)(4), (q). Pub. L. 103–296, § 321(c)(6)(D), substituted ''1986'' for ''1954'' after ''Code of''.

Subsec. (r). Pub. L. 103–296, § 319(b)(1), added subsec. (r).

1993—Subsec. (a)(5)(H)(i). Pub. L. 103–178 substituted ''section 2157 of title 50'' for ''section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees''.

1992—Subsec. (a)(5)(E). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1990—Subsec. (a)(7)(F). Pub. L. 101–508 added subpar. (F).

1989—Subsec. (a). Pub. L. 101–239 substituted ''3121(*l*)(6)'' for ''3121(*l*)(8)'' in introductory provisions.

1988—Subsec. (a)(5). Pub. L. 100–647, § 8015(c)(1), in provision following subpar. (B) inserted ''any such service performed on or after any date on which such individual performs'' after ''with respect to''.

Subsec. (a)(5)(H). Pub. L. 100–647, § 8015(b)(1), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: ''service performed by an individual on or after the effective date of an election by such individual under section 301(a) of the Federal Employees' Retirement System Act of 1986, or under regulations issued under section 860 of the Foreign Service Act of 1980 or section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, to become subject to chapter 84 of title 5;''.

Subsec. (a)(19). Pub. L. 100–647, § 1001(d)(2)(E), substituted ''(F), (J), or (M)'' for ''(F) or (J)'' in two places.

Subsec. (a)(20). Pub. L. 100–647, § 8016(a)(4)(B), (C), amended Pub. L. 99–272, § 13303(c)(2), see 1986 Amendment note below.

1987—Subsec. (a)(3)(A). Pub. L. 100–203, § 9005(a)(1), substituted ''18'' for ''twenty-one''.

Pub. L. 100–203, § 9004(a)(1), struck out reference to service performed by an individual in the employ of his spouse.

Subsec. (a)(3)(B). Pub. L. 100–203, § 9005(a)(2), inserted reference to an individual under the age of 21 in the employ of his father or mother.

Pub. L. 100–203, § 9004(a)(2), substituted introductory provisions for former introductory provisions which read as follows: ''Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—''.

Subsec. (*l*)(1). Pub. L. 100–203, § 9001(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (4) of this subsection, the term 'employment' shall, notwithstanding the provisions of subsection (a) of this section, include service performed after December 1956 by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.''

Subsec. (p). Pub. L. 100–203, § 9023(p), directed that the heading of subsec. (p) be amended to read the same as it was set out in the general amendment of subsec. (p) by Pub. L. 99–272, see 1986 Amendment note below.

1986—Subsec. (a)(5)(G). Pub. L. 99–514, § 1883(a)(4), substituted ''any other service'' for ''Any other service''.

Subsec. (a)(5)(H). Pub. L. 99–335 added subpar. (H).

Subsec. (a)(20). Pub. L. 99–272, § 13303(c)(2), as amended by Pub. L. 100–647, § 8016(a)(4)(B), (C), substituted ''Service (other than service described in paragraph (3)(A)) performed'' for ''Service performed'' in introductory provisions.

Subsec. (p). Pub. L. 99–272, § 13205(b)(1), amended subsec. (p) generally. Prior to amendment, subsec. (p) read as follows: ''For purposes of sections 426 and 426–1 of this title, the term 'medicare qualified Federal employment' means any service which would constitute 'employment' as defined in subsection (a) of this section but for the application of the provisions of subsection (a)(5) of this section.''

Subsec. (p)(2)(E). Pub. L. 99–514, § 1895(b)(18)(B), added subpar. (E).

Subsec. (p)(4)(B). Pub. L. 99–514, § 1895(b)(19), struck out quotation marks before ''(A)''.

1985—Subsec. (a)(5)(B)(i)(V). Pub. L. 99–221 added subcl. (V).

1984—Subsec. (a). Pub. L. 98–369, § 2661(j), struck out the second comma after ''such affiliate''.

Subsec. (a)(1). Pub. L. 98–369, § 2663(a)(7)(A), struck out ''(A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, or (B)''.

Subsec. (a)(5)(B). Pub. L. 98–369, § 2601(a)(1), in amending subpar. (B) generally, substituted ''(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,'' for ''(i) has been continuously in the employ of the United States or an instrumentality thereof since December

31, 1983 (and for this purpose an individual who returns to the performance of such service after being separated therefrom following a previous period of such service shall nevertheless be considered upon such return as having been continuously in the employ of the United States or an instrumentality thereof, regardless of whether the period of such separation began before, on, or after December 31, 1983, if the period of such separation does not exceed 365 consecutive days),'', added subcls. (II) to (IV), and reenacted cl. (ii).

Subsec. (a)(5)(C) to (F). Pub. L. 98–369, §2601(a)(2)(A), (B), in provisions following ''except that this paragraph shall not apply with respect to—'' redesignated cls. (i), (ii), (iii), and (iv) as subpars. (C), (D), (E), and (F), respectively, and redesignated former subcls. (I), (II), and (III) as cls. (i), (ii), and (iii), respectively, of the redesignated subpar. (D).

Subsec. (a)(5)(G). Pub. L. 98–369, §2601(a)(2)(A), (C), in provisions following ''except that this paragraph shall not apply with respect to—'' redesignated former cl. (v) as subpar. (G), and in subpar. (G) as so redesignated, designated the existing provisions of subpar. (G) as the introductory language and the first phrase of cl. (i) and added the remainder of cl. (i) following ''chapter 38 of title 5'', cls. (ii) and (iii), and the provisions following cl. (iii).

Subsec. (a)(7)(D). Pub. L. 98–369, §2663(a)(7)(B), realigned margins of subpar. (D).

Subsec. (a)(8). Pub. L. 98–369, §2603(a)(1), designated existing provisions as subpar. (A), substituted ''this subparagraph'' for ''this paragraph'', and added subpar. (B).

Subsec. (a)(9). Pub. L. 98–369, §2663(a)(7)(C), substituted ''section 3231 of the Internal Revenue Code of 1954'' for ''section 1532 of the Internal Revenue Code of 1939''.

Subsec. (a)(10)(B). Pub. L. 98–369, §2663(j)(3)(A)(i), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (a)(19). Pub. L. 98–369, §2663(a)(7)(D), struck out the comma after ''; or''.

Subsec. (*l*)(2). Pub. L. 98–369, §2663(a)(7)(E), substituted ''paragraph (21) of section 101 of title 38'' for ''section 102 of the Servicemen's and Veterans' Survivor Benefits Act'' and ''paragraph (22) of such section'' for ''such section''.

Subsec. (*l*)(3). Pub. L. 98–369, §2663(a)(7)(F), substituted ''paragraph (23) of such section 101'' for ''such section 102''.

Subsec. (*l*)(4)(A). Pub. L. 98–369, §2663(j)(3)(A)(i), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (m). Pub. L. 98–369, §2663(a)(7)(G)(i), (ii), in provisions preceding par. (1), substituted ''a reserve component as defined in section 101(27) of title 38'' for ''a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act'' and inserted reference to the National Oceanic and Atmospheric Administration Corps.

Subsec. (m)(5). Pub. L. 98–369, §2663(a)(7)(G)(iii), substituted ''military, naval, or air'' for ''military or naval'' wherever appearing.

Subsec. (m)(5)(B). Pub. L. 98–369, §2663(a)(7)(G)(iv), substituted ''Military Selective Service Act'' for ''Universal Military Training and Service Act''.

1983—Subsec. (a). Pub. L. 98–21, §322(a)(1), added cl. (C) and struck out ''either'' before ''A'' in provisions preceding par. (1).

Pub. L. 98–21, §321(b), amended cl. (B) in provisions preceding par. (1) generally, substituting reference to section 3121(*l*)(8) of the Internal Revenue Code of 1954 for reference to section 3121(*l*) of such Code ''an American employer'' for ''a domestic corporation (as determined in accordance with section 7701 of the Internal Revenue Code of 1954)'', and ''affiliate'' for ''subsidiary'' after ''with respect to such''.

Pub. L. 98–21, §323(a)(2), substituted ''a citizen or resident of the United States'' for ''a citizen of the United States'' in cl. (B) in provisions preceding par. (1).

Subsec. (a)(5). Pub. L. 98–21, §101(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939, by virtue of any provision of law which specifically refers to such section in granting such exemption;''.

Subsec. (a)(6). Pub. L. 98–21, §101(a)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows:

''(A) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

''(B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939, on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

''(i) service performed in the employ of a corporation which is wholly owned by the United States;

''(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

''(iii) service performed in the employ of a State, county, or community committee under the Production and Marketing Administration;

''(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

''(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

''(C) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

''(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

''(ii) in the legislative branch;

''(iii) in a penal institution of the United States by an inmate thereof;

''(iv) by any individual as an employee included under section 5351(2) of title 5, other than as a medical or dental intern or a medical or dental resident in training;

''(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

''(vi) by any individual to whom subchapter III of chapter 83 of title 5 does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);''.

Subsec. (a)(8). Pub. L. 98–21, §102(a), struck out subpar. (A) designation, struck out subpar. (B) which had related to service performed by employees of nonprofit organizations, and substituted ''this paragraph'' for ''this subparagraph''.

Subsec. (p). Pub. L. 98–21, §101(a)(2), struck out designations for pars. (1) and (2) and struck out par. (1)

which related to application of the provisions of subparagraph (A), (B), or (C)(i), (ii), or (vi) of subsection (a)(6) of this section.

Subsec. (q). Pub. L. 97–448 redesignated subsec. (p), relating to treatment of real estate agents and direct sellers, as (q).

1982—Subsec. (p). Pub. L. 97–248, § 269(b), added subsec. (p) relating to treatment of real estate agents and direct sellers.

Pub. L. 97–248, § 278(b)(1), added subsec. (p) relating to medicare qualified Federal employment.

1978—Subsec. (a)(6)(B)(v). Pub. L. 95–600 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1977—Subsec. (a)(10). Pub. L. 95–216, § 351(a)(3)(B), struck out subpar. (A) which related to service performed in the employ of any exempt organization under section 101 of the Internal Revenue Code of 1939, and designated existing provisions of subpar. (B) as entire subsec. (a)(10) and, as so designated, redesignated cls. (i) and (ii) as subpars. (A) and (B).

Subsecs. (a)(17)(A), (f)(4)(B). Pub. L. 95–216, § 351(a)(1), substituted ''year'' for ''quarter''.

1976—Subsec. (a)(8)(B). Pub. L. 94–563 inserted ''(or deemed to have been so filed under paragraph (4) or (5) of such section 3121(k))'' after ''section 3121(k) of the Internal Revenue Code of 1954'' in provisions preceding cl. (i), inserted ''(or deemed to have been filed)'' after ''filed'' in cls. (i), (ii), and (iii), and substituted ''is (or is deemed to be) in effect'' for ''is in effect'' in provisions following cl. (iii).

Subsec. (a)(20). Pub. L. 94–455 added par. (20).

1974—Subsec. (*l*)(4)(A). Pub. L. 93–445 substituted ''section 231b(i) of title 45'' for ''section 228c–1 of title 45'' and struck out '', as provided in section 228c–1(p)(2) of title 45'' after ''notify the Secretary of Health, Education, and Welfare''.

1972—Subsec. (a)(7)(E). Pub. L. 92–603, § 128(a), added subpar. (E).

Subsec. (a)(8)(A). Pub. L. 92–603, § 123(a)(1), inserted provisions referring to the election of coverage under section 3121(r) of the Internal Revenue Code of 1954.

Subsec. (a)(10)(B). Pub. L. 92–603, § 129(a)(1), designated existing provisions as cl. (i) and added cl. (ii).

1968—Subsec. (a)(3)(B). Pub. L. 90–248, § 123(a), inserted exception provision including cls. (i) to (iii).

Subsec. (a)(6)(C)(iv). Pub. L. 90–248, § 403(a)(1), substituted reference to section 5351(2) of title 5 for former section 1052 of title 5.

Subsec. (a)(6)(C)(vi). Pub. L. 90–248, § 403(a)(2), substituted ''subchapter III of chapter 83 of title 5'' for ''the Civil Service Retirement Act''.

Subsec. (a)(7)(D)(ii). Pub. L. 90–248, § 403(a)(3), substituted reference to section 5351(2) of title 5 for former section 1052 of title 5.

1965—Subsec. (a)(6)(C)(iv). Pub. L. 89–97, § 311(a)(3), inserted '', other than as a medical or dental intern or a medical or dental resident in training''.

Subsec. (a)(7)(D). Pub. L. 89–97, § 317(a)(3), added subpar. (D).

Subsec. (a)(13). Pub. L. 89–97, § 311(a)(4), struck out from definition of employment the exclusion of service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law.

1961—Subsec. (a)(19). Pub. L. 87–256 added par. (19).

Subsec. (*o*). Pub. L. 87–293 added subsec. (*o*).

1960—Subsec. (a)(3). Pub. L. 86–778, § 104(a), designated existing provisions as cl. (A), struck out provisions which related to service performed by an individual in the employ of his son or daughter, and added cl. (B).

Subsec. (a)(7). Pub. L. 86–778, § 103(c), excluded service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof.

Subsec. (a)(18). Pub. L. 86–778, § 103(d), added par. (18).

Subsec. (h). Pub. L. 86–778, § 103(e), included Guam and American Samoa.

Pub. L. 86–624 substituted ''includes the District of Columbia and'' for ''includes Hawaii, the District of Columbia, and''.

Subsec. (i). Pub. L. 86–778, § 103(f), included Guam and American Samoa.

Pub. L. 86–624 struck out ''Hawaii,'' before ''the District of Columbia.''

Subsecs. (j) to (*o*). Pub. L. 86–778, § 103(j)(2)(A), (B), repealed subsec. (j) and redesignated subsecs. (*l*) to (*o*) as (k) to (n), respectively.

1959—Subsec. (a)(6)(B)(ii). Pub. L. 86–168 substituted ''Federal land bank association'' for ''national farm loan association'', and included service in the employ of Federal land banks, Federal intermediate credit banks and banks for cooperatives.

Subsecs. (h), (i). Pub. L. 86–70 struck out ''Alaska,'' before ''Hawaii''.

1958—Subsec. (a)(1). Pub. L. 85–840, § 311(a), struck out provisions which excluded from coverage service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141j(g) of title 12.

Subsec. (a)(8)(B). Pub. L. 85–840, § 312(a), substituted references to the Internal Revenue Code of 1954 for references to the Internal Revenue Code of 1939, and inserted provisions making subparagraph inapplicable to service performed during the period for which a certificate is in effect if such service is performed by an employee who, after the calendar quarter in which the certificate was filed with respect to a group described in section 3121(k)(1)(E) of the Internal Revenue Code of 1954 became a member of such group, and making subparagraph applicable with respect to service performed by an employee as a member of a group described in section 3121(k)(1)(E) with respect to which no certificate is in effect.

1956—Subsec. (a)(1)(B). Act Aug. 1, 1956, ch. 836, § 104(a), excluded from coverage service performed by foreign agricultural workers lawfully admitted on a temporary basis from any foreign country or possession thereof.

Subsec. (a)(6)(B)(ii). Act Aug. 1, 1956, ch. 836, § 104(b)(1), included service performed in the employ of a Federal Home Loan Bank.

Subsec. (a)(6)(C)(vi). Act Aug. 1, 1956, ch. 836, § 104(b)(2), substituted ''Civil Service Retirement Act'' for ''Civil Service Retirement Act of 1930'', and inserted ''(other than the retirement system of the Tennessee Valley Authority)'' after ''retirement system''.

Subsec. (a)(16), (17). Act Aug. 1, 1956, ch. 836, §§ 104(c)(1), 121(c), added pars. (16) and (17).

Subsecs. (m), (n). Act Aug. 1, 1956, ch. 837, added subsecs. (m) and (n).

Subsec. (*o*). Act Aug. 1, 1956, ch. 836, § 105(b), added subsec. (*o*).

1954—Subsec. (a)(B). Act Sept. 1, 1954, § 101(m), included within definition of ''employment'' service performed outside the United States by citizens of the United States as employees for foreign subsidiaries of domestic corporations under certain conditions.

Subsec. (a)(1). Act Sept. 1, 1954, § 101(a)(4), removed specific exception from employment of services performed in connection with the ginning of cotton, and added an exception for services performed by West Indian agricultural workers lawfully admitted to the United States on a temporary basis.

Subsec. (a)(3). Act Sept. 1, 1954, § 101(a)(5), redesignated par. (4) as (3) and struck out former par. (3).

Subsec. (a)(4). Act Sept. 1, 1954, § 101(a)(5), (b), redesignated par. (5) as (4), and made the exclusion with respect to services on non-American vessels or aircraft applicable only if the individual is not a United States citizen or the employer is not an American employer. Former par. (4) redesignated (3).

Subsec. (a)(5). Act Sept. 1, 1954, § 101(a)(5), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (a)(6)(B). Act Sept. 1, 1954, § 101(a)(5), (c)(1)(A), redesignated par. (7) as (6), and inserted ''by an individual'' after ''Service performed'' and ''and if such service is covered by a retirement system established by such instrumentality;'' after ''December 31, 1950.''

Subsec. (a)(6)(B)(v). Act Sept. 1, 1954, §101(a)(5), (c)(1)(A), redesignated par. (7) as (6), and added cl. (v).

Subsec. (a)(6)(C). Act Sept. 1, 1954, §101(a)(5), (c)(2), redesignated par. (7) as (6), and struck out exception from coverage for services in the following categories; temporary employees in the Post Office Department field service; temporary census-taking employees of the Bureau of the Census; Federal employees paid on a contract or fee basis; Federal employees receiving compensation of $12 a year or less; certain consular agents; individuals employed under Federal unemployment relief programs; and members of State, county, or community committees under the Production and Marketing Administration and similar bodies, unless such bodies are composed exclusively of full-time Federal employee and limited the exclusion of inmates or patients of United States institutions to inmates of penal institutions.

Subsec. (a)(7) to (17). Act Sept. 1, 1954, §101(a)(5), (e), struck out par. (15) and redesignated pars. (7) to (14), (16), and (17) as (6) to (15), respectively.

Subsec. (k)(3)(C). Act Sept. 1, 1954, §101(f), struck out requirement that services of homeworkers be subject to State licensing laws in order to constitute covered employment.

1951—Subsec. (a)(1)(C). Act Oct. 31, 1949, §505(a), as added by act July 12, 1951, added subpar. (C).

1950—Act Aug. 28, 1950, substituted a new section 410 for former section 410.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (a)(5)(E) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Commissioned Officer Corps of the Environmental Science Services Administration changed to Commissioned Officer Corps of National Oceanic and Atmospheric Administration, see Reorg. Plan No. 4 of 1970, §4(d), eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective, except as otherwise specifically provided, as if included in the enactment of title XI of the Balanced Budget Act of 1997, Pub. L. 105–33, see section 101(h) [title VIII, §805] of Pub. L. 105–277, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable with respect to all months beginning after the date on which the Director of the Office of Personnel Management issues regulations to carry out section 11–1726, District of Columbia Code, see section 11246(b)(4) of Pub. L. 105–33, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to remuneration paid after Dec. 31, 1994, and, unless payor treated such remuneration (when paid) as being subject to tax under chapter 21 of Title 26, Internal Revenue Code, after Dec. 31, 1984, and before Jan. 1, 1995, see section 1116(a)(3) of Pub. L. 104–188, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–387 applicable to services performed after Dec. 31, 1994, see section 2(a)(3)(B) of Pub. L. 103–387, set out as a note under section 3102 of Title 26, Internal Revenue Code.

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 303(e) of Pub. L. 103–296 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section, section 418 of this title, and section 3121 of Title 26, Internal Revenue Code] shall apply with respect to service performed on or after January 1, 1995.''

Amendment by section 319(b)(1), (3) of Pub. L. 103–296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 320(b) of Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of Title 26.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to service performed after July 1, 1991, see section 11332(d) of Pub. L. 101–508, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable with respect to any agreement in effect under section 3121(*l*) of Title 26, Internal Revenue Code, on or after June 15, 1989, with respect to which no notice of termination is in effect on such date, see section 10201(c) of Pub. L. 101–239, set out as a note under section 406 of Title 26.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(E) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 8015(b)(1) of Pub. L. 100–647 applicable as if such amendment had been included or reflected in section 304 of Federal Employees' Retirement System Act of 1986, Pub. L. 99–335, at the time of its enactment (June 6, 1986), see section 8015(b)(3) of Pub. L. 100–647, set out as a note under section 3121 of Title 26.

Amendment by section 8015(c)(1) of Pub. L. 100–647 applicable to any individual only upon the performance by such individual of service described in subpar. (C), (D), (E), (F), (G), or (H) of subsec. (a)(5) of this section on or after Nov. 10, 1988, see section 8015(c)(3) of Pub. L. 100–647, set out as a note under section 3121 of Title 26.

Amendment by section 8016(a)(4)(B), (C) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to Title 26, as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of Title 26.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9001(a)(1) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9001(d) of Pub. L. 100–203, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 9004(a) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec.

31, 1987, see section 9004(c) of Pub. L. 100–203, set out as a note under section 3121 of Title 26.

Amendment by section 9005(a) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9005(c) of Pub. L. 100–203, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(a)(4) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1895(b)(18)(B) of Pub. L. 99–514 applicable to services performed after Mar. 31, 1986, see section 1895(b)(18)(C) of Pub. L. 99–514, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 1895(b)(19) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26.

Section 13205(d)(2) of Pub. L. 99–272 provided that:

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section and sections 426, 426–1, and 1395c of this title] shall be effective after March 31, 1986, and the amendments made by paragraph (3) of that subsection [subsection does not contain a paragraph (3)] shall apply to services performed (for medicare qualified government employment) after that date.

''(B) TREATMENT OF CERTAIN DISABILITIES.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act [section 1395c et seq. of this title] pursuant to the amendments made by subsection (b), no individual may be considered to be under a disability for any period beginning before April 1, 1986.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 3(c) of Pub. L. 99–221 provided that: ''The amendments made by subsection (b) [amending this section and section 3121 of Title 26, Internal Revenue Code] apply to any return to the performance of service in the employ of the United States, or of an instrumentality thereof, after 1983.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2601(f) of Pub. L. 98–369 provided that: ''Except as provided in subsection (d) [set out as a Qualification and Requalification of Federal Employees for Benefits note below], the amendments made by subsections (a) and (b) [amending this section and section 3121 of Title 26, Internal Revenue Code] (and provisions of subsection (e) [set out as a Services Performed for Nonprofit Organizations by Federal Employees note below]) shall be effective with respect to service performed after December 31, 1983.''

Section 2603(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 411 of this title and sections 1402 and 3121 of Title 26 and enacting provisions set out as a note under section 3121 of Title 26] shall apply to service performed after December 31, 1983.''

Amendment by section 2661(j) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(7), (j)(3)(A)(i) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 101(a) of Pub. L. 98–21 effective with respect to service performed after Dec. 31, 1983, see section 101(d) of Pub. L. 98–21, as amended, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 102(a) of Pub. L. 98–21 effective with respect to service performed after Dec. 31, 1983, see section 102(c) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

Amendment by section 321(b) of Pub. L. 98–21 applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21, set out as a note under section 406 of Title 26.

Amendment by section 322(a)(1) of Pub. L. 98–21 effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

Amendment by section 323(a)(2) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, see section 323(c)(1) of Pub. L. 98–21, set out as a note under 3121 of Title 26.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 269(b) of Pub. L. 97–248 applicable to services performed after Dec. 31, 1982, see section 269(e)(1) of Pub. L. 97–248, set out as an Effective Date note under section 3508 of Title 26, Internal Revenue Code.

Amendment by section 278(b)(1) of Pub. L. 97–248 effective on and after Jan. 1, 1983, see section 278(c)(2)(A) of Pub. L. 97–248, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to remuneration paid and services rendered after Dec. 31, 1977, see section 351(d) of Pub. L. 95–216, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–563 applicable with respect to services performed after 1950, to the extent covered by waiver certificates filed or deemed to have been filed under section 3121(k)(4) or (5) of Title 26, see section 1(d) of Pub. L. 94–563, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENT

Section 128(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply with respect to service performed on and after the first day of the first calendar quarter which begins on or after the date of the enactment of this Act [Oct. 30, 1972].''

Section 129(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section and section 3121 of Title 26] shall apply to services performed after December 31, 1972.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 123(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply with respect to services performed after December 31, 1967.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 311(c) of Pub. L. 89–97 provided that: ''The amendments made by paragraphs (1) and (2) of sub-

section (a) [amending section 411 of this title], and by paragraphs (1), (2), and (3) of subsection (b) [amending section 1402 of Title 26, Internal Revenue Code], shall apply only with respect to taxable years ending on or after December 31, 1965. The amendments made by paragraphs (3) and (4) of subsection (a) [amending this section], and by paragraphs (4) and (5) of subsection (b) [amending section 3121 of Title 26], shall apply only with respect to services performed after 1965.''

Section 317(g) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 3121, 3125, 6205, and 6413 of Title 26, Internal Revenue Code] shall apply with respect to service performed after the calendar quarter in which this section is enacted and after the calendar quarter in which the Secretary of the Treasury receives a certification from the Commissioners of the District of Columbia expressing their desire to have the insurance system established by title II (and part A of title XVIII) of the Social Security Act [this subchapter and part A of subchapter XVIII of this chapter] extended to the officers and employees coming under the provisions of such amendments.''

EFFECTIVE DATE OF 1961 AMENDMENTS

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 87–256 applicable with respect to service performed after Dec. 31, 1961, see section 110(h)(3) of Pub. L. 87–256, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by section 103(c) of Pub. L. 86–778 applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by Title II of the Social Security Act, this subchapter, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by this subchapter extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1), (2) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(d) of Pub. L. 86–778 applicable only with respect to service performed after 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(e), (f) of Pub. L. 86–778 applicable only with respect to service performed after 1960, except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, the amendment shall be applicable only in the case of taxable years beginning after 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(j)(2)(A), (B) of Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as a note under section 402 of this title.

Section 104(c) of Pub. L. 86–778 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply only with respect to services performed after 1960.''

Amendment by Pub. L. 86–624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86–624, set out as a note under section 201 of this title.

EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment by Pub. L. 86–168 effective Jan. 1, 1960, see section 203(c) of Pub. L. 86–168.

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 47(d) of Pub. L. 86–70.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 311(b) of Pub. L. 85–840 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to service performed after 1958.''

Section 312(b) of Pub. L. 85–840, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3121(k)(1) of Title 26, Internal Revenue Code] after the date of enactment of this Act [Aug. 28, 1958].''

EFFECTIVE DATE OF 1956 AMENDMENTS

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

Section 104(i) of act Aug. 1, 1956, ch. 836, as amended by Pub. L. 92–603, title I, §125(b), Oct. 30, 1972, 86 Stat. 1357, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to service performed after 1956. The amendments made by paragraph (1) of subsection (c) [amending this section] shall apply with respect to service performed after 1954. The amendment made by paragraph (2) of subsection (c) [amending section 411 of this title] shall apply with respect to taxable years ending after 1955. The amendment made by paragraph (3) of subsection (c) [amending section 411 of this title] shall apply with respect to taxable years ending after 1954. The amendment made by subsection (d) [amending section 411 of this title] shall apply with respect to taxable years ending after 1955. The amendment made by subsection (h) [amending section 411 of this title] shall apply with respect to the same taxable years with respect to which the amendment made by section 201(g) of this Act [amending section 1402 of Title 26, Internal Revenue Code] applies.

''(2)(A) Except as provided in subparagraphs (B) and (C), the amendments made by subsection (b) [amending this section] shall apply only with respect to service performed after June 30, 1957, and only if—

''(i) [Repealed. Pub. L. 92–603, title I, §125(b), Oct. 30, 1972, 86 Stat. 1357.]

''(ii) in the case of the amendment made by paragraph (2) of such subsection [amending this section], the conditions prescribed in subparagraph (C) are met.

''(B) [Repealed. Pub. L. 92–603, title I, §125(b), Oct. 30, 1972, 86 Stat. 1357.]

''(C) The amendment made by paragraph (2) of subsection (b) [amending this section] shall be effective only if—

''(i) the Board of Directors of the Tennessee Valley Authority submits to the Secretary of Health, Education, and Welfare, and the Secretary approves, before July 1, 1957, a plan, with respect to employees of the Tennessee Valley Authority, for the coordination, on an equitable basis, of the benefits provided by the retirement system applicable to such employees with the benefits provided by title II of the Social Security Act [this subchapter]; and

''(ii) such plan specifies, as the effective date of the plan, July 1, 1957, or the first day of a prior calendar quarter beginning not earlier than January 1, 1956. If the plan specifies as the effective date of the plan a day before July 1, 1957, the amendment made by paragraph (2) of subsection (b) [amending this section] shall apply with respect to service performed on or after such effective date; except that, if such effective date is prior to the day on which the Secretary approves the plan, such amendment shall not apply with respect to service performed, prior to the day on which the Secretary approves the plan, by an individual who is not an employee of the Tennessee Valley Authority on such day.

''(D) The Secretary of Health, Education, and Welfare shall, on or before July 31, 1957, submit a report to the Congress setting forth the details of any plan approved by him under subparagraph (B) or (C).''

Amendment by section 105(b) of act Aug. 1, 1956, ch. 836, applicable with respect to service performed after 1956, see section 105(d) of such act Aug. 1, 1956, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 101(a)(4), (5) of act Sept. 1, 1954, applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954, and amendment by section 101(b), (c)(1), (2), (e), and (f) of act Sept. 1, 1954, applicable only with respect to services performed after 1954, see section 101(n) of act Sept. 1, 1954, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section as added by section 104(a) of act Aug. 28, 1950, effective Jan. 1, 1951, see section 104(b) of act Aug. 28, 1950, set out as a note under section 409 of this title. Former section 410 was struck out effective Sept. 1, 1950, by section 105 of act Aug. 28, 1950.

LINE ITEM VETO

Section 642(d)(1) of Pub. L. 105–61, amending this section, was subject to line item veto by the President, Cancellation No. 97–56, signed Oct. 16, 1997, 62 F.R. 54338, Oct. 17, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

REPEALS: AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(b)(1) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

FEDERAL LEGISLATIVE BRANCH EMPLOYEES WHO CONTRIBUTE REDUCED AMOUNTS BY REASON OF THE FEDERAL EMPLOYEES' RETIREMENT CONTRIBUTION TEMPORARY ADJUSTMENT ACT OF 1983

Section 2601(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of section 210(a)(5)(G) of the Social Security Act [subsec. (a)(5)(G) of this section] and section 3121(b)(5)(G) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)(G)], an individual shall not be considered to be subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), if he is contributing a reduced amount by reason of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [Pub. L. 98–168, title II, Nov. 29, 1983, 97 Stat. 1106, set out as a note under section 8331 of Title 5, Government Organization and Employees].''

QUALIFICATION AND REQUALIFICATION OF FEDERAL EMPLOYEES FOR BENEFITS

Section 2601(d) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1883(a)(5)(A), Oct. 22, 1986, 100 Stat. 2916, provided that:

''(1) Any individual who—

''(A) was subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983 (as determined for purposes of section 210(a)(5)(G) of the Social Security Act [subsec. (a)(5)(G) of this section]), and

''(B)(i) received a lump-sum payment under section 8342(a) of such title 5, or under the corresponding provision of the law establishing the other retirement system described in subparagraph (A), after December 31, 1983, and prior to June 15, 1984, or received such a payment on or after June 15, 1984, pursuant to an application which was filed in accordance with such section 8342(a) or the corresponding provision of the law establishing such other retirement system prior to that date, or

''(ii) otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code, for a period after December 31, 1983, to which section 210(a)(5)(G)(iii) of the Social Security Act applies,

shall, if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) after the date on which he last ceased to be subject to such subchapter but prior to, or within 30 days after, the date of the enactment of this Act [July 18, 1984], requalify for the exemption from social security coverage and taxes under section 210(a)(5) of the Social Security Act and section 3121(b)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)] as if the cessation of coverage under title 5 had not occurred.

''(2) An individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) who is not in the employ of the United States or an instrumentality thereof on the date of the enactment of this Act [July 18, 1984] may requalify for such exemptions in the same manner as under paragraph (1) if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) within 30 days after the date on which he first returns to service in the legislative branch after such

date of enactment, if such date (on which he returns to service) is within 365 days after he was last in the employ of the United States or an instrumentality thereof.

''(3) If an individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) does not again become subject to subchapter III of chapter 83 of title 5 (or effectively apply for coverage under such subchapter) prior to the date of the enactment of this Act or within the relevant 30-day period as provided in paragraph (1) or (2), social security coverage and taxes by reason of section 210(a)(5)(G) of the Social Security Act and section 3121(b)(5)(G) of the Internal Revenue Code of 1986 shall, with respect to such individual's service in the legislative branch of the Federal Government, become effective with the first month beginning after such 30-day period.

''(4) The provisions of paragraphs (1) and (2) shall apply only for purposes of reestablishing an exemption from social security coverage and taxes, and do not affect the amount of service to be credited to an individual for purposes of title 5, United States Code.''

[Section 1883(a)(5) of Pub. L. 99–514 provided in part that amendment of above note by section 1883(a)(5)(A) of Pub. L. 99–514 is effective July 18, 1984.]

SERVICES PERFORMED FOR NONPROFIT ORGANIZATIONS BY FEDERAL EMPLOYEES

Section 2601(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) For purposes of section 210(a)(5) of the Social Security Act [subsec. (a)(5) of this section] (as in effect in January 1983 and as in effect on and after January 1, 1984) and section 3121(b)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)] (as so in effect), service performed in the employ of a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] by an employee who is required by law to be subject to subchapter III of chapter 83 of title 5, United States Code, with respect to such service, shall be considered to be service performed in the employ of an instrumentality of the United States.

''(2) For purposes of section 203 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [section 203 of Pub. L. 98–168, set out as a note under section 8331 of Title 5, Government Organization and Employees], service described in paragraph (1) which is also 'employment' for purposes of title II of the Social Security Act [this subchapter], shall be considered to be 'covered service'.''

ACCRUED FEDERAL RETIREMENT ENTITLEMENTS; REDUCTION PROHIBITED

Section 101(e) of Pub. L. 98–21 provided that: ''Nothing in this Act [see Short Title of 1983 Amendment note set out under section 1305 of this title] shall reduce the accrued entitlements to future benefits under the Federal Retirement System of current and retired Federal employees and their families.''

COVERAGE OF FEDERAL HOME LOAN BANK EMPLOYEES

Section 125(a) of Pub. L. 92–603, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The provisions of section 210(a)(6)(B)(ii) of the Social Security Act [subsec. (a)(6)(B)(ii) of this section] and section 3121(b)(6)(B)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3121(b)(6)(B)(ii) of Title 26, Internal Revenue Code], insofar as they relate to service performed in the employ of a Federal home loan bank, shall be effective—

''(1) with respect to all service performed in the employ of a Federal home loan bank on and after the first day of the first calendar quarter which begins on or after the date of the enactment of this Act [Oct. 30, 1972]; and

''(2) in the case of individuals who are in the employ of a Federal home loan bank on such first day, with respect to any service performed in the employ of a Federal home loan bank after the last day of the sixth calendar year preceding the year in which this Act is enacted [1972]; but this paragraph shall be effective only if an amount equal to the taxes imposed by sections 3101 and 3111 of such Code [sections 3101 and 3111 of Title 26, Internal Revenue Code] with respect to the services of all such individuals performed in the employ of Federal home loan banks after the last day of the sixth calendar year preceding the year in which this Act is enacted [1972] are paid under the provisions of section 3122 of such Code [section 3122 of Title 26] by July 1, 1973, or by such later date as may be provided in an agreement entered into before such date with the Secretary of the Treasury or his delegate for purposes of this paragraph.''

COVERED EMPLOYMENT NOT COUNTED UNDER OTHER FEDERAL RETIREMENT SYSTEMS

Section 115 of act Sept. 1, 1954, which prohibited counting employment under other Federal retirement systems in determining eligibility for benefits under this subchapter, was repealed by Pub. L. 91–630, § 1, Dec. 31, 1970, 84 Stat. 1875. Section 2 of Pub. L. 91–630 provided that such repeal shall not apply in the case of a person who, on Dec. 31, 1970, is receiving or is entitled to receive benefits under any retirement system established by the United States or any instrumentality thereof unless he requests, in writing, the office which administers his retirement system to apply it in this case, and that any additional benefits payable pursuant to such request shall commence on January 1, 1971.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 410a. Transferred

CODIFICATION

Section, act Aug. 29, 1935, ch. 812, § 17, as added June 24, 1937, ch. 382, Pt. I, § 1, 50 Stat. 317; amended Oct. 30, 1951, ch. 632, § 24, 65 Stat. 690, was transferred to section 228q of Title 45, Railroads, and subsequently superseded. See section 231q of Title 45.

§ 411. Definitions relating to self-employment

For the purposes of this subchapter—

(a) Net earnings from self-employment

The term ''net earnings from self-employment'' means the gross income, as computed under subtitle A of the Internal Revenue Code of 1986, derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 702(a)(8) of such Code, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) There shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares), together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to

any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) with respect to any such agricultural or horticultural commodity;

(2) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities;

(3) There shall be excluded any gain or loss (A) which is considered under subtitle A of the Internal Revenue Code of 1986 as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 of the Internal Revenue Code of 1986 applies to such gain or loss, or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) The deduction for net operating losses provided in section 172 of the Internal Revenue Code of 1986 shall not be allowed;

(5)(A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;

(B) If any portion of a partner's distributive share of the ordinary net income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(6) A resident of the Commonwealth of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to the provisions of section 933 of the Internal Revenue Code of 1986;

(7) An individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) of this section without regard to section 107 (relating to rental value of parsonages), section 119 (relating to meals and lodging furnished for the convenience of the employer), and section 911 (relating to earned income from sources without the United States) of the Internal Revenue Code of 1986, but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires;

(8) The exclusion from gross income provided by section 931 of the Internal Revenue Code of 1986 shall not apply;

(9) There shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary of the Treasury or his delegate, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A);

(10) The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1986 shall not apply;

(11) In lieu of the deduction provided by section 164(f) of the Internal Revenue Code of 1986 (relating to deduction for one-half of self-employment taxes), there shall be allowed a deduction equal to the product of—

(A) the taxpayer's net earnings from self-employment for the taxable year (determined without regard to this paragraph), and

(B) one-half of the sum of the rates imposed by subsections (a) and (b) of section 1401 of such Code for such year;

(12) There shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) of the Internal Revenue Code of 1986 to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services;

(13) In the case of church employee income, the special rules of subsection (i)(1) of this section shall apply;

(14) There shall be excluded income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights); and

(15) The deduction under section 162(*l*) of the Internal Revenue Code of 1986 (relating to health insurance costs of self-employed individuals) shall not be allowed.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the partnership (even though beginning prior to 1951) ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 410(f) of this title—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than $2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66⅔ percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than $2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than $1,600, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be $1,600; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1986 applies) is not more than $2,400, his distributive share of income described in section 702(a)(8) of such Code derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1986 applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(8) of such Code derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600, his distributive share of income described in such section 702(a)(8) derived from such trade or business may, at his option, be deemed to be $1,600.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (g) of this section, or by a partnership of which an individual is a member on a regular basis as defined in subsection (g) of this section, but only if such individual's net earnings from self-employment in the taxable year as determined without regard to this sentence are less than $1,600 and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed $1,600.

(b) Self-employment income

The term ''self-employment income'' means the net earnings from self-employment derived

by an individual (other than a nonresident alien individual, except as provided by an agreement under section 433 of this title) during any taxable year beginning after 1950; except that such term shall not include—

(1) That part of the net earnings from self-employment which is in excess of—

(A) For any taxable year ending prior to 1955, (i) $3,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(B) For any taxable year ending after 1954 and prior to 1959, (i) $4,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(C) For any taxable year ending after 1958 and prior to 1966, (i) $4,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(D) For any taxable year ending after 1965 and prior to 1968, (i) $6,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(E) For any taxable year ending after 1967 and beginning prior to 1972, (i) $7,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(F) For any taxable year beginning after 1971 and prior to 1973, (i) $9,000, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(G) For any taxable year beginning after 1972 and prior to 1974, (i) $10,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(H) For any taxable year beginning after 1973 and prior to 1975, (i) $13,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(I) For any taxable year beginning in any calendar year after 1974, (i) an amount equal to the contribution and benefit base (as determined under section 430 of this title) which is effective for such calendar year, minus (ii) the amount of the wages paid to such individual during such taxable year; or

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than $400.

An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for the purpose of this subsection, be considered to be a nonresident alien individual. In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2).

(c) Trade or business

The term ''trade or business'', when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1986, except that such term shall not include—

(1) The performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 418 of this title;

(2) The performance of service by an individual as an employee, other than—

(A) service described in section 410(a)(14)(B) of this title performed by an individual who has attained the age of eighteen,

(B) service described in section 410(a)(16) of this title,

(C) service described in section 410(a) (11), (12), or (15) of this title performed in the United States by a citizen of the United States, except service which constitutes ''employment'' under section 410(r) of this title,

(D) service described in paragraph (4) of this subsection,

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 418 of this title,

(F) service described in section 410(a)(20) of this title, and

(G) service described in section 410(a)(8)(B) of this title;

(3) The performance of service by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1986;

(4) The performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(5) The performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or

(6) The performance of service by an individual during the period for which an exemption under section 1402(g) of the Internal Revenue Code of 1986 is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under section 1402(e) of the Internal Revenue Code of 1986 is effective with respect to him.

(d) Partnership and partner

The term ''partnership'' and the term ''partner'' shall have the same meaning as when used in subchapter K of chapter 1 of the Internal Revenue Code of 1986.

(e) Taxable year

The term ''taxable year'' shall have the same meaning as when used in subtitle A of the Internal Revenue Code of 1986; and the taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of

subtitle A of such Code, in which case his taxable year for the purposes of this subchapter shall be the same as his taxable year under such subtitle A.

(f) Partner's taxable year ending as result of death

In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection—

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term ''deceased partner's distributive share'' includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

(g) Regular basis

An individual shall be deemed to be self-employed on a regular basis in a taxable year, or to be a member of a partnership on a regular basis in such year, if he had net earnings from self-employment, as defined in the first sentence of subsection (a) of this section, of not less than $400 in at least two of the three consecutive taxable years immediately preceding such taxable year from trades or businesses carried on by such individual or such partnership.

(h) Option dealers and commodity dealers

(1) In determining the net earnings from self-employment of any options dealer or commodities dealer—

(A) notwithstanding subsection (a)(3)(A) of this section, there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

(B) the deduction provided by section 1202 of the Internal Revenue Code of 1986 shall not apply.

(2) For purposes of this subsection—

(A) The term ''options dealer'' has the meaning given such term by section 1256(g)(8) of such Code.

(B) The term ''commodities dealer'' means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(C) The term ''section 1256 contracts'' has the meaning given to such term by section 1256(b) of such Code.

(i) Church employee income

(1) In applying subsection (a) of this section—

(A) church employee income shall not be reduced by any deduction;

(B) church employee income and deductions attributable to such income shall not be taken into account in determining the amount of other net earnings from self-employment.

(2)(A) Subsection (b)(2) of this section shall be applied separately—

(i) to church employee income, and

(ii) to other net earnings from self-employment.

(B) In applying subsection (b)(2) of this section to church employee income, ''$100'' shall be substituted for ''$400''.

(3) Paragraph (1) shall not apply to any amount allowable as a deduction under subsection (a)(11) of this section, and paragraph (1) shall be applied before determining the amount so allowable.

(4) For purposes of this section, the term ''church employee income'' means gross income for services which are described in section 410(a)(8)(B) of this title (and are not described in section 410(a)(8)(A) of this title).

(j) Codification of treatment of certain termination payments received by former insurance salesmen

Nothing in subsection (a) of this section shall be construed as including in the net earnings from self-employment of an individual any amount received during the taxable year from an insurance company on account of services performed by such individual as an insurance salesman for such company if—

(1) such amount is received after termination of such individual's agreement to perform such services for such company,

(2) such individual performs no services for such company after such termination and before the close of such taxable year,

(3) such individual enters into a covenant not to compete against such company which applies to at least the 1-year period beginning on the date of such termination, and

(4) the amount of such payment—

(A) depends primarily on policies sold by or credited to the account of such individual during the last year of such agreement or the extent to which such policies remain in force for some period after such termination, or both, and

(B) does not depend to any extent on length of service or overall earnings from services performed for such company (without regard to whether eligibility for payment depends on length of service).

(Aug. 14, 1935, ch. 531, title II, § 211, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 502; amended Sept. 23, 1950, ch. 994, title II, § 221(j)(2), 64 Stat. 947; Sept. 1, 1954, ch. 1206, title I, §§ 101(d), (g), 104(b), 68 Stat. 1054, 1078; Aug. 1, 1956, ch. 836, title I, §§ 104(c)(2), (3), (d), (h), 106(a), 70 Stat. 824–826, 828; Pub. L. 85–239, § 5(a), Aug. 30, 1957, 71 Stat. 523; Pub. L. 85–840, title I, § 102(b), title III, § 313(a), Aug. 28, 1958, 72 Stat. 1019, 1036; Pub. L. 86–778, title I, §§ 103(g), (h), (j)(3), 106(a), Sept. 13, 1960, 74 Stat. 937, 938, 945; Pub. L. 88–272,

title II, § 227(b)(7), Feb. 26, 1964, 78 Stat. 98; Pub. L. 89–97, title III, §§ 311(a)(1), (2), 312(a), 319(b), 320(a)(2), July 30, 1965, 79 Stat. 380, 381, 391, 393; Pub. L. 90–248, title I, §§ 108(a)(2), 115(a), 118(b), 122(a), Jan. 2, 1968, 81 Stat. 834, 839, 841, 843; Pub. L. 92–5, title II, § 203(a)(2), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, § 203(a)(2), July 1, 1972, 86 Stat. 418; Pub. L. 92–603, title I, §§ 121(a), 124(a), 140(a), Oct. 30, 1972, 86 Stat. 1353, 1357, 1366; Pub. L. 93–66, title II, § 203(a)(2), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, § 5(a)(2), Dec. 31, 1973, 87 Stat. 953; Pub. L. 93–368, § 10(a), Aug. 7, 1974, 88 Stat. 422; Pub. L. 94–455, title XII, § 1207(e)(2)(B), Oct. 4, 1976, 90 Stat. 1707; Pub. L. 95–216, title III, § 313(a), Dec. 20, 1977, 91 Stat. 1535; Pub. L. 95–600, title VII, § 703(j)(14)(D), (E), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 98–21, title I, § 124(c)(3), title III, §§ 322(b)(1), 323(b)(2), Apr. 20, 1983, 97 Stat. 90, 121; Pub. L. 98–369, div. A, title I, § 102(c)(2), div. B, title VI, §§ 2603(c)(1), (d)(1), 2663(a)(8), July 18, 1984, 98 Stat. 622, 1129, 1163; Pub. L. 99–514, title XVIII, §§ 1882(b)(2), 1883(a)(6), Oct. 22, 1986, 100 Stat. 2915, 2916; Pub. L. 100–203, title IX, §§ 9022(a), 9023(b), Dec. 22, 1987, 101 Stat. 1330–295, 1330–296; Pub. L. 100–647, title I, § 1011B(b)(4), title III, § 3043(b), title VIII, § 8016(a)(2), Nov. 10, 1988, 102 Stat. 3488, 3642, 3792; Pub. L. 101–508, title V, §§ 5123(a)(1), 5130(a)(2), (3), Nov. 5, 1990, 104 Stat. 1388–284, 1388–289; Pub. L. 103–296, title I, § 107(a)(4), title III, §§ 319(b)(2), 321(a)(14), (c)(5), (6)(E)–(G), Aug. 15, 1994, 108 Stat. 1478, 1535, 1536, 1538; Pub. L. 105–34, title IX, § 922(b), Aug. 5, 1997, 111 Stat. 880; Pub. L. 108–203, title IV, §§ 422(a), 424(a), 425(a), Mar. 2, 2004, 118 Stat. 536.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is classified to Title 26, Internal Revenue Code.

AMENDMENTS

2004—Subsec. (a)(5)(A). Pub. L. 108–203, § 425(a), substituted ''the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;'' for ''all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife;''.

Subsec. (a)(7). Pub. L. 108–203, § 422(a), inserted '', but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires'' before semicolon at end.

Subsec. (a)(15). Pub. L. 108–203, § 424(a), substituted ''section 162(*l*)'' for ''section 162(m)''.

1997—Subsec. (j). Pub. L. 105–34 added subsec. (j).

1994—Subsec. (a). Pub. L. 103–296, § 321(c)(6)(E), substituted ''1986'' for ''1954'' after ''Code of'' wherever appearing in introductory provisions, in pars. (3), (4), (6), (10), (11), and (12), and in cls. (iii) and (iv) of closing provisions.

Subsec. (a)(13) to (15). Pub. L. 103–296, § 321(a)(14), (c)(5), struck out ''and'' at end of par. (13), substituted ''; and'' for period at end of par. (14), and inserted ''of the Internal Revenue Code of 1986'' after ''section 162(m)'' in par. (15).

Subsec. (c). Pub. L. 103–296, § 321(c)(6)(F), substituted ''1986'' for ''1954'' after ''Code of'' in introductory and closing provisions.

Subsec. (c)(1). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(C). Pub. L. 103–296, § 319(b)(2), which directed that subpar. (C) be amended by inserting '', except service which constitutes 'employment' under section 410(r) of this title'' before the semicolon, was executed by making the insertion before the comma at end, to reflect the probable intent of Congress.

Subsec. (c)(2)(E). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(3), (6). Pub. L. 103–296, § 321(c)(6)(F), substituted ''1986'' for ''1954'' after ''Code of''.

Subsecs. (d), (e), (h)(1)(B). Pub. L. 103–296, § 321(c)(6)(G), substituted ''1986'' for ''1954'' after ''Code of''.

1990—Subsec. (a). Pub. L. 101–508, § 5123(a)(1), redesignated last undesignated paragraph, relating to income of an individual which results from or is attributable to performance of services by such individual as a director of a corporation, as subsec. (f)(5) of section 403 of this title.

Subsec. (a)(14), (15). Pub. L. 101–508, § 5130(a)(3), redesignated par. (14), relating to nonallowability of deduction under section 162(m) (health insurance costs of self-employed individuals), as (15).

Subsec. (b). Pub. L. 101–508, § 5130(a)(2), made technical correction to directory language of Pub. L. 98–21, § 322(b)(1). See 1983 Amendment note below.

1988—Subsec. (a)(7). Pub. L. 100–647, § 8016(a)(2), inserted ''of the Internal Revenue Code of 1986'' before semicolon at end.

Subsec. (a)(14). Pub. L. 100–647, § 3043(b), added par. (14) relating to the exclusion of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (income derived by Indians from exercise of fishing rights).

Pub. L. 100–647, § 1011B(b)(4), added par. (14) relating to nonallowability of deduction under section 162(m) (health insurance costs of self-employed individuals).

1987—Subsec. (a). Pub. L. 100–203, § 9022(a), inserted par. at end relating to income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation.

Subsec. (a)(7). Pub. L. 100–203, § 9023(b)(1), struck out reference to section 931 (relating to income from sources within possessions of the United States) of the Internal Revenue Code of 1954.

Subsec. (a)(8). Pub. L. 100–203, § 9023(b)(2), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''The term 'possession of the United States' as used in sections 931 (relating to income from sources within the possessions of the United States) and 932 (relating to citizens of possessions of the United States) of the Internal Revenue Code of 1986 shall be deemed not to include the Virgin Islands, Guam, or American Samoa;''.

1986—Subsec. (a)(13). Pub. L. 99–514, § 1882(b)(2)(B)(i), amended par. (13) generally. Prior to amendment, par. (13) read as follows: ''With respect to remuneration for service which are treated as services in a trade or business under subsection (c)(2)(G) of this section—

''(A) no deduction for trade or business expenses provided under the Internal Revenue Code of 1954 (other than the deduction under paragraph (11) of this subsection) shall apply;

''(B) the provisions of subsection (b)(2) of this section shall not apply; and

''(C) if the amount of such remuneration from an employer for the taxable year is less than $100, such remuneration from that employer shall not be included in self-employment income.''

Subsec. (b). Pub. L. 99–514, §1882(b)(2)(B)(ii), inserted at end ''In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2).''

Subsec. (c)(2)(G). Pub. L. 99–514, §1883(a)(6), realigned margins of subpar. (G).

Subsec. (i). Pub. L. 99–514, §1882(b)(2)(A), added subsec. (i).

1984—Subsec. (a). Pub. L. 98–369, §2663(a)(8)(A), substituted ''subtitle A of the Internal Revenue Code of 1954'' for ''chapter 1 of the Internal Revenue Code of 1939'', ''such subtitle'' for ''such chapter'', and ''section 702(a)(8) of the Internal Revenue Code of 1954'' for ''section 183 of the Internal Revenue Code of 1939''.

Pub. L. 98–369, §2663(a)(8)(D), in provisions following numbered pars., substituted ''702(a)(8)'' for ''702(a)(9)'' in cl. (iii) and in two places in cl. (iv).

Subsec. (a)(3). Pub. L. 98–369, §2663(a)(8)(B), substituted ''subtitle A of the Internal Revenue Code of 1954'' for ''chapter 1 of the Internal Revenue Code of 1939'' and inserted ''or'' before ''(C)''.

Subsec. (a)(4). Pub. L. 98–369, §2663(a)(8)(C), substituted ''section 172 of the Internal Revenue Code of 1954'' for ''section 23(s) of the Internal Revenue Code of 1939''.

Subsec. (a)(13). Pub. L. 98–369, §2603(d)(1), added par. (13).

Subsec. (b)(1)(D), (G) to (I). Pub. L. 98–369, §2663(a)(8)(E), realigned margins of subpars. (D) and (G) to (I).

Subsec. (c). Pub. L. 98–369, §2663(a)(8)(F), substituted ''section 162 of the Internal Revenue Code of 1954'' for ''section 23 of the Internal Revenue Code of 1939'' in provisions preceding par. (1).

Subsec. (c)(2)(G). Pub. L. 98–369, §2603(c)(1), added subpar. (G).

Subsec. (c)(3). Pub. L. 98–369, §2663(a)(8)(G), substituted ''section 3231 of the Internal Revenue Code of 1954'' for ''section 1532 of the Internal Revenue Code of 1939''.

Subsec. (d). Pub. L. 98–369, §2663(a)(8)(H), substituted ''subchapter K of chapter 1 of the Internal Revenue Code of 1954'' for ''supplement F of chapter 1 of the Internal Revenue Code of 1939''.

Subsec. (e). Pub. L. 98–369, §2663(a)(8)(I), substituted ''subtitle A of the Internal Revenue Code of 1954'' for ''chapter 1 of the Internal Revenue Code of 1939'' in three places.

Subsec. (h). Pub. L. 98–369, §102(c)(2), added subsec. (h).

1983—Subsec. (a)(10). Pub. L. 98–21, §323(b)(2)(A), substituted ''The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1954 shall not apply'' for ''In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply''.

Pub. L. 98–21, §323(b)(2)(B), temporarily amended par. (10) by substituting ''In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply'' for ''In the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) of the Internal Revenue Code of 1954 shall not apply''. See Effective and Termination Dates of 1983 Amendment note below.

Subsec. (a)(11), (12). Pub. L. 98–21, §124(c)(3), added par. (11) and redesignated former par. (11) as (12).

Subsec. (b). Pub. L. 98–21, §322(b)(1), as amended by Pub. L. 101–508, §5130(a)(2), inserted '', except as provided by an agreement under section 433 of this title'' after ''non-resident alien individual'' in provisions preceding par. (1).

1978—Subsec. (a)(2). Pub. L. 95–600, §703(j)(14)(D), which directed that ''(other than interest described in section 35 of the Internal Revenue Code of 1954)'' be struck out from subsec. (a)(2) of this section, was executed by striking out ''(other than interest described in section 25(a) of the Internal Revenue Code of 1939)'' as the probable intent of Congress.

Subsec. (c)(6). Pub. L. 95–600, §703(j)(14)(E), substituted ''section 1402(g)'' for ''section 1402(h)''.

1977—Subsec. (a)(11). Pub. L. 95–216 added par. (11).

1976—Subsec. (c)(2)(F). Pub. L. 94–455 added subpar. (F).

1974—Subsec. (a)(1). Pub. L. 93–368 inserted ''(as determined without regard to any activities of an agent of such owner or tenant)'' after ''material participation by the owner or tenant'' wherever appearing.

1973—Subsec. (b)(1)(H). Pub. L. 93–233 substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000''.

1972—Subsec. (a). Pub. L. 92–603, §§121(a)(1), 124(a), 140(a), struck out provisions of par. (7) relating to citizens of the United States performing the specified services as an employee of an American employer (as defined in section 410(e) of this title) or as a minister in a foreign country who has a congregation composed predominantly of United States citizens, inserted provisions in par. (7) relating to the applicability of sections 911 and 931 of title 26, and added par. (10) and provisions for an optional method for determining self-employment earnings.

Subsec. (b)(1)(F). Pub. L. 92–336, §203(a)(2)(A), inserted ''and prior to 1973'' after ''1971''.

Subsec. (b)(1)(G) to (I). Pub. L. 92–336, §203(a)(2)(B), added subpars. (G) to (I).

Subsec. (g). Pub. L. 92–603, §121(a)(2), added subsec. (g).

1971—Subsec. (b)(1)(E). Pub. L. 92–5, §203(a)(2)(A), inserted ''and beginning prior to 1972'' after ''1967''.

Subsec. (b)(1)(F). Pub. L. 92–5, §203(a)(2)(B), added subpar. (F).

1968—Subsec. (a)(9). Pub. L. 90–248, §118(b), added par. (9).

Subsec. (b)(1)(D), (E). Pub. L. 90–248, §108(a)(2)(A), (B), inserted ''and prior to 1968'' after ''1965'' and added subpar. (E), respectively.

Subsec. (c). Pub. L. 90–248, §115(a), substituted in last sentence ''unless an exemption under section 1402(e) of the Internal Revenue Code of 1954 is effective with respect to him'' for ''during the period for which a certificate filed by him under section 1402(e) of the Internal Revenue Code of 1954 is in effect''.

Subsec. (c)(1). Pub. L. 90–248, §122(a)(1), included in term ''trade or business'' functions of a public office of a State or political subdivision thereof with respect to fees received in a position compensated solely on a fee basis and which position is not covered under a State social security coverage agreement.

Subsec. (c)(2)(E). Pub. L. 90–248, §122(a)(2), added subpar. (E).

1965—Subsec. (a). Pub. L. 89–97, §312(a), substituted ''$2,400'' for ''$1,800'' in cls. (i) to (iv) and ''$1,600'' for ''$1,200'' in cls. (ii) and (iv) of second sentence following par. (8), wherever appearing.

Subsec. (b)(1)(C). Pub. L. 89–97, §320(a)(2)(A), inserted ''and prior to 1966'' after ''1958'' and substituted ''and'' for ''or'' after the semicolon.

Subsec. (b)(1)(D). Pub. L. 89–97, §320(a)(2)(B), added subpar. (D).

Subsec. (c). Pub. L. 89–97, §311(a)(1), (2), struck out from par. (5) ''doctor of medicine or'' before, and ''; or the performance of such service by a partnership'' after ''Christian Science practitioner'' and consolidated into one sentence former last two sentences.

Subsec. (c)(6). Pub. L. 89–97, §319(b), added par. (6).

1964—Subsec. (a)(3)(B), Pub. L. 88–272 amended cl. (B) generally, substituting '', coal, or iron ore, if section 631 of the Internal Revenue Code of 1954 applies'' for ''or coal, if section 117(j) of the Internal Revenue Code of 1954 is applicable''.

1960—Subsec. (a)(6). Pub. L. 86–778, §103(j)(3), substituted ''section 933 of the Internal Revenue Code of 1954'' for ''section 116(1) of the Internal Revenue Code of 1954'', and struck out provisions which defined ''possession of the United States'' in the case of taxable years beginning before the effective date specified in former section 419 of this title.

Subsec. (a)(8). Pub. L. 86–778, § 103(g), added par. (8) and inserted a reference to paragraph (8) in cls. (v) and (vi) of last sentence.

Subsec. (b). Pub. L. 86–778, § 103(h), provided that individuals who are not citizens of the United States but who are residents of Guam or American Samoa shall not, for the purposes of this subsection, be considered to be nonresident alien individuals, and struck out provisions which related to individuals who were citizens of Puerto Rico prior to the effective date specified in section 419 of this title.

Subsec. (c)(2). Pub. L. 86–778, § 106(a), excluded service described in section 410(a)(11), (12), or (15) of this title performed in the United States by a citizen of the United States.

1958—Subsec. (b)(1). Pub. L. 85–840, § 102(b), inserted ''and prior to 1959'' after ''year ending after 1954'' in cl. (B), and added cl. (C).

Subsec. (f). Pub. L. 85–840, § 313(a), added subsec. (f).

1957—Subsec. (a)(7). Pub. L. 85–239 permitted computation of net earnings without regard to sections 107 and 119 of the Internal Revenue Code of 1954.

1956—Subsec. (a). Act Aug. 1, 1956, § 106(a), amended last two sentences generally, to include those businesses in which the income is computed under an accrual method, and partnerships, to change the method of computation of net earnings for individuals by permitting those whose gross income is not more than $1,800 to deem their net earnings to be 66⅔ percent of such gross income, and those whose gross income is more than $1,800 and the net earnings are less than $1,200, to deem the net earnings to be $1,200, and to provide for the computation of net earnings for members of partnerships.

Subsec. (a)(1). Act Aug. 1, 1956, § 104(c)(2), struck out from exclusion, income derived by an owner or tenant to land if such income is derived under an arrangement with another individual for the production by such other individual of agricultural or horticultural commodities if such arrangement provides for material participation by the owner or tenant in the production or the management of the production of such commodities, and there is material participation by the owner or tenant with respect to any such commodity.

Subsec. (a)(7)(B). Act Aug. 1, 1956, § 104(h), included citizens of the United States who are ministers in foreign countries and have congregations composed predominantly of citizens of the United States.

Subsec. (c)(2). Act Aug. 1, 1956, § 104(c)(3), included within term ''trade or business'' service described in section 410(a)(16) of this title.

Subsec. (c)(5). Act Aug. 1, 1956, § 104(d), struck out exclusion from coverage in the case of lawyers, dentists, osteopaths, veterinarians, chiropractors, naturopaths, and optometrists.

1954—Subsec. (a)(1). Act Sept. 1, 1954, § 101(g)(2), made it clear that rentals paid in crop shares would be excluded as being rentals from real estate.

Subsec. (a)(2). Act Sept. 1, 1954, § 101(g)(1), redesignated par. (3) as (2), and struck out former par. (2).

Subsec. (a)(3). Act Sept. 1, 1954, § 101(g)(3), redesignated par. (4) as (3), and excluded from ''net earnings from self-employment'' the gain or loss derived from coal royalties under certain conditions. Former par. (3) redesignated (2).

Subsec. (a)(4) to (6). Act Sept. 1, 1954, § 101(g)(1), redesignated pars. (5) to (7) as (4) to (6), respectively. Former par. (4) redesignated (3).

Subsec. (a)(7). Act Sept. 1, 1954, § 101(d)(3), added par. (7).

Subsec. (a). Act Sept. 1, 1954, § 101(g)(1), inserted two sentences at end.

Subsec. (b)(1). Act Sept. 1, 1954, § 104(b), excluded from self-employment income, for taxable years after 1954 any amount in excess of $4,200 minus the amount of the wages paid to an individual during the taxable year.

Subsec. (c). Act Sept. 1, 1954, § 101(d)(2), inserted two sentences at end making provisions of par. (4) inapplicable to service performed during the period for which a certificate filed under section 1402(e) of title 26 is in effect.

Subsec. (c)(2). Act Sept. 1, 1954, § 101(d)(1), inserted ''and other than service described in paragraph (4) of this subsection'' after ''eighteen''.

Subsec. (c)(5). Act Sept. 1, 1954, § 101(g)(4), struck out exclusion from coverage in case of architects, certified public accountants, accountants registered or licensed as accountants under State or municipal law, full-time practicing public accountants, funeral directors, or professional engineers.

1950—Subsec. (a)(7). Act Sept. 23, 1950, made provisions applicable to Puerto Rico and provided the basis for computation of net earnings.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 422(b), Mar. 2, 2004, 118 Stat. 536, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning before, on, or after December 31, 1994.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to payments after Dec. 31, 1997, see section 922(c) of Pub. L. 105–34, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 319(b)(2) of Pub. L. 103–296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5123(a)(1) of Pub. L. 101–508 applicable with respect to income received for services performed in taxable years beginning after Dec. 31, 1990, see section 5123(b) of Pub. L. 101–508, set out as a note under section 403 of this title.

Amendment by section 5130(a)(2) of Pub. L. 101–508 effective as if included in the enactment of Pub. L. 98–21, § 322(b)(1), and amendment by section 5130(a)(3) of Pub. L. 101–508 effective as if included in the enactment of Pub. L. 100–647, § 1011B(b)(4), see section 5130(b) of Pub. L. 101–508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(b)(4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 3043(b) of Pub. L. 100–647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100–647, set out as an Effective Date note under section 7873 of Title 26.

Amendment by section 8016(a)(2) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to Title 26, as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of Title 26.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9022(a) of Pub. L. 100–203 applicable with respect to services performed in taxable

years beginning on or after Jan. 1, 1988, see section 9022(c) of Pub. L. 100–203, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1882(b)(2) of Pub. L. 99–514 applicable to remuneration paid or derived in taxable years beginning after Dec. 31, 1985, see section 1882(b)(3) of Pub. L. 99–514, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 1883(a)(6) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(c)(2) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, except as otherwise provided, see section 102(f)(3), (g) of Pub. L. 98–369, set out as a note under section 1256 of Title 26, Internal Revenue Code.

Amendment by section 2603(c)(1), (d)(1) of Pub. L. 98–369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98–369, set out as a note under section 410 of this title.

Amendment by section 2663(a)(8) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by section 124(c)(3) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 1401 of Title 26, Internal Revenue Code.

Amendment by section 322(b)(2) of Pub. L. 98–21 effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 3121 of Title 26.

Amendment by section 323(b)(2)(A) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, see section 323(c)(2) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 1402 of Title 26.

Section 323(b)(2)(B) of Pub. L. 98–21 provided that the amendment made by such section 323(b)(2)(B) is effective with respect to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 313(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to taxable years beginning after December 31, 1977.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 10(c) of Pub. L. 93–368 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to taxable years beginning after December 31, 1973.''

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1972 AMENDMENTS

Section 121(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years beginning after December 31, 1972.''

Section 124(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26] shall apply with respect to taxable years beginning after December 31, 1972.''

Section 140(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26] shall apply with respect to taxable years beginning after December 31, 1972.''

Amendment by Pub. L. 92–336 applicable only with respect to taxable years beginning after 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to taxable years beginning after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(a)(2) of Pub. L. 90–248 applicable only with respect to taxable years ending after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of this title.

Amendment by section 115(a) of Pub. L. 90–248 applicable only with respect to taxable years ending after 1967, see section 115(c) of Pub. L. 90–248, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 118(b) of Pub. L. 90–248 applicable only with respect to taxable years ending on or after Dec. 31, 1967, see section 118(c) of Pub. L. 90–248, set out as a note under section 1402 of Title 26.

Amendment by section 122(a)(1), (2) of Pub. L. 90–248 applicable with respect to fees received after 1967 and with respect to election to exempt fees from coverage as self-employment income, see section 122(c) of Pub. L. 90–248, set out as a note under section 1402 of Title 26.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 311(a)(1), (2) of Pub. L. 89–97 applicable only with respect to taxable years ending on or after Dec. 31, 1965, see section 311(c) of Pub. L. 89–97, set out as a note under section 410 of this title.

Section 312(c) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years beginning after December 31, 1965.''

Amendment by section 319(b) of Pub. L. 89–97 applicable with respect to taxable years beginning after December 31, 1950, see section 319(e) of Pub. L. 89–97, set out as a note under section 1402 of Title 26.

Amendment by section 320(a)(2) of Pub. L. 89–97 applicable with respect to taxable years ending after 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88–272, set out as a note under section 272 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 103(g) of Pub. L. 86–778 applicable only in the case of taxable years beginning after

1960, except that, insofar as involves the nonapplication of section 932 of Title 26, Internal Revenue Code, to the Virgin Islands for purposes of sections 1401 et seq. of Title 26 and this section, such amendment shall be effective in the case of all taxable years with respect to which such sections 1401 et seq. (and corresponding provisions of prior law) and this section are applicable, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(h) of Pub. L. 86–778 applicable only in the case of taxable years beginning after 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(j)(3) of Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as a note under section 402 of this title.

Section 106(c) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years ending on or after December 31, 1960; except that for purposes of section 203 of the Social Security Act [section 403 of this title], the amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years (of the individual performing the service involved) beginning after the date of the enactment of this Act [Sept. 13, 1960].''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 313(b) of Pub. L. 85–840 provided that: ''The amendment made by subsection (a) [amending this section] shall apply—

''(1) with respect to individuals who die after the date of the enactment of this Act [Aug. 28, 1958], and

''(2) with respect to any individual who died after 1955 and on or before the date of the enactment of this Act [Aug. 28, 1958], but only if the requirements of section 403(b)(2) of this Act [section 603(b)(2) of this title] are met.''

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment by Pub. L. 85–239 applicable, except for purposes of section 403 of this title, only with respect to taxable years ending on or after December 31, 1957, see section 5(c) of Pub. L. 85–239, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by section 104(c)(2), (d) of act Aug. 1, 1956, applicable with respect to taxable years ending after 1955, see section 104(i) of such act Aug. 1, 1956, set out as a note under section 410 of this title.

Amendment by section 104(c)(3) of act Aug. 1, 1956, applicable with respect to taxable years ending after 1954, see section 104(i) of act Aug. 1, 1956, set out as a note under section 410 of this title.

Amendment by section 104(h) of act Aug. 1, 1956, applicable with respect to the same taxable years with respect to which the amendment to section 3121(k)(1) of Title 26, Internal Revenue Code, applies, see section 104(i) of act Aug. 1, 1956, set out as a note under section 410 of this title, and section 201(m)(2) of such act Aug. 1, 1956, set out as a note under section 3121 of Title 26.

Section 106(b) of act Aug. 1, 1956, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to taxable years ending on or after December 31, 1956.''

EFFECTIVE DATE OF 1954 AMENDMENT

Amendments by section 101(d), (g)(1), (2), (4) of act Sept. 1, 1954, applicable only with respect to taxable years ending after 1954, amendment by section 101(g)(3) of act Sept. 1, 1954, applicable only with respect to taxable years beginning after 1950, and, for purposes of section 403 of this title, the amendments made by paragraphs (1), (2), and (4) of subsection (g) and by subsection (d) [of said section 101] effective with respect to net earnings from self-employment derived after 1954, see section 101(n) of act Sept. 1, 1954, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Sept. 23, 1950, applicable with respect to taxable years beginning after Dec. 31, 1950, see section 221(k) of act Sept. 23, 1950.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

TREATY OBLIGATIONS

Section 214 of act Sept. 23, 1950, provided that: ''No amendment made by this Act [see Tables for classification] shall apply in any case where its application would be contrary to any treaty obligation of the United States.''

§ 412. Self-employment income credited to calendar years

(a) For the purposes of determining average monthly wage and quarters of coverage the amount of self-employment income derived during any taxable year which begins before 1978 shall—

(1) in the case of a taxable year which is a calendar year, be credited equally to each quarter of such calendar year; and

(2) in the case of any other taxable year, be credited equally to the calendar quarter in which such taxable year ends and to each of the next three or fewer preceding quarters any part of which is in such taxable year.

(b) For the purposes of determining average indexed monthly earnings, average monthly wage, and quarters of coverage the amount of self-employment income derived during any taxable year which begins after 1977 shall—

(1) in the case of a taxable year which is a calendar year or which begins with or during a calendar year and ends with or during such year, be credited to such calendar year; and

(2) in the case of any other taxable year, be allocated proportionately to the two calendar years, portions of which are included within such taxable year, on the basis of the number of months in each such calendar year which are included completely within the taxable year.

For purposes of clause (2), the calendar month in which a taxable year ends shall be treated as included completely within that taxable year.

(Aug. 14, 1935, ch. 531, title II, § 212, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 504; amended Pub. L. 95–216, title III, § 351(b), Dec. 20, 1977, 91 Stat. 1549.)

AMENDMENTS

1977—Pub. L. 95–216 designated existing provisions as subsec. (a), substituted provisions relating to crediting of self-employment income to calendar years for provisions relating to crediting of self-employment income to calendar quarters, and added subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective Jan. 1, 1978, see section 351(d) of Pub. L. 95–216, set out as a note under section 409 of this title.

§ 413. Quarter and quarter of coverage

(a) Definitions

For the purposes of this subchapter—

(1) The term ''quarter'', and the term ''calendar quarter'', mean a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(2)(A) The term ''quarter of coverage'' means—

(i) for calendar years before 1978, and subject to the provisions of subparagraph (B), a quarter in which an individual has been paid $50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited (as determined under section 412 of this title) with $100 or more of self-employment income; and

(ii) for calendar years after 1977, and subject to the provisions of subparagraph (B), each portion of the total of the wages paid and the self-employment income credited (pursuant to section 412 of this title) to an individual in a calendar year which equals the amount required for a quarter of coverage in that calendar year (as determined under subsection (d) of this section), with such quarter of coverage being assigned to a specific calendar quarter in such calendar year only if necessary in the case of any individual who has attained age 62 or died or is under a disability and the requirements for insured status in subsection (a) or (b) of section 414 of this title, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 416(i) of this title would not otherwise be met.

(B) Notwithstanding the provisions of subparagraph (A)—

(i) no quarter after the quarter in which an individual dies shall be a quarter of coverage, and no quarter any part of which is included in a period of disability (other than the initial quarter and the last quarter of such period) shall be a quarter of coverage;

(ii) if the wages paid to an individual in any calendar year equal $3,000 in the case of a calendar year before 1951, or $3,600 in the case of a calendar year after 1950 and before 1955, or $4,200 in the case of a calendar year after 1954 and before 1959, or $4,800 in the case of a calendar year after 1958 and before 1966, or $6,600 in the case of a calendar year after 1965 and before 1968, or $7,800 in the case of a calendar year after 1967 and before 1972, or $9,000 in the case of the calendar year 1972, or $10,800 in the case of the calendar year 1973, or $13,200 in the case of the calendar year 1974, or an amount equal to the contribution and benefit base (as determined under section 430 of this title) in the case of any calendar year after 1974 and before 1978 with respect to which such contribution and benefit base is effective, each quarter of such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

(iii) if an individual has self-employment income for a taxable year, and if the sum of such income and the wages paid to him during such year equals $3,600 in the case of a taxable year beginning after 1950 and ending before 1955, or $4,200 in the case of a taxable year ending after 1954 and before 1959, or $4,800 in the case of a taxable year ending after 1958 and before 1966, or $6,600 in the case of a taxable year ending after 1965 and before 1968, or $7,800 in the case of a taxable year ending after 1967 and before 1972, or $9,000 in the case of a taxable year beginning after 1971 and before 1973, or $10,800 in the case of a taxable year beginning after 1972 and before 1974, or $13,200 in the case of a taxable year beginning after 1973 and before 1975, or an amount equal to the contribution and benefit base (as determined under section 430 of this title) which is effective for the calendar year in the case of any taxable year beginning in any calendar year after 1974 and before 1978, each quarter any part of which falls in such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

(iv) if an individual is paid wages for agricultural labor in a calendar year after 1954 and before 1978, then, subject to clauses (i) and (v), (I) the last quarter of such year which can be but is not otherwise a quarter of coverage shall be a quarter of coverage if such wages equal or exceed $100 but are less than $200; (II) the last two quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $200 but are less than $300; (III) the last three quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $300 but are less than $400; and (IV) each quarter of such year which is not otherwise a quarter of coverage shall be a quarter of coverage if such wages are $400 or more;

(v) no quarter shall be counted as a quarter of coverage prior to the beginning of such quarter;

(vi) not more than one quarter of coverage may be credited to a calendar quarter; and

(vii) no more than four quarters of coverage may be credited to any calendar year after 1977.

If in the case of an individual who has attained age 62 or died or is under a disability and who has been paid wages for agricultural labor in a calendar year after 1954 and before 1978, the requirements for insured status in subsection (a) or (b) of section 414 of this title, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 416(i) of this title are not met after assignment of quarters of coverage to quarters in such year as provided in clause (iv) of the preceding sentence, but would be met if such quarters of coverage were assigned to different quarters in such year, then such quarters of coverage shall instead be assigned, for purposes only of determining compliance with such requirements, to such different quarters. If, in the case of an individual who did not die prior to January 1, 1955, and who attained age 62 (if a woman) or age 65 (if a man) or died before July 1, 1957, the requirements for insured status in section 414(a)(3) of this title are not met because of his having too few quarters of coverage but would be met if his quarters of coverage in the first calendar year in which he had any covered employment had been determined on the basis of the period during

which wages were earned rather than on the basis of the period during which wages were paid (any such wages paid that are reallocated on an earned basis shall not be used in determining quarters of coverage for subsequent calendar years), then upon application filed by the individual or his survivors and satisfactory proof of his record of wages earned being furnished by such individual or his survivors, the quarters of coverage in such calendar year may be determined on the basis of the periods during which wages were earned.

(b) Crediting of wages paid in 1937

With respect to wages paid to an individual in the six-month periods commencing either January 1, 1937, or July 1, 1937; (A) if wages of not less than $100 were paid in any such period, one-half of the total amount thereof shall be deemed to have been paid in each of the calendar quarters in such period; and (B) if wages of less than $100 were paid in any such period, the total amount thereof shall be deemed to have been paid in the latter quarter of such period, except that if in any such period, the individual attained age sixty-five, all of the wages paid in such period shall be deemed to have been paid before such age was attained.

(c) Alternative method for determining quarters of coverage with respect to wages in period from 1937 to 1950

For purposes of sections 414(a) and 415(d) of this title, an individual shall be deemed to have one quarter of coverage for each $400 of his total wages prior to 1951 (as defined in section 415(d)(1)(C) of this title), except where such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to such individual for periods after 1950.

(d) Amount required for a quarter of coverage

(1) The amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in any year under subsection (a)(2)(A)(ii) of this section shall be $250 in the calendar year 1978 and the amount determined under paragraph (2) of this subsection for years after 1978.

(2) The Commissioner of Social Security shall, on or before November 1 of 1978 and of every year thereafter, determine and publish in the Federal Register the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in the succeeding calendar year. The amount required for a quarter of coverage shall be the larger of—

(A) the amount in effect in the calendar year in which the determination under this subsection is made, or

(B) the product of the amount prescribed in paragraph (1) which is required for a quarter of coverage in 1978 and the ratio of the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the year in which the determination under this paragraph is made to the national average wage index (as so defined) for 1976,

with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

(Aug. 14, 1935, ch. 531, title II, § 213, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 504; amended July 18, 1952, ch. 945, §§ 3(a), 66 Stat. 770; Sept. 1, 1954, ch. 1206, title I, §§ 104(c), 106(a), 108(b), 68 Stat. 1078, 1084; Aug. 1, 1956, ch. 836, title I, § 105(c), 70 Stat. 828; Pub. L. 85–840, title I, § 102(c), Aug. 28, 1958, 72 Stat. 1019; Pub. L. 86–442, § 3, Apr. 22, 1960, 74 Stat. 82; Pub. L. 86–778, title II, § 206(a), Sept. 13, 1960, 74 Stat. 949; Pub. L. 87–64, title I, § 102(c)(2)(A), (3)(B), June 30, 1961, 75 Stat. 134, 135; Pub. L. 89–97, title III, § 320(a)(3), July 30, 1965, 79 Stat. 393; Pub. L. 90–248, title I, §§ 108(a)(3), 155(b)(1), Jan. 2, 1968, 81 Stat. 834, 865; Pub. L. 92–5, title II, § 203(a)(3), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, § 203(a)(3), July 1, 1972, 86 Stat. 418; Pub. L. 93–66, title II, § 203(a)(3), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, § 5(a)(3), Dec. 31, 1973, 87 Stat. 953; Pub. L. 95–216, title III, §§ 351(c), 352(a), (b), Dec. 20, 1977, 91 Stat. 1550, 1552; Pub. L. 96–473, § 6(c), Oct. 19, 1980, 94 Stat. 2265; Pub. L. 98–369, div. B, title VI, § 2663(a)(9), July 18, 1984, 98 Stat. 1164; Pub. L. 101–239, title X, § 10208(b)(2)(A), (B), (d)(2)(A)(i), Dec. 19, 1989, 103 Stat. 2477, 2478, 2480; Pub. L. 101–508, title V, § 5117(c)(1), Nov. 5, 1990, 104 Stat. 1388–278; Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(a)(15), (e)(2)(A), Aug. 15, 1994, 108 Stat. 1478, 1536, 1539.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–296, § 321(a)(15), substituted ''sections'' for ''section'' before ''414(a) and 415(d) of this title''.

Subsec. (d)(2). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions.

Subsec. (d)(2)(B). Pub. L. 103–296, § 321(e)(2)(A), substituted ''national average wage index'' for ''deemed average total wages'' before ''(as defined in'' and ''the national average wage index (as so defined) for 1976,'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate for 1976 (as published in the Federal Register in accordance with section 415(a)(1)(D) of this title),''.

1990—Subsec. (c). Pub. L. 101–508 inserted ''and 415(d)'' after ''section 414(a)'' and substituted ''except where such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to such individual for periods after 1950.'' for ''except where—

''(1) such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to him for periods after 1950, or

''(2) such individual's elapsed years (for purposes of section 414(a)(1) of this title) are less than 7.''

1989—Subsec. (d)(2)(B). Pub. L. 101–239, § 10208(b)(2)(A), (B), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate'' and ''(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title)'' for ''(as so defined and computed)''.

Pub. L. 101–239, §10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

1984—Subsec. (a)(1). Pub. L. 98–369, §2663(a)(9)(A), substituted ''mean'' for ''means''.

Subsec. (a)(2)(B)(ii). Pub. L. 98–369, §2663(a)(9)(B), substituted ''equal $3,000'' for ''equal to $3,000''.

1980—Subsec. (a)(2)(A). Pub. L. 96–473 substituted reference to quarter of coverage, for reference to quarters of coverage.

1977—Subsec. (a)(2). Pub. L. 95–216, §§351(c), 352(a), substituted provisions relating to factors respecting definition of ''quarters of coverage'' for calendar years before 1978, subject to the provisions of subpar. (B) of this par., and for calendar years after 1977, subject to the provisions of subpar. (B) of this par., for provisions relating to factors respecting definition of ''quarter of coverage'' as a quarter in which the individual has been paid $50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited (as determined under section 412 of this title) with $100 or more of self-employment income.

Subsec. (d). Pub. L. 95–216, §352(b), added subsec. (d).

1973—Subsec. (a)(2)(ii), (iii). Pub. L. 93–233 substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000'', in cls. (ii) and (iii).

1972—Subsec. (a)(2)(ii). Pub. L. 92–336, §203(a)(3)(A), inserted provisions for determining a quarter of coverage based on amounts earned as wages after 1971 and before 1975, and amounts equal to the contribution and benefit base in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective.

Subsec. (a)(2)(iii). Pub. L. 92–336, §203(a)(3)(B), inserted provisions for determining a quarter of coverage based on amounts earned as wages after 1971 and before 1975, and amounts equal to the contribution and benefit base which is effective for the calendar year in the case of any taxable year beginning in any calendar year after 1974.

1971—Subsec. (a)(2)(ii). Pub. L. 92–5, §203(a)(3)(A), substituted ''after 1967 and before 1972, or $9,000 in the case of a calendar year after 1971'' for ''after 1967''.

Subsec. (a)(2)(iii). Pub. L. 92–5, §203(a)(3)(B), substituted ''after 1967 and beginning before 1972, or $9,000 in the case of a taxable year beginning after 1971'' for ''after 1967''.

1968—Subsec. (a)(2)(ii). Pub. L. 90–248, §108(a)(3)(A), inserted ''and before 1968, or $7,800 in the case of a calendar year after 1967'' after ''1965''.

Subsec. (a)(2)(iii). Pub. L. 90–248, §108(a)(3)(B), inserted ''and before 1968, or $7,800 in the case of a taxable year ending after 1967'' after ''1965''.

Subsec. (c). Pub. L. 90–248, §155(b)(1), added subsec. (c).

1965—Subsec. (a)(2)(ii). Pub. L. 89–97, §320(a)(3)(A), substituted ''after 1958 and before 1966, or $6,600 in the case of a calendar year after 1965'' for ''after 1958''.

Subsec. (a)(2)(iii). Pub. L. 89–97, §320(a)(3)(B), substituted ''after 1958 and before 1966, or $6,600 in the case of a taxable year ending after 1965'' for ''after 1958''.

1961—Subsec. (a). Pub. L. 87–64 substituted ''has attained age 62'' for ''has attained retirement age'', and ''who attained age 62 (if a woman) or age 65 (if a man)'' for ''who attained retirement age''.

1960—Subsec. (a)(2). Pub. L. 86–778 required each quarter of a calendar year before 1951 to be counted as a quarter of coverage if the individual received wages equal to $3,000 in the calendar year.

Pub. L. 86–442 inserted sentence in cl. (B) to permit the quarters of coverage in a calendar year to be determined on the basis of the periods during which wages were earned in the case of individuals who did not die prior to Jan. 1, 1955, and who attained retirement age or died before July 1, 1957, who did not meet the requirements for insured status because of having too few quarters of coverage but who would meet the requirements if the quarters of coverage in the first calendar year in which they had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid.

1958—Subsec. (a)(2)(B). Pub. L. 85–840 inserted ''and before 1959, or $4,800 in the case of a calendar year after 1958'' after ''after 1954'' in cl. (ii), and ''and before 1959, or $4,800 in the case of a taxable year ending after 1958'' after ''after 1954'' in cl. (iii).

1956—Subsec. (a)(2)(B)(iv). Act Aug. 1, 1956, substituted ''if such wages equal or exceed $100 but are less than $200'' for ''if such wages are less than $200''.

1954—Subsec. (a)(2)(A). Act Sept. 1, 1954, §106(a)(1), redefined ''quarter of coverage,'' in the case of quarters occurring before 1951, to exclude any quarter any part of which was included in a period of disability, other than the initial quarter of such period, and which provided that any quarter any part of which was included in a period of disability, other than the first quarter of such period, could not be counted as a quarter of coverage in a calendar year in which wages of $3,000 or more were paid.

Subsec. (a)(2)(B). Act Sept. 1, 1954, §104(c), provided that for calendar years after 1954 an individual shall be credited with a quarter of coverage for each quarter of the year if his wages for the year equal $4,200 and he shall be credited with a quarter of coverage for each quarter of a taxable year ending after 1954 in which the sum of his wages and self-employment income equal $4,200.

Act Sept. 1, 1954, §108(b), provided for crediting quarters of coverage on basis of annual amounts of wages received for agricultural labor.

Subsec. (a)(2)(B)(i). Act Sept. 1, 1954, §106(a)(2), redefined ''quarter of coverage'', for quarters occurring after 1950, to exclude any quarter any part of which was included in a period of disability, other than the first and last quarters of such period.

1952—Subsec. (a)(2)(A). Act July 18, 1952, §3(a)(1), redefined ''quarter of coverage''.

Subsec. (a)(2)(B)(i). Act July 18, 1952, §3(a)(2), inserted ''and no quarter any part of which was included in a period of disability (other than the initial quarter and the last quarter of such period) shall be a quarter of coverage''.

Subsec. (a)(2)(B)(iii). Act July 18, 1952, §3(a)(3), substituted ''shall (subject to clause (i) of this subparagraph) be a quarter of coverage'' for ''shall be a quarter of coverage''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5117(c)(3) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note below] shall apply only with respect to individuals who—

''(A) make application for benefits under section 202 of the Social Security Act [section 402 of this title] after the 18-month period following the month in which this Act is enacted [November 1990], and

''(B) are not entitled to benefits under section 227 or 228 of such Act [section 427 or 428 of this title] for the month in which such application is made.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10208(b)(2)(A), (B) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date,

see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 351(c) of Pub. L. 95–216 effective Jan. 1, 1978, see section 351(d) of Pub. L. 95–216, set out as a note under section 409 of this title.

Section 352(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall be effective January 1, 1978.''

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 203(a)(3)(A) of Pub. L. 92–336 applicable only with respect to remuneration paid after December 1972, and amendment by section 203(a)(3)(B) of Pub. L. 92–336 applicable only with respect to taxable years beginning after 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by section 203(a)(3)(A) of Pub. L. 92–5 applicable only with respect to remuneration paid after December 1971, and amendment by section 203(a)(3)(B) of Pub. L. 92–5 applicable only with respect to taxable years beginning after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(a)(3)(A) of Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, and amendment by section 108(a)(3)(B) applicable only with respect to taxable years ending after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of this title.

Section 155(b)(2) of Pub. L. 90–248, as amended by Pub. L. 101–508, title V, § 5117(c)(2), Nov. 5, 1990, 104 Stat. 1388–278, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only in the case of an individual who applies for benefits under section 202(a) of the Social Security Act [section 402(a) of this title] after the date of the enactment of this Act [Jan. 2, 1968], or who dies without being entitled to benefits under section 202(a) or 223 of the Social Security Act [section 402(a) or 423 of this title].''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 320(a)(3)(A) of Pub. L. 89–97 applicable with respect to remuneration paid after December, 1965, and amendment by section 320(a)(3)(B) of Pub. L. 89–97 applicable with respect to taxable years ending after 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961 based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(f) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 206(b) of Pub. L. 86–778 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply only in the case of monthly benefits under title II of the Social Security Act [this subchapter], and the lump-sum death payment under section 202 of such Act [section 402 of this title], based on the wages and self-employment income of an individual—

''(A) who becomes entitled to benefits under section 202(a) or 223 of such Act [section 402(a) or 423 of this title] on the basis of an application filed in or after the month in which this Act is enacted [September 1960]; or

''(B) who is (or would, but for the provisions of section 215(f)(6) of the Social Security Act [section 415(f)(6) of this title], be) entitled to a recomputation of his primary insurance amount under section 215(f)(2)(A) of such Act on the basis of an application filed in or after the month in which this Act is enacted [September 1960]; or

''(C) who dies without becoming entitled to benefits under section 202(a) or 223 of the Social Security Act [section 402(a) or 423 of this title], and (unless he dies a currently insured individual but not a fully insured individual (as those terms are defined in section 214 of such Act [section 414 of this title])) without leaving any individual entitled (on the basis of his wages and self-employment income) to survivor's benefits or a lump-sum death payment under section 202 of such Act [section 402 of this title] on the basis of an application filed prior to the month in which this Act is enacted [September 1960]; or

''(D) who dies in or after the month in which this Act is enacted [September 1960] and whose survivors are (or would, but for the provisions of section 215(f)(6) of the Social Security Act [section 415(f)(6) of this title], be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act; or

''(E) who dies prior to the month in which this Act is enacted [September 1960] and (i) whose survivors are (or would, but for the provisions of section 215(f)(6) of the Social Security Act, be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act [section 415(f)(4)(A) of this title], and (ii) on the basis of whose wages and self-employment income no individual was entitled to survivor's benefits or a lump-sum death payment under section 202 of such Act [section 402 of this title] on the basis of an application filed prior to the month in which this Act is enacted [September 1960] (and no individual was entitled to such a benefit, without the filing of an application, for any month prior to the month in which this Act is enacted [September 1960]); or

''(F) who files an application for a recomputation under section 102(f)(2)(B) of the Social Security Amendments of 1954 [set out as a note under section 415 of this title] in or after the month in which this Act is enacted [September 1960] and is (or would, but for the fact that such recomputation would not result in a higher primary insurance amount, be) entitled to have his primary insurance amount recomputed under such subparagraph; or

''(G) who dies and whose survivors are (or would, but for the fact that such recomputation would not result in a higher primary insurance amount for such individual, be) entitled, on the basis of an application filed in or after the month in which this Act [September 1960] is enacted, to have his primary insurance amount recomputed under section 102(f)(2)(B) of the Social Security Amendments of 1954 [set out as a note under section 415 of this title].

''(2) The amendment made by subsection (a) [amending this section] shall also be applicable in the case of applications for disability determination under section 216(i) of the Social Security Act [section 416(i) of this title] filed in or after the month in which this Act is enacted [September 1960].

''(3) Notwithstanding any other provisions of this subsection, in the case of any individual who would not be a fully insured individual under section 214(a) of the Social Security Act [section 414(a) of this title] except for the enactment of this section, no benefits shall be

payable on the basis of his wages and self-employment income for any month prior to the month in which this Act is enacted [September 1960].''

Section 3 of Pub. L. 86–442 provided in part that: ''This amendment [amending this section] shall be applicable in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after June 1957, and in the case of the lump-sum death payments under such title, with respect to deaths occurring after such month; the requirements for filing applications for such benefits and payments within certain time limits, as prescribed in sections 202(i) and 202(j) of such title [sections 402(i) and 402(j) of this title], shall not apply if an application is filed within the one-year period beginning with the first day of the month after the month in which this Act is enacted [April 1960].''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 106(h) of act Sept. 1, 1954, provided that: ''Notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f) of this title], the amendments made by subsections (a), (b), (c), (d), (e), and (f) of this section [amending this section and sections 414 to 417 of this title and section 228e of Title 45, Railroads] shall apply with respect to monthly benefits under title II of the Social Security Act [subchapter II of this chapter] for months after June 1955, and with respect to lump-sum death payments under such title in the case of deaths occurring after June 1955; but no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [section 415(f) of this title].''

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

Section 3(f) of act July 18, 1952, provided that: ''Notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title], the amendments made by subsections (a), (b), (c), and (d) of this section [amending this section and sections 414 to 416, 420, and 421 of this title] shall apply to monthly benefits under title II of the Social Security Act [subchapter II of this chapter] for months after June 1953, and to lump-sum death payments under such title in the case of deaths occurring after June 1953; but no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [section 415(f) of this title].''

Section 3(g) of act July 18, 1952, provided that: ''Notwithstanding the preceding provisions of this section and the amendments made thereby [amending this section and sections 414 to 416, 420, and 421 of this title], such provisions and amendments shall cease to be in effect at the close of June 30, 1953, and after such amendments cease to be in effect any provision of law amended thereby shall be in full force and effect as though this Act had not been enacted.''

§ 414. Insured status for purposes of old-age and survivors insurance benefits

For the purposes of this subchapter—

(a) "Fully insured individual" defined

The term ''fully insured individual'' means any individual who had not less than—

(1) one quarter of coverage (whenever acquired) for each calendar year elapsing after 1950 (or, if later, the year in which he attained age 21) and before the year in which he died or (if earlier) the year in which he attained age 62, except that in no case shall an individual be a fully insured individual unless he has at least 6 quarters of coverage; or

(2) 40 quarters of coverage; or

(3) in the case of an individual who died before 1951, 6 quarters of coverage;

not counting as an elapsed year for purposes of paragraph (1) any year any part of which was included in a period of disability (as defined in section 416(i) of this title), and who satisfies the criterion specified in subsection (c) of this section.

(b) "Currently insured individual" defined

The term ''currently insured individual'' means any individual who had not less than six quarters of coverage during the thirteen-quarter period ending with (1) the quarter in which he died, (2) the quarter in which he became entitled to old-age insurance benefits, (3) the quarter in which he became entitled to primary insurance benefits under this subchapter as in effect prior to August 28, 1950, or (4) in the case of any individual entitled to disability insurance benefits, the quarter in which he most recently became entitled to disability insurance benefits, not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage, and who satisfies the criterion specified in subsection (c) of this section.

(c) Criterion described

For purposes of subsections (a) and (b) of this section, the criterion specified in this subsection is that the individual, if not a United States citizen or national—

(1) has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (III) of section 405(c)(2)(B)(i) of this title; or

(2) at the time any such quarters of coverage are earned—

(A) is described in subparagraph (B) or (D) of section 1101(a)(15) of title 8,

(B) is lawfully admitted temporarily to the United States for business (in the case of an individual described in such subparagraph (B)) or the performance as a crewman (in the case of an individual described in such subparagraph (D)), and

(C) the business engaged in or service as a crewman performed is within the scope of the terms of such individual's admission to the United States.

(Aug. 14, 1935, ch. 531, title II, § 214, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 505; amended July 18, 1952, ch. 945, § 3(b), 66 Stat. 770; Sept. 1, 1954, ch. 1206, title I, §§ 106(b), 108(a), 68 Stat. 1079, 1083; Aug. 1, 1956, ch. 836, title I, § 108, 70 Stat. 830; Pub. L. 85–840, title II, § 205(*l*), Aug. 28, 1958, 72 Stat. 1025; Pub. L. 86–778, title II, § 204(a), Sept. 13, 1960, 74 Stat. 948; Pub. L. 87–64, title I, § 103(a), June 30, 1961, 75 Stat. 137; Pub. L. 92–603, title I, § 104(a), Oct. 30, 1972, 86 Stat. 1340; Pub. L. 108–203, title II, § 211(a), Mar. 2, 2004, 118 Stat. 518.)

CODIFICATION

Section 211(a) of Pub. L. 108–203, which directed amendment of section 214, was executed to this section, which is section 214 of the Social Security Act, to reflect the probable intent of Congress. See 2004 Amendment notes below.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–203, § 211(a)(1), inserted '', and who satisfies the criterion specified in subsection (c) of this section'' before period at end. See Codification note above.

Subsec. (b). Pub. L. 108–203, § 211(a)(2), inserted '', and who satisfies the criterion specified in subsection (c) of this section'' before period at end. See Codification note above.

Subsec. (c). Pub. L. 108–203, § 211(a)(3), added subsec. (c). See Codification note above.

1972—Subsec. (a)(1). Pub. L. 92–603 struck out provisions setting a separate age computation point for women and reduced from age 65 to age 62 the age computation point for men.

1961—Subsec. (a). Pub. L. 87–64 required one quarter of coverage for each calendar year elapsing after 1950 (or after the year in which the individual attained age 21, if that was later than 1950) instead of one quarter of coverage for each three of the quarters elapsing after 1950, and struck out ''unless such quarter was a quarter of coverage'' after ''a period of disability (as defined in section 41i(i) of this title)''.

1960—Subsec. (a). Pub. L. 86–778 changed provisions which required an individual to have one quarter of coverage for each two quarters to provide that an individual is fully insured if he has not less than one quarter of coverage for each three quarters elapsing after Dec. 31, 1950, or, if later, December 31 of the year in which he attained the age of 21 years, and inserted provisions defining fully insured in the case of an individual who died prior to 1951 as one who had six quarters of coverage.

1958—Subsec. (b). Pub. L. 85–840 included within definition of ''currently insured individual'' an individual entitled to disability insurance benefits who has not less than six quarters of coverage during the thirteen-quarter period ending with the quarter in which he most recently became entitled to disability insurance benefits.

1956—Subsec. (a)(3). Act Aug. 1, 1956, provided that an individual who had at least six quarters of coverage after 1954 would be fully insured if all but four of the quarters elapsing after 1954 and prior to July 1, 1957, or if later, the quarter in which he attained retirement age or died, whichever first occurred, are quarters of coverage.

1954—Subsec. (a)(2)(B). Act Sept. 1, 1954, § 106(b)(1), excluded from the elapsed period under subsec. (a)(2)(A) any quarter any part of which was included in a period of disability, unless such quarter was a quarter of coverage.

Subsec. (a)(3), (4). Act Sept. 1, 1954, § 108(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b). Act Sept. 1, 1954, § 106(b)(2), inserted '', not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage.''

1952—Subsec. (a)(2)(B). Act July 18, 1952, § 3(b)(1), inserted ''not counting as an elapsed quarter for purposes of subparagraph (A) any quarter any part of which was included in a period of disability (as defined in section 416(i) of this title unless such quarter was a quarter of coverage''.

Subsec. (b). Act July 18, 1952, § 3(b)(2), inserted ''not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage'' after ''August 28, 1950''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, § 211(c), Mar. 2, 2004, 118 Stat. 518, provided that: ''The amendments made by this section [amending this section and section 423 of this title] apply to benefit applications based on social security account numbers issued on or after January 1, 2004.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 104(j) of Pub. L. 92–603 provided that:

''(1) The amendments made by this section [amending this section and sections 415, 416, 423, and 427 of this title and provisions set out as a note under section 415 of this title] (except the amendment made by subsection (i), and the amendment made by subsection (g) to section 209(i) of the Social Security Act) shall apply only in the case of a man who attains (or would attain) age 62 after December 1974. The amendment made by subsection (i), and the amendment made by subsection (g) to section 209(i) of the Social Security Act [section 409(i) of this title and section 3121(a)(9) of Title 26, Internal Revenue Code], shall apply only with respect to payments after 1974.

''(2) In the case of a man who attains age 62 prior to 1975, the number of his elapsed years for purposes of section 215(b)(3) of the Social Security Act [section 415(b)(3) of this title] shall be equal to (A) the number determined under such section as in effect on September 1, 1972, or (B) if less, the number determined as though he attained age 65 in 1975, except that monthly benefits under title II of the Social Security Act [this subchapter] for months prior to January 1973 payable on the basis of his wages and self-employment income shall be determined as though this section had not been enacted.

''(3)(A) In the case of a man who attains or will attain age 62 in 1973, the figure '65' in sections 214(a)(1), 223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act [subsec. (a)(1) of this section and sections 423(c)(1)(A) and 416(i)(3)(A) of this title] shall be deemed to read '64'.

''(B) In the case of a man who attains or will attain age 62 in 1974, the figure '65' in sections 214(a)(1), 223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act [subsec. (a)(1) of this section and sections 423(c)(1)(A) and 416(i)(3)(A) of this title] shall be deemed to read '63'.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 103(b) of Pub. L. 87–64 provided that: ''The amendment made by subsection (a) [amending this section] shall apply—

''(1) in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months beginning on or after the effective date of this title [see note set out under section 402 of this title], based on applications filed in or after March 1961,

''(2) in the case of lump-sum death payments under such title with respect to deaths on or after the effective date of this title, and

''(3) in the case of an application for a disability determination (with respect to a period of disability, as defined in section 216(i) of such Act [section 416(i) of this title]) filed in or after March 1961.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 204(d)(1) of Pub. L. 86–778 provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section and provisions set out as a note under section 415 of this title] shall be applicable (A) in the case of monthly benefits under title II of the Social Security Act [this subchapter], for months after the month in which this Act is enacted [September 1960], on the basis of applications filed in or after such month, (B) in the case of lump-sum death payments under such title with respect to deaths occurring after such month, and (C) in the case of an application for a disability determination with respect to a period of disability (as defined in section 216(i) of the Social Security Act [section 416(i) of this title]) filed after such month.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 205(*l*) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 106(b) of act Sept. 1, 1954, applicable with respect to monthly benefits under subchapter II of this chapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 415(f) of this title, see section 106(h) of act Sept. 1, 1954, set out as a note under section 413 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

For effective and termination dates of amendment by act July 18, 1952, see section 3(f), (g) of act July 18, 1952, set out as a note under section 413 of this title.

EMPLOYEES OF NONPROFIT ORGANIZATIONS AS FULLY INSURED INDIVIDUALS

Pub. L. 98–21, title I, §102(e), Apr. 20, 1983, 97 Stat. 71, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) If any individual—

''(A) on January 1, 1984, is age 55 or over, and is an employee of an organization described in section 210(a)(8)(B) of the Social Security Act [42 U.S.C. 410(a)(8)(B)] (A) which does not have in effect (on that date) a waiver certificate under section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(k)] and (B) to the employees of which social security coverage is extended on January 1, 1984, solely by reason of the enactment of this section [amending section 410 of this title and section 3121 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under section 3121 of Title 26], and

''(B) after December 31, 1983, acquires the number of quarters of coverage (within the meaning of section 213 of the Social Security Act [section 413 of this title]) which is required for purposes of this subparagraph under paragraph (2),

then such individual shall be deemed to be a fully insured individual (as defined in section 214 of the Social Security Act [this section]) for all of the purposes of title II of such Act [this subchapter].

''(2) The number of quarters of coverage which is required for purposes of subparagraph (B) of paragraph (1) shall be determined as follows:

"In the case of an individual who on January 1, 1984, is—	The number of quarters of coverage so required shall be—
age 60 or over	6
age 59 or over but less than age 60	8
age 58 or over but less than age 59	12
age 57 or over but less than age 58	16
age 55 or over but less than age 57	20.''

DETERMINATION OF ENTITLEMENT TO MONTHLY BENEFITS FOR SEPT. 1960 AND PRIOR MONTHS AND INDIVIDUAL'S CLOSING DATE PRIOR TO 1960

Section 204(d)(2) of Pub. L. 86–778 provided that the provisions of subsec. (a) of this section in effect prior to Sept. 13, 1960, and the provisions of section 109 of act Sept. 1, 1954, ch. 1206, 68 Stat. 1084, set out as a note under section 415 of this title, as in effect prior to such date were to apply for purposes of determining entitlement to monthly benefits under this subchapter for Sept. 1960 and prior months with respect to wages and self-employment income of an individual and for purposes of determining an individual's closing date prior to 1960 under section 415(b)(3)(B) of this title.

§ 415. Computation of primary insurance amount

For the purposes of this subchapter—

(a) Primary insurance amount

(1)(A) The primary insurance amount of an individual shall (except as otherwise provided in this section) be equal to the sum of—

(i) 90 percent of the individual's average indexed monthly earnings (determined under subsection (b) of this section) to the extent that such earnings do not exceed the amount established for purposes of this clause by subparagraph (B),

(ii) 32 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (i) but do not exceed the amount established for purposes of this clause by subparagraph (B), and

(iii) 15 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (ii),

rounded, if not a multiple of $0.10, to the next lower multiple of $0.10, and thereafter increased as provided in subsection (i) of this section.

(B)(i) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the calendar year 1979, the amount established for purposes of clause (i) and (ii) of subparagraph (A) shall be $180 and $1,085, respectively.

(ii) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established with respect to the calendar year 1979 under clause (i) of this subparagraph and the quotient obtained by dividing—

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the second calendar year preceding the calendar year for which the determination is made, by

(II) the national average wage index (as so defined) for 1977.

(iii) Each amount established under clause (ii) for any calendar year shall be rounded to the nearest $1, except that any amount so established which is a multiple of $0.50 but not of $1 shall be rounded to the next higher $1.

(C)(i) No primary insurance amount computed under subparagraph (A) may be less than an amount equal to $11.50 multiplied by the individual's years of coverage in excess of 10, or the increased amount determined for purposes of this clause under subsection (i) of this section.

(ii) For purposes of clause (i), the term ''years of coverage'' with respect to any individual means the number (not exceeding 30) equal to the sum of (I) the number (not exceeding 14 and disregarding any fraction) determined by dividing (a) the total of the wages credited to such individual (including wages deemed to be paid prior to 1951 to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] prior to 1951 which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid prior to 1951 to such individual under section 431 of this title) for years

after 1936 and before 1951 by (b) $900, plus (II) the number equal to the number of years after 1950 each of which is a computation base year (within the meaning of subsection (b)(2)(B)(ii) of this section) and in each of which he is credited with wages (including wages deemed to be paid to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid to such individual under section 429 of this title) and self-employment income of not less than 25 percent (in the case of a year after 1950 and before 1978) of the maximum amount which (pursuant to subsection (e) of this section) may be counted for such year, or 25 percent (in the case of a year after 1977 and before 1991) or 15 percent (in the case of a year after 1990) of the maximum amount which (pursuant to subsection (e) of this section) could be counted for such year if section 430 of this title as in effect immediately prior to December 20, 1977, had remained in effect without change (except that, for purposes of subsection (b) of such section 430 of this title as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to $45,000, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the national average wage index (as defined in section 409(k)(1) of this title), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subsection (a) of such section 430 of this title is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1992).

(D) In each calendar year the Commissioner of Social Security shall publish in the Federal Register, on or before November 1, the formula for computing benefits under this paragraph and for adjusting wages and self-employment income under subsection (b)(3) of this section in the case of an individual who becomes eligible for an old-age insurance benefit, or (if earlier) becomes eligible for a disability insurance benefit or dies, in the following year, and the national average wage index (as defined in section 409(k)(1) of this title) on which that formula is based.

(2)(A) A year shall not be counted as the year of an individual's death or eligibility for purposes of this subsection or subsection (i) of this section in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit or benefits to which he was entitled during such 12 months).

(B) In the case of an individual who was entitled to a disability insurance benefit for any of the 12 months before the month in which he became entitled to an old-age insurance benefit, became reentitled to a disability insurance benefit, or died, the primary insurance amount for determining any benefit attributable to that entitlement, reentitlement, or death is the greater of—

(i) the primary insurance amount upon which such disability insurance benefit was based, increased by the amount of each general benefit increase (as defined in subsection (i)(3) of this section), and each increase provided under subsection (i)(2) of this section, that would have applied to such primary insurance amount had the individual remained entitled to such disability insurance benefit until the month in which he became so entitled or reentitled or died, or

(ii) the amount computed under paragraph (1)(C).

(C) In the case of an individual who was entitled to a disability insurance benefit for any month, and with respect to whom a primary insurance amount is required to be computed at any time after the close of the period of the individual's disability (whether because of such individual's subsequent entitlement to old-age insurance benefits or to a disability insurance benefit based upon a subsequent period of disability, or because of such individual's death), the primary insurance amount so computed may in no case be less than the primary insurance amount with respect to which such former disability insurance benefit was most recently determined.

(3)(A) Paragraph (1) applies only to an individual who was not eligible for an old-age insurance benefit prior to January 1979 and who in that or any succeeding month—

(i) becomes eligible for such a benefit,

(ii) becomes eligible for a disability insurance benefit, or

(iii) dies,

and (except for subparagraph (C)(i) thereof) it applies to every such individual except to the extent otherwise provided by paragraph (4).

(B) For purposes of this subchapter, an individual is deemed to be eligible—

(i) for old-age insurance benefits, for months beginning with the month in which he attains age 62, or

(ii) for disability insurance benefits, for months beginning with the month in which his period of disability began as provided under section 416(i)(2)(C) of this title,

except as provided in paragraph (2)(A) in cases where fewer than 12 months have elapsed since the termination of a prior period of disability.

(4) Paragraph (1) (except for subparagraph (C)(i) thereof) does not apply to the computation or recomputation of a primary insurance amount for—

(A) an individual who was eligible for a disability insurance benefit for a month prior to January 1979 unless, prior to the month in which occurs the event described in clause (i), (ii), or (iii) of paragraph (3)(A), there occurs a period of at least 12 consecutive months for which he was not entitled to a disability insurance benefit, or

(B) an individual who had wages or self-employment income credited for one or more years prior to 1979, and who was not eligible for an old-age or disability insurance benefit,

and did not die, prior to January 1979, if in the year for which the computation or recomputation would be made the individual's primary insurance amount would be greater if computed or recomputed—

(i) under this subsection as in effect in December 1978, for purposes of old-age insurance benefits in the case of an individual who becomes eligible for such benefits prior to 1984, or

(ii) as provided by subsection (d) of this section, in the case of an individual to whom such section applies.

In determining whether an individual's primary insurance amount would be greater if computed or recomputed as provided in subparagraph (B), (I) the table of benefits in effect in December 1978, as modified by paragraph (6), shall be applied without regard to any increases in that table which may become effective (in accordance with subsection (i)(4) of this section) for years after 1978 (subject to clause (iii) of subsection (i)(2)(A) of this section) and (II) such individual's average monthly wage shall be computed as provided by subsection (b)(4) of this section.

(5)(A) Subject to subparagraphs (B), (C), (D) and (E), for purposes of computing the primary insurance amount (after December 1978) of an individual to whom paragraph (1) does not apply (other than an individual described in paragraph (4)(B)), this section as in effect in December 1978 shall remain in effect, except that, effective for January 1979, the dollar amount specified in paragraph (3) of this subsection shall be increased to $11.50.

(B)(i) Subject to clauses (ii), (iii), and (iv), and notwithstanding any other provision of law, the primary insurance amount of any individual described in subparagraph (C) shall be, in lieu of the primary insurance amount as computed pursuant to any of the provisions referred to in subparagraph (D), the primary insurance amount computed under subsection (a) of this section as in effect in December 1978, without regard to subsections (b)(4) and (c) of this section as so in effect.

(ii) The computation of a primary insurance amount under this subparagraph shall be subject to section 104(j)(2) of the Social Security Amendments of 1972 (relating to the number of elapsed years under subsection (b) of this section).

(iii) In computing a primary insurance amount under this subparagraph, the dollar amount specified in paragraph (3) of subsection (a) of this section (as in effect in December 1978) shall be increased to $11.50.

(iv) In the case of an individual to whom subsection (d) of this section applies, the primary insurance amount of such individual shall be the greater of—

(I) the primary insurance amount computed under the preceding clauses of this subparagraph, or

(II) the primary insurance amount computed under subsection (d) of this section.

(C) An individual is described in this subparagraph if—

(i) paragraph (1) does not apply to such individual by reason of such individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979, and

(ii) such individual's primary insurance amount computed under this section as in effect immediately before November 5, 1990, would have been computed under the provisions described in subparagraph (D).

(D) The provisions described in this subparagraph are—

(i) the provisions of this subsection as in effect prior to July 30, 1965, if such provisions would preclude the use of wages prior to 1951 in the computation of the primary insurance amount,

(ii) the provisions of section 409 of this title as in effect prior to August 28, 1950, and

(iii) the provisions of subsection (d) of this section as in effect prior to December 20, 1977.

(E) For purposes of this paragraph, the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) of this section for each year after 1978.

(6)(A) In applying the table of benefits in effect in December 1978 under this section for purposes of the last sentence of paragraph (4), such table, revised as provided by subsection (i) of this section, as applicable, shall be extended for average monthly wages of less than $76.00 and primary insurance benefits (as determined under subsection (d) of this section) of less than $16.20.

(B) The Commissioner of Social Security shall determine and promulgate in regulations the methodology for extending the table under subparagraph (A).

(7)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection, who—

(i) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986 and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(ii) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subparagraph (C), but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937 [45 U.S.C. 231 et seq., 228a et seq.], (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title, and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)) which is based in whole or in part upon his or her earnings for service which did not constitute ''employment'' as defined in section 410 of this title for purposes of this subchapter (hereafter in this paragraph and in subsection (d)(3) of this section referred to as ''noncovered service''), the primary insurance amount of that individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be computed or recomputed under subparagraph (B).

(B)(i) If paragraph (1) of this subsection would apply to such an individual (except for subparagraph (A) of this paragraph), there shall first be computed an amount equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that for purposes of such computation the percentage of the individual's average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1) shall be the percent specified in clause (ii). There shall then be computed (without regard to this paragraph) a second amount, which shall be equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that such second amount shall be reduced by an amount equal to one-half of the portion of the monthly periodic payment which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which the individual is entitled (or is deemed to be entitled) for the initial month of his or her concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits. The individual's primary insurance amount shall be the larger of the two amounts computed under this subparagraph (before the application of subsection (i) of this section) and shall be deemed to be computed under paragraph (1) of this subsection for the purpose of applying other provisions of this subchapter.

(ii) For purposes of clause (i), the percent specified in this clause is—

(I) 80.0 percent with respect to individuals who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62) in 1986;

(II) 70.0 percent with respect to individuals who so become eligible in 1987;

(III) 60.0 percent with respect to individuals who so become eligible in 1988;

(IV) 50.0 percent with respect to individuals who so become eligible in 1989; and

(V) 40.0 percent with respect to individuals who so become eligible in 1990 or thereafter.

(C)(i) Any periodic payment which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly payment (as determined by the Commissioner of Social Security), and such equivalent monthly payment shall constitute a monthly periodic payment for purposes of this paragraph.

(ii) In the case of an individual who has elected to receive a periodic payment that has been reduced so as to provide a survivor's benefit to any other individual, the payment shall be deemed to be increased (for purposes of any computation under this paragraph or subsection (d)(3) of this section) by the amount of such reduction.

(iii) For purposes of this paragraph, the term ''periodic payment'' includes a payment payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(D) This paragraph shall not apply in the case of an individual who has 30 years or more of coverage. In the case of an individual who has more than 20 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subdivision of subparagraph (B)(ii) shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the applicable percent specified in the following table:

If the number of such individual's years of coverage (as so defined) is:	The applicable percent is:
29	85 percent
28	80 percent
27	75 percent
26	70 percent
25	65 percent
24	60 percent
23	55 percent
22	50 percent
21	45 percent.

For purposes of this subparagraph, the term ''year of coverage'' shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to ''15 percent'' therein shall be deemed to be a reference to ''25 percent''.

(E) This paragraph shall not apply in the case of an individual whose eligibility for old-age or disability insurance benefits is based on an agreement concluded pursuant to section 433 of this title or an individual who on January 1, 1984—

(i) is an employee performing service to which social security coverage is extended on that date solely by reason of the amendments made by section 101 of the Social Security Amendments of 1983; or

(ii) is an employee of a nonprofit organization which (on December 31, 1983) did not have in effect a waiver certificate under section 3121(k) of the Internal Revenue Code of 1954 and to the employees of which social security coverage is extended on that date solely by reason of the amendments made by section 102 of that Act, unless social security coverage had previously extended to service performed by such individual as an employee of that organization under a waiver certificate which was subsequently (prior to December 31, 1983) terminated.

(b) Average indexed monthly earnings; average monthly wage

(1) An individual's average indexed monthly earnings shall be equal to the quotient obtained by dividing—

(A) the total (after adjustment under paragraph (3)) of his wages paid in and self-employment income credited to his benefit computation years (determined under paragraph (2)), by

(B) the number of months in those years.

(2)(A) The number of an individual's benefit computation years equals the number of elapsed years reduced—

(i) in the case of an individual who is entitled to old-age insurance benefits (except as provided in the second sentence of this subparagraph), or who has died, by 5 years, and

(ii) in the case of an individual who is entitled to disability insurance benefits, by the number of years equal to one-fifth of such in-

dividual's elapsed years (disregarding any resulting fractional part of a year), but not by more than 5 years.

Clause (ii), once applicable with respect to any individual, shall continue to apply for purposes of determining such individual's primary insurance amount for purposes of any subsequent eligibility for disability or old-age insurance benefits unless prior to the month in which such eligibility begins there occurs a period of at least 12 consecutive months for which he was not entitled to a disability or an old-age insurance benefit. If an individual described in clause (ii) is living with a child (of such individual or his or her spouse) under the age of 3 in any calendar year which is included in such individual's computation base years, but which is not disregarded pursuant to clause (ii) or to subparagraph (B) (in determining such individual's benefit computation years) by reason of the reduction in the number of such individual's elapsed years under clause (ii), the number by which such elapsed years are reduced under this subparagraph pursuant to clause (ii) shall be increased by one (up to a combined total not exceeding 3) for each such calendar year; except that (I) no calendar year shall be disregarded by reason of this sentence (in determining such individual's benefit computation years) unless the individual was living with such child substantially throughout the period in which the child was alive and under the age of 3 in such year and the individual had no earnings as described in section 403(f)(5) of this title in such year, (II) the particular calendar years to be disregarded under this sentence (in determining such benefit computation years) shall be those years (not otherwise disregarded under clause (ii)) which, before the application of subsection (f) of this section, meet the conditions of subclause (I), and (III) this sentence shall apply only to the extent that its application would not result in a lower primary insurance amount. The number of an individual's benefit computation years as determined under this subparagraph shall in no case be less than 2.

(B) For purposes of this subsection with respect to any individual—

(i) the term ''benefit computation years'' means those computation base years, equal in number to the number determined under subparagraph (A), for which the total of such individual's wages and self-employment income, after adjustment under paragraph (3), is the largest;

(ii) the term ''computation base years'' means the calendar years after 1950 and before—

(I) in the case of an individual entitled to old-age insurance benefits, the year in which occurred (whether by reason of section 402(j)(1) of this title or otherwise) the first month of that entitlement; or

(II) in the case of an individual who has died (without having become entitled to old-age insurance benefits), the year succeeding the year of his death;

except that such term excludes any calendar year entirely included in a period of disability; and

(iii) the term ''number of elapsed years'' means (except as otherwise provided by section 104(j)(2) of the Social Security Amendments of 1972) the number of calendar years after 1950 (or, if later, the year in which the individual attained age 21) and before the year in which the individual died, or, if it occurred earlier (but after 1960), the year in which he attained age 62; except that such term excludes any calendar year any part of which is included in a period of disability.

(3)(A) Except as provided by subparagraph (B), the wages paid in and self-employment income credited to each of an individual's computation base years for purposes of the selection therefrom of benefit computation years under paragraph (2) shall be deemed to be equal to the product of—

(i) the wages and self-employment income paid in or credited to such year (as determined without regard to this subparagraph), and

(ii) the quotient obtained by dividing—

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the second calendar year preceding the earliest of the year of the individual's death, eligibility for an old-age insurance benefit, or eligibility for a disability insurance benefit (except that the year in which the individual dies, or becomes eligible, shall not be considered as such year if the individual was entitled to disability insurance benefits for any month in the 12-month period immediately preceding such death or eligibility, but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit to which he was entitled in such 12-month period), by

(II) the national average wage index (as so defined) for the computation base year for which the determination is made.

(B) Wages paid in or self-employment income credited to an individual's computation base year which—

(i) occurs after the second calendar year specified in subparagraph (A)(ii)(I), or

(ii) is a year treated under subsection (f)(2)(C) of this section as though it were the last year of the period specified in paragraph (2)(B)(ii),

shall be available for use in determining an individual's benefit computation years, but without applying subparagraph (A) of this paragraph.

(4) For purposes of determining the average monthly wage of an individual whose primary insurance amount is computed (after 1978) under subsection (a) or (d) of this section as in effect (except with respect to the table contained therein) in December 1978, by reason of subsection (a)(4)(B) of this section, this subsection as in effect in December 1978 shall remain in effect, except that paragraph (2)(C) (as then in effect) shall be deemed to provide that ''computation base years'' include only calendar years in the period after 1950 (or 1936, if applicable) and prior to the year in which occurred the first month for which the individual was eligible (as defined in subsection (a)(3)(B) of this section as in effect in January 1979) for an old-age or disability insurance benefit, or, if earlier, the year

in which he died. Any calendar year all of which is included in a period of disability shall not be included as a computation base year for such purposes.

(c) Application of prior provisions in certain cases

Subject to the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990, this subsection as in effect in December 1978 shall remain in effect with respect to an individual to whom subsection (a)(1) of this section does not apply by reason of the individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979.

(d) Primary insurance amount under 1939 Act

(1) For purposes of column I of the table appearing in subsection (a) of this section, as that subsection was in effect in December 1977, an individual's primary insurance benefit shall be computed as follows:

(A) The individual's average monthly wage shall be determined as provided in subsection (b) of this section, as in effect in December 1977 (but without regard to paragraph (4) thereof and subject to section 104(j)(2) of the Social Security Amendments of 1972), except that for purposes of paragraphs (2)(C) and (3) of that subsection (as so in effect) 1936 shall be used instead of 1950.

(B) For purposes of subparagraphs (B) and (C) of subsection (b)(2) of this section (as so in effect)—

(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual—

(I) shall, in the case of an individual who attained age 21 prior to 1950, be divided by the number of years (hereinafter in this subparagraph referred to as the ''divisor'') elapsing after the year in which the individual attained age 20, or 1936 if later, and prior to the earlier of the year of death or 1951, except that such divisor shall not include any calendar year entirely included in a period of disability, and in no case shall the divisor be less than one, and

(II) shall, in the case of an individual who died before 1950 and before attaining age 21, be divided by the number of years (hereinafter in this subparagraph referred to as the ''divisor'') elapsing after the second year prior to the year of death, or 1936 if later, and prior to the year of death, and in no case shall the divisor be less than one; and

(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who either attained age 21 after 1949 or died after 1949 before attaining age 21, shall be divided by the number of years (hereinafter in this subparagraph referred to as the ''divisor'') elapsing after 1949 and prior to 1951.

The quotient so obtained shall be deemed to be the individual's wages credited to each of the years which were used in computing the amount of the divisor, except that—

(iii) if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the computation base year (as defined in subsection (b)(2) of this section as in effect in December 1977) immediately preceding the earliest year used in computing the amount of the divisor, or (II) if $3,000 or more, shall be deemed credited, in $3,000 increments, to the computation base year (as so defined) immediately preceding the earliest year used in computing the amount of the divisor and to each of the computation base years (as so defined) consecutively preceding that year, with any remainder less than $3,000 being credited to the computation base year (as so defined) immediately preceding the earliest year to which a full $3,000 increment was credited; and

(iv) no more than $42,000 may be taken into account, for purposes of this subparagraph, as total wages after 1936 and prior to 1951.

(C) For the purposes of subparagraph (B), ''total wages prior to 1951'' with respect to an individual means the sum of (i) remuneration credited to such individual prior to 1951 on the records of the Commissioner of Social Security, (ii) wages deemed paid prior to 1951 to such individual under section 417 of this title, (iii) compensation under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] prior to 1951 creditable to him pursuant to this subchapter, and (iv) wages deemed paid prior to 1951 to such individual under section 431 of this title.

(D) The individual's primary insurance benefit shall be 40 percent of the first $50 of his average monthly wage as computed under this subsection, plus 10 percent of the next $200 of his average monthly wage, increased by 1 percent for each increment year. The number of increment years is the number, not more than 14 nor less than 4, that is equal to the individual's total wages prior to 1951 divided by $1,650 (disregarding any fraction).

(2) The provisions of this subsection shall be applicable only in the case of an individual—

(A) with respect to whom at least one of the quarters elapsing prior to 1951 is a quarter of coverage;

(B) who attained age 22 after 1950 and with respect to whom less than six of the quarters elapsing after 1950 are quarters of coverage, or who attained such age before 1951; and

(C)(i) who becomes entitled to benefits under section 402(a) or 423 of this title or who dies, or

(ii) whose primary insurance amount is required to be recomputed under paragraph (2), (6), or (7) of subsection (f) of this section or under section 431 of this title.

(3) In the case of an individual whose primary insurance amount is not computed under paragraph (1) of subsection (a) of this section by reason of paragraph (4)(B)(ii) of that subsection, who—

(A) attains age 62 after 1985 (except where he or she became entitled to a disability insur-

ance benefit before 1986, and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(B) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subsection (a)(7)(C) of this section, but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937 [45 U.S.C. 231 et seq., 228a et seq.], (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title, and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)) which is based (in whole or in part) upon his or her earnings in noncovered service, the primary insurance amount of such individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be the primary insurance amount computed or recomputed under this subsection (without regard to this paragraph and before the application of subsection (i) of this section) reduced by an amount equal to the smaller of—

(i) one-half of the primary insurance amount (computed without regard to this paragraph and before the application of subsection (i) of this section), or

(ii) one-half of the portion of the monthly periodic payment (or payment determined under subsection (a)(7)(C) of this section) which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which that individual is entitled (or is deemed to be entitled) for the initial month of such concurrent entitlement.

This paragraph shall not apply in the case of any individual to whom subsection (a)(7) of this section would not apply by reason of subparagraph (E) or the first sentence of subparagraph (D) thereof.

(e) Certain wages and self-employment income not to be counted

For the purposes of subsections (b) and (d) of this section—

(1) in computing an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage, there shall not be counted the excess over $3,600 in the case of any calendar year after 1950 and before 1955, the excess over $4,200 in the case of any calendar year after 1954 and before 1959, the excess over $4,800 in the case of any calendar year after 1958 and before 1966, the excess over $6,600 in the case of any calendar year after 1965 and before 1968, the excess over $7,800 in the case of any calendar year after 1967 and before 1972, the excess over $9,000 in the case of any calendar year after 1971 and before 1973, the excess over $10,800 in the case of any calendar year after 1972 and before 1974, the excess over $13,200 in the case of any calendar year after 1973 and before 1975, and the excess over an amount equal to the contribution and benefit base (as determined under section 430 of this title) in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective, (before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A) of this section) of (A) the wages paid to him in such year, plus (B) the self-employment income credited to such year (as determined under section 412 of this title); and

(2) if an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage, computed under subsection (b) of this section or for the purposes of subsection (d) of this section is not a multiple of $1, it shall be reduced to the next lower multiple of $1.

(f) Recomputation of benefits

(1) After an individual's primary insurance amount has been determined under this section, there shall be no recomputation of such individual's primary insurance amount except as provided in this subsection or, in the case of a World War II veteran who died prior to July 27, 1954, as provided in section 417(b) of this title.

(2)(A) If an individual has wages or self-employment income for a year after 1978 for any part of which he is entitled to old-age or disability insurance benefits, the Commissioner of Social Security shall, at such time or times and within such period as the Commissioner may by regulation prescribe, recompute the individual's primary insurance amount for that year.

(B) For the purpose of applying subparagraph (A) of subsection (a)(1) of this section to the average indexed monthly earnings of an individual to whom that subsection applies and who receives a recomputation under this paragraph, there shall be used, in lieu of the amounts established by subsection (a)(1)(B) of this section for purposes of clauses (i) and (ii) of subsection (a)(1)(A) of this section, the amounts so established that were (or, in the case of an individual described in subsection (a)(4)(B) of this section, would have been) used in the computation of such individual's primary insurance amount prior to the application of this subsection.

(C) A recomputation of any individual's primary insurance amount under this paragraph shall be made as provided in subsection (a)(1) of this section as though the year with respect to which it is made is the last year of the period specified in subsection (b)(2)(B)(ii) of this section; and subsection (b)(3)(A) of this section shall apply with respect to any such recomputation as it applied in the computation of such individual's primary insurance amount prior to the application of this subsection.

(D) A recomputation under this paragraph with respect to any year shall be effective—

(i) in the case of an individual who did not die in that year, for monthly benefits beginning with benefits for January of the following year; or

(ii) in the case of an individual who died in that year, for monthly benefits beginning with benefits for the month in which he died.

(3) Repealed. Pub. L. 95–216, title II, § 201(f)(2), Dec. 20, 1977, 91 Stat. 1521.

(4) A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least $1.

(5) In the case of a man who became entitled to old-age insurance benefits and died before the month in which he attained retirement age (as defined in section 416(*l*) of this title), the Commissioner of Social Security shall recompute his primary insurance amount as provided in subsection (a) of this section as though he became entitled to old-age insurance benefits in the month in which he died; except that (i) his computation base years referred to in subsection (b)(2) of this section shall include the year in which he died, and (ii) his elapsed years referred to in subsection (b)(3) of this section shall not include the year in which he died or any year thereafter. Such recomputation of such primary insurance amount shall be effective for and after the month in which he died.

(6) Upon the death after 1967 of an individual entitled to benefits under section 402(a) or section 423 of this title, if any person is entitled to monthly benefits or a lump-sum death payment, on the wages and self-employment income of such individual, the Commissioner of Social Security shall recompute the decedent's primary insurance amount, but only if the decedent during his lifetime was paid compensation which was treated under section 405(*o*) of this title as remuneration for employment.

(7) This subsection as in effect in December 1978 shall continue to apply to the recomputation of a primary insurance amount computed under subsection (a) or (d) of this section as in effect (without regard to the table in subsection (a) of this section) in that month, and, where appropriate, under subsection (d) as in effect in December 1977, including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990. For purposes of recomputing a primary insurance amount determined under subsection (a) or (d) of this section (as so in effect) in the case of an individual to whom those subsections apply by reason of subsection (a)(4)(B) of this section as in effect after December 1978, no remuneration shall be taken into account for the year in which the individual initially became eligible for an old-age or disability insurance benefit or died, or for any year thereafter, and (effective January 1982) the recomputation shall be modified by the application of subsection (a)(6) of this section where applicable.

(8) The Commissioner of Social Security shall recompute the primary insurance amounts applicable to beneficiaries whose benefits are based on a primary insurance amount which was computed under subsection (a)(3) of this section effective prior to January 1979, or would have been so computed if the dollar amount specified therein were $11.50. Such recomputation shall be effective January 1979, and shall include the effect of the increase in the dollar amount provided by subsection (a)(1)(C)(i) of this section. Such primary insurance amount shall be deemed to be provided under such section for purposes of subsection (i) of this section.

(9)(A) In the case of an individual who becomes entitled to a periodic payment determined under subsection (a)(7)(A) of this section (including a payment determined under subsection (a)(7)(C) of this section) in a month subsequent to the first month in which he or she becomes entitled to an old-age or disability insurance benefit, and whose primary insurance amount has been computed without regard to either such subsection or subsection (d)(3) of this section, such individual's primary insurance amount shall be recomputed (notwithstanding paragraph (4) of this subsection), in accordance with either such subsection or subsection (d)(3) of this section, as may be applicable, effective with the first month of his or her concurrent entitlement to such benefit and such periodic payment.

(B) If an individual's primary insurance amount has been computed under subsection (a)(7) or (d)(3) of this section, and it becomes necessary to recompute that primary insurance amount under this subsection—

(i) so as to increase the monthly benefit amount payable with respect to such primary insurance amount (except in the case of the individual's death), such increase shall be determined as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(3) of this section, or

(ii) by reason of the individual's death, such primary insurance amount shall be recomputed without regard to (and as though it had never been computed with regard to) subsection (a)(7) or (d)(3) of this section.

(g) Rounding of benefits

The amount of any monthly benefit computed under section 402 or 423 of this title which (after any reduction under sections 403(a) and 424a of this title and any deduction under section 403(b) of this title, and after any deduction under section 1395s(a)(1) of this title) is not a multiple of $1 shall be rounded to the next lower multiple of $1.

(h) Service of certain Public Health Service Officers

(1) Notwithstanding the provisions of subchapter III of chapter 83 of title 5, remuneration paid for service to which the provisions of section 410(*l*)(1) of this title are applicable and which is performed by an individual as a commissioned officer of the Reserve Corps of the Public Health Service prior to July 1, 1960, shall not be included in computing entitlement to or the amount of any monthly benefit under this subchapter, on the basis of his wages and self-employment income, for any month after June 1960 and prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Commissioner of Social Security that, by reason of a waiver filed as provided in paragraph (2), no further annuity will be paid to him, his wife, and his children, or, if he has died, to his widow and children, under subchapter III of chapter 83 of title 5 on the basis of such service.

(2) In the case of a monthly benefit for a month prior to that in which the individual, on

whose wages and self-employment income such benefit is based, dies, the waiver must be filed by such individual; and such waiver shall be irrevocable and shall constitute a waiver on behalf of himself, his wife, and his children. If such individual did not file such a waiver before he died, then in the case of a benefit for the month in which he died or any month thereafter, such waiver must be filed by his widow, if any, and by or on behalf of all his children, if any; and such waivers shall be irrevocable. Such a waiver by a child shall be filed by his legal guardian or guardians, or, in the absence thereof, by the person (or persons) who has the child in his care.

(i) Cost-of-living increases in benefits

(1) For purposes of this subsection—

(A) the term ''base quarter'' means (i) the calendar quarter ending on September 30 in each year after 1982, or (ii) any other calendar quarter in which occurs the effective month of a general benefit increase under this subchapter;

(B) the term ''cost-of-living computation quarter'' means a base quarter, as defined in subparagraph (A)(i), with respect to which the applicable increase percentage is greater than zero; except that there shall be no cost-of-living computation quarter in any calendar year if in the year prior to such year a law has been enacted providing a general benefit increase under this subchapter or if in such prior year such a general benefit increase becomes effective;

(C) the term ''applicable increase percentage'' means—

(i) with respect to a base quarter or cost-of-living computation quarter in any calendar year before 1984, or in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is 15.0 percent or more, or in any calendar year after 1988 for which the OASDI fund ratio is 20.0 percent or more, the CPI increase percentage; and

(ii) with respect to a base quarter or cost-of-living computation quarter in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is less than 15.0 percent, or in any calendar year after 1988 for which the OASDI fund ratio is less than 20.0 percent, the CPI increase percentage or the wage increase percentage, whichever (with respect to that quarter) is the lower;

(D) the term ''CPI increase percentage'', with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the Consumer Price Index for that quarter (as prepared by the Department of Labor) exceeds such index for the most recent prior calendar quarter which was a base quarter under subparagraph (A)(ii) or, if later, the most recent cost-of-living computation quarter under subparagraph (B);

(E) the term ''wage increase percentage'', with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the national average wage index (as defined in section 409(k)(1) of this title) for the year immediately preceding such calendar year exceeds such index for the year immediately preceding the most recent prior calendar year which included a base quarter under subparagraph (A)(ii) or, if later, which included a cost-of-living computation quarter;

(F) the term ''OASDI fund ratio'', with respect to any calendar year, means the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund as of the beginning of such year, including the taxes transferred under section 401(a) of this title on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Fund from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title, to

(ii) the total amount which (as estimated by the Commissioner of Social Security) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during such calendar year for all purposes authorized by section 401 of this title (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account;[1]

(G) the Consumer Price Index for a base quarter, a cost-of-living computation quarter, or any other calendar quarter shall be the arithmetical mean of such index for the 3 months in such quarter.

(2)(A)(i) The Commissioner of Social Security shall determine each year beginning with 1975 (subject to the limitation in paragraph (1)(B)) whether the base quarter (as defined in paragraph (1)(A)(i)) in such year is a cost-of-living computation quarter.

(ii) If the Commissioner of Social Security determines that the base quarter in any year is a cost-of-living computation quarter, the Commissioner shall, effective with the month of December of that year as provided in subparagraph (B), increase—

(I) the benefit amount to which individuals are entitled for that month under section 427 or 428 of this title,

(II) the primary insurance amount of each other individual on which benefit entitlement is based under this subchapter, and

(III) the amount of total monthly benefits based on any primary insurance amount which is permitted under section 403 of this title (and such total shall be increased, unless otherwise so increased under another provision of this subchapter, at the same time as such primary insurance amount) or, in the case of a primary insurance amount computed under subsection (a) of this section as in effect (without regard

[1] So in original. Probably should be followed by ''and''.

to the table contained therein) prior to January 1979, the amount to which the beneficiaries may be entitled under section 403 of this title as in effect in December 1978, except as provided by section 403(a)(7) and (8) of this title as in effect after December 1978.

The increase shall be derived by multiplying each of the amounts described in subdivisions (I), (II), and (III) (including each of those amounts as previously increased under this subparagraph) by the applicable increase percentage; and any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10. Any increase under this subsection in a primary insurance amount determined under subparagraph (C)(i) of subsection (a)(1) of this section shall be applied after the initial determination of such primary insurance amount under that subparagraph (with the amount of such increase, in the case of an individual who becomes eligible for old-age or disability insurance benefits or dies in a calendar year after 1979, being determined from the range of possible primary insurance amounts published by the Commissioner of Social Security under the last sentence of subparagraph (D)).

(iii) In the case of an individual who becomes eligible for an old-age or disability insurance benefit, or who dies prior to becoming so eligible, in a year in which there occurs an increase provided under clause (ii), the individual's primary insurance amount (without regard to the time of entitlement to that benefit) shall be increased (unless otherwise so increased under another provision of this subchapter and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section in the case of an individual to whom that subsection (as in effect in December 1981) applied, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)) by the amount of that increase and subsequent applicable increases, but only with respect to benefits payable for months after November of that year.

(B) The increase provided by subparagraph (A) with respect to a particular cost-of-living computation quarter shall apply in the case of monthly benefits under this subchapter for months after November of the calendar year in which occurred such cost-of-living computation quarter, and in the case of lump-sum death payments with respect to deaths occurring after November of such calendar year.

(C)(i) Whenever the Commissioner of Social Security determines that a base quarter in a calendar year is also a cost-of-living computation quarter, the Commissioner shall notify the House Committee on Ways and Means and the Senate Committee on Finance of such determination within 30 days after the close of such quarter, indicating the amount of the benefit increase to be provided, the Commissioner's estimate of the extent to which the cost of such increase would be met by an increase in the contribution and benefit base under section 430 of this title and the estimated amount of the increase in such base, the actuarial estimates of the effect of such increase, and the actuarial assumptions and methodology used in preparing such estimates.

(ii) The Commissioner of Social Security shall determine and promulgate the OASDI fund ratio for the current calendar year on or before November 1 of the current calendar year, based upon the most recent data then available. The Commissioner of Social Security shall include a statement of the fund ratio and the national average wage index (as defined in section 409(k)(1) of this title) and a statement of the effect such ratio and the level of such index may have upon benefit increases under this subsection in any notification made under clause (i) and any determination published under subparagraph (D).

(D) If the Commissioner of Social Security determines that a base quarter in a calendar year is also a cost-of-living computation quarter, the Commissioner shall publish in the Federal Register within 45 days after the close of such quarter a determination that a benefit increase is resultantly required and the percentage thereof. The Commissioner shall also publish in the Federal Register at that time (i) a revision of the range of the primary insurance amounts which are possible after the application of this subsection based on the dollar amount specified in subparagraph (C)(i) of subsection (a)(1) of this section (with such revised primary insurance amounts constituting the increased amounts determined for purposes of such subparagraph (C)(i) under this subsection), or specified in subsection (a)(3) of this section as in effect prior to 1979, and (ii) a revision of the range of maximum family benefits which correspond to such primary insurance amounts (with such maximum benefits being effective notwithstanding section 403(a) of this title except for paragraph (3)(B) thereof (or paragraph (2) thereof as in effect prior to 1979)). Notwithstanding the preceding sentence, such revision of maximum family benefits shall be subject to paragraph (6) of section 403(a) of this title (as added by section 101(a)(3) of the Social Security Disability Amendments of 1980).

(3) As used in this subsection, the term ''general benefit increase under this subchapter'' means an increase (other than an increase under this subsection) in all primary insurance amounts on which monthly insurance benefits under this subchapter are based.

(4) This subsection as in effect in December 1978, and as amended by sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983 and by section 9001 of the Omnibus Budget Reconciliation Act of 1986, shall continue to apply to subsections (a) and (d) of this section, as then in effect and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990, for purposes of computing the primary insurance amount of an individual to whom subsection (a) of this section, as in effect after December 1978, does not apply (including an individual to whom subsection (a) of this section does not apply in any year by reason of paragraph (4)(B) of that subsection (but the application of this subsection in such cases shall be modified by the application of subdivision (I) in the last sentence of paragraph (4) of that subsection)), except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v)

of this subsection as in effect in December 1978, the phrase ''increased to the next higher multiple of $0.10'' shall be deemed to read ''decreased to the next lower multiple of $0.10''. For purposes of computing primary insurance amounts and maximum family benefits (other than primary insurance amounts and maximum family benefits for individuals to whom such paragraph (4)(B) applies), the Commissioner of Social Security shall revise the table of benefits contained in subsection (a) of this section, as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Commissioner of Social Security publish such revision of the table of benefits in the Federal Register shall not apply.

(5)(A) If—

(i) with respect to any calendar year the ''applicable increase percentage'' was determined under clause (ii) of paragraph (1)(C) rather than under clause (i) of such paragraph, and the increase becoming effective under paragraph (2) in such year was accordingly determined on the basis of the wage increase percentage rather than the CPI increase percentage (or there was no such increase becoming effective under paragraph (2) in that year because there was no wage increase percentage greater than zero), and

(ii) for any subsequent calendar year in which an increase under paragraph (2) becomes effective the OASDI fund ratio is greater than 32.0 percent,

then each of the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii), as increased under paragraph (2) effective with the month of December in such subsequent calendar year, shall be further increased (effective with such month) by an additional percentage, which shall be determined under subparagraph (B) and shall apply as provided in subparagraph (C). Any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

(B) The applicable additional percentage by which the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii) are to be further increased under subparagraph (A) in the subsequent calendar year involved shall be the amount derived by—

(i) subtracting (I) the compounded percentage benefit increases that were actually paid under paragraph (2) and this paragraph from (II) the compounded percentage benefit increases that would have been paid if all increases under paragraph (2) had been made on the basis of the CPI increase percentage,

(ii) dividing the difference by the sum of the compounded percentage in clause (i)(I) and 100 percent, and

(iii) multiplying such quotient by 100 so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent),

with the compounded increases referred to in clause (i) being measured—

(iv) in the case of amounts described in subdivision (I) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which monthly benefits described in such subdivision were first increased on the basis of the wage increase percentage and ending with the year before such subsequent calendar year, and

(v) in the case of amounts described in subdivisions (II) and (III) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which the individual whose primary insurance amount is increased under such subdivision (II) became eligible (as defined in subsection (a)(3)(B) of this section) for the old-age or disability insurance benefit that is being increased under this subsection, or died before becoming so eligible, and ending with the year before such subsequent calendar year;

except that if the Commissioner of Social Security determines in any case that the application (in accordance with subparagraph (C)) of the additional percentage as computed under the preceding provisions of this subparagraph would cause the OASDI fund ratio to fall below 32.0 percent in the calendar year immediately following such subsequent year, the Commissioner shall reduce such applicable additional percentage to the extent necessary to ensure that the OASDI fund ratio will remain at or above 32.0 percent through the end of such following year.

(C) Any applicable additional percentage increase in an amount described in subdivision (I), (II), or (III) of paragraph (2)(A)(ii), made under this paragraph in any calendar year, shall thereafter be treated for all the purposes of this chapter as a part of the increase made in such amount under paragraph (2) for that year.

(Aug. 14, 1935, ch. 531, title II, § 215, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 506; amended July 18, 1952, ch. 945, §§ 2(a), (b)(1), 3(c), 6(a), (b), 66 Stat. 767, 768, 770, 771, 776; Sept. 1, 1954, ch. 1206, title I, §§ 102(a)–(d), (e)(1)–(4), 104(d), 106(c), 68 Stat. 1062–1068, 1078, 1079; Aug. 1, 1956, ch. 836, title I, §§ 103(c)(4), (5), 109(a), 115(a)–(c), 70 Stat. 818, 830, 832, 833; Pub. L. 85–840, title I, §§ 101(a)–(d), 102(d), title II, § 205(m), Aug. 28, 1958, 72 Stat. 1013–1016, 1020, 1025; Pub. L. 86–415, § 7, Apr. 8, 1960, 74 Stat. 35; Pub. L. 86–778, title I, § 103(j)(2)(C), title II, § 211(n), title III, §§ 303(a)–(e), 304(a), Sept. 13, 1960, 74 Stat. 937, 958, 960–962, 966; Pub. L. 87–64, title I, §§ 101(a), 102(d), June 30, 1961, 75 Stat. 131, 135; Pub. L. 89–97, title III, §§ 301(a), (b), 302(a)–(d), 303(e), 304(k), 320(a)(4), July 30, 1965, 79 Stat. 361, 363–365, 367, 370, 393; Pub. L. 90–248, title I, §§ 101(a), (c), (d), 108(a)(4), 155(a)(1)–(6), title IV, § 403(b), Jan. 2, 1968, 81 Stat. 824, 827, 834, 864, 865, 931; Pub. L. 91–172, title X, § 1002(a), (c), (d), Dec. 30, 1969, 83 Stat. 737, 740; Pub. L. 92–5, title II, §§ 201(a), (c), (d), 203(a)(4), Mar. 17, 1971, 85 Stat. 6, 9, 10; Pub. L. 92–336, title II, §§ 201(a), (c)–(f), 202(a)(1), (3), 203(a)(4), July 1, 1972, 86 Stat. 406, 410–412, 416, 418; Pub. L. 92–603, title I, §§ 101(a), (c)–(e), 104(b), 134, 142(b), (c), 144(a)(1), Oct. 30, 1972, 86 Stat. 1333, 1334, 1340, 1362, 1368, 1369; Pub. L. 93–66, title II, § 203(a)(4), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §§ 1(h)(1), 2(a), 3(a)–(h), 5(a)(4), Dec. 31, 1973, 87 Stat. 948, 952, 953; Pub. L. 95–216, title I, § 103(d), title II, § 201, Dec. 20, 1977, 91 Stat. 1514, 1519; Pub. L. 96–265, title I, §§ 101(b)(3), (4), 102(a), June 9, 1980, 94 Stat. 442, 443; Pub. L. 96–473, § 6(d), Oct. 19, 1980, 94 Stat.

2265; Pub. L. 97–35, title XXII, §§ 2201(a), (b)(1)–(9), (c)(1)–(5), 2206(a), (b)(5)–(7), Aug. 13, 1981, 95 Stat. 830, 831, 838; Pub. L. 97–123, § 2(a)–(d), Dec. 29, 1981, 95 Stat. 1660; Pub. L. 98–21, title I, §§ 111(a)(1)–(3), (6), (b)(1), (2), (c), 112(a)–(d), 113(a)–(c), title II, § 201(c)(1)(C), Apr. 20, 1983, 97 Stat. 72–78, 109; Pub. L. 98–369, div. B, title VI, §§ 2661(k), 2663(a)(10), July 18, 1984, 98 Stat. 1157, 1164; Pub. L. 99–272, title XII, § 12105, Apr. 7, 1986, 100 Stat. 286; Pub. L. 99–509, title IX, § 9001(a), (b), Oct. 21, 1986, 100 Stat. 1969, 1970; Pub. L. 99–514, title XVIII, § 1883(a)(7), Oct. 22, 1986, 100 Stat. 2916; Pub. L. 100–647, title VIII, §§ 8003(a), 8011(a), (b), Nov. 10, 1988, 102 Stat. 3780, 3789; Pub. L. 101–239, title X, § 10208(b)(1), (2)(A), (B), (3), (4), (d)(2)(A)(i), Dec. 19, 1989, 103 Stat. 2477, 2478, 2480; Pub. L. 101–508, title V, §§ 5117(a)(1)–(3)(A), (C)–(E), 5122, Nov. 5, 1990, 104 Stat. 1388–274 to 1388–277, 1388–283; Pub. L. 103–296, title I, § 107(a)(4), title III, §§ 307(a), (b), 308(b), 321(a)(16), (17), (e)(2)(B)–(G), (g)(1)(C), Aug. 15, 1994, 108 Stat. 1478, 1522, 1536, 1539, 1540, 1543.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1937, referred to in subsecs. (a)(1)(C)(ii), (7)(A), and (d)(1)(C), (3), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsecs. (a)(1)(C)(ii), (7)(A) and (d)(3), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Pub. L. 93–445 completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45. For further details and complete classification of these Acts to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Section 104(j)(2) of the Social Security Amendments of 1972, referred to in subsecs. (a)(5)(B)(ii), (b)(2)(B)(iii), and (d)(1)(A), is section 104(j)(2) of Pub. L. 92–603, which is set out as a note under section 414 of this title.

Section 101 of the Social Security Amendments of 1983, referred to in subsec. (a)(7)(E)(i), is section 101 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 67, which amended sections 409 and 410 of this title and section 3121 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under section 410 of this title and section 3121 of Title 26.

Section 3121(k) of the Internal Revenue Code of 1954, referred to in subsec. (a)(7)(E)(ii), was classified to section 3121(k) of Title 26, and was repealed by Pub. L. 98–21, title I, § 102(b)(2), Apr. 20, 1983, 97 Stat. 71.

Section 102 of that Act, referred to in subsec. (a)(7)(E)(ii), is section 102 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 70, which amended section 410 of this title and section 3121 of Title 26 and enacted provisions set out as notes under section 414 of this title and section 3121 of Title 26.

Section 5117 of the Omnibus Budget Reconciliation Act of 1990, referred to in subsecs. (c), (f)(7), and (i)(4), is section 5117 of Pub. L. 101–508, title V, Nov. 5, 1990, 104 Stat. 1388–274, which amended this section and sections 403, 413, and 417 of this title, amended provisions set out as a note under section 413 of this title, and enacted provisions set out as notes under sections 403 and 413 of this title.

The 1939 Act, referred to in subsec. (d), probably means act Aug. 10, 1939, ch. 666, 53 Stat. 1360, known as the Social Security Act Amendments of 1939, which enacted sections 901a, 1306 and 1307 of this title, amended sections 302, 303, 306, 401, 402 to 409, 502, 503, 602, 603, 606, 701, 702, 703, 711, 712, 713, 714, 721, 801, 1011, 1202, 1203, 1206, 1301, of this title, section 642 of Title 7, Agriculture, section 1464 of Title 12, Banks and Banking, section 1601 of former Title 26, Internal Revenue Code of 1939, section 45b of Title 29, Labor, and enacted provisions set out as notes under section 363 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

Section 101(a)(3) of the Social Security Disability Amendments of 1980, referred to in subsec. (i)(2)(D), is section 101(a)(3) of Pub. L. 96–265, title I, June 9, 1980, 94 Stat. 442, which enacted section 403(a)(6) of this title.

Sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983, referred to in subsec. (i)(4), are sections 111(a)(6), 111(b)(2), and 112 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 72, 73, which amended subsec. (i) of this section and enacted provisions set out as notes below. See 1983 Amendment notes below.

Section 9001 of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (i)(4), is section 9001 of Pub. L. 99–509, title IX, Oct. 21, 1986, 100 Stat. 1969, which amended sections 415 and 1395r of this title and enacted provisions set out as a note below.

AMENDMENTS

1994—Subsec. (a)(1)(B)(ii). Pub. L. 103–296, § 321(e)(2)(B), in subcl. (I) substituted ''national average wage index'' for ''deemed average total wages'' and in subcl. (II) substituted ''the national average wage index (as so defined) for 1977.'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year 1977.''

Subsec. (a)(1)(C)(ii). Pub. L. 103–296, § 321(g)(1)(C), substituted ''(except that, for purposes of subsection (b) of such section 430 of this title as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to $45,000, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the national average wage index (as defined in section 409(k)(1) of this title), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subsection (a) of such section 430 of this title is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1992).'' for ''(except that, for purposes of subsection (b)(2)(A) of such section 430 of this title as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the national average wage index (within the meaning of section 409(k)(1) of this title) for such calendar year).''

Pub. L. 103–296, § 321(e)(2)(C), substituted ''national average wage index'' for ''deemed average total wages'' before ''(within the meaning''.

Subsec. (a)(1)(D). Pub. L. 103–296, § 321(e)(2)(D), substituted ''In each calendar year'' for ''In each calendar year after 1978'' and ''the national average wage index (as defined in section 409(k)(1) of this title'' for ''the average of the total wages (as described in subparagraph (B)(ii)(I)'' and struck out at end ''With the initial publication required by this subparagraph, the Secretary shall also publish in the Federal Register the average of the total wages (as so described) for each calendar year after 1950.''

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(5)(B)(i). Pub. L. 103–296, § 321(a)(16), substituted ''subsections'' for ''subsection'' before ''(b)(4) and (c)''.

Subsec. (a)(6)(B). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(7)(A). Pub. L. 103–296, § 308(b), in closing provisions struck out ''and'' before ''(II)'' and inserted '', and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)'' after ''section 433 of this title''.

Pub. L. 103–296, § 307(a)(1), in closing provisions substituted ''but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937, and (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title'' for ''but excluding a payment under the Railroad Retirement Act of 1974 or 1937''.

Subsec. (a)(7)(C)(i). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(7)(E). Pub. L. 103–296, § 307(a)(2), in introductory provisions inserted ''whose eligibility for old-age or disability insurance benefits is based on an agreement concluded pursuant to section 433 of this title or an individual'' before ''who on January''.

Subsec. (b)(3)(A)(ii)(I), (II). Pub. L. 103–296, § 321(e)(2)(E), substituted ''national average wage index'' for ''deemed average total wages''.

Subsec. (d)(1)(C). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(3). Pub. L. 103–296, § 308(b), in closing provisions struck out ''and'' before ''(II)'' and inserted '', and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)'' after ''section 433 of this title''.

Pub. L. 103–296, § 307(b), in closing provisions substituted ''but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937, and (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title'' for ''but excluding a payment under the Railroad Retirement Act of 1974 or 1937''.

Subsec. (f)(2)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner may'' for ''he may''.

Subsec. (f)(5), (6). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (f)(7). Pub. L. 103–296, § 321(a)(17), inserted a period after ''1990''.

Subsecs. (f)(8), (h)(1). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (i)(1)(E). Pub. L. 103–296, § 321(e)(2)(F)(i), substituted ''national average wage index (as defined in section 409(k)(1) of this title)'' for ''SSA average wage index''.

Subsec. (i)(1)(F)(ii). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (i)(1)(G), (H). Pub. L. 103–296, § 321(e)(2)(F)(ii), redesignated subpar. (H) as (G) and struck out former subpar. (G) which read as follows: ''the term 'SSA average wage index', with respect to any calendar year, means the amount determined for such calendar year under subsection (b)(3)(A)(ii)(I) of this section; and''.

Subsec. (i)(2)(A)(i), (ii), (C)(i). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner shall'' for ''he shall'' in introductory provisions of par. (2)(A)(ii) and in par. (2)(C)(i), and ''the Commissioner's estimate'' for ''his estimate'' in par. (2)(C)(i).

Subsec. (i)(2)(C)(ii). Pub. L. 103–296, § 321(e)(2)(G), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''The Secretary shall determine and promulgate the OASDI fund ratio for the current calendar year and the SSA wage index for the preceding calendar year before November 1 of the current calendar year, based upon the most recent data then available, and shall include a statement of such fund ratio and wage index (and of the effect such ratio and the level of such index may have upon benefit increases under this subsection) in any notification made under clause (i) and any determination published under subparagraph (D).''

Pub. L. 103–296, § 107(a)(4), in cl. (ii) as amended by Pub. L. 103–296, § 321(e)(2)(G), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (i)(2)(D). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner shall publish'' for ''he shall publish''.

Pub. L. 103–296, § 107(a)(4), which directed that this subchapter be amended by substituting ''the Commissioner'' for ''he'' wherever referring to the Secretary of Health and Human Services, was executed by substituting ''The Commissioner'' for ''He'' before ''shall also publish'', to reflect the probable intent of Congress.

Subsec. (i)(4), (5)(B). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner shall'' for ''he shall'' in closing provisions of par. (5)(B).

1990—Subsec. (a)(1)(C)(ii). Pub. L. 101–508, § 5122(a), substituted ''of not less than 25 percent (in the case of a year after 1950 and before 1978) of the maximum amount which (pursuant to subsection (e) of this section) may be counted for such year, or 25 percent (in the case of a year after 1977 and before 1991) or 15 percent (in the case of a year after 1990) of the maximum amount which (pursuant to subsection (e) of this section) could be counted for such year if'' for ''of not less than 25 percent of the maximum amount which, pursuant to subsection (e) of this section, may be counted for such year, or of not less than 25 percent of the maximum amount which could be so counted for such year (in the case of a year after 1977) if''.

Subsec. (a)(5). Pub. L. 101–508, § 5117(a)(1), designated existing provision as subpar. (A), substituted ''Subject to subparagraphs (B), (C), (D), and (E), for purposes of'' for ''For purposes of'', struck out at end ''The table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) of this section for each year after 1978.'', and added subpars. (B) to (E).

Subsec. (a)(7)(A), (C)(ii). Pub. L. 101–508, § 5117(a)(3)(E)(ii), substituted ''subsection (d)(3)'' for ''subsection (d)(5)''.

Subsec. (a)(7)(D). Pub. L. 101–508, § 5122(b), struck out ''(as defined in paragraph (1)(C)(ii))'' before period at end of first sentence and inserted at end ''For purposes of this subparagraph, the term 'year of coverage' shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to '15 percent' therein shall be deemed to be a reference to '25 percent'.''

Subsec. (c). Pub. L. 101–508, § 5117(a)(3)(C), substituted ''Subject to the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990, this'' for ''This''.

Subsec. (d)(1)(A). Pub. L. 101–508, § 5117(a)(2)(A)(i), inserted ''and subject to section 104(j)(2) of the Social Security Amendments of 1972'' after ''thereof''.

Subsec. (d)(1)(B)(i), (ii). Pub. L. 101–508, § 5117(a)(2)(A)(ii), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1936 and prior to 1950 shall be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after the year in which the individual attained age 20 and prior to 1951; and

''(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1949 shall be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after 1949 and prior to 1951.''

Subsec. (d)(1)(B)(iii). Pub. L. 101–508, § 5117(a)(2)(B), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the year immediately preceding the earliest year used in computing the amount of the divisor, or (II) if $3,000 or more, shall be deemed credited, in $3,000 increments, to the year immediately preceding the earliest year used in computing the amount of the divisor and to each year consecutively preceding that year, with any remainder less than $3,000 being credited to the year immediately preceding the earliest year to which a full $3,000 increment was credited; and''.

Subsec. (d)(2)(B). Pub. L. 101–508, § 5117(a)(2)(C)(i), struck out ''except as provided in paragraph (3),'' after ''(B)''.

Subsec. (d)(2)(C). Pub. L. 101–508, § 5117(a)(2)(C)(ii), added subpar. (C) and struck out former subpar. (C) which read as follows:

''(C)(i) who becomes entitled to benefits under section 402(a) or 423 of this title after January 2, 1968, or

''(ii) who dies after such date without being entitled to benefits under section 402(a) or 423 of this title, or

''(iii) whose primary insurance amount is required to be recomputed under subsection (f)(2) or (6) of this section or section 431 of this title.''

Subsec. (d)(3) to (5). Pub. L. 101–508, § 5117(a)(2)(C)(iii), (3)(E)(i), redesignated par. (5) as (3) and struck out former pars. (3) and (4) which read as follows:

''(3) The provisions of this subsection as in effect prior to January 2, 1968, shall be applicable in the case of an individual who had a period of disability which began prior to 1951, but only if the primary insurance amount resulting therefrom is higher than the primary insurance amount resulting from the application of this section (as amended by the Social Security Amendments of 1967) and section 420 of this title.

''(4) The provisions of this subsection as in effect in December 1977 shall be applicable to individuals who become eligible for old-age or disability insurance benefits or die prior to 1978.''

Subsec. (f)(7). Pub. L. 101–508, § 5117(a)(3)(D), substituted '', including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990'' for period at end of first sentence.

Subsec. (f)(9)(A). Pub. L. 101–508, § 5117(a)(3)(E)(ii), substituted ''subsection (d)(3)'' for ''subsection (d)(5)'' in two places.

Subsec. (f)(9)(B). Pub. L. 101–508, § 5117(a)(3)(E)(iii), substituted ''or (d)(3)'' for ''or (d)(5)'' wherever appearing.

Subsec. (i)(4). Pub. L. 101–508, § 5117(a)(3)(A), inserted ''and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990'' after ''as then in effect'' in first sentence.

1989—Subsec. (a)(1)(B)(ii)(I). Pub. L. 101–239, § 10208(b)(2)(A), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, § 10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (a)(1)(B)(ii)(II). Pub. L. 101–239, § 10208(b)(2)(B), substituted ''(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title)'' for ''(as so defined and computed)''.

Subsec. (a)(1)(C)(ii). Pub. L. 101–239, § 10208(b)(4), substituted ''change (except that, for purposes of subsection (b)(2)(A) of such section 430 of this title as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wages (within the meaning of section 409(k)(1) of this title) for such calendar year)'' for ''change''.

Subsec. (b)(3)(A)(ii)(I). Pub. L. 101–239, § 10208(b)(1)(C), struck out ''(after 1976)'' after ''calendar year''.

Pub. L. 101–239, § 10208(b)(1)(A), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, § 10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (b)(3)(A)(ii)(II). Pub. L. 101–239, § 10208(b)(1)(B), substituted ''the deemed average total wages (as so defined)'' for ''the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate''.

Subsec. (i)(1)(G). Pub. L. 101–239, § 10208(b)(3), substituted ''the amount determined for such calendar year under subsection (b)(3)(A)(ii)(I)'' for ''the average of the total wages reported to the Secretary of the Treasury or his delegate as determined for purposes of subsection (b)(3)(A)(ii)''.

1988—Subsec. (a)(7)(A). Pub. L. 100–647, § 8011(a)(1), struck out ''with respect to the initial month in which the individual becomes eligible for such benefits'' before period at end.

Subsec. (a)(7)(B)(i). Pub. L. 100–647, § 8011(a)(2), substituted ''concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits'' for ''eligibility for old-age or disability insurance benefits''.

Subsec. (a)(7)(C)(iii), (iv). Pub. L. 100–647, § 8011(a)(3), redesignated cl. (iv) as (iii) and struck out former cl. (iii) which read as follows: ''If an individual to whom subparagraph (A) applies is eligible for a periodic payment beginning with a month that is subsequent to the month in which he or she becomes eligible for old-age or disability insurance benefits, the amount of that payment (for purposes of subparagraph (B)) shall be deemed to be the amount to which he or she is, or is deemed to be, entitled (subject to clauses (i), (ii), and (iv) of this subparagraph) in such subsequent month.''

Subsec. (a)(7)(D). Pub. L. 100–647, § 8003(a), in introductory provisions, substituted ''20 years'' for ''25 years'' and ''shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the applicable percent specified in the following table:'' for ''shall (if such percent is smaller than the percent specified in whichever of the following clauses applies) be deemed to be—'', and substituted table for former cls. (i) to (iv) which read as follows:

''(i) 80 percent, in the case of an individual who has 29 of such years of coverage;

''(ii) 70 percent, in the case of an individual who has 28 of such years;

''(iii) 60 percent, in the case of an individual who has 27 of such years; and

''(iv) 50 percent, in the case of an individual who has 26 of such years.''

Subsec. (d)(5)(ii). Pub. L. 100–647, § 8011(b), substituted ''such concurrent entitlement'' for ''his or her eligibility for old-age or disability insurance benefits''.

1986—Subsec. (i)(1)(B). Pub. L. 99–509, § 9001(a), substituted ''percentage is greater than zero'' for ''percentage is 3 percent or more''.

Pub. L. 99–509, § 9001(b)(2)(A), amended subpar. (B), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out '', by not less than 3 per centum,'' after ''Department of Labor exceeds''.

Subsec. (i)(2)(C)(i). Pub. L. 99–509, § 9001(b)(1)(A)(i), redesignated cl. (ii) as (i) and struck out former cl. (i)

which read as follows: ''Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.''

Pub. L. 99–509, § 9001(b)(2)(B), amended subpar. (C), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out cl. (i) which read as follows: ''Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.''

Subsec. (i)(2)(C)(ii). Pub. L. 99–509, § 9001(b)(1)(A), redesignated cl. (iii) as (ii) and substituted ''under clause (i)'' for ''under clause (ii)''. Former cl. (ii) redesignated (i).

Pub. L. 99–509, § 9001(b)(2)(B), amended subpar. (C), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out cl. (ii) designation.

Subsec. (i)(2)(C)(iii). Pub. L. 99–509, § 9001(b)(1)(A)(i), redesignated cl. (iii) as (ii).

Subsec. (i)(4). Pub. L. 99–509, § 9001(b)(1)(B), inserted ''and by section 9001 of the Omnibus Budget Reconciliation Act of 1986''.

Pub. L. 99–272 substituted ''the Secretary shall revise the table of benefits contained in subsection (a) of this section, as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Secretary publish such revision of the table of benefits in the Federal Register shall not apply'' for ''the Secretary shall publish in the Federal Register revisions of the table of benefits contained in subsection (a) of this section, as in effect in December 1978, as required by paragraph (2)(D) of this subsection as then in effect''.

Subsec. (i)(5)(A)(i). Pub. L. 99–509, § 9001(b)(1)(C), substituted ''because there was no wage increase percentage greater than zero'' for ''because the wage increase percentage was less than 3 percent''.

Subsec. (i)(5)(B). Pub. L. 99–514, § 1883(a)(7), substituted ''clause (i)(I)'' for ''subdivision (I)'' in cl. (ii) and ''clause (i)'' for ''subdivisions (I) and (II)'' in provisions between cls. (iii) and (iv).

1984—Subsec. (a)(1)(B)(i). Pub. L. 98–369, § 2663(a)(10)(A)(i), substituted ''for such benefits'' for ''of such benefits''.

Subsec. (a)(1)(B)(iii). Pub. L. 98–369, § 2663(a)(10)(A)(ii), substituted ''amount'' for ''amounts'' after ''except that any''.

Subsec. (a)(1)(C)(ii). Pub. L. 98–369, § 2663(a)(10)(A)(iii), substituted ''section 217'' for ''scetion 217'' after ''deemed to be paid to such individual under''.

Subsec. (a)(4)(B). Pub. L. 98–369, § 2663(a)(10)(B), realigned margins of subpar. (B).

Subsec. (a)(7)(B)(ii)(I). Pub. L. 98–369, § 2661(k)(1), substituted ''who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62)'' for ''who initially become eligible for old-age or disability insurance benefits''.

Subsec. (a)(7)(C)(ii). Pub. L. 98–369, § 2661(k)(2), substituted ''survivor's'' for ''survivors''.

Subsec. (f)(2)(A). Pub. L. 98–369, § 2663(a)(10)(C), substituted ''primary insurance amount'' for ''primary insurance account''.

Subsec. (f)(9)(B)(i). Pub. L. 98–369, § 2661(k)(3), substituted ''as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(5)'' for ''as though such primary insurance amount had initially been computed without regard to subsection (a)(7) or (d)(5)''.

Subsec. (h)(1). Pub. L. 98–369, § 2663(a)(10)(D)(ii), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (i)(5)(A). Pub. L. 98–369, § 2661(k)(4), inserted provision that any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

Subsec. (i)(5)(B)(iii). Pub. L. 98–369, § 2661(k)(5)(A), substituted ''so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent)'' for ''and rounding to the nearest one-tenth of 1 percent''.

Subsec. (i)(5)(B)(iv), (v). Pub. L. 98–369, § 2661(k)(5)(B), (C), substituted ''ending with the year before such subsequent calendar year'' for ''ending with such subsequent calendar year'' in cls. (iv) and (v) and ''became eligible (as defined in subsection (a)(3)(B) of this section) for the old-age or disability insurance benefit that is being increased under this subsection'' for ''initially became eligible for an old-age or disability insurance benefit'' in cl. (v).

1983—Subsec. (a)(7). Pub. L. 98–21, § 113(a), added par. (7).

Subsec. (d)(5). Pub. L. 98–21, § 113(b), added par. (5).

Subsec. (f)(5). Pub. L. 98–21, § 201(c)(1)(C), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65''.

Subsec. (f)(9). Pub. L. 98–21, § 113(c), added par. (9).

Subsec. (i)(1)(A). Pub. L. 98–21, § 111(b)(1), substituted ''September 30'' for ''March 31'' and ''1982'' for ''1974''.

Pub. L. 98–21, § 111(b)(2), amended subpar. (A), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting ''September 30'' for ''March 31'' and ''1982'' for ''1974''.

Subsec. (i)(1)(B). Pub. L. 98–21, § 112(a)(1), substituted ''with respect to which the applicable increase percentage is 3 percent or more'' for ''in which the Consumer Price Index prepared by the Department of Labor exceeds, by not less than 3 per centum, such Index in the later of (i) the last prior cost-of-living computation quarter which was established under this subparagraph, or (ii) the most recent calendar quarter in which occurred the effective month of a general benefit increase under this subchapter''.

Subsec. (i)(1)(C) to (H). Pub. L. 98–21, § 112(a)(3), (4), added subpars. (C) to (G) and redesignated former subpar. (C) as (H).

Subsec. (i)(2)(A)(ii). Pub. L. 98–21, § 112(b), in provisions immediately following subcl. (iii), substituted ''by the applicable increase percentage'' for ''by the same percentage (rounded to the nearest one-tenth of 1 percent) as the percentage by which the Consumer Price Index for that cost-of-living computation quarter exceeds such index for the most recent prior calendar quarter which was a base quarter under paragraph (1)(A)(ii) or, if later, the most recent cost-of-living computation quarter under paragraph (1)(B)''.

Pub. L. 98–21, § 111(a)(1), substituted ''December'' for ''June'' in provisions preceding subcl. (I).

Pub. L. 98–21, § 111(a)(6), amended par. (2), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting in the provisions preceding subpar. (A)(ii)(I) ''December'' for ''June''.

Subsec. (i)(2)(A)(iii). Pub. L. 98–21, § 111(a)(2), substituted ''November'' for ''May''.

Subsec. (i)(2)(B). Pub. L. 98–21, § 111(a)(3), substituted ''November'' for ''May'' in two places.

Pub. L. 98–21, § 111(a)(6), amended par. (2), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting in subpar. (B) ''November'' for ''May'' in two places.

Subsec. (i)(2)(C)(iii). Pub. L. 98–21, § 112(d)(1), added cl. (iii).

Subsec. (i)(4). Pub. L. 98–21, § 112(d)(2), inserted reference to amendments made by section 112 of the Social Security Amendments of 1983.

Pub. L. 98–21, §111(c), inserted reference to amendments made by section 111(a)(6) and 111(b)(2) of the Social Security Amendments of 1983.

Subsec. (i)(5). Pub. L. 98–21, §112(c), added par. (5).

1981—Subsec. (a)(1)(A). Pub. L. 97–35, §2206(b)(5), substituted in provision following cl. (iii) ''rounded, if not a multiple of $0.10, to the next lower multiple of $0.10,'' for ''rounded in accordance with subsection (g) of this section''.

Subsec. (a)(1)(C)(i). Pub. L. 97–35, §2201(a), struck out provisions that primary insurance amount computed under subpar. (A) not be less than the dollar amount set forth on first line of column IV in table of benefits contained, or deemed to be contained in, this subsection as in effect in December 1978, rounded, if not a multiple of $1, to next higher multiple of $1 and that no increase under subsec. (i) of this section, except as provided in subsec. (i)(2)(A) of this section, apply to dollar amount so specified.

Subsec. (a)(1)(C)(ii). Pub. L. 97–35, §2201(b)(1), substituted ''For the purposes of clause (i)'' for ''For the purposes of clause (i)(II)''.

Subsec. (a)(3)(A). Pub. L. 97–35, §2201(b)(2), substituted ''subparagraph (C)(i)'' for ''subparagraph (C)(i)(II)''.

Subsec. (a)(4). Pub. L. 97–35, §2201(b)(3), (c)(2), substituted in provision preceding subpar. (A) ''subparagraph (C)(i)'' for ''subparagraph (C)(i)(II)'' and in provision following subpar. (B) '', as modified by paragraph (6)'' and struck out ''but without regard to clauses (iv) and (v) thereof'' after ''subsection (i)(2)(A) of this section''.

Subsec. (a)(5). Pub. L. 97–123, §2(a)(1), struck out '', and the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be modified as specified in paragraph (6)'', and substituted ''December 1978 shall be revised'' for ''December 1978, modified by the application of paragraph (6), shall be revised''.

Pub. L. 97–35, §2201(c)(3), inserted '', and the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be modified as specified in paragraph (6)'' and substituted ''December 1978, modified by the application of paragraph (6), shall be revised'' for ''December 1978 shall be revised''.

Subsec. (a)(6). Pub. L. 97–123, §2(a)(2), substituted in subpar. (A) ''In applying the table of benefits in effect in December 1978 under this section for purposes of the last sentence of paragraph (4), such table, revised as provided by subsection (i) of this section, as applicable, shall be extended'' for ''The table of benefits in effect in December 1978 under this section, referred to in paragraph (4) in the matter following subparagraph (B) and in paragraph (5), revised as provided by subsection (i) of this section, as applicable, shall be extended''.

Pub. L. 97–35, §2201(c)(1), added par. (6).

Subsec. (f)(7). Pub. L. 97–123, §2(b), inserted provisions that effective January 1982, the recomputation shall be modified by the application of subsec. (a)(6) of this section where applicable, and struck out provision that the recomputation shall be modified by the application of subsec. (a)(6) of this section, where applicable.

Pub. L. 97–35, §2201(c)(4), inserted provision that the recomputation be modified by the application of subsec. (a)(6) of this section, where applicable.

Subsec. (f)(8). Pub. L. 97–35, §2201(b)(4), substituted ''subsection (a)(1)(C)(i) of this section'' for ''subsection (a)(1)(C)(i)(II) of this section''.

Subsec. (g). Pub. L. 97–35, §2206(a), struck out ''any primary insurance amount and the amount of'' after ''The amount of'' and substituted ''(after any reduction under sections 403(a) and 424 of this title and any deduction under section 403(b) of this title, and after any deduction under section 1395s(a)(1) of this title) is not a multiple of $1 shall be rounded to the next lower multiple of $1'' for ''(after reduction under section 403(a) of this title and deductions under section 403(b) of this title) is not a multiple of $0.10 shall be raised to the next higher multiple of $0.10''.

Subsec. (i)(2)(A)(ii). Pub. L. 97–35, §2201(b)(5), (6), in subcl. (II) struck out ''(including a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, but subject to the provisions of such subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph)'' after ''under this subchapter'' and in provision following subcl. (III) substituted ''subparagraph (C)(i)'' for ''subparagraph (C)(i)(II)''.

Pub. L. 97–35, §2206(b)(6), substituted in provision following subcl. (III) ''decreased to the next lower'' for ''increased to the next higher''.

Subsec. (i)(2)(A)(iii). Pub. L. 97–123, §2(c), inserted ''and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section in the case of an individual to whom that subsection (as in effect in December 1981) applied, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)'' after ''provision of this subchapter''.

Pub. L. 97–35, §2201(b)(7), struck out ''and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph'' after ''provision of this subchapter''.

Subsec. (i)(2)(A)(iv). Pub. L. 97–35, §2201(b)(8), struck out cl. (iv) which related to increases in the primary insurance amount for individuals entitled to old-age insurance benefits, individuals entitled to insurance benefits under section 402(e) and (f) of this title, increases that would otherwise apply except for provisions of this clause, and increases occurring in a later year not applicable to the primary insurance amount on account of provisions of this clause.

Subsec. (i)(2)(A)(v). Pub. L. 97–35, §2201(b)(8), struck out cl. (v) which provided, that notwithstanding cl. (iv), no primary insurance amount be less than that provided under subsec. (a)(1) of this section without regard to subpar. (C)(i)(I) thereof, as subsequently increased by applicable increases under this section.

Subsec. (i)(2)(D). Pub. L. 97–35, §2201(b)(9), substituted ''subparagraph (C)(i)'' for ''subparagraph (C)(i)(II)'' in two places.

Subsec. (i)(4). Pub. L. 97–123, §2(d), struck out '', modified by the application of subsec. (a)(6) of this section,''.

Pub. L. 97–35, §2201(c)(5), inserted '', modified by the application of subsec. (a)(6) of this section,''.

Pub. L. 97–35, §2206(b)(7), inserted ''except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v) of this subsection as in effect in December 1978, the phrase 'increased to the next higher multiple of $0.10' shall be deemed to read 'decreased to the next lower multiple of $0.10' ''.

1980—Subsec. (a)(4)(B). Pub. L. 96–473 substituted ''recomputation'' for ''recommendation''.

Subsec. (b)(2)(A). Pub. L. 96–265, §102(a), designated existing provisions as cl. (i), inserted provision limiting its applicability to individuals who are entitled to old-age insurance benefits (except as provided in the second sentence of this subparagraph) or who have died, and added cl. (ii) and provisions following cl. (ii).

Subsec. (i)(2)(A)(ii)(III). Pub. L. 96–265, §101(b)(3), substituted ''section 403(a)(7) and (8)'' for ''section 403(a)(6) and (7)''.

Subsec. (i)(2)(D). Pub. L. 96–265, §101(b)(4), inserted sentence providing that revision of maximum family benefits shall be subject to paragraph (6) of section 403(a) of this title (as added by section 101(a)(3) of the Social Security Disability Amendments of 1980).

1977—Subsec. (a). Pub. L. 95–216, §201(a), amended provisions under which primary insurance amount of an individual is determined by substituting provisions which employ a formula using percentages of different portions of the individual's average indexed monthly earnings for provisions under which the primary insurance amount of an insured individual was determined through references to a five-column table covering primary insurance amounts and maximum family benefits.

Subsec. (b). Pub. L. 95–216, § 201(b), substituted provisions setting up a formula for determining an individual's average indexed monthly earnings using benefit computation years, computation base years, and elapsed years as factors in the determination, for provisions that had set a formula for determining an individual's average monthly wage.

Subsec. (c). Pub. L. 95–216, § 201(c), substituted provisions that this subsection as in effect in Dec. 1978, will remain in effect with respect to an individual to whom subsec. (a)(1) of this section does not apply by reason of the individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979, for provisions under which, for the purposes of column II of the latest table that had appeared in (or was deemed to have appeared in) subsec. (a) of this section, an individual's primary insurance amount was to be computed on the basis of the law in effect prior to the month in which the latest such table had become effective, but with a limitation that this subsection was to be applicable only in the case of an individual who had become entitled to benefits under section 402(a) or section 423 of this title, or who had died, before such effective month.

Subsec. (d)(1)(A). Pub. L. 95–216, § 201(d)(1), inserted provisions in subsec. (d)(1)(A) and preceding introductory provision directing that existing references to subsecs. (a) and (b) of this section be deemed reference to such subsecs. (a) and (b) as they were in effect in Dec. 1977.

Subsec. (d)(1)(B). Pub. L. 95–216, § 201(d)(1), made a parenthetical insertion which limited the existing references to subpars. (B) and (C) of subsec. (b)(2) of this section to those provisions as they had been in effect in Dec. 1977, and introduced a simplified method, using the concept of a divisor and a quotient, for computing the primary insurance amounts of workers age 21 after 1936 and before 1951 when wages before 1951 are included in the computations.

Subsec. (d)(1)(D). Pub. L. 95–216, § 201(d)(2), substituted ''40 percent'' for ''45.6 per centum'' and ''plus 10 percent of the next $200 of his average monthly wage, increased by 1 percent for each increment year'' for ''plus 11.4 per centum of the next $200 of such average monthly wage'' in existing provisions and inserted provisions that the number of increment years in the number, not more than 14 nor less than 4, that is equal to the individual's total wages prior to 1951 divided by $1,650 (disregarding any fraction).

Subsec. (d)(3). Pub. L. 95–216, § 201(d)(3), struck out requirement that when wages prior to 1951 are included in computing the average monthly wages of an individual who attains age 21 after 1936 and prior to 1951, the present law computation provisions in effect before the Social Security Amendments of 1967 must be used.

Subsec. (d)(4). Pub. L. 95–216, § 201(d)(4), added par. (4).

Subsec. (e)(1). Pub. L. 95–216, § 201(e), substituted ''average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage'' for ''average monthly wage'' and ''(before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A) of this section) of (A) the wages paid to him in such year'' for ''of (A) the wages paid to him in such year''.

Subsec. (e)(2). Pub. L. 95–216, § 201(e), substituted ''average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage''.

Subsec. (f)(2). Pub. L. 95–216, § 201(f)(1), generally expanded provisions for recomputing primary insurance amounts for individuals with wages or self-employment income for years after 1978 for any part of which the individuals are entitled to old-age or disability insurance benefits.

Subsec. (f)(3). Pub. L. 95–216, § 201(f)(2), struck out par. (3) which had provided for the recomputation of primary insurance amounts for workers who had self-employment income in 1952 and who had applied for benefits or died prior to 1961.

Subsec. (f)(4). Pub. L. 95–216, § 201(f)(3), substituted ''A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least $1'' for ''Any recomputation under this subsection shall be effective only if such recomputation results in a higher primary insurance amount''.

Subsec. (f)(7), (8). Pub. L. 95–216, § 201(f)(4), added pars. (7) and (8).

Subsec. (i)(2)(A)(ii). Pub. L. 95–216, § 201(g)(1), specified that an automatic benefit increase effective for June of a year in which the Secretary determines that a cost-of-living computation quarter, which triggers such an increase, has occurred will apply to benefits of those entitled to special payments under sections 427 and 428 of this title, to the primary insurance amounts on which beneficiaries are entitled including the frozen minimum primary insurance amounts and special minimum primary insurance amounts, and to the maximum family benefits at the same time as the primary insurance amounts on which they are based, where a primary insurance amount was computed under the law in effect in December 1978 will be increased at the same time as the primary insurance amounts, except as provided in section 403(a)(7) and (7) of this title.

Subsec. (i)(2)(A)(iii) to (v). Pub. L. 95–216, § 201(g)(2), added cls. (iii) to (v).

Subsec. (i)(2)(D). Pub. L. 95–216, § 201(g)(3), substituted provisions directing publication in the Federal Register of revisions of the range of primary insurance amounts and of the range of maximum family benefits for provisions that had directed publication of the revision of the table of benefits formerly set out in subsec. (a) and had set out the method of determining the revision of the table.

Subsec. (i)(2)(D)(v). Pub. L. 95–216, § 103(d), substituted in cl. (v) ''is equal to, or exceeds by less than $5, one-twelfth of the new contribution and benefit base'' for ''is equal to one-twelfth of the new contribution and benefit base'' and ''plus 20 percent of the excess of the second figure in the last line of column III as extended under the preceding sentence over such second figure for the calendar year in which the table of benefits is revised'' for ''plus 20 percent of one-twelfth of the excess of the new contribution and benefit base for the calendar year following the calendar year in which such table of benefits is revised (as determined under section 430 of this title) over such base for the calendar year in which the table of benefits is revised'' in third sentence.

Subsec. (i)(4). Pub. L. 95–216, § 201(g)(4), added par. (4).

1973—Subsec. (a). Pub. L. 93–233, § 2(a), in revising benefits table: in column II, substituted ''Primary insurance amount effective for September 1972'' for ''Primary insurance amount under 1971 Act'' and increased benefit amounts to $84.50–$404.50 from $70.40–$295.40; in column III, increased benefit amounts to $76 to $1,096–$1,100 from $76 to $996–$1,000; in column IV, increased benefit amounts to $93.80–$469.00 from $84.50–$404.50; and in column V, increased benefit amounts to $140.80–$820.80 from $126.80–$707.90.

Subsec. (a)(3). Pub. L. 93–233, § 1(h)(1), substituted ''$9.00'' for ''$8.50''.

Subsec. (e)(1). Pub. L. 93–233, § 5(a)(4), substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000''.

Subsec. (i)(1)(A)(i). Pub. L. 93–233, § 3(a), substituted ''calendar quarter ending on March 31 in each year after 1974'' for ''calendar quarter ending on June 30 in each year after 1972''.

Subsec. (i)(1)(B)(ii). Pub. L. 93–233, § 3(b), substituted in exception provision ''if in the year prior to such year a law has been enacted providing a general benefit increase under this subchapter or if in such prior year such a general benefit increase becomes effective'' for ''in which a law has been enacted providing a general benefit increase under this subchapter or in which such a benefit increase becomes effective''.

Subsec. (i)(2)(A)(i). Pub. L. 93–233, § 3(c), substituted ''1975'' for ''1974'' and struck out ''and to subparagraph (E) of this paragraph'' after ''paragraph (1)(B)''.

Subsec. (i)(2)(A)(ii). Pub. L. 93–233, §3(d)(1)–(3), substituted ''the base quarter in any year'' and ''June of such year'' for ''such base quarter'' and ''January of the next calendar year'' and struck out ''(subject to subparagraph (E))'' before ''as provided in subparagraph (B)'', respectively.

Subsec. (i)(2)(B). Pub. L. 93–233, §3(e), substituted ''May'' for ''December'' in two places and struck out ''(subject to subparagraph (E))'' after ''shall apply''.

Subsec. (i)(2)(C)(ii). Pub. L. 93–233, §3(f), substituted ''within 30 days after the close of such quarter'' for ''on or before August 15 of such calendar year''.

Subsec. (i)(2)(D). Pub. L. 93–233, §3(g), substituted ''within 45 days after the close of such quarter'' for ''on or before November 1 of such calendar year''.

Subsec. (i)(2)(E). Pub. L. 93–233, §3(h), struck out subpar. (E) providing that ''Notwithstanding a determination by the Secretary under subparagraph (A) that a base quarter in any calendar year is a cost-of-living computation quarter (and notwithstanding any notification or publication thereof under subparagraph (C) or (D)), no increase in benefits shall take effect pursuant thereto, and such quarter shall be deemed not to be a cost-of-living computation quarter, if during the calendar year in which such determination is made a law providing a general benefit increase under this subchapter is enacted or becomes effective.''

1972—Subsec. (a). Pub. L. 92–336, §202(a)(3)(A), inserted ''(or, if larger, the amount in column IV of the latest table deemed to be such table under subsection (i)(2)(D))'' after ''the following table'' in par. (1)(A), and ''(whether enacted by another law or deemed to be such table under subsection (i)(2)(D))'' after ''effective month of a new table'' in par. (2).

Pub. L. 92–336, §201(a), revised benefits table by substituting ''Primary insurance amount under 1971 Act'' for ''Primary insurance amount under 1969 Act'' and $70.40–$295.40 for $64.00 or less—$250.70 in column II, adding $751–$996 under minimum average monthly wage subcolumn of column III, adding $755–$1000 under maximum average monthly wage subcolumn of column III, substituting $84.50–$404.50 for $70.40–$295.40 in column IV, and $126.80–$707.90 for $105.60–$517.00 in column V.

Pub. L. 92–336, §201(c), inserted ''The primary insurance amount of an insured individual shall be determined as follows:'' after ''(a)'', redesignated introductory material and pars. (1) to (3) as par. (1) and subpars. (A) to (C) respectively, and as so redesignated, in par. (1) inserted provision relating to exception in par. (2) and in subpars. (A) to (C) made changes in phraseology, and redesignated par. (4) as par. (2) and as so redesignated, inserted provisions relating to determination of primary insurance amount where individual was entitled to disability insurance benefits under section 423 of this title.

Subsec. (a)(1). Pub. L. 92–603, §101(a)(1), inserted reference to paragraph (3) in provisions preceding subpar. (A).

Subsec. (a)(2). Pub. L. 92–603, §101(c), designated existing provisions as subpar. (A), inserted ''(whether enacted by another law or deemed to be such table under subsection (i)(2)(D) of this section)'', and added subpar. (B).

Subsec. (a)(3). Pub. L. 92–603, §101(a)(2), added par. (3) and provisions following such par. (3) covering the individual's ''years of coverage'' for purposes of par. (3).

Pub. L. 92–603, §144(a)(1), substituted in column II ''254.40'' for ''251.40'' and in column III ''696'' for ''699''.

Subsec. (b)(3). Pub. L. 92–603, §104(b), struck out provisions setting a separate age computation point for women and reduced from age 65 to age 62 the age computation point for men.

Subsec. (b)(4). Pub. L. 92–336, §202(a)(3)(B), substituted provisions relating to an individual who becomes entitled to benefits in or after the month in which a new table that appears in (or is deemed by subsec. (i)(2)(D) to appear in) subsec. (a) becomes effective for provisions relating to an individual who becomes entitled to benefits after August 1972 in subpar. (A), substituted provisions relating to an individual who dies in or after the month in which such table becomes effective for provisions relating to an individual who dies after August 1972 in subpar. (B), and added subpar. (C).

Pub. L. 92–336, §201(d), substituted ''August 1972'' for ''December 1970'' in two places.

Subsec. (c). Pub. L. 92–336, §202(a)(3)(C), substituted provisions relating to the computation of an individual's primary insurance amount based on the law in effect prior to the month in which the latest table appearing in (or is deemed to be appearing in) subsec. (a) of this section becomes effective, for provisions relating to the computation of an individual's primary insurance amount based on the law in effect prior to September 1972 in subpar. (1), and substituted '', or who died, before such effective month'' for ''before September 1972, or who died before such month'' in subpar. (2).

Pub. L. 92–336, §201(e), substituted ''September 1972'' for ''March 17, 1971'' in two places, and ''month'' for ''date''.

Subsec. (d)(1)(C)(iv). Pub. L. 92–603, §142(b), added cl. (iv).

Subsec. (d)(2). Pub. L. 92–603, §§134(b), 142(c), inserted references to subsec. (f)(6) of this section and section 431 of this title.

Subsec. (e)(1). Pub. L. 92–336, §203(a)(4), inserted provisions eliminating from the computation of an individual's average monthly wage excess amounts in calendar years after 1971 and before 1975, and excess over amounts equal to the contribution and benefit base in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective.

Subsec. (f)(2). Pub. L. 92–603, §§101(d), 134(a)(1), inserted reference to subsec. (a)(3) of this section in provisions preceding subpar. (A) and in subpar. (B) struck out provision relating to any individual whose increase in his primary insurance amount is attributable to compensation which, upon his death, is treated as remuneration for employment under section 405(*o*) of this title.

Pub. L. 92–336, §201(f), substituted ''subsection (a)(1)(A) and (C) of this section'' for ''subsection (a) (1) and (3) of this section.''

Subsec. (f)(6). Pub. L. 92–603, §134(a)(2), added par. (6).

Subsec. (i). Pub. L. 92–336, §202(a)(1), added subsec. (i).

Subsec. (i)(2)(A)(ii). Pub. L. 92–603, §101(e), inserted ''(but not including a primary insurance amount determined under subsection (a)(3) of this section)'' after ''under this subchapter''.

1971—Subsec. (a). Pub. L. 92–5, §201(a), revised benefits table by: substituting ''Primary insurance amount under 1969 Act'' for ''Primary insurance amount under 1967 Act'' and $64.00 or less—$250.70 for $55.40 or less—$218.00 in column II, adding $653–$746 under minimum average monthly wage subcolumn of column III, striking out $650 and adding $652–$750 under maximum average monthly wage subcolumn of column III, substituting $70.40–$295.40 for $64.00–$250.70 in column IV, and $105.60–$517.00 for $96.00–$434.40 in column V.

Subsec. (b)(4). Pub. L. 92–5, §201(c), substituted ''December 1970'' for ''December 1969'' in two places.

Subsec. (c). Pub. L. 92–5, §201(d), substituted ''prior to March 17, 1971'' for ''prior to December 30, 1969'' in subpar. 1, and substituted ''before March 17, 1971, or who died before such date'' for ''before January 1970, or who died before such month'' in subpar. 2.

Subsec. (e)(1). Pub. L. 92–5, §203(a)(4), substituted ''the excess over $7,800 in the case of any calendar year after 1967 and before 1972, and the excess over $9,000 in the case of any calendar year after 1971'' for ''and the excess over $7,800 in the case of any calendar year after 1967''.

1969—Subsec. (a). Pub. L. 91–172, §1002(a), revised benefits table to increase: the primary insurance amount limits to $64.00–$250.70 for people whose average monthly wage is $76.00 or less for the minimum, and $650.00 for the maximum, the primary insurance amounts of retired workers on the benefit rolls from $48.00 or less to $55.40 at the minimum, and from $168.00 to $218.00 at the maximum, and the family benefits limits to $96.00–$434.40 from $82.50–$434.40.

Subsec. (b)(4). Pub. L. 91–172, § 1002(c), substituted references to December 1969 for references to January 1968.

Subsec. (c). Pub. L. 91–172, § 1002(d), substituted ''December 30, 1969'' for ''January 2, 1968'' in subpar. (1), and ''January 1970'' for ''February 1968'' in subpar. (2).

1968—Subsec. (a). Pub. L. 90–248, § 101(a), revised benefits table to increase: the primary insurance amount limits to $55.00—$218.00 for people whose average monthly wage is $74.00 or less for the minimum and $650.00 for the maximum, the primary insurance amounts of retired workers on the benefit rolls from $48.00 or less to $55.00 at the minimum and from $168.00 to $189.90 at the maximum, and the family benefit limits to $82.50–$434.40 from $66.00–$368.00.

Subsec. (b)(4). Pub. L. 90–248, § 101(c)(1), amended par. (4) generally, substituting ''January 1968'' for ''December 1965'' in subpars. (A) and (B), striking out '', as amended by the Social Security Amendments of 1965;'' at end of subpar. (C), and striking out provision that the subsection would not apply to any individual described therein for purposes of monthly benefits for months before January 1966.

Subsec. (b)(5). Pub. L. 90–248, § 101(c)(2), struck out par. (5) which preserved the method in effect before the enactment of the 1965 amendments of computing average monthly earnings for people who become entitled to benefits or a recomputation of benefits before 1966.

Subsec. (c). Pub. L. 90–248, § 101(d), substituted ''1965 Act'' for ''1958 Act, as modified'' in heading and ''on the basis of the law in effect prior to the enactment of the Social Security Amendments of 1967'' for ''as provided in, and subject to the limitations specified in, (A) this section as in effect prior to July 30, 1965 and (B) the applicable provisions of the Social Security Amendments of 1960'' in par. (1) and ''the month of February 1968, or who died before such month'' for ''July 30, 1965 or who died before such date'' in par. (2).

Subsec. (d)(1). Pub. L. 90–248, § 155(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purposes of column I of the table appearing in subsection (a) of this section. An individual's primary insurance benefit shall be computed as provided in this subchapter as in effect prior to August 28, 1950, except that—

''(A) In the computation of such benefit, such individual's average monthly wage shall (in lieu of being determined under section 409(f) of this title as in effect prior to August 28, 1950) be determined as provided in subsection (b) of this section (but without regard to paragraphs (4) and (5) thereof), except that for the purposes of paragraphs (2)(C) and (3) of subsection (b) of this section, 1936, shall be used instead of 1950.

''(B) For purposes of such computation, the date he became entitled to old-age insurance benefits shall be deemed to be the date he became entitled to primary insurance benefits.

''(C) The 1 per centum addition provided for in section 409(e)(2) of this title as in effect prior to August 28, 1950 shall be applicable only with respect to calendar years prior to 1951, except that any wages paid in any year prior to such year all of which was included in a period of disability shall not be counted.

''(D) The provisions of subsection (e) of this section shall be applicable to such computation.''

Subsec. (d)(2)(B), (C). Pub. L. 90–248, § 155(a)(2), struck out subpar. (B), redesignated subpar. (C) as (B), inserted exception phrase at beginning of subpar. (B), and added subpar. (C).

Subsec. (d)(3). Pub. L. 90–248, § 155(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The provisions of this subsection as in effect prior to September 13, 1960 shall be applicable in the case of an individual who meets the requirements of subsection (b)(5) of this section (as in effect after September 13, 1965).''

Subsec. (e)(1). Pub. L. 90–248, § 108(a)(4), substituted ''the excess over $6,600 in the case of any calendar year after 1965 and before 1968, and the excess over $7,800 in the case of any calendar year after 1967'' for ''and the excess over $6,600 in the case of any calendar year after 1965''.

Subsec. (f)(2). Pub. L. 90–248, § 155(a)(4), (5), struck out subpars. (A) to (D) and text preceding (A) by substituting provisions that if an individual has wages or self-employment income for a year after 1965 for any part of which he is entitled to old-age insurance benefits, the Secretary is to recompute his primary insurance amount with respect to each such year, and that such recomputation shall be made as provided in subsec. (a)(1) and (3) as though the year with respect to which such recomputation is made is the last year of the period specified in subsec. (b)(2)(C) for former provisions for a recomputation with respect to each year after Dec. 31, 1964, and for any part of which an individual was entitled to old-age insurance benefits, that such recomputation was to be made as provided in subsec. (a)(1) and (3) if such year was either the year in which he became entitled to such old-age insurance benefits or the preceding year or as provided in subsec. (a)(1) in any other case, and that in all cases such recomputation was to be made as though the year with respect to which it was to be made was the last year of the period specified in subsec. (b)(2)(C); and redesignated subpars. (E) and (F) as (A) and (B).

Subsec. (f)(5). Pub. L. 90–248, § 155(a)(6), added par. (5).

Subsec. (h)(1). Pub. L. 90–248, § 403(b), substituted ''subchapter III of chapter 83 of title 5'' for ''the Civil Service Retirement Act'' in two places.

1965—Subsec. (a). Pub. L. 89–97, § 301(a), revised the benefits table to increase: the primary insurance amount limits to $44–$168 for people whose average monthly wage is $67 or less for the minimum and $550 for the maximum from $40–$127 for people whose average monthly wage is $67 or less for the minimum and $400 for the maximum (representing an increase of 7-percent for average monthly wages of $400 or less with minimum increase of $4); the primary insurance amounts of retired workers on the benefit rolls from $40 to $44 at the minimum and from $127 to $135.90 at the maximum; and the family benefit limits to $66–$368 from $60–$254 (determined on basis of new formula and representing minimum increase of $6).

Subsec. (a)(4). Pub. L. 89–97, § 304(k), substituted ''the primary insurance amount upon which such disability insurance benefit is based'' for ''such disability insurance benefit''.

Pub. L. 89–97, § 303(e), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''In the case of—

''(A) a woman who was entitled to a disability insurance benefit for the month before the month in which she died or became entitled to old-age insurance benefits, or

''(B) a man who was entitled to a disability insurance benefit for the month before the month in which he died or attained age 65,''.

Subsec. (b)(2)(C). Pub. L. 89–97, § 302(a)(1), excluded from an insured individual's computation base years the year in which he became entitled to benefits and included in his computation base years (for purposes of survivors' benefits) the year in which he died to make an individual's computation base years the calendar years occurring after 1950 and up to the year in which his first month of entitlement to a benefit occurred or the year after the year in which he died.

Subsec. (b)(3)(A) to (C). Pub. L. 89–97, § 302(a)(2), substituted in: cl. (A) '', if it occurred earlier but after 1960, the year in which she attained age 62,'' for ''(if earlier) the first year after 1960 in which she both was fully insured and had attained age 62.''; cl. (B) '', if it occurred earlier but after 1960, the year in which he attained age 65'' for ''(if earlier) the first year after 1960 in which he both was fully insured and had attained age 65''; and cl. (C) ''the year occurring after 1960 in which he attained (or would attain) age 65'' for ''the first year after 1960 in which he attained (or would attain) age 65 or (if later) the first year in which he was fully insured''.

Subsec. (b)(4), (5). Pub. L. 89–97, § 302(a)(3), amended pars. (4) and (5) generally. Prior to amendment, pars. (4) and (5) read as follows:

''(4) The provisions of this subsection shall be applicable only in the case of an individual with respect to whom not less than six of the quarters elapsing after 1950 are quarters of coverage, and—

''(A) who becomes entitled to benefits after December 1960 under section [section 402(a) or section 423 of this title]; or

''(B) who dies after December 1960 without being entitled to benefits under section [section 402(a) or section 423 of this title]; or

''(C) who files an application for a recomputation under subsection (f)(2)(A) of this section after December 1960 and is (or would, but for the provisions of subsection (f)(6) of this section, be) entitled to have his primary insurance amount recomputed under subsection (f)(2)(A) of this section; or

''(D) who dies after December 1960 and whose survivors are (or would, but for the provisions of subsection (f)(6) of this section, be) entitled to a recomputation of his primary insurance amount under subsection (f)(4) of this section.

''(5) In the case of any individual—

''(A) to whom the provisions of this subsection are not made applicable by paragraph (4), but

''(B)(i) prior to 1961, met the requirements of this paragraph (including subparagraph (E) thereof) as in effect prior to the enactment of the Social Security Amendments of 1960, or (ii) after 1960, meets the conditions of subparagraph (E) of this paragraph as in effect prior to such enactment,

then the provisions of this subsection as in effect prior to such enactment shall apply to such individual for the purposes of column III of the table appearing in subsection (a) of this section.''

Subsec. (c). Pub. L. 89–97, § 301(b), substituted in par. (1)(A) ''prior to the enactment of the Social Security Amendments of 1965'' and executed in the Code ''prior to July 30, 1965'' for ''prior to the enactment of the Social Security Amendments of 1958'' and executed in the Code ''prior to August 28, 1958''; in par. (1)(B) ''Social Security Amendments of 1960'' for ''Social Security Amendments of 1954''; in par. (2), formerly designated (2)(A), ''before July 30, 1965 or who died before such date'' for ''or died prior to January 1959''; and deleted par. (2)(B) making the provisions of the subsection applicable only in the case of an individual ''to whom the provisions of neither paragraph (4) nor paragraph (5) of subsection (b) of this section are applicable.''

Subsec. (d)(1)(A). Pub. L. 89–97, § 302(b)(1), substituted ''(2)(C) and (3)'' for ''(2)(C)(i) and (3)(A)(i)'', ''1936'' for ''December 31, 1936,'' and ''1950'' for ''December 31, 1950''.

Subsec. (d)(3). Pub. L. 89–97, § 302(b)(2), substituted ''1965'' for ''1960'' in two places and struck out at the end ''but without regard to whether such individual has six quarters of coverage after 1950''.

Subsec. (e)(1). Pub. L. 89–97, § 320(a)(4), substituted ''the excess over $4,800 in the case of any calendar year after 1958 and before 1966, and the excess over $6,600 in the case of any calendar year after 1965'' for ''and the excess over $4,800 in the case of any calendar year after 1958''.

Subsec. (e)(3). Pub. L. 89–97, § 302(c), struck out par. (3) which provided that for the purposes of subsecs. (b) and (d) of this section, if an individual had self-employment income in a taxable year which began prior to the calendar year in which he became entitled to old-age insurance benefits and ended after the last day of the month preceding the month in which he became so entitled, his self-employment income in such taxable year should not be counted in determining his benefit computation years, except as provided in subsection (f)(3)(C) of this section.

Subsec. (f)(2). Pub. L. 89–97, § 302(d)(1), substituted provisions for annual automatic recomputation of benefits, taking into account any earnings the person had in or after the year in which he became entitled to benefits, and effective in the case of a living beneficiary with January of the year following the year in which the earnings were received and in death cases for survivors' benefits beginning with the month of death for former provisions which required an application for the recomputation to include earnings in a year after entitlement and that the person have six quarters of coverage after 1950 to qualify for the recomputation and was not available unless the person had earnings of more than $1,200 for the year.

Subsec. (f)(3). Pub. L. 89–97, § 302(d)(2), redesignated par. (5) as (3) and repealed former par. (3) which provided for a recomputation of benefits to include earnings in the year of entitlement to benefits or in the year in which an individual's benefits were recomputed on account of additional earnings and is now covered by the annual automatic recomputation of benefits provision of subsec. (f)(2) of this section.

Subsec. (f)(4). Pub. L. 89–97, § 302(d)(2), redesignated par. (6) as (4) and repealed former par. (4) which provided for a recomputation of benefits for the purpose of paying benefits to survivors of an individual who died after 1960 and who had been entitled to old-age insurance benefits and is now covered by the annual automatic recomputation of benefits provision of subsec. (f)(2) of this section.

Subsec. (f)(5), (6). Pub. L. 89–97, § 302(d)(2), redesignated pars. (5) and (6) as (3) and (4), respectively.

Subsec. (f)(7). Pub. L. 89–97, § 302(d)(2), repealed par. (7) which provided for recomputation at age 65 of the benefits of an individual who became entitled to benefits before that age and is now covered by the annual automatic recomputation of benefits provision of subsec. (f)(2) of this section.

1961—Subsec. (a). Pub. L. 87–64, §§ 101(a), 102(d)(1), increased minimum primary insurance amount from $33 to $40, and minimum family benefit from $53 to $60, and in the case of a man, limited provisions which permit the primary insurance amount to be equal to the disability insurance benefit for the month before the month in which the man became entitled to old-age insurance benefits only if the man first became entitled to old-age insurance benefits at age 65.

Subsec. (b)(3). Pub. L. 87–64, § 102(d)(2), substituted ''For purposes of paragraph (2), the number of an individual's elapsed years is the number of calendar years after 1950 (or, if later, the year in which he attained age 21) and before—

''(A) in the case of a woman, the year in which she died or (if earlier) the first year after 1960 in which she both was fully insured and had attained age 62,

''(B) in the case of a man who has died, the year in which he died or (if earlier) the first year after 1960 in which he both was fully insured and had attained age 65, or

''(C) in the case of a man who has not died, the first year after 1960 in which he attained (or would attain) age 65 or (if later) the first year in which he was fully insured''

for the following provisions: ''For the purposes of paragraph (2), an individual's 'elapsed years' shall be the number of calendar years—

''(A) after (i) December 31, 1950, or (ii) if later, December 31 of the year in which he attained the age of twenty-one, and

''(B) prior to (i) the year in which he died, or (ii) if earlier, the first year after December 31, 1960, in which he both was fully insured and had attained retirement age.''

Subsec. (f)(7). Pub. L. 87–64, § 102(d)(3), added par. (7).

1960—Subsec. (b)(1). Pub. L. 86–778, § 303(a), substituted provisions defining ''average monthly wage'' as the quotient obtained by dividing (A) the total of an individual's wages paid in and self-employment income credited to his benefit computation years, by (B) the number of months in such years, for provisions which defined the term as the quotient obtained by dividing the total of his wages and self-employment income after his starting date and prior to his closing date by the number of months elapsing after such starting date and prior to such closing date, excluding the months in any year prior to the year in which the individual attained the age of 22 if less than two quarters of such

prior years were quarters of coverage and the months in any year any part of which was included in a period of disability except the months in the year in which such period of disability began if their inclusion will result in a higher primary insurance amount.

Subsec. (b)(2). Pub. L. 86–778, § 303(a), substituted provisions relating to benefit computation years and to computation base years for provisions which defined an individual's starting date as December 31, 1950, or if later, the last day of the year in which he attains the age of 21, whichever results in the higher primary insurance amount.

Subsec. (b)(3). Pub. L. 86–778, § 303(a), substituted provisions defining an individual's elapsed years for provisions which defined an individual's closing date as the first day of the year in which he died or became entitled to old-age insurance benefits, whichever first occurred, or the first day of the first year in which he both was fully insured and had attained retirement age, whichever results in the higher primary insurance amount.

Subsec. (b)(4). Pub. L. 86–778, § 303(a), substituted provisions prescribing the applicability of subsec. (f) for provisions which required the Secretary to determine the five or fewer calendar years after an individual's starting date and prior to his closing date which, if the months of such years and his wages and self-employment income for such years were excluded in computing his average monthly wage, would produce the highest primary insurance amount, and which required exclusion of such months and such wages and self-employment income for purposes of computing an individual's average monthly wage.

Subsec. (b)(5). Pub. L. 86–778, § 303(a), substituted provisions making subsec. (f) applicable in the case of an individual to whom the provisions of subsec. (f) are not made applicable by par. (4) but prior to 1961, met the requirements of this paragraph as in effect prior to Sept. 13, 1960, or, after 1960, meets the conditions of subpar. (E) of this paragraph as in effect prior to Sept. 13, 1960, for provisions which prescribed the applicability of subsec. (f) of this section. Former provisions of par. (5) were covered by par. (4) of this section.

Subsec. (c)(2)(B). Pub. L. 86–778, § 303(b), substituted ''to whom the provisions of neither paragraph (4) nor paragraph (5) of subsection (b) of this section are applicable'' for ''to whom the provisions of paragraph (5) of subsection (b) of this section are not applicable''.

Subsec. (d)(1)(A). Pub. L. 86–778, § 303(c)(1), substituted ''be determined as provided in subsection (b) of this section (but without regard to paragraphs (4) and (5) thereof), except that for the purposes of paragraphs (2)(C)(i) and (3)(A)(i) of subsection (b) of this section, December 31, 1936, shall be used instead of December 31, 1950'' for ''be determined as provided in subsection (b) of this section (but without regard to paragraph (5) thereof), except that his starting date shall be December 31, 1936''.

Subsec. (d)(1)(C). Pub. L. 86–778, § 303(c)(2), substituted ''all of which was included'' for ''any part of which was included'', and struck out provisions which required the wages paid in the year in which the period of disability began to be counted if the counting of such wages would result in a higher primary insurance amount.

Subsec. (d)(2)(B). Pub. L. 86–778, § 303(c)(3), substituted ''paragraph (4) of subsection (b) of this section'' for ''paragraph (5) of subsection (b) of this section''.

Subsec. (d)(3). Pub. L. 86–778, § 303(c)(4), added par. (3).

Subsec. (e)(3). Pub. L. 86–778, § 303(d)(1), substituted ''if an individual has self-employment income in a taxable year which begins prior to the calendar year in which he becomes entitled to old-age insurance benefits and ends after the last day of the month preceding the month in which he becomes so entitled, his self-employment income in such taxable year shall not be counted in determining his benefit computation years'' for ''if an individual's closing date is determined under paragraph (3)(A) of subsection (b) of this section and he has self-employment income in a taxable year which begins prior to such closing date and ends after the last day of the month preceding the month in which he becomes entitled to old-age insurance benefits, there shall not be counted, in determining his average monthly wage, his self-employment income in such taxable year''.

Subsec. (e)(4). Pub. L. 86–778, § 303(d)(2), struck out par. (4) which prohibited, in computing an individual's average monthly wage, the counting of any wages paid such individual in any year any part of which was included in a period of disability, or any self-employment income of such individual credited pursuant to section 412 of this title to any year any part of which was included in a period of disability, unless the months of such year are included as elapsed months pursuant to subsec. (b)(1)(B) of this section.

Subsec. (f)(2)(A). Pub. L. 86–778, § 303(e)(1), substituted ''1960'' for ''1954'' in opening provisions, and ''filed such application after such calendar year'' for ''filed such application no earlier than six months after such calendar year'' in cl. (iii).

Subsec. (f)(2)(B). Pub. L. 86–778, § 303(e)(2), substituted provisions requiring a recomputation pursuant to subpar. (A) to be made only as provided in subsec. (a)(1) of this section, if the provisions of subsec. (b) of this section, as amended by Pub. L. 86–778, were applicable to the last previous computation of the individual's primary insurance amount, or as provided in subsec. (a)(1) and (3) of this section in all other cases for provisions which required a recomputation to be made only as provided in subsec. (a) of this section, inserted provisions requiring the computation base years, if cl. (i) of this subparagraph is applicable to such recomputation, to include only calendar years occurring prior to the year in which he filed his application for such recomputation, and struck out provisions which prescribed the method of making the recomputation if subsec. (b)(4) of this section were applicable to the previous computation.

Subsec. (f)(3)(A). Pub. L. 86–778, § 303(e)(3), substituted ''December 1960'' for ''August 1954'' in two places, struck out provisions which related to applications by individuals whose primary insurance amount was recomputed under section 102(e)(5) or 102(f)(2)(B) of the Social Security Amendments of 1954, and substituted ''except that such individual's computation base years referred to in subsection (b)(2) of this section shall include the calendar year referred to in the preceding sentence'' for ''except that his closing date for purposes of subsection (b) of this section shall be the first day of the year following the year in which he became entitled to old-age insurance benefits or in which he filed his application for the last recomputation (to which he was entitled) of his primary insurance amount under any provision of law referred to in clause (ii) or (iii) of the preceding sentence, whichever is later''.

Subsec. (f)(3)(B). Pub. L. 86–778, § 303(e)(3), substituted ''December 1960'' for ''August 1954'' in three places, struck out provisions which related to individuals whose primary insurance amount was recomputed under section 102(e)(5) or section 102(f)(2) of the Social Security Amendments of 1954, and individuals with respect to whom the last previous computation or recomputation of their primary insurance amount was based upon a closing date determined under subpar. (A) or (B) of subsec. (b)(3) of this section, and substituted ''except that such individual's computation base years referred to in subsection (b)(2) of this section shall include the calendar year in which he died in the case of an individual who was not entitled to old-age insurance benefits at the time of death or whose primary insurance amount was recomputed under paragraph (4) of this subsection, or in all other cases, the calendar year in which he filed his application for the last previous computation of his primary insurance amount'' for ''except that his closing date for purposes of subsection (b) of this section shall be the day following the year of death in case he died without becoming entitled to old-age insurance benefits, or in case he was entitled to old-age insurance benefits, the day following the year

in which was filed the application for the last previous computation of his primary insurance amount or in which the individual died, whichever first occurred''.

Subsec. (f)(3)(C). Pub. L. 86–778, § 303(e)(3), substituted ''In the case of an individual who becomes entitled to old-age insurance benefits in a calendar year after 1960, if such individual has self-employment income in a taxable year which begins prior to such calendar year and ends after the last day of the month preceding the month in which he became so entitled, the Secretary shall recompute such individual's primary insurance amount after the close of such taxable year and shall take into account in determining the individual's benefit computation years only such self-employment income in such taxable year as is credited, pursuant to section 412 of this title, to the year preceding the year in which he became so entitled'' for ''If an individual's closing date is determined under paragraph (3)(A) of subsection (b) of this section and he has self-employment income in a taxable year which begins prior to such closing date and ends after the last day of the month preceding the month in which he became entitled to old-age insurance benefits, the Secretary shall recompute his primary insurance amount after the close of such taxable year, taking into account only such self-employment income in such taxable year as is, pursuant to section 412 of this title, allocated to calendar quarters prior to such closing date.''

Subsec. (f)(4). Pub. L. 86–778, § 303(e)(4), struck out ''(without the application of clause (iii) thereof)'' after ''paragraph (2)(A)'' in cl. (A), struck out provisions from the second sentence which required, if the recomputation is permitted by subpar. (A), to include in such recomputation any compensation (described in section 405(*o*) of this title) paid to him prior to the closing date which would have been applicable under such paragraph, and substituted ''which were considered in the last previous computation of his primary insurance amount and the compensation (described in section 405(*o*) of this title) paid to him in the years in which such wages were paid or to which such self-employment income was credited'' for ''which were taken into account in the last previous computation of his primary insurance amount and the compensation (described in section 405(*o*) of this title) paid to him prior to the closing date applicable to such computation'' in third sentence.

Subsec. (f)(5). Pub. L. 86–778, § 304(a), substituted ''then upon application filed by such individual after the close of such taxable year and prior to January 1961 or (if he died without filing such application and such death occurred prior to January 1961)'' for ''then upon application filed after the close of such taxable year by such individual (or if he died without filing such application)''.

Subsec. (g). Pub. L. 86–778, § 211(n), inserted ''and deductions under section 403(b) of this title''.

Subsec. (h). Pub. L. 86–778, § 103(j)(2)(C), substituted ''section 410(*l*)(1) of this title'' for ''section 410(m)(1) of this title'', in par. (1).

Pub. L. 86–415 added subsec. (h).

1958—Subsec. (a). Pub. L. 85–840, § 101(a), amended subsec. (a) generally, and, among other changes, substituted a new method for computing the primary insurance amount of an individual for provisions which established the primary insurance amount as either 55% of the first $110 of an individual's average monthly wage, plus 20% of the next $240, or the amount determined by use of the conversion table under former subsec. (c) of this section, whichever was larger.

Subsec. (b)(1). Pub. L. 85–840, § 101(b)(1), substituted ''for the purposes of column III of the table appearing in subsection (a) of this section, an'' for ''An''.

Subsec. (b)(5). Public L. 85–840, § 101(b)(2), added par. (5).

Subsec. (c). Pub. L. 85–840, § 101(c), amended subsec. (c) generally, and, among other changes, substituted provisions for computation of the primary insurance amount of an individual under the 1954 Act for provisions which related to determinations made by use of the conversion table.

Subsec. (d). Pub. L. 85–840, § 101(d), substituted provisions for computation of the primary insurance benefit under the 1939 Act for provisions which related to determination of the primary insurance benefit and primary insurance amount for purposes of the conversion table in former subsec. (c) of this section.

Subsec. (e). Pub. L. 85–840, § 102(d), substituted ''(d) of this section'' for ''(d)(4) of this section'' in opening provisions and in cl. (2), and inserted ''and before 1959, and the excess over $4,800 in the case of any calendar year after 1958'' after ''after 1954'', in cl. (1).

Subsec. (g). Pub. L. 85–840, § 205(m), struck out provisions which related to reduction under section 424 of this title.

1956—Subsec. (a)(3). Act Aug. 1, 1956, § 103(c)(4), added par. (3).

Subsec. (b)(1). Act Aug. 1, 1956, § 115(a), excluded from computation of an individual's average wage the months in any year any part of which was included in a period of disability, except the months in any year in which a period of disability began if their inclusion would result in a higher primary insurance amount.

Subsec. (b)(4). Act Aug. 1, 1956, § 109(a), substituted ''five'' for ''four'', and struck out provisions which required the maximum number of calendar years determined under this clause to be five in the case of any individual who has not less than 20 quarters of coverage.

Subsec. (d)(5). Act Aug. 1, 1956, § 115(b), excluded from the computation all quarters in any year prior to 1951 any part of which was included in a period of disability, except the quarters in the year in which a period of disability began if the inclusion of such quarters would result in a higher primary insurance amount.

Subsec. (e)(4). Act Aug. 1, 1956, § 115(c), excluded any wages paid to an individual in any year any part of which was included in a period of disability, and any self-employment income credited to such year unless the months of such year are included as elapsed months.

Subsec. (g). Act Aug. 1, 1956, § 103(c)(5), inserted references to sections 423 and 424 of this title.

1954—Subsec. (a). Act Sept. 1, 1954, § 102(a), provided a new benefit formula, for computing primary insurance amount for certain individuals, of 55 percent of the first $110 of average monthly wage plus 20 percent of the next $240 and provided that other individuals have their primary insurance amount computed under subsection (c) of this section.

Subsec. (b). Act Sept. 1, 1954, § 102(b), provided standard end-of-the-year starting and beginning-of-the-year closing dates, applicable to both wage earners and self-employed individuals, for computation of the average monthly wage, and provided for the exclusion of up to 5 years in which earnings were lowest (or non-existent) from the average monthly wage computation.

Subsec. (b)(1). Act Sept. 1, 1954, § 106(c)(1), inserted ''and any month in any quarter any part of which was included in a period of disability (as defined in section 416(i) of this title) unless such quarter was a quarter of coverage'' after ''quarters of coverage''.

Subsec. (c). Act Sept. 1, 1954, § 102(c), provided a new conversion table with increased benefits for individuals already on the rolls and computed the primary insurance amount of certain individuals who come on the rolls after the enactment of the act.

Subsec. (d). Act. Sept. 1, 1954, § 102(d), inserted provisions for computation of a primary insurance amount for purposes of the conversion table.

Subsec. (d)(5). Act Sept. 1, 1954, § 106(c)(2), added subsec. (d)(5). Former subsec. (d)(5), which was added by act July 18, 1952, § 3(c)(3), ceased to be in effect at the close of June 30, 1953. See Termination Date of 1952 Amendment note set out under section 413 of this title.

Subsec. (d)(6). Act Sept. 1, 1954, § 102(d)(4), added par. (6).

Subsec. (e). Act Sept. 1, 1954, § 104(d), provided that earnings up to $4,200, in any calendar year after 1954, shall be used in the computation of an individual's average monthly wage.

Subsec. (e)(3). Act Sept. 1, 1954, § 102(e)(1), added par. (3).

Subsec. (e)(4). Act Sept. 1, 1954, §106(c)(3), added par. (4).

Subsec. (f)(2). Act Sept. 1, 1954, §102(e)(2), substituted a new test for determining eligibility for a recomputation to take into account additional earnings after entitlement.

Subsec. (f)(3)(A), (B). Act Sept. 1, 1954, §102(e)(3)(A), amended provisions generally.

Subsec. (f)(3)(C). Act Sept. 1, 1954, §102(e)(3)(B), added subpar. (C).

Subsec. (f)(4). Act Sept. 1, 1954, §102(e)(4), provided for recomputation of the primary insurance on the death after 1954 of an old-age insurance beneficiary, if any person is entitled to monthly survivors benefits or to a lump-sum death payment on the basis of his wages and self-employment income.

1952—Subsec. (a)(1). Act July 18, 1952, §2(b)(1), provided a new benefit formula for the computation of benefits based entirely on wages paid and self-employment income derived after 1950 of 55 percent of the first $100 of average monthly wage and 15 percent of next $200 and increased the primary insurance amount.

Subsec. (b)(1). Act July 18, 1952, §3(c)(1), inserted ''and any month in any quarter any part of which was included in a period of disability (as defined in section 416(i) of this title) unless such quarter was quarter of coverage'' after ''not a quarter of coverage.''

Subsec. (b)(4). Act July 18, 1952, §3(c)(2), inserted provisions of subpars. (B) and (C).

Subsec. (c)(1). Act July 18, 1952, §2(a)(1), inserted a new conversion table and increased amounts.

Subsec. (c)(2). Act July 18, 1952, §2(a)(2), provided that individuals, whose primary insurance amounts are governed by regulations, shall have the same increase as is provided for individuals governed by the new conversion table.

Subsec. (c)(4). Act July 18, 1952, §2(a)(3), added par. (4).

Subsec. (d)(5). Act July 18, 1952, §3(c)(3), added par. (5).

Subsec. (f)(2). Act July 18, 1952, §6(a), provided that upon application an individual will have his benefit recomputed by the new formula prescribed in subsec. (a)(1) of this section under certain conditions.

Subsec. (f)(5), (6). Act July 18, 1952, §6(b), added par. (5) and redesignated former par. (5) as (6).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 307(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section] shall apply (notwithstanding section 215(f)(1) of the Social Security Act (42 U.S.C. 415(f)(1))) with respect to benefits payable for months after December 1994.''

Amendment by section 308(b) of Pub. L. 103–296 applicable (notwithstanding subsec. (f) of this section) with respect to benefits payable for months after Dec. 1994, see section 308(c) of Pub. L. 103–296, set out as a note under section 402 of this title.

Section 321(g)(3)(A) of Pub. L. 103–296 provided that: ''The amendments made by paragraph (1) [amending this section and section 430 of this title] shall be effective with respect to the determination of the contribution and benefit base for years after 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5117(a) of Pub. L. 101–508 applicable with respect to computation of primary insurance amount of any insured individual in any case in which a person becomes entitled to benefits under section 402 or 423 of this title on basis of such insured individual's wages and self-employment income for months after 18-month period following November 1990, but inapplicable if any person is entitled to benefits based on wages and self-employment income of such insured individual for month preceding initial month of such person's entitlement to such benefits under section 402 or 423, and amendment also applicable with respect to any primary insurance amount upon recomputation of such amount if recomputation is first effective for monthly benefits for months after 18-month period following November 1990, see section 5117(a)(4) of Pub. L. 101–508, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10208(b)(1), (2)(A), (B), (3), (4) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8003(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to benefits payable for months after December 1988.''

Section 8011(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to benefits based on applications filed after the month in which this Act is enacted [November 1988].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(a)(7) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Section 9001(d) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and section 1395r of this title] shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [subsec. (i) of this section] (as currently in effect, and as in effect in December 1978 and applied in certain cases under the provisions of such Act [this chapter] in effect after December 1978) in 1986 and subsequent years.

''(2) The amendments made by paragraphs (1)(A) and (2)(B) of subsection (b) [amending this section] shall apply with respect to months after September 1986.

''(3) The amendment made by subsection (c) [amending section 1395r of this title] shall apply with respect to monthly premiums (under section 1839 of the Social Security Act [section 1395r of this title]) for months after December 1986.''

Section 12115 of Pub. L. 99–272 provided that: ''Except as otherwise specifically provided, the preceding provisions of this subtitle [subtitle A (§§12101–12115) of title XII of Pub. L. 99–272, amending this section and sections 402 to 404, 409, 418, 423, 424a, 907, 909, 910, 1310, and 1383 of this title and sections 86, 871, 932, and 3121 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 402 to 404, 409, 418, 424a, 907, and 909 of this title and section 932 of Title 26, amending provisions set out as notes under section 1310 of this title, and repealing provisions set out as a note under section 907 of this title], including the amendments made thereby, shall take effect on the first day of the month following the month in which this Act is enacted [April 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2661(k) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(10) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 111(a)(1)–(3), (6), (b)(1), (2), (c) of Pub. L. 98–21 applicable with respect to cost-of-living

increases determined under subsec. (i) of this section for years after 1982, see section 111(a)(8) of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 111(b)(3) of Pub. L. 98–21 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to cost-of-living increases determined under section 2151(i) of the Social Security Act [subsec. (i) of this section] for years after 1983.''

Section 112(e) of Pub. L. 98–21 provided that: ''The amendments made by the preceding provisions of this section [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1983.''

EFFECTIVE DATE OF 1981 AMENDMENTS

Section 2(j)(2)–(4) of Pub. L. 97–123, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided:

''(2) Except as provided in paragraphs (3) and (4), the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981 [enacting section 1382k of this title, amending this section and sections 402, 403, 417, and 433 of this title] (other than subsection (f) thereof [amending section 402 of this title]), together with the amendments made by the preceding subsections of this section [amending this section and sections 402, 403, and 417 of this title and repealing section 1382k of this title and a provision set out as a note under section 1382k of this title], shall apply with respect to benefits for months after December 1981; and the amendment made by subsection (f) of such section 2201 shall apply with respect to deaths occurring after December 1981.

''(3) Such amendments shall not apply—

''(A) in the case of an old-age insurance benefit, if the individual who is entitled to such benefit first became eligible (as defined in section 215(a)(3)(B) of the Social Security Act [subsec. (a)(3)(B) of this section]) for such benefit before January 1982,

''(B) in the case of a disability insurance benefit, if the individual who is entitled to such benefit first became eligible (as so defined) for such benefit before January 1982, or attained age sixty-two before January 1982,

''(C) in the case of a wife's or husband's insurance benefit, or a child's insurance benefit based on the wages and self-employment income of a living individual, if the individual on whose wages and self-employment income such benefit is based is entitled to an old-age or disability insurance benefit with respect to which such amendments do not apply, or

''(D) in the case of a survivors insurance benefit, if the individual on whose wages and self-employment income such benefit is based died before January 1982, or dies in or after January 1982 and at the time of his death is eligible (as so defined) for an old-age or disability insurance benefit with respect to which such amendments do not apply.

''(4) In the case of an individual who is a member of a religious order (within the meaning of section 3121(r)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3121(r)(2) of Title 26, Internal Revenue Code]), or an autonomous subdivision of such order, whose members are required to take a vow of poverty, and which order or subdivision elected coverage under title II of the Social Security Act [this subchapter] before the date of the enactment of this Act [Dec. 29, 1981], or who would be such a member except that such individual is considered retired because of old age or total disability, paragraphs (2) and (3) shall apply, except that each reference therein to 'December 1981' or 'January 1982' shall be considered a reference to 'December 1991' or 'January 1992', respectively.''

Amendment by section 2206(a), (b)(5)–(7) of Pub. L. 97–35 applicable only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981, see section 2206(c) of Pub. L. 97–35, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 102(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes entitled to disability insurance benefits on or after July 1, 1980; except that the third sentence of section 215(b)(2)(A) of the Social Security Act [subsec. (b)(2)(A) of this section] (as added by such amendments) shall apply only with respect to monthly benefits payable for months beginning on or after July 1, 1981.''

For effective date of amendment by section 101(b)(3), (4) of Pub. L. 96–265, see section 101(c) of Pub. L. 96–265, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 103(d) of Pub. L. 95–216 applicable with respect to remuneration paid or received, and taxable years beginning after 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of Title 26, Internal Revenue Code.

Amendment by section 201 of Pub. L. 95–216 effective only with respect to monthly benefits under this subchapter payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after December 1978, except that amendment by section 201(d) of Pub. L. 95–216 effective with respect to monthly benefits of an individual who becomes eligible for an old-age or disability insurance benefit, or dies after December 1977, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Section 1(h)(2) of Pub. L. 93–233 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to benefits payable for months after February 1974.''

Section 2(c) of Pub. L. 93–233 provided that: ''The amendment made by subsections (a) and (b) [amending this section and sections 427 and 428 of this title and repealing section 202(a)(4) of Pub. L. 92–336, title II, July 1, 1972, 86 Stat. 416] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after May 1974, and with respect to lump-sum death payments under section 202(i) of such Act [section 402(i) of this title] in the case of deaths occurring after such month.''

Amendment by section 5(a)(4) of Pub. L. 93–233 applicable with respect to calendar years after 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable with respect to calendar years after 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1972 AMENDMENTS

Section 101(g) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] for months after December 1972 (without regard to when the insured individual became entitled to such benefits or when he died) and with respect to lump-sum death payments under such title in the case of deaths occurring after such month.''

Amendment by section 104(b) of Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after Dec. 1974, with provision for the determination of the number of elapsed years for purposes of subsec. (b)(3) of this section in the case of a man who attains age 62 prior to 1975, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

Amendment by section 144(a)(1) of Pub. L. 92–603 effective in like manner as if such amendment had been

included in title II of Pub. L. 92–336, see section 144(b) of Pub. L. 92–603, set out as a note under section 403 of this title.

Section 201(i) of Pub. L. 92–336 provided that: ''The amendments made by this section [amending this section and section 403 of this title] (other than the amendments made by subsections (g) and (h)) shall apply with respect to monthly benefits under title II of the Social Security Act [this chapter] for months after August 1972 and with respect to lump-sum death payments under such title in the case of deaths occurring after such month. The amendments made by subsection (g) [amending sections 427 and 428 of this title] shall apply with respect to monthly benefits under title II of such Act for months after August 1972. The amendments made by subsection (h)(1) [amending section 403 of this title] shall apply with respect to monthly benefits under title II of such Act for months after December 1971.''

Section 202(a)(3) of Pub. L. 92–336, as amended by Pub. L. 93–233, §2(d), Dec. 31, 1973, 87 Stat. 952, provided that the amendment made by that section is effective June 1, 1974.

Amendment by section 203(a)(4) of Pub. L. 92–336 applicable only with respect to calendar years after 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 201(e) of Pub. L. 92–5 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1970 and with respect to lump-sum death payments under such title in the case of deaths occurring in and after the month in which this Act is enacted [March 1971].''

Amendment by section 203(a)(4) of Pub. L. 92–5 applicable only with respect to calendar years after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 1002(e) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1969 and with respect to lump-sum death payments under such title in the case of deaths occurring after December 1969.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 101(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968 and with respect to lump-sum death payments under such title in the case of deaths occurring after January 1968.''

Amendment by section 108(a)(4) of Pub. L. 90–248 applicable only with respect to calendar years after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of this title.

Section 155(a)(7), (9) of Pub. L. 90–248 provided that:

''(7)(A) The amendments made by paragraphs (4) and (5) [amending this section] shall apply with respect to recomputations made under section 215(f)(2) of the Social Security Act [subsec. (f)(2) of this section] after the date of the enactment of this Act [Jan. 2, 1968].

''(B) The amendments made by paragraph (6) [amending this section] shall apply with respect to individuals who die after the date of enactment of this Act [Jan. 2, 1968].

''(9) The amendment made by paragraphs (1) and (2) [amending this section] shall not apply with respect to monthly benefits for any month prior to January 1967.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 301(d) of Pub. L. 89–97 provided that: ''The amendments made by subsections (a), (b), and (c) of this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1964 and with respect to lump-sum death payments under such title in the case of deaths occurring in or after the month in which this Act is enacted [July 1965].''

Section 302(d)(2) of Pub. L. 89–97 provided that the amendment made by that section is effective Jan. 2, 1966.

Section 302(f)(1)–(5) of Pub. L. 89–97 provided as follows:

''(1) The amendments made by subsection (c) [amending this section] shall apply only to individuals who become entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] after 1965.

''(2) Any individual who would, upon filing an application prior to January 2, 1966, be entitled to a recomputation of his monthly benefit amount for purposes of title II of the Social Security Act [this subchapter] shall be deemed to have filed such application on the earliest date on which such application could have been filed, or on the day on which this Act is enacted [July 30, 1965], whichever is the later.

''(3) In the case of an individual who died after 1960 and prior to 1966 and who was entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] at the time of his death, the provisions of sections 215(f)(3)(B) and 215(f)(4) of such Act [subsec. (f)(3)(B) and (f)(4) of this section] as in effect before the enactment of this Act [July 30, 1965] shall apply.

''(4) In the case of a man who attains age 65 prior to 1966, or dies before such year, the provisions of section 215(f)(7) of the Social Security Act as in effect before the enactment of this Act [July 30, 1965] shall apply.

''(5) The amendments made by subsection (e) of this section [amending section 423 of this title] shall apply in the case of individuals who become entitled to disability insurance benefits under section 223 of the Social Security Act [section 423 of this title] after December 1965.''

Section 303(f)(2) of Pub. L. 89–97 provided that: ''The amendment made by subsection (e) [amending this section] shall apply in the case of the primary insurance amounts of individuals who attain age 65 after the date of enactment of this Act [July 30, 1965].''

Amendment by section 304(k) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter for and after the second month following July 1965 but only on the basis of applications filed in or after July 1965, see section 304(*o*) of Pub. L. 89–97, set out as a note under section 402 of this title.

Amendment by section 320(a)(4) of Pub. L. 89–97 applicable with respect to calendar years after 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 101(b) of Pub. L. 87–64 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only in the case of monthly insurance benefits under title II of the Social Security Act [this subchapter] for months beginning on or after the effective date of this title [see note set out under section 402 of this title], and in the case of lump-sum death payments under such title with respect to deaths on or after such effective date.''

Amendment by section 102(d)(1), (2) of Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after Aug. 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after Aug. 1, 1961, and amendment by section 102(d)(3) of Pub. L. 87–64 effective Aug. 1, 1961,

see sections 102(f)(6), (7) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 103(j)(2)(C) of Pub. L. 86–778 effective on Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 211(n) of Pub. L. 86–778 effective in the manner provided in section 211(p) and (q) of Pub. L. 86–778, see section 211(s) of Pub. L. 86–778, set out as a note under section 403 of this title.

Section 303(d)(1) of Pub. L. 86–778 provided that the amendment made by that section is effective with respect to individuals who become entitled to benefits under section 402(a) of this title after 1960.

Section 303(d)(2) of Pub. L. 86–778 provided that the amendment made by that section is effective with respect to individuals who meet any of the subparagraphs of paragraph (4) of subsec. (b) of this section, as amended by Pub. L. 86–778.

Section 303(e)(1) of Pub. L. 86–778 provided that the amendment made by that section is effective with respect to applications for recomputation under subsec. (f)(2) of this section filed after 1960.

Section 303(e)(4)(B) of Pub. L. 86–778 provided that the amendment made by that section is effective in the case of deaths occurring on or after Sept. 13, 1960.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 101(g) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section and sections 402 and 403 of this title] shall be applicable in the case of monthly benefits under title II of the Social Security Act [this subchapter], for months after December 1958, and in the case of the lump-sum death payments under such title, with respect to deaths occurring after such month.''

Amendment by section 205(m) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for August 1958 and succeeding months, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 109(b) of act Aug. 1, 1956, provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of monthly benefits under section 202 of the Social Security Act [section 402 of this title], and the lump-sum death payment under such section, based on the wages and self-employment income of an individual—

''(1) who becomes entitled to benefits under subsection (a) of such section on the basis of an application filed on or after the date of enactment of this Act [Aug. 1, 1956]; or

''(2) who is (but for the provisions of subsection (f)(6) of section 215 of the Social Security Act [subsec. (f)(6) of this section]) entitled to a recomputation of his primary insurance amount under subsection (f)(2)(A) of such section 215 based on an application filed on or after the date of enactment of this Act [Aug. 1, 1956]; or

''(3) who dies without becoming entitled to benefits under subsection (a) of such section 202 [section 402(a) of this title] and no individual was entitled to survivor's benefits and no lump-sum death payment was payable under such section 202 on the basis of an application filed prior to such date of enactment [Aug. 1, 1956]; or

''(4) who dies on or after such date of enactment [Aug. 1, 1956] and whose survivors are (but for the provisions of subsection (f)(6) of such section 215 [subsec. (f)(6) of this section]) entitled to a recomputation of his primary insurance amount under subsection (f)(4)(A) of such section 215; or

''(5) who dies prior to such date of enactment [Aug. 1, 1956] and (A) whose survivors are (but for the provisions of subsection (f)(6) of such section 215 [subsec. (f)(6) of this section]) entitled to a recomputation of his primary insurance amount under subsection (f)(4)(A) of such section 215, and (B) on the basis of whose wages and self-employment income no individual was entitled to survivor's benefits under such section 202 [section 402 of this title], and no lump-sum death payment was payable under such section, on the basis of an application filed prior to such date of enactment and no individual was entitled to such a benefit, without the filing of an application for the month in which this Act is enacted [August 1956] or any month prior thereto.''

Section 115(d) of act Aug. 1, 1956, provided that: ''The amendments made by this section [amending this section] shall apply in the case of an individual (1) who becomes entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to benefits under section 202(a) of such Act [section 402(a) of this title] after the date of enactment of this Act [Aug. 1, 1956], or (2) who dies without becoming entitled to benefits under such section 202(a) and on the basis of whose wages and self-employment income an application for benefits or a lump-sum death payment under section 202 of such Act is filed after the date of enactment of this Act, or (3) who becomes entitled to benefits under section 223 of such Act [section 423 of this title], or (4) who files, after the date of enactment of this Act, an application for a disability determination which is accepted as an application for purposes of section 216(i) of such Act [section 416(i) of this title].''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 102(f) of act Sept. 1, 1954, as amended by Pub. L. 86–778, title II, §303(k), Sept. 13, 1960, 74 Stat. 966; Pub. L. 89–97, title III §302(f)(7), July 30, 1965, 79 Stat. 366, provided that:

''(1) The amendments made by the preceding subsections [amending this section and section 403 of this title], other than subsection (b) and paragraphs (1), (2), (3), and (4) of subsection (e), shall (subject to the provisions of paragraph (2) and notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section]) apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after, and in the case of monthly benefits under such section for months after, August 1954.

''(2)(A) The amendment made by subsection (b)(2) [amending this section] shall be applicable only in the case of monthly benefits for months after August 1954, and the lump-sum death payment in the case of death after August 1954, based on the wages and self-employment income of an individual (i) who does not become eligible for benefits under section 202(a) of the Social Security Act [section 402(a) of this title] until after August 1954, or (ii) who dies after August 1954, and without becoming eligible for benefits under such section 202(a), or (iii) who is or has been entitled to have his primary insurance amount recomputed under section 215(f)(2) of the Social Security Act, as amended by subsection (e)(2) of this section, or under subsection (e)(5)(B) of this section [set out as a note under this section], or (iv) with respect to whom not less than six of the quarters elapsing after June 1953 are quarters of coverage (as defined in such Act), or (v) who files an application for a disability determination which is accepted as an application for purposes of section 216(i) of such Act [section 416(i) of this title], or (vi) who dies after August 1954, and whose survivors are (or would, but for the provisions of section 215(f)(6) of such Act, be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act, as amended by this Act. For purposes of the preceding sentence an individual shall be deemed eligible for benefits under section 202(a) of the Social Security Act for any month if he was, or would upon filing application therefor in such month have been, entitled to such benefits for such month.

''(B) [Repealed. Pub. L. 89–97, title III, §302(f)(7), July 30, 1965, 79 Stat. 366, eff. Jan. 2, 1966.]

''(3) The amendments made by subsections (b)(1), (e)(1), and (e)(3)(B) [amending this section] shall be applicable only in the case of monthly benefits based on the wages and self-employment income of an individual who does not become entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] until after August 1954, or who dies after August 1954 without becoming entitled to such benefits, or who files an application after August 1954 and is entitled to a recomputation under paragraph (2) or (4) of section 215(f) of the Social Security Act, as amended by this Act [subsec. (f)(2) or (4) of this section], or who is entitled to a recomputation under paragraph (2)(B) of this subsection, or who is entitled to a recomputation under paragraph (5) of subsection (e) [set out as a note under this section].

''(4) The amendments made by subsection (e)(2) [amending this section] shall be applicable only in the case of applications for recomputation filed after 1954. The amendment to subsec. (f)(4) made by subsection (e)(4) shall be applicable only in the case of deaths after 1954.

''(5) The amendments made by subparagraph (A) of subsection (e)(3) [amending this section] shall be applicable only in the case of applications for recomputation filed, or deaths occurring, after August 1954.

''(6) No increase in any benefit by reason of the amendments made by this section (other than subsection (e)) or by reason of subparagraph (B) of paragraph (2) of this subsection shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [subsec. (f) of this section].''

Amendment by section 106(c) of act Sept. 1, 1954, applicable with respect to monthly benefits under this subchapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments should be regarded as a recomputation for purposes of subsec. (f) of this section, see section 106(h) of act Sept. 1, 1954, set out as a note under section 413 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENTS

For effective and termination dates of amendment by act July 18, 1952, see section 3(f), (g) of act July 18, 1952, set out as a note under section 413 of this title.

Section 2(c)(1), (3) of act July 18, 1952, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall, subject to the provisions of paragraph (2) of this subsection and notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section], apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after, and in the case of monthly benefits under such section for any month after, August 1952.

''(3) The amendments made by subsection (b) [amending this section and section 403 of this title] shall (notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section]) apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after August 1952, and in the case of monthly benefits under such section for months after August 1952.''

SAVINGS PROVISION

1960—Section 303(i) of Pub. L. 86–778 provided that in the case of an application for recomputation under subsec. (f)(2) of this section, the provisions of subsec. (f)(2) as in effect prior to Sept. 13, 1960, were to apply where the application was filed after 1954 and before 1961, and that in the case of an individual who died after 1954 and before 1961 and who was entitled to an old-age insurance benefit under section 402(a) of this title, the provisions of subsec. (f)(4) as in effect prior to Sept. 13, 1960 were to apply.

1958—Section 101(i) of Pub. L. 85–840 provided that: ''In the case of any individual to whom the provisions of subsection (b)(5) of section 215 of the Social Security Act [subsec. (b)(5) of this section], as amended by this Act, are applicable and on the basis of whose wages and self-employment income benefits are payable for months prior to January 1959, his primary insurance amount for purposes of benefits for such prior months shall, if based on an application for such benefits or for a recomputation of such amount, as the case may be, filed after December 1958, be determined under such section 215 [this section], as in effect prior to the enactment of this Act [Aug. 28, 1958], and, if such individual's primary insurance amount as so determined is larger than the primary insurance amount determined for him under section 215 as amended by this Act, such larger primary insurance amount (increased to the next higher dollar if it is not a multiple of a dollar) shall, for months after December 1958, be his primary insurance amount for purposes of such section 215 (and of the other provisions) of the Social Security Act as amended by this Act in lieu of the amount determined without regard to this subsection.''

1952—Subsec. (d) of section 2 of act July 18, 1952, provided that:

''(1) Where—

''(A) an individual was entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to an old-age insurance benefit under title II of such Act [this subchapter] for August 1952;

''(B) two or more other persons were entitled (without the application of such section 202(j)(1) [section 402(j)(1) of this title]) to monthly benefits under such title for such month on the basis of the wages and self-employment income of such individual; and

''(C) the total of the benefits to which all persons are entitled under such title [this subchapter] on the basis of such individual's wages and self-employment income for any subsequent month for which he is entitled to an old-age insurance benefit under such title, would (but for the provisions of this paragraph) be reduced by reason of the application of section 203(a) of the Social Security Act, as amended by this Act [section 403(a) of this title],

then the total of benefits, referred to in clause (C), for such subsequent month shall be reduced to whichever of the following is the larger:

''(D) the amount determined pursuant to section 203(a) of the Social Security Act, as amended by this Act [section 403(a) of this title]; or

''(E) the amount determined pursuant to such section, as in effect prior to the enactment of this Act [July 18, 1952], for August 1952 plus the excess of (i) the amount of his old-age insurance benefit for August 1952 computed as if the amendments made by the preceding subsections of this section had been applicable in the case of such benefit for August 1952, over (ii) the amount of his old-age insurance benefit for August 1952.

''(2) No increase in any benefit by reason of the amendments made by this section or by reason of paragraph (2) of subsection (c) of this section shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [subsec. (f) of this section].''

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

COMMISSION ON THE SOCIAL SECURITY ''NOTCH'' ISSUE

Pub. L. 102–393, title VI, § 635, Oct. 6, 1992, 106 Stat. 1777, as amended by Pub. L. 103–123, title VI, § 627, Oct. 28, 1993, 107 Stat. 1266, established a Commission on the Social Security ''Notch'' Issue, provided for its composition, directed Commission to conduct a comprehensive study of what had become known as the ''notch'' issue and transmit to Congress, not later than Dec. 31, 1994, a report with a detailed statement of its findings and conclusions, together with any recommendations, and provided the Commission terminate 30 days after transmittal of report.

COST-OF-LIVING INCREASES; COST-OF-LIVING COMPUTATION QUARTER DETERMINATIONS

Pub. L. 98–604, § 1, Oct. 30, 1984, 98 Stat. 3161, provided: ''That (a) in determining whether the base quarter ending on September 30, 1984, is a cost-of-living computation quarter for the purposes of the cost-of-living increases under sections 215(i) and 1617 of the Social Security Act [subsec. (i) of this section and section 1382f of this title], the phrase 'is 3 percent or more' appearing in section 215(i)(1)(B) of such Act shall be deemed to read 'is greater than zero' (and the phrase 'exceeds, by not less than 3 per centum, such Index' appearing in section 215(i)(1)(B) of such Act as in effect in December 1978 shall be deemed to read 'exceeds such Index').

''(b) For purposes of section 215(i) of such Act, the provisions of subsection (a) shall not constitute a 'general benefit increase'.''

''BASE QUARTER'' IN CALENDAR YEAR 1983

Section 111(d) of Pub. L. 98–21 provided that: ''Notwithstanding any provision to the contrary in section 215(i) of the Social Security Act [subsec. (i) of this section], the 'base quarter' (as defined in paragraph (1)(A)(i) of such section) in the calendar year 1983 shall be a 'cost-of-living computation quarter' within the meaning of paragraph (1)(B) of such section (and shall be deemed to have been determined by the Secretary of Health and Human Services to be a 'cost-of-living computation quarter' under paragraph (2)(A) of such section) for all of the purposes of such Act [this chapter] as amended by this section and by other provisions of this Act, without regard to the extent by which the Consumer Price Index has increased since the last prior cost-of-living computation quarter which was established under such paragraph (1)(B).''

COMBINED BALANCE IN TRUST FUNDS USED IN DETERMINING OASDI FUND RATIO WITH RESPECT TO CALENDAR YEAR 1984

Section 112(f) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title VI, § 2662(b), July 18, 1984, 98 Stat. 1159, provided that: ''Notwithstanding anything to the contrary in section 215(i)(1)(F) of the Social Security Act [subsec. (i)(1)(F) of this section] (as added by subsection (a)(4) of this section), the combined balance in the Trust Funds which is to be used in determining the 'OASDI fund ratio' with respect to the calendar year 1984 under such section shall be the estimated combined balance in such Funds as of the close of that year (rather than as of its beginning), including the taxes transferred under section 201(a) of such Act [section 401(a) of this title] on the first day of the year following that year.''

RECALCULATION OF PRIMARY INSURANCE AMOUNTS APPLICABLE TO CERTAIN BENEFICIARIES

Section 2201(e) of Pub. L. 97–35, which provided for recalculation of primary insurance amounts for certain beneficiaries, was repealed by Pub. L. 97–123, § 2(i), Dec. 29, 1981, 95 Stat. 1661.

COST-OF-LIVING INCREASE IN BENEFITS

Section 3(i) of Pub. L. 93–233 provided that: ''For purposes of section 203(f)(8) [section 403(f)(8) of this title], so much of section 215(i)(1)(B) [subsec. (i)(1)(B) of this section] as follows the semicolon, and section 230(a) of the Social Security Act [section 430(a) of this title], the increase in benefits provided by section 2 of this Act [amending this section and sections 427 and 428 of this title] shall be considered an increase under section 215(i) of the Social Security Act.''

INCREASE OF OLD-AGE OR DISABILITY INSURANCE BENEFITS FOLLOWING INCREASE IN PRIMARY INSURANCE AMOUNT OR ENTITLEMENT TO BENEFITS ON A HIGHER AMOUNT

Section 101(f) of Pub. L. 92–603 provided that: ''Whenever an insured individual is entitled to benefits for a month which are based on a primary insurance amount under paragraph (1) or paragraph (3) of section 215(a) of the Social Security Act [subsec. (a)(1) or (3) of this section] and for the following month such primary insurance amount is increased or such individual becomes entitled to benefits on a higher primary insurance amount under a different paragraph of such section 215(a), such individual's old-age or disability insurance benefit (beginning with the effective month of the increased primary insurance amount) shall be increased by an amount equal to the difference between the higher primary insurance amount and the primary insurance amount on which such benefit was based for the month prior to such effective month, after the application of section 202(q) of such Act [section 402(q) of this title] where applicable, to such difference.''

TABLE MODIFICATION AND EXTENSION; EFFECTIVE DATE; PUBLICATION IN FEDERAL REGISTER

Section 203(f) of Pub. L. 93–66 provided that effective June 1, 1974, the Secretary of Health, Education, and Welfare would prescribe and publish in the Federal Register all necessary modifications and extensions in the table formerly contained in subsec. (a) of this section.

CONVERSION OF DISABILITY INSURANCE BENEFITS TO OLD-AGE INSURANCE BENEFITS

Section 201(f) of Pub. L. 92–5 provided that: ''If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1970 on the basis of an application filed in or after the month in which this Act is enacted [March 1971], and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1971, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable), the amount in column IV of the table appearing in such section 215(c) [probably means section 215(a) which is subsec. (a) of this section] for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act [subsec. (c) of this section]) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.''

Section 1002(f) of Pub. L. 91–172 provided that: ''If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1969 and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1970, or he died in such month, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable), the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.''

Section 101(f) of Pub. L. 90–248 provided that: ''If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423

of this title] for the month of January 1968 and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for the month of February 1968, or who died in such month, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable) the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.''

Section 301(e) of Pub. L. 89–97 provided that: ''If an individual is entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1964 on the basis of an application filed after enactment of this Act [July 30, 1965] and is entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1965, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable) the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act) instead of the amount in column IV equal to his disability insurance benefit.''

Section 101(h) of Pub. L. 85–840 provided that: ''If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1958, and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title], or died, in January 1959, then, for purposes of paragraph (4) of section 215(a) of the Social Security Act [subsec. (a)(4) of this section], as amended by this Act, the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under subsection (c) of such section 215) instead of the amount in column IV equal to his disability insurance benefit.''

COMPUTATION OF PRIMARY INSURANCE AMOUNT FOR PERSONS ENTITLED TO BENEFITS AFTER JANUARY 2 AND BEFORE FEBRUARY 1968

Section 155(a)(8) of Pub. L. 90–248 provided that: ''In any case in which—

''(A) any person became entitled to a monthly benefit under section 202 or 223 of the Social Security Act [section 402 or 423 of this title] after the date of enactment of this Act [Jan. 2, 1968] and before February 1968, and

''(B) the primary insurance amount on which the amount of such benefit is based was determined by applying section 215(d) of the Social Security Act [subsec. (d) of this section] as amended by this Act,

such primary insurance amount shall, for purposes of section 215(c) of the Social Security Act [subsec. (c) of this section], as amended by this Act, be deemed to have been computed on the basis of the Social Security Act [this chapter] in effect prior to the enactment of this Act [Jan. 2, 1968].''

COMPUTATION OF PRIMARY INSURANCE AMOUNT FOR CERTAIN INDIVIDUALS WHO WERE FULLY INSURED AND HAD ATTAINED RETIREMENT AGE PRIOR TO 1961

Section 303(g)(1) of Pub. L. 86–778, as amended by Pub. L. 87–64, title I, §103(d), June 30, 1961, 75 Stat. 138; Pub. L. 89–97, title III, §302(f)(6), July 30, 1965, 79 Stat. 366; Pub. L. 90–248, title I, §155(c), Jan. 2, 1968, 81 Stat. 866; Pub. L. 92–603, title I, §104(h), Oct. 30, 1972, 86 Stat. 1341, provided that: ''In the case of any individual who both was fully insured and had attained retirement age prior to 1961 and (A) who becomes entitled to old-age insurance benefits after 1960, or (B) who dies after 1960 without being entitled to such benefits, then, notwithstanding the amendments made by the preceding subsections of this section [amending this section and section 423 of this title], or the amendments made by the Social Security Amendments of 1965, 1967, 1969, and 1972 (and by Public Law 92–5) [see Tables for classification of Pub. L. 89–97, July 30, 1965, 79 Stat. 286, Pub. L. 90–248, Jan. 2, 1968, 81 Stat. 821, Pub. L. 91–172, title X, Dec. 30, 1969, 83 Stat. 737, Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, Pub. L. 92–5, Mar. 17, 1971, 85 Stat. 5] the Secretary shall also compute such individual's primary insurance amount on the basis of such individual's average monthly wage determined under the provisions of section 215 of the Social Security Act [this section] in effect prior to the enactment of this Act with a closing date determined under section 215(b)(3)(B) of such Act as then in effect, but only if such closing date would have been applicable to such computation had this section not been enacted. If the primary insurance amount resulting from the use of such an average monthly wage is higher than the primary insurance amount resulting from the use of an average monthly wage determined pursuant to the provisions of section 215 of the Social Security Act, as amended by the Social Security Amendments of 1960 [Pub. L. 86–778], or (if such individual becomes entitled to old-age insurance benefits after the date of enactment of the Social Security Amendments of 1972 [Oct. 30, 1972], or dies after such date without becoming so entitled) as amended by the Social Security Amendments of 1972 [Pub. L. 92–603], such higher primary insurance amount shall be the individual's primary insurance amount for purposes of such section 215. The terms used in this subsection shall have the meaning assigned to them by title II of the Social Security Act [this subchapter]; except that the terms 'fully insured' and 'retirement age' shall have the meaning assigned to them by such title II as in effect on September 13, 1960.''

DISREGARDING OF INCOME OF OASDI RECIPIENTS AND RAILROAD RETIREMENT RECIPIENTS IN DETERMINING NEED FOR PUBLIC ASSISTANCE

Section 1007 of Pub. L. 91–172, as amended by Pub. L. 91–306, §2(b)(1), July 6, 1970, 84 Stat. 408; Pub. L. 91–669, Jan. 11, 1971, 84 Stat. 2038; Pub. L. 92–223, §5, Dec. 28, 1971, 85 Stat. 810; Pub. L. 92–603, title III, §304, Oct. 30, 1972, 86 Stat. 1484, eff. Oct. 30, 1972, provided a minimum aid requirement in addition to the requirements imposed by law as conditions of approval of State plans for aid to individuals under subchapters I, X, XIV, or XVI of this chapter, in the case of any individual found eligible for aid for any month after Mar. 1970 and before Jan. 1974 who also received a monthly insurance benefit under this subchapter, and in the case of such an individual who also received a monthly annuity or pension under the Railroad Retirement Acts of 1935 or 1937, set out in sections 215 et seq. and 228a et seq., respectively, of Title 45, Railroads.

DISREGARDING OF RETROACTIVE PAYMENT OF OASDI BENEFIT INCREASE AND OF RAILROAD RETIREMENT BENEFIT INCREASE

Section 201(g) of Pub. L. 92–5 provided that: ''Notwithstanding the provisions of sections 2(a)(10), 402(a)(7), 1002(a)(8), 1402(a)(8), and 1602(a)(13) and (14) of the Social Security Act [sections 302(a)(10), 602(a)(7), 1202(a)(8), 1352(a)(8), and 1382(a)(13) and (14) of this title] each State, in determining need for aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV, of such Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter], may disregard (and the plan may be deemed to require the State to disregard), in addition to any other amounts which the State is required or permitted to disregard in determining such need, any amount paid to an individual under title II of such Act [subchapter II of this chapter] (or under the Railroad Retirement Act of 1937 [section 228a et seq. of Title 45, Railroads] by reason of the first proviso in section 3(e) thereof [section 228c(e) of Title 45]), in any month after the

month in which this Act is enacted [March 1971], to the extent that (1) such payment is attributable to the increase in monthly benefits under the old-age, survivors, and disability insurance system for January, February, March, or April 1971 resulting from the enactment of this title, and (2) the amount of such increase is paid separately from the rest of the monthly benefit of such individual for January, February, March, or April 1971.''

Section 1006 of title X of Pub. L. 91–172, as amended by Pub. L. 91–306, § 2(a)(1), July 6, 1970, 84 Stat. 407, provided that: ''Notwithstanding the provisions of sections 2(a)(10), 402(a)(7), 1002(a)(8), 1402(a)(8), and 1602(a)(13) and (14) of the Social Security Act [sections 302(a)(10), 602(a)(7), 1202(a)(8), 1352(a)(8), and 1382(a)(13) and (14) of this title], each State, in determining need for aid or assistance under a State plan approved under title I, X, XIV, or XVI [subchapters I, X, XIV, or XVI of this chapter], or part A of title IV, of such Act [part A of subchapter IV of this chapter], shall disregard (and the plan shall be deemed to require the State to disregard), in addition to any other amounts which the State is required or permitted to disregard in determining such need, any amount paid to any individual (1) under title II of such Act [this subchapter] (or under the Railroad Retirement Act of 1937 [section 228a et seq. of Title 45, Railroads] by reason of the first proviso in section 3(e) thereof [section 228c(e) of Title 45]), in any month after December 1969, to the extent that (a) such payment is attributable to the increase in monthly benefits under the old-age, survivors, and disability insurance system for January or February 1970 resulting from the enactment of this title, and (b) the amount of such increase is paid separately from the rest of the monthly benefit of such individual for January or February 1970; or (2) as annuity or pension under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1935, if such amount is paid in a lump-sum to carry out any retroactive increase in annuities or pensions payable under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1935 [section 215 et seq. of Title 45] brought about by reason of the enactment (after May 30, 1970 and prior to December 31, 1970) of any Act which increases, retroactively, the amount of such annuities or pensions.''

DISREGARDING OASDI BENEFIT INCREASES AND CHILD'S INSURANCE BENEFIT PAYMENTS BEYOND AGE 18 TO THE EXTENT ATTRIBUTABLE TO RETROACTIVE EFFECTIVE DATE OF 1965 AMENDMENTS

Section 406 of Pub. L. 89–97 authorized a State to disregard, in determining the need for aid or assistance under State plans approved under subchapter I, IV, X, XIV, or XVI of this chapter, any amount paid to an individual under subchapter II of this chapter or the Railroad Retirement Act of 1937, section 228a et seq. of Title 45, Railroads, by reason of the amendments made by section 326(a) of Pub. L. 89–97 to sections 228a(q) and 228e(1)(9) of Title 45, for months occurring after December 1964 and before the third month following July 1965, in certain instances.

COMPUTATION OF AVERAGE MONTHLY WAGE FOR CERTAIN INDIVIDUALS ENTITLED TO DISABILITY INSURANCE BENEFITS PRIOR TO 1961

Section 303(g)(2) of Pub. L. 86–778 provided that: ''Notwithstanding the amendments made by the preceding subsections of this section [amending this section and section 423 of this title], in the case of any individual who was entitled (without regard to the provisions of section 223(b) of the Social Security Act [section 423(b) of this title]) to a disability insurance benefit under such section 223 for the month before the month in which he became entitled to an old-age insurance benefit under section 202(a) of such Act [section 402(a) of this title], or in which he died, and such disability insurance benefit was based upon a primary insurance amount determined under the provisions of section 215 of the Social Security Act [this section] in effect prior to the enactment of this Act, the Secretary shall, in applying the provisions of such section 215(a) (except paragraph (4) thereof), for purposes of determining benefits payable under section 202 of such Act on the basis of such individual's wages and self-employment income, determine such individual's average monthly wage under the provisions of section 215 of the Social Security Act [this section] in effect prior to the enactment of this Act [Sept. 13, 1960]. The provisions of this paragraph shall not apply with respect to any such individual, entitled to such old-age insurance benefits, (i) who applies, after 1960, for a recomputation (to which he is entitled) of his primary insurance amount under section 215(f)(2) of such Act [subsec. (f)(2) of this section], or (ii) who dies after 1960 and meets the conditions for a recomputation of his primary insurance amount under section 215(f)(4) of such Act.''

AVERAGE MONTHLY WAGE FOR CERTAIN INDIVIDUALS ENTITLED TO MONTHLY BENEFITS OR TO RECOMPUTATION OF PRIMARY INSURANCE AMOUNT FOR MONTHS PRIOR TO JANUARY 1961

Section 303(j) of Pub. L. 86–778 provided that: ''In the case of an individual whose average monthly wage is computed under the provisions of section 215(b) of the Social Security Act [subsec. (b) of this section], as amended by this Act, and—

''(1) who is entitled, by reason of the provisions of section 202(j)(1) or section 223(b) of the Social Security Act [section 402(j)(1) or 423(b) of this title], to a monthly benefit for any month prior to January 1961, or

''(2) who is (or would, but for the fact that such recomputation would not result in a higher primary insurance amount for such individual, be) entitled, by reason of section 215(f) of the Social Security Act [subsec. (f) of this section], to have his primary insurance amount recomputed effective for a month prior to January 1961,

his average monthly wage as determined under the provisions of such section 215(b) [subsec. (b) of this section] shall be his average monthly wage for the purposes of determining his primary insurance amount for such prior month.''

LAG RECOMPUTATION PRESERVED FOR CERTAIN INDIVIDUALS ELIGIBLE OR DEAD PRIOR TO SEPTEMBER 1954

Section 102(e)(8) of act Sept. 1, 1954, as amended by Pub. L. 86–778, title III, § 304(c), Sept. 13, 1960, 74 Stat. 966, provided that: ''In the case of an individual who became (without the application of section 202(j)(1) [section 402(j)(1) of this title]) entitled to old-age insurance benefits or died prior to September 1954, the provisions of section 215(f)(3) [subsec. (f)(3) of this section] as in effect prior to the enactment of this Act [Sept. 1, 1954] shall be applicable as though this Act had not been enacted but only if such individual files the application referred to in subparagraph (A) of such section prior to January 1961 or (if he dies without filing such application) his death occurred prior to January 1961.''

RIGHT TO RECOMPUTATION UNDER LAW PRIOR TO ENACTMENT OF ACT SEPTEMBER 1, 1954

Section 102(e)(5) of act Sept. 1, 1954, as amended by Pub. L. 86–778, title III, § 304(b), Sept. 13, 1960, 74 Stat. 966, provided that:

''(A) In the case of any individual who, upon filing application therefor before September 1954, would (but for the provisions of section 215(f)(6) of the Social Security Act [subsec. (f)(6) of this section]) have been entitled to a recomputation under subparagraph (A) or (B) of section 215(f)(2) of such Act as in effect prior to the enactment of this Act [Sept. 1, 1954], the Secretary shall recompute such individual's primary insurance amount, but only if he files an application therefor or, in case he died before filing such application, an application for monthly benefits or a lump-sum death payment on the basis of his wages and self-employment income is filed. Such recomputation shall be made only as pro-

vided in subsection (a)(2) of section 215 of the Social Security Act, as amended by this Act, through the use of a primary insurance amount determined under subsection (d)(6) of such section in the same manner as for an individual to whom subsection (a)(1) of such section, as in effect prior to the enactment of this Act [Sept. 1, 1954], is applicable; and such recomputation shall take into account only such wages and self-employment income as would be taken into account under section 215(b) of the Social Security Act if the month in which the application for recomputation is filed, or if the individual died without filing the application for recomputation, the month in which he died, were deemed to be the month in which he became entitled to old-age insurance benefits. In the case of monthly benefits, such recomputation shall be effective for and after the month in which such application for recomputation is filed or, if the individual has died without filing the application, for and after the month in which the person filing the application for monthly survivor benefits becomes entitled to such benefits.

''(B) In the case of—

''(i) any individual who is entitled to a recomputation under subparagraph (A) of section 215(f)(2) of the Social Security Act [subsec. (f)(2)(A) of this section] as in effect prior to the enactment of this Act [Sept. 1, 1954] on the basis of an application filed after August 1954, or who died after such month leaving any survivors entitled to a recomputation under section 215(f)(4) of the Social Security Act as in effect prior to the enactment of this Act on the basis of his wages and self-employment income, and whose sixth quarter of coverage after 1950 was acquired after August 1954 or with respect to whom the twelfth month referred to in such subparagraph (A) occurred after such month, and

''(ii) any individual who is entitled to a recomputation under section 215(f)(2)(B) of the Social Security Act [subsec. (f)(2)(B) of this section] as is in effect prior to the enactment of this Act [Sept. 1, 1954] on the basis of an application filed after August 1954, or who died after August 1954 leaving any survivors entitled to a recomputation under section 215(f)(4) of the Social Security Act as in effect prior to the enactment of this Act on the basis of his wages and self-employment income, and whose sixth quarter of coverage after 1950 was acquired after August 1954 or who did not attain the age of seventy-five prior to September 1954, the recomputation of his primary insurance amount shall be made in the manner provided in section 215 of the Social Security Act [this section], as amended by this Act, for computation of such amount, except that his closing date, for purposes of subsection (b) of such section 215, shall be determined as though he became entitled to old-age insurance benefits in the month in which he filed such application for or, if he has died, in the month in which he died. In the case of monthly benefits, such recomputation shall be effective for and after the month in which such application for recomputation is filed or, if the individual has died without filing the application, for and after the month in which the person filing the application for monthly survivors benefits becomes entitled to such benefits.

''(C) An individual or, in case of his death, his survivors entitled to a lump-sum death payment or to monthly benefits under section 202 of the Social Security Act on the basis of his wages and self-employment income shall be entitled to a recomputation of his primary insurance amount under section 215(f)(2) or section 215(f)(4) of the Social Security Act [subsec. (f)(2) or (4) of this section] as in effect prior to the date of enactment of this Act [Sept. 1, 1954] only if (i) he had not less than six quarters of coverage in the period after 1950 and prior to January 1, 1955, and (ii) either the twelfth month referred to in subparagraph (A) of such section 215(f)(2) occurred prior to January 1, 1955, or he attained the age of 75 prior to 1955, and (iii) he meets the other conditions of entitlement to such a recomputation. No individual shall be entitled to a computation under subparagraph (A) or (B) of this paragraph if his primary insurance amount has previously been recomputed under either of such subparagraphs.

''(D) Notwithstanding the provisions of subparagraphs (A), (B), and (C), the primary insurance amount of an individual shall not be recomputed under such provisions unless such individual files the application referred to in subparagraph (A) or (B) prior to January 1961 or, if he dies without filing such application, his death occurred prior to January 1961.''

RECOMPUTATION OF PRIMARY INSURANCE AMOUNT IN CERTAIN CASES WHERE APPLICATION FOR RECOMPUTATION IS FILED ON OR AFTER SEPTEMBER 13, 1960

Section 303(h) of Pub. L. 86–778 provided that: ''In any case where application for recomputation under section 215(f)(3) of the Social Security Act [subsec. (f)(3) of this section] is filed on or after the date of the enactment of this Act [Sept. 13, 1960] with respect to an individual for whom the last previous computation of the primary insurance amount was based on an application filed prior to 1961, or who died before 1961, the provisions of section 215 of such Act [this section] as in effect prior to the enactment of this Act shall apply except that—

''(1) such recomputation shall be made as provided in section 215(a) of the Social Security Act [subsec. (a) of this section] (as in effect prior to the enactment of this Act) and as though such individual first became entitled to old-age insurance benefits in the month in which he filed his application for such recomputation or died without filing such an application, and his closing date for such purposes shall be as specified in such section 215(f)(3); and

''(2) the provisions of section 215(b)(4) of the Social Security Act [subsec. (b)(4) of this section] (as in effect prior to the enactment of this Act) shall apply only if they were applicable to the last previous computation of such individual's primary insurance amount, or would have been applicable to such computation if there had been taken into account—

''(A) his wages and self-employment income in the year in which he became entitled to old-age insurance benefits or filed application for the last previous recomputation of his primary insurance amount, where he is living at the time of the application for recomputation under this subsection, or

''(B) his wages and self-employment income in the year in which he died without becoming entitled to old-age insurance benefits, or (if he was entitled to such benefits) the year in which application was filed for the last previous computation of his primary insurance amount or in which he died, whichever first occurred, where he has died at the time of the application for such recomputation.

If the primary insurance amount of an individual was recomputed under section 215(f)(3) of the Social Security Act [subsec. (f)(3) of this section] as in effect prior to the enactment of this Act, and such amount would have been larger if the recomputation had been made under such section as modified by this subsection, then the Secretary shall recompute such primary insurance amount under such section as so modified, but only if an application for such recomputation is filed on or after the date of the enactment of this Act [Sept. 13, 1960]. A recomputation under the preceding sentence shall be effective for and after the first month for which the last previous recomputation of such individual's primary insurance amount under such section 215 [this section] was effective, but in no event for any month prior to the twenty-fourth month before the month in which the application for a recomputation is filed under the preceding sentence.''

SPECIAL STARTING AND CLOSING DATES FOR CERTAIN INDIVIDUALS FOR COMPUTATION OF 1957 BENEFIT AMOUNTS

Section 110 of act Aug. 1, 1956, provided that: ''In the case of an individual who died or became (without the application of section 202(j)(1) of the Social Security

Act [section 402(j)(1) of this title]) entitled to old-age insurance benefits in 1957 and with respect to whom not less than six of the quarters elapsing after 1955 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his primary insurance amount shall be computed under section 215(a)(1)(A) of such Act [subsec. (a)(1)(A) of this section], with a starting date of December 31, 1955, and a closing date of July 1, 1957, but only if it would result in a higher primary insurance amount. For the purposes of section 215(f)(3)(C) of such Act, the determination of an individual's closing date under the preceding sentence shall be considered as a determination of the individual's closing date under section 215(b)(3)(A) of such Act and the recomputation provided for by such section 215(f)(3)(C) shall be made using July 1, 1957, as the closing date, but only if it would result in a higher primary insurance amount. In any such computation on the basis of a July 1, 1957, closing date, the total of his wages and self-employment income after December 31, 1956, shall, if it is in excess of $2,100, be reduced to such amount.''

SPECIAL STARTING AND CLOSING DATES FOR CERTAIN INDIVIDUALS FOR COMPUTATION OF 1966 BENEFIT AMOUNTS

Section 102(e)(6) of act Sept. 1, 1954, provided that: ''In the case of an individual who died or became (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) entitled to old-age insurance benefits in 1956 and with respect to whom not less than six of the quarters elapsing after 1954 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his primary insurance amount shall be computed under section 215(a)(1)(A) of such Act, as amended by this Act [subsec. (a)(1)(A) of this section], with a starting date of December 31, 1954, and a closing date of July 1, 1956, but only if it would result in a higher primary insurance amount. For the purposes of section 215(f)(3)(C) of such Act, the determination of an individual's closing date under the preceding sentence shall be considered as a determination of the individual's closing date under section 215(b)(3)(A) of such Act, and the recomputation provided for by such section 215(f)(3)(C) shall be made using July 1, 1956, as the closing date, but only if it would result in a higher primary insurance amount. In any such computation on the basis of a July 1, 1956 closing date, the total of his wages and self-employment income after December 31, 1955, shall, if it is in excess of $2,100, be reduced to such amount.''

STUDY OF FEASIBILITY OF INCREASING BENEFITS

Section 404 of act Sept. 1, 1954, authorized the Secretary of Health, Education, and Welfare to conduct a feasibility study with a view toward increasing the minimum old-age insurance benefit under this subchapter to $55, $60, or $75 per month and required him to report the results of his study to the Congress at the earliest practicable date.

CHANGE OF WAGE CLOSING DATE OF CERTAIN INDIVIDUALS DEAD OR ELIGIBLE IN 1952 TO THE FIRST WAY OF THE QUARTER OF DEATH OR ENTITLEMENT

Section 6(c) of act July 18, 1952, provided that: ''In the case of an individual who died or became (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) entitled to old-age insurance benefits in 1952 and with respect to whom not less than six of the quarters elapsing after 1950 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his wage closing date shall be the first day of such quarter of death or entitlement instead of the day specified in section 215(b)(3) of such Act [subsec. (b)(3) of this section], but only if it would result in a higher primary insurance amount for such individual. The terms used in this paragraph shall have the same meaning as when used in title II of the Social Security Act [this subchapter].''

COMPUTATION OF INCREASED BENEFITS TO INDIVIDUALS ENTITLED THERETO FOR AUGUST 1952

Section 6(e) of act July 18, 1952, provided that: ''In case the benefit of any individual for any month after August 1952 is computed under section 2(c)(2)(A) of this Act [set out as a note under this section] through use of a benefit (after the application of sections 203 and 215(g) of the Social Security Act [section 403 of this title and subsec. (g) of this section] as in effect prior to the enactment of this Act [July 18, 1952]) for August 1952 which could have been derived from either of two (and not more than two) primary insurance amounts, and such primary insurance amounts differ from each other by not more than $0.10, then the benefit of such individual for such month of August 1952 shall, for the purposes of the last sentence of such section 2(c)(2)(A) [set out as a note under this section], be deemed to have been derived from the larger of such two primary insurance amounts.''

COMPUTATION OF INCREASED BENEFITS FOR DEPENDENTS AND SURVIVORS ON BENEFIT ROLLS FOR AUGUST 1952

Section 2(c)(2) of act July 18, 1952, as amended by act Sept. 1, 1954, § 102(g), eff. Sept. 1, 1954, provided that:

''(A) In the case of any individual who is (without the application of section 202(j)(1) of the Social Security Act) [section 402(j)(1) of this title] entitled to a monthly benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of such section 202 for August 1952, whose benefit for such month is computed through use of a primary insurance amount determined under paragraph (1) or (2) of section 215(c) of such Act [subsec. (c) of this section], and who is entitled to such benefit for any succeeding month on the basis of the same wages and self-employment income, the amendments made by this section shall not (subject to the provisions of subparagraph (B) of this paragraph) apply for purposes of computing the amount of such benefit for such succeeding month. The amount of such benefit for such succeeding month shall instead be equal to the larger of (i) 112½ per centum of the amount of such benefit (after the application of sections 203(a) and 215(g) of the Social Security Act [section 403(a) of this title and subsec. (g) of this section] as in effect prior to the enactment of this Act [July 18, 1952]) for August 1952, increased, if it is not a multiple of $0.10, to the next higher multiple of $0.10, or (ii) the amount of such benefit (after the application of sections 203(a) and 215(g) of the Social Security Act as in effect prior to the enactment of this Act [July 18, 1952]) for August 1952, increased by an amount equal to the product obtained by multiplying $5 by the fraction applied to the primary insurance amount which was used in determining such benefit, and further increased, if such product is not a multiple of $0.10, to the next higher multiple of $0.10. The provisions of section 203(a) of the Social Security Act, as amended by this section (and, for purposes of such section 203(a), the provisions of section 215(c)(4) of the Social Security Act, as amended by this section), shall apply to such benefit as computed under the preceding sentence of this subparagraph, and the resulting amount, if not a multiple of $0.10, shall be increased to the next higher multiple of $0.10.

''(B) The provisions of subparagraph (A) shall cease to apply to the benefit of any individual under title II of the Social Security Act [this subchapter] for any month after August 1954.''

DETERMINATION OF PRIMARY INSURANCE AMOUNT OF INDIVIDUALS WHO DIED AFTER 1939 AND PRIOR TO 1951

Section 204(b) of Pub. L. 86–778 provided that: ''The primary insurance amount (for purposes of title II of the Social Security Act [this subchapter]) of any indi-

vidual who died after 1939 and prior to 1951 shall be determined as provided in section 215(a)(2) of such Act [subsec. (a)(2) of this section].''

BENEFITS IN CERTAIN CASES OF DEATHS BEFORE SEPTEMBER 1950

Section 109 of act Sept. 1, 1954, as amended by Pub. L. 86–778, title II, § 204(c), Sept. 13, 1960, 74 Stat. 948, provided that in the case of an individual who died prior to Sept. 1, 1950, and was not a fully insured individual when he died and who had at least six quarters of coverage under this subchapter, such individual was generally to be deemed to have died fully insured, his primary insurance amount was to be deemed to be computed under subsec. (a)(2) of this section, the proof of support requirement in section 402(h) of this title was not to be applicable where such proof was filed before Sept. 1956, and that the provisions of this section were to apply to monthly benefits under section 402 of this title for months after Aug. 1954 and in or prior to Sept. 1960.

COMPUTATION OF PRIMARY INSURANCE AMOUNT OF INDIVIDUALS WHO DIED PRIOR TO 1940

Section 205(c) of Pub. L. 86–778 provided that: ''The primary insurance amount (for purposes of title II of the Social Security Act [this subchapter]) of any individual who died prior to 1940, and who had not less than six quarters of coverage (as defined in section 213 of such Act [section 413 of this title]), shall be computed under section 215(a)(2) of such Act [subsec. (a)(2) of this section].''

[Section 205(c) of Pub. L. 86–778 as applicable only in the case of monthly benefits under this subchapter for months after September 1960, on the basis of applications filed in or after such month, see section 205(d) of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 402 of this title.]

§ 416. Additional definitions

For the purposes of this subchapter—

(a) Spouse; surviving spouse

(1) The term ''spouse'' means a wife as defined in subsection (b) of this section or a husband as defined in subsection (f) of this section.

(2) The term ''surviving spouse'' means a widow as defined in subsection (c) of this section or a widower as defined in subsection (g) of this section.

(b) Wife

The term ''wife'' means the wife of an individual, but only if she (1) is the mother of his son or daughter, (2) was married to him for a period of not less than one year immediately preceding the day on which her application is filed, or (3) in the month prior to the month of her marriage to him (A) was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 402 of this title, (B) had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (C) was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45. For purposes of clause (2), a wife shall be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of her marriage to such individual. For purposes of subparagraph (C) of section 402(b)(1) of this title, a divorced wife shall be deemed not to be married throughout the month in which she becomes divorced.

(c) Widow

(1) The term ''widow'' (except when used in the first sentence of section 402(i) of this title) means the surviving wife of an individual, but only if (A) she is the mother of his son or daughter, (B) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (C) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (D) she was married to him at the time both of them legally adopted a child under the age of eighteen, (E) except as provided in paragraph (2), she was married to him for a period of not less than nine months immediately prior to the day on which he died, or (F) in the month prior to the month of her marriage to him (i) she was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 402 of this title, (ii) she had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (iii) she was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45.

(2) The requirements of paragraph (1)(E) in connection with the surviving wife of an individual shall be treated as satisfied if—

(A) the individual had been married prior to the individual's marriage to the surviving wife,

(B) the prior wife was institutionalized during the individual's marriage to the prior wife due to mental incompetence or similar incapacity,

(C) during the period of the prior wife's institutionalization, the individual would have divorced the prior wife and married the surviving wife, but the individual did not do so because such divorce would have been unlawful, by reason of the prior wife's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

(D) the prior wife continued to remain institutionalized up to the time of her death, and

(E) the individual married the surviving wife within 60 days after the prior wife's death.

(d) Divorced spouses; divorce

(1) The term ''divorced wife'' means a woman divorced from an individual, but only if she had been married to such individual for a period of 10 years immediately before the date the divorce became effective.

(2) The term ''surviving divorced wife'' means a woman divorced from an individual who has died, but only if she had been married to the individual for a period of 10 years immediately before the date the divorce became effective.

(3) The term ''surviving divorced mother'' means a woman divorced from an individual who has died, but only if (A) she is the mother of his son or daughter, (B) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18, (C) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18, or (D) she was married to him at the time both of them legally adopted a child under the age of 18.

(4) The term ''divorced husband'' means a man divorced from an individual, but only if he had been married to such individual for a period of 10 years immediately before the date the divorce became effective.

(5) The term ''surviving divorced husband'' means a man divorced from an individual who has died, but only if he had been married to the individual for a period of 10 years immediately before the divorce became effective.

(6) The term ''surviving divorced father'' means a man divorced from an individual who has died, but only if (A) he is the father of her son or daughter, (B) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of 18, (C) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of 18, or (D) he was married to her at the time both of them legally adopted a child under the age of 18.

(7) The term ''surviving divorced parent'' means a surviving divorced mother as defined in paragraph (3) of this subsection or a surviving divorced father as defined in paragraph (6).

(8) The terms ''divorce'' and ''divorced'' refer to a divorce a vinculo matrimonii.

(e) Child

The term ''child'' means (1) the child or legally adopted child of an individual, (2) a stepchild who has been such stepchild for not less than one year immediately preceding the day on which application for child's insurance benefits is filed or (if the insured individual is deceased) not less than nine months immediately preceding the day on which such individual died, and (3) a person who is the grandchild or stepgrandchild of an individual or his spouse, but only if (A) there was no natural or adoptive parent (other than such a parent who was under a disability, as defined in section 423(d) of this title) of such person living at the time (i) such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (ii) if such individual had a period of disability which continued until such individual became entitled to old-age insurance benefits or disability insurance benefits, or died, at the time such period of disability began, or (B) such person was legally adopted after the death of such individual by such individual's surviving spouse in an adoption that was decreed by a court of competent jurisdiction within the United States and such person's natural or adopting parent or stepparent was not living in such individual's household and making regular contributions toward such person's support at the time such individual died. For purposes of clause (1), a person shall be deemed, as of the date of death of an individual, to be the legally adopted child of such individual if such person was either living with or receiving at least one-half of his support from such individual at the time of such individual's death and was legally adopted by such individual's surviving spouse after such individual's death but only if (A) proceedings for the adoption of the child had been instituted by such individual before his death, or (B) such child was adopted by such individual's surviving spouse before the end of two years after (i) the day on which such individual died or (ii) August 28, 1958. For purposes of clause (2), a person who is not the stepchild of an individual shall be deemed the stepchild of such individual if such individual was not the mother or adopting mother or the father or adopting father of such person and such individual and the mother or adopting mother, or the father or adopting father, as the case may be, of such person went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of subsection (h)(1)(B) of this section, would have been a valid marriage. For purposes of clause (2), a child shall be deemed to have been the stepchild of an individual for a period of one year throughout the month in which occurs the expiration of such one year. For purposes of clause (3), a person shall be deemed to have no natural or adoptive parent living (other than a parent who was under a disability) throughout the most recent month in which a natural or adoptive parent (not under a disability) dies.

(f) Husband

The term ''husband'' means the husband of an individual, but only if (1) he is the father of her son or daughter, (2) he was married to her for a period of not less than one year immediately preceding the day on which his application is filed, or (3) in the month prior to the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c), (f) or (h) of section 402 of this title, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (C) he was entitled to, or upon application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45. For purposes of clause (2), a husband shall be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of his marriage to her. For purposes of subparagraph (C) of section 402(c)(1) of this title, a divorced husband shall be deemed not to be married throughout the month which he becomes divorced.

(g) Widower

(1) The term ''widower'' (except when used in the first sentence of section 402(i) of this title) means the surviving husband of an individual, but only if (A) he is the father of her son or daughter, (B) he legally adopted her son or

daughter while he was married to her and while such son or daughter was under the age of eighteen, (C) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (D) he was married to her at the time both of them legally adopted a child under the age of eighteen, (E) except as provided in paragraph (2), he was married to her for a period of not less than nine months immediately prior to the day on which she died, or (F) in the month before the month of his marriage to her (i) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c), (f) or (h) of section 402 of this title, (ii) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (iii) he was entitled to, or on application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45.

(2) The requirements of paragraph (1)(E) in connection with the surviving husband of an individual shall be treated as satisfied if—

(A) the individual had been married prior to the individual's marriage to the surviving husband,

(B) the prior husband was institutionalized during the individual's marriage to the prior husband due to mental incompetence or similar incapacity,

(C) during the period of the prior husband's institutionalization, the individual would have divorced the prior husband and married the surviving husband, but the individual did not do so because such divorce would have been unlawful, by reason of the prior husband's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

(D) the prior husband continued to remain institutionalized up to the time of his death, and

(E) the individual married the surviving husband within 60 days after the prior husband's death.

(h) Determination of family status

(1)(A)(i) An applicant is the wife, husband, widow, or widower of a fully or currently insured individual for purposes of this subchapter if the courts of the State in which such insured individual is domiciled at the time such applicant files and application, or, if such insured individual is dead, the courts of the State in which he was domiciled at the time of death, or, if such insured individual is or was not so domiciled in any State, the courts of the District of Columbia, would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died.

(ii) If such courts would not find that such applicant and such insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the wife, husband, widow, or widower, as the case may be, of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.

(B)(i) In any case where under subparagraph (A) an applicant is not (and is not deemed to be) the wife, widow, husband, or widower of a fully or currently insured individual, or where under subsection (b), (c), (d), (f), or (g) of this section such applicant is not the wife, divorced wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual, but it is established to the satisfaction of the Commissioner of Social Security that such applicant in good faith went through a marriage ceremony with such individual resulting in a purported marriage between them which, but for a legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage, then, for purposes of subparagraph (A) and subsections (b), (c), (d), (f), and (g) of this section, such purported marriage shall be deemed to be a valid marriage. Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of the insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of the death of such insured individual.

(ii) The provisions of clause (i) shall not apply if the Commissioner of Social Security determines, on the basis of information brought to the Commissioner's attention, that such applicant entered into such purported marriage with such insured individual with knowledge that it would not be a valid marriage.

(iii) The entitlement to a monthly benefit under subsection (b) or (c) of section 402 of this title, based on the wages and self-employment income of such insured individual, of a person who would not be deemed to be a wife or husband of such insured individual but for this subparagraph, shall end with the month before the month in which such person enters into a marriage, valid without regard to this subparagraph, with a person other than such insured individual.

(iv) For purposes of this subparagraph, a legal impediment to the validity of a purported marriage includes only an impediment (I) resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or (II) resulting from a defect in the procedure followed in connection with such purported marriage.

(2)(A) In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this subchapter, the Commissioner of Social Security shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or, if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

(B) If an applicant is a son or daughter of a fully or currently insured individual but is not (and is not deemed to be) the child of such insured individual under subparagraph (A), such applicant shall nevertheless be deemed to be the child of such insured individual if such insured individual and the mother or father, as the case may be, of such applicant went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of paragraph (1)(B), would have been a valid marriage.

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2) of this subsection, shall nevertheless be deemed to be the child of such insured individual if:

(A) in the case of an insured individual entitled to old-age insurance benefits (who was not, in the month preceding such entitlement, entitled to disability insurance benefits)—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) has been decreed by a court to be the mother or father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his or her son or daughter,

and such acknowledgment, court decree, or court order was made not less than one year before such insured individual became entitled to old-age insurance benefits or attained retirement age (as defined in subsection (*l*) of this section), whichever is earlier; or

(ii) such insured individual is shown by evidence satisfactory to the Commissioner of Social Security to be the mother or father of the applicant and was living with or contributing to the support of the applicant at the time such applicant's application for benefits was filed;

(B) in the case of an insured individual entitled to disability insurance benefits, or who was entitled to such benefits in the month preceding the first month for which he or she was entitled to old-age insurance benefits—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) has been decreed by a court to be the mother or father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his or her son or daughter,

and such acknowledgment, court decree, or court order was made before such insured individual's most recent period of disability began; or

(ii) such insured individual is shown by evidence satisfactory to the Commissioner of Social Security to be the mother or father of the applicant and was living with or contributing to the support of that applicant at the time such applicant's application for benefits was filed;

(C) in the case of a deceased individual—

(i) such insured individual—

(I) had acknowledged in writing that the applicant is his or her son or daughter,

(II) had been decreed by a court to be the mother or father of the applicant, or

(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his or her son or daughter,

and such acknowledgment, court decree, or court order was made before the death of such insured individual, or

(ii) such insured individual is shown by evidence satisfactory to the Commissioner of Social Security to have been the mother or father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died.

For purposes of subparagraphs (A)(i) and (B)(i), an acknowledgement, court decree, or court order shall be deemed to have occurred on the first day of the month in which it actually occurred.

(i) Disability; period of disability

(1) Except for purposes of sections 402(d), 402(e), 402(f), 423, and 425 of this title, the term ''disability'' means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term ''blindness'' means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), (2)(B), (3), (4), (5), and (6) of section 423(d) of this title shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this subchapter shall be construed as authorizing the Commissioner of Social Security or any other

officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2)(A) The term ''period of disability'' means a continuous period (beginning and ending as hereinafter provided in this subsection) during which an individual was under a disability (as defined in paragraph (1)), but only if such period is of not less than five full calendar months' duration or such individual was entitled to benefits under section 423 of this title for one or more months in such period.

(B) No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains retirement age (as defined in subsection (*l*) of this section). In the case of a deceased individual, the requirement of an application under the preceding sentence may be satisfied by an application for a disability determination filed with respect to such individual within 3 months after the month in which he died.

(C) A period of disability shall begin—

(i) on the day the disability began, but only if the individual satisfies the requirements of paragraph (3) on such day; or

(ii) if such individual does not satisfy the requirements of paragraph (3) on such day, then on the first day of the first quarter thereafter in which he satisfies such requirements.

(D) A period of disability shall end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains retirement age (as defined in subsection (*l*) of this section), or (ii) the month preceding (I) the termination month (as defined in section 423(a)(1) of this title), or, if earlier (II) the first month for which no benefit is payable by reason of section 423(e) of this title, where no benefit is payable for any of the succeeding months during the 36-month period referred to in such section. The provisions set forth in section 423(f) of this title with respect to determinations of whether entitlement to benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling).

(E) Except as is otherwise provided in subparagraph (F), no application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph) shall be accepted as an application for purposes of this paragraph.

(F) An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraphs (B) and (E)) shall be accepted as an application for purposes of this paragraph if—

(i) in the case of an application filed by or on behalf of an individual with respect to a disability which ends after January 1968, such application is filed not more than 36 months after the month in which such disability ended, such individual is alive at the time the application is filed, and the Commissioner of Social Security finds in accordance with regulations prescribed by the Commissioner that the failure of such individual to file an application for a disability determination within the time specified in subparagraph (E) was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application, and

(ii) in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before January 1968—

(I) such application is filed not more than 12 months after January 1968,

(II) a previous application for a disability determination has been filed by or on behalf of such individual (1) in or before January 1968, and (2) not more than 36 months after the month in which his disability ended, and

(III) the Commissioner of Social Security finds in accordance with regulations prescribed by the Commissioner, that the failure of such individual to file an application within the then specified time period was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application.

In making a determination under this subsection, with respect to the disability or period of disability of any individual whose application for a determination thereof is accepted solely by reason of the provisions of this subparagraph (F), the provisions of this subsection (other than the provisions of this subparagraph) shall be applied as such provisions are in effect at the time such determination is made.

(G) An application for a disability determination filed before the first day on which the applicant satisfies the requirements for a period of disability under this subsection shall be deemed a valid application (and shall be deemed to have been filed on such first day) only if the applicant satisfies the requirements for a period of disability before the Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security).

(3) The requirements referred to in clauses (i) and (ii) of paragraph (2)(C) of this subsection are satisfied by an individual with respect to any quarter only if—

(A) he would have been a fully insured individual (as defined in section 414 of this title)

had he attained age 62 and filed application for benefits under section 402(a) of this title on the first day of such quarter; and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with such quarter, or

(ii) if such quarter ends before he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with such quarter and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of clause (ii), had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with such quarter are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of ''blindness'' as defined in paragraph (1)). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage.

(j) Periods of limitation ending on nonwork days

Where this subchapter, any provision of another law of the United States (other than the Internal Revenue Code of 1986) relating to or changing the effect of this subchapter, or any regulation issued by the Commissioner of Social Security pursuant thereto provides for a period within which an act is required to be done which affects eligibility for or the amount of any benefit or payment under this subchapter or is necessary to establish or protect any rights under this subchapter, and such period ends on a Saturday, Sunday, or legal holiday, or on any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order, then such act shall be considered as done within such period if it is done on the first day thereafter which is not a Saturday, Sunday, or legal holiday or any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order. For purposes of this subsection, the day on which a period ends shall include the day on which an extension of such period, as authorized by law or by the Commissioner of Social Security pursuant to law, ends. The provisions of this subsection shall not extend the period during which benefits under this subchapter may (pursuant to section 402(j)(1) or 423(b) of this title) be paid for months prior to the day application for such benefits is filed, or during which an application for benefits under this subchapter may (pursuant to section 402(j)(2) or 423(b) of this title) be accepted as such.

(k) Waiver of nine-month requirement for widow, stepchild, or widower in case of accidental death or in case of serviceman dying in line of duty, or in case of remarriage to same individual

The requirement in clause (E) of subsection (c)(1) of this section or clause (E) of subsection (g)(1) of this section that the surviving spouse of an individual have been married to such individual for a period of not less than nine months immediately prior to the day on which such individual died in order to qualify as such individual's widow or widower, and the requirement in subsection (e) of this section that the stepchild of a deceased individual have been such stepchild for not less than nine months immediately preceding the day on which such individual died in order to qualify as such individual's child, shall be deemed to be satisfied, where such individual dies within the applicable nine-month period, if—

(1) his death—

(A) is accidental, or

(B) occurs in line of duty while he is a member of a uniformed service serving on active duty (as defined in section 410(*l*)(2) of this title),

unless the Commissioner of Social Security determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months, or

(2)(A) the widow or widower of such individual had been previously married to such individual and subsequently divorced and such requirement would have been satisfied at the time of such divorce if such previous marriage had been terminated by the death of such individual at such time instead of by divorce; or

(B) the stepchild of such individual had been the stepchild of such individual during a previous marriage of such stepchild's parent to such individual which ended in divorce and such requirement would have been satisfied at the time of such divorce if such previous marriage had been terminated by the death of such individual at such time instead of by divorce;

except that paragraph (2) of this subsection shall not apply if the Commissioner of Social Security determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months. For purposes of paragraph (1)(A) of this subsection, the death of an individual is accidental if he receives bodily injuries solely through violent, external, and accidental means and, as a direct result of the bodily injuries and independently of all other causes, loses his life not later than three months after the day on which he receives such bodily injuries.

***(l)* Retirement age**

(1) The term ''retirement age'' means—

(A) with respect to an individual who attains early retirement age (as defined in paragraph (2)) before January 1, 2000, 65 years of age;

(B) with respect to an individual who attains early retirement age after December 31, 1999,

and before January 1, 2005, 65 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age;

(C) with respect to an individual who attains early retirement age after December 31, 2004, and before January 1, 2017, 66 years of age;

(D) with respect to an individual who attains early retirement age after December 31, 2016, and before January 1, 2022, 66 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age; and

(E) with respect to an individual who attains early retirement age after December 31, 2021, 67 years of age.

(2) The term ''early retirement age'' means age 62 in the case of an old-age, wife's, or husband's insurance benefit, and age 60 in the case of a widow's or widower's insurance benefit.

(3) The age increase factor for any individual who attains early retirement age in a calendar year within the period to which subparagraph (B) or (D) of paragraph (1) applies shall be determined as follows:

(A) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2000 through 2004, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2000 and ending with December of the year in which the individual attains early retirement age.

(B) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2017 through 2021, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2017 and ending with December of the year in which the individual attains early retirement age.

(Aug. 14, 1935, ch. 531, title II, §216, as added Aug. 28, 1950, ch. 809, title I, §104(a), 64 Stat. 492, 510; amended July 18, 1952, ch. 945, §3(d), 66 Stat. 771; Sept. 1, 1954, ch. 1206, title I, §106(d), 68 Stat. 1080; Aug. 1, 1956, ch. 836, title I, §§102(a), (d)(12), 103(c)(6), 70 Stat. 809, 815, 818; Pub. L. 85–109, §1, July 17, 1957, 71 Stat. 308; Pub. L. 85–238, §3(h), Aug. 30, 1957, 71 Stat. 519; Pub. L. 85–840, title II, §§201, 203, 204(a), title III, §§301(a)(2), (b)(2), (c)(2), (d), (e), 302(a), 305(b), Aug. 28, 1958, 72 Stat. 1020, 1021, 1026–1028, 1030; Pub. L. 86–778, title II, §§207(a)–(c), 208(a)–(c), title IV, §§402(e), 403(c), title VII, §703, Sept. 13, 1960, 74 Stat. 950–952, 968, 969, 994; Pub. L. 87–64, title I, §§102(b)(2)(D), (c)(1), (2)(B), (3)(C), 105, June 30, 1961, 75 Stat. 134, 135, 139; Pub. L. 88–650, §1(a)–(c), Oct. 13, 1964, 78 Stat. 1075; Pub. L. 89–97, title III, §§303(a)(1), (b)(1), (2), 304(*l*), 306(c)(13), 308(c), (d)(2)(B), 328(b), 334(a)–(d), 339(a), 344(a), July 30, 1965, 79 Stat. 366, 367, 370, 373, 377, 378, 400, 404, 405, 409, 412; Pub. L. 90–248, title I, §§104(d)(2), 105(a), 111(a), 150(a), 156(a)–(d), 158(d), 172(a), (b), Jan. 2, 1968, 81 Stat. 832, 833, 837, 860, 866, 869, 877; Pub. L. 92–603, title I, §§104(g), 113(a), 115(b), 116(d), 117(a), 118(b), 145(a), Oct. 30, 1972, 86 Stat. 1341, 1347, 1349–1351, 1370; Pub. L. 93–445, title III, §304, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 95–216, title III, §337(a), Dec. 20, 1977, 91 Stat. 1548; Pub. L. 96–265, title III, §§303(b)(2)(B), 306(b), June 9, 1980, 94 Stat. 453, 457; Pub. L. 96–473, §5(a)(2), Oct. 19, 1980, 94 Stat. 2265; Pub. L. 97–35, title XXII, §§2202(a)(2), 2203(b)(2), (c)(2), (d)(3), (4), Aug. 13, 1981, 95 Stat. 835–837; Pub. L. 98–21, title II, §201(a), (c)(1)(D), title III, §§301(c), 303, 304(c), 306(c), 309(j), (k), 332(a), 333(a), Apr. 20, 1983, 97 Stat. 107, 109, 111, 112, 114, 117, 129; Pub. L. 98–369, div. B, title VI, §§2661(*l*), 2662(c)(1), 2663(a)(11), July 18, 1984, 98 Stat. 1158, 1159, 1164; Pub. L. 98–460, §§2(b), 4(a)(2), Oct. 9, 1984, 98 Stat. 1796, 1800; Pub. L. 100–203, title IX, §9010(e)(1), Dec. 22, 1987, 101 Stat. 1330–294; Pub. L. 101–508, title V, §§5103(b)(1), 5104(a), 5119(a), (b), Nov. 5, 1990, 104 Stat. 1388–251, 1388–254, 1388–278, 1388–279; Pub. L. 103–296, title I, §107(a)(4), title III, §321(c)(6)(H), Aug. 15, 1994, 108 Stat. 1478, 1538; Pub. L. 108–203, title IV, §414(a)–(c), Mar. 2, 2004, 118 Stat. 529, 530.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (j), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–203, §414(a), designated existing provisions as par. (1), redesignated former cls. (1) to (6) as cls. (A) to (F), respectively, of par. (1), in cl. (E) inserted ''except as provided in paragraph (2),'' before ''she was married'', in cl. (F) redesignated former subcls. (A) to (C) as subcls. (i) to (iii), respectively, and added par. (2).

Subsec. (g). Pub. L. 108–203, §414(b), designated existing provisions as par. (1), redesignated former cls. (1) to (6) as cls. (A) to (F), respectively, of par. (1), in cl. (E) inserted ''except as provided in paragraph (2),'' before ''he was married'', in cl. (F) redesignated former subcls. (A) to (C) as subcls. (i) to (iii), respectively, and added par. (2).

Subsec. (k). Pub. L. 108–203, §414(c), substituted ''clause (E) of subsection (c)(1) of this section or clause (E) of subsection (g)(1) of this section'' for ''clause (5) of subsection (c) of this section or clause (5) of subsection (g) of this section'' in introductory provisions.

1994—Subsecs. (h), (i). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' in subsec. (h)(1)(B)(ii), and ''prescribed by the Commissioner'' for ''prescribed by him'' in subsec. (i)(2)(F)(i), (ii)(III).

Subsec. (j). Pub. L. 103–296, §321(c)(6)(H), substituted ''1986'' for ''1954'' after ''Code of''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (k). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

1990—Subsec. (e). Pub. L. 101–508, §5104(a), substituted ''either living with or receiving at least one-half of his support from such individual at the time of such individual's death'' for ''at the time of such individual's death living in such individual's household'' and struck out before period at end of second sentence ''; except that this sentence shall not apply if at the time of such individual's death such person was receiving regular contributions toward his support from someone other than such individual or his spouse, or from any public or private welfare organization which furnishes services or assistance for children''.

Subsec. (h)(1)(A). Pub. L. 101–508, §5119(a)(1), designated first and second sentences as cls. (i) and (ii), respectively.

Subsec. (h)(1)(B)(i). Pub. L. 101–508, §5119(b), substituted ''where under subsection (b), (c), (d), (f), or (g) of this section such applicant is not the wife, divorced

wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual'' for ''where under subsection (b), (c), (f), or (g) of this section such applicant is not the wife, widow, husband, or widower of such individual'', struck out ''and such applicant and the insured individual were living in the same household at the time of the death of such insured individual or (if such insured individual is living) at the time such applicant files the application,'' after ''valid marriage,'', substituted ''subsections (b), (c), (d), (f), and (g)'' for ''subsections (b), (c), (f), and (g)'', and inserted at end ''Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of the insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of the death of such insured individual.''

Pub. L. 101–508, §5119(a)(2)(A), inserted ''(i)'' after ''(B)''.

Subsec. (h)(1)(B)(ii). Pub. L. 101–508, §5119(a)(2)(B), (C), substituted ''(ii) The provisions of clause (i) shall not apply'' for ''The provisions of the preceding sentence shall not apply (i) if another person is or has been entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 402 of this title on the basis of the wages and self-employment income of such insured individual and such other person is (or is deemed to be) a wife, widow, husband, or widower of such insured individual under subparagraph (A) at the time such applicant files the application, or (ii)''.

Subsec. (h)(1)(B)(iii). Pub. L. 101–508, §5119(a)(2)(D)–(G), substituted ''(iii) The entitlement to a monthly benefit under subsection (b) or (c)'' for ''The entitlement to a monthly benefit under subsection (b), (c), (e), (f), or (g)'', ''a wife or husband'' for ''a wife, widow, husband, or widower'', and ''in which such person enters'' for ''(i) in which the Secretary certifies, pursuant to section 405(i) of this title, that another person is entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 402 of this title on the basis of the wages and self-employment income of such insured individual, if such other person is (or is deemed to be) the wife, widow, husband, or widower of such insured individual under subparagraph (A), or (ii) if the applicant is entitled to a monthly benefit under subsection (b) or (c) of section 402 of this title, in which such applicant entered''.

Subsec. (h)(1)(B)(iv). Pub. L. 101–508, §5119(a)(2)(H), (I), inserted ''(iv)'' before ''For purposes'' and substituted ''(I)'' and ''(II)'' for ''(i)'' and ''(ii)'', respectively.

Subsec. (i)(1). Pub. L. 101–508, §5103(b)(1), substituted ''(2)(B)'' for ''(2)(C)''.

1987—Subsec. (i)(2)(D)(ii)(II). Pub. L. 100–203 substituted ''36-month period'' for ''15-month period''.

1984—Subsec. (f). Pub. L. 98–369, §2661(*l*)(1), inserted provision that for purposes of subparagraph (C) of section 402(c)(1) of this title, a divorced husband shall be deemed not to be married throughout the month which he becomes divorced.

Subsec. (h)(3). Pub. L. 98–369, §2663(a)(11)(A), made technical amendment to directory language of Pub. L. 97–35, §2203(d)(4). See 1981 Amendment Note below.

Subsec. (h)(3)(A)(i). Pub. L. 98–369, §2661(*l*)(2), substituted ''subsection (*l*) of this section'' for ''section 416(*l*) of this title''.

Subsec. (i)(1). Pub. L. 98–460, §4(a)(2), inserted ''(2)(C),'' after ''(2)(A),''.

Subsec. (i)(2)(B). Pub. L. 98–369, §2661(*l*)(3), substituted ''subsection (*l*) of this section'' for ''section 416(*l*) of this title''.

Pub. L. 98–369, §2662(c)(1), made clarifying amendment to Pub. L. 98–21, §201(c)(1)(D). See 1983 Amendment note below.

Subsec. (i)(2)(D). Pub. L. 98–460, §2(b), inserted ''The provisions set forth in section 423(f) of this title with respect to determinations of whether entitlement to benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling).''

Pub. L. 98–369, §2661(*l*)(3), substituted ''subsection (*l*) of this section'' for ''section 416(*l*) of this title''.

Subsec. (i)(2)(F)(ii). Pub. L. 98–369, §2663(a)(11)(B), substituted a dash for a comma after ''before January 1968'' in provisions preceding subcl. (I).

1983—Subsec. (a). Pub. L. 98–21, §304(c), added subsec. (a).

Subsec. (d)(4), (5). Pub. L. 98–21, §301(c)(1), added pars. (4) and (5). Former par. (4) redesignated (6).

Subsec. (d)(6). Pub. L. 98–21, §306(c), added par. (6) and redesignated former par. (6) as (8).

Pub. L. 98–21, §301(c)(1), redesignated former par. (4) as (6).

Subsec. (d)(7). Pub. L. 98–21, §306(c), added par. (7).

Subsec. (d)(8). Pub. L. 98–21, §306(c), redesignated former par. (6) as (8).

Subsecs. (f)(3)(A), (g)(6)(A). Pub. L. 98–21, §309(j), (k), inserted reference to subsec. (c) of section 402 of this title.

Subsec. (h)(3). Pub. L. 98–21, §333(a), substituted ''subparagraphs (A)(i) and (B)(i)'' for ''subparagraph (A)(i)'' in provisions following subpar. (C)(ii).

Subsec. (h)(3)(A)(i). Pub. L. 98–21, §201(c)(1)(D), substituted ''retirement age (as defined in subsection (*l*) of this section)'' for ''age 65''.

Subsec. (h)(3)(A)(i)(I). Pub. L. 98–21, §303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(A)(i)(II). Pub. L. 98–21, §303(a), inserted ''mother or'' before ''father''.

Subsec. (h)(3)(A)(i)(III). Pub. L. 98–21, §303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(A)(ii). Pub. L. 98–21, §303(a), (b), inserted ''mother or'' before ''father'' and substituted ''such applicant's application for benefits was filed'' for ''such insured individual became entitled to benefits or attained retirement age (as defined in subsection (*l*) of this section), whichever first occurred''.

Pub. L. 98–21, §201(c)(1)(D), substituted ''retirement age (as defined in subsection (*l*) of this section)'' for ''age 65''.

Subsec. (h)(3)(B). Pub. L. 98–21, §303(d)(2), substituted ''he or she'' for ''he'' in provisions preceding cl. (i).

Subsec. (h)(3)(B)(i)(I). Pub. L. 98–21, §303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(B)(i)(II). Pub. L. 98–21, §303(a), inserted ''mother or'' before ''father''.

Subsec. (h)(3)(B)(i)(III). Pub. L. 98–21, §303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(B)(ii). Pub. L. 98–21, §303(c), substituted ''such applicant's application for benefits was filed'' for ''such period of disability began''.

Pub. L. 98–21, §303(a), inserted ''mother or'' before ''father''.

Subsec. (h)(3)(C)(i)(I). Pub. L. 98–21, §303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(C)(i)(II). Pub. L. 98–21, §303(a), inserted ''mother or'' before ''father''.

Subsec. (h)(3)(C)(i)(III). Pub. L. 98–21, §303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(C)(ii). Pub. L. 98–21, §303(a), inserted ''mother or'' before ''father''.

Subsec. (i)(2)(B). Pub. L. 98–21, §201(c)(1)(D), as amended by Pub. L. 98–369, §2662(c)(1), substituted ''re-

tirement age (as defined in subsection (*l*) of this section)'' for ''the age of 65''.

Subsec. (i)(2)(D). Pub. L. 98–21, §201(c)(1)(D), substituted ''retirement age (as defined in subsection (*l*) of this section)'' for ''age 65''.

Subsec. (i)(3)(B)(iii). Pub. L. 98–21, §332(a), added cl. (iii).

Subsec. (*l*). Pub. L. 98–21, §201(a), added subsec. (*l*).

1981—Subsec. (b). Pub. L. 97–35, §2203(b)(2), inserted provisions that for purposes of cl. (2), a wife be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of her marriage to such individual and for purposes of section 402(b)(1)(C) of this title, a divorced wife be deemed not to be married throughout the month in which she becomes divorced.

Subsec. (c). Pub. L. 97–35, §2202(a)(2)(A), inserted ''the first sentence of'' before ''section 402(i) of this title''.

Subsec. (e). Pub. L. 97–35, §2203(d)(3), inserted provisions that for purposes of cl. (2), a child be deemed to have been a stepchild of an individual for a period of one year throughout the month in which occurs the expiration of such one year and for purposes of cl. (3), a person be deemed to have no natural or adoptive parent living, other than a parent who is under a disability, throughout the most recent month in which a natural or adoptive parent, not under a disability, dies.

Subsec. (f). Pub. L. 97–35, §2203(c)(2), inserted provision that for purposes of cl. (2), a husband be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of his marriage to her.

Subsec. (g). Pub. L. 97–35, §2202(a)(2)(B), inserted ''the first sentence of'' before ''section 402(i) of this title''.

Subsec. (h)(3). Pub. L. 97–35, §2203(d)(4), as amended by Pub. L. 98–369, §2663(a)(11)(A), inserted provision that for purposes of subpar. (A)(i), an acknowledgement, court decree, or court order be deemed to have occurred on the first day of the month in which it actually occurred.

1980—Subsec. (i)(1). Pub. L. 96–473 inserted reference to section 423(d)(6) of this title.

Subsec. (i)(2)(D)(ii). Pub. L. 96–265, §303(b)(2)(B), substituted ''(ii) the month preceding (I) the termination month (as defined in section 423(a)(1) of this title), or, if earlier (II) the first month for which no benefit is payable by reason of section 423(e) of this title, where no benefit is payable for any of the succeeding months during the 15-month period referred to in such section'' for ''(ii) the second month following the month in which the disability ceases''.

Subsec. (i)(2)(G). Pub. L. 96–265, §306(b), inserted provisions placing limitations on the prospective effect of applications.

1977—Subsec. (d)(1), (2). Pub. L. 95–216 substituted ''10'' for ''20'' wherever appearing.

1974—Subsecs. (b), (c), (f), (g). Pub. L. 93–445 substituted ''section 231a of title 45'' for ''section 228e of title 45''.

1972—Subsec. (e). Pub. L. 92–603, §113(a), extended definition of ''child'' to include grandchildren and stepgrandchildren of an individual or his spouse.

Subsec. (i)(2)(A). Pub. L. 92–603, §116(d), substituted ''five'' for ''6''.

Subsec. (i)(2)(B). Pub. L. 92–603, §118(b), provided for the filing of an application for a disability determination after the death of the insured individual.

Subsec. (i)(3). Pub. L. 92–603, §§104(g), 117(a), struck out ''(if a woman) or age 65 (if a man)'' after ''attained age 62'' in subpar. (A), and substituted provisions eliminating the disability insured status requirement of substantial recent covered work in the case of individuals who are blind for provisions excepting the provisions of subpar. (A) in the case of an individual with respect to whom a period of disability would, but for such subpar., begin before 1951 in the provisions following subpar. (B).

Subsec. (k). Pub. L. 92–603, §§115(b), 145(a), designated existing pars. (1) and (2) as subpars. (A) and (B) of par. (1), added par. (2), in par. (1), as so redesignated, substituted ''unless the Secretary determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months'' for ''and he would satisfy such requirement if a three-month period were substituted for the nine-month period'', and in material following par. (2) substituted ''except that paragraph (2) of this subsection shall not apply'' for ''except that this subsection shall not apply''.

1968—Subsec. (c)(5). Pub. L. 90–248, §156(a), substituted ''not less than nine months'' for ''not less than one year''.

Subsec. (e). Pub. L. 90–248, §§150(a), 156(b), inserted in first sentence ''not less than nine months immediately preceding'' before ''the day on which such individual died'', and added, in second sentence, cl. (A) and incorporated existing provisions in cl. (B).

Subsec. (g)(5). Pub. L. 90–248, §156(c), substituted ''not less than nine months'' for ''not less than one year''.

Subsec. (i)(1). Pub. L. 90–248, §§104(d)(2), 158(d), 172(a), (b), inserted ''402(e), 402(f),'' after ''402(d),'', redefined ''blindness'' to mean central visual acuity of 20/200 rather than 5/200 or less in the better eye and substituted provision deeming an eye accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees as having a central visual acuity of 20/200 or less for former provision deeming an eye in which visual field is reduced to five degrees or less concentric contraction as having a central visual acuity of 5/200 or less, respectively, and deleted former third sentence which provided that an individual was not deemed under a disability unless he furnished proof as required and added third sentence making section 423(d)(2)(A), (3), (4), and (5) of this title applicable to determine if an individual is under a disability.

Subsec. (i)(2)(E) to (G). Pub. L. 90–248, §111(a), inserted introductory exception phrase, added subpar. (F), and redesignated former subpar. (F) as (G).

Subsec. (i)(3)(B)(ii). Pub. L. 90–248, §105(a), struck out ''and he is under a disability by reason of blindness (as defined in paragraph (1) of this subsection)'' after ''age 31''.

Subsec. (k). Pub. L. 90–248, §156(d), added subsec. (k).

1965—Subsec. (b). Pub. L. 89–97, §§306(c)(13), 308(d)(2)(B), 334(a), inserted ''(subject, however, to section 402(s) of this title)'', included reference to subsec. (b) of section 402 of this title, and added cl. (3)(C), respectively.

Subsec. (c). Pub. L. 89–97, §§306(c)(13), 308(d)(2)(B), 334(b), inserted ''(subject, however, to section 402(s) of this title)'', included reference to subsec. (b) of section 402 of this title, and added cl. (6)(C), respectively.

Subsec. (d). Pub. L. 89–97, §308(c), added pars. (1), (2), and (4), defining ''divorced wife'', ''surviving divorced wife'', and ''divorce'' and ''divorced'', and incorporated definition of ''former wife divorced'' in par. (3), inserting ''who has died'' after ''individual'' and redesignating cls. (1) to (4) as (A) to (D), respectively.

Subsec. (f). Pub. L. 89–97, §§306(c)(13), 334(c), inserted ''(subject, however, to section 402(s) of this title)'' and added cl. (3)(C), respectively.

Subsec. (g). Pub. L. 89–97, §§306(c)(13), 334(d), inserted ''(subject, however, to section 402(s) of this title)'' and added cl. (6)(C), respectively.

Subsec. (h). Pub. L. 89–97, §339(a), added par. (3).

Subsec. (i)(1)(A). Pub. L. 89–97, §303(a)(1), substituted ''or has lasted or can be expected to last for a continuous period of not less than 12 months'' for ''or to be of long-continued and indefinite duration''.

Subsec. (i)(2). Pub. L. 89–97, §303(b)(1), struck out sixth sentence providing that: ''Any application for a disability determination which is filed within such three months' period or six months' period shall be deemed to have been filed on such first day or in such first month, as the case may be.''

Subsec. (i)(2)(A). Pub. L. 89–97, §303(b)(1), designated first sentence as subpar. (A).

Subsec. (i)(2)(B). Pub. L. 89–97, §303(b)(1), designated second sentence as subpar. (B), substituted therein ''No

period of disability'' for ''No such disability'', and struck out '', while under such disability,'' after ''unless such individual''.

Subsec. (i)(2)(C). Pub. L. 89–97, §§303(b)(1), 304(*l*), designated third sentence as subpar. (C), struck out ''(subject to section 423(a)(3) of this title)'' before ''begin'', and redesignated cls. (A) and (B) thereof as (i) and (ii); and again struck out ''(subject to section 423(a)(3) of this title)'' before ''begin'', respectively.

Subsec. (i)(2)(D). Pub. L. 89–97, §303(b)(1), designated fourth sentence as subpar. (D), substituted ''the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains age 65, or (ii) the second month following the month in which the disability ceases'' for ''the close of the last day of the month preceding which of the following months is the earlier: the month in which the individual attains age sixty-five or the third month following the month in which the disability ceases''.

Subsec. (i)(2)(E). Pub. L. 89–97, §303(b)(1), designated fifth sentence as subpar. (E), substituted ''12 months'' for ''three months'' and ''after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph)'' for ''before the first day on which a period of disability can begin (as determined under this paragraph), or, in any case in which clause (ii) of section 423(a)(1) of this title is applicable, more than six months before the first month for which such applicant becomes entitled to benefits under section 423 of this title,'', and struck out '', and no such application which is filed prior to January 1, 1955, shall be accepted'' after ''for purposes of this paragraph''.

Subsec. (i)(2)(F). Pub. L. 89–97, §328(b), added subpar. (F).

Subsec. (i)(3). Pub. L. 89–97, §§303(b)(2), 344(a), substituted ''clauses (i) and (ii) of paragraph (2)(C)'' for ''clauses (A) and (B) of paragraph (2)'', removed from existing subpar. (B) provision prohibiting the inclusion, as part of such 40-quarter period, of any quarter any part of which was included in a prior period of disability unless such quarter was a quarter of coverage, and designated such subpar., as so amended, as subpar. (B)(i), added subpar. (B)(ii), and, in the material following subpar. (B)(ii), inserted provision prohibiting inclusion of any quarter as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage and calling for reduction by one of the number of quarters in any period whenever such number of quarters is an odd number, respectively.

1964—Subsec. (i)(2). Pub. L. 88–650, §1(a), struck out provisions which directed that a period of disability shall begin if the individual satisfies the requirements of par. (3) of this subsection on such day, on the first day of the eighteen-month period which ends with the day before the day on which the individual files such application.

Subsec. (i)(3). Pub. L. 88–650, §1(b), substituted ''paragraph (2) of this subsection'' for ''paragraphs (2) and (4) of this subsection''.

Subsec. (i)(4). Pub. L. 88–650, §1(c), repealed par. (4) which related to the beginning of the period of disability for individuals who filed an application for a disability determination after Dec. 1954, and before July 1962, with respect to a disability which began before January 1961.

1961—Subsec. (a). Pub. L. 87–64, §102(c)(1), repealed subsec. (a) which defined retirement age.

Subsecs. (b), (c), (f), (g). Pub. L. 87–64, §102(c)(2)(B), substituted ''attainment of age 62'' for ''attainment of retirement age''.

Subsec. (i)(2). Pub. L. 87–64, §102(b)(2)(D), substituted ''a period of disability shall (subject to section 423(a)(3) of this title) begin'' for ''a period of disability shall begin'' in third sentence.

Subsec. (i)(3)(A). Pub. L. 87–64, §102(c)(3)(C), substituted ''attainment age 62 (if a woman) or age 65 (if a man)'' for ''attained retirement age''.

Subsec. (i)(4). Pub. L. 87–64, §105, substituted ''July 1962'' for ''July 1961'', and ''January 1961'' for ''July 1960''.

1960—Subsec. (b). Pub. L. 86–778, §207(a), substituted ''one year'' for ''three years''.

Subsec. (e). Pub. L. 86–778, §§207(b), 208(c), in first sentence, reduced the period for eligibility of a stepchild of a living individual from three years immediately preceding the day on which application for child's benefits is filed to one year immediately preceding the day on which application for child's benefits is filed, and inserted the last sentence requiring, for purposes of clause (2), that a person who is not the stepchild of an individual shall be deemed the stepchild of such individual if such individual was not the mother or adopting mother or the father or adopting father of such person and such individual and the mother or adopting mother, or the father or adopting father, as the case may be, of such person went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in last sentence of subsec. (h)(1)(B) of this section, would have been a valid marriage.

Subsec. (f). Pub. L. 86–778, §207(c), substituted ''one year'' for ''three years''.

Subsec. (h)(1). Pub. L. 86–778, §208(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(2). Pub. L. 86–778, §208(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (i)(2). Pub. L. 86–778, §§402(e), 403(c), redefined ''period of disability'' to include a period of less than six full calendar months' duration if the individual was entitled to benefits under section 423 of this title for one or more months in such period, prohibited acceptance of an application, in any case in which clause (ii) of section 423(a) of this title is applicable, filed more than six months before the first month for which the applicant becomes entitled to benefits under section 423 of this title, substituted provisions requiring a period of disability to end with the close of the last day of the month preceding whichever of the following months is the earlier: the month in which the individual attains age 65 or the third month following the month in which the disability ceases, for provisions which required a period of disability to end with the close of the last day of the first month in which either the disability ceases or the individual attains the age of 65, and inserted sentence providing that any application for a disability determination which is filed within such three months' period or six months' period shall be deemed to have been filed on such first day or in such first month, as the case may be.

Subsec. (j). Pub. L. 86–778, §703, added subsec. (j).

1958—Subsec. (b). Pub. L. 85–840, §301(d), included within definition of ''wife'' a woman who, in the month prior to the month of her marriage, was entitled to, or on application therefor and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (e) or (h) of section 402 of this title, or had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of section 402 of this title.

Subsec. (c). Pub. L. 85–840, §301(b)(2) included within definition of ''widow'' a woman whose husband had legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen, and a woman who, in the month prior to the month of her marriage, was entitled to, or on application therefor and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (e) or (h) of section 402 of this title, or had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of section 402 of this title.

Subsec. (d). Pub. L. 85–840, §301(e), included within definition of ''former wife divorced'' a woman whose husband legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen.

Subsec. (e). Pub. L. 85–840, §302(a), struck out requirement that an adopted child of a living individual must have been adopted for not less than three years immediately preceding the day on which application for

child's benefits is filed, and inserted provisions requiring a child to be deemed, as of the date of death of an individual, to be the legally adopted child of such individual if the child was living in the decedent's household at the time of his death and was legally adopted by the surviving spouse after the individual's death but before the end of two years after the day on which the individual died or Aug. 28, 1958, and the child was not receiving regular contributions toward his support from someone other than the individual or his spouse, or from any public or private welfare organization.

Subsec. (f). Pub. L. 85–840, §301(a)(2), included within definition of ''husband'' a person who in the month prior to the month of his marriage was entitled to, or on application therefor and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (f) or (h) of section 402 of this title, or who had attained age eighteen and was entitled to, or on application therefor would have been entitled to benefits under subsection (d) of section 402 of this title.

Subsec. (g). Pub. L. 85–840, §301(c)(2), included within definition of ''widower'' a person whose wife had legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of eighteen, and a person who, in the month before the month of his marriage, was entitled to, or on application therefor and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (f) or (h) of section 402 of this title, or had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of section 402 of this title.

Subsec. (h)(3). Pub. L. 85–840, §305(b), repealed par. (3) which defined ''living with'' for purposes of section 402(i) of this title.

Subsec. (i)(2). Pub. L. 85–840, §201, substituted ''while under such disability'' for ''while under a disability'' in opening provisions, and ''eighteen-month period'' for ''one-year period'' in cl. (A)(ii).

Subsec. (i)(3). Pub. L. 85–840, §204(a), struck out provisions that required, for a period of disability to begin with respect to any quarter, an individual to have not less than six quarters of coverage during the thirteen-quarter period which ends with such quarter, and inserted provisions requiring an individual to be fully insured.

Subsec. (i)(4). Pub. L. 85–840, §203, substituted ''July 1961'' for ''July 1958'' and ''July 1960'' for ''July 1957'', and struck out provisions which required the applicant to be alive on July 1, 1955.

1957—Subsec. (h). Pub. L. 85–238 amended subsec. (h) generally to provide that the applicant is the wife, husband, widow, or widower if there is a finding that the applicant and the insured individual were validly married at the time the application for benefits is filed, or at the time the insured individual died, and to eliminate provisions which prescribed certain conditions under which a wife or husband would be deemed to have been living with his or her spouse, and which related to determination of status of parent.

Subsec. (i)(4). Pub. L. 85–109, substituted ''July 1958'' for ''July 1957'' and ''July 1957'' for ''July 1956''.

1956—Subsec. (a). Act Aug. 1, 1956, §102(a), reduced the retirement age in the case of a woman from age sixty-five to age sixty-two.

Subsec. (i)(1). Act Aug. 1, 1956, §103(c)(6), inserted ''Except for purposes of sections 402(d), 423, and 425 of this title''.

Subsec. (i)(2). Act Aug. 1, 1956, §102(d)(12), substituted ''the age of sixty-five'' for ''retirement age'' in two places.

1954—Subsec. (i). Act Sept. 1, 1954, §106(d), added subsec. (i). Former subsec. (i), which was added by act July 18, 1952, §3(d), ceased to be in effect at the close of June 30, 1953. See Effective and Termination Date of 1952 Amendment note set out under section 413 of this title.

1952—Subsec. (i). Act July 18, 1952, added subsec. (i).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, §414(d), Mar. 2, 2004, 118 Stat. 530, provided that: ''The amendments made by this section [amending this section] shall be effective with respect to applications for benefits under title II of the Social Security Act [this subchapter] filed during months ending after the date of the enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5103(b)(1) of Pub. L. 101–508 applicable with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after Jan. 1, 1991, or are pending on such date, see section 5103(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

Section 5104(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits payable for months after December 1990, but only on the basis of applications filed after December 31, 1990.''

Amendment by section 5119(a), (b) of Pub. L. 101–508 applicable with respect to benefits for months after December 1990, and applicable only with respect to benefits for which application is filed with Secretary of Health and Human Services after Dec. 31, 1990, with exception from application requirement, see section 5119(e) of Pub. L. 101–508, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective Jan. 1, 1988, and applicable with respect to individuals entitled to benefits under specific provisions of sections 402 and 423 of this title for any month after December 1987, and individuals entitled to benefits payable under specific provisions of sections 402 and 423 of this title for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section 9010(f) of Pub. L. 100–203, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 2(b) of Pub. L. 98–460 applicable to determinations made by the Secretary on or after Oct. 9, 1984, with certain enumerated exceptions and qualifications, see section 2(d) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 4(a)(2) of Pub. L. 98–460 applicable with respect to determinations made on or after the first day of the first month beginning after 30 days after Oct. 9, 1984, see section 4(c) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 2661(*l*) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(11) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 301(c), 303, 304(c), 306(c), and 309(j), (k) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 332(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [section 423

of this title], and for disability determinations under section 216(i) of such Act [subsec. (i) of this section], filed after the date of the enactment of this Act [Apr. 20, 1983], except that no monthly benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by this section for months before the month following the month of enactment of this Act.''

Section 333(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective on the date of the enactment of this Act [Apr. 20, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2202(a)(2) of Pub. L. 97–35 applicable only with respect to deaths occurring after August 1981, see section 2202(b) of Pub. L. 97–35, set out as a note under section 402 of this title.

Amendment by section 2203(b)(2), (c)(2) of Pub. L. 97–35 applicable only to monthly insurance benefits payable to individuals who attain age 62 after August 1981, and amendment by section 2203(d)(3), (4) of Pub. L. 97–35 applicable to monthly insurance benefits for months after August 1981, and only in the case of individuals who were not entitled to such insurance benefits for August 1981 or any preceding month, see section 2203(f)(1), (2) of Pub. L. 97–35, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–473 effective with respect to benefits payable for months beginning on or after Oct. 1, 1980, see section 5(d) of Pub. L. 96–473, set out as a note under section 402 of this title.

Amendment by section 303(b)(2)(B) of Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, to apply with respect to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

Amendment by section 306(b) of Pub. L. 96–265 applicable to applications filed after June 1980, see section 306(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective with respect to monthly benefits after Dec., 1978, and applications filed on or after Jan. 1, 1979, see section 337(c) of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 104(g) of Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after December 1974, with the figure ''65'' in subsec. (i)(3)(A) of this section to be deemed to read ''64'' in the case of a man who attains age 62 in 1973, and deemed to read ''63'' in the case of a man who attains age 62 in 1974, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

Amendment by section 113(a) of Pub. L. 92–603 applicable with respect to monthly benefits payable under this subchapter for months after December 1972, but only on the basis of applications filed on or after October 30, 1972, see section 113(c) of Pub. L. 92–603, set out as a note under section 402 of this title.

Section 115(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972 on the basis of applications filed in or after the month in which this Act is enacted [October 1972].''

Amendment by section 116(d) of Pub. L. 92–603 effective with respect to applications for disability determinations under subsec. (i) of this section filed on or after October 1972 or before October 1972 under specified conditions, see section 116(e) of Pub. L. 92–603, set out as a note under section 423 of this title.

Amendment by section 117(a) of Pub. L. 92–603 effective with respect to applications for disability determinations under subsec. (i) of this section filed in or after October 1972 or before October 1972 under specified conditions, see section 117(c) of Pub. L. 92–603, set out as a note under section 423 of this title.

Section 118(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall apply in the case of deaths occurring after December 31, 1969. For purposes of such amendments (and for purposes of sections 202(j)(1) and 223(b) of the Social Security Act [sections 402(j)(1) and 423(b) of this title], any application with respect to an individual whose death occurred after December 31, 1969, but before the date of the enactment of this Act [Oct. 30, 1972] which is filed in, or within 3 months after the month in which this Act is enacted [October 1972] shall be deemed to have been filed in the month in which such death occurred.''

Section 145(b) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972 on the basis of applications filed in or after the month in which this Act is enacted [October 1972].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 104 of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

Section 105(c) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to applications for disability determinations filed under section 216(i) of the Social Security Act [subsec. (i) of this section] in or after the month in which this Act is enacted [January 1968]. The amendments made by subsection (b) [amending section 423 of this title] shall apply with respect to monthly benefits under title II of such Act [this subchapter] for months after January 1968, but only on the basis of applications for such benefits filed in or after the month in which this Act is enacted.''

Section 111(b) of Pub. L. 90–248 provided that: ''No monthly insurance benefits under title II of the Social Security Act [this subchapter] shall be payable or increased for any month before the month in which this Act is enacted [January 1968] by reason of amendments made by subsection (a) [amending this section].''

Section 150(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of an application filed in or after the month in which this Act is enacted [January 1968].''

Section 156(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of applications filed in or after the month in which this Act is enacted [January 1968].''

Amendment by section 158(d) of Pub. L. 90–248 applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under subsec. (i) of this section, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

Section 172(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this sec-

tion] shall be effective with respect to benefits under section 223 of the Social Security Act [section 423 of this title] for months after January 1968 based on applications filed after the date of enactment of this Act [Jan. 2, 1968] and with respect to disability determinations under section 216(i) of the Social Security Act [subsec. (i) of this section] based on applications filed after the date of enactment of this Act.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 308(c), (d)(2)(B) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

Amendment by section 334(a)–(d) of Pub. L. 89–97 applicable only with respect to monthly insurance benefits under section 401 et seq. of this title beginning with September 1965 but only on the basis of applications filed in or after July 1965, see section 334(g) of Pub. L. 89–97, set out as a note under section 402 of this title.

Section 339(c) of Pub. L. 89–97 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 402 of this title] shall be applicable with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] beginning with the second month following the month in which this Act is enacted [July 1965] but only on the basis of an application filed in or after the month in which this Act is enacted.''

Amendment by section 303(a)(1), (b)(1), (2) of Pub. L. 89–97 effective with respect to applications for disability insurance benefits under section 423 of this title, and for disability determinations under subsec. (i) of this section, filed in or after July 1965 or before July 1965, if the applicant has not died before such month, and notice of final administrative decision has not been given to the applicant before such month, except that monthly insurance benefits under this subchapter shall not be payable or increased by reason of amendments to subsecs. (i)(1)(A), (2), (3) of this section for months before the second month following July 1965, see section 303(f)(1) of Pub. L. 89–97, set out as a note under section 423 of this title.

Amendment by section 304(*l*) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter for and after the second month following July 1965 but only on the basis of applications filed in or after July 1965, see section 304(*o*) of Pub. L. 89–97, set out as a note under section 402 of this title.

Section 328(d) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 402 and 423 of this title] shall apply with respect to (1) applications filed on or after the date of enactment of this Act [July 30, 1965], (2) applications as to which the Secretary has not made a final decision before the date of enactment of this Act, and (3) if a civil action with respect to final decision by the Secretary has been commenced under section 205(g) of the Social Security Act [section 405(g) of this title] before the date of enactment of this Act, applications as to which there has been no final judicial decision before the date of enactment of this Act.''

Section 344(e) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after the first month following the month in which this Act is enacted [July 1965], on the basis of applications for such benefits filed in or after the month in which this Act is enacted.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 1(d) of Pub. L. 88–650 provided that:

''(1) The amendments made by subsections (a), (b), and (c) [amending this section] shall apply in the case of applications for disability determinations under section 216(i) of the Social Security Act [subsec. (i) of this section] filed after the month following the month in which this Act is enacted [October 1964].

''(2) Except as provided in the succeeding paragraphs, such amendments shall also apply, and as though such amendments had been enacted on July 1, 1962, in the case of applications for disability determinations filed under section 216(i) of the Social Security Act [subsec. (i) of this section] during the period beginning July 1, 1962, and ending with the close of the month following the month in which this Act is enacted [October 1964], by an individual who—

''(A) has been under a disability (as defined in such section 216(i)) continuously since he filed such application and up to (i) the first day of the second month following the month in which this Act is enacted or (ii) if earlier, the first day of the month in which he attained the age of 65, and

''(B) is living on the day specified in subparagraph (A)(i).

''(3) In the case of an individual to whom paragraph (2) applies and who filed an application for disability insurance benefits under section 223 of the Social Security Act [section 423 of this title] during the period specified in such paragraph—

''(A) if such individual was under a disability (as defined in section 223(c) of such Act) throughout such period and was not entitled to disability insurance benefits under such section 223 for any month in such period (except for the amendments made by this section), such application and any application filed during such period for benefits under section 202 of the Social Security Act [section 402 of this title] on the basis of the wages and self-employment income of such individual shall, notwithstanding section 202(j)(2) and the first sentence of section 223(b), be deemed an effective application, or

''(B) if such individual was entitled (without the application of this section) to disability insurance benefits under section 223 [section 423 of this title] for a continuous period of months immediately preceding—

''(i) the second month following the month in which this Act was enacted [October 1964], or

''(ii) if earlier, the month in which he became entitled to benefits under section 202(a) [section 402(a) of this title],

his primary insurance amount shall be recomputed, but only if such amount would be increased solely by reason of the enactment of this section.

''(4) No monthly insurance benefits, and no increase in monthly insurance benefits, may be paid under title II of the Social Security Act [this subchapter] by reason of the enactment of this section for any month before the eleventh month before the month in which this Act is enacted [October 1964].

''(5) In the case of an individual (A) who is entitled under section 202 of the Social Security Act [section 402 of this title] (but without the application of subsection (j)(1) of such section) to a widow's, widower's, or parent's insurance benefit, or to an old-age, wife's or husband's insurance benefit which is reduced under section 202(q) of such Act, for any month in the period referred to in paragraph (2) of this subsection, (B) who was under a disability (as defined in section 223(c) of the Social Security Act [section 423(c) of this title]) which began prior to the sixth month before the first month for which the benefits referred to in clause (A) are payable and which continued through the month following the month in which this Act is enacted [October 1964], and (C) who files an application for disability insurance benefits under section 223(a)(1) of the Social Security Act—

''(i) subsection (a)(3) of section 223 of the Social Security Act shall not prevent him from being entitled to such disability insurance benefits;

''(ii) the provisions of subsection (a)(1) of such section 223 terminating entitlement to disability insur-

ance benefits by reason of entitlement to old-age insurance benefits shall not apply with respect to him unless and until he again becomes entitled to such old-age insurance benefits under the provisions of section 202 of such Act;

''(iii) such individual shall, for any month for which he is thereby entitled to both old-age insurance benefits and disability insurance benefits, be entitled only to such disability insurance benefits; and

''(iv) in case the benefits reduced under subsection (q) of section 202 of such Act are old-age insurance benefits (I) such old-age insurance benefits for the months in the period referred to in paragraph (2) of this subsection shall not be recomputed solely by reason of the enactment of this section, and, if otherwise recomputed, the provisions of and amendments made by this section shall not apply to such recomputation; and (II) the months for which he received such old-age insurance benefits before or during the period for which he becomes entitled, by reason of such enactment, to disability insurance benefits under such section 223 and the months for which he received such disability insurance benefits shall be excluded from the 'reduction period' and the 'adjusted reduction period', as defined in paragraphs (5) and (6), respectively, of such subsection (q) for purposes of determining the amount of the old-age insurance benefits to which he may subsequently become entitled.

''(6) The entitlement of any individual to benefits under section 202 of the Social Security Act [section 402 of this title] shall not be terminated solely by reason of the enactment of this section, except where such individual is entitled to benefits under section 202(a) or 223 of such Act [section 402(a) or 423 of this title] in an amount which (but for this subsection) would have required termination of such benefits under such section 202.''

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by section 102(b)(2)(D) of Pub. L. 87–64 effective Aug. 1, 1961, and amendment by section 102(c)(1), (2)(B), (3)(C) of Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(f)(4), (6) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

Section 105 of Pub. L. 87–64 provided that the amendment made by that section is effective with respect to applications for disability determinations filed on or after July 1, 1961.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 207(d) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months beginning with the month in which this Act is enacted [September 1960], on the basis of applications filed in or after such month.''

Section 208(f) of Pub. L. 86–778 provided that: ''The amendments made by the preceding provisions of this section [amending this section and section 402 of this title] shall be applicable (1) with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months beginning with the month in which this Act is enacted [September 1960] on the basis of an application filed in or after such month, and (2) in the case of a lump-sum death payment under such title based on an application filed in or after such month, but only if no person, other than the person filing such application, has filed an application for a lump-sum death payment under such title prior to the date of the enactment of this Act [Sept. 13, 1960] with respect to the death of the same individual.''

Amendment by section 402(e) of Pub. L. 86–778 applicable only in the case of individuals who become entitled to benefits under section 423 of this title in or after September 1960, see section 402(f) of Pub. L. 86–778, set out as a note under section 423 of this title.

Amendment by section 403(c) of Pub. L. 86–778 applicable only in the case of individuals who have a period of disability (as defined in subsec. (i) of this section) beginning on or after Sept. 13, 1960, or beginning before Sept. 13, 1960 and continuing, without regard to such amendment, beyond the end of September 1960, see section 403(e) of Pub. L. 86–778, set out as a note under section 422 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 207(a) of Pub. L. 85–840 provided that: ''The amendments made by section 201 [amending this section] shall apply with respect to applications for a disability determination under section 216(i) of the Social Security Act [subsec. (i) of this section] filed after June 1961. The amendments made by section 202 [amending section 423 of this title] shall apply with respect to applications for disability insurance benefits under section 223 of such Act filed after December 1957. The amendments made by section 203 [amending this section] shall apply with respect to applications for a disability determination under such section 216(i) filed after June 1958. The amendments made by section 204 [amending this section and section 423 of this title] shall apply with respect to (1) applications for disability insurance benefits under such section 223 or for a disability determination under such section 216(i) filed on or after the date of enactment of this Act [Aug. 28, 1958], and (2) applications for such benefits or for such a determination filed after 1957 and prior to such date of enactment if the applicant has not died prior to such date of enactment and if notice to the applicant of the Secretary's decision with respect thereto has not been given to him on or prior to such date, except that (A) no benefits under title II of the Social Security Act [this subchapter] for the month in which this Act is enacted [August 1958] or any prior month shall be payable or increased by reason of the amendments made by section 204 of this Act, and (B) the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title] shall not prevent recomputation of monthly benefits under section 202 of such Act [section 402 of this title] (but no such recomputation shall be regarded as a recomputation for purposes of section 215(f) of such Act). The amendments made by section 205 (other than by subsections (k) and (m)) [amending sections 401, 402, 403, 414, 422, and 425 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted, but only if an application for such benefits is filed on or after the date of enactment of this Act. The amendments made by section 206 [repealing section 424 of this title] and by subsections (k) and (m) of section 205 [amending sections 403 and 415 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for the month in which this Act is enacted and succeeding months.''

Amendment by section 301(a)(2), (b)(2), (c)(2), (d), (e) of Pub. L. 85–840 applicable with respect to monthly benefits under section 402 of this title for months beginning after Aug. 28, 1958, but only if an application for such benefits is filed on or after such date, see section 301(f) of Pub. L. 85–840, set out as a note under section 402 of this title.

Section 302(b) of Pub. L. 85–840 provided that: ''The amendment made by this section [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.''

Amendment by section 305(b) of Pub. L. 85–840 applicable in the case of lump-sum death payments under section 402(i) of this title on the basis of the wages and self-employment income of any individual who dies after August 1958, see section 305(c) of Pub. L. 85–840, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment by Pub. L. 85–238 applicable to monthly benefits under section 402 of this title for months after August 1957, but not to operate to deprive any such parent of benefits to which he would otherwise be entitled under section 402(h) of this title, see section 3(i) of Pub. L. 85–238, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 102(b) of act Aug. 1, 1956, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply in the case of benefits under subsection (e) of section 202 of the Social Security Act [section 402(e) of this title] for months after October 1956, but only, except in the case of an individual who was entitled to wife's or mother's insurance benefits under such section 202 for October 1956, or any month thereafter, on the basis of applications filed after the date of enactment of this Act [Aug. 1, 1956]. The amendment made by subsection (a) shall apply in the case of benefits under subsection (h) of such section 202 for months after October 1956 on the basis of applications filed after the date of enactment of this Act.

''(2) Except as provided in paragraphs (1) and (4), the amendment made by subsection (a) shall apply in the case of lump-sum death payments under section 202(i) of the Social Security Act with respect to deaths after October 1956, and in the case of monthly benefits under title II of such Act [this subchapter] for months after October 1956 on the basis of applications filed after the date of enactment of this Act.

''(3) For purposes of section 215(b)(3)(B) of the Social Security Act [section 415(b)(3)(B) of this title] (but subject to paragraphs (1) and (2) of this subsection)—

''(A) a woman who attains the age of sixty-two prior to November 1956 and who was not eligible for old-age insurance benefits under section 202 of such Act (as in effect prior to the enactment of this Act) for any month prior to November 1956 shall be deemed to have attained the age of sixty-two in 1956 or, if earlier, the year in which she died;

''(B) a woman shall not, by reason of the amendment made by subsection (a), be deemed to be a fully insured individual before November 1956 or the month in which she died, whichever month is the earlier; and

''(C) the amendment made by subsection (a) shall not be applicable in the case of any woman who was eligible for old-age insurance benefits under such section 202 for any month prior to November 1956.

A woman shall, for purposes of this paragraph, be deemed eligible for old-age insurance benefits under section 202 of the Social Security Act for any month if she was or would have been, upon filing application therefor in such month, entitled to such benefits for such month.

''(4) For purposes of section 209(i) of such Act [section 409(i) of this title], the amendment made by subsection (a) shall apply only with respect to remuneration paid after October 1956.''

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 106(d) of act Sept. 1, 1954, applicable with respect to monthly benefits under subchapter II of this chapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 415(f) of this title, see section 106(h) of act Sept. 1, 1954, set out as a note under section 413 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

For effective and termination dates of amendment by Act July 18, 1952, see section 3(f), (g) of act July 18, 1952, set out as a note under section 413 of this title.

EFFECTIVE DATE

Section applicable (1) in case of monthly benefits for months after August 1950, and (2) in the case of lump-sum death payments with respect to deaths after August 1950, see section 104(b) of act Aug. 28, 1950, set out as an Effective Date of 1950 Amendment note under section 409 of this title.

RETROACTIVE BENEFITS

For provisions relating to entitlement to retroactive benefits under section 2 of Pub. L. 98–460 (which amended subsec. (i)(2)(D) of this section), see section 2(f) of Pub. L. 98–460, set out as a note under section 423 of this title.

PROMULGATION OF REGULATIONS

For provisions requiring the Secretary of Health and Human Services to prescribe regulations necessary to implement amendment to subsec. (i)(2)(D) of this section by section 2(b) of Pub. L. 98–460 not later than 180 days after Oct. 9, 1984, see section 2(g) of Pub. L. 98–460, set out as a note under section 423 of this title.

STUDY OF EFFECT OF RAISING RETIREMENT AGE ON THOSE UNLIKELY TO BENEFIT FROM IMPROVEMENTS IN LONGEVITY

Section 201(d) of Pub. L. 98–21 required the Secretary to conduct a comprehensive study and analysis of the implications of the changes made by this section (amending sections 402, 403, 415, 416, and 423 of this title) in retirement age in the case of certain individuals and submit to Congress no later than January 1, 1986, a full report on the study and analysis, including any recommendations for legislative changes.

SPECIAL INSURED STATUS TEST IN CERTAIN CASES FOR DISABILITY PURPOSES

Section 404 of Pub. L. 86–778 provided that:

''(a) In the case of any individual who does not meet the requirements of section 216(i)(3) of the Social Security Act [subsec. (i)(3) of this section] with respect to any quarter, or who is not insured for disability insurance benefits as determined under section 223(c)(1) of such Act [section 423(c)(1) of this title] with respect to any month in a quarter, such individual shall be deemed to have met such requirements with respect to such quarter or to be so insured with respect to such month of such quarter, as the case may be, if—

''(1) he had a total of not less than twenty quarters of coverage (as defined in section 213 of such Act [section 413 of this title]) during the period ending with the close of such quarter, and

''(2) all of the quarters elapsing after 1950 and up to but excluding such quarter were quarters of coverage with respect to him and there were not fewer than six such quarters of coverage.

''(b) Subsection (a) shall apply only in the case of applications for disability insurance benefits under section 223 of the Social Security Act, or for disability determinations under section 216(i) of such Act, filed in or after the month in which this Act is enacted [September 1960], and then only with respect to an individual who, but for such subsection (a), would not meet the requirements for a period of disability under section 216(i) with respect to the quarter in which this Act is enacted or any prior quarter and would not meet the requirements for benefits under section 223 with respect to the month in which this Act is enacted or any prior month. No benefits under title II of the Social Security Act [this subchapter] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of the amendment made by such subsection.''

§ 417. Benefits for veterans

(a) Determination of benefits

(1) For purposes of determining entitlement to and the amount of any monthly benefit for any

month after August 1950, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this subchapter on the basis of the wages and self-employment income of any World War II veteran, and for purposes of section 416(i)(3) of this title, such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States during World War II. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran during World War II is determined by any agency or wholly owned instrumentality of the United States (other than the Department of Veterans Affairs) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) of this paragraph shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to section 415(f) of this title) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) of this paragraph shall also not apply for purposes of section 416(i)(3) of this title.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Commissioner of Social Security shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless the Commissioner has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If the Commissioner has not been so notified, the Commissioner of Social Security shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service during World War II shall, at the request of the Commissioner of Social Security, certify to the Commissioner, with respect to any veteran, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (2) of this subsection.

(b) Determination of insurance status

(1) Subject to paragraph (3), any World War II veteran who died during the period of three years immediately following his separation from the active military or naval service of the United States shall be deemed to have died a fully insured individual whose primary insurance amount is the amount determined under section 415(c) of this title as in effect in December 1978. Notwithstanding section 415(d) of this title as in effect in December 1978, the primary insurance benefit (for purposes of section 415(c) of this title as in effect in December 1978) of such veteran shall be determined as provided in this subchapter as in effect prior to August 28, 1950, except that the 1 per centum addition provided for in section 409(a)(4)(B) of this title as in effect prior to August 28, 1950, shall be applicable only with respect to calendar years prior to 1951. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application;

(B) any pension or compensation is determined by the Secretary of Veterans Affairs to be payable by him on the basis of the death of such veteran;

(C) the death of the veteran occurred while he was in the active military or naval service of the United States; or

(D) such veteran has been discharged or released from the active military or naval service of the United States subsequent to July 26, 1951.

(2) Upon an application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Commissioner of Social Security shall make a decision without regard to paragraph (1)(B) of this subsection unless the Commissioner has been notified by the Secretary of Veterans Affairs that pension or compensation is determined to be payable by that Secretary by reason of the death of such veteran. The Commissioner of Social Security shall thereupon report such decision to the Secretary of Veterans Affairs. If the Secretary of Veterans Affairs in any such case has made an adjudication or thereafter makes an adjudication that any pension or compensation is payable under any law administered by it, the Secretary of Veterans Affairs shall notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment, or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection. Any payments theretofore certified by the Commissioner of Social Security on the basis of paragraph (1) of

this subsection to any individual, not exceeding the amount of any accrued pension or compensation payable to him by the Secretary of Veterans Affairs, shall (notwithstanding the provisions of section 5301 of title 38) be deemed to have been paid to him by that Secretary on account of such accrued pension or compensation. No such payment certified by the Commissioner of Social Security, and no payment certified by the Commissioner for any month prior to the first month for which any pension or compensation is paid by the Secretary of Veterans Affairs shall be deemed by reason of this subsection to have been an erroneous payment.

(3)(A) The preceding provisions of this subsection shall apply for purposes of determining the entitlement to benefits under section 402 of this title, based on the primary insurance amount of the deceased World War II veteran, of any surviving individual only if such surviving individual makes application for such benefits before the end of the 18-month period after November 1990.

(B) Subparagraph (A) shall not apply if any person is entitled to benefits under section 402 of this title based on the primary insurance amount of such veteran for the month preceding the month in which such application is made.

(c) Filing proof of support

In the case of any World War II veteran to whom subsection (a) of this section is applicable, proof of support required under section 402(h) of this title may be filed by a parent at any time prior to July 1951 or prior to the expiration of two years after the date of the death of such veteran, whichever is the later.

(d) Definitions

For the purposes of this section—

(1) The term ''World War II'' means the period beginning with September 16, 1940, and ending at the close of July 24, 1947.

(2) The term ''World War II veteran'' means any individual who served in the active military or naval service of the United States at any time during World War II and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(e) Determination based on wages and self-employment

(1) For purposes of determining entitlement to and the amount of any monthly benefit or lump-sum death payment payable under this subchapter on the basis of wages and self-employment income of any veteran (as defined in paragraph (4) of this subsection), and for purposes of section 416(i)(3) of this title, such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States on or after July 25, 1947, and prior to January 1, 1957. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, is determined by any agency or wholly owned instrumentality of the United States (other than the Department of Veterans Affairs) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) of this paragraph shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to subsection (f) of section 415 of this title) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) of this paragraph shall also not apply for purposes of section 416(i)(3) of this title. In the case of monthly benefits under this subchapter for months after December 1956 (and any lump-sum death payment under this subchapter with respect to a death occurring after December 1956) based on the wages and self-employment income of a veteran who performed service (as a member of a uniformed service) to which the provisions of section 410(*l*)(1) of this title are applicable, wages which would, but for the provisions of clause (B) of this paragraph, be deemed under this subsection to have been paid to such veteran with respect to his active military or naval service performed after December 1950 shall be deemed to have been paid to him with respect to such service notwithstanding the provisions of such clause, but only if the benefits referred to in such clause which are based (in whole or in part) on such service are payable solely by the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, National Oceanic and Atmospheric Administration Corps, or Public Health Service.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any veteran, the Commissioner of Social Security shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless the Commissioner has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If the Commissioner has not been so notified, the Commissioner of Social Security shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit de-

scribed in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service on or after July 25, 1947, and prior to January 1, 1957, shall, at the request of the Commissioner of Social Security, certify to the Commissioner, with respect to any veteran, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (2) of this subsection.

(4) For the purposes of this subsection, the term ''veteran'' means any individual who served in the active military or naval service of the United States at any time on or after July 25, 1947, and prior to January 1, 1957, and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(f) Right to annuity; waiver

(1) In any case where a World War II veteran (as defined in subsection (d)(2) of this section) or a veteran (as defined in subsection (e)(4) of this section) has died or shall hereafter die, and his or her surviving spouse or child is entitled under subchapter III of chapter 83 of title 5 to an annuity in the computation of which his or her active military or naval service was included, clause (B) of subsection (a)(1) of this section or clause (B) of subsection (e)(1) of this section shall not operate (solely by reason of such annuity) to make such subsection inapplicable in the case of any monthly benefit under section 402 of this title which is based on his or her wages and self-employment income; except that no such surviving spouse or child shall be entitled under section 402 of this title to any monthly benefit in the computation of which such service is included by reason of this subsection (A) unless such surviving spouse or child after December 1956 waives his or her right to receive such annuity, or (B) for any month prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Commissioner of Social Security that (by reason of such waiver) no further annuity will be paid to such surviving spouse or child under such subchapter III on the basis of such veteran's military or civilian service. Any such waiver shall be irrevocable.

(2) Whenever a surviving spouse waives his or her right to receive such annuity such waiver shall constitute a waiver on his or her own behalf; a waiver by a legal guardian or guardians, or, in the absence of a legal guardian, the person (or persons) who has the child in his or her care, of the child's right to receive such annuity shall constitute a waiver on behalf of such child. Such a waiver with respect to an annuity based on a veteran's service shall be valid only if the surviving spouse and all children, or, if there is no surviving spouse, all the children, waive their rights to receive annuities under subchapter III of chapter 83 of title 5 based on such veteran's military or civilian service.

(g) Appropriation to trust funds

(1) Within thirty days after April 20, 1983, the Commissioner of Social Security shall determine the amount equal to the excess of—

(A) the actuarial present value as of April 20, 1983, of the past and future benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under this subchapter and subchapter XVIII of this chapter, together with associated administrative costs, resulting from the operation of this section (other than this subsection) and section 410 of this title as in effect before the enactment of the Social Security Amendments of 1950, over

(B) any amounts previously transferred from the general fund of the Treasury to such Trust Funds pursuant to the provisions of this subsection as in effect immediately before April 20, 1983.

Such actuarial present value shall be based on the relevant actuarial assumptions set forth in the report of the Board of Trustees of each such Trust Fund for 1983 under sections 401(c) and 1395i(b) of this title. Within thirty days after April 20, 1983, the Secretary of the Treasury shall transfer the amount determined under this paragraph with respect to each such Trust Fund to such Trust Fund from amounts in the general fund of the Treasury not otherwise appropriated.

(2) The Commissioner of Social Security shall revise the amount determined under paragraph (1) with respect to each such Trust Fund in 1985 and each fifth year thereafter, as determined appropriate by the Commissioner of Social Security from data which becomes available to the Commissioner after the date of the determination under paragraph (1) on the basis of the amount of benefits and administrative expenses actually paid from such Trust Fund under this subchapter or subchapter XVIII of this chapter and the relevant actuarial assumptions set forth in the report of the Board of Trustees of such Trust Fund for such year under section 401(c) or 1395i(b) of this title. Within 30 days after any such revision, the Secretary of the Treasury, to the extent provided in advance in appropriation Acts, shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of the Treasury determines necessary to take into account such revision.

(h) Determination of veterans status

(1) For the purposes of this section, any individual who the Commissioner of Social Security finds—

(A) served during World War II (as defined in subsection (d)(1) of this section) in the active military or naval service of a country which was on September 16, 1940, at war with a country with which the United States was at war during World War II;

(B) entered into such active service on or before December 8, 1941;

(C) was a citizen of the United States throughout such period of service or lost his United States citizenship solely because of his entrance into such service;

(D) had resided in the United States for a period or periods aggregating four years during the five-year period ending on the day of, and was domiciled in the United States on the day of, such entrance into such active service; and

(E)(i) was discharged or released from such service under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty, or

(ii) died while in such service,

shall be considered a World War II veteran (as defined in subsection (d)(2) of this section) and such service shall be considered to have been performed in the active military or naval service of the United States.

(2) In the case of any individual to whom paragraph (1) applies, proof of support required under section 402(f) or (h) of this title may be filed at any time prior to the expiration of two years after the date of such individual's death or August 28, 1958, whichever is the later.

(Aug. 14, 1935, ch. 531, title II, §217, as added Aug. 28, 1950, ch. 809, title I, §105, 64 Stat. 512; amended July 18, 1952, ch. 945, §5(a), (d)(1), 66 Stat. 773, 775; Aug. 14, 1953, ch. 483, §1, 67 Stat. 580; Sept. 1, 1954, ch. 1206, title I, §106(e), 68 Stat. 1081; Aug. 9, 1955, ch. 685, §1, 69 Stat. 621; Aug. 1, 1956, ch. 837, title IV, §§404(a), (b), 406, 70 Stat. 872, 873, 875; Pub. L. 85–840, title III, §314(a), (b), Aug. 28, 1958, 72 Stat. 1036, 1037; Pub. L. 85–857, §13(i)(2), Sept. 2, 1958, 72 Stat. 1265; Pub. L. 86–778, title I, §103(j)(2)(C), Sept. 13, 1960, 74 Stat. 937; Pub. L. 89–97, title III, §322, July 30, 1965, 79 Stat. 396; Pub. L. 90–248, title IV, §403(c), Jan. 2, 1968, 81 Stat. 932; Pub. L. 94–273, §§2(23), 16, Apr. 21, 1976, 90 Stat. 376, 379; Pub. L. 95–216, title II, §205(c), Dec. 20, 1977, 91 Stat. 1529; Pub. L. 97–35, title XXII, §2201(c)(7), Aug. 13, 1981, 95 Stat. 832; Pub. L. 97–123, §2(g), Dec. 29, 1981, 95 Stat. 1661; Pub. L. 98–21, title I, §151(a), title III, §308, Apr. 20, 1983, 97 Stat. 103, 115; Pub. L. 98–369, div. B, title VI, §2663(a)(12), (j)(3)(A)(ii), July 18, 1984, 98 Stat. 1164, 1170; Pub. L. 101–239, title X, §10208(d)(2)(A)(iv), Dec. 19, 1989, 103 Stat. 2481; Pub. L. 101–508, title V, §5117(b), Nov. 5, 1990, 104 Stat. 1388–277; Pub. L. 102–40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–54, §13(q)(3)(A)(i), (D), (E), June 13, 1991, 105 Stat. 279; Pub. L. 103–296, title I, §107(a)(4), Aug. 15, 1994, 108 Stat. 1478.)

REFERENCES IN TEXT

The Social Security Act Amendments of 1950, referred to in subsec. (g)(1)(A), is act Aug. 28, 1950, ch. 809, 64 Stat. 477, as amended. For complete classification of this Act to the Code, see Short Title of 1950 Amendment note set out under section 1305 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(2), (3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''unless the Commissioner'' for ''unless he'' and ''If the Commissioner'' for ''If he'' in par. (2), and ''to the Commissioner'' for ''to him'' and ''the Commissioner's functions'' for ''his functions'' in par. (3).

Subsec. (b)(2). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing except where appearing before ''of Veterans Affairs'' or after ''that'' and substituted ''unless the Commissioner'' for ''unless he'' and ''certified by the Commissioner'' for ''certified by him''.

Subsec. (e)(2), (3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner has'' for ''he has'' in two places in par. (2), and ''certify to the Commissioner'' for ''certify to him'' and ''the Commissioner's'' for ''his'' in par. (3).

Subsec. (f)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (g). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, except where appearing before ''of the Treasury'' and substituted ''the Commissioner after'' for ''him after'' in par. (2).

Subsec. (h)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions.

1991—Subsec. (a)(1)(B). Pub. L. 102–54, §13(q)(3)(A)(i), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (b)(1)(B). Pub. L. 102–54, §13(q)(3)(D), substituted ''Secretary of Veterans Affairs to be payable by him'' for ''Veterans' Administration to be payable by it''.

Subsec. (b)(2). Pub. L. 102–54, §13(q)(3)(E), substituted references to Secretary of Veterans Affairs and Secretary for references to Veterans' Administration and Administration, wherever appearing.

Pub. L. 102–40 substituted ''section 5301 of title 38'' for ''section 3101 of title 38''.

Subsec. (e)(1)(B). Pub. L. 102–54, §13(q)(3)(A)(i), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (b)(1). Pub. L. 101–508, §5117(b)(1), substituted ''Subject to paragraph (3), any'' for ''Any''.

Subsec. (b)(3). Pub. L. 101–508, §5117(b)(2), added par. (3).

1989—Subsec. (b)(1). Pub. L. 101–239 substituted ''409(a)(4)(B)'' for ''409(e)(2)'' in introductory provisions.

1984—Subsecs. (a)(2), (3), (b)(2). Pub. L. 98–369, §2663(j)(3)(A)(ii), struck out ''of Health, Education, and Welfare'' after ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 98–369, §2663(a)(12)(A), realigned margins of subsec. (d).

Subsec. (e)(1). Pub. L. 98–369, §2663(a)(12)(B), inserted reference to National Oceanic and Atmospheric Administration.

Subsec. (e)(2), (3). Pub. L. 98–369, §2663(j)(3)(A)(ii), struck out ''of Health, Education, and Welfare'' after ''Secretary'' wherever appearing.

Subsec. (f)(1). Pub. L. 98–369, §2663(a)(12)(C), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission''.

Pub. L. 98–369, §2663(j)(3)(A)(ii), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

1983—Subsec. (f). Pub. L. 98–21, §308(2), substituted ''his or her'' for ''his'' and ''her'' wherever appearing, except in cl. (A) of par. (1).

Pub. L. 98–21, §308(1), substituted ''surviving spouse'' for ''widow'' wherever appearing.

Subsec. (g). Pub. L. 98–21, §151(a), amended subsec. generally, substituting provisions relating to deter-

mination of amounts to be appropriated to trust funds and to revisions of such amounts for provisions which had formerly required that, in September of 1965, 1970, and 1975, and in October 1980 and in every fifth October thereafter up to and including October 2010, the Secretary determine the amount which, if paid in equal installments at the beginning of each fiscal year in the period beginning (A) with July 1, 1965, in the case of the first such determination, and (B) with the beginning of the first fiscal year commencing after the determination in the case of all other such determinations, and ending with the close of September 30, 2015, would accumulate, with interest compounded annually, to an amount equal to the amount needed to place each of the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position at the close of September 30, 2015, as he estimated they would otherwise be in at the close of that date if section 410 of this title as in effect prior to the Social Security Act Amendments of 1950, and this section, had not been enacted, with the interest to be used in determining such amount to be the rate determined under section 401(d) of this title for public-debt obligations which were or could have been issued for purchase by the Trust Funds in the June preceding the September in which the determinations in 1965, 1970, and 1975 were made and in the September preceding the October in which all other determinations were made.

1981—Subsec. (b)(1). Pub. L. 97–123 struck out '', and as modified by the application of section 415(a)(6) of this title''.

Pub. L. 97–35 inserted '', and as modified by the application of section 415(a)(6) of this title''.

1977—Subsec. (b)(1). Pub. L. 95–216 substituted ''section 415(c) of this title as in effect in December 1978'' for ''section 415(c) of this title'' in two places and ''section 415(d) of this title as in effect in December 1978'' for ''section 415(d) of this title''.

1976—Subsec. (g)(1). Pub. L. 94–273, § 16, substituted provisions relating to determination of the required amount for payment in September of 1965, 1970, and 1975, and in October 1980 and in every fifth October thereafter up to and including October 2010, and ending with the close of September 30, 2015, for provisions relating to determination of the required amount for payment in September 1965, and in every fifth September thereafter up to and including September 2010, and ending with the close of June 30, 2015, and inserted provisions relating to the rate of interest for the determination of the required amount in the Septembers preceding the Octobers for all the other determinations subsequent to the 1975 determination.

Subsec. (g)(2)(B), (3), (4). Pub. L. 94–273, § 2(23), substituted ''September'' for ''June'' wherever appearing.

1968—Subsec. (f)(1). Pub. L. 90–248, § 403(c)(1), substituted ''subchapter III of chapter 83 of title 5'' and ''such subchapter III'' for ''the Civil Service Retirement Act of May 29, 1930, as amended,'' and ''such Act of May 29, 1930, as amended,'', respectively.

Subsec. (f)(2). Pub. L. 90–248, § 403(c)(2), substituted ''subchapter III of chapter 83 of title 5'' for ''the Civil Service Retirement Act of May 29, 1930, as amended''.

1965—Subsec. (g)(1). Pub. L. 89–97 substituted provisions requiring the Secretary to determine, in September 1965, and every fifth September thereafter, up to and including September 2010, the amount necessary to place each of the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position at the close of June 30, 2015, as they would otherwise have been in at the close of that date if section 410 of this title, as in effect prior to the Social Security Act Amendments of 1950, and this section had not been enacted and providing for determination of interest in accordance with section 401(d) of this title, for provisions authorizing the appropriation of sums necessary to meet additional costs resulting from payment of benefits after June 1956 under subsecs. (a), (b), and (e), including lump-sum death payments.

Subsec. (g)(2). Pub. L. 89–97 substituted provisions authorizing appropriation to the Trust Funds and the Federal Hospital Insurance Trust Fund in the fiscal years ending with the close of June 30, 2015, for provisions requiring the Secretary to determine before October 1, 1958, the amount necessary to place the Federal Old-Age and Survivors Insurance Trust Fund in the same position it would have been at the close of June 30, 1956, if section 410 of this title, as in effect prior to the Social Security Act Amendments of 1950, and this section had not been enacted and authorizing appropriations during the first ten years beginning after such determination had been made aggregating the sum so determined plus interest.

Subsec. (g)(3), (4). Pub. L. 89–97 added pars. (3) and (4).

1960—Subsec. (e)(1). Pub. L. 86–778 substituted ''section 410(*l*)(1) of this title'' for ''section 410(m)(1) of this title''.

1958—Subsec. (b)(2). Pub. L. 85–857 substituted ''section 3101 of title 38'' for ''section 454a of title 38''.

Subsec. (g). Pub. L. 85–840, § 314(b), substituted ''Trust Funds'' for ''Trust Fund'' in par. (1), and ''the Federal Old-Age and Survivors Insurance Trust Fund in'' for ''the Trust Fund in'', ''such Trust Fund annually'', for ''the Trust Fund annually'', and ''such Trust Fund during'' for ''the Trust Fund during'' in par. (2).

Subsec. (h). Pub. L. 85–840, § 314(a), added subsec. (h).

1956—Subsec. (e). Act Aug. 1, 1956, § 404(a), amended subsec. (e) generally, substituting ''January 1, 1957'' for ''April 1, 1956'' in five places, and inserting provisions in par. (1) relating to monthly benefits for months after December 1956 and any lump-sum death payment under this subchapter with respect to a death occurring after December 1956.

Subsecs. (f), (g). Act Aug. 1, 1956, §§ 404(b), 406, added subsecs. (f) and (g), respectively.

1955—Subsec. (e). Act Aug. 9, 1955, substituted ''April 1, 1956'' for ''July 1, 1955'' wherever appearing.

1954—Subsec. (a)(1). Act Sept. 1, 1954, § 106(e)(1), (3), inserted ''and for purposes of section 416(i)(3) of this title'' after ''World War II veteran'' in first sentence, and inserted sentence at end.

Subsec. (e)(1). Act Sept. 1, 1954, § 106(e)(2), (3), inserted ''and for purposes of section 416(i)(3) of this title'' after ''veteran (as defined in paragraph (4) of this subsection)'' and inserted sentence at end.

1953—Subsec. (e). Act Aug. 14, 1953, substituted ''July 1, 1955'' for ''January 1, 1954'' wherever appearing.

1952—Act July 18, 1952, § 5(a), struck out reference to World War II veterans in section catchline.

Subsec. (a)(1). Act July 5, 1952, § 5(d)(1), inserted provision following cl. (B) that cl. (B) not apply in the case of any monthly benefits or lump-sum death payments under this subchapter.

Subsec. (e). Act July 18, 1952, § 5(a), added subsec. (e).

CHANGE OF NAME

Coast and Geodetic Survey consolidated with Weather Bureau to form a new agency in Department of Commerce to be known as Environmental Science Services Administration, and commissioned officers of Survey transferred to ESSA, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, abolished Environmental Science Services Administration, established National Oceanic and Atmospheric Administration, and redesignated Commissioned Officer Corps of ESSA as Commissioned Officer Corps of NOAA. For further details, see Transfer of Functions note set out under section 851 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any

right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 308 of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2201(c)(7) of Pub. L. 97–35 and by section 2(g) of Pub. L. 97–123 applicable with respect to benefits for months after December 1981 with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective with respect to monthly benefits and lump-sum death payments for deaths occurring after December 1978, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding Part I of Title 38, Veterans' Benefits.

Section 314(c)(1) of Pub. L. 85–840 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to (A) monthly benefits under sections 202 and 223 of the Social Security Act [sections 402 and 423 of this title] for months after the month in which this Act is enacted [August 1958], (B) lump-sum death payments under such section 202 in the case of deaths occurring after the month in which this Act is enacted, and (C) periods of disability under section 216(i) [section 416(i) of this title] in the case of applications for a disability determination filed after the month in which this Act is enacted.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 404(d) of act Aug. 1, 1956, provided that: ''Except for the last sentence of section 217(e)(1) of the Social Security Act [subsec. (e)(1) of this section] as amended by subsection (a) of this section, the amendments made by such subsection (a) [amending this section] shall be effective as though they had been enacted on March 31, 1956. Such last sentence of section 217(e)(1) of the Social Security Act shall become effective January 1, 1957.''

Amendment by section 406 of act Aug. 1, 1956, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 106(e) of act Sept. 1, 1954, applicable with respect to monthly benefits under subchapter II of this chapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 415(f) of this title, see section 106(h) of act Sept. 1, 1954, set out as a note under section 413 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 5(c) of act of July 18, 1952, as amended by Pub. L. 86–778, title III, § 304(d), Sept. 13, 1960, 74 Stat. 966, provided that:

''(1) The amendments made by subsections (a) and (b) [amending this section and section 405 of this title] shall apply with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months after August 1952, and with respect to lump-sum death payments in the case of deaths occurring after August 1952, except that, in the case of any individual who is entitled, on the basis of the wages and self-employment income of any individual to whom section 217(e) of the Social Security Act [subsec. (e) of this section] applies, to monthly benefits under such section 202 for August 1952, such amendments shall apply (A) only if an application for recomputation by reason of such amendments is filed by such individual, or any other individual, entitled to benefits under such section 202 on the basis of such wages and self-employment income, and (B) only with respect to such benefits for months after whichever of the following is the later: August 1952 of the seventh month before the month in which such application was filed. Recomputations of benefits as required to carry out the provisions of this paragraph shall be made notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title]; but no such recomputation shall be regarded as a recomputation for purposes of section 215(f) of such act. Notwithstanding the preceding provisions of this paragraph, the primary insurance amount of an individual shall not be recomputed under such provisions unless such individual files the application referred to in clause (A) of the first sentence of this paragraph prior to January 1961 or, if he dies without filing such application, his death occurred prior to January 1961.

''(2) In the case of any veteran (as defined in section 217(e)(4) of the Social Security Act [subsec. (e)(4) of this section]) who died prior to September 1952, the requirement in subsections (f) and (h) of section 202 of the Social Security Act that proof of support be filed within two years of the date of such death shall not apply if such proof is filed prior to September 1954.''

Section 5(d)(2) of act July 18, 1952, provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall apply only in the case of applications for benefits under section 202 of the Social Security Act [section 402 of this title] filed after August 1952.''

EFFECTIVE DATE

Section 105 of act Aug. 28, 1950, provided that this section is effective Sept. 1, 1950.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard, of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

RECOMPUTATION OF PRIMARY INSURANCE AMOUNT OF CERTAIN INDIVIDUALS

Section 314(c)(2) of Pub. L. 85–840 provided that: ''In the case of any individual—

''(A) who is a World War II veteran (as defined in section 217(d)(2) of the Social Security Act [subsec.

(d)(2) of this section]) wholly or partly by reason of service described in section 217(h)(1)(A) of such Act; and

''(B) who (i) became entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] or to disability insurance benefits under section 223 of such Act [section 423 of this title] prior to the first day of the month following the month in which this Act is enacted [August 1958], or (i) died prior to such first day, and whose widow, former wife divorced, widower, child, or parent is entitled for the month in which this Act is enacted, on the basis of his wages and self-employment income, to a monthly benefit under section 202 of such Act; and

''(C) any part of whose service described in section 217(h)(1)(A) of the Social Security Act was not included in the computation of his primary insurance amount under section 215 of such Act [section 415 of this title] but would have been included in such computation if the amendment made by subsection (a) of this section had been effective prior to the date of such computation,

the Secretary of Health, Education, and Welfare [now Health and Human Services] shall, notwithstanding the provisions of section 215(f)(1) of the Social Security Act, recompute the primary insurance amount of such individual upon the filing of an application, after the month in which this Act is enacted [August 1958], by him or (if he has died without filing such an application) by any person entitled to monthly benefits under section 202 of the Social Security Act on the basis of his wages and self-employment income. Such recomputation shall be made only in the manner provided in title II of the Social Security Act [this subchapter] as in effect at the time of the last previous computation or recomputation of such individual's primary insurance amount, and as though application therefor was filed in the month in which application for such last previous computation or recomputation was filed. No recomputation made under this subsection shall be regarded as a recomputation under section 215(f) of the Social Security Act. Any such recomputation shall be effective for and after the twelfth month before the month in which the application is filed, but in no case for the month in which this Act is enacted or any prior month.''

RECOMPUTATION OF SOCIAL SECURITY BENEFITS OF WIDOWS AND CHILDREN WHO WAIVE RIGHT TO ANNUITY UNDER CIVIL SERVICE RETIREMENT ACT

Section 404(c) of act Aug. 1, 1956, provided that: ''In the case of any deceased individual—

''(1) who is a World War II veteran (as defined in section 217(d)(2) of the Social Security Act [subsec. (d)(2) of this section]) or a veteran (as defined in section 217(e)(4) of such Act); and

''(2) whose widow or child is entitled under the Civil Service Retirement Act of May 29, 1930, as amended [see section 8301 et seq. of Title 5, Government Organization and Employees], to an annuity in the computation of which his active military or naval service after September 15, 1940, and before January 1, 1957, was included; and

''(3) whose widow or child is entitled under section 202 of the Social Security Act [section 402 of this title], on the basis of his wages and self-employment income, to a monthly benefit in the computation of which such active military or naval service was excluded (under clause (B) of subsection (a)(1) or (e)(1) of section 217 of such Act) solely by reason of the annuity described in the preceding paragraph; and

''(4) whose widow or child is entitled by reason of section 217(f) of the Social Security Act to have such active military or naval service included in the computation of such monthly benefit,

the Secretary of Health, Education, and Welfare [now Health and Human Services] shall, notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title], recompute the primary insurance amount of such individual upon the filing of an application, after December 1956, by or on behalf of such widow or child. Such recomputation shall be made only in the manner provided in title II of the Social Security Act [this subchapter] as in effect at the time of such individual's death, and as though application therefor was filed in the month in which he died. No recomputation made under this subsection shall be regarded as a recomputation under section 215(f) of the Social Security Act. Any such recomputation shall be effective for and after the twelfth month before the month in which the application is filed, but in no case for any month before the first month with respect to which such widow or child is entitled by reason of section 217(f) of the Social Security Act to have such active military or naval service included in the computation of such monthly benefits. The terms used in this subsection shall have the same meaning as when used in title II of the Social Security Act [this subchapter].''

§ 418. Voluntary agreements for coverage of State and local employees

(a) Purpose of agreement

(1) The Commissioner of Social Security shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this subchapter to services performed by individuals as employees of such State or any political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request.

(2) Notwithstanding section 410(a) of this title, for the purposes of this subchapter the term ''employment'' includes any service included under an agreement entered into under this section.

(b) Definitions

For the purposes of this section—

(1) The term ''State'' does not include the District of Columbia, Guam, or American Samoa.

(2) The term ''political subdivision'' includes an instrumentality of (A) a State, (B) one or more political subdivisions of a State, or (C) a State and one or more of its political subdivisions.

(3) The term ''employee'' includes an officer of a State or political subdivision.

(4) The term ''retirement system'' means a pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof.

(5) The term ''coverage group'' means (A) employees of the State other than those engaged in performing service in connection with a proprietary function; (B) employees of a political subdivision of a State other than those engaged in performing service in connection with a proprietary function; (C) employees of a State engaged in performing service in connection with a single proprietary function; or (D) employees of a political subdivision of a State engaged in performing service in connection with a single proprietary function. If under the preceding sentence an employee would be included in more than one coverage group by reason of the fact that he performs service in connection with two or more proprietary functions or in connection with both a proprietary function and a nonproprietary

function, he shall be included in only one such coverage group. The determination of the coverage group in which such employee shall be included shall be made in such manner as may be specified in the agreement. Persons employed under section 709 of title 32, who elected under section 6 of the National Guard Technicians Act of 1968 to remain covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall, for the purposes of this chapter, be employees of the State or the Commonwealth of Puerto Rico and (notwithstanding the preceding provisions of this paragraph), shall be deemed to be a separate coverage group. For purposes of this section, individuals employed pursuant to an agreement, entered into pursuant to section 1624 of title 7 or section 499n of title 7, between a State and the United States Department of Agriculture to perform services as inspectors of agricultural products may be deemed, at the option of the State, to be employees of the State and (notwithstanding the preceding provisions of this paragraph) shall be deemed to be a separate coverage group.

(c) Services covered

(1) An agreement under this section shall be applicable to any one or more coverage groups designated by the State.

(2) In the case of each coverage group to which the agreement applies, the agreement must include all services (other than services excluded by or pursuant to subsection (d) or paragraph (3), (5), or (6) of this subsection) performed by individuals as members of such group.

(3) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any one or more of the following:

(A) All services in any class or classes of (i) elective positions, (ii) part-time positions, or (iii) positions the compensation for which is on a fee basis;

(B) All services performed by individuals as members of a coverage group in positions covered by a retirement system on the date such agreement is made applicable to such coverage group, but only in the case of individuals who, on such date (or, if later, the date on which they first occupy such positions), are not eligible to become members of such system and whose services in such positions have not already been included under such agreement pursuant to subsection (d)(3) of this section.

(4) The Commissioner of Social Security shall, at the request of any State, modify the agreement with such State so as to (A) include any coverage group to which the agreement did not previously apply, or (B) include, in the case of any coverage group to which the agreement applies, services previously excluded from the agreement; but the agreement as so modified may not be inconsistent with the provisions of this section applicable in the case of an original agreement with a State. A modification of an agreement pursuant to clause (B) of the preceding sentence may apply to individuals to whom paragraph (3)(B) of this subsection is applicable (whether or not the previous exclusion of the service of such individuals was pursuant to such paragraph), but only if such individuals are, on the effective date specified in such modification, ineligible to be members of any retirement system or if the modification with respect to such individuals is pursuant to subsection (d)(3) of this section.

(5) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any agricultural labor, or service performed by a student, designated by the State. This paragraph shall apply only with respect to service which is excluded from employment by any provision of section 410(a) of this title other than paragraph (7) of such section and service the remuneration for which is excluded from wages by subparagraph (B) of section 409(a)(7) of this title.

(6) Such agreement shall exclude—

(A) service performed by an individual who is employed to relieve him from unemployment,

(B) service performed in a hospital, home, or other institution by a patient or inmate thereof,

(C) covered transportation service (as determined under section 410(k) of this title),

(D) service (other than agricultural labor or service performed by a student) which is excluded from employment by any provision of section 410(a) of this title other than paragraph (7) of such section,

(E) service performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency, and

(F) service described in section 410(a)(7)(F) of this title which is included as ''employment'' under section 410(a) of this title.

(7) No agreement may be made applicable (either in the original agreement or by any modification thereof) to service performed by any individual to whom paragraph (3)(B) of this subsection is applicable unless such agreement provides (in the case of each coverage group involved) either that the service of any individual to whom such paragraph is applicable and who is a member of such coverage group shall continue to be covered by such agreement in case he thereafter becomes eligible to be a member of a retirement system, or that such service shall cease to be so covered when he becomes eligible to be a member of such a system (but only if the agreement is not already applicable to such system pursuant to subsection (d)(3) of this section), whichever may be desired by the State.

(8)(A) Notwithstanding any other provision of this section, the agreement with any State entered into under this section may at the option of the State be modified at any time to exclude service performed by election officials or election workers if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under subparagraph (B) for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year. Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed in and after the calendar

year in which the modification is mailed or delivered by other means to the Commissioner of Social Security.

(B) For each year after 1999, the Commissioner of Social Security shall adjust the amount referred to in subparagraph (A) at the same time and in the same manner as is provided under section 415(a)(1)(B)(ii) of this title with respect to the amounts referred to in section 415(a)(1)(B)(i) of this title, except that—

(i) for purposes of this subparagraph, 1997 shall be substituted for the calendar year referred to in section 415(a)(1)(B)(ii)(II) of this title, and

(ii) such amount as so adjusted, if not a multiple of $100, shall be rounded to the next higher multiple of $100 where such amount is a multiple of $50 and to the nearest multiple of $100 in any other case.

The Commissioner of Social Security shall determine and publish in the Federal Register each adjusted amount determined under this subparagraph not later than November 1 preceding the year for which the adjustment is made.

(d) Positions covered by retirement systems

(1) No agreement with any State may be made applicable (either in the original agreement or by any modification thereof) to any service performed by employees as members of any coverage group in positions covered by a retirement system either (A) on the date such agreement is made applicable to such coverage group, or (B) on September 1, 1954 (except in the case of positions which are, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to September 1, 1954, no longer covered by a retirement system on the date referred to in clause (A), and except in the case of positions excluded by paragraph (5)(A) of this subsection). The preceding sentence shall not be applicable to any service performed by an employee as a member of any coverage group in a position (other than a position excluded by paragraph (5)(A) of this subsection) covered by a retirement system on the date an agreement is made applicable to such coverage group if, on such date (or, if later, the date on which such individual first occupies such position), such individual is ineligible to be a member of such system.

(2) It is declared to be the policy of the Congress in enacting the succeeding paragraphs of this subsection that the protection afforded employees in positions covered by a retirement system on the date an agreement under this section is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

(3) Notwithstanding paragraph (1) of this subsection, an agreement with a State may be made applicable (either in the original agreement or by any modification thereof) to service performed by employees in positions covered by a retirement system (including positions specified in paragraph (4) of this subsection but not including positions excluded by or pursuant to paragraph (5)), if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Commissioner of Social Security that the following conditions have been met:

(A) A referendum by secret written ballot was held on the question of whether service in positions covered by such retirement system should be excluded from or included under an agreement under this section;

(B) An opportunity to vote in such referendum was given (and was limited) to eligible employees;

(C) Not less than ninety days' notice of such referendum was given to all such employees;

(D) Such referendum was conducted under the supervision of the governor or an agency or individual designated by him; and

(E) A majority of the eligible employees voted in favor of including service in such positions under an agreement under this section.

An employee shall be deemed an ''eligible employee'' for purposes of any referendum with respect to any retirement system if, at the time such referendum was held, he was in a position covered by such retirement system and was a member of such system, and if he was in such a position at the time notice of such referendum was given as required by clause (C) of the preceding sentence; except that he shall not be deemed an ''eligible employee'' if, at the time the referendum was held, he was in a position to which the State agreement already applied, or if he was in a position excluded by or pursuant to paragraph (5). No referendum with respect to a retirement system shall be valid for purposes of this paragraph unless held within the two-year period which ends on the date of execution of the agreement or modification which extends the insurance system established by this subchapter to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

(4) For the purposes of subsection (c) of this section, the following employees shall be deemed to be a separate coverage group—

(A) all employees in positions which were covered by the same retirement system on the date the agreement was made applicable to such system (other than employees to whose services the agreement already applied on such date);

(B) all employees in positions which became covered by such system at any time after such date; and

(C) all employees in positions which were covered by such system at any time before such date and to whose services the insurance system established by this subchapter has not been extended before such date because the positions were covered by such retirement system (including employees to whose services the agreement was not applicable on such date because such services were excluded pursuant to subsection (c)(3)(B) of this section).

(5)(A) Nothing in paragraph (3) of this subsection shall authorize the extension of the in-

surance system established by this subchapter to service in any policeman's or fireman's position.

(B) At the request of the State, any class or classes of positions covered by a retirement system which may be excluded from the agreement pursuant to paragraph (3) or (5) of subsection (c) of this section, and to which the agreement does not already apply, may be excluded from the agreement at the time it is made applicable to such retirement system; except that, notwithstanding the provisions of paragraph (3)(B) of such subsection, such exclusion may not include any services to which such paragraph (3)(B) is applicable. In the case of any such exclusion, each such class so excluded shall, for purposes of this subsection, constitute a separate retirement system in case of any modification of the agreement thereafter agreed to.

(6)(A) If a retirement system covers positions of employees of the State and positions of employees of one or more political subdivisions of the State, or covers positions of employees of two or more political subdivisions of the State, then, for purposes of the preceding paragraphs of this subsection, there shall, if the State so desires, be deemed to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned. Where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of the State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems pursuant to the preceding sentence or pursuant to subparagraph (C), then the State may, for purposes of subsection (e) of this section only, deem the system to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned.

(B) If a retirement system covers positions of employees of one or more institutions of higher learning, then, for purposes of such preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of each such institution of higher learning. For the purposes of this subparagraph, the term ''institutions of higher learning'' includes junior colleges and teachers colleges. If a retirement system covers positions of employees of a hospital which is an integral part of a political subdivision, then, for purposes of the preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of such hospital.

(C) For the purposes of this subsection, any retirement system established by the State of Alaska, California, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin, or Hawaii, or any political subdivision of any such State, which, on, before, or after August 1, 1956, is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who do not desire such coverage, shall, if the State so desires and if it is provided that there shall be included in such division or part composed of members desiring such coverage the positions of individuals who become members of such system after such coverage is extended, be deemed to be a separate retirement system with respect to each such division or part. If, in the case of a separate retirement system which is deemed to exist by reason of subparagraph (A) and which has been divided into two divisions or parts pursuant to the first sentence of this subparagraph, individuals become members of such system by reason of action taken by a political subdivision after coverage under an agreement under this section has been extended to the division or part thereof composed of positions of individuals who desire such coverage, the positions of such individuals who become members of such retirement system by reason of the action so taken shall be included in the division or part of such system composed of positions of members who do not desire such coverage if (i) such individuals, on the day before becoming such members, were in the division or part of another separate retirement system (deemed to exist by reason of subparagraph (A)) composed of positions of members of such system who do not desire coverage under an agreement under this section, and (ii) all of the positions in the separate retirement system of which such individuals so become members and all of the positions in the separate retirement system referred to in clause (i) would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems under this paragraph.

(D)(i) The position of any individual which is covered by any retirement system to which subparagraph (C) is applicable shall, if such individual is ineligible to become a member of such system on August 1, 1956, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this subchapter.

(ii) Notwithstanding clause (i), the State may, pursuant to subsection (c)(4)(B) of this section and subject to the conditions of continuation or termination of coverage provided for in subsection (c)(7) of this section, modify its agreement under this section to include services performed by all individuals described in clause (i) other than those individuals to whose services the agreement already applies. Such individuals shall be deemed (on and after the effective date of the modification) to be in positions covered by the separate retirement system consisting of the positions of members of the division or part

who desire coverage under the insurance system established under this subchapter.

(E) An individual who is in a position covered by a retirement system to which subparagraph (C) is applicable and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection (other than paragraph (8) of this subsection), be regarded as a member of such system; except that, in the case of any retirement system a division or part of which is covered under the agreement (either in the original agreement or by a modification thereof), which coverage is agreed to prior to 1960, the preceding provisions of this subparagraph shall apply only if the State so requests and any such individual referred to in such preceding provisions shall, if the State so requests, be treated, after division of the retirement system pursuant to such subparagraph (C), the same as individuals in positions referred to in subparagraph (F).

(F) In the case of any retirement system divided pursuant to subparagraph (C), the position of any member of the division or part composed of positions of members who do not desire coverage may be transferred to the separate retirement system composed of positions of members who desire such coverage if it is so provided in a modification of such agreement which is mailed, or delivered by other means, to the Commissioner of Social Security prior to 1970 or, if later, the expiration of two years after the date on which such agreement, or the modification thereof making the agreement applicable to such separate retirement system, as the case may be, is agreed to, but only if, prior to such modification or such later modification, as the case may be, the individual occupying such position files with the State a written request for such transfer. Notwithstanding subsection (e)(1) of this section, any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subparagraph (C) to the separate retirement system composed of positions of members who desire coverage, shall be effective with respect to services performed after the same effective date as that which was specified in the case of such previous division.

(G) For the purposes of this subsection, in the case of any retirement system of the State of Florida, Georgia, Minnesota, North Dakota, Pennsylvania, Washington, or Hawaii which covers positions of employees of such State who are compensated in whole or in part from grants made to such State under subchapter III of this chapter, there shall be deemed to be, if such State so desires, a separate retirement system with respect to any of the following:

(i) the positions of such employees;

(ii) the positions of all employees of such State covered by such retirement system who are employed in the department of such State in which the employees referred to in clause (i) are employed; or

(iii) employees of such State covered by such retirement system who are employed in such department of such State in positions others than those referred to in clause (i).

(7) The certification by the governor (or an official of the State designated by him for the purpose) required under paragraph (3) of this subsection shall be deemed to have been made, in the case of a division or part (created under subparagraph (C) of paragraph (6) of this subsection or the corresponding provision of prior law) consisting of the positions of members of a retirement system who desire coverage under the agreement under this section, if the governor (or the official so designated) certifies to the Commissioner of Social Security that—

(A) an opportunity to vote by written ballot on the question of whether they wish to be covered under an agreement under this section was given to all individuals who were members of such system at the time the vote was held;

(B) not less than ninety days' notice of such vote was given to all individuals who were members of such system on the date the notice was issued;

(C) the vote was conducted under the supervision of the governor or an agency or individual designated by him; and

(D) such system was divided into two parts or divisions in accordance with the provisions of subparagraphs (C) and (D) of paragraph (6) of this subsection or the corresponding provision of prior law.

For purposes of this paragraph, an individual in a position to which the State agreement already applied or in a position excluded by or pursuant to paragraph (5) of this subsection shall not be considered a member of the retirement system.

(8)(A) Notwithstanding paragraph (1) of this subsection, if under the provisions of this subsection an agreement is, after December 31, 1958, made applicable to service performed in positions covered by a retirement system, service performed by an individual in a position covered by such a system may not be excluded from the agreement because such position is also covered under another retirement system.

(B) Subparagraph (A) shall not apply to service performed by an individual in a position covered under a retirement system if such individual, on the day the agreement is made applicable to service performed in positions covered by such retirement system, is not a member of such system and is a member of another system.

(C) If an agreement is made applicable, prior to 1959, to service in positions covered by any retirement system, the preceding provisions of this paragraph shall be applicable in the case of such system if the agreement is modified to so provide.

(D) Except in the case of State agreements modified as provided in subsection (*l*) of this section and agreements with interstate instrumentalities, nothing in this paragraph shall authorize the application of an agreement to service in any policeman's or fireman's position.

(e) Effective date of agreement; retroactive coverage

(1) Any agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification; except that such date may not be earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification, as the case may be, is mailed or

delivered by other means to the Commissioner of Social Security.

(2) In the case of service performed by members of any coverage group—

(A) to which an agreement under this section is made applicable, and

(B) with respect to which the agreement, or modification thereof making the agreement so applicable, specifies an effective date earlier than the date of execution of such agreement and such modification, respectively,

the agreement shall, if so requested by the State, be applicable to such services (to the extent the agreement was not already applicable) performed before such date of execution and after such effective date by any individual as a member of such coverage group if he is such a member on a date, specified by the State, which is earlier than such date of execution, except that in no case may the date so specified be earlier than the date such agreement or such modification, as the case may be, is mailed, or delivered by other means, to the Commissioner of Social Security.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, in the case of services performed by individuals as members of any coverage group to which an agreement under this section is made applicable, and with respect to which there were timely paid in good faith to the Secretary of the Treasury amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 had such services constituted employment for purposes of chapter 21 of such Code at the time they were performed, and with respect to which refunds were not obtained, such individuals may, if so requested by the State, be deemed to be members of such coverage group on the date designated pursuant to paragraph (2).

(f) Duration of agreement

No agreement under this section may be terminated, either in its entirety or with respect to any coverage group, on or after April 20, 1983.

(g) Instrumentalities of two or more States

(1) The Commissioner of Social Security may, at the request of any instrumentality of two or more States, enter into an agreement with such instrumentality for the purpose of extending the insurance system established by this subchapter to services performed by individuals as employees of such instrumentality. Such agreement, to the extent practicable, shall be governed by the provisions of this section applicable in the case of an agreement with a State.

(2) In the case of any instrumentality of two or more States, if—

(A) employees of such instrumentality are in positions covered by a retirement system of such instrumentality or of any of such States or any of the political subdivisions thereof, and

(B) such retirement system is (on, before, or after August 30, 1957) divided into two divisions or parts, one of which is composed of positions of members of such system who are employees of such instrumentality and who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who are employees of such instrumentality and who do not desire such coverage, and

(C) it is provided that there shall be included in such division or part composed of the positions of members desiring such coverage the positions of employees of such instrumentality who become members of such system after such coverage is extended,

then such retirement system shall, if such instrumentality so desires, be deemed to be a separate retirement system with respect to each such division or part. An individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection, be regarded as a member of such system. Coverage under the agreement of any such individual shall be provided under the same conditions, to the extent practicable, as are applicable in the case of the States to which the provisions of subsection (d)(6)(C) of this section apply. The position of any employee of any such instrumentality which is covered by any retirement system to which the first sentence of this paragraph is applicable shall, if such individual is ineligible to become a member of such system on August 30, 1957, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this subchapter. Services in positions covered by a separate retirement system created pursuant to this subsection (and consisting of the positions of members who desire coverage under an agreement under this section) shall be covered under such agreement on compliance, to the extent practicable, with the same conditions as are applicable to coverage under an agreement under this section of services in positions covered by a separate retirement system created pursuant to subparagraph (C) of subsection (d)(6) of this section or the corresponding provision of prior law (and consisting of the positions of members who desire coverage under such agreement).

(3) Any agreement with any instrumentality of two or more States entered into pursuant to this chapter may, notwithstanding the provisions of subsection (d)(5)(A) of this section and the references thereto in subsections (d)(1) and (d)(3) of this section, apply to service performed by employees of such instrumentality in any policeman's or fireman's position covered by a retirement system, but only upon compliance, to the extent practicable, with the requirements of subsection (d)(3) of this section. For the purpose of the preceding sentence, a retirement system which covers positions of policemen or firemen or both, and other positions shall, if the instrumentality concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(h) Delegation of functions

The Commissioner of Social Security is authorized, pursuant to agreement with the head

of any Federal agency, to delegate any of the Commissioner's functions under this section to any officer or employee of such agency and otherwise to utilize the services and facilities of such agency in carrying out such functions, and payment therefor shall be in advance or by way of reimbursement, as may be provided in such agreement.

(i) Wisconsin Retirement Fund

(1) Notwithstanding paragraph (1) of subsection (d) of this section, the agreement with the State of Wisconsin may, subject to the provisions of this subsection, be modified so as to apply to service performed by employees in positions covered by the Wisconsin retirement fund or any successor system.

(2) All employees in positions covered by the Wisconsin retirement fund at any time on or after January 1, 1951, shall, for the purposes of subsection (c) only, be deemed to be a separate coverage group; except that there shall be excluded from such separate coverage group all employees in positions to which the agreement applies without regard to this subsection.

(3) The modification pursuant to this subsection shall exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) service performed by any individual during any period before he is included under the Wisconsin retirement fund.

(4) The modification pursuant to this subsection shall, if the State of Wisconsin requests it, exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) all service performed in policemen's positions, all service performed in firemen's positions, or both.

(j) Certain positions no longer covered by retirement systems

Notwithstanding subsection (d) of this section, an agreement with any State entered into under this section prior to September 1, 1954 may, prior to January 1, 1958, be modified pursuant to subsection (c)(4) of this section so as to apply to services performed by employees, as members of any coverage group to which such agreement already applies (and to which such agreement applied on September 1, 1954), in positions (1) to which such agreement does not already apply, (2) which were covered by a retirement system on the date such agreement was made applicable to such coverage group, and (3) which, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to September 1, 1954, are no longer covered by a retirement system on the date such agreement is made applicable to such services.

(k) Certain employees of State of Utah

Notwithstanding the provisions of subsection (d) of this section, the agreement with the State of Utah entered into pursuant to this section may be modified pursuant to subsection (c)(4) of this section so as to apply to services performed for any of the following, the employees performing services for each of which shall constitute a separate coverage group: Weber Junior College, Carbon Junior College, Dixie Junior College, Central Utah Vocational School, Salt Lake Area Vocational School, Center for the Adult Blind, Union High School (Roosevelt, Utah), Utah High School Activities Association, State Industrial School, State Training School, State Board of Education, and Utah School Employees Retirement Board. Any modification agreed to prior to January 1, 1955, may be made effective with respect to services performed by employees as members of any of such coverage groups after an effective date specified therein, except that in no case may any such date be earlier than December 31, 1950. Coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.

***(l)* Policemen and firemen in certain States**

Any agreement with a State entered into pursuant to this section may, notwithstanding the provisions of subsection (d)(5)(A) of this section and the references thereto in subsections (d)(1) and (d)(3) of this section, be modified pursuant to subsection (c)(4) of this section to apply to service performed by employees of such State or any political subdivision thereof in any policeman's or fireman's position covered by a retirement system in effect on or after August 1, 1956, but only upon compliance with the requirements of subsection (d)(3) of this section. For the purposes of the preceding sentence, a retirement system which covers positions of policemen or firemen, or both, and other positions shall, if the State concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(m) Positions compensated solely on a fee basis

(1) Notwithstanding any other provision in this section, an agreement entered into under this section may be made applicable to service performed after 1967 in any class or classes of positions compensated solely on a fee basis to which such agreement did not apply prior to 1968 only if the State specifically requests that its agreement be made applicable to such service in such class or classes of positions.

(2) Notwithstanding any other provision in this section, an agreement entered into under this section may be modified, at the option of the State, at any time after 1967, so as to exclude services performed in any class or classes of positions compensation for which is solely on a fee basis.

(3) Any modification made under this subsection shall be effective with respect to services performed after the last day of the calendar year in which the modification is mailed or delivered by other means to the Commissioner of Social Security.

(4) If any class or classes of positions have been excluded from coverage under the State agreement by a modification agreed to under this subsection, the Commissioner of Social Security and the State may not thereafter modify such agreement so as to again make the agreement applicable with respect to such class or classes of positions.

(n) Optional medicare coverage of current employees

(1) The Commissioner of Social Security shall, at the request of any State, enter into or modify an agreement with such State under this section

for the purpose of extending the provisions of subchapter XVIII of this chapter, and sections 426 and 426–1 of this title, to services performed by employees of such State or any political subdivision thereof who are described in paragraph (2).

(2) This subsection shall apply only with respect to employees—

(A) whose services are not treated as employment as that term applies under section 410(p) of this title by reason of paragraph (3) of such section; and

(B) who are not otherwise covered under the State's agreement under this section.

(3) For purposes of sections 426 and 426–1 of this title, services covered under an agreement pursuant to this subsection shall be treated as ''medicare qualified government employment''.

(4) Except as otherwise provided in this subsection, the provisions of this section shall apply with respect to services covered under the agreement pursuant to this subsection.

(Aug. 14, 1935, ch. 531, title II, §218, as added Aug. 28, 1950, ch. 809, title I, §106, 64 Stat. 514; amended June 28, 1952, ch. 483, 66 Stat. 285; Aug. 15, 1953, ch. 504, §1, 67 Stat. 587; Sept. 1, 1954, ch. 1206, title I, §101(a)(5), (6), (h)(1)–(8), (i)(1), (2), (j), 68 Stat. 1055–1059; Aug. 1, 1956, ch. 836, title I, §§103(f), (g), 104(e), (g), 70 Stat. 823, 825, 826; Pub. L. 85–226, Aug. 30, 1957, 71 Stat. 511; Pub. L. 85–227, §1, Aug. 30, 1957, 71 Stat. 512; Pub. L. 85–229, Aug. 30, 1957, 71 Stat. 513; Pub. L. 85–787, §§1, 2, Aug. 27, 1958, 72 Stat. 939; Pub. L. 85–798, §§2, 3, Aug. 28, 1958, 72 Stat. 964, 965; Pub. L. 85–840, title III, §315(a)–(c)(1), Aug. 28, 1958, 72 Stat. 1038–1040; Pub. L. 86–284, §2, Sept. 16, 1959, 73 Stat. 566; Pub. L. 86–624, §30(e), (f), July 12, 1960, 74 Stat. 420; Pub. L. 86–778, title I, §§102(a), (b)(1), (c)(1), (2), (d), (e), (f)(1), (g), (*l*), 103(i), (j)(2)(G), Sept. 13, 1960, 74 Stat. 928–930, 934, 936–938; Pub. L. 87–64, title I, §§106, 107, June 30, 1961, 75 Stat. 139, 140; Pub. L. 87–878, §2, Oct. 24, 1962, 76 Stat. 1202; Pub. L. 88–350, §2, July 2, 1964, 78 Stat. 240; Pub. L. 88–382, July 23, 1964, 78 Stat. 335; Pub. L. 89–97, title I, §108(b), title III, §§314, 315, July 30, 1965, 79 Stat. 338, 385; Pub. L. 90–248, title I, §§116(a)–(b)(2), (c), (d), 117, 119(a), 120(a), 121, 122(d), Jan. 2, 1968, 81 Stat. 840–844; Pub. L. 90–486, §7, Aug. 13, 1968, 82 Stat. 759; Pub. L. 92–603, title I, §126, Oct. 30, 1972, 86 Stat. 1358; Priv. L. 93–107, §2, Dec. 31, 1974, 88 Stat. 2386; Pub. L. 95–216, title III, §§319–321, 353(b), Dec. 20, 1977, 91 Stat. 1541, 1553; Pub. L. 96–265, title V, §503(a), June 9, 1980, 94 Stat. 470; Pub. L. 98–21, title I, §103(a), title III, §§325(a), 342(a), Apr. 20, 1983, 97 Stat. 71, 126, 136; Pub. L. 98–369, div. B, title VI, §2663(a)(13), (j)(2)(A)(ii), (3)(A)(iii), July 18, 1984, 98 Stat. 1164, 1170; Pub. L. 99–272, title XII, §12110(a), (b), title XIII, §13205(c), Apr. 7, 1986, 100 Stat. 287, 317; Pub. L. 99–509, title IX, §9002(c)(1), (2)(C)–(E), Oct. 21, 1986, 100 Stat. 1971, 1972; Pub. L. 99–514, title XVIII, §1883(a)(8), Oct. 22, 1986, 100 Stat. 2916; Pub. L. 100–203, title IV, §4009(j)(7), title IX, §9023(c), Dec. 22, 1987, 101 Stat. 1330–59, 1330–296; Pub. L. 101–239, title X, §10208(d)(2)(A)(v), Dec. 19, 1989, 103 Stat. 2481; Pub. L. 101–508, title XI, §11332(c), Nov. 5, 1990, 104 Stat. 1388–470; Pub. L. 103–296, title I, §107(a)(4), title III, §§303(c), (d), 305(a), (b), 321(a)(18), (c)(6)(I), Aug. 15, 1994, 108 Stat. 1478, 1519, 1521, 1537, 1538; Pub. L. 108–203, title IV, §416(a), Mar. 2, 2004, 118 Stat. 530.)

REFERENCES IN TEXT

Section 6 of the National Guard Technicians Act of 1968, referred to in subsec. (b)(5), is section 6 of Pub. L. 90–486, which is set out as a note under section 709 of Title 32, National Guard.

The Internal Revenue Code of 1986, referred to in subsec. (e)(3), is classified to Title 26, Internal Revenue Code.

AMENDMENTS

2004—Subsec. (d)(6)(C). Pub. L. 108–203 inserted ''Kentucky, Louisiana,'' after ''Illinois,''.

1994—Subsecs. (a)(1), (c)(4). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(6)(F). Pub. L. 103–296, §321(a)(18), realigned margin.

Subsec. (c)(8). Pub. L. 103–296, §303(c), (d), substituted ''at any time'' for ''on or after January 1, 1968,'', substituted ''$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under subparagraph (B) for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year'' for ''$100'', substituted ''Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed in and after the calendar year in which the modification is mailed or delivered by other means to the Secretary.'' for ''Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed after an effective date, specified in such modification, which shall not be earlier than the last day of the calendar quarter in which the modification is mailed or delivered by other means to the Secretary.'', inserted subpar. (A) designation, and added subpar. (B).

Pub. L. 103–296, §107(a)(4), in par. (8) as amended by Pub. L. 103–296, §303(c), (d), substituted ''Commissioner of Social Security'' for ''Secretary'' in last sentence of subpar. (A) and in introductory and closing provisions of subpar. (B).

Subsec. (d)(3), (6)(F), (7). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(8)(D). Pub. L. 103–296, §305(b), substituted ''State agreements modified as provided in'' for ''agreements with the States named in''.

Subsec. (e)(1), (2). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (e)(3). Pub. L. 103–296, §321(c)(6)(I), substituted ''1986'' for ''1954'' after ''Code of''.

Subsecs. (g)(1), (h). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in subsecs. (g)(1) and (h) and ''the Commissioner's'' for ''his'' in subsec. (h).

Subsec. (*l*). Pub. L. 103–296, §305(a), struck out par. (1) designation before ''Any agreement with'', substituted ''a State entered into pursuant to this section'' for ''the State of Alabama, California, Florida, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Mississippi, Montana, New York, North Carolina, North Dakota, Oregon, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, or Washington entered into pursuant to this section prior to August 1, 1956,'', and struck out par. (2) which read as follows: ''A State, not otherwise listed by name in paragraph (1), shall be deemed to be a State listed in such paragraph for the purpose of extending coverage under this subchapter to service in firemen's positions covered by a retirement system, if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary that the overall benefit protection of the employees in such positions would be improved by

reason of the extension of such coverage to such employees. Notwithstanding the provisions of the second sentence of such paragraph (1), such firemen's positions shall be deemed a separate retirement system and no other positions shall be included in such system.''

Subsecs. (m)(3), (4), (n)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

1990—Subsec. (c)(6)(F). Pub. L. 101–508 added subpar. (F).

1989—Subsec. (c)(5). Pub. L. 101–239 substituted ''subparagraph (B) of section 409(a)(7)'' for ''paragraph (2) of section 409(h)''.

1987—Subsec. (n). Pub. L. 100–203, §9023(c), redesignated subsec. (v) as (n), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which had previously been struck out of subsec. (v) by section 4009(j)(7) of Pub. L. 100–203 prior to its redesignation as subsec. (n) by Pub. L. 100–203, §9023(c)(1). See below.

Subsec. (v). Pub. L. 100–203, §9023(c)(1), redesignated subsec. (v) as (n).

Subsec. (v)(3). Pub. L. 100–203, §4009(j)(7), struck out par. (3) which read as follows: ''Payments by the State required under subsection (e) of this section with respect to employees covered under this subsection shall be limited to amounts equivalent to the sum of the taxes which would be imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1954 if such services for which wages were paid to such employees constituted 'employment' as defined in section 3121 of such Code.''

1986—Subsec. (d)(6). Pub. L. 99–509, §9002(c)(2)(C), substituted ''subsection (e)'' for ''subsection (f)'' in subpar. (A), and ''subsection (e)(1)'' for ''subsection (f)(1)'' in subpar. (F).

Subsec. (d)(8)(D). Pub. L. 99–509, §9002(c)(2)(D), substituted ''subsection (*l*)'' for ''subsection (p)''.

Subsec. (e). Pub. L. 99–509, §9002(c)(1), (2)(E), redesignated subsec. (f) as (e), substituted ''Any agreement'' for ''Except as provided in subsection (e)(2) of this section, any agreement'', and struck out former subsec. (e) which required that agreements under this section include certain provisions relating to payments and reports by States and allowed inclusion of certain provisions relating to employees employed by two or more political subdivisions of a State.

Subsec. (f). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (f)(1). Pub. L. 99–272, §12110(a), substituted ''is mailed or delivered by other means to the Secretary'' for ''is agreed to by the Secretary and the State''.

Subsec. (g). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (k) as (g). Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (*l*) as (h) and struck out former subsec. (h) which required that amounts received by the Secretary of the Treasury under an agreement made under this section be deposited in the Trust Funds and the Federal Hospital Insurance Trust Fund in certain ratio and provided for adjustment of amount due if more or less than correct amount due is paid.

Subsec. (i). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (m) as (i) and struck out former subsec. (i), relating to regulations of the Secretary.

Subsec. (j). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (n) as (j) and struck out former subsec. (j) which read as follows: ''In case any State does not make, at the time or times due, the payments provided for under an agreement pursuant to this section, there shall be added, as part of the amounts due, interest at the rate of 6 per centum per annum from the date due until paid, and the Secretary may, in his discretion, deduct such amounts plus interest from any amounts certified by him to the Secretary of the Treasury for payment to such State under any other provision of this chapter. Amounts so deducted shall be deemed to have been paid to the State under such other provision of this chapter. Amounts equal to the amounts deducted under this subsection are hereby appropriated to the Trust Funds in the ratio in which amounts are deposited in such Funds pursuant to subsection (h)(1) of this section.''

Subsec. (k). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (*o*) as (k). Former subsec. (k) redesignated (g).

Subsec. (*l*). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (p) as (*l*). Former subsec. (*l*) redesignated (h).

Subsec. (m). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (u) as (m). Former subsec. (m) redesignated (i).

Pub. L. 99–514 substituted ''Retirement Fund'' for ''retirement fund'' in heading.

Subsec. (n) to (p). Pub. L. 99–509, §9002(c)(1), redesignated subsecs. (n) to (p) as (j) to (*l*), respectively.

Subsec. (q). Pub. L. 99–509, §9002(c)(1), struck out subsec. (q) which provided time limitations on liability of States for amounts due under agreements under this section.

Subsec. (r). Pub. L. 99–509, §9002(c)(1), struck out subsec. (r) which provided time limitations on credits and refunds of overpayments by States under agreements under this section.

Subsec. (s). Pub. L. 99–509, §9002(c)(1), struck out subsec. (s) which related to review by Secretary.

Subsec. (t). Pub. L. 99–509, §9002(c)(1), struck out subsec. (t) which provided for judicial review of decisions by Secretary of Health and Human Services under former subsec. (s) of this section.

Subsec. (u). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (u) as (m).

Subsec. (u)(3). Pub. L. 99–272, §12110(b), substituted ''is mailed or delivered by other means to the Secretary'' for ''is agreed to by the Secretary and the State''.

Subsec. (v). Pub. L. 99–272, §13205(c), added subsec. (v).

Subsec. (w). Pub. L. 99–509, §9002(c)(1), struck out subsec. (w) which read as follows: ''Notwithstanding sections 3125(a), 6205(a)(5), 6413(a)(5), and 6413(c)(2)(G) of the Internal Revenue Code of 1954, any State shall make payments of the taxes imposed with respect to services of employees of such State and of a political subdivision thereof under sections 3101(b) and 3111(b) of such Code, and reports of such services, under the same procedures as apply to payments and reports under subsection (e) of this section, but only if any employees of such State or of such political subdivision thereof respectively are covered under an agreement pursuant to this section.''

Pub. L. 99–272, §13205(c), added subsec. (w).

1984—Subsecs. (a)(1), (c)(4), (d)(3), (7), (h)(2), (3). Pub. L. 98–369, §2663(j)(3)(A)(iii), struck out ''of Health, Education, and Welfare'' after ''Secretary'' wherever appearing.

Subsec. (i). Pub. L. 98–369, §2663(j)(3)(A)(iii), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Pub. L. 98–369, §2663(a)(13), substituted ''chapter 21 and subtitle F of the Internal Revenue Code of 1954'' for ''subchapter A or E of chapter 9 of the Internal Revenue Code of 1939''.

Subsecs. (j), (k)(1), (*l*), (p)(2). Pub. L. 98–369, §2663(j)(3)(A)(iii), struck out ''of Health, Education, and Welfare'' after ''Secretary'' wherever appearing.

Subsecs. (q)(4)(B), (6)(B), (r)(1). Pub. L. 98–369, §2663(j)(2)(A)(ii), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'' wherever appearing.

1983—Subsec. (e)(1)(A). Pub. L. 98–21, §342(a), amended subpar. (A) generally, designating existing provisions as cl. (i), and in (i) as so designated, substituting ''on the last day of each calendar month'' for ''within the thirty-day period immediately following the last day of each calendar month'' and inserting ''with respect to the period which includes the first fifteen days of such calendar month'' before ''if the services'', and adding cl. (ii).

Subsec. (g). Pub. L. 98–21, §103(a), amended subsec. (g) generally, substituting provision that no agreement under this section may be terminated on or after April 20, 1983, for provision that had authorized the termination of agreements of States with the Secretary conditioned upon the giving of advance notice.

Subsec. (*o*). Pub. L. 98–21, §325(a), inserted provision that coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.

1980—Subsec. (e)(1)(A). Pub. L. 96–265, §503(a), substituted ''(A) that the State will pay to the Secretary of the Treasury, within the thirty-day period immediately following the last day of each calendar month, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 if the services for which wages were paid in such month to employees covered by the agreement constituted employment as defined in section 3121 of such Code'' for ''(A) that the State will pay to the Secretary of the Treasury, at such time or times as the Secretary of Health, Education, and Welfare may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 1400 and 1410 of the Internal Revenue Code of 1939, if the services of employees covered by the agreement constituted employment as defined in section 1426 of the Internal Revenue Code of 1939''.

1977—Subsec. (c)(8). Pub. L. 95–216, §353(b)(1), substituted ''year'' for ''quarter'' and ''$100'' for ''$50''.

Subsec. (d)(6)(C). Pub. L. 95–216, §320, inserted reference to New Jersey.

Subsec. (g)(1). Pub. L. 95–216, §353(b)(2), substituted ''year'' for ''quarter''.

Subsec. (m)(1). Pub. L. 95–216, §321, inserted ''or any successor system'' after ''Wisconsin retirement fund''.

Subsec. (p)(1). Pub. L. 95–216, §319, inserted reference to Mississippi.

Subsec. (q)(4)(B). Pub. L. 95–216, §353(b)(3), substituted references to calendar years for references to calendar quarters wherever appearing.

Subsec. (q)(6)(B). Pub. L. 95–216, §353(b)(4), substituted ''period or periods designated by the State in such wage reports as the period or'' for ''calendar quarters designated by the State in such wage reports as the''.

Subsec. (r)(1). Pub. L. 95–216, §353(b)(5), in provisions preceding cl. (A) and in cl. (B) substituted ''year'' for ''quarter'', and in cl. (A) struck out ''in which occurred the calendar quarter'' after ''year''.

1974—Subsec. (p)(1). Priv. L. 93–107 inserted ''Montana,'' after ''Maryland,''.

1972—Subsec. (p)(1). Pub. L. 92–603 inserted ''Idaho,'' after ''Hawaii,''.

1968—Subsec. (b)(5). Pub. L. 90–486 substituted provisions pertaining to the coverage of persons employed under section 709 of title 32, who elected under section 6 of the National Guard Technicians Act of 1968 to remain covered by an employee retirement system of, or plan sponsored by, a state or the Commonwealth of Puerto Rico, such persons, for the purposes of this chapter, to be considered employees of the state or the Commonwealth of Puerto Rico, for provisions pertaining to the coverage of civilian employees of National Guard units of a state who are employed pursuant to section 42 of title 32, and who are paid from funds allotted to such units by the Department of the Defense, such persons, for the purposes of this section, to be deemed employees of the state.

Subsec. (c)(3). Pub. L. 90–248, §116(b)(1)(A), struck out subpar. (A) which provided for the exclusion of any service of an emergency nature and redesignated subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (c)(4). Pub. L. 90–248, §116(b)(1)(B), substituted ''(3)(B)'' for ''(3)(C)''.

Subsec. (c)(6)(E). Pub. L. 90–248, §116(b)(2), added subpar. (E).

Subsec. (c)(7). Pub. L. 90–248, §116(b)(1)(B), substituted ''(3)(B)'' for ''(3)(C)''.

Subsec. (c)(8). Pub. L. 90–248, §116(c), added par. (8).

Subsec. (d)(4)(C). Pub. L. 90–248, §116(b)(1)(C), substituted ''(c)(3)(B)'' for ''(c)(3)(C)''.

Subsec. (d)(5)(B). Pub. L. 90–248, §116(b)(1)(B), substituted ''(3)(B)'' for ''(3)(C)'' wherever appearing.

Subsec. (d)(6)(C). Pub. L. 90–248, §117, inserted ''Illinois,'' after ''Georgia,''.

Subsec. (d)(6)(D). Pub. L. 90–248, §116(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (d)(6)(F). Pub. L. 90–248, §116(d), substituted ''1970'' for ''1967''.

Subsec. (f)(3). Pub. L. 90–248, §121, added par. (3).

Subsec. (p). Pub. L. 90–248, §§119(a), 120(a), designated existing provisions as par. (1), inserted ''Puerto Rico,'' after ''Oregon,'', and added par. (2).

Subsec. (u). Pub. L. 90–248, §122(d), added subsec. (u).

1965—Subsec. (d)(6)(C). Pub. L. 89–97, §314, inserted ''Alaska,'' before ''California''.

Subsec. (d)(6)(F). Pub. L. 89–97, §315, substituted ''1967'' for ''1963''.

Subsec. (h)(1). Pub. L. 89–97, §108(b), substituted ''Trust Funds and the Federal Hospital Insurance Trust Fund in the ratio in which amounts are appropriated to such Funds pursuant to subsection (a)(3) of section 401 of this title, subsection (b)(1) of such section, and subsection (a)(1) of section 1395i of this title, respectively'' for ''Trust Funds in the ratio in which amounts are appropriated to such Funds pursuant to subsections (a)(3) and (b)(1) of section 401 of this title''.

1964—Subsec. (d)(6)(C). Pub. L. 88–382 included retirement systems established by Nevada.

Subsec. (p). Pub. L. 88–350 inserted reference to Texas.

1962—Subsec. (p). Pub. L. 87–878 inserted reference to Maine.

1961—Subsec. (d)(6)(C). Pub. L. 87–64, §107, included retirement system established by the State of New Mexico.

Subsec. (d)(6)(F). Pub. L. 87–64, §106, substituted ''prior to 1963 or, if later, the expiration of two years after the date'' for ''prior to 1960 or, if later the expiration of one year after the date'', and inserted sentence providing that any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subpar. (C) to the separate retirement system composed of positions of members who desire coverage, shall be effective with respect to services performed after the same effective date as that which was specified in the case of such previous division.

1960—Subsec. (b)(1). Pub. L. 86–778, §103(i), excluded Guam and American Samoa from definition of ''State''.

Subsec. (c)(6)(C). Pub. L. 86–778, §103(j)(2)(G), substituted ''section 410(k)'' for ''section 410(*l*)''.

Subsec. (d)(3). Pub. L. 86–778, §102(a)(1), authorized certification by an official of the State designated by the Governor for that purpose.

Subsec. (d)(6). Pub. L. 86–624, §30(e), substituted ''Hawaii'' for ''the Territory of Hawaii'' in cl. (C) and (G), and struck out ''or Territory'' after ''State'' in two places in cl. (C) and in seven places in cl. (G).

Subsec. (d)(6)(A). Pub. L. 86–778, §102(c)(2), authorized a State, where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of the State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems, to deem the system, for purposes of subsec. (f) of this section, to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or any one or more of the political subdivisions concerned.

Subsec. (d)(6)(B). Pub. L. 86–778, §102(g), inserted sentences providing that if a retirement system covers positions of employees of a hospital which is an integral part of a political subdivision, then, for purposes of preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of such hospital.

Subsec. (d)(6)(C). Pub. L. 86–778, §102(b)(1), (*l*), inserted sentence requiring the positions of individuals, who become members of a separate retirement system which has been divided into two divisions or parts by reason of action taken by a political subdivision after coverage under an agreement under this section has been extended to the division or part thereof composed of positions of individuals who desire such coverage, to be

included in the division or part of such system composed of positions of members who do not desire such coverage if such individuals, on the day before becoming such members, were in the division or part of another separate retirement system composed of positions of members who do not desire coverage under an agreement and all of the positions in the system of which such individuals so become members and all of the positions in the separate retirement system would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems, and included retirement systems established by the State of Texas.

Subsec. (d)(7). Pub. L. 86–778, §102(a)(2), included certifications made by an official of the State designated by the Governor for that purpose.

Subsec. (e). Pub. L. 86–778, §102(e)(1), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), and added par. (2).

Subsec. (f)(1). Pub. L. 86–778, §102(c)(1), (e)(2), inserted exception to subsection (e)(2) of this section, and substituted provisions restricting the effective date of any agreement of modification to a date not earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification is agreed to by the Secretary and the State for provisions which specified the effective date of agreements or modifications entered into prior to 1960 and which limited the effective date of agreements or modifications entered into after 1959 to a date not earlier than the last day of the calendar year preceding the year in which such agreement or modification is agreed to by the Secretary and the State.

Subsec. (p). Pub. L. 86–778, §102(d), inserted reference to Virginia.

Pub. L. 86–624, §30(f), substituted ''Hawaii'' for ''Territory of Hawaii''.

Subsecs. (q) to (t). Pub. L. 86–778, §102(f)(1), added subsecs. (q) to (t).

1959—Subsec. (p). Pub. L. 86–284 inserted reference to California, Kansas, North Dakota, and Vermont.

1958—Subsec. (d)(6). Pub. L. 85–840, §315(a)(1), designated first sentence as subpar. (A), second and third sentences as subpar. (B), fourth sentence as subpar. (C), fifth sentence as subpar. (D), and sixth sentence as subpar. (G), added subpars. (E) and (F), and amended subpar. (C) to include retirement systems established by the States of Massachusetts and Vermont.

Pub. L. 85–787 added Massachusetts and Vermont to States authorized to divide their retirement systems into two parts, and inserted sentence permitting transfer, in cases of divided retirement system, of members not desiring coverage to system of members desiring coverage.

Subsec. (d)(7). Pub. L. 85–840, §315(a)(2), substituted ''(created under subparagraph (C) of paragraph (6) of this subsection or the corresponding provision of prior law)'' for ''(created under the fourth sentence of paragraph (6) of this subsection)'', and ''subparagraphs (C) and (D) of paragraph (6) of this subsection or the corresponding provision of prior law'' for ''the fourth and fifth sentences of paragraph (6) of this subsection''.

Subsec. (d)(8). Pub. L. 85–840, §315(b), added par. (8).

Subsec. (f). Pub. L. 85–840, §315(c)(1), designated existing provisions as par. (1), redesignated cls. (1) to (4) of par. (1) as cls. (A) to (D), and added par. (2).

Subsec. (k)(2). Pub. L. 85–840, §315(a)(3), inserted provisions requiring an individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is not a member of such system but is eligible to become a member thereof to be regarded, for the purposes of this subsection, as a member of such system, and providing for coverage under the agreement of any such individual.

Subsec. (k)(3). Pub. L. 85–798, §2, added par. (3).

Subsec. (p). Pub. L. 85–798, §3, included agreements with the State of Washington.

1957—Subsec. (d)(6). Pub. L. 85–227 authorized the States of California, Connecticut, Minnesota, and Rhode Island, or any political subdivisions thereof, to divide their retirement system into two divisions or parts.

Subsec. (d)(7). Pub. L. 85–229 added par. (7).

Subsec. (f)(3). Pub. L. 85–226, §3, added par. (3). Former par. (3) redesignated (4).

Subsec. (f)(4). Pub. L. 85–226, §3, redesignated former par. (3) as (4), and substituted ''1959'' for ''1957''.

Subsec. (k). Pub. L. 85–226, §1, redesignated existing provisions as par. (1) and added par. (2).

Subsec. (p). Pub. L. 85–226, §2, included agreements with the States of Alabama, Georgia, Maryland, New York, and Tennessee, or the Territory of Hawaii.

1956—Subsec. (d)(6). Act Aug. 1, 1956, §104(e), authorized the State of Florida, Georgia, New York, North Dakota, Pennsylvania, Tennessee, Washington, Wisconsin, or the Territory of Hawaii, or any political subdivision thereof, to divide their retirement system into two divisions or parts, and provided for a separate retirement system with respect to employees of the States of Florida, Georgia, Minnesota, North Dakota, Pennsylvania, Washington, or the Territory of Hawaii who are compensated in whole or in part from grants under subchapter III of this chapter.

Subsec. (h)(1). Act Aug. 1, 1956, §103(f), required amounts to be deposited in the Trust Funds in the ratio in which amounts are appropriated to such Funds pursuant to section 401(a)(3), (b)(1), of this title.

Subsec. (j). Act Aug. 1, 1956, §103(g), substituted ''Secretary of Health, Education, and Welfare'' for ''Administrator'', and provided for appropriation of amounts in the ratio in which amounts are deposited in the Trust Funds pursuant to subsection (h)(1) of this section.

Subsec. (p). Act Aug. 1, 1956, §104(g), added subsec. (p).

1954—Subsec. (b)(5). Act Sept. 1, 1954, §101(i)(1), (2), inserted sentence at end relating to civilian employees of State National Guard units and a sentence relating to certain State inspectors of agricultural products.

Subsec. (c)(3). Act Sept. 1, 1954, §101(h)(3), inserted an additional optional exclusion with respect to all services performed by individuals as members of any coverage group who are in positions covered by a retirement system on the date when the group is brought under the agreement if these individuals are not eligible to become members of the system on that date, or on any later date when they first occupy the positions, and if they have not already been included under the agreement by means of a referendum.

Subsec. (c)(4). Act Sept. 1, 1954, §101(h)(4), inserted sentence at end.

Subsec. (c)(5). Act Sept. 1, 1954, §101(a)(5), (6), substituted ''paragraph (7)'' for ''paragraph (8),'' and inserted at end ''and service the remuneration for which is excluded from wages by paragraph (2) of section 209(h)''.

Subsec. (c)(6)(D). Act Sept. 1, 1954, §101(a)(5), substituted ''paragraph (7)'' for ''paragraph (8)''.

Subsec. (c)(7). Act Sept. 1, 1954, §101(h)(5), added par. (7).

Subsec. (d). Act Sept. 1, 1954, §101(h)(1)(A), struck out ''Exclusion of'' in heading, redesignated the subsection as (d)(1), and inserted sentence at end.

Subsec. (d)(1). Act Sept. 1, 1954, §101(h)(1)(B), inserted provision in first sentence making the prohibition inapplicable to service in positions which though covered by a retirement system on the enactment date, were, by reason of action taken prior to the enactment date by the appropriate governmental unit, no longer covered by a retirement system when the coverage group which included employees in such positions was brought under an agreement.

Subsec. (d)(2) to (6). Act Sept. 1, 1954, §101(h)(2), added pars. (2) to (6).

Subsec. (f). Act Sept. 1, 1954, §101(h)(6), permitted agreements or modifications entered into during 1955, 1956, and 1957 to be made retroactive to a date not earlier than December 31, 1954.

Subsec. (m)(1). Act Sept. 1, 1954, §101(h)(7), substituted ''paragraph (1) of subsection (d)'' for ''subsection (d)''.

Subsec. (n). Act Sept. 1, 1954, §101(h)(8), added subsec. (n).

Subsec. (*o*). Act Sept. 1, 1954, § 101(j), added subsec. (*l*).

1953—Subsec. (m). Act Aug. 15, 1953, added subsec. (m).

1952—Subsec. (f). Act June 28, 1952, substituted ''January 1, 1954'' for ''January 1, 1953''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 416(b), Mar. 2, 2004, 118 Stat. 530, provided that: ''The amendment made by subsection (a) [amending this section] takes effect on January 1, 2003.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 303(c) of Pub. L. 103–296 applicable with respect to service performed on or after Jan. 1, 1995, see section 303(e) of Pub. L. 103–296, set out as a note under section 410 of this title.

Section 305(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section] shall apply with respect to modifications filed by States after the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to service performed after July 1, 1991, see section 11332(d) of Pub. L. 101–508, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(a)(8) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Section 9002(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [enacting section 3126 of Title 26, Internal Revenue Code, amending this section and sections 405 and 424a of this title and sections 1402, 3121, and 3306 of Title 26, and renumbering former section 3126 of Title 26 as section 3127] are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act [subsec. (e)(2) of this section] prior to the date of the enactment of this Act [Oct. 21, 1986]; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-monthly period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 [26 U.S.C. 3402] if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.''

Section 12110(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section] shall apply with respect to agreements and modifications of agreements which are mailed or delivered to the Secretary of Health and Human Services (under section 218 of the Social Security Act [this section]) on or after the date of the enactment of this Act [Apr. 7, 1986].''

Section 13205(d)(3) of Pub. L. 99–272 provided that: ''The amendment made by subsection (c) [amending this section] shall apply to services performed after March 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 103(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any agreement in effect under section 218 of the Social Security Act [this section] on the date of the enactment of this Act [Apr. 20, 1983], without regard to whether a notice of termination is in effect on such date, and to any agreement or modification thereof which may become effective under such section 218 after that date.''

Section 325(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to name changes made before, on, or after the date of the enactment of this section [Apr. 20, 1983].''

Section 342(b) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section] shall apply to calendar months beginning after December 31, 1983.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 503(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to the payment of taxes (referred to in section 218(e)(1)(A) of the Social Security Act [subsec. (e)(1)(A) of this section], as amended by subsection (a)) on account of wages paid on or after July 1, 1980.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 353(g) of Pub. L. 95–216 provided that: ''The amendments made by subsection (b) of this section [amending this section] shall apply with respect to remuneration paid after December 31, 1977, except that the amendment made by subsection (b)(2) shall apply with respect to notices submitted by the States to the Secretary after the date of the enactment of this Act [Dec. 20, 1977]. The amendments made by subsections (d) and (f)(2) [amending sections 405 and 429 of this title] shall be effective January 1, 1978. Except as otherwise specifically provided, the remaining amendments made by this section [amending sections 403, 424a, and 430 of this title] shall be effective January 1, 1979.''

EFFECTIVE DATE OF 1968 AMENDMENTS

Amendment by Pub. L. 90–486 effective Jan. 1, 1968, except that no deductions or withholding from salary which result therefrom shall commence before first day of first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

Section 116(b)(3) of Pub. L. 90–248 provided that: ''The amendments made by this subsection [amending this section] shall be effective with respect to services performed on or after January 1, 1968.''

Section 120(c) of Pub. L. 90–248 provided that: ''The amendment made by this section [amending this section] shall apply in the case of any State with respect to modifications of such State agreement under section 218 of the Social Security Act [this section] made after the date of enactment of this Act [Jan. 2, 1968].''

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 effective Aug. 1, 1961, see section 109 of Pub. L. 87–64, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 102(b)(2) of Pub. L. 86–778 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply in the case of transfers of positions (as described therein) which occur on or after the date of enactment of this Act [Sept. 13, 1960]. Such amendment

shall also apply in the case of such transfers in any State which occurred prior to such date, but only upon request of the Governor (or other official designated by him for the purpose) filed with the Secretary of Health, Education, and Welfare before July 1, 1961; and, in the case of any such request, such amendment shall apply only with respect to wages paid on and after the date on which such request is filed.''

Section 102(c)(3) of Pub. L. 86–778 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply in the case of any agreement or modification of an agreement under section 218 of the Social Security Act [this section] which is agreed to on or after January 1, 1960; except that in the case of any such agreement or modification agreed to before January 1, 1961, the effective date specified therein shall not be earlier than December 31, 1955. The amendment made by paragraph (2) [amending this section] shall apply in the case of any such agreement or modification which is agreed to on or after the date of the enactment of this Act [Sept. 13, 1960].''

Section 102(f)(3) of Pub. L. 86–778 provided that:

''(A) The amendments made by paragraphs (1) and (2) [amending this section and section 405 of this title] shall become effective on the first day of the second calendar year following the year in which this Act is enacted [1960].

''(B) In any case in which the Secretary of Health, Education, and Welfare has notified a State prior to the beginning of such second calendar year that there is an amount due by such State, that such State's claim for a credit or refund of an overpayment is disallowed, or that such State has been allowed a credit or refund of an overpayment, under an agreement pursuant to section 218 of the Social Security Act [this section], then the Secretary shall be deemed to have made an assessment of such amount due as provided in section 218(q) of such Act or notified the State of such allowance or disallowance, as the case may be, on the first day of such second calendar year. In such a case the 90-day limitation in section 218(s) of such Act shall not be applicable with respect to the assessment so deemed to have been made or the notification of allowance or disallowance so deemed to have been given the State. However, the preceding sentences of this subparagraph shall not apply if the Secretary makes an assessment of such amount due or notifies the State of such allowance or disallowance on or after the first day of the second calendar year following the year in which this Act is enacted [1960] and within the period specified in section 218(q) of the Social Security Act or the period specified in section 218(r) of such Act, as the case may be.''

Amendments by section 103(i) of Pub. L. 86–778 applicable only with respect to service performed after 1960, and amendment by section 103(j)(2)(G) of Pub. L. 86–778 effective on Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 315(c)(2) of Pub. L. 85–840 provided that: ''The amendment made by this subsection [amending this section] shall apply in the case of any agreement, or modification of an agreement, under section 218 of the Social Security Act [this section], which is executed after the date of enactment of this Act [Aug. 28, 1958].''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 101(h)(9) of act Sept. 1, 1954, provided that: ''The amendments made by this subsection, other than paragraph (1)(B) [amending this section], shall take effect January 1, 1955.''

Section 101(i)(1) of act Sept. 1, 1954, provided that the amendment made by that section is effective as of January 1, 1951.

Section 101(i)(2) of act Sept. 1, 1954, provided that the amendment made by that section is effective January 1, 1955.

Section 101(i)(3) of act Sept. 1, 1954, provided that: ''In the case of any coverage group to which the amendment made by paragraph (1) [amending this section] is applicable, any agreement or modification of an agreement agreed to prior to January 1, 1956, may, notwithstanding section 218(f) of the Social Security Act [subsec. (f) of this section], be made effective with respect to services performed by employees as members of such coverage group after any effective date specified therein, but in no case may such effective date be earlier than December 31, 1950.''

Section 101(j) of act Sept. 1, 1954, provided that the amendment made by that section is effective as of January 1, 1951.

Amendment by section 101(a)(5), (6) of act Sept. 1, 1954, shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954, see section 101(n) of act Sept. 1, 1954, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT

Section 2 of act Aug. 15, 1953, provided that: ''For the purposes of section 418(f) of the Social Security Act (relating to effective date of agreements) [subsec. (f) of this section], the amendment made by the first section of this Act [amending this section] shall take effect as of January 1, 1951.''

EXEMPTION FOR STUDENTS EMPLOYED BY STATE SCHOOLS, COLLEGES, OR UNIVERSITIES

Pub. L. 105–277, div. J, title II, § 2023, Oct. 21, 1998, 112 Stat. 2681–904, provided that:

''(a) IN GENERAL.—Notwithstanding section 218 of the Social Security Act [this section], any agreement with a State (or any modification thereof) entered into pursuant to such section may, at the option of such State, be modified at any time on or after January 1, 1999, and on or before March 31, 1999, so as to exclude service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

''(b) EFFECTIVE DATE OF MODIFICATION.—Any modification of an agreement pursuant to subsection (a) shall be effective with respect to services performed after June 30, 2000.

''(c) IRREVOCABILITY OF MODIFICATION.—If any modification of an agreement pursuant to subsection (a) terminates coverage with respect to service performed in the employ of a school, college, or university, by a student who is enrolled and regularly attending classes at such school, college, or university, the Commissioner of Social Security and the State may not thereafter modify such agreement so as to again make the agreement applicable to such service performed in the employ of such school, college, or university.''

TREATMENT OF CERTAIN CREDITS AS AMOUNTS DEPOSITED IN SOCIAL SECURITY TRUST FUNDS PURSUANT TO AGREEMENT

Section 123(b)(4) of Pub. L. 98–21, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of subsection (h) of section 218 of the Social Security Act [subsec. (h) of this section] (relating to deposits in social security trust funds of amounts received under section 218 agreements), amounts allowed as a credit pursuant to subsection (d) of section 3510 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3510(d)] (relating to credit for remuneration paid during 1984 which is covered under an agreement under section 218 of the Social Security Act) shall be treated as amounts received under such an agreement.''

MODIFICATION OF AGREEMENT WITH STATE OF IOWA TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN

Section 9008 of Pub. L. 100–203 provided that:

''(a) IN GENERAL.—Notwithstanding subsection (d)(5)(A) of section 218 of the Social Security Act [sub-

sec. (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of Iowa heretofore entered into pursuant to such section 218 may, at any time prior to January 1, 1989, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions required to be covered by a retirement system pursuant to section 410.1 of the Iowa Code as in effect on July 1, 1953, if the State of Iowa has at any time prior to the date of the enactment of this Act [Dec. 22, 1987] paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date).

''(b) SERVICE TO BE COVERED.—Notwithstanding the provisions of subsection (e) of section 218 of the Social Security Act (as so redesignated by section 9002(c)(1) of the Omnibus Budget Reconciliation Act of 1986)), any modification in the agreement with the State of Iowa under subsection (a) shall be made effective with respect to—

''(1) all services performed in any policemen's or firemen's position to which the modification relates on or after January 1, 1987, and

''(2) all services performed in such a position before January 1, 1987, with respect to which the State of Iowa has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date) at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

''(A) no refund of the sums so paid has been obtained, or

''(B) a refund of part or all of the sums so paid has been obtained but the State of Iowa repays to the Secretary of the Treasury the amount of such refund within 90 days after the date on which the modification is agreed to by the State and the Secretary of Health and Human Services.''

MODIFICATION OF AGREEMENT WITH STATE OF CONNECTICUT TO PROVIDE COVERAGE FOR CONNECTICUT STATE POLICE

Section 12114 of Pub. L. 99–272 provided that: ''Notwithstanding any provision of section 218 of the Social Security Act [this section], the Secretary of Health and Human Services shall, upon the request of the Governor of Connecticut, modify the agreement under such section between the Secretary and the State of Connecticut to provide that service performed after the date of the enactment of this Act [Apr. 7, 1986] by members of the Division of the State Police within the Connecticut Department of Public Safety, who are hired on or after May 8, 1984, and who are members of the tier II plan of the Connecticut State Employees Retirement System, shall be covered under such agreement.''

MODIFICATION OF AGREEMENT WITH STATE OF ILLINOIS TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN

Section 318 of Pub. L. 95–216 provided that the agreement with the State of Illinois entered into pursuant to this section could, at any time prior to Jan. 1, 1979, be modified pursuant to subsec. (c)(4) of this section so as to apply to services performed in the policemen's or firemen's positions covered by the Illinois Municipal Retirement Fund on Dec. 20, 1977, if the State of Illinois had prior to such date paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsec. (e)(1) of this section.

MODIFICATION OF REPORTING PROCEDURES IN EFFECT DECEMBER 1, 1975, UNDER FEDERAL-STATE AGREEMENTS

Pub. L. 94–202, §8(k), Jan. 2, 1976, 89 Stat. 1140, provided that: ''Notwithstanding the provisions of section 218(i) of the Social Security Act [subsec. (i) of this section], nothing contained in the amendments made by the preceding provisions of this section [enacting section 432 of this title and amending sections 401, 403, 424a, and 430 of this title and section 6103 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 401 and 432 of this title] shall be construed to authorize or require the Secretary, in promulgating regulations or amendments thereto under such section 218(i), substantially to modify the procedures, as in effect on December 1, 1975, for the reporting by States to the Secretary of the wages of individuals covered by social security pursuant to Federal-State agreements entered into pursuant to section 218 of the Social Security Act [this section].''

MODIFICATION OF AGREEMENT WITH STATE OF WEST VIRGINIA WITH RESPECT TO CERTAIN POLICEMEN AND FIREMEN

Pub. L. 94–202, §6, Jan. 2, 1976, 89 Stat. 1136, provided that:

''(a) Notwithstanding the provisions of subsection (d)(5)(A) of section 218 of the Social Security Act [subsec. (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of West Virginia heretofore entered into pursuant to such section 218 [this section] may, at any time prior to 1977, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions covered by a retirement system on the date of the enactment of this Act [Jan. 2, 1976] by individuals as employees of any class III or class IV municipal corporation (as defined in or under the laws of the State) if the State of West Virginia has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions by individuals as employees of such municipal corporation, the sums prescribed pursuant to subsection (e)(1) of such section 218. For purposes of this subsection, a retirement system which covers positions of policemen or firemen, or both, and other positions, shall, if the State of West Virginia so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

''(b) Notwithstanding the provisions of subsection (f) of section 218 of the Social Security Act, any modification in the agreement with the State of West Virginia under subsection (a) of this section, to the extent it involves services performed by individuals as employees of any class III or class IV municipal corporation, may be made effective with respect to—

''(1) all services performed by such individual, in any policemen's or firemen's position to which the modification relates, on or after the date of the enactment of this Act; and

''(2) all services performed by such individual in such a position before such date of enactment with respect to which the State of West Virginia has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 at the time or times established pursuant to such subsection (e)(1) if and to the extent that—

''(A) no refund of the sums so paid has been obtained, or

''(B) a refund of part or all of the sums so paid has been obtained but the State of West Virginia repays to the Secretary of the Treasury the amount of such refund within ninety days after the date that the modification is agreed to by the State and the Secretary of Health, Education, and Welfare.''

Section 143 of Pub. L. 92–603 provided that:

''(a) Notwithstanding the provisions of subsection (d)(5)(A) of section 218 of the Social Security Act [subsec. (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218 the agreement with the State of West Virginia heretofore entered into pursuant to such section 218 [this section]

may, at any time prior to 1974, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions covered by a retirement system on the date of the enactment of this Act [Oct. 30, 1972] by individuals as employees of any class III or class IV municipal corporation (as defined in or under the laws of the State) if the State of West Virginia has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions by individuals as employees of such municipal corporation, the sums prescribed pursuant to subsection (e)(1) of such section 218. For purposes of this subsection, a retirement system which covers positions of policemen or firemen, or both, and other positions, shall, if the State of West Virginia so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

''(b) Notwithstanding the provisions of subsection (f) of section 218 of the Social Security Act, any modification in the agreement with the State of West Virginia under subsection (a) of this section, to the extent it involves services performed by individuals as employees of any class III or class IV municipal corporation, may be made effective with respect to—

''(1) all services performed by such individual, in any policeman's or fireman's position to which the modification relates, on or after the date of the enactment of this Act; and

''(2) all services performed by such individual in such a position before such date of enactment with respect to which the State of West Virginia has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

''(A) no refund of the sums so paid has been obtained, or

''(B) a refund of part or all of the sums so paid has been obtained but the State of West Virginia repays to the Secretary of the Treasury the amount of such refund within ninety days after the date that the modification is agreed to by the State and the Secretary of Health, Education, and Welfare.''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF NEW MEXICO TO COVER CERTAIN HOSPITAL EMPLOYEES

Section 127 of Pub. L. 92–603 provided that: ''Notwithstanding any provisions of section 218 of the Social Security Act [this section], the Agreement with the State of New Mexico heretofore entered into pursuant to such section may at the option of such State be modified at any time prior to the first day of the fourth month after the month in which this Act is enacted [October 1972], so as to apply to the services of employees of a hospital which is an integral part of a political subdivision to which an agreement under this section has not been made applicable, as a separate coverage group within the meaning of section 218(b)(5) of such Act [subsec. (b)(5) of this section], but only if such hospital has prior to 1966 withdrawn from a retirement system which had been applicable to the employees of such hospital.''

MODIFICATION OF AGREEMENT WITH STATE OF LOUISIANA WITH RESPECT TO VOTER REGISTRARS

Section 139 of Pub. L. 92–603 provided that:

''(a) Notwithstanding the provisions of section 218(g)(1) of the Social Security Act [subsec. (g)(1) of this section], the Secretary may, under such conditions as he deems appropriate, permit the State of Louisiana to modify its agreement entered into under section 218 of such Act [this section] so as to terminate the coverage of all employees who are in positions under the Registrars of Voters Employees' Retirement System, effective after December 1975, but only if such State files with him notice of termination on or before December 31, 1973.

''(b) If the coverage of such employees in positions under such retirement system is terminated pursuant to subsection (a), coverage cannot later be extended to employees in positions under such retirement system.''

MODIFICATION OF AGREEMENTS WITH STATES WITH RESPECT TO CERTAIN STUDENTS AND PART-TIME EMPLOYEES

Section 141 of Pub. L. 92–603 provided that:

''(a) Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreement with any State (or any modification thereof) entered into pursuant to such section may, at the option of such State, be modified at any time prior to January 1, 1974, so as to exclude either or both of the following;

''(1) service in any class or classes of part-time positions; or

''(2) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

''(b) Any modification of such agreement pursuant to this section shall be effective with respect to services performed after the end of the calendar quarter following the calendar quarter in which such agreement is modified.

''(c) If any such modification terminates coverage with respect to service in any class or classes of part-time positions in any coverage group, the Secretary of Health, Education, and Welfare and the State may not thereafter modify such agreement so as to again make the agreement applicable to service in such positions in such coverage group; if such modification terminates coverage with respect to service performed in the employ of a school, college, or university, by a student who is enrolled and regularly attending classes at such school, college, or university, the Secretary of Health, Education, and Welfare and the State may not thereafter modify such agreement so as to again make the agreement applicable to such service performed in the employ of such school, college, or university.''

MODIFICATION OF AGREEMENT WITH STATE OF MASSACHUSETTS WITH RESPECT TO EMPLOYEES OF THE MASSACHUSETTS TURNPIKE AUTHORITY

Section 124 of Pub. L. 90–248 provided that:

''(a) Notwithstanding the provisions of section 218(g)(1) of the Social Security Act [subsec. (g)(1) of this section] the Secretary may, under such conditions as he deems appropriate, permit the State of Massachusetts to modify its agreement entered into under section 218 of such Act [this section] so as to terminate the coverage of the employees of the Massachusetts Turnpike Authority effective at the end of any calendar quarter within the two years next following the date on which such agreement is so modified.

''(b) If the coverage of employees of the Massachusetts Turnpike Authority is terminated pursuant to subsection (a), coverage cannot later be extended to the employees of such Authority.''

MODIFICATION OF AGREEMENTS WITH STATES OF NORTH DAKOTA AND IOWA WITH RESPECT TO CERTAIN STUDENTS

Section 338 of Pub. L. 89–97 provided that: ''Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreements with the States of North Dakota and Iowa entered into pursuant to such section may, at the option of the State, be modified so as to exclude service performed in any calendar quarter in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university and if the remuneration for such service is less than $50. Any modification of either of such agreements pursuant to this Act shall be effective with respect to services performed after an effective date specified in such modification, except that

such date shall not be earlier than the date of enactment of this Act [July 30, 1965].''

MODIFICATION OF AGREEMENT WITH STATE OF NEBRASKA FOR EXCLUSION OF SERVICES PERFORMED BY JUSTICES OF THE PEACE AND CONSTABLES

Section 102(i) of Pub. L. 86–778 provided that: ''Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreement with the State of Nebraska entered into pursuant to such section may, at the option of such State, be modified so as to exclude services performed within such State by individuals as justices of the peace or constables, if such individuals are compensated for such services on a fee basis. Any modification of such agreement pursuant to this subsection shall be effective with respect to services performed after an effective date specified in such modification, except that such date shall not be earlier than the date of enactment of this Act [Sept. 13, 1960].''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF CALIFORNIA PRIOR TO FEBRUARY 1966

Section 102(k) of Pub. L. 86–778, as amended by Pub. L. 89–97, title III, §318, July 30, 1965, 79 Stat. 390; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreement with the State of California heretofore entered into pursuant to such section may at the option of such State be modified, at any time prior to 1962, pursuant to subsection (c)(4) of such section 218 [subsec. (c)(4) of this section], so as to apply to services performed by any individual who, on or after January 1, 1957, and on or before December 31, 1959, was employed by such State (or any political subdivision thereof) in any hospital employee's position which, on September 1, 1954, was covered by a retirement system, but which, prior to 1960, was removed from coverage by such retirement system if, prior to July 1, 1960, there have been paid in good faith to the Secretary of the Treasury, with respect to any of the services performed by such individual in any such position, amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [sections 3101 and 3111 of Title 26, Internal Revenue Code] if such services had constituted employment for purposes of chapter 21 of such Code [section 3101 et seq. of Title 26] at the time they were performed. Notwithstanding the provisions of subsection (f) of such section 218 such modification shall be effective with respect to (1) all services performed by such individual in any such position on or after January 1, 1960, and (2) all such services, performed before such date, with respect to which amounts equivalent to such taxes have, prior to the date of enactment of this subsection [Sept. 13, 1960], been paid.

''(2) Such agreement, as modified pursuant to paragraph (1), may at the option of such State be further modified, at any time prior to the seventh month after the month [July 1965] in which this paragraph is enacted, so as to apply to services performed for any hospital affected by such earlier modification by any individual who after December 31, 1959, is or was employed by such State (or any political subdivision thereof) in any position described in paragraph (1). Such modification shall be effective with respect to (A) all services performed by such individual in any such position on or after January 1, 1962, and (B) all such services, performed before such date, with respect to which amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [sections 3101 and 3111 of Title 26] if such services had constituted employment for purposes of chapter 21 of such Code at the time they were performed have, prior to the date of the enactment of this paragraph [July 30, 1965], been paid.''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF OKLAHOMA PRIOR TO 1962

Section 3 of Pub. L. 86–284 provided that: ''Notwithstanding the provisions of subsection (d)(5)(A) of section 218 of the Social Security Act [subsec. (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of Oklahoma heretofore entered into pursuant to such section 218 [this section] may, at any time prior to 1962, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed by any individual employed by such State (or any political subdivision thereof) in any policeman's position covered by a retirement system in effect on the date of enactment of this Act [Sept. 16, 1959] if (1) in the case of an individual performing such services on such date, such individual is ineligible to become a member of such retirement system, or, in the case of an individual who prior to such date has ceased to perform such services, such individual was, on the last day he did perform such services, ineligible to become a member of such retirement system, and (2) such State has, prior to 1959, paid to the Secretary of the Treasury, with respect to any of the services performed by such individual in any such position, the sums prescribed pursuant to subsection (e)(1) of such section 218. Notwithstanding the provisions of subsection (f) of such section 218, such modification shall be effective with respect to (i) all services performed by such individual in any such position on or after the date of enactment of this Act, and (ii) all such services, performed before such date, with respect to which such State has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e) of such section 218, at the time or times established pursuant to such subsection.''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF MAINE PRIOR TO JULY 1, 1967

Section 316 of Pub. L. 85–840, as amended by Pub. L. 86–778, title I, §102(j), Sept. 13, 1960, 74 Stat. 935; Pub. L. 88–350, §1, July 2, 1964, 78 Stat. 240; Pub. L. 89–97, title III, §337, July 30, 1965, 79 Stat. 409, eff. July 1, 1965, provided that: ''For the purposes of any modification which might be made after the date of enactment of this Act [Aug. 28, 1958] and prior to July 1, 1967, by the State of Maine of its existing agreement made under section 218 of the Social Security Act [this section], any retirement system of such State which covers positions of teachers and positions of other employees shall, if such State so desires, be deemed (notwithstanding the provisions of subsection (d) of such section) to consist of a separate retirement system with respect to the positions of such teachers and a separate retirement system with respect to the positions of such other employees; and for the purposes of this sentence, the term 'teacher' shall mean any teacher, principal, supervisor, school nurse, school dietitian, school secretary or superintendent employed in any public school, including teachers in unorganized territory.''

MODIFICATION OF EXISTING AGREEMENTS WITH STATES OF CALIFORNIA, CONNECTICUT, MINNESOTA, OR RHODE ISLAND PRIOR TO 1960

Section 2 of Pub. L. 85–227 provided that: ''Notwithstanding subsection (f) of section 218 of the Social Security Act [subsec. (f) of this section], any modification of the agreement with the State of California, Connecticut, Minnesota, or Rhode Island under such section which makes such agreement applicable to services performed in positions covered by a separate retirement system created pursuant to the fourth sentence of subsection (d)(6) of such section (and consisting of the positions of members who desire coverage under the agreement) may, if such modification is agreed to prior to 1960, be made effective with respect to services performed in such positions after an effective date specified in such modification, except that in

no case may such date be earlier than December 31, 1955.''

MODIFICATION OF EXISTING AGREEMENTS WITH STATES OF FLORIDA, NEVADA, NEW MEXICO, MINNESOTA, OKLAHOMA, PENNSYLVANIA, TEXAS, WASHINGTON, OR HAWAII PRIOR TO JULY 1, 1962

Section 104(f) of act Aug. 1, 1956, as amended by Pub. L. 86–284, §1, provided that: ''Notwithstanding the provisions of subsection (d) of section 218 of the Social Security Act [subsection (d) of this section], any agreement under such section entered into prior to the date of enactment of this Act [Aug. 1, 1956] by the State of Florida, Nevada, New Mexico, Minnesota, Oklahoma, Pennsylvania, Texas, Washington, or the Territory of Hawaii shall if the State or Territory concerned so requests, be modified prior to July 1, 1962, so as to apply to services performed by employees of the respective public school districts of such State or Territory who, on the date such agreement is made applicable to such services, are not in positions the incumbents of which are required by State or Territorial law or regulation to have valid State or Territorial teachers' or administrators' certificates in order to receive pay for their services. The provisions of this subsection shall not apply to services of any such employees to which any such agreement applies without regard to this subsection.''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF ARIZONA PRIOR TO JANUARY 1, 1956

Section 101(k) of act Sept. 1, 1954, provided that: ''If, prior to January 1, 1956, the agreement with the State of Arizona entered into pursuant to section 218 of the Social Security Act [this section] is modified pursuant to subsection (d)(3) of such section so as to apply to service performed by employees in positions covered by the Arizona Teachers' Retirement System the modification may, notwithstanding section 218(f) of the Social Security Act, be made effective with respect to service performed in such positions after an effective date specified in the modification, but in no case may such effective date be earlier than December 31, 1950. For the purposes of any such modification, all employees in positions covered by the Arizona Teachers' Retirement System shall be deemed, notwithstanding the provisions of section 218(d)(6) of such Act, to constitute a separate coverage group.''

EXTENSION OF COVERAGE TO SERVICE IN FIREMEN'S POSITION

Section 120(b) of Pub. L. 90–248 provided that: ''Nothing in the amendments made by subsection (a) [amending this section] shall authorize the extension of the insurance system established by title II of the Social Security Act [this subchapter] under the provisions of section 218(d)(6)(C) of such Act [subsec. (d)(6)(C) of this section] to service in any fireman's position.''

VALIDATION OF COVERAGE FOR CERTAIN FIREMEN IN THE STATE OF NEBRASKA

Section 119(b) of Pub. L. 90–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In any case in which—

''(1) an individual has performed services prior to the enactment of this Act [Jan. 2, 1968] in the employ of a political subdivision of the State of Nebraska in a fireman's position, and

''(2) amounts, equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [sections 3101 and 3111 of Title 26, Internal Revenue Code] had such services constituted employment for purposes of section 21 of such Code [section 21 of Title 26] at the time they were performed, were timely paid in good faith to the Secretary of the Treasury, and

''(3) no refunds of such amounts paid in lieu of taxes have been obtained,

the amount of the remuneration for such services with respect to which such amounts have been paid shall be deemed to constitute remuneration for employment as defined in section 209 of the Social Security Act [section 409 of this title].''

VALIDATION OF COVERAGE FOR CERTAIN EMPLOYEES OF AN INTEGRAL UNIT OF A POLITICAL SUBDIVISION OF ALASKA

Section 342 of Pub. L. 89–97 provided that: ''For purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Alaska, or its predecessor the Territory of Alaska, where employees of an integral unit of a political subdivision of the State or Territory of Alaska have in good faith been included under the State or Territory's agreement as a coverage group on the basis that such integral unit of a political subdivision was a political subdivision, then such unit of the political subdivision shall, for purposes of section 218(b)(2) of such Act, be deemed to be a political subdivision, and employees performing services within such unit shall be deemed to be a coverage group, effective with the effective date specified in such agreement or modification of such agreement with respect to such coverage group and ending with the last day of the year in which this Act is enacted [1965].''

VALIDATION OF COVERAGE FOR DISTRICT ENGINEERING AIDES OF SOIL AND WATER CONSERVATION DISTRICTS OF OKLAHOMA

Pub. L. 88–650, §3, Oct. 13, 1964, 78 Stat. 1077, provided that: ''For purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Oklahoma, remuneration paid to district engineering aides of soil and water conservation districts of the State of Oklahoma which was reported by the State as amounts paid to such aides as employees of the State for services performed by them during the period beginning January 1, 1951, and ending with the close of June 30, 1962, shall be deemed to have been paid to such aides for services performed by them in the employ of the State.''

VALIDATION OF COVERAGE FOR CERTAIN EMPLOYEES OF AN INTEGRAL UNIT OF A POLITICAL SUBDIVISION OF ARKANSAS

Section 1 of Pub. L. 87–878 provided: ''That, for purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Arkansas, where employees of an integral unit of a political subdivision of the State of Arkansas have in good faith been included under the State's agreement as a coverage group on the basis that such integral unit of a political subdivision was a political subdivision, then such unit of the political subdivision shall, for purposes of section 218(b)(2) of such Act, be deemed to be a political subdivision, and employees performing services within such unit shall be deemed to be a coverage group, effective with the effective date specified in such agreement or modification of such agreement with respect to such coverage group and ending with the last day of the year in which this Act is enacted [1962].''

VALIDATION OF COVERAGE FOR CERTAIN MISSISSIPPI TEACHERS

Section 102(h) of Pub. L. 86–778 provided that: ''For purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Mississippi, services of teachers in such State performed after February 28, 1951, and prior to October 1, 1959, shall be deemed to have been performed by such teachers as employees of the State. The term 'teacher' as used in the preceding sentence means—

''(1) any individual who is licensed to serve in the capacity of teacher, librarian, registrar, supervisor, principal, or superintendent and who is principally engaged in the public elementary or secondary school

system of the State in any one or more of such capacities;

''(2) any employee in the office of the county superintendent of education or the county school supervisor, or in the office of the principal of any county or municipal public elementary or secondary school in the State; and

''(3) any individual licensed to serve in the capacity of teacher who is engaged in any educational capacity in any day or night school conducted under the supervision of the State department of education as a part of the adult education program provided for under the laws of Mississippi or under the laws of the United States.''

PRESUMPTION OF WORK DEDUCTIONS FOR SERVICES PERFORMED PRIOR TO 1955 IN CASE OF CERTAIN RETROACTIVE STATE AGREEMENTS; RECOMPUTATION

Section 101(*l*) of act Sept. 1, 1954, provided that:

''(1) In the case of any services performed prior to 1955 to which an agreement under section 218 of the Social Security Act [this section] was made applicable, deductions which—

''(A) were not imposed under section 203 of such Act [section 403 of this title] with respect to such services performed prior to the date the agreement was agreed to or, if the original agreement was not applicable to such services, performed prior to the date the modification making such agreement applicable to such services was agreed to, and

''(B) would have been imposed under such section 203 had such agreement, or modification, as the case may be, been agreed to on the date it became effective,

shall be deemed to have been imposed, but only for purposes of section 215(f)(2)(A) or section 215(f)(4)(A) of such Act [section 415(f)(2)(A) or section 415(f)(4)(A) of this title] as in effect prior to the enactment of this Act [Sept. 1, 1954]. An individual with respect to whose services the preceding sentence is applicable, or in the case of his death, his survivors entitled to monthly benefits under section 202 of the Social Security Act [section 402 of this title] on the basis of his wages and self-employment income, shall be entitled to a recomputation of his primary insurance amount under such section 215(f)(2)(A) or section 215(f)(4)(A), as the case may be, if the conditions specified therein are met and if, with respect to a recomputation under such section 215(f)(2)(A), such individual files the application referred to in such section after August 1954 and prior to January 1956 or, with respect to a recomputation under such section 215(f)(4)(A), such individual died prior to January 1956 and any of such survivors entitled to monthly benefits files an application, in addition to the application filed for such monthly benefits, for a recomputation under such section 215(f)(4)(A).

''(2) For purposes of a recomputation made by reason of paragraph (1) of this subsection, the primary insurance amount of the individual who performed the services referred to in such paragraph shall be computed under subsection (a)(2) of section 215 of the Social Security Act, as amended by this Act (but, for such purposes, without application of subsection (d)(4) of such section, as in effect prior to the enactment of this Act or as amended by this Act) and as though he became entitled to old-age insurance benefits in whichever of the following months yields the highest primary insurance amount:

''(A) the month following the last month for which deductions are deemed, pursuant to paragraph (1) of this subsection, to have been made; or

''(B) the first month after the month determined under subparagraph (A) (and prior to September 1954) in which his benefits under section 202(a) of the Social Security Act [section 402(a) of this title] were no longer subject to deductions under section 203(b) of such Act [section 403(b) of this title]; or

''(C) the first month after the last month (and prior to September 1954) in which his benefits under section 202(a) of the Social Security Act were subject to deductions under section 203(b) of such Act; or

''(D) the month in which such individual filed his application for recomputation referred to in paragraph (1) of this subsection or, if he died without filing such application and prior to January 1, 1956, the month in which he died, and in any such case (but, if the individual is deceased, only if death occurred after August 1954) the amendments made by subsections (b)(1), (e)(1) and (e)(3)(B) of section 102 of this Act [amending section 415 of this title] shall be applicable.

Such recomputation shall be effective for and after the month in which the application required by paragraph (1) of this subsection is filed. The provisions of this subsection shall not be applicable in the case of any individual if his primary insurance amount has been recomputed under section 215(f)(2) of the Social Security Act on the basis of an application filed prior to September 1954.

''(3) If any recomputation under section 215(f) of the Social Security Act is made by reason of deductions deemed pursuant to paragraph (1) of this subsection to have been imposed with respect to benefits based on the wages and self-employment income of any individual, the total of the benefits based on such wages and self-employment income for months for which such deductions are so deemed to have been imposed shall be recovered by making, in addition to any other deductions under section 203 of such Act, deductions from any increase in benefits, based on such wages and self-employment income, resulting from such recomputation.''

§ 419. Repealed. Pub. L. 86–778, title I, § 103(j)(1), Sept. 13, 1960, 74 Stat. 937

Section, act Aug. 14, 1935, ch. 531, title II, § 219, as added Aug. 28, 1950, ch. 809, title I, § 107, 64 Stat. 517, prescribed the effective date of this subchapter in Puerto Rico as January 1 of the first calendar year which begins more than 90 days after the date on which the President received a certification from the Governor of Puerto Rico.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 13, 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 402 of this title.

§ 420. Disability provisions inapplicable if benefit rights impaired

None of the provisions of this subchapter relating to periods of disability shall apply in any case in which their application would result in the denial of monthly benefits or a lump-sum death payment which would otherwise be payable under this subchapter; nor shall they apply in the case of any monthly benefit or lump-sum death payment under this subchapter if such benefit or payment would be greater without their application.

(Aug. 14, 1935, ch. 531, title II, § 220, as added Sept. 1, 1954, ch. 1206, title I, § 106(g), 68 Stat. 1081.)

PRIOR PROVISIONS

A prior section 420, act Aug. 14, 1935, ch. 531, title II, § 220, as added July 18, 1952, ch. 945, § 3(e), 66 Stat. 772, relating to inapplicability of disability provisions if benefits were reduced, ceased to be in effect at the close of June 30, 1953. See Effective and Termination Date of 1952 Amendment note set out under section 413 of this title.

§ 421. Disability determinations

(a) State agencies

(1) In the case of any individual, the determination of whether or not he is under a dis-

ability (as defined in section 416(i) or 423(d) of this title) and of the day such disability began, and the determination of the day on which such disability ceases, shall be made by a State agency, notwithstanding any other provision of law, in any State that notifies the Commissioner of Social Security in writing that it wishes to make such disability determinations commencing with such month as the Commissioner of Social Security and the State agree upon, but only if (A) the Commissioner of Social Security has not found, under subsection (b)(1) of this section, that the State agency has substantially failed to make disability determinations in accordance with the applicable provisions of this section or rules issued thereunder, and (B) the State has not notified the Commissioner of Social Security, under subsection (b)(2) of this section, that it does not wish to make such determinations. If the Commissioner of Social Security once makes the finding described in clause (A) of the preceding sentence, or the State gives the notice referred to in clause (B) of such sentence, the Commissioner of Social Security may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make disability determinations under this paragraph.

(2) The disability determinations described in paragraph (1) made by a State agency shall be made in accordance with the pertinent provisions of this subchapter and the standards and criteria contained in regulations or other written guidelines of the Commissioner of Social Security pertaining to matters such as disability determinations, the class or classes of individuals with respect to which a State may make disability determinations (if it does not wish to do so with respect to all individuals in the State), and the conditions under which it may choose not to make all such determinations. In addition, the Commissioner of Social Security shall promulgate regulations specifying, in such detail as the Commissioner deems appropriate, performance standards and administrative requirements and procedures to be followed in performing the disability determination function in order to assure effective and uniform administration of the disability insurance program throughout the United States. The regulations may, for example, specify matters such as—

(A) the administrative structure and the relationship between various units of the State agency responsible for disability determinations,

(B) the physical location of and relationship among agency staff units, and other individuals or organizations performing tasks for the State agency, and standards for the availability to applicants and beneficiaries of facilities for making disability determinations,

(C) State agency performance criteria, including the rate of accuracy of decisions, the time periods within which determinations must be made, the procedures for and the scope of review by the Commissioner of Social Security, and, as the Commissioner finds appropriate, by the State, of its performance in individual cases and in classes of cases, and rules governing access of appropriate Federal officials to State offices and to State records relating to its administration of the disability determination function,

(D) fiscal control procedures that the State agency may be required to adopt, and

(E) the submission of reports and other data, in such form and at such time as the Commissioner of Social Security may require, concerning the State agency's activities relating to the disability determination.

Nothing in this section shall be construed to authorize the Commissioner of Social Security to take any action except pursuant to law or to regulations promulgated pursuant to law.

(b) Determinations by Commissioner

(1) If the Commissioner of Social Security finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with the Commissioner's regulations and other written guidelines, the Commissioner of Social Security shall, not earlier than 180 days following the Commissioner's finding, and after the Commissioner has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1) of this section.

(2) If a State, having notified the Commissioner of Social Security of its intent to make disability determinations under subsection (a)(1) of this section, no longer wishes to make such determinations, it shall notify the Commissioner of Social Security in writing of that fact, and, if an agency of the State is making disability determinations at the time such notice is given, it shall continue to do so for not less than 180 days, or (if later) until the Commissioner of Social Security has complied with the requirements of paragraph (3). Thereafter, the Commissioner of Social Security shall make the disability determinations referred to in subsection (a)(1) of this section.

(3)(A) The Commissioner of Social Security shall develop and initiate all appropriate procedures to implement a plan with respect to any partial or complete assumption by the Commissioner of Social Security of the disability determination function from a State agency, as provided in this section, under which employees of the affected State agency who are capable of performing duties in the disability determination process for the Commissioner of Social Security shall, notwithstanding any other provision of law, have a preference over any other individual in filling an appropriate employment position with the Commissioner of Social Security (subject to any system established by the Commissioner of Social Security for determining hiring priority among such employees of the State agency) unless any such employee is the administrator, the deputy administrator, or assistant administrator (or his equivalent) of the State agency, in which case the Commissioner of Social Security may accord such priority to such employee.

(B) The Commissioner of Social Security shall not make such assumption of the disability determination function until such time as the Secretary of Labor determines that, with respect to employees of such State agency who will be displaced from their employment on account of

such assumption by the Commissioner of Social Security and who will not be hired by the Commissioner of Social Security to perform duties in the disability determination process, the State has made fair and equitable arrangements to protect the interests of employees so displaced. Such protective arrangements shall include only those provisions which are provided under all applicable Federal, State and local statutes including, but not limited to, (i) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (ii) the continuation of collective-bargaining rights; (iii) the assignment of affected employees to other jobs or to retraining programs; (iv) the protection of individual employees against a worsening of their positions with respect to their employment; (v) the protection of health benefits and other fringe benefits; and (vi) the provision of severance pay, as may be necessary.

(c) Review of determination by Commissioner

(1) The Commissioner of Social Security may on the Commissioner's own motion or as required under paragraphs (2) and (3) review a determination, made by a State agency under this section, that an individual is or is not under a disability (as defined in section 416(i) or 423(d) of this title) and, as a result of such review, may modify such agency's determination and determine that such individual either is or is not under a disability (as so defined) or that such individual's disability began on a day earlier or later than that determined by such agency, or that such disability ceased on a day earlier or later than that determined by such agency. A review by the Commissioner of Social Security on the Commissioner's own motion of a State agency determination under this paragraph may be made before or after any action is taken to implement such determination.

(2) The Commissioner of Social Security (in accordance with paragraph (3)) shall review determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title). Any review by the Commissioner of Social Security of a State agency determination under this paragraph shall be made before any action is taken to implement such determination.

(3)(A) In carrying out the provisions of paragraph (2) with respect to the review of determinations made by State agencies pursuant to this section that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title), the Commissioner of Social Security shall review—

(i) at least 50 percent of all such determinations made by State agencies on applications for benefits under this subchapter, and

(ii) other determinations made by State agencies pursuant to this section to the extent necessary to assure a high level of accuracy in such other determinations.

(B) In conducting reviews pursuant to subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review those determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.

(C) Not later than April 1, 1992, and annually thereafter, the Commissioner of Social Security shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report setting forth the number of reviews conducted under subparagraph (A)(ii) during the preceding fiscal year and the findings of the Commissioner of Social Security based on such reviews of the accuracy of the determinations made by State agencies pursuant to this section.

(d) Hearings and judicial review

Any individual dissatisfied with any determination under subsection (a), (b), (c), or (g) of this section shall be entitled to a hearing thereon by the Commissioner of Social Security to the same extent as is provided in section 405(b) of this title with respect to decisions of the Commissioner of Social Security, and to judicial review of the Commissioner's final decision after such hearing as is provided in section 405(g) of this title.

(e) State's right to cost from Trust Funds

Each State which is making disability determinations under subsection (a)(1) of this section shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as determined by the Commissioner of Social Security, the cost to the State of making disability determinations under subsection (a)(1) of this section. The Commissioner of Social Security shall from time to time certify such amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period; and the Managing Trustee, prior to audit or settlement by the Government Accountability Office, shall make payment from the Trust Funds at the time or times fixed by the Commissioner of Social Security, in accordance with such certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 401 of this title (but taking into account any refunds under subsection (f) of this section) to insure that the Federal Disability Insurance Trust Fund is charged with all expenses incurred which are attributable to the administration of section 423 of this title and the Federal Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.

(f) Use of funds

All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury of the United States for deposit in the Trust Funds.

(g) Regulations governing determinations in certain cases

In the case of individuals in a State which does not undertake to perform disability determinations under subsection (a)(1) of this section, or which has been found by the Commissioner of Social Security to have substantially failed to make disability determinations in a manner consistent with the Commissioner's regulations and guidelines, in the case of individuals outside the United States, and in the case of any class or classes of individuals for whom no State undertakes to make disability determinations, the determinations referred to in subsection (a) of this section shall be made by the Commissioner of Social Security in accordance with regulations prescribed by the Commissioner.

(h) Evaluation of mental impairments by qualified medical professionals

An initial determination under subsection (a), (c), (g), or (i) of this section that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Commissioner of Social Security has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.

(i) Review of disability cases to determine continuing eligibility; permanent disability cases; appropriate number of cases reviewed; reporting requirements

(1) In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Commissioner of Social Security (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years, subject to paragraph (2); except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Commissioner of Social Security determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this subchapter.

(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Commissioner of Social Security determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Commissioner of Social Security shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Commissioner of Social Security shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Commissioner of Social Security shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Commissioner of Social Security under the preceding sentence.

(3) The Commissioner of Social Security shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d) of this section, or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.

(4) In any case in which the Commissioner of Social Security initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Commissioner of Social Security shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review.

(5) For suspension of reviews under this subsection in the case of an individual using a ticket to work and self-sufficiency, see section 1320b–19(i) of this title.

(j) Rules and regulations; consultative examinations

The Commissioner of Social Security shall prescribe regulations which set forth, in detail—

(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

(2) standards for the type of referral to be made; and

(3) procedures by which the Commissioner of Social Security will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.

(k) Establishment of uniform standards for determination of disability

(1) The Commissioner of Social Security shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 416(i) or 423(d) of this title.

(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5.

(*l*) Special notice to blind individuals with respect to hearings and other official actions

(1) In any case where an individual who is applying for or receiving benefits under this subchapter on the basis of disability by reason of blindness is entitled to receive notice from the Commissioner of Social Security of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this subchapter, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Commissioner of Social Security and agreed to by the individual.

(2) The election under paragraph (1) may be made at any time, but an opportunity to make such an election shall in any event be given, to every individual who is an applicant for benefits under this subchapter on the basis of disability by reason of blindness, at the time of his or her application. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this subchapter until such time as it is revoked or changed.

(m) Work activity as basis for review

(1) In any case where an individual entitled to disability insurance benefits under section 423 of this title or to monthly insurance benefits under section 402 of this title based on such individual's disability (as defined in section 423(d) of this title) has received such benefits for at least 24 months—

(A) no continuing disability review conducted by the Commissioner may be scheduled for the individual solely as a result of the individual's work activity;

(B) no work activity engaged in by the individual may be used as evidence that the individual is no longer disabled; and

(C) no cessation of work activity by the individual may give rise to a presumption that the individual is unable to engage in work.

(2) An individual to which paragraph (1) applies shall continue to be subject to—

(A) continuing disability reviews on a regularly scheduled basis that is not triggered by work; and

(B) termination of benefits under this subchapter in the event that the individual has earnings that exceed the level of earnings established by the Commissioner to represent substantial gainful activity.

(Aug. 14, 1935, ch. 531, title II, §221, as added Sept. 1, 1954, ch. 1206, title I, §106(g), 68 Stat. 1081; amended Aug. 1, 1956, ch. 836, title I, §103(c)(7), (8), (h), 70 Stat. 818, 823; Pub. L. 90–248, title I, §158(c)(3), (4), Jan. 2, 1968, 81 Stat. 869; Pub. L. 96–265, title III, §§304(a)–(f), 311(a), June 9, 1980, 94 Stat. 453–456, 460; Pub. L. 97–455, §§3(a), 6, Jan. 12, 1983, 96 Stat. 2499, 2500; Pub. L. 98–369, div. B, title VI, §2663(a)(14), July 18, 1984, 98 Stat. 1164; Pub. L. 98–460, §§6(a), 8(a), 9(a)(1), 10(a), 17(a), Oct. 9, 1984, 98 Stat. 1802, 1804, 1805, 1811; Pub. L. 99–514, title XVIII, §1883(a)(9), Oct. 22, 1986, 100 Stat. 2916; Pub. L. 100–647, title VIII, §8012(a), Nov. 10, 1988, 102 Stat. 3789; Pub. L. 101–239, title X, §10306(a)(1), Dec. 19, 1989, 103 Stat. 2484; Pub. L. 101–508, title V, §5128(a), Nov. 5, 1990, 104 Stat. 1388–286; Pub. L. 103–296, title I, §107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 106–170, title I, §§101(b)(1)(A), 111(a), Dec. 17, 1999, 113 Stat. 1873, 1881; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 421, act Aug. 14, 1935, ch. 531, title II, §221, as added July 18, 1952, ch. 945, §3(e), 66 Stat. 772; amended by 1953 Reorg. Plan No. 1, §5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, relating to disability determinations, ceased to be in effect at the close of June 30, 1953. See section 3(g) of act July 18, 1952, set out as an Effective and Termination Date of 1952 Amendment note under section 413 of this title.

AMENDMENTS

2004—Subsec. (e). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1999—Subsec. (i)(5). Pub. L. 106–170, §101(b)(1)(A), added par. (5).

Subsec. (m). Pub. L. 106–170, §111(a), added subsec. (m).

1994—Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing except where appearing before ''of Labor'' in subsec. (b)(3)(B) and substituted ''the Commissioner deems'' for ''he deems'' and ''the Commissioner finds'' for ''he finds'' in subsec. (a)(2), ''the Commissioner's'' for ''his'' wherever appearing in subsecs. (b)(1), (c)(1), and (g), ''the Commissioner has complied'' for ''he has complied'' in subsec. (b)(1), ''Commissioner's'' for ''Secretary's'' in subsec. (d), and ''prescribed by the Commissioner'' for ''prescribed by him'' in subsec. (g).

1990—Subsec. (c)(3). Pub. L. 101–508 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In carrying out the provisions of paragraph (2) with respect to the review of determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title), the Secretary shall review—

''(A) at least 15 percent of all such determinations made by State agencies in the fiscal year 1981,

''(B) at least 35 percent of all such determinations made by State agencies in the fiscal year 1982, and

''(C) at least 65 percent of all such determinations made by State agencies in any fiscal year after the fiscal year 1982.''

1989—Subsec. (*l*). Pub. L. 101–239 added subsec. (*l*).

1988—Subsec. (i)(3). Pub. L. 100–647 substituted ''semiannually'' for ''annually''.

1986—Subsec. (e). Pub. L. 99–514 struck out ''under this section'' before ''shall be entitled''.

1984—Subsec. (a)(1)(A). Pub. L. 98–460, §17(a)(2), (b), temporarily substituted ''subsection (b)(1)(C) of this section'' for ''subsection (b)(1) of this section''. See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(1). Pub. L. 98–460, §17(a)(1), (b), temporarily amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''If the Secretary finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with his regulations and other written guidelines, the Secretary shall, not earlier than 180 days following his finding, and after he has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1) of this section.'' See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(3). Pub. L. 98–460, §17(a)(3), (b), temporarily substituted ''Except as provided in subparagraph

(D)(i) of paragraph (1), the Secretary'' for ''The Secretary'' in subpars. (A) and (B). See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (d). Pub. L. 98–460, §17(a)(4), (b), temporarily substituted ''Except as provided in subsection (b)(1)(D) of this section, any individual'' for ''Any individual''. See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (e). Pub. L. 98–369 substituted ''Federal Disability Insurance Trust Fund is charged'' for ''Federal Disability Trust Fund is charged''.

Subsec. (h). Pub. L. 98–460, §8(a), added subsec. (h).

Subsec. (i)(4). Pub. L. 98–460, §6(a), added par. (4).

Subsec. (j). Pub. L. 98–460, §9(a)(1), added subsec. (j).

Subsec. (k). Pub. L. 98–460, §10(a), added subsec. (k).

1983—Subsec. (i). Pub. L. 97–455 designated existing provisions as par. (1), inserted '', subject to paragraph (2)'' after ''at least once every 3 years'', and added pars. (2) and (3).

1980—Subsec. (a). Pub. L. 96–265, §304(a), completely revised provisions under which determinations are to be made by State agencies.

Subsec. (b). Pub. L. 96–265, §304(b), substituted provisions covering the making of disability determinations by the Secretary rather than by the State for provisions relating to agreements between the Secretary and the State under which the State would make disability determinations.

Subsec. (c). Pub. L. 96–265, §304(c), designated existing provisions as par. (1), inserted provision that a review by the Secretary on his own motion of a State agency determination may be made before or after any action is taken to implement that determination, and added pars. (2) and (3).

Subsec. (d). Pub. L. 96–265, §304(d), substituted ''subsection (a), (b), (c), or (g) of this section'' for ''subsection (a), (c), or (g) of this section''.

Subsec. (e). Pub. L. 96–265, §304(e), substituted ''which is making disability determinations under subsection (a)(1)'' for ''which has an agreement with the Secretary'', substituted ''as determined by the Secretary'' for ''as may be mutually agreed upon'', and substituted ''making disability determinations under subsection (a)(1)'' for ''carrying out the agreement under this section''.

Subsec. (g). Pub. L. 96–265, §304(f), substituted ''does not undertake to perform disability determinations under subsection (a)(1) of this section, or which has been found by the Secretary to have substantially failed to make disability determinations in a manner consistent with his regulations and guidelines'' for ''has no agreement under subsection (b) of this section'' and ''for whom no State undertakes to make disability determinations'' for ''not included in an agreement under subsection (b) of this section''.

Subsec. (i). Pub. L. 96–265, §311(a), added subsec. (i).

1968—Subsec. (a). Pub. L. 90–248, §158(c)(3), substituted in first sentence reference to ''423(d)'' for ''423(c)''.

Subsec. (c). Pub. L. 90–248, §158(c)(4), substituted reference to ''423(d)'' for ''423(c)''.

1956—Subsec. (a). Act Aug. 1, 1956, §103(c)(7), inserted reference to section 423(c) of this title.

Subsec. (c). Act Aug. 1, 1956, §103(c)(8), restricted disability to definition of such term contained in section 416(i) or 423(c) of this title.

Subsec. (e). Act Aug. 1, 1956, §103(h), substituted ''Trust Funds'' for ''Trust Fund'', and provided for adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to payments made under this subsection.

Subsec. (f). Act Aug. 1, 1956, §103(h), substituted ''Trust Funds'' for ''Trust Fund''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 101(b)(1)(A) of Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

Pub. L. 106–170, title I, §111(b), Dec. 17, 1999, 113 Stat. 1881, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2002.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5128(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to determinations made by State agencies in fiscal years after fiscal year 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10306(a)(3) of Pub. L. 101–239 provided that: ''The amendment made by this section [amending this section] shall apply with respect to notices issued on or after July 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8012(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply to reports required to be submitted after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Section 8(c) of Pub. L. 98–460 provided that: ''The amendments made by this section [amending this section and section 1382c of this title] shall apply to determinations made after 60 days after the date of the enactment of this Act [Oct. 9, 1984].''

Section 17(b) of Pub. L. 98–460 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall become effective on the date of the enactment of this Act [Oct. 9, 1984] and shall expire on December 31, 1987. The provisions of the Social Security Act amended by subsection (a) of this section (as such provisions were in effect immediately before the date of the enactment of this Act) shall be effective after December 31, 1987.''

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 3(b) of Pub. L. 97–455 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Jan. 12, 1983].''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 304(h) of Pub. L. 96–265 provided that: ''The amendments made by subsections (a), (b), (d), (e), and (f) [amending this section] shall be effective beginning with the twelfth month following the month in which this Act is enacted [June 1980]. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under section 221(a) of the Social Security Act [subsec. (a) of this section] (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in section 221(a)(1) of such Act as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given.''

Section 311(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on January 1, 1982.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable with respect to application for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

ELECTION UNDER SUBSECTION (*l*)(1) BY CURRENT RECIPIENTS

Section 10306(a)(2) of Pub. L. 101–239 provided that: ''Not later than July 1, 1990, the Secretary of Health and Human Services shall provide every individual receiving benefits under title II of the Social Security Act [this subchapter] on the basis of disability by reason of blindness an opportunity to make an election under section 221(*l*)(1) of such Act [subsec. (*l*)(1) of this section] (as added by paragraph (1)).''

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

Section 5 of Pub. L. 98–460 provided that:

''(a) The Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary') shall revise the criteria embodied under the category 'Mental Disorders' in the 'Listing of Impairments' in effect on the date of the enactment of this Act [Oct. 9, 1984] under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act.

''(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act [subsec. (i) of this section], or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act [subchapter XVI of this chapter], with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

''(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

''(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term 'continuing eligibility review', when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

''(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act [section 1382h of this title]) is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) and (f) of such Act [section 402(e), (f) of this title]).

''(c)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act [this subchapter or subchapter XVI of this chapter] after the date of the enactment of this Act [Oct. 9, 1984] and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

''(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

''(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act [Oct. 9, 1984], and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.''

INSTITUTION OF NOTIFICATION SYSTEM

Section 6(c) of Pub. L. 98–460 provided that: ''The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) [amending this section and section 1383b of this title] as soon as is practicable after the date of the enactment of this Act [Oct. 9, 1984].''

DEMONSTRATION PROJECTS; OPPORTUNITY FOR PERSONAL APPEARANCE PRIOR TO DISABILITY DETERMINATIONS; REPORT TO CONGRESSIONAL COMMITTEES

Section 6(d), (e) of Pub. L. 98–460 provided that:

''(d) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act [Oct. 9, 1984], implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 221(i) of the Social Security Act [subsec. (i) of this section] is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act [section 405(b)(2) of this title]. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act [subchapter XVI of this chapter]. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

''(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance is provided the applicant prior to initial disability determinations under subsections (a), (c), and (g) of section 221 of the Social Security Act, and prior to initial disability determinations on applications for benefits under title XVI of such Act. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.''

PROMULGATION OF REGULATIONS

Section 9(a)(2) of Pub. L. 98–460 provided that: ''The Secretary of Health and Human Services shall prescribe regulations required under section 221(j) of the Social Security Act [subsec. (j) of this section] not later than 180 days after the date of the enactment of this Act [Oct. 9, 1984].''

FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

Section 15 of Pub. L. 98–460 provided that: ''The Secretary of Health and Human Services shall promulgate final regulations, within 180 days after the date of the enactment of this Act [Oct. 9, 1984], which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act [subsec. (j) of this section]. Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act.''

TRAVEL EXPENSES FOR MEDICAL EXAMINATIONS, RECONSIDERATION INTERVIEWS, AND PROCEEDINGS BEFORE ADMINISTRATIVE LAW JUDGES

Provisions authorizing payment of travel expenses either on an actual cost or commuted basis, to an individual for travel incident to medical examinations, and to parties, their representatives and all reasonably necessary witnesses for travel within the United States, Puerto Rico, and the Virgin Islands, to reconsider interviews and to proceedings before administrative law judges under subchapters II, XVI, and XVIII of this chapter were contained in the following appropriation acts:

Oct. 18, 1978, Pub. L. 95–480, title II, 92 Stat. 1582.
Sept. 30, 1976, Pub. L. 94–439, title II, 90 Stat. 1432.
Jan. 28, 1976, Pub. L. 94–206, title II, 90 Stat. 17.
Dec. 7, 1974, Pub. L. 93–517, title II, 88 Stat. 1645.
Dec. 18, 1973, Pub. L. 93–192, title II, 87 Stat. 759.
Aug. 10, 1971, Pub. L. 92–80, title II, 85 Stat. 296.
Jan. 11, 1971, Pub. L. 91–667, title II, 84 Stat. 2013.
Mar. 5, 1970, Pub. L. 91–204, title II, 84 Stat. 41.
Oct. 11, 1968, Pub. L. 90–557, title II, 82 Stat. 988.
Nov. 8, 1967, Pub. L. 90–132, title II, 81 Stat. 402.
Nov. 7, 1966, Pub. L. 89–787, title II, 80 Stat. 1395.
Aug. 31, 1965, Pub. L. 89–156, title II, 79 Stat. 604.
Sept. 19, 1964, Pub. L. 88–605, title II, 78 Stat. 974.
Oct. 11, 1963, Pub. L. 88–136, title II, 77 Stat. 239.
Aug. 14, 1962, Pub. L. 87–582, title II, 76 Stat. 375.
Sept. 22, 1961, Pub. L. 87–290, title II, 75 Stat. 604.
Sept. 2, 1960, Pub. L. 86–703, title II, 74 Stat. 769.
Aug. 14, 1959, Pub. L. 86–158, title II, 73 Stat. 352.
Aug. 1, 1958, Pub. L. 85–580, title II, 72 Stat. 471.
June 29, 1957, Pub. L. 85–67, title II, 71 Stat. 221.
June 29, 1956, ch. 477, title II, 70 Stat. 434.
Aug. 1, 1955, ch. 437, title II, 69 Stat. 408.

REVIEW OF DECISIONS RENDERED BY ADMINISTRATIVE LAW JUDGES AS RESULT OF DISABILITY HEARINGS; REPORT TO CONGRESS

Section 304(g) of Pub. L. 96–265 provided that: ''The Secretary of Health and Human Services shall implement a program of reviewing, on his own motion, decisions rendered by administrative law judges as a result of hearings under section 221(d) of the Social Security Act [subsec. (d) of this section], and shall report to the Congress by January 1, 1982, on his progress.''

ASSUMPTION BY SECRETARY OF FUNCTIONS AND OPERATIONS OF STATE DISABILITY DETERMINATION UNITS

Section 304(i) of Pub. L. 96–265 directed Secretary of Health and Human Services to submit to Congress by July 1, 1980, a detailed plan on how he intended to assume functions and operations of a State disability determination unit when this became necessary under amendments made by this section [amending this section], and how he intended to meet requirements of section 221(b)(3) of Social Security Act [subsec. (b)(3) of this section]. Such plan was to assume the uninterrupted operation of disability determination function and utilization of best qualified personnel to carry out such function, and was to include recommendations for any amendment of Federal law or regulation required to carry out such plan.

§ 422. Rehabilitation services

(a), (b) Repealed. Pub. L. 106–170, title I, § 101(b)(1)(B), (C), Dec. 17, 1999, 113 Stat. 1873

(c) "Period of trial work" defined

(1) The term ''period of trial work'', with respect to an individual entitled to benefits under section 423, 402(d), 402(e), or 402(f) of this title, means a period of months beginning and ending as provided in paragraphs (3) and (4).

(2) For purposes of sections 416(i) and 423 of this title, any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. For purposes of this subsection the term ''services'' means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain.

(3) A period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits, or, in the case of an individual entitled to benefits under section 402(d) of this title who has attained the age of eighteen, with the month in which he becomes entitled to such benefits or the month in which he attains the age of eighteen, whichever is later, or, in the case of an individual entitled to widow's or widower's insurance benefits under section 402(e) or (f) of this title who became entitled to such benefits prior to attaining age 60, with the month in which such individual becomes so entitled. Notwithstanding the preceding sentence, no period of trial work may begin for any individual prior to the beginning of the month following September 1960; and no such period may begin for an individual in a period of disability of such individual in which he had a previous period of trial work.

(4) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(A) the ninth month, in any period of 60 consecutive months, in which the individual renders services (whether or not such nine months are consecutive); or

(B) the month in which his disability (as defined in section 423(d) of this title) ceases (as determined after application of paragraph (2) of this subsection).

(5) Upon conviction by a Federal court that an individual has fraudulently concealed work activity during a period of trial work from the Commissioner of Social Security by—

(A) providing false information to the Commissioner of Social Security as to whether the individual had earnings in or for a particular period, or as to the amount thereof;

(B) receiving disability insurance benefits under this subchapter while engaging in work activity under another identity, including under another social security account number or a number purporting to be a social security account number; or

(C) taking other actions to conceal work activity with an intent fraudulently to secure payment in a greater amount than is due or when no payment is authorized,

no benefit shall be payable to such individual under this subchapter with respect to a period of disability for any month before such conviction during which the individual rendered services during the period of trial work with respect to which the fraudulently concealed work activity occurred, and amounts otherwise due under this subchapter as restitution, penalties, assessments, fines, or other repayments shall in all cases be in addition to any amounts for which such individual is liable as overpayments by reason of such concealment.

(d) Cost of rehabilitation services from trust funds

(1) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

(A) entitled to disability insurance benefits under section 423 of this title,

(B) entitled to child's insurance benefits under section 402(d) of this title after having attained age 18 (and are under a disability),

(C) entitled to widow's insurance benefits under section 402(e) of this title prior to attaining age 60, or

(D) entitled to widower's insurance benefits under section 402(f) of this title prior to attaining age 60,

to the end that savings will accrue to the Trust Funds as a result of rehabilitating such individuals, there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year such sums as may be necessary to enable the Commissioner of Social Security to reimburse the State for the reasonable and necessary costs of vocational rehabilitation services furnished such individuals (including services during their waiting periods), under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.], (i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 425(b) of this title (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria formulated by the Commissioner.

(2) In the case of any State which is unwilling to participate or does not have a plan which meets the requirements of paragraph (1), the Commissioner of Social Security may provide such services in such State by agreement or contract with other public or private agencies, organizations, institutions, or individuals. The provision of such services shall be subject to the same conditions as otherwise apply under paragraph (1).

(3) Payments under this subsection shall be made in advance or by way of reimbursement, with necessary adjustments for overpayments and underpayments.

(4) Money paid from the Trust Funds under this subsection for the reimbursement of the costs of providing services to individuals who are entitled to benefits under section 423 of this title (including services during their waiting periods), or who are entitled to benefits under section 402(d) of this title on the basis of the wages and self-employment income of such individuals, shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid from the Trust Funds under this subsection shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund. The Commissioner of Social Security shall determine according to such methods and procedures as the Commissioner may deem appropriate—

(A) the total amount to be reimbursed for the cost of services under this subsection, and

(B) subject to the provisions of the preceding sentence, the amount which should be charged to each of the Trust Funds.

(5) For purposes of this subsection the term ''vocational rehabilitation services'' shall have the meaning assigned to it in title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.], except that such services may be limited in type, scope, or amount in accordance with regulations of the Commissioner of Social Security designed to achieve the purpose of this subsection.

(e) Treatment referrals for individuals with alcoholism or drug addiction condition

In the case of any individual whose benefits under this subchapter are paid to a representative payee pursuant to section 405(j)(1)(B) of this title, the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).

(Aug. 14, 1935, ch. 531, title II, § 222, as added Sept. 1, 1954, ch. 1206, title I, § 106(g) 68 Stat. 1081; amended Aug. 1, 1956, ch. 836, title I, § 103(b), 70 Stat. 817; Pub. L. 85–840, title II, § 205(n), title III, § 307(g), Aug. 28, 1958, 72 Stat. 1025, 1032; Pub. L. 86–778, title IV, § 403(a), Sept. 13, 1960, 74 Stat. 968; Pub. L. 89–97, title III, §§ 306(c)(14), 308(d)(11), 336, July 30, 1965, 79 Stat. 373, 379, 408; Pub. L.

90–248, title I, §§104(d)(3), (4), 158(c)(5), Jan. 2, 1968, 81 Stat. 832, 869; Pub. L. 92–603, title I, §§107(b)(3), (4), 131, Oct. 30, 1972, 86 Stat. 1343, 1360; Pub. L. 96–265, title III, §303(a), June 9, 1980, 94 Stat. 451; Pub. L. 97–35, title XXII, §2209(a), Aug. 13, 1981, 95 Stat. 840; Pub. L. 98–21, title III, §309(*l*)–(n), Apr. 20, 1983, 97 Stat. 117; Pub. L. 98–369, div. B, title VI, §2663(a)(15), July 18, 1984, 98 Stat. 1165; Pub. L. 98–460, §11(a), Oct. 9, 1984, 98 Stat. 1805; Pub. L. 101–508, title V, §5112(a), Nov. 5, 1990, 104 Stat. 1388–273; Pub. L. 103–296, title I, §107(a)(4), title II, §201(a)(4)(B), Aug. 15, 1994, 108 Stat. 1478, 1499; Pub. L. 104–121, title I, §105(a)(3), Mar. 29, 1996, 110 Stat. 852; Pub. L. 106–170, title I, §101(b)(1)(B), (C), Dec. 17, 1999, 113 Stat. 1873; Pub. L. 108–203, title II, §208(a), Mar. 2, 2004, 118 Stat. 513.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (d)(1), (5), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended. Title I of the Rehabilitation Act of 1973 is classified generally to subchapter I (§720 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (e), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart II of part B of title XIX of the Act is classified generally to subpart II (§300x–21 et seq.) of part B of subchapter XVII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

2004—Subsec. (c)(5). Pub. L. 108–203 added par. (5).

1999—Subsec. (a). Pub. L. 106–170, §101(b)(1)(B), struck out heading and text of subsec. (a). Text read as follows: ''It is declared to be the policy of the Congress that disabled individuals applying for a determination of disability, and disabled individuals who are entitled to child's insurance benefits, widow's insurance benefits, or widower's insurance benefits, shall be promptly referred to the State agency or agencies administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973 for necessary vocational rehabilitation services, to the end that the maximum number of such individuals may be rehabilitated into productive activity.''

Subsec. (b). Pub. L. 106–170, §101(b)(1)(C), struck out heading and text of subsec. (b), which authorized deductions from payments under this subchapter up to amount of benefits on account of refusal without good cause to accept rehabilitation services, and authorized deductions from payments to husbands, wives, or children of individuals who refuse to accept such services with exception for children between 18 and 22 who are full-time students.

1996—Subsec. (e). Pub. L. 104–121 added subsec. (e).

1994—Subsec. (b)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2). Pub. L. 103–296, §201(a)(4)(B), inserted ''(whether legal or illegal)'' after ''activity''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(1). Pub. L. 103–296, §107(a)(4), in closing provisions substituted ''Commissioner of Social Security to reimburse'' for ''Secretary to reimburse''.

Pub. L. 103–296, §107(a)(4), which directed the amendment of this subchapter by substituting ''the Commissioner'' for ''him'' where such word referred to the Secretary of Health and Human Services, was executed in closing provisions by substituting ''the Commissioner'' for ''him'' where referring to the Commissioner of Social Security, to reflect the probable intent of Congress.

Subsec. (d)(4). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner may'' for ''he may''.

Subsec. (d)(5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

1990—Subsec. (c)(4)(A). Pub. L. 101–508, §5112(a)(1), substituted ''in any period of 60 consecutive months'' for ''beginning on or after the first day of such period''.

Subsec. (c)(5). Pub. L. 101–508, §5112(a)(2), struck out par. (5) which read as follows: ''In the case of an individual who becomes entitled to benefits under section 423 of this title for any month as provided in clause (ii) of subsection (a)(1) of such section, the preceding provisions of this subsection shall not apply with respect to services in any month beginning with the first month for which he is so entitled and ending with the first month thereafter for which he is not entitled to benefits under section 423 of this title.''

1984—Subsecs. (a), (b)(1). Pub. L. 98–369, §2663(a)(15)(A), substituted ''title I of the Rehabilitation Act of 1973'' for ''the Vocational Rehabilitation Act''.

Subsec. (b)(3). Pub. L. 98–369, §2663(a)(15)(B), substituted ''equals'' for ''equal''.

Subsec. (b)(4). Pub. L. 98–369, §2663(a)(15)(C), substituted ''full-time elementary or secondary school student'' for ''full-time student''.

Subsec. (d)(1). Pub. L. 98–460, §11(a), in provisions following subpar. (D) struck out ''into substantial gainful activity'' after ''rehabilitating such individuals'', designated existing provisions as cl. (i), added cls. (ii) and (iii), and substituted ''of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,'' for ''of such individuals to substantial gainful activity'' after cl. (iii).

1983—Subsec. (b)(1). Pub. L. 98–21, §309(*l*), substituted '', surviving divorced wife, or surviving divorced husband'' for ''or surviving divorced wife''.

Subsec. (b)(2). Pub. L. 98–21, §309(m), inserted ''or father's'' after ''mother's'' wherever appearing.

Subsec. (b)(3). Pub. L. 98–21, §309(n), inserted ''divorced husband,'' after ''husband,''.

1981—Subsec. (d). Pub. L. 97–35 substituted provisions authorizing the transfer of funds as may be necessary to enable the Secretary to reimburse the State for the reasonable and necessary costs of vocational rehabilitation, under a State plan approved under title I of the Rehabilitation Act of 1973, which results in performance of substantial gainful activity for a continuous period of nine months, with the determination that the vocational rehabilitation services contributed to the successful return to substantial gainful activity and the amount of costs to be reimbursed made by the Commissioner of Social Security for provisions authorizing the transfer of funds as may be necessary to enable the Secretary to pay the cost of vocational rehabilitation services, restricting the amount of such cost that may be expended in any one fiscal year, establishing specific criteria which a State plan must meet, and providing that the selection of individuals to receive services be made in conformance with criteria formulated by the Secretary.

1980—Subsec. (c)(1). Pub. L. 96–265, §303(a)(1), inserted references to sections 402(e) and 402(f) of this title.

Subsec. (c)(3). Pub. L. 96–265, §303(a)(2), inserted reference to individuals entitled to widow's or widower's insurance benefits under section 402(e) or (f) of this title who became entitled to such benefits prior to attaining age 60.

1972—Subsec. (b)(1). Pub. L. 92–603, §107(b)(3), substituted ''a widow, widower or surviving divorced wife who has not attained age 60'' or ''a widow or surviving divorced wife who has not attained age 60, a widower who has not attained age 62''.

Subsec. (d)(1). Pub. L. 92–603, §§107(b)(4), 131, substituted ''age 60'' for ''age 62'', and inserted provisions increasing applicable percentages so that the total

amount made available pursuant to subsec. (d) may not exceed 1.25 percent, in fiscal year ending June 30, 1973, and 1.5 percent, in fiscal year ending June 30, 1974, and thereafter, of the total of the benefits under section 402(d) of this title for children who have attained age 18 and are under a disability.

1968—Subsec. (a). Pub. L. 90–248, §104(d)(3)(A), inserted ''widow's insurance benefits, or widower's insurance benefits,'' after ''benefits,''.

Subsec. (b)(1). Pub. L. 90–248, §104(d)(3)(B), substituted ''child's insurance benefits, a widow or surviving divorced wife who has not attained age 60, a widower who has not attained age 62, or'' for ''child's insurance benefits or if''.

Subsec. (c)(4)(B). Pub. L. 90–248, §158(c)(5), substituted reference to ''423(d)'' for ''423(c)(2)''.

Subsec. (d)(1). Pub. L. 90–248, §104(d)(4), added subpars. (C) and (D), and inserted ''the benefits under section 402(e) of this title for widows and surviving divorced wives who have not attained age 60 and are under a disability, the benefits under section 402(f) of this title for widowers who have not attained age 62,'' after ''disability,'' in text following subpar. (D).

1965—Subsec. (b)(3). Pub. L. 89–97, §308(d)(11), inserted ''divorced wife,'' after ''wife,''.

Subsec. (b)(4). Pub. L. 89–97, §306(c)(14), added par. (4).

Subsec. (d). Pub. L. 89–97, §336, added subsec. (d).

1960—Subsec. (c). Pub. L. 86–778 amended subsection generally by substituting provisions relating to period of trial work for provisions which related to services performed pursuant to a State-approved rehabilitation program.

1958—Subsec. (b). Pub. L. 85–840 designated existing provisions thereof as par. (1) and added pars. (2) and (3).

1956—Subsec. (a). Act Aug. 1, 1956, designated existing provisions as subsec. (a), authorized referral of disabled individuals who are entitled to child's insurance benefits, and substituted ''rehabilitated into productive activity'' for ''restored to productive activity''.

Subsecs. (b), (c). Act Aug. 1, 1956, added subsecs. (b) and (c).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, §208(b), Mar. 2, 2004, 118 Stat. 513, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to work activity performed after the date of the enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–121 effective July 1, 1996, with respect to any individual whose claim for benefits is finally adjudicated on or after Mar. 29, 1996, or whose entitlement to benefits is based upon an entitlement redetermination made pursuant to section 105(a)(5)(C) of Pub. L. 104–121, see section 105(a)(5) of Pub. L. 104–121, as amended, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(a)(4)(C) of Pub. L. 103–296 provided that: ''The amendments made by this paragraph [amending this section and section 423 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5112(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on January 1, 1992.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 11(c) of Pub. L. 98–460 provided that: ''The amendments made by this section [amending this section and section 1382d of this title] shall apply with respect to individuals who receive benefits as a result of section 225(b) or section 1631(a)(6) of the Social Security Act [section 425(b) or 1383(a)(6) of this title], or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted [October 1984].''

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2209(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services rendered on or after October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, and applicable to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to monthly benefits under this subchapter for months after Dec. 1972, with specified exceptions, see section 107(c) of Pub. L. 92–603, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 104(d)(3), (4) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

Amendment by section 158(c)(5) of Pub. L. 90–248 applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 308(d)(11) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 403(e) of Pub. L. 86–778 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall be effective only with respect to months beginning after the month in which this Act is enacted [September 1960].

''(2) The amendments made by subsections (b) and (d) [amending sections 423 and 402 of this title] shall apply only with respect to benefits under section 223(a) or 202(d) of the Social Security Act [section 423(a) or 402(d) of this title] for months after the month in which this Act is enacted in the case of individuals who, without regard to such amendments, would have been entitled to such benefits for the month in which this Act is enacted or for any succeeding month.

''(3) The amendment made by subsection (c) [amending section 416 of this title] shall apply only in the case of individuals who have a period of disability (as defined in section 216(i) of the Social Security Act [section 416(i) of this title]) beginning on or after the date of the enactment of this Act [Sept. 13, 1960], or beginning before such date and continuing, without regard to such amendment, beyond the end of the month in which this Act is enacted.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 205(n) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after August 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

Section 307(h)(3) of Pub. L. 85–840 provided that: ''The amendments made by subsection (g) [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months, occurring after the month in which this Act is enacted [August 1958], in which a deduction is incurred under paragraph (1) of section 222(b) of the Social Security Act [subsec. (b)(1) of this section].''

§ 423. Disability insurance benefit payments

(a) Disability insurance benefits

(1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c)(1) of this section),

(B) has not attained retirement age (as defined in section 416(*l*) of this title),

(C) if not a United States citizen or national—

(i) has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (III) of section 405(c)(2)(B)(i) of this title; or

(ii) at the time any quarters of coverage are earned—

(I) is described in subparagraph (B) or (D) of section 1101(a)(15) of title 8,

(II) is lawfully admitted temporarily to the United States for business (in the case of an individual described in such subparagraph (B)) or the performance as a crewman (in the case of an individual described in such subparagraph (D)), and

(III) the business engaged in or service as a crewman performed is within the scope of the terms of such individual's admission to the United States.

(D) has filed application for disability insurance benefits, and

(E) is under a disability (as defined in subsection (d) of this section)

shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after his waiting period (as defined in subsection (c)(2) of this section) in which he becomes so entitled to such insurance benefits, or (ii) for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 416(i) of this title) which ceased, within the 60-month period preceding the first month in which he is under such disability, and ending with the month preceding whichever of the following months is the earliest: the month in which he dies, the month in which he attains retirement age (as defined in section 416(*l*) of this title), or, subject to subsection (e) of this section, the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity. No payment under this paragraph may be made to an individual who would not meet the definition of disability in subsection (d) of this section except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 402 of this title to any person on the basis of the wages and self-employment income of such individual. In the case of a deceased individual, the requirement of subparagraph (C) may be satisfied by an application for benefits filed with respect to such individual within 3 months after the month in which he died.

(2) Except as provided in section 402(q) of this title and section 415(b)(2)(A)(ii) of this title, such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 415 of this title as though he had attained age 62 in—

(A) the first month of his waiting period, or

(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes entitled to such disability insurance benefits,

and as though he had become entitled to old-age insurance benefits in the month in which the application for disability insurance benefits was filed and he was entitled to an old-age insurance benefit for each month for which (pursuant to subsection (b) of this section) he was entitled to a disability insurance benefit. For the purposes of the preceding sentence, in the case of an individual who attained age 62 in or before the first month referred to in subparagraph (A) or (B) of

such sentence, as the case may be, the elapsed years referred to in section 415(b)(3) of this title shall not include the year in which he attained age 62, or any year thereafter.

(b) Filing application

An application for disability insurance benefits filed before the first month in which the applicant satisfies the requirements for such benefits (as prescribed in subsection (a)(1) of this section) shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made, or if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security). An individual who would have been entitled to a disability insurance benefit for any month had he filed application therefor before the end of such month shall be entitled to such benefit for such month if such application is filed before the end of the 12th month immediately succeeding such month.

(c) Definitions; insured status; waiting period

For purposes of this section—

(1) An individual shall be insured for disability insurance benefits in any month if—

(A) he would have been a fully insured individual (as defined in section 414 of this title) had he attained age 62 and filed application for benefits under section 402(a) of this title on the first day of such month, and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such month occurred, or

(ii) if such month ends before the quarter in which he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of section 416(i)(3)(B)(ii) of this title, had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with the quarter in which such month occurs are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of ''blindness'' as defined in section 416(i)(1) of this title). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a period of disability unless such quarter was a quarter of coverage.

(2) The term ''waiting period'' means, in the case of any application for disability insurance benefits, the earliest period of five consecutive calendar months—

(A) throughout which the individual with respect to whom such application is filed has been under a disability, and

(B)(i) which begins not earlier than with the first day of the seventeenth month before the month in which such application is filed if such individual is insured for disability insurance benefits in such seventeenth month, or (ii) if he is not so insured in such month, which begins not earlier than with the first day of the first month after such seventeenth month in which he is so insured.

Notwithstanding the preceding provisions of this paragraph, no waiting period may begin for any individual before January 1, 1957.

(d) "Disability" defined

(1) The term ''disability'' means—

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of ''blindness'' as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

(2) For purposes of paragraph (1)(A)—

(A) An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), ''work which exists in the national economy'' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that

such impairment or impairments could be the basis of eligibility under this section, the Commissioner of Social Security shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Commissioner of Social Security does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.

(C) An individual shall not be considered to be disabled for purposes of this subchapter if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.

(3) For purposes of this subsection, a ''physical or mental impairment'' is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(4)(A) The Commissioner of Social Security shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed an amount equal to the exempt amount which would be applicable under section 403(f)(8) of this title, to individuals described in subparagraph (D) thereof, if section 102 of the Senior Citizens' Right to Work Act of 1996 had not been enacted. Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 422(c) of this title, be found not to be disabled. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe.

(B) In determining under subparagraph (A) when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity, the Commissioner of Social Security shall apply the criteria described in subparagraph (A) with respect to services performed by any individual without regard to the legality of such services.

(5)(A) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Commissioner of Social Security may require. An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue) must be considered in reaching a conclusion as to whether the individual is under a disability. Any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician not in the employ of the Federal Government, which supplies medical evidence required and requested by the Commissioner of Social Security under this paragraph shall be entitled to payment from the Commissioner of Social Security for the reasonable cost of providing such evidence.

(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Commissioner of Social Security shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Commissioner of Social Security shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.

(6)(A) Notwithstanding any other provision of this subchapter, any physical or mental impairment which arises in connection with the commission by an individual (after October 19, 1980) of an offense which constitutes a felony under applicable law and for which such individual is subsequently convicted, or which is aggravated in connection with such an offense (but only to the extent so aggravated), shall not be considered in determining whether an individual is under a disability.

(B) Notwithstanding any other provision of this subchapter, any physical or mental impairment which arises in connection with an individual's confinement in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of an offense (committed after October 19, 1980) constituting a

felony under applicable law, or which is aggravated in connection with such a confinement (but only to the extent so aggravated), shall not be considered in determining whether such individual is under a disability for purposes of benefits payable for any month during which such individual is so confined.

(e) Engaging in substantial gainful activity

(1) No benefit shall be payable under subsection (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 402 of this title or under subsection (a)(1) of this section to an individual for any month, after the third month, in which he engages in substantial gainful activity during the 36-month period following the end of his trial work period determined by application of section 422(c)(4)(A) of this title.

(2) No benefit shall be payable under section 402 of this title on the basis of the wages and self-employment income of an individual entitled to a benefit under subsection (a)(1) of this section for any month for which the benefit of such individual under subsection (a)(1) of this section is not payable under paragraph (1).

(f) Standard of review for termination of disability benefits

A recipient of benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(1) substantial evidence which demonstrates that—

(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(B) the individual is now able to engage in substantial gainful activity; or

(2) substantial evidence which—

(A) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity, or

(B) demonstrates that—

(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity; or

(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this subchapter or subchapter XVIII of this chapter based on an individual's disability is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of the entitlement to such benefits or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. In making for purposes of the preceding sentence any determination relating to fraudulent behavior by any individual or failure by any individual without good cause to cooperate or to take any required action, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language). Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Commissioner of Social Security. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled. For purposes of this subsection, a benefit under this subchapter is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.

(g) Continued payment of disability benefits during appeal

(1) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(C) a timely request for a hearing under section 421(d) of this title, or for an administrative review prior to such hearing, is pending

with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Commissioner of Social Security shall by regulations prescribe) to have the payment of such benefits, the payment of any other benefits under this subchapter based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under subchapter XVIII of this chapter based on such individual's disability, continued for an additional period beginning with the first month beginning after January 12, 1983, for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, or (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending.

(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in subparagraph (B).

(B) If the Commissioner of Social Security determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under paragraph (1) shall be subject to waiver consideration under the provisions of section 404 of this title. In making for purposes of this subparagraph any determination of whether any individual's appeal is made in good faith, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).

(h) Interim benefits in cases of delayed final decisions

(1) In any case in which an administrative law judge has determined after a hearing as provided under section 405(b) of this title that an individual is entitled to disability insurance benefits or child's, widow's, or widower's insurance benefits based on disability and the Commissioner of Social Security has not issued the Commissioner's final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month preceding the month in which such 110-day period expires and ending with the month preceding the month in which such final decision is issued.

(2) For purposes of paragraph (1), in determining whether the 110-day period referred to in paragraph (1) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Commissioner's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

(3) Any benefits currently paid under this subchapter pursuant to this subsection (for the months described in paragraph (1)) shall not be considered overpayments for any purpose of this subchapter (unless payment of such benefits was fraudulently obtained), and such benefits shall not be treated as past-due benefits for purposes of section 406(b)(1) of this title.

(i) Reinstatement of entitlement

(1)(A) Entitlement to benefits described in subparagraph (B)(i)(I) shall be reinstated in any case where the Commissioner determines that an individual described in subparagraph (B) has filed a request for reinstatement meeting the requirements of paragraph (2)(A) during the period prescribed in subparagraph (C). Reinstatement of such entitlement shall be in accordance with the terms of this subsection.

(B) An individual is described in this subparagraph if—

(i) prior to the month in which the individual files a request for reinstatement—

(I) the individual was entitled to benefits under this section or section 402 of this title on the basis of disability pursuant to an application filed therefor; and

(II) such entitlement terminated due to the performance of substantial gainful activity;

(ii) the individual is under a disability and the physical or mental impairment that is the basis for the finding of disability is the same as (or related to) the physical or mental impairment that was the basis for the finding of disability that gave rise to the entitlement described in clause (i); and

(iii) the individual's disability renders the individual unable to perform substantial gainful activity.

(C)(i) Except as provided in clause (ii), the period prescribed in this subparagraph with respect to an individual is 60 consecutive months beginning with the month following the most recent month for which the individual was entitled to a benefit described in subparagraph (B)(i)(I) prior to the entitlement termination described in subparagraph (B)(i)(II).

(ii) In the case of an individual who fails to file a reinstatement request within the period prescribed in clause (i), the Commissioner may extend the period if the Commissioner determines that the individual had good cause for the failure to so file.

(2)(A)(i) A request for reinstatement shall be filed in such form, and containing such information, as the Commissioner may prescribe.

(ii) A request for reinstatement shall include express declarations by the individual that the individual meets the requirements specified in clauses (ii) and (iii) of paragraph (1)(B).

(B) A request for reinstatement filed in accordance with subparagraph (A) may constitute an application for benefits in the case of any individual who the Commissioner determines is

not entitled to reinstated benefits under this subsection.

(3) In determining whether an individual meets the requirements of paragraph (1)(B)(ii), the provisions of subsection (f) of this section shall apply.

(4)(A)(i) Subject to clause (ii), entitlement to benefits reinstated under this subsection shall commence with the benefit payable for the month in which a request for reinstatement is filed.

(ii) An individual whose entitlement to a benefit for any month would have been reinstated under this subsection had the individual filed a request for reinstatement before the end of such month shall be entitled to such benefit for such month if such request for reinstatement is filed before the end of the twelfth month immediately succeeding such month.

(B)(i) Subject to clauses (ii) and (iii), the amount of the benefit payable for any month pursuant to the reinstatement of entitlement under this subsection shall be determined in accordance with the provisions of this subchapter.

(ii) For purposes of computing the primary insurance amount of an individual whose entitlement to benefits under this section is reinstated under this subsection, the date of onset of the individual's disability shall be the date of onset used in determining the individual's most recent period of disability arising in connection with such benefits payable on the basis of an application.

(iii) Benefits under this section or section 402 of this title payable for any month pursuant to a request for reinstatement filed in accordance with paragraph (2) shall be reduced by the amount of any provisional benefit paid to such individual for such month under paragraph (7).

(C) No benefit shall be payable pursuant to an entitlement reinstated under this subsection to an individual for any month in which the individual engages in substantial gainful activity.

(D) The entitlement of any individual that is reinstated under this subsection shall end with the benefits payable for the month preceding whichever of the following months is the earliest:

(i) The month in which the individual dies.

(ii) The month in which the individual attains retirement age.

(iii) The third month following the month in which the individual's disability ceases.

(5) Whenever an individual's entitlement to benefits under this section is reinstated under this subsection, entitlement to benefits payable on the basis of such individual's wages and self-employment income may be reinstated with respect to any person previously entitled to such benefits on the basis of an application if the Commissioner determines that such person satisfies all the requirements for entitlement to such benefits except requirements related to the filing of an application. The provisions of paragraph (4) shall apply to the reinstated entitlement of any such person to the same extent that they apply to the reinstated entitlement of such individual.

(6) An individual to whom benefits are payable under this section or section 402 of this title pursuant to a reinstatement of entitlement under this subsection for 24 months (whether or not consecutive) shall, with respect to benefits so payable after such twenty-fourth month, be deemed for purposes of paragraph (1)(B)(i)(I) and the determination, if appropriate, of the termination month in accordance with subsection (a)(1) of this section, or subsection (d)(1), (e)(1), or (f)(1) of section 402 of this title, to be entitled to such benefits on the basis of an application filed therefor.

(7)(A) An individual described in paragraph (1)(B) who files a request for reinstatement in accordance with the provisions of paragraph (2)(A) shall be entitled to provisional benefits payable in accordance with this paragraph, unless the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration under paragraph (2)(A)(ii) is false. Any such determination by the Commissioner shall be final and not subject to review under subsection (b) or (g) of section 405 of this title.

(B) The amount of a provisional benefit for a month shall equal the amount of the last monthly benefit payable to the individual under this subchapter on the basis of an application increased by an amount equal to the amount, if any, by which such last monthly benefit would have been increased as a result of the operation of section 415(i) of this title.

(C)(i) Provisional benefits shall begin with the month in which a request for reinstatement is filed in accordance with paragraph (2)(A).

(ii) Provisional benefits shall end with the earliest of—

(I) the month in which the Commissioner makes a determination regarding the individual's entitlement to reinstated benefits;

(II) the fifth month following the month described in clause (i);

(III) the month in which the individual performs substantial gainful activity; or

(IV) the month in which the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration made in accordance with paragraph (2)(A)(ii) is false.

(D) In any case in which the Commissioner determines that an individual is not entitled to reinstated benefits, any provisional benefits paid to the individual under this paragraph shall not be subject to recovery as an overpayment unless the Commissioner determines that the individual knew or should have known that the individual did not meet the requirements of paragraph (1)(B).

(j) Limitation on payments to prisoners

For provisions relating to limitation on payments to prisoners, see section 402(x) of this title.

(Aug. 14, 1935, ch. 531, title II, § 223, as added Aug. 1, 1956, ch. 836, title I, § 103(a), 70 Stat. 815; amended Pub. L. 85–840, title II, §§ 202, 204(b), Aug. 28, 1958, 72 Stat. 1020, 1021; Pub. L. 86–778, title III, § 303(f), title IV, §§ 401(a), (b), 402(a)–(d), 403(b), Sept. 13, 1960, 74 Stat. 964, 967, 969; Pub. L. 87–64, title I, § 102(b)(2)(B), (C), (c)(2)(C), (3)(D), (E), June 30, 1961, 75 Stat. 134, 135; Pub. L. 89–97, title III, §§ 302(e), 303(a)(2), (b)(3), (4), (c), 304(m),

(n), 328(c), 344(b)–(d), July 30, 1965, 79 Stat. 366, 367, 370, 400, 413; Pub. L. 90–248, title I, §§105(b), 158(a), (b), (c)(6)–(8), Jan. 2, 1968, 81 Stat. 833, 867–869; Pub. L. 92–603, title I, §§104(c), (d), 116(a), 117(b), 118(a), Oct. 30, 1972, 86 Stat. 1340, 1350, 1351; Pub. L. 95–216, title III, §335, Dec. 20, 1977, 91 Stat. 1547; Pub. L. 96–265, title I, §102(b), title III, §§302(a)(1), 303(b)(1)(A), (2)(A), 306(c), 309(a), June 9, 1980, 94 Stat. 443, 450, 451, 453, 458, 459; Pub. L. 96–473, §5(a)(1), (c), Oct. 19, 1980, 94 Stat. 2264, 2265; Pub. L. 97–123, §6, Dec. 29, 1981, 95 Stat. 1664; Pub. L. 97–455, §2, Jan. 12, 1983, 96 Stat. 2498; Pub. L. 98–21, title II, §201(c)(1)(E), (3), title III, §§309(*o*), 332(b), 339(b), Apr. 20, 1983, 97 Stat. 109, 117, 129, 134; Pub. L. 98–118, §2, Oct. 11, 1983, 97 Stat. 803; Pub. L. 98–369, div. B, title VI, §§2661(m), 2662(c)(2), (i), 2663(a)(16), July 18, 1984, 98 Stat. 1158–1160, 1165; Pub. L. 98–460, §§2(a), 3(a)(1), 4(a)(1), 7(a), 9(b)(1), Oct. 9, 1984, 98 Stat. 1794, 1799, 1800, 1803, 1805; Pub. L. 99–272, title XII, §12107(b), Apr. 7, 1986, 100 Stat. 286; Pub. L. 99–514, title XVIII, §1883(a)(10), Oct. 22, 1986, 100 Stat. 2916; Pub. L. 100–203, title IX, §§9009, 9010(a), (e)(2), Dec. 22, 1987, 101 Stat. 1330–293, 1330–294; Pub. L. 100–647, title VIII, §§8001(a), 8006, Nov. 10, 1988, 102 Stat. 3778, 3781; Pub. L. 101–239, title X, §§10101, 10305(c), (d), Dec. 19, 1989, 103 Stat. 2471, 2483; Pub. L. 101–508, title V, §§5102, 5103(a), (b)(2)–(5), 5118(a), Nov. 5, 1990, 104 Stat. 1388–250, 1388–251, 1388–278; Pub. L. 103–296, title I, §107(a)(4), title II, §201(a)(4)(A), title III, §321(a)(19), (f)(1), Aug. 15, 1994, 108 Stat. 1478, 1499, 1537, 1540; Pub. L. 104–121, title I, §§102(b)(2), 105(a)(1), Mar. 29, 1996, 110 Stat. 848, 852; Pub. L. 106–170, title I, §112(a), Dec. 17, 1999, 113 Stat. 1881; Pub. L. 108–203, title II, §211(b), Mar. 2, 2004, 118 Stat. 518.)

REFERENCES IN TEXT

Section 102 of the Senior Citizens' Right to Work Act of 1996, referred to in subsec. (d)(4)(A), is section 102 of title I of Pub. L. 104–121, which amended this section and section 403 of this title and enacted provisions set out as a note under section 403 of this title.

AMENDMENTS

2004—Subsec. (a)(1)(C) to (E). Pub. L. 108–203 added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

1999—Subsecs. (i), (j). Pub. L. 106–170 added subsec. (i) and redesignated former subsec. (i) as (j).

1996—Subsec. (d)(2)(C). Pub. L. 104–121, §105(a)(1), added subpar. (C).

Subsec. (d)(4)(A). Pub. L. 104–121, §102(b)(2), substituted ''an amount equal to the exempt amount which would be applicable under section 403(f)(8) of this title, to individuals described in subparagraph (D) thereof, if section 102 of the Senior Citizens' Right to Work Act of 1996 had not been enacted'' for ''the exempt amount under section 403(f)(8) of this title which is applicable to individuals described in subparagraph (D) thereof''.

1994—Subsecs. (b), (d)(2)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (d)(4). Pub. L. 103–296, §201(a)(4)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 103–296, §107(a)(4), in par. (4) as amended by Pub. L. 103–296, §201(a)(4)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (d)(5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (f). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places in closing provisions.

Subsec. (f)(2)(A). Pub. L. 103–296, §321(f)(1)(A), struck out ''(in a case to which clause (ii)(II) does not apply)'' after ''new medical evidence and'' in introductory provisions.

Subsec. (f)(2)(B)(ii). Pub. L. 103–296, §321(f)(1)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: ''the requirements of subclause (I) or (II) of subparagraph (A)(ii) are met; or''.

Subsecs. (g), (h). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' in subsec. (h)(1), and ''Commissioner's'' for ''Secretary's'' in subsec. (h)(2).

Subsec. (i). Pub. L. 103–296, §321(a)(19), inserted heading.

1990—Subsec. (d)(2)(A). Pub. L. 101–508, §5103(a)(1), struck out ''(except a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 402(e) or (f) of this title)'' after ''An individual''.

Subsec. (d)(2)(B), (C). Pub. L. 101–508, §5103(a)(2), (3), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''A widow, surviving divorced wife, widower, or surviving divorced husband shall not be determined to be under a disability (for purposes of section 402(e) or (f) of this title) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.''

Subsec. (e). Pub. L. 101–508, §5118(a), designated existing provision as par. (1) and added par. (2).

Subsec. (f). Pub. L. 101–508, §5103(b)(5), struck out ''(or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband),'' after ''gainful activity'' in two places in first sentence following par. (4).

Subsec. (f)(1)(B). Pub. L. 101–508, §5103(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(B)(i) the individual is now able to engage in substantial gainful activity, or

''(ii) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is no longer deemed, under regulations prescribed by the Secretary, sufficient to preclude the individual from engaging in gainful activity; or''.

Subsec. (f)(2)(A)(ii). Pub. L. 101–508, §5103(b)(3), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows:

''(ii)(I) the individual is now able to engage in substantial gainful activity, or

''(II) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity, or''.

Subsec. (f)(3). Pub. L. 101–508, §5103(b)(4), substituted ''therefore the individual is able to engage in substantial gainful activity; or'' for ''therefore—'' and subpars. (A) and (B) which read as follows:

''(A) the individual is able to engage in substantial gainful activity, or

''(B) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or''.

Subsec. (g)(1). Pub. L. 101–508, §5102(1), inserted ''or'' before ''(ii)'' and substituted ''pending'' for ''pending, or (iii) June 1991'' before period at end.

Subsec. (g)(3). Pub. L. 101–508, §5102(2), struck out par. (3) which read as follows: ''The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

''(A) on or after January 12, 1983, or prior to such date but only on the basis of a timely request for a hearing under section 421(d) of this title, or for an administrative review prior to such hearing, and

''(B) prior to January 1, 1991.''

1989—Subsec. (f). Pub. L. 101–239, §10305(c), inserted after first sentence of concluding provisions ''In making for purposes of the preceding sentence any determination relating to fraudulent behavior by any individual or failure by any individual without good cause to cooperate or to take any required action, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).''

Subsec. (g)(1)(iii). Pub. L. 101–239, §10101(1), substituted ''1991'' for ''1990''.

Subsec. (g)(2)(B). Pub. L. 101–239, §10305(d), inserted at end ''In making for purposes of this subparagraph any determination of whether any individual's appeal is made in good faith, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).''

Subsec. (g)(3)(B). Pub. L. 101–239, §10101(2), substituted ''1991'' for ''1990''.

1988—Subsec. (g)(1)(iii). Pub. L. 100–647, §8006(1), substituted ''June 1990'' for ''June 1989''.

Subsec. (g)(3)(B). Pub. L. 100–647, §8006(2), substituted ''January 1, 1990'' for ''January 1, 1989''.

Subsecs. (h), (i). Pub. L. 100–647, §8001(a), added subsec. (h) and redesignated former subsec. (h) as (i).

1987—Subsec. (a)(1). Pub. L. 100–203, §9010(a), substituted ''36 months'' for ''15 months''.

Subsec. (e). Pub. L. 100–203, §9010(e)(2), substituted ''36-month period'' for ''15-month period''.

Subsec. (g)(1). Pub. L. 100–203, §9009(1), substituted ''June 1989'' for ''June 1988'' in cl. (iii) at end.

Subsec. (g)(3)(B). Pub. L. 100–203, §9009(2), substituted ''January 1, 1989'' for ''January 1, 1988''.

1986—Subsec. (e). Pub. L. 99–272 inserted ''(d)(6)(A)(ii), (d)(6)(B),'' after ''(d)(1)(B)(ii)''.

Subsec. (g)(1). Pub. L. 99–514 struck out second comma after ''payment of such benefits'' in provisions following subpar. (C).

1984—Subsec. (a)(1)(B). Pub. L. 98–369, §2662(c)(2), made a clarifying amendment to Pub. L. 98–21, §201(c)(3). See 1983 Amendment note below.

Subsec. (c)(1)(B). Pub. L. 98–369, §2661(m), realigned margins of subpar. (B).

Subsec. (d)(2)(A). Pub. L. 98–369, §2663(a)(16), substituted ''An individual'' for ''an individual''.

Subsec. (d)(2)(C). Pub. L. 98–460, §4(a)(1), added subpar. (C).

Subsec. (d)(5). Pub. L. 98–460, §9(b)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 98–460, §3(a)(1), inserted provisions requiring, in making determinations as to whether an individual is under a disability, that subjective statements as to pain or other symptoms alleged to be disabling be supplemented by, and considered together with, objective medical evidence of those symptoms showing the existence of a medical impairment resulting from anatomical, physiological, or psychological abnormalities.

Subsec. (f). Pub. L. 98–460, §2(a), amended subsec. (f) generally, substituting provisions relating to the standard of review for termination of disability benefits for provisions relating to suspension of benefits for inmates of penal institutions.

Subsec. (g)(1). Pub. L. 98–460, §7(a)(1), in provisions following subpar. (C) substituted reference to benefits under this subchapter for reference to benefits under this chapter, inserted references to the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, substituted reference to benefits under subchapter XVIII of this chapter based on such individual's disability for reference to benefits under subchapter XVIII of this chapter, and substituted ''June 1988'' for ''June 1984'' in cl. (iii).

Subsec. (g)(3)(B). Pub. L. 98–460, §7(a)(2), substituted ''January 1, 1988'' for ''December 7, 1983''.

Subsec. (h). Pub. L. 98–369, §2662(i), amended Pub. L. 98–21, §339(b), resulting in addition of subsec. (h) of this section. See 1983 Amendment note below.

1983—Subsec. (a)(1). Pub. L. 98–21, §201(c)(1)(E), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65''.

Subsec. (a)(1)(B). Pub. L. 98–21, §201(c)(3), as amended by Pub. L. 98–369, §2662(c)(2), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''the age of sixty-five''.

Subsec. (c)(1)(B)(iii). Pub. L. 98–21, §332(b), added cl. (iii).

Subsec. (d)(2). Pub. L. 98–21, §309(*o*), substituted ''widower, or surviving divorced husband'' for ''or widower'' wherever appearing.

Subsec. (f). Pub. L. 98–21, §339(b), before amendment by Pub. L. 98–369, §2662(i), struck out subsec. (f) relating to suspension of benefits for inmates of penal institutions. See note below for subsec. (h).

Subsec. (g). Pub. L. 97–455 added subsec. (g).

Subsec. (g)(3)(B). Pub. L. 98–118 substituted ''December 7, 1983'' for ''October 1, 1983''.

Subsec. (h). Pub. L. 98–21, §339(b), as amended by Pub. L. 98–369, §2662(i), added subsec. (h).

1981—Subsec. (f)(3). Pub. L. 97–123 added par. (3).

1980—Subsec. (a)(1). Pub. L. 96–265, §303(b)(1)(A), inserted reference to subsec. (e) of this section and provisions relating to an individual's termination month.

Subsec. (a)(2). Pub. L. 96–265, §102(b), substituted ''Except as provided in section 402(q) and section 415(b)(2)(A)(ii) of this title'' for ''Except as provided in section 402(q) of this title''.

Subsec. (b). Pub. L. 96–265, §306(c), inserted provisions relating to limitations on the prospective effect of applications.

Subsec. (d)(4). Pub. L. 96–265, §302(a)(1), inserted provisions relating to extraordinary work expenses due to severe disability.

Subsec. (d)(5). Pub. L. 96–265, §309(a), inserted provisions relating to payment for existing medical evidence.

Subsec. (d)(6). Pub. L. 96–473, §5(a)(1), added par. (6).

Subsec. (e). Pub. L. 96–265, §303(b)(2)(A), added subsec. (e).

Subsec. (f). Pub. L. 96–473, §5(c), added subsec. (f).

1977—Subsec. (d)(4). Pub. L. 95–216 inserted provisions relating to activities of blind individuals.

1972—Subsec. (a)(1). Pub. L. 92–603, §118(a)(1), inserted provision for filing of an application for disability insurance benefits after death of insured individual.

Subsec. (a)(2). Pub. L. 92–603, §§104(c), 118(a)(2). struck out ''(if a woman) or age 65 (if a man)'' after ''attained age 62'' and substituted ''an individual'' for ''a woman'', ''in which he attained age 62'' for ''in which she attained age 62'', and ''the application for disability insurance benefits was filed and he was'' for ''he filed his application for disability insurance benefits and was''.

Subsec. (b). Pub. L. 92–603, §118(a)(3), substituted ''if such application is filed'' for ''if he files such application''.

Subsec. (c)(1). Pub. L. 92–603, §§104(d), 117(b), struck out ''(if a woman) or age 65 (if a man)'' after ''attained age 62'' in subpar. (A) and in provisions following subpar. (B) inserted provisions eliminating the disability insured status requirement of substantial recent covered work in the case of individuals who are blind.

Subsec. (c)(2). Pub. L. 92–603, §§116(a), 118(a)(4), substituted ''five consecutive calendar months'' for ''six consecutive calendar months'' in provisions preceding subpar. (A), substituted ''with respect to whom such application is filed'' for ''who files such application'' in subpar. (A), and substituted ''seventeenth'' for ''eighteenth'' in subpar. (B).

1968—Subsec. (a)(1). Pub. L. 90–248, § 158(c)(6)–(8), substituted in subpar. (D) reference to ''subsection (d)'' for ''subsection (c)(2)'', in text of first sentence following subpar. (D) reference to ''subsection (c)(2)'' for ''subsection (c)(3)'', and in last sentence following subpar. (D) reference to ''subsection (d) except for paragraph (1)(B) thereof'' for ''subsection (c)(2) except for subparagraph (B) thereof'', respectively.

Subsec. (c). Pub. L. 90–248, § 158(a), restricted heading to definitions of ''insured status'' and ''waiting period'', struck out former par. (2) defining ''disability'' and requiring medical and other evidence of disability, now incorporated in subsec. (d)(1)(A), (5) of this section, and redesignated former par. (3) as (2).

Subsec. (c)(1)(B)(ii). Pub. L. 90–248, § 105(b), substituted in cl. (ii) ''before the quarter in which he attains'' for ''before he attains'' and struck out ''and he is under a disability by reason of blindness (as defined in section 416(i)(1) of this title)'' after ''age 31''.

Subsec. (d). Pub. L. 90–248, § 158(b), redesignated former first sentence of former subsec. (c)(2), comprising subpars. (A) and (B), as par. (1)(A), (B), added pars. (2) to (4), and redesignated former second sentence of former subsec. (c)(2) as par. (5).

1965—Subsec. (a)(1). Pub. L. 89–97, §§ 303(b)(3), 344(c), struck out from subpar. (D) ''at the time such application is filed,'' after parenthetical provision and from provisions following subpar. (D) ''the first month for which he is entitled to old-age insurance benefits'' after ''age 65,''; and prohibit payment to an individual who would not meet the definition of disability in subsec. (c)(2) except for subpar. (B) thereof for any month in which he engages in substantial gainful activity, and payment for such month under subsec. (b), (c), or (d) of section 402 of this title to any person on the basis of the wages and self-employment income of such individual, respectively.

Subsec. (a)(2). Pub. L. 89–97, §§ 302(e), 304(m), inserted in first sentence ''and was entitled to an old-age insurance benefit for each month for which (pursuant to subsection (b) of this section) he was entitled to a disability insurance benefit'' and ''Except as provided in section 402(q) of this title'' and in last sentence substituted ''shall not include the year'' for ''shall not include the first year'' and struck out ''both was fully insured and had'' before ''attained age 62'' in two places, respectively.

Subsec. (a)(3). Pub. L. 89–97, § 304(n), repealed par. (3) which prohibited an individual from becoming entitled to disability insurance benefits if he is entitled to a widow's, widower's, or parent's insurance benefit, or an old-age, wife's or husband's insurance benefit.

Subsec. (b). Pub. L. 89–97, §§ 303(c), 328(c), struck out from last sentence ''after June 1957'' after ''for any months'' and substituted ''before'' for ''prior to'' where first appearing and ''if he files such application before the end of the 12th month immediately succeeding such month'' for ''if he is continuously under a disability after such month and until he files application therefor and he files said application prior to the end of the twelfth month immediately succeeding such month''; and substituted provisions calling for an application for benefits filed before the first month in which the applicant satisfies the requirements for such benefits to be deemed a valid application only if the applicant satisfies the requirements before the Secretary makes a final decision on the application and calling for the application to be deemed filed in the first month if the applicant is found to satisfy the requirements for provisions placing an outer limit on the time prior to entitlement during which an application would be deemed filed during the first month prior to entitlement, respectively.

Subsec. (c)(1). Pub. L. 89–97, § 344(b), removed from existing subpar. (B) provision prohibiting the inclusion, as part of such 40-quarter period, of any quarter any part of which was included in a prior period of disability unless such quarter was a quarter of coverage, and designated such subpar., as so amended as subpar. (B)(i), added subpar. (B)(ii), and added the material following subpar. (B)(ii) prohibiting inclusion of any quarter as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage and calling for reduction by one of the number of quarters in any period whenever such number of quarters is an odd number.

Subsec. (c)(2)(A). Pub. L. 89–97, § 303(a)(2), designated existing provisions as subpar. (A) and substituted ''which has lasted or can be expected to last for a continuous period of not less than 12 months; or'' for ''to be of long-continued and indefinite duration''.

Subsec. (c)(2)(B). Pub. L. 89–97, § 344(d), added subpar. (B).

Subsec. (c)(3)(A). Pub. L. 89–97, § 303(b)(4), struck out ''which continues until such application is filed'' after ''disability''.

1961—Subsec. (a)(1). Pub. L. 87–64, § 102(b)(2)(C), substituted ''the month in which he attains age 65, the first month for which he is entitled to old-age insurance benefits'' for ''the month in which he attains the age of sixty-five''.

Subsec. (a)(2). Pub. L. 87–64, § 102(c)(2)(C), (3)(D), substituted ''as though he had attained age 62 (if a woman) or age 65 (if a man)'' for ''as though he had attained retirement age'', and ''fully insured and had attained age 62'' for ''fully insured and had attained retirement age'', in two places.

Subsec. (a)(3). Pub. L. 87–64, § 102(b)(2)(B), added par. (3).

Subsec. (c)(1)(A). Pub. L. 87–64, § 102(c)(3)(E), substituted ''attained age 62 (if a woman) or age 65 (if a man)'' for ''attained retirement age''.

1960—Subsec. (a)(1). Pub. L. 86–778, §§ 401(a), 402(a), 403(b), struck out provisions from cl. (B) which required an individual to have attained the age of 50, inserted provisions authorizing payment of benefits to an individual for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability which ceased, within the 60-month period preceding the first month in which he is under such disability, and substituted provisions requiring benefits to end with the month preceding whichever of the following is the earliest: the month in which he dies, the month in which he attains the age of 65, or the third month following the month in which his disability ceases for provisions which required the benefits to end with the month preceding the first month in which any of the following occurs: his disability ceases, he dies, or he attains the age of 65.

Subsec. (a)(2). Pub. L. 86–778, § 303(f), amended generally subsec. (a)(2), as amended by section 402(b) of Pub. L. 86–778 which read as follows: ''Such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 415 of this title as though he became entitled to old-age insurance benefits in—

''(A) the first month of his waiting period, or

''(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes so entitled to such disability insurance benefits.''

Pub. L. 86–778, § 402(b), amended subsec. (a)(2) generally. Prior to amendment, subsec. (a)(2) read as follows: ''Such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 415 of this title as though he became entitled to old-age insurance benefits in the first month of his waiting period.''

Subsec. (b). Pub. L. 86–778, § 402(c), (d), prohibited acceptance of an application, in any case in which cl. (ii) of par. (1) of subsec. (a) of this section is applicable, if it is filed more than six months before the first month for which the applicant becomes entitled to benefits, inserted provisions requiring any application filed within the nine months' period or six months' period, as the case may be, to be deemed to have been filed in

such first month, and substituted ''if he is continuously under a disability after such month and until he files application therefor, and he files such application'' for ''if he files application therefor''.

Subsec. (c)(3). Pub. L. 86–778, § 401(b), struck out provisions which prohibited a waiting period for any individual from beginning before the first day of the sixth month before the month in which he attains the age of 50.

1958—Subsec. (b). Pub. L. 85–840, § 202(a), provided that individuals who would have been entitled to disability insurance benefits for any month after June 1957 had they filed application therefor prior to the end of such month shall be entitled to disability benefits for such month if they file application therefor prior to the end of the twelfth month immediately succeeding such month.

Subsec. (c)(1). Pub. L. 85–840, § 204(b), substituted ''fully insured'' for ''fully and currently insured'' in cl. (A).

Subsec. (c)(3). Pub. L. 85–840, § 202(b), inserted ''which continues until such application is filed'' after ''under a disability'' in cl. (A), and substituted ''eighteenth month'' for ''sixth month'' in three instances in cl. (B).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 applicable to benefit applications based on social security account numbers issued on or after Jan. 1, 2004, see section 211(c) of Pub. L. 108–203, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title I, § 112(c), Dec. 17, 1999, 113 Stat. 1886, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1383 of this title] shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act [Dec. 17, 1999].

''(2) LIMITATION.—No benefit shall be payable under title II or XVI [of the Social Security Act, subchapter II or XVI of this chapter] on the basis of a request for reinstatement filed under section 223(i) or 1631(p) of the Social Security Act (42 U.S.C. 423(i), 1383(p)) before the effective date described in paragraph (1).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 102(b)(2) of Pub. L. 104–121 applicable with respect to taxable years ending after 1995, see section 102(c) of Pub. L. 104–121, set out as a note under section 403 of this title.

Amendment by section 105(a)(1) of Pub. L. 104–121 applicable to individual who applies for, or whose claim is finally adjudicated with respect to, benefits under this subchapter based on disability on or after Mar. 29, 1996, with special rule for any individual who applied, and whose claim has been finally adjudicated, before Mar. 29, 1996, see section 105(a)(5) of Pub. L. 104–121, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 321(f)(1) of Pub. L. 103–296 effective as if included in the provisions of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, to which such amendment relates, see section 321(f)(5) of Pub. L. 103–296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5103(a), (b)(2)–(5) of Pub. L. 101–508 applicable with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after Jan. 1, 1991, or are pending on such date, see section 5103(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

Section 5118(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits for months after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10305(c), (d) of Pub. L. 101–239 applicable with respect to determinations made on or after July 1, 1990, see section 10305(f) of Pub. L. 101–239, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8001(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply to determinations by administrative law judges of entitlement to benefits made after 180 days after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9010(a), (e)(2) of Pub. L. 100–203 effective Jan. 1, 1988, and applicable with respect to individuals entitled to benefits under specific provisions of this section and section 402 of this title for any month after December 1987, and individuals entitled to benefits payable under specific provisions of this section and section 402 of this title for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section 9010(f) of Pub. L. 100–203, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Dec. 1, 1980, and applicable with respect to any individual who is under a disability (as defined in subsection (d) of this section) on or after that date, see section 12107(c) of Pub. L. 99–272, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 2(d) of Pub. L. 98–460 provided that:

''(1) The amendments made by this section [amending this section and sections 416 and 1382c of this title and enacting provisions set out as notes under this section] shall apply only as provided in this subsection.

''(2) The amendments made by this section shall apply to—

''(A) determinations made by the Secretary on or after the date of the enactment of this Act [Oct. 9, 1984];

''(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act [Oct. 9, 1984] and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act [section 405 of this title] and regulations of the Secretary;

''(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

''(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act [Oct. 9, 1984].

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

''(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act [this subchapter or subchapter XVI or XVIII of this chapter]—

''(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

''(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date,

the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Security Act as amended by this section. Such notification shall specify that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall make a review of the determination described in subparagraph (A) in accordance with the provisions of this section and the provisions of the Social Security Act as amended by this section. The amendments made by this section shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

''(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act [section 405 of this title] and regulations issued by the Secretary in conformity with such section.

''(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

''(6) For purposes of this subsection, the term 'action relating to medical improvement' means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act [this subchapter or subchapter XVI or XVIII of this chapter] based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.''

Section 3(a)(3) of Pub. L. 98–460 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1382c of this title] shall apply to determinations made prior to January 1, 1987.''

Section 4(c) of Pub. L. 98–460 provided that: ''The amendments made by this section [amending this section and sections 416 and 1382c of this title] shall apply with respect to determinations made on or after the first day of the first month beginning after 30 days after the date of the enactment of this Act [Oct. 9, 1984].''

Section 9(b)(2) of Pub. L. 98–460 provided that: ''The amendments made by this subsection [amending this section] shall apply to determinations made on or after the date of the enactment of this Act [Oct. 9, 1984].''

Amendment by sections 2661(m) and 2662(c)(2), (i) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(16) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 309(*o*) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Amendment by section 332(b) of Pub. L. 98–21 effective with respect to applications for disability insurance benefits under this section filed after Apr. 20, 1983, except that no monthly benefits under this subchapter shall be payable or increased by reason of such amendment for months before the month following April, 1983, see section 332(c) of Pub. L. 98–21, set out as a note under section 416 of this title.

Amendment by section 339(b) of Pub. L. 98–21 applicable with respect to monthly benefits payable for months beginning on or after April 20, 1983, see section 339(c) of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–473 effective with respect to benefits payable for months beginning on or after Oct. 1, 1980, see section 5(d) of Pub. L. 96–473, set out as a note under section 402 of this title.

For effective date of amendment by section 102(b) of Pub. L. 96–265, see section 102(c) of Pub. L. 96–265, set out as a note under section 415 of this title.

Section 302(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 1382a and 1382c of this title] shall apply with respect to expenses incurred on or after the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980].''

For effective date of amendment by section 303(b)(1)(A), (2)(A) of Pub. L. 96–265, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

Amendment by section 306(c) of Pub. L. 96–265 applicable to applications filed after June 1980, see section 306(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

Section 309(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to evidence requested on or after the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 104(c), (d) of Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after Dec. 1974, with the figure ''65'' in subsec. (c)(1)(A) of this section to be deemed to read ''64'' in the case of a man who attains age 62 in 1973, and deemed to read ''63'' in the case of a man who attains age 62 in 1974, see section 104(j) of Pub. L. 92–603, set out as an Effective Date of 1972 Amendment note under section 414 of this title.

Section 116(e) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 402 and 416 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [this section], applications for widow's and widower's insurance benefits based on disability under section 202 of such Act [section 402 of this title], and applications for disability determinations under section 216(i) of such Act [section 416(i) of this title], filed—

''(1) in or after the month in which this Act is enacted [October 1972], or

''(2) before the month in which this Act is enacted, if—

''(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month, or

''(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by this section for any month before January 1973.''

Section 117(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [this section], and for disability determinations under section 216(i) of such Act [section 416(i) of this title], filed—

''(1) in or after the month in which this Act is enacted, or

''(2) before the month in which this Act is enacted if—

''(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

''(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by this section for months before January 1973.''

Amendment by section 118(a) of Pub. L. 92–603 applicable in the case of deaths occurring after Dec. 31, 1969, with any applications with respect to an individual whose death occurred after Dec. 31, 1969, but before Oct. 30, 1972, to be deemed to have been filed in the month in which death occurred if filed in or within three months after Oct. 1972, see section 118(c) of Pub. L. 92–603, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 105(b) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for months after January 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 105(c) of Pub. L. 90–248, set out as a note under section 416 of this title.

Section 158(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and sections 402, 416, 421, 422, and 425 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [this section], and for disability determinations under section 216(i) of such Act [section 416(i) of this title], filed—

''(1) in or after the month in which this Act is enacted [January 1968], or

''(2) before the month in which this Act is enacted if the applicant has not died before such month and if—

''(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

''(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 302(e) of Pub. L. 89–97 applicable in the case of individuals who become entitled to disability insurance benefits under this section after December 1965, see section 302(f)(5) of Pub. L. 89–97, set out as a note under section 415 of this title.

Section 303(f)(1) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) [amending this section and section 416 of this title], paragraphs (3) and (4) of subsection (b) [amending this section], and subsections (c) and (d) [amending this section and section 402 of this title], and the provisions of subparagraphs (B) and (E) of section 216(i)(2) of the Social Security Act [section 416(i)(2) of this title] (as amended by subsection (b)(1) of this section), shall be effective with respect to applications for disability insurance benefits under section 223 [this section], and for disability determinations under section 216(i), of the Social Security Act filed—

''(A) in or after the month in which this Act is enacted [July 1965], or

''(B) before the month in which this Act is enacted, if the applicant has not died before such month and if—

''(i) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

''(ii) the notice referred to in subparagraph (i) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly insurance benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by subsections (a) and (b) [amending this section and section 416 of this title] for months before the second month following the month in which this Act is enacted [July 1965]. The preceding sentence shall also be applicable in the case of applications for monthly insurance benefits under title II of the Social Security Act based on the wages and self-employment income of an applicant with respect to whose application for disability insurance benefits under section 223 of such Act [this section] such preceding sentence is applicable.''

Amendment by section 304(m), (n) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter for and after the second month following July 1965 but only on the basis of applications filed in or after July 1965, see section 304(*o*) of Pub. L. 89–97, set out as a note under section 402 of this title.

Amendment by section 328(c) of Pub. L. 89–97 applicable with respect to applications filed on or after July 30, 1965, applications as to which the Secretary has not made a final decision before July 30, 1965, and, if a civil action with respect to a final decision of the Secretary has been commenced under section 405(g) of this title before July 30, 1965, applications as to which there has been no final judicial decision before July 30, 1965, see section 328(d) of Pub. L. 89–97, set out as a note under section 416 of this title.

Amendment by section 344(b)–(d) of Pub. L. 89–97 applicable only with respect to monthly benefits under subchapter II of this chapter for months after August 1965 on the basis of applications for such benefits filed in or after July 1965, see section 344(e) of Pub. L. 89–97, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by section 102(b)(2)(B), (C) of Pub. L. 87–64 effective Aug. 1, 1961, and amendment by section 102(c)(2)(C), (3)(D), (E) of Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(f)(4), (6) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 303(f) of Pub. L. 86–778 provided that the amendment made by such section 303(f) is effective

with respect to individuals who become entitled to benefits under this section after 1960.

Section 401(c) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to monthly benefits under sections 202 and 223 of the Social Security Act [this section and section 402 of this title] for months after the month following the month in which this Act is enacted [September 1960] which are based on the wages and self-employment income of an individual who did not attain the age of fifty in or prior to the month following the month in which this Act is enacted, but only where applications for such benefits are filed in or after the month in which this Act is enacted.''

Section 402(f) of Pub. L. 86–778 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to benefits under section 223 of the Social Security Act [this section] for the month in which this Act is enacted [September 1960] and subsequent months. The amendment made by subsection (c) [amending this section] shall apply only in the case of applications for benefits under such section 223 filed after the seventh month before the month in which this Act is enacted. The amendment made by subsection (d) [amending this section] shall apply only in the case of applications for benefits under such section 223 filed in or after the month in which this Act is enacted. The amendment made by subsection (e) [amending section 416 of this title] shall apply only in the case of individuals who become entitled to benefits under such section 223 in or after the month in which this Act is enacted.''

Amendment by section 403(b) of Pub. L. 86–778 applicable only with respect to benefits under this section for months after September 1960, in the case of individuals who, without regard to such amendment, would have been entitled to such benefits for September 1960, or for any succeeding month, see section 403(e) of Pub. L. 86–778, set out as a note under section 422 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 202 of Pub. L. 85–840 applicable with respect to applications for disability insurance benefits under this section filed after December 1957, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

For applicability of amendment by section 204(b) of Pub. L. 85–840, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE

Section 103(d) of act Aug. 1, 1956, provided that:

''(1) The amendment made by subsection (a) [enacting this section and sections 424 and 425 of this title] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after June 1957.

''(2) For purposes of determining entitlement to a disability insurance benefit for any month after June 1957 and before December 1957, an application for disability insurance benefits filed by any individual after July 1957 and before January 1958 shall be deemed to have been filed during the first month after June 1957 for which such individual would (without regard to this paragraph) have been entitled to a disability insurance benefit had he filed application before the end of such month.''

ELECTION OF PAYMENTS

Section 2(e) of Pub. L. 98–460 provided that: ''Any individual whose case is remanded to the Secretary pursuant to subsection (d) [set out as a note above] or whose request for a review is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act [subsec. (g) of this section or section 1383(a)(7) of this title], to have payments made beginning with the month in which he makes such election, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)—

''(1) shall be made at least until an initial redetermination is made by the Secretary; and

''(2) shall begin with the payment for the month in which such individual makes such election.''

RETROACTIVE BENEFITS

Section 2(f) of Pub. L. 98–460 provided that: ''In the case of any individual who is found to be under a disability after a review required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied.''

PROMULGATION OF REGULATIONS

Section 2(g) of Pub. L. 98–460 provided that: ''The Secretary of Health and Human Services shall prescribe regulations necessary to implement the amendments made by this section [amending this section and sections 416 and 1382c of this title and enacting provisions set out as notes under this section] not later than 180 days after the date of the enactment of this Act [Oct. 9, 1984].''

COMMISSION ON EVALUATION OF PAIN

Section 3(b) of Pub. L. 98–460 provided that:

''(1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the 'Commission') to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act [sections 401 et seq., 1381 et seq. of this title] whether an individual is under a disability. Such study shall be conducted in consultation with the National Academy of Sciences.

''(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and representation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

''(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act [Pub. L. 92–463, set out in the Appendix to Title 5, Government Organization and Employees]) within 60 days after the date of the enactment of this Act [Oct. 9, 1984]. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary.

''(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

''(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Depart-

ment of Health and Human Services as the Commission may require to carry out its functions.

''(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1985. The Commission shall terminate at the time such results are submitted.''

STUDY AND REPORT TO CONGRESSIONAL COMMITTEES ON EFFECT OF CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL ON TRUST FUND EXPENDITURES AND THE RATE OF APPEALS

Section 7(c) of Pub. L. 98–460 provided that:

''(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act [Oct. 9, 1984], conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act [subsec. (g) of this section] is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

''(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

LUMP-SUM PAYMENT OF DISABILITY INSURANCE BENEFITS FOR PERIOD BEGINNING AFTER 1959 AND ENDING PRIOR TO 1964; FILING OF APPLICATION

Section 133 of Pub. L. 92–603 provided that:

''(a) If an individual would (upon the timely filing of an application for a disability determination under section 216(i) of the Social Security Act [section 416(i) of this title]) and of an application for disability insurance benefits under section 223 of such Act [this section]) have been entitled to disability insurance benefits under such section 223 for a period which began after 1959 and ended prior to 1964, such individual shall, upon filing application for disability insurance benefits under such section 223 with respect to such period not later than 6 months after the date of enactment of this section [Oct. 30, 1972], be entitled, notwithstanding any other provision of title II of the Social Security Act [this subchapter], to receive in a lump sum as disability insurance benefits payable under section 223, an amount equal to the total amounts of disability insurance benefits which would have been payable to him for such period if he had timely filed such an application for a disability determination and such an application for disability insurance benefits with respect to such period; but only if—

''(1) prior to the date of enactment of this section and after the date of enactment of the Social Security Amendments of 1967 [Jan. 2, 1968] such period was determined (under section 216(i) of the Social Security Act [section 416(i) of this title]) to be a period of disability as to such individual; and

''(2) the application giving rise to the determination (under such section 216(i)) that such period is a period of disability as to such individual would not have been accepted as an application for such a determination except for the provisions of section 216(i)(2)(F).

''(b) No payment shall be made to any individual by reason of the provisions of subsection (a) except upon the basis of an application filed after the date of enactment of this section.''

SPECIAL INSURED STATUS TEST IN CERTAIN CASES FOR DISABILITY PURPOSES

Individuals not insured for disability benefits as determined under subsec. (c)(1) of this section with respect to any month in a quarter deemed to have met such requirements in certain cases, see section 404 of Pub. L. 86–778, set out as a note under section 416 of this title.

§ 424. Repealed. Pub. L. 85–840, title II, § 206, Aug. 28, 1958, 72 Stat. 1025

Section, act Aug. 14, 1935, ch. 531, title II, § 224, as added Aug. 1, 1956, ch. 836, title I, § 103(a), 70 Stat. 816; amended July 17, 1957, Pub. L. 85–109, § 2(a), 71 Stat. 308, related to reduction of benefits based on disability.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to monthly benefits under this subchapter for August 1958 and succeeding months, see section 207(a) of Pub. L. 85–840, set out as an Effective Date of 1958 Amendment note under section 416 of this title.

§ 424a. Reduction of disability benefits

(a) Conditions for reduction; computation

If for any month prior to the month in which an individual attains the age of 65—

(1) such individual is entitled to benefits under section 423 of this title, and

(2) such individual is entitled for such month to—

(A) periodic benefits on account of his or her total or partial disability (whether or not permanent) under a workmen's compensation law or plan of the United States or a State, or

(B) periodic benefits on account of his or her total or partial disability (whether or not permanent) under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 418(b)(2) of this title), or an instrumentality of two or more States (as that term is used in section 418(g) of this title), other than (i) benefits payable under title 38, (ii) benefits payable under a program of assistance which is based on need, (iii) benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Commissioner of Social Security under section 418 of this title, and (iv) benefits under a law or plan of the United States based on service all or substantially all of which is employment as defined in section 410 of this title,

the total of his benefits under section 423 of this title for such month and of any benefits under section 402 of this title for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of—

(3) such total of benefits under sections 423 and 402 of this title for such month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under such laws or plans,

exceeds the higher of—

(5) 80 per centum of his ''average current earnings'', or

(6) the total of such individual's disability insurance benefits under section 423 of this title for such month and of any monthly insurance benefits under section 402 of this title for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 423 and 402 of this title for a month (in a continuous period of months) reduce such total below the sum of—

(7) the total of the benefits under sections 423 and 402 of this title, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.

For purposes of clause (5), an individual's average current earnings means the largest of (A) the average monthly wage (determined under section 415(b) of this title as in effect prior to January 1979) used for purposes of computing his benefits under section 423 of this title, (B) one-sixtieth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a)(1) and 411(b)(1) of this title) for the five consecutive calendar years after 1950 for which such wages and self-employment income were highest, or (C) one-twelfth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a)(1) and 411(b)(1) of this title) for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled (as defined in section 423(d) of this title) and the five years preceding that year.

(b) Reduction where benefits payable on other than monthly basis

If any periodic benefit for a total or partial disability under a law or plan described in subsection (a)(2) of this section is payable on other than a monthly basis (excluding a benefit payable as a lump sum except to the extent that it is a commutation of, or a substitute for, periodic payments), the reduction under this section shall be made at such time or times and in such amounts as the Commissioner of Social Security finds will approximate as nearly as practicable the reduction prescribed by subsection (a) of this section.

(c) Reductions and deductions under other provisions

Reduction of benefits under this section shall be made after any reduction under subsection (a) of section 403 of this title, but before deductions under such section and under section 422(b)[1] of this title.

(d) Exception

The reduction of benefits required by this section shall not be made if the law or plan described in subsection (a)(2) of this section under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this subchapter on the basis of the wages and self-employment income of an individual entitled to benefits under section 423 of this title, and such law or plan so provided on February 18, 1981.

(e) Conditions for payment

If it appears to the Commissioner of Social Security that an individual may be eligible for periodic benefits under a law or plan which would give rise to reduction under this section, the Commissioner may require, as a condition of certification for payment of any benefits under section 423 of this title to any individual for any month and of any benefits under section 402 of this title for such month based on such individual's wages and self-employment income, that such individual certify (i) whether he has filed or intends to file any claim for such periodic benefits, and (ii) if he has so filed, whether there has been a decision on such claim. The Commissioner of Social Security may, in the absence of evidence to the contrary, rely upon such a certification by such individual that he has not filed and does not intend to file such a claim, or that he has so filed and no final decision thereon has been made, in certifying benefits for payment pursuant to section 405(i) of this title.

(f) Redetermination of reduction

(1) In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 423 of this title and any benefits under section 402 of this title based on his wages and self-employment income was first required (in a continuous period of months), and in each third year thereafter, the Commissioner of Social Security shall redetermine the amount of such benefits which are still subject to reduction under this section; but such redetermination shall not result in any decrease in the total amount of benefits payable under this subchapter on the basis of such individual's wages and self-employment income. Such redetermined benefit shall be determined as of, and shall become effective with, the January following the year in which such redetermination was made.

(2) In making the redetermination required by paragraph (1), the individual's average current earnings (as defined in subsection (a) of this section) shall be deemed to be the product of—

(A) his average current earnings as initially determined under subsection (a) of this section; and

(B) the ratio of (i) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the year in which such redetermination is made to (ii) the national average wage index (as so defined) for the calendar year before the year in which the

[1] See References in Text note below.

reduction was first computed (but not counting any reduction made in benefits for a previous period of disability).

Any amount determined under this paragraph which is not a multiple of $1 shall be reduced to the next lower multiple of $1.

(g) Proportionate reduction; application of excess

Whenever a reduction in the total of benefits for any month based on an individual's wages and self-employment income is made under this section, each benefit, except the disability insurance benefit, shall first be proportionately decreased, and any excess of such reduction over the sum of all such benefits other than the disability insurance benefits shall then be applied to such disability insurance benefit.

(h) Furnishing of information

(1) Notwithstanding any other provision of law, the head of any Federal agency shall provide such information within its possession as the Commissioner of Social Security may require for purposes of making a timely determination of the amount of the reduction, if any, required by this section in benefits payable under this subchapter, or verifying other information necessary in carrying out the provisions of this section.

(2) The Commissioner of Social Security is authorized to enter into agreements with States, political subdivisions, and other organizations that administer a law or plan subject to the provisions of this section, in order to obtain such information as the Commissioner may require to carry out the provisions of this section.

(Aug. 14, 1935, ch. 531, title II, § 224, as added Pub. L. 89–97, title III, § 335, July 30, 1965, 79 Stat. 406; amended Pub. L. 90–248, title I, § 159(a), Jan. 2, 1968, 81 Stat. 869; Pub. L. 92–603, title I, § 119(a), (b), Oct. 30, 1972, 86 Stat. 1352; Pub. L. 94–202, § 8(j), Jan. 2, 1976, 89 Stat. 1140; Pub. L. 95–216, title II, § 205(d), title III, § 353(c), Dec. 20, 1977, 91 Stat. 1529, 1553; Pub. L. 97–35, title XXII, § 2208(a), Aug. 13, 1981, 95 Stat. 839; Pub. L. 99–272, title XII, § 12109(a), Apr. 7, 1986, 100 Stat. 286; Pub. L. 99–509, title IX, § 9002(c)(2)(F), Oct. 21, 1986, 100 Stat. 1972; Pub. L. 101–239, title X, § 10208(b)(2)(A), (C), (d)(2)(A)(i), (iii), Dec. 19, 1989, 103 Stat. 2477, 2478, 2480, 2481; Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(e)(2)(H), Aug. 15, 1994, 108 Stat. 1478, 1540.)

REFERENCES IN TEXT

Section 422(b) of this title, referred to in subsec. (c), was repealed by Pub. L. 106–170, title I, § 101(b)(1)(C), Dec. 17, 1999, 113 Stat. 1873.

PRIOR PROVISIONS

A prior section 224 of act Aug. 14, 1935, was classified to section 424 of this title prior to repeal by Pub. L. 85–840, title II, § 206, Aug. 28, 1958, 72 Stat. 1025.

AMENDMENTS

1994—Subsecs. (a)(2)(B), (b), (e), (f)(1). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner may require'' for ''he may require'' in subsec. (e).

Subsec. (f)(2). Pub. L. 103–296, § 321(e)(2)(H), inserted ''and'' at end of subpar. (A), added subpar. (B), and struck out former subpars. (B) and (C) which read as follows:

''(B) the ratio of (i) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which such redetermination is made to (ii)(I) the average of the total wages ((as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is before 1991, or (II) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is after 1990; and

''(C) in any case in which the reduction was first computed before 1978, the ratio of (i) the average of the taxable wages reported to the Secretary for the first calendar quarter of 1977 to (ii) the average of the taxable wages reported to the Secretary for the first calendar quarter of the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability).''

Subsec. (h). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in pars. (1) and (2) and ''the Commissioner may'' for ''he may'' in par. (2).

1989—Subsec. (a). Pub. L. 101–239, § 10208(d)(2)(A)(iii), substituted ''409(a)(1)'' for ''409(a)'' in cls. (B) and (C) of last sentence.

Subsec. (f)(2)(B)(i). Pub. L. 101–239, § 10208(b)(2)(A), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, § 10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (f)(2)(B)(ii). Pub. L. 101–239, § 10208(b)(2)(C), inserted ''(I)'' after ''(ii)'', substituted ''(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title)'' for ''as so defined and computed)'' and inserted '', if such calendar year is before 1991, or (II) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is after 1990'' before ''; and'' at end.

1986—Subsec. (a)(2). Pub. L. 99–272, § 12109(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''such individual is entitled for such month to periodic benefits on account of such individual's total or partial disability (whether or not permanent) under—

''(A) a workmen's compensation law or plan of the United States or a State, or

''(B) any other law or plan of the United States, a State, a political subdivision (as that term is used in section 418(b)(2) of this title), or an instrumentality of two or more States (as that term is used in section 418(k) of this title),

other than benefits payable under title 38, benefits payable under a program of assistance which is based on need, benefits based on service all, or substantially all, of which was included under an agreement entered into by a State and the Secretary under section 418 of this title, and benefits under a law or plan of the United States based on service all or part of which is employment as defined in section 410 of this title,''.

Subsec. (a)(2)(B). Pub. L. 99–509 substituted ''section 418(g)'' for ''section 418(k)''.

Pub. L. 99–272, § 12109(a)(2), substituted ''all or substantially all of which'' for ''all or part of which'' in cl. (iv).

1981—Subsec. (a). Pub. L. 97–35, § 2208(a)(2)–(4), in provision preceding par. (1) substituted ''age of 65'' for ''age of 62'', in par. (2) inserted provisions including periodic benefits under any other law or plan of the United States, a State, a political subdivision, or an instrumentality of two or more States and excluding specified benefits and struck out provision requiring that the Secretary receive notice, in a prior month, of the entitlement for such month, and in par. (4) substituted ''such laws or plans'' for ''the workmen's compensation law or plan''.

Subsec. (b). Pub. L. 97–35, § 2208(a)(5), substituted ''for a total or partial disability under a law or plan described in subsection (a)(2) of this section'' for ''under a workmen's compensation law or plan''.

Subsec. (d). Pub. L. 97–35, § 2208(a)(6), substituted ''law or plan described in subsection (a)(2) of this section'' for ''workmen's compensation law or plan'' and ''section 423 of this title, and such law or plan so provided on February 18, 1981'' for ''section 423 of this title''.

Subsec. (e). Pub. L. 97–35, § 2208(a)(7), struck out ''workmen's compensation'' after ''periodic benefits under a''.

Subsec. (h). Pub. L. 97–35, § 2208(a)(8), added subsec. (h).

1977—Subsec. (a). Pub. L. 95–216, §§ 205(d), 353(c)(1), struck out provisions following par. (8) under which the Secretary, in cases where an individual's wages and self-employment income reported to the Secretary for a calendar year reached the limitations specified in sections 409(a) and 411(b)(1) of this title, was required to estimate the total of such wages and self-employment income on the basis of such information as might be available to him indicating the extent (if any) by which the wages and self-employment income exceeded limitations, and, effective with respect to monthly benefits under this subchapter payable for months after Dec. 1978, and with respect to lump-sum death payments with respect to death occurring after Dec. 1978, inserted ''(determined under section 415(b) of this title as in effect prior to January 1979)'' after ''(A) the average monthly wage'' in provisions following par. (8).

Subsec. (f)(2). Pub. L. 95–216, § 353(c)(2), divided existing provisions into subpars. (A) and (B), added subpar. (C), and in subpar. (B) as so redesignated substituted ''(i) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which such redetermination is made to (ii) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year'' for ''(i) the average of the taxable wages of all persons for whom taxable wages were reported to the Secretary for the first calendar quarter of the calendar year before the calendar year in which the redetermination is made, to (ii) the average of the taxable wages of such persons reported to the Secretary for the first calendar quarter of the taxable year before the calendar year''.

1976—Subsec. (f)(2). Pub. L. 94–202 substituted ''calendar year before the calendar year'' for ''calendar year'' and ''taxable year before the calendar year'' for ''taxable year''.

1972—Subsec. (a). Pub. L. 92–603 added cl. (C) in provisions for the determination of an individual's average current earnings so as to introduce into the formula a factor of one-twelfth of the total wages and self-employment income for the calendar year in which he had the highest such wages and income during the year in which he became disabled and the five years preceding that year.

1968—Subsec. (a). Pub. L. 90–248 inserted in cl. (B) of first sentence following par. (8) ''(computed without regard to the limitations specified in sections 409(a) and 411(b)(1) of this title)'' before ''for the five'', and inserted last sentence authorizing the Secretary, in certain cases, to estimate the total of wages and self-employment income for purposes of cl. (B) indicating the extent such earnings exceed the limitations in sections 409(a) and 411(b)(1) of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10208(b)(2)(A), (C) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–509 effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of this title prior to Oct. 21, 1986, with certain exceptions, see section 9002(d) of Pub. L. 99–509 set out as a note under section 418 of this title.

Section 12109(b) of Pub. L. 99–272 provided that:

''(1) The amendment made by subsection (a)(1) [amending this section] shall be effective as though it had been included or reflected in the amendment made by section 2208(a)(3) of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35, amending this section].

''(2) The amendment made by subsection (a)(2) [amending this section] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of individuals who become disabled (within the meaning of section 223(d) of the Social Security Act [section 423(d) of this title]) after the month in which this Act is enacted [April 1986].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2208(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to individuals who first become entitled to benefits under section 223(a) of the Social Security Act [section 423(a) of this title] for months beginning after the month in which this Act is enacted [August 1981], but only in the case of an individual who became disabled within the meaning of section 223(d) of such Act after the sixth month preceding the month in which this Act is enacted.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 205(d) of Pub. L. 95–216 effective with respect to monthly benefits under this subchapter payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after December 1978, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

Section 353(c)(1) of Pub. L. 95–216 provided that the amendment made by that section is effective with respect to the estimates for calendar years beginning after Dec. 31, 1977.

Amendment by section 353(c)(2) of Pub. L. 95–216 effective Jan. 1, 1979, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 119(c) of Pub. L. 92–603 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972.''

EFFECTIVE DATE OF 1968 AMENDMENTS; DETERMINATION OF AVERAGE CURRENT EARNINGS UPON REDETERMINATION OF BENEFITS SUBJECT TO REDUCTION

Section 159(b) of Pub. L. 90–248 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968.

''(2) For purposes of any redetermination which is made under section 224(f) of the Social Security Act [subsec. (f) of this section] in the case of benefits subject to reduction under section 224 of such Act, where such reduction as first computed was effective with respect to benefits for the month in which this Act is enacted [January 1968] or a prior month, the amendments made by subsection (a) of this section [amending subsec. (a) of this section] shall also be deemed to have applied in the initial determination of the 'average current earnings' of the individual whose wages and self-employment income are involved.''

EFFECTIVE DATE

Section 335 of Pub. L. 89–97 provided that this section is effective with respect to benefits under this subchapter for months after December 1965 based on the wages and self-employment income of individuals entitled to benefits under section 423 of this title whose period of disability (as defined in this subchapter) began after June 1, 1965.

§ 425. Additional rules relating to benefits based on disability

(a) Suspension of benefits

If the Commissioner of Social Security, on the basis of information obtained by or submitted to the Commissioner, believes that an individual entitled to benefits under section 423 of this title, or that a child who has attained the age of eighteen and is entitled to benefits under section 402(d) of this title, or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 402(e) of this title, or that a widower or surviving divorced husband who has not attained age 60 and is entitled to benefits under section 402(f) of this title, may have ceased to be under a disability, the Commissioner of Social Security may suspend the payment of benefits under such section 402(d), 402(e), 402(f), or 423 of this title until it is determined (as provided in section 421 of this title) whether or not such individual's disability has ceased or until the Commissioner of Social Security believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 421(b) of this title, the Commissioner of Social Security shall promptly notify the appropriate State of the Commissioner's action under this subsection and shall request a prompt determination of whether such individual's disability has ceased. For purposes of this subsection, the term ''disability'' has the meaning assigned to such term in section 423(d) of this title. Whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 402 of this title, on the basis of the wages and self-employment income of such individual, shall be suspended for such month. The first sentence of this subsection shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 402(d) of this title).

(b) Continued payments during rehabilitation program

Notwithstanding any other provision of this subchapter, payment to an individual of benefits based on disability (as described in the first sentence of subsection (a) of this section) shall not be terminated or suspended because the physical or mental impairment, on which the individual's entitlement to such benefits is based, has or may have ceased, if—

(1) such individual is participating in a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b–19 of this title or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security, and

(2) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.

(Aug. 14, 1935, ch. 531, title II, § 225, as added Aug. 1, 1956, ch. 836, title I, § 103(a), 70 Stat. 817; amended Pub. L. 85–840, title II, § 205(*o*), Aug. 28, 1958, 72 Stat. 1025; Pub. L. 89–97, title III, § 306(c)(15), July 30, 1965, 79 Stat. 373; Pub. L. 90–248, title I, §§ 104(d)(5), 158(c)(9), Jan. 2, 1968, 81 Stat. 833, 869; Pub. L. 92–603, title I, § 107(b)(5), Oct. 30, 1972, 86 Stat. 1343; Pub. L. 96–265, title III, § 301(a), June 9, 1980, 94 Stat. 449; Pub. L. 98–21, title III, § 309(p), Apr. 20, 1983, 97 Stat. 117; Pub. L. 101–508, title V, § 5113(a), Nov. 5, 1990, 104 Stat. 1388–273; Pub. L. 103–296, title I, § 107(a)(4), title II, § 201(a)(3)(A), Aug. 15, 1994, 108 Stat. 1478, 1494; Pub. L. 104–121, title I, § 105(a)(4), Mar. 29, 1996, 110 Stat. 853; Pub. L. 106–170, title I, § 101(b)(1)(D), Dec. 17, 1999, 113 Stat. 1873.)

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106–170 substituted ''a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b–19 of this title or another program of vocational rehabilitation services, employment services, or other support services'' for ''a program of vocational rehabilitation services''.

1996—Subsec. (c). Pub. L. 104–121 struck out subsec. (c) which related to nonpayment or termination of benefits where entitlement involved alcoholism or drug addiction.

1994—Pub. L. 103–296, § 201(a)(3)(A)(i), amended section catchline.

Subsec. (a). Pub. L. 103–296, § 201(a)(3)(A)(i), inserted heading.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''to the Commissioner'' for ''to him'', and ''the Commissioner's'' for ''his''.

Subsec. (b). Pub. L. 103–296, § 201(a)(3)(A)(ii), inserted heading.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in pars. (1) and (2).

Subsec. (c). Pub. L. 103–296, § 201(a)(3)(A)(iii), added subsec. (c).

Pub. L. 103–296, § 107(a)(4), in subsec. (c) as added by Pub. L. 103–296, § 201(a)(3)(A)(iii), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' wherever appearing.

1990—Subsec. (b)(1). Pub. L. 101–508, § 5113(a)(1), added par. (1) and struck out former par. (1) which read as follows: ''such individual is participating in an approved

vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and''.

Subsec. (b)(2). Pub. L. 101–508, § 5113(a)(2), substituted ''Secretary'' for ''Commissioner of Social Security''.

1983—Subsec. (a). Pub. L. 98–21 inserted ''or surviving divorced husband'' after ''widower''.

1980—Pub. L. 96–265 designated existing provisions as subsec. (a), made conforming amendments in subsec. (a) as so designated, and added subsec. (b).

1972—Pub. L. 92–603 substituted ''age 60'' for ''age 62''.

1968—Pub. L. 90–248 in first sentence inserted ''or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 402(e) of this title, or that a widower who has not attained age 62 and is entitled to benefits under section 402(f) of this title,'' after ''section 402(d) of this title,'' and substituted ''402(d), 402(e), 402(f), or 423'' for ''423 or 402(d)'', and substituted in third sentence reference to ''423(d)'' for ''423(c)(2)''.

1965—Pub. L. 89–97 inserted ''The first sentence of this section shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 402(d) of this title).''

1958—Pub. L. 85–840 provided that whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 402 of this title, on the basis of the wages and self-employment income of such individual, shall be suspended for such month.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–121 applicable to any individual who applies for, or whose claim is finally adjudicated with respect to, benefits under this subchapter based on disability on or after Mar. 29, 1996, with special rule for any individual who applied, and whose claim has been finally adjudicated, before Mar. 29, 1996, see section 105(a)(5) of Pub. L. 104–121, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT; SUNSET PROVISION

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(a)(3)(C), (E) of Pub. L. 103–296 provided that:

''(C) SUNSET OF 36-MONTH RULE.—Section 225(c)(7) of the Social Security Act [subsec. (c)(7) of this section] (added by subparagraph (A)) shall cease to be effective with respect to benefits for months after September 2004.

''(E) EFFECTIVE DATE.—

''(i) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this paragraph [amending this section and sections 426 and 426–1 of this title] shall apply with respect to benefits based on disability (as defined in section 225(c)(9) of the Social Security Act [subsec. (c)(9) of this section], added by this section) which are otherwise payable in months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994]. The Secretary of Health and Human Services shall issue regulations necessary to carry out the amendments made by this paragraph not later than 180 days after the date of the enactment of this Act.

''(ii) REFERRAL AND MONITORING AGENCIES.—Section 225(c)(5) of the Social Security Act [subsec. (c)(5) of this section] (added by this subsection) shall take effect 180 days after the date of the enactment of this Act.

''(iii) TERMINATION AFTER 36 MONTHS.—Section 225(c)(7) of the Social Security Act [subsec. (c)(7) of this section] (added by this subsection) shall apply with respect to benefits based on disability (as so defined) for months beginning after 180 days after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5113(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall be effective with respect to benefits payable for months after the eleventh month following the month in which this Act is enacted [November 1990] and shall apply only with respect to individuals whose blindness or disability has or may have ceased after such eleventh month.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 301(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall become effective on the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980], and shall apply with respect to individuals whose disability has not been determined to have ceased prior to such first day.''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to monthly benefits under this subchapter for months after December 1972, with specified exceptions, see section 107(c) of Pub. L. 92–603, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 104(d)(5) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

Amendment by section 158(c)(9) of Pub. L. 90–248 applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 205(*o*) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE

Section applicable only with respect to monthly benefits under this subchapter for months after June 1957, see section 103(a) of act Aug. 1, 1956, set out as a note under section 423 of this title.

REPORT ON REFERRAL, MONITORING, TESTING AND TREATMENT OF INDIVIDUALS WHERE ENTITLEMENT TO OR TERMINATION OF BENEFITS INVOLVES ALCOHOLISM OR DRUG ADDICTION

Section 201(a)(3)(B) of Pub. L. 103–296 provided that not later than Dec. 31, 1996, the Secretary was to sub-

mit to Congress a full and complete report on the Secretary's activities under former subsec. (c)(5) of this section, which was to include the number and percentage of individuals referred to in such provision who had not received regular drug testing since the effective date of such provision, prior to repeal by Pub. L. 105–33, title V, § 5525(c), Aug. 5, 1997, 111 Stat. 625.

TRANSITION RULES FOR CURRENT BENEFICIARIES

Section 201(a)(3)(F) of Pub. L. 103–296 provided that: ''In any case in which an individual is entitled to benefits based on disability, the determination of disability was made by the Secretary of Health and Human Services during or before the 180-day period following the date of the enactment of this Act [Aug. 15, 1994], and alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is under a disability—

''(i) TREATMENT REQUIREMENT.—Paragraphs (1) through (4) of section 225(c) of the Social Security Act [subsec. (c)(1) to (4) of this section] (added by this subsection) shall apply only with respect to benefits paid in months after the month in which such individual is notified by the Secretary in writing that alcoholism or drug addiction is a contributing factor material to the Secretary's determination and that such individual is therefore required to comply with the provisions of section 225(c) of such Act.

''(ii) TERMINATION AFTER 36 MONTHS.—

''(I) IN GENERAL.—For purposes of section 225(c)(7) of the Social Security Act [subsec. (c)(7) of this section] (added by this subsection), the first month of entitlement beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994] shall be treated as the individual's first month of entitlement to such benefits.

''(II) CONCURRENT BENEFICIARIES CURRENTLY UNDER TREATMENT.—In any case in which the individual is also entitled to benefits under title XVI [subchapter XVI of this chapter] and, as of 180 days after the date of the enactment of this Act, such individual is undergoing treatment required under section 1611(e)(3) of the Social Security Act [section 1382(e)(3) of this title] (as in effect immediately before the date of the enactment of this Act), the Secretary of Health and Human Services shall notify such individual of the provisions of section 225(c)(7) of the Social Security Act (added by this subsection) not later than 180 days after the date of the enactment of this Act.

''(III) CONCURRENT BENEFICIARIES NOT CURRENTLY UNDER TREATMENT.—In any case in which the individual is also entitled to benefits under title XVI but, as of 180 days after the date of the enactment of this Act, such individual is not undergoing treatment described in subclause (II), section 225(c)(7) (added by this subsection) shall apply only with respect to benefits for months after the month in which treatment required under section 1611(e)(3) of the Social Security Act (as amended by subsection (b)) is available, as determined under regulations of the Secretary of Health and Human Services, and the Secretary notifies such individual of the availability of such treatment and describes in such notification the provisions of section 225(c)(7) of the Social Security Act (added by this subsection).''

DEMONSTRATION PROJECTS RELATING TO REFERRAL, MONITORING, AND TREATMENT FOR ALCOHOLICS OR DRUG ADDICTS

Section 201(c) of Pub. L. 103–296 related to demonstration projects relating to referral, monitoring, and treatment for alcoholics or drug addicts, prior to repeal by Pub. L. 104–121, title I, § 105(c), Mar. 29, 1996, 110 Stat. 855.

PAYMENT OF COSTS OF REHABILITATION SERVICES

Amendment of sections 422 and 1382d of this title by section 11(a), (b) of Pub. L. 98–460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following October 1984, see section 11(c) of Pub. L. 98–460, set out as an Effective Date of 1984 Amendment note under section 422 of this title.

§ 426. Entitlement to hospital insurance benefits

(a) Individuals over 65 years

Every individual who—

(1) has attained age 65, and

(2)(A) is entitled to monthly insurance benefits under section 402 of this title, would be entitled to those benefits except that he has not filed an application therefor (or application has not been made for a benefit the entitlement to which for any individual is a condition of entitlement therefor), or would be entitled to such benefits but for the failure of another individual, who meets all the criteria of entitlement to monthly insurance benefits, to meet such criteria throughout a month, and, in conformity with regulations of the Secretary, files an application for hospital insurance benefits under part A of subchapter XVIII of this chapter,

(B) is a qualified railroad retirement beneficiary, or

(C)(i) would meet the requirements of subparagraph (A) upon filing application for the monthly insurance benefits involved if medicare qualified government employment (as defined in section 410(p) of this title) were treated as employment (as defined in section 410(a) of this title) for purposes of this subchapter, and (ii) files an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of subchapter XVIII of this chapter,

shall be entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter for each month for which he meets the condition specified in paragraph (2), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2).

(b) Individuals under 65 years

Every individual who—

(1) has not attained age 65, and

(2)(A) is entitled to, and has for 24 calendar months been entitled to, (i) disability insurance benefits under section 423 of this title or (ii) child's insurance benefits under section 402(d) of this title by reason of a disability (as defined in section 423(d) of this title) or (iii) widow's insurance benefits under section 402(e) of this title or widower's insurance benefits under section 402(f) of this title by reason of a disability (as defined in section 423(d) of this title), or

(B) is, and has been for not less than 24 months, a disabled qualified railroad retirement beneficiary, within the meaning of section 231f(d) of title 45, or

(C)(i) has filed an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of subchapter XVIII of this chapter pursuant to this subparagraph, and

(ii) would meet the requirements of subparagraph (A) (as determined under the disability criteria, including reviews, applied under this subchapter), including the requirement that he has been entitled to the specified benefits for 24 months, if—

(I) medicare qualified government employment (as defined in section 410(p) of this title) were treated as employment (as defined in section 410(a) of this title) for purposes of this subchapter, and

(II) the filing of the application under clause (i) of this subparagraph were deemed to be the filing of an application for the disability-related benefits referred to in clause (i), (ii), or (iii) of subparagraph (A),

shall be entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter for each month beginning with the later of (I) July 1973 or (II) the twenty-fifth month of his entitlement or status as a qualified railroad retirement beneficiary described in paragraph (2), and ending (subject to the last sentence of this subsection) with the month following the month in which notice of termination of such entitlement to benefits or status as a qualified railroad retirement beneficiary described in paragraph (2) is mailed to him, or if earlier, with the month before the month in which he attains age 65. In applying the previous sentence in the case of an individual described in paragraph (2)(C), the ''twenty-fifth month of his entitlement'' refers to the first month after the twenty-fourth month of entitlement to specified benefits referred to in paragraph (2)(C) and ''notice of termination of such entitlement'' refers to a notice that the individual would no longer be determined to be entitled to such specified benefits under the conditions described in that paragraph. For purposes of this subsection, an individual who has had a period of trial work which ended as provided in section 422(c)(4)(A) of this title, and whose entitlement to benefits or status as a qualified railroad retirement beneficiary as described in paragraph (2) has subsequently terminated, shall be deemed to be entitled to such benefits or to occupy such status (notwithstanding the termination of such entitlement or status) for the period of consecutive months throughout all of which the physical or mental impairment, on which such entitlement or status was based, continues, and throughout all of which such individual would have been entitled to monthly insurance benefits under this subchapter or as a qualified railroad retirement beneficiary had such individual been unable to engage in substantial gainful activity, but not in excess of 78 such months. In determining when an individual's entitlement or status terminates for purposes of the preceding sentence, the term ''36 months'' in the second sentence of section 423(a)(1) of this title, in section 402(d)(1)(G)(i) of this title, in the last sentence of section 402(e)(1) of this title, and in the last sentence of section 402(f)(1) of this title shall be applied as though it read ''15 months''.

(c) Conditions

For purposes of subsection (a) of this section—

(1) entitlement of an individual to hospital insurance benefits for a month shall consist of entitlement to have payment made under, and subject to the limitations in, part A of subchapter XVIII of this chapter on his behalf for inpatient hospital services, post-hospital extended care services, and home health services (as such terms are defined in part E of subchapter XVIII of this chapter) furnished him in the United States (or outside the United States in the case of inpatient hospital services furnished under the conditions described in section 1395f(f) of this title) during such month; except that (A) no such payment may be made for post-hospital extended care services furnished before January 1967, and (B) no such payment may be made for post-hospital extended care services unless the discharge from the hospital required to qualify such services for payment under part A of subchapter XVIII of this chapter occurred (i) after June 30, 1966, or on or after the first day of the month in which he attains age 65, whichever is later, or (ii) if he was entitled to hospital insurance benefits pursuant to subsection (b) of this section, at a time when he was so entitled; and

(2) an individual shall be deemed entitled to monthly insurance benefits under section 402 or section 423 of this title, or to be a qualified railroad retirement beneficiary, for the month in which he died if he would have been entitled to such benefits, or would have been a qualified railroad retirement beneficiary, for such month had he died in the next month.

(d) "Qualified railroad retirement beneficiary" defined

For purposes of this section, the term ''qualified railroad retirement beneficiary'' means an individual whose name has been certified to the Secretary by the Railroad Retirement Board under section 231f(d) of title 45. An individual shall cease to be a qualified railroad retirement beneficiary at the close of the month preceding the month which is certified by the Railroad Retirement Board as the month in which he ceased to meet the requirements of section 231f(d) of title 45.

(e) Benefits for widows and widowers

(1)(A) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of widows and widowers described in paragraph (2)(A)(iii) thereof—

(i) the term ''age 60'' in sections 402(e)(1)(B)(ii), 402(e)(4), 402(f)(1)(B)(ii), and 402(f)(4) of this title shall be deemed to read ''age 65''; and

(ii) the phrase ''before she attained age 60'' in the matter following subparagraph (F) of section 402(e)(1) of this title and the phrase ''before he attained age 60'' in the matter following subparagraph (F) of section 402(f)(1) of this title shall each be deemed to read ''based on a disability''.

(B) For purposes of subsection (b)(2)(A)(iii) of this section, each month in the period commencing with the first month for which an individual is first eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this

title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Secretary under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), shall be included as one of the 24 months for which such individual must have been entitled to widow's or widower's insurance benefits on the basis of disability in order to become entitled to hospital insurance benefits on that basis.

(2) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of an individual under age 65 who is entitled to benefits under section 402 of this title, and who was entitled to widow's insurance benefits or widower's insurance benefits based on disability for the month before the first month in which such individual was so entitled to old-age insurance benefits (but ceased to be entitled to such widow's or widower's insurance benefits upon becoming entitled to such old-age insurance benefits), such individual shall be deemed to have continued to be entitled to such widow's insurance benefits or widower's insurance benefits for and after such first month.

(3) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section, any disabled widow aged 50 or older who is entitled to mother's insurance benefits (and who would have been entitled to widow's insurance benefits by reason of disability if she had filed for such widow's benefits), and any disabled widower aged 50 or older who is entitled to father's insurance benefits (and who would have been entitled to widower's insurance benefits by reason of disability if he had filed for such widower's benefits), shall, upon application for such hospital insurance benefits be deemed to have filed for such widow's or widower's insurance benefits.

(4) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of an individual described in clause (iii) of subsection (b)(2)(A) of this section, the entitlement of such individual to widow's or widower's insurance benefits under section 402(e) or (f) of this title by reason of a disability shall be deemed to be the entitlement to such benefits that would result if such entitlement were determined without regard to the provisions of section 402(j)(4) of this title.

(f) Medicare waiting period for recipients of disability benefits

For purposes of subsection (b) of this section (and for purposes of section 1395p(g)(1) of this title and section 231f(d)(2)(ii) of title 45), the 24 months for which an individual has to have been entitled to specified monthly benefits on the basis of disability in order to become entitled to hospital insurance benefits on such basis effective with any particular month (or to be deemed to have enrolled in the supplementary medical insurance program, on the basis of such entitlement, by reason of section 1395p(f) of this title), where such individual had been entitled to specified monthly benefits of the same type during a previous period which terminated—

(1) more than 60 months before the month in which his current disability began in any case where such monthly benefits were of the type specified in clause (A)(i) or (B) of subsection (b)(2) of this section, or

(2) more than 84 months before the month in which his current disability began in any case where such monthly benefits were of the type specified in clause (A)(ii) or (A)(iii) of such subsection,

shall not include any month which occurred during such previous period, unless the physical or mental impairment which is the basis for disability is the same as (or directly related to) the physical or mental impairment which served as the basis for disability in such previous period.

(g) Information regarding eligibility of Federal employees

The Secretary and Director of the Office of Personnel Management shall jointly prescribe and carry out procedures designed to assure that all individuals who perform medicare qualified government employment by virtue of service described in section 410(a)(5) of this title are fully informed with respect to (1) their eligibility or potential eligibility for hospital insurance benefits (based on such employment) under part A of subchapter XVIII of this chapter, (2) the requirements for and conditions of such eligibility, and (3) the necessity of timely application as a condition of entitlement under subsection (b)(2)(C) of this section, giving particular attention to individuals who apply for an annuity under chapter 83[1] of title 5 or under another similar Federal retirement program, and whose eligibility for such an annuity is or would be based on a disability.

(h) Waiver of waiting period for individuals with ALS

For purposes of applying this section in the case of an individual medically determined to have amyotrophic lateral sclerosis (ALS), the following special rules apply:

(1) Subsection (b) of this section shall be applied as if there were no requirement for any entitlement to benefits, or status, for a period longer than 1 month.

(2) The entitlement under such subsection shall begin with the first month (rather than twenty-fifth month) of entitlement or status.

(3) Subsection (f) of this section shall not be applied.

(i) Continuing eligibility of certain terminated individuals

For purposes of this section, each person whose monthly insurance benefit for any month is terminated or is otherwise not payable solely by reason of paragraph (1) or (7) of section 425(c)[2] of this title shall be treated as entitled to such benefit for such month.

(j) Certain uninsured individuals

For entitlement to hospital insurance benefits in the case of certain uninsured individuals, see section 426a of this title.

(Aug. 14, 1935, ch. 531, title II, § 226, as added Pub. L. 89–97, title I, § 101, July 30, 1965, 79 Stat. 290; amended Pub. L. 90–248, title I, § 129(c)(1), Jan. 2,

[1] So in original. Probably should be ''subchapter III of chapter 83''.

[2] See References in Text note below.

1968, 81 Stat. 847; Pub. L. 92–603, title II, §§ 201(b), 299I, Oct. 30, 1972, 86 Stat. 1371, 1463; Pub. L. 93–58, § 3, July 6, 1973, 87 Stat. 142; Pub. L. 93–233, § 18(f), Dec. 31, 1973, 87 Stat. 969; Pub. L. 93–445, title III, § 305, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 95–216, title III, §§ 332(a)(3), 334(d)(4)(B), Dec. 20, 1977, 91 Stat. 1543, 1546; Pub. L. 95–292, §§ 1(b), 3, June 13, 1978, 92 Stat. 308, 315; Pub. L. 96–265, title I, §§ 103(a)(1), (b), 104(a), June 9, 1980, 94 Stat. 444; Pub. L. 96–473, § 2(a), Oct. 19, 1980, 94 Stat. 2263; Pub. L. 96–499, title IX, § 930(q), Dec. 5, 1980, 94 Stat. 2633; Pub. L. 97–35, title XXII, § 2203(e), Aug. 13, 1981, 95 Stat. 837; Pub. L. 97–248, title II, § 278(b)(2)(A), (B), (4), Sept. 3, 1982, 96 Stat. 560, 561; Pub. L. 98–21, title I, § 131(a)(3)(H), (b)(3)(G), title III, § 309(q)(1), Apr. 20, 1983, 97 Stat. 93, 117; Pub. L. 98–369, div. B, title VI, § 2663(a)(17), July 18, 1984, 98 Stat. 1165; Pub. L. 99–272, title XIII, § 13205(b)(2)(A), (C)(ii), Apr. 7, 1986, 100 Stat. 317; Pub. L. 100–203, title IV, § 4033(a), formerly § 4033(a)(1), title IX, § 9010(e)(3), Dec. 22, 1987, 101 Stat. 1330–77, 1330–294, renumbered Pub. L. 100–360, title IV, § 411(e)(2), July 1, 1988, 102 Stat. 775; Pub. L. 100–360, title IV, § 411(n)(1), July 1, 1988, 102 Stat. 807; Pub. L. 100–485, title VI, § 608(f)(5), Oct. 13, 1988, 102 Stat. 2424; Pub. L. 101–508, title V, § 5103(c)(2)(C), Nov. 5, 1990, 104 Stat. 1388–252; Pub. L. 103–296, title II, § 201(a)(3)(D)(i), Aug. 15, 1994, 108 Stat. 1497; Pub. L. 105–33, title IV, § 4002(f)(1), Aug. 5, 1997, 111 Stat. 329; Pub. L. 106–170, title II, § 202(a), Dec. 17, 1999, 113 Stat. 1894; Pub. L. 106–554, § 1(a)(6) [title I, § 115(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–474; Pub. L. 108–173, title I, § 101(e)(1), Dec. 8, 2003, 117 Stat. 2150; Pub. L. 108–203, title IV, § 418(b)(4)(B)(vii), Mar. 2, 2004, 118 Stat. 533.)

REFERENCES IN TEXT

Parts A and E of subchapter XVIII of this chapter, referred to in text, are classified to section 1395c et seq. and 1395x et seq., respectively, of this title.

Section 212 of Public Law 93–66, referred to in subsec. (e)(1)(B), is section 212 of Pub. L. 93–66 which is set out as a note under section 1382 of this title.

Section 425(c) of this title, referred to in subsec. (i), was repealed by Pub. L. 104–121, title I, § 105(a)(4), Mar. 29, 1996, 110 Stat. 853.

AMENDMENTS

2004—Subsec. (e)(1)(A)(i). Pub. L. 108–203 substituted ''402(f)(4)'' for ''402(f)(5)''.

2003—Subsec. (c)(1). Pub. L. 108–173 substituted ''part E'' for ''part D''.

2000—Subsecs. (h), (j). Pub. L. 106–554 added subsec. (h) and redesignated former subsec. (h) as (j) and transferred such subsec. to appear at end of section.

1999—Subsec. (b). Pub. L. 106–170 substituted ''78'' for ''24'' in penultimate sentence.

1997—Subsec. (c)(1). Pub. L. 105–33 substituted ''part D'' for ''part C''.

1994—Subsec. (i). Pub. L. 103–296 added subsec. (i).

1990—Subsec. (e)(1). Pub. L. 101–508 designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

1988—Subsec. (a). Pub. L. 100–485 substituted ''condition specified in paragraph (2)'' for ''condition specified in paragraph (1)'' in concluding provisions.

Subsec. (b). Pub. L. 100–360, § 411(n)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''In determining when an individual's entitlement or status terminates for purposes of the preceding sentence, the second sentence of section 423(a) of this title shall be applied as though the term '36 months' (in such second sentence) read '15 months'.''

1987—Subsec. (b). Pub. L. 100–203, § 9010(e)(3), inserted sentence at end which related to determining when an individual's entitlement or status terminates for purposes of preceding sentence.

Subsec. (f). Pub. L. 100–203, § 4033(a), inserted before period at end '', unless the physical or mental impairment which is the basis for disability is the same as (or directly related to) the physical or mental impairment which served as the basis for disability in such previous period''.

1986—Subsec. (a)(2)(C)(i). Pub. L. 99–272, § 13205(b)(2)(A) substituted ''medicare qualified government employment'' for ''medicare qualified Federal employment''.

Subsec. (b)(2)(C)(ii)(I). Pub. L. 99–272, § 13205(b)(2)(A), substituted ''medicare qualified government employment'' for ''medicare qualified Federal employment''.

Subsec. (g). Pub. L. 99–272, § 13205(b)(2)(C)(ii), substituted ''medicare qualified government employment by virtue of service described in section 410(a)(5) of this title'' for ''medicare qualified Federal employment''.

1984—Subsec. (b). Pub. L. 98–369 substituted ''part A'' for ''part (A)'' in provisions following par. (2)(C).

1983—Subsec. (e)(1)(A). Pub. L. 98–21, § 131(a)(3)(H), (b)(3)(G), substituted reference to section 402(e)(4), (f)(5) of this title for reference to section 405(e)(5), (f)(6) of this title.

Subsec. (e)(3). Pub. L. 98–21, § 309(q)(1), amended par. (3) generally, inserting provisions relating to any disabled widower and striking out provision that a disabled widow, upon furnishing proof of such disability prior to July 1, 1974, under such procedures as the Secretary prescribed, would be deemed to have been entitled to such widow's benefits as of the time she would have been entitled to such widow's benefits if she had filed a timely application therefor.

1982—Subsec. (a)(2). Pub. L. 97–248, § 278(b)(2)(A), redesignated existing provisions as subpar. (A), struck out ''or is a qualified railroad retirement beneficiary,'' after ''of this chapter,'', and added subpars. (B) and (C).

Subsec. (b). Pub. L. 97–248, § 278(b)(2)(B), in par. (2)(B) inserted a comma after ''24 months'' and ''or'' after ''title 45,'', added par. (2)(C), and in provisions following par. (2) inserted provision defining ''twenty-fifth month of his entitlement'' and ''notice of termination of such entitlement'' with regards to applying first sentence of this subsection to individuals described in par. (2)(C).

Subsecs. (g), (h). Pub. L. 97–248, § 278(b)(4), added subsec. (g) and redesignated former subsec. (g) as (h).

1981—Subsec. (a)(2). Pub. L. 97–35 substituted ''would be entitled'' for ''or would be entitled'' and inserted '', or would be entitled to such benefits but for the failure of another individual, who meets all the criteria of entitlement to monthly insurance benefits, to meet such criteria throughout a month,''.

1980—Subsec. (a)(2). Pub. L. 96–473 inserted provisions relating to persons who would be entitled to benefits but for enumerated exceptions.

Subsec. (b). Pub. L. 96–265, § 104(a), in provisions following par. (2), inserted ''(subject to the last sentence of this subsection)'', and inserted provision that, for purposes of this subsection, an individual who has had a period of trial work which ended as provided in section 422(c)(4)(A) of this title, and whose entitlement to benefits or status as a qualified railroad retirement beneficiary as described in paragraph (2) has subsequently terminated, shall be deemed to be entitled to such benefits or to occupy such status (notwithstanding the termination of such entitlement or status) for the period of consecutive months throughout all of which the physical or mental impairment, on which such entitlement or status was based, continues, and throughout all of which such individual would have been entitled to monthly insurance benefits under this subchapter.

Pub. L. 96–265, § 103(a)(1), substituted ''24 calendar months'' and ''24 months'' for ''24 consecutive calendar months'' and ''24 consecutive months'', respectively, in par. (2) and, in provisions following par. (2), substituted ''the twenty-fifth month'' for ''the twenty-fifth consecutive month''.

Subsec. (c)(1). Pub. L. 96–499 substituted ''and home health services'' for ''and post-hospital home health services'' and struck out ''or post-hospital home health services'' before ''unless the discharge''.

Subsecs. (f), (g). Pub. L. 96–265, § 103(b), added subsec. (f) and redesignated former subsec. (f) as (g).

1978—Subsec. (a). Pub. L. 95–292, § 3(a), substituted ''condition specified in paragraph (1), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2)'' for ''conditions specified in subparagraph (B), beginning with the first month after June 1966 for which he meets the conditions specified in subparagraphs (A) and (B)''.

Subsec. (e). Pub. L. 95–292, §§ 1(b)(1), (2), 3(b), redesignated subsec. (h) as (e) and, in subsec. (e) as so redesignated, corrected a technical error resulting from the 1973 amendment of pars. (2) and (3) by Pub. L. 93–233 under which a reference to subsec. (b) of this section had been inserted without the required parentheses. Former subsec. (e), relating to Medicare eligibility of persons medically determined to have chronic renal disease requiring hemodialysis or renal transplantation, was struck out. See section 426–1 of this title.

Subsec. (f). Pub. L. 95–292, § 1(b)(1), (2), redesignated subsec. (i) as (f). Former subsec. (f), relating to the duration of Medicare coverage of persons medically determined to have chronic renal disease requiring hemodialysis or renal transplantation, was struck out. See section 426–1 of this title.

Subsec. (g). Pub. L. 95–292, § 1(b)(1), struck out subsec. (g) which related to reimbursement for kidney transplant and kidney treatment. See section 1395rr of this title.

Subsecs. (h), (i). Pub. L. 95–292, § 1(b)(2), redesignated subsecs. (h) and (i) as (e) and (f), respectively.

1977—Subsec. (h)(1)(B). Pub. L. 95–216, § 334(d)(4)(B), substituted ''subparagraph (F) of section 402(f)(1)'' for ''subparagraph (G) of section 402(f)(1)''.

Subsec. (h)(4). Pub. L. 95–216, § 332(a)(3), added par. (4).

1974—Subsec. (b)(2). Pub. L. 93–445, § 305(a), substituted ''section 7(d) of the Railroad Retirement Act of 1974'' for ''section 22 of the Railroad Retirement Act of 1937''.

Subsec. (d). Pub. L. 93–445, § 305(b), substituted ''section 7(d) of the Railroad Retirement Act of 1974'' for ''section 21 or 22 of the Railroad Retirement Act of 1937'', in two places.

Subsec. (e). Pub. L. 93–445, § 305(c), substituted ''Railroad Retirement Act of 1974'' for ''Railroad Retirement Act of 1937'', wherever appearing.

1973—Subsec. (a). Pub. L. 93–233, § 18(f)(1)(A), redesignated subsec. (a)(1) as subsec. (a).

Subsec. (a)(1), (2). Pub. L. 93–233, § 18(f)(1)(B), redesignated cls. (A) and (B) as (1) and (2), respectively.

Subsec. (e)(2). Pub. L. 93–58, inserted in: item (2)(A) ''or would be fully or currently insured if his service as an employee (as defined in the Railroad Retirement Act of 1937) after December 31, 1936, were included in the term 'employment' as defined in this chapter'' after ''(as such terms are defined in section 414 of this title)''; item (2)(B) ''or an annuity under the Railroad Retirement Act of 1937'' after ''this subchapter''; item (2)(C) ''Or would be fully or currently insured if his service as an employee (as defined in the Railroad Retirement Act of 1937) after December 31, 1936, were included in the term 'employment' as defined in this chapter'' after ''fully or currently insured''; and item (2)(D) ''or annuity under the Railroad Retirement Act of 1937'' after ''this subchapter''.

Subsec. (h). Pub. L. 93–233, § 18(f)(1)(C), (2)–(4), redesignated as subsec. (h) provisions originally enacted as subsec. (e) by section 201(b)(5) of Pub. L. 92–603 and redesignated as subsec. (f) by section 299I of Pub. L. 92–603, and in par. (1)(A) substituted '', 402(e)(5),'' for ''and 402(e)(5) of this title, and the term 'age 62' in sections'', in par. (1)(B) substituted ''and the phrase 'before he attained age 60' in the matter following subparagraph (G) of section 402(f)(1) of this title shall each'' for ''shall'', and in pars. (2) and (3) substituted ''(b)'' for ''(a)(2)'', respectively.

Subsec. (i). Pub. L. 93–233, § 18(f)(1)(C), redesignated as subsec. (i) provisions originally enacted as subsec. (d) by section 101 of Pub. L. 89–97 and redesignated as subsec. (f) by section 201(b)(5) of Pub. L. 92–603.

1972—Subsec. (a). Pub. L. 92–603, § 201(b)(1), incorporated provisions of former subsec. (a) and subsec. (a)(1), and redesignated pars. (1) and (2) as subpars. (A) and (B).

Subsec. (b). Pub. L. 92–603, § 201(b)(1), added subsec. (b). Former subsec. (b) redesignated subsec. (c).

Subsec. (c)(1). Pub. L. 92–603, § 201(b)(2), (5), redesignated subsec. (b)(1) as subsec. (c)(1) and, in subsec. (c)(1) as so redesignated, inserted reference to entitlement to hospital insurance benefits pursuant to subsec. (b) of this section. Former subsec. (c) redesignated subsec. (d).

Subsec. (c)(2). Pub. L. 92–603, § 201(b)(3), (5), redesignated subsec. (b)(2) as subsec. (c)(2) and inserted reference to section 423 of this title. Former subsec. (c) redesignated subsec. (d).

Subsec. (d). Pub. L. 92–603, § 201(b)(4), (5), redesignated former subsec. (c) as subsec. (d) and inserted reference to section 22 of the Railroad Retirement Act of 1937. Former subsec. (d) redesignated subsec. (i).

Subsecs. (e) to (h). Pub. L. 92–603, §§ 201(b)(5), 299I, added subsecs. (e) to (h). See 1973 Amendment note above.

Subsec. (i). Pub. L. 92–603, § 201(b)(5), redesignated former subsec. (d) as subsec. (i). See 1973 Amendment note above.

1968—Subsec. (b)(1). Pub. L. 90–248 struck out outpatient hospital diagnostic services from services for which hospital insurance benefits are payable.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 applicable with respect to applications for benefits under this subchapter filed on or after the first day of the first month that begins after Mar. 2, 2004, see section 418(c) of Pub. L. 108–203, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title I, § 115(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–474, provided that: ''The amendments made by this section [amending this section and section 1395p of this title] shall apply to benefits for months beginning July 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title II, § 202(b), Dec. 17, 1999, 113 Stat. 1894, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective on and after October 1, 2000.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 applicable with respect to benefits based on disability (as defined in section 425(c)(9) of this title) which are otherwise payable in months beginning after 180 days after Aug. 15, 1994, with Secretary of Health and Human Services to issue regulations necessary to carry out such amendment not later than 180 days after Aug. 15, 1994, see section 201(a)(3)(E)(i) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment; Sunset Provision note under section 425 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to items and services furnished after December 1990, see section 5103(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 608(f)(5) of Pub. L. 100–485 provided that the amendment made by such section 608(f)(5) is effective as of the date of enactment of Pub. L. 95–292, which was approved June 13, 1978.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates

to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4033(b), formerly section 4033(a)(2) of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(e)(2), July 1, 1988, 102 Stat. 775, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply to months beginning after the end of the 60-day period beginning on the date of enactment of this Act [Dec. 22, 1987].

''(2) The amendment made by subsection (a) shall not apply so as to include (for the purposes described in section 226(f) of the Social Security Act [subsec. (f) of this section]) monthly benefits paid for any month in a previous period (described in that section) that terminated before the end of the 60-day period described in paragraph (1).''

Amendment by section 9010(e)(3) of Pub. L. 100–203 effective Jan. 1, 1988, and applicable with respect to individuals entitled to benefits under specific provisions of sections 402 and 423 of this title for any month after December 1987, and individuals entitled to benefits payable under specific provisions of sections 402 and 423 of this title for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section 9010(f) of Pub. L. 100–203, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99–272, set out as a note under section 410 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 131(a)(3)(H), (b)(3)(G) of Pub. L. 98–21 effective with respect to monthly benefits payable under this subchapter for months after December 1983, and in the case of an individual who was not entitled to a monthly benefit of the type involved under this subchapter for December 1983, no benefit shall be paid under this subchapter by reason of such amendments unless proper application for such benefit is made, see section 131(d) of Pub. L. 98–21 set out as a note under section 402 of this title.

Amendment by section 309(q)(1) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Pub. L. 97–448, title III, § 309(c)(1), Jan. 12, 1983, 96 Stat. 2410, provided that: ''Any amendment to the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248, Sept. 3, 1982, 96 Stat. 324] made by this section [amending sections 1395x, 1395cc, and 1396a of this title and amending provisions set out as notes under this section and sections 1320c, 1395b–1, 1395f, 1395u, 1395ww, 1395xx, and 1396*o* of this title] shall be effective as if it had been originally included in the provision of such Act to which such amendment relates.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITIONAL PROVISIONS

Section 278(c)(2), (d) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 309(a)(10), (11), Jan. 12, 1983, 96 Stat. 2408, provided that:

''(c) EFFECTIVE DATES.—

''(2) MEDICARE COVERAGE.—

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section and sections 410, 426–1, and 1395c of this title] are effective on and after January 1, 1983, and the amendments made by paragraph (2) of that subsection [amending this section and section 426–1 of this title] apply to remuneration (for medicare qualified Federal employment) paid after December 31, 1982.

''(B) TREATMENT OF CURRENT DISABILITIES.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act [section 1395c et seq. of this title] pursuant to the amendments made by subsection (b) or the provisions of subsection (d), no individual may be considered to be under a disability for any period before January 1, 1983.

''(d) TRANSITIONAL PROVISIONS.—

''(1) IN GENERAL.—For purposes of sections 226, 226A, and 1811 of the Social Security Act [this section and sections 426–1 and 1395c of this title], in the case of any individual who performs service both during January 1983, and before January 1, 1983, which constitutes medicare qualified Federal employment (as defined in section 210(p) of such Act [section 410(p) of this title]), the individual's medicare qualified Federal employment (as so defined) performed before January 1, 1983, for which remuneration was paid before such date, shall be considered to be 'employment' (as defined for purposes of title II of such Act [this subchapter]), but only for the purpose of providing the individual (or another person) with entitlement to hospital insurance benefits under part A of title XVIII of such Act [section 1395c et seq. of this title].

''(2) APPROPRIATIONS.—There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund from time to time such sums as the Secretary of Health and Human Services deems necessary for any fiscal year, on account of—

''(A) payments made or to be made during such fiscal year from such Trust Fund with respect to individuals who are entitled to benefits under title XVIII of the Social Security Act [section 1395 et seq. of this title] solely by reason of paragraph (1) of this subsection,

''(B) the additional administrative expenses resulting or expected to result therefrom, and

''(C) any loss in interest to such Trust Fund resulting from the payment of those amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if this subsection had not been enacted.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2203(f)(3) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, § 128(c)(2), Sept. 3, 1982, 96 Stat. 367, provided that: ''The amendments made by subsection (e) of this section [amending this section] shall apply only to individuals aged 65 and over whose insured spouse attains age 62 after August 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 2(d) of Pub. L. 96–473 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395c of this title] shall be effective after the second month beginning after the date on which this Act is enacted [Oct. 19, 1980].''

Section 103(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this sec-

tion and sections 1395c and 1395p of this title and section 231f of Title 45, Railroads] shall apply with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980].''

Section 104(b) of Pub. L. 96–265 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980], and shall apply with respect to any individual whose disability has not been determined to have ceased prior to such first day.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 6 of Pub. L. 95–292 provided that: ''The amendments made by the preceding sections of this Act [enacting sections 426–1 and 1395rr of this title and amending this section and sections 1395c, 1395i, 1395*l*, 1395t, 1395x, 1395cc, and 1395mm of this title] shall become effective with respect to services, supplies, and equipment furnished after the third calendar month which begins after the date of the enactment of this Act [June 13, 1978], except that those amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers shall become effective with respect to a facility's or provider's first accounting period which begins after the last day of the twelfth month following the month of the enactment of this Act [June 1978], and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 332(a)(3) of Pub. L. 95–216 effective with respect to monthly insurance benefits under this subchapter to which an individual becomes entitled on the basis of an application filed on or after Jan. 1, 1978, see section 332(b) of Pub. L. 95–216, set out as a note under section 402 of this title.

Amendment by section 334(d)(4)(B) of Pub. L. 95–216 applicable with respect to monthly insurance benefits payable under this subchapter for months beginning with December 1977, on the basis of applications filed in or after December 1977, see section 334(f) of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1973 AMENDMENT

Section 4(a) of Pub. L. 93–58 provided that: ''The provisions of this Act [amending this section and sections 228c and 228e of Title 45, Railroads], except the provisions of section 1, shall be effective as of the date the corresponding provisions of Public Law 92–603 are effective as follows: clause (xi) [section 228c(e)(xi) of Title 45] effective with respect to services provided on and after July 1, 1973. The provisions of clauses (xi) and (xii), which are added by section 1 of this Act, shall be effective as follows: clause (xi) [section 228c(e)(xi) of Title 45] shall be effective with respect to calendar years after 1971 for annuities accruing after December 1972; and clause (xii) [section 228c(e)(xii) of Title 45 shall be effective as of the date the delayed retirement provision of Public Law 92–603 is effective [section 402(w) of this title applicable with respect to old-age insurance benefits payable under this subchapter for months beginning after 1972].''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 299I of Pub. L. 92–603 provided that the amendment made by that section is effective with respect to services provided on and after July 1, 1973.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable with respect to services furnished after March 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

APPLICABILITY OF PUB. L. 96–473 TO APPLICATIONS FOR HOSPITAL INSURANCE BENEFITS

Section 2(c) of Pub. L. 96–473 provided that: ''For purposes of section 226 of such Act [this section] as amended by subsection (a) of this section, an individual who filed an application for monthly insurance benefits under section 202 of such Act [section 402 of this title] prior to the effective date of the amendment made by subsection (a) [see section 2(c) of Pub. L. 96–473, set out above as an Effective Date of 1980 Amendment note] shall be deemed to have filed an application for hospital insurance benefits under part A of title XVIII of such Act [part A of subchapter XVIII of this chapter] at the time he applied for such benefits under section 202 regardless of the continuing status or effect of the application for benefits under section 202, if he would have been entitled to benefits under that section had such application remained in effect.''

GAO REPORT

Pub. L. 106–170, title II, §202(c), Dec. 17, 1999, 113 Stat. 1894, provided that: ''Not later than 5 years after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General of the United States shall submit a report to the Congress that—

''(1) examines the effectiveness and cost of the amendment made by subsection (a) [amending this section];

''(2) examines the necessity and effectiveness of providing continuation of medicare coverage under section 226(b) of the Social Security Act (42 U.S.C. 426(b)) to individuals whose annual income exceeds the contribution and benefit base (as determined under section 230 of such Act (42 U.S.C. 430));

''(3) examines the viability of providing the continuation of medicare coverage under such section 226(b) based on a sliding scale premium for individuals whose annual income exceeds such contribution and benefit base;

''(4) examines the viability of providing the continuation of medicare coverage under such section 226(b) based on a premium buy-in by the beneficiary's employer in lieu of coverage under private health insurance;

''(5) examines the interrelation between the use of the continuation of medicare coverage under such section 226(b) and the use of private health insurance coverage by individuals during the extended period; and

''(6) recommends such legislative or administrative changes relating to the continuation of medicare coverage for recipients of social security disability benefits as the Comptroller General determines are appropriate.''

TIME IN WHICH TO FURNISH PROOF OF DISABILITY FOR HOSPITAL BENEFITS

Section 309(q)(2) of Pub. L. 98–21 provided that: ''For purposes of determining entitlement to hospital insurance benefits under section 226(e)(3) of such Act [subsec. (e)(3) of this section], as amended by paragraph (1), an individual becoming entitled to such hospital insurance benefits as a result of the amendment made by such paragraph shall, upon furnishing proof of his or her disability within twelve months after the month in which this Act is enacted [April 1983], under such procedures as the Secretary of Health and Human Services may prescribe, be deemed to have been entitled to the widow's or widower's benefits referred to in such section 226(e)(3), as so amended, as of the time such individual would have been entitled to such widow's or widower's benefits if he or she had filed a timely application therefor.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each

individual who, for the month of March 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

ADOPTED CHILD'S REENLISTMENT TO ANNUITY

Section 4(b) of Pub. L. 93–58 provided that: ''Any child (1) whose entitlement to an annuity under section 5(c) of the Railroad Retirement Act [section 228e(c) of Title 45, Railroads] was terminated by reason of his adoption prior to the enactment of this Act [July 6, 1973], and (2) who, except for such adoption, would be entitled to an annuity under such section for a month after the month in which this Act is enacted [July 1973], may, upon filing application for an annuity under the Railroad Retirement Act [section 228a et seq. of Title 45] after the date of enactment of this Act [July 6, 1973], become reentitled to such annuity; except that no child shall, by reason of the enactment of this Act [amending this section and sections 228c, 228e of Title 45] become reentitled to such annuity for any month prior to the effective date of the relevant amendments made by this Act to section 5(*l*)(1)(ii) of the Railroad Retirement Act [section 228e(*l*)(1)(ii)].''

§ 426–1. End stage renal disease program

(a) Entitlement to benefits

Notwithstanding any provision to the contrary in section 426 of this title or subchapter XVIII of this chapter, every individual who—

(1)(A) is fully or currently insured (as such terms are defined in section 414 of this title), or would be fully or currently insured if (i) his service as an employee (as defined in the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.]) after December 31, 1936, were included within the meaning of the term ''employment'' for purposes of this subchapter, and (ii) his medicare qualified government employment (as defined in section 410(p) of this title) were included within the meaning of the term ''employment'' for purposes of this subchapter;

(B)(i) is entitled to monthly insurance benefits under this subchapter, (ii) is entitled to an annuity under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], or (iii) would be entitled to a monthly insurance benefit under this subchapter if medicare qualified government employment (as defined in section 410(p) of this title) were included within the meaning of the term ''employment'' for purposes of this subchapter; or

(C) is the spouse or dependent child (as defined in regulations) of an individual described in subparagraph (A) or (B);

(2) is medically determined to have end stage renal disease; and

(3) has filed an application for benefits under this section;

shall, in accordance with the succeeding provisions of this section, be entitled to benefits under part A and eligible to enroll under part B of subchapter XVIII of this chapter, subject to the deductible, premium, and coinsurance provisions of that subchapter.

(b) Duration of period of entitlement

Subject to subsection (c) of this section, entitlement of an individual to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter by reasons of this section on the basis of end stage renal disease—

(1) shall begin with—

(A) the third month after the month in which a regular course of renal dialysis is initiated, or

(B) the month in which such individual receives a kidney transplant, or (if earlier) the first month in which such individual is admitted as an inpatient to an institution which is a hospital meeting the requirements of section 1395x(e) of this title (and such additional requirements as the Secretary may prescribe under section 1395rr(b) of this title for such institutions) in preparation for or anticipation of kidney transplantation, but only if such transplantation occurs in that month or in either of the next two months,

whichever first occurs (but no earlier than one year preceding the month of the filing of an application for benefits under this section); and

(2) shall end, in the case of an individual who receives a kidney transplant, with the thirty-sixth month after the month in which such individual receives such transplant or, in the case of an individual who has not received a kidney transplant and no longer requires a regular course of dialysis, with the twelfth month after the month in which such course of dialysis is terminated.

(c) Individuals participating in self-care dialysis training programs; kidney transplant failures; resumption of previously terminated regular course of dialysis

Notwithstanding the provisions of subsection (b) of this section—

(1) in the case of any individual who participates in a self-care dialysis training program prior to the third month after the month in which such individual initiates a regular course of renal dialysis in a renal dialysis facility or provider of services meeting the requirements of section 1395rr(b) of this title, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such regular course of renal dialysis is initiated;

(2) in any case in which a kidney transplant fails (whether during or after the thirty-six-month period specified in subsection (b)(2) of this section) and as a result the individual who received such transplant initiates or resumes a regular course of renal dialysis, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such course is initiated or resumed; and

(3) in any case in which a regular course of renal dialysis is resumed subsequent to the termination of an earlier course, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such regular course of renal dialysis is resumed.

(c)[1] Continuing eligibility of certain terminated individuals

For purposes of this section, each person whose monthly insurance benefit for any month is terminated or is otherwise not payable solely by reason of paragraph (1) or (7) of section 425(c)[2] of this title shall be treated as entitled to such benefit for such month.

(Aug. 14, 1935, ch. 531, title II, § 226A, as added Pub. L. 95–292, § 1(a), June 13, 1978, 92 Stat. 307; amended Pub. L. 97–248, title II, § 278(b)(2)(C), Sept. 3, 1982, 96 Stat. 561; Pub. L. 97–448, title III, § 309(b)(1), Jan. 12, 1983, 96 Stat. 2408; Pub. L. 99–272, title XIII, § 13205(b)(2)(B), Apr. 7, 1986, 100 Stat. 317; Pub. L. 103–296, title II, § 201(a)(3)(D)(ii), Aug. 15, 1994, 108 Stat. 1497.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1)(A), (B), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Parts A and B of subchapter XVIII of this chapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 425(c) of this title, referred to in subsec. (c), was repealed by Pub. L. 104–121, title I, § 105(a)(4), Mar. 29, 1996, 110 Stat. 853.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–296 added subsec. (c) relating to continuing eligibility of certain terminated individuals.

1986—Subsec. (a)(1)(A)(ii), (B)(iii). Pub. L. 99–272 substituted ''medicare qualified government employment'' for ''medicare qualified Federal employment''.

1983—Subsec. (a)(1)(B)(iii). Pub. L. 97–448 substituted ''section 410(p)'' for ''410(p)'' and struck out ''after December 31, 1982,''.

1982—Subsec. (a)(1)(A). Pub. L. 97–248 designated existing provisions as cl. (i), substituted ''within the meaning of the term 'employment' for purposes of this subchapter'' for ''in the term 'employment' as defined in this chapter'', and added cl. (ii).

Subsec. (a)(1)(B). Pub. L. 97–248 designated ''is entitled to monthly insurance benefits under this subchapter'' as cl. (i), substituted ''(ii) is entitled to an annuity under the Railroad Retirement Act of 1974'' for ''or an annuity under the Railroad Retirement Act of 1974'', and added cl. (iii).

Subsec. (a)(1)(C), (D). Pub. L. 97–248 combined former subpars. (C) and (D) into subpar. (C) and substituted a reference to individuals described in subpar. (A) or (B) for a more detailed definition of such individuals.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 applicable with respect to benefits based on disability (as defined in section 425(c)(9) of this title) which are otherwise payable in months beginning after 180 days after Aug. 15, 1994, with Secretary of Health and Human Services to issue regulations necessary to carry out such amendment not later than 180 days after Aug. 15, 1994, see section 201(a)(3)(E)(i) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment; Sunset Provision note under section 425 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99–272, set out as a note under section 410 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 309(c)(2) of Pub. L. 97–448 provided that: ''Any amendment to the Social Security Act [this chapter] made by this section [amending this section and sections 410, 1320c–2, 1320c–3, 1395d, 1395f, 1395r, 1395y, 1395cc, 1395mm, 1395ww, 1396b, 1396n, 1396*o*, and 1396p of this title] shall be effective as if it had been originally included as a part of that provision of the Social Security Act to which it relates, as such provision of such Act was amended or added by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248, Sept. 3, 1982, 96 Stat. 324].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective on and after Jan. 1, 1983, see section 278(c)(2)(A) of Pub. L. 97–248, set out as a note under section 426 of this title.

EFFECTIVE DATE

Section effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

§ 426a. Transitional provision on eligibility of uninsured individuals for hospital insurance benefits

(a) Entitlement to benefits

Anyone who—

(1) has attained the age of 65,

(2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage (as defined in this subchapter or section 228e(*l*) of title 45), whenever acquired, for each calendar year elapsing after 1966 and before the year in which he attained such age,

(3) is not, and upon filing application for monthly insurance benefits under section 402 of this title would not be, entitled to hospital insurance benefits under section 426 of this title, and is not certifiable as a qualified railroad retirement beneficiary under section 228s–2 of title 45,

(4) is a resident of the United States (as defined in section 410(i) of this title), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as so defined) continuously during the 5 years immediately preceding the month in which he files application under this section, and

(5) has filed an application under this section in such manner and in accordance with such other requirements as may be prescribed in regulations of the Secretary,

shall (subject to the limitations in this section) be deemed, solely for purposes of section 426 of this title, to be entitled to monthly insurance benefits under such section 402 for each month,

[1] So in original. Probably should be ''(d)''.

[2] See References in Text note below.

beginning with the first month in which he meets the requirements of this subsection and ending with the month in which he dies, or, if earlier, the month before the month in which he becomes (or upon filing application for monthly insurance benefits under section 402 of this title would become) entitled to hospital insurance benefits under section 426 of this title or becomes certifiable as a qualified railroad retirement beneficiary. An individual who would have met the preceding requirements of this subsection in any month had he filed application under paragraph (5) hereof before the end of such month shall be deemed to have met such requirements in such month if he files such application before the end of the twelfth month following such month. No application under this section which is filed by an individual more than 3 months before the first month in which he meets the requirements of paragraphs (1), (2), (3), and (4) shall be accepted as an application for purposes of this section.

(b) Persons ineligible

The provisions of subsection (a) of this section shall not apply to any individual who—

(1) is, at the beginning of the first month in which he meets the requirements of subsection (a), a member of any organization referred to in section 410(a)(17) of this title,

(2) has, prior to the beginning of such first month, been convicted of any offense listed in section 402(u) of this title, or

(3)(A) at the beginning of such first month is covered by an enrollment in a health benefits plan under chapter 89 of title 5,

(B) was so covered on February 16, 1965, or

(C) could have been so covered for such first month if he or some other person had availed himself of opportunities to enroll in a health benefits plan under such chapter and to continue such enrollment (but this subparagraph shall not apply unless he or such other person was a Federal employee at any time after February 15, 1965).

Paragraph (3) shall not apply in the case of any individual for the month (or any month thereafter) in which coverage under such a health benefits plan ceases (or would have ceased if he had had such coverage) by reason of his or some other person's separation from Federal service, if he or such other person was not (or would not have been) eligible to continue such coverage after such separation.

(c) Authorization of appropriations

There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1395i of this title) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under part A of subchapter XVIII of this chapter with respect to individuals who are entitled to hospital insurance benefits under section 426 of this title solely by reason of this section,

(2) the additional administrative expenses resulting or expected to result therefrom, and

(3) any loss in interest to such Trust Fund resulting from the payment of such amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the preceding subsections of this section had not been enacted.

(Pub. L. 89–97, title I, § 103, July 30, 1965, 79 Stat. 333; Pub. L. 90–248, title I, § 139, title IV, § 403(h), Jan. 2, 1968, 81 Stat. 854, 932.)

REFERENCES IN TEXT

Sections 228e(*l*) and 228s–2 of title 45, referred to in subsec. (a)(2), (3), are references to sections 5(*l*) and 21 of the Railroad Retirement Act of 1937. That Act was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305. That Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Sections 228e and 228s–2 of title 45 are covered by sections 231e and 231f of Title 45, respectively.

Part A of subchapter XVIII of this chapter, referred to in subsec. (c)(1), is classified to section 1395c et seq. of this title.

CODIFICATION

Section was not enacted as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1968—Subsec. (a)(2)(B). Pub. L. 90–248, § 139, substituted ''1966'' for ''1965''.

Subsec. (b)(3)(A), (C). Pub. L. 90–248, § 403(h)(1), (2), substituted ''chapter 89 of title 5'' and ''such chapter'' for ''the Federal Employees Health Benefits Act of 1959'' and ''such Act'' in subpars. (A) and (C), respectively.

§ 427. Transitional insured status for purposes of old-age and survivors benefits

(a) Determination of entitlement to benefits under section 402(a) to (c) of this title

In the case of any individual who attains the age of 72 before 1969 but who does not meet the requirements of section 414(a) of this title, the 6 quarters of coverage referred to in paragraph (1) of section 414(a) of this title shall, instead, be 3 quarters of coverage for purposes of determining entitlement of such individual to benefits under section 402(a) of this title, and of the spouse to benefits under section 402(b) or section 402(c) of this title, but, in the case of such spouse, only if he or she attains the age of 72 before 1969 and only with respect to spouse's insurance benefits under section 402(b) or section 402(c) of this title for and after the month in which he or she attains such age. For each month before the month in which any such individual meets the requirements of section 414(a) of this title, the amount of the old-age insurance benefit shall, notwithstanding the provisions of section 402(a) of this title, be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title and the amount of the spouse's insurance benefit of the spouse shall, notwithstanding the provisions of section 402(b) or section 402(c) of this title, be the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

(b) Determination of entitlement to surviving spouse's benefits under section 402(e) or (f) of this title

In the case of any individual who has died, who does not meet the requirements of section

414(a) of this title, and whose surviving spouse attains age 72 before 1969, the 6 quarters of coverage referred to in paragraph (3) of section 414(a) of this title and in paragraph (1) thereof shall, for purposes of determining the entitlement to surviving spouse's insurance benefits under section 402(e) or section 402(f) of this title, instead be—

(1) 3 quarters of coverage if such surviving spouse attains the age of 72 in or before 1966,

(2) 4 quarters of coverage if such surviving spouse attains the age of 72 in 1967, or

(3) 5 quarters of coverage if such surviving spouse attains the age of 72 in 1968.

The amount of the surviving spouse's insurance benefit for each month shall, notwithstanding the provisions of section 402(e) or section 402(f) of this title (and section 402(m)[1] of this title), be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title.

(c) Deceased individual entitled to benefits by reason of subsection (a) deemed to meet requirements of subsection (b)

In the case of any individual who becomes, or upon filing application therefor would become, entitled to benefits under section 402(a) of this title by reason of the application of subsection (a) of this section, who dies, and whose surviving spouse attains the age of 72 before 1969, such deceased individual shall be deemed to meet the requirements of subsection (b) of this section for purposes of determining entitlement of such surviving spouse to surviving spouse's insurance benefits under section 402(e) or section 402(f) of this title.

(Aug. 14, 1935, ch. 531, title II, § 227, as added Pub. L. 89–97, title III, § 309(a), July 30, 1965, 79 Stat. 379; amended Pub. L. 90–248, title I, § 102(a), Jan. 2, 1968, 81 Stat. 827; Pub. L. 91–172, title X, § 1003(a), Dec. 30, 1969, 83 Stat. 740; Pub. L. 92–5, title II, § 202(a), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, § 201(g)(1), July 1, 1972, 86 Stat. 411; Pub. L. 92–603, title I, § 104 (e), (f), Oct. 30, 1972, 86 Stat. 1340; Pub. L. 93–233, § 2(b)(1), Dec. 31, 1973, 87 Stat. 952; Pub. L. 98–21, title III, § 304(a), (b), Apr. 20, 1983, 97 Stat. 112.)

REFERENCES IN TEXT

Section 402(m) of this title, referred to in subsec. (b), was repealed by Pub. L. 97–35, title XXII, § 2201(b)(10), Aug. 13, 1981, 95 Stat. 831.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–21, § 304(a), substituted ''spouse'' for ''wife'', ''spouse's'' for ''wife's'', and ''he or she'' for ''she'', wherever appearing, substituted ''the'' for ''his'' after ''402(a) of this title, and of'' and preceding ''spouse'' in two places and preceding ''old-age insurance'', and inserted ''or section 402(c)'' after ''section 402(b)'' wherever appearing.

Subsec. (b). Pub. L. 98–21, § 304(b), substituted ''surviving spouse'' for ''widow'' and ''surviving spouse's'' for ''widow's'' wherever appearing, substituted ''the'' for ''her'' after ''determining'' and ''The amount of'', and inserted ''or section 402(f)'' after ''section 402(e)'' wherever appearing.

Subsec. (c). Pub. L. 98–21, § 304(b)(1), (2), (4), substituted ''surviving spouse'' for ''widow'' wherever appearing and ''surviving spouse's'' for ''widow's'', and inserted ''or section 402(f)'' after ''section 402(e)''.

1973—Subsec. (a). Pub. L. 93–233, § 2(b)(1), substituted ''the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' and ''the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00''.

Subsec. (b). Pub. L. 93–233, § 2(b)(1), substituted ''the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00''.

1972—Subsec. (a). Pub. L. 92–336, § 201(g)(1)(A), substituted ''$58.00'' for ''$48.30'' and ''$29.00'' for ''$24.20''.

Subsec. (a)(1). Pub. L. 92–603, § 104(e), substituted ''paragraph (1) of section 414(a) of this title'' for ''so much of paragraph (1) of section 414(a) of this title as follows clause (C)''.

Subsec. (b). Pub. L. 92–336, § 201(g)(1)(B), substituted ''$58.00'' for ''$48.30''.

Subsec. (b)(1). Pub. L. 92–603, § 104(f), substituted ''paragraph (1) thereof'' for ''so much of paragraph (1) thereof as follows clause (C)''.

1971—Subsec. (a). Pub. L. 92–5, § 202(a)(1), substituted ''$48.30'' for ''$46'' and ''$24.20'' for ''$23''.

Subsec. (b). Pub. L. 92–5, § 202(a)(2), substituted ''$48.30'' for ''$46''.

1969—Subsec. (a). Pub. L. 91–172, § 1003(a)(1), substituted ''$46'' for ''$40'', and ''$23'' for ''$20''.

Subsec. (b). Pub. L. 91–172, § 1003(a)(2), substituted ''$46'' for ''$40''.

1968—Subsec. (a). Pub. L. 90–248, § 102(a)(1), substituted ''$40'' for ''$35'' and ''$20'' for ''$17.50''.

Subsec. (b). Pub. L. 90–248, § 102(a)(2), substituted ''$40'' for ''$35''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21 set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 2(b)(1) of Pub. L. 93–233 provided that the amendment made by that section is effective June 1, 1974.

Amendment by Pub. L. 93–233 applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title, see section 2(c) of Pub. L. 93–233, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after December 1974, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

Amendment by Pub. L. 92–336 applicable with respect to monthly benefits under subchapter II of this chapter for months after August 1972, see section 201(i) of Pub. L. 92–336, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 202(c) of Pub. L. 92–5 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1970.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 1003(c) of Pub. L. 91–172 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1969.''

[1] See References in Text note below.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 102(c) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968.''

EFFECTIVE DATE

Section 309(b) of Pub. L. 89–97 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply in the case of monthly benefits under title II of the Social Security Act [this subchapter] for and after the second month following the month [July 1965] in which this Act is enacted on the basis of applications filed in or after the month in which this Act is enacted.''

REPEAL OF AMENDMENT OF SUBSECS. (a) AND (b) PRIOR TO EFFECTIVE DATE

Section 202(a)(4) of Pub. L. 92–336, title II, July 1, 1972, 86 Stat. 416, which, effective Jan. 1, 1975, substituted ''the larger of $58.00 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' and ''the larger of $29.00 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00'', was repealed prior to its effective date by Pub. L. 93–233, § 2(b)(2), Dec. 31, 1973, 87 Stat. 952, applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title. See section 2(c) of Pub. L. 93–233, set out as an Effective Date of 1973 Amendment note under section 415 of this title.

§ 428. Benefits at age 72 for certain uninsured individuals

(a) Eligibility

Every individual who—

(1) has attained the age of 72,

(2)(A) attained such age before 1968, or (B)(i) attained such age after 1967 and before 1972, and (ii) has not less than 3 quarters of coverage, whenever acquired, for each calendar year elapsing after 1966 and before the year in which he or she attained such age,

(3) is a resident of the United States (as defined in subsection (e) of this section), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as defined in section 410(i) of this title) continuously during the 5 years immediately preceding the month in which he or she files application under this section, and

(4) has filed application for benefits under this section,

shall (subject to the limitations in this section) be entitled to a benefit under this section for each month beginning with the first month after September 1966 in which he or she becomes so entitled to such benefits and ending with the month preceding the month in which he or she dies. No application under this section which is filed by an individual more than 3 months before the first month in which he or she meets the requirements of paragraphs (1), (2), and (3) shall be accepted as an application for purposes of this section.

(b) Amount of benefits

The benefit amount to which an individual is entitled under this section for any month shall be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title.

(c) Reduction for government pension system benefits

(1) The benefit amount of any individual under this section for any month shall be reduced (but not below zero) by the amount of any periodic benefit under a governmental pension system for which he or she is eligible for such month.

(2) In the case of a husband and wife only one of whom is entitled to benefits under this section for any month, the benefit amount, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the spouse who is not entitled to benefits under this section is eligible for such month, over (B) the benefit amount as determined without regard to this subsection.

(3) In the case of a husband or wife both of whom are entitled to benefits under this section for any month, the benefit amount of each spouse, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the other spouse is eligible for such month, over (B) the benefit amount of such other spouse as determined without regard to this subsection.

(4) For purposes of this subsection, in determining whether an individual is eligible for periodic benefits under a governmental pension system—

(A) such individual shall be deemed to have filed application for such benefits,

(B) to the extent that entitlement depends on an application by such individual's spouse, such spouse shall be deemed to have filed application, and

(C) to the extent that entitlement depends on such individual or his or her spouse having retired, such individual and his or her spouse shall be deemed to have retired before the month for which the determination of eligibility is being made.

(5) For purposes of this subsection, if any periodic benefit is payable on any basis other than a calendar month, the Commissioner of Social Security shall allocate the amount of such benefit to the appropriate calendar months.

(6) If, under the foregoing provisions of this section, the amount payable for any month would be less than $1, such amount shall be reduced to zero. In the case of a husband and wife both of whom are entitled to benefits under this section for the month, the preceding sentence shall be applied with respect to the aggregate amount so payable for such month.

(7) If any benefit amount computed under the foregoing provisions of this section is not a multiple of $0.10, it shall be raised to the next higher multiple of $0.10.

(8) Under regulations prescribed by the Commissioner of Social Security, benefit payments under this section to an individual (or aggregate benefit payments under this section in the case of a husband and wife) of less than $5 may be accumulated until they equal or exceed $5.

(d) Suspension for months in which cash payments are made under public assistance or in which supplemental security income benefits are payable

The benefit to which any individual is entitled under this section for any month shall not be paid for such month if—

(1) such individual receives aid or assistance in the form of money payments in such month under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or under a State program funded under part A of subchapter IV of this chapter, or

(2) such individual's husband or wife receives such aid or assistance in such month, and under the State plan the needs of such individual were taken into account in determining eligibility for (or amount of) such aid or assistance,

unless the State agency administering or supervising the administration of such plan notifies the Commissioner of Social Security, at such time and in such manner as may be prescribed in accordance with regulations of the Commissioner of Social Security, that such payments to such individual (or such individual's husband or wife) under such plan are being terminated with the payment or payments made in such month and such individual is not an individual with respect to whom supplemental security income benefits are payable pursuant to subchapter XVI of this chapter or section 211 of Public Law 93–66 for the following month, nor shall such benefit be paid for such month if such individual is an individual with respect to whom supplemental security income benefits are payable pursuant to subchapter XVI of this chapter or section 211 of Public Law 93–66 for such month, unless the Commissioner of Social Security determines that such benefits are not payable with respect to such individual for the month following such month.

(e) Suspension where individual is residing outside United States

The benefit to which any individual is entitled under this section for any month shall not be paid if, during such month, such individual is not a resident of the United States. For purposes of this subsection, the term ''United States'' means the 50 States and the District of Columbia.

(f) Treatment as monthly insurance benefits

For purposes of subsections (t) and (u) of section 402 of this title, and of section 1395s of this title, a monthly benefit under this section shall be treated as a monthly insurance benefit payable under section 402 of this title.

(g) Annual reimbursement of Federal Old-Age and Survivors Insurance Trust Fund

There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1969, and for each fiscal year thereafter, such sums as the Commissioner of Social Security deems necessary on account of—

(1) payments made under this section during the second preceding fiscal year and all fiscal years prior thereto to individuals who, as of the beginning of the calendar year in which falls the month for which payment was made, had less than 3 quarters of coverage,

(2) the additional administrative expenses resulting from the payments described in paragraph (1), and

(3) any loss in interest to such Trust Fund resulting from such payments and expenses,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if such payments had not been made.

(h) Definitions

For purposes of this section—

(1) The term ''quarter of coverage'' includes a quarter of coverage as defined in section 228e(*l*) of title 45.

(2) The term ''governmental pension system'' means the insurance system established by this subchapter or any other system or fund established by the United States, a State, any political subdivision of a State, or any wholly owned instrumentality of any one or more of the foregoing which provides for payment of (A) pensions, (B) retirement or retired pay, or (C) annuities or similar amounts payable on account of personal services performed by any individual (not including any payment under any workmen's compensation law or any payment by the Secretary of Veterans Affairs as compensation for service-connected disability or death).

(3) The term ''periodic benefit'' includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(4) The determination of whether an individual is a husband or wife for any month shall be made under subsection (h) of section 416 of this title without regard to subsections (b) and (f) of section 416 of this title.

(Aug. 14, 1935, ch. 531, title II, § 228, as added Pub. L. 89–368, title III, § 302(a), Mar. 15, 1966, 80 Stat. 67; amended Pub. L. 90–248, title I, § 102(b), title II, § 241(a) Jan. 2, 1968, 81 Stat. 827, 916; Pub. L. 91–172, title X, § 1003(b), Dec. 30, 1969, 83 Stat. 740; Pub. L. 92–5, title II, § 202(b), Mar. 17, 1971, 85 Stat. 10; Pub. L. 92–336, title II, § 201(g)(2), July 1, 1972, 86 Stat. 411; Pub. L. 93–233, §§ 2(b)(1), 18(c), Dec. 31, 1973, 87 Stat. 952, 968; Pub. L. 98–21, title III, § 305(a)–(d), Apr. 20, 1983, 97 Stat. 113; Pub. L. 98–369, div. B, title VI, §§ 2662(e), 2663(j)(3)(A)(iv), July 18, 1984, 98 Stat. 1159, 1170; Pub. L. 101–508, title V, § 5114(a), Nov. 5, 1990, 104 Stat. 1388–273; Pub. L. 102–54, § 13(q)(3)(B)(i), June 13, 1991, 105 Stat. 279; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 104–193, title I, § 108(a)(2), Aug. 22, 1996, 110 Stat. 2165.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsec. (d)(1), is classified to section 601 et seq. of this title.

Section 211 of Pub. L. 93–66, referred to in subsec. (d), is set out as a note under section 1382 of this title.

Section 228e(*l*) of title 45, referred to in subsec. (h)(1), is a reference to section 5(*l*) of the Railroad Retirement Act of 1937. That Act was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305. The Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974, and

is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Section 228e of title 45 is covered by section 231e of Title 45.

AMENDMENTS

1996—Subsec. (d)(1). Pub. L. 104–193 inserted ''under a State program funded under'' before ''part A of subchapter IV of this chapter''.

1994—Subsecs. (c)(5), (8), (d), (g). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1991—Subsec. (h)(2). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (a)(2). Pub. L. 101–508 substituted ''(B)(i) attained such age after 1967 and before 1972, and (ii)'' for ''(B)''.

1984—Subsec. (c)(4)(C). Pub. L. 98–369, § 2662(e), amended directory language of Pub. L. 98–21, § 305(d)(2). See 1983 Amendment note below.

Subsec. (g). Pub. L. 98–369, § 2663(j)(3)(A)(iv), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

1983—Subsec. (a). Pub. L. 98–21, § 305(d)(1), substituted ''he or she'' for ''he'' wherever appearing.

Subsec. (b). Pub. L. 98–21, § 305(a), substituted ''The'' for ''(1) Except as provided in paragraph (2), the'' and struck out par. (2), which had provided that if both husband and wife were entitled or would have been entitled upon application to benefits under this section for any month, the amount of the husband's benefit for such month would be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and the amount of the wife's benefit for such month the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(1). Pub. L. 98–21, § 305(d)(1), substituted ''he or she'' for ''he''.

Subsec. (c)(2). Pub. L. 98–21, § 305(b), substituted ''(B) the benefit amount as determined without regard to this subsection'' for ''(B) the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title''.

Subsec. (c)(3). Pub. L. 98–21, § 305(c), amended par. (3) generally, substituting provisions relating to either a husband or wife for provision that the benefit amount of the wife, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the husband was eligible for such month, over (ii) the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and that the benefit amount of the husband, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the wife was eligible for such month, over (ii) the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(4)(C). Pub. L. 98–21, § 305(d)(2), as amended by Pub. L. 98–369, § 2662(e), substituted ''his or her'' for ''his'' wherever appearing.

1973—Subsec. (b). Pub. L. 93–233, § 2(b)(1), substituted ''the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' in pars. (1) and (2) and ''the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00'' in par. (2).

Subsec. (c). Pub. L. 93–233, § 2(b)(1), substituted ''the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' in par. (3), subpar. (A) and ''the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00'' in par. (2) and par. (3) subpar. (B).

Subsec. (d). Pub. L. 93–233, § 18(c) provided for elimination of benefits at age 72 for uninsured individuals receiving supplemental security income benefits.

1972—Subsec. (b)(1). Pub. L. 92–336, § 201(g)(2)(A), substituted ''$58.00'' for ''$48.30''.

Subsec. (b)(2). Pub. L. 92–336, § 201(g)(2)(B), substituted ''$58.00'' for ''$48.30'' and ''$29.00'' for ''$24.20''.

Subsec. (c)(2). Pub. L. 92–336, § 201(g)(2)(C), substituted ''$29.00'' for ''$24.20''.

Subsec. (c)(3)(A). Pub. L. 92–336, § 201(g)(2)(D), substituted ''$58.00'' for ''$48.30''.

Subsec. (c)(3)(B). Pub. L. 92–336, § 201(g)(2)(E), substituted ''$29.00'' for ''$24.20''.

1971—Subsec. (b)(1). Pub. L. 92–5, § 202(b)(1), substituted ''$48.30'' for ''$46''.

Subsec. (b)(2). Pub. L. 92–5, § 202(b)(2), substituted ''$48.30'' for ''$46'' and ''$24.20'' for ''$23''.

Subsec. (c)(2). Pub. L. 92–5, § 202(b)(3), substituted ''$24.20'' for ''$23''.

Subsec. (c)(3)(A). Pub. L. 92–5, § 202(b)(4), substituted ''$48.30'' for ''$46''.

Subsec. (c)(3)(B). Pub. L. 92–5, § 202(b)(5), substituted ''$24.20'' for ''$23''.

1969—Subsec. (b)(1). Pub. L. 91–172, § 1003(b)(1), substituted ''$46'' for ''$40''.

Subsec. (b)(2). Pub. L. 91–172, § 1003(b)(2), substituted ''$46'' for ''$40'' and ''$23'' for ''$20''.

Subsec. (c)(2). Pub. L. 91–172, § 1003(b)(3), substituted ''$23'' for ''$20''.

Subsec. (c)(3)(A). Pub. L. 91–172, § 1003(b)(4), substituted ''$46'' for ''$40''.

Subsec. (c)(3)(B). Pub. L. 91–172, § 1003(b)(5), substituted ''$23'' for ''$20''.

1968—Subsec. (b)(1). Pub. L. 90–248, § 102(b)(1), substituted ''$40'' for ''$35''.

Subsec. (b)(2). Pub. L. 90–248, § 102(b)(2), substituted ''$40'' for ''$35'' and ''$20'' for $17.50''.

Subsec. (c)(2). Pub. L. 90–248, § 102(b)(3), substituted ''$20'' for ''$17.50''.

Subsec. (c)(3)(A). Pub. L. 90–248, § 102(b)(4), substituted ''$40'' for ''$35''.

Subsec. (c)(3)(B). Pub. L. 90–248, § 102(b)(5), substituted ''$20'' for ''$17.50''.

Subsec. (d)(1). Pub. L. 90–248, § 241(a), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XVI of this chapter,''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5114(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect [to] benefits payable on the basis of applications filed after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2662(e) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(j)(3)(A)(iv) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law

involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 2(b)(1) of Pub. L. 93–233 provided that the amendment made by that section is effective June 1, 1974.

Amendment by section 2(b)(1) of Pub. L. 93–233 applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title, see section 2(c) of Pub. L. 93–233, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–336 applicable with respect to monthly benefits under subchapter II of this chapter for months after August 1972, see section 201(i) of Pub. L. 92–336, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable with respect to monthly benefits under subchapter II of this chapter for months after December 1970, see section 202(c) of Pub. L. 92–5, set out as a note under section 427 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable for months after December 1969, see section 1003(c) of Pub. L. 91–172, set out as a note under section 427 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 102(b) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for months after January 1968, see section 102(c) of Pub. L. 90–248, set out as a note under section 427 of this title.

REPEAL OF AMENDMENT OF SUBSECS. (b)(1), (2) AND (c)(3)(A), (B) PRIOR TO EFFECTIVE DATE

Section 202(a)(4) of Pub. L. 92–336, title II, July 1, 1972, 86 Stat. 416, which, effective Jan. 1, 1975, substituted ''the larger of $58.00 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' and ''the larger of $29.00 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00'', was repealed prior to its effective date by Pub. L. 93–233, §2(b)(2), Dec. 31, 1973, 87 Stat. 952, applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title. See section 2(c) of Pub. L. 93–233, set out as an Effective Date of 1973 Amendment note under section 415 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 56593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

INCREASES TO TAKE INTO ACCOUNT GENERAL BENEFIT INCREASES

Section 305(e) of Pub. L. 98–21 provided that: ''The Secretary shall increase the amounts specified in section 228 of the Social Security Act [this section], as amended by this section, to take into account any general benefit increases (as referred to in section 215(i)(3) of such Act [section 415(i)(3) of this title]), and any increases under section 215(i) of such Act, which have occurred after June 1974 or may hereafter occur.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by Secretary of the Treasury to each individual who, for month of March 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

APPLICATIONS FOR TRANSITIONAL COVERAGE OF UNINSURED INDIVIDUALS FOR HOSPITAL INSURANCE BENEFITS

Section 302(b) of Pub. L. 89–368 provided that: ''For purposes of paragraph (4) of section 228(a) of the Social Security Act [subsec. (a)(4) of this section] (added by subsection (a) of this section), an application filed under section 103 of the Social Security Amendments of 1965 [set out as a note under section 426 of this title] before July 1966 shall be regarded as an application under such section 228 [this section] and shall, for purposes of such paragraph and of the last sentence of such section 228(a), be deemed to have been filed in July 1966, unless the person by whom or on whose behalf such application was filed notifies the Secretary that he does not want such application so regarded.''

§ 429. Benefits in case of members of uniformed services

For purposes of determining entitlement to and the amount of any monthly benefit for any month after December 1972, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this subchapter on the basis of the wages and self-employment income of any individual, and for purposes of section 416(i)(3) of this title, such individual, if he was paid wages for service as a member of a uniformed service (as defined in section 410(m) of this title) which was included in the term ''employment'' as defined in section 410(a) of this title as a result of the provisions of section 410(*l*)(1)(A) of this title, shall be deemed to have been paid—

(1) in each calendar quarter occurring after 1956 and before 1978 in which he was paid such wages, additional wages of $300, and

(2) in each calendar year occurring after 1977 and before 2002 in which he was paid such wages, additional wages of $100 for each $300 of such wages, up to a maximum of $1,200 of additional wages for any calendar year.

(Aug. 14, 1935, ch. 531, title II, §229, as added Pub. L. 90–428, title I, §106, Jan. 2, 1968, 81 Stat. 833; amended Pub. L. 92–603, title I, §120(a), Oct. 30, 1972, 86 Stat. 1352; Pub. L. 95–216, title III, §353(d), Dec. 20, 1977, 91 Stat. 1554; Pub. L. 98–21, title I, §151(b)(1), Apr. 20, 1983, 97 Stat. 104; Pub. L. 98–369, div. B, title VI, §2661(n), July 18, 1984, 98 Stat. 1158; Pub. L. 100–203, title IX, §9001(c), Dec. 22, 1987, 101 Stat. 1330–286; Pub. L. 103–296, title I, §107(a)(4), title III, §321(c)(6)(J), Aug. 15, 1994, 108 Stat. 1478, 1538; Pub. L. 108–203, title IV, §420(b), Mar. 2, 2004, 118 Stat. 535.)

AMENDMENTS

2004—Pub. L. 108–203, §420(b)(1), struck out subsec. (a) designation before ''For purposes of'' and struck out

subsec. (b), which authorized to be appropriated to each of the Trust Funds, for transfer on July 1 of each calendar year to such Fund, an amount equal to the total of the additional amounts which would be appropriated to such Fund for the fiscal year ending Sept. 30 of such calendar year under section 401 or 1395i of this title if the amounts of the additional wages deemed to have been paid for such calendar year constituted remuneration for employment for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 and set forth provisions relating to determination of amounts authorized to be appropriated and adjustments to such amounts.

Par. (2). Pub. L. 108–203, § 420(b)(2), inserted ''and before 2002'' after ''1977''.

1994—Subsec. (b). Pub. L. 103–296, § 321(c)(6)(J), substituted ''1986'' for ''1954'' after ''Code of'' in two places.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

1987—Subsec. (a). Pub. L. 100–203 substituted ''section 410(*l*)(1)(A)'' for ''section 410(*l*)''.

1984—Subsec. (b). Pub. L. 98–369 inserted at end ''Additional adjustments may be made in the amounts so authorized to be appropriated to the extent that the amounts transferred in accordance with clauses (i) and (ii) of section 151(b)(3)(B) of the Social Security Amendments of 1983 with respect to wages deemed to have been paid in 1983 were in excess of or were less than the amount which the Secretary, on the basis of appropriate data, determines should have been so transferred.''

1983—Subsec. (b). Pub. L. 98–21 amended subsec. (b) generally, substituting provisions relating to authorization of appropriations to each of the Trust Funds for transfer on July 1 of each calendar year for provision that had authorized appropriations to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund annually, as benefits under this subchapter and part A of subchapter XVIII of this chapter were paid after December 1967, such sums as the Secretary determined to be necessary to meet (1) the additional costs, resulting from subsec. (a), of such benefits (including lump-sum death payments), (2) the additional administrative expenses resulting therefrom, and (3) any loss in interest to such trust funds resulting from the payment of such amounts, and that such additional costs would be determined after any increases in such benefits arising from the application of section 417 of this title had been made.

1977—Subsec. (a). Pub. L. 95–216 substituted provisions relating to applicability of benefits for wages deemed to have been paid in each calendar quarter occurring after 1956 and before 1978 and provisions relating to applicability of benefits for wages deemed to have been paid in each calendar quarter occurring after 1977, for provisions relating to applicability of benefits for wages deemed to have been paid in each calendar quarter occurring after 1956.

1972—Subsec. (a). Pub. L. 92–603 substituted ''December 1972'' for ''December 1967'' and ''after 1956'' for ''after 1967'' and struck out provisions limiting the wages deemed to have been paid an individual in addition to the wages actually paid him for his service to $100 if the wages actually paid to him in a quarter were $100 or less or to $200 if the wages actually paid to him in a quarter were more than $100 but not more than $200.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9001(d) of Pub. L. 100–203, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 151(b)(2) of Pub. L. 98–21 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to wages deemed to have been paid for calendar years after 1983.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective Jan. 1, 1978, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 120(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972 and with respect to lump-sum death payments under such title in the case of deaths occurring after December 1972 except that, in the case of any individual who is entitled, on the basis of the wages and self-employment income of any individual to whom section 229 of such Act [this section] applies, to monthly benefits under title II of such Act for the month in which this Act is enacted [October 1972], such amendments shall apply (1) only if a written request for a recalculation of such benefits (by reason of such amendments) under the provisions of section 215(b) and (d) of such Act [section 415(b) and (d) of this title], as in effect at the time such request is filed, is filed by such individual, or any other individual, entitled to benefits under such title II on the basis of such wages and self-employment income, and (2) only with respect to such benefits for months beginning with whichever of the following is later: January 1973 or the twelfth month before the month in which such request was filed. Recalculations of benefits as required to carry out the provisions of this section shall be made notwithstanding the provisions of section 215(f)(1) of the Social Security Act, and no such recalculation shall be regarded as a recomputation for purposes of section 215(f) of such Act.''

PAYMENT OF WAGES AFTER 2001

Pub. L. 107–117, div. A, title VIII, § 8134, Jan. 10, 2002, 115 Stat. 2278, provided that: ''Notwithstanding section 229(a) of the Social Security Act [subsec. (a) of this section], no wages shall be deemed to have been paid to any individual pursuant to that section in any calendar year after 2001.''

COMPENSATORY PAYMENTS TO TRUST FUNDS

Section 151(b)(3) of Pub. L. 98–21, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) Within thirty days after the date of the enactment of this Act [Apr. 20, 1983], the Secretary of Health and Human Services shall determine the additional amounts which would have been appropriated to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under sections 201 and 1817 of the Social Security Act [sections 401 and 1395i of this title] if the additional wages deemed to have been paid under section 229(a) of the Social Security Act [subsec. (a) of this section] prior to 1984 had constituted remuneration for employment (as defined in section 3121(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)]) for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [26 U.S.C. 3101, 3111], and the amount of interest which would have been earned on such amounts if they had been so appropriated.

''(B)(i) Within thirty days after the date of the enactment of this Act [Apr. 20, 1983], the Secretary of the Treasury shall transfer to each such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to the amount determined with respect to such Trust Fund under subparagraph (A), less any amount appropriated to such Trust Fund pursuant to the provisions of section 229(b) of the Social Security Act [subsec. (b) of this section] prior to the date of the determination made under subparagraph (A) with respect to wages deemed to have been paid for calendar years prior to 1984.

''(ii) The Secretary of Health and Human Services shall revise the amount determined under clause (i) with respect to each such Trust Fund within one year after the date of the transfer made to such Trust Fund under clause (i), as determined appropriate by such Secretary from data which becomes available to him after the date of the transfer under clause (i). Within 30 days after any such revision, the Secretary of the Treasury shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of Health and Human Services certifies as necessary to take into account such revision.''

§ 430. Adjustment of contribution and benefit base

(a) Determination and publication by Commissioner in Federal Register subsequent to cost-of-living benefit increase; effective date

Whenever the Commissioner of Social Security pursuant to section 415(i) of this title increases benefits effective with the December following a cost-of-living computation quarter, the Commissioner shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the contribution and benefit base determined under subsection (b) or (c) of this section which shall be effective with respect to remuneration paid after the calendar year in which such quarter occurs and taxable years beginning after such year.

(b) Determination of amount

The amount of such contribution and benefit base shall (subject to subsection (c) of this section) be the amount of the contribution and benefit base in effect in the year in which the determination is made or, if larger, the product of—

(1) $60,600, and

(2) the ratio of (A) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subsection (a) of this section is made to (B) the national average wage index (as so defined) for 1992,

with such product, if not a multiple of $300, being rounded to the next higher multiple of $300 where such product is a multiple of $150 but not of $300 and to the nearest multiple of $300 in any other case.

(c) Amount of base for period prior to initial cost-of-living benefit increase

For purposes of this section, and for purposes of determining wages and self-employment income under sections 409, 411, 413, and 415 of this title and sections 1402, 3121, 3122, 3125, 6413, and 6654 of the Internal Revenue Code of 1986, (1) the ''contribution and benefit base'' with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1973 and prior to the calendar year with the June of which the first increase in benefits pursuant to section 415(i) of this title becomes effective shall be $13,200 or (if applicable) such other amount as may be specified in a law enacted subsequent to the law which added this section, and (2) the ''contribution and benefit base'' with respect to remuneration paid (and taxable years beginning)—

(A) in 1978 shall be $17,700,

(B) in 1979 shall be $22,900,

(C) in 1980 shall be $25,900, and

(D) in 1981 shall be $29,700.

For purposes of determining under subsection (b) of this section the ''contribution and benefit base'' with respect to remuneration paid (and taxable years beginning) in 1982 and subsequent years, the dollar amounts specified in clause (2) of the preceding sentence shall be considered to have resulted from the application of such subsection (b) of this section and to be the amount determined (with respect to the years involved) under that subsection.

(d) Determinations for calendar years after 1976 for purposes of retirement benefit plans

Notwithstanding any other provision of law, the contribution and benefit base determined under this section for any calendar year after 1976 for purposes of section 1322(b)(3)(B) of title 29, with respect to any plan, shall be the contribution and benefit base that would have been determined for such year if this section as in effect immediately prior to the enactment of the Social Security Amendments of 1977 had remained in effect without change (except that, for purposes of subsection (b) of such section 430 of this title as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to $45,000, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the national average wage index (as defined in section 409(k)(1) of this title), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subsection (a) of such section 430 of this title is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1992).

(Aug. 14, 1935, ch. 531, title II, § 230, as added Pub. L. 92–336, title II, § 202(b)(1), July 1, 1972, 86 Stat. 416; amended Pub. L. 92–603, title I, § 144(a)(4), Oct. 30, 1972, 86 Stat. 1370; Pub. L. 93–66, title II, § 203(c), July 9, 1973, 87 Stat. 153; Pub. L. 93–233, §§ 3(j), 5(c), Dec. 31, 1973, 87 Stat. 952, 954; Pub. L. 94–202, § 8(h), Jan. 2, 1976, 89 Stat. 1139; Pub. L. 95–216, title I, § 103(a)–(c)(1), title III, § 353(e), Dec. 20, 1977, 91 Stat. 1513, 1514, 1554; Pub. L. 97–34, title VII, § 741(d)(1), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98–21, title I, § 111(a)(5), Apr. 20, 1983, 97 Stat. 72; Pub. L. 98–76, title II, §§ 211(d), 225(a)(4), Aug. 12, 1983, 97 Stat. 419, 425; Pub. L.

98–369, div. B, title VI, § 2663(a)(18), July 18, 1984, 98 Stat. 1165; Pub. L. 101–239, title X, § 10208(b)(1)(A), (B), (5), (d)(2)(A)(i), Dec. 19, 1989, 103 Stat. 2477, 2478, 2480; Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(b)(2), (c)(6)(K), (g)(1)(A), (B), Aug. 15, 1994, 108 Stat. 1478, 1537, 1538, 1542.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (c), is classified generally to Title 26, Internal Revenue Code.

''Subsequent to the law which added this section'', referred to in subsec. (c), means subsequent to the enactment of Pub. L. 92–336, which was approved July 1, 1972.

The enactment of the Social Security Amendments of 1977, referred to in subsec. (d), means the enactment of Pub. L. 95–216, which was approved Dec. 20, 1977.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner shall'' for ''he shall''.

Subsec. (b)(1), (2). Pub. L. 103–296, § 321(g)(1)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) the contribution and benefit base which is in effect with respect to remuneration paid in (and taxable years beginning in) the calendar year in which the determination under subsection (a) of this section is made, and

''(2) the ratio of (A) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subsection (a) of this section is made to (B) the deemed average total wages (as so defined) for the calendar year before the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under subsection (a) of this section,''.

Subsec. (b)(2)(A), (B). Pub. L. 103–296, § 321(b)(2), made technical correction to directory language of Pub. L. 101–239, § 10208(b)(1). See 1989 Amendment note below.

Subsec. (c). Pub. L. 103–296, § 321(c)(6)(K), substituted ''1986'' for ''1954'' after ''Code of''.

Subsec. (d). Pub. L. 103–296, § 321(g)(1)(B), at end substituted parenthetical provisions beginning with ''(except that'' and ending with ''reference to 1992).'' for former parenthetical provisions which read as follows: ''(except that, for purposes of subsection (b)(2)(A) of this section as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wage (within the meaning of section 409(k)(1) of this title) for such calendar year).''

1989—Subsec. (b)(2)(A). Pub. L. 101–239, § 10208(b)(1)(A), as amended by Pub. L. 103–296, § 321(b)(2), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, § 10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (b)(2)(B). Pub. L. 101–239, § 10208(b)(1)(B), as amended by Pub. L. 103–296, § 321(b)(2), substituted ''the deemed average total wages (as so defined)'' for ''the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate''.

Subsec. (d). Pub. L. 101–239, § 10208(b)(5), substituted ''change (except that, for purposes of subsection (b)(2)(A) of this section as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wage (within the meaning of section 409(k)(1) of this title) for such calendar year)'' for ''change''.

1984—Subsec. (c). Pub. L. 98–369, in last sentence which was repealed by Pub. L. 98–76, substituted ''3(a) or 3(f)(3)'' for ''3(a) or (3)(f)(3)'' in the original, which had been translated as ''section 231b(a) or (f)(3) of title 45''.

1983—Subsec. (a). Pub. L. 98–21 substituted ''December'' for ''June''.

Subsec. (c). Pub. L. 98–76, § 225(a)(4), struck out provision that for purposes of determining employee and employer tax liability under sections 3201(a) and 3221(a) of the Internal Revenue Code of 1954, for purposes of determining the portion of the employee representative tax liability under section 3211(a) of such Code which resulted from the application of the 12.75 percent rate specified therein, and for purposes of computing average monthly compensation under section 231b(j) of title 45, except with respect to annuity amounts determined under section 231b(a) or (f)(3) of title 45, clause (2) and the preceding sentence of this subsection shall be disregarded.

Pub. L. 98–76, § 211(d), temporarily substituted ''12.75 percent'' for ''11.75 percent''. See Effective and Termination Dates of 1983 Amendments note below.

1981—Subsec. (c). Pub. L. 97–34 substituted in last sentence ''employee and employer'' for ''employer'', ''sections 3201(a) and 3221(a)'' for ''section 3221(a)'', and ''11.75'' for ''9.5''.

1977—Subsec. (a). Pub. L. 95–216, § 103(a)(1), substituted ''determined under subsection (b) or (c) of this section'' for ''determined under subsection (b) of this section''.

Subsec. (b). Pub. L. 95–216, § 103(a)(2), in provisions preceding par. (1), substituted ''shall (subject to subsection (c) of this section) be the amount'' for ''shall be the amount''.

Subsec. (b)(1). Pub. L. 95–216, § 353(e)(2), substituted ''determination under subsection (a) of this section is made'' for ''determination under subsection (a) of this section with respect to such particular calendar year was made''.

Subsec. (b)(2). Pub. L. 95–216, § 353(e)(3), substituted ''(A) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year in which the determination under subsection (a) of this section is made to (B) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before'' for ''(A) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year in which the determination under subsection (a) of this section with respect to such particular calendar years was made to (B) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973 or, if later, the calendar year preceding''.

Subsec. (b). Pub. L. 95–216, § 353(e)(1), in provisions following par. (2), struck out directive that, for purposes of this subsection, the average of the wages for the calendar year 1978 (or any prior calendar year), in the case of determinations made under subsection (a) of this section prior to December 31, 1979, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year.

Subsec. (c). Pub. L. 95–216, § 103(b), designated existing provisions as introductory material and cl. (1) and added cl. (2) and closing material.

Subsec. (d). Pub. L. 95–216, § 103(c)(1), added subsec. (d).

1976—Subsec. (b). Pub. L. 94–202 substituted ''wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year'' for ''taxable wages of all employees as reported to the Secretary for the first calendar quarter of the calendar

year'' and ''made to'' for ''made to the latest of'' in cl. (A) of par. (2), substituted ''wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973 or, if later, the calendar year preceding'' for ''taxable wages of all employees as reported to the Secretary for the first calendar quarter of 1973 or the first calendar quarter of'' in cl. (B) of par. (2), and inserted, following par. (2), provision directing that the average wages for the calendar year 1978, or any prior calendar year, be deemed equal to 400% of the average wages reported for the first quarter of that calendar year.

1973—Subsec. (a). Pub. L. 93–233, §3(j)(1), substituted ''with the June'' for ''with the first month of the calendar year'' and struck out ''(along with the publication of such benefit increase as required by section 415(i)(2)(D) of this title)'' after ''such quarter occurs'' and ''(unless such increase in benefits is prevented from becoming effective by section 415(i)(2)(E) of this title)'' after ''shall be effective'', respectively.

Subsec. (c). Pub. L. 93–233, §§3(j)(2), 5(c), substituted ''the June'' for ''the first month'' and ''$13,200'' for ''$12,600'', respectively.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000''.

1972—Subsec. (b)(2)(A). Pub. L. 92–603 substituted ''of'' for ''or''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 321(b)(2) of Pub. L. 103–296 provided that the amendment made by that section is effective as if included in section 10208(b)(1) of Pub. L. 101–239.

Amendment by section 321(g)(1)(A), (B) of Pub. L. 103–296 effective with respect to the determination of the contribution and benefit base for years after 1994, see section 321(g)(3)(A) of Pub. L. 103–296, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10208(c) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section and sections 403, 409, 413, 415, and 424a of this title] shall apply with respect to the computation of average total wage amounts (under the amended provisions) for calendar years after 1990.

''(2) TRANSITIONAL RULE.—For purposes of determining the contribution and benefit base for 1990, 1991, and 1992 under section 230(b) of the Social Security Act [subsec. (b) of this section] (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977 [Pub. L. 95–216, approved Dec. 20, 1977])—

''(A) the average of total wages for 1988 shall be deemed to be equal to the amount which would have been determined without regard to this paragraph, plus 2 percent of the amount which has been determined to the average of total wages for 1987,

''(B) the average of total wages for 1989 shall be deemed to be equal to the amount which would have been determined without regard to this paragraph, plus 2 percent of the amount which would have been determined to be the average of total wages for 1988 without regard to subparagraph (A), and

''(C) the average of total wages reported to the Secretary of the Treasury for 1990 shall be deemed to be equal to the product of—

''(i) the SSA average wage index (as defined in section 215(i)(1)(G) of the Social Security Act [section 415(i)(1)(G) of this title] and promulgated by the Secretary) for 1989, and

''(ii) the quotient obtained by dividing—

''(I) the average of total wages (as defined in regulations of the Secretary and computed without regard to the limitations of section 209(a)(1) of the Social Security Act [section 409(a)(1) of this title] and by including deferred compensation amounts, within the meaning of section 209(k)(2) of such Act as added by this section) reported to the Secretary of the Treasury or his delegate for 1990, by

''(II) the average of total wages (as so defined and computed without regard to the limitations specified in such section 209(a)(1) and by excluding deferred compensation amounts within the meaning of such section 209(k)(2)) reported to the Secretary of the Treasury or his delegate for 1989.

''(3) DETERMINATION OF CONTRIBUTION AND BENEFIT BASE FOR 1993.—For purposes of determining the contribution and benefit base for 1993 under section 230(b) of the Social Security Act (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977), the average of total wages for 1990 shall be determined without regard to subparagraph (C) of paragraph (2).

''(4) REVISED DETERMINATION UNDER SECTION 230 OF THE SOCIAL SECURITY ACT.—As soon as possible after the enactment of this Act [Dec. 19, 1989], the Secretary of Health and Human Services shall revise and publish, in accordance with the provisions of this Act [Pub. L. 101–239, see Tables for classification] and the amendments made thereby, the contribution and benefit base under section 230 of the Social Security Act with respect to remuneration paid after 1989 and taxable years beginning after calendar year 1989.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

Amendment by section 211(d) of Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98–76, set out as a note under section 3201 of Title 26, Internal Revenue Code.

Amendment by section 225(a)(4) of Pub. L. 98–76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98–76, set out as a note under section 3201 of Title 26.

Amendment by Pub. L. 98–21 applicable with respect to cost-of-living increases determined under section 415(i) of this title for years after 1982, see section 111(a)(8) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 402 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97–34, set out as a note under section 3201 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 103(a), (b) of Pub. L. 95–216 applicable with respect to remunerations paid or received, and taxable years beginning after, 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of Title 26, Internal Revenue Code.

Section 103(c)(2) of Pub. L. 95–216 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to plan terminations occurring after the date of the enactment of this Act [Dec. 20, 1977].''

Amendment by section 353(e) of Pub. L. 95–216 effective Jan. 1, 1979, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 effective in like manner as if such amendment had been included in title II of Pub. L. 92–336, see section 144(b) of Pub. L. 92–603, set out as a note under section 403 of this title.

SOCIAL SECURITY CONTRIBUTION AND BENEFIT BASE

2005—By notice of the Commissioner of Social Security, Oct. 26, 2004, 69 F.R. 62497, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2005 is $90,000.

2004—By notice of the Commissioner of Social Security, Oct. 16, 2003, 68 F.R. 60437, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2004 is $87,900.

2003—By notice of the Commissioner of Social Security, Oct. 18, 2002, 67 F.R. 65620, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2003 is $87,000.

2002—By notice of the Commissioner of Social Security, Oct. 19, 2001, 66 F.R. 54047, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2002 is $84,900.

2001—By notice of the Commissioner of Social Security, Oct. 18, 2000, 65 F.R. 63663, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2001 is $80,400.

2000—By notice of the Commissioner of Social Security, Oct. 20, 1999, 64 F.R. 57506, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2000 is $76,200.

1999—By notice of the Commissioner of Social Security, Oct. 21, 1998, 63 F.R. 58446, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1999 is $72,600.

1998—By notice of the Commissioner of Social Security, Oct. 22, 1997, 62 F.R. 58762, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1998 is $68,400.

1997—By notice of the Commissioner of Social Security, Oct. 18, 1996, 61 F.R. 55346, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1997 is $65,400.

1996—By notice of the Commissioner of Social Security, Oct. 18, 1995, 60 F.R. 54751, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1996 is $62,700.

1995—By notice of the Secretary of Health and Human Services, Oct. 25, 1994, 59 F.R. 54464, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1995 is $61,200.

1994—By notice of the Secretary of Health and Human Services, Oct. 28, 1993, 58 F.R. 58004, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1994 is $60,600.

1993—By notice of the Secretary of Health and Human Services, Oct. 20, 1992, 57 F.R. 48619, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1993 is $57,600.

1992—By notice of the Secretary of Health and Human Services, Oct. 21, 1991, 56 F.R. 55325, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1992 is $55,500.

1991—By notice of the Secretary of Health and Human Services, Oct. 25, 1990, 55 F.R. 45856, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1991 is $53,400.

1990—By notice of the Secretary of Health and Human Services, Oct. 26, 1989, 54 F.R. 45803, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1990 is $50,400.

1989—By notice of the Secretary of Health and Human Services, Oct. 27, 1988, 53 F.R. 43932, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1989 is $48,000.

1988—By notice of the Secretary of Health and Human Services, Oct. 19, 1987, 52 F.R. 41672, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1988 is $45,000.

1987—By notice of the Secretary of Health and Human Services, Oct. 31, 1986, 51 F.R. 40256, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1987 is $43,800.

1986—By notice of the Secretary of Health and Human Services, Oct. 29, 1985, 50 F.R. 45559, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1986 is $42,000.

1985—By notice of the Secretary of Health and Human Services, Oct. 29, 1984, 49 F.R. 43775, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1985 is $39,600.

1983—By notice of the Secretary of Health and Human Services, Nov. 4, 1982, 47 F.R. 51003, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1983 is $35,700.

1982—By notice of the Secretary of Health and Human Services, Oct. 30, 1981, 46 F.R. 53791, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit

base with respect to remuneration paid in, and taxable years beginning in, 1982 is $32,400.

1978—By notice of the Secretary of Health, Education, and Welfare, Oct. 31, 1977, 42 F.R. 57754, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1978 is $17,700.

1977—By notice of the Secretary of Health, Education, and Welfare, Oct. 7, 1976, 41 F.R. 44878, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1977 is $16,500.

1976—By notice of the Secretary of Health, Education, and Welfare, Oct. 22, 1975, 40 F.R. 50556, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1976 is $15,300.

COST-OF-LIVING INCREASE IN BENEFITS

For purposes of subsec. (a) of this section, the increase in benefits provided by section 2 of Pub. L. 93–233, revising benefits table of section 415(a) of this title and amending sections 427(a), (b) and 428(b)(1), (2), (c)(3)(A), (B) of this title considered an increase under section 415(i) of this title, see section 3(i) of Pub. L. 93–233, set out as a note under section 415 of this title.

§ 431. Benefits for certain individuals interned by United States during World War II

(a) "Internee" defined

For the purposes of this section the term ''internee'' means an individual who was interned during any period of time from December 7, 1941, through December 31, 1946, at a place within the United States operated by the Government of the United States for the internment of United States citizens of Japanese ancestry.

(b) Applicability in determining entitlement to and amount of monthly benefits and lump-sum death payments, and period of disability; effect of payment of benefits by other agency or instrumentality of United States

(1) For purposes of determining entitlement to and the amount of any monthly benefit for any month after December 1972, or entitlement to and the amount of any lump-sum death payment in the case of a death after such month, payable under this subchapter on the basis of the wages and self-employment income of any individual, and for purposes of section 416(i)(3) of this title, such individual shall be deemed to have been paid during any period after he attained age 18 and for which he was an internee, wages (in addition to any wages actually paid to him) at a weekly rate of basic pay during such period as follows—

(A) in the case such individual was not employed prior to the beginning of such period, 40 multiplied by the minimum hourly rate or rates in effect at any such time under section 206(a)(1) of title 29, for each full week during such period; and

(B) in the case such individual who was employed prior to the beginning of such period, 40 multiplied by the greater of (i) the highest hourly rate received during any such employment, or (ii) the minimum hourly rate or rates in effect at any such time under section 206(a)(1) of title 29, for each full week during such period.

(2) This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump-sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon internment during any period from December 7, 1941, through December 31, 1946, at a place within the United States operated by the Government of the United States for the internment of United States citizens of Japanese ancestry, is determined by any agency or wholly owned instrumentality of the United States to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 416(i)(3) of this title.

(3) Upon application for benefits, a recalculation of benefits (by reason of this section), or a lump-sum death payment on the basis of the wages and self-employment income of any individual who was an internee, the Commissioner of Social Security shall accept the certification of the Secretary of Defense or his designee concerning any period of time for which an internee is to receive credit under paragraph (1) and shall make a decision without regard to clause (B) of paragraph (2) of this subsection unless the Commissioner has been notified by some other agency or instrumentality of the United States that, on the basis of the period for which such individual was an internee, a benefit described in clause (B) of paragraph (2) has been determined by such agency or instrumentality to be payable by it. If the Commissioner of Social Security has not been so notified, the Commissioner shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (2) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by this section.

(4) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on any period for which any individual was an internee shall, at the request of the Commissioner of Social Security, certify to the Commissioner, with respect to any indi-

vidual who was an internee, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (3) of this subsection.

(c) Authorization of appropriations

There are authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund for the fiscal year ending June 30, 1978, such sums as the Commissioner of Social Security and the Secretary jointly determine would place the Trust Funds and the Federal Hospital Insurance Trust Fund in the position in which they would have been if the preceding provisions of this section had not been enacted.

(Aug. 14, 1935, ch. 531, title II, § 231, as added Pub. L. 92–603, title I, § 142(a), Oct. 30, 1972, 86 Stat. 1367; amended Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(A)(iii), July 18, 1984, 98 Stat. 1170; Pub. L. 103–296, title I, § 107(a)(1), (4), (c), Aug. 15, 1994, 108 Stat. 1477, 1478, 1481.)

AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103–296, § 107(a)(1), (4), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' after ''an internee, the'', after ''If the'', and after ''so notify the'', substituted ''the Commissioner'' for ''he'' before ''has been notified'' and before ''shall then ascertain'', and substituted ''Commissioner of Social Security'' for ''Secretary'' before ''shall certify no''.

Subsec. (b)(4). Pub. L. 103–296, § 107(a)(1), (4), substituted ''Commissioner of Social Security, certify to the Commissioner, with respect to any individual who was an internee, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (3) of this subsection'' for ''Secretary of Health and Human Services, certify to him, with respect to any individual who was an internee, such information as the Secretary deems necessary to carry out his functions under paragraph (3) of this subsection''.

Subsec. (c). Pub. L. 103–296, § 107(c), substituted ''Commissioner of Social Security and the Secretary jointly determine'' for ''Secretary determines''.

1984—Subsec. (b)(3), (4). Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

§ 432. Processing of tax data

The Secretary of the Treasury shall make available information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986, to the Commissioner of Social Security for the purposes of this subchapter and subchapter XI of this chapter. The Commissioner of Social Security and the Secretary of the Treasury are authorized to enter into an agreement for the processing by the Commissioner of Social Security of information contained in returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986. Notwithstanding the provisions of section 6103(a) of the Internal Revenue Code of 1986, the Secretary of the Treasury shall make available to the Commissioner of Social Security such documents as may be agreed upon as being necessary for purposes of such processing. The Commissioner of Social Security shall process any withholding tax statements or other documents made available to the Commissioner by the Secretary of the Treasury pursuant to this section. Any agreement made pursuant to this section shall remain in full force and effect until modified or otherwise changed by mutual agreement of the Commissioner of Social Security and the Secretary of the Treasury.

(Aug. 14, 1935, ch. 531, title II, § 232, as added Pub. L. 94–202, § 8(b), Jan. 2, 1976, 89 Stat. 1137; amended Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(c)(6)(L), Aug. 15, 1994, 108 Stat. 1478, 1538.)

REFERENCES IN TEXT

Part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986, referred to in text, is classified to section 6031 et seq. of Title 26, Internal Revenue Code.

AMENDMENTS

1994—Pub. L. 103–296, § 321(c)(6)(L), substituted ''1986'' for ''1954'' after ''Code of'' wherever appearing.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, except where appearing before ''of the Treasury'' and substituted ''available to the Commissioner'' for ''available to him''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 8(c) of Pub. L. 94–202 provided that: ''Section 232 of the Social Security Act [this section], as added by subsection (b) of this section, shall be effective with respect to statements reporting income received after 1977.''

§ 433. International agreements

(a) Purpose of agreement

The President is authorized (subject to the succeeding provisions of this section) to enter into agreements establishing totalization arrangements between the social security system established by this subchapter and the social security system of any foreign country, for the purposes of establishing entitlement to and the amount of old-age, survivors, disability, or derivative benefits based on a combination of an individual's periods of coverage under the social security system established by this subchapter and the social security system of such foreign country.

(b) Definitions

For the purposes of this section—

(1) the term ''social security system'' means, with respect to a foreign country, a social insurance or pension system which is of general application in the country and under which periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, death, or disability; and

(2) the term ''period of coverage'' means a period of payment of contributions or a period of earnings based on wages for employment or on self-employment income, or any similar period recognized as equivalent thereto under this subchapter or under the social security system of a country which is a party to an agreement entered into under this section.

(c) Crediting periods of coverage; conditions of payment of benefits

(1) Any agreement establishing a totalization arrangement pursuant to this section shall provide—

(A) that in the case of an individual who has at least 6 quarters of coverage as defined in section 413 of this title and periods of coverage under the social security system of a foreign country which is a party to such agreement, periods of coverage of such individual under such social security system of such foreign country may be combined with periods of coverage under this subchapter and otherwise considered for the purposes of establishing entitlement to and the amount of old-age, survivors, and disability insurance benefits under this subchapter;

(B)(i) that employment or self-employment, or any service which is recognized as equivalent to employment or self-employment under this subchapter or the social security system of a foreign country which is a party to such agreement, shall, on or after the effective date of such agreement, result in a period of coverage under the system established under this subchapter or under the system established under the laws of such foreign country, but not under both, and (ii) the methods and conditions for determining under which system employment, self-employment, or other service shall result in a period of coverage; and

(C) that where an individual's periods of coverage are combined, the benefit amount payable under this subchapter shall be based on the proportion of such individual's periods of coverage which was completed under this subchapter.

(2) Any such agreement may provide that an individual who is entitled to cash benefits under this subchapter shall, notwithstanding the provisions of section 402(t) of this title, receive such benefits while he resides in a foreign country which is a party to such agreement.

(3) Section 426 of this title shall not apply in the case of any individual to whom it would not be applicable but for this section or any agreement or regulation under this section.

(4) Any such agreement may contain other provisions which are not inconsistent with the other provisions of this subchapter and which the President deems appropriate to carry out the purposes of this section.

(d) Regulations

The Commissioner of Social Security shall make rules and regulations and establish procedures which are reasonable and necessary to implement and administer any agreement which has been entered into in accordance with this section.

(e) Reports to Congress; effective date of agreements

(1) Any agreement to establish a totalization arrangement entered into pursuant to this section shall be transmitted by the President to the Congress together with a report on the estimated number of individuals who will be affected by the agreement and the effect of the agreement on the estimated income and expenditures of the programs established by this chapter.

(2) Such an agreement shall become effective on any date, provided in the agreement, which occurs after the expiration of the period (following the date on which the agreement is transmitted in accordance with paragraph (1)) during which at least one House of the Congress has been in session on each of 60 days; except that such agreement shall not become effective if, during such period, either House of the Congress adopts a resolution of disapproval of the agreement.

(Aug. 14, 1935, ch. 531, title II, § 233, as added Pub. L. 95–216, title III, § 317(a), Dec. 20, 1977, 91 Stat. 1538; amended Pub. L. 97–35, title XXII, § 2201(b)(12), Aug. 13, 1981, 95 Stat. 831; Pub. L. 98–21, title III, § 326(a), Apr. 20, 1983, 97 Stat. 126; Pub. L. 98–369, div. B, title VI, § 2663(j)(3)(A)(v), July 18, 1984, 98 Stat. 1170; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478.)

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

1984—Subsec. (d). Pub. L. 98–369 struck out ''of Health, Education, and Welfare'' after ''Secretary''.

1983—Subsec. (e)(2). Pub. L. 98–21 substituted ''during which at least one House of the Congress has been in session on each of 60 days'' for ''during which each House of the Congress has been in session on each of 90 days''.

1981—Subsec. (c)(2). Pub. L. 97–35 struck out provision permitting the agreement to provide that if the benefit paid by the United States to an individual who legally resides in the United States when added to the benefit paid by the foreign country is less than the benefit amount payable to such individual based on the first figure in, or deemed to be in, column IV of the table in section 415(a) of this title in the case of an individual becoming eligible before Jan. 1, 1979, or based on a primary insurance amount determined under section 415(a)(1)(C)(i)(I) of this title in the case of an individual becoming eligible for such benefit on or after such date, the benefit paid by the United States be increased so that the two benefits equal the benefit amount that would be payable.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed

(under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 326(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective on the date of the enactment of this Act [Apr. 20, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to benefits for months after December 1981, with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

§ 434. Demonstration project authority

(a) Authority

(1) In general

The Commissioner of Social Security (in this section referred to as the ''Commissioner'') shall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of—

(A) various alternative methods of treating the work activity of individuals entitled to disability insurance benefits under section 423 of this title or to monthly insurance benefits under section 402 of this title based on such individual's disability (as defined in section 423(d) of this title), including such methods as a reduction in benefits based on earnings, designed to encourage the return to work of such individuals;

(B) altering other limitations and conditions applicable to such individuals (including lengthening the trial work period (as defined in section 422(c) of this title), altering the 24-month waiting period for hospital insurance benefits under section 426 of this title, altering the manner in which the program under this subchapter is administered, earlier referral of such individuals for rehabilitation, and greater use of employers and others to develop, perform, and otherwise stimulate new forms of rehabilitation); and

(C) implementing sliding scale benefit offsets using variations in—

(i) the amount of the offset as a proportion of earned income;

(ii) the duration of the offset period; and

(iii) the method of determining the amount of income earned by such individuals,

to the end that savings will accrue to the Trust Funds, or to otherwise promote the objectives or facilitate the administration of this subchapter.

(2) Authority for expansion of scope

The Commissioner may expand the scope of any such experiment or demonstration project to include any group of applicants for benefits under the program established under this subchapter with impairments that reasonably may be presumed to be disabling for purposes of such demonstration project, and may limit any such demonstration project to any such group of applicants, subject to the terms of such demonstration project which shall define the extent of any such presumption.

(b) Requirements

The experiments and demonstration projects developed under subsection (a) of this section shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the disability insurance program under this subchapter without committing such program to the adoption of any particular system either locally or nationally.

(c) Authority to waive compliance with benefits requirements

In the case of any experiment or demonstration project initiated under subsection (a) of this section on or before December 17, 2005, the Commissioner may waive compliance with the benefit requirements of this subchapter and the requirements of section 1320b–19 of this title as they relate to the program established under this subchapter, and the Secretary may (upon the request of the Commissioner) waive compliance with the benefits requirements of subchapter XVIII of this chapter, insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such experiment or project shall be actually placed in operation unless at least 90 days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Commissioner to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such experiments and demonstration projects shall be submitted by the Commissioner to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in subsection (a) of this section.

(d) Reports

(1) Interim reports

On or before June 9 of each year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate an annual interim report on the progress of the experiments and demonstration projects carried out under this subsection[1] together with any related data and materials that the Commissioner may consider appropriate.

(2) Termination and final report

The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2005. Not later than 90 days after the termination of any experiment or demonstration project carried out under this section, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a final report

[1] So in original. Probably should be ''section''.

with respect to that experiment or demonstration project.

(Aug. 14, 1935, ch. 531, title II, § 234, as added Pub. L. 106–170, title III, § 301(a), Dec. 17, 1999, 113 Stat. 1900; amended Pub. L. 108–203, title IV, § 401, Mar. 2, 2004, 118 Stat. 525.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–203, § 401(1), substituted ''initiated under subsection (a) of this section on or before December 17, 2005'' for ''conducted under subsection (a) of this section''.

Subsec. (d)(2). Pub. L. 108–203, § 401(2), substituted ''The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2005.'' for ''The authority under the preceding provisions of this section (including any waiver granted pursuant to subsection (c) of this section) shall terminate 5 years after December 17, 1999.''

DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS

Pub. L. 106–170, title III, § 302, Dec. 17, 1999, 113 Stat. 1902, as amended by Pub. L. 108–203, title IV, §§ 402, 403, Mar. 2, 2004, 118 Stat. 525, provided that:

''(a) AUTHORITY.—The Commissioner of Social Security shall conduct demonstration projects for the purpose of evaluating, through the collection of data, a program for title II disability beneficiaries (as defined in section 1148(k)(3) of the Social Security Act [section 1320b–19(k)(3) of this title]) under which benefits payable under section 223 of such Act [section 423 of this title], or under section 202 of such Act [section 402 of this title] based on the beneficiary's disability, are reduced by $1 for each $2 of the beneficiary's earnings that is above a level to be determined by the Commissioner. Such projects shall be conducted at a number of localities which the Commissioner shall determine is sufficient to adequately evaluate the appropriateness of national implementation of such a program. Such projects shall identify reductions in Federal expenditures that may result from the permanent implementation of such a program.

''(b) SCOPE AND SCALE AND MATTERS TO BE DETERMINED.—

''(1) IN GENERAL.—The demonstration projects developed under subsection (a) shall be of sufficient duration, shall be of sufficient scope, and shall be carried out on a wide enough scale to permit a thorough evaluation of the project to determine—

''(A) the effects, if any, of induced entry into the project and reduced exit from the project;

''(B) the extent, if any, to which the project being tested is affected by whether it is in operation in a locality within an area under the administration of the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act [section 1320b–19 of this title]; and

''(C) the savings that accrue to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and other Federal programs under the project being tested.

The Commissioner shall take into account advice provided by the Ticket to Work and Work Incentives Advisory Panel pursuant to section 101(f)(2)(B)(ii) of this Act [set out as a note under section 1320b–19 of this title].

''(2) ADDITIONAL MATTERS.—The Commissioner shall also determine with respect to each project—

''(A) the annual cost (including net cost) of the project and the annual cost (including net cost) that would have been incurred in the absence of the project;

''(B) the determinants of return to work, including the characteristics of the beneficiaries who participate in the project; and

''(C) the employment outcomes, including wages, occupations, benefits, and hours worked, of beneficiaries who return to work as a result of participation in the project.

The Commissioner may include within the matters evaluated under the project the merits of trial work periods and periods of extended eligibility.

''(c) WAIVERS.—The Commissioner may waive compliance with the benefit provisions of title II of the Social Security Act (42 U.S.C. 401 et seq.) and the requirements of section 1148 of such Act (42 U.S.C. 1320b–19) as they relate to the program established under title II of such Act, and the Secretary of Health and Human Services may waive compliance with the benefit requirements of title XVIII of such Act (42 U.S.C. 1395 et seq.), insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such project shall be actually placed in operation unless at least 90 days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Commissioner to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such projects shall be submitted by the Commissioner to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in subsection (a).

''(d) INTERIM REPORTS.—Not later than 2 years after the date of the enactment of this Act [Dec. 17, 1999], and annually thereafter, the Commissioner of Social Security shall submit to the Congress an interim report on the progress of the demonstration projects carried out under this subsection together with any related data and materials that the Commissioner of Social Security may consider appropriate.

''(e) FINAL REPORT.—The Commissioner of Social Security shall submit to the Congress a final report with respect to all demonstration projects carried out under this section not later than 1 year after their completion.

''(f) EXPENDITURES.—Administrative expenses for demonstration projects under this section shall be paid from funds available for the administration of title II or XVIII of the Social Security Act [subchapters II and XVIII of this chapter], as appropriate. Benefits payable to or on behalf of individuals by reason of participation in projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the Secretary of Health and Human Services, from funds available for benefits under such title II or XVIII.''

STUDY BY GENERAL ACCOUNTING OFFICE OF THE IMPACT OF THE SUBSTANTIAL GAINFUL ACTIVITY LIMIT ON RETURN TO WORK

Pub. L. 106–170, title III, § 303(c), Dec. 17, 1999, 113 Stat. 1904, provided that, as soon as practicable after Dec. 17, 1999, the Comptroller General was to undertake a study of the substantial gainful activity level applicable as of that date to recipients of benefits under sections 402 and 423 of this title and the effect of such level as a disincentive for those recipients to return to work, to address the merits of increasing the substantial gainful activity level applicable to recipients and the rationale for not yearly indexing that level to inflation, and not later than 2 years after Dec. 17, 1999, to transmit to the appropriate congressional committees a written report presenting the results of the Comptroller General's study conducted pursuant to this sub-

section and appropriate recommendations for legislative or administrative changes.

STUDY BY THE GOVERNMENT ACCOUNTABILITY OFFICE OF SOCIAL SECURITY ADMINISTRATION'S DISABILITY INSURANCE PROGRAM DEMONSTRATION AUTHORITY

Pub. L. 106–170, title III, § 303(e), Dec. 17, 1999, 113 Stat. 1905, provided that:

''(1) STUDY.—As soon as practicable after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General of the United States shall undertake a study to assess the results of the Social Security Administration's efforts to conduct disability demonstrations authorized under prior law as well as under section 234 of the Social Security Act [this section] (as added by section 301 of this Act).

''(2) REPORT.—Not later than 5 years after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the Comptroller General's study conducted pursuant to this section, together with a recommendation as to whether the demonstration authority authorized under section 234 of the Social Security Act [this section] (as added by section 301 of this Act) should be made permanent.''

SUBCHAPTER III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

§ 501. Use of available funds

The amounts made available pursuant to section 1101(c)(1)(A) of this title for the purpose of assisting the States in the administration of their unemployment compensation laws shall be used as hereinafter provided.

(Aug. 14, 1935, ch. 531, title III, § 301, 49 Stat. 626; Apr. 19, 1939, ch. 73, 53 Stat. 581; Pub. L. 86–778, title V, § 524(a), Sept. 13, 1960, 74 Stat. 982.)

AMENDMENTS

1960—Pub. L. 86–778 struck out provisions prescribing specific sums for fiscal years 1936–1939 and for each fiscal year thereafter and inserted provisions relating to amounts made available pursuant to section 1101(c)(1)(A) of this title.

1939—Act Apr. 19, 1939, provided increased appropriation for fiscal year ending June 30, 1939, and for each fiscal year thereafter.

§ 502. Payments to States; computation of amounts

(a) Certification of amounts

The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act, such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made, including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title. The Secretary of Labor's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant. The Secretary of Labor shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Payment of amounts

Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a) of this section, pay, through the Fiscal Service of the Department of the Treasury and prior to audit or settlement by the Government Accountability Office, to the State agency charged with the administration of such law the amount so certified.

(c) Mailing costs

No portion of the cost of mailing a statement under section 6050B(b) of the Internal Revenue Code of 1986 (relating to unemployment compensation) shall be treated as not being a cost for the proper and efficient administration of the State unemployment compensation law by reason of including with such statement information about the earned income credit provided by section 32 of the Internal Revenue Code of 1986. The preceding sentence shall not apply if the inclusion of such information increases the postage required to mail such statement.

(Aug. 14, 1935, ch. 531, title III, § 302, 49 Stat. 626; Aug. 10, 1939, ch. 666, title III, § 301, 53 Stat. 1378; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; Pub. L. 98–369, div. B, title VI, § 2663(b)(1), July 18, 1984, 98 Stat. 1165; Pub. L. 99–603, title I, § 121(b)(3), Nov. 6, 1986, 100 Stat. 3390; Pub. L. 102–318, title III, § 302(a), July 3, 1992, 106 Stat. 297; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsec. (a), comprised subchapter C (§§ 1600 to 1611) of chapter 9 of the Internal Revenue Code of 1939. Chapter 9 of the 1939 Code was repealed (subject to certain exceptions) by section 7851(a)(3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. The Federal Unemployment Tax Act also comprises chapter 23 (§ 3301 et seq.) of the Internal Revenue Code of 1986.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1992—Subsec. (c). Pub. L. 102–318 added subsec. (c).

1986—Subsec. (a). Pub. L. 99–603 inserted at end of first sentence '', including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title''.

1984—Subsec. (b). Pub. L. 98–369 substituted ''the Fiscal Service of the Department of the Treasury'' for ''the Division of Disbursement of the Treasury Department''.

1939—Subsec. (a). Act Aug. 10, 1939, substituted ''Federal Unemployment Tax Act'' for ''sections 1101–1110 of this title,'' and inserted ''efficient'' before ''administration''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 302(b) of Pub. L. 102–318 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 3, 1992].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 121(c)(2) of Pub. L. 99–603 provided that: ''The amendments made by subsection (b) [enacting section 1437r of this title, amending this section and sections 303, 603, 1203, 1353, and 1396b of this title, section 2025 of Title 7, Agriculture, and section 1096 of Title 20, Education, and amending provisions set out as a Puerto Rico, Guam, and Virgin Islands note under section 1383 of this title] take effect on October 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Federal Security Administrator with respect to unemployment compensation transferred to Secretary of Labor by Reorg. Plan No. 2 of 1949, set out in the Appendix to Title 5.

Section 1 of Reorg. Plan No. 2 of 1949, also provided that functions transferred by this section shall be performed by Secretary of Labor, or subject to his direction and control, by such officers, agencies, and employees of Department of Labor as he shall designate.

''Administrator'' substituted for ''Board'' by section 4 of Reorg. Plan No. 2 of 1946, set out in the Appendix to Title 5.

REPORT ON METHOD OF ALLOCATING ADMINISTRATIVE FUNDS AMONG STATES

Pub. L. 102–164, title III, §304, Nov. 15, 1991, 105 Stat. 1061, as amended by Pub. L. 102–318, title V, §533, July 3, 1992, 106 Stat. 317, provided that:

''(a) IN GENERAL.—The Secretary of Labor shall submit to the Congress, before December 31, 1994, a comprehensive report setting forth a proposal for revising the method of allocating grants among the States under section 302 of the Social Security Act [this section].

''(b) SPECIFIC REQUIREMENTS.—The report required by subsection (a) shall include an analysis of—

''(1) the use of unemployment insurance workload levels as the primary factor in allocating grants among the States under section 302 of the Social Security Act [this section],

''(2) ways to ensure that each State receive not less than a minimum grant amount for each fiscal year,

''(3) the use of nationally available objective data to determine the unemployment compensation administrative costs of each State, with consideration of legitimate cost differences among the States,

''(4) ways to simplify the method of allocating such grants among the States,

''(5) ways to eliminate the disincentives to productivity and efficiency which exist in the current method of allocating such grants among the States,

''(6) ways to promote innovation and cost-effective practices in the method of allocating such grants among the States, and

''(7) the effect of the proposal set forth in such report on the grant amounts allocated to each State.

''(c) CONGRESSIONAL REVIEW PERIOD.—The Secretary of Labor may not revise the method in effect on the date of the enactment of this Act [Nov. 15, 1991] for allocating grants among the States under section 302 of the Social Security Act [this section], until after the expiration of the 12-month period beginning on the date on which the report required by subsection (a) is submitted to the Congress.''

§ 503. State laws

(a) Provisions required

The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], includes provision for—

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary of Labor may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act [26 U.S.C. 3305(b)]), immediately upon such receipt, to the Secretary of the Treasury to the credit of the unemployment trust fund[1] established by section 1104 of this title; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act [26 U.S.C. 3305(b)]: *Provided*, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further*, That the amounts specified by section 1103(c)(2) or 1103(d)(4) of this title may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administra-

[1] So in original. Probably should be ''Unemployment Trust Fund''.

tion of its unemployment compensation law and public employment offices: *Provided further*, That nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor: *Provided further*, That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g) of this section: *Provided further*, That amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor: *Provided further*, That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t) of the Internal Revenue Code of 1986 [26 U.S.C. 3306(t)]); and

(6) The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law; and

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 502 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to section 502 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such State law; and

(10) A requirement that, as a condition of eligibility for regular compensation for any week, any claimant who has been referred to reemployment services pursuant to the profiling system under subsection (j)(1)(B) of this section participate in such services or in similar services unless the State agency charged with the administration of the State law determines—

(A) such claimant has completed such services; or

(B) there is justifiable cause for such claimant's failure to participate in such services.

(b) Failure to comply; payments stopped

Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a) of this section;

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State: *Provided*, That there shall be no finding under clause (1) until the question of entitlement shall have been decided by the highest judicial authority given jurisdiction under such State law: *Provided further*, That any costs may be paid with respect to any claimant by a State and included as costs of administration of its law.

(c) Denial of certification; availability of records to Railroad Retirement Board; cooperation with Federal agencies

The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

(1) that such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes;

(2) that such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law; or

(3) that any interest required to be paid on advances under subchapter XII of this chapter has not been paid by the date on which such interest is required to be paid or has been paid directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund, until such interest is properly paid.

(d) Disclosure of unemployment compensation information; deduction and withholding of amounts owed to State food stamp agencies; reimbursement of administrative costs; noncompliance of State agency

(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, to officers and employees of the Department of Agriculture and to officers or employees of any State food stamp agency any of the following information contained in the records of such State agency—

(i) wage information,

(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of

any such compensation being received (or to be received) by such individual,

(iii) the current (or most recent) home address of such individual, and

(iv) whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.].

(2)(A) For purposes of this paragraph, the term ''unemployment compensation'' means any unemployment compensation payable under the State law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law).

(B) The State agency charged with the administration of the State law—

(i) may require each new applicant for unemployment compensation to disclose whether the applicant owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977 [7 U.S.C. 2022(c)(1)]) of food stamp coupons,

(ii) may notify the State food stamp agency to which the uncollected overissuance is owed that the applicant has been determined to be eligible for unemployment compensation if the applicant discloses under clause (i) that the applicant owes an uncollected overissuance and the applicant is determined to be so eligible,

(iii) may deduct and withhold from any unemployment compensation otherwise payable to an individual—

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977 [7 U.S.C. 2022(c)(3)(A)], or

(III) any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to section 13(c)(3)(B) of such Act [7 U.S.C. 2022(c)(3)(B)], and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State food stamp agency.

(C) Any amount deducted and withheld under subparagraph (B)(iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State food stamp agency to which the uncollected overissuance is owed as repayment of the individual's uncollected overissuance.

(D) A State food stamp agency to which an uncollected overissuance is owed shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by the State agency under this paragraph that are attributable to repayment of uncollected overissuance to the State food stamp agency to which the uncollected overissuance is owed.

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term ''State food stamp agency'' means any agency described in section 3(n)(1) of the Food Stamp Act of 1977 [7 U.S.C. 2012(n)(1)] which administers the food stamp program established under such Act.

(e) Disclosure of wage information; non-compliance of State agency

(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, directly to officers or employees of any State or local child support enforcement agency any wage information contained in the records of such State agency, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for purposes of establishing and collecting child support obligations from, and locating, individuals owing such obligations.

For purposes of this subsection, the term ''child support obligations'' only includes obligations which are being enforced pursuant to a plan described in section 654 of this title which has been approved by the Secretary of Health and Human Services under part D of subchapter IV of this chapter.

(2)(A) The State agency charged with the administration of the State law—

(i) shall require each new applicant for unemployment compensation to disclose whether or not such applicant owes child support obligations (as defined in the last sentence of paragraph (1)),

(ii) shall notify the State or local child support enforcement agency enforcing such obligations, if any applicant discloses under clause (i) that he owes child support obligations and he is determined to be eligible for unemployment compensation, that such applicant has been so determined to be eligible,

(iii) shall deduct and withhold from any unemployment compensation otherwise payable to an individual—

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State

agency under section 654(19)(B)(i) of this title, or

(III) any amount otherwise required to be so deducted and withheld from such unemployment compensation through legal process (as defined in section 662(e)[2] of this title), and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State or local child support enforcement agency.

Any amount deducted and withheld under clause (iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the State or local child support enforcement agency in satisfaction of his child support obligations.

(B) For purposes of this paragraph, the term ''unemployment compensation'' means any compensation payable under the State law (including amounts payable pursuant to agreements under any Federal unemployment compensation law).

(C) Each State or local child support enforcement agency shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by such State agency under this paragraph which are attributable to child support obligations being enforced by the State or local child support enforcement agency.

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1) or (2), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term ''State or local child support enforcement agency'' means any agency of a State or political subdivision thereof operating pursuant to a plan described in the last sentence of paragraph (1).

(5) A State or local child support enforcement agency may disclose to any agent of the agency that is under contract with the agency to carry out the purposes described in paragraph (1)(B) wage information that is disclosed to an officer or employee of the agency under paragraph (1)(A). Any agent of a State or local child support agency that receives wage information under this paragraph shall comply with the safeguards established pursuant to paragraph (1)(B).

(f) Income and eligibility verification system

The State agency charged with the administration of the State law shall provide that information shall be requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

[2] See References in Text note below.

(g) Recovery of unemployment benefit payments

(1) A State may deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

(2) Any State may enter into an agreement with the Secretary of Labor under which—

(A) the State agrees to recover from unemployment benefits otherwise payable to an individual by such State any overpayments made under an unemployment benefit program of the United States to such individual and not previously recovered, in accordance with paragraph (1), and to pay such amounts recovered to the United States for credit to the appropriate account, and

(B) the United States agrees to allow the State to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States any overpayments made by such State to such individual under a State unemployment benefit program and not previously recovered, in accordance with the same procedures as apply under paragraph (1).

(3) For purposes of this subsection, ''unemployment benefits'' means unemployment compensation, trade adjustment allowances, and other unemployment assistance.

(h) Disclosure to Secretary of Health and Human Services of wage and unemployment compensation claims information; suspension by Secretary of Labor of payments to State for noncompliance

(1) The State agency charged with the administration of the State law shall, on a reimbursable basis—

(A) disclose quarterly, to the Secretary of Health and Human Services, wage and claim information, as required pursuant to section 653(i)(1) of this title, contained in the records of such agency;

(B) ensure that information provided pursuant to subparagraph (A) meets such standards relating to correctness and verification as the Secretary of Health and Human Services, with the concurrence of the Secretary of Labor, may find necessary; and

(C) establish such safeguards as the Secretary of Labor determines are necessary to insure that information disclosed under subparagraph (A) is used only for purposes of subsections (i)(1), (i)(3), and (j) of section 653 of this title.

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor

shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, the Secretary shall make no future certification to the Secretary of the Treasury with respect to the State.

(3) For purposes of this subsection—

(A) the term ''wage information'' means information regarding wages paid to an individual, the social security account number of such individual, and the name, address, State, and the Federal employer identification number of the employer paying such wages to such individual; and

(B) the term ''claim information'' means information regarding whether an individual is receiving, has received, or has made application for, unemployment compensation, the amount of any such compensation being received (or to be received by such individual), and the individual's current (or most recent) home address.

(i) Access to State employment records

(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, only to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency, any of the following information contained in the records of such State agency with respect to individuals applying for or participating in any housing assistance program administered by the Department who have signed an appropriate consent form approved by the Secretary of Housing and Urban Development—

(i) wage information, and

(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to ensure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under a housing assistance program of the Department of Housing and Urban Development.

(2) The Secretary of Labor shall prescribe regulations governing how often and in what form information may be disclosed under paragraph (1)(A).

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he or she is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he or she shall make no future certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term ''public housing agency'' means any agency described in section 1437a(b)(6) of this title.

(j) Worker profiling

(1) The State agency charged with the administration of the State law shall establish and utilize a system of profiling all new claimants for regular compensation that—

(A) identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;

(B) refers claimants identified pursuant to subparagraph (A) to reemployment services, such as job search assistance services, available under any State or Federal law;

(C) collects follow-up information relating to the services received by such claimants and the employment outcomes for such claimants subsequent to receiving such services and utilizes such information in making identifications pursuant to subparagraph (A); and

(D) meets such other requirements as the Secretary of Labor determines are appropriate.

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(k) Transfer of unemployment experience upon transfer of business

(1) For purposes of subsection (a) of this section, the unemployment compensation law of a State must provide—

(A) that if an employer transfers its business to another employer, and both employers are (at the time of transfer) under substantially common ownership, management, or control, then the unemployment experience attributable to the transferred business shall also be transferred to (and combined with the unemployment experience attributable to) the employer to whom such business is so transferred,

(B) that unemployment experience shall not, by virtue of the transfer of a business, be transferred to the person acquiring such business if—

(i) such person is not otherwise an employer at the time of such acquisition, and

(ii) the State agency finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions,

(C) that unemployment experience shall (or shall not) be transferred in accordance with such regulations as the Secretary of Labor may prescribe to ensure that higher rates of contributions are not avoided through the transfer or acquisition of a business,

(D) that meaningful civil and criminal penalties are imposed with respect to—

(i) persons that knowingly violate or attempt to violate those provisions of the State law which implement subparagraph (A) or (B) or regulations under subparagraph (C), and

(ii) persons that knowingly advise another person to violate those provisions of the State law which implement subparagraph (A) or (B) or regulations under subparagraph (C), and

(E) for the establishment of procedures to identify the transfer or acquisition of a business for purposes of this subsection.

(2) For purposes of this subsection—

(A) the term ''unemployment experience'', with respect to any person, refers to such person's experience with respect to unemployment or other factors bearing a direct relation to such person's unemployment risk;

(B) the term ''employer'' means an employer as defined under the State law;

(C) the term ''business'' means a trade or business (or a part thereof);

(D) the term ''contributions'' has the meaning given such term by section 3306(g) of the Internal Revenue Code of 1986;

(E) the term ''knowingly'' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved; and

(F) the term ''person'' has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986.

(Aug. 14, 1935, ch. 531, title III, § 303, 49 Stat. 626; June 25, 1938, ch. 680, § 13(g), 52 Stat. 1112; June 20, 1939, ch. 227, § 18, 53 Stat. 848; Aug. 10, 1939, ch. 666, title III, § 302, 53 Stat. 1378; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, § 416(c), 60 Stat. 991; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 28, 1950, ch. 809, title IV, § 405(b), 64 Stat. 560; Aug. 5, 1954, ch. 657, § 5(a)(1), 68 Stat. 673; Pub. L. 96–249, title I, § 127(b)(1), May 26, 1980, 94 Stat. 366; Pub. L. 96–265, title IV, § 408(b)(1), June 9, 1980, 94 Stat. 468; Pub. L. 96–473, § 6(e)(1), Oct. 19, 1980, 94 Stat. 2265; Pub. L. 97–35, title XXIII, § 2335(b), Aug. 13, 1981, 95 Stat. 863; Pub. L. 97–248, title I, §§ 171(b)(3), 175(a)(2), Sept. 3, 1982, 96 Stat. 401, 403; Pub. L. 98–21, title V, §§ 515(a), 523(b), Apr. 20, 1983, 97 Stat. 147, 148; Pub. L. 98–369, div. B, title VI, §§ 2651(d), 2663(b)(2)–(5), July 18, 1984, 98 Stat. 1149, 1165; Pub. L. 99–198, title XV, § 1535(b)(3), Dec. 23, 1985, 99 Stat. 1584; Pub. L. 99–272, title XII, § 12401(a), Apr. 7, 1986, 100 Stat. 297; Pub. L. 100–485, title I, § 124(b)(1), Oct. 13, 1988, 102 Stat. 2353; Pub. L. 100–628, title IX, § 904(c)(1)(A), Nov. 7, 1988, 102 Stat. 3260; Pub. L. 102–318, title IV, § 401(a)(3), July 3, 1992, 106 Stat. 298; Pub. L. 103–152, § 4(a)(1), (b), Nov. 24, 1993, 107 Stat. 1517; Pub. L. 103–182, title V, § 507(b)(3), Dec. 8, 1993, 107 Stat. 2154; Pub. L. 103–465, title VII, § 702(c)(3), Dec. 8, 1994, 108 Stat. 4997; Pub. L. 104–193, title III, §§ 313(d), 316(g)(3), Aug. 22, 1996, 110 Stat. 2212, 2219; Pub. L. 105–33, title V, § 5201, Aug. 5, 1997, 111 Stat. 597; Pub. L. 105–65, title V, § 542(a)(1), Oct. 27, 1997, 111 Stat. 1412; Pub. L. 107–147, title II, § 209(d)(2), Mar. 9, 2002, 116 Stat. 33; Pub. L. 108–295, § 2(a), Aug. 9, 2004, 118 Stat. 1090.)

REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsec. (a), is act Aug. 16, 1954, ch. 736, §§ 3301–3311, 68A Stat. 439, as amended, which is classified generally to chapter 23 (§ 3301 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3311 of Title 26 and Tables.

The Food Stamp Act of 1977, referred to in subsec. (d)(1)(B), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

Part D of subchapter IV of this chapter, referred to in subsec. (e)(1), is classified to section 651 et seq. of this title.

Section 662 of this title, referred to in subsec. (e)(2)(A)(iii)(III), was repealed by Pub. L. 104–193, title III, § 362(b)(1), Aug. 22, 1996, 110 Stat. 2246.

The Internal Revenue Code of 1986, referred to in subsec. (k)(2)(D), (F), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2004—Subsec. (k). Pub. L. 108–295 added subsec. (k).

2002—Subsec. (a)(5). Pub. L. 107–147 substituted ''section 1103(c)(2) or 1103(d)(4) of this title'' for ''section 1103(c)(2) of this title''.

1997—Subsec. (h)(1)(C). Pub. L. 105–33 substituted ''subsections (i)(1), (i)(3), and (j) of section 653 of this title'' for ''section 653(i)(1) of this title in carrying out the child support enforcement program under subchapter IV of this chapter''.

Subsec. (i)(5). Pub. L. 105–65 struck out par. (5) which read as follows: ''The provisions of this subsection shall cease to be effective beginning on October 1, 1994.''

1996—Subsec. (e)(5). Pub. L. 104–193, § 313(d), added par. (5).

Subsec. (h). Pub. L. 104–193, § 316(g)(3), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

''(1) The State agency charged with the administration of the State law shall take such actions (in such manner as may be provided in the agreement between the Secretary of Health and Human Services and the Secretary of Labor under section 653(e)(3) of this title) as may be necessary to enable the Secretary of Health and Human Services to obtain prompt access to any wage and unemployment compensation claims information (including any information that might be useful in locating an absent parent or such parent's employer) for use by the Secretary of Health and Human Services, for purposes of section 653 of this title, in carrying out the child support enforcement program under subchapter IV of this chapter.

''(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirement of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until such Secretary is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, such Secretary shall make no further certification to the Secretary of the Treasury with respect to such State.''

1994—Subsec. (a)(5). Pub. L. 103–465 inserted '', or the withholding of Federal, State, or local individual income tax,'' after ''health insurance''.

1993—Subsec. (a)(5). Pub. L. 103–182 substituted '': *Provided further*, That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t) of the Internal Revenue Code of 1986); and'' for ''; and'' at end.

Subsec. (a)(10). Pub. L. 103–152, § 4(b), added par. (10).

Subsec. (j). Pub. L. 103–152, § 4(a)(1), added subsec. (j).

1992—Subsec. (a)(5). Pub. L. 102–318 inserted ''*: Provided further*, That amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor'' before ''; and'' at end.

1988—Subsec. (h). Pub. L. 100–485 added subsec. (h).

Subsec. (i). Pub. L. 100–628 added subsec. (i).

1986—Subsec. (a)(5). Pub. L. 99–272, § 12401(a)(1), inserted provision at end that amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g) of this section.

Subsec. (g). Pub. L. 99–272, § 12401(a)(2), added subsec. (g).

1985—Subsec. (d)(2) to (4). Pub. L. 99–198 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1984—Subsec. (a)(4). Pub. L. 98–369, § 2663(b)(2), substituted ''section 3305(b)'' for ''section 1606(b)''.

Subsec. (a)(5). Pub. L. 98–369, § 2663(b)(3), substituted ''section 3305(b)'' for ''section 1606(b)'' and before last proviso substituted a colon for erroneous punctuation.

Subsec. (c)(1), (2). Pub. L. 98–369, § 2663(b)(4), substituted ''that'' for ''That''.

Subsec. (e)(2)(A)(i). Pub. L. 98–369, § 2663(b)(5), substituted ''child support obligations'' for ''child support obligatons''.

Subsec. (f). Pub. L. 98–369, § 2651(d), added subsec. (f).

1983—Subsec. (a)(5). Pub. L. 98–21, § 523(b), inserted provision that nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor.

Subsec. (c)(3). Pub. L. 98–21, § 515(a), added par. (3).

1982—Subsec. (e)(2)(A)(i). Pub. L. 97–248, § 175(a)(2), substituted ''of paragraph (1)'' for ''of this subsection''.

Subsec. (e)(2)(A)(iii)(II). Pub. L. 97–248, § 171(b)(3), substituted ''(19)'' for ''(20)''.

1981—Subsec. (e)(1). Pub. L. 97–35, § 2335(b)(3), in provision following subpar. (B) substituted ''this subsection'' for ''the preceding sentence''.

Subsec. (e)(2). Pub. L. 97–35, § 2335(b)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e)(3), (4). Pub. L. 97–35, § 2335(b)(1), (2), redesignated former par. (2) as (3) and substituted ''paragraph (1) or (2)'' for ''paragraph (1)''. Former par. (3) redesignated (4).

1980—Subsec. (d). Pub. L. 96–249 added subsec. (d). Another subsec. (d), as added by Pub. L. 96–265, was redesignated (e) by Pub. L. 96–473.

Subsec. (e). Pub. L. 96–473 redesignated former subsec. (d) as added by Pub. L. 96–265 as subsec. (e).

1954—Subsec. (a)(5). Act Aug. 5, 1954, made it clear that the funds credited to the State account may, subject to certain restrictions, be used for administrative expenses of the State in connection with its unemployment compensation law.

1950—Subsec. (b). Act Aug. 28, 1950, inserted provisos.

1946—Subsec. (a)(5). Act Aug. 10, 1946, inserted proviso allowing payment of disability benefits.

1939—Subsec. (a). Act Aug. 10, 1939, substituted ''Federal Unemployment Tax Act'' for ''sections 1101–1110 of this title'', amended pars. (1), (4), and (5) generally, and added pars. (8) and (9).

Subsec. (c)(2). Act June 20, 1939, substituted ''unemployment'' for ''employment''.

1938—Subsec. (c). Act June 25, 1938, added subsec. (c).

EFFECTIVE DATE OF 2004 AMENDMENT; DEFINITIONS

Pub. L. 108–295, § 2(c), (d), Aug. 9, 2004, 118 Stat. 1091, provided that:

''(c) EFFECTIVE DATE.—The amendment made by subsection (a) [amending this section] shall, with respect to a State, apply to certifications for payments (under section 302(a) of the Social Security Act [section 502(a) of this title]) in rate years beginning after the end of the 26-week period beginning on the first day of the first regularly scheduled session of the State legislature beginning on or after the date of the enactment of this Act [Aug. 9, 2004].

''(d) DEFINITIONS.—For purposes of this section—

''(1) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

''(2) the term 'rate year' means the rate year as defined in the applicable State law; and

''(3) the term 'State law' means the unemployment compensation law of the State, approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1986 [26 U.S.C. 3304].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 542(a)(2) of Pub. L. 105–65 provided that: ''The amendment made by this subsection [amending this section] shall apply to any request for information made after the date of the enactment of this Act [Oct. 27, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to payments made after Dec. 31, 1996, see section 702(d) of Pub. L. 103–465, set out as a note under section 3304 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 4(f) of Pub. L. 103–152 provided that:

''(1) The amendments made by subsections (a) and (b) [amending this section and section 504 of this title] shall take effect on the date one year after the date of the enactment of this Act [Nov. 24, 1993].

''(2) The provisions of subsections (c), (d), and (e) [enacting provisions set out as notes below and repealing provisions set out as a note under section 3304 of Title 26, Internal Revenue Code] shall take effect on the date of enactment of this Act.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Sept. 30, 1989, with provision for optional early implementation and provision for States whose legislatures have not been in session for at least 30 days between Nov. 7, 1988, and Sept. 30, 1989, see section 3544(d) of this title.

Amendment by Pub. L. 100–485 effective on first day of first calendar quarter beginning one year or more after Oct. 13, 1988, see section 124(c)(1) of Pub. L. 100–485, set out as a note under section 653 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12401(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and sections 3304 and 3306 of Title 26, Internal Revenue Code] shall apply to recoveries made on or after the date of the enactment of this Act [Apr. 7, 1986] and shall apply with respect to overpayments made before, on, or after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2651(d) of Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

Amendment by section 2663(b)(2)–(5) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 523(b) of Pub. L. 98–21 effective Apr. 20, 1983, see section 523(c) of Pub. L. 98–21 set

out as a note under section 3304 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 171(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 653, 654, and 655 of this title] shall be effective on and after August 13, 1981.''

Section 175(b) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and section 652 of this title] shall be effective as of October 1, 1981.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2335(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 654 of this title] shall take effect on the date of the enactment of this Act [Aug. 13, 1981], except that such amendments shall not be requirements under section 454 or 303 of the Social Security Act [section 654 or 503 of this title] before October 1, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 408(b)(3) of Pub. L. 96–265 provided that: ''The amendments made by this subsection [amending this section and section 504 of this title] shall take effect July 1, 1980.''

Section 127(b)(3) of Pub. L. 96–249 provided that: ''The amendments made by this subsection [amending this section and section 504 of this title] shall take effect on January 1, 1983.''

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Labor under subsec. (a)(1) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(2)(B) of this title.

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with to delegate, see Reorg. Plan No. 6 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Federal Security Administrator with respect to unemployment compensation transferred to Secretary of Labor by section 1 of Reorg. Plan No. 2 of 1949 set out in the Appendix to Title 5.

Section 1 of Reorg. Plan No. 2 of 1949 also provided that functions transferred by this section shall be performed by Secretary of Labor, or subject to his direction and control, by such officers, agencies, and employees of Department of Labor as he shall designate.

''Administrator'' substituted for ''Board'' by section 2 of Reorg. Plan No. 2 of 1946, set out in the Appendix to Title 5.

CLARIFYING PROVISION RELATING TO BASE PERIODS

Section 5401 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—No provision of a State law under which the base period for such State is defined or otherwise determined shall, for purposes of section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1)), be considered a provision for a method of administration.

''(b) DEFINITIONS.—For purposes of this section, the terms 'State law', 'base period', and 'State' shall have the meanings given them under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [Pub. L. 91–373] (26 U.S.C. 3304 note).

''(c) EFFECTIVE DATE.—This section shall apply for purposes of any period beginning before, on, or after the date of the enactment of this Act [Aug. 5, 1997].''

PROFILING SYSTEM TECHNICAL ASSISTANCE

Section 4(c) of Pub. L. 103–152 provided that: ''The Secretary of Labor shall provide technical assistance and advice to assist the States in implementing the profiling system required under the amendments made by subsection (a) [amending this section and section 504 of this title]. Such assistance shall include the development and identification of model profiling systems.''

PROFILING SYSTEM REPORT TO CONGRESS

Section 4(d) of Pub. L. 103–152 provided that: ''Not later than the date 3 years after the date of enactment of this Act [Nov. 24, 1993], the Secretary of Labor shall report to the Congress on the operation and effectiveness of the profiling system required under the amendments made by subsection (a) [amending this section and section 504 of this title] and the participation requirement provided by the amendments made under subsection (b) [amending this section]. Such report shall include such recommendations as the Secretary of Labor determines are appropriate.''

§ 504. Judicial review

(a) Finding by Secretary of Labor; petition for review; filing of record

Whenever the Secretary of Labor—

(1) finds that a State law does not include any provision specified in section 503(a) of this title, or

(2) makes a finding with respect to a State under subsection (b), (c), (d), (e), (h), (i), or (j) of section 503 of this title,

such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28.

(b) Findings of fact by Secretary of Labor; new or modified findings

The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Affirmance or setting aside of Secretary's action; review by Supreme Court

The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(d) Stay of Secretary's action

(1) The Secretary of Labor shall not withhold any certification for payment to any State under section 502 of this title until the expiration of 60 days after the Governor of the State has been notified of the action referred to in paragraph (1) or (2) of subsection (a) of this section or until the State has filed a petition for review of such action, whichever is earlier.

(2) The commencement of judicial proceedings under this section shall stay the Secretary's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary's action and including such other relief as may be necessary to preserve status or rights.

(Aug. 14, 1935, ch. 531, title III, § 304, as added Pub. L. 91–373, title I, § 131(a), Aug. 10, 1970, 84 Stat. 703; amended Pub. L. 96–249, title I, § 127(b)(2), May 26, 1980, 94 Stat. 367; Pub. L. 96–265, title IV, § 408(b)(2), June 9, 1980, 94 Stat. 469; Pub. L. 96–473, § 6(e)(2), Oct. 19, 1980, 94 Stat. 2265; Pub. L. 98–620, title IV, § 402(39), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 100–485, title I, § 124(b)(2), Oct. 13, 1988, 102 Stat. 2353; Pub. L. 100–628, title IX, § 904(c)(1)(B), Nov. 7, 1988, 102 Stat. 3261; Pub. L. 103–152, § 4(a)(2), Nov. 24, 1993, 107 Stat. 1517.)

AMENDMENTS

1993—Subsec. (a)(2). Pub. L. 103–152 substituted ''(i), or (j)'' for ''or (i)''.

1988—Subsec. (a)(2). Pub. L. 100–628 substituted ''(e), (h), or (i)'' for ''(e), or (h)''.

Pub. L. 100–485 substituted ''(e), or (h)'' for ''or (e)''.

1984—Subsec. (e). Pub. L. 98–620 struck out subsec. (e) which provided that any judicial proceedings under this section were entitled to, and upon request of the Secretary or the State would receive, a preference and be heard and determined as expeditiously as possible.

1980—Subsec. (a)(2). Pub. L. 96–473 inserted reference to subsec. (e) of section 503 of this title.

Pub. L. 96–249 and Pub. L. 96–265 made identical amendments, substituting ''subsection (b), (c), or (d)'' for ''subsection (b) or (c)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–152 effective on the date one year after Nov. 24, 1993, see section 4(f)(1) of Pub. L. 103–152, set out as a note under section 503 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Sept. 30, 1989, with provision for optional early implementation and provision for States whose legislatures have not been in session for at least 30 days between Nov. 7, 1988, and Sept. 30, 1989, see section 3544(d) of this title.

Amendment by Pub. L. 100–485 effective on first day of first calendar quarter beginning one year or more after Oct. 13, 1988, see section 124(c)(1) of Pub. L. 100–485, set out as a note under section 653 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–265 effective July 1, 1980, see section 408(b)(3) of Pub. L. 96–265, set out as a note under section 503 of this title.

Amendment by Pub. L. 96–249 effective Jan. 1, 1983, see section 127(b)(3) of Pub. L. 96–249, set out as a note under section 503 of this title.

SUBCHAPTER IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

AMENDMENTS

1968—Pub. L. 90–248, title II, § 240(a), Jan. 2, 1968, 81 Stat. 911, provided for grants for child-welfare services in subchapter heading.

1962—Pub. L. 87–543, title I, § 104(a)(1), July 25, 1962, 76 Stat. 185, substituted ''AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN'' for ''AID TO DEPENDENT CHILDREN'' in subchapter heading.

PART A—BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

PRIOR PROVISIONS

A prior part A relating to aid to families with dependent children and consisting of sections 601 to 618 of this title was repealed, except for section 618, by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112.

§ 601. Purpose

(a) In general

The purpose of this part is to increase the flexibility of States in operating a program designed to—

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

(b) No individual entitlement

This part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part.

(Aug. 14, 1935, ch. 531, title IV, § 401, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112; amended Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.)

PRIOR PROVISIONS

A prior section 601, acts Aug. 14, 1935, ch. 531, title IV, § 401, 49 Stat. 627; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, § 312(a), 70 Stat. 848; July 25, 1962, Pub. L. 87–543, title I, § 104(a)(4), (c)(2), 76 Stat. 185, 186; Jan. 2, 1968, Pub. L. 90–248, title II, § 241(b)(1), 81 Stat. 916, related to authorization of appropriations for Aid to Families With Dependent Children program prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section 116 of title I of Pub. L. 104–193, as amended by Pub. L. 104–327, § 1(a), (c), Oct. 19, 1996, 110 Stat. 4002, 4003; Pub. L. 105–33, title V, §§ 5516(b), 5517, Aug. 5, 1997, 111 Stat. 620, 621, provided that:

''(a) EFFECTIVE DATES.—

''(1) IN GENERAL.—Except as otherwise provided in this title [see Tables for classification], this title and

the amendments made by this title shall take effect on July 1, 1997.

''(2) DELAYED EFFECTIVE DATE FOR CERTAIN PROVISIONS.—Notwithstanding any other provision of this section (but subject to subsection (b)(1)(A)(ii)), paragraphs (2), (3), (4), (5), (8), and (10) of section 409(a) and section 411(a) of the Social Security Act [sections 609(a) and 611(a) of this title] (as added by the amendments made by section 103(a) of this Act) shall not take effect with respect to a State until, and shall apply only with respect to conduct that occurs on or after, the later of—

''(A) July 1, 1997; or

''(B) the date that is 6 months after the date the Secretary of Health and Human Services receives from the State a plan described in section 402(a) of the Social Security Act [section 602(a) of this title] (as added by such amendment).

''(3) GRANTS TO OUTLYING AREAS.—The amendments made by section 103(b) [amending section 1308 of this title] shall take effect on October 1, 1996.

''(4) ELIMINATION OF CHILD CARE PROGRAMS.—The amendments made by section 103(c) [amending sections 602 and 603 of this title] shall take effect on October 1, 1996.

''(5) DEFINITIONS APPLICABLE TO NEW CHILD CARE ENTITLEMENT.—Sections 403(a)(1)(C), 403(a)(1)(D), and 419(4) of the Social Security Act [sections 603(a)(1)(C), (D) and 619(4) of this title], as added by the amendments made by section 103(a) of this Act, shall take effect on October 1, 1996.

''(6) RESEARCH, EVALUATIONS, AND NATIONAL STUDIES.—Section 413 of the Social Security Act [section 613 of this title], as added by the amendment made by section 103(a) of this Act, shall take effect on the date of the enactment of this Act [Aug. 22, 1996].

''(b) TRANSITION RULES.—Effective on the date of the enactment of this Act [Aug. 22, 1996]:

''(1) STATE OPTION TO ACCELERATE EFFECTIVE DATE; LIMITATION ON FISCAL YEARS 1996 AND 1997 PAYMENTS.—

''(A) IN GENERAL.—If the Secretary of Health and Human Services receives from a State a plan described in section 402(a) of the Social Security Act [section 602(a) of this title] (as added by the amendment made by section 103(a)(1) of this Act), then—

''(i) on and after the date of such receipt—

''(I) except as provided in clause (ii), this title and the amendments made by this title (other than by section 103(c) of this Act [amending sections 602 and 603 of this title]) shall apply with respect to the State; and

''(II) the State shall be considered an eligible State for purposes of part A of title IV of the Social Security Act [this part] (as in effect pursuant to the amendments made by such section 103(a)); and

''(ii) during the period that begins on the date of such receipt and ends on the later of June 30, 1997, or the day before the date described in subsection (a)(2)(B) of this section, there shall remain in effect with respect to the State—

''(I) section 403(h) of the Social Security Act [section 603(h) of this title] (as in effect on September 30, 1995); and

''(II) all State reporting requirements under parts A and F of title IV of the Social Security Act [this part and part F of this subchapter] (as in effect on September 30, 1995), modified by the Secretary as appropriate, taking into account the State program under part A of title IV of the Social Security Act (as in effect pursuant to the amendments made by such section 103(a)).

''(B) LIMITATIONS ON FEDERAL OBLIGATIONS.—

''(i) UNDER AFDC PROGRAM.—The total obligations of the Federal Government to a State under part A of title IV of the Social Security Act (as in effect on September 30, 1995) with respect to expenditures in fiscal year 1997 shall not exceed an amount equal to the State family assistance grant.

''(ii) Under temporary family assistance program.—Notwithstanding section 403(a)(1) of the Social Security Act [section 603(a)(1) of this title] (as in effect pursuant to the amendments made by section 103(a) of this Act), the total obligations of the Federal Government to a State under such section 403(a)(1)—

''(I) for fiscal year 1996, shall be an amount equal to—

''(aa) the State family assistance grant; multiplied by

''(bb) 1/366 of the number of days during the period that begins on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act [section 602(a) of this title] (as added by the amendment made by section 103(a)(1) of this Act) and ends on September 30, 1996; and

''(II) for fiscal year 1997, shall be an amount equal to the lesser of—

''(aa) the amount (if any) by which the sum of the State family assistance grant and the amount, if any, that the State would have been eligible to be paid under the Contingency Fund for State Welfare Programs established under section 403(b) of the Social Security Act [section 603(b) of this title] (as amended by section 103(a)(1) of this Act), during the period beginning on October 1, 1996, and ending on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act [section 602(a) of this title] (as so amended) if, with respect to such State, the effective date of this Act [title] under subsection (a)(1) were August 22, 1996, exceeds the total obligations of the Federal Government to the State under part A of title IV of the Social Security Act [this part] (as in effect on September 30, 1995) with respect to expenditures in fiscal year 1997; or

''(bb) the sum of the State family assistance grant, multiplied by 1/365 of the number of days during the period that begins on October 1, 1996, or the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act (as added by the amendment made by section 103(a)(1) of this Act), whichever is later, and ends on September 30, 1997, and the amount, if any, that the State would have been eligible to be paid under the Contingency Fund for State Welfare Programs established under section 403(b) of the Social Security Act (as amended by section 103(a)(1) of this Act), during the period beginning on October 1, 1996, and ending on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act (as so amended) if, with respect to such State, the effective date of this Act [title] under subsection (a)(1) were August 22, 1996.

''(iii) CHILD CARE OBLIGATIONS EXCLUDED IN DETERMINING FEDERAL AFDC OBLIGATIONS.—As used in this subparagraph, the term 'obligations of the Federal Government to the State under part A of title IV of the Social Security Act' does not include any obligation of the Federal Government with respect to child care expenditures by the State.

''(C) SUBMISSION OF STATE PLAN FOR FISCAL YEAR 1996 OR 1997 DEEMED ACCEPTANCE OF GRANT LIMITATIONS AND FORMULA AND TERMINATION OF AFDC ENTITLEMENT.—The submission of a plan by a State pursuant to subparagraph (A) is deemed to constitute—

''(i) the State's acceptance of the grant reductions under subparagraph (B) (including the formula for computing the amount of the reduction); and

''(ii) the termination of any entitlement of any individual or family to benefits or services under the State AFDC program.

''(D) DEFINITIONS.—As used in this paragraph:

''(i) STATE AFDC PROGRAM.—The term 'State AFDC program' means the State program under parts A and F of title IV of the Social Security Act (as in effect on September 30, 1995).

''(ii) STATE.—The term 'State' means the 50 States and the District of Columbia.

''(iii) STATE FAMILY ASSISTANCE GRANT.—The term 'State family assistance grant' means the State family assistance grant (as defined in section 403(a)(1)(B) of the Social Security Act [section 603(a)(1)(B) of this title], as added by the amendment made by section 103(a)(1) of this Act).

''(2) CLAIMS, ACTIONS, AND PROCEEDINGS.—The amendments made by this title [see Tables for classification] shall not apply with respect to—

''(A) powers, duties, functions, rights, claims, penalties, or obligations applicable to aid, assistance, or services provided before the effective date of this title under the provisions amended; and

''(B) administrative actions and proceedings commenced before such date, or authorized before such date to be commenced, under such provisions.

''(3) CLOSING OUT ACCOUNT FOR THOSE PROGRAMS TERMINATED OR SUBSTANTIALLY MODIFIED BY THIS TITLE.—In closing out accounts, Federal and State officials may use scientifically acceptable statistical sampling techniques. Claims made with respect to State expenditures under a State plan approved under part A of title IV of the Social Security Act [this part] (as in effect on September 30, 1995) with respect to assistance or services provided on or before September 30, 1995, shall be treated as claims with respect to expenditures during fiscal year 1995 for purposes of reimbursement even if payment was made by a State on or after October 1, 1995. Each State shall complete the filing of all claims under the State plan (as so in effect) within 2 years after the date of the enactment of this Act [Aug. 22, 1996]. The head of each Federal department shall—

''(A) use the single audit procedure to review and resolve any claims in connection with the close out of programs under such State plans; and

''(B) reimburse States for any payments made for assistance or services provided during a prior fiscal year from funds for fiscal year 1995, rather than from funds authorized by this title.

''(4) CONTINUANCE IN OFFICE OF ASSISTANT SECRETARY FOR FAMILY SUPPORT.—The individual who, on the day before the effective date of this title, is serving as Assistant Secretary for Family Support within the Department of Health and Human Services shall, until a successor is appointed to such position—

''(A) continue to serve in such position; and

''(B) except as otherwise provided by law—

''(i) continue to perform the functions of the Assistant Secretary for Family Support under section 417 of the Social Security Act [section 617 of this title] (as in effect before such effective date); and

''(ii) have the powers and duties of the Assistant Secretary for Family Support under section 416 of the Social Security Act [section 616 of this title] (as in effect pursuant to the amendment made by section 103(a)(1) of this Act).

''(c) TERMINATION OF ENTITLEMENT UNDER AFDC PROGRAM.—Effective October 1, 1996, no individual or family shall be entitled to any benefits or services under any State plan approved under part A or F of title IV of the Social Security Act [this part or part F of this subchapter] (as in effect on September 30, 1995).''

CONGRESSIONAL FINDINGS

Section 101 of Pub. L. 104–193 provided that: ''The Congress makes the following findings:

''(1) Marriage is the foundation of a successful society.

''(2) Marriage is an essential institution of a successful society which promotes the interests of children.

''(3) Promotion of responsible fatherhood and motherhood is integral to successful child rearing and the well-being of children.

''(4) In 1992, only 54 percent of single-parent families with children had a child support order established and, of that 54 percent, only about one-half received the full amount due. Of the cases enforced through the public child support enforcement system, only 18 percent of the caseload has a collection.

''(5) The number of individuals receiving aid to families with dependent children (in this section referred to as 'AFDC') has more than tripled since 1965. More than two-thirds of these recipients are children. Eighty-nine percent of children receiving AFDC benefits now live in homes in which no father is present.

''(A)(i) The average monthly number of children receiving AFDC benefits—

''(I) was 3,300,000 in 1965;

''(II) was 6,200,000 in 1970;

''(III) was 7,400,000 in 1980; and

''(IV) was 9,300,000 in 1992.

''(ii) While the number of children receiving AFDC benefits increased nearly threefold between 1965 and 1992, the total number of children in the United States aged 0 to 18 has declined by 5.5 percent.

''(B) The Department of Health and Human Services has estimated that 12,000,000 children will receive AFDC benefits within 10 years.

''(C) The increase in the number of children receiving public assistance is closely related to the increase in births to unmarried women. Between 1970 and 1991, the percentage of live births to unmarried women increased nearly threefold, from 10.7 percent to 29.5 percent.

''(6) The increase of out-of-wedlock pregnancies and births is well documented as follows:

''(A) It is estimated that the rate of nonmarital teen pregnancy rose 23 percent from 54 pregnancies per 1,000 unmarried teenagers in 1976 to 66.7 pregnancies in 1991. The overall rate of nonmarital pregnancy rose 14 percent from 90.8 pregnancies per 1,000 unmarried women in 1980 to 103 in both 1991 and 1992. In contrast, the overall pregnancy rate for married couples decreased 7.3 percent between 1980 and 1991, from 126.9 pregnancies per 1,000 married women in 1980 to 117.6 pregnancies in 1991.

''(B) The total of all out-of-wedlock births between 1970 and 1991 has risen from 10.7 percent to 29.5 percent and if the current trend continues, 50 percent of all births by the year 2015 will be out-of-wedlock.

''(7) An effective strategy to combat teenage pregnancy must address the issue of male responsibility, including statutory rape culpability and prevention. The increase of teenage pregnancies among the youngest girls is particularly severe and is linked to predatory sexual practices by men who are significantly older.

''(A) It is estimated that in the late 1980's, the rate for girls age 14 and under giving birth increased 26 percent.

''(B) Data indicates that at least half of the children born to teenage mothers are fathered by adult men. Available data suggests that almost 70 percent of births to teenage girls are fathered by men over age 20.

''(C) Surveys of teen mothers have revealed that a majority of such mothers have histories of sexual and physical abuse, primarily with older adult men.

''(8) The negative consequences of an out-of-wedlock birth on the mother, the child, the family, and society are well documented as follows:

''(A) Young women 17 and under who give birth outside of marriage are more likely to go on public assistance and to spend more years on welfare once enrolled. These combined effects of 'younger and

longer' increase total AFDC costs per household by 25 percent to 30 percent for 17-year-olds.

''(B) Children born out-of-wedlock have a substantially higher risk of being born at a very low or moderately low birth weight.

''(C) Children born out-of-wedlock are more likely to experience low verbal cognitive attainment, as well as more child abuse, and neglect.

''(D) Children born out-of-wedlock were more likely to have lower cognitive scores, lower educational aspirations, and a greater likelihood of becoming teenage parents themselves.

''(E) Being born out-of-wedlock significantly reduces the chances of the child growing up to have an intact marriage.

''(F) Children born out-of-wedlock are 3 times more likely to be on welfare when they grow up.

''(9) Currently 35 percent of children in single-parent homes were born out-of-wedlock, nearly the same percentage as that of children in single-parent homes whose parents are divorced (37 percent). While many parents find themselves, through divorce or tragic circumstances beyond their control, facing the difficult task of raising children alone, nevertheless, the negative consequences of raising children in single-parent homes are well documented as follows:

''(A) Only 9 percent of married-couple families with children under 18 years of age have income below the national poverty level. In contrast, 46 percent of female-headed households with children under 18 years of age are below the national poverty level.

''(B) Among single-parent families, nearly ½ of the mothers who never married received AFDC while only ⅕ of divorced mothers received AFDC.

''(C) Children born into families receiving welfare assistance are 3 times more likely to be on welfare when they reach adulthood than children not born into families receiving welfare.

''(D) Mothers under 20 years of age are at the greatest risk of bearing low birth weight babies.

''(E) The younger the single-parent mother, the less likely she is to finish high school.

''(F) Young women who have children before finishing high school are more likely to receive welfare assistance for a longer period of time.

''(G) Between 1985 and 1990, the public cost of births to teenage mothers under the aid to families with dependent children program, the food stamp program, and the medicaid program has been estimated at $120,000,000,000.

''(H) The absence of a father in the life of a child has a negative effect on school performance and peer adjustment.

''(I) Children of teenage single parents have lower cognitive scores, lower educational aspirations, and a greater likelihood of becoming teenage parents themselves.

''(J) Children of single-parent homes are 3 times more likely to fail and repeat a year in grade school than are children from intact 2-parent families.

''(K) Children from single-parent homes are almost 4 times more likely to be expelled or suspended from school.

''(L) Neighborhoods with larger percentages of youth aged 12 through 20 and areas with higher percentages of single-parent households have higher rates of violent crime.

''(M) Of those youth held for criminal offenses within the State juvenile justice system, only 29.8 percent lived primarily in a home with both parents. In contrast to these incarcerated youth, 73.9 percent of the 62,800,000 children in the Nation's resident population were living with both parents.

''(10) Therefore, in light of this demonstration of the crisis in our Nation, it is the sense of the Congress that prevention of out-of-wedlock pregnancy and reduction in out-of-wedlock birth are very important Government interests and the policy contained in part A of title IV of the Social Security Act [this part] (as amended by section 103(a) of this Act) is intended to address the crisis.''

APPROPRIATION BY STATE LEGISLATURES

Section 901 of Pub. L. 104–193 provided that:

''(a) IN GENERAL.—Any funds received by a State under the provisions of law specified in subsection (b) shall be subject to appropriation by the State legislature, consistent with the terms and conditions required under such provisions of law.

''(b) PROVISIONS OF LAW.—The provisions of law specified in this subsection are the following:

''(1) Part A of title IV of the Social Security Act [this part] (relating to block grants for temporary assistance for needy families).

''(2) The Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9858 et seq.] (relating to block grants for child care).''

§ 602. Eligible States; State plan

(a) In general

As used in this part, the term ''eligible State'' means, with respect to a fiscal year, a State that, during the 27-month period ending with the close of the 1st quarter of the fiscal year, has submitted to the Secretary a plan that the Secretary has found includes the following:

(1) Outline of family assistance program

(A) General provisions

A written document that outlines how the State intends to do the following:

(i) Conduct a program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner), that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.

(ii) Require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier, consistent with section 607(e)(2) of this title.

(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 607 of this title.

(iv) Take such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.

(v) Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State (as defined in section 603(a)(2)(C)(iii) of this title) for calendar years 1996 through 2005.

(vi) Conduct a program, designed to reach State and local law enforcement officials, the education system, and relevant counseling services, that provides edu-

cation and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men.

(B) Special provisions

(i) The document shall indicate whether the State intends to treat families moving into the State from another State differently than other families under the program, and if so, how the State intends to treat such families under the program.

(ii) The document shall indicate whether the State intends to provide assistance under the program to individuals who are not citizens of the United States, and if so, shall include an overview of such assistance.

(iii) The document shall set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process.

(iv) Not later than 1 year after August 22, 1996, unless the chief executive officer of the State opts out of this provision by notifying the Secretary, a State shall, consistent with the exception provided in section 607(e)(2) of this title, require a parent or caretaker receiving assistance under the program who, after receiving such assistance for 2 months is not exempt from work requirements and is not engaged in work, as determined under section 607(c) of this title, to participate in community service employment, with minimum hours per week and tasks to be determined by the State.

(2) Certification that the State will operate a child support enforcement program

A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D of this subchapter.

(3) Certification that the State will operate a foster care and adoption assistance program

A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a foster care and adoption assistance program under the State plan approved under part E of this subchapter, and that the State will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for medical assistance under the State plan under subchapter XIX of this chapter.

(4) Certification of the administration of the program

A certification by the chief executive officer of the State specifying which State agency or agencies will administer and supervise the program referred to in paragraph (1) for the fiscal year, which shall include assurances that local governments and private sector organizations—

(A) have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and

(B) have had at least 45 days to submit comments on the plan and the design of such services.

(5) Certification that the State will provide Indians with equitable access to assistance

A certification by the chief executive officer of the State that, during the fiscal year, the State will provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a tribal family assistance plan approved under section 612 of this title, with equitable access to assistance under the State program funded under this part attributable to funds provided by the Federal Government.

(6) Certification of standards and procedures to ensure against program fraud and abuse

A certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to ensure against program fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage.

(7) Optional certification of standards and procedures to ensure that the State will screen for and identify domestic violence

(A) In general

At the option of the State, a certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to—

(i) screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals;

(ii) refer such individuals to counseling and supportive services; and

(iii) waive, pursuant to a determination of good cause, other program requirements such as time limits (for so long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.

(B) "Domestic violence" defined

For purposes of this paragraph, the term ''domestic violence'' has the same meaning as the term ''battered or subjected to extreme cruelty'', as defined in section 608(a)(7)(C)(iii) of this title.

(b) Plan amendments

Within 30 days after a State amends a plan submitted pursuant to subsection (a) of this section, the State shall notify the Secretary of the amendment.

(c) Public availability of State plan summary

The State shall make available to the public a summary of any plan or plan amendment submitted by the State under this section.

(Aug. 14, 1935, ch. 531, title IV, § 402, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2113; amended Pub. L. 105–33, title V, §§ 5501, 5514(c), Aug. 5, 1997, 111 Stat. 606, 620; Pub. L. 106–169, title IV, § 401(a), Dec. 14, 1999, 113 Stat. 1858.)

REFERENCES IN TEXT

Parts D and E of this subchapter, referred to in subsec. (a)(2), (3), are classified to sections 651 et seq. and 670 et seq., respectively, of this title.

PRIOR PROVISIONS

A prior section 602, acts Aug. 14, 1935, ch. 531, title IV, § 402, 49 Stat. 627; Aug. 10, 1939, ch. 666, title IV, § 401, 53 Stat. 1379; Aug. 28, 1950, ch. 809, title III, pt. 2, § 321, pt. 6, § 361(c), (d), 64 Stat. 549, 558; Aug. 1, 1956, ch. 836, title III, § 312(b), 70 Stat. 849; July 25, 1962, Pub. L. 87–543, title I, §§ 103, 104(a)(2), (3)(A), (B), (5)(A), 106(b), 76 Stat. 185, 188; July 30, 1965, Pub. L. 89–97, title IV, §§ 403(b), 410, 79 Stat. 418, 423; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 201(a), (b), 202(a), (b), 204(b), (e), 205(a), 210(a)(2), 211(a), 213(b), 81 Stat. 877, 879, 881, 890, 892, 895, 896, 898; Dec. 28, 1971, Pub. L. 92–223, § 3(a)(1)–(7), 85 Stat. 803, 804; Oct. 30, 1972, Pub. L. 92–603, title II, § 299E(c), title IV, § 414(a), 86 Stat. 1462, 1492; Jan. 4, 1975, Pub. L. 93–647, §§ 3(a)(1), (2), (8), 101(c)(2)–(5), (8), 88 Stat. 2348, 2349, 2359, 2360; Aug. 9, 1975, Pub. L. 94–88, title II, §§ 202, 207, 208(a), 209, 89 Stat. 434, 436, 437; Dec. 20, 1977, Pub. L. 95–216, title IV, § 403(c), 91 Stat. 1561; Apr. 1, 1980, Pub. L. 96–222, title I, § 101(a)(2)(A), 94 Stat. 195; June 9, 1980, Pub. L. 96–265, title IV, §§ 401(a)–(f), 403(a), 406(b), 94 Stat. 460–462, 465, 466; June 17, 1980, Pub. L. 96–272, title I, § 101(a)(3)(A), title III, § 302(a), 94 Stat. 512, 528; Oct. 19, 1980, Pub. L. 96–473, § 6(f), 94 Stat. 2266; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §§ 2301–2306(a), 2310, 2313(b), (c)(1), 2314, 2315(a), 2316, 2318, 2320(a), (b)(1), 2353(b)(1), (c), 95 Stat. 843–846, 852, 854–857, 872; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 151(a), 152(a), 154(a), 96 Stat. 395, 396; Oct. 13, 1982, Pub. L. 97–300, title VI, § 603, formerly title V, § 503, 96 Stat. 1398, renumbered title VI, § 603, Nov. 7, 1988, Pub. L. 100–628, title VII, § 712(a)(1), (2), 102 Stat. 3248; Jan. 6, 1983, Pub. L. 97–424, title V, § 545(b), 96 Stat. 2198; Apr. 20, 1983, Pub. L. 98–21, title IV, § 404(b), 97 Stat. 140; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2621–2624(a), 2625(a), 2626, 2628, 2629, 2631–2634, 2636, 2639(a), (c), 2640(a), (c), 2642(a), (b), 2651(b)(1), (2), 2663(c)(1), (3)(B), (*l*)(1), 98 Stat. 1134–1137, 1141, 1142, 1144–1146, 1149, 1165, 1166, 1171; Aug. 16, 1984, Pub. L. 98–378, § 9(a)(2), 98 Stat. 1316; Apr. 7, 1986, Pub. L. 99–272, title XII, §§ 12303(a), 12304(a), 100 Stat. 292; Oct. 22, 1986, Pub. L. 99–514, § 2, title XVIII, § 1883(a)(5)(B), (b)(1)(A), (2)(A), (B), (3)(A), (4), (5), 100 Stat. 2095, 2916, 2917; Nov. 6, 1986, Pub. L. 99–603, title II, § 201(b)(1), title III, §§ 302(b)(1), 303(e)(1), 100 Stat. 3403, 3422, 3431; Dec. 22, 1987, Pub. L. 100–203, title IX, §§ 9102(b), 9133(b)(1), 101 Stat. 1330–300, 1330–314; Oct. 13, 1988, Pub. L. 100–485, title I, §§ 102(a), 123(d), title II, §§ 201(a), 202(b)(1)–(3), title III, §§ 301, 302(a), (b)(1), (c), 303(b)(3), (f)(2)(B), (C), 304(b)(2), title IV, §§ 401(a)(1), (2)(A), (b)(2), (f), (h), 402(a)–(c), 403(a), 404(a), title VI, §§ 604(a), 605(a), 102 Stat. 2346, 2353, 2356, 2377, 2382–2384, 2392, 2393, 2395–2398, 2409; Dec. 19, 1989, Pub. L. 101–239, title X, § 10403(a)(1)(B)(i), (C)(i), 103 Stat. 2487; Nov. 5, 1990, Pub. L. 101–508, title V, §§ 5051(a), (b), 5053(a), 5054(a), 5055(a), 5060(a), 5081(a), (c), (d), title XI, § 11115(a), 104 Stat. 1388–227 to 1388–229, 1388–231, 1388–233, 1388–236, 1388–414; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13742(a), 107 Stat. 663; Oct. 20, 1994, Pub. L. 103–382, title III, § 394(k), 108 Stat. 4029; Oct. 31, 1994, Pub. L. 103–432, title II, §§ 235(a), 264(c), 108 Stat. 4466, 4468; Aug. 22, 1996, Pub. L. 104–193, title I, § 103(c)(1), (2)(A), 110 Stat. 2161, related to State plans for aid and services to needy families with children prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620, effective July 1, 1997.

AMENDMENTS

1999—Subsec. (a)(1)(B)(iv). Pub. L. 106–169 made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

1997—Pub. L. 105–33, § 5514(c), made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

Subsec. (a). Pub. L. 105–33, § 5501(a), substituted ''27-month period ending with the close of the 1st quarter of'' for ''2-year period immediately preceding'' in introductory provisions.

Subsec. (a)(1)(A)(ii). Pub. L. 105–33, § 5501(b), inserted '', consistent with section 607(e)(2) of this title'' before period at end.

Subsec. (a)(1)(A)(v). Pub. L. 105–33, § 5501(c), substituted ''section 603(a)(2)(C)(iii)'' for ''section 603(a)(2)(B)''.

Subsec. (b). Pub. L. 105–33, § 5501(d)(1), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 105–34, § 5501(d)(2), inserted ''or plan amendment'' after ''plan''.

Pub. L. 105–33, § 5501(d)(1), redesignated subsec. (b) as (c).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–169, title IV, § 401(q), Dec. 14, 1999, 113 Stat. 1859, provided that: ''Except as provided in subsection (*l*) [amending section 604 of this title and enacting provisions set out as a note under section 604 of this title], the amendments made by this section [amending this section and sections 604, 609, 613, 616, 629a, 652, 654, 655, 657, 666, 671, and 1320b–7 of this title] shall take effect as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105).''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Section 5518(a) of title V of Pub. L. 105–33 provided that: ''The amendments made by this chapter to a provision of part A of title IV of the Social Security Act [chapter 1 (§§ 5501–5518) of subtitle F of title V of Pub. L. 105–33, amending this section and sections 603, 604, 607, 608, 609, 611, 612, 613, and 616 of this title] shall take effect as if the amendments had been included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193] at the time such section became law.''

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM

Section 9121 of Pub. L. 100–203 authorized State of Washington, upon application of State and approval by Secretary of Health and Human Services, to conduct demonstration project for purpose of testing whether operation of its Family Independence Program enacted in May 1987, as alternative to AFDC program under this subchapter, would more effectively break the cycle of poverty and provide families with opportunities for economic independence and strengthened family func-

tioning, prior to repeal by Pub. L. 104–193, title I, §110(b), Aug. 22, 1996, 110 Stat. 2171.

CHILD SUPPORT DEMONSTRATION PROGRAM IN NEW YORK STATE

Section 9122 of Pub. L. 100–203 authorized State of New York, upon application by State and approval by Secretary of Health and Human Services, to conduct demonstration program in accordance with this section for purpose of testing State's Child Support Supplemental Program as alternative to the program of Aid to Families with Dependent Children under this subchapter, prior to repeal by Pub. L. 104–193, title I, §110(c), Aug. 22, 1996, 110 Stat. 2171.

UTILITY PAYMENTS MADE BY TENANTS IN ASSISTED HOUSING

Pub. L. 98–181, title II, §221, Nov. 30, 1983, 97 Stat. 1188, as amended by Pub. L. 98–479, title I, §102(g)(3), Oct. 17, 1984, 98 Stat. 2222, provided that notwithstanding any other provision of law, for purposes of determining eligibility, or amount of benefits payable, under this part, any utility payment made in lieu of any rental payment by person living in dwelling unit in lower income housing project assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or section 1715z–1 of Title 12, Banks and Banking, was to be considered to be shelter payment, prior to repeal by Pub. L. 104–193, title I, §110(d), Aug. 22, 1996, 110 Stat. 2171.

EXCLUSION FROM INCOME

Section 159 of Pub. L. 97–248 provided that payments made under statutorily established State program to meet certain needs of children receiving aid under State's plan approved under this part were to be excluded from income of such children and their families for purposes of section 602(a)(17) of this title and for all other purposes of this part and of such plan, effective Sept. 3, 1982, if the payments were made to such children by State agency administering such plan, but were made without Federal financial participation under section 603(a) of this title or otherwise, and if State program had been continuously in effect since before Jan. 1, 1979, prior to repeal by Pub. L. 104–193, title I, §110(e), Aug. 22, 1996, 110 Stat. 2171.

STATE PLANS TO DISREGARD EARNED INCOME OF INDIVIDUALS IN DETERMINATION OF NEED FOR AID; EFFECTIVE DATE

Section 202(d) of Pub. L. 90–248 provided that effective with respect to quarters beginning after June 30, 1968, in determining need of individuals claiming aid under State plan approved under this part, State was to apply provisions of this part notwithstanding any provisions of law other than this chapter requiring State to disregard earned income of such individuals in determining need under such State plan, prior to repeal by Pub. L. 104–193, title I, §110(f), Aug. 22, 1996, 110 Stat. 2171.

§ 603. Grants to States

(a) Grants

(1) Family assistance grant

(A) In general

Each eligible State shall be entitled to receive from the Secretary, for each of fiscal years 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003, a grant in an amount equal to the State family assistance grant.

(B) State family assistance grant

The State family assistance grant payable to a State for a fiscal year shall be the amount that bears the same ratio to the amount specified in subparagraph (C) of this paragraph as the amount required to be paid to the State under this paragraph for fiscal year 2002 (determined without regard to any reduction pursuant to section 609 or 612(a)(1) of this title) bears to the total amount required to be paid under this paragraph for fiscal year 2002 (as so determined).

(C) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal year 2003 $16,566,542,000 for grants under this paragraph.

(2) Bonus to reward decrease in illegitimacy ratio

(A) In general

Each eligible State shall be entitled to receive from the Secretary a grant for each bonus year.

(B) Amount of grant

(i) In general

If, for a bonus year, none of the eligible States is Guam, the Virgin Islands, or American Samoa, then the amount of the grant shall be—

(I) $20,000,000 if there are 5 eligible States; or

(II) $25,000,000 if there are fewer than 5 eligible States.

(ii) Amount if certain territories are eligible

If, for a bonus year, Guam, the Virgin Islands, or American Samoa is an eligible State, then the amount of the grant shall be—

(I) in the case of such a territory, 25 percent of the mandatory ceiling amount (as defined in section 1308(c)(4) of this title) with respect to the territory; and

(II) in the case of a State that is not such a territory—

(aa) if there are 5 eligible States other than such territories, $20,000,000, minus ⅕ of the total amount of the grants payable under this paragraph to such territories for the bonus year; or

(bb) if there are fewer than 5 such eligible States, $25,000,000, or such lesser amount as may be necessary to ensure that the total amount of grants payable under this paragraph for the bonus year does not exceed $100,000,000.

(C) Definitions

As used in this paragraph:

(i) Eligible State

(I) In general

The term ''eligible State'' means a State that the Secretary determines meets the following requirements:

(aa) The State demonstrates that the illegitimacy ratio of the State for the most recent 2-year period for which such information is available decreased as compared to the illegitimacy ratio of the State for the previous 2-year period, and the magnitude of the decrease for the State for the pe-

riod is not exceeded by the magnitude of the corresponding decrease for 5 or more other States for the period. In the case of a State that is not a territory specified in subparagraph (B), the comparative magnitude of the decrease for the State shall be determined without regard to the magnitude of the corresponding decrease for any such territory.

(bb) The rate of induced pregnancy terminations in the State for the calendar year for which the most recent data are available is less than the rate of induced pregnancy terminations in the State for calendar year 1995.

(II) Disregard of changes in data due to changed reporting methods

In making the determination required by subclause (I), the Secretary shall disregard—

(aa) any difference between the illegitimacy ratio of a State for a calendar year and the illegitimacy ratio of a State for calendar year 1995 which is attributable to a change in State methods of reporting data used to calculate the illegitimacy ratio; and

(bb) any difference between the rate of induced pregnancy terminations in a State for a calendar year and such rate for calendar year 1995 which is attributable to a change in State methods of reporting data used to calculate such rate.

(ii) Bonus year

The term ''bonus year'' means calendar years 1999, 2000, 2001, 2002, and 2003.

(iii) Illegitimacy ratio

The term ''illegitimacy ratio'' means, with respect to a State and a period—

(I) the number of out-of-wedlock births to mothers residing in the State that occurred during the period; divided by

(II) the number of births to mothers residing in the State that occurred during the period.

(D) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1999 through 2003, such sums as are necessary for grants under this paragraph.

(3) Supplemental grant for population increases in certain States

(A) In general

Each qualifying State shall, subject to subparagraph (F), be entitled to receive from the Secretary—

(i) for fiscal year 1998 a grant in an amount equal to 2.5 percent of the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; and

(ii) for each of fiscal years 1999, 2000, and 2001, a grant in an amount equal to the sum of—

(I) the amount (if any) required to be paid to the State under this paragraph for the immediately preceding fiscal year; and

(II) 2.5 percent of the sum of—

(aa) the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; and

(bb) the amount (if any) required to be paid to the State under this paragraph for the fiscal year preceding the fiscal year for which the grant is to be made.

(B) Preservation of grant without increases for States failing to remain qualifying States

Each State that is not a qualifying State for a fiscal year specified in subparagraph (A)(ii) but was a qualifying State for a prior fiscal year shall, subject to subparagraph (F), be entitled to receive from the Secretary for the specified fiscal year, a grant in an amount equal to the amount required to be paid to the State under this paragraph for the most recent fiscal year for which the State was a qualifying State.

(C) Qualifying State

(i) In general

For purposes of this paragraph, a State is a qualifying State for a fiscal year if—

(I) the level of welfare spending per poor person by the State for the immediately preceding fiscal year is less than the national average level of State welfare spending per poor person for such preceding fiscal year; and

(II) the population growth rate of the State (as determined by the Bureau of the Census) for the most recent fiscal year for which information is available exceeds the average population growth rate for all States (as so determined) for such most recent fiscal year.

(ii) State must qualify in fiscal year 1998

Notwithstanding clause (i), a State shall not be a qualifying State for any fiscal year after 1998 by reason of clause (i) if the State is not a qualifying State for fiscal year 1998 by reason of clause (i).

(iii) Certain States deemed qualifying States

For purposes of this paragraph, a State is deemed to be a qualifying State for fiscal years 1998, 1999, 2000, and 2001 if—

(I) the level of welfare spending per poor person by the State for fiscal year 1994 is less than 35 percent of the national average level of State welfare spending per poor person for fiscal year 1994; or

(II) the population of the State increased by more than 10 percent from April 1, 1990 to July 1, 1994, according to the population estimates in publication CB94–204 of the Bureau of the Census.

(D) Definitions

As used in this paragraph:

(i) Level of welfare spending per poor person

The term ''level of State welfare spending per poor person'' means, with respect to a State and a fiscal year—

(I) the sum of—

(aa) the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; and

(bb) the amount (if any) paid to the State under this paragraph for the immediately preceding fiscal year; divided by

(II) the number of individuals, according to the 1990 decennial census, who were residents of the State and whose income was below the poverty line.

(ii) National average level of State welfare spending per poor person

The term ''national average level of State welfare spending per poor person'' means, with respect to a fiscal year, an amount equal to—

(I) the total amount required to be paid to the States under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; divided by

(II) the number of individuals, according to the 1990 decennial census, who were residents of any State and whose income was below the poverty line.

(iii) State

The term ''State'' means each of the 50 States of the United States and the District of Columbia.

(E) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1998, 1999, 2000, and 2001 such sums as are necessary for grants under this paragraph, in a total amount not to exceed $800,000,000.

(F) Grants reduced pro rata if insufficient appropriations

If the amount appropriated pursuant to this paragraph for a fiscal year is less than the total amount of payments otherwise required to be made under this paragraph for the fiscal year, then the amount otherwise payable to any State for the fiscal year under this paragraph shall be reduced by a percentage equal to the amount so appropriated divided by such total amount.

(G) Budget scoring

Notwithstanding section 907(b)(2) of title 2, the baseline shall assume that no grant shall be made under this paragraph after fiscal year 2001.

(H) Reauthorization

Notwithstanding any other provision of this paragraph—

(i) any State that was a qualifying State under this paragraph for fiscal year 2001 or any prior fiscal year shall be entitled to receive from the Secretary for each of fiscal years 2002 and 2003 a grant in an amount equal to the amount required to be paid to the State under this paragraph for the most recent fiscal year in which the State was a qualifying State;

(ii) subparagraph (G) shall be applied as if ''March 31, 2006'' were substituted for ''fiscal year 2001''; and

(iii) out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for each of fiscal years 2002 and 2003 such sums as are necessary for grants under this subparagraph.

(4) Bonus to reward high performance States

(A) In general

The Secretary shall make a grant pursuant to this paragraph to each State for each bonus year for which the State is a high performing State.

(B) Amount of grant

(i) In general

Subject to clause (ii) of this subparagraph, the Secretary shall determine the amount of the grant payable under this paragraph to a high performing State for a bonus year, which shall be based on the score assigned to the State under subparagraph (D)(i) for the fiscal year that immediately precedes the bonus year.

(ii) Limitation

The amount payable to a State under this paragraph for a bonus year shall not exceed 5 percent of the State family assistance grant.

(C) Formula for measuring State performance

Not later than 1 year after August 22, 1996, the Secretary, in consultation with the National Governors' Association and the American Public Welfare Association, shall develop a formula for measuring State performance in operating the State program funded under this part so as to achieve the goals set forth in section 601(a) of this title.

(D) Scoring of State performance; setting of performance thresholds

For each bonus year, the Secretary shall—

(i) use the formula developed under subparagraph (C) to assign a score to each eligible State for the fiscal year that immediately precedes the bonus year; and

(ii) prescribe a performance threshold in such a manner so as to ensure that—

(I) the average annual total amount of grants to be made under this paragraph for each bonus year equals $200,000,000; and

(II) the total amount of grants to be made under this paragraph for all bonus years equals $1,000,000,000.

(E) Definitions

As used in this paragraph:

(i) Bonus year

The term ''bonus year'' means fiscal years 1999, 2000, 2001, 2002, and 2003.

(ii) High performing State

The term ''high performing State'' means, with respect to a bonus year, an eligible State whose score assigned pursuant to subparagraph (D)(i) for the fiscal year immediately preceding the bonus year equals or exceeds the performance threshold prescribed under subparagraph (D)(ii) for such preceding fiscal year.

(F) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1999 through 2003 $1,000,000,000 for grants under this paragraph.

(5) Welfare-to-work grants

(A) Formula grants

(i) Entitlement

A State shall be entitled to receive from the Secretary of Labor a grant for each fiscal year specified in subparagraph (H) of this paragraph for which the State is a welfare-to-work State, in an amount that does not exceed the lesser of—

(I) 2 times the total of the expenditures by the State (excluding qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) and any expenditure described in subclause (I), (II), or (IV) of section 609(a)(7)(B)(iv) of this title) during the period permitted under subparagraph (C)(vii) of this paragraph for the expenditure of funds under the grant for activities described in subparagraph (C)(i) of this paragraph; or

(II) the allotment of the State under clause (iii) of this subparagraph for the fiscal year.

(ii) Welfare-to-work State

A State shall be considered a welfare-to-work State for a fiscal year for purposes of this paragraph if the Secretary of Labor determines that the State meets the following requirements:

(I) The State has submitted to the Secretary of Labor and the Secretary of Health and Human Services (in the form of an addendum to the State plan submitted under section 602 of this title) a plan which—

(aa) describes how, consistent with this subparagraph, the State will use any funds provided under this subparagraph during the fiscal year;

(bb) specifies the formula to be used pursuant to clause (vi) to distribute funds in the State, and describes the process by which the formula was developed;

(cc) contains evidence that the plan was developed in consultation and coordination with appropriate entitites[1] in sub-State areas;

(dd) contains assurances by the Governor of the State that the private industry council (and any alternate agency designated by the Governor under item (ee)) for a service delivery area in the State will coordinate the expenditure of any funds provided under this subparagraph for the benefit of the service delivery area with the expenditure of the funds provided to the State under paragraph (1);

(ee) if the Governor of the State desires to have an agency other than a private industry council administer the funds provided under this subparagraph for the benefit of 1 or more service delivery areas in the State, contains an application to the Secretary of Labor for a waiver of clause (vii)(I) with respect to the area or areas in order to permit an alternate agency designated by the Governor to so administer the funds; and

(ff) describes how the State will ensure that a private industry council to which information is disclosed pursuant to section 603(a)(5)(K)[2] or 654A(f)(5) of this title has procedures for safeguarding the information and for ensuring that the information is used solely for the purpose described in that section.

(II) The State has provided to the Secretary of Labor an estimate of the amount that the State intends to expend during the period permitted under subparagraph (C)(vii) of this paragraph for the expenditure of funds under the grant (excluding expenditures described in section 609(a)(7)(B)(iv) of this title (other than subclause (III) thereof)) pursuant to this paragraph.

(III) The State has agreed to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance and funding of any evaluation under section 613(j) of this title, and to cooperate with the conduct of any such evaluation.

(IV) The State is an eligible State for the fiscal year.

(V) The State certifies that qualified State expenditures (within the meaning of section 609(a)(7) of this title) for the fiscal year will be not less than the applicable percentage of historic State expenditures (within the meaning of section 609(a)(7) of this title) with respect to the fiscal year.

(iii) Allotments to welfare-to-work States

(I) In general

Subject to this clause, the allotment of a welfare-to-work State for a fiscal year shall be the available amount for the fiscal year, multiplied by the State percentage for the fiscal year.

(II) Minimum allotment

The allotment of a welfare-to-work State (other than Guam, the Virgin Islands, or American Samoa) for a fiscal

[1] So in original. Probably should be ''entities''.

[2] See References in Text note below.

year shall not be less than 0.25 percent of the available amount for the fiscal year.

(III) Pro rata reduction

Subject to subclause (II), the Secretary of Labor shall make pro rata reductions in the allotments to States under this clause for a fiscal year as necessary to ensure that the total of the allotments does not exceed the available amount for the fiscal year.

(iv) Available amount

As used in this subparagraph, the term ''available amount'' means, for a fiscal year, the sum of—

(I) 75 percent of the sum of—

(aa) the amount specified in subparagraph (H) for the fiscal year, minus the total of the amounts reserved pursuant to subparagraphs (E), (F), and (G) for the fiscal year; and

(bb) any amount reserved pursuant to subparagraph (E) for the immediately preceding fiscal year that has not been obligated; and

(II) any available amount for the immediately preceding fiscal year that has not been obligated by a State, other than funds reserved by the State for distribution under clause (vi)(III) and funds distributed pursuant to clause (vi)(I) in any State in which the service delivery area is the State.

(v) State percentage

As used in clause (iii), the term ''State percentage'' means, with respect to a fiscal year, ½ of the sum of—

(I) the percentage represented by the number of individuals in the State whose income is less than the poverty line divided by the number of such individuals in the United States; and

(II) the percentage represented by the number of adults who are recipients of assistance under the State program funded under this part divided by the number of adults in the United States who are recipients of assistance under any State program funded under this part.

(vi) Procedure for distribution of funds within States

(I) Allocation formula

A State to which a grant is made under this subparagraph shall devise a formula for allocating not less than 85 percent of the amount of the grant among the service delivery areas in the State, which—

(aa) determines the amount to be allocated for the benefit of a service delivery area in proportion to the number (if any) by which the population of the area with an income that is less than the poverty line exceeds 7.5 percent of the total population of the area, relative to such number for all such areas in the State with such an excess, and accords a weight of not less than 50 percent to this factor;

(bb) may determine the amount to be allocated for the benefit of such an area in proportion to the number of adults residing in the area who have been recipients of assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 first applied to the State) for at least 30 months (whether or not consecutive) relative to the number of such adults residing in the State; and

(cc) may determine the amount to be allocated for the benefit of such an area in proportion to the number of unemployed individuals residing in the area relative to the number of such individuals residing in the State.

(II) Distribution of funds

(aa) In general

If the amount allocated by the formula to a service delivery area is at least $100,000, the State shall distribute the amount to the entity administering the grant in the area.

(bb) Special rule

If the amount allocated by the formula to a service delivery area is less than $100,000, the sum shall be available for distribution in the State under subclause (III) during the fiscal year.

(III) Projects to help long-term recipients of assistance enter unsubsidized jobs

The Governor of a State to which a grant is made under this subparagraph may distribute not more than 15 percent of the grant funds (plus any amount required to be distributed under this subclause by reason of subclause (II)(bb)) to projects that appear likely to help long-term recipients of assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 first applied to the State) enter unsubsidized employment.

(vii) Administration

(I) Private industry councils

The private industry council for a service delivery area in a State shall have sole authority, in coordination with the chief elected official (as defined in section 101 of the Workforce Investment Act of 1998 [29 U.S.C. 2801]) of the area, to expend the amounts distributed under clause (vi)(II)(aa) for the benefit of the service delivery area, in accordance with the assurances described in clause (ii)(I)(dd) provided by the Governor of the State.

(II) Enforcement of coordination of expenditures with other expenditures under this part

Notwithstanding subclause (I) of this clause, on a determination by the Gov-

ernor of a State that a private industry council (or an alternate agency described in clause (ii)(I)(dd)) has used funds provided under this subparagraph in a manner inconsistent with the assurances described in clause (ii)(I)(dd)—

(aa) the private industry council (or such alternate agency) shall remit the funds to the Governor; and

(bb) the Governor shall apply to the Secretary of Labor for a waiver of subclause (I) of this clause with respect to the service delivery area or areas involved in order to permit an alternate agency designated by the Governor to administer the funds in accordance with the assurances.

(III) Authority to permit use of alternate administering agency

The Secretary of Labor shall approve an application submitted under clause (ii)(I)(ee) or subclause (II)(bb) of this clause to waive subclause (I) of this clause with respect to 1 or more service delivery areas if the Secretary determines that the alternate agency designated in the application would improve the effectiveness or efficiency of the administration of amounts distributed under clause (vi)(II)(aa) for the benefit of the area or areas.

(viii) Data to be used in determining the number of adult TANF recipients

For purposes of this subparagraph, the number of adult recipients of assistance under a State program funded under this part for a fiscal year shall be determined using data for the most recent 12-month period for which such data is available before the beginning of the fiscal year.

(ix) Reversion of unallotted formula funds

If at the end of any fiscal year any funds available under this subparagraph have not been allotted due to a determination by the Secretary that any State has not met the requirements of clause (ii), such funds shall be transferred to the General Fund of the Treasury of the United States.

(B) Competitive grants

(i) In general

The Secretary of Labor shall award grants in accordance with this subparagraph, in fiscal years 1998 and 1999, for projects proposed by eligible applicants, based on the following:

(I) The effectiveness of the proposal in—

(aa) expanding the base of knowledge about programs aimed at moving recipients of assistance under State programs funded under this part who are least job ready into unsubsidized employment.

(bb) moving recipients of assistance under State programs funded under this part who are least job ready into unsubsidized employment; and

(cc) moving recipients of assistance under State programs funded under this part who are least job ready into unsubsidized employment, even in labor markets that have a shortage of low-skill jobs.

(II) At the discretion of the Secretary of Labor, any of the following:

(aa) The history of success of the applicant in moving individuals with multiple barriers into work.

(bb) Evidence of the applicant's ability to leverage private, State, and local resources.

(cc) Use by the applicant of State and local resources beyond those required by subparagraph (A).

(dd) Plans of the applicant to coordinate with other organizations at the local and State level.

(ee) Use by the applicant of current or former recipients of assistance under a State program funded under this part as mentors, case managers, or service providers.

(ii) Eligible applicants

As used in clause (i), the term ''eligible applicant'' means a private industry council for a service delivery area in a State, a political subdivision of a State, or a private entity applying in conjunction with the private industry council for such a service delivery area or with such a political subdivision, that submits a proposal developed in consultation with the Governor of the State.

(iii) Determination of grant amount

In determining the amount of a grant to be made under this subparagraph for a project proposed by an applicant, the Secretary of Labor shall provide the applicant with an amount sufficient to ensure that the project has a reasonable opportunity to be successful, taking into account the number of long-term recipients of assistance under a State program funded under this part, the level of unemployment, the job opportunities and job growth, the poverty rate, and such other factors as the Secretary of Labor deems appropriate, in the area to be served by the project.

(iv) Consideration of needs of rural areas and cities with large concentrations of poverty

In making grants under this subparagraph, the Secretary of Labor shall consider the needs of rural areas and cities with large concentrations of residents with an income that is less than the poverty line.

(v) Funding

For grants under this subparagraph for each fiscal year specified in subparagraph (H), there shall be available to the Secretary of Labor an amount equal to the sum of—

(I) 25 percent of the sum of—

(aa) the amount specified in subparagraph (H) for the fiscal year, minus the total of the amounts reserved pursuant

to subparagraphs (E), (F), and (G) for the fiscal year; and

(bb) any amount reserved pursuant to subparagraph (E) for the immediately preceding fiscal year that has not been obligated; and

(II) any amount available for grants under this subparagraph for the immediately preceding fiscal year that has not been obligated.

(C) Limitations on use of funds

(i) Allowable activities

An entity to which funds are provided under this paragraph shall use the funds to move individuals into and keep individuals in lasting unsubsidized employment by means of any of the following:

(I) The conduct and administration of community service or work experience programs.

(II) Job creation through public or private sector employment wage subsidies.

(III) On-the-job training.

(IV) Contracts with public or private providers of readiness, placement, and post-employment services, or if the entity is not a private industry council or workforce investment board, the direct provision of such services.

(V) Job vouchers for placement, readiness, and postemployment services.

(VI) Job retention or support services if such services are not otherwise available.

(VII) Not more than 6 months of vocational educational or job training.

Contracts or vouchers for job placement services supported by such funds must require that at least ½ of the payment occur after an eligible individual placed into the workforce has been in the workforce for 6 months.

(ii) General eligibility

An entity that operates a project with funds provided under this paragraph may expend funds provided to the project for the benefit of recipients of assistance under the program funded under this part of the State in which the entity is located who—

(I) has received assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 first apply to the State) for at least 30 months (whether or not consecutive); or

(II) within 12 months, will become ineligible for assistance under the State program funded under this part by reason of a durational limit on such assistance, without regard to any exemption provided pursuant to section 608(a)(7)(C) of this title that may apply to the individual.

(iii) Noncustodial parents

An entity that operates a project with funds provided under this paragraph may use the funds to provide services in a form described in clause (i) to noncustodial parents with respect to whom the requirements of the following subclauses are met:

(I) The noncustodial parent is unemployed, underemployed, or having difficulty in paying child support obligations.

(II) At least 1 of the following applies to a minor child of the noncustodial parent (with preference in the determination of the noncustodial parents to be provided services under this paragraph to be provided by the entity to those noncustodial parents with minor children who meet, or who have custodial parents who meet, the requirements of item (aa)):

(aa) The minor child or the custodial parent of the minor child meets the requirements of subclause (I) or (II) of clause (ii).

(bb) The minor child is eligible for, or is receiving, benefits under the program funded under this part.

(cc) The minor child received benefits under the program funded under this part in the 12-month period preceding the date of the determination but no longer receives such benefits.

(dd) The minor child is eligible for, or is receiving, assistance under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.], benefits under the supplemental security income program under subchapter XVI of this chapter, medical assistance under subchapter XIX of this chapter, or child health assistance under subchapter XXI of this chapter.

(III) In the case of a noncustodial parent who becomes enrolled in the project on or after November 29, 1999, the noncustodial parent is in compliance with the terms of an oral or written personal responsibility contract entered into among the noncustodial parent, the entity, and (unless the entity demonstrates to the Secretary that the entity is not capable of coordinating with such agency) the agency responsible for administering the State plan under part D of this subchapter, which was developed taking into account the employment and child support status of the noncustodial parent, which was entered into not later than 30 (or, at the option of the entity, not later than 90) days after the noncustodial parent was enrolled in the project, and which, at a minimum, includes the following:

(aa) A commitment by the noncustodial parent to cooperate, at the earliest opportunity, in the establishment of the paternity of the minor child, through voluntary acknowledgement or other procedures, and in the establishment of a child support order.

(bb) A commitment by the noncustodial parent to cooperate in the payment of child support for the minor

child, which may include a modification of an existing support order to take into account the ability of the noncustodial parent to pay such support and the participation of such parent in the project.

(cc) A commitment by the noncustodial parent to participate in employment or related activities that will enable the noncustodial parent to make regular child support payments, and if the noncustodial parent has not attained 20 years of age, such related activities may include completion of high school, a general equivalency degree, or other education directly related to employment.

(dd) A description of the services to be provided under this paragraph, and a commitment by the noncustodial parent to participate in such services, that are designed to assist the noncustodial parent obtain and retain employment, increase earnings, and enhance the financial and emotional contributions to the well-being of the minor child.

In order to protect custodial parents and children who may be at risk of domestic violence, the preceding provisions of this subclause shall not be construed to affect any other provision of law requiring a custodial parent to cooperate in establishing the paternity of a child or establishing or enforcing a support order with respect to a child, or entitling a custodial parent to refuse, for good cause, to provide such cooperation as a condition of assistance or benefit under any program, shall not be construed to require such cooperation by the custodial parent as a condition of participation of either parent in the program authorized under this paragraph, and shall not be construed to require a custodial parent to cooperate with or participate in any activity under this clause. The entity operating a project under this clause with funds provided under this paragraph shall consult with domestic violence prevention and intervention organizations in the development of the project.

(iv) Targeting of hard to employ individuals with characteristics associated with long-term welfare dependence

An entity that operates a project with funds provided under this paragraph may expend not more than 30 percent of all funds provided to the project for programs that provide assistance in a form described in clause (i)—

(I) to recipients of assistance under the program funded under this part of the State in which the entity is located who have characteristics associated with long-term welfare dependence (such as school dropout, teen pregnancy, or poor work history), including, at the option of the State, by providing assistance in such form as a condition of receiving assistance under the State program funded under this part;

(II) to children—

(aa) who have attained 18 years of age but not 25 years of age; and

(bb) who, before attaining 18 years of age, were recipients of foster care maintenance payments (as defined in section 675(4) of this title) under part E of this subchapter or were in foster care under the responsibility of a State;

(III) to recipients of assistance under the State program funded under this part, determined to have significant barriers to self-sufficiency, pursuant to criteria established by the local private industry council; or

(IV) to custodial parents with incomes below 100 percent of the poverty line (as defined in section 9902(2) of this title, including any revision required by such section, applicable to a family of the size involved).

To the extent that the entity does not expend such funds in accordance with the preceding sentence, the entity shall expend such funds in accordance with clauses (ii) and (iii) and, as appropriate, clause (v).

(v) Authority to provide work-related services to individuals who have reached the 5-year limit

An entity that operates a project with funds provided under this paragraph may use the funds to provide assistance in a form described in clause (i) of this subparagraph to, or for the benefit of, individuals who (but for section 608(a)(7) of this title) would be eligible for assistance under the program funded under this part of the State in which the entity is located.

(vi) Relationship to other provisions of this part

(I) Rules governing use of funds

The rules of section 604 of this title, other than subsections (b), (f), and (h) of section 604 of this title, shall not apply to a grant made under this paragraph.

(II) Rules governing payments to States

The Secretary of Labor shall carry out the functions otherwise assigned by section 605 of this title to the Secretary of Health and Human Services with respect to the grants payable under this paragraph.

(III) Administration

Section 616 of this title shall not apply to the programs under this paragraph.

(vii) Prohibition against use of grant funds for any other fund matching requirement

An entity to which funds are provided under this paragraph shall not use any part of the funds, nor any part of State expenditures made to match the funds, to fulfill any obligation of any State, polit-

ical subdivision, or private industry council to contribute funds under subsection (b) of this section or section 618 of this title or any other provision of this chapter or other Federal law.

(viii) Deadline for expenditure

An entity to which funds are provided under this paragraph shall remit to the Secretary of Labor any part of the funds that are not expended within 5 years after the date the funds are so provided.

(ix) Regulations

Within 90 days after August 5, 1997, the Secretary of Labor, after consultation with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, shall prescribe such regulations as may be necessary to implement this paragraph.

(x) Reporting requirements

The Secretary of Labor, in consultation with the Secretary of Health and Human Services, States, and organizations that represent State or local governments, shall establish requirements for the collection and maintenance of financial and participant information and the reporting of such information by entities carrying out activities under this paragraph.

(D) Definitions

(i) Individuals with income less than the poverty line

For purposes of this paragraph, the number of individuals with an income that is less than the poverty line shall be determined for a fiscal year—

(I) based on the methodology used by the Bureau of the Census to produce and publish intercensal poverty data for States and counties (or, in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa, other poverty data selected by the Secretary of Labor); and

(II) using data for the most recent year for which such data is available before the beginning of the fiscal year.

(ii) Private industry council

As used in this paragraph, the term ''private industry council'' means, with respect to a service delivery area, the private industry council or local workforce investment board established for the service delivery area pursuant to title I of the Workforce Investment Area[3] of 1998 [29 U.S.C. 2801 et seq.], as appropriate.

(iii) Service delivery area

As used in this paragraph, the term ''service delivery area'' shall have the meaning given such term for purposes of the Job Training Partnership Act or.[4]

(E) Funding for Indian tribes

1 percent of the amount specified in subparagraph (H) for fiscal year 1998 and $15,000,000 of the amount so specified for fiscal year 1999 shall be reserved for grants to Indian tribes under section 612(a)(3) of this title.

(F) Funding for evaluations of welfare-to-work programs

0.6 percent of the amount specified in subparagraph (H) for fiscal year 1998 and $9,000,000 of the amount so specified for fiscal year 1999 shall be reserved for use by the Secretary to carry out section 613(j) of this title.

(G) Funding for evaluation of abstinence education programs

(i) In general

0.2 percent of the amount specified in subparagraph (H) for fiscal year 1998 and $3,000,000 of the amount so specified for fiscal year 1999 shall be reserved for use by the Secretary to evaluate programs under section 710 of this title, directly or through grants, contracts, or interagency agreements.

(ii) Authority to use funds for evaluations of welfare-to-work programs

Any such amount not required for such evaluations shall be available for use by the Secretary to carry out section 613(j) of this title.

(iii) Deadline for outlays

Outlays from funds used pursuant to clause (i) for evaluation of programs under section 710 of this title shall not be made after fiscal year 2005.

(iv) Interim report

Not later than January 1, 2002, the Secretary shall submit to the Congress an interim report on the evaluations referred to in clause (i).

(H) Appropriations

(i) In general

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for grants under this paragraph—

(I) $1,500,000,000 for fiscal year 1998; and

(II) $1,400,000,000 for fiscal year 1999.

(ii) Availability

The amounts made available pursuant to clause (i) shall remain available for such period as is necessary to make the grants provided for in this paragraph.

(I) Worker protections

(i) Nondisplacement in work activities

(I) General prohibition

Subject to this clause, an adult in a family receiving assistance attributable to funds provided under this paragraph may fill a vacant employment position in order to engage in a work activity.

(II) Prohibition against violation of contracts

A work activity engaged in under a program operated with funds provided

[3] So in original. Probably should be ''Act''.

[4] So in original.

under this paragraph shall not violate an existing contract for services or a collective bargaining agreement, and such a work activity that would violate a collective bargaining agreement shall not be undertaken without the written concurrence of the labor organization and employer concerned.

(III) Other prohibitions

An adult participant in a work activity engaged in under a program operated with funds provided under this paragraph shall not be employed or assigned—

(aa) when any other individual is on layoff from the same or any substantially equivalent job;

(bb) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the participant; or

(cc) if the employer has caused an involuntary reduction to less than full time in hours of any employee in the same or a substantially equivalent job.

(ii) Health and safety

Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of other participants engaged in a work activity under a program operated with funds provided under this paragraph.

(iii) Nondiscrimination

In addition to the protections provided under the provisions of law specified in section 608(c) of this title, an individual may not be discriminated against by reason of gender with respect to participation in work activities engaged in under a program operated with funds provided under this paragraph.

(iv) Grievance procedure

(I) In general

Each State to which a grant is made under this paragraph shall establish and maintain a procedure for grievances or complaints from employees alleging violations of clause (i) and participants in work activities alleging violations of clause (i), (ii), or (iii).

(II) Hearing

The procedure shall include an opportunity for a hearing.

(III) Remedies

The procedure shall include remedies for violation of clause (i), (ii), or (iii), which may continue during the pendency of the procedure, and which may include—

(aa) suspension or termination of payments from funds provided under this paragraph;

(bb) prohibition of placement of a participant with an employer that has violated clause (i), (ii), or (iii);

(cc) where applicable, reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions and privileges of employment; and

(dd) where appropriate, other equitable relief.

(IV) Appeals

(aa) Filing

Not later than 30 days after a grievant or complainant receives an adverse decision under the procedure established pursuant to subclause (I), the grievant or complainant may appeal the decision to a State agency designated by the State which shall be independent of the State or local agency that is administering the programs operated with funds provided under this paragraph and the State agency administering, or supervising the administration of, the State program funded under this part.

(bb) Final determination

Not later than 120 days after the State agency designated under item (aa) receives a grievance or complaint made under the procedure established by a State pursuant to subclause (I), the State agency shall make a final determination on the appeal.

(v) Rule of interpretation

This subparagraph shall not be construed to affect the authority of a State to provide or require workers' compensation.

(vi) Nonpreemption of State law

The provisions of this subparagraph shall not be construed to preempt any provision of State law that affords greater protections to employees or to other participants engaged in work activities under a program funded under this part than is afforded by such provisions of this subparagraph.

(J) Information disclosure

If a State to which a grant is made under this section establishes safeguards against the use or disclosure of information about applicants or recipients of assistance under the State program funded under this part, the safeguards shall not prevent the State agency administering the program from furnishing to a private industry council the names, addresses, telephone numbers, and identifying case number information in the State program funded under this part, of noncustodial parents residing in the service delivery area of the private industry council, for the purpose of identifying and contacting noncustodial parents regarding participation in the program under this paragraph.

(b) Contingency Fund

(1) Establishment

There is hereby established in the Treasury of the United States a fund which shall be known as the ''Contingency Fund for State

Welfare Programs'' (in this section referred to as the ''Fund'').

(2) Deposits into Fund

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1997, 1998, 1999, 2000, 2001, 2002, and 2003 such sums as are necessary for payment to the Fund in a total amount not to exceed $2,000,000,000, reduced by the sum of the dollar amounts specified in paragraph (6)(C)(ii).

(3) Grants

(A) Provisional payments

If an eligible State submits to the Secretary a request for funds under this paragraph during an eligible month, the Secretary shall, subject to this paragraph, pay to the State, from amounts appropriated pursuant to paragraph (2), an amount equal to the amount of funds so requested.

(B) Payment priority

The Secretary shall make payments under subparagraph (A) in the order in which the Secretary receives requests for such payments.

(C) Limitations

(i) Monthly payment to a State

The total amount paid to a single State under subparagraph (A) during a month shall not exceed 1/12 of 20 percent of the State family assistance grant.

(ii) Payments to all States

The total amount paid to all States under subparagraph (A) during fiscal years 1997 through 2006 shall not exceed the total amount appropriated pursuant to paragraph (2).

(4) "Eligible month" defined

As used in paragraph (3)(A), the term ''eligible month'' means, with respect to a State, a month in the 2-month period that begins with any month for which the State is a needy State.

(5) Needy State

For purposes of paragraph (4), a State is a needy State for a month if—

(A) the average rate of—

(i) total unemployment in such State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all States are published equals or exceeds 6.5 percent; and

(ii) total unemployment in such State (seasonally adjusted) for the 3-month period equals or exceeds 110 percent of such average rate for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years; or

(B) as determined by the Secretary of Agriculture (in the discretion of the Secretary of Agriculture), the monthly average number of individuals (as of the last day of each month) participating in the food stamp program in the State in the then most recently concluded 3-month period for which data are available exceeds by not less than 10 percent the lesser of—

(i) the monthly average number of individuals (as of the last day of each month) in the State that would have participated in the food stamp program in the corresponding 3-month period in fiscal year 1994 if the amendments made by titles IV and VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 had been in effect throughout fiscal year 1994; or

(ii) the monthly average number of individuals (as of the last day of each month) in the State that would have participated in the food stamp program in the corresponding 3-month period in fiscal year 1995 if the amendments made by titles IV and VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 had been in effect throughout fiscal year 1995.

(6) Annual reconciliation

(A) In general

Notwithstanding paragraph (3), if the Secretary makes a payment to a State under this subsection in a fiscal year, then the State shall remit to the Secretary, within 1 year after the end of the first subsequent period of 3 consecutive months for which the State is not a needy State, an amount equal to the amount (if any) by which—

(i) the total amount paid to the State under paragraph (3) of this subsection in the fiscal year; exceeds

(ii) the product of—

(I) the Federal medical assistance percentage for the State (as defined in section 1396d(b) of this title, as such section was in effect on September 30, 1995);

(II) the State's reimbursable expenditures for the fiscal year; and

(III) 1/12 times the number of months during the fiscal year for which the Secretary made a payment to the State under such paragraph (3).

(B) Definitions

As used in subparagraph (A):

(i) Reimbursable expenditures

The term ''reimbursable expenditures'' means, with respect to a State and a fiscal year, the amount (if any) by which—

(I) countable State expenditures for the fiscal year; exceeds

(II) historic State expenditures (as defined in section 609(a)(7)(B)(iii) of this title), excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994.

(ii) Countable State expenditures

The term ''countable expenditures'' means, with respect to a State and a fiscal year—

(I) the qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title (other than the expenditures de-

scribed in subclause (I)(bb) of such section)) under the State program funded under this part for the fiscal year; plus

(II) any amount paid to the State under paragraph (3) during the fiscal year that is expended by the State under the State program funded under this part.

(C) Adjustment of State remittances

(i) In general

The amount otherwise required by subparagraph (A) to be remitted by a State for a fiscal year shall be increased by the lesser of—

(I) the total adjustment for the fiscal year, multiplied by the adjustment percentage for the State for the fiscal year; or

(II) the unadjusted net payment to the State for the fiscal year.

(ii) Total adjustment

As used in clause (i), the term ''total adjustment'' means—

(I) in the case of fiscal year 1998, $2,000,000;

(II) in the case of fiscal year 1999, $9,000,000;

(III) in the case of fiscal year 2000, $16,000,000; and

(IV) in the case of fiscal year 2001, $13,000,000.

(iii) Adjustment percentage

As used in clause (i), the term ''adjustment percentage'' means, with respect to a State and a fiscal year—

(I) the unadjusted net payment to the State for the fiscal year; divided by

(II) the sum of the unadjusted net payments to all States for the fiscal year.

(iv) Unadjusted net payment

As used in this subparagraph, the term, ''unadjusted net payment'' means with respect to a State and a fiscal year—

(I) the total amount paid to the State under paragraph (3) in the fiscal year; minus

(II) the amount that, in the absence of this subparagraph, would be required by subparagraph (A) or by section 609(a)(10) of this title to be remitted by the State in respect of the payment.

(7) "State" defined

As used in this subsection, the term ''State'' means each of the 50 States and the District of Columbia.

(8) Annual reports

The Secretary shall annually report to the Congress on the status of the Fund.

(Aug. 14, 1935, ch. 531, title IV, § 403, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2115; amended Pub. L. 104–327, § 1(b), Oct. 19, 1996, 110 Stat. 4002; Pub. L. 105–33, title V, §§ 5001(a)(1), 5502, 5514(c), Aug. 5, 1997, 111 Stat. 577, 606, 620; Pub. L. 105–78, title VI, § 608, Nov. 13, 1997, 111 Stat. 1522; Pub. L. 105–89, title IV, § 404(a), (b), Nov. 19, 1997, 111 Stat. 2134; Pub. L. 105–200, title IV, § 408, July 16, 1998, 112 Stat. 672; Pub. L. 105–277, div. A, § 101(f) [title I, § 102, title VIII, § 405(d)(30), (f)(22)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–346, 2681–425, 2681–432; Pub. L. 105–306, § 6(a), Oct. 28, 1998, 112 Stat. 2928; Pub. L. 106–113, div. B, § 1000(a)(4) [title VIII, §§ 801(a), (b)(1), (c), 802, 803, 804(b), 805(a)(2), (b), 806], Nov. 29, 1999, 113 Stat. 1535, 1501A–280, 1501A–281, 1501A–283 to 1501A–286; Pub. L. 106–246, div. B, title II, § 2402, July 13, 2000, 114 Stat. 555; Pub. L. 106–554, § 1(a)(1) [title I, §§ 103, 107(a)–(b)(4), (c), title V, § 513], Dec. 21, 2000, 114 Stat. 2763, 2763A–11, 2763A–12, 2763A–71; Pub. L. 107–147, title VI, §§ 616, 617, Mar. 9, 2002, 116 Stat. 62; Pub. L. 108–40, § 3(a), (c)–(e), June 30, 2003, 117 Stat. 836, 837; Pub. L. 108–89, title I, § 101(b)(1), (2), Oct. 1, 2003, 117 Stat. 1131; Pub. L. 108–210, § 2(b), Mar. 31, 2004, 118 Stat. 564; Pub. L. 108–262, § 2(b), June 30, 2004, 118 Stat. 696; Pub. L. 108–308, § 2(b)(1), (2), Sept. 30, 2004, 118 Stat. 1135; Pub. L. 109–4, § 2(b), Mar. 25, 2005, 119 Stat. 17; Pub. L. 109–19, § 2(b), July 1, 2005, 119 Stat. 344; Pub. L. 109–68, § 2(b)(2)(A), (B), Sept. 21, 2005, 119 Stat. 2003; Pub. L. 109–161, § 2(b), Dec. 30, 2005, 119 Stat. 2958.)

REFERENCES IN TEXT

Section 603(a)(5)(K) of this title, referred to in subsec. (a)(5)(A)(ii)(I)(ff), was redesignated as section 603(a)(5)(J) by Pub. L. 106–554, § 1(a)(1) [title I, § 107(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–12.

Section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(5)(A)(vi)(I)(bb), (III), (C)(ii)(I), is section 103 of Pub. L. 104–193, which enacted this part, amended sections 602, 603, and 1308 of this title, and repealed provisions formerly set out as this part. For complete classification of section 103 to the Code, see Tables.

The Food Stamp Act of 1977, referred to in subsec. (a)(5)(C)(iii)(II)(dd), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

Parts D and E of this subchapter, referred to in subsec. (a)(5)(C)(iii)(III), (iv)(II)(bb), are classified to sections 651 et seq. and 670 et seq., respectively, of this title.

The Job Training Partnership Act, referred to in subsec. (a)(5)(D)(iii), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, which was classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor, prior to repeal by Pub. L. 105–220, title I, § 199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. For complete classification of this Act to the Code, see Tables.

The Workforce Investment Act of 1998, referred to in subsec. (a)(5)(D)(ii), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Titles IV and VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (b)(5)(B), are titles IV (§ 400 et seq.) and VIII (§ 801 et seq.) of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2260, 2308. For complete classification of these titles to the Code, see Tables.

PRIOR PROVISIONS

A prior section 603, acts Aug. 14, 1935, ch. 531, title IV, § 403, 49 Stat. 628; Aug. 10, 1939, ch. 666, title IV, § 402, 53 Stat. 1380; Aug. 10, 1946, ch. 951, title V, § 502, 60 Stat. 992; June 14, 1948, ch. 468, § 3(b), 62 Stat. 439; Aug. 28, 1950, ch. 809, title III, pt. 2, § 322(a), pt. 6, § 361(c), (d), 64 Stat. 550, 558; July 18, 1952, ch. 945, § 8(b), 66 Stat. 778;

Sept. 1, 1954, ch. 1206, title III, § 303(a), 68 Stat. 1097; Aug. 1, 1956, ch. 836, title III, §§ 302, 312(c), 342, 351(a), 70 Stat. 847, 849, 852, 854; Aug. 28, 1958, Pub. L. 85–840, title V, § 502, 72 Stat. 1048; July 25, 1962, Pub. L. 87–543, title I, §§ 101(a)(2), (b)(2)(A)–(C), 104(a)(3)(C), 108(b), (c), 76 Stat. 174, 180, 185, 190; July 30, 1965, Pub. L. 89–97, title I, § 122, title IV, § 401(c), 79 Stat. 353, 415; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 201(c)–(e)(3), 205(b), 206(a), 207(b), 208, 241(b)(2), (3), 81 Stat. 879, 880, 892–894, 916; June 28, 1968, Pub. L. 90–364, title III, § 301, 82 Stat. 273; July 9, 1969, Pub. L. 91–41, § 3, 83 Stat. 45; Dec. 28, 1971, Pub. L. 92–223, § 3(a)(8), (9), 85 Stat. 805; Oct. 20, 1972, Pub. L. 92–512, title III, § 301(b)–(d), 86 Stat. 946, 947; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 299E(d), 299F, 86 Stat. 1462, 1463; Jan. 4, 1975, Pub. L. 93–647, §§ 3(a)(3), (4), (e)(2), 5(b), 101(c)(6)(A), 88 Stat. 2348–2350, 2360; Aug. 9, 1975, Pub. L. 94–88, title II, § 204, 89 Stat. 435; Nov. 12, 1977, Pub. L. 95–171, § 3(a)(1), 91 Stat. 1354; Dec. 20, 1977, Pub. L. 95–216, title IV, §§ 401, 402(a), 91 Stat. 1559, 1560; June 9, 1980, Pub. L. 96–265, title IV, §§ 401(g), (h), 406(a), 407(c), 94 Stat. 462, 465, 467; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2181(a)(1), 2184(b)(1), title XXIII, §§ 2307(b), 2315(b), 2317(a), 2319(a)–(c), 2353(b)(1), (d), 95 Stat. 815, 817, 848, 855–857, 872; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 154(b), 156(a)–(c), 157(a), 96 Stat. 397–399; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(2), (j)(2)(B)(i), (3)(B)(i), 98 Stat. 1166, 1170, 1171; Aug. 16, 1984, Pub. L. 98–378, § 9(b), 98 Stat. 1316; Nov. 6, 1986, Pub. L. 99–603, title I, § 121(b)(1), 100 Stat. 3390; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9102(c), 101 Stat. 1330–300; Oct. 13, 1988, Pub. L. 100–485, title II, §§ 201(c), (d), 202(b)(4)–(6), 204(b)(2), title III, §§ 302(b)(2), 304(b)(2), title VI, §§ 601(c)(1), 606, 609(a), 102 Stat. 2372, 2377, 2381, 2384, 2393, 2407, 2410, 2424; Dec. 19, 1989, Pub. L. 101–239, title VIII, § 8004(b), 103 Stat. 2460; Nov. 5, 1990, Pub. L. 101–508, title V, § 5081(b), 104 Stat. 1388–235; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13741(a), 107 Stat. 663; July 27, 1995, Pub. L. 104–19, title I, 109 Stat. 215; Apr. 26, 1996, Pub. L. 104–134, title III, 110 Stat. 1321–355; Aug. 22, 1996, Pub. L. 104–193, title I, § 103(c)(2)(B), 110 Stat. 2161; June 12, 1997, Pub. L. 105–18, title II, 111 Stat. 204, related to payments to States with approved plans for aid and services to needy families with children, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620, effective July 1, 1997.

AMENDMENTS

2005—Subsec. (a)(3)(H)(ii). Pub. L. 109–161 substituted ''March 31, 2006'' for ''December 31, 2005''.

Pub. L. 109–68, § 2(b)(2)(A), substituted ''December 31'' for ''September 30''.

Pub. L. 109–19 substituted ''September 30'' for ''June 30''.

Pub. L. 109–4 substituted ''June 30'' for ''March 31''.

Subsec. (b)(3)(C)(ii). Pub. L. 109–68, § 2(b)(2)(B), substituted ''2006'' for ''2005''.

2004—Subsec. (a)(3)(H)(ii). Pub. L. 108–308, § 2(b)(1), substituted ''March 31, 2005'' for ''September 30, 2004''.

Pub. L. 108–262 substituted ''September 30'' for ''June 30''.

Pub. L. 108–210 substituted ''June 30'' for ''March 31''.

Subsec. (b)(3)(C)(ii). Pub. L. 108–308, § 2(b)(2), substituted ''2005'' for ''2004''.

2003—Subsec. (a)(1)(A). Pub. L. 108–40, § 3(a)(1), substituted ''2002, and 2003'' for ''and 2002''.

Subsec. (a)(1)(B) to (E). Pub. L. 108–40, § 3(a)(2), added subpars. (B) and (C) and struck out former subpars. (B) to (E) which related to, in subpar. (B), definition of ''State family assistance grant'', in subpar. (C), definition of ''total amount required to be paid to the State under former section 603 of this title'', in subpar. (D), information to be used in determining amounts of grants for fiscal years 1992 to 1995, and, in subpar. (E), appropriations for fiscal years 1996 to 2002.

Subsec. (a)(2)(C)(ii). Pub. L. 108–40, § 3(c)(1), substituted ''2002, and 2003'' for ''and 2002''.

Subsec. (a)(2)(D). Pub. L. 108–40, § 3(c)(2), substituted ''2003'' for ''2002''.

Subsec. (a)(3)(H). Pub. L. 108–40, § 3(d)(1), and Pub. L. 108–89, § 101(b)(1)(A), amended subpar. identically, striking out ''of grants for fiscal year 2002'' after ''Reauthorization'' in heading.

Subsec. (a)(3)(H)(i). Pub. L. 108–40, § 3(d)(2), substituted ''each of fiscal years 2002 and 2003'' for ''fiscal year 2002''.

Subsec. (a)(3)(H)(ii). Pub. L. 108–89, § 101(b)(1)(B), substituted ''March 31, 2004'' for ''2003'' and ''fiscal year 2001'' for ''2001''.

Pub. L. 108–40, § 3(d)(3), substituted ''2003'' for ''2002''.

Subsec. (a)(3)(H)(iii). Pub. L. 108–40, § 3(d)(4), substituted ''each of fiscal years 2002 and 2003'' for ''fiscal year 2002''.

Subsec. (b)(2). Pub. L. 108–40, § 3(e)(1), substituted ''2002, and 2003'' for ''and 2002''.

Subsec. (b)(3)(C)(ii). Pub. L. 108–89, § 101(b)(2), substituted ''2004'' for ''2003''.

Pub. L. 108–40, § 3(e)(2), substituted ''2003'' for ''2002''.

2002—Subsec. (a)(3)(H). Pub. L. 107–147, § 616, added subpar. (H).

Subsec. (b)(2). Pub. L. 107–147, § 617(1), substituted ''2001, and 2002'' for ''and 2001''.

Subsec. (b)(3)(C)(ii). Pub. L. 107–147, § 617(2), substituted ''2002'' for ''2001''.

2000—Subsec. (a)(5)(A)(i). Pub. L. 106–554, § 1(a)(1) [title I, § 107(b)(1)], substituted ''subparagraph (H)'' for ''subparagraph (I)'' in introductory provisions.

Subsec. (a)(5)(A)(iv)(I)(aa). Pub. L. 106–554, § 1(a)(1) [title I, § 107(b)(2)(A)], substituted ''(H)'' for ''(I)'' and ''and (G)'' for ''(G), and (H)''.

Subsec. (a)(5)(A)(iv)(I)(bb). Pub. L. 106–554, § 1(a)(1) [title I, § 107(b)(2)(B)], substituted ''subparagraph (E)'' for ''subparagraph (F)''.

Subsec. (a)(5)(B)(v). Pub. L. 106–554, § 1(a)(1) [title I, § 107(b)(3)], substituted ''subparagraph (H)'' for ''subparagraph (I) '' in introductory provisions.

Subsec. (a)(5)(B)(v)(I)(aa). Pub. L. 106–554, § 1(a)(1) [title I, § 107(b)(2)(A)], substituted ''(H)'' for ''(I)'' and ''and (G)'' for ''(G), and (H)''.

Subsec. (a)(5)(B)(v)(I)(bb). Pub. L. 106–554, § 1(a)(1) [title I, § 107(b)(2)(B)], substituted ''subparagraph (E)'' for ''subparagraph (F)''.

Subsec. (a)(5)(C)(viii). Pub. L. 106–554, § 1(a)(1) [title I, § 103)], substituted ''5 years'' for ''3 years''.

Subsec. (a)(5)(E). Pub. L. 106–554, § 1(a)(1) [title I, § 107(a), (b)(4)], redesignated subpar. (F) as (E), substituted ''subparagraph (H)'' for ''subparagraph (I)'', and struck out former subpar. (E), which established a set-aside for successful performance bonuses.

Subsec. (a)(5)(F). Pub. L. 106–554, § 1(a)(1) [title I, § 107(a), (b)(4)], redesignated subpar. (G) as (F) and substituted ''subparagraph (H)'' for ''subparagraph (I)''. Former subpar. (F) redesignated (E).

Pub. L. 106–246, § 2402(1), substituted ''$15,000,000'' for ''$1,500,000''.

Subsec. (a)(5)(G). Pub. L. 106–554, § 1(a)(1) [title V, § 513], which directed the amendment of subpar. (H) by substituting ''2005'' for ''2001'' in cl. (iii) and adding cl. (iv), was executed by making amendments to subpar. (G), to reflect the probable intent of Congress and the redesignation of subpar. (H) as (G) by Pub. L. 106–554, § 1(a)(1) [title V, § 107(a)]. See below.

Pub. L. 106–554, § 1(a)(1) [title I, § 107(a), (b)(4)], redesignated subpar. (H) as (G) and substituted ''subparagraph (H)'' for ''subparagraph (I)'' in cl. (i). Former subpar. (G) redesignated (F).

Pub. L. 106–246, § 2402(2), substituted ''$9,000,000'' for ''$900,000''.

Subsec. (a)(5)(H). Pub. L. 106–554, § 1(a)(1) [title I, § 107(a), (c)], redesignated subpar. (I) as (H) and substituted ''$1,400,000,000'' for ''$1,450,000,000'' in cl. (i)(II). Former subpar. (H) redesignated (G).

Pub. L. 106–246, § 2402(3), substituted ''$3,000,000'' for ''$300,000'' in cl. (i).

Subsec. (a)(5)(I) to (K). Pub. L. 106–554, § 1(a)(1) [title I, § 107(a)], redesignated subpars. (J) and (K) as (I) and (J), respectively. Former subpar. (I) redesignated (H).

1999—Subsec. (a)(5)(A)(ii)(I)(ff). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 805(b)], added item (ff).

Subsec. (a)(5)(C)(i)(IV). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 803], inserted before period at end '', or if

the entity is not a private industry council or workforce investment board, the direct provision of such services''.

Subsec. (a)(5)(C)(i)(VII). Pub. L. 106–113, §1000(a)(4) [title VIII, §802], added subcl. (VII).

Subsec. (a)(5)(C)(ii). Pub. L. 106–113, §1000(a)(4) [title VIII, §801(a)], amended heading and text of cl. (ii) generally, substituting provisions relating to general eligibility for provisions relating to required beneficiaries.

Subsec. (a)(5)(C)(iii). Pub. L. 106–113, §1000(a)(4) [title VIII, §801(b)(1)(B)], added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (a)(5)(C)(iv). Pub. L. 106–113, §1000(a)(4) [title VIII, §801(c)], inserted ''hard to employ'' before ''individuals'' in heading, substituted ''clauses (ii) and (iii) and, as appropriate, clause (v)'' for ''clause (ii)'' before period at end of concluding provisions, added subcls. (II) to (IV), and struck out former subcl. (II) which read as follows: ''to individuals—

''(aa) who are noncustodial parents of minors whose custodial parent is such a recipient; and

''(bb) who have such characteristics.''

Pub. L. 106–113, §1000(a)(4) [title VIII, §801(b)(1)(A)], redesignated cl. (iii) as (iv). Former cl. (iv) redesignated (v).

Subsec. (a)(5)(C)(v) to (ix). Pub. L. 106–113, §1000(a)(4) [title VIII, §801(b)(1)(A)], redesignated cls. (iv) to (viii) as (v) to (ix), respectively.

Subsec. (a)(5)(C)(x). Pub. L. 106–113, §1000(a)(4) [title VIII, §804(b)], added cl. (x).

Subsec. (a)(5)(E)(i). Pub. L. 106–113, §1000(a)(4) [title VIII, §806(c)], substituted ''award'' for ''make'' and inserted '', but shall not make any outlay to pay any such grant before October 1, 2000'' before period at end.

Subsec. (a)(5)(E)(iv)(I)(bb), (vi). Pub. L. 106–113, §1000(a)(4) [title VIII, §806(a)], substituted ''$50,000,000'' for ''$100,000,000''.

Subsec. (a)(5)(F). Pub. L. 106–113, §1000(a)(4) [title VIII, §806(b)(1)], inserted ''$1,500,000'' before ''of the amount so specified for fiscal year 1999''.

Subsec. (a)(5)(G). Pub. L. 106–113, §1000(a)(4) [title VIII, §806(b)(2)], inserted ''$900,000'' before ''of the amount so specified for fiscal year 1999''.

Subsec. (a)(5)(H)(i). Pub. L. 106–113, §1000(a)(4) [title VIII, §806(b)(3)], inserted ''$300,000'' before ''of the amount so specified for fiscal year 1999''.

Subsec. (a)(5)(I)(i). Pub. L. 106–113, §1000(a)(4) [title VIII, §806(b)(4)], substituted ''for grants under this paragraph—'' and subcls. (I) and (II) for ''$1,500,000,000 for each of fiscal years 1998 and 1999 for grants under this paragraph.''

Subsec. (a)(5)(K). Pub. L. 106–113, §1000(a)(4) [title VIII, §805(a)(2)], added subpar. (K).

1998—Subsec. (a)(5)(A)(iv)(II). Pub. L. 105–306 substituted '', other than funds reserved by the State for distribution under clause (vi)(III) and funds distributed pursuant to clause (vi)(I) in any State in which the service delivery area is the State'' for ''or sub-State entity''.

Subsec. (a)(5)(A)(vii)(I). Pub. L. 105–277, §101(f) [title VIII, §405(f)(22)(A)], struck out ''described in section 103(c) of the Job Training Partnership Act or'' before ''defined in section 101 of the Workforce''.

Pub. L. 105–277, §101(f) [title VIII, §405(d)(30)(A)], substituted ''(as described in section 103(c) of the Job Training Partnership Act or defined in section 101 of the Workforce Investment Act of 1998)'' for ''(as described in section 103(c) of the Job Training Partnership Act)''.

Subsec. (a)(5)(A)(ix). Pub. L. 105–277, §101(f) [title I, §102], added cl. (ix).

Subsec. (a)(5)(C)(ii). Pub. L. 105–200, §408(1), struck out ''of minors whose custodial parent is such a recipient'' after ''noncustodial parents'' in introductory provisions.

Subsec. (a)(5)(C)(ii)(I). Pub. L. 105–200, §408(2), inserted ''or the noncustodial parent'' after ''recipient'' in introductory provisions.

Subsec. (a)(5)(C)(ii)(II). Pub. L. 105–200, §408(3), substituted ''The recipient or the minor children of the noncustodial parent—'' for ''The individual—'' in introductory provisions.

Subsec. (a)(5)(D)(ii). Pub. L. 105–277, §101(f) [title VIII, §405(f)(22)(B)(i)], struck out ''the Job Training Partnership Act or'' before ''title I of the Workforce Investment''.

Pub. L. 105–277, §101(f) [title VIII, §405(d)(30)(B)(i)], substituted ''means, with respect to a service delivery area, the private industry council or local workforce investment board established for the service delivery area pursuant to the Job Training Partnership Act or title I of the Workforce Investment Area of 1998, as appropriate'' for ''means, with respect to a service delivery area, the private industry council (or successor entity) established for the service delivery area pursuant to the Job Training Partnership Act''.

Subsec. (a)(5)(D)(iii). Pub. L. 105–277, §101(f) [title VIII, §405(f)(22)(B)(ii)], struck out before period at end ''shall mean a local area as defined in section 101 of the Workforce Investment Act of 1998, as appropriate''.

Pub. L. 105–277, §101(f) [title VIII, §405(d)(30)(B)(ii)], substituted ''shall have the meaning given such term for purposes of the Job Training Partnership Act or shall mean a local area as defined in section 101 of the Workforce Investment Act of 1998, as appropriate'' for ''shall have the meaning given such term (or the successor to such term) for purposes of the Job Training Partnership Act''.

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (a)(2). Pub. L. 105–33, §5502(b)(1), inserted ''ratio'' after ''illegitimacy'' in heading.

Subsec. (a)(2)(A). Pub. L. 105–33, §5502(b)(2), struck out ''for which the State demonstrates a net decrease in out-of-wedlock births'' after ''bonus year''.

Subsec. (a)(2)(B). Pub. L. 105–33, §5502(a)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows:

''(i) IF 5 ELIGIBLE STATES.—If there are 5 eligible States for a bonus year, the amount of the grant shall be $20,000,000.

''(ii) IF FEWER THAN 5 ELIGIBLE STATES.—If there are fewer than 5 eligible States for a bonus year, the amount of the grant shall be $25,000,000.''

Subsec. (a)(2)(C)(i)(I)(aa). Pub. L. 105–33, §5502(b)(3)(A)(i), substituted ''illegitimacy ratio of the State for'' for ''number of out-of-wedlock births that occurred in the State during'' and ''illegitimacy ratio of the State for'' for ''number of such births that occurred during''.

Pub. L. 105–33, §5502(a)(2), inserted at end ''In the case of a State that is not a territory specified in subparagraph (B), the comparative magnitude of the decrease for the State shall be determined without regard to the magnitude of the corresponding decrease for any such territory.''

Subsec. (a)(2)(C)(i)(I)(bb). Pub. L. 105–33, §5502(c)(1)(A), substituted ''the calendar year for which the most recent data are available'' for ''the fiscal year'' and ''calendar year 1995'' for ''fiscal year 1995''.

Subsec. (a)(2)(C)(i)(II). Pub. L. 105–33, §5502(c)(1)(B), substituted ''calendar'' for ''fiscal'' wherever appearing.

Subsec. (a)(2)(C)(i)(II)(aa). Pub. L. 105–33, §5502(b)(3)(A)(ii), substituted ''illegitimacy ratio of'' for ''number of out-of-wedlock births that occurred in'' in two places and ''calculate the illegitimacy ratio'' for ''calculate the number of out-of-wedlock births''.

Subsec. (a)(2)(C)(ii). Pub. L. 105–33, §5502(c)(2), substituted ''calendar years'' for ''fiscal years''.

Subsec. (a)(2)(C)(iii). Pub. L. 105–33, §5502(b)(3)(B), added cl. (iii).

Subsec. (a)(3)(C)(ii). Pub. L. 105–33, §5502(d), substituted ''1998'' for ''1997'' in heading.

Subsec. (a)(5). Pub. L. 105–33, §5001(a)(1), added par. (5).

Subsec. (a)(5)(A)(i)(I), (ii)(II). Pub. L. 105–78 substituted ''during the period permitted under subparagraph (C)(vii) of this paragraph for the expenditure of funds under the grant'' for ''during the fiscal year''.

Subsec. (b)(2). Pub. L. 105–89, §404(a), inserted '', reduced by the sum of the dollar amounts specified in paragraph (6)(C)(ii)'' before period.

Subsec. (b)(4), (5). Pub. L. 105–33, §5502(e)(2), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which required each State to remit to the Secretary at the end of each fiscal year certain excess amounts paid to the State under par. (3) during the fiscal year.

Subsec. (b)(6). Pub. L. 105–33, §5502(e)(3), added par. (6).

Pub. L. 105–33, §5502(e)(2), redesignated par. (6) as (5).

Pub. L. 105–33, §5502(e)(1), substituted ''paragraph (4)'' for ''paragraph (5)'' in introductory provisions.

Subsec. (b)(6)(C). Pub. L. 105–89, §404(b), added subpar. (C).

Subsec. (b)(7). Pub. L. 105–33, §5502(f), amended heading and text of par. (7) generally. Prior to amendment, text read as follows: ''As used in this subsection:

''(A) STATE.—The term 'State' means each of the 50 States of the United States and the District of Columbia.

''(B) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.''

1996—Subsec. (b)(4)(A)(i)(II). Pub. L. 104–327, §1(b)(1), struck out ''minus any Federal payment with respect to such child care expenditures'' after ''for fiscal year 1994''.

Subsec. (b)(4)(A)(ii)(I). Pub. L. 104–327, §1(b)(2), inserted ''the sum of'' before ''the expenditures'' and '', and any additional qualified State expenditures, as defined in section 609(a)(7)(B)(i) of this title, for child care assistance made under the Child Care and Development Block Grant Act of 1990'' before ''; exceeds''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–40, §8, June 30, 2003, 117 Stat. 838, provided that: ''The amendments made by this Act [amending this section and sections 606, 609, 612, 614, 618, 710, 1308, 1320a–9, 1396a, and 1396r–6 of this title] shall take effect on July 1, 2003.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(1) [title I, §107(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–12, provided that: ''The amendments made by subsections (a), (b), and (c) of this section [amending this section and section 612 of this title] shall take effect on October 1, 2000.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §801(e)], Nov. 29, 1999, 113 Stat. 1535, 1501A–283, provided that: ''The amendments made by this section [amending this section and sections 604 and 612 of this title]—

''(1) shall be effective January 1, 2000, with respect to the determination of eligible individuals for purposes of section 403(a)(5)(B) of the Social Security Act [subsec. (a)(5)(B) of this section] (relating to competitive grants);

''(2) shall be effective July 1, 2000, except that expenditures from allotments to the States shall not be made before October 1, 2000—

''(A) with respect to the determination of eligible individuals for purposes of section 403(a)(5)(A) of the Social Security Act [subsec. (a)(5)(A) of this section] (relating to formula grants) in the case of those individuals who may be determined to be so eligible, but would not have been eligible before July 1, 2000; or

''(B) for allowable activities described in section 403(a)(5)(C)(i)(VII) of the Social Security Act [subsec. (a)(5)(C)(i)(VII) of this section] (as added by section 802 of this title) provided to any individuals determined to be eligible for purposes of section 403(a)(5)(A) of the Social Security Act (relating to formula grants).''

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–306, §6(b), Oct. 28, 1998, 112 Stat. 2928, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 5001 of the Balanced Budget Act of 1997 [Pub. L. 105–33].''

Amendment by section 101(f) [title VIII, §405(d)(30)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(22)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

Amendment by section 5502 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1(d) of Pub. L. 104–327 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 601 of this title] shall take effect as if included in the provisions of and the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].''

EFFECTIVE DATE

Subsec. (a)(1)(C), (D) of this section effective Oct. 1, 1996, and remainder of this section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

REGULATIONS

Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §801(f)], Nov. 29, 1999, 113 Stat. 1535, 1501A–284, provided that: ''Interim final regulations shall be prescribed to implement the amendments made by this section [amending this section and sections 604 and 612 of this title] not later than January 1, 2000. Final regulations shall be prescribed within 90 days after the date of the enactment of this Act [Nov. 29, 1999] to implement the amendments made by this Act to section 403(a)(5) of the Social Security Act [subsec. (a)(5) of this section], in the same manner as described in section 403(a)(5)(C)(ix) of the Social Security Act (as so redesignated by subsection (b)(1)(A) of this section).''

§ 603a. Transferred

CODIFICATION

Section, Pub. L. 94–566, title V, §508(b), Oct. 20, 1976, 90 Stat. 2689; Pub. L. 104–193, title I, §110(a), Aug. 22, 1996, 110 Stat. 2171, which related to reimbursement to State employment offices for expenses incurred for furnishing information requested of such offices by State or local agency administering this part, was transferred to section 655a of this title.

§ 604. Use of grants

(a) General rules

Subject to this part, a State to which a grant is made under section 603 of this title may use the grant—

(1) in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with assistance in meeting home heating and cooling costs; or

(2) in any manner that the State was authorized to use amounts received under part A or F of this subchapter, as such parts were in effect on September 30, 1995, or (at the option of the State) August 21, 1996.

(b) Limitation on use of grant for administrative purposes

(1) Limitation

A State to which a grant is made under section 603 of this title shall not expend more than 15 percent of the grant for administrative purposes.

(2) Exception

Paragraph (1) shall not apply to the use of a grant for information technology and computerization needed for tracking or monitoring required by or under this part.

(c) Authority to treat interstate immigrants under rules of former State

A State operating a program funded under this part may apply to a family the rules (including benefit amounts) of the program funded under this part of another State if the family has moved to the State from the other State and has resided in the State for less than 12 months.

(d) Authority to use portion of grant for other purposes

(1) In general

Subject to paragraph (2), a State may use not more than 30 percent of the amount of any grant made to the State under section 603(a) of this title for a fiscal year to carry out a State program pursuant to any or all of the following provisions of law:

(A) Subchapter XX of this chapter.

(B) The Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9858 et seq.].

(2) Limitation on amount transferable to subchapter XX programs

(A) In general

A State may use not more than the applicable percent of the amount of any grant made to the State under section 603(a) of this title for a fiscal year to carry out State programs pursuant to subchapter XX of this chapter.

(B) Applicable percent

For purposes of subparagraph (A), the applicable percent is 4.25 percent in the case of fiscal year 2001 and each succeeding fiscal year.

(3) Applicable rules

(A) In general

Except as provided in subparagraph (B) of this paragraph, any amount paid to a State under this part that is used to carry out a State program pursuant to a provision of law specified in paragraph (1) shall not be subject to the requirements of this part, but shall be subject to the requirements that apply to Federal funds provided directly under the provision of law to carry out the program, and the expenditure of any amount so used shall not be considered to be an expenditure under this part.

(B) Exception relating to subchapter XX programs

All amounts paid to a State under this part that are used to carry out State programs pursuant to subchapter XX of this chapter shall be used only for programs and services to children or their families whose income is less than 200 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(e) Authority to reserve certain amounts for assistance

A State or tribe may reserve amounts paid to the State or tribe under this part for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State or tribal program funded under this part.

(f) Authority to operate employment placement program

A State to which a grant is made under section 603 of this title may use the grant to make payments (or provide job placement vouchers) to State-approved public and private job placement agencies that provide employment placement services to individuals who receive assistance under the State program funded under this part.

(g) Implementation of electronic benefit transfer system

A State to which a grant is made under section 603 of this title is encouraged to implement an electronic benefit transfer system for providing assistance under the State program funded under this part, and may use the grant for such purpose.

(h) Use of funds for individual development accounts

(1) In general

A State to which a grant is made under section 603 of this title may use the grant to carry out a program to fund individual development accounts (as defined in paragraph (2)) established by individuals eligible for assistance under the State program funded under this part.

(2) Individual development accounts

(A) Establishment

Under a State program carried out under paragraph (1), an individual development account may be established by or on behalf of an individual eligible for assistance under the State program operated under this part for the purpose of enabling the individual to accumulate funds for a qualified purpose described in subparagraph (B).

(B) Qualified purpose

A qualified purpose described in this subparagraph is 1 or more of the following, as provided by the qualified entity providing assistance to the individual under this subsection:

(i) Postsecondary educational expenses

Postsecondary educational expenses paid from an individual development account directly to an eligible educational institution.

(ii) First home purchase

Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time homebuyer, if paid from an individual development account directly to the persons to whom the amounts are due.

(iii) Business capitalization

Amounts paid from an individual development account directly to a business capitalization account which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses.

(C) Contributions to be from earned income

An individual may only contribute to an individual development account such amounts as are derived from earned income, as defined in section 911(d)(2) of the Internal Revenue Code of 1986.

(D) Withdrawal of funds

The Secretary shall establish such regulations as may be necessary to ensure that funds held in an individual development account are not withdrawn except for 1 or more of the qualified purposes described in subparagraph (B).

(3) Requirements

(A) In general

An individual development account established under this subsection shall be a trust created or organized in the United States and funded through periodic contributions by the establishing individual and matched by or through a qualified entity for a qualified purpose (as described in paragraph (2)(B)).

(B) "Qualified entity" defined

As used in this subsection, the term ''qualified entity'' means—

(i) a not-for-profit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; or

(ii) a State or local government agency acting in cooperation with an organization described in clause (i).

(4) No reduction in benefits

Notwithstanding any other provision of Federal law (other than the Internal Revenue Code of 1986) that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such law to be provided to or for the benefit of such individual, funds (including interest accruing) in an individual development account under this subsection shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

(5) Definitions

As used in this subsection—

(A) Eligible educational institution

The term ''eligible educational institution'' means the following:

(i) An institution described in section 1088(a)(1) or 1141(a) of title 20, as such sections are in effect on August 22, 1996.

(ii) An area vocational education school (as defined in subparagraph (C) or (D) of section 2471(4) of title 20) which is in any State (as defined in section 2471(33) of title 20), as such sections are in effect on August 22, 1996.

(B) Post-secondary educational expenses

The term ''post-secondary educational expenses'' means—

(i) tuition and fees required for the enrollment or attendance of a student at an eligible educational institution, and

(ii) fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

(C) Qualified acquisition costs

The term ''qualified acquisition costs'' means the costs of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

(D) Qualified business

The term ''qualified business'' means any business that does not contravene any law or public policy (as determined by the Secretary).

(E) Qualified business capitalization expenses

The term ''qualified business capitalization expenses'' means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

(F) Qualified expenditures

The term ''qualified expenditures'' means expenditures included in a qualified plan, including capital, plant, equipment, working capital, and inventory expenses.

(G) Qualified first-time homebuyer

(i) In general

The term ''qualified first-time homebuyer'' means a taxpayer (and, if married, the taxpayer's spouse) who has no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this subsection applies.

(ii) Date of acquisition

The term ''date of acquisition'' means the date on which a binding contract to ac-

quire, construct, or reconstruct the principal residence to which this subparagraph applies is entered into.

(H) Qualified plan

The term ''qualified plan'' means a business plan which—

(i) is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity,

(ii) includes a description of services or goods to be sold, a marketing plan, and projected financial statements, and

(iii) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(I) Qualified principal residence

The term ''qualified principal residence'' means a principal residence (within the meaning of section 1034 of the Internal Revenue Code of 1986), the qualified acquisition costs of which do not exceed 100 percent of the average area purchase price applicable to such residence (determined in accordance with paragraphs (2) and (3) of section 143(e) of such Code).

(i) Sanction welfare recipients for failing to ensure that minor dependent children attend school

A State to which a grant is made under section 603 of this title shall not be prohibited from sanctioning a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government or under the food stamp program, as defined in section 2012(h) of title 7, if such adult fails to ensure that the minor dependent children of such adult attend school as required by the law of the State in which the minor children reside.

(j) Requirement for high school diploma or equivalent

A State to which a grant is made under section 603 of this title shall not be prohibited from sanctioning a family that includes an adult who is older than age 20 and younger than age 51 and who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government or under the food stamp program, as defined in section 2012(h) of title 7, if such adult does not have, or is not working toward attaining, a secondary school diploma or its recognized equivalent unless such adult has been determined in the judgment of medical, psychiatric, or other appropriate professionals to lack the requisite capacity to complete successfully a course of study that would lead to a secondary school diploma or its recognized equivalent.

(k) Limitations on use of grant for matching under certain Federal transportation program

(1) Use limitations

A State to which a grant is made under section 603 of this title may not use any part of the grant to match funds made available under section 3037 of the Transportation Equity Act for the 21st Century, unless—

(A) the grant is used for new or expanded transportation services (and not for construction) that benefit individuals described in subparagraph (C), and not to subsidize current operating costs;

(B) the grant is used to supplement and not supplant other State expenditures on transportation;

(C) the preponderance of the benefits derived from such use of the grant accrues to individuals who are—

(i) recipients of assistance under the State program funded under this part;

(ii) former recipients of such assistance;

(iii) noncustodial parents who are described in section 603(a)(5)(C)(iii) of this title; and

(iv) low-income individuals who are at risk of qualifying for such assistance; and

(D) the services provided through such use of the grant promote the ability of such recipients to engage in work activities (as defined in section 607(d) of this title).

(2) Amount limitation

From a grant made to a State under section 603(a) of this title, the amount that a State uses to match funds described in paragraph (1) of this subsection shall not exceed the amount (if any) by which 30 percent of the total amount of the grant exceeds the amount (if any) of the grant that is used by the State to carry out any State program described in subsection (d)(1) of this section.

(3) Rule of interpretation

The provision by a State of a transportation benefit under a program conducted under section 3037 of the Transportation Equity Act for the 21st Century, to an individual who is not otherwise a recipient of assistance under the State program funded under this part, using funds from a grant made under section 603(a) of this title, shall not be considered to be the provision of assistance to the individual under the State program funded under this part.

(Aug. 14, 1935, ch. 531, title IV, § 404, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2124; amended Pub. L. 105–33, title V, §§ 5002(a), 5503, 5514(c), Aug. 5, 1997, 111 Stat. 593, 609, 620; Pub. L. 105–178, title VIII, § 8401(b), June 9, 1998, 112 Stat. 499; Pub. L. 105–200, title IV, § 403(a), July 16, 1998, 112 Stat. 670; Pub. L. 106–113, div. B, § 1000(a)(4) [title VIII, § 801(d)], Nov. 29, 1999, 113 Stat. 1535, 1501A–283; Pub. L. 106–169, title IV, § 401(*l*), Dec. 14, 1999, 113 Stat. 1858.)

REFERENCES IN TEXT

Part F of this subchapter, referred to in subsec. (a)(2), was classified to section 681 et seq. of this title, prior to repeal by Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (d)(1)(B), is subchapter C (§ 658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–236, as amended, which is classified generally to subchapter II–B (§ 9858 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (h)(2)(C), (3)(B)(i), (4), (5)(I), is classified generally to Title 26, Internal Revenue Code.

Section 1088(a) of title 20, referred to in subsec. (h)(5)(A)(i), was repealed and section 1088(d) was redesignated section 1088(a), by Pub. L. 105–244, title I, § 101(c), Oct. 7, 1998, 112 Stat. 1617. Provisions similar to those in former section 1088(a)(1) are now contained in section 1002(a)(1) of Title 20, Education.

Section 1141(a) of title 20, referred to in subsec. (h)(5)(A)(i), was repealed by Pub. L. 105–244, § 3, title I, § 101(b), title VII, § 702, Oct. 7, 1998, 112 Stat. 1585, 1616, 1803, effective Oct. 1, 1998.

Section 2471 of title 20, referred to in subsec. (h)(5)(A)(ii), was omitted in the general amendment of chapter 44 (§ 2301 et seq.) of Title 20, Education, by Pub. L. 105–332, § 1(b), Oct. 31, 1998, 112 Stat. 3076.

Section 3037 of the Transportation Equity Act for the 21st Century, referred to in subsec. (k)(1), (3), is section 3037 of Pub. L. 105–178, title III, June 9, 1998, 112 Stat. 387, which is set out as a note under section 5309 of Title 49, Transportation.

PRIOR PROVISIONS

A prior section 604, acts Aug. 14, 1935, ch. 531, title IV, § 404, 49 Stat. 628; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; May 8, 1961, Pub. L. 87–31, § 4, 75 Stat. 77; July 25, 1962, Pub. L. 87–543, title I, §§ 104(a)(5)(B), 107(b), 76 Stat. 185, 189; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 241(b)(4), 245, 81 Stat. 916, 918; Jan. 4, 1975, Pub. L. 93–647, § 101(c)(6)(B), 88 Stat. 2360; July 18, 1984, Pub. L. 98–369, title VI, § 2663(*l*)(1), 98 Stat. 1171, related to deviation from State plan, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

1999—Subsec. (e). Pub. L. 106–169 inserted ''or tribe'' after ''A State'' and ''to the State'' and inserted ''or tribal'' after ''under the State''.

Subsec. (k)(1)(C)(iii). Pub. L. 106–113 substituted ''section 603(a)(5)(C)(iii) of this title'' for ''item (aa) or (bb) of section 603(a)(5)(C)(ii)(II) of this title''.

1998—Subsec. (d)(2). Pub. L. 105–178 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''A State may use not more than 10 percent of the amount of any grant made to the State under section 603(a) of this title for a fiscal year to carry out State programs pursuant to subchapter XX of this chapter.''

Subsec. (k). Pub. L. 105–200 added subsec. (k).

1997—Pub. L. 105–33, § 5514(c), made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

Subsec. (a)(2). Pub. L. 105–33, § 5503, inserted '', or (at the option of the State) August 21, 1996'' before period.

Subsec. (d)(1). Pub. L. 105–33, § 5002(a)(1), substituted ''Subject to paragraph (2), a State may'' for ''A State may''.

Subsec. (d)(2). Pub. L. 105–33, § 5002(a)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''Notwithstanding paragraph (1), not more than ⅓ of the total amount paid to a State under this part for a fiscal year that is used to carry out State programs pursuant to provisions of law specified in paragraph (1) may be used to carry out State programs pursuant to subchapter XX of this chapter.''

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–169, title IV, § 401(*l*), Dec. 14, 1999, 113 Stat. 1858, provided that the amendment made by section 401(*l*) is effective Dec. 14, 1999.

For effective date of amendment by Pub. L. 106–113, see section 1000(a)(4) [title VIII, § 801(e)] of Pub. L. 106–113, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–178, title VIII, § 8401(c), June 9, 1998, 112 Stat. 499, provided that: ''The amendments made by this section [amending this section and section 1397b of this title] take effect on October 1, 1998.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5002(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].''

Amendment by section 5503 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

ASSETS FOR INDEPENDENCE

Pub. L. 105–285, title IV, Oct. 27, 1998, 112 Stat. 2759, as amended by Pub. L. 106–554, § 1(a)(1) [title VI, §§ 602–607(a), 608(a), 609, 610], Dec. 21, 2000, 114 Stat. 2763, 2763A–74 to 2763A–76; Pub. L. 107–110, title VII, § 702(h), Jan. 8, 2002, 115 Stat. 1947, provided that:

''SEC. 401. SHORT TITLE.

''This title may be cited as the 'Assets for Independence Act'.

''SEC. 402. FINDINGS.

''Congress makes the following findings:

''(1) Economic well-being does not come solely from income, spending, and consumption, but also requires savings, investment, and accumulation of assets because assets can improve economic independence and stability, connect individuals with a viable and hopeful future, stimulate development of human and other capital, and enhance the welfare of offspring.

''(2) Fully ½ of all Americans have either no, negligible, or negative assets available for investment, just as the price of entry to the economic mainstream, the cost of a house, an adequate education, and starting a business, is increasing. Further, the household savings rate of the United States lags far behind other industrial nations, presenting a barrier to economic growth.

''(3) In the current tight fiscal environment, the United States should invest existing resources in high-yield initiatives. There is reason to believe that the financial returns, including increased income, tax revenue, and decreased welfare cash assistance, resulting from individual development accounts will far exceed the cost of investment in those accounts.

''(4) Traditional public assistance programs concentrating on income and consumption have rarely been successful in promoting and supporting the transition to increased economic self-sufficiency. Income-based domestic policy should be complemented with asset-based policy because, while income-based policies ensure that consumption needs (including food, child care, rent, clothing, and health care) are met, asset-based policies provide the means to achieve greater independence and economic well-being.

''SEC. 403. PURPOSES.

''The purposes of this title are to provide for the establishment of demonstration projects designed to determine—

''(1) the social, civic, psychological, and economic effects of providing to individuals and families with limited means an incentive to accumulate assets by saving a portion of their earned income;

''(2) the extent to which an asset-based policy that promotes saving for postsecondary education, homeownership, and microenterprise development may be used to enable individuals and families with limited means to increase their economic self-sufficiency; and

''(3) the extent to which an asset-based policy stabilizes and improves families and the community in which the families live.

''SEC. 404. DEFINITIONS.

''In this title:

''(1) APPLICABLE PERIOD.—The term 'applicable period' means, with respect to amounts to be paid from a grant made for a project year, the calendar year immediately preceding the calendar year in which the grant is made.

''(2) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means an individual who is selected to participate in a demonstration project by a qualified entity under section 409.

''(3) EMERGENCY WITHDRAWAL.—The term 'emergency withdrawal' means a withdrawal by an eligible individual that—

''(A) is a withdrawal of only those funds, or a portion of those funds, deposited by the individual in the individual development account of the individual;

''(B) is permitted by a qualified entity on a case-by-case basis; and

''(C) is made for—

''(i) expenses for medical care or necessary to obtain medical care, for the individual or a spouse or dependent of the individual described in paragraph (8)(D);

''(ii) payments necessary to prevent the eviction of the individual from the residence of the individual, or foreclosure on the mortgage for the principal residence of the individual, as defined in paragraph (8)(B); or

''(iii) payments necessary to enable the individual to meet necessary living expenses following loss of employment.

''(4) HOUSEHOLD.—The term 'household' means all individuals who share use of a dwelling unit as primary quarters for living and eating separate from other individuals.

''(5) INDIVIDUAL DEVELOPMENT ACCOUNT.—

''(A) IN GENERAL.—The term 'individual development account' means a trust created or organized in the United States exclusively for the purpose of paying the qualified expenses of an eligible individual, or enabling the eligible individual to make an emergency withdrawal, but only if the written governing instrument creating the trust contains the following requirements:

''(i) No contribution will be accepted unless the contribution is in cash or by check.

''(ii) The trustee is a federally insured financial institution, or a State insured financial institution if no federally insured financial institution is available.

''(iii) The assets of the trust will be invested in accordance with the direction of the eligible individual after consultation with the qualified entity providing deposits for the individual under section 410.

''(iv) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

''(v) Except as provided in clause (vi), any amount in the trust that is attributable to a deposit provided under section 410 may be paid or distributed out of the trust only for the purpose of paying the qualified expenses of the eligible individual.

''(vi) Any balance in the trust on the day after the date on which the individual for whose benefit the trust is established dies shall be distributed within 30 days of that date as directed by that individual to another individual development account established for the benefit of an eligible individual.

''(B) CUSTODIAL ACCOUNTS.—For purposes of subparagraph (A), a custodial account shall be treated as a trust if the assets of the custodial account are held by a bank (as defined in section 408(n) of the Internal Revenue Code of 1986 [26 U.S.C. 408(n)]) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which such person will administer the custodial account will be consistent with the requirements of this title, and if the custodial account would, except for the fact that it is not a trust, constitute an individual development account described in subparagraph (A). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of that custodial account shall be treated as the trustee of the account.

''(6) PROJECT YEAR.—The term 'project year' means, with respect to a demonstration project, any of the 5 consecutive 12-month periods beginning on the date the project is originally authorized to be conducted.

''(7) QUALIFIED ENTITY.—

''(A) IN GENERAL.—The term 'qualified entity' means—

''(i) one or more not-for-profit organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] and exempt from taxation under section 501(a) of such Code;

''(ii) a State or local government agency, or a tribal government, submitting an application under section 405 jointly with an organization described in clause (i); or

(iii) an entity that—

(I) is—

(aa) a credit union designated as a low-income credit union by the National Credit Union Administration (NCUA); or

(bb) an organization designated as a community development financial institution by the Secretary of the Treasury (or the Community Development Financial Institutions Fund); and

(II) can demonstrate a collaborative relationship with a local community-based organization whose activities are designed to address poverty in the community and the needs of community members for economic independence and stability.

''(B) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as preventing an organization described in subparagraph (A)(i) from collaborating with a financial institution or for-profit community development corporation to carry out the purposes of this title.

''(8) QUALIFIED EXPENSES.—The term 'qualified expenses' means one or more of the following, as provided by a qualified entity:

''(A) POSTSECONDARY EDUCATIONAL EXPENSES.—Postsecondary educational expenses paid from an individual development account directly to an eligible educational institution. In this subparagraph:

''(i) POSTSECONDARY EDUCATIONAL EXPENSES.—The term 'postsecondary educational expenses' means the following:

''(I) TUITION AND FEES.—Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution.

''(II) FEES, BOOKS, SUPPLIES, AND EQUIPMENT.—Fees, books, supplies, and equipment required

for courses of instruction at an eligible educational institution.

''(ii) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means the following:

''(I) INSTITUTION OF HIGHER EDUCATION.—An institution described in section 101 or 102 of the Higher Education Act of 1965 [20 U.S.C. 1001, 1002].

''(II) POSTSECONDARY VOCATIONAL EDUCATION SCHOOL.—An area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4))) which is in any State (as defined in section 521(33) of such Act), as such sections are in effect on the date of enactment of this title [Oct. 27, 1998].

''(B) FIRST-HOME PURCHASE.—Qualified acquisition costs with respect to a principal residence for a qualified first-time homebuyer, if paid from an individual development account directly to the persons to whom the amounts are due. In this subparagraph:

''(i) PRINCIPAL RESIDENCE.—The term 'principal residence' means a main residence, the qualified acquisition costs of which do not exceed 120 percent of the average area purchase price applicable to such residence.

''(ii) QUALIFIED ACQUISITION COSTS.—The term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

''(iii) QUALIFIED FIRST-TIME HOMEBUYER.—

''(I) IN GENERAL.—The term 'qualified first-time homebuyer' means an individual participating in the project involved (and, if married, the individual's spouse) who has no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this subparagraph applies.

''(II) DATE OF ACQUISITION.—The term 'date of acquisition' means the date on which a binding contract to acquire, construct, or reconstruct the principal residence to which this subparagraph applies is entered into.

''(C) BUSINESS CAPITALIZATION.—Amounts paid from an individual development account directly to a business capitalization account that is established in a federally insured financial institution (or in a State insured financial institution if no federally insured financial institution is available) and is restricted to use solely for qualified business capitalization expenses. In this subparagraph:

''(i) QUALIFIED BUSINESS CAPITALIZATION EXPENSES.—The term 'qualified business capitalization expenses' means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

''(ii) QUALIFIED EXPENDITURES.—The term 'qualified expenditures' means expenditures included in a qualified plan, including capital, plant, equipment, working capital, and inventory expenses.

''(iii) QUALIFIED BUSINESS.—The term 'qualified business' means any business that does not contravene any law or public policy (as determined by the Secretary).

''(iv) QUALIFIED PLAN.—The term 'qualified plan' means a business plan, or a plan to use a business asset purchased, which—

''(I) is approved by a financial institution, a microenterprise development organization, or a nonprofit loan fund having demonstrated fiduciary integrity;

''(II) includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

''(III) may require the eligible individual to obtain the assistance of an experienced entrepreneurial adviser.

''(D) TRANSFERS TO IDAS OF FAMILY MEMBERS.—Amounts paid from an individual development account directly into another such account established for the benefit of an eligible individual who is—

''(i) the individual's spouse; or

''(ii) any dependent of the individual with respect to whom the individual is allowed a deduction under section 151 of the Internal Revenue Code of 1986 [26 U.S.C. 151].

''(9) QUALIFIED SAVINGS OF THE INDIVIDUAL FOR THE PERIOD.—The term 'qualified savings of the individual for the period' means the aggregate of the amounts contributed by an individual to the individual development account of the individual during the period.

''(10) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services, acting through the Director of Community Services.

''(11) TRIBAL GOVERNMENT.—The term 'tribal government' means a tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) or a Native Hawaiian organization, as defined in section 7207 of the Native Hawaiian Education Act [20 U.S.C. 7517].

''SEC. 405. APPLICATIONS.

''(a) ANNOUNCEMENT OF DEMONSTRATION PROJECTS.—Not later than 3 months after the date of enactment of this title [Oct. 27, 1998], the Secretary shall publicly announce the availability of funding under this title for demonstration projects and shall ensure that applications to conduct the demonstration projects are widely available to qualified entities.

''(b) SUBMISSION.—Not later than 6 months after the date of enactment of this title, a qualified entity may submit to the Secretary an application to conduct a demonstration project under this title.

''(c) CRITERIA.—In considering whether to approve an application to conduct a demonstration project under this title, the Secretary shall assess the following:

''(1) SUFFICIENCY OF PROJECT.—The degree to which the project described in the application appears likely to aid project participants in achieving economic self-sufficiency through activities requiring one or more qualified expenses.

''(2) ADMINISTRATIVE ABILITY.—The experience and ability of the applicant to responsibly administer the project.

''(3) ABILITY TO ASSIST PARTICIPANTS.—The experience and ability of the applicant in recruiting, educating, and assisting project participants to increase their economic independence and general well-being through the development of assets.

''(4) COMMITMENT OF NON-FEDERAL FUNDS.—The aggregate amount of direct funds from non-Federal public sector and from private sources that are formally committed to the project as matching contributions.

''(5) ADEQUACY OF PLAN FOR PROVIDING INFORMATION FOR EVALUATION.—The adequacy of the plan for providing information relevant to an evaluation of the project.

''(6) OTHER FACTORS.—Such other factors relevant to the purposes of this title as the Secretary may specify.

''(d) PREFERENCES.—In considering an application to conduct a demonstration project under this title, the Secretary shall give preference to an application that—

''(1) demonstrates the willingness and ability to select individuals described in section 408 who are predominantly from households in which a child (or children) is living with the child's biological or adoptive mother or father, or with the child's legal guardian;

''(2) provides a commitment of non-Federal funds with a proportionately greater amount of such funds committed from private sector sources; and

''(3) targets such individuals residing within one or more relatively well-defined neighborhoods or com-

munities (including rural communities) that experience high rates of poverty or unemployment.

''(e) APPROVAL.—Not later than 9 months after the date of enactment of this title [Oct. 27, 1998], the Secretary shall, on a competitive basis, approve such applications to conduct demonstration projects under this title as the Secretary considers to be appropriate, taking into account the assessments required by subsections (c) and (d). The Secretary shall ensure, to the maximum extent practicable, that the applications that are approved involve a range of communities (both rural and urban) and diverse populations.

''(f) CONTRACTS WITH NONPROFIT ENTITIES.—The Secretary may contract with an entity described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] and exempt from taxation under section 501(a) of such Code to carry out any responsibility of the Secretary under this section or section 412 if—

''(1) such entity demonstrates the ability to carry out such responsibility; and

''(2) the Secretary can demonstrate that such responsibility would not be carried out by the Secretary at a lower cost.

''(g) GRANDFATHERING OF EXISTING STATEWIDE PROGRAMS.—Any statewide individual asset-building program that is carried out in a manner consistent with the purposes of this title, that is established under State law as of the date of enactment of this Act [Oct. 27, 1998], and that as of such date is operating with an annual State appropriation of not less than $1,000,000 in non-Federal funds, shall be deemed to meet the eligibility requirements of this subtitle [title], and the entity carrying out the program shall be deemed to be a qualified entity. The Secretary shall consider funding the statewide program as a demonstration project described in this subtitle [title]. In considering the statewide program for funding, the Secretary shall review an application submitted by the entity carrying out such statewide program under this section, notwithstanding the preference requirements listed in subsection (d). Any program requirements under sections 407 through 411 that are inconsistent with State statutory requirements in effect on the date of enactment of this Act, governing such statewide program, shall not apply to the program.

''SEC. 406. DEMONSTRATION AUTHORITY; ANNUAL GRANTS.

''(a) DEMONSTRATION AUTHORITY.—If the Secretary approves an application to conduct a demonstration project under this title, the Secretary shall, not later than 10 months after the date of enactment of this title [Oct. 27, 1998], authorize the applicant to conduct the project for 5 project years in accordance with the approved application and the requirements of this title.

''(b) GRANT AUTHORITY.—For each project year of a demonstration project conducted under this title, the Secretary may make a grant to the qualified entity authorized to conduct the project. In making such a grant, the Secretary shall make the grant on the first day of the project year in an amount not to exceed the lesser of—

''(1) the aggregate amount of funds committed as matching contributions from non-Federal public or private sector sources; or

''(2) $1,000,000.

''SEC. 407. RESERVE FUND.

''(a) ESTABLISHMENT.—A qualified entity under this title, other than a State or local government agency or a tribal government, shall establish a Reserve Fund that shall be maintained in accordance with this section.

''(b) AMOUNTS IN RESERVE FUND.—

''(1) IN GENERAL.—As soon after receipt as is practicable, a qualified entity shall deposit in the Reserve Fund established under subsection (a)—

''(A) all funds provided to the qualified entity from any public or private source in connection with the demonstration project; and

''(B) the proceeds from any investment made under subsection (c)(2).

''(2) UNIFORM ACCOUNTING REGULATIONS.—The Secretary shall prescribe regulations with respect to accounting for amounts in the Reserve Fund established under subsection (a).

''(c) USE OF AMOUNTS IN THE RESERVE FUND.—

''(1) IN GENERAL.—A qualified entity shall use the amounts in the Reserve Fund established under subsection (a) to—

''(A) assist participants in the demonstration project in obtaining the skills (including economic literacy, budgeting, credit, and counseling skills) and information necessary to achieve economic self-sufficiency through activities requiring qualified expenses;

''(B) provide deposits in accordance with section 410 for individuals selected by the qualified entity to participate in the demonstration project;

''(C) administer the demonstration project; and

''(D) provide the research organization evaluating the demonstration project under section 414 with such information with respect to the demonstration project as may be required for the evaluation.

''(2) AUTHORITY TO INVEST FUNDS.—

''(A) GUIDELINES.—The Secretary shall establish guidelines for investing amounts in the Reserve Fund established under subsection (a) in a manner that provides an appropriate balance between return, liquidity, and risk.

''(B) INVESTMENT.—A qualified entity shall invest the amounts in its Reserve Fund that are not immediately needed to carry out the provisions of paragraph (1), in accordance with the guidelines established under subparagraph (A).

''(3) LIMITATION ON USES.—Not more than 15 percent of the amounts provided to a qualified entity under section 406(b) shall be used by the qualified entity for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1), of which not less than 2 percent of the amounts shall be used by the qualified entity for the purposes described in paragraph (1)(D). Of the total amount specified in this paragraph, not more than 7.5 percent shall be used for administrative functions under paragraph (1)(C), including program management, reporting requirements, recruitment and enrollment of individuals, and monitoring. The remainder of the total amount specified in this paragraph (not including the amount specified for use for the purposes described in paragraph (1)(D)) shall be used for nonadministrative functions described in paragraph (1)(A), including case management, budgeting, economic literacy, and credit counseling. If the cost of nonadministrative functions described in paragraph (1)(A) is less than 5.5 percent of the total amount specified in this paragraph, such excess funds may be used for administrative functions. If two or more qualified entities are jointly administering a project, no qualified entity shall use more than its proportional share for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1).

''(d) UNUSED FEDERAL GRANT FUNDS TRANSFERRED TO THE SECRETARY WHEN PROJECT TERMINATES.—Notwithstanding subsection (c), upon the termination of any demonstration project authorized under this section, the qualified entity conducting the project shall transfer to the Secretary an amount equal to—

''(1) the amounts in its Reserve Fund at the time of the termination; multiplied by

''(2) a percentage equal to—

''(A) the aggregate amount of grants made to the qualified entity under section 406(b); divided by

''(B) the aggregate amount of all funds provided to the qualified entity from all sources to conduct the project.

''SEC. 408. ELIGIBILITY FOR PARTICIPATION.

''(a) IN GENERAL.—Any individual who is a member of a household that is eligible for assistance under the State temporary assistance for needy families program established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or that meets each of the

following requirements shall be eligible to participate in a demonstration project conducted under this title:

''(1) INCOME TEST.—The adjusted gross income of the household is equal to or less than 200 percent of the poverty line (as determined by the Office of Management and Budget) or the earned income amount described in section 32 of the Internal Revenue Code of 1986 [26 U.S.C. 32] (taking into account the size of the household).

''(2) NET WORTH TEST.—

''(A) IN GENERAL.—The net worth of the household, as of the end of the calendar year preceding the determination of eligibility, does not exceed $10,000.

''(B) DETERMINATION OF NET WORTH.—For purposes of subparagraph (A), the net worth of a household is the amount equal to—

''(i) the aggregate market value of all assets that are owned in whole or in part by any member of the household; minus

''(ii) the obligations or debts of any member of the household.

''(C) EXCLUSIONS.—For purposes of determining the net worth of a household, a household's assets shall not be considered to include the primary dwelling unit and one motor vehicle owned by a member of the household.

''(b) INDIVIDUALS UNABLE TO COMPLETE THE PROJECT.—The Secretary shall establish such regulations as are necessary to ensure compliance with this title if an individual participating in the demonstration project moves from the community in which the project is conducted or is otherwise unable to continue participating in that project, including regulations prohibiting future eligibility to participate in any other demonstration project conducted under this title.

''SEC. 409. SELECTION OF INDIVIDUALS TO PARTICIPATE.

''From among the individuals eligible to participate in a demonstration project conducted under this title, each qualified entity shall select the individuals—

''(1) that the qualified entity determines to be best suited to participate; and

''(2) to whom the qualified entity will provide deposits in accordance with section 410.

''SEC. 410. DEPOSITS BY QUALIFIED ENTITIES.

''(a) IN GENERAL.—Not less than once every 3 months during each project year, each qualified entity under this title shall deposit in the individual development account of each individual participating in the project, or into a parallel account maintained by the qualified entity—

''(1) from the non-Federal funds described in section 405(c)(4), a matching contribution of not less than $0.50 and not more than $4 for every $1 of earned income (as defined in section 911(d)(2) of the Internal Revenue Code of 1986 [26 U.S.C. 911(d)(2)]) deposited in the account by a project participant during that period;

''(2) from the grant made under section 406(b), an amount equal to the matching contribution made under paragraph (1); and

''(3) any interest that has accrued on amounts deposited under paragraph (1) or (2) on behalf of that individual into the individual development account of the individual or into a parallel account maintained by the qualified entity.

''(b) LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.—Not more than $2,000 from a grant made under section 406(b) shall be provided to any one individual over the course of the demonstration project.

''(c) LIMITATION ON DEPOSITS FOR A HOUSEHOLD.—Not more than $4,000 from a grant made under section 406(b) shall be provided to any one household over the course of the demonstration project.

''(d) WITHDRAWAL OF FUNDS.—The Secretary shall establish such guidelines as may be necessary to ensure that funds held in an individual development account are not withdrawn, except for one or more qualified expenses, or for an emergency withdrawal. Such guidelines shall include a requirement that a responsible official of the qualified entity conducting a project approve a withdrawal from such an account in writing. The guidelines shall provide that no individual may withdraw funds from an individual development account earlier than 6 months after the date on which the individual first deposits funds in the account.

''(e) REIMBURSEMENT.—An individual shall reimburse an individual development account for any funds withdrawn from the account for an emergency withdrawal, not later than 12 months after the date of the withdrawal. If the individual fails to make the reimbursement, the qualified entity administering the account shall transfer the funds deposited into the account or a parallel account under this section to the Reserve Fund of the qualified entity, and use the funds to benefit other individuals participating in the demonstration project involved.

''SEC. 411. LOCAL CONTROL OVER DEMONSTRATION PROJECTS.

''A qualified entity under this title, other than a State or local government agency or a tribal government, shall, subject to the provisions of section 413, have sole authority over the administration of the project. The Secretary may prescribe only such regulations or guidelines with respect to demonstration projects conducted under this title as are necessary to ensure compliance with the approved applications and the requirements of this title.

''SEC. 412. ANNUAL PROGRESS REPORTS.

''(a) IN GENERAL.—Each qualified entity under this title shall prepare an annual report on the progress of the demonstration project. Each report shall include both program and participant information and shall specify for the period covered by the report the following information:

''(1) The number and characteristics of individuals making a deposit into an individual development account.

''(2) The amounts in the Reserve Fund established with respect to the project.

''(3) The amounts deposited in the individual development accounts.

''(4) The amounts withdrawn from the individual development accounts and the purposes for which such amounts were withdrawn.

''(5) The balances remaining in the individual development accounts.

''(6) The savings account characteristics (such as threshold amounts and match rates) required to stimulate participation in the demonstration project, and how such characteristics vary among different populations or communities.

''(7) What service configurations of the qualified entity (such as configurations relating to peer support, structured planning exercises, mentoring, and case management) increased the rate and consistency of participation in the demonstration project and how such configurations varied among different populations or communities.

''(8) Such other information as the Secretary may require to evaluate the demonstration project.

''(b) SUBMISSION OF REPORTS.—The qualified entity shall submit each report required to be prepared under subsection (a) to—

''(1) the Secretary; and

''(2) the Treasurer (or equivalent official) of the State in which the project is conducted, if the State or a local government or a tribal government committed funds to the demonstration project.

''(c) TIMING.—The first report required by subsection (a) shall be submitted not later than 60 days after the end of the project year in which the Secretary authorized the qualified entity to conduct the demonstration project, and subsequent reports shall be submitted every 12 months thereafter, until the conclusion of the project.

''SEC. 413. SANCTIONS.

''(a) AUTHORITY TO TERMINATE DEMONSTRATION PROJECT.—If the Secretary determines that a qualified

entity under this title is not operating a demonstration project in accordance with the entity's approved application under section 405 or the requirements of this title (and has not implemented any corrective recommendations directed by the Secretary), the Secretary shall terminate such entity's authority to conduct the demonstration project.

''(b) ACTIONS REQUIRED UPON TERMINATION.—If the Secretary terminates the authority to conduct a demonstration project, the Secretary—

''(1) shall suspend the demonstration project;

''(2) shall take control of the Reserve Fund established pursuant to section 407;

''(3) shall make every effort to identify another qualified entity (or entities) willing and able to conduct the project in accordance with the approved application (or, if modification is necessary to incorporate the recommendations, the application as modified) and the requirements of this title;

''(4) shall, if the Secretary identifies an entity (or entities) described in paragraph (3)—

''(A) authorize the entity (or entities) to conduct the project in accordance with the approved application (or, if modification is necessary to incorporate the recommendations, the application as modified) and the requirements of this title;

''(B) transfer to the entity (or entities) control over the Reserve Fund established pursuant to section 407; and

''(C) consider, for purposes of this title—

''(i) such other entity (or entities) to be the qualified entity (or entities) originally authorized to conduct the demonstration project; and

''(ii) the date of such authorization to be the date of the original authorization; and

''(5) if, by the end of the 1-year period beginning on the date of the termination, the Secretary has not found a qualified entity (or entities) described in paragraph (3), shall—

''(A) terminate the project; and

''(B) from the amount remaining in the Reserve Fund established as part of the project, remit to each source that provided funds under section 405(c)(4) to the entity originally authorized to conduct the project, an amount that bears the same ratio to the amount so remaining as the amount provided from the source under section 405(c)(4) bears to the amount provided from all such sources under that section.

''SEC. 414. EVALUATIONS.

''(a) IN GENERAL.—Not later than 10 months after the date of enactment of this title [Oct. 27, 1998], the Secretary shall enter into a contract with an independent research organization to evaluate the demonstration projects conducted under this title, individually and as a group, including evaluating all qualified entities participating in and sources providing funds for the demonstration projects conducted under this title.

''(b) FACTORS TO EVALUATE.—In evaluating any demonstration project conducted under this title, the research organization shall address the following factors:

''(1) The effects of incentives and organizational or institutional support on savings behavior in the demonstration project.

''(2) The savings rates of individuals in the demonstration project based on demographic characteristics including gender, age, family size, race or ethnic background, and income.

''(3) The economic, civic, psychological, and social effects of asset accumulation, and how such effects vary among different populations or communities.

''(4) The effects of individual development accounts on savings rates, homeownership, level of postsecondary education attained, and self-employment, and how such effects vary among different populations or communities.

''(5) The potential financial returns to the Federal Government and to other public sector and private sector investors in individual development accounts over a 5-year and 10-year period of time.

''(6) The lessons to be learned from the demonstration projects conducted under this title and if a permanent program of individual development accounts should be established.

''(7) Such other factors as may be prescribed by the Secretary.

''(c) METHODOLOGICAL REQUIREMENTS.—In evaluating any demonstration project conducted under this title, the research organization shall—

''(1) for at least one site, use control groups to compare participants with nonparticipants;

''(2) before, during, and after the project, obtain such quantitative data as are necessary to evaluate the project thoroughly; and

''(3) develop a qualitative assessment, derived from sources such as in-depth interviews, of how asset accumulation affects individuals and families.

''(d) REPORTS BY THE SECRETARY.—

''(1) INTERIM REPORTS.—Not later than 90 days after the end of the project year in which the Secretary first authorizes a qualified entity to conduct a demonstration project under this title, and every 12 months thereafter until all demonstration projects conducted under this title are completed, the Secretary shall submit to Congress an interim report setting forth the results of the reports submitted pursuant to section 412(b).

''(2) FINAL REPORTS.—Not later than 12 months after the conclusion of all demonstration projects conducted under this title, the Secretary shall submit to Congress a final report setting forth the results and findings of all reports and evaluations conducted pursuant to this title.

''(e) EVALUATION EXPENSES.—Of the amount appropriated under section 416 for a fiscal year, the Secretary may expend not more than $500,000 for such fiscal year to carry out the objectives of this section.

''SEC. 415. NO REDUCTION IN BENEFITS.

''Notwithstanding any other provision of Federal law (other than the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.]) that requires consideration of one or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such law to be provided to or for the benefit of such individual, funds (including interest accruing) in an individual development account under this Act [see Short Title of 1998 Amendment note set out under section 9801 of this title] shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

''SEC. 416. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated to carry out this title, $25,000,000 for each of fiscal years 1999, 2000, 2001, 2002, and 2003, to remain available until expended.''

[Pub. L. 106–554, § 1(a)(1) [title VI, § 607(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–76, provided that: ''Notwithstanding the amendment made by subsection (a) [amending section 412(c) of Pub. L. 105–285, set out above], the submission of the initial report of a qualified entity under section 412(c) [section 412(c) of Pub. L. 105–285, set out above] shall not be required prior to the date that is 90 days after the date of enactment of this title [Dec. 21, 2000].'']

[Pub. L. 106–554, § 1(a)(1) [title VI, § 608(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–76, provided that: ''Notwithstanding the amendment made by subsection (a) [amending section 414(d)(1) of Pub. L. 105–285, set out above], the submission of the initial interim report of the Secretary under section 412(c) [section 412(c) of Pub. L. 105–285, set out above] shall not be required prior to the date that is 90 days after the date of enactment of this title [Dec. 21, 2000].'']

§ 604a. Services provided by charitable, religious, or private organizations

(a) In general

(1) State options

A State may—

(A) administer and provide services under the programs described in subparagraphs (A) and (B)(i) of paragraph (2) through contracts with charitable, religious, or private organizations; and

(B) provide beneficiaries of assistance under the programs described in subparagraphs (A) and (B)(ii) of paragraph (2) with certificates, vouchers, or other forms of disbursement which are redeemable with such organizations.

(2) Programs described

The programs described in this paragraph are the following programs:

(A) A State program funded under this part (as amended by section 103(a) of this Act).

(B) Any other program established or modified under title I or II of this Act, that—

(i) permits contracts with organizations; or

(ii) permits certificates, vouchers, or other forms of disbursement to be provided to beneficiaries, as a means of providing assistance.

(b) Religious organizations

The purpose of this section is to allow States to contract with religious organizations, or to allow religious organizations to accept certificates, vouchers, or other forms of disbursement under any program described in subsection (a)(2) of this section, on the same basis as any other nongovernmental provider without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under such program.

(c) Nondiscrimination against religious organizations

In the event a State exercises its authority under subsection (a) of this section, religious organizations are eligible, on the same basis as any other private organization, as contractors to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, under any program described in subsection (a)(2) of this section so long as the programs are implemented consistent with the Establishment Clause of the United States Constitution. Except as provided in subsection (k) of this section, neither the Federal Government nor a State receiving funds under such programs shall discriminate against an organization which is or applies to be a contractor to provide assistance, or which accepts certificates, vouchers, or other forms of disbursement, on the basis that the organization has a religious character.

(d) Religious character and freedom

(1) Religious organizations

A religious organization with a contract described in subsection (a)(1)(A) of this section, or which accepts certificates, vouchers, or other forms of disbursement under subsection (a)(1)(B) of this section, shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) Additional safeguards

Neither the Federal Government nor a State shall require a religious organization to—

(A) alter its form of internal governance; or

(B) remove religious art, icons, scripture, or other symbols;

in order to be eligible to contract to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, funded under a program described in subsection (a)(2) of this section.

(e) Rights of beneficiaries of assistance

(1) In general

If an individual described in paragraph (2) has an objection to the religious character of the organization or institution from which the individual receives, or would receive, assistance funded under any program described in subsection (a)(2) of this section, the State in which the individual resides shall provide such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection with assistance from an alternative provider that is accessible to the individual and the value of which is not less than the value of the assistance which the individual would have received from such organization.

(2) Individual described

An individual described in this paragraph is an individual who receives, applies for, or requests to apply for, assistance under a program described in subsection (a)(2) of this section.

(f) Employment practices

A religious organization's exemption provided under section 2000e–1 of this title regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (a)(2) of this section.

(g) Nondiscrimination against beneficiaries

Except as otherwise provided in law, a religious organization shall not discriminate against an individual in regard to rendering assistance funded under any program described in subsection (a)(2) of this section on the basis of religion, a religious belief, or refusal to actively participate in a religious practice.

(h) Fiscal accountability

(1) In general

Except as provided in paragraph (2), any religious organization contracting to provide assistance funded under any program described in subsection (a)(2) of this section shall be subject to the same regulations as other contractors to account in accord with generally accepted auditing principles for the use of such funds provided under such programs.

(2) Limited audit

If such organization segregates Federal funds provided under such programs into separate accounts, then only the financial assistance provided with such funds shall be subject to audit.

(i) Compliance

Any party which seeks to enforce its rights under this section may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation.

(j) Limitations on use of funds for certain purposes

No funds provided directly to institutions or organizations to provide services and administer programs under subsection (a)(1)(A) of this section shall be expended for sectarian worship, instruction, or proselytization.

(k) Preemption

Nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

(Pub. L. 104–193, title I, § 104, Aug. 22, 1996, 110 Stat. 2161.)

REFERENCES IN TEXT

Section 103(a) of this Act, referred to in subsec. (a)(2)(A), means section 103(a) of Pub. L. 104–193, which enacted this part and struck out former part A of this subchapter, except for section 618. For complete classification of section 103(a) to the Code, see Tables.

Titles I and II of this Act, referred to in subsec. (a)(2)(B), means titles I and II of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2110, 2185. For complete classification of these titles to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Social Security Act which comprises this chapter.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 605. Administrative provisions

(a) Quarterly

The Secretary shall pay each grant payable to a State under section 603 of this title in quarterly installments, subject to this section.

(b) Notification

Not later than 3 months before the payment of any such quarterly installment to a State, the Secretary shall notify the State of the amount of any reduction determined under section 612(a)(1)(B) of this title with respect to the State.

(c) Computation and certification of payments to States

(1) Computation

The Secretary shall estimate the amount to be paid to each eligible State for each quarter under this part, such estimate to be based on a report filed by the State containing an estimate by the State of the total sum to be expended by the State in the quarter under the State program funded under this part and such other information as the Secretary may find necessary.

(2) Certification

The Secretary of Health and Human Services shall certify to the Secretary of the Treasury the amount estimated under paragraph (1) with respect to a State, reduced or increased to the extent of any overpayment or underpayment which the Secretary of Health and Human Services determines was made under this part to the State for any prior quarter and with respect to which adjustment has not been made under this paragraph.

(d) Payment method

Upon receipt of a certification under subsection (c)(2) of this section with respect to a State, the Secretary of the Treasury shall, through the Fiscal Service of the Department of the Treasury and before audit or settlement by the Government Accountability Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

(Aug. 14, 1935, ch. 531, title IV, § 405, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2128; amended Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 605, acts Aug. 14, 1935, ch. 531, title IV, § 405, 49 Stat. 629; July 25, 1962, Pub. L. 87–543, title I, § 107(a), 76 Stat. 188, related to use of payments for benefit of children, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 606. Federal loans for State welfare programs

(a) Loan authority

(1) In general

The Secretary shall make loans to any loan-eligible State, for a period to maturity of not more than 3 years.

(2) Loan-eligible State

As used in paragraph (1), the term ''loan-eligible State'' means a State against which a penalty has not been imposed under section 609(a)(1) of this title.

(b) Rate of interest

The Secretary shall charge and collect interest on any loan made under this section at a rate equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the period to maturity of the loan.

(c) Use of loan

A State shall use a loan made to the State under this section only for any purpose for which grant amounts received by the State under section 603(a) of this title may be used, including—

(1) welfare anti-fraud activities; and

(2) the provision of assistance under the State program to Indian families that have moved from the service area of an Indian tribe with a tribal family assistance plan approved under section 612 of this title.

(d) Limitation on total amount of loans to State

The cumulative dollar amount of all loans made to a State under this section during fiscal years 1997 through 2003 shall not exceed 10 percent of the State family assistance grant.

(e) Limitation on total amount of outstanding loans

The total dollar amount of loans outstanding under this section may not exceed $1,700,000,000.

(f) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated such sums as may be necessary for the cost of loans under this section.

(Aug. 14, 1935, ch. 531, title IV, §406, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2128; amended Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620; Pub. L. 108–40, §3(f), June 30, 2003, 117 Stat. 837.)

PRIOR PROVISIONS

A prior section 606, acts Aug. 14, 1935, ch. 531, title IV, §406, 49 Stat. 629; Aug. 10, 1939, ch. 666, title IV, §403, 53 Stat. 1380; Aug. 28, 1950, ch. 809, title III, pt. 2, §323(a), 64 Stat. 551; Aug. 1, 1956, ch. 836, title III, §§321, 322, 351(b), 70 Stat. 850, 855; July 25, 1962, Pub. L. 87–543, title I, §§104(a)(3)(D), 108(a), 109, 152, 156(b), 76 Stat. 185, 189, 190, 206, 207; Oct. 13, 1964, Pub. L. 88–641, §2(a), 78 Stat. 1042; July 30, 1965, Pub. L. 89–97, title IV, §409, 79 Stat. 422; Jan. 2, 1968, Pub. L. 90–248, title II, §§201(f), 206(b), 207(a), 241(b)(5), 81 Stat. 880, 893, 916; Jan. 4, 1975, Pub. L. 93–647, §§3(a)(5), 101(c)(7), 88 Stat. 2348, 2360; Nov. 12, 1977, Pub. L. 95–171, §3(a)(2), 91 Stat. 1354; Dec. 28, 1980, Pub. L. 96–611, §4, 94 Stat. 3567; Aug. 13, 1981, Pub. L. 97–35, title XXI, §2184(b)(2), title XXIII, §§2311, 2312, 2317(b), 2353(b)(1), 95 Stat. 817, 852, 853, 856, 872; Sept. 3, 1982, Pub. L. 97–248, title I, §153(a), 96 Stat. 396; July 18, 1984, Pub. L. 98–369, div. B, title III, §2361(c), title VI, §2663(c)(3)(A), (B)(i), 98 Stat. 1104, 1166; Aug. 16, 1984, Pub. L. 98–378, §20(a), 98 Stat. 1322, related to definitions used in this part, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–40 substituted ''2003'' for ''2002''.

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 607. Mandatory work requirements

(a) Participation rate requirements

(1) All families

A State to which a grant is made under section 603 of this title for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to all families receiving assistance under the State program funded under this part:

If the fiscal year is:	The minimum participation rate is:
1997	25
1998	30
1999	35
2000	40
2001	45
2002 or thereafter	50.

(2) 2-parent families

A State to which a grant is made under section 603 of this title for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to 2-parent families receiving assistance under the State program funded under this part:

If the fiscal year is:	The minimum participation rate is:
1997	75
1998	75
1999 or thereafter	90.

(b) Calculation of participation rates

(1) All families

(A) Average monthly rate

For purposes of subsection (a)(1) of this section, the participation rate for all families of a State for a fiscal year is the average of the participation rates for all families of the State for each month in the fiscal year.

(B) Monthly participation rates

The participation rate of a State for all families of the State for a month, expressed as a percentage, is—

(i) the number of families receiving assistance under the State program funded under this part that include an adult or a minor child head of household who is engaged in work for the month; divided by

(ii) the amount by which—

(I) the number of families receiving such assistance during the month that include an adult or a minor child head of household receiving such assistance; exceeds

(II) the number of families receiving such assistance that are subject in such month to a penalty described in subsection (e)(1) of this section but have not been subject to such penalty for more than 3 months within the preceding 12-month period (whether or not consecutive).

(2) 2-parent families

(A) Average monthly rate

For purposes of subsection (a)(2) of this section, the participation rate for 2-parent families of a State for a fiscal year is the average of the participation rates for 2-parent families of the State for each month in the fiscal year.

(B) Monthly participation rates

The participation rate of a State for 2-parent families of the State for a month shall be calculated by use of the formula set forth in paragraph (1)(B), except that in the formula the term ''number of 2-parent families'' shall be substituted for the term ''number of families'' each place such latter term appears.

(C) Family with a disabled parent not treated as a 2-parent family

A family that includes a disabled parent shall not be considered a 2-parent family for purposes of subsections (a) and (b) of this section.

(3) Pro rata reduction of participation rate due to caseload reductions not required by Federal law and not resulting from changes in State eligibility criteria

(A) In general

The Secretary shall prescribe regulations for reducing the minimum participation rate otherwise required by this section for a fiscal year by the number of percentage points equal to the number of percentage points (if any) by which—

(i) the average monthly number of families receiving assistance during the immediately preceding fiscal year under the State program funded under this part is less than

(ii) the average monthly number of families that received aid under the State plan approved under part A of this subchapter (as in effect on September 30, 1995) during fiscal year 1995.

The minimum participation rate shall not be reduced to the extent that the Secretary determines that the reduction in the number of families receiving such assistance is required by Federal law.

(B) Eligibility changes not counted

The regulations required by subparagraph (A) shall not take into account families that are diverted from a State program funded under this part as a result of differences in eligibility criteria under a State program funded under this part and eligibility criteria under the State program operated under the State plan approved under part A of this subchapter (as such plan and such part were in effect on September 30, 1995). Such regulations shall place the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria.

(4) State option to include individuals receiving assistance under a tribal family assistance plan or tribal work program

For purposes of paragraphs (1)(B) and (2)(B), a State may, at its option, include families in the State that are receiving assistance under a tribal family assistance plan approved under section 612 of this title or under a tribal work program to which funds are provided under this part.

(5) State option for participation requirement exemptions

For any fiscal year, a State may, at its option, not require an individual who is a single custodial parent caring for a child who has not attained 12 months of age to engage in work, and may disregard such an individual in determining the participation rates under subsection (a) of this section for not more than 12 months.

(c) Engaged in work

(1) General rules

(A) All families

For purposes of subsection (b)(1)(B)(i) of this section, a recipient is engaged in work for a month in a fiscal year if the recipient is participating in work activities for at least the minimum average number of hours per week specified in the following table during the month, not fewer than 20 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d) of this section, subject to this subsection:

If the month is in fiscal year:	The minimum average number of hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30.

(B) 2-parent families

For purposes of subsection (b)(2)(B) of this section, an individual is engaged in work for a month in a fiscal year if—

(i) the individual and the other parent in the family are participating in work ac-

tivities for a total of at least 35 hours per week during the month, not fewer than 30 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d) of this section, subject to this subsection; and

(ii) if the family of the individual receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, the individual and the other parent in the family are participating in work activities for a total of at least 55 hours per week during the month, not fewer than 50 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d) of this section.

(2) Limitations and special rules

(A) Number of weeks for which job search counts as work

(i) Limitation

Notwithstanding paragraph (1) of this subsection, an individual shall not be considered to be engaged in work by virtue of participation in an activity described in subsection (d)(6) of this section of a State program funded under this part, after the individual has participated in such an activity for 6 weeks (or, if the unemployment rate of the State is at least 50 percent greater than the unemployment rate of the United States or the State is a needy State (within the meaning of section 603(b)(6) of this title), 12 weeks), or if the participation is for a week that immediately follows 4 consecutive weeks of such participation.

(ii) Limited authority to count less than full week of participation

For purposes of clause (i) of this subparagraph, on not more than 1 occasion per individual, the State shall consider participation of the individual in an activity described in subsection (d)(6) of this section for 3 or 4 days during a week as a week of participation in the activity by the individual.

(B) Single parent or relative with child under age 6 deemed to be meeting work participation requirements if parent or relative is engaged in work for 20 hours per week

For purposes of determining monthly participation rates under subsection (b)(1)(B)(i) of this section, a recipient who is the only parent or caretaker relative in the family of a child who has not attained 6 years of age is deemed to be engaged in work for a month if the recipient is engaged in work for an average of at least 20 hours per week during the month.

(C) Single teen head of household or married teen who maintains satisfactory school attendance deemed to be meeting work participation requirements

For purposes of determining monthly participation rates under subsection (b)(1)(B)(i) of this section, a recipient who is married or a head of household and has not attained 20 years of age is deemed to be engaged in work for a month in a fiscal year if the recipient—

(i) maintains satisfactory attendance at secondary school or the equivalent during the month; or

(ii) participates in education directly related to employment for an average of at least 20 hours per week during the month.

(D) Limitation on number of persons who may be treated as engaged in work by reason of participation in educational activities

For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b) of this section, not more than 30 percent of the number of individuals in all families and in 2-parent families, respectively, in a State who are treated as engaged in work for a month may consist of individuals who are determined to be engaged in work for the month by reason of participation in vocational educational training, or (if the month is in fiscal year 2000 or thereafter) deemed to be engaged in work for the month by reason of subparagraph (C) of this paragraph.

(d) "Work activities" defined

As used in this section, the term ''work activities'' means—

(1) unsubsidized employment;

(2) subsidized private sector employment;

(3) subsidized public sector employment;

(4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;

(5) on-the-job training;

(6) job search and job readiness assistance;

(7) community service programs;

(8) vocational educational training (not to exceed 12 months with respect to any individual);

(9) job skills training directly related to employment;

(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and

(12) the provision of child care services to an individual who is participating in a community service program.

(e) Penalties against individuals

(1) In general

Except as provided in paragraph (2), if an individual in a family receiving assistance under the State program funded under this part refuses to engage in work required in accordance with this section, the State shall—

(A) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the individual so refuses; or

(B) terminate such assistance,

subject to such good cause and other exceptions as the State may establish.

(2) Exception

Notwithstanding paragraph (1), a State may not reduce or terminate assistance under the State program funded under this part based on a refusal of an individual to engage in work required in accordance with this section if the individual is a single custodial parent caring for a child who has not attained 6 years of age, and the individual proves that the individual has a demonstrated inability (as determined by the State) to obtain needed child care, for 1 or more of the following reasons:

(A) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site.

(B) Unavailability or unsuitability of informal child care by a relative or under other arrangements.

(C) Unavailability of appropriate and affordable formal child care arrangements.

(f) Nondisplacement in work activities

(1) In general

Subject to paragraph (2), an adult in a family receiving assistance under a State program funded under this part attributable to funds provided by the Federal Government may fill a vacant employment position in order to engage in a work activity described in subsection (d) of this section.

(2) No filling of certain vacancies

No adult in a work activity described in subsection (d) of this section which is funded, in whole or in part, by funds provided by the Federal Government shall be employed or assigned—

(A) when any other individual is on layoff from the same or any substantially equivalent job; or

(B) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with an adult described in paragraph (1).

(3) Grievance procedure

A State with a program funded under this part shall establish and maintain a grievance procedure for resolving complaints of alleged violations of paragraph (2).

(4) No preemption

Nothing in this subsection shall preempt or supersede any provision of State or local law that provides greater protection for employees from displacement.

(g) Sense of Congress

It is the sense of the Congress that in complying with this section, each State that operates a program funded under this part is encouraged to assign the highest priority to requiring adults in 2-parent families and adults in single-parent families that include older preschool or school-age children to be engaged in work activities.

(h) Sense of Congress that States should impose certain requirements on noncustodial, nonsupporting minor parents

It is the sense of the Congress that the States should require noncustodial, nonsupporting parents who have not attained 18 years of age to fulfill community work obligations and attend appropriate parenting or money management classes after school.

(i) Review of implementation of State work programs

During fiscal year 1999, the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate shall hold hearings and engage in other appropriate activities to review the implementation of this section by the States, and shall invite the Governors of the States to testify before them regarding such implementation. Based on such hearings, such Committees may introduce such legislation as may be appropriate to remedy any problems with the State programs operated pursuant to this section.

(Aug. 14, 1935, ch. 531, title IV, § 407, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2129; amended Pub. L. 105–33, title V, §§ 5003(a), 5504, 5514(c), Aug. 5, 1997, 111 Stat. 594, 609, 620.)

PRIOR PROVISIONS

A prior section 607, act Aug. 14, 1935, ch. 531, title IV, § 407, as added May 8, 1961, Pub. L. 87–31, § 1, 75 Stat. 75; amended July 25, 1962, Pub. L. 87–543, title I, §§ 104(a)(3)(E), 131(a), 134, 76 Stat. 185, 193, 196; Oct. 13, 1964, Pub. L. 88–641, § 2(b), 78 Stat. 1042; June 29, 1967, Pub. L. 90–36, § 2, 81 Stat. 94; Jan. 2, 1968, Pub. L. 90–248, title II, § 203(a), 81 Stat. 882; June 28, 1968, Pub. L. 90–364, title III, § 302, 82 Stat. 273; Dec. 28, 1971, Pub. L. 92–223, § 3(a)(10), (11), 85 Stat. 805; Oct. 20, 1976, Pub. L. 94–566, title V, § 507(a), (b), (d), 90 Stat. 2688; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §§ 2313(a), (c)(2), 2353(q), 95 Stat. 853, 854, 874; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(4), (j)(3)(B)(ii), 98 Stat. 1166, 1171; Oct. 13, 1988, Pub. L. 100–485, title II, § 202(b)(7)–(11), title IV, § 401(a)(2)(B), (C), (b)(1), (3), (c), (h), 102 Stat. 2377, 2378, 2394–2396; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8105(1)–(3), (5), 102 Stat. 3797; Dec. 19, 1989, Pub. L. 101–239, title X, § 10403(a)(1)(A)(i), (2), 103 Stat. 2487, 2488; Nov. 5, 1990, Pub. L. 101–508, title V, §§ 5061(a), 5062(a), 104 Stat. 1388–231, 1388–232, related to dependent children of unemployed parents, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

1997—Pub. L. 105–33, § 5514(c), made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

Subsec. (b)(2)(C). Pub. L. 105–33, § 5504(a), added subpar. (C).

Subsec. (b)(3). Pub. L. 105–33, § 5504(b), inserted ''and not resulting from changes in State eligibility criteria'' after ''Federal law'' in heading.

Subsec. (b)(4). Pub. L. 105–33, § 5504(c), inserted ''or tribal work program'' after ''assistance plan'' in heading and ''or under a tribal work program to which funds are provided under this part'' before period at end of text.

Subsec. (c)(1)(B). Pub. L. 105–33, § 5504(e), substituted ''participating'' for ''making progress'' in cls. (i) and (ii).

Subsec. (c)(1)(B)(i). Pub. L. 105–33, § 5504(d)(1), substituted ''and the other parent in the family are'' for ''is'' and inserted ''a total of'' before ''at least''.

Subsec. (c)(1)(B)(ii). Pub. L. 105–33, § 5504(d)(2), substituted ''individual and the other parent in the family are'' for ''individual's spouse is'', inserted ''for a total of at least 55 hours per week'' before ''during the month'', and substituted ''50'' for ''20'' and ''(6), (7), (8), or (12)'' for ''or (7)''.

Subsec. (c)(2)(A)(i). Pub. L. 105–33, § 5504(f), inserted ''or the State is a needy State (within the meaning of section 603(b)(6) of this title)'' after ''United States''.

Subsec. (c)(2)(B). Pub. L. 105–33, § 5504(g), inserted ''or relative'' after ''parent'' in two places in heading and substituted ''who is the only parent or caretaker relative in the family'' for ''in a 1-parent family who is the parent''.

Subsec. (c)(2)(C). Pub. L. 105–33, § 5504(h), in heading substituted ''Single teen head of household or married teen'' for ''Teen head of household'' and, in introductory provisions, substituted ''married or a'' for ''a single'' and struck out '', subject to subparagraph (D) of this paragraph,'' after ''is deemed''.

Subsec. (c)(2)(C)(ii). Pub. L. 105–33, § 5504(i), substituted ''an average of at least 20 hours per week during the month'' for ''at least the minimum average number of hours per week specified in the table set forth in paragraph (1)(A) of this subsection''.

Subsec. (c)(2)(D). Pub. L. 105–33, § 5003(a), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b) of this section, not more than 20 percent of individuals in all families and in 2-parent families may be determined to be engaged in work in the State for a month by reason of participation in vocational educational training or deemed to be engaged in work by reason of subparagraph (C) of this paragraph.''

Subsec. (e)(2). Pub. L. 105–33, § 5504(j), substituted ''engage in work required in accordance with this section'' for ''work'' in introductory provisions.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5003(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].''

Amendment by section 5504 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 608. Prohibitions; requirements

(a) In general

(1) No assistance for families without a minor child

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to a family, unless the family includes a minor child who resides with the family (consistent with paragraph (10)) or a pregnant individual.

(2) Reduction or elimination of assistance for noncooperation in establishing paternity or obtaining child support

If the agency responsible for administering the State plan approved under part D of this subchapter determines that an individual is not cooperating with the State in establishing paternity or in establishing, modifying, or enforcing a support order with respect to a child of the individual, and the individual does not qualify for any good cause or other exception established by the State pursuant to section 654(29) of this title, then the State—

(A) shall deduct from the assistance that would otherwise be provided to the family of the individual under the State program funded under this part an amount equal to not less than 25 percent of the amount of such assistance; and

(B) may deny the family any assistance under the State program.

(3) No assistance for families not assigning certain support rights to the State

(A) In general

A State to which a grant is made under section 603 of this title shall require, as a condition of providing assistance to a family under the State program funded under this part, that a member of the family assign to the State any rights the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so provided to the family, which accrue (or have accrued) before the date the family ceases to receive assistance under the program, which assignment, on and after such date, shall not apply with respect to any support (other than support collected pursuant to section 664 of this title) which accrued before the family received such assistance and which the State has not collected by—

(i)(I) September 30, 2000, if the assignment is executed on or after October 1, 1997, and before October 1, 2000; or

(II) the date the family ceases to receive assistance under the program, if the assignment is executed on or after October 1, 2000; or

(ii) if the State elects to distribute collections under section 657(a)(6) of this title, the date the family ceases to receive assistance under the program, if the assignment is executed on or after October 1, 1998.

(B) Limitation

A State to which a grant is made under section 603 of this title shall not require, as a condition of providing assistance to any family under the State program funded under this part, that a member of the family assign to the State any rights to support described in subparagraph (A) which accrue

after the date the family ceases to receive assistance under the program.

(4) No assistance for teenage parents who do not attend high school or other equivalent training program

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to an individual who has not attained 18 years of age, is not married, has a minor child at least 12 weeks of age in his or her care, and has not successfully completed a high-school education (or its equivalent), if the individual does not participate in—

(A) educational activities directed toward the attainment of a high school diploma or its equivalent; or

(B) an alternative educational or training program that has been approved by the State.

(5) No assistance for teenage parents not living in adult-supervised settings

(A) In general

(i) Requirement

Except as provided in subparagraph (B), a State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to an individual described in clause (ii) of this subparagraph if the individual and the minor child referred to in clause (ii)(II) do not reside in a place of residence maintained by a parent, legal guardian, or other adult relative of the individual as such parent's, guardian's, or adult relative's own home.

(ii) Individual described

For purposes of clause (i), an individual described in this clause is an individual who—

(I) has not attained 18 years of age; and

(II) is not married, and has a minor child in his or her care.

(B) Exception

(i) Provision of, or assistance in locating, adult-supervised living arrangement

In the case of an individual who is described in clause (ii), the State agency referred to in section 602(a)(4) of this title shall provide, or assist the individual in locating, a second chance home, maternity home, or other appropriate adult-supervised supportive living arrangement, taking into consideration the needs and concerns of the individual, unless the State agency determines that the individual's current living arrangement is appropriate, and thereafter shall require that the individual and the minor child referred to in subparagraph (A)(ii)(II) reside in such living arrangement as a condition of the continued receipt of assistance under the State program funded under this part attributable to funds provided by the Federal Government (or in an alternative appropriate arrangement, should circumstances change and the current arrangement cease to be appropriate).

(ii) Individual described

For purposes of clause (i), an individual is described in this clause if the individual is described in subparagraph (A)(ii), and—

(I) the individual has no parent, legal guardian, or other appropriate adult relative described in subclause (II) of his or her own who is living or whose whereabouts are known;

(II) no living parent, legal guardian, or other appropriate adult relative, who would otherwise meet applicable State criteria to act as the individual's legal guardian, of such individual allows the individual to live in the home of such parent, guardian, or relative;

(III) the State agency determines that—

(aa) the individual or the minor child referred to in subparagraph (A)(ii)(II) is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the individual's own parent or legal guardian; or

(bb) substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the individual and the minor child lived in the same residence with the individual's own parent or legal guardian; or

(IV) the State agency otherwise determines that it is in the best interest of the minor child to waive the requirement of subparagraph (A) with respect to the individual or the minor child.

(iii) Second-chance home

For purposes of this subparagraph, the term ''second-chance home'' means an entity that provides individuals described in clause (ii) with a supportive and supervised living arrangement in which such individuals are required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence and the well-being of their children.

(6) No medical services

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide medical services.

(B) Exception for prepregnancy family planning services

As used in subparagraph (A), the term ''medical services'' does not include prepregnancy family planning services.

(7) No assistance for more than 5 years

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to a family that includes an adult who has received assistance under any State program funded under this part attributable to funds

provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences, subject to this paragraph.

(B) Minor child exception

In determining the number of months for which an individual who is a parent or pregnant has received assistance under the State program funded under this part, the State shall disregard any month for which such assistance was provided with respect to the individual and during which the individual was—

(i) a minor child; and

(ii) not the head of a household or married to the head of a household.

(C) Hardship exception

(i) In general

The State may exempt a family from the application of subparagraph (A) by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

(ii) Limitation

The average monthly number of families with respect to which an exemption made by a State under clause (i) is in effect for a fiscal year shall not exceed 20 percent of the average monthly number of families to which assistance is provided under the State program funded under this part during the fiscal year or the immediately preceding fiscal year (but not both), as the State may elect.

(iii) Battered or subject to extreme cruelty defined

For purposes of clause (i), an individual has been battered or subjected to extreme cruelty if the individual has been subjected to—

(I) physical acts that resulted in, or threatened to result in, physical injury to the individual;

(II) sexual abuse;

(III) sexual activity involving a dependent child;

(IV) being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

(V) threats of, or attempts at, physical or sexual abuse;

(VI) mental abuse; or

(VII) neglect or deprivation of medical care.

(D) Disregard of months of assistance received by adult while living in Indian country or an Alaskan Native village with 50 percent unemployment

(i) In general

In determining the number of months for which an adult has received assistance under a State or tribal program funded under this part, the State or tribe shall disregard any month during which the adult lived in Indian country or an Alaskan Native village if the most reliable data available with respect to the month (or a period including the month) indicate that at least 50 percent of the adults living in Indian country or in the village were not employed.

(ii) "Indian country" defined

As used in clause (i), the term ''Indian country'' has the meaning given such term in section 1151 of title 18.

(E) Rule of interpretation

Subparagraph (A) shall not be interpreted to require any State to provide assistance to any individual for any period of time under the State program funded under this part.

(F) Rule of interpretation

This part shall not be interpreted to prohibit any State from expending State funds not originating with the Federal Government on benefits for children or families that have become ineligible for assistance under the State program funded under this part by reason of subparagraph (A).

(G) Inapplicability to welfare-to-work grants and assistance

For purposes of subparagraph (A) of this paragraph, a grant made under section 603(a)(5) of this title shall not be considered a grant made under section 603 of this title, and noncash assistance from funds provided under section 603(a)(5) of this title shall not be considered assistance.

(8) Denial of assistance for 10 years to a person found to have fraudulently misrepresented residence in order to obtain assistance in 2 or more States

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide cash assistance to an individual during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from 2 or more States under programs that are funded under this subchapter, subchapter XIX of this chapter, or the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.], or benefits in 2 or more States under the supplemental security income program under subchapter XVI of this chapter. The preceding sentence shall not apply with respect to a conviction of an individual, for any month beginning after the President of the United States grants a pardon with respect to the conduct which was the subject of the conviction.

(9) Denial of assistance for fugitive felons and probation and parole violators

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to any individual who is—

(i) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt

to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

(ii) violating a condition of probation or parole imposed under Federal or State law.

The preceding sentence shall not apply with respect to conduct of an individual, for any month beginning after the President of the United States grants a pardon with respect to the conduct.

(B) Exchange of information with law enforcement agencies

If a State to which a grant is made under section 603 of this title establishes safeguards against the use or disclosure of information about applicants or recipients of assistance under the State program funded under this part, the safeguards shall not prevent the State agency administering the program from furnishing a Federal, State, or local law enforcement officer, upon the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that—

(i) the recipient—

(I) is described in subparagraph (A); or

(II) has information that is necessary for the officer to conduct the official duties of the officer; and

(ii) the location or apprehension of the recipient is within such official duties.

(10) Denial of assistance for minor children who are absent from the home for a significant period

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance for a minor child who has been, or is expected by a parent (or other caretaker relative) of the child to be, absent from the home for a period of 45 consecutive days or, at the option of the State, such period of not less than 30 and not more than 180 consecutive days as the State may provide for in the State plan submitted pursuant to section 602 of this title.

(B) State authority to establish good cause exceptions

The State may establish such good cause exceptions to subparagraph (A) as the State considers appropriate if such exceptions are provided for in the State plan submitted pursuant to section 602 of this title.

(C) Denial of assistance for relative who fails to notify State agency of absence of child

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance for an individual who is a parent (or other caretaker relative) of a minor child and who fails to notify the agency administering the State program funded under this part of the absence of the minor child from the home for the period specified in or provided for pursuant to subparagraph (A), by the end of the 5-day period that begins with the date that it becomes clear to the parent (or relative) that the minor child will be absent for such period so specified or provided for.

(11) Medical assistance required to be provided for certain families having earnings from employment or child support

(A) Earnings from employment

A State to which a grant is made under section 603 of this title and which has a State plan approved under subchapter XIX of this chapter shall provide that in the case of a family that is treated (under section 1396u–1(b)(1)(A) of this title for purposes of subchapter XIX of this chapter) as receiving aid under a State plan approved under this part (as in effect on July 16, 1996), that would become ineligible for such aid because of hours of or income from employment of the caretaker relative (as defined under this part as in effect on such date) or because of section 602(a)(8)(B)(ii)(II) of this title (as so in effect), and that was so treated as receiving such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under subchapter XIX of this chapter for an extended period or periods as provided in section 1396r–6 or 1396a(e)(1) of this title (as applicable), and that the family will be appropriately notified of such extension as required by section 1396r–6(a)(2) of this title.

(B) Child support

A State to which a grant is made under section 603 of this title and which has a State plan approved under subchapter XIX of this chapter shall provide that in the case of a family that is treated (under section 1396u–1(b)(1)(A) of this title for purposes of subchapter XIX of this chapter) as receiving aid under a State plan approved under this part (as in effect on July 16, 1996), that would become ineligible for such aid as a result (wholly or partly) of the collection of child or spousal support under part D of this subchapter and that was so treated as receiving such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under subchapter XIX of this chapter for an extended period or periods as provided in section 1396u–1(c)(1) of this title.

(b) Individual responsibility plans

(1) Assessment

The State agency responsible for administering the State program funded under this part shall make an initial assessment of the skills, prior work experience, and employability of each recipient of assistance under the program who—

(A) has attained 18 years of age; or

(B) has not completed high school or obtained a certificate of high school equivalency, and is not attending secondary school.

(2) Contents of plans

(A) In general

On the basis of the assessment made under subsection (a) of this section with respect to an individual, the State agency, in consultation with the individual, may develop an individual responsibility plan for the individual, which—

(i) sets forth an employment goal for the individual and a plan for moving the individual immediately into private sector employment;

(ii) sets forth the obligations of the individual, which may include a requirement that the individual attend school, maintain certain grades and attendance, keep school age children of the individual in school, immunize children, attend parenting and money management classes, or do other things that will help the individual become and remain employed in the private sector;

(iii) to the greatest extent possible is designed to move the individual into whatever private sector employment the individual is capable of handling as quickly as possible, and to increase the responsibility and amount of work the individual is to handle over time;

(iv) describes the services the State will provide the individual so that the individual will be able to obtain and keep employment in the private sector, and describe the job counseling and other services that will be provided by the State; and

(v) may require the individual to undergo appropriate substance abuse treatment.

(B) Timing

The State agency may comply with paragraph (1) with respect to an individual—

(i) within 90 days (or, at the option of the State, 180 days) after the effective date of this part, in the case of an individual who, as of such effective date, is a recipient of aid under the State plan approved under part A of this subchapter (as in effect immediately before such effective date); or

(ii) within 30 days (or, at the option of the State, 90 days) after the individual is determined to be eligible for such assistance, in the case of any other individual.

(3) Penalty for noncompliance by individual

In addition to any other penalties required under the State program funded under this part, the State may reduce, by such amount as the State considers appropriate, the amount of assistance otherwise payable under the State program to a family that includes an individual who fails without good cause to comply with an individual responsibility plan signed by the individual.

(4) State discretion

The exercise of the authority of this subsection shall be within the sole discretion of the State.

(c) Sanctions against recipients not considered wage reductions

A penalty imposed by a State against the family of an individual by reason of the failure of the individual to comply with a requirement under the State program funded under this part shall not be construed to be a reduction in any wage paid to the individual.

(d) Nondiscrimination provisions

The following provisions of law shall apply to any program or activity which receives funds provided under this part:

(1) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

(2) Section 794 of title 29.

(3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(e) Special rules relating to treatment of certain aliens

For special rules relating to the treatment of certain aliens, see title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(f) Special rules relating to treatment of non-213A aliens

The following rules shall apply if a State elects to take the income or resources of any sponsor of a non-213A alien into account in determining whether the alien is eligible for assistance under the State program funded under this part, or in determining the amount or types of such assistance to be provided to the alien:

(1) Deeming of sponsor's income and resources

For a period of 3 years after a non-213A alien enters the United States:

(A) Income deeming rule

The income of any sponsor of the alien and of any spouse of the sponsor is deemed to be income of the alien, to the extent that the total amount of the income exceeds the sum of—

(i) the lesser of—

(I) 20 percent of the total of any amounts received by the sponsor or any such spouse in the month as wages or salary or as net earnings from self-employment, plus the full amount of any costs incurred by the sponsor and any such spouse in producing self-employment income in such month; or

(II) $175;

(ii) the cash needs standard established by the State for purposes of determining eligibility for assistance under the State program funded under this part for a family of the same size and composition as the sponsor and any other individuals living in the same household as the sponsor who are claimed by the sponsor as dependents for purposes of determining the sponsor's Federal personal income tax liability but whose needs are not taken into account in determining whether the sponsor's family has met the cash needs standard;

(iii) any amounts paid by the sponsor or any such spouse to individuals not living in the household who are claimed by the sponsor as dependents for purposes of determining the sponsor's Federal personal income tax liability; and

(iv) any payments of alimony or child support with respect to individuals not living in the household.

(B) Resource deeming rule

The resources of a sponsor of the alien and of any spouse of the sponsor are deemed to be resources of the alien to the extent that the aggregate value of the resources exceeds $1,500.

(C) Sponsors of multiple non-213A aliens

If a person is a sponsor of 2 or more non-213A aliens who are living in the same home, the income and resources of the sponsor and any spouse of the sponsor that would be deemed income and resources of any such alien under subparagraph (A) shall be divided into a number of equal shares equal to the number of such aliens, and the State shall deem the income and resources of each such alien to include 1 such share.

(2) Ineligibility of non-213A aliens sponsored by agencies; exception

A non-213A alien whose sponsor is or was a public or private agency shall be ineligible for assistance under a State program funded under this part, during a period of 3 years after the alien enters the United States, unless the State agency administering the program determines that the sponsor either no longer exists or has become unable to meet the alien's needs.

(3) Information provisions

(A) Duties of non-213A aliens

A non-213A alien, as a condition of eligibility for assistance under a State program funded under this part during the period of 3 years after the alien enters the United States, shall be required to provide to the State agency administering the program—

(i) such information and documentation with respect to the alien's sponsor as may be necessary in order for the State agency to make any determination required under this subsection, and to obtain any cooperation from the sponsor necessary for any such determination; and

(ii) such information and documentation as the State agency may request and which the alien or the alien's sponsor provided in support of the alien's immigration application.

(B) Duties of Federal agencies

The Secretary shall enter into agreements with the Secretary of State and the Attorney General under which any information available to them and required in order to make any determination under this subsection will be provided by them to the Secretary (who may, in turn, make the information available, upon request, to a concerned State agency).

(4) "Non-213A alien" defined

An alien is a non-213A alien for purposes of this subsection if the affidavit of support or similar agreement with respect to the alien that was executed by the sponsor of the alien's entry into the United States was executed other than pursuant to section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a].

(5) Inapplicability to alien minor sponsored by a parent

This subsection shall not apply to an alien who is a minor child if the sponsor of the alien or any spouse of the sponsor is a parent of the alien.

(6) Inapplicability to certain categories of aliens

This subsection shall not apply to an alien who is—

(A) admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157];

(B) paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for a period of at least 1 year; or

(C) granted political asylum by the Attorney General under section 208 of such Act [8 U.S.C. 1158].

(g) State required to provide certain information

Each State to which a grant is made under section 603 of this title shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the State knows is not lawfully present in the United States.

(Aug. 14, 1935, ch. 531, title IV, § 408, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2134; amended Pub. L. 105–33, title V, §§ 5001(d), (h)(1), 5505, 5514(c), 5532(b)(2), 5581(a), Aug. 5, 1997, 111 Stat. 591, 593, 610, 620, 626, 642.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in subsec. (a)(2), (11)(B), is classified to section 651 et seq. of this title.

The Food Stamp Act of 1977, referred to in subsec. (a)(8), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

For effective date of this part, referred to in subsec. (b)(2)(B)(i), see Effective Date note set out below.

The Age Discrimination Act of 1975, referred to in subsec. (d)(1), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (d)(3), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to chapter 126 (§ 12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (d)(4), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (e), is title IV (§ 400 et seq.) of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2260. For complete classification of title IV to the Code, see Tables.

PRIOR PROVISIONS

A prior section 608, act Aug. 14, 1935, ch. 531, title IV, § 408, as added Dec. 19, 1989, Pub. L. 101–239, title VIII,

§ 8004(a), 103 Stat. 2454; amended Oct. 31, 1994, Pub. L. 103–432, title II, § 265(a), 108 Stat. 4469, related to AFDC quality control system, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

Another prior section 608, act Aug. 14, 1935, ch. 531, title IV, § 408, as added May 8, 1961, Pub. L. 87–31, § 2, 75 Stat. 76; amended July 25, 1962, Pub. L. 87–543, title I, §§ 101(b)(2)(D), 104(a)(3)(F), (G), 131(b), 135(a)–(d), 155(a), 76 Stat. 180, 185, 193, 196, 197, 207; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 201(e)(4), 205(c), 81 Stat. 880, 892; June 17, 1980, Pub. L. 96–272, title I, §§ 101(a)(5)(A), 102(b), 94 Stat. 513, 515, related to payment to States for foster home care of dependent children, prior to repeal by Pub. L. 96–272, title I, § 101(a)(2), June 17, 1980, 94 Stat. 512, effective, with certain exceptions, to expenditures made after Sept. 30, 1980.

AMENDMENTS

1997—Pub. L. 105–33, § 5514(c), made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

Subsec. (a)(1). Pub. L. 105–33, § 5505(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to a family—

''(A) unless the family includes—

''(i) a minor child who resides with a custodial parent or other adult caretaker relative of the child; or

''(ii) a pregnant individual; and

''(B) if the family includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences (unless an exception described in subparagraph (B), (C), or (D) of paragraph (7) applies).''

Subsec. (a)(3). Pub. L. 105–33, § 5505(b), substituted ''ceases to receive assistance under'' for ''leaves'' in introductory provisions and cl. (ii) of subpar. (A) and in subpar. (B) and substituted ''after such date'' for ''after the date the family leaves the program'' in introductory provisions of subpar. (A).

Subsec. (a)(3)(A). Pub. L. 105–33, § 5532(b)(2), redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i) and added a new cl. (ii).

Subsec. (a)(5)(A)(ii). Pub. L. 105–33, § 5505(c), made technical correction to heading in original.

Subsec. (a)(7)(C)(ii). Pub. L. 105–33, § 5505(d)(1), substituted ''The average monthly number'' for ''The number'' and inserted ''during the fiscal year or the immediately preceding fiscal year (but not both), as the State may elect'' before period at end.

Subsec. (a)(7)(D). Pub. L. 105–33, § 5505(d)(2), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''In determining the number of months for which an adult has received assistance under the State program funded under this part, the State shall disregard any month during which the adult lived on an Indian reservation or in an Alaskan Native village if, during the month—

''(i) at least 1,000 individuals were living on the reservation or in the village; and

''(ii) at least 50 percent of the adults living on the reservation or in the village were unemployed.''

Subsec. (a)(7)(G). Pub. L. 105–33, § 5001(d), added subpar. (G).

Subsecs. (c), (d). Pub. L. 105–33, § 5001(h)(1), added subsec. (c) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 105–33, § 5505(e), added subsec. (e) and struck out heading and text of former subsec. (e). Text read as follows: ''For special rules relating to the treatment of aliens, see section 1612 of title 8.''

Pub. L. 105–33, § 5001(h)(1)(A), redesignated subsec. (d) as (e).

Subsec. (f). Pub. B. 105–33, § 5505(e), added subsec. (f).

Subsec. (g). Pub. L. 105–33, § 5581(a), added subsec. (g).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5001(h)(2) of Pub. L. 105–33 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].''

Amendment by section 5505 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Pub. L. 105–33, title V, § 5557, Aug. 5, 1997, 111 Stat. 637, as amended by Pub. L. 105–200, title IV, § 410(e)(1), July 16, 1998, 112 Stat. 673, provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this chapter [chapter 3 (§§ 5531–5557) of subtitle F of title V of Pub. L. 105–33, amending this section, sections 652 to 654, 654b, 655, 656, 657 to 659, 663, 664, and 666 of this title, section 1738B of Title 28, Judiciary and Judicial Procedure, and provisions set out as a note under section 655 of this title] shall take effect as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105).

''(b) EXCEPTION.—The amendments made by section 5532(b)(2) of this Act [amending this section] shall take effect as if the amendments had been included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2112). The amendment made by section 5536(1)(A) [amending section 666 of this title] shall not take effect with respect to a State until October 1, 2000, or such earlier date as the State may select.''

[Pub. L. 105–200, title IV, § 410(e)(2), July 16, 1998, 112 Stat. 673, provided that: ''The amendment made by paragraph (1) [amending section 5557 of Pub. L. 105–33, set out above] shall take effect as if included in the enactment of section 5557 of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 637).'']

Section 5581(a) of Pub. L. 105–33 provided that the amendment made by that section is effective July 1, 1997.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 608a. Fraud under means-tested welfare and public assistance programs

(a) In general

If an individual's benefits under a Federal, State, or local law relating to a means-tested

welfare or a public assistance program are reduced because of an act of fraud by the individual under the law or program, the individual may not, for the duration of the reduction, receive an increased benefit under any other means-tested welfare or public assistance program for which Federal funds are appropriated as a result of a decrease in the income of the individual (determined under the applicable program) attributable to such reduction.

(b) Welfare or public assistance programs for which Federal funds are appropriated

For purposes of subsection (a) of this section, the term ''means-tested welfare or public assistance program for which Federal funds are appropriated'' includes the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), any program of public or assisted housing under title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), and any State program funded under this part.

(Pub. L. 104–193, title IX, § 911, Aug. 22, 1996, 110 Stat. 2353.)

REFERENCES IN TEXT

The Food Stamp Act of 1977, referred to in subsec. (b), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The United States Housing Act of 1937, referred to in subsec. (b), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended. Title I of the Act is classified generally to subchapter I (§ 1437 et seq.) of chapter 8 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

CODIFICATION

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Social Security Act which comprises this chapter.

§ 609. Penalties

(a) In general

Subject to this section:

(1) Use of grant in violation of this part

(A) General penalty

If an audit conducted under chapter 75 of title 31 finds that an amount paid to a State under section 603 of this title for a fiscal year has been used in violation of this part, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter by the amount so used.

(B) Enhanced penalty for intentional violations

If the State does not prove to the satisfaction of the Secretary that the State did not intend to use the amount in violation of this part, the Secretary shall further reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter by an amount equal to 5 percent of the State family assistance grant.

(C) Penalty for misuse of competitive welfare-to-work funds

If the Secretary of Labor finds that an amount paid to an entity under section 603(a)(5)(B) of this title has been used in violation of subparagraph (B) or (C) of section 603(a)(5) of this title, the entity shall remit to the Secretary of Labor an amount equal to the amount so used.

(2) Failure to submit required report

(A) In general

If the Secretary determines that a State has not, within 45 days after the end of a fiscal quarter, submitted the report required by section 611(a) of this title for the quarter, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to 4 percent of the State family assistance grant.

(B) Rescission of penalty

The Secretary shall rescind a penalty imposed on a State under subparagraph (A) with respect to a report if the State submits the report before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the report was required.

(3) Failure to satisfy minimum participation rates

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title for a fiscal year has failed to comply with section 607(a) of this title for the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to the applicable percentage of the State family assistance grant.

(B) "Applicable percentage" defined

As used in subparagraph (A), the term ''applicable percentage'' means, with respect to a State—

(i) if a penalty was not imposed on the State under subparagraph (A) for the immediately preceding fiscal year, 5 percent; or

(ii) if a penalty was imposed on the State under subparagraph (A) for the immediately preceding fiscal year, the lesser of—

(I) the percentage by which the grant payable to the State under section 603(a)(1) of this title was reduced for such preceding fiscal year, increased by 2 percentage points; or

(II) 21 percent.

(C) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance, and may reduce the penalty if the noncompliance is due to circumstances that caused the State to become a needy State (as defined in section 603(b)(6) of this title) during the fiscal year or if the noncompli-

ance is due to extraordinary circumstances such as a natural disaster or regional recession. The Secretary shall provide a written report to Congress to justify any waiver or penalty reduction due to such extraordinary circumstances.

(4) Failure to participate in the income and eligibility verification system

If the Secretary determines that a State program funded under this part is not participating during a fiscal year in the income and eligibility verification system required by section 1320b–7 of this title, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not more than 2 percent of the State family assistance grant.

(5) Failure to comply with paternity establishment and child support enforcement requirements under part D

Notwithstanding any other provision of this chapter, if the Secretary determines that the State agency that administers a program funded under this part does not enforce the penalties requested by the agency administering part D of this subchapter against recipients of assistance under the State program who fail to cooperate in establishing paternity or in establishing, modifying, or enforcing a child support order in accordance with such part and who do not qualify for any good cause or other exception established by the State under section 654(29) of this title, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year (without regard to this section) by not more than 5 percent.

(6) Failure to timely repay a Federal Loan Fund for State Welfare Programs

If the Secretary determines that a State has failed to repay any amount borrowed from the Federal Loan Fund for State Welfare Programs established under section 606 of this title within the period of maturity applicable to the loan, plus any interest owed on the loan, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter (without regard to this section) by the outstanding loan amount, plus the interest owed on the outstanding amount. The Secretary shall not forgive any outstanding loan amount or interest owed on the outstanding amount.

(7) Failure of any State to maintain certain level of historic effort

(A) In general

The Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for fiscal year 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, or 2007 by the amount (if any) by which qualified State expenditures for the then immediately preceding fiscal year are less than the applicable percentage of historic State expenditures with respect to such preceding fiscal year.

(B) Definitions

As used in this paragraph:

(i) Qualified State expenditures

(I) In general

The term ''qualified State expenditures'' means, with respect to a State and a fiscal year, the total expenditures by the State during the fiscal year, under all State programs, for any of the following with respect to eligible families:

(aa) Cash assistance, including any amount collected by the State as support pursuant to a plan approved under part D of this subchapter, on behalf of a family receiving assistance under the State program funded under this part, that is distributed to the family under section 657(a)(1)(B) of this title and disregarded in determining the eligibility of the family for, and the amount of, such assistance.

(bb) Child care assistance.

(cc) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons who are not members of an eligible family.

(dd) Administrative costs in connection with the matters described in items (aa), (bb), (cc), and (ee), but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year.

(ee) Any other use of funds allowable under section 604(a)(1) of this title.

(II) Exclusion of transfers from other State and local programs

Such term does not include expenditures under any State or local program during a fiscal year, except to the extent that—

(aa) the expenditures exceed the amount expended under the State or local program in the fiscal year most recently ending before August 22, 1996; or

(bb) the State is entitled to a payment under former section 603 of this title (as in effect immediately before August 22, 1996) with respect to the expenditures.

(III) Exclusion of amounts expended to replace penalty grant reductions

Such term does not include any amount expended in order to comply with paragraph (12).

(IV) Eligible families

As used in subclause (I), the term ''eligible families'' means families eligible for assistance under the State program funded under this part, families that would be eligible for such assistance but

for the application of section 608(a)(7) of this title, and families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(ii) Applicable percentage

The term ''applicable percentage'' means for fiscal years 1997 through 2006, 80 percent (or, if the State meets the requirements of section 607(a) of this title for the fiscal year, 75 percent).

(iii) Historic State expenditures

The term ''historic State expenditures'' means, with respect to a State, the lesser of—

(I) the expenditures by the State under parts A and F of this subchapter (as in effect during fiscal year 1994) for fiscal year 1994; or

(II) the amount which bears the same ratio to the amount described in subclause (I) as—

(aa) the State family assistance grant, plus the total amount required to be paid to the State under former section 603 of this title for fiscal year 1994 with respect to amounts expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994); bears to

(bb) the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994.

Such term does not include any expenditures under the State plan approved under part A of this subchapter (as so in effect) on behalf of individuals covered by a tribal family assistance plan approved under section 612 of this title, as determined by the Secretary.

(iv) Expenditures by the State

The term ''expenditures by the State'' does not include—

(I) any expenditure from amounts made available by the Federal Government;

(II) any State funds expended for the medicaid program under subchapter XIX of this chapter;

(III) any State funds which are used to match Federal funds provided under section 603(a)(5) of this title; or

(IV) any State funds which are expended as a condition of receiving Federal funds other than under this part.

Notwithstanding subclause (IV) of the preceding sentence, such term includes expenditures by a State for child care in a fiscal year to the extent that the total amount of the expenditures does not exceed the amount of State expenditures in fiscal year 1994 or 1995 (whichever is the greater) that equal the non-Federal share for the programs described in section 618(a)(1)(A) of this title.

(v) Source of data

In determining expenditures by a State for fiscal years 1994 and 1995, the Secretary shall use information which was reported by the State on ACF Form 231 or (in the case of expenditures under part F of this subchapter) ACF Form 331, available as of the dates specified in clauses (ii) and (iii) of section 603(a)(1)(D)[1] of this title.

(8) Noncompliance of State child support enforcement program with requirements of part D

(A) In general

If the Secretary finds, with respect to a State's program under part D of this subchapter, in a fiscal year beginning on or after October 1, 1997—

(i)(I) on the basis of data submitted by a State pursuant to section 654(15)(B) of this title, or on the basis of the results of a review conducted under section 652(a)(4) of this title, that the State program failed to achieve the paternity establishment percentages (as defined in section 652(g)(2) of this title), or to meet other performance measures that may be established by the Secretary;

(II) on the basis of the results of an audit or audits conducted under section 652(a)(4)(C)(i) of this title that the State data submitted pursuant to section 654(15)(B) of this title is incomplete or unreliable; or

(III) on the basis of the results of an audit or audits conducted under section 652(a)(4)(C) of this title that a State failed to substantially comply with 1 or more of the requirements of part D of this subchapter (other than paragraph (24), or subparagraph (A) or (B)(i) of paragraph (27), of section 654 of this title); and

(ii) that, with respect to the succeeding fiscal year—

(I) the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance as described in subparagraph (A)(i); or

(II) the data submitted by the State pursuant to section 654(15)(B) of this title is incomplete or unreliable;

the amounts otherwise payable to the State under this part for quarters following the end of such succeeding fiscal year, prior to quarters following the end of the first quarter throughout which the State program has achieved the paternity establishment percentages or other performance measures as described in subparagraph (A)(i)(I), or is in substantial compliance with 1 or more of the requirements of part D of this subchapter as described in subparagraph (A)(i)(III), as appropriate, shall be reduced by the percentage specified in subparagraph (B).

(B) Amount of reductions

The reductions required under subparagraph (A) shall be—

[1] See References in Text note below.

(i) not less than 1 nor more than 2 percent;

(ii) not less than 2 nor more than 3 percent, if the finding is the 2nd consecutive finding made pursuant to subparagraph (A); or

(iii) not less than 3 nor more than 5 percent, if the finding is the 3rd or a subsequent consecutive such finding.

(C) Disregard of noncompliance which is of a technical nature

For purposes of this section and section 652(a)(4) of this title, a State determined as a result of an audit—

(i) to have failed to have substantially complied with 1 or more of the requirements of part D of this subchapter shall be determined to have achieved substantial compliance only if the Secretary determines that the extent of the noncompliance is of a technical nature which does not adversely affect the performance of the State's program under part D of this subchapter; or

(ii) to have submitted incomplete or unreliable data pursuant to section 654(15)(B) of this title shall be determined to have submitted adequate data only if the Secretary determines that the extent of the incompleteness or unreliability of the data is of a technical nature which does not adversely affect the determination of the level of the State's paternity establishment percentages (as defined under section 652(g)(2) of this title) or other performance measures that may be established by the Secretary.

(9) Failure to comply with 5-year limit on assistance

If the Secretary determines that a State has not complied with section 608(a)(7) of this title during a fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to 5 percent of the State family assistance grant.

(10) Failure of State receiving amounts from Contingency Fund to maintain 100 percent of historic effort

If, at the end of any fiscal year during which amounts from the Contingency Fund for State Welfare Programs have been paid to a State, the Secretary finds that the qualified State expenditures (as defined in paragraph (7)(B)(i) (other than the expenditures described in subclause (I)(bb) of that paragraph)) under the State program funded under this part for the fiscal year are less than 100 percent of historic State expenditures (as defined in paragraph (7)(B)(iii) of this subsection), excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by the total of the amounts so paid to the State that the State has not remitted under section 603(b)(6) of this title.

(11) Failure to maintain assistance to adult single custodial parent who cannot obtain child care for child under age 6

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title for a fiscal year has violated section 607(e)(2) of this title during the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(12) Requirement to expend additional State funds to replace grant reductions; penalty for failure to do so

If the grant payable to a State under section 603(a)(1) of this title for a fiscal year is reduced by reason of this subsection, the State shall, during the immediately succeeding fiscal year, expend under the State program funded under this part an amount equal to the total amount of such reductions. If the State fails during such succeeding fiscal year to make the expenditure required by the preceding sentence from its own funds, the Secretary may reduce the grant payable to the State under section 603(a)(1) of this title for the fiscal year that follows such succeeding fiscal year by an amount equal to the sum of—

(A) not more than 2 percent of the State family assistance grant; and

(B) the amount of the expenditure required by the preceding sentence.

(13) Penalty for failure of State to maintain historic effort during year in which welfare-to-work grant is received

If a grant is made to a State under section 603(a)(5)(A) of this title for a fiscal year and paragraph (7) of this subsection requires the grant payable to the State under section 603(a)(1) of this title to be reduced for the immediately succeeding fiscal year, then the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for such succeeding fiscal year by the amount of the grant made to the State under section 603(a)(5)(A) of this title for the fiscal year.

(14) Penalty for failure to reduce assistance for recipients refusing without good cause to work

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title in a fiscal year has violated section 607(e) of this title during the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not less than 1 percent and not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(b) Reasonable cause exception

(1) In general

The Secretary may not impose a penalty on a State under subsection (a) of this section with respect to a requirement if the Secretary determines that the State has reasonable cause for failing to comply with the requirement.

(2) Exception

Paragraph (1) of this subsection shall not apply to any penalty under paragraph (6), (7), (8), (10), (12), or (13) of subsection (a) of this section.

(c) Corrective compliance plan

(1) In general

(A) Notification of violation

Before imposing a penalty against a State under subsection (a) of this section with respect to a violation of this part, the Secretary shall notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan in accordance with this subsection which outlines how the State will correct or discontinue, as appropriate, the violation and how the State will insure continuing compliance with this part.

(B) 60-day period to propose a corrective compliance plan

During the 60-day period that begins on the date the State receives a notice provided under subparagraph (A) with respect to a violation, the State may submit to the Federal Government a corrective compliance plan to correct or discontinue, as appropriate, the violation.

(C) Consultation about modifications

During the 60-day period that begins with the date the Secretary receives a corrective compliance plan submitted by a State in accordance with subparagraph (B), the Secretary may consult with the State on modifications to the plan.

(D) Acceptance of plan

A corrective compliance plan submitted by a State in accordance with subparagraph (B) is deemed to be accepted by the Secretary if the Secretary does not accept or reject the plan during 60-day period that begins on the date the plan is submitted.

(2) Effect of correcting or discontinuing violation

The Secretary may not impose any penalty under subsection (a) of this section with respect to any violation covered by a State corrective compliance plan accepted by the Secretary if the State corrects or discontinues, as appropriate[2] the violation pursuant to the plan.

[2] So in original. Probably should be followed by a comma.

(3) Effect of failing to correct or discontinue violation

The Secretary shall assess some or all of a penalty imposed on a State under subsection (a) of this section with respect to a violation if the State does not, in a timely manner, correct or discontinue, as appropriate, the violation pursuant to a State corrective compliance plan accepted by the Secretary.

(4) Inapplicability to certain penalties

This subsection shall not apply to the imposition of a penalty against a State under paragraph (6), (7), (8), (10), (12), or (13) of subsection (a) of this section.

(d) Limitation on amount of penalties

(1) In general

In imposing the penalties described in subsection (a) of this section, the Secretary shall not reduce any quarterly payment to a State by more than 25 percent.

(2) Carryforward of unrecovered penalties

To the extent that paragraph (1) of this subsection prevents the Secretary from recovering during a fiscal year the full amount of penalties imposed on a State under subsection (a) of this section for a prior fiscal year, the Secretary shall apply any remaining amount of such penalties to the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year.

(Aug. 14, 1935, ch. 531, title IV, § 409, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2142; amended Pub. L. 105–33, title V, §§ 5001(a)(2), (g), 5004(a), 5506, 5514(c), Aug. 5, 1997, 111 Stat. 589, 592, 594, 613, 620; Pub. L. 105–200, title I, § 101(b), July 16, 1998, 112 Stat. 647; Pub. L. 106–113, div. B, § 1000(a)(4) [title VIII, § 807(b)], Nov. 29, 1999, 113 Stat. 1535, 1501A–287; Pub. L. 106–169, title IV, § 401(b), Dec. 14, 1999, 113 Stat. 1858; Pub. L. 108–40, § 3(g), June 30, 2003, 117 Stat. 837; Pub. L. 108–89, title I, § 101(b)(3), Oct. 1, 2003, 117 Stat. 1131; Pub. L. 108–308, § 2(b)(3), Sept. 30, 2004, 118 Stat. 1135; Pub. L. 109–68, § 2(b)(2)(C), Sept. 21, 2005, 119 Stat. 2003.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in subsec. (a)(5), (7)(B)(i)(I)(aa), (8), is classified to section 651 et seq. of this title.

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(7)(B)(i)(IV), is title IV (§ 400 et seq.) of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2260. For complete classification of title IV to the Code, see Tables.

Part F of this subchapter, referred to in subsec. (a)(7)(B)(iii)(I), (v), was classified to section 681 et seq. of this title, prior to repeal by Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167.

Section 603(a)(1)(D) of this title, referred to in subsec. (a)(7)(B)(v), was repealed by Pub. L. 108–40, § 3(a)(2), June 30, 2003, 117 Stat. 836.

PRIOR PROVISIONS

A prior section 609, act Aug. 14, 1935, ch. 531, title IV, § 409, as added Nov. 5, 1990, Pub. L. 101–508, title V, § 5052(a), 104 Stat. 1388–228, related to exclusion from AFDC unit of child for whom Federal, State, or local foster care maintenance or adoption assistance payments were made, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

Another prior section 609, act Aug. 14, 1935, ch. 531, title IV, § 409, as added and amended July 25, 1962, Pub. L. 87–543, title I, §§ 101(b)(2)(E), 105(a), 76 Stat. 180, 186; Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2307(a), 95 Stat. 846; Sept. 3, 1982, Pub. L. 97–248, title I, § 154(c), 96 Stat. 397; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2627, 2641(a), 2663(c)(5), 98 Stat. 1136, 1146, 1166, related to community work experience programs, prior to repeal by Pub. L. 100–485, title II, §§ 202(b)(12), 204(a), (b)(1)(A), Oct. 13, 1988, 102 Stat. 2378, 2381, effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485 at such earlier effective dates.

AMENDMENTS

2005—Subsec. (a)(7)(A). Pub. L. 109–68, § 2(b)(2)(C)(i), substituted ''2006, or 2007'' for ''or 2006''.

Subsec. (a)(7)(B)(ii). Pub. L. 109–68, § 2(b)(2)(C)(ii), substituted ''2006'' for ''2005''.

2004—Subsec. (a)(7)(A). Pub. L. 108–308, § 2(b)(3)(A), substituted ''2005, or 2006'' for ''or 2005''.

Subsec. (a)(7)(B)(ii). Pub. L. 108–308, § 2(b)(3)(B), substituted ''2005'' for ''2004''.

2003—Subsec. (a)(7)(A). Pub. L. 108–89, § 101(b)(3)(A), substituted ''2004, or 2005'' for ''or 2004''.

Pub. L. 108–40, § 3(g)(1), substituted ''2003, or 2004'' for ''or 2003''.

Subsec. (a)(7)(B)(ii). Pub. L. 108–89, § 101(b)(3)(B), substituted ''2004'' for ''2003''.

Pub. L. 108–40, § 3(g)(2), substituted ''2003'' for ''2002''.

1999—Subsec. (a)(7)(B)(i)(II). Pub. L. 106–169 made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

Subsec. (a)(8)(A)(i)(III). Pub. L. 106–113 substituted ''paragraph (24), or subparagraph (A) or (B)(i) of paragraph (27), of section 654 of this title'' for ''section 654(24) of this title''.

1998—Subsec. (a)(8)(A)(i)(III). Pub. L. 105–200 inserted ''(other than section 654(24) of this title)'' before semicolon.

1997—Pub. L. 105–33, § 5514(c), made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

Subsec. (a)(1)(C). Pub. L. 105–33, § 5001(g)(2), added subpar. (C).

Subsec. (a)(2)(A). Pub. L. 105–33, § 5506(a), substituted ''45 days'' for ''1 month''.

Subsec. (a)(3)(A). Pub. L. 105–33, § 5506(n)(1), struck out ''not more than'' after ''an amount equal to''.

Subsec. (a)(3)(C). Pub. L. 105–33, § 5506(n)(2), inserted before period at end ''or if the noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession. The Secretary shall provide a written report to Congress to justify any waiver or penalty reduction due to such extraordinary circumstances''.

Subsec. (a)(7)(B)(i)(I)(aa). Pub. L. 105–33, § 5506(b), inserted before period at end '', including any amount collected by the State as support pursuant to a plan approved under part D of this subchapter, on behalf of a family receiving assistance under the State program funded under this part, that is distributed to the family under section 657(a)(1)(B) of this title and disregarded in determining the eligibility of the family for, and the amount of, such assistance''.

Subsec. (a)(7)(B)(i)(III). Pub. L. 105–33, § 5506(c), added subcl. (III). Former subcl. (III) redesignated (IV).

Subsec. (a)(7)(B)(i)(IV). Pub. L. 105–33, § 5506(d), substituted ''this part, families'' for ''this part, and families'' and ''section 608(a)(7) of this title, and families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996'' for ''section 608(a)(7) of this title or section 1612 of title 8''.

Pub. L. 105–33, § 5506(c), redesignated subcl. (III) as (IV).

Subsec. (a)(7)(B)(ii). Pub. L. 105–33, § 5506(e), struck out ''reduced (if appropriate) in accordance with subparagraph (C)(ii)'' after ''75 percent)''.

Subsec. (a)(7)(B)(iv). Pub. L. 105–33, § 5001(a)(2), amended heading and text of cl. (iv) generally. Prior to amendment, text read as follows: ''The term 'expenditures by the State' does not include—

''(I) any expenditures from amounts made available by the Federal Government;

''(II) any State funds expended for the medicaid program under subchapter XIX of this chapter;

''(III) any State funds which are used to match Federal funds; or

''(IV) any State funds which are expended as a condition of receiving Federal funds under Federal programs other than under this part.

Notwithstanding subclause (IV) of the preceding sentence, such term includes expenditures by a State for child care in a fiscal year to the extent that the total amount of such expenditures does not exceed an amount equal to the amount of State expenditures in fiscal year 1994 or 1995 (whichever is greater) that equal the non-Federal share for the programs described in section 618(a)(1)(A) of this title.''

Subsec. (a)(7)(B)(v). Pub. L. 105–33, § 5506(f), added cl. (v).

Subsec. (a)(8). Pub. L. 105–33, § 5506(g), amended heading and text of par. (8) generally. Prior to amendment, par. (8) provided that if a State program operated under part D of this subchapter was found to not have complied substantially with the requirements of such part for any quarter, and was not complying substantially with such requirements at the time of the finding, the Secretary was to reduce the grant payable to the State under section 603(a)(1) of this title for certain quarters until the program was found to be in substantial compliance with such requirements.

Subsec. (a)(9). Pub. L. 105–33, § 5506(h), substituted ''608(a)(7)'' for ''608(a)(1)(B)''.

Subsec. (a)(10). Pub. L. 105–33, § 5506(i), substituted ''the qualified State expenditures (as defined in paragraph (7)(B)(i) (other than the expenditures described in subclause (I)(bb) of that paragraph)) under the State program funded under this part for the fiscal year'' for ''the expenditures under the State program funded under this part for the fiscal year (excluding any amounts made available by the Federal Government)'', inserted ''excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994,'' after ''(as defined in paragraph (7)(B)(iii) of this subsection),'', and inserted before period at end ''that the State has not remitted under section 603(b)(6) of this title''.

Subsec. (a)(12). Pub. L. 105–33, § 5506(j), in heading substituted ''Requirement'' for ''Failure'' and ''reductions; penalty for failure to do so'' for ''reductions'' and in text inserted at end ''If the State fails during such succeeding fiscal year to make the expenditure required by the preceding sentence from its own funds, the Secretary may reduce the grant payable to the State under section 603(a)(1) of this title for the fiscal year that follows such succeeding fiscal year by an amount equal to the sum of—

''(A) not more than 2 percent of the State family assistance grant; and

''(B) the amount of the expenditure required by the preceding sentence.''

Subsec. (a)(13). Pub. L. 105–33, § 5001(g)(1)(A), added par. (13).

Subsec. (a)(14). Pub. L. 105–33, § 5004(a), added par. (14).

Subsec. (b)(2). Pub. L. 105–33, § 5506(k), substituted ''(6), (7), (8), (10), or (12)'' for ''(7) or (8)''.

Pub. L. 105–33, § 5001(g)(1)(B), substituted ''(12), or (13)'' for ''or (12)''.

Subsec. (c)(1)(A), (B). Pub. L. 105–33, § 5506(*l*)(1), inserted ''or discontinue, as appropriate,'' after ''correct''.

Subsec. (c)(2). Pub. L. 105–33, § 5506(*l*)(2), inserted ''or discontinuing'' after ''correcting'' in heading and ''or discontinues, as appropriate'' after ''corrects'' in text.

Subsec. (c)(3). Pub. L. 105–33, §5506(*l*)(3), inserted ''or discontinue'' after ''correct'' in heading and ''or discontinue, as appropriate,'' before ''the violation'' in text.

Subsec. (c)(4). Pub. L. 105–33, §5506(m), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''This subsection shall not apply to the imposition of a penalty against a State under subsection (a)(6) of this section.''

Pub. L. 105–33, §5001(g)(1)(C), substituted ''(12), or (13)'' for ''or (12)''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §807(c)], Nov. 29, 1999, 113 Stat. 1535, 1501A–287, provided that: ''The amendments made by this section [amending this section and section 655 of this title] shall take effect on October 1, 1999.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5004(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].''

Amendment by section 5506 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with delayed effective date for subsec. (a)(2)–(5), (8), (10) of this section, and with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§610. Appeal of adverse decision

(a) In general

Within 5 days after the date the Secretary takes any adverse action under this part with respect to a State, the Secretary shall notify the chief executive officer of the State of the adverse action, including any action with respect to the State plan submitted under section 602 of this title or the imposition of a penalty under section 609 of this title.

(b) Administrative review

(1) In general

Within 60 days after the date a State receives notice under subsection (a) of this section of an adverse action, the State may appeal the action, in whole or in part, to the Departmental Appeals Board established in the Department of Health and Human Services (in this section referred to as the ''Board'') by filing an appeal with the Board.

(2) Procedural rules

The Board shall consider an appeal filed by a State under paragraph (1) on the basis of such documentation as the State may submit and as the Board may require to support the final decision of the Board. In deciding whether to uphold an adverse action or any portion of such an action, the Board shall conduct a thorough review of the issues and take into account all relevant evidence. The Board shall make a final determination with respect to an appeal filed under paragraph (1) not less than 60 days after the date the appeal is filed.

(c) Judicial review of adverse decision

(1) In general

Within 90 days after the date of a final decision by the Board under this section with respect to an adverse action taken against a State, the State may obtain judicial review of the final decision (and the findings incorporated into the final decision) by filing an action in—

(A) the district court of the United States for the judicial district in which the principal or headquarters office of the State agency is located; or

(B) the United States District Court for the District of Columbia.

(2) Procedural rules

The district court in which an action is filed under paragraph (1) shall review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by subparagraphs (A) through (E) of section 706(2) of title 5. The review shall be on the basis of the documents and supporting data submitted to the Board.

(Aug. 14, 1935, ch. 531, title IV, §410, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2148; amended Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.)

PRIOR PROVISIONS

A prior section 610, act Aug. 14, 1935, ch. 531, title IV, §410, as added Oct. 21, 1976, Pub. L. 94–585, §1(a), 90 Stat. 2901; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(c)(6), 98 Stat. 1166, related to food stamp program coupons, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

Another prior section 610, act Aug. 14, 1935, ch. 531, title IV, §410, as added Jan. 2, 1968, Pub. L. 90–248, title II, §211(b), 81 Stat. 897, provided for furnishing by Secretary to Secretary of the Treasury the names of parents contained in reports from State agencies, for ascertainment of addresses, and authorization for appropriations for such purpose, prior to repeal by Pub. L. 93–647, §101(c)(8), Jan. 4, 1975, 88 Stat. 2360, eff. July 1, 1975.

AMENDMENTS

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 611. Data collection and reporting

(a) Quarterly reports by States

(1) General reporting requirement

(A) Contents of report

Each eligible State shall collect on a monthly basis, and report to the Secretary on a quarterly basis, the following disaggregated case record information on the families receiving assistance under the State program funded under this part (except for information relating to activities carried out under section 603(a)(5) of this title):

(i) The county of residence of the family.

(ii) Whether a child receiving such assistance or an adult in the family is receiving—

(I) Federal disability insurance benefits;

(II) benefits based on Federal disability status;

(III) aid under a State plan approved under subchapter XIV of this chapter (as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972));[1]

(IV) aid or assistance under a State plan approved under subchapter XVI of this chapter (as in effect without regard to such amendment) by reason of being permanently and totally disabled; or

(V) supplemental security income benefits under subchapter XVI of this chapter (as in effect pursuant to such amendment) by reason of disability.

(iii) The ages of the members of such families.

(iv) The number of individuals in the family, and the relation of each family member to the head of the family.

(v) The employment status and earnings of the employed adult in the family.

(vi) The marital status of the adults in the family, including whether such adults have never married, are widowed, or are divorced.

(vii) The race and educational level of each adult in the family.

(viii) The race and educational level of each child in the family.

(ix) Whether the family received subsidized housing, medical assistance under the State plan approved under subchapter XIX of this chapter, food stamps, or subsidized child care, and if the latter 2, the amount received.

(x) The number of months that the family has received each type of assistance under the program.

(xi) If the adults participated in, and the number of hours per week of participation in, the following activities:

(I) Education.

(II) Subsidized private sector employment.

(III) Unsubsidized employment.

(IV) Public sector employment, work experience, or community service.

(V) Job search.

(VI) Job skills training or on-the-job training.

(VII) Vocational education.

(xii) Information necessary to calculate participation rates under section 607 of this title.

(xiii) The type and amount of assistance received under the program, including the amount of and reason for any reduction of assistance (including sanctions).

(xiv) Any amount of unearned income received by any member of the family.

(xv) The citizenship of the members of the family.

(xvi) From a sample of closed cases, whether the family left the program, and if so, whether the family left due to—

(I) employment;

(II) marriage;

(III) the prohibition set forth in section 608(a)(7) of this title;

(IV) sanction; or

(V) State policy.

(xvii) With respect to each individual in the family who has not attained 20 years of age, whether the individual is a parent of a child in the family.

(B) Use of samples

(i) Authority

A State may comply with subparagraph (A) by submitting disaggregated case record information on a sample of families selected through the use of scientifically acceptable sampling methods approved by the Secretary.

(ii) Sampling and other methods

The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary deems necessary to produce statistically valid estimates of the performance of State programs funded under this part. The Secretary may develop and implement procedures for verifying the quality of data submitted by the States.

(2) Report on use of Federal funds to cover administrative costs and overhead

The report required by paragraph (1) for a fiscal quarter shall include a statement of the

[1] So in original. The second parenthesis probably should not appear.

percentage of the funds paid to the State under this part for the quarter that are used to cover administrative costs or overhead, with a separate statement of the percentage of such funds that are used to cover administrative costs or overhead incurred for programs operated with funds provided under section 603(a)(5) of this title.

(3) Report on State expenditures on programs for needy families

The report required by paragraph (1) for a fiscal quarter shall include a statement of the total amount expended by the State during the quarter on programs for needy families, with a separate statement of the total amount expended by the State during the quarter on programs operated with funds provided under section 603(a)(5) of this title.

(4) Report on noncustodial parents participating in work activities

The report required by paragraph (1) for a fiscal quarter shall include the number of noncustodial parents in the State who participated in work activities (as defined in section 607(d) of this title) during the quarter, with a separate statement of the number of such parents who participated in programs operated with funds provided under section 603(a)(5) of this title.

(5) Report on transitional services

The report required by paragraph (1) for a fiscal quarter shall include the total amount expended by the State during the quarter to provide transitional services to a family that has ceased to receive assistance under this part because of employment, along with a description of such services.

(6) Report on families receiving assistance

The report required by paragraph (1) for a fiscal quarter shall include for each month in the quarter—

(A) the number of families and individuals receiving assistance under the State program funded under this part (including the number of 2-parent and 1-parent families);

(B) the total dollar value of such assistance received by all families; and

(C) with respect to families and individuals participating in a program operated with funds provided under section 603(a)(5) of this title—

(i) the total number of such families and individuals; and

(ii) the number of such families and individuals whose participation in such a program was terminated during a month.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary to define the data elements with respect to which reports are required by this subsection, and shall consult with the Secretary of Labor in defining the data elements with respect to programs operated with funds provided under section 603(a)(5) of this title.

(b) Annual reports to Congress by Secretary

Not later than 6 months after the end of fiscal year 1997, and each fiscal year thereafter, the Secretary shall transmit to the Congress a report describing—

(1) whether the States are meeting—

(A) the participation rates described in section 607(a) of this title; and

(B) the objectives of—

(i) increasing employment and earnings of needy families, and child support collections; and

(ii) decreasing out-of-wedlock pregnancies and child poverty;

(2) the demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that become ineligible to receive assistance;

(3) the characteristics of each State program funded under this part; and

(4) the trends in employment and earnings of needy families with minor children living at home.

(Aug. 14, 1935, ch. 531, title IV, § 411, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2148; amended Pub. L. 105–33, title V, §§ 5001(e), 5507, 5514(c), Aug. 5, 1997, 111 Stat. 591, 616, 620; Pub. L. 106–113, div. B, § 1000(a)(4) [title VIII, § 804(a)], Nov. 29, 1999, 113 Stat. 1535, 1501A–284.)

REFERENCES IN TEXT

Section 301 of the Social Security Amendments of 1972, referred to in subsec. (a)(1)(A)(ii)(III), is section 301 of Pub. L. 92–603, title III, Oct. 30, 1972, 86 Stat. 1465, which enacted sections 1381 to 1382e and 1383 to 1383c of this title.

PRIOR PROVISIONS

A prior section 611, act Aug. 14, 1935, ch. 531, title IV, § 411, as added Dec. 20, 1977, Pub. L. 95–216, title IV, § 403(a), 91 Stat. 1561, related to availability of wage information to States and political subdivisions, prior to repeal by Pub. L. 98–369, div. B, title VI, § 2651(b)(3), (*l*)(2), July 18, 1984, 98 Stat. 1149, 1151, effective Apr. 1, 1985, except as otherwise provided. See section 1320b–7 of this title.

AMENDMENTS

1999—Subsec. (a)(1)(A). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 804(a)(1)], in introductory provisions, inserted ''(except for information relating to activities carried out under section 603(a)(5) of this title)'' after ''part''.

Subsec. (a)(1)(A)(xviii). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 804(a)(2)], struck out cl. (xviii) which related to families participating in a program operated with funds provided under section 603(a)(5) of this title.

1997—Pub. L. 105–33, § 5514(c), made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

Subsec. (a)(1)(A)(ii). Pub. L. 105–33, § 5507(1)(A)(i), added cl. (ii) and struck out former cl. (ii) which read as follows: ''Whether a child receiving such assistance or an adult in the family is disabled.''

Subsec. (a)(1)(A)(iv). Pub. L. 105–33, § 5507(1)(A)(ii), substituted ''head of'' for ''youngest child in''.

Subsec. (a)(1)(A)(vii), (viii). Pub. L. 105–33, § 5507(1)(A)(iii), substituted ''level'' for ''status''.

Subsec. (a)(1)(A)(xvii). Pub. L. 105–33, § 5507(1)(A)(iv), added cl. (xvii).

Subsec. (a)(1)(A)(xviii). Pub. L. 105–33, § 5001(e)(1), added cl. (xviii).

Subsec. (a)(1)(B). Pub. L. 105–33, § 5507(1)(B), substituted ''samples'' for ''estimates'' in heading and ''disaggregated case record information on a sample of families selected'' for ''an estimate which is obtained'' in cl. (i).

Subsec. (a)(2). Pub. L. 105–33, § 5001(e)(2), inserted before period at end '', with a separate statement of the percentage of such funds that are used to cover administrative costs or overhead incurred for programs operated with funds provided under section 603(a)(5) of this title''.

Subsec. (a)(3). Pub. L. 105–33, § 5001(e)(3), inserted before period at end '', with a separate statement of the total amount expended by the State during the quarter on programs operated with funds provided under section 603(a)(5) of this title''.

Subsec. (a)(4). Pub. L. 105–33, § 5001(e)(4), inserted before period at end '', with a separate statement of the number of such parents who participated in programs operated with funds provided under section 603(a)(5) of this title''.

Subsec. (a)(6). Pub. L. 105–33, § 5507(2), added par. (6). Former par. (6) redesignated (7).

Subsec. (a)(6)(C). Pub. L. 105–33, § 5001(e)(5), added subpar. (C).

Subsec. (a)(7). Pub. L. 105–33, § 5507(2), redesignated par. (6) as (7).

Pub. L. 105–33, § 5001(e)(6), inserted before period at end '', and shall consult with the Secretary of Labor in defining the data elements with respect to programs operated with funds provided under section 603(a)(5) of this title''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5507 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 611a. State required to provide certain information

Each State to which a grant is made under section 603 of this title shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the State knows is unlawfully in the United States.

(Aug. 14, 1935, ch. 531, title IV, § 411A, as added Pub. L. 104–193, title IV, § 404(b), Aug. 22, 1996, 110 Stat. 2267.)

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 612. Direct funding and administration by Indian tribes

(a) Grants for Indian tribes

(1) Tribal family assistance grant

(A) In general

For each of fiscal years 1997, 1998, 1999, 2000, 2001, 2002, and 2003, the Secretary shall pay to each Indian tribe that has an approved tribal family assistance plan a tribal family assistance grant for the fiscal year in an amount equal to the amount determined under subparagraph (B), which shall be reduced for a fiscal year, on a pro rata basis for each quarter, in the case of a tribal family assistance plan approved during a fiscal year for which the plan is to be in effect, and shall reduce the grant payable under section 603(a)(1) of this title to any State in which lies the service area or areas of the Indian tribe by that portion of the amount so determined that is attributable to expenditures by the State.

(B) Amount determined

(i) In general

The amount determined under this subparagraph is an amount equal to the total amount of the Federal payments to a State or States under section 603 of this title (as in effect during such fiscal year) for fiscal year 1994 attributable to expenditures (other than child care expenditures) by the State or States under parts A and F of this subchapter (as so in effect) for fiscal year 1994 for Indian families residing in the service area or areas identified by the Indian tribe pursuant to subsection (b)(1)(C) of this section.

(ii) Use of State submitted data

(I) In general

The Secretary shall use State submitted data to make each determination under clause (i).

(II) Disagreement with determination

If an Indian tribe or tribal organization disagrees with State submitted data described under subclause (I), the Indian tribe or tribal organization may submit to the Secretary such additional information as may be relevant to making the determination under clause (i) and the Secretary may consider such information before making such determination.

(2) Grants for Indian tribes that received jobs funds

(A) In general

For each of fiscal years 1997, 1998, 1999, 2000, 2001, 2002, and 2003, the Secretary shall pay to each eligible Indian tribe that proposes to operate a program described in subparagraph (C) a grant in an amount equal to the amount received by the Indian tribe in fiscal year 1994 under section 682(i) of this title (as in effect during fiscal year 1994).

(B) Eligible Indian tribe

For purposes of subparagraph (A), the term ''eligible Indian tribe'' means an Indian tribe

or Alaska Native organization that conducted a job opportunities and basic skills training program in fiscal year 1995 under section 682(i) of this title (as in effect during fiscal year 1995).

(C) Use of grant

Each Indian tribe to which a grant is made under this paragraph shall use the grant for the purpose of operating a program to make work activities available to such population and such service area or areas as the tribe specifies.

(D) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $7,633,287 for each fiscal year specified in subparagraph (A) for grants under subparagraph (A).

(3) Welfare-to-work grants

(A) In general

The Secretary of Labor shall award a grant in accordance with this paragraph to an Indian tribe for each fiscal year specified in section 603(a)(5)(H) of this title for which the Indian tribe is a welfare-to-work tribe, in such amount as the Secretary of Labor deems appropriate, subject to subparagraph (B) of this paragraph.

(B) Welfare-to-work tribe

An Indian tribe shall be considered a welfare-to-work tribe for a fiscal year for purposes of this paragraph if the Indian tribe meets the following requirements:

(i) The Indian tribe has submitted to the Secretary of Labor a plan which describes how, consistent with section 603(a)(5) of this title, the Indian tribe will use any funds provided under this paragraph during the fiscal year. If the Indian tribe has a tribal family assistance plan, the plan referred to in the preceding sentence shall be in the form of an addendum to the tribal family assistance plan.

(ii) The Indian tribe is operating a program under a tribal family assistance plan approved by the Secretary of Health and Human Services, a program described in paragraph (2)(C), or an employment program funded through other sources under which substantial services are provided to recipients of assistance under a program funded under this part.

(iii) The Indian tribe has provided the Secretary of Labor with an estimate of the amount that the Indian tribe intends to expend during the fiscal year (excluding tribal expenditures described in section 609(a)(7)(B)(iv) (other than subclause (III) thereof) of this title) pursuant to this paragraph.

(iv) The Indian tribe has agreed to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance and funding of any evaluation under section 613(j) of this title, and to cooperate with the conduct of any such evaluation.

(C) Limitations on use of funds

(i) In general

Section 603(a)(5)(C) of this title shall apply to funds provided to Indian tribes under this paragraph in the same manner in which such section applies to funds provided under section 603(a)(5) of this title.

(ii) Waiver authority

The Secretary of Labor may waive or modify the application of a provision of section 603(a)(5)(C) (other than clause (viii) thereof) of this title with respect to an Indian tribe to the extent necessary to enable the Indian tribe to operate a more efficient or effective program with the funds provided under this paragraph.

(iii) Regulations

Within 90 days after August 5, 1997, the Secretary of Labor, after consultation with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, shall prescribe such regulations as may be necessary to implement this paragraph.

(b) 3-year tribal family assistance plan

(1) In general

Any Indian tribe that desires to receive a tribal family assistance grant shall submit to the Secretary a 3-year tribal family assistance plan that—

(A) outlines the Indian tribe's approach to providing welfare-related services for the 3-year period, consistent with this section;

(B) specifies whether the welfare-related services provided under the plan will be provided by the Indian tribe or through agreements, contracts, or compacts with intertribal consortia, States, or other entities;

(C) identifies the population and service area or areas to be served by such plan;

(D) provides that a family receiving assistance under the plan may not receive duplicative assistance from other State or tribal programs funded under this part;

(E) identifies the employment opportunities in or near the service area or areas of the Indian tribe and the manner in which the Indian tribe will cooperate and participate in enhancing such opportunities for recipients of assistance under the plan consistent with any applicable State standards; and

(F) applies the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31.

(2) Approval

The Secretary shall approve each tribal family assistance plan submitted in accordance with paragraph (1).

(3) Consortium of tribes

Nothing in this section shall preclude the development and submission of a single tribal family assistance plan by the participating Indian tribes of an intertribal consortium.

(c) Minimum work participation requirements and time limits

The Secretary, with the participation of Indian tribes, shall establish for each Indian tribe receiving a grant under this section minimum work participation requirements, appropriate time limits for receipt of welfare-related services under the grant, and penalties against individuals—

(1) consistent with the purposes of this section;

(2) consistent with the economic conditions and resources available to each tribe; and

(3) similar to comparable provisions in section 607(e) of this title.

(d) Emergency assistance

Nothing in this section shall preclude an Indian tribe from seeking emergency assistance from any Federal loan program or emergency fund.

(e) Accountability

Nothing in this section shall be construed to limit the ability of the Secretary to maintain program funding accountability consistent with—

(1) generally accepted accounting principles; and

(2) the requirements of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(f) Eligibility for Federal loans

Section 606 of this title shall apply to an Indian tribe with an approved tribal assistance plan in the same manner as such section applies to a State, except that section 606(c) of this title shall be applied by substituting ''section 612(a)'' for ''section 603(a)''.

(g) Penalties

(1) Subsections (a)(1), (a)(6), (b), and (c) of section 609 of this title, shall apply to an Indian tribe with an approved tribal assistance plan in the same manner as such subsections apply to a State.

(2) Section 609(a)(3) of this title shall apply to an Indian tribe with an approved tribal assistance plan by substituting ''meet minimum work participation requirements established under section 612(c) of this title'' for ''comply with section 607(a) of this title''.

(h) Data collection and reporting

Section 611 of this title shall apply to an Indian tribe with an approved tribal family assistance plan.

(i) Special rule for Indian tribes in Alaska

(1) In general

Notwithstanding any other provision of this section, and except as provided in paragraph (2), an Indian tribe in the State of Alaska that receives a tribal family assistance grant under this section shall use the grant to operate a program in accordance with requirements comparable to the requirements applicable to the program of the State of Alaska funded under this part. Comparability of programs shall be established on the basis of program criteria developed by the Secretary in consultation with the State of Alaska and such Indian tribes.

(2) Waiver

An Indian tribe described in paragraph (1) may apply to the appropriate State authority to receive a waiver of the requirement of paragraph (1).

(Aug. 14, 1935, ch. 531, title IV, §412, as added Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2150; amended Pub. L. 105–33, title V, §§5001(c), 5508, 5514(c), Aug. 5, 1997, 111 Stat. 589, 617, 620; Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §801(b)(2)], Nov. 29, 1999, 113 Stat. 1535, 1501A–283; Pub. L. 106–554, §1(a)(1) [title I, §107(b)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–12; Pub. L. 108–40, §3(h), June 30, 2003, 117 Stat. 837.)

REFERENCES IN TEXT

Part F of this subchapter, referred to in subsec. (a)(1)(B)(i), was classified to section 681 et seq. of this title, prior to repeal by Pub. L. 104–193, title I, §108(e), Aug. 22, 1996, 110 Stat. 2167.

Section 682 of this title, referred to in subsec. (a)(2)(A), (B), was repealed by Pub. L. 104–193, title I, §108(e), Aug. 22, 1996, 110 Stat. 2167.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (e)(2), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 612, act Aug. 14, 1935, ch. 531, title IV, §412, as added June 17, 1980, Pub. L. 96–272, title III, §303, 94 Stat. 528; amended Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2306(b), 95 Stat. 846; Sept. 3, 1982, Pub. L. 97–248, title I, §155(a), 96 Stat. 397, related to prorating shelter allowance for AFDC family living with another household, prior to repeal by Pub. L. 104–193, §103(a)(1), as amended by Pub. L. 105–33, title V, §5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

2003—Subsec. (a)(1)(A), (2)(A). Pub. L. 108–40 substituted ''2002, and 2003'' for ''and 2002''.

2000—Subsec. (a)(3)(A). Pub. L. 106–554 substituted ''603(a)(5)(H)'' for ''603(a)(5)(I)''.

1999—Subsec. (a)(3)(C)(ii). Pub. L. 106–113 substituted ''clause (viii)'' for ''clause (vii)''.

1997—Pub. L. 105–33, §5514(c), made technical amendment to directory language of Pub. L. 104–193, §103(a)(1), which enacted this section.

Subsec. (a)(1)(A). Pub. L. 105–33, §5508(a), inserted ''which shall be reduced for a fiscal year, on a pro rata basis for each quarter, in the case of a tribal family assistance plan approved during a fiscal year for which the plan is to be in effect,'' before ''and shall''.

Subsec. (a)(2)(A). Pub. L. 105–33, §5508(b), substituted ''For each of fiscal years 1997, 1998, 1999, 2000, 2001, and 2002, the Secretary shall pay to each eligible Indian tribe that proposes to operate a program described in subparagraph (C)'' for ''The Secretary shall pay to each eligible Indian tribe for each of fiscal years 1997, 1998, 1999, 2000, 2001, and 2002''.

Subsec. (a)(2)(C). Pub. L. 105–33, §5508(c), substituted ''such population and such service area or areas as the tribe specifies'' for ''members of the Indian tribe''.

Subsec. (a)(2)(D). Pub. L. 105–33, §5508(d), substituted ''$7,633,287'' for ''$7,638,474''.

Subsec. (a)(3). Pub. L. 105–33, §5001(c), added par. (3).

Subsec. (f). Pub. L. 105–33, §5508(f), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1). Pub. L. 105–33, §5508(e), substituted ''(b), and (c)'' for ''and (b)''.

Subsecs. (g) to (i). Pub. L. 105–33, § 5508(f), redesignated subsecs. (f) to (h) as (g) to (i), respectively.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective Oct. 1, 2000, see section 1(a)(1) [title I, § 107(d)] of Pub. L. 106–554, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

For effective date of amendment by Pub. L. 106–113, see section 1000(a)(4) [title VIII, § 801(e)] of Pub. L. 106–113, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5508 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 613. Research, evaluations, and national studies

(a) Research

The Secretary, directly or through grants, contracts, or interagency agreements, shall conduct research on the benefits, effects, and costs of operating different State programs funded under this part, including time limits relating to eligibility for assistance. The research shall include studies on the effects of different programs and the operation of such programs on welfare dependency, illegitimacy, teen pregnancy, employment rates, child well-being, and any other area the Secretary deems appropriate. The Secretary shall also conduct research on the costs and benefits of State activities under section 607 of this title.

(b) Development and evaluation of innovative approaches to reducing welfare dependency and increasing child well-being

(1) In general

The Secretary may assist States in developing, and shall evaluate, innovative approaches for reducing welfare dependency and increasing the well-being of minor children living at home with respect to recipients of assistance under programs funded under this part. The Secretary may provide funds for training and technical assistance to carry out the approaches developed pursuant to this paragraph.

(2) Evaluations

In performing the evaluations under paragraph (1), the Secretary shall, to the maximum extent feasible, use random assignment as an evaluation methodology.

(c) Dissemination of information

The Secretary shall develop innovative methods of disseminating information on any research, evaluations, and studies conducted under this section, including the facilitation of the sharing of information and best practices among States and localities through the use of computers and other technologies.

(d) Annual ranking of States and review of most and least successful work programs

(1) Annual ranking of States

The Secretary shall rank annually the States to which grants are paid under section 603 of this title in the order of their success in placing recipients of assistance under the State program funded under this part into long-term private sector jobs, reducing the overall welfare caseload, and, when a practicable method for calculating this information becomes available, diverting individuals from formally applying to the State program and receiving assistance. In ranking States under this subsection, the Secretary shall take into account the average number of minor children living at home in families in the State that have incomes below the poverty line and the amount of funding provided each State for such families.

(2) Annual review of most and least successful work programs

The Secretary shall review the programs of the 3 States most recently ranked highest under paragraph (1) and the 3 States most recently ranked lowest under paragraph (1) that provide parents with work experience, assistance in finding employment, and other work preparation activities and support services to enable the families of such parents to leave the program and become self-sufficient.

(e) Annual ranking of States and review of issues relating to out-of-wedlock births

(1) In general

The Secretary shall annually rank States to which grants are made under section 603 of this title based on the following ranking factors:

(A) Absolute out-of-wedlock ratios

The ratio represented by—

(i) the total number of out-of-wedlock births in families receiving assistance under the State program under this part in the State for the most recent year for which information is available; over

(ii) the total number of births in families receiving assistance under the State program under this part in the State for the year.

(B) Net changes in the out-of-wedlock ratio

The difference between the ratio described in subparagraph (A) with respect to a State for the most recent year for which such in-

formation is available and the ratio with respect to the State for the immediately preceding year.

(2) Annual review

The Secretary shall review the programs of the 5 States most recently ranked highest under paragraph (1) and the 5 States most recently ranked the lowest under paragraph (1).

(f) State-initiated evaluations

A State shall be eligible to receive funding to evaluate the State program funded under this part if—

(1) the State submits a proposal to the Secretary for the evaluation;

(2) the Secretary determines that the design and approach of the evaluation is rigorous and is likely to yield information that is credible and will be useful to other States; and

(3) unless otherwise waived by the Secretary, the State contributes to the cost of the evaluation, from non-Federal sources, an amount equal to at least 10 percent of the cost of the evaluation.

(g) Report on circumstances of certain children and families

(1) In general

Beginning 3 years after August 22, 1996, the Secretary of Health and Human Services shall prepare and submit to the Committees on Ways and Means and on Education and the Workforce of the House of Representatives and to the Committees on Finance and on Labor and Resources of the Senate annual reports that examine in detail the matters described in paragraph (2) with respect to each of the following groups for the period after August 22, 1996:

(A) Individuals who were children in families that have become ineligible for assistance under a State program funded under this part by reason of having reached a time limit on the provision of such assistance.

(B) Children born after August 22, 1996, to parents who, at the time of such birth, had not attained 20 years of age.

(C) Individuals who, after August 22, 1996, became parents before attaining 20 years of age.

(2) Matters described

The matters described in this paragraph are the following:

(A) The percentage of each group that has dropped out of secondary school (or the equivalent), and the percentage of each group at each level of educational attainment.

(B) The percentage of each group that is employed.

(C) The percentage of each group that has been convicted of a crime or has been adjudicated as a delinquent.

(D) The rate at which the members of each group are born, or have children, out-of-wedlock, and the percentage of each group that is married.

(E) The percentage of each group that continues to participate in State programs funded under this part.

(F) The percentage of each group that has health insurance provided by a private entity (broken down by whether the insurance is provided through an employer or otherwise), the percentage that has health insurance provided by an agency of government, and the percentage that does not have health insurance.

(G) The average income of the families of the members of each group.

(H) Such other matters as the Secretary deems appropriate.

(h) Funding of studies and demonstrations

(1) In general

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $15,000,000 for each of fiscal years 1997 through 2002 for the purpose of paying—

(A) the cost of conducting the research described in subsection (a) of this section;

(B) the cost of developing and evaluating innovative approaches for reducing welfare dependency and increasing the well-being of minor children under subsection (b) of this section;

(C) the Federal share of any State-initiated study approved under subsection (f) of this section; and

(D) an amount determined by the Secretary to be necessary to operate and evaluate demonstration projects, relating to this part, that are in effect or approved under section 1315 of this title as of August 22, 1996, and are continued after such date.

(2) Allocation

Of the amount appropriated under paragraph (1) for a fiscal year—

(A) 50 percent shall be allocated for the purposes described in subparagraphs (A) and (B) of paragraph (1), and

(B) 50 percent shall be allocated for the purposes described in subparagraphs (C) and (D) of paragraph (1).

(3) Demonstrations of innovative strategies

The Secretary may implement and evaluate demonstrations of innovative and promising strategies which—

(A) provide one-time capital funds to establish, expand, or replicate programs;

(B) test performance-based grant-to-loan financing in which programs meeting performance targets receive grants while programs not meeting such targets repay funding on a prorated basis; and

(C) test strategies in multiple States and types of communities.

(i) Child poverty rates

(1) In general

Not later than May 31, 1998, and annually thereafter, the chief executive officer of each State shall submit to the Secretary a statement of the child poverty rate in the State as of August 22, 1996, or the date of the most recent prior statement under this paragraph.

(2) Submission of corrective action plan

Not later than 90 days after the date a State submits a statement under paragraph (1)

which indicates that, as a result of the amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the child poverty rate of the State has increased by 5 percent or more since the most recent prior statement under paragraph (1), the State shall prepare and submit to the Secretary a corrective action plan in accordance with paragraph (3).

(3) Contents of plan

A corrective action plan submitted under paragraph (2) shall outline the manner in which the State will reduce the child poverty rate in the State. The plan shall include a description of the actions to be taken by the State under such plan.

(4) Compliance with plan

A State that submits a corrective action plan that the Secretary has found contains the information required by this subsection shall implement the corrective action plan until the State determines that the child poverty rate in the State is less than the lowest child poverty rate on the basis of which the State was required to submit the corrective action plan.

(5) Methodology

The Secretary shall prescribe regulations establishing the methodology by which a State shall determine the child poverty rate in the State. The methodology shall take into account factors including the number of children who receive free or reduced-price lunches, the number of food stamp households, and, to the extent available, county-by-county estimates of children in poverty as determined by the Census Bureau.

(j) Evaluation of welfare-to-work programs

(1) Evaluation

The Secretary, in consultation with the Secretary of Labor and the Secretary of Housing and Urban Development—

(A) shall develop a plan to evaluate how grants made under sections 603(a)(5) and 612(a)(3) of this title have been used;

(B) may evaluate the use of such grants by such grantees as the Secretary deems appropriate, in accordance with an agreement entered into with the grantees after good-faith negotiations; and

(C) is urged to include the following outcome measures in the plan developed under subparagraph (A):

(i) Placements in unsubsidized employment, and placements in unsubsidized employment that last for at least 6 months.

(ii) Placements in the private and public sectors.

(iii) Earnings of individuals who obtain employment.

(iv) Average expenditures per placement.

(2) Reports to the Congress

(A) In general

Subject to subparagraphs (B) and (C), the Secretary, in consultation with the Secretary of Labor and the Secretary of Housing and Urban Development, shall submit to the Congress reports on the projects funded under section[1] 603(a)(5) and 612(a)(3) of this title and on the evaluations of the projects.

(B) Interim report

Not later than January 1, 1999, the Secretary shall submit an interim report on the matter described in subparagraph (A).

(C) Final report

Not later than January 1, 2001,[2] (or at a later date, if the Secretary informs the Committees of the Congress with jurisdiction over the subject matter of the report) the Secretary shall submit a final report on the matter described in subparagraph (A).

(Aug. 14, 1935, ch. 531, title IV, § 413, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2153; amended Pub. L. 105–33, title V, §§ 5001(f), 5509, 5514(c), Aug. 5, 1997, 111 Stat. 592, 618, 620; Pub. L. 105–200, title IV, § 410(a), July 16, 1998, 112 Stat. 673; Pub. L. 106–169, title IV, § 401(c), Dec. 14, 1999, 113 Stat. 1858.)

REFERENCES IN TEXT

Section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (i)(2), is section 103 of Pub. L. 104–193, which enacted this part, amended sections 602, 603, and 1308 of this title, and repealed provisions formerly set out as this part. For complete classification of section 103 to the Code, see Tables.

PRIOR PROVISIONS

A prior section 613, act Aug. 14, 1935, ch. 531, title IV, § 413, as added June 9, 1980, Pub. L. 96–265, title IV, § 406(c), 94 Stat. 467, related to technical assistance for developing management information systems, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

1999—Subsec. (g)(1). Pub. L. 106–169 made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

1998—Subsec. (g)(1). Pub. L. 105–200 substituted ''Education and the Workforce'' for ''Economic and Educational Opportunities''.

1997—Pub. L. 105–33, § 5514(c), made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

Subsec. (a). Pub. L. 105–33, § 5509(a), inserted '', directly or through grants, contracts, or interagency agreements,'' before ''shall conduct'' and substituted ''section 607'' for ''section 609''.

Subsec. (e)(1). Pub. L. 105–33, § 5509(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—The Secretary shall annually rank States to which grants are made under section 603 of this title based on the following ranking factors:

''(i) ABSOLUTE OUT-OF-WEDLOCK RATIOS.—The ratio represented by—

''(I) the total number of out-of-wedlock births in families receiving assistance under the State program under this part in the State for the most recent fiscal year for which information is available; over

''(II) the total number of births in families receiving assistance under the State program under this part in the State for such year.

''(ii) NET CHANGES IN THE OUT-OF-WEDLOCK RATIO.—The difference between the ratio described in subparagraph (A)(i) with respect to a State for the most

[1] So in original. Probably should be ''sections''.

[2] So in original.

recent fiscal year for which such information is available and the ratio with respect to the State for the immediately preceding year.''

Subsec. (h)(1)(D). Pub. L. 105–33, § 5509(c), substituted ''August 22, 1996'' for ''September 30, 1995''.

Subsec. (i)(1). Pub. L. 105–33, § 5509(d)(1), substituted ''May 31, 1998'' for ''90 days after August 22, 1996''.

Subsec. (i)(5). Pub. L. 105–33, § 5509(d)(2), substituted '', to the extent available, county-by-county'' for ''the county-by-county''.

Subsec. (j). Pub. L. 105–33, § 5001(f), added subsec. (j).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5509 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective Aug. 22, 1996, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

COORDINATION OF SUBSTANCE ABUSE AND CHILD PROTECTION SERVICES

Pub. L. 105–89, title IV, § 405, Nov. 19, 1997, 111 Stat. 2135, provided that: ''Within 1 year after the date of the enactment of this Act [Nov. 19, 1997], the Secretary of Health and Human Services, based on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families in the Department of Health of [sic] Human Services, shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which describes the extent and scope of the problem of substance abuse in the child welfare population, the types of services provided to such population, and the outcomes resulting from the provision of such services to such population. The report shall include recommendations for any legislation that may be needed to improve coordination in providing such services to such population.''

GAO STUDY OF EFFECT OF FAMILY VIOLENCE ON NEED FOR PUBLIC ASSISTANCE

Section 5001(i) of Pub. L. 105–33 provided that:

''(1) STUDY.—The Comptroller General shall conduct a study of the effect of family violence on the use of public assistance programs, and in particular the extent to which family violence prolongs or increases the need for public assistance.

''(2) REPORT.—Within 1 year after the date of the enactment of this Act [Aug. 5, 1997], the Comptroller General shall submit to the Committees on Ways and Means and Education and the Workforce of the House of Representatives and the Committee on Finance of the Senate a report that contains the findings of the study required by paragraph (1).''

STUDY ON ALTERNATIVE OUTCOMES MEASURES

Section 107 of Pub. L. 104–193, as amended by Pub. L. 105–33, title V, § 5511, Aug. 5, 1997, 111 Stat. 619, provided that:

''(a) STUDY.—The Secretary shall, in cooperation with the States, study and analyze outcomes measures for evaluating the success of the States in moving individuals out of the welfare system through employment as an alternative to the minimum participation rates described in section 407 of the Social Security Act [section 607 of this title]. The study shall include a determination as to whether such alternative outcomes measures should be applied on a national or a State-by-State basis and a preliminary assessment of the effects of section 408(a)(7)(C) of such Act [section 608(a)(7)(C) of this title].

''(b) REPORT.—Not later than September 30, 1998, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report containing the findings of the study required by subsection (a).''

§ 614. Study by Census Bureau

(a) In general

The Bureau of the Census shall continue to collect data on the 1992 and 1993 panels of the Survey of Income and Program Participation as necessary to obtain such information as will enable interested persons to evaluate the impact of the amendments made by title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on a random national sample of recipients of assistance under State programs funded under this part and (as appropriate) other low-income families, and in doing so, shall pay particular attention to the issues of out-of-wedlock birth, welfare dependency, the beginning and end of welfare spells, and the causes of repeat welfare spells, and shall obtain information about the status of children participating in such panels.

(b) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for each of fiscal years 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003 for payment to the Bureau of the Census to carry out subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title IV, § 414, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2156; amended Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620; Pub. L. 108–40, § 3(i), June 30, 2003, 117 Stat. 837.)

REFERENCES IN TEXT

Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a), is title I of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2110. For complete classification of this title to the Code, see Tables.

PRIOR PROVISIONS

A prior section 614, act Aug. 14, 1935, ch. 531, title IV, § 414, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2308, 95 Stat. 848; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2638(a), 2663(c)(7)(A), 98 Stat. 1143, 1166, related to work supplementation program, prior to repeal by Pub. L. 100–485, title II, §§ 202(b)(13), 204(a), (b)(1)(A), Oct. 13, 1988, 102 Stat. 2378, 2381, effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to

the amendments by title II of Pub. L. 100–485, at such earlier effective dates.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–40 substituted ''2002, and 2003'' for ''and 2002''.

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 615. Waivers

(a) Continuation of waivers

(1) Waivers in effect on August 22, 1996

(A) In general

Except as provided in subparagraph (B), if any waiver granted to a State under section 1315 of this title or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1996) is in effect as of August 22, 1996, the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than by section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent such amendments are inconsistent with the waiver.

(B) Financing limitation

Notwithstanding any other provision of law, beginning with fiscal year 1996, a State operating under a waiver described in subparagraph (A) shall be entitled to payment under section 603 of this title for the fiscal year, in lieu of any other payment provided for in the waiver.

(2) Waivers granted subsequently

(A) In general

Except as provided in subparagraph (B), if any waiver granted to a State under section 1315 of this title or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1996) is submitted to the Secretary before August 22, 1996, and approved by the Secretary on or before July 1, 1997, and the State demonstrates to the satisfaction of the Secretary that the waiver will not result in Federal expenditures under subchapter IV of this chapter (as in effect without regard to the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) that are greater than would occur in the absence of the waiver, the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than by section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are inconsistent with the waiver.

(B) No effect on new work requirements

Notwithstanding subparagraph (A), a waiver granted under section 1315 of this title or otherwise which relates to the provision of assistance under a State program funded under this part (as in effect on September 30, 1996) shall not affect the applicability of section 607 of this title to the State.

(b) State option to terminate waiver

(1) In general

A State may terminate a waiver described in subsection (a) of this section before the expiration of the waiver.

(2) Report

A State which terminates a waiver under paragraph (1) shall submit a report to the Secretary summarizing the waiver and any available information concerning the result or effect of the waiver.

(3) Hold harmless provision

(A) In general

Notwithstanding any other provision of law, a State that, not later than the date described in subparagraph (B) of this paragraph, submits a written request to terminate a waiver described in subsection (a) of this section shall be held harmless for accrued cost neutrality liabilities incurred under the waiver.

(B) Date described

The date described in this subparagraph is 90 days following the adjournment of the first regular session of the State legislature that begins after August 22, 1996.

(c) Secretarial encouragement of current waivers

The Secretary shall encourage any State operating a waiver described in subsection (a) of this section to continue the waiver and to evaluate, using random sampling and other characteristics of accepted scientific evaluations, the result or effect of the waiver.

(d) Continuation of individual waivers

A State may elect to continue 1 or more individual waivers described in subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title IV, § 415, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2157; amended Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.)

REFERENCES IN TEXT

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(1)(A), (2)(A), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. Section 103(c) of the Act amended sections 602 and 603 of this title. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 615, act Aug. 14, 1935, ch. 531, title IV, § 415, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2320(b)(2), 95 Stat. 857; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2635, 2663(c)(7)(B), 98 Stat. 1142, 1166, related to attribution of income and resources of sponsor and spouse to alien, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 616. Administration

The programs under this part and part D of this subchapter shall be administered by an Assistant Secretary for Family Support within the Department of Health and Human Services, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be in addition to any other Assistant Secretary of Health and Human Services provided for by law, and the Secretary shall reduce the Federal workforce within the Department of Health and Human Services by an amount equal to the sum of 75 percent of the full-time equivalent positions at such Department that relate to any direct spending program, or any program funded through discretionary spending, that has been converted into a block grant program under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the amendments made by such Act, and by an amount equal to 75 percent of that portion of the total full-time equivalent departmental management positions at such Department that bears the same relationship to the amount appropriated for any direct spending program, or any program funded through discretionary spending, that has been converted into a block grant program under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the amendments made by such Act, as such amount relates to the total amount appropriated for use by such Department, and, notwithstanding any other provision of law, the Secretary shall take such actions as may be necessary, including reductions in force actions, consistent with sections 3502 and 3595 of title 5, to reduce the full-time equivalent positions within the Department of Health and Human Services by 245 full-time equivalent positions related to the program converted into a block grant under the amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and by 60 full-time equivalent managerial positions in the Department.

(Aug. 14, 1935, ch. 531, title IV, § 416, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2158; amended Pub. L. 105–33, title V, § 5514(c), (d), Aug. 5, 1997, 111 Stat. 620; Pub. L. 106–169, title IV, § 401(d), Dec. 14, 1999, 113 Stat. 1858.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in text, is classified to section 651 et seq. of this title.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in text, is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1305 of this title and Tables.

Section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in text, is section 103 of Pub. L. 104–193, which enacted this part, amended sections 602, 603, and 1308 of this title, and repealed provisions formerly set out as this part. For complete classification of section 103 to the Code, see Tables.

PRIOR PROVISIONS

A prior section 616, act Aug. 14, 1935, ch. 531, title IV, § 416, as added Dec. 22, 1987, Pub. L. 100–203, title IX, § 9102(a), 101 Stat. 1330–299, related to fraud control, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

1999—Pub. L. 106–169 substituted ''Opportunity Reconciliation Act'' for ''Opportunity Act'' the first two places appearing.

1997—Pub. L. 105–33, § 5514(c), made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

Pub. L. 105–33, § 5514(d), substituted ''amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation'' for ''amendment made by section 2103 of the Personal Responsibility and Work Opportunity''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193

amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Amendment by section 5514(d) of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 617. Limitation on Federal authority

No officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part.

(Aug. 14, 1935, ch. 531, title IV, § 417, as added Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2159; amended Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.)

PRIOR PROVISIONS

A prior section 617, act Aug. 14, 1935, ch. 531, title IV, § 417, formerly § 418, as added Oct. 13, 1988, Pub. L. 100–485, title VI, § 603(a), 102 Stat. 2408; renumbered § 417, Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8105(7), 102 Stat. 3798, related to Assistant Secretary for Family Support, prior to repeal by Pub. L. 104–193, § 103(a)(1), as amended by Pub. L. 105–33, title V, § 5514(c), Aug. 5, 1997, 111 Stat. 620.

AMENDMENTS

1997—Pub. L. 105–33 made technical amendment to directory language of Pub. L. 104–193, § 103(a)(1), which enacted this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 618. Funding for child care

(a) General child care entitlement

(1) General entitlement

Subject to the amount appropriated under paragraph (3), each State shall, for the purpose of providing child care assistance, be entitled to payments under a grant under this subsection for a fiscal year in an amount equal to the greater of—

(A) the total amount required to be paid to the State under section 603 of this title for fiscal year 1994 or 1995 (whichever is greater) with respect to expenditures for child care under subsections (g) and (i) of section 602 of this title (as in effect before October 1, 1995); or

(B) the average of the total amounts required to be paid to the State for fiscal years 1992 through 1994 under the subsections referred to in subparagraph (A).

(2) Remainder

(A) Grants

The Secretary shall use any amounts appropriated for a fiscal year under paragraph (3), and remaining after the reservation described in paragraph (4) and after grants are awarded under paragraph (1), to make grants to States under this paragraph.

(B) Allotments to States

The total amount available for payments to States under this paragraph, as determined under subparagraph (A), shall be allotted among the States based on the formula used for determining the amount of Federal payments to each State under section 603(n) of this title (as in effect before October 1, 1995).

(C) Federal matching of State expenditures exceeding historical expenditures

The Secretary shall pay to each eligible State for a fiscal year an amount equal to the lesser of the State's allotment under subparagraph (B) or the Federal medical assistance percentage for the State for the fiscal year (as defined in section 1396d(b) of this title, as such section was in effect on September 30, 1995) of so much of the State's expenditures for child care in that fiscal year as exceed the total amount of expenditures by the State (including expenditures from amounts made available from Federal funds) in fiscal year 1994 or 1995 (whichever is greater) for the programs described in paragraph (1)(A).

(D) Redistribution

(i) In general

With respect to any fiscal year, if the Secretary determines (in accordance with clause (ii)) that any amounts allotted to a State under this paragraph for such fiscal year will not be used by such State during such fiscal year for carrying out the purpose for which such amounts are allotted, the Secretary shall make such amounts available in the subsequent fiscal year for carrying out such purpose to one or more States which apply for such funds to the extent the Secretary determines that such States will be able to use such additional amounts for carrying out such purpose. Such available amounts shall be redistributed to a State pursuant to section 603(n) of this title (as such section was in effect before October 1, 1995) by substituting ''the number of children residing in all States

applying for such funds'' for ''the number of children residing in the United States in the second preceding fiscal year''.

(ii) Time of determination and distribution

The determination of the Secretary under clause (i) for a fiscal year shall be made not later than the end of the first quarter of the subsequent fiscal year. The redistribution of amounts under clause (i) shall be made as close as practicable to the date on which such determination is made. Any amount made available to a State from an appropriation for a fiscal year in accordance with this subparagraph shall, for purposes of this part, be regarded as part of such State's payment (as determined under this subsection) for the fiscal year in which the redistribution is made.

(3) Appropriation

For grants under this section, there are appropriated—

(A) $1,967,000,000 for fiscal year 1997;
(B) $2,067,000,000 for fiscal year 1998;
(C) $2,167,000,000 for fiscal year 1999;
(D) $2,367,000,000 for fiscal year 2000;
(E) $2,567,000,000 for fiscal year 2001; and
(F) $2,717,000,000 for each of fiscal years 2002 and 2003.

(4) Indian tribes

The Secretary shall reserve not less than 1 percent, and not more than 2 percent, of the aggregate amount appropriated to carry out this section in each fiscal year for payments to Indian tribes and tribal organizations.

(5) Data used to determine State and Federal shares of expenditures

In making the determinations concerning expenditures required under paragraphs (1) and (2)(C), the Secretary shall use information that was reported by the State on ACF Form 231 and available as of the applicable dates specified in clauses (i)(I), (ii), and (iii)(III) of section 603(a)(1)(D)[1] of this title.

(b) Use of funds

(1) In general

Amounts received by a State under this section shall only be used to provide child care assistance. Amounts received by a State under a grant under subsection (a)(1) of this section shall be available for use by the State without fiscal year limitation.

(2) Use for certain populations

A State shall ensure that not less than 70 percent of the total amount of funds received by the State in a fiscal year under this section are used to provide child care assistance to families who are receiving assistance under a State program under this part, families who are attempting through work activities to transition off of such assistance program, and families who are at risk of becoming dependent on such assistance program.

(c) Application of Child Care and Development Block Grant Act of 1990

Notwithstanding any other provision of law, amounts provided to a State under this section shall be transferred to the lead agency under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9858 et seq.], integrated by the State into the programs established by the State under such Act, and be subject to requirements and limitations of such Act.

(d) "State" defined

As used in this section, the term ''State'' means each of the 50 States and the District of Columbia.

(Aug. 14, 1935, ch. 531, title IV, § 418, as added Pub. L. 104–193, title VI, § 603(b), Aug. 22, 1996, 110 Stat. 2279; amended Pub. L. 105–33, title V, § 5601, Aug. 5, 1997, 111 Stat. 644; Pub. L. 108–40, § 4, June 30, 2003, 117 Stat. 837.)

REFERENCES IN TEXT

Section 603(a)(1)(D) of this title, referred to in subsec. (a)(5), was repealed by Pub. L. 108–40, § 3(a)(2), June 30, 2003, 117 Stat. 836.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (c), is subchapter C (§ 658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–236, as amended, which is classified generally to subchapter II–B (§ 9858 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

AMENDMENTS

2003—Subsec. (a)(3)(F). Pub. L. 108–40 substituted ''each of fiscal years 2002 and 2003'' for ''fiscal year 2002''.

1997—Subsec. (a)(1). Pub. L. 105–33, § 5601(a)(1)(A), (D), inserted ''the greater of'' after ''equal to'' in introductory provisions and struck out concluding provisions which read ''whichever is greater.''

Subsec. (a)(1)(A). Pub. L. 105–33, § 5601(a)(1)(B), struck out ''the sum of'' before ''the total amount'', substituted ''expenditures'' for ''amounts expended'' and ''subsections (g) and (i) of section 602 of this title (as in effect before October 1, 1995); or'' for ''section—'', and struck out cls. (i) and (ii) which read as follows:

''(i) 602(g) of this title (as such section was in effect before October 1, 1995); and

''(ii) 602(i) of this title (as so in effect); or''.

Subsec. (a)(1)(B). Pub. L. 105–33, § 5601(a)(1)(C), substituted ''subsections'' for ''sections'' and a period for the semicolon at end.

Subsec. (a)(2)(B). Pub. L. 105–33, § 5601(a)(2)(A), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: ''Subject to subparagraph (C), the amount of a grant awarded to a State for a fiscal year under this paragraph shall be based on the formula used for determining the amount of Federal payments to the State under section 603(n) of this title (as such section was in effect before October 1, 1995).''

Subsec. (a)(2)(C). Pub. L. 105–33, § 5601(a)(2)(B), added subpar. (C) and struck out heading and text of former subpar. (C). Text read as follows: ''The Secretary shall pay to each eligible State in a fiscal year an amount, under a grant under subparagraph (A), equal to the Federal medical assistance percentage for such State for fiscal year 1995 (as defined in section 1396d(b) of this title) of so much of the expenditures by the State for child care in such year as exceed the State set-aside for such State under paragraph (1)(A) for such year and the amount of State expenditures in fiscal year 1994 or 1995 (whichever is greater) that equal the non-Federal share for the programs described in subparagraph (A) of paragraph (1).''

Subsec. (a)(2)(D)(i). Pub. L. 105–33, § 5601(a)(2)(C), substituted ''any amounts allotted'' for ''amounts under any grant awarded'' and ''such amounts are allotted'' for ''the grant is made''.

[1] See References in Text note below.

Subsec. (a)(5). Pub. L. 105–33, § 5601(b), added par. (5).
Subsec. (d). Pub. L. 105–33, § 5601(c), substituted ''and'' for ''or'' before ''the District''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5603 of title V of Pub. L. 105–33 provided that:
''(a) IN GENERAL.—Except as provided in subsection (b), this chapter [chapter 6 (§§ 5601–5603) of subtitle F of title V of Pub. L. 105–33, amending this section and sections 9858c, 9858i, 9858j, 9858m, and 9858n of this title] and the amendments made by this chapter shall take effect as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2278).
''(b) EXCEPTIONS.—The amendment made by section 5601(a)(2)(B) [amending this section] shall take effect on October 1, 1997.''

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 9858 of this title.

§ 619. Definitions

As used in this part:

(1) Adult

The term ''adult'' means an individual who is not a minor child.

(2) Minor child

The term ''minor child'' means an individual who—

(A) has not attained 18 years of age; or

(B) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

(3) Fiscal year

The term ''fiscal year'' means any 12-month period ending on September 30 of a calendar year.

(4) Indian, Indian tribe, and tribal organization

(A) In general

Except as provided in subparagraph (B), the terms ''Indian'', ''Indian tribe'', and ''tribal organization'' have the meaning given such terms by section 450b of title 25.

(B) Special rule for Indian tribes in Alaska

The term ''Indian tribe'' means, with respect to the State of Alaska, only the Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:

(i) Arctic Slope Native Association.
(ii) Kawerak, Inc.
(iii) Maniilaq Association.
(iv) Association of Village Council Presidents.
(v) Tanana Chiefs Conference.
(vi) Cook Inlet Tribal Council.
(vii) Bristol Bay Native Association.
(viii) Aleutian and Pribilof Island Association.
(ix) Chugachmuit.
(x) Tlingit Haida Central Council.
(xi) Kodiak Area Native Association.
(xii) Copper River Native Association.

(5) State

Except as otherwise specifically provided, the term ''State'' means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

(Aug. 14, 1935, ch. 531, title IV, § 419, as added Pub. L. 104–193, title I, § 103(a)(2), Aug. 22, 1996, 110 Stat. 2159.)

EFFECTIVE DATE

Par. (4) of this section effective Oct. 1, 1996, with remainder of section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

PART B—CHILD AND FAMILY SERVICES

AMENDMENTS

1993—Pub. L. 103–66, title XIII, § 13711(a)(1), Aug. 10, 1993, 107 Stat. 649, substituted ''Child and Family Services'' for ''Child Welfare Services'' in part B heading.
1968—Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 911, added part B heading.

SUBPART 1—CHILD WELFARE SERVICES

AMENDMENTS

1993—Pub. L. 103–66, title XIII, § 13711(a)(1), Aug. 10, 1993, 107 Stat. 649, added subpart 1 heading.

§ 620. Authorization of appropriations

(a) For the purpose of enabling the United States, through the Secretary, to cooperate with State public welfare agencies in establishing, extending, and strengthening child welfare services, there is authorized to be appropriated for each fiscal year the sum of $325,000,000.

(b) Funds appropriated for any fiscal year pursuant to the authorization contained in subsection (a) of this section shall be included in the appropriation Act (or supplemental appropriation Act) for the fiscal year preceding the fiscal year for which such funds are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence shall apply notwithstanding the fact that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

(Aug. 14, 1935, ch. 531, title IV, § 420, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 911; amended Pub. L. 92–603, title IV, § 412, Oct. 30, 1972, 86 Stat. 1492; Pub. L. 96–272, title I, § 103(a), June 17, 1980, 94 Stat. 516; Pub. L. 98–369, div. B, title VI, § 2663(c)(8), July 18, 1984, 98 Stat. 1166; Pub. L. 101–239, title X, § 10401(a), Dec. 19, 1989, 103 Stat. 2487.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239 substituted ''$325,000,000'' for ''$266,000,000''.

1984—Subsec. (b). Pub. L. 98–369 struck out the comma after ''preceding sentence''.

1980—Pub. L. 96–272 designated existing provisions as subsec. (a), struck out provisions that had made specific authorization of appropriations for fiscal years 1973, 1974, 1975, and 1976, and added subsec. (b).

1972—Pub. L. 92–603 substituted ''$196,000,000 for the fiscal year ending June 30, 1973, $211,000,000 for the fiscal year ending June 30, 1974, $226,000,000 for the fiscal year ending June 30, 1975, $246,000,000 for the fiscal year ending June 30, 1976, and $266,000,000'' for ''$55,000,000 for the fiscal year ending June 30, 1968, $100,000,000 for the fiscal year ending June 30, 1969, and $110,000,000''.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10401(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section and sections 627 and 674 of this title] shall take effect on October 1, 1989.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 412 of Pub. L. 92–603 provided that the amendment made by that section is effective with respect to fiscal years beginning after June 30, 1972.

EFFECTIVE DATE

Section 240(e)(2) of Pub. L. 90–248 provided that: ''Part B of title IV of the Social Security Act (as added by subsection (c) of this section) [this part], and the amendments made by subsections (a) and (b) of this section [amending subchapter IV and enacting Part A heading] shall become effective on the date this Act is enacted [Jan. 2, 1968].''

APPROPRIATION OF FUNDS

Section 103(f) of Pub. L. 96–272 provided that:

''(1) Notwithstanding any other provision of law, funds which are appropriated for fiscal year 1980 pursuant to section 420 of the Social Security Act [this section], and for which States are eligible for payment under part B of title IV of that Act [this part], shall remain available, to the extent so provided in an appropriation Act hereafter enacted, for payment with respect to expenditures for child welfare services under part B of title IV of that Act until September 30, 1981.

''(2) Section 420(b) of the Social Security Act (as added by subsection (a) of this section) shall apply only with respect to appropriation Acts, which appropriate funds for fiscal years after fiscal year 1981 pursuant to the authorization contained in section 420 of the Social Security Act, enacted after the date of enactment of this Act [June 17, 1980].''

STATE PLANS; DATE OF DEVELOPMENT; APPROPRIATIONS, ALLOTMENTS, AND REALLOTMENTS

Section 240(f)(1), (2) of Pub. L. 90–248 provided that: ''In the case of any State which has a plan developed as provided in part 3 of title V of the Social Security Act [part 3 of subchapter V of this chapter] as in effect prior to the enactment of this Act [Jan. 2, 1968]—

''(1) such plan shall be treated as a plan developed, as provided in part B of title IV of such Act [this part], on the date this Act is enacted [Jan. 2, 1968];

''(2) any sums appropriated, allotted, or reallotted pursuant to part 3 of title V; for the fiscal year ending June 30, 1968, shall be deemed appropriated, allotted, or reallotted (as the case may be) under part B of title IV of such Act [this part] for such fiscal year;''

§ 621. Allotments to States

(a) Allotment formula

The sum appropriated pursuant to section 620 of this title for each fiscal year shall be allotted by the Secretary for use by cooperating State public welfare agencies which have plans developed jointly by the State agency and the Secretary as follows: He shall first allot $70,000 to each State, and shall then allot to each State an amount which bears the same ratio to the remainder of such sum as the product of (1) the population of the State under the age of twenty-one and (2) the allotment percentage of the State (as determined under this section) bears to the sum of the corresponding products of all the States.

(b) Allotment percentage

The ''allotment percentage'' for any State shall be 100 per centum less the State percentage; and the State percentage shall be the percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States; except that (1) the allotment percentage shall in no case be less than 30 per centum or more than 70 per centum, and (2) the allotment percentage shall be 70 per centum in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(c) Promulgation of allotment percentage

The allotment percentage for each State shall be promulgated by the Secretary between October 1 and November 30 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning October 1 next succeeding such promulgation.

(d) "United States" defined

For purposes of this section, the term ''United States'' means the fifty States and the District of Columbia.

(Aug. 14, 1935, ch. 531, title IV, § 421, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 912; amended Pub. L. 96–272, title I, § 103(a), June 17, 1980, 94 Stat. 516; Pub. L. 100–203, title IX, § 9135(b)(2), Dec. 22, 1987, 101 Stat. 1330–315.)

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–203 substituted ''Guam, and American Samoa'' for ''and Guam''.

1980—Pub. L. 96–272 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9135(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1301 and 1397b of this title] shall apply with respect to fiscal years beginning on or after October 1, 1988.''

§ 622. State plans for child welfare services

(a) Joint development

In order to be eligible for payment under this subpart, a State must have a plan for child wel-

fare services which has been developed jointly by the Secretary and the State agency designated pursuant to subsection (b)(1) of this section, and which meets the requirements of subsection (b) of this section.

(b) Requisite features of State plans

Each plan for child welfare services under this subpart shall—

(1) provide that (A) the individual or agency that administers or supervises the administration of the State's services program under subchapter XX of this chapter will administer or supervise the administration of the plan (except as otherwise provided in section 103(d) of the Adoption Assistance and Child Welfare Act of 1980), and (B) to the extent that child welfare services are furnished by the staff of the State agency or local agency administering the plan, a single organizational unit in such State or local agency, as the case may be, will be responsible for furnishing such child welfare services;

(2) provide for coordination between the services provided for children under the plan and the services and assistance provided under subchapter XX of this chapter, under the State program funded under part A of this subchapter, under the State plan approved under subpart 2 of this part, under the State plan approved under the State plan approved[1] under part E of this subchapter, and under other State programs having a relationship to the program under this subpart, with a view to provision of welfare and related services which will best promote the welfare of such children and their families;

(3) provide that the standards and requirements imposed with respect to child day care under subchapter XX of this chapter shall apply with respect to day care services under this subpart, except insofar as eligibility for such services is involved;

(4) provide for the training and effective use of paid paraprofessional staff, with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan, and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency;

(5) contain a description of the services to be provided and specify the geographic areas where such services will be available;

(6) contain a description of the steps which the State will take to provide child welfare services and to make progress in—

(A) covering additional political subdivisions,

(B) reaching additional children in need of services, and

(C) expanding and strengthening the range of existing services and developing new types of services,

along with a description of the State's child welfare services staff development and training plans;

(7) provide, in the development of services for children, for utilization of the facilities and experience of voluntary agencies in accordance with State and local programs and arrangements, as authorized by the State;

(8) provide that the agency administering or supervising the administration of the plan will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require;

(9) provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed;

(10) provide assurances that the State—

(A) since June 17, 1980, has completed an inventory of all children who, before the inventory, had been in foster care under the responsibility of the State for 6 months or more, which determined—

(i) the appropriateness of, and necessity for, the foster care placement;

(ii) whether the child could or should be returned to the parents of the child or should be freed for adoption or other permanent placement; and

(iii) the services necessary to facilitate the return of the child or the placement of the child for adoption or legal guardianship;

(B) is operating, to the satisfaction of the Secretary—

(i) a statewide information system from which can be readily determined the status, demographic characteristics, location, and goals for the placement of every child who is (or, within the immediately preceding 12 months, has been) in foster care;

(ii) a case review system (as defined in section 675(5) of this title) for each child receiving foster care under the supervision of the State;

(iii) a service program designed to help children—

(I) where safe and appropriate, return to families from which they have been removed; or

(II) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement; and

(iv) a preplacement preventive services program designed to help children at risk of foster care placement remain safely with their families; and

(C)(i) has reviewed (or within 12 months after October 31, 1994, will review) State policies and administrative and judicial procedures in effect for children abandoned at or shortly after birth (including policies and procedures providing for legal representation of such children); and

(ii) is implementing (or within 24 months after October 31, 1994, will implement) such policies and procedures as the State determines, on the basis of the review described in clause (i), to be necessary to enable permanent decisions to be made expeditiously with respect to the placement of such children;

[1] So in original.

(11) contain a description, developed after consultation with tribal organizations (as defined in section 450b of title 25) in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act [25 U.S.C. 1901 et seq.];

(12) contain assurances that the State shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children;

(13) contain a description of the activities that the State has undertaken for children adopted from other countries, including the provision of adoption and post-adoption services; and

(14) provide that the State shall collect and report information on children who are adopted from other countries and who enter into State custody as a result of the disruption of a placement for adoption or the dissolution of an adoption, including the number of children, the agencies who handled the placement or adoption, the plans for the child, and the reasons for the disruption or dissolution.

(Aug. 14, 1935, ch. 531, title IV, §422, as added and amended Pub. L. 90–248, title II, §240(c), (d), Jan. 2, 1968, 81 Stat. 912, 915; Pub. L. 93–647, §3(a)(6), (7), (h), Jan. 4, 1975, 88 Stat. 2348, 2349; Pub. L. 96–272, title I, §103(a), June 17, 1980, 94 Stat. 517; Pub. L. 101–239, title X, §10403(b)(1), Dec. 19, 1989, 103 Stat. 2488; Pub. L. 103–66, title XIII, §13711(b)(1), Aug. 10, 1993, 107 Stat. 655; Pub. L. 103–382, title V, §554, Oct. 20, 1994, 108 Stat. 4057; Pub. L. 103–432, title II, §§202(a), 204(a), Oct. 31, 1994, 108 Stat. 4453, 4456; Pub. L. 104–193, title I, §108(b), Aug. 22, 1996, 110 Stat. 2165; Pub. L. 105–33, title V, §5592(a)(1)(A), (2), Aug. 5, 1997, 111 Stat. 644; Pub. L. 105–89, title I, §102(1), title II, §202(a), Nov. 19, 1997, 111 Stat. 2117, 2125; Pub. L. 105–200, title IV, §410(b), July 16, 1998, 112 Stat. 673; Pub. L. 106–279, title II, §205, Oct. 6, 2000, 114 Stat. 837.)

REFERENCES IN TEXT

Section 103(d) of the Adoption Assistance and Child Welfare Act of 1980, referred to in subsec. (b)(1), is section 103(d) of Pub. L. 96–272, which is set out as a note below.

Parts A and E of this subchapter, referred to in subsec. (b)(2), are classified to sections 601 et seq. and 670 et seq. of this title.

The Indian Child Welfare Act, referred to in subsec. (b)(10), probably means the Indian Child Welfare Act of 1978, Pub. L. 95–608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§1901 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 25 and Tables.

AMENDMENTS

2000—Subsec. (b)(13), (14). Pub. L. 106–279 added pars. (13) and (14).

1998—Subsec. (b)(2). Pub. L. 105–200 struck out ''under'' before ''the State plan approved under part E of this subchapter''.

1997—Subsec. (b)(9). Pub. L. 105–33, §5592(a)(2), made technical amendment to directory language of Pub. L. 103–432, §204(a)(2). See 1994 Amendment note below.

Pub. L. 105–33, §5592(a)(1)(A)(iii), redesignated par. (9), relating to providing assurances that the State has met certain requirements to protect foster children, as (10).

Pub. L. 105–33, §5592(a)(1)(A)(i), amended par. (9) relating to diligent recruitment of potential foster and adoptive families by substituting a semicolon for period at end.

Subsec. (b)(10). Pub. L. 105–33, §5592(a)(1)(A)(iii), redesignated par. (9), relating to providing assurances that the State has met certain requirements to protect foster children, as (10). Former par. (10) redesignated (11).

Subsec. (b)(10)(B). Pub. L. 105–89, §102(1), in cl. (iii)(I) inserted ''safe and'' after ''where'' and in cl. (iv) inserted ''safely'' after ''remain''.

Subsec. (b)(11). Pub. L. 105–33, §5592(a)(1)(A)(ii), redesignated par. (10) as (11).

Subsec. (b)(12). Pub. L. 105–89, §202(a), added par. (12).

1996—Subsec. (b)(2). Pub. L. 104–193 substituted ''program funded under part A of this subchapter'' for ''plan approved under part A of this subchapter'' and ''under the State plan approved under part E of this subchapter'' for ''part E of this subchapter''.

1994—Subsec. (b)(7). Pub. L. 103–432, §202(a)(1), which directed amendment of par. (7) by striking out ''and'' at end, could not be executed because ''and'' did not appear at end subsequent to amendment by Pub. L. 103–382, §554(1). See below.

Pub. L. 103–382, §554(1), struck out ''and'' at end.

Subsec. (b)(8). Pub. L. 103–432, §204(a)(1), struck out ''and'' at end.

Pub. L. 103–432, §202(a)(2), which directed amendment of par. (8) by substituting ''; and'' for period at end, could not be executed because there was no period at end subsequent to amendment by Pub. L. 103–382, §554(2). See below.

Pub. L. 103–382, §554(2), substituted ''; and'' for period at end.

Subsec. (b)(9). Pub. L. 103–432, §204(a)(2), as amended by Pub. L. 105–33, §5592(a)(2), substituted ''; and'' for period at end of par. (9) relating to providing assurances that the State has met certain requirements to protect foster children.

Pub. L. 103–432, §202(a)(3), added par. (9) relating to providing assurances that the State has met certain requirements to protect foster children.

Pub. L. 103–382, §554(3), added par. (9) relating to diligent recruitment of potential foster and adoptive families.

Subsec. (b)(10). Pub. L. 103–432, §204(a)(3), added par. (10).

1993—Subsec. (a). Pub. L. 103–66, §13711(b)(1)(A), substituted ''under this subpart'' for ''under this part''.

Subsec. (b). Pub. L. 103–66, §13711(b)(1)(B), substituted ''this subpart'' for ''this part'' in introductory provisions.

Subsec. (b)(2). Pub. L. 103–66, §13711(b)(1)(B), (C), inserted ''under the State plan approved under subpart 2 of this part,'' after ''part A of this subchapter,'' and substituted ''under this subpart'' for ''under this part''.

Subsec. (b)(3). Pub. L. 103–66, §13711(b)(1)(B), substituted ''under this subpart'' for ''under this part''.

1989—Subsec. (b)(1)(A). Pub. L. 101–239 substituted ''the individual or agency that administers or supervises the administration of the State's services program under subchapter XX of this chapter'' for ''the individual or agency designated pursuant to section 1397b(d)(1)(C) of this title to administer or supervise the administration of the State's services program''.

1980—Pub. L. 96–272 substituted provisions relating to State plans covering child welfare services for provisions relating to the payments to States and the computation of amounts. See section 623 of this title.

1975—Subsec. (a)(1)(A)(i). Pub. L. 93–647, §3(a)(6), substituted ''the individual or agency designated pursuant to section 1397b(d)(1)(C) of this title to administer or supervise the administration of the State's services program'' for ''the State agency designated pursuant to section 602(a)(3) of this title to administer or supervise the administration of the plan of the State approved under part A of this subchapter''.

Subsec. (a)(i)(A)(ii). Pub. L. 93–647, §3(a)(7), substituted ''a single organizational unit in such State or local agency, as the case may be,'' for ''the organizational unit in such State or local agency established pursuant to section 602(a)(15) of this title''.

Subsec. (c). Pub. L. 93–647, § 3(h), added subsec. (c).

1968—Subsec. (a)(1). Pub. L. 90–248, § 240(d), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–279 effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 501 of Pub. L. 105–89 provided that:

''(a) IN GENERAL.—Except as otherwise provided in this Act [enacting sections 673b, 678, and 679b of this title, amending this section, sections 603, 629, 629a, 629b, 653, 671 to 673, 674, 675, 677, and 1320a–9 of this title, and sections 645 and 901 of Title 2, The Congress, enacting provisions set out as notes under sections 613, 629a, 671, 673, 675, 679b, 1305, 1320a–9, 5111, and 5113 of this title, and amending provisions set out as a note under section 670 of this title], the amendments made by this Act take effect on the date of enactment of this Act [Nov. 19, 1997].

''(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—In the case of a State plan under part B or E of title IV of the Social Security Act [this part and part E of this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of the failure of the plan to meet such additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Nov. 19, 1997]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 5593 of title V of Pub. L. 105–33 provided that: ''The amendments made by this chapter [chapter 5 (§§ 5591–5593) of subtitle F of title V of Pub. L. 105–33, amending this section and sections 624, 625, 628b, 671, and 672 of this title] shall take effect as if included in the enactment of title V of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2277).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 202(e) of Pub. L. 103–432 provided that: ''The amendments and repeal made by this section [amending this section and sections 623 to 625 and 672 of this title and repealing section 627 of this title] shall be effective with respect to fiscal years beginning on or after April 1, 1996.''

Section 204(b) of Pub. L. 103–432 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to fiscal years beginning on or after October 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13711(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [enacting sections 629 to 629e of this title and amending this section and sections 623, 628, and 671 of this title] shall be effective with respect to calendar quarters beginning on or after October 1, 1993.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10403(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if such amendment had been included in section 1883(e)(1) of the Tax Reform Act of 1986 [Pub. L. 99–514, amending section 1397b of this title] on the date of the enactment of such Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 3 of Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, except that amendment by section 3(a) of Pub. L. 93–647 not effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands, or Guam, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT; DIFFERENT STATE AGENCIES FOR ADMINISTRATION OF STATE PLANS UNDER PARTS A AND B

Section 240(e)(3) of Pub. L. 90–248 provided that: ''The amendments made by paragraphs (1) and (2) of subsection (d) [amending this section] shall become effective July 1, 1969, except that (A) if on the date of enactment of this Act [Jan. 2, 1968] the agency of a State administering its plan for child-welfare services developed under part B of title IV of the Social Security Act [this part] is different from the agency of the State designated pursuant to section 402(a)(3) of such Act [section 602(a)(3) of this title], so much of paragraph (1) of section 422(a) of such Act [subsec. (a) of this section] as precedes subparagraph (B) (as added by paragraph (2) of such subsection (d)) shall not apply with respect to such agencies but only so long as such agencies of the State are different, and (B) if on such date the local agency administering the plan of a State for child-welfare services developed under part B of title IV of the Social Security Act [this part] is different from the local agency in such subdivision administering the plan of such State under part A of title IV of such Act [part A of this subchapter], so much of such paragraph (1) as precedes such subparagraph (B) shall not apply with respect to such local agencies but only so long as such local agencies are different.''

FINDINGS AND PURPOSE

Section 552 of Pub. L. 103–382 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) nearly 500,000 children are in foster care in the United States;

''(2) tens of thousands of children in foster care are waiting for adoption;

''(3) 2 years and 8 months is the median length of time that children wait to be adopted;

''(4) child welfare agencies should work to eliminate racial, ethnic, and national origin discrimination and bias in adoption and foster care recruitment, selection, and placement procedures; and

''(5) active, creative, and diligent efforts are needed to recruit foster and adoptive parents of every race, ethnicity, and culture in order to facilitate the placement of children in foster and adoptive homes which will best meet each child's needs.

''(b) PURPOSE.—It is the purpose of this subpart [subpart 1 of part E of title V of Pub. L. 103–382, enacting section 5115a of this title, amending this section, and enacting provisions set out as a note under section 1305 of this title] to promote the best interests of children by—

''(1) decreasing the length of time that children wait to be adopted;

''(2) preventing discrimination in the placement of children on the basis of race, color, or national origin; and

''(3) facilitating the identification and recruitment of foster and adoptive families that can meet children's needs.''

GUAM, PUERTO RICO, VIRGIN ISLANDS, AND COMMONWEALTH OF NORTHERN MARIANA ISLANDS

Section 103(c) of Pub. L. 96–272 provided that in the case of Guam, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, subsec. (b)(1) of this section (as otherwise amended by section 103(a) of Pub. L. 96–272), is deemed to read as follows:

''(1) provide that (A) the State agency designated pursuant to section 602(a)(3) of this title to administer or supervise the administration of the plan of the State approved under part A of this subchapter will administer or supervise the administration of such plan for child welfare services, and (B) to the extent that child welfare services are furnished by the staff of the State agency or local agency administering such plan for child welfare services, the organizational unit in such State or local agency established pursuant to section 602(a)(15) of this title will be responsible for furnishing such child welfare services;''.

ADMINISTRATION OF STATE PLAN FOR CHILD WELFARE SERVICES BY NON-DESIGNATED AGENCY

Section 103(d) of Pub. L. 96–272 provided that: ''Notwithstanding section 422(b)(1) of the Social Security Act (as amended by subsection (a) of this section) [subsec. (b)(1) of this section] if on December 1, 1974, the agency of a State administering its plan for child welfare services under part B of title IV of that Act [this part] was not the agency designated pursuant to section 402(a)(3) of that Act [section 602(a)(3) of this title], such section 422(b)(1) shall not apply with respect to such agency, but only so long as such agency is not the agency designated under section 2003(d)(1)(C) of that Act [section 1397b(d)(1)(C) of this title]; and if on December 1, 1974, the local agency administering the plan of a State under part B of title IV of that Act in a subdivision of the State was not the local agency in such subdivision administering the plan of such State under part A of that title [part A of this subchapter], such section 422(b)(1) shall not apply with respect to such local agency, but only so long as such local agency is not the local agency administering the program of the State for the provision of services under title XX of that Act [subchapter XX of this chapter].''

OVERPAYMENTS OR UNDERPAYMENTS

Section 240(f)(3) of Pub. L. 90–248 provided that in the case of any State which has a plan developed as provided in part 3 of this subchapter as in effect prior to Jan. 2, 1968, sections 721 to 728 of this title, ''any overpayment or underpayment which the Secretary determines was made to the State under section 523 of the Social Security Act [section 723 of this title] and with respect to which adjustment has not then already been made under subsection (b) of such section shall, for purposes of section 422 of such Act [this section], be considered an overpayment or underpayment (as the case may be) made under section 422 of such Act.''

§ 623. Payment to States

(a) Payment schedule

From the sums appropriated therefor and the allotment under this subpart, subject to the conditions set forth in this section, the Secretary shall from time to time pay to each State that has a plan developed in accordance with section 622 of this title an amount equal to 75 per centum of the total sum expended under the plan (including the cost of administration of the plan) in meeting the costs of State, district, county, or other local child welfare services.

(b) Computation and method of payment

The method of computing and making payments under this section shall be as follows:

(1) The Secretary shall, prior to the beginning of each period for which a payment is to be made, estimate the amount to be paid to the State for such period under the provisions of this section.

(2) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such prior period under this section.

(c) Prohibited payments; exceptions

(1) No payment may be made to a State under this part, for any fiscal year beginning after September 30, 1979, with respect to State expenditures made for (A) child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, (B) foster care maintenance payments, and (C) adoption assistance payments, to the extent that the Federal payment with respect to those expenditures would exceed the total amount of the Federal payment under this part for fiscal year 1979.

(2) Expenditures made by a State for any fiscal year which begins after September 30, 1979, for foster care maintenance payments shall be treated for purposes of making Federal payments under this part with respect to expenditures for child welfare services, as if such foster care maintenance payments constituted child welfare services of a type to which the limitation imposed by paragraph (1) does not apply; except that the amount payable to the State with respect to expenditures made for other child welfare services and for foster care maintenance payments during any such year shall not exceed 100 per centum of the amount of the expenditures made for child welfare services for which payment may be made under the limitation imposed by paragraph (1) as in effect without regard to this paragraph.

(d) Minimum State expenditures

No payment may be made to a State under this part in excess of the payment made under this part for fiscal year 1979, for any fiscal year beginning after September 30, 1979, if for the latter fiscal year the total of the State's expenditures for child welfare services under this part (excluding expenditures for activities specified in subsection (c)(1) of this section) is less than the total of the State's expenditures under this part (excluding expenditures for such activities) for fiscal year 1979.

(Aug. 14, 1935, ch. 531, title IV, § 423, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 913; amended Pub. L. 94–273, § 22, Apr. 21, 1976, 90 Stat. 379; Pub. L. 96–272, title I, § 103(a), June 17, 1980, 94 Stat. 518; Pub. L. 103–66, title XIII, § 13711(b)(2), Aug. 10, 1993, 107 Stat. 655; Pub. L. 103–432, title II, § 202(d)(1), Oct. 31, 1994, 108 Stat. 4454.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–432 struck out ''and in section 627 of this title'' after ''set forth in this section''.

1993—Subsec. (a). Pub. L. 103–66 substituted ''under this subpart'' for ''under this part''.

1980—Pub. L. 96–272 substituted provisions covering payments to States for provisions relating to allotment percentages and Federal share.

1976—Subsec. (c). Pub. L. 94–273 substituted ''October'' for ''July'' wherever appearing and ''November 30'' for ''August 31''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Apr. 1, 1996, see section 202(e) of Pub. L. 103–432, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as a note under section 622 of this title.

§ 624. Reallotment

(a) In general

Subject to subsection (b) of this section, the amount of any allotment to a State under section 621 of this title for any fiscal year which the State certifies to the Secretary will not be required for carrying out the State plan developed as provided in section 622 of this title shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines (1) have need in carrying out their State plans so developed for sums in excess of those previously allotted to them under section 621 of this title and (2) will be able to use such excess amounts during such fiscal year. Such reallotments shall be made on the basis of the State plans so developed, after taking into consideration the population under the age of twenty-one, and the per capita income of each such State as compared with the population under the age of twenty-one, and the per capita income of all such States with respect to which such a determination by the Secretary has been made. Any amount so reallotted to a State shall be deemed part of its allotment under section 621 of this title.

(b) Exception relating to foster child protections

The Secretary shall not reallot under subsection (a) of this section any amount that is withheld or recovered from a State due to the failure of the State to meet the requirements of section 622(b)(10) of this title.

(Aug. 14, 1935, ch. 531, title IV, § 424, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 914; amended Pub. L. 96–272, title I, § 103(a), June 17, 1980, 94 Stat. 519; Pub. L. 103–432, title II, § 202(b), Oct. 31, 1994, 108 Stat. 4454; Pub. L. 105–33, title V, § 5592(a)(1)(B), Aug. 5, 1997, 111 Stat. 644.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–33 substituted ''section 622(b)(10)'' for ''section 622(b)(9)''.

1994—Pub. L. 103–432 designated existing provisions as subsec. (a), inserted heading, substituted ''Subject to subsection (b) of this section, the amount'' for ''The amount'', and added subsec. (b).

1980—Pub. L. 96–272 reenacted section without substantial change.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title V of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5593 of Pub. L. 105–33, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Apr. 1, 1996, see section 202(e) of Pub. L. 103–432, set out as a note under section 622 of this title.

§ 625. Definitions

(a)(1) For purposes of this subchapter, the term ''child welfare services'' means public social services which are directed toward the accomplishment of the following purposes: (A) protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; (B) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children; (C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (D) restoring to their families children who have been removed, by the provision of services to the child and the families; (E) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and (F) assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption.

(2) Funds expended by a State for any calendar quarter to comply with section 622(b)(10) or 676(b) of this title, and funds expended with respect to nonrecurring costs of adoption proceedings in the case of children placed for adoption with respect to whom assistance is provided under a State plan for adoption assistance approved under part E of this subchapter, shall be deemed to have been expended for child welfare services.

(b) For other definitions relating to this part and to part E of this subchapter, see section 675 of this title.

(Aug. 14, 1935, ch. 531, title IV, § 425, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 914; amended Pub. L. 96–272, title I, § 103(a), June 17, 1980, 94 Stat. 519; Pub. L. 103–432, title II, § 202(d)(2), Oct. 31, 1994, 108 Stat. 4454; Pub. L. 105–33, title V, § 5592(a)(1)(B), Aug. 5, 1997, 111 Stat. 644.)

REFERENCES IN TEXT

Part E of this subchapter, referred to in text, is classified to section 670 et seq. of this title.

AMENDMENTS

1997—Subsec. (a)(2). Pub. L. 105–33 substituted ''section 622(b)(10)'' for ''section 622(b)(9)''.

1994—Subsec. (a)(2). Pub. L. 103–432 substituted ''section 622(b)(9) or 676(b) of this title'' for ''the statistical report required by section 676(b) of this title''.

1980—Pub. L. 96–272 revised definition of ''child-welfare services'', designated that definition as subsec. (a)(1), and added subsecs. (a)(2) and (b).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title V of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5593 of Pub. L. 105–33, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Apr. 1, 1996, see section 202(e) of Pub. L. 103–432, set out as a note under section 622 of this title.

§ 626. Research, training, or demonstration projects

(a) Authorization of appropriations

There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine—

(1) for grants by the Secretary—

(A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child-welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;

(B) to State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and special types of welfare services; and

(C) to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships described in section 628a of this title with such stipends and allowances as may be permitted by the Secretary; and

(2) for contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects relating to such matters.

(b) Appropriations for demonstration projects for development of alternate care arrangements for infants not requiring hospitalization

(1) There are authorized to be appropriated $4,000,000 for each of the fiscal years 1988, 1989, and 1990 for grants by the Secretary to public or private nonprofit entities submitting applications under this subsection for the purpose of conducting demonstration projects under this subsection to develop alternative care arrangements for infants who do not have health conditions that require hospitalization and who would otherwise remain in inappropriate hospital settings.

(2) The demonstration projects conducted under this section may include—

(A) multidisciplinary projects designed to prevent the inappropriate hospitalization of infants and to allow infants described in paragraph (1) to remain with or return to a parent in a residential setting, where appropriate care for the infant and suitable treatment for the parent (including treatment for drug or alcohol addiction) may be assured, with the goal (where possible) of rehabilitating the parent and eliminating the need for such care for the infant;

(B) multidisciplinary projects that assure appropriate, individualized care for such infants in a foster home or other non-medical residential setting in cases where such infant does not require hospitalization and would otherwise remain in inappropriate hospital settings, including projects to demonstrate methods to recruit, train, and retain foster care families; and

(C) such other projects as the Secretary determines will best serve the interests of such infants and will serve as models for projects that agencies or organizations in other communities may wish to develop.

(3) In the case of any project which includes the use of funds authorized under this subsection for the care of infants in foster homes or other non-medical residential settings away from their parents, there shall be developed for each such infant a case plan of the type described in section 675(1) of this title (to the extent that such infant is not otherwise covered by such a plan), and each such project shall include a case review system of the type described in section 675(5) of this title (covering each such infant who is not otherwise subject to such a system).

(4) In evaluating applications from entities proposing to conduct demonstration projects under this subsection, the Secretary shall give priority to those projects that serve areas most in need of alternative care arrangements for infants described in paragraph (1).

(5) No project may be funded unless the application therefor contains assurances that it will—

(A) provide for adequate evaluation;

(B) provide for coordination with local governments;

(C) provide for community education regarding the inappropriate hospitalization of infants;

(D) use, to the extent practical, other available private, local, State, and Federal sources for the provision of direct services; and

(E) meet such other criteria as the Secretary may prescribe.

(6) Grants may be used to pay the costs of maintenance and of necessary medical and social services (to the extent that these costs are not otherwise paid for under other subchapters of this chapter), and for such other purposes as the Secretary may allow.

(7) The Secretary shall provide training and technical assistance to grantees, as requested.

(c) Payments; advances or reimbursements; installments; conditions

Payments of grants or under contracts or cooperative arrangements under this section may

be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants, contracts, or other arrangements.

(Aug. 14, 1935, ch. 531, title IV, § 426, as added Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 915; amended Pub. L. 100–203, title IX, § 9137, Dec. 22, 1987, 101 Stat. 1330–319; Pub. L. 103–432, title II, § 205(b), Oct. 31, 1994, 108 Stat. 4457.)

AMENDMENTS

1994—Subsec. (a)(1)(C). Pub. L. 103–432 inserted ''described in section 628a of this title'' after ''including traineeships''.

1987—Subsecs. (b), (c). Pub. L. 100–203 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 205(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [enacting section 628a of this title and amending this section] shall apply to grants awarded on or after October 1, 1995.''

APPROPRIATIONS OR GRANTS

Section 240(g) of Pub. L. 90–248 provided that any appropriations or grants made pursuant to section 726 of this title, as in effect prior to Jan. 2, 1968, were to be deemed to have been appropriated or made under this section.

§ 627. Repealed. Pub. L. 103–432, title II, § 202(c), Oct. 31, 1994, 108 Stat. 4454

Section, act Aug. 14, 1935, ch. 531, title IV, § 427, as added June 17, 1980, Pub. L. 96–272, title I, § 103(b), 94 Stat. 519; amended Dec. 19, 1989, Pub. L. 101–239, title X, § 10401(a), 103 Stat. 2487, related to foster care protection required for additional payments.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to fiscal years beginning on or after Apr. 1, 1996, see section 202(e) of Pub. L. 103–432, set out as an Effective Date of 1994 Amendment note under section 622 of this title.

§ 628. Payments to Indian tribal organizations

(a) Amounts

The Secretary may, in appropriate cases (as determined by the Secretary) make payments under this subpart directly to an Indian tribal organization within any State which has a plan for child welfare services approved under this subpart. Such payments shall be made in such manner and in such amounts as the Secretary determines to be appropriate.

(b) Inclusion in State allotment

Amounts paid under subsection (a) of this section shall be deemed to be a part of the allotment (as determined under section 621 of this title) for the State in which such Indian tribal organization is located.

(c) "Indian tribe" and "tribal organization" defined

For purposes of this section, the terms ''Indian tribe'' and ''tribal organization'' shall have the meanings given such terms by subsections (e) and (*l*) of section 450b of title 25, respectively.

(Aug. 14, 1935, ch. 531, title IV, § 428, as added Pub. L. 96–272, title I, § 103(b), June 17, 1980, 94 Stat. 520; amended Pub. L. 103–66, title XIII, § 13711(b)(3), Aug. 10, 1993, 107 Stat. 655; Pub. L. 104–193, title III, § 375(d), Aug. 22, 1996, 110 Stat. 2257.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–193 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For purposes of this section—

''(1) the term 'tribal organization' means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body; and

''(2) the term 'Indian tribe' means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Public Law 92–203; 85 Stat. 688)) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or (B) is located on, or in proximity to, a Federal or State reservation or rancheria.''

1993—Subsec. (a). Pub. L. 103–66 substituted ''under this subpart'' for ''under this part'' in two places.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as a note under section 622 of this title.

§ 628a. Child welfare traineeships

The Secretary may approve an application for a grant to a public or nonprofit institution for higher learning to provide traineeships with stipends under section 626(a)(1)(C) of this title only if the application—

(1) provides assurances that each individual who receives a stipend with such traineeship (in this section referred to as a ''recipient'') will enter into an agreement with the institution under which the recipient agrees—

(A) to participate in training at a public or private nonprofit child welfare agency on a regular basis (as determined by the Secretary) for the period of the traineeship;

(B) to be employed for a period of years equivalent to the period of the traineeship, in a public or private nonprofit child welfare agency in any State, within a period of time (determined by the Secretary in accordance with regulations) after completing the post-secondary education for which the traineeship was awarded;

(C) to furnish to the institution and the Secretary evidence of compliance with subparagraphs (A) and (B); and

(D) if the recipient fails to comply with subparagraph (A) or (B) and does not qualify for any exception to this subparagraph which the Secretary may prescribe in regulations, to repay to the Secretary all (or an appropriately prorated part) of the amount of the stipend, plus interest, and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary);

(2) provides assurances that the institution will—

(A) enter into agreements with child welfare agencies for onsite training of recipients;

(B) permit an individual who is employed in the field of child welfare services to apply for a traineeship with a stipend if the traineeship furthers the progress of the individual toward the completion of degree requirements; and

(C) develop and implement a system that, for the 3-year period that begins on the date any recipient completes a child welfare services program of study, tracks the employment record of the recipient, for the purpose of determining the percentage of recipients who secure employment in the field of child welfare services and remain employed in the field.

(Aug. 14, 1935, ch. 531, title IV, § 429, as added Pub. L. 103–432, title II, § 205(a), Oct. 31, 1994, 108 Stat. 4456.)

EFFECTIVE DATE

Section applicable to grants awarded on or after Oct. 1, 1995, see section 205(c) of Pub. L. 103–432, set out as an Effective Date of 1994 Amendment note under section 626 of this title.

§ 628b. National random sample study of child welfare

(a) In general

The Secretary shall conduct (directly, or by grant, contract, or interagency agreement) a national study based on random samples of children who are at risk of child abuse or neglect, or are determined by States to have been abused or neglected.

(b) Requirements

The study required by subsection (a) of this section shall—

(1) have a longitudinal component; and

(2) yield data reliable at the State level for as many States as the Secretary determines is feasible.

(c) Preferred contents

In conducting the study required by subsection (a) of this section, the Secretary should—

(1) carefully consider selecting the sample from cases of confirmed abuse or neglect; and

(2) follow each case for several years while obtaining information on, among other things—

(A) the type of abuse or neglect involved;

(B) the frequency of contact with State or local agencies;

(C) whether the child involved has been separated from the family, and, if so, under what circumstances;

(D) the number, type, and characteristics of out-of-home placements of the child; and

(E) the average duration of each placement.

(d) Reports

(1) In general

From time to time, the Secretary shall prepare reports summarizing the results of the study required by subsection (a) of this section.

(2) Availability

The Secretary shall make available to the public any report prepared under paragraph (1), in writing or in the form of an electronic data tape.

(3) Authority to charge fee

The Secretary may charge and collect a fee for the furnishing of reports under paragraph (2).

(e) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary for each of fiscal years 1996 through 2002 $6,000,000 to carry out this section.

(Aug. 14, 1935, ch. 531, title IV, § 429A, as added Pub. L. 104–193, title V, § 503, Aug. 22, 1996, 110 Stat. 2277; amended Pub. L. 105–33, title V, §§ 5591(a), 5592(a)(1)(C), Aug. 5, 1997, 111 Stat. 643, 644.)

AMENDMENTS

1997—Pub. L. 105–33, § 5592(a)(1)(C), transferred section in original to end of this subpart.

Subsec. (a). Pub. L. 105–33, § 5591(a), inserted ''(directly, or by grant, contract, or interagency agreement)'' after ''conduct''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title V of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5593 of Pub. L. 105–33, set out as a note under section 622 of this title.

SUBPART 2—PROMOTING SAFE AND STABLE FAMILIES

§ 629. Findings and purpose

(a) Findings

The Congress finds that there is a continuing urgent need to protect children and to strengthen families as demonstrated by the following:

(1) Family support programs directed at specific vulnerable populations have had positive effects on parents, children, or both. The vulnerable populations for which programs have been shown to be effective include teenage mothers with very young children and families that have children with special needs.

(2) Family preservation programs have been shown to provide extensive and intensive services to families in crisis.

(3) The time lines established by the Adoption and Safe Families Act of 1997 have made the prompt availability of services to address family problems (and in particular the prompt availability of appropriate services and treatment addressing substance abuse) an important factor in successful family reunification.

(4) The rapid increases in the annual number of adoptions since the enactment of the Adoption and Safe Families Act of 1997 have created a growing need for postadoption services and for service providers with the particular knowledge and skills required to address the unique issues adoptive families and children may face.

(b) Purpose

The purpose of this program is to enable States to develop and establish, or expand, and to operate coordinated programs of community-based family support services, family preservation services, time-limited family reunification services, and adoption promotion and support services to accomplish the following objectives:

(1) To prevent child maltreatment among families at risk through the provision of supportive family services.

(2) To assure children's safety within the home and preserve intact families in which children have been maltreated, when the family's problems can be addressed effectively.

(3) To address the problems of families whose children have been placed in foster care so that reunification may occur in a safe and stable manner in accordance with the Adoption and Safe Families Act of 1997.

(4) To support adoptive families by providing support services as necessary so that they can make a lifetime commitment to their children.

(Aug. 14, 1935, ch. 531, title IV, § 430, as added Pub. L. 103–66, title XIII, § 13711(a)(2), Aug. 10, 1993, 107 Stat. 649; amended Pub. L. 105–89, title III, § 305(a)(1), (2), (b)(3)(A), Nov. 19, 1997, 111 Stat. 2130, 2131; Pub. L. 107–133, title I, § 101, Jan. 17, 2002, 115 Stat. 2414.)

REFERENCES IN TEXT

The Adoption and Safe Families Act of 1997, referred to in subsecs. (a)(3), (4) and (b)(3), is Pub. L. 105–89, Nov. 19, 1997, 111 Stat. 2115, as amended. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 430 of act Aug. 14, 1935, was classified to section 630 of this title prior to repeal by Pub. L. 100–485, title II, § 202(a), Oct. 13, 1988, 102 Stat. 2377.

AMENDMENTS

2002—Pub. L. 107–133 amended section generally, substituting subsecs. (a) and (b) relating to findings and purpose for former subsecs. (a) to (d) relating to purposes, limitations on authorizations of appropriations, description of amounts, inflation percentage, and reservation of certain amounts.

1997—Subsec. (a). Pub. L. 105–89, § 305(b)(3)(A), substituted ", community-based family support services, time-limited family reunification services, and adoption promotion and support services" for "and community-based family support services".

Subsec. (b)(6) to (8). Pub. L. 105–89, § 305(a)(1), added pars. (6) to (8).

Subsec. (d). Pub. L. 105–89, § 305(a)(2), substituted "1998, 1999, 2000, and 2001" for "and 1998" in pars. (1) and (2).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–133, title III, § 301, Jan. 17, 2002, 115 Stat. 2425, provided that:

"(a) IN GENERAL.—Subject to subsection (b), the amendments made by this Act [enacting sections 629f to 629i of this title and amending this section and sections 629a, 629c, 629d, 629e, 674, and 677 of this title] shall take effect on the date of the enactment of this Act [Jan. 17, 2002].

"(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—In the case of a State plan under subpart 2 of part B or part E of the Social Security Act [probably means subpart 2 of part B or part E of title IV of the Social Security Act (this subpart and part E of this subchapter)] that the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments specified in subsection (a) of this section, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of the failure of the plan to meet the additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Jan. 17, 2001]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be deemed to be a separate regular session of the State legislature."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

EFFECTIVE DATE

Subpart effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 622 of this title.

§ 629a. Definitions

(a) In general

As used in this subpart:

(1) Family preservation services

The term "family preservation services" means services for children and families designed to help families (including adoptive and extended families) at risk or in crisis, including—

(A) service programs designed to help children—

(i) where safe and appropriate, return to families from which they have been removed; or

(ii) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be safe and appropriate for a child, in some other planned, permanent living arrangement;

(B) preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain safely with their families;

(C) service programs designed to provide followup care to families to whom a child has been returned after a foster care placement;

(D) respite care of children to provide temporary relief for parents and other caregivers (including foster parents);

(E) services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition; and

(F) infant safe haven programs to provide a way for a parent to safely relinquish a

newborn infant at a safe haven designated pursuant to a State law.

(2) Family support services

The term ''family support services'' means community-based services to promote the safety and well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a safe, stable, and supportive family environment, to strengthen parental relationships and promote healthy marriages, and otherwise to enhance child development.

(3) State agency

The term ''State agency'' means the State agency responsible for administering the program under subpart 1.

(4) State

The term ''State'' includes an Indian tribe or tribal organization, in addition to the meaning given such term for purposes of subpart 1.

(5) Tribal organization

The term ''tribal organization'' means the recognized governing body of any Indian tribe.

(6) Indian tribe

The term ''Indian tribe'' means any Indian tribe (as defined in section 682(i)(5) of this title, as in effect before August 22, 1986) and any Alaska Native organization (as defined in section 682(i)(7)(A) of this title, as so in effect).

(7) Time-limited family reunification services

(A) In general

The term ''time-limited family reunification services'' means the services and activities described in subparagraph (B) that are provided to a child that is removed from the child's home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, but only during the 15-month period that begins on the date that the child, pursuant to section 675(5)(F) of this title, is considered to have entered foster care.

(B) Services and activities described

The services and activities described in this subparagraph are the following:

(i) Individual, group, and family counseling.

(ii) Inpatient, residential, or outpatient substance abuse treatment services.

(iii) Mental health services.

(iv) Assistance to address domestic violence.

(v) Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries.

(vi) Transportation to or from any of the services and activities described in this subparagraph.

(8) Adoption promotion and support services

The term ''adoption promotion and support services'' means services and activities designed to encourage more adoptions out of the foster care system, when adoptions promote the best interests of children, including such activities as pre- and post-adoptive services and activities designed to expedite the adoption process and support adoptive families.

(9) Non-Federal funds

The term ''non-Federal funds'' means State funds, or at the option of a State, State and local funds.

(b) Other terms

For other definitions of other terms used in this subpart, see section 675 of this title.

(Aug. 14, 1935, ch. 531, title IV, § 431, as added Pub. L. 103–66, title XIII, § 13711(a)(2), Aug. 10, 1993, 107 Stat. 650; amended Pub. L. 105–89, title III, § 305(b)(2), (c)(2), (d)(1), Nov. 19, 1997, 111 Stat. 2131, 2132; Pub. L. 106–169, title IV, § 401(e), Dec. 14, 1999, 113 Stat. 1858; Pub. L. 107–133, title I, § 102, Jan. 17, 2002, 115 Stat. 2415.)

REFERENCES IN TEXT

Section 682 of this title, referred to in subsec. (a)(6), was repealed by Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167.

PRIOR PROVISIONS

A prior section 431 of act Aug. 14, 1935, was classified to section 631 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2002—Subsec. (a)(1)(F). Pub. L. 107–133, § 102(a), added subpar. (F).

Subsec. (a)(2). Pub. L. 107–133, § 102(b), inserted ''to strengthen parental relationships and promote healthy marriages,'' after ''environment,''.

1999—Subsec. (a)(6). Pub. L. 106–169 inserted '', as in effect before August 22, 1986'' after ''682(i)(5) of this title'' and '', as so in effect'' after ''682(i)(7)(A) of this title''.

1997—Subsec. (a)(1)(A). Pub. L. 105–89, § 305(c)(2)(A)(i), inserted ''safe and'' before ''appropriate'' in cls. (i) and (ii).

Subsec. (a)(1)(B). Pub. L. 105–89, § 305(c)(2)(A)(ii), inserted ''safely'' after ''remain''.

Subsec. (a)(2). Pub. L. 105–89, § 305(c)(2)(B), inserted ''safety and'' before ''well-being of children'' and substituted ''safe, stable, and supportive family'' for ''stable and supportive family''.

Subsec. (a)(7), (8). Pub. L. 105–89, § 305(b)(2), added pars. (7) and (8).

Subsec. (a)(9). Pub. L. 105–89, § 305(d)(1), added par. (9).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 305(b)(2), (c)(2) of Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

Section 305(d)(2) of Pub. L. 105–89 provided that: ''The amendment made by paragraph (1) [amending this sec-

tion] takes effect as if included in the enactment of section 13711 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–33 [103–66]; 107 Stat. 649).''

§ 629b. State plans

(a) Plan requirements

A State plan meets the requirements of this subsection if the plan—

(1) provides that the State agency shall administer, or supervise the administration of, the State program under this subpart;

(2)(A)(i) sets forth the goals intended to be accomplished under the plan by the end of the 5th fiscal year in which the plan is in operation in the State, and (ii) is updated periodically to set forth the goals intended to be accomplished under the plan by the end of each 5th fiscal year thereafter;

(B) describes the methods to be used in measuring progress toward accomplishment of the goals;

(C) contains assurances that the State—

(i) after the end of each of the 1st 4 fiscal years covered by a set of goals, will perform an interim review of progress toward accomplishment of the goals, and on the basis of the interim review will revise the statement of goals in the plan, if necessary, to reflect changed circumstances; and

(ii) after the end of the last fiscal year covered by a set of goals, will perform a final review of progress toward accomplishment of the goals, and on the basis of the final review (I) will prepare, transmit to the Secretary, and make available to the public a final report on progress toward accomplishment of the goals, and (II) will develop (in consultation with the entities required to be consulted pursuant to subsection (b) of this section) and add to the plan a statement of the goals intended to be accomplished by the end of the 5th succeeding fiscal year;

(3) provides for coordination, to the extent feasible and appropriate, of the provision of services under the plan and the provision of services or benefits under other Federal or federally assisted programs serving the same populations;

(4) contains assurances that not more than 10 percent of expenditures under the plan for any fiscal year with respect to which the State is eligible for payment under section 629d of this title for the fiscal year shall be for administrative costs, and that the remaining expenditures shall be for programs of family preservation services, community-based family support services, time-limited family reunification services, and adoption promotion and support services, with significant portions of such expenditures for each such program;

(5) contains assurances that the State will—

(A) annually prepare, furnish to the Secretary, and make available to the public a description (including separate descriptions with respect to family preservation services, community-based family support services, time-limited family reunification services, and adoption promotion and support services) of—

(i) the service programs to be made available under the plan in the immediately succeeding fiscal year;

(ii) the populations which the programs will serve; and

(iii) the geographic areas in the State in which the services will be available; and

(B) perform the activities described in subparagraph (A)—

(i) in the case of the 1st fiscal year under the plan, at the time the State submits its initial plan; and

(ii) in the case of each succeeding fiscal year, by the end of the 3rd quarter of the immediately preceding fiscal year;

(6) provides for such methods of administration as the Secretary finds to be necessary for the proper and efficient operation of the plan;

(7)(A) contains assurances that Federal funds provided to the State under this subpart will not be used to supplant Federal or non-Federal funds for existing services and activities which promote the purposes of this subpart; and

(B) provides that the State will furnish reports to the Secretary, at such times, in such format, and containing such information as the Secretary may require, that demonstrate the State's compliance with the prohibition contained in subparagraph (A);

(8) provides that the State agency will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require; and

(9) contains assurances that in administering and conducting service programs under the plan, the safety of the children to be served shall be of paramount concern.

(b) Approval of plans

(1) In general

The Secretary shall approve a plan that meets the requirements of subsection (a) of this section only if the plan was developed jointly by the Secretary and the State, after consultation by the State agency with appropriate public and nonprofit private agencies and community-based organizations with experience in administering programs of services for children and families (including family preservation, family support, time-limited family reunification, and adoption promotion and support services).

(2) Plans of Indian tribes

(A) Exemption from inappropriate requirements

The Secretary may exempt a plan submitted by an Indian tribe from any requirement of this section that the Secretary determines would be inappropriate to apply to the Indian tribe, taking into account the resources, needs, and other circumstances of the Indian tribe.

(B) Special rule

Notwithstanding subparagraph (A) of this paragraph, the Secretary may not approve a plan of an Indian tribe under this subpart to which (but for this subparagraph) an allotment of less than $10,000 would be made under section 629c(a) of this title if allotments were made under section 629c(a) of

this title to all Indian tribes with plans approved under this subpart with the same or larger numbers of children.

(Aug. 14, 1935, ch. 531, title IV, § 432, as added Pub. L. 103–66, title XIII, § 13711(a)(2), Aug. 10, 1993, 107 Stat. 651; amended Pub. L. 105–89, title III, § 305(b)(1), (c)(1), Nov. 19, 1997, 111 Stat. 2130, 2131; Pub. L. 105–200, title IV, § 410(c), July 16, 1998, 112 Stat. 673.)

PRIOR PROVISIONS

A prior section 432 of act Aug. 14, 1935, was classified to section 632 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

1998—Subsec. (a)(8). Pub. L. 105–200 inserted ''; and'' at end.

1997—Subsec. (a)(4). Pub. L. 105–89, § 305(b)(1)(A)(i), substituted '', community-based family support services, time-limited family reunification services, and adoption promotion and support services,'' for ''and community-based family support services''.

Subsec. (a)(5)(A). Pub. L. 105–89, § 305(b)(1)(A)(ii), substituted '', community-based family support services, time-limited family reunification services, and adoption promotion and support services'' for ''and community-based family support services''.

Subsec. (a)(9). Pub. L. 105–89, § 305(c)(1), added par. (9).

Subsec. (b)(1). Pub. L. 105–89, § 305(b)(1)(B), substituted '', family support, time-limited family reunification, and adoption promotion and support'' for ''and family support''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

§ 629c. Allotments to States

(a) Indian tribes

From the amount reserved pursuant to section 629f(b)(3) of this title for any fiscal year, the Secretary shall allot to each Indian tribe with a plan approved under this subpart an amount that bears the same ratio to such reserved amount as the number of children in the Indian tribe bears to the total number of children in all Indian tribes with State plans so approved, as determined by the Secretary on the basis of the most current and reliable information available to the Secretary.

(b) Territories

From the amount described in section 629f(a) of this title for any fiscal year that remains after applying section 629f(b) of this title for the fiscal year, the Secretary shall allot to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa an amount determined in the same manner as the allotment to each of such jurisdictions is determined under section 621 of this title.

(c) Other States

(1) In general

From the amount described in section 629f(a) of this title for any fiscal year that remains after applying section 629f(b) of this title and subsection (b) of this section for the fiscal year, the Secretary shall allot to each State (other than an Indian tribe) which is not specified in subsection (b) of this section an amount equal to such remaining amount multiplied by the food stamp percentage of the State for the fiscal year.

(2) "Food stamp percentage" defined

(A) In general

As used in paragraph (1) of this subsection, the term ''food stamp percentage'' means, with respect to a State and a fiscal year, the average monthly number of children receiving food stamp benefits in the State for months in the 3 fiscal years referred to in subparagraph (B) of this paragraph, as determined from sample surveys made under section 2025(c) of title 7, expressed as a percentage of the average monthly number of children receiving food stamp benefits in the States described in such paragraph (1) for months in such 3 fiscal years, as so determined.

(B) Fiscal years used in calculation

For purposes of the calculation pursuant to subparagraph (A), the Secretary shall use data for the 3 most recent fiscal years, preceding the fiscal year for which the State's allotment is calculated under this subsection, for which such data are available to the Secretary.

(d) Reallotments

The amount of any allotment to a State under this section for any fiscal year that the State certifies to the Secretary will not be required for carrying out the State plan under section 629b of this title shall be available for reallotment using the allotment methodology specified in this section. Any amount so reallotted to a State is deemed part of the allotment of the State under the preceding provisions of this section.

(Aug. 14, 1935, ch. 531, title IV, § 433, as added Pub. L. 103–66, title XIII, § 13711(a)(2), Aug. 10, 1993, 107 Stat. 653; amended Pub. L. 107–133, title I, §§ 103, 106(a)(2), Jan. 17, 2002, 115 Stat. 2415, 2417.)

PRIOR PROVISIONS

A prior section 433 of act Aug. 14, 1935, was classified to section 633 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–133, § 106(a)(2)(A), substituted ''section 629f(b)(3)'' for ''section 629(d)(3)''.

Subsec. (b). Pub. L. 107–133, § 106(a)(2)(B), substituted ''section 629f(a)'' for ''section 629(b)'' and ''section 629f(b)'' for ''section 629(d)''.

Subsec. (c)(1). Pub. L. 107–133, § 106(a)(2)(C), substituted ''section 629f(a)'' for ''section 629(b)'' and ''section 629f(b)'' for ''section 629(d)''.

Subsec. (d). Pub. L. 107–133, § 103, added subsec. (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

§ 629d. Payments to States

(a) Entitlement

Each State that has a plan approved under section 629b of this title shall be entitled to payment of the lesser of—

(1) 75 percent of the total expenditures by the State for activities under the plan during the fiscal year or the immediately succeeding fiscal year; or

(2) the allotment of the State under section 629c of this title for the fiscal year.

(b) Prohibitions

(1) No use of other Federal funds for State match

Each State receiving an amount paid under subsection (a) of this section may not expend any Federal funds to meet the costs of services under the State plan under section 629b of this title not covered by the amount so paid.

(2) Availability of funds

A State may not expend any amount paid under subsection (a) of this section for any fiscal year after the end of the immediately succeeding fiscal year.

(c) Direct payments to tribal organizations of Indian tribes

The Secretary shall pay any amount to which an Indian tribe is entitled under this section directly to the tribal organization of the Indian tribe.

(Aug. 14, 1935, ch. 531, title IV, § 434, as added Pub. L. 103–66, title XIII, § 13711(a)(2), Aug. 10, 1993, 107 Stat. 653; amended Pub. L. 107–133, title I, § 104, Jan. 17, 2002, 115 Stat. 2415.)

PRIOR PROVISIONS

A prior section 434 of act Aug. 14, 1935, was classified to section 634 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–133, § 104(a), struck out par. (1) designation and heading after subsec. heading, substituted ''Each State that has a plan approved under section 629b of this title shall be entitled to payment of the lesser of—'' for ''Except as provided in paragraph (2) of this subsection, each State which has a plan approved under this subpart shall be entitled to payment of the lesser of—'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and realigned their margins, and struck out former par. (2) which related to a special rule for fiscal year 1994.

Subsec. (b)(1). Pub. L. 107–133, § 104(b)(1), struck out ''paragraph (1) or (2)(B) of'' after ''amount paid under'' and substituted ''under the State plan under section 629b of this title'' for ''described in this subpart''.

Subsec. (b)(2). Pub. L. 107–133, § 104(b)(2), substituted ''subsection (a)'' for ''subsection (a)(1)''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

§ 629e. Evaluations; research; technical assistance

(a) Evaluations

(1) In general

The Secretary shall evaluate and report to the Congress biennially on the effectiveness of the programs carried out pursuant to this subpart in accomplishing the purposes of this subpart, and may evaluate any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the program under this subpart, in accordance with criteria established in accordance with paragraph (2).

(2) Criteria to be used

In developing the criteria to be used in evaluations under paragraph (1), the Secretary shall consult with appropriate parties, such as—

(A) State agencies administering programs under this part and part E of this subchapter;

(B) persons administering child and family services programs (including family preservation and family support programs) for private, nonprofit organizations with an interest in child welfare; and

(C) other persons with recognized expertise in the evaluation of child and family services programs (including family preservation and family support programs) or other related programs.

(3) Timing of report

Beginning in 2003, the Secretary shall submit the biennial report required by this subsection not later than April 1 of every other year, and shall include in each such report the funding level, the status of ongoing evaluations, findings to date, and the nature of any technical assistance provided to States under subsection (d) of this section.

(b) Coordination of evaluations

The Secretary shall develop procedures to coordinate evaluations under this section, to the extent feasible, with evaluations by the States of the effectiveness of programs under this subpart.

(c) Research

The Secretary shall give priority consideration to the following topics for research and evaluation under this subsection, using rigorous evaluation methodologies where feasible:

(1) Promising program models in the service categories specified in section 629(b) of this title, particularly time-limited reunification services and postadoption services.

(2) Multi-disciplinary service models designed to address parental substance abuse and to reduce its impacts on children.

(3) The efficacy of approaches directed at families with specific problems and with children of specific age ranges.

(4) The outcomes of adoptions finalized after enactment of the Adoption and Safe Families Act of 1997.

(d) Technical assistance

To the extent funds are available therefor, the Secretary shall provide technical assistance that helps States and Indian tribes to—

(1) develop research-based protocols for identifying families at risk of abuse and neglect of use in the field;

(2) develop treatment models that address the needs of families at risk, particularly families with substance abuse issues;

(3) implement programs with well-articulated theories of how the intervention will result in desired changes among families at risk;

(4) establish mechanisms to ensure that service provision matches the treatment model; and

(5) establish mechanisms to ensure that postadoption services meet the needs of the individual families and develop models to reduce the disruption rates of adoption.

(Aug. 14, 1935, ch. 531, title IV, § 435, as added Pub. L. 103–66, title XIII, § 13711(a)(2), Aug. 10, 1993, 107 Stat. 654; amended Pub. L. 107–133, title I, § 105, Jan. 17, 2002, 115 Stat. 2415.)

REFERENCES IN TEXT

Part E of this subchapter, referred to in subsec. (a)(2)(A), is classified to section 670 et seq. of this title.

The enactment of the Adoption and Safe Families Act of 1997, referred to in subsec. (c)(4), is the enactment of Pub. L. 105–89, which was approved Nov. 19, 1997.

PRIOR PROVISIONS

A prior section 435 of act Aug. 14, 1935, was classified to section 635 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2002—Pub. L. 107–133, § 105(1), substituted ''Evaluations; research; technical assistance'' for ''Evaluations'' in section catchline.

Subsec. (a)(1). Pub. L. 107–133, § 105(1), substituted ''The Secretary shall evaluate and report to the Congress biennially on'' for ''The Secretary shall evaluate''.

Subsec. (a)(3). Pub. L. 107–133, § 105(2), added par. (3).

Subsecs. (c), (d). Pub. L. 107–133, § 105(3), added subsecs. (c) and (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

§ 629f. Authorization of appropriations; reservation of certain amounts

(a) Authorization

There are authorized to be appropriated to carry out the provisions of this subpart $305,000,000 for each of fiscal years 2002 through 2006.

(b) Reservation of certain amounts

From the amount specified in subsection (a) of this section for a fiscal year, the Secretary shall reserve amounts as follows:

(1) Evaluation, research, training, and technical assistance

The Secretary shall reserve $6,000,000 for expenditure by the Secretary—

(A) for research, training, and technical assistance costs related to the program under this subpart; and

(B) for evaluation of State programs based on the plans approved under section 629b of this title and funded under this subpart, and any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the State programs.

(2) State court improvements

The Secretary shall reserve $10,000,000 for grants under section 629h of this title.

(3) Indian tribes

The Secretary shall reserve 1 percent for allotment to Indian tribes in accordance with section 629c(a) of this title.

(Aug. 14, 1935, ch. 531, title IV, § 436, as added Pub. L. 107–133, title I, § 106(a)(1), Jan. 17, 2002, 115 Stat. 2416.)

PRIOR PROVISIONS

A prior section 436 of act Aug. 14, 1935, was classified to section 636 of this title prior to repeal by Pub. L. 100–485.

EFFECTIVE DATE

Section effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as an Effective Date of 2002 Amendment note under section 629 of this title.

§ 629g. Discretionary grants

(a) Limitations on authorization of appropriations

In addition to any amount appropriated pursuant to section 629f of this title, there are authorized to be appropriated to carry out this section $200,000,000 for each of fiscal years 2002 through 2006.

(b) Reservation of certain amounts

From the amount (if any) appropriated pursuant to subsection (a) of this section for a fiscal year, the Secretary shall reserve amounts as follows:

(1) Evaluation, research, training, and technical assistance

The Secretary shall reserve 3.3 percent for expenditure by the Secretary for the activities described in section 629f(b)(1) of this title.

(2) State court improvements

The Secretary shall reserve 3.3 percent for grants under section 629h of this title.

(3) Indian tribes

The Secretary shall reserve 2 percent for allotment to Indian tribes in accordance with subsection (c)(1) of this section.

(c) Allotments

(1) Indian tribes

From the amount (if any) reserved pursuant to subsection (b)(3) of this section for any fiscal year, the Secretary shall allot to each Indian tribe with a plan approved under this subpart an amount that bears the same ratio to such reserved amount as the number of children in the Indian tribe bears to the total number of children in all Indian tribes with State plans so approved, as determined by the Secretary on the basis of the most current and reliable information available to the Secretary.

(2) Territories

From the amount (if any) appropriated pursuant to subsection (a) of this section for any fiscal year that remains after applying

subection[1] (b) of this section for the fiscal year, the Secretary shall allot to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa an amount determined in the same manner as the allotment to each of such jurisdictions is determined under section 621 of this title.

(3) Other States

From the amount (if any) appropriated pursuant to subsection (a) of this section for any fiscal year that remains after applying subsection (b) of this section and paragraph (2) of this subsection for the fiscal year, the Secretary shall allot to each State (other than an Indian tribe) which is not specified in paragraph (2) of this subsection an amount equal to such remaining amount multiplied by the food stamp percentage (as defined in section 629c(c)(2) of this title) of the State for the fiscal year.

(d) Grants

The Secretary may make a grant to a State which has a plan approved under this subpart in an amount equal to the lesser of—

(1) 75 percent of the total expenditures by the State for activities under the plan during the fiscal year or the immediately succeeding fiscal year; or

(2) the allotment of the State under subsection (c) of this section for the fiscal year.

(e) Applicability of certain rules

The rules of subsections (b) and (c) of section 629d of this title shall apply in like manner to the amounts made available pursuant to this section.

(Aug. 14, 1935, ch. 531, title IV, § 437, as added Pub. L. 107–133, title I, § 106(b), Jan. 17, 2002, 115 Stat. 2417.)

PRIOR PROVISIONS

A prior section 437 of act Aug. 14, 1935, was classified to section 637 of this title prior to repeal by Pub. L. 100–485.

EFFECTIVE DATE

Section effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as an Effective Date of 2002 Amendment note under section 629 of this title.

§ 629h. Entitlement funding for State courts to assess and improve handling of proceedings relating to foster care and adoption

(a) In general

The Secretary shall make grants, in accordance with this section, to the highest State courts in States participating in the program under part E of this subchapter, for the purpose of enabling such courts—

(1) to conduct assessments, in accordance with such requirements as the Secretary shall publish, of the role, responsibilities, and effectiveness of State courts in carrying out State laws requiring proceedings (conducted by or under the supervision of the courts)—

(A) that implement this part and part E of this subchapter;

(B) that determine the advisability or appropriateness of foster care placement;

(C) that determine whether to terminate parental rights; and

(D) that determine whether to approve the adoption or other permanent placement of a child; and

(2) to implement improvements the highest state[1] courts deem necessary as a result of the assessments, including—

(A) to provide for the safety, well-being, and permanence of children in foster care, as set forth in the Adoption and Safe Families Act of 1997 (Public Law 105–89); and

(B) to implement a corrective action plan, as necessary, resulting from reviews of child and family service programs under section 1320a–2a of this title.

(b) Applications

In order to be eligible for a grant under this section, a highest State court shall submit to the Secretary an application at such time, in such form, and including such information and assurances as the Secretary shall require.

(c) Allotments

(1) In general

Each highest State court which has an application approved under subsection (b) of this section, and is conducting assessment and improvement activities in accordance with this section, shall be entitled to payment, for each of fiscal years 2002 through 2006, from the amount reserved pursuant to section 629f(b)(2) of this title (and the amount, if any, reserved pursuant to section 629g(b)(2) of this title), of an amount equal to the sum of $85,000 plus the amount described in paragraph (2) of this subsection for the fiscal year.

(2) Formula

The amount described in this paragraph for any fiscal year is the amount that bears the same ratio to the amount reserved pursuant to section 629f(b)(2) of this title (and the amount, if any, reserved pursuant to section 629g(b)(2) of this title) for the fiscal year (reduced by the dollar amount specified in paragraph (1) of this subsection for the fiscal year) as the number of individuals in the State who have not attained 21 years of age bears to the total number of such individuals in all States the highest State courts of which have approved applications under subsection (b) of this section.

(d) Federal share

Each highest State court which receives funds paid under this section may use such funds to pay not more than 75 percent of the cost of activities under this section in each of fiscal years 2002 through 2006.

(Aug. 14, 1935, ch. 531, title IV, § 438, formerly Pub. L. 103–66, title XIII, § 13712, Aug. 10, 1993, 107 Stat. 655, as amended Pub. L. 105–89, title III, § 305(a)(3), Nov. 19, 1997, 111 Stat. 2130; renumbered § 438 of act Aug. 14, 1935, and amended Pub. L. 107–133, title I, § 107, Jan. 17, 2002, 115 Stat. 2418.)

[1] So in original. Probably should be ''subsection''.

[1] So in original. Probably should be capitalized.

REFERENCES IN TEXT

Part E of this subchapter, referred to in subsec. (a), is classified to section 670 et seq. of this title.

The Adoption and Safe Families Act of 1997, referred to in subsec. (a)(2)(A), is Pub. L. 105–89, Nov. 19, 1997, 111 Stat. 2115, as amended. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 1305 of this title and Tables.

CODIFICATION

Section was formerly set out as a note under section 670 of this title prior to renumbering by Pub. L. 107–133.

PRIOR PROVISIONS

A prior section 438 of act Aug. 14, 1935, was classified to section 638 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–133, §107(d)(1)(A), made technical amendment to reference in original act which appears in text as reference to part E of this subchapter.

Subsec. (a)(1)(A). Pub. L. 107–133, §107(d)(1)(B), made technical amendment to reference in original act which appears in text as reference to this part and part E of this subchapter.

Subsec. (a)(2). Pub. L. 107–133, §107(a)(1), added par. (2) and struck out former par. (2) which read as follows: ''to implement changes deemed necessary as a result of the assessments.''

Subsec. (c)(1). Pub. L. 107–133, §107(a)(2), (b), inserted ''and improvement'' after ''assessment'' and substituted ''for each of fiscal years 2002 through 2006, from the amount reserved pursuant to section 629f(b)(2) of this title (and the amount, if any, reserved pursuant to section 629g(b)(2) of this title), of an amount equal to the sum of $85,000 plus the amount described in paragraph (2) of this subsection for the fiscal year.'' for ''for each of fiscal years 1995 through 2001, from amounts reserved pursuant to section 629(d)(2) of this title, of an amount equal to the sum of—

''(A) for fiscal year 1995, $75,000 plus the amount described in paragraph (2) for fiscal year 1995; and

''(B) for each of fiscal years 1996 through 2001, $85,000 plus the amount described in paragraph (2) for each of such fiscal years.''

Subsec. (c)(2). Pub. L. 107–133, §107(d)(2), substituted ''section 629f(b)(2) of this title (and the amount, if any, reserved pursuant to section 629g(b)(2) of this title)'' for ''section 629(d)(2) of this title''.

Subsec. (d). Pub. L. 107–133, §107(c), in heading substituted ''Federal share'' for ''Use of grant funds'' and in text substituted ''to pay not more than 75 percent of the cost of activities under this section in each of fiscal years 2002 through 2006.'' for ''to pay—

''(1) any or all costs of activities under this section in fiscal year 1995; and

''(2) not more than 75 percent of the cost of activities under this section in each of fiscal years 1996, 1997, 1998, 1999, 2000, and 2001.''

1997—Subsec. (c)(1). Pub. L. 105–89, §305(a)(3)(A), substituted ''2001'' for ''1998'' in introductory provisions and par. (B).

Subsec. (d)(2). Pub. L. 105–89, §305(a)(3)(B), substituted ''1998, 1999, 2000, and 2001'' for ''and 1998''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

§ 629i. Grants for programs for mentoring children of prisoners

(a) Findings and purpose

(1) Findings

(A) In the period between 1991 and 1999, the number of children with a parent incarcerated in a Federal or State correctional facility increased by more than 100 percent, from approximately 900,000 to approximately 2,000,000. In 1999, 2.1 percent of all children in the United States had a parent in Federal or State prison.

(B) Prior to incarceration, 64 percent of female prisoners and 44 percent of male prisoners in State facilities lived with their children.

(C) Nearly 90 percent of the children of incarcerated fathers live with their mothers, and 79 percent of the children of incarcerated mothers live with a grandparent or other relative.

(D) Parental arrest and confinement lead to stress, trauma, stigmatization, and separation problems for children. These problems are coupled with existing problems that include poverty, violence, parental substance abuse, high-crime environments, intrafamilial abuse, child abuse and neglect, multiple care givers, and/or prior separations. As a result, these children often exhibit a broad variety of behavioral, emotional, health, and educational problems that are often compounded by the pain of separation.

(E) Empirical research demonstrates that mentoring is a potent force for improving children's behavior across all risk behaviors affecting health. Quality, one-on-one relationships that provide young people with caring role models for future success have profound, life-changing potential. Done right, mentoring markedly advances youths' life prospects. A widely cited 1995 study by Public/Private Ventures measured the impact of one Big Brothers Big Sisters program and found significant effects in the lives of youth—cutting first-time drug use by almost half and first-time alcohol use by about a third, reducing school absenteeism by half, cutting assaultive behavior by a third, improving parental and peer relationships, giving youth greater confidence in their school work, and improving academic performance.

(2) Purpose

The purpose of this section is to authorize the Secretary to make competitive grants to applicants in areas with substantial numbers of children of incarcerated parents, to support the establishment or expansion and operation of programs using a network of public and private community entities to provide mentoring services for children of prisoners.

(b) Definitions

In this section:

(1) Children of prisoners

The term ''children of prisoners'' means children one or both of whose parents are incarcerated in a Federal, State, or local correctional facility. The term is deemed to include children who are in an ongoing mentoring re-

lationship in a program under this section at the time of their parents' release from prison, for purposes of continued participation in the program.

(2) Mentoring

The term ''mentoring'' means a structured, managed program in which children are appropriately matched with screened and trained adult volunteers for one-on-one relationships, involving meetings and activities on a regular basis, intended to meet, in part, the child's need for involvement with a caring and supportive adult who provides a positive role model.

(3) Mentoring services

The term ''mentoring services'' means those services and activities that support a structured, managed program of mentoring, including the management by trained personnel of outreach to, and screening of, eligible children; outreach to, education and training of, and liaison with sponsoring local organizations; screening and training of adult volunteers; matching of children with suitable adult volunteer mentors; support and oversight of the mentoring relationship; and establishment of goals and evaluation of outcomes for mentored children.

(c) Program authorized

From the amounts appropriated under subsection (h) of this section for a fiscal year that remain after applying subsection (h)(2) of this section, the Secretary shall make grants under this section for each of fiscal years 2002 through 2006 to State or local governments, tribal governments or tribal consortia, faith-based organizations, and community-based organizations in areas that have significant numbers of children of prisoners and that submit applications meeting the requirements of this section, in amounts that do not exceed $5,000,000 per grant.

(d) Application requirements

In order to be eligible for a grant under this section, the chief executive officer of the applicant must submit to the Secretary an application containing the following:

(1) Program design

A description of the proposed program, including—

(A) a list of local public and private organizations and entities that will participate in the mentoring network;

(B) the name, description, and qualifications of the entity that will coordinate and oversee the activities of the mentoring network;

(C) the number of mentor-child matches proposed to be established and maintained annually under the program;

(D) such information as the Secretary may require concerning the methods to be used to recruit, screen support, and oversee individuals participating as mentors, (which methods shall include criminal background checks on the individuals), and to evaluate outcomes for participating children, including information necessary to demonstrate compliance with requirements established by the Secretary for the program; and

(E) such other information as the Secretary may require.

(2) Community consultation; coordination with other programs

A demonstration that, in developing and implementing the program, the applicant will, to the extent feasible and appropriate—

(A) consult with public and private community entities, including religious organizations, and including, as appropriate, Indian tribal organizations and urban Indian organizations, and with family members of potential clients;

(B) coordinate the programs and activities under the program with other Federal, State, and local programs serving children and youth; and

(C) consult with appropriate Federal, State, and local corrections, workforce development, and substance abuse and mental health agencies.

(3) Equal access for local service providers

An assurance that public and private entities and community organizations, including religious organizations and Indian organizations, will be eligible to participate on an equal basis.

(4) Records, reports, and audits

An agreement that the applicant will maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

(5) Evaluation

An agreement that the applicant will cooperate fully with the Secretary's ongoing and final evaluation of the program under the plan, by means including providing the Secretary access to the program and program-related records and documents, staff, and grantees receiving funding under the plan.

(e) Federal share

(1) In general

A grant for a program under this section shall be available to pay a percentage share of the costs of the program up to—

(A) 75 percent for the first and second fiscal years for which the grant is awarded; and

(B) 50 percent for the third and each succeeding such fiscal years.

(2) Non-Federal share

The non-Federal share of the cost of projects under this section may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

(f) Considerations in awarding grants

In awarding grants under this section, the Secretary shall take into consideration—

(1) the qualifications and capacity of applicants and networks of organizations to effectively carry out a mentoring program under this section;

(2) the comparative severity of need for mentoring services in local areas, taking into con-

sideration data on the numbers of children (and in particular of low-income children) with an incarcerated parents[1] (or parents) in the areas;

(3) evidence of consultation with existing youth and family service programs, as appropriate; and

(4) any other factors the Secretary may deem significant with respect to the need for or the potential success of carrying out a mentoring program under this section.

(g) Evaluation

The Secretary shall conduct an evaluation of the programs conducted pursuant to this section, and submit to the Congress not later than April 15, 2005, a report on the findings of the evaluation.

(h) Authorization of appropriations; reservation of certain amounts

(1) Authorization

There are authorized to be appropriated to carry out this section $67,000,000 for each of fiscal years 2002 and 2003, and such sums as may be necessary for each succeeding fiscal year.

(2) Reservation

The Secretary shall reserve 2.5 percent of the amount appropriated for each fiscal year under paragraph (1) for expenditure by the Secretary for research, technical assistance, and evaluation related to programs under this section.

(Aug. 14, 1935, ch. 531, title IV, §439, as added Pub. L. 107–133, title I, §121, Jan. 17, 2002, 115 Stat. 2419.)

PRIOR PROVISIONS

A prior section 439 of act Aug. 14, 1935, was classified to section 639 of this title prior to repeal by Pub. L. 100–485.

EFFECTIVE DATE

Section effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as an Effective Date of 2002 Amendment note under section 629 of this title.

PART C—WORK INCENTIVE PROGRAM FOR RECIPIENTS OF AID UNDER STATE PLAN APPROVED UNDER PART A

§§ 630 to 632. Repealed. Pub. L. 100–485, title II, §202(a), Oct. 13, 1988, 102 Stat. 2377

Section 630, act Aug. 14, 1935, ch. 531, title IV, §430, as added Jan. 2, 1968, Pub. L. 90–248, title II, §204(a), 81 Stat. 884; amended Dec. 28, 1971, Pub. L. 92–223, §3(b)(1), 85 Stat. 805, provided statement of purpose for work incentive program for recipients of aid under State plan approved under part A.

Section 631, act Aug. 14, 1935, ch. 531, title IV, §431, as added Jan. 2, 1968, Pub. L. 90–248, title II, §204(a), 81 Stat. 884; amended Dec. 28, 1971, Pub. L. 92–223, §3(b)(2), 85 Stat. 805; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(j)(2)(B)(ii), 98 Stat. 1170, authorized appropriations.

Section 632, act Aug. 14, 1935, ch. 531, title IV, §432, as added Jan. 2, 1968, Pub. L. 90–248, title II, §204(a), 81 Stat. 884; amended Dec. 28, 1971, Pub. L. 92–223, §3(b)(3), 85 Stat. 806; Oct. 13, 1982, Pub. L. 97–300, title V, §502(a), (b)(1), (c)(1), 96 Stat. 1397, 1398; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(k), 98 Stat. 1171, established work incentive programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204(a), (b)(1)(A), of Pub. L. 100–485, set out as an Effective Date of 1988 Amendment note under section 671 of this title.

§632a. Omitted

CODIFICATION

Section, Pub. L. 96–499, title IX, §966, Dec. 5, 1980, 94 Stat. 2652; Pub. L. 97–35, title XXI, §2156, Aug. 13, 1981, 95 Stat. 802; Pub. L. 97–123, §5, Dec. 29, 1981, 95 Stat. 1664; Pub. L. 102–54, §13(q)(4), June 13, 1991, 105 Stat. 280, required Secretary of Health and Human Services to enter into agreements with 7 to 12 States for the purpose of conducting demonstration projects of up to 4 years duration for the training and employment of eligible participants as homemakers or home health aides and required Secretary to submit to Congress annual reports and a final report 6 months after receiving final reports from all States.

§§ 633 to 645. Repealed. Pub. L. 100–485, title II, §202(a), Oct. 13, 1988, 102 Stat. 2377

Section 633, act Aug. 14, 1935, ch. 531, title IV, §433, as added Jan. 2, 1968, Pub. L. 90–248, title II, §204(a), 81 Stat. 885; amended Dec. 28, 1971, Pub. L. 92–223, §3(b)(4)(A)–(F), 85 Stat. 806, 807; Oct. 13, 1982, Pub. L. 97–300, title V, §502(b)(2), (c)(2), (3), 96 Stat. 1398; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(k), 98 Stat. 1171, related to operation of programs.

Section 634, act Aug. 14, 1935, ch. 531, title IV, §434, as added Jan. 2, 1968, Pub. L. 90–248, title II, §204(a), 81 Stat. 887; amended Dec. 28, 1971, Pub. L. 92–223, §3(b)(4)(G), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(k), 98 Stat. 1171, related to incentive payments and allowances for transportation and other costs.

Section 635, act Aug. 14, 1935, ch. 531, title IV, §435, as added Jan. 2, 1968, Pub. L. 90–248, title II, §204(a), 81 Stat. 887; amended Dec. 28, 1971, Pub. L. 92–223, §3(b)(5), 85 Stat. 808, limited Federal assistance.

Section 636, act Aug. 14, 1935, ch. 531, title IV, §436, as added Jan. 2, 1968, Pub. L. 90–248, title II, §204(a), 81 Stat. 887; amended Dec. 28, 1971, Pub. L. 92–223, §3(b)(6), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(j)(2)(B)(iii), 98 Stat. 1170, related to period of enrollment.

Section 637, act Aug. 14, 1935, ch. 531, title IV, §437, as added Jan. 2, 1968, Pub. L. 90–248, title II, §204(a), 81 Stat. 887, related to relocation of participants.

Section 638, act Aug. 14, 1935, ch. 531, title IV, §438, as added Jan. 2, 1968, Pub. L. 90–248, title II, §204(a), 81 Stat. 887; amended Dec. 28, 1971, Pub. L. 92–223, §3(b)(7), 85 Stat. 808, provided that participants in programs were not Federal employees.

Section 639, act Aug. 14, 1935, ch. 531, title IV, §439, as added Jan. 2, 1968, Pub. L. 90–248, title II, §204(a), 81 Stat. 888; amended Dec. 28, 1971, Pub. L. 92–223, §3(b)(8), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(j)(2)(B)(iv), 98 Stat. 1170, related to rules and regulations.

Section 640, act Aug. 14, 1935, ch. 531, title IV, §440, as added Jan. 2, 1968, Pub. L. 90–248, title II, §204(a), 81 Stat. 888, required annual report.

Section 641, act Aug. 14, 1935, ch. 531, title IV, §441, as added Jan. 2, 1968, Pub. L. 90–248, title II, §204(a), 81 Stat. 888; amended Dec. 28, 1971, Pub. L. 92–223, §3(b)(9),

[1] So in original. Probably should be ''parent''.

85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(9), (j)(2)(B)(v), 98 Stat. 1166, 1170, related to evaluation and research.

Section 642, act Aug. 14, 1935, ch. 531, title IV, § 442, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 888; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(10), 85 Stat. 808, related to technical assistance for providers of employment or training.

Section 643, act Aug. 14, 1935, ch. 531, title IV, § 443, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 888; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(11), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(B)(vi), 98 Stat. 1170, related to collection of State share.

Section 644, act Aug. 14, 1935, ch. 531, title IV, § 444, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 889; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(12), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(10), (j)(2)(B)(vii), 98 Stat. 1166, 1170, related to agreements with other agencies providing assistance to families of unemployed parents.

Section 645, act Aug. 14, 1935, ch. 531, title IV, § 445, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2309, 95 Stat. 850; amended Sept. 3, 1982, Pub. L. 97–248, title I, § 158(a), (b), 96 Stat. 399; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(11), 98 Stat. 1166; Aug. 22, 1984, Pub. L. 98–396, title I, 98 Stat. 1392, 1393; Oct. 18, 1986, Pub. L. 99–500, § 150, 100 Stat. 1783–352, and Oct. 30, 1986, Pub. L. 99–591, § 150, 100 Stat. 3341–355; July 11, 1988, Pub. L. 100–364, § 2, 102 Stat. 822, related to work incentive demonstration program.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204(a), (b)(1)(A), of Pub. L. 100–485, set out as an Effective Date of 1988 Amendment note under section 671 of this title.

PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

§ 651. Authorization of appropriations

For the purpose of enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living, locating noncustodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for assistance under a State program funded under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

(Aug. 14, 1935, ch. 531, title IV, § 451, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2351; amended Pub. L. 97–35, title XXIII, § 2332(a), Aug. 13, 1981, 95 Stat. 861; Pub. L. 98–378, § 2, Aug. 16, 1984, 98 Stat. 1305; Pub. L. 104–193, title I, § 108(c)(1), title III, § 395(d)(1)(A), Aug. 22, 1996, 110 Stat. 2165, 2259.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in text, is classified to section 601 et seq. of this title.

AMENDMENTS

1996—Pub. L. 104–193, § 395(d)(1)(A), substituted ''noncustodial'' for ''absent'' in two places.

Pub. L. 104–193, § 108(c)(1), substituted ''assistance under a State program funded under part A of this subchapter'' for ''aid under part A of this subchapter''.

1984—Pub. L. 98–378 substituted ''obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested,'' for ''and obtaining child and spousal support,''.

1981—Pub. L. 97–35 substituted ''children and the spouse (or former spouse) with whom such children are living'' for ''children'' and ''child and spousal support'' for ''child support''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(c)(1) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For effective date of amendment by section 395(d)(1)(A) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2336 of Pub. L. 97–35 provided that:

''(a) Except as otherwise specifically provided in the preceding sections of this chapter [sections 2331–2335 of Pub. L. 97–35] or in subsection (b), the provisions of this chapter and the amendments and repeals made by this chapter [amending this section, sections 652, 653, 654, 657, and 664 of this title, and sections 6305 and 6402 of Title 26, Internal Revenue Code] shall become effective on October 1, 1981.

''(b) If a State agency administering a plan approved under part D of title IV of the Social Security Act [this part] demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by this chapter to which the effective date specified in subsection (a) applies, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or after October 1, 1981. For purposes of the preceding sentence, the term 'session of a State's legislature' includes any regular, special, budget, or other session of a State legislature.''

EFFECTIVE DATE

Section 101(f) of Pub. L. 93–647, as amended by Pub. L. 94–46, § 2, June 30, 1975, 89 Stat. 245, provided that: ''The amendments made by this section [enacting this part and section 6305 of Title 26, Internal Revenue Code, amending sections 602, 603, 604, 606, and 1306 of this title, repealing section 610 of this title, and enacting provisions set out as notes under this section and section 602 of this title] shall become effective on August 1, 1975, except that section 459 of the Social Security Act [section 659 of this title], as added by subsection (a) of this section shall become effective on January 1, 1975, and subsection (e) of this section [enacting provisions set out as a note under this section] shall become effective upon the date of the enactment of this Act [Jan. 4, 1975].''

SHORT TITLE

This part is popularly known as the ''Child Support Enforcement Act''.

STUDY ON EFFECTIVENESS OF ENFORCEMENT OF MEDICAL SUPPORT BY STATE AGENCIES

Pub. L. 105–200, title IV, § 401(a), July 16, 1998, 112 Stat. 659, provided that:

''(1) MEDICAL CHILD SUPPORT WORKING GROUP.—Within 60 days after the date of the enactment of this Act [July 16, 1998], the Secretary of Health and Human Services and the Secretary of Labor shall jointly establish a Medical Child Support Working Group. The purpose of the Working Group shall be to identify the impediments to the effective enforcement of medical support by State agencies administering the programs operated pursuant to part D of title IV of the Social Security Act [this part].

''(2) MEMBERSHIP.—The Working Group shall consist of not more than 30 members and shall be composed of representatives of—

''(A) the Department of Labor;

''(B) the Department of Health and Human Services;

''(C) State directors of programs under part D of title IV of the Social Security Act [this part];

''(D) State directors of the Medicaid program under title XIX of the Social Security Act [subchapter XIX of this chapter];

''(E) employers, including owners of small businesses and their trade or industry representatives and certified human resource and payroll professionals;

''(F) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1))[)];

''(G) children potentially eligible for medical support, such as child advocacy organizations;

''(H) State medical child support programs; and

''(I) organizations representing State child support programs.

''(3) COMPENSATION.—The members shall serve without compensation.

''(4) ADMINISTRATIVE SUPPORT.—The Department of Health and Human Services and the Department of Labor shall jointly provide appropriate administrative support to the Working Group, including technical assistance. The Working Group may use the services and facilities of either such Department, with or without reimbursement, as jointly determined by such Departments.

''(5) REPORT.—

''(A) REPORT BY WORKING GROUP TO THE SECRETARIES.—Not later than 18 months after the date of the enactment of this Act [July 16, 1998], the Working Group shall submit to the Secretary of Labor and the Secretary of Health and Human Services a report containing recommendations for appropriate measures to address the impediments to the effective enforcement of medical support by State agencies administering the programs operated pursuant to part D of title IV of the Social Security Act [this part] identified by the Working Group, including—

''(i) recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under interim regulations;

''(ii) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677);

''(iii) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs operated pursuant to part D of title IV of the Social Security Act and titles XIX and XXI of such Act [subchapter XIX and XXI of this chapter];

''(iv) appropriate measures to improve the availability of alternate types of medical support that are aside from health coverage offered through the noncustodial parent's health plan and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage;

''(v) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act [section 652(f) of this title]; and

''(vi) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the Working Group deems necessary.

''(B) REPORT BY SECRETARIES TO THE CONGRESS.—Not later than 2 months after receipt of the report pursuant to subparagraph (A), the Secretaries shall jointly submit a report to each House of the Congress regarding the recommendations contained in the report under subparagraph (A).

''(6) TERMINATION.—The Working Group shall terminate 30 days after the date of the issuance of its report under paragraph (5).''

PROMULGATION OF NATIONAL MEDICAL SUPPORT NOTICE

Pub. L. 105–200, title IV, § 401(b), July 16, 1998, 112 Stat. 660, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services and the Secretary of Labor shall jointly develop and promulgate by regulation a National Medical Support Notice, to be issued by States as a means of enforcing the health care coverage provisions in a child support order.

''(2) REQUIREMENTS.—The National Medical Support Notice shall—

''(A) conform with the requirements which apply to medical child support orders under section 609(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1169(a)(3)) in connection with group health plans (subject to section 609(a)(4) of such Act), irrespective of whether the group health plan is covered under section 4 of such Act [29 U.S.C. 1003];

''(B) conform with the requirements of part D of title IV of the Social Security Act [this part]; and

''(C) include a separate and easily severable employer withholding notice, informing the employer of—

''(i) applicable provisions of State law requiring the employer to withhold any employee contributions due under any group health plan in connection with coverage required to be provided under such order;

''(ii) the duration of the withholding requirement;

''(iii) the applicability of limitations on any such withholding under title III of the Consumer Credit Protection Act [15 U.S.C. 1671 et seq.];

''(iv) the applicability of any prioritization required under State law between amounts to be withheld for purposes of cash support and amounts to be withheld for purposes of medical support, in cases where available funds are insufficient for full withholding for both purposes; and

''(v) the name and telephone number of the appropriate unit or division to contact at the State agency regarding the National Medical Support Notice.

''(3) PROCEDURES.—The regulations promulgated pursuant to paragraph (1) shall include appropriate procedures for the transmission of the National Medical Support Notice to employers by State agencies administering the programs operated pursuant to part D of title IV of the Social Security Act [this part].

''(4) INTERIM REGULATIONS.—Not later than 10 months after the date of the enactment of this Act [July 16, 1998], the Secretaries shall issue interim regulations providing for the National Medical Support Notice.

''(5) FINAL REGULATIONS.—Not later than 1 year after the issuance of the interim regulations under paragraph (4), the Secretary of Health and Human Services and the Secretary of Labor shall jointly issue final reg-

ulations providing for the National Medical Support Notice.''

AUTHORIZATION OF APPROPRIATIONS

Subsec. 101(e) of Pub. L. 93–647 provided that: ''There are authorized to be appropriated to the Secretary of Health, Education, and Welfare such sums as may be necessary to plan and prepare for the implementation of the program established by this section [this part and section 6305 of Title 26, Internal Revenue Code].''

§ 652. Duties of Secretary

(a) Establishment of separate organizational unit; duties

The Secretary shall establish, within the Department of Health and Human Services a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

(1) establish such standards for State programs for locating noncustodial parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the noncustodial parent's child is living as he determines to be necessary to assure that such programs will be effective;

(2) establish minimum organizational and staffing requirements for State units engaged in carrying out such programs under plans approved under this part;

(3) review and approve State plans for such programs;

(4)(A) review data and calculations transmitted by State agencies pursuant to section 654(15)(B) of this title on State program accomplishments with respect to performance indicators for purposes of subsection (g) of this section and section 658a of this title;

(B) review annual reports submitted pursuant to section 654(15)(A) of this title and, as appropriate, provide to the State comments, recommendations for additional or alternative corrective actions, and technical assistance; and

(C) conduct audits, in accordance with the Government auditing standards of the Comptroller General of the United States—

(i) at least once every 3 years (or more frequently, in the case of a State which fails to meet the requirements of this part concerning performance standards and reliability of program data) to assess the completeness, reliability, and security of the data and the accuracy of the reporting systems used in calculating performance indicators under subsection (g) of this section and section 658a of this title;

(ii) of the adequacy of financial management of the State program operated under the State plan approved under this part, including assessments of—

(I) whether Federal and other funds made available to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(II) whether collections and disbursements of support payments are carried out correctly and are fully accounted for; and

(iii) for such other purposes as the Secretary may find necessary;

(5) assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part in each State, and establish procedures to be followed by States for collecting and reporting information required to be provided under this part, and establish uniform definitions (including those necessary to enable the measurement of State compliance with the requirements of this part relating to expedited processes) to be applied in following such procedures;

(6) maintain records of all amounts collected and disbursed under programs established pursuant to the provisions of this part and of the costs incurred in collecting such amounts;

(7) provide technical assistance to the States to help them establish effective systems for collecting child and spousal support and establishing paternity, and specify the minimum requirements of an affidavit to be used for the voluntary acknowledgment of paternity which shall include the social security number of each parent and, after consultation with the States, other common elements as determined by such designee;

(8) receive applications from States for permission to utilize the courts of the United States to enforce court orders for support against noncustodial parents and, upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the noncustodial parent within a reasonable time, and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order, approve such applications;

(9) operate the Federal Parent Locator Service established by section 653 of this title;

(10) not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

(A) total program costs and collections set forth in sufficient detail to show the cost to the States and the Federal Government, the distribution of collections to families, State and local governmental units, and the Federal Government; and an identification of the financial impact of the provisions of this part, including—

(i) the total amount of child support payments collected as a result of services furnished during the fiscal year to individuals receiving services under this part;

(ii) the cost to the States and to the Federal Government of so furnishing the services; and

(iii) the number of cases involving families—

(I) who became ineligible for assistance under State programs funded under part A of this subchapter during a month in the fiscal year; and

(II) with respect to whom a child support payment was received in the month;

(B) costs and staff associated with the Office of Child Support Enforcement;

(C) the following data, separately stated for cases where the child is receiving assistance under a State program funded under part A of this subchapter (or foster care maintenance payments under part E of this subchapter), or formerly received such assistance or payments and the State is continuing to collect support assigned to it pursuant to section 608(a)(3) of this title or under section 671(a)(17) or 1396k of this title, and for all other cases under this part:

(i) the total number of cases in which a support obligation has been established in the fiscal year for which the report is submitted;

(ii) the total number of cases in which a support obligation has been established;

(iii) the number of cases in which support was collected during the fiscal year;

(iv) the total amount of support collected during such fiscal year and distributed as current support;

(v) the total amount of support collected during such fiscal year and distributed as arrearages;

(vi) the total amount of support due and unpaid for all fiscal years; and

(vii) the number of child support cases filed in each State in such fiscal year, and the amount of the collections made in each State in such fiscal year, on behalf of children residing in another State or against parents residing in another State;

(D) the status of all State plans under this part as of the end of the fiscal year last ending before the report is submitted, together with an explanation of any problems which are delaying or preventing approval of State plans under this part;

(E) data, by State, on the use of the Federal Parent Locator Service, and the number of locate requests submitted without the noncustodial parent's social security account number;

(F) the number of cases, by State, in which an applicant for or recipient of assistance under a State program funded under part A of this subchapter has refused to cooperate in identifying and locating the noncustodial parent and the number of cases in which refusal so to cooperate is based on good cause (as determined by the State);

(G) data, by State, on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government;

(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part during the fiscal year last ending prior to the submission of such report; and

(I) compliance, by State, with the standards established pursuant to subsections (h) and (i) of this section; and

(11) not later than October 1, 1996, after consulting with the State directors of programs under this part, promulgate forms to be used by States in interstate cases for—

(A) collection of child support through income withholding;

(B) imposition of liens; and

(C) administrative subpoenas.

(b) Certification of child support obligations to Secretary of the Treasury for collection

The Secretary shall, upon the request of any State having in effect a State plan approved under this part, certify to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1986 the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving assistance under the State program funded under part A of this subchapter) which is assigned to such State or is undertaken to be collected by such State pursuant to section 654(4) of this title. No amount may be certified for collection under this subsection except the amount of the delinquency under a court or administrative order for support and upon a showing by the State that such State has made diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms, and upon an agreement that the State will reimburse the Secretary of the Treasury for any costs involved in making the collection. All reimbursements shall be credited to the appropriation accounts which bore all or part of the costs involved in making the collections. The Secretary after consultation with the Secretary of the Treasury may, by regulation, establish criteria for accepting amounts for collection and for making certification under this subsection including imposing such limitations on the frequency of making such certifications under this subsection.

(c) Payment of child support collections to States

The Secretary of the Treasury shall from time to time pay to each State for distribution in accordance with the provisions of section 657 of this title the amount of each collection made on behalf of such State pursuant to subsection (b) of this section.

(d) Child support management information system

(1) Except as provided in paragraph (3), the Secretary shall not approve the initial and annually updated advance automated data processing planning document, referred to in section 654(16) of this title, unless he finds that such document, when implemented, will generally carry out the objectives of the management system referred to in such subsection, and such document—

(A) provides for the conduct of, and reflects the results of, requirements analysis studies, which include consideration of the program mission, functions, organization, services, constraints, and current support, of, in, or relating to, such system,

(B) contains a description of the proposed management system referred to in section 654(16) of this title, including a description of information flows, input data, and output reports and uses,

(C) sets forth the security and interface requirements to be employed in such management system,

(D) describes the projected resource requirements for staff and other needs, and the resources available or expected to be available to meet such requirements,

(E) contains an implementation plan and backup procedures to handle possible failures,

(F) contains a summary of proposed improvement of such management system in terms of qualitative and quantitative benefits, and

(G) provides such other information as the Secretary determines under regulation is necessary.

(2)(A) The Secretary shall through the separate organizational unit established pursuant to subsection (a) of this section, on a continuing basis, review, assess, and inspect the planning, design, and operation of, management information systems referred to in section 654(16) of this title, with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under paragraph (1) and the conditions specified under section 654(16) of this title.

(B) If the Secretary finds with respect to any statewide management information system referred to in section 654(16) of this title that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automated data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.

(3) The Secretary may waive any requirement of paragraph (1) or any condition specified under section 654(16) of this title, and shall waive the single statewide system requirement under sections 654(16) and 654a of this title, with respect to a State if—

(A) the State demonstrates to the satisfaction of the Secretary that the State has or can develop an alternative system or systems that enable the State—

(i) for purposes of section 609(a)(8) of this title, to achieve the paternity establishment percentages (as defined in subsection (g)(2) of this section) and other performance measures that may be established by the Secretary;

(ii) to submit data under section 654(15)(B) of this title that is complete and reliable;

(iii) to substantially comply with the requirements of this part; and

(iv) in the case of a request to waive the single statewide system requirement, to—

(I) meet all functional requirements of sections 654(16) and 654a of this title;

(II) ensure that calculation of distributions meets the requirements of section 657 of this title and accounts for distributions to children in different families or in different States or sub-State jurisdictions, and for distributions to other States;

(III) ensure that there is only one point of contact in the State which provides seamless case processing for all interstate case processing and coordinated, automated intrastate case management;

(IV) ensure that standardized data elements, forms, and definitions are used throughout the State;

(V) complete the alternative system in no more time than it would take to complete a single statewide system that meets such requirement; and

(VI) process child support cases as quickly, efficiently, and effectively as such cases would be processed through a single statewide system that meets such requirement;

(B)(i) the waiver meets the criteria of paragraphs (1), (2), and (3) of section 1315(c) of this title; or

(ii) the State provides assurances to the Secretary that steps will be taken to otherwise improve the State's child support enforcement program; and

(C) in the case of a request to waive the single statewide system requirement, the State has submitted to the Secretary separate estimates of the total cost of a single statewide system that meets such requirement, and of any such alternative system or systems, which shall include estimates of the cost of developing and completing the system and of operating and maintaining the system for 5 years, and the Secretary has agreed with the estimates.

(e) Technical assistance to States

The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 654(16) of this title.

(f) Regulations

The Secretary shall issue regulations to require that State agencies administering the child support enforcement program under this part include medical support as part of any child support order and enforce medical support whenever health care coverage is available to the noncustodial parent at a reasonable cost. Such regulation shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid programs under subchapter XIX of this chapter with respect to the availability of health insurance coverage.

(g) Performance standards for State paternity establishment programs

(1) A State's program under this part shall be found, for purposes of section 609(a)(8) of this title, not to have complied substantially with the requirements of this part unless, for any fiscal year beginning on or after October 1, 1994, its paternity establishment percentage for such fiscal year is based on reliable data and (rounded to the nearest whole percentage point) equals or exceeds—

(A) 90 percent;

(B) for a State with a paternity establishment percentage of not less than 75 percent but less than 90 percent for such fiscal year,

the paternity establishment percentage of the State for the immediately preceding fiscal year plus 2 percentage points;

(C) for a State with a paternity establishment percentage of not less than 50 percent but less than 75 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 3 percentage points;

(D) for a State with a paternity establishment percentage of not less than 45 percent but less than 50 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 4 percentage points;

(E) for a State with a paternity establishment percentage of not less than 40 percent but less than 45 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 5 percentage points; or

(F) for a State with a paternity establishment percentage of less than 40 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 6 percentage points.

In determining compliance under this section, a State may use as its paternity establishment percentage either the State's IV–D paternity establishment percentage (as defined in paragraph (2)(A)) or the State's statewide paternity establishment percentage (as defined in paragraph (2)(B)).

(2) For purposes of this section—

(A) the term ''IV–D paternity establishment percentage'' means, with respect to a State for a fiscal year, the ratio (expressed as a percentage) that the total number of children—

(i) who have been born out of wedlock,

(ii)(I) except as provided in the last sentence of this paragraph, with respect to whom assistance is being provided under the State program funded under part A of this subchapter in the fiscal year or, at the option of the State, as of the end of such year, or (II) with respect to whom services are being provided under the State's plan approved under this part in the fiscal year or, at the option of the State, as of the end of such year pursuant to an application submitted under section 654(4)(A)(ii) of this title, and

(iii) the paternity of whom has been established or acknowledged,

bears to the total number of children born out of wedlock and (except as provided in such last sentence) with respect to whom assistance was being provided under the State program funded under part A of this subchapter as of the end of the preceding fiscal year or with respect to whom services were being provided under the State's plan approved under this part as of the end of the preceding fiscal year pursuant to an application submitted under section 654(4)(A)(ii) of this title;

(B) the term ''statewide paternity establishment percentage'' means, with respect to a State for a fiscal year, the ratio (expressed as a percentage) that the total number of minor children—

(i) who have been born out of wedlock, and

(ii) the paternity of whom has been established or acknowledged during the fiscal year,

bears to the total number of children born out of wedlock during the preceding fiscal year; and

(C) the term ''reliable data'' means the most recent data available which are found by the Secretary to be reliable for purposes of this section.

For purposes of subparagraphs (A) and (B), the total number of children shall not include any child with respect to whom assistance is being provided under the State program funded under part A of this subchapter by reason of the death of a parent unless paternity is established for such child or any child with respect to whom an applicant or recipient is found by the State to qualify for a good cause or other exception to cooperation pursuant to section 654(29) of this title.

(3)(A) The Secretary may modify the requirements of this subsection to take into account such additional variables as the Secretary identifies (including the percentage of children in a State who are born out of wedlock or for whom support has not been established) that affect the ability of a State to meet the requirements of this subsection.

(B) The Secretary shall submit an annual report to the Congress that sets forth the data upon which the paternity establishment percentages for States for a fiscal year are based, lists any additional variables the Secretary has identified under subparagraph (A), and describes State performance in establishing paternity.

(h) Prompt State response to requests for child support assistance

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must accept and respond to requests (from States, jurisdictions thereof, or individuals who apply for services furnished by the State agency under this part or with respect to whom an assignment pursuant to section 608(a)(3) of this title is in effect) for assistance in establishing and enforcing support orders, including requests to locate noncustodial parents, establish paternity, and initiate proceedings to establish and collect child support awards.

(i) Prompt State distribution of amounts collected as child support

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must distribute, in accordance with section 657 of this title, amounts collected as child support pursuant to the State's plan approved under this part.

(j) Training of Federal and State staff, research and demonstration programs, and special projects of regional or national significance

Out of any money in the Treasury of the United States not otherwise appropriated, there is hereby appropriated to the Secretary for each

fiscal year an amount equal to 1 percent of the total amount paid to the Federal Government pursuant to a plan approved under this part during the immediately preceding fiscal year (as determined on the basis of the most recent reliable data available to the Secretary as of the end of the third calendar quarter following the end of such preceding fiscal year), which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements, for—

(1) information dissemination and technical assistance to States, training of State and Federal staff, staffing studies, and related activities needed to improve programs under this part (including technical assistance concerning State automated systems required by this part); and

(2) research, demonstration, and special projects of regional or national significance relating to the operation of State programs under this part.

The amount appropriated under this subsection shall remain available until expended.

(k) Denial of passports for nonpayment of child support

(1) If the Secretary receives a certification by a State agency in accordance with the requirements of section 654(31) of this title that an individual owes arrearages of child support in an amount exceeding $5,000, the Secretary shall transmit such certification to the Secretary of State for action (with respect to denial, revocation, or limitation of passports) pursuant to paragraph (2).

(2) The Secretary of State shall, upon certification by the Secretary transmitted under paragraph (1), refuse to issue a passport to such individual, and may revoke, restrict, or limit a passport issued previously to such individual.

(3) The Secretary and the Secretary of State shall not be liable to an individual for any action with respect to a certification by a State agency under this section.

(*l*) Facilitation of agreements between State agencies and financial institutions

The Secretary, through the Federal Parent Locator Service, may aid State agencies providing services under State programs operated pursuant to this part and financial institutions doing business in two or more States in reaching agreements regarding the receipt from such institutions, and the transfer to the State agencies, of information that may be provided pursuant to section 666(a)(17)(A)(i) of this title, except that any State that, as of July 16, 1998, is conducting data matches pursuant to section 666(a)(17)(A)(i) of this title shall have until January 1, 2000, to allow the Secretary to obtain such information from such institutions that are operating in the State. For purposes of section 3413(d) of title 12, a disclosure pursuant to this subsection shall be considered a disclosure pursuant to a Federal statute.

(Aug. 14, 1935, ch. 531, title IV, § 452, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2351; amended Pub. L. 95–30, title V, § 504(a), May 23, 1977, 91 Stat. 163; Pub. L. 96–265, title IV, §§ 402(a), 405(c), (d), June 9, 1980, 94 Stat. 462, 464, 465; Pub. L. 96–272, title III, § 301(b), June 17, 1980, 94 Stat. 527; Pub. L. 97–35, title XXIII, § 2332(b), Aug. 13, 1981, 95 Stat. 861; Pub. L. 97–248, title I, § 175(a)(1), Sept. 3, 1982, 96 Stat. 403; Pub. L. 98–369, div. B, title VI, § 2663(c)(12), (j)(2)(B)(viii), July 18, 1984, 98 Stat. 1166, 1170; Pub. L. 98–378, §§ 4(b), 9(a)(1), 13(a), (b), 16, Aug. 16, 1984, 98 Stat. 1312, 1316, 1319, 1321; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–203, title IX, § 9143(a), Dec. 22, 1987, 101 Stat. 1330–322; Pub. L. 100–485, title I, §§ 111(a), 121(a), 122(a), 123(b), (d), Oct. 13, 1988, 102 Stat. 2348, 2351–2353; Pub. L. 101–239, title X, § 10403(a)(1)(B)(i), Dec. 19, 1989, 103 Stat. 2487; Pub. L. 103–66, title XIII, § 13721(a), Aug. 10, 1993, 107 Stat. 658; Pub. L. 103–432, title II, § 213, Oct. 31, 1994, 108 Stat. 4461; Pub. L. 104–35, § 1(b), Oct. 12, 1995, 109 Stat. 294; Pub. L. 104–193, title I, § 108(c)(2)–(9), title III, §§ 301(c)(1), (2), 316(e)(1), 324(a), 331(b), 341(b), formerly 341(c), 342(b), 343(a), 345(a), 346(a), 370(a)(1), 395(d)(1)(B), Aug. 22, 1996, 110 Stat. 2165, 2200, 2215, 2223, 2230, 2232–2234, 2237, 2238, 2251, 2259; Pub. L. 104–208, div. A, title I, § 101(e) [title II, § 215], Sept. 30, 1996, 110 Stat. 3009–233, 3009–255; Pub. L. 105–33, title V, §§ 5513(a)(1), (2), 5540, 5541(a), 5556(c), Aug. 5, 1997, 111 Stat. 619, 630, 637; Pub. L. 105–200, title I, § 102(a), title II, § 201(e)(1)(A), title IV, §§ 401(c)(2), 406(b), 407(b), July 16, 1998, 112 Stat. 647, 657, 662, 671, 672; Pub. L. 106–169, title IV, § 401(f), Dec. 14, 1999, 113 Stat. 1858.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in subsecs. (a)(10), (b), and (g)(2), are classified to sections 601 et seq. and 670 et seq. of this title.

The Internal Revenue Code of 1986, referred to in subsec. (b), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

Subsec. (a)(4)(A) and (C)(i) are set out in this supplement to update translations appearing in main edition.

AMENDMENTS

1999—Subsec. (a)(7). Pub. L. 106–169 substituted ''social security'' for ''Social Security''.

1998—Subsec. (a)(10)(H) to (J). Pub. L. 105–200, § 407(b), inserted ''and'' at end of subpar. (H), redesignated subpar. (J) as (I), and struck out former subpar. (I) which read as follows: ''the amount of administrative costs which are expended in each functional category of expenditures, including establishment of paternity; and''.

Subsec. (d)(3). Pub. L. 105–200, § 102(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Secretary may waive any requirement of paragraph (1) or any condition specified under section 654(16) of this title with respect to a State if—

''(A) the State demonstrates to the satisfaction of the Secretary that the State has an alternative system or systems that enable the State, for purposes of section 609(a)(8) of this title, to achieve the paternity establishment percentages (as defined under subsection (g)(2) of this section) and other performance measures that may be established by the Secretary, and to submit data under section 654(15)(B) of this title that is complete and reliable, and to substantially comply with the requirements of this part; and

''(B)(i) the waiver meets the criteria of paragraphs (1), (2), and (3) of section 1315(b) of this title, or

''(ii) the State provides assurances to the Secretary that steps will be taken to otherwise improve the State's child support enforcement program.''

Subsec. (f). Pub. L. 105–200, § 401(c)(2), substituted ''include'' for ''petition for the inclusion of'' and inserted ''and enforce medical support'' before ''whenever''.

Subsec. (g). Pub. L. 105–200, §201(e)(1)(A), amended Pub. L. 104–193, §341. See 1996 Amendment notes below.

Subsec. (*l*). Pub. L. 105–200, §406(b), added subsec. (*l*).

1997—Subsec. (d)(3)(A). Pub. L. 105–33, §5513(a)(1)(A), substituted ''section 609(a)(8) of this title, to achieve the paternity establishment percentages (as defined under subsection (g)(2) of this section) and other performance measures that may be established by the Secretary, and to submit data under section 654(15)(B) of this title that is complete and reliable, and to substantially comply with the requirements of this part; and'' for ''section 603(h) of this title, to be in substantial compliance with other requirements of this part; and''.

Subsec. (g)(1). Pub. L. 105–33, §5513(a)(1)(B), substituted ''section 609(a)(8)'' for ''section 603(h)'' in introductory provisions.

Subsec. (g)(2). Pub. L. 105–33, §5513(a)(2), made technical amendment to directory language of Pub. L. 104–193, §108(c)(8). See 1996 Amendment note below.

Pub. L. 105–33, §5540, substituted ''subparagraphs (A) and (B)'' for ''subparagraph (A)'' in concluding provisions.

Subsec. (j). Pub. L. 105–33, §5556(c), amended Pub. L. 104–208, §101(e) [title II, §215], generally. See 1996 Amendment note below.

Pub. L. 105–33, §5541(a), substituted ''which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements,'' for ''to cover costs incurred by the Secretary'' in introductory provisions.

1996—Subsec. (a)(1). Pub. L. 104–193, §395(d)(1)(B), substituted ''noncustodial'' for ''absent'' in two places.

Subsec. (a)(4). Pub. L. 104–193, §342(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(h)(1) of this title, or which is operating under a corrective action plan in accordance with section 603(h)(2) of this title), conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 603(h) of this title whether the actual operation of such programs in each State conforms to the requirements of this part;''.

Subsec. (a)(5). Pub. L. 104–193, §343(a), inserted before semicolon at end '', and establish procedures to be followed by States for collecting and reporting information required to be provided under this part, and establish uniform definitions (including those necessary to enable the measurement of State compliance with the requirements of this part relating to expedited processes) to be applied in following such procedures''.

Subsec. (a)(7). Pub. L. 104–193, §331(b), inserted before semicolon at end '', and specify the minimum requirements of an affidavit to be used for the voluntary acknowledgment of paternity which shall include the Social Security number of each parent and, after consultation with the States, other common elements as determined by such designee''.

Subsec. (a)(8). Pub. L. 104–193, §395(d)(1)(B), substituted ''noncustodial'' for ''absent'' in two places.

Subsec. (a)(9). Pub. L. 104–193, §316(e)(1), inserted ''Federal'' before ''Parent''.

Subsec. (a)(10). Pub. L. 104–193, §346(a)(5), struck out closing provisions which read as follows: ''The information contained in any such report under subparagraph (A) shall specifically include (i) the total amount of child support payments collected as a result of services furnished during the fiscal year involved to individuals under section 654(6) of this title, (ii) the cost to the States and to the Federal Government of furnishing such services to those individuals, and (iii) the extent to which the furnishing of such services was successful in providing sufficient support to those individuals to assure that they did not require assistance under the State plan approved under part A of this subchapter.''

Subsec. (a)(10)(A). Pub. L. 104–193, §346(a)(1)(A), substituted ''this part, including—'' for ''this part;''.

Subsec. (a)(10)(A)(i) to (iii). Pub. L. 104–193, §346(a)(1)(B), added cls. (i) to (iii).

Subsec. (a)(10)(C). Pub. L. 104–193, §346(a)(2)(A), in introductory provisions, substituted ''separately stated for cases'' for ''with the data required under each clause being separately stated for cases'', ''or formerly received'' for ''cases where the child was formerly receiving'', ''671(a)(17) or 1396k of this title'' for ''671(a)(17) of this title'', and ''for all other cases under this part'' for ''all other cases under this part''.

Pub. L. 104–193, §108(c)(2), in introductory provisions, substituted ''assistance under a State program funded under part A of this subchapter'' for ''aid to families with dependent children'', ''such assistance or payments'' for ''such aid or payments'', and ''pursuant to section 608(a)(3) of this title or under section'' for ''under section 602(a)(26) or''.

Subsec. (a)(10)(C)(i), (ii). Pub. L. 104–193, §346(a)(2)(B), struck out '', and the total amount of such obligations'' before semicolon at end.

Subsec. (a)(10)(C)(iii). Pub. L. 104–193, §346(a)(2)(C), substituted ''in which support was collected during the fiscal year'' for ''described in clause (i) in which support was collected during such fiscal year, and the total amount of such collections''.

Subsec. (a)(10)(C)(iv) to (vii). Pub. L. 104–193, §346(a)(2)(D), (E), added cls. (iv) to (vi), redesignated former cl. (v) as (vii), and struck out former cl. (iv) which read as follows: ''the number of cases described in clause (ii) in which support was collected during such fiscal year, and the total amount of such collections; and''.

Subsec. (a)(10)(E). Pub. L. 104–193, §395(d)(1)(B), substituted ''noncustodial'' for ''absent''.

Subsec. (a)(10)(F). Pub. L. 104–193, §395(d)(1)(B), substituted ''noncustodial'' for ''absent''.

Pub. L. 104–193, §108(c)(3), substituted ''assistance under a State program funded under part A of this subchapter'' for ''aid under a State plan approved under part A of this subchapter'' and ''(as determined by the State)'' for ''(as determined in accordance with the standards referred to in section 602(a)(26)(B)(ii) of this title)''.

Subsec. (a)(10)(G). Pub. L. 104–193, §346(a)(3), struck out ''on the use of Federal courts and'' before ''on use of the Internal Revenue Service''.

Subsec. (a)(10)(J). Pub. L. 104–193, §346(a)(4), added subpar. (J).

Subsec. (a)(11). Pub. L. 104–193, §324(a), added par. (11).

Subsec. (b). Pub. L. 104–193, §301(c)(1), substituted ''654(4)'' for ''654(6)''.

Pub. L. 104–193, §108(c)(4), substituted ''assistance under the State program funded under part A'' for ''aid under the State plan approved under part A''.

Subsec. (d)(3)(B)(i). Pub. L. 104–193, §108(c)(5), substituted ''1315(b)'' for ''1315(c)''.

Subsec. (f). Pub. L. 104–193, §395(d)(1)(B), substituted ''noncustodial'' for ''absent''.

Subsec. (g)(1). Pub. L. 104–193, §341(b)(2)(B), formerly §341(c)(2)(B), as redesignated by Pub. L. 105–200, §201(e)(1)(A), inserted as closing provisions ''In determining compliance under this section, a State may use as its paternity establishment percentage either the State's IV–D paternity establishment percentage (as defined in paragraph (2)(A)) or the State's statewide paternity establishment percentage (as defined in paragraph (2)(B)).''

Subsec. (g)(1)(A). Pub. L. 104–193, §341(b)(1), formerly §341(c)(1), as redesignated by Pub. L. 105–200, §201(e)(1)(A), substituted ''90'' for ''75''.

Subsec. (g)(1)(B) to (F). Pub. L. 104–193, §341(b)(2)(A), formerly §341(c)(2)(A), as redesignated by Pub. L. 105–200, §201(e)(1)(A), added subpar. (B) and redesignated former subpars. (B) to (E) as (C) to (F), respectively.

Subsec. (g)(2). Pub. L. 104–193, §108(c)(8), as amended by Pub. L. 105–33, §5513(a)(2), in closing provisions, sub-

stituted ''with respect to whom assistance is being provided under the State program funded under part A of this subchapter'' for ''who is a dependent child'' and ''found by the State to qualify for a good cause or other exception to cooperation pursuant to section 654(29) of this title'' for ''found to have good cause for refusing to cooperate under section 602(a)(26) of this title or any child with respect to whom the State agency administering the plan under part E of this subchapter determines (as provided in section 654(4)(B) of this title) that it is against the best interests of such child to do so''.

Subsec. (g)(2)(A). Pub. L. 104–193, § 341(b)(3)(A), formerly § 341(c)(3)(A), as redesignated by Pub. L. 105–200, § 201(e)(1)(A), in introductory provisions, substituted '' 'IV–D paternity establishment percentage' '' for '' 'paternity establishment percentage' '' and struck out ''(or all States, as the case may be)'' after ''with respect to a State'', and, in closing provisions, struck out ''and'' at end.

Pub. L. 104–193, § 301(c)(2), substituted ''654(4)(A)(ii)'' for ''654(6)'' in cl. (ii)(I) and in closing provisions.

Pub. L. 104–193, § 108(c)(7), in concluding provisions, substituted ''assistance was being provided under the State program funded under part A'' for ''aid was being paid under the State's plan approved under part A or E''.

Subsec. (g)(2)(A)(ii)(I). Pub. L. 104–193, § 108(c)(6), substituted ''assistance is being provided under the State program funded under part A'' for ''aid is being paid under the State's plan approved under part A or E''.

Subsec. (g)(2)(B), (C). Pub. L. 104–193, § 341(b)(3)(B), formerly § 341(c)(3)(B), as redesignated by Pub. L. 105–200, § 201(e)(1)(A), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (g)(3)(A). Pub. L. 104–193, § 341(b)(4)(B), formerly § 341(c)(4)(B), as redesignated by Pub. L. 105–200, § 201(e)(1)(A), substituted ''the percentage of children in a State who are born out of wedlock or for whom support has not been established'' for ''the percentage of children born out-of-wedlock in a State''.

Pub. L. 104–193, § 341(b)(4)(A), formerly § 341(c)(4)(A), as redesignated by Pub. L. 105–200, § 201(e)(1)(A), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''The requirements of this subsection are in addition to and shall not supplant any other requirement (that is not inconsistent with such requirements) established in regulations by the Secretary for the purpose of determining (for purposes of section 603(h) of this title) whether the program of a State operated under this part shall be treated as complying substantially with the requirements of this part.''

Subsec. (g)(3)(B), (C). Pub. L. 104–193, § 341(b)(4)(A), formerly § 341(c)(4)(A), as redesignated by Pub. L. 105–200, § 201(e)(1)(A), redesignated subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (h). Pub. L. 104–193, § 395(d)(1)(B), substituted ''noncustodial'' for ''absent''.

Pub. L. 104–193, § 108(c)(9), substituted ''pursuant to section 608(a)(3)'' for ''under section 602(a)(26)''.

Subsec. (j). Pub. L. 104–208, title I, § 101(e) [title II, § 215], as amended by Pub. L. 105–33, § 5556(c), substituted ''a plan approved under this part'' for ''section 657(a) of this title''.

Pub. L. 104–193, § 345(a), added subsec. (j).

Subsec. (k). Pub. L. 104–193, § 370(a)(1), added subsec. (k).

1995—Subsecs. (d)(1)(B), (2)(A), (B), (e). Pub. L. 104–35 substituted ''in section 654(16)'' for ''in section 655(a)(1)(B)''.

1994—Subsec. (g)(2)(A). Pub. L. 103–432, § 213(5), in closing provisions, substituted ''born out of wedlock'' for ''who were born out of wedlock during the immediately preceding fiscal year'', substituted ''the preceding fiscal year'' for ''such preceding fiscal year'' in two places, and struck out ''or E'' after ''under this part''.

Subsec. (g)(2)(A)(i). Pub. L. 103–432, § 213(1), struck out ''during the fiscal year'' after ''wedlock''.

Subsec. (g)(2)(A)(ii)(I). Pub. L. 103–432, § 213(2), substituted ''in the fiscal year or, at the option of the State, as of the end of such year'' for ''as of the end of the fiscal year''.

Subsec. (g)(2)(A)(ii)(II). Pub. L. 103–432, § 213(3), substituted ''in the fiscal year or, at the option of the State, as of the end of such year'' for ''or E as of the end of the fiscal year''.

Subsec. (g)(2)(A)(iii). Pub. L. 103–432, § 213(4), struck out ''during the fiscal year'' after ''acknowledged''.

1993—Subsec. (g)(1). Pub. L. 103–66, § 13721(a)(1)(A)–(C), substituted ''1994'' for ''1991'' and inserted ''is based on reliable data and (rounded to the nearest whole percentage point)'' before ''equals''.

Subsec. (g)(1)(A) to (E). Pub. L. 103–66, § 13721(a)(1)(D), added subpars. (A) to (E) and struck out former subpars. (A) to (C) which read as follows:

''(A) 50 percent;

''(B) the paternity establishment percentage of the State for the fiscal year 1988, increased by the applicable number of percentage points; or

''(C) the paternity establishment percentage determined with respect to all States for such fiscal year.''

Subsec. (g)(2). Pub. L. 103–66, § 13721(a)(2)(C), (D), in concluding provisions, inserted ''unless paternity is established for such child'' after ''the death of a parent'' and ''or any child with respect to whom the State agency administering the plan under part E of this subchapter determines (as provided in section 654(4)(B) of this title) that it is against the best interests of such child to do so'' after ''cooperate under section 602(a)(26) of this title''.

Subsec. (g)(2)(A). Pub. L. 103–66, § 13721(a)(2)(A), in cl. (i), inserted before comma ''during the fiscal year'', in cl. (ii)(I), substituted ''part A or E of this subchapter as of the end of the'' for ''part A of this subchapter (or under all such plans) for such'', in cl. (ii)(II), substituted ''this part or E as of the end of the'' for ''this part (or under all such plans) for the'', in cl. (iii), inserted before comma ''or acknowledged during the fiscal year'', and in concluding provisions, substituted ''children who were born out of wedlock during the immediately preceding fiscal year and'' for ''children who have been born out of wedlock and'', ''aid was being paid'' for ''aid is being paid'', ''part A or E of this subchapter as of the end of such preceding fiscal'' for ''part A of this subchapter (or under all such plans) for such fiscal'', ''services were being'' for ''services are being'', and ''this part or E as of the end of such preceding fiscal'' for ''this part (or under all such plans) for the fiscal''.

Subsec. (g)(2)(B). Pub. L. 103–66, § 13721(a)(2)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the applicable number of percentage points means, with respect to a fiscal year (beginning with the fiscal year 1991), 3 percentage points multiplied by the number of fiscal years after the fiscal year 1989 and before the beginning of such fiscal year.''

1989—Subsec. (d)(2)(B). Pub. L. 101–239 substituted ''automated data'' for ''automatic data''.

1988—Subsec. (d)(1). Pub. L. 100–485, § 123(b)(1), substituted ''Except as provided in paragraph (3), the'' for ''The''.

Pub. L. 100–485, § 123(d), substituted ''automated'' for ''automatic''.

Subsec. (d)(3). Pub. L. 100–485, § 123(b)(2), added par. (3).

Subsec. (g). Pub. L. 100–485, § 111(a), added subsec. (g).

Subsec. (h). Pub. L. 100–485, § 121(a), added subsec. (h).

Subsec. (i). Pub. L. 100–485, § 122(a), added subsec. (i).

1987—Subsec. (c). Pub. L. 100–203 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(1) There is hereby established in the Treasury a revolving fund which shall be available to the Secretary without fiscal year limitation, to enable him to pay to the States for distribution in accordance with the provisions of section 657 of this title such amounts as may be collected and paid (subject to paragraph (2)) into such fund under section 6305 of the Internal Revenue Code of 1986.

''(2) There is hereby appropriated to the fund, out of any moneys in the Treasury not otherwise appro-

priated, amounts equal to the amounts collected under section 6305 the Internal Revenue Code of 1986, reduced by the amounts credited or refunded as overpayments of the amounts so collected. The amounts appropriated by the preceding sentence shall be transferred at least quarterly from the general fund of the Treasury to the fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.''

1986—Subsecs. (b), (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing.

1984—Subsec. (a). Pub. L. 98–369, §2663(j)(2)(B)(viii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' in provisions preceding par. (1).

Subsec. (a)(4). Pub. L. 98–378, §9(a)(1), substituted ''not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(h)(1) of this title, or which is operating under a corrective action plan in accordance with section 603(h)(2) of this title)'' for ''not less often than annually''.

Subsec. (a)(10)(C). Pub. L. 98–378, §13(a), amended subpar. (C) generally to include the reporting of additional aspects of child support enforcement. Prior to amendment, subpar. (C) read as follows: ''the number of child support cases (with separate identification of the number in which collection of spousal support was involved) in each State during each quarter of the fiscal year last ending before the report is submitted and during each quarter of the preceding fiscal year (including the transitional period beginning July 1, 1976, and ending September 30, 1976, in the case of the first report to which this subparagraph applies), and the disposition of such cases;''.

Subsec. (a)(10)(I). Pub. L. 98–378, §13(b), added subpar. (I).

Subsec. (c)(2). Pub. L. 98–369, §2663(c)(12), substituted ''preceding sentence'' for ''preceding section''.

Subsecs. (d)(1)(B), (2)(A), (B), (e). Pub. L. 98–378, §4(b), substituted ''655(a)(1)(B) of this title'' for ''655(a)(3) of this title''.

Subsec. (f). Pub. L. 98–378, §16, added subsec. (f).

1982—Subsec. (b). Pub. L. 97–248 substituted provisions that the Secretary shall, upon the request of a State having in effect a State plan approved under this part, certify to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1954 the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A of this subchapter) which is assigned to such State or is undertaken to be collected by such State pursuant to section 654(6) of this title for provisions that the Secretary would, upon the request of any State having in effect a State plan approved under this part, certify the amount of any child support obligation assigned to such State, including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A of this subchapter (or undertaken to be collected by such State pursuant to section 654(6) of this title) to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1954.

1981—Subsec. (a)(1). Pub. L. 97–35, §2332(b)(1)(A), inserted ''and support for the spouse (or former spouse) with whom the absent parent's child is living''.

Subsec. (a)(7). Pub. L. 97–35, §2332(b)(1)(B), substituted ''child and spousal support'' for ''child support''.

Subsec. (a)(10)(C). Pub. L. 97–35, §2332(b)(1)(C), inserted ''(with separate identification of the number in which collection of spousal support was involved)''.

Subsec. (b). Pub. L. 97–35, §2332(b)(2), inserted '', including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A of this subchapter,'' and provision that all reimbursements be credited to the appropriation accounts which bore all or part of the costs involved in making the collections and substituting ''court or administrative order'' for ''court order'' and ''reimburse the Secretary of the Treasury'' for ''reimburse the United States''.

1980—Subsec. (a)(10). Pub. L. 96–272 inserted provisions following subpar. (H) setting out certain required information to be contained in reports under subpar. (A).

Subsec. (b). Pub. L. 96–265, §402(a), inserted ''(or undertaken to be collected by such State pursuant to section 654(6) of this title)'' after ''assigned to such State''.

Subsecs. (d), (e). Pub. L. 96–265, §405(c), (d), added subsecs. (d) and (e).

1977—Subsec. (a)(10). Pub. L. 95–30 substituted ''not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following'' for ''not later than June 30 of each year beginning after December 31, 1975, submit to the Congress a report on all activities undertaken pursuant to the provisions of this part'', substituted a colon for a period at end of provisions thus substituted, and added subpars. (A) to (H).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–200, title II, §201(e)(2), July 16, 1998, 112 Stat. 657, provided that: ''The amendments made by this subsection [amending this section and section 658 of this title, amending provisions set out as notes under this section and section 658 of this title, and repealing provisions set out as a note under section 658 of this title] shall take effect as if included in the enactment of section 341 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].''

Pub. L. 105–200, title IV, §401(c)(3), July 16, 1998, 112 Stat. 662, as amended by Pub. L. 105–306, §4(b)(1), Oct. 28, 1998, 112 Stat. 2927, provided that: ''The amendments made by this subsection [amending this section and section 666 of this title] shall be effective with respect to periods beginning on or after the later of—

''(A) October 1, 2001; or

''(B) the effective date of laws enacted by the legislature of such State implementing such amendments, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date specified in subparagraph (A). For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

[Pub. L. 105–306, §4(b)(2), Oct. 28, 1998, 112 Stat. 2927, provided that: ''The amendment made by paragraph (1) of this subsection [amending section 401(c)(3) of Pub. L. 105–200, set out above] shall take effect as if included in the enactment of section 401(c)(3) of the Child Support Performance and Incentive Act of 1998 [Pub. L. 105–200].'']

Pub. L. 105–200, title IV, §407(c), July 16, 1998, 112 Stat. 672, provided that: ''The amendments made by this section [amending this section and section 669 of this title] shall apply to information maintained with respect to fiscal year 1995 or any succeeding fiscal year.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5518(b) of Pub. L. 105–33 provided that: ''The amendments made by section 5513 of this Act [amend-

ing this section and sections 656, 664, 672, and 673 of this title] shall take effect as if the amendments had been included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193] at the time such section 108 became law.''

Amendment by sections 5540, 5541(a), and 5556(c) of Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 101(e) [title II, § 215] of div. A of Pub. L. 104–208, as amended by Pub. L. 105–33, title V, § 5556(c), Aug. 5, 1997, 111 Stat. 637, provided in part that: ''Amounts available under such sections 452(j) [subsec. (j) of this section] and 453(*o*) [section 653(*o*) of this title] shall be calculated as though the amendments made by this section were effective October 1, 1995.''

Amendment by section 108(c)(2)–(9) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Pub. L. 104–193, title III, § 341(c)(2), formerly § 341(d)(2), Aug. 22, 1996, 110 Stat. 2233, as redesignated and amended by Pub. L. 105–200, title II, § 201(e)(1)(A), (B)(ii), July 16, 1998, 112 Stat. 657, provided that: ''The amendments made by subsection (b) [amending this section] shall become effective with respect to calendar quarters beginning on or after the date of the enactment of this Act [Aug. 22, 1996].''

Section 342(c) of Pub. L. 104–193 provided that: ''The amendments made by this section [amending this section and section 654 of this title] shall be effective with respect to calendar quarters beginning 12 months or more after the date of the enactment of this Act [Aug. 22, 1996].''

Section 346(b) of Pub. L. 104–193 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to fiscal year 1997 and succeeding fiscal years.''

Section 370(b) of Pub. L. 104–193 provided that: ''This section [amending this section and section 654 of this title] and the amendments made by this section shall become effective October 1, 1997.''

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13721(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 666 of this title] shall become effective with respect to a State on the later of—

''(1) October 1, 1993 or,

''(2) the date of enactment by the legislature of such State of all laws required by such amendments, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 10, 1993]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10403(a)(1)(B)(ii) of Pub. L. 101–239 provided that: ''The amendments made by clause (i) [amending this section and section 602 of this title] shall take effect as if such amendments had been included in section 123(d) of the Family Support Act of 1988 [Pub. L. 100–485] on the date of the enactment of such Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 111(f)(1) of Pub. L. 100–485 provided that: ''The amendments made by subsections (a), (d), and (e) [enacting section 668 of this title and amending this section and section 666 of this title] shall become effective on the date of the enactment of this Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9143(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to amounts collected after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 4(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section and section 655 of this title] shall apply to fiscal years after fiscal year 1983.''

Section 9(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section and sections 602 and 603 of this title] shall be effective on and after October 1, 1983.''

Section 13(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section] shall be effective for reports for fiscal year 1986 and each fiscal year thereafter.''

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Oct. 1, 1981, see section 175(b) of Pub. L. 97–248, set out as a note under section 503 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 402(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect July 1, 1980.''

Section 405(e) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 654 and 655 of this title] shall take effect on July 1, 1981, and shall be effective only with respect to expenditures, referred to in section 455(a)(3) of the Social Security Act [section 655(a)(3) of this title] (as amended by this Act), made on or after such date.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 504(b) of Pub. L. 95–30 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective in the case of reports, submitted by the Secretary of Health, Education, and Welfare [now Health and Human Services] after 1976.''

REGULATIONS

Section 122(b) of Pub. L. 100–485 provided that: ''Not later than 180 days after the date of the enactment of this Act [Oct. 13, 1988], the Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to the standards required by the amendment made by subsection (a) [amending this section], and, after allowing not less than 60 days for public comment, shall issue final regulations not later than the first day of the 10th month to begin after such date of enactment.''

IMPLEMENTATION OF PERFORMANCE STANDARDS FOR STATE PATERNITY ESTABLISHMENT PROGRAMS

Section 111(f)(3) of Pub. L. 100–485 provided that: ''The Secretary of Health and Human Services shall collect the data necessary to implement the requirements of section 452(g) of the Social Security Act [subsec. (g) of this section] (as added by subsection (a) of this section) and may, in carrying out the requirement of determining a State's paternity establishment percentage for the fiscal year 1988, compute such percentage on the basis of data collected with respect to the last quarter of such fiscal year (or, if such data are not available, the first quarter of the fiscal year 1989) if the Secretary determines that data for the full year are not available.''

REQUESTS FOR CHILD SUPPORT ASSISTANCE; ADVISORY COMMITTEE; PROMULGATION OF REGULATIONS

Section 121(b) of Pub. L. 100–485 provided that:

''(1) Not later than 60 days after the date of the enactment of this Act [Oct. 13, 1988], the Secretary of Health and Human Services shall establish an advisory committee. The committee shall include representatives of organizations representing State governors, State welfare administrators, and State directors of programs under part D of title IV of the Social Security Act [this part]. The Secretary shall consult with the advisory committee before issuing any regulations with respect to the standards required by the amendment made by subsection (a) [amending this section] (including regulations regarding what constitutes an adequate response on the part of a State to the request of an individual, State, or jurisdiction).

''(2) Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to the standards required by the amendment made by subsection (a), and, after allowing not less than 60 days for public comment, shall issue final regulations not later than the first day of the 10th month beginning after such date of enactment.''

SUPPLEMENTAL REPORT TO BE SUBMITTED TO CONGRESS NOT LATER THAN JUNE 30, 1977

Section 504(c) of Pub. L. 95–30 directed Secretary of Health, Education, and Welfare to submit to Congress, not later than June 30, 1977, a special supplementary report with respect to activities undertaken pursuant to this part.

§ 653. Federal Parent Locator Service

(a) Establishment; purpose

(1) The Secretary shall establish and conduct a Federal Parent Locator Service, under the direction of the designee of the Secretary referred to in section 652(a) of this title, which shall be used for the purposes specified in paragraphs (2) and (3).

(2) For the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations, the Federal Parent Locator Service shall obtain and transmit to any authorized person specified in subsection (c) of this section—

(A) information on, or facilitating the discovery of, the location of any individual—

(i) who is under an obligation to pay child support;

(ii) against whom such an obligation is sought;

(iii) to whom such an obligation is owed; or

(iv) who has or may have parental rights with respect to a child,

including the individual's social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual's employer;

(B) information on the individual's wages (or other income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); and

(C) information on the type, status, location, and amount of any assets of, or debts owed by or to, any such individual.

(3) For the purpose of enforcing any Federal or State law with respect to the unlawful taking or restraint of a child, or making or enforcing a child custody or visitation determination, as defined in section 663(d)(1) of this title, the Federal Parent Locator Service shall be used to obtain and transmit the information specified in section 663(c) of this title to the authorized persons specified in section 663(d)(2) of this title.

(b) Disclosure of information to authorized persons

(1) Upon request, filed in accordance with subsection (d) of this section, of any authorized person, as defined in subsection (c) of this section for the information described in subsection (a)(2) of this section, or of any authorized person, as defined in section 663(d)(2) of this title for the information described in section 663(c) of this title, the Secretary shall, notwithstanding any other provision of law, provide through the Federal Parent Locator Service such information to such person, if such information—

(A) is contained in any files or records maintained by the Secretary or by the Department of Health and Human Services; or

(B) is not contained in such files or records, but can be obtained by the Secretary, under the authority conferred by subsection (e) of this section, from any other department, agency, or instrumentality of the United States or of any State,

and is not prohibited from disclosure under paragraph (2).

(2) No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. The Secretary shall give priority to requests made by any authorized person described in subsection (c)(1) of this section. No information shall be disclosed to any person if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent, provided that—

(A) in response to a request from an authorized person (as defined in subsection (c) of this section and section 663(d)(2) of this title), the Secretary shall advise the authorized person that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse and that information can only be disclosed to a court or an agent of a court pursuant to subparagraph (B); and

(B) information may be disclosed to a court or an agent of a court described in subsection (c)(2) of this section or section 663(d)(2)(B) of this title, if—

(i) upon receipt of information from the Secretary, the court determines whether disclosure to any other person of that information could be harmful to the parent or the child; and

(ii) if the court determines that disclosure of such information to any other person could be harmful, the court and its agents shall not make any such disclosure.

(3) Information received or transmitted pursuant to this section shall be subject to the safeguard provisions contained in section 654(26) of this title.

(c) "Authorized person" defined

As used in subsection (a) of this section, the term ''authorized person'' means—

(1) any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amounts owed as child and spousal support (including, when authorized under the State plan, any official of a political subdivision);

(2) the court which has authority to issue an order or to serve as the initiating court in an action to seek an order against a noncustodial parent for the support and maintenance of a child, or any agent of such court;

(3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving assistance under a State program funded under part A of this subchapter) (as determined by regulations prescribed by the Secretary) without regard to the existence of a court order against a noncustodial parent who has a duty to support and maintain any such child; and

(4) a State agency that is administering a program operated under a State plan under subpart 1 of part B of this subchapter, or a State plan approved under subpart 2 of part B of this subchapter or under part E of this subchapter.

(d) Form and manner of request for information

A request for information under this section shall be filed in such manner and form as the Secretary shall by regulation prescribe and shall be accompanied or supported by such documents as the Secretary may determine to be necessary.

(e) Compliance with request; search of files and records by head of any department, etc., of United States; transmittal of information to Secretary; reimbursement for cost of search; fees

(1) Whenever the Secretary receives a request submitted under subsection (b) of this section which he is reasonably satisfied meets the criteria established by subsections (a), (b), and (c) of this section, he shall promptly undertake to provide the information requested from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States or of any State.

(2) Notwithstanding any other provision of law, whenever the individual who is the head of any department, agency, or instrumentality of the United States receives a request from the Secretary for information authorized to be provided by the Secretary under this section, such individual shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality with a view to determining whether the information requested is contained in any such files or records. If such search discloses the information requested, such individual shall immediately transmit such information to the Secretary, except that if any information is obtained the disclosure of which would contravene national policy or security interests of the United States or the confidentiality of census data, such information shall not be transmitted and such individual shall immediately notify the Secretary. If such search fails to disclose the information requested, such individual shall immediately so notify the Secretary. The costs incurred by any such department, agency, or instrumentality of the United States or of any State in providing such information to the Secretary shall be reimbursed by him in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information). Whenever such services are furnished to an individual specified in subsection (c)(3) of this section, a fee shall be charged such individual. The fee so charged shall be used to reimburse the Secretary or his delegate for the expense of providing such services.

(3) The Secretary of Labor shall enter into an agreement with the Secretary to provide prompt access for the Secretary (in accordance with this subsection) to the wage and unemployment compensation claims information and data maintained by or for the Department of Labor or State employment security agencies.

(f) Arrangements and cooperation with State agencies

The Secretary, in carrying out his duties and functions under this section, shall enter into arrangements with State agencies administering State plans approved under this part for such State agencies to accept from resident parents, legal guardians, or agents of a child described in subsection (c)(3) of this section and to transmit to the Secretary requests for information with regard to the whereabouts of noncustodial parents and otherwise to cooperate with the Secretary in carrying out the purposes of this section.

(g) Reimbursement for reports by State agencies

The Secretary may reimburse Federal and State agencies for the costs incurred by such entities in furnishing information requested by the Secretary under this section in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information).

(h) Federal Case Registry of Child Support Orders

(1) In general

Not later than October 1, 1998, in order to assist States in administering programs under State plans approved under this part and programs funded under part A of this subchapter,

and for the other purposes specified in this section, the Secretary shall establish and maintain in the Federal Parent Locator Service an automated registry (which shall be known as the ''Federal Case Registry of Child Support Orders''), which shall contain abstracts of support orders and other information described in paragraph (2) with respect to each case and order in each State case registry maintained pursuant to section 654a(e) of this title, as furnished (and regularly updated), pursuant to section 654a(f) of this title, by State agencies administering programs under this part.

(2) Case and order information

The information referred to in paragraph (1) with respect to a case or an order shall be such information as the Secretary may specify in regulations (including the names, social security numbers or other uniform identification numbers, and State case identification numbers) to identify the individuals who owe or are owed support (or with respect to or on behalf of whom support obligations are sought to be established), and the State or States which have the case or order. Beginning not later than October 1, 1999, the information referred to in paragraph (1) shall include the names and social security numbers of the children of such individuals.

(3) Administration of Federal tax laws

The Secretary of the Treasury shall have access to the information described in paragraph (2) for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children.

(i) National Directory of New Hires

(1) In general

In order to assist States in administering programs under State plans approved under this part and programs funded under part A of this subchapter, and for the other purposes specified in this section, the Secretary shall, not later than October 1, 1997, establish and maintain in the Federal Parent Locator Service an automated directory to be known as the National Directory of New Hires, which shall contain the information supplied pursuant to section 653a(g)(2) of this title.

(2) Data entry and deletion requirements

(A) In general

Information provided pursuant to section 653a(g)(2) of this title shall be entered into the data base maintained by the National Directory of New Hires within two business days after receipt, and shall be deleted from the data base 24 months after the date of entry.

(B) 12-month limit on access to wage and unemployment compensation information

The Secretary shall not have access for child support enforcement purposes to information in the National Directory of New Hires that is provided pursuant to section 653a(g)(2)(B) of this title, if 12 months has elapsed since the date the information is so provided and there has not been a match resulting from the use of such information in any information comparison under this subsection.

(C) Retention of data for research purposes

Notwithstanding subparagraphs (A) and (B), the Secretary may retain such samples of data entered in the National Directory of New Hires as the Secretary may find necessary to assist in carrying out subsection (j)(5) of this section.

(3) Administration of Federal tax laws

The Secretary of the Treasury shall have access to the information in the National Directory of New Hires for purposes of administering section 32 of the Internal Revenue Code of 1986, or the advance payment of the earned income tax credit under section 3507 of such Code, and verifying a claim with respect to employment in a tax return.

(4) List of multistate employers

The Secretary shall maintain within the National Directory of New Hires a list of multistate employers that report information regarding newly hired employees pursuant to section 653a(b)(1)(B) of this title, and the State which each such employer has designated to receive such information.

(j) Information comparisons and other disclosures

(1) Verification by Social Security Administration

(A) In general

The Secretary shall transmit information on individuals and employers maintained under this section to the Social Security Administration to the extent necessary for verification in accordance with subparagraph (B).

(B) Verification by SSA

The Social Security Administration shall verify the accuracy of, correct, or supply to the extent possible, and report to the Secretary, the following information supplied by the Secretary pursuant to subparagraph (A):

(i) The name, social security number, and birth date of each such individual.

(ii) The employer identification number of each such employer.

(2) Information comparisons

For the purpose of locating individuals in a paternity establishment case or a case involving the establishment, modification, or enforcement of a support order, the Secretary shall—

(A) compare information in the National Directory of New Hires against information in the support case abstracts in the Federal Case Registry of Child Support Orders not less often than every 2 business days; and

(B) within 2 business days after such a comparison reveals a match with respect to an individual, report the information to the State agency responsible for the case.

(3) Information comparisons and disclosures of information in all registries for subchapter IV program purposes

To the extent and with the frequency that the Secretary determines to be effective in assisting States to carry out their responsibilities under programs operated under this part and programs funded under part A of this subchapter, the Secretary shall—

(A) compare the information in each component of the Federal Parent Locator Service maintained under this section against the information in each other such component (other than the comparison required by paragraph (2)), and report instances in which such a comparison reveals a match with respect to an individual to State agencies operating such programs; and

(B) disclose information in such components to such State agencies.

(4) Provision of new hire information to the Social Security Administration

The National Directory of New Hires shall provide the Commissioner of Social Security with all information in the National Directory.

(5) Research

The Secretary may provide access to data in each component of the Federal Parent Locator Service maintained under this section and to information reported by employers pursuant to section 653a(b) of this title for research purposes found by the Secretary to be likely to contribute to achieving the purposes of part A of this subchapter or this part, but without personal identifiers.

(6) Information comparisons and disclosure for enforcement of obligations on Higher Education Act loans and grants

(A) Furnishing of information by the Secretary of Education

The Secretary of Education shall furnish to the Secretary, on a quarterly basis or at such less frequent intervals as may be determined by the Secretary of Education, information in the custody of the Secretary of Education for comparison with information in the National Directory of New Hires, in order to obtain the information in such directory with respect to individuals who—

(i) are borrowers of loans made under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.] that are in default; or

(ii) owe an obligation to refund an overpayment of a grant awarded under such title.

(B) Requirement to seek minimum information necessary

The Secretary of Education shall seek information pursuant to this section only to the extent essential to improving collection of the debt described in subparagraph (A).

(C) Duties of the Secretary

(i) Information comparison; disclosure to the Secretary of Education

The Secretary, in cooperation with the Secretary of Education, shall compare information in the National Directory of New Hires with information in the custody of the Secretary of Education, and disclose information in that Directory to the Secretary of Education, in accordance with this paragraph, for the purposes specified in this paragraph.

(ii) Condition on disclosure

The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part. Support collection under section 666(b) of this title shall be given priority over collection of any defaulted student loan or grant overpayment against the same income.

(D) Use of information by the Secretary of Education

The Secretary of Education may use information resulting from a data match pursuant to this paragraph only—

(i) for the purpose of collection of the debt described in subparagraph (A) owed by an individual whose annualized wage level (determined by taking into consideration information from the National Directory of New Hires) exceeds $16,000; and

(ii) after removal of personal identifiers, to conduct analyses of student loan defaults.

(E) Disclosure of information by the Secretary of Education

(i) Disclosures permitted

The Secretary of Education may disclose information resulting from a data match pursuant to this paragraph only to—

(I) a guaranty agency holding a loan made under part B of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.] on which the individual is obligated;

(II) a contractor or agent of the guaranty agency described in subclause (I);

(III) a contractor or agent of the Secretary; and

(IV) the Attorney General.

(ii) Purpose of disclosure

The Secretary of Education may make a disclosure under clause (i) only for the purpose of collection of the debts owed on defaulted student loans, or overpayments of grants, made under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.].

(iii) Restriction on redisclosure

An entity to which information is disclosed under clause (i) may use or disclose such information only as needed for the purpose of collecting on defaulted student loans, or overpayments of grants, made under title IV of the Higher Education Act of 1965.

(F) Reimbursement of HHS costs

The Secretary of Education shall reimburse the Secretary, in accordance with sub-

section (k)(3) of this section, for the additional costs incurred by the Secretary in furnishing the information requested under this subparagraph.

(7)[1] Information comparisons for housing assistance programs

(A) Furnishing of information by HUD

Subject to subparagraph (G), the Secretary of Housing and Urban Development shall furnish to the Secretary, on such periodic basis as determined by the Secretary of Housing and Urban Development in consultation with the Secretary, information in the custody of the Secretary of Housing and Urban Development for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to individuals who are participating in any program under—

(i) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

(ii) section 1701q of title 12;

(iii) section 1715*l*(d)(3), 1715*l*(d)(5), or 1715z–1 of title 12;

(iv) section 8013 of this title; or

(v) section 1701s of title 12.

(B) Requirement to seek minimum information

The Secretary of Housing and Urban Development shall seek information pursuant to this section only to the extent necessary to verify the employment and income of individuals described in subparagraph (A).

(C) Duties of the Secretary

(i) Information disclosure

The Secretary, in cooperation with the Secretary of Housing and Urban Development, shall compare information in the National Directory of New Hires with information provided by the Secretary of Housing and Urban Development with respect to individuals described in subparagraph (A), and shall disclose information in such Directory regarding such individuals to the Secretary of Housing and Urban Development, in accordance with this paragraph, for the purposes specified in this paragraph.

(ii) Condition on disclosure

The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

(D) Use of information by HUD

The Secretary of Housing and Urban Development may use information resulting from a data match pursuant to this paragraph only—

(i) for the purpose of verifying the employment and income of individuals described in subparagraph (A); and

(ii) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals described in subparagraph (A).

(E) Disclosure of information by HUD

(i) Purpose of disclosure

The Secretary of Housing and Urban Development may make a disclosure under this subparagraph only for the purpose of verifying the employment and income of individuals described in subparagraph (A).

(ii) Disclosures permitted

Subject to clause (iii), the Secretary of Housing and Urban Development may disclose information resulting from a data match pursuant to this paragraph only to a public housing agency, the Inspector General of the Department of Housing and Urban Development, and the Attorney General in connection with the administration of a program described in subparagraph (A). Information obtained by the Secretary of Housing and Urban Development pursuant to this paragraph shall not be made available under section 552 of title 5.

(iii) Conditions on disclosure

Disclosures under this paragraph shall be—

(I) made in accordance with data security and control policies established by the Secretary of Housing and Urban Development and approved by the Secretary;

(II) subject to audit in a manner satisfactory to the Secretary; and

(III) subject to the sanctions under subsection (*l*)(2) of this section.

(iv) Additional disclosures

(I) Determination by Secretaries

The Secretary of Housing and Urban Development and the Secretary shall determine whether to permit disclosure of information under this paragraph to persons or entities described in subclause (II), based on an evaluation made by the Secretary of Housing and Urban Development (in consultation with and approved by the Secretary), of the costs and benefits of disclosures made under clause (ii) and the adequacy of measures used to safeguard the security and confidentiality of information so disclosed.

(II) Permitted persons or entities

If the Secretary of Housing and Urban Development and the Secretary determine pursuant to subclause (I) that disclosures to additional persons or entities shall be permitted, information under this paragraph may be disclosed by the Secretary of Housing and Urban Development to a private owner, a management agent, and a contract administrator in connection with the administration of a program described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

(v) Restrictions on redisclosure

A person or entity to which information is disclosed under this subparagraph may

[1] So in original. Another par. (7) follows par. (8).

use or disclose such information only as needed for verifying the employment and income of individuals described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

(F) Reimbursement of HHS costs

The Secretary of Housing and Urban Development shall reimburse the Secretary, in accordance with subsection (k)(3) of this section, for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

(G) Consent

The Secretary of Housing and Urban Development shall not seek, use, or disclose information under this paragraph relating to an individual without the prior written consent of such individual (or of a person legally authorized to consent on behalf of such individual).

(8) Information comparisons and disclosure to assist in administration of unemployment compensation programs

(A) In general

If, for purposes of administering an unemployment compensation program under Federal or State law, a State agency responsible for the administration of such program transmits to the Secretary the names and social security account numbers of individuals, the Secretary shall disclose to such State agency information on such individuals and their employers maintained in the National Directory of New Hires, subject to this paragraph.

(B) Condition on disclosure by the Secretary

The Secretary shall make a disclosure under subparagraph (A) only to the extent that the Secretary determines that the disclosure would not interfere with the effective operation of the program under this part.

(C) Use and disclosure of information by State agencies

(i) In general

A State agency may not use or disclose information provided under this paragraph except for purposes of administering a program referred to in subparagraph (A).

(ii) Information security

The State agency shall have in effect data security and control policies that the Secretary finds adequate to ensure the security of information obtained under this paragraph and to ensure that access to such information is restricted to authorized persons for purposes of authorized uses and disclosures.

(iii) Penalty for misuse of information

An officer or employee of the State agency who fails to comply with this subparagraph shall be subject to the sanctions under subsection (*l*)(2) of this section to the same extent as if such officer or employee was an officer or employee of the United States.

(D) Procedural requirements

State agencies requesting information under this paragraph shall adhere to uniform procedures established by the Secretary governing information requests and data matching under this paragraph.

(E) Reimbursement of costs

The State agency shall reimburse the Secretary, in accordance with subsection (k)(3) of this section, for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

(7)[2] Information comparisons and disclosure to assist in Federal debt collection

(A) Furnishing of information by the Secretary of the Treasury

The Secretary of the Treasury shall furnish to the Secretary, on such periodic basis as determined by the Secretary of the Treasury in consultation with the Secretary, information in the custody of the Secretary of the Treasury for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to persons—

(i) who owe delinquent nontax debt to the United States; and

(ii) whose debt has been referred to the Secretary of the Treasury in accordance with section 3711(g) of title 31.

(B) Requirement to seek minimum information

The Secretary of the Treasury shall seek information pursuant to this section only to the extent necessary to improve collection of the debt described in subparagraph (A).

(C) Duties of the Secretary

(i) Information disclosure

The Secretary, in cooperation with the Secretary of the Treasury, shall compare information in the National Directory of New Hires with information provided by the Secretary of the Treasury with respect to persons described in subparagraph (A) and shall disclose information in such Directory regarding such persons to the Secretary of the Treasury in accordance with this paragraph, for the purposes specified in this paragraph. Such comparison of information shall not be considered a matching program as defined in section 552a of title 5.

(ii) Condition on disclosure

The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part. Support collection under section 666(b) of this title shall be given priority over collection of any delinquent Federal nontax debt against the same income.

(D) Use of information by the Secretary of the Treasury

The Secretary of the Treasury may use information provided under this paragraph

[2] So in original. Another par. (7) follows par. (6).

only for purposes of collecting the debt described in subparagraph (A).

(E) Disclosure of information by the Secretary of the Treasury

(i) Purpose of disclosure

The Secretary of the Treasury may make a disclosure under this subparagraph only for purposes of collecting the debt described in subparagraph (A).

(ii) Disclosures permitted

Subject to clauses (iii) and (iv), the Secretary of the Treasury may disclose information resulting from a data match pursuant to this paragraph only to the Attorney General in connection with collecting the debt described in subparagraph (A).

(iii) Conditions on disclosure

Disclosures under this subparagraph shall be—

(I) made in accordance with data security and control policies established by the Secretary of the Treasury and approved by the Secretary;

(II) subject to audit in a manner satisfactory to the Secretary; and

(III) subject to the sanctions under subsection (*l*)(2) of this section.

(iv) Additional disclosures

(I) Determination by Secretaries

The Secretary of the Treasury and the Secretary shall determine whether to permit disclosure of information under this paragraph to persons or entities described in subclause (II), based on an evaluation made by the Secretary of the Treasury (in consultation with and approved by the Secretary), of the costs and benefits of such disclosures and the adequacy of measures used to safeguard the security and confidentiality of information so disclosed.

(II) Permitted persons or entities

If the Secretary of the Treasury and the Secretary determine pursuant to subclause (I) that disclosures to additional persons or entities shall be permitted, information under this paragraph may be disclosed by the Secretary of the Treasury, in connection with collecting the debt described in subparagraph (A), to a contractor or agent of either Secretary and to the Federal agency that referred such debt to the Secretary of the Treasury for collection, subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

(v) Restrictions on redisclosure

A person or entity to which information is disclosed under this subparagraph may use or disclose such information only as needed for collecting the debt described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

(F) Reimbursement of HHS costs

The Secretary of the Treasury shall reimburse the Secretary, in accordance with subsection (k)(3) of this section, for the costs incurred by the Secretary in furnishing the information requested under this paragraph. Any such costs paid by the Secretary of the Treasury shall be considered costs of implementing section 3711(g) of title 31 in accordance with section 3711(g)(6) of title 31 and may be paid from the account established pursuant to section 3711(g)(7) of title 31.

(k) Fees

(1) For SSA verification

The Secretary shall reimburse the Commissioner of Social Security, at a rate negotiated between the Secretary and the Commissioner, for the costs incurred by the Commissioner in performing the verification services described in subsection (j) of this section.

(2) For information from State directories of new hires

The Secretary shall reimburse costs incurred by State directories of new hires in furnishing information as required by section 653a(g)(2) of this title, at rates which the Secretary determines to be reasonable (which rates shall not include payment for the costs of obtaining, compiling, or maintaining such information).

(3) For information furnished to State and Federal agencies

A State or Federal agency that receives information from the Secretary pursuant to this section shall reimburse the Secretary for costs incurred by the Secretary in furnishing the information, at rates which the Secretary determines to be reasonable (which rates shall include payment for the costs of obtaining, verifying, maintaining, and comparing the information).

(*l*) Restriction on disclosure and use

(1) In general

Information in the Federal Parent Locator Service, and information resulting from comparisons using such information, shall not be used or disclosed except as expressly provided in this section, subject to section 6103 of the Internal Revenue Code of 1986.

(2) Penalty for misuse of information in the National Directory of New Hires

The Secretary shall require the imposition of an administrative penalty (up to and including dismissal from employment), and a fine of $1,000, for each act of unauthorized access to, disclosure of, or use of, information in the National Directory of New Hires established under subsection (i) of this section by any officer or employee of the United States or any other person who knowingly and willfully violates this paragraph.

(m) Information integrity and security

The Secretary shall establish and implement safeguards with respect to the entities established under this section designed to—

(1) ensure the accuracy and completeness of information in the Federal Parent Locator Service; and

(2) restrict access to confidential information in the Federal Parent Locator Service to

authorized persons, and restrict use of such information to authorized purposes.

(n) Federal Government reporting

Each department, agency, and instrumentality of the United States shall on a quarterly basis report to the Federal Parent Locator Service the name and social security number of each employee and the wages paid to the employee during the previous quarter, except that such a report shall not be filed with respect to an employee of a department, agency, or instrumentality performing intelligence or counterintelligence functions, if the head of such department, agency, or instrumentality has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(*o*) Use of set-aside funds

Out of any money in the Treasury of the United States not otherwise appropriated, there is hereby appropriated to the Secretary for each fiscal year an amount equal to 2 percent of the total amount paid to the Federal Government pursuant to a plan approved under this part during the immediately preceding fiscal year (as determined on the basis of the most recent reliable data available to the Secretary as of the end of the third calendar quarter following the end of such preceding fiscal year), which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements, for operation of the Federal Parent Locator Service under this section, to the extent such costs are not recovered through user fees. Amounts appropriated under this subsection for each of fiscal years 1997 through 2001 shall remain available until expended.

(p) "Support order" defined

As used in this part, the term ''support order'' means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

(Aug. 14, 1935, ch. 531, title IV, § 453, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2353; amended Pub. L. 97–35, title XXIII, § 2332(c), Aug. 13, 1981, 95 Stat. 862; Pub. L. 98–369, div. B, title VI, § 2663(c)(13), (j)(2)(B)(ix), July 18, 1984, 98 Stat. 1166, 1170; Pub. L. 98–378, §§ 17, 19(a), Aug. 16, 1984, 98 Stat. 1321, 1322; Pub. L. 100–485, title I, § 124(a), Oct. 13, 1988, 102 Stat. 2353; Pub. L. 104–193, title I, § 108(c)(10), title III, §§ 316(a)–(f), 345(b), 366, 395(d)(1)(C), (2)(A), Aug. 22, 1996, 110 Stat. 2166, 2214–2216, 2237, 2250, 2259; Pub. L. 104–208, div. A, title I, § 101(e) [title II, § 215], Sept. 30, 1996, 110 Stat. 3009–233, 3009–255; Pub. L. 105–33, title V, §§ 5534(a), 5535, 5541(b), 5543, 5553, 5556(c), Aug. 5, 1997, 111 Stat. 627, 629–631, 636, 637; Pub. L. 105–34, title X, § 1090(a)(2), Aug. 5, 1997, 111 Stat. 961; Pub. L. 105–89, title I, § 105, Nov. 19, 1997, 111 Stat. 2120; Pub. L. 105–200, title IV, §§ 402(a), (b), 410(d), July 16, 1998, 112 Stat. 668, 669, 673; Pub. L. 106–113, div. B, § 1000(a)(5) [title III, § 303(a), (b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–304, 1501A–306; Pub. L. 108–199, div. G, title II, § 217(a), Jan. 23, 2004, 118 Stat. 394; Pub. L. 108–295, § 3, Aug. 9, 2004, 118 Stat. 1091; Pub. L. 108–447, div. H, title VI, § 643, Dec. 8, 2004, 118 Stat. 3283.)

REFERENCES IN TEXT

Parts A, B, and E of this subchapter, referred to in subsecs. (c)(3), (4), (h)(1), (i)(1), and (j)(3), (5), are classified to sections 601 et seq., 620 et seq., and 670 et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (h)(3), (i)(3), and (*l*), is classified generally to Title 26, Internal Revenue Code.

The Higher Education Act of 1965, referred to in subsec. (j)(6)(A), (E), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of this title. Part B of title IV of the Act is classified generally to part B (§ 1071 et seq.) of subchapter IV of chapter 28 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The United States Housing Act of 1937, referred to in subsec. (j)(7)(A)(i), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

AMENDMENTS

2004—Subsec. (j)(7). Pub. L. 108–447 added par. (7) relating to information comparisons and disclosure to assist in Federal debt collection.

Pub. L. 108–199 added par. (7) relating to information comparisons for housing assistance programs.

Subsec. (j)(8). Pub. L. 108–295 added par. (8).

1999—Subsec. (j)(6). Pub. L. 106–113, § 1000(a)(5) [title III, § 303(a)], added par. (6).

Subsec. (*l*)(2). Pub. L. 106–113, § 1000(a)(5) [title III, § 303(b)], amended Pub. L. 105–200, § 402(a), by inserting ''or any other person'' after ''employee of the United States'' in new par. (2). See 1998 Amendment note below.

1998—Subsec. (a)(2). Pub. L. 105–200, § 410(d)(1), (2), in introductory provisions, substituted ''parentage or'' for ''parentage,'' and struck out ''or making or enforcing child custody or visitation orders,'' after ''obligations,''.

Subsec. (a)(2)(A)(iv). Pub. L. 105–200, § 410(d)(3), realigned margins.

Subsec. (i)(2). Pub. L. 106–200, § 402(b), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''Information shall be entered into the data base maintained by the National Directory of New Hires within 2 business days of receipt pursuant to section 653a(g)(2) of this title.''

Subsec. (*l*). Pub. L. 105–200, § 402(a), as amended by Pub. L. 106–113, § 1000(a)(5) [title III, § 303(b)], designated existing provisions as par. (1), inserted heading, and added par. (2).

1997—Subsec. (a). Pub. L. 105–33, § 5534(a)(1), designated existing provisions as par. (1), substituted ''for the purposes specified in paragraphs (2) and (3).'' for ''to obtain and transmit to any authorized person (as defined in subsection (c) of this section), for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or enforcing child custody or visitation orders—'', added pars. (2) and (3), and struck out former pars. (1) to (3) which read as follows:

''(1) information on, or facilitating the discovery of, the location of any individual—

''(A) who is under an obligation to pay child support or provide child custody or visitation rights;

''(B) against whom such an obligation is sought;

''(C) to whom such an obligation is owed,

including the individual's social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual's employer;

''(2) information on the individual's wages (or other income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); and

''(3) information on the type, status, location, and amount of any assets of, or debts owed by or to, any such individual.''

Subsec. (a)(2). Pub. L. 105–89, §105(1)(A), inserted ''or making or enforcing child custody or visitation orders,'' after ''obligations,'' in introductory provisions.

Subsec. (a)(2)(A)(iv). Pub. L. 105–89, §105(1)(B), added cl. (iv).

Subsec. (b). Pub. L. 105–33, §5534(a)(2), amended subsec. (b) generally, revising and restating former provisions relating to disclosure of information to authorized persons as pars. (1) to (3).

Subsec. (c)(1). Pub. L. 105–33, §5534(a)(3)(A), struck out ''or to seek to enforce orders providing child custody or visitation rights'' after ''spousal support''.

Subsec. (c)(2). Pub. L. 105–33, §5534(a)(3)(B), inserted ''or to serve as the initiating court in an action to seek an order'' after ''authority to issue an order'' and struck out ''or to issue an order against a resident parent for child custody or visitation rights'' after ''maintenance of a child''.

Subsec. (c)(4). Pub. L. 105–89, §105(2), added par. (4).

Subsec. (h)(1). Pub. L. 105–33, §5553(1), inserted ''and order'' after ''with respect to each case''.

Subsec. (h)(2). Pub. L. 105–34, §1090(a)(2)(A), inserted at end ''Beginning not later than October 1, 1999, the information referred to in paragraph (1) shall include the names and social security numbers of the children of such individuals.''

Pub. L. 105–33, §5553(2), inserted ''and order'' after ''case'' in heading and ''or an order'' after ''with respect to a case'' and ''or order'' after ''and the State or States which have the case'' in text.

Subsec. (h)(3). Pub. L. 105–34, §1090(a)(2)(B), added par. (3).

Subsec. (j)(3)(B). Pub. L. 105–33, §5535(b)(1), substituted ''components'' for ''registries''.

Subsec. (j)(5). Pub. L. 105–33, §5535(a), inserted ''data in each component of the Federal Parent Locator Service maintained under this section and to'' before ''information''.

Subsec. (k)(2). Pub. L. 105–33, §5535(b)(2), substituted ''section 653a(g)(2) of this title'' for ''subsection (j)(3) of this section''.

Subsec. (*o*). Pub. L. 105–33, §5556(c), amended Pub. L. 104–208, §101(e) [title II, §215], generally. See 1996 Amendment note below.

Pub. L. 105–34, §5541(b), in heading substituted ''Use of set-aside funds'' for ''Recovery of costs'' and in text substituted ''which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements,'' for ''to cover costs incurred by the Secretary'' and inserted at end ''Amounts appropriated under this subsection for each of fiscal years 1997 through 2001 shall remain available until expended.''

Subsec. (p). Pub. L. 105–33, §5543, substituted ''of the parent'' for ''a child and the parent''.

1996—Pub. L. 104–193, §316(e)(2), inserted ''Federal'' before ''Parent Locator Service'' in section catchline.

Subsec. (a). Pub. L. 104–193, §316(a)(1), (e)(1), inserted ''Federal'' before ''Parent Locator Service'', substituted '', for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or enforcing child custody or visitation orders—'' for ''information as to the whereabouts of any absent parent when such information is to be used to locate such parent for the purpose of enforcing support obligations against such parent.'', and added pars. (1) to (3).

Subsec. (b). Pub. L. 104–193, §316(a)(2), (e)(1), substituted ''information described in subsection (a) of this section'' for ''social security account number (or numbers, if the individual involved has more than one such number) and the most recent address and place of employment of any absent parent'', inserted ''Federal'' before ''Parent Locator Service'', and inserted at end of closing provisions ''No information shall be disclosed to any person if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent. Information received or transmitted pursuant to this section shall be subject to the safeguard provisions contained in section 654(26) of this title.''

Subsec. (c)(1). Pub. L. 104–193, §316(b)(1), substituted ''support or to seek to enforce orders providing child custody or visitation rights'' for ''support''.

Subsec. (c)(2). Pub. L. 104–193, §§316(b)(2), 395(d)(2)(A), substituted ''a noncustodial parent'' for ''an absent parent'' and ''or to issue an order against a resident parent for child custody or visitation rights, or any agent of such court;'' for '', or any agent of such court; and''.

Subsec. (c)(3). Pub. L. 104–193, §395(d)(2)(A), substituted ''a noncustodial parent'' for ''an absent parent''.

Pub. L. 104–193, §108(c)(10), substituted ''assistance under a State program funded under part A of this subchapter'' for ''aid under part A of this subchapter''.

Subsec. (e)(2). Pub. L. 104–193, §316(c), inserted ''in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information)'' after ''Secretary shall be reimbursed by him''.

Subsec. (f). Pub. L. 104–193, §395(d)(1)(C), substituted ''noncustodial'' for ''absent''.

Subsec. (g). Pub. L. 104–193, §316(d), added subsec. (g).

Subsecs. (h) to (n). Pub. L. 104–193, §316(f), added subsecs. (h) to (n).

Subsec. (*o*). Pub. L. 104–208, title I, §101(e) [title II, §215], as amended by Pub. L. 105–33, §5556(c), substituted ''a plan approved under this part'' for ''section 657(a) of this title''.

Pub. L. 104–193, §345(a), added subsec. (*o*).

Subsec. (p). Pub. L. 104–193, §366, added subsec. (p).

1988—Subsec. (e)(3). Pub. L. 100–485 added par. (3).

1984—Subsec. (b). Pub. L. 98–378, §19(a), inserted ''the social security account number (or numbers, if the individual involved has more than one such number) and''.

Subsec. (b)(1). Pub. L. 98–369, §2663(j)(2)(B)(ix), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (b)(2). Pub. L. 98–369, §2663(c)(13), substituted ''of the United States'' for '', or the United States''.

Subsec. (f). Pub. L. 98–378, §17, struck out '', after determining that the absent parent cannot be located through the procedures under the control of such State agencies,'' before ''to transmit to the Secretary''.

1981—Subsec. (c)(1). Pub. L. 97–35 substituted ''child and spousal support'' for ''child support''.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(5) [title III, §303(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–306, provided that: ''The amendments made by this section [amending this section] shall become effective October 1, 1999.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–200, title IV, §402(e), July 16, 1998, 112 Stat. 669, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

Section 1090(a)(4) of Pub. L. 105–34 provided that: ''The amendments made by this subsection [amending this section and section 654a of this title] shall take effect on October 1, 1998.''

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amounts available under subsec. (*o*) of this section to be calculated as though amendments made by section 101(e) [title II, § 215] of Pub. L. 104–208 were effective Oct. 1, 1995, see section 101(e) [title II, § 215] of Pub. L. 104–208, as amended, set out as a note under section 652 of this title.

Amendment by section 108(c)(10) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 124(c) of Pub. L. 100–485 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending this section and sections 503 and 504 of this title] shall become effective on the first day of the first calendar quarter which begins one year or more after the date of the enactment of this Act [Oct. 13, 1988].

''(2) The Secretary of Health and Human Services and the Secretary of Labor shall enter into the agreement required by the amendment made by subsection (a) [amending this section] not later than 90 days after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

NOTICE OF PURPOSES FOR WHICH WAGE AND SALARY DATA ARE TO BE USED

Pub. L. 105–200, title IV, § 402(c), July 16, 1998, 112 Stat. 669, provided that: ''Within 90 days after the date of the enactment of this Act [July 16, 1998], the Secretary of Health and Human Services shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of the specific purposes for which the new hire and the wage and unemployment compensation information in the National Directory of New Hires is to be used. At least 30 days before such information is to be used for a purpose not specified in the notice provided pursuant to the preceding sentence, the Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of such purpose.''

REPORT ON DATA MAINTAINED BY NATIONAL DIRECTORY OF NEW HIRES

Pub. L. 105–200, title IV, § 402(d), July 16, 1998, 112 Stat. 669, provided that: ''Within 3 years after the date of the enactment of this Act [July 16, 1998], the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the accuracy of the data maintained by the National Directory of New Hires pursuant to section 453(i) of the Social Security Act [subsec. (i) of this section], and the effectiveness of the procedures designed to provide for the security of such data.''

COORDINATION BETWEEN SECRETARIES RELATING TO AMENDMENTS BY PUB. L. 105–34

Section 1090(a)(3) of Pub. L. 105–34 provided that: ''The Secretary of the Treasury and the Secretary of Health and Human Services shall consult regarding the implementation issues resulting from the amendments made by this subsection [amending this section and section 654a of this title], including interim deadlines for States that may be able before October 1, 1999, to provide the data required by such amendments. The Secretaries shall report to Congress on the results of such consultation.''

REQUIREMENT FOR COOPERATION

Section 316(h) of title III of Pub. L. 104–193 provided that: ''The Secretary of Labor and the Secretary of Health and Human Services shall work jointly to develop cost-effective and efficient methods of accessing the information in the various State directories of new hires and the National Directory of New Hires as established pursuant to the amendments made by this subtitle [subtitle B (§§ 311–317) of title III of Pub. L. 104–193, enacting sections 653a and 654b of this title and amending this section, sections 503, 654, 654a, 666, 1320b–7 of this title, and sections 3304 and 6103 of Title 26, Internal Revenue Code]. In developing these methods the Secretaries shall take into account the impact, including costs, on the States, and shall also consider the need to insure the proper and authorized use of wage record information.''

EXECUTIVE AGENCIES TO FACILITATE PAYMENT OF CHILD SUPPORT

For provisions requiring Federal agencies to cooperate with Federal Parent Locator Service, see Ex. Ord. No. 12953, § 303, Feb. 27, 1995, 60 F.R. 11014, set out as a note under section 659 of this title.

§ 653a. State Directory of New Hires

(a) Establishment

(1) In general

(A) Requirement for States that have no directory

Except as provided in subparagraph (B), not later than October 1, 1997, each State shall establish an automated directory (to be known as the ''State Directory of New Hires'') which shall contain information supplied in accordance with subsection (b) of this section by employers on each newly hired employee.

(B) States with new hire reporting law in existence

A State which has a new hire reporting law in existence on August 22, 1996, may con-

tinue to operate under the State law, but the State must meet the requirements of subsection (g)(2) of this section not later than October 1, 1997, and the requirements of this section (other than subsection (g)(2) of this section) not later than October 1, 1998.

(2) Definitions

As used in this section:

(A) Employee

The term ''employee''—

(i) means an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986; and

(ii) does not include an employee of a Federal or State agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to paragraph (1) with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(B) Employer

(i) In general

The term ''employer'' has the meaning given such term in section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

(ii) Labor organization

The term ''labor organization'' shall have the meaning given such term in section 152(5) of title 29, and includes any entity (also known as a ''hiring hall'') which is used by the organization and an employer to carry out requirements described in section 158(f)(3) of title 29 of an agreement between the organization and the employer.

(b) Employer information

(1) Reporting requirement

(A) In general

Except as provided in subparagraphs (B) and (C), each employer shall furnish to the Directory of New Hires of the State in which a newly hired employee works, a report that contains the name, address, and social security number of the employee, and the name and address of, and identifying number assigned under section 6109 of the Internal Revenue Code of 1986 to, the employer.

(B) Multistate employers

An employer that has employees who are employed in 2 or more States and that transmits reports magnetically or electronically may comply with subparagraph (A) by designating 1 State in which such employer has employees to which the employer will transmit the report described in subparagraph (A), and transmitting such report to such State. Any employer that transmits reports pursuant to this subparagraph shall notify the Secretary in writing as to which State such employer designates for the purpose of sending reports.

(C) Federal Government employers

Any department, agency, or instrumentality of the United States shall comply with subparagraph (A) by transmitting the report described in subparagraph (A) to the National Directory of New Hires established pursuant to section 653 of this title.

(2) Timing of report

Each State may provide the time within which the report required by paragraph (1) shall be made with respect to an employee, but such report shall be made—

(A) not later than 20 days after the date the employer hires the employee; or

(B) in the case of an employer transmitting reports magnetically or electronically, by 2 monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

(c) Reporting format and method

Each report required by subsection (b) of this section shall be made on a W–4 form or, at the option of the employer, an equivalent form, and may be transmitted by 1st class mail, magnetically, or electronically.

(d) Civil money penalties on noncomplying employers

The State shall have the option to set a State civil money penalty which shall not exceed—

(1) $25 per failure to meet the requirements of this section with respect to a newly hired employee; or

(2) $500 if, under State law, the failure is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report.

(e) Entry of employer information

Information shall be entered into the data base maintained by the State Directory of New Hires within 5 business days of receipt from an employer pursuant to subsection (b) of this section.

(f) Information comparisons

(1) In general

Not later than May 1, 1998, an agency designated by the State shall, directly or by contract, conduct automated comparisons of the social security numbers reported by employers pursuant to subsection (b) of this section and the social security numbers appearing in the records of the State case registry for cases being enforced under the State plan.

(2) Notice of match

When an information comparison conducted under paragraph (1) reveals a match with respect to the social security number of an individual required to provide support under a support order, the State Directory of New Hires shall provide the agency administering the State plan approved under this part of the appropriate State with the name, address, and social security number of the employee to whom the social security number is assigned, and the name and address of, and identifying number assigned under section 6109 of the Internal Revenue Code of 1986 to, the employer.

(g) Transmission of information

(1) Transmission of wage withholding notices to employers

Within 2 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, the State agency enforcing the employee's child support obligation shall transmit a notice to the employer of the employee directing the employer to withhold from the income of the employee an amount equal to the monthly (or other periodic) child support obligation (including any past due support obligation) of the employee, unless the employee's income is not subject to withholding pursuant to section 666(b)(3) of this title.

(2) Transmissions to the National Directory of New Hires

(A) New hire information

Within 3 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, the State Directory of New Hires shall furnish the information to the National Directory of New Hires.

(B) Wage and unemployment compensation information

The State Directory of New Hires shall, on a quarterly basis, furnish to the National Directory of New Hires information concerning the wages and unemployment compensation paid to individuals, by such dates, in such format, and containing such information as the Secretary of Health and Human Services shall specify in regulations.

(3) "Business day" defined

As used in this subsection, the term ''business day'' means a day on which State offices are open for regular business.

(h) Other uses of new hire information

(1) Location of child support obligors

The agency administering the State plan approved under this part shall use information received pursuant to subsection (f)(2) of this section to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations, and may disclose such information to any agent of the agency that is under contract with the agency to carry out such purposes.

(2) Verification of eligibility for certain programs

A State agency responsible for administering a program specified in section 1320b–7(b) of this title shall have access to information reported by employers pursuant to subsection (b) of this section for purposes of verifying eligibility for the program.

(3) Administration of employment security and workers' compensation

State agencies operating employment security and workers' compensation programs shall have access to information reported by employers pursuant to subsection (b) of this section for the purposes of administering such programs.

(Aug. 14, 1935, ch. 531, title IV, § 453A, as added Pub. L. 104–193, title III, § 313(b), Aug. 22, 1996, 110 Stat. 2209; amended Pub. L. 105–33, title V, § 5533, Aug. 5, 1997, 111 Stat. 627.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(2), (b)(1)(A), and (f)(2), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1997—Subsec. (d). Pub. L. 105–33, § 5533(1), substituted ''shall not exceed'' for ''shall be less than'' in introductory provisions and ''$25 per failure to meet the requirements of this section with respect to a newly hired employee'' for ''$25'' in par. (1).

Subsec. (g)(2)(B). Pub. L. 105–33, § 5533(2), substituted ''information'' for ''extracts of the reports required under section 503(a)(6) of this title to be made to the Secretary of Labor''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE

For effective date of section, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

§ 654. State plan for child and spousal support

A State plan for child and spousal support must—

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

(4) provide that the State will—

(A) provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to—

(i) each child for whom (I) assistance is provided under the State program funded under part A of this subchapter, (II) benefits or services for foster care maintenance are provided under the State program funded under part E of this subchapter, (III) medical assistance is provided under the State plan approved under subchapter XIX of this chapter, or (IV) cooperation is required pursuant to section 2015(*l*)(1) of title 7, unless, in accordance with paragraph (29), good cause or other exceptions exist;

(ii) any other child, if an individual applies for such services with respect to the child; and

(B) enforce any support obligation established with respect to—

(i) a child with respect to whom the State provides services under the plan; or

(ii) the custodial parent of such a child;

(5) provide that (A) in any case in which support payments are collected for an individual with respect to whom an assignment pursuant to section 608(a)(3) of this title is effective, such payments shall be made to the State for distribution pursuant to section 657 of this title and shall not be paid directly to the family, and the individual will be notified on a monthly basis (or on a quarterly basis for so long as the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden) of the amount of the support payments collected, and (B) in any case in which support payments are collected for an individual pursuant to the assignment made under section 1396k of this title, such payments shall be made to the State for distribution pursuant to section 1396k of this title, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance;

(6) provide that—

(A) services under the plan shall be made available to residents of other States on the same terms as to residents of the State submitting the plan;

(B) an application fee for furnishing such services shall be imposed on an individual, other than an individual receiving assistance under a State program funded under part A or E of this subchapter, or under a State plan approved under subchapter XIX of this chapter, or who is required by the State to cooperate with the State agency administering the program under this part pursuant to subsection (*l*) or (m) of section 2015 of title 7, and shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State);

(C) a fee of not more than $25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 664(a)(2) of this title;

(D) a fee (in accordance with regulations of the Secretary) for performing genetic tests may be imposed on any individual who is not a recipient of assistance under a State program funded under part A of this subchapter; and

(E) any costs in excess of the fees so imposed may be collected—

(i) from the parent who owes the child or spousal support obligation involved; or

(ii) at the option of the State, from the individual to whom such services are made available, but only if such State has in effect a procedure whereby all persons in such State having authority to order child or spousal support are informed that such costs are to be collected from the individual to whom such services were made available;

(7) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials and Indian tribes or tribal organizations (as defined in subsections (e) and (*l*) of section 450b of title 25) (A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

(8) provide that, for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or making or enforcing a child custody or visitation determination, as defined in section 663(d)(1) of this title the agency administering the plan will establish a service to locate parents utilizing—

(A) all sources of information and available records; and

(B) the Federal Parent Locator Service established under section 653 of this title,

and shall, subject to the privacy safeguards required under paragraph (26), disclose only the information described in sections 653 and 663 of this title to the authorized persons specified in such sections for the purposes specified in such sections;

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

(A) in establishing paternity, if necessary;

(B) in locating a noncustodial parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part in another State;

(C) in securing compliance by a noncustodial parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State;

(D) in carrying out other functions required under a plan approved under this part; and

(E) not later than March 1, 1997, in using the forms promulgated pursuant to section 652(a)(11) of this title for income withholding, imposition of liens, and issuance of administrative subpoenas in interstate child support cases;

(10) provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system;

(11)(A) provide that amounts collected as support shall be distributed as provided in section 657 of this title; and

(B) provide that any payment required to be made under section 656 or 657 of this title to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children;

(12) provide for the establishment of procedures to require the State to provide individuals who are applying for or receiving services under the State plan, or who are parties to cases in which services are being provided under the State plan—

(A) with notice of all proceedings in which support obligations might be established or modified; and

(B) with a copy of any order establishing or modifying a child support obligation, or (in the case of a petition for modification) a notice of determination that there should be no change in the amount of the child support award, within 14 days after issuance of such order or determination;

(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing paternity, obtaining support orders, and collecting support payments and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan;

(14)(A) comply with such bonding requirements, for employees who receive, disburse, handle, or have access to, cash, as the Secretary shall by regulations prescribe;

(B) maintain methods of administration which are designed to assure that persons responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts (except that the Secretary shall by regulations provide for exceptions to this requirement in the case of sparsely populated areas where the hiring of unreasonable additional staff would otherwise be necessary);

(15) provide for—

(A) a process for annual reviews of and reports to the Secretary on the State program operated under the State plan approved under this part, including such information as may be necessary to measure State compliance with Federal requirements for expedited procedures, using such standards and procedures as are required by the Secretary, under which the State agency will determine the extent to which the program is operated in compliance with this part; and

(B) a process of extracting from the automated data processing system required by paragraph (16) and transmitting to the Secretary data and calculations concerning the levels of accomplishment (and rates of improvement) with respect to applicable performance indicators (including paternity establishment percentages) to the extent necessary for purposes of sections 652(g) and 658a of this title;

(16) provide for the establishment and operation by the State agency, in accordance with an (initial and annually updated) advance automated data processing planning document approved under section 652(d) of this title, of a statewide automated data processing and information retrieval system meeting the requirements of section 654a of this title designed effectively and efficiently to assist management in the administration of the State plan, so as to control, account for, and monitor all the factors in the support enforcement collection and paternity determination process under such plan;

(17) provide that the State will have in effect an agreement with the Secretary entered into pursuant to section 663 of this title for the use of the Parent Locator Service established under section 653 of this title, and provide that the State will accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, will impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, will transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect will otherwise comply with such agreement and regulations of the Secretary with respect thereto;

(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 664 of this title, and take all steps necessary to implement and utilize such procedures;

(19) provide that the agency administering the plan—

(A) shall determine on a periodic basis, from information supplied pursuant to section 508 of the Unemployment Compensation Amendments of 1976, whether any individuals receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to any agreement under any Federal unemployment compensation law) owe child support obligations which are being enforced by such agency; and

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met—

(i) through an agreement with such individual to have specified amounts withheld from compensation otherwise payable to such individual and by submitting a copy of any such agreement to the State agency administering the unemployment compensation law; or

(ii) in the absence of such an agreement, by bringing legal process (as defined in section 659(i)(5) of this title) to require the withholding of amounts from such compensation;

(20) provide, to the extent required by section 666 of this title, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws;

(21)(A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 666(e) of this title) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the noncustodial parent owing the overdue support; and

(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed;

(22) in order for the State to be eligible to receive any incentive payments under section 658a of this title, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision;

(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained and will publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support by means the State deems appropriate;

(24) provide that the State will have in effect an automated data processing and information retrieval system—

(A) by October 1, 1997, which meets all requirements of this part which were enacted on or before October 13, 1988; and

(B) by October 1, 2000, which meets all requirements of this part enacted on or before August 22, 1996, except that such deadline shall be extended by 1 day for each day (if any) by which the Secretary fails to meet the deadline imposed by section 344(a)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(25) provide that if a family with respect to which services are provided under the plan ceases to receive assistance under the State program funded under part A of this subchapter, the State shall provide appropriate notice to the family and continue to provide such services, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under the plan, except that an application or other request to continue services shall not be required of such a family and paragraph (6)(B) shall not apply to the family;

(26) have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including—

(A) safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify, or enforce support, or to make or enforce a child custody determination;

(B) prohibitions against the release of information on the whereabouts of 1 party or the child to another party against whom a protective order with respect to the former party or the child has been entered;

(C) prohibitions against the release of information on the whereabouts of 1 party or the child to another person if the State has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child;

(D) in cases in which the prohibitions under subparagraphs (B) and (C) apply, the requirement to notify the Secretary, for purposes of section 653(b)(2) of this title, that the State has reasonable evidence of domestic violence or child abuse against a party or the child and that the disclosure of such information could be harmful to the party or the child; and

(E) procedures providing that when the Secretary discloses information about a parent or child to a State court or an agent of a State court described in section 653(c)(2) or 663(d)(2)(B) of this title, and advises that court or agent that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse pursuant to section 653(b)(2) of this title, the court shall determine whether disclosure to any other person of information received from the Secretary could be harmful to the parent or child and, if the court determines that disclosure to any other person could be harmful, the court and its agents shall not make any such disclosure;

(27) provide that, on and after October 1, 1998, the State agency will—

(A) operate a State disbursement unit in accordance with section 654b of this title; and

(B) have sufficient State staff (consisting of State employees) and (at State option) contractors reporting directly to the State agency to—

(i) monitor and enforce support collections through the unit in cases being enforced by the State pursuant to paragraph (4) (including carrying out the automated data processing responsibilities described in section 654a(g) of this title); and

(ii) take the actions described in section 666(c)(1) of this title in appropriate cases;

(28) provide that, on and after October 1, 1997, the State will operate a State Directory

of New Hires in accordance with section 653a of this title;

(29) provide that the State agency responsible for administering the State plan—

(A) shall make the determination (and redetermination at appropriate intervals) as to whether an individual who has applied for or is receiving assistance under the State program funded under part A of this subchapter, the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the food stamp program, as defined under section 2012(h) of title 7, is cooperating in good faith with the State in establishing the paternity of, or in establishing, modifying, or enforcing a support order for, any child of the individual by providing the State agency with the name of, and such other information as the State agency may require with respect to, the noncustodial parent of the child, subject to good cause and other exceptions which—

(i) in the case of the State program funded under part A of this subchapter, the State program under part E of this subchapter, or the State program under subchapter XIX of this chapter shall, at the option of the State, be defined, taking into account the best interests of the child, and applied in each case, by the State agency administering such program; and

(ii) in the case of the food stamp program, as defined under section 2012(h) of title 7, shall be defined and applied in each case under that program in accordance with section 2015(*l*)(2) of title 7;

(B) shall require the individual to supply additional necessary information and appear at interviews, hearings, and legal proceedings;

(C) shall require the individual and the child to submit to genetic tests pursuant to judicial or administrative order;

(D) may request that the individual sign a voluntary acknowledgment of paternity, after notice of the rights and consequences of such an acknowledgment, but may not require the individual to sign an acknowledgment or otherwise relinquish the right to genetic tests as a condition of cooperation and eligibility for assistance under the State program funded under part A of this subchapter, the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the food stamp program, as defined under section 2012(h) of title 7; and

(E) shall promptly notify the individual and the State agency administering the State program funded under part A of this subchapter, the State agency administering the State program under part E of this subchapter, the State agency administering the State program under subchapter XIX of this chapter, or the State agency administering the food stamp program, as defined under section 2012(h) of title 7, of each such determination, and if noncooperation is determined, the basis therefor;

(30) provide that the State shall use the definitions established under section 652(a)(5) of this title in collecting and reporting information as required under this part;

(31) provide that the State agency will have in effect a procedure for certifying to the Secretary, for purposes of the procedure under section 652(k) of this title, determinations that individuals owe arrearages of child support in an amount exceeding $5,000, under which procedure—

(A) each individual concerned is afforded notice of such determination and the consequences thereof, and an opportunity to contest the determination; and

(B) the certification by the State agency is furnished to the Secretary in such format, and accompanied by such supporting documentation, as the Secretary may require;

(32)(A) provide that any request for services under this part by a foreign reciprocating country or a foreign country with which the State has an arrangement described in section 659a(d) of this title shall be treated as a request by a State;

(B) provide, at State option, notwithstanding paragraph (4) or any other provision of this part, for services under the plan for enforcement of a spousal support order not described in paragraph (4)(B) entered by such a country (or subdivision); and

(C) provide that no applications will be required from, and no costs will be assessed for such services against, the foreign reciprocating country or foreign obligee (but costs may at State option be assessed against the obligor); and

(33) provide that a State that receives funding pursuant to section 628 of this title and that has within its borders Indian country (as defined in section 1151 of title 18) may enter into cooperative agreements with an Indian tribe or tribal organization (as defined in subsections (e) and (*l*) of section 450b of title 25), if the Indian tribe or tribal organization demonstrates that such tribe or organization has an established tribal court system or a Court of Indian Offenses with the authority to establish paternity, establish, modify, or enforce support orders, or to enter support orders in accordance with child support guidelines established or adopted by such tribe or organization, under which the State and tribe or organization shall provide for the cooperative delivery of child support enforcement services in Indian country and for the forwarding of all collections pursuant to the functions performed by the tribe or organization to the State agency, or conversely, by the State agency to the tribe or organization, which shall distribute such collections in accordance with such agreement.

The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21). Nothing in paragraph (33) shall void any provision of any cooperative agreement entered into before August 22, 1996, nor shall such paragraph deprive any State of jurisdiction over Indian country (as

so defined) that is lawfully exercised under section 1322 of title 25.

(Aug. 14, 1935, ch. 531, title IV, § 454, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2354; amended Pub. L. 94–88, title II, § 208(b), (c), Aug. 9, 1975, 89 Stat. 436; Pub. L. 95–30, title V, § 502(a), May 23, 1977, 91 Stat. 162; Pub. L. 96–265, title IV, § 405(b), June 9, 1980, 94 Stat. 463; Pub. L. 96–611, § 9(a), Dec. 28, 1980, 94 Stat. 3571; Pub. L. 97–35, title XXIII, §§ 2331(b), 2332(d), 2333(a), (b), 2335(a), Aug. 13, 1981, 95 Stat. 860, 862, 863; Pub. L. 97–248, title I, §§ 171(a), (b)(1), 173(a), Sept. 3, 1982, 96 Stat. 401, 403; Pub. L. 98–369, div. B, title VI, § 2663(c)(14), (j)(2)(B)(x), July 18, 1984, 98 Stat. 1166, 1170; Pub. L. 98–378, §§ 3(a), (c)–(f), 5(b), 6(a), 11(b)(1), 12(a), (b), 14(a), 21(d), Aug. 16, 1984, 98 Stat. 1306, 1310, 1311, 1314, 1318, 1319, 1320, 1324; Pub. L. 100–203, title IX, §§ 9141(a)(2), 9142(a), Dec. 22, 1987, 101 Stat. 1330–321; Pub. L. 100–485, title I, §§ 104(a), 111(c), 123(a), (d), Oct. 13, 1988, 102 Stat. 2348, 2349, 2352, 2353; Pub. L. 104–35, § 1(a), Oct. 12, 1995, 109 Stat. 294; Pub. L. 104–193, title I, § 108(c)(11), (12), title III, §§ 301(a), (b), 302(b)(2), 303(a), 304(a), 312(a), 313(a), 316(g)(1), 324(b), 332, 333, 342(a), 343(b), 344(a)(1), (4), 370(a)(2), 371(b), 375(a), (c), 395(d)(1)(D), (2)(B), Aug. 22, 1996, 110 Stat. 2166, 2199, 2204, 2205, 2207, 2209, 2218, 2223, 2230, 2233, 2234, 2236, 2252, 2254, 2256, 2259, 2260; Pub. L. 105–33, title V, §§ 5531(a), 5542(c), 5545, 5546(a), 5548, 5552, 5556(b), Aug. 5, 1997, 111 Stat. 625, 631, 633, 635, 637; Pub. L. 106–169, title IV, § 401(g), (h), Dec. 14, 1999, 113 Stat. 1858.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in pars. (4)(A)(i), (6)(B), (D), (25), and (29)(A), (D), (E), are classified to section 601 et seq. and 670 et seq., respectively, of this title.

Section 508 of the Unemployment Compensation Amendments of 1976, referred to in par. (19), is section 508 of Pub. L. 94–566, Oct. 20, 1976, 90 Stat. 2689, which enacted section 603a of this title and amended section 49b of Title 29, Labor.

Section 344(a)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in par. (24), is section 344(a)(3) of Pub. L. 104–193, which is set out as a Regulations note under section 654a of this title.

AMENDMENTS

1999—Par. (6)(E)(i). Pub. L. 106–169, § 401(g)(1), substituted ''; or'' for '', or'' at end.

Par. (9)(A) to (C). Pub. L. 106–169, § 401(g)(2), substituted semicolon for comma at end.

Par. (19)(A). Pub. L. 106–169, § 401(g)(3), substituted ''; and'' for '', and'' at end.

Par. (19)(B)(i). Pub. L. 106–169, § 401(g)(1), substituted ''; or'' for '', or'' at end.

Par. (24)(A). Pub. L. 106–169, § 401(g)(3), substituted ''; and'' for '', and'' at end.

Par. (24)(B). Pub. L. 106–169, § 401(h), made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

1997—Par. (4)(A)(i)(IV). Pub. L. 105–33, § 5548(a), added subcl. (IV).

Par. (6)(B). Pub. L. 105–33, § 5531(a), substituted ''an individual, other than an individual receiving assistance under a State program funded under part A or E of this subchapter, or under a State plan approved under subchapter XIX of this chapter, or who is required by the State to cooperate with the State agency administering the program under this part pursuant to subsection (*l*) or (m) of section 2015 of title 7, and'' for ''individuals not receiving assistance under any State program funded under part A of this subchapter, which''.

Par. (8). Pub. L. 105–33, § 5552(1)(D), inserted concluding provisions.

Pub. L. 105–33, § 5552(1)(A), in introductory provisions, inserted '', for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or making or enforcing a child custody or visitation determination, as defined in section 663(d)(1) of this title'' after ''provide that'' and struck out ''noncustodial'' before ''parents''.

Par. (8)(A). Pub. L. 105–33, § 5552(1)(B), substituted ''records; and'' for ''records, and''.

Par. (8)(B). Pub. L. 105–33, § 5552(1)(C), substituted ''title,'' for ''title;''.

Par. (16). Pub. L. 105–33, § 5556(b), made technical amendment to directory language of Pub. L. 104–193, § 344(a)(1)(F). See 1996 Amendment note below.

Par. (17). Pub. L. 105–33, § 5552(2), substituted ''provide that the State will have'' for ''in the case of a State which has'' and inserted ''and'' after ''section 653 of this title,''.

Par. (19)(B)(ii). Pub. L. 105–33, § 5542(c), substituted ''section 659(i)(5)'' for ''section 662(e)''.

Par. (26). Pub. L. 105–33, § 5552(3)(A), struck out ''will'' before ''have in effect'' in introductory provisions.

Par. (26)(A). Pub. L. 105–33, § 5552(3)(B), inserted '', modify,'' after ''or to establish'' and '', or to make or enforce a child custody determination'' after ''support''.

Par. (26)(B). Pub. L. 105–33, § 5552(3)(C)(i), (ii), inserted ''or the child'' after ''1 party'' and after ''former party''.

Par. (26)(C). Pub. L. 105–33, § 5552(3)(D), inserted ''or the child'' after ''1 party'', substituted ''another person'' for ''another party'', inserted ''to that person'' after ''release of the information'', and substituted ''party or the child'' for ''former party''.

Par. (26)(D), (E). Pub. L. 105–33, § 5552(3)(C)(iii), (E), added subpars. (D) and (E).

Par. (29)(A). Pub. L. 105–33, § 5548(b)(1)(B), substituted cls. (i) and (ii) for

''(i) shall be defined, taking into account the best interests of the child, and

''(ii) shall be applied in each case,

by, at the option of the State, the State agency administering the State program under part A of this subchapter, this part, or subchapter XIX of this chapter;''.

Pub. L. 105–33, § 5548(b)(1)(A), in introductory provisions, substituted ''part A of this subchapter, the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the food stamp program, as defined under section 2012(h) of title 7,'' for ''part A of this subchapter or the State program under subchapter XIX of this chapter''.

Par. (29)(D). Pub. L. 105–33, § 5548(b)(2), substituted ''the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the food stamp program, as defined under section 2012(h) of title 7'' for ''or the State program under subchapter XIX of this chapter''.

Par. (29)(E). Pub. L. 105–33, § 5548(b)(3), substituted ''individual and the State agency administering the State program funded under part A of this subchapter, the State agency administering the State program under part E of this subchapter, the State agency administering the State program under subchapter XIX of this chapter, or the State agency administering the food stamp program, as defined under section 2012(h) of title 7,'' for ''individual, the State agency administering the State program funded under part A of this subchapter, and the State agency administering the State program under subchapter XIX of this chapter,''.

Par. (32)(A). Pub. L. 105–33, § 5545, substituted ''section 659a(d)'' for ''section 659a(d)(2)''.

Par. (33). Pub. L. 105–33, § 5546(a), substituted ''or enforce support orders, or'' for ''and enforce support orders, and'', ''guidelines established or adopted by such tribe or organization'' for ''guidelines established by such tribe or organization'', ''all collections'' for ''all funding collected'', and ''such collections'' for ''such funding''.

1996—Pub. L. 104–193, §375(a)(4), inserted at end of closing provisions ''Nothing in paragraph (33) shall void any provision of any cooperative agreement entered into before August 22, 1996, nor shall such paragraph deprive any State of jurisdiction over Indian country (as so defined) that is lawfully exercised under section 1322 of title 25.''

Par. (4). Pub. L. 104–193, §301(a)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''provide that such State will undertake—

''(A) in the case of a child born out of wedlock with respect to whom an assignment under section 602(a)(26) of this title or section 1396k of this title is effective, to establish the paternity of such child, unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so, or, in the case of such a child with respect to whom an assignment under section 1396k of this title is in effect, the State agency administering the plan approved under subchapter XIX of this chapter determines pursuant to section 1396k(a)(1)(B) of this title that it is against the best interests of the child to do so, and

''(B) in the case of any child with respect to whom such assignment is effective, including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E of this subchapter, to secure support for such child from his parent (or from any other person legally liable for such support), and from such parent for his spouse (or former spouse) receiving aid to families with dependent children or medical assistance under a State plan approved under subchapter XIX of this chapter (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan), utilizing any reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A or E of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so), except that when such arrangements and other means have proven ineffective, the State may utilize the Federal courts to obtain or enforce court orders for support;''.

Par. (5)(A). Pub. L. 104–193, §108(c)(11), substituted ''pursuant to section 608(a)(3) of this title'' for ''under section 602(a)(26) of this title'' and ''payments collected,'' for ''payments collected; except that this paragraph shall not apply to such payments for any month following the first month in which the amount collected is sufficient to make such family ineligible for assistance under the State plan approved under part A of this subchapter;''.

Par. (6). Pub. L. 104–193, §301(a)(2)(A), substituted ''provide that—'' for ''provide that'' in introductory provisions.

Par. (6)(A). Pub. L. 104–193, §301(a)(2)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, including support collection services for the spouse (or former spouse) with whom the absent parent's child is living (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan),''.

Par. (6)(B). Pub. L. 104–193, §301(a)(2)(C), (D), inserted ''on individuals not receiving assistance under any State program funded under part A of this subchapter'' after ''such services shall be imposed'', realigned margins, and substituted semicolon for comma at end.

Par. (6)(C). Pub. L. 104–193, §301(a)(2)(D), realigned margins and substituted semicolon for comma at end.

Par. (6)(D). Pub. L. 104–193, §301(a)(2)(D), realigned margins and substituted semicolon for comma before ''and'' at end.

Pub. L. 104–193, §108(c)(12), substituted ''assistance under a State program funded'' for ''aid under a State plan approved''.

Par. (6)(E). Pub. L. 104–193, §301(a)(2)(D)(i), (E), realigned margins.

Pub. L. 104–193, §301(a)(2)(D)(ii), which directed substitution of a semicolon for the final comma, could not be executed because subpar. (E) already ended in a semicolon and not a comma.

Par. (7). Pub. L. 104–193, §375(c), inserted ''and Indian tribes or tribal organizations (as defined in subsections (e) and (*l*) of section 450b of title 25)'' after ''law enforcement officials''.

Par. (8). Pub. L. 104–193, §395(d)(1)(D), substituted ''noncustodial'' for ''absent'' in introductory provisions.

Par. (8)(B). Pub. L. 104–193, §316(g)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the Parent Locator Service in the Department of Health and Human Services;''.

Par. (9)(B), (C). Pub. L. 104–193, §395(d)(2)(B), substituted ''a noncustodial parent'' for ''an absent parent''.

Par. (9)(E). Pub. L. 104–193, §324(b), added subpar. (E).

Par. (11). Pub. L. 104–193, §302(b)(2), designated existing provisions as subpar. (A), inserted ''and'' after semicolon at end, and redesignated par. (12) as subpar. (B).

Par. (12). Pub. L. 104–193, §304(a), added par. (12). Former par. (12) redesignated (11)(B).

Pub. L. 104–193, §302(b)(2)(B), redesignated par. (12) as (11)(B).

Par. (13). Pub. L. 104–193, §§316(g)(1)(B), 395(d)(1)(D), substituted ''noncustodial parents'' for ''absent parents'' and inserted before semicolon at end ''and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan''.

Par. (14). Pub. L. 104–193, §342(a)(1), (2), designated existing provisions as subpar. (A) and redesignated par. (15) as subpar. (B).

Par. (15). Pub. L. 104–193, §342(a)(3), added par. (15). Former par. (15) redesignated (14)(B).

Pub. L. 104–193, §342(a)(2), redesignated par. (15) as (14)(B).

Par. (16). Pub. L. 104–193, §344(a)(1), as amended by Pub. L. 105–33, §5556(b), struck out '', at the option of the State,'' before ''for the establishment'', inserted ''and operation by the State agency'' after ''for the establishment'' and ''meeting the requirements of section 654a of this title'' after ''information retrieval system'', substituted ''so as to control'' for ''in the State and localities thereof, so as (A) to control'', struck out ''(i)'' before ''all the factors in the support enforcement collection'', and struck out before semicolon at end ''(including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction, (II) checking of records of such individuals on a periodic basis with Federal, intra- and inter-State, and local agencies, (III) maintaining the data necessary to meet the Federal reporting requirements on a timely basis, and (IV) delinquency and enforcement activities), (ii) the collection and distribution of support payments (both intra- and inter-State), the determination, collection, and distribution of incentive payments both inter- and intra-State, and the maintenance of accounts receivable on all amounts owed, collected and distributed, and (iii)

the costs of all services rendered, either directly or by interfacing with State financial management and expenditure information, (B) to provide interface with records of the State's aid to families with dependent children program in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program, (C) to provide for security against unauthorized access to, or use of, the data in such system, (D) to facilitate the development and improvement of the income withholding and other procedures required under section 666(a) of this title through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur, and (E) to provide management information on all cases under the State plan from initial referral or application through collection and enforcement''.

Par. (21)(A). Pub. L. 104–193, §395(d)(1)(D), substituted ''noncustodial parent'' for ''absent parent''.

Par. (23). Pub. L. 104–193, §332, inserted ''and will publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support by means the State deems appropriate'' before semicolon.

Par. (24). Pub. L. 104–193, §344(a)(4), amended par. (24) generally. Prior to amendment, par. (24) read as follows: ''provide that if the State, as of October 13, 1988, does not have in effect an automated data processing and information retrieval system meeting all of the requirements of paragraph (16), the State—

''(A) will submit to the Secretary by October 1, 1991, for review and approval by the Secretary within 9 months after submittal an advance automated data processing planning document of the type referred to in such paragraph; and

''(B) will have in effect by October 1, 1997, an operational automated data processing and information retrieval system, meeting all the requirements of that paragraph, which has been approved by the Secretary;''.

Par. (25). Pub. L. 104–193, §301(b), added par. (25).

Par. (26). Pub. L. 104–193, §303(a), added par. (26).

Par. (27). Pub. L. 104–193, §312(a), added par. (27).

Par. (28). Pub. L. 104–193, §313(a), added par. (28).

Par. (29). Pub. L. 104–193, §333, added par. (29).

Par. (30). Pub. L. 104–193, §343(b), added par. (30).

Par. (31). Pub. L. 104–193, §370(a)(2), added par. (31).

Par. (32). Pub. L. 104–193, §371(b), added par. (32).

Par. (33). Pub. L. 104–193, §375(a)(1)–(3), added par. (33).

1995—Par. (24)(B). Pub. L. 104–35 substituted ''1997'' for ''1995''.

1988—Par. (5)(A). Pub. L. 100–485, §104(a), substituted ''on a monthly basis (or on a quarterly basis for so long as the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden)'' for ''at least annually''.

Par. (6)(D), (E). Pub. L. 100–485, §111(c), added cl. (D) and redesignated former cl. (D) as (E).

Par. (16). Pub. L. 100–485, §123(d), substituted ''advance automated'' for ''advance automatic'' in introductory provisions.

Pub. L. 100–485, §123(a)(2), substituted ''a statewide automated'' for ''an automatic''.

Par. (24). Pub. L. 100–485, §123(a)(1), added par. (24).

1987—Par. (4)(A). Pub. L. 100–203, §9142(a)(1)(A), (B), substituted ''an assignment under section 602(a)(26) of this title or section 1396k of this title'' for ''an assignment under section 602(a)(26) of this title'' and '', or, in the case of such a child with respect to whom an assignment under section 1396k of this title is in effect, the State agency administering the plan approved under subchapter XIX of this chapter determines pursuant to section 1396k(a)(1)(B) of this title that it is against the best interests of the child to do so, and'' for '', and''.

Par. (4)(B). Pub. L. 100–203, §9142(a)(1)(C), inserted ''or medical assistance under a State plan approved under subchapter XIX of this chapter'' after ''children''.

Par. (5). Pub. L. 100–203, §9142(a)(2), substituted ''provide that (A)'' for ''provide that,'' and added cl. (B).

Pub. L. 100–203, §9141(a)(2), struck out ''(except as provided in section 657(c) of this title)'' after ''apply to such payments''.

1984—Par. (4)(B). Pub. L. 98–378, §11(b)(1), inserted ''including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E of this subchapter,'' after ''such assignment is effective,'' and inserted ''or E'' after ''part A''.

Par. (4)(B). Pub. L. 98–378, §12(a), substituted '', and'' for ''and, at the option of the State,'' before ''from such parent'' and inserted '', and only if the support obligation established with respect to the child is being enforced under the plan''.

Par. (5). Pub. L. 98–378, §3(e), inserted '', and the individual will be notified at least annually of the amount of the support payments collected;''.

Par. (6)(A). Pub. L. 98–378, §12(b), struck out '', at the option of the State,'' before ''support collection services'' and inserted '', and only if the support obligation established with respect to the child is being enforced under the plan''.

Par. (6)(B). Pub. L. 98–378, §3(c), substituted ''shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), and'' for ''may be imposed, except that the amount of any such application fee shall be reasonable, as determined under regulations of the Secretary,''.

Par. (6)(C). Pub. L. 98–378, §21(d)(1), (3), added cl. (C). Former cl. (C) redesignated (D).

Par. (6)(D). Pub. L. 98–378, §21(d)(1), (2), redesignated former cl. (C) as (D) and substituted ''fees'' for ''fee'' before ''so imposed''.

Par. (8)(B). Pub. L. 98–369, §2663(j)(2)(B)(x), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Par. (9)(C). Pub. L. 98–369, §2663(c)(14)(A), struck out ''of such parent'' before ''with respect to whom aid''.

Par. (16)(A)(ii). Pub. L. 98–369, §2663(c)(14)(B), substituted ''collection, and distribution'' for ''collection and distribution,'' before ''of incentive payments''.

Par. (16)(D), (E). Pub. L. 98–378, §6(a), added cl. (D) and redesignated former cl. (D) as (E).

Par. (17). Pub. L. 98–378, §2663(c)(14)(C), realigned margin, substituted ''provide that the State will accept'' for ''to accept'', ''will impose'' for ''and to impose'', ''will transmit'' for ''to transmit'', and ''will otherwise comply'' for '', otherwise to comply''.

Par. (20). Pub. L. 98–378, §3(a), added par. (20).

Par. (21). Pub. L. 98–378, §3(d), added par. (21).

Par. (22). Pub. L. 98–378, §5(b), added par. (22).

Par. (23). Pub. L. 98–378, §14(a), added par. (23).

Pub. L. 98–378, §3(f), inserted after numbered paragraphs provision that the State may allow the jurisdiction which makes the collection involved to retain any application fee under par. (6)(B) or any late payment fee under par. (21).

1982—Par. (5). Pub. L. 97–248, §173(a), inserted ''following the first month'' after ''for any month''.

Par. (6). Pub. L. 97–248, §171(a), in cl. (A) inserted provisions relating to inclusion of, at the option of the State, support collection services for the spouse or former spouse, in cl. (B) substituted ''such services'' for ''services under the State plan (other than collection of support)'', and in cl. (C) substituted provisions relating to collection of any costs in excess of the fee imposed, for provisions relating to the State retaining any fee

imposed under State law as required under former par. (19).

Pars. (18) to (20). Pub. L. 97–248, § 171(b)(1), inserted ''and'' at end of par. (18), struck out par. (19) relating to imposition of a fee on an individual who owes child or spousal support obligation, and redesignated par. (20) as (19).

1981—Pub. L. 97–35, § 2332(d)(2), substituted in provision preceding par. (1) ''child and spousal support'' for ''child support''.

Par. (4)(B). Pub. L. 97–35, § 2332(d)(3), substituted ''such support) and, at the option of the State, from such parent for his spouse (or former spouse) receiving aid to families with dependent children (but only if a support obligation has been established with respect to such spouse), utilizing'' for ''such support), utilizing''.

Par. (5). Pub. L. 97–35, § 2332(d)(4), substituted ''support payments'' for ''child support payments'' and ''collected for an individual'' for ''collected for a child''.

Par. (6)(B). Pub. L. 97–35, § 2333(a)(1), substituted ''services under the State plan (other than collection of support)'' for ''such services''.

Par. (6)(C). Pub. L. 97–35, § 2333(a)(2), substituted ''the State will retain, but only if it is the State which makes the collection, the fee imposed under State law as required under paragraph (19)'' for ''any costs in excess of the fee so imposed may be collected from such individual by deducting such costs from the amount of any recovery made''.

Par. (9)(C). Pub. L. 97–35, § 2332(d)(5), substituted ''of the child or children or the parent of such child or children'' for ''of a child or children''.

Par. (11). Pub. L. 97–35, § 2332(d)(6), substituted ''collected as support'' for ''collected as child support''.

Par. (16). Pub. L. 97–35, § 2332(d)(7), substituted ''support enforcement'' for ''child support enforcement'', ''whom support obligations'' for ''whom child support obligations'', and ''obligated to pay support'' for ''obligated to pay child support''.

Par. (18). Pub. L. 97–35, § 2331(b), added par. (18).

Par. (19). Pub. L. 97–35, § 2333(b), added par. (19).

Par. (20). Pub. L. 97–35, § 2335(a), added par. (20).

1980—Par. (16). Pub. L. 96–265 added par. (16).

Par. (17). Pub. L. 96–611 added par. (17).

1977—Pars. (14), (15). Pub. L. 95–30 added pars. (14) and (15).

1975—Par. (4)(A). Pub. L. 94–88, § 208(b), substituted ''to establish the paternity of such child, unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so'' for ''to establish the paternity of such child''.

Par. (4)(B). Pub. L. 94–88, § 208(c), substituted ''reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so)'' for ''reciprocal arrangements adopted with other States''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(c)(11), (12) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Amendment by section 302(b)(2) of Pub. L. 104–193 effective Aug. 22, 1996, see section 302(c)(2) of Pub. L. 104–193, set out as a note under section 657 of this title.

Section 303(b) of Pub. L. 104–193 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1997.''

Section 304(b) of Pub. L. 104–193 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1997.''

Amendment by section 312(a) of Pub. L. 104–193 effective Oct. 1, 1998, with limited exception for States which, as of Aug. 22, 1996, were processing the receipt of child support payments through local courts, see section 312(d) of Pub. L. 104–193, set out as an Effective Date note under section 654b of this title.

Amendment by section 342(a) of Pub. L. 104–193 effective with respect to calendar quarters beginning 12 months or more after Aug. 22, 1996, see section 342(c) of Pub. L. 104–193, set out as a note under section 652 of this title.

Amendment by section 370(a)(2) of Pub. L. 104–193 effective Oct. 1, 1997, see section 370(b) of Pub. L. 104–193, set out as a note under section 652 of this title.

Section 395(a)–(c) of title III of Pub. L. 104–193 provided that:

''(a) IN GENERAL.—Except as otherwise specifically provided (but subject to subsections (b) and (c))—

''(1) the provisions of this title [see Tables for classification] requiring the enactment or amendment of State laws under section 466 of the Social Security Act [section 666 of this title], or revision of State plans under section 454 of such Act [this section], shall be effective with respect to periods beginning on and after October 1, 1996; and

''(2) all other provisions of this title shall become effective upon the date of the enactment of this Act [Aug. 22, 1996].

''(b) GRACE PERIOD FOR STATE LAW CHANGES.—The provisions of this title shall become effective with respect to a State on the later of—

''(1) the date specified in this title, or

''(2) the effective date of laws enacted by the legislature of such State implementing such provisions,

but in no event later than the 1st day of the 1st calendar quarter beginning after the close of the 1st regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 22, 1996]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

''(c) GRACE PERIOD FOR STATE CONSTITUTIONAL AMENDMENT.—A State shall not be found out of compliance with any requirement enacted by this title if the State is unable to so comply without amending the State constitution until the earlier of—

''(1) 1 year after the effective date of the necessary State constitutional amendment; or

''(2) 5 years after the date of the enactment of this Act [Aug. 22, 1996].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 104(b) of Pub. L. 100–485 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the first day of the first calendar quarter which begins 4 or more years after the date of the enactment of this Act [Oct. 13, 1988].''

Section 111(f)(2) of Pub. L. 100–485 provided that: ''The amendments made by subsections (b) and (c) [amending this section and section 666 of this title] shall become effective on the first day of the first month beginning

one year or more after the date of the enactment of this Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9141(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section and section 657 of this title] shall become effective upon enactment [Dec. 22, 1987].''

Section 9142(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on July 1, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 3(g) of Pub. L. 98–378 provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting section 666 of this title and amending this section] shall become effective on October 1, 1985.

''(2) Section 454(21) of the Social Security Act [par. 21 of this section] (as added by subsection (d) of this section), and section 466(e) of such Act [section 666(e) of this title] (as added by subsection (b) of this section), shall be effective with respect to support owed for any month beginning after the date of the enactment of this Act [Aug. 16, 1984].

''(3) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act [this part] to the requirements imposed by any amendment made by this section, the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature.''

Section 5(c)(1) of Pub. L. 98–378 provided that: ''The amendments made by the preceding provisions of this section [amending this section and section 658 of this title] shall become effective on October 1, 1985.''

Section 6(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section and section 655 of this title] shall apply with respect to quarters beginning on or after October 1, 1984.''

Section 11(e) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section and sections 656, 657, 664, and 671 of this title] shall become effective October 1, 1984, and shall apply to collections made on or after that date.''

Section 12(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section] shall become effective October 1, 1985.''

Section 14(b) of Pub. L. 98–378 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective October 1, 1985.''

Amendment by section 21(d) of Pub. L. 98–378 applicable with respect to refunds payable under section 6402 of Title 26, Internal Revenue Code, after Dec. 31, 1985, see section 21(g) of Pub. L. 98–378, set out as a note under section 6103 of Title 26.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 171(a), (b)(1) of Pub. L. 97–248 effective on and after Aug. 13, 1981, see section 171(c) of Pub. L. 97–248, set out as a note under section 503 of this title.

Section 173(b) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall become effective on October 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendments by sections 2331(b), 2332(d)(2)–(7), and 2333(a), (b) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

Amendment by section 2335(a) of Pub. L. 97–35 effective Aug. 13, 1981, except that such amendment shall not be requirements under this section or section 503 of this title before Oct. 1, 1982, see section 2335(c) of Pub. L. 97–35, set out as a note under section 503 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 effective July 1, 1981, and to be effective only with respect to expenditures, referred to in section 655(a)(3) of this title, made on or after such date, see section 405(e) of Pub. L. 96–265, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 502(b) of Pub. L. 95–30 provided that: ''The amendments made by this section [amending this section] shall take effect on the first day of the first calendar month which begins after the date of enactment of this Act [May 23, 1977].''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 210 of title II of Pub. L. 94–88 provided that: ''The amendments made by this title [amending this section and sections 602, 603, and 655 of this title and enacting provisions set out as notes under sections 602 and 655 of this title] shall, unless otherwise specified therein, become effective August 1, 1975.''

STATE COMMISSIONS ON CHILD SUPPORT

Section 15 of Pub. L. 98–378 provided that:

''(a) As a condition of the State's eligibility for Federal payments under part A or D of title IV of the Social Security Act [part A of this subchapter or this part] for quarters beginning more than 30 days after the date of the enactment of this Act [Aug. 16, 1984] and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall (subject to subsection (f)) appoint a State Commission on Child Support.

''(b) Each State Commission appointed under subsection (a) shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the agency or organizational unit administering the State's plan under part D of such title IV [this part], the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

''(c) It shall be the function of each State Commission to examine, investigate, and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State plan approved under part A of title IV of such Act [part A of this subchapter] and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

''(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this section. The Governor shall transmit such report to the Secretary of Health and Human Services along with the Governor's comments thereon.

''(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under subsections (c) and (d), shall be considered as expenditures qualifying for Federal payments under part A or D of title IV of the Social Security Act [part A of this subchapter or this part] or be otherwise payable or reimbursable by the United States or any agency thereof.

''(f) If the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

''(1) has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations,

''(2) has established within the five years prior to the enactment of this Act [Aug. 16, 1984] a commission or council with substantially the same functions as the State Commissions provided for under this section, or

''(3) is making satisfactory progress toward fully effective child support enforcement and will continue to do so,

then such State shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply.''

DELAYED EFFECTIVE DATE IN CASES REQUIRING STATE LEGISLATION

Section 176 of Pub. L. 97–248 provided that: ''In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act [this part] to the requirements imposed by any amendment made by this subtitle [subtitle E (§§171–176) of title I of Pub. L. 97–248, see Tables for classification], the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the end of the first session of the State legislature which begins after October 1, 1982, or which began prior to October 1, 1982, and remained in session for at least twenty-five calendar days after such date. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature.''

§ 654a. Automated data processing

(a) In general

In order for a State to meet the requirements of this section, the State agency administering the State program under this part shall have in operation a single statewide automated data processing and information retrieval system which has the capability to perform the tasks specified in this section with the frequency and in the manner required by or under this part.

(b) Program management

The automated system required by this section shall perform such functions as the Secretary may specify relating to management of the State program under this part, including—

(1) controlling and accounting for use of Federal, State, and local funds in carrying out the program; and

(2) maintaining the data necessary to meet Federal reporting requirements under this part on a timely basis.

(c) Calculation of performance indicators

In order to enable the Secretary to determine the incentive payments and penalty adjustments required by sections 652(g) and 658a of this title, the State agency shall—

(1) use the automated system—

(A) to maintain the requisite data on State performance with respect to paternity establishment and child support enforcement in the State; and

(B) to calculate the paternity establishment percentage for the State for each fiscal year; and

(2) have in place systems controls to ensure the completeness and reliability of, and ready access to, the data described in paragraph (1)(A), and the accuracy of the calculations described in paragraph (1)(B).

(d) Information integrity and security

The State agency shall have in effect safeguards on the integrity, accuracy, and completeness of, access to, and use of data in the automated system required by this section, which shall include the following (in addition to such other safeguards as the Secretary may specify in regulations):

(1) Policies restricting access

Written policies concerning access to data by State agency personnel, and sharing of data with other persons, which—

(A) permit access to and use of data only to the extent necessary to carry out the State program under this part; and

(B) specify the data which may be used for particular program purposes, and the personnel permitted access to such data.

(2) Systems controls

Systems controls (such as passwords or blocking of fields) to ensure strict adherence to the policies described in paragraph (1).

(3) Monitoring of access

Routine monitoring of access to and use of the automated system, through methods such as audit trails and feedback mechanisms, to guard against and promptly identify unauthorized access or use.

(4) Training and information

Procedures to ensure that all personnel (including State and local agency staff and contractors) who may have access to or be required to use confidential program data are informed of applicable requirements and penalties (including those in section 6103 of the Internal Revenue Code of 1986), and are adequately trained in security procedures.

(5) Penalties

Administrative penalties (up to and including dismissal from employment) for unauthorized access to, or disclosure or use of, confidential data.

(e) State case registry

(1) Contents

The automated system required by this section shall include a registry (which shall be known as the ''State case registry'') that contains records with respect to—

(A) each case in which services are being provided by the State agency under the State plan approved under this part; and

(B) each support order established or modified in the State on or after October 1, 1998.

(2) Linking of local registries

The State case registry may be established by linking local case registries of support orders through an automated information network, subject to this section.

(3) Use of standardized data elements

Such records shall use standardized data elements for both parents (such as names, social security numbers and other uniform identification numbers, dates of birth, and case identification numbers), and contain such other information (such as on case status) as the Secretary may require.

(4) Payment records

Each case record in the State case registry with respect to which services are being provided under the State plan approved under this part and with respect to which a support order has been established shall include a record of—

(A) the amount of monthly (or other periodic) support owed under the order, and other amounts (including arrearages, interest or late payment penalties, and fees) due or overdue under the order;

(B) any amount described in subparagraph (A) that has been collected;

(C) the distribution of such collected amounts;

(D) the birth date and, beginning not later than October 1, 1999, the social security number, of any child for whom the order requires the provision of support; and

(E) the amount of any lien imposed with respect to the order pursuant to section 666(a)(4) of this title.

(5) Updating and monitoring

The State agency operating the automated system required by this section shall promptly establish and update, maintain, and regularly monitor, case records in the State case registry with respect to which services are being provided under the State plan approved under this part, on the basis of—

(A) information on administrative actions and administrative and judicial proceedings and orders relating to paternity and support;

(B) information obtained from comparison with Federal, State, or local sources of information;

(C) information on support collections and distributions; and

(D) any other relevant information.

(f) Information comparisons and other disclosures of information

The State shall use the automated system required by this section to extract information from (at such times, and in such standardized format or formats, as may be required by the Secretary), to share and compare information with, and to receive information from, other data bases and information comparison services, in order to obtain (or provide) information necessary to enable the State agency (or the Secretary or other State or Federal agencies) to carry out this part, subject to section 6103 of the Internal Revenue Code of 1986. Such information comparison activities shall include the following:

(1) Federal Case Registry of Child Support Orders

Furnishing to the Federal Case Registry of Child Support Orders established under section 653(h) of this title (and update as necessary, with information including notice of expiration of orders) the minimum amount of information on child support cases recorded in the State case registry that is necessary to operate the registry (as specified by the Secretary in regulations).

(2) Federal Parent Locator Service

Exchanging information with the Federal Parent Locator Service for the purposes specified in section 653 of this title.

(3) Temporary family assistance and medicaid agencies

Exchanging information with State agencies (of the State and of other States) administering programs funded under part A of this subchapter, programs operated under a State plan approved under subchapter XIX of this chapter, and other programs designated by the Secretary, as necessary to perform State agency responsibilities under this part and under such programs.

(4) Intrastate and interstate information comparisons

Exchanging information with other agencies of the State, agencies of other States, and interstate information networks, as necessary and appropriate to carry out (or assist other States to carry out) the purposes of this part.

(5) Private industry councils receiving welfare-to-work grants

Disclosing to a private industry council (as defined in section 603(a)(5)(D)(ii) of this title) to which funds are provided under section 603(a)(5) of this title the names, addresses, telephone numbers, and identifying case number information in the State program funded under part A of this subchapter, of noncustodial parents residing in the service delivery area of the private industry council, for the purpose of identifying and contacting noncustodial parents regarding participation in the program under section 603(a)(5) of this title.

(g) Collection and distribution of support payments

(1) In general

The State shall use the automated system required by this section, to the maximum extent feasible, to assist and facilitate the collection and disbursement of support payments through the State disbursement unit operated under section 654b of this title, through the performance of functions, including, at a minimum—

(A) transmission of orders and notices to employers (and other debtors) for the withholding of income—

(i) within 2 business days after receipt of notice of, and the income source subject to, such withholding from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State; and

(ii) using uniform formats prescribed by the Secretary;

(B) ongoing monitoring to promptly identify failures to make timely payment of support; and

(C) automatic use of enforcement procedures (including procedures authorized pursuant to section 666(c) of this title) if payments are not timely made.

(2) "Business day" defined

As used in paragraph (1), the term ''business day'' means a day on which State offices are open for regular business.

(h) Expedited administrative procedures

The automated system required by this section shall be used, to the maximum extent feasible, to implement the expedited administrative procedures required by section 666(c) of this title.

(Aug. 14, 1935, ch. 531, title IV, § 454A, as added and amended Pub. L. 104–193, title III, §§ 311, 312(c), 325(b), 344(a)(2), Aug. 22, 1996, 110 Stat. 2205, 2208, 2226, 2235; Pub. L. 105–34, title X, § 1090(a)(1), Aug. 5, 1997, 111 Stat. 961; Pub. L. 106–113, div. B, § 1000(a)(4) [title VIII, § 805(a)(1)], Nov. 29, 1999, 113 Stat. 1535, 1501A–285.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (d)(4) and (f), is classified generally to Title 26, Internal Revenue Code.

Part A of this subchapter, referred to in subsec. (f)(3), (5), is classified to section 601 et seq. of this title.

AMENDMENTS

1999—Subsec. (f)(5). Pub. L. 106–113 added par. (5).

1997—Subsec. (e)(4)(D). Pub. L. 105–34 substituted ''the birth date and, beginning not later than October 1, 1999, the social security number, of any child'' for ''the birth date of any child''.

1996—Subsecs. (e), (f). Pub. L. 104–193, § 311, added subsecs. (e) and (f).

Subsec. (g). Pub. L. 104–193, § 312(c), added subsec. (g).

Subsec. (h). Pub. L. 104–193, § 325(b), added subsec. (h).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective Oct. 1, 1998, see section 1090(a)(4) of Pub. L. 105–34, set out as a note under section 653 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 312(c) of Pub. L. 104–193 effective Oct. 1, 1998, with limited exception for States which, as of Aug. 22, 1996, were processing the receipt of child support payments through local courts, see section 312(d) of Pub. L. 104–193, set out as an Effective Date note under section 654b of this title.

EFFECTIVE DATE

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

REGULATIONS

Section 344(a)(3) of Pub. L. 104–193 provided that: ''The Secretary of Health and Human Services shall prescribe final regulations for implementation of section 454A of the Social Security Act [this section] not later than 2 years after the date of the enactment of this Act [Aug. 22, 1996].''

§ 654b. Collection and disbursement of support payments

(a) State disbursement unit

(1) In general

In order for a State to meet the requirements of this section, the State agency must establish and operate a unit (which shall be known as the ''State disbursement unit'') for the collection and disbursement of payments under support orders—

(A) in all cases being enforced by the State pursuant to section 654(4) of this title; and

(B) in all cases not being enforced by the State under this part in which the support order is initially issued in the State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to withholding pursuant to section 666(a)(8)(B) of this title.

(2) Operation

The State disbursement unit shall be operated—

(A) directly by the State agency (or 2 or more State agencies under a regional cooperative agreement), or (to the extent appropriate) by a contractor responsible directly to the State agency; and

(B) except in cases described in paragraph (1)(B), in coordination with the automated system established by the State pursuant to section 654a of this title.

(3) Linking of local disbursement units

The State disbursement unit may be established by linking local disbursement units through an automated information network, subject to this section, if the Secretary agrees that the system will not cost more nor take more time to establish or operate than a centralized system. In addition, employers shall be given 1 location to which income withholding is sent.

(b) Required procedures

The State disbursement unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments, including procedures—

(1) for receipt of payments from parents, employers, and other States, and for disbursements to custodial parents and other obligees, the State agency, and the agencies of other States;

(2) for accurate identification of payments;

(3) to ensure prompt disbursement of the custodial parent's share of any payment; and

(4) to furnish to any parent, upon request, timely information on the current status of support payments under an order requiring payments to be made by or to the parent, except that in cases described in subsection (a)(1)(B) of this section, the State disbursement unit shall not be required to convert and maintain in automated form records of payments kept pursuant to section 666(a)(8)(B)(iii) of this title before the effective date of this section.

(c) Timing of disbursements

(1) In general

Except as provided in paragraph (2), the State disbursement unit shall distribute all amounts payable under section 657(a) of this title within 2 business days after receipt from the employer or other source of periodic income, if sufficient information identifying the payee is provided. The date of collection for amounts collected and distributed under this part is the date of receipt by the State disbursement unit, except that if current support is withheld by an employer in the month when due and is received by the State disbursement unit in a month other than the month when due, the date of withholding may be deemed to be the date of collection.

(2) Permissive retention of arrearages

The State disbursement unit may delay the distribution of collections toward arrearages until the resolution of any timely appeal with respect to such arrearages.

(d) "Business day" defined

As used in this section, the term ''business day'' means a day on which State offices are open for regular business.

(Aug. 14, 1935, ch. 531, title IV, § 454B, as added Pub. L. 104–193, title III, § 312(b), Aug. 22, 1996, 110 Stat. 2207; amended Pub. L. 105–33, title V, § 5549, Aug. 5, 1997, 111 Stat. 633.)

REFERENCES IN TEXT

For effective date of this section, referred to in subsec. (b)(4), see Effective Date note below.

AMENDMENTS

1997—Subsec. (c)(1). Pub. L. 105–33 inserted at end ''The date of collection for amounts collected and distributed under this part is the date of receipt by the State disbursement unit, except that if current support is withheld by an employer in the month when due and is received by the State disbursement unit in a month other than the month when due, the date of withholding may be deemed to be the date of collection.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE

Section 312(d) of Pub. L. 104–193 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 654 and 654a of this title] shall become effective on October 1, 1998.

''(2) LIMITED EXCEPTION TO UNIT HANDLING PAYMENTS.—Notwithstanding section 454B(b)(1) of the Social Security Act [subsec. (b)(1) of this section], as added by this section, any State which, as of the date of the enactment of this Act [Aug. 22, 1996], processes the receipt of child support payments through local courts may, at the option of the State, continue to process through September 30, 1999, such payments through such courts as processed such payments on or before such date of enactment.''

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

§ 655. Payments to States

(a) Amounts payable each quarter

(1) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter an amount—

(A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 654 of this title,

(B) equal to the percent specified in paragraph (3) of the sums expended during such quarter that are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system (including in such sums the full cost of the hardware components of such system); and[1]

(C) equal to 90 percent (rather than the percentage specified in subparagraph (A)) of so much of the sums expended during such quarter as are attributable to laboratory costs incurred in determining paternity, and

(D) equal to 66 percent of the sums expended by the State during the quarter for an alternative statewide system for which a waiver has been granted under section 652(d)(3) of this title, but only to the extent that the total of the sums so expended by the State on or after July 16, 1998, does not exceed the least total cost estimate submitted by the State pursuant to section 652(d)(3)(C) of this title in the request for the waiver;

except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 663 of this title. In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.

(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

(B) 68 percent for fiscal years 1988 and 1989, and

(C) 66 percent for fiscal year 1990 and each fiscal year thereafter.

(3)(A) The Secretary shall pay to each State, for each quarter in fiscal years 1996 and 1997, 90 percent of so much of the State expenditures described in paragraph (1)(B) as the Secretary finds are for a system meeting the requirements specified in section 654(16) of this title (as in effect on September 30, 1995) but limited to the amount approved for States in the advance planning documents of such States submitted on or before September 30, 1995.

(B)(i) The Secretary shall pay to each State or system described in clause (iii), for each quarter in fiscal years 1996 through 2001, the percentage specified in clause (ii) of so much of the State or system expenditures described in paragraph (1)(B) as the Secretary finds are for a system

[1] So in original. The ''; and'' probably should be a comma.

meeting the requirements of sections 654(16) and 654a of this title.

(ii) The percentage specified in this clause is 80 percent.

(iii) For purposes of clause (i), a system described in this clause is a system that has been approved by the Secretary to receive enhanced funding pursuant to the Family Support Act of 1988 (Public Law 100–485; 102 Stat. 2343) for the purpose of developing a system that meets the requirements of sections 654(16) of this title (as in effect on and after September 30, 1995) and 654a of this title, including systems that have received funding for such purpose pursuant to a waiver under section 1315(a) of this title.

(4)(A)(i) If—

(I) the Secretary determines that a State plan under section 654 of this title would (in the absence of this paragraph) be disapproved for the failure of the State to comply with a particular subparagraph of section 654(24) of this title, and that the State has made and is continuing to make a good faith effort to so comply; and

(II) the State has submitted to the Secretary a corrective compliance plan that describes how, by when, and at what cost the State will achieve such compliance, which has been approved by the Secretary,

then the Secretary shall not disapprove the State plan under section 654 of this title, and the Secretary shall reduce the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the fiscal year by the penalty amount.

(ii) All failures of a State during a fiscal year to comply with any of the requirements referred to in the same subparagraph of section 654(24) of this title shall be considered a single failure of the State to comply with that subparagraph during the fiscal year for purposes of this paragraph.

(B) In this paragraph:

(i) The term ''penalty amount'' means, with respect to a failure of a State to comply with a subparagraph of section 654(24) of this title—

(I) 4 percent of the penalty base, in the case of the first fiscal year in which such a failure by the State occurs (regardless of whether a penalty is imposed under this paragraph with respect to the failure);

(II) 8 percent of the penalty base, in the case of the second such fiscal year;

(III) 16 percent of the penalty base, in the case of the third such fiscal year;

(IV) 25 percent of the penalty base, in the case of the fourth such fiscal year; or

(V) 30 percent of the penalty base, in the case of the fifth or any subsequent such fiscal year.

(ii) The term ''penalty base'' means, with respect to a failure of a State to comply with a subparagraph of section 654(24) of this title during a fiscal year, the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the preceding fiscal year.

(C)(i) The Secretary shall waive a penalty under this paragraph for any failure of a State to comply with section 654(24)(A) of this title during fiscal year 1998 if—

(I) on or before August 1, 1998, the State has submitted to the Secretary a request that the Secretary certify the State as having met the requirements of such section;

(II) the Secretary subsequently provides the certification as a result of a timely review conducted pursuant to the request; and

(III) the State has not failed such a review.

(ii) If a State with respect to which a reduction is made under this paragraph for a fiscal year with respect to a failure to comply with a subparagraph of section 654(24) of this title achieves compliance with such subparagraph by the beginning of the succeeding fiscal year, the Secretary shall increase the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the succeeding fiscal year by an amount equal to 90 percent of the reduction for the fiscal year.

(iii) The Secretary shall reduce the amount of any reduction that, in the absence of this clause, would be required to be made under this paragraph by reason of the failure of a State to achieve compliance with section 654(24)(B) of this title during the fiscal year, by an amount equal to 20 percent of the amount of the otherwise required reduction, for each State performance measure described in section 658a(b)(4) of this title with respect to which the applicable percentage under section 658a(b)(6) of this title for the fiscal year is 100 percent, if the Secretary has made the determination described in section 658a(b)(5)(B) of this title with respect to the State for the fiscal year.

(D) The Secretary may not impose a penalty under this paragraph against a State with respect to a failure to comply with section 654(24)(B) of this title for a fiscal year if the Secretary is required to impose a penalty under this paragraph against the State with respect to a failure to comply with section 654(24)(A) of this title for the fiscal year.

(5)(A)(i) If—

(I) the Secretary determines that a State plan under section 654 of this title would (in the absence of this paragraph) be disapproved for the failure of the State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title, and that the State has made and is continuing to make a good faith effort to so comply; and

(II) the State has submitted to the Secretary, not later than April 1, 2000, a corrective compliance plan that describes how, by when, and at what cost the State will achieve such compliance, which has been approved by the Secretary,

then the Secretary shall not disapprove the State plan under section 654 of this title, and the Secretary shall reduce the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the fiscal year by the penalty amount.

(ii) All failures of a State during a fiscal year to comply with any of the requirements of section 654B of this title shall be considered a single failure of the State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title during the fiscal year for purposes of this paragraph.

(B) In this paragraph:

(i) The term ''penalty amount'' means, with respect to a failure of a State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title—

(I) 4 percent of the penalty base, in the case of the 1st fiscal year in which such a failure by the State occurs (regardless of whether a penalty is imposed in that fiscal year under this paragraph with respect to the failure), except as provided in subparagraph (C)(ii) of this paragraph;

(II) 8 percent of the penalty base, in the case of the 2nd such fiscal year;

(III) 16 percent of the penalty base, in the case of the 3rd such fiscal year;

(IV) 25 percent of the penalty base, in the case of the 4th such fiscal year; or

(V) 30 percent of the penalty base, in the case of the 5th or any subsequent such fiscal year.

(ii) The term ''penalty base'' means, with respect to a failure of a State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title during a fiscal year, the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the preceding fiscal year.

(C)(i) The Secretary shall waive all penalties imposed against a State under this paragraph for any failure of the State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title if the Secretary determines that, before April 1, 2000, the State has achieved such compliance.

(ii) If a State with respect to which a reduction is required to be made under this paragraph with respect to a failure to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title achieves such compliance on or after April 1, 2000, and on or before September 30, 2000, then the penalty amount applicable to the State shall be 1 percent of the penalty base with respect to the failure involved.

(D) The Secretary may not impose a penalty under this paragraph against a State for a fiscal year for which the amount otherwise payable to the State under paragraph (1)(A) of this subsection is reduced under paragraph (4) of this subsection for failure to comply with section 654(24)(A) of this title.

(b) Estimate of amounts payable; installment payments

(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) Subject to subsection (d) of this section, the Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c) Repealed. Pub. L. 97–248, title I, § 174(b), Sept. 3, 1982, 96 Stat. 403

(d) State reports

Notwithstanding any other provision of law, no amount shall be paid to any State under this section for any quarter, prior to the close of such quarter, unless for the period consisting of all prior quarters for which payment is authorized to be made to such State under subsection (a) of this section, there shall have been submitted by the State to the Secretary, with respect to each quarter in such period (other than the last two quarters in such period), a full and complete report (in such form and manner and containing such information as the Secretary shall prescribe or require) as to the amount of child support collected and disbursed and all expenditures with respect to which payment is authorized under subsection (a) of this section.

(e) Special project grants for interstate enforcement; appropriations

(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children on whose behalf the support is sought or their noncustodial parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.

(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify.

(4) Amounts expended by a State in carrying out a special project assisted under this section

shall be considered, for purposes of section 658(b)[2] of this title (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), to have been expended for the operation of the State's plan approved under section 654 of this title.

(5) There is authorized to be appropriated the sum of $7,000,000 for fiscal year 1985, $12,000,000 for fiscal year 1986, and $15,000,000 for each fiscal year thereafter, to be used by the Secretary in making grants under this subsection.

(f) Direct Federal funding to Indian tribes and tribal organizations

The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection.

(Aug. 14, 1935, ch. 531, title IV, §455, as added Pub. L. 93–647, §101(a), Jan. 4, 1975, 88 Stat. 2355; amended Pub. L. 94–88, title II, §§201(c), 205, Aug. 9, 1975, 89 Stat. 433, 435; Pub. L. 94–365, §3, July 14, 1976, 90 Stat. 990; Pub. L. 95–59, §4, June 30, 1977, 91 Stat. 255; Pub. L. 96–178, §2(a), Jan. 2, 1980, 93 Stat. 1295; Pub. L. 96–265, title IV, §§404(a), 405(a), 407(a), (b), June 9, 1980, 94 Stat. 463, 467; Pub. L. 96–611, §§9(c), 11(c), Dec. 28, 1980, 94 Stat. 3573, 3574; Pub. L. 97–35, title XXIII, §2333(c), Aug. 13, 1981, 95 Stat. 863; Pub. L. 97–248, title I, §§171(b)(2), 174(a), (b), Sept. 3, 1982, 96 Stat. 401, 403; Pub. L. 98–378, §§4(a), 6(b), 8, Aug. 16, 1984, 98 Stat. 1311, 1314, 1315; Pub. L. 100–485, title I, §§112(a), 123(c), Oct. 13, 1988, 102 Stat. 2350, 2352; Pub. L. 104–193, title III, §§344(b)(1), (c), 375(b), 395(d)(1)(E), Aug. 22, 1996, 110 Stat. 2236, 2237, 2256, 2259; Pub. L. 105–33, title V, §§5546(b), (c), 5555(a), Aug. 5, 1997, 111 Stat. 631, 632, 636; Pub. L. 105–200, title I, §§101(a), 102(b), title II, §201(f)(2)(B), July 16, 1998, 112 Stat. 646, 648, 658; Pub. L. 105–306, §4(a)(1), Oct. 28, 1998, 112 Stat. 2926; Pub. L. 106–113, div. B, §1000(a)(4) [title VIII, §807(a)], Nov. 29, 1999, 113 Stat. 1535, 1501A–286; Pub. L. 106–169, title IV, §401(i), Dec. 14, 1999, 113 Stat. 1858.)

REFERENCES IN TEXT

The Family Support Act of 1988, referred to in subsec. (a)(3)(B)(iii), is Pub. L. 100–485, Oct. 13, 1988, 102 Stat. 2343, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 1305 of this title and Tables.

Section 658(b) of this title (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), referred to in subsec. (e)(4), was in the original a reference to ''section 458(b)'', meaning section 458(b) of act of Aug. 14, 1935, as amended by section 5(a) of Pub. L. 98–378, which was classified to section 658(b) of this title. Pub. L. 105–200, title II, §201(f)(1), (2)(A), July 16, 1998, 112 Stat. 657, 658, repealed section 458 and renumbered section 458A of the act of Aug. 14, 1935, as section 458, which is classified to section 658a of this title.

[2] See References in Text note below.

AMENDMENTS

1999—Subsec. (a)(1)(B). Pub. L. 106–169 amended Pub. L. 104–193, §344(b)(1)(A). See 1996 Amendment note below.

Subsec. (a)(5). Pub. L. 106–113 added par. (5).

1998—Subsec. (a)(1)(D). Pub. L. 105–200, §102(b), added subpar. (D).

Subsec. (a)(4). Pub. L. 105–200, §101(a), added par. (4).

Subsec. (a)(4)(C)(iii). Pub. L. 105–306 added cl. (iii).

Pub. L. 105–200, §201(f)(2)(B), made technical amendments to references in original act which appear in text as references to section 658a(b)(4), section 658a(b)(6), and section 658a(b)(5)(B) of this title.

1997—Subsec. (a)(3)(B)(i). Pub. L. 105–33, §5555(a)(1), inserted ''or system described in clause (iii)'' after ''each State'' and ''or system'' after ''the State''.

Subsec. (a)(3)(B)(iii). Pub. L. 105–33, §5555(a)(2), added cl. (iii).

Subsec. (b). Pub. L. 105–33, §5546(b), redesignated subsec. (b), relating to direct Federal funding to Indian tribes and tribal organizations, as (f).

Subsec. (f). Pub. L. 105–33, §5546(c), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''The Secretary may, in appropriate cases, make direct payments under this part to an Indian tribe or tribal organization which has an approved child support enforcement plan under this subchapter. In determining whether such payments are appropriate, the Secretary shall, at a minimum, consider whether services are being provided to eligible Indian recipients by the State agency through an agreement entered into pursuant to section 654(34) of this title.''

Pub. L. 105–33, §5546(b), redesignated subsec. (b), relating to direct Federal funding to Indian tribes and tribal organizations, as (f).

1996—Subsec. (a)(1). Pub. L. 104–193, §344(c), which directed repeal of Pub. L. 100–485, §123(c), was executed by restoring the provisions of this section amended by §123(c) to read as if §123(c) had not been enacted, to reflect the probable intent of Congress. See 1988 Amendment note below.

Subsec. (a)(1)(B). Pub. L. 104–193, §344(b)(1)(A), as amended by Pub. L. 106–169, added subpar. (B) and struck out former subpar. (B) which read as follows: ''equal to 90 percent (rather than the percent specified in subparagraph (A)) of so much of the sums expended during such quarter as are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system (including in such sums the full cost of the hardware components of such system) which the Secretary finds meets the requirements specified in section 654(16) of this title, or meets such requirements without regard to clause (D) thereof, and''.

Subsec. (a)(3). Pub. L. 104–193, §344(b)(1)(B), added par. (3).

Subsec. (b). Pub. L. 104–193, §375(b), added subsec. (b) relating to direct Federal funding to Indian tribes and tribal organizations.

Subsec. (e)(1). Pub. L. 104–193, §395(d)(1)(E), substituted ''noncustodial parents'' for ''absent parents''.

1988—Subsec. (a)(1). Pub. L. 100–485, §123(c), which directed striking subpars. (A) and (B), redesignating subpar. (C) as (A), striking ''(rather than the percentage specified in subparagraph (A))'' and inserting ''and'' after the semicolon in subpar. (A), and adding new subpar. (B) which read ''equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 654 of this title;'', was repealed by Pub. L. 104–193, §344(c).

Subsec. (a)(1)(C). Pub. L. 100–485, §112(a), added subpar. (C).

1984—Subsec. (a)(1). Pub. L. 98–378, §4(a)(1)–(5), designated existing provisions as par. (1) and in par. (1) as so designated, struck out '', beginning with the quarter commencing July 1, 1975,'' after ''for each quarter'', substituted subpar. (A) for former par. (1) which provided for an amount equal to 70 percent of the total

amounts expended by the State during the quarter for the operation of the plan approved under section 654 of this title, struck out former par. (2) which provided for an amount equal to 50 percent of the total amounts expended by the State during the quarter for the operation of a plan which met the conditions of section 654 of this title except as was provided by a waiver by the Secretary which was granted pursuant to specific authority set forth in the law, redesignated former par. (3) as subpar. (B) of par. (1), and in subpar. (B) as so redesignated, substituted ''subparagraph (A)'' for ''clause (1) or (2)'', and inserted ''(including in such sums the full cost of the hardware components of such system)'' and '', or meets such requirements without regard to clause (D) thereof''.

Subsec. (a)(2). Pub. L. 98–378, §4(a)(6), added par. (2). Former par. (2) was struck out.

Subsec. (a)(3). Pub. L. 98–378, §4(a)(3), redesignated par. (3) of subsec. (a) as subpar. (B) of subsec. (a)(1).

Subsec. (e). Pub. L. 98–378, §8, added subsec. (e).

1982—Subsec. (a)(1). Pub. L. 97–248, §174(a), substituted ''70 percent'' for ''75 percent''.

Subsec. (c). Pub. L. 97–248, §174(b), struck out subsec. (c) which had provided that expenditures of courts of a State or its political subdivisions in connection with performance of services related to the operation of a plan approved under section 654 of this title, would be included in determining the amounts expended by a State during any quarter for the operation of such plan, that the aggregate amount of such expenditures would be reduced by the total amount of those expenditures made by a State for the 12-month period beginning on Jan. 1, 1978, and that a State agency could, under State law, pay the courts of the State from amounts received under subsec. (a) of this section.

1981—Subsec. (a). Pub. L. 97–35, as amended by Pub. L. 97–248, §171(b)(2), inserted provision that in determining the total amounts expended by any State during a quarter, for purposes of this subsection, there be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.

1980—Subsec. (a). Pub. L. 96–611, §9(c), inserted provision following par. (3) that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 663 of this title.

Pub. L. 96–611, §11(c), which was intended to make a technical correction in par. (3) by substituting a period for the semicolon at the end thereof, was not executed in view of the amendment by section 9(c) of Pub. L. 96–611 inserting provision following par. (3).

Pub. L. 96–265, §405(a), added par. (3).

Pub. L. 96–178 struck out provisions following par. (2) prohibiting payment to any State on account of furnishing child support collection or paternity determination services (other than the parent locator services) to individuals under section 654(6) of this title during any period beginning after Sept. 30, 1978.

Subsec. (b)(2). Pub. L. 96–265, §407(a), substituted ''Subject to subsection (d) of this section, the Secretary'' for ''The Secretary''.

Subsecs. (c), (d). Pub. L. 96–265, §§404(a), 407(b), added subsecs. (c) and (d).

1977—Subsec. (a). Pub. L. 95–59 substituted ''September 30, 1978'' for ''June 30, 1977'' in provisions following par. (2).

1976—Subsec. (a). Pub. L. 94–365 substituted ''June 30, 1977'' for ''June 30, 1976''.

1975—Subsec. (a). Pub. L. 94–88, §§201(c), 205, designated existing provisions as subsec. (a), and inserted provisions authorizing Secretary to pay to each State for each quarter beginning with the quarter commencing July 1, 1975, an amount equal to 50 per cent of the total amounts expended by such State during such quarter for the operation of a plan which meets the conditions of section 654 of this title except as is provided by a waiver by the Secretary which is granted pursuant to specific authority set forth in the law.

Subsec. (b). Pub. L. 94–88, §205, added subsec. (b).

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

Amendment by Pub. L. 106–113 effective Oct. 1, 1999, see section 1000(a)(4) [title VIII, §807(c)] of Pub. L. 106–113, set out as a note under section 609 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–306, §4(a)(2), Oct. 28, 1998, 112 Stat. 2927, provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall take effect as if included in the enactment of section 101(a) of the Child Support Performance and Incentive Act of 1998 [Pub. L. 105–200, amending this section], and the amendment shall be considered to have been added by section 101(a) of such Act for purposes of section 201(f)(2)(B) of such Act [amending this section].''

Pub. L. 105–200, title II, §201(f)(3), July 16, 1998, 112 Stat. 658, provided that: ''The amendments made by this subsection [amending this section, renumbering section 658a as section 658 of this title, and repealing former section 658 of this title] shall take effect on October 1, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 112(b) of Pub. L. 100–485 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to laboratory costs incurred on or after October 1, 1988.''

Section 123(c) of Pub. L. 100–485 which provided that the amendment made by that section was effective Sept. 30, 1995, was repealed by Pub. L. 104–193, title III, §344(c), Aug. 22, 1996, 110 Stat. 2237.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 4(a) of Pub. L. 98–378 applicable to fiscal years after fiscal year 1983, see section 4(c) of Pub. L. 98–378, set out as a note under section 652 of this title.

Amendment by section 6(b) of Pub. L. 98–378 applicable with respect to quarters beginning on or after Oct. 1, 1984, see section 6(c) of Pub. L. 98–378, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 171(b)(2) of Pub. L. 97–248 effective on and after Aug. 13, 1981, see section 171(c) of Pub. L. 97–248, set out as a note under section 503 of this title.

Section 174(d) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to quarters beginning on or after October 1, 1982. Subsection (b) [amending this section] shall apply with respect to quarters beginning on or after October 1, 1983; and the amendment made by subsection (c) [amending section 658 of this title] shall apply with respect to amounts collected on or after October 1, 1983.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 404(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to expenditures made by States on or after July 1, 1980.''

Amendment by section 405(a) of Pub. L. 96–265 effective July 1, 1981, and to be effective only with respect to expenditures, referred to in subsec. (a)(3) of this section, made on or after such date, see section 405(e) of Pub. L. 96–265, set out as a note under section 652 of this title.

Section 407(d) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 603 of this title] shall be effective in the case of calendar quarters commencing on or after January 1, 1981.''

Section 2(b) of Pub. L. 96–178, as amended Pub. L. 96–272, title III, § 301(a), June 17, 1980, 94 Stat. 527, provided that: ''This section [amending this section] shall become effective on the date of the enactment of this Act [Jan. 2, 1980], and shall apply with respect to services furnished on or after October 1, 1978.''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–88 effective Aug. 1, 1975, unless otherwise provided, see section 210 of Pub. L. 94–88, set out as a note under section 654 of this title.

TEMPORARY LIMITATION ON PAYMENTS UNDER SPECIAL FEDERAL MATCHING RATE

Section 344(b)(2) of Pub. L. 104–193, as amended by Pub. L. 105–33, title V, § 5555(b), Aug. 5, 1997, 111 Stat. 637, provided that:

''(A) IN GENERAL.—The Secretary of Health and Human Services may not pay more than $400,000,000 in the aggregate under section 455(a)(3)(B) of the Social Security Act [subsec. (a)(3)(B) of this section] for fiscal years 1996 through 2001.

''(B) ALLOCATION OF LIMITATION AMONG STATES.—The total amount payable to a State or a system described in subparagraph (C) under section 455(a)(3)(B) of such Act for fiscal years 1996 through 2001 shall not exceed the limitation determined for the State or system by the Secretary of Health and Human Services in regulations.

''(C) ALLOCATION FORMULA.—The regulations referred to in subparagraph (B) shall prescribe a formula for allocating the amount specified in subparagraph (A) among States with plans approved under part D of title IV of the Social Security Act [this part], and among systems that have been approved by the Secretary to receive enhanced funding pursuant to the Family Support Act of 1988 (Public Law 100–485; 102 Stat. 2343) for the purpose of developing a system that meets the requirements of sections 454(16) (as in effect on and after September 30, 1995) and 454A [probably means sections 454(16) and 454A of the Social Security Act which are classified to sections 654(16) and 654a, respectively, of this title], including systems that have received funding for such purpose pursuant to a waiver under section 1115(a) [probably means section 1115(a) of the Social Security Act which is classified to section 1315(a) of this title], which shall take into account—

''(i) the relative size of such State and system caseloads under part D of title IV of the Social Security Act [this part]; and

''(ii) the level of automation needed to meet the automated data processing requirements of such part.''

PAYMENTS TO STATES FOR CERTAIN EXPENSES INCURRED DURING JULY 1975

Section 206 of Pub. L. 94–88 provided that amounts expended in good faith by any State during July 1975 in certain ways in preparation for or implementation of the child support program under this part were to be considered for purposes of this section, to the extent that payment for the expenses incurred would have been made under the terms of this section, had the amendment by section 101 of Pub. L. 93–647 been effective on July 1, 1975, to have been expended by the State for the operation of the State plan or for the conduct of activities specified in this section.

§ 655a. Provision for reimbursement of expenses

For purposes of section 655 of this title, expenses incurred to reimburse State employment offices for furnishing information requested of such offices—

(1) pursuant to section 49b(b) of title 29, or

(2) by a State or local agency charged with the duty of carrying a State plan for child support approved under this part,

shall be considered to constitute expenses incurred in the administration of such State plan.

(Pub. L. 94–566, title V, § 508(b), Oct. 20, 1976, 90 Stat. 2689; Pub. L. 104–193, title I, § 110(a), Aug. 22, 1996, 110 Stat. 2171; Pub. L. 105–220, title III, § 302(b), Aug. 7, 1998, 112 Stat. 1081.)

CODIFICATION

Section was formerly classified to section 603a of this title.

Section was not enacted as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1998—Par. (1). Pub. L. 105–220 substituted ''section 49b(b) of title 29'' for ''the third sentence of section 49b(a) of title 29''.

1996—Pub. L. 104–193 amended section catchline and text generally. Prior to amendment, text read as follows: ''For purposes of section 603 of this title, expenses incurred to reimburse State employment offices for furnishing information requested of such offices pursuant to the third sentence of section 49b(a) of title 29, by a State or local agency administering a State plan approved under part A of this subchapter shall be considered to constitute expenses incurred in the administration of such State plan; and for purposes of section 655 of this title, expenses incurred to reimburse State employment offices for furnishing information so requested by a State or local agency charged with the duty of carrying out a State plan for child support approved under part D of this subchapter shall be considered to constitute expenses incurred in the administration of such State plan.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–220 effective July 1, 1999, see section 311 of Pub. L. 105–220, set out as a note under section 49a of Title 29, Labor.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

§ 656. Support obligation as obligation to State; amount; discharge in bankruptcy

(a) Collection processes

(1) The support rights assigned to the State pursuant to section 608(a)(3) of this title or secured on behalf of a child receiving foster care maintenance payments shall constitute an obli-

gation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(2) The amount of such obligation shall be—

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary.

(3) Any amounts collected from a noncustodial parent under the plan shall reduce, dollar for dollar, the amount of his obligation under subparagraphs (A) and (B) of paragraph (2).

(b) Nondischargeability

A debt (as defined in section 101 of title 11) owed under State law to a State (as defined in such section) or municipality (as defined in such section) that is in the nature of support and that is enforceable under this part is not released by a discharge in bankruptcy under title 11.

(Aug. 14, 1935, ch. 531, title IV, §456, as added Pub. L. 93–647, §101(a), Jan. 4, 1975, 88 Stat. 2356; amended Pub. L. 95–598, title III, §328, Nov. 6, 1978, 92 Stat. 2679; Pub. L. 97–35, title XXIII, §2334(a), Aug. 13, 1981, 95 Stat. 863; Pub. L. 98–369, div. B, title VI, §2663(c)(15), July 18, 1984, 98 Stat. 1167; Pub. L. 98–378, §11(b)(2), Aug. 16, 1984, 98 Stat. 1318; Pub. L. 104–193, title I, §108(c)(13), title III, §§374(b), 395(d)(2)(C), Aug. 22, 1996, 110 Stat. 2166, 2255, 2260; Pub. L. 105–33, title V, §§5513(a)(3), 5556(d), Aug. 5, 1997, 111 Stat. 619, 637.)

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–33, §5513(a)(3), amended Pub. L. 104–193, §108(c)(13). See 1996 Amendment note below.

Subsec. (a)(2)(B). Pub. L. 105–33, §5556(d), substituted ''Secretary.'' for ''Secretary, and''.

1996—Subsec. (a)(1). Pub. L. 104–193, §108(c)(13), as amended by Pub. L. 105–33, §5513(a)(3), substituted ''pursuant to section 608(a)(3) of this title'' for ''under section 602(a)(26) of this title''.

Subsec. (a)(3). Pub. L. 104–193, §395(d)(2)(C), substituted ''a noncustodial parent'' for ''an absent parent''.

Subsec. (b). Pub. L. 104–193, §374(b), inserted heading and amended text generally. Prior to amendment, text read as follows: ''A debt which is a child support obligation assigned to a State under section 602(a)(26) of this title is not released by a discharge in bankruptcy under title 11.''

1984—Subsec. (a)(1). Pub. L. 98–378, §11(b)(2), inserted ''or secured on behalf of a child receiving foster care maintenance payments'' after ''section 602(a)(26) of this title''.

Pub. L. 98–369, §2663(c)(15)(A), designated existing unenumerated provisions as par. (1). Former par. (1) redesignated (2).

Subsec. (a)(2). Pub. L. 98–369, §2663(c)(15)(B), redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 98–369, §2663(c)(15)(C), (D), redesignated former par. (2) as (3) and substituted ''subparagraphs (A) and (B) of paragraph (2)'' for ''paragraphs (1)(A) and (B)''.

1981—Subsec. (b). Pub. L. 97–35 added subsec. (b).

1978—Subsec. (b). Pub. L. 95–598 repealed provision declaring a debt which is a child support obligation assigned to a State under section 602(a)(26) of this title as not released by a discharge in bankruptcy under the Bankruptcy Act.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5513(a)(3) of Pub. L. 105–33 effective as if included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 108 became law, see section 5518(b) of Pub. L. 105–33, set out as a note under section 652 of this title.

Amendment by section 5556(d) of Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(c)(13) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Amendment by section 374(b) of Pub. L. 104–193 applicable only with respect to cases commenced under Title 11, Bankruptcy, after Aug. 22, 1996, see section 374(c) of Pub. L. 104–193, set out as a note under section 523 of Title 11.

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2334(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 523 of Title 11, Bankruptcy] shall become effective on the date of the enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§657. Distribution of collected support

(a) In general

Subject to subsections (d) and (e) of this section, an amount collected on behalf of a family as support by a State pursuant to a plan approved under this part shall be distributed as follows:

(1) Families receiving assistance

In the case of a family receiving assistance from the State, the State shall—

(A) pay to the Federal Government the Federal share of the amount so collected; and

(B) retain, or distribute to the family, the State share of the amount so collected.

In no event shall the total of the amounts paid to the Federal Government and retained by the State exceed the total of the amounts that have been paid to the family as assistance by the State.

(2) Families that formerly received assistance

In the case of a family that formerly received assistance from the State:

(A) Current support payments

To the extent that the amount so collected does not exceed the amount required to be paid to the family for the month in which collected, the State shall distribute the amount so collected to the family.

(B) Payments of arrearages

To the extent that the amount so collected exceeds the amount required to be paid to the family for the month in which collected, the State shall distribute the amount so collected as follows:

(i) Distribution of arrearages that accrued after the family ceased to receive assistance

(I) Pre-October 1997

Except as provided in subclause (II), the provisions of this section as in effect and applied on the day before August 22, 1996 (other than subsection (b)(1) (as so in effect)), shall apply with respect to the distribution of support arrearages that—

(aa) accrued after the family ceased to receive assistance, and

(bb) are collected before October 1, 1997.

(II) Post-September 1997

With respect to the amount so collected on or after October 1, 1997 (or before such date, at the option of the State)—

(aa) In general

The State shall first distribute the amount so collected (other than any amount described in clause (iv)) to the family to the extent necessary to satisfy any support arrearages with respect to the family that accrued after the family ceased to receive assistance from the State.

(bb) Reimbursement of governments for assistance provided to the family

After the application of division (aa) and clause (ii)(II)(aa) with respect to the amount so collected, the State shall retain the State share of the amount so collected, and pay to the Federal Government the Federal share (as defined in subsection (c)(2) of this section) of the amount so collected, but only to the extent necessary to reimburse amounts paid to the family as assistance by the State.

(cc) Distribution of the remainder to the family

To the extent that neither division (aa) nor division (bb) applies to the amount so collected, the State shall distribute the amount to the family.

(ii) Distribution of arrearages that accrued before the family received assistance

(I) Pre-October 2000

Except as provided in subclause (II), the provisions of this section as in effect and applied on the day before August 22, 1996 (other than subsection (b)(1) (as so in effect)), shall apply with respect to the distribution of support arrearages that—

(aa) accrued before the family received assistance, and

(bb) are collected before October 1, 2000.

(II) Post-September 2000

Unless, based on the report required by paragraph (5), the Congress determines otherwise, with respect to the amount so collected on or after October 1, 2000 (or before such date, at the option of the State)—

(aa) In general

The State shall first distribute the amount so collected (other than any amount described in clause (iv)) to the family to the extent necessary to satisfy any support arrearages with respect to the family that accrued before the family received assistance from the State.

(bb) Reimbursement of governments for assistance provided to the family

After the application of clause (i)(II)(aa) and division (aa) with respect to the amount so collected, the State shall retain the State share of the amount so collected, and pay to the Federal Government the Federal share (as defined in subsection (c)(2) of this section) of the amount so collected, but only to the extent necessary to reimburse amounts paid to the family as assistance by the State.

(cc) Distribution of the remainder to the family

To the extent that neither division (aa) nor division (bb) applies to the amount so collected, the State shall distribute the amount to the family.

(iii) Distribution of arrearages that accrued while the family received assistance

In the case of a family described in this subparagraph, the provisions of paragraph (1) shall apply with respect to the distribution of support arrearages that accrued while the family received assistance.

(iv) Amounts collected pursuant to section 664

Notwithstanding any other provision of this section, any amount of support collected pursuant to section 664 of this title shall be retained by the State to the ex-

tent past-due support has been assigned to the State as a condition of receiving assistance from the State, up to the amount necessary to reimburse the State for amounts paid to the family as assistance by the State. The State shall pay to the Federal Government the Federal share of the amounts so retained. To the extent the amount collected pursuant to section 664 of this title exceeds the amount so retained, the State shall distribute the excess to the family.

(v) Ordering rules for distributions

For purposes of this subparagraph, unless an earlier effective date is required by this section, effective October 1, 2000, the State shall treat any support arrearages collected, except for amounts collected pursuant to section 664 of this title, as accruing in the following order:

(I) To the period after the family ceased to receive assistance.

(II) To the period before the family received assistance.

(III) To the period while the family was receiving assistance.

(3) Families that never received assistance

In the case of any other family, the State shall distribute the amount so collected to the family.

(4) Families under certain agreements

In the case of an amount collected for a family in accordance with a cooperative agreement under section 654(33) of this title, distribute the amount so collected pursuant to the terms of the agreement.

(5) Study and report

Not later than October 1, 1999, the Secretary shall report to the Congress the Secretary's findings with respect to—

(A) whether the distribution of post-assistance arrearages to families has been effective in moving people off of welfare and keeping them off of welfare;

(B) whether early implementation of a pre-assistance arrearage program by some States has been effective in moving people off of welfare and keeping them off of welfare;

(C) what the overall impact has been of the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 with respect to child support enforcement in moving people off of welfare and keeping them off of welfare; and

(D) based on the information and data the Secretary has obtained, what changes, if any, should be made in the policies related to the distribution of child support arrearages.

(6) State option for applicability

Notwithstanding any other provision of this subsection, a State may elect to apply the rules described in clauses (i)(II), (ii)(II), and (v) of paragraph (2)(B) to support arrearages collected on and after October 1, 1998, and, if the State makes such an election, shall apply the provisions of this section, as in effect and applied on the day before August 22, 1996, other than subsection (b)(1) (as so in effect), to amounts collected before October 1, 1998.

(b) Continuation of assignments

Any rights to support obligations, assigned to a State as a condition of receiving assistance from the State under part A of this subchapter and in effect on September 30, 1997 (or such earlier date, on or after August 22, 1996, as the State may choose), shall remain assigned after such date.

(c) Definitions

As used in subsection (a) of this section:

(1) Assistance

The term ''assistance from the State'' means—

(A) assistance under the State program funded under part A of this subchapter or under the State plan approved under part A of this subchapter (as in effect on the day before August 22, 1996); and

(B) foster care maintenance payments under the State plan approved under part E of this subchapter.

(2) Federal share

The term ''Federal share'' means that portion of the amount collected resulting from the application of the Federal medical assistance percentage in effect for the fiscal year in which the amount is distributed.

(3) Federal medical assistance percentage

The term ''Federal medical assistance percentage'' means—

(A) 75 percent, in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa; or

(B) the Federal medical assistance percentage (as defined in section 1396d(b) of this title, as such section was in effect on September 30, 1995) in the case of any other State.

(4) State share

The term ''State share'' means 100 percent minus the Federal share.

(d) Gap payments not subject to distribution under this section

At State option, this section shall not apply to any amount collected on behalf of a family as support by the State (and paid to the family in addition to the amount of assistance otherwise payable to the family) pursuant to a plan approved under this part if such amount would have been paid to the family by the State under section 602(a)(28) of this title, as in effect and applied on the day before August 22, 1996.

(e) Amounts collected for child for whom foster care maintenance payments are made

Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E of this subchapter—

(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect

to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of assistance under the State program funded under part A of this subchapter) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2).

(Aug. 14, 1935, ch. 531, title IV, § 457, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2356; amended Pub. L. 95–171, § 11, Nov. 12, 1977, 91 Stat. 1357; Pub. L. 97–35, title XXIII, § 2332(e), Aug. 13, 1981, 95 Stat. 862; Pub. L. 98–369, div. B, title VI, § 2640(b), July 18, 1984, 98 Stat. 1145; Pub. L. 98–378, §§ 7(a), 11(a), Aug. 16, 1984, 98 Stat. 1315, 1317; Pub. L. 99–514, title XVIII, §§ 1883(b)(6), 1899(a), Oct. 22, 1986, 100 Stat. 2917, 2957; Pub. L. 100–203, title IX, § 9141(a)(1), Dec. 22, 1987, 101 Stat. 1330–321; Pub. L. 100–485, title I, § 102(b), Oct. 13, 1988, 102 Stat. 2346; Pub. L. 104–193, title III, § 302(a), Aug. 22, 1996, 110 Stat. 2200; Pub. L. 105–33, title V, §§ 5532(a), (b)(1), (c)–(h), 5547, Aug. 5, 1997, 111 Stat. 626, 627, 632; Pub. L. 106–169, title III, § 301(a), (c), title IV, § 401(j), (k), Dec. 14, 1999, 113 Stat. 1857, 1858.)

REFERENCES IN TEXT

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(5)(C), is Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2105. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1305 of this title and Tables.

Parts A and E of this subchapter, referred to in subsecs. (b), (c)(1), and (e), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–169, § 301(c)(1), substituted ''subsections (d) and (e)'' for ''subsections (e) and (f)'' in introductory provisions.

Subsec. (a)(2)(B)(i)(I). Pub. L. 106–169, § 401(j), made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

Subsec. (a)(5)(C). Pub. L. 106–169, § 401(k), substituted ''Opportunity Reconciliation Act'' for ''Opportunity Act''.

Subsecs. (a)(6), (c)(1)(A). Pub. L. 106–169, § 401(k), made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

Subsec. (d). Pub. L. 106–169, § 301(c)(2), (4), redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: ''If—

''(1) the State share of amounts collected in the fiscal year which could be retained to reimburse the State for amounts paid to families as assistance by the State is less than the State share of such amounts collected in fiscal year 1995 (determined in accordance with this section as in effect on August 21, 1996); and

''(2)(A) the State has distributed to families that include an adult receiving assistance under the program under part A of this subchapter at least 80 percent of the current support payments collected during the preceding fiscal year on behalf of such families, and the amounts distributed were disregarded in determining the amount or type of assistance provided under the program under part A of this subchapter; or

''(B) the State has distributed to families that formerly received assistance under the program under part A of this subchapter the State share of the amounts collected pursuant to section 664 of this title that could have been retained as reimbursement for assistance paid to such families,

then the State share otherwise determined for the fiscal year shall be increased by an amount equal to one-half of the amount (if any) by which the State share for fiscal year 1995 exceeds the State share for the fiscal year (determined without regard to this subsection).''

Pub. L. 106–169, § 301(a), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: ''If the amounts collected which could be retained by the State in the fiscal year (to the extent necessary to reimburse the State for amounts paid to families as assistance by the State) are less than the State share of the amounts collected in fiscal year 1995 (determined in accordance with this section as in effect on the day before August 22, 1996), the State share for the fiscal year shall be an amount equal to the State share in fiscal year 1995.''

Pub. L. 106–169, § 401(k), made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

Subsec. (e). Pub. L. 106–169, § 301(c)(4), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Pub. L. 106–169, § 301(c)(3), struck out at end ''For purposes of subsection (d) of this section, the State share of such amount paid to the family shall be considered amounts which could be retained by the State if such payments were reported by the State as part of the State share of amounts collected in fiscal year 1995.''

Subsec. (f). Pub. L. 106–169, § 301(c)(4), redesignated subsec. (f) as (e).

1997—Subsec. (a). Pub. L. 105–33, § 5547(1), substituted ''subsections (e) and (f)'' for ''subsection (e)'' in introductory provisions.

Subsec. (a)(1). Pub. L. 105–33, § 5532(c), inserted concluding provisions.

Subsec. (a)(2)(B)(i)(I), (ii)(I). Pub. L. 105–33, § 5532(f)(1), in introductory provisions, struck out ''(other than subsection (b)(1))'' after ''provisions of this section'' and inserted ''(other than subsection (b)(1) (as so in effect))'' after ''1996''.

Subsec. (a)(2)(B)(ii)(II). Pub. L. 105–33, § 5532(f)(2), substituted ''paragraph (5)'' for ''paragraph (4)''.

Subsec. (a)(4). Pub. L. 105–33, § 5532(d), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''In the case of a family receiving assistance from an Indian tribe, distribute the amount so collected pursuant to an agreement entered into pursuant to a State plan under section 654(33) of this title.''

Subsec. (a)(5). Pub. L. 105–33, § 5532(e), substituted ''1999'' for ''1998'' in introductory provisions.

Subsec. (a)(6). Pub. L. 105–33, § 5532(b)(1), added par. (6).

Subsec. (b). Pub. L. 105–33, § 5532(a), substituted ''assigned'' for ''which were assigned'' and ''and in effect on September 30, 1997 (or such earlier date, on or after August 22, 1996, as the State may choose), shall remain assigned after such date.'' for ''and which were in effect on the day before August 22, 1996, shall remain assigned after August 22, 1996.''

Subsec. (c)(2). Pub. L. 105–33, § 5532(h)(1), substituted ''is distributed'' for ''is collected''.

Subsec. (c)(3)(A). Pub. L. 105–33, § 5532(g), substituted ''75 percent'' for ''the Federal medical assistance percentage (as defined in section 1318 of this title)''.

Subsec. (c)(3)(B). Pub. L. 105–33, § 5532(h)(2), substituted ''as such section was in effect on September 30, 1995'' for ''as in effect on September 30, 1996''.

Subsec. (f). Pub. L. 105–33, § 5547(2), added subsec. (f).

1996—Pub. L. 104–193 substituted ''collected support'' for ''proceeds'' in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (d) relating to distribution of amounts collected by States as child support during 15 months beginning July 1, 1975, and during any fiscal year beginning after Sept. 30, 1976, distribution of support collected for families whose assistance under part A of this subchapter has terminated, and distribution of support collected on behalf of children for whom foster care maintenance payments were being made.

1988—Subsec. (b)(1). Pub. L. 100–485 substituted ''of such amounts as are collected periodically which represent monthly support payments, the first $50 of any payments for a month received in that month, and the first $50 of payments for each prior month received in that month which were made by the absent parent in the month when due,'' for ''the first $50 of such amounts as are collected periodically which represent monthly support payments''.

1987—Subsec. (c). Pub. L. 100–203 amended subsec. (c) generally, revising and restating as single unnumbered subsection provisions of former pars. (1) and (2).

1986—Subsec. (b)(3). Pub. L. 99–514, § 1899(a), inserted ''or administrative'' after ''court''.

Subsec. (c). Pub. L. 99–514, § 1883(b)(6), substituted ''subsection (b)(4)(A) and (B)'' for ''subsection (b)(3)(A) and (B)''.

1984—Subsec. (b). Pub. L. 98–378, § 11(a)(2), inserted ''(subject to subsection (d) of this section)'' after ''shall'' in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98–369, § 2640(b)(1), added par. (1). Former par. (1) redesignated (2).

Subsec. (b)(2). Pub. L. 98–369, § 2640(b)(1), (2)(A), redesignated former par. (1) as (2), and inserted ''which are in excess of any amount paid to the family under paragraph (1) and''. Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 98–369, § 2640(b)(1), (2)(B), redesignated former par. (2) as (3), and substituted ''paragraph (2)'' for ''paragraph (1)''. Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 98–369, § 2640(b)(1), (2)(C), redesignated former par. (3) as (4), and substituted ''paragraphs (1), (2), and (3)'' for ''paragraphs (1) and (2)''.

Subsec. (c). Pub. L. 98–378, § 7(a)(1), substituted ''shall'' for ''may'' in provisions preceding par. (1).

Subsec. (c)(2). Pub. L. 98–378, § 7(a)(2), substituted ''any amount so collected, which represents monthly support payments, to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this subchapter,'' for ''the net amount of any amount so collected, which represents monthly support payments, to the family after deducting any costs incurred in making the collection from the amount of any recovery made,''.

Subsec. (d). Pub. L. 98–378, § 11(a)(1), added subsec. (d).

1981—Subsec. (b). Pub. L. 97–35, § 2332(e)(1), substituted in provision preceding par. (1) ''as support'' for ''as child support''.

Subsec. (c). Pub. L. 97–35, § 2332(e)(2), substituted in provision preceding par. (1) ''whom support payments'' for ''whom child support payments'' and in pars. (1) and (2) ''amounts of support payments'' for ''amounts of child support payments'' in two places and ''amounts of support so'' for ''amounts of child support so''.

1977—Subsec. (c). Pub. L. 95–171, § 11(a)–(c), in par. (1), substituted ''amounts of child support payments which represent monthly support payments'' for ''such support payments'' and inserted '', which represent monthly support payments,'' after ''amounts so collected''; in par. (2), substituted ''amounts of child support payments which represent monthly support payments'' for ''such support payments'' and inserted '', which represents monthly support payments,'' after ''amount so collected''; changed to a comma the period at end of par. (2); and inserted provision for distribution of child support proceeds.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–169, title III, § 301(b), Dec. 14, 1999, 113 Stat. 1857, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to calendar quarters occurring during the period that begins on October 1, 1998, and ends on September 30, 2001.''

Pub. L. 106–169, title III, § 301(c), Dec. 14, 1999, 113 Stat. 1857, provided that the amendment made by section 301(c) is effective Oct. 1, 2001.

Amendment by section 401(j), (k) of Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 302(c) of Pub. L. 104–193 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 654 and 664 of this title] shall be effective on October 1, 1996, or earlier at the State's option.

''(2) CONFORMING AMENDMENTS.—The amendments made by subsection (b)(2) [amending section 654 of this title] shall become effective on the date of the enactment of this Act [Aug. 22, 1996].''

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 102(c) of Pub. L. 100–485 provided that: ''The amendments made by this section [amending this section and section 602 of this title] shall become effective on the first day of the first calendar quarter which begins after the date of the enactment of this Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1883(b)(6) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Section 1899(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 7(b) of Pub. L. 98–378 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective October 1, 1984.''

Amendment by section 11(a) of Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on

or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

Section 2646 of Pub. L. 98–369 provided that: ''Except as otherwise specifically provided in this subtitle [subtitle B (§§ 2611–2646) of Pub. L. 98–369], the provisions of parts 1 and 2 [sections 2611 to 2642 of Pub. L. 98–369, enacting section 1320b–6 of this title, amending this section and sections 602, 609, 614, 615, 1320a–6, 1382 to 1382b, 1382j, and 1383 of this title and section 51 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 602, 609, 614, 1320a–6, 1382a, and 1383 of this title and section 51 of Title 26] and the amendments made thereby shall take effect on October 1, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

§ 658. Repealed. Pub. L. 105–200, title II, § 201(f)(1), July 16, 1998, 112 Stat. 657

Section, act Aug. 14, 1935, ch. 531, title IV, § 458, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2357; amended Pub. L. 95–30, title V, § 503(a), May 23, 1977, 91 Stat. 162; Pub. L. 96–272, title III, § 307, June 17, 1980, 94 Stat. 531; Pub. L. 97–248, title I, § 174(c), Sept. 3, 1982, 96 Stat. 403; Pub. L. 98–378, § 5(a), (c)(2)(A), Aug. 16, 1984, 98 Stat. 1312, 1314; Pub. L. 99–514, title XVIII, § 1883(b)(7), Oct. 22, 1986, 100 Stat. 2917; Pub. L. 100–485, title I, § 127, Oct. 13, 1988, 102 Stat. 2355; Pub. L. 104–193, title III, §§ 341(a), formerly 341(b), 395(d)(1)(F), Aug. 22, 1996, 110 Stat. 2231, 2259; Pub. L. 105–33, title V, § 5550(b), Aug. 5, 1997, 111 Stat. 634; Pub. L. 105–200, title II, § 201(e)(1)(A), July 16, 1998, 112 Stat. 657, related to incentive payments to States for child support enforcement programs.

§ 658a. Incentive payments to States

(a) In general

In addition to any other payment under this part, the Secretary shall, subject to subsection (f) of this section, make an incentive payment to each State for each fiscal year in an amount determined under subsection (b) of this section.

(b) Amount of incentive payment

(1) In general

The incentive payment for a State for a fiscal year is equal to the incentive payment pool for the fiscal year, multiplied by the State incentive payment share for the fiscal year.

(2) Incentive payment pool

(A) In general

In paragraph (1), the term ''incentive payment pool'' means—

(i) $422,000,000 for fiscal year 2000;
(ii) $429,000,000 for fiscal year 2001;
(iii) $450,000,000 for fiscal year 2002;
(iv) $461,000,000 for fiscal year 2003;
(v) $454,000,000 for fiscal year 2004;
(vi) $446,000,000 for fiscal year 2005;
(vii) $458,000,000 for fiscal year 2006;
(viii) $471,000,000 for fiscal year 2007;
(ix) $483,000,000 for fiscal year 2008; and
(x) for any succeeding fiscal year, the amount of the incentive payment pool for the fiscal year that precedes such succeeding fiscal year, multiplied by the percentage (if any) by which the CPI for such preceding fiscal year exceeds the CPI for the second preceding fiscal year.

(B) CPI

For purposes of subparagraph (A), the CPI for a fiscal year is the average of the Consumer Price Index for the 12-month period ending on September 30 of the fiscal year. As used in the preceding sentence, the term ''Consumer Price Index'' means the last Consumer Price Index for all-urban consumers published by the Department of Labor.

(3) State incentive payment share

In paragraph (1), the term ''State incentive payment share'' means, with respect to a fiscal year—

(A) the incentive base amount for the State for the fiscal year; divided by
(B) the sum of the incentive base amounts for all of the States for the fiscal year.

(4) Incentive base amount

In paragraph (3), the term ''incentive base amount'' means, with respect to a State and a fiscal year, the sum of the applicable percentages (determined in accordance with paragraph (6)) multiplied by the corresponding maximum incentive base amounts for the State for the fiscal year, with respect to each of the following measures of State performance for the fiscal year:

(A) The paternity establishment performance level.
(B) The support order performance level.
(C) The current payment performance level.
(D) The arrearage payment performance level.
(E) The cost-effectiveness performance level.

(5) Maximum incentive base amount

(A) In general

For purposes of paragraph (4), the maximum incentive base amount for a State for a fiscal year is—

(i) with respect to the performance measures described in subparagraphs (A), (B), and (C) of paragraph (4), the State collections base for the fiscal year; and
(ii) with respect to the performance measures described in subparagraphs (D) and (E) of paragraph (4), 75 percent of the State collections base for the fiscal year.

(B) Data required to be complete and reliable

Notwithstanding subparagraph (A), the maximum incentive base amount for a State for a fiscal year with respect to a performance measure described in paragraph (4) is zero, unless the Secretary determines, on the basis of an audit performed under section 652(a)(4)(C)(i) of this title, that the data which the State submitted pursuant to section 654(15)(B) of this title for the fiscal year and which is used to determine the performance level involved is complete and reliable.

(C) State collections base

For purposes of subparagraph (A), the State collections base for a fiscal year is equal to the sum of—

(i) 2 times the sum of—
(I) the total amount of support collected during the fiscal year under the

State plan approved under this part in cases in which the support obligation involved is required to be assigned to the State pursuant to part A or E of this subchapter or subchapter XIX of this chapter; and

(II) the total amount of support collected during the fiscal year under the State plan approved under this part in cases in which the support obligation involved was so assigned but, at the time of collection, is not required to be so assigned; and

(ii) the total amount of support collected during the fiscal year under the State plan approved under this part in all other cases.

(6) Determination of applicable percentages based on performance levels

(A) Paternity establishment

(i) Determination of paternity establishment performance level

The paternity establishment performance level for a State for a fiscal year is, at the option of the State, the IV–D paternity establishment percentage determined under section 652(g)(2)(A) of this title or the statewide paternity establishment percentage determined under section 652(g)(2)(B) of this title.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's paternity establishment performance level is as follows:

If the paternity establishment performance level is:		The applicable percentage is:
At least:	But less than:	
80%		100
79%	80%	98
78%	79%	96
77%	78%	94
76%	77%	92
75%	76%	90
74%	75%	88
73%	74%	86
72%	73%	84
71%	72%	82
70%	71%	80
69%	70%	79
68%	69%	78
67%	68%	77
66%	67%	76
65%	66%	75
64%	65%	74
63%	64%	73
62%	63%	72
61%	62%	71
60%	61%	70
59%	60%	69
58%	59%	68
57%	58%	67
56%	57%	66
55%	56%	65
54%	55%	64
53%	54%	63
52%	53%	62
51%	52%	61
50%	51%	60
0%	50%	0.

Notwithstanding the preceding sentence, if the paternity establishment performance level of a State for a fiscal year is less than 50 percent but exceeds by at least 10 percentage points the paternity establishment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's paternity establishment performance level is 50 percent.

(B) Establishment of child support orders

(i) Determination of support order performance level

The support order performance level for a State for a fiscal year is the percentage of the total number of cases under the State plan approved under this part in which there is a support order during the fiscal year.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's support order performance level is as follows:

If the support order performance level is:		The applicable percentage is:
At least:	But less than:	
80%		100
79%	80%	98
78%	79%	96
77%	78%	94
76%	77%	92
75%	76%	90
74%	75%	88
73%	74%	86
72%	73%	84
71%	72%	82
70%	71%	80
69%	70%	79
68%	69%	78
67%	68%	77
66%	67%	76
65%	66%	75
64%	65%	74
63%	64%	73
62%	63%	72
61%	62%	71
60%	61%	70
59%	60%	69
58%	59%	68
57%	58%	67
56%	57%	66
55%	56%	65
54%	55%	64
53%	54%	63
52%	53%	62
51%	52%	61
50%	51%	60
0%	50%	0.

Notwithstanding the preceding sentence, if the support order performance level of a State for a fiscal year is less than 50 percent but exceeds by at least 5 percentage points the support order performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's support order performance level is 50 percent.

(C) Collections on current child support due

(i) Determination of current payment performance level

The current payment performance level for a State for a fiscal year is equal to the

total amount of current support collected during the fiscal year under the State plan approved under this part divided by the total amount of current support owed during the fiscal year in all cases under the State plan, expressed as a percentage.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's current payment performance level is as follows:

If the current payment performance level is:		The applicable percentage is:
At least:	But less than:	
80%		100
79%	80%	98
78%	79%	96
77%	78%	94
76%	77%	92
75%	76%	90
74%	75%	88
73%	74%	86
72%	73%	84
71%	72%	82
70%	71%	80
69%	70%	79
68%	69%	78
67%	68%	77
66%	67%	76
65%	66%	75
64%	65%	74
63%	64%	73
62%	63%	72
61%	62%	71
60%	61%	70
59%	60%	69
58%	59%	68
57%	58%	67
56%	57%	66
55%	56%	65
54%	55%	64
53%	54%	63
52%	53%	62
51%	52%	61
50%	51%	60
49%	50%	59
48%	49%	58
47%	48%	57
46%	47%	56
45%	46%	55
44%	45%	54
43%	44%	53
42%	43%	52
41%	42%	51
40%	41%	50
0%	40%	0.

Notwithstanding the preceding sentence, if the current payment performance level of a State for a fiscal year is less than 40 percent but exceeds by at least 5 percentage points the current payment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's current payment performance level is 50 percent.

(D) Collections on child support arrearages

(i) Determination of arrearage payment performance level

The arrearage payment performance level for a State for a fiscal year is equal to the total number of cases under the State plan approved under this part in which payments of past-due child support were received during the fiscal year and part or all of the payments were distributed to the family to whom the past-due child support was owed (or, if all past-due child support owed to the family was, at the time of receipt, subject to an assignment to the State, part or all of the payments were retained by the State) divided by the total number of cases under the State plan in which there is past-due child support, expressed as a percentage.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's arrearage payment performance level is as follows:

If the arrearage payment performance level is:		The applicable percentage is:
At least:	But less than:	
80%		100
79%	80%	98
78%	79%	96
77%	78%	94
76%	77%	92
75%	76%	90
74%	75%	88
73%	74%	86
72%	73%	84
71%	72%	82
70%	71%	80
69%	70%	79
68%	69%	78
67%	68%	77
66%	67%	76
65%	66%	75
64%	65%	74
63%	64%	73
62%	63%	72
61%	62%	71
60%	61%	70
59%	60%	69
58%	59%	68
57%	58%	67
56%	57%	66
55%	56%	65
54%	55%	64
53%	54%	63
52%	53%	62
51%	52%	61
50%	51%	60
49%	50%	59
48%	49%	58
47%	48%	57
46%	47%	56
45%	46%	55
44%	45%	54
43%	44%	53
42%	43%	52
41%	42%	51
40%	41%	50
0%	40%	0.

Notwithstanding the preceding sentence, if the arrearage payment performance level of a State for a fiscal year is less than 40 percent but exceeds by at least 5 percentage points the arrearage payment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's arrearage payment performance level is 50 percent.

(E) Cost-effectiveness

(i) Determination of cost-effectiveness performance level

The cost-effectiveness performance level for a State for a fiscal year is equal to the total amount collected during the fiscal year under the State plan approved under this part divided by the total amount expended during the fiscal year under the State plan, expressed as a ratio.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State's cost-effectiveness performance level is as follows:

If the cost-effectiveness performance level is:		The applicable percentage is:
At least:	But less than:	
5.00		100
4.50	4.99	90
4.00	4.50	80
3.50	4.00	70
3.00	3.50	60
2.50	3.00	50
2.00	2.50	40
0.00	2.00	0.

(c) Treatment of interstate collections

In computing incentive payments under this section, support which is collected by a State at the request of another State shall be treated as having been collected in full by both States, and any amounts expended by a State in carrying out a special project assisted under section 655(e) of this title shall be excluded.

(d) Administrative provisions

The amounts of the incentive payments to be made to the States under this section for a fiscal year shall be estimated by the Secretary at/or before the beginning of the fiscal year on the basis of the best information available. The Secretary shall make the payments for the fiscal year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section are deemed obligated.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary governing the calculation of incentive payments under this section, including directions for excluding from the calculations certain closed cases and cases over which the States do not have jurisdiction.

(f) Reinvestment

A State to which a payment is made under this section shall expend the full amount of the payment to supplement, and not supplant, other funds used by the State—

(1) to carry out the State plan approved under this part; or

(2) for any activity (including cost-effective contracts with local agencies) approved by the Secretary, whether or not the expenditures for the activity are eligible for reimbursement under this part, which may contribute to improving the effectiveness or efficiency of the State program operated under this part.

(Aug. 14, 1935, ch. 531, title IV, § 458, formerly § 458A, as added and renumbered § 458, Pub. L. 105–200, title II, § 201(a), (f)(2)(A), July 16, 1998, 112 Stat. 648, 658.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in subsec. (b)(5)(C)(i)(I), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

EFFECTIVE DATE

Pub. L. 105–200, title II, § 201(g), July 16, 1998, 112 Stat. 658, provided that: ''Except as otherwise provided in this section [enacting this section, amending this section and sections 652, 655, and 658 of this title, repealing section 658 of this title, enacting provisions set out as notes under this section and sections 652 and 655 of this title, amending provisions set out as notes under this section and sections 652 and 658 of this title, and repealing provisions set out as a note under section 658 of this title], the amendments made by this section shall take effect on October 1, 1999.''

REGULATIONS

Pub. L. 105–200, title II, § 201(c), July 16, 1998, 112 Stat. 656, provided that: ''Within 9 months after the date of the enactment of this section [July 16, 1998], the Secretary of Health and Human Services shall prescribe regulations governing the implementation of section 458A [now 458] of the Social Security Act [this section] when such section takes effect and the implementation of subsection (b) of this section [formerly set out as a note below].''

TRANSITION RULE

Pub. L. 105–200, title II, § 201(b), July 16, 1998, 112 Stat. 656, provided for reductions by the Secretary of the amount otherwise payable to a State under this section and former section 658 of this title for fiscal years 2000 and 2001.

STUDIES

Pub. L. 105–200, title II, § 201(d), (f)(2)(C), July 16, 1998, 112 Stat. 656, 658, provided that:

''(1) GENERAL REVIEW OF NEW INCENTIVE PAYMENT SYSTEM.—

''(A) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study of the implementation of the incentive payment system established by section 458 of the Social Security Act [this section], in order to identify the problems and successes of the system.

''(B) REPORTS TO THE CONGRESS.—

''(i) REPORT ON VARIATIONS IN STATE PERFORMANCE ATTRIBUTABLE TO DEMOGRAPHIC VARIABLES.—Not later than October 1, 2000, the Secretary shall submit to the Congress a report that identifies any demographic or economic variables that account for differences in the performance levels achieved by the States with respect to the performance measures used in the system, and contains the recommendations of the Secretary for such adjustments to the system as may be necessary to ensure that the relative performance of States is measured from a baseline that takes account of any such variables.

''(ii) INTERIM REPORT.—Not later than March 1, 2001, the Secretary shall submit to the Congress an

interim report that contains the findings of the study required by subparagraph (A).

''(iii) FINAL REPORT.—Not later than October 1, 2003, the Secretary shall submit to the Congress a final report that contains the final findings of the study required by subparagraph (A). The report shall include any recommendations for changes in the system that the Secretary determines would improve the operation of the child support enforcement program.

''(2) DEVELOPMENT OF MEDICAL SUPPORT INCENTIVE.—

''(A) IN GENERAL.—The Secretary of Health and Human Services, in consultation with State directors of programs operated under part D of title IV of the Social Security Act [this part] and representatives of children potentially eligible for medical support, shall develop a performance measure based on the effectiveness of States in establishing and enforcing medical support obligations, and shall make recommendations for the incorporation of the measure, in a revenue neutral manner, into the incentive payment system established by section 458A [now 458] of the Social Security Act [this section].

''(B) REPORT.—Not later than October 1, 1999, the Secretary shall submit to the Congress a report that describes the performance measure and contains the recommendations required by subparagraph (A).''

§ 659. Consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations

(a) Consent to support enforcement

Notwithstanding any other provision of law (including section 407 of this title and section 5301 of title 38), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the Armed Forces of the United States, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 666 of this title and regulations of the Secretary under such subsections, and to any other legal process brought, by a State agency administering a program under a State plan approved under this part or by an individual obligee, to enforce the legal obligation of the individual to provide child support or alimony.

(b) Consent to requirements applicable to private person

With respect to notice to withhold income pursuant to subsection (a)(1) or (b) of section 666 of this title, or any other order or process to enforce support obligations against an individual (if the order or process contains or is accompanied by sufficient data to permit prompt identification of the individual and the moneys involved), each governmental entity specified in subsection (a) of this section shall be subject to the same requirements as would apply if the entity were a private person, except as otherwise provided in this section.

(c) Designation of agent; response to notice or process

(1) Designation of agent

The head of each agency subject to this section shall—

(A) designate an agent or agents to receive orders and accept service of process in matters relating to child support or alimony; and

(B) annually publish in the Federal Register the designation of the agent or agents, identified by title or position, mailing address, and telephone number.

(2) Response to notice or process

If an agent designated pursuant to paragraph (1) of this subsection receives notice pursuant to State procedures in effect pursuant to subsection (a)(1) or (b) of section 666 of this title, or is effectively served with any order, process, or interrogatory, with respect to an individual's child support or alimony payment obligations, the agent shall—

(A) as soon as possible (but not later than 15 days) thereafter, send written notice of the notice or service (together with a copy of the notice or service) to the individual at the duty station or last-known home address of the individual;

(B) within 30 days (or such longer period as may be prescribed by applicable State law) after receipt of a notice pursuant to such State procedures, comply with all applicable provisions of section 666 of this title; and

(C) within 30 days (or such longer period as may be prescribed by applicable State law) after effective service of any other such order, process, or interrogatory, withhold available sums in response to the order or process, or answer the interrogatory.

(d) Priority of claims

If a governmental entity specified in subsection (a) of this section receives notice or is served with process, as provided in this section, concerning amounts owed by an individual to more than 1 person—

(1) support collection under section 666(b) of this title must be given priority over any other process, as provided in section 666(b)(7) of this title;

(2) allocation of moneys due or payable to an individual among claimants under section 666(b) of this title shall be governed by section 666(b) of this title and the regulations prescribed under such section; and

(3) such moneys as remain after compliance with paragraphs (1) and (2) shall be available to satisfy any other such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(e) No requirement to vary pay cycles

A governmental entity that is affected by legal process served for the enforcement of an individual's child support or alimony payment obligations shall not be required to vary its normal pay and disbursement cycle in order to comply with the legal process.

(f) Relief from liability

(1) Neither the United States, nor the government of the District of Columbia, nor any disbursing officer shall be liable with respect to any payment made from moneys due or payable

from the United States to any individual pursuant to legal process regular on its face, if the payment is made in accordance with this section and the regulations issued to carry out this section.

(2) No Federal employee whose duties include taking actions necessary to comply with the requirements of subsection (a) of this section with regard to any individual shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by the employee in connection with the carrying out of such actions.

(g) Regulations

Authority to promulgate regulations for the implementation of this section shall, insofar as this section applies to moneys due from (or payable by)—

(1) the United States (other than the legislative or judicial branches of the Federal Government) or the government of the District of Columbia, be vested in the President (or the designee of the President);

(2) the legislative branch of the Federal Government, be vested jointly in the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees),[1] and

(3) the judicial branch of the Federal Government, be vested in the Chief Justice of the United States (or the designee of the Chief Justice).

(h) Moneys subject to process

(1) In general

Subject to paragraph (2), moneys payable to an individual which are considered to be based upon remuneration for employment, for purposes of this section—

(A) consist of—

(i) compensation payable for personal services of the individual, whether the compensation is denominated as wages, salary, commission, bonus, pay, allowances, or otherwise (including severance pay, sick pay, and incentive pay);

(ii) periodic benefits (including a periodic benefit as defined in section 428(h)(3) of this title) or other payments—

(I) under the insurance system established by subchapter II of this chapter;

(II) under any other system or fund established by the United States which provides for the payment of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, or similar amounts payable on account of personal services performed by the individual or any other individual;

(III) as compensation for death under any Federal program;

(IV) under any Federal program established to provide ''black lung'' benefits; or

(V) by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation;

(iii) worker's compensation benefits paid or payable under Federal or State law;

(iv) benefits paid or payable under the Railroad Retirement System,[2] and

(v) special benefits for certain World War II veterans payable under subchapter VIII of this chapter; but

(B) do not include any payment—

(i) by way of reimbursement or otherwise, to defray expenses incurred by the individual in carrying out duties associated with the employment of the individual;

(ii) as allowances for members of the uniformed services payable pursuant to chapter 7 of title 37, as prescribed by the Secretaries concerned (defined by section 101(5) of title 37) as necessary for the efficient performance of duty; or

(iii) of periodic benefits under title 38, except as provided in subparagraph (A)(ii)(V).

(2) Certain amounts excluded

In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

(A) are owed by the individual to the United States;

(B) are required by law to be, and are, deducted from the remuneration or other payment involved, including Federal employment taxes, and fines and forfeitures ordered by court-martial;

(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he was entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1986 may be permitted only when the individual presents evidence of a tax obligation which supports the additional withholding);

(D) are deducted as health insurance premiums;

(E) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage); or

(F) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage).

(i) Definitions

For purposes of this section—

(1) United States

The term ''United States'' includes any department, agency, or instrumentality of the legislative, judicial, or executive branch of the

[1] So in original. The comma probably should be a semicolon.

[2] So in original. The comma probably should be a semicolon.

Federal Government, the United States Postal Service, the Postal Rate Commission, any Federal corporation created by an Act of Congress that is wholly owned by the Federal Government, and the governments of the territories and possessions of the United States.

(2) Child support

The term ''child support'', when used in reference to the legal obligations of an individual to provide such support, means amounts required to be paid under a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages or reimbursement, and which may include other related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief.

(3) Alimony

(A) In general

The term ''alimony'', when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of the individual, and (subject to and in accordance with State law) includes separate maintenance, alimony pendente lite, maintenance, and spousal support, and includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

(B) Exceptions

Such term does not include—

(i) any child support; or

(ii) any payment or transfer of property or its value by an individual to the spouse or a former spouse of the individual in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(4) Private person

The term ''private person'' means a person who does not have sovereign or other special immunity or privilege which causes the person not to be subject to legal process.

(5) Legal process

The term ''legal process'' means any writ, order, summons, or other similar process in the nature of garnishment—

(A) which is issued by—

(i) a court or an administrative agency of competent jurisdiction in any State, territory, or possession of the United States;

(ii) a court or an administrative agency of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor the process; or

(iii) an authorized official pursuant to an order of such a court or an administrative agency of competent jurisdiction or pursuant to State or local law; and

(B) which is directed to, and the purpose of which is to compel, a governmental entity which holds moneys which are otherwise payable to an individual to make a payment from the moneys to another party in order to satisfy a legal obligation of the individual to provide child support or make alimony payments.

(Aug. 14, 1935, ch. 531, title IV, § 459, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2357; amended Pub. L. 95–30, title V, § 501(a), (b), May 23, 1977, 91 Stat. 157; Pub. L. 98–21, title III, § 335(b)(1), Apr. 20, 1983, 97 Stat. 130; Pub. L. 104–193, title III, § 362(a), Aug. 22, 1996, 110 Stat. 2242; Pub. L. 105–33, title V, § 5542(a), (b), Aug. 5, 1997, 111 Stat. 631; Pub. L. 106–169, title II, § 251(b)(3), Dec. 14, 1999, 113 Stat. 1855.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (h)(2)(C), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1999—Subsec. (h)(1)(A)(v). Pub. L. 106–169 added cl. (v).

1997—Subsec. (c)(2)(C). Pub. L. 105–33, § 5542(a), substituted ''withhold available sums in response to the order or process, or answer the interrogatory'' for ''respond to the order, process, or interrogatory''.

Subsec. (h)(1). Pub. L. 105–33, § 5542(b)(1), struck out ''paid or'' after ''moneys'' in introductory provisions.

Subsec. (h)(1)(A)(i). Pub. L. 105–33, § 5542(b)(1), struck out ''paid or'' before ''payable''.

Subsec. (h)(1)(A)(iii). Pub. L. 105–33, § 5542(b)(2)(B)(i), inserted ''or payable'' after ''paid''.

Subsec. (h)(1)(A)(iv). Pub. L. 105–33, § 5542(b)(2)(A), (B)(ii), (C), added cl. (iv).

Subsec. (h)(1)(B)(iii). Pub. L. 105–33, § 5542(b)(3), added cl. (iii).

1996—Pub. L. 104–193 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (f) relating to use of legal process to collect money payable to an individual as remuneration for employment by the United States or the District of Columbia for purpose of enforcing individual's legal obligation to provide child support or make alimony payments.

1983—Subsec. (a). Pub. L. 98–21 inserted reference to section 407 of this title.

1977—Subsec. (a). Pub. L. 95–30, § 501(a), (b)(1), designated existing provisions as subsec. (a) and substituted ''or the District of Columbia (including any agency, subdivision, or instrumentality thereof)'' for ''(including any agency or instrumentality thereof and any wholly owned Federal Corporation)'' and ''as if the United States or the District of Columbia were a private person'' for ''as if the United States were a private person''.

Subsecs. (b) to (f). Pub. L. 95–30, § 501(b)(2), added subsecs. (b) to (f).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 362(d) of Pub. L. 104–193 provided that: ''The amendments made by this section [amending this sec-

tion, section 5520a of Title 5, Government Organization and Employees, and section 1408 of Title 10, Armed Forces, and repealing sections 661 and 662 of this title] shall become effective 6 months after the date of the enactment of this Act [Aug. 22, 1996].''

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EXECUTIVE ORDER NO. 11881

Ex. Ord. No. 11881, Oct. 3, 1975, 40 F.R. 46291, which related to the delegation of authority to issue regulations for the implementation of the provisions of this section, was revoked by Ex. Ord. No. 12105, Dec. 19, 1978, 43 F.R. 59465, set out as a note below.

EX. ORD. NO. 12105. DELEGATION OF AUTHORITY TO PROMULGATE REGULATIONS

Ex. Ord. No. 12105, Dec. 19, 1978, 43 F.R. 59465, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by Section 461(a)(1) of the Social Security Act, as added by Section 501(c) of the Tax Reduction and Simplification Act of 1977 (Public Law 95–30, 91 Stat. 158, 42 U.S.C. 661(a)(1)), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, in order to provide for the enforcement of legal obligations to provide child support or make alimony payments incurred by employees of the Executive branch, it is hereby ordered as follows:

1–1. DELEGATION OF AUTHORITY

1–101. The Office of Personnel Management, in consultation with the Attorney General, the Secretary of Defense with respect to members of the armed forces, and the Mayor of the District of Columbia with respect to employees of the Government thereof, is authorized to promulgate regulations for the uniform implementation of Section 459 of the Social Security Act, as amended (42 U.S.C. 659), hereinafter referred to as the Act.

1–102. The regulations promulgated by the Office of Personnel Management pursuant to this Order shall:

(a) Be applicable to the Executive branch of the Government as defined in Section 461(a)(1) of the Act (42 U.S.C. 661(a)(1)).

(b) Require the appropriate officials of the Executive branch of the Government to take the actions prescribed by Sections 461(b)(1), 461(b)(3)(A) and 461(c) of the Act (42 U.S.C. 661(b)(1), 661(b)(3)(A) and 661(c)).

(c) Require the appropriate officials of the Executive branch of the Government to issue such rules, regulations and directives as are necessary to implement the regulations of the Office of Personnel Management.

1–2. REVOCATIONS

1–201. Executive Order No. 11881 of October 3, 1975 is revoked.

1–202. All regulations, directives, or actions taken by the Office of Personnel Management pursuant to Executive Order No. 11881 of October 3, 1975 shall remain in effect until modified, superseded or revoked by the Office of Personnel Management pursuant to this Order.

JIMMY CARTER.

EX. ORD. NO. 12953. ACTIONS REQUIRED OF ALL EXECUTIVE AGENCIES TO FACILITATE PAYMENT OF CHILD SUPPORT

Ex. Ord. No. 12953, Feb. 27, 1995, 60 F.R. 11013, provided:

Children need and deserve the emotional and financial support of both their parents.

The Federal Government requires States and, through them, public and private employers to take actions necessary to ensure that monies in payment of child support obligations are withheld and transferred to the child's caretaker in an efficient and expeditious manner.

The Federal Government, through its civilian employees and Uniformed Services members, is the Nation's largest single employer and as such should set an example of leadership and encouragement in ensuring that all children are properly supported.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

PART I—PURPOSE

SECTION 101. This executive order: (a) Establishes the executive branch of the Federal Government, through its civilian employees and Uniformed Services members, as a model employer in promoting and facilitating the establishment and enforcement of child support.

(b) Requires all Federal agencies, including the Uniformed Services, to cooperate fully in efforts to establish paternity and child support orders and to enforce the collection of child and medical support in all situations where such actions may be required.

(c) Requires each Federal agency, including the Uniformed Services, to provide information to its employees and members about actions that they should take and services that are available to ensure that their children are provided the support to which they are legally entitled.

PART 2—DEFINITIONS

For purposes of this order:

SEC. 201. ''Federal agency'' means any authority as defined at 5 U.S.C. 105, including the Uniformed Services, as defined in section 202 of this order.

SEC. 202. ''Uniformed Services'' means the Army, Navy, Marine Corps, Air Force, Coast Guard, and the Commissioned Corps of the National Oceanic and Atmospheric Administration, and the Public Health Service.

SEC. 203. ''Child support enforcement'' means any administrative or judicial action by a court or administrative entity of a State necessary to establish paternity or establish a child support order, including a medical support order, and any actions necessary to enforce a child support or medical support order. Child support actions may be brought under the civil or criminal laws of a State and are not limited to actions brought on behalf of the State or individual by State agencies providing services under title IV-D of the Social Security Act, 42 U.S.C. 651 *et seq*.

SEC. 204. ''State'' means any of the fifty States, the District of Columbia, the territories, the possessions, and the Commonwealths of Puerto Rico and of the Mariana Islands.

PART 3—IMMEDIATE ACTIONS TO ENSURE CHILDREN ARE SUPPORTED BY THEIR PARENTS

SEC. 301. *Wage Withholding*. (a) Within 60 days from the date of this order, every Federal agency shall review its procedures for wage withholding under 42 U.S.C. 659 and implementing regulations to ensure that it is in full compliance with the requirements of that section, and shall endeavor, to the extent feasible, to process wage withholding actions consistent with the requirements of 42 U.S.C. 666(b).

(b) Beginning no later than July 1, 1995, the Director of the Office of Personnel Management (OPM) shall publish annually in the Federal Register the list of agents (and their addresses) designated to receive service of withholding notices for Federal employees.

SEC. 302. *Service of Legal Process*. Every Federal agency shall assist in the service of legal process in civil actions pursuant to orders of courts of States to establish paternity and establish or enforce a support obligation by making Federal employees and members of the Uniformed Services stationed outside the United States available for the service of process. Each agency shall designate an official who shall be responsible for facilitating a Federal employee's or member's availability for service of process, regardless of the location of the

employee's workplace or member's duty station. The OPM shall publish a list of these officials annually in the Federal Register, beginning no later than July 1, 1995.

SEC. 303. *Federal Parent Locator*. Every Federal agency shall cooperate with the Federal Parent Locator Service, established under 42 U.S.C. 653, by providing complete, timely and accurate information that will assist in locating noncustodial parents and their employers.

SEC. 304. *Crossmatch for Delinquent Obligors*. (a) The master file of delinquent obligors that each State child support enforcement agency submits to the Internal Revenue Service for Federal income tax refund offset purposes shall be matched at least annually with the payroll or personnel files of Federal agencies in order to determine if there are any Federal employees with child support delinquencies. The list of matches shall be forwarded to the appropriate State child support enforcement agency to determine, in each instance, whether wage withholding or other enforcement actions should be commenced. All matches will be performed in accordance with 5 U.S.C. 552a(*o*)–(u).

(b) All Federal agencies shall inform current and prospective employees that crossmatches are routinely made between Federal personnel records and State records on individuals who owe child support, and inform employees how to initiate voluntary wage withholding requests.

SEC. 305. *Availability of Service*. All Federal agencies shall advise current and prospective employees of services authorized under title IV-D of the Social Security Act [42 U.S.C. 651 et seq.] that are available through the States. At a minimum, information shall be provided annually to current employees through the Employee Assistance Program, or similar programs, and to new employees during routine orientation.

SEC. 306. *Report on Actions Taken*. Within 90 days of the date of this order, all Federal agencies shall report to the Director of the Office of Management and Budget (OMB) on the actions they have taken to comply with this order and any statutory, regulatory, and administrative barriers that hinder them from complying with the requirements of part 3 of this order.

PART 4—ADDITIONAL ACTIONS

SEC. 401. *Additional Review for the Uniformed Services*. (a) In addition to the requirements outlined above, the Secretary of the Department of Defense (DOD) will chair a task force, with participation by the Department of Health and Human Services (HHS), the Department of Commerce, and the Department of Transportation, that shall conduct a full review of current policies and practices within the Uniformed Services to ensure that children of Uniformed Services personnel are provided financial and medical support in the same manner and within the same time frames as is mandated for all other children due such support. This review shall include, but not be limited to, issues related to withholding non-custodial parents' wages, service of legal process, activities to locate parents and their income and assets, release time to attend civil paternity and support proceedings, and health insurance coverage under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). All relevant existing statutes, including the Soldiers[']and Sailors[']Civil Relief Act of 1940 [now Servicemembers Civil Relief Act] [50 App. U.S.C. 501 et seq.], the Uniformed Services Former Spouses[']Protection Act [see Short Title of 1982 Amendment note set out under section 1401 of Title 10, Armed Forces], and the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248, see Tables for classification], shall be reviewed and appropriate legislative modifications shall be identified.

(b) Within 180 days of the date of this order, DOD shall submit to OMB a report based on this review. The report shall recommend additional policy, regulatory and legislative changes that would improve and enhance the Federal Government's commitment to ensuring parental support for all children.

SEC. 402. *Additional Federal Agency Actions*. (a) OPM and HHS shall jointly study and prepare recommendations concerning additional administrative, regulatory, and legislative improvements in the policies and procedures of Federal agencies affecting child support enforcement. Other agencies shall be included in the development of recommendations for specific items as appropriate. The recommendations shall address, among other things:

(i) any changes that would be needed to ensure that Federal employees comply with child support orders that require them to provide health insurance coverage for their children;

(ii) changes needed to ensure that more accurate and up-to-date data about civilian and uniformed personnel who are being sought in conjunction with State paternity or child support actions can be obtained from Federal agencies and their payroll and personnel records, to improve efforts to locate noncustodial parents and their income and assets;

(iii) changes needed for selecting Federal agencies to test and evaluate new approaches to the establishment and enforcement of child support obligations;

(iv) proposals to improve service of process for civilian employees and members of the Uniformed Services stationed outside the United States, including the possibility of serving process by certified mail in establishment and enforcement cases or of designating an agent for service of process that would have the same effect and bind employees to the same extent as actual service upon the employees;

(v) strategies to facilitate compliance with Federal and State child support requirements by quasi-governmental agencies, advisory groups, and commissions; and

(vi) analysis of whether compliance with support orders should be a factor used in defining suitability for Federal employment.

(b) The recommendations are due within 180 days of the date of this order. The recommendations are to be submitted in writing to the Office of Management and Budget.

SEC. 501. *Internal Management*. This order is intended only to improve the internal management of the executive branch with regard to child support enforcement and shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, or any other person.

SEC. 502. *Sovereignty of the United States Government*. This order is intended only to provide that the Federal Government has elected to require Federal agencies to adhere to the same standards as are applicable to all other employers in the Nation and shall not be interpreted as subjecting the Federal Government to any State law or requirement. This order should not be construed as a waiver of the sovereign immunity of the United States Government or of any existing statutory or regulatory provisions, including 42 U.S.C. 659, 662, and 665; 5 CFR Part 581; 42 CFR Part 21, Subpart C; 32 CFR Part 54; and 32 CFR Part 81.

SEC. 503. *Defense and Security*.

This order is not intended to require any action that would compromise the defense or national security interest of the United States.

WILLIAM J. CLINTON.

§ 659a. International support enforcement

(a) Authority for declarations

(1) Declaration

The Secretary of State, with the concurrence of the Secretary of Health and Human Services, is authorized to declare any foreign country (or a political subdivision thereof) to be a foreign reciprocating country if the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to obligees who are residents of the United

States, and such procedures are substantially in conformity with the standards prescribed under subsection (b) of this section.

(2) Revocation

A declaration with respect to a foreign country made pursuant to paragraph (1) may be revoked if the Secretaries of State and Health and Human Services determine that—

(A) the procedures established by the foreign country regarding the establishment and enforcement of duties of support have been so changed, or the foreign country's implementation of such procedures is so unsatisfactory, that such procedures do not meet the criteria for such a declaration; or

(B) continued operation of the declaration is not consistent with the purposes of this part.

(3) Form of declaration

A declaration under paragraph (1) may be made in the form of an international agreement, in connection with an international agreement or corresponding foreign declaration, or on a unilateral basis.

(b) Standards for foreign support enforcement procedures

(1) Mandatory elements

Support enforcement procedures of a foreign country which may be the subject of a declaration pursuant to subsection (a)(1) of this section shall include the following elements:

(A) The foreign country (or political subdivision thereof) has in effect procedures, available to residents of the United States—

(i) for establishment of paternity, and for establishment of orders of support for children and custodial parents; and

(ii) for enforcement of orders to provide support to children and custodial parents, including procedures for collection and appropriate distribution of support payments under such orders.

(B) The procedures described in subparagraph (A), including legal and administrative assistance, are provided to residents of the United States at no cost.

(C) An agency of the foreign country is designated as a Central Authority responsible for—

(i) facilitating support enforcement in cases involving residents of the foreign country and residents of the United States; and

(ii) ensuring compliance with the standards established pursuant to this subsection.

(2) Additional elements

The Secretary of Health and Human Services and the Secretary of State, in consultation with the States, may establish such additional standards as may be considered necessary to further the purposes of this section.

(c) Designation of United States Central Authority

It shall be the responsibility of the Secretary of Health and Human Services to facilitate support enforcement in cases involving residents of the United States and residents of foreign countries that are the subject of a declaration under this section, by activities including—

(1) development of uniform forms and procedures for use in such cases;

(2) notification of foreign reciprocating countries of the State of residence of individuals sought for support enforcement purposes, on the basis of information provided by the Federal Parent Locator Service; and

(3) such other oversight, assistance, and coordination activities as the Secretary may find necessary and appropriate.

(d) Effect on other laws

States may enter into reciprocal arrangements for the establishment and enforcement of support obligations with foreign countries that are not the subject of a declaration pursuant to subsection (a) of this section, to the extent consistent with Federal law.

(Aug. 14, 1935, ch. 531, title IV, § 459A, as added Pub. L. 104–193, title III, § 371(a), Aug. 22, 1996, 110 Stat. 2252.)

EFFECTIVE DATE

For effective date of section, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

§ 660. Civil action to enforce child support obligations; jurisdiction of district courts

The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of Health and Human Services under section 652(a)(8) of this title. A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides.

(Aug. 14, 1935, ch. 531, title IV, § 460, as added Pub. L. 93–647, § 101(a), Jan. 4, 1975, 88 Stat. 2358; amended Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(B)(xi), July 18, 1984, 98 Stat. 1170.)

AMENDMENTS

1984—Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§§ 661, 662. Repealed. Pub. L. 104–193, title III, § 362(b)(1), Aug. 22, 1996, 110 Stat. 2246

Section 661, act Aug. 14, 1935, ch. 531, title IV, § 461, as added May 23, 1977, Pub. L. 95–30, title V, § 501(c), 91 Stat. 158, related to regulations pertaining to garnishments.

Section 662, act Aug. 14, 1935, ch. 531, title IV, § 462, as added May 23, 1977, Pub. L. 95–30, title V, § 501(d), 91 Stat. 159; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(17), 98 Stat. 1167; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095; June 13, 1991, Pub. L. 102–54, § 13(q)(3)(B)(ii), 105 Stat. 279, related to definitions for purposes of section 659 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 6 months after Aug. 22, 1996, see section 362(d) of Pub. L. 104–193, set out as an Effective

Date of 1996 Amendment note under section 659 of this title.

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

§ 663. Use of Federal Parent Locator Service in connection with enforcement or determination of child custody in cases of parental kidnaping of child

(a) Agreements with States for use of Federal Parent Locator Service

The Secretary shall enter into an agreement with every State under which the services of the Federal Parent Locator Service established under section 653 of this title shall be made available to each State for the purpose of determining the whereabouts of any parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody or visitation determination.

(b) Requests from authorized persons for information

An agreement entered into under subsection (a) of this section shall provide that the State agency described in section 654 of this title will, under procedures prescribed by the Secretary in regulations, receive and transmit to the Secretary requests from authorized persons for information as to (or useful in determining) the whereabouts of any parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody or visitation determination.

(c) Information which may be disclosed

Information authorized to be provided by the Secretary under subsection (a), (b), (e), or (f) of this section shall be subject to the same conditions with respect to disclosure as information authorized to be provided under section 653 of this title, and a request for information by the Secretary under this section shall be considered to be a request for information under section 653 of this title which is authorized to be provided under such section. Only information as to the most recent address and place of employment of any parent or child shall be provided under this section.

(d) "Custody or visitation determination" and "authorized person" defined

For purposes of this section—

(1) the term ''custody or visitation determination'' means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modification;

(2) the term ''authorized person'' means—

(A) any agent or attorney of any State having an agreement under this section, who has the duty or authority under the law of such State to enforce a child custody or visitation determination;

(B) any court having jurisdiction to make or enforce such a child custody or visitation determination, or any agent of such court; and

(C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

(e) Agreement on use of Federal Parent Locator Service with United States Central Authority under Convention on the Civil Aspects of International Child Abduction

The Secretary shall enter into an agreement with the Central Authority designated by the President in accordance with section 11606 of this title, under which the services of the Federal Parent Locator Service established under section 653 of this title shall be made available to such Central Authority upon its request for the purpose of locating any parent or child on behalf of an applicant to such Central Authority within the meaning of section 11602(1) of this title. The Federal Parent Locator Service shall charge no fees for services requested pursuant to this subsection.

(f) Agreement to assist in locating missing children under Federal Parent Locator Service

The Secretary shall enter into an agreement with the Attorney General of the United States, under which the services of the Federal Parent Locator Service established under section 653 of this title shall be made available to the Office of Juvenile Justice and Delinquency Prevention upon its request to locate any parent or child on behalf of such Office for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child, or

(2) making or enforcing a child custody or visitation determination.

The Federal Parent Locator Service shall charge no fees for services requested pursuant to this subsection.

(Aug. 14, 1935, ch. 531, title IV, § 463, as added Pub. L. 96–611, § 9(b), Dec. 28, 1980, 94 Stat. 3572; amended Pub. L. 100–300, § 11, Apr. 29, 1988, 102 Stat. 441; Pub. L. 103–432, title II, § 214(a), (b), Oct. 31, 1994, 108 Stat. 4461; Pub. L. 104–193, title III, §§ 316(e)(1), 395(d)(1)(G), Aug. 22, 1996, 110 Stat. 2215, 2259; Pub. L. 105–33, title V, § 5534(b), Aug. 5, 1997, 111 Stat. 629.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33, § 5534(b)(1)(A), (5), in introductory provisions, substituted ''every State'' for ''any State which is able and willing to do so,'' and ''each State'' for ''such State'' and struck out ''noncustodial'' before ''parent''.

Subsec. (a)(2). Pub. L. 105–33, § 5534(b)(1)(B), inserted ''or visitation'' after ''custody''.

Subsec. (b). Pub. L. 105–33, § 5534(b)(5), struck out ''noncustodial'' before ''parent or child when'' in introductory provisions.

Subsec. (b)(2). Pub. L. 105–33, § 5534(b)(2), inserted ''or visitation'' after ''custody''.

Subsec. (c). Pub. L. 105–33, § 5534(b)(5), struck out ''noncustodial'' before ''parent''.

Subsec. (d)(1). Pub. L. 105–33, § 5534(b)(3)(A), inserted ''or visitation'' before ''determination''.

Subsec. (d)(2)(A), (B). Pub. L. 105–33, § 5534(b)(3)(B), inserted ''or visitation'' after ''custody''.

Subsec. (f)(2). Pub. L. 105–33, § 5534(b)(4), inserted ''or visitation'' after ''custody''.

1996—Subsec. (a). Pub. L. 104–193, §§ 316(e)(1), 395(d)(1)(G), inserted ''Federal'' before ''Parent Locator Service'' and substituted ''noncustodial parent'' for ''absent parent''.

Subsecs. (b), (c). Pub. L. 104–193, § 395(d)(1)(G), substituted ''noncustodial parent'' for ''absent parent''.

Subsecs. (e), (f). Pub. L. 104–193, § 316(e)(1), inserted ''Federal'' before ''Parent Locator Service'' wherever appearing.

1994—Subsec. (c). Pub. L. 103–432, § 214(b), substituted ''subsection (a), (b), (e), or (f) of this section'' for ''subsection (a), (b), or (e) of this section''.

Subsec. (f). Pub. L. 103–432, § 214(a), added subsec. (f).

1988—Subsec. (b). Pub. L. 100–300, § 11(1), substituted ''under subsection (a) of this section'' for ''under this section''.

Subsec. (c). Pub. L. 100–300, § 11(2), substituted ''under subsection (a), (b), or (e) of this section'' for ''under this section''.

Subsec. (e). Pub. L. 100–300, § 11(3), added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 214(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1995.''

EFFECTIVE DATE

Section 9(d) of Pub. L. 96–611 provided that: ''No agreement entered into under section 463 of the Social Security Act [this section] shall become effective before the date on which section 1738A of title 28, United States Code (as added by this title [probably should be ''as added by section 8(a) of this Act'']) becomes effective.''

§ 664. Collection of past-due support from Federal tax refunds

(a) Procedures applicable; distribution

(1) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support which has been assigned to such State pursuant to section 608(a)(3) or section 671(a)(17) of this title, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to the past-due support, shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay such amount to the State agency (together with notice of the individual's home address) for distribution in accordance with section 657 of this title. This subsection may be executed by the disbursing official of the Department of the Treasury.

(2)(A) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support (as that term is defined for purposes of this paragraph under subsection (c) of this section) which such State has agreed to collect under section 654(4)(A)(ii) of this title, and that the State agency has sent notice to such individual in accordance with paragraph (3)(A), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to such past-due support, and shall concurrently send notice to such individual that the withholding has been made, including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund. The Secretary of the Treasury shall pay the amount withheld to the State agency, and the State shall pay to the Secretary of the Treasury any fee imposed by the Secretary of the Treasury to cover the costs of the withholding and any required notification. The State agency shall, subject to paragraph (3)(B), distribute such amount to or on behalf of the child to whom the support was owed in accordance with section 657 of this title. This subsection may be executed by the Secretary of the Department of the Treasury or his designee.

(B) This paragraph shall apply only with respect to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1985.

(3)(A) Prior to notifying the Secretary of the Treasury under paragraph (1) or (2) that an individual owes past-due support, the State shall send notice to such individual that a withholding will be made from any refund otherwise payable to such individual. The notice shall also (i) instruct the individual owing the past-due support of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support, and (ii) provide information, as may be prescribed by the Secretary of Health and Human Services by regulation in consultation with the Secretary of the Treasury, with respect to procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(B) If the Secretary of the Treasury determines that an amount should be withheld under paragraph (1) or (2), and that the refund from which it should be withheld is based upon a joint return, the Secretary of the Treasury shall no-

tify the State that the withholding is being made from a refund based upon a joint return, and shall furnish to the State the names and addresses of each taxpayer filing such joint return. In the case of a withholding under paragraph (2), the State may delay distribution of the amount withheld until the State has been notified by the Secretary of the Treasury that the other person filing the joint return has received his or her proper share of the refund, but such delay may not exceed six months.

(C) If the other person filing the joint return with the named individual owing the past-due support takes appropriate action to secure his or her proper share of a refund from which a withholding was made under paragraph (1) or (2), the Secretary of the Treasury shall pay such share to such other person. The Secretary of the Treasury shall deduct the amount of such payment from amounts subsequently payable to the State agency to which the amount originally withheld from such refund was paid.

(D) In any case in which an amount was withheld under paragraph (1) or (2) and paid to a State, and the State subsequently determines that the amount certified as past-due support was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the State shall pay the excess amount withheld to the named individual thought to have owed the past-due support (or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return).

(b) Regulations; contents, etc.

(1) The Secretary of the Treasury shall issue regulations, approved by the Secretary of Health and Human Services, prescribing the time or times at which States must submit notices of past-due support, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify the minimum amount of past-due support to which the offset procedure established by subsection (a) of this section may be applied, and the fee that a State must pay to reimburse the Secretary of the Treasury for the full cost of applying the offset procedure, and shall provide that the Secretary of the Treasury will advise the Secretary of Health and Human Services, not less frequently than annually, of the States which have furnished notices of past-due support under subsection (a) of this section, the number of cases in each State with respect to which such notices have been furnished, the amount of support sought to be collected under this subsection by each State, and the amount of such collections actually made in the case of each State. Any fee paid to the Secretary of the Treasury pursuant to this subsection may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(2) In the case of withholdings made under subsection (a)(2) of this section, the regulations promulgated pursuant to this subsection shall include the following requirements:

(A) The withholding shall apply only in the case where the State determines that the amount of the past-due support which will be owed at the time the withholding is to be made, based upon the pattern of payment of support and other enforcement actions being pursued to collect the past-due support, is equal to or greater than $500. The State may limit the $500 threshold amount to amounts of past-due support accrued since the time that the State first began to enforce the child support order involved under the State plan, and may limit the application of the withholding to past-due support accrued since such time.

(B) The fee which the Secretary of the Treasury may impose to cover the costs of the withholding and notification may not exceed $25 per case submitted.

(c) "Past-due support" defined

(1) Except as provided in paragraph (2), as used in this part the term ''past-due support'' means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.

(2) For purposes of subsection (a)(2) of this section, the term ''past-due support'' means only past-due support owed to or on behalf of a qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent).

(3) For purposes of paragraph (2), the term ''qualified child'' means a child—

(A) who is a minor; or

(B)(i) who, while a minor, was determined to be disabled under subchapter II or XVI of this chapter; and

(ii) for whom an order of support is in force.

(Aug. 14, 1935, ch. 531, title IV, § 464, as added Pub. L. 97–35, title XXIII, § 2331(a), Aug. 13, 1981, 95 Stat. 860; amended Pub. L. 98–378, §§ 11(d), 21(a)–(c), Aug. 16, 1984, 98 Stat. 1318, 1322–1324; Pub. L. 99–514, § 2, title XVIII, § 1883(b)(8), Oct. 22, 1986, 100 Stat. 2095, 2917; Pub. L. 101–508, title V, § 5011(a), (b), Nov. 5, 1990, 104 Stat. 1388–220; Pub. L. 104–134, title III, § 31001(v)(2), Apr. 26, 1996, 110 Stat. 1321–375; Pub. L. 104–193, title III, § 302(b)(1), Aug. 22, 1996, 110 Stat. 2204; Pub. L. 105–33, title V, §§ 5513(a)(4), 5531(b), 5532(i)(1), Aug. 5, 1997, 111 Stat. 620, 626, 627.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–33, § 5513(a)(4), substituted ''section 608(a)(3)'' for ''section 602(a)(26)''.

Subsec. (a)(2)(A). Pub. L. 105–33, § 5531(b), substituted ''section 654(4)(A)(ii)'' for ''section 654(6)'' in first sentence.

Pub. L. 105–33, § 5532(i)(1), inserted ''in accordance with section 657 of this title'' after ''owed'' in penultimate sentence.

1996—Subsec. (a)(1). Pub. L. 104–134, § 31001(v)(2)(1), inserted at end ''This subsection may be executed by the disbursing official of the Department of the Treasury.''

Pub. L. 104–193 substituted ''section 657'' for ''section 657(b)(4) or (d)(3)''.

Subsec. (a)(2)(A). Pub. L. 104–134, § 31001(v)(2)(2), inserted at end ''This subsection may be executed by the

Secretary of the Department of the Treasury or his designee.''

1990—Subsec. (a)(2)(B). Pub. L. 101–508, §5011(a), struck out '', and before January 1, 1991'' after ''1985''.

Subsec. (c)(2). Pub. L. 101–508, §5011(b)(1), substituted ''qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent)'' for ''minor child''.

Subsec. (c)(3). Pub. L. 101–508, §5011(b)(2), added par. (3).

1986—Subsec. (a)(2)(B). Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(2)(A). Pub. L. 99–514, §1883(b)(8), substituted ''threshold'' for ''threshhold''.

1984—Subsec. (a). Pub. L. 98–378, §21(a), (b)(1), designated existing provisions as par. (1), substituted ''shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay'' for ''and pay'', and added pars. (2) and (3).

Pub. L. 98–378, §11(d), inserted ''or section 671(a)(17)'' and substituted ''section 657(b)(4) or (d)(3)'' for ''section 657(b)(3)''.

Subsec. (b)(1). Pub. L. 98–378, §21(b)(2), designated existing provisions as par. (1), substituted ''The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify'' for ''The regulations shall specify'', substituted ''and shall provide'' for ''and provide'', inserted provision that any fee paid to the Secretary of the Treasury pursuant to subsec. (b) may be used to reimburse appropriations which bore all or part of the cost of applying such procedure, and added par. (2).

Subsec. (c)(1). Pub. L. 98–378, §21(c), designated existing provisions as par. (1), inserted reference to par. (2), and added par. (2).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5513(a)(4) of Pub. L. 105–33 effective as if included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 108 became law, see section 5518(b) of Pub. L. 105–33, set out as a note under section 652 of this title.

Amendment by sections 5531(b) and 5532(i)(1) of Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, or earlier at the State's option, see section 302(c) of Pub. L. 104–193, set out as a note under section 657 of this title.

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5011(c) of Pub. L. 101–508 provided that: ''The amendments made by subsection (b) [amending this section] shall take effect on January 1, 1991.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 11(d) of Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

Amendment by section 21(a)–(c) of Pub. L. 98–378 applicable with respect to refunds payable under section 6402 of Title 26, Internal Revenue Code, after Dec. 31, 1985, see section 21(g) of Pub. L. 98–378, set out as a note under section 6103 of Title 26.

EFFECTIVE DATE

Section effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 651 of this title.

§ 665. Allotments from pay for child and spousal support owed by members of uniformed services on active duty

(a) Mandatory allotment; notice upon failure to make; amount of allotment; adjustment or discontinuance; consultation

(1) In any case in which child support payments or child and spousal support payments are owed by a member of one of the uniformed services (as defined in section 101(3) of title 37) on active duty, such member shall be required to make allotments from his pay and allowances (under chapter 13 of title 37) as payment of such support, when he has failed to make periodic payments under a support order that meets the criteria specified in section 1673(b)(1)(A) of title 15 and the resulting delinquency in such payments is in a total amount equal to the support payable for two months or longer. Failure to make such payments shall be established by notice from an authorized person (as defined in subsection (b) of this section) to the designated official in the appropriate uniformed service. Such notice (which shall in turn be given to the affected member) shall also specify the person to whom the allotment is to be payable. The amount of the allotment shall be the amount necessary to comply with the order (which, if the order so provides, may include arrearages as well as amounts for current support), except that the amount of the allotment, together with any other amounts withheld for support from the wages of the member, as a percentage of his pay from the uniformed service, shall not exceed the limits prescribed in sections[1] 1673(b) and (c) of title 15. An allotment under this subsection shall be adjusted or discontinued upon notice from the authorized person.

(2) Notwithstanding the preceding provisions of this subsection, no action shall be taken to require an allotment from the pay and allowances of any member of one of the uniformed services under such provisions (A) until such member has had a consultation with a judge advocate of the service involved (as defined in section 801(13) of title 10), or with a law specialist (as defined in section 801(11) of such title) in the case of the Coast Guard, or with a legal officer designated by the Secretary concerned (as defined in section 101(5) of title 37) in any other case, in person, to discuss the legal and other factors involved with respect to the member's support obligation and his failure to make payments thereon, or (B) until 30 days have elapsed after the notice described in the second sentence of paragraph (1) is given to the affected member in any case where it has not been possible, despite continuing good faith efforts, to arrange such a consultation.

(b) "Authorized person" defined

For purposes of this section the term ''authorized person'' with respect to any member of the uniformed services means—

[1] So in original. Probably should be ''section''.

(1) any agent or attorney of a State having in effect a plan approved under this part who has the duty or authority under such plan to seek to recover any amounts owed by such member as child or child and spousal support (including, when authorized under the State plan, any official of a political subdivision); and

(2) the court which has authority to issue an order against such member for the support and maintenance of a child, or any agent of such court.

(c) Regulations

The Secretary of Defense, in the case of the Army, Navy, Air Force, and Marine Corps, and the Secretary concerned (as defined in section 101(5) of title 37) in the case of each of the other uniformed services, shall each issue regulations applicable to allotments to be made under this section, designating the officials to whom notice of failure to make support payments, or notice to discontinue or adjust an allotment, should be given, prescribing the form and content of the notice and specifying any other rules necessary for such Secretary to implement this section.

(Aug. 14, 1935, ch. 531, title IV, § 465, as added Pub. L. 97–248, title I, § 172(a), Sept. 3, 1982, 96 Stat. 401.)

EFFECTIVE DATE

Section 172(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [enacting this section] shall become effective on October 1, 1982.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

(1)(A) Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan.

(B) Procedures under which the income of a person with a support obligation imposed by a support order issued (or modified) in the State before January 1, 1994, if not otherwise subject to withholding under subsection (b) of this section, shall become subject to withholding as provided in subsection (b) of this section if arrearages occur, without the need for a judicial or administrative hearing.

(2) Expedited administrative and judicial procedures (including the procedures specified in subsection (c) of this section) for establishing paternity and for establishing, modifying, and enforcing support obligations. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement or paternity establishment within the political subdivision (in accordance with the general rule for exemptions under subsection (d) of this section).

(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—

(A) any refund of State income tax which would otherwise be payable to a noncustodial parent will be reduced, after notice has been sent to that noncustodial parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such noncustodial parent;

(B) the amount by which such refund is reduced shall be distributed in accordance with section 657 of this title in the case of overdue support assigned to a State pursuant to section 608(a)(3) or 671(a)(17) of this title, or, in any other case, shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

(C) notice of the noncustodial parent's social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

(4) LIENS.—Procedures under which—

(A) liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State; and

(B) the State accords full faith and credit to liens described in subparagraph (A) arising in another State, when the State agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the State, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

(5) PROCEDURES CONCERNING PATERNITY ESTABLISHMENT.—

(A) ESTABLISHMENT PROCESS AVAILABLE FROM BIRTH UNTIL AGE 18.—

(i) Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age.

(ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed

because a statute of limitations of less than 18 years was then in effect in the State.

(B) PROCEDURES CONCERNING GENETIC TESTING.—

(i) GENETIC TESTING REQUIRED IN CERTAIN CONTESTED CASES.—Procedures under which the State is required, in a contested paternity case (unless otherwise barred by State law) to require the child and all other parties (other than individuals found under section 654(29) of this title to have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party—

(I) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(II) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(ii) OTHER REQUIREMENTS.—Procedures which require the State agency, in any case in which the agency orders genetic testing—

(I) to pay costs of such tests, subject to recoupment (if the State so elects) from the alleged father if paternity is established; and

(II) to obtain additional testing in any case if an original test result is contested, upon request and advance payment by the contestant.

(C) VOLUNTARY PATERNITY ACKNOWLEDGMENT.—

(i) SIMPLE CIVIL PROCESS.—Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknowledgment of paternity, the mother and the putative father must be given notice, orally, or through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities that arise from, signing the acknowledgment.

(ii) HOSPITAL-BASED PROGRAM.—Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child.

(iii) PATERNITY ESTABLISHMENT SERVICES.—

(I) STATE-OFFERED SERVICES.—Such procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.

(II) REGULATIONS.—

(aa) SERVICES OFFERED BY HOSPITALS AND BIRTH RECORD AGENCIES.—The Secretary shall prescribe regulations governing voluntary paternity establishment services offered by hospitals and birth record agencies.

(bb) SERVICES OFFERED BY OTHER ENTITIES.—The Secretary shall prescribe regulations specifying the types of other entities that may offer voluntary paternity establishment services, and governing the provision of such services, which shall include a requirement that such an entity must use the same notice provisions used by, use the same materials used by, provide the personnel providing such services with the same training provided by, and evaluate the provision of such services in the same manner as the provision of such services is evaluated by, voluntary paternity establishment programs of hospitals and birth record agencies.

(iv) USE OF PATERNITY ACKNOWLEDGMENT AFFIDAVIT.—Such procedures must require the State to develop and use an affidavit for the voluntary acknowledgment of paternity which includes the minimum requirements of the affidavit specified by the Secretary under section 652(a)(7) of this title for the voluntary acknowledgment of paternity, and to give full faith and credit to such an affidavit signed in any other State according to its procedures.

(D) STATUS OF SIGNED PATERNITY ACKNOWLEDGMENT.—

(i) INCLUSION IN BIRTH RECORDS.—Procedures under which the name of the father shall be included on the record of birth of the child of unmarried parents only if—

(I) the father and mother have signed a voluntary acknowledgment of paternity; or

(II) a court or an administrative agency of competent jurisdiction has issued an adjudication of paternity.

Nothing in this clause shall preclude a State agency from obtaining an admission of paternity from the father for submission in a judicial or administrative proceeding, or prohibit the issuance of an order in a judicial or administrative proceeding which bases a legal finding of paternity on an admission of paternity by the father and any other additional showing required by State law.

(ii) LEGAL FINDING OF PATERNITY.—Procedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of—

(I) 60 days; or

(II) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.

(iii) CONTEST.—Procedures under which, after the 60-day period referred to in clause (ii), a signed voluntary acknowledg-

ment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

(E) BAR ON ACKNOWLEDGMENT RATIFICATION PROCEEDINGS.—Procedures under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

(F) ADMISSIBILITY OF GENETIC TESTING RESULTS.—Procedures—

(i) requiring the admission into evidence, for purposes of establishing paternity, of the results of any genetic test that is—

(I) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary; and

(II) performed by a laboratory approved by such an accreditation body;

(ii) requiring an objection to genetic testing results to be made in writing not later than a specified number of days before any hearing at which the results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of the results); and

(iii) making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

(G) PRESUMPTION OF PATERNITY IN CERTAIN CASES.—Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

(H) DEFAULT ORDERS.—Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law.

(I) NO RIGHT TO JURY TRIAL.—Procedures providing that the parties to an action to establish paternity are not entitled to a trial by jury.

(J) TEMPORARY SUPPORT ORDER BASED ON PROBABLE PATERNITY IN CONTESTED CASES.—Procedures which require that a temporary order be issued, upon motion by a party, requiring the provision of child support pending an administrative or judicial determination of parentage, if there is clear and convincing evidence of paternity (on the basis of genetic tests or other evidence).

(K) PROOF OF CERTAIN SUPPORT AND PATERNITY ESTABLISHMENT COSTS.—Procedures under which bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

(L) STANDING OF PUTATIVE FATHERS.—Procedures ensuring that the putative father has a reasonable opportunity to initiate a paternity action.

(M) FILING OF ACKNOWLEDGMENTS AND ADJUDICATIONS IN STATE REGISTRY OF BIRTH RECORDS.—Procedures under which voluntary acknowledgments and adjudications of paternity by judicial or administrative processes are filed with the State registry of birth records for comparison with information in the State case registry.

(6) Procedures which require that a noncustodial parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such noncustodial parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

(7) REPORTING ARREARAGES TO CREDIT BUREAUS.—

(A) IN GENERAL.—Procedures (subject to safeguards pursuant to subparagraph (B)) requiring the State to report periodically to consumer reporting agencies (as defined in section 1681a(f) of title 15) the name of any noncustodial parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent.

(B) SAFEGUARDS.—Procedures ensuring that, in carrying out subparagraph (A), information with respect to a noncustodial parent is reported—

(i) only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information; and

(ii) only to an entity that has furnished evidence satisfactory to the State that the entity is a consumer reporting agency (as so defined).

(8)(A) Procedures under which all child support orders not described in subparagraph (B) will include provision for withholding from income, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

(i) The income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such income shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

(ii) The requirements of subsection (b)(1) of this section (which shall apply in the case of each noncustodial parent against whom a

support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b) of this section, where applicable.

(iv) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

(B) entitled as a judgment to full faith and credit in such State and in any other State, and

(C) not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

(10) REVIEW AND ADJUSTMENT OF SUPPORT ORDERS UPON REQUEST.—

(A) 3-YEAR CYCLE.—

(i) IN GENERAL.—Procedures under which every 3 years (or such shorter cycle as the State may determine), upon the request of either parent, or, if there is an assignment under part A of this subchapter, upon the request of the State agency under the State plan or of either parent, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved—

(I) review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(II) apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(III) use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.

(ii) OPPORTUNITY TO REQUEST REVIEW OF ADJUSTMENT.—If the State elects to conduct the review under subclause (II) or (III) of clause (i), procedures which permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 667(a) of this title.

(iii) NO PROOF OF CHANGE IN CIRCUMSTANCES NECESSARY IN 3-YEAR CYCLE REVIEW.—Procedures which provide that any adjustment under clause (i) shall be made without a requirement for proof or showing of a change in circumstances.

(B) PROOF OF SUBSTANTIAL CHANGE IN CIRCUMSTANCES NECESSARY IN REQUEST FOR REVIEW OUTSIDE 3-YEAR CYCLE.—Procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under clause (i), the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title.

(C) NOTICE OF RIGHT TO REVIEW.—Procedures which require the State to provide notice not less than once every 3 years to the parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order pursuant to this paragraph. The notice may be included in the order.

(11) Procedures under which a State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

(12) LOCATOR INFORMATION FROM INTERSTATE NETWORKS.—Procedures to ensure that all Federal and State agencies conducting activities under this part have access to any system used by the State to locate an individual for purposes relating to motor vehicles or law enforcement.

(13) RECORDING OF SOCIAL SECURITY NUMBERS IN CERTAIN FAMILY MATTERS.—Procedures requiring that the social security number of—

(A) any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application;

(B) any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment be placed in the records relating to the matter; and

(C) any individual who has died be placed in the records relating to the death and be recorded on the death certificate.

For purposes of subparagraph (A), if a State allows the use of a number other than the social security number to be used on the face of the document while the social security number is kept on file at the agency, the State shall so advise any applicants.

(14) HIGH-VOLUME, AUTOMATED ADMINISTRATIVE ENFORCEMENT IN INTERSTATE CASES.—

(A) IN GENERAL.—Procedures under which—

(i) the State shall use high-volume automated administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another State to enforce support orders, and shall promptly report the results of such enforcement procedure to the requesting State;

(ii) the State may, by electronic or other means, transmit to another State a request for assistance in enforcing support orders through high-volume, automated administrative enforcement, which request—

(I) shall include such information as will enable the State to which the request is transmitted to compare the information about the cases to the information in the data bases of the State; and

(II) shall constitute a certification by the requesting State—

(aa) of the amount of support under an order the payment of which is in arrears; and

(bb) that the requesting State has complied with all procedural due process requirements applicable to each case;

(iii) if the State provides assistance to another State pursuant to this paragraph with respect to a case, neither State shall consider the case to be transferred to the caseload of such other State; and

(iv) the State shall maintain records of—

(I) the number of such requests for assistance received by the State;

(II) the number of cases for which the State collected support in response to such a request; and

(III) the amount of such collected support.

(B) HIGH-VOLUME AUTOMATED ADMINISTRATIVE ENFORCEMENT.—In this part, the term ''high-volume automated administrative enforcement'', in interstate cases, means, on request of another State, the identification by a State, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other States, and the seizure of such assets by the State, through levy or other appropriate processes.

(15) PROCEDURES TO ENSURE THAT PERSONS OWING OVERDUE SUPPORT WORK OR HAVE A PLAN FOR PAYMENT OF SUCH SUPPORT.—Procedures under which the State has the authority, in any case in which an individual owes overdue support with respect to a child receiving assistance under a State program funded under part A of this subchapter, to issue an order or to request that a court or an administrative process established pursuant to State law issue an order that requires the individual to—

(A) pay such support in accordance with a plan approved by the court, or, at the option of the State, a plan approved by the State agency administering the State program under this part; or

(B) if the individual is subject to such a plan and is not incapacitated, participate in such work activities (as defined in section 607(d) of this title) as the court, or, at the option of the State, the State agency administering the State program under this part, deems appropriate.

(16) AUTHORITY TO WITHHOLD OR SUSPEND LICENSES.—Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational and sporting licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

(17) FINANCIAL INSTITUTION DATA MATCHES.—

(A) IN GENERAL.—Procedures under which the State agency shall enter into agreements with financial institutions doing business in the State—

(i) to develop and operate, in coordination with such financial institutions, and the Federal Parent Locator Service in the case of financial institutions doing business in two or more States, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the State by name and social security number or other taxpayer identification number; and

(ii) in response to a notice of lien or levy, encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien pursuant to paragraph (4).

(B) REASONABLE FEES.—The State agency may pay a reasonable fee to a financial institution for conducting the data match provided for in subparagraph (A)(i), not to exceed the actual costs incurred by such financial institution.

(C) LIABILITY.—A financial institution shall not be liable under any Federal or State law to any person—

(i) for any disclosure of information to the State agency under subparagraph (A)(i);

(ii) for encumbering or surrendering any assets held by such financial institution in response to a notice of lien or levy issued by the State agency as provided for in subparagraph (A)(ii); or

(iii) for any other action taken in good faith to comply with the requirements of subparagraph (A).

(D) DEFINITIONS.—For purposes of this paragraph—

(i) FINANCIAL INSTITUTION.—The term ''financial institution'' has the meaning given to such term by section 669A(d)(1) of this title.

(ii) ACCOUNT.—The term ''account'' means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(18) ENFORCEMENT OF ORDERS AGAINST PATERNAL OR MATERNAL GRANDPARENTS.—Procedures under which, at the State's option, any child support order enforced under this part with respect to a child of minor parents, if the custodial parent of such child is receiving assistance under the State program under part A of this subchapter, shall be enforceable, jointly and severally, against the parents of the noncustodial parent of such child.

(19) HEALTH CARE COVERAGE.—Procedures under which—

(A) effective as provided in section 401(c)(3) of the Child Support Performance and Incentive Act of 1998, all child support orders enforced pursuant to this part which include a provision for the health care coverage of the child are enforced, where appropriate, through the use of the National Medical Support Notice promulgated pursuant to section 401(b) of the Child Support Performance and Incentive Act of 1998 (and referred to in section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1169(a)(5)(C)] in connection with group health plans covered under title I of such Act [29 U.S.C. 1001 et seq.], in section 401(e)(3)(C) of the Child Support Performance and Incentive Act of 1998 in connection with State or local group health plans, and in section 401(f)(5)(C) of such Act in connection with church group health plans);

(B) unless alternative coverage is allowed for in any order of the court (or other entity issuing the child support order), in any case in which a noncustodial parent is required under the child support order to provide such health care coverage and the employer of such noncustodial parent is known to the State agency—

(i) the State agency uses the National Medical Support Notice to transfer notice of the provision for the health care coverage of the child to the employer;

(ii) within 20 business days after the date of the National Medical Support Notice, the employer is required to transfer the Notice, excluding the severable employer withholding notice described in section 401(b)(2)(C) of the Child Support Performance and Incentive Act of 1998, to the appropriate plan providing any such health care coverage for which the child is eligible;

(iii) in any case in which the noncustodial parent is a newly hired employee entered in the State Directory of New Hires pursuant to section 653a(e) of this title, the State agency provides, where appropriate, the National Medical Support Notice, together with an income withholding notice issued pursuant to subsection (b) of this section, within two days after the date of the entry of such employee in such Directory; and

(iv) in any case in which the employment of the noncustodial parent with any employer who has received a National Medical Support Notice is terminated, such employer is required to notify the State agency of such termination; and

(C) any liability of the noncustodial parent to such plan for employee contributions which are required under such plan for enrollment of the child is effectively subject to appropriate enforcement, unless the noncustodial parent contests such enforcement based on a mistake of fact.

Notwithstanding section 654(20)(B) of this title, the procedures which are required under paragraphs (3), (4), (6), (7), and (15) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the noncustodial parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

(b) Withholding from income of amounts payable as support

The procedures referred to in subsection (a)(1)(A) of this section (relating to the withholding from income of amounts payable as support) must provide for the following:

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's income must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 1673(b) of title 15. If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 1673(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for assistance under a State program funded under part A of this subchapter) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

(3)(A) The income of a noncustodial parent shall be subject to such withholding, regardless of whether support payments by such parent are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after October 13, 1988, on the effective date of the order; except that such income shall not be subject to such withholding under this subparagraph in any case where (i) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement.

(B) The income of a noncustodial parent shall become subject to such withholding, in the case of income not subject to withholding under subparagraph (A), on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of—

(i) the date as of which the noncustodial parent requests that such withholding begin,

(ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or

(iii) such earlier date as the State may select.

(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and the State must send notice to each noncustodial parent to whom paragraph (1) applies—

(i) that the withholding has commenced; and

(ii) of the procedures to follow if the noncustodial parent desires to contest such withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact.

(B) The notice under subparagraph (A) of this paragraph shall include the information provided to the employer under paragraph (6)(A).

(5) Such withholding must be administered by the State through the State disbursement unit established pursuant to section 654b of this title, in accordance with the requirements of section 654b of this title.

(6)(A)(i) The employer of any noncustodial parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such noncustodial parent's income the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the State disbursement unit within 7 business days after the date the amount would (but for this subsection) have been paid or credited to the employee, for distribution in accordance with this part. The employer shall withhold funds as directed in the notice, except that when an employer receives an income withholding order issued by another State, the employer shall apply the income withholding law of the State of the obligor's principal place of employment in determining—

(I) the employer's fee for processing an income withholding order;

(II) the maximum amount permitted to be withheld from the obligor's income;

(III) the time periods within which the employer must implement the income withholding order and forward the child support payment;

(IV) the priorities for withholding and allocating income withheld for multiple child support obligees; and

(V) any withholding terms or conditions not specified in the order.

An employer who complies with an income withholding notice that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice.

(ii) The notice given to the employer shall be in a standard format prescribed by the Secretary, and contain only such information as may be necessary for the employer to comply with the withholding order.

(iii) As used in this subparagraph, the term ''business day'' means a day on which State offices are open for regular business.

(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

(C) The employer must be held liable to the State for any amount which such employer fails to withhold from income due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(D) Provision must be made for the imposition of a fine against any employer who—

(i) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer; or

(ii) fails to withhold support from income or to pay such amounts to the State disbursement unit in accordance with this subsection.

(7) Support collection under this subsection must be given priority over any other legal process under State law against the same income.

(8) For purposes of subsection (a) of this section and this subsection, the term ''income''

means any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program, and interest.

(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by noncustodial parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

(10) Provision must be made for terminating withholding.

(11) Procedures under which the agency administering the State plan approved under this part may execute a withholding order without advance notice to the obligor, including issuing the withholding order through electronic means.

(c) Expedited procedures

The procedures specified in this subsection are the following:

(1) Administrative action by State agency

Procedures which give the State agency the authority to take the following actions relating to establishment of paternity or to establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of State agencies of other States to take the following actions:

(A) Genetic testing

To order genetic testing for the purpose of paternity establishment as provided in subsection (a)(5) of this section.

(B) Financial or other information

To subpoena any financial or other information needed to establish, modify, or enforce a support order, and to impose penalties for failure to respond to such a subpoena.

(C) Response to State agency request

To require all entities in the State (including for-profit, nonprofit, and governmental employers) to provide promptly, in response to a request by the State agency of that or any other State administering a program under this part, information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, and to sanction failure to respond to any such request.

(D) Access to information contained in certain records

To obtain access, subject to safeguards on privacy and information security, and subject to the nonliability of entities that afford such access under this subparagraph, to information contained in the following records (including automated access, in the case of records maintained in automated data bases):

(i) Records of other State and local government agencies, including—

(I) vital statistics (including records of marriage, birth, and divorce);

(II) State and local tax and revenue records (including information on residence address, employer, income and assets);

(III) records concerning real and titled personal property;

(IV) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;

(V) employment security records;

(VI) records of agencies administering public assistance programs;

(VII) records of the motor vehicle department; and

(VIII) corrections records.

(ii) Certain records held by private entities with respect to individuals who owe or are owed support (or against or with respect to whom a support obligation is sought), consisting of—

(I) the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized by subparagraph (B); and

(II) information (including information on assets and liabilities) on such individuals held by financial institutions.

(E) Change in payee

In cases in which support is subject to an assignment in order to comply with a requirement imposed pursuant to part A of this subchapter, part E of this subchapter, or section 1396k of this title, or to a requirement to pay through the State disbursement unit established pursuant to section 654b of this title, upon providing notice to obligor and obligee, to direct the obligor or other payor to change the payee to the appropriate government entity.

(F) Income withholding

To order income withholding in accordance with subsections (a)(1)(A) and (b) of this section.

(G) Securing assets

In cases in which there is a support arrearage, to secure assets to satisfy any current support obligation and the arrearage by—

(i) intercepting or seizing periodic or lump-sum payments from—

(I) a State or local agency, including unemployment compensation, workers' compensation, and other benefits; and

(II) judgments, settlements, and lotteries;

(ii) attaching and seizing assets of the obligor held in financial institutions;

(iii) attaching public and private retirement funds; and

(iv) imposing liens in accordance with subsection (a)(4) of this section and, in appropriate cases, to force sale of property and distribution of proceeds.

(H) Increase monthly payments

For the purpose of securing overdue support, to increase the amount of monthly support payments to include amounts for arrearages, subject to such conditions or limitations as the State may provide.

Such procedures shall be subject to due process safeguards, including (as appropriate) requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal.

(2) Substantive and procedural rules

The expedited procedures required under subsection (a)(2) of this section shall include the following rules and authority, applicable with respect to all proceedings to establish paternity or to establish, modify, or enforce support orders:

(A) Locator information; presumptions concerning notice

Procedures under which—

(i) each party to any paternity or child support proceeding is required (subject to privacy safeguards) to file with the State case registry upon entry of an order, and to update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of employer; and

(ii) in any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the court or administrative agency of competent jurisdiction shall deem State due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the State case registry pursuant to clause (i).

(B) Statewide jurisdiction

Procedures under which—

(i) the State agency and any administrative or judicial tribunal with authority to hear child support and paternity cases exerts statewide jurisdiction over the parties; and

(ii) in a State in which orders are issued by courts or administrative tribunals, a case may be transferred between local jurisdictions in the State without need for any additional filing by the petitioner, or service of process upon the respondent, to retain jurisdiction over the parties.

(3) Coordination with ERISA

Notwithstanding subsection (d) of section 514 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1144(d)] (relating to effect on other laws), nothing in this subsection shall be construed to alter, amend, modify, invalidate, impair, or supersede subsections (a), (b), and (c) of such section 514 [29 U.S.C. 1144(a)–(c)] as it applies with respect to any procedure referred to in paragraph (1) and any expedited procedure referred to in paragraph (2), except to the extent that such procedure would be consistent with the requirements of section 206(d)(3) of such Act [29 U.S.C. 1056(d)(3)] (relating to qualified domestic relations orders) or the requirements of section 609(a) of such Act [29 U.S.C. 1169(a)] (relating to qualified medical child support orders) if the reference in such section 206(d)(3) to a domestic relations order and the reference in such section 609(a) to a medical child support order were a reference to a support order referred to in paragraphs (1) and (2) relating to the same matters, respectively.

(d) Exemption of States

If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

(e) "Overdue support" defined

For purposes of this section, the term ''overdue support'' means the amount of a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the noncustodial parent's spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of section 654(4) of this title. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply independently to each procedure specified under this section.

(f) Uniform Interstate Family Support Act

In order to satisfy section 654(20)(A) of this title, on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws.

(g) Laws voiding fraudulent transfers

In order to satisfy section 654(20)(A) of this title, each State must have in effect—

(1)(A) the Uniform Fraudulent Conveyance Act of 1981;

(B) the Uniform Fraudulent Transfer Act of 1984; or

(C) another law, specifying indicia of fraud which create a prima facie case that a debtor transferred income or property to avoid payment to a child support creditor, which the Secretary finds affords comparable rights to child support creditors; and

(2) procedures under which, in any case in which the State knows of a transfer by a child support debtor with respect to which such a prima facie case is established, the State must—

(A) seek to void such transfer; or

(B) obtain a settlement in the best interests of the child support creditor.

(Aug. 14, 1935, ch. 531, title IV, § 466, as added Pub. L. 98–378, § 3(b), Aug. 16, 1984, 98 Stat. 1306; amended Pub. L. 99–509, title IX, § 9103(a), Oct. 21, 1986, 100 Stat. 1973; Pub. L. 100–485, title I, §§ 101(a), (b), 103(c), 111(b), (e), Oct. 13, 1988, 102 Stat. 2344–2346, 2349, 2350; Pub. L. 100–647, title VIII, § 8105(4), Nov. 10, 1988, 102 Stat. 3797; Pub. L. 103–66, title XIII, § 13721(b), Aug. 10, 1993, 107 Stat. 659; Pub. L. 103–432, title II, § 212(a), Oct. 31, 1994, 108 Stat. 4460; Pub. L. 104–193, title I, § 108(c)(14), (15), title III, §§ 301(c)(3), (4), 314, 315, 317, 321, 323, 325(a), 331(a), 351, 364, 365, 367–369, 372, 373, 382, 395(d)(1)(H), (2)(D), Aug. 22, 1996, 110 Stat. 2166, 2200, 2212, 2214, 2220–2222, 2224, 2227, 2239, 2249–2251, 2254, 2255, 2257, 2259, 2260; Pub. L. 105–33, title V, §§ 5532(i)(2), 5536–5539, 5544, 5550(a), 5551, 5556(a), (e), Aug. 5, 1997, 111 Stat. 627, 629–631, 633, 634, 637; Pub. L. 105–200, title IV, §§ 401(c)(1), 404(a), 406(a), July 16, 1998, 112 Stat. 661, 671; Pub. L. 106–169, title IV, § 401(f), (m), (n), Dec. 14, 1999, 113 Stat. 1858, 1859.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in subsecs. (a)(10)(A)(i), (15), (18), (b)(2), and (c)(1)(E), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

Sections 401(b), 401(c)(3), and 401(f)(5)(C) of the Child Support Performance and Incentive Act of 1998, Pub. L. 105–200, referred to in subsec. (a)(19)(A), (B)(ii), are set out as notes under section 651 of this title, section 652 of this title, and section 1169 of Title 29, Labor, respectively. Section 401(e)(3)(C) of the Act, referred to in subsec. (a)(19)(A), probably means section 401(e) or 401(e)(3) of the Act, which is set out in a note under section 1169 of Title 29. Section 401(e)(3) of Pub. L. 105–200 does not contain a subpar. (C).

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(19)(A), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title I of the Act is classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

CODIFICATION

October 13, 1988, referred to in subsec. (b)(3)(A), was in the original ''the date of enactment of this paragraph'', which was translated as meaning the date of enactment of Pub. L. 100–485, which amended par. (3) of this section generally, to reflect the probable intent of Congress.

AMENDMENTS

1999—Subsec. (a)(7)(A). Pub. L. 106–169, § 401(m), substituted ''1681a(f) of title 15)'' for ''1681a(f) of title 15''.

Subsec. (b)(6)(A)(i). Pub. L. 106–169, § 401(n), substituted ''State of the obligor's'' for ''state of the obligor's'' in introductory provisions.

Subsec. (c)(2)(A)(i). Pub. L. 106–169, § 401(f), substituted ''social security'' for ''Social Security''.

1998—Subsec. (a)(14)(B). Pub. L. 105–200, § 404(a), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''In this part, the term 'high-volume automated administrative enforcement' means the use of automatic data processing to search various State data bases, including license records, employment service data, and State new hire registries, to determine whether information is available regarding a parent who owes a child support obligation.''

Subsec. (a)(17)(A)(i). Pub. L. 105–200, § 406(a), inserted ''and the Federal Parent Locator Service in the case of financial institutions doing business in two or more States,'' before ''a data match system''.

Subsec. (a)(19). Pub. L. 105–200, § 401(c)(1), amended heading and text of par. (19) generally. Prior to amendment, text read as follows: ''Procedures under which all child support orders enforced pursuant to this part shall include a provision for the health care coverage of the child, and in the case in which a noncustodial parent provides such coverage and changes employment, and the new employer provides health care coverage, the State agency shall transfer notice of the provision to the employer, which notice shall operate to enroll the child in the noncustodial parent's health plan, unless the noncustodial parent contests the notice.''

1997—Subsec. (a)(1)(B). Pub. L. 105–33, § 5556(e), substituted ''January 1, 1994'' for ''October 1, 1996''.

Subsec. (a)(3)(B). Pub. L. 105–33, § 5532(i)(2), substituted ''section 657'' for ''section 657(b)(4) or (d)(3)''.

Subsec. (a)(5)(C)(i). Pub. L. 105–33, § 5539, inserted '', or through the use of video or audio equipment,'' after ''orally''.

Subsec. (a)(13). Pub. L. 105–33, § 5536(2), inserted ''to be used on the face of the document while the social security number is kept on file at the agency'' after ''other than the social security number'' in concluding provisions.

Subsec. (a)(13)(A). Pub. L. 105–33, § 5536(1)(B), inserted ''recreational license,'' after ''occupational license,''.

Pub. L. 105–33, § 5536(1)(A), struck out ''commercial'' before ''driver's license''.

Subsec. (a)(14). Pub. L. 105–33, § 5550(a), amended heading and text of par. (14) generally. Prior to amendment, text consisted of subpars. (A) to (D) relating to administrative enforcement in interstate cases.

Subsec. (a)(15). Pub. L. 105–33, § 5551, amended heading and text of par. (15) generally. Prior to amendment, text related to procedures to ensure that persons owning past-due support work or have a plan for payment of such support.

Subsec. (a)(16). Pub. L. 105–33, § 5544, inserted ''and sporting'' after ''recreational''.

Subsec. (c)(1)(E). Pub. L. 105–33, § 5538(1)(A), inserted '', part E of this subchapter,'' after ''part A of this subchapter''.

Subsec. (c)(1)(F). Pub. L. 105–33, § 5556(a), made technical amendment to reference in original act which appears in text as reference to subsections (a)(1)(A) and (b) of this section.

Subsec. (c)(1)(G). Pub. L. 105–33, § 5538(1)(B), inserted ''any current support obligation and'' after ''to satisfy'' in introductory provisions.

Subsec. (c)(2)(A)(i). Pub. L. 105–33, § 5538(2)(A), struck out ''the tribunal and'' after ''to file with''.

Subsec. (c)(2)(A)(ii). Pub. L. 105–33, § 5538(2)(B), substituted ''court or administrative agency of competent jurisdiction shall'' for ''tribunal may'' and ''filed with the State case registry'' for ''filed with the tribunal''.

Subsec. (f). Pub. L. 105–33, § 5537, substituted ''and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws.'' for ''together with any amendments officially adopted before January 1, 1998 by the National Conference of Commissioners on Uniform State Laws.''

1996—Subsec. (a). Pub. L. 104–193, §§ 365(b), 395(d)(1)(H), in closing provisions, substituted ''(7), and (15)'' for ''and (7)'' and ''noncustodial parent'' for ''absent parent''.

Subsec. (a)(1). Pub. L. 104–193, § 314(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support.''

Subsec. (a)(2). Pub. L. 104–193, § 325(a)(1), substituted ''Expedited administrative and judicial procedures (including the procedures specified in subsection (c) of this section) for establishing paternity and for establishing, modifying, and enforcing support obligations.'' for ''Procedures under which expedited processes (determined in accordance with regulations of the Secretary) are in effect under the State judicial system or under State administrative processes (A) for obtaining and enforcing support orders, and (B) for establishing paternity.''

Subsec. (a)(3)(A). Pub. L. 104–193, § 395(d)(1)(H), (2)(D), substituted ''a noncustodial parent'' for ''an absent parent'' and substituted ''noncustodial parent'' for ''absent parent'' in two places.

Subsec. (a)(3)(B). Pub. L. 104–193, § 301(c)(3), substituted ''in any other case'' for ''in the case of overdue support which a State has agreed to collect under section 654(6) of this title''.

Pub. L. 104–193, § 108(c)(14), substituted ''section 608(a)(3)'' for ''section 602(a)(26)''.

(a)(3)(C). Pub. L. 104–193, § 395(d)(1)(H), substituted ''noncustodial parent's'' for ''absent parent's''.

Subsec. (a)(4). Pub. L. 104–193, § 368, inserted heading and amended text of par. (4) generally. Prior to amendment, text read as follows: ''Procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State.''

Subsec. (a)(5). Pub. L. 104–193, § 331(a), inserted heading and amended text of par. (5) generally. Prior to amendment, text related to establishment of child's paternity prior to child's eighteenth birthday.

Subsec. (a)(6). Pub. L. 104–193, § 395(d)(1)(H), (2)(D), substituted ''a noncustodial parent give security'' for ''an absent parent give security'' and ''noncustodial parent of the proposed action'' for ''absent parent of the proposed action''.

Subsec. (a)(7). Pub. L. 104–193, § 367, inserted heading and amended text of par. (7) generally. Prior to amendment, text read as follows: ''Procedures which require the State to periodically report to consumer reporting agencies (as defined in section 1681a(f) of title 15) the name of any parent who owes overdue support and is at least 2 months delinquent in the payment of such support and the amount of such delinquency; except that (A) if the amount of the overdue support involved in any case is less than $1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after notice has been sent to such absent parent of the proposed action, and such absent parent has been given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State), and (C) such information shall not be made available to (i) a consumer reporting agency which the State determines does not have sufficient capability to systematically and timely make accurate use of such information, or (ii) an entity which has not furnished evidence satisfactory to the State that the entity is a consumer reporting agency.''

Subsec. (a)(8)(A). Pub. L. 104–193, § 314(b)(2)(A), substituted ''income'' for ''wages''.

Subsec. (a)(8)(B)(i). Pub. L. 104–193, §§ 314(b)(2)(A), 395(d)(2)(D), substituted ''income'' for ''wages'' in two places and ''a noncustodial parent'' for ''an absent parent''.

Subsec. (a)(8)(B)(ii). Pub. L. 104–193, § 395(d)(1)(H), substituted ''noncustodial parent'' for ''absent parent''.

Subsec. (a)(10). Pub. L. 104–193, § 351, inserted heading and amended text of par. (10) generally. Prior to amendment, text consisted of subpars. (A) to (C) relating to procedures to ensure review of child support orders and to ensure that States implement a process for periodic review and adjustment of child support orders and provide certain notices to parents subject to child support order of matters relating to the review and adjustment of those orders.

Subsec. (a)(12). Pub. L. 104–193, § 315, added par. (12).

Subsec. (a)(13). Pub. L. 104–193, § 317, added par. (13).

Subsec. (a)(14). Pub. L. 104–193, § 323, added par. (14).

Subsec. (a)(15). Pub. L. 104–193, § 365(a), added par. (15).

Subsec. (a)(16). Pub. L. 104–193, § 369, added par. (16).

Subsec. (a)(17). Pub. L. 104–193, § 372, added par. (17).

Subsec. (a)(18). Pub. L. 104–193, § 373, added par. (18).

Subsec. (a)(19). Pub. L. 104–193, § 382, added par. (19).

Subsec. (b). Pub. L. 104–193, § 314(a)(2)(A), substituted ''subsection (a)(1)(A)'' for ''subsection (a)(1)'' in introductory provisions.

Subsec. (b)(1). Pub. L. 104–193, §§ 314(b)(2)(B), 395(d)(1)(H), substituted ''noncustodial parent'' for ''absent parent'' and ''income'' for ''wages (as defined by the State for purposes of this section)''.

Subsec. (b)(2). Pub. L. 104–193, § 108(c)(15), substituted ''assistance under a State program funded under part A'' for ''aid under part A''.

Subsec. (b)(3)(A). Pub. L. 104–193, §§ 314(b)(2)(A), 395(d)(2)(D), substituted ''income'' for ''wages'' in two places and ''a noncustodial parent'' for ''an absent parent''.

Subsec. (b)(3)(B). Pub. L. 104–193, §§ 314(b)(2)(A), 395(d)(1)(H), (2)(D), in introductory provisions, substituted ''income'' for ''wages'' in two places, ''a noncustodial parent'' for ''an absent parent'', and ''the noncustodial parent'' for ''the absent parent''.

Subsec. (b)(3)(B)(i). Pub. L. 104–193, § 395(d)(1)(H), substituted ''noncustodial parent'' for ''absent parent''.

Subsec. (b)(4). Pub. L. 104–193, § 314(a)(2)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

''(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and (subject to subparagraph (B)) the State must send advance notice to each absent parent to whom paragraph (1) applies regarding the proposed withholding and the procedures such absent parent should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of fact. If the absent parent contests such withholding on those grounds, the State shall determine whether such withholding will actually occur, shall (within no more than 45 days after the provision of such advance notice) inform such parent of whether or not withholding will occur and (if so) of the date on which it is to begin, and shall furnish such parent with the information contained in any notice given to the employer under paragraph (6)(A) with respect to such withholding.

''(B) The requirement of advance notice set forth in the first sentence of subparagraph (A) shall not apply in the case of any State which has a system of income withholding for child support purposes in effect on August 16, 1984, if such system provides on that date, and continues to provide, such procedures as may be necessary to meet the procedural due process requirements of State law.''

Subsec. (b)(5). Pub. L. 104–193, § 314(a)(2)(C), substituted ''the State through the State disbursement unit established pursuant to section 654b of this title, in accordance with the requirements of section 654b of this title.'' for ''a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 657 of this title under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and

distribution of such amounts (under the supervision of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.''

Subsec. (b)(6)(A)(i). Pub. L. 104–193, §§314(a)(2)(D)(i), (b)(2)(A), 395(d)(1)(H), substituted ''The employer of any noncustodial parent'' for ''The employer of any absent parent'', ''withhold from such noncustodial parent's income'' for ''withhold from such absent parent's wages'', and ''to the State disbursement unit within 7 business days after the date the amount would (but for this subsection) have been paid or credited to the employee, for distribution in accordance with this part. The employer shall withhold funds as directed in the notice, except that when an employer receives an income withholding order issued by another State, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining—'' for ''to the appropriate agency (or other entity authorized to collect the amounts withheld under the alternative procedures described in paragraph (5)) for distribution in accordance with section 657 of this title.'', and added subcls. (I) to (V) and closing provisions.

Subsec. (b)(6)(A)(ii). Pub. L. 104–193, §314(a)(2)(D)(ii), inserted ''be in a standard format prescribed by the Secretary, and'' after ''employer shall''.

Subsec. (b)(6)(A)(iii). Pub. L. 104–193, §314(a)(2)(D)(iii), added cl. (iii).

Subsec. (b)(6)(C). Pub. L. 104–193, §314(b)(2)(A), substituted ''income'' for ''wages''.

Subsec. (b)(6)(D). Pub. L. 104–193, §314(a)(2)(E), substituted ''any employer who—'' for ''any employer who discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer.'' and added cls. (i) and (ii).

Subsec. (b)(7). Pub. L. 104–193, §314(b)(2)(A), substituted ''income'' for ''wages''.

Subsec. (b)(8). Pub. L. 104–193, §314(b)(1), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''The State may take such actions as may be necessary to extend its system of withholding under this subsection so that such system will include withholding from forms of income other than wages, in order to assure that child support owed by absent parents in the State will be collected without regard to the types of such absent parents' income or the nature of their income-producing activities.''

Subsec. (b)(9). Pub. L. 104–193, §395(d)(1)(H), substituted ''noncustodial parents'' for ''absent parents''.

Subsec. (b)(11). Pub. L. 104–193, §314(a)(2)(F), added par. (11).

Subsec. (c). Pub. L. 104–193, §325(a)(2), added subsec. (c).

Pub. L. 104–193, §314(c), struck out subsec. (c) which read as follows: ''Any State may at its option, under its plan approved under section 654 of this title, establish procedures under which support payments under this part will be made through the State agency or other entity which administers the State's income withholding system in any case where either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in connection therewith or $25, whichever is less, shall be imposed on the requesting parent by the State.''

Subsec. (e). Pub. L. 104–193, §§301(c)(4), 395(d)(1)(H), substituted ''noncustodial parent's spouse'' for ''absent parent's spouse'' and ''section 654(4)'' for ''paragraph (4) or (6) of section 654''.

Subsec. (f). Pub. L. 104–193, §321, added subsec. (f).

Subsec. (g). Pub. L. 104–193, §364, added subsec. (g).

1994—Subsec. (a)(7). Pub. L. 103–432, §212(a)(1), substituted ''Procedures which require the State to periodically report to consumer reporting agencies (as defined in section 1681a(f) of title 15) the name of any parent who owes overdue support and is at least 2 months delinquent in the payment of such support and the amount of such delinquency'' for ''Procedures by which information regarding the amount of overdue support owed by an absent parent residing in the State will be made available to any consumer reporting agency (as defined in section 1681a(f) of title 15) upon the request of such agency''.

Subsec. (a)(7)(C). Pub. L. 103–432, §212(a)(2), substituted ''(C) such information shall not be made available to (i) a consumer reporting agency which the State determines does not have sufficient capability to systematically and timely make accurate use of such information, or (ii) an entity which has not furnished evidence satisfactory to the State that the entity is a consumer reporting agency'' for ''(C) a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting agency by the State''.

1993—Subsec. (a)(2). Pub. L. 103–66, §13721(b)(1), struck out ''at the option of the State,'' after ''and (B)'' and inserted ''or paternity establishment'' after ''support order issuance and enforcement''.

Subsec. (a)(5)(C) to (H). Pub. L. 103–66, §13721(b)(2), added subpars. (C) to (H).

Subsec. (a)(11). Pub. L. 103–66, §13721(b)(3), added par. (11).

1988—Subsec. (a)(5). Pub. L. 100–485, §111(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(5)(A). Pub. L. 100–485, §111(e), as amended by Pub. L. 100–647, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(8). Pub. L. 100–485, §101(b), designated existing provisions as subpar. (A), substituted ''not described in subparagraph (B)'' for ''which are issued or modified in the State'', and added subpar. (B).

Subsec. (a)(10). Pub. L. 100–485, §103(c), added par. (10).

Subsec. (b)(3). Pub. L. 100–485, §101(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''An absent parent shall become subject to such withholding, and the advance notice required under paragraph (4) shall be given, on the earliest of—

''(A) the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month,

''(B) the date as of which the absent parent requests that such withholding begin, or

''(C) such earlier date as the State may select.''

1986—Subsec. (a)(9). Pub. L. 99–509 added par. (9).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 401(c)(1) of Pub. L. 105–200 effective with respect to periods beginning on or after the later of Oct. 1, 2001, or the effective date of laws enacted by the legislature of such State implementing such amendment, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after Oct. 1, 2001, see section 401(c)(3) of Pub. L. 105–200, as amended, set out as a note under section 652 of this title.

Pub. L. 105–200, title IV, §404(b), July 16, 1998, 112 Stat. 671, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 5550 of the Bal-

anced Budget Act of 1997 (Public Law 105–33; 111 Stat. 633).''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, except that amendment made by section 5536(1)(A) of Pub. L. 105–33 not effective with respect to a State until Oct. 1, 2000, or such earlier date as the State may elect, see section 5557 of Pub. L. 105–33, as amended, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(c)(14), (15) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For effective date of amendments by title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 212(b) of Pub. L. 103–432 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to a State on later of Oct. 1, 1993, or date of enactment by legislature of such State of all laws required by such amendments made by section 13721 of Pub. L. 103–66, but in no event later than first day of first calendar quarter beginning after close of first regular session of State legislature that begins after Aug. 10, 1993, and, in case of State that has 2-year legislative session, each year of such session deemed to be separate regular session of State legislature, see section 13721(c) of Pub. L. 103–66, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8105 of Pub. L. 100–647 provided that amendments made by that section, amending sections 607 and 669 of this title and amending provisions of Pub. L. 100–485 which are classified to this section and section 607 of this title, are effective on date of enactment of Family Support Act of 1988, Pub. L. 100–485, which was approved Oct. 13, 1988.

Section 101(d) of Pub. L. 100–485 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall become effective on the first day of the 25th month beginning after the date of the enactment of this Act [Oct. 13, 1988].

''(2) The amendments made by subsection (b) [amending this section] shall become effective on January 1, 1994.

''(3) Subsection (c) [set out below] shall become effective on the date of the enactment of this Act.''

Section 103(f) of Pub. L. 100–485 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and section 667 of this title] shall become effective one year after the date of the enactment of this Act [Oct. 13, 1988].''

Amendment by section 111(b) of Pub. L. 100–485 effective on first day of first month beginning one year or more after Oct. 13, 1988, see section 111(f)(2) of Pub. L. 100–485, set out as a note under section 654 of this title.

Amendment by section 111(e) of Pub. L. 100–485 effective Oct. 13, 1988, see section 111(f)(1) of Pub. L. 100–485, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9103(b) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 21, 1986].

''(2) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act [this part] to the requirements imposed by the amendment made by subsection (a) [amending this section], the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after the date of the enactment of this Act [Oct. 21, 1986]. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature.''

EFFECTIVE DATE

Section effective Oct. 1, 1985, except that subsec. (e) effective with respect to support owed for any month beginning after Aug. 16, 1984, see section 3(g) of Pub. L. 98–378, set out as an Effective Date of 1984 Amendment note under section 654 of this title.

STUDY ON MAKING IMMEDIATE INCOME WITHHOLDING MANDATORY IN ALL CASES

Section 101(c) of Pub. L. 100–485 directed Secretary of Health and Human Services to conduct a study of administrative feasibility, cost implications, and other effects of requiring immediate income withholding with respect to all child support awards in a State and report on results of such study not later than 3 years after Oct. 13, 1988.

STUDY OF IMPACT OF EXTENDING PERIODIC REVIEW REQUIREMENTS TO ALL OTHER CASES

Section 103(d) of Pub. L. 100–485 directed Secretary of Health and Human Resources, within 2 years after Oct. 13, 1988, to conduct and complete a study to determine impact on child support awards and the courts of requiring each State to periodically review all child support orders in effect in the State.

DEMONSTRATION PROJECTS FOR EVALUATING MODEL PROCEDURES FOR REVIEWING CHILD SUPPORT AWARDS

Section 103(e) of Pub. L. 100–485 authorized an agreement between Secretary of Health and Human Services and each State submitting an application for purpose of conducting a demonstration project to test and evaluate model procedures for reviewing child support award amounts, directed that such projects be commenced not later than Sept. 30, 1989, and be conducted for a 2-year period, and directed Secretary to report results of such projects to Congress not later than 6 months after all projects are completed.

COMMISSION ON INTERSTATE CHILD SUPPORT

Section 126 of Pub. L. 100–485, as amended by Pub. L. 101–508, title V, § 5012(a), Nov. 5, 1990, 104 Stat. 1388–221; Pub. L. 102–318, title V, § 534(a), July 3, 1992, 106 Stat. 317, established Commission on Interstate Child Support to hold national conferences on interstate child support reform and prepare report to Congress containing recommendations for improving interstate establishment and enforcement of child support awards and for revising Uniform Reciprocal Enforcement of Support Act and provided for powers of the Commission, appropriations, and termination of the Commission on Sept. 30, 1992.

§ 667. State guidelines for child support awards

(a) Establishment of guidelines; method

Each State, as a condition for having its State plan approved under this part, must establish

guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.

(b) Availability of guidelines; rebuttable presumption

(1) The guidelines established pursuant to subsection (a) of this section shall be made available to all judges and other officials who have the power to determine child support awards within such State.

(2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.

(c) Technical assistance to States; State to furnish Secretary with copies

The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines.

(Aug. 14, 1935, ch. 531, title IV, §467, as added Pub. L. 98–378, §18(a), Aug. 16, 1984, 98 Stat. 1321; amended Pub. L. 100–485, title I, §103(a), (b), Oct. 13, 1988, 102 Stat. 2346.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–485, §103(b), inserted '', and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts'' before period at end.

Subsec. (b). Pub. L. 100–485, §103(a), designated existing provisions as par. (1), struck out '', but need not be binding upon such judges or other officials'' after ''within such State'', and added par. (2).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective one year after Oct. 13, 1988, see section 103(f) of Pub. L. 100–485, set out as a note under section 666 of this title.

EFFECTIVE DATE

Section 18(b) of Pub. L. 98–378 provided that: ''The amendment made by subsection (a) [enacting this section] shall become effective on October 1, 1987.''

STUDY OF CHILD-REARING COSTS

Section 128 of Pub. L. 100–485 directed Secretary of Health and Human Services, by grant or contract, to conduct a study of patterns of expenditures on children in 2-parent families, in single-parent families following divorce or separation, and in single-parent families in which parents were never married, giving particular attention to the relative standards of living in households in which both parents and all of the children do not live together, and submit to Congress no later than 2 years after Oct. 13, 1988, a full and complete report of results of such study, including recommendations for legislative, administrative, and other actions.

§ 668. Encouragement of States to adopt civil procedure for establishing paternity in contested cases

In the administration of the child support enforcement program under this part, each State is encouraged to establish and implement a civil procedure for establishing paternity in contested cases.

(Aug. 14, 1935, ch. 531, title IV, §468, as added Pub. L. 100–485, title I, §111(d), Oct. 13, 1988, 102 Stat. 2350; amended Pub. L. 104–193, title III, §331(c), Aug. 22, 1996, 110 Stat. 2230.)

AMENDMENTS

1996—Pub. L. 104–193 struck out ''a simple civil process for voluntarily acknowledging paternity and'' after ''implement''.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

§ 669. Collection and reporting of child support enforcement data

(a) In general

With respect to each type of service described in subsection (b) of this section, the Secretary shall collect and maintain up-to-date statistics, by State, and on a fiscal year basis, on—

(1) the number of cases in the caseload of the State agency administering the plan approved under this part in which the service is needed; and

(2) the number of such cases in which the service has actually been provided.

(b) Types of services

The statistics required by subsection (a) of this section shall be separately stated with respect to paternity establishment services and child support obligation establishment services.

(c) Types of service recipients

The statistics required by subsection (a) of this section shall be separately stated with respect to—

(1) recipients of assistance under a State program funded under part A of this subchapter or of payments or services under a State plan approved under part E of this subchapter; and

(2) individuals who are not such recipients.

(d) Rule of interpretation

For purposes of subsection (a)(2) of this section, a service has actually been provided when the task described by the service has been accomplished.

(Aug. 14, 1935, ch. 531, title IV, §469, as added Pub. L. 100–485, title I, §129, Oct. 13, 1988, 102 Stat. 2356; amended Pub. L. 100–647, title VIII, §8105(6), Nov. 10, 1988, 102 Stat. 3797; Pub. L. 104–193, title I, §108(c)(16), title III, §395(d)(2)(E), Aug. 22, 1996, 110 Stat. 2166, 2260; Pub. L. 105–200, title IV, §407(a), July 16, 1998, 112 Stat. 672.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in subsec. (c)(1), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

AMENDMENTS

1998—Pub. L. 105–200 reenacted section catchline without change, added subsecs. (a) to (c), redesignated former subsec. (c) as (d) and inserted heading, and struck out former subsec. (a) relating to statistics on need for and actual provision of services and subsec. (b) relating to types of services.

1996—Subsec. (a). Pub. L. 104–193, § 108(c)(16), substituted ''assistance under State programs funded under part A of this subchapter and for families not receiving such assistance)'' for ''aid under plans approved under part A of this subchapter and for families not receiving such aid)''.

Subsec. (b)(2), (4). Pub. L. 104–193, § 395(d)(2)(E), substituted ''a noncustodial parent'' for ''an absent parent''.

1988—Subsec. (a). Pub. L. 100–647 made technical amendment to references to part A of this subchapter and to this part involving underlying provisions of original act and requiring no change in text.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–200 applicable to information maintained with respect to fiscal year 1995 or any succeeding fiscal year, see section 407(c) of Pub. L. 105–200, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(c)(16) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For effective date of amendment by section 395(d)(2)(E) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8105 of Pub. L. 100–647 provided that the amendment made by that section is effective on date of enactment of Family Support Act of 1988, Pub. L. 100–485, which was approved Oct. 13, 1988.

§ 669a. Nonliability for financial institutions providing financial records to State child support enforcement agencies in child support cases

(a) In general

Notwithstanding any other provision of Federal or State law, a financial institution shall not be liable under any Federal or State law to any person for disclosing any financial record of an individual to a State child support enforcement agency attempting to establish, modify, or enforce a child support obligation of such individual, or for disclosing any such record to the Federal Parent Locator Service pursuant to section 666(a)(17)(A) of this title.

(b) Prohibition of disclosure of financial record obtained by State child support enforcement agency

A State child support enforcement agency which obtains a financial record of an individual from a financial institution pursuant to subsection (a) of this section may disclose such financial record only for the purpose of, and to the extent necessary in, establishing, modifying, or enforcing a child support obligation of such individual.

(c) Civil damages for unauthorized disclosure

(1) Disclosure by State officer or employee

If any person knowingly, or by reason of negligence, discloses a financial record of an individual in violation of subsection (b) of this section, such individual may bring a civil action for damages against such person in a district court of the United States.

(2) No liability for good faith but erroneous interpretation

No liability shall arise under this subsection with respect to any disclosure which results from a good faith, but erroneous, interpretation of subsection (b) of this section.

(3) Damages

In any action brought under paragraph (1), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

(A) the greater of—

(i) $1,000 for each act of unauthorized disclosure of a financial record with respect to which such defendant is found liable; or

(ii) the sum of—

(I) the actual damages sustained by the plaintiff as a result of such unauthorized disclosure; plus

(II) in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages; plus

(B) the costs (including attorney's fees) of the action.

(d) Definitions

For purposes of this section—

(1) Financial institution

The term ''financial institution'' means—

(A) a depository institution, as defined in section 1813(c) of title 12;

(B) an institution-affiliated party, as defined in section 1813(u) of title 12;

(C) any Federal credit union or State credit union, as defined in section 1752 of title 12, including an institution-affiliated party of such a credit union, as defined in section 1786(r) of title 12; and

(D) any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in the State.

(2) Financial record

The term ''financial record'' has the meaning given such term in section 3401 of title 12.

(Aug. 14, 1935, ch. 531, title IV, § 469A, as added Pub. L. 104–193, title III, § 353, Aug. 22, 1996, 110 Stat. 2240; amended Pub. L. 105–200, title IV, § 406(c), July 16, 1998, 112 Stat. 672.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–200 inserted '', or for disclosing any such record to the Federal Parent Locator Service pursuant to section 666(a)(17)(A) of this title'' before period at end.

EFFECTIVE DATE

For effective date of section, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

§ 669b. Grants to States for access and visitation programs

(a) In general

The Administration for Children and Families shall make grants under this section to enable States to establish and administer programs to support and facilitate noncustodial parents' access to and visitation of their children, by means of activities including mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangements.

(b) Amount of grant

The amount of the grant to be made to a State under this section for a fiscal year shall be an amount equal to the lesser of—

(1) 90 percent of State expenditures during the fiscal year for activities described in subsection (a) of this section; or

(2) the allotment of the State under subsection (c) of this section for the fiscal year.

(c) Allotments to States

(1) In general

The allotment of a State for a fiscal year is the amount that bears the same ratio to $10,000,000 for grants under this section for the fiscal year as the number of children in the State living with only 1 biological parent bears to the total number of such children in all States.

(2) Minimum allotment

The Administration for Children and Families shall adjust allotments to States under paragraph (1) as necessary to ensure that no State is allotted less than—

(A) $50,000 for fiscal year 1997 or 1998; or

(B) $100,000 for any succeeding fiscal year.

(d) No supplantation of State expenditures for similar activities

A State to which a grant is made under this section may not use the grant to supplant expenditures by the State for activities specified in subsection (a) of this section, but shall use the grant to supplement such expenditures at a level at least equal to the level of such expenditures for fiscal year 1995.

(e) State administration

Each State to which a grant is made under this section—

(1) may administer State programs funded with the grant, directly or through grants to or contracts with courts, local public agencies, or nonprofit private entities;

(2) shall not be required to operate such programs on a statewide basis; and

(3) shall monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.

(Aug. 14, 1935, ch. 531, title IV, § 469B, as added Pub. L. 104–193, title III, § 391, Aug. 22, 1996, 110 Stat. 2258.)

EFFECTIVE DATE

For effective date of section, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

§ 670. Congressional declaration of purpose; authorization of appropriations

For the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for children who otherwise would have been eligible for assistance under the State's plan approved under part A of this subchapter (as such plan was in effect on June 1, 1995) and adoption assistance for children with special needs, there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1980) such sums as may be necessary to carry out the provisions of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans under this part.

(Aug. 14, 1935, ch. 531, title IV, § 470, as added Pub. L. 96–272, title I, § 101(a)(1), June 17, 1980, 94 Stat. 501; amended Pub. L. 99–272, title XII, § 12307(d), Apr. 7, 1986, 100 Stat. 297; Pub. L. 99–514, title XVII, § 1711(c)(1), Oct. 22, 1986, 100 Stat. 2784; Pub. L. 104–193, title I, § 108(d)(1), Aug. 22, 1996, 110 Stat. 2166.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in text, is classified to section 601 et seq. of this title.

AMENDMENTS

1996—Pub. L. 104–193 substituted ''would have been eligible'' for ''would be eligible'' and inserted ''(as such plan was in effect on June 1, 1995)'' after ''part A of this subchapter''.

1986—Pub. L. 99–514 substituted ''foster care and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter and adoption assistance for children with special needs'' for ''foster care, adoption assistance, and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter (or, in the case of adoption assistance, would be eligible for benefits under subchapter XVI of this chapter)''.

Pub. L. 99–272 substituted ''foster care, adoption assistance, and transitional independent living programs'' for ''foster care and adoption assistance''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1711(d) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 671, 673, and 675 of this title] shall apply only with respect to expenditures made after December 31, 1986.''

STRENGTHENING ABUSE AND NEGLECT COURTS

Pub. L. 106–314, Oct. 17, 2000, 114 Stat. 1266, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Strengthening Abuse and Neglect Courts Act of 2000'.

''SEC. 2. FINDINGS.

''Congress finds the following:

''(1) Under both Federal and State law, the courts play a crucial and essential role in the Nation's child welfare system and in ensuring safety, stability, and permanence for abused and neglected children under the supervision of that system.

''(2) The Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2115) [see Short Title of 1997 Amendment note set out under section 1305 of this title] establishes explicitly for the first time in Federal law that a child's health and safety must be the paramount consideration when any decision is made regarding a child in the Nation's child welfare system.

''(3) The Adoption and Safe Families Act of 1997 promotes stability and permanence for abused and neglected children by requiring timely decision-making in proceedings to determine whether children can safely return to their families or whether they should be moved into safe and stable adoptive homes or other permanent family arrangements outside the foster care system.

''(4) To avoid unnecessary and lengthy stays in the foster care system, the Adoption and Safe Families Act of 1997 specifically requires, among other things, that States move to terminate the parental rights of the parents of those children who have been in foster care for 15 of the last 22 months.

''(5) While essential to protect children and to carry out the general purposes of the Adoption and Safe Families Act of 1997, the accelerated timelines for the termination of parental rights and the other requirements imposed under that Act increase the pressure on the Nation's already overburdened abuse and neglect courts.

''(6) The administrative efficiency and effectiveness of the Nation's abuse and neglect courts would be substantially improved by the acquisition and implementation of computerized case-tracking systems to identify and eliminate existing backlogs, to move abuse and neglect caseloads forward in a timely manner, and to move children into safe and stable families. Such systems could also be used to evaluate the effectiveness of such courts in meeting the purposes of the amendments made by, and provisions of, the Adoption and Safe Families Act of 1997.

''(7) The administrative efficiency and effectiveness of the Nation's abuse and neglect courts would also be improved by the identification and implementation of projects designed to eliminate the backlog of abuse and neglect cases, including the temporary hiring of additional judges, extension of court hours, and other projects designed to reduce existing caseloads.

''(8) The administrative efficiency and effectiveness of the Nation's abuse and neglect courts would be further strengthened by improving the quality and availability of training for judges, court personnel, agency attorneys, guardians ad litem, volunteers who participate in court-appointed special advocate (CASA) programs, and attorneys who represent the children and the parents of children in abuse and neglect proceedings.

''(9) While recognizing that abuse and neglect courts in this country are already committed to the quality administration of justice, the performance of such courts would be even further enhanced by the development of models and educational opportunities that reinforce court projects that have already been developed, including models for case-flow procedures, case management, representation of children, automated interagency interfaces, and 'best practices' standards.

''(10) Judges, magistrates, commissioners, and other judicial officers play a central and vital role in ensuring that proceedings in our Nation's abuse and neglect courts are run efficiently and effectively. The performance of those individuals in such courts can only be further enhanced by training, seminars, and an ongoing opportunity to exchange ideas with their peers.

''(11) Volunteers who participate in court-appointed special advocate (CASA) programs play a vital role as the eyes and ears of abuse and neglect courts in proceedings conducted by, or under the supervision of, such courts and also bring increased public scrutiny of the abuse and neglect court system. The Nation's abuse and neglect courts would benefit from an expansion of this program to currently underserved communities.

''(12) Improved computerized case-tracking systems, comprehensive training, and development of, and education on, model abuse and neglect court systems, particularly with respect to underserved areas, would significantly further the purposes of the Adoption and Safe Families Act of 1997 by reducing the average length of an abused and neglected child's stay in foster care, improving the quality of decision-making and court services provided to children and families, and increasing the number of adoptions.

''SEC. 3. DEFINITIONS.

''In this Act:

''(1) ABUSE AND NEGLECT COURTS.—The term 'abuse and neglect courts' means the State and local courts that carry out State or local laws requiring proceedings (conducted by or under the supervision of the courts)—

''(A) that implement part B and part E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.) (including preliminary disposition of such proceedings);

''(B) that determine whether a child was abused or neglected;

''(C) that determine the advisability or appropriateness of placement in a family foster home, group home, or a special residential care facility; or

''(D) that determine any other legal disposition of a child in the abuse and neglect court system.

''(2) AGENCY ATTORNEY.—The term 'agency attorney' means an attorney or other individual, including any government attorney, district attorney, attorney general, State attorney, county attorney, city solicitor or attorney, corporation counsel, or privately retained special prosecutor, who represents the State or local agency administrating the programs under parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.) in a proceeding conducted by, or under the supervision of, an abuse and neglect court, including a proceeding for termination of parental rights.

''SEC. 4. GRANTS TO STATE COURTS AND LOCAL COURTS TO AUTOMATE THE DATA COLLECTION AND TRACKING OF PROCEEDINGS IN ABUSE AND NEGLECT COURTS.

''(a) AUTHORITY TO AWARD GRANTS.—

''(1) IN GENERAL.—Subject to paragraph (2), the Attorney General, acting through the Office of Juvenile Justice and Delinquency Prevention of the Office of Justice Programs, shall award grants in accordance with this section to State courts and local courts for the purposes of—

''(A) enabling such courts to develop and implement automated data collection and case-tracking systems for proceedings conducted by, or under the supervision of, an abuse and neglect court;

''(B) encouraging the replication of such systems in abuse and neglect courts in other jurisdictions; and

''(C) requiring the use of such systems to evaluate a court's performance in implementing the requirements of parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.).

''(2) LIMITATIONS.—

''(A) NUMBER OF GRANTS.—Not less than 20 nor more than 50 grants may be awarded under this section.

''(B) PER STATE LIMITATION.—Not more than 2 grants authorized under this section may be awarded per State.

''(C) USE OF GRANTS.—Funds provided under a grant made under this section may only be used for the purpose of developing, implementing, or enhancing automated data collection and case-tracking systems for proceedings conducted by, or under the supervision of, an abuse and neglect court.

''(b) APPLICATION.—

''(1) IN GENERAL.—A State court or local court may submit an application for a grant authorized under this section at such time and in such manner as the Attorney General may determine.

''(2) INFORMATION REQUIRED.—An application for a grant authorized under this section shall contain the following:

''(A) A description of a proposed plan for the development, implementation, and maintenance of an automated data collection and case-tracking system for proceedings conducted by, or under the supervision of, an abuse and neglect court, including a proposed budget for the plan and a request for a specific funding amount.

''(B) A description of the extent to which such plan and system are able to be replicated in abuse and neglect courts of other jurisdictions that specifies the common case-tracking data elements of the proposed system, including, at a minimum—

''(i) identification of relevant judges, court, and agency personnel;

''(ii) records of all court proceedings with regard to the abuse and neglect case, including all court findings and orders (oral and written); and

''(iii) relevant information about the subject child, including family information and the reason for court supervision.

''(C) In the case of an application submitted by a local court, a description of how the plan to implement the proposed system was developed in consultation with related State courts, particularly with regard to a State court improvement plan funded under section 13712 of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 670 note) [now 42 U.S.C. 629h] if there is such a plan in the State.

''(D) In the case of an application that is submitted by a State court, a description of how the proposed system will integrate with a State court improvement plan funded under section 13712 of such Act if there is such a plan in the State.

''(E) After consultation with the State agency responsible for the administration of parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.)—

''(i) a description of the coordination of the proposed system with other child welfare data collection systems, including the statewide automated child welfare information system (SACWIS) and the adoption and foster care analysis and reporting system (AFCARS) established pursuant to section 479 of the Social Security Act (42 U.S.C. 679); and

''(ii) an assurance that such coordination will be implemented and maintained.

''(F) Identification of an independent third party that will conduct ongoing evaluations of the feasibility and implementation of the plan and system and a description of the plan for conducting such evaluations.

''(G) A description or identification of a proposed funding source for completion of the plan (if applicable) and maintenance of the system after the conclusion of the period for which the grant is to be awarded.

''(H) An assurance that any contract entered into between the State court or local court and any other entity that is to provide services for the development, implementation, or maintenance of the system under the proposed plan will require the entity to agree to allow for replication of the services provided, the plan, and the system, and to refrain from asserting any proprietary interest in such services for purposes of allowing the plan and system to be replicated in another jurisdiction.

''(I) An assurance that the system established under the plan will provide data that allows for evaluation (at least on an annual basis) of the following information:

''(i) The total number of cases that are filed in the abuse and neglect court.

''(ii) The number of cases assigned to each judge who presides over the abuse and neglect court.

''(iii) The average length of stay of children in foster care.

''(iv) With respect to each child under the jurisdiction of the court—

''(I) the number of episodes of placement in foster care;

''(II) the number of days placed in foster care and the type of placement (foster family home, group home, or special residential care facility);

''(III) the number of days of in-home supervision; and

''(IV) the number of separate foster care placements.

''(v) The number of adoptions, guardianships, or other permanent dispositions finalized.

''(vi) The number of terminations of parental rights.

''(vii) The number of child abuse and neglect proceedings closed that had been pending for 2 or more years.

''(viii) With respect to each proceeding conducted by, or under the supervision of, an abuse and neglect court—

''(I) the timeliness of each stage of the proceeding from initial filing through legal finalization of a permanency plan (for both contested and uncontested hearings);

''(II) the number of adjournments, delays, and continuances occurring during the proceeding, including identification of the party requesting each adjournment, delay, or continuance and the reasons given for the request;

''(III) the number of courts that conduct or supervise the proceeding for the duration of the abuse and neglect case;

''(IV) the number of judges assigned to the proceeding for the duration of the abuse and neglect case; and

''(V) the number of agency attorneys, children's attorneys, parent's attorneys, guardians ad litem, and volunteers participating in a court-appointed special advocate (CASA) program assigned to the proceeding during the duration of the abuse and neglect case.

''(J) A description of how the proposed system will reduce the need for paper files and ensure prompt action so that cases are appropriately listed with national and regional adoption exchanges, and public and private adoption services.

''(K) An assurance that the data collected in accordance with subparagraph (I) will be made available to relevant Federal, State, and local government agencies and to the public.

''(L) An assurance that the proposed system is consistent with other civil and criminal information requirements of the Federal Government.

''(M) An assurance that the proposed system will provide notice of timeframes required under the Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2115) for individual cases to ensure prompt attention and compliance with such requirements.

''(c) CONDITIONS FOR APPROVAL OF APPLICATIONS.—

''(1) MATCHING REQUIREMENT.—

''(A) IN GENERAL.—A State court or local court awarded a grant under this section shall expend $1 for every $3 awarded under the grant to carry out the development, implementation, and mainte-

nance of the automated data collection and case-tracking system under the proposed plan.

''(B) WAIVER FOR HARDSHIP.—The Attorney General may waive or modify the matching requirement described in subparagraph (A) in the case of any State court or local court that the Attorney General determines would suffer undue hardship as a result of being subject to the requirement.

''(C) NON-FEDERAL EXPENDITURES.—

''(i) CASH OR IN KIND.—State court or local court expenditures required under subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

''(ii) NO CREDIT FOR PRE-AWARD EXPENDITURES.—Only State court or local court expenditures made after a grant has been awarded under this section may be counted for purposes of determining whether the State court or local court has satisfied the matching expenditure requirement under subparagraph (A).

''(2) NOTIFICATION TO STATE OR APPROPRIATE CHILD WELFARE AGENCY.—No application for a grant authorized under this section may be approved unless the State court or local court submitting the application demonstrates to the satisfaction of the Attorney General that the court has provided the State, in the case of a State court, or the appropriate child welfare agency, in the case of a local court, with notice of the contents and submission of the application.

''(3) CONSIDERATIONS.—In evaluating an application for a grant under this section the Attorney General shall consider the following:

''(A) The extent to which the system proposed in the application may be replicated in other jurisdictions.

''(B) The extent to which the proposed system is consistent with the provisions of, and amendments made by, the Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2115), and parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.).

''(C) The extent to which the proposed system is feasible and likely to achieve the purposes described in subsection (a)(1).

''(4) DIVERSITY OF AWARDS.—The Attorney General shall award grants under this section in a manner that results in a reasonable balance among grants awarded to State courts and grants awarded to local courts, grants awarded to courts located in urban areas and courts located in rural areas, and grants awarded in diverse geographical locations.

''(d) LENGTH OF AWARDS.—No grant may be awarded under this section for a period of more than 5 years.

''(e) AVAILABILITY OF FUNDS.—Funds provided to a State court or local court under a grant awarded under this section shall remain available until expended without fiscal year limitation.

''(f) REPORTS.—

''(1) ANNUAL REPORT FROM GRANTEES.—Each State court or local court that is awarded a grant under this section shall submit an annual report to the Attorney General that contains—

''(A) a description of the ongoing results of the independent evaluation of the plan for, and implementation of, the automated data collection and case-tracking system funded under the grant; and

''(B) the information described in subsection (b)(2)(I).

''(2) INTERIM AND FINAL REPORTS FROM ATTORNEY GENERAL.—

''(A) INTERIM REPORTS.—Beginning 2 years after the date of enactment of this Act [Oct. 17, 2000], and biannually thereafter until a final report is submitted in accordance with subparagraph (B), the Attorney General shall submit to Congress interim reports on the grants made under this section.

''(B) FINAL REPORT.—Not later than 90 days after the termination of all grants awarded under this section, the Attorney General shall submit to Congress a final report evaluating the automated data collection and case-tracking systems funded under such grants and identifying successful models of such systems that are suitable for replication in other jurisdictions. The Attorney General shall ensure that a copy of such final report is transmitted to the highest State court in each State.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $10,000,000 for the period of fiscal years 2001 through 2005.

''SEC. 5. GRANTS TO REDUCE PENDING BACKLOGS OF ABUSE AND NEGLECT CASES TO PROMOTE PERMANENCY FOR ABUSED AND NEGLECTED CHILDREN.

''(a) AUTHORITY TO AWARD GRANTS.—The Attorney General, acting through the Office of Juvenile Justice and Delinquency Prevention of the Office of Justice Programs and in collaboration with the Secretary of Health and Human Services, shall award grants in accordance with this section to State courts and local courts for the purposes of—

''(1) promoting the permanency goals established in the Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2115); and

''(2) enabling such courts to reduce existing backlogs of cases pending in abuse and neglect courts, especially with respect to cases to terminate parental rights and cases in which parental rights to a child have been terminated but an adoption of the child has not yet been finalized.

''(b) APPLICATION.—A State court or local court shall submit an application for a grant under this section, in such form and manner as the Attorney General shall require, that contains a description of the following:

''(1) The barriers to achieving the permanency goals established in the Adoption and Safe Families Act of 1997 that have been identified.

''(2) The size and nature of the backlogs of children awaiting termination of parental rights or finalization of adoption.

''(3) The strategies the State court or local court proposes to use to reduce such backlogs and the plan and timetable for doing so.

''(4) How the grant funds requested will be used to assist the implementation of the strategies described in paragraph (3).

''(c) USE OF FUNDS.—Funds provided under a grant awarded under this section may be used for any purpose that the Attorney General determines is likely to successfully achieve the purposes described in subsection (a), including temporarily—

''(1) establishing night court sessions for abuse and neglect courts;

''(2) hiring additional judges, magistrates, commissioners, hearing officers, referees, special masters, and other judicial personnel for such courts;

''(3) hiring personnel such as clerks, administrative support staff, case managers, mediators, and attorneys for such courts; or

''(4) extending the operating hours of such courts.

''(d) NUMBER OF GRANTS.—Not less than 15 nor more than 20 grants shall be awarded under this section.

''(e) AVAILABILITY OF FUNDS.—Funds awarded under a grant made under this section shall remain available for expenditure by a grantee for a period not to exceed 3 years from the date of the grant award.

''(f) REPORT ON USE OF FUNDS.—Not later than the date that is halfway through the period for which a grant is awarded under this section, and 90 days after the end of such period, a State court or local court awarded a grant under this section shall submit a report to the Attorney General that includes the following:

''(1) The barriers to the permanency goals established in the Adoption and Safe Families Act of 1997 that are or have been addressed with grant funds.

''(2) The nature of the backlogs of children that were pursued with grant funds.

''(3) The specific strategies used to reduce such backlogs.

''(4) The progress that has been made in reducing such backlogs, including the number of children in such backlogs—

''(A) whose parental rights have been terminated; and

''(B) whose adoptions have been finalized.

''(5) Any additional information that the Attorney General determines would assist jurisdictions in achieving the permanency goals established in the Adoption and Safe Families Act of 1997.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the period of fiscal years 2001 and 2002 $10,000,000 for the purpose of making grants under this section.

''SEC. 6. GRANTS TO EXPAND THE COURT-APPOINTED SPECIAL ADVOCATE PROGRAM IN UNDERSERVED AREAS.

''(a) GRANTS TO EXPAND CASA PROGRAMS IN UNDERSERVED AREAS.—The Administrator of the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice shall make a grant to the National Court-Appointed Special Advocate Association for the purposes of—

''(1) expanding the recruitment of, and building the capacity of, court-appointed special advocate programs located in the 15 largest urban areas;

''(2) developing regional, multijurisdictional court-appointed special advocate programs serving rural areas; and

''(3) providing training and supervision of volunteers in court-appointed special advocate programs.

''(b) LIMITATION ON ADMINISTRATIVE EXPENDITURES.—Not more than 5 percent of the grant made under this subsection may be used for administrative expenditures.

''(c) DETERMINATION OF URBAN AND RURAL AREAS.—For purposes of administering the grant authorized under this subsection, the Administrator of the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice shall determine whether an area is one of the 15 largest urban areas or a rural area in accordance with the practices of, and statistical information compiled by, the Bureau of the Census.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to make the grant authorized under this section, $5,000,000 for the period of fiscal years 2001 and 2002.''

ENTITLEMENT FUNDING FOR STATE COURTS TO ASSESS AND IMPROVE HANDLING OF PROCEEDINGS RELATING TO FOSTER CARE AND ADOPTION

Pub. L. 103–66, title XIII, §13712, Aug. 10, 1993, 107 Stat. 655, as amended by Pub. L. 105–89, title III, §305(a)(3), Nov. 19, 1997, 111 Stat. 2130; Pub. L. 107–133, title I, §107(a)–(d), Jan. 17, 2002, 115 Stat. 2418, which was formerly set out as a note under this section, was renumbered section 438 of the Social Security Act by Pub. L. 107–133, title I, §107(e), Jan. 17, 2002, 115 Stat. 2419, and is classified to section 629h of this title.

ABANDONED INFANTS ASSISTANCE

Pub. L. 100–505, Oct. 18, 1988, 102 Stat. 2533, as amended by Pub. L. 102–236, §§2–8, Dec. 12, 1991, 105 Stat. 1812–1816; Pub. L. 104–235, title II, §§221, 222, Oct. 3, 1996, 110 Stat. 3091, 3092; Pub. L. 108–36, title III, §§301–305, June 25, 2003, 117 Stat. 822–824, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Abandoned Infants Assistance Act of 1988'.

''SEC. 2. FINDINGS.

''The Congress finds that—

''(1) studies indicate that a number of factors contribute to the inability of some parents to provide adequate care for their infants and young children and a lack of suitable shelter homes for such infants and young children have led to the abandonment of such infants and young children in hospitals for extended periods;

''(2) an unacceptable number of these infants and young children will be medically cleared for discharge, yet remain in hospitals as boarder babies;

''(3) hospital-based child care for these infants and young children is extremely costly and deprives them of an adequate nurturing environment;

''(4) appropriate training is needed for personnel working with infants and young children with life-threatening conditions and other special needs, including those who are infected with the human immunodeficiency virus (commonly known as 'HIV'), those who have acquired immune deficiency syndrome (commonly known as 'AIDS'), and those who have been exposed to dangerous drugs;

''(5) infants and young children who are abandoned in hospitals are particularly difficult to place in foster homes, and are being abandoned in hospitals in increasing numbers by mothers dying of acquired immune deficiency syndrome, by parents abusing drugs, or by parents incapable of providing adequate care;

''(6) there is a need for comprehensive support services for such infants and young children and their families and services to prevent the abandonment of such infants and young children, including foster care services, case management services, family support services, respite and crisis intervention services, counseling services, and group residential home services;

''(7) there is a need to support the families of such infants and young children through the provision of services that will prevent the abandonment of the infants and children; and

''(8) private, Federal, State, and local resources should be coordinated to establish and maintain services described in paragraph (7) and to ensure the optimal use of all such resources.

''TITLE I—PROJECTS REGARDING ABANDONMENT OF INFANTS AND YOUNG CHILDREN IN HOSPITALS

''SEC. 101. ESTABLISHMENT OF LOCAL PROJECTS.

''(a) IN GENERAL.—The Secretary of Health and Human Services may make grants to public and nonprofit private entities for the purpose of developing, implementing, and operating projects to demonstrate methods—

''(1) to prevent the abandonment of infants and young children, including the provision of services to members of the natural family for any condition that increases the probability of abandonment of an infant or young child;

''(2) to identify and address the needs of abandoned infants and young children;

''(3) to assist abandoned infants and young children to reside with their natural families or in foster care, as appropriate;

''(4) to recruit, train, and retain foster families for abandoned infants and young children;

''(5) to carry out residential care programs for abandoned infants and young children who are unable to reside with their families or to be placed in foster care;

''(6) to carry out programs of respite care for families and foster families of infants and young children described in subsection (b);

''(7) to recruit and train health and social services personnel to work with families, foster care families, and residential care programs for abandoned infants and young children; and

''(8) to prevent the abandonment of infants and young children, and to care for the infants and young children who have been abandoned, through model programs providing health, educational, and social services at a single site in a geographic area in which a significant number of infants and young children described in subsection (b) reside (with special consideration given to applications from entities that will provide the services of the project through community-based organizations).

mit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate, a report describing the findings made as a result of the study.

''TITLE III—GENERAL PROVISIONS

''SEC. 301. DEFINITIONS.

''In this Act:

''(1) ABANDONED; ABANDONMENT.—The terms 'abandoned' and 'abandonment', used with respect to infants and young children, mean that the infants and young children are medically cleared for discharge from acute-care hospital settings, but remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives.

''(2) ACQUIRED IMMUNE DEFICIENCY SYNDROME.—The term 'acquired immune deficiency syndrome' includes infection with the etiologic agent for such syndrome, any condition indicating that an individual is infected with such etiologic agent, and any condition arising from such etiologic agent.

''(3) DANGEROUS DRUG.—The term 'dangerous drug' means a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

''(4) NATURAL FAMILY.—The term 'natural family' shall be broadly interpreted to include natural parents, grandparents, family members, guardians, children residing in the household, and individuals residing in the household on a continuing basis who are in a care-giving situation, with respect to infants and young children covered under this Act.

''(5) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

''SEC. 302. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—

''(1) AUTHORIZATION.—For the purpose of carrying out this Act, there are authorized to be appropriated $45,000,000 for fiscal year 2004 and such sums as may be necessary for fiscal years 2005 through 2008.

''(2) LIMITATION.—Not more than 5 percent of the amounts appropriated under paragraph (1) for any fiscal year may be obligated for carrying out section 102(a).

''(b) ADMINISTRATIVE EXPENSES.—

''(1) AUTHORIZATION.—For the purpose of the administration of this Act by the Secretary, there is authorized to be appropriated for each fiscal year specified in subsection (a)(1) an amount equal to 5 percent of the amount authorized in such subsection to be appropriated for the fiscal year. With respect to the amounts appropriated under such subsection, the preceding sentence may not be construed to prohibit the expenditure of the amounts for the purpose described in such sentence.

''(2) LIMITATION.—The Secretary may not obligate any of the amounts appropriated under paragraph (1) for a fiscal year unless, from the amounts appropriated under subsection (a)(1) for the fiscal year, the Secretary has obligated for the purpose described in such paragraph an amount equal to the amounts obligated by the Secretary for such purpose in fiscal year 2003.

''(c) AVAILABILITY OF FUNDS.—Amounts appropriated under this section shall remain available until expended.''

[Pub. L. 102–236, §1, Dec. 12, 1991, 105 Stat. 1812, provided that: ''This Act [amending Pub. L. 100–505 set out above and provisions set out as a note under section 623 of Title 29, Labor] may be cited as the 'Abandoned Infants Assistance Act Amendments of 1991'.''']

STUDY OF FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS; REPORT TO CONGRESS NOT LATER THAN OCTOBER 1, 1983

Section 101(b) of Pub. L. 96–272 directed Secretary of Health, Education, and Welfare to conduct a study of programs of foster care and adoption assistance established under part IV–E of the Social Security Act (this part) and submit to Congress, not later than Oct. 1, 1983, a full and complete report thereon, together with his recommendations as to (A) whether such part IV–E should be continued, and if so, (B) the changes (if any) which should be made in such part IV–E.

§ 671. State plan for foster care and adoption assistance

(a) Requisite features of State plan

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(1) provides for foster care maintenance payments in accordance with section 672 of this title and for adoption assistance in accordance with section 673 of this title;

(2) provides that the State agency responsible for administering the program authorized by subpart 1 of part B of this subchapter shall administer, or supervise the administration of, the program authorized by this part;

(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this subchapter, under subchapter XX of this chapter, and under any other appropriate provision of Federal law;

(5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

(6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the ''State agency'') will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

(8) provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this subchapter or under subchapter I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or pro-

gram, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

(9) provides that the State agency will—

(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B of this subchapter or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;

(10) provides for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, and provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this subchapter;

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;

(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness;

(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this subchapter, which shall be conducted no less frequently than once every three years;

(14) provides (A) specific goals (which shall be established by State law on or before October 1, 1982) for each fiscal year (commencing with the fiscal year which begins on October 1, 1983) as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care with respect to whom assistance under the plan is provided during such year) who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months, and (B) a description of the steps which will be taken by the State to achieve such goals;

(15) provides that—

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has—

(I) committed murder (which would have been an offense under section 1111(a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

(E) if reasonable efforts of the type described in subparagraph (B) are not made

with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—

(i) a permanency hearing (as described in section 675(5)(C) of this title) shall be held for the child within 30 days after the determination; and

(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

(F) reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subparagraph (B);

(16) provides for the development of a case plan (as defined in section 675(1) of this title) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 675(5)(B) of this title with respect to each such child;

(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the program funded under part A of this subchapter and plan approved under part D of this subchapter, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part;

(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may—

(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved;

(19) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards;

(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments are to be made under the State plan under this part, including procedures requiring that—

(i) in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

(ii) in any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

(B) subparagraph (A) shall not apply to a State plan if the Governor of the State has notified the Secretary in writing that the State has elected to make subparagraph (A) inapplicable to the State, or if the State legislature, by law, has elected to make subparagraph (A) inapplicable to the State;

(21) provides for health insurance coverage (including, at State option, through the program under the State plan approved under subchapter XIX of this chapter) for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement (other than an agreement under this part) between the State and an adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care, and that with respect to the provision of such health insurance coverage—

(A) such coverage may be provided through 1 or more State medical assistance programs;

(B) the State, in providing such coverage, shall ensure that the medical benefits, including mental health benefits, provided are of the same type and kind as those that would be provided for children by the State under subchapter XIX of this chapter;

(C) in the event that the State provides such coverage through a State medical assistance program other than the program under subchapter XIX of this chapter, and the State exceeds its funding for services under such other program, any such child shall be deemed to be receiving aid or assistance under the State plan under this part for purposes of section 1396a(a)(10)(A)(i)(I) of this title; and

(D) in determining cost-sharing requirements, the State shall take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted consistent, to the extent coverage is provided through a State medical assistance program, with the rules under such program;

(22) provides that, not later than January 1, 1999, the State shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children;

(23) provides that the State shall not—

(A) deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or

(B) fail to grant an opportunity for a fair hearing, as described in paragraph (12), to an individual whose allegation of a violation of subparagraph (A) of this paragraph is denied by the State or not acted upon by the State with reasonable promptness; and

(24) include[1] a certification that, before a child in foster care under the responsibility of the State is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child.

(b) Approval of plan by Secretary

The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title IV, § 471, as added Pub. L. 96–272, title I, § 101(a)(1), June 17, 1980, 94 Stat. 501; amended Pub. L. 97–35, title XXIII, § 2353(r), Aug. 13, 1981, 95 Stat. 874; Pub. L. 97–248, title I, § 160(d), Sept. 3, 1982, 96 Stat. 400; Pub. L. 98–378, § 11(c), Aug. 16, 1984, 98 Stat. 1318; Pub. L. 99–514, title XVII, § 1711(c)(2), Oct. 22, 1986, 100 Stat. 2784; Pub. L. 100–485, title II, § 202(c)(1), Oct. 13, 1988, 102 Stat. 2378; Pub. L. 101–508, title V, § 5054(b), Nov. 5, 1990, 104 Stat. 1388–229; Pub. L. 103–66, title XIII, § 13711(b)(4), Aug. 10, 1993, 107 Stat. 655; Pub. L. 103–432, title II, § 203(b), Oct. 31, 1994, 108 Stat. 4456; Pub. L. 104–188, title I, § 1808(a), Aug. 20, 1996, 110 Stat. 1903; Pub. L. 104–193, title I, § 108(d)(2), title V, § 505, Aug. 22, 1996, 110 Stat. 2166, 2278; Pub. L. 105–33, title V, § 5591(b), Aug. 5, 1997, 111 Stat. 643; Pub. L. 105–89, title I, §§ 101(a), 106, title III, §§ 306, 308, Nov. 19, 1997, 111 Stat. 2116, 2120, 2132, 2133; Pub. L. 105–200, title III, § 301(a), July 16, 1998, 112 Stat. 658; Pub. L. 106–169, title I, § 112(a), title IV, § 401(*o*), Dec. 14, 1999, 113 Stat. 1829, 1859.)

REFERENCES IN TEXT

Parts A, B, and D of this subchapter, referred to in subsec. (a)(2), (4), (8)–(10), (13), and (17), are classified to sections 601 et seq., 620 et seq., and 651 et seq., respectively, of this title.

AMENDMENTS

1999—Subsec. (a)(8). Pub. L. 106–169, § 401(*o*), struck out ''(including activities under part F of this subchapter)'' after ''part A, B, or D of this subchapter''.

Subsec. (a)(24). Pub. L. 106–169, § 112(a), added par. (24).

1998—Subsec. (a)(23). Pub. L. 105–200 added par. (23).

1997—Subsec. (a)(15). Pub. L. 105–89, § 101(a), amended par. (15) generally. Prior to amendment, par. (15) read as follows: ''effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home;''.

Subsec. (a)(17). Pub. L. 105–33, § 5591(b)(1), struck out ''and'' at end.

Subsec. (a)(18). Pub. L. 105–33, § 5591(b)(3), redesignated par. (18), relating to preference to adult relatives, as (19).

Pub. L. 105–33, § 5591(b)(2), substituted ''; and'' for period at end of par. (18) relating to denial or delay of adoption or foster care on basis of race, color, or national origin.

Subsec. (a)(19). Pub. L. 105–33, § 5591(b)(3), redesignated par. (18), relating to preference to adult relatives, as (19).

Subsec. (a)(20). Pub. L. 105–89, § 106, added par. (20).

Subsec. (a)(21). Pub. L. 105–89, § 306, added par. (21).

Subsec. (a)(22). Pub. L. 105–89, § 308, added par. (22).

1996—Subsec. (a)(17). Pub. L. 104–193, § 108(d)(2), substituted ''program funded under part A of this subchapter and plan approved under part D of this subchapter'' for ''plans approved under parts A and D of this subchapter''.

Subsec. (a)(18). Pub. L. 104–193, § 505(3), added par. (18) relating to preference to adult relatives.

Pub. L. 104–188, § 1808(a)(3), added par. (18) relating to denial or delay of adoption or foster care on basis of race, color, or national origin.

1994—Subsec. (b). Pub. L. 103–432 struck out after first sentence ''However, in any case in which the Secretary finds, after reasonable notice and opportunity for a hearing, that a State plan which has been approved by the Secretary no longer complies with the provisions of subsection (a) of this section, or that in the administration of the plan there is a substantial failure to comply with the provisions of the plan, the Secretary shall notify the State that further payments will not be made to the State under this part, or that such payments will be made to the State but reduced by an amount which the Secretary determines appropriate, until the Secretary is satisfied that there is no longer any such failure to comply, and until he is so satisfied he shall make no further payments to the State, or shall reduce such payments by the amount specified in his notification to the State.''

1993—Subsec. (a)(2). Pub. L. 103–66 substituted ''subpart 1 of part B'' for ''part B''.

1990—Subsec. (a)(8)(E). Pub. L. 101–508, § 5054(b)(2), added cl. (E).

Subsec. (a)(9). Pub. L. 101–508, § 5054(b)(1), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''provides that where any agency of the State has reason to believe that the home or institution in which a child resides whose care is being paid for in whole or in part with funds provided under this part or part B of this subchapter is unsuitable for the child because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency;''.

1988—Subsec. (a)(8)(A). Pub. L. 100–485 substituted ''part A, B, or D of this subchapter (including activities under part F of this subchapter)'' for ''part A, B, C, or D of this subchapter''.

1986—Subsec. (a)(1), (11). Pub. L. 99–514 substituted ''adoption assistance'' for ''adoption assistance payments''.

1984—Subsec. (a)(17). Pub. L. 98–378 added par. (17).

1982—Subsec. (a)(10). Pub. L. 97–248 amended Pub. L. 97–35, § 2353(r), generally. See 1981 Amendment note below.

1981—Subsec. (a)(10). Pub. L. 97–35, § 2353(r), as amended by Pub. L. 97–248, § 160(d), substituted provisions that in order for a State to be eligible for payments under this part a State plan must provide for establishment or designation of a State authority or authorities responsible for standards for foster family homes and child care institutions, such standards to be reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, for provisions that such State plan provide for the application of standards referred to in section 1397b(d)(1) of this title.

[1] So in original. Probably should be ''includes''.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–169, title I, §112(b), Dec. 14, 1999, 113 Stat. 1829, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1999.''

Amendment by section 401(*o*) of Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–200, title III, §301(d), July 16, 1998, 112 Stat. 658, provided that: ''The amendments made by this section [amending this section and section 674 of this title] shall take effect as if included in the enactment of section 202 of the Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2125) [see Effective Date of 1997 Amendments note below].''

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

Amendment by Pub. L. 105–33 effective as if included in the enactment of title V of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5593 of Pub. L. 105–33, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(d)(2) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 203(c)(2) of Pub. L. 103–432 provided that: ''The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5054(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 602 of this title] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 204 of title II of Pub. L. 100–485 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title [enacting sections 681 to 687 of this title, amending this section, sections 602, 603, 607, 1308, 1396a, and 1396s of this title, and section 51 of Title 26, Internal Revenue Code, repealing sections 609, 614, 630 to 632, and 633 to 645 of this title, and enacting provisions set out as notes under section 681 of this title] shall become effective on October 1, 1990.

''(b) SPECIAL RULES.—(1)(A) If any State makes the changes in its State plan approved under section 402 of the Social Security Act [section 602 of this title] that are required in order to carry out the amendments made by this title and formally notifies the Secretary of Health and Human Services of its desire to become subject to such amendments as of the first day of any calendar quarter beginning on or after the date on which the proposed regulations of the Secretary of Health and Human Services are published under section 203(a) [42 U.S.C. 671 note] (or, if earlier, the date on which such regulations are required to be published under such section) and before October 1, 1990, such amendments shall become effective with respect to that State as of such first day.

''(B) In the case of any State in which the amendments made by this title become effective (in accordance with subparagraph (A)) with respect to any quarter of a fiscal year beginning before October 1, 1990, the limitation applicable to the State for the fiscal year under section 403(k)(2) of the Social Security Act [section 603(k)(2) of this title] (as added by section 201(c)(1) of this Act) shall be an amount that bears the same ratio to such limitation (as otherwise determined with respect to the State for the fiscal year) as the number of quarters in the fiscal year throughout which such amendments apply to the State bears to 4.

''(2) Section 403(*l*)(3) of the Social Security Act [section 603(*l*)(3) of this title] (as added by section 201(c)(2) of this Act) is repealed effective October 1, 1995 (except that subparagraph (A) of such section 403(*l*)(3) shall remain in effect for purposes of applying any reduction in payment rates required by such subparagraph for any of the fiscal years specified therein); and section 403(*l*)(4) of such Act (as so added) is repealed effective October 1, 1998.

''(3) Subsections (a), (c), and (d) of section 203 of this Act [42 U.S.C. 671 note, 681 notes], and section 486 of the Social Security Act [section 686 of this title] (as added by section 201(b) of this Act), shall become effective on the date of the enactment of this Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99–514, set out as a note under section 670 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Oct. 1, 1981, see section 160(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

REGULATIONS

Section 203(a) of title II of Pub. L. 100–485 provided that: ''Not later than 6 months after the date of the enactment of this Act [Oct. 13, 1988], the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall issue proposed regulations for the purpose of implementing the amendments made by this title [see Effective Date of 1988 Amendment note above], including regulations establishing uniform data collection requirements. The Secretary shall publish final regulations for such purpose not later than one year after the date of the enactment of this Act. Regulations issued under this subsection shall be developed by the Secretary in consultation with the Secretary of Labor and with the responsible State agencies described in section 482(a)(2) of the Social Security Act [section 682(a)(2) of this title].''

PRESERVATION OF REASONABLE PARENTING

Section 401 of Pub. L. 105–89 provided that: ''Nothing in this Act [see Short Title of 1997 Amendment note set out under section 1305 of this title] is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting.''

REPORTING REQUIREMENTS

Section 402 of Pub. L. 105–89 provided that: ''Any information required to be reported under this Act [see Short Title of 1997 Amendment note set out under section 1305 of this title] shall be supplied to the Secretary of Health and Human Services through data meeting the requirements of the Adoption and Foster Care Analysis and Reporting System established pursuant to section 479 of the Social Security Act (42 U.S.C. 679), to the extent such data is available under that system. The Secretary shall make such modifications to regulations issued under section 479 of such Act with respect to the Adoption and Foster Care Analysis and Reporting System as may be necessary to allow States to obtain data that meets the requirements of such system in order to satisfy the reporting requirements of this Act.''

PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS

Section 406 of Pub. L. 105–89 provided that:

''(a) IN GENERAL.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Act [see Short Title of 1997 Amendment note set out under section 1305 of this title] should be American-made.

''(b) NOTICE REQUIREMENT.—In providing financial assistance to, or entering into any contract with, any entity using funds made available under this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.''

§ 672. Foster care maintenance payments program

(a) Qualifying children

Each State with a plan approved under this part shall make foster care maintenance payments (as defined in section 675(4) of this title) under this part with respect to a child who would have met the requirements of section 606(a) of this title or of section 607 of this title (as such sections were in effect on July 16, 1996) but for his removal from the home of a relative (specified in section 606(a) of this title (as so in effect)), if—

(1) the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 671(a)(15) of this title for a child have been made;

(2) such child's placement and care are the responsibility of (A) the State agency administering the State plan approved under section 671 of this title, or (B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 671 of this title has made an agreement which is still in effect;

(3) such child has been placed in a foster family home or child-care institution as a result of the voluntary placement agreement or judicial determination referred to in paragraph (1); and

(4) such child—

(A) would have received aid under the State plan approved under section 602 of this title (as in effect on July 16, 1996) in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

(B)(i) would have received such aid in or for such month if application had been made therefor, or (ii) had been living with a relative specified in section 606(a) of this title (as in effect on July 16, 1996) within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made.

In any case where the child is an alien disqualified under section 1255a(h), 1160(f), or 1161(d)(7)[1] of title 8 from receiving aid under the State plan approved under section 602 of this title in or for the month in which such agreement was entered into or court proceedings leading to the removal of the child from the home were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corresponding requirements of section 673(a)(2)(B) of this title), with respect to that month, if he or she would have satisfied such requirements but for such disqualification. In determining whether a child would have received aid under a State plan approved under section 602 of this title (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 602(a)(7)(B) of this title, as so in effect) have a combined value of not more than $10,000 shall be considered to be a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of such section 602(a)(7)(B) of this title).

(b) Additional qualifications

Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is—

(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or private child-placement or child-care agency, or

(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term ''foster care maintenance payments'' (as defined in section 675(4) of this title).

(c) "Foster family home" and "child-care institution" defined

For the purposes of this part, (1) the term ''foster family home'' means a foster family

[1] See References in Text note below.

home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term ''child-care institution'' means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(d) Children removed from their homes pursuant to voluntary placement agreements

Notwithstanding any other provision of this subchapter, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a) of this section, only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 622(b)(10) of this title.

(e) Placements in best interest of child

No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as described in subsection (a) of this section and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.

(f) "Voluntary placement" and "voluntary placement agreement" defined

For the purposes of this part and part B of this subchapter, (1) the term ''voluntary placement'' means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and (2) the term ''voluntary placement agreement'' means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

(g) Revocation of voluntary placement agreement

In any case where—

(1) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a) of this section, and

(2) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative,

the voluntary placement agreement shall be deemed to be revoked unless the State agency opposes such request and obtains a judicial determination, by a court of competent jurisdiction, that the return of the child to such home would be contrary to the child's best interests.

(h) Aid for dependent children; assistance for minor children in needy families

(1) For purposes of subchapter XIX of this chapter, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a dependent child as defined in section 606 of this title (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this subchapter (as so in effect). For purposes of subchapter XX of this chapter, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a minor child in a needy family under a State program funded under part A of this subchapter and is deemed to be a recipient of assistance under such part.

(2) For purposes of paragraph (1), a child whose costs in a foster family home or child care institution are covered by the foster care maintenance payments being made with respect to the child's minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are made under this section.

(Aug. 14, 1935, ch. 531, title IV, § 472, as added and amended Pub. L. 96–272, title I, §§ 101(a)(1), 102(a)(1), (2), June 17, 1980, 94 Stat. 503, 513, 514; Pub. L. 99–603, title II, § 201(b)(2)(A), title III, §§ 302(b)(2), 303(e)(2), Nov. 6, 1986, 100 Stat. 3403, 3422, 3431; Pub. L. 100–203, title IX, §§ 9133(b)(2), 9139(a), Dec. 22, 1987, 101 Stat. 1330–314, 1330–321; Pub. L. 103–432, title II, § 202(d)(3), Oct. 31, 1994, 108 Stat. 4454; Pub. L. 104–193, title I, § 108(d)(3), (4), title V, § 501, Aug. 22, 1996, 110 Stat. 2166, 2277; Pub. L. 105–33, title V, §§ 5513(b)(1), (2), 5592(b), Aug. 5, 1997, 111 Stat. 620, 644; Pub. L. 105–89, title I, § 101(c), Nov. 19, 1997, 111 Stat. 2117; Pub. L. 106–169, title I, § 111, Dec. 14, 1999, 113 Stat. 1829; Pub. L. 109–113, § 2, Nov. 22, 2005, 119 Stat. 2371.)

REFERENCES IN TEXT

Section 1161 of title 8, referred to in subsec. (a), was repealed by Pub. L. 103–416, title II, § 219(ee)(1), Oct. 25, 1994, 108 Stat. 4319.

Parts A and B of this subchapter, referred to in subsecs. (f) and (h), are classified to sections 601 et seq. and 620 et seq., respectively, of this title.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–113 struck out ''nonprofit'' before ''private'' in pars. (1) and (2).

1999—Subsec. (a). Pub. L. 106–169 inserted at end ''In determining whether a child would have received aid under a State plan approved under section 602 of this title (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 602(a)(7)(B) of

this title, as so in effect) have a combined value of not more than $10,000 shall be considered to be a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of such section 602(a)(7)(B) of this title).

1997—Subsec. (a). Pub. L. 105–33, § 5513(b)(1), substituted ''July 16, 1996'' for ''June 1, 1995'' in introductory provisions.

Subsec. (a)(1). Pub. L. 105–89 inserted ''for a child'' before ''have been made;''.

Subsec. (a)(4). Pub. L. 105–33, § 5513(b)(1), substituted ''July 16, 1996'' for ''June 1, 1995'' in subpars. (A) and (B).

Subsec. (d). Pub. L. 105–33, § 5592(b), substituted ''section 622(b)(10)'' for ''section 622(b)(9)''.

Subsec. (h)(1). Pub. L. 105–33, § 5513(b)(2), substituted ''July 16, 1996'' for ''June 1, 1995''.

1996—Subsec. (a). Pub. L. 104–193, § 108(d)(3)(A), in introductory provisions, substituted ''would have met the requirements'' for ''would meet the requirements'' and inserted ''(as such sections were in effect on June 1, 1995)'' after ''section 607 of this title'' and ''(as so in effect)'' after ''section 606(a) of this title''.

Subsec. (a)(4)(A). Pub. L. 104–193, § 108(d)(3)(B)(i), substituted ''would have received aid'' for ''received aid'' and inserted ''(as in effect on June 1, 1995)'' after ''section 602 of this title''.

Subsec. (a)(4)(B)(ii). Pub. L. 104–193, § 108(d)(3)(B)(ii), inserted ''(as in effect on June 1, 1995)'' after ''section 606(a) of this title''.

Subsec. (c)(2). Pub. L. 104–193, § 501, struck out ''nonprofit'' before ''private child-care institution.''

Subsec. (h). Pub. L. 104–193, § 108(d)(4), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''For purposes of subchapters XIX and XX of this chapter, any child with respect to whom foster care maintenance payments are made under this section shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter. For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are made under this section.''

1994—Subsec. (d). Pub. L. 103–432 substituted ''section 622(b)(9) of this title'' for ''section 627(b) of this title''.

1987—Subsec. (a). Pub. L. 100–203, § 9139(a), substituted ''section 673(a)(2)(B) of this title'' for ''section 673(a)(1)(B) of this title''.

Subsec. (h). Pub. L. 100–203, § 9133(b)(2), inserted sentence at end.

1986—Subsec. (a). Pub. L. 99–603, § 303(e)(2), inserted in closing provisions reference to cases in which a child is an alien disqualified under section 1161(d)(7) of title 8.

Pub. L. 99–603, § 302(b)(2), inserted in closing provisions reference to cases in which a child is an alien disqualified under section 1160(f) of title 8.

Pub. L. 99–603, § 201(b)(2)(A), inserted closing provisions: ''In any case where the child is an alien disqualified under section 1255a(h) of title 8 from receiving aid under the State plan approved under section 602 of this title in or for the month in which such agreement was entered into or court proceedings leading to the removal of the child from the home were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corresponding requirements of section 673(a)(1)(B) of this title), with respect to that month, if he or she would have satisfied such requirements but for such disqualification.''

1980—Subsec. (a). Pub. L. 96–272, § 102(a)(1), inserted provisions relating to voluntary placement agreements entered into by a child's parent or legal guardian.

Subsecs. (d) to (h). Pub. L. 96–272, § 102(a)(2), added subsecs. (d) to (g). Former subsec. (d) was redesignated (h).

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

Amendment by section 5513(b)(1), (2) of Pub. L. 105–33 effective as if included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 108 became law, see section 5518(b) of Pub. L. 105–33, set out as a note under section 652 of this title.

Amendment by section 5592(b) of Pub. L. 105–33 effective as if included in the enactment of title V of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5593 of Pub. L. 105–33, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(d)(3), (4) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Apr. 1, 1996, see section 202(e) of Pub. L. 103–432, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9133(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 602, 673, and 675 of this title] shall become effective April 1, 1988.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 102(a)(1) of Pub. L. 96–272, as amended by Pub. L. 98–118, § 3(a), Oct. 11, 1983, 97 Stat. 803; Pub. L. 98–617, § 4(c)(1), Nov. 8, 1984, 98 Stat. 3297; Pub. L. 99–272, title XII, 12306(c)(1), Apr. 7, 1986, 100 Stat. 294; Pub. L. 100–203, title IX, § 9131(a)(1), Dec. 22, 1987, 101 Stat. 1330–313, provided that the amendment made by that section is effective with respect to expenditures made after Sept. 30, 1980.

Section 102(c) of Pub. L. 96–272, as amended by Pub. L. 98–118, § 3(b), Oct. 11, 1983, 97 Stat. 803; Pub. L. 98–617, § 4(c)(2), Nov. 8, 1984, 98 Stat. 3297; Pub. L. 99–272, title XII, § 12306(c)(2), Apr. 7, 1986, 100 Stat. 294; Pub. L. 100–203, title IX, § 9131(a)(2), Dec. 22, 1987, 101 Stat. 1330–313, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 608, 673, and 675 of this title] shall be effective only with respect to expenditures made after September 30, 1979.''

[Section 9131(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending section 102(a)(1), (c), and (e) of Pub. L. 96–272, set out as notes under this section] shall become effective October 1, 1987.'']

CHILDREN VOLUNTARILY REMOVED FROM HOME OF RELATIVE

Section 102(d)(1) of Pub. L. 96–272 provided that: ''For purposes of section 472 of the Social Security Act [this section], a child who was voluntarily removed from the home of a relative and who had a judicial determination prior to October 1, 1978, to the effect that continuation therein would be contrary to the welfare of such child, shall be deemed to have been so removed as a result of such judicial determination if, and from the date that, a case plan and a review meeting the require-

ments of section 471(a)(16) of such Act [section 671(a)(16) of this title] have been made with respect to such child and such child is determined to be in need of foster care as a result of such review. In the case of any child described in the preceding sentence, for purposes of section 472(a)(4) of such Act [subsec. (a)(4) of this section], the date of the voluntary removal shall be deemed to be the date on which court proceedings are initiated which led to such removal.''

ANNUAL REPORT TO CONGRESS OF NUMBER OF CHILDREN PLACED IN FOSTER CARE PURSUANT TO VOLUNTARY PLACEMENT AGREEMENTS

Pub. L. 96–272, title I, §102(e), June 17, 1980, 94 Stat. 515, as amended by Pub. L. 100–203, title IX, §9131(a)(3), Dec. 22, 1987, 101 Stat. 1330–313, which required the Secretary of Health, Education, and Welfare, to submit to Congress a full and complete annual report on the placement of children in foster care pursuant to voluntary placement agreements under this section and section 608 of this title, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 12 on page 99 of House Document No. 103–7.

§ 673. Adoption assistance program

(a) Agreements with adoptive parents of children with special needs; State payments; qualifying children; amount of payments; changes in circumstances; placement period prior to adoption; nonrecurring adoption expenses

(1)(A) Each State having a plan approved under this part shall enter into adoption assistance agreements (as defined in section 675(3) of this title) with the adoptive parents of children with special needs.

(B) Under any adoption assistance agreement entered into by a State with parents who adopt a child with special needs, the State—

(i) shall make payments of nonrecurring adoption expenses incurred by or on behalf of such parents in connection with the adoption of such child, directly through the State agency or through another public or nonprofit private agency, in amounts determined under paragraph (3), and

(ii) in any case where the child meets the requirements of paragraph (2), may make adoption assistance payments to such parents, directly through the State agency or through another public or nonprofit private agency, in amounts so determined.

(2) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if such child—

(A)(i) at the time adoption proceedings were initiated, met the requirements of section 606(a) of this title or section 607 of this title (as such sections were in effect on July 16, 1996) or would have met such requirements except for his removal from the home of a relative (specified in section 606(a) of this title (as so in effect)), either pursuant to a voluntary placement agreement with respect to which Federal payments are provided under section 674 (or 603 (as such section was in effect on July 16, 1996)) of this title or as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child,

(ii) meets all of the requirements of subchapter XVI of this chapter with respect to eligibility for supplemental security income benefits, or

(iii) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent as provided in section 675(4)(B) of this title,

(B)(i) would have received aid under the State plan approved under section 602 of this title (as in effect on July 16, 1996) in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

(ii)(I) would have received such aid in or for such month if application had been made therefor, or (II) had been living with a relative specified in section 606(a) of this title (as in effect on July 16, 1996) within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made, or

(iii) is a child described in subparagraph (A)(ii) or (A)(iii), and

(C) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

The last sentence of section 672(a) of this title shall apply, for purposes of subparagraph (B), in any case where the child is an alien described in that sentence. Any child who meets the requirements of subparagraph (C), who was determined eligible for adoption assistance payments under this part with respect to a prior adoption, who is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died, and who fails to meet the requirements of subparagraphs (A) and (B) but would meet such requirements if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part and the prior adoption were treated as never having occurred, shall be treated as meeting the requirements of this paragraph for purposes of paragraph (1)(B)(ii).

(3) The amount of the payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B) shall be determined through agreement between the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment made under clause (ii) of paragraph (1)(B) exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

(4) Notwithstanding the preceding paragraph, (A) no payment may be made to parents with respect to any child who has attained the age of eighteen (or, where the State determines that the child has a mental or physical handicap which warrants the continuation of assistance, the age of twenty-one), and (B) no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.

(5) For purposes of this part, individuals with whom a child (who has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs) is placed for adoption in accordance with applicable State and local law shall be eligible for such payments, during the period of the placement, on the same terms and subject to the same conditions as if such individuals had adopted such child.

(6)(A) For purposes of paragraph (1)(B)(i), the term ''nonrecurring adoption expenses'' means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of State or Federal law.

(B) A State's payment of nonrecurring adoption expenses under an adoption assistance agreement shall be treated as an expenditure made for the proper and efficient administration of the State plan for purposes of section 674(a)(3)(E) of this title.

(b) Aid for dependent children; assistance for minor children in needy families

(1) For purposes of subchapter XIX of this chapter, any child who is described in paragraph (3) is deemed to be a dependent child as defined in section 606 of this title (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this subchapter (as so in effect) in the State where such child resides.

(2) For purposes of subchapter XX of this chapter, any child who is described in paragraph (3) is deemed to be a minor child in a needy family under a State program funded under part A of this subchapter and deemed to be a recipient of assistance under such part.

(3) A child described in this paragraph is any child—

(A)(i) who is a child described in subsection (a)(2) of this section, and

(ii) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued), or

(B) with respect to whom foster care maintenance payments are being made under section 672 of this title.

(4) For purposes of paragraphs (1) and (2), a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the child's minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are being made under section 672 of this title.

(c) Children with special needs

For purposes of this section, a child shall not be considered a child with special needs unless—

(1) the State has determined that the child cannot or should not be returned to the home of his parents; and

(2) the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter.

(Aug. 14, 1935, ch. 531, title IV, § 473, as added and amended Pub. L. 96–272, title I, §§ 101(a)(1), 102(a)(3), June 17, 1980, 94 Stat. 504, 514; Pub. L. 99–272, title XII, § 12305(a), (b)(1), Apr. 7, 1986, 100 Stat. 293; Pub. L. 99–514, title XVII, § 1711(a), (b), (c)(3)–(5), Oct. 22, 1986, 100 Stat. 2783, 2784; Pub. L. 99–603, title II, § 201(b)(2)(B), Nov. 6, 1986, 100 Stat. 3403; Pub. L. 100–203, title IX, §§ 9133(b)(3), (4), 9139(b), Dec. 22, 1987, 101 Stat. 1330–314, 1330–321; Pub. L. 103–432, title II, §§ 265(b), 266(a), Oct. 31, 1994, 108 Stat. 4469; Pub. L. 104–193, title I, § 108(d)(5), (6), Aug. 22, 1996, 110 Stat. 2167; Pub. L. 105–33, title V, § 5513(b)(3), (4), Aug. 5, 1997, 111 Stat. 620; Pub. L. 105–89, title III, § 307(a), Nov. 19, 1997, 111 Stat. 2133.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (b)(1), (2), is classified to section 601 et seq. of this title.

AMENDMENTS

1997—Subsec. (a)(2). Pub. L. 105–89 inserted at end ''Any child who meets the requirements of subparagraph (C), who was determined eligible for adoption assistance payments under this part with respect to a prior adoption, who is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or

because the child's adoptive parents have died, and who fails to meet the requirements of subparagraphs (A) and (B) but would meet such requirements if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part and the prior adoption were treated as never having occurred, shall be treated as meeting the requirements of this paragraph for purposes of paragraph (1)(B)(ii).''

Pub. L. 105–33, §5513(b)(3), substituted ''July 16, 1996'' for ''June 1, 1995'' wherever appearing.

Subsec. (b)(1). Pub. L. 105–33, §5513(b)(4), substituted ''July 16, 1996'' for ''June 1, 1995''.

1996—Subsec. (a)(2)(A)(i). Pub. L. 104–193, §108(d)(5)(A), inserted ''(as such sections were in effect on June 1, 1995)'' after ''section 607 of this title'', ''(as so in effect)'' after ''specified in section 606(a) of this title'', and ''(as such section was in effect on June 1, 1995)'' after ''603''.

Subsec. (a)(2)(B)(i). Pub. L. 104–193, §108(d)(5)(B), inserted ''would have'' before ''received aid under the State plan'' and ''(as in effect on June 1, 1995)'' after ''602 of this title''.

Subsec. (a)(2)(B)(ii)(II). Pub. L. 104–193, §108(d)(5)(C), inserted ''(as in effect on June 1, 1995)'' after ''606(a) of this title''.

Subsec. (b). Pub. L. 104–193, §108(d)(6), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For purposes of subchapters XIX and XX of this chapter, any child—

''(1)(A) who is a child described in subsection (a)(2) of this section, and

''(B) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued), or

''(2) with respect to whom foster care maintenance payments are being made under section 672 of this title,

shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter in the State where such child resides. For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are being made under section 672 of this title.''

1994—Subsec. (a)(6)(B). Pub. L. 103–432, §266(a), substituted ''section 674(a)(3)(E) of this title'' for ''section 674(a)(3)(C) of this title''.

Pub. L. 103–432, §265(b), substituted ''section 674(a)(3)(C) of this title'' for ''section 674(a)(3)(B) of this title''.

1987—Subsec. (a)(2). Pub. L. 100–203, §9139(b), made technical amendment to Pub. L. 99–603. See 1986 Amendment note below.

Subsec. (a)(2)(A)(iii). Pub. L. 100–203, §9133(b)(3)(A), added cl. (iii).

Subsec. (a)(2)(B)(iii). Pub. L. 100–203, §9133(b)(3)(B), inserted ''or (A)(iii)'' after ''(A)(ii)''.

Subsec. (b). Pub. L. 100–203, §9133(b)(4), inserted sentence at end.

1986—Subsec. (a)(2). Pub. L. 99–603, as amended Pub. L. 100–203, §9139(b), inserted at end ''The last sentence of section 672(a) of this title shall apply, for purposes of subparagraph (B), in any case where the child is an alien described in that sentence.''

Pub. L. 99–514, §1711(a), substituted par. (1) and introductory text of par. (2) for former introductory text of par. (1) which read as follows: ''Each State with a plan approved under this part shall, directly through the State agency or through another public or nonprofit private agency, make adoption assistance payments pursuant to an adoption assistance agreement in amounts determined under paragraph (2) of this subsection to parents who, after June 17, 1980, adopt a child who—''. Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 99–514, §1711(a)(1), (c)(3), redesignated par. (2) as (3), substituted ''payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B)'' for ''adoption assistance payments'', and inserted ''made under clause (ii) of paragraph (1)(B)''. Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 99–514, §1711(a)(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 99–514, §1711(a)(1), (c)(4), redesignated par. (4) as (5) and substituted ''in accordance with applicable State and local law shall be eligible for such payments'' for '', pursuant to an interlocutory decree, shall be eligible for adoption assistance payments under this subsection''.

Subsec. (a)(6). Pub. L. 99–514, §1711(b), added par. (6).

Subsec. (b). Pub. L. 99–272, §12305(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For purposes of subchapters XIX and XX of this chapter, any child with respect to whom adoption assistance payments are made under this section shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter.''

Subsec. (b)(1)(A). Pub. L. 99–514, §1711(c)(5), substituted ''subsection (a)(2)'' for ''subsection (a)(1)''.

Subsec. (c)(2). Pub. L. 99–272, §12305(b)(1), substituted ''without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter'' for ''without providing adoption assistance'', and inserted ''or medical assistance under subchapter XIX of this chapter'' after ''appropriate adoptive parents without providing adoption assistance under this section''.

1980—Subsec. (a)(1). Pub. L. 96–272, §102(a)(3), inserted references to voluntary placement agreements in subpars. (A)(i) and (B)(i), (ii).

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 307(b) of Pub. L. 105–89 provided that: ''The amendment made by subsection (a) [amending this section] shall only apply to children who are adopted on or after October 1, 1997.''

Amendment by Pub. L. 105–33 effective as if included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 108 became law, see section 5518(b) of Pub. L. 105–33, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 265(d) of Pub. L. 103–432 provided that: ''Each amendment made by this section [amending this section and sections 608 and 675 of this title] shall take effect as if the amendment had been included in the provision of OBRA–1989 [Pub. L. 101–239] to which the amendment relates, at the time the provision became law.''

Section 266(b) of Pub. L. 103–432 provided that: ''The amendment made by this section [amending this sec-

tion] shall take effect as if the amendment had been included in the provision of OBRA–1993 [Pub. L. 103–66] to which the amendment relates, at the time the provision became law.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9133(b)(3), (4) of Pub. L. 100–203 effective Apr. 1, 1988, see section 9133(c) of Pub. L. 100–203, set out as a note under section 672 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99–514, set out as a note under section 670 of this title.

Section 12305(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and sections 675 and 1396a of this title] shall apply to medical assistance furnished in or after the first calendar quarter beginning more than 90 days after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 102(a)(3) of Pub. L. 96–272 effective only with respect to expenditures made after Sept. 30, 1979, see section 102(c) of Pub. L. 96–272, as amended, set out as a note under section 672 of this title.

§ 673a. Interstate compacts

The Secretary of Health and Human Services shall take all possible steps to encourage and assist the various States to enter into interstate compacts (which are hereby approved by the Congress) under which the interests of any adopted child with respect to whom an adoption assistance agreement has been entered into by a State under section 673 of this title will be adequately protected, on a reasonable and equitable basis which is approved by the Secretary, if and when the child and his or her adoptive parent (or parents) move to another State.

(Pub. L. 96–272, title I, § 101(a)(4)(B), June 17, 1980, 94 Stat. 512.)

CODIFICATION

Section was enacted as part of the Adoption Assistance and Child Welfare Act of 1980, and not as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

''Secretary of Health and Human Services'' was substituted for ''Secretary of Health, Education, and Welfare'' in text, pursuant to Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508(b) of Title 20, Education.

§ 673b. Adoption incentive payments

(a) Grant authority

Subject to the availability of such amounts as may be provided in advance in appropriations Acts for this purpose, the Secretary shall make a grant to each State that is an incentive-eligible State for a fiscal year in an amount equal to the adoption incentive payment payable to the State under this section for the fiscal year, which shall be payable in the immediately succeeding fiscal year.

(b) Incentive-eligible State

A State is an incentive-eligible State for a fiscal year if—

(1) the State has a plan approved under this part for the fiscal year;

(2)(A) the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year; or

(B) the number of older child adoptions in the State during the fiscal year exceeds the base number of older child adoptions for the State for the fiscal year;

(3) the State is in compliance with subsection (c) of this section for the fiscal year;

(4) in the case of fiscal years 2001 through 2007, the State provides health insurance coverage to any child with special needs (as determined under section 673(c) of this title) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents; and

(5) the fiscal year is any of fiscal years 1998 through 2007.

(c) Data requirements

(1) In general

A State is in compliance with this subsection for a fiscal year if the State has provided to the Secretary the data described in paragraph (2)—

(A) for fiscal years 1995 through 1997 (or, if the first fiscal year for which the State seeks a grant under this section is after fiscal year 1998, the fiscal year that precedes such first fiscal year); and

(B) for each succeeding fiscal year that precedes the fiscal year.

(2) Determination of numbers of adoptions based on AFCARS data

The Secretary shall determine the numbers of foster child adoptions, of special needs adoptions that are not older child adoptions, and of older child adoptions in a State during each of fiscal years 2002 through 2007, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 679 of this title, as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

(3) No waiver of AFCARS requirements

This section shall not be construed to alter or affect any requirement of section 679 of this title or of any regulation prescribed under such section with respect to reporting of data by States, or to waive any penalty for failure to comply with such a requirement.

(d) Adoption incentive payment

(1) In general

Except as provided in paragraph (2), the adoption incentive payment payable to a State for a fiscal year under this section shall be equal to the sum of—

(A) $4,000, multiplied by the amount (if any) by which the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;

(B) $2,000, multiplied by the amount (if any) by which the number of special needs adoptions that are not older child adoptions in the State during the fiscal year exceeds the base number of special needs adoptions

that are not older child adoptions for the State for the fiscal year; and

(C) $4,000, multiplied by the amount (if any) by which the number of older child adoptions in the State during the fiscal year exceeds the base number of older child adoptions for the State for the fiscal year.

(2) Pro rata adjustment if insufficient funds available

For any fiscal year, if the total amount of adoption incentive payments otherwise payable under this section for a fiscal year exceeds the amount appropriated pursuant to subsection (h) of this section for the fiscal year, the amount of the adoption incentive payment payable to each State under this section for the fiscal year shall be—

(A) the amount of the adoption incentive payment that would otherwise be payable to the State under this section for the fiscal year; multiplied by

(B) the percentage represented by the amount so appropriated for the fiscal year, divided by the total amount of adoption incentive payments otherwise payable under this section for the fiscal year.

(e) 2-year availability of incentive payments

Payments to a State under this section in a fiscal year shall remain available for use by the State through the end of the succeeding fiscal year.

(f) Limitations on use of incentive payments

A State shall not expend an amount paid to the State under this section except to provide to children or families any service (including post-adoption services) that may be provided under part B of this subchapter or this part. Amounts expended by a State in accordance with the preceding sentence shall be disregarded in determining State expenditures for purposes of Federal matching payments under sections 623, 629d, and 674 of this title.

(g) Definitions

As used in this section:

(1) Foster child adoption

The term ''foster child adoption'' means the final adoption of a child who, at the time of adoptive placement, was in foster care under the supervision of the State.

(2) Special needs adoption

The term ''special needs adoption'' means the final adoption of a child for whom an adoption assistance agreement is in effect under section 673 of this title.

(3) Base number of foster child adoptions

The term ''base number of foster child adoptions for a State'' means—

(A) with respect to fiscal year 2003, the number of foster child adoptions in the State in fiscal year 2002; and

(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.

(4) Base number of special needs adoptions that are not older child adoptions

The term ''base number of special needs adoptions for a State'' means—

(A) with respect to fiscal year 2003, the number of special needs adoptions that are not older child adoptions in the State in fiscal year 2002; and

(B) with respect to any subsequent fiscal year, the number of special needs adoptions that are not older child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.

(5) Base number of older child adoptions

The term ''base number of older child adoptions for a State'' means—

(A) with respect to fiscal year 2003, the number of older child adoptions in the State in fiscal year 2002; and

(B) with respect to any subsequent fiscal year, the number of older child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.

(6) Older child adoptions

The term ''older child adoptions'' means the final adoption of a child who has attained 9 years of age if—

(A) at the time of the adoptive placement, the child was in foster care under the supervision of the State; or

(B) an adoption assistance agreement was in effect under section 673 of this title with respect to the child.

(h) Limitations on authorization of appropriations

(1) In general

For grants under subsection (a) of this section, there are authorized to be appropriated to the Secretary—

(A) $20,000,000 for fiscal year 1999;

(B) $43,000,000 for fiscal year 2000;

(C) $20,000,000 for each of fiscal years 2001 through 2003; and

(D) $43,000,000 for each of fiscal years 2004 through 2008.

(2) Availability

Amounts appropriated under paragraph (1), or under any other law for grants under subsection (a) of this section, are authorized to remain available until expended, but not after fiscal year 2008.

(i) Technical assistance

(1) In general

The Secretary may, directly or through grants or contracts, provide technical assistance to assist States and local communities to reach their targets for increased numbers of adoptions and, to the extent that adoption is not possible, alternative permanent placements, for children in foster care.

(2) Description of the character of the technical assistance

The technical assistance provided under paragraph (1) may support the goal of encour-

aging more adoptions out of the foster care system, when adoptions promote the best interests of children, and may include the following:

(A) The development of best practice guidelines for expediting termination of parental rights.

(B) Models to encourage the use of concurrent planning.

(C) The development of specialized units and expertise in moving children toward adoption as a permanency goal.

(D) The development of risk assessment tools to facilitate early identification of the children who will be at risk of harm if returned home.

(E) Models to encourage the fast tracking of children who have not attained 1 year of age into pre-adoptive placements.

(F) Development of programs that place children into pre-adoptive families without waiting for termination of parental rights.

(3) Targeting of technical assistance to the courts

Not less than 50 percent of any amount appropriated pursuant to paragraph (4) shall be used to provide technical assistance to the courts.

(4) Limitations on authorization of appropriations

To carry out this subsection, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed $10,000,000 for each of fiscal years 2004 through 2006.

(Aug. 14, 1935, ch. 531, title IV, § 473A, as added Pub. L. 105–89, title II, § 201(a), Nov. 19, 1997, 111 Stat. 2122; Pub. L. 105–200, title IV, § 410(f), July 16, 1998, 112 Stat. 673; Pub. L. 106–169, title I, § 131, Dec. 14, 1999, 113 Stat. 1830; Pub. L. 108–145, § 3(a), Dec. 2, 2003, 117 Stat. 1879.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsec. (f), is classified to section 620 et seq. of this title.

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108–145, § 3(a)(1)(A), added par. (2) and struck out former par. (2) which read as follows: ''the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;''.

Subsec. (b)(4). Pub. L. 108–145, § 3(a)(1)(B), substituted ''through 2007'' for ''and 2002''.

Subsec. (b)(5). Pub. L. 108–145, § 3(a)(1)(C), substituted ''2007'' for ''2002''.

Subsec. (c)(2). Pub. L. 108–145, § 3(a)(2), added par. (2) and struck out heading and text of former par. (2). Text read as follows:

''(A) DETERMINATIONS BASED ON AFCARS DATA.—Except as provided in subparagraph (B), the Secretary shall determine the numbers of foster child adoptions and of special needs adoptions in a State during each of fiscal years 1995 through 2002, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 679 of this title, as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

''(B) ALTERNATIVE DATA SOURCES PERMITTED FOR FISCAL YEARS 1995 THROUGH 1997.—For purposes of the determination described in subparagraph (A) for fiscal years 1995 through 1997, the Secretary may use data from a source or sources other than that specified in subparagraph (A) that the Secretary finds to be of equivalent completeness and reliability, as reported by a State by April 30, 1998, and approved by the Secretary by July 1, 1998.''

Subsec. (d)(1). Pub. L. 108–145, § 3(a)(3), inserted ''that are not older child adoptions'' after ''adoptions'' in two places in subpar. (B) and added subpar. (C).

2003—Subsec. (g)(3)(A), (B). Pub. L. 108–145, § 3(a)(4)(A), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

''(A) with respect to fiscal year 1998, the average number of foster child adoptions in the State in fiscal years 1995, 1996, and 1997; and

''(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year.''

Subsec. (g)(4). Pub. L. 108–145, § 3(a)(4)(B), inserted ''that are not older child adoptions'' after ''adoptions'' in heading, added subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

''(A) with respect to fiscal year 1998, the average number of special needs adoptions in the State in fiscal years 1995, 1996, and 1997; and

''(B) with respect to any subsequent fiscal year, the number of special needs adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year.''

Subsec. (g)(5), (6). Pub. L. 108–145, § 3(a)(4)(C), added pars. (5) and (6).

Subsec. (h)(1)(D). Pub. L. 108–145, § 3(a)(5)(A), added subpar. (D).

Subsec. (h)(2). Pub. L. 108–145, § 3(a)(5)(B), inserted '', or under any other law for grants under subsection (a) of this section,'' after ''(1)'' and substituted ''2008'' for ''2003''.

Subsec. (i)(4). Pub. L. 108–145, § 3(a)(6), substituted ''2004 through 2006'' for ''1998 through 2000''.

Subsec. (j). Pub. L. 108–145, § 3(a)(7), struck out subsec. (j) which related to supplemental grants.

1999—Subsec. (h)(1). Pub. L. 106–169, § 131(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''For grants under subsection (a) of this section, there are authorized to be appropriated to the Secretary $20,000,000 for each of fiscal years 1999 through 2003.''

Subsec. (j). Pub. L. 106–169, § 131(a), added subsec. (j).

1998—Subsec. (c)(2)(B). Pub. L. 105–200 substituted ''April 30, 1998'' for ''November 30, 1997'' and ''July 1, 1998'' for ''March 1, 1998''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–145, § 5, Dec. 2, 2003, 117 Stat. 1882, provided that: ''The amendments made by this Act [amending this section and section 674 of this title] shall take effect on October 1, 2003.''

EFFECTIVE DATE

Section effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as an Effective Date of 1997 Amendment note under section 622 of this title.

FINDINGS

Pub. L. 108–145, § 2, Dec. 2, 2003, 117 Stat. 1879, provided that: ''The Congress finds the following:

''(1) In 1997, the Congress passed the Adoption and Safe Families Act of 1997 [Pub. L. 105–89; see Short Title of 1997 Amendment note set out under section 1305 of this title] to promote comprehensive child welfare reform to ensure that consideration of children's safety is paramount in child welfare decisions, and to provide a greater sense of urgency to find every child a safe, permanent home.

''(2) The Adoption and Safe Families Act of 1997 also created the Adoption Incentives program, which authorizes incentive payments to States to promote adoptions, with additional incentives provided for the adoption of foster children with special needs.

''(3) Since 1997, all States, the District of Columbia, and Puerto Rico have qualified for incentive payments for their work in promoting adoption of foster children.

''(4) Between 1997 and 2002, adoptions increased by 64 percent, and adoptions of children with special needs increased by 63 percent; however, 542,000 children remain in foster care, and 126,000 are eligible for adoption.

''(5) Although substantial progress has been made to promote adoptions, attention should be focused on promoting adoption of older children. Recent data suggest that half of the children waiting to be adopted are age 9 or older.''

§ 674. Payments to States

(a) Amounts

For each quarter beginning after September 30, 1980, each State which has a plan approved under this part shall be entitled to a payment equal to the sum of—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title) of the total amount expended during such quarter as foster care maintenance payments under section 672 of this title for children in foster family homes or child-care institutions; plus

(2) an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title) of the total amount expended during such quarter as adoption assistance payments under section 673 of this title pursuant to adoption assistance agreements; plus

(3) an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the provision of child placement services and for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision,

(B) 75 percent of so much of such expenditures (including travel and per diem expenses) as are for the short-term training of current or prospective foster or adoptive parents and the members of the staff of State-licensed or State-approved child care institutions providing care to foster and adopted children receiving assistance under this part, in ways that increase the ability of such current or prospective parents, staff members, and institutions to provide support and assistance to foster and adopted children, whether incurred directly by the State or by contract,

(C) 50 percent of so much of such expenditures as are for the planning, design, development, or installation of statewide mechanized data collection and information retrieval systems (including 50 percent of the full amount of expenditures for hardware components for such systems) but only to the extent that such systems—

(i) meet the requirements imposed by regulations promulgated pursuant to section 679(b)(2) of this title;

(ii) to the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;

(iii) to the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part A of this subchapter (for the purposes of facilitating verification of eligibility of foster children); and

(iv) are determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under a State plan approved under part B of this subchapter or this part; and

(D) 50 percent of so much of such expenditures as are for the operation of the statewide mechanized data collection and information retrieval systems referred to in subparagraph (C); and

(E) one-half of the remainder of such expenditures; plus

(4) an amount equal to the amount (if any) by which—

(A) the lesser of—

(i) 80 percent of the amounts expended by the State during the fiscal year in which the quarter occurs to carry out programs in accordance with the State application approved under section 677(b) of this title for the period in which the quarter occurs (including any amendment that meets the requirements of section 677(b)(5) of this title); or

(ii) the amount allotted to the State under section 677(c)(1) of this title for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this paragraph for all prior quarters in the fiscal year; exceeds

(B) the total amount of any penalties assessed against the State under section 677(e) of this title during the fiscal year in which the quarter occurs.

(b) Quarterly estimates of State's entitlement for next quarter; payments; United States' pro rata share of amounts recovered as overpayment; allowance, disallowance, or deferral of claim

(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with subsection (a) of this section, and stating the

amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of children in the State receiving assistance under this part, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amounts so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to foster care and adoption assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4)(A) Within 60 days after receipt of a State claim for expenditures pursuant to subsection (a) of this section, the Secretary shall allow, disallow, or defer such claim.

(B) Within 15 days after a decision to defer such a State claim, the Secretary shall notify the State of the reasons for the deferral and of the additional information necessary to determine the allowability of the claim.

(C) Within 90 days after receiving such necessary information (in readily reviewable form), the Secretary shall—

(i) disallow the claim, if able to complete the review and determine that the claim is not allowable, or

(ii) in any other case, allow the claim, subject to disallowance (as necessary)—

(I) upon completion of the review, if it is determined that the claim is not allowable; or

(II) on the basis of findings of an audit or financial management review.

(c) Automated data collection expenditures

The Secretary shall treat as necessary for the proper and efficient administration of the State plan all expenditures of a State necessary in order for the State to plan, design, develop, install, and operate data collection and information retrieval systems described in subsection (a)(3)(C) of this section, without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under this part.

(d) Reduction for violation of plan requirement

(1) If, during any quarter of a fiscal year, a State's program operated under this part is found, as a result of a review conducted under section 1320a–2a of this title, or otherwise, to have violated paragraph (18) or (23) of section 671(a) of this title with respect to a person or to have failed to implement a corrective action plan within a period of time not to exceed 6 months with respect to such violation, then, notwithstanding subsection (a) of this section and any regulations promulgated under section 1320a–2a(b)(3) of this title, the Secretary shall reduce the amount otherwise payable to the State under this part, for that fiscal year quarter and for any subsequent quarter of such fiscal year, until the State program is found, as a result of a subsequent review under section 1320a–2a of this title, to have implemented a corrective action plan with respect to such violation, by—

(A) 2 percent of such otherwise payable amount, in the case of the 1st such finding for the fiscal year with respect to the State;

(B) 3 percent of such otherwise payable amount, in the case of the 2nd such finding for the fiscal year with respect to the State; or

(C) 5 percent of such otherwise payable amount, in the case of the 3rd or subsequent such finding for the fiscal year with respect to the State.

In imposing the penalties described in this paragraph, the Secretary shall not reduce any fiscal year payment to a State by more than 5 percent.

(2) Any other entity which is in a State that receives funds under this part and which violates paragraph (18) or (23) of section 671(a) of this title during a fiscal year quarter with respect to any person shall remit to the Secretary all funds that were paid by the State to the entity during the quarter from such funds.

(3)(A) Any individual who is aggrieved by a violation of section 671(a)(18) of this title by a State or other entity may bring an action seeking relief from the State or other entity in any United States district court.

(B) An action under this paragraph may not be brought more than 2 years after the date the alleged violation occurred.

(4) This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978 [25 U.S.C. 1901 et seq.].

(e) Discretionary grants for educational and training vouchers for youths aging out of foster care

From amounts appropriated pursuant to section 677(h)(2) of this title, the Secretary may make a grant to a State with a plan approved under this part, for a calendar quarter, in an amount equal to the lesser of—

(1) 80 percent of the amounts expended by the State during the quarter to carry out programs for the purposes described in section 677(a)(6) of this title; or

(2) the amount, if any, allotted to the State under section 677(c)(3) of this title for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this subsection for such purposes for all prior quarters in the fiscal year.

(f) Reduction for failure to submit required data

(1) If the Secretary finds that a State has failed to submit to the Secretary data, as required by regulation, for the data collection system implemented under section 679 of this title, the Secretary shall, within 30 days after the date by which the data was due to be so submitted, notify the State of the failure and that

payments to the State under this part will be reduced if the State fails to submit the data, as so required, within 6 months after the date the data was originally due to be so submitted.

(2) If the Secretary finds that the State has failed to submit the data, as so required, by the end of the 6-month period referred to in paragraph (1) of this subsection, then, notwithstanding subsection (a) of this section and any regulations promulgated under section 1320a–2a(b)(3) of this title, the Secretary shall reduce the amounts otherwise payable to the State under this part, for each quarter ending in the 6-month period (and each quarter ending in each subsequent consecutively occurring 6-month period until the Secretary finds that the State has submitted the data, as so required), by—

(A) ⅙ of 1 percent of the total amount expended by the State for administration of foster care activities under the State plan approved under this part in the quarter so ending, in the case of the 1st 6-month period during which the failure continues; or

(B) ¼ of 1 percent of the total amount so expended, in the case of the 2nd or any subsequent such 6-month period.

(Aug. 14, 1935, ch. 531, title IV, § 474, as added Pub. L. 96–272, title I, § 101(a)(1), June 17, 1980, 94 Stat. 506; amended Pub. L. 96–611, § 3, Dec. 28, 1980, 94 Stat. 3567; Pub. L. 98–369, div. B, title VI, § 2663(c)(18), July 18, 1984, 98 Stat. 1167; Pub. L. 98–617, § 4(a), (b), Nov. 8, 1984, 98 Stat. 3296, 3297; Pub. L. 99–272, title XII, §§ 12306(a), (b), 12307(c), Apr. 7, 1986, 100 Stat. 294, 296; Pub. L. 99–514, title XVIII, § 1883(b)(9), Oct. 22, 1986, 100 Stat. 2917; Pub. L. 100–203, title IX, § 9132(a), Dec. 22, 1987, 101 Stat. 1330–313; Pub. L. 101–239, title VIII, §§ 8001(a), 8002(c), 8006(a), title X, §§ 10401(a), 10402(a), 10403(c)(1), Dec. 19, 1989, 103 Stat. 2452, 2453, 2461, 2487, 2488; Pub. L. 101–508, title V, § 5071(a), Nov. 5, 1990, 104 Stat. 1388–233; Pub. L. 103–66, title XIII, § 13713(a)(1), (2), (b)(1), Aug. 10, 1993, 107 Stat. 656, 657; Pub. L. 103–432, title II, §§ 207(a), (b), 210(a), Oct. 31, 1994, 108 Stat. 4457, 4460; Pub. L. 104–188, title I, § 1808(b), Aug. 20, 1996, 110 Stat. 1903; Pub. L. 105–89, title II, § 202(b), Nov. 19, 1997, 111 Stat. 2125; Pub. L. 105–200, title III, § 301(b), (c), title IV, § 410(g), July 16, 1998, 112 Stat. 658, 674; Pub. L. 106–169, title I, § 101(c), Dec. 14, 1999, 113 Stat. 1828; Pub. L. 107–133, title II, § 201(f), Jan. 17, 2002, 115 Stat. 2424; Pub. L. 108–145, § 4, Dec. 2, 2003, 117 Stat. 1881.)

References in Text

Parts A and B of this subchapter, referred to in subsec. (a)(3)(C)(iii), (iv), are classified to sections 601 et seq. and 620 et seq., respectively, of this title.

The Indian Child Welfare Act of 1978, referred to in subsec. (d)(4), is Pub. L. 95–608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§ 1901 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 25 and Tables.

Amendments

2003—Subsec. (f). Pub. L. 108–145 added subsec. (f).

2002—Subsec. (a)(4). Pub. L. 107–133, § 201(f)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the lesser of—

''(A) 80 percent of the amount (if any) by which—

''(i) the total amount expended by the State during the fiscal year in which the quarter occurs to carry out programs in accordance with the State application approved under section 677(b) of this title for the period in which the quarter occurs (including any amendment that meets the requirements of section 677(b)(5) of this title); exceeds

''(ii) the total amount of any penalties assessed against the State under section 677(e) of this title during the fiscal year in which the quarter occurs; or

''(B) the amount allotted to the State under section 677 of this title for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this paragraph for all prior quarters in the fiscal year.''

Subsec. (e). Pub. L. 107–133, § 201(f)(2), added subsec. (e).

1999—Subsec. (a)(4). Pub. L. 106–169 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''an amount equal to the sum of—

''(A) so much of the amounts expended by such State to carry out programs under section 677 of this title as do not exceed the basic amount for such State determined under section 677(e)(1) of this title; and

''(B) the lesser of—

''(i) one-half of any additional amounts expended by such State for such programs; or

''(ii) the maximum additional amount for such State under such section 677(e)(1) of this title.''

1998—Subsec. (a). Pub. L. 105–200, § 410(g), struck out ''(subject to the limitations imposed by subsection (b) of this section)'' after ''this part'' in introductory provisions.

Subsec. (d)(1), (2). Pub. L. 105–200, § 301(b), substituted ''paragraph (18) or (23) of section 671(a) of this title'' for ''section 671(a)(18) of this title''.

Subsec. (e). Pub. L. 105–200, § 301(c), struck out subsec. (e) which read as follows: ''Notwithstanding subsection (a) of this section, a State shall not be eligible for any payment under this section if the Secretary finds that, after November 19, 1997, the State has—

''(1) denied or delayed the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or

''(2) failed to grant an opportunity for a fair hearing, as described in section 671(a)(12) of this title, to an individual whose allegation of a violation of paragraph (1) of this subsection is denied by the State or not acted upon by the State with reasonable promptness.''

1997—Subsec. (e). Pub. L. 105–89 added subsec. (e).

1996—Subsec. (d). Pub. L. 104–188 added subsec. (d).

1994—Subsec. (b). Pub. L. 103–432, § 207(a), (b)(2), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to maximum aggregate sums payable to any State and State allotments for fiscal years 1981 to 1992.

Subsec. (b)(4). Pub. L. 103–432, § 210(a), added par. (4).

Subsec. (c). Pub. L. 103–432, § 207(a), (b)(2), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to reimbursement for expenditures.

Subsec. (d). Pub. L. 103–432, § 207(b)(2), redesignated subsec. (d) as (b).

Subsec. (d)(1). Pub. L. 103–432, § 207(b)(1), substituted ''subsection (a) of this section for such quarter'' for ''subsections (a), (b), and (c) of this section for such quarter'' and ''subsection (a) of this section'' for ''the provisions of such subsections''.

Subsec. (e). Pub. L. 103–432, § 207(b)(2), redesignated subsec. (e) as (c).

1993—Subsec. (a)(3)(B). Pub. L. 103–66, § 13713(a)(1)(A), struck out ''and'' at end.

Subsec. (a)(3)(C). Pub. L. 103–66, § 13713(b)(1), substituted ''50 percent'' for ''75 percent'' in two places in introductory provisions.

Pub. L. 103–66, § 13713(a)(1)(C), added subpar. (C). Former subpar. (C) redesignated (E).

Subsec. (a)(3)(D), (E). Pub. L. 103–66, §13713(a)(1)(B), (C), added subpar. (D) and redesignated former subpar. (C) as (E).

Subsec. (e). Pub. L. 103–66, §13713(a)(2), added subsec. (e).

1990—Subsec. (a)(3). Pub. L. 101–508 inserted ''provision of child placement services and for the'' before ''proper and efficient''.

1989—Subsec. (a)(3)(B), (C). Pub. L. 101–239, §8006(a), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(4). Pub. L. 101–239, §8002(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''an amount for transitional independent living programs as provided in section 677 of this title.''

Subsec. (b)(1). Pub. L. 101–239, §10403(c)(1), amended Pub. L. 98–617, §4(a)(1), see 1984 Amendment note below.

Pub. L. 101–239, §8001(a), substituted ''through 1992'' for ''through 1989''.

Subsec. (b)(2)(A)(iv). Pub. L. 101–239, §10402(a), added cl. (iv).

Subsec. (b)(2)(B). Pub. L. 101–239, §10403(c)(1), amended Pub. L. 98–617, §4(a)(1), see 1984 Amendment note below.

Pub. L. 101–239, §8001(a), substituted ''through 1992'' for ''through 1989''.

Subsec. (b)(4)(B). Pub. L. 101–239, §10403(c)(1), amended Pub. L. 98–617, §4(a)(1), see 1984 Amendment note below.

Pub. L. 101–239, §8001(a), substituted ''through 1992'' for ''through 1989''.

Subsec. (b)(5)(A). Pub. L. 101–239, §8001(a), substituted ''1992'' for ''1989'' in introductory provisions and in cl. (ii).

Subsec. (c)(1), (2). Pub. L. 101–239, §8001(a), substituted ''through 1992'' for ''through 1989''.

Subsec. (c)(4)(B), (C). Pub. L. 101–239, §10401(a), substituted ''$325,000,000'' for ''$266,000,000''.

1987—Subsec. (b)(1), (2)(A)(iii), (B), (4)(B). Pub. L. 100–203, §9132(a)(1), substituted ''through 1989'' for ''through 1987''.

Subsec. (b)(5)(A). Pub. L. 100–203, §9132(a)(1), (2), substituted ''October 1, 1989'' for ''October 1, 1987'' in introductory provisions and ''through 1989'' for ''through 1987'' in cl. (ii).

Subsec. (c)(1), (2). Pub. L. 100–203, §9132(a)(3), substituted ''through 1989'' for ''through 1987''.

1986—Subsec. (a)(3). Pub. L. 99–272, §12307(c)(1), substituted ''; plus'' for period at end.

Subsec. (a)(4). Pub. L. 99–514 realigned margins of par. (4).

Pub. L. 99–272, §12307(c)(2), added par. (4).

Subsec. (b)(1). Pub. L. 99–272, §12306(a)(1), substituted ''1987'' for ''1985''.

Subsec. (b)(2)(A). Pub. L. 99–272, §12306(a)(2), substituted in cl. (iii) ''each of the fiscal years 1983 through 1987'' for ''fiscal year 1983'', and struck out cls. (iv) and (v) relating to limitations with respect to fiscal years 1984 and 1985, respectively, if the appropriation for each of those years is equal to $266,000,000.

Subsec. (b)(2)(B), (4)(B). Pub. L. 99–272, §12306(a)(1), substituted ''1987'' for ''1985''.

Subsec. (b)(5)(A). Pub. L. 99–272, §12306(a)(3), substituted ''October 1, 1987'' for ''October 1, 1985'' in introductory provision, and in cl. (ii) substituted ''1984 through 1987'' for ''1984 and 1985''.

Subsec. (c)(1), (2). Pub. L. 99–272, §12306(b), substituted ''1987'' for ''1985''.

1984—Subsec. (b)(1). Pub. L. 98–617, §4(a)(1)(A), formerly §4(a)(1), as redesignated and amended by Pub. L. 101–239, §10403(c)(1), substituted ''1985'' for ''1984'' after ''1981 through''.

Subsec. (b)(2)(A)(v). Pub. L. 98–617, §4(a)(2), added cl. (v).

Subsec. (b)(2)(B). Pub. L. 98–617, §4(a)(1)(B), formerly §4(a)(1), as redesignated and amended by Pub. L. 101–239, §10403(c)(1), substituted ''1981 through 1985'' for ''1982 through 1984''.

Subsec. (b)(4)(A). Pub. L. 98–369, §2663(c)(18)(A), substituted ''subparagraph (C)'' for ''subparagraph (c)''.

Subsec. (b)(4)(B). Pub. L. 98–617, §4(a)(1)(A), formerly §4(a)(1), as redesignated and amended by Pub. L. 101–239, §10403(c)(1), substituted ''1985'' for ''1984'' after ''1981 through''.

Subsec. (b)(5)(A). Pub. L. 98–617, §4(a)(3)(A), substituted ''October 1, 1985'' for ''October 1, 1984''.

Subsec. (b)(5)(A)(ii). Pub. L. 98–617, §4(a)(3)(B), substituted ''each of fiscal years 1984 and 1985'' for ''fiscal year 1984''.

Subsec. (c)(1), (2). Pub. L. 98–617, §4(b), substituted ''1985'' for ''1984'' after ''1981 through''.

Pub. L. 98–369, §2663(c)(18)(B), substituted ''relevant'' for ''relvant''.

Subsec. (d)(1). Pub. L. 98–369, §2663(c)(18)(C), substituted ''and (C) such'' for ''and (c) such'' and ''Secretary may find'' for ''secretary may find''.

1980—Subsec. (d). Pub. L. 96–611 added subsec. (d).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–145 effective Oct. 1, 2003, see section 5 of Pub. L. 108–145, set out as a note under section 673b of this section.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 301(b), (c) of Pub. L. 105–200 effective as if included in the enactment of section 202 of the Adoption and Safe Families Act of 1997, Pub. L. 105–89, see section 301(d) of Pub. L. 105–200, set out as a note under section 671 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 207(c) of Pub. L. 103–432 provided that: ''The amendments and repeals made by this section [amending this section] shall apply to payments for calendar quarters beginning on or after October 1, 1993.''

Section 210(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to claims made on or after the date of the enactment of this Act [Oct. 31, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13713(a)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section] shall take effect on October 1, 1993.''

Section 13713(b)(2) of Pub. L. 103–66, as amended by Pub. L. 104–193, title V, §502, Aug. 22, 1996, 110 Stat. 2277, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to expenditures during fiscal years beginning on or after October 1, 1997.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5071(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8001(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1989.''

Section 8002(e) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a), (b) and (c) [amending this section and section 677 of this title] shall take effect October 1, 1989.''

Section 8006(b) of Pub. L. 101–239, as amended by Pub. L. 103–66, title XIII, §13715, Aug. 10, 1993, 107 Stat. 657, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to expenditures made on or after October 1, 1989, and before October 1, 1992, and to expenditures made on or after October 1, 1993.''

Amendment by section 10401(a) of Pub. L. 101–239 effective Oct. 1, 1989, see section 10401(b) of Pub. L. 101–239, set out as a note under section 620 of this title.

Section 10402(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1989.''

Section 10403(c)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall take effect as if included in section 4 of Public Law 98-617 at the time such section became law [enacted Nov. 8, 1974].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9132(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective October 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 675. Definitions

As used in this part or part B of this subchapter:

(1) The term ''case plan'' means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 672(a)(1) of this title.

(B) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) To the extent available and accessible, the health and education records of the child, including—

(i) the names and addresses of the child's health and educational providers;

(ii) the child's grade level performance;

(iii) the child's school record;

(iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;

(v) a record of the child's immunizations;

(vi) the child's known medical problems;

(vii) the child's medications; and

(viii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

(D) Where appropriate, for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.

(2) The term ''parents'' means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term ''adoption assistance agreement'' means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4)(A) The term ''foster care maintenance payments'' means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(B) In cases where—

(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.

(5) The term ''case review system'' means a procedure for assuring that—

(A) each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child, which—

(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child, and

(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 12 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, or of the State in which the child has been placed, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship,

(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents;[1]

(D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care;[1]

(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—

(i) at the option of the State, the child is being cared for by a relative;

(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 671(a)(15)(B)(ii) of this title are required to be made with respect to the child;[1]

(F) a child shall be considered to have entered foster care on the earlier of—

(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(ii) the date that is 60 days after the date on which the child is removed from the home;[1] and

[1] So in original. The semicolon probably should be a comma.

(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard.

(6) The term ''administrative review'' means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

(7) The term ''legal guardianship'' means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term ''legal guardian'' means the caretaker in such a relationship.

(Aug. 14, 1935, ch. 531, title IV, § 475, as added and amended Pub. L. 96–272, title I, §§ 101(a)(1), 102(a)(4), June 17, 1980, 94 Stat. 510, 514; Pub. L. 99–272, title XII, §§ 12305(b)(2), 12307(b), Apr. 7, 1986, 100 Stat. 293, 296; Pub. L. 99–514, title XVII, § 1711(c)(6), Oct. 22, 1986, 100 Stat. 2784; Pub. L. 100–203, title IX, § 9133(a), Dec. 22, 1987, 101 Stat. 1330–314; Pub. L. 100–647, title VIII, § 8104(e), Nov. 10, 1988, 102 Stat. 3797; Pub. L. 101–239, title VIII, § 8007(a), (b), Dec. 19, 1989, 103 Stat. 2462; Pub. L. 103–432, title II, §§ 206(a), (b), 209(a), (b), 265(c), Oct. 31, 1994, 108 Stat. 4457, 4459, 4469; Pub. L. 105–89, title I, §§ 101(b), 102(2), 103(a), (b), 104, 107, title III, § 302, Nov. 19, 1997, 111 Stat. 2117, 2118, 2120, 2121, 2128.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in text, is classified to section 620 et seq. of this title.

AMENDMENTS

1997—Par. (1). Pub. L. 105–89, § 107(1)(A), (B), struck out ''the case plan must also include'' before ''a written description'' in concluding provisions and redesignated those provisions as subpar. (D) of par. (1).

Par. (1)(A). Pub. L. 105–89, § 102(2)(A)(i), inserted ''safety and'' before ''appropriateness of the placement''.

Par. (1)(B). Pub. L. 105–89, § 102(2)(A)(ii), inserted ''safe and'' after ''child receives'' and ''safe'' after ''return of the child to his own''.

Par. (1)(D). Pub. L. 105–89, § 107(1)(B), redesignated concluding provisions of par. (1) as subpar. (D) of par. (1) and realigned margins.

Par. (1)(E). Pub. L. 105–89, § 107(2), added subpar. (E).

Par. (5)(A). Pub. L. 105–89, § 102(2)(B)(i), inserted ''a safe setting that is'' after ''placement in'' in introductory provisions.

Par. (5)(B). Pub. L. 105–89, § 102(2)(B)(ii), inserted ''the safety of the child,'' after ''determine'' and ''and safely maintained in'' before ''the home or placed for adoption''.

Par. (5)(C). Pub. L. 105–89, § 302, substituted ''permanency hearing'' for ''dispositional hearing'' and ''no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F))'' for ''no later than eighteen months after the original placement'', and which directed the substitution of ''permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement'' for ''future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long term basis)'', was executed by making the substitution for text which contained the words ''long-term'' rather than ''long term'' to reflect the probable intent of Congress.

Par. (5)(E). Pub. L. 105–89, § 103(a), added subpar. (E).

Par. (5)(F). Pub. L. 105–89, § 103(b), added subpar. (F).

Par. (5)(G). Pub. L. 105–89, § 104, added subpar. (G).

Par. (7). Pub. L. 105–89, § 101(b), added par. (7).

1994—Par. (5)(A). Pub. L. 103–432, § 209(a), inserted ''which—'' after ''needs of the child,'' and added cls. (i) and (ii).

Pub. L. 103–432, § 206(a), inserted ''and most appropriate'' after ''(most family like)''.

Par. (5)(C). Pub. L. 103–432, § 209(b), inserted ''and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child,'' after ''permanent or long-term basis)''.

Pub. L. 103–432, § 206(b), substituted ''(and not less frequently than every 12 months'' for ''(and periodically''.

Par. (5)(D). Pub. L. 103–432, § 265(c), realigned margins.

1989—Par. (1). Pub. L. 101–239, § 8007(a), inserted ''(A)'' before ''A description'', substituted ''section 672(a)(1) of this title. (B) A plan'' for ''section 672(a)(1) of this title; and a plan'', realigned margins of subpars. (A) and (B), added subpar. (C), and set the last sentence flush with the left margin of par. (1).

Par. (5)(D). Pub. L. 101–239, § 8007(b), added subpar. (D).

1988—Par. (5)(C). Pub. L. 100–647 inserted ''and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living'' after ''long-term basis)''.

1987—Par. (4). Pub. L. 100–203 designated existing provisions as subpar. (A) and added subpar. (B).

1986—Par. (1). Pub. L. 99–272, § 12307(b), inserted at end ''Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.''

Par. (3). Pub. L. 99–514 added cl. (A) and struck out former cl. (A) which read as follows: ''specifies the amounts of any adoption assistance payments and any other services and assistance which are to be provided as part of such agreement, and''.

Pub. L. 99–272, § 12305(b)(2), substituted in cl. (A) ''any adoption assistance payments and any other services and assistance'' for ''the adoption assistance payments and any additional services and assistance''.

1980—Par. (1). Pub. L. 96–272, § 102(a)(4), inserted reference to voluntary placement agreements.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 206(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1995.''

Section 209(d) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and section 679 of this title] shall be effective with respect to fiscal years beginning on or after October 1, 1995.''

Amendment by section 265(c) of Pub. L. 103–432 effective as if included in the provision of Pub. L. 101–239 to which the amendment relates, at the time the provision became law, see section 265(d) of Pub. L. 103–432, set out as a note under section 673 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8007(c) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect on April 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective Oct. 1, 1988, see section 8104(g)(1) of Pub. L. 100–647, set out as a note under section 677 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective Apr. 1, 1988, see section 9133(c) of Pub. L. 100–203, set out as a note under section 672 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99–514, set out as a note under section 670 of this title.

Amendment by section 12305(b)(2) of Pub. L. 99–272 applicable to medical assistance furnished in or after the first calendar quarter beginning more than 90 days after Apr. 7, 1986, see section 12305(c) of Pub. L. 99–272, set out as a note under section 673 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 101(a)(4)(A) of Pub. L. 96–272 provided that: ''Clause (B) of the first sentence of section 475(3) of the Social Security Act [par. (3)(B) of this section] (as added by subsection (a) of this section) shall be effective with respect to adoption assistance agreements entered into on or after October 1, 1983.''

Amendment by section 102(a)(4) of Pub. L. 96–272 effective only with respect to expenditures made after Sept. 30, 1979, see section 102(c) of Pub. L. 96–272, as amended, set out as a note under section 672 of this title.

CONSTRUCTION

Section 103(d) of Pub. L. 105–89 provided that: ''Nothing in this section [amending this section and enacting provisions set out as a note below] or in part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.), as amended by this Act, shall be construed as precluding State courts or State agencies from initiating the termination of parental rights for reasons other than, or for timelines earlier than, those specified in part E of title IV of such Act, when such actions are determined to be in the best interests of the child, including cases where the child has experienced multiple foster care placements of varying durations.''

TRANSITION RULES; NEW AND CURRENT FOSTER CHILDREN

Section 103(c) of Pub. L. 105–89 provided that:

''(1) NEW FOSTER CHILDREN.—In the case of a child who enters foster care (within the meaning of section 475(5)(F) of the Social Security Act [par. (5)(F) of this section]) under the responsibility of a State after the date of the enactment of this Act [Nov. 19, 1997]—

''(A) if the State comes into compliance with the amendments made by subsection (a) of this section [amending this section] before the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with section 475(5)(E) of the Social Security Act [par. (5)(E) of this section] with respect to the child when the child has been in such foster care for 15 of the most recent 22 months; and

''(B) if the State comes into such compliance after the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with such section 475(5)(E) with respect to the child not later than 3 months after the end of the first regular session of the State legislature that begins after such date of enactment.

''(2) CURRENT FOSTER CHILDREN.—In the case of children in foster care under the responsibility of the State on the date of the enactment of this Act, the State shall—

''(A) not later than 6 months after the end of the first regular session of the State legislature that begins after such date of enactment, comply with section 475(5)(E) of the Social Security Act with respect to not less than ⅓ of such children as the State shall select, giving priority to children for whom the permanency plan (within the meaning of part E of title IV of the Social Security Act [this part]) is adoption and children who have been in foster care for the greatest length of time;

''(B) not later than 12 months after the end of such first regular session, comply with such section 475(5)(E) with respect to not less than ⅔ of such children as the State shall select; and

''(C) not later than 18 months after the end of such first regular session, comply with such section 475(5)(E) with respect to all of such children.

''(3) TREATMENT OF 2-YEAR LEGISLATIVE SESSIONS.—For purposes of this subsection, in the case of a State that has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

''(4) REQUIREMENTS TREATED AS STATE PLAN REQUIREMENTS.—For purposes of part E of title IV of the Social Security Act, the requirements of this subsection shall be treated as State plan requirements imposed by section 471(a) of such Act [section 671(a) of this title].''

§ 676. Administration

(a) Technical assistance to States

The Secretary may provide technical assistance to the States to assist them to develop the programs authorized under this part and shall periodically (1) evaluate the programs authorized under this part and part B of this subchapter and (2) collect and publish data pertaining to the incidence and characteristics of foster care and adoptions in this country.

(b) Data collection and evaluation

Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care.

(Aug. 14, 1935, ch. 531, title IV, § 476, as added Pub. L. 96–272, title I, § 101(a)(1), June 17, 1980, 94 Stat. 511.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsec. (a), is classified to section 620 et seq. of this title.

§ 677. John H. Chafee Foster Care Independence Program

(a) Purpose

The purpose of this section is to provide States with flexible funding that will enable programs to be designed and conducted—

(1) to identify children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention);

(2) to help children who are likely to remain in foster care until 18 years of age receive the education, training, and services necessary to obtain employment;

(3) to help children who are likely to remain in foster care until 18 years of age prepare for and enter postsecondary training and education institutions;

(4) to provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults;

(5) to provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood; and

(6) to make available vouchers for education and training, including postsecondary training and education, to youths who have aged out of foster care.

(b) Applications

(1) In general

A State may apply for funds from its allotment under subsection (c) of this section for a period of five consecutive fiscal years by submitting to the Secretary, in writing, a plan that meets the requirements of paragraph (2) and the certifications required by paragraph (3) with respect to the plan.

(2) State plan

A plan meets the requirements of this paragraph if the plan specifies which State agency or agencies will administer, supervise, or oversee the programs carried out under the plan, and describes how the State intends to do the following:

(A) Design and deliver programs to achieve the purposes of this section.

(B) Ensure that all political subdivisions in the State are served by the program, though not necessarily in a uniform manner.

(C) Ensure that the programs serve children of various ages and at various stages of achieving independence.

(D) Involve the public and private sectors in helping adolescents in foster care achieve independence.

(E) Use objective criteria for determining eligibility for benefits and services under the programs, and for ensuring fair and equitable treatment of benefit recipients.

(F) Cooperate in national evaluations of the effects of the programs in achieving the purposes of this section.

(3) Certifications

The certifications required by this paragraph with respect to a plan are the following:

(A) A certification by the chief executive officer of the State that the State will provide assistance and services to children who have left foster care because they have attained 18 years of age, and who have not attained 21 years of age.

(B) A certification by the chief executive officer of the State that not more than 30 percent of the amounts paid to the State from its allotment under subsection (c) of this section for a fiscal year will be expended for room or board for children who have left foster care because they have attained 18 years of age, and who have not attained 21 years of age.

(C) A certification by the chief executive officer of the State that none of the amounts paid to the State from its allotment under subsection (c) of this section will be expended for room or board for any child who has not attained 18 years of age.

(D) A certification by the chief executive officer of the State that the State will use training funds provided under the program of Federal payments for foster care and adoption assistance to provide training to help foster parents, adoptive parents, workers in group homes, and case managers understand and address the issues confronting adolescents preparing for independent living, and will, to the extent possible, coordinate such training with the independent living program conducted for adolescents.

(E) A certification by the chief executive officer of the State that the State has consulted widely with public and private organizations in developing the plan and that the State has given all interested members of the public at least 30 days to submit comments on the plan.

(F) A certification by the chief executive officer of the State that the State will make every effort to coordinate the State programs receiving funds provided from an allotment made to the State under subsection (c) of this section with other Federal and State programs for youth (especially transitional living youth projects funded under part B of title III of the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5714–1 et seq.]), abstinence education programs, local housing programs, programs for disabled youth (especially sheltered workshops), and school-to-work programs offered by high schools or local workforce agencies.

(G) A certification by the chief executive officer of the State that each Indian tribe in

the State has been consulted about the programs to be carried out under the plan; that there have been efforts to coordinate the programs with such tribes; and that benefits and services under the programs will be made available to Indian children in the State on the same basis as to other children in the State.

(H) A certification by the chief executive officer of the State that the State will ensure that adolescents participating in the program under this section participate directly in designing their own program activities that prepare them for independent living and that the adolescents accept personal responsibility for living up to their part of the program.

(I) A certification by the chief executive officer of the State that the State has established and will enforce standards and procedures to prevent fraud and abuse in the programs carried out under the plan.

(J) A certification by the chief executive officer of the State that the State educational and training voucher program under this section is in compliance with the conditions specified in subsection (i) of this section, including a statement describing methods the State will use—

(i) to ensure that the total amount of educational assistance to a youth under this section and under other Federal and Federally supported programs does not exceed the limitation specified in subsection (i)(5) of this section; and

(ii) to avoid duplication of benefits under this and any other Federal or Federally assisted benefit program.

(4) Approval

The Secretary shall approve an application submitted by a State pursuant to paragraph (1) for a period if—

(A) the application is submitted on or before June 30 of the calendar year in which such period begins; and

(B) the Secretary finds that the application contains the material required by paragraph (1).

(5) Authority to implement certain amendments; notification

A State with an application approved under paragraph (4) may implement any amendment to the plan contained in the application if the application, incorporating the amendment, would be approvable under paragraph (4). Within 30 days after a State implements any such amendment, the State shall notify the Secretary of the amendment.

(6) Availability

The State shall make available to the public any application submitted by the State pursuant to paragraph (1), and a brief summary of the plan contained in the application.

(c) Allotments to States

(1) General program allotment

From the amount specified in subsection (h)(1) of this section that remains after applying subsection (g)(2) of this section for a fiscal year, the Secretary shall allot to each State with an application approved under subsection (b) of this section for the fiscal year the amount which bears the ratio to such remaining amount equal to the State foster care ratio, as adjusted in accordance with paragraph (2).

(2) Hold harmless provision

(A) In general

The Secretary shall allot to each State whose allotment for a fiscal year under paragraph (1) is less than the greater of $500,000 or the amount payable to the State under this section for fiscal year 1998, an additional amount equal to the difference between such allotment and such greater amount.

(B) Ratable reduction of certain allotments

In the case of a State not described in subparagraph (A) of this paragraph for a fiscal year, the Secretary shall reduce the amount allotted to the State for the fiscal year under paragraph (1) by the amount that bears the same ratio to the sum of the differences determined under subparagraph (A) of this paragraph for the fiscal year as the excess of the amount so allotted over the greater of $500,000 or the amount payable to the State under this section for fiscal year 1998 bears to the sum of such excess amounts determined for all such States.

(3) Voucher program allotment

From the amount, if any, appropriated pursuant to subsection (h)(2) of this section for a fiscal year, the Secretary may allot to each State with an application approved under subsection (b) of this section for the fiscal year an amount equal to the State foster care ratio multiplied by the amount so specified.

(4) State foster care ratio

In this subsection, the term ''State foster care ratio'' means the ratio of the number of children in foster care under a program of the State in the most recent fiscal year for which the information is available to the total number of children in foster care in all States for the most recent fiscal year.

(d) Use of funds

(1) In general

A State to which an amount is paid from its allotment under subsection (c) of this section may use the amount in any manner that is reasonably calculated to accomplish the purposes of this section.

(2) No supplantation of other funds available for same general purposes

The amounts paid to a State from its allotment under subsection (c) of this section shall be used to supplement and not supplant any other funds which are available for the same general purposes in the State.

(3) Two-year availability of funds

Payments made to a State under this section for a fiscal year shall be expended by the State in the fiscal year or in the succeeding fiscal year.

(4) Reallocation of unused funds

If a State does not apply for funds under this section for a fiscal year within such time as may be provided by the Secretary, the funds to which the State would be entitled for the fiscal year shall be reallocated to 1 or more other States on the basis of their relative need for additional payments under this section, as determined by the Secretary.

(e) Penalties

(1) Use of grant in violation of this part

If the Secretary is made aware, by an audit conducted under chapter 75 of title 31 or by any other means, that a program receiving funds from an allotment made to a State under subsection (c) of this section has been operated in a manner that is inconsistent with, or not disclosed in the State application approved under subsection (b) of this section, the Secretary shall assess a penalty against the State in an amount equal to not less than 1 percent and not more than 5 percent of the amount of the allotment.

(2) Failure to comply with data reporting requirement

The Secretary shall assess a penalty against a State that fails during a fiscal year to comply with an information collection plan implemented under subsection (f) of this section in an amount equal to not less than 1 percent and not more than 5 percent of the amount allotted to the State for the fiscal year.

(3) Penalties based on degree of noncompliance

The Secretary shall assess penalties under this subsection based on the degree of noncompliance.

(f) Data collection and performance measurement

(1) In general

The Secretary, in consultation with State and local public officials responsible for administering independent living and other child welfare programs, child welfare advocates, Members of Congress, youth service providers, and researchers, shall—

(A) develop outcome measures (including measures of educational attainment, high school diploma, employment, avoidance of dependency, homelessness, nonmarital childbirth, incarceration, and high-risk behaviors) that can be used to assess the performance of States in operating independent living programs;

(B) identify data elements needed to track—

(i) the number and characteristics of children receiving services under this section;

(ii) the type and quantity of services being provided; and

(iii) State performance on the outcome measures; and

(C) develop and implement a plan to collect the needed information beginning with the second fiscal year beginning after December 14, 1999.

(2) Report to the Congress

Within 12 months after December 14, 1999, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report detailing the plans and timetable for collecting from the States the information described in paragraph (1) and a proposal to impose penalties consistent with paragraph (e)(2) on States that do not report data.

(g) Evaluations

(1) In general

The Secretary shall conduct evaluations of such State programs funded under this section as the Secretary deems to be innovative or of potential national significance. The evaluation of any such program shall include information on the effects of the program on education, employment, and personal development. To the maximum extent practicable, the evaluations shall be based on rigorous scientific standards including random assignment to treatment and control groups. The Secretary is encouraged to work directly with State and local governments to design methods for conducting the evaluations, directly or by grant, contract, or cooperative agreement.

(2) Funding of evaluations

The Secretary shall reserve 1.5 percent of the amount specified in subsection (h) of this section for a fiscal year to carry out, during the fiscal year, evaluation, technical assistance, performance measurement, and data collection activities related to this section, directly or through grants, contracts, or cooperative agreements with appropriate entities.

(h) Limitations on authorization of appropriations

To carry out this section and for payments to States under section 674(a)(4) of this title, there are authorized to be appropriated to the Secretary for each fiscal year—

(1) $140,000,000, which shall be available for all purposes under this section; and

(2) an additional $60,000,000, which are authorized to be available for payments to States for education and training vouchers for youths who age out of foster care, to assist the youths to develop skills necessary to lead independent and productive lives.

(i) Educational and training vouchers

The following conditions shall apply to a State educational and training voucher program under this section:

(1) Vouchers under the program may be available to youths otherwise eligible for services under the State program under this section.

(2) For purposes of the voucher program, youths adopted from foster care after attaining age 16 may be considered to be youths otherwise eligible for services under the State program under this section.

(3) The State may allow youths participating in the voucher program on the date they attain 21 years of age to remain eligible until they attain 23 years of age, as long as

they are enrolled in a postsecondary education or training program and are making satisfactory progress toward completion of that program.

(4) The voucher or vouchers provided for an individual under this section—

(A) may be available for the cost of attendance at an institution of higher education, as defined in section 1002 of title 20; and

(B) shall not exceed the lesser of $5,000 per year or the total cost of attendance, as defined in section 1087*ll* of title 20.

(5) The amount of a voucher under this section may be disregarded for purposes of determining the recipient's eligibility for, or the amount of, any other Federal or Federally supported assistance, except that the total amount of educational assistance to a youth under this section and under other Federal and Federally supported programs shall not exceed the total cost of attendance, as defined in section 1087*ll* of title 20, and except that the State agency shall take appropriate steps to prevent duplication of benefits under this and other Federal or Federally supported programs.

(6) The program is coordinated with other appropriate education and training programs.

(Aug. 14, 1935, ch. 531, title IV, §477, as added Pub. L. 99–272, title XII, §12307(a), Apr. 7, 1986, 100 Stat. 294; amended Pub. L. 100–647, title VIII, §8104(a)–(d), (f), Nov. 10, 1988, 102 Stat. 3796, 3797; Pub. L. 101–239, title VIII, §8002(a), (b), Dec. 19, 1989, 103 Stat. 2452; Pub. L. 101–508, title V, §5073(a), Nov. 5, 1990, 104 Stat. 1388–233; Pub. L. 103–66, title XIII, §13714(a), Aug. 10, 1993, 107 Stat. 657; Pub. L. 105–89, title III, §304, Nov. 19, 1997, 111 Stat. 2130; Pub. L. 106–169, title I, §101(b), Dec. 14, 1999, 113 Stat. 1824; Pub. L. 107–133, title II, §§201(a)–(e), 202(a), Jan. 17, 2002, 115 Stat. 2422, 2423, 2425.)

REFERENCES IN TEXT

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (b)(3)(F), is Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1109, as amended. Part B of title III of the Act is classified generally to Part B (§5714–1 et seq.) of subchapter III of chapter 72 of this title. For complete classification of this Act to the Code, see Short Title note under section 5601 of this title and Tables.

CODIFICATION

December 14, 1999, referred to in subsec. (f), was in the original ''the date of the enactment of this section'' which was translated as meaning the date of enactment of Pub. L. 106–169, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2002—Subsec. (a)(6). Pub. L. 107–133, §201(a), added par. (6).

Subsec. (b)(3)(J). Pub. L. 107–133, §201(c), added subpar. (J).

Subsec. (c)(1). Pub. L. 107–133, §201(e)(1), in heading substituted ''General program allotment'' for ''In general'' and in text substituted ''From the amount specified in subsection (h)(1)'' for ''From the amount specified in subsection (h)'', ''which bears the ratio'' for ''which bears the same ratio'', and ''equal to the State foster care ratio, as adjusted in accordance with paragraph (2).'' for ''as the number of children in foster care under a program of the State in the most recent fiscal year for which such information is available bears to the total number of children in foster care in all States for such most recent fiscal year, as adjusted in accordance with paragraph (2).''

Subsec. (c)(3), (4). Pub. L. 107–133, §201(e)(2), added pars. (3) and (4).

Subsec. (d)(4). Pub. L. 107–133, §202(a), added par. (4).

Subsec. (h). Pub. L. 107–133, §201(d), substituted ''there are authorized to be appropriated to the Secretary for each fiscal year—'' and pars. (1) and (2) for ''there are authorized to be appropriated to the Secretary $140,000,000 for each fiscal year.''

Subsec. (i). Pub. L. 107–133, §201(b), added subsec. (i).

1999—Pub. L. 106–169 amended section generally, substituting present provisions for provisions which had authorized payments to States and localities for establishment of programs designed to assist children who have attained age 16 in making transition from foster care to independent living, and set forth provisions relating to administration of programs, assurances, types of programs, amounts of entitlement, and provisions requiring annual report and promulgation of regulations.

1997—Subsec. (a)(2)(A). Pub. L. 105–89 inserted before comma at end ''(including children with respect to whom such payments are no longer being made because the child has accumulated assets, not to exceed $5,000, which are otherwise regarded as resources for purposes of determining eligibility for benefits under this part)''.

1993—Subsec. (a)(1). Pub. L. 103–66, §13714(a)(1), struck out at end ''Such payments shall be made only for the fiscal years 1987 through 1992.''

Subsec. (c). Pub. L. 103–66, §13714(a)(2), substituted ''any succeeding fiscal year'' for ''any of the fiscal years 1988 through 1992''.

Subsec. (e)(1)(A). Pub. L. 103–66, §13714(a)(3), substituted ''fiscal year 1987 and any succeeding fiscal year'' for ''each of the fiscal years 1987 through 1992''.

Subsec. (e)(1)(B). Pub. L. 103–66, §13714(a)(4), substituted ''fiscal year 1991 and any succeeding fiscal year'' for ''fiscal years 1991 and 1992''.

Subsec. (e)(1)(C)(ii)(II). Pub. L. 103–66, §13714(a)(5), substituted ''any succeeding fiscal year'' for ''fiscal year 1992''.

1990—Subsec. (a)(2)(C). Pub. L. 101–508 inserted ''who has not attained age 21'' after ''also include any child'' and struck out before semicolon '', but such child may not be so included after the end of the 6-month period beginning on the date of discontinuance of such payments or care''.

1989—Subsec. (a)(1). Pub. L. 101–239, §8002(a)(1), substituted ''through 1992'' for '', 1988, and 1989''.

Subsec. (c). Pub. L. 101–239, §8002(a)(2), substituted ''any of the fiscal years 1988 through 1992'' for ''the fiscal year 1988 or 1989''.

Subsec. (e)(1). Pub. L. 101–239, §8002(b)(1), (2), (4), (5), designated existing provisions as subpar. (A), substituted ''The basic amount'' for ''The amount'' and ''the basic ceiling for such fiscal year'' for ''$45,000,000'', and added subpars. (B) and (C).

Pub. L. 101–239, §8002(b)(3), which directed amendment of subpar. (A) by substituting ''1989, 1990, 1991, and 1992'' for ''and 1989'' could not be executed because the words ''and 1989'' did not appear after execution of amendment by Pub. L. 101–239, §8002(a)(1), see below.

Pub. L. 101–239, §8002(a)(1), substituted ''through 1992'' for '', 1988, and 1989''.

1988—Subsec. (a). Pub. L. 100–647, §8104(a)(1), substituted ''1987, 1988, and 1989'' for ''1987 and 1988''.

Subsec. (a)(1). Pub. L. 100–647, §8104(c), designated existing provisions as par. (1), substituted ''children described in paragraph (2) who have attained age 16'' for ''children, with respect to whom foster care maintenance payments are being made by the State under this part and who have attained age 16,'' and added par. (2).

Subsec. (a)(2)(C). Pub. L. 100–647, §8104(d), added subpar. (C).

Subsec. (c). Pub. L. 100–647, §8104(a)(2), substituted ''for the fiscal year 1988 or 1989, such description and assurances must be submitted prior to February 1 of such fiscal year'' for ''for fiscal year 1988, such description

and assurances must be submitted prior to January 1, 1988''.

Subsec. (e)(1). Pub. L. 100–647, § 8104(a)(1), substituted ''1987, 1988, and 1989'' for ''1987 and 1988''.

Subsec. (e)(3). Pub. L. 100–647, § 8104(f), inserted at end ''Amounts payable under this section may not be used for the provision of room or board.''

Subsec. (f). Pub. L. 100–647, § 8104(b), inserted at end ''Notwithstanding paragraph (3), payments made to a State under this section for the fiscal year 1987 and unobligated may be expended by such State in the fiscal year 1989.''

Subsec. (g)(1). Pub. L. 100–647, § 8104(a)(3), (4), substituted ''Not later than the first January 1 following the end of each fiscal year, each State shall submit to the Secretary a report on the programs carried out during such fiscal year'' for ''Not later than March 1, 1988, each State shall submit to the Secretary a report on the programs carried out''.

Subsec. (g)(2). Pub. L. 100–647, § 8104(a)(5), (6), substituted:

''(A) Not later than July 1, 1988, the Secretary shall submit an interim report on the activities carried out under this section.

''(B) Not later than March 1, 1989,''

for ''Not later than July 1, 1988,'' and substituted ''fiscal years 1987 and 1988'' for ''fiscal year 1987'' in subpar. (B).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13714(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to activities engaged in, on, or after October 1, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5073(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments made under part E of title IV of the Social Security Act [part E of this subchapter] for fiscal years beginning in or after fiscal year 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective Oct. 1, 1989, see section 8002(e) of Pub. L. 101–239, set out as a note under section 674 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8104(g) of Pub. L. 100–647 provided that:

''(1) The amendments made by subsections (a), (b), and (e) [amending this section and section 675 of this title] shall take effect on October 1, 1988.

''(2) The amendments made by subsections (c), (d), and (f) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].''

REGULATIONS

Pub. L. 106–169, title I, § 101(d), Dec. 14, 1999, 113 Stat. 1828, provided that: ''Not later than 12 months after the date of the enactment of this Act [Dec. 14, 1999], the Secretary of Health and Human Services shall issue such regulations as may be necessary to carry out the amendments made by this section [amending this section and section 674 of this title].''

TEMPORARY EXTENSION OF AVAILABILITY OF INDEPENDENT LIVING FUNDS

Pub. L. 107–133, title II, § 202(b), Jan. 17, 2002, 115 Stat. 2425, provided that: ''Notwithstanding section 477(d)(3) of the Social Security Act [subsec. (d)(3) of this section], payments made to a State under section 477 of such Act for fiscal year 2000 shall remain available for expenditure by the State through fiscal year 2002.''

FINDINGS

Pub. L. 106–169, title I, § 101(a), Dec. 14, 1999, 113 Stat. 1823, provided that: ''The Congress finds the following:

''(1) States are required to make reasonable efforts to find adoptive families for all children, including older children, for whom reunification with their biological family is not in the best interests of the child. However, some older children will continue to live in foster care. These children should be enrolled in an Independent Living program designed and conducted by State and local government to help prepare them for employment, postsecondary education, and successful management of adult responsibilities.

''(2) Older children who continue to be in foster care as adolescents may become eligible for Independent Living programs. These Independent Living programs are not an alternative to adoption for these children. Enrollment in Independent Living programs can occur concurrent with continued efforts to locate and achieve placement in adoptive families for older children in foster care.

''(3) About 20,000 adolescents leave the Nation's foster care system each year because they have reached 18 years of age and are expected to support themselves.

''(4) Congress has received extensive information that adolescents leaving foster care have significant difficulty making a successful transition to adulthood; this information shows that children aging out of foster care show high rates of homelessness, nonmarital childbearing, poverty, and delinquent or criminal behavior; they are also frequently the target of crime and physical assaults.

''(5) The Nation's State and local governments, with financial support from the Federal Government, should offer an extensive program of education, training, employment, and financial support for young adults leaving foster care, with participation in such program beginning several years before high school graduation and continuing, as needed, until the young adults emancipated from foster care establish independence or reach 21 years of age.''

STUDY AND REPORT EVALUATING EFFECTIVENESS OF PROGRAMS

Section 8002(d) of Pub. L. 101–239 provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall study the programs authorized under section 477 of the Social Security Act [this section] for the purposes of evaluating the effectiveness of the programs. The study shall include a comparison of outcomes of children who participated in the programs and a comparable group of children who did not participate in the programs.

''(2) REPORT.—Upon completion of the study, the Secretary shall issue a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.''

§ 678. Rule of construction

Nothing in this part shall be construed as precluding State courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described in section 671(a)(15)(D) of this title.

(Aug. 14, 1935, ch. 531, title IV, § 478, as added Pub. L. 105–89, title I, § 101(d), Nov. 19, 1997, 111 Stat. 2117.)

PRIOR PROVISIONS

A prior section 678, act Aug. 14, 1935, ch. 531, title IV, § 478, as added Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1883(b)(10)(A), 100 Stat. 2917, excluded from AFDC unit child for whom foster care maintenance payments are made, prior to repeal by Pub. L. 101–508, title V, § 5052(b), (c), Nov. 5, 1990, 104 Stat. 1388–228, applicable with respect to benefits for months beginning on or after the first day of the sixth calendar month following November 1990.

EFFECTIVE DATE

Section effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as an Effective Date of 1997 Amendments note under section 622 of this title.

§ 679. Collection of data relating to adoption and foster care

(a) Advisory Committee on Adoption and Foster Care Information

(1) Not later than 90 days after October 21, 1986, the Secretary shall establish an Advisory Committee on Adoption and Foster Care Information (in this section referred to as the ''Advisory Committee'') to study the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

(2) The study required by paragraph (1) shall—

(A) identify the types of data necessary to—

(i) assess (on a continuing basis) the incidence, characteristics, and status of adoption and foster care in the United States, and

(ii) develop appropriate national policies with respect to adoption and foster care;

(B) evaluate the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies;

(C) assess the validity of various methods of collecting data with respect to adoption and foster care; and

(D) evaluate the financial and administrative impact of implementing each such method.

(3) Not later than October 1, 1987, the Advisory Committee shall submit to the Secretary and the Congress a report setting forth the results of the study required by paragraph (1) and evaluating and making recommendations with respect to the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

(4)(A) Subject to subparagraph (B), the membership and organization of the Advisory Committee shall be determined by the Secretary.

(B) The membership of the Advisory Committee shall include representatives of—

(i) private, nonprofit organizations with an interest in child welfare (including organizations that provide foster care and adoption services),

(ii) organizations representing State and local governmental agencies with responsibility for foster care and adoption services,

(iii) organizations representing State and local governmental agencies with responsibility for the collection of health and social statistics,

(iv) organizations representing State and local judicial bodies with jurisdiction over family law,

(v) Federal agencies responsible for the collection of health and social statistics, and

(vi) organizations and agencies involved with privately arranged or international adoptions.

(5) After the date of the submission of the report required by paragraph (3), the Advisory Committee shall cease to exist.

(b) Report to Congress; regulations

(1)(A) Not later than July 1, 1988, the Secretary shall submit to the Congress a report that—

(i) proposes a method of establishing, administering, and financing a system for the collection of data relating to adoption and foster care in the United States,

(ii) evaluates the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies, and

(iii) evaluates the impact of the system proposed under clause (i) on the agencies with responsibility for implementing it.

(B) The report required by subparagraph (A) shall—

(i) specify any changes in law that will be necessary to implement the system proposed under subparagraph (A)(i), and

(ii) describe the type of system that will be implemented under paragraph (2) in the absence of such changes.

(2) Not later than December 31, 1988, the Secretary shall promulgate final regulations providing for the implementation of—

(A) the system proposed under paragraph (1)(A)(i), or

(B) if the changes in law specified pursuant to paragraph (1)(B)(i) have not been enacted, the system described in paragraph (1)(B)(ii).

Such regulations shall provide for the full implementation of the system not later than October 1, 1991.

(c) Data collection system

Any data collection system developed and implemented under this section shall—

(1) avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;

(2) assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;

(3) provide comprehensive national information with respect to—

(A) the demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents,

(B) the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),

(C) the number and characteristics of—

(i) children placed in or removed from foster care,

(ii) children adopted or with respect to whom adoptions have been terminated, and

(iii) children placed in foster care outside the State which has placement and care responsibility, and

(D) the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided; and

(4) utilize appropriate requirements and incentives to ensure that the system functions reliably throughout the United States.

(Aug. 14, 1935, ch. 531, title IV, § 479, as added Pub. L. 99–509, title IX, § 9443, Oct. 21, 1986, 100 Stat. 2073; amended Pub. L. 103–432, title II, § 209(c), Oct. 31, 1994, 108 Stat. 4459.)

AMENDMENTS

1994—Subsec. (c)(3)(C)(iii). Pub. L. 103–432 added cl. (iii).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Oct. 1, 1995, see section 209(d) of Pub. L. 103–432, set out as a note under section 675 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 679a. National Adoption Information Clearinghouse

The Secretary of Health and Human Services shall establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse shall—

(1) collect, compile, and maintain information obtained from available research, studies, and reports by public and private agencies, institutions, or individuals concerning all aspects of infant adoption and adoption of children with special needs;

(2) compile, maintain, and periodically revise directories of information concerning—

(A) crisis pregnancy centers,

(B) shelters and residences for pregnant women,

(C) training programs on adoption,

(D) educational programs on adoption,

(E) licensed adoption agencies,

(F) State laws relating to adoption,

(G) intercountry adoption, and

(H) any other information relating to adoption for pregnant women, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field;

(3) disseminate the information compiled and maintained pursuant to paragraph (1) and the directories compiled and maintained pursuant to paragraph (2); and

(4) upon the establishment of an adoption and foster care data collection system pursuant to section 679 of this title, disseminate the data and information made available through that system.

(Pub. L. 99–509, title IX, § 9442, Oct. 21, 1986, 100 Stat. 2073.)

CODIFICATION

Section was enacted as part of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and also as part of the Omnibus Budget Reconciliation Act of 1986, and not as part of the Social Security Act which comprises this chapter.

§ 679b. Annual report

The Secretary, in consultation with Governors, State legislatures, State and local public officials responsible for administering child welfare programs, and child welfare advocates, shall—

(1) develop a set of outcome measures (including length of stay in foster care, number of foster care placements, and number of adoptions) that can be used to assess the performance of States in operating child protection and child welfare programs pursuant to part B of this subchapter and this part to ensure the safety of children;

(2) to the maximum extent possible, the outcome measures should be developed from data available from the Adoption and Foster Care Analysis and Reporting System;

(3) develop a system for rating the performance of States with respect to the outcome measures, and provide to the States an explanation of the rating system and how scores are determined under the rating system;

(4) prescribe such regulations as may be necessary to ensure that States provide to the Secretary the data necessary to determine State performance with respect to each outcome measure, as a condition of the State receiving funds under this part; and

(5) on May 1, 1999, and annually thereafter, prepare and submit to the Congress a report on the performance of each State on each outcome measure, which shall examine the reasons for high performance and low performance and, where possible, make recommendations as to how State performance could be improved.

(Aug. 14, 1935, ch. 531, title IV, § 479A, as added Pub. L. 105–89, title II, § 203(a), Nov. 19, 1997, 111 Stat. 2126.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in par. (1), is classified to section 620 et seq. of this title.

EFFECTIVE DATE

Section effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is

required, see section 501 of Pub. L. 105–89, set out as an Effective Date of 1997 Amendments note under section 622 of this title.

DEVELOPMENT OF PERFORMANCE-BASED INCENTIVE SYSTEM

Section 203(b) of Pub. L. 105–89 provided that: ''The Secretary of Health and Human Services, in consultation with State and local public officials responsible for administering child welfare programs and child welfare advocates, shall study, develop, and recommend to Congress an incentive system to provide payments under parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq., 670 et seq.) to any State based on the State's performance under such a system. Such a system shall, to the extent the Secretary determines feasible and appropriate, be based on the annual report required by section 479A of the Social Security Act [this section] (as added by subsection (a) of this section) or on any proposed modifications of the annual report. Not later than 6 months after the date of the enactment of this Act [Nov. 19, 1997], the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a progress report on the feasibility, timetable, and consultation process for conducting such a study. Not later than 15 months after such date of enactment, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the final report on a performance-based incentive system. The report may include other recommendations for restructuring the program and payments under parts B and E of title IV of the Social Security Act.''

PART F—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

§§ 681 to 687. Repealed. Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167

Section 681, act Aug. 14, 1935, ch. 531, title IV, § 481, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2360, related to purpose of part and definitions.

Section 682, act Aug. 14, 1935, ch. 531, title IV, § 482, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2360; amended Oct. 31, 1994, Pub. L. 103–432, title II, § 241(a), 108 Stat. 4466, related to establishment and operation of State programs.

Section 683, act Aug. 14, 1935, ch. 531, title IV, § 483, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2369, related to coordination of Federal and State programs.

Section 684, act Aug. 14, 1935, ch. 531, title IV, § 484, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2370, related to provisions generally applicable to provision of services.

Section 685, act Aug. 14, 1935, ch. 531, title IV, § 485, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2371, related to contract authority.

Section 686, act Aug. 14, 1935, ch. 531, title IV, § 486, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2372, related to initial State evaluations.

Section 687, act Aug. 14, 1935, ch. 531, title IV, § 487, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 203(b), 102 Stat. 2378; amended Oct. 31, 1994, Pub. L. 103–432, title II, § 242, 108 Stat. 4466, related to performance standards.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

SUBCHAPTER V—MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT

AMENDMENTS

1981—Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 818, substituted ''MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT'' for ''MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES'' as the heading of title V of the Social Security Act [this subchapter] as part of the general revision of this subchapter.

§ 701. Authorization of appropriations; purposes; definitions

(a) To improve the health of all mothers and children consistent with the applicable health status goals and national health objectives established by the Secretary under the Public Health Service Act [42 U.S.C. 201 et seq.] for the year 2000, there are authorized to be appropriated $850,000,000 for fiscal year 2001 and each fiscal year thereafter—

(1) for the purpose of enabling each State—

(A) to provide and to assure mothers and children (in particular those with low income or with limited availability of health services) access to quality maternal and child health services;

(B) to reduce infant mortality and the incidence of preventable diseases and handicapping conditions among children, to reduce the need for inpatient and long-term care services, to increase the number of children (especially preschool children) appropriately immunized against disease and the number of low income children receiving health assessments and follow-up diagnostic and treatment services, and otherwise to promote the health of mothers and infants by providing prenatal, delivery, and postpartum care for low income, at-risk pregnant women, and to promote the health of children by providing preventive and primary care services for low income children;

(C) to provide rehabilitation services for blind and disabled individuals under the age of 16 receiving benefits under subchapter XVI of this chapter, to the extent medical assistance for such services is not provided under subchapter XIX of this chapter; and

(D) to provide and to promote family-centered, community-based, coordinated care (including care coordination services, as defined in subsection (b)(3) of this section) for children with special health care needs and to facilitate the development of community-based systems of services for such children and their families;

(2) for the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for special projects of regional and national significance, research, and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development), for genetic disease testing, counseling, and information development and dissemination programs, for grants (including funding for comprehensive hemophilia diagnostic treatment centers) relating to hemophilia without regard to age, and for the

screening of newborns for sickle cell anemia, and other genetic disorders and follow-up services; and

(3) subject to section 702(b) of this title for the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for developing and expanding the following—

(A) maternal and infant health home visiting programs in which case management services as defined in subparagraphs (A) and (B) of subsection (b)(4) of this section, health education services, and related social support services are provided in the home to pregnant women or families with an infant up to the age one by an appropriate health professional or by a qualified nonprofessional acting under the supervision of a health care professional,

(B) projects designed to increase the participation of obstetricians and pediatricians under the program under this subchapter and under state[1] plans approved under subchapter XIX of this chapter,

(C) integrated maternal and child health service delivery systems (of the type described in section 1320b–6[2] of this title and using, once developed, the model application form developed under section 6506(a) of the Omnibus Budget Reconciliation Act of 1989),

(D) maternal and child health centers which (i) provide prenatal, delivery, and postpartum care for pregnant women and preventive and primary care services for infants up to age one, and (ii) operate under the direction of a not-for-profit hospital,

(E) maternal and child health projects to serve rural populations, and

(F) outpatient and community based services programs (including day care services) for children with special health care needs whose medical services are provided primarily through inpatient institutional care.

Funds appropriated under this section may only be used in a manner consistent with the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.].

(b) For purposes of this subchapter:

(1) The term ''consolidated health programs'' means the programs administered under the provisions of—

(A) this subchapter (relating to maternal and child health and services for children with special health care needs),

(B) section 1382d(c) of this title (relating to supplemental security income for disabled children),

(C) sections 247a of this title (relating to lead-based paint poisoning prevention programs), 300b of this title (relating to genetic disease programs), 300c–11 of this title (relating to sudden infant death syndrome programs) and 300c–21 of this title (relating to hemophilia treatment centers), and

(D) title VI of the Health Services and Centers Amendments of 1978 (Public Law 95–626; relating to adolescent pregnancy grants),

as such provisions were in effect before August 13, 1981.

(2) The term ''low income'' means, with respect to an individual or family, such an individual or family with an income determined to be below the income official poverty line defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title.

(3) The term ''care coordination services'' means services to promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children with special health care needs and their families.

(4) The term ''case management services'' means—

(A) with respect to pregnant women, services to assure access to quality prenatal, delivery, and postpartum care; and

(B) with respect to infants up to age one, services to assure access to quality preventive and primary care services.

(Aug. 14, 1935, ch. 531, title V, § 501, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 818; amended Pub. L. 97–248, title I, § 137(b)(1), (2), Sept. 3, 1982, 96 Stat. 376; Pub. L. 98–369, div. B, title III, § 2372(a), July 18, 1984, 98 Stat. 1110; Pub. L. 99–272, title IX, § 9527(a)–(c), Apr. 7, 1986, 100 Stat. 219; Pub. L. 99–509, title IX, § 9441(a), Oct. 21, 1986, 100 Stat. 2071; Pub. L. 100–203, title IV, § 4118(p)(8), Dec. 22, 1987, 101 Stat. 1330–159; Pub. L. 101–239, title VI, § 6501(a), Dec. 19, 1989, 103 Stat. 2273; Pub. L. 103–432, title II, § 201, Oct. 31, 1994, 108 Stat. 4453; Pub. L. 105–12, § 9(d), Apr. 30, 1997, 111 Stat. 27; Pub. L. 106–554, § 1(a)(6) [title IX, § 921(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–584.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (a), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (a), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

Section 1320b–6 of this title, referred to in subsec. (a)(3)(C), was repealed by Pub. L. 104–193, title I, § 108(g)(7), Aug. 22, 1996, 110 Stat. 2168.

Section 6506(a) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (a)(3)(C), is section 6506(a) of Pub. L. 101–239 which is set out below.

Sections 247a, 300b, 300c–11, and 300c–21 of this title, referred to in subsec. (b)(1)(C), were repealed by Pub. L. 97–35, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827. See Effective Date, Savings, and Transitional Provisions note set out below.

The Health Services and Centers Amendments of 1978, referred to in subsec. (b)(1)(D), is Pub. L. 95–626, Nov. 10, 1978, 92 Stat. 3551. Title VI of the Health Services and Centers Amendments of 1978 was classified generally to part A (§ 300a–21 et seq.) of subchapter VIII–A of this chapter prior to its repeal by Pub. L. 97–35, title IX, § 955(b), title XXI, § 2193(f), Aug. 13, 1981, 95 Stat. 592, 828. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 201 of this title and Tables.

[1] So in original. Probably should be capitalized.

[2] See References in Text note below.

PRIOR PROVISIONS

A prior section 701, act Aug. 14, 1935, ch. 531, title V, § 501, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 921; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 309(a), 91 Stat. 396; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(3), 95 Stat. 827, provided for authorization of appropriations, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out below.

Another prior section 701, acts Aug. 14, 1935, ch. 531, title V, § 501, 49 Stat. 629; Aug. 10, 1939, ch. 666, title V, § 501, 53 Stat. 1380; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, § 401(b)(1), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, § 331(a), pt. 6, § 361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub. L. 85–840, title VI, § 602(a), 72 Stat. 1054; Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(a)(1)(A), 74 Stat. 995; Oct. 24, 1963, Pub. L. 88–156, § 2(a), 77 Stat. 273; July 30, 1965, Pub. L. 89–97, title II, § 201(a), 79 Stat. 353, authorized appropriations, for maternal and child health services, of $25,000,000; $30,000,000; $35,000,000; $45,000,000; $50,000,000; $55,000,000; $55,000,000; and $60,000,000 for fiscal years ending June 30, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970 and each fiscal year thereafter, respectively, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301.

Provisions similar to those comprising former section 701 were contained in section 511 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 631, as amended (formerly classified to section 711 of this title, and sections 531(a), 532(a), and 533(a) (formerly 532(a)) of act Aug. 14, 1935, ch. 531, title V, as added Oct. 24, 1963, Pub. L. 88–156, § 4, 77 Stat. 274; amended July 30, 1965, Pub. L. 89–97, title II, § 205(3), 79 Stat. 354; Oct. 24, 1963, Pub. L. 88–156, § 4, 77 Stat. 274; renumbered July 30, 1965, Pub. L. 89–97, title II, § 205(2), 79 Stat. 354 (formerly classified to sections 729(a), 729–1(a), and 729a(a) of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–554 substituted ''$850,000,000 for fiscal year 2001'' for ''$705,000,000 for fiscal year 1994'' in introductory provisions.

1997—Subsec. (a). Pub. L. 105–12 inserted concluding provisions.

1994—Subsec. (a). Pub. L. 103–432 substituted ''$705,000,000 for fiscal year 1994'' for ''$686,000,000 for fiscal year 1990'' in introductory provisions.

1989—Subsec. (a). Pub. L. 101–239, § 6501(a)(1), amended subsec. (a) generally, substituting pars. (1) to (3) for former pars. (1) to (4) and concluding provisions.

Subsec. (b)(3), (4). Pub. L. 101–239, § 6501(a)(2), added pars. (3) and (4).

1987—Subsec. (b)(2). Pub. L. 100–203 struck out ''nonform'' after ''below the''.

1986—Subsec. (a). Pub. L. 99–509 substituted ''$553,000,000 for fiscal year 1987, $557,000,000 for fiscal year 1988, and $561,000,000 for fiscal year 1989'' for ''$478,000,000 for fiscal year 1984'' in concluding provisions.

Pub. L. 99–272, § 9527(b), substituted ''children with special health care needs'' for ''crippled children'' in concluding provisions.

Subsec. (a)(4). Pub. L. 99–272, § 9527(a), substituted ''children who are 'children with special health care needs' or who are suffering from conditions leading to such status'' for ''children who are crippled or who are suffering from conditions leading to crippling''.

Subsec. (b)(1)(A). Pub. L. 99–272, § 9527(c), substituted ''services for children with special health care needs'' for ''crippled children's services''.

1984—Subsec. (a). Pub. L. 98–369 substituted ''$478,000,000 for fiscal year 1984 and each fiscal year thereafter'' for ''$373,000,000 for fiscal year 1982 and for each fiscal year thereafter''.

1982—Subsec. (b)(1)(D). Pub. L. 97–248, § 137(b)(1), substituted ''title VI'' for ''title IV''.

Subsec. (b)(2). Pub. L. 97–248, § 137(b)(2), substituted ''section 9902(2)'' for ''section 2971d''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title IX, § 921(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–585, provided that: ''The amendment made by subsection (a) [amending this section] takes effect on October 1, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6510 of Pub. L. 101–239 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle C (§§ 6501–6510) of title VI of Pub. L. 101–239, amending this section and sections 702 to 706, 708, and 709 of this title] shall apply to appropriations for fiscal years beginning with fiscal year 1990.

''(b) APPLICATION AND REPORT.—The amendments made—

''(1) by subsections (b) and (c) of section 6503 [amending sections 702, 704 to 706, and 709 of this title] shall apply to payments for allotments for fiscal years beginning with fiscal year 1991, and

''(2) by section 6504 [amending section 706 of this title] shall apply to annual reports for fiscal years beginning with fiscal year 1991.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2372(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective for fiscal years beginning on or after October 1, 1983.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE, SAVINGS, AND TRANSITIONAL PROVISIONS

Section 2194 of Pub. L. 97–35 provided that:

''(a) Except as otherwise provided in this section, the amendments made by sections 2192 [enacting this subchapter and enacting provisions set out as a note under section 706 of this title] and 2193 [amending this section and sections 247a, 300a–27, 300b, 300c–11, and 300c–21 of this title with respect to fiscal year ending Sept. 30, 1982, amending sections 300b–3, 300b–6, 1301, 1308, 1320a–1, 1320a–8, 1320b–2, 1320b–4, 1320c–21, 1382d, 1395b–1, 1395x, and 1396a of this title, repealing sections 236, 247a, 300a–21 to 300a–28, 300a–41, 300b, 300b–5, 300c–11, and 300c–21 of this title, enacting provisions set out as a note under section 1382d of this title, and amending provisions set out as notes under sections 1320a–8 and 1395b–1 of this title] of this subtitle do not apply to any grant made, or contract entered into, or amounts payable to States under State plans before the earlier of—

''(1) October 1, 1982, or

''(2)(A) in the case of such grants, contracts, or payments under consolidated State programs (as defined in subsection (c)(2)(C)) to a State (or entities in the State), the date the State is first entitled to an allotment under title V of the Social Security Act [this subchapter] (as amended by this subtitle), or

''(B) in the case of grants and contracts under consolidated Federal programs (as defined in subsection (c)(2)(B)), October 1, 1981, or such later date (before October 1, 1982) as the Secretary determines to be appropriate.

''(b)(1) The Secretary of Health and Human Services (hereinafter in this section referred to as the 'Secretary') may not provide for any allotment to a State under title V of the Social Security Act [this subchapter] (as amended by this subtitle) for a calendar quarter in fiscal year 1982 unless the State has notified the Secretary, at least 30 days (or 15 days in the case of the first calendar quarter of the fiscal year) before the beginning of the calendar quarter, that the State requests an allotment for that calendar quarter (and subsequent calendar quarters).

''(2)(A) Any grants or contracts entered into under the authorities of the consolidated State programs (as defined in subsection (c)(2)(C)) after the date of the enactment of this subtitle [Aug. 13, 1981] shall permit the termination of such grant or contract upon three months notice by the State in which the grantee or contractor is located.

''(B) The Secretary shall not make or renew any grants or contracts under the provisions of the consolidated State programs (as defined in subsection (c)(2)(C)) to a State (or an entity in the State) after the date the State becomes entitled to an allotment of funds under title V of the Social Security Act [this subchapter] (as amended by this subtitle).

''(3)(A) In the case of funds appropriated for fiscal year 1982 for consolidated health programs (as defined in subsection (c)(2)(A)), such funds shall (notwithstanding any other provision of law) be available for use under title V of the Social Security Act (as amended by this subtitle) [this subchapter], subject to subparagraphs (B) and (C).

''(B) Notwithstanding any other provision of law—

''(i) the amount that may be made available for expenditures for the consolidated Federal programs for fiscal year 1982 and for projects and programs under section 502(a) of the Social Security Act [section 702(a) of this title] (as amended by this subtitle) may not exceed the amount provided for projects and programs under such section 502(a) for that fiscal year, and

''(ii) the amount that may be made available to a State (or entities in the State) for carrying out the consolidated State programs for fiscal year 1982 and for allotments to the State under section 502(b) of the Social Security Act [section 702(b) of this title] (as amended by this subtitle) may not exceed the amount which is allotted to the State for that fiscal year under such section (without regard to paragraphs (3) and (4) thereof).

''(C) For fiscal year 1982, the Secretary shall reduce the amount which would otherwise be available—

''(i) for expenditures by the Secretary under section 502(a) of the Social Security Act [section 702(a) of this title] (as amended by this subtitle) by the amounts which the Secretary determines or estimates are payable for consolidated Federal programs (as defined in subsection (c)(2)(B)) from funds for fiscal year 1982, and

''(ii) for allotment to each of the States under section 502(b) of such Act [section 702(b) of this title] (as so amended) by the amounts which the Secretary determines or estimates are payable to that State (or entities in the State) under the consolidated State programs (as defined in subsection (c)(2)(C)) from funds for fiscal year 1982.

''(c) For purposes of this section:

''(1) The term 'State' has the meaning given such term for purposes of title V of the Social Security Act [this subchapter].

''(2)(A) The term 'consolidated health programs' has the meaning given such term in section 501(b) of the Social Security Act [subsec. (b) of this section] (as amended by this subtitle).

''(B) The term 'consolidated Federal programs' means the consolidated health programs—

''(i) of special projects grants under sections 503 and 504 [sections 703 and 704 of this title], and training grants under section 511 [section 711 of this title], of the Social Security Act,

''(ii) of grants and contracts for genetic disease projects and programs under section 1101 of the Public Health Service Act [section 300b of this title], and

''(iii) of grants or contracts for comprehensive hemophilia diagnostic and treatment centers under section 1131 of the Public Health Service Act [section 300c–21 of this title],

as such sections are in effect before the date of the enactment of this subtitle [Aug. 13, 1981].

''(C) The term 'consolidated State programs' means the consolidated health programs, other than the consolidated Federal programs.

''(d) The provisions of chapter 2 of subtitle C of title XVII of this Act [sections 1741–1745 of Pub. L. 97–35, which were repealed and reenacted as section 7301–7305 of Title 31, Money and Finance, by Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 877] shall not apply to this subtitle (or the programs under the amendments made by this title [probably should be subtitle]) and, specifically, section 1745 of this Act [set out as a note under section 1243 of Title 31] shall not apply to financial and compliance audits conducted under section 506(b) of the Social Security Act [section 706(b) of this title] (as amended by this subtitle).''

DEVELOPMENT OF MODEL APPLICATIONS FOR MATERNAL AND CHILD ASSISTANCE PROGRAMS

Section 6506(a) of Pub. L. 101–239 directed Secretary of Health and Human Services to develop, not later than one year after Dec. 19, 1989, a model application form for use in applying for assistance for pregnant women and for children less than 6 years old under maternal and child assistance programs and required publication of model form in Federal Register and dissemination of form to State agencies.

RESEARCH ON INFANT MORTALITY AND MEDICAID SERVICES

Section 6507 of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall develop a national data system for linking, for any infant up to age one—

''(1) the infant's birth record,

''(2) any death record for the infant, and

''(3) information on any claims submitted under title XIX of the Social Security Act [subchapter XIX of this chapter] for health care furnished to the infant or with respect to the birth of the infant.''

DEMONSTRATION PROJECT ON HEALTH INSURANCE FOR MEDICALLY UNINSURABLE CHILDREN

Section 6508 of Pub. L. 101–239 authorized Secretary of Health and Human Services to conduct not more than 4 demonstration projects to provide health insurance coverage through eligible plans to medically uninsurable children under 19 years of age, further provided for definition of eligible plan, requirements for demonstration projects, including guarantee of insurance coverage for at least two years, provision of non-Federal funds, as well as further restrictions on insurance plans, and further provided for applications for projects, evaluation of projects by Secretary and report to Congress, and authorization of appropriations for each of fiscal years 1991, 1992, and 1993.

MATERNAL AND CHILD HEALTH HANDBOOK

Section 6509 of Pub. L. 101–239 provided that:

''(a) IN GENERAL.—

''(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a maternal and child health handbook in consultation with the National Commission to Prevent Infant Mortality and public and private organizations interested in the health and welfare of mothers and children.

''(2) FIELD TESTING AND EVALUATION.—The Secretary shall complete publication of the handbook for field testing by July 1, 1990, and shall complete field testing and evaluation by June 1, 1991.

''(3) AVAILABILITY AND DISTRIBUTION.—The Secretary shall make the handbook available to pregnant women and families with young children, and shall provide copies of the handbook to maternal and child health programs (including maternal and child health clinics supported through either title V or title XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter], community and migrant health centers under sections 329 and 330 of the Public Health Service Act [former sections 254b and 254c of this title], the grant program for the homeless under section 340 of the Public Health Service Act [former section 256 of this title], the 'WIC' program under section 17 of the Child Nutrition Act of 1966 [section 1786 of this title], and the head start program under the Head Start Act [section 9831 et seq. of this title]) that serve high-risk women. The Secretary shall coordinate the distribution of the handbook with State maternal and child health departments, State and local public health clinics, private providers of obstetric and pediatric care, and community groups where applicable. The Secretary shall make efforts to involve private entities in the distribution of the handbook under this paragraph.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for each of fiscal years 1991, 1992, and 1993, for carrying out the purposes of this section.''

[Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.]

§ 702. Allotment to States and Federal set-aside

(a) Special projects

(1) Of the amounts appropriated under section 701(a) of this title for a fiscal year that are not in excess of $600,000,000, the Secretary shall retain an amount equal to 15 percent for the purpose of carrying out activities described in section 701(a)(2) of this title. The authority of the Secretary to enter into any contracts under this subchapter is effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

(2) For purposes of paragraph (1)—

(A) amounts retained by the Secretary for training shall be used to make grants to public or nonprofit private institutions of higher learning for training personnel for health care and related services for mothers and children; and

(B) amounts retained by the Secretary for research shall be used to make grants to, contracts with, or jointly financed cooperative agreements with, public or nonprofit institutions of higher learning and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or programs for children with special health care needs for research projects relating to maternal and child health services or services for children with special health care needs which show promise of substantial contribution to the advancement thereof.

(3) No funds may be made available by the Secretary under this subsection or subsection (b) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, be submitted in such manner, and contain and be accompanied by such information as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under this subchapter.

(b) Excess funds; preference

(1)(A) Of the amounts appropriated under section 701(a) of this title for a fiscal year in excess of $600,000,000 the Secretary shall retain an amount equal to 12¾ percent thereof for the projects described in subparagraphs (A) through (F) of section 701(a)(3) of this title.

(B) Any amount appropriated under section 701(a) of this title for a fiscal year in excess of $600,000,000 that remains after the Secretary has retained the applicable amount (if any) under subparagraph (A) shall be retained by the Secretary in accordance with subsection (a) of this section and allocated to the States in accordance with subsection (c) of this section.

(2)(A) Of the amounts retained for the purpose of carrying out activities described in section 701(a)(3)(A), (B), (C), (D) and (E) of this title, the Secretary shall provide preference to qualified applicants which demonstrate that the activities to be carried out with such amounts shall be in areas with a high infant mortality rate (relative to the average infant mortality rate in the United States or in the State in which the area is located).

(B) In carrying out activities described in section 701(a)(3)(D) of this title, the Secretary shall not provide for developing or expanding a maternal and child health center unless the Secretary has received satisfactory assurances that there will be applied, towards the costs of such development or expansion, non-Federal funds in an amount at least equal to the amount of funds provided under this subchapter toward such development or expansion.

(c) Allotments to States

From the remaining amounts appropriated under section 701(a) of this title for any fiscal year that are not in excess of $600,000,000, the Secretary shall allot to each State which has transmitted an application for the fiscal year under section 705(a) of this title, an amount determined as follows:

(1) The Secretary shall determine, for each State—

(A)(i) the amount provided or allotted by the Secretary to the State and to entities in the State under the provisions of the consolidated health programs (as defined in section 701(b)(1) of this title), other than for any of the projects or programs described in subsection (a) of this section, from appropriations for fiscal year 1981,

(ii) the proportion that such amount for that State bears to the total of such amounts for all the States, and

(B)(i) the number of low income children in the State, and

(ii) the proportion that such number of children for that State bears to the total of such numbers of children for all the States.

(2) Each such State shall be allotted for each fiscal year an amount equal to the sum of—

(A) the amount of the allotment to the State under this subsection in fiscal year 1983, and

(B) the State's proportion (determined under paragraph (1)(B)(ii)) of the amount by which the allotment available under this subsection for all the States for that fiscal year exceeds the amount that was available under this subsection for allotment for all the States for fiscal year 1983.

(d) Re-allotment of unallotted funds

(1) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 705(a) of this title for the fiscal year or because some States have indicated in their descriptions of activities under section 705(a) of this title that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

(2) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 706(b)(2) of this title, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

(Aug. 14, 1935, ch. 531, title V, § 502, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 819; amended Pub. L. 99–272, title IX, § 9527(d), Apr. 7, 1986, 100 Stat. 219; Pub. L. 99–509, title IX, § 9441(b), Oct. 21, 1986, 100 Stat. 2071; Pub. L. 101–239, title VI, §§ 6502(a), 6503(c)(1), (4), Dec. 19, 1989, 103 Stat. 2275, 2278.)

PRIOR PROVISIONS

A prior section 702, act Aug. 14, 1935, ch. 531, title V, § 502, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 921; amended July 10, 1972, Pub. L. 92–345, § 1, 86 Stat. 456; July 1, 1973, Pub. L. 93–53, § 4(a)(1), (2), 87 Stat. 135, prescribed purposes for which funds were available, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Another prior section 702, acts Aug. 14, 1935, ch. 531, title V, § 502, 49 Stat. 629; Aug. 10, 1939, ch. 666, title V, § 502, 53 Stat. 1380; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, § 401(b)(2), (3), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, § 331(b), pt. 6, § 361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub. L. 85–840, title VI, § 602(b), (c), 72 Stat. 1055; Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(a)(1)(B), (C), (b)(1)(A), 74 Stat. 995, 996; Oct. 24, 1963, Pub. L. 88–156, § 2(b), (c), 77 Stat. 273, provided for allotment to States for maternal and child health services, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 703 of this title.

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–239, § 6502(a)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''Of the amounts appropriated under section 701(a) of this title for a fiscal year that are not in excess of $478,000,000, the Secretary shall retain an amount equal to 15 percent thereof in the case of fiscal year 1982, and an amount equal to not less than 10, nor more than 15, percent thereof in the case of each fiscal year thereafter, for the purpose of carrying out (through grants, contracts, or otherwise) special projects of regional and national significance, training, and research and for the funding of genetic disease testing, counseling, and information development and dissemination programs and of comprehensive hemophilia diagnostic and treatment centers.''

Subsec. (a)(3). Pub. L. 101–239, § 6502(a)(2), inserted ''or subsection (b) of this section'' after ''this subsection''.

Subsec. (b). Pub. L. 101–239, § 6502(a)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 101–239, § 6503(c)(4), which directed amendment of subsec. (b) by substituting ''705(a)'' for ''705'', was executed to subsec. (c) to reflect the probable intent of Congress and the intervening redesignation of former subsec. (b) as (c) by Pub. L. 101–239, § 6502(a)(3), see below.

Pub. L. 101–239, § 6503(c)(1), substituted ''an application'' for ''a description of intended activities and statement of assurances'' in introductory provisions.

Pub. L. 101–239, § 6502(a)(4)(A), substituted ''$600,000,000'' for ''$478,000,000'' in introductory provisions.

Pub. L. 101–239, § 6502(a)(3), redesignated subsec. (b) as (c) and struck out former subsec. (c) which related to special projects for children.

Subsec. (c)(2). Pub. L. 101–239, § 6502(a)(4)(B), amended par. (2) generally, substituting provisions basing each State's allotment for each fiscal year upon 1983 amounts for former provisions setting forth formulas for allotments for fiscal years 1982 and 1983 and for each year beginning with fiscal year 1984.

Subsec. (d)(1). Pub. L. 101–239, § 6503(c)(4), substituted ''705(a)'' for ''705'' in two places.

1986—Subsec. (a)(1). Pub. L. 99–509, § 9441(b)(1), substituted ''amounts appropriated under section 701(a) of this title for a fiscal year that are not in excess of $478,000,000'' for ''amount appropriated under section 701(a) of this title''.

Subsec. (a)(2)(B). Pub. L. 99–272 substituted ''programs for children with special health care needs'' for ''crippled children's programs'' and ''services for children with special health care needs'' for ''crippled children's services''.

Subsec. (b). Pub. L. 99–509, § 9441(b)(2), inserted ''that are not in excess of $478,000,000'' in introductory provisions and struck out par. (3) which read as follows:

''(A) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 705 of this title for the fiscal year or because some States have indicated in their descriptions of activities under section 705 of this title that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subparagraph.

''(B) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 706(b)(2) of this title, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subparagraph.''

Subsecs. (c), (d). Pub. L. 99–509, § 9441(b)(3), added subsecs. (c) and (d).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6502(a) of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(c)(1), (4) of Pub. L. 101–239 applicable to payments

for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

§ 703. Payments to States

(a) Statutory provisions applicable

From the sums appropriated therefor and the allotments available under section 702(c) of this title, the Secretary shall make payments as provided by section 6503(a) of title 31 to each State provided such an allotment under section 702(c) of this title, for each quarter, of an amount equal to four-sevenths of the total of the sums expended by the State during such quarter in carrying out the provisions of this subchapter.

(b) Unobligated allotments

Any amount payable to a State under this subchapter from allotments for a fiscal year which remains unobligated at the end of such year shall remain available to such State for obligation during the next fiscal year. No payment may be made to a State under this subchapter from allotments for a fiscal year for expenditures made after the following fiscal year.

(c) Reduction of payments; fair market value of supplies or equipment, value of salaries, travel expenses, etc.

The Secretary, at the request of a State, may reduce the amount of payments under subsection (a) of this section by—

(1) the fair market value of any supplies or equipment furnished the State, and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of supplies or equipment or the detail of an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 705(a) of this title on a temporary basis. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which the reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.

(Aug. 14, 1935, ch. 531, title V, § 503, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 821; amended Pub. L. 98–369, div. B, title III, § 2373(a)(1), July 18, 1984, 98 Stat. 1111; Pub. L. 101–239, title VI, §§ 6502(b), 6503(c)(4), Dec. 19, 1989, 103 Stat. 2276, 2278.)

PRIOR PROVISIONS

A prior section 703, act Aug. 14, 1935, ch. 531, title V, § 503, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 922, related to allotments to States for maternal and child health services, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. See section 702 of this title. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Another prior section 703, acts Aug. 14, 1935, ch. 531, title V, § 503, 49 Stat. 630; Aug. 10, 1939, ch. 666, title V, § 503, 53 Stat. 1380; 1946 Reorg. Plan No. 2, §§ 1, 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809 title III, pt. 6, § 361(e), 64 Stat. 558; July 30, 1965, Pub. L. 89–97, title II, § 204(a), 79 Stat. 354, related to contents of State plans for maternal and child health services and their approval by the Administrator, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 705 of this title.

Provisions similar to those comprising former section 703 were contained in section 502 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 629, as amended (formerly classified to section 702 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 6502(b), substituted ''702(c)'' for ''702(b)'' in two places.

Subsec. (c). Pub. L. 101–239, § 6503(c)(4), substituted ''705(a)'' for ''705'' in penultimate sentence.

1984—Subsec. (a). Pub. L. 98–369 substituted ''section 6503(a) of title 31'' for ''section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6502(b) of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(c)(4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

§ 703a. Omitted

CODIFICATION

Section, Pub. L. 90–132, title II, Nov. 8, 1967, 81 Stat. 404, which provided for approval by Secretary of any State plan which provided standards for professional obstetrical services in accordance with the laws of the State, was not repeated in the Department of Health, Education, and Welfare Appropriation Act, 1969. Similar provisions were contained in the following prior appropriation acts:

Nov. 7, 1966, Pub. L. 87–787, title II, 80 Stat. 1397.
Aug. 31, 1965, Pub. L. 89–156, title II, 79 Stat. 605.
Sept. 19, 1964, Pub. L. 88–605, title II, 78 Stat. 976.
Oct. 11, 1963, Pub. L. 88–136, title II, 77 Stat. 240.
Aug. 14, 1962, Pub. L. 87–582, title II, 76 Stat. 376.
Sept. 22, 1961, Pub. L. 87–290, title II, 75 Stat. 605.
Sept. 2, 1960, Pub. L. 86–703, title II, 74 Stat. 770.
Aug. 14, 1959, Pub. L. 86–158, title II, 73 Stat. 353.
Aug. 1, 1958, Pub. L. 85–580, title II, 72 Stat. 472.
June 29, 1957, Pub. L. 85–67, title II, 71 Stat. 222.
June 29, 1956, ch. 477, title II, 70 Stat. 434.
Aug. 1, 1955, ch. 437, title II, 69 Stat. 408.
July 2, 1954, ch. 457, title II, 68 Stat. 444.
July 31, 1953, ch. 296, title II, 67 Stat. 255.
July 5, 1952, ch. 575, title II, 66 Stat. 368.
Aug. 31, 1951, ch. 373, title II, 65 Stat. 219.
Sept. 6, 1950, ch. 896, ch. V, title II, 64 Stat. 653.
June 29, 1949, ch. 275, title II, 63 Stat. 284.
June 16, 1948, ch. 472, title I, 62 Stat. 447.
July 8, 1947, ch. 210, title II, 61 Stat. 273.
July 26, 1946, title I, 60 Stat. 681.
July 3, 1945, ch. 263, title I, 59 Stat. 363.

§ 704. Use of allotment funds

(a) Covered services

Except as otherwise provided under this section, a State may use amounts paid to it under section 703 of this title for the provision of health services and related activities (including planning, administration, education, and evaluation and including payment of salaries and other related expenses of National Health Serv-

ice Corps personnel) consistent with its application transmitted under section 705(a) of this title.

(b) Restrictions

Amounts described in subsection (a) of this section may not be used for—

(1) inpatient services, other than inpatient services provided to children with special health care needs or to high-risk pregnant women and infants and such other inpatient services as the Secretary may approve;

(2) cash payments to intended recipients of health services;

(3) the purchase or improvement of land, the purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility, or the purchase of major medical equipment;

(4) satisfying any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds;

(5) providing funds for research or training to any entity other than a public or nonprofit private entity; or

(6) payment for any item or service (other than an emergency item or service) furnished—

(A) by an individual or entity during the period when such individual or entity is excluded under this subchapter or subchapter XVIII, XIX, or XX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title, or

(B) at the medical direction or on the prescription of a physician during the period when the physician is excluded under this subchapter or subchapter XVIII, XIX, or XX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).

The Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this subchapter.

(c) Use of portion of funds

A State may use a portion of the amounts described in subsection (a) of this section for the purpose of purchasing technical assistance from public or private entities if the State determines that such assistance is required in developing, implementing, and administering programs funded under this subchapter.

(d) Limitation on use of funds for administrative costs

Of the amounts paid to a State under section 703 of this title from an allotment for a fiscal year under section 702(c) of this title, not more than 10 percent may be used for administering the funds paid under such section.

(Aug. 14, 1935, ch. 531, title V, § 504, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 821; amended Pub. L. 99–272, title IX, § 9527(e), Apr. 7, 1986, 100 Stat. 219; Pub. L. 100–93, § 8(a), Aug. 18, 1987, 101 Stat. 692; Pub. L. 100–203, title IV, § 4118(e)(12), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(k)(10)(D), July 1, 1988, 102 Stat. 796, and amended Pub. L. 100–485, title VI, § 608(d)(26)(K)(ii), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 101–239, title VI, § 6503(a), (c)(2), (4), Dec. 19, 1989, 103 Stat. 2276, 2278.)

PRIOR PROVISIONS

A prior section 704, act Aug. 14, 1935, ch. 531, title V, § 504, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 922, related to allotments to States for crippled children's services, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. See section 702 of this title. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Another prior section 704, acts Aug. 14, 1935, ch. 531, title V, § 504, 49 Stat. 630; 1940 Reorg. Plan No. III, § 1(a), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(e), 64 Stat. 558; Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(b)(1)(B), 74 Stat. 996; July 30, 1965, Pub. L. 89–97, title II, § 201(b), 79 Stat. 353, provided for payment to States with an approved plan for maternal and child-health services and computation of amounts, and prescribed general availability of services by July 1, 1975, as requisite for payments for any period after June 30, 1966, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 706 of this title.

Provisions similar to those comprising former section 704 were contained in section 512 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 631, as amended (formerly classified to section 712 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 6503(c)(2), (4), substituted ''its application'' for ''its description of intended expenditures and statement of assurances'' and ''705(a)'' for ''705''.

Pub. L. 101–239, § 6503(a)(1), inserted ''and including payment of salaries and other related expenses of National Health Service Corps personnel'' after ''education, and evaluation''.

Subsec. (d). Pub. L. 101–239, § 6503(a)(2), added subsec. (d).

1988—Subsec. (b)(6). Pub. L. 100–360, as amended by Pub. L. 100–485, added Pub. L. 100–203, § 4118(e)(12), see 1987 Amendment note below.

1987—Subsec. (b)(6). Pub. L. 100–203, § 4118(e)(12), as added by Pub. L. 100–360 and amended by Pub. L. 100–485, substituted ''under this subchapter or subchapter XVIII, XIX, or XX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title'' for ''pursuant to section 1320a–7 of this title or section 1320a–7a of this title from participation in the program under this subchapter'' in subpars. (A) and (B).

Pub. L. 100–93 added par. (6).

1986—Subsec. (b)(1). Pub. L. 99–272 substituted ''children with special health care needs'' for ''crippled children''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6503(a) of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(c)(2), (4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 608(g) of Pub. L. 100–485 provided that:

''(1) The amendments made by subsections (a), (b), and (d) [amending this section and sections 1320a–7, 1320a–7a, 1320b–10, 1320c–3, 1395i–2, 1395i–3, 1395*l*, 1395m, 1395r, 1395s, 1395t–1, 1395t–2, 1395u, 1395v, 1395w–2, 1395w–3, 1395x, 1395y, 1395aa to 1395dd, 1395mm, 1395tt, 1395ww, 1395aaa to 1395ccc, 1396a, 1396b, 1396d, 1396i, 1396n, 1396p, 1396r, 1396r–1, 1396r–4, 1396r–5, 1396s, and 1397d of this title, repealing section 1320a–2 of this title, enacting provisions set out as a note under section 1320a–2 of this title, and amending provisions set out as notes under sections 1320c–5, 1395b, 1395d, 1395e, 1395i–3, 1395u, 1395*ll*, 1395mm, 1395ss, 1395tt, 1395ww, 1396a, 1396d, and 1396r–5 of this title] shall be effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].

''(2) The amendments made by subsection (c) and subsection (f) (other than paragraph (5)) [amending sections 1395cc, 1396b, 1396d, and 1396n of this title, enacting provisions set out as a note under section 1395k of this title, and amending provisions set out as a note under section 1395k of this title] shall take effect on the date of the enactment of this Act [Oct. 13, 1988].''

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

§ 704a. Omitted

CODIFICATION

Section, Pub. L. 92–80, title II, Aug. 10, 1971, 85 Stat. 290, which provided that certain allotments to States were not to be included in computing amounts expended or estimated to be expended by the State under subsecs. (a) and (b) of section 706 of this title, was not repeated in the Department of Health, Education, and Welfare Appropriation Act, 1973. Similar provisions were contained in the following prior appropriation acts:

Jan. 11, 1971, Pub. L. 91–667, 84 Stat. 2006.
Mar. 5, 1970, Pub. L. 91–204, title II, 84 Stat. 39.
Oct. 11, 1968, Pub. L. 90–557, title II, 82 Stat. 987.
Nov. 8, 1967, Pub. L. 90–132, title II, 81 Stat. 403.
Nov. 7, 1966, Pub. L. 89–787, title II, 80 Stat. 1396.
Aug. 31, 1965, Pub. L. 89–156, title II, 79 Stat. 605.
Sept. 10, 1964, Pub. L. 88–605, title II, 78 Stat. 975.
Oct. 11, 1963, Pub. L. 88–136, title II, 77 Stat. 240.
Aug. 14, 1962, Pub. L. 87–582, title II, 76 Stat. 376.
Sept. 22, 1961, Pub. L. 87–290, title II, 75 Stat. 605.
Sept. 2, 1960, Pub. L. 86–703, title II, 74 Stat. 770.
Aug. 14, 1959, Pub. L. 86–158, title II, 73 Stat. 353.
Aug. 1, 1958, Pub. L. 85–580, title II, 72 Stat. 472.
June 29, 1957, Pub. L. 85–67, title II, 71 Stat. 222.
June 29, 1956, ch. 477, title II, 70 Stat. 434.
Aug. 1, 1955, ch. 437, title II, 69 Stat. 409.
July 2, 1954, ch. 457, title II, 68 Stat. 444.
July 31, 1953, ch. 296, title II, 67 Stat. 255.
July 5, 1952, ch. 575, title II, 66 Stat. 368.
Aug. 31, 1951, ch. 373, title II, 65 Stat. 219.
Sept. 6, 1950, ch. 896, ch. V, title II, 64 Stat. 653.
June 29, 1949, ch. 275, title II, 63 Stat. 284.
June 16, 1948, ch. 472, title I, 62 Stat. 447.
July 8, 1947, ch. 210, title II, 61 Stat. 273.
July 26, 1946, ch. 672, title I, 60 Stat. 681.
July 3, 1945, ch. 263, title I, 59 Stat. 364.
June 28, 1944, ch. 302, title I, 58 Stat. 550.
July 12, 1943, ch. 221, title I, 57 Stat. 497.
July 2, 1942, ch. 475, title I, 56 Stat. 565.
July 1, 1941, ch. 269, title I, 55 Stat. 469.
June 26, 1940, ch. 428, title I, 54 Stat. 578.
June 29, 1939, ch. 249, 53 Stat. 924.
Aug. 9, 1939, ch. 633, title I, 53 Stat. 1320.
Apr. 27, 1938, ch. 180, title IV, 52 Stat. 288.
June 16, 1937, ch. 359, title IV, 50 Stat. 301.
May 15, 1936, ch. 405, 49 Stat. 1350.

§ 704b. Nonavailability of allotments after close of fiscal year

No allotment for this or any succeeding fiscal year under this subchapter shall be available after the close of such fiscal year except as may be necessary to liquidate obligations incurred during such year.

(July 5, 1952, ch. 575, title II, § 201, 66 Stat. 368.)

CODIFICATION

Section is from act July 5, 1952, popularly known as the Federal Security Agency Appropriation Act, 1953, and is not a part of the Social Security Act which comprises this chapter.

§ 705. Application for block grant funds

(a) In order to be entitled to payments for allotments under section 702 of this title for a fiscal year, a State must prepare and transmit to the Secretary an application (in a standardized form specified by the Secretary) that—

(1) contains a statewide needs assessment (to be conducted every 5 years) that shall identify (consistent with the health status goals and national health objectives referred to in section 701(a) of this title) the need for—

(A) preventive and primary care services for pregnant women, mothers, and infants up to age one;

(B) preventive and primary care services for children; and

(C) services for children with special health care needs (as specified in section 701(a)(1)(D) of this title);

(2) includes for each fiscal year—

(A) a plan for meeting the needs identified by the statewide needs assessment under paragraph (1); and

(B) a description of how the funds allotted to the State under section 702(c) of this title will be used for the provision and coordination of services to carry out such plan that shall include—

(i) subject to paragraph (3), a statement of the goals and objectives consistent with the health status goals and national health objectives referred to in section 701(a) of this title for meeting the needs specified in the State plan described in subparagraph (A);

(ii) an identification of the areas and localities in the State in which services are to be provided and coordinated;

(iii) an identification of the types of services to be provided and the categories or characteristics of individuals to be served; and

(iv) information the State will collect in order to prepare reports required under section 706(a) of this title;

(3) except as provided under subsection (b) of this section, provides that the State will use—

(A) at least 30 percent of such payment amounts for preventive and primary care services for children, and

(B) at least 30 percent of such payment amounts for services for children with special health care needs (as specified in section 701(a)(1)(D) of this title);

(4) provides that a State receiving funds for maternal and child health services under this subchapter shall maintain the level of funds being provided solely by such State for maternal and child health programs at a level at least equal to the level that such State provided for such programs in fiscal year 1989; and

(5) provides that—

(A) the State will establish a fair method (as determined by the State) for allocating funds allotted to the State under this subchapter among such individuals, areas, and localities identified under paragraph (1)(A) as needing maternal and child health services, and the State will identify and apply guidelines for the appropriate frequency and content of, and appropriate referral and followup with respect to, health care assessments and services financially assisted by the State under this subchapter and methods for assuring quality assessments and services;

(B) funds allotted to the State under this subchapter will only be used, consistent with section 708 of this title, to carry out the purposes of this subchapter or to continue activities previously conducted under the consolidated health programs (described in section 701(b)(1) of this title);

(C) the State will use—

(i) special consideration (where appropriate) for the continuation of the funding of special projects in the State previously funded under this subchapter (as in effect before August 31, 1981), and

(ii) a reasonable proportion (based upon the State's previous use of funds under this subchapter) of such sums to carry out the purposes described in subparagraphs (A) through (D) of section 701(a)(1) of this title;

(D) if any charges are imposed for the provision of health services assisted by the State under this subchapter, such charges (i) will be pursuant to a public schedule of charges, (ii) will not be imposed with respect to services provided to low income mothers or children, and (iii) will be adjusted to reflect the income, resources, and family size of the individual provided the services;

(E) the State agency (or agencies) administering the State's program under this subchapter will provide for a toll-free telephone number (and other appropriate methods) for the use of parents to access information about health care providers and practitioners who provide health care services under this subchapter and subchapter XIX of this chapter and about other relevant health and health-related providers and practitioners; and

(F) the State agency (or agencies) administering the State's program under this subchapter will—

(i) participate in the coordination of activities between such program and the early and periodic screening, diagnostic, and treatment program under section 1396d(a)(4)(B) of this title (including the establishment of periodicity and content standards for early and periodic screening, diagnostic, and treatment services), to ensure that such programs are carried out without duplication of effort,

(ii) participate in the arrangement and carrying out of coordination agreements described in section 1396a(a)(11) of this title (relating to coordination of care and services available under this subchapter and subchapter XIX of this chapter),

(iii) participate in the coordination of activities within the State with programs carried out under this subchapter and related Federal grant programs (including supplemental food programs for mothers, infants, and children, related education programs, and other health, developmental disability, and family planning programs), and

(iv) provide, directly and through their providers and institutional contractors, for services to identify pregnant women and infants who are eligible for medical assistance under subparagraph (A) or (B) of section 1396a(*l*)(1) of this title and, once identified, to assist them in applying for such assistance.

The application shall be developed by, or in consultation with, the State maternal and child health agency and shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during its development and after its transmittal.

(b) The Secretary may waive the requirements under subsection (a)(3) of this section that a State's application for a fiscal year provide for the use of funds for specific activities if for that fiscal year—

(1) the Secretary determines—

(A) on the basis of information provided in the State's most recent annual report submitted under section 706(a)(1) of this title, that the State has demonstrated an extraordinary unmet need for one of the activities described in subsection (a)(3) of this section, and

(B) that the granting of the waiver is justified and will assist in carrying out the purposes of this subchapter; and

(2) the State provides assurances to the Secretary that the State will provide for the use of some amounts paid to it under section 703 of this title for the activities described in subparagraphs (A) and (B) of subsection (a)(3) of this section and specifies the percentages to be substituted in each of such subparagraphs.

(Aug. 14, 1935, ch. 531, title V, § 505, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 822; amended Pub. L. 97–248, title I, § 137(b)(3), (4), Sept. 3, 1982, 96 Stat. 377; Pub. L. 101–239, title VI, §§ 6501(b), 6503(b), Dec. 19, 1989, 103 Stat. 2275, 2276; Pub. L. 101–508, title IV, § 4755(c)(3), Nov. 5, 1990, 104 Stat. 1388–210.)

PRIOR PROVISIONS

A prior section 705, act Aug. 14, 1935, ch. 531, title V, § 505, as added and amended Jan. 2, 1968, Pub. L. 90–248, title III, §§ 301, 304(a), 81 Stat. 923, 929; July 10, 1972, Pub. L. 92–345, § 2(a)–(c), 86 Stat. 456, 457; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 221(c)(1), 232(b), 239(c), 86 Stat. 1389, 1411, 1417; July 1, 1973, Pub. L. 93–53, § 4(a)(3)–(5), 87 Stat. 135; Dec. 5, 1980, Pub. L. 96–499, title IX, § 914(c)(1), 94 Stat. 2622, related to contents of State plans, approval by Secretary, etc., prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title. For effective dates of prior amendments, see section 304(b) of Pub. L. 90–248, sections 232(c) and 239(d) of Pub. L. 92–603, and section 914(c)(2) of Pub. L. 96–499 as amended by section 137(c)(2) of Pub. L. 97–248.

Another prior section 705, acts Aug. 14, 1935, ch. 531, title V, § 505, 49 Stat. 631; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(e), 64 Stat. 558, provided for stopping payment on failure to comply with plan for maternal and child health services, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 707 of this title.

Provisions similar to those comprising former section 705 were contained in sections 503 and 513 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 630, 632, as amended (formerly classified to sections 703 and 713 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–508 substituted ''requirements'' for ''requirement'' in introductory provisions.

1989—Pub. L. 101–239, § 6503(b)(1), substituted ''Application for block grant funds'' for ''Description of intended expenditures and statement of assurances'' in section catchline.

Subsec. (a). Pub. L. 101–239, § 6503(b)(2), (3), inserted ''(a)'' before ''In order to be entitled'' and ''an application (in a standardized form specified by the Secretary) that'' after ''must prepare and transmit to the Secretary''.

Subsec. (a)(1). Pub. L. 101–239, § 6503(b)(4), added par. (1) and struck out former par. (1) which read as follows: ''a report describing the intended use of payments the State is to receive under this subchapter for the fiscal year, including (A) a description of those populations, areas, and localities in the State which the State has identified as needing maternal and child health services, (B) a statement of goals and objectives for meeting those needs, (C) information on the types of services to be provided and the categories or characteristics of individuals to be served, and (D) data the State intends to collect respecting activities conducted with such payments; and''.

Subsec. (a)(2) to (4). Pub. L. 101–239, § 6503(b)(4), added pars. (2) to (4) and redesignated former par. (2) as (5).

Subsec. (a)(5). Pub. L. 101–239, § 6503(b)(5)(A), (6), in introductory provisions, substituted ''provides'' for ''a statement of assurances that represents to the Secretary'', and in concluding provisions, substituted ''The application shall be developed by, or in consultation with, the State maternal and child health agency and shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during its development and after its transmittal.'' for ''The description and statement shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and statement and after its transmittal. The description and statement shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in any element of such description or statement, and any revision shall be subject to the requirements of the preceding sentence.''

Pub. L. 101–239, § 6503(b)(4), redesignated former par. (2) as (5).

Subsec. (a)(5)(A). Pub. L. 101–239, § 6503(b)(5)(B), substituted ''will establish'' for ''will provide''.

Subsec. (a)(5)(C)(i). Pub. L. 101–239, § 6503(b)(5)(C), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''a substantial proportion of the sums expended by the State for carrying out this subchapter for the provision of health services to mothers and children, with special consideration given (where appropriate) to the continuation of the funding of special projects in the State previously funded under this subchapter (as in effect before August 13, 1981), and''.

Subsec. (a)(5)(C)(ii). Pub. L. 101–239, § 6501(b), substituted ''subparagraphs (A) through (D) of section 701(a)(1) of this title'' for ''paragraphs (1) through (3) of section 701(a) of this title''.

Subsec. (a)(5)(E). Pub. L. 101–239, § 6503(b)(5)(D), (E), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (a)(5)(F). Pub. L. 101–239, § 6503(b)(5)(F)(i), struck out ''participate'' after ''under this subchapter will'' in introductory provisions.

Pub. L. 101–239, § 6503(b)(5)(E), redesignated subpar. (E) as (F).

Subsec. (a)(5)(F)(i). Pub. L. 101–239, § 6503(b)(5)(F)(ii)–(iv), inserted ''participate'' before ''in the coordination'' and substituted ''diagnostic'' for ''diagnosis'' and ''section 1396d(a)(4)(B) of this title (including the establishment of periodicity and content standards for early and periodic screening, diagnostic, and treatment services)'' for ''subchapter XIX of this chapter''.

Subsec. (a)(5)(F)(ii). Pub. L. 101–239, § 6503(b)(5)(F)(iv), inserted ''participate'' before ''in the arrangement''.

Subsec. (a)(5)(F)(iii). Pub. L. 101–239, § 6503(b)(5)(F)(iv), inserted ''participate'' before ''in the coordination''.

Subsec. (a)(5)(F)(iv). Pub. L. 101–239, § 6503(b)(5)(F)(v)–(vii), added cl. (iv).

Subsec. (b). Pub. L. 101–239, § 6503(b)(7), added subsec. (b).

1982—Par. (2)(B). Pub. L. 97–248, § 137(b)(3), substituted ''section 701(b)(1)'' for ''section 702(b)(1)''.

Subsec. (2)(D). Pub. L. 97–248, § 137(b)(4), substituted ''any charges are imposed'' for ''the State imposes any charges''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6501(b) of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(b) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 137 of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

§ 706. Administrative and fiscal accountability

(a) Annual reporting requirements; form, etc.

(1) Each State shall prepare and submit to the Secretary annual reports on its activities under this subchapter. Each such report shall be prepared by, or in consultation with, the State maternal and child health agency. In order properly to evaluate and to compare the performance of different States assisted under this subchapter and to assure the proper expenditure of funds under this subchapter, such reports shall

be in such standardized form and contain such information (including information described in paragraph (2)) as the Secretary determines (after consultation with the States) to be necessary (A) to secure an accurate description of those activities, (B) to secure a complete record of the purposes for which funds were spent, of the recipients of such funds, (C) to describe the extent to which the State has met the goals and objectives it set forth under section 705(a)(2)(B)(i) of this title and the national health objectives referred to in section 701(a) of this title, and (D) to determine the extent to which funds were expended consistent with the State's application transmitted under section 705(a) of this title. Copies of the report shall be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(2) Each annual report under paragraph (1) shall include the following information:

(A)(i) The number of individuals served by the State under this subchapter (by class of individuals).

(ii) The proportion of each class of such individuals which has health coverage.

(iii) The types (as defined by the Secretary) of services provided under this subchapter to individuals within each such class.

(iv) The amounts spent under this subchapter on each type of services, by class of individuals served.

(B) Information on the status of maternal and child health in the State, including—

(i) information (by county and by racial and ethnic group) on—

(I) the rate of infant mortality, and

(II) the rate of low-birth-weight births;

(ii) information (on a State-wide basis) on—

(I) the rate of maternal mortality,

(II) the rate of neonatal death,

(III) the rate of perinatal death,

(IV) the number of children with chronic illness and the type of illness,

(V) the proportion of infants born with fetal alcohol syndrome,

(VI) the proportion of infants born with drug dependency,

(VII) the proportion of women who deliver who do not receive prenatal care during the first trimester of pregnancy, and

(VIII) the proportion of children, who at their second birthday, have been vaccinated against each of measles, mumps, rubella, polio, diphtheria, tetanus, pertussis, Hib meningitis, and hepatitis B; and

(iii) information on such other indicators of maternal, infant, and child health care status as the Secretary may specify.

(C) Information (by racial and ethnic group) on—

(i) the number of deliveries in the State in the year, and

(ii) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this subchapter or were entitled to benefits with respect to such deliveries under the State plan under subchapter XIX of this chapter in the year.

(D) Information (by racial and ethnic group) on—

(i) the number of infants under one year of age who were in the State in the year, and

(ii) the number of such infants who were provided services under this subchapter or were entitled to benefits under the State plan under subchapter XIX of this chapter or the State plan under subchapter XXI of this chapter at any time during the year.

(E) Information on the number of—

(i) obstetricians,

(ii) family practitioners,

(iii) certified family nurse practitioners,

(iv) certified nurse midwives,

(v) pediatricians, and

(vi) certified pediatric nurse practitioners,

who were licensed in the State in the year.

For purposes of subparagraph (A), each of the following shall be considered to be a separate class of individuals: pregnant women, infants up to age one, children with special health care needs, other children under age 22, and other individuals.

(3) The Secretary shall annually transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate a report that includes—

(A) a description of each project receiving funding under paragraph (2) or (3) of section 702(a) of this title, including the amount of Federal funds provided, the number of individuals served or trained, as appropriate, under the project, and a summary of any formal evaluation conducted with respect to the project;

(B) a summary of the information described in paragraph (2)(A) reported by States;

(C) based on information described in paragraph (2)(B) supplied by the States under paragraph (1), a compilation of the following measures of maternal and child health in the United States and in each State:

(i) Information on—

(I) the rate of infant mortality, and

(II) the rate of low-birth-weight births.

Information under this clause shall also be compiled by racial and ethnic group.

(ii) Information on—

(I) the rate of maternal mortality,

(II) the rate of neonatal death,

(III) the rate of perinatal death,

(IV) the proportion of infants born with fetal alcohol syndrome,

(V) the proportion of infants born with drug dependency,

(VI) the proportion of women who deliver who do not receive prenatal care during the first trimester of pregnancy, and

(VII) the proportion of children, who at their second birthday, have been vaccinated against each of measles, mumps, rubella, polio, diphtheria, tetanus, pertussis, Hib meningitis, and hepatitis B.

(iii) Information on such other indicators of maternal, infant, and child health care

status as the Secretary has specified under paragraph (2)(B)(iii).

(iv) Information (by racial and ethnic group) on—

(I) the number of deliveries in the State in the year, and

(II) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this subchapter or were entitled to benefits with respect to such deliveries under the State plan under subchapter XIX of this chapter in the year;

(D) based on information described in subparagraphs (C), (D), and (E) of paragraph (2) supplied by the States under paragraph (1), a compilation of the following information in the United States and in each State:

(i) Information on—

(I) the number of deliveries in the year, and

(II) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this subchapter or were entitled to benefits with respect to such deliveries under a State plan under subchapter XIX of this chapter in the year.

Information under this clause shall also be compiled by racial and ethnic group.

(ii) Information on—

(I) the number of infants under one year of age in the year, and

(II) the number of such infants who were provided services under this subchapter or were entitled to benefits under a State plan under subchapter XIX of this chapter or the State plan under subchapter XXI of this chapter at any time during the year.

Information under this clause shall also be compiled by racial and ethnic group.

(iii) Information on the number of—

(I) obstetricians,

(II) family practitioners,

(III) certified family nurse practitioners,

(IV) certified nurse midwives,

(V) pediatricians, and

(VI) certified pediatric nurse practitioners,

who were licensed in a State in the year; and

(E) an assessment of the progress being made to meet the health status goals and national health objectives referred to in section 701(a) of this title.

(b) Audits; implementation, standards, etc.

(1) Each State shall, not less often than once every two years, audit its expenditures from amounts received under this subchapter. Such State audits shall be conducted by an entity independent of the State agency administering a program funded under this subchapter in accordance with the Comptroller General's standards for auditing governmental organizations, programs, activities, and functions and generally accepted auditing standards. Within 30 days following the completion of each audit report, the State shall submit a copy of that audit report to the Secretary.

(2) Each State shall repay to the United States amounts found by the Secretary, after notice and opportunity for a hearing to the State, not to have been expended in accordance with this subchapter and, if such repayment is not made, the Secretary may offset such amounts against the amount of any allotment to which the State is or may become entitled under this subchapter or may otherwise recover such amounts.

(3) The Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this subchapter in accordance with this subchapter. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(c) Public inspection of reports and audits

The State shall make copies of the reports and audits required by this section available for public inspection within the State.

(d) Access to books, records, etc.; creation of new records

(1) For the purpose of evaluating and reviewing the block grant established under this subchapter, the Secretary and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that are related to such block grant, and that are in the possession, custody, or control of States, political subdivisions thereof, or any of their grantees.

(2) In conjunction with an evaluation or review under paragraph (1), no State or political subdivision thereof (or grantee of either) shall be required to create or prepare new records to comply with paragraph (1).

(3) For other provisions relating to deposit, accounting, reports, and auditing with respect to Federal grants to States, see section 6503(b)[1] of title 31.

(Aug. 14, 1935, ch. 531, title V, § 506, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 823; amended Pub. L. 98–369, div. B, title III, § 2373(a)(2), July 18, 1984, 98 Stat. 1111; Pub. L. 101–239, title VI, §§ 6503(c)(3), (4), 6504, Dec. 19, 1989, 103 Stat. 2278; Pub. L. 104–316, title I, § 122(f), Oct. 19, 1996, 110 Stat. 3837; Pub. L. 106–113, div. B, § 1000(a)(6) [title VII, § 703(d)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–402.)

REFERENCES IN TEXT

Section 6503 of title 31, referred to in subsec. (d)(3), was amended generally by Pub. L. 101–453, § 5(b), Oct. 24, 1990, 104 Stat. 1059, and, as so amended, provisions formerly appearing in subsec. (b) are now contained in subsec. (h).

PRIOR PROVISIONS

A prior section 706, act Aug. 14, 1935, ch. 531, title V, § 506, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 924; amended Oct. 30, 1972, Pub. L. 92–603, title II, §§ 221(c)(2), 224(d), 229(d), 233(d), 237(b), 86 Stat. 1389, 1395, 1410, 1412, 1416, related to computation of amount of payments to States, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. See section 703 of this title. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

[1] See References in Text note below.

Provisions similar to those comprising former section 706 were contained in sections 504 and 514 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 630, 632, as amended (formerly classified to sections 704 and 714 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1999—Subsec. (a)(2)(D)(ii), (3)(D)(ii)(II). Pub. L. 106–113 inserted ''or the State plan under subchapter XXI of this chapter'' after ''subchapter XIX of this chapter''.

1996—Subsec. (a)(1). Pub. L. 104–316 struck out ''and the Comptroller General'' after ''with the States''.

1989—Subsec. (a)(1). Pub. L. 101–239, § 6504(a)(1), inserted after first sentence ''Each such report shall be prepared by, or in consultation with, the State maternal and child health agency.'', substituted ''be in such standardized form and contain such information (including information described in paragraph (2))'' for ''be in such form and contain such information'', and substituted '', (C) to describe the extent to which the State has met the goals and objectives it set forth under section 705(a)(2)(B)(i) of this title and the national health objectives referred to in section 701(a) of this title, and (D)'' for ''and of the progress made toward achieving the purposes of this subchapter, and (C)''.

Pub. L. 101–239, § 6503(c)(3), (4), substituted ''application transmitted under section 705(a) of this title'' for ''description and statement transmitted under section 705 of this title'' in subpar. (C).

Subsec. (a)(2). Pub. L. 101–239, § 6504(a)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 101–239, § 6504(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Secretary shall annually report to the Congress on activities funded under section 702(a) of this title and shall provide for transmittal of a copy of such report to each State.''

Pub. L. 101–239, § 6504(a)(2), redesignated former par. (2) as (3).

1984—Subsec. (d)(3). Pub. L. 98–369 substituted ''section 6503(b) of title 31'' for ''section 202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212)''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title VII, § 703(d)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–402, provided that: ''The amendments made by paragraph (1) [amending this section] apply to annual reports submitted under section 506 of the Social Security Act (42 U.S.C. 706) for years beginning after the date of the enactment of this Act [Nov. 29, 1999].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6503(c)(3), (4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, and amendment by section 6504 of Pub. L. 101–239 applicable to annual reports for fiscal years beginning with fiscal year 1991, see section 6510(b) of Pub. L. 101–239, set out as a note under section 701 of this title.

REPORTS TO CONGRESS; ACTIVITIES OF STATES RECEIVING ALLOTMENTS AND STUDY OF ALTERNATIVE FORMULAS FOR ALLOTMENT

Section 2192(b) of Pub. L. 97–35 provided that:

''(1) The Secretary of Health and Human Services shall, no later than October 1, 1984, report to the Congress on the activities of States receiving allotments under title V of the Social Security Act [this subchapter] (as amended by this section) and include in such report any recommendations for appropriate changes in legislation.

''(2) The Secretary of Health and Human Services, in consultation with the Comptroller General, shall examine alternative formulas, for the allotment of funds to States under section 502(b) of the Social Security Act [section 702(b) of this title] (as amended by this section) which might be used as a substitute for the method of allotting funds described in such section, which provide for the equitable distribution of such funds to States (as defined for purposes of such section), and which take into account—

''(A) the populations of the States,

''(B) the number of live births in the States,

''(C) the number of crippled children in the States,

''(D) the number of low income mothers and children in the States,

''(E) the financial resources of the various States, and

''(F) such other factors as the Secretary deems appropriate, and shall report to the Congress thereon not later than June 30, 1982.''

§ 707. Criminal penalty for false statements

(a) Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payment may be made by a State from funds allotted to the State under this subchapter, or

(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(b) For civil monetary penalties for certain submissions of false claims, see section 1320a–7a of this title.

(Aug. 14, 1935, ch. 531, title V, § 507, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 824.)

PRIOR PROVISIONS

A prior section 707, act Aug. 14, 1935, ch. 531, title V, § 507, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 925, related to failure of State plan to comply with provisions of this subchapter, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. See section 706 of this title. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Provisions similar to those comprising former section 707 were contained in sections 505 and 515 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 631, 633, as amended (formerly classified to sections 705 and 715 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

§ 708. Nondiscrimination provisions

(a) Federally funded activities

(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under this subchapter are considered to be programs and activities receiving Federal financial assistance.

(2) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this subchapter.

(b) Compliance

Whenever the Secretary finds that a State, or an entity that has received a payment from an allotment to a State under section 702(c) of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], as may be applicable, or

(3) take such other action as may be provided by law.

(c) Authority of Attorney General; civil actions

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whenever he has reason to believe that the entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(Aug. 14, 1935, ch. 531, title V, § 508, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 825; amended Pub. L. 101–239, title VI, § 6502(b), Dec. 19, 1989, 103 Stat. 2276.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1) and (b)(2), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1) and (b)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

PRIOR PROVISIONS

A prior section 708, act Aug. 14, 1935, ch. 531, title V, § 508, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 926; amended July 10, 1972, Pub. L. 92–345, § 2(d), 86 Stat. 457; July 1, 1973, Pub. L. 93–53, § 4(a)(6), 87 Stat. 135, related to special project grants for maturity and infant care, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Provisions similar to those comprising former section 708 were contained in section 531 of act Aug. 14, 1935, ch. 531, title V, as added Oct. 24, 1963, Pub. L. 88–156, § 4, 77 Stat. 274 (formerly classified to section 729 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted ''702(c) of this title'' for ''702(b) of this title'' in introductory provisions.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, see section 6510(a) of Pub. L. 101–239, set out as a note under section 701 of this title.

§ 709. Administration of Federal and State programs

(a) The Secretary shall designate an identifiable administrative unit with expertise in maternal and child health within the Department of Health and Human Services, which unit shall be responsible for—

(1) the Federal program described in section 702(a) of this title;

(2) promoting coordination at the Federal level of the activities authorized under this subchapter and under subchapter XIX of this chapter, especially early and periodic screening, diagnosis and treatment, related activities funded by the Departments of Agriculture and Education, and under health block grants and categorical health programs, such as immunizations, administered by the Secretary;

(3) disseminating information to the States in such areas as preventive health services and advances in the care and treatment of mothers and children;

(4) providing technical assistance, upon request, to the States in such areas as program planning, establishment of goals and objec-

tives, standards of care, and evaluation and in developing consistent and accurate data collection mechanisms in order to report the information required under section 706(a)(2) of this title;

(5) in cooperation with the National Center for Health Statistics and in a manner that avoids duplication of data collection, collection, maintenance, and dissemination of information relating to the health status and health service needs of mothers and children in the United States;

(6) assisting in the preparation of reports to the Congress on the activities funded and accomplishments achieved under this subchapter from the information required to be reported by the States under sections 705(a) and 706 of this title; and[1]

(7) assisting States in the development of care coordination services (as defined in section 701(b)(3) of this title); and

(8) developing and making available to the State agency (or agencies) administering the State's program under this subchapter a national directory listing by State the toll-free numbers described in section 705(a)(5)(E) of this title.

(b) The State health agency of each State shall be responsible for the administration (or supervision of the administration) of programs carried out with allotments made to the State under this subchapter, except that, in the case of a State which on July 1, 1967, provided for administration (or supervision thereof) of the State plan under this subchapter (as in effect on such date) by a State agency other than the State health agency, that State shall be considered to comply[2] the requirement of this subsection if it would otherwise comply but for the fact that such other State agency administers (or supervises the administration of) any such program providing services for children with special health care needs.

(Aug. 14, 1935, ch. 531, title V, § 509, as added Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 825; amended Pub. L. 99–272, title IX, § 9527(e), Apr. 7, 1986, 100 Stat. 219; Pub. L. 101–239, title VI, §§ 6503(c)(4), 6505, Dec. 19, 1989, 103 Stat. 2278, 2281.)

PRIOR PROVISIONS

A prior section 709, act Aug. 14, 1935, ch. 531, title V, § 509, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 926; amended July 10, 1972, Pub. L. 92–345, § 2(e), 86 Stat. 457; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 221(c)(3), 233(e), 86 Stat. 1389, 1412; July 1, 1973, Pub. L. 93–53, § 4(a)(7), 87 Stat. 135, related to special project grants for health of school and preschool children, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Provisions similar to those comprising former section 709, were contained in section 532 of act Aug. 14, 1935, ch. 531, title V, as added July 30, 1965, Pub. L. 89–97, title II, § 205(3), 79 Stat. 354 (formerly classified to section 729–1 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

[1] So in original. The word "and" probably should not appear.

[2] So in original. Probably should be "comply with".

AMENDMENTS

1989—Subsec. (a)(4). Pub. L. 101–239, § 6505(1), inserted before semicolon at end "and in developing consistent and accurate data collection mechanisms in order to report the information required under section 706(a)(2) of this title".

Subsec. (a)(6). Pub. L. 101–239, § 6503(c)(4), substituted "705(a)" for "705".

Subsec. (a)(7), (8). Pub. L. 101–239, § 6505(2)–(4), added pars. (7) and (8).

1986—Subsec. (b). Pub. L. 99–272 substituted "children with special health care needs" for "crippled children".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6503(c)(4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, and amendment by section 6505 of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

REPORT TO CONGRESS; EVALUATION OF PROGRAM

Pub. L. 89–97, title II, § 206, July 30, 1965, 79 Stat. 354, authorized Secretary to submit to President for transmission to Congress before July 1, 1969, a full report of administration of provisions of section 729–1 of this title, which was covered by former sections 701, 702(1)(B), and 709 of this title, together with an evaluation of program established thereby and his recommendations as to continuation of and modifications in that program.

§ 710. Separate program for abstinence education

(a) In general

For the purpose described in subsection (b) of this section, the Secretary shall, for fiscal year 1998 and each subsequent fiscal year, allot to each State which has transmitted an application for the fiscal year under section 705(a) of this title an amount equal to the product of—

(1) the amount appropriated in subsection (d) of this section for the fiscal year; and

(2) the percentage determined for the State under section 702(c)(1)(B)(ii) of this title.

(b) Purpose of allotment

(1) The purpose of an allotment under subsection (a) of this section to a State is to enable the State to provide abstinence education, and at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, with a focus on those groups which are most likely to bear children out-of-wedlock.

(2) For purposes of this section, the term "abstinence education" means an educational or motivational program which—

(A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

(B) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

(C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

(D) teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

(E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

(F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

(G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

(H) teaches the importance of attaining self-sufficiency before engaging in sexual activity.

(c) Applicability of sections 703, 707, and 708

(1) Sections 703, 707, and 708 of this title apply to allotments under subsection (a) of this section to the same extent and in the same manner as such sections apply to allotments under section 702(c) of this title.

(2) Sections 705 and 706 of this title apply to allotments under subsection (a) of this section to the extent determined by the Secretary to be appropriate.

(d) Appropriations

For the purpose of allotments under subsection (a) of this section, there is appropriated, out of any money in the Treasury not otherwise appropriated, an additional $50,000,000 for each of the fiscal years 1998 through 2003. The appropriation under the preceding sentence for a fiscal year is made on October 1 of the fiscal year.

(Aug. 14, 1935, ch. 531, title V, §510, as added Pub. L. 104–193, title IX, §912, Aug. 22, 1996, 110 Stat. 2353; amended Pub. L. 108–40, §6, June 30, 2003, 117 Stat. 837.)

PRIOR PROVISIONS

A prior section 710, act Aug. 14, 1935, ch. 531, title V, §510, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 927; amended July 10, 1972, Pub. L. 92–345, §2(f), 86 Stat. 457; July 1, 1973, Pub. L. 93–53, §4(a)(8), 87 Stat. 136, provided for special project grants for dental health of children, prior to the general revision of this subchapter by Pub. L. 97–35, title XXI, §2192(a), Aug. 13, 1981, 95 Stat. 818. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–40 substituted ''2003'' for ''2002''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

ESTABLISHING NATIONAL GOALS TO PREVENT TEENAGE PREGNANCIES

Section 905 of Pub. L. 104–193 provided that:

''(a) IN GENERAL.—Not later than January 1, 1997, the Secretary of Health and Human Services shall establish and implement a strategy for—

''(1) preventing out-of-wedlock teenage pregnancies, and

''(2) assuring that at least 25 percent of the communities in the United States have teenage pregnancy prevention programs in place.

''(b) REPORT.—Not later than June 30, 1998, and annually thereafter, the Secretary shall report to the Congress with respect to the progress that has been made in meeting the goals described in paragraphs (1) and (2) of subsection (a).''

§§ 711 to 716. Omitted

CODIFICATION

Sections 711 to 716 were omitted in the general revision of this subchapter by Pub. L. 97–35, title XXI, §2192(a), Aug. 13, 1981, 95 Stat. 818. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Section 711, act Aug. 14, 1935, ch. 531, title V, §511, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 927, related to training of personnel for health care and related services for mothers and children.

Another prior section 711, acts Aug. 14, 1935, ch. 531, title V, §511, 49 Stat. 631; Aug. 10, 1939, ch. 666, title V, §504, 53 Stat. 1380; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, §401(b)(4), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, §331(c), pt. 6, §361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub. L. 85–840, title VI, §603(a), 72 Stat. 1055; Sept. 13, 1960, Pub. L. 86–778, title VII, §707(a)(2)(A), 74 Stat. 995; Oct. 24, 1963, Pub. L. 88–156, §3(a), 77 Stat. 273; July 30, 1965, Pub. L. 89–97, title II, §202(a), 79 Stat. 353, authorized appropriations, for services for crippled children, of $25,000,000; $30,000,000; $35,000,000; $45,000,000; $50,000,000; $55,000,000; and $60,000,000, for fiscal years ending June 30, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970 and thereafter respectively, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301, and was covered by former section 701 of this title.

Provisions similar to those comprising former section 711 were contained in section 516 of act Aug. 14, 1935, ch. 531, title V, as added July 30, 1965, Pub. L. 89–97, title II, §203(a), 79 Stat. 353 (formerly classified to section 716 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, §301.

Section 712, act Aug. 14, 1935, ch. 531, title V, §512, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 927, provided for research projects relating to maternal and child health services and crippled children's services. See section 702(a) of this title.

Another prior section 712, acts Aug. 14, 1935, ch. 531, title V, §512, 49 Stat. 631; Aug. 10, 1939, ch. 666, title V, §505, 53 Stat. 1380; 1946 Reorg. Plan. No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, §401(b)(5), (6), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, §331(d), pt. 6, §361(e), 64 Stat. 552, 558; Aug. 28, 1958, Pub. L. 85–840, title VI, §603(b), (c), 72 Stat. 1055; Sept. 13, 1960, Pub. L. 86–778, title VII, §707(a)(2)(B), (C), (b)(2)(A), 74 Stat. 996; Oct. 24, 1963, Pub. L. 88–156, §3(b), (c), 77 Stat. 274, provided for allotment to States for services for crippled children, and was covered by former section 704 of this title.

Provisions similar to those comprising former section 712 were contained in section 533, formerly section 532, of act Aug. 14, 1935, ch. 531, title V, as added Oct. 24, 1963, Pub. L. 88–156, §4, 77 Stat. 274, and renumbered July 30, 1965, Pub. L. 89–97, title II, §205(2), 79 Stat. 354 (formerly classified to section 729a of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, §301.

Section 713, act Aug. 14, 1935, ch. 531, title V, §513, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 928, related to administration. See section 709 of this title.

Another prior section 713, acts Aug. 14, 1935, ch. 531, title V, §513, 49 Stat. 632; Aug. 10, 1939, ch. 666, title V, §506, 53 Stat. 1381; 1946 Reorg. Plan No. 2, §§1, 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(e), 64 Stat. 558; July 30, 1965, Pub. L. 89–97, title II, §204(b), 79 Stat. 354, related to contents of State plans for services for crippled children and their approval by the Administrator prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301, and was covered by former section 705 of this title.

Provisions similar to those comprising former section 713 were contained in section 541 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 634, as amended (formerly classified to section 731 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, §301.

Section 714, act Aug. 14, 1935, ch. 531, title V, §514, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 928, defined ''crippled child''.

Another prior section 714, acts Aug. 14, 1935, ch. 531, title V, §514, 49 Stat. 632; Aug. 10, 1939, ch. 666, title V, §507(a), (b), 53 Stat. 1381; 1940 Reorg. Plan No. III, §1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(e), 64 Stat. 558; Sept. 13, 1960, Pub. L. 86–778, title VII, §707(b)(2)(B), 74 Stat. 996; July 30, 1965, Pub. L. 89–97, title II, §§202(b), 203(b), 79 Stat. 353, 354, provided for payment to States with an approved plan for services for crippled children, computation of amounts, and prescribed general availability of services by July 1, 1975, as requisite for payments for any period after June 30, 1966 prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301, and was covered by former section 706 of this title.

Section 715, act Aug. 14, 1935, ch. 531, title V, §515, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 928, related to observance of religious beliefs.

Another prior section 715, acts Aug. 14, 1935, ch. 531, title V, §515, 49 Stat. 633; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(e), 64 Stat. 558, provided for stopping payment on failure to comply with State plan for services for crippled children prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301, and was covered by former section 707 of this title.

Section 716, act Aug. 14, 1935, ch. 531, title V, §516, as added July 1, 1973, Pub. L. 93–53, §4(b), 87 Stat. 136, related to supplemental allotments.

Another prior section 716, act Aug. 14, 1935, ch. 531, title V, §516, as added July 30, 1965, Pub. L. 89–97, title II, §203(a), 79 Stat. 353, authorized appropriations for training of professional personnel for health and related care of crippled and mentally retarded children of $5,000,000, $10,000,000, and $17,500,000 for fiscal years ending June 30, 1967, 1968, 1969, and thereafter, respectively, and was omitted in the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301, and was covered by former sections 702 and 711 of this title.

SUPPLEMENTAL ALLOTMENTS FOR FISCAL YEAR ENDING JUNE 30, 1974

Section 4(c) of Pub. L. 93–53 authorized a State, for fiscal year ending June 30, 1974, to receive an additional supplemental allotment to match excess of amount of allotments which such State would have received under sections 703 and 704 of this title for such year if section 4(a) of Pub. L. 93–53 had not been enacted over aggregate of allotments which such State actually received under such sections plus aggregate of grants received under sections 708, 709, and 710 of this title for fiscal year ending June 30, 1973, and authorized appropriations necessary for supplemental allotments.

§§ 721 to 728. Repealed. Pub. L. 90–248, title II, §240(e)(1), Jan. 2, 1968, 81 Stat. 915

Section 721, acts Aug. 14, 1935, ch. 531, title V, §521, 49 Stat. 633; Aug. 10, 1939, ch. 666, title V, §507(c), 53 Stat. 1381; 1940 Reorg. Plan No. III, §1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg. Plan. No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, §401(b)(7), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, §331(e), pt. 6, §361(e), 64 Stat. 552, 558; Aug. 1, 1956, ch. 836, title IV, §402, 70 Stat. 856; Aug. 28, 1958, Pub. L. 85–840, title VI, §601, 72 Stat. 1052; Sept. 13, 1960, Pub. L. 86–778, title VII, §707(a)(3)(A), 74 Stat. 996; July 25, 1962, Pub. L. 87–543, title I, §102(a), (d)(1), 76 Stat. 182, 184; July 30, 1965, Pub. L. 89–97, title II, §207, 79 Stat. 355, authorized appropriations for child-welfare services. See section 620 of this title.

Section 722, act Aug. 14, 1935, ch. 531, title V, §522, as added Aug. 28, 1958, Pub. L. 85–840, title VI, §601, 72 Stat. 1053; amended Sept. 13, 1960, Pub. L. 86–778, title VII, §707(a)(3)(B), 74 Stat. 996; July 25, 1962, Pub. L. 87–543, title I, §102(c)(1), 76 Stat. 183; July 30, 1965, Pub. L. 89–97, title II, §208(b), 79 Stat. 355, provided for allotments to States. See section 621 of this title.

Section 723, act Aug. 14, 1935, ch. 531, title V, §523, as added Aug. 28, 1958, Pub. L. 85–840, title VI, §601, 72 Stat. 1053; amended July 25, 1962, Pub. L. 87–543, title I, §102(b), 76 Stat. 182; July 30, 1965, Pub. L. 89–97, title II, §208(c), 79 Stat. 356, provided for payment to States and computation of amounts. See section 622 of this title.

Section 724, act Aug. 14, 1935, ch. 531, title V, §524, as added Aug. 28, 1958, Pub. L. 85–840, title VI, §601, 72 Stat. 1054; amended June 25, 1959, Pub. L. 86–70, §32(b), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, §30(b), 74 Stat. 420, provided for allotment percentage and Federal share. See section 623 of this title.

Section 725, act Aug. 14, 1935, ch. 531, title V, §525, as added Aug. 28, 1958, Pub. L. 85–840, title VI, §601, 72 Stat. 1054, provided for reallotment of allotments to States. See section 624 of this title.

Section 726, act Aug. 14, 1935, ch. 531, title V, §526, as added Sept. 13, 1960, Pub. L. 86–778, title VII, §707(b)(3), 74 Stat. 997; amended July 25, 1962, Pub. L. 87–543, title I, §123(d), 76 Stat. 193, provided for research, training, or demonstration projects. See section 626 of this title.

Section 727, act Aug. 14, 1935, ch. 531, title V, §527, as added July 25, 1962, Pub. L. 87–543, title I, §102(c)(2), 76 Stat. 183, provided for allotments and reallotment of allotments to States for day care services. Section had been previously repealed by Pub. L. 89–97, title II, §208(a)(1), July 30, 1965, 79 Stat. 355, effective Jan. 1, 1966, under section 208(d) of Pub. L. 89–97.

Section 728, act Aug. 14, 1935, ch. 531, title V, §528, as added July 25, 1962, Pub. L. 87–543, title I, §102(d)(2), 76 Stat. 184, defined, child-welfare ''services''. See section 625 of this title.

§§ 729 to 729a, 731. Omitted

CODIFICATION

Section 729, act Aug. 14, 1935, ch. 531, title V, §531, as added Oct. 24, 1963, Pub. L. 88–156, §4, 77 Stat. 274; amended Jan. 2, 1968, Pub. L. 90–248, title III, §303, 81 Stat. 929, related to maternity and infant care projects, authorized appropriations of $5,000,000; $15,000,000; $30,000,000; and $35,000,000 for fiscal years ending June 30, 1964, 1965, 1966 and 1967, and 1968, respectively; provided for grants to State health agencies, limitations on payments, scope of projects, health hazards, low-income families, other reasons for lack of health care; and provided for payments to States, adjustments, advances or reimbursement, installments, and conditions, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301. See sections 701 and 702 of this title. Section 531 of act Aug. 14, 1935, as originally enacted, appropriated funds for vocational rehabilitation, and was classified to section 45b of Title 29, Labor. It was omitted as superseded by section 31 of Title 29.

Section 729–1, act Aug. 14, 1935, ch. 531, title V, §532, as added July 30, 1965, Pub. L. 89–97, title II, §205(3), 79 Stat. 354, provided for projects for health of school and preschool children, authorized appropriations of $15,000,000; $35,000,000; $40,000,000; $45,000,000; and $50,000,000 for fiscal years ending June 30, 1966, 1967, 1968, 1969, and 1970, respectively; provided for grants to State health agencies, medical and dental schools, and teaching hospitals, limitations on payments, eligibility for grants, comprehensive care and services; and provided for payments to States, adjustments, advances or reimbursement, installments, and conditions, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301. See sections 701 and 702 of this title.

Section 729a, act Aug. 14, 1935, ch. 531, title V, §533, formerly §532, as added Oct. 24, 1963, Pub. L. 88–156, §4, 77 Stat. 274; renumbered July 30, 1965, Pub. L. 89–97, title II, §205(2), 79 Stat. 354, provided for research projects relating to maternal and child health services and crippled children's services, authorized appropriations of $8,000,000 for fiscal year ending June 30, 1964, and each subsequent fiscal year; and provided for payments to eligible institutions, agencies, and organizations, adjustments, advances or reimbursements, in-

stallments, and conditions, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301. See sections 701 and 702 of this title.

Section 731, acts Aug. 14, 1935, ch. 531, title V, § 541, 49 Stat. 634; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, § 401(b)(8), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(e), title IV, § 402(a), 64 Stat. 558, required the Administrator to make studies and investigations to promote efficient administration of sections 701 to 703, 704, 705, 711 to 715, 721 to 729a, and 731 of this title, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301. See section 713 of this title.

SUBCHAPTER VI—TEMPORARY STATE FISCAL RELIEF

PRIOR PROVISIONS

A prior subchapter VI related to grants to States for services to the aged, blind, or disabled and consisted of sections 801 to 805, prior to repeal by Pub. L. 93–647, § 3(b), Jan. 4, 1975, 88 Stat. 2349.

§ 801. Repealed

Section, act Aug. 14, 1935, ch. 531, title VI, § 601, as added Pub. L. 108–27, title IV, § 401(b), May 28, 2003, 117 Stat. 766, related to temporary State fiscal relief, prior to repeal by act Aug. 14, 1935, ch. 531, title VI, § 601(g), as added Pub. L. 108–27, title IV, § 401(b), May 28, 2003, 117 Stat. 768.

PRIOR PROVISIONS

Prior sections 801 to 805 were repealed by Pub. L. 93–647, §§ 3(b), 7(b), Jan. 4, 1975, 88 Stat. 2349, 2351, effective with respect to payments under section 803 for quarters commencing after Sept. 30, 1975.

Section 801, act Aug. 14, 1935, ch. 531, title VI, § 601, as added Oct. 30, 1972, Pub. L. 92–603, title III, § 302, 86 Stat. 1478, authorized appropriations for encouraging States to furnish rehabilitation to needy individuals 65 years of age or older, and the blind or disabled.

Another prior section 801, acts Aug. 14, 1935, ch. 531, title VI, § 601, 49 Stat. 634; Aug. 10, 1939, ch. 666, title V, § 509, 53 Stat. 1381, which provided appropriations for the purpose of assisting States and subdivisions in maintaining adequate public health services, was repealed by act July 1, 1944, ch. 373, title XI, § 1113, 58 Stat. 714. See section 246 of this title.

Section 802, act Aug. 14, 1935, ch. 531, title VI, § 602, as added Oct. 30, 1972, Pub. L. 92–603, title III, § 302, 86 Stat. 1479, set out the necessary provisions for State plans for services to the aged, blind, or disabled.

Another prior section 802, act Aug. 14, 1935, ch. 531, title VI, § 602, 49 Stat. 634, which provided for allotments to States by Surgeon General, was repealed by act July 1, 1944, ch. 373, title XI, § 1113, 58 Stat. 714. See section 246 of this title.

Section 803, act Aug. 14, 1935, ch. 531, title VI, § 603, as added Oct. 30, 1972, Pub. L. 92–603, title III, § 302, 86 Stat. 1481, provided for payments to States under approved plans for services to the aged, blind, or disabled.

Another prior section 803, act Aug. 14, 1935, ch. 531, title VI, § 603, 49 Stat. 635, which provided for allotments to States by appropriations for investigation of diseases by Public Health Service, was repealed by act July 1, 1944, ch. 373, title XI, § 1113, 58 Stat. 714. See section 246 of this title.

Section 804, act Aug. 14, 1935, ch. 531, title VI, § 604, as added Oct. 30, 1972, Pub. L. 92–603, title III, § 302, 86 Stat. 1484, provided for notification to States and termination of payments in case of noncompliance with laws or State plan.

Section 805, act Aug. 14, 1935, ch. 531, title VI, § 605, as added Oct. 30, 1972, Pub. L. 92–603, title III, § 302, 86 Stat. 1484, defined ''services to the aged, blind or disabled''.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2004, see section 601(g) of act Aug. 14, 1935, as added by Pub. L. 108–27, title IV, § 401(b), May 28, 2003, 117 Stat. 768, which was formerly classified to subsec. (g) of this section.

RENUMBERING OF REPEALING ACT

Section 611 of act July 1, 1944, which repealed prior sections 801 to 803, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47, § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720, § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919, § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931, and § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506.

SUBCHAPTER VII—ADMINISTRATION

AMENDMENTS

1950—Act Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(f), 64 Stat. 558, substituted ''ADMINISTRATION'' for ''SOCIAL SECURITY BOARD'' as subchapter heading.

§ 901. Social Security Administration

(a) There is hereby established, as an independent agency in the executive branch of the Government, a Social Security Administration (in this subchapter referred to as the ''Administration'').

(b) It shall be the duty of the Administration to administer the old-age, survivors, and disability insurance program under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter.

(Aug. 14, 1935, ch. 531, title VII, § 701, 49 Stat. 635; Aug. 28, 1950, ch. 809, title IV, § 401(a), 64 Stat. 558; Pub. L. 103–296, title I, § 101, Aug. 15, 1994, 108 Stat. 1465.)

AMENDMENTS

1994—Pub. L. 103–296 amended section generally, substituting present provisions for former provisions relating to a Commissioner for Social Security in the Federal Security Agency.

1950—Act Aug. 28, 1950, amended section generally to provide for the appointment of a Commissioner of Social Security.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

TRANSFERS TO NEW SOCIAL SECURITY ADMINISTRATION

Section 105 of title I of Pub. L. 103–296 provided that: ''(a) FUNCTIONS.—

''(1) IN GENERAL.—There are transferred to the Social Security Administration all functions of the Secretary of Health and Human Services with respect to or in support of the programs and activities the administration of which is vested in the Social Security Administration by reason of this title [see Tables for classification] and the amendments made thereby. The Commissioner of Social Security shall allocate such functions in accordance with sections 701, 702, 703, and 704 of the Social Security Act [this section and sections 902 to 904 of this title] (as amended by this title).

''(2) FUNCTIONS OF OTHER AGENCIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Social Security Administration shall also perform—

''(i) the functions of the Department of Health and Human Services, including functions relating to titles XVIII and XIX of the Social Security Act [subchapters XVIII and IX of this chapter] (including adjudications, subject to final decisions by the Secretary of Health and Human Services),

that the Social Security Administration in such Department performed as of immediately before the date of the enactment of this Act [Aug. 15, 1994], and

''(ii) the functions of any other agency for which administrative responsibility was vested in the Social Security Administration in the Department of Health and Human Services as of immediately before the date of the enactment of this Act.

''(B) RULES GOVERNING CONTINUATION OF FUNCTIONS IN THE ADMINISTRATION.—The Social Security Administration shall perform, on behalf of the Secretary of Health and Human Services (or the head of any other agency, as applicable), the functions described in subparagraph (A) in accordance with the same financial and other terms in effect on the day before the date of the enactment of this Act, except to the extent that the Commissioner and the Secretary (or other agency head, as applicable) agree to alter such terms pertaining to any such function or to terminate the performance by the Social Security Administration of any such function.

''(b) PERSONNEL, ASSETS, ETC.—

''(1) IN GENERAL.—There are transferred from the Department of Health and Human Services to the Social Security Administration, for appropriate allocation by the Commissioner of Social Security in the Social Security Administration—

''(A) the personnel employed in connection with the functions transferred by this title and the amendments made thereby; and

''(B) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, or used in connection with such functions, arising from such functions, or available, or to be made available, in connection with such functions.

''(2) UNEXPENDED FUNDS.—Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally appropriated.

''(3) EMPLOYMENT PROTECTIONS.—

''(A) IN GENERAL.—During the 1-year period beginning March 31, 1995—

''(i) the transfer pursuant to this section of any full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such personnel to be separated or reduced in grade or compensation solely as a result of such transfer, and

''(ii) except as provided in subparagraph (B), any such personnel who were not employed in the Social Security Administration in the Department of Health and Human Services immediately before the date of the enactment of this Act [Aug. 15, 1994] shall not be subject to directed reassignment to a duty station outside their commuting area.

''(B) SPECIAL RULES.—

''(i) In the case of personnel whose duty station is in the Washington, District of Columbia, commuting area immediately before March 31, 1995, subparagraph (A)(ii) shall not apply with respect to directed reassignment to a duty station in the Baltimore, Maryland, commuting area after September 30, 1995.

''(ii) In the case of personnel whose duty station is in the Baltimore, Maryland, commuting area immediately before March 31, 1995, subparagraph (A)(ii) shall not apply with respect to directed reassignment to a duty station in the Washington, District of Columbia, commuting area after September 30, 1995.

''(4) OFFICE SPACE.—Notwithstanding section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606) [now 40 U.S.C. 3305(b)(2)(B), 3307], and subject to available appropriations, the Administrator of General Services may, after consultation with the Commissioner of Social Security and under such terms and conditions as the Administrator finds to be in the interests of the United States—

''(A) acquire occupiable space in the metropolitan area of Washington, District of Columbia, for housing the Social Security Administration, and

''(B) renovate such space as necessary.

''(c) INTER-AGENCY TRANSFER ARRANGEMENT.—The Secretary of Health and Human Services and the Commissioner of Social Security shall enter into a written inter-agency transfer arrangement (in this subsection referred to as the 'arrangement'), which shall be effective March 31, 1995. Transfers made pursuant to this section shall be in accordance with the arrangement, which shall specify the personnel and resources to be transferred as provided under this section. The terms of such arrangement shall be transmitted not later than January 1, 1995, to the Committee on Ways and Means of the House of Representatives, to the Committee on Finance of the Senate, and to the Comptroller General of the United States. Not later than February 15, 1995, the Comptroller General shall submit a report to each such Committee setting forth an evaluation of such arrangement.''

[Section 105(a)–(b)(3) of Pub. L. 103–296, set out above, effective Mar. 31, 1995, and section 105(b)(4), (c) of Pub. L. 103–296, set out above, effective Aug. 15, 1994, see section 110(a), (c) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

TRANSITION RULES

Section 106 of title I of Pub. L. 103–296 provided that:

''(a) TRANSITION RULES RELATING TO OFFICERS OF THE SOCIAL SECURITY ADMINISTRATION.—

''(1) APPOINTMENT OF INITIAL COMMISSIONER OF SOCIAL SECURITY.—The President shall nominate for appointment the initial Commissioner of Social Security to serve as head of the Social Security Administration established under section 701 of the Social Security Act [this section] (as amended by this Act) not later than 60 days after the date of the enactment of this Act [Aug. 15, 1994].

''(2) ASSUMPTION OF OFFICE OF INITIAL COMMISSIONER BEFORE EFFECTIVE DATE OF NEW AGENCY.—If the appointment of the initial Commissioner of Social Security pursuant to section 702 of the Social Security Act [section 902 of this title] (as amended by this Act) is confirmed by the Senate pursuant to such section 702 before March 31, 1995, the individual shall take office as Commissioner immediately upon confirmation, and, until March 31, 1995, such Commissioner shall perform the functions of the Commissioner of Social Security in the Department of Health and Human Services.

''(3) TREATMENT OF INSPECTOR GENERAL AND OTHER APPOINTMENTS.—At any time on or after the date of the enactment of this Act [Aug. 15, 1994], any of the officers provided for in section 702 of the Social Security Act (as amended by this title) and any of the members of the Social Security Advisory Board provided for in section 703 of such Act [section 903 of this title] (as so amended) may be nominated and take office, under the terms and conditions set out in such sections.

''(4) COMPENSATION FOR INITIAL OFFICERS AND BOARD MEMBERS BEFORE EFFECTIVE DATE OF NEW AGENCY.—Funds available to any official or component of the Department of Health and Human Services, functions of which are transferred to the Commissioner of Social Security or the Social Security Administration by this title [see Tables for classification], may, with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer or employee of the new Social Security Administration and of any member or staff of the Social Security Advisory Board who takes office pursuant to this subsection before March

31, 1995, until such time as funds for that purpose are otherwise available.

''(5) INTERIM ROLE OF CURRENT COMMISSIONER AFTER EFFECTIVE DATE OF NEW AGENCY.—In the event that, as of March 31, 1995, an individual appointed to serve as the initial Commissioner of Social Security has not taken office, until such initial Commissioner has taken office, the officer serving on March 31, 1995, as Commissioner of Social Security (or Acting Commissioner of Social Security, if applicable) in the Department of Health and Human Services shall, while continuing to serve as such Commissioner of Social Security (or Acting Commissioner of Social Security), serve as Commissioner of Social Security (or Acting Commissioner of Social Security, respectively) in the Social Security Administration established under such section 701 and shall assume the powers and duties under such Act [this chapter] (as amended by this Act) of the Commissioner of Social Security in the Social Security Administration as so established under such section 701. In the event that, as of March 31, 1995, the President has not nominated an individual for appointment to the office of Commissioner of Social Security in the Social Security Administration established under such section 701, then the individual serving as Commissioner of Social Security (or Acting Commissioner of Social Security, if applicable) in the Department of Health and Human Services shall become the Acting Commissioner of Social Security in the Social Security Administration as so established under such section 701.

''(6) INTERIM INSPECTOR GENERAL.—The Commissioner of Social Security may appoint an individual to assume the powers and duties under the Inspector General Act of 1978 [Pub. L. 95–452, set out in the Appendix to Title 5, Government Organization and Employees] of Inspector General of the Social Security Administration as established under section 701 of the Social Security Act for a period not to exceed 60 days. The Inspector General of the Department of Health and Human Services may, when so requested by the Commissioner, while continuing to serve as Inspector General in such Department, serve as Inspector General of the Social Security Administration established under such section 701 and shall assume the powers and duties under the Inspector General Act of 1978 of Inspector General of the Social Security Administration as established under such section 701. The Social Security Administration shall reimburse the Office of Inspector General of the Department of Health and Human Services for costs of any functions performed pursuant to this subsection, from funds available to the Administration at the time the functions are performed. The authority under this paragraph to exercise the powers and duties of the Inspector General shall terminate upon the entry upon office of an Inspector General for the Social Security Administration under the Inspector General Act of 1978.

''(7) ABOLISHMENT OF OFFICE OF COMMISSIONER OF SOCIAL SECURITY IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—Effective when the initial Commissioner of Social Security of the Social Security Administration established under section 701 of the Social Security Act (as amended by this title) takes office pursuant to section 702 of such Act (as so amended)—

''(A) the position of Commissioner of Social Security in the Department of Health and Human Services is abolished; and

''(B) [Amended section 5315 of Title 5, Government Organization and Employees.]

''(b) CONTINUATION OF ORDERS, DETERMINATIONS, RULES, REGULATIONS, ETC.—All orders, determinations, rules, regulations, permits, contracts, collective bargaining agreements (and ongoing negotiations relating to such collective bargaining agreements), recognitions of labor organizations, certificates, licenses, and privileges—

''(1) which have been issued, made, promulgated, granted, or allowed to become effective, in the exercise of functions (A) which were exercised by the Secretary of Health and Human Services (or the Secretary's delegate), and (B) which relate to functions which, by reason of this title, the amendments made thereby, and regulations prescribed thereunder, are vested in the Commissioner of Social Security; and

''(2) which are in effect immediately before March 31, 1995,

shall (to the extent that they relate to functions described in paragraph (1)(B)) continue in effect according to their terms until modified, terminated, suspended, set aside, or repealed by such Commissioner, except that any collective bargaining agreement shall remain in effect until the date of termination specified in such agreement.

''(c) CONTINUATION OF PROCEEDINGS.—The provisions of this title (including the amendments made thereby) shall not affect any proceeding pending before the Secretary of Health and Human Services immediately before March 31, 1995, with respect to functions vested (by reason of this title, the amendments made thereby, and regulations prescribed thereunder) in the Commissioner of Social Security, except that such proceedings, to the extent that such proceedings relate to such functions, shall continue before such Commissioner. Orders shall be issued under any such proceeding, appeals taken therefrom, and payments shall be made pursuant to such orders, in like manner as if this title had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or repealed by such Commissioner, by a court of competent jurisdiction, or by operation of law.

''(d) CONTINUATION OF SUITS.—Except as provided in this subsection—

''(1) the provisions of this title shall not affect suits commenced before March 31, 1995; and

''(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this title had not been enacted.

No cause of action, and no suit, action, or other proceeding commenced by or against any officer in such officer's official capacity as an officer of the Department of Health and Human Services, shall abate by reason of the enactment of this title. In any suit, action, or other proceeding pending immediately before March 31, 1995, the court or hearing officer may at any time, on the motion of the court or hearing officer or that of a party, enter an order which will give effect to the provisions of this subsection (including, where appropriate, an order for substitution of parties).

''(e) CONTINUATION OF PENALTIES.—This title shall not have the effect of releasing or extinguishing any civil or criminal prosecution, penalty, forfeiture, or liability incurred as a result of any function which (by reason of this title, the amendments made thereby, and regulations prescribed thereunder) is vested in the Commissioner of Social Security.

''(f) JUDICIAL REVIEW.—Orders and actions of the Commissioner of Social Security in the exercise of functions vested in such Commissioner under this title and the amendments made thereby (other than functions performed pursuant to 105(a)(2) [set out above]) shall be subject to judicial review to the same extent and in the same manner as if such orders had been made and such actions had been taken by the Secretary of Health and Human Services in the exercise of such functions immediately before March 31, 1995. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function so vested in such Commissioner shall continue to apply to the exercise of such function by such Commissioner.

''(g) EXERCISE OF FUNCTIONS.—In the exercise of the functions vested in the Commissioner of Social Security under this title, the amendments made thereby, and regulations prescribed thereunder, such Commissioner shall have the same authority as that vested in the Secretary of Health and Human Services with respect to the exercise of such functions immediately

preceding the vesting of such functions in such Commissioner, and actions of such Commissioner shall have the same force and effect as when exercised by such Secretary.''

RULES OF CONSTRUCTION

Section 109 of title I of Pub. L. 103–296 provided that:

''(a) REFERENCES TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—Whenever any reference is made in any provision of law (other than this title [see Tables for classification] or a provision of law amended by this title), regulation, rule, record, or document to the Department of Health and Human Services with respect to such Department's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act [subchapter II of this chapter] or the supplemental security income program under title XVI of such Act [subchapter XVI of this chapter] or other functions performed by the Social Security Administration pursuant to section 105(a)(2) of this Act [set out above], such reference shall be considered a reference to the Social Security Administration.

''(b) REFERENCES TO THE SECRETARY OF HEALTH AND HUMAN SERVICES.—Whenever any reference is made in any provision of law (other than this title or a provision of law amended by this title), regulation, rule, record, or document to the Secretary of Health and Human Services with respect to such Secretary's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act or other functions performed by the Commissioner of Social Security pursuant to section 105(a)(2) of this Act, such reference shall be considered a reference to the Commissioner of Social Security.

''(c) REFERENCES TO OTHER OFFICERS AND EMPLOYEES.—Whenever any reference is made in any provision of law (other than this title or a provision of law amended by this title), regulation, rule, record, or document to any other officer or employee of the Department of Health and Human Services with respect to such officer or employee's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act or other functions performed by the officer or employee of the Social Security Administration pursuant to section 105(a)(2) of this Act, such reference shall be considered a reference to the appropriate officer or employee of the Social Security Administration.''

§ 901a. Repealed. Aug. 28, 1950, ch. 809, title IV, § 401(b), 64 Stat. 558

Section, act Aug. 10, 1939, ch. 666, title IX, § 908, 53 Stat. 1402, placed Social Security Board under direction and supervision of Federal Security Administrator.

§ 902. Commissioner; Deputy Commissioner; other officers

(a) Commissioner of Social Security

(1) There shall be in the Administration a Commissioner of Social Security (in this subchapter referred to as the ''Commissioner'') who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Commissioner shall be compensated at the rate provided for level I of the Executive Schedule.

(3) The Commissioner shall be appointed for a term of 6 years, except that the initial term of office for Commissioner shall terminate January 19, 2001. In any case in which a successor does not take office at the end of a Commissioner's term of office, such Commissioner may continue in office until the entry upon office of such a successor. A Commissioner appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term. An individual serving in the office of Commissioner may be removed from office only pursuant to a finding by the President of neglect of duty or malfeasance in office.

(4) The Commissioner shall be responsible for the exercise of all powers and the discharge of all duties of the Administration, and shall have authority and control over all personnel and activities thereof.

(5) The Commissioner may prescribe such rules and regulations as the Commissioner determines necessary or appropriate to carry out the functions of the Administration. The regulations prescribed by the Commissioner shall be subject to the rulemaking procedures established under section 553 of title 5.

(6) The Commissioner may establish, alter, consolidate, or discontinue such organizational units or components within the Administration as the Commissioner considers necessary or appropriate, except that this paragraph shall not apply with respect to any unit, component, or provision provided for by this chapter.

(7) The Commissioner may assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, to such officers and employees of the Administration as the Commissioner may find necessary. Within the limitations of such delegations, redelegations, or assignments, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Commissioner.

(8) The Commissioner and the Secretary of Health and Human Services (in this subchapter referred to as the ''Secretary'') shall consult, on an ongoing basis, to ensure—

(A) the coordination of the programs administered by the Commissioner, as described in section 901 of this title, with the programs administered by the Secretary under subchapters XVIII and XIX of this chapter; and

(B) that adequate information concerning benefits under such subchapters XVIII and XIX of this chapter is available to the public.

(b) Deputy Commissioner of Social Security

(1) There shall be in the Administration a Deputy Commissioner of Social Security (in this subchapter referred to as the ''Deputy Commissioner'') who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Deputy Commissioner shall be appointed for a term of 6 years, except that the initial term of office for the Deputy Commissioner shall terminate January 19, 2001. In any case in which a successor does not take office at the end of a Deputy Commissioner's term of office, such Deputy Commissioner may continue in office until the entry upon office of such a successor. A Deputy Commissioner appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term.

(3) The Deputy Commissioner shall be compensated at the rate provided for level II of the Executive Schedule.

(4) The Deputy Commissioner shall perform such duties and exercise such powers as the Commissioner shall from time to time assign or delegate. The Deputy Commissioner shall be Acting Commissioner of the Administration during the absence or disability of the Commissioner and, unless the President designates another officer of the Government as Acting Commissioner, in the event of a vacancy in the office of the Commissioner.

(c) Chief Actuary

(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5.

(d) Chief Financial Officer

There shall be in the Administration a Chief Financial Officer appointed by the Commissioner in accordance with section 901(a)(2) of title 31.

(e) Inspector General

There shall be in the Administration an Inspector General appointed by the President, by and with the advice and consent of the Senate, in accordance with section 3(a) of the Inspector General Act of 1978.

(Aug. 14, 1935, ch. 531, title VII, § 702, 49 Stat. 636; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(C)(i), (*l*)(1), July 18, 1984, 98 Stat. 1170, 1171; Pub. L. 103–296, title I, § 102, Aug. 15, 1994, 108 Stat. 1465; Pub. L. 104–121, title I, § 103(e)(1), Mar. 29, 1996, 110 Stat. 851.)

REFERENCES IN TEXT

Levels I and II of the Executive Schedule, referred to in subsecs. (a)(2) and (b)(3), are set out in sections 5312 and 5313, respectively, of Title 5, Government Organization and Employees.

Section 3(a) of the Inspector General Act of 1978, referred to in subsec. (e), is section 3(a) of Pub. L. 95–452, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsecs. (c) to (e). Pub. L. 104–121 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1994—Pub. L. 103–296 amended section generally. Prior to amendment, section read as follows: ''The Secretary shall perform the duties imposed upon him by this chapter and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.''

1984—Pub. L. 98–369, § 2663(*l*)(1), substituted ''Secretary'' for ''Administrator''.

Pub. L. 98–369, § 2663(j)(2)(C)(i), which directed the substitution of ''Health and Human Services'' for ''Health, Education, and Welfare'', could not be executed because ''Health, Education, and Welfare'' did not appear in text.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' and ''him'' for ''it''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 103(e)(2) of Pub. L. 104–121 provided that: ''The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Mar. 29, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN WORK OR EARNINGS STATUS OF DISABLED BENEFICIARIES

Pub. L. 108–203, title II, § 202, Mar. 2, 2004, 118 Stat. 509, provided that: ''Effective as soon as possible, but not later than 1 year after the date of the enactment of this Act [Mar. 2, 2004], until such time as the Commissioner of Social Security implements a centralized computer file recording the date of the submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary's work or earnings status, the Commissioner shall issue a receipt to the disabled beneficiary (or representative) each time he or she submits documentation, or otherwise reports to the Commissioner, on a change in such status.''

DEMONSTRATION PROJECTS RELATING TO ACCOUNTABILITY FOR TELEPHONE SERVICE CENTER COMMUNICATIONS

Pub. L. 101–508, title V, § 5108, Nov. 5, 1990, 104 Stat. 1388–269, directed Secretary of Health and Human Services to develop and carry out demonstration projects designed to implement certain accountability procedures in not fewer than 3 telephone service centers operated by the Social Security Administration, provided that such projects commence not later than 180 days after Nov. 5, 1990, and remain in operation for not less than 1 year and not more than 3 years, and directed Secretary to submit to Congress a written report on the progress of the demonstration projects not later than 90 days after the termination of the project.

TELEPHONE ACCESS TO SOCIAL SECURITY ADMINISTRATION

Section 302 of Pub. L. 103–296 directed Comptroller General of the United States to submit to Congress, not later than Jan. 31, 1996, report and study of telephone access to local offices of the Social Security Administration, based on independent assessment of Social Security Administration's use of innovative technology (including attendant call and voice mail) to increase public telephone access to local offices of the Administration.

Pub. L. 101–508, title V, § 5110, Nov. 5, 1990, 104 Stat. 1388–272, provided that:

''(a) REQUIRED MINIMUM LEVEL OF ACCESS TO LOCAL OFFICES.—In addition to such other access by telephone to offices of the Social Security Administration as the Secretary of Health and Human Services may consider

appropriate, the Secretary shall maintain access by telephone to local offices of the Social Security Administration at the level of access generally available as of September 30, 1989.

''(b) TELEPHONE LISTINGS.—The Secretary shall make such requests of local telephone utilities in the United States as are necessary to ensure that the listings subsequently maintained and published by such utilities for each locality include the address and telephone number for each local office of the Social Security Administration to which direct telephone access is maintained under subsection (a) in such locality. Such listing may also include information concerning the availability of a toll-free number which may be called for general information.

''(c) REPORT BY SECRETARY.—Not later than January 1, 1993, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which—

''(1) assesses the impact of the requirements established by this section on the Social Security Administration's allocation of resources, workload levels, and service to the public, and

''(2) presents a plan for using new, innovative technologies to enhance access to the Social Security Administration, including access to local offices.

''(d) GAO REPORT.—The Comptroller General of the United States shall review the level of telephone access by the public to the local offices of the Social Security Administration. The Comptroller General shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate describing such level of telephone access not later than 120 days after the date of the enactment of this Act [Nov. 5, 1990] and shall file a final report with such Committees describing such level of access not later than 210 days after such date.

''(e) EFFECTIVE DATE.—The Secretary of Health and Human Services shall meet the requirements of subsections (a) and (b) as soon as possible after the date of the enactment of this Act but not later [than] 180 days after such date.''

REPORT REGARDING NOTICES IN LANGUAGES OTHER THAN ENGLISH

Pub. L. 101–239, title X, §10306(b), Dec. 19, 1989, 103 Stat. 2484, directed Secretary of Health and Human Resources, not later than Jan. 1, 1991, to submit a report to Congress relating to procedures of Social Security Administration for issuing notices in languages other than English.

STUDY CONCERNING ESTABLISHMENT OF SOCIAL SECURITY ADMINISTRATION AS AN INDEPENDENT AGENCY

Pub. L. 98–21, title III, §338, Apr. 20, 1983, 97 Stat. 132, as amended by Pub. L. 98–369, div. B, title VI, §2662(h)(1), July 18, 1984, 98 Stat. 1160, established, under authority of Committee on Ways and Means of the House of Representatives and Committee on Finance of the Senate, a Joint Study Panel on the Social Security Administration to undertake a study of removing Social Security Administration from Department of Health and Human Services and establishing it as an independent agency in the executive branch with its own independent administrative structure, including possibility of such a structure headed by a board appointed by the President, by and with the advice and consent of the Senate, and to submit, not later than Apr. 1, 1984, a report of the findings of the study, and provided that the Panel would expire 30 days after the date of the submission of the report.

EARNINGS SHARING IMPLEMENTATION REPORT

Pub. L. 98–21, title III, §343, Apr. 20, 1983, 97 Stat. 136, directed Secretary of Health and Human Services to develop, in consultation with Committee on Finance of the Senate and Committee on Ways and Means of the House of Representatives, proposals for earnings sharing legislation (i.e., proposals that combined earnings of a husband and wife during period of their marriage be divided equally and shared between them for social security benefit purposes) and report such proposals to such committees not later than July 1, 1984.

UNIVERSAL COVERAGE OF SOCIAL SECURITY PROGRAMS; STUDY AND REPORT TO PRESIDENT AND CONGRESS RESPECTING SCOPE, ALTERNATIVES, ETC.; CONSULTATION BY SECRETARY

Pub. L. 95–216, title III, §311, Dec. 20, 1977, 91 Stat. 1531, as amended by 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783, directed Secretary of Health, Education, and Welfare to undertake as soon as possible after Dec. 20, 1977, a thorough study with respect to extent of coverage under old-age, survivors, and disability insurance programs and under programs established by subchapter XVIII of this chapter and submit a report on findings of such study not later than 2 years after Dec. 20, 1977.

PROPOSALS FOR ELIMINATION OF DEPENDENCY AND SEX DISCRIMINATION UNDER SOCIAL SECURITY PROGRAM; STUDY AND REPORT TO CONGRESS

Pub. L. 95–216, title III, §341, Dec. 20, 1977, 91 Stat. 1548, directed Secretary of Health, Education, and Welfare, in consultation with the Task Force on Sex Discrimination, to make a detailed study of proposals to eliminate dependency as a factor in the determination of entitlement to spouse's benefits under the program established under subchapter II of this chapter and of proposals to bring about equal treatment for men and women in any and all respects under such program and submit a report to Congress within 6 months of Dec. 20, 1977.

§ 903. Social Security Advisory Board

(a) Establishment of Board

There shall be established a Social Security Advisory Board (in this section referred to as the ''Board'').

(b) Functions of Board

On and after the date the Commissioner takes office, the Board shall advise the Commissioner on policies related to the old-age, survivors, and disability insurance program under subchapter II of this chapter, the program of special benefits for certain World War II veterans under subchapter VIII of this chapter, and the supplemental security income program under subchapter XVI of this chapter. Specific functions of the Board shall include—

(1) analyzing the Nation's retirement and disability systems and making recommendations with respect to how the old-age, survivors, and disability insurance program and the supplemental security income program, supported by other public and private systems, can most effectively assure economic security;

(2) studying and making recommendations relating to the coordination of programs that provide health security with programs described in paragraph (1);

(3) making recommendations to the President and to the Congress with respect to policies that will ensure the solvency of the old-age, survivors, and disability insurance program, both in the short-term and the long-term;

(4) making recommendations with respect to the quality of service that the Administration provides to the public;

(5) making recommendations with respect to policies and regulations regarding the old-age,

survivors, and disability insurance program and the supplemental security income program;

(6) increasing public understanding of the social security system;

(7) making recommendations with respect to a long-range research and program evaluation plan for the Administration;

(8) reviewing and assessing any major studies of social security as may come to the attention of the Board; and

(9) making recommendations with respect to such other matters as the Board determines to be appropriate.

(c) Structure and membership of Board

(1) The Board shall be composed of 7 members who shall be appointed as follows:

(A) 3 members shall be appointed by the President, by and with the advice and consent of the Senate. Not more than 2 of such members shall be from the same political party.

(B) 2 members (each member from a different political party) shall be appointed by the President pro tempore of the Senate with the advice of the Chairman and the Ranking Minority Member of the Senate Committee on Finance.

(C) 2 members (each member from a different political party) shall be appointed by the Speaker of the House of Representatives, with the advice of the Chairman and the Ranking Minority Member of the House Committee on Ways and Means.

(2) The members shall be chosen on the basis of their integrity, impartiality, and good judgment, and shall be individuals who are, by reason of their education, experience, and attainments, exceptionally qualified to perform the duties of members of the Board.

(d) Terms of appointment

Each member of the Board shall serve for a term of 6 years, except that—

(1) a member appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term; and

(2) the terms of service of the members initially appointed under this section shall begin on October 1, 1994, and expire as follows:

(A) The terms of service of the members initially appointed by the President shall expire as designated by the President at the time of nomination, 1 each at the end of—

(i) 2 years;

(ii) 4 years; and

(iii) 6 years.

(B) The terms of service of members initially appointed by the President pro tempore of the Senate shall expire as designated by the President pro tempore of the Senate at the time of nomination, 1 each at the end of—

(i) 3 years; and

(ii) 6 years.

(C) The terms of service of members initially appointed by the Speaker of the House of Representatives shall expire as designated by the Speaker of the House of Representatives at the time of nomination, 1 each at the end of—

(i) 4 years; and

(ii) 5 years.

(e) Chairman

A member of the Board shall be designated by the President to serve as Chairman for a term of 4 years, coincident with the term of the President, or until the designation of a successor.

(f) Compensation, expenses, and per diem

A member of the Board shall, for each day (including traveltime) during which the member is attending meetings or conferences of the Board or otherwise engaged in the business of the Board, be compensated at the daily rate of basic pay for level IV of the Executive Schedule. While serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government employed intermittently.

(g) Meetings

(1) The Board shall meet at the call of the Chairman (in consultation with the other members of the Board) not less than 4 times each year to consider a specific agenda of issues, as determined by the Chairman in consultation with the other members of the Board.

(2) Four members of the Board (not more than 3 of whom may be of the same political party) shall constitute a quorum for purposes of conducting business.

(h) Federal Advisory Committee Act

The Board shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(i) Personnel

The Board shall, without regard to the provisions of title 5 relating to the competitive service, appoint a Staff Director who shall be paid at a rate equivalent to a rate established for the Senior Executive Service under section 5382 of title 5. The Board shall appoint such additional personnel as the Board determines to be necessary to provide adequate support for the Board, and may compensate such additional personnel without regard to the provisions of title 5 relating to the competitive service.

(j) Authorization of appropriations

There are authorized to be appropriated, out of the Federal Disability Insurance Trust Fund, the Federal Old-Age and Survivors Insurance Trust Fund, and the general fund of the Treasury, such sums as are necessary to carry out the purposes of this section.

(Aug. 14, 1935, ch. 531, title VII, § 703, 49 Stat. 636; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; Pub. L. 98–369, div. B, title VI, § 2663(*l*)(1), July 18, 1984, 98 Stat. 1171; Pub. L. 103–296, title I, § 103, Aug. 15, 1994, 108 Stat. 1467; Pub. L. 104–121, title I, § 108, Mar. 29, 1996, 110 Stat. 857; Pub. L. 105–33, title V, § 5526, Aug. 5, 1997, 111 Stat. 625; Pub. L. 106–169, title II, § 251(b)(4), Dec. 14, 1999, 113 Stat. 1855; Pub. L. 108–203, title IV, § 417(a), Mar. 2, 2004, 118 Stat. 530.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (f), is set out under section 5315 of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The provisions of title 5 relating to the competitive service, referred to in subsec. (i), are classified generally to section 3301 et seq. of Title 5.

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–203 amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''Members of the Board shall serve without compensation, except that, while serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government employed intermittently.''

1999—Subsec. (b). Pub. L. 106–169 substituted ''subchapter II of this chapter, the program of special benefits for certain World War II veterans under title VIII of this chapter,'' for ''subchapter II of this chapter'' in introductory provisions.

1997—Subsec. (i). Pub. L. 105–33 struck out '', and three professional staff members one of whom shall be appointed from among individuals approved by the members of the Board who are not members of the political party represented by the majority of the Board,'' after ''Staff Director'' and ''clerical'' after ''provide adequate''.

1996—Subsec. (i). Pub. L. 104–121 inserted '', and three professional staff members one of whom shall be appointed from among individuals approved by the members of the Board who are not members of the political party represented by the majority of the Board,'' after ''Staff Director''.

1994—Pub. L. 103–296 amended section generally. Prior to amendment, section read as follows: ''The Secretary is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out his functions under this chapter. Appointments of attorneys and experts may be made without regard to the civil-service laws.''

1984—Pub. L. 98–369 substituted ''Secretary'' for ''Administrator''.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' and ''his'' for ''its''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 417(b), Mar. 2, 2004, 118 Stat. 531, provided that: ''The amendment made by this section [amending this section] shall be effective as of January 1, 2003.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5528 of title V of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—Except as provided in this section, the amendments made by this chapter [chapter 2 (§§ 5521–5528) of subtitle F of title V of Pub. L. 105–33, amending this section, sections 1310, 1382, 1382c, 1382d, and 1383 of this title, and provisions set out as a note under section 1382 of this title and repealing provisions set out as notes under sections 425 and 1382 of this title] shall take effect as if included in the enactment of title II of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2185).

''(b) SECTION 5524 AMENDMENTS.—The amendments made by section 5524 of this Act [amending section 1310 of this title] shall take effect as if included in the enactment of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296; 108 Stat. 1464).

''(c) SECTION 5525 AMENDMENTS.—

''(1) IN GENERAL.—The amendments made by subsections (a) and (b) of section 5525 of this Act [amending provisions set out as a note under section 1382 of this title] shall take effect as if included in the enactment of section 105 of the Contract with America Advancement Act of 1996 (Public Law 104–121; 110 Stat. 852 et seq.).

''(2) REPEALS.—The repeals made by section 5525(c) [repealing provisions set out as notes under sections 425 and 1382 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].

''(d) SECTION 5526 AMENDMENTS.—The amendments made by section 5526 of this Act [amending this section] shall take effect as if included in the enactment of section 108 of the Contract with America Advancement Act of 1996 (Public Law 104–121; 110 Stat. 857).

''(e) SECTION 5227.—Section 5227 [probably means section 5527 of this Act which is set out as a note under section 909 of this title] shall take effect on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 904. Administrative duties of Commissioner

(a) Personnel

(1) The Commissioner shall appoint such additional officers and employees as the Commissioner considers necessary to carry out the functions of the Administration under this chapter, and attorneys and experts may be appointed without regard to the civil service laws. Except as otherwise provided in the preceding sentence or in any other provision of law, such officers and employees shall be appointed, and their compensation shall be fixed, in accordance with title 5.

(2) The Commissioner may procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5.

(3) Notwithstanding any requirements of section 3133 of title 5, the Director of the Office of Personnel Management shall authorize for the Administration a total number of Senior Executive Service positions which is substantially greater than the number of such positions authorized in the Social Security Administration in the Department of Health and Human Services as of immediately before August 15, 1994, to the extent that the greater number of such authorized positions is specified in the comprehensive work force plan as established and revised by the Commissioner under subsection (b)(2) of this section. The total number of such positions authorized for the Administration shall not at any time be less than the number of such authorized positions as of immediately before such date.

(b) Budgetary matters

(1)(A) The Commissioner shall prepare an annual budget for the Administration, which shall be submitted by the President to the Congress without revision, together with the President's annual budget for the Administration.

(B) The Commissioner shall include in the annual budget prepared pursuant to subparagraph (A) an itemization of the amount of funds required by the Social Security Administration

for the fiscal year covered by the budget to support efforts to combat fraud committed by applicants and beneficiaries.

(2)(A) Appropriations requests for staffing and personnel of the Administration shall be based upon a comprehensive work force plan, which shall be established and revised from time to time by the Commissioner.

(B) Appropriations for administrative expenses of the Administration are authorized to be provided on a biennial basis.

(c) Employment restriction

The total number of positions in the Administration (other than positions established under section 902 of this title) which—

(1) are held by noncareer appointees (within the meaning of section 3132(a)(7) of title 5) in the Senior Executive Service, or

(2) have been determined by the President or the Office of Personnel Management to be of a confidential, policy-determining, policy-making, or policy-advocating character and have been excepted from the competitive service thereby,

may not exceed at any time the equivalent of 20 full-time positions.

(d) Seal of office

The Commissioner shall cause a seal of office to be made for the Administration of such design as the Commissioner shall approve. Judicial notice shall be taken of such seal.

(e) Data exchanges

(1) Notwithstanding any other provision of law (including subsections (b), (*o*), (p), (q), (r), and (u) of section 552a of title 5—

(A) the Secretary shall disclose to the Commissioner any record or information requested in writing by the Commissioner for the purpose of administering any program administered by the Commissioner, if records or information of such type were disclosed to the Commissioner of Social Security in the Department of Health and Human Services under applicable rules, regulations, and procedures in effect before August 15, 1994; and

(B) the Commissioner shall disclose to the Secretary or to any State any record or information requested in writing by the Secretary to be so disclosed for the purpose of administering any program administered by the Secretary, if records or information of such type were so disclosed under applicable rules, regulations, and procedures in effect before August 15, 1994.

(2) The Commissioner and the Secretary shall enter into an agreement under which the Commissioner provides the Secretary data concerning the quality of the services and information provided to beneficiaries of the programs under subchapters XVIII and XIX of this chapter and the administrative services provided by the Social Security Administration in support of such programs. Such agreement shall stipulate the type of data to be provided and the terms and conditions under which the data are to be provided.

(3) The Commissioner and the Secretary shall periodically review the need for exchanges of information not referred to in paragraph (1) or (2) and shall enter into such agreements as may be necessary and appropriate to provide information to each other or to States in order to meet the programmatic needs of the requesting agencies.

(4)(A) Any disclosure from a system of records (as defined in section 552a(a)(5) of title 5) pursuant to this subsection shall be made as a routine use under subsection (b)(3) of section 552a of such title (unless otherwise authorized under such section 552a).

(B) Any computerized comparison of records, including matching programs, between the Commissioner and the Secretary shall be conducted in accordance with subsections (*o*), (p), (q), (r), and (u) of section 552a of title 5.

(5) The Commissioner and the Secretary shall each ensure that timely action is taken to establish any necessary routine uses for disclosures required under paragraph (1) or agreed to pursuant to paragraph (3).

(Aug. 14, 1935, ch. 531, title VII, § 704, 49 Stat. 636; Aug. 28, 1950, ch. 809, title IV, § 402(b), 64 Stat. 558; Pub. L. 94–273, § 33, Apr. 21, 1976, 90 Stat. 380; Pub. L. 98–369, div. B, title VI, § 2663(*l*)(1), July 18, 1984, 98 Stat. 1171; Pub. L. 103–296, title I, § 104(a), Aug. 15, 1994, 108 Stat. 1470; Pub. L. 106–169, title II, § 211(a), Dec. 14, 1999, 113 Stat. 1842.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(1), are classified generally to Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106–169 designated existing provisions as subpar. (A) and added subpar. (B).

1994—Pub. L. 103–296 amended section generally. Prior to amendment, section read as follows: ''The Secretary shall make a full report to Congress, within one hundred and twenty days after the beginning of each regular session, of the administration of the functions with which he is charged under this chapter. In addition to the number of copies of such report authorized by other law to be printed, there is hereby authorized to be printed not more than five thousand copies of such report for use by the Secretary for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the social security program.''

1984—Pub. L. 98–369 substituted ''Secretary'' for ''Administrator''.

1976—Pub. L. 94–273 substituted ''within one hundred and twenty days after the beginning'' for ''at the beginning''.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' in first sentence and added second sentence.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–169, title II, § 211(b), Dec. 14, 1999, 113 Stat. 1842, provided that: ''The amendments made by this section [amending this section] shall apply with respect to annual budgets prepared for fiscal years after fiscal year 1999.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 104(c) of Pub. L. 103–296 provided that:

''(1) EFFECTIVE DATE.—Section 704(e)(4) of the Social Security Act [subsec. (e)(4) of this section] (as amended by subsection (a)) shall take effect March 31, 1996.

''(2) TRANSITION RULE.—Notwithstanding any other provision of law (including subsections (b), (*o*), (p), (q),

(r), and (u) of section 552a of title 5, United States Code), arrangements for disclosure of records or other information, and arrangements for computer matching of records, which were in effect immediately before the date of the enactment of this Act [Aug. 15, 1994] between the Social Security Administration in the Department of Health and Human Services and other components of such Department may continue between the Social Security Administration established under section 701 of the Social Security Act [section 901 of this title] (as amended by this Act) and such Department during the period beginning on the date of the enactment of this Act and ending March 31, 1996.''

Amendment by section 104(a) of Pub. L. 103–296 effective Mar. 31, 1995, except as otherwise provided, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

REPORT ON SES POSITIONS UNDER COMPREHENSIVE WORK FORCE PLAN

Section 104(b) of Pub. L. 103–296 provided that within 60 days after establishment by Commissioner of Social Security of comprehensive work force plan required under subsec. (b)(2) of this section, Director of Office of Personnel Management was to transmit to Congress a report specifying total number of Senior Executive Services positions authorized for Social Security Administration in connection with such work force plan.

§§ 905, 905a. Transferred

CODIFICATION

Section 905, act July 5, 1952, ch. 575, title II, § 201, 66 Stat. 369, as amended, which related to the working capital fund, was transferred to section 3513 of this title.

Section 905a, act Aug. 10, 1971, Pub. L. 92–80, title II, § 200, 85 Stat. 297, which related to additional use of the working capital fund, was transferred to section 3513b of this title.

§ 906. Training grants for public welfare personnel

(a) Authorization of appropriations

In order to assist in increasing the effectiveness and efficiency of administration of public assistance programs by increasing the number of adequately trained public welfare personnel available for work in public assistance programs, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1963, the sum of $3,500,000, and for each fiscal year thereafter the sum of $5,000,000.

(b) Allocation for carrying out direct grant programs

Such portion of the sums appropriated pursuant to subsection (a) of this section for any fiscal year as the Secretary may determine, but not in excess of $1,000,000 in the case of the fiscal year ending June 30, 1963, and $2,000,000 in the case of any fiscal year thereafter, shall be available for carrying out subsection (f) of this section. From the remainder of the sums so appropriated for any fiscal year, the Secretary shall make allotments to the States on the basis of (1) population, (2) relative need for trained public welfare personnel, particularly for personnel to provide self-support and self-care services, and (3) financial need.

(c) Payments to States for cost of grant programs to certain agencies and institutions

From each State's allotment under subsection (b) of this section, the Secretary shall from time to time pay to such State its costs of carrying out the purposes of this section through (1) grants to public or other nonprofit institutions of higher learning for training personnel employed or preparing for employment in public assistance programs, (2) special courses of study or seminars of short duration conducted for such personnel by experts hired on a temporary basis for the purpose, and (3) establishing and maintaining, directly or through grants to such institutions, fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted under regulations of the Secretary.

(d) Advance payments to States

Payments pursuant to subsection (c) of this section shall be made in advance on the basis of estimates by the Secretary and adjustments may be made in future payments under this section to take account of overpayments or underpayments in amounts previously paid.

(e) Reallotments

The amount of any allotment to a State under subsection (b) of this section for any fiscal year which the State certifies to the Secretary will not be required for carrying out the purposes of this section in such State shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines have need in carrying out such purposes for sums in excess of those previously allotted to them under this section and will be able to use such excess amounts during such fiscal year; such reallotments to be made on the basis provided in subsection (b) of this section for the initial allotments to the States. Any amount so reallotted to a State shall be deemed part of its allotment under such subsection.

(f) Direct grants to certain agencies and institutions

(1) The portion of the sums appropriated for any fiscal year which is determined by the Secretary under the first sentence of subsection (b) of this section to be available for carrying out this subsection shall be available to enable him to provide (A) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for training personnel who are employed or preparing for employment in the administration of public assistance programs, (B) directly or through grants to or contracts with public or nonprofit private agencies or institutions, for special courses of study or seminars of short duration (not in excess of one year) for training of such personnel, and (C) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for establishing and maintaining fellowships or traineeships for such personnel at such institutions, with such sti-

pends and allowances as may be permitted by the Secretary.

(2) Payments under paragraph (1) may be made in advance on the basis of estimates by the Secretary, or may be made by way of reimbursement, and adjustments may be made in future payments under this subsection to take account of overpayments or underpayments in amounts previously paid.

(3) The Secretary may, to the extent he finds such action to be necessary, prescribe requirements to assure that any individual will repay the amount of his fellowship or traineeship received under this subsection to the extent such individual fails to serve, for the period prescribed by the Secretary, with a State or political subdivision thereof, or with the Federal Government, in connection with administration of any State or local public assistance program. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that requirement of such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the public welfare programs established by this chapter.

(Aug. 14, 1935, ch. 531, title VII, §705, as added Aug. 1, 1956, ch. 836, title III, §332, 70 Stat. 851; amended Pub. L. 87–31, §3, May 8, 1961, 75 Stat. 77; Pub. L. 87–543, title I, §123 (a)–(c), July 25, 1962, 76 Stat. 192.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–543, §123(a), substituted ''for the fiscal year ending June 30, 1963, the sum of $3,500,000, and for each fiscal year thereafter the sum of $5,000,000'' for ''for the fiscal year ending June 30, 1958, the sum of $5,000,000, and for each of the five succeeding fiscal years such sums as the Congress may determine''.

Subsec. (b). Pub. L. 87–543, §123(b), required appropriated moneys to be made available for carrying out subsec. (f) of this section.

Subsec. (f). Pub. L. 87–543, §123(c), added subsec. (f).

1961—Subsec. (a). Pub. L. 87–31, §3(a), substituted ''five'' for ''four''.

Subsec. (c). Pub. L. 87–31, §3(b), substituted ''its costs of carrying out the purposes of this section'' for ''80 per centum of the total of its expenditures in carrying out the purposes of this section''.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 202(b) of Pub. L. 87–543 provided that: ''The amendments made by sections 102(c), 123, and 132(d) [enacting section 727 of this title, amending this section and sections 722 and 726 of this title, and repealing credits to section 1308 of this title and provisions set out as notes under section 1308 of this title] shall be applicable in the case of fiscal years beginning after June 30, 1962.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 3(b) of Pub. L. 87–31 provided that the amendment made by that section is effective with respect to payments from allotments from appropriations made for fiscal years beginning after June 30, 1961.

§ 907. Repealed. Pub. L. 103–296, title I, § 108(a)(2), Aug. 15, 1994, 108 Stat. 1481

Section, act Aug. 14, 1935, ch. 531, title VII, §706, as added July 30, 1965, Pub. L. 89–97, title I, §109(a), 79 Stat. 339; amended Jan. 2, 1968, Pub. L. 90–248, title I, §165, title IV, §403(d), 81 Stat. 874, 932; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(j)(2)(C)(ii), 98 Stat. 1170; Apr. 7, 1986, Pub. L. 99–272, title XII, §12102(g)(1), 100 Stat. 285; Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095, provided for appointment by Secretary every four years of an Advisory Council on Social Security and functions of Council.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.

APPLICABILITY OF REPEAL TO 1994 COUNCIL

Section 108(a)(2) of Pub. L. 103–296 provided in part that: ''This paragraph [repealing this section] shall not apply with respect to the Advisory Council for Social Security appointed in 1994.''

§ 907a. National Commission on Social Security

(a) Establishment; membership; Chairman and Vice Chairman; quorum; terms of office; vacancies; per diem and expense reimbursement; meetings

(1) There is established a commission to be known as the National Commission on Social Security (hereinafter referred to as the ''Commission'').

(2)(A) The Commission shall consist of—

(i) five members to be appointed by the President, by and with the advice and consent of the Senate, one of whom shall, at the time of appointment, be designated as Chairman of the Commission;

(ii) two members to be appointed by the Speaker of the House of Representatives; and

(iii) two members to be appointed by the President pro tempore of the Senate.

(B) At no time shall more than three of the members appointed by the President, one of the members appointed by the Speaker of the House of Representatives, or one of the members appointed by the President pro tempore of the Senate be members of the same political party.

(C) The membership of the Commission shall consist of individuals who are of recognized standing and distinction and who possess the demonstrated capacity to discharge the duties imposed on the Commission, and shall include representatives of the private insurance industry and of recipients and potential recipients of benefits under the programs involved as well as individuals whose capacity is based on a special knowledge or expertise in those programs. No individual who is otherwise an officer or full-time employee of the United States shall serve as a member of the Commission.

(D) The Chairman of the Commission shall designate a member of the Commission to act as Vice Chairman of the Commission.

(E) A majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings.

(F) Members of the Commission shall be appointed for a term which shall end on April 1, 1981.

(G) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as that herein provided for the appointment of the member first appointed to the vacant position.

(3) Members of the Commission shall receive $138 per diem while engaged in the actual per-

formance of the duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(4) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission; but meetings of the Commission shall be held not less frequently than once in each calendar month which begins after a majority of the authorized membership of the Commission has first been appointed.

(b) Continuing study, investigation, and review of social security program; scope of study, etc., and public participation

(1) It shall be the duty and function of the Commission to conduct a continuing study, investigation, and review of—

(A) the Federal old-age, survivors, and disability insurance program established by subchapter II of this chapter; and

(B) the health insurance programs established by subchapter XVIII of this chapter.

(2) Such study, investigation, and review of such programs shall include (but not be limited to)—

(A) the fiscal status of the trust funds established for the financing of such programs and the adequacy of such trust funds to meet the immediate and long-range financing needs of such programs;

(B) the scope of coverage, the adequacy of benefits including the measurement of an adequate retirement income, and the conditions of qualification for benefits provided by such programs including the application of the retirement income test to unearned as well as earned income;

(C) the impact of such programs on, and their relation to, public assistance programs, nongovernmental retirement and annuity programs, medical service delivery systems, and national employment practices;

(D) any inequities (whether attributable to provisions of law relating to the establishment and operation of such programs, to rules and regulations promulgated in connection with the administration of such programs, or to administrative practices and procedures employed in the carrying out of such programs) which affect substantial numbers of individuals who are insured or otherwise eligible for benefits under such programs, including inequities and inequalities arising out of marital status, sex, or similar classifications or categories;

(E) possible alternatives to the current Federal programs or particular aspects thereof, including but not limited to (i) a phasing out of the payroll tax with the financing of such programs being accomplished in some other manner (including general revenue funding and the retirement bond), (ii) the establishment of a system providing for mandatory participation in any or all of the Federal programs, (iii) the integration of such current Federal programs with private retirement programs, and (iv) the establishment of a system permitting covered individuals a choice of public or private programs or both;

(F) the need to develop a special Consumer Price Index for the elderly, including the financial impact that such an index would have on the costs of the programs established under this chapter; and

(G) methods for effectively implementing the recommendations of the Commission.

(3) In order to provide an effective opportunity for the general public to participate fully in the study, investigation, and review under this section, the Commission, in conducting such study, investigation, and review, shall hold public hearings in as many different geographical areas of the country as possible. The residents of each area where such a hearing is to be held shall be given reasonable advance notice of the hearing and an adequate opportunity to appear and express their views on the matters under consideration.

(c) Special, annual, and final reports to President and Congress concerning implementation, etc., of study, investigation, and review responsibilities; termination of Commission

(1) No later than four months after the date on which a majority of the authorized membership of the Commission is initially appointed, the Commission shall submit to the President and the Congress a special report describing the Commission's plans for conducting the study, investigation, and review under subsection (b) of this section, with particular reference to the scope of such study, investigation, and review and the methods proposed to be used in conducting it.

(2) At or before the close of each of the first two years after the date on which a majority of the authorized membership of the Commission is initially appointed, the Commission shall submit to the President and the Congress an annual report on the study, investigation, and review under subsection (b) of this section, together with its recommendations with respect to the programs involved. The second such report shall constitute the final report of the Commission on such study, investigation, and review, and shall include its final recommendations; and the Commission shall cease to exist on April 1, 1981.

(d) Executive Director and additional personnel; appointment and compensation

(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule by title 5.

(2) In addition to the Executive Director, the Commission shall have the power to appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5 governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(e) Administrative procedures

In carrying out its duties under this section, the Commission, or any duly authorized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters with respect to which it has a responsibility under this section, as the Commission or such

committee may deem advisable. The Chairman of the Commission or any member authorized by him may administer oaths or affirmations to witnesses appearing before the Commission or before any committee thereof.

(f) Data and information from other Federal departments and agencies

The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Commission, any such department or agency shall furnish any such data or information to the Commission.

(g) Administrative support services from General Services Administration; reimbursement

The General Services Administration shall provide to the Commission, on a reimbursable basis such administrative support services as the Commission may request.

(h) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 95–216, title III, § 361, Dec. 20, 1977, 91 Stat. 1556; Pub. L. 96–265, title V, § 502, June 9, 1980, 94 Stat. 470; Pub. L. 98–369, div. B, title III, § 2349(b)(3), July 18, 1984, 98 Stat. 1097.)

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (d)(1), is set out in section 5316 of Title 5, Government Officers and Employees.

The provisions of title 5 governing appointments to the competitive service, referred to in subsec. (d)(2), are classified to section 3301 et seq. of Title 5.

CODIFICATION

Section was enacted as part of the Social Security Amendments of 1977, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1984—Subsec. (i). Pub. L. 98–369 struck out subsec. (i) which provided for notice of and attendance at meetings of the Health Insurance Benefits Advisory Council.

1980—Subsec. (a)(2)(F). Pub. L. 96–265, § 502(a), substituted ''a term which shall end on April 1, 1981'' for ''a term of two years''.

Subsec. (c)(2). Pub. L. 96–265, § 502(b), substituted ''and the Commission shall cease to exist on April 1, 1981'' for ''and upon the submission of such final report the Commission shall cease to exist''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2349(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395z of this title and section 231f of Title 45, Railroads, and repealing section 1395dd of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

§ 908. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title VII, § 707, as added Jan. 2, 1968, Pub. L. 90–248, title IV, § 401, 81 Stat. 930, related to grants for expansion and development of undergraduate and graduate programs in the fiscal year ending June 30, 1969, and each of the three succeeding fiscal years.

§ 909. Delivery of benefit checks

(a) Saturdays, Sundays, and holidays

If the day regularly designated for the delivery of benefit checks under subchapter II, VIII, or XVI of this chapter falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103 of title 5) in any month, the benefit checks which would otherwise be delivered on such day shall be mailed for delivery on the first day preceding such day which is not a Saturday, Sunday, or legal public holiday (as so defined), without regard to whether the delivery of such checks would as a result have to be made before the end of the month for which such checks are issued.

(b) Recovery of overpayments

If more than the correct amount of payment under subchapter II, VIII, or XVI of this chapter is made to any individual as a result of the receipt of a benefit check pursuant to subsection (a) of this section before the end of the month for which such check is issued, no action shall be taken (under section 404 or 1383(b) of this title or otherwise) to recover such payment or the incorrect portion thereof.

(c) Early delivery

For purposes of computing the ''OASDI trust fund ratio'' under section 401(*l*) of this title, the ''OASDI fund ratio'' under section 415(i) of this title, and the ''balance ratio'' under section 910(b) of this title, benefit checks delivered before the end of the month for which they are issued by reason of subsection (a) of this section shall be deemed to have been delivered on the regularly designated delivery date.

(Aug. 14, 1935, ch. 531, title VII, § 708, as added Pub. L. 95–216, title III, § 333(a), Dec. 20, 1977, 91 Stat. 1543; amended Pub. L. 99–272, title XII, § 12111(a), Apr. 7, 1986, 100 Stat. 287; Pub. L. 106–169, title II, § 251(b)(5), Dec. 14, 1999, 113 Stat. 1855.)

AMENDMENTS

1999—Subsecs. (a), (b). Pub. L. 106–169 substituted ''subchapter II, VIII,'' for ''subchapter II''.

1986—Subsec. (c). Pub. L. 99–272 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12111(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 86 of Title 26, Internal Revenue Code] shall apply with respect to benefit checks issued for months ending after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE

Section 333(b) of Pub. L. 95–216 provided that: ''The amendment made by subsection (a) of this section [enacting this section] shall apply with respect to benefit checks the regularly designated day for delivery of which occurs on or after the thirtieth day after the date of the enactment of this Act [Dec. 20, 1977].''

TIMING OF DELIVERY OF OCTOBER 1, 2000, SSI BENEFIT PAYMENTS

Pub. L. 105–33, title V, § 5527, Aug. 5, 1997, 111 Stat. 625, provided that, notwithstanding the provisions of section 908(a) of this title, the day designated for delivery of benefit payments under subchapter XVI of this chapter for October 2000 would be the second day of that month, prior to repeal by Pub. L. 106–246, div. B, title V, § 5105, July 13, 2000, 114 Stat. 582.

§ 910. Recommendations by Board of Trustees to remedy inadequate balances in Social Security trust funds

(a) Terms and conditions of recommendations

If the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund determines at any time that the balance ratio of any such Trust Fund for any calendar year may become less than 20 percent, the Board shall promptly submit to each House of the Congress a report setting forth its recommendations for statutory adjustments affecting the receipts and disbursements of such Trust Fund necessary to maintain the balance ratio of such Trust Fund at not less than 20 percent, with due regard to the economic conditions which created such inadequacy in the balance ratio and the amount of time necessary to alleviate such inadequacy in a prudent manner. The report shall set forth specifically the extent to which benefits would have to be reduced, taxes under section 1401, 3101, or 3111 of the Internal Revenue Code of 1986 would have to be increased, or a combination thereof, in order to obtain the objectives referred to in the preceding sentence.

(b) "Balance ratio" defined

For purposes of this section, the term ''balance ratio'' means, with respect to any calendar year in connection with any Trust Fund referred to in subsection (a) of this section, the ratio of—

(1) the balance in such Trust Fund as of the beginning of such year, including the taxes transferred under section 401(a) of this title on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 401(*l*) or 1395i(j) of this title, to

(2) the total amount which (for amounts which will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as estimated by the Commissioner, and for amounts which will be paid from the Federal Hospital Insurance Trust and the Federal Supplementary Medical Insurance Trust Fund, as estimated by the Secretary) will be paid from such Trust Fund during such calendar year for all purposes authorized by section 401, 1395i, or 1395t of this title (as applicable), other than payments of interest on, or repayments of, loans under section 401(*l*) or 1395i(j) of this title, but excluding any transfer payments between such Trust Fund and any other Trust Fund referred to in subsection (a) of this section and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from that Account.

(Aug. 14, 1935, ch. 531, title VII, §709, as added Pub. L. 98–21, title I, §143, Apr. 20, 1983, 97 Stat. 102; amended Pub. L. 99–272, title XII, §12106, Apr. 7, 1986, 100 Stat. 286; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–296, title I, §108(a)(3), Aug. 15, 1994, 108 Stat. 1481.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–296 substituted ''(for amounts which will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as estimated by the Commissioner, and for amounts which will be paid from the Federal Hospital Insurance Trust and the Federal Supplementary Medical Insurance Trust Fund, as estimated by the Secretary)'' for ''(as estimated by the Secretary)''.

1986—Subsec. (a). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(1). Pub. L. 99–272 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the balance in such Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 401(*l*) or 1395i(j) of this title, as of the beginning of such year, to''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective on first day of month following April 1986, see section 12115 of Pub. L. 99–272, set out as a note under section 415 of this title.

§ 911. Budgetary treatment of trust fund operations

(a) The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund and the taxes imposed under sections 1401 and 3101 of the Internal Revenue Code of 1986 shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(b) No provision of law enacted after December 12, 1985 (other than a provision of an appropriation Act that appropriated funds authorized under this chapter as in effect on December 12, 1985) may provide for payments from the general fund of the Treasury to any Trust Fund specified in subsection (a) of this section or for payments from any such Trust Fund to the general fund of the Treasury.

(Aug. 14, 1935, ch. 531, title VII, §710, as added and amended Pub. L. 98–21, title III, §346(a)(1), (b), Apr. 20, 1983, 97 Stat. 137, 138; Pub. L. 99–177, title II, §261(a)(1), (b), Dec. 12, 1985, 99 Stat. 1093, 1094; Pub. L. 105–33, title X, §10209(c), Aug. 5, 1997, 111 Stat. 711.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1997—Pub. L. 105–33 amended section generally. Prior to amendment, section provided that receipts and dis-

bursements of Federal Old-Age and Survivors Insurance Trust Fund, Federal Disability Insurance Trust Fund, and Federal Hospital Insurance Trust Fund and taxes imposed under sections 1401, 3101, and 3111 of title 26 were not to be included in totals of budget of United States Government, that no law enacted after Dec. 12, 1985, except certain appropriations Act provisions, could provide for payments from general fund of the Treasury to any such Trust Fund or from any such Trust Fund to general fund, and that disbursements of Federal Supplementary Medical Insurance Trust Fund were to be treated as a separate major functional category in budget of the Government.

1985—Subsec. (a). Pub. L. 99–177, § 261(b), designated existing provisions as par. (1) and added par. (2).

Pub. L. 99–177, § 261(a)(1)(E), temporarily added subsec. (a). See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (b). Pub. L. 99–177, § 261(a)(1)(A)–(D), temporarily designated existing provisions as subsec. (b), struck out references to the Federal Old-Age and Survivors Insurance Trust Fund and to the Federal Disability Insurance Trust Fund, and substituted ''sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954'' for ''sections 1401, 3101, and 3111 of the Internal Revenue Code of 1954''. See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (c). Pub. L. 99–177, § 261(a)(1)(F), temporarily added subsec. (c). See Effective and Termination Dates of 1985 Amendment note below.

1983—Pub. L. 98–21, § 346(b), amended section generally, adding subsec. (a) and designating existing provisions as subsec. (b) and striking out ''Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the'' after ''The disbursements of the'' and substituting ''such Trust Fund'' for ''such Trust Funds'', including the taxes imposed under sections 1401, 3101, and 3111 of the Internal Revenue Code of 1954,'' after ''receipts of such Trust Fund''.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 261(a)(2) of Pub. L. 99–177 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to fiscal years beginning after September 30, 1985, and ending before October 1, 1992.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 346(b) of Pub. L. 98–21 provided that the amendment made by that section is effective for fiscal years beginning on or after Oct. 1, 1992.

EFFECTIVE AND TERMINATION DATES

Section 346(a)(2) of Pub. L. 98–21 provided that: ''The amendment made by paragraph (1) [enacting this section] shall apply with respect to fiscal years beginning on or after October 1, 1984, and ending on or before September 30, 1992, except that such amendment shall apply with respect to the fiscal year beginning on October 1, 1983, to the extent it relates to the congressional budget.''

§ 912. Office of Rural Health Policy

(a) There shall be established in the Department of Health and Human Services (in this section referred to as the ''Department'') an Office of Rural Health Policy (in this section referred to as the ''Office''). The Office shall be headed by a Director, who shall advise the Secretary on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under subchapters XVIII and XIX of this chapter on the financial viability of small rural hospitals, the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, and access to (and the quality of) health care in rural areas.

(b) In addition to advising the Secretary with respect to the matters specified in subsection (a) of this section, the Director, through the Office, shall—

(1) oversee compliance with the requirements of section 1302(b) of this title and section 4403 of the Omnibus Budget Reconciliation Act of 1987 (as such section pertains to rural health issues),

(2) establish and maintain a clearinghouse for collecting and disseminating information on—

(A) rural health care issues, including rural mental health, rural infant mortality prevention, and rural occupational safety and preventive health promotion,

(B) research findings relating to rural health care, and

(C) innovative approaches to the delivery of health care in rural areas, including programs providing community-based mental health services, pre-natal and infant care services, and rural occupational safety and preventive health education and promotion,

(3) coordinate the activities within the Department that relate to rural health care,

(4) provide information to the Secretary and others in the Department with respect to the activities, of other Federal departments and agencies, that relate to rural health care, including activities relating to rural mental health, rural infant mortality, and rural occupational safety and preventive health promotion, and

(5) administer grants, cooperative agreements, and contracts to provide technical assistance and other activities as necessary to support activities related to improving health care in rural areas.

(Aug. 14, 1935, ch. 531, title VII, § 711, as added Pub. L. 100–203, title IV, § 4401, Dec. 22, 1987, 101 Stat. 1330–225; amended Pub. L. 100–360, title IV, § 411(m)(1), July 1, 1988, 102 Stat. 806; Pub. L. 101–239, title VI, § 6213(g), Dec. 19, 1989, 103 Stat. 2251; Pub. L. 108–173, title IV, § 432, Dec. 8, 2003, 117 Stat. 2288.)

REFERENCES IN TEXT

Section 4403 of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (b)(1), is section 4403 of Pub. L. 100–203, which is set out as a note under section 1395b–1 of this title.

AMENDMENTS

2003—Subsec. (b)(5). Pub. L. 108–173 added par. (5).

1989—Subsec. (b)(2)(A). Pub. L. 101–239, § 6213(g)(1), substituted ''health care issues, including rural mental health, rural infant mortality prevention, and rural occupational safety and preventive health promotion'' for ''health care issues''.

Subsec. (b)(2)(C). Pub. L. 101–239, § 6213(g)(2), substituted ''health care in rural areas, including programs providing community-based mental health services, pre-natal and infant care services, and rural occupational safety and preventive health education and promotion'' for ''health care in rural areas''.

Subsec. (b)(4). Pub. L. 101–239, § 6213(g)(3), substituted ''rural health care, including activities relating to rural mental health, rural infant mortality, and rural

occupational safety and preventive health promotion'' for ''rural health care''.

1988—Subsec. (b)(1). Pub. L. 100–360 substituted ''section 4403 of the Omnibus Budget Reconciliation Act of 1987 (as such section pertains to rural health issues)'' for ''section 4083 of the Omnibus Budget Reconciliation Act of 1987''.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

§ 913. Duties and authority of Secretary

The Secretary shall perform the duties imposed upon the Secretary by this chapter. The Secretary is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures as may be necessary for carrying out the functions of the Secretary under this chapter. The Secretary may appoint attorneys and experts without regard to the civil service laws.

(Aug. 14, 1935, ch. 531, title VII, § 712, as added Pub. L. 103–296, title I, § 108(a)(1), Aug. 15, 1994, 108 Stat. 1481.)

REFERENCES IN TEXT

The civil service laws, referred to in text, are classified generally to Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

SUBCHAPTER VIII—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

PRIOR PROVISIONS

A prior subchapter VIII, relating to taxes with respect to employment and consisting of sections 1001 to 1011 of this title, was omitted. See Prior Provisions note set out under section 1001 of this title.

§ 1001. Basic entitlement to benefits

Every individual who is a qualified individual under section 1002 of this title shall, in accordance with and subject to the provisions of this subchapter, be entitled to a monthly benefit paid by the Commissioner of Social Security for each month after September 2000 (or such earlier month, if the Commissioner determines is administratively feasible) the individual resides outside the United States.

(Aug. 14, 1935, ch. 531, title VIII, § 801, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1844.)

PRIOR PROVISIONS

Prior sections 1001 to 1011, act Aug. 14, 1935, ch. 531, title VIII, §§ 801–811, 49 Stat. 636–639, related to taxes with respect to employment. Section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1, which act enacted Title 26, Internal Revenue Code of 1939, provided that all laws and parts of laws codified into the I.R.C. 1939, to the extent that they related exclusively to internal revenue laws, were repealed. Provisions of I.R.C. 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). See, also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. The omitted sections were formerly and are now covered by certain sections in Title 26, I.R.C. 1939 and I.R.C. 1986, respectively, as follows:

Omitted sections	I.R.C. 1939	I.R.C. 1986
1001	1400	3101.
1002	1402	3102.
1003	1401	3502.
1004	1410	3111.
1005	1411	6205(a), 6413(a).
1006	1421	6205(b), 6413(b).
1007	1420, 1430	3501.
1008	1429	7805(a), (c).
1009	1423, 1424	6801 et seq.
1010	1425	7208(1), 7209.
1011 (as amended Aug. 10, 1939, ch. 666, title IX, § 905(a), 53 Stat. 1400).	1426	3121, 7701(a)(1).

Section 1001 related to income tax on employees.
Section 1002 related to deduction of tax from wages.
Section 1003 related to deductibility from income taxes.
Section 1004 related to excise tax on employers.
Section 1005 related to adjustment of employers' tax.
Section 1006 related to refunds and deficiencies.
Section 1007 related to collection and payment of taxes.
Section 1008 related to rules and regulations.
Section 1009 related to sale by postmasters of stamps or other devices for collection or payment of tax.
Section 1010 related to penalties.
Section 1011 related to definitions.

§ 1002. Qualified individuals

Except as otherwise provided in this subchapter, an individual—

(1) who has attained the age of 65 on or before December 14, 1999;

(2) who is a World War II veteran;

(3) who is eligible for a supplemental security income benefit under subchapter XVI of this chapter for—

(A) the month in which this subchapter is enacted; and

(B) the month in which the individual files an application for benefits under this subchapter;

(4) whose total benefit income is less than 75 percent of the Federal benefit rate under subchapter XVI of this chapter;

(5) who has filed an application for benefits under this subchapter; and

(6) who is in compliance with all requirements imposed by the Commissioner of Social Security under this subchapter,

shall be a qualified individual for purposes of this subchapter.

(Aug. 14, 1935, ch. 531, title VIII, § 802, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1844.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

§ 1003. Residence outside the United States

For purposes of section 1001 of this title, with respect to any month, an individual shall be regarded as residing outside the United States if, on the first day of the month, the individual so resides outside the United States.

(Aug. 14, 1935, ch. 531, title VIII, § 803, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1845.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

§ 1004. Disqualifications

(a) In general

Notwithstanding section 1002 of this title, an individual may not be a qualified individual for any month—

(1) that begins after the month in which the Commissioner of Social Security is notified by the Attorney General that the individual has been removed from the United States pursuant to section 1227(a) or 1182(a)(6)(A) of title 8 and before the month in which the individual is lawfully admitted to the United States for permanent residence;

(2) during any part of which the individual is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the United States or the jurisdiction within the United States from which the person has fled, for a crime, or an attempt to commit a crime, that is a felony under the laws of the place from which the individual has fled, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed;

(3) during any part of which the individual violates a condition of probation or parole imposed under Federal or State law; or

(4) during which the individual resides in a foreign country and is not a citizen or national of the United States if payments for such month to individuals residing in such country are withheld by the Treasury Department under section 3329 of title 31.

(b) Requirement for Attorney General

For the purpose of carrying out subsection (a)(1) of this section, the Attorney General shall notify the Commissioner of Social Security as soon as practicable after the removal of any individual under section 1227(a) or 1182(a)(6)(A) of title 8.

(Aug. 14, 1935, ch. 531, title VIII, § 804, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1845; amended Pub. L. 108–203, title II, § 203(c), Mar. 2, 2004, 118 Stat. 511.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–203 substituted ''or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed'' for ''or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 effective on the first day of the first month that begins on or after the date that is 9 months after Mar. 2, 2004, see section 203(d) of Pub. L. 108–203, set out as a note under section 402 of this title.

§ 1005. Benefit amount

The benefit under this subchapter payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate under subchapter XVI of this chapter for the month, reduced by the amount of the qualified individual's benefit income for the month.

(Aug. 14, 1935, ch. 531, title VIII, § 805, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1845.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

§ 1006. Applications and furnishing of information

(a) In general

The Commissioner of Social Security shall, subject to subsection (b) of this section, prescribe such requirements with respect to the filing of applications, the furnishing of information and other material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this subchapter.

(b) Verification requirement

The requirements prescribed by the Commissioner of Social Security under subsection (a) of this section shall preclude any determination of entitlement to benefits under this subchapter solely on the basis of declarations by the individual concerning qualifications or other material facts, and shall provide for verification of material information from independent or collateral sources, and the procurement of additional information as necessary in order to ensure that the benefits are provided only to qualified individuals (or their representative payees) in correct amounts.

(Aug. 14, 1935, ch. 531, title VIII, § 806, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1846.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

§ 1007. Representative payees

(a) In general

If the Commissioner of Social Security determines that the interest of any qualified individual under this subchapter would be served thereby, payment of the qualified individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the qualified individual, either directly to the qualified individual, or for his or her use and benefit, to another person (the meaning of which term, for purposes of this section, includes an organization) with respect to whom the requirements of subsection (b) of this section have been met (in this section referred to as the qualified individual's ''representative

payee''). If the Commissioner of Social Security determines that a representative payee has misused any benefit paid to the representative payee pursuant to this section, 405(j) of this title, or section 1383(a)(2) of this title, the Commissioner of Social Security shall promptly revoke the person's designation as the qualified individual's representative payee under this subsection, and shall make payment to an alternative representative payee or, if the interest of the qualified individual under this subchapter would be served thereby, to the qualified individual.

(b) Examination of fitness of prospective representative payee

(1) Any determination under subsection (a) of this section to pay the benefits of a qualified individual to a representative payee shall be made on the basis of—

(A) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of the determination and shall, to the extent practicable, include a face-to-face interview with the person (or, in the case of an organization, a representative of the organization); and

(B) adequate evidence that the arrangement is in the interest of the qualified individual.

(2) As part of the investigation referred to in paragraph (1), the Commissioner of Social Security shall—

(A) require the person being investigated to submit documented proof of the identity of the person;

(B) in the case of a person who has a social security account number issued for purposes of the program under subchapter II of this chapter or an employer identification number issued for purposes of the Internal Revenue Code of 1986, verify the number;

(C) determine whether the person has been convicted of a violation of section 408, 1011, or 1383a of this title;

(D) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

(E) obtain information concerning whether such person is a person described in section 1004(a)(2) of this title; and

(F) determine whether payment of benefits to the person in the capacity as representative payee has been revoked or terminated pursuant to this section, section 405(j) of this title, or section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter II, or XVI of this chapter, respectively.

(3) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subsection, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

(A) such person is described in section 1004(a)(2) of this title,

(B) such person has information that is necessary for the officer to conduct the officer's official duties, and

(C) the location or apprehension of such person is within the officer's official duties.

(c) Requirement for maintaining lists of undesirable payees

The Commissioner of Social Security shall establish and maintain lists which shall be updated periodically and which shall be in a form that renders such lists available to the servicing offices of the Social Security Administration. The lists shall consist of—

(1) the names and (if issued) social security account numbers or employer identification numbers of all persons with respect to whom, in the capacity of representative payee, the payment of benefits has been revoked or terminated under this section, section 405(j) of this title, or section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter II, or XVI of this chapter, respectively; and

(2) the names and (if issued) social security account numbers or employer identification numbers of all persons who have been convicted of a violation of section 408, 1011, or 1383a of this title.

(d) Persons ineligible to serve as representative payees

(1) In general

The benefits of a qualified individual may not be paid to any other person pursuant to this section if—

(A) the person has been convicted of a violation of section 408, 1011, or 1383a of this title;

(B) except as provided in paragraph (2), payment of benefits to the person in the capacity of representative payee has been revoked or terminated under this section, section 405(j) of this title, or section 1383(a)(2)(A)(ii)[1] of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter II, or subchapter XVI of this chapter, respectively;

(C) except as provided in paragraph (2)(B), the person is a creditor of the qualified individual and provides the qualified individual with goods or services for consideration;

(D) such person has previously been convicted as described in subsection (b)(2)(D) of this section, unless the Commissioner determines that such payment would be appropriate notwithstanding such conviction; or

(E) such person is a person described in section 1004(a)(2) of this title.

(2) Exemptions

(A) The Commissioner of Social Security may prescribe circumstances under which the

[1] So in original. Probably should be ''1383(a)(2)(A)(iii)''.

Commissioner of Social Security may grant an exemption from paragraph (1) to any person on a case-by-case basis if the exemption is in the best interest of the qualified individual whose benefits would be paid to the person pursuant to this section.

(B) Paragraph (1)(C) shall not apply with respect to any person who is a creditor referred to in such paragraph if the creditor is—

(i) a relative of the qualified individual and the relative resides in the same household as the qualified individual;

(ii) a legal guardian or legal representative of the individual;

(iii) a facility that is licensed or certified as a care facility under the law of the political jurisdiction in which the qualified individual resides;

(iv) a person who is an administrator, owner, or employee of a facility referred to in clause (iii), if the qualified individual resides in the facility, and the payment to the facility or the person is made only after the Commissioner of Social Security has made a good faith effort to locate an alternative representative payee to whom payment would serve the best interests of the qualified individual; or

(v) a person who is determined by the Commissioner of Social Security, on the basis of written findings and pursuant to procedures prescribed by the Commissioner of Social Security, to be acceptable to serve as a representative payee.

(C) The procedures referred to in subparagraph (B)(v) shall require the person who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(i) the person poses no risk to the qualified individual;

(ii) the financial relationship of the person to the qualified individual poses no substantial conflict of interest; and

(iii) no other more suitable representative payee can be found.

(e) Deferral of payment pending appointment of representative payee

(1) In general

Subject to paragraph (2), if the Commissioner of Social Security makes a determination described in the first sentence of subsection (a) of this section with respect to any qualified individual's benefit and determines that direct payment of the benefit to the qualified individual would cause substantial harm to the qualified individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of the benefit to the qualified individual, until such time as the selection of a representative payee is made pursuant to this section.

(2) Time limitation

(A) In general

Except as provided in subparagraph (B), any deferral or suspension of direct payment of a benefit pursuant to paragraph (1) shall be for a period of not more than 1 month.

(B) Exception in the case of incompetency

Subparagraph (A) shall not apply in any case in which the qualified individual is, as of the date of the Commissioner of Social Security's determination, legally incompetent under the laws of the jurisdiction in which the individual resides.

(3) Payment of retroactive benefits

Payment of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the qualified individual or the representative payee as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interest of the qualified individual.

(f) Hearing

Any qualified individual who is dissatisfied with a determination by the Commissioner of Social Security to make payment of the qualified individual's benefit to a representative payee under subsection (a) of this section or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Commissioner of Social Security to the same extent as is provided in section 1009(a) of this title, and to judicial review of the Commissioner of Social Security's final decision as is provided in section 1009(b) of this title.

(g) Notice requirements

(1) In general

In advance, to the extent practicable, of the payment of a qualified individual's benefit to a representative payee under subsection (a) of this section, the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to so make the payment. The notice shall be provided to the qualified individual, except that, if the qualified individual is legally incompetent, then the notice shall be provided solely to the legal guardian or legal representative of the qualified individual.

(2) Specific requirements

Any notice required by paragraph (1) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as the qualified individual's representative payee, and shall explain to the reader the right under subsection (f) of this section of the qualified individual or of the qualified individual's legal guardian or legal representative—

(A) to appeal a determination that a representative payee is necessary for the qualified individual;

(B) to appeal the designation of a particular person to serve as the representative payee of the qualified individual; and

(C) to review the evidence upon which the designation is based and to submit additional evidence.

(h) Accountability monitoring

(1) In general

In any case where payment under this subchapter is made to a person other than the qualified individual entitled to the payment,

the Commissioner of Social Security shall establish a system of accountability monitoring under which the person shall report not less often than annually with respect to the use of the payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing the reports in order to identify instances in which persons are not properly using the payments.

(2) Special reports

Notwithstanding paragraph (1), the Commissioner of Social Security may require a report at any time from any person receiving payments on behalf of a qualified individual, if the Commissioner of Social Security has reason to believe that the person receiving the payments is misusing the payments.

(3) Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting

In any case in which the person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissioner of Social Security under paragraph (1) or (2), the Commissioner may, after furnishing notice to such person and the qualified individual, require that such person appear in person at a United States Government facility designated by the Social Security Administration as serving the area in which the qualified individual resides in order to receive such benefit payments.

(4) Maintaining lists of payees

The Commissioner of Social Security shall maintain lists which shall be updated periodically of—

(A) the name, address, and (if issued) the social security account number or employer identification number of each representative payee who is receiving benefit payments pursuant to this section, section 405(j) of this title, or section 1383(a)(2) of this title; and

(B) the name, address, and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this section, section 405(j) of this title, or section 1383(a)(2) of this title.

(5) Maintaining lists of agencies

The Commissioner of Social Security shall maintain lists, which shall be updated periodically, of public agencies and community-based nonprofit social service agencies which are qualified to serve as representative payees pursuant to this section and which are located in the jurisdiction in which any qualified individual resides.

(i) Restitution

In any case where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall make payment to the qualified individual or the individual's alternative representative payee of an amount equal to the misused benefits. In any case in which a representative payee that—

(A) is not an individual; or

(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this subchapter, subchapter II of this chapter, subchapter XVI of this chapter, or any combination of such subchapters;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of subsection (*l*)(2) of this section. The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(j) Misuse of benefits

For purposes of this subchapter, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this subchapter for the use and benefit of another person under this subchapter and converts such payment, or any part thereof, to a use other than for the use and benefit of such person. The Commissioner of Social Security may prescribe by regulation the meaning of the term ''use and benefit'' for purposes of this subsection.

(k) Periodic onsite review

(1) In general

In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner may provide for the periodic onsite review of any person or agency that receives the benefits payable under this subchapter (alone or in combination with benefits payable under subchapter II of this chapter or subchapter XVI of this chapter) to another individual pursuant to the appointment of such person or agency as a representative payee under this section, section 405(j) of this title, or section 1383(a)(2) of this title in any case in which—

(A) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; or

(B) the representative payee is an agency that serves in that capacity with respect to 50 or more such individuals.

(2) Report

Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to paragraph (1) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this subchapter. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

(A) the number of such reviews;

(B) the results of such reviews;

(C) the number of cases in which the representative payee was changed and why;

(D) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(E) the number of cases discovered in which there was a misuse of funds;

(F) how any such cases of misuse of funds were dealt with by the Commissioner;

(G) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(H) such other information as the Commissioner deems appropriate.

(*l*) Liability for misused amounts

(1) In general

If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of a qualified individual's benefit that was paid to such representative payee under this section, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such qualified individual or such qualified individual's alternative representative payee.

(2) Limitation

The total of the amount paid to such individual or such individual's alternative representative payee under paragraph (1) and the amount paid under subsection (i) of this section may not exceed the total benefit amount misused by the representative payee with respect to such individual.

(Aug. 14, 1935, ch. 531, title VIII, § 807, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1846; amended Pub. L. 108–203, title I, §§ 101(b), 102(b)(2), 103(b), 105(b), 106(b), Mar. 2, 2004, 118 Stat. 495, 499, 501, 504, 506.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(2)(B), (3), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–203, § 101(b)(3), substituted ''for his or her use and benefit'' for ''for his or her benefit''.

Subsec. (b)(2)(D) to (F). Pub. L. 108–203, § 103(b)(1), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

Subsec. (b)(3). Pub. L. 108–203, § 103(b)(2), added par. (3).

Subsec. (d)(1)(D), (E). Pub. L. 108–203, § 103(b)(3), added subpars. (D) and (E).

Subsec. (h)(3) to (5). Pub. L. 108–203, § 106(b), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (i). Pub. L. 108–203, § 101(b)(1), inserted second and third sentences.

Subsec. (j). Pub. L. 108–203, § 101(b)(2), added subsec. (j).

Subsec. (k). Pub. L. 108–203, § 102(b)(2), added subsec. (k).

Subsec. (*l*). Pub. L. 108–203, § 105(b), added subsec. (*l*).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b) of Pub. L. 108–203 applicable to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after Jan. 1, 1995, see section 101(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 103(b) of Pub. L. 108–203 effective on the first day of the thirteenth month beginning after Mar. 2, 2004, see section 103(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 105(b) of Pub. L. 108–203 applicable to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after Mar. 2, 2004, see section 105(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 106(b) of Pub. L. 108–203 effective 180 days after Mar. 2, 2004, see section 106(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

§ 1008. Overpayments and underpayments

(a) In general

Whenever the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, as follows:

(1) With respect to payment to a person of more than the correct amount, the Commissioner of Social Security shall decrease any payment under this subchapter to which the overpaid person (if a qualified individual) is entitled, or shall require the overpaid person or his or her estate to refund the amount in excess of the correct amount, or, if recovery is not obtained under these two methods, shall seek or pursue recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury, as authorized under section 3720A of title 31.

(2) With respect to payment of less than the correct amount to a qualified individual who, at the time the Commissioner of Social Security is prepared to take action with respect to the underpayment—

(A) is living, the Commissioner of Social Security shall make payment to the qualified individual (or the qualified individual's representative payee designated under section 1007 of this title) of the balance of the amount due the underpaid qualified individual; or

(B) is deceased, the balance of the amount due shall revert to the general fund of the Treasury.

(b) Waiver of recovery of overpayment

In any case in which more than the correct amount of payment has been made, there shall

be no adjustment of payments to, or recovery by the United States from, any person who is without fault if the Commissioner of Social Security determines that the adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) Limited immunity for disbursing officers

A disbursing officer may not be held liable for any amount paid by the officer if the adjustment or recovery of the amount is waived under subsection (b) of this section, or adjustment under subsection (a) of this section is not completed before the death of the qualified individual against whose benefits deductions are authorized.

(d) Authorized collection practices

(1) In general

With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(e), 3716, and 3718 of title 31, as in effect on October 1, 1994.

(2) Definition

For purposes of paragraph (1), the term ''delinquent amount'' means an amount—

(A) in excess of the correct amount of the payment under this subchapter; and

(B) determined by the Commissioner of Social Security to be otherwise unrecoverable under this section from a person who is not a qualified individual under this subchapter.

(e) Cross-program recovery of overpayments

For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1320b–17 of this title.

(Aug. 14, 1935, ch. 531, title VIII, § 808, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1850; amended Pub. L. 108–203, title II, § 210(b)(2), Mar. 2, 2004, 118 Stat. 517.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–203, § 210(b)(2)(A), substituted ''any payment'' for ''any payment—'', struck out ''(A)'' before ''under this subchapter'', substituted ''section 3720A of title 31.'' for ''section 3720A of title 31; or'', and struck out subpar. (B) which read as follows: ''under subchapter II of this chapter to recover the amount in excess of the correct amount, if the person is not currently eligible for payment under this subchapter.''

Subsec. (b) to (d). Pub. L. 108–203, § 210(b)(2)(B), redesignated subsecs. (c) to (e) as (b) to (d), respectively, and struck out heading and text of subsec. (b). Text read as follows: ''In any case in which the Commissioner of Social Security takes action in accordance with subsection (a)(1)(B) of this section to recover an amount incorrectly paid to an individual, that individual shall not, as a result of such action—

''(1) become qualified for benefits under this subchapter; or

''(2) if such individual is otherwise so qualified, become qualified for increased benefits under this subchapter.''

Subsec. (e). Pub. L. 108–203, § 210(b)(2)(B), (C), added subsec. (e) and redesignated former subsec. (e) as (d).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108–203, set out as a note under section 404 of this title.

§ 1009. Hearings and review

(a) Hearings

(1) In general

The Commissioner of Social Security shall make findings of fact and decisions as to the rights of any individual applying for payment under this subchapter. The Commissioner of Social Security shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be a qualified individual and is in disagreement with any determination under this subchapter with respect to entitlement to, or the amount of, benefits under this subchapter, if the individual requests a hearing on the matter in disagreement within 60 days after notice of the determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse the Commissioner of Social Security's findings of fact and the decision. The Commissioner of Social Security may, on the Commissioner of Social Security's own motion, hold such hearings and conduct such investigations and other proceedings as the Commissioner of Social Security deems necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under the rules of evidence applicable to court procedure. The Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation of the individual (including any lack of facility with the English language) in determining, with respect to the entitlement of the individual for benefits under this subchapter, whether the individual acted in good faith or was at fault, and in determining fraud, deception, or intent.

(2) Effect of failure to timely request review

A failure to timely request review of an initial adverse determination with respect to an application for any payment under this subchapter or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any payment under this subchapter if the applicant demonstrates that the applicant failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for payments in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration.

(3) Notice requirements

In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Commissioner of Social Security shall describe in clear and specific language the effect on possible entitlement to benefits under this subchapter of choosing to reapply in lieu of requesting review of the determination.

(b) Judicial review

The final determination of the Commissioner of Social Security after a hearing under subsection (a)(1) of this section shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Commissioner of Social Security's final determinations under section 405 of this title.

(Aug. 14, 1935, ch. 531, title VIII, § 809, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1851.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

§ 1010. Other administrative provisions

(a) Regulations and administrative arrangements

The Commissioner of Social Security may prescribe such regulations, and make such administrative and other arrangements, as may be necessary or appropriate to carry out this subchapter.

(b) Payment of benefits

Benefits under this subchapter shall be paid at such time or times and in such installments as the Commissioner of Social Security determines are in the interests of economy and efficiency.

(c) Entitlement redeterminations

An individual's entitlement to benefits under this subchapter, and the amount of the benefits, may be redetermined at such time or times as the Commissioner of Social Security determines to be appropriate.

(d) Suspension and termination of benefits

Regulations prescribed by the Commissioner of Social Security under subsection (a) of this section may provide for the suspension and termination of entitlement to benefits under this subchapter as the Commissioner determines is appropriate.

(Aug. 14, 1935, ch. 531, title VIII, § 810, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1852.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

§ 1010a. Optional Federal administration of State recognition payments

(a) In general

The Commissioner of Social Security may enter into an agreement with any State (or political subdivision thereof) that provides cash payments on a regular basis to individuals entitled to benefits under this subchapter under which the Commissioner of Social Security shall make such payments on behalf of such State (or subdivision).

(b) Agreement terms

(1) In general

Such agreement shall include such terms as the Commissioner of Social Security finds necessary to achieve efficient and effective administration of both this subchapter and the State program.

(2) Financial terms

Such agreement shall provide for the State to pay the Commissioner of Social Security, at such times and in such installments as the parties may specify—

(A) an amount equal to the expenditures made by the Commissioner of Social Security pursuant to such agreement as payments to individuals on behalf of such State; and

(B) an administration fee to reimburse the administrative expenses incurred by the Commissioner of Social Security in making payments to individuals on behalf of the State.

(c) Special disposition of administration fees

Administration fees, upon collection, shall be credited to a special fund established in the Treasury of the United States for State recognition payments for certain World War II veterans. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out this subchapter.

(Aug. 14, 1935, ch. 531, title VIII, § 810A, as added Pub. L. 106–554, § 1(a)(1) [title V, § 518(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–73.)

§ 1011. Penalties for fraud

(a) In general

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in an application for benefits under this subchapter;

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining any right to the benefits;

(3) having knowledge of the occurrence of any event affecting—

(A) his or her initial or continued right to the benefits; or

(B) the initial or continued right to the benefits of any other individual in whose behalf he or she has applied for or is receiving the benefit,

conceals or fails to disclose the event with an intent fraudulently to secure the benefit either in a greater amount or quantity than is due or when no such benefit is authorized; or

(4) having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and willfully converts the benefit or any part thereof

to a use other than for the use and benefit of the other individual,

shall be fined under title 18, imprisoned not more than 5 years, or both.

(b) Court order for restitution

(1) In general

Any Federal court, when sentencing a defendant convicted of an offense under subsection (a) of this section, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Commissioner of Social Security, in any case in which such offense results in—

(A) the Commissioner of Social Security making a benefit payment that should not have been made, or

(B) an individual suffering a financial loss due to the defendant's violation of subsection (a) of this section in his or her capacity as the individual's representative payee appointed pursuant to section 1007(i) of this title.

(2) Related provisions

Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Commissioner of Social Security shall be considered the victim.

(3) Stated reasons for not ordering restitution

If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

(4) Receipt of restitution payments

(A) In general

Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited as miscellaneous receipts in the general fund of the Treasury.

(B) Payment to the individual

In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (1)(B), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss as described in such paragraph, except that such amount may be reduced by any overpayment of benefits owed under this subchapter, subchapter II of this chapter, or subchapter XVI of this chapter by the individual.

(Aug. 14, 1935, ch. 531, title VIII, § 811, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1852; amended Pub. L. 108–203, title II, § 209(b), Mar. 2, 2004, 118 Stat. 514.)

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–203 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''If a person or organization violates subsection (a) of this section in the person's or organization's role as, or in applying to become, a representative payee under section 1007 of this title on behalf of a qualified individual, and the violation includes a willful misuse of funds by the person or entity, the court may also require that full or partial restitution of funds be made to the qualified individual.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 applicable with respect to violations occurring on or after Mar. 2, 2004, see section 209(d) of Pub. L. 108–203, set out as a note under section 408 of this title.

§ 1012. Definitions

In this subchapter:

(1) World War II veteran

The term ''World War II veteran'' means a person who—

(A) served during World War II—

(i) in the active military, naval, or air service of the United States during World War II; or

(ii) in the organized military forces of the Government of the Commonwealth of the Philippines, while the forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including among the military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, in any case in which the service was rendered before December 31, 1946; and

(B) was discharged or released therefrom under conditions other than dishonorable—

(i) after service of 90 days or more; or

(ii) because of a disability or injury incurred or aggravated in the line of active duty.

(2) World War II

The term ''World War II'' means the period beginning on September 16, 1940, and ending on July 24, 1947.

(3) Supplemental security income benefit under subchapter XVI

The term ''supplemental security income benefit under subchapter XVI'', except as otherwise provided, includes State supplementary payments which are paid by the Commissioner of Social Security pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66.

(4) Federal benefit rate under subchapter XVI

The term ''Federal benefit rate under subchapter XVI of this chapter'' means, with respect to any month, the amount of the supplemental security income cash benefit (not including any State supplementary payment which is paid by the Commissioner of Social Security pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66) payable under subchapter XVI of this chapter for the month to an eligible individual with no income.

(5) United States

The term ''United States'' means, notwithstanding section 1301(a)(1) of this title, only the 50 States, the District of Columbia, and the Commonwealth of the Northern Mariana Islands.

(6) Benefit income

The term ''benefit income'' means any recurring payment received by a qualified individual as an annuity, pension, retirement, or disability benefit (including any veterans' compensation or pension, workmen's compensation payment, old-age, survivors, or disability insurance benefit, railroad retirement annuity or pension, and unemployment insurance benefit), but only if a similar payment was received by the individual from the same (or a related) source during the 12-month period preceding the month in which the individual files an application for benefits under this subchapter.

(Aug. 14, 1935, ch. 531, title VIII, § 812, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1853.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in pars. (3) and (4), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

§ 1013. Appropriations

There are hereby appropriated for fiscal year 2000 and subsequent fiscal years, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary to carry out this subchapter.

(Aug. 14, 1935, ch. 531, title VIII, § 813, as added Pub. L. 106–169, title II, § 251(a), Dec. 14, 1999, 113 Stat. 1854.)

SUBCHAPTER IX—EMPLOYMENT SECURITY ADMINISTRATIVE FINANCING

AMENDMENTS

1954—Act Aug. 5, 1954, ch. 657, § 2, 68 Stat. 668, in amending subchapter generally substituted subchapter heading ''EMPLOYMENT SECURITY ADMINISTRATIVE FINANCING'' for ''TAX ON EMPLOYMENT OF EIGHT OR MORE''.

PRIOR LAW; TAX ON EMPLOYERS OF EIGHT OR MORE

Former subchapter IX, sections 1101–1103, 1105–1110, act Aug. 14, 1935, ch. 531, title IX, §§ 901–903, 905–910, 49 Stat. 639–644, related to taxes on employers of eight or more. Section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1, which act enacted Title 26, Internal Revenue Code of 1939, provided that all laws and parts of laws codified into the I.R.C. 1939, to the extent that they related exclusively to internal revenue laws, were repealed. Provisions of I.R.C. 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). See, also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. Said prior law sections were formerly and are now covered by certain sections in Title 26, I.R.C. 1939 and I.R.C. 1986, respectively, as follows:

Former sections	I.R.C. 1939	I.R.C. 1986
1101	1600	3301.
1102	1601(a)	3302.
1103	1603	3304.
1105	1604, 1605, 1610	3501, 6011(a), 6065, 6071, 6081(a), 6091(b)(1), (2), 6106, 6152(a)(3), (b), 6161(a)(1), 6313, 6601(a), (f)(1).
1106	1606	3305.
1107 (as amended act June 25, 1938, ch. 680, § 13(a), 52 Stat. 1110).	1607	3306, 7701(a)(1).
1108	1609	7805(a), (c).
1109	1601(b), (c)	3302.
1110	1602	3303.

REPAIR OF 1938 HURRICANE DAMAGE

Act Aug. 11, 1939, ch. 719, § 1, 53 Stat. 1420, provided that no special security taxes should be collected for work done prior to Jan. 1, 1940, in cleaning up debris and damage caused by the 1938 hurricane.

CREDITS AGAINST SOCIAL SECURITY TAX

Act Aug. 10, 1939, ch. 666, title IX, § 902(a)–(d), (h), 53 Stat. 1399, provided for a credit against the social security tax of certain contributions made with respect to employment during calendar years 1936, 1937, or 1938. Said act Aug. 10, 1939, was affected by act Sept. 20, 1941, ch. 412, title VII, § 701(c), 55 Stat. 728.

Act May 28, 1938, ch. 289, § 810, 52 Stat. 576, related to credits against Social Security Tax for 1936. It was affected by act Sept. 20, 1941, ch. 412, title VII, § 701(c), 55 Stat. 728, relating to credit against Federal unemployment taxes.

§ 1101. Employment Security Administration Account

(a) Establishment

There is hereby established in the Unemployment Trust Fund an employment security administration account.

(b) Amount credited to Account; transfer of funds; adjustments; repayment of internal revenue refunds

(1) There is hereby appropriated to the Unemployment Trust Fund for credit to the employment security administration account, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1961, and for each fiscal year thereafter, an amount equal to 100 per centum of the tax (including interest, penalties, and additions to the tax) received during the fiscal year under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] and covered into the Treasury.

(2) The amount appropriated by paragraph (1) shall be transferred at least monthly from the general fund of the Treasury to the Unemployment Trust Fund and credited to the employment security administration account. Each such transfer shall be based on estimates made by the Secretary of the Treasury of the amounts received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred, to the extent prior estimates (including estimates for the fiscal year ending June 30, 1960) were in excess of or were less than the amounts required to be transferred.

(3) The Secretary of the Treasury is directed to pay from time to time from the employment security administration account into the Treasury, as repayments to the account for refunding internal revenue collections, amounts equal to

all refunds made after June 30, 1960, of amounts received as tax under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] (including interest on such refunds).

(c) Administrative expenditures; necessary expenses; quarterly transfer of funds; adjustments; limitation; estimate of net receipts

(1) There are hereby authorized to be made available for expenditure out of the employment security administration account for the fiscal year ending June 30, 1971, and for each fiscal year thereafter—

(A) such amounts (not in excess of the applicable limit provided by paragraph (3) and, with respect to clause (ii), not in excess of the limit provided by paragraph (4)) as the Congress may deem appropriate for the purpose of—

(i) assisting the States in the administration of their unemployment compensation laws as provided in subchapter III of this chapter (including administration pursuant to agreements under any Federal unemployment compensation law),

(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of June 6, 1933, as amended (29 U.S.C., secs. 49–49n), and

(iii) carrying into effect section 4103 of title 38;

(B) such amounts (not in excess of the limit provided by paragraph (4) with respect to clause (iii)) as the Congress may deem appropriate for the necessary expenses of the Department of Labor for the performance of its functions under—

(i) this subchapter and subchapters III and XII of this chapter,

(ii) the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.],

(iii) the provisions of the Act of June 6, 1933, as amended [29 U.S.C. 49 et seq.],

(iv) chapter 41 (except section 4103) of title 38, and

(v) any Federal unemployment compensation law.

The term ''necessary expenses'' as used in this subparagraph (B) shall include the expense of reimbursing a State for salaries and other expenses of employees of such State temporarily assigned or detailed to duty with the Department of Labor and of paying such employees for travel expenses, transportation of household goods, and per diem in lieu of subsistence while away from their regular duty stations in the State, at rates authorized by law for civilian employees of the Federal Government.

(2) The Secretary of the Treasury is directed to pay from the employment security administration account into the Treasury as miscellaneous receipts the amount estimated by him which will be expended during a three-month period by the Treasury Department for the performance of its functions under—

(A) this subchapter and subchapters III and XII of this chapter, including the expenses of banks for servicing unemployment benefit payment and clearing accounts which are offset by the maintenance of balances of Treasury funds with such banks,

(B) the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], and

(C) any Federal unemployment compensation law with respect to which responsibility for administration is vested in the Secretary of Labor.

If it subsequently appears that the estimates under this paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Secretary of the Treasury in future payments.

(3)(A) For purposes of paragraph (1)(A), the limitation on the amount authorized to be made available for any fiscal year after June 30, 1970, is, except as provided in subparagraph (B) and in the second sentence of subsection (f)(3)(A) of this section, an amount equal to 95 percent of the amount estimated and set forth in the budget of the United States Government for such fiscal year as the amount by which the net receipts during such year under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] will exceed the amount transferred under section 1105(b) of this title during such year to the extended unemployment compensation account.

(B) The limitation established by subparagraph (A) is increased by any unexpended amount retained in the employment security administration account in accordance with subsection (f)(2)(B) of this section.

(C) Each estimate of net receipts under this paragraph shall be based upon a tax rate of 0.6 percent.

(4) For purposes of paragraphs (1)(A)(ii) and (1)(B)(iii) the amount authorized to be made available out of the employment security administration account for any fiscal year after June 30, 1972, shall reflect the proportion of the total cost of administering the system of public employment offices in accordance with the Act of June 6, 1933, as amended [29 U.S.C. 49 et seq.], and of the necessary expenses of the Department of Labor for the performance of its functions under the provisions of such Act, as the President determines is an appropriate charge to the employment security administration account, and reflects in his annual budget for such year. The President's determination, after consultation with the Secretary, shall take into account such factors as the relationship between employment subject to State laws and the total labor force in the United States, the number of claimants and the number of job applicants, and such other factors as he finds relevant.

(5)(A) There are authorized to be appropriated out of the employment security administration account to carry out program integrity activities, in addition to any amounts available under paragraph (1)(A)(i)—

(i) $89,000,000 for fiscal year 1998;
(ii) $91,000,000 for fiscal year 1999;
(iii) $93,000,000[1] fiscal year 2000;
(iv) $96,000,000 for fiscal year 2001; and
(v) $98,000,000 for fiscal year 2002.

(B) In any fiscal year in which a State receives funds appropriated pursuant to this paragraph, the State shall expend a proportion of the funds appropriated pursuant to paragraph (1)(A)(i) to

[1] So in original. Probably should be followed by ''for''.

carry out program integrity activities that is not less than the proportion of the funds appropriated under such paragraph that was expended by the State to carry out program integrity activities in fiscal year 1997.

(C) For purposes of this paragraph, the term ''program integrity activities'' means initial claims review activities, eligibility review activities, benefit payments control activities, and employer liability auditing activities.

(d) Additional tax attributable to reduced credits; transfer of funds

(1) The Secretary of the Treasury is directed to transfer from the employment security administration account—

(A) To the Federal unemployment account, an amount equal to the amount by which—

(i) 100 per centum of the additional tax received under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] with respect to any State by reason of the reduced credits provisions of section 3302(c)(3) of such Act [26 U.S.C. 3302(c)(3)] and covered into the Treasury for the repayment of advances made to the State under section 1321 of this title, exceeds

(ii) the amount transferred to the account of such State pursuant to subparagraph (B) of this paragraph.

Any amount transferred pursuant to this subparagraph shall be credited against, and shall operate to reduce, that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax.

(B) To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax, an amount equal to the amount by which such additional tax received and covered into the Treasury exceeds that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax.

(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) of this section.

(e) Revolving fund; appropriations; advances to Account; repayment; interest

(1) There is hereby established in the Treasury a revolving fund which shall be available to make the advances authorized by this subsection. There are hereby authorized to be appropriated, without fiscal year limitation, to such revolving fund such amounts as may be necessary for the purposes of this section.

(2) The Secretary of the Treasury is directed to advance from time to time from the revolving fund to the employment security administration account such amounts as may be necessary for the purposes of this section. If the net balance in the employment security administration account as of the beginning of any fiscal year equals 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the preceding fiscal year, no advance may be made under this subsection during such fiscal year.

(3) Advances to the employment security administration account made under this subsection shall bear interest until repaid at a rate equal to the average rate of interest (computed as of the end of the calendar month next preceding the date of such advance) borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) Advances to the employment security administration account made under this subsection, plus interest accrued thereon, shall be repaid by the transfer from time to time, from the employment security administration account to the revolving fund, of such amounts as the Secretary of the Treasury, in consultation with the Secretary of Labor, determines to be available in the employment security administration account for such repayment. Any amount transferred as a repayment under this paragraph shall be credited against, and shall operate to reduce, any balance of advances (plus accrued interest) repayable under this subsection.

(f) Determination of excess in Account; limitation on amount to be retained; use of balance in Account during certain fiscal years; net balance

(1) The Secretary of the Treasury shall determine as of the close of each fiscal year (beginning with the fiscal year ending June 30, 1961) the excess in the employment security administration account.

(2) The excess in the employment security administration account as of the close of any fiscal year is the amount by which the net balance in such account as of such time (after the application of section 1102(b) of this title and paragraph (3)(C) of this subsection) exceeds the net balance in the employment security administration account as of the beginning of that fiscal year (including the fiscal year for which the excess is being computed) for which the net balance was higher than as of the beginning of any other such fiscal year.

(3)(A) The excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, shall be retained (as of the beginning of the succeeding fiscal year) in the employment security administration account until the amount in such account is equal to 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the fiscal year for which the excess is determined. Three-eighths of the amount in the employment security administration account as of the beginning of any fiscal year after June 30, 1972, or $150 million, whichever is the lesser, is authorized to be made available for such fiscal year pursuant to subsection (c)(1) of this section for additional costs of administration due to an increase in the rate of insured unemployment for a calendar quarter of at least 15 percent over the rate of insured unemployment for the corresponding calendar quarter in the immediately preceding year.

(B) If the entire amount of the excess determined as provided in paragraph (2) as of the

close of any fiscal year after June 30, 1972, is not retained in the employment security administration account, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the balance of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to the limit provided in section 1105(b)(2) of this title.

(C) If as of the close of any fiscal year after June 30, 1972, the amount in the extended unemployment compensation account exceeds the limit provided in section 1105(b)(2) of this title, such excess shall be transferred to the employment security administration account as of the close of such fiscal year.

(4) For the purposes of this section, the net balance in the employment security administration account as of any time is the amount in such account as of such time reduced by the sum of—

(A) the amounts then subject to transfer pursuant to subsection (d) of this section, and

(B) the balance of advances (plus interest accrued thereon) then repayable to the revolving fund established by subsection (e) of this section.

The net balance in the employment security administration account as of the beginning of any fiscal year shall be determined after the disposition of the excess in such account as of the close of the preceding fiscal year.

(Aug. 14, 1935, ch. 531, title IX, §901, as added Aug. 5, 1954, ch. 657, §2, 68 Stat. 668; amended Pub. L. 86–778, title V, §521, Sept. 13, 1960, 74 Stat. 970; Pub. L. 87–31, §7, May 8, 1961, 75 Stat. 78; Pub. L. 88–31, §1, May 29, 1963, 77 Stat. 51; Pub. L. 91–53, §3, Aug. 7, 1969, 83 Stat. 93; Pub. L. 91–373, title III, §303, Aug. 10, 1970, 84 Stat. 713; Pub. L. 94–273, §39, Apr. 21, 1976, 90 Stat. 381; Pub. L. 94–566, title II, §211(e)(1) [(c)(1)], Oct. 20, 1976, 90 Stat. 2676; Pub. L. 97–248, title II, §271(b)(2)(A), (c)(3)(D), Sept. 3, 1982, 96 Stat. 554, 555; Pub. L. 98–369, div. B, title VI, §2663(d)(1), (2), July 18, 1984, 98 Stat. 1167; Pub. L. 100–203, title IX, §9154(a), (c)(2), Dec. 22, 1987, 101 Stat. 1330–326; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–318, title V, §531(d)(1), (2), July 3, 1992, 106 Stat. 316, 317; Pub. L. 105–33, title V, §5408, Aug. 5, 1997, 111 Stat. 605.)

REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsecs. (b)(1), (3), (c)(1)(B)(ii), (2)(B), (3)(A), and (d)(1)(A)(i), is act Aug. 16, 1954, ch. 736, §§3301 to 3311, 68A Stat. 439, as amended, which is classified generally to chapter 23 (§3301 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3311 of Title 26 and Tables.

Act of June 6, 1933, as amended (29 U.S.C. 49–49n), referred to in subsec. (c)(1)(A)(ii), (B)(iii), and (4), probably means act June 6, 1933, ch. 49, 48 Stat. 113, as amended, known as the Wagner-Peyser Act, which is classified generally to chapter 4B (§49 et seq.) of Title 29, Labor. Sections 49m and 49n were not part of act June 6, 1933. For complete classification of this Act to the Code, see Short Title note set out under section 49 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 1101, act Aug. 14, 1935, ch. 531, title IX, §901, 49 Stat. 639, related to imposition of tax. For further details, see Prior Law note set out preceding this section.

AMENDMENTS

1997—Subsec. (c)(5). Pub. L. 105–33 added par. (5).

1992—Subsec. (f)(2). Pub. L. 102–318, §531(d)(1), struck out designation for subpar. (A), substituted ''The'' for ''Except as provided in subparagraph (B), the'', and struck out subpar. (B) which read as follows: ''With respect to the fiscal years ending June 30, 1970, June 30, 1971, and June 30, 1972, the balance in the employment security administration account at the close of each such fiscal year shall not be considered excess but shall be retained in the account for use as provided in paragraph (1) of subsection (c) of this section.''

Subsec. (g). Pub. L. 102–318, §531(d)(2), struck out subsec. (g) which read as follows:

''(1) With respect to calendar years 1988, 1989, and 1990, the Secretary of the Treasury shall transfer from the employment security administration account—

''(A) to the Federal unemployment account an amount equal to 50 percent of the amount of tax received under section 3301(1) of the Federal Unemployment Tax Act which is attributable to the difference in the tax rates between paragraphs (1) and (2) of such section; and

''(B) to the extended unemployment compensation account an amount equal to 50 percent of such amount of tax received.

''(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) of this section with respect to wages paid during such calendar years.''

1991—Subsec. (c)(1)(A)(iii), (B)(iv). Pub. L. 102–83 substituted reference to section 4103 of title 38 for reference to section 2003 of title 38.

1987—Subsec. (c)(3)(C). Pub. L. 100–203, §9154(c)(2), substituted ''a tax rate of 0.6 percent'' for ''(i) a tax rate of 0.6 percent in the case of any calendar year for which the rate of tax under section 3301 of the Federal Unemployment Tax Act is 6.0 percent, and (ii) a tax rate of 0.8 percent in the case of any calendar year for which the rate of tax under such section is 6.2 percent''.

Subsec. (g). Pub. L. 100–203, §9154(a), added subsec. (g).

1984—Subsec. (c). Pub. L. 98–369, §2663(d)(1), realigned margins of subsec. (c).

Subsec. (f). Pub. L. 98–369, §2663(d)(2), realigned margins of par. (3).

1982—Subsec. (c)(3)(C). Pub. L. 97–248, §271(c)(3)(D), substituted ''0.6'' for ''0.5'', ''6.0'' for ''3.2'', and ''6.2'' for ''3.5''.

Subsec. (c)(3)(C)(ii). Pub. L. 97–248, §271(b)(2)(A), substituted ''0.8'' for ''0.7'', struck out ''3301'' after ''tax under such section'', and substituted ''3.5'' for ''3.4''.

1976—Subsec. (c)(3)(C). Pub. L. 94–566 limited existing provisions by making them applicable only in the case of calendar years for which the rate of tax under section 3301 of the Federal Unemployment Tax Act is 3.2 percent, designated the existing provisions as so amended as cl. (i) and added cl. (ii).

Subsec. (f)(3)(A). Pub. L. 94–273 struck out ''fiscal'' after ''immediately preceding''.

1970—Subsec. (c)(1). Pub. L. 91–373, §303(a)(1), substituted ''fiscal year ending June 30, 1971'' for ''fiscal year ending June 30, 1964'', inserted reference to par. (4), struck out reference to the Temporary Unemployment Compensation Act of 1958, as amended, and substituted ''section 2003 of title 38'' for ''section 2012 of title 38''.

Subsec. (c)(2). Pub. L. 91–373, §303(a)(2), struck out provision for the exclusion of amounts attributable to the Temporary Unemployment Compensation Act of 1958, as amended.

Subsec. (c)(3). Pub. L. 91–373, §303(a)(3), changed the ceiling on the amount in the employment security administration account authorized for appropriation for State grants by making it 95 percent of the amount set forth in the budget of the United States Government as

the amount by which the net receipts during the fiscal year are estimated to exceed the amount transferred to the extended unemployment compensation account under section 1105(b) of this title.

Subsec. (c)(4). Pub. L. 91–373, §303(a)(4), added par. (4).

Subsec. (d). Pub. L. 91–373, §303(b), struck out reference to section 3302(c)(2) of the Federal Unemployment Tax Act in par. (1)(A)(i), struck out provision for separate application of par. (1) in years in which there was both a balance described in sections 3302(c)(2) and 3302(c)(3) of the Federal Unemployment Tax Act, redesignated par. (3) as par. (2), and struck out former par. (2) covering the transfer of funds from the employment security administration account to the general fund of the Treasury and to the State account, with respect to which employers paid additional tax, received by reason of the reduced credit provisions of section 1400c of this title.

Subsec. (e)(2). Pub. L. 91–373, §303(c), substituted ''equals 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account of the preceding fiscal year'' for ''is $250,000,000''.

Subsec. (f)(2)(A). Pub. L. 91–373, §303(d)(1), inserted reference to par. (3)(C) of this subsection.

Subsec. (f)(3). Pub. L. 91–373, §303(d)(2), revised provisions for the distribution of any excess in the employment security administration account at the end of any fiscal year after June 30, 1972.

1969—Subsec. (c)(3). Pub. L. 91–53, §3(a), struck out subpar. (A) provisions limiting expenditures for fiscal year ending June 30, 1964, to 95 percent of amount estimated by the Secretary of Treasury as the net receipts during such fiscal year under the Federal Unemployment Tax Act, redesignated subpar. (B) provisions as par. (3) without restricting their application to fiscal years ending after June 30, 1964, increased expenditure limitation by unexpended amount retained in the employment security administration account in accordance with subsec. (f)(2)(B) of this section, reenacted provision for estimate of net receipts, and struck out dated provisions requiring the Secretary of Treasury to report to Congress his estimate under subpar. (A) within thirty days after May 29, 1963, the date of enactment of Pub. L. 88–31, and providing for its printing as a House document.

Subsec. (f)(2). Pub. L. 91–53, §3(b), designated existing provisions as subpar. (A), inserted introductory text ''Except as provided in subparagraph (B)'', and added subpar. (B).

1963—Subsec. (c). Pub. L. 88–31 substituted ''June 30, 1964'' for ''June 30, 1961'' in par. (1), ''(not in excess of the limit provided by paragraph (3))'' for ''(not in excess of $350,000,000 for any fiscal year)'' in par. (1)(A), and added par. (3).

1961—Subsec. (c)(1)(B). Pub. L. 87–31 inserted provision relating to necessary expenses.

1960—Subsec. (a). Pub. L. 86–778 substituted provision establishing the employment security administration account for former provision making an appropriation to the Unemployment Trust Fund for fiscal year ending June 30, 1954, and for each fiscal year thereafter, providing for transfer of funds from the general fund in the Treasury to the Unemployment Trust Fund at the close of the fiscal year, and adjustments in the transfers, and requiring the Secretary of the Treasury to consult with the Secretary of Labor with respect to estimates of employment security administrative expenditures.

Subsec. (b). Pub. L. 86–778 substituted provisions crediting the employment security administration with funds, and requiring transfer of funds, adjustments and repayment of internal revenue refunds for former provisions defining ''employment security administrative expenditures'', now incorporated in subsec. (c)(1)(A), (B), (2)(A) of this section.

Subsecs. (c) to (f). Pub. L. 86–778 added subsecs. (c) to (f).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9154(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1102 and 1105 of this title] shall become effective on the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 271(b)(2)(A) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, and amendment by section 271(c)(3)(D) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1984, see section 271(d)(1), (2) of Pub. L. 97–248, as amended, set out as a note under section 3301 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 211(d)(3) of Pub. L. 94–566 provided that: ''The amendments made by subsection (c) [amending this section, section 1105 of this title, and section 6157 of Title 26, Internal Revenue Code] shall take effect on the date of enactment of this Act [Oct. 20, 1976].''

EFFECTIVE DATE OF 1970 AMENDMENT

Section 303(a) of Pub. L. 91–373 provided that the amendment made by that section is effective with respect to fiscal years after June 30, 1970.

Section 303(c) of Pub. L. 91–373 provided that the amendment made by that section is effective July 1, 1972.

Section 303(d) of Pub. L. 91–373 provided that the amendment made by that section is effective with respect to fiscal years after June 30, 1972.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 4(b) of Pub. L. 91–53 provided that: ''The amendments made by section 3 [amending this section] shall take effect upon enactment of this Act [Aug. 7, 1969].''

INCREASE IN ADMINISTRATIVE EXPENDITURES LIMITATION FOR FISCAL YEAR 1963

Section 4 of Pub. L. 88–31 provided that notwithstanding subsec. (c)(1)(A) of this section, the limitation on the amount authorized to be available for the fiscal year ending June 30, 1963, for the purposes specified in subsec. (c)(1)(A), was increased to $407,148,000.

Pub. L. 87–582, title I, §101, Aug. 14, 1962, 76 Stat. 363, provided that notwithstanding subsec. (c)(1)(A) of this section, the limitation on the amount authorized to be available for the fiscal year ending June 30, 1963, for the purposes specified in subsec. (c)(1)(A), was increased to $400,000,000.

INCREASE IN ADMINISTRATIVE EXPENDITURES LIMITATION FOR FISCAL YEARS 1961 AND 1962

Pub. L. 87–6, §15, Mar. 24, 1961, 75 Stat. 16, provided that notwithstanding subsec. (c)(1)(A) of this section, the limitation on the amount authorized to be available for the fiscal years ending June 30, 1961 and June 30, 1962, for the purposes specified in subsec. (c)(1)(A), was increased to $385,000,000 and $415,000,000, respectively.

§ 1102. Transfers between Federal Unemployment Account and Employment Security Administration Account

(a) Determination of excess; amount transferred

Whenever the Secretary of the Treasury determines pursuant to section 1101(f) of this title that there is an excess in the employment secu-

rity administration account as of the close of any fiscal year and the entire amount of such excess is not retained in the employment security administration account or transferred to the extended unemployment compensation account as provided in section 1101(f)(3) of this title, there shall be transferred (as of the beginning of the succeeding fiscal year) to the Federal unemployment account the balance of such excess or so much thereof as is required to increase the amount in the Federal unemployment account to whichever of the following is the greater:

(1) $550 million, or

(2) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to 0.5 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

(b) Unemployment account excesses

The amount, if any, by which the amount in the Federal unemployment account as of the close of any fiscal year exceeds the greater of the amounts specified in paragraphs (1) and (2) of subsection (a) of this section shall be transferred to the employment security administration account as of the close of such fiscal year.

(c) Report to Congress

Whenever the Secretary of Labor has reason to believe that in the next fiscal year the employment security administration account will reach the limit provided for such account in section 1101(f)(3)(A) of this title, and the Federal unemployment account will reach the limit provided for such account in subsection (a) of this section, and the extended unemployment compensation account will reach the limit provided for such account in section 1105(b)(2) of this title, he shall, after consultation with the Secretary of the Treasury, so report to the Congress with a recommendation for appropriate action by the Congress.

(Aug. 14, 1935, ch. 531, title IX, §902, as added Aug. 5, 1954, ch. 657, §2, 68 Stat. 669; amended Pub. L. 86–778, title V, §521, Sept. 13, 1960, 74 Stat. 974; Pub. L. 91–373, title III, §304(a), (b), Aug. 10, 1970, 84 Stat. 715, 716; Pub. L. 100–203, title IX, §9154(b)(1), Dec. 22, 1987, 101 Stat. 1330–326; Pub. L. 102–318, title V, §531(b), July 3, 1992, 106 Stat. 316; Pub. L. 105–33, title V, §5402(a), Aug. 5, 1997, 111 Stat. 603.)

PRIOR PROVISIONS

A prior section 1102, act Aug. 14, 1935, ch. 531, title IX, §902, 49 Stat. 639, related to credit against tax. For further details, see Prior Law note set out preceding section 1101 of this title.

AMENDMENTS

1997—Subsec. (a)(2). Pub. L. 105–33 substituted ''0.5 percent'' for ''0.25 percent''.

1992—Subsec. (a)(2). Pub. L. 102–318 substituted ''0.25 percent'' for ''five-eighths of 1 percent''.

1987—Subsec. (a)(2). Pub. L. 100–203 substituted ''five-eighths'' for ''one-eighth''.

1970—Subsec. (a). Pub. L. 91–373, §304(a), inserted, in provisions preceding par. (1), reference to the retention of the entire amount of the excess in the employment security administration account or the transfer to the extended unemployment compensation account as provided in section 1101(f)(3) of this title and, in par. (2), substituted ''one-eighth of 1 percent'' for ''four-tenths of 1 per centum''.

Subsec. (c). Pub. L. 91–373, §304(b), added subsec. (c).

1960—Pub. L. 86–778 substituted provisions for transfers between Federal unemployment account and employment security administration account for former provisions crediting the Federal unemployment account with funds and defining ''adjusted balance''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5402(b) of Pub. L. 105–33 provided that: ''This section [amending this section] and the amendment made by this section—

''(1) shall take effect on October 1, 2001, and

''(2) shall apply to fiscal years beginning on or after that date.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 531(e) of Pub. L. 102–318 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 1110 of this title and amending this section and sections 1101, 1104, and 1105 of this title] shall take effect on the date of the enactment of this Act [July 3, 1992].

''(2) CHANGES IN CEILING AMOUNTS.—The amendments made by subsection[s] (a)(2) and (b) [amending this section and section 1105 of this title] shall apply to fiscal years beginning after September 30, 1993.''

§ 1103. Amounts transferred to State accounts

(a) Determination and certification by Secretary of Labor

(1) If as of the close of any fiscal year after the fiscal year ending June 30, 1972, the amount in the extended unemployment compensation account has reached the limit provided in section 1105(b)(2) of this title and the amount in the Federal unemployment account has reached the limit provided in section 1102(a) of this title and all advances and interest pursuant to section 1105(d) of this title and section 1323 of this title have been repaid, and there remains in the employment security administration account any amount over the amount provided in section 1101(f)(3)(A) of this title, such excess amount, except as provided in subsection (b) of this section, shall be transferred (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund.

(2) Each State's share of the funds to be transferred under this subsection as of any October 1—

(A) shall be determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury before such date, and

(B) shall bear the same ratio to the total amount to be so transferred as—

(i) the amount of wages subject to tax under section 3301 of the Internal Revenue Code of 1986 during the preceding calendar year which are determined by the Secretary of Labor to be attributable to the State, bears to

(ii) the total amount of wages subject to such tax during such year.

(b) Transfer of funds where State is ineligible

(1) If the Secretary of Labor finds that on October 1 of any fiscal year—

(A) a State is not eligible for certification under section 503 of this title, or

(B) the law of a State is not approvable under section 3304 of the Federal Unemployment Tax Act [26 U.S.C. 3304],

then the amount available for transfer to such State's account shall, in lieu of being so transferred, be transferred to the Federal unemployment account as of the beginning of such October 1. If, during the fiscal year beginning on such October 1, the Secretary of Labor finds and certifies to the Secretary of the Treasury that such State is eligible for certification under section 503 of this title, that the law of such State is approvable under such section 3304, or both, the Secretary of the Treasury shall transfer such amount from the Federal unemployment account to the account of such State. If the Secretary of Labor does not so find and certify to the Secretary of the Treasury before the close of such fiscal year then the amount which was available for transfer to such State's account as of October 1 of such fiscal year shall (as of the close of such fiscal year) become unrestricted as to use as part of the Federal unemployment account.

(2) The amount which, but for this paragraph, would be transferred to the account of a State under subsection (a) of this section or paragraph (1) of this subsection shall be reduced (but not below zero) by the balance of advances made to the State under section 1321 of this title. The sum by which such amount is reduced shall—

(A) be transferred to or retained in (as the case may be) the Federal unemployment account, and

(B) be credited against, and operate to reduce—

(i) first, any balance of advances made before September 13, 1960, to the State under section 1321 of this title, and

(ii) second, any balance of advances made on or after September 13, 1960, to the State under section 1321 of this title.

(c) Use of funds

(1) Except as provided in paragraph (2), amounts transferred to the account of a State pursuant to subsections (a) and (b) of this section shall be used only in the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.

(2) A State may, pursuant to a specific appropriation made by the legislative body of the State, use money withdrawn from its account in the payment of expenses incurred by it for the administration of its unemployment compensation law and public employment offices if and only if—

(A) the purposes and amounts were specified in the law making the appropriation,

(B) the appropriation law did not authorize the obligation of such money after the close of the two-year period which began on the date of enactment of the appropriation law,

(C) the money is withdrawn and the expenses are incurred after such date of enactment,

(D)(i) the appropriation law limits the total amount which may be obligated under such appropriation at any time to an amount which does not exceed, at any such time, the amount by which—

(I) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b) of this section, exceeds

(II) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State, and

(ii) for purposes of clause (i), amounts used by a State for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into, and

(E) the use of the money is accounted for in accordance with standards established by the Secretary of Labor.

(3)(A) If—

(i) amounts transferred to the account of a State pursuant to subsections (a) and (b) of this section were used in payment of unemployment benefits to individuals; and

(ii) the Governor of such State submits a request to the Secretary of Labor that such amounts be restored under this paragraph,

then the amounts described in clause (i) shall be restored to the status of funds transferred under subsections (a) and (b) of this section which have not been used by eliminating any charge against amounts so transferred for the use of such amounts in the payment of unemployment benefits.

(B) Subparagraph (A) shall apply only to the extent that the amounts described in clause (i) of such subparagraph do not exceed the amount then in the State's account.

(C) Subparagraph (A) shall not apply if the State has a balance of advances made to its account under subchapter XII of this chapter.

(D) If the Secretary of Labor determines that the requirements of this paragraph are met with respect to any request, the Secretary shall notify the Governor of the State that such requirements are met with respect to such request and the amount restored under this paragraph. Such restoration shall be as of the first day of the first month following the month in which the notification is made.

(d) Special transfer in fiscal year 2002

(1) The Secretary of the Treasury shall transfer (as of the date determined under paragraph (5)) from the Federal unemployment account to the account of each State in the Unemployment Trust Fund the amount determined with respect to such State under paragraph (2).

(2)(A) The amount to be transferred under this subsection to a State account shall (as determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury) be equal to—

(i) the amount which would have been required to have been transferred under this section to such account at the beginning of fiscal year 2002 if—

(I) section 209(a)(1) of the Temporary Extended Unemployment Compensation Act of 2002 had been enacted before the close of fiscal year 2001, and

(II) section 5402 of Public Law 105–33 (relating to increase in Federal unemployment account ceiling) had not been enacted,

minus

(ii) the amount which was in fact transferred under this section to such account at the beginning of fiscal year 2002.

(B) Notwithstanding the provisions of subparagraph (A)—

(i) the aggregate amount transferred to the States under this subsection may not exceed a total of $8,000,000,000; and

(ii) all amounts determined under subparagraph (A) shall be reduced ratably, if and to the extent necessary in order to comply with the limitation under clause (i).

(3)(A) Except as provided in paragraph (4), amounts transferred to a State account pursuant to this subsection may be used only in the payment of cash benefits—

(i) to individuals with respect to their unemployment, and

(ii) which are allowable under subparagraph (B) or (C).

(B)(i) At the option of the State, cash benefits under this paragraph may include amounts which shall be payable as—

(I) regular compensation, or

(II) additional compensation, upon the exhaustion of any temporary extended unemployment compensation (if such State has entered into an agreement under the Temporary Extended Unemployment Compensation Act of 2002), for individuals eligible for regular compensation under the unemployment compensation law of such State.

(ii) Any additional compensation under clause (i) may not be taken into account for purposes of any determination relating to the amount of any extended compensation for which an individual might be eligible.

(C)(i) At the option of the State, cash benefits under this paragraph may include amounts which shall be payable to 1 or more categories of individuals not otherwise eligible for regular compensation under the unemployment compensation law of such State, including those described in clause (iii).

(ii) The benefits paid under this subparagraph to any individual may not, for any period of unemployment, exceed the maximum amount of regular compensation authorized under the unemployment compensation law of such State for that same period, plus any additional compensation (described in subparagraph (B)(i)) which could have been paid with respect to that amount.

(iii) The categories of individuals described in this clause include the following:

(I) Individuals who are seeking, or available for, only part-time (and not full-time) work.

(II) Individuals who would be eligible for regular compensation under the unemployment compensation law of such State under an alternative base period.

(D) Amounts transferred to a State account under this subsection may be used in the payment of cash benefits to individuals only for weeks of unemployment beginning after March 9, 2002.

(4) Amounts transferred to a State account under this subsection may be used for the administration of its unemployment compensation law and public employment offices (including in connection with benefits described in paragraph (3) and any recipients thereof), subject to the same conditions as set forth in subsection (c)(2) of this section (excluding subparagraph (B) thereof, and deeming the reference to ''subsections (a) and (b)'' in subparagraph (D) thereof to include this subsection).

(5) Transfers under this subsection shall be made within 10 days after March 9, 2002.

(e) Special transfer in fiscal year 2006

Not later than 10 days after October 20, 2005, the Secretary of the Treasury shall transfer from the Federal unemployment account—

(1) $15,000,000 to the account of Alabama in the Unemployment Trust Fund;

(2) $400,000,000 to the account of Louisiana in the Unemployment Trust Fund; and

(3) $85,000,000 to the account of Mississippi in the Unemployment Trust Fund.

(Aug. 14, 1935, ch. 531, title IX, §903, as added Aug. 5, 1954, ch. 657, §2, 68 Stat. 670; amended Pub. L. 86–778, title V, §521, Sept. 13, 1960, 74 Stat. 974; Pub. L. 88–31, §3, May 29, 1963, 77 Stat. 51; Pub. L. 90–430, July 26, 1968, 82 Stat. 447; Pub. L. 91–373, title III, §305(b), Aug. 10, 1970, 84 Stat. 717; Pub. L. 92–224, §1, title II, §204(c), Dec. 29, 1971, 85 Stat. 810, 814; Pub. L. 92–329, §2(d), June 30, 1972, 86 Stat. 398; Pub. L. 93–368, §4(b), Aug. 7, 1974, 88 Stat. 420; Pub. L. 94–273, §§2(20), 3(23), 23, 41, Apr. 21, 1976, 90 Stat. 375, 377, 379, 381; Pub. L. 97–248, title I, §192, Sept. 3, 1982, 96 Stat. 408; Pub. L. 100–203, title IX, §9155(c), Dec. 22, 1987, 101 Stat. 1330–327; Pub. L. 101–508, title V, §5021(a), (b), Nov. 5, 1990, 104 Stat. 1388–223; Pub. L. 105–33, title V, §5403, Aug. 5, 1997, 111 Stat. 603; Pub. L. 107–147, title II, §209(a)(1), (b), Mar. 9, 2002, 116 Stat. 31; Pub. L. 109–91, title II, §201, Oct. 20, 2005, 119 Stat. 2093.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B)(i), is classified generally to Title 26, Internal Revenue Code.

The Temporary Extended Unemployment Compensation Act of 2002, referred to in subsec. (d)(2)(A)(i)(I), (3)(B)(i)(II), is title II of Pub. L. 107–147, Mar. 9, 2002, 116 Stat. 26, which is set out as a note under section 3304 of Title 26, Internal Revenue Code. Section 209(a)(1) of the Act amended this section. For complete classification of this Act to the Code, see Tables.

Section 5402 of Public Law 105–33, referred to in subsec. (d)(2)(A)(i)(II), is section 5402 of Pub. L. 105–33, title V, Aug. 5, 1997, 111 Stat. 603, which amended section 1102 of this title and enacted provisions set out as a note under section 1102 of this title.

PRIOR PROVISIONS

A prior section 1103, act Aug. 14, 1935, ch. 531, title IX, §903, 49 Stat. 640, related to approval and certification of State laws. For further details, see Prior Law note set out preceding section 1101 of this title.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–91 added subsec. (e).

2002—Subsec. (a)(3). Pub. L. 107–147, §209(a)(1)(A), struck out par. (3) which related to disposition of excess amounts remaining in the employment security administration account as of the close of fiscal year 1999, 2000, or 2001.

Subsec. (c)(2). Pub. L. 107–147, §209(a)(1)(B), struck out concluding provisions which read as follows: ''Any

amount allocated to a State under this section for fiscal year 2000, 2001, or 2002 may be used by such State only to pay expenses incurred by it for the administration of its unemployment compensation law, and may be so used by it without regard to any of the conditions prescribed in any of the preceding provisions of this paragraph.''

Subsec. (d). Pub. L. 107–147, § 209(b), added subsec. (d).

1997—Subsec. (a)(3). Pub. L. 105–33, § 5403(a), added par. (3).

Subsec. (c)(2). Pub. L. 105–33, § 5403(b), inserted concluding provisions.

1990—Subsec. (a)(2). Pub. L. 101–508, § 5021(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Each State's share of the funds to be transferred under this subsection as of any October 1—

''(A) shall be determined by the Secretary of Labor and certified by him to the Secretary of the Treasury before that date on the basis of reports furnished by the States to the Secretary of Labor before September 1, and

''(B) shall bear the same ratio to the total amount to be so transferred as the amount of wages subject to contributions under such State's unemployment compensation law during the preceding calendar year which have been reported to the State before August 1 bears to the total of wages subject to contributions under all State unemployment compensation laws during such calendar year which have been reported to the States before August 1.''

Subsec. (c)(2). Pub. L. 101–508, § 5021(b), added subpars. (D) and (E) and struck out former subpar. (D) and last sentence which required a State's appropriation law to limit the total amount which may be obligated during a twelve-month or transitional period from its account.

1987—Subsec. (a)(1). Pub. L. 100–203 inserted ''and interest'' after ''all advances''.

1982—Subsec. (c)(2). Pub. L. 97–248, § 192(a), substituted ''thirty-four'' for ''twenty-four'' wherever appearing, and ''thirty-fourth'' for ''twenty-fourth'' in provisions following subpar. (D).

Subsec. (c)(3). Pub. L. 97–248, § 192(b), added par. (3).

1976—Subsec. (a)(2). Pub. L. 94–273, § 3(23) substituted ''October'' for ''July''.

Subsec. (a)(2)(A). Pub. L. 94–273, § 2(20), substituted ''September'' for ''June''.

Subsec. (a)(2)(B). Pub. L. 94–273, § 23, substituted ''August'' for ''May'' wherever appearing.

Subsec. (b)(1). Pub. L. 94–273, § 3(23), substituted ''October'' for ''July''.

Subsec. (c)(2). Pub. L. 94–273, § 41, in subpar. (D) and provisions following subpar. (D) substituted provisions relating to determination based on a twelve-month period (as prescribed in the law of the State), or during a transitional period of less than twelve months caused by a change in the twelve-month period (as prescribed in the law of the State), for provisions relating to determination based on a fiscal year period.

1974—Subsec. (b)(3). Pub. L. 93–368 struck out par. (3) which related to reductions in the amount transferable to the account of any State by reason of emergency compensation paid to any individual for a week of unemployment ending after June 30, 1972.

1972—Subsec. (b)(3). Pub. L. 92–329 inserted provisions relating to reductions in the amount transferable to the account of any State by reason of emergency compensation paid to any individual for a week of unemployment ending after June 30, 1972.

1971—Subsec. (b)(3). Pub. L. 92–224, § 204(c), added par. (3).

Subsec. (c)(2). Pub. L. 92–224, § 1, substituted ''twenty-four preceding fiscal years'' and ''such twenty-five fiscal years'' for ''fourteen preceding fiscal years'' and ''such fifteen fiscal years'' in subpar. (D) of first sentence and ''twenty-fourth preceding fiscal year'' for ''fourteenth preceding fiscal year'' in second sentence.

1970—Subsec. (a)(1). Pub. L. 91–373 inserted references to the limits provided in sections 1102(a) and 1105(b)(2) of this title, advances pursuant to section 1105(d) of this title, and the amount provided in section 1101(f)(3)(A) of this title.

1968—Subsec. (c). Pub. L. 90–430 substituted in par. (2)(D)(i) ''fourteen'' for ''nine'', in par. (2)(D)(ii) ''fifteen'' for ''ten'', and in provisions following par. (2)(D) ''fourteenth'' for ''ninth''.

1963—Subsec. (c)(2). Pub. L. 88–31 substituted ''nine preceding fiscal years'' for ''four preceding fiscal years'', ''ten fiscal years'' for ''five fiscal years'' in cl. (D), and ''ninth preceding fiscal year'' for ''fourth preceding fiscal year'' in last sentence.

1960—Subsec. (a). Pub. L. 86–778 substituted provisions of par. (1) for first sentence of the section which read ''So much of any amount transferred to the Unemployment Trust Fund at the close of any fiscal year under section 1101(a) of this title as is not credited to the Federal unemployment account under section 1102 of this title shall be credited (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund'' and designated existing provisions of second sentence as part (2), substituting ''transferred'' for ''credited'', and striking out ''on or'' before ''before'' in subpar. (A).

Subsec. (b). Pub. L. 86–778 redesignated existing provisions as par. (1) and cls. (1) and (2) thereof as subpars. (A) and (B), substituted ''section 3304 of title 26'' for ''section 1603 of title 26'', in two places, and ''transfer to such States' account'', ''transferred'', and ''transfer'' for ''crediting to such States' account'', ''credited'' and ''credit'', respectively, except where already reading ''shall transfer'', and added par. (2).

Subsec. (c). Pub. L. 86–778 substituted ''transferred'' for ''credited'', wherever appearing, ''obligation'' for ''expenditure'' in par. (2)(B), ''obligated'' for ''so used'' in par. (2)(D), and ''obligated for administration'' for ''used'' in concluding par., inserted references to subsection (b) in pars. (1) and (2)(D), and struck out ''any of'' before ''such five fiscal years'' in par. (2)(D).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5021(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to fiscal years beginning after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9155(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1105 and 1323 of this title] shall apply to advances made on or after the date of the enactment of this Act [Dec. 22, 1987].''

REGULATIONS

Pub. L. 109–91, title II, § 203, Oct. 20, 2005, 119 Stat. 2094, provided that: ''The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this title [amending this section] and any amendment made by this title.''

§ 1104. Unemployment Trust Fund

(a) Establishment

There is hereby established in the Treasury of the United States a trust fund to be known as the ''Unemployment Trust Fund'', hereinafter in this subchapter called the ''Fund''. The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund, or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account or the railroad unemployment insurance administration fund, or otherwise deposited in or credited to the Fund or any account therein. Such deposit may be made directly with the Secretary of the Treasury, with any depositary designated by him for such purpose, or with any Federal Reserve Bank.

(b) Investments

It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition. Advances made to the Federal unemployment account pursuant to section 1323 of this title shall not be invested.

(c) Sale or redemption of obligations

Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) Treatment of interest and proceeds

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) Separate book accounts

The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency, the employment security administration account, the Federal unemployment account, the railroad unemployment insurance account, and the railroad unemployment insurance administration fund and shall credit quarterly (on March 31, June 30, September 30, and December 31, of each year) to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date. For the purpose of this subsection, the average daily balance shall be computed—

(1) in the case of any State account, by reducing (but not below zero) the amount in the account by the balance of advances made to the State under section 1321 of this title, and

(2) in the case of the Federal unemployment account—

(A) by adding to the amount in the account the aggregate of the reductions under paragraph (1), and

(B) by subtracting from the sum so obtained the balance of advances made under section 1323 of this title to the account.

(f) Payment to State agencies and Railroad Retirement Board

The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment. The Secretary of the Treasury is authorized and directed to make such payments out of the railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment.

(g) Federal unemployment account; establishment

There is hereby established in the Unemployment Trust Fund a Federal unemployment account.

(Aug. 14, 1935, ch. 531, title IX, §904, 49 Stat. 640; June 25, 1938, ch. 680, §10(e)–(g), 52 Stat. 1104, 1105; Oct. 3, 1944, ch. 480, title IV, §401, 58 Stat. 789; Aug. 6, 1947, ch. 510, §5(a), 61 Stat. 794; Aug. 28, 1950, ch. 809, title IV, §404(b), 64 Stat. 560; Aug. 5, 1954, ch. 657, §5(b)–(f), 68 Stat. 673; Pub. L. 85–927, pt. II, §204, Sept. 6, 1958, 72 Stat. 1782; Pub. L. 86–346, title I, §104(3), Sept. 22, 1959, 73 Stat. 622; Pub. L. 86–778, title V, §521, Sept. 13, 1960, 74 Stat. 976; Pub. L. 98–369, div. B, title VI, §2663(d)(3), July 18, 1984, 98 Stat. 1167; Pub. L. 102–318, title V, §531(d)(3), July 3, 1992, 106 Stat. 317.)

AMENDMENTS

1992—Subsec. (g). Pub. L. 102–318 struck out after the first sentence the following: ''There is hereby authorized to be appropriated to such Federal unemployment account a sum equal to (1) the excess of taxes collected prior to July 1, 1946, under title IX of this Act or under the Federal Unemployment Tax Act, over the total unemployment administrative expenditures made prior to July 1, 1946, plus (2) the excess of taxes collected under the Federal Unemployment Tax Act after June 30, 1946, and prior to July 1, 1953, over the unemployment administrative expenditures made after June 30, 1946, and prior to July 1, 1953. As used in this subsection, the term 'unemployment administrative expenditures' means expenditures for grants under subchapter III of this chapter, expenditures for the administration of that subchapter by the Secretary of Health and Human Services, or the Secretary of Labor, and expenditures for the administration of title IX of this Act, or of the Federal Unemployment Tax Act, by the Department of the Treasury, the Secretary of Health and Human Services, or the Secretary of Labor. For the purposes of this subsection, there shall be deducted from the total amount of taxes collected prior to July 1, 1943, under title IX of this Act, the sum of $40,561,886.43 which was authorized to be appropriated by the Act of August 24, 1937 (50 Stat. 754), and the sum of $18,451,846 which was authorized to be appropriated by section 361(b) of title 45.''

1984—Subsec. (b). Pub. L. 98–369 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended''.

1960—Subsec. (a). Pub. L. 86–778 substituted ''with any depositary designated by him for such purpose, or with

any Federal Reserve Bank'' for ''or with any Federal Reserve bank or member bank of the Federal Reserve System designated by him for such purpose''.

Subsec. (b). Pub. L. 86–778 substituted ''Second Liberty Bond Act, as amended'' and ''section 1323'' for ''section 752 of title 31'' and ''section 1322(c)'', respectively, and inserted ''made'' after ''Advances''.

Subsec. (e). Pub. L. 86–778 provided for the maintenance of a separate book account for the employment security administration account and substituted ''balance of advances made to the State under section 1321 of this title'' for ''aggregate of the outstanding advances under section 1321 of this title from the Federal unemployment account'' in par. (1) and ''balance of advances made under section 1323 of this title to the account'' for ''aggregate of the outstanding advances from the Treasury to the account pursuant to section 1322(c) of this title''.

Subsec. (g). Pub. L. 86–778 redesignated former subsec. (h) as (g).

1959—Subsec. (b). Pub. L. 86–346 substituted ''on original issue at the issue price'' for ''on original issue at par''.

1958—Subsec. (a). Pub. L. 85–927, § 204(a), inserted ''or the railroad unemployment insurance administration fund''.

Subsec. (e). Pub. L. 85–927, § 204(b), substituted ''the railroad unemployment insurance account, and the railroad unemployment insurance administration fund'' for ''and the railroad unemployment insurance account''.

Subsec. (f). Pub. L. 85–927, § 204(c), substituted ''railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment'' for ''fund as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the railroad unemployment insurance account at the time of such payment''.

1954—Subsec. (a). Act Aug. 5, 1954, § 5(b), substituted ''or otherwise deposited in or credited to the Fund or any account therein'' for ''or deposited pursuant to appropriations to the Federal unemployment account''.

Subsec. (b). Act Aug. 5, 1954, § 5(c), inserted provision that advances to the Federal unemployment account pursuant to section 1323 of this title shall not be invested.

Subsec. (e). Act Aug. 5, 1954, § 5(d), inserted ''For the purposes of this subsection, the average daily balance shall be computed—

''(1) in the case of any State account, by reducing (but not below zero) the amount in the account by the aggregate of the outstanding advances under section 1201 from the Federal unemployment account, and

''(2) in the case of the Federal unemployment account, (A) by adding to the amount in the account the aggregate of the reductions under paragraph (1), and (B) by subtracting from the sum so obtained the aggregate of the outstanding advances from the Treasury to the account pursuant to section 1202(c).''

Subsec. (g). Act Aug. 5, 1954, § 5(e), repealed subsec. (g) which authorized Secretary of Treasury to make transfers from Federal unemployment account to account of any State in Unemployment Trust Fund.

Subsec. (h). Act Aug. 5, 1954, § 5(f), substituted a new cl. (2) in second sentence and repealed the third sentence: ''Any amounts in the Federal unemployment account on April 1952, and any amounts repaid to such account after such date, shall be covered into the general fund of the Treasury.''

1950—Subsec. (h). Act Aug. 28, 1950, substituted ''prior to July 1, 1951'' for ''prior to July 1, 1949'', ''on July 1, 1951, and ending on December 31, 1951'' for ''on July 1, 1949, and ending on December 31, 1949'' in cl. (2) of second sentence, and ''April 1, 1952'' for ''April 1, 1950'' in third sentence.

1947—Subsec. (h). Act Aug. 6, 1947, amended subsec. (h) generally, and, among other changes, changed the periods for which excess of tax collections over administrative expenditures could be appropriated to the unemployment account, limited authorized appropriations for the unemployment account to the excess collections for the period ending Dec. 31, 1949, provided for amounts in such account on Apr. 1, 1950, and any repayments to the account after such date be covered into the general fund of the Treasury, and provided for an additional deduction of $18,451,846 from the total amount of taxes collected prior to July 1, 1943.

1944—Subsec. (a). Act Oct. 3, 1944, § 401(a), inserted '', or deposited pursuant to appropriations to the Federal unemployment account'' after ''unemployment insurance account'' in second sentence.

Subsec. (e). Act Oct. 3, 1944, § 401(b), inserted '', the Federal unemployment account'' after ''a separate book account for each State agency''.

Subsecs. (g), (h). Act Oct. 3, 1944, § 401(c), added subsecs. (g) and (h).

1938—Subsec. (a). Act June 25, 1938, § 10(e), inserted ''or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account''.

Subsec. (e). Act June 25, 1938, § 10(f), inserted ''and the railroad unemployment insurance account''.

Subsec. (f). Act June 25, 1938, § 10(g), inserted second sentence.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–927 effective Sept. 6, 1958, except as otherwise indicated, see section 207(c) of Pub. L. 85–927, set out as a note under section 351 of Title 45, Railroads.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 404(c) of act Aug. 28, 1950, provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section and section 1321 of this title] shall be effective January 1, 1950.''

TERMINATION DATE

Section 4 of act Aug. 6, 1947, provided: ''Section 603 of the War Mobilization and Reconversion Act of 1944 [formerly set out as a note under section 1651 of Appendix to Title 50, War and National Defense] (terminating the provisions of such Act [sections 1651 to 1678 of Appendix to title 50] on June 30, 1947) shall not be applicable in the case of the amendments made by title IV of such Act [amending sections 1666 and 1667 of Appendix to Title 50] to the Social Security Act [this section and section 1321 of this title].''

PAYMENTS TO STATES

Act Aug. 24, 1937, ch. 755, 50 Stat. 754, provided for payments to States of 90 per cent of proceeds of the unemployment tax collected prior to Jan. 31, 1938, where State had enacted an approved unemployment-compensation law during 1937.

§ 1105. Extended Unemployment Compensation Account

(a) Establishment

There is hereby established in the Unemployment Trust Fund an extended unemployment compensation account. For the purposes provided for in section 1104(e) of this title, such account shall be maintained as a separate book account.

(b) Transfers to account

(1) Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month) from the employment security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount (determined by such Secretary) equal to 20 percent of the amount by which—

(A) the transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month, exceed

(B) the payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred.

(2) Whenever the Secretary of the Treasury determines pursuant to section 1101(f) of this title that there is an excess in the employment security administration account as of the close of any fiscal year beginning after June 30, 1972, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the total amount of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to whichever of the following is the greater:

(A) $750,000,000, or

(B) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to 0.5 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

(3) The Secretary of the Treasury shall make no transfer pursuant to paragraph (1) as of the close of any month if he determines that the amount in the extended unemployment compensation account is equal to (or in excess of) the limitation provided in paragraph (2).

(c) Transfers to State accounts

Amounts in the extended unemployment compensation account shall be available for transfer to the accounts of the States in the Unemployment Trust Fund as provided in section 204(e) of the Federal-State Extended Unemployment Compensation Act of 1970.

(d) Advances to account; repayment

There are hereby authorized to be appropriated, without fiscal year limitation, to the extended unemployment compensation account, as repayable advances, such sums as may be necessary to carry out the purposes of the Federal-State Extended Unemployment Compensation Act of 1970. Amounts appropriated as repayable advances shall be repaid by transfers from the extended unemployment compensation account to the general fund of the Treasury, at such times as the amount in the extended unemployment compensation account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Repayments under the preceding sentence shall be made whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that the amount then in the account exceeds the amount necessary to meet the anticipated payments from the account during the next 3 months. Any amount transferred as a repayment under this subsection shall be credited against, and shall operate to reduce, any balance of advances repayable under this subsection. Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.

(Aug. 14, 1935, ch. 531, title IX, §905, as added Pub. L. 87–6, §13, Mar. 24, 1961, 75 Stat. 14; amended Pub. L. 88–31, §2(c), May 29, 1963, 77 Stat. 51; Pub. L. 91–373, title III, §305(a), Aug. 10, 1970, 84 Stat. 716; Pub. L. 92–329, §2(c), June 30, 1972, 86 Stat. 398; Pub. L. 94–566, title II, §211(e)(2) [(c)(2)], Oct. 20, 1976, 90 Stat. 2677; Pub. L. 97–248, title II, §§271(b)(2)(B), 275, Sept. 3, 1982, 96 Stat. 555, 558; Pub. L. 100–203, title IX, §§9154(b)(2), (c)(1), 9155(a), Dec. 22, 1987, 101 Stat. 1330–326; Pub. L. 102–318, title V, §531(a), July 3, 1992, 106 Stat. 315; Pub. L. 103–152, §5, Nov. 24, 1993, 107 Stat. 1518.)

REFERENCES IN TEXT

The Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsecs. (c) and (d), is Pub. L. 91–373, title II, Aug. 10, 1970, 84 Stat. 708, as amended, which is set out as a note under section 3304 of Title 26, Internal Revenue Code. Section 204(e) of that Act is part of that note. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 1105, act Aug. 14, 1935, ch. 531, title IX, §905, 49 Stat. 641, related to administration, refunds and penalties. For further details, see Prior Law note set out preceding section 1101 of this title.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–152 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month), from the employment security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount determined by him to be equal to the sum of—

''(A) 100 percent of the transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month on account of liabilities referred to in section 1101(b)(1)(B) of this title, plus

''(B) 20 percent of the excess of the transfers to such account pursuant to section 1101(b)(2) of this title during such month on account of amounts referred to in section 1101(b)(1)(A) of this title over the payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (B), proper adjustments shall be made in the amounts subsequently transferred.''

1992—Subsec. (b)(1). Pub. L. 102–318, § 531(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided by paragraph (3), the Secretary of the Treasury shall transfer (as of the close of July 1970, and each month thereafter), from the employment security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount determined by him to be equal, in the case of any month before April 1972, to one-fifth, and in the case of any month after March 1972, to one-tenth, of the amount by which—

''(A) transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month, exceed

''(B) payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred.''

Subsec. (b)(2)(B). Pub. L. 102–318, § 531(a)(2), substituted ''0.5 percent'' for ''three-eighths of 1 percent''.

1987—Subsec. (b)(1). Pub. L. 100–203, § 9154(c)(1), struck out at end ''In the case of any month after March 1983 and before April 1 of the first calendar year to which paragraph (2) of section 3301 of the Federal Unemployment Tax Act applies, the first sentence of this paragraph shall be applied by substituting '40 percent' for 'one-tenth'.''

Subsec. (b)(2)(B). Pub. L. 100–203, § 9154(b)(2), substituted ''three-eighths'' for ''one-eighth''.

Subsec. (d). Pub. L. 100–203, § 9155(a), struck out ''(without interest)'' after ''account, as repayable advances'' and '', without interest,'' after ''shall be repaid'' and inserted sentence at end providing that amounts appropriated as repayable advances for purposes of this subsection shall bear interest.

1982—Subsec. (b)(1). Pub. L. 97–248, § 271(b)(2)(B), substituted ''1983'' for ''1977'', inserted ''1'' after ''April'', and substituted ''40 percent'' for ''five-fourteenths'' in provisions following subpar. (B).

Subsec. (d). Pub. L. 97–248, § 275, inserted provision that repayment shall be made whenever the Secretary of the Treasury determines that the amount then in the account exceeds the amount necessary to meet the anticipated payments from the account during the next 3 months.

1976—Subsec. (b)(1). Pub. L. 94–566 substituted ''In the case of any month after March 1977 and before April of the first calendar year to which paragraph (2) of section 3301 of the Federal Unemployment Tax Act applies, the first sentence of this paragraph shall be applied by substituting 'five-fourteenths' for 'one-tenth' '' for ''In the case of any month after March 1973 and before April 1974, the first sentence of this paragraph shall be applied by substituting 'thirteen fifty-eighths' for 'one-tenth' ''.

1972—Subsec. (b)(1). Pub. L. 92–329 inserted provisions for transfers in the case of any month after March 1973 and before April 1974.

1970—Pub. L. 91–373 substituted provisions for an extended unemployment compensation account for provisions for a Federal extended compensation account.

1963—Subsec. (b). Pub. L. 88–31 inserted ''(with respect to the calendar year 1963), or 5/13 (with respect to the calendar year 1964),''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 531(a) of Pub. L. 102–318 effective July 3, 1992, except that amendment by section 531(a)(2) of Pub. L. 102–318 applicable to fiscal years beginning after Sept. 30, 1993, see section 531(e) of Pub. L. 102–318, set out as a note under section 1102 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9155(a) of Pub. L. 100–203 applicable to advances made on or after Dec. 22, 1987, see section 9155(d) of Pub. L. 100–203, set out as a note under section 1103 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 271(b)(2)(B) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, see section 271(d)(1) of Pub. L. 97–248, as amended, set out as a note under section 3301 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–566 effective Oct. 20, 1976, see section 211(d)(3) of Pub. L. 94–566, set out as a note under section 1101 of this title.

§ 1106. Unemployment compensation research program

(a) The Secretary of Labor shall—

(1) establish a continuing and comprehensive program of research to evaluate the unemployment compensation system. Such research shall include, but not be limited to, a program of factual studies covering the role of unemployment compensation under varying patterns of unemployment including those in seasonal industries, the relationship between the unemployment compensation and other social insurance programs, the effect of State eligibility and disqualification provisions, the personal characteristics, family situations, employment background and experience of claimants, with the results of such studies to be made public; and

(2) establish a program of research to develop information (which shall be made public) as to the effect and impact of extending coverage to excluded groups with first attention to agricultural labor.

(b) To assist in the establishment and provide for the continuation of the comprehensive research program relating to the unemployment compensation system, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter, such sums, not to exceed $8,000,000, as may be necessary to carry out the purposes of this section. From the sums authorized to be appropriated by this subsection the Secretary may provide for the conduct of such research through grants or contracts.

(Aug. 14, 1935, ch. 531, title IX, § 906, as added Pub. L. 91–373, title I, § 141, Aug. 10, 1970, 84 Stat. 705.)

PRIOR PROVISIONS

A prior section 1106, act Aug. 14, 1935, ch. 531, title IX, § 906, 49 Stat. 642, related to excusing payment of tax by engaging in interstate commerce. For further details, see Prior Law note set out preceding section 1101 of this title.

§ 1107. Personnel training

(a) Creation of program

In order to assist in increasing the effectiveness and efficiency of administration of the unemployment compensation program by increasing the number of adequately trained personnel, the Secretary of Labor shall—

(1) provide directly, through State agencies, or through contracts with institutions of higher education or other qualified agencies, organizations, or institutions, programs and courses designed to train individuals to prepare them, or improve their qualifications, for service in the administration of the unemployment compensation program, including claims determinations and adjudication, with such stipends and allowances as may be permitted under regulations of the Secretary;

(2) develop training materials for and provide technical assistance to the State agencies in the operation of their training programs;

(3) under such regulations as he may prescribe, award fellowships and traineeships to persons in the Federal-State employment security agencies, in order to prepare them or improve their qualifications for service in the administration of the unemployment compensation program.

(b) Repayment of costs

The Secretary may, to the extent that he finds such action to be necessary, prescribe requirements to assure that any person receiving a fellowship, traineeship, stipend or allowance shall repay the costs thereof to the extent that such person fails to serve in the Federal-State employment security program for the period prescribed by the Secretary. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the programs established by this section.

(c) Detail of Federal and State employees

The Secretary, with the concurrence of the State, may detail Federal employees to State unemployment compensation administration and the Secretary may concur in the detailing of State employees to the United States Department of Labor for temporary periods for training or for purposes of unemployment compensation administration, and the provisions of section 869b[1] of title 20 or any more general program of interchange enacted by a law amending, supplementing, or replacing section 869b[1] of title 20 shall apply to any such assignment.

(d) Authorization of appropriations

There are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter such sums, not to exceed $5,000,000, as may be necessary to carry out the purposes of this section.

(Aug. 14, 1935, ch. 531, title IX, §907, as added Pub. L. 91–373, title I, §141, Aug. 10, 1970, 84 Stat. 705.)

REFERENCES IN TEXT

Section 869b of title 20, referred to in subsec. (c), was repealed by Pub. L. 91–648, title IV, §403, Jan. 5, 1971, 84 Stat. 1925. Provisions relating to assignment of personnel to and from State and local governments are covered by section 3371 et seq. of Title 5, Government Organization and Employees.

[1] See References in Text note below.

PRIOR PROVISIONS

A prior section 1107, acts Aug. 14, 1935, ch. 531, title IX, §907, 49 Stat. 642; June 25, 1938, ch. 680, §13(a), 52 Stat. 1110, related to definitions. For further details, see Prior Law note set out preceding section 1101 of this title.

§ 1108. Advisory Council on Unemployment Compensation

(a) Establishment

Not later than February 1, 1992, and every 4th year thereafter, the Secretary of Labor shall establish an advisory council to be known as the Advisory Council on Unemployment Compensation (referred to in this section as the ''Council'').

(b) Function

It shall be the function of each Council to evaluate the unemployment compensation program, including the purpose, goals, countercyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and any other aspects of the program and to make recommendations for improvement.

(c) Members

(1) In general

Each Council shall consist of 11 members as follows:

(A) 5 members appointed by the President, to include representatives of business, labor, State government, and the public.

(B) 3 members appointed by the President pro tempore of the Senate, in consultation with the Chairman and ranking member of the Committee on Finance of the Senate.

(C) 3 members appointed by the Speaker of the House of Representatives, in consultation with the Chairman and ranking member of the Committee on Ways and Means of the House of Representatives.

(2) Qualifications

In appointing members under subparagraphs (B) and (C) of paragraph (1), the President pro tempore of the Senate and the Speaker of the House of Representatives shall each appoint—

(A) 1 representative of the interests of business,

(B) 1 representative of the interests of labor, and

(C) 1 representative of the interests of State governments.

(3) Vacancies

A vacancy in any Council shall be filled in the manner in which the original appointment was made.

(4) Chairman

The President shall appoint the Chairman of the Council from among its members.

(d) Staff and other assistance

(1) In general

Each Council may engage any technical assistance (including actuarial services) required by the Council to carry out its functions under this section.

(2) Assistance from Secretary of Labor

The Secretary of Labor shall provide each Council with any staff, office facilities, and

other assistance, and any data prepared by the Department of Labor, required by the Council to carry out its functions under this section.

(e) Compensation

Each member of any Council—

(1) shall be entitled to receive compensation at the rate of pay for level V of the Executive Schedule under section 5316 of title 5 for each day (including travel time) during which such member is engaged in the actual performance of duties vested in the Council, and

(2) while engaged in the performance of such duties away from such member's home or regular place of business, shall be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for persons in the Government employed intermittently.

(f) Report

(1) In general

Not later than February 1 of the third year following the year in which any Council is required to be established under subsection (a) of this section, the Council shall submit to the President and the Congress a report setting forth the findings and recommendations of the Council as a result of its evaluation of the unemployment compensation program under this section.

(2) Report of first Council

The Council shall include in its report required to be submitted by February 1, 1995, the Council's findings and recommendations with respect to determining eligibility for extended unemployment benefits on the basis of unemployment statistics for regions, States, or subdivisions of States.

(Aug. 14, 1935, ch. 531, title IX, § 908, as added Pub. L. 91–373, title I, § 141, Aug. 10, 1970, 84 Stat. 706; amended Pub. L. 98–369, div. B, title VI, § 2663(d)(4), July 18, 1984, 98 Stat. 1167; Pub. L. 102–164, title III, § 303, Nov. 15, 1991, 105 Stat. 1059; Pub. L. 103–152, § 6, Nov. 24, 1993, 107 Stat. 1518.)

CODIFICATION

Section 9 of Pub. L. 102–107, Aug. 17, 1991, 105 Stat. 547, which contained provisions substantially identical to those of section 303 of Pub. L. 102–164, amending this section, did not become effective pursuant to section 10(b) of Pub. L. 102–107, because the President did not take the action required by that section by Aug. 17, 1991.

PRIOR PROVISIONS

A prior section 1108, act Aug. 14, 1935, ch. 531, title IX, § 908, 49 Stat. 643, related to rules and regulations. For further details, see Prior Law note set out preceding section 1101 of this title.

A prior section 1109, act Aug. 14, 1935, ch. 531, title IX, § 909, 49 Stat. 643, related to an additional credit against tax. For further details, see Prior Law note set out preceding section 1101 of this title.

A prior section 1110, act Aug. 14, 1935, ch. 531, title IX, § 910, 49 Stat. 644, related to conditions of additional credit allowance. For further details, see Prior Law note set out preceding section 1101 of this title.

AMENDMENTS

1993—Subsec. (f). Pub. L. 103–152 substituted ''third year'' for ''2d year'' in par. (1) and ''1995'' for ''1994'' in par. (2).

1991—Pub. L. 102–164 amended section generally, substituting present provisions for provisions which in subsec. (a) established the Federal Advisory Council and its membership, in subsec. (b) prescribed the appointment of its members, in subsec. (c) required that secretarial, clerical, and other assistance be made available to the Council, in subsec. (d) provided for compensation of members, in subsec. (e) encouraged the organization of State advisory councils, and in subsec. (f) authorized certain appropriations for the work of the Council.

1984—Subsec. (d). Pub. L. 98–369 substituted ''5703'' for ''5703(b)''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REPORT ON AGRICULTURAL LABOR PERFORMED BY ALIENS

Pub. L. 102–318, title III, § 303(b), July 3, 1992, 106 Stat. 297, directed Advisory Council on Unemployment Compensation to submit a report to Congress, not later than Feb. 1, 1994, on its recommendations with respect to the treatment of agricultural labor performed by aliens.

§ 1109. Federal Employees Compensation Account

There is hereby established in the Unemployment Trust Fund a Federal Employees Compensation Account which shall be used for the purposes specified in section 8509 of title 5. For the purposes provided for in section 1104(e) of this title, such account shall be maintained as a separate book account.

(Aug. 14, 1935, ch. 531, title IX, § 909, as added Pub. L. 96–499, title X, § 1023(a), Dec. 5, 1980, 94 Stat. 2657.)

§ 1110. Borrowing between Federal accounts

(a) In general

Whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that—

(1) the amount in the employment security administration account, Federal unemployment account, or extended unemployment compensation account, is insufficient to meet the anticipated payments from the account,

(2) such insufficiency may cause such account to borrow from the general fund of the Treasury, and

(3) the amount in any other such account exceeds the amount necessary to meet the anticipated payments from such other account,

the Secretary shall transfer to the account referred to in paragraph (1) from the account referred to[1] paragraph (3) an amount equal to the insufficiency determined under paragraph (1) (or, if less, the excess determined under paragraph (3)).

(b) Treatment of advance

Any amount transferred under subsection (a) of this section—

(1) shall be treated as a noninterest-bearing repayable advance, and

(2) shall not be considered in computing the amount in any account for purposes of the application of sections 1101(f)(2), 1102(b), and 1105(b) of this title.

(c) Repayment

Whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that the amount in the account to which an advance is made under subsection (a) of this section exceeds the amount necessary to meet the anticipated payments from the account, the Secretary shall transfer from the account to the account from which the advance was made an amount equal to the lesser of the amount so advanced or such excess.

(Aug. 14, 1935, ch. 531, title IX, §910, as added Pub. L. 102–318, title V, §531(c), July 3, 1992, 106 Stat. 316.)

SUBCHAPTER X—GRANTS TO STATES FOR AID TO BLIND

REPEAL OF SUBCHAPTER X OF THIS CHAPTER; INAPPLICABILITY OF REPEAL TO PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this subchapter is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

§ 1201. Authorization of appropriations

For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health and Human Services, State plans for aid to the blind.

(Aug. 14, 1935, ch. 531, title X, §1001, 49 Stat. 645; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(b), 64 Stat. 558; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, §313(a), 70 Stat. 849; Pub. L. 87–543, title I, §104(c)(3), July 25, 1962, 76 Stat. 186; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXI, §2184(c)(1), Aug. 13, 1981, 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 struck out ''and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support and self-care'' after ''who are blind''.

1962—Pub. L. 87–543 inserted ''to furnish rehabilitation and other services'' before ''to help such individuals'' and ''or retain capability for'' after ''attain''.

1956—Act Aug. 1, 1956, restated purpose to include assistance to individuals to attain self-support or self-care.

1950—Act Aug. 28, 1950, substituted ''Federal Security Administrator'' for ''Social Security Board''.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 1202. State plans for aid to blind

(a) A State plan for aid to the blind must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low-income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid vol-

[1] So in original. Probably should be ''to in''.

unteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; and[1] (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title or assistance under a State program funded under part A of subchapter IV of this chapter; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind, as well as any expenses reasonably attributable to the earning of any such income, except that, in making such determination, the State agency (A) shall disregard the first $85 per month of earned income, plus one-half of earned income in excess of $85 per month, (B) shall, for a period not in excess of twelve months, and may, for a period not in excess of thirty-six months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, and (C) may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than $7.50 of any income; (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan; (10) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (11) effective July 1, 1951, provide that all individuals wishing to make application for aid to the blind shall have opportunity to do so, and that aid to the blind shall be furnished with reasonable promptness to all eligible individuals; (12) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; (13) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the blind to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and (14) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(2) Any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this subchapter. In the case of any State (other than Puerto Rico and the Virgin Islands) which did not have on January 1, 1949, a State plan for aid to the blind approved under this subchapter, the Secretary shall approve a plan of such State for aid to the blind for purposes of this subchapter, even though it does not meet the requirements of clause (8) of subsection (a) of this section, if it meets all other requirements of this subchapter for an approved plan for aid to the blind; but payments under section 1203 of this title shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1203 of this title under a plan approved under this section without regard to the provisions of this sentence.

(Aug. 14, 1935, ch. 531, title X, § 1002, 49 Stat. 645; Aug. 10, 1939, ch. 666, title VII, § 701, 53 Stat. 1397; Aug. 28, 1950, ch. 809, title III, pt. 4, § 341(a)–(e), pt. 6, § 361(c), (d), 64 Stat. 553, 558; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, § 313(b), 70 Stat. 849; Pub. L. 86–778, title VII, § 710, Sept. 13, 1960, 74 Stat. 997; Pub. L. 87–543, title I, §§ 104(a)(3)(H), 106(a)(2), 136(a), 154, July 25, 1962, 76 Stat. 185, 188, 197, 206; Pub. L. 88–650, § 5(a), Oct. 13, 1964, 78 Stat. 1078; Pub. L. 89–97, title IV, § 403(c), July 30, 1965, 79 Stat. 418; Pub. L. 90–248, title II, §§ 210(a)(3), 213(a)(2), Jan. 2, 1968, 81 Stat. 895, 898; Pub. L. 92–603, title IV, §§ 405(b), 406(b), 407(b), 410(b), 413(b), Oct. 30, 1972, 86 Stat. 1488, 1489, 1491, 1492; Pub. L. 98–369, div. B, title VI, § 2651(f), July 18, 1984, 98 Stat. 1149; Pub. L. 104–193, title I, § 108(f), Aug. 22, 1996, 110 Stat. 2168.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsec. (a)(7), is classified to section 601 et seq. of this title.

[1] So in original. The word ''and'' probably should not appear.

AMENDMENTS

1996—Subsec. (a)(7). Pub. L. 104–193 substituted ''assistance under a State program funded under part A of subchapter IV of this chapter'' for ''aid to families with dependent children under the State plan approved under section 602 of this title''.

1984—Subsec. (a)(14). Pub. L. 98–369 added cl. (14).

1972—Subsec. (a)(1). Pub. L. 92–603, §410(b), inserted ''except to the extent permitted by the Secretary with respect to services,'' before ''provide''.

Subsec. (a)(4). Pub. L. 92–603, §407(b), designated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(9). Pub. L. 92–603, §413(b), substituted provisions permitting the use or disclosure of information concerning applicants or recipients to public officials requiring such information in connection with their official duties and to other persons for purposes directly connected with the administration of the State plan, for provisions restricting the use or disclosure of such information to purposes directly connected with the administration of aid to the blind.

Subsec. (a)(13). Pub. L. 92–603, §405(b), inserted provision relating to the use of whatever internal organizational arrangement found appropriate.

Subsec. (b). Pub. L. 92–603, §406(b), inserted provision relating to the furnishing of manuals and other policy issuances to persons without charge and at the option of the State.

1968—Subsec. (a)(5). Pub. L. 90–248, §210(a)(3), designated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(8)(C). Pub. L. 90–248, §213(a)(2), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.

1965—Subsec. (a)(8)(C). Pub. L. 89–97 added subcl. (C).

1964—Subsec. (a)(8). Pub. L. 88–650 permitted the State agency, for a period not in excess of thirty-six months to disregard such additional amounts of other income and resources.

1962—Subsec. (a)(7). Pub. L. 87–543, §104(a)(3)(H), substituted ''aid to families with dependent children'' for ''aid to dependent children''.

Subsec. (a)(8). Pub. L. 87–543, §§106(a)(2), 154, inserted '', as well as any expenses reasonably attributable to the earning of any such income'', and amended the exception provision by striking out ''either (i) the first $50 per month of earned income, or'' after ''disregard'', redesignating subcl. (ii) as (A) and adding subcl. (B).

Subsec. (b). Pub. L. 87–543, §136(a), provided for approval of certain plans of States, without an approved plan on Jan. 1, 1949, meeting all but income and resources requirements, and payment of certain expenditures under such plans.

1960—Subsec. (a)(8). Pub. L. 86–778, §710(b), struck out provision that required the State agency to disregard, alternatively, the first $50 per month of earned income in considering claimant's income and resources in determining need.

Pub. L. 86–778, §710(a), inserted provision that required the State agency to disregard, alternatively, the first $85 per month of earned income plus one-half of earned income in excess of $85 per month in considering claimant's income and resources in determining need.

1956—Subsec. (a)(13). Act Aug. 1, 1956, added cl. (13).

1950—Subsec. (a)(4). Act Aug. 28, 1950, §341(a), substituted ''provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness'' for ''provide for granting to any individual, whose claim for aid is denied, an opportunity for a fair hearing before such State agency''.

Subsec. (a)(7). Act Aug. 28, 1950, §341(b), inserted ''or aid to dependent children under the State plan approved under section 302 of this title''.

Subsec. (a)(8). Act Aug. 28, 1950, §341(c)(2), (d), amended cl. (8) generally, effective July 1, 1952, and struck out ''and'' preceding cl. (9).

Act Aug. 28, 1950, §341(c)(1), amended cl. (8) generally for period beginning Oct. 1, 1950, and ending June 30, 1952.

Subsec. (a)(9). Act Aug. 28, 1950, §341(d), substituted comma for period at end.

Subsec. (a)(10). Act Aug. 28, 1950, §341(e), amended cl. (10) generally. Prior to amendment, cl. (10) read as follows: ''provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist;''.

Act Aug. 28, 1950, §341(d), added cl. (10).

Subsec. (a)(11), (12). Act Aug. 28, 1950, §341(d), added cls. (11) and (12).

Subsec. (b). Act Aug. 28, 1950, §361(c), (d), substituted ''Administrator'' for ''Board'' and ''he'' for ''it''.

1939—Subsec. (a)(5). Act Aug. 10, 1939, §701(a), inserted ''(including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Board shall exercise no authority with respect)'' after ''methods of administration'' and ''proper'' before ''and efficient operation of the plan''.

Subsec. (a)(8), (9). Act Aug. 10, 1939, §701(b), added cls. (8) and (9).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 210(a)(3) of Pub. L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub. L. 90–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 403(c) of Pub. L. 89–97 provided that the amendment made by that section is effective Oct. 1, 1965.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 106(a)(2) of Pub. L. 87–543 effective July 1, 1963, see section 202(a) of Pub. L. 87–543, set out as a note under section 302 of this title.

Section 154 of Pub. L. 87–543 provided that the amendment made by that section is effective July 1, 1963.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 710(a) of Pub. L. 86–778 provided that the amendment made by that section is effective for the period beginning with first day of calendar quarter which begins after Sept. 13, 1960, and ending with close of June 30, 1962.

Section 710(b) of Pub. L. 86–778 provided that the amendment made by that section is effective July 1, 1962.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, effective July 1, 1957, see section 314 [315] of act Aug. 1, 1956, set out as a note under section 302 of this title.

EFFECTIVE AND TERMINATION DATES OF 1950 AMENDMENT

Section 341(c)(1) of act Aug. 28, 1950, provided that the amendment made by that section is effective for the period beginning Oct. 1, 1950, and ending June 30, 1952.

Section 341(c)(2) of act Aug. 28, 1950, provided that the amendment made by that section is effective July 1, 1952.

Section 341(e) of act Aug. 28, 1950, provided that the amendment made by that section is effective July 1, 1952.

Section 341(f) of act Aug. 28, 1950, provided that: ''The amendments made by subsections (b) and (d) [amending this section] shall take effect October 1, 1950; and the amendment made by subsection (a) [amending this section] shall take effect July 1, 1951.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 701(b) of act Aug. 10, 1939, provided that the amendment made by that section is effective July 1, 1941.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary under subsec. (a)(5)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

PUBLIC ACCESS TO STATE DISBURSEMENT RECORDS

Public access to State records of disbursements of funds and payments under this subchapter, see note set out under section 302 of this title.

§ 1202a. Repealed. Pub. L. 87–543, title I, § 136(b), July 25, 1962, 76 Stat. 197

Section, act Aug. 28, 1950, ch. 809, title III, pt. 4, § 344(a), 64 Stat. 554, provided, in the case of any State without a plan for aid to the blind approved on Jan. 1, 1949, for approval of the plan of such a State conforming to all requirements except those relating to determination of need and consideration of resources but conditioned payments to the State meeting the excepted requirement.

EFFECTIVE AND TERMINATION DATES

Section 136(b) of Pub. L. 87–543 also repealed section 344(b) of act Aug. 28, 1950, as amended Sept. 1, 1954, ch. 1206, title III, § 302, 68 Stat. 1097; Apr. 25, 1957, Pub. L. 85–26, 71 Stat. 27; Aug. 28, 1958, Pub. L. 85–840, title V, § 509, 72 Stat. 1051; Sept. 13, 1960, Pub. L. 86–778, title VII, § 706, 74 Stat. 995, which provided that this section should become effective Oct. 1, 1950 and terminate June 30, 1964.

§ 1203. Payment to States

(a) Authorization of payments

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) Repealed. Pub. L. 97–35, title XXI, § 2184(c)(2)(A), Aug. 13, 1981, 95 Stat. 817.

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the blind for such month; and

(3) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) Computation of amounts

The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health and Human Services shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of blind individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the blind furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the Government Accountability Office, pay to the State, at the time or times

fixed by the Secretary of Health and Human Services, the amount so certified.

(Aug. 14, 1935, ch. 531, title X, § 1003, 49 Stat. 646; Aug. 10, 1939, ch. 666, title VII, § 702, 53 Stat. 1397; 1940 Reorg. Plan No. III, § 1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; Aug. 10, 1946, ch. 951, title V, § 503, 60 Stat. 992; June 14, 1948, ch. 468, § 3(c), 62 Stat. 439; Aug. 28, 1950, ch. 809, title III, pt. 4, § 342(a), pt. 6, § 361(c), (d), 64 Stat. 553, 558; July 18, 1952, ch. 945, § 8(c), 66 Stat. 779; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 1, 1954, ch. 1206, title III, § 303(a), 68 Stat. 1097; Aug. 1, 1956, ch. 836, title III, §§ 303, 313(c), 343, 70 Stat. 847, 849, 853; Pub. L. 85–840, title V, § 503, Aug. 28, 1958, 72 Stat. 1049; Pub. L. 87–64, title III, § 303(b), June 30, 1961, 75 Stat. 143; Pub. L. 87–543, title I, §§ 101(a)(3), (b)(3), 132(b), July 25, 1962, 76 Stat. 176, 180, 195; Pub. L. 89–97, title I, § 122, title IV, § 401(d), July 30, 1965, 79 Stat. 353, 415; Pub. L. 90–248, title II, § 212(b), Jan. 2, 1968, 81 Stat. 897; Pub. L. 92–512, title III, § 301(b), (d), Oct. 20, 1972, 86 Stat. 946, 947; Pub. L. 93–647, §§ 3(e)(2), 5(c), Jan. 4, 1975, 88 Stat. 2349, 2350; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXI, § 2184(c)(2), title XXIII, § 2353(e), Aug. 13, 1981, 95 Stat. 817, 872; Pub. L. 99–603, title I, § 121(b)(4), Nov. 6, 1986, 100 Stat. 3391; Pub. L. 103–66, title XIII, § 13741(b), Aug. 10, 1993, 107 Stat. 663; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1993—Subsec. (a)(3). Pub. L. 103–66 substituted ''50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.'' for ''the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

''(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

''(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title; plus

''(C) one-half of the remainder of such expenditures.''

1986—Subsec. (a)(3)(B), (C). Pub. L. 99–603 added subpar. (B) and redesignated former subpar. (B) as (C).

1981—Subsec. (a)(1). Pub. L. 97–35, § 2184(c)(2)(A), struck out par. (1) which provided for computation of amounts payable in the case of any State other than Puerto Rico, the Virgin Islands, and Guam.

Subsec. (a)(2). Pub. L. 97–35, § 2184(c)(2)(B), struck out ''(including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)'' after ''under the State plan''.

Subsec. (a)(3). Pub. L. 97–35, § 2353(e)(1)(A), redesignated subpar. (A)(iv) as subpar. (A), struck out former subpars. (A)(i), which included services prescribed pursuant to subsec. (c)(1) of this section and provided to applicants for or recipients of aid to the blind to help them attain self-support, (A)(ii), which included other services, specified by the Secretary as likely to prevent or reduce dependency, and (A)(iii), which included any of the services in subpars. (A)(i) and (ii) deemed appropriate for individuals likely to become applicants for or recipients of aid to the blind, redesignated former subpar. (C) as (B), and struck out former subpar. (B), which included one-half of so much of the expenditures, not included in subpar. (A), as are for services for applicants for or recipients of aid to the blind or individuals likely to become such applicants or recipients, and subpars. (D) and (E) and provision following subpar. (E), which specified what services were includible.

Subsec. (a)(4). Pub. L. 97–35, § 2353(e)(1)(B), struck out par. (4) which provided payment, in the case of any State whose plan approved under section 1202 of this title did not meet the requirements of subsec. (c)(1) of this section, of an amount equal to one-half of the total of the sums expended during the quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

Subsec. (c). Pub. L. 97–35, § 2353(e)(2), struck out subsec. (c) which prescribed eligibility requirements for payments.

1975—Subsec. (a). Pub. L. 93–647, § 3(e)(2), struck out ''(subject to section 1320b of this title)'' after ''the Secretary of the Treasury shall''.

Subsec. (a)(3)(A)(iv). Pub. L. 93–647, § 5(c), inserted ''(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)'' after ''training''.

1972—Subsec. (a). Pub. L. 92–512, § 301(d), substituted ''shall (subject to section 1320b of this title) pay'' for ''shall pay'' in provisions preceding par. (1).

Subsec. (a)(3)(E). Pub. L. 92–512, § 301(b), substituted ''under conditions which shall be'' for ''subject to limitations''.

1968—Subsec. (a)(3)(D). Pub. L. 90–248 inserted '', except to the extent specified by the Secretary'' after ''shall'' in introductory text to subpar. (D).

1965—Subsec. (a)(1). Pub. L. 89–97, §§ 122, 401(d), inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase appearing in so much of par. (1) as precedes cl. (A); and substituted ''31/37'' and ''$37'' for ''29/35'' and ''$35'' in subpar. (A) and ''$75'' for ''$70'' in subpar. (B), respectively.

Subsec. (a)(2). Pub. L. 89–97, § 122, inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase.

1962—Subsec. (a)(1). Pub. L. 87–543, § 132(b), substituted ''29/35'' and ''$35'' for ''four-fifths'' and ''$31'', respectively, in subpar. (A) and ''$70'' for ''$66'' in subpar. (B).

Subsec. (a)(2). Pub. L. 87–543, § 132(b), substituted ''$37.50'' for ''$35.50''.

Subsec. (a)(3). Pub. L. 87–543, § 101(a)(3), (b)(3)(A), inserted in opening provisions ''whose State plan approved under section 1202 of this title meets the requirements of subsection (c)(1) of this section'' after ''any State'', and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per centum of the quarterly expenses for certain prescribed services to help attain and retain capability for self-support or self-care, services likely to prevent or reduce dependency, and services appropriate for individuals who were or are likely

to become applicants for or recipients of aid to the blind and request such services, and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff service of State or local public assistance agencies to applicants for and recipients of aid to the blind to help them attain self-support or self-care.

Subsec. (a)(4). Pub. L. 87–543, §101(b)(3)(B), added par. (4).

Subsec. (c). Pub. L. 87–543, §101(b)(3)(C), added subsec. (c).

1961—Subsec. (a). Pub. L. 87–64 substituted ''$31'' for ''$30'' and ''$66'' for ''$65'' in cl. (1), and ''$35.50'' for ''$35'' in cl. (2).

1958—Subsec. (a). Pub. L. 85–840 increased the payments to the States to four-fifths of the first $30 of the average monthly payment per recipient including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus the Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, increased the average monthly payment to Puerto Rico and the Virgin Islands from $30 to $35, excluded Guam from the provisions which authorize an average monthly payment of $65 and included Guam within the provisions which authorize an average monthly payment of $35, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956—Subsec. (a). Act Aug. 1, 1956, §303, substituted ''during such quarter as aid to the blind in the form of money payments under the State plan'' for ''during such quarter as aid to the blind under the State plan'' in cls. (1) and (2), ''who received aid to the blind in the form of money payments for such month'' for ''who received aid to the blind for such month'' in par. (a) of cl. (1), and inserted cl. (4).

Act Aug. 1, 1956, §313(c), struck out '', which shall be used exclusively as aid to the blind,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), and substituted ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of aid to the blind to help them attain self-support or self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to the blind, or both, and for no other purpose'' in cl. (3).

Act Aug. 1, 1956, §343, substituted ''October 1, 1956'' for ''October 1, 1952'', struck out '', which shall be used exclusively as aid to the blind,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), substituted ''$60'' for ''$55,'' ''the product of $30'' for ''the product of $25'', ''Secretary of Health, Education, and Welfare'' for ''Secretary'', and ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of aid to the blind to help them attain self-support or self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to the blind, or both, and for no other purpose''.

1954—Subsec. (b)(1). Act Sept. 1, 1954, substituted ''the State's proportionate share'' for ''one-half''.

1952—Subsec. (a). Act July 18, 1952, increased the Federal share of the State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing the Federal share of public assistance for Puerto Rico and the Virgin Islands.

1950—Subsec. (a). Act Aug. 28, 1950, §342(a), provided a new method of computation of the Federal portion of aid to the blind.

Subsec. (b). Act Aug. 28, 1950, §361(c), (d), substituted ''Administrator'' for ''Board''.

1948—Subsec. (a). Act June 14, 1948, substituted ''$50'' for ''$45'' and ''$20'' for ''$15''.

1946—Subsec. (a). Act Aug. 10, 1946, §503(a), temporarily increased the maximum monthly State expenditure to which the Federal government will contribute from $40 to $45 and increased the Federal contribution for aid to the blind from one-half the State's expenditure to two-thirds such expenditure up to $15 monthly per individual plus one-half the State's expenditure over $15. See Effective and Termination Date of 1946 Amendment note below.

Subsec. (b). Act Aug. 10, 1946, §503(b), temporarily substituted ''the State's proportionate share'' for ''one-half'' in par. (1). See Effective and Termination Date of 1946 Amendment note below.

1939—Act Aug. 10. 1939, amended section generally.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Apr. 1, 1994, with special rule for States whose legislature meets biennially, and does not have regular session scheduled in calendar year 1994, see section 13741(c) of Pub. L. 103–66, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(e) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 3(e)(2) of Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

Amendment by section 5(c) of Pub. L. 93–647 effective with respect to payments for quarters commencing after Sept. 30, 1975, see section 7(a) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 301(b) of Pub. L. 92–512 effective Jan. 1, 1973, and amendment by section 301(d) of Pub. L. 92–512 effective July 1, 1972, see section 301(e) of Pub. L. 92–512, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 effective Jan. 1, 1968, see section 212(e) of Pub. L. 90–248, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 401(d) of Pub. L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter, see section 401(f) of Pub. L. 89–97, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 101(a)(3) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan

approved under subchapter I, IV, X, or XIV of this chapter, as the case may be made after Aug. 31, 1962, and amendment by section 101(b)(3) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after June 30, 1963, see section 202(f) of Pub. L. 87–543, set out as a note under section 303 of this title.

Amendment by section 132(b) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Sept. 30, 1962, see section 202(d) of Pub. L. 87–543, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 applicable only in the case of expenditures made after Sept. 30, 1961, and before July 1, 1962, under a State plan approved under subchapters I, X, or XIV of this chapter, see section 303(e) of Pub. L. 87–64, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1956 AMENDMENT

Amendment by section 303 of act Aug. 1, 1956, effective July 1, 1957, see section 305 of act Aug. 1, 1956, set out as a note under section 303 of this title.

Amendment by section 343 of act Aug. 1, 1956, effective only for period beginning Oct. 1, 1956, and ending with close of June 30, 1959, see section 345 of act Aug. 1, 1956, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

Amendment by act July 18, 1952, effective for the period beginning Oct. 1, 1952, and ending Sept. 30, 1956, see section 8(e) of act July 18, 1952, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 342(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950.''

EFFECTIVE DATE OF 1948 AMENDMENT

Amendment by act June 14, 1948, effective Oct. 1, 1948, see section 3(d) of act June 14, 1948, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1946 AMENDMENT

Amendment by section 503 of act Aug. 10, 1946, effective only for period beginning Oct. 1, 1946, and ending with close of June 30, 1950, see section 504 of act Aug. 10, 1946, as amended, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 702 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Fiscal Service'' substituted for ''Division of Disbursement'' in subsec. (b)(3), on authority of section 1(a)(1) of Reorg. Plan No. III of 1940, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees, which consolidated such division into the Fiscal Service of the Treasury Department. See section 306 of Title 31, Money and Finance.

NONDUPLICATION OF PAYMENTS TO STATES, PROHIBITION OF PAYMENTS AFTER DECEMBER 31, 1969

Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89–97, set out as a note under section 1396b of this title.

ELECTION OF PAYMENTS UNDER COMBINED STATE PLAN RATHER THAN SEPARATE PLANS

Payments to States under combined State plan under subchapter XVI of this chapter as precluding payment under State plan conforming to this subchapter, see section 141(b) of Pub. L. 87–543.

§ 1204. Operation of State plans

In the case of any State plan for aid to the blind which has been approved by the Secretary of Health and Human Services, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1202(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1202(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title X, § 1004, 49 Stat. 646; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 90–248, title II, § 245, Jan. 2, 1968, 81 Stat. 918; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1968—Pub. L. 90–248 inserted ''(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)'' after ''further payments will not be made to the State'' and substituted in last sentence ''further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)'' for ''further certification to the Secretary of the Treasury with respect to such State''.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' and ''his'' for ''its''.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 1205. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title X, § 1005, 49 Stat. 647, made available $30,000 for the fiscal year ending June 30, 1936, for expenses in administering sections 1201 to 1204 of this title.

REPEALS

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section was repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

§ 1206. "Aid to the blind" defined

For the purposes of this subchapter, the term ''aid to the blind'' means money payments to blind individuals who are needy, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1202 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the blind to be paid (and in conjunction with other income and resources), meet all the need[1] of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) of this subsection for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of 90 consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for 30 consecutive days in the case of such an individual who has maintained his residence in such State during such period or 90 consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.

(Aug. 14, 1935, ch. 531, title X, § 1006, 49 Stat. 647; Aug. 10, 1939, ch. 666, title VII, § 703, 53 Stat. 1398; Aug. 28, 1950, ch. 809, title III, pt. 4, § 343(a), 64 Stat. 554; Pub. L. 87–543, title I, § 156(c), July 25, 1962, 76 Stat. 207; Pub. L. 89–97, title II, § 221(b), title IV, § 402(c), July 30, 1965, 79 Stat. 358, 416; Pub. L. 92–603, title IV, §§ 408(b), 409(b), Oct. 30, 1972, 86 Stat. 1490; Pub. L. 97–35, title XXI, § 2184(c)(3), Aug. 13, 1981, 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 struck out in provision preceding par. (1) '', or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of,'' after ''money payments to''.

1972—Pub. L. 92–603 authorized the State, at its option, to include within term ''aid to the blind'' provisions relating to money payments to an individual absent from such State for more than 90 consecutive days, and provisions relating to rent payments made directly to a public housing agency.

1965—Pub. L. 89–97 struck out from definition of ''aid to the blind'' the exclusion of payments to or medical care in behalf of any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof; and extended definition of ''aid to the blind'' to include payments

[1] So in original. Probably should be ''needs''.

made on behalf of the needy individual to another individual who (as determined in accordance with standards determined by the Secretary) is interested in or concerned with the welfare of such needy individual and enumerated the five characteristics required of State plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs of the individual, special efforts to protect welfare, periodic review, and opportunity for fair hearing, respectively.

1962—Pub. L. 87–543 inserted ''(if provided in or after the third month before the month in which the recipient makes application for aid)'' before ''medical care''.

1950—Act Aug. 28, 1950, redefined ''aid to the blind''.

1939—Act Aug. 10, 1939, redefined ''aid to the blind'' to include those individuals who are needy.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221(b) of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 302 of this title.

Amendment by section 402(c) of Pub. L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a State plan approved under subchapters I, X, XIV, or XVI of this chapter, see section 402(e) of Pub. L. 89–97, set out as a note under section 306 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 156(c) of Pub. L. 87–543 applicable in the case of applications made after Sept. 30, 1962, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, see section 156(e) of Pub. L. 87–543, set out as a note under section 306 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 343(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950, except that the exclusion of money payments to needy individuals described in clause (a) or (b) of section 1006 of the Social Security Act [this section] as so amended shall, in the case of any of such individuals who are not patients in a public institution, be effective July 1, 1952.''

SUBCHAPTER XI—GENERAL PROVISIONS, PEER REVIEW, AND ADMINISTRATIVE SIMPLIFICATION

PART A—GENERAL PROVISIONS

§ 1301. Definitions

(a) When used in this chapter—

(1) The term ''State'', except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico, and when used in subchapters IV, V, VII, XI, XIX, and XXI of this chapter includes the Virgin Islands and Guam. Such term when used in subchapters III, IX, and XII of this chapter also includes the Virgin Islands. Such term when used in subchapter V and in part B of this subchapter of this chapter also includes American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. Such term when used in subchapters XIX and XXI of this chapter also includes the Northern Mariana Islands and American Samoa. In the case of Puerto Rico, the Virgin Islands, and Guam, subchapters I, X, and XIV, and subchapter XVI of this chapter (as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972) shall continue to apply, and the term ''State'' when used in such subchapters (but not in subchapter XVI of this chapter as in effect pursuant to such amendment after December 31, 1973) includes Puerto Rico, the Virgin Islands, and Guam. Such term when used in subchapter XX of this chapter also includes the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Such term when used in subchapter IV of this chapter also includes American Samoa.

(2) The term ''United States'' when used in a geographical sense means, except where otherwise provided, the States.

(3) The term ''person'' means an individual, a trust or estate, a partnership, or a corporation.

(4) The term ''corporation'' includes associations, joint-stock companies, and insurance companies.

(5) The term ''shareholder'' includes a member in an association, joint-stock company, or insurance company.

(6) The term ''Secretary'', except when the context otherwise requires, means the Secretary of Health and Human Services.

(7) The terms ''physician'' and ''medical care'' and ''hospitalization'' include osteopathic practitioners or the services of osteopathic practitioners and hospitals within the scope of their practice as defined by State law.

(8)(A) The ''Federal percentage'' for any State (other than Puerto Rico, the Virgin Islands, and Guam) shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the square of the per capita income of such State bears to the square of the per capita income of the United States; except that the Federal percentage shall in no case be less than 50 per centum or more than 65 per centum.

(B) The Federal percentage for each State (other than Puerto Rico, the Virgin Islands, and Guam) shall be promulgated by the Secretary between October 1 and November 30 of each year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the four quarters in the period beginning October 1 next succeeding such promulgation: *Provided*, That the Secretary shall promulgate such percentages as soon as possible after August 28, 1958, which promulgation shall be conclusive for each of the eleven quarters in the period beginning October 1, 1958, and ending with the close of June 30, 1961.

(C) The term ''United States'' means (but only for purposes of subparagraphs (A) and (B) of this paragraph) the fifty States and the District of Columbia.

(D) Promulgations made before satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska shall prescribe a Federal percentage for Alaska of 50 per centum and, for purposes of such promulgations, Alaska shall not be included as part of the ''United States''. Promulgations made thereafter but before per

capita income data for Alaska for a full three-year period are available from the Department of Commerce shall be based on satisfactory data available therefrom for Alaska for such one full year or, when such data are available for a two-year period, for such two years.

(9) The term ''shared health facility'' means any arrangement whereby—

(A) two or more health care practitioners practice their professions at a common physical location;

(B) such practitioners share (i) common waiting areas, examining rooms, treatment rooms, or other space, (ii) the services of supporting staff, or (iii) equipment;

(C) such practitioners have a person (who may himself be a practitioner)—

(i) who is in charge of, controls, manages, or supervises substantial aspects of the arrangement or operation for the delivery of health or medical services at such common physical location, other than the direct furnishing of professional health care services by the practitioners to their patients; or

(ii) who makes available to such practitioners the services of supporting staff who are not employees of such practitioners;

and who is compensated in whole or in part, for the use of such common physical location or support services pertaining thereto, on a basis related to amounts charged or collected for the services rendered or ordered at such location or on any basis clearly unrelated to the value of the services provided by the person; and

(D) at least one of such practitioners received payments on a fee-for-service basis under subchapters XVIII and XIX of this chapter in an amount exceeding $5,000 for any one month during the preceding 12 months or in an aggregate amount exceeding $40,000 during the preceding 12 months;

except that such term does not include a provider of services (as defined in section 1395x(u) of this title), a health maintenance organization (as defined in section 300e(a) of this title), a hospital cooperative shared services organization meeting the requirements of section 501(e) of the Internal Revenue Code of 1986, or any public entity.

(10) The term ''Administration'' means the Social Security Administration, except where the context requires otherwise.

(b) The terms ''includes'' and ''including'' when used in a definition contained in this chapter shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this chapter or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this chapter shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this chapter, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

(Aug. 14, 1935, ch. 531, title XI, § 1101, 49 Stat. 647; Aug. 10, 1939, ch. 666, title VIII, § 801, 53 Stat. 1398; Aug. 10, 1946, ch. 951, title IV, § 401(a), 60 Stat. 986; June 14, 1948, ch. 468, § 2(a), 62 Stat. 438; Aug. 28, 1950, ch. 809, title IV, § 403(a)(1), (2), (b), 64 Stat. 559; Aug. 16, 1956, ch. 836, title III, § 333, 70 Stat. 852; Pub. L. 85–840, title V, §§ 505, 506, Aug. 28, 1958, 72 Stat. 1050, 1051; Pub. L. 86–70, § 32(a), (d), June 25, 1959, 73 Stat. 149; Pub. L. 86–624, § 30(a), (d), July 12, 1960, 74 Stat. 419, 420; Pub. L. 86–778, title V, § 541, Sept. 13, 1960, 74 Stat. 985; Pub. L. 87–543, title I, § 153, July 25, 1962, 76 Stat. 206; Pub. L. 89–97, title I, § 121(c)(1), July 30, 1965, 79 Stat. 352; Pub. L. 92–603, title II, § 272(a), Oct. 30, 1972, 86 Stat. 1451; Pub. L. 93–233, § 18(z–2)(1)(A), Dec. 31, 1973, 87 Stat. 973; Pub. L. 94–273, § 22, Apr. 21, 1976, 90 Stat. 379; Pub. L. 94–566, title I, § 116(a), Oct. 20, 1976, 90 Stat. 2672; Pub. L. 95–142, § 5(c)(2), (*l*)(2), Oct. 25, 1977, 91 Stat. 1184, 1191; Pub. L. 97–35, title XXI, §§ 2162(a)(1), 2193(c)(2), title XXIII, § 2352(b), Aug. 13, 1981, 95 Stat. 806, 827, 871; Pub. L. 97–248, title I, §§ 136(a), 160(c), Sept. 3, 1982, 96 Stat. 375, 400; Pub. L. 98–369, div. B, title VI, § 2663(e)(1), (j)(1), July 18, 1984, 98 Stat. 1167, 1170; Pub. L. 99–272, title IX, § 9528(a), Apr. 7, 1986, 100 Stat. 219; Pub. L. 99–514, § 2, title XVIII, §§ 1883(c)(1), 1895(c)(6), Oct. 22, 1986, 100 Stat. 2095, 2918, 2936; Pub. L. 100–203, title IX, § 9135(a)(1), (b)(1), Dec. 22, 1987, 101 Stat. 1330–315; Pub. L. 100–485, title VI, § 601(a), Oct. 13, 1988, 102 Stat. 2407; Pub. L. 103–296, title I, § 108(b)(1), Aug. 15, 1994, 108 Stat. 1481; Pub. L. 105–33, title IV, § 4901(b)(1), Aug. 5, 1997, 111 Stat. 570.)

REFERENCES IN TEXT

Section 301 of the Social Security Amendments of 1972, referred to in subsec. (a)(1), is section 301 of Pub. L. 92–603, title III, Oct. 30, 1972, 86 Stat. 1465, which enacted sections 1381 to 1382e and 1383 to 1383c of this title.

The Internal Revenue Code of 1986, referred to in subsec. (a)(9), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–33 substituted ''XIX, and XXI'' for ''and XIX'' and ''subchapters XIX and XXI'' for ''subchapter XIX''.

1994—Subsec. (a)(10). Pub. L. 103–296 added par. (10).

1988—Subsec. (a)(1). Pub. L. 100–485 amended last sentence generally. Prior to amendment, last sentence read as follows: ''Such term when used in part B of subchapter IV of this chapter also includes American Samoa.''

1987—Subsec. (a)(1). Pub. L. 100–203, § 9135(a)(1), inserted ''American Samoa,'' after ''Guam,''.

Pub. L. 100–203, § 9135(b)(1), inserted at end ''Such term when used in part B of subchapter IV of this chapter also includes American Samoa.''

1986—Subsec. (a)(3) to (5). Pub. L. 99–514, § 1883(c)(1), realigned margins of pars. (3) to (5).

Subsec. (a)(8)(B). Pub. L. 99–514, § 1895(c)(6), amended directory language of Pub. L. 99–272, § 9528(a), and did not involve any change in text. See note below.

Pub. L. 99–272, § 9528(a), as amended by Pub. L. 99–514, § 1895(c)(6), struck out ''even-numbered'' after ''November 30 of each'' and substituted ''for each of the four quarters'' for ''for each of the eight quarters''.

Subsec. (a)(9). Pub. L. 99–514, § 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in closing provisions.

1984—Subsec. (a)(6). Pub. L. 98–369, § 2663(j)(1), substituted ''means the Secretary of Health and Human Services'' for ''means the Secretary of Health, Education, and Welfare''.

Subsec. (a)(8), (9). Pub. L. 98–369, § 2663(e)(1), realigned margins of pars. (8) and (9).

1982—Subsec. (a)(1). Pub. L. 97–248, § 136(a), inserted ''and American Samoa'' after ''includes the Northern Mariana Islands''.

Pub. L. 97–248, § 160(c), substituted ''Guam, and the Northern Mariana Islands'' for ''American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands''.

1981—Subsec. (a)(1). Pub. L. 97–35, §§ 2162(a)(1), 2352(b), substituted ''American Samoa, the Northern Mariana Islands, and'' for ''American Samoa and'' and inserted provisions that ''State'' when used in subchapter XIX of this chapter also includes the Northern Mariana Islands and when used in subchapter XX of this chapter also includes the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Subsec. (a)(9)(D). Pub. L. 97–35, § 2193(c)(2), substituted ''subchapters XVIII, and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter''.

1977—Subsec. (a)(1). Pub. L. 95–142, § 5(*l*)(2), which directed that second sentence of par. (1) be amended by inserting provision that ''State'' when used in part B of this subchapter also includes American Samoa and the Trust Territory of the Pacific Islands, was executed by inserting that provision to third sentence.

Subsec. (a)(9). Pub. L. 95–142, § 5(c)(2), added par. (9).

1976—Subsec. (a)(1). Pub. L. 94–566 inserted provision that ''State'', when used in subchapters III, IX, and XII of this chapter, also includes the Virgin Islands.

Subsec. (a)(8)(B). Pub. L. 94–273 substituted ''October'' for ''July'' in two places and ''November 30'' for ''August 31''.

1973—Subsec. (a)(1). Pub. L. 93–233 struck out in first sentence references to subchapters I, X, XIV, and XVI of this chapter and inserted third sentence respecting the case of Puerto Rico, the Virgin Islands, and Guam.

1972—Subsec. (a)(1). Pub. L. 92–603 extended benefits of subchapter V of this chapter to American Samoa and the Trust Territory of the Pacific Islands.

1965—Subsec. (a)(1). Pub. L. 89–97 included subchapter XIX of this chapter.

1962—Subsec. (a)(1). Pub. L. 87–543, § 153(a), included in enumeration subchapters XI and XVI of this chapter.

Subsec. (a)(2). Pub. L. 87–543, § 153(b), struck out '', the District of Columbia, and the Commonwealth of Puerto Rico'' after ''the States,''.

1960—Subsec. (a)(1). Pub. L. 86–778 substituted ''The term 'State', except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico'' for ''The term 'State' includes Hawaii, and the District of Columbia'', and ''includes the Virgin Islands and Guam'' for ''includes Puerto Rico, the Virgin Islands, and Guam''.

Pub. L. 86–624, § 30(d)(1), struck out ''Hawaii, and'' before ''the District of Columbia''.

Subsec. (a)(2). Pub. L. 86–778 substituted ''means, except where otherwise provided, the States, the District of Columbia, and the Commonwealth of Puerto Rico'' for ''means the States, Hawaii, and the District of Columbia''.

Pub. L. 86–624, § 30(d)(2), struck out '', Hawaii,'' before ''and the District of Columbia''.

Subsec. (a)(8)(A). Pub. L. 86–624, § 30(a)(1), (2), substituted ''per capita income of the United States'' for ''per capita income of the continental United States (including Alaska)'', and struck out provisions which prescribed the Federal percentage for Hawaii as 50 per centum.

Subsec. (a)(8)(B). Pub. L. 86–624, § 30(a)(1), substituted ''United States'' for ''continental United States (including Alaska)''.

Subsec. (a)(8)(C), (D). Pub. L. 86–624, § 30(a)(3), added subpars. (C) and (D).

1959—Subsec. (a)(1). Pub. L. 86–70, § 32(d)(1), substituted ''Hawaii and'' for ''Alaska, Hawaii, and''.

Subsec. (a)(2). Pub. L. 86–70, § 32(d)(2), struck out ''Alaska,'' before ''Hawaii''.

Subsec. (a)(8). Pub. L. 86–70, § 32(a), substituted ''(including Alaska)'' for ''(excluding Alaska)'' in two places, and ''50 per centum for Hawaii'' for ''50 per centum for Alaska and Hawaii''.

1958—Subsec. (a)(1). Pub. L. 85–840, § 506, included Guam within definition of ''State'' when used in subchapters I, IV, V, VII, X, and XIV of this chapter.

Subsec. (a)(8). Pub. L. 85–840, § 505, added par. (8).

1956—Subsec. (a)(1). Act Aug. 1, 1956, inserted reference to subchapter VII of this chapter.

1950—Subsec. (a)(1). Act Aug. 28, 1950, § 403(a)(1), redefined ''State''.

Subsec. (a)(6). Act Aug. 28, 1950, § 403(a)(2), defined ''Administrator''.

Subsec. (a)(7). Act Aug. 28, 1950, § 403(b), added par. (7).

1948—Subsec. (a)(6). Act June 14, 1948, provided for application of usual common-law rules in determining whether a person is an employee.

1946—Subsec. (a)(1). Act Aug. 10, 1946, struck out exception of section 45b of title 29 and inserted reference to Virgin Islands.

1939—Subsec. (a)(1). Act Aug. 10, 1939, redefined ''State''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 601(d) of Pub. L. 100–485 provided that: ''The amendments made by this section [amending this section and sections 603, 1308, and 1318 of this title] shall become effective on October 1, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to fiscal years beginning on or after Oct. 1, 1988, see section 9135(c) of Pub. L. 100–203, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(c)(1) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1895(c)(6) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 9528(b), (c) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §§ 9102, 9421(a), Oct. 21, 1986, 100 Stat. 1972, 2065, provided that:

''(b) EFFECTIVE DATE.—The amendments made by this section [amending this section] shall apply to the Federal percentage (and Federal medical assistance percentage) for fiscal years 1987 and thereafter. Such amendments shall apply without regard to the requirement of section 1101(a)(8)(B) of the Social Security Act [subsec. (a)(8)(B) of this section] relating to the promulgation of the Federal percentage prior to November 30 of the year preceding the year in which the new Federal percentage becomes applicable. The Secretary of Health and Human Services shall promulgate such new percentage for fiscal year 1987 as soon as practicable after the date of the enactment of this Act [Apr. 7, 1986].

''(c) HOLD HARMLESS PROVISION.—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payments to States under sections 403 and 1903 of the Social Security Act [sections 603 and 1396b of this title],

the amendments made by subsection (a) [amending this section] shall not apply to a State with respect to either such section if the effect of the [sic] applying the amendments would be to reduce the amount of payment made to the State under that section.''

[Section 9102 of Pub. L. 99–509 provided that the amendment made by that section [amending section 9528(c) of Pub. L. 99–272, set out above] is effective as provided in section 9421(b) of Pub. L. 99–509. See below.]

[Section 9421(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [enacting section 9528(c) of Pub. L. 99–272, set out above] shall be effective as though it had been included in the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272] at the time of its enactment.'']

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 136(e) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 1308, 1396a, and 1396d of this title] shall become effective on October 1, 1982.''

Section 160(e) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 671, 1308, and 1397b of this title] shall be effective as of October 1, 1981.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2352(a) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(2) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–566 effective on the later of Oct. 1, 1976, or the day after the day on which the Secretary of Labor approves under section 3304(a) of Title 26, Internal Revenue Code, an unemployment compensation law submitted to him by the Virgin Islands for approval, see section 116(f)(1) of Pub. L. 94–566, set out as a note under section 3304 of Title 26.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 18(z–2)(2) of Pub. L. 93–233 provided that: ''The amendments made by this subsection [amending this section and sections 1315 and 1316 of this title] shall be effective on and after January 1, 1974.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 272(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1308 of this title] shall apply with respect to fiscal years beginning after June 30, 1971.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 121(c)(1) of Pub. L. 89–97 provided that the amendment made by that section is effective Jan. 1, 1966.

EFFECTIVE DATE OF 1960 AMENDMENTS

Section 541 of Pub. L. 86–778 provided that the amendment made by that section is effective on and after Jan. 1, 1961.

Amendment by section 30(d) of Pub. L. 86–624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86–624, set out as a note under section 201 of this title.

Amendment by section 30(a)(1) of Pub. L. 86–624 applicable in the case of promulgations or computations of Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after Aug. 21, 1959, see section 47(a) of Pub. L. 86–624.

Section 47(b) of Pub. L. 86–624 provided that: ''The amendments made by paragraph (2) of section 30(a) [amending this section] shall be effective with the beginning of the calendar quarter in which this Act is enacted. The Secretary of Health, Education, and Welfare shall, as soon as possible after enactment of this Act [July 12, 1960], promulgate a Federal percentage for Hawaii determined in accordance with the provisions of subparagraph (B) of section 1101(a)(8) of the Social Security Act [subsec. (a)(8)(B) of this section], such promulgation to be effective for the period beginning with the beginning of the calendar quarter in which this Act is enacted and ending with the close of June 30, 1961.''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by section 32(a) of Pub. L. 86–70 applicable in the case of promulgations of Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska, and amendment by section 32(d) of Pub. L. 86–70 effective Jan. 3, 1959, see section 47(a), (d) of Pub. L. 86–70.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendments by Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 403(a)(3) of act Aug. 28, 1950, provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall take effect October 1, 1950, and the amendment made by paragraph (2) of this subsection [amending this section], insofar as it repeals the definition of 'employee', shall be effective only with respect to services performed after 1950.''

Section 403(b) of act Aug. 28, 1950, provided that the amendment made by that section is effective Oct. 1, 1950.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 2(b) of act June 14, 1948, provided that: ''The amendment made by subsection (a) [amending this section] shall have the same effect as if included in the Social Security Act [this chapter] on August 14, 1935, the date of its enactment, but shall not have the effect of voiding any (1) wage credits reported to the Bureau of Internal Revenue [now Internal Revenue Service] with respect to services performed prior to the enactment of this Act [June 14, 1948] or (2) wage credits with respect to services performed prior to the close of the first calendar quarter which begins after the date of the enactment of this Act in the case of individuals who have attained age sixty-five or who have died, prior to the close of such quarter, and with respect to whom prior to the date of enactment of this Act wage credits were established which would not have been established had the amendment made by subsection (a) been in effect on and after August 14, 1935.''

EFFECTIVE DATE OF 1946 AMENDMENT

Section 401(a) of act Aug. 10, 1946, provided that the amendment made by that section is effective Jan. 1, 1947.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 801 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

REPEALS

The provisions of subsecs. (a)(1), (3), (6), (c) of this section were incorporated into sections 1426(d) to (f), 1427, 1607(i) to (k), and 1608 of former Title 26, Internal

Revenue Code of 1939, by act Feb. 10, 1939, ch. 2, 53 Stat. 1. Section 4 of the act of Feb. 10, 1939, provided that all laws and parts of laws codified into the Internal Revenue Code of 1939, to the extent that they related exclusively to internal revenue, were repealed. See enacting sections preceding section 1 of former Title 26.

Provisions of the Internal Revenue Code of 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). See, also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095. Said repealed sections are covered by sections 3121, 3123, 3306, 3307, 7701 of Title 26.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and Office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PROVISIONS RELATING TO FEDERAL SECURITY ADMINISTRATOR

Section 2663(*l*) of Pub. L. 98–369 provided that: ''Any reference to the Federal Security Administrator which may remain in the provisions of title II, IV, VII, or XI of the Social Security Act [subchapter II, IV, VII, or XI of this chapter] (other than section 1101(a)(6) of such Act [subsec. (a)(6) of this section]) is amended—

''(1) by substituting 'Secretary' or 'Secretary's' for the term 'Administrator' or 'Administrator's', where the reference is to that term alone;

''(2) by substituting 'Secretary of Health, Education, and Welfare' for the term 'Federal Security Administrator', where the reference is to that term, if the provision containing such reference is amended by paragraph (2) or (3) of subsection (j) [Pub. L. 98–369, §2663(j)(2), (3), see Tables for classification] (in which case the amendment of such provision under this paragraph shall be deemed to have taken effect immediately prior to the amendment of such provision under such paragraph (2) or (3)); and

''(3) by substituting 'Secretary of Health and Human Services' for the term 'Federal Security Administrator' in any other case where the reference is to that term;

and any reference to the Federal Security Agency which may remain in such provisions is amended by substituting 'Department of Health and Human Services' for the term 'Federal Security Agency'; but nothing in this subsection shall affect the exercise under section 402(a)(5) of such Act [section 602(a)(5) of this title] of the functions, powers, and duties relating to the prescription of personnel standards on a merit basis which were transferred from the Secretary of Health, Education, and Welfare by section 208(a)(3)(D) of Public Law 91–648 [42 U.S.C. 4728(a)(3)(D)].''

DEFINITIONS OF ''BIPA'' AND ''SECRETARY''

Pub. L. 108–173, §1(c), Dec. 8, 2003, 117 Stat. 2066, provided that:

''In this Act [see Short Title of 2003 Amendments note set out under section 1305 of this title]:

''(1) BIPA.—The term 'BIPA' means the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted into law by section 1(a)(6) of Public Law 106–554 [see Tables for classification].

''(2) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.''

DEFINITION OF ''SECRETARY''

Pub. L. 90–248, title IV, §404, Jan. 2, 1968, 81 Stat. 933, as amended by Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the amendments made by this Act [see Short Title of 1968 Amendment note set out under section 1305 of this title] (unless the context otherwise requires), the term 'Secretary' means the Secretary of Health and Human Services.''

Section 110 of Pub. L. 89–97, as amended by Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this Act, and in the provisions of the Social Security Act amended by this Act [see Short Title of 1965 Amendment note set out under section 1305 of this title], the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 6 of Pub. L. 88–156, as amended by Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the amendments to the Social Security Act made by this Act [see Short Title of 1963 Amendment note set out under section 1305 of this title], the term 'Secretary' means the Secretary of Health and Human Services.''

Section 201 of Pub. L. 87–543, as amended by Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this Act and in the provisions of the Social Security Act amended by this Act [see Short Title of 1962 Amendment note set out under section 1305 of this title], the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 304 of title III of Pub. L. 87–64, as amended by Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this title and title I, and in the provisions of the Social Security Act amended thereby [see Short Title of 1961 Amendment note set out under section 1305 of this title], the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 709 of Pub. L. 86–778, as amended by Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this Act and the provisions of the Social Security Act amended by this Act [see Short Title of 1960 Amendment note set out under section 1305 of this title] the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 702 of Pub. L. 85–840, as amended by Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the provisions of the Social Security Act amended by this Act [see Short Title of 1958 Amendment note set out under section 1305 of this title], the term ''Secretary'', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 119 of act Aug. 1, 1956, ch. 836, as amended Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695, provided that: ''As used in this Act and in the provisions of the Social Security Act set forth in this Act [see Short Title of 1956 Amendment note set out under section 1305 of this title], the term 'Secretary' means the Secretary of Health and Human Services.''

Section 114 of title I of act Sept. 1, 1954, as amended Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695, provided that: ''As used in the provisions of the Social Security Act amended by this title [sections 402, 403, 415, and 421 of this title], the term 'Secretary' means the Secretary of Health and Human Services.''

§ 1301–1. Omitted

CODIFICATION

Section, act Aug. 10, 1946, ch. 951, title II, §202, 60 Stat. 981, defined the term ''Administrator'' as used in

certain sections of this chapter. See section 1301 of this title.

§ 1301a. Omitted

CODIFICATION

Section, act June 26, 1940, ch. 428, title II, 54 Stat. 588, provided for reimbursement for official travel performed by employees of the Bureau of Old-Age Insurance, was from the Federal Security Agency Appropriation Act, 1941, and was not repeated in subsequent appropriations acts.

§ 1302. Rules and regulations; impact analyses of Medicare and Medicaid rules and regulations on small rural hospitals

(a) The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, respectively, shall make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the functions with which each is charged under this chapter.

(b)(1) Whenever the Secretary publishes a general notice of proposed rulemaking for any rule or regulation proposed under subchapter XVIII of this chapter, subchapter XIX of this chapter, or part B of this subchapter that may have a significant impact on the operations of a substantial number of small rural hospitals, the Secretary shall prepare and make available for public comment an initial regulatory impact analysis. Such analysis shall describe the impact of the proposed rule or regulation on such hospitals and shall set forth, with respect to small rural hospitals, the matters required under section 603 of title 5 to be set forth with respect to small entities. The initial regulatory impact analysis (or a summary) shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule or regulation.

(2) Whenever the Secretary promulgates a final version of a rule or regulation with respect to which an initial regulatory impact analysis is required by paragraph (1), the Secretary shall prepare a final regulatory impact analysis with respect to the final version of such rule or regulation. Such analysis shall set forth, with respect to small rural hospitals, the matters required under section 604 of title 5 to be set forth with respect to small entities. The Secretary shall make copies of the final regulatory impact analysis available to the public and shall publish, in the Federal Register at the time of publication of the final version of the rule or regulation, a statement describing how a member of the public may obtain a copy of such analysis.

(3) If a regulatory flexibility analysis is required by chapter 6 of title 5 for a rule or regulation to which this subsection applies, such analysis shall specifically address the impact of the rule or regulation on small rural hospitals.

(Aug. 14, 1935, ch. 531, title XI, § 1102, 49 Stat. 647; Aug. 28, 1950, ch. 809, title IV, § 403(c), 64 Stat. 559; Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(i), (*l*)(2), July 18, 1984, 98 Stat. 1170, 1171; Pub. L. 100–203, title IV, § 4402(a), Dec. 22, 1987, 101 Stat. 1330–226.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsec. (b)(1), is classified to section 1320c et seq. of this title.

AMENDMENTS

1987—Pub. L. 100–203 designated existing provision as subsec. (a) and added subsec. (b).

1984—Pub. L. 98–369, § 2663(*l*)(2), substituted ''Secretary of Health, Education, and Welfare'' for ''Federal Security Administrator'' immediately prior to the substitution of ''Health and Human Services'' for ''Health, Education, and Welfare'' by Pub. L. 98–369, § 2663(j)(2)(D)(i).

1950—Act Aug. 28, 1950, substituted ''Federal Security Administrator'' for ''Social Security Board''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4402(b) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [probably means subsec. (a), amending this section] shall apply to regulations proposed more than 30 days after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

REPEALS

The provisions of this section were incorporated into sections 1429 and 1609 of former Title 26, Internal Revenue Code of 1939, by act Feb. 10, 1939, ch. 2, 53 Stat. 1. Section 4 of the act of Feb. 10, 1939, which enacted Title 26, I.R.C. 1939, provided that all laws and parts of laws codified into the I.R.C. 1939, to the extent that they related exclusively to internal revenue, were repealed. Provisions of I.R.C. 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954. See also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. The repealed sections are covered by section 7805(a), (c) of Title 26.

ABORTION SERVICES; PROHIBITION ON CERTAIN POLICY CHANGES

Pub. L. 100–517, § 9, Oct. 24, 1988, 102 Stat. 2583, provided that: ''With respect to abortion services, the Secretary of Health and Human Services shall not promulgate or issue any regulations, policy statements, or interpretations or develop any practices concerning the performance of medically necessary procedures if such regulations, policy statements, interpretations, or practices would be inconsistent with regulations, policy statements, interpretations, or practices in effect on the date of the enactment of this Act [Oct. 24, 1988].''

NOTICE ON SOCIAL SECURITY CHECKS

Pub. L. 98–473, title II, § 1212, Oct. 12, 1984, 98 Stat. 2165, provided that:

''(a) The Secretary of the Treasury shall take such steps as may be necessary to provide that all checks issued for payment of benefits under title II of the Social Security Act [subchapter II of this chapter], and the envelopes in which such checks are mailed, contain a printed notice that the commission of forgery in conjunction with the cashing or attempted cashing of such checks constitutes a violation of Federal law. Such notice shall also state the maximum penalties for forgery under the applicable provisions of title 18 of the United States Code.

''(b) Subsection (a) shall apply with respect to checks issued for months after the ninth month after the date of the enactment of this Act [Oct. 12, 1984].''

§ 1303. Separability

If any provision of this chapter, or the application thereof to any person or circumstance, is

held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby.

(Aug. 14, 1935, ch. 531, title XI, § 1103, 49 Stat. 648.)

SEPARABILITY

Pub. L. 98–460, § 18, Oct. 9, 1984, 98 Stat. 1813, provided that: ''If any provision of this Act [amending sections 405, 408, 416, 421 to 423, 1382c, 1382d, 1382h, and 1383 to 1383b of this title, enacting provisions set out as notes under sections 405, 421 to 423, 907, and 1305 of this title, and amending provisions set out as a note under section 1382h of this title], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.''

§ 1304. Reservation of right to amend or repeal

The right to alter, amend, or repeal any provision of this chapter is hereby reserved to the Congress.

(Aug. 14, 1935, ch. 531, title XI, § 1104, 49 Stat. 648.)

§ 1305. Short title of chapter

This chapter may be cited as the ''Social Security Act''.

(Aug. 14, 1935, ch. 531, title XI, § 1105, 49 Stat. 648.)

SHORT TITLE OF 2005 AMENDMENTS

Pub. L. 109–161, § 1, Dec. 30, 2005, 119 Stat. 2958, provided that: ''This Act [amending section 603 of this title] may be cited as the 'TANF and Child Care Continuation Act of 2005'.''

Pub. L. 109–113, § 1, Nov. 22, 2005, 119 Stat. 2371, provided that: ''This Act [amending section 672 of this title] may be cited as the 'Fair Access Foster Care Act of 2005'.''

Pub. L. 109–91, § 1, Oct. 20, 2005, 119 Stat. 2091, provided that: ''This Act [amending sections 1103, 1395w–102, 1396a, 1396b, 1396r–8, 1396u–3, and 1396u–5 of this title and enacting provisions set out as notes under sections 1103, 1395w–102, 1396a, and 1396b of this title] may be cited as the 'QI, TMA, and Abstinence Programs Extension and Hurricane Katrina Unemployment Relief Act of 2005'.''

Pub. L. 109–68, § 1, Sept. 21, 2005, 119 Stat. 2003, provided that: ''This Act [amending sections 603 and 609 of this title] may be cited as the 'TANF Emergency Response and Recovery Act of 2005'.''

Pub. L. 109–19, § 1, July 1, 2005, 119 Stat. 344, provided that: ''This Act [amending section 603 of this title] may be cited as the 'TANF Extension Act of 2005'.''

Pub. L. 109–4, § 1, Mar. 25, 2005, 119 Stat. 17, provided that: ''This Act [amending section 603 of this title] may be cited as the 'Welfare Reform Extension Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENTS

Pub. L. 108–308, § 1, Sept. 30, 2004, 118 Stat. 1135, provided that: ''This Act [amending sections 603 and 609 of this title] may be cited as the 'Welfare Reform Extension Act, Part VIII'.''

Pub. L. 108–295, § 1, Aug. 9, 2004, 118 Stat. 1090, provided that: ''This Act [amending sections 503 and 653 of this title and enacting provisions set out as a note under section 503 of this title] may be cited as the 'SUTA Dumping Prevention Act of 2004'.''

Pub. L. 108–262, § 1, June 30, 2004, 118 Stat. 696, provided that: ''This Act [amending section 603 of this title] may be cited as the 'TANF and Related Programs Continuation Act of 2004'.''

Pub. L. 108–210, § 1, Mar. 31, 2004, 118 Stat. 564, provided that: ''This Act [amending section 603 of this title] may be cited as the 'Welfare Reform Extension Act of 2004'.''

Pub. L. 108–203, § 1(a), Mar. 2, 2004, 118 Stat. 493, provided that: ''This Act [enacting section 1320a–8b of this title, amending sections 401, 402, 404, 405, 406, 408, 409 to 411, 414, 416, 418, 422, 423, 426, 429, 434, 903, 1004, 1007, 1008, 1011, 1310, 1320a–8, 1320a–8a, 1320b–10, 1320b–13, 1320b–17, 1320b–19 to 1320b–21, 1382 to 1382c, 1383, and 1383a of this title, sections 1401, 1402, 3101, 3102, 3111, and 3121 of Title 26, Internal Revenue Code, and sections 231n and 231n–1 of Title 45, Railroads, repealing section 1320b–18 of this title, enacting provisions set out as notes under sections 402, 404, 405, 406, 408, 411, 414, 416, 418, 422, 902, 903, 1320a–8, 1320b–10, 1320b–13, 1320b–19 to 1320b–21, 1382 to 1382c, and 1383 of this title and section 1113 of Title 31, Money and Finance, and amending provisions set out as a note under section 434 of this title] may be cited as the 'Social Security Protection Act of 2004'.''

SHORT TITLE OF 2003 AMENDMENTS

Pub. L. 108–173, § 1(a), Dec. 8, 2003, 117 Stat. 2066, provided that: ''This Act [see Tables for classification] may be cited as the 'Medicare Prescription Drug, Improvement, and Modernization Act of 2003'.''

Pub. L. 108–145, § 1, Dec. 2, 2003, 117 Stat. 1879, provided that: ''This Act [amending sections 673b and 674 of this title and enacting provisions set out as notes under section 673b of this title] may be cited as the 'Adoption Promotion Act of 2003'.''

Pub. L. 108–40, § 1, June 30, 2003, 117 Stat. 836, provided that: ''This Act [amending sections 603, 606, 609, 612, 614, 618, 710, 1308, 1320a–9, 1396a, and 1396r–6 of this title and enacting provisions set out as a note under section 603 of this title] may be cited as the 'Welfare Reform Extension Act of 2003'.''

SHORT TITLE OF 2002 AMENDMENTS

Pub. L. 107–133, § 1, Jan. 17, 2002, 115 Stat. 2413, provided that: ''This Act [enacting sections 629f to 629i of this title, amending sections 629, 629a, 629c, 629d, 629e, 674, and 677 of this title, and enacting provisions set out as a note under section 677 of this title] may be cited as the 'Promoting Safe and Stable Families Amendments of 2001'.''

Pub. L. 107–121, § 1, Jan. 15, 2002, 115 Stat. 2384, provided that: ''This Act [amending sections 1396a and 1396n of this title and enacting provisions set out as a note under section 1396a of this title] may be cited as the 'Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001'.''

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–105, § 1, Dec. 27, 2001, 115 Stat. 1003, provided that: ''This Act [amending sections 1320d and 1395y of this title and enacting provisions set out as notes under sections 1320d–4 and 1395y of this title] may be cited as the 'Administrative Simplification Compliance Act'.''

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–554, § 1(a)(1) [title VI, § 601], Dec. 21, 2000, 114 Stat. 2763, 2763A–74, provided that: ''This title [enacting and amending provisions set out as notes under section 604 of this title] may be cited as the 'Assets for Independence Act Amendments of 2000'.''

Pub. L. 106–554, § 1(a)(6) [§ 1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–463, provided that: ''This Act [H.R. 5661, as enacted by section 1(a)(6) of Pub. L. 106–554, see Tables for classification] may be cited as the 'Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000'.''

Pub. L. 106–553, § 1(a)(2) [title VI, § 635(a)], Dec. 21, 2000, 114 Stat. 2762, 2762A–114, which provided that section 1(a)(2) [title VI, § 635] of Pub. L. 106–553, enacting section 1320b–23 of this title, amending section 408 of this title, and enacting provisions set out as notes under sections 408 and 1320b–23 of this title, could be

cited as ''Amy Boyer's Law'', was repealed by Pub. L. 106–554, §1(a)(4) [div. A, §213(a)(6), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, effective as if included in Pub. L. 106–553 on Dec. 21, 2000.

Pub. L. 106–354, §1, Oct. 24, 2000, 114 Stat. 1381, provided that: ''This Act [enacting section 1396r–1b of this title, amending sections 1396a, 1396b, and 1396d of this title, and enacting provisions set out as a note under section 1396a of this title] may be cited as the 'Breast and Cervical Cancer Prevention and Treatment Act of 2000'.''

Pub. L. 106–182, §1, Apr. 7, 2000, 114 Stat. 198, provided that: ''This Act [amending sections 402 and 403 of this title and enacting provisions set out as a note under section 402 of this title] may be cited as the 'Senior Citizens' Freedom to Work Act of 2000'.''

SHORT TITLE OF 1999 AMENDMENTS

Pub. L. 106–170, §1(a), Dec. 17, 1999, 113 Stat. 1860, provided that: ''This Act [see Tables for classification] may be cited as the 'Ticket to Work and Work Incentives Improvement Act of 1999'.''

Pub. L. 106–169, §1(a), Dec. 14, 1999, 113 Stat. 1822, provided that: ''This Act [enacting subchapter VIII of this chapter and sections 1306b, 1320a–8a, 1320b–6, and 1320b–18 of this title, amending sections 401, 402, 404, 405, 602, 604, 609, 613, 616, 629a, 652, 654, 655, 657, 659, 666, 671, 672, 673b, 674, 677, 903, 904, 909, 1320a–8, 1320b–7, 1320b–17, 1382, 1382a, 1382b, 1383, 1396a, and 1396d of this title and sections 3701 and 3716 of Title 31, Money and Finance, and enacting provisions set out as notes under sections 402, 404, 602, 604, 657, 671, 677, 904, 1320a–8, 1320a–8a, 1320b–6, 1382, 1382a, 1382b, 1383, and 1396a of this title and section 3701 of Title 31] may be cited as the 'Foster Care Independence Act of 1999'.''

Pub. L. 106–113, div. B, §1000(a)(6) [§1(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–321, provided that: ''This Act [H.R. 3426, as enacted by section 1000(a)(6) of Pub. L. 106–113, see Tables for classification] may be cited as the 'Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999'.''

Pub. L. 106–4, §1, Mar. 25, 1999, 113 Stat. 7, provided that: ''This Act [amending section 1396r of this title and enacting provisions set out as a note under section 1396r of this title] may be cited as the 'Nursing Home Resident Protection Amendments of 1999'.''

SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105–306, §1, Oct. 28, 1998, 112 Stat. 2926, provided that: ''This Act [enacting section 1320b–17 of this title, amending sections 404, 603, 655, 1382a, 1382b, and 1383 of this title and sections 1611 and 1621 of Title 8, Aliens and Nationality, enacting provisions set out as notes under sections 404, 603, 652, 655, and 1382a of this title, and amending provisions set out as notes under section 652 of this title and section 3306 of Title 26, Internal Revenue Code] may be cited as the 'Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998'.''

Pub. L. 105–200, §1, July 16, 1998, 112 Stat. 645, provided that: ''This Act [enacting section 658a of this title, amending sections 603, 604, 609, 613, 622, 629b, 652, 653, 655, 658, 658a, 666, 669, 669a, 671, 673b, 674, and 1314a of this title and sections 1021, 1144, and 1169 of Title 29, Labor, repealing section 658 of this title, enacting provisions set out as notes under sections 608, 651 to 653, 655, 658a, 666, and 671 of this title, sections 1021, 1144, and 1169 of Title 29, and section 5309 of Title 49, Transportation, amending provisions set out as notes under sections 608, 652, 658, and 658a of this title, and repealing provisions set out as a note under section 658 of this title] may be cited as the 'Child Support Performance and Incentive Act of 1998'.''

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–89, §1(a), Nov. 19, 1997, 111 Stat. 2115, provided that: ''This Act [enacting sections 673b, 678, and 679b of this title, amending sections 603, 622, 629 to 629b, 653, 671 to 673, 674, 675, 677, and 1320a–9 of this title and sections 645 and 901 of Title 2, The Congress, enacting provisions set out as notes under sections 613, 622, 629a, 671, 673, 675, 679b, 1320a–9, 5111, and 5113 of this title, and amending provisions set out as a note under section 670 of this title] may be cited as the 'Adoption and Safe Families Act of 1997'.''

SHORT TITLE OF 1996 AMENDMENTS

Pub. L. 104–193, §1, Aug. 22, 1996, 110 Stat. 2105, provided that: ''This Act [see Tables for classification] may be cited as the 'Personal Responsibility and Work Opportunity Reconciliation Act of 1996'.''

Pub. L. 104–121, title I, §101, Mar. 29, 1996, 110 Stat. 847, provided that: ''This title [enacting sections 1320b–15 and 1383e of this title, amending sections 401 to 403, 405, 422, 423, 425, 902, 903, 1382, 1382c, 1383, and 1383c of this title and sections 665e and 901 of Title 2, The Congress, enacting provisions set out as notes under sections 401 to 403, 405, 902, 1320b–15, and 1382 of this title, and repealing provisions set out as a note under section 425 of this title] may be cited as the 'Senior Citizens' Right to Work Act of 1996'.''

SHORT TITLE OF 1994 AMENDMENTS

Pub. L. 103–432, §1, Oct. 31, 1994, 108 Stat. 4398, provided that: ''This Act [see Tables for classification] may be cited as the 'Social Security Act Amendments of 1994'.''

Pub. L. 103–382, title V, §551, Oct. 20, 1994, 108 Stat. 4056, provided that: ''This subpart [subpart 1 (§§551–554) of part E of title V of Pub. L. 103–382 enacting section 5115a of this title, amending section 622 of this title, and enacting provisions set out as a note under section 622 of this title] may be cited as the 'Howard M. Metzenbaum Multiethnic Placement Act of 1994'.''

Pub. L. 103–296, §1(a), Aug. 15, 1994, 108 Stat. 1464, provided that: ''This Act [see Tables for classification] may be cited as the 'Social Security Independence and Program Improvements Act of 1994'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–234, §1, Dec. 12, 1991, 105 Stat. 1793, provided that: ''This Act [amending sections 1396a, 1396b, and 1396r–4 of this title and enacting provisions set out as notes under sections 1396a, 1396b, and 1396r–4 of this title] may be cited as the 'Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991'.''

SHORT TITLE OF 1989 AMENDMENTS

Pub. L. 101–239, title X, §10000, Dec. 19, 1989, 103 Stat. 2470, provided that: ''This title [see Tables for classification] may be cited as the 'Miscellaneous and Technical Social Security Act Amendments of 1989'.''

Pub. L. 101–234, §1, Dec. 13, 1989, 103 Stat. 1979, provided that: ''This Act [see Tables for classification] may be cited as the 'Medicare Catastrophic Coverage Repeal Act of 1989'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–485, §1(a), Oct. 13, 1988, 102 Stat. 2343, provided that: ''This Act [enacting sections 617, 668, 669, 681 to 687, and 1396r–6 of this title, amending sections 405, 426, 503, 504, 602, 603, 607, 652 to 655, 657, 658, 666, 667, 671, 704, 1301, 1308, 1315, 1318, 1320a–7, 1320a–7a, 1320b–10, 1320c–3, 1395i–2, 1395i–3, 1395*l*, 1395m, 1395r, 1395s, 1395t–1, 1395t–2, 1395u, 1395v, 1395w–2, 1395w–3, 1395x, 1395y, 1395aa to 1395dd, 1395mm, 1395tt, 1395ww, 1395aaa to 1395ccc, 1396a, 1396b, 1396d, 1396i, 1396n, 1396p, 1396r, 1396r–1, 1396r–4, 1396r–5, 1396s, 1397d, and 1397e of this title, section 5315 of Title 5, Government Organization and Employees, and sections 21, 51, 62, 129, 6103, 6109, and 7213 of Title 26, Internal Revenue Code, repealing sections 609, 614, 630 to 632, 633 to 645, and 1320a–2 of this title, enacting provisions set out as notes under sections 405, 426, 602, 603, 607, 618, 652 to 655, 666, 667, 681, 704, 1308, 1315, 1320a–2, 1395k, 1396b, and 1396r–6 of this title and sections 21, 62, 6103, and 6109 of Title 26, and amending provisions set out as notes under sections

603, 606, 1320c–5, 1395b, 1395d, 1395e, 1395i–3, 1395k, 1395u, 1395*ll*, 1395mm, 1395ss, 1395tt, 1395ww, 1396a, 1396d, and 1396r–5 of this title and sections 6402 of Title 26] may be cited as the 'Family Support Act of 1988'.''

Pub. L. 100–364, §1, July 11, 1988, 102 Stat. 822, provided: ''That this Act [amending section 645 of this title] may be cited as the 'WIN Demonstration Program Extension Act of 1988'.''

Pub. L. 100–360, §1(a), July 1, 1988, 102 Stat. 683, provided that: ''This Act [enacting sections 1320b–10, 1395b–2, 1395i–1a, 1395t–1, 1395t–2, 1395w–3, 1396r–4, and 1396r–5 of this title and section 59B of Title 26, Internal Revenue Code, amending sections 254*o*, 294f, 300aa–12, 300aa–15, 300aa–21, 401, 426, 704, 912, 1320a–7, 1320a–7a, 1320a–7b, 1320b–5, 1320b–7, 1320b–8, 1320c–3, 1320c–5, 1320c–9, 1382, 1382b, 1395c to 1395f, 1395h, 1395i, 1395i–2, 1395i–3, 1395k to 1395n, 1395r to 1395t, 1395u to 1395w–2, 1395x to 1395z, 1395aa to 1395dd, 1395gg, 1395mm, 1395ss, 1395tt, 1395ww, 1395aaa to 1395ccc, 1396a, 1396b, 1396d, 1396j, 1396n to 1396p, 1396r, 1396r–1, 1396r–3, 1396r–4, 1396s, and 1397d of this title and section 6050F of Title 26, enacting provisions set out as notes under this section and sections 294f, 1320b–7, 1320b–10, 1320c–3, 1395b, 1395b–1, 1395b–2, 1395d, 1395e, 1395h, 1395i–1a, 1395k, 1395*l*, 1395m, 1395r, 1395u, 1395v, 1395x, 1395y, 1395cc, 1395*ll*, 1395mm, 1395ss, 1395ww, 1396a, 1396b, 1396d, 1396r–1, and 1396r–5 of this title, section 106 of Title 1, General Provisions, section 8902 of Title 5, Government Organization and Employees, and section 59B of Title 26, amending provisions set out as notes under sections 426, 1320a–7a, 1320c–2, 1320c–3, 1395b–1, 1395h, 1395i–3, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395w–1, 1395x, 1395y, 1395aa, 1395dd, 1395mm, 1395pp, 1395ss, 1395ww, 1395bbb, 1396a, 1396b, and 1396r of this title, and repealing provisions set out as a note under section 1395*l* of this title] may be cited as the 'Medicare Catastrophic Coverage Act of 1988'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–93, §1(a), Aug. 18, 1987, 101 Stat. 680, provided that: ''This Act [enacting sections 1395aaa and 1396r–2 of this title, amending sections 704, 1320a–3, 1320a–5, 1320a–7, 1320a–7a, 1320a–7b, 1320c–5, 1395u, 1395y, 1395cc, 1395ff, 1395nn, 1395rr, 1395ss, 1395ww, 1396a, 1396b, 1396h, 1396n, 1396s, and 1397d of this title and section 824 of Title 21, Food and Drugs, transferring section 1396h of this title to section 1320a–7b of this title, repealing section 1395nn of this title, enacting provisions set out as notes under sections 1320a–7 and 1320a–7b of this title, and amending provisions set out as a note under section 1396a of this title] may be cited as the 'Medicare and Medicaid Patient and Program Protection Act of 1987'.''

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–643, §1, Nov. 10, 1986, 100 Stat. 3574, provided that: ''This Act [amending sections 1382, 1382c, 1382h, 1383, 1383c, 1396a, and 1396s of this title, enacting provisions set out as notes under sections 1382, 1382h, 1383, 1383c, and 1396a of this title, and amending provisions set out as a note under section 1382h of this title] may be cited as the 'Employment Opportunities for Disabled Americans Act'.''

Pub. L. 99–272, title IX, §9000, Apr. 7, 1986, 100 Stat. 151, provided that: ''This title [enacting sections 1320c–13, 1395w–1, 1395dd, 1396r, and 1396s of this title, amending sections 401, 701, 702, 704, 709, 1301, 1320a–2, 1320c–2, 1320c–3, 1395e, 1395f, 1395i, 1395i–2, 1395*l*, 1395p to 1395r, 1395t, 1395u, 1395x, 1395y, 1395cc, 1395mm, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396k, 1396n, and 1396*o* of this title and sections 623, 631, and 1144 of Title 29, Labor, enacting provisions set out as notes under sections 401, 1301, 1320a–2, 1320c–2, 1320c–3, 1320c–13, 1395b, 1395b–1, 1395e, 1395h, 1395i–2, 1395*l*, 1395p, 1395r, 1395u, 1395x, 1395y, 1395cc, 1395dd, 1395mm, 1395rr, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396n, and 1396r of this title and section 1144 of Title 29, and amending provisions set out as notes under sections 1395c, 1395h, 1395y, and 1395ww of this title] may be cited as the 'Medicare and Medicaid Budget Reconciliation Amendments of 1985'.''

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98–460, §1, Oct. 9, 1984, 98 Stat. 1794, provided that: ''This Act [amending sections 405, 408, 416, 421 to 423, 1382c, 1382d, 1382h, and 1383 to 1383b of this title, enacting provisions set out as notes under sections 405, 421 to 423, 907, and 1303 of this title, and amending provisions set out as a note under section 1382h of this title] may be cited as the 'Social Security Disability Benefits Reform Act of 1984'.''

Pub. L. 98–378, §1, Aug. 16, 1984, 98 Stat. 1305, provided that: ''This Act [enacting sections 666 and 667 of this title, amending sections 602, 603, 606, 651 to 658, 664, 671, 1315, and 1396a of this title and sections 6103, 6402, and 7213 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 602, 606, 652, 654, 657, 658, and 667 of this title and section 6103 of Title 26] may be cited as the 'Child Support Enforcement Amendments of 1984'.''

Pub. L. 98–369, div. B, title III, §2300, July 18, 1984, 98 Stat. 1061, provided that: ''This title [enacting sections 1317, 1395yy, 1395zz, and 1396q of this title, amending sections 291i, 300s–1a, 606, 701, 703, 706, 907a, 1308, 1310, 1316, 1320a–1, 1320a–7 to 1320a–8, 1320c–2, 1395b–1, 1395f, 1395h, 1395i, 1395i–2, 1395k, 1395*l*, 1395n, 1395p to 1395cc, 1395ff, 1395ii, 1395*ll*, 1395mm to 1395*oo*, 1395rr, 1395ww, 1396a, 1396b, 1396d, 1396k, 1396*l*, and 1396n of this title, section 5315 of Title 5, Government Organization and Employees, section 162 of Title 26, Internal Revenue Code, section 623 of Title 29, Labor, and section 231f of Title 45, Railroads, repealing section 1395dd of this title, enacting provisions set out as notes under sections 291i, 701, 907a, 1308, 1310, 1317, 1320a–1, 1320a–7, 1320c–2, 1395b–1, 1395f, 1395h, 1395i, 1395k, 1395*l*, 1395n, 1395p, 1395r, 1395u, 1395x, 1395y, 1395bb, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395uu, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396*l*, and 1396q of this title and section 623 of Title 29, and amending provisions set out as notes under sections 1320c, 1395x, 1395mm, and 1395ww of this title] may be cited as the 'Medicare and Medicaid Budget Reconciliation Amendments of 1984'.''

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98–21, §1, Apr. 20, 1983, 97 Stat. 65, provided in part that Pub. L. 98–21 [enacting sections 910 and 911 of this title and sections 86, 3510, and 6050F of Title 26, Internal Revenue Code, amending sections 401, 402, 403, 405, 407, 409, 410, 411, 415, 416, 417, 418, 422, 423, 425, 426, 427, 428, 429, 430, 433, 503, 602, 659, 1320a–1, 1320c–2, 1322, 1382, 1382a, 1382f, 1382g, 1395f, 1395i, 1395i–2, 1395n, 1395r, 1395t, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395ww, and 1395xx of this title, section 3413 of Title 12, Banks and Banking, and sections 37, 41, 43, 44A, 46, 53, 85, 86, 87, 105, 128, 164, 275, 401, 403, 406, 407, 415, 861, 871, 904, 1401, 1402, 1441, 3101, 3111, 3121, 3302, 3304, 3306, 6103, 6413, and 7871 of Title 26, and enacting provisions set out as notes under sections 401, 402, 403, 405, 407, 410, 411, 414, 415, 416, 418, 426, 428, 429, 433, 602, 902, 911, 1382, 1395b–1, 1395i, 1395r, 1395x, 1395y, 1395cc, and 1395ww of this title, sections 37, 86, 406, 1401, 1402, 3101, 3121, 3302, 3303, 3304, 3306, and 3510 of Title 26, section 5123 of Title 38, Veterans' Benefits, and section 231n of Title 45, Railroads] may be cited as the ''Social Security Amendments of 1983''.

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–248, title I, §141, Sept. 3, 1982, 96 Stat. 381, provided that: ''This subtitle [subtitle C (§§141–150) of Pub. L. 97–248, enacting part B of this subchapter, amending sections 1395b–1, 1395g, 1395k, 1395*l*, 1395x, 1395y, 1395cc, 1395pp, 1396a, and 1396b of this title, and enacting provisions set out as notes under section 1320c of this title] may be cited as the 'Peer Review Improvement Act of 1982'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title XXI, §2100, Aug. 13, 1981, 95 Stat. 783, provided that: ''Subtitles A [sections 2101–2114 of Pub. L. 97–35, enacting sections 1320a–7a, 1395uu, and 1395vv of this title, amending sections, 1320a–7, 1320c,

1320c–1, 1320c–3, 1320c–4, 1320c–7, 1320c–8, 1320c–9, 1320c–11, 1320c–17, 1320c–21, 1395*l*, 1395n, 1395q, 1395x, 1395y, 1396a, and 1396b of this title, repealing sections 1320c–13 and 1320c–20 of this title, and enacting provisions set out as notes under sections 1320c, 1320c–1, 1320c–3, 1395*l*, 1395x, 1395y, 1395uu, and 1396b of this title], B [sections 2121–2156 of Pub. L. 97–35, amending sections 632a, 1320c–3, 1320c–4, 1320c–7, 1395d, 1395e, 1395f, 1395*l*, 1395n, 1395p, 1395q, 1395r, 1395u, 1395x, 1395y, 1395cc, and 1395rr of this title and section 162 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 1320c–3, 1395e, 1395f, 1395*l*, 1395p, 1395x, 1395y and 1395rr of this title and section 162 of Title 26, and repealing provisions set out as notes under sections 1395b–1, 1395g, and 1395*ll* of this title], and C [sections 2161–2184 of Pub. L. 97–35, enacting sections 1320b–5 and 1396n of this title, amending sections 301, 302, 303, 306, 603, 606, 1201, 1203, 1206, 1301, 1308, 1351, 1353, 1355, 1396a, 1396b, 1396d, and 1396n of this title, and enacting provisions set out as notes under sections 603, 1308, 1381, 1382, 1383, 1385, 1396a, 1396b, 1396d, and 1396n of this title] of this title may be cited as the 'Medicare and Medicaid Amendments of 1981'.''

Pub. L. 97–35, title XXI, § 2191, Aug. 13, 1981, 95 Stat. 818, provided that: ''This subtitle [subtitle D (sections 2191–2194) of title XXI of Pub. L. 97–35, enacting sections 701 to 709 of this title, amending sections 247a, 300a–27, 300b, 300b–3, 300b–6, 300c–11, 300c–21, 701, 1301, 1308, 1320a–1, 1320a–8, 1320b–2, 1320b–4, 1320c–21, 1382d, 1395b–1, 1395x, and 1396a of this title, repealing sections 236, 247a, 300a–21 to 300a–28, 300a–41, 300b, 300b–5, 300c–11, and 300c–21 of this title, enacting provisions set out as notes under sections 701, 706, and 1382d of this title, and amending provisions set out as notes under sections 1320a–8 and 1395b–1 of this title] may be cited as the 'Maternal and Child Health Services Block Grant Act'.''

Pub. L. 97–35, title XXIII, § 2351, Aug. 13, 1981, 95 Stat. 867, provided that: ''This subtitle [subtitle C (§§ 2351–2355) of title XXIII of Pub. L. 97–35, enacting sections 1397 to 1397f of this title, amending sections 303, 602, 603, 607, 671, 1203, 1301, 1308, 1315, 1316, 1320a–3, 1320a–5, 1320a–7, 1353, 1382e, 1382h, and 1382i of this title, enacting provisions set out as notes under sections 602, 603, 1381, 1383, and 1397 of this title, and repealing a provision set out as a note under section 1397a of this title] may be cited as the 'Social Services Block Grant Act'.''

Short Title of 1980 Amendments

Pub. L. 96–611, § 6, Dec. 28, 1980, 94 Stat. 3568, provided that: ''Sections 6 to 10 of this Act [enacting section 663 of this title, and section 1738A of Title 28, Judiciary and Judicial Procedure, amending sections 654 and 655 of this title, and enacting provisions set out as notes under section 1073 of Title 18, Crimes and Criminal Procedure, section 1738A of Title 28, and section 663 of this title] may be cited as the 'Parental Kidnapping Prevention Act of 1980'.''

Pub. L. 96–499, title IX, § 900, Dec. 5, 1980, 94 Stat. 2609, provided that: ''This title [enacting sections 632a, 1320a–7, 1320a–8, 1320b–4, 1395tt, 1396*l*, and 1396m of this title, amending sections 426, 705, 1320a–2, 1320a–3, 1320c–1, 1320c–3, 1320c–4, 1320c–7, 1320c–11, 1320c–12, 1320c–22, 1395c, 1395d, 1395f, 1395h, 1395k, 1395*l*, 1395n, 1395p, 1395q, 1395r, 1395u, 1395v, 1395x, 1395y, 1395z, 1395aa, 1395cc, 1395gg, 1395nn, 1395*oo*, 1395pp, 1395rr, 1396a, 1396b, 1396d, 1396h, 1396i, and 1397b of this title, and section 231f of Title 45, Railroads, repealing section 1395m of this title, and enacting provisions set out as notes under sections 705, 1320a–8, 1320b–4, 1320c, 1320c–4, 1320c–7, 1320c–11, 1320c–12, 1320c–15, 1395b–1, 1395d, 1395f, 1395g, 1395k, 1395*l*, 1395n, 1395p, 1395u, 1395v, 1395x, 1395y, 1395gg, 1395*ll*, 1395pp, 1395tt, 1396a, and 1396b of this title] may be cited as the 'Medicare and Medicaid Amendments of 1980'.''

Pub. L. 96–272, § 1, June 17, 1980, 94 Stat. 500, provided that: ''This Act [enacting sections 612, 627, 628, 670 to 673a, 674 to 676, 1320b–2, and 1320b–3 of this title, amending sections 602, 608, 620–625, 652, 658, 672, 673, 675, 1308, 1318, 1382d, 1395y, 1395cc, 1396a, 1397, 1397a, 1397b, 1397c, and 1397d of this title and section 50B of Title 26, Internal Revenue Code, repealing section 608 of this title, enacting provisions set out as notes under sections 602, 603, 608, 620, 622, 670, 672, 675, 1320b–2, 1320b–3, 1396a, and 1397a of this title and section 50B of Title 26, and amending provisions set out as notes under sections 655, 1397a, and 1397e–1 of this title] may be cited as the 'Adoption Assistance and Child Welfare Act of 1980'.''

Pub. L. 96–265, § 1, June 9, 1980, 94 Stat. 441, provided: ''That this Act [enacting sections 613, 1320a–6, 1382h, 1382i, 1382j, and 1395ss of this title, amending sections 401, 402, 403, 404, 405, 415, 416, 418, 421, 422, 423, 425, 426, 503, 504, 602, 603, 652, 654, 655, 907a, 1310, 1382, 1382a, 1382c, 1382e, 1383, 1395c, 1395i, 1395p, and 1397b of this title, sections 6103 and 7213 of Title 26, Internal Revenue Code, and section 231f of Title 45, Railroads, and enacting provisions set out as notes under sections 401, 402, 403, 405, 405a, 415, 418, 421, 423, 425, 426, 503, 602, 603, 613, 652, 655, 1310, 1320a–6, 1382, 1382a, 1382c, 1382h, 1382j, 1395*ll*, and 1395ss of this title and under section 6103 of Title 26] may be cited as the 'Social Security Disability Amendments of 1980'.''

Short Title of 1977 Amendments

Pub. L. 95–216, § 1, Dec. 20, 1977, 91 Stat. 1509, provided in part that Pub. L. 95–216 [enacting sections 433, 611, 907a, and 909 of this title, amending sections 401, 402, 403, 405, 409, 410, 411 to 413, 415 to 418, 423, 424a, 426, 429, 430, 602, 603, 1315, 1395r, 1395u, and 1395x of this title, section 441i of Title 2, The Congress, sections 1401, 1402, 3101, 3102, 3111, 3121, 3304, 3306, and 6051 of Title 26, Internal Revenue Code, and section 231b of Title 45, Railroads, and enacting provisions set out as notes under sections 402, 403, 409, 411, 413, 418, 424a, 430, 602, 603, 902, 907, 909, 1383, and 1395x of this title, section 441i of Title 2, sections 1401, 1402, 3102, 3111, and 3121 of Title 26, and section 231b of Title 45] may be cited as the ''Social Security Amendments of 1977''.

Pub. L. 95–142, § 1, Oct. 25, 1977, 91 Stat. 1175, provided that: ''This Act [enacting sections 1320a, 1320a–3 to 1320a–5, 1320c–20 to 1320c–22, and 1396k of this title, amending sections 254e, 1301, 1320c–1, 1320c–3, 1320c–4, 1320c–6, 1320c–7, 1320c–9, 1320c–12, 1320c–15 to 1320c–17, 1395b–1, 1395f, 1395g, 1395h, 1395*l*, 1395u, 1395x, 1395y, 1395cc, 1395nn, 1396a, 1396b, 1396h, 1397a, 1397b, and 3524 of this title, and enacting provisions set out as notes under sections 254e, 1320a, 1320a–3, 1320a–5, 1320c–6, 1320c–7, 1395f, 1395g, 1395h, 1395*l*, 1395x, 1395cc, 1395*ll*, 1395nn, 1396a, and 1396b of this title] may be cited as the 'Medicare-Medicaid Anti-Fraud and Abuse Amendments'.''

Short Title of 1976 Amendment

Pub. L. 94–202, § 8(a), Jan. 2, 1976, 89 Stat. 1137, provided that: ''This section [enacting section 432 of this title, amending sections 401, 403, 424a, and 430 of this title and section 6103 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 401, 418, and 432 of this title] may be cited as the 'Combined Old-Age, Survivors, and Disability Insurance-Income Tax Reporting Amendments of 1975'.''

Short Title of 1975 Amendment

Pub. L. 93–647, § 1, Jan. 4, 1975, 88 Stat. 2337, provided: ''That this Act [enacting subchapter XX of this chapter, sections 651 to 660 of this title, and section 6305 of Title 26, Internal Revenue Code, amending sections 303, 602, 603, 604, 606, 622, 1203, 1306, 1308, 1315, 1316, 1353, and 1383 note of this title, repealing sections 610, 801 to 805, and 1320b of this title, and enacting provisions set out as notes under sections 602, 651, 1320b, 1397, and 1397a of this title] may be cited as the 'Social Services Amendments of 1974'.''

Short Title of 1972 Amendment

Pub. L. 92–603, § 1, Oct. 30, 1972, 86 Stat. 1329, provided in part that Pub. L. 92–603 [enacting sections 431, 801 to 805, 1320a–1, 1320a–2, 1320c to 1320c–19, 1381a, 1382a to 1382e, 1383a to 1383c, 1395i–2, 1395mm, 1395nn, 1395*oo*,

1395pp, 1396h, 1396i, and 3502a of this title, and section 228s–3 of Title 45, Railroads, amending sections 302, 306, 401, 402, 403, 405, 408, 409, 410, 410 note, 411, 414, 415, 416, 418, 422, 423, 424a, 425, 426, 427, 429, 430, 602, 603, 620, 705, 706, 709, 1202, 1206, 1301, 1306, 1308, 1352, 1355, 1381, 1382, 1383, 1385, 1395b–1, 1395c, 1395f, 1395h, 1395i, 1395j, 1395k, 1395*l*, 1395n, 1395*o*, 1395p, 1395q, 1395r, 1395s, 1395t, 1395u, 1395w, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395dd, 1395ff, 1395gg, 1395ii, 1395kk, 1395*ll*, 1395mm, 1395nn, 1396a, 1396b, 1396b–1, 1396d, 1396g, 1396h, and 1396i of this title, sections 5315 and 5316 of Title 5, Government Organization and Employees, sections 1431, 2012, 2019, and 2023 of Title 7, Agriculture, and sections 1401, 1402, 3101, 3111, 3121, 6051, and 6413 of Title 26, Internal Revenue Code, repealing sections 301 to 306, 1201 to 1206, 1351, 1352, 1353, 1354, 1355, and 1396e of this title and section 639 of Title 25, Indians, and enacting provisions set out as notes under sections 301, 302, 401, 402, 403, 408, 409, 410, 411, 414, 415, 416, 418, 423, 424a, 426, 429, 602, 620, 705, 801, 1301, 1306, 1308, 1320a–1, 1320b, 1381, 1382e, 1395f, 1395*l*, 1395n, 1395p, 1395q, 1395s, 1395u, 1395w, 1395x, 1395aa, 1395cc, 1395ff, 1395gg, 1395mm, 1395nn, 1395*oo*, 1395pp, 1396a, 1396b, 2396d, and 1396e of this title, section 5315 of Title 5, sections 1431 and 2012 of Title 7, section 639 of Title 25, and sections 1401, 6051, and 6413 of Title 26,] may be cited as the ''Social Security Amendments of 1972''.

SHORT TITLE OF 1969 AMENDMENT

Pub. L. 91–172, title X, §1001, Dec. 30, 1969, 83 Stat. 737, provided that: ''This title [amending sections 401 to 403, 415, 427, and 428 of this title, and enacting provisions set out as notes under sections 401 to 403, 415 and 427 of this title] may be cited as the 'Social Security Amendments of 1969'.''

SHORT TITLE OF 1968 AMENDMENT

Pub. L. 90–248, §1, Jan. 2, 1968, 81 Stat. 821, provided that this Act [enacting sections 429, 610, 620 to 626, 630 to 644, 908, 1319–1320a, 1395b–1, and 1396e to 1396g of this title, amending sections 302 to 304, 401 to 406, 409 to 411, 413, 415 to 418, 421 to 423, 424a, 425, 426, 426a, 427, 428, 601 to 604, 606 to 608, 622, 701 to 715, 729, 907, 1202 to 1204, 1306, 1308 to 1311, 1313 to 1318, 1352 to 1354, 1361, 1382, 1383, 1395d to 1395f, 1395i, 1395k, 1395*l*, 1395n, 1395p to 1395y, 1395aa, 1395cc, 1395dd, 1395gg, 1395*ll*, 1396a, 1396b, and 1396d of this title, sections 1401, 1402, 3101, 3111, 3121, 3122, 3125, 3306, 6051, and 6413 of Title 26, Internal Revenue Code, and sections 228e and 228s–2 of Title 45, Railroads, repealing sections 721 to 728, 1317, and 1395ee of this title, enacting provisions set out as notes under sections 242b, 302, 303, 402 to 405, 409, 410, 413, 415, 416, 418, 423, 424a, 427, 601 to 603, 607, 609, 620, 622, 626, 633, 701, 705, 1301, 1308, 1319, 1395c to 1395f, 1395j to 1395*l*, 1395n, 1395p, 1395u, 1395x, 1395aa, 1395dd, 1396a, 1396b, 1396d, and 1396g of this title, and amending provisions set out as notes under sections 603 and 608 of this title and sections 1401, 1402, 3121, and 6051 of Title 26] may be cited as the ''Social Security Amendments of 1967.''

Pub. L. 90–248, title III, §306, Jan. 2, 1968, 81 Stat. 930, provided that: ''This title [enacting subchapter V of this chapter, amending sections 705, 729, 1396a, and 1396d of this title, enacting provisions set out as notes under section 705 of this title, and amending provisions set out as notes under section 242b of this title] may be cited as the 'Child Health Act of 1967'.''

SHORT TITLE OF 1965 AMENDMENT

Pub. L. 89–97, §1, July 30, 1965, 79 Stat. 286, provided that this Act [enacting sections 424a, 426, 427, 716, 729–1, 907, 1316, 1317, 1318, 1395 to 1395dd, 1395ee, 1395gg to 1395*ll* and 1396 to 1396d of this title, section 6053 of Title 26, Internal Revenue Code, and section 228s–2 of Title 45, Railroads; amending sections 302, 303, 306, 401 to 406, 409 to 411, 413, 415 to 418, 422, 423, 425, 602, 603, 606, 701, 703, 704, 711, 713, 714, 721 to 723, 1202, 1203, 1206, 1301, 1306, 1308, 1309, 1312, 1315, 1352, 1353, 1355, 1382, 1383, 1385, 1391, 1392, and 1395kk of this title, sections 72, 79, 213, 401, 451, 1401, 1402, 3101, 3102, 3111, 3121, 3122, 3125, 3201, 3211, 3221, 3401, 3402, 6051, 6205, 6413, 6652, and 6674 of Title 26, and sections 228a, 228e, and 228s–2 of title 45, repealing section 727 of this title, enacting provisions set out as notes under sections 242b, 302, 303, 306, 402, 403, 405, 410, 411, 415, 416, 418, 423, 424a, 426, 427, 602, 722, 729–1, 1202, 1301, 1308, 1309, 1315, 1316, 1352, 1382, 1395*l*, 1395*o*, 1395p, 1396b, and 2981 of this title, sections 213, 1401, 1402, 3121, 3201, and 6053 of Title 26, and section 228s–2 of Title 45, and amending provisions set out as notes under sections 415 and 418 of this title and section 3121 of Title 26] may be cited as the ''Social Security Amendments of 1965''.

Pub. L. 89–97, title I, July 30, 1965, 79 Stat. 290, provided that: ''This title [enacting subchapter XVIII of this chapter, sections 426, 907, and 1396 to 1396d of this title, and section 228s–2 of Title 45, Railroads, amending sections 303, 401, 401a, 402, 418, 603, 1203, 1301, 1306, 1309, 1315, 1353, 1383, and 1395kk of this title, sections 72, 79, 213, 401, 405, 1401, 3101, 3111, 3201, 3211, 3221, and 6051 of Title 26, Internal Revenue Code, and sections 228e and 228s–2 of Title 45, and enacting provisions set out as notes under sections 426, 1301, 1309, 1315, 1395*l*, 1395*o*, 1395p, and 1396b of this title, sections 213 and 3201 of Title 26, and section 228s–2 of Title 45] may be cited as the 'Health Insurance for the Aged Act'.''

Pub. L. 89–97, title III, July 30, 1965, 79 Stat. 361, provided that: ''This title [enacting sections 424a and 427 of this title and section 6053 of Title 26, Internal Revenue Code, amending sections 401 to 406, 409 to 411, 413, 415 to 418, 422, 423, 425, and 1306 of this title, sections 451, 1401, 1402, 3101, 3102, 3111, 3121, 3122, 3125, 3401, 3402, 6051, 6205, 6413, 6652, and 6674 of Title 26, and sections 228a and 228e of Title 45, Railroads, enacting provisions set out as notes under sections 402, 403, 405, 410, 411, 415, 416, 418, 424, 424a, and 427 of this title and sections 1401, 1402, 3121, and 6053 of Title 26, and amending provisions set out as notes under sections 415 and 418 of this title and section 3121 of Title 26] may be cited as the 'Old-Age, Survivors, and Disability Insurance Amendments of 1965'.''

SHORT TITLE OF 1963 AMENDMENT

Pub. L. 88–156, §1, Oct. 24, 1963, 77 Stat. 273, provided: ''That this Act [enacting subchapter XVII of this chapter and sections 729 and 729a of this title, amending sections 701, 702, 711, and 712 of this title, and enacting provisions set out as a note under section 1301 of this title] may be cited as the 'Maternal and Child Health and Mental Retardation Planning Amendments of 1963'.''

SHORT TITLE OF 1962 AMENDMENT

Pub. L. 87–543, §1, July 25, 1962, 76 Stat. 172, provided in part that this Act [enacting sections 609, 727, 728, 1314, 1315, and 1381 to 1385 of this title, amending sections 301 to 303, 306, 601 to 609, 721 to 723, 726, 906, 1201 to 1203, 1206, 1301, 1308, 1309, 1311, 1313, 1351 to 1353, and 1355 of this title, repealing section 1202a of this title and provisions set out as notes under sections 1202a and 1308 of this title, and enacting provisions set out as notes under sections 302, 303, 306, 601, 603, 606, 608, 609, 722, 1202, 1301, 1308, and 1383 of this title], may be cited as the ''Public Welfare Amendments of 1962.''

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87–64, §1, June 30, 1961, 75 Stat. 131, provided: ''That this Act [enacting section 1313 of this title, amending sections 303, 402, 403, 409, 413, 414, 415, 416, 418, 423, 1203, 1308, and 1353 of this title, sections 1401, 1402, 3101 and 3111 of Title 26, Internal Revenue Code, and section 228a of Title 45, Railroads, and enacting provisions set out as notes under sections 303, 402, 403, 414, 415, 416, 1301, and 1308 of this title and under sections 1401 and 1402 of Title 26] may be cited as the 'Social Security Amendments of 1961.'''

SHORT TITLE OF 1960 AMENDMENT

Pub. L. 86–778, §1, Sept. 13, 1960, 74 Stat. 924, provided that this Act [enacting sections 726 and 1312 of this title and sections 3125 and 3308 of Title 26, Internal Rev-

enue Code, amending sections 301 to 304, 306, 401, 401a, 402, 403, 405, 408 to 411, 413 to 416, 418, 422, 423, 501, 701, 702, 704, 711, 712, 714, 721, 722, 1101 to 1104, 1202, 1301, 1308, 1321 to 1324, 1361, 1363, 1364, 1367, 1371, and 1400c of this title, sections 1402, 1403, 3121, 3301, 3302, 3305, 3306, 6205, 6413, 7213, and 7701 of Title 26, section 49d of Title 29, Labor, sections 228a, 228c, and 228e of Title 45, Railroads, and section 1421h of Title 48, Territories and Insular Possessions, repealing section 419 of this title, and enacting provisions set out as notes under sections 301, 302, 401, 402, 403, 405, 410, 411, 413 to 418, 422, 423, 701, 1101, 1202, 1202a, 1301, 1321, 1362, 1363, and 1364 of this title, sections 1402, 3121, 3301, 3304, 3305, and 3306 of Title 26, and section 49d of Title 29] may be cited as the ''Social Security Amendments of 1960.''

Pub. L. 86–778, title V, § 501, Sept. 13, 1960, 74 Stat. 970, provided that: ''This title [enacting section 3308 of Title 26, Internal Revenue Code, amending sections 501, 1101 to 1104, 1301, 1321 to 1324, 1361 to 1364, 1367, 1371, and 1400c of this title, sections 3301, 3302, 3305, 3306, and 3309 of Title 26, and section 49d of Title 29, Labor, and enacting provisions set out as notes under sections 1301, 1321, and 1362 to 1364 of this title, sections 3301, 3304, and 3305 of Title 26, and section 49d of Title 29] may be cited as the 'Employment Security Act of 1960'.''

SHORT TITLE OF 1958 AMENDMENT

Pub. L. 85–840, § 1, Aug. 28, 1958, 72 Stat. 1013, provided that this Act [enacting sections 722 to 725 and 1311 of this title, amending sections 302, 303, 401, 402, 403, 406, 408, 409 to 411, 413 to 418, 422, 423, 425, 603, 701, 702, 711, 712, 1203, 1301, 1306, 1308, and 1353 of this title, sections 1401, 1402, 3101, 3111, 3121, 3122, 6334, and 6413 of Title 26, Internal Revenue Code, and section 228a of Title 45, Railroads, repealing section 424 of this title, and enacting provisions set out as notes under sections 303, 402, 403, 410, 411, 415, 416, 417, 418, 422, 721, 1202a, 1301 of this title and sections 1401, 1402, and 3121 of Title 26] should be popularly known as the ''Social Security Amendments of 1958''.

SHORT TITLE OF 1956 AMENDMENT

Act Aug. 1, 1956, ch. 836, § 1, 70 Stat. 807, provided: ''That this Act [enacting sections 401a, 423, 424, 425, 906, and 1310 of this title and section 3113 of Title 26, Internal Revenue Code, amending sections 301 to 303, 401, 402, 403, 405, 409 to 411, 413 to 416, 418, 421, 422, 601 to 603, 606, 721, 1201 to 1203, 1301, 1308, and 1351 to 1353 of this title, sections 1401, 1402, 3101, 3102, 3111, and 3121 of Title 26, and sections 228 and 228e of Title 45, Railroads, and amending provisions set out as a note under section 3121 of Title 26] may be cited as the 'Social Security Amendments of 1956'.''

SHORT TITLE OF 1954 AMENDMENT

Act Aug. 5, 1954, ch. 657, § 1, 68 Stat. 668, provided that: ''This Act [enacting sections 1101 to 1103, 1322, and 1323 of this title and amending sections 503, 1104, and 1321 of this title and sections 1601, 1603, and 1607 of former Title 26, Internal Revenue Code of 1939] may be cited as the 'Employment Security Administration Financing Act of 1954'.''

SHORT TITLE OF 1952 AMENDMENT

Act July 18, 1952, ch. 945, § 1, 66 Stat. 767, provided that: ''This Act [enacting sections 420, 421, and 1309 of this title, amending sections 303, 403, 405, 413, 414, 415, 416, 417, 603, 1203, and 1353 of this title and sections 228a, 228e of Title 45, Railroads, and enacting provisions set out as notes under sections 303, 402, 403, 413, 415, and 417 of this title] may be cited as the 'Social Security Act Amendments of 1952'.''

SHORT TITLE OF 1950 AMENDMENT

Act Aug. 28, 1950, ch. 809, § 1, 64 Stat. 477, provided in part that act Aug. 28, 1950, may be cited as the ''Social Security Act Amendments of 1950''. For complete classification of this Act to the Code, see Tables.

§ 1306. Disclosure of information in possession of Social Security Administration or Department of Health and Human Services

(a) Disclosure prohibited; exceptions

(1) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code [of 1939], or under regulations made under authority thereof, which has been transmitted to the head of the applicable agency by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the head of the applicable agency or by any officer or employee of the applicable agency in the course of discharging the duties of the head of the applicable agency under this chapter, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the head of the applicable agency or from any officer or employee of the applicable agency, shall be made except as the head of the applicable agency may by regulations prescribe and except as otherwise provided by Federal law. Any person who shall violate any provision of this section shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding $10,000 for each occurrence of a violation, or by imprisonment not exceeding 5 years, or both.

(2) For purposes of this subsection and subsection (b) of this section, the term ''applicable agency'' means—

(A) the Social Security Administration, with respect to matter transmitted to or obtained by such Administration or matter disclosed by such Administration, or

(B) the Department of Health and Human Services, with respect to matter transmitted to or obtained by such Department or matter disclosed by such Department.

(b) Requests for information and services

Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the head of the applicable agency to avoid undue interference with his functions under this chapter, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the head of the applicable agency. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the head of the applicable agency, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance

Trust Fund) for the unit or units of the applicable agency which furnished the information or services. Notwithstanding the preceding provisions of this subsection, requests for information made pursuant to the provisions of part D of subchapter IV of this chapter for the purpose of using Federal records for locating parents shall be complied with and the cost incurred in providing such information shall be paid for as provided in such part D of subchapter IV of this chapter.

(c) Cost reimbursement

Notwithstanding sections 552 and 552a of title 5 or any other provision of law, whenever the Commissioner of Social Security or the Secretary determines that a request for information is made in order to assist a party in interest (as defined in section 1002 of title 29) with respect to the administration of an employee benefit plan (as so defined), or is made for any other purpose not directly related to the administration of the program or programs under this chapter to which such information relates, such Commissioner or Secretary may require the requester to pay the full cost, as determined by such Commissioner or Secretary, of providing such information.

(d) Compliance with requests

Notwithstanding any other provision of this section, in any case in which—

(1) information regarding whether an individual is shown on the records of the Commissioner of Social Security as being alive or deceased is requested from the Commissioner for purposes of epidemiological or similar research which the Commissioner in consultation with the Secretary of Health and Human Services finds may reasonably be expected to contribute to a national health interest, and

(2) the requester agrees to reimburse the Commissioner for providing such information and to comply with limitations on safeguarding and rerelease or redisclosure of such information as may be specified by the Commissioner,

the Commissioner shall comply with such request, except to the extent that compliance with such request would constitute a violation of the terms of any contract entered into under section 405(r) of this title.

(e) Public inspection

Notwithstanding any other provision of this section the Secretary shall make available to each State agency operating a program under subchapter XIX of this chapter and shall, subject to the limitations contained in subsection (e)[1] of this section, make available for public inspection in readily accessible form and fashion, the following official reports (not including, however, references to any internal tolerance rules and practices that may be contained therein, internal working papers or other informal memoranda) dealing with the operation of the health programs established by subchapters XVIII and XIX of this chapter—

(1) individual contractor performance reviews and other formal evaluations of the performance of carriers, intermediaries, and State agencies, including the reports of follow-up reviews;

(2) comparative evaluations of the performance of such contractors, including comparisons of either overall performance or of any particular aspect of contractor operation; and

(3) program validation survey reports and other formal evaluations of the performance of providers of services, including the reports of follow-up reviews, except that such reports shall not identify individual patients, individual health care practitioners, or other individuals.

(f) Opportunity for review

No report described in subsection (e) of this section shall be made public by the Secretary or the State subchapter XIX agency until the contractor or provider of services whose performance is being evaluated has had a reasonable opportunity (not exceeding 60 days) to review such report and to offer comments pertinent parts of which may be incorporated in the public report; nor shall the Secretary be required to include in any such report information with respect to any deficiency (or improper practice or procedures) which is known by the Secretary to have been fully corrected, within 60 days of the date such deficiency was first brought to the attention of such contractor or provider of services, as the case may be.

(Aug. 14, 1935, ch. 531, title XI, §1106, as added Aug. 10, 1939, ch. 666, title VIII, §802, 53 Stat. 1398; amended Aug. 28, 1950, ch. 809, title IV, §403(d), 64 Stat. 559; Pub. L. 85–840, title VII, §701, Aug. 28, 1958, 72 Stat. 1055; Pub. L. 89–97, title I, §108(c), title III, §340, July 30, 1965, 79 Stat. 339, 411; Pub. L. 90–248, title I, §168, title II, §241(c)(1), Jan. 2, 1968, 81 Stat. 875, 917; Pub. L. 92–603, title II, §249C(a), Oct. 30, 1972, 86 Stat. 1428; Pub. L. 93–647, §101(d), Jan. 4, 1975, 88 Stat. 2360; Pub. L. 97–35, title XXII, §2207, Aug. 13, 1981, 95 Stat. 838; Pub. L. 98–369, div. B, title VI, §2663(j)(2)(D)(ii), (*l*), July 18, 1984, 98 Stat. 1170, 1171; Pub. L. 103–296, title I, §108(b)(2)–(5), title III, §§311(a), 313(a), Aug. 15, 1994, 108 Stat. 1481, 1482, 1525, 1530.)

REFERENCES IN TEXT

Title VIII of the Social Security Act, referred to in subsec. (a)(1), probably refers to former title VIII of the Act, which was classified to subchapter VIII (§1001 et seq.) of this chapter prior to its omission from the Code as superseded by the provisions of the Internal Revenue Code of 1939 and the Internal Revenue Code of 1986.

Subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a), were comprised of sections 480 to 482 and 1400 to 1432, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Part D of subchapter IV of this chapter, referred to in subsec. (b), is classified to section 651 et seq. of this title.

[1] So in original. Probably should be subsection ''(f)''.

Subchapter XVIII of this chapter, referred to in subsec. (e), is classified to section 1395 et seq. of this title.

Subchapter XIX of this chapter, referred to in subsecs. (e) and (f), is classified to section 1396 et seq. of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 313(a), in par. (1), substituted ''felony'' for ''misdemeanor'', ''$10,000 for each occurrence of a violation'' for ''$1,000'', and ''5 years'' for ''one year''.

Pub. L. 103–296, § 108(b)(2), designated existing provisions as par. (1), substituted ''head of the applicable agency'' for ''Secretary'' wherever appearing and ''employee of the applicable agency'' for ''employee of the Department of Health and Human Services'' in two places, and added par. (2).

Subsec. (b). Pub. L. 103–296, § 108(b)(3), substituted ''head of the applicable agency'' for ''Secretary'' wherever appearing and ''applicable agency which'' for ''Department of Health and Human Services which''.

Subsec. (c). Pub. L. 103–296, § 108(b)(4), substituted ''the Commissioner of Social Security or the Secretary'' for ''the Secretary'' where first appearing and ''such Commissioner or Secretary'' for ''the Secretary'' where appearing subsequently in two places.

Subsec. (d). Pub. L. 103–296, § 311(a)(3), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 103–296, § 108(b)(5) in subsec. (d) as added by Pub. L. 103–296, § 311(a)(3), in par. (1) substituted ''Commissioner of Social Security'' for ''Secretary'' after ''records of the'', ''Commissioner'' for ''Secretary'' after ''from the'', ''Commissioner in consultation with the Secretary of Health and Human Services'' for ''Secretary'' after ''which the'', and in par. (2) and closing provisions substituted ''Commissioner'' for ''Secretary'' wherever appearing.

Subsec. (e). Pub. L. 103–296, § 311(a)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 103–296, § 311(a)(1), (2), redesignated subsec. (e) as (f) and substituted ''subsection (e)'' for ''subsection (d)''.

1984—Subsec. (a). Pub. L. 98–369, § 2663(*l*), substituted ''Secretary'' and ''Department of Health and Human Services'' for ''Administrator'' and ''Federal Security Agency'', respectively, wherever appearing.

Subsec. (b). Pub. L. 98–369, § 2663(j)(2)(D)(ii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1981—Subsec. (a). Pub. L. 97–35, § 2207(1), substituted ''as otherwise provided by Federal law'' for ''as provided in part D of subchapter IV of this chapter''.

Subsec. (c). Pub. L. 97–35, § 2207(2), added subsec. (c).

1975—Subsec. (a). Pub. L. 93–647, § 101(d)(1), inserted ''and except as provided in part D of subchapter IV of this chapter'' after ''may by regulations prescribe''.

Subsec. (b). Pub. L. 93–647, § 101(d)(2), inserted provision relating to compliance with requests for information made pursuant to part D of subchapter IV of this chapter for purpose of using Federal records to locate parents.

Subsec. (c). Pub. L. 93–647, § 101(d)(3), repealed subsec. (c) relating to requests by State or local agencies for most recent address of any individual maintained pursuant to section 405 of this title and requirements for release of such information.

1972—Subsecs. (d), (e). Pub. L. 92–603 added subsecs. (d) and (e).

1968—Subsec. (c)(1). Pub. L. 90–248, § 241(c)(1), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

Subsec. (c)(1)(A), (B). Pub. L. 90–248, § 168(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (D) as cls. (i) to (iv) thereof, and added subpar. (B).

Subsec. (c)(2). Pub. L. 90–248, § 168(b)(1), substituted ''(and, in the case of a request under paragraph (1)(A), shall be accompanied by a certified copy of the order referred to in clauses (i) and (iv) thereof)'' for '', and shall be accompanied by a certified copy of the order referred to in paragraph (1)(A) of this subsection''.

Subsec. (c)(3). Pub. L. 90–248, § 168(b)(2), substituted ''authorized by subparagraph (A)(iv) or (B)'' for ''authorized by subparagraph (D)''.

1965—Subsec. (b). Pub. L. 89–97, § 108(c), provided for use of special deposit in the Treasury (made up of payments for information and services furnished) to reimburse authorizations to make expenditures from the Federal Hospital Insurance Trust Fund and the Supplementary Medical Insurance Trust Fund.

Subsec. (c). Pub. L. 89–97, § 340, added subsec. (c).

1958—Subsec. (b). Pub. L. 85–840 amended subsec. (b) generally, authorizing compliance with requests for services if the agency, person, or organization making the request agrees to pay for the services.

1950—Act Aug. 28, 1950, amended section generally, designating existing provisions as subsec. (a), substituting ''under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939'' for ''the Federal Insurance Contributions Act,'' reflecting the transfer of functions from the Social Security Board to the Federal Security Administrator and the Federal Security Agency, and adding subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(2)–(5) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 311(a) of Pub. L. 103–296, applicable with respect to requests for information made after Aug. 15, 1994, see section 311(c) of Pub. L. 103–296, set out as a note under section 6103 of Title 26, Internal Revenue Code.

Section 313(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section and section 1307 of this title] shall apply to violations occurring on or after the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective Aug. 1, 1975, see section 101(f) of Pub. L. 93–647, set out as an Effective Date note under section 651 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 249C(b) of Pub. L. 92–603 provided that: ''The provisions of subsection (a) [amending this section] shall apply with respect to reports which are completed by the Secretary after the third calendar month following the enactment of this Act [Oct. 30, 1972].''

§ 1306a. Public access to State disbursement records

No State or any agency or political subdivision thereof shall be deprived of any grant-in-aid or other payment to which it otherwise is or has become entitled pursuant to subchapter I (other than section 303(a)(3) thereof), IV, X, XIV, or XVI (other than section 1383(a)(3) thereof) of this chapter, by reason of the enactment or enforcement by such State of any legislation prescribing any conditions under which public access may be had to records of the disbursement of any such funds or payments within such State, if such legislation prohibits the use of any list or names obtained through such access

to such records for commercial or political purposes.

(Oct. 20, 1951, ch. 521, title VI, § 618, 65 Stat. 569; Pub. L. 86–778, title VI, § 603(a), Sept. 13, 1960, 74 Stat. 992; Pub. L. 87–543, title I, § 141(e), July 25, 1962, 76 Stat. 205.)

REFERENCES IN TEXT

Section 303(a)(3), referred to in text, was repealed by Pub. L. 97–35, title XXI, § 2184(a)(4)(A), Aug. 13, 1981, 95 Stat. 816.

Section 1383(a)(3), referred to in text, was in the original a reference to section 1603(a)(3) of the Social Security Act as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 200, and amended. That section was amended generally by Pub. L. 92–603, § 301, Oct. 30, 1972, 86 Stat. 1478. However, the amendment by Pub. L. 92–603 was inapplicable to Puerto Rico, Guam, and the Virgin Islands, so that the prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

CODIFICATION

Section was enacted as part of act Oct. 20, 1951, popularly known as the Revenue Act of 1951, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1962—Pub. L. 87–543 substituted ''XIV, or XVI (other than section 1383(a)(3) thereof)'' for ''or XIV''.

1960—Pub. L. 86–778 inserted ''(other than section 303(a)(3) thereof)'' after ''pursuant to subchapter I''.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 603(b) of Pub. L. 86–778 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1960.''

§ 1306b. State data exchanges

Whenever the Commissioner of Social Security requests information from a State for the purpose of ascertaining an individual's eligibility for benefits (or the correct amount of such benefits) under subchapter II or XVI of this chapter, the standards of the Commissioner promulgated pursuant to section 1306 of this title or any other Federal law for the use, safeguarding, and disclosure of information are deemed to meet any standards of the State that would otherwise apply to the disclosure of information by the State to the Commissioner.

(Pub. L. 106–169, title II, § 209, Dec. 14, 1999, 113 Stat. 1842.)

CODIFICATION

Section was enacted as part of the Foster Care Independence Act of 1999, and not as part of the Social Security Act which comprises this chapter.

§ 1307. Penalty for fraud

(a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this chapter, of chapter 2, 21, or 23 of the Internal Revenue Code of 1986, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939, or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the social security account number, date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Commissioner of Social Security or the Secretary that he is such individual, or the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual, or the duly authorized agent of such individual, or of the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual, or (2) falsely represents to any person that he is an employee or agent of the United States, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine not exceeding $10,000 for each occurrence of a violation, or by imprisonment not exceeding 5 years, or both.

(Aug. 14, 1935, ch. 531, title XI, § 1107, as added Aug. 10, 1939, ch. 666, title VIII, § 802, 53 Stat. 1398; amended Aug. 28, 1950, ch. 809, title IV, § 403(e), (f), 64 Stat. 560; Pub. L. 98–369, div. B, title VI, § 2663(e)(2)(A), (3), (j)(2)(D)(iii), (*l*)(1), July 18, 1984, 98 Stat. 1168, 1170, 1171; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–296, title I, § 108(b)(6), title III, § 313(b), Aug. 15, 1994, 108 Stat. 1482, 1530.)

REFERENCES IN TEXT

Subchapter E of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a), was comprised of sections 1631 to 1636 of the 1939 Code, and was repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–296, § 313(b), inserted ''social security account number,'' after ''information as to the'' and substituted ''felony'' for ''misdemeanor'', ''$10,000 for each occurrence of a violation'' for ''$1,000'', and ''5 years'' for ''one year''.

Pub. L. 103–296, § 108(b)(6), which directed that subsec. (b) be amended by substituting ''the Commissioner of Social Security or the Secretary'' for ''the Secretary of Health and Human Services'', was executed by making the substitution for ''the Secretary'' to reflect the probable intent of Congress.

1986—Subsec. (a). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (a). Pub. L. 98–369, § 2663(e)(2)(A), substituted ''of chapter 2, 21, or 23 of the Internal Revenue Code of 1954, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of

1939,'' for ''subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code [of 1939]''.

Subsec. (b). Pub. L. 98–369, § 2663(*l*)(1), substituted ''Secretary'' for ''Administrator''.

Pub. L. 98–369, § 2663(j)(2)(D)(iii), which directed the substitution of ''Health and Human Services'' for ''Health, Education, and Welfare'' could not be executed because ''Health, Education, and Welfare'' did not appear in text.

Pub. L. 98–369, § 2663(e)(3), substituted ''divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father,'' for ''former wife divorced,'' in two places.

1950—Subsec. (a). Act Aug. 28, 1950, § 403(e), substituted ''subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code of 1939,'' for ''the Federal Insurance Contributions Act, or the Federal Unemployment Tax Act,''.

Subsec. (b). Act Aug. 28, 1950, § 403(f), substituted ''Administrator'' for ''Board'' and ''wife, husband, widow, widower, former wife divorced, child, or parent'' for ''wife, parent, or child'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(6) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 313(b) of Pub. L. 103–296 applicable to violations occurring on or after Aug. 15, 1994, see section 313(c) of Pub. L. 103–296, set out as a note under section 1306 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section § 2663(e)(2)(B) of Pub. L. 98–369 provided that: ''The amendment made by subparagraph (A) [amending this section] shall not apply to returns filed or representations made on or before the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2663(e)(3), (j)(2)(D)(iii), (*l*)(1) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 1308. Additional grants to Puerto Rico, Virgin Islands, Guam, and American Samoa; limitation on total payments

(a) Limitation on total payments to each territory

(1) In general

Notwithstanding any other provision of this chapter (except for paragraph (2) of this subsection), the total amount certified by the Secretary of Health and Human Services under subchapters I, X, XIV, and XVI of this chapter, under parts A and E of subchapter IV of this chapter, and under subsection (b) of this section, for payment to any territory for a fiscal year shall not exceed the ceiling amount for the territory for the fiscal year.

(2) Certain payments disregarded

Paragraph (1) of this subsection shall be applied without regard to any payment made under section 603(a)(2), 603(a)(4), 603(a)(5), 606, or 613(f) of this title.

(b) Entitlement to matching grant

(1) In general

Each territory shall be entitled to receive from the Secretary for each fiscal year a grant in an amount equal to 75 percent of the amount (if any) by which—

(A) the total expenditures of the territory during the fiscal year under the territory programs funded under parts A and E of subchapter IV of this chapter, including any amount paid to the State under part A of subchapter IV of this chapter that is transferred in accordance with section 604(d) of this title and expended under the program to which transferred; exceeds

(B) the sum of—

(i) the amount of the family assistance grant payable to the territory without regard to section 609 of this title; and

(ii) the total amount expended by the territory during fiscal year 1995 pursuant to parts A and F of subchapter IV of this chapter (as so in effect), other than for child care.

(2) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1997 through 2003, such sums as are necessary for grants under this paragraph.

(c) Definitions

As used in this section:

(1) Territory

The term ''territory'' means Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) Ceiling amount

The term ''ceiling amount'' means, with respect to a territory and a fiscal year, the mandatory ceiling amount with respect to the territory, reduced for the fiscal year in accordance with subsection (e)[1] of this section, and reduced by the amount of any penalty imposed on the territory under any provision of law specified in subsection (a) of this section during the fiscal year.

(3) Family assistance grant

The term ''family assistance grant'' has the meaning given such term by section 603(a)(1)(B) of this title.

(4) Mandatory ceiling amount

The term ''mandatory ceiling amount'' means—

(A) $107,255,000 with respect to Puerto Rico;

(B) $4,686,000 with respect to Guam;

(C) $3,554,000 with respect to the Virgin Islands; and

(D) $1,000,000 with respect to American Samoa.

(5) Total amount expended by the territory

The term ''total amount expended by the territory''—

(A) does not include expenditures during the fiscal year from amounts made available by the Federal Government; and

(B) when used with respect to fiscal year 1995, also does not include—

[1] See References in Text note below.

(i) expenditures during fiscal year 1995 under subsection (g) or (i) of section 602 of this title (as in effect on September 30, 1995); or

(ii) any expenditures during fiscal year 1995 for which the territory (but for this section, as in effect on September 30, 1995) would have received reimbursement from the Federal Government.

(d) Authority to transfer funds to certain programs

A territory to which an amount is paid under subsection (b) of this section may use the amount in accordance with section 604(d) of this title.

(e) Repealed. Pub. L. 105–33, title V, § 5512(c), Aug. 5, 1997, 111 Stat. 619

(f) Total amount certified under subchapter XIX

Subject to subsection (g) of this section and section 1396u–5(e)(1)(B) of this title, the total amount certified by the Secretary under subchapter XIX of this chapter with respect to a fiscal year for payment to—

(1) Puerto Rico shall not exceed (A) $116,500,000 for fiscal year 1994 and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (as published by the Bureau of Labor Statistics) for the twelve-month period ending in March preceding the beginning of the fiscal year, rounded to the nearest $100,000;

(2) the Virgin Islands shall not exceed (A) $3,837,500 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000;

(3) Guam shall not exceed (A) $3,685,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000;

(4) Northern Mariana Islands shall not exceed (A) $1,110,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000; and

(5) American Samoa shall not exceed (A) $2,140,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000.

(g) Medicaid payments to territories for fiscal year 1998 and thereafter

(1) Fiscal year 1998

With respect to fiscal year 1998, the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsection (f) of this section for such fiscal year shall be increased by the following amounts:

(A) For Puerto Rico, $30,000,000.

(B) For the Virgin Islands, $750,000.

(C) For Guam, $750,000.

(D) For the Northern Mariana Islands, $500,000.

(E) For American Samoa, $500,000.

(2) Fiscal year 1999 and thereafter

Notwithstanding subsection (f) of this section, with respect to fiscal year 1999 and any fiscal year thereafter, the total amount certified by the Secretary under subchapter XIX of this chapter for payment to—

(A) Puerto Rico shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase in the medical care component of the Consumer Price Index for all urban consumers (as published by the Bureau of Labor Statistics) for the 12-month period ending in March preceding the beginning of the fiscal year, rounded to the nearest $100,000;

(B) the Virgin Islands shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000;

(C) Guam shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000;

(D) the Northern Mariana Islands shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000; and

(E) American Samoa shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000.

(Aug. 14, 1935, ch. 531, title XI, § 1108, as added Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(g), 64 Stat. 558; amended Aug. 1, 1956, ch. 836, title III, § 351(c), 70 Stat. 855; Pub. L. 85–840, title V, §§ 507, 508, Aug. 28, 1958, 72 Stat. 1051; Pub. L. 86–778, title VI, § 602, Sept. 13, 1960, 74 Stat. 992; Pub. L. 87–31, § 6(a)(1), (2), (b), May 8, 1961, 75 Stat. 78; Pub. L. 87–64, title III, § 303(d), June 30, 1961, 75 Stat. 143; Pub. L. 87–543, title I, § 151, July 25, 1962, 76 Stat. 206; Pub. L. 89–97, title II, § 208(a)(2), title IV, § 408(a), July 30, 1965, 79 Stat. 355, 422; Pub. L. 90–248, title II, § 248(a)(1), Jan. 2, 1968, 81 Stat. 918; Pub. L. 92–603, title II, §§ 271(a), (b), 272(b), Oct. 30, 1972, 86 Stat. 1451; Pub. L. 93–647, § 3(i), Jan. 4, 1975, 88 Stat. 2350; Pub. L. 95–600, title VIII, § 802(b), Nov. 6, 1978, 92 Stat. 2945; Pub. L. 96–272, title II, § 207(c), title III, §§ 305(a), (b), June 17, 1980, 94 Stat. 526, 529, 530; Pub. L. 97–35, title XXI, §§ 2162(b)(1), 2193(c)(1), title XXIII, § 2353(f), Aug. 13, 1981, 95 Stat. 806, 827, 872; Pub. L. 97–248, title I, §§ 136(b), 160(a), Sept. 3, 1982, 96 Stat. 375, 400; Pub. L. 98–369, div. B, title III, § 2365(a), July 18, 1984, 98 Stat. 1108; Pub. L.

100–203, title IV, § 4111(a), Dec. 22, 1987, 101 Stat. 1330–148; Pub. L. 100–485, title II, § 202(c)(2), (3), title VI, §§ 601(b), (c)(2), 602(a), Oct. 13, 1988, 102 Stat. 2378, 2407, 2408; Pub. L. 103–66, title XIII, § 13641(a), Aug. 10, 1993, 107 Stat. 646; Pub. L. 104–193, title I, § 103(b), Aug. 22, 1996, 110 Stat. 2160; Pub. L. 105–33, title IV, § 4726, title V, §§ 5001(b), 5512, Aug. 5, 1997, 111 Stat. 519, 589, 619; Pub. L. 108–40, § 3(b), June 30, 2003, 117 Stat. 836; Pub. L. 108–173, title I, § 103(d)(2), Dec. 8, 2003, 117 Stat. 2159.)

REFERENCES IN TEXT

Parts A and E of subchapter IV of this chapter, referred to in subsecs. (a) and (b)(1), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

Part F of subchapter IV of this chapter, referred to in subsec. (b)(1)(B)(ii), was classified to section 681 et seq. of this title, prior to repeal by Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167.

Subsection (e) of this section, referred to in subsec. (c)(2), was repealed by Pub. L. 105–33, title V, § 5512(c), Aug. 5, 1997, 111 Stat. 619.

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108–40 substituted ''2003'' for ''2002''.

Subsec. (f). Pub. L. 108–173 inserted ''and section 1396u–5(e)(1)(B) of this title'' after ''Subject to subsection (g) of this section'' in introductory provisions.

1997—Subsec. (a). Pub. L. 105–33, § 5512(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Notwithstanding any other provision of this chapter, the total amount certified by the Secretary of Health and Human Services under subchapters I, X, XIV, and XVI of this chapter, under parts A and E of subchapter IV of this chapter, and under subsection (b) of this section, for payment to any territory for a fiscal year shall not exceed the ceiling amount for the territory for the fiscal year.''

Subsec. (a)(2). Pub. L. 105–33, § 5001(b), inserted ''603(a)(5),'' after ''603(a)(4),''.

Subsec. (b)(1)(A). Pub. L. 105–33, § 5512(b), inserted '', including any amount paid to the State under part A of subchapter IV of this chapter that is transferred in accordance with section 604(d) of this title and expended under the program to which transferred'' before semicolon.

Subsec. (e). Pub. L. 105–33, § 5512(c), struck out heading and text of subsec. (e). Text read as follows: ''The ceiling amount with respect to a territory shall be reduced for a fiscal year by an amount equal to the amount (if any) by which—

''(1) the total amount expended by the territory under all programs of the territory operated pursuant to the provisions of law specified in subsection (a) of this section (as such provisions were in effect for fiscal year 1995) for fiscal year 1995; exceeds

''(2) the total amount expended by the territory under all programs of the territory that are funded under the provisions of law specified in subsection (a) of this section for the fiscal year that immediately precedes the fiscal year referred to in the matter preceding paragraph (1).''

Subsec. (f). Pub. L. 105–33, § 4726(1), substituted ''Subject to subsection (g) of this section, the'' for ''The'' in introductory provisions.

Subsec. (g). Pub. L. 105–33, § 4726(2), added subsec. (g).

1996—Pub. L. 104–193, § 103(b)(3), added section catchline and struck out former catchline.

Subsecs. (a), (b). Pub. L. 104–193, § 103(b)(3), added subsecs. (a) and (b) and struck out former subsec. (a) which limited total amount certified under subchapters I, X, XIV, XVI of this chapter and parts A and E of subchapter IV of this chapter for payment to Puerto Rico, the Virgin Islands, and Guam and former subsec. (b) which limited total amount certified for family planning services for Puerto Rico, the Virgin Islands, and Guam.

Subsec. (c). Pub. L. 104–193, § 103(b)(3), added subsec. (c). Former subsec. (c) redesignated (f).

Subsecs. (d), (e). Pub. L. 104–193, § 103(b)(1), (3), added subsecs. (d) and (e) and struck out former subsec. (d) which limited payments to American Samoa and former subsec. (e) which related to allotment of smaller amounts.

Subsec. (f). Pub. L. 104–193, § 103(b)(2), redesignated subsec. (c) as (f).

1993—Subsec. (c)(1) to (5). Pub. L. 103–66 amended pars. (1) to (5) generally. Prior to amendment, pars. (1) to (5) read as follows:

''(1) Puerto Rico shall not exceed (A) $73,400,000 for fiscal year 1988, (B) $76,200,000 for fiscal year 1989, and (C) $79,000,000 for fiscal year 1990 (and each succeeding fiscal year);

''(2) the Virgin Islands shall not exceed (A) $2,430,000 for fiscal year 1988, (B) $2,515,000 for fiscal year 1989, and (C) $2,600,000 for fiscal year 1990 (and each succeeding fiscal year);

''(3) Guam shall not exceed (A) $2,320,000 for fiscal year 1988, (B) $2,410,000 for fiscal year 1989, and (C) $2,500,000 for fiscal year 1990 (and each succeeding fiscal year);

''(4) the Northern Mariana Islands shall not exceed (A) $636,700 for fiscal year 1988, (B) $693,350 for fiscal year 1989, and (C) $750,000 for fiscal year 1990 (and each succeeding fiscal year); and

''(5) American Samoa shall not exceed (A) $1,330,000 for fiscal year 1988, (B) $1,390,000 for fiscal year 1989, and (C) $1,450,000 for fiscal year 1990 (and each succeeding fiscal year).''

1988—Pub. L. 100–485, § 601(c)(2), amended section catchline generally.

Subsec. (a). Pub. L. 100–485, § 202(c)(2), inserted ''or, in the case of part A of subchapter IV of this chapter, section 603(k) of this title'' before ''applies'' in introductory provisions.

Subsec. (a)(1)(F), (G). Pub. L. 100–485, § 602(a)(1), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: ''$72,000,000 with respect to the fiscal year 1979 and each fiscal year thereafter;''.

Subsec. (a)(2)(F), (G). Pub. L. 100–485, § 602(a)(2), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: ''$2,400,000 with respect to the fiscal year 1979 and each fiscal year thereafter;''.

Subsec. (a)(3)(F), (G). Pub. L. 100–485, § 602(a)(3), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: ''$3,300,000 with respect to the fiscal year 1979 and each fiscal year thereafter.''

Subsec. (b). Pub. L. 100–485, § 202(c)(3), struck out ''and services provided under section 602(a)(19) of this title'' after ''family planning services'' in introductory provisions.

Subsecs. (d), (e). Pub. L. 100–485, § 601(b), added subsec. (d) and redesignated former subsec. (d) as (e).

1987—Subsec. (c). Pub. L. 100–203 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The total amount certified by the Secretary under subchapter XIX of this chapter with respect to a fiscal year for payment to—

''(1) Puerto Rico shall not exceed $63,400,000;

''(2) the Virgin Islands shall not exceed $2,100,000;

''(3) Guam shall not exceed $2,000,000;

''(4) the Northern Mariana Islands shall not exceed $550,000; and

''(5) American Samoa shall not exceed $1,150,000.''

1984—Subsec. (c). Pub. L. 98–369 substituted ''$63,400,000'' for ''$45,000,000'' in par. (1), ''$2,100,000'' for ''$1,500,000'' in par. (2), ''$2,000,000'' for ''$1,400,000'' in par. (3), ''$550,000'' for ''$350,000'' in par. (4), and ''$1,150,000'' for ''$750,000'' in par. (5).

1982—Subsec. (a). Pub. L. 97–248, § 160(a), inserted provisions following par. (3)(F) that each jurisdiction specified in this subsection may use in its program under subchapter XX of this chapter any sums available to it under this subsection which are not needed to carry out the programs specified in this subsection.

Subsec. (c)(5). Pub. L. 97–248, § 136(b), added par. (5).

1981—Subsec. (a). Pub. L. 97–35, § 2353(f), substituted in provision preceding par. (1) ''The total amount certified by the Secretary of Health and Human Services'' for ''Except as provided in section 1397a(a)(2)(C) of this title, the total amount certified by the Secretary of Health, Education, and Welfare''.

Subsec. (c). Pub. L. 97–35, § 2162(b)(1), in par. (1) increased the amount from not to exceed $2,000,000 to not to exceed $45,000,000, in par. (2) increased the amount from not to exceed $65,000 to not to exceed $1,500,000, in par. (3) increased the amount from not to exceed $90,000 to not to exceed $1,400,000, and added par. (4).

Subsec. (d). Pub. L. 97–35, § 2193(c)(1), substituted ''section 621 of this title'' for ''sections 702(a) and 712(a) of this title, and the provisions of sections 621, 703(1), and 704(1) of this title as amended by the Social Security Amendments of 1967''.

1980—Subsec. (a). Pub. L. 96–272 substituted ''section 1397a(a)(2)(C) of this title'' for ''section 1397a(a)(2)(D) of this title'' and ''under parts A and E'' for ''under part A'' in provisions preceding par. (1), substituted ''with respect to each of the fiscal years 1972 through 1978'' for ''with respect to the fiscal year 1972 and each fiscal year thereafter other than the fiscal year 1979'' in pars. (1)(E), (2)(E), and (3)(E), and substituted ''with respect to the fiscal year 1979 and each fiscal year thereafter'' for ''with respect to the fiscal year 1979'' in pars. (1)(F), (2)(F), and (3)(F).

1978—Subsec. (a)(1)(E). Pub. L. 95–600, § 802(b)(1)(B), inserted ''other than the fiscal year 1979, or''.

Subsec. (a)(1)(F). Pub. L. 95–600, § 802(b)(1)(C), added subpar. (F).

Subsec. (a)(2)(E). Pub. L. 95–600, § 802(b)(2)(B), substituted ''other than the fiscal year 1979, or'' for ''; and''.

Subsec. (a)(2)(F). Pub. L. 95–600, § 802(b)(2)(C), added subpar. (F).

Subsec. (a)(3)(E). Pub. L. 95–600, § 802(b)(3)(B), inserted ''other than the fiscal year 1979, or''.

Subsec. (a)(3)(F). Pub. L. 95–600, § 802(b)(3)(C), added subpar. (F).

1975—Subsec. (a). Pub. L. 93–647 substituted ''Except as provided in section 1397a(a)(2)(D) of this title, the total amount'' for ''The total amount''.

1972—Subsec. (c)(1). Pub. L. 92–603, § 271(a), substituted ''$30,000,000'' for ''$20,000,000''.

Subsec. (c)(2). Pub. L. 92–603, § 271(b), substituted ''$1,000,000'' for ''$650,000''.

Subsec. (d). Pub. L. 92–603, § 272(b), inserted '', American Samoa, and the Trust Territory of the Pacific Islands'' after ''allot such smaller amounts to Guam''.

1968—Pub. L. 90–248 amended section generally and, among other changes, raised the present $9.8 million limit for Federal financial participation in the public assistance programs of Puerto Rico to $12.5 million for fiscal 1968 with further increases in succeeding fiscal years to a maximum of $24 million for fiscal 1972 and each fiscal year thereafter, increased the dollar maximums for the Virgin Islands from $330,000 to $800,000 for fiscal 1972 and thereafter and for Guam from $450,000 to $1.1 million for fiscal 1972 and thereafter, authorized payments for family planning services and services referred to in section 602(a)(19) of this title, with respect to any fiscal year, of not more than $2 million for Puerto Rico, $65,000 for the Virgin Islands, and $90,000 for Guam, imposed a maximum on Federal payments for the medical assistance program under subchapter XIX of this chapter, with respect to any fiscal year, of $20 million for Puerto Rico, $650,000 for the Virgin Islands, and $900,000 for Guam, and provided that notwithstanding sections 702(a) and 712(a) of this title and sections 621, 703(1), and 704(1) of this title, as amended by the Social Security Amendments of 1967, and until Congress otherwise provides, the Secretary shall, in lieu of the initial allotments specified in such sections, allot smaller amounts to Guam as he deems appropriate.

1965—Pub. L. 89–97 substituted ''and 722(a)'' for ''722(a) and 727(a)'' and struck out ''(or, in the case of section 727(a) of this title'' after ''in lieu of the initial'', and removed the litigation requiring that, with respect to any fiscal year, $625,000 of the $9,800,000 certified for payments to Puerto Rico, $18,750 of the $330,000 certified for payments to the Virgin Islands, and $25,000 of the $450,000 certified for payments to Guam, be used only for payments with respect to section 303(a)(2)(B) or 1383(a)(2)(B) of this title.

1962—Pub. L. 87–543 substituted ''$9,800,000'', ''$330,000'', ''$450,000'', and ''initial (or, in the case of section 727(a) of this title, the minimum) allotment'' for ''$9,500,000'', ''$320,000'', ''$430,000'', and ''$60,000, $60,000 $60,000, respectively,'' and inserted references to subchapter ''XVI (other than section 1383(a)(3) thereof)'' of this chapter, section 1383(a)(2) in three places and section 727(a) after section 722(a).

1961—Pub. L. 87–64, substituted ''$9,500,000'', ''$320,000'', and ''$430,000'' for ''$9,425,000'', ''$318,750'', and ''$425,000'', respectively. See Repeals note below.

Pub. L. 87–31 increased the grant to Puerto Rico for fiscal year ending June 30, 1961, from $9,000,000 to $9,075,000 and for fiscal year ending June 30, 1962, to $9,425,000; the grants to Virgin Islands and Guam from $315,000 and $420,000 to $318,750 and $425,000, respectively; and payments under section 303(a)(2)(B) of this title to Puerto Rico, Virgin Islands and Guam from $500,000, $15,000 and $20,000 to $625,000, $18,750 and $25,000, respectively. See also Limitation on Payments note below.

1960—Pub. L. 86–778 substituted ''$9,000,000, of which $500,000 may be used only for payments certified with respect to section 303(a)(2)(B) of this title'' for ''$8,500,000'', ''$315,000, of which $15,000 may be used only for payments certified in respect to section 303(a)(2)(B) of this title'' for ''$300,000'', ''$420,000, of which $20,000 may be used only for payments certified in respect to section 303(a)(2)(B) of this title'' for ''$400,000'', and ''subchapters I (other than section 303(a)(3) thereof)'' for ''subchapters I''.

1958—Pub. L. 85–840, §§ 507, 508, amended section. Section 507(a) substituted ''$8,500,000'' for ''$5,312,500'' and ''$300,000'' for ''$200,000'', and limited the total amount certified for payment to Guam with respect to any fiscal year to not more than $400,000. Section 507(b) amended catchline to include Guam. Section 508 inserted provisions requiring the Secretary, in lieu of the allotments specified in sections 702(a)(2), 712(a)(2) and 722(a) of this title, to allot such smaller amounts as he may deem appropriate to Guam, notwithstanding provisions of such sections and until such time as the Congress may by appropriation or other law otherwise provide.

1956—Act Aug. 1, 1956, substituted ''$5,312,500'' for ''$4,250,000'', and ''$200,000'' for ''$160,000''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 116(a)(3) of Pub. L. 104–193, set out as a note under section 601 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13641(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply beginning with fiscal year 1994.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 202(c)(2), (3) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204 of Pub. L. 100–485, set out as a note under section 671 of this title.

Amendment by section 601(b), (c)(2) of Pub. L. 100–485 effective Oct. 1, 1988, see section 601(d) of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 1301 of this title.

Section 602(b) of Pub. L. 100–485 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on October 1, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4111(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments for fiscal years beginning with fiscal year 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2365(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective for fiscal years beginning on or after October 1, 1983.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 136(b) of Pub. L. 97–248 effective Oct. 1, 1982, see section 136(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

Amendment by section 160(a) of Pub. L. 97–248 effective Oct. 1, 1981, see section 160(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2162(b)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to fiscal years beginning with fiscal year 1982.''

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(1) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Amendment by section 2353(f) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 271(c) of Pub. L. 92–603 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to fiscal years beginning after June 30, 1971.''

Amendment by section 272(b) of Pub. L. 92–603 applicable with respect to fiscal years beginning after June 30, 1971, see section 272(c) of Pub. L. 92–603, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 248(a)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to fiscal years beginning after June 30, 1967.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 208(a)(2) Pub. L. 89–97 effective Jan. 1, 1966, see section 208(d) of Pub. L. 89–97.

Section 408(b) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective in the case of Puerto Rico, the Virgin Islands, or Guam with respect to fiscal years beginning on or after the date on which its plan under title XIX of the Social Security Act [section 1396 et seq. of this title] is approved.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 151 of Pub. L. 87–543 provided that the amendment made by that section is effective for fiscal years ending after June 30, 1962.

EFFECTIVE AND TERMINATION DATES OF 1961 AMENDMENTS

Section 132(d) of Pub. L. 87–543 repealed section 303(d) of Pub. L. 87–64, which had provided that the amendment by section 303(d) of Pub. L. 87–64 shall be effective only for fiscal year ending June 30, 1962, and section 6 of Pub. L. 87–31, which had provided that the amendment by section 6(b) of Pub. L. 87–31 shall be effective for fiscal years ending after June 30, 1961. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note under section 906 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective with respect to fiscal years ending after 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendments made by sections 507 and 508 of Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 351(d) of act Aug. 1, 1956, provided that: ''The amendments made by this section [amending this section and sections 603 and 606 of this title] shall be effective with respect to the fiscal year ending June 30, 1957, and all succeeding fiscal years.''

REPEALS: EFFECTIVE DATE

Section 132(d) of Pub. L. 87–543 repealed section 6 of Pub. L. 87–31, May 8, 1961, 75 Stat. 78, and section 303(d) of Pub. L. 87–64, title III, June 30, 1961, 75 Stat. 143, formerly cited as a credit to this section. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note under section 906 of this title.

LIMITATION ON PAYMENTS: EFFECTIVE DATE

Section 132(d) of Pub. L. 87–543 repealed section 6(a) of Pub. L. 87–31, May 8, 1961, 75 Stat. 78, which had limited payments to Puerto Rico not to exceed $9,075,000 for fiscal year ending June 30, 1961, $9,425,000 for fiscal year ending June 30, 1962; and $9,125,000 for fiscal years ending after June 30, 1962. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note under section 906 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1309. Amounts disregarded not to be taken into account in determining eligibility of other individuals

Any amount which is disregarded (or set aside for future needs) in determining the eligibility of and amount of the aid or assistance for any individual under a State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter,[1] shall not be taken into consideration in determining the eligibility of and amount of aid or assistance for any other individual under a State plan approved under any other of such subchapters.

(Aug. 14, 1935, ch. 531, title XI, § 1109, as added July 18, 1952, ch. 945, § 7, 66 Stat. 778; amended

[1] So in original. The comma probably should not appear.

Pub. L. 87–543, title I, § 141(c), July 25, 1962, 76 Stat. 205; Pub. L. 89–97, title I, § 121(c)(2), July 30, 1965, 79 Stat. 352; Pub. L. 90–248, title II, § 241(c)(2), Jan. 2, 1968, 81 Stat. 917; Pub. L. 104–193, title I, § 108(g)(1), Aug. 22, 1996, 110 Stat. 2168.)

AMENDMENTS

1996—Pub. L. 104–193 struck out ''or part A of subchapter IV of this chapter,'' after ''subchapter I, X, XIV, XVI, or XIX of this chapter,''.

1968—Pub. L. 90–248 struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter,'' after ''XIX of this chapter''.

1965—Pub. L. 89–97 substituted requirement that amounts disregarded be not taken into account in determining eligibility of other individuals, for former provisions which had provided that: ''Notwithstanding the provisions of sections 302(a)(10)(A), 602(a)(7), 1202(a)(8), 1352(a)(8), and 1382(a)(14) of this title, a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter may until June 30, 1954, and thereafter shall provide that where earned income has been disregarded in determining the need of an individual receiving aid to the blind under a State plan approved under subchapter X of this chapter, the earned income so disregarded (but not in excess of the amount specified in section 1202(a)(8) of this title) shall not be taken into consideration in determining the need of any other individual for assistance under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter''.

1962—Pub. L. 87–543 substituted reference to section 302(a)(10)(A) for 302(a)(7) and inserted references to section 1382(a)(14) and subchapter XVI.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

§ 1310. Cooperative research or demonstration projects

(a) In general

(1) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1957, $5,000,000 and for each fiscal year thereafter such sums as the Congress may determine for (A) making grants to States and public and other organizations and agencies for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency, or which will aid in effecting coordination of planning between private and public welfare agencies or which will help improve the administration and effectiveness of programs carried on or assisted under this chapter and programs related thereto, and (B) making contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research or demonstration projects relating to such matters.

(2) No contract or jointly financed cooperative arrangement shall be entered into, and no grant shall be made, under paragraph (1), until the Secretary (or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapters II or XVI of this chapter) obtains the advice and recommendations of specialists who are competent to evaluate the proposed projects as to soundness of their design, the possibilities of securing productive results, the adequacy of resources to conduct the proposed research or demonstrations, and their relationship to other similar research or demonstrations already completed or in process.

(3) Grants and payments under contracts or cooperative arrangements under paragraph (1) may be made either in advance or by way of reimbursement, as may be determined by the Secretary (or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapter II or XVI of this chapter); and shall be made in such installments and on such conditions as the Secretary (or the Commissioner, as applicable) finds necessary to carry out the purposes of this subsection.

(b) Limitations and costs

(1) The Commissioner is authorized to waive any of the requirements, conditions, or limitations of subchapter XVI of this chapter (or to waive them only for specified purposes, or to impose additional requirements, conditions, or limitations) to such extent and for such period as the Commissioner finds necessary to carry out one or more experimental, pilot, or demonstration projects which, in the Commissioner's judgment, are likely to assist in promoting the objectives or facilitate the administration of such subchapter. Any costs for benefits under or administration of any such project (including planning for the project and the review and evaluation of the project and its results), in excess of those that would have been incurred without regard to the project, shall be met by the Commissioner from amounts available to the Commissioner for this purpose from appropriations made to carry out such subchapter. The costs of any such project which is carried out in coordination with one or more related projects under other subchapters of this chapter shall be allocated among the appropriations available for such projects and any Trust Funds involved, in a manner determined by the Commissioner with respect to the old-age, survivors, and disability insurance programs under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter, and by the Secretary with respect to other subchapters of this chapter, taking into consideration the programs (or types of benefit) to which the project (or part of a project) is most closely related or which the project (or part of a project) is intended to benefit. If, in order to carry out a project under this subsection, the Commissioner requests a State to make supplementary payments (or the Commissioner makes them pursuant to an agreement under section 1382e of this title) to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not make such payments, the Commissioner shall reimburse such State for the non-Federal share of such payments from amounts appropriated to carry out subchapter

XVI of this chapter. If, in order to carry out a project under this subsection, the Secretary requests a State to provide medical assistance under its plan approved under subchapter XIX of this chapter to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not provide such medical assistance, the Secretary shall reimburse such State for the non-Federal share of such assistance from amounts appropriated to carry out subchapter XVI of this chapter, which shall be provided by the Commissioner to the Secretary for this purpose.

(2) With respect to the participation of recipients of supplemental security income benefits in experimental, pilot, or demonstration projects under this subsection—

(A) the Commissioner is not authorized to carry out any project that would result in a substantial reduction in any individual's total income and resources as a result of his or her participation in the project;

(B) the Commissioner may not require any individual to participate in a project; and the Commissioner shall assure (i) that the voluntary participation of individuals in any project is obtained through informed written consent which satisfies the requirements for informed consent established by the Commissioner for use in any experimental, pilot, or demonstration project in which human subjects are at risk, and (ii) that any individual's voluntary agreement to participate in any project may be revoked by such individual at any time;

(C) the Commissioner shall, to the extent feasible and appropriate, include recipients who are under age 18 as well as adult recipients; and

(D) the Commissioner shall include in the projects carried out under this section such experimental, pilot, or demonstration projects as may be necessary to ascertain the feasibility of treating alcoholics and drug addicts to prevent the onset of irreversible medical conditions which may result in permanent disability, including programs in residential care treatment centers.

(c) Survey of use of payments

(1) In addition to the amount otherwise appropriated in any other law to carry out subsection (a) of this section for fiscal year 2004, up to $8,500,000 is authorized and appropriated and shall be used by the Commissioner of Social Security under this subsection for purposes of conducting a statistically valid survey to determine how payments made to individuals, organizations, and State or local government agencies that are representative payees for benefits paid under subchapter II or XVI of this chapter are being managed and used on behalf of the beneficiaries for whom such benefits are paid.

(2) Not later than 18 months after March 2, 2004, the Commissioner of Social Security shall submit a report on the survey conducted in accordance with paragraph (1) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(Aug. 14, 1935, ch. 531, title XI, § 1110, as added Aug. 1, 1956, ch. 836, title III, § 331, 70 Stat. 850; amended Pub. L. 90–248, title II, § 246, Jan. 2, 1968, 81 Stat. 918; Pub. L. 96–265, title V, § 505(b), June 9, 1980, 94 Stat. 474; Pub. L. 98–369, div. B, title III, § 2331(a), July 18, 1984, 98 Stat. 1088; Pub. L. 99–272, title XII, § 12101(d), Apr. 7, 1986, 100 Stat. 283; Pub. L. 103–296, title I, § 108(b)(7), Aug. 15, 1994, 108 Stat. 1482; Pub. L. 105–33, title V, § 5524, Aug. 5, 1997, 111 Stat. 623; Pub. L. 106–170, title IV, § 404(a), Dec. 17, 1999, 113 Stat. 1910; Pub. L. 108–203, title I, § 107(a), Mar. 2, 2004, 118 Stat. 506.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–203 added subsec. (c).

1999—Subsec. (a)(3). Pub. L. 106–170 substituted ''subchapter II or XVI'' for ''subchapter XVI''.

1997—Subsec. (a)(3). Pub. L. 105–33 inserted ''(or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapter XVI of this chapter)'' after ''Secretary'' the first place appearing and ''(or the Commissioner, as applicable)'' after ''Secretary'' the second place appearing.

1994—Subsec. (a)(2). Pub. L. 103–296, § 108(b)(7)(B), inserted ''(or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapters II or XVI of this chapter)'' after ''Secretary''.

Subsec. (b)(1). Pub. L. 103–296, § 108(b)(7)(A), (C), in first sentence substituted ''The Commissioner'' for ''The Secretary'', ''as the Commissioner'' for ''as he'', and ''in the Commissioner's judgment'' for ''in his judgment'', in second sentence substituted ''by the Commissioner'' for ''by the Secretary'' and ''available to the Commissioner'' for ''available to him'', in third sentence substituted ''determined by the Commissioner with respect to the old-age, survivors, and disability insurance programs under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter, and by the Secretary with respect to other subchapters of this chapter,'' for ''determined by the Secretary,'', and substituted fourth and fifth sentences for former fourth sentence which read as follows: ''If, in order to carry out a project under this subsection, the Secretary requests a State to make supplementary payments (or makes them himself pursuant to an agreement under section 1382e of this title), or to provide medical assistance under its plan approved under subchapter XIX of this chapter, to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not make such payments or provide such medical assistance, the Secretary shall reimburse such State for the non-Federal share of such payments or assistance from amounts appropriated to carry out subchapter XVI of this chapter.''

Subsec. (b)(2). Pub. L. 103–296, § 108(b)(7)(A), (D), substituted ''the Commissioner'' for ''the Secretary'' wherever appearing and ''the Commissioner shall'' for ''he shall'' in subpar. (B).

Subsec. (b)(3). Pub. L. 103–296, § 108(b)(7)(E), struck out par. (3) which read as follows: ''All reports of the Secretary with respect to projects carried out under this subsection shall be incorporated into the Secretary's annual report to the Congress required by section 904 of this title.''

1986—Subsec. (b)(3). Pub. L. 99–272 added par. (3).

1984—Subsec. (a)(1)(A). Pub. L. 98–369 struck out ''nonprofit'' before first reference to ''organizations and agencies''.

1980—Pub. L. 96–265 redesignated provisions of subsec. (a) and cls. (1) and (2) thereof as subsec. (a)(1) and cls. (A) and (B) thereof, respectively, redesignated provisions of subsecs. (b) and (c) as subsec. (a)(2) and (3), respectively, added subsec. (b), and made conforming amendments to subsec. (a)(2) and (3) as redesignated.

1968—Subsec. (a). Pub. L. 90–248 struck out ''nonprofit'' before ''organizations'' in cl. (2).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title IV, §404(b), Dec. 17, 1999, 113 Stat. 1910, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296; 108 Stat. 1464).''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of the Social Security Independence and Program Improvements Act of 1994, Pub. L. 103–296, see section 5528(b) of Pub. L. 105–33, set out as a note under section 903 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective on first day of month following April 1986, see section 12115 of Pub. L. 99–272, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2331(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395b–1 of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

VOCATIONAL REHABILITATION DEMONSTRATION PROJECTS

Pub. L. 101–508, title V, §5120(a)–(e), Nov. 5, 1990, 104 Stat. 1388–280, directed Secretary of Health and Human Services to develop and carry out under this section demonstration projects in each of not fewer than three States, with such demonstration projects to be designed to assess the advantages and disadvantages of permitting disabled beneficiaries to select from among both public and private qualified vocational rehabilitation providers, providers of vocational rehabilitation services directed at enabling such beneficiaries to engage in substantial gainful activities, with each such demonstration project to commence as soon as practicable after Nov. 5, 1990, and to remain in operation until the end of fiscal year 1993, and with a final written report to be submitted to Congress not later than Apr. 1, 1994.

FINAL REPORT COVERING ALL EXPERIMENTS AND DEMONSTRATION PROJECTS

Section 505(c) of Pub. L. 96–265, as amended by Pub. L. 99–272, title XII, §12101(c), Apr. 7, 1986, 100 Stat. 283; Pub. L. 101–239, title X, §10103(a)(3), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 101–508, title V, §5120(f), Nov. 5, 1990, 104 Stat. 1388–282; Pub. L. 103–296, title I, §108(m)(3), title III, §315(a)(3), Aug. 15, 1994, 108 Stat. 1489, 1531, which directed Commissioner to submit to Congress final report with respect to all experiments and demonstration projects carried out under section 505 of Pub. L. 96–265, which amended this section and section 401 of this title and enacted provisions formerly set out below (other than demonstration projects conducted under section 5120 of the Omnibus Budget Reconciliation of 1990, Pub. L. 101–508, set out above) no later than Oct. 1, 1996, was repealed by Pub. L. 106–170, title III, §301(b)(1)(A), Dec. 17, 1999, 113 Stat. 1902.

AUTHORITY FOR DEMONSTRATION PROJECTS; REPORT TO CONGRESS

Section 505(a)(1)–(4) of Pub. L. 96–265, as amended by Pub. L. 99–272, title XII, §12101(a), (b), Apr. 7, 1986, 100 Stat. 282; Pub. L. 101–239, title X, §10103(a)(1), (2), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 103–296, title I, §108(m), title III, §315(a)(1), (2), Aug. 15, 1994, 108 Stat. 1489, 1531, which authorized Commissioner of Social Security to carry out demonstration projects to determine advantages and disadvantages of alternative methods of treating work activity of disabled beneficiaries under the old age, survivors, and disability insurance program and altering limitations and conditions applicable to such disabled beneficiaries, and required report to Congress on or before June 9, 1986, and in each succeeding year through 1995, was repealed by Pub. L. 106–170, title III, §301(b)(1)(A), Dec. 17, 1999, 113 Stat. 1902.

Pub. L. 106–170, title III, §301(b)(2), Dec. 17, 1999, 113 Stat. 1902, provided that: ''With respect to any experiment or demonstration project being conducted under section 505(a) of the Social Security Disability Amendments of 1980 [Pub. L. 96–265, formerly set out above] (42 U.S.C. 1310 note) as of the date of the enactment of this Act [Dec. 17, 1999], the authority to conduct such experiment or demonstration project (including the terms and conditions applicable to the experiment or demonstration project) shall be treated as if that authority (and such terms and conditions) had been established under section 234 of the Social Security Act [section 434 of this title], as added by subsection (a).''

§ 1311. Public assistance payments to legal representatives

For purposes of subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, payments on behalf of an individual, made to another person who has been judicially appointed, under the law of the State in which such individual resides, as legal representative of such individual for the purpose of receiving and managing such payments (whether or not he is such individual's legal representative for other purposes), shall be regarded as money payments to such individual.

(Aug. 14, 1935, ch. 531, title XI, §1111, as added Pub. L. 85–840, title V, §511(a), Aug. 28, 1958, 72 Stat. 1051; amended Pub. L. 87–543, title I, §141(d), July 25, 1962, 76 Stat. 205; Pub. L. 90–248, title II, §241(c)(3), Jan. 2, 1968, 81 Stat. 917.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in text, is classified to section 601 et seq. of this title.

AMENDMENTS

1968—Pub. L. 90–248 struck out ''IV,'' after ''I,'' and inserted ''and part A of subchapter IV of this chapter,'' after ''XVI of this chapter,''.

1962—Pub. L. 87–543 inserted reference to subchapter XVI.

EFFECTIVE DATE

Section 511(b) of Pub. L. 85–840 provided that: ''The amendment made by subsection (a) [enacting this section] shall be applicable in the case of payments to legal representatives by any State made after June 30, 1958; and to such payments by any State made after December 31, 1955, and prior to July 1, 1958, if certifications for payment to such State have been made by the Secretary of Health, Education, and Welfare with respect thereto, or such State has presented to the Secretary a claim (and such other data as the Secretary may require) with respect thereto, prior to July 1, 1959.''

§ 1312. Medical care guides and reports for public assistance and medical assistance

In order to assist the States to extend the scope and content, and improve the quality, of medical care and medical services for which payments are made to or on behalf of needy and low-income individuals under this chapter and

in order to promote better public understanding about medical care and medical assistance for needy and low-income individuals, the Secretary shall develop and revise from time to time guides or recommended standards as to the level, content, and quality of medical care and medical services for the use of the States in evaluating and improving their public assistance medical care programs and their programs of medical assistance; shall secure periodic reports from the States on items included in, and the quantity of, medical care and medical services for which expenditures under such programs are made; and shall from time to time publish data secured from these reports and other information necessary to carry out the purposes of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1112, as added Pub. L. 86–778, title VII, § 705, Sept. 13, 1960, 74 Stat. 995; amended Pub. L. 89–97, title IV, § 408(c), July 30, 1965, 79 Stat. 422.)

AMENDMENTS

1965—Pub. L. 89–97 struck out ''for the aged'' after ''medical assistance''.

§ 1313. Assistance for United States citizens returned from foreign countries

(a) Authorization; reimbursement; utilization of facilities of public or private agencies and organizations

(1) The Secretary is authorized to provide temporary assistance to citizens of the United States and to dependents of citizens of the United States, if they (A) are identified by the Department of State as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen of the United States or the illness of such citizen or any of his dependents or because of war, threat of war, invasion, or similar crisis, and (B) are without available resources.

(2) Except in such cases or classes of cases as are set forth in regulations of the Secretary, provision shall be made for reimbursement to the United States by the recipients of the temporary assistance to cover the cost thereof.

(3) The Secretary may provide assistance under paragraph (1) directly or through utilization of the services and facilities of appropriate public or private agencies and organizations, in accordance with agreements providing for payment, in advance or by way of reimbursement, as may be determined by the Secretary, of the cost thereof. Such cost shall be determined by such statistical, sampling, or other method as may be provided in the agreement.

(b) Plans and arrangements for assistance; consultations

The Secretary is authorized to develop plans and make arrangements for provision of temporary assistance within the United States to individuals specified in subsection (a)(1) of this section. Such plans shall be developed and such arrangements shall be made after consultation with the Secretary of State, the Attorney General, and the Secretary of Defense. To the extent feasible, assistance provided under subsection (a) of this section shall be provided in accordance with the plans developed pursuant to this subsection, as modified from time to time by the Secretary.

(c) "Temporary assistance" defined

For purposes of this section, the term ''temporary assistance'' means money payments, medical care, temporary billeting, transportation, and other goods and services necessary for the health or welfare of individuals (including guidance, counseling, and other welfare services) furnished to them within the United States upon their arrival in the United States and for such period after their arrival, not exceeding ninety days, as may be provided in regulations of the Secretary; except that assistance under this section may be furnished beyond such ninety-day period in the case of any citizen or dependent upon a finding by the Secretary that the circumstances involved necessitate or justify the furnishing of assistance beyond such period in that particular case.

(d) Maximum total amount of temporary assistance

The total amount of temporary assistance provided under this section shall not exceed $1,000,000 during any fiscal year beginning after September 30, 2003.

(e) Authority of Secretary to accept gifts

(1) The Secretary may accept on behalf of the United States gifts, in cash or in kind, for use in carrying out the program established under this section. Gifts in the form of cash shall be credited to the appropriation account from which this program is funded, in addition to amounts otherwise appropriated, and shall remain available until expended.

(2) Gifts accepted under paragraph (1) shall be available for obligation or other use by the United States only to the extent and in the amounts provided in appropriation Acts.

(Aug. 14, 1935, ch. 531, title XI, § 1113, as added Pub. L. 87–64, title III, § 302, June 30, 1961, 75 Stat. 142; amended Pub. L. 87–543, title I, § 133, July 25, 1962, 76 Stat. 196; Pub. L. 88–347, June 30, 1964, 78 Stat. 236; Pub. L. 90–36, § 2, June 29, 1967, 81 Stat. 94; Pub. L. 90–248, title V, § 503, Jan. 2, 1968, 81 Stat. 934; Pub. L. 91–41, § 4, July 9, 1969, 83 Stat. 45; Pub. L. 92–40, July 1, 1971, 85 Stat. 96; Pub. L. 94–44, §§ 1, 2, June 28, 1975, 89 Stat. 235; Pub. L. 101–382, title I, § 140, Aug. 20, 1990, 104 Stat. 654; Pub. L. 101–508, title V, § 5056(a), Nov. 5, 1990, 104 Stat. 1388–229; Pub. L. 108–11, title I, § 1701, Apr. 16, 2003, 117 Stat. 585.)

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–11 substituted ''2003'' for ''1991''.

1990—Subsec. (d). Pub. L. 101–508, § 5056(a)(1), substituted ''after September 30, 1991'' for ''on or after October 1, 1989''.

Pub. L. 101–382 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The total amount of temporary assistance provided under this section shall not exceed—

''(1) $8,000,000 during the fiscal years ending June 30, 1975, and June 30, 1976, and the succeeding calendar quarter, or

''(2) $300,000 during any fiscal year beginning on or after October 1, 1976.''

Subsec. (e). Pub. L. 101–508, § 5056(a)(2), added subsec. (e).

1975—Subsec. (c). Pub. L. 94–44, §2, set a 90-day limit for assistance following arrival in the United States with provision for furnishing of assistance beyond the 90-day limit upon a finding by the Secretary that the circumstances involved necessitate or justify the furnishing of assistance in that particular case.

Subsec. (d). Pub. L. 94–44, §1, substituted provisions setting the maximum total amount of temporary assistance provided under this section for provisions prohibiting temporary assistance after June 30, 1973.

1971—Subsec. (d). Pub. L. 92–40 extended termination date from June 30, 1971, to June 30, 1973.

1969—Subsec. (d). Pub. L. 91–41 extended termination date from June 30, 1969, to June 30, 1971.

1968—Subsec. (d). Pub. L. 90–248 extended termination date from June 30, 1968, to June 30, 1969.

1967—Subsec. (d). Pub. L. 90–36 extended termination date from June 30, 1967, to June 30, 1968.

1964—Subsec. (d). Pub. L. 88–347 extended termination date from June 30, 1964, to June 30, 1967.

1962—Subsec. (d). Pub. L. 87–543 extended termination date from June 30, 1962, to June 30, 1964.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5056(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective for fiscal years beginning after September 30, 1989.''

§ 1314. Public advisory groups

(a) Advisory Council on Public Welfare; appointment and functions of initial Council

The Secretary shall, during 1964, appoint an Advisory Council on Public Welfare for the purpose of reviewing the administration of the public assistance and child welfare services programs for which funds are appropriated pursuant to this chapter and making recommendations for improvement of such administration, and reviewing the status of and making recommendations with respect to the public assistance programs for which funds are so appropriated, especially in relation to the old-age, survivors, and disability insurance program, with respect to the fiscal capacities of the States and the Federal Government, and with respect to any other matters bearing on the amount and proportion of the Federal and State shares in the public assistance and child welfare services programs.

(b) Membership and representation of interests on initial Council

The Council shall be appointed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive service and shall consist of twelve persons who shall, to the extent possible, be representatives of employers and employees in equal numbers, representatives of State or Federal agencies concerned with the administration or financing of the public assistance and child welfare services programs, representatives of nonprofit private organizations concerned with social welfare programs, other persons with special knowledge, experience, or qualifications with respect to such programs, and members of the public.

(c) Technical and other assistance for initial Council; availability of data

The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Health and Human Services as it may require to carry out such functions.

(d) Termination of initial Council's existence on submission of report

The Council shall make a report of its findings and recommendations (including recommendations for changes in the provisions of this chapter) to the Secretary, such report to be submitted not later than July 1, 1966, after which date such Council shall cease to exist.

(e) Succeeding Councils; appointment; functions; membership; representation of interests; assistance and data; termination

The Secretary shall also from time to time thereafter appoint an Advisory Council on Public Welfare, with the same functions and constituted in the same manner as prescribed for the Advisory Council in the preceding subsections of this section. Each Council so appointed shall report its findings and recommendations, as prescribed in subsection (d) of this section, not later than July 1 of the second year after the year in which it is appointed, after which date such Council shall cease to exist.

(f) Advisory committees; functions; reports by Secretary

The Secretary may also appoint, without regard to the provisions of title 5 governing appointments in the competitive service, such advisory committees as he may deem advisable to advise and consult with him in carrying out any of his functions under this chapter. The Secretary shall report to the Congress annually on the number of such committees and on the membership and activities of each such committee.

(g) Compensation and travel expenses

Members of the Council or of any advisory committee appointed under this section who are not regular full-time employees of the United States shall, while serving on business of the Council or any such committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $75 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(h) Exemption from conflict of interest laws of members of Council or advisory committees; exceptions

(1) Any member of the Council or any advisory committee appointed under this chapter, who is not a regular full-time employee of the United States, is hereby exempted, with respect to such appointment, from the operation of sections 203, 205, and 209 of title 18, except as otherwise specified in paragraph (2) of this subsection.

(2) The exemption granted by paragraph (1) shall not extend—

(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

(Aug. 14, 1935, ch. 531, title XI, § 1114, as added Pub. L. 87–543, title I, § 121, July 25, 1962, 76 Stat. 190; amended Pub. L. 90–248, title IV, § 403(e), Jan. 2, 1968, 81 Stat. 932; Pub. L. 98–369, div. B, title VI, § 2663(e)(4), (j)(2)(D)(iv), July 18, 1984, 98 Stat. 1168, 1170; Pub. L. 106–554, § 1(a)(6) [title V, § 522(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–546; Pub. L. 108–173, title IX, § 948(a)(1)(A), Dec. 8, 2003, 117 Stat. 2425.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsecs. (b) and (f), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

2003—Subsec. (i). Pub. L. 108–173 redesignated and transferred subsec. (i) of this section to subsec. (j) of section 1395y of this title.

2000—Subsec. (i). Pub. L. 106–554 added subsec. (i).

1984—Subsec. (c). Pub. L. 98–369, § 2663(j)(2)(D)(iv), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (g). Pub. L. 98–369, § 2663(e)(4)(A), made technical correction of typographical error resulting in no change in text.

Subsec. (h)(1). Pub. L. 98–369, § 2663(e)(4)(B), substituted ''sections 203, 205, and 209 of title 18'' for ''sections 281, 283, and 1914 of title 18 and section 190 of the Revised Statutes (5 U.S.C. 99)''.

1968—Subsecs. (b), (f). Pub. L. 90–248, § 403(e)(1), (2), substituted ''provisions of title 5, governing appointments in the competitive service'' for ''civil-service laws''.

Subsec. (g). Pub. L. 90–248, § 403(e)(3), substituted ''section 5703 of title 5'' for ''section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b–2)''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 948(e), Dec. 8, 2003, 117 Stat. 2426, provided that: ''Except as otherwise provided, the amendments made by this section [amending this section and sections 1320c–3, 1395w–22, 1395y, and 1395ff of this title] shall be effective as if included in the enactment of BIPA [the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted by section 1(a)(6) of Public Law 106–554].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title V, § 522(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–547, provided that: ''The amendments made by this section [amending this section and sections 1395y and 1395ff of this title] shall apply with respect to—

''(1) a review of any national or local coverage determination filed,

''(2) a request to make such a determination made, and

''(3) a national coverage determination made,

on or after October 1, 2001.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1314a. Measurement and reporting of welfare receipt

(a) Congressional policy

The Congress hereby declares that—

(1) it is the policy and responsibility of the Federal Government to reduce the rate at which and the degree to which families depend on income from welfare programs and the duration of welfare receipt, consistent with other essential national goals;

(2) it is the policy of the United States to strengthen families, to ensure that children grow up in families that are economically self-sufficient and that the life prospects of children are improved, and to underscore the responsibility of parents to support their children;

(3) the Federal Government should help welfare recipients as well as individuals at risk of welfare receipt to improve their education and job skills, to obtain child care and other necessary support services, and to take such other steps as may be necessary to assist them to become financially independent; and

(4) it is the purpose of this section to provide the public with generally accepted measures of welfare receipt so that it can track such receipt over time and determine whether progress is being made in reducing the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt.

(b) Development of welfare indicators and predictors

The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') in consultation with the Secretary of Agriculture shall—

(1) develop—

(A) indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt; and

(B) predictors of welfare receipt;

(2) assess the data needed to report annually on the indicators and predictors, including the ability of existing data collection efforts to provide such data and any additional data collection needs; and

(3) not later than 2 years after October 31, 1994, provide an interim report containing conclusions resulting from the development and assessment described in paragraphs (1) and (2), to—

(A) the Committee on Ways and Means of the House of Representatives;

(B) the Committee on Education and Labor of the House of Representatives;

(C) the Committee on Agriculture of the House of Representatives;

(D) the Committee on Commerce of the House of Representatives;

(E) the Committee on Finance of the Senate;

(F) the Committee on Labor and Human Resources of the Senate; and

(G) the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(c) Advisory Board on Welfare Indicators

(1) Establishment

There is established an Advisory Board on Welfare Indicators (in this subsection referred to as the ''Board'').

(2) Composition

The Board shall be composed of 12 members with equal numbers to be appointed by the House of Representatives, the Senate, and the President. The Board shall be composed of experts in the fields of welfare research and welfare statistical methodology, representatives of State and local welfare agencies, and organizations concerned with welfare issues.

(3) Vacancies

Any vacancy occurring in the membership of the Board shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(4) Duties

Duties of the Board shall include—

(A) providing advice and recommendations to the Secretary on the development of indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt; and

(B) providing advice on the development and presentation of annual reports required under subsection (d) of this section.

(5) Travel expenses

Members of the Board shall not be compensated, but shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(6) Detail of Federal employees

The Secretary shall detail, without reimbursement, any of the personnel of the Department of Health and Human Services to the Board to assist the Board in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(7) Voluntary service

Notwithstanding section 1342 of title 31, the Board may accept the voluntary services provided by a member of the Board.

(8) Termination of Board

The Board shall be terminated at such time as the Secretary determines the duties described in paragraph (4) have been completed, but in any case prior to the submission of the first report required under subsection (d) of this section.

(d) Annual welfare indicators report

(1) Preparation

The Secretary shall prepare annual reports on welfare receipt in the United States.

(2) Coverage

The report shall include analysis of families and individuals receiving assistance under means-tested benefit programs, including the program of aid to families with dependent children under part A of subchapter IV of this chapter, the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), and the Supplemental Security Income program under subchapter XVI of this chapter, or as general assistance under programs administered by State and local governments.

(3) Contents

Each report shall set forth for each of the means-tested benefit programs described in paragraph (2)—

(A) indicators of—

(i) the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs, and

(ii) the duration of welfare receipt;

(B) trends in indicators;

(C) predictors of welfare receipt;

(D) the causes of welfare receipt;

(E) patterns of multiple program receipt;

(F) such other information as the Secretary deems relevant; and

(G) such recommendations for legislation, which shall not include proposals to reduce eligibility levels or impose barriers to program access, as the Secretary may determine to be necessary or desirable to reduce—

(i) the rate at which and the degree to which families depend on income from welfare programs, and

(ii) the duration of welfare receipt.

(4) Submission

The Secretary shall submit such a report not later than 3 years after October 31, 1994, and annually thereafter, to the committees specified in subsection (b)(3) of this section. Each such report shall be transmitted during the first 60 days of each regular session of Congress.

(e) Short title

This section may be cited as the ''Welfare Indicators Act of 1994''.

(Pub. L. 103–432, title II, § 232, Oct. 31, 1994, 108 Stat. 4462; Pub. L. 105–200, title IV, § 410(h), July 16, 1998, 112 Stat. 674.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter and subchapter XVI of this chapter, referred to in subsec. (d)(2), are classified to section 601 et seq. and section 1381 et seq., respectively, of this title.

The Food Stamp Act of 1977, referred to in subsec. (d)(2), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

Section was enacted as part of the Social Security Act Amendments of 1994, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (b)(3)(D). Pub. L. 105–200, § 410(h)(1), struck out ''Energy and'' before ''Commerce''.

Subsec. (d)(4). Pub. L. 105–200, § 410(h)(2), substituted ''subsection (b)(3) of this section'' for ''subsection (b)(3)(C) of this section''.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

§ 1315. Demonstration projects

(a) Waiver of State plan requirements; costs regarded as State plan expenditures; availability of appropriations

In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of subchapter I, X, XIV, XVI, or XIX of this chapter, or part A or D of subchapter IV of this chapter, in a State or States—

(1) the Secretary may waive compliance with any of the requirements of section 302, 602, 654, 1202, 1352, 1382, or 1396a of this title, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(2)(A) costs of such project which would not otherwise be included as expenditures under section 303, 655, 1203, 1353, 1383, or 1396b of this title, as the case may be, and which are not included as part of the costs of projects under section 1310 of this title, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such subchapter, or for administration of such State plan or plans, as may be appropriate, and

(B) costs of such project which would not otherwise be a permissible use of funds under part A of subchapter IV of this chapter and which are not included as part of the costs of projects under section 1310 of this title, shall to the extent and for the period prescribed by the Secretary, be regarded as a permissible use of funds under such part.

In addition, not to exceed $4,000,000 of the aggregate amount appropriated for payments to States under such subchapters for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such subchapters and is not included as part of the cost of projects for purposes of section 1310 of this title.

(b) Child support enforcement programs

In the case of any experimental, pilot, or demonstration project undertaken under subsection (a) of this section to assist in promoting the objectives of part D of subchapter IV of this chapter, the project—

(1) must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program;

(2) may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support; and

(3) must not result in increased cost to the Federal Government under part A of such subchapter.

(c) Demonstration projects to test alternative definitions of unemployment

(1)(A) The Secretary shall enter into agreements with up to 8 States submitting applications under this subsection for the purpose of conducting demonstration projects in such States to test and evaluate the use, with respect to individuals who received aid under part A of subchapter IV of this chapter in the preceding month (on the basis of the unemployment of the parent who is the principal earner), of a number greater than 100 for the number of hours per month that such individuals may work and still be considered to be unemployed for purposes of section 607 of this title. If any State submits an application under this subsection for the purpose of conducting a demonstration project to test and evaluate the total elimination of the 100-hour rule, the Secretary shall approve at least one such application.

(B) If any State with an agreement under this subsection so requests, the demonstration project conducted pursuant to such agreement may test and evaluate the complete elimination of the 100-hour rule and of any other durational standard that might be applied in defining unemployment for purposes of determining eligibility under section 607 of this title.

(2) Notwithstanding section 602(a)(1) of this title, a demonstration project conducted under this subsection may be conducted in one or more political subdivisions of the State.

(3) An agreement under this subsection shall be entered into between the Secretary and the

State agency designated under section 602(a)(3) of this title. Such agreement shall provide for the payment of aid under the applicable State plan under part A of subchapter IV of this chapter as though section 607 of this title had been modified to reflect the definition of unemployment used in the demonstration project but shall also provide that such project shall otherwise be carried out in accordance with all of the requirements and conditions of section 607 of this title (and, except as provided in paragraph (2), any related requirements and conditions under part A of subchapter IV of this chapter).

(4) A demonstration project under this subsection may be commenced any time after September 30, 1990, and shall be conducted for such period of time as the agreement with the Secretary may provide; except that, in no event may a demonstration project under this section be conducted after September 30, 1995.

(5)(A) Any State with an agreement under this subsection shall evaluate the comparative cost and employment effects of the use of the definition of unemployment in its demonstration project under this section by use of experimental and control groups comprised of a random sample of individuals receiving aid under section 607 of this title and shall furnish the Secretary with such information as the Secretary determines to be necessary to evaluate the results of the project conducted by the State.

(B) The Secretary shall report the results of the demonstration projects conducted under this subsection to the Congress not later than 6 months after all such projects are completed.

(e)[1] Extensions of State-wide comprehensive demonstration projects for which waivers granted

(1) The provisions of this subsection shall apply to the extension of any State-wide comprehensive demonstration project (in this subsection referred to as ''waiver project'') for which a waiver of compliance with requirements of subchapter XIX of this chapter is granted under subsection (a) of this section.

(2) During the 6-month period ending 1 year before the date the waiver under subsection (a) of this section with respect to a waiver project would otherwise expire, the chief executive officer of the State which is operating the project may submit to the Secretary a written request for an extension, of up to 3 years, of the project.

(3) If the Secretary fails to respond to the request within 6 months after the date it is submitted, the request is deemed to have been granted.

(4) If such a request is granted, the deadline for submittal of a final report under the waiver project is deemed to have been extended until the date that is 1 year after the date the waiver project would otherwise have expired.

(5) The Secretary shall release an evaluation of each such project not later than 1 year after the date of receipt of the final report.

(6) Subject to paragraphs (4) and (7), the extension of a waiver project under this subsection shall be on the same terms and conditions (including applicable terms and conditions relating to quality and access of services, budget neutrality, data and reporting requirements, and special population protections) that applied to the project before its extension under this subsection.

(7) If an original condition of approval of a waiver project was that Federal expenditures under the project not exceed the Federal expenditures that would otherwise have been made, the Secretary shall take such steps as may be necessary to ensure that, in the extension of the project under this subsection, such condition continues to be met. In applying the previous sentence, the Secretary shall take into account the Secretary's best estimate of rates of change in expenditures at the time of the extension.

(f) Application for extension of waiver project; submission; approval

An application by the chief executive officer of a State for an extension of a waiver project the State is operating under an extension under subsection (e) of this section (in this subsection referred to as the ''waiver project'') shall be submitted and approved or disapproved in accordance with the following:

(1) The application for an extension of the waiver project shall be submitted to the Secretary at least 120 days prior to the expiration of the current period of the waiver project.

(2) Not later than 45 days after the date such application is received by the Secretary, the Secretary shall notify the State if the Secretary intends to review the terms and conditions of the waiver project. A failure to provide such notification shall be deemed to be an approval of the application.

(3) Not later than 45 days after the date a notification is made in accordance with paragraph (2), the Secretary shall inform the State of proposed changes in the terms and conditions of the waiver project. A failure to provide such information shall be deemed to be an approval of the application.

(4) During the 30-day period that begins on the date information described in paragraph (3) is provided to a State, the Secretary shall negotiate revised terms and conditions of the waiver project with the State.

(5)(A) Not later than 120 days after the date an application for an extension of the waiver project is submitted to the Secretary (or such later date agreed to by the chief executive officer of the State), the Secretary shall—

(i) approve the application subject to such modifications in the terms and conditions—

(I) as have been agreed to by the Secretary and the State; or

(II) in the absence of such agreement, as are determined by the Secretary to be reasonable, consistent with the overall objectives of the waiver project, and not in violation of applicable law; or

(ii) disapprove the application.

(B) A failure by the Secretary to approve or disapprove an application submitted under this subsection in accordance with the requirements of subparagraph (A) shall be deemed to be an approval of the application

[1] So in original. No subsec. (d) has been enacted.

subject to such modifications in the terms and conditions as have been agreed to (if any) by the Secretary and the State.

(6) An approval of an application for an extension of a waiver project under this subsection shall be for a period not to exceed 3 years.

(7) An extension of a waiver project under this subsection shall be subject to the final reporting and evaluation requirements of paragraphs (4) and (5) of subsection (e) of this section (taking into account the extension under this subsection with respect to any timing requirements imposed under those paragraphs).

(Aug. 14, 1935, ch. 531, title XI, § 1115, as added Pub. L. 87–543, title I, § 122, July 25, 1962, 76 Stat. 192; amended Pub. L. 89–97, title I, § 121(c)(3), July 30, 1965, 79 Stat. 352; Pub. L. 90–36, § 2, June 29, 1967, 81 Stat. 94; Pub. L. 90–248, title II, §§ 241(c)(4), 247, Jan. 2, 1968, 81 Stat. 917, 918; Pub. L. 93–233, § 18(z–2)(1)(B), Dec. 31, 1973, 87 Stat. 973; Pub. L. 93–647, § 3(c), Jan. 4, 1975, 88 Stat. 2349; Pub. L. 95–216, title IV, § 404, Dec. 20, 1977, 91 Stat. 1562; Pub. L. 97–35, title XXIII, § 2353(g), Aug. 13, 1981, 95 Stat. 872; Pub. L. 98–369, div. B, title VI, § 2663(e)(5), July 18, 1984, 98 Stat. 1168; Pub. L. 98–378, § 10, Aug. 16, 1984, 98 Stat. 1317; Pub. L. 99–272, title XIV, § 14001(b)(2), Apr. 7, 1986, 100 Stat. 328; Pub. L. 100–485, title V, § 503, Oct. 13, 1988, 102 Stat. 2402; Pub. L. 104–193, title I, § 108(g)(2), Aug. 22, 1996, 110 Stat. 2168; Pub. L. 105–33, title IV, § 4757(a), Aug. 5, 1997, 111 Stat. 527; Pub. L. 106–554, § 1(a)(6) [title VII, § 703(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574.)

REFERENCES IN TEXT

Parts A and D of subchapter IV of this chapter, referred to in text, are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

Sections 1382 and 1383 of this title, referred to in subsec. (a)(1), (2), respectively, are references to sections 1382 and 1383 of this title as they existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior sections (which are set out as notes under sections 1382 and 1383, respectively, of this title) continue in effect for Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

2000—Subsec. (f). Pub. L. 106–554 added subsec. (f).

1997—Subsec. (e). Pub. L. 105–33 added subsec. (e).

1996—Subsec. (a)(2). Pub. L. 104–193, § 108(g)(2)(A), designated existing provisions as subpar. (A), struck out ''603,'' before ''655,'', substituted '', and'' for period at end, and added subpar. (B).

Subsec. (b). Pub. L. 104–193, § 108(g)(2)(C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to purposes, criteria and procedures applicable to establishment, participatory effect, duration and termination of demonstration projects.

Subsec. (c). Pub. L. 104–193, § 108(g)(2)(C), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(3). Pub. L. 104–193, § 108(g)(2)(B), substituted ''part A of such subchapter'' for ''the program of aid to families with dependent children''.

Subsec. (d). Pub. L. 104–193, § 108(g)(2)(C), redesignated subsec. (d) as (c).

1988—Subsec. (d). Pub. L. 100–485 added subsec. (d).

1986—Subsec. (b)(2)(C). Pub. L. 99–272 struck out subpar. (C) relating to use of funds as are appropriated for payments to States under chapter 67 of title 31 to cover costs of salaries for individuals in public service employment.

1984—Subsec. (a). Pub. L. 98–378, § 10(a)(1), substituted ''part A or D of subchapter IV'' for ''part A of subchapter IV'' in provisions preceding par. (1).

Pub. L. 98–369, § 2663(e)(5), struck out ''VI,'' after ''I,'' in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98–378, § 10(a)(2), inserted ''654,''.

Pub. L. 98–369, § 2663(e)(5), struck out ''802,'' after ''602,''.

Subsec. (a)(2). Pub. L. 98–378, § 10(a)(3), inserted ''655,''.

Pub. L. 98–369, § 2663(e)(5), struck out ''803,'' after ''603,''.

Subsec. (c). Pub. L. 98–378, § 10(b), added subsec. (c).

1981—Subsec. (a). Pub. L. 97–35 substituted in provision preceding par. (1) ''or XIX of this chapter'' for ''XIX, or XX of this chapter'', in par. (1) ''or 1396a of this title'' for ''1396a, 1397a, 1397b, or 1397c of this title'', and in par. (2) ''or 1396b of this title'' for ''1396b, or 1397a of this title'' and in par. (2) struck out ''or expenditures with respect to which payment shall be made under section 1397a of this title,'' before ''as may be appropriate''.

1977—Pub. L. 95–216 designated existing provisions as subsec. (a) and existing pars. (a) and (b) thereof as pars. (1) and (2), respectively, and added subsec. (b).

1975—Pub. L. 93–647, § 3(c)(1), substituted ''XIX, or XX'' for ''or XIX''.

Subsec. (a). Pub. L. 93–647, § 3(c)(2), inserted references to sections 1397a, 1397b, and 1397c.

Subsec. (b). Pub. L. 93–647, § 3(c)(3), (4), substituted ''1396b, or 1397a'' for ''1396b'', and inserted ''or expenditures with respect to which payment shall be made under section 1397a of this title'' after ''administration of such State plan or plans,''.

1973—Pub. L. 93–233 inserted references in text preceding subsec. (a) to subchapter VI of this chapter, in subsec. (a) to section 802 of this title, and in subsec. (b) to section 803 of this title.

1968—Pub. L. 90–248, § 241(c)(4), in opening phrase struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter,'' after ''XIX of this chapter''.

Pub. L. 90–248, § 247, substituted in second sentence ''$4,000,000'' for ''$2,000,000'' and ''beginning after June 30, 1967'' for ''ending prior to July 1, 1968''.

1967—Pub. L. 90–36 substituted ''July 1, 1968'' for ''July 1, 1967''.

1965—Pub. L. 89–97 included in enumeration in opening phrase, and cls. (a) and (b), subchapter XIX of this chapter, and sections 1396a and 1396b of this title, respectively.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title VII, § 703(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–575, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to requests for extensions of demonstration projects pending or submitted on or after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4757(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to demonstration projects initially approved before, on, or after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99–272.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective on and after Jan. 1, 1974, see section 18(z–2)(2) of Pub. L. 93–233, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 121(c)(3) of Pub. L. 89–97 provided that the amendment made by that section is effective Jan. 1, 1966.

FAMILY SUPPORT DEMONSTRATION PROJECTS

Section 501 of Pub. L. 100–485, as amended by Pub. L. 103–432, title II, § 262, Oct. 31, 1994, 108 Stat. 4467, provided that:

''(a) DEMONSTRATION PROJECTS TO TEST THE EFFECT OF EARLY CHILDHOOD DEVELOPMENT PROGRAMS.—(1) In order to test the effect of in-home early childhood development programs and pre-school center-based development programs (emphasizing the use of volunteers and including academic credit for student volunteers) on families receiving aid under State plans approved under section 402 of the Social Security Act [section 602 of this title] and participating in the job opportunities and basic skills training program under part F of title IV of such Act [part F of subchapter IV of this chapter], up to 10 States may undertake and carry out demonstration projects utilizing such development programs to enhance the cognitive skills and linguistic ability of children under the age of 5, to improve the communications skills of such children, and to develop their ability to read, write, and speak the English language effectively. Such projects may include parents along with their eligible children in family-centered education programs that assist children directly in achieving the goals stated in the preceding sentence and also help parents contribute to the proper development and education of their young children. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall prescribe, and no such project shall be conducted for a period of more than 3 years.

''(2) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this subsection, shall approve up to 10 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this subsection, and shall make grants to the States whose applications are approved to assist them in carrying out such projects.

''(3) The Secretary shall submit to the Congress with respect to each project undertaken by a State under this subsection, after such project has been carried out for one year and again when such project is completed, a detailed evaluation of the project and of its contribution to the achievement of the purpose of this subsection.

''(4) For grants to States to conduct demonstration projects under this subsection, there are authorized to be appropriated not to exceed $3,000,000 for each of the fiscal years 1995 through 1999.

''(b) STATE DEMONSTRATION PROJECTS TO ENCOURAGE INNOVATIVE EDUCATION AND TRAINING PROGRAMS FOR CHILDREN.—In order to encourage States to develop innovative education and training programs for children receiving aid under State plans approved under section 402 of the Social Security Act [section 602 of this title], any State may establish and conduct one or more demonstration projects, targeted to such children, designed to test financial incentives and interdisciplinary approaches to reducing school dropouts, encouraging skill development, and avoiding welfare dependence; and the Secretary may make grants to States to assist in financing such projects. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary shall prescribe, and no such project shall be conducted for a period of less than one year or more than 5 years.

''(c) DEMONSTRATIONS TO ENSURE LONG TERM FAMILY SELF-SUFFICIENCY THROUGH COMMUNITY-BASED SERVICES.—Any State, using funds made available to it from appropriations made pursuant to subsection (d) in conjunction with its other resources, may conduct demonstrations to test more effective methods of providing coordination and services to ensure long term family self-sufficiency through community-based comprehensive family support services involving a partnership between the State agency administering or supervising the administrating of the State's plan under section 402 of the Social Security Act [section 602 of this title] and community-based organizations having experience and demonstrated effectiveness in providing services.

''(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to States to conduct demonstration projects under this section, there is authorized to be appropriated not to exceed $6,000,000 for each of the fiscal years 1990, 1991, and 1992.''

DEMONSTRATION PROJECTS TO ENCOURAGE STATES TO EMPLOY PARENTS RECEIVING AFDC AS PAID CHILD CARE PROVIDERS

Section 502 of Pub. L. 100–485 authorized Secretary of Health and Human Services to permit up to 5 States to undertake and carry out demonstration projects designed to test whether employment of parents of dependent children receiving AFDC as providers of child care for other children receiving AFDC would effectively facilitate the conduct of the job opportunities and basic skills training program under part F of title IV of this chapter by making additional child care services available to meet the requirements of section 602(g)(1)(A) of this title while affording significant numbers of families receiving such aid a realistic opportunity to avoid welfare dependence through employment as a child care provider, and authorized to be appropriated not to exceed $1,000,000 for each of the fiscal years 1990, 1991, and 1992 for grants to States to carry out such demonstration projects.

DEMONSTRATION PROJECTS TO ADDRESS CHILD ACCESS PROBLEMS

Section 504 of Pub. L. 100–485 provided that any State could establish and conduct one or more demonstration projects (in accordance with such terms, conditions, and requirements prescribed by the Secretary of Health and Human Services, except that no such project could include the withholding of aid to families with dependent children pending visitation) to develop, improve, or expand activities designed to increase compliance with child access provisions of court orders, specified activities that could be funded by a grant under this section, authorized to be appropriated not to exceed $4,000,000 for each of the fiscal years 1990 and 1991, and directed Secretary of Health and Human Services, not later than July 1, 1992, to submit to Congress a report on the effectiveness of the demonstration projects established under this section.

DEMONSTRATION PROJECTS TO PROVIDE COUNSELING AND SERVICES TO HIGH-RISK TEENAGERS

Section 506 of Pub. L. 100–485 provided that:

''(a) FINDINGS AND PURPOSE.—(1) The Congress finds that—

''(A) the incidences of teenage pregnancy, suicide, substance abuse, and school dropout are increasing;

''(B) research to date has established a link between low self-esteem, perceived limited life options and the risk of teenage pregnancy, suicide, substance abuse, and school dropout;

''(C) little data currently exists on how to improve the self-image of and expand the life options available to high-risk teenagers; and

''(D) there currently is no Federal program in place to address the unique and significant problems faced by today's teenagers.

''(2) It is the purpose of the demonstration projects conducted under this section to provide programs in which a range of non-academic services (sports, recreation, the arts) and self-image counseling are provided to high-risk teenagers in order to reduce the rates of pregnancy, suicide, substance abuse, and school dropout among such teenagers.

''(b) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall enter into an agreement with each of 4 States submitting applications under this section for the purpose of conducting demonstration projects in accordance with this section to provide counseling and services to certain high-risk teenagers.

''(c) NATURE OF PROJECT.—Under each demonstration project conducted under this section—

''(1) The State shall establish a 'Teen Care Plan' that shall consist of the following:

''(A) A clearing house where high-risk teenagers will be referred to and encouraged to participate in non-academic activities (arts, recreation, sports) which are already in place in the community.

''(B) A survey of the area to be targeted by the project to determine the need to fund and create new non-academic activities in the area.

''(C) Counseling services utilizing qualified, locally licensed psychologists, social psychologists, or other mental health professionals or related experts to provide individual and group counseling to participating high-risk teenagers.

''(D) A program to provide participants in the project (to the extent practicable) with such transportation, child care, and equipment as is necessary to carry out the purposes of the project.

''(2) The State shall designate two geographical areas within the State to be targeted by the project. One area will serve as the 'home base' for the project, where services will be concentrated and in which a local school system will be selected to receive services and provide facilities for resource referral and counseling. The second geographical area will serve as a 'peripheral' participant, receiving assistance and services from the home base.

''(3) A high-risk teenager is any male or female who has reached the age of 10 years and whose age does not exceed 20 years, and who—

''(A) has a history of academic problems;

''(B) has a history of behavioral problems both in and out of school;

''(C) comes from a one-parent household; or

''(D) is pregnant or is a mother of a child.

''(d) APPLICATIONS; SELECTION CRITERIA.—(1) In selecting States to conduct demonstration projects under this section, the Secretary—

''(A) shall consult with the Consortium on Adolescent Pregnancy;

''(B) shall consider—

''(i) the rate of teenage pregnancy in each State,

''(ii) the teenage school dropout rate in each State,

''(iii) the incidence of teenage substance abuse in each State, and

''(iv) the incidence of teenage suicide in each State; and

''(C) shall give priority to States whose applications—

''(i) demonstrate a current strong State commitment aimed at reducing teenage pregnancy, suicide, drug abuse, and school dropout;

''(ii) contain a 'State support agreement' signed by the Governor, the State School Commissioner, the State Department of Human Services, and the State Department of Education, pledging their commitment to the project;

''(iii) describe facilities and services to be made available by the State to assist in carrying out the project; and

''(iv) indicate a demonstrably high rate of alcoholism among its residents.

''(2) Of the States selected to participate in the demonstration projects conducted under this section—

''(A) one shall be a geographically small State with a population of less than 1,250,000;

''(B) one shall be a State with a population of over 20,000,000; and

''(C) two shall be States with populations of more than 1,000,000 but less than 20,000,000.

''(e) EVALUATION AND REPORT.—(1) Each State conducting a demonstration project under this section shall submit to the Secretary for his approval an evaluation plan that provides for examining the effectiveness of the project in both the home base and peripheral area of the State.

''(2) Not later than October 1, 1992, the Secretary shall submit to the Congress a report containing a summary of the evaluations conducted by States pursuant to the plans described in paragraph (1).

''(f) FUNDING.—(1) Three-fifths of the total amount appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State's designated project home base, and 5 percent of such three-fifths shall be set aside for the conduct of the State's evaluation as provided for in subsection (e).

''(2) Two-fifths of the total amounts appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State's designated peripheral area, and 5 percent of such two-fifths shall be set aside for the conduct of the State's evaluation as provided for in subsection (e).

''(g) DURATION.—A demonstration project conducted under this section shall be commenced not later than September 30, 1989, and shall be conducted for a 3-year period; except that the Secretary may terminate a project before the end of such period if he determines that the State conducting the project is not in substantial compliance with the terms of the agreement entered into with the Secretary under this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of funding in equal amounts each State demonstration project conducted under this section, there is authorized to be appropriated not to exceed $1,500,000 for each of the fiscal years 1990, 1991, and 1992.''

CONTINUATION OF FEDERAL FINANCIAL PARTICIPATION IN EXPERIMENTAL, PILOT, OR DEMONSTRATION PROJECTS APPROVED BEFORE OCTOBER 1, 1973, FOR PERIOD ON-AND-AFTER DECEMBER 31, 1973, WITHOUT DENIAL OR REDUCTION ON ACCOUNT OF SUBCHAPTER XVI PROVISIONS FOR SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED; WAIVER OF SUBCHAPTER XVI RESTRICTIONS FOR INDIVIDUALS; FEDERAL PAYMENTS OF NON-FEDERAL SHARE AS SUPPLEMENTARY PAYMENTS

Section 11 of Pub. L. 93–233 provided that:

''(a) If any State (other than the Commonwealth of Puerto Rico, the Virgin Islands, or Guam) has any experimental, pilot, or demonstration project (referred to in section 1115 of the Social Security Act [this section])—

''(1) which (prior to October 1, 1973) has been approved by the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the 'Secretary'), for a period which ends on or after December 31, 1973, as being a project with respect to which the authority conferred upon him by subsection (a) or (b) of such section 1115 [subsec. (a) or (b) of this section] will be exercised, and

''(2) with respect to the costs of which Federal financial participation would (except for the provisions of this section) be denied or reduced on account of the enactment of section 301 of the Social Security Amendments of 1972 [enacting subchapter XVI of this chapter],

then, for any period (after December 31, 1973) with respect to which such project is approved by the Secretary, Federal financial participation in the costs of such project shall be continued in like manner as if—

''(3) such section 301 [enacting subchapter XVI of this chapter] had not been enacted, and

''(4) such State (for the month of January 1974 and any month thereafter) continued to have in effect the State plan (approved under title XVI [subchapter XVI of this chapter]) which was in effect for the month of October 1973, or the State plans (approved under titles I, X, and XIV of the Social Security Act [subchapters I, X, and XIV of this chapter]) which were in effect for such month, as the case may be.

''(b) With respect to individuals—

''(1) who are participants in any project to which the provisions of subsection (a) are applicable, and

''(2) with respect to whom supplemental security income benefits are (or would, except for their participation in such project, be) payable under title XVI of the Social Security Act, or who meet the requirements for aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act of the State in which such project is conducted (as such State plan was in effect for July 1973),

the Secretary may waive such requirements of title XVI of such Act (as enacted by section 301 of the Social Security Amendments of 1972) to such extent as he determines to be necessary to the successful operation of such project.

''(c) In the case of any State which has entered into an agreement with the Secretary under section 1616 of the Social Security Act [section 1382e of this title] (or which is deemed, under section 212(d) of Public Law 93–66 [set out as a note under section 1382 of this title], to have entered into such an agreement), then, of the costs of any project of such State with respect to which there is (solely by reason of the provisions of subsection (a)) Federal financial participation, the non-Federal share thereof shall—

''(1) be paid, from time to time, to such State by the Secretary, and

''(2) shall, for purposes of section 1616(d) of the Social Security Act [section 1382e(d) of this title] and section 401 of the Social Security Amendments of 1972 [set out as a note under section 1382e of this title] be treated in like manner as if such non-Federal share were supplementary payments made by the Secretary on behalf of such State pursuant to such agreement.''

§ 1316. Administrative and judicial review of public assistance determinations

(a) Determination of conformity with requirements for approval; petition for reconsideration; hearing; time limitations; review by court of appeals

(1) Whenever a State plan is submitted to the Secretary by a State for approval under subchapter I, X, XIV, XVI, or XIX of this chapter, he shall, not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such subchapter. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

(2) Any State dissatisfied with a determination of the Secretary under paragraph (1) of this subsection with respect to any plan may, within 60 days after it has been notified of such determination, file a petition with the Secretary for reconsideration of the issue of whether such plan conforms to the requirements for approval under such subchapter. Within 30 days after receipt of such a petition, the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering such issue. Such hearing shall be held not less than 20 days nor more than 60 days after the date notice of such hearing is furnished to such State, unless the Secretary and such State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse his original determination within 60 days of the conclusion of the hearing.

(3) Any State which is dissatisfied with a final determination made by the Secretary on such a reconsideration or a final determination of the Secretary under section 304, 1204, 1354, 1384, or 1396c of this title may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of title 28.

(4) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(5) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) Amendment of plans

For the purposes of subsection (a) of this section, any amendment of a State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter, may, at the option of the State, be treated as the submission of a new State plan.

(c) Restitution when Secretary reverses his determination

Action pursuant to an initial determination of the Secretary described in subsection (a) of this section shall not be stayed pending reconsideration, but in the event that the Secretary subsequently determines that his initial determination was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

(d) Items covered under other subchapters; disallowance

Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under subchapter I, X, XIV, XVI, or XIX of this chapter, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

(Aug. 14, 1935, ch. 531, title XI, § 1116, as added Pub. L. 89–97, title IV, § 404(a), July 30, 1965, 79 Stat. 419; amended Pub. L. 90–248, title II, § 241(c)(5), Jan. 2, 1968, 81 Stat. 917; Pub. L. 93–233, § 18(z–2)(1)(C), Dec. 31, 1973, 87 Stat. 974; Pub. L. 93–647, § 3(d), Jan. 4, 1975, 88 Stat. 2349; Pub. L. 97–35, title XXIII, § 2353(h), Aug. 13, 1981, 95 Stat. 872; Pub. L. 98–369, div. B, title III, § 2354(c)(2), title VI, § 2663(e)(6), July 18, 1984, 98 Stat. 1102, 1168; Pub. L. 104–193, title I, § 108(g)(3), Aug. 22, 1996, 110 Stat. 2168.)

REFERENCES IN TEXT

Section 1384 of this title, referred to in subsec. (a)(3), is a reference to section 1384 of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1384 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–193, § 108(g)(3)(A), struck out ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

Subsec. (a)(3). Pub. L. 104–193, § 108(g)(3)(B), struck out ''604,'' before ''1204,''.

Subsecs. (b), (d). Pub. L. 104–193, § 108(g)(3)(A), struck out ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

1984—Subsec. (a)(1). Pub. L. 98–369, § 2663(e)(6)(A), struck out ''VI,'' after ''I,''.

Pub. L. 98–369, § 2354(c)(2), corrected typographical error in directory language of Pub. L. 97–35, § 2353(h)(1). See 1982 Amendment note below.

Subsec. (a)(3). Pub. L. 98–369, § 2663(e)(6)(B), struck out ''804,'' after ''604,''.

Subsec. (b). Pub. L. 98–369, § 2663(e)(6)(A), struck out ''VI,'' after ''I,''.

Pub. L. 98–369, § 2354(c)(2), corrected typographical error in directory language of Pub. L. 97–35, § 2353(h)(1). See 1982 Amendment note below.

Subsec. (d). Pub. L. 98–369, § 2663(e)(6)(A), struck out ''VI,'' after ''I,''.

Pub. L. 98–369, § 2663(e)(6)(C), substituted ''XVI, or XIX of this chapter, or part A'' for ''XVI, or or XIX of this chapter, or part A''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2353(h)(1), as amended by Pub. L. 98–369, § 2354(c)(2), substituted ''or XIX of this chapter'' for ''XIX or XX of this chapter''.

Subsec. (a)(3). Pub. L. 97–35, § 2353(h)(2), substituted ''or 1396c of this title'' for ''1396c, or 1397b of this title''.

Subsec. (b). Pub. L. 97–35, § 2353(h)(1), as amended by Pub. L. 98–369, § 2354(c)(2), substituted ''or XIX of this chapter'' for ''XIX or XX of this chapter''.

Subsec. (d). Pub. L. 97–35, § 2353(h)(3), substituted ''or XIX of this chapter'' for ''XIX, or XX of this chapter''.

1975—Subsec. (a)(1). Pub. L. 93–647, § 3(d)(1), substituted ''XIX or XX'' for ''or XIX''.

Subsec. (a)(3). Pub. L. 93–647, § 3(d)(2), substituted ''1396c, or 1397b'' for ''or 1396c''.

Subsec. (b). Pub. L. 93–647, § 3(d)(1), substituted ''XIX or XX'' for ''or XIX''.

Subsec. (d). Pub. L. 93–647, § 3(d)(3), inserted ''XX,'' after ''XIX,''.

1973—Subsec. (a). Pub. L. 93–233, § 18(z–2)(1)(C)(i), (ii), inserted references in par. (1) to subchapter VI of this chapter and in par. (3) to section 804 of this title.

Subsecs. (b), (d). Pub. L. 93–233, § 18(z–2)(1)(C)(iii), (iv), inserted reference to subchapter VI of this chapter.

1968—Subsec. (a)(1). Pub. L. 90–248, § 241(c)(5)(A), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

Subsecs. (b), (d). Pub. L. 90–248, § 241(c)(5)(B), struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter,'' after ''XIX of this chapter''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(c)(2) of Pub. L. 98–369 effective as if originally included in Pub. L. 97–35, see section 2354(e)(2) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(e)(6) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective on and after Jan. 1, 1974, see section 18(z–2)(2) of Pub. L. 93–233, set out as a note under section 1301 of this title.

EFFECTIVE DATE

Section 404(b) of Pub. L. 89–97 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply only with respect to determinations made after December 31, 1965.''

§ 1317. Appointment of the Administrator and Chief Actuary of the Centers for Medicare & Medicaid Services

(a) The Administrator of the Centers for Medicare & Medicaid Services shall be appointed by the President by and with the advice and consent of the Senate.

(b)(1) There is established in the Centers for Medicare & Medicaid Services the position of Chief Actuary. The Chief Actuary shall be appointed by, and in direct line of authority to, the Administrator of such Centers. The Chief Actuary shall be appointed from among individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall exercise

such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5.

(3) In the office of the Chief Actuary there shall be an actuary whose duties relate exclusively to the programs under parts C and D of subchapter XVIII of this chapter and related provisions of such subchapter.

(Aug. 14, 1935, ch. 531, title XI, § 1117, as added Pub. L. 98–369, div. B, title III, § 2332(a), July 18, 1984, 98 Stat. 1088; amended Pub. L. 105–33, title IV, § 4643, Aug. 5, 1997, 111 Stat. 487; Pub. L. 108–173, title IX, § 900(c), (e)(1)(A), Dec. 8, 2003, 117 Stat. 2370.)

REFERENCES IN TEXT

Parts C and D of subchapter XVIII of this chapter, referred to in subsec. (b)(3), are classified to sections 1395w–21 et seq. and 1395w–101 et seq., respectively, of this title.

PRIOR PROVISIONS

A prior section 1317, act Aug. 14, 1935, ch. 531, title XI, § 1117, as added July 30, 1965, Pub. L. 89–97, title IV, § 405, 79 Stat. 420; amended Jan. 2, 1968, Pub. L. 90–248, title II, §§ 221(a)–(c), 241(c)(6), 81 Stat. 899, 917, related to maintenance of State public assistance expenditures, prior to repeal by Pub. L. 90–248, title II, § 221(d), Jan. 2, 1968, 81 Stat. 900, eff. July 1, 1968.

AMENDMENTS

2003—Pub. L. 108–173, § 900(e)(1)(A)(i), substituted ''Appointment of the Administrator and Chief Actuary of the Centers for Medicare & Medicaid Services'' for ''Appointment of Administrator and Chief Actuary of Health Care Financing Administration'' in section catchline.

Subsec. (a). Pub. L. 108–173, § 900(e)(1)(A)(ii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

Subsec. (b)(1). Pub. L. 108–173, § 900(e)(1)(A)(iii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' and ''such Centers'' for ''such Administration''.

Subsec. (b)(3). Pub. L. 108–173, § 900(c), added par. (3).

1997—Pub. L. 105–33 amended section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE

Section 2332(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [enacting this section and amending section 5315 of Title 5, Government Organization and Employees] shall apply to appointments made after the date of the enactment of this Act [July 18, 1984].''

§ 1318. Alternative Federal payment with respect to public assistance expenditures

In the case of any State which has in effect a plan approved under subchapter XIX of this chapter for any calendar quarter, the total of the payments to which such State is entitled for such quarter, and for each succeeding quarter in the same fiscal year (which for purposes of this section means the 4 calendar quarters ending with September 30), under paragraphs (1) and (2) of sections 303(a),[1] 1203(a),[1] 1353(a),[1] and 1383(a)[1] of this title shall, at the option of the State, be determined by application of the Federal medical assistance percentage (as defined in section 1396d of this title), instead of the percentages provided under each such section, to the expenditures under its State plans approved under subchapters I, X, XIV, and XVI of this chapter, which would be included in determining the amounts of the Federal payments to which such State is entitled under such sections, but without regard to any maximum on the dollar amounts per recipient which may be counted under such sections. For purposes of the preceding sentence, the term ''Federal medical assistance percentage'' shall, in the case of Puerto Rico, the Virgin Islands, and Guam, mean 75 per centum.

(Aug. 14, 1935, ch. 531, title XI, § 1118, as added Pub. L. 89–97, title IV, § 411, July 30, 1965, 79 Stat. 423; amended Pub. L. 90–248, title II, § 241(c)(7), Jan. 2, 1968, 81 Stat. 917; Pub. L. 94–273, § 2(23), Apr. 21, 1976, 90 Stat. 376; Pub. L. 95–600, title VIII, § 802(a), Nov. 6, 1978, 92 Stat. 2945; Pub. L. 96–272, title III, § 305(c), June 17, 1980, 94 Stat. 530; Pub. L. 100–485, title VI, § 601(c)(3), Oct. 13, 1988, 102 Stat. 2408; Pub. L. 104–193, title I, § 108(g)(4), Aug. 22, 1996, 110 Stat. 2168.)

REFERENCES IN TEXT

Paragraph (1) of sections 303(a), 1203(a), and 1353(a) of this title, referred to in text, were repealed by Pub. L. 97–35, title XXI, § 2184(a)(4)(A), (c)(2)(A), Aug. 13, 1981, 95 Stat. 816, 817.

Section 1383(a) of this title, referred to in text, is a reference to section 1383(a) of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1996—Pub. L. 104–193 struck out ''603(a),'' before ''1203(a),'', ''and part A of subchapter IV of this chapter,'' after ''XVI of this chapter,'', and '', and shall, in the case of American Samoa, mean 75 per centum with respect to part A of subchapter IV of this chapter'' after ''the Virgin Islands, and Guam, mean 75 per centum''.

1988—Pub. L. 100–485 inserted before period at end '', and shall, in the case of American Samoa, mean 75 per centum with respect to part A of subchapter IV of this chapter''.

1980—Pub. L. 96–272 struck out ''when applied to quarters in the fiscal year ending September 30, 1979'' after ''means 75 per centum''.

1978—Pub. L. 95–600, inserted provision relating to definition of ''Federal medical assistance percentage'' in the case of Puerto Rico, the Virgin Islands, and Guam.

1976—Pub. L. 94–273 substituted ''September'' for ''June''.

1968—Pub. L. 90–248 struck out ''IV,'' after ''I,'' and inserted ''and part A of subchapter IV of this chapter,'' after ''XVI of this chapter''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC

[1] See References in Text note below.

program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective Oct. 1, 1988, see section 601(d) of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 1301 of this title.

§ 1319. Federal participation in payments for repairs to home owned by recipient of aid or assistance

In the case of an expenditure for repairing the home owned by an individual who is receiving aid or assistance, other than medical assistance to the aged, under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, if—

(1) the State agency or local agency administering the plan approved under such subchapter has made a finding (prior to making such expenditure) that (A) such home is so defective that continued occupancy is unwarranted, (B) unless repairs are made to such home, rental quarters will be necessary for such individual, and (C) the cost of rental quarters to take care of the needs of such individual (including his spouse living with him in such home and any other individual whose needs were taken into account in determining the need of such individual) would exceed (over such time as the Secretary may specify) the cost of repairs needed to make such home habitable together with other costs attributable to continued occupancy of such home, and

(2) no such expenditures were made for repairing such home pursuant to any prior finding under this section,

the amount paid to any such State for any quarter under section 303(a), 1203(a), 1353(a), or 1383(a) of this title shall be increased by 50 per centum of such expenditures, except that the excess above $500 expended with respect to any one home shall not be included in determining such expenditures.

(Aug. 14, 1935, ch. 531, title XI, § 1119, as added Pub. L. 90–248, title II, § 209(a), Jan. 2, 1968, 81 Stat. 894; amended Pub. L. 104–193, title I, § 108(g)(5), Aug. 22, 1996, 110 Stat. 2168.)

REFERENCES IN TEXT

Section 1383(a) of this title, referred to in text, is a reference to section 1383(a) of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1996—Pub. L. 104–193 substituted ''subchapter I, X, XIV, or XVI of this chapter,'' for ''subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter'' in introductory provisions and struck out ''603(a),'' before ''1203(a),'' in closing provisions.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE

Section 209(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply with respect to expenditures made after December 31, 1967.''

§ 1320. Approval of certain projects

No payment shall be made under this chapter with respect to any experimental, pilot, demonstration, or other project all or any part of which is wholly financed with Federal funds made available under this chapter (without any State, local, or other non-Federal financial participation) unless such project shall have been personally approved by the Secretary or Deputy Secretary of Health and Human Services.

(Aug. 14, 1935, ch. 531, title XI, § 1120, as added Pub. L. 90–248, title II, § 249, Jan. 2, 1968, 81 Stat. 919; amended Pub. L. 93–608, § 2(5), Jan. 2, 1975, 88 Stat. 1971; Pub. L. 97–375, title I, § 107(a), Dec. 21, 1982, 96 Stat. 1820; Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(v), July 18, 1984, 98 Stat. 1170; Pub. L. 101–509, title V, § 529 [title I, § 112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454.)

AMENDMENTS

1990—Pub. L. 101–509 substituted ''Deputy Secretary of Health and Human Services'' for ''Under Secretary of Health and Human Services''.

1984—Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1982—Pub. L. 97–375 struck out subsec. (b) which directed the Secretary to submit an annual report to Congress describing each project approved under former subsec. (a) of this section during the preceding year, including the purpose, probable cost, and expected duration of each project, and struck out ''(a)'' before ''No payment''.

1975—Subsec. (b). Pub. L. 93–608 substituted provisions relating to an annual submission of the required report to the Congress by the Secretary for each approved project, for provisions relating to submission of the report as soon as possible after approval.

EFFECTIVE DATE OF 1990 AMENDMENT; CONTINUED SERVICE BY INCUMBENTS

Amendment by Pub. L. 101–509 effective on the first day of the first pay period that begins on or after Nov. 5, 1990, with continued service by incumbent Under Secretary of Health and Human Services, see section 529 [title I, § 112(e)] of Pub. L. 101–509, set out as a note under section 3404 of Title 20, Education.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 1320a. Uniform reporting systems for health services facilities and organizations

(a) Establishment; criteria for regulations; requirements for hospitals

For the purposes of reporting the cost of services provided by, of planning, and of measuring

and comparing the efficiency of and effective use of services in, hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, health maintenance organizations, and other types of health services facilities and organizations to which payment may be made under this chapter, the Secretary shall establish by regulation, for each such type of health services facility or organization, a uniform system for the reporting by a facility or organization of that type of the following information:

(1) The aggregate cost of operation and the aggregate volume of services.

(2) The costs and volume of services for various functional accounts and subaccounts.

(3) Rates, by category of patient and class of purchaser.

(4) Capital assets, as defined by the Secretary, including (as appropriate) capital funds, debt service, lease agreements used in lieu of capital funds, and the value of land, facilities, and equipment.

(5) Discharge and bill data.

The uniform reporting system for a type of health services facility or organization shall provide for appropriate variation in the application of the system to different classes of facilities or organizations within that type and shall be established, to the extent practicable, consistent with the cooperative system for producing comparable and uniform health information and statistics described in section 242k(e)(1) of this title. In reporting under such a system, hospitals shall employ such chart of accounts, definitions, principles, and statistics as the Secretary may prescribe in order to reach a uniform reconciliation of financial and statistical data for specified uniform reports to be provided to the Secretary.

(b) Monitoring, etc., of systems by Secretary

The Secretary shall—

(1) monitor the operation of the systems established under subsection (a) of this section;

(2) assist with and support demonstrations and evaluations of the effectiveness and cost of the operation of such systems and encourage State adoption of such systems; and

(3) periodically revise such systems to improve their effectiveness and diminish their cost.

(c) Availability of information to appropriate agencies and organizations

The Secretary shall provide information obtained through use of the uniform reporting systems described in subsection (a) of this section in a useful manner and format to appropriate agencies and organizations, including health systems agencies (designated under section 300*l*–4[1] of this title) and State health planning and development agencies (designated under section 300m[1] of this title), as may be necessary to carry out such agencies' and organizations' functions.

(Aug. 14, 1935, ch. 531, title XI, §1121, as added Pub. L. 95–142, §19(a), Oct. 25, 1977, 91 Stat. 1203.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 300*l*–4 of this title, referred to in subsec. (c), was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 300m of this title, referred to in subsec. (c), was in the original a reference to section 1521 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 101–354, §2, Aug. 10, 1990, 104 Stat. 410, enacted section 1503 of act July 1, 1944, which is classified to section 300m of this title.

PRIOR PROVISIONS

A prior section 1320a, act Aug. 14, 1935, ch. 531, title XI, §1121, as added Jan. 2, 1968, Pub. L. 90–248, title II, §250(a), 81 Stat. 920, provided for assistance in the form of institutional services in intermediate care facilities, the subsecs. providing as follows: subsec. (a), modification of certain plans to include such benefit; subsec. (b), eligible individuals; subsec. (c), payments and Federal medical assistance percentage; subsec. (d), conditions, limitations, rights, and obligations applicable to modified plans; and subsec. (e), definition of ''intermediate care facility'', which is covered in section 1396d(c) of this title, prior to repeal by Pub. L. 92–223, §4(c), Dec. 28, 1971, 85 Stat. 810.

Section was additionally amended by Pub. L. 92–603, title II, §278(a)(24), Oct. 30, 1972, 86 Stat. 1453, without reference to the earlier repeal of this section by Pub. L. 92–223.

TIME PERIODS FOR ESTABLISHMENT OF UNIFORM REPORTING SYSTEMS; CONSULTATIONS WITH INTERESTED PARTIES

Section 19(c)(1) of Pub. L. 95–142 directed Secretary of Health, Education, and Welfare to establish the systems described in subsec. (a) of this section only after consultation with interested parties and for hospitals, skilled nursing facilities, and intermediate care facilities, not later than the end of the one year period beginning on Oct. 25, 1977, and for other types of health services facilities and organizations, not later than the end of the two-year period beginning on Oct. 25, 1977.

§ 1320a–1. Limitation on use of Federal funds for capital expenditures

(a) Use of reimbursement for planning activities for health services and facilities

The purpose of this section is to assure that Federal funds appropriated under subchapters XVIII and XIX of this chapter are not used to support unnecessary capital expenditures made by or on behalf of health care facilities which are reimbursed under any of such subchapters and that, to the extent possible, reimbursement under such subchapters shall support planning activities with respect to health services and facilities in the various States.

(b) Agreement between Secretary and State for submission of proposed capital expenditures related to health care facilities and procedures for appeal from recommendations

The Secretary, after consultation with the Governor (or other chief executive officer) and with appropriate local public officials, shall make an agreement with any State which is able and willing to do so under which a designated planning agency (which shall be an agency described in clause (ii) of subsection (d)(1)(B) of this section that has a governing body or advisory board at least half of whose members represent consumer interests) will—

(1) make, and submit to the Secretary together with such supporting materials as he

may find necessary, findings and recommendations with respect to capital expenditures proposed by or on behalf of any health care facility in such State within the field of its responsibilities,

(2) receive from other agencies described in clause (ii) of subsection (d)(1)(B) of this section, and submit to the Secretary together with such supporting material as he may find necessary, the findings and recommendations of such other agencies with respect to capital expenditures proposed by or on behalf of health care facilities in such State within the fields of their respective responsibilities, and

(3) establish and maintain procedures pursuant to which a person proposing any such capital expenditure may appeal a recommendation by the designated agency and will be granted an opportunity for a fair hearing by such agency or person other than the designated agency as the Governor (or other chief executive officer) may designate to hold such hearings,

whenever and to the extent that the findings of such designated agency or any such other agency indicate that any such expenditure is not consistent with the standards, criteria, or plans developed pursuant to the Public Health Service Act [42 U.S.C. 201 et seq.] to meet the need for adequate health care facilities in the area covered by the plan or plans so developed.

(c) Manner of payment to States for carrying out agreement

The Secretary shall pay any such State from the general fund in the Treasury, in advance or by way of reimbursement as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (b) of this section.

(d) Determination of amount of exclusions from Federal payments

(1) Except as provided in paragraph (2), if the Secretary determines that—

(A) neither the planning agency designated in the agreement described in subsection (b) of this section nor an agency described in clause (ii) of subparagraph (B) of this paragraph had been given notice of any proposed capital expenditure (in accordance with such procedure or in such detail as may be required by such agency) at least 60 days prior to obligation for such expenditure; or

(B)(i) the planning agency so designated or an agency so described had received such timely notice of the intention to make such capital expenditure and had, within a reasonable period after receiving such notice and prior to obligation for such expenditure, notified the person proposing such expenditure that the expenditure would not be in conformity with the standards, criteria, or plans developed by such agency or any other agency described in clause (ii) for adequate health care facilities in such State or in the area for which such other agency has responsibility, and

(ii) the planning agency so designated had, prior to submitting to the Secretary the findings referred to in subsection (b) of this section—

(I) consulted with, and taken into consideration the findings and recommendations of, the State planning agencies established pursuant to sections 314(a) and 604(a) of the Public Health Service Act [42 U.S.C. 246(a), 291d(a)] (to the extent that either such agency is not the agency so designated) as well as the public or nonprofit private agency or organization responsible for the comprehensive regional, metropolitan area, or other local area plan or plans referred to in section 314(b) of the Public Health Service Act [42 U.S.C. 246(b)] and covering the area in which the health care facility proposing such capital expenditure is located (where such agency is not the agency designated in the agreement), or, if there is no such agency, such other public or nonprofit private agency or organization (if any) as performs, as determined in accordance with criteria included in regulations, similar functions, and

(II) granted to the person proposing such capital expenditure an opportunity for a fair hearing with respect to such findings;

then, for such period as he finds necessary in any case to effectuate the purpose of this section, he shall, in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter with respect to services furnished in the health care facility for which such capital expenditure is made, not include any amount which is attributable to depreciation, interest on borrowed funds, a return on equity capital (in the case of proprietary facilities), or other expenses related to such capital expenditure. With respect to any organization which is reimbursed on a per capita or a fixed fee or negotiated rate basis, in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter, the Secretary shall exclude an amount which in his judgment is a reasonable equivalent to the amount which would otherwise be excluded under this subsection if payment were to be made on other than a per capita or a fixed fee or negotiated rate basis.

(2) If the Secretary, after submitting the matters involved to the advisory council established or designated under subsection (i) of this section, determines that an exclusion of expenses related to any capital expenditure of any health care facility would discourage the operation or expansion of such facility which has demonstrated to his satisfaction proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of subchapter XVIII or XIX of this chapter, he shall not exclude such expenses pursuant to paragraph (1).

(e) Treatment of lease or comparable arrangement of any facility or equipment for a facility in determining amount of exclusions from Federal payments

Where a person obtains under lease or comparable arrangement any facility or part there-

of, or equipment for a facility, which would have been subject to an exclusion under subsection (d) of this section if the person had acquired it by purchase, the Secretary shall (1) in computing such person's rental expense in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter with respect to services furnished in such facility, deduct the amount which in his judgment is a reasonable equivalent of the amount that would have been excluded if the person had acquired such facility or such equipment by purchase, and (2) in computing such person's return on equity capital deduct any amount deposited under the terms of the lease or comparable arrangement.

(f) Reconsideration by Secretary of determinations

Any person dissatisfied with a determination by the Secretary under this section may within six months following notification of such determination request the Secretary to reconsider such determination. A determination by the Secretary under this section shall not be subject to administrative or judicial review.

(g) "Capital expenditure" defined

For the purposes of this section, a ''capital expenditure'' is an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which (1) exceeds $600,000 (or such lesser amount as the State may establish), (2) changes the bed capacity of the facility with respect to which such expenditure is made, or (3) substantially changes the services of the facility with respect to which such expenditure is made. For purposes of clause (1) of the preceding sentence, the cost of the studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment with respect to which such expenditure is made shall be included in determining whether such expenditure exceeds the dollar amount specified in clause (1).

(h) Applicability to Christian Science sanatoriums

The provisions of this section shall not apply to a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).

(i) National advisory council; establishment or designation of existing council; functions; consultations with other appropriate national advisory councils; composition; compensation and travel expenses

(1) The Secretary shall establish a national advisory council, or designate an appropriate existing national advisory council, to advise and assist him in the preparation of general regulations to carry out the purposes of this section and on policy matters arising in the administration of this section, including the coordination of activities under this section with those under other parts of this chapter or under other Federal or federally assisted health programs.

(2) The Secretary shall make appropriate provision for consultation between and coordination of the work of the advisory council established or designated under paragraph (1) and the Federal Hospital Council, the National Advisory Health Council, the Health Insurance Benefits Advisory Council, and other appropriate national advisory councils with respect to matters bearing on the purposes and administration of this section and the coordination of activities under this section with related Federal health programs.

(3) If an advisory council is established by the Secretary under paragraph (1), it shall be composed of members who are not otherwise in the regular full-time employ of the United States, and who shall be appointed by the Secretary without regard to the civil service laws from among leaders in the fields of the fundamental sciences, the medical sciences, and the organization, delivery, and financing of health care, and persons who are State or local officials or are active in community affairs or public or civic affairs or who are representative of minority groups. Members of such advisory council, while attending meetings of the council or otherwise serving on business of the council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the maximum rate specified at the time of such service for grade GS–18 in section 5332 of title 5, including traveltime, and while away from their homes or regular places of business they may also be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

(j) Capital expenditure review exception for eligible organization health care facilities

A capital expenditure made by or on behalf of a health care facility shall not be subject to review pursuant to this section if 75 percent of the patients who can reasonably be expected to use the service with respect to which the capital expenditure is made will be individuals enrolled in an eligible organization as defined in section 1395mm(b) of this title, and if the Secretary determines that such capital expenditure is for services and facilities which are needed by such organization in order to operate efficiently and economically and which are not otherwise readily accessible to such organization because—

(1) the facilities do not provide common services at the same site (as usually provided by the organization),

(2) the facilities are not available under a contract of reasonable duration,

(3) full and equal medical staff privileges in the facilities are not available,

(4) arrangements with such facilities are not administratively feasible, or

(5) the purchase of such services is more costly than if the organization provided the services directly.

(Aug. 14, 1935, ch. 531, title XI, §1122, as added Pub. L. 92–603, title II, §221(a), Oct. 30, 1972, 86 Stat. 1386; amended Pub. L. 93–233, §18(z), (z–1), Dec. 31, 1973, 87 Stat. 973; Pub. L. 95–559, §14(b), Nov. 1, 1978, 92 Stat. 2141; Pub. L. 96–32, §2(c), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title XXI, §2193(c)(3), Aug. 13, 1981, 95 Stat. 827; Pub. L. 97–248, title I, §137(a)(5), Sept. 3, 1982, 96 Stat.

376; Pub. L. 98–21, title VI, §607(a), (b)(1), (c), Apr. 20, 1983, 97 Stat. 171, 172; Pub. L. 98–369, div. B, title III, §2354(a)(1), (2), July 18, 1984, 98 Stat. 1100; Pub. L. 105–33, title IV, §4454(c)(1), Aug. 5, 1997, 111 Stat. 431.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (b), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The civil service laws, referred to in subsec. (i)(3), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

AMENDMENTS

1997—Subsec. (h). Pub. L. 105–33 substituted ''a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).'' for ''Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.''

1984—Subsec. (b). Pub. L. 98–369, §2354(a)(1), substituted a comma for the period at end of par. (1), and struck out ''(or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963)'' before ''to meet the need'' in provisions following par. (3).

Subsec. (i)(3). Pub. L. 98–369, §2354(a)(2), substituted ''5703'' for ''5703(b)''.

1983—Subsec. (c). Pub. L. 98–21, §607(a), substituted ''the general fund in the Treasury'' for ''the Federal Hospital Insurance Trust Fund''.

Subsec. (g). Pub. L. 98–21, §607(b)(1), substituted ''$600,000 (or such lesser amount as the State may establish)'' for ''$100,000'' and Pub. L. 98–21, §607(b)(1)(B), substituted ''the dollar amount specified in clause (1)'' for ''$100,000'' the second time it appeared.

Subsec. (j). Pub. L. 98–21, §607(c), added subsec. (j).

1982—Subsec. (d)(2). Pub. L. 97–248 amended directory language of Pub. L. 97–35, §2193(c)(3)(B), to correct typographical error, and did not involve any change in text. See 1981 Amendment note below.

1981—Subsec. (a). Pub. L. 97–35, §2193(c)(3)(A), substituted ''subchapters XVIII and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter''.

Subsec. (d)(1). Pub. L. 97–35, §2193(c)(3)(A), substituted in provision following subpar. (B)(ii)(II) ''subchapters XVIII and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter'' in two places.

Subsec. (d)(2). Pub. L. 97–35, §2193(c)(3)(B), as amended by Pub. L. 97–248, §137(a)(5), substituted ''subchapter XVIII or XIX of this chapter'' for ''subchapter V, XVIII, or XIX of this chapter''.

Subsec. (e). Pub. L. 97–35, §2193(c)(3)(A), substituted ''subchapters XVIII and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter''.

1979—Pub. L. 96–32 amended directory language of Pub. L. 95–559 and required no change in text of section. See 1978 Amendment notes below.

1978—Subsecs. (a), (b). Pub. L. 95–559, §14(b)(1), (2), as amended by Pub. L. 96–32, struck out references to health maintenance organizations wherever appearing.

Subsec. (d). Pub. L. 95–559, §14(b)(1), (3), as amended by Pub. L. 96–32, struck out references to health maintenance organizations wherever appearing and in par. (2) ''or organization, or of any facility of such organization,'' after ''expansion of such facility''.

1973—Subsec. (d)(1). Pub. L. 93–233, §18(z), inserted ''or a fixed fee or negotiated rate'' after ''per capita'' wherever appearing in last sentence.

Subsec. (d)(2). Pub. L. 93–233, §18(z–1), substituted ''exclude'' for ''include'' where last appearing.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2354(e) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1316, 1320a–7a, 1320a–8, 1395f, 1395i, 1395i–2, 1395k, 1395*l*, 1395n, 1395p, 1395s to 1395z, 1395aa, 1395cc, 1395ff, 1395ii, 1395*ll*, 1395mm, 1395*oo*, 1395rr, and 1395ww of this title and section 162 of Title 26, Internal Revenue Code, and amending provisions set out as notes under sections 1320c, 1395x, and 1395mm of this title] shall be effective on the date of the enactment of this Act [July 18, 1984]; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.

''(2) The amendments made by paragraphs (1) [amending section 1395f of this title and provisions set out as a note under section 1395x of this title], (2) [amending section 1316 of this title], and (3) [amending provisions set out as notes under sections 1320c and 1395mm of this title] of subsection (c) shall be effective as if they had been originally included in Public Laws 96–499, 97–35, and 97–248, respectively.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE

Section 221(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply only with respect to a capital expenditure the obligation for which is incurred by or on behalf of a health care facility or health maintenance organization subsequent to whichever of the following is earlier: (A) December 31, 1972, or (B) with respect to any State or any part thereof specified by such State, the last day of the calendar quarter in which the State requests that the amendment made by subsection (a) of this section [enacting this section] apply in such State or such part thereof.''

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

EXPENDITURES OR OBLIGATIONS OF HEALTH CARE FACILITIES PROVIDING HEALTH CARE SERVICES PRIOR TO DECEMBER 18, 1970; LIMITATIONS ON FEDERAL PARTICIPATION

Section 221(d) of Pub. L. 92–603 provided that: ''In the case of a health care facility providing health care services as of December 18, 1970, which on such date is committed to a formal plan of expansion or replacement, the amendments made by the preceding provisions of this section [enacting this section and amending sections 705, 706, 709, 1395x, 1396a, and 1396b of this title] shall not apply with respect to such expenditures as may be made or obligations incurred for capital items included in such plan where preliminary expenditures toward the plan of expansion or replacement (including payments for studies, surveys, designs, plans, working drawings, specifications, and site acquisition, essential to the acquisition, improvement, expansion, or replacement of the health care facility or equipment concerned) of $100,000 or more, had been made during the three-year period ended December 17, 1970.''

§ 1320a–1a. Transferred

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XI, § 1123, as added Oct. 31, 1994, Pub. L. 103–432, title II, § 203(a), 108 Stat. 4454, which related to reviews of child and family services programs, and of foster care and adoption assistance programs, for conformity with State plan requirements, was renumbered section 1123A of act Aug. 14, 1935, by Pub. L. 104–193, title V, § 504, Aug. 22, 1996, 110 Stat. 2278, and was transferred to section 1320a–2a of this title.

§ 1320a–2. Effect of failure to carry out State plan

In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action.

(Aug. 14, 1935, ch. 531, title XI, § 1123, as added Pub. L. 103–382, title V, § 555(a), Oct. 20, 1994, 108 Stat. 4057.)

PRIOR PROVISIONS

A prior section 1320a–2, act Aug. 14, 1935, ch. 531, title XI, § 1123, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 241, 86 Stat. 1418; amended Dec. 5, 1980, Pub. L. 96–499, title IX, § 911, 94 Stat. 2619; Sept. 3, 1982, Pub. L. 97–248, title I, § 126, 96 Stat. 366; Apr. 7, 1986, Pub. L. 99–272, title IX, § 9303(b)(4), 100 Stat. 189, related to qualifications for health care personnel, prior to repeal by Pub. L. 100–360, title IV, § 430(a), as added Pub. L. 100–485, title VI, § 608(b), (g)(1), Oct. 13, 1988, 102 Stat. 2412, 2424, effective as if included in the enactment of Pub. L. 100–360.

Another section 1123 of act Aug. 14, 1935, was renumbered section 1123A, and is classified to section 1320a–2a of this title.

EFFECTIVE DATE

Section 555(b) of Pub. L. 103–382 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to actions pending on the date of the enactment of this Act [Oct. 20, 1994] and to actions brought on or after such date of enactment.''

§ 1320a–2a. Reviews of child and family services programs, and of foster care and adoption assistance programs, for conformity with State plan requirements

(a) In general

The Secretary, in consultation with the State agencies administering the State programs under parts B and E of subchapter IV of this chapter, shall promulgate regulations for the review of such programs to determine whether such programs are in substantial conformity with—

(1) State plan requirements under such parts B and E,

(2) implementing regulations promulgated by the Secretary, and

(3) the relevant approved State plans.

(b) Elements of review system

The regulations referred to in subsection (a) of this section shall—

(1) specify the timetable for conformity reviews of State programs, including—

(A) an initial review of each State program;

(B) a timely review of a State program following a review in which such program was found not to be in substantial conformity; and

(C) less frequent reviews of State programs which have been found to be in substantial conformity, but such regulations shall permit the Secretary to reinstate more frequent reviews based on information which indicates that a State program may not be in conformity;

(2) specify the requirements subject to review, and the criteria to be used to measure conformity with such requirements and to determine whether there is a substantial failure to so conform;

(3) specify the method to be used to determine the amount of any Federal matching funds to be withheld (subject to paragraph (4)) due to the State program's failure to so conform, which ensures that—

(A) such funds will not be withheld with respect to a program, unless it is determined that the program fails substantially to so conform;

(B) such funds will not be withheld for a failure to so conform resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary; and

(C) the amount of such funds withheld is related to the extent of the failure to so conform; and

(4) require the Secretary, with respect to any State program found to have failed substantially to so conform—

(A) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the failure to so conform;

(B) to make technical assistance available to the State to the extent feasible to enable the State to develop and implement such a corrective action plan;

(C) to suspend the withholding of any Federal matching funds under this section while such a corrective action plan is in effect; and

(D) to rescind any such withholding if the failure to so conform is ended by successful completion of such a corrective action plan.

(c) Provisions for administrative and judicial review

The regulations referred to in subsection (a) of this section shall—

(1) require the Secretary, not later than 10 days after a final determination that a program of the State is not in conformity, to notify the State of—

(A) the basis for the determination; and

(B) the amount of the Federal matching funds (if any) to be withheld from the State;

(2) afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days after receipt of the notice described in paragraph (1) (or, if later, after failure to continue or to complete a corrective action plan); and

(3) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, within 60 days after the State receives notice of the decision of the Board, by appeal to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(Aug. 14, 1935, ch. 531, title XI, § 1123A, formerly § 1123, as added Pub. L. 103–432, title II, § 203(a), Oct. 31, 1994, 108 Stat. 4454; renumbered § 1123A, Pub. L. 104–193, title V, § 504, Aug. 22, 1996, 110 Stat. 2278.)

REFERENCES IN TEXT

Parts B and E of subchapter IV of this chapter, referred to in subsec. (a), are classified to sections 620 et seq. and 670 et seq., respectively, of this title.

CODIFICATION

Section was formerly classified to section 1320a–1a of this title prior to renumbering by Pub. L. 104–193.

EFFECTIVE DATE

Section 203(c)(1) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

REGULATIONS

Section 203(c)(3) of Pub. L. 103–432 provided that: ''The Secretary shall promulgate the regulations referred to in section 1123(a) [now 1123A(a)] of the Social Security Act [subsec. (a) of this section] (as added by this section) not later than July 1, 1995, to take effect on April 1, 1996.''

§ 1320a–3. Disclosure of ownership and related information; procedure; definitions; scope of requirements

(a)(1) The Secretary shall by regulation or by contract provision provide that each disclosing entity (as defined in paragraph (2)) shall—

(A) as a condition of the disclosing entity's participation in, or certification or recertification under, any of the programs established by subchapters V, XVIII, and XIX of this chapter, or

(B) as a condition for the approval or renewal of a contract or agreement between the disclosing entity and the Secretary or the appropriate State agency under any of the programs established under subchapters V, XVIII, and XIX of this chapter,

supply the Secretary or the appropriate State agency with full and complete information as to the identity of each person with an ownership or control interest (as defined in paragraph (3)) in the entity or in any subcontractor (as defined by the Secretary in regulations) in which the entity directly or indirectly has a 5 per centum or more ownership interest and supply the Secretary with the[1] both the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing entity, each person with an ownership or control interest (as defined in subsection (a)(3) of this section), and any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest.

(2) As used in this section, the term ''disclosing entity'' means an entity which is—

(A) a provider of services (as defined in section 1395x(u) of this title, other than a fund), an independent clinical laboratory, a renal disease facility, a managed care entity, as defined in section 1396u–2(a)(1)(B) of this title, or a health maintenance organization (as defined in section 300e(a) of this title);

(B) an entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, items or services with respect to which payment may be claimed by the entity under any plan or program established pursuant to subchapter V of this chapter or under a State plan approved under subchapter XIX of this chapter; or

(C) a carrier or other agency or organization that is acting as a fiscal intermediary or agent with respect to one or more providers of services (for purposes of part A or part B of subchapter XVIII of this chapter, or both, or for purposes of a State plan approved under subchapter XIX of this chapter) pursuant to (i) an agreement under section 1395h of this title, (ii) a contract under section 1395u of this title, or (iii) an agreement with a single State agency administering or supervising the administration of a State plan approved under subchapter XIX of this chapter.

(3) As used in this section, the term ''person with an ownership or control interest'' means, with respect to an entity, a person who—

[1] So in original. The word ''the'' probably should not appear.

(A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership interest of 5 per centum or more in the entity; or

(ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 per centum of the total property and assets of the entity; or

(B) is an officer or director of the entity, if the entity is organized as a corporation; or

(C) is a partner in the entity, if the entity is organized as a partnership.

(b) To the extent determined to be feasible under regulations of the Secretary, a disclosing entity shall also include in the information supplied under subsection (a)(1) of this section, with respect to each person with an ownership or control interest in the entity, the name of any other disclosing entity with respect to which the person is a person with an ownership or control interest.

(Aug. 14, 1935, ch. 531, title XI, § 1124, as added Pub. L. 95–142, § 3(a)(1), Oct. 25, 1977, 91 Stat. 1177; amended Pub. L. 96–499, title IX, § 912(a), Dec. 5, 1980, 94 Stat. 2619; Pub. L. 97–35, title XXIII, § 2353(i), Aug. 13, 1981, 95 Stat. 872; Pub. L. 100–93, § 11, Aug. 18, 1987, 101 Stat. 697; Pub. L. 105–33, title IV, §§ 4313(a), 4707(c), Aug. 5, 1997, 111 Stat. 388, 506.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(1), is classified generally to Title 26, Internal Revenue Code.

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (a)(2)(C), are classified to sections 1395c et seq. and 1395j et seq. of this title.

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–33, § 4313(a), inserted before period at end of concluding provisions ''and supply the Secretary with the both the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing entity, each person with an ownership or control interest (as defined in subsection (a)(3) of this section), and any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest.'' The substitution was made to reflect the probable intent of Congress, in the absence of closing quotations designating the provisions to be inserted.

Subsec. (a)(2)(A). Pub. L. 105–33, § 4707(c), inserted ''a managed care entity, as defined in section 1396u–2(a)(1)(B) of this title,'' after ''renal disease facility,''.

1987—Subsec. (a)(3)(A)(ii). Pub. L. 100–93 struck out ''$25,000 or'' after ''exceeds''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2353(i)(1), substituted in subpars. (A) and (B) ''and XIX of this chapter'' for ''XIX, and XX of this chapter''.

Subsec. (a)(2)(D). Pub. L. 97–35, § 2353(i)(2)(C), struck out subpar. (D) which included within term ''disclosing entity'' an entity, other than an individual practitioner or group of practitioners, that furnishes, or arranges for the furnishing of, health related services with respect to which payment may be claimed by the entity under a State plan or program approved under subchapter XX of this chapter.

1980—Subsec. (a)(3)(A)(ii). Pub. L. 96–499 substituted ''of a whole or part interest'' for ''(in whole or in part) of an interest of 5 per centum or more'' and inserted '', which whole or part interest is equal to or exceeds $25,000 or 5 per centum of the total property and assets of the entity''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4313(e) of Pub. L. 105–33 provided that:

''(1) DISCLOSURE REQUIREMENTS.—The amendment made by subsection (a) [amending this section] shall apply to the application of conditions of participation, and entering into and renewal of contracts and agreements, occurring more than 90 days after the date of submission of the report under subsection (d) [set out as a note below].

''(2) OTHER PROVIDERS.—The amendments made by subsection (b) [amending section 1320a–3a of this title] shall apply to payment for items and services furnished more than 90 days after the date of submission of such report.''

Amendment by section 4707(c) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105–33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE

Section 3(e) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a)(1) [enacting this section] shall apply with respect to certifications and recertifications made (and participation in the programs established by titles V, XVIII, XIX, and XX of the Social Security Act [subchapters V, XVIII, XIX, and XX of this chapter] pursuant to certifications and recertifications made), and fiscal intermediary or agent agreements or contracts entered into or renewed, on and after the date of the enactment of this Act [Oct. 25, 1977]. The remaining amendments made by this section [amending sections 1395x and 1395cc of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1977]; except that the amendments made by subsections (c) and (d) [amending sections 1396a, 1396b, 1397a, and 1397b of this title] shall become effective January 1, 1978.''

REPORT ON CONFIDENTIALITY OF SOCIAL SECURITY ACCOUNT NUMBERS

Section 4313(d) of Pub. L. 105–33 provided that: ''Before the amendments made by this section [amending this section and section 1320a–3a of this title] may become effective, the Secretary of Health and Human Services shall submit to Congress a report on steps the Secretary has taken to assure the confidentiality of social security account numbers that will be provided to the Secretary under such amendments.''

§ 1320a–3a. Disclosure requirements for other providers under part B of Medicare

(a) Disclosure required to receive payment

No payment may be made under part B of subchapter XVIII of this chapter for items or services furnished by any disclosing part B provider unless such provider has provided the Secretary with full and complete information—

(1) on the identity of each person with an ownership or control interest in the provider

or in any subcontractor (as defined by the Secretary in regulations) in which the provider directly or indirectly has a 5 percent or more ownership interest;

(2) with respect to any person identified under paragraph (1) or any managing employee of the provider—

(A) on the identity of any other entities providing items or services for which payment may be made under subchapter XVIII of this chapter with respect to which such person or managing employee is a person with an ownership or control interest at the time such information is supplied or at any time during the 3-year period ending on the date such information is supplied, and

(B) as to whether any penalties, assessments, or exclusions have been assessed against such person or managing employee under section 1320a–7, 1320a–7a, or 1320a–7b of this title; and

(3) including the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing part B provider and any person, managing employee, or other entity identified or described under paragraph (1) or (2).

(b) Updates to information supplied

A disclosing part B provider shall notify the Secretary of any changes or updates to the information supplied under subsection (a) of this section not later than 180 days after such changes or updates take effect.

(c) Verification

(1) Transmittal by HHS

The Secretary shall transmit—

(A) to the Commissioner of Social Security information concerning each social security account number (assigned under section 405(c)(2)(B) of this title), and

(B) to the Secretary of the Treasury information concerning each employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986),

supplied to the Secretary pursuant to subsection (a)(3) of this section or section 1320a–3(c)[1] of this title to the extent necessary for verification of such information in accordance with paragraph (2).

(2) Verification

The Commissioner of Social Security and the Secretary of the Treasury shall verify the accuracy of, or correct, the information supplied by the Secretary to such official pursuant to paragraph (1), and shall report such verifications or corrections to the Secretary.

(3) Fees for verification

The Secretary shall reimburse the Commissioner and Secretary of the Treasury, at a rate negotiated between the Secretary and such official, for the costs incurred by such official in performing the verification and correction services described in this subsection.

[1] See References in Text note below.

(d) Definitions

For purposes of this section—

(1) the term ''disclosing part B provider'' means any entity receiving payment on an assignment-related basis (or, for purposes of subsection (a)(3) of this section, any entity receiving payment) for furnishing items or services for which payment may be made under part B of subchapter XVIII of this chapter, except that such term does not include an entity described in section 1320a–3(a)(2) of this title;

(2) the term ''managing employee'' means, with respect to a provider, a person described in section 1320a–5(b) of this title; and

(3) the term ''person with an ownership or control interest'' means, with respect to a provider—

(A) a person described in section 1320a–3(a)(3) of this title, or

(B) a person who has one of the 5 largest direct or indirect ownership or control interests in the provider.

(Aug. 14, 1935, ch. 531, title XI, § 1124A, as added Pub. L. 101–508, title IV, § 4164(b)(1), Nov. 5, 1990, 104 Stat. 1388–101; amended Pub. L. 103–432, title I, § 147(f)(7)(A)(i), Oct. 31, 1994, 108 Stat. 4432; Pub. L. 105–33, title IV, § 4313(b), (c), Aug. 5, 1997, 111 Stat. 388.)

REFERENCES IN TEXT

Part B of subchapter XVIII of this chapter, referred to in subsecs. (a) and (d)(1), is classified to section 1395j et seq. of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (a)(3) and (c)(1)(B), is classified generally to Title 26, Internal Revenue Code.

Section 1320a–3 of this title, referred to in subsec. (c)(1), does not contain a subsec. (c).

AMENDMENTS

1997—Subsec. (a)(3). Pub. L. 105–33, § 4313(b)(1), added par. (3).

Subsec. (c). Pub. L. 105–33, § 4313(c)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 105–33, § 4313(b)(2), inserted ''(or, for purposes of subsection (a)(3) of this section, any entity receiving payment)'' after ''on an assignment-related basis''.

Subsec. (d). Pub. L. 105–33, § 4313(c)(1), redesignated subsec. (c) as (d).

1994—Subsec. (a)(2)(A). Pub. L. 103–432 made technical amendment to reference to subchapter XVIII of this chapter to correct reference to corresponding provision of original act.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4313(b) of Pub. L. 105–33 applicable to payment for items and services furnished more than 90 days after date of submission of report under section 4313(d) of Pub. L. 105–33, set out as a note under section 1320a–3 of this title, see section 4313(e) of Pub. L. 105–33, set out as a note under section 1320a–3 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 147(g) of Pub. L. 103–432 provided that: ''Except as otherwise provided in this section [amending this section and sections 1320b–5, 1395*l*, 1395p, 1395q, 1395x, 1395y, and 1395cc of this title, enacting provisions set out as notes under sections 1395*l*, 1395p, and 1395y of this title, amending provisions set out as notes under this section and sections 254b, 1395*l*, and 1395u of this title, and repealing provisions set out as a note under section 1395*l* of this title], the amendments made by

this section shall take effect as if included in the enactment of OBRA–1990 [Pub L. 101–508].''

EFFECTIVE DATE

Section 4164(b)(4) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §147(f)(7)(A)(ii), Oct. 31, 1994, 108 Stat. 4432, provided that: ''The amendments made by paragraphs (1), (2), and (3) [enacting this section and amending sections 1320a–7 and 1320a–7b of this title] shall apply with respect to items or services furnished on or after—

''(A) January 1, 1993, in the case of items or services furnished by a provider who, on or before the date of the enactment of this Act [Nov. 5, 1990], has furnished items or services for which payment may be made under part B of title XVIII of the Social Security Act [part B of subchapter XVIII of this chapter]; or

''(B) January 1, 1992, in the case of items or services furnished by any other provider.''

REPORT ON CONFIDENTIALITY OF SOCIAL SECURITY ACCOUNT NUMBERS

Before amendment by Pub. L. 105–33 may become effective, Secretary of Health and Human Services is required to submit to Congress a report on steps Secretary has taken to assure the confidentiality of social security account numbers that will be provided to Secretary, see section 4313(d) of Pub. L. 105–33, set out as a note under section 1320a–3 of this title.

§ 1320a–4. Issuance of subpenas by Comptroller General

(a) Authorization; scope; service and proof of service

For the purpose of any audit, investigation, examination, analysis, review, evaluation, or other function authorized by law with respect to any program authorized under this chapter, the Comptroller General of the United States shall have power to sign and issue subpenas to any person requiring the production of any pertinent books, records, documents, or other information. Subpenas so issued by the Comptroller General shall be served by anyone authorized by him (1) by delivering a copy thereof to the person named therein, or (2) by registered mail or by certified mail addressed to such person at his last dwelling place or principal place of business. A verified return by the person so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post office receipt therefor signed by the person so served, shall be proof of service.

(b) Contumacy or refusal to obey subpena; contempt proceedings

In case of contumacy by, or refusal to obey a subpena issued pursuant to subsection (a) of this section and duly served upon, any person, any district court of the United States for the judicial district in which such person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Comptroller General, shall have jurisdiction to issue an order requiring such person to produce the books, records, documents, or other information sought by the subpena; and any failure to obey such order of the court may be punished by the court as a contempt thereof. In proceedings brought under this subsection, the Comptroller General shall be represented by attorneys employed in the Government Accountability Office or by counsel whom he may employ without regard to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapters III and VI of chapter 53 of such title, relating to classification and General Schedule pay rates.

(c) Nondisclosure of personal medical records by Government Accountability Office

No personal medical record in the possession of the Government Accountability Office shall be subject to subpena or discovery proceedings in a civil action.

(Aug. 14, 1935, ch. 531, title XI, §1125, as added Pub. L. 95–142, §6, Oct. 25, 1977, 91 Stat. 1192; amended Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsecs. (b) and (c). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' wherever appearing.

§ 1320a–5. Disclosure by institutions, organizations, and agencies of owners, officers, etc., convicted of offenses related to programs; notification requirements; "managing employee" defined

(a) As a condition of participation in or certification or recertification under the programs established by subchapters XVIII,[1] and XIX of this chapter, any hospital, nursing facility, or other entity (other than an individual practitioner or group of practitioners) shall be required to disclose to the Secretary or to the appropriate State agency the name of any person that is a person described in subparagraphs (A) and (B) of section 1320a–7(b)(8) of this title. The Secretary or the appropriate State agency shall promptly notify the Inspector General in the Department of Health and Human Services of the receipt from any entity of any application or request for such participation, certification, or recertification which discloses the name of any such person, and shall notify the Inspector General of the action taken with respect to such application or request.

(b) For the purposes of this section, the term ''managing employee'' means, with respect to an entity, an individual, including a general manager, business manager, administrator, and director, who exercises operational or managerial control over the entity, or who directly or indirectly conducts the day-to-day operations of the entity.

(Aug. 14, 1935, ch. 531, title XI, §1126, as added Pub. L. 95–142, §8(a), Oct. 25, 1977, 91 Stat. 1194; amended Pub. L. 97–35, title XXIII, §2353(j), Aug. 13, 1981, 95 Stat. 873; Pub. L. 98–369, div. B, title VI, §2663(j)(2)(D)(vi), July 18, 1984, 98 Stat. 1170; Pub. L. 100–93, §8(b), Aug. 18, 1987, 101 Stat. 692.)

[1] So in original. The comma probably should not appear.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–93, § 8(b)(1), in first sentence substituted ''or other entity (other than an individual practitioner or group of practitioners) shall be required to disclose to the Secretary or to the appropriate State agency the name of any person that is a person described in subparagraphs (A) and (B) of section 1320a–7(b)(8) of this title.'' for ''or other institution, organization, or agency shall be required to disclose to the Secretary or to the appropriate State agency the name of any person who—

''(1) has a direct or indirect ownership or control interest of 5 percent or more in such institution, organization, or agency or is an officer, director, agent, or managing employee (as defined in subsection (b) of this section) of such institution, organization, or agency, and

''(2) has been convicted (on or after October 25, 1977, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to the involvement of such person in any of such programs.'',

and in second sentence substituted ''entity'' for ''institution, organization, or agency''.

Subsec. (b). Pub. L. 100–93, § 8(b)(2), substituted ''entity'' for ''institution, organization, or agency'' in three places.

1984—Subsec. (a). Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' in provisions following par. (2).

1981—Subsec. (a). Pub. L. 97–35 substituted in provision preceding par. (1) ''and XIX of this chapter'' for ''XIX, and XX of this chapter''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE

Section 8(e) of Pub. L. 95–142 provided that: ''The amendments made by this section [enacting this section and amending sections 1395cc, 1396b, and 1397a of this title] shall apply with respect to contracts, agreements, and arrangements entered into and approvals given pursuant to applications or requests made on and after the first day of the fourth month beginning after the date of the enactment of this Act [Oct. 25, 1977].''

§ 1320a–6. Adjustments in SSI benefits on account of retroactive benefits under subchapter II

(a) Reduction in benefits

Notwithstanding any other provision of this chapter, in any case where an individual—

(1) is entitled to benefits under subchapter II of this chapter that were not paid in the months in which they were regularly due; and

(2) is an individual or eligible spouse eligible for supplemental security income benefits for one or more months in which the benefits referred to in clause (1) were regularly due,

then any benefits under subchapter II of this chapter that were regularly due in such month or months, or supplemental security income benefits for such month or months, which are due but have not been paid to such individual or eligible spouse shall be reduced by an amount equal to so much of the supplemental security income benefits, whether or not paid retroactively, as would not have been paid or would not be paid with respect to such individual or spouse if he had received such benefits under subchapter II of this chapter in the month or months in which they were regularly due. A benefit under subchapter II of this chapter shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to subsection (a)(4) or (b) of section 406 of this title.

(b) "Supplemental security income benefits" defined

For purposes of this section, the term ''supplemental security income benefits'' means benefits paid or payable by the Commissioner of Social Security under subchapter XVI of this chapter, including State supplementary payments under an agreement pursuant to section 1382e(a) of this title or an administration agreement under section 212(b) of Public Law 93–66.

(c) Reimbursement of the State

From the amount of the reduction made under subsection (a) of this section, the Commissioner of Social Security shall reimburse the State on behalf of which supplementary payments were made for the amount (if any) by which such State's expenditures on account of such supplementary payments for the month or months involved exceeded the expenditures which the State would have made (for such month or months) if the individual had received the benefits under subchapter II of this chapter at the times they were regularly due. An amount equal to the portion of such reduction remaining after reimbursement of the State under the preceding sentence shall be covered into the general fund of the Treasury.

(Aug. 14, 1935, ch. 531, title XI, § 1127, as added Pub. L. 96–265, title V, § 501(a), June 9, 1980, 94 Stat. 469; amended Pub. L. 98–369, div. B, title VI, § 2615(a), July 18, 1984, 98 Stat. 1132; Pub. L. 101–508, title V, § 5106(b), Nov. 5, 1990, 104 Stat. 1388–268; Pub. L. 103–296, title I, § 108(b)(8), title III, § 321(f)(3)(B)(ii), Aug. 15, 1994, 108 Stat. 1483, 1542.)

REFERENCES IN TEXT

Section 212(b) of Pub. L. 93–66, referred to in subsec. (b), is set out as a note under section 1382 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 321(f)(3)(B)(ii), in last sentence substituted ''subsection (a)(4) or (b) of section 406 of this title'' for ''section 406(a)(4) of this title''.

Subsecs. (b), (c). Pub. L. 103–296, § 108(b)(8), substituted ''Commissioner of Social Security'' for ''Secretary''.

1990—Subsec. (a). Pub. L. 101–508 inserted at end ''A benefit under subchapter II of this chapter shall not be

reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to section 406(a)(4) of this title.''

1984—Pub. L. 98–369 substituted provisions relating to adjustment in supplemental security income benefits on account of retroactive benefits under subchapter II of this chapter for provisions which related to adjustment of retroactive benefits under subchapter II of this chapter on account of supplemental security income benefits.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(8) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 321(f)(3)(B)(ii) of Pub. L. 103–296 effective as if included in the provisions of the Omnibus Reconciliation Act of 1990, Pub. L. 101–508, to which such amendment relates, except that such amendment applicable with respect to favorable judgments made after 180 days after Aug. 15, 1994, see section 321(f)(5) of Pub. L. 103–296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d), of Pub. L. 101–508, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2615(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section] shall apply for purposes of reducing retroactive benefits under title II of the Social Security Act [subchapter II of this chapter] or retroactive supplemental security income benefits payable beginning with the seventh month following the month in which this Act is enacted [July 1984]; except that in the case of retroactive title II benefits other than those which result from a determination of entitlement following an application for benefits under title II or from a reinstatement of benefits under title II following a period of suspension or termination of such benefits, it shall apply when the Secretary of Health and Human Services determines that it is administratively feasible.''

EFFECTIVE DATE

Section 501(d) of Pub. L. 96–265 provided that: ''The amendments made by this section [enacting this section and amending sections 404 and 1383 of this title] shall be applicable in the case of payments of monthly insurance benefits under title II of the Social Security Act [subchapter II of this chapter] entitlement for which is determined on or after the first day of the thirteenth month which begins after the date of the enactment of this Act [June 9, 1980].''

§ 1320a–7. Exclusion of certain individuals and entities from participation in Medicare and State health care programs

(a) Mandatory exclusion

The Secretary shall exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title):

(1) Conviction of program-related crimes

Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under subchapter XVIII of this chapter or under any State health care program.

(2) Conviction relating to patient abuse

Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

(3) Felony conviction relating to health care fraud

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

(4) Felony conviction relating to controlled substance

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(b) Permissive exclusion

The Secretary may exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title):

(1) Conviction relating to fraud

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law—

(A) of a criminal offense consisting of a misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

(i) in connection with the delivery of a health care item or service, or

(ii) with respect to any act or omission in a health care program (other than those specifically described in subsection (a)(1) of this section) operated by or financed in whole or in part by any Federal, State, or local government agency; or

(B) of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than a health care program) operated by or financed in whole or in part by any Federal, State, or local government agency.

(2) Conviction relating to obstruction of an investigation

Any individual or entity that has been convicted, under Federal or State law, in connection with the interference with or obstruction of any investigation into any criminal offense described in paragraph (1) or in subsection (a) of this section.

(3) Misdemeanor conviction relating to controlled substance

Any individual or entity that has been convicted, under Federal or State law, of a criminal offense consisting of a misdemeanor relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(4) License revocation or suspension

Any individual or entity—

(A) whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license or the right to apply for or renew such a license, for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity, or

(B) who surrendered such a license while a formal disciplinary proceeding was pending before such an authority and the proceeding concerned the individual's or entity's professional competence, professional performance, or financial integrity.

(5) Exclusion or suspension under Federal or State health care program

Any individual or entity which has been suspended or excluded from participation, or otherwise sanctioned, under—

(A) any Federal program, including programs of the Department of Defense or the Department of Veterans Affairs, involving the provision of health care, or

(B) a State health care program,

for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity.

(6) Claims for excessive charges or unnecessary services and failure of certain organizations to furnish medically necessary services

Any individual or entity that the Secretary determines—

(A) has submitted or caused to be submitted bills or requests for payment (where such bills or requests are based on charges or cost) under subchapter XVIII of this chapter or a State health care program containing charges (or, in applicable cases, requests for payment of costs) for items or services furnished substantially in excess of such individual's or entity's usual charges (or, in applicable cases, substantially in excess of such individual's or entity's costs) for such items or services, unless the Secretary finds there is good cause for such bills or requests containing such charges or costs;

(B) has furnished or caused to be furnished items or services to patients (whether or not eligible for benefits under subchapter XVIII of this chapter or under a State health care program) substantially in excess of the needs of such patients or of a quality which fails to meet professionally recognized standards of health care;

(C) is—

(i) a health maintenance organization (as defined in section 1396b(m) of this title) providing items and services under a State plan approved under subchapter XIX of this chapter, or

(ii) an entity furnishing services under a waiver approved under section 1396n(b)(1) of this title,

and has failed substantially to provide medically necessary items and services that are required (under law or the contract with the State under subchapter XIX of this chapter) to be provided to individuals covered under that plan or waiver, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals; or

(D) is an entity providing items and services as an eligible organization under a risk-sharing contract under section 1395mm of this title and has failed substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under the risk-sharing contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals.

(7) Fraud, kickbacks, and other prohibited activities

Any individual or entity that the Secretary determines has committed an act which is described in section 1320a–7a, 1320a–7b, or 1320a–8 of this title.

(8) Entities controlled by a sanctioned individual

Any entity with respect to which the Secretary determines that a person—

(A)(i) who has a direct or indirect ownership or control interest of 5 percent or more in the entity or with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in that entity,

(ii) who is an officer, director, agent, or managing employee (as defined in section 1320a–5(b) of this title) of that entity; or

(iii) who was described in clause (i) but is no longer so described because of a transfer of ownership or control interest, in anticipation of (or following) a conviction, assessment, or exclusion described in subparagraph (B) against the person, to an immediate family member (as defined in subsection (j)(1) of this section) or a member of the household of the person (as defined in subsection (j)(2) of this section) who continues to maintain an interest described in such clause—

is a person—

(B)(i) who has been convicted of any offense described in subsection (a) of this section or in paragraph (1), (2), or (3) of this subsection;

(ii) against whom a civil monetary penalty has been assessed under section 1320a–7a or 1320a–8 of this title; or

(iii) who has been excluded from participation under a program under subchapter XVIII of this chapter or under a State health care program.

(9) Failure to disclose required information

Any entity that did not fully and accurately make any disclosure required by section 1320a–3 of this title, section 1320a–3a of this title, or section 1320a–5 of this title.

(10) Failure to supply requested information on subcontractors and suppliers

Any disclosing entity (as defined in section 1320a–3(a)(2) of this title) that fails to supply (within such period as may be specified by the Secretary in regulations) upon request specifically addressed to the entity by the Secretary or by the State agency administering or supervising the administration of a State health care program—

(A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom the entity has had, during the previous 12 months, business transactions in an aggregate amount in excess of $25,000, or

(B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between the entity and any wholly owned supplier or between the entity and any subcontractor.

(11) Failure to supply payment information

Any individual or entity furnishing items or services for which payment may be made under subchapter XVIII of this chapter or a State health care program that fails to provide such information as the Secretary or the appropriate State agency finds necessary to determine whether such payments are or were due and the amounts thereof, or has refused to permit such examination of its records by or on behalf of the Secretary or that agency as may be necessary to verify such information.

(12) Failure to grant immediate access

Any individual or entity that fails to grant immediate access, upon reasonable request (as defined by the Secretary in regulations) to any of the following:

(A) To the Secretary, or to the agency used by the Secretary, for the purpose specified in the first sentence of section 1395aa(a) of this title (relating to compliance with conditions of participation or payment).

(B) To the Secretary or the State agency, to perform the reviews and surveys required under State plans under paragraphs (26), (31), and (33) of section 1396a(a) of this title and under section 1396b(g) of this title.

(C) To the Inspector General of the Department of Health and Human Services, for the purpose of reviewing records, documents, and other data necessary to the performance of the statutory functions of the Inspector General.

(D) To a State medicaid fraud control unit (as defined in section 1396b(q) of this title), for the purpose of conducting activities described in that section.

(13) Failure to take corrective action

Any hospital that fails to comply substantially with a corrective action required under section 1395ww(f)(2)(B) of this title.

(14) Default on health education loan or scholarship obligations

Any individual who the Secretary determines is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans, except that (A) the Secretary shall not exclude pursuant to this paragraph a physician who is the sole community physician or sole source of essential specialized services in a community if a State requests that the physician not be excluded, and (B) the Secretary shall take into account, in determining whether to exclude any other physician pursuant to this paragraph, access of beneficiaries to physician services for which payment may be made under subchapter XVIII or XIX of this chapter.

(15) Individuals controlling a sanctioned entity

(A) Any individual—

(i) who has a direct or indirect ownership or control interest in a sanctioned entity and who knows or should know (as defined in section 1320a–7a(i)(6)[1] of this title) of the action constituting the basis for the conviction or exclusion described in subparagraph (B); or

(ii) who is an officer or managing employee (as defined in section 1320a–5(b) of this title) of such an entity.

(B) For purposes of subparagraph (A), the term ''sanctioned entity'' means an entity—

(i) that has been convicted of any offense described in subsection (a) of this section or in paragraph (1), (2), or (3) of this subsection; or

(ii) that has been excluded from participation under a program under subchapter XVIII of this chapter or under a State health care program.

(c) Notice, effective date, and period of exclusion

(1) An exclusion under this section or under section 1320a–7a of this title shall be effective at such time and upon such reasonable notice to the public and to the individual or entity excluded as may be specified in regulations consistent with paragraph (2).

(2)(A) Except as provided in subparagraph (B), such an exclusion shall be effective with respect to services furnished to an individual on or after the effective date of the exclusion.

(B) Unless the Secretary determines that the health and safety of individuals receiving services warrants the exclusion taking effect earlier, an exclusion shall not apply to payments made under subchapter XVIII of this chapter or under a State health care program for—

(i) inpatient institutional services furnished to an individual who was admitted to such institution before the date of the exclusion, or

(ii) home health services and hospice care furnished to an individual under a plan of care established before the date of the exclusion,

[1] So in original. Probably should be section ''1320a–7a(i)(7)''.

until the passage of 30 days after the effective date of the exclusion.

(3)(A) The Secretary shall specify, in the notice of exclusion under paragraph (1) and the written notice under section 1320a–7a of this title, the minimum period (or, in the case of an exclusion of an individual under subsection (b)(12) of this section or in the case described in subparagraph (G), the period) of the exclusion.

(B) Subject to subparagraph (G), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be not less than five years, except that, upon the request of the administrator of a Federal health care program (as defined in section 1320a–7b(f) of this title) who determines that the exclusion would impose a hardship on individuals entitled to benefits under part A of subchapter XVIII of this chapter or enrolled under part B of such subchapter, or both, the Secretary may, after consulting with the Inspector General of the Department of Health and Human Services, waive the exclusion under subsection (a)(1), (a)(3), or (a)(4) of this section with respect to that program in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community. The Secretary's decision whether to waive the exclusion shall not be reviewable.

(C) In the case of an exclusion of an individual under subsection (b)(12) of this section, the period of the exclusion shall be equal to the sum of—

(i) the length of the period in which the individual failed to grant the immediate access described in that subsection, and

(ii) an additional period, not to exceed 90 days, set by the Secretary.

(D) Subject to subparagraph (G), in the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b) of this section, the period of the exclusion shall be 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.

(E) In the case of an exclusion of an individual or entity under subsection (b)(4) or (b)(5) of this section, the period of the exclusion shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered, or the individual or the entity is excluded or suspended from a Federal or State health care program.

(F) In the case of an exclusion of an individual or entity under subsection (b)(6)(B) of this section, the period of the exclusion shall be not less than 1 year.

(G) In the case of an exclusion of an individual under subsection (a) of this section based on a conviction occurring on or after August 5, 1997, if the individual has (before, on, or after August 5, 1997) been convicted—

(i) on one previous occasion of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be not less than 10 years, or

(ii) on 2 or more previous occasions of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be permanent.

(d) Notice to State agencies and exclusion under State health care programs

(1) Subject to paragraph (3), the Secretary shall exercise the authority under this section and section 1320a–7a of this title in a manner that results in an individual's or entity's exclusion from all the programs under subchapter XVIII of this chapter and all the State health care programs in which the individual or entity may otherwise participate.

(2) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) of this section and to which section 824(a)(5) of title 21 may apply, the Attorney General)—

(A) of the fact and circumstances of each exclusion effected against an individual or entity under this section or section 1320a–7a of this title, and

(B) of the period (described in paragraph (3)) for which the State agency is directed to exclude the individual or entity from participation in the State health care program.

(3)(A) Except as provided in subparagraph (B), the period of the exclusion under a State health care program under paragraph (2) shall be the same as any period of exclusion under subchapter XVIII of this chapter.

(B)(i) The Secretary may waive an individual's or entity's exclusion under a State health care program under paragraph (2) if the Secretary receives and approves a request for the waiver with respect to the individual or entity from the State agency administering or supervising the administration of the program.

(ii) A State health care program may provide for a period of exclusion which is longer than the period of exclusion under subchapter XVIII of this chapter.

(e) Notice to State licensing agencies

The Secretary shall—

(1) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual or entity excluded (or directed to be excluded) from participation under this section or section 1320a–7a of this title, of the fact and circumstances of the exclusion,

(2) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and

(3) request that the State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to the request.

(f) Notice, hearing, and judicial review

(1) Subject to paragraph (2), any individual or entity that is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title, and to judicial review of the Sec-

retary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(2) Unless the Secretary determines that the health or safety of individuals receiving services warrants the exclusion taking effect earlier, any individual or entity that is the subject of an adverse determination under subsection (b)(7) of this section shall be entitled to a hearing by an administrative law judge (as provided under section 405(b) of this title) on the determination under subsection (b)(7) of this section before any exclusion based upon the determination takes effect.

(3) The provisions of section 405(h) of this title shall apply with respect to this section and sections 1320a–7a, 1320a–8, and 1320c–5 of this title to the same extent as it is applicable with respect to subchapter II of this chapter, except that, in so applying such section and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security shall be considered a reference to the Secretary.

(g) Application for termination of exclusion

(1) An individual or entity excluded (or directed to be excluded) from participation under this section or section 1320a–7a of this title may apply to the Secretary, in the manner specified by the Secretary in regulations and at the end of the minimum period of exclusion provided under subsection (c)(3) of this section and at such other times as the Secretary may provide, for termination of the exclusion effected under this section or section 1320a–7a of this title.

(2) The Secretary may terminate the exclusion if the Secretary determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Secretary at the time of the exclusion, that—

(A) there is no basis under subsection (a) or (b) of this section or section 1320a–7a(a) of this title for a continuation of the exclusion, and

(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

(3) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) of this section and to which section 824(a)(5) of title 21 may apply, the Attorney General) of the fact and circumstances of each termination of exclusion made under this subsection.

(h) "State health care program" defined

For purposes of this section and sections 1320a–7a and 1320a–7b of this title, the term ''State health care program'' means—

(1) a State plan approved under subchapter XIX of this chapter,

(2) any program receiving funds under subchapter V of this chapter or from an allotment to a State under such subchapter,

(3) any program receiving funds under subchapter XX of this chapter or from an allotment to a State under such subchapter, or

(4) a State child health plan approved under subchapter XXI of this chapter.

(i) "Convicted" defined

For purposes of subsections (a) and (b) of this section, an individual or entity is considered to have been ''convicted'' of a criminal offense—

(1) when a judgment of conviction has been entered against the individual or entity by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

(2) when there has been a finding of guilt against the individual or entity by a Federal, State, or local court;

(3) when a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court; or

(4) when the individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(j) Definition of immediate family member and member of household

For purposes of subsection (b)(8)(A)(iii) of this section:

(1) The term ''immediate family member'' means, with respect to a person—

(A) the husband or wife of the person;

(B) the natural or adoptive parent, child, or sibling of the person;

(C) the stepparent, stepchild, stepbrother, or stepsister of the person;

(D) the father-, mother-, daughter-, son-, brother-, or sister-in-law of the person;

(E) the grandparent or grandchild of the person; and

(F) the spouse of a grandparent or grandchild of the person.

(2) The term ''member of the household'' means, with respect to any person, any individual sharing a common abode as part of a single family unit with the person, including domestic employees and others who live together as a family unit, but not including a roomer or boarder.

(Aug. 14, 1935, ch. 531, title XI, §1128, as added Pub. L. 96–499, title IX, §913(a), Dec. 5, 1980, 94 Stat. 2619; amended Pub. L. 97–35, title XXI, §2105(b), title XXIII, §2353(k), Aug. 13, 1981, 95 Stat. 791, 873; Pub. L. 98–369, div. B, title III, §2333(a), (b), July 18, 1984, 98 Stat. 1089; Pub. L. 99–509, title IX, §9317(c), Oct. 21, 1986, 100 Stat. 2008; Pub. L. 100–93, §2, Aug. 18, 1987, 101 Stat. 680; Pub. L. 100–203, title IV, §4118(e)(2)–(5), Dec. 22, 1987, 101 Stat. 1330–155, as amended Pub. L. 100–360, title IV, §411(k)(10)(D), July 1, 1988, 102 Stat. 795; Pub. L. 100–360, title IV, §411(k)(10)(C), July 1, 1988, 102 Stat. 795; Pub. L. 101–239, title VI, §6411(d)(1), Dec. 19, 1989, 103 Stat. 2270; Pub. L. 101–508, title IV, §4164(b)(3), Nov. 5, 1990, 104 Stat. 1388–102; Pub. L. 102–54, §13(q)(3)(A)(ii), June 13, 1991, 105 Stat. 279; Pub. L. 103–296, title I, §108(b)(9), title II, §206(b)(2), Aug. 15, 1994, 108 Stat. 1483, 1513; Pub. L. 104–191, title II, §§211–213,

Aug. 21, 1996, 110 Stat. 2003–2005; Pub. L. 105–33, title IV, §§ 4301, 4303(a), 4331(c), 4901(b)(2), Aug. 5, 1997, 111 Stat. 382, 396, 570; Pub. L. 108–173, title IX, § 949, Dec. 8, 2003, 117 Stat. 2426.)

REFERENCES IN TEXT

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (c)(3)(B), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (c)(3)(B). Pub. L. 108–173 amended first sentence generally. Prior to amendment, first sentence read as follows: ''Subject to subparagraph (G), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be not less than five years, except that, upon the request of a State, the Secretary may waive the exclusion under subsection (a)(1) of this section in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community.''

1997—Subsec. (a). Pub. L. 105–33, § 4331(c)(1), substituted ''any Federal health care program (as defined in section 1320a–7b(f) of this title)'' for ''any program under subchapter XVIII of this chapter and shall direct that the following individuals and entities be excluded from participation in any State health care program (as defined in subsection (h) of this section)'' in introductory provisions.

Subsec. (b). Pub. L. 105–33, § 4331(c)(2), substituted ''any Federal health care program (as defined in section 1320a–7b(f) of this title)'' for ''any program under subchapter XVIII of this chapter and may direct that the following individuals and entities be excluded from participation in any State health care program'' in introductory provisions.

Subsec. (b)(8)(A)(iii). Pub. L. 105–33, § 4303(a)(1), added cl. (iii).

Subsec. (c)(3)(A). Pub. L. 105–33, § 4301(1), inserted ''or in the case described in subparagraph (G)'' after ''subsection (b)(12) of this section''.

Subsec. (c)(3)(B), (D). Pub. L. 105–33, § 4301(2), substituted ''Subject to subparagraph (G), in the case'' for ''In the case''.

Subsec. (c)(3)(G). Pub. L. 105–33, § 4301(3), added subpar. (G).

Subsec. (h)(4). Pub. L. 105–33, § 4901(b)(2), added par. (4).

Subsec. (j). Pub. L. 105–33, § 4303(a)(2), added subsec. (j).

1996—Subsec. (a)(3). Pub. L. 104–191, § 211(a)(1), added par. (3).

Subsec. (a)(4). Pub. L. 104–191, § 211(b)(1), added par. (4).

Subsec. (b)(1). Pub. L. 104–191, § 211(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Any individual or entity that has been convicted, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a program operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.''

Subsec. (b)(3). Pub. L. 104–191, § 211(b)(2), substituted ''Misdemeanor conviction'' for ''conviction'' in heading and ''criminal offense consisting of a misdemeanor'' for ''criminal offense'' in text.

Subsec. (b)(15). Pub. L. 104–191, § 213, added par. (15).

Subsec. (c)(3)(D) to (F). Pub. L. 104–191, § 212, added subpars. (D) to (F).

1994—Subsec. (b)(7). Pub. L. 103–296, § 206(b)(2)(A), substituted ''section 1320a–7a, 1320a–7b, or 1230a–8 of this title'' for ''section 1320a–7a of this title or section 1320a–7b of this title''.

Subsec. (b)(8)(B)(ii). Pub. L. 103–296, § 206(b)(2)(B), inserted ''or 1320a–8'' after ''section 1320a–7a''.

Subsec. (f)(1). Pub. L. 103–296, § 108(b)(9)(A), inserted before period at end '', except that, in so applying such sections and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

Subsec. (f)(3). Pub. L. 103–296, § 206(b)(2)(C), inserted '', 1320a–8,'' after ''sections 1320a–7a''.

Pub. L. 103–296, § 108(b)(9)(B), inserted before period at end '', except that, in so applying such section and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security shall be considered a reference to the Secretary''.

1991—Subsec. (b)(5)(A). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (b)(9). Pub. L. 101–508 substituted ''section 1320a–3 of this title, section 1320a–3a of this title,'' for ''section 1320a–3 of this title''.

1989—Subsec. (b)(4)(A). Pub. L. 101–239 inserted ''or the right to apply for or renew such a license'' after ''lost such a license''.

1988—Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(3)–(5), which amended subsec. (b)(8)(A)(i), (d)(1), (3)(A), and (i). See 1987 Amendment notes below.

Subsec. (d)(3)(B)(ii). Pub. L. 100–360, § 411(k)(10)(C), struck out ''under a program'' after ''longer than the period of exclusion''.

1987—Pub. L. 100–93 amended section generally, substituting subsecs. (a) to (i) for former subsecs. (a) to (f).

Subsec. (b)(8)(A)(i). Pub. L. 100–203, § 4118(e)(3), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted at beginning ''who has a direct or indirect ownership or control interest of 5 percent or more in the entity or''.

Subsec. (d)(1). Pub. L. 100–203, § 4118(e)(4)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''this section and section 1320a–7a of this title'' for ''subsection (b) of this section''.

Subsec. (d)(3)(A). Pub. L. 100–203, § 4118(e)(4)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), struck out ''under a program'' after ''any period of exclusion''.

Subsec. (d)(3)(B). Pub. L. 100–203, § 4118(e)(2), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (i). Pub. L. 100–203, § 4118(e)(5)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''an individual or entity'' for ''a physician or other individual'' in introductory provisions.

Pub. L. 100–203, § 4118(e)(5)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), which directed amendment of pars. (1) to (4) by substituting ''individual or entity'' for ''physician or other individual'' each place it appears, was executed by substituting ''individual or entity'' for ''physician or individual'' in pars. (1) to (4) as the probable intent of Congress.

Subsec. (i)(4). Pub. L. 100–203, § 4118(e)(5)(C), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''first offender, deferred adjudication, or other arrangement or program'' for ''first offender or other program''.

1986—Subsec. (f). Pub. L. 99–509 added subsec. (f).

1984—Subsecs. (b) to (e). Pub. L. 98–369 added subsec. (b), redesignated former subsecs. (b) to (d) as (c) to (e), respectively, and in subsec. (e) substituted ''Any person or entity'' for ''Any person'' and ''(a), (b), or (c)'' for ''(a) or (b)''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2105(b)(1), struck out '', for such period as he may deem appropriate,'' after ''subchapter XVIII of this chapter''.

Subsec. (a)(2). Pub. L. 97–35, § 2353(k), substituted in subpar. (A) ''subchapter XIX of this chapter'' for ''subchapter XIX or subchapter XX of this chapter,'' and in subpar. (B) ''subchapter XIX of this chapter'' for ''subchapter XIX or subchapter XX of this chapter''.

Subsecs. (b) to (d). Pub. L. 97–35, § 2105(b)(2)–(4), added subsec. (b), redesignated former subsecs. (b) and (c) as (c) and (d), respectively, and in subsec. (d) as so redesignated substituted ''subsection (a) or (b)'' for ''subsection (a)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4303(b) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall take effect on the date that is 45 days after the date of the enactment of this Act [Aug. 5, 1997].''

Amendments by section 4331(c) of Pub. L. 105–33 effective Aug. 5, 1997, see section 4331(f)(2) of Pub. L. 105–33, set out as a note under section 1320a–7e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 218 of Pub. L. 104–191 provided that: ''Except as otherwise provided, the amendments made by this subtitle [subtitle B, §§211–218, of title II of Pub. L. 104–191, amending this section and sections 1320a–7b, 1320c–5, and 1395mm of this title] shall take effect January 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(9) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 206(b)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [enacting section 1320a–8 of this title and amending this section] shall apply to conduct occurring on or after October 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to items or services furnished on or after Jan. 1, 1993, in the case of items or services furnished by a provider who, on or before Nov. 5, 1990, has furnished items or services for which payment may be made under part B of subchapter XVIII of this chapter, or Jan. 1, 1992, in the case of items or services furnished by any other provider, see section 4164(b)(4) of Pub. L. 101–508, set out as an Effective Date note under section 1320a–3a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6411(d)(4)[(A)] of Pub. L. 101–239 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and sections 1395y and 1396b of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360 set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 15 of Pub. L. 100–93 provided that:

''(a) IN GENERAL.—Except as provided in subsections (b), (c), (d), and (e), the amendments made by this Act [enacting sections 1395aaa and 1396r–2 of this title, amending this section, sections 704, 1320a–3, 1320a–5, 1320a–7a, 1320a–7b, 1320c–5, 1395u, 1395y, 1395cc, 1395ff, 1395nn, 1395rr, 1395ss, 1395ww, 1396a, 1396b, 1396h, 1396n, 1396s, and 1397d of this title, and section 824 of Title 21, Food and Drugs, transferring section 1396h of this title to section 1320a–7b of this title, repealing section 1395nn of this title, enacting provisions set out as a note under section 1320a–7b of this title, and amending provisions set out as a note under section 1396a of this title] shall become effective at the end of the fourteen-day period beginning on the date of the enactment of this Act [Aug. 18, 1987] and shall not apply to administrative proceedings commenced before the end of such period.

''(b) MANDATORY MINIMUM EXCLUSIONS APPLY PROSPECTIVELY.—Section 1128(c)(3)(B) of the Social Security Act [subsec. (c)(3)(B) of this section] (as amended by this Act), which requires an exclusion of not less than five years in the case of certain exclusions, shall not apply to exclusions based on convictions occurring before the date of the enactment of this Act [Aug. 18, 1987].

''(c) EFFECTIVE DATE FOR CHANGES IN MEDICAID LAW.—(1) The amendments made by sections 5 and 8(f) [enacting section 1396r–2 of this title and amending sections 1396a and 1396s of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [subchapter XIX of this chapter] for calendar quarters beginning more than thirty days after the date of the enactment of this Act [Aug. 18, 1987], without regard to whether or not final regulations to carry out such amendment have been published by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

''(3) Subsection (j) of section 1128A of the Social Security Act [section 1320a–7a(j) of this title] (as added by section 3(f) of this Act) takes effect on the date of the enactment of this Act.

''(d) PHYSICIAN MISREPRESENTATIONS.—Clauses (ii) and (iii) of section 1128A(a)(1)(C) of the Social Security Act [section 1320a–7a(a)(1)(C)(ii), (iii) of this title], as amended by section 3(a)(1) of this Act, apply to claims presented for services performed on or after the effective date specified in subsection (a), without regard to the date the misrepresentation of fact was made.

''(e) CLARIFICATION OF MEDICAID MORATORIUM.—The amendments made by section 9 of this Act [amending provisions set out as a note under section 1396a of this title] shall apply as though they were originally included in the enactment of section 2373(c) of the Deficit Reduction Act of 1984 [set out as a note under section 1396a of this title].

''(f) TREATMENT OF CERTAIN DENIALS OF PAYMENT.—For purposes of section 1128(b)(8)(B)(iii) of the Social Security Act [subsec. (b)(8)(B)(iii) of this section] (as amended by section 2 of this Act), a person shall be considered to have been excluded from participation under a program under title XVIII [subchapter XVIII of this chapter] if payment to the person has been denied under section 1862(d) of the Social Security Act [section 1395y(d) of this title], as in effect before the effective date specified in subsection (a).''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9317(d)(3) of Pub. L. 99–509 provided that: ''The provisions—

''(A) of paragraphs (1), (2), and (3) of section 1128(f) of the Social Security Act [subsec. (f)(1)–(3) of this section] (as added by the amendment made by subsection (c)) shall apply to judgments entered, findings made, and pleas entered, before, on, or after the date of the enactment of this Act [Oct. 21, 1986], and

''(B) of paragraph (4) of such section [subsec. (f)(4) of this section] shall apply to participation in a program entered into on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2333(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] become effective on the date of the enactment of this Act [July 18, 1984] and shall apply to convictions of persons occurring after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(k) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

§ 1320a–7a. Civil monetary penalties

(a) Improperly filed claims

Any person (including an organization, agency, or other entity, but excluding a beneficiary, as defined in subsection (i)(5) of this section) that—

(1) knowingly presents or causes to be presented to an officer, employee, or agent of the United States, or of any department or agency thereof, or of any State agency (as defined in subsection (i)(1) of this section), a claim (as defined in subsection (i)(2) of this section) that the Secretary determines—

(A) is for a medical or other item or service that the person knows or should know was not provided as claimed, including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,

(B) is for a medical or other item or service and the person knows or should know the claim is false or fraudulent,

(C) is presented for a physician's service (or an item or service incident to a physician's service) by a person who knows or should know that the individual who furnished (or supervised the furnishing of) the service—

(i) was not licensed as a physician,

(ii) was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing), or

(iii) represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board when the individual was not so certified,

(D) is for a medical or other item or service furnished during a period in which the person was excluded from the program under which the claim was made pursuant to a determination by the Secretary under this section or under section 1320a–7, 1320c–5, 1320c–9(b) (as in effect on September 2, 1982), 1395y(d) (as in effect on August 18, 1987), or 1395cc(b) of this title or as a result of the application of the provisions of section 1395u(j)(2) of this title, or

(E) is for a pattern of medical or other items or services that a person knows or should know are not medically necessary;

(2) knowingly presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1395u(b)(3)(B)(ii) of this title, or (B) an agreement with a State agency (or other requirement of a State plan under subchapter XIX of this chapter) not to charge a person for an item or service in excess of the amount permitted to be charged, or (C) an agreement to be a participating physician or supplier under section 1395u(h)(1) of this title, or (D) an agreement pursuant to section 1395cc(a)(1)(G) of this title;

(3) knowingly gives or causes to be given to any person, with respect to coverage under subchapter XVIII of this chapter of inpatient hospital services subject to the provisions of section 1395ww of this title, information that he knows or should know is false or misleading, and that could reasonably be expected to influence the decision when to discharge such person or another individual from the hospital;

(4) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under subchapter XVIII of this chapter or a State health care program in accordance with this subsection or under section 1320a–7 of this title and who, at the time of a violation of this subsection—

(A) retains a direct or indirect ownership or control interest in an entity that is participating in a program under subchapter XVIII of this chapter or a State health care program, and who knows or should know of the action constituting the basis for the exclusion; or

(B) is an officer or managing employee (as defined in section 1320a–5(b) of this title) of such an entity;

(5) offers to or transfers remuneration to any individual eligible for benefits under subchapter XVIII of this chapter, or under a State health care program (as defined in section 1320a–7(h) of this title) that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under subchapter XVIII of this chapter, or a State health care program (as so defined);

(6) arranges or contracts (by employment or otherwise) with an individual or entity that the person knows or should know is excluded from participation in a Federal health care program (as defined in section 1320a–7b(f) of this title), for the provision of items or services for which payment may be made under such a program; or

(7) commits an act described in paragraph (1) or (2) of section 1320a–7b(b) of this title;

shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $10,000 for each item or service (or, in cases under paragraph (3), $15,000 for each individual with respect to whom false or misleading information was given; in cases under paragraph (4), $10,000 for each day the prohibited relationship occurs; or in cases under paragraph (7), $50,000 for each such act). In addition, such a person shall be subject to an assessment of not more than 3 times the amount claimed for each such item or service in lieu of damages sustained by the United States or a

State agency because of such claim (or, in cases under paragraph (7), damages of not more than 3 times the total amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose). In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the Federal health care programs (as defined in section 1320a–7b(f)(1) of this title) and to direct the appropriate State agency to exclude the person from participation in any State health care program.

(b) Payments to induce reduction or limitation of services

(1) If a hospital or a critical access hospital knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided with respect to individuals who—

(A) are entitled to benefits under part A or part B of subchapter XVIII of this chapter or to medical assistance under a State plan approved under subchapter XIX of this chapter, and

(B) are under the direct care of the physician,

the hospital or a critical access hospital shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each such individual with respect to whom the payment is made.

(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each individual described in such paragraph with respect to whom the payment is made.

(3)(A) Any physician who executes a document described in subparagraph (B) with respect to an individual knowing that all of the requirements referred to in such subparagraph are not met with respect to the individual shall be subject to a civil monetary penalty of not more than the greater of—

(i) $5,000, or

(ii) three times the amount of the payments under subchapter XVIII of this chapter for home health services which are made pursuant to such certification.

(B) A document described in this subparagraph is any document that certifies, for purposes of subchapter XVIII of this chapter, that an individual meets the requirements of section 1395f(a)(2)(C) or 1395n(a)(2)(A) of this title in the case of home health services furnished to the individual.

(c) Initiation of proceeding; authorization by Attorney General, notice, etc., estoppel, failure to comply with order or procedure

(1) The Secretary may initiate a proceeding to determine whether to impose a civil money penalty, assessment, or exclusion under subsection (a) or (b) of this section only as authorized by the Attorney General pursuant to procedures agreed upon by them. The Secretary may not initiate an action under this section with respect to any claim, request for payment, or other occurrence described in this section later than six years after the date the claim was presented, the request for payment was made, or the occurrence took place. The Secretary may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

(2) The Secretary shall not make a determination adverse to any person under subsection (a) or (b) of this section until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(3) In a proceeding under subsection (a) or (b) of this section which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

(B) involves the same transaction as in the criminal action,

the person is estopped from denying the essential elements of the criminal offense.

(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established,

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense,

(C) striking pleadings, in whole or in part,

(D) staying the proceedings,

(E) dismissal of the action,

(F) entering a default judgment,

(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct, and

(H) refusing to consider any motion or other action which is not filed in a timely manner.

(d) Amount or scope of penalty, assessment, or exclusion

In determining the amount or scope of any penalty, assessment, or exclusion imposed pursuant to subsection (a) or (b) of this section, the Secretary shall take into account—

(1) the nature of claims and the circumstances under which they were presented,

(2) the degree of culpability, history of prior offenses, and financial condition of the person presenting the claims, and

(3) such other matters as justice may require.

(e) Review by courts of appeals

Any person adversely affected by a determination of the Secretary under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the claim was presented, by filing in such court (within sixty days following the date the person is notified of the Secretary's determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the Court[1] the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Secretary and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be made a part of the record. The Secretary may modify his findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and he shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and his recommendations, if any, for the modification or setting aside of his original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(f) Compromise of penalties and assessments; recovery; use of funds recovered

Civil money penalties and assessments imposed under this section may be compromised by the Secretary and may be recovered in a civil action in the name of the United States brought in United States district court for the district where the claim was presented, or where the claimant resides, as determined by the Secretary. Amounts recovered under this section shall be paid to the Secretary and disposed of as follows:

(1)(A) In the case of amounts recovered arising out of a claim under subchapter XIX of this chapter, there shall be paid to the State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(B) In the case of amounts recovered arising out of a claim under an allotment to a State under subchapter V of this chapter, there shall be paid to the State agency an amount equal to three-sevenths of the amount recovered.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1395i and 1395t of this title shall be repaid to such trust funds.

(3) With respect to amounts recovered arising out of a claim under a Federal health care program (as defined in section 1320a–7b(f) of this title), the portion of such amounts as is determined to have been paid by the program shall be repaid to the program, and the portion of such amounts attributable to the amounts recovered under this section by reason of the amendments made by the Health Insurance Portability and Accountability Act of 1996 (as estimated by the Secretary) shall be deposited into the Federal Hospital Insurance Trust Fund pursuant to section 1395i(k)(2)(C) of this title.

(4) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

The amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States or a State agency to the person against whom the penalty or assessment has been assessed.

(g) Finality of determination respecting penalty, assessment, or exclusion

A determination by the Secretary to impose a penalty, assessment, or exclusion under subsection (a) or (b) of this section shall be final upon the expiration of the sixty-day period referred to in subsection (e) of this section. Matters that were raised or that could have been raised in a hearing before the Secretary or in an appeal pursuant to subsection (e) of this section may not be raised as a defense to a civil action by the United States to collect a penalty, assessment, or exclusion assessed under this section.

(h) Notification of appropriate entities of finality of determination

Whenever the Secretary's determination to impose a penalty, assessment, or exclusion under subsection (a) or (b) of this section becomes final, he shall notify the appropriate State or local medical or professional organization, the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title), and the appropriate utilization and quality control peer review organization, and the appropriate State or local licensing agency or organization (including the agency specified in section 1395aa(a) and

[1] So in original. Probably should not be capitalized.

1396a(a)(33) of this title) that such a penalty, assessment, or exclusion has become final and the reasons therefor.

(i) Definitions

For the purposes of this section:

(1) The term ''State agency'' means the agency established or designated to administer or supervise the administration of the State plan under subchapter XIX of this chapter or designated to administer the State's program under subchapter V of this chapter or subchapter XX of this chapter.

(2) The term ''claim'' means an application for payments for items and services under a Federal health care program (as defined in section 1320a–7b(f) of this title).

(3) The term ''item or service'' includes (A) any particular item, device, medical supply, or service claimed to have been provided to a patient and listed in an itemized claim for payment, and (B) in the case of a claim based on costs, any entry in the cost report, books of account or other documents supporting such claim.

(4) The term ''agency of the United States'' includes any contractor acting as a fiscal intermediary, carrier, or fiscal agent or any other claims processing agent for a Federal health care program (as so defined).

(5) The term ''beneficiary'' means an individual who is eligible to receive items or services for which payment may be made under a Federal health care program (as so defined) but does not include a provider, supplier, or practitioner.

(6) The term ''remuneration'' includes the waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value. The term ''remuneration'' does not include—

(A) the waiver of coinsurance and deductible amounts by a person, if—

(i) the waiver is not offered as part of any advertisement or solicitation;

(ii) the person does not routinely waive coinsurance or deductible amounts; and

(iii) the person—

(I) waives the coinsurance and deductible amounts after determining in good faith that the individual is in financial need; or

(II) fails to collect coinsurance or deductible amounts after making reasonable collection efforts;

(B) subject to subsection (n) of this section, any permissible practice described in any subparagraph of section 1320a–7b(b)(3) of this title or in regulations issued by the Secretary;

(C) differentials in coinsurance and deductible amounts as part of a benefit plan design as long as the differentials have been disclosed in writing to all beneficiaries, third party payers, and providers, to whom claims are presented and as long as the differentials meet the standards as defined in regulations promulgated by the Secretary not later than 180 days after August 21, 1996; or

(D)[2] incentives given to individuals to promote the delivery of preventive care as determined by the Secretary in regulations so promulgated.

(D)[2] a reduction in the copayment amount for covered OPD services under section 1395*l*(t)(5)(B)[3] of this title.

(7) The term ''should know'' means that a person, with respect to information—

(A) acts in deliberate ignorance of the truth or falsity of the information; or

(B) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

(j) Subpoenas

(1) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II of this chapter. The Secretary may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General of the Department of Health and Human Services for purposes of any investigation under this section.

(2) The Secretary may delegate authority granted under this section and under section 1320a–7 of this title to the Inspector General of the Department of Health and Human Services.

(k) Injunctions

Whenever the Secretary has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil monetary penalty under this section, the Secretary may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil monetary penalty if any such penalty were to be imposed or to seek other appropriate relief.

(*l*) Liability of principal for acts of agent

A principal is liable for penalties, assessments, and an exclusion under this section for the actions of the principal's agent acting within the scope of the agency.

(m) Claims within jurisdiction of other departments or agencies

(1) For purposes of this section, with respect to a Federal health care program not contained in this chapter, references to the Secretary in this section shall be deemed to be references to the Secretary or Administrator of the department or agency with jurisdiction over such program and references to the Inspector General of the Department of Health and Human Services in this section shall be deemed to be references to the Inspector General of the applicable department or agency.

(2)(A) The Secretary and Administrator of the departments and agencies referred to in para-

[2] So in original. Two subpars. (D) have been enacted.

[3] See References in Text note below.

graph (1) may include in any action pursuant to this section, claims within the jurisdiction of other Federal departments or agencies as long as the following conditions are satisfied:

(i) The case involves primarily claims submitted to the Federal health care programs of the department or agency initiating the action.

(ii) The Secretary or Administrator of the department or agency initiating the action gives notice and an opportunity to participate in the investigation to the Inspector General of the department or agency with primary jurisdiction over the Federal health care programs to which the claims were submitted.

(B) If the conditions specified in subparagraph (A) are fulfilled, the Inspector General of the department or agency initiating the action is authorized to exercise all powers granted under the Inspector General Act of 1978 (5 U.S.C. App.) with respect to the claims submitted to the other departments or agencies to the same manner and extent as provided in that Act with respect to claims submitted to such departments or agencies.

(n) Safe harbor for payment of medigap premiums

(1) Subparagraph (B) of subsection (i)(6) of this section shall not apply to a practice described in paragraph (2) unless—

(A) the Secretary, through the Inspector General of the Department of Health and Human Services, promulgates a rule authorizing such a practice as an exception to remuneration; and

(B) the remuneration is offered or transferred by a person under such rule during the 2-year period beginning on the date the rule is first promulgated.

(2) A practice described in this paragraph is a practice under which a health care provider or facility pays, in whole or in part, premiums for medicare supplemental policies for individuals entitled to benefits under part A of subchapter XVIII of this chapter pursuant to section 426–1 of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1128A, as added Pub. L. 97–35, title XXI, § 2105(a), Aug. 13, 1981, 95 Stat. 789; amended Pub. L. 97–248, title I, § 137(b)(26), Sept. 3, 1982, 96 Stat. 380; Pub. L. 98–369, div. B, title III, §§ 2306(f)(1), 2354(a)(3), July 18, 1984, 98 Stat. 1073, 1100; Pub. L. 99–509, title IX, §§ 9313(c)(1), 9317(a), (b), Oct. 21, 1986, 100 Stat. 2003, 2008; Pub. L. 100–93, § 3, Aug. 18, 1987, 101 Stat. 686; Pub. L. 100–203, title IV, §§ 4039(h)(1), 4118(e)(1), (6)–(10), Dec. 22, 1987, 101 Stat. 1330–155, as amended Pub. L. 100–360, title IV, § 411(e)(3), (k)(10)(B)(ii), (D), July 1, 1988, 102 Stat. 775, 794, 795; Pub. L. 100–360, title II, § 202(c)(2), July 1, 1988, 102 Stat. 715; Pub. L. 100–485, title VI, § 608(d)(26)(H)–(K)(i), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, § 6003(g)(3)(D)(i), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 101–508, title IV, §§ 4204(a)(3), 4207(h), formerly 4027(h), 4731(b)(1), 4753, Nov. 5, 1990, 104 Stat. 1388–109, 1388–123, 1388–195, 1388–208, renumbered § 4207(h), Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 104–191, title II, §§ 231(a)–(e), (h), 232(a), Aug. 21, 1996, 110 Stat. 2012–2015; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4304(a), (b), 4331(e), 4523(c), Aug. 5, 1997, 111 Stat. 373, 383, 396, 449; Pub. L. 105–277, div. J, title V, § 5201(a), (b)(1), Oct. 21, 1998, 112 Stat. 2681–916.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (c)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (f)(3), is Pub. L. 104–191, Aug. 21, 1996, 110 Stat. 1936. For complete classification of this Act to the Code, see Short Title of 1996 Amendments note set out under section 201 of this title and Tables.

Section 1395*l*(t)(5)(B) of this title, referred to in subsec. (i)(6)(D), was redesignated section 1395*l*(t)(8)(B) of this title by Pub. L. 106–113, div. B, § 1000(a)(6) [title II, §§ 201(a)(1), 202(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–336, 1501A–342.

The Inspector General Act of 1978, referred to in subsec. (m)(2)(B), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1998—Subsec. (i)(6)(B). Pub. L. 105–277, § 5201(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''any permissible waiver as specified in section 1320a–7b(b)(3) of this title or in regulations issued by the Secretary;''.

Subsec. (n). Pub. L. 105–277, § 5201(b)(1), added subsec. (n).

1997—Subsec. (a). Pub. L. 105–33, § 4304(b)(2), in concluding provisions, substituted ''occurs; or in cases under paragraph (7), $50,000 for each such act).'' for ''occurs).'' and inserted ''(or, in cases under paragraph (7), damages of not more than 3 times the total amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose)'' after ''of such claim''.

Subsec. (a)(6). Pub. L. 105–33, § 4304(a), added par. (6).

Subsec. (a)(7). Pub. L. 105–33, § 4304(b)(1), added par. (7).

Subsec. (b)(1). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' in introductory and concluding provisions.

Subsec. (i)(6)(A)(iii). Pub. L. 105–33, § 4331(e)(1), inserted ''or'' at end of subcl. (I), struck out ''or'' at end of subcl. (II), and struck out subcl. (III) which read as follows: ''provides for any permissible waiver as specified in section 1320a–7b(b)(3) of this title or in regulations issued by the Secretary;''.

Subsec. (i)(6)(B). Pub. L. 105–33, § 4523(c)(1), which directed amendment of par. (6) by striking ''or'' at end of subpar. (B), could not be executed because the word ''or'' did not appear at end of subpar. (B) subsequent to amendment by Pub. L. 105–33, § 4331(e)(2), (3). See below.

Pub. L. 105–33, § 4331(e)(3), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (i)(6)(C). Pub. L. 105–33, § 4523(c)(2), which directed amendment of par. (6) by substituting ''; or'' for the period at end of subpar. (C), could not be executed because there was not a period at the end of subpar. (C) subsequent to amendment by Pub. L. 105–33, § 4331(e)(2). See below.

Pub. L. 105–33, § 4331(e)(2), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (i)(6)(D). Pub. L. 105–33, § 4523(c), added subpar. (D) relating to a reduction in copayment amount for covered OPD services.

Pub. L. 105–33, § 4331(e)(2), redesignated subpar. (C), relating to incentives given to individuals to promote delivery, as (D).

1996—Subsec. (a). Pub. L. 104–191, § 231(c), in concluding provisions, substituted ''$10,000'' for ''$2,000'',

inserted ''; in cases under paragraph (4), $10,000 for each day the prohibited relationship occurs'' after ''false or misleading information was given'', and substituted ''3 times the amount'' for ''twice the amount''.

Pub. L. 104–191, § 231(a)(1), in concluding provisions, substituted ''Federal health care programs (as defined in section 1320a–7b(f)(1) of this title)'' for ''programs under subchapter XVIII of this chapter''.

Subsec. (a)(1). Pub. L. 104–191, § 231(d)(1)(A), inserted ''knowingly'' before ''presents'' in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 104–191, § 231(e)(1), substituted ''claimed, including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,'' for ''claimed,''.

Subsec. (a)(1)(E). Pub. L. 104–191, § 231(e)(2)–(4), added subpar. (E).

Subsec. (a)(2). Pub. L. 104–191, § 231(d)(1)(A), inserted ''knowingly'' before ''presents''.

Subsec. (a)(3). Pub. L. 104–191, § 231(d)(1)(B), substituted ''knowingly gives or causes to be given'' for ''gives''.

Subsec. (a)(4). Pub. L. 104–191, § 231(b), added par. (4).

Subsec. (a)(5). Pub. L. 104–191, § 231(h)(1), added par. (5).

Subsec. (b)(3). Pub. L. 104–191, § 232(a), added par. (3).

Subsec. (f)(3), (4). Pub. L. 104–191, § 231(a)(2), added par. (3) and redesignated former par. (3) as (4).

Subsec. (i)(2). Pub. L. 104–191, § 231(a)(3)(A), substituted ''a Federal health care program (as defined in section 1320a–7b(f) of this title)'' for ''subchapter V, XVIII, XIX, or XX of this chapter''.

Subsec. (i)(4). Pub. L. 104–191, § 231(a)(3)(B), substituted ''a Federal health care program (as so defined)'' for ''a health insurance or medical services program under subchapter XVIII or XIX of this chapter''.

Subsec. (i)(5). Pub. L. 104–191, § 231(a)(3)(C), substituted ''a Federal health care program (as so defined)'' for ''subchapter V, XVIII, XIX, or XX of this chapter''.

Subsec. (i)(6). Pub. L. 104–191, § 231(h)(2), added par. (6).

Subsec. (i)(7). Pub. L. 104–191, § 231(d)(2), added par. (7).

Subsec. (m). Pub. L. 104–191, § 231(a)(4), added subsec. (m).

1990—Subsec. (b)(1). Pub. L. 101–508, § 4731(b)(1), struck out ''or an entity with a contract under section 1396b(m) of this title'' before ''knowingly makes a payment'' in introductory provisions.

Pub. L. 101–508, § 4204(a)(3), struck out '', an eligible organization with a risk-sharing contract under section 1395mm of this title,'' after ''primary care hospital'' in introductory provisions, struck out ''or organization'' after ''primary care hospital'' in concluding provisions, redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''in the case of an eligible organization or an entity, are enrolled with the organization or entity, and''.

Subsec. (j). Pub. L. 101–508, § 4753, made an amendment to subsec. (j) identically to that of Pub. L. 101–508, § 4207(h). See below.

Pub. L. 101–508, § 4207(h), formerly § 4027(h), as renumbered by Pub. L. 103–432, designated existing provisions as par. (1) and added par. (2).

1989—Subsec. (a)(1)(D), (2)(C), (4). Pub. L. 101–234 repealed Pub. L. 100–360, § 202(c), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(1). Pub. L. 101–239 substituted ''hospital or a rural primary care hospital'' for ''hospital'' in introductory and concluding provisions.

1988—Subsec. (a). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(10)(A), see 1987 Amendment note below.

Subsec. (a)(1). Pub. L. 100–360, § 411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, § 608(d)(26)(H), amended directory language of Pub. L. 100–203, § 4118(e)(1), see 1987 Amendment note below.

Subsec. (a)(1)(D). Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(i), added Pub. L. 100–203, § 4118(e)(6), see 1987 Amendment note below.

Pub. L. 100–360, § 202(c)(2)(A), struck out ''or'' after semicolon.

Subsec. (a)(2)(C). Pub. L. 100–360, § 202(c)(2)(B), inserted ''or to be a participating pharmacy under section 1395u(*o*) of this title'' after ''section 1395u(h)(1) of this title''.

Subsec. (a)(3). Pub. L. 100–360, § 411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, § 608(d)(26)(H), made technical amendment to directory language of Pub. L. 100–203, § 4118(e)(1)(A), see 1987 Amendment note below.

Subsec. (a)(4). Pub. L. 100–360, § 202(c)(2)(C)–(E), added par. (4) relating to participating or nonparticipating pharmacies.

Subsec. (b)(1)(A). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(1)(A), see 1987 Amendment note below.

Subsec. (b)(2). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(1)(B), see 1987 Amendment note below.

Subsec. (c)(1). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(7), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(8), see 1987 Amendment note below.

Subsec. (i)(1). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(9), see 1987 Amendment note below.

Subsec. (i)(2). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(10)(B), see 1987 Amendment note below.

Subsec. (i)(5). Pub. L. 100–485, § 608(d)(26)(J), amended directory language of Pub. L. 100–203, § 4118(e)(10)(C), see 1987 Amendment note below.

Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(10)(C), see 1987 Amendment note below.

Subsec. (*l*). Pub. L. 100–485, § 608(d)(26)(I), inserted ''for penalties, assessments, and an exclusion'' after ''liable''.

Pub. L. 100–360, § 411(k)(10)(B)(ii)(III), added Pub. L. 100–203, § 4118(e)(1)(B), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–203, § 4118(e)(10)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted '', but excluding a beneficiary, as defined in subsection (i)(5) of this section'' in introductory provisions.

Pub. L. 100–93, § 3(a)(3)(B), in concluding provisions, inserted ''(or, in cases under paragraph (3), $15,000 for each individual with respect to whom false or misleading information was given)'' before period at end of first sentence, and inserted at end ''In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the programs under subchapter XVIII of this chapter and to direct the appropriate State agency to exclude the person from participation in any State health care program.''

Subsec. (a)(1). Pub. L. 100–203, § 4118(e)(1)(A), formerly § 4118(e)(1), as amended by Pub. L. 100–360, § 411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, § 608(d)(26)(H), substituted ''or should know'' for ''or has reason to know'' in subpars. (A) to (C).

Pub. L. 100–93, § 3(a)(1), substituted ''the Secretary determines'' for ''the Secretary determines is for a medical or other item or service'' in introductory provisions and substituted subpars. (A) to (D) for former subpars. (A) and (B) which read as follows:

''(A) that the person knows or has reason to know was not provided as claimed, or

''(B) payment for which may not be made under the program under which such claim was made, pursuant to a determination by the Secretary under section 1320a–7, 1320c–9(b), or 1395y(d) of this title, or pursuant to a determination by the Secretary under section 1395cc(b)(2) of this title with respect to which the Secretary has initiated termination proceedings; or''.

Subsec. (a)(1)(D). Pub. L. 100–203, § 4118(e)(6), as added by Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(i), substituted ''excluded from'' for ''excluded under'' and inserted ''or as a result of the application of the provisions of section 1395u(j)(2) of this title''.

Subsec. (a)(2). Pub. L. 100–93, § 3(a)(2), inserted ''(or other requirement of a State plan under subchapter XIX of this chapter)'' after ''State agency'' in subpar. (B) and added subpar. (D).

Subsec. (a)(3). Pub. L. 100–203, § 4118(e)(1)(A), as amended by Pub. L. 100–360, § 411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, § 608(d)(26)(H), substituted ''or should know'' for ''or has reason to know''.

Pub. L. 100–93, § 3(a)(3)(A), added par. (3).

Subsec. (b)(1)(A). Pub. L. 100–203, § 4039(h)(1)(A), as added by Pub. L. 100–360, § 411(e)(3), substituted ''subchapter XVIII'' for ''subchapter XVII''.

Subsec. (b)(2). Pub. L. 100–203, § 4039(h)(1)(B), as added by Pub. L. 100–360, § 411(e)(3), substituted ''$2,000 for each'' for ''$2,000 for''.

Subsec. (c)(1). Pub. L. 100–203, § 4118(e)(7), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted '', request for payment, or other occurrence described in this section'' and '', the request for payment was made, or the occurrence took place''.

Pub. L. 100–93, § 3(b), (c), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' and inserted provision that the Secretary not initiate an action under this section with respect to a claim later than six years after the claim was presented and that the Secretary initiate an action in the manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

Subsec. (d). Pub. L. 100–93, § 3(c), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' in introductory provisions.

Subsec. (f)(1)(A). Pub. L. 100–93, § 3(d), substituted ''bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid'' for ''equal to the State's share of the amount paid by the State agency''.

Subsec. (g). Pub. L. 100–93, § 3(c), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' in two places.

Subsec. (h). Pub. L. 100–93, § 3(c), (e), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' in two places and inserted ''the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title),'' after ''professional organization,''.

Subsec. (i). Pub. L. 100–203, § 4118(e)(8), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''this section'' for ''this subsection'' in introductory provisions.

Subsec. (i)(1). Pub. L. 100–203, § 4118(e)(9), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted ''or subchapter XX of this chapter''.

Subsec. (i)(2). Pub. L. 100–203, § 4118(e)(10)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''for payments for items and services under subchapter V, XVIII, XIX, or XX of this chapter'' for ''submitted by—

''(A) a provider of services or other person, agency, or organization that furnishes an item or service under subchapter XVIII of this chapter, or

''(B) a person, agency, or organization that furnishes an item or service for which medical assistance is provided under subchapter XIX of this chapter, or

''(C) a person, agency, or organization that provides an item or service for which payment is made under subchapter V of this chapter or from an allotment to a State under such subchapter,

to the United States or a State agency, or agent thereof, for payment for health care services under subchapter XVIII or XIX of this chapter or for any item or service under subchapter V of this chapter''.

Subsec. (i)(5). Pub. L. 100–203, § 4118(e)(10)(C), as added by Pub. L. 100–360, § 411(k)(10)(D), and amended by Pub. L. 100–485, § 608(d)(26)(J), added par. (5).

Subsecs. (j), (k). Pub. L. 100–93, § 3(f), added subsecs. (j) and (k).

Subsec. (*l*). Pub. L. 100–203, § 4118(e)(1)(B), as added by Pub. L. 100–360, § 411(k)(10)(B)(ii)(III), added subsec. (*l*).

1986—Subsec. (a)(1). Pub. L. 99–509, § 9313(c)(1)(B), substituted ''(i)(1)'' and ''(i)(2)'' for ''(h)(1)'' and ''(h)(2)'', respectively.

Subsec. (b). Pub. L. 99–509, § 9313(c)(1)(D), (E), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99–509, § 9313(c)(1)(A), (D), redesignated subsec. (b) as (c) and substituted ''subsection (a) or (b)'' for ''subsection (a)'' in pars. (1) and (2). Former subsec. (c) redesignated (d).

Subsec. (c)(3). Pub. L. 99–509, § 9317(a), added par. (3).

Subsec. (c)(4). Pub. L. 99–509, § 9317(b), added par. (4).

Subsec. (d). Pub. L. 99–509, § 9313(c)(1)(A), (D), redesignated subsec. (c) as (d) and substituted ''subsection (a) or (b)'' for ''subsection (a)'' in introductory provisions. Former subsec. (d) redesignated (e).

Subsecs. (e), (f). Pub. L. 99–509, § 9313(c)(1)(D), redesignated subsecs. (d) and (e) as (e) and (f), respectively. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 99–509, § 9313(c)(1)(A), (C), (D), redesignated subsec. (f) as (g) and substituted ''subsection (a) or (b)'' for ''subsection (a)'' and ''subsection (e)'' for ''subsection (d)''. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 99–509, § 9313(c)(1)(A), (D), redesignated subsec. (g) as (h) and substituted ''subsection (a) or (b)'' for ''subsection (a)''. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 99–509, § 9313(c)(1)(D), redesignated subsec. (h) as (i).

1984—Subsec. (a)(2)(C). Pub. L. 98–369, § 2306(f)(1), added cl. (C).

Subsec. (g). Pub. L. 98–369, § 2354(a)(3), substituted ''utilization and quality control peer review organization'' for ''Professional Standards Review Organization''.

1982—Subsec. (a). Pub. L. 97–248 redesignated as part of par. (1) preceding subpar. (A) provisions formerly preceding par. (1), in subpar. (B) substituted ''or pursuant to a determination by the Secretary under section 1395cc(b)(2) of this title with respect to which the Secretary has initiated termination proceedings;'' for ''or 1395cc(b)(2) of this title,'', and in par. (2) substituted ''presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1842(b)(3)(B)(ii), or (B) an agreement with a State agency not to charge a person for an item or service in excess of the amount permitted to be charged'' for ''is submitted in violation of an agreement between the person and the United States or a State agency''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title V, § 5201(d), Oct. 21, 1998, 112 Stat. 2681–917, provided that: ''The amendments made by this section [amending this section and section 1320a–7d of this title] shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4304(c) of Pub. L. 105–33 provided that:

''(1) CONTRACTS WITH EXCLUDED PERSONS.—The amendments made by subsection (a) [amending this section] shall apply to arrangements and contracts entered into after the date of the enactment of this Act [Aug. 5, 1997].

''(2) KICKBACKS.—The amendments made by subsection (b) [amending this section] shall apply to acts committed after the date of the enactment of this Act.''

Amendment by section 4331(e) of Pub. L. 105–33 effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996,

Pub. L. 104–191, see section 4331(f) of Pub. L. 105–33, set out as a note under section 1320a–7e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 231(i) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section and sections 1320c–5 and 1395mm of this title] shall apply to acts or omissions occurring on or after January 1, 1997.''

Section 232(b) of Pub. L. 104–191 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to certifications made on or after the date of the enactment of this Act [Aug. 21, 1996].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 201(c) of Pub. L. 101–234 provided that: ''The provisions of this section [amending this section and sections 1320c–3, 1395h, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395w–2, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395mm, 1396a, 1396b, 1396d, and 1396n of this title, repealing section 1395w–3 of this title, and amending or repealing provisions set out as notes under sections 1320c–3, 1395b–1, 1395k, 1395m, 1395u, 1395x, 1395*ll*, and 1395ww of this title] shall take effect January 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(c)(2) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(e)(3), (k)(10)(B)(ii), (D) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4118(e)(14), formerly section 4118(e)(3), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, § 411(k)(10)(B)(i), (D), July 1, 1988, 102 Stat. 794, 795, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to activities occurring before, on, or after the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, except that amendment by section 3(a)(1) of Pub. L. 100–93 applicable to claims presented for services performed on or after date at end of fourteen-day period beginning Aug. 18, 1987, without regard to the date the physician's misrepresentation of fact was made, and amendment by section 3(f) of Pub. L. 100–93 effective Aug. 18, 1987, see section 15(a), (c)(3), and (d) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9313(c)(2) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4016, Dec. 22, 1987, 101 Stat. 1330–64; Pub. L. 101–239, title VI, § 6207(a), Dec. 19, 1989, 103 Stat. 2245, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to—

''(A) payments by hospitals occurring more than 6 months after the date of the enactment of this Act [Oct. 21, 1986], and

''(B) payments by eligible organizations or entities occurring on or after April 1, 1991.''

Section 9317(d)(1), (2) of Pub. L. 99–509 provided that: ''(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 21, 1986], without regard to when the criminal conviction was obtained, but shall only apply to a conviction upon a plea of nolo contendere tendered after the date of the enactment of this Act.

''(2) The amendment made by subsection (b) [amending this section] shall apply to failures or misconduct occurring on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(a)(3) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

REGULATIONS

Pub. L. 105–277, div. J, title V, § 5201(e), Oct. 21, 1998, 112 Stat. 2681–917, provided that: ''The Secretary of Health and Human Services may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment, in order to implement the amendments made by this section [amending this section and section 1320a–7d of this title] in a timely manner.''

GAO STUDY AND REPORT ON IMPACT OF SAFE HARBOR ON MEDIGAP POLICIES

Pub. L. 105–277, div. J, title V, § 5201(b)(2), Oct. 21, 1998, 112 Stat. 2681–917, provided that: ''If a permissible practice is promulgated under section 1128A(n)(1)(A) of the Social Security Act [subsec. (n)(1)(A) of this section] (as added by paragraph (1)), the Comptroller General of the United States shall conduct a study that compares any disproportionate impact on specific issuers of medicare supplemental policies (including the impact on premiums for non-ESRD medicare beneficiaries enrolled in such policies) due to adverse selection in enrolling medicare ESRD beneficiaries before the enactment of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191, Aug. 21, 1996] and 1 year after the date of promulgation of such permissible practice under section 1128A(n)(1)(A) of the Social Security Act. Not later than 18 months after the date of promulgation of such practice, the Comptroller General shall submit a report to Congress on such study and shall include in the report recommendations concerning whether the time limitation imposed under section 1128A(n)(1)(B) of such Act [subsec. (n)(1)(B) of this section] should be extended.''

REPEAL OF 1988 EXPANSION OF MEDICARE PART B BENEFITS

Section 201(a) of Pub. L. 101–234 provided that:

''(1) GENERAL RULE.—Except as provided in paragraph (2), sections 201 through 208 of MCCA [sections 201 to 208 of Pub. L. 100–360, enacting section 1395w–3 of this title, amending this section and sections 1320c–3, 1395h, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395w–2, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395mm, 1396a, 1396b, and 1396n of this title, and enacting provisions set out as notes under sections 1320c–3, 1395b–1, 1395k, 1395m, 1395u, 1395x, 1395*ll*, and 1395ww of this title] are repealed and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted.

''(2) EXCEPTION.—Paragraph (1) shall not apply to subsections (g) and (m)(4) of section 202 of MCCA [amending section 1395u of this title and enacting provisions set out as a note under section 1395u of this title.]''

STUDY AND REPORT ON INCENTIVE ARRANGEMENTS OFFERED TO PHYSICIANS

Section 9313(c)(3) of Pub. L. 99–509 directed Secretary of Health and Human Services to report to Congress, not later than Jan. 1, 1988, concerning incentive arrangements offered by health maintenance organizations and competitive medical plans to physicians.

§ 1320a–7b. Criminal penalties for acts involving Federal health care programs

(a) Making or causing to be made false statements or representations

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a Federal health care program (as defined in subsection (f) of this section),

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized,

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

(5) presents or causes to be presented a claim for a physician's service for which payment may be made under a Federal health care program and knows that the individual who furnished the service was not licensed as a physician, or

(6) for a fee knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under a State plan under subchapter XIX of this chapter, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1396p(c) of this title,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under the program, be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, conversion, or provision of counsel or assistance by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a Federal health care program is convicted of an offense under the preceding provisions of this subsection, the administrator of such program may at its option (notwithstanding any other provision of such program) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.

(b) Illegal remunerations

(1) Whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) Whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under a Federal health care program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under a Federal health care program;

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services;

(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under a Federal health care program if—

(i) the person has a written contract, with each such individual or entity, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

(ii) in the case of an entity that is a provider of services (as defined in section 1395x(u) of this title), the person discloses (in such form and manner as the Secretary requires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity;

(D) a waiver of any coinsurance under part B of subchapter XVIII of this chapter by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act [42 U.S.C. 201 et seq.];

(E) any payment practice specified by the Secretary in regulations promulgated pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 or in regulations under section 1395w–104(e)(6)[1] of this title;

(F) any remuneration between an organization and an individual or entity providing items or services, or a combination thereof, pursuant to a written agreement between the organization and the individual or entity if the organization is an eligible organization under section 1395mm of this title or if the written agreement, through a risk-sharing arrangement, places the individual or entity at substantial financial risk for the cost or utilization of the items or services, or a combination thereof, which the individual or entity is obligated to provide;

(G) the waiver or reduction by pharmacies (including pharmacies of the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations) of any cost-sharing imposed under part D of subchapter XVIII of this chapter, if the conditions described in clauses (i) through (iii) of section 1320a–7a(i)(6)(A) of this title are met with respect to the waiver or reduction (except that, in the case of such a waiver or reduction on behalf of a subsidy eligible individual (as defined in section 1395w–114(a)(3) of this title), section 1320a–7a(i)(6)(A) of this title shall be applied without regard to clauses (ii) and (iii) of that section); and

(H)[2] any remuneration between a federally qualified health center (or an entity controlled by such a health center) and an MA organization pursuant to a written agreement described in section 1395w–23(a)(4) of this title.

(H)[2] any remuneration between a health center entity described under clause (i) or (ii) of section 1396d(*l*)(2)(B) of this title and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity pursuant to a contract, lease, grant, loan, or other agreement, if such agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center entity.

(c) False statements or representations with respect to condition or operation of institutions

Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or entity in order that such institution, facility, or entity may qualify (either upon initial certification or upon recertification) as a hospital, critical access hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or other entity (including an eligible organization under section 1395mm(b) of this title) for which certification is required under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a–7(h) of this title), or with respect to information required to be provided under section 1320a–3a of this title, shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(d) Illegal patient admittance and retention practices

Whoever knowingly and willfully—

(1) charges, for any service provided to a patient under a State plan approved under subchapter XIX of this chapter, money or other consideration at a rate in excess of the rates established by the State (or, in the case of services provided to an individual enrolled with a medicaid managed care organization under subchapter XIX of this chapter under a contract under section 1396b(m) of this title or under a contractual, referral, or other arrangement under such contract, at a rate in excess of the rate permitted under such contract), or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under a State plan approved under subchapter XIX of this chapter, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)—

(A) as a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for the mentally retarded, or

(B) as a requirement for the patient's continued stay in such a facility,

when the cost of the services provided therein to the patient is paid for (in whole or in part) under the State plan,

shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or

[1] See References in Text note below.

[2] So in original. Two subpars. (H) have been enacted.

imprisoned for not more than five years, or both.

(e) Violation of assignment terms

Whoever accepts assignments described in section 1395u(b)(3)(B)(ii) of this title or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title and knowingly, willfully, and repeatedly violates the term of such assignments or agreement, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $2,000 or imprisoned for not more than six months, or both.

(f) "Federal health care program" defined

For purposes of this section, the term ''Federal health care program'' means—

(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under chapter 89 of title 5); or

(2) any State health care program, as defined in section 1320a–7(h) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1128B, formerly title XVIII, § 1877(d), and title XIX, § 1909, as added and amended Pub. L. 92–603, title II, §§ 242(c), 278(b)(9), Oct. 30, 1972, 86 Stat. 1419, 1454; Pub. L. 95–142, § 4(a), (b), Oct. 25, 1977, 91 Stat. 1179, 1181; Pub. L. 96–499, title IX, § 917, Dec. 5, 1980, 94 Stat. 2625; Pub. L. 98–369, div. B, title III, § 2306(f)(2), July 18, 1984, 98 Stat. 1073; renumbered title XI, § 1128B, and amended Pub. L. 100–93, §§ 4(a)–(d), 14(b), Aug. 18, 1987, 101 Stat. 688, 689, 697; Pub. L. 100–203, title IV, §§ 4039(a), 4211(h)(7), Dec. 22, 1987, 101 Stat. 1330–81, 1330–206; Pub. L. 100–360, title IV, § 411(a)(3)(A), (B)(i), July 1, 1988, 102 Stat. 768; Pub. L. 101–239, title VI, § 6003(g)(3)(D)(ii), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 101–508, title IV, §§ 4161(a)(4), 4164(b)(2), Nov. 5, 1990, 104 Stat. 1388–94, 1388–102; Pub. L. 103–432, title I, § 133(a)(2), Oct. 31, 1994, 108 Stat. 4421; Pub. L. 104–191, title II, §§ 204(a), 216(a), 217, Aug. 21, 1996, 110 Stat. 1999, 2007, 2008; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4704(b), 4734, Aug. 5, 1997, 111 Stat. 373, 498, 522; Pub. L. 108–173, title I, § 101(e)(2), (8)(A), title II, § 237(d), title IV, § 431(a), Dec. 8, 2003, 117 Stat. 2150, 2152, 2213, 2287.)

REFERENCES IN TEXT

Part B of subchapter XVIII of this chapter, referred to in subsec. (b)(3)(D), is classified to section 1395j et seq. of this title.

The Public Health Service Act, referred to in subsec. (b)(3)(D), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987, referred to in subsec. (b)(3)(E), is section 14(a) of Pub. L. 100–93, which is set out below.

Section 1395w–104(e)(6) of this title, referred to in subsec. (b)(3)(E), was in the original ''section 1860D–3(e)(6)'', and was translated as reading ''section 1860D–4(e)(6)'' to reflect the probable intent of Congress, because section 1860D–3, which is classified to section 1395w–103 of this title, does not contain a subsec. (e), and section 1395w–104(e)(6) relates to regulations.

Part D of subchapter XVIII of this chapter, referred to in subsec. (b)(3)(G), is classified to section 1395w–101 et seq. of this title.

CODIFICATION

Prior to redesignation by Pub. L. 100–93, subsecs. (a) to (d) of this section were subsecs. (a) to (d) of section 1909 of act Aug. 14, 1935, which was classified to section 1396h of this title, and subsec. (e) of this section was subsec. (d) of section 1877 of act Aug. 14, 1935, which was classified to section 1395nn of this title.

AMENDMENTS

2003—Subsec. (b)(3)(E). Pub. L. 108–173, § 101(e)(8)(A), which directed the amendment of subpar. (C) by inserting ''or in regulations under section 1395w–104(e)(6) of this title'' after ''1987'', was executed by making the insertion in subpar. (E) to reflect the probable intent of Congress because ''1987'' does not appear in subpar. (C).

Subsec. (b)(3)(G). Pub. L. 108–173, § 101(e)(2), added subpar. (G).

Subsec. (b)(3)(H). Pub. L. 108–173, § 431(a), added subpar. (H) relating to remuneration between a health center entity and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity.

Pub. L. 108–173, § 237(d), added subpar. (H) relating to remuneration between a federally qualified health center and an MA organization.

1997—Subsec. (a). Pub. L. 105–33, § 4734(2), in cl. (ii) of concluding provisions, substituted ''failure, conversion, or provision of counsel or assistance by any other person'' for ''failure, or conversion by any other person''.

Subsec. (a)(6). Pub. L. 105–33, § 4734(1), added par. (6) and struck out former par. (6) which read as follows: ''knowingly and willfully disposes of assets (including by any transfer in trust) in order for an individual to become eligible for medical assistance under a State plan under subchapter XIX of this chapter, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1396p(c) of this title,''.

Subsec. (c). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (d)(1). Pub. L. 105–33, § 4704(b), inserted ''(or, in the case of services provided to an individual enrolled with a medicaid managed care organization under subchapter XIX of this chapter under a contract under section 1396b(m) of this title or under a contractual, referral, or other arrangement under such contract, at a rate in excess of the rate permitted under such contract)'' after ''by the State''.

1996—Pub. L. 104–191, § 204(a)(1), substituted ''Federal'' for ''Medicare or State'' in section catchline.

Subsec. (a). Pub. L. 104–191, § 204(a)(4), in concluding provisions, substituted ''a Federal health care program'' for ''a State plan approved under subchapter XIX of this chapter'' and ''the administrator of such program may at its option (notwithstanding any other provision of such program)'' for ''the State may at its option (notwithstanding any other provision of that subchapter or of such plan)''.

Subsec. (a)(1). Pub. L. 104–191, § 204(a)(2), substituted ''a Federal health care program (as defined in subsection (f) of this section)'' for ''a program under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a–7(h) of this title)''.

Subsec. (a)(5). Pub. L. 104–191, § 204(a)(3), substituted ''a Federal'' for ''a program under subchapter XVIII of this chapter or a State''.

Subsec. (a)(6). Pub. L. 104–191, § 217, added par. (6).

Subsec. (b). Pub. L. 104–191, § 204(a)(5), substituted ''a Federal health care program'' for ''subchapter XVIII of this chapter or a State health care program'' wherever appearing.

Subsec. (b)(3)(F). Pub. L. 104–191, § 216(a), added subpar. (F).

Subsec. (c). Pub. L. 104–191, § 204(a)(6), inserted ''(as defined in section 1320a–7(h) of this title)'' after ''a State health care program''.

Subsec. (f). Pub. L. 104–191, § 204(a)(7), added subsec. (f).

1994—Subsec. (b)(3)(B). Pub. L. 103–432, which directed substitution of ''1395m(j)(5)'' for ''1395m(j)(4)'' in subpar.

(B) as amended by section 134(a) of Pub. L. 103–432, could not be executed because ''1395m(j)(4)'' does not appear in subpar. (B) and section 134(a) of Pub. L. 103–432 did not amend this section.

1990—Subsec. (b)(3)(D), (E). Pub. L. 101–508, § 4161(a)(4), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (c). Pub. L. 101–508, § 4164(b)(2), substituted ''health care program, or with respect to information required to be provided under section 1320a–3a of this title,'' for ''health care program''.

1989—Subsec. (c). Pub. L. 101–239 inserted ''rural primary care hospital,'' after ''hospital,''.

1988—Subsec. (c). Pub. L. 100–360 made technical correction to directory language of Pub. L. 100–203, § 4039(a), see 1987 Amendment note below.

Pub. L. 100–203, § 4211(h)(7)(A), substituted ''nursing facility, intermediate care facility for the mentally retarded'' for ''intermediate care facility''.

Subsec. (d)(2)(A). Pub. L. 100–203, § 4211(h)(7)(B), substituted ''nursing facility, or intermediate care facility for the mentally retarded'' for ''skilled nursing facility, or intermediate care facility''.

1987—Pub. L. 100–93, § 4(a)(1), substituted ''Criminal penalties for acts involving Medicare or State health care programs'' for ''Offenses and penalties'' in section catchline.

Subsec. (a). Pub. L. 100–93, § 4(a)(3), (4), in concluding provisions, substituted ''made under the program'' for ''made under this subchapter'', ''approved under subchapter XIX of this chapter'' for ''approved under this subchapter'', and ''provision of that subchapter'' for ''provision of this subchapter''.

Subsec. (a)(1). Pub. L. 100–93, § 4(a)(2), substituted ''a program under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a–7(h) of this title)'' for ''a State plan approved under this subchapter''.

Subsec. (a)(5). Pub. L. 100–93, § 4(b), added par. (5).

Subsec. (b)(1)(A), (B), (2)(A), (B). Pub. L. 100–93, § 4(a)(5), substituted ''subchapter XVIII of this chapter or a State health care program'' for ''this subchapter''.

Subsec. (b)(3). Pub. L. 100–93, §§ 4(a)(5), (6), 14(b), substituted ''subchapter XVIII of this chapter or a State health care program'' for ''this subchapter'' in two places in subpar. (A) and added subpars. (C) and (D).

Subsec. (c). Pub. L. 100–203, § 4039(a), as amended by Pub. L. 100–360, substituted ''institution, facility, or entity'' for ''institution or facility'' wherever appearing and inserted ''(including an eligible organization under section 1395mm(b) of this title)'' after ''other entity''.

Pub. L. 100–93, § 4(a)(7), substituted ''home health agency, or other entity for which certification is required under subchapter XVIII of this chapter or a State health care program'' for ''or home health agency (as those terms are employed in this subchapter)''.

Subsec. (d)(1), (2). Pub. L. 100–93, § 4(a)(8), substituted ''subchapter XIX of this chapter'' for ''this subchapter''.

Subsec. (e). Pub. L. 100–93, § 4(c), redesignated subsec. (d) of section 1395nn of this title as subsec. (e) of this section.

1984—Subsec. (e). Pub. L. 98–369 inserted ''or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title'' after ''section 1395u(b)(3)(B)(ii) of this title'', and substituted ''or agreement'' for ''specified in subclause (I) of such section''.

1980—Subsec. (b)(1), (2). Pub. L. 96–499 inserted ''knowingly and willfully'' after ''Whoever''.

1977—Subsec. (a). Pub. L. 95–142, § 4(b), designated existing provisions following par. (4) as cl. (ii) and, as so designated, inserted provisions relating to activities of other persons, and inserted provisions authorizing the State to limit, restrict, or suspend, the eligibility of any convicted persons for benefits, and added cl. (i). See Codification note above.

Subsec. (b). Pub. L. 95–142, § 4(b), redesignated existing provisions as par. (1), substituted provisions relating to solicitation or receiving of any remuneration in return for referring an individual to a person for the furnishing or arranging the furnishing of any item or service, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, etc., as constituting a felony punishable by a fine of not more than $25,000 and/or imprisonment for not more than five years, for provisions relating to furnishing items or services and soliciting, offering or receiving any kickback, bribe, or rebate in connection with furnishing, etc. items or services as constituting a misdemeanor punishable by a fine of not more than $10,000 and/or imprisonment for not more than one year, and added pars. (2) and (3). See Codification note above.

Subsec. (c). Pub. L. 95–142, § 4(b), substituted provisions setting forth felony nature of criminal activities with a fine of not more than $25,000, or imprisonment for not more than five years, or both, for provisions setting forth misdemeanor nature of criminal activities with a fine of not more than $2,000, or imprisonment for not more than six months, or both. See Codification note above.

Subsec. (d). Pub. L. 95–142, § 4(b), added subsec. (d). See Codification note above.

Subsec. (e). Pub. L. 95–142, § 4(a), added subsec. (e). See Codification note above.

1972—Subsec. (c). Pub. L. 92–603, § 278(b)(9), substituted ''skilled nursing facility'' for ''skilled nursing home''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title II, § 237(e), Dec. 8, 2003, 117 Stat. 2213, provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395w–21, 1395w–23, and 1395w–27 of this title] shall apply to services provided on or after January 1, 2006, and contract years beginning on or after such date.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4704(b) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105–33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 204(b) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 1997.''

Section 216(c) of Pub. L. 104–191 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to written agreements entered into on or after January 1, 1997, without regard to whether regulations have been issued to implement such amendments.''

Amendment by section 217 of Pub. L. 104–191 effective Jan. 1, 1997, except as otherwise provided, see section 218 of Pub. L. 104–191, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 133(a)(2) of Pub. L. 103–432 applicable to items or services furnished on or after Jan. 1, 1995, see section 133(c) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4161(a)(4) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4164(b)(2) of Pub. L. 101–508 applicable with respect to items or services furnished on or after Jan. 1, 1993, in the case of items or services furnished by a provider who, on or before Nov. 5, 1990, has furnished items or services for which payment may be made under part B of subchapter XVIII of this chapter

or Jan. 1, 1992, in the case of items or services furnished by any other provider, see section 4164(b)(4) of Pub. L. 101–508, set out as an Effective Date note under section 1320a–3a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4211(h)(7) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 4(d) of Pub. L. 95–142 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to acts occurring and statements or representations made on or after the date of the enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE

Section 242(d) of Pub. L. 92–603 provided that: ''The provisions of amendments made by this section [enacting this section and section 1396h of this title and amending section 1395ii of this title] shall not be applicable to any acts, statements, or representations made or committed prior to the enactment of this Act [Oct. 30, 1972].''

RULEMAKING FOR EXCEPTION FOR HEALTH CENTER ENTITY ARRANGEMENTS

Pub. L. 108–173, title IV, § 431(b), Dec. 8, 2003, 117 Stat. 2287, provided that:

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—The Secretary [of Health and Human Services] shall establish, on an expedited basis, standards relating to the exception described in section 1128B(b)(3)(H) of the Social Security Act [subsec. (b)(3)(H) of this section], as added by subsection (a), for health center entity arrangements to the antikickback penalties.

''(B) FACTORS TO CONSIDER.—The Secretary shall consider the following factors, among others, in establishing standards relating to the exception for health center entity arrangements under subparagraph (A):

''(i) Whether the arrangement between the health center entity and the other party results in savings of Federal grant funds or increased revenues to the health center entity.

''(ii) Whether the arrangement between the health center entity and the other party restricts or limits an individual's freedom of choice.

''(iii) Whether the arrangement between the health center entity and the other party protects a health care professional's independent medical judgment regarding medically appropriate treatment.

The Secretary may also include other standards and criteria that are consistent with the intent of Congress in enacting the exception established under this section.

''(2) DEADLINE.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003] the Secretary shall publish final regulations establishing the standards described in paragraph (1).''

NEGOTIATED RULEMAKING FOR RISK-SHARING EXCEPTION

Section 216(b) of Pub. L. 104–191 provided that:

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter 3 [III] of chapter 5 of title 5, United States Code, standards relating to the exception for risk-sharing arrangements to the anti-kickback penalties described in section 1128B(b)(3)(F) of the Social Security Act [subsec. (b)(3)(F) of this section], as added by subsection (a).

''(B) FACTORS TO CONSIDER.—In establishing standards relating to the exception for risk-sharing arrangements to the anti-kickback penalties under subparagraph (A), the Secretary—

''(i) shall consult with the Attorney General and representatives of the hospital, physician, other health practitioner, and health plan communities, and other interested parties; and

''(ii) shall take into account—

''(I) the level of risk appropriate to the size and type of arrangement;

''(II) the frequency of assessment and distribution of incentives;

''(III) the level of capital contribution; and

''(IV) the extent to which the risk-sharing arrangement provides incentives to control the cost and quality of health care services.

''(2) PUBLICATION OF NOTICE.—In carrying out the rulemaking process under this subsection, the Secretary shall publish the notice provided for under section 564(a) of title 5, United States Code, by not later than 45 days after the date of the enactment of this Act [Aug. 21, 1996].

''(3) TARGET DATE FOR PUBLICATION OF RULE.—As part of the notice under paragraph (2), and for purposes of this subsection, the 'target date for publication' (referred to in section 564(a)(5) of such title) shall be January 1, 1997.

''(4) ABBREVIATED PERIOD FOR SUBMISSION OF COMMENTS.—In applying section 564(c) of such title under this subsection, '15 days' shall be substituted for '30 days'.

''(5) APPOINTMENT OF NEGOTIATED RULEMAKING COMMITTEE AND FACILITATOR.—The Secretary shall provide for—

''(A) the appointment of a negotiated rulemaking committee under section 565(a) of such title by not later than 30 days after the end of the comment period provided for under section 564(c) of such title (as shortened under paragraph (4)), and

''(B) the nomination of a facilitator under section 566(c) of such title by not later than 10 days after the date of appointment of the committee.

''(6) PRELIMINARY COMMITTEE REPORT.—The negotiated rulemaking committee appointed under paragraph (5) shall report to the Secretary, by not later than October 1, 1996, regarding the committee's progress on achieving a consensus with regard to the rulemaking proceeding and whether such consensus is likely to occur before one month before the target date for publication of the rule. If the committee reports that the committee has failed to make significant progress toward such consensus or is unlikely to reach such consensus by the target date, the Secretary may terminate such process and provide for the publication of a rule under this subsection through such other methods as the Secretary may provide.

''(7) FINAL COMMITTEE REPORT.—If the committee is not terminated under paragraph (6), the rulemaking committee shall submit a report containing a proposed rule by not later than one month before the target publication date.

''(8) INTERIM, FINAL EFFECT.—The Secretary shall publish a rule under this subsection in the Federal Register by not later than the target publication date. Such rule shall be effective and final immediately on an interim basis, but is subject to change and revision after public notice and opportunity for a period (of not less than 60 days) for public comment. In connection with such rule, the Secretary shall specify the process for the timely review and approval of applications of entities to be certified as provider-sponsored organizations pursuant to such rules and consistent with this subsection.

''(9) PUBLICATION OF RULE AFTER PUBLIC COMMENT.—The Secretary shall provide for consideration of such comments and republication of such rule by not later than 1 year after the target publication date.''

ANTI-KICKBACK REGULATIONS

Section 14(a) of Pub. L. 100–93 provided that: ''The Secretary of Health and Human Services, in consultation with the Attorney General, not later than 1 year after the date of the enactment of this Act [Aug. 18, 1987] shall publish proposed regulations, and not later than 2 years after the date of the enactment of this Act shall promulgate final regulations, specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act [subsec. (b) of this section] and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act. Any practices specified in regulations pursuant to the preceding sentence shall be in addition to the practices described in subparagraphs (A) through (C) of section 1128B(b)(3).''

§ 1320a–7c. Fraud and abuse control program

(a) Establishment of program

(1) In general

Not later than January 1, 1997, the Secretary, acting through the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General shall establish a program—

(A) to coordinate Federal, State, and local law enforcement programs to control fraud and abuse with respect to health plans,

(B) to conduct investigations, audits, evaluations, and inspections relating to the delivery of and payment for health care in the United States,

(C) to facilitate the enforcement of the provisions of sections 1320a–7, 1320a–7a, and 1320a–7b of this title and other statutes applicable to health care fraud and abuse,

(D) to provide for the modification and establishment of safe harbors and to issue advisory opinions and special fraud alerts pursuant to section 1320a–7d of this title, and

(E) to provide for the reporting and disclosure of certain final adverse actions against health care providers, suppliers, or practitioners pursuant to the data collection system established under section 1320a–7e of this title.

(2) Coordination with health plans

In carrying out the program established under paragraph (1), the Secretary and the Attorney General shall consult with, and arrange for the sharing of data with representatives of health plans.

(3) Guidelines

(A) In general

The Secretary and the Attorney General shall issue guidelines to carry out the program under paragraph (1). The provisions of sections 553, 556, and 557 of title 5 shall not apply in the issuance of such guidelines.

(B) Information guidelines

(i) In general

Such guidelines shall include guidelines relating to the furnishing of information by health plans, providers, and others to enable the Secretary and the Attorney General to carry out the program (including coordination with health plans under paragraph (2)).

(ii) Confidentiality

Such guidelines shall include procedures to assure that such information is provided and utilized in a manner that appropriately protects the confidentiality of the information and the privacy of individuals receiving health care services and items.

(iii) Qualified immunity for providing information

The provisions of section 1320c–6(a) of this title (relating to limitation on liability) shall apply to a person providing information to the Secretary or the Attorney General in conjunction with their performance of duties under this section.

(4) Ensuring access to documentation

The Inspector General of the Department of Health and Human Services is authorized to exercise such authority described in paragraphs (3) through (9) of section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) as necessary with respect to the activities under the fraud and abuse control program established under this subsection.

(5) Authority of Inspector General

Nothing in this chapter shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

(b) Additional use of funds by Inspector General

(1) Reimbursements for investigations

The Inspector General of the Department of Health and Human Services is authorized to receive and retain for current use reimbursement for the costs of conducting investigations and audits and for monitoring compliance plans when such costs are ordered by a court, voluntarily agreed to by the payor, or otherwise.

(2) Crediting

Funds received by the Inspector General under paragraph (1) as reimbursement for costs of conducting investigations shall be deposited to the credit of the appropriation from which initially paid, or to appropriations for similar purposes currently available at the time of deposit, and shall remain available for obligation for 1 year from the date of the deposit of such funds.

(c) "Health plan" defined

For purposes of this section, the term ''health plan'' means a plan or program that provides

health benefits, whether directly, through insurance, or otherwise, and includes—

(1) a policy of health insurance;

(2) a contract of a service benefit organization; and

(3) a membership agreement with a health maintenance organization or other prepaid health plan.

(Aug. 14, 1935, ch. 531, title XI, § 1128C, as added Pub. L. 104–191, title II, § 201(a), Aug. 21, 1996, 110 Stat. 1992.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (a)(4), (5), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 1320a–7d. Guidance regarding application of health care fraud and abuse sanctions

(a) Solicitation and publication of modifications to existing safe harbors and new safe harbors

(1) In general

(A) Solicitation of proposals for safe harbors

Not later than January 1, 1997, and not less than annually thereafter, the Secretary shall publish a notice in the Federal Register soliciting proposals, which will be accepted during a 60-day period, for—

(i) modifications to existing safe harbors issued pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. 1320a–7b note);

(ii) additional safe harbors specifying payment practices that shall not be treated as a criminal offense under section 1320a–7b(b) of this title and shall not serve as the basis for an exclusion under section 1320a–7(b)(7) of this title;

(iii) advisory opinions to be issued pursuant to subsection (b) of this section; and

(iv) special fraud alerts to be issued pursuant to subsection (c) of this section.

(B) Publication of proposed modifications and proposed additional safe harbors

After considering the proposals described in clauses (i) and (ii) of subparagraph (A), the Secretary, in consultation with the Attorney General, shall publish in the Federal Register proposed modifications to existing safe harbors and proposed additional safe harbors, if appropriate, with a 60-day comment period. After considering any public comments received during this period, the Secretary shall issue final rules modifying the existing safe harbors and establishing new safe harbors, as appropriate.

(C) Report

The Inspector General of the Department of Health and Human Services (in this section referred to as the ''Inspector General'') shall, in an annual report to Congress or as part of the year-end semiannual report required by section 5 of the Inspector General Act of 1978 (5 U.S.C. App.), describe the proposals received under clauses (i) and (ii) of subparagraph (A) and explain which proposals were included in the publication described in subparagraph (B), which proposals were not included in that publication, and the reasons for the rejection of the proposals that were not included.

(2) Criteria for modifying and establishing safe harbors

In modifying and establishing safe harbors under paragraph (1)(B), the Secretary may consider the extent to which providing a safe harbor for the specified payment practice may result in any of the following:

(A) An increase or decrease in access to health care services.

(B) An increase or decrease in the quality of health care services.

(C) An increase or decrease in patient freedom of choice among health care providers.

(D) An increase or decrease in competition among health care providers.

(E) An increase or decrease in the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

(F) An increase or decrease in the cost to Federal health care programs (as defined in section 1320a–7b(f) of this title).

(G) An increase or decrease in the potential overutilization of health care services.

(H) The existence or nonexistence of any potential financial benefit to a health care professional or provider which may vary based on their decisions of—

(i) whether to order a health care item or service; or

(ii) whether to arrange for a referral of health care items or services to a particular practitioner or provider.

(I) Any other factors the Secretary deems appropriate in the interest of preventing fraud and abuse in Federal health care programs (as so defined).

(b) Advisory opinions

(1) Issuance of advisory opinions

The Secretary, in consultation with the Attorney General, shall issue written advisory opinions as provided in this subsection.

(2) Matters subject to advisory opinions

The Secretary shall issue advisory opinions as to the following matters:

(A) What constitutes prohibited remuneration within the meaning of section 1320a–7b(b) of this title or section 1320a–7a(i)(6) of this title.

(B) Whether an arrangement or proposed arrangement satisfies the criteria set forth in section 1320a–7b(b)(3) of this title for activities which do not result in prohibited remuneration.

(C) Whether an arrangement or proposed arrangement satisfies the criteria which the Secretary has established, or shall establish by regulation for activities which do not result in prohibited remuneration.

(D) What constitutes an inducement to reduce or limit services to individuals entitled to benefits under subchapter XVIII of this

chapter or subchapter XIX of this chapter within the meaning of section 1320a–7a(b) of this title.

(E) Whether any activity or proposed activity constitutes grounds for the imposition of a sanction under section 1320a–7, 1320a–7a, or 1320a–7b of this title.

(3) Matters not subject to advisory opinions

Such advisory opinions shall not address the following matters:

(A) Whether the fair market value shall be, or was paid or received for any goods, services or property.

(B) Whether an individual is a bona fide employee within the requirements of section 3121(d)(2) of the Internal Revenue Code of 1986.

(4) Effect of advisory opinions

(A) Binding as to Secretary and parties involved

Each advisory opinion issued by the Secretary shall be binding as to the Secretary and the party or parties requesting the opinion.

(B) Failure to seek opinion

The failure of a party to seek an advisory opinion may not be introduced into evidence to prove that the party intended to violate the provisions of sections[1] 1320a–7, 1320a–7a, or 1320a–7b of this title.

(5) Regulations

(A) In general

Not later than 180 days after August 21, 1996, the Secretary shall issue regulations to carry out this section. Such regulations shall provide for—

(i) the procedure to be followed by a party applying for an advisory opinion;

(ii) the procedure to be followed by the Secretary in responding to a request for an advisory opinion;

(iii) the interval in which the Secretary shall respond;

(iv) the reasonable fee to be charged to the party requesting an advisory opinion; and

(v) the manner in which advisory opinions will be made available to the public.

(B) Specific contents

Under the regulations promulgated pursuant to subparagraph (A)—

(i) the Secretary shall be required to issue to a party requesting an advisory opinion by not later than 60 days after the request is received; and

(ii) the fee charged to the party requesting an advisory opinion shall be equal to the costs incurred by the Secretary in responding to the request.

(6) Application of subsection

This subsection shall apply to requests for advisory opinions made on or after the date which is 6 months after August 21, 1996.

[1] So in original. Probably should be ''section''.

(c) Special fraud alerts

(1) In general

(A) Request for special fraud alerts

Any person may present, at any time, a request to the Inspector General for a notice which informs the public of practices which the Inspector General considers to be suspect or of particular concern under the Medicare program under subchapter XVIII of this chapter or a State health care program, as defined in section 1320a–7(h) of this title (in this subsection referred to as a ''special fraud alert'').

(B) Issuance and publication of special fraud alerts

Upon receipt of a request described in subparagraph (A), the Inspector General shall investigate the subject matter of the request to determine whether a special fraud alert should be issued. If appropriate, the Inspector General shall issue a special fraud alert in response to the request. All special fraud alerts issued pursuant to this subparagraph shall be published in the Federal Register.

(2) Criteria for special fraud alerts

In determining whether to issue a special fraud alert upon a request described in paragraph (1), the Inspector General may consider—

(A) whether and to what extent the practices that would be identified in the special fraud alert may result in any of the consequences described in subsection (a)(2) of this section; and

(B) the volume and frequency of the conduct that would be identified in the special fraud alert.

(Aug. 14, 1935, ch. 531, title XI, §1128D, as added Pub. L. 104–191, title II, §205, Aug. 21, 1996, 110 Stat. 2000; amended Pub. L. 105–33, title IV, §4331(a)(1), Aug. 5, 1997, 111 Stat. 395; Pub. L. 105–277, div. J, title V, §5201(c), Oct. 21, 1998, 112 Stat. 2681–917; Pub. L. 106–554, §1(a)(6) [title V, §543], Dec. 21, 2000, 114 Stat. 2763, 2763A–551.)

REFERENCES IN TEXT

Section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987, referred to in subsec. (a)(1)(A)(i), is section 14(a) of Pub. L. 100–93, which is set out as a note under section 1320a–7b of this title.

Section 5 of the Inspector General Act of 1978, referred to in subsec. (a)(1)(C), is section 5 of Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1103, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Internal Revenue Code of 1986, referred to in subsec. (b)(3)(B), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2000—Subsec. (b)(6). Pub. L. 106–554 struck out '', and before the date which is 4 years after August 21, 1996'' before period at end.

1998—Subsec. (b)(2)(A). Pub. L. 105–277 inserted ''or section 1320a–7a(i)(6) of this title'' before period at end.

1997—Subsec. (b)(2)(D). Pub. L. 105–33 substituted ''section 1320a–7a(b)'' for ''section 1320a–7b(b)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of the Health Insurance Portability

and Accountability Act of 1996, Pub. L. 104–191, see section 4331(f) of Pub. L. 105–33, set out as a note under section 1320a–7e of this title.

§ 1320a–7e. Health care fraud and abuse data collection program

(a) General purpose

Not later than January 1, 1997, the Secretary shall establish a national health care fraud and abuse data collection program for the reporting of final adverse actions (not including settlements in which no findings of liability have been made) against health care providers, suppliers, or practitioners as required by subsection (b) of this section, with access as set forth in subsection (c) of this section, and shall maintain a database of the information collected under this section.

(b) Reporting of information

(1) In general

Each Government agency and health plan shall report any final adverse action (not including settlements in which no findings of liability have been made) taken against a health care provider, supplier, or practitioner.

(2) Information to be reported

The information to be reported under paragraph (1) includes:

(A) The name and TIN (as defined in section 7701(a)(41) of the Internal Revenue Code of 1986) of any health care provider, supplier, or practitioner who is the subject of a final adverse action.

(B) The name (if known) of any health care entity with which a health care provider, supplier, or practitioner, who is the subject of a final adverse action, is affiliated or associated.

(C) The nature of the final adverse action and whether such action is on appeal.

(D) A description of the acts or omissions and injuries upon which the final adverse action was based, and such other information as the Secretary determines by regulation is required for appropriate interpretation of information reported under this section.

(3) Confidentiality

In determining what information is required, the Secretary shall include procedures to assure that the privacy of individuals receiving health care services is appropriately protected.

(4) Timing and form of reporting

The information required to be reported under this subsection shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date specified by the Secretary.

(5) To whom reported

The information required to be reported under this subsection shall be reported to the Secretary.

(6) Sanctions for failure to report

(A) Health plans

Any health plan that fails to report information on an adverse action required to be reported under this subsection shall be subject to a civil money penalty of not more than $25,000 for each such adverse action not reported. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(B) Governmental agencies

The Secretary shall provide for a publication of a public report that identifies those Government agencies that have failed to report information on adverse actions as required to be reported under this subsection.

(c) Disclosure and correction of information

(1) Disclosure

With respect to the information about final adverse actions (not including settlements in which no findings of liability have been made) reported to the Secretary under this section with respect to a health care provider, supplier, or practitioner, the Secretary shall, by regulation, provide for—

(A) disclosure of the information, upon request, to the health care provider, supplier, or licensed practitioner, and

(B) procedures in the case of disputed accuracy of the information.

(2) Corrections

Each Government agency and health plan shall report corrections of information already reported about any final adverse action taken against a health care provider, supplier, or practitioner, in such form and manner that the Secretary prescribes by regulation.

(d) Access to reported information

(1) Availability

The information in the database maintained under this section shall be available to Federal and State government agencies and health plans pursuant to procedures that the Secretary shall provide by regulation.

(2) Fees for disclosure

The Secretary may establish or approve reasonable fees for the disclosure of information in such database (other than with respect to requests by Federal agencies). The amount of such a fee shall be sufficient to recover the full costs of operating the database. Such fees shall be available to the Secretary or, in the Secretary's discretion to the agency designated under this section to cover such costs.

(e) Protection from liability for reporting

No person or entity, including the agency designated by the Secretary in subsection (b)(5) of this section shall be held liable in any civil action with respect to any report made as required by this section, without knowledge of the falsity of the information contained in the report.

(f) Coordination with National Practitioner Data Bank

The Secretary shall implement this section in such a manner as to avoid duplication with the reporting requirements established for the National Practitioner Data Bank under the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.).

(g) Definitions and special rules

For purposes of this section:

(1) Final adverse action

(A) In general

The term ''final adverse action'' includes:

(i) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service.

(ii) Federal or State criminal convictions related to the delivery of a health care item or service.

(iii) Actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, and licensed health care practitioners, including—

(I) formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation,

(II) any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or

(III) any other negative action or finding by such Federal or State agency that is publicly available information.

(iv) Exclusion from participation in Federal or State health care programs (as defined in sections 1320a–7b(f) and 1320a–7(h) of this title, respectively).

(v) Any other adjudicated actions or decisions that the Secretary shall establish by regulation.

(B) Exception

The term does not include any action with respect to a malpractice claim.

(2) Practitioner

The terms ''licensed health care practitioner'', ''licensed practitioner'', and ''practitioner'' mean, with respect to a State, an individual who is licensed or otherwise authorized by the State to provide health care services (or any individual who, without authority holds himself or herself out to be so licensed or authorized).

(3) Government agency

The term ''Government agency'' shall include:

(A) The Department of Justice.

(B) The Department of Health and Human Services.

(C) Any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to the Department of Defense and the Department of Veterans Affairs.

(D) State law enforcement agencies.

(E) State medicaid fraud control units.

(F) Federal or State agencies responsible for the licensing and certification of health care providers and licensed health care practitioners.

(4) Health plan

The term ''health plan'' has the meaning given such term by section 1320a–7c(c) of this title.

(5) Determination of conviction

For purposes of paragraph (1), the existence of a conviction shall be determined under paragraphs (1) through (4) of section 1320a–7(i) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1128E, as added Pub. L. 104–191, title II, § 221(a), Aug. 21, 1996, 110 Stat. 2009; amended Pub. L. 105–33, title IV, § 4331(a)(2), (b), (d), Aug. 5, 1997, 111 Stat. 395, 396.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(2)(A), is classified generally to Title 26, Internal Revenue Code.

The Health Care Quality Improvement Act of 1986, referred to in subsec. (f), is title IV of Pub. L. 99–660, Nov. 14, 1986, 100 Stat. 3784, as amended, which is classified generally to chapter 117 (§ 11101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11101 of this title and Tables.

AMENDMENTS

1997—Subsec. (b)(6). Pub. L. 105–33, § 4331(d), added par. (6).

Subsec. (g)(3)(C). Pub. L. 105–33, § 4331(a)(2), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (g)(5). Pub. L. 105–33, § 4331(b), substituted ''paragraphs (1) through (4)'' for ''paragraph (4)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4331(f) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 1320a–7, 1320a–7a, and 1320a–7d of this title] shall be effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191].

''(2) FEDERAL HEALTH PROGRAM.—The amendments made by subsection (c) [amending section 1320a–7 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].

''(3) SANCTION FOR FAILURE TO REPORT.—The amendment made by subsection (d) [amending this section] shall apply to failures occurring on or after the date of the enactment of this Act.''

§ 1320a–7f. Coordination of medicare and medicaid surety bond provisions

In the case of a home health agency that is subject to a surety bond requirement under subchapter XVIII of this chapter and subchapter XIX of this chapter, the surety bond provided to satisfy the requirement under one such subchapter shall satisfy the requirement under the other such subchapter so long as the bond applies to guarantee return of overpayments under both such subchapters.

(Aug. 14, 1935, ch. 531, title XI, § 1128F, as added Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 304(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–361.)

§ 1320a–8. Civil monetary penalties and assessments for subchapters II, VIII and XVI

(a) False statements or representations of material fact; proceedings to exclude; wrongful conversions by representative payees

(1) Any person (including an organization, agency, or other entity) who—

(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter VIII or XVI of this chapter, that the person knows or should know is false or misleading,

(B) makes such a statement or representation for such use with knowing disregard for the truth, or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter VIII or XVI of this chapter, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such statement or representation or each receipt of such benefits or payments while withholding disclosure of such fact. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation or because of such withholding of disclosure of a material fact, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation or such a withholding of disclosure. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1320a–7 of this title, such a person who is a medical provider or physician from participation in the programs under subchapter XVIII of this chapter.

(2) For purposes of this section, a material fact is one which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under subchapter II of this chapter or subchapter VIII of this chapter, or eligible for benefits or payments under subchapter XVI of this chapter.

(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 405(j), 1007, or 1383(a)(2) of this title, a payment under subchapter II, VIII, or XVI of this chapter for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such conversion. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.

(b) Initiation of proceedings; hearing; sanctions

(1) The Commissioner of Social Security may initiate a proceeding to determine whether to impose a civil money penalty or assessment, or whether to recommend exclusion under subsection (a) of this section only as authorized by the Attorney General pursuant to procedures agreed upon by the Commissioner of Social Security and the Attorney General. The Commissioner of Social Security may not initiate an action under this section with respect to any violation described in subsection (a) of this section later than 6 years after the date the violation was committed. The Commissioner of Social Security may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

(2) The Commissioner of Social Security shall not make a determination adverse to any person under this section until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(3) In a proceeding under this section which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal or State crime; and

(B) involves the same transaction as in the criminal action;

the person is estopped from denying the essential elements of the criminal offense.

(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, for failing to defend an action, or for such other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inference or treating such refusal as an admission by deeming the matter, or certain facts, to be established;

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(C) striking pleadings, in whole or in part;

(D) staying the proceedings;

(E) dismissal of the action;

(F) entering a default judgment;

(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct; and

(H) refusing to consider any motion or other action which is not filed in a timely manner.

(c) Amount or scope of penalties, assessments, or exclusions

In determining pursuant to subsection (a) of this section the amount or scope of any penalty or assessment, or whether to recommend an exclusion, the Commissioner of Social Security shall take into account—

(1) the nature of the statements, representations, or actions referred to in subsection (a) of this section and the circumstances under which they occurred;

(2) the degree of culpability, history of prior offenses, and financial condition of the person committing the offense; and

(3) such other matters as justice may require.

(d) Judicial review

(1) Any person adversely affected by a determination of the Commissioner of Social Security under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the statement or representation referred to in subsection (a) of this section was made, by filing in such court (within 60 days following the date the person is notified of the Commissioner's determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner of Social Security, and thereupon the Commissioner of Social Security shall file in the court the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Commissioner of Social Security and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Commissioner of Social Security shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(2) The findings of the Commissioner of Social Security with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive in the review described in paragraph (1). If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commissioner of Social Security, the court may order such additional evidence to be taken before the Commissioner of Social Security and to be made a part of the record. The Commissioner of Social Security may modify such findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and the Commissioner of Social Security shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole shall be conclusive, and the Commissioner's recommendations, if any, for the modification or setting aside of the Commissioner's original order.

(3) Upon the filing of the record and the Commissioner's original or modified order with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(e) Compromise of money penalties and assessments; recovery; use of funds recovered

(1) Civil money penalties and assessments imposed under this section may be compromised by the Commissioner of Social Security and may be recovered—

(A) in a civil action in the name of the United States brought in United States district court for the district where the violation occurred, or where the person resides, as determined by the Commissioner of Social Security;

(B) by means of reduction in tax refunds to which the person is entitled, based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31;

(C)(i) by decrease of any payment of monthly insurance benefits under subchapter II of this chapter, notwithstanding section 407 of this title,

(ii) by decrease of any payment under subchapter VIII of this chapter to which the person is entitled, or

(iii) by decrease of any payment under subchapter XVI of this chapter for which the person is eligible, notwithstanding section 407 of this title, as made applicable to subchapter XVI of this chapter by reason of section 1383(d)(1) of this title;

(D) by authorities provided under the Debt Collection Act of 1982, as amended, to the extent applicable to debts arising under this chapter;

(E) by deduction of the amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, from any sum then or later owing by the United States to the person against whom the penalty or assessment has been assessed; or

(F) by any combination of the foregoing.

(2) Amounts recovered under this section shall be recovered by the Commissioner of Social Security and shall be disposed of as follows:

(A) In the case of amounts recovered arising out of a determination relating to subchapter II of this chapter, the amounts shall be transferred to the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and such amounts shall be deposited by the Managing Trustee into such Trust Fund.

(B) In the case of any other amounts recovered under this section, the amounts shall be deposited by the Commissioner of Social Security into the general fund of the Treasury as miscellaneous receipts.

(f) Finality of determination respecting penalty, assessment, or exclusion

A determination pursuant to subsection (a) of this section by the Commissioner of Social Security to impose a penalty or assessment, or to recommend an exclusion shall be final upon the expiration of the 60-day period referred to in subsection (d) of this section. Matters that were raised or that could have been raised in a hearing before the Commissioner of Social Security or in an appeal pursuant to subsection (d) of this section may not be raised as a defense to a civil action by the United States to collect a penalty or assessment imposed under this section.

(g) Notification of appropriate entities of finality of determination

Whenever the Commissioner's determination to impose a penalty or assessment under this section with respect to a medical provider or physician becomes final, the Commissioner shall notify the Secretary of the final determination and the reasons therefor, and the Secretary shall then notify the entities described in section 1320a–7a(h) of this title of such final determination.

(h) Injunction

Whenever the Commissioner of Social Security has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil monetary penalty under this section, the Commissioner of Social Security may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil monetary penalty and assessment if any such penalty were to be imposed or to seek other appropriate relief.

(i) Delegation of authority

(1) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II of this chapter. The Commissioner of Social Security may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General for purposes of any investigation under this section.

(2) The Commissioner of Social Security may delegate authority granted under this section to the Inspector General.

(j) "State agency" defined

For purposes of this section, the term ''State agency'' shall have the same meaning as in section 1320a–7a(i)(1) of this title.

(k) Liability of principal for acts of agents

A principal is liable for penalties and assessments under subsection (a) of this section, and for an exclusion under section 1320a–7 of this title based on a recommendation under subsection (a) of this section, for the actions of the principal's agent acting within the scope of the agency.

***(l)* Protection of ongoing criminal investigations**

As soon as the Inspector General, Social Security Administration, has reason to believe that fraud was involved in the application of an individual for monthly insurance benefits under subchapter II of this chapter or for benefits under subchapter VIII or XVI of this chapter, the Inspector General shall make available to the Commissioner of Social Security information identifying the individual, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that making the information so available in a particular investigation or redetermining the eligibility of the individual for such benefits would jeopardize the criminal prosecution of any person who is a subject of the investigation from which the information is derived.

(Aug. 14, 1935, ch. 531, title XI, § 1129, as added and amended Pub. L. 103–296, title I, § 108(b)(10)(A), title II, § 206(b)(1), (e)(1), Aug. 15, 1994, 108 Stat. 1483, 1509, 1515; Pub. L. 106–169, title II, § 251(b)(6), Dec. 14, 1999, 113 Stat. 1855; Pub. L. 108–203, title I, § 111(a), title II, § 201(a)(1), (b), (c), Mar. 2, 2004, 118 Stat. 507, 508.)

REFERENCES IN TEXT

Rule 4 of the Federal Rules of Civil Procedure, referred to in subsec. (b)(1), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Debt Collection Act of 1982, referred to in subsec. (e)(1)(D), is Pub. L. 97–365, Oct. 25, 1982, 96 Stat. 1749. For complete classification of this Act to the Code, see Short Title of 1982 Amendment note set out under section 5514 of Title 5, Government Employees and Organization, and Tables.

PRIOR PROVISIONS

A prior section 1320a–8, act Aug. 14, 1935, ch. 531, title XI, § 1129, as added Dec. 5, 1980, Pub. L. 96–499, title IX, § 914(a), 94 Stat. 2621; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(c)(4), 95 Stat. 827; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2354(a)(4), 98 Stat. 1100, related to coordinated audits, prior to repeal by Pub. L. 100–203, title IV, § 4118(m)(1)(A), (2), Dec. 22, 1987, 101 Stat. 1330–157, applicable to audits conducted after Dec. 22, 1987.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–203, § 201(a)(1), substantially rewrote par. (1). Prior to amendment, par. (1) read as follows: ''Any person (including an organization, agency, or other entity) who makes, or causes to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or the amount of—

''(A) monthly insurance benefits under subchapter II of this chapter,

''(B) benefits or payments under subchapter VIII of this chapter, or

''(C) benefits or payments under subchapter XVI of this chapter,

that the person knows or should know is false or misleading or knows or should know omits a material fact or makes such a statement with knowing disregard for the truth shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such statement or representation. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1320a–7 of this title, such a person

who is a medical provider or physician from participation in the programs under subchapter XVIII of this chapter.''

Subsec. (a)(3). Pub. L. 108–203, §111(a), added par. (3).

Subsec. (b)(3)(A). Pub. L. 108–203, §201(c)(1), struck out ''charging fraud or false statements'' after ''Federal or State crime''.

Subsec. (c)(1). Pub. L. 108–203, §201(c)(2), substituted '', representations, or actions'' for ''and representations''.

Subsec. (e)(1)(A). Pub. L. 108–203, §201(c)(3), substituted ''violation occurred'' for ''statement or representation referred to in subsection (a) of this section was made''.

Subsec. (e)(2)(B). Pub. L. 108–203, §201(b), substituted ''In the case of any other amounts recovered under this section,'' for ''In the case of amounts recovered arising out of a determination relating to subchapter VIII or XVI of this chapter,''.

1999—Pub. L. 106–169, §251(b)(6)(A), substituted ''II, VIII'' for ''II'' in section catchline.

Subsec. (a)(1)(B), (C). Pub. L. 106–169, §251(b)(6)(B), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(2). Pub. L. 106–169, §251(b)(6)(C), inserted ''or subchapter VIII of this chapter,'' after ''subchapter II of this chapter''.

Subsec. (e)(1)(C)(ii), (iii). Pub. L. 106–169, §251(b)(6)(D), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (e)(2)(B). Pub. L. 106–169, §251(b)(6)(E), substituted ''subchapter VIII or XVI'' for ''subchapter XVI''.

Subsec. (*l*). Pub. L. 106–169, §251(b)(6)(F), substituted ''subchapter VIII or XVI'' for ''subchapter XVI''.

1994—Subsec. (a)(1). Pub. L. 103–296, §108(b)(10)(A)(i), (ii), in closing provisions substituted ''Commissioner of Social Security'' for ''Secretary'', inserted ''recommend that the Secretary'' before ''exclude, as provided'', and struck out before period at end ''and to direct the appropriate State agency to exclude the person from participation in any State health care program permanently or for such period as the Secretary determines''.

Subsecs. (a)(2), (b)(1), (2), (c). Pub. L. 103–296, §108(b)(10)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 103–296, §108(b)(10)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Pub. L. 103–296, §108(b)(10)(A)(i), which directed that this section be amended by substituting ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, was also executed by substituting ''Commissioner's'' for ''Secretary's'' wherever appearing in subsec. (d), to reflect the probable intent of Congress, because Pub. L. 103–296, §108(b)(10)(A)(i), (iii)(I), substituted ''Commissioner of Social Security'' for ''Secretary'' throughout this section and in subsec. (g) substituted ''Commissioner's'' for ''Secretary's''.

Subsecs. (e), (f). Pub. L. 103–296, §108(b)(10)(A)(i), which directed amendment of this section by substituting ''Commissioner of Social Security'' for ''Secretary'' each place it appears, was executed in subsecs. (e) and (f) by making the substitution wherever appearing except where appearing before ''of the Treasury'' in subsec. (e)(1)(B) to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 103–296, §108(b)(10)(A)(iii), substituted ''Commissioner's'' for ''Secretary's'' and ''the Commissioner shall notify the Secretary of the final determination and the reasons therefor, and the Secretary shall then notify the entities described in section 1320a–7a(h) of this title of such final determination.'' for ''the provisions of section 1320a–7a(h) of this title shall apply.''

Subsecs. (h), (i). Pub. L. 103–296, §108(b)(10)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (k). Pub. L. 103–296, §108(b)(10)(A)(iv), inserted ''based on a recommendation under subsection (a) of this section'' after ''section 1320a–7 of this title''.

Subsec. (*l*). Pub. L. 103–296, §206(e)(1), added subsec. (*l*).

Pub. L. 103–296, §108(b)(10)(A)(i), (v), in subsec. (*l*) as added by Pub. L. 103–296, §206(e)(1), substituted ''Social Security Administration'' for ''Department of Health and Human Services'' and ''Commissioner of Social Security'' for ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title I, §111(b), Mar. 2, 2004, 118 Stat. 507, provided that: ''The amendment made by this section [amending this section] shall apply with respect to violations committed after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title II, §201(d), Mar. 2, 2004, 118 Stat. 508, provided that: ''The amendments made by this section [amending this section and section 1320a–8a of this title] shall apply with respect to violations committed after the date on which the Commissioner of Social Security implements the centralized computer file described in section 202 [set out as a note under section 902 of this title].'' [The centralized computer file was implemented Nov. 27, 2006, see 72 F.R. 27424.]

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(10)(A) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 206(e)(2) of Pub. L. 103–296 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1994.''

EFFECTIVE DATE

Section applicable to conduct occurring on or after Oct. 1, 1994, see section 206(b)(3) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 1320a–7 of this title.

STUDY ON POSSIBLE MEASURES TO IMPROVE FRAUD PREVENTION AND ADMINISTRATIVE PROCESSING

Pub. L. 106–169, title II, §210, Dec. 14, 1999, 113 Stat. 1842, provided that:

''(a) STUDY.—As soon as practicable after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner of Social Security, in consultation with the Inspector General of the Social Security Administration and the Attorney General, shall conduct a study of possible measures to improve—

''(1) prevention of fraud on the part of individuals entitled to disability benefits under section 223 of the Social Security Act [section 423 of this title] or benefits under section 202 of such Act [section 402 of this title] based on the beneficiary's disability, individuals eligible for supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter], and applicants for any such benefits; and

''(2) timely processing of reported income changes by individuals receiving such benefits.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report that contains the results of the Commissioner's study under subsection (a). The report shall contain such recommendations for legislative and administrative changes as the Commissioner considers appropriate.''

§ 1320a–8a. Administrative procedure for imposing penalties for false or misleading statements

(a) In general

Any person who—

(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to

or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter XVI of this chapter that the person knows or should know is false or misleading,

(2) makes such a statement or representation for such use with knowing disregard for the truth, or

(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter XVI of this chapter, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a penalty described in subsection (b) of this section to be imposed by the Commissioner of Social Security.

(b) Penalty

The penalty described in this subsection is—

(1) nonpayment of benefits under subchapter II of this chapter that would otherwise be payable to the person; and

(2) ineligibility for cash benefits under subchapter XVI of this chapter,

for each month that begins during the applicable period described in subsection (c) of this section.

(c) Duration of penalty

The duration of the applicable period, with respect to a determination by the Commissioner under subsection (a) of this section that a person has engaged in conduct described in subsection (a) of this section, shall be—

(1) six consecutive months, in the case of the first such determination with respect to the person;

(2) twelve consecutive months, in the case of the second such determination with respect to the person; and

(3) twenty-four consecutive months, in the case of the third or subsequent such determination with respect to the person.

(d) Effect on other assistance

A person subject to a period of nonpayment of benefits under subchapter II of this chapter or ineligibility for subchapter XVI of this chapter benefits by reason of this section nevertheless shall be considered to be eligible for and receiving such benefits, to the extent that the person would be receiving or eligible for such benefits but for the imposition of the penalty, for purposes of—

(1) determination of the eligibility of the person for benefits under subchapters XVIII and XIX of this chapter; and

(2) determination of the eligibility or amount of benefits payable under subchapter II or XVI of this chapter to another person.

(e) Definition

In this section, the term ''benefits under subchapter VIII or XVI of this chapter'' includes State supplementary payments made by the Commissioner pursuant to an agreement under section 1010a or 1382e(a) of this title or section 212(b) of Public Law 93–66, as the case may be.

(f) Consultations

The Commissioner of Social Security shall consult with the Inspector General of the Social Security Administration regarding initiating actions under this section.

(Aug. 14, 1935, ch. 531, title XI, § 1129A, as added Pub. L. 106–169, title II, § 207(a), Dec. 14, 1999, 113 Stat. 1837; amended Pub. L. 106–554, § 1(a)(1) [title V, § 518(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–74; Pub. L. 108–203, title II, § 201(a)(2), Mar. 2, 2004, 118 Stat. 508.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in subsec. (e), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–203 substantially rewrote text of subsec. (a). Prior to amendment, text read as follows: ''Any person who makes, or causes to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or the amount of—

''(1) monthly insurance benefits under subchapter II of this chapter; or

''(2) benefits or payments under subchapter XVI of this chapter,

that the person knows or should know is false or misleading or knows or should know omits a material fact or who makes such a statement with knowing disregard for the truth shall be subject to, in addition to any other penalties that may be prescribed by law, a penalty described in subsection (b) of this section to be imposed by the Commissioner of Social Security.''

2000—Subsec. (e). Pub. L. 106–554, § 1(a)(1) [title V, § 518(b)(2)(B), (D)], inserted ''1010a or'' after ''agreement under section'' and '', as the case may be'' before period at end.

Pub. L. 106–554, § 1(a)(1) [title V, § 518(b)(2)(C)], which directed the amendment of subsec. (e) by inserting ''1010A or'' before ''1382(e)(a)'', could not be executed because ''1382(e)(a)'' does not appear in text.

Pub. L. 106–554, § 1(a)(1) [title V, § 518(b)(2)(A)], which directed the amendment of subsec. (e) by inserting ''VIII or'' after ''benefits under'', was executed by making the insertion after ''benefits under subchapter'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 applicable with respect to violations committed after Nov. 27, 2006, see section 201(d) of Pub. L. 108–203, set out as a note under section 1320a–8 of this title.

EFFECTIVE DATE

Section applicable to statements and representations made on or after Dec. 14, 1999, see section 207(e) of Pub. L. 106–169, set out as an Effective Date of 1999 Amendment note under section 402 of this title.

REGULATIONS

Pub. L. 106–169, title II, § 207(d), Dec. 14, 1999, 113 Stat. 1838, provided that: ''Within 6 months after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner of Social Security shall develop regulations that prescribe the administrative process for making determinations under section 1129A of the Social Security Act [this section] (including when the applicable period in subsection (c) of such section shall commence), and

shall provide guidance on the exercise of discretion as to whether the penalty should be imposed in particular cases.''

§ 1320a–8b. Attempts to interfere with administration of this chapter

Whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this chapter, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this chapter, shall be fined not more than $5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be fined not more than $3,000, imprisoned not more than 1 year, or both. In this subsection, the term ''threats of force'' means threats of harm to the officer or employee of the United States or to a contractor of the Social Security Administration, or to a member of the family of such an officer or employee or contractor.

(Aug. 14, 1935, ch. 531, title XI, § 1129B, as added Pub. L. 108–203, title II, § 206, Mar. 2, 2004, 118 Stat. 512.)

§ 1320a–9. Demonstration projects

(a) Authority to approve demonstration projects

(1) In general

The Secretary may authorize States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of subchapter IV of this chapter.

(2) Limitation

The Secretary may authorize not more than 10 demonstration projects under paragraph (1) in each of fiscal years 1998 through 2003.

(3) Certain types of proposals required to be considered

(A) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to identify and address barriers that result in delays to adoptive placements for children in foster care.

(B) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to identify and address parental substance abuse problems that endanger children and result in the placement of children in foster care, including through the placement of children with their parents in residential treatment facilities (including residential treatment facilities for post-partum depression) that are specifically designed to serve parents and children together in order to promote family reunification and that can ensure the health and safety of the children in such placements.

(C) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to address kinship care.

(4) Limitation on eligibility

The Secretary may not authorize a State to conduct a demonstration project under this section if the State fails to provide health insurance coverage to any child with special needs (as determined under section 673(c) of this title) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents.

(5) Requirement to consider effect of project on terms and conditions of certain court orders

In considering an application to conduct a demonstration project under this section that has been submitted by a State in which there is in effect a court order determining that the State's child welfare program has failed to comply with the provisions of part B or E of subchapter IV of this chapter, or with the Constitution of the United States, the Secretary shall take into consideration the effect of approving the proposed project on the terms and conditions of the court order related to the failure to comply.

(b) Waiver authority

The Secretary may waive compliance with any requirement of part B or E of subchapter IV of this chapter which (if applied) would prevent a State from carrying out a demonstration project under this section or prevent the State from effectively achieving the purpose of such a project, except that the Secretary may not waive—

(1) any provision of section 627 of this title (as in effect before April 1, 1996), section 622(b)(9) of this title (as in effect after such date), or section 679 of this title; or

(2) any provision of such part E, to the extent that the waiver would impair the entitlement of any qualified child or family to benefits under a State plan approved under such part E.

(c) Treatment as program expenditures

For purposes of parts B and E of subchapter IV of this chapter, the Secretary shall consider the expenditures of any State to conduct a demonstration project under this section to be expenditures under subpart 1 or 2 of such part B, or under such part E, as the State may elect.

(d) Duration of demonstration

A demonstration project under this section may be conducted for not more than 5 years, unless in the judgment of the Secretary, the demonstration project should be allowed to continue.

(e) Application

Any State seeking to conduct a demonstration project under this section shall submit to the Secretary an application, in such form as the Secretary may require, which includes—

(1) a description of the proposed project, the geographic area in which the proposed project

would be conducted, the children or families who would be served by the proposed project, and the services which would be provided by the proposed project (which shall provide, where appropriate, for random assignment of children and families to groups served under the project and to control groups);

(2) a statement of the period during which the proposed project would be conducted;

(3) a discussion of the benefits that are expected from the proposed project (compared to a continuation of activities under the approved plan or plans of the State);

(4) an estimate of the costs or savings of the proposed project;

(5) a statement of program requirements for which waivers would be needed to permit the proposed project to be conducted;

(6) a description of the proposed evaluation design; and

(7) such additional information as the Secretary may require.

(f) Evaluations; report

Each State authorized to conduct a demonstration project under this section shall—

(1) obtain an evaluation by an independent contractor of the effectiveness of the project, using an evaluation design approved by the Secretary which provides for—

(A) comparison of methods of service delivery under the project, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management;

(B) comparison of outcomes for children and families (and groups of children and families) under the project, and such outcomes under a State plan or plans, for purposes of assessing the effectiveness of the project in achieving program goals; and

(C) any other information that the Secretary may require; and

(2) provide interim and final evaluation reports to the Secretary, at such times and in such manner as the Secretary may require.

(g) Cost neutrality

The Secretary may not authorize a State to conduct a demonstration project under this section unless the Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the project over its approved term (or such portion thereof or other period as the Secretary may find appropriate) will not exceed the amount of such funds that would be expended by the State under the State plans approved under parts B and E of subchapter IV of this chapter if the project were not conducted.

(Aug. 14, 1935, ch. 531, title XI, § 1130, as added Pub. L. 103–432, title II, § 208, Oct. 31, 1994, 108 Stat. 4457; amended Pub. L. 105–89, title III, § 301(a), (c), Nov. 19, 1997, 111 Stat. 2127, 2128; Pub. L. 108–40, § 5, June 30, 2003, 117 Stat. 837.)

REFERENCES IN TEXT

Parts B and E of subchapter IV of this chapter, referred to in subsecs. (a) to (c) and (g), are classified to sections 620 et seq. and 670 et seq., respectively, of this title.

Section 627 of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 103–432, title II, § 202(c), Oct. 31, 1994, 108 Stat. 4454.

PRIOR PROVISIONS

A prior section 1130 of act Aug. 14, 1935, was classified to section 1320b of this title prior to repeal by Pub. L. 93–647, § 3(e)(1), Jan. 4, 1975, 88 Stat. 2349.

AMENDMENTS

2003—Subsec. (a)(2). Pub. L. 108–40 substituted ''2003'' for ''2002''.

1997—Subsec. (a). Pub. L. 105–89, § 301(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary may authorize not more than 10 States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of subchapter IV of this chapter.''

Subsec. (d). Pub. L. 105–89, § 301(c), inserted before period at end '', unless in the judgment of the Secretary, the demonstration project should be allowed to continue''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

CONSTRUCTION OF 1997 AMENDMENT

Section 301(b) of Pub. L. 105–89 provided that: ''Nothing in the amendment made by subsection (a) [amending this section] shall be construed as affecting the terms and conditions of any demonstration project approved under section 1130 of the Social Security Act (42 U.S.C. 1320a–9) before the date of the enactment of this Act [Nov. 19, 1997].''

§ 1320a–10. Effect of failure to carry out State plan

In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability: *Provided*, *however*, That this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action.

(Aug. 14, 1935, ch. 531, title XI, § 1130A, as added Pub. L. 103–432, title II, § 211(a), Oct. 31, 1994, 108 Stat. 4460.)

EFFECTIVE DATE

Section 211(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to actions pending on the date of the enactment of this Act [Oct. 31, 1994] and to actions brought on or after such date of enactment.''

§ 1320b. Repealed. Pub. L. 93–647, § 3(e)(1), Jan. 4, 1975, 88 Stat. 2349

Section, act Aug. 14, 1935, ch. 531, title XI, § 1130, as added Oct. 20, 1972, Pub. L. 92–512, title III, § 301(a), 86

Stat. 945; amended July 9, 1973, Pub. L. 93–66, title II, § 221, 87 Stat. 159; Dec. 31, 1973, Pub. L. 93–233, § 18(j), 87 Stat. 970, set out limitations on funds for certain social services.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as an Effective Date of 1975 Amendment note under section 303 of this title.

SOCIAL SERVICES REGULATIONS POSTPONED

Pub. L. 93–233, § 12, Dec. 31, 1973, 87 Stat. 959, as amended by Pub. L. 93–647, § 3(g), Jan. 4, 1975, 88 Stat. 2349, provided that:

''(a) Subject to subsection (b), no regulation and no modification of any regulation, promulgated by the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter referred to as the 'Secretary') after January 1, 1973, shall be effective for any period which begins prior to October 1, 1975, if (and insofar as) such regulation or modification of a regulation pertains (directly or indirectly) to the provisions of law contained in section 3(a)(4)(A), 402(a)(19)(G), 403(a)(3)(A), 603(a)(1)(A), 1003(a)(3)(A), 1403(a)(3)(A), or 1603(a)(4)(A) of the Social Security Act [section 303(a)(4)(A), 602(a)(19)(G), 603(a)(3)(A), 803(a)(1)(A), 1203(a)(3)(A), 1353(a)(3)(A), or 1383(a)(4)(A) of this title].

''(b)(1) The provisions of subsection (a) shall not be applicable to any regulation relating to 'scope of programs', if such regulation is identical (except as provided in the succeeding sentence) to the provisions of section 221.0 of the regulations (relating to social services) proposed by the Secretary and published in the Federal Register on May 1, 1973. There shall be deleted from the first sentence of subsection (b) of such section 221.0 the phrase 'meets all the applicable requirements of this part and'.

''(2) The provisions of subsection (a) shall not be applicable to any regulation relating to 'limitations on total amount of Federal funds payable to States for services', if such regulation is identical (except as provided in the succeeding sentence) to the provisions of section 221.55 of the regulations so proposed and published on May 1, 1973. There shall be deleted from subsection (d)(1) of such section 221.55 the phrase '(as defined under day care services for children)'; and, in lieu of the sentence contained in subsection (d)(5) of such section 221.55, there shall be inserted the following: 'Services provided to a child who is under foster care in a foster family home (as defined in section 408 of the Social Security Act [section 608 of this title]) or in a childcare institution (as defined in such section [section 608 of this title]), or while awaiting placement in such a home or institution, but only if such services are needed by such child because he is under foster care.'.

''(3) The provisions of subsection (a) shall not be applicable to any regulation relating to 'rates and amounts of Federal financial participation for Puerto Rico, the Virgin Islands, and Guam', if such regulation is identical to the provisions of section 221.56 of the regulations so proposed and published on May 1, 1973.

''(4) The provisions of subsection (a) shall not be construed to preclude the Secretary from making any modification in any regulation (described in subsection (a)) if such modification is technically necessary to take account of the enactment of section 301 or 302 of the Social Security Amendments of 1972 [enacting subchapters XVI and VI of this chapter].

''(c) Notwithstanding the provisions of section 553(d) of title 5, United States Code, any regulation described in subsection (b) may become effective upon the date of its publication in the Federal Register.''

Similar provisions were contained in the following prior act: Pub. L. 93–66, title II, § 220, July 9, 1973, 87 Stat. 158.

MODIFICATION OF SOCIAL SERVICES REGULATIONS

Section 3(g) of Pub. L. 93–647 provided in part that: ''Notwithstanding the provisions of section 12(a) of Public Law 93–233 [set out as a note above], the Secretary may make any modification in any regulation described in that section if the modification is necessary to implement the provisions of this part.''

ADJUSTMENT OF ALLOTMENT TO STATE FOR FISCAL YEAR ENDING JUNE 30, 1973

Pub. L. 92–603, title IV, § 403, Oct. 30, 1972, 86 Stat. 1487, provided for the computation of the allotment of each state for the fiscal year ending June 30, 1973.

§ 1320b–1. Notification of Social Security claimant with respect to deferred vested benefits

(a) Whenever—

(1) the Commissioner of Social Security makes a finding of fact and a decision as to—

(A) the entitlement of any individual to monthly benefits under section 402, 423, or 428 of this title, or

(B) the entitlement of any individual to a lump-sum death payment payable under section 402(i) of this title on account of the death of any person to whom such individual is related by blood, marriage, or adoption,

(2) the Secretary makes a finding of fact and a decision as to the entitlement under section 426 of this title of any individual to hospital insurance benefits under part A of subchapter XVIII of this chapter, or

(3) the Commissioner of Social Security is requested to do so—

(A) by any individual with respect to whom the Commissioner of Social Security holds information obtained under section 6057 of title 26, or

(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 404(d) of this title,

the Commissioner of Social Security shall transmit to the individual referred to in paragraph (1) or (2) or the individual making the request under paragraph (3) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Commissioner of Social Security pursuant to such section 6057 with respect to the individual referred to in paragraph (1), (2), or (3)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

(b)(1) For purposes of section 401(g)(1) of this title, expenses incurred in the administration of subsection (a) of this section shall be deemed to be expenses incurred for the administration of subchapter II of this chapter.

(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Commissioner of Social Security deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1131, as added Pub. L. 93–406, title II, § 1032, Sept. 2, 1974, 88 Stat. 947; amended Pub. L. 98–369, div. B, title

VI, § 2663(e)(7), July 18, 1984, 98 Stat. 1168; Pub. L. 103–296, title I, § 108(b)(11), Aug. 15, 1994, 108 Stat. 1484.)

REFERENCES IN TEXT

Part A of subchapter XVIII of this chapter, referred to in subsec. (a)(2), is classified to section 1395c et seq. of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 108(b)(11)(A), (G), in closing provisions substituted ''the Commissioner of Social Security shall transmit'' for ''he shall transmit'', ''paragraph (1) or (2)'' for ''paragraph (1)'', ''paragraph (3)'' for ''paragraph (2)'', ''Commissioner of Social Security pursuant to'' for ''Secretary pursuant to'', and ''paragraph (1), (2), or (3)(A)'' for ''paragraph (1) or (2)(A)''.

Subsec. (a)(1). Pub. L. 103–296, § 108(b)(11)(A)–(D), substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions, inserted ''or'' at end of subpar. (A), struck out ''or'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''the entitlement under section 426 of this title of any individual to hospital insurance benefits under part A of subchapter XVIII of this chapter, or''.

Subsec. (a)(2). Pub. L. 103–296, § 108(b)(11)(F), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 103–296, § 108(b)(11)(A), (E), redesignated par. (2) as (3) and substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions and in subpar. (A).

Subsec. (b)(2). Pub. L. 103–296, § 108(b)(11)(A), substituted ''Commissioner of Social Security'' for ''Secretary''.

1984—Subsec. (a). Pub. L. 98–369, § 2663(e)(7)(B), realigned margin of provisions following par. (2)(B).

Subsec. (a)(2)(B). Pub. L. 98–369, § 2663(e)(7)(A), substituted a comma for the period after ''section 404(d) of this title''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1978, see section 1034 of Pub. L. 93–406, set out as a note under section 6057 of Title 26, Internal Revenue Code.

§ 1320b–2. Period within which certain claims must be filed

(a) Claims

Notwithstanding any other provision of this chapter (but subject to subsection (b) of this section), any claim by a State for payment with respect to an expenditure made during any calendar quarter by the State—

(1) in carrying out a State plan approved under subchapter I, IV, X, XIV, XVI, XIX, or XX of this chapter, or

(2) under any other provision of this chapter which provides (on an entitlement basis) for Federal financial participation in expenditures made under State plans or programs,

shall be filed (in such form and manner as the Secretary shall by regulations prescribe) within the two-year period which begins on the first day of the calendar quarter immediately following such calendar quarter; and payment shall not be made under this chapter on account of any such expenditure if claim therefor is not made within such two-year period; except that this subsection shall not be applied so as to deny payment with respect to any expenditure involving court-ordered retroactive payments or audit exceptions, or adjustments to prior year costs.

(b) Waiver

The Secretary shall waive the requirement imposed under subsection (a) of this section with respect to the filing of any claim if he determines (in accordance with regulations) that there was good cause for the failure by the State to file such claim within the period prescribed under subsection (a) of this section. Any such waiver shall be only for such additional period of time as may be necessary to provide the State with a reasonable opportunity to file such claim. A failure to file a claim within such time period which is attributable to neglect or administrative inadequacies shall be deemed not to be for good cause.

(Aug. 14, 1935, ch. 531, title XI, § 1132, as added Pub. L. 96–272, title III, § 306(a), June 17, 1980, 94 Stat. 530; amended Pub. L. 97–35, title XXI, § 2193(c)(5), Aug. 13, 1981, 95 Stat. 827.)

AMENDMENTS

1981—Subsec. (a)(1). Pub. L. 97–35 substituted ''subchapter I, IV, X'' for ''subchapter I, IV, V, X''.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE

Section 306(b), (c) of Pub. L. 96–272 provided that:

''(b)(1) The amendment made by subsection (a) [enacting this section] shall be effective only in the case of claims filed on account of expenditures made in calendar quarters commencing on or after October 1, 1979.

''(2) In the case of claims filed prior to the date of enactment of this Act [June 17, 1980] on account of expenditures described in section 1132 of the Social Security Act [this section] made in calendar quarters commencing prior to October 1, 1979, there shall be no time limit for the payment of such claims.

''(3) In the case of such expenditures made in calendar quarters commencing prior to October 1, 1979, for which no claim has been filed on or before the date of enactment of this Act, payment shall not be made under this Act on account of any such expenditure unless claim therefor is filed (in such form and manner as the Secretary shall by regulation prescribe) prior to January 1, 1981.

''(4) The provisions of this subsection shall not be applied so as to deny payment with respect to any expenditure involving adjustments to prior year costs or court-ordered retroactive payments or audit exceptions. The Secretary may waive the requirements of paragraph (3) in the same manner as under section 1132(b) of the Social Security Act [subsec. (b)(3) of this section].

''(c) Notwithstanding any other provision of law, there shall be no time limit for the filing or payment of such claims except as provided in this section, unless such other provision of law, in imposing such a time limitation, specifically exempts such filing or payment from the provisions of this section.''

§ 1320b–3. Applicants or recipients under public assistance programs not to be required to make election respecting certain veterans' benefits

(a) Supplemental Security Income program

Notwithstanding any other provision of law (but subject to subsection (b) of this section), no individual who is an applicant for or recipient of aid or assistance under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or of benefits under the Supplemental Security Income program established by subchapter XVI of this chapter shall—

(1) be required, as a condition of eligibility for (or of continuing to receive) such aid, assistance, or benefits, to make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 with respect to pension paid by the Secretary of Veterans Affairs, or

(2) by reason of failure or refusal to make such an election, be denied (or suffer a reduction in the amount of) such aid, assistance, or benefits.

(b) Period of effectiveness

The provisions of subsection (a) of this section shall be applicable only with respect to an individual, who is an applicant for or recipient of aid, assistance, or benefits described in subsection (a) of this section, during a period with respect to which there is in effect—

(1) in case such individual is an applicant for or recipient of aid or assistance under a State plan referred to in subsection (a) of this section, in the State having such plan, or

(2) in case such individual is an applicant for or recipient of benefits under the Supplemental Security Income program established by subchapter XVI of this chapter, in the State in which the individual applies for or receives such benefits,

a State plan for medical assistance, approved under subchapter XIX of this chapter, under which medical assistance is available to such individual only for periods for which such individual is a recipient of aid, assistance, or benefits described in subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1133, as added Pub. L. 96–272, title III, § 310(a)(1), June 17, 1980, 94 Stat. 532; amended Pub. L. 102–54, § 13(q)(3)(B)(iii), June 13, 1991, 105 Stat. 279; Pub. L. 104–193, title I, § 108(g)(6), Aug. 22, 1996, 110 Stat. 2168.)

References in Text

Section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, referred to in subsec. (a)(1), is section 306 of Pub. L. 95–588, title III, Nov. 4, 1978, 92 Stat. 2508, which is set out as a note under section 1521 of Title 38, Veterans' Benefits.

Amendments

1996—Subsec. (a). Pub. L. 104–193 substituted ''subchapter I, X, XIV, or XVI of this chapter,'' for ''subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter,''.

1991—Subsec. (a)(1). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Effective Date

Section 310(a)(2) of Pub. L. 96–272 provided that: ''The amendment made by paragraph (1) [enacting this section] shall be effective on and after January 1, 1979; except that nothing contained in such amendment shall be construed to authorize or require any payment (or increase in payment) of any aid or assistance or benefits referred to in section 1133(a) of the Social Security Act [subsec. (a) of this section] (as added by paragraph (1)) for any benefit period which begins prior to the date of enactment of this Act [June 17, 1980].''

Continuing Medicaid Eligibility for Certain Recipients of Veterans' Administration Pensions

Section 310(b)(2) of Pub. L. 96–272 provided that:

''(A) The Administrator shall provide to each individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) [this section] applies and who is eligible to make or has made an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38, Veterans' Benefits], a written notice, in clear and understandable language, which (i) describes the consequences to such individual (and possibly to such individual's family), in terms of a determination or possible determination of ineligibility for medical assistance under a State plan approved under title XIX of the Social Security Act [subchapter XIX of this chapter], of making an election with respect to pension under such section 306, (ii) describes the provisions of subparagraph (B) of this paragraph and subsection (a) of this section, (iii) sets forth other relevant information that would be helpful to such individual in making an informed decision concerning such an election or the disaffirmation thereof, and (iv) in the case of any individual who has made such an election, is accompanied by a form prepared for the purpose of enabling such individual to file with the Administrator a written disaffirmation of such an election.

''(B) Notwithstanding any other provision of law—

''(i) any individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) [this section] applies may, within the 90-day period beginning with the day that there is mailed to such individual (at such individual's last known mailing address) a notice referred to in subparagraph (A), disaffirm an election previously made by such individual under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38] by completing and mailing to the Administrator the form furnished such individual for such purpose by the Administrator pursuant to subparagraph (A),

''(ii) whenever any such individual files such a disaffirmation with the Administrator, the amount of pension payable to such individual shall be adjusted, beginning with the first calendar month which commences after the receipt by the Administrator of such disaffirmation, to the amount that such pension would have been if such an election by such individual had not been made,

''(iii) any individual who has filed a disaffirmation, pursuant to this subparagraph, of an election made by such individual under such section 306 may again make an election thereunder, but such subsequent

election may not be disaffirmed under this subsection, and

''(iv) no indebtedness to the United States, as a result of the disaffirmation by an individual, pursuant to this subparagraph, of an election made by such individual under such section 306 shall be considered to arise from the payment of pension pursuant to such an election.

''(C) The Administrator shall promptly advise the Secretary of Health, Education, and Welfare [now Health and Human Services], and provide identification of the individuals involved and other pertinent information with respect to (i) disaffirmations of elections made by individuals pursuant to subparagraph (B), (ii) individuals who, by failing to disaffirm within the 90-day period prescribed in subparagraph (B), are deemed to have reaffirmed elections previously made, and (iii) individuals who, after having disaffirmed an election under subparagraph (B), subsequently again make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38]. The Secretary, upon receipt of any such information with respect to an individual, shall promptly notify the appropriate agencies administering State plans approved under title I, X, XIV, XIX, and part A of title IV of the Social Security Act [subchapters I, X, XIV, XIX, and part A of subchapter IV of this chapter], and State agencies making supplemental payments pursuant to section 1616 of such Act [section 1382e of this title] or an agreement entered into pursuant to section 212(a) of Public Law 93–66 [set out as a note under section 1382 of this title].''

§ 1320b–4. Nonprofit hospital or critical access hospital philanthropy

For purposes of determining, under subchapters XVIII and XIX of this chapter, the reasonable costs of services provided by nonprofit hospitals or critical access hospitals, the following items shall not be deducted from the operating costs of such hospitals or critical access hospitals:

(1) A grant, gift, or endowment, or income therefrom, which is to or for such a hospital and which has not been designated by the donor for paying any specific operating costs.

(2) A grant or similar payment which is to such a hospital, which was made by a governmental entity, and which is not available under the terms of the grant or payment for use as operating funds.

(3) Those types of donor designated grants and gifts (including grants and similar payments which are made by a governmental entity), and income therefrom, which the Secretary determines, in the best interests of needed health care, should be encouraged.

(4) The proceeds from the sale or mortgage of any real estate or other capital asset of such a hospital, which real estate or asset the hospital acquired through gift or grant, if such proceeds are not available for use as operating funds under the terms of the gift or grant.

Paragraph (4) shall not apply to the recovery of the appropriate share of depreciation when gains or losses are realized from the disposal of depreciable assets.

(Aug. 14, 1935, ch. 531, title XI, § 1134, as added Pub. L. 96–499, title IX, § 901(a), Dec. 5, 1980, 94 Stat. 2611; amended Pub. L. 97–35, title XXI, § 2193(c)(6), Aug. 13, 1981, 95 Stat. 827; Pub. L. 97–248, title I, § 137(b)(5), Sept. 3, 1982, 96 Stat. 377; Pub. L. 101–239, title VI, § 6003(g)(3)(D)(iii), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 105–33, title IV, § 4201(c)(1), Aug. 5, 1997, 111 Stat. 373.)

AMENDMENTS

1997—Pub. L. 105–33 substituted ''critical access'' for ''rural primary care'' in two places in introductory provisions.

1989—Pub. L. 101–239 substituted ''hospitals or rural primary care hospitals'' for ''hospitals'' in two places in introductory provisions.

1982—Par. (4). Pub. L. 97–248 substituted ''sale'' for ''scale''.

1981—Pub. L. 97–35 substituted ''subchapters XVIII and'' for ''subchapters V, XVIII, and'' in provision preceding par. (1).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE

Section 901(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to grants, gifts, and endowments, and income therefrom, made or established after the date of the enactment of this Act [Dec. 5, 1980].''

§ 1320b–5. Authority to waive requirements during national emergencies

(a) Purpose

The purpose of this section is to enable the Secretary to ensure to the maximum extent feasible, in any emergency area and during an emergency period (as defined in subsection (g)(1) of this section)—

(1) that sufficient health care items and services are available to meet the needs of individuals in such area enrolled in the programs under subchapters XVIII, XIX, and XXI of this chapter; and

(2) that health care providers (as defined in subsection (g)(2) of this section) that furnish such items and services in good faith, but that are unable to comply with one or more requirements described in subsection (b) of this section, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

(b) Secretarial authority

To the extent necessary to accomplish the purpose specified in subsection (a) of this section, the Secretary is authorized, subject to the provisions of this section, to temporarily waive or modify the application of, with respect to health care items and services furnished by a

health care provider (or classes of health care providers) in any emergency area (or portion of such an area) during any portion of an emergency period, the requirements of subchapters XVIII, XIX, or XXI of this chapter, or any regulation thereunder (and the requirements of this subchapter other than this section, and regulations thereunder, insofar as they relate to such subchapters), pertaining to—

(1)(A) conditions of participation or other certification requirements for an individual health care provider or types of providers,

(B) program participation and similar requirements for an individual health care provider or types of providers, and

(C) pre-approval requirements;

(2) requirements that physicians and other health care professionals be licensed in the State in which they provide such services, if they have equivalent licensing in another State and are not affirmatively excluded from practice in that State or in any State a part of which is included in the emergency area;

(3) actions under section 1395dd of this title (relating to examination and treatment for emergency medical conditions and women in labor) for—

(A) a transfer of an individual who has not been stabilized in violation of subsection (c) of such section if the transfer is necessitated by the circumstances of the declared emergency in the emergency area during the emergency period; or

(B) the direction or relocation of an individual to receive medical screening in an alternate location pursuant to an appropriate State emergency preparedness plan;

(4) sanctions under section 1395nn(g) of this title (relating to limitations on physician referral);

(5) deadlines and timetables for performance of required activities, except that such deadlines and timetables may only be modified, not waived;

(6) limitations on payments under section 1395w–21(i) of this title for health care items and services furnished to individuals enrolled in a Medicare+Choice plan by health care professionals or facilities not included under such plan; and

(7) sanctions and penalties that arise from noncompliance with the following requirements (as promulgated under the authority of section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note)—[1]

(A) section 164.510 of title 45, Code of Federal Regulations, relating to—

(i) requirements to obtain a patient's agreement to speak with family members or friends; and

(ii) the requirement to honor a request to opt out of the facility directory;

(B) section 164.520 of such title, relating to the requirement to distribute a notice; or

(C) section 164.522 of such title, relating to—

(i) the patient's right to request privacy restrictions; and

(ii) the patient's right to request confidential communications.

Insofar as the Secretary exercises authority under paragraph (6) with respect to individuals enrolled in a Medicare+Choice plan, to the extent possible given the circumstances, the Secretary shall reconcile payments made on behalf of such enrollees to ensure that the enrollees do not pay more than would be required had they received services from providers within the network of the plan and may reconcile payments to the organization offering the plan to ensure that such organization pays for services for which payment is included in the capitation payment it receives under part C of subchapter XVIII of this chapter. A waiver or modification provided for under paragraph (3) or (7) shall only be in effect if such actions are taken in a manner that does not discriminate among individuals on the basis of their source of payment or of their ability to pay, and shall be limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. A waiver or modification under such paragraph (7) shall be withdrawn after such period and the provider shall comply with the requirements under such paragraph for any patient still under the care of the provider.

(c) Authority for retroactive waiver

A waiver or modification of requirements pursuant to this section may, at the Secretary's discretion, be made retroactive to the beginning of the emergency period or any subsequent date in such period specified by the Secretary.

(d) Certification to Congress

The Secretary shall provide a certification and advance written notice to the Congress at least two days before exercising the authority under this section with respect to an emergency area. Such a certification and notice shall include—

(1) a description of—

(A) the specific provisions that will be waived or modified;

(B) the health care providers to whom the waiver or modification will apply;

(C) the geographic area in which the waiver or modification will apply; and

(D) the period of time for which the waiver or modification will be in effect; and

(2) a certification that the waiver or modification is necessary to carry out the purpose specified in subsection (a) of this section.

(e) Duration of waiver

(1) In general

A waiver or modification of requirements pursuant to this section terminates upon—

(A) the termination of the applicable declaration of emergency or disaster described in subsection (g)(1)(A) of this section;

(B) the termination of the applicable declaration of public health emergency described in subsection (g)(1)(B) of this section; or

(C) subject to paragraph (2), the termination of a period of 60 days from the date the waiver or modification is first published (or, if applicable, the date of extension of the waiver or modification under paragraph (2)).

[1] So in original. A second closing parenthesis probably should precede the dash.

(2) Extension of 60-day periods

The Secretary may, by notice, provide for an extension of a 60-day period described in paragraph (1)(C) (or an additional period provided under this paragraph) for additional period or periods (not to exceed, except as subsequently provided under this paragraph, 60 days each), but any such extension shall not affect or prevent the termination of a waiver or modification under subparagraph (A) or (B) of paragraph (1).

(f) Report to Congress

Within one year after the end of the emergency period in an emergency area in which the Secretary exercised the authority provided under this section, the Secretary shall report to the Congress regarding the approaches used to accomplish the purposes described in subsection (a) of this section, including an evaluation of such approaches and recommendations for improved approaches should the need for such emergency authority arise in the future.

(g) Definitions

For purposes of this section:

(1) Emergency area; emergency period

An ''emergency area'' is a geographical area in which, and an ''emergency period'' is the period during which, there exists—

(A) an emergency or disaster declared by the President pursuant to the National Emergencies Act [50 U.S.C. 1601 et seq.] or the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.]; and

(B) a public health emergency declared by the Secretary pursuant to section 247d of this title.

(2) Health care provider

The term ''health care provider'' means any entity that furnishes health care items or services, and includes a hospital or other provider of services, a physician or other health care practitioner or professional, a health care facility, or a supplier of health care items or services.

(Aug. 14, 1935, ch. 531, title XI, §1135, as added Pub. L. 107–188, title I, §143(a), June 12, 2002, 116 Stat. 627; amended Pub. L. 108–276, §9, July 21, 2004, 118 Stat. 863.)

REFERENCES IN TEXT

Part C of subchapter XVIII of this chapter, referred to in subsec. (b), is classified to section 1395w–21 et seq. of this title.

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (b)(7), is section 264(c) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

The National Emergencies Act, referred to in subsec. (g)(1)(A), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (g)(1)(A), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

PRIOR PROVISIONS

A prior section 1320b–5, act Aug. 14, 1935, ch. 531, title XI, §1135, as added Pub. L. 97–35, title XXI, §2173(c), Aug. 13, 1981, 95 Stat. 809; amended Pub. L. 97–248, title I, §101(b)(3), Sept. 3, 1982, 96 Stat. 335; Pub. L. 99–509, title IX, §9343(f), Oct. 21, 1986, 100 Stat. 2041; Pub. L. 100–203, title IV, §4068(b), Dec. 22, 1987, 101 Stat. 1330–114; Pub. L. 100–360, title IV, §411(g)(6), July 1, 1988, 102 Stat. 785; Pub. L. 103–432, title I, §147(c)(2), Oct. 31, 1994, 108 Stat. 4429, related to development of model prospective rate methodology, prior to repeal by Pub. L. 106–113, div. B, §1000(a)(6) [title III, §321(*l*)], Nov. 29, 1999, 113 Stat. 1536, 1501A–368, effective Nov. 29, 1999.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–276, §9(5), inserted at end of concluding provisions: ''A waiver or modification provided for under paragraph (3) or (7) shall only be in effect if such actions are taken in a manner that does not discriminate among individuals on the basis of their source of payment or of their ability to pay, and shall be limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. A waiver or modification under such paragraph (7) shall be withdrawn after such period and the provider shall comply with the requirements under such paragraph for any patient still under the care of the provider.''

Subsec. (b)(3). Pub. L. 108–276, §9(1), added par. (3) and struck out former par. (3) which read as follows: ''sanctions under section 1395dd of this title (relating to examination and treatment for emergency medical conditions and women in labor) for a transfer of an individual who has not been stabilized in violation of subsection (c) of this section of such section if the transfer arises out of the circumstances of the emergency;''.

Subsec. (b)(7). Pub. L. 108–276, §9(2)–(4), added par. (7).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE

Pub. L. 107–188, title I, §143(b), June 12, 2002, 116 Stat. 629, provided that: ''The amendment made by subsection (a) [enacting this section] shall be effective on and after September 11, 2001.''

§ 1320b–6. Exclusion of representatives and health care providers convicted of violations from participation in social security programs

(a) In general

The Commissioner of Social Security shall exclude from participation in the social security programs any representative or health care provider—

(1) who is convicted of a violation of section 408 or 1383a of this title;

(2) who is convicted of any violation under title 18 relating to an initial application for or continuing entitlement to, or amount of, benefits under subchapter II of this chapter, or an initial application for or continuing eligibility for, or amount of, benefits under subchapter XVI of this chapter; or

(3) who the Commissioner determines has committed an offense described in section 1320a–8(a)(1) of this title.

(b) Notice, effective date, and period of exclusion

(1) An exclusion under this section shall be effective at such time, for such period, and upon such reasonable notice to the public and to the individual excluded as may be specified in regulations consistent with paragraph (2).

(2) Such an exclusion shall be effective with respect to services furnished to any individual on or after the effective date of the exclusion. Nothing in this section may be construed to preclude, in determining disability under subchapter II of this chapter or subchapter XVI of this chapter, consideration of any medical evidence derived from services provided by a health care provider before the effective date of the exclusion of the health care provider under this section.

(3)(A) The Commissioner shall specify, in the notice of exclusion under paragraph (1), the period of the exclusion.

(B) Subject to subparagraph (C), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be 5 years, except that the Commissioner may waive the exclusion in the case of an individual who is the sole source of essential services in a community. The Commissioner's decision whether to waive the exclusion shall not be reviewable.

(C) In the case of an exclusion of an individual under subsection (a) of this section based on a conviction or a determination described in subsection (a)(3) of this section occurring on or after December 14, 1999, if the individual has (before, on, or after December 14, 1999) been convicted, or if such a determination has been made with respect to the individual—

(i) on one previous occasion of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be not less than 10 years; or

(ii) on two or more previous occasions of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be permanent.

(c) Notice to State agencies

The Commissioner shall promptly notify each appropriate State agency employed for the purpose of making disability determinations under section 421 or 1383b(a) of this title—

(1) of the fact and circumstances of each exclusion effected against an individual under this section; and

(2) of the period (described in subsection (b)(3) of this section) for which the State agency is directed to exclude the individual from participation in the activities of the State agency in the course of its employment.

(d) Notice to State licensing agencies

The Commissioner shall—

(1) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual excluded from participation under this section of the fact and circumstances of the exclusion;

(2) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy; and

(3) request that the State or local agency or authority keep the Commissioner and the Inspector General of the Social Security Administration fully and currently informed with respect to any actions taken in response to the request.

(e) Notice, hearing, and judicial review

(1) Any individual who is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Commissioner to the same extent as is provided in section 405(b) of this title, and to judicial review of the Commissioner's final decision after such hearing as is provided in section 405(g) of this title.

(2) The provisions of section 405(h) of this title shall apply with respect to this section to the same extent as it is applicable with respect to subchapter II of this chapter.

(f) Application for termination of exclusion

(1) An individual excluded from participation under this section may apply to the Commissioner, in the manner specified by the Commissioner in regulations and at the end of the minimum period of exclusion provided under subsection (b)(3) of this section and at such other times as the Commissioner may provide, for termination of the exclusion effected under this section.

(2) The Commissioner may terminate the exclusion if the Commissioner determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Commissioner at the time of the exclusion, that—

(A) there is no basis under subsection (a) of this section for a continuation of the exclusion; and

(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

(3) The Commissioner shall promptly notify each State agency employed for the purpose of making disability determinations under section 421 or 1383b(a) of this title of the fact and circumstances of each termination of exclusion made under this subsection.

(g) Availability of records of excluded representatives and health care providers

Nothing in this section shall be construed to have the effect of limiting access by any applicant or beneficiary under subchapter II or XVI of this chapter, any State agency acting under section 421 or 1383b(a) of this title, or the Commissioner to records maintained by any representative or health care provider in connection with services provided to the applicant or beneficiary prior to the exclusion of such representative or health care provider under this section.

(h) Reporting requirement

Any representative or health care provider participating in, or seeking to participate in, a social security program shall inform the Commissioner, in such form and manner as the Commissioner shall prescribe by regulation, whether such representative or health care provider has been convicted of a violation described in subsection (a) of this section.

(i) Delegation of authority

The Commissioner may delegate authority granted by this section to the Inspector General.

(j) Definitions

For purposes of this section:

(1) Exclude

The term ''exclude'' from participation means—

(A) in connection with a representative, to prohibit from engaging in representation of an applicant for, or recipient of, benefits, as a representative payee under section 405(j) or section 1383(a)(2)(A)(ii) of this title, or otherwise as a representative, in any hearing or other proceeding relating to entitlement to benefits; and

(B) in connection with a health care provider, to prohibit from providing items or services to an applicant for, or recipient of, benefits for the purpose of assisting such applicant or recipient in demonstrating disability.

(2) Social security program

The term ''social security programs'' means the program providing for monthly insurance benefits under subchapter II of this chapter, and the program providing for monthly supplemental security income benefits to individuals under subchapter XVI of this chapter (including State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66).

(3) Convicted

An individual is considered to have been ''convicted'' of a violation—

(A) when a judgment of conviction has been entered against the individual by a Federal, State, or local court, except if the judgment of conviction has been set aside or expunged;

(B) when there has been a finding of guilt against the individual by a Federal, State, or local court;

(C) when a plea of guilty or nolo contendere by the individual has been accepted by a Federal, State, or local court; or

(D) when the individual has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(Aug. 14, 1935, ch. 531, title XI, § 1136, as added Pub. L. 106–169, title II, § 208(a), Dec. 14, 1999, 113 Stat. 1839.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in subsec. (j)(2), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

PRIOR PROVISIONS

A prior section 1320b–6, act Aug. 14, 1935, ch. 531, title XI, § 1136, as added Pub. L. 98–369, div. B, title VI, § 2630, July 18, 1984, 98 Stat. 1137; amended Pub. L. 99–514, title XVIII, § 1883(c)(2), Oct. 22, 1986, 100 Stat. 2918, related to pilot projects to demonstrate use of integrated service delivery systems for human services programs, prior to repeal by Pub. L. 104–193, title I, §§ 108(q)(7), 116, Aug. 22, 1996, 110 Stat. 2168, 2181, effective July 1, 1997, with certain transition rules.

EFFECTIVE DATE

Pub. L. 106–169, title II, § 208(b), Dec. 14, 1999, 113 Stat. 1842, provided that: ''The amendment made by this section [enacting this section] shall apply with respect to convictions of violations described in paragraphs (1) and (2) of section 1136(a) of the Social Security Act [subsec. (a) of this section] and determinations described in paragraph (3) of such section occurring on or after the date of the enactment of this Act [Dec. 14, 1999].''

§ 1320b–7. Income and eligibility verification system

(a) Requirements of State eligibility systems

In order to meet the requirements of this section, a State must have in effect an income and eligibility verification system which meets the requirements of subsection (d) of this section and under which—

(1) the State shall require, as a condition of eligibility for benefits under any program listed in subsection (b) of this section, that each applicant for or recipient of benefits under that program furnish to the State his social security account number (or numbers, if he has more than one such number), and the State shall utilize such account numbers in the administration of that program so as to enable the association of the records pertaining to the applicant or recipient with his account number;

(2) wage information from agencies administering State unemployment compensation laws available pursuant to section 3304(a)(16) of the Internal Revenue Code of 1986, wage information reported pursuant to paragraph (3) of this subsection, and wage, income, and other information from the Social Security Administration and the Internal Revenue Service available pursuant to section 6103(*l*)(7) of such Code, shall be requested and utilized to the extent that such information may be useful in verifying eligibility for, and the amount of, benefits available under any program listed in subsection (b) of this section, as determined by the Secretary of Health and Human Services (or, in the case of the unemployment compensation program, by the Secretary of Labor, or, in the case of the food stamp program, by the Secretary of Agriculture);

(3) employers (as defined in section 653a(a)(2)(B) of this title) (including State and local governmental entities and labor organizations) in such State are required, effective September 30, 1988, to make quarterly wage reports to a State agency (which may be the agency administering the State's unemployment compensation law) except that the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provisions of this paragraph if he determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in paragraph (2), and except that no report shall be filed with respect to an employee of a State

or local agency performing intelligence or counterintelligence functions, if the head of such agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission, and except that in the case of wage reports with respect to domestic service employment, a State may permit employers (as so defined) that make returns with respect to such employment on a calendar year basis pursuant to section 3510 of the Internal Revenue Code of 1986 to make such reports on an annual basis;

(4) the State agencies administering the programs listed in subsection (b) of this section adhere to standardized formats and procedures established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) under which—

(A) the agencies will exchange with each other information in their possession which may be of use in establishing or verifying eligibility or benefit amounts under any other such program;

(B) such information shall be made available to assist in the child support program under part D of subchapter IV of this chapter, and to assist the Secretary of Health and Human Services in establishing or verifying eligibility or benefit amounts under subchapters II and XVI of this chapter, but subject to the safeguards and restrictions established by the Secretary of the Treasury with respect to information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1986; and

(C) the use of such information shall be targeted to those uses which are most likely to be productive in identifying and preventing ineligibility and incorrect payments, and no State shall be required to use such information to verify the eligibility of all recipients;

(5) adequate safeguards are in effect so as to assure that—

(A) the information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving such information, and the information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1986 is only exchanged with agencies authorized to receive such information under such section 6103(*l*); and

(B) the information is adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Secretary of Health and Human Services, or, in the case of the unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture, or[1] in the case of information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1986, the Secretary of the Treasury;

(6) all applicants for and recipients of benefits under any such program shall be notified at the time of application, and periodically thereafter, that information available through the system will be requested and utilized; and

(7) accounting systems are utilized which assure that programs providing data receive appropriate reimbursement from the programs utilizing the data for the costs incurred in providing the data.

(b) Applicable programs

The programs which must participate in the income and eligibility verification system are—

(1) any State program funded under part A of subchapter IV of this chapter;

(2) the medicaid program under subchapter XIX of this chapter;

(3) the unemployment compensation program under section 3304 of the Internal Revenue Code of 1986;

(4) the food stamp program under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; and

(5) any State program under a plan approved under subchapter I, X, XIV, or XVI of this chapter.

(c) Protection of applicants from improper use of information

(1) In order to protect applicants for and recipients of benefits under the programs identified in subsection (b) of this section, or under the supplemental security income program under subchapter XVI of this chapter, from the improper use of information obtained from the Secretary of the Treasury under section 6103(*l*)(7)(B) of the Internal Revenue Code of 1986, no Federal, State, or local agency receiving such information may terminate, deny, suspend, or reduce any benefits of an individual until such agency has taken appropriate steps to independently verify information relating to—

(A) the amount of the asset or income involved,

(B) whether such individual actually has (or had) access to such asset or income for his own use, and

(C) the period or periods when the individual actually had such asset or income.

(2) Such individual shall be informed by the agency of the findings made by the agency on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(d) Citizenship or immigration status requirements; documentation; verification by Immigration and Naturalization Service; denial of benefits; hearing

The requirements of this subsection, with respect to an income and eligibility verification system of a State, are as follows:

(1)(A) The State shall require, as a condition of an individual's eligibility for benefits under a program listed in subsection (b) of this section, a declaration in writing, under penalty of perjury—

(i) by the individual,

(ii) in the case in which eligibility for program benefits is determined on a family or household basis, by any adult member of such individual's family or household (as applicable), or

[1] So in original. Probably should be followed by a comma.

(iii) in the case of an individual born into a family or household receiving benefits under such program, by any adult member of such family or household no later than the next redetermination of eligibility of such family or household following the birth of such individual,

stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

(B) In this subsection, in the case of the program described in subsection (b)(4) of this section—

(i) any reference to the State shall be considered a reference to the State agency, and

(ii) any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's eligibility to participate in the program as a member of a household, and

(iii) the term ''satisfactory immigration status'' means an immigration status which does not make the individual ineligible for benefits under the applicable program.

(2) If such an individual is not a citizen or national of the United States, there must be presented either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

(B) such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

(3) If the documentation described in paragraph (2)(A) is presented, the State shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for benefits, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the State—

(i) shall provide a reasonable opportunity to submit to the State evidence indicating a satisfactory immigration status, and

(ii) may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the State determines constitutes reasonable evidence indicating such status—

(i) the State shall transmit to the Immigration and Naturalization Service either photostatic or other similar copies of such documents, or information from such documents, as specified by the Immigration and Naturalization Service, for official verification,

(ii) pending such verification, the State may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status, and

(iii) the State shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the State determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status under the applicable program—

(A) the State shall deny or terminate the individual's eligibility for benefits under the program, and

(B) the applicable fair hearing process shall be made available with respect to the individual.

(e) Erroneous State citizenship or immigration status determinations; penalties not required

Each Federal agency responsible for administration of a program described in subsection (b) of this section shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to any error in the State's determination to make an individual eligible for benefits based on citizenship or immigration status—

(1) if the State has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the State, under subsection (d)(4)(A)(ii) of this section, was required to provide a reasonable opportunity to submit documentation,

(3) because the State, under subsection (d)(4)(B)(ii) of this section, was required to wait for the response of the Immigration and Naturalization Service to the State's request for official verification of the immigration status of the individual, or

(4) because of a fair hearing process described in subsection (d)(5)(B) of this section.

(f) Medical assistance to aliens for treatment of emergency conditions

Subsections (a)(1) and (d) of this section shall not apply with respect to aliens seeking medical assistance for the treatment of an emergency medical condition under section 1396b(v)(2) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1137, as added Pub. L. 98–369, div. B, title VI, § 2651(a), July 18,

1984, 98 Stat. 1147; amended Pub. L. 99–509, title IX, § 9101, Oct. 21, 1986, 100 Stat. 1972; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–603, title I, § 121(a)(1), Nov. 6, 1986, 100 Stat. 3384; Pub. L. 100–360, title IV, § 411(k)(15)(A), July 1, 1988, 102 Stat. 799; Pub. L. 103–432, title II, § 231, Oct. 31, 1994, 108 Stat. 4462; Pub. L. 104–193, title I, § 108(g)(8), title III, § 313(c), Aug. 22, 1996, 110 Stat. 2168, 2212; Pub. L. 104–208, div. C, title V, § 507(a), Sept. 30, 1996, 110 Stat. 3009–673; Pub. L. 106–169, title IV, § 401(p), Dec. 14, 1999, 113 Stat. 1859; Pub. L. 106–170, title IV, § 405(a), (b), Dec. 17, 1999, 113 Stat. 1911.)

REFERENCES IN TEXT

Parts A and D of subchapter IV of this chapter, referred to in subsecs. (a)(4)(B) and (b)(1), are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (a)(2), (3), (4)(B), (5), (b)(3), and (c)(1), is classified generally to Title 26, Internal Revenue Code.

The Food Stamp Act of 1977, referred to in subsec. (b)(4), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

AMENDMENTS

1999—Subsec. (a)(3). Pub. L. 106–170, § 405(b)(2), inserted ''(as defined in section 653a(a)(2)(B) of this title)'' after ''employers''.

Pub. L. 106–170, § 405(b)(1), which directed striking out ''(as defined in section 653a(a)(2)(B)(iii) of this title)'' after ''labor organizations'', was executed by striking ''(as defined in section 653a(a)(2)(B)(ii) of this title)'' to reflect the probable intent of Congress and the amendment by Pub. L. 106–169.

Pub. L. 106–170, § 405(a), inserted before semicolon at end: '', and except that in the case of wage reports with respect to domestic service employment, a State may permit employers (as so defined) that make returns with respect to such employment on a calendar year basis pursuant to section 3510 of the Internal Revenue Code of 1986 to make such reports on an annual basis''.

Pub. L. 106–169, substituted ''653a(a)(2)(B)(ii) of this title))'' for ''653a(a)(2)(B)(iii) of this title)''. See Effective Date of 1999 Amendment note below.

1996—Subsec. (a)(3). Pub. L. 104–193, § 313(c), inserted ''(including State and local governmental entities and labor organizations (as defined in section 653a(a)(2)(B)(iii) of this title)'' after ''employers'' and '', and except that no report shall be filed with respect to an employee of a State or local agency performing intelligence or counterintelligence functions, if the head of such agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission'' before semicolon at end.

Subsec. (b)(1). Pub. L. 104–193, § 108(g)(8)(A), added par. (1) and struck out former par. (1) which read as follows: ''the aid to families with dependent children program under part A of subchapter IV of this chapter;''.

Subsec. (d)(1)(B). Pub. L. 104–193, § 108(g)(8)(B), substituted ''In this subsection, in'' for ''In this subsection—'', struck out ''(ii) in'' before ''the case of the program described in subsection (b)(4)'', redesignated subcls. (I) to (III) as cls. (i) to (iii), respectively, realigned margins, and struck out former cl. (i) which read as follows: ''in the case of the program described in subsection (b)(1) of this section, any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's being considered a dependent child or to the individual's being treated as a caretaker relative or other person whose needs are to be taken into account in making the determination under section 602(a)(7) of this title,''.

Subsec. (d)(4)(B)(i). Pub. L. 104–208 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the State shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,''.

1994—Subsec. (d)(1)(A). Pub. L. 103–432 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The State shall require, as a condition of an individual's eligibility for benefits under any program listed in subsection (b) of this section, a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.''

1988—Subsec. (f). Pub. L. 100–360 added subsec. (f).

1986—Subsec. (a). Pub. L. 99–603, § 121(a)(1)(A), inserted ''which meets the requirements of subsection (d) of this section and'' after ''system'' in introductory text.

Subsec. (a)(2), (4)(B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (a)(4)(C). Pub. L. 99–509 inserted before semicolon at end '', and no State shall be required to use such information to verify the eligibility of all recipients''.

Subsec. (a)(5). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing.

Subsec. (b). Pub. L. 99–603, § 121(a)(1)(B), substituted ''income and eligibility verification system'' for ''income verification system'' in introductory text.

Subsecs. (b)(3), (c)(1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsecs. (d), (e). Pub. L. 99–603, § 121(a)(1)(C), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–170, title IV, § 405(c), Dec. 17, 1999, 113 Stat. 1911, provided that: ''The amendments made by this section [amending this section] shall apply to wage reports required to be submitted on and after the date of the enactment of this Act [Dec. 17, 1999].''

Amendment by section 401(p) of Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(g)(8) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For effective date of amendment by section 313(c) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 411(k)(15)(B) of Pub. L. 100–360 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply as if it were included in the enactment of section 9406 of the Omnibus Budget Reconciliation Act of 1986 [see section 9406(c) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 1396a of this title].''

EFFECTIVE DATE OF 1986 AMENDMENT; USE OF VERIFICATION SYSTEM

Section 121(c)(3), (4) of Pub. L. 99–603 provided that:

''(3) USE OF VERIFICATION SYSTEM REQUIRED IN FISCAL YEAR 1989.—Except as provided in paragraph (4), the amendments made by subsection (a) [amending this section, section 1436a of this title, and section 1091 of Title 20, Education] take effect on October 1, 1988. States have until that date to begin complying with the requirements imposed by those amendments.

''(4) USE OF VERIFICATION SYSTEM NOT REQUIRED FOR A PROGRAM IN CERTAIN CASES.—

''(A) REPORT TO RESPECTIVE CONGRESSIONAL COMMITTEES.—With respect to each covered program (as defined in subparagraph (D)(i)), each appropriate Secretary shall examine and report to the appropriate Committees of the House of Representatives and of the Senate, by not later than April 1, 1988, concerning whether (and the extent to which)—

''(i) the application of the amendments made by subsection (a) to the program is cost-effective and otherwise appropriate, and

''(ii) there should be a waiver of the application of such amendments under subparagraph (B).

The amendments made by subsection (a) shall not apply with respect to a covered program described in subclause (II), (V), (VI), or (VII) of subparagraph (D)(i) until after the date of receipt of such report with respect to the program.

''(B) WAIVER IN CERTAIN CASES.—If, with respect to a covered program, the appropriate Secretary determines, on the Secretary's own initiative or upon an application by an administering entity and based on such information as the Secretary deems persuasive (which may include the results of the report required under subsection (d)(1) [set out as a note below] and information contained in such an application), that—

''(i) the appropriate Secretary or the administering entity has in effect an alternative system of immigration status verification which—

''(I) is as effective and timely as the system otherwise required under the amendments made by subsection (a) with respect to the program, and

''(II) provides for at least the hearing and appeals rights for beneficiaries that would be provided under the amendments made by subsection (a), or

''(ii) the costs of administration of the system otherwise required under such amendments exceed the estimated savings,

such Secretary may waive the application of such amendments to the covered program to the extent (by State or other geographic area or otherwise) that such determinations apply.

''(C) BASIS FOR DETERMINATION.—A determination under subparagraph (B)(ii) shall be based upon the appropriate Secretary's estimate of—

''(i) the number of aliens claiming benefits under the covered program in relation to the total number of claimants seeking benefits under the program,

''(ii) any savings in benefit expenditures reasonably expected to result from implementation of the verification program, and

''(iii) the labor and nonlabor costs of administration of the verification system,

the degree to which the Immigration and Naturalization Service is capable of providing timely and accurate information to the administering entity in order to permit a reliable determination of immigration status, and such other factors as such Secretary deems relevant.

''(D) DEFINITIONS.—In this paragraph:

''(i) The term 'covered program' means each of the following programs:

''(I) The aid to families with dependent children program under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter].

''(II) The medicaid program under title XIX of the Social Security Act [subchapter XIX of this chapter].

''(III) Any State program under a plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter].

''(IV) The unemployment compensation program under section 3304 of the Internal Revenue Code of 1954 [now 1986; 26 U.S.C. 3304].

''(V) The food stamp program under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.].

''(VI) The programs of financial assistance for housing subject to section 214 of the Housing and Community Development Act of 1980 [42 U.S.C. 1436a].

''(VII) The program of grants, loans, and work assistance under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq.; 42 U.S.C. 2751 et seq.].

''(ii) The term 'appropriate Secretary' means, with respect to the covered program described in—

''(I) subclauses (I) through (III) of clause (i), the Secretary of Health and Human Services;

''(II) clause (i)(IV), the Secretary of Labor;

''(III) clause (i)(V), the Secretary of Agriculture;

''(IV) clause (i)(VI), the Secretary of Housing and Urban Development; and

''(V) clause (i)(VII), the Secretary of Education.

''(iii) The term 'administering entity' means, with respect to the covered program described in—

''(I) subclause (I), (II), (III), (IV), or (V) of clause (i), the State agency responsible for the administration of the program in a State;

''(II) clause (i)(VI), the Secretary of Housing and Urban Development, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance; and

''(III) clause (i)(VII), an institution of higher education involved.''

EFFECTIVE DATE

Section 2651(*l*) of Pub. L. 98–369 provided that:

''(1) The amendments made by subsections (j) and (k) [amending section 1383 of this title and section 6103 of Title 26, Internal Revenue Code] shall become effective on the date of the enactment of this Act [July 18, 1984].

''(2) Except as otherwise specifically provided, the amendments made by subsections (a) through (i) [enacting this section, amending sections 302, 503, 602, 1202, 1352, and 1396a of this title and section 2020 of Title 7, Agriculture, repealing section 611 of this title, and amending provisions set out as a note under section 1382 of this title] shall become effective on April 1, 1985. In the case of any State which submits a plan describing a good faith effort by such State to come into compliance with the requirements of such subsections, the Secretary of Health and Human Services (or, in the case of the State unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture) may by waiver grant a delay in the effective date of such subsections, except that no such waiver may delay the effective date of section 1137(c) of the Social Security Act [subsec. (c) of this section] (as added by subsection (a) of this section), or delay the effective date of any other provision of or added by this section beyond September 30, 1986.''

CONSTRUCTION OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 to be executed as if Pub. L. 106–169 had been enacted after the enactment of Pub. L. 106–170, see section 121(c)(1) of Pub. L. 106–169, set out as a note under section 1396a of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

IMMIGRATION AND NATURALIZATION SERVICE TO ESTABLISH VERIFICATION SYSTEM BY OCTOBER 1, 1987

Section 121(c)(1) of Pub. L. 99–603 provided that: ''The Commissioner of Immigration and Naturalization shall implement a system for the verification of immigration status under paragraphs (3) and (4)(B)(i) of section 1137(d) of the Social Security Act [subsec. (d)(3) and (4)(B)(i) of this section] (as amended by this section) so that the system is available to all the States by not later than October 1, 1987. Such system shall not be used by the Immigration and Naturalization Service for administrative (non-criminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the sex, color, race, religion, or nationality of the individual involved.''

GENERAL ACCOUNTING OFFICE REPORTS

Section 121(d) of Pub. L. 99–603 directed Comptroller General to examine current pilot projects relating to the System for Alien Verification of Eligibility (SAVE) operated by, or through cooperative agreements with, the Immigration and Naturalization Service, and report, not later than Oct. 1, 1987, to Congress and to Commissioner of Immigration and Naturalization Service concerning the effectiveness of such projects and any problems with the implementation of such projects, particularly as they may apply to implementation of the system, with Comptroller General to monitor and analyze the implementation of such system, report to Congress and to the appropriate Secretaries, by not later than Apr. 1, 1989, on such implementation, and include in such report recommendations for appropriate changes in the system.

§ 1320b–8. Hospital protocols for organ procurement and standards for organ procurement agencies

(a)(1) The Secretary shall provide that a hospital or critical access hospital meeting the requirements of subchapter XVIII or XIX of this chapter may participate in the program established under such subchapter only if—

(A) the hospital or critical access hospital establishes written protocols for the identification of potential organ donors that—

(i) assure that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline,

(ii) encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of such families, and

(iii) require that such hospital's designated organ procurement agency (as defined in paragraph (3)(B)) is notified of potential organ donors;

(B) in the case of a hospital in which organ transplants are performed, the hospital is a member of, and abides by the rules and requirements of, the Organ Procurement and Transplantation Network established pursuant to section 274 of this title (in this section referred to as the ''Network''); and

(C) the hospital or critical access hospital has an agreement (as defined in paragraph (3)(A)) only with such hospital's designated organ procurement agency.

(2)(A) The Secretary shall grant a waiver of the requirements under subparagraphs (A)(iii) and (C) of paragraph (1) to a hospital or critical access hospital desiring to enter into an agreement with an organ procurement agency other than such hospital's designated organ procurement agency if the Secretary determines that—

(i) the waiver is expected to increase organ donation; and

(ii) the waiver will assure equitable treatment of patients referred for transplants within the service area served by such hospital's designated organ procurement agency and within the service area served by the organ procurement agency with which the hospital seeks to enter into an agreement under the waiver.

(B) In making a determination under subparagraph (A), the Secretary may consider factors that would include, but not be limited to—

(i) cost effectiveness;

(ii) improvements in quality;

(iii) whether there has been any change in a hospital's designated organ procurement agency due to a change made on or after December 28, 1992, in the definitions for metropolitan statistical areas (as established by the Office of Management and Budget); and

(iv) the length and continuity of a hospital's relationship with an organ procurement agency other than the hospital's designated organ procurement agency;

except that nothing in this subparagraph shall be construed to permit the Secretary to grant a waiver that does not meet the requirements of subparagraph (A).

(C) Any hospital or critical access hospital seeking a waiver under subparagraph (A) shall submit an application to the Secretary containing such information as the Secretary determines appropriate.

(D) The Secretary shall—

(i) publish a public notice of any waiver application received from a hospital or critical access hospital under this paragraph within 30 days of receiving such application; and

(ii) prior to making a final determination on such application under subparagraph (A), offer interested parties the opportunity to submit written comments to the Secretary during the 60-day period beginning on the date such notice is published.

(3) For purposes of this subsection—

(A) the term ''agreement'' means an agreement described in section 273(b)(3)(A) of this title;

(B) the term ''designated organ procurement agency'' means, with respect to a hospital or critical access hospital, the organ procurement agency designated pursuant to subsection (b) of this section for the service area in which such hospital is located; and

(C) the term ''organ'' means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by the Secretary for purposes of this subsection.

(b)(1) The Secretary shall provide that payment may be made under subchapter XVIII or XIX of this chapter with respect to organ procurement costs attributable to payments made to an organ procurement agency only if the agency—

(A)(i) is a qualified organ procurement organization (as described in section 273(b) of this

title) that is operating under a grant made under section 273(a) of this title, or (ii) has been certified or recertified by the Secretary within the previous 2 years (4 years if the Secretary determines appropriate for an organization on the basis of its past practices) as meeting the standards to be a qualified organ procurement organization (as so described);

(B) meets the requirements that are applicable under such subchapter for organ procurement agencies;

(C) meets performance-related standards prescribed by the Secretary;

(D) is a member of, and abides by the rules and requirements of, the Network;

(E) allocates organs, within its service area and nationally, in accordance with medical criteria and the policies of the Network; and

(F) is designated by the Secretary as an organ procurement organization payments to which may be treated as organ procurement costs for purposes of reimbursement under such subchapter.

(2) The Secretary may not designate more than one organ procurement organization for each service area (described in section 273(b)(1)(E)[1] of this title) under paragraph (1)(F).

(Aug. 14, 1935, ch. 531, title XI, § 1138, as added Pub. L. 99–509, title IX, § 9318(a), Oct. 21, 1986, 100 Stat. 2009; amended Pub. L. 100–203, title IV, § 4039(h)(2), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 775; amended Pub. L. 101–239, title VI, § 6003(g)(3)(D)(iv), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 103–432, title I, § 155(a)(1), Oct. 31, 1994, 108 Stat. 4438; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4642, Aug. 5, 1997, 111 Stat. 373, 487.)

REFERENCES IN TEXT

Section 273(b)(1)(E) of this title, referred to in subsec. (b)(2), was redesignated section 273(b)(1)(F) of this title by Pub. L. 106–505, title VII, § 701(c)(1), Nov. 13, 2000, 114 Stat. 2347 and Pub. L. 106–554, § 1(a)(1) [title II, § 219(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–29.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' wherever appearing.

Subsec. (b)(1)(A)(ii). Pub. L. 105–33, § 4642, substituted ''2 years (4 years if the Secretary determines appropriate for an organization on the basis of its past practices)'' for ''two years''.

1994—Subsec. (a)(1)(A)(iii). Pub. L. 103–432, § 155(a)(1)(A), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''require that an organ procurement agency designated by the Secretary pursuant to subsection (b)(1)(F) of this section be notified of potential organ donors; and''.

Subsec. (a)(1)(C). Pub. L. 103–432, § 155(a)(1)(B), added subpar. (C).

Subsec. (a)(2). Pub. L. 103–432, § 155(a)(1)(C)(ii), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 103–432, § 155(a)(1)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of this subsection, the term 'organ' means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by the Secretary for purposes of this subsection.''

Pub. L. 103–432, § 155(a)(1)(C)(i), redesignated par. (2) as (3).

1989—Subsec. (a)(1). Pub. L. 101–239 substituted ''hospital or rural primary care hospital'' for ''hospital'' in two places preceding cl. (i) of subpar. (A).

1988—Subsec. (a)(1)(B). Pub. L. 100–360 added Pub. L. 100–203, § 4039(h)(2), see 1987 Amendment note below.

1987—Subsec. (a)(1)(B). Pub. L. 100–203, § 4039(h)(2), as added by Pub. L. 100–360, substituted ''in'' for ''In'' at beginning.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 155(a)(3) of Pub. L. 103–432 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to hospitals and rural primary care hospitals participating in the programs under titles XVIII and XIX of the Social Security Act [subchapters XVIII and XIX of this chapter] beginning January 1, 1996.''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 9318(b) of Pub. L. 99–509, as amended by Pub. L. 100–119, title I, § 107(c), Sept. 29, 1987, 101 Stat. 784; Pub. L. 100–203, title IV, § 4009(g)(1), Dec. 22, 1987, 101 Stat. 1330–58, provided that:

''(1) Section 1138(a) of the Social Security Act [subsec. (a) of this section] shall apply to hospitals participating in the programs under titles XVIII and XIX of such Act [subchapters XVIII and XIX of this chapter] as of November 21, 1987.''

''(2) Section 1138(b) of such Act [subsec. (b) of this section] shall apply to costs of organs procured on or after March 31, 1988.''

[Pub. L. 100–203, title IV, § 4009(g)(2), Dec. 22, 1987, 101 Stat. 1330–58, provided that: ''The amendment made by paragraph (1) [amending this note] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''']

EXISTING AGREEMENTS WITH ORGAN PROCUREMENT AGENCIES

Section 155(a)(2) of Pub. L. 103–432 provided that: ''Any hospital or rural primary care hospital which has an agreement (as defined in section 1138(a)(3)(A) of the Social Security Act [subsec. (a)(3)(A) of this section]) with an organ procurement agency other than such hospital's designated organ procurement agency (as defined in section 1138(a)(3)(B) of such Act) on the date of the enactment of this section [Oct. 31, 1994] shall, if such hospital desires to continue such agreement on and after the effective date of the amendments made by paragraph (1) [see Effective Date of 1994 Amendment note above], submit an application to the Secretary for a waiver under section 1138(a)(2) of such Act not later than January 1, 1996, and such agreement may continue in effect pending the Secretary's determination with respect to such application.''

§ 1320b–9. National Commission on Children

(a) Establishment

(1)[1] There is hereby established a commission to be known as the National Commission on

[1] See References in Text note below.

[1] So in original. No par. (2) has been enacted.

Children (in this section referred to as the ''Commission'').

(b) Membership

(1) The Commission shall consist of—

(A) 12 members to be appointed by the President,

(B) 12 members to be appointed by the Speaker of the House of Representatives, and

(C) 12 members to be appointed by the President pro tempore of the Senate.

(2) The President, the Speaker, and the President pro tempore shall each appoint as members of the Commission—

(A) 4 individuals who—

(i) are representatives of organizations providing services to children,

(ii) are involved in activities on behalf of children, or

(iii) have engaged in academic research with respect to the problems and needs of children,

(B) 4 individuals who are elected or appointed public officials (at the Federal, State, or local level) involved in issues and programs relating to children, and

(C) 4 individuals who are parents or representatives of parents or parents' organizations.

(3) The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairmen of committees of the House of Representatives and the Senate, respectively, having jurisdiction over relevant Federal programs.

(c) Duties and functions of Commission; public hearings in different geographical areas; broad spectrum of witnesses and testimony

(1) It shall be the duty and function of the Commission to serve as a forum on behalf of the children of the Nation and to conduct the studies and issue the report required by subsection (d) of this section.

(2) The Commission (and any committees that it may form) shall conduct public hearings in different geographic areas of the country, both urban and rural, in order to receive the views of a broad spectrum of the public on the status of the Nation's children and on ways to safeguard and enhance the physical, mental, and emotional well-being of all of the children of the Nation, including those with physical or mental disabilities, and others whose circumstances deny them a full share of the opportunities that parents of the Nation may rightfully expect for their children.

(3) The Commission shall receive testimony from individuals, and from representatives of public and private organizations and institutions with an interest in the welfare of children, including educators, health care professionals, religious leaders, providers of social services, representatives of organizations with children as members, elected and appointed public officials, and from parents and children speaking in their own behalf.

(d) Interim and final report to President and Congress; recommendations

The Commission shall submit to the President, and to the Committees on Finance and Labor and Human Resources of the Senate and the Committees on Ways and Means, Education and Labor, and Energy and Commerce of the House of Representatives, an interim report no later than March 31, 1990, and a final report no later than March 31, 1991, setting forth recommendations with respect to the following subjects:

(1) Questions relating to the health of children that the Commission shall address include—

(A) how to reduce infant mortality,

(B) how to reduce the number of low-birthweight babies,

(C) how to reduce the number of children with chronic illnesses and disabilities,

(D) how to improve the nutrition of children,

(E) how to promote the physical fitness of children,

(F) how to ensure that pregnant women receive adequate prenatal care,

(G) how to ensure that all children have access to both preventive and acute care health services, and

(H) how to improve the quality and availability of health care for children.

(2) Questions relating to social and support services for children and their parents that the Commission shall address include—

(A) how to prevent and treat child neglect and abuse,

(B) how to provide help to parents who seek assistance in meeting the problems of their children,

(C) how to provide counseling services for children,

(D) how to strengthen the family unit,

(E) how children can be assured of adequate care while their parents are working or participating in education or training programs,

(F) how to improve foster care and adoption services,

(G) how to reduce drug and alcohol abuse by children and youths, and

(H) how to reduce the incidence of teenage pregnancy.

(3) Questions relating to education that the Commission shall address include—

(A) how to encourage academic excellence for all children at all levels of education,

(B) how to use preschool experiences to enhance educational achievement,

(C) how to improve the qualifications of teachers,

(D) how schools can better prepare the Nation's youth to compete in the labor market,

(E) how parents and schools can work together to help children achieve success at each step of the academic ladder,

(F) how to encourage teenagers to complete high school and remain in school to fulfill their academic potential,

(G) how to address the problems of drug and alcohol abuse by young people,

(H) how schools might lend support to efforts aimed at reducing the incidence of teenage pregnancy, and

(I) how schools might better meet the special needs of children who have physical or mental handicaps.

(4) Questions relating to income security that the Commission shall address include—

(A) how to reduce poverty among children,

(B) how to ensure that parents support their children to the fullest extent possible through improved child support collection services, including services on behalf of children whose parents are unmarried, and

(C) how to ensure that cash assistance to needy children is adequate.

(5) Questions relating to tax policy that the Commission shall address include—

(A) how to assure the equitable tax treatment of families with children,

(B) the effect of existing tax provisions, including the dependent care tax credit, the earned income tax credit, and the targeted jobs tax credit, on children living in poverty,

(C) whether the dependent care tax credit should be refundable and the effect of such a policy,

(D) whether the earned income tax credit should be adjusted for family size and the effect of such a policy, and

(E) whether there are other tax-related policies which would reduce poverty among children.

(6) In addition to addressing the questions specified in paragraphs (1) through (5), the Commission shall—

(A) seek to identify ways in which public and private organizations and institutions can work together at the community level to identify deficiencies in existing services for families and children and to develop recommendations to ensure that the needs of families and children are met, using all available resources, in a coordinated and comprehensive manner, and

(B) assess the existing capacities of agencies to collect and analyze data on the status of children and on relevant programs, identify gaps in the data collection system, and recommend ways to improve the collection of data and the coordination among agencies in the collection and utilization of data.

The reports required by this subsection shall be based upon the testimony received in the hearings conducted pursuant to subsection (c) of this section, and upon other data and findings developed by the Commission.

(e) Time of appointment of members; vacancies; election of Chairman; quorum; calling of meetings; number of meetings; voting; compensation and expenses

(1)(A) Members of the Commission shall first be appointed not later than 60 days after December 22, 1987, for terms ending on March 31, 1991.

(B) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the vacant position was first filled.

(2) The Commission shall elect one of its members to serve as Chairman of the Commission. The Chairman shall be a nonvoting member of the Commission.

(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(4)(A) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission.

(B) The Commission shall meet not less than 4 times during the period beginning with December 22, 1987, and ending with March 31, 1991.

(5) Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

(6) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

(f) Executive Director and additional personnel; appointment and compensation; consultants

(1) The Commission shall appoint an Executive Director of the Commission. In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable. Such appointments and compensation may be made without regard to the provisions of title 5 that govern appointments in the competitive services, and the provisions of chapter 51 and subchapter III of chapter 53 of such title that relate to classifications and the General Schedule pay rates.

(2) The Commission may procure such temporary and intermittent services of consultants under section 3109(b) of title 5 as the Commission determines to be necessary to carry out the duties of the Commission.

(g) Time and place of hearings and nature of testimony authorized

In carrying out its duties, the Commission, or any duly organized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which it has a responsibility under this section, as the Commission or committee may deem advisable.

(h) Data and information from other agencies and departments

(1) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities.

(2) Upon request of the Commission, any such department or agency shall furnish any such data or information.

(i) Support services by General Services Administration

The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(j) Authorization of appropriations

There are authorized to be appropriated through fiscal year 1991, such sums as may be necessary to carry out this section for each of fiscal years 1989 and 1990.

(k) Donations accepted and deposited in Treasury in separate fund; expenditures; gift or bequest to or for use of United States

(1) The Commission is authorized to accept donations of money, property, or personal services. Funds received from donations shall be depos-

ited in the Treasury in a separate fund created for this purpose. Funds appropriated for the Commission and donated funds may be expended for such purposes as official reception and representation expenses, public surveys, public service announcements, preparation of special papers, analyses, and documentaries, and for such other purposes as determined by the Commission to be in furtherance of its mission to review national issues affecting children.

(2) For purposes of Federal income, estate, and gift taxation, money and other property accepted under paragraph (1) of this subsection shall be considered as a gift or bequest to or for the use of the United States.

(3) Expenditure of appropriated and donated funds shall be subject to such rules and regulations as may be adopted by the Commission and shall not be subject to Federal procurement requirements.

(*l*) Public surveys

The Commission is authorized to conduct such public surveys as it deems necessary in support of its review of national issues affecting children and, in conducting such surveys, the Commission shall not be deemed to be an ''agency'' for the purpose of section 3502 of title 44.

(Aug. 14, 1935, ch. 531, title XI, §1139, as added Pub. L. 100–203, title IX, §9136, Dec. 22, 1987, 101 Stat. 1330–316; amended Pub. L. 100–647, title VIII, §8201, Nov. 10, 1988, 102 Stat. 3798; Pub. L. 101–45, title IV, §409, June 30, 1989, 103 Stat. 130; Pub. L. 101–239, title VI, §6221, Dec. 19, 1989, 103 Stat. 2255; Pub. L. 101–508, title IV, §4207(k)(6), formerly §4027(k)(6), title V, §5057, Nov. 5, 1990, 104 Stat. 1388–125, 1388–230; Pub. L. 103–432, title I, §160(d)(4), title II, §264(d), Oct. 31, 1994, 108 Stat. 4444, 4468.)

REFERENCES IN TEXT

The provisions of title 5 that govern appointments in the competitive services, referred to in subsec. (f)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–432, §264(d), repealed Pub. L. 101–508, §5057. See 1990 Amendment note below.

1990—Subsec. (d). Pub. L. 101–508, §5057, which directed amendment of subsec. (d) by substituting ''an interim report no later than September 30, 1990, and a final report no later than March 31, 1991'' for ''an interim report no later than March 31, 1991, and a final report no later than September 30, 1990'', and could not be executed, was repealed by Pub. L. 103–432, §264(d). See Construction of 1990 Amendment note below.

Pub. L. 101–508, §4207(k)(6), formerly §4027(k)(6), as renumbered by Pub. L. 103–432, §160(d)(4), substituted ''interim report no later than March 31, 1990, and a final report no later than March 31, 1991, setting forth'' for ''interim report no later than March 31, 1991, and a final report no later than September 30, 1990, setting forth''.

1989—Subsec. (d). Pub. L. 101–239, §6221(1), which directed the substitution of ''March 31, 1990'' for ''September 30, 1988'' and ''March 31, 1991'' for ''March 31, 1990 [1989]'', could only be executed in part by substituting ''March 31, 1991'' for ''March 30, 1990'' in view of amendment by Pub. L. 100–647. See 1990 Amendment note above.

Subsec. (e)(1)(A), (4)(B). Pub. L. 101–239, §6221(2), substituted ''March 31, 1991'' for ''September 30, 1990''.

Subsec. (f). Pub. L. 101–45 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5.

''(2) In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5 governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.''

Subsec. (j). Pub. L. 101–239, §6221(3), substituted ''through fiscal year 1991, such sums'' for ''such sums''.

Subsecs. (k), (*l*). Pub. L. 101–239, §6221(4), added subsecs. (k) and (*l*).

1988—Subsec. (d). Pub. L. 100–647, §8201(1), (2), substituted ''March 31, 1990'' for ''September 30, 1988'' and ''September 30, 1990'' for ''March 31, 1989'' in introductory provisions.

Subsec. (e)(1)(A), (4)(B). Pub. L. 100–647, §8201(3), (4), substituted ''September 30, 1990'' for ''March 31, 1989''.

Subsec. (j). Pub. L. 100–647, §8201(5), inserted ''for each of fiscal years 1989 and 1990'' before period at end.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives and Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 264(h) of Pub. L. 103–432 provided that: ''Each amendment made by this section [amending this section and sections 602, 1382a, and 1383 of this title] shall take effect as if included in the provision of OBRA–1990 [Pub. L. 101–508] to which the amendment relates at the time such provision became law.''

CONSTRUCTION OF 1990 AMENDMENT

Section 264(d) of Pub. L. 103–432 provided that: ''Section 5057 of OBRA–1990 [Pub. L. 101–508, amending this section], and the amendment made by such section, are hereby repealed, and section 1139(d) of the Social Security Act [subsec. (d) of this section] shall be applied and administered as if such section 5057 had never been enacted.''

TERMINATION OF ADVISORY COMMISSIONS

Advisory commissions established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a commission established by the President or an officer of the Federal Government, such commission is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a commission established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out

in the Appendix to Title 5, Government Organization and Employees.

§ 1320b–10. Prohibitions relating to references to Social Security or Medicare

(a) Prohibited acts

(1) No person may use, in connection with any item constituting an advertisement, solicitation, circular, book, pamphlet, or other communication, or a play, motion picture, broadcast, telecast, or other production, alone or with other words, letters, symbols, or emblems—

(A) the words ''Social Security'', ''Social Security Account'', ''Social Security System'', ''Social Security Administration'', ''Medicare'', ''Centers for Medicare & Medicaid Services'', ''Department of Health and Human Services'', ''Health and Human Services'', ''Supplemental Security Income Program'', ''Medicaid'', ''Death Benefits Update'', ''Federal Benefit Information'', ''Funeral Expenses'', or ''Final Supplemental Plan'', the letters ''SSA'', ''CMS'', ''DHHS'', ''HHS'', or ''SSI'', or any other combination or variation of such words or letters, or

(B) a symbol or emblem of the Social Security Administration, Centers for Medicare & Medicaid Services, or Department of Health and Human Services (including the design of, or a reasonable facsimile of the design of, the social security card issued pursuant to section 405(c)(2)(F) of this title or the Medicare card,,[1] the check used for payment of benefits under subchapter II of this chapter, or envelopes or other stationery used by the Social Security Administration, Centers for Medicare & Medicaid Services, or Department of Health and Human Services), or any other combination or variation of such symbols or emblems,

in a manner which such person knows or should know would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that such item is approved, endorsed, or authorized by the Social Security Administration, the Centers for Medicare & Medicaid Services, or the Department of Health and Human Services or that such person has some connection with, or authorization from, the Social Security Administration, the Centers for Medicare & Medicaid Services, or the Department of Health and Human Services. The preceding provisions of this subsection shall not apply with respect to the use by any agency or instrumentality of a State or political subdivision of a State of any words or letters which identify an agency or instrumentality of such State or of a political subdivision of such State or the use by any such agency or instrumentality of any symbol or emblem of an agency or instrumentality of such State or a political subdivision of such State.

(2)(A) No person may, for a fee, reproduce, reprint, or distribute any item consisting of a form, application, or other publication of the Social Security Administration unless such person has obtained specific, written authorization for such activity in accordance with regulations which the Commissioner of Social Security shall prescribe.

(B) No person may, for a fee, reproduce, reprint, or distribute any item consisting of a form, application, or other publication of the Department of Health and Human Services unless such person has obtained specific, written authorization for such activity in accordance with regulations which the Secretary shall prescribe.

(3) Any determination of whether the use of one or more words, letters, symbols, or emblems (or any combination or variation thereof) in connection with an item described in paragraph (1) or the reproduction, reprinting, or distribution of an item described in paragraph (2) is a violation of this subsection shall be made without regard to any inclusion in such item (or any so reproduced, reprinted, or distributed copy thereof) of a disclaimer of affiliation with the United States Government or any particular agency or instrumentality thereof.

(4)(A) No person shall offer, for a fee, to assist an individual to obtain a product or service that the person knows or should know is provided free of charge by the Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is tendered a notice that—

(i) explains that the product or service is available free of charge from the Social Security Administration, and

(ii) complies with standards prescribed by the Commissioner of Social Security respecting the content of such notice and its placement, visibility, and legibility.

(B) Subparagraph (A) shall not apply to any offer—

(i) to serve as a claimant representative in connection with a claim arising under subchapter II of this chapter, subchapter VIII of this chapter, or subchapter XVI of this chapter; or

(ii) to prepare, or assist in the preparation of, an individual's plan for achieving self-support under subchapter XVI of this chapter.

(b) Civil penalties

The Commissioner or the Secretary (as applicable) may, pursuant to regulations, impose a civil money penalty not to exceed—

(1) except as provided in paragraph (2), $5,000, or

(2) in the case of a violation consisting of a broadcast or telecast, $25,000,

against any person for each violation by such person of subsection (a) of this section. In the case of any items referred to in subsection (a)(1) of this section consisting of pieces of mail, each such piece of mail which contains one or more words, letters, symbols, or emblems in violation of subsection (a) of this section shall represent a separate violation. In the case of any item referred to in subsection (a)(2) of this section, the reproduction, reprinting, or distribution of such item shall be treated as a separate violation with respect to each copy thereof so reproduced, reprinted, or distributed.

(c) Application of other law; compromise, recovery, and deposit into Treasury of civil money penalties

(1) The provisions of section 1320a–7a of this title (other than subsections (a), (b), (f), (h), and

[1] So in original.

(i) and the first sentence of subsection (c)) shall apply to civil money penalties under subsection (b) of this section in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(2) Penalties imposed against a person under subsection (b) of this section may be compromised by the Commissioner or the Secretary (as applicable) and may be recovered in a civil action in the name of the United States brought in the district court of the United States for the district in which the violation occurred or where the person resides, has its principal office, or may be found, as determined by the Commissioner or the Secretary (as applicable). Amounts recovered under this section shall be paid to the Commissioner or the Secretary (as applicable) and shall be deposited as miscellaneous receipts of the Treasury of the United States, except that (A) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Social Security Administration, such amounts shall be deposited into the Federal Old-Age and Survivors Insurance Trust Fund, and (B) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Department of Health and Human Services, such amounts shall be deposited into the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund, as appropriate. The amount of such penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States to the person against whom the penalty has been imposed.

(d) Enforcement

The preceding provisions of this section may be enforced through the Office of the Inspector General of the Social Security Administration or the Office of the Inspector General of the Department of Health and Human Services (as appropriate).

(Aug. 14, 1935, ch. 531, title XI, §1140, as added Pub. L. 100–360, title IV, §428(a), July 1, 1988, 102 Stat. 815; amended Pub. L. 100–485, title VI, §608(d)(30)(A), Oct. 13, 1988, 102 Stat. 2424; Pub. L. 103–296, title I, §108(b)(12), title III, §§304(b), 312(a)–(j), Aug. 15, 1994, 108 Stat. 1484, 1520, 1526, 1527; Pub. L. 108–173, title IX, §900(e)(1)(B), Dec. 8, 2003, 117 Stat. 2371; Pub. L. 108–203, title II, §§204(a), 207(a), Mar. 2, 2004, 118 Stat. 511, 512.)

AMENDMENTS

2004—Pub. L. 108–203, §204(a)(2), substituted ''Prohibitions relating to references'' for ''Prohibition of misuse of symbols, emblems, or names in reference'' in section catchline.

Subsec. (a)(1). Pub. L. 108–203, §207(a)(3), which directed the substitution of ''the Centers for Medicare & Medicaid Services,'' for ''the Health Care Financing Administration,'' wherever appearing in concluding provisions, could not be executed because ''the Health Care Financing Administration,'' did not appear subsequent to amendment by Pub. L. 108–173, §900(e)(1)(B)(i). See 2003 Amendment note below.

Subsec. (a)(1)(A). Pub. L. 108–203, §207(a)(1), which directed the insertion of '' 'Centers for Medicare & Medicaid Services','' after '' 'Health Care Financing Administration','' and '' 'CMS','' after '' 'HCFA','', could not be executed because of the prior amendment by Pub. L. 108–173, §900(e)(1)(B)(ii). See 2003 Amendment note below.

Pub. L. 108–203, §207(a)(1), substituted '' 'Medicaid', 'Death Benefits Update', 'Federal Benefit Information', 'Funeral Expenses', or 'Final Supplemental Plan','' for ''or 'Medicaid',''.

Subsec. (a)(1)(B). Pub. L. 108–203, §207(a)(2), which directed the insertion of ''Centers for Medicare & Medicaid Services,'' after ''Health Care Financing Administration,'' wherever appearing, could not be executed because ''Health Care Financing Administration,'' did not appear subsequent to amendment by Pub. L. 108–173, §900(e)(1)(B)(iii). See 2003 Amendment note below.

Subsec. (a)(4). Pub. L. 108–203, §204(a)(1), added par. (4).

2003—Subsec. (a)(1). Pub. L. 108–173, §900(e)(1)(B)(i), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in two places in concluding provisions.

Subsec. (a)(1)(A). Pub. L. 108–173, §900(e)(1)(B)(ii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' and ''CMS'' for ''HCFA''.

Subsec. (a)(1)(B). Pub. L. 108–173, §900(e)(1)(B)(iii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in two places.

1994—Subsec. (a). Pub. L. 103–296, §312(a), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (a)(1). Pub. L. 103–296, §312(c), (d), in closing provisions substituted ''convey, or in a manner which reasonably could be interpreted or construed as conveying,'' for ''convey'' and inserted at end ''The preceding provisions of this subsection shall not apply with respect to the use by any agency or instrumentality of a State or political subdivision of a State of any words or letters which identify an agency or instrumentality of such State or of a political subdivision of such State or the use by any such agency or instrumentality of any symbol or emblem of an agency or instrumentality of such State or a political subdivision of such State.''

Subsec. (a)(1)(A). Pub. L. 103–296, §312(b)(1), substituted ''Administration', 'Department of Health and Human Services', 'Health and Human Services', 'Supplemental Security Income Program', or 'Medicaid', the letters 'SSA', 'HCFA', 'DHHS', 'HHS', or 'SSI','' for ''Administration', the letters 'SSA' or 'HCFA',''.

Subsec. (a)(1)(B). Pub. L. 103–296, §312(b)(2), substituted ''Social Security Administration, Health Care Financing Administration, or Department of Health and Human Services'' for ''Social Security Administration'' in two places, struck out ''or of the Health Care Financing Administration'' before '', or any other'', and inserted ''or the Medicare card,'' after ''section 405(c)(2)(F) of this title''.

Subsec. (a)(2). Pub. L. 103–296, §304(b), substituted ''405(c)(2)(F)'' for ''405(c)(2)(E)''.

Subsec. (a)(2)(A), (B). Pub. L. 103–296, §108(b)(12)(A), in par. (2) as added by Pub. L. 103–296, §312(a), designated existing provisions as subpar. (A), struck out ''or of the Department of Health and Human Services'' after ''Social Security Administration'', substituted ''Commissioner of Social Security'' for ''Secretary'', and added subpar. (B).

Subsec. (a)(3). Pub. L. 103–296, §312(e), added par. (3).

Subsec. (b). Pub. L. 103–296, §312(g), substituted ''The'' for ''(1) Subject to paragraph (2), the'', redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and in par. (1) substituted ''paragraph (2)'' for ''subparagraph (B)'', and struck out former par. (2) which read as follows: ''The total amount of penalties which may be imposed under paragraph (1) with respect to multiple violations in any one year period consisting of substantially identical communications or productions shall not exceed $100,000.''

Subsec. (b)(1). Pub. L. 103–296, § 312(f) inserted at end ''In the case of any items referred to in subsection (a)(1) of this section consisting of pieces of mail, each such piece of mail which contains one or more words, letters, symbols, or emblems in violation of subsection (a) of this section shall represent a separate violation. In the case of any item referred to in subsection (a)(2) of this section, the reproduction, reprinting, or distribution of such item shall be treated as a separate violation with respect to each copy thereof so reproduced, reprinted, or distributed.''

Pub. L. 103–296, § 108(b)(12)(B), substituted ''the Commissioner or the Secretary (as applicable)'' for ''the Secretary'' in introductory provisions.

Subsec. (c)(1). Pub. L. 103–296, § 312(h), inserted ''and the first sentence of subsection (c)'' after ''and (i)''.

Subsec. (c)(2). Pub. L. 103–296, § 312(i), at end of second sentence substituted comma for period and inserted ''except that (A) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Social Security Administration, such amounts shall be deposited into the Federal Old-Age and Survivors Insurance Trust Fund, and (B) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Department of Health and Human Services, such amounts shall be deposited into the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund, as appropriate.''

Pub. L. 103–296, § 108(b)(12)(C), substituted ''the Commissioner or the Secretary (as applicable)'' for ''the Secretary'' wherever appearing.

Subsec. (d). Pub. L. 103–296, § 312(j), added subsec. (d).

Pub. L. 103–296, § 108(b)(12)(D), which in subsec. (d) as added by Pub. L. 103–296, § 312(j), directed the substitution of ''the Office of the Inspector General of the Social Security Administration or the Office of the Inspector General of the Department of Health and Human Services (as appropriate)'' for ''the Office of Inspector General of the Department of Health and Human Services'', was executed by making the substitution for ''the Office of the Inspector General of the Department of Health and Human Services'' to reflect the probable intent of Congress.

1988—Subsec. (c)(1). Pub. L. 100–485 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Subsections (c), (d), (e), (g), (j), and (k) of section 1320a–7a of this title shall apply with respect to violations under subsection (a) of this section and penalties imposed under subsection (b) of this section in the same manner and to the same extent as such subsections apply with respect to claims in violation of section 1320a–7a of this title and penalties imposed under section 1320a–7a(a) of this title.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, § 204(b), Mar. 2, 2004, 118 Stat. 511, provided that: ''The amendments made by this section [amending this section] shall apply to offers of assistance made after the sixth month ending after the Commissioner of Social Security promulgates final regulations prescribing the standards applicable to the notice required to be provided in connection with such offer. The Commissioner shall promulgate such final regulations within 1 year after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title II, § 207(b), Mar. 2, 2004, 118 Stat. 513, provided that: ''The amendments made by this section [amending this section] shall apply to items sent after 180 days after the date of the enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(12) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 312(a)–(j) of Pub. L. 103–296 applicable with respect to violations occurring after Mar. 31, 1995, see section 312(m)(1) of Pub. L. 103–296, set out as an Effective Date note under section 333 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

EFFECTIVE DATE

Section 428(c) of Pub. L. 100–360 provided that: ''The amendments made by this section [enacting this section and amending section 1395ss of this title] shall take effect on the date of the enactment of this Act [July 1, 1988] and shall apply only with respect to violations occurring on or after such date.''

REPORTS ON OPERATION OF THIS SECTION

Section 312(k) of Pub. L. 103–296 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services and the Commissioner of Social Security shall each submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate 3 reports on the operation of section 1140 of the Social Security Act [this section] with respect to the Social Security Administration or the Department of Health and Human Services during the period covered by the report, which shall specify—

''(A) the number of complaints of violations of such section received by the Social Security Administration or the Department of Health and Human Services during the period,

''(B) the number of cases in which the Social Security Administration or the Department, during the period, sent a notice of violation of such section requesting that an individual cease activities in violation of such section,

''(C) the number of cases in which the Social Security Administration or the Department formally proposed a civil money penalty in a demand letter during the period,

''(D) the total amount of civil money penalties assessed by the Social Security Administration or the Department under this section during the period,

''(E) the number of requests for hearings filed during the period by the Social Security Administration or the Department pursuant to sections 1140(c)(1) [subsec. (c)(1) of this section] and 1128A(c)(2) [section 1320a–7a(c)(2) of this title] of the Social Security Act,

''(F) the disposition during the period of hearings filed pursuant to sections 1140(c)(1) and 1128A(c)(2) of the Social Security Act, and

''(G) the total amount of civil money penalties collected under this section and deposited into the Federal Old-Age and Survivors Insurance Trust Fund or the Health Insurance and Supplementary Medical Insurance Trust Funds, as applicable, during the period.

''(2) WHEN DUE.—The reports required by paragraph (1) shall be submitted not later than December 1, 1995, not later than December 1, 1997, and not later than December 1, 1999, respectively.''

CONSULTATION BY UNITED STATES POSTAL SERVICE REGARDING PREVENTION OF DECEPTIVE MAILINGS

United States Postal Service to consult and coordinate functions of Secretary of Department of Health and Human Services in administration of this section, see section 4 of Pub. L. 101–524, set out as a Coordination of Functions With Department of Health and Human Services note under section 3001 of Title 39, Postal Service.

§ 1320b–11. Blood donor locator service

(a) In general

The Commissioner of Social Security shall establish and conduct a Blood Donor Locator

Service, which shall be used to obtain and transmit to any authorized person (as defined in subsection (h)(1) of this section) the most recent mailing address of any blood donor who, as indicated by the donated blood or products derived therefrom or by the history of the subsequent use of such blood or blood products, has or may have the virus for acquired immune deficiency syndrome, in order to inform such donor of the possible need for medical care and treatment.

(b) Provision of address information

Whenever the Commissioner of Social Security receives a request, filed by an authorized person (as defined in subsection (h)(1) of this section), for the mailing address of a donor described in subsection (a) of this section and the Commissioner of Social Security is reasonably satisfied that the requirements of this section have been met with respect to such request, the Commissioner of Social Security shall promptly undertake to provide the requested address information from—

(1) the files and records maintained by the Social Security Administration, and

(2) such files and records obtained pursuant to section 6103(m)(6) of the Internal Revenue Code of 1986 as the Commissioner of Social Security considers necessary to comply with such request.

(c) Manner and form of requests

A request for address information under this section shall be filed in such manner and form as the Commissioner of Social Security shall by regulation prescribe, shall include the blood donor's social security account number, and shall be accompanied or supported by such documents as the Commissioner of Social Security may determine to be necessary.

(d) Procedures and safeguards

Any authorized person shall, as a condition for receiving address information from the Blood Donor Locator Service—

(1) establish and maintain, to the satisfaction of the Commissioner of Social Security, a system for standardizing records with respect to any request, the reason for such request, and the date of such request made by or of it and any disclosure of address information made by or to it,

(2) establish and maintain, to the satisfaction of the Commissioner of Social Security, a secure area or place in which such address information and all related blood donor records shall be stored,

(3) restrict, to the satisfaction of the Commissioner of Social Security, access to the address information and related blood donor records only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this section,

(4) provide such other safeguards which the Commissioner of Social Security determines (and which the Commissioner of Social Security prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the address information and related blood donor records,

(5) furnish a report to the Commissioner of Social Security, at such time and containing such information as the Commissioner of Social Security may prescribe, which describes the procedures established and utilized by the authorized person for ensuring the confidentiality of address information and related blood donor records required under this subsection, and

(6) destroy such address information and related blood donor records, upon completion of their use in providing the notification for which the information was obtained, so as to make such information and records undisclosable.

If the Commissioner of Social Security determines that any authorized person has failed to, or does not, meet the requirements of this subsection, the Commissioner of Social Security may, after any proceedings for review established under subsection (f) of this section, take such actions as are necessary to ensure such requirements are met, including refusing to disclose address information to such authorized person until the Commissioner of Social Security determines that such requirements have been or will be met. In the case of any authorized person who discloses any address information received pursuant to this section or any related blood donor records to any agent, this subsection shall apply to such authorized person and each such agent (except that, in the case of an agent, any report to the Commissioner of Social Security or other action with respect to the Commissioner of Social Security shall be made or taken through such authorized person). The Commissioner of Social Security shall destroy all related blood donor records in the possession of the Social Security Administration upon completion of their use in transmitting mailing addresses as required under subsection (a) of this section, so as to make such records undisclosable.

(e) Arrangements with State agencies and authorized persons

The Commissioner of Social Security, in carrying out the Commissioner's duties and functions under this section, shall enter into arrangements—

(1) with State agencies to accept and to transmit to the Commissioner of Social Security requests for address information under this section and to accept and to transmit such information to authorized persons, and

(2) with State agencies and authorized persons otherwise to cooperate with the Commissioner of Social Security in carrying out the purposes of this section.

(f) Procedures for administrative review

The Commissioner of Social Security shall by regulation prescribe procedures which provide for administrative review of any determination that any authorized person has failed to meet the requirements of this section.

(g) Unauthorized disclosure of information

Paragraphs (1), (2), and (3) of section 7213(a) of the Internal Revenue Code of 1986 shall apply with respect to the unauthorized willful disclosure to any person of address information or related blood donor records acquired or maintained by or under the Commissioner of Social

Security, or pursuant to this section by any authorized person, or of information derived from any such address information or related blood donor records, in the same manner and to the same extent as such paragraphs apply with respect to unauthorized disclosures of return and return information described in such paragraphs. Paragraph (4) of section 7213(a) of such Code shall apply with respect to the willful offer of any item of material value in exchange for any such address information or related blood donor record in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

(h) Definitions

For purposes of this section—

(1) Authorized person

The term ''authorized person'' means—

(A) any agency of a State (or of a political subdivision of a State) which has duties or authority under State law relating to the public health or otherwise has the duty or authority under State law to regulate blood donations, and

(B) any entity engaged in the acceptance of blood donations which is licensed or registered by the Food and Drug Administration in connection with the acceptance of such blood donations, and which, in accordance with such regulations as may be prescribed by the Commissioner of Social Security, provides for—

(i) the confidentiality of any address information received pursuant to this section and related blood donor records,

(ii) blood donor notification procedures for individuals with respect to whom such information is requested and a finding has been made that they have or may have the virus for acquired immune deficiency syndrome, and

(iii) counseling services for such individuals who have been found to have such virus.

(2) Related blood donor record

The term ''related blood donor record'' means any record, list, or compilation which indicates, directly or indirectly, the identity of any individual with respect to whom a request for address information has been made pursuant to this section.

(3) State

The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(Aug. 14, 1935, ch. 531, title XI, §1141, as added Pub. L. 100–647, title VIII, §8008(b)(1), Nov. 10, 1988, 102 Stat. 3784; amended Pub. L. 103–296, title I, §108(b)(13), Aug. 15, 1994, 108 Stat. 1484.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (b)(2) and (g), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §108(b)(13)(A), (C), substituted ''The Commissioner of Social Security'' for ''The Secretary'' and struck out ''under the direction of the Commissioner of Social Security,'' before ''which shall be used''.

Subsec. (b), (c). Pub. L. 103–296, §108(b)(13)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 103–296, §108(b)(13)(D), which directed amendment of par. (6) by substituting ''Social Security Administration'' for ''Department of Health Services'', was executed by substituting ''Social Security Administration'' for ''Department of Health and Human Services'' in closing provisions to reflect the probable intent of Congress.

Pub. L. 103–296, §108(b)(13)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (e). Pub. L. 103–296, §108(b)(13)(A), (B), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in introductory provisions.

Subsecs. (f), (g), (h)(1)(B). Pub. L. 103–296, §108(b)(13)(A), substituted ''Commissioner of Social Security'' for ''Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TIME LIMIT FOR ESTABLISHMENT OF BLOOD DONOR LOCATOR SERVICE

Section 8008(b)(2) of Pub. L. 100–647 provided that: ''The Secretary of Health and Human Services shall establish the Blood Donor Locator Service pursuant to section 1141 of the Social Security Act [this section] not later than 180 days after the date of the enactment of this Act [Nov. 10, 1988].''

§ 1320b–12. Research on outcomes of health care services and procedures

(a) Establishment of program

(1) In general

The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall—

(A) conduct and support research with respect to the outcomes, effectiveness, and appropriateness of health care services and procedures in order to identify the manner in which diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically; and

(B) assure that the needs and priorities of the program under subchapter XVIII of this chapter are appropriately reflected in the development and periodic review and updating (through the process set forth in section 299b–2[1] of this title) of treatment-specific or condition-specific practice guidelines for clinical treatments and conditions in forms appropriate for use in clinical practice, for use in educational programs, and for use in reviewing quality and appropriateness of medical care.

[1] See References in Text note below.

(2) Evaluations of alternative services and procedures

In carrying out paragraph (1), the Secretary shall conduct or support evaluations of the comparative effects, on health and functional capacity, of alternative services and procedures utilized in preventing, diagnosing, treating, and clinically managing diseases, disorders, and other health conditions.

(3) Initial guidelines

(A) In carrying out paragraph (1)(B) of this subsection, and section 299b–1(d)[1] of this title, the Secretary shall, by not later than January 1, 1991, assure the development of an initial set of the guidelines specified in paragraph (1)(B) that shall include not less than 3 clinical treatments or conditions that—

(i)(I) account for a significant portion of expenditures under subchapter XVIII of this chapter; and

(II) have a significant variation in the frequency or the type of treatment provided; or

(ii) otherwise meet the needs and priorities of the program under subchapter XVIII of this chapter, as set forth under subsection (b)(3) of this section.

(B)(i) The Secretary shall provide for the use of guidelines developed under subparagrah[2] (A) to improve the quality, effectiveness, and appropriateness of care provided under subchapter XVIII of this chapter. The Secretary shall determine the impact of such use on the quality, appropriateness, effectiveness, and cost of medical care provided under such subchapter and shall report to the Congress on such determination by not later than January 1, 1993.

(ii) For the purpose of carrying out clause (i), the Secretary shall expend, from the amounts specified in clause (iii), $1,000,000 for fiscal year 1990 and $1,500,000 for each of the fiscal years 1991 and 1992.

(iii) For each fiscal year, for purposes of expenditures required in clause (ii)—

(I) 60 percent of an amount equal to the expenditure involved is appropriated from the Federal Hospital Insurance Trust Fund (established under section 1395i of this title); and

(II) 40 percent of an amount equal to the expenditure involved is appropriated from the Federal Supplementary Medical Insurance Trust Fund (established under section 1395t of this title).

(b) Priorities

(1) In general

The Secretary shall establish priorities with respect to the diseases, disorders, and other health conditions for which research and evaluations are to be conducted or supported under subsection (a) of this section. In establishing such priorities, the Secretary shall, with respect to a disease, disorder, or other health condition, consider the extent to which—

(A) improved methods of prevention, diagnosis, treatment, and clinical management can benefit a significant number of individuals;

(B) there is significant variation among physicians in the particular services and procedures utilized in making diagnoses and providing treatments or there is significant variation in the outcomes of health care services or procedures due to different patterns of diagnosis or treatment;

(C) the services and procedures utilized for diagnosis and treatment result in relatively substantial expenditures; and

(D) the data necessary for such evaluations are readily available or can readily be developed.

(2) Preliminary assessments

For the purpose of establishing priorities under paragraph (1), the Secretary may, with respect to services and procedures utilized in preventing, diagnosing, treating, and clinically managing diseases, disorders, and other health conditions, conduct or support assessments of the extent to which—

(A) rates of utilization vary among similar populations for particular diseases, disorders, and other health conditions;

(B) uncertainties exist on the effect of utilizing a particular service or procedure; or

(C) inappropriate services and procedures are provided.

(3) Relationship with medicare program

In establishing priorities under paragraph (1) for research and evaluation, and under section 299b–3(a)[1] of this title for the agenda under such section, the Secretary shall assure that such priorities appropriately reflect the needs and priorities of the program under subchapter XVIII of this chapter, as set forth by the Administrator of the Centers for Medicare & Medicaid Services.

(c) Methodologies and criteria for evaluations

For the purpose of facilitating research under subsection (a) of this section, the Secretary shall—

(1) conduct and support research with respect to the improvement of methodologies and criteria utilized in conducting research with respect to outcomes of health care services and procedures;

(2) conduct and support reviews and evaluations of existing research findings with respect to such treatment or conditions;

(3) conduct and support reviews and evaluations of the existing methodologies that use large data bases in conducting such research and shall develop new research methodologies, including data-based methods of advancing knowledge and methodologies that measure clinical and functional status of patients, with respect to such research;

(4) provide grants and contracts to research centers, and contracts to other entities, to conduct such research on such treatment or conditions, including research on the appropriate use of prescription drugs;

(5) conduct and support research and demonstrations on the use of claims data and data on clinical and functional status of patients in determining the outcomes, effectiveness, and appropriateness of such treatment; and

[2] So in original. Probably should be ''subparagraph''.

(6) conduct and support supplementation of existing data bases, including the collection of new information, to enhance data bases for research purposes, and the design and development of new data bases that would be used in outcomes and effectiveness research.

(d) Standards for data bases

In carrying out this section, the Secretary shall develop—

(1) uniform definitions of data to be collected and used in describing a patient's clinical and functional status;

(2) common reporting formats and linkages for such data; and

(3) standards to assure the security, confidentiality, accuracy, and appropriate maintenance of such data.

(e) Dissemination of research findings and guidelines

(1) In general

The Secretary shall provide for the dissemination of the findings of research and the guidelines described in subsection (a) of this section, and for the education of providers and others in the application of such research findings and guidelines.

(2) Cooperative educational activities

In disseminating findings and guidelines under paragraph (1), and in providing for education under such paragraph, the Secretary shall work with professional associations, medical specialty and subspecialty organizations, and other relevant groups to identify and implement effective means to educate physicians, other providers, consumers, and others in using such findings and guidelines, including training for physician managers within provider organizations.

(f) Evaluations

The Secretary shall conduct and support evaluations of the activities carried out under this section to determine the extent to which such activities have had an effect on the practices of physicians in providing medical treatment, the delivery of health care, and the outcomes of health care services and procedures.

(g) Research with respect to dissemination

The Secretary may conduct or support research with respect to improving methods of disseminating information on the effectiveness and appropriateness of health care services and procedures.

(h) Omitted

(i) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section—

(A) $50,000,000 for fiscal year 1990;

(B) $75,000,000 for fiscal year 1991;

(C) $110,000,000 for fiscal year 1992;

(D) $148,000,000 for fiscal year 1993; and

(E) $185,000,000 for fiscal year 1994.

(2) Specifications

For the purpose of carrying out this section, for each of the fiscal years 1990 through 1992 an amount equal to two-thirds of the amounts authorized to be appropriated under paragraph (1), and for each of the fiscal years 1993 and 1994 an amount equal to 70 percent of such amounts, are to be appropriated in the following proportions from the following trust funds:

(A) 60 percent from the Federal Hospital Insurance Trust Fund (established under section 1395i of this title).

(B) 40 percent from the Federal Supplementary Medical Insurance Trust Fund (established under section 1395t of this title).

(3) Allocations

(A) For each fiscal year, of the amounts transferred or otherwise appropriated to carry out this section, the Secretary shall reserve appropriate amounts for each of the purposes specified in clauses (i) through (iv) of subparagraph (B).

(B) The purposes referred to in subparagraph (A) are—

(i) the development of guidelines, standards, performance measures, and review criteria;

(ii) research and evaluation;

(iii) data-base standards and development; and

(iv) education and information dissemination.

(Aug. 14, 1935, ch. 531, title XI, § 1142, as added Pub. L. 101–239, title VI, § 6103(b)(1), Dec. 19, 1989, 103 Stat. 2195; amended Pub. L. 106–129, § 2(b)(2), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 108–173, title IX, § 900(e)(1)(C), Dec. 8, 2003, 117 Stat. 2371.)

REFERENCES IN TEXT

Sections 299b–1 to 299b–3 of this title, referred to in subsecs. (a) and (b), were in the original references to sections 912 to 914 of act July 1, 1944, which were omitted in the general amendment of subchapter VII of chapter 6A of this title by Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1653. Section 2(a) of Pub. L. 106–129 enacted new sections 912 to 914 of act July 1, 1944, which are classified to sections 299b–1 to 299b–3, respectively, of this title.

CODIFICATION

Subsec. (h) of this section, which required the Secretary to report biennially to Congress on the progress of the activities under this section during the preceding 2 fiscal years, including the impact of such activities on medical care (particularly medical care for individuals receiving benefits under subchapter XVIII of this chapter), terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 10 on page 94 of House Document No. 103–7.

Another section 1142 of act Aug. 14, 1935, was renumbered section 1143 by Pub. L. 101–508, title V, § 5111(a)(1), Nov. 5, 1990, 104 Stat. 1388–272, and is classified to section 1320b–13 of this title.

AMENDMENTS

2003—Subsec. (b)(3). Pub. L. 108–173, § 900(e)(1)(C), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

1999—Subsec. (a)(1). Pub. L. 106–129 substituted ''Director of the Agency for Healthcare Research and Qual-

ity'' for ''Administrator for Health Care Policy and Research'' in introductory provisions.

AHCPR STUDY ON EFFECT OF CREDENTIALING OF TECHNOLOGISTS AND SONOGRAPHERS ON QUALITY OF ULTRASOUND

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §229(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–357, provided that:

''(1) STUDY.—The Administrator for Health Care Policy and Research shall provide for a study that, with respect to the provision of ultrasound under the medicare and medicaid programs under titles XVIII and XIX of the Social Security Act [subchapters XVIII and XIX of this chapter], compares differences in quality between ultrasound furnished by individuals who are credentialed by private entities or organizations and ultrasound furnished by those who are not so credentialed. Such study shall examine and evaluate differences in error rates, resulting complications, and patient outcomes as a result of the differences in credentialing. In designing the study, the Administrator shall consult with organizations nationally recognized for their expertise in ultrasound.

''(2) REPORT.—Not later than two years after the date of the enactment of this Act [Nov. 29, 1999], the Administrator shall submit a report to Congress on the study conducted under paragraph (1).''

REPORT ON LINKAGE OF PUBLIC AND PRIVATE RESEARCH RELATED DATA

Section 6103(b)(2) of Pub. L. 101–239 provided that: ''Not later than 1 year after the date of the enactment of this Act [Dec. 19, 1989], the Secretary of Health and Human Services shall report to the Congress on the feasibility of linking research-related data described in section 1142(d) of the Social Security Act [subsec. (d) of this section] (as added by paragraph (1) of this subsection) with similar data collected or maintained by non-Federal entities and by Federal agencies other than the Department of Health and Human Services (including the Departments of Defense and Veterans Affairs and the Office of Personnel Management).''

§ 1320b–13. Social security account statements

(a) Provision upon request

(1) Beginning not later than October 1, 1990, the Commissioner of Social Security shall provide upon the request of an eligible individual a social security account statement (hereinafter referred to as the ''statement'').

(2) Each statement shall contain—

(A) the amount of wages paid to and self-employment income derived by the eligible individual as shown by the records of the Commissioner at the date of the request;

(B) an estimate of the aggregate of the employer, employee, and self-employment contributions of the eligible individual for old-age, survivors, and disability insurance as shown by the records of the Commissioner on the date of the request;

(C) a separate estimate of the aggregate of the employer, employee, and self-employment contributions of the eligible individual for hospital insurance as shown by the records of the Commissioner on the date of the request; and

(D) an estimate of the potential monthly retirement, disability, survivor, and auxiliary benefits payable on the eligible individual's account together with a description of the benefits payable under the medicare program of subchapter XVIII of this chapter.

(3) For purposes of this section, the term ''eligible individual'' means an individual who—

(A) has a social security account number,

(B) has attained age 25 or over, and

(C) has wages or net earnings from self-employment.

(b) Notice to eligible individuals

The Commissioner shall, to the maximum extent practicable, take such steps as are necessary to assure that eligible individuals are informed of the availability of the statement described in subsection (a) of this section.

(c) Mandatory provision of statements

(1) By not later than September 30, 1995, the Commissioner shall provide a statement to each eligible individual who has attained age 60 by October 1, 1994, and who is not receiving benefits under subchapter II of this chapter and for whom a current mailing address can be determined through such methods as the Commissioner determines to be appropriate. In fiscal years 1995 through 1999 the Commissioner shall provide a statement to each eligible individual who attains age 60 in such fiscal years and who is not receiving benefits under subchapter II of this chapter and for whom a current mailing address can be determined through such methods as the Commissioner determines to be appropriate. The Commissioner shall provide with each statement to an eligible individual notice that such statement is updated annually and is available upon request.

(2) Beginning not later than October 1, 1999, the Commissioner shall provide a statement on an annual basis to each eligible individual who is not receiving benefits under subchapter II of this chapter and for whom a mailing address can be determined through such methods as the Commissioner determines to be appropriate. With respect to statements provided to eligible individuals who have not attained age 50, such statements need not include estimates of monthly retirement benefits. However, if such statements provided to eligible individuals who have not attained age 50 do not include estimates of retirement benefit amounts, such statements shall include a description of the benefits (including auxiliary benefits) that are available upon retirement.

(d) Disclosure to governmental employees of effect of noncovered employment

(1) In the case of any individual commencing employment on or after January 1, 2005, in any agency or instrumentality of any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) in a position in which service performed by the individual does not constitute ''employment'' as defined in section 410 of this title, the head of the agency or instrumentality shall ensure that, prior to the date of the commencement of the individual's employment in the position, the individual is provided a written notice setting forth an explanation, in language calculated to be understood by the average individual, of the maximum effect on computations of primary insurance amounts (under section 415(a)(7) of this title) and the effect on benefit amounts (under section 402(k)(5) of this title) of monthly periodic payments or benefits payable based on earnings derived in such service. Such notice shall be in a form which shall

be prescribed by the Commissioner of Social Security.

(2) The written notice provided to an individual pursuant to paragraph (1) shall include a form which, upon completion and signature by the individual, would constitute certification by the individual of receipt of the notice. The agency or instrumentality providing the notice to the individual shall require that the form be completed and signed by the individual and submitted to the agency or instrumentality and to the pension, annuity, retirement, or similar fund or system established by the governmental entity involved responsible for paying the monthly periodic payments or benefits, before commencement of service with the agency or instrumentality.

(Aug. 14, 1935, ch. 531, title XI, § 1143, formerly § 1142, as added Pub. L. 101–239, title X, § 10308, Dec. 19, 1989, 103 Stat. 2485; renumbered § 1143 and amended Pub. L. 101–508, title V, § 5111(a), Nov. 5, 1990, 104 Stat. 1388–272; Pub. L. 105–78, title VI, § 605, Nov. 13, 1997, 111 Stat. 1521; Pub. L. 108–203, title IV, §§ 419(a)–(c), 421, Mar. 2, 2004, 118 Stat. 533–535.)

AMENDMENT OF SUBSECTION (a)(2) AND (3)

Pub. L. 108–203, title IV, § 419(a), (b), (d), Mar. 2, 2004, 118 Stat. 533, 534, provided that, applicable with respect to social security account statements issued on or after Jan. 1, 2007, this section is amended as follows:

(1) in subsection (a)(2), by striking ''and'' at the end of subparagraph (C), by striking the period and inserting ''; and'' in subparagraph (D), and by adding at the end the following:

''(E) in the case of an eligible individual described in paragraph (3)(C)(ii), an explanation, in language calculated to be understood by the average eligible individual, of the operation of the provisions under sections 402(k)(5) and 415(a)(7) of this title and an explanation of the maximum potential effects of such provisions on the eligible individual's monthly retirement, survivor, and auxiliary benefits.''; and

(2) in subsection (a)(3), by striking ''who'' after ''an individual'' and inserting ''who'' before ''has'' in each of subparagraphs (A) and (B), by inserting ''(i) who'' after ''(C)'', and by inserting before the period the following: '', or (ii) with respect to whom the Commissioner has information that the pattern of wages or self-employment income indicate a likelihood of noncovered employment''.

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–203, § 421(1), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(2)(A) to (C). Pub. L. 108–203, § 421(2), substituted ''Commissioner'' for ''Secretary''.

Subsecs. (b), (c). Pub. L. 108–203, § 421(2), substituted ''Commissioner'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 108–203, § 419(c), added subsec. (d).

1997—Subsec. (a)(2)(B), (C). Pub. L. 105–78 substituted ''employer, employee,'' for ''employee''.

1990—Subsec. (c)(2). Pub. L. 101–508, § 5111(a)(2), substituted ''an annual'' for ''a biennial''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 419(d), Mar. 2, 2004, 118 Stat. 534, provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section] shall apply with respect to social security account statements issued on or after January 1, 2007.''

§ 1320b–14. Outreach efforts to increase awareness of the availability of medicare cost-sharing and subsidies for low-income individuals under subchapter XVIII

(a) Outreach

(1) In general

The Commissioner of Social Security (in this section referred to as the ''Commissioner'') shall conduct outreach efforts to—

(A) identify individuals entitled to benefits under the medicare program under subchapter XVIII of this chapter who may be eligible for medical assistance for payment of the cost of medicare cost-sharing under the medicaid program pursuant to sections 1396a(a)(10)(E) and 1396u–3 of this title[1] for the transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies under section 1395w–114 of this title; and

(B) notify such individuals of the availability of such medical assistance, program, and subsidies under such sections.

(2) Content of notice

Any notice furnished under paragraph (1) shall state that eligibility for medicare cost-sharing assistance, the transitional assistance under section 1395w–141(f) of this title, or premium and cost-sharing subsidies under section 1395w–114 of this title under such sections is conditioned upon—

(A) the individual providing to the State information about income and resources (in the case of an individual residing in a State that imposes an assets test for eligibility for medicare cost-sharing under the medicaid program); and

(B) meeting the applicable eligibility criteria.

(b) Coordination with States

(1) In general

In conducting the outreach efforts under this section, the Commissioner shall—

(A) furnish the agency of each State responsible for the administration of the medicaid program and any other appropriate State agency with information consisting of the name and address of individuals residing in the State that the Commissioner determines may be eligible for medical assistance for payment of the cost of medicare cost-sharing under the medicaid program pursuant to sections 1396a(a)(10)(E) and 1396u–3 of this title, for transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies for low-income individuals under section 1395w–114 of this title; and

(B) update any such information not less frequently than once per year.

(2) Information in periodic updates

The periodic updates described in paragraph (1)(B) shall include information on individuals

[1] So in original. Probably should be followed by a comma.

who are or may be eligible for the medical assistance, program, and subsidies described in paragraph (1)(A) because such individuals have experienced reductions in benefits under subchapter II of this chapter.

(Aug. 14, 1935, ch. 531, title XI, § 1144, as added Pub. L. 106–554, § 1(a)(6) [title IX, § 911(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–583; amended Pub. L. 108–173, title I, § 103(g), Dec. 8, 2003, 117 Stat. 2160.)

PRIOR PROVISIONS

A prior section 1320b–14, act Aug. 14, 1935, ch. 531, title XI, § 1144, as added Pub. L. 103–66, title XIII, § 13581(a), Aug. 10, 1993, 107 Stat. 609; Pub. L. 105–34, title XV, § 1503(e), Aug. 5, 1997, 111 Stat. 1063, related to Medicare and Medicaid Coverage Data Bank, prior to repeal by Pub. L. 104–226, § 1(a), Oct. 2, 1996, 110 Stat. 3033.

AMENDMENTS

2003—Pub. L. 108–173, § 103(g)(1), inserted ''and subsidies for low-income individuals under subchapter XVIII'' after ''cost-sharing'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 108–173, § 103(g)(2)(A)(i), inserted ''for the transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies under section 1395w–114 of this title'' before semicolon.

Subsec. (a)(1)(B). Pub. L. 108–173, § 103(g)(2)(A)(ii), inserted '', program, and subsidies'' after ''medical assistance''.

Subsec. (a)(2). Pub. L. 108–173, § 103(g)(2)(B)(i), inserted '', the transitional assistance under section 1395w–141(f) of this title, or premium and cost-sharing subsidies under section 1395w–114 of this title'' after ''assistance'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 108–173, § 103(g)(2)(B)(ii), substituted ''eligibility for medicare cost-sharing under the medicaid program'' for ''such eligibility''.

Subsec. (b)(1)(A). Pub. L. 108–173, § 103(g)(3)(A), inserted '', for transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies for low-income individuals under section 1395w–114 of this title'' after ''1396u–3 of this title''.

Subsec. (b)(2). Pub. L. 108–173, § 103(g)(3)(B), inserted '', program, and subsidies'' after ''medical assistance''.

EFFECTIVE DATE

Pub. L. 106–554, § 1(a)(6) [title IX, § 911(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–584, provided that: ''The amendments made by subsection (a) [enacting this section and amending section 1396d of this title] shall take effect one year after the date of the enactment of this Act [Dec. 21, 2000].''

GAO REPORT

Pub. L. 106–554, § 1(a)(6) [title IX, § 911(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–584, provided that: ''The Comptroller General of the United States shall conduct a study of the impact of section 1144 of the Social Security Act [this section] (as added by subsection (a)(1)) on the enrollment of individuals for medicare cost-sharing under the medicaid program. Not later than 18 months after the date that the Commissioner of Social Security first conducts outreach under section 1144 of such Act, the Comptroller General shall submit to Congress a report on such study. The report shall include such recommendations for legislative changes as the Comptroller General deems appropriate.''

§ 1320b–15. Protection of social security and medicare trust funds

(a) In general

No officer or employee of the United States shall—

(1) delay the deposit of any amount into (or delay the credit of any amount to) any Federal fund or otherwise vary from the normal terms, procedures, or timing for making such deposits or credits,

(2) refrain from the investment in public debt obligations of amounts in any Federal fund, or

(3) redeem prior to maturity amounts in any Federal fund which are invested in public debt obligations for any purpose other than the payment of benefits or administrative expenses from such Federal fund.

(b) "Public debt obligation" defined

For purposes of this section, the term ''public debt obligation'' means any obligation subject to the public debt limit established under section 3101 of title 31.

(c) "Federal fund" defined

For purposes of this section, the term ''Federal fund'' means—

(1) the Federal Old-Age and Survivors Insurance Trust Fund;

(2) the Federal Disability Insurance Trust Fund;

(3) the Federal Hospital Insurance Trust Fund; and

(4) the Federal Supplementary Medical Insurance Trust Fund.

(Aug. 14, 1935, ch. 531, title XI, § 1145, as added Pub. L. 104–121, title I, § 107(a), Mar. 29, 1996, 110 Stat. 856.)

EFFECTIVE DATE

Section 107(b) of Pub. L. 104–121 provided that: ''The amendment made by this section [enacting this section] shall take effect on the date of the enactment of this Act [Mar. 29, 1996].''

§ 1320b–16. Public disclosure of certain information on hospital financial interest and referral patterns

The Secretary shall make available to the public, in a form and manner specified by the Secretary, information disclosed to the Secretary pursuant to section 1395cc(a)(1)(S) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1146, as added Pub. L. 105–33, title IV, § 4321(c), Aug. 5, 1997, 111 Stat. 395.)

EFFECTIVE DATE

Section 4321(d)(2) of Pub. L. 105–33 provided that: ''The Secretary of Health and Human Services shall issue regulations by not later than the date which is 1 year after the date of the enactment of this Act [Aug. 5, 1997] to carry out the amendments made by subsections (b) and (c) [enacting this section and amending section 1395cc of this title] and such amendments shall take effect as of such date (on or after the issuance of such regulations) as the Secretary specifies in such regulations.''

§ 1320b–17. Cross-program recovery of overpayments from benefits

(a) In general

Subject to subsection (b) of this section, whenever the Commissioner of Social Security determines that more than the correct amount of any payment has been made to a person under a program described in subsection (e) of this section,

the Commissioner of Social Security may recover the amount incorrectly paid by decreasing any amount which is payable to such person under any other program specified in that subsection.

(b) Limitation applicable to current benefits

(1) In general

In carrying out subsection (a) of this section, the Commissioner of Social Security may not decrease the monthly amount payable to an individual under a program described in subsection (e) of this section that is paid when regularly due—

(A) in the case of benefits under subchapter II or VIII of this chapter, by more than 10 percent of the amount of the benefit payable to the person for that month under such subchapter; and

(B) in the case of benefits under subchapter XVI of this chapter, by an amount greater than the lesser of—

(i) the amount of the benefit payable to the person for that month; or

(ii) an amount equal to 10 percent of the person's income for that month (including such monthly benefit but excluding payments under subchapter II of this chapter when recovery is also made from subchapter II payments and excluding income excluded pursuant to section 1382a(b) of this title).

(2) Exception

Paragraph (1) shall not apply if—

(A) the person or the spouse of the person was involved in willful misrepresentation or concealment of material information in connection with the amount incorrectly paid; or

(B) the person so requests.

(c) No effect on eligibility or benefit amount under subchapter VIII or XVI

In any case in which the Commissioner of Social Security takes action in accordance with subsection (a) of this section to recover an amount incorrectly paid to any person, neither that person, nor (with respect to the program described in subsection (e)(3) of this section) any individual whose eligibility for benefits under such program or whose amount of such benefits, is determined by considering any part of that person's income, shall, as a result of such action—

(1) become eligible for benefits under the program described in paragraph (2) or (3) of subsection (e) of this section; or

(2) if such person or individual is otherwise so eligible, become eligible for increased benefits under such program.

(d) Inapplicability of prohibition against assessment and legal process

Section 407 of this title shall not apply to actions taken under the provisions of this section to decrease amounts payable under subchapters II and XVI of this chapter.

(e) Programs described

The programs described in this subsection are the following:

(1) The old-age, survivors, and disability insurance benefits program under subchapter II of this chapter.

(2) The special benefits for certain World War II veterans program under subchapter VIII of this chapter.

(3) The supplemental security income benefits program under subchapter XVI of this chapter (including, for purposes of this section, State supplementary payments paid by the Commissioner pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66).

(Aug. 14, 1935, ch. 531, title XI, § 1147, as added Pub. L. 105–306, § 8(a), Oct. 28, 1998, 112 Stat. 2928; amended Pub. L. 106–169, title II, § 251(b)(7), Dec. 14, 1999, 113 Stat. 1855; Pub. L. 108–203, title II, § 210(a), Mar. 2, 2004, 118 Stat. 516.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in subsec. (e)(3), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 156, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

2004—Pub. L. 108–203 amended section catchline and text generally, substituting provisions relating to recovery of overpayments from benefits under subchapters II, VIII, and XVI of this chapter, consisting of subsecs. (a) to (e), for provisions relating to recovery of overpayments from benefits under subchapter XVI of this chapter, consisting of subsecs. (a) and (b).

1999—Pub. L. 106–169, § 251(b)(7)(B), substituted ''other'' for ''social security'' in section catchline.

Subsec. (a)(1). Pub. L. 106–169, § 251(b)(7)(A), inserted ''or VIII'' after ''person under subchapter II'' and substituted ''payable under such subchapter'' for ''payable under subchapter II of this chapter''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108–203, set out as a note under section 404 of this title.

EFFECTIVE DATE

Section effective Oct. 28, 1998, and applicable to amounts incorrectly paid which remain outstanding on or after such date, see section 8(c) of Pub. L. 105–306, set out as an Effective Date of 1998 Amendment note under section 404 of this title.

§ 1320b–18. Repealed. Pub. L. 108–203, title II, § 210(b)(3), Mar. 2, 2004, 118 Stat. 517

Section, act Aug. 14, 1935, ch. 531, title XI, § 1147A, as added Pub. L. 106–169, title II, § 251(b)(8), Dec. 14, 1999, 113 Stat. 1856, related to recovery of social security benefit overpayments from subchapter VIII benefits. See section 1320b–17 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108–203, set out as an Effective Date of 2004 Amendment note under section 404 of this title.

§ 1320b–19. The Ticket to Work and Self-Sufficiency Program

(a) In general

The Commissioner shall establish a Ticket to Work and Self-Sufficiency Program, under which a disabled beneficiary may use a ticket to

work and self-sufficiency issued by the Commissioner in accordance with this section to obtain employment services, vocational rehabilitation services, or other support services from an employment network which is of the beneficiary's choice and which is willing to provide such services to such beneficiary.

(b) Ticket system

(1) Distribution of tickets

The Commissioner may issue a ticket to work and self-sufficiency to disabled beneficiaries for participation in the Program.

(2) Assignment of tickets

A disabled beneficiary holding a ticket to work and self-sufficiency may assign the ticket to any employment network of the beneficiary's choice which is serving under the Program and is willing to accept the assignment.

(3) Ticket terms

A ticket issued under paragraph (1) shall consist of a document which evidences the Commissioner's agreement to pay (as provided in paragraph (4)) an employment network, which is serving under the Program and to which such ticket is assigned by the beneficiary, for such employment services, vocational rehabilitation services, and other support services as the employment network may provide to the beneficiary.

(4) Payments to employment networks

The Commissioner shall pay an employment network under the Program in accordance with the outcome payment system under subsection (h)(2) of this section or under the outcome-milestone payment system under subsection (h)(3) of this section (whichever is elected pursuant to subsection (h)(1) of this section). An employment network may not request or receive compensation for such services from the beneficiary.

(c) State participation

(1) In general

Each State agency administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) may elect to participate in the Program as an employment network with respect to a disabled beneficiary. If the State agency does elect to participate in the Program, the State agency also shall elect to be paid under the outcome payment system or the outcome-milestone payment system in accordance with subsection (h)(1) of this section. With respect to a disabled beneficiary that the State agency does not elect to have participate in the Program, the State agency shall be paid for services provided to that beneficiary under the system for payment applicable under section 422(d) of this title and subsections (d) and (e) of section 1382d of this title. The Commissioner shall provide for periodic opportunities for exercising such elections.

(2) Effect of participation by State agency

(A) State agencies participating

In any case in which a State agency described in paragraph (1) elects under that paragraph to participate in the Program, the employment services, vocational rehabilitation services, and other support services which, upon assignment of tickets to work and self-sufficiency, are provided to disabled beneficiaries by the State agency acting as an employment network shall be governed by plans for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.).

(B) State agencies administering maternal and child health services programs

Subparagraph (A) shall not apply with respect to any State agency administering a program under subchapter V of this chapter.

(3) Agreements between State agencies and employment networks

State agencies and employment networks shall enter into agreements regarding the conditions under which services will be provided when an individual is referred by an employment network to a State agency for services. The Commissioner shall establish by regulations the timeframe within which such agreements must be entered into and the mechanisms for dispute resolution between State agencies and employment networks with respect to such agreements.

(d) Responsibilities of the Commissioner

(1) Selection and qualifications of program managers

The Commissioner shall enter into agreements with 1 or more organizations in the private or public sector for service as a program manager to assist the Commissioner in administering the Program. Any such program manager shall be selected by means of a competitive bidding process, from among organizations in the private or public sector with available expertise and experience in the field of vocational rehabilitation or employment services.

(2) Tenure, renewal, and early termination

Each agreement entered into under paragraph (1) shall provide for early termination upon failure to meet performance standards which shall be specified in the agreement and which shall be weighted to take into account any performance in prior terms. Such performance standards shall include—

(A) measures for ease of access by beneficiaries to services; and

(B) measures for determining the extent to which failures in obtaining services for beneficiaries fall within acceptable parameters, as determined by the Commissioner.

(3) Preclusion from direct participation in delivery of services in own service area

Agreements under paragraph (1) shall preclude—

(A) direct participation by a program manager in the delivery of employment services, vocational rehabilitation services, or other support services to beneficiaries in the service area covered by the program manager's agreement; and

(B) the holding by a program manager of a financial interest in an employment net-

work or service provider which provides services in a geographic area covered under the program manager's agreement.

(4) Selection of employment networks

(A) In general

The Commissioner shall select and enter into agreements with employment networks for service under the Program. Such employment networks shall be in addition to State agencies serving as employment networks pursuant to elections under subsection (c) of this section.

(B) Alternate participants

In any State where the Program is being implemented, the Commissioner shall enter into an agreement with any alternate participant that is operating under the authority of section 422(d)(2) of this title in the State as of December 17, 1999, and chooses to serve as an employment network under the Program.

(5) Termination of agreements with employment networks

The Commissioner shall terminate agreements with employment networks for inadequate performance, as determined by the Commissioner.

(6) Quality assurance

The Commissioner shall provide for such periodic reviews as are necessary to provide for effective quality assurance in the provision of services by employment networks. The Commissioner shall solicit and consider the views of consumers and the program manager under which the employment networks serve and shall consult with providers of services to develop performance measurements. The Commissioner shall ensure that the results of the periodic reviews are made available to beneficiaries who are prospective service recipients as they select employment networks. The Commissioner shall ensure that the periodic surveys of beneficiaries receiving services under the Program are designed to measure customer service satisfaction.

(7) Dispute resolution

The Commissioner shall provide for a mechanism for resolving disputes between beneficiaries and employment networks, between program managers and employment networks, and between program managers and providers of services. The Commissioner shall afford a party to such a dispute a reasonable opportunity for a full and fair review of the matter in dispute.

(e) Program managers

(1) In general

A program manager shall conduct tasks appropriate to assist the Commissioner in carrying out the Commissioner's duties in administering the Program.

(2) Recruitment of employment networks

A program manager shall recruit, and recommend for selection by the Commissioner, employment networks for service under the Program. The program manager shall carry out such recruitment and provide such recommendations, and shall monitor all employment networks serving in the Program in the geographic area covered under the program manager's agreement, to the extent necessary and appropriate to ensure that adequate choices of services are made available to beneficiaries. Employment networks may serve under the Program only pursuant to an agreement entered into with the Commissioner under the Program incorporating the applicable provisions of this section and regulations thereunder, and the program manager shall provide and maintain assurances to the Commissioner that payment by the Commissioner to employment networks pursuant to this section is warranted based on compliance by such employment networks with the terms of such agreement and this section. The program manager shall not impose numerical limits on the number of employment networks to be recommended pursuant to this paragraph.

(3) Facilitation of access by beneficiaries to employment networks

A program manager shall facilitate access by beneficiaries to employment networks. The program manager shall ensure that each beneficiary is allowed changes in employment networks without being deemed to have rejected services under the Program. When such a change occurs, the program manager shall reassign the ticket based on the choice of the beneficiary. Upon the request of the employment network, the program manager shall make a determination of the allocation of the outcome or milestone-outcome payments based on the services provided by each employment network. The program manager shall establish and maintain lists of employment networks available to beneficiaries and shall make such lists generally available to the public. The program manager shall ensure that all information provided to disabled beneficiaries pursuant to this paragraph is provided in accessible formats.

(4) Ensuring availability of adequate services

The program manager shall ensure that employment services, vocational rehabilitation services, and other support services are provided to beneficiaries throughout the geographic area covered under the program manager's agreement, including rural areas.

(5) Reasonable access to services

The program manager shall take such measures as are necessary to ensure that sufficient employment networks are available and that each beneficiary receiving services under the Program has reasonable access to employment services, vocational rehabilitation services, and other support services. Services provided under the Program may include case management, work incentives planning, supported employment, career planning, career plan development, vocational assessment, job training, placement, follow-up services, and such other services as may be specified by the Commissioner under the Program. The program manager shall ensure that such services are available in each service area.

(f) Employment networks

(1) Qualifications for employment networks

(A) In general

Each employment network serving under the Program shall consist of an agency or instrumentality of a State (or a political subdivision thereof) or a private entity, that assumes responsibility for the coordination and delivery of services under the Program to individuals assigning to the employment network tickets to work and self-sufficiency issued under subsection (b) of this section.

(B) One-stop delivery systems

An employment network serving under the Program may consist of a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.).

(C) Compliance with selection criteria

No employment network may serve under the Program unless it meets and maintains compliance with both general selection criteria (such as professional and educational qualifications, where applicable) and specific selection criteria (such as substantial expertise and experience in providing relevant employment services and supports).

(D) Single or associated providers allowed

An employment network shall consist of either a single provider of such services or of an association of such providers organized so as to combine their resources into a single entity. An employment network may meet the requirements of subsection (e)(4) of this section by providing services directly, or by entering into agreements with other individuals or entities providing appropriate employment services, vocational rehabilitation services, or other support services.

(2) Requirements relating to provision of services

Each employment network serving under the Program shall be required under the terms of its agreement with the Commissioner to—

(A) serve prescribed service areas; and

(B) take such measures as are necessary to ensure that employment services, vocational rehabilitation services, and other support services provided under the Program by, or under agreements entered into with, the employment network are provided under appropriate individual work plans that meet the requirements of subsection (g) of this section.

(3) Annual financial reporting

Each employment network shall meet financial reporting requirements as prescribed by the Commissioner.

(4) Periodic outcomes reporting

Each employment network shall prepare periodic reports, on at least an annual basis, itemizing for the covered period specific outcomes achieved with respect to specific services provided by the employment network. Such reports shall conform to a national model prescribed under this section. Each employment network shall provide a copy of the latest report issued by the employment network pursuant to this paragraph to each beneficiary upon enrollment under the Program for services to be received through such employment network. Upon issuance of each report to each beneficiary, a copy of the report shall be maintained in the files of the employment network. The program manager shall ensure that copies of all such reports issued under this paragraph are made available to the public under reasonable terms.

(g) Individual work plans

(1) Requirements

Each employment network shall—

(A) take such measures as are necessary to ensure that employment services, vocational rehabilitation services, and other support services provided under the Program by, or under agreements entered into with, the employment network are provided under appropriate individual work plans that meet the requirements of subparagraph (C);

(B) develop and implement each such individual work plan, in partnership with each beneficiary receiving such services, in a manner that affords such beneficiary the opportunity to exercise informed choice in selecting an employment goal and specific services needed to achieve that employment goal;

(C) ensure that each individual work plan includes at least—

(i) a statement of the vocational goal developed with the beneficiary, including, as appropriate, goals for earnings and job advancement;

(ii) a statement of the services and supports that have been deemed necessary for the beneficiary to accomplish that goal;

(iii) a statement of any terms and conditions related to the provision of such services and supports; and

(iv) a statement of understanding regarding the beneficiary's rights under the Program (such as the right to retrieve the ticket to work and self-sufficiency if the beneficiary is dissatisfied with the services being provided by the employment network) and remedies available to the individual, including information on the availability of advocacy services and assistance in resolving disputes through the State grant program authorized under section 1320b–21 of this title;

(D) provide a beneficiary the opportunity to amend the individual work plan if a change in circumstances necessitates a change in the plan; and

(E) make each beneficiary's individual work plan available to the beneficiary in, as appropriate, an accessible format chosen by the beneficiary.

An individual work plan established pursuant to this subsection shall be treated, for purposes of section 51(d)(6)(B)(i) of the Internal Revenue Code of 1986, as an individualized written plan for employment under a State plan for vocational rehabilitation services ap-

proved under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.].

(2) Effective upon written approval

A beneficiary's individual work plan shall take effect upon written approval by the beneficiary or a representative of the beneficiary and a representative of the employment network that, in providing such written approval, acknowledges assignment of the beneficiary's ticket to work and self-sufficiency.

(h) Employment network payment systems

(1) Election of payment system by employment networks

(A) In general

The Program shall provide for payment authorized by the Commissioner to employment networks under either an outcome payment system or an outcome-milestone payment system. Each employment network shall elect which payment system will be utilized by the employment network, and, for such period of time as such election remains in effect, the payment system so elected shall be utilized exclusively in connection with such employment network (except as provided in subparagraph (B)).

(B) No change in method of payment for beneficiaries with tickets already assigned to the employment networks

Any election of a payment system by an employment network that would result in a change in the method of payment to the employment network for services provided to a beneficiary who is receiving services from the employment network at the time of the election shall not be effective with respect to payment for services provided to that beneficiary and the method of payment previously selected shall continue to apply with respect to such services.

(2) Outcome payment system

(A) In general

The outcome payment system shall consist of a payment structure governing employment networks electing such system under paragraph (1)(A) which meets the requirements of this paragraph.

(B) Payments made during outcome payment period

The outcome payment system shall provide for a schedule of payments to an employment network, in connection with each individual who is a beneficiary, for each month, during the individual's outcome payment period, for which benefits (described in paragraphs (3) and (4) of subsection (k) of this section) are not payable to such individual because of work or earnings.

(C) Computation of payments to employment network

The payment schedule of the outcome payment system shall be designed so that—

(i) the payment for each month during the outcome payment period for which benefits (described in paragraphs (3) and (4) of subsection (k) of this section) are not payable is equal to a fixed percentage of the payment calculation base for the calendar year in which such month occurs; and

(ii) such fixed percentage is set at a percentage which does not exceed 40 percent.

(3) Outcome-milestone payment system

(A) In general

The outcome-milestone payment system shall consist of a payment structure governing employment networks electing such system under paragraph (1)(A) which meets the requirements of this paragraph.

(B) Early payments upon attainment of milestones in advance of outcome payment periods

The outcome-milestone payment system shall provide for 1 or more milestones, with respect to beneficiaries receiving services from an employment network under the Program, that are directed toward the goal of permanent employment. Such milestones shall form a part of a payment structure that provides, in addition to payments made during outcome payment periods, payments made prior to outcome payment periods in amounts based on the attainment of such milestones.

(C) Limitation on total payments to employment network

The payment schedule of the outcome milestone payment system shall be designed so that the total of the payments to the employment network with respect to each beneficiary is less than, on a net present value basis (using an interest rate determined by the Commissioner that appropriately reflects the cost of funds faced by providers), the total amount to which payments to the employment network with respect to the beneficiary would be limited if the employment network were paid under the outcome payment system.

(4) Definitions

In this subsection:

(A) Payment calculation base

The term ''payment calculation base'' means, for any calendar year—

(i) in connection with a title II disability beneficiary, the average disability insurance benefit payable under section 423 of this title for all beneficiaries for months during the preceding calendar year; and

(ii) in connection with a title XVI disability beneficiary (who is not concurrently a title II disability beneficiary), the average payment of supplemental security income benefits based on disability payable under subchapter XVI of this chapter (excluding State supplementation) for months during the preceding calendar year to all beneficiaries who have attained 18 years of age but have not attained 65 years of age.

(B) Outcome payment period

The term ''outcome payment period'' means, in connection with any individual

who had assigned a ticket to work and self-sufficiency to an employment network under the Program, a period—

(i) beginning with the first month, ending after the date on which such ticket was assigned to the employment network, for which benefits (described in paragraphs (3) and (4) of subsection (k) of this section) are not payable to such individual by reason of engagement in substantial gainful activity or by reason of earnings from work activity; and

(ii) ending with the 60th month (consecutive or otherwise), ending after such date, for which such benefits are not payable to such individual by reason of engagement in substantial gainful activity or by reason of earnings from work activity.

(5) Periodic review and alterations of prescribed schedules

(A) Percentages and periods

The Commissioner shall periodically review the percentage specified in paragraph (2)(C), the total payments permissible under paragraph (3)(C), and the period of time specified in paragraph (4)(B) to determine whether such percentages, such permissible payments, and such period provide an adequate incentive for employment networks to assist beneficiaries to enter the workforce, while providing for appropriate economies. The Commissioner may alter such percentage, such total permissible payments, or such period of time to the extent that the Commissioner determines, on the basis of the Commissioner's review under this paragraph, that such an alteration would better provide the incentive and economies described in the preceding sentence.

(B) Number and amounts of milestone payments

The Commissioner shall periodically review the number and amounts of milestone payments established by the Commissioner pursuant to this section to determine whether they provide an adequate incentive for employment networks to assist beneficiaries to enter the workforce, taking into account information provided to the Commissioner by program managers, the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, and other reliable sources. The Commissioner may from time to time alter the number and amounts of milestone payments initially established by the Commissioner pursuant to this section to the extent that the Commissioner determines that such an alteration would allow an adequate incentive for employment networks to assist beneficiaries to enter the workforce. Such alteration shall be based on information provided to the Commissioner by program managers, the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, or other reliable sources.

(C) Report on the adequacy of incentives

The Commissioner shall submit to the Congress not later than 36 months after December 17, 1999, a report with recommendations for a method or methods to adjust payment rates under subparagraphs (A) and (B), that would ensure adequate incentives for the provision of services by employment networks of—

(i) individuals with a need for ongoing support and services;

(ii) individuals with a need for high-cost accommodations;

(iii) individuals who earn a subminimum wage; and

(iv) individuals who work and receive partial cash benefits.

The Commissioner shall consult with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 during the development and evaluation of the study. The Commissioner shall implement the necessary adjusted payment rates prior to full implementation of the Ticket to Work and Self-Sufficiency Program.

(i) Suspension of disability reviews

During any period for which an individual is using, as defined by the Commissioner, a ticket to work and self-sufficiency issued under this section, the Commissioner (and any applicable State agency) may not initiate a continuing disability review or other review under section 421 of this title of whether the individual is or is not under a disability or a review under subchapter XVI of this chapter similar to any such review under section 421 of this title.

(j) Authorizations

(1) Payments to employment networks

(A) Title II disability beneficiaries

There are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year such sums as may be necessary to make payments to employment networks under this section. Money paid from the Trust Funds under this section with respect to title II disability beneficiaries who are entitled to benefits under section 423 of this title or who are entitled to benefits under section 402(d) of this title on the basis of the wages and self-employment income of such beneficiaries, shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid from the Trust Funds under this section shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund.

(B) Title XVI disability beneficiaries

Amounts authorized to be appropriated to the Social Security Administration under section 1381 of this title shall include amounts necessary to carry out the provisions of this section with respect to title XVI disability beneficiaries.

(2) Administrative expenses

The costs of administering this section (other than payments to employment net-

works) shall be paid from amounts made available for the administration of subchapter II of this chapter and amounts made available for the administration of subchapter XVI of this chapter, and shall be allocated among such amounts as appropriate.

(k) Definitions

In this section:

(1) Commissioner

The term ''Commissioner'' means the Commissioner of Social Security.

(2) Disabled beneficiary

The term ''disabled beneficiary'' means a title II disability beneficiary or a title XVI disability beneficiary.

(3) Title II disability beneficiary

The term ''title II disability beneficiary'' means an individual entitled to disability insurance benefits under section 423 of this title or to monthly insurance benefits under section 402 of this title based on such individual's disability (as defined in section 423(d) of this title). An individual is a title II disability beneficiary for each month for which such individual is entitled to such benefits.

(4) Title XVI disability beneficiary

The term ''title XVI disability beneficiary'' means an individual eligible for supplemental security income benefits under subchapter XVI of this chapter on the basis of blindness (within the meaning of section 1382c(a)(2) of this title) or disability (within the meaning of section 1382c(a)(3) of this title). An individual is a title XVI disability beneficiary for each month for which such individual is eligible for such benefits.

(5) Supplemental security income benefit

The term ''supplemental security income benefit under subchapter XVI of this chapter'' means a cash benefit under section 1382 or 1382h(a) of this title, and does not include a State supplementary payment, administered federally or otherwise.

(*l*) Regulations

Not later than 1 year after December 17, 1999, the Commissioner shall prescribe such regulations as are necessary to carry out the provisions of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1148, as added Pub. L. 106–170, title I, § 101(a), Dec. 17, 1999, 113 Stat. 1863; amended Pub. L. 108–203, title IV, § 405(a), Mar. 2, 2004, 118 Stat. 526.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsecs. (c)(1), (2)(A) and (g)(1), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. Title I of the Act is classified generally to subchapter I (§ 720 et seq.) of chapter 16 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Workforce Investment Act of 1998, referred to in subsec. (f)(1)(B), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Subtitle B of title I of the Act is classified generally to subchapter II (§ 2811 et seq.) of chapter 30 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (g)(1), is classified generally to Title 26, Internal Revenue Code.

Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, referred to in subsec. (h)(5)(B), (C), is section 101(f) of Pub. L. 106–170, which is set out as a note below.

AMENDMENTS

2004—Subsec. (g)(1). Pub. L. 108–203 inserted concluding provisions.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 405(b), Mar. 2, 2004, 118 Stat. 527, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in section 505 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1921).''

EFFECTIVE DATE

Pub. L. 106–170, title I, § 101(c), 113 Stat. 1874, provided that: ''Subject to subsection (d) [set out as a note below], the amendments made by subsections (a) and (b) [enacting this section and amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title] shall take effect with the first month following 1 year after the date of the enactment of this Act [Dec. 17, 1999].''

REGULATIONS

Pub. L. 106–170, title I, § 101(e), Dec. 17, 1999, 113 Stat. 1877, provided that:

''(1) IN GENERAL.—The Commissioner of Social Security shall prescribe such regulations as are necessary to implement the amendments made by this section [enacting this section and amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title].

''(2) SPECIFIC MATTERS TO BE INCLUDED IN REGULATIONS.—The matters which shall be addressed in such regulations shall include—

''(A) the form and manner in which tickets to work and self-sufficiency may be distributed to beneficiaries pursuant to section 1148(b)(1) of the Social Security Act [subsec. (b)(1) of this section];

''(B) the format and wording of such tickets, which shall incorporate by reference any contractual terms governing service by employment networks under the Program;

''(C) the form and manner in which State agencies may elect participation in the Ticket to Work and Self-Sufficiency Program pursuant to section 1148(c)(1) of such Act and provision for periodic opportunities for exercising such elections;

''(D) the status of State agencies under section 1148(c)(1) of such Act at the time that State agencies exercise elections under that section;

''(E) the terms of agreements to be entered into with program managers pursuant to section 1148(d) of such Act, including—

''(i) the terms by which program managers are precluded from direct participation in the delivery of services pursuant to section 1148(d)(3) of such Act;

''(ii) standards which must be met by quality assurance measures referred to in paragraph (6) of section 1148(d) of such Act and methods of recruitment of employment networks utilized pursuant to paragraph (2) of section 1148(e) of such Act; and

''(iii) the format under which dispute resolution will operate under section 1148(d)(7) of such Act;

''(F) the terms of agreements to be entered into with employment networks pursuant to section 1148(d)(4) of such Act, including—

''(i) the manner in which service areas are specified pursuant to section 1148(f)(2)(A) of such Act;

''(ii) the general selection criteria and the specific selection criteria which are applicable to em-

ployment networks under section 1148(f)(1)(C) of such Act in selecting service providers;

''(iii) specific requirements relating to annual financial reporting by employment networks pursuant to section 1148(f)(3) of such Act; and

''(iv) the national model to which periodic outcomes reporting by employment networks must conform under section 1148(f)(4) of such Act;

''(G) standards which must be met by individual work plans pursuant to section 1148(g) of such Act;

''(H) standards which must be met by payment systems required under section 1148(h) of such Act, including—

''(i) the form and manner in which elections by employment networks of payment systems are to be exercised pursuant to section 1148(h)(1)(A) of such Act;

''(ii) the terms which must be met by an outcome payment system under section 1148(h)(2) of such Act;

''(iii) the terms which must be met by an outcome-milestone payment system under section 1148(h)(3) of such Act;

''(iv) any revision of the percentage specified in paragraph (2)(C) of section 1148(h) of such Act or the period of time specified in paragraph (4)(B) of such section 1148(h) of such Act; and

''(v) annual oversight procedures for such systems; and

''(I) procedures for effective oversight of the Program by the Commissioner of Social Security, including periodic reviews and reporting requirements.''

GAO STUDY REGARDING THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM

Pub. L. 108–203, title IV, §406, Mar. 2, 2004, 118 Stat. 527, provided that:

''(a) [sic] GAO REPORT.—Not later than 12 months after the date of enactment of this Act [Mar. 2, 2004], the Comptroller General of the United States shall submit a report to Congress regarding the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19) that—

''(1) examines the annual and interim reports issued by States, the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 [Pub. L. 106–170] (42 U.S.C. 1320b–19 note), and the Commissioner of Social Security regarding such program;

''(2) assesses the effectiveness of the activities carried out under such program; and

''(3) recommends such legislative or administrative changes as the Comptroller General determines are appropriate to improve the effectiveness of such program.''

FINDINGS AND PURPOSES

Pub. L. 106–170, §2, Dec. 17, 1999, 113 Stat. 1862, provided that:

''(a) FINDINGS.—The Congress makes the following findings:

''(1) It is the policy of the United States to provide assistance to individuals with disabilities to lead productive work lives.

''(2) Health care is important to all Americans.

''(3) Health care is particularly important to individuals with disabilities and special health care needs who often cannot afford the insurance available to them through the private market, are uninsurable by the plans available in the private sector, and are at great risk of incurring very high and economically devastating health care costs.

''(4) Americans with significant disabilities often are unable to obtain health care insurance that provides coverage of the services and supports that enable them to live independently and enter or rejoin the workforce. Personal assistance services (such as attendant services, personal assistance with transportation to and from work, reader services, job coaches, and related assistance) remove many of the barriers between significant disability and work. Coverage for such services, as well as for prescription drugs, durable medical equipment, and basic health care are powerful and proven tools for individuals with significant disabilities to obtain and retain employment.

''(5) For individuals with disabilities, the fear of losing health care and related services is one of the greatest barriers keeping the individuals from maximizing their employment, earning potential, and independence.

''(6) Social Security Disability Insurance and Supplemental Security Income beneficiaries risk losing medicare or medicaid coverage that is linked to their cash benefits, a risk that is an equal, or greater, work disincentive than the loss of cash benefits associated with working.

''(7) Individuals with disabilities have greater opportunities for employment than ever before, aided by important public policy initiatives such as the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), advancements in public understanding of disability, and innovations in assistive technology, medical treatment, and rehabilitation.

''(8) Despite such historic opportunities and the desire of millions of disability recipients to work and support themselves, fewer than one-half of one percent of Social Security Disability Insurance and Supplemental Security Income beneficiaries leave the disability rolls and return to work.

''(9) In addition to the fear of loss of health care coverage, beneficiaries cite financial disincentives to work and earn income and lack of adequate employment training and placement services as barriers to employment.

''(10) Eliminating such barriers to work by creating financial incentives to work and by providing individuals with disabilities real choice in obtaining the services and technology they need to find, enter, and maintain employment can greatly improve their short and long-term financial independence and personal well-being.

''(11) In addition to the enormous advantages such changes promise for individuals with disabilities, redesigning government programs to help individuals with disabilities return to work may result in significant savings and extend the life of the Social Security Disability Insurance Trust Fund.

''(12) If only an additional one-half of one percent of the current Social Security Disability Insurance and Supplemental Security Income recipients were to cease receiving benefits as a result of employment, the savings to the Social Security Trust Funds and to the Treasury in cash assistance would total $3,500,000,000 over the worklife of such individuals, far exceeding the cost of providing incentives and services needed to assist them in entering work and achieving financial independence to the best of their abilities.

''(b) PURPOSES.—The purposes of this Act [see Tables for classification] are as follows:

''(1) To provide health care and employment preparation and placement services to individuals with disabilities that will enable those individuals to reduce their dependency on cash benefit programs.

''(2) To encourage States to adopt the option of allowing individuals with disabilities to purchase medicaid coverage that is necessary to enable such individuals to maintain employment.

''(3) To provide individuals with disabilities the option of maintaining medicare coverage while working.

''(4) To establish a return to work ticket program that will allow individuals with disabilities to seek the services necessary to obtain and retain employment and reduce their dependency on cash benefit programs.''

GRADUATED IMPLEMENTATION OF PROGRAM

Pub. L. 106–170, title I, §101(d), Dec. 17, 1999, 113 Stat. 1874, provided that:

''(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Dec. 17, 1999], the Commissioner of Social Security shall commence implementation of the amendments made by this section [enacting this section and amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title] (other than paragraphs (1)(C) and (2)(B) of subsection (b) [amending sections 422 and 1382d of this title]) in graduated phases at phase-in sites selected by the Commissioner. Such phase-in sites shall be selected so as to ensure, prior to full implementation of the Ticket to Work and Self-Sufficiency Program, the development and refinement of referral processes, payment systems, computer linkages, management information systems, and administrative processes necessary to provide for full implementation of such amendments. Subsection (c) [set out as a note above] shall apply with respect to paragraphs (1)(C) and (2)(B) of subsection (b) without regard to this subsection.

''(2) REQUIREMENTS.—Implementation of the Program at each phase-in site shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration, so as to ensure that the most efficacious methods are determined and in place for full implementation of the Program on a timely basis.

''(3) FULL IMPLEMENTATION.—The Commissioner shall ensure that ability to provide tickets and services to individuals under the Program exists in every State as soon as practicable on or after the effective date specified in subsection (c) but not later than 3 years after such date.

''(4) ONGOING EVALUATION OF PROGRAM.—

''(A) IN GENERAL.—The Commissioner shall provide for independent evaluations to assess the effectiveness of the activities carried out under this section [enacting this section, amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title, and enacting provisions set out as notes under this section] and the amendments made thereby. Such evaluations shall address the cost-effectiveness of such activities, as well as the effects of this section and the amendments made thereby on work outcomes for beneficiaries receiving tickets to work and self-sufficiency under the Program.

''(B) CONSULTATION.—Evaluations shall be conducted under this paragraph after receiving relevant advice from experts in the fields of disability, vocational rehabilitation, and program evaluation and individuals using tickets to work and self-sufficiency under the Program and in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of this Act [set out as a note below], the Comptroller General of the United States, other agencies of the Federal Government, and private organizations with appropriate expertise.

''(C) METHODOLOGY.—

''(i) IMPLEMENTATION.—The Commissioner, in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of this Act, shall ensure that plans for evaluations and data collection methods under the Program are appropriately designed to obtain detailed employment information.

''(ii) SPECIFIC MATTERS TO BE ADDRESSED.—Each such evaluation shall address (but is not limited to)—

''(I) the annual cost (including net cost) of the Program and the annual cost (including net cost) that would have been incurred in the absence of the Program;

''(II) the determinants of return to work, including the characteristics of beneficiaries in receipt of tickets under the Program;

''(III) the types of employment services, vocational rehabilitation services, and other support services furnished to beneficiaries in receipt of tickets under the Program who return to work and to those who do not return to work;

''(IV) the duration of employment services, vocational rehabilitation services, and other support services furnished to beneficiaries in receipt of tickets under the Program who return to work and the duration of such services furnished to those who do not return to work and the cost to employment networks of furnishing such services;

''(V) the employment outcomes, including wages, occupations, benefits, and hours worked, of beneficiaries who return to work after receiving tickets under the Program and those who return to work without receiving such tickets;

''(VI) the characteristics of individuals in possession of tickets under the Program who are not accepted for services and, to the extent reasonably determinable, the reasons for which such beneficiaries were not accepted for services;

''(VII) the characteristics of providers whose services are provided within an employment network under the Program;

''(VIII) the extent (if any) to which employment networks display a greater willingness to provide services to beneficiaries with a range of disabilities;

''(IX) the characteristics (including employment outcomes) of those beneficiaries who receive services under the outcome payment system and of those beneficiaries who receive services under the outcome-milestone payment system;

''(X) measures of satisfaction among beneficiaries in receipt of tickets under the Program; and

''(XI) reasons for (including comments solicited from beneficiaries regarding) their choice not to use their tickets or their inability to return to work despite the use of their tickets.

''(D) PERIODIC EVALUATION REPORTS.—Following the close of the third and fifth fiscal years ending after the effective date under subsection (c), and prior to the close of the seventh fiscal year ending after such date, the Commissioner shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing the Commissioner's evaluation of the progress of activities conducted under the provisions of this section and the amendments made thereby. Each such report shall set forth the Commissioner's evaluation of the extent to which the Program has been successful and the Commissioner's conclusions on whether or how the Program should be modified. Each such report shall include such data, findings, materials, and recommendations as the Commissioner may consider appropriate.

''(5) EXTENT OF STATE'S RIGHT OF FIRST REFUSAL IN ADVANCE OF FULL IMPLEMENTATION OF AMENDMENTS IN SUCH STATE.—

''(A) IN GENERAL.—In the case of any State in which the amendments made by subsection (a) [enacting this section] have not been fully implemented pursuant to this subsection, the Commissioner shall determine by regulation the extent to which—

''(i) the requirement under section 222(a) of the Social Security Act (42 U.S.C. 422(a)) for prompt referrals to a State agency; and

''(ii) the authority of the Commissioner under section 222(d)(2) of such Act (42 U.S.C. 422(d)(2)) to provide vocational rehabilitation services in such State by agreement or contract with other public or private agencies, organizations, institutions, or individuals,

shall apply in such State.

''(B) EXISTING AGREEMENTS.—Nothing in subparagraph (A) or the amendments made by subsection (a) [enacting this section] shall be construed to limit, impede, or otherwise affect any agreement entered into pursuant to section 222(d)(2) of the Social Security Act (42 U.S.C. 422(d)(2)) before the date of the en-

actment of this Act [Dec. 17, 1999] with respect to services provided pursuant to such agreement to beneficiaries receiving services under such agreement as of such date, except with respect to services (if any) to be provided after 3 years after the effective date provided in subsection (c).''

TICKET TO WORK AND WORK INCENTIVES ADVISORY PANEL

Pub. L. 106–170, title I, §101(f), Dec. 17, 1999, 113 Stat. 1878, provided that:

''(1) ESTABLISHMENT.—There is established within the Social Security Administration a panel to be known as the 'Ticket to Work and Work Incentives Advisory Panel' (in this subsection referred to as the 'Panel').

''(2) DUTIES OF PANEL.—It shall be the duty of the Panel to—

''(A) advise the President, the Congress, and the Commissioner of Social Security on issues related to work incentives programs, planning, and assistance for individuals with disabilities, including work incentive provisions under titles II, XI, XVI, XVIII, and XIX of the Social Security Act (42 U.S.C. 401 et seq., 1301 et seq., 1381 et seq., 1395 et seq., 1396 et seq.); and

''(B) with respect to the Ticket to Work and Self-Sufficiency Program established under section 1148 of such Act [this section]—

''(i) advise the Commissioner of Social Security with respect to establishing phase-in sites for such Program and fully implementing the Program thereafter, the refinement of access of disabled beneficiaries to employment networks, payment systems, and management information systems, and advise the Commissioner whether such measures are being taken to the extent necessary to ensure the success of the Program;

''(ii) advise the Commissioner regarding the most effective designs for research and demonstration projects associated with the Program or conducted pursuant to section 302 of this Act [set out as a note under section 434 of this title];

''(iii) advise the Commissioner on the development of performance measurements relating to quality assurance under section 1148(d)(6) of the Social Security Act [subsec. (d)(6) of this section]; and

''(iv) furnish progress reports on the Program to the Commissioner and each House of Congress.

''(3) MEMBERSHIP.—

''(A) NUMBER AND APPOINTMENT.—The Panel shall be composed of 12 members as follows:

''(i) four members appointed by the President, not more than two of whom may be of the same political party;

''(ii) two members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Committee on Ways and Means of the House of Representatives;

''(iii) two members appointed by the minority leader of the House of Representatives, in consultation with the ranking member of the Committee on Ways and Means of the House of Representatives;

''(iv) two members appointed by the majority leader of the Senate, in consultation with the Chairman of the Committee on Finance of the Senate; and

''(v) two members appointed by the minority leader of the Senate, in consultation with the ranking member of the Committee on Finance of the Senate.

''(B) REPRESENTATION.—

''(i) IN GENERAL.—The members appointed under subparagraph (A) shall have experience or expert knowledge as a recipient, provider, employer, or employee in the fields of, or related to, employment services, vocational rehabilitation services, and other support services.

''(ii) REQUIREMENT.—At least one-half of the members appointed under subparagraph (A) shall be individuals with disabilities, or representatives of individuals with disabilities, with consideration given to current or former title II [subchapter II of this chapter] disability beneficiaries or title XVI [subchapter XVI of this chapter] disability beneficiaries (as such terms are defined in section 1148(k) of the Social Security Act [subsec. (k) of this section] (as added by subsection (a)).

''(C) TERMS.—

''(i) IN GENERAL.—Each member shall be appointed for a term of 4 years (or, if less, for the remaining life of the Panel), except as provided in clauses (ii) and (iii). The initial members shall be appointed not later than 90 days after the date of the enactment of this Act [Dec. 17, 1999].

''(ii) TERMS OF INITIAL APPOINTEES.—Of the members first appointed under each clause of subparagraph (A), as designated by the appointing authority for each such clause—

''(I) one-half of such members shall be appointed for a term of 2 years; and

''(II) the remaining members shall be appointed for a term of 4 years.

''(iii) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Panel shall be filled in the manner in which the original appointment was made.

''(D) BASIC PAY.—Members shall each be paid at a rate, and in a manner, that is consistent with guidelines established under section 7 of the Federal Advisory Committee Act (5 U.S.C. App.).

''(E) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(F) QUORUM.—Eight members of the Panel shall constitute a quorum but a lesser number may hold hearings.

''(G) CHAIRPERSON.—The Chairperson of the Panel shall be designated by the President. The term of office of the Chairperson shall be 4 years.

''(H) MEETINGS.—The Panel shall meet at least quarterly and at other times at the call of the Chairperson or a majority of its members.

''(4) DIRECTOR AND STAFF OF PANEL; EXPERTS AND CONSULTANTS.—

''(A) DIRECTOR.—The Panel shall have a Director who shall be appointed by the Chairperson, and paid at a rate, and in a manner, that is consistent with guidelines established under section 7 of the Federal Advisory Committee Act (5 U.S.C. App.).

''(B) STAFF.—Subject to rules prescribed by the Commissioner of Social Security, the Director may appoint and fix the pay of additional personnel as the Director considers appropriate.

''(C) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commissioner of Social Security, the Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

''(D) STAFF OF FEDERAL AGENCIES.—Upon request of the Panel, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Panel to assist it in carrying out its duties under this Act [see Tables for classification].

''(5) POWERS OF PANEL.—

''(A) HEARINGS AND SESSIONS.—The Panel may, for the purpose of carrying out its duties under this subsection, hold such hearings, sit and act at such times and places, and take such testimony and evidence as the Panel considers appropriate.

''(B) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Panel may, if authorized by the Panel, take any action which the Panel is authorized to take by this section [enacting this section, amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title, and enacting provisions set out as notes above].

''(C) MAILS.—The Panel may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

''(6) REPORTS.—

''(A) INTERIM REPORTS.—The Panel shall submit to the President and the Congress interim reports at least annually.

''(B) FINAL REPORT.—The Panel shall transmit a final report to the President and the Congress not later than eight years after the date of the enactment of this Act [Dec. 17, 1999]. The final report shall contain a detailed statement of the findings and conclusions of the Panel, together with its recommendations for legislation and administrative actions which the Panel considers appropriate.

''(7) TERMINATION.—The Panel shall terminate 30 days after the date of the submission of its final report under paragraph (6)(B).

''(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the general fund of the Treasury, as appropriate, such sums as are necessary to carry out this subsection.''

§ 1320b–20. Work incentives outreach program

(a) Establishment

(1) In general

The Commissioner, in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, shall establish a community-based work incentives planning and assistance program for the purpose of disseminating accurate information to disabled beneficiaries on work incentives programs and issues related to such programs.

(2) Grants, cooperative agreements, contracts, and outreach

Under the program established under this section, the Commissioner shall—

(A) establish a competitive program of grants, cooperative agreements, or contracts to provide benefits planning and assistance, including information on the availability of protection and advocacy services, to disabled beneficiaries, including individuals participating in the Ticket to Work and Self-Sufficiency Program established under section 1320b–19 of this title, the program established under section 1382h of this title, and other programs that are designed to encourage disabled beneficiaries to work;

(B) conduct directly, or through grants, cooperative agreements, or contracts, ongoing outreach efforts to disabled beneficiaries (and to the families of such beneficiaries) who are potentially eligible to participate in Federal or State work incentive programs that are designed to assist disabled beneficiaries to work, including—

(i) preparing and disseminating information explaining such programs; and

(ii) working in cooperation with other Federal, State, and private agencies and nonprofit organizations that serve disabled beneficiaries, and with agencies and organizations that focus on vocational rehabilitation and work-related training and counseling;

(C) establish a corps of trained, accessible, and responsive work incentives specialists within the Social Security Administration who will specialize in disability work incentives under subchapters II and XVI of this chapter for the purpose of disseminating accurate information with respect to inquiries and issues relating to work incentives to—

(i) disabled beneficiaries;

(ii) benefit applicants under subchapters II and XVI of this chapter; and

(iii) individuals or entities awarded grants under subparagraphs[1] (A) or (B); and

(D) provide—

(i) training for work incentives specialists and individuals providing planning assistance described in subparagraph (C); and

(ii) technical assistance to organizations and entities that are designed to encourage disabled beneficiaries to return to work.

(3) Coordination with other programs

The responsibilities of the Commissioner established under this section shall be coordinated with other public and private programs that provide information and assistance regarding rehabilitation services and independent living supports and benefits planning for disabled beneficiaries including the program under section 1382h of this title, the plans for achieving self-support program (PASS), and any other Federal or State work incentives programs that are designed to assist disabled beneficiaries, including educational agencies that provide information and assistance regarding rehabilitation, school-to-work programs, transition services (as defined in, and provided in accordance with, the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.)), a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.), and other services.

(b) Conditions

(1) Selection of entities

(A) Application

An entity shall submit an application for a grant, cooperative agreement, or contract to provide benefits planning and assistance to the Commissioner at such time, in such manner, and containing such information as the Commissioner may determine is necessary to meet the requirements of this section.

(B) Statewideness

The Commissioner shall ensure that the planning, assistance, and information described in paragraph (2) shall be available on a statewide basis.

(C) Eligibility of States and private organizations

(i) In general

The Commissioner may award a grant, cooperative agreement, or contract under

[1] So in original. Probably should be ''subparagraph''.

this section to a State or a private agency or organization (other than Social Security Administration Field Offices and the State agency administering the State medicaid program under subchapter XIX of this chapter, including any agency or entity described in clause (ii), that the Commissioner determines is qualified to provide the planning, assistance, and information described in paragraph (2)).

(ii) Agencies and entities described

The agencies and entities described in this clause are the following:

(I) Any public or private agency or organization (including Centers for Independent Living established under title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796 et seq.), protection and advocacy organizations, client assistance programs established in accordance with section 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732), and State Developmental Disabilities Councils established in accordance with section 6024[2] of this title) that the Commissioner determines satisfies the requirements of this section.

(II) The State agency administering the State program funded under part A of subchapter IV of this chapter.

(D) Exclusion for conflict of interest

The Commissioner may not award a grant, cooperative agreement, or contract under this section to any entity that the Commissioner determines would have a conflict of interest if the entity were to receive a grant, cooperative agreement, or contract under this section.

(2) Services provided

A recipient of a grant, cooperative agreement, or contract to provide benefits planning and assistance shall select individuals who will act as planners and provide information, guidance, and planning to disabled beneficiaries on the—

(A) availability and interrelation of any Federal or State work incentives programs designed to assist disabled beneficiaries that the individual may be eligible to participate in;

(B) adequacy of any health benefits coverage that may be offered by an employer of the individual and the extent to which other health benefits coverage may be available to the individual; and

(C) availability of protection and advocacy services for disabled beneficiaries and how to access such services.

(3) Amount of grants, cooperative agreements, or contracts

(A) Based on population of disabled beneficiaries

Subject to subparagraph (B), the Commissioner shall award a grant, cooperative agreement, or contract under this section to an entity based on the percentage of the population of the State where the entity is located who are disabled beneficiaries.

(B) Limitations

(i) Per grant

No entity shall receive a grant, cooperative agreement, or contract under this section for a fiscal year that is less than $50,000 or more than $300,000.

(ii) Total amount for all grants, cooperative agreements, and contracts

The total amount of all grants, cooperative agreements, and contracts awarded under this section for a fiscal year may not exceed $23,000,000.

(4) Allocation of costs

The costs of carrying out this section shall be paid from amounts made available for the administration of subchapter II of this chapter and amounts made available for the administration of subchapter XVI of this chapter, and shall be allocated among those amounts as appropriate.

(c) Definitions

In this section:

(1) Commissioner

The term ''Commissioner'' means the Commissioner of Social Security.

(2) Disabled beneficiary

The term ''disabled beneficiary'' means an individual—

(A) who is a disabled beneficiary as defined in section 1320b–19(k)(2) of this title;

(B) who is receiving a cash payment described in section 1382e(a) of this title or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1382e(a) of this title or under section 212(b) of Public Law 93–66);

(C) who, pursuant to section 1382h(b) of this title, is considered to be receiving benefits under subchapter XVI of this chapter; or

(D) who is entitled to benefits under part A of subchapter XVIII of this chapter by reason of the penultimate sentence of section 426(b) of this title.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section $23,000,000 for each of the fiscal years 2000 through 2009.

(Aug. 14, 1935, ch. 531, title XI, § 1149, as added Pub. L. 106–170, title I, § 121, Dec. 17, 1999, 113 Stat. 1887; amended Pub. L. 108–203, title IV, §§ 404(a)(1), 407(a), Mar. 2, 2004, 118 Stat. 525, 527.)

REFERENCES IN TEXT

Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, referred to in subsec. (a)(1), is section 101(f) of Pub. L. 106–170, which is set out as a note under section 1320b–19 of this title.

The Individuals with Disabilities Education Act, referred to in subsec. (a)(3), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

[2] See References in Text note below.

The Workforce Investment Act of 1998, referred to in subsec. (a)(3), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Subtitle B of title I of the Act is classified generally to subchapter II (§ 2811 et seq.) of chapter 30 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (b)(1)(C)(ii)(I), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended. Title VII of the Act is classified generally to subchapter VII (§ 796 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Section 6024 of this title, referred to in subsec. (b)(1)(C)(ii)(I), was repealed by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737. See section 15025 of this title.

Part A of subchapter IV of this chapter, referred to in subsec. (b)(1)(C)(ii)(II), is classified to section 601 et seq. of this title.

Section 212 of Public Law 93–66, referred to in subsec. (c)(2)(B), is set out as a note under section 1382 of this title.

Part A of subchapter XVIII of this chapter, referred to in subsec. (c)(2)(D), is classified to section 1395c et seq. of this title.

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–203, § 404(a)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'disabled beneficiary' has the meaning given that term in section 1320b–19(k)(2) of this title.''

Subsec. (d). Pub. L. 108–203, § 407(a), substituted ''2009'' for ''2004''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 404(a)(2), Mar. 2, 2004, 118 Stat. 526, provided that: ''The amendment made by this subsection [amending this section] shall apply with respect to grants, cooperative agreements, or contracts entered into on or after the date of the enactment of this Act [Mar. 2, 2004].''

§ 1320b–21. State grants for work incentives assistance to disabled beneficiaries

(a) In general

Subject to subsection (c) of this section, the Commissioner may make payments in each State to the protection and advocacy system established pursuant to part C of title I of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.)[1] for the purpose of providing services to disabled beneficiaries.

(b) Services provided

Services provided to disabled beneficiaries pursuant to a payment made under this section may include—

(1) information and advice about obtaining vocational rehabilitation and employment services; and

(2) advocacy or other services that a disabled beneficiary may need to secure, maintain, or regain gainful employment.

(c) Application

In order to receive payments under this section, a protection and advocacy system shall submit an application to the Commissioner, at such time, in such form and manner, and accompanied by such information and assurances as the Commissioner may require.

(d) Amount of payments

(1) In general

Subject to the amount appropriated for a fiscal year for making payments under this section, a protection and advocacy system shall not be paid an amount that is less than—

(A) in the case of a protection and advocacy system located in a State (including the District of Columbia and Puerto Rico) other than Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the greater of—

(i) $100,000; or

(ii) ⅓ of 1 percent of the amount available for payments under this section; and

(B) in the case of a protection and advocacy system located in Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, $50,000.

(2) Inflation adjustment

For each fiscal year in which the total amount appropriated to carry out this section exceeds the total amount appropriated to carry out this section in the preceding fiscal year, the Commissioner shall increase each minimum payment under subparagraphs (A) and (B) of paragraph (1) by a percentage equal to the percentage increase in the total amount so appropriated to carry out this section.

(e) Annual report

Each protection and advocacy system that receives a payment under this section shall submit an annual report to the Commissioner and the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 on the services provided to individuals by the system.

(f) Funding

(1) Allocation of payments

Payments under this section shall be made from amounts made available for the administration of subchapter II of this chapter and amounts made available for the administration of subchapter XVI of this chapter, and shall be allocated among those amounts as appropriate.

(2) Carryover

Any amounts allotted for payment to a protection and advocacy system under this section for a fiscal year shall remain available for payment to or on behalf of the protection and advocacy system until the end of the succeeding fiscal year.

(g) Definitions

In this section:

(1) Commissioner

The term ''Commissioner'' means the Commissioner of Social Security.

(2) Disabled beneficiary

The term ''disabled beneficiary'' means an individual—

[1] See References in Text note below.

(A) who is a disabled beneficiary as defined in section 1320b–19(k)(2) of this title;

(B) who is receiving a cash payment described in section 1382e(a) of this title or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1382e(a) of this title or under section 212(b) of Public Law 93–66);

(C) who, pursuant to section 1382h(b) of this title, is considered to be receiving benefits under subchapter XVI of this chapter; or

(D) who is entitled to benefits under part A of subchapter XVIII of this chapter by reason of the penultimate sentence of section 426(b) of this title.

(3) Protection and advocacy system

The term ''protection and advocacy system'' means a protection and advocacy system established pursuant to part C of title I of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.).[1]

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section $7,000,000 for each of the fiscal years 2000 through 2009.

(Aug. 14, 1935, ch. 531, title XI, §1150, as added Pub. L. 106–170, title I, §122, Dec. 17, 1999, 113 Stat. 1890; amended Pub. L. 108–203, title IV, §§404(b)(1), (2), 407(b), Mar. 2, 2004, 118 Stat. 526, 527.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsecs. (a) and (g)(3), is title I of Pub. L. 88–164, Oct. 31, 1963, 77 Stat. 282, as amended generally by Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2662, and as further amended, which was repealed by Pub. L. 106–402, title IV, §401(a), Oct. 30, 2000, 114 Stat. 1737. Part C of the Act was classified generally to subchapter III (§6041 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Tables.

Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, referred to in subsec. (e), is section 101(f) of Pub. L. 106–170, which is set out as a note under section 1320b–19 of this title.

Section 212 of Public Law 93–66, referred to in subsec. (g)(2)(B), is set out as a note under section 1382 of this title.

Part A of subchapter XVIII of this chapter, referred to in subsec. (g)(2)(D), is classified to section 1395c et seq. of this title.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108–203, §404(b)(2), substituted ''secure, maintain, or regain'' for ''secure or regain''.

Subsec. (g)(2). Pub. L. 108–203, §404(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'disabled beneficiary' has the meaning given that term in section 1320b–19(k)(2) of this title.''

Subsec. (h). Pub. L. 108–203, §407(b), substituted ''2009'' for ''2004''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, §404(b)(3), Mar. 2, 2004, 118 Stat. 526, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to payments provided after the date of the enactment of this Act [Mar. 2, 2004].''

§ 1320b–22. Grants to develop and establish State infrastructures to support working individuals with disabilities

(a) Establishment

(1) In general

The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall award grants described in subsection (b) of this section to States to support the design, establishment, and operation of State infrastructures that provide items and services to support working individuals with disabilities.

(2) Application

In order to be eligible for an award of a grant under this section, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall require.

(3) Definition of State

In this section, the term ''State'' means each of the 50 States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) Grants for infrastructure and outreach

(1) In general

Out of the funds appropriated under subsection (e) of this section, the Secretary shall award grants to States to—

(A) support the establishment, implementation, and operation of the State infrastructures described in subsection (a) of this section; and

(B) conduct outreach campaigns regarding the existence of such infrastructures.

(2) Eligibility for grants

(A) In general

No State may receive a grant under this subsection unless the State demonstrates to the satisfaction of the Secretary that the State makes personal assistance services available under the State plan under subchapter XIX of this chapter to the extent necessary to enable individuals with disabilities to remain employed, including individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title if the State has elected to provide medical assistance under such plan to such individuals.

(B) Definitions

In this section:

(i) Employed

The term ''employed'' means—

(I) earning at least the applicable minimum wage requirement under section 206 of title 29 and working at least 40 hours per month; or

(II) being engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, as defined and approved by the Secretary.

(ii) Personal assistance services

The term ''personal assistance services'' means a range of services, provided by 1 or

more persons, designed to assist an individual with a disability to perform daily activities on and off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(3) Determination of awards

(A) In general

Subject to subparagraph (B), the Secretary shall develop a methodology for awarding grants to States under this section for a fiscal year in a manner that—

(i) rewards States for their efforts in encouraging individuals described in paragraph (2)(A) to be employed; and

(ii) does not provide a State that has not elected to provide medical assistance under subchapter XIX of this chapter to individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title with proportionally more funds for a fiscal year than a State that has exercised such election.

(B) Award limits

(i) Minimum awards

(I) In general

Subject to subclause (II), no State with an approved application under this section shall receive a grant for a fiscal year that is less than $500,000.

(II) Pro rata reductions

If the funds appropriated under subsection (e) of this section for a fiscal year are not sufficient to pay each State with an application approved under this section the minimum amount described in subclause (I), the Secretary shall pay each such State an amount equal to the pro rata share of the amount made available.

(ii) Maximum awards

(I) States that elected optional medicaid eligibility

No State that has an application that has been approved under this section and that has elected to provide medical assistance under subchapter XIX of this chapter to individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title shall receive a grant for a fiscal year that exceeds 10 percent of the total expenditures by the State (including the reimbursed Federal share of such expenditures) for medical assistance provided under such subchapter for such individuals, as estimated by the State and approved by the Secretary.

(II) Other States

The Secretary shall determine, consistent with the limit described in subclause (I), a maximum award limit for a grant for a fiscal year for a State that has an application that has been approved under this section but that has not elected to provide medical assistance under subchapter XIX of this chapter to individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title.

(c) Availability of funds

(1) Funds awarded to States

Funds awarded to a State under a grant made under this section for a fiscal year shall remain available until expended.

(2) Funds not awarded to States

Funds not awarded to States in the fiscal year for which they are appropriated shall remain available in succeeding fiscal years for awarding by the Secretary.

(d) Annual report

A State that is awarded a grant under this section shall submit an annual report to the Secretary on the use of funds provided under the grant. Each report shall include the percentage increase in the number of title II disability beneficiaries, as defined in section 1320b–19(k)(3) of this title in the State, and title XVI disability beneficiaries, as defined in section 1320b–19(k)(4) of this title in the State who return to work.

(e) Appropriation

(1) In general

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to make grants under this section—

(A) for fiscal year 2001, $20,000,000;

(B) for fiscal year 2002, $25,000,000;

(C) for fiscal year 2003, $30,000,000;

(D) for fiscal year 2004, $35,000,000;

(E) for fiscal year 2005, $40,000,000; and

(F) for each of fiscal years 2006 through 2011, the amount appropriated for the preceding fiscal year increased by the percentage increase (if any) in the Consumer Price Index for All Urban Consumers (United States city average) for the preceding fiscal year.

(2) Budget authority

This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of the amounts appropriated under paragraph (1).

(f) Recommendation

Not later than October 1, 2010, the Secretary, in consultation with the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of this Act, shall submit a recommendation to the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate regarding whether the grant program established under this section should be continued after fiscal year 2011.

(Pub. L. 106–170, title II, § 203, Dec. 17, 1999, 113 Stat. 1894.)

REFERENCES IN TEXT

Section 101(f) of this Act, referred to in subsec. (f), is section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, which is set out as a note under section 1320b–19 of this title.

CODIFICATION

Section was enacted as part of the Ticket to Work and Work Incentives Improvement Act of 1999, and not as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 1320b–23. Repealed. Pub. L. 106–554, § 1(a)(4) [div. A, § 213(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180

Section, act Aug. 14, 1935, ch. 531, title XI, § 1150A, as added Pub. L. 106–553, § 1(a)(2) [title VI, § 635(c)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A–115, related to prohibition of certain misuses of social security numbers.

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in Pub. L. 106–553 on Dec. 21, 2000, see § 1(a)(4) [div. A, § 213(b)] of Pub. L. 106–554, set out as an Effective Date of 2000 Amendment note under section 408 of this title.

CONGRESSIONAL FINDINGS

Pub. L. 106–553, § 1(a)(2) [title VI, § 635(b)], Dec. 21, 2000, 114 Stat. 2762, 2762A–114, which set forth congressional findings, was repealed by Pub. L. 106–554, § 1(a)(4) [div. A, § 213(a)(6), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, effective as if included in Pub. L. 106–553 on Dec. 21, 2000.

STUDY AND REPORT ON FEASIBILITY OF ADDITIONAL PROHIBITIONS

Pub. L. 106–553, § 1(a)(2) [title VI, § 635(d)], Dec. 21, 2000, 114 Stat. 2762, 2762A–117, which directed the Comptroller General to conduct a study of the feasibility of imposing additional limitations or prohibitions on the use of social security numbers in public records and to submit a report to Congress, was repealed by Pub. L. 106–554, § 1(a)(4) [div. A, § 213(a)(6), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, effective as if included in Pub. L. 106–553 on Dec. 21, 2000.

PART B—PEER REVIEW OF UTILIZATION AND QUALITY OF HEALTH CARE SERVICES

§ 1320c. Purpose

The purpose of this part is to establish the contracting process which the Secretary must follow pursuant to the requirements of section 1395y(g) of this title, including the definition of the utilization and quality control peer review organizations with which the Secretary shall contract, the functions such peer review organizations are to perform, the confidentiality of medical records, and related administrative matters to facilitate the carrying out of the purposes of this part.

(Aug. 14, 1935, ch. 531, title XI, § 1151, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382.)

PRIOR PROVISIONS

A prior section 1320c, act Aug. 14, 1935, ch. 531, title XI, § 1151, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1429; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2113(a), 95 Stat. 794, set out the Congressional declaration of purpose of former part B, in the general revision of this part by Pub. L. 97–248.

EFFECTIVE DATE

Section 149 of Pub. L. 97–248, as amended by Pub. L. 98–369, div. B, title III, § 2354(c)(3)(C), July 18, 1984, 98 Stat. 1102, provided that: ''The amendments made by this subtitle [subtitle C (§§ 141–150) of title I of Pub. L. 97–248, enacting this part, amending sections 1395b–1, 1395g, 1395k, 1395*l*, 1395x, 1395y, 1395cc, 1395pp, 1396a, and 1396b of this title, and enacting provisions set out as notes under sections 1305 and 1320c of this title] shall, subject to section 150 [section 150 of Pub. L. 97–248, set out as a note below], be effective with respect to contracts entered into or renewed on or after the date of the enactment of this Act [Sept. 3, 1982].''

IOM STUDY OF QIOS

Pub. L. 108–173, title I, § 109(d), Dec. 8, 2003, 117 Stat. 2173, provided that:

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall request the Institute of Medicine of the National Academy of Sciences to conduct an evaluation of the program under part B of title XI of the Social Security Act [this part]. The study shall include a review of the following:

''(A) An overview of the program under such part.

''(B) The duties of organizations with contracts with the Secretary under such part.

''(C) The extent to which quality improvement organizations improve the quality of care for medicare beneficiaries.

''(D) The extent to which other entities could perform such quality improvement functions as well as, or better than, quality improvement organizations.

''(E) The effectiveness of reviews and other actions conducted by such organizations in carrying out those duties.

''(F) The source and amount of funding for such organizations.

''(G) The conduct of oversight of such organizations.

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

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

COORDINATION OF PROS AND CARRIERS

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

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

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

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

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

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

EVALUATION OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Pub. L. 97–448, title III, § 309(d), Jan. 12, 1983, 96 Stat. 2410, provided that: ''In order to avoid unfairly discriminating against professional standards review organizations whose performance was evaluated during the first and second calendar quarters of 1982, the Sec-

retary of Health and Human Services shall disregard the results of such evaluations and shall carry out such new evaluations of such organizations as may be necessary to select utilization and quality control peer review organizations in accordance with subtitle C of title I of the Tax Equity and Fiscal Responsibility Act of 1982 [sections 141–150 of Pub. L. 97–248] and part B of title XI of the Social Security Act [this part] as amended by such subtitle.''

MAINTENANCE OF CURRENT PROFESSIONAL STANDARDS REVIEW ORGANIZATION AGREEMENTS

Section 150 of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 309(a)(9), Jan. 12, 1983, 96 Stat. 2408, provided that:

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

''(b) The provisions of part B of title XI of the Social Security Act [this part] as in effect prior to the amendments made by this subtitle [subtitle C (§§ 141–150) of title I of Pub. L. 97–248] shall remain in effect with respect to agreements with professional standards review organizations in effect on the earlier of the date of the enactment of this Act [Sept. 3, 1982] or September 30, 1982, until such time as such agreement is terminated or is not renewed, in accordance with subsection (a). Any matters awaiting a determination by a Statewide Professional Standards Review Council on the date of the enactment of this Act shall be transferred to the Secretary of Health and Human Services for a determination unless such determination is made by such Council within 30 days after the date of the enactment of this Act. No payments shall be made under part B of title XI of the Social Security Act to Statewide Professional Standards Review Councils for services performed under section 1162 of such Act [section 1320c–11 of this title] after the end of such 30-day period.''

§ 1320c–1. "Utilization and quality control peer review organization" defined

The term ''utilization and quality control peer review organization'' means an entity which—

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

(2) is able, in the judgment of the Secretary, to perform review functions required under section 1320c–3 of this title in a manner consistent with the efficient and effective administration of this part and to perform reviews of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptable and adequate practice; and

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

(Aug. 14, 1935, ch. 531, title XI, § 1152, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382; amended Pub. L. 99–509, title IX, § 9353(b)(1), Oct. 21, 1986, 100 Stat. 2046.)

PRIOR PROVISIONS

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

AMENDMENTS

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

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9353(b)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987.''

§ 1320c–2. Contracts with utilization and quality control peer review organizations

(a) Establishment and consolidation of geographic areas

(1) The Secretary shall establish throughout the United States geographic areas with respect to which contracts under this part will be made. In establishing such areas, the Secretary shall use the same areas as established under section 1320c–1 of this title as in effect immediately prior to September 3, 1982, but subject to the provisions of paragraph (2).

(2) As soon as practicable after September 3, 1982, the Secretary shall consolidate such geographic areas, taking into account the following criteria:

(A) Each State shall generally be designated as a geographic area for purposes of paragraph (1).

(B) The Secretary shall establish local or regional areas rather than State areas only where the volume of review activity or other relevant factors (as determined by the Secretary) warrant such an establishment, and the Secretary determines that review activity can be carried out with equal or greater efficiency by establishing such local or regional areas. In applying this subparagraph the Secretary shall take into account the number of hospital admissions within each State for which payment may be made under subchapter XVIII of this chapter or a State plan approved under subchapter XIX of this chapter, with any State having fewer than 180,000 such admissions annually being established as a single statewide area, and no local or regional area being established which has fewer than 60,000 total hospital admissions (including public and private pay patients) under review

annually, unless the Secretary determines that other relevant factors warrant otherwise.

(C) No local or regional area shall be designated which is not a self-contained medical service area, having a full spectrum of services, including medical specialists' services.

(b) Organizations entitled to contract with Secretary

(1) The Secretary shall enter into a contract with a utilization and quality control peer review organization for each area established under subsection (a) of this section if a qualified organization is available in such area and such organization and the Secretary have negotiated a proposed contract which the Secretary determines will be carried out by such organization in a manner consistent with the efficient and effective administration of this part. If more than one such qualified organization meets the requirements of the preceding sentence, priority shall be given to any such organization which is described in section 1320c–1(1)(A) of this title.

(2)(A) Prior to November 15, 1984, the Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), an entity (other than a self-insured employer) which directly or indirectly makes payments to any practitioner or provider whose health care services are reviewed by such entity or would be reviewed by such entity if it entered into a contract with the Secretary under this part. For purposes of this paragraph, an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of members of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an ''eligible organization'' as defined in section 1395mm(b) of this title.

(B) If, after November 14, 1984, the Secretary determines that there is no other entity available for an area with which the Secretary can enter into a contract under this part, the Secretary may then enter into a contract under this part with an entity described in subparagraph (A) for such area if such entity otherwise meets the requirements of this part.

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

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

(c) Terms of contract

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

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

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

(3) the contract shall be for an initial term of three years and shall be renewable on a triennial basis thereafter;

(4) if the Secretary intends not to renew a contract, he shall notify the organization of his decision at least 90 days prior to the expiration of the contract term, and shall provide the organization an opportunity to present data, interpretations of data, and other information pertinent to its performance under the contract, which shall be reviewed in a timely manner by the Secretary;

(5) the organization may terminate the contract upon 90 days notice to the Secretary;

(6) the Secretary may terminate the contract prior to the expiration of the contract term upon 90 days notice to the organization if the Secretary determines that—

(A) the organization does not substantially meet the requirements of section 1320c–1 of this title; or

(B) the organization has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of this part, but only after such organization has had an opportunity to submit data and have such data reviewed by the panel established under subsection (d) of this section;

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

(8) reimbursement shall be made to the organization on a monthly basis, with payments for any month being made not later than 15 days after the close of such month.

In evaluating the performance of utilization and quality control peer review organizations under contracts under this part, the Secretary shall place emphasis on the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.

(d) Review prior to termination of contract; modification and termination; reviewing panel

(1) Prior to making any termination under subsection (c)(6)(B) of this section, the Sec-

retary must provide the organization with an opportunity to provide data, interpretations of data, and other information pertinent to its performance under the contract. Such data and other information shall be reviewed in a timely manner by a panel appointed by the Secretary, and the panel shall submit a report of its findings to the Secretary in a timely manner. The Secretary shall make a copy of the report available to the organization.

(2) The Secretary may accept or not accept the findings of the panel. After the panel has submitted a report with respect to an organization, the Secretary may, with the concurrence of the organization, amend the contract to modify the scope of the functions to be carried out by the organization, or in any other manner. The Secretary may terminate a contract under the authority of subsection (c)(6)(B) of this section upon 90 days notice after the panel has submitted a report, or earlier if the organization so agrees.

(3) A panel appointed by the Secretary under this subsection shall consist of not more than five individuals, each of whom shall be a member of a utilization and quality control peer review organization having a contract with the Secretary under this part. While serving on such panel individuals shall be paid at a per diem rate not to exceed the current per diem equivalent at the time that service on the panel is rendered for grade GS–18 under section 5332 of title 5. Appointments shall be made without regard to title 5.

(4) During the period after the Secretary has given notice of intent to terminate a contract, and prior to the time that the Secretary enters into a contract with another utilization and quality control peer review organization, the Secretary may transfer review responsibilities of the organization under the contract being terminated to another utilization and quality control peer review organization, or to an intermediary or carrier having an agreement under section 1395h of this title or a contract under section 1395u of this title.

(e) Authority of Secretary

(1) Except as provided in paragraph (2), contracting authority of the Secretary under this section may be carried out without regard to any provision of law relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the purposes of this part. The Secretary may use different contracting methods with respect to different geographical areas.

(2) If a peer review organization with a contract under this section is required to carry out a review function in addition to any function required to be carried out at the time the Secretary entered into or renewed the contract with the organization, the Secretary shall, before requiring such organization to carry out such additional function, negotiate the necessary contractual modifications, including modifications that provide for an appropriate adjustment (in light of the cost of such additional function) to the amount of reimbursement made to the organization.

(f) Termination not subject to judicial review

Any determination by the Secretary to terminate or not to renew a contract under this section shall not be subject to judicial review.

(g) Timely provision of hospital data to peer review organizations

The Secretary shall provide that fiscal intermediaries furnish to peer review organizations, each month on a timely basis, data necessary to initiate the review process under section 1320c–3(a) of this title on a timely basis. If the Secretary determines that a fiscal intermediary is unable to furnish such data on a timely basis, the Secretary shall require the hospital to do so.

(h) Publication of new policy or procedure and general criteria and standards for evaluation; performance comparison report

(1) The Secretary shall publish in the Federal Register any new policy or procedure adopted by the Secretary that affects substantially the performance of contract obligations under this section not less than 30 days before the date on which such policy or procedure is to take effect. This paragraph shall not apply to the extent it is inconsistent with a statutory deadline.

(2) The Secretary shall publish in the Federal Register the general criteria and standards used for evaluating the efficient and effective performance of contract obligations under this section and shall provide opportunity for public comment with respect to such criteria and standards.

(3) The Secretary shall regularly furnish each peer review organization with a contract under this section with a report that documents the performance of the organization in relation to the performance of other such organizations.

(i) Preference in contracting with in-State organizations

(1) Notwithstanding any other provision of this section, the Secretary shall not renew a contract with any organization that is not an in-State organization (as defined in paragraph (3)) unless the Secretary has first complied with the requirements of paragraph (2).

(2)(A) Not later than six months before the date on which a contract period ends with respect to an organization that is not an in-State organization, the Secretary shall publish in the Federal Register—

(i) the date on which such period ends; and

(ii) the period of time in which an in-State organization may submit a proposal for the contract ending on such date.

(B) If one or more qualified in-State organizations submits a proposal within the period of time specified under subparagraph (A)(ii), the Secretary shall not automatically renew the current contract on a noncompetitive basis, but shall provide for competition for the contract in the same manner as a new contract under subsection (b) of this section.

(3) For purposes of this subsection, an in-State organization is an organization that has its primary place of business in the State in which review will be conducted (or, which is owned by a parent corporation the headquarters of which is located in such State).

(Aug. 14, 1935, ch. 531, title XI, § 1153, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382; amended Pub. L. 97–448, title III, § 309(b)(2), Jan. 12, 1983, 96 Stat. 2408; Pub. L. 98–21, title VI, § 602(a), Apr. 20, 1983, 97 Stat. 163; Pub. L. 98–369, div. B, title III, §§ 2334(a), (b), 2347(c), July 18, 1984, 98 Stat. 1090, 1097; Pub. L. 99–272, title IX, §§ 9402(b), 9404(a), 9406(a), Apr. 7, 1986, 100 Stat. 200, 201; Pub. L. 99–509, title IX, § 9352(a)(1), Oct. 21, 1986, 100 Stat. 2044; Pub. L. 100–203, title IV, §§ 4091(a)(2)(A), (b)(1), (2), 4092(a), 4094(d)(1), Dec. 22, 1987, 101 Stat. 1330–134, 1330–135, 1330–137.)

PRIOR PROVISIONS

A prior section 1320c–2, act Aug. 14, 1935, ch. 531, title XI, § 1153, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1432, related to review pending designation of a Professional Standards Review Organization in a given area, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–203, § 4094(d)(1), inserted after and below par. (8) the following: ''In evaluating the performance of utilization and quality control peer review organizations under contracts under this part, the Secretary shall place emphasis on the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.''

Subsec. (c)(3). Pub. L. 100–203, § 4091(a)(2)(A), substituted ''three'' for ''two'' and ''triennial'' for ''biennial''.

Subsec. (e). Pub. L. 100–203, § 4091(b)(2), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), contracting'' for ''Contracting'', and added par. (2).

Subsec. (h). Pub. L. 100–203, § 4091(b)(1), added subsec. (h).

Subsec. (i). Pub. L. 100–203, § 4092(a), added subsec. (i).

1986—Subsec. (b)(2)(A). Pub. L. 99–272, § 9404(a), substituted ''consists only of members of the governing board'' for ''consists only of one individual member of the governing board''.

Subsec. (c)(8). Pub. L. 99–272, § 9402(b), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''reimbursement shall be made to the organization in accordance with the terms of the contract.''

Subsec. (d)(4). Pub. L. 99–272, § 9406(a), added par. (4).

Subsec. (g). Pub. L. 99–509 added subsec. (g).

1984—Subsec. (b)(2)(A). Pub. L. 98–369, § 2347(c)(1), substituted ''Prior to November 15, 1984'' for ''During the first twelve months in which the Secretary is entering into contracts under this section''.

Pub. L. 98–369, § 2334(b), inserted ''(other than a self-insured employer)'' and provision that for purposes of this paragraph an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of one individual member of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an ''eligible organization'' as defined in section 1395mm(b) of this title.

Subsec. (b)(2)(B). Pub. L. 98–369, § 2347(c)(2), substituted ''after November 14, 1984'' for ''after the expiration of the twelve-month period referred to in subparagraph (A)''.

Subsec. (b)(2)(C). Pub. L. 98–369, § 2347(c)(3), struck out subpar. (C) which provided that the twelve-month period formerly referred to in subpar. (A) would be deemed to have begun not later than October 1983.

Subsec. (b)(3). Pub. L. 98–369, § 2334(a), designated existing provisions as subpar. (A) and added subpar. (B).

1983—Subsec. (b)(2)(C). Pub. L. 98–21 added subpar. (C).

Subsec. (d). Pub. L. 97–448 substituted reference to ''subsection (c)(6)(B)'' for ''subsection (c)(5)(B)'' and ''subsection (c)(5)(C)'' in pars. (1) and (2), respectively.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4091(a)(2)(B) of Pub. L. 100–203 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4091(b)(3) of Pub. L. 100–203 provided that: ''The amendment made by paragraphs (1) and (2) [amending this section] shall become effective on the date of enactment of this Act [Dec. 22, 1987].''

Section 4092(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to contracts scheduled to be renewed on or after the first day of the eighth month to begin after the date of enactment of this Act [Dec. 22, 1987].''

Section 4094(d)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act [this part] as of January 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9352(c)(1) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall implement the amendment made by subsection (a) [amending this section and section 1395h of this title] not later than 6 months after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9402(c)(2) of Pub. L. 99–272 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to contracts entered into or renewed on or after the date of the enactment of this Act [Apr. 7, 1986].''

Section 9404(b) of Pub. L. 99–272 provided that: ''The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9406(b) of Pub. L. 99–272 provided that: ''The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2334(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Section 2347(d) of Pub. L. 98–369 provided that: ''The provisions of, and amendments made by, this section [amending this section and section 1395cc of this title and enacting provisions set out as a note under section 1395cc of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General

Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

EXTENSIONS OF PEER REVIEW CONTRACT PERIOD; ONE-TIME EXTENSIONS TO PERMIT STAGGERING OF EXPIRATION DATES

Section 4091(a)(1) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(j)(1), July 1, 1988, 102 Stat. 790, provided that:

''(A) IN GENERAL.—In order to permit the Secretary of Health and Human Services an adequate time to complete contract renewal negotiations with utilization and quality control peer review organizations under part B of title XI of the Social Security Act [this part] and to provide for a staggered period of contract expiration dates, notwithstanding section 1153(c) of such Act [subsec. (c) of this section], the Secretary may provide for extensions of existing contracts, but the total of such extensions may not exceed 24 months for any contract.

''(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to contracts expiring on or after the date of the enactment of this Act [Dec. 22, 1987].''

§ 1320c–3. Functions of peer review organizations

(a) Review of professional activities; determination of payment; determination of review authority; consultation with professional health care practitioners; standards of health care; other duties

Any utilization and quality control peer review organization entering into a contract with the Secretary under this part must perform the following functions:

(1) The organization shall review some or all of the professional activities in the area, subject to the terms of the contract and subject to the requirements of subsection (d) of this section, of physicians and other health care practitioners and institutional and noninstitutional providers of health care services in the provision of health care services and items for which payment may be made (in whole or in part) under subchapter XVIII of this chapter (including where payment is made for such services to eligible organizations pursuant to contracts under section 1395mm of this title, to Medicare Advantage organizations pursuant to contracts under part C,[1] and to prescription drug sponsors pursuant to contracts under part D[1]) for the purpose of determining whether—

(A) such services and items are or were reasonable and medically necessary and whether such services and items are not allowable under subsection (a)(1) or (a)(9) of section 1395y of this title;

(B) the quality of such services meets professionally recognized standards of health care; and

(C) in case such services and items are proposed to be provided in a hospital or other health care facility on an inpatient basis, such services and items could, consistent with the provision of appropriate medical care, be effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type.

If the organization performs such reviews with respect to a type of health care practitioner other than medical doctors, the organization shall establish procedures for the involvement of health care practitioners of that type in such reviews.

(2) The organization shall determine, on the basis of the review carried out under subparagraphs (A), (B), and (C) of paragraph (1), whether payment shall be made for services under subchapter XVIII of this chapter. Such determination shall constitute the conclusive determination on those issues for purposes of payment under subchapter XVIII of this chapter, except that payment may be made if—

(A) such payment is allowed by reason of section 1395pp of this title;

(B) in the case of inpatient hospital services or extended care services, the peer review organization determines that additional time is required in order to arrange for postdischarge care, but payment may be continued under this subparagraph for not more than two days, but only in the case where the provider of such services did not know and could not reasonably have been expected to know (as determined under section 1395pp of this title) that payment would not otherwise be made for such services under subchapter XVIII of this chapter prior to notification by the organization under paragraph (3);

(C) such determination is changed as the result of any hearing or review of the determination under section 1320c–4 of this title; or

(D) such payment is authorized under section 1395x(v)(1)(G) of this title.

The organization shall identify cases for which payment should not be made by reason of paragraph (1)(B) only through the use of criteria developed pursuant to guidelines established by the Secretary.

(3)(A) Subject to subparagraphs (B) and (D), whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall promptly notify such patient and the agency or organization responsible for the payment of claims under subchapter XVIII of this chapter of such determination.

(B) The notification under subparagraph (A) with respect to services or items disapproved by reason of subparagraph (A) or (C) of paragraph (1) shall not occur until 20 days after the date that the organization has—

(i) made a preliminary notification to such practitioner or provider of such proposed determination, and

(ii) provided such practitioner or provider an opportunity for discussion and review of the proposed determination.

(C) The discussion and review conducted under subparagraph (B)(ii) shall not affect the rights of a practitioner or provider to a formal reconsideration of a determination under this part (as provided under section 1320c–4 of this title).

[1] See References in Text note below.

(D) The notification under subparagraph (A) with respect to services or items disapproved by reason of paragraph (1)(B) shall not occur until after—

(i) the organization has notified the practitioner or provider involved of the determination and of the practitioner's or provider's right to a formal reconsideration of the determination under section 1320c–4 of this title, and

(ii) if the provider or practitioner requests such a reconsideration, the organization has made such a reconsideration.

If a provider or practitioner is provided a reconsideration, such reconsideration shall be in lieu of any subsequent reconsideration to which the provider or practitioner may be otherwise entitled under section 1320c–4 of this title, but shall not affect the right of a beneficiary from seeking reconsideration under such section of the organization's determination (after any reconsideration requested by the provider or physician under clause (ii)).

(E)(i) In the case of services and items provided by a physician that were disapproved by reason of paragraph (1)(B), the notice to the patient shall state the following: ''In the judgment of the peer review organization, the medical care received was not acceptable under the medicare program. The reasons for the denial have been discussed with your physician.''

(ii) In the case of services or items provided by an entity or practitioner other than a physician, the Secretary may substitute the entity or practitioner which provided the services or items for the term ''physician'' in the notice described in clause (i).

(4)(A) The organization shall, after consultation with the Secretary, determine the types and kinds of cases (whether by type of health care or diagnosis involved, or whether in terms of other relevant criteria relating to the provision of health care services) with respect to which such organization will, in order to most effectively carry out the purposes of this part, exercise review authority under the contract. The organization shall notify the Secretary periodically with respect to such determinations. Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities is made among the different cases and settings (including post-acute-care settings, ambulatory settings, and health maintenance organizations). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.

(B) The contract of each organization shall provide for the review of services (including both inpatient and outpatient services) provided by eligible organizations pursuant to a risk-sharing contract under section 1395mm of this title (or that is subject to review under section 1395ss(t)(3) of this title) for the purpose of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organization (as determined, in part, by a survey of individuals enrolled with the organization who have not yet used the organization to receive such services). The contract of each organization shall also provide that with respect to health care provided by a health maintenance organization or competitive medical plan under section 1395mm of this title, the organization shall maintain a beneficiary outreach program designed to apprise individuals receiving care under such section of the role of the peer review system, of the rights of the individual under such system, and of the method and purposes for contacting the organization. The previous two sentences shall not apply with respect to a contract year if another entity has been awarded a contract under subparagraph (C). Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.

(C) The Secretary may provide, by contract under competitive procurement procedures on a State-by-State basis in up to 25 States, for the review described in subparagraph (B) by an appropriate entity (which may be a peer review organization described in that subparagraph). In selecting among States in which to conduct such competitive procurement procedures, the Secretary may not select States which, as a group, have more than 50 percent of the total number of individuals enrolled with eligible organizations under section 1395mm of this title. Under a contract with an entity under this subparagraph—

(i) the entity must be, or must meet all the requirements under section 1320c–1 of this title to be, a utilization and quality control peer review organization (other than the ability to perform review functions under this section that are not described in subparagraph (B)),

(ii) the contract must meet the requirement of section 1320c–2(b)(3) of this title, and

(iii) the level of effort expended under the contract shall be, to the extent practicable, not less than the level of effort that would otherwise be required under the third sentence of subparagraph (B) if this subparagraph did not apply.

(5) The organization shall consult with nurses and other professional health care practitioners (other than physicians described in section 1395x(r)(1) of this title) and with representatives of institutional and noninstitu-

tional providers of health care services, with respect to the organization's responsibility for the review under paragraph (1) of the professional activities of such practitioners and providers.

(6)(A) The organization shall, consistent with the provisions of its contract under this part, apply professionally developed norms of care, diagnosis, and treatment based upon typical patterns of practice within the geographic area served by the organization as principal points of evaluation and review, taking into consideration national norms where appropriate. Such norms with respect to treatment for particular illnesses or health conditions shall include—

(i) the types and extent of the health care services which, taking into account differing, but acceptable, modes of treatment and methods of organizing and delivering care, are considered within the range of appropriate diagnosis and treatment of such illness or health condition, consistent with professionally recognized and accepted patterns of care; and

(ii) the type of health care facility which is considered, consistent with such standards, to be the type in which health care services which are medically appropriate for such illness or condition can most economically be provided.

As a component of the norms described in clause (i) or (ii), the organization shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and other appropriate factors (such as the distance from a patient's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.

(B) The organization shall—

(i) offer to provide, several times each year, for a physician representing the organization to meet (at a hospital or at a regional meeting) with medical and administrative staff of each hospital (the services of which are reviewed by the organization) respecting the organization's review of the hospital's services for which payment may be made under subchapter XVIII of this chapter, and

(ii) publish (not less often than annually) and distribute to providers and practitioners whose services are subject to review a report that describes the organization's findings with respect to the types of cases in which the organization has frequently determined that (I) inappropriate or unnecessary care has been provided, (II) services were rendered in an inappropriate setting, or (III) services did not meet professionally recognized standards of health care.

(7) The organization, to the extent necessary and appropriate to the performance of the contract, shall—

(A)(i) make arrangements to utilize the services of persons who are practitioners of, or specialists in, the various areas of medicine (including dentistry, optometry, and podiatry), or other types of health care, which persons shall, to the maximum extent practicable, be individuals engaged in the practice of their profession within the area served by such organization; and

(ii) in the case of psychiatric and physical rehabilitation services, make arrangements to ensure that (to the extent possible) initial review of such services be made by a physician who is trained in psychiatry or physical rehabilitation (as appropriate).[2]

(B) undertake such professional inquiries either before or after, or both before and after, the provision of services with respect to which such organization has a responsibility for review which in the judgment of such organization will facilitate its activities;

(C) examine the pertinent records of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1); and

(D) inspect the facilities in which care is rendered or services are provided (which are located in such area) of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1).

(8) The organization shall perform such duties and functions and assume such responsibilities and comply with such other requirements as may be required by this part or under regulations of the Secretary promulgated to carry out the provisions of this part or as may be required to carry out section 1395y(a)(15) of this title.

(9)(A) The organization shall collect such information relevant to its functions, and keep and maintain such records, in such form as the Secretary may require to carry out the purposes of this part, and shall permit access to and use of any such information and records as the Secretary may require for such purposes, subject to the provisions of section 1320c–9 of this title.

(B) If the organization finds, after reasonable notice to and opportunity for discussion with the physician or practitioner concerned, that the physician or practitioner has furnished services in violation of section 1320c–5(a) of this title and the organization determines that the physician or practitioner should enter into a corrective action plan under section 1320c–5(b)(1) of this title, the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician or practitioner of its finding and of any action taken as a result of the finding.

(10) The organization shall coordinate activities, including information exchanges, which are consistent with economical and efficient

[2] So in original. The period probably should be a semicolon.

operation of programs among appropriate public and private agencies or organizations including—

(A) agencies under contract pursuant to sections 1395h and 1395u of this title;

(B) other peer review organizations having contracts under this part; and

(C) other public or private review organizations as may be appropriate.

(11) The organization shall make available its facilities and resources for contracting with private and public entities paying for health care in its area for review, as feasible and appropriate, of services reimbursed by such entities.

(12) Repealed. Pub. L. 103–432, title I, § 156(a)(2)(A)(i), Oct. 31, 1994, 108 Stat. 4440.

(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services met professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an ''early readmission case'' is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge.

(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under subchapter XVIII of this chapter) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such subchapter (or a person acting on the individual's behalf). The organization shall inform the individual (or representative) of the organization's final disposition of the complaint. Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.

(15) During each year of the contract entered into under section 1320c–2(b) of this title, the organization shall perform significant on-site review activities, including on-site review in at least 20 percent of the rural hospitals in the organization's area.

(16) The organization shall provide for a review and report to the Secretary when requested by the Secretary under section 1395dd(d)(3) of this title. The organization shall provide reasonable notice of the review to the physician and hospital involved. Within the time period permitted by the Secretary, the organization shall provide a reasonable opportunity for discussion with the physician and hospital involved, and an opportunity for the physician and hospital to submit additional information, before issuing its report to the Secretary under such section.

(17) The organization shall execute its responsibilities under subparagraphs (A) and (B) of paragraph (1) by offering to providers, practitioners, Medicare Advantage organizations offering Medicare Advantage plans under part C,[3] and prescription drug sponsors offering prescription drug plans under part D[3] quality improvement assistance pertaining to prescription drug therapy. For purposes of this part and subchapter XVIII of this chapter, the functions described in this paragraph shall be treated as a review function.

(b) Review by physicians; physician's family defined

(1) No physician shall be permitted to review—

(A) health care services provided to a patient if he was directly responsible for providing such services; or

(B) health care services provided in or by an institution, organization, or agency, if he or any member of his family has, directly or indirectly, a significant financial interest in such institution, organization, or agency.

(2) For purposes of this subsection, a physician's family includes only his spouse (other than a spouse who is legally separated from him under a decree of divorce or separate maintenance), children (including legally adopted children), grandchildren, parents, and grandparents.

(c) Utilization of services of physicians to make final determinations of denial decisions with respect to professional conduct of other physicians

No utilization and quality control peer review organization shall utilize the services of any individual who is not a duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry to make final determinations of denial decisions in accordance with its duties and functions under this part with respect to the professional conduct of any other duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry, or any act performed by any duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry in the exercise of his profession.

(d) Review of ambulatory surgical procedures

Each contract under this part shall require that the utilization and quality control peer review organization's review responsibility pursuant to subsection (a)(1) of this section will include review of all ambulatory surgical procedures specified pursuant to section 1395*l*(i)(1)(A) of this title which are performed in the area, or, at the discretion of the Secretary a sample of such procedures.

(e) Review of hospital denial notices

(1) If—

(A) a hospital has determined that a patient no longer requires inpatient hospital care, and

(B) the attending physician has agreed with the hospital's determination,

the hospital may provide the patient (or the patient's representative) with a notice (meeting conditions prescribed by the Secretary under section 1395pp of this title) of the determination.

(2) to (4) Repealed. Pub. L. 106–554, § 1(a)(6) [title V, § 521(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–543.

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[3] See References in Text note below.

(f) Identification of methods for identifying cases of substandard care

The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist peer review organizations (under subsection (a)(4) of this section) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care.

(Aug. 14, 1935, ch. 531, title XI, § 1154, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 385; amended Pub. L. 97–448, title III, § 309(b)(3), (4), Jan. 12, 1983, 96 Stat. 2408, 2409; Pub. L. 99–272, title IX, §§ 9307(b), 9401(a), 9403(a), 9405(a), Apr. 7, 1986, 100 Stat. 193, 196, 200, 201; Pub. L. 99–509, title IX, §§ 9343(d), 9351(a), 9352(b), 9353(a)(1)–(3), (c)(1), Oct. 21, 1986, 100 Stat. 2040, 2043, 2044–2047; Pub. L. 100–203, title IV, §§ 4039(h)(3), (4), 4093(a), 4094(a)–(c)(1)(A), (2)(A), (B), 4096(c), Dec. 22, 1987, 101 Stat. 1330–135 to 1330–137, 1330–139, as amended Pub. L. 100–360, title IV, § 411(e)(3), (j)(3)(A), July 1, 1988, 102 Stat. 775, 791; Pub. L. 100–360, title II, § 203(d)(2), title IV, § 411(j)(2), (3)(B), (4)(C), July 1, 1988, 102 Stat. 724, 775, 791; Pub. L. 100–485, title VI, § 608(d)(25)(B), Oct. 13, 1988, 102 Stat. 2421; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, § 6224(a)(1), (b)(1), Dec. 19, 1989, 103 Stat. 2257; Pub. L. 101–508, title IV, §§ 4205(b)(1), (d)(1)(A), (g)(1)(A), (2)(A), 4207(a)(1)(B), formerly 4027(a)(1)(B), 4358(b)(3), Nov. 5, 1990, 104 Stat. 1388–113 to 1388–115, 1388–117, 1388–137; Pub. L. 103–432, title I, §§ 156(a)(2)(A), (b)(2)(A), 160(d)(4), 171(h)(2), Oct. 31, 1994, 108 Stat. 4440, 4441, 4444, 4450; Pub. L. 106–554, § 1(a)(6) [title V, § 521(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–543; Pub. L. 108–173, title I, § 109(a), (b), title IX, § 948(d), Dec. 8, 2003, 117 Stat. 2173, 2426.)

REFERENCES IN TEXT

Parts C and D, referred to in subsec. (a)(1), (17), probably means parts C and D of title XVIII of act Aug. 14, 1935, ch. 531, which are classified to parts C (§ 1395w–21 et seq.) and D (§ 1395w–101 et seq.), respectively, of subchapter XVIII of this chapter.

PRIOR PROVISIONS

A prior section 1320c–3, act Aug. 14, 1935, ch. 531, title XI, § 1154, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1432; amended Oct. 25, 1977, Pub. L. 95–142, § 5(b), (d)(2)(C), 91 Stat. 1184, 1186; Dec. 5, 1980, Pub. L. 96–499, title IX, § 924(a), 94 Stat. 2628; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2112(a)(1), (2)(B), (b), 2113(c), 2121(e), 95 Stat. 793, 794, 796, related to trial period for Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–173, § 109(a), inserted '', to Medicare Advantage organizations pursuant to contracts under part C, and to prescription drug sponsors pursuant to contracts under part D'' after ''under section 1395mm of this title''.

Subsec. (a)(17). Pub. L. 108–173, § 109(b), added par. (17).

Subsec. (e)(5). Pub. L. 108–173, § 948(d), struck out par. (5) which read as follows: ''In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient's representative).''

2000—Subsec. (e)(2) to (4). Pub. L. 106–554 struck out pars. (2) to (4), which had: in par. (2), authorized peer review organization review of validity of hospital's determination that a patient no longer required inpatient hospital care but attending physician had not agreed with the hospital's determination; in par. (3), authorized review of the determination where patient or patient's representative had received a notice under par. (1) and requested the review; and in par. (4), directed that hospital could not charge patient for inpatient services furnished before noon of the day after the date the patient or representative received notice of the decision where request for review had been made not later than noon of the first working day after notice under par. (1) had been received and section 1395pp(a)(2) conditions had been met.

1994—Subsec. (a)(4)(B). Pub. L. 103–432, § 171(h)(2), substituted ''(or that is subject to review under section 1395ss(t)(3) of this title)'' for ''(or subject to review under section 1395ss(t) of this title)''.

Subsec. (a)(9)(B). Pub. L. 103–432, § 156(b)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''If the organization finds, after notice and hearing, that a physician has furnished services in violation of this subsection, the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician of its finding and decision.''

Subsec. (a)(12). Pub. L. 103–432, § 156(a)(2)(A)(i), struck out par. (12) which read as follows: ''The organization shall perform the review, referral, and other functions required under section 1320c–13 of this title.''

Subsec. (d). Pub. L. 103–432, § 156(a)(2)(A)(ii), struck out ''(and except as provided in section 1320c–13 of this title)'' after ''discretion of the Secretary''.

1990—Subsec. (a)(2). Pub. L. 101–508, § 4205(g)(2)(A), inserted third sentence and struck out former third sentence which read as follows: ''Determinations that payment should not be made by reason of subparagraph (B) of paragraph (1) shall be made only on the basis of criteria which are consistent with guidelines established by the Secretary.''

Subsec. (a)(3)(E). Pub. L. 101–508, § 4205(g)(1)(A), designated existing provisions as cl. (i), inserted ''provided by a physician that were'' after ''items'', substituted ''physician.'' for ''physician and hospital.'', and added cl. (ii).

Subsec. (a)(4)(B). Pub. L. 101–508, § 4358(b)(3), inserted ''(or subject to review under section 1395ss(t) of this title)'' after ''section 1395mm of this title'' in first sentence.

Subsec. (a)(7)(A)(i). Pub. L. 101–508, § 4205(b)(1)(A), inserted '', optometry, and podiatry'' after ''dentistry''.

Subsec. (a)(9). Pub. L. 101–508, § 4205(d)(1)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(16). Pub. L. 101–508, § 4207(a)(1)(B), formerly § 4027(a)(1)(B), as renumbered by Pub. L. 103–432, § 160(d)(4), added par. (16).

Subsec. (c). Pub. L. 101–508, § 4205(b)(1)(B), substituted ''dentistry, optometry, or podiatry'' for ''or dentistry'' in three places.

1989—Subsec. (a)(1). Pub. L. 101–239, § 6224(a)(1), inserted at end ''If the organization performs such reviews with respect to a type of health care practitioner other than medical doctors, the organization shall establish procedures for the involvement of health care practitioners of that type in such reviews.''

Subsec. (a)(3)(A). Pub. L. 101–239, § 6224(b)(1)(A), substituted ''subparagraphs (B) and (D)'' for ''subparagraph (B)''.

Subsec. (a)(3)(B). Pub. L. 101–239, § 6224(b)(1)(B), inserted ''with respect to services or items disapproved by reason of subparagraph (A) or (C) of paragraph (1)'' after ''under subparagraph (A)''.

Subsec. (a)(3)(D), (E). Pub. L. 101–239, § 6224(b)(1)(C), added subpars. (D) and (E).

Subsec. (a)(16). Pub. L. 101–234, repealed Pub. L. 100–360, § 203(d)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a)(3)(C). Pub. L. 100–360, §411(j)(2), designated last sentence of par. (3) as subpar. (C).

Subsec. (a)(4). Pub. L. 100–360, §411(e)(3), added Pub. L. 100–203, §4039(h)(3), see 1987 Amendment note below.

Subsec. (a)(6). Pub. L. 100–360, §411(j)(3)(A), made technical amendment to directory language of Pub. L. 100–203, §4094(a), see 1987 Amendment note below.

Subsec. (a)(15). Pub. L. 100–360, §411(j)(3)(B), substituted ''review in at least'' for ''review at at least''.

Subsec. (a)(16). Pub. L. 100–360, §203(d)(2), added par. (16) which related to review of home intravenous drug therapy services.

Subsec. (d). Pub. L. 100–360, §411(e)(3), added Pub. L. 100–203, §4039(h)(4), see 1987 Amendment note below.

Subsec. (e)(3)(A)(i). Pub. L. 100–360, §411(j)(4)(C), as amended by Pub. L. 100–485, §608(d)(25)(B), substituted ''paragraph (1)'' for ''paragraph (1) or (2)''.

Subsec. (e)(3)(B). Pub. L. 100–360, §411(j)(4)(C), as amended by Pub. L. 100–485, §608(d)(25)(B), substituted ''paragraph (1)'' for ''paragraph (1) or (2)'' in introductory provisions.

1987—Subsec. (a)(3). Pub. L. 100–203, §4093(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall promptly notify such practitioner or provider, such patient, and the agency or organization responsible for the payment of claims under subchapter XVIII of this chapter. In the case of practitioners and providers of services, the organization shall provide an opportunity for discussion and review of the determination.''

Subsec. (a)(4). Pub. L. 100–203, §4039(h)(3), as added by Pub. L. 100–360, §411(e)(3), realigned margins for subpars. (B) and (C) and cls. (i) to (iii) of subpar. (C), in subpar. (B), substituted ''risk sharing contract under section 1395mm'' for ''contract under section 1395mm'', and in subpar. (C), inserted ''(other than the ability to perform review functions under this section that are not described in subparagraph (B))''.

Subsec. (a)(4)(B). Pub. L. 100–203, §4094(c)(2)(A), inserted before period at end of first sentence ''and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organization (as determined, in part, by a survey of individuals enrolled with the organization who have not yet used the organization to receive such services). The contract of each organization shall also provide that with respect to health care provided by a health maintenance organization or competitive medical plan under section 1395mm of this title, the organization shall maintain a beneficiary outreach program designed to apprise individuals receiving care under such section of the role of the peer review system, of the rights of the individual under such system, and of the method and purposes for contacting the organization'' and substituted ''previous two sentences'' for ''previous sentence'' in penultimate sentence.

Subsec. (a)(6). Pub. L. 100–203, §4094(c)(1)(A), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Pub. L. 100–203, §4094(a), as amended by Pub. L. 100–360, §411(j)(3)(A), inserted after and below subpar. (A) the following: ''As a component of the norms described in clause (i) or (ii), the organization shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and other appropriate factors (such as the distance from a patient's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.''

Subsec. (a)(7)(A). Pub. L. 100–203, §4094(c)(2)(B), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(15). Pub. L. 100–203, §4094(b), added par. (15).

Subsec. (d). Pub. L. 100–203, §4039(h)(4), as added by Pub. L. 100–360, §411(e)(3), substituted ''1320c–13 of this title'' for ''1320c–13(b)(4) of this title''.

Subsec. (e)(2). Pub. L. 100–203, §4096(c)(1), inserted provision at end requiring hospital to notify patient if it has requested a review.

Subsec. (e)(3)(A)(i), (B). Pub. L. 100–203, §4096(c)(2), inserted ''or (2)'' after ''paragraph (1)''.

1986—Subsec. (a)(1). Pub. L. 99–509, §9343(d)(1), inserted ''and subject to the requirements of subsection (d) of this section'' after ''subject to the terms of the contract'' in introductory provisions.

Pub. L. 99–272, §9405(a), inserted ''(including where payment is made for such services to eligible organizations pursuant to contracts under section 1395mm of this title)'' after ''subchapter XVIII of this chapter'' in introductory provisions.

Subsec. (a)(2). Pub. L. 99–272, §9403(a), in introductory provisions substituted ''subparagraphs (A), (B), and (C)'' for ''subparagraphs (A) and (C)'', and following subpar. (D) inserted provision that determinations that payment should not be made by reason of subpar. (B) of par. (1) shall be made only on the basis of criteria which are consistent with guidelines established by the Secretary.

Subsec. (a)(4)(A). Pub. L. 99–509, §9353(a)(1), inserted at end ''Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities is made among the different cases and settings (including post-acute-care settings, ambulatory settings, and health maintenance organizations). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.''

Pub. L. 99–509, §9353(a)(2)(A), inserted ''(A)'' after ''(4)''.

Subsec. (a)(4)(B). Pub. L. 99–509, §9353(a)(2)(C), inserted at end ''Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.''

Pub. L. 99–509, §9353(a)(2)(B), added subpar. (B).

Subsec. (a)(4)(C). Pub. L. 99–509, §9353(a)(2)(D), added subpar. (C).

Subsec. (a)(8). Pub. L. 99–272, §9307(b), inserted ''or as may be required to carry out section 1395y(a)(15) of this title'' before the period at end.

Subsec. (a)(12). Pub. L. 99–272, §9401(a), added par. (12).

Subsec. (a)(13). Pub. L. 99–509, §9352(b), added par. (13).

Subsec. (a)(14). Pub. L. 99–509, §9353(c)(1), added par. (14).

Subsec. (d). Pub. L. 99–509, §9343(d)(2), added subsec. (d).

Subsec. (e). Pub. L. 99–509, §9351(a), added subsec. (e).

Subsec. (f). Pub. L. 99–509, §9353(a)(3), added subsec. (f).

1983—Subsec. (a)(1)(A). Pub. L. 97–448, §309(b)(3), substituted ''and whether such services and items are not allowable under subsection (a)(1) or (a)(9) of section 1395y of this title'' for ''or otherwise allowable under section 1395y(a)(1) of this title''.

Subsec. (a)(2)(B). Pub. L. 97–448, §309(b)(4), struck out ''posthospital'' before ''extended care services''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title I, §109(c), Dec. 8, 2003, 117 Stat. 2173, provided that: ''The amendments made by this

section [amending this section] shall apply on and after January 1, 2004.''

Pub. L. 108–173, title IX, § 948(d), Dec. 8, 2003, 117 Stat. 2426, provided that the amendment made by section 948(d) is effective as if included in the enactment of section 521(c) of BIPA (the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted by section 1(a)(6) of Pub. L. 106–554).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title V, § 521(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–543, provided that: ''The amendments made by this section [amending this section and sections 1395w–22 and 1395ff of this title] shall apply with respect to initial determinations made on or after October 1, 2002.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 156(a)(3) of Pub. L. 103–432 provided that: ''The amendments made by this subsection [amending this section and sections 1395*l*, 1395m, 1395y, and 1395cc of this title and repealing section 1320c–13 of this title] shall apply to services provided on or after the date of the enactment of this Act [Oct. 31, 1994].''

Amendment by section 171(h)(2) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 171(*l*) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4205(b)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4205(d)(1)(C) of Pub. L. 101–508 provided that: ''The amendments made by this paragraph [amending this section and section 1320c–9 of this title] shall apply to notices of proposed sanctions issued more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4205(g)(1)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconiliation [sic] Act of 1989 [Pub. L. 101–239].''

Section 4205(g)(2)(B) of Pub. L. 101–508 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Section 4207(a)(1)(C), formerly 4027(a)(1)(C), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendment made by subparagraph (A) [amending section 1395dd of this title] shall take effect on the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Nov. 5, 1990]. The amendment made by subparagraph (B) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act [this part] as of the first day of the first month beginning more than 60 days after the date of the enactment of this Act.''

Section 4358(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 172(a), Oct. 31, 1994, 108 Stat. 4452; Pub. L. 104–18, § 1, July 7, 1995, 109 Stat. 192, provided that:

''(1) The amendments made by this section [amending this section and section 1395ss of this title] shall only apply—

''(A) in 15 States (as determined by the Secretary of Health and Human Services) and such other States as elect such amendments to apply to them, and

''(B) subject to paragraph (2), during the 6½-year period beginning with 1992.

For purposes of this paragraph, the term 'State' has the meaning given such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

''(2)(A) The Secretary of Health and Human Services shall conduct a study that compares the health care costs, quality of care, and access to services under medicare select policies with that under other medicare supplemental policies. The study shall be based on surveys of appropriate age-adjusted sample populations. The study shall be completed by June 30, 1997.

''(B) Not later than December 31, 1997, the Secretary shall determine, based on the results of the study under subparagraph (A), if any of the following findings are true:

''(i) The amendments made by this section have not resulted in savings of premium costs to those enrolled in medicare select policies (in comparison to their enrollment in medicare supplemental policies that are not medicare select policies and that provide comparable coverage).

''(ii) There have been significant additional expenditures under the medicare program as a result of such amendments.

''(iii) Access to and quality of care has been significantly diminished as a result of such amendments.

''(C) The amendments made by this section shall remain in effect beyond the 6½-year period described in paragraph (1)(B) unless the Secretary determines that any of the findings described in clause (i), (ii), or (iii) of subparagraph (B) are true.

''(3) The Comptroller General shall conduct a study to determine the extent to which individuals who are continuously covered under a medicare supplemental policy are subject to medical underwriting if they change the policy under which they are covered, and to identify options, if necessary, for modifying the medicare supplemental insurance market to make sure that continuously insured beneficiaries are able to switch plans without medical underwriting. By not later than June 30, 1996, the Comptroller General shall submit to the Congress a report on the study. The report shall include a description of the potential impact on the cost and availability of medicare supplemental policies of each option identified in the study.''

[Section 172(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending section 4358(c) of Pub. L. 101–508, set out above] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508].'']

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6224(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into after the date of the enactment of this Act [Dec. 19, 1989].''

Section 6224(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1320c–4 of this title] shall apply to determinations by utilization and quality control peer review organizations with respect to which preliminary notifications were made under section 1154(a)(3)(B) of the Social Security Act [subsec. (a)(3)(B) of this section] more than 30 days after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 203(g) of Pub. L. 100–360, which had provided that the amendments made by section 203 of Pub. L. 100–360 (amending this section and sections 1395h, 1395k to 1395n, 1395w–2, 1395x, 1395z, and 1395aa of this title) were to apply to items and services furnished on or after January 1, 1990, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(e)(3), (j)(2), (3),

(4)(C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4093(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to determinations made on or after April 1, 1988.''

Section 4094(c)(1)(B) of Pub. L. 100–203 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] entered into or renewed more than 6 months after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4094(c)(2)(C) of Pub. L. 100–203 provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act [Dec. 22, 1987].''

Section 4096(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1395u, 1395gg, and 1395pp of this title] shall apply to services furnished on or after January 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9343(d) of Pub. L. 99–509 applicable to contracts entered into or renewed after Jan. 1, 1987, see section 9343(h)(4) of Pub. L. 99–509, as amended, set out as a note under section 1395*l* of this title.

Section 9351(b) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to denial notices furnished by hospitals to individuals on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act [Oct. 21, 1986].

''(2) Section 1154(e)(4) of the Social Security Act [subsec. (e)(4) of this section] (as added by the amendment made by subsection (a)) shall take effect on the date of the enactment of this Act [Oct. 21, 1986].''

Section 9352(c)(2) of Pub. L. 99–509 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987, except that in applying such amendment before January 1, 1989, the term 'post-hospital services' does not include physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.''

Section 9353(a)(6) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4039(h)(9)(A), (B), as added Pub. L. 100–360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 776, provided that:

''(A)(i) Except as provided in clause (ii), the amendments made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987.

''(ii) The amendment made by paragraph (1) shall not be construed as requiring, before January 1, 1989, the review of physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.

''(B) The amendments made by paragraphs (2)(B) and (2)(D) [amending this section] shall apply to contracts as of April 1, 1987.

''(C) The amendment made by paragraph (2)(C) [amending this section] shall apply to review activities conducted by organizations on or after January 1, 1988.

''(D) The amendment made by paragraph (3) [amending this section] becomes effective on the date of the enactment of this Act [Oct. 21, 1986].''

Section 9353(c)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to complaints received on or after the first day of the first month that begins more than 9 months after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9307(e) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and sections 1395u and 1395y of this title] shall apply to services performed on or after April 1, 1986.''

Section 9401(d) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to items and services furnished on or after January 1, 1987. The Secretary of Health and Human Services shall provide for such modification of contracts under part B of title XI of the Social Security Act [this part] that are in effect on that date as may be necessary to effect these amendments on a timely basis.''

Section 9403(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 1395cc of this title] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9405(b) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, § 9353(a)(5), Oct. 21, 1986, 100 Stat. 2046, provided that: ''The amendment made by this section [amending this section] shall apply to items and services furnished on or after April 1, 1987.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

STATE REGULATORY PROGRAMS

For provisions relating to changes required to conform State regulatory programs to amendments by section 171 of Pub. L. 103–432, see section 171(m) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

REVIEW AND ANALYSIS OF VARIATIONS IN UTILIZATION OF HOSPITAL AND OTHER HEALTH CARE SERVICES

Section 9353(a)(4) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall provide, to at least 12 utilization and quality control peer review organizations with contracts under part B of title XI of the Social Security Act [this part], data and data processing assistance to allow each of these organizations to review and analyze small-area variations, in the service area of the organization, in the utilization of hospital and other health care services for which payment is made under title XVIII of such Act [subchapter XVIII of this chapter].''

§ 1320c–4. Right to hearing and judicial review

Any beneficiary who is entitled to benefits under subchapter XVIII of this chapter, and, subject to section 1320c–3(a)(3)(D) of this title, any practitioner or provider, who is dissatisfied with a determination made by a contracting peer review organization in conducting its review responsibilities under this part, shall be entitled to a reconsideration of such determination by the reviewing organization. Where the reconsideration is adverse to the beneficiary and where the matter in controversy is $200 or more, such beneficiary shall be entitled to a hearing by the Secretary (to the same extent as beneficiaries under subchapter II of this chapter are entitled to a hearing by the Commissioner of Social Security under section 405(b) of this title). For purposes of the preceding sentence, subsection (*l*) of section 405 of this title shall apply, except that any reference in such subsection to the Commissioner of Social Security or the So-

cial Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively. Where the amount in controversy is $2,000 or more, such beneficiary shall be entitled to judicial review of any final decision relating to a reconsideration described in this subsection.

(Aug. 14, 1935, ch. 531, title XI, § 1155, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 388; amended Pub. L. 101–239, title VI, § 6224(b)(2), Dec. 19, 1989, 103 Stat. 2257; Pub. L. 103–296, title I, § 108(b)(14), Aug. 15, 1994, 108 Stat. 1485.)

PRIOR PROVISIONS

A prior section 1320c–4, act Aug. 14, 1935, ch. 531, title XI, § 1155, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1433; amended Oct. 25, 1977, Pub. L. 95–142, § 5(c)(1), (d)(3), (*o*)(2), (p), 91 Stat. 1184, 1188, 1191, 1192; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 924(b)–(d), 925–927(a), 931(g), 94 Stat. 2629, 2630, 2634; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2111, 2113(d), 2121(f), 95 Stat. 793, 794, 796, related to functions and duties of Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1994—Pub. L. 103–296 substituted ''(to the same extent as beneficiaries under subchapter II of this chapter are entitled to a hearing by the Commissioner of Social Security under section 405(b) of this title). For purposes of the preceding sentence, subsection (*l*) of section 405 of this title shall apply, except that any reference in such subsection to the Commissioner of Social Security or the Social Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively. Where the amount in controversy is $2,000 or more, such beneficiary shall be entitled to judicial review of any final decision relating to a reconsideration described in this subsection.'' for ''(to the same extent as is provided in section 405(b) of this title), and, where the amount in controversy is $2,000 or more, to judicial review of the Secretary's final decision.''

1989—Pub. L. 101–239 inserted '', subject to section 1320c–3(a)(3)(D) of this title,'' before ''any practitioner or provider''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to determinations by utilization and quality control peer review organizations with respect to which preliminary notifications were made under section 1320c–3(a)(3)(B) of this title more than 30 days after Dec. 19, 1989, see section 6224(b)(3) of Pub. L. 101–239, set out as a note under section 1320c–3 of this title.

§ 1320c–5. Obligations of health care practitioners and providers of health care services; sanctions and penalties; hearings and review

(a) Assurances regarding services and items ordered or provided by practitioner or provider

It shall be the obligation of any health care practitioner and any other person (including a hospital or other health care facility, organization, or agency) who provides health care services for which payment may be made (in whole or in part) under this chapter, to assure, to the extent of his authority that services or items ordered or provided by such practitioner or person to beneficiaries and recipients under this chapter—

(1) will be provided economically and only when, and to the extent, medically necessary;

(2) will be of a quality which meets professionally recognized standards of health care; and

(3) will be supported by evidence of medical necessity and quality in such form and fashion and at such time as may reasonably be required by a reviewing peer review organization in the exercise of its duties and responsibilities.

(b) Sanctions and penalties; hearings and review

(1) If after reasonable notice and opportunity for discussion with the practitioner or person concerned, and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which may include remedial education) agreed to by the organization, and has failed successfully to complete such plan, any organization having a contract with the Secretary under this part determines that such practitioner or person has—

(A) failed in a substantial number of cases substantially to comply with any obligation imposed on him under subsection (a) of this section, or

(B) grossly and flagrantly violated any such obligation in one or more instances,

such organization shall submit a report and recommendations to the Secretary. If the Secretary agrees with such determination, the Secretary (in addition to any other sanction provided under law) may exclude (permanently or for such period as the Secretary may prescribe, except that such period may not be less than 1 year) such practitioner or person from eligibility to provide services under this chapter on a reimbursable basis. If the Secretary fails to act upon the recommendations submitted to him by such organization within 120 days after such submission, such practitioner or person shall be excluded from eligibility to provide services on a reimbursable basis until such time as the Secretary determines otherwise.

(2) A determination made by the Secretary under this subsection to exclude a practitioner or person shall be effective on the same date and in the same manner as an exclusion from participation under the programs under this chapter becomes effective under section 1320a–7(c) of this title, and shall (subject to the minimum period specified in the second sentence of paragraph (1)) remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(3) In lieu of the sanction authorized by paragraph (1), the Secretary may require that (as a condition to the continued eligibility of such practitioner or person to provide such health care services on a reimbursable basis) such practitioner or person pays[1] to the United States, in case such acts or conduct involved the provision

[1] So in original. Probably should be ''pay''.

or ordering by such practitioner or person of health care services which were medically improper or unnecessary, an amount not in excess of up to $10,000 for each instance of the medically improper or unnecessary services so provided. Such amount may be deducted from any sums owing by the United States (or any instrumentality thereof) to the practitioner or person from whom such amount is claimed.

(4) Any practitioner or person furnishing services described in paragraph (1) who is dissatisfied with a determination made by the Secretary under this subsection shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title.

(5) Before the Secretary may effect an exclusion under paragraph (2) in the case of a provider or practitioner located in a rural health professional shortage area or in a county with a population of less than 70,000, the provider or practitioner adversely affected by the determination is entitled to a hearing before an administrative law judge (described in section 405(b) of this title) respecting whether the provider or practitioner should be able to continue furnishing services to individuals entitled to benefits under this chapter, pending completion of the administrative review procedure under paragraph (4). If the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to such individuals if permitted to continue furnishing such services, the Secretary shall not effect the exclusion under paragraph (2) until the provider or practitioner has been provided reasonable notice and opportunity for an administrative hearing thereon under paragraph (4).

(6) When the Secretary effects an exclusion of a physician under paragraph (2), the Secretary shall notify the State board responsible for the licensing of the physician of the exclusion.

(c) Enlistment of support of other organizations to assure practitioner's or provider's compliance with obligations

It shall be the duty of each utilization and quality control peer review organization to use such authority or influence it may possess as a professional organization, and to enlist the support of any other professional or governmental organization having influence or authority over health care practitioners and any other person (including a hospital or other health care facility, organization, or agency) providing health care services in the area served by such review organization, in assuring that each practitioner or person (referred to in subsection (a) of this section) providing health care services in such area shall comply with all obligations imposed on him under subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title XI, §1156, as added Pub. L. 97–248, title I, §143, Sept. 3, 1982, 96 Stat. 388; amended Pub. L. 100–93, §6, Aug. 18, 1987, 101 Stat. 691; Pub. L. 100–203, title IV, §4095(a), Dec. 22, 1987, 101 Stat. 1330–138; Pub. L. 100–203, title IV, §4039(h)(5), Dec. 22, 1987, as added Pub. L. 100–360, title IV, §411(e)(3), July 1, 1988, 102 Stat. 775; Pub. L. 101–508, title IV, §4205(a)(1), (d)(2)(A), Nov. 5, 1990, 104 Stat. 1388–112, 1388–114; Pub. L. 101–597, title IV, §401(c)(1), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 103–432, title I, §156(b)(1), Oct. 31, 1994, 108 Stat. 4441; Pub. L. 104–191, title II, §§214, 231(f), Aug. 21, 1996, 110 Stat. 2005, 2014.)

PRIOR PROVISIONS

A prior section 1320c–5, act Aug. 14, 1935, ch. 531, title XI, §1156, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1435, provided for development of norms of health care services by Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–191, §214(b)(2), struck out in concluding provisions ''In determining whether a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with such obligations, the Secretary shall consider the practitioner's or person's willingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan.'' after ''chapter on a reimbursable basis.''

Pub. L. 104–191, §214(b)(1), struck out in concluding provisions ''and determines that such practitioner or person, in providing health care services over which such organization has review responsibility and for which payment (in whole or in part) may be made under this chapter, has demonstrated an unwillingness or a lack of ability substantially to comply with such obligations,'' after ''agrees with such determination,''.

Pub. L. 104–191, §214(a)(1), substituted ''may prescribe, except that such period may not be less than 1 year)'' for ''may prescribe)'' in concluding provisions.

Subsec. (b)(2). Pub. L. 104–191, §214(a)(2), substituted ''shall (subject to the minimum period specified in the second sentence of paragraph (1)) remain'' for ''shall remain''.

Subsec. (b)(3). Pub. L. 104–191, §231(f), substituted ''up to $10,000 for each instance'' for ''the actual or estimated cost''.

1994—Subsec. (b)(1). Pub. L. 103–432 substituted ''whether'' for ''whehter'' in third sentence.

1990—Subsec. (b)(1). Pub. L. 101–508, §4205(a)(1), inserted ''and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which may include remedial education) agreed to by the organization, and has failed successfully to complete such plan,'' after ''concerned,'' in introductory provisions and inserted after second sentence ''In determining whehter [sic] a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with such obligations, the Secretary shall consider the practitioner's or person's willingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan.''

Subsec. (b)(5). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area (HMSA)''.

Subsec. (b)(6). Pub. L. 101–508, §4205(d)(2)(A), added par. (6).

1988—Subsec. (b). Pub. L. 100–360 added Pub. L. 100–203, §4039(h)(5), see 1987 Amendment notes below.

1987—Subsec. (a). Pub. L. 100–93, §6(1), substituted ''this chapter'' for ''subchapter XVIII of this chapter'' and ''this subchapter''.

Subsec. (b)(1). Pub. L. 100–203, §4039(h)(5)(A), as added by Pub. L. 100–360, substituted ''services under this chapter'' for ''such services''.

Pub. L. 100–93, §6(2), substituted ''this chapter'' for ''subchapter XVIII of this chapter''.

Subsec. (b)(2). Pub. L. 100–203, §4039(h)(5)(B), as added by Pub. L. 100–360, substituted ''on the same date and in the same manner as an exclusion from participation

under the programs under this chapter becomes effective under section 1320a–7(c) of this title'' for ''at such time and upon such reasonable notice to the public and to the practitioner or person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of institutional health care services such determination shall be effective in the manner provided in this chapter with respect to terminations of provider agreements)''.

Pub. L. 100–93, § 6(2), substituted ''this chapter'' for ''subchapter XVIII of this chapter''.

Subsec. (b)(5). Pub. L. 100–203 added par. (5).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 214 of Pub. L. 104–191 effective Jan. 1, 1997, except as otherwise provided, see section 218 of Pub. L. 104–191, set out as a note under section 1320a–7 of this title.

Amendment by section 231(f) of Pub. L. 104–191 applicable to acts or omissions occurring on or after Jan. 1, 1997, see section 231(i) of Pub. L. 104–191, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 156(b)(6)(A) of Pub. L. 103–432, set out as a note under section 1320c–9 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4205(a)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to initial determinations made by organizations on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4205(d)(2)(B) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 156(b)(3), Oct. 31, 1994, 108 Stat. 4441, provided that: ''The amendment made by this paragraph [amending this section] shall apply to sanctions effected more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4095(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to determinations made by the Secretary of Health and Human Services under section 1156(b) of the Social Security Act [subsec. (b) of this section] on or after the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

TELECOMMUNICATIONS DEMONSTRATION PROJECTS

Section 4094(e) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(j)(3)(C), as added by Pub. L. 100–485, title VI, § 608(d)(25)(A), Oct. 13, 1988, 102 Stat. 2421, provided that: ''The Secretary of Health and Human Services shall enter into agreements with entities submitting applications under this subsection (in such form as the Secretary may provide) to establish demonstration projects to examine the feasibility of requiring instruction and oversight of rural physicians, in lieu of imposing sanctions, through use of video communication between rural hospitals and teaching hospitals under this title [probably means title XI of the Social Security Act which is classified to this subchapter]. Under such demonstration projects, the Secretary may provide for payments to physicians consulted via video communication systems. No funds may be expended under the demonstration projects for the acquisition of capital items including computer hardware.''

PREEXCLUSION HEARINGS; TRANSITION FOR CURRENT CASES AND REDETERMINATION IN CERTAIN CASES

Section 4095(c), (d) of Pub. L. 100–203 provided that:

''(c) TRANSITION FOR CURRENT CASES.—In the case of a practitioner or person—

''(1) for whom a notice of determination under section 1156(b) of the Social Security Act [subsec. (b) of this section] has been provided within 365 days before the date of the enactment of this Act [Dec. 22, 1987],

''(2) who has not exhausted the administrative remedies available under section 1156(b)(4) of such Act for review of the determination, and

''(3) who requests, within 90 days after the date of the enactment of this Act, a hearing established under this subsection,

the Secretary of Health and Human Services shall provide for a hearing described in section 1156(b)(5) of the Social Security Act (as amended by subsection (a) of this section).

''(d) REDETERMINATIONS IN CERTAIN CASES.—If, in hearing under subsection (c), the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to individuals entitled to benefits under title XVIII of the Social Security Act [subchapter XVIII of this chapter] if permitted to continue or resume furnishing such services, the Secretary shall not effect the exclusion (or shall suspend the exclusion, if previously effected) under paragraph (2) of section 1156(b) of such Act [subsec. (b) of this section] until the provider or practitioner has been provided an administrative hearing thereon under paragraph (4) of such section, notwithstanding any failure by the provider or practitioner to request the hearing on a timely basis.''

§ 1320c–6. Limitation on liability

(a) Providers of information to organizations having a contract with Secretary

Notwithstanding any other provision of law, no person providing information to any organization having a contract with the Secretary under this part shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) unless—

(1) such information is unrelated to the performance of the contract of such organization; or

(2) such information is false and the person providing it knew, or had reason to believe, that such information was false.

(b) Employees and fiduciaries of organizations having contracts with Secretary

No organization having a contract with the Secretary under this part and no person who is employed by, or who has a fiduciary relationship with, any such organization or who furnishes professional services to such organization, shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this part or to a valid contract entered into under this part, to have violated

any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided due care was exercised in the performance of such duty, function, or activity.

(c) Physicians and providers

No doctor of medicine or osteopathy and no provider (including directors, trustees, employees, or officials thereof) of health care services shall be civilly liable to any person under any law of the United States or of any State (or political subdivision thereof) on account of any action taken by him in compliance with or reliance upon professionally developed norms of care and treatment applied by an organization under contract pursuant to section 1320c–2 of this title operating in the area where such doctor of medicine or osteopathy or provider took such action; but only if—

(1) he takes such action in the exercise of his profession as a doctor of medicine or osteopathy or in the exercise of his functions as a provider of health care services; and

(2) he exercised due care in all professional conduct taken or directed by him and reasonably related to, and resulting from, the actions taken in compliance with or reliance upon such professionally accepted norms of care and treatment.

(d) Reimbursement by Secretary for expenses incurred in defense of legal proceedings

The Secretary shall make payment to an organization under contract with him pursuant to this part, or to any member or employee thereof, or to any person who furnishes legal counsel or services to such organization, in an amount equal to the reasonable amount of the expenses incurred, as determined by the Secretary, in connection with the defense of any suit, action, or proceeding brought against such organization, member, or employee related to the performance of any duty or function under such contract by such organization, member, or employee.

(Aug. 14, 1935, ch. 531, title XI, §1157, as added Pub. L. 97–248, title I, §143, Sept. 3, 1982, 96 Stat. 389; amended Pub. L. 101–508, title IV, §4205(f), Nov. 5, 1990, 104 Stat. 1388–114.)

PRIOR PROVISIONS

A prior section 1320c–6, act Aug. 14, 1935, ch. 531, title XI, §1157, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1437; amended Oct. 25, 1977, Pub. L. 95–142, §13(b)(4), 91 Stat. 1198, related to submission of reports by Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–508 inserted ''organization having a contract with the Secretary under this part and no'' after ''No'', struck out ''by him'' after ''the performance'', and substituted ''due care was exercised in the performance of such duty, function, or activity'' for ''he has exercised due care''.

§ 1320c–7. Application of this part to certain State programs receiving Federal financial assistance

(a) State plan provision that functions of peer review organizations may be performed by contract with such organization

A State plan approved under subchapter XIX of this chapter may provide that the functions specified in section 1320c–3 of this title may be performed in an area by contract with a utilization and quality control peer review organization that has entered into a contract with the Secretary in accordance with the provisions of section 1395y(g) of this title.

(b) Federal share of expenditures

In the event a State enters into a contract in accordance with subsection (a) of this section, the Federal share of the expenditures made to the contracting organization for its costs in the performance of its functions under the State plan shall be 75 percent (as provided in section 1396b(a)(3)(C) of this title).

(Aug. 14, 1935, ch. 531, title XI, §1158, as added Pub. L. 97–248, title I, §143, Sept. 3, 1982, 96 Stat. 390.)

PRIOR PROVISIONS

A prior section 1320c–7, act Aug. 14, 1935, ch. 531, title XI, §1158, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1437; amended Oct. 25, 1977, Pub. L. 95–142, §§5(d)(1), 22(a), 91 Stat. 1185, 1208; Dec. 5, 1980, Pub. L. 96–499, title IX, §§902(a)(3), 931(h), 94 Stat. 2613, 2634; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§2113(e), 2121(g), 95 Stat. 794, 796, related to review approval as a condition of payment of claims, prior to the general revision of this part by Pub. L. 97–248.

§ 1320c–8. Authorization for use of certain funds to administer provisions of this part

Expenses incurred in the administration of the contracts described in section 1395y(g) of this title shall be payable from—

(1) funds in the Federal Hospital Insurance Trust Fund; and

(2) funds in the Federal Supplementary Medical Insurance Trust Fund,

in such amounts from each of such Trust Funds as the Secretary shall deem to be fair and equitable after taking into consideration the expenses attributable to the administration of this part with respect to each of such programs. The Secretary shall make such transfers of moneys between such Trust Funds as may be appropriate to settle accounts between them in cases where expenses properly payable from one such Trust Fund have been paid from the other such Trust Fund.

(Aug. 14, 1935, ch. 531, title XI, §1159, as added Pub. L. 97–248, title I, §143, Sept. 3, 1982, 96 Stat. 390.)

PRIOR PROVISIONS

A prior section 1320c–8, act Aug. 14, 1935, ch. 531, title XI, §1159, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1437; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, §2113(f), 95 Stat. 795, related to reconsideration hearing and review, prior to the general revision of this part by Pub. L. 97–248.

§ 1320c–9. Prohibition against disclosure of information

(a) Freedom of Information Act inapplicable; exceptions to nondisclosure

An organization, in carrying out its functions under a contract entered into under this part, shall not be a Federal agency for purposes of the provisions of section 552 of title 5 (commonly referred to as the Freedom of Information Act). Any data or information acquired by any such organization in the exercise of its duties and functions shall be held in confidence and shall not be disclosed to any person except—

(1) to the extent that may be necessary to carry out the purposes of this part,

(2) in such cases and under such circumstances as the Secretary shall by regulations provide to assure adequate protection of the rights and interests of patients, health care practitioners, or providers of health care, or

(3) in accordance with subsection (b) of this section.

(b) Disclosure of information permitted

An organization having a contract with the Secretary under this part shall provide in accordance with procedures and safeguards established by the Secretary, data and information—

(1) which may identify specific providers or practitioners as may be necessary—

(A) to assist Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse, which data and information shall be provided by the peer review organization to any such agency at the request of such agency relating to a specific case or pattern;

(B) to assist appropriate Federal and State agencies recognized by the Secretary as having responsibility for identifying cases or patterns involving risks to the public health, which data and information shall be provided by the peer review organization to any such agency—

(i) at the discretion of the peer review organization, at the request of such agency relating to a specific case or pattern with respect to which such agency has made a finding, or has a reasonable belief, that there may be a substantial risk to the public health, or

(ii) upon a finding by, or the reasonable belief of, the peer review organization that there may be a substantial risk to the public health;

(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1395bb of this title in accrediting providers for purposes of meeting the conditions described in subchapter XVIII of this chapter, which data and information shall be provided by the peer review organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body to carry out its respective function which is within the jurisdiction of the agency or body under State law or under section 1395bb of this title; and

(D) to provide notice in accordance with section 1320c–3(a)(9)(B) of this title;

(2) to assist the Secretary, and such Federal and State agencies recognized by the Secretary as having health planning or related responsibilities under Federal or State law (including health systems agencies and State health planning and development agencies), in carrying out appropriate health care planning and related activities, which data and information shall be provided in such format and manner as may be prescribed by the Secretary or agreed upon by the responsible Federal and State agencies and such organization, and shall be in the form of aggregate statistical data (without explicitly identifying any individual) on a geographic, institutional, or other basis reflecting the volume and frequency of services furnished, as well as the demographic characteristics of the population subject to review by such organization.

The penalty provided in subsection (c) of this section shall not apply to the disclosure of any information received under this subsection, except that such penalty shall apply to the disclosure (by the agency receiving such information) of any such information described in paragraph (1) unless such disclosure is made in a judicial, administrative, or other formal legal proceeding resulting from an investigation conducted by the agency receiving the information. An organization may require payment of a reasonable fee for providing information under this subsection in response to a request for such information.

(c) Penalties

It shall be unlawful for any person to disclose any such information described in subsection (a) of this section other than for the purposes provided in subsections (a) and (b) of this section, and any person violating the provisions of this section shall, upon conviction, be fined not more than $1,000, and imprisoned for not more than 6 months, or both, and shall be required to pay the costs of prosecution.

(d) Subpoena and discovery proceedings regarding patient records

No patient record in the possession of an organization having a contract with the Secretary under this part shall be subject to subpoena or discovery proceedings in a civil action. No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1320c–3(a)(1)(B) or 1320c–5(a)(2) of this title shall be subject to subpoena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization's findings and conclusions in making the determination.

(e) Organizations with contracts

For purposes of this section and section 1320c–6 of this title, the term ''organization with a contract with the Secretary under this part'' includes an entity with a contract with the Secretary under section 1320c–3(a)(4)(C) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1160, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 391; amended Pub. L. 99–509, title IX, § 9353(d)(1), Oct. 21, 1986, 100 Stat. 2047; Pub. L. 100–203, title IV, § 4039(h)(6), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 776; Pub. L. 101–508, title IV, § 4205(d)(1)(B), (e)(1), Nov. 5, 1990, 104 Stat. 1388–113, 1388–114; Pub. L. 103–432, title I, § 156(b)(2)(B), (4), Oct. 31, 1994, 108 Stat. 4441.)

PRIOR PROVISIONS

A prior section 1320c–9, act Aug. 14, 1935, ch. 531, title XI, § 1160, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1438; amended Oct. 25, 1977, Pub. L. 95–142, § 5(e), (*o*)(3), 91 Stat. 1189, 1191; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2113(g), 95 Stat. 795, enumerated obligations of health care practitioners and providers of health care services, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1994—Subsec. (b)(1)(D). Pub. L. 103–432, § 156(b)(2)(B), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''to provide notice to the State medical board in accordance with section 1320c–3(a)(9)(B) of this title when the organization submits a report and recommendations to the Secretary under section 1320c–5(b)(1) of this title with respect to a physician whom the board is responsible for licensing;''.

Subsec. (d). Pub. L. 103–432, § 156(b)(4), which directed amendment of subsec. (d) by substituting ''subpoena'' for ''subpena'', was executed by making the substitution in two places to reflect the probable intent of Congress.

1990—Subsec. (b)(1)(D). Pub. L. 101–508, § 4205(d)(1)(B), added subpar. (D).

Subsec. (d). Pub. L. 101–508, § 4205(e)(1), inserted at end ''No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1320c–3(a)(1)(B) or 1320c–5(a)(2) of this title shall be subject to subpena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization's findings and conclusions in making the determination.''

1988—Subsec. (e). Pub. L. 100–360 added Pub. L. 100–203, § 4039(h)(6), see 1987 Amendment note below.

1987—Subsec. (e). Pub. L. 100–203, § 4039(h)(6), as added by Pub. L. 100–360, added subsec. (e).

1986—Subsec. (b)(1)(C). Pub. L. 99–509 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners, which data and information shall be provided by the peer review organization to any such agency at the request of such agency relating to a specific case, but only to the extent that such data and information is required by the agency in carrying out a function which is within the jurisdiction of such agency under State law; and''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 156(b)(6) of Pub. L. 103–432 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section, sections 1320c–3 and 1320c–5 of this title, and provisions set out as notes under this section and section 1320c–5 of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].

''(B) The amendments made by paragraph (2) [amending this section and section 1320c–3 of this title] (relating to the requirement on reporting of information to State boards) shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4205(d)(1)(B) of Pub. L. 101–508 applicable to notices of proposed sanctions issued more than 60 days after Nov. 5, 1990, see section 4205(d)(1)(C) of Pub. L. 101–508, set out as a note under section 1320c–3 of this title.

Section 4205(e)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 156(b)(5), Oct. 31, 1994, 108 Stat. 4441, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to proceedings as of the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9353(d)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to requests for data and information made on and after the end of the 6-month period beginning on the date of the enactment of this Act [Oct. 21, 1986].''

FREEDOM OF INFORMATION ACT REQUEST

Pub. L. 96–499, title IX, § 928, Dec. 5, 1980, 94 Stat. 2630, provided that: ''No Professional Standards Review Organization designated (conditionally or otherwise) under part B of title XI of the Social Security Act [this part] shall be required to make available any records pursuant to a request made under section 552 of title 5, United States Code, until the later of (1) one year after the date of entry of a final court order requiring that such records be made available, or (2) the last date of the Congress during which the court order was entered.''

§ 1320c–10. Annual reports

The Secretary shall submit to the Congress not later than April 1 of each year, a full and complete report on the administration, impact, and cost of the program under this part during the preceding fiscal year, including data and information on—

(1) the number, status, and service areas of all utilization and quality control peer review organizations participating in the program;

(2) the number of health care institutions and practitioners whose services are subject to review by such organizations, and the number of beneficiaries and recipients who received services subject to such review during such year;

(3) the various methods of reimbursement utilized in contracts under this part, and the relative efficiency of each such method of reimbursement;

(4) the imposition of penalties and sanctions under this title for violations of law and for

failure to comply with the obligations imposed by this part;

(5) the total costs incurred under subchapters XVIII and XIX of this chapter in the implementation and operation of all procedures required by such subchapters for the review of services to determine their medical necessity, appropriateness of use, and quality; and

(6) descriptions of the criteria upon which decisions are made, and the selection and relative weights of such criteria.

(Aug. 14, 1935, ch. 531, title XI, § 1161, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 392.)

PRIOR PROVISIONS

A prior section 1320c–10, act Aug. 14, 1935, ch. 531, title XI, § 1161, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1440, related to giving of notice to a practitioner or provider by a Professional Standards Review Organization immediately after taking certain action or making certain determinations, prior to the general revision of this part by Pub. L. 97–248.

PERFORMANCE OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS; REPORT TO CONGRESS

Pub. L. 97–35, title XXI, § 2112(a)(2)(D), Aug. 13, 1981, 95 Stat. 793, provided that the Secretary of Health and Human Services, not later than September 30, 1982, was to report to the Congress on his assessment (under former section 1320c–3(g) of this title) of the relative performance of Professional Standards Review Organizations and on any determinations made not to renew agreements with such Organizations on the basis of such performance.

§ 1320c–11. Exemptions for religious nonmedical health care institutions

The provisions of this part shall not apply with respect to a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).

(Aug. 14, 1935, ch. 531, title XI, § 1162, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 393; amended Pub. L. 105–33, title IV, § 4454(c)(2), Aug. 5, 1997, 111 Stat. 431.)

PRIOR PROVISIONS

A prior section 1320c–11, act Aug. 14, 1935, ch. 531, title XI, § 1162, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1440; amended Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 922(a), 927(b), 94 Stat. 2628, 2630; Aug. 13, 1981, 97–35, title XXI, § 2113(h), 95 Stat. 795, related to Statewide Professional Standards Review Councils, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1997—Pub. L. 105–33 substituted ''Exemptions for religious nonmedical health care institutions'' for ''Exemptions of Christian Science sanatoriums'' in section catchline and substituted ''religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title)'' for ''Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts'' in text.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

§ 1320c–12. Medical officers in American Samoa, Northern Mariana Islands, and Trust Territory of Pacific Islands to be included in utilization and quality control peer review program

For purposes of applying this part to American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, individuals licensed to practice medicine in those places shall be considered to be physicians and doctors of medicine.

(Aug. 14, 1935, ch. 531, title XI, § 1163, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 393.)

PRIOR PROVISIONS

A prior section 1320c–12, act Aug. 14, 1935, ch. 531, title XI, § 1163, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1441; amended Oct. 25, 1977, Pub. L. 95–142, § 5(f), (g), 91 Stat. 1189; Dec. 5, 1980, Pub. L. 96–499, title IX, § 923(a)–(d), 94 Stat. 2628, related to establishment and membership of the National Professional Standards Review Council, prior to the general revision of this part by Pub. L. 97–248.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1320c–13. Repealed. Pub. L. 103–432, title I, § 156(a)(1), Oct. 31, 1994, 108 Stat. 4440

Section, act Aug. 14, 1935, ch. 531, title XI, § 1164, as added Apr. 7, 1986, Pub. L. 99–272, title IX, § 9401(b), 100 Stat. 196; amended Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1895(b)(17), 100 Stat. 2934; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6003(g)(3)(D)(v), 103 Stat. 2153, related to 100 percent peer review for certain surgical procedures.

EFFECTIVE DATE OF REPEAL

Repeal applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as an Effective Date of 1994 Amendment note under section 1320c–3 of this title.

§§ 1320c–14 to 1320c–19. Omitted

CODIFICATION

Sections 1320c–14 to 1320c–19 were omitted in the general revision of this part by Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382.

Section 1320c–14, act Aug. 14, 1935, ch. 531, title XI, § 1165, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1443, related to correlation of functions between Professional Standards Review Organizations and administrative instrumentalities.

Section 1320c–15, act Aug. 14, 1935, ch. 531, title XI, § 1166, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1443; amended Oct. 25, 1977, Pub. L. 95–142, § 5(h), 91 Stat. 1189, related to general prohibition against disclosure of data or information and exceptions to such prohibition. See section 1320c–9 of this title.

Section 1320c–16, act Aug. 14, 1935, ch. 531, title XI, § 1167, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1443; amended Oct. 25, 1977, Pub. L. 95–142, § 5(i), (n), 91 Stat. 1190, 1191, related to limitation of liability of persons providing information to Professional Standards Review Organizations and Statewide Professional Standards Review Councils. See section 1320c–6 of this title.

Section 1320c–17, act Aug. 14, 1935, ch. 531, title XI, § 1168, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1444; amended Dec. 31, 1975, Pub. L. 94–182, title I, § 112(c), 89 Stat. 1055; Oct. 25, 1977, Pub. L. 95–142, § 5(j), 91 Stat. 1190; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2113(j), 95 Stat. 795, related to authorization for use of funds for administering professional review program, transfer of moneys between funds, and payments for Professional Standards Review Organizations. See section 1320c–8 of this title.

Section 1320c–18, act Aug. 14, 1935, ch. 531, title XI, § 1169, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1444, related to technical assistance given to organizations desiring to be designated as Professional Standards Review Organizations.

Section 1320c–19, act Aug. 14, 1935, ch. 531, title XI, § 1170, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1445, related to exemptions of Christian Science sanatoriums. See section 1320c–11 of this title.

§ 1320c–20. Repealed. Pub. L. 97–35, title XXI, § 2113(k), Aug. 13, 1981, 95 Stat. 795

Section, act Aug. 14, 1935, ch. 531, title XI, § 1171, as added Oct. 25, 1977, Pub. L. 95–142, § 5(d)(2)(D), 91 Stat. 1186, set forth provisions respecting Federal-State relations regarding memorandum of understanding between Organization and State agency.

EFFECTIVE DATE OF REPEAL

Repeal applicable to agreements with Professional Standards Review Organizations entered into on or after Oct. 1, 1981, see section 2113(*o*) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 1396a of this title.

§§ 1320c–21, 1320c–22. Omitted

CODIFICATION

Sections 1320c–21 and 1320c–22 were omitted in the general revision of this part by Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382.

Section 1320c–21, act Aug. 14, 1935, ch. 531, title XI, § 1172, as added Oct. 25, 1977, Pub. L. 95–142, § 5(k), 91 Stat. 1190; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2113(*l*), 2193(c)(7), 95 Stat. 795, 827, related to annual reports submitted to Congress by Secretary. See section 1320c–10 of this title.

Section 1320c–22, act Aug. 14, 1935, ch. 531, title XI, § 1173, as added Oct. 25, 1977, Pub. L. 95–142, § 5(*l*)(1), 91 Stat. 1191; amended Dec. 5, 1980, Pub. L. 96–499, title IX, § 923(e), 94 Stat. 2628, provided that medical officers in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands were includable in program under former Part B. See section 1320c–12 of this title.

PART C—ADMINISTRATIVE SIMPLIFICATION

§ 1320d. Definitions

For purposes of this part:

(1) Code set

The term ''code set'' means any set of codes used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

(2) Health care clearinghouse

The term ''health care clearinghouse'' means a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements.

(3) Health care provider

The term ''health care provider'' includes a provider of services (as defined in section 1395x(u) of this title), a provider of medical or other health services (as defined in section 1395x(s) of this title), and any other person furnishing health care services or supplies.

(4) Health information

The term ''health information'' means any information, whether oral or recorded in any form or medium, that—

(A) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

(5) Health plan

The term ''health plan'' means an individual or group plan that provides, or pays the cost of, medical care (as such term is defined in section 300gg–91 of this title). Such term includes the following, and any combination thereof:

(A) A group health plan (as defined in section 300gg–91(a) of this title), but only if the plan—

(i) has 50 or more participants (as defined in section 1002(7) of title 29); or

(ii) is administered by an entity other than the employer who established and maintains the plan.

(B) A health insurance issuer (as defined in section 300gg–91(b) of this title).

(C) A health maintenance organization (as defined in section 300gg–91(b) of this title).

(D) Parts[1] A, B, or C of the Medicare program under subchapter XVIII of this chapter.

(E) The medicaid program under subchapter XIX of this chapter.

(F) A Medicare supplemental policy (as defined in section 1395ss(g)(1) of this title).

(G) A long-term care policy, including a nursing home fixed indemnity policy (unless the Secretary determines that such a policy does not provide sufficiently comprehensive coverage of a benefit so that the policy should be treated as a health plan).

(H) An employee welfare benefit plan or any other arrangement which is established or maintained for the purpose of offering or providing health benefits to the employees of 2 or more employers.

(I) The health care program for active military personnel under title 10.

(J) The veterans health care program under chapter 17 of title 38.

(K) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in section 1072(4) of title 10.

(L) The Indian health service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

(M) The Federal Employees Health Benefit Plan under chapter 89 of title 5.

[1] So in original. Probably should be ''Part''.

(6) Individually identifiable health information

The term ''individually identifiable health information'' means any information, including demographic information collected from an individual, that—

(A) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and—

(i) identifies the individual; or

(ii) with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

(7) Standard

The term ''standard'', when used with reference to a data element of health information or a transaction referred to in section 1320d–2(a)(1) of this title, means any such data element or transaction that meets each of the standards and implementation specifications adopted or established by the Secretary with respect to the data element or transaction under sections 1320d–1 through 1320d–3 of this title.

(8) Standard setting organization

The term ''standard setting organization'' means a standard setting organization accredited by the American National Standards Institute, including the National Council for Prescription Drug Programs, that develops standards for information transactions, data elements, or any other standard that is necessary to, or will facilitate, the implementation of this part.

(Aug. 14, 1935, ch. 531, title XI, § 1171, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2021; amended Pub. L. 107–105, § 4, Dec. 27, 2001, 115 Stat. 1007.)

REFERENCES IN TEXT

The Indian Health Care Improvement Act, referred to in par. (5)(L), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended, which is classified principally to chapter 18 (§ 1601 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 1171 of act Aug. 14, 1935, was classified to section 1320c–20 of this title prior to repeal by Pub. L. 97–35.

AMENDMENTS

2001—Par. (5)(D). Pub. L. 107–105 substituted ''Parts A, B, or C'' for ''Part A or part B''.

PURPOSE

Section 261 of title II of Pub. L. 104–191 provided that: ''It is the purpose of this subtitle [subtitle F (§§ 261–264) of title II of Pub. L. 104–191, enacting this part, amending sections 242k and 1395cc of this title, and enacting provisions set out as a note under section 1320d–2 of this title] to improve the Medicare program under title XVIII of the Social Security Act [subchapter XVIII of this chapter], the medicaid program under title XIX of such Act [subchapter XIX of this chapter], and the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of standards and requirements for the electronic transmission of certain health information.''

§ 1320d–1. General requirements for adoption of standards

(a) Applicability

Any standard adopted under this part shall apply, in whole or in part, to the following persons:

(1) A health plan.

(2) A health care clearinghouse.

(3) A health care provider who transmits any health information in electronic form in connection with a transaction referred to in section 1320d–2(a)(1) of this title.

(b) Reduction of costs

Any standard adopted under this part shall be consistent with the objective of reducing the administrative costs of providing and paying for health care.

(c) Role of standard setting organizations

(1) In general

Except as provided in paragraph (2), any standard adopted under this part shall be a standard that has been developed, adopted, or modified by a standard setting organization.

(2) Special rules

(A) Different standards

The Secretary may adopt a standard that is different from any standard developed, adopted, or modified by a standard setting organization, if—

(i) the different standard will substantially reduce administrative costs to health care providers and health plans compared to the alternatives; and

(ii) the standard is promulgated in accordance with the rulemaking procedures of subchapter III of chapter 5 of title 5.

(B) No standard by standard setting organization

If no standard setting organization has developed, adopted, or modified any standard relating to a standard that the Secretary is authorized or required to adopt under this part—

(i) paragraph (1) shall not apply; and

(ii) subsection (f) of this section shall apply.

(3) Consultation requirement

(A) In general

A standard may not be adopted under this part unless—

(i) in the case of a standard that has been developed, adopted, or modified by a standard setting organization, the organization consulted with each of the organizations described in subparagraph (B) in the course of such development, adoption, or modification; and

(ii) in the case of any other standard, the Secretary, in complying with the requirements of subsection (f) of this section, con-

sulted with each of the organizations described in subparagraph (B) before adopting the standard.

(B) Organizations described

The organizations referred to in subparagraph (A) are the following:

(i) The National Uniform Billing Committee.

(ii) The National Uniform Claim Committee.

(iii) The Workgroup for Electronic Data Interchange.

(iv) The American Dental Association.

(d) Implementation specifications

The Secretary shall establish specifications for implementing each of the standards adopted under this part.

(e) Protection of trade secrets

Except as otherwise required by law, a standard adopted under this part shall not require disclosure of trade secrets or confidential commercial information by a person required to comply with this part.

(f) Assistance to Secretary

In complying with the requirements of this part, the Secretary shall rely on the recommendations of the National Committee on Vital and Health Statistics established under section 242k(k) of this title, and shall consult with appropriate Federal and State agencies and private organizations. The Secretary shall publish in the Federal Register any recommendation of the National Committee on Vital and Health Statistics regarding the adoption of a standard under this part.

(g) Application to modifications of standards

This section shall apply to a modification to a standard (including an addition to a standard) adopted under section 1320d–3(b) of this title in the same manner as it applies to an initial standard adopted under section 1320d–3(a) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1172, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2023.)

PRIOR PROVISIONS

A prior section 1172 of act Aug. 14, 1935, was classified to section 1320c–21 of this title prior to the general amendment of part B of this subchapter by Pub. L. 97–248.

§ 1320d–2. Standards for information transactions and data elements

(a) Standards to enable electronic exchange

(1) In general

The Secretary shall adopt standards for transactions, and data elements for such transactions, to enable health information to be exchanged electronically, that are appropriate for—

(A) the financial and administrative transactions described in paragraph (2); and

(B) other financial and administrative transactions determined appropriate by the Secretary, consistent with the goals of improving the operation of the health care system and reducing administrative costs.

(2) Transactions

The transactions referred to in paragraph (1)(A) are transactions with respect to the following:

(A) Health claims or equivalent encounter information.

(B) Health claims attachments.

(C) Enrollment and disenrollment in a health plan.

(D) Eligibility for a health plan.

(E) Health care payment and remittance advice.

(F) Health plan premium payments.

(G) First report of injury.

(H) Health claim status.

(I) Referral certification and authorization.

(3) Accommodation of specific providers

The standards adopted by the Secretary under paragraph (1) shall accommodate the needs of different types of health care providers.

(b) Unique health identifiers

(1) In general

The Secretary shall adopt standards providing for a standard unique health identifier for each individual, employer, health plan, and health care provider for use in the health care system. In carrying out the preceding sentence for each health plan and health care provider, the Secretary shall take into account multiple uses for identifiers and multiple locations and specialty classifications for health care providers.

(2) Use of identifiers

The standards adopted under paragraph (1) shall specify the purposes for which a unique health identifier may be used.

(c) Code sets

(1) In general

The Secretary shall adopt standards that—

(A) select code sets for appropriate data elements for the transactions referred to in subsection (a)(1) of this section from among the code sets that have been developed by private and public entities; or

(B) establish code sets for such data elements if no code sets for the data elements have been developed.

(2) Distribution

The Secretary shall establish efficient and low-cost procedures for distribution (including electronic distribution) of code sets and modifications made to such code sets under section 1320d–3(b) of this title.

(d) Security standards for health information

(1) Security standards

The Secretary shall adopt security standards that—

(A) take into account—

(i) the technical capabilities of record systems used to maintain health information;

(ii) the costs of security measures;

(iii) the need for training persons who have access to health information;

(iv) the value of audit trails in computerized record systems; and

(v) the needs and capabilities of small health care providers and rural health care providers (as such providers are defined by the Secretary); and

(B) ensure that a health care clearinghouse, if it is part of a larger organization, has policies and security procedures which isolate the activities of the health care clearinghouse with respect to processing information in a manner that prevents unauthorized access to such information by such larger organization.

(2) Safeguards

Each person described in section 1320d–1(a) of this title who maintains or transmits health information shall maintain reasonable and appropriate administrative, technical, and physical safeguards—

(A) to ensure the integrity and confidentiality of the information;

(B) to protect against any reasonably anticipated—

(i) threats or hazards to the security or integrity of the information; and

(ii) unauthorized uses or disclosures of the information; and

(C) otherwise to ensure compliance with this part by the officers and employees of such person.

(e) Electronic signature

(1) Standards

The Secretary, in coordination with the Secretary of Commerce, shall adopt standards specifying procedures for the electronic transmission and authentication of signatures with respect to the transactions referred to in subsection (a)(1) of this section.

(2) Effect of compliance

Compliance with the standards adopted under paragraph (1) shall be deemed to satisfy Federal and State statutory requirements for written signatures with respect to the transactions referred to in subsection (a)(1) of this section.

(f) Transfer of information among health plans

The Secretary shall adopt standards for transferring among health plans appropriate standard data elements needed for the coordination of benefits, the sequential processing of claims, and other data elements for individuals who have more than one health plan.

(Aug. 14, 1935, ch. 531, title XI, § 1173, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2024.)

PRIOR PROVISIONS

A prior section 1173 of act Aug. 14, 1935, was classified to section 1320c–22 of this title prior to the general amendment of part B of this subchapter by Pub. L. 97–248.

RECOMMENDATIONS WITH RESPECT TO PRIVACY OF CERTAIN HEALTH INFORMATION

Section 264 of Pub. L. 104–191 directed Secretary of Health and Human Services, in consultation with the National Committee on Vital and Health Statistics and the Attorney General, to submit to Congress, not later than the date that is 12 months after Aug. 21, 1996, detailed recommendations on standards with respect to the privacy of individually identifiable health information, which recommendations were to address at least the rights that an individual who is a subject of individually identifiable health information should have, the procedures that should be established for the exercise of such rights, and the uses and disclosures of such information that should be authorized or required, further provided that if legislation governing such standards was not enacted by the date that is 36 months after Aug. 21, 1996, the Secretary was to promulgate final regulations containing such standards not later than the date that is 42 months after Aug. 21, 1996, and further provided for preemption of regulations.

EX. ORD. NO. 13181. TO PROTECT THE PRIVACY OF PROTECTED HEALTH INFORMATION IN OVERSIGHT INVESTIGATIONS

Ex. Ord. No. 13181, Dec. 20, 2000, 65 F.R. 81321, provided:

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, it is ordered as follows:

SECTION 1. *Policy*.

It shall be the policy of the Government of the United States that law enforcement may not use protected health information concerning an individual that is discovered during the course of health oversight activities for unrelated civil, administrative, or criminal investigations of a non-health oversight matter, except when the balance of relevant factors weighs clearly in favor of its use. That is, protected health information may not be so used unless the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services. Protecting the privacy of patients' protected health information promotes trust in the health care system. It improves the quality of health care by fostering an environment in which patients can feel more comfortable in providing health care professionals with accurate and detailed information about their personal health. In order to provide greater protections to patients' privacy, the Department of Health and Human Services is issuing final regulations concerning the confidentiality of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191, see Tables for classification] (HIPAA). HIPAA applies only to ''covered entities,'' such as health care plans, providers, and clearinghouses. HIPAA regulations therefore do not apply to other organizations and individuals that gain access to protected health information, including Federal officials who gain access to health records during health oversight activities.

Under the new HIPAA regulations, health oversight investigators will appropriately have ready access to medical records for oversight purposes. Health oversight investigators generally do not seek access to the medical records of a particular patient, but instead review large numbers of records to determine whether a health care provider or organization is violating the law, such as through fraud against the Medicare system. Access to many health records is often necessary in order to gain enough evidence to detect and bring enforcement actions against fraud in the health care system. Stricter rules apply under the HIPAA regulations, however, when law enforcement officials seek protected health information in order to investigate criminal activity outside of the health oversight realm.

In the course of their efforts to protect the health care system, health oversight investigators may also uncover evidence of wrongdoing unrelated to the health care system, such as evidence of criminal conduct by an individual who has sought health care. For records containing that evidence, the issue thus arises whether the information should be available for law enforce-

ment purposes under the less restrictive oversight rules or the more restrictive rules that apply to non-oversight criminal investigations.

A similar issue has arisen in other circumstances. Under 18 U.S.C. 3486, an individual's health records obtained for health oversight purposes pursuant to an administrative subpoena may not be used against that individual patient in an unrelated investigation by law enforcement unless a judicial officer finds good cause. Under that statute, a judicial officer determines whether there is good cause by weighing the public interest and the need for disclosure against the potential for injury to the patient, to the physician-patient relationship, and to the treatment services. It is appropriate to extend limitations on the use of health information to all situations in which the government obtains medical records for a health oversight purpose. In recognition of the increasing importance of protecting health information as shown in the medical privacy rule, a higher standard than exists in 18 U.S.C. 3486 is necessary. It is, therefore, the policy of the Government of the United States that law enforcement may not use protected health information concerning an individual, discovered during the course of health oversight activities for unrelated civil, administrative, or criminal investigations, against that individual except when the balance of relevant factors weighs clearly in favor of its use. That is, protected health information may not be so used unless the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services.

SEC. 2. *Definitions.*

(a) ''Health oversight activities'' shall include the oversight activities enumerated in the regulations concerning the confidentiality of individually identifiable health information promulgated by the Secretary of Health and Human Services pursuant to the ''Health Insurance Portability and Accountability Act of 1996,'' as amended [Pub. L. 104–191, see Tables for classification].

(b) ''Protected health information'' shall have the meaning ascribed to it in the regulations concerning the confidentiality of individually identifiable health information promulgated by the Secretary of Health and Human Services pursuant to the ''Health Insurance Portability and Accountability Act of 1996,'' as amended.

(c) ''Injury to the patient'' includes injury to the privacy interests of the patient.

SEC. 3. *Implementation.*

(a) Protected health information concerning an individual patient discovered during the course of health oversight activities shall not be used against that individual patient in an unrelated civil, administrative, or criminal investigation of a non-health oversight matter unless the Deputy Attorney General of the U.S Department of Justice, or insofar as the protected health information involves members of the Armed Forces, the General Counsel of the U.S. Department of Defense, has authorized such use.

(b) In assessing whether protected health information should be used under subparagraph (a) of this section, the Deputy Attorney General shall permit such use upon concluding that the balance of relevant factors weighs clearly in favor of its use. That is, the Deputy Attorney General shall permit disclosure if the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services.

(c) Upon the decision to use protected health information under subparagraph (a) of this section, the Deputy Attorney General, in determining the extent to which this information should be used, shall impose appropriate safeguards against unauthorized use.

(d) On an annual basis, the Department of Justice, in consultation with the Department of Health and Human Services, shall provide to the President of the United States a report that includes the following information:

(i) the number of requests made to the Deputy Attorney General for authorization to use protected health information discovered during health oversight activities in a non-health oversight, unrelated investigation;

(ii) the number of requests that were granted as applied for, granted as modified, or denied;

(iii) the agencies that made the applications, and the number of requests made by each agency; and

(iv) the uses for which the protected health information was authorized.

(e) The General Counsel of the U.S. Department of Defense will comply with the requirements of subparagraphs (b), (c), and (d), above. The General Counsel also will prepare a report, consistent with the requirements of subparagraphs (d)(i) through (d)(iv), above, and will forward it to the Department of Justice where it will be incorporated into the Department's annual report to the President.

SEC. 4. *Exceptions.*

(a) Nothing in this Executive Order shall place a restriction on the derivative use of protected health information that was obtained by a law enforcement agency in a non-health oversight investigation.

(b) Nothing in this Executive Order shall be interpreted to place a restriction on a duty imposed by statute.

(c) Nothing in this Executive Order shall place any additional limitation on the derivative use of health information obtained by the Attorney General pursuant to the provisions of 18 U.S.C. 3486.

(d) This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, the officers and employees, or any other person.

WILLIAM J. CLINTON.

§ 1320d–3. Timetables for adoption of standards

(a) Initial standards

The Secretary shall carry out section 1320d–2 of this title not later than 18 months after August 21, 1996, except that standards relating to claims attachments shall be adopted not later than 30 months after August 21, 1996.

(b) Additions and modifications to standards

(1) In general

Except as provided in paragraph (2), the Secretary shall review the standards adopted under section 1320d–2 of this title, and shall adopt modifications to the standards (including additions to the standards), as determined appropriate, but not more frequently than once every 12 months. Any addition or modification to a standard shall be completed in a manner which minimizes the disruption and cost of compliance.

(2) Special rules

(A) First 12-month period

Except with respect to additions and modifications to code sets under subparagraph (B), the Secretary may not adopt any modification to a standard adopted under this part during the 12-month period beginning on the date the standard is initially adopted, unless the Secretary determines that the modification is necessary in order to permit compliance with the standard.

(B) Additions and modifications to code sets

(i) In general

The Secretary shall ensure that procedures exist for the routine maintenance, testing, enhancement, and expansion of code sets.

(ii) Additional rules

If a code set is modified under this subsection, the modified code set shall include instructions on how data elements of health information that were encoded prior to the modification may be converted or translated so as to preserve the informational value of the data elements that existed before the modification. Any modification to a code set under this subsection shall be implemented in a manner that minimizes the disruption and cost of complying with such modification.

(Aug. 14, 1935, ch. 531, title XI, § 1174, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2026.)

§ 1320d–4. Requirements

(a) Conduct of transactions by plans

(1) In general

If a person desires to conduct a transaction referred to in section 1320d–2(a)(1) of this title with a health plan as a standard transaction—

(A) the health plan may not refuse to conduct such transaction as a standard transaction;

(B) the insurance plan may not delay such transaction, or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the ground that the transaction is a standard transaction; and

(C) the information transmitted and received in connection with the transaction shall be in the form of standard data elements of health information.

(2) Satisfaction of requirements

A health plan may satisfy the requirements under paragraph (1) by—

(A) directly transmitting and receiving standard data elements of health information; or

(B) submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse, and receiving standard data elements through the health care clearinghouse.

(3) Timetable for compliance

Paragraph (1) shall not be construed to require a health plan to comply with any standard, implementation specification, or modification to a standard or specification adopted or established by the Secretary under sections 1320d–1 through 1320d–3 of this title at any time prior to the date on which the plan is required to comply with the standard or specification under subsection (b) of this section.

(b) Compliance with standards

(1) Initial compliance

(A) In general

Not later than 24 months after the date on which an initial standard or implementation specification is adopted or established under sections 1320d–1 and 1320d–2 of this title, each person to whom the standard or implementation specification applies shall comply with the standard or specification.

(B) Special rule for small health plans

In the case of a small health plan, paragraph (1) shall be applied by substituting ''36 months'' for ''24 months''. For purposes of this subsection, the Secretary shall determine the plans that qualify as small health plans.

(2) Compliance with modified standards

If the Secretary adopts a modification to a standard or implementation specification under this part, each person to whom the standard or implementation specification applies shall comply with the modified standard or implementation specification at such time as the Secretary determines appropriate, taking into account the time needed to comply due to the nature and extent of the modification. The time determined appropriate under the preceding sentence may not be earlier than the last day of the 180-day period beginning on the date such modification is adopted. The Secretary may extend the time for compliance for small health plans, if the Secretary determines that such extension is appropriate.

(3) Construction

Nothing in this subsection shall be construed to prohibit any person from complying with a standard or specification by—

(A) submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse; or

(B) receiving standard data elements through a health care clearinghouse.

(Aug. 14, 1935, ch. 531, title XI, § 1175, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2027.)

EXTENSION OF DEADLINE FOR COVERED ENTITIES SUBMITTING COMPLIANCE PLANS

Pub. L. 107–105, § 2, Dec. 27, 2001, 115 Stat. 1003, provided that:

''(a) IN GENERAL.—

''(1) EXTENSION.—Subject to paragraph (2), notwithstanding section 1175(b)(1)(A) of the Social Security Act (42 U.S.C. 1320d–4(b)(1)(A)) and section 162.900 of title 45, Code of Federal Regulations, a health care provider, health plan (other than a small health plan), or a health care clearinghouse shall not be considered to be in noncompliance with the applicable requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations, before October 16, 2003.

''(2) CONDITION.—Paragraph (1) shall apply to a person described in such paragraph only if, before October 16, 2002, the person submits to the Secretary of Health and Human Services a plan of how the person will come into compliance with the requirements described in such paragraph not later than October 16, 2003. Such plan shall be a summary of the following:

''(A) An analysis reflecting the extent to which, and the reasons why, the person is not in compliance.

''(B) A budget, schedule, work plan, and implementation strategy for achieving compliance.

''(C) Whether the person plans to use or might use a contractor or other vendor to assist the person in achieving compliance.

''(D) A timeframe for testing that begins not later than April 16, 2003.

''(3) ELECTRONIC SUBMISSION.—Plans described in paragraph (2) may be submitted electronically.

''(4) MODEL FORM.—Not later than March 31, 2002, the Secretary of Health and Human Services shall

promulgate a model form that persons may use in drafting a plan described in paragraph (2). The promulgation of such form shall be made without regard to chapter 35 of title 44, United States Code (commonly known as the 'Paperwork Reduction Act').

''(5) ANALYSIS OF PLANS; REPORTS ON SOLUTIONS.—

''(A) ANALYSIS OF PLANS.—

''(i) FURNISHING OF PLANS.—Subject to subparagraph (D), the Secretary of Health and Human Services shall furnish the National Committee on Vital and Health Statistics with a sample of the plans submitted under paragraph (2) for analysis by such Committee.

''(ii) ANALYSIS.—The National Committee on Vital and Health Statistics shall analyze the sample of the plans furnished under clause (i).

''(B) REPORTS ON SOLUTIONS.—The National Committee on Vital and Health Statistics shall regularly publish, and widely disseminate to the public, reports containing effective solutions to compliance problems identified in the plans analyzed under subparagraph (A). Such reports shall not relate specifically to any one plan but shall be written for the purpose of assisting the maximum number of persons to come into compliance by addressing the most common or challenging problems encountered by persons submitting such plans.

''(C) CONSULTATION.—In carrying out this paragraph, the National Committee on Vital and Health Statistics shall consult with each organization—

''(i) described in section 1172(c)(3)(B) of the Social Security Act (42 U.S.C. 1320d–1(c)(3)(B)); or

''(ii) designated by the Secretary of Health and Human Services under section 162.910(a) of title 45, Code of Federal Regulations.

''(D) PROTECTION OF CONFIDENTIAL INFORMATION.—

''(i) IN GENERAL.—The Secretary of Health and Human Services shall ensure that any material provided under subparagraph (A) to the National Committee on Vital and Health Statistics or any organization described in subparagraph (C) is redacted so as to prevent the disclosure of any—

''(I) trade secrets;

''(II) commercial or financial information that is privileged or confidential; and

''(III) other information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

''(ii) CONSTRUCTION.—Nothing in clause (i) shall be construed to affect the application of section 552 of title 5, United States Code (commonly known as the 'Freedom of Information Act'), including the exceptions from disclosure provided under subsection (b) of such section.

''(6) ENFORCEMENT THROUGH EXCLUSION FROM PARTICIPATION IN MEDICARE.—

''(A) IN GENERAL.—In the case of a person described in paragraph (1) who fails to submit a plan in accordance with paragraph (2), and who is not in compliance with the applicable requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations, on or after October 16, 2002, the person may be excluded at the discretion of the Secretary of Health and Human Services from participation (including under part C or as a contractor under sections 1816, 1842, and 1893) [42 U.S.C. 1395h, 1395u, 1395ddd] in title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(B) PROCEDURE.—The provisions of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) (other than the first and second sentences of subsection (a) and subsection (b)) shall apply to an exclusion under this paragraph in the same manner as such provisions apply with respect to an exclusion or proceeding under section 1128A(a) of such Act.

''(C) CONSTRUCTION.—The availability of an exclusion under this paragraph shall not be construed to affect the imposition of penalties under section 1176 of the Social Security Act (42 U.S.C. 1320d–5).

''(D) NONAPPLICABILITY TO COMPLYING PERSONS.—The exclusion under subparagraph (A) shall not apply to a person who—

''(i) submits a plan in accordance with paragraph (2); or

''(ii) who is in compliance with the applicable requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations, on or before October 16, 2002.

''(b) SPECIAL RULES.—

''(1) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

''(A) as modifying the October 16, 2003, deadline for a small health plan to comply with the requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations; or

''(B) as modifying—

''(i) the April 14, 2003, deadline for a health care provider, a health plan (other than a small health plan), or a health care clearinghouse to comply with the requirements of subpart E of part 164 of title 45, Code of Federal Regulations; or

''(ii) the April 14, 2004, deadline for a small health plan to comply with the requirements of such subpart.

''(2) APPLICABILITY OF PRIVACY STANDARDS BEFORE COMPLIANCE DEADLINE FOR INFORMATION TRANSACTION STANDARDS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, during the period that begins on April 14, 2003, and ends on October 16, 2003, a health care provider or, subject to subparagraph (B), a health care clearinghouse, that transmits any health information in electronic form in connection with a transaction described in subparagraph (C) shall comply with the requirements of subpart E of part 164 of title 45, Code of Federal Regulations, without regard to whether the transmission meets the standards required by part 162 of such title.

''(B) APPLICATION TO HEALTH CARE CLEARINGHOUSES.—For purposes of this paragraph, during the period described in subparagraph (A), an entity that processes or facilitates the processing of information in connection with a transaction described in subparagraph (C) and that otherwise would be treated as a health care clearinghouse shall be treated as a health care clearinghouse without regard to whether the processing or facilitation produces (or is required to produce) standard data elements or a standard transaction as required by part 162 of title 45, Code of Federal Regulations.

''(C) TRANSACTIONS DESCRIBED.—The transactions described in this subparagraph are the following:

''(i) A health care claims or equivalent encounter information transaction.

''(ii) A health care payment and remittance advice transaction.

''(iii) A coordination of benefits transaction.

''(iv) A health care claim status transaction.

''(v) An enrollment and disenrollment in a health plan transaction.

''(vi) An eligibility for a health plan transaction.

''(vii) A health plan premium payments transaction.

''(viii) A referral certification and authorization transaction.

''(c) DEFINITIONS.—In this section—

''(1) the terms 'health care provider', 'health plan', and 'health care clearinghouse' have the meaning given those terms in section 1171 of the Social Security Act (42 U.S.C. 1320d) and section 160.103 of title 45, Code of Federal Regulations;

''(2) the terms 'small health plan' and 'transaction' have the meaning given those terms in section 160.103 of title 45, Code of Federal Regulations; and

''(3) the terms 'health care claims or equivalent encounter information transaction', 'health care payment and remittance advice transaction', 'coordination of benefits transaction', 'health care claim status transaction', 'enrollment and disenrollment in a health plan transaction', 'eligibility for a health plan transaction', 'health plan premium payments trans-

action', and 'referral certification and authorization transaction' have the meanings given those terms in sections 162.1101, 162.1601, 162.1801, 162.1401, 162.1501, 162.1201, 162.1701, and 162.1301 of title 45, Code of Federal Regulations, respectively.''

§ 1320d–5. General penalty for failure to comply with requirements and standards

(a) General penalty

(1) In general

Except as provided in subsection (b) of this section, the Secretary shall impose on any person who violates a provision of this part a penalty of not more than $100 for each such violation, except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

(2) Procedures

The provisions of section 1320a–7a of this title (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to the imposition of a civil money penalty under this subsection in the same manner as such provisions apply to the imposition of a penalty under such section 1320a–7a of this title.

(b) Limitations

(1) Offenses otherwise punishable

A penalty may not be imposed under subsection (a) of this section with respect to an act if the act constitutes an offense punishable under section 1320d–6 of this title.

(2) Noncompliance not discovered

A penalty may not be imposed under subsection (a) of this section with respect to a provision of this part if it is established to the satisfaction of the Secretary that the person liable for the penalty did not know, and by exercising reasonable diligence would not have known, that such person violated the provision.

(3) Failures due to reasonable cause

(A) In general

Except as provided in subparagraph (B), a penalty may not be imposed under subsection (a) of this section if—

(i) the failure to comply was due to reasonable cause and not to willful neglect; and

(ii) the failure to comply is corrected during the 30-day period beginning on the first date the person liable for the penalty knew, or by exercising reasonable diligence would have known, that the failure to comply occurred.

(B) Extension of period

(i) No penalty

The period referred to in subparagraph (A)(ii) may be extended as determined appropriate by the Secretary based on the nature and extent of the failure to comply.

(ii) Assistance

If the Secretary determines that a person failed to comply because the person was unable to comply, the Secretary may provide technical assistance to the person during the period described in subparagraph (A)(ii). Such assistance shall be provided in any manner determined appropriate by the Secretary.

(4) Reduction

In the case of a failure to comply which is due to reasonable cause and not to willful neglect, any penalty under subsection (a) of this section that is not entirely waived under paragraph (3) may be waived to the extent that the payment of such penalty would be excessive relative to the compliance failure involved.

(Aug. 14, 1935, ch. 531, title XI, § 1176, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2028.)

§ 1320d–6. Wrongful disclosure of individually identifiable health information

(a) Offense

A person who knowingly and in violation of this part—

(1) uses or causes to be used a unique health identifier;

(2) obtains individually identifiable health information relating to an individual; or

(3) discloses individually identifiable health information to another person,

shall be punished as provided in subsection (b) of this section.

(b) Penalties

A person described in subsection (a) of this section shall—

(1) be fined not more than $50,000, imprisoned not more than 1 year, or both;

(2) if the offense is committed under false pretenses, be fined not more than $100,000, imprisoned not more than 5 years, or both; and

(3) if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than $250,000, imprisoned not more than 10 years, or both.

(Aug. 14, 1935, ch. 531, title XI, § 1177, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2029.)

§ 1320d–7. Effect on State law

(a) General effect

(1) General rule

Except as provided in paragraph (2), a provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1320d–1 through 1320d–3 of this title, shall supersede any contrary provision of State law, including a provision of State law that requires medical or health plan records (including billing information) to be maintained or transmitted in written rather than electronic form.

(2) Exceptions

A provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1320d–1 through 1320d–3 of this title, shall not super-

sede a contrary provision of State law, if the provision of State law—

(A) is a provision the Secretary determines—

(i) is necessary—

(I) to prevent fraud and abuse;

(II) to ensure appropriate State regulation of insurance and health plans;

(III) for State reporting on health care delivery or costs; or

(IV) for other purposes; or

(ii) addresses controlled substances; or

(B) subject to section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, relates to the privacy of individually identifiable health information.

(b) Public health

Nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention.

(c) State regulatory reporting

Nothing in this part shall limit the ability of a State to require a health plan to report, or to provide access to, information for management audits, financial audits, program monitoring and evaluation, facility licensure or certification, or individual licensure or certification.

(Aug. 14, 1935, ch. 531, title XI, §1178, as added Pub. L. 104–191, title II, §262(a), Aug. 21, 1996, 110 Stat. 2029.)

REFERENCES IN TEXT

Section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (a)(2)(B), is section 264(c)(2) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

§ 1320d–8. Processing payment transactions by financial institutions

To the extent that an entity is engaged in activities of a financial institution (as defined in section 3401 of title 12), or is engaged in authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments, for a financial institution, this part, and any standard adopted under this part, shall not apply to the entity with respect to such activities, including the following:

(1) The use or disclosure of information by the entity for authorizing, processing, clearing, settling, billing, transferring, reconciling or collecting, a payment for, or related to, health plan premiums or health care, where such payment is made by any means, including a credit, debit, or other payment card, an account, check, or electronic funds transfer.

(2) The request for, or the use or disclosure of, information by the entity with respect to a payment described in paragraph (1)—

(A) for transferring receivables;

(B) for auditing;

(C) in connection with—

(i) a customer dispute; or

(ii) an inquiry from, or to, a customer;

(D) in a communication to a customer of the entity regarding the customer's transactions, payment card, account, check, or electronic funds transfer;

(E) for reporting to consumer reporting agencies; or

(F) for complying with—

(i) a civil or criminal subpoena; or

(ii) a Federal or State law regulating the entity.

(Aug. 14, 1935, ch. 531, title XI, §1179, as added Pub. L. 104–191, title II, §262(a), Aug. 21, 1996, 110 Stat. 2030.)

SUBCHAPTER XII—ADVANCES TO STATE UNEMPLOYMENT FUNDS

§ 1321. Eligibility requirements for transfer of funds; reimbursement by State; application; certification; limitation

(a)(1) Advances shall be made to the States from the Federal unemployment account in the Unemployment Trust Fund as provided in this section, and shall be repayable, with interest to the extent provided in section 1322(b) of this title, in the manner provided in sections 1101(d)(1), 1103(b)(2), and 1322 of this title. An advance to a State for the payment of compensation in any 3-month period may be made if—

(A) the Governor of the State applies therefor no earlier than the first day of the month preceding the first month of such 3-month period, and

(B) he furnishes to the Secretary of Labor his estimate of the amount of an advance which will be required by the State for the payment of compensation in each month of such 3-month period.

(2) In the case of any application for an advance under this section to any State for any 3-month period, the Secretary of Labor shall—

(A) determine the amount (if any) which he finds will be required by such State for the payment of compensation in each month of such 3-month period, and

(B) certify to the Secretary of the Treasury the amount (not greater than the amount estimated by the Governor of the State) determined under subparagraph (A).

The aggregate of the amounts certified by the Secretary of Labor with respect to any 3-month period shall not exceed the amount which the Secretary of the Treasury reports to the Secretary of Labor is available in the Federal unemployment account for advances with respect to each month of such 3-month period.

(3) For purposes of this subsection—

(A) an application for an advance shall be made on such forms, and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the State unemployment compensation law, as the Secretary of Labor deems necessary or relevant to the performance of his duties under this subchapter,

(B) the amount required by any State for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month, and

(C) the term ''compensation'' means cash benefits payable to individuals with respect to their unemployment, exclusive of expenses of administration.

(b) The Secretary of the Treasury shall, prior to audit or settlement by the Government Accountability Office, transfer in monthly installments from the Federal unemployment account to the account of the State in the Unemployment Trust Fund the amount certified under subsection (a) of this section by the Secretary of Labor (but not exceeding that portion of the balance in the Federal unemployment account at the time of the transfer which is not restricted as to use pursuant to section 1103(b)(1) of this title). The amount of any monthly installment so transferred shall not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which such installment is made.

(Aug. 14, 1935, ch. 531, title XII, § 1201, as added Oct. 3, 1944, ch. 480, title IV, § 402, 58 Stat. 790; amended Aug. 6, 1947, ch. 510, § 5(b), 61 Stat. 794; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 28, 1950, ch. 809, title IV, § 404(a), 64 Stat. 560; Aug. 5, 1954, ch. 657, § 3, 68 Stat. 671; Pub. L. 86–778, title V, § 522(a), Sept. 13, 1960, 74 Stat. 978; Pub. L. 94–566, title II, § 213(a)–(c), Oct. 20, 1976, 90 Stat. 2677; Pub. L. 97–35, title XXIV, § 2407(b)(1), Aug. 13, 1981, 95 Stat. 880; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1981—Subsec. (a)(1). Pub. L. 97–35 substituted ''with interest to the extent provided in section 1322(b) of this title'' for ''without interest''.

1976—Subsec. (a)(1). Pub. L. 94–566, § 213(a), substituted ''any 3-month period'' for ''any month'' in provisions preceding subpar. (A), ''the month preceding the first month of such 3-month period'' for ''the preceding month'' in subpar. (A), and ''each month of such 3-month period'' for ''such month'' in subpar. (B).

Subsec. (a)(2). Pub. L. 94–566, § 213(b), substituted ''any 3-month period'' for ''any month'' in provisions preceding subpar. (A) and following subpar. (B), and ''each month of such 3-month period'' for ''such month'' in subpar. (A) and provisions following subpar. (B).

Subsec. (b). Pub. L. 94–566, § 213(c), provided that the transfer of amounts by the Secretary of the Treasury from the Federal unemployment account to the account of the States in the Unemployment Trust Fund be made in monthly installments and that the amount of any monthly installment so transferred not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which the installment is made.

1960—Subsec. (a). Pub. L. 86–778 amended subsec. (a) generally, substituting provisions relating to advances on a monthly basis upon application of the Governor and the furnishing of an estimate of amount of requisite advance and determination and certification by the Secretary of Labor of the requisite amount limited to a sum which is available in the Federal unemployment account for advances for the month for former provisions relating to advances on a quarterly basis upon application of the Governor for a specified amount not to exceed the highest total compensation paid out under the unemployment compensation law of the State during any one of the four calendar quarters preceding the quarter in which the application is made, where the balance in the unemployment fund of the State in the Unemployment Trust Fund at the close of Sept. 30, 1953, or the last day in any ensuing calendar quarter is less than the total compensation paid out under the unemployment compensation law of the State during the twelve-month period at the close of such day; incorporating former provisions of subsec. (b), relating to repayment of advances, in par. (1), inserting provision for repayment under section 1103(b)(2) of this title, and provisions formerly designated as cl. (A) and (B) in par. (3)(A) and (C); and adding par. (3)(B).

Subsec. (b). Pub. L. 86–778 amended subsec. (b) generally, striking out provision for repayment of advances which is now incorporated in subsec. (a)(1) in the reference to repayment under sections 1101(d)(1) and 1322 of this title.

1954—Act Aug. 5, 1954, amended section generally to provide that: (1) the first condition of eligibility for an advance is that the balance in the State unemployment fund at the close of a calendar quarter be less than the total of cash payments made by the State to individuals during the 12-month period which ends with such quarter; (2) the Governor of the State must apply for an advance during the quarter following the quarter specified in paragraph (1) of this section; and (3) the total amount certified for any one application may not exceed the amount paid out by the State for cash benefits in that particular quarter.

1950—Subsec. (a). Act Aug. 28, 1950, substituted ''January 1, 1952'' for ''January 1, 1950''.

1947—Subsec. (a). Act Aug. 6, 1947, substituted ''June 30, 1947'' for ''June 30, 1945'' and ''January 1, 1950'' for ''July 1, 1947''.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 213(d) of Pub. L. 94–566 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 20, 1976].''

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Aug. 28, 1950, effective Jan. 1, 1950, see section 404(c) of act Aug. 28, 1950, set out as a note under section 1104 of this title.

TERMINATION DATE

Section 4 of act Aug. 6, 1947, provided that: ''Section 603 of the War Mobilization and Reconversion Act of 1944 [section 1651 note of Appendix to Title 50, War and National Defense] (terminating the provisions of such Act [sections 1651 to 1678 of Appendix to Title 50] on June 30, 1947) shall not be applicable in the case of the amendments made by title IV of such Act [sections 1666 and 1667 of Appendix to Title 50] to the Social Security Act [this section and section 1104 of this title].''

APPLICATIONS FOR TRANSFER OF FUNDS UNDER FORMER PROVISIONS OF SECTION 1321(a); LIMITATIONS

Pub. L. 86–778, title V, § 522(b), Sept. 13, 1960, 74 Stat. 979, provided that:

''(1) No amount shall be transferred on or after the date of the enactment of this Act [Sept. 13, 1960] from the Federal unemployment account to the account of any State in the Unemployment Trust Fund pursuant to any application made under section 1201(a) of the Social Security Act [subsec. (a) of this section] as in effect before such date; except that, if—

''(A) some but not all of an amount certified by the Secretary of Labor to the Secretary of the Treasury for transfer to the account of any State was transferred to such account before such date, and

''(B) the Governor of such State, after the date of the enactment of this Act [Sept. 13, 1960], requests the Secretary of the Treasury to transfer all or any part of the remainder to such account,

the Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office [now Government Accountability Office], transfer from the Federal unemployment account to the account of such

State in the Unemployment Trust Fund the amount so requested or (if smaller) the amount available in the Federal unemployment account at the time of the transfer. No such amount shall be transferred under this paragraph after the one-year period beginning on the date of the enactment of this Act [Sept. 13, 1960].

''(2) For purposes of section 3302(c) of the Federal Unemployment Tax Act [section 3302(c) of Title 26, Internal Revenue Code] and titles IX and XII of the Social Security Act [subchapter IX and XII of this chapter], if any amount is transferred pursuant to paragraph (1) to the unemployment account of any State, such amount shall be treated as an advance made before the date of the enactment of this Act [Sept. 13, 1960].''

ADVANCES TO ALASKA

Act June 1, 1955, ch. 118, 69 Stat. 81, authorized the Governor of Alaska to obtain from the Federal Unemployment Fund such advances as the Territory of Alaska might qualify for and as might be necessary to obtain for the payment of unemployment compensation benefits to claimants entitled thereto under the Alaska employment security law and provided for the reimbursement of the general fund of the Territory of Alaska from which advances have been made for the payment of unemployment compensation benefits from advances made through the Governor of Alaska from the Federal Unemployment Fund.

§ 1322. Repayment by State; certification; transfer; interest on loan; credit of interest on loan

(a) Repayment by State; certification; transfer

The Governor of any State may at any time request that funds be transferred from the account of such State to the Federal unemployment account in repayment of part or all of that balance of advances, made to such State under section 1321 of this title, specified in the request. The Secretary of Labor shall certify to the Secretary of the Treasury the amount and balance specified in the request; and the Secretary of the Treasury shall promptly transfer such amount in reduction of such balance.

(b) Interest on loan

(1) Except as otherwise provided in this subsection, each State shall pay interest on any advance made to such State under section 1321 of this title. Interest so payable with respect to periods during any calendar year shall be at the rate determined under paragraph (4) for such calendar year.

(2) No interest shall be required to be paid under paragraph (1) with respect to any advance or advances made during any calendar year if—

(A) such advances are repaid in full before the close of September 30 of the calendar year in which the advances were made,

(B) no other advance was made to such State under section 1321 of this title during such calendar year and after the date on which the repayment of the advances was completed, and

(C) such State meets funding goals, established under regulations issued by the Secretary of Labor, relating to the accounts of the States in the Unemployment Trust Fund.

(3)(A) Interest payable under paragraph (1) which was attributable to periods during any fiscal year shall be paid by the State to the Secretary of the Treasury prior to the first day of the following fiscal year. If interest is payable under paragraph (1) on any advance (hereinafter in this subparagraph referred to as the ''first advance'') by reason of another advance made to such State after September 30 of the calendar year in which the first advance was made, interest on such first advance attributable to periods before such September 30 shall be paid not later than the day after the date on which the other advance was made.

(B) Notwithstanding subparagraph (A), in the case of any advance made during the last 5 months of any fiscal year, interest on such advance attributable to periods during such fiscal year shall not be required to be paid before the last day of the succeeding taxable year. Any interest the time for payment of which is deferred by the preceding sentence shall bear interest in the same manner as if it were an advance made on the day on which it would have been required to be paid but for this subparagraph.

(C)(i) In the case of any State which meets the requirements of clause (ii) for any calendar year, any interest otherwise required to be paid under this subsection during such calendar year shall be paid as follows—

(I) 25 percent of the amount otherwise required to be paid on or before any day during such calendar year shall be paid on or before such day; and

(II) 25 percent of the amount otherwise required to be paid on or before such day shall be paid on or before the corresponding day in each of the 3 succeeding calendar years.

No interest shall accrue on such deferred interest.

(ii) A State meets the requirements of this clause for any calendar year if the rate of insured unemployment (as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970) under the State law of the period consisting of the first 6 months of the preceding calendar year equaled or exceeded 7.5 percent.

(4) The interest rate determined under this paragraph with respect to any calendar year is a percentage (but not in excess of 10 percent) determined by dividing—

(A) the aggregate amount credited under section 1104(e) of this title to State accounts on the last day of the last calendar quarter of the immediately preceding calendar year, by

(B) the aggregate of the average daily balances of the State accounts for such quarter as determined under section 1104(e) of this title.

(5) Interest required to be paid under paragraph (1) shall not be paid (directly or indirectly) by a State from amounts in its unemployment fund. If the Secretary of Labor determines that any State action results in the paying of such interest directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) from such unemployment fund, the Secretary of Labor shall not certify such State's unemployment compensation law under section 3304 of the Internal Revenue Code of 1986. Such noncertification shall be made in accordance with section 3304(c) of such Code.

(6)(A) For purposes of paragraph (2), any voluntary repayment shall be applied against advances made under section 1321 of this title on the last made first repaid basis. Any other re-

payment of such an advance shall be applied against advances on a first made first repaid basis.

(B) For purposes of this paragraph, the term ''voluntary repayment'' means any repayment made under subsection (a) of this section.

(7) This subsection shall only apply to advances made on or after April 1, 1982.

(8)(A) With respect to interest due under this section on September 30 of 1983, 1984, or 1985 (other than interest previously deferred under paragraph (3)(C)), a State may pay 80 percent of such interest in four annual installments of at least 20 percent beginning with the year after the year in which it is otherwise due, if such State meets the criteria of subparagraph (B). No interest shall accrue on such deferred interest.

(B) To meet the criteria of this subparagraph a State must—

(i) have taken no action since October 1, 1982, which would reduce its net unemployment tax effort or the net solvency of its unemployment system (as determined for purposes of section 3302(f) of the Internal Revenue Code of 1986); and

(ii)(I) have taken an action (as certified by the Secretary of Labor) after March 31, 1982, which would have increased revenue liabilities and decreased benefits under the State's unemployment compensation system (hereinafter referred to as a ''solvency effort'') by a combined total of the applicable percentage (as compared to such revenues and benefits as would have been in effect without such State action) for the calendar year for which the deferral is requested; or

(II) have had, for taxable year 1982, an average unemployment tax rate which was equal to or greater than 2.0 percent of the total of the wages (as determined without any limitation on amount) attributable to such State subject to contribution under the State unemployment compensation law with respect to such taxable year.

In the case of the first year for which there is a deferral (over a 4-year period) of the interest otherwise payable for such year, the applicable percentage shall be 25 percent. In the case of the second such year, the applicable percentage shall be 35 percent. In the case of the third such year, the applicable percentage shall be 50 percent.

(C)(i) The base year is the first year for which deferral under this provision is requested and subsequently granted. The Secretary of Labor shall estimate the unemployment rate for the base year. To determine whether a State meets the requirements of subparagraph (B)(ii)(I), the Secretary of Labor shall determine the percentage by which the benefits and taxes in the base year with the application of the action referred to in subparagraph (B)(ii)(I) are lower or greater, as the case may be, than such benefits and taxes would have been without the application of such action. In making this determination, the Secretary shall deem the application of the action referred to in subparagraph (B)(ii)(I) to have been effective for the base year to the same extent as such action is effective for the year following the year for which the deferral is sought. Once a deferral is approved under clause (ii)(I) of subparagraph (B) a State must continue to maintain its solvency effort. Failure to do so shall result in the State being required to make immediate payment of all deferred interest.

(ii) Increases in the taxable wage base from $6,000 to $7,000 or increases after 1984 in the maximum tax rate to 5.4 percent shall not be counted for purposes of meeting the requirement of subparagraph (B).

(D) In the case of a State which produces a solvency effort of 50 percent, 80 percent, and 90 percent rather than the 25 percent, 35 percent, and 50 percent required under subparagraph (B), the interest shall be computed at an interest rate which is 1 percentage point less than the otherwise applicable interest rate.

(9) Any interest otherwise due from a State on September 30 of a calendar year after 1982 may be deferred (and no interest shall accrue on such deferred interest) for a grace period of not to exceed 9 months if, for the most recent 12-month period for which data are available before the date such interest is otherwise due, the State had an average total unemployment rate of 13.5 percent or greater.

(c) Credit of interest on loan

Interest paid by States in accordance with this section shall be credited to the Federal unemployment account established by section 1104(g) of this title in the Unemployment Trust Fund.

(Aug. 14, 1935, ch. 531, title XII, § 1202, as added Aug. 5, 1954, ch. 657, § 3, 68 Stat. 672; amended Pub. L. 86–778, title V, § 522(a), Sept. 13, 1960, 74 Stat. 979; Pub. L. 97–35, title XXIV, § 2407(a), (b)(2), Aug. 13, 1981, 95 Stat. 879, 880; Pub. L. 97–248, title II, § 274(a), Sept. 3, 1982, 96 Stat. 557; Pub. L. 98–21, title V, §§ 511, 514, Apr. 20, 1983, 97 Stat. 144, 147; Pub. L. 98–118, § 5(a), Oct. 11, 1983, 97 Stat. 804; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–203, title IX, § 9156(a), Dec. 22, 1987, 101 Stat. 1330–327; Pub. L. 105–33, title V, § 5404(a), Aug. 5, 1997, 111 Stat. 604.)

REFERENCES IN TEXT

Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (b)(3)(C)(ii), is section 203 of Pub. L. 91–373, title II, Aug. 10, 1970, 84 Stat. 709, as amended, which is set out as a note under section 3304 of Title 26, Internal Revenue Code.

The Internal Revenue Code of 1986, referred to in subsec. (b)(5), (8)(B)(i), is classified generally to Title 26.

AMENDMENTS

1997—Subsec. (b)(2)(C). Pub. L. 105–33 added subpar. (C).

1987—Subsec. (c). Pub. L. 100–203 added subsec. (c).

1986—Subsec. (b)(5), (8)(B)(i). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1983—Subsec. (b)(2). Pub. L. 98–118, § 5(a)(1), substituted ''advance or advances'' for ''advance'' in provisions preceding subpar. (A).

Subsec. (b)(2)(A). Pub. L. 98–118, § 5(a)(2), (3), substituted ''advances are'' for ''advance is'' and ''advances were'' for ''advance was''.

Subsec. (b)(2)(B). Pub. L. 98–118, § 5(a)(4), substituted ''advances was completed'' for ''advance was completed''.

Subsec. (b)(3)(A). Pub. L. 98–21, § 514, which directed substitution of ''prior to'' for ''not later than'' was executed, as the probable intent of Congress, by making that substitution the first time the phrase appeared

following ''Secretary of Treasury'' and not the second time that phrase appeared.

Subsec. (b)(3)(C)(i). Pub. L. 98–21, § 511(c), substituted, after subcl. II, provision that no interest shall accrue on such deferred interest for provision that any interest the time for payment of which was deferred under this subparagraph would bear interest in the same manner as if it had been an advance made on the day on which it would have been required to be paid but for this subparagraph.

Subsec. (b)(7). Pub. L. 98–21, § 511(b), struck out '', and before January 1, 1988'' after ''April 1, 1982''.

Subsec. (b)(8), (9). Pub. L. 98–21, § 511(a), added pars. (8) and (9).

1982—Subsec. (b)(3)(C). Pub. L. 97–248 added subpar. (C).

1981—Subsec. (a). Pub. L. 97–35, § 2407(b)(2), designated existing provision as subsec. (a).

Subsec. (b). Pub. L. 97–35, § 2407(a), added subsec. (b).

1960—Pub. L. 86–778 amended section generally, designating provisions constituting subsec. (a) as entire section, substituting ''that balance of advances, made to such State under section 1321 of this title, specified in the request'' for ''any remaining balance of advances made to such State under section 1321 of this title'' and inserting ''in reduction of such balance'' and omitting subsecs. (b) and (c) pertaining to appropriations and repayable advances which were incorporated in sections 1101(d)(1) and 1323 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 5404(b) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9156(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to interest paid on advances made on or after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 5(b) of Pub. L. 98–118 provided that: ''The amendments made by this section [amending this section] shall apply to advances made on or after April 1, 1982.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 274(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to interest required to be paid after December 31, 1982.''

§ 1323. Repayable advances to Federal Unemployment Account

There are hereby authorized to be appropriated to the Federal unemployment account, as repayable advances, such sums as may be necessary to carry out the purposes of this subchapter. Amounts appropriated as repayable advances shall be repaid by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Any amount transferred as a repayment under this section shall be credited against, and shall operate to reduce, any balance of advances repayable under this section. Whenever, after the application of sections 1101(f)(3) and 1102(a) of this title with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, so much of such remainder as does not exceed the balance of advances made pursuant to this section shall be transferred to the general fund of the Treasury and shall be credited against, and shall operate to reduce, such balance of advances. Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.

(Aug. 14, 1935, ch. 531, title XII, § 1203, as added Aug. 5, 1954, ch. 657, § 3, 68 Stat. 672; amended Pub. L. 86–778, title V, § 522(a), Sept. 13, 1960, 74 Stat. 979; Pub. L. 91–373, title III, § 304(c), Aug. 10, 1970, 84 Stat. 716; Pub. L. 98–135, title II, § 205(a), Oct. 24, 1983, 97 Stat. 861; Pub. L. 100–203, title IX, § 9155(b), Dec. 22, 1987, 101 Stat. 1330–327.)

PRIOR PROVISIONS

Provisions similar to those comprising the first sentence of this section were contained in section 1322(c), act Aug. 14, 1935, ch. 531, title XII, § 1202(c), as added Aug. 5, 1954, ch. 657, § 3, 68 Stat. 672, prior to amendment by Pub. L. 86–778.

AMENDMENTS

1987—Pub. L. 100–203 struck out ''(without interest)'' after ''account, as repayable advances'' and '', without interest,'' after ''shall be repaid'', and inserted sentence at end relating to amounts appropriated as repayable advances for purposes of this subsection.

1983—Pub. L. 98–135 inserted provision requiring that amounts appropriated as repayable advances be repaid, without interest, by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose, and that any amount transferred as a repayment under this section be credited against, and operate to reduce, any balance of advances repayable under this section.

1970—Pub. L. 91–373 inserted reference to section 1102(a) of this title.

1960—Pub. L. 86–778 amended section generally, substituting provisions relating to repayable advances to the Federal unemployment account for former provision defining ''Governor'' and now incorporated in section 1324 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to advances made on or after Dec. 22, 1987, see section 9155(d) of Pub. L. 100–203, set out as a note under section 1103 of this title.

RETRANSFER OF AMOUNTS TRANSFERRED FROM FEDERAL UNEMPLOYMENT ACCOUNT TO EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT AS OF SEPTEMBER 30, 1983

Section 205(b) of Pub. L. 98–135 provided that: ''Any amounts transferred from the Federal unemployment account to the employment security administration account as of September 30, 1983, shall be transferred back to the Federal unemployment account.''

§ 1324. "Governor" defined

When used in this subchapter, the term ''Governor'' includes the Mayor of the District of Columbia.

(Aug. 14, 1935, ch. 531, title XII, § 1204, as added Pub. L. 86–778, title V, § 522(a), Sept. 13, 1960, 74 Stat. 979; amended 1967 Reorg. Plan No. 3, § 401, eff. Nov. 3, 1967, 32 F.R. 11669, 81 Stat. 951; Pub. L. 93–198, title IV, § 421, Dec. 24, 1973, 87 Stat. 789.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 1323, act Aug. 14, 1935, ch. 531, title XII, § 1203, as added Aug. 5, 1954, ch. 657, § 3, 68 Stat. 672, prior to amendment by Pub. L. 86–778.

TRANSFER OF FUNCTIONS

Except as otherwise provided in Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967 (in part), 32 F.R. 11669, 81 Stat. 948, functions of Board of Commissioners of District of Columbia transferred to Commissioner of District of Columbia by section 401 of Reorg. Plan No. 3 of 1967. Office of Commissioner of District of Columbia, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by office of Mayor of District of Columbia by section 421 of Pub. L. 93–198. Accordingly, ''Mayor'' substituted in text for ''Commissioners''.

SUBCHAPTER XIII—RECONVERSION UNEMPLOYMENT BENEFITS FOR SEAMEN

§§ 1331 to 1336. Repealed. Pub. L. 98–369, div. B, title VI, § 2663(f), July 18, 1984, 98 Stat. 1168

Section 1331, act Aug. 14, 1935, ch. 531, title XIII, § 1301, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, provided for administration of this chapter by Secretary of Labor.

Section 1332, act Aug. 14, 1935, ch. 531, title XIII, § 1302, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982; amended July 16, 1949, ch. 342, §§ 1–3, 63 Stat. 445, defined ''reconversion period'', ''compensation'', ''Federal maritime service'', and ''Federal maritime wages''.

Section 1333, act Aug. 14, 1935, ch. 531, title XIII, § 1303, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065, related to compensation for seamen, agreements with states, payments in absence of agreements, wage information, and determination of wages.

Section 1334, act Aug. 14, 1935, ch. 531, title XIII, § 1304, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to review of determinations and reports.

Section 1335, act Aug. 14, 1935, ch. 531, title XIII, § 1305, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to payments to States, certification of such payments by Secretary of Labor to Secretary of the Treasury, and return of unused funds.

Section 1336, act Aug. 14, 1935, ch. 531, title XIII, § 1306, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to penalties.

EFFECTIVE DATE OF REPEAL

Repeal effective July 18, 1984, but such repeal shall not be construed as changing or affecting any right, liability, status, or interpretation which existed before that date, see section 2664(b) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 401 of this title.

SUBCHAPTER XIV—GRANTS TO STATES FOR AID TO PERMANENTLY AND TOTALLY DISABLED

REPEAL OF SUBCHAPTER; INAPPLICABILITY OF REPEAL TO PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this subchapter is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

§ 1351. Authorization of appropriations

For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals eighteen years of age and older who are permanently and totally disabled, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid to the permanently and totally disabled.

(Aug. 14, 1935, ch. 531, title XIV, § 1401, as added Aug. 28, 1950, ch. 809, title III, pt. 5, § 351, 64 Stat. 555; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, § 314(a), 70 Stat. 849; Pub. L. 87–543, title I, § 104(c)(4), July 25, 1962, 76 Stat. 186; Pub. L. 97–35, title XXI, § 2184(c)(1), Aug. 13, 1981, 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 struck out ''and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain and retain capability for self-support or self-care'' after ''and totally disabled''.

1962—Pub. L. 87–543 inserted ''to furnish rehabilitation and other services'' before ''to help such individuals'' and ''or retain capability for'' after ''attain''.

1956—Act Aug. 1, 1956, restated purpose to include assistance to individuals to attain self-support of self-care.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 1352. State plans for aid to permanently and totally disabled

(a) A State plan for aid to the permanently and totally disabled must (1) except to the ex-

tent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the permanently and totally disabled is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title, assistance under a State program funded under part A of subchapter IV of this chapter, or aid to the blind under the State plan approved under section 1202 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the permanently and totally disabled, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (A) the State agency may disregard not more than $7.50 of any income, (B) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (C) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation; (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan; (10) provide that all individuals wishing to make application for aid to the permanently and totally disabled shall have opportunity to do so, and that aid to the permanently and totally disabled shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; (12) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and (13) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the permanently and totally disabled under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid to the permanently and totally disabled and has resided therein continuously for one year immediately preceding the application;

(2) Any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this subchapter.

(Aug. 14, 1935, ch. 531, title XIV, §1402, as added Aug. 28, 1950, ch. 809, title III, pt. 5, §351, 64 Stat. 555; amended 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, §314(b), 70 Stat. 850; Pub. L. 87–543, title I, §§104(a)(3)(I), 106(a)(3), July 25, 1962, 76 Stat. 185, 188; Pub. L. 89–97, title IV, §403(d) July 30, 1965, 79 Stat. 418; Pub. L. 90–248, title II, §§210(a)(4), 213(a)(3), Jan. 2, 1968, 81 Stat. 896, 898; Pub. L. 92–603, title IV, §§405(c), 406(c),

407(c), 410(c), 413(c), Oct. 30, 1972, 86 Stat. 1488, 1489, 1491, 1492; Pub. L. 98–369, div. B, title VI, § 2651(g), July 18, 1984, 98 Stat. 1150; Pub. L. 104–193, title I, § 108(h), Aug. 22, 1996, 110 Stat. 2169.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsec. (a)(7), is classified to section 601 et seq. of this title.

AMENDMENTS

1996—Subsec. (a)(7). Pub. L. 104–193 substituted ''assistance under a State program funded under part A of subchapter IV of this chapter'' for ''aid to families with dependent children under the State plan approved under section 602 of this title''.

1984—Subsec. (a)(13). Pub. L. 98–369 added cl. (13).

1972—Subsec. (a)(1). Pub. L. 92–603, § 410(c), inserted ''except to the extent permitted by the Secretary with respect to services'' before ''provide''.

Subsec. (a)(4). Pub. L. 92–603, § 407(c), designated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(9). Pub. L. 92–603, § 413(c), substituted provisions permitting the use or disclosure of information concerning applicants or recipients to public officials requiring such information in connection with their official duties and to other persons for purposes directly connected with the administration of the State plan, for provisions restricting the use or disclosure of such information to purposes directly connected with the administration of aid to the permanently and totally disabled.

Subsec. (a)(12). Pub. L. 92–603, § 405(c), inserted provision relating to the use of whatever internal organizational arrangement found appropriate.

Subsec. (b). Pub. L. 92–603, § 406(c), inserted provision relating to the furnishing of manuals and other policy issuances to persons without charge and at the option of the State.

1968—Subsec. (a)(5). Pub. L. 90–248, § 210(a)(4), designated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(8)(A). Pub. L. 90–248 § 213(a)(3), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.

1965—Subsec. (a)(8). Pub. L. 89–97 inserted exception prohibiting disregard by State in making its determination of need of more than $5 of any income or of more than the first $20 of the first $80 per month of additional income which is earned and allowing disregard, for a period not in excess of 36 months, of such additional amounts of other income and resources as may be necessary to the fulfillment of approved plan for achieving self-support but only as to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation.

1962—Subsec. (a)(7). Pub. L. 87–543, § 104(a)(3)(I), substituted ''aid to families with dependent children'' for ''aid to dependent children''.

Subsec. (a)(8). Pub. L. 87–543, § 106(a)(3), inserted '', as well as any expenses reasonably attributable to the earning of any such income''.

1956—Subsec. (a)(12). Act Aug. 1, 1956, added cl. (12).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 210(a)(4) of Pub. L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub. L. 90–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 403(d) of Pub. L. 89–97 provided that the amendment made by that section is effective Oct. 1, 1965.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 106(a)(3) of Pub. L. 87–543 effective July 1, 1963, see section 202(a) of Pub. L. 87–543, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, effective July 1, 1957, see section 314 [315] of act Aug. 1, 1956, set out as a note under section 302 of this title.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary under subsec. (a)(5)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

PUBLIC ACCESS TO STATE DISBURSEMENT RECORDS

Public access to State records of disbursements of funds and payments under this subchapter, see note set out under section 302 of this title.

§ 1353. Payments to States

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) Repealed. Pub. L. 97–35, title XXI, § 2184(c)(2)(A), Aug. 13, 1981, 95 Stat. 817.

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the permanently and totally disabled under the State plan, not counting so

much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the permanently and totally disabled for such month; and

(3) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health and Human Services shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of subsection (a) of this section, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of permanently and totally disabled individuals in the State, and (C) such other investigation as the Secretary of Health and Human Services may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the permanently and totally disabled furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the Government Accountability Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

(Aug. 14, 1935, ch. 531, title XIV, §1403, as added Aug. 28, 1950, ch. 809, title III, pt. 5, §351, 64 Stat. 556; amended July 18, 1952, ch. 945, §8(d), 66 Stat. 779; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, §§304, 314(c), 344, 70 Stat. 847, 850, 854; Pub. L. 85–840, title V, §504, Aug. 28, 1958, 72 Stat. 1049; Pub. L. 87–64, title III, §303(c), June 30, 1961, 75 Stat. 143; Pub. L. 87–543, title I, §§101(a)(4), (b)(4), 132(c), July 25, 1962, 76 Stat. 178, 181, 195; Pub. L. 89–97, title I, §122, title IV, §401(e), July 30, 1965, 79 Stat. 353, 415; Pub. L. 90–248, title II, §212(c), Jan. 2, 1968, 81 Stat. 897; Pub. L. 92–512, title III, §301(b), (d), Oct. 20, 1972, 86 Stat. 946, 947; Pub. L. 93–647, §§3(e)(2), 5(d), Jan. 4, 1975, 88 Stat. 2349, 2350; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXI, §2184(c)(2), title XXV, §2353(*l*), Aug. 13, 1981, 95 Stat. 817, 873; Pub. L. 99–603, title I, §121(b)(4), Nov. 6, 1986, 100 Stat. 3391; Pub. L. 103–66, title XIII, §13741(b), Aug. 10, 1993, 107 Stat. 663; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

REPEAL OF SECTION

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1993—Subsec. (a)(3). Pub. L. 103–66 substituted ''50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.'' for ''the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and official administration of the State plan—

''(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

''(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title; plus

''(C) one-half of the remainder of such expenditures.''

1986—Subsec. (a)(3)(B), (C). Pub. L. 99–603 added subpar. (B) and redesignated former subpar. (B) as (C).

1981—Subsec. (a)(1). Pub. L. 97–35, §2184(c)(2)(A), struck out par. (1) which provided for computation of the amount of payments in the case of any State other than Puerto Rico, the Virgin Islands, and Guam.

Subsec. (a)(2). Pub. L. 97–35, §2184(c)(2)(B), struck out ''(including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)''.

Subsec. (a)(3). Pub. L. 97–35, §2353(*l*)(1)(A), redesignated subpar. (A)(iv) as subpar. (A), struck out former subpars. (A)(i), which included services prescribed pursuant to subsec. (c)(1) of this section and provided to applicants for or recipients of aid to the permanently and totally disabled to help them attain self-support,

(A)(ii), which included other services, specified by the Secretary as likely to prevent or reduce dependency, and (A)(iii), which included any of the services in subpars. (A)(i) and (ii) deemed appropriate for individuals likely to become applicants for or recipients of aid to the permanently and totally disabled, redesignated former subpar. (C) as (B), and struck out former subpar. (B), which included one-half of so much of the expenditures, not included in subpar. (A), as are for services for applicants for or recipients of aid to the permanently and totally disabled or individuals likely to become applicants or recipients, and subpars. (D) and (E) and provision following subpar. (E), which specified what services were includible.

Subsec. (a)(4). Pub. L. 97–35, § 2353(*l*)(1)(B), struck out par. (4), which provided payment, in the case of any State whose plan approved under section 1352 of this title did not meet the requirements of subsec. (c)(1) of this section, of an amount equal to one-half of the total of the sums expended during the quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

Subsec. (c). Pub. L. 97–35, § 2353(*l*)(2), struck out subsec. (c) which prescribed eligibility requirements for payments.

1975—Subsec. (a). Pub. L. 93–647, § 3(e)(2), struck out ''(subject to section 1320b of this title)'' after ''the Secretary of the Treasury shall''.

Subsec. (a)(3)(A)(iv). Pub. L. 93–647, § 5(d), inserted ''(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)'' after ''training''.

1972—Subsec. (a). Pub. L. 92–512, § 301(d), substituted ''shall (subject to section 1320b of this title) pay'' for ''shall pay'' in provisions preceding par. (1).

Subsec. (a)(3)(E). Pub. L. 92–512, § 301(b), substituted ''under conditions which shall be'' for ''subject to limitations''.

1968—Subsec. (a)(3)(D). Pub. L. 90–248 inserted, ''except to the extent specified by the Secretary'' after ''shall'' in introductory text to subpar. (D).

1965—Subsec. (a)(1). Pub. L. 89–97, §§ 122, 401(e), inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase appearing in so much of par. (1) as precedes clause (A); and substituted ''31/37'' and ''$37'' for ''29/35'' and ''$35'' in subpar. (A) and ''$75'' for ''$70'' in subpar. (B), respectively.

Subsec. (a)(2). Pub. L. 89–97, § 122, inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase.

1962—Subsec. (a)(1). Pub. L. 87–543, § 132(c), substituted ''29/35'' and ''$35'' for ''four-fifths'' and ''$31'', respectively, in subpar. (A) and ''$70'' for ''$66'' in subpar. (B).

Subsec. (a)(2). Pub. L. 87–543, § 132(c), substituted ''$37.50'' for ''$35.50''.

Subsec. (a)(3). Pub. L. 87–543, § 101(a)(4), (b)(4)(A), inserted in opening provisions ''whose State plan approved under section 1352 of this title meets the requirements of subsection (c)(1) of this section'' after ''any State'', and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per centum of the quarterly expenses for certain prescribed services to help attain and retain capability for self-support or self-care, services likely to prevent or reduce dependency, and services appropriate for individuals who were or are likely to become applicants for or recipients of aid to the permanently and totally disabled and request such services, and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary, for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff services of State or local public assistance agencies to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care.

Subsec. (a)(4). Pub. L. 87–543, § 101(b)(4)(B), added par. (4).

Subsec. (c). Pub. L. 87–543, § 101(b)(4)(C), added subsec. (c).

1961—Subsec. (a). Pub. L. 87–64 substituted ''$31'' for ''$30'' and ''$66'' for ''$65'' in cl. (1), and ''$35.50'' for ''$35'' in cl. (2).

1958—Subsec. (a). Pub. L. 85–840 increased the payments to the States to four-fifths of the first $30 of the average monthly payment per recipient, including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus the Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, increased the average monthly payment to Puerto Rico and the Virgin Islands from $30 to $35, excluded Guam from the provisions which authorize an average monthly payment of $65 and included Guam within the provisions which authorize an average monthly payment of $35, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956—Subsec. (a). Act Aug. 1, 1956, § 304, substituted ''during such quarter as aid to the permanently and totally disabled in the form of money payments under the State plan'' for ''during such quarter as aid to the permanently and totally disabled under the State plan'' in cls. (1) and (2), ''who received aid to the permanently and totally disabled in the form of money payments for each month'' for ''who received aid to the permanently and totally disabled for such month'' in par. (A) of cl. (1), and inserted cl. (4).

Act Aug. 1, 1956, § 314(c), struck out '', which shall be used exclusively as aid to the permanently and totally disabled,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), and substituted ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of such aid to help them attain self-support or self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to the permanently and totally disabled or both, and for no other purpose'' in cl. (3).

Act Aug. 1, 1956, § 344, substituted ''October 1, 1956'' for ''October 1, 1952'', struck out '', which shall be used exclusively as aid to the permanently and totally disabled,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), and substituted ''$60'' for ''$55'', ''the product of $30'' for ''the product of $25'', ''Secretary of Health, Education, and Welfare'' for ''Secretary'', and ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of such aid to help them attain self-support or self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to the permanently and totally disabled, or both, and for no other purpose''.

1952—Subsec. (a). Act July 18, 1952, increased the Federal share of the State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing the Federal share of public assistance for Puerto Rico and the Virgin Islands.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Apr. 1, 1994, with special rule for States whose legislature meets biennially, and does not have regular session scheduled in calendar year 1994, see section 13741(c) of Pub. L. 103–66, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(*l*) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 3(e)(2) of Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, and amendment by section 5(d) of Pub. L. 93–647 effective with respect to payments for quarters commencing after Sept. 30, 1975, see section 7(a), (b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendments by Pub. L. 92–512 effective July 1, 1972, and Jan. 1, 1973, respectively, see section 301(e) of Pub. L. 92–512, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 effective Jan. 1, 1968, see section 212(e) of Pub. L. 90–248, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 401(e) of Pub. L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter, see section 401(f) of Pub. L. 89–97, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 101(a)(4) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Aug. 31, 1962, amendment by section 101(b)(4) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after June 30, 1963, and amendment by section 132(c) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Sept. 30, 1962, see section 202(d), (f) of Pub. L. 87–543, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 applicable only in the case of expenditures made after Sept. 30, 1961, and before July 1, 1962, under a State plan approved under subchapters I, X, or XIV of this chapter, see section 303(e) of Pub. L. 87–64, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1956 AMENDMENT

Amendment by section 304 of act Aug. 1, 1956, effective July 1, 1957, see section 305 of act Aug. 1, 1956, set out as a note under section 303 of this title.

Amendment by section 344 of act Aug. 1, 1956, effective only for period beginning Oct. 1, 1956, and ending with close of June 30, 1959, see section 345 of such act Aug. 1, 1956, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

Amendment by act July 18, 1952, effective for period beginning Oct. 1, 1952, and ending Sept. 30, 1956, see section 8(e) of act July 18, 1952, set out as a note set out under section 303 of this title.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and Office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

NONDUPLICATION OF PAYMENTS TO STATES: PROHIBITION OF PAYMENTS AFTER DECEMBER 31, 1969

Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89–97, set out as a note under section 1396b of this title.

ELECTION OF PAYMENTS UNDER COMBINED STATE PLAN RATHER THAN SEPARATE PLANS

Payments to States under combined State plan under subchapter XVI or this chapter as precluding payment under State plan conforming to this subchapter, see section 141(b) of Pub. L. 87–543, set out as a note under section 1382e of this title.

§ 1354. Operation of State plans

In the case of any State plan for aid to the permanently and totally disabled which has been approved by the Secretary of Health and Human Services, if the Secretary after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1352(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1352(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until he

is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title XIV, § 1404, as added Aug. 28, 1950, ch. 809, title III, pt. 5, § 351, 64 Stat. 557; amended 1953 Reorg. Plan No. 1, §§ 5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 90–248, title II, § 245, Jan. 2, 1968, 81 Stat. 918; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1968—Pub. L. 90–248 inserted ''(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)'' after ''further payments will not be made to the State'' and substituted in last sentence ''further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)'' for ''further certification to the Secretary of the Treasury with respect to such State''.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 1355. Definitions

For the purposes of this subchapter, the term ''aid to the permanently and totally disabled'' means money payments to needy individuals eighteen years of age or older who are permanently and totally disabled, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1352 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the permanently and totally disabled to be paid (and in conjunction with other income and resources), meet all the need[1] of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of ninety consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for thirty consecutive days in the case of such an individual who has maintained his residence in such State during such period or ninety consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.

(Aug. 14, 1935, ch. 531, title XIV, § 1405, as added Aug. 28, 1950, ch. 809, title III, pt. 5, § 351, 64 Stat. 557; amended Pub. L. 87–543, title I, § 156(d), July 25, 1962, 76 Stat. 207; Pub. L. 89–97, title II, § 221(c), title IV, § 402(d), July 30, 1965, 79 Stat. 358, 417; Pub. L. 92–603, title IV, §§ 408(c), 409(c), Oct. 30, 1972, 86 Stat. 1490, 1491; Pub. L. 97–35, title XXI, § 2184(c)(3), Aug. 13, 1981, 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 struck out in provision preceding par. (1) '', or (if provided on or after the third month before the month in which the recipient makes application for aid) medical care in behalf of, or any type of remedial care recognized under State law in behalf of,'' after ''money payments to''.

[1] So in original. Probably should be ''needs''.

1972—Pub. L. 92–603 authorized the State, at its option, to include within ''aid to the permanently and totally disabled'' provisions relating to money payments to an individual absent from such State for more than 90 consecutive days, and provisions relating to rent payments made directly to a public housing agency.

1965—Pub. L. 89–97 struck out from definition of ''aid to the permanently and totally disabled'' the exclusion of payments to or medical care in behalf of any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof; and extended definition of ''aid to the permanently and totally disabled'' to include payments made on behalf of the needy individual to another individual who (as determined in accordance with standards determined by the Secretary) is interested in or concerned with the welfare of such needy individual and enumerated the five characteristics required of state plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs of the individual, special efforts to protect welfare, periodic review, and opportunity for fair hearing, respectively.

1962—Pub. L. 87–543 inserted ''(if provided in or after the third month before the month in which the recipient makes application for aid)'' before ''medical care''.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221(c) of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 303 of this title.

Amendment by section 402(d) of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a state plan approved under subchapter I, X, XIV, or XVI of this chapter, see section 402(e) of Pub. L. 89–97, set out as a note under section 306 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–543 applicable in the case of applications made after Sept. 30, 1962, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, see section 156(e) of Pub. L. 87–543, set out as a note under section 306 of this title.

SUBCHAPTER XV—UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES

§§ 1361 to 1364. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 658, 660, 661

Section 1361, act Aug. 14, 1935, ch. 531, title XV, § 1501, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1130; amended Aug. 28, 1958, Pub. L. 85–848, § 2, 72 Stat. 1087; July 12, 1960, Pub. L. 86–624, § 30(g), 74 Stat. 420; Sept. 13, 1960, Pub. L. 86–778, title V, §§ 531(e), 542(d), 74 Stat. 984, 986, defined terms used in this subchapter. See section 8501 of Title 5, Government Organization and Employees.

Pub. L. 90–248, title IV, § 403(f), Jan. 2, 1968, 81 Stat. 932, amended section 1361(a)(6), (9), without reference to repeal of such section by Pub. L. 89–554, § 8(a).

Section 1362, act Aug. 14, 1935, ch. 531, title XV, § 1502, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1131; amended Sept. 13, 1960, Pub. L. 86–778, title V, § 543(b)(1)(A), 74 Stat. 985, provided for compensation of Federal employees under State agreements. See section 8502 of Title 5.

Section 1363, act Aug. 14, 1935, ch. 531, title XV, § 1503, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1132; amended Sept. 13, 1960, Pub. L. 86–778, title V, § 543(b)(1)(B), (C), (c)(1), 74 Stat. 986, provided for compensation of Federal employees in absence of State agreement. See section 8503 of Title 5.

Section 1364, act Aug. 14, 1935, ch. 531, title XV, § 1504, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1133; amended Sept. 13, 1960, Pub. L. 86–778, title V, § 542(b)(2), 74 Stat. 986, related to assignment to State of Federal service and wages. See section 8504 of Title 5.

§ 1365. Repealed. Pub. L. 86–442, § 1, Apr. 22, 1960, 74 Stat. 81

Section, act Aug. 14, 1935, ch. 531, title XV, § 1505, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1133, related to status of a Federal employee who was performing Federal service at time of separation from employment by the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective only with respect to benefit years which began more than thirty days after Apr. 22, 1960, see section 1 of Pub. L. 86–442.

§§ 1366 to 1371. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 658, 660, 661

Section 1366, act Aug. 14, 1935, ch. 531, title XV, § 1506, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1133, provided for payments to States. See section 8505 of Title 5, Government Organization and Employees.

Section 1367, act Aug. 14, 1935, ch. 531, title XV, § 1507, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1134; amended Aug. 28, 1958, Pub. L. 85–848, § 4, 72 Stat. 1089; Sept. 13, 1960, Pub. L. 86–778, title V, § 531(f), 74 Stat. 984, provided for dissemination of information by both Federal and State agencies. See section 8506 of Title 5.

Section 1368, act Aug. 14, 1935, ch. 531, title XV, § 1508, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1135, related to penalties. See section 8507 of Title 5 and section 1919 of Title 18, Crimes and Criminal Procedure.

Section 1369, act Aug. 14, 1935, ch. 531, title XV, § 1509, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1135, related to rules and regulations. See section 8508 of Title 5.

Section 1370, act Aug. 14, 1935, ch. 531, title XV, § 1510, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1135, related to authorization of appropriations. See section 5509 of Title 5.

Section 1371, act Aug. 14, 1935, ch. 531, title XV, § 1511, as added Aug. 28, 1958, Pub. L. 85–848, § 3, 72 Stat. 1087; amended Sept. 2, 1958, Pub. L. 85–857, § 13(i)(3), 72 Stat. 1265; Apr. 22, 1960, Pub. L. 86–442, § 2, 74 Stat. 82; Sept. 13, 1960, Pub. L. 86–778, title V, § 542(c), 74 Stat. 986, provided an ex-servicemen's unemployment compensation program. See sections 8521 to 8525 of Title 5.

SUBCHAPTER XVI—SUPPLEMENTAL SECURITY INCOME FOR AGED, BLIND, AND DISABLED

§ 1381. Statement of purpose; authorization of appropriations

For the purpose of establishing a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled, there are authorized to be appropriated sums sufficient to carry out this subchapter.

(Aug. 14, 1935, ch. 531, title XVI, § 1601, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465.)

PRIOR PROVISIONS

A prior section 1381, act Aug. 14, 1935, ch. 531, title XVI, § 1601, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 197, authorized appropriations for grants to States for aid to aged, blind, or disabled, and for medical assistance for aged, prior to the general amendment of title XVI of the Social Security Act by Pub. L. 92–603, § 301, but is set out as a note below in view of its continued applicability to Puerto Rico, Guam, and the Virgin Islands.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

CONTINUATION OF FEDERAL FINANCIAL PARTICIPATION IN EXPERIMENTAL, PILOT, OR DEMONSTRATION PROJECTS APPROVED BEFORE OCTOBER 1973, FOR PERIOD ON-AND-AFTER DECEMBER 31, 1973, WITHOUT DENIAL OR REDUCTION ON ACCOUNT OF SUBCHAPTER XVI PROVISIONS; WAIVER OF SUBCHAPTER XVI RESTRICTIONS FOR INDIVIDUALS; FEDERAL PAYMENTS OF NON-FEDERAL SHARE AS SUPPLEMENTARY PAYMENTS

Subchapter provisions without effect on Federal Financial Participation in Experimental, Pilot or Demonstration Projects approved before Oct. 1, 1973, for period on-and-after Dec. 31, 1973, see section 11 of Pub. L. 93–233, Dec. 31, 1973, 87 Stat. 958, set out as a note under section 1315 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of section 1601 of the Social Security Act [this section] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1601 of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92–603, and as amended, continues to apply and reads as follows:

§ 1381. Authorization of appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to needy individuals who are 65 years of age or over, are blind, or are 18 years of age or over and permanently and totally disabled, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Commissioner of Social Security, State plans for aid to the aged, blind, or disabled.

(Aug. 14, 1935, ch. 531, title XVI, § 1601, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 197; amended Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(d)(3), title XXIII, § 2353(m)(1), 95 Stat. 817, 873; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(1), 108 Stat. 1477.)

[Amendment by section 107(a)(1) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

PAYMENTS UNDER CHAPTER PROVISIONS IN EFFECT BEFORE JANUARY 1, 1974, FOR: ACTIVITIES CARRIED OUT THROUGH DECEMBER 31, 1973, UNDER STATE PLANS APPROVED UNDER SUBCHAPTER I, X, XIV, OR XVI PROVISIONS; AND FOR ADMINISTRATIVE ACTIVITIES AFTER JANUARY 1, 1974, CLOSING OUT SUCH ACTIVITIES

Pub. L. 93–233, § 19(b), Dec. 31, 1973, 87 Stat. 974, provided that: ''Notwithstanding the provisions of section 301 of the Social Security Amendments of 1972 [enacting this subchapter], the Secretary of Health, Education, and Welfare shall make payments to the 50 States and the District of Columbia after December 31, 1973, in accordance with the provisions of the Social Security Act [this chapter] as in effect prior to January 1, 1974, for (1) activities carried out through the close of December 31, 1973, under State plans approved under title I, X, XIV, or XVI, of such Act [subchapter I, X, XIV, or XVI of this chapter], and (2) administrative activities carried out after December 31, 1973, which such Secretary determines are necessary to bring to a close activities carried out under such State plans.''

§ 1381a. Basic entitlement to benefits

Every aged, blind, or disabled individual who is determined under part A of this subchapter to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Commissioner of Social Security.

(Aug. 14, 1935, ch. 531, title XVI, § 1602, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465; amended Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(E), July 18, 1984, 98 Stat. 1170; Pub. L. 103–296, title I, § 107(a)(1), Aug. 15, 1994, 108 Stat. 1477.)

PRIOR PROVISIONS

A prior section 1602 of act Aug. 14, 1935, ch. 531, title XVI, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 198; amended Oct. 13, 1964, Pub. L. 88–650, § 5(b), 78 Stat. 1078; July 30, 1965, Pub. L. 89–97, title II, § 221(d)(3), title IV, § 403(e), 79 Stat. 358, 418; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 210(a)(5), 213(a)(4), 241(d), 81 Stat. 896, 898, 917, formerly classified to section 1382 of this title, set forth the required contents of State plans for aid to the aged, blind, or disabled, and for medical assistance for the aged, prior to the general amendment of title XVI of the Social Security Act by Pub. L. 92–603, § 301.

AMENDMENTS

1994—Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

1984—Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

PART A—DETERMINATION OF BENEFITS

§ 1382. Eligibility for benefits

(a) "Eligible individual" defined

(1) Each aged, blind, or disabled individual who does not have an eligible spouse and—

(A) whose income, other than income excluded pursuant to section 1382a(b) of this title, is at a rate of not more than $1,752 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 or any calendar year thereafter, and

(B) whose resources, other than resources excluded pursuant to section 1382b(a) of this title, are not more than (i) in case such individual has a spouse with whom he is living, the applicable amount determined under paragraph (3)(A), or (ii) in case such individual has no spouse with whom he is living, the applicable amount determined under paragraph (3)(B),

shall be an eligible individual for purposes of this subchapter.

(2) Each aged, blind, or disabled individual who has an eligible spouse and—

(A) whose income (together with the income of such spouse), other than income excluded pursuant to section 1382a(b) of this title, is at a rate of not more than $2,628 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974, or any calendar year thereafter, and

(B) whose resources (together with the resources of such spouse), other than resources excluded pursuant to section 1382b(a) of this title, are not more than the applicable amount determined under paragraph (3)(A),

shall be an eligible individual for purposes of this subchapter.

(3)(A) The dollar amount referred to in clause (i) of paragraph (1)(B), and in paragraph (2)(B), shall be $2,250 prior to January 1, 1985, and shall be increased to $2,400 on January 1, 1985, to $2,550 on January 1, 1986, to $2,700 on January 1, 1987, to $2,850 on January 1, 1988, and to $3,000 on January 1, 1989.

(B) The dollar amount referred to in clause (ii) of paragraph (1)(B), shall be $1,500 prior to January 1, 1985, and shall be increased to $1,600 on January 1, 1985, to $1,700 on January 1, 1986, to $1,800 on January 1, 1987, to $1,900 on January 1, 1988, and to $2,000 on January 1, 1989.

(b) Amount of benefits

(1) The benefit under this subchapter for an individual who does not have an eligible spouse shall be payable at the rate of $1,752 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1382a(b) of this title, of such individual.

(2) The benefit under this subchapter for an individual who has an eligible spouse shall be payable at the rate of $2,628 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1382a(b) of this title, of such individual and spouse.

(c) Period for determination of benefits

(1) An individual's eligibility for a benefit under this subchapter for a month shall be determined on the basis of the individual's (and eligible spouse's, if any) income, resources, and other relevant characteristics in such month, and, except as provided in paragraphs (2), (3), (4), (5), and (6), the amount of such benefit shall be determined for such month on the basis of income and other characteristics in the first or, if the Commissioner of Social Security so determines, second month preceding such month. Eligibility for and the amount of such benefits shall be redetermined at such time or times as may be provided by the Commissioner of Social Security.

(2) The amount of such benefit for the month in which an application for benefits becomes effective (or, if the Commissioner of Social Security so determines, for such month and the following month) and for any month immediately following a month of ineligibility for such benefits (or, if the Commissioner of Social Security so determines, for such month and the following month) shall—

(A) be determined on the basis of the income of the individual and the eligible spouse, if any, of such individual and other relevant circumstances in such month; and

(B) in the case of the first month following a period of ineligibility in which eligibility is restored after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if eligibility had been restored on the first day of such month as the number of days in such month including and following the date of restoration of eligibility bears to the total number of days in such month.

(3) For purposes of this subsection, an increase in the benefit amount payable under subchapter II of this chapter (over the amount payable in the preceding month, or, at the election of the Commissioner of Social Security, the second preceding month) to an individual receiving benefits under this subchapter shall be included in the income used to determine the benefit under this subchapter of such individual for any month which is—

(A) the first month in which the benefit amount payable to such individual under this title is increased pursuant to section 1382f of this title, or

(B) at the election of the Commissioner of Social Security, the month immediately following such month.

(4)(A) Notwithstanding paragraph (3), if the Commissioner of Social Security determines that reliable information is currently available with respect to the income and other circumstances of an individual for a month (including information with respect to a class of which such individual is a member and information with respect to scheduled cost-of-living adjustments under other benefit programs), the benefit amount of such individual under this subchapter for such month may be determined on the basis of such information.

(B) The Commissioner of Social Security shall prescribe by regulation the circumstances in

which information with respect to an event may be taken into account pursuant to subparagraph (A) in determining benefit amounts under this subchapter.

(5) Notwithstanding paragraphs (1) and (2), any income which is paid to or on behalf of an individual in any month pursuant to (A) a State program funded under part A of subchapter IV of this chapter, (B) section 672 of this title (relating to foster care assistance), (C) section 1522(e) of title 8 (relating to assistance for refugees), (D) section 501(a) of Public Law 96-422 (relating to assistance for Cuban and Haitian entrants), or (E) section 13 of title 25 (relating to assistance furnished by the Bureau of Indian Affairs), shall be taken into account in determining the amount of the benefit under this subchapter of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month.

(6) The dollar amount in effect under subsection (b) of this section as a result of any increase in benefits under this subchapter by reason of section 1382f of this title shall be used to determine the value of any in-kind support and maintenance required to be taken into account in determining the benefit payable under this subchapter to an individual (and the eligible spouse, if any, of the individual) for the 1st 2 months for which the increase in benefits applies.

(7) For purposes of this subsection, an application of an individual for benefits under this subchapter shall be effective on the later of—

(A) the first day of the month following the date such application is filed, or

(B) the first day of the month following the date such individual becomes eligible for such benefits with respect to such application.

(8) The Commissioner of Social Security may waive the limitations specified in subparagraphs (A) and (B) of subsection (e)(1) of this section on an individual's eligibility and benefit amount for a month (to the extent either such limitation is applicable by reason of such individual's presence throughout such month in a hospital, extended care facility, nursing home, or intermediate care facility) if such waiver would promote the individual's removal from such institution or facility. Upon waiver of such limitations, the Commissioner of Social Security shall apply, to the month preceding the month of removal, or, if the Commissioner of Social Security so determines, the two months preceding the month of removal, the benefit rate that is appropriate to such individual's living arrangement subsequent to his removal from such institution or facility.

(9)(A) Notwithstanding paragraphs (1) and (2), any nonrecurring income which is paid to an individual in the first month of any period of eligibility shall be taken into account in determining the amount of the benefit under this subchapter of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month.

(B) For purposes of subparagraph (A), payments to an individual in varying amounts from the same or similar source for the same or similar purpose shall not be considered to be nonrecurring income.

(10) For purposes of this subsection, remuneration for service performed as a member of a uniformed service may be treated as received in the month in which it was earned, if the Commissioner of Social Security determines that such treatment would promote the economical and efficient administration of the program authorized by this subchapter.

(d) Limitation on amount of gross income earned; "gross income" defined

The Commissioner of Social Security may prescribe the circumstances under which, consistently with the purposes of this subchapter, the gross income from a trade or business (including farming) will be considered sufficiently large to make an individual ineligible for benefits under this subchapter. For purposes of this subsection, the term ''gross income'' has the same meaning as when used in chapter 1 of the Internal Revenue Code of 1986.

(e) Limitation on eligibility of certain individuals

(1)(A) Except as provided in subparagraphs (B), (C), (D), (E), and (G), no person shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if throughout such month he is an inmate of a public institution.

(B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month (subject to subparagraph (G)), in a medical treatment facility receiving payments (with respect to such individual or spouse) under a State plan approved under subchapter XIX of this chapter, or an eligible individual is a child described in section 1382c(f)(2)(B) of this title, or, in the case of an eligible individual who is a child under the age of 18, receiving payments (with respect to such individual) under any health insurance policy issued by a private provider of such insurance the benefit under this subchapter for such individual for such month shall be payable (subject to subparagraph (E))—

(i) at a rate not in excess of $360 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who does not have an eligible spouse;

(ii) in the case of an individual who has an eligible spouse, if only one of them is in such a facility throughout such month, at a rate not in excess of the sum of—

(I) the rate of $360 per year (reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the one who is in such facility), and

(II) the applicable rate specified in subsection (b)(1) of this section (reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the other); and

(iii) at a rate not in excess of $720 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who has an eligible spouse, if both of them are in such a facility throughout such month.

For purposes of this subsection, a medical treatment facility that provides services described in

section 1396p(c)(1)(C) of this title shall be considered to be receiving payments with respect to an individual under a State plan approved under subchapter XIX of this chapter during any period of ineligibility of such individual provided for under the State plan pursuant to section 1396p(c) of this title.

(C) As used in subparagraph (A), the term ''public institution'' does not include a publicly operated community residence which serves no more than 16 residents.

(D) A person may be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month throughout which he is a resident of a public emergency shelter for the homeless (as defined in regulations which shall be prescribed by the Commissioner of Social Security); except that no person shall be an eligible individual or eligible spouse by reason of this subparagraph more than 6 months in any 9-month period.

(E) Notwithstanding subparagraphs (A) and (B), any individual who—

(i)(I) is an inmate of a public institution, the primary purpose of which is the provision of medical or psychiatric care, throughout any month as described in subparagraph (A), or

(II) is in a medical treatment facility throughout any month as described in subparagraph (B),

(ii) was eligible under section 1382h(a) or (b) of this title for the month preceding such month, and

(iii) under an agreement of the public institution or the medical treatment facility is permitted to retain any benefit payable by reason of this subparagraph,

may be an eligible individual or eligible spouse for purposes of this subchapter (and entitled to a benefit determined on the basis of the rate applicable under subsection (b) of this section) for the month referred to in subclause (I) or (II) of clause (i) and, if such subclause still applies, for the succeeding month.

(F) An individual who is an eligible individual or an eligible spouse for a month by reason of subparagraph (E) shall not be treated as being eligible under section 1382h(a) or (b) of this title for such month for purposes of clause (ii) of such subparagraph.

(G) A person may be an eligible individual or eligible spouse for purposes of this subchapter, and subparagraphs (A) and (B) shall not apply, with respect to any particular month throughout which he or she is an inmate of a public institution the primary purpose of which is the provision of medical or psychiatric care, or is in a medical treatment facility receiving payments (with respect to such individual or spouse) under a State plan approved under subchapter XIX of this chapter or, in the case of an individual who is a child under the age of 18, under any health insurance policy issued by a private provider of such insurance, if it is determined in accordance with subparagraph (H) or (J) that—

(i) such person's stay in that institution or facility (or in that institution or facility and one or more other such institutions or facilities during a continuous period of institutionalization) is likely (as certified by a physician) not to exceed 3 months, and the particular month involved is one of the first 3 months throughout which such person is in such an institution or facility during a continuous period of institutionalization; and

(ii) such person needs to continue to maintain and provide for the expenses of the home or living arrangement to which he or she may return upon leaving the institution or facility.

The benefit of any person under this subchapter (including State supplementation if any) for each month to which this subparagraph applies shall be payable, without interruption of benefit payments and on the date the benefit involved is regularly due, at the rate that was applicable to such person in the month prior to the first month throughout which he or she is in the institution or facility.

(H) The Commissioner of Social Security shall establish procedures for the determinations required by clauses (i) and (ii) of subparagraph (G), and may enter into agreements for making such determinations (or for providing information or assistance in connection with the making of such determinations) with appropriate State and local public and private agencies and organizations. Such procedures and agreements shall include the provision of appropriate assistance to individuals who, because of their physical or mental condition, are limited in their ability to furnish the information needed in connection with the making of such determinations.

(I)(i) The Commissioner shall enter into an agreement, with any interested State or local institution comprising a jail, prison, penal institution, or correctional facility, or with any other interested State or local institution a purpose of which is to confine individuals as described in section 402(x)(1)(A)(ii) of this title, under which—

(I) the institution shall provide to the Commissioner, on a monthly basis and in a manner specified by the Commissioner, the names, social security account numbers, dates of birth, confinement commencement dates, and, to the extent available to the institution, such other identifying information concerning the inmates of the institution as the Commissioner may require for the purpose of carrying out this paragraph and the other provisions of this subchapter; and

(II) the Commissioner shall pay to any such institution, with respect to each individual who receives in the month preceding the first month throughout which such individual is an inmate of the jail, prison, penal institution, or correctional facility that furnishes information respecting such individual pursuant to subclause (I), or is confined in the institution (that so furnishes such information) as described in section 402(x)(1)(A)(ii) of this title, a benefit under this subchapter for such preceding month, and who is determined by the Commissioner to be ineligible for benefits under this subchapter by reason of confinement based on the information provided by such institution, $400 (subject to reduction under clause (ii)) if the institution furnishes the information described in subclause (I) to the Commissioner within 30 days after the date such individual becomes an inmate of such institution, or $200 (subject to reduction

under clause (ii)) if the institution furnishes such information after 30 days after such date but within 90 days after such date.

(ii) The dollar amounts specified in clause (i)(II) shall be reduced by 50 percent if the Commissioner is also required to make a payment to the institution with respect to the same individual under an agreement entered into under section 402(x)(3)(B) of this title.

(iii) The Commissioner shall maintain, and shall provide on a reimbursable basis, information obtained pursuant to agreements entered into under clause (i) to any Federal or federally-assisted cash, food, or medical assistance program for eligibility and other administrative purposes under such program.

(iv) Payments to institutions required by clause (i)(II) shall be made from funds otherwise available for the payment of benefits under this subchapter and shall be treated as direct spending for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 900 et seq.].

(J) For the purpose of carrying out this paragraph, the Commissioner of Social Security shall conduct periodic computer matches with data maintained by the Secretary of Health and Human Services under subchapter XVIII or XIX of this chapter. The Secretary shall furnish to the Commissioner, in such form and manner and under such terms as the Commissioner and the Secretary shall mutually agree, such information as the Commissioner may request for this purpose. Information obtained pursuant to such a match may be substituted for the physician's certification otherwise required under subparagraph (G)(i).

(2) No person shall be an eligible individual or eligible spouse for purposes of this subchapter if, after notice to such person by the Commissioner of Social Security that it is likely that such person is eligible for any payments of the type enumerated in section 1382a(a)(2)(B) of this title, such person fails within 30 days to take all appropriate steps to apply for and (if eligible) obtain any such payments.

(3) Notwithstanding anything to the contrary in the criteria being used by the Commissioner of Social Security in determining when a husband and wife are to be considered two eligible individuals for purposes of this subchapter and when they are to be considered an eligible individual with an eligible spouse, the State agency administering or supervising the administration of a State plan under any other program under this chapter may (in the administration of such plan) treat a husband and wife living in the same medical treatment facility described in paragraph (1)(B) as though they were an eligible individual with his or her eligible spouse for purposes of this subchapter (rather than two eligible individuals), after they have continuously lived in the same such facility for 6 months, if treating such husband and wife as two eligible individuals would prevent either of them from receiving benefits or assistance under such plan or reduce the amount thereof.

(4)(A) No person shall be considered an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if during such month the person is—

(i) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed; or

(ii) violating a condition of probation or parole imposed under Federal or State law.

(B) Notwithstanding subparagraph (A), the Commissioner shall, for good cause shown, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that—

(i) a court of competent jurisdiction has found the person not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the person for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action), or

(ii) the person was erroneously implicated in connection with the criminal offense by reason of identity fraud.

(C) Notwithstanding subparagraph (A), the Commissioner may, for good cause shown based on mitigating circumstances, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that—

(i) the offense described in subparagraph (A)(i) or underlying the imposition of the probation or parole described in subparagraph (A)(ii) was nonviolent and not drug-related, and

(ii) in the case of a person who is not considered an eligible individual or eligible spouse pursuant to subparagraph (A)(ii), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.

(5) Notwithstanding any other provision of law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any recipient of benefits under this subchapter, if the officer furnishes the Commissioner with the name of the recipient, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the recipient, and notifies the Commissioner that—

(A) the recipient is described in clause (i) or (ii) of paragraph (4)(A); and

(B) the location or apprehension of the recipient is within the officer's official duties.

(f) Individuals outside United States; determination of status

(1) Notwithstanding any other provision of this subchapter, no individual (other than a child described in section 1382c(a)(1)(B)(ii) of this title) shall be considered an eligible individual for purposes of this subchapter for any

month during all of which such individual is outside the United States (and no person shall be considered the eligible spouse of an individual for purposes of this subchapter with respect to any month during all of which such person is outside the United States). For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.

(2) For a period of not more than 1 year, the first sentence of paragraph (1) shall not apply to any individual who—

(A) was eligible to receive a benefit under this subchapter for the month immediately preceding the first month during all of which the individual was outside the United States; and

(B) demonstrates to the satisfaction of the Commissioner of Social Security that the absence of the individual from the United States will be—

(i) for not more than 1 year; and

(ii) for the purpose of conducting studies as part of an educational program that is—

(I) designed to substantially enhance the ability of the individual to engage in gainful employment;

(II) sponsored by a school, college, or university in the United States; and

(III) not available to the individual in the United States.

(g) Individuals deemed to meet resources test

In the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under subchapter I, X, XIV, or XVI of this chapter,

(2) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(3) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or eligible spouse with respect to whom supplemental security income benefits are payable,

the resources of such individual or such individual and his spouse (as the case may be) shall be deemed not to exceed the amount specified in subsections (a)(1)(B) and (a)(2)(B) of this section during any period that the resources of such individual or such individual and his spouse (as the case may be) does not exceed the maximum amount of resources specified in the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973.

(h) Individuals deemed to meet income test

In determining eligibility for, and the amount of, benefits payable under this section in the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under subchapter X or XVI of this chapter,

(2) is blind under the definition of that term in the plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973,

(3) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(4) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or an eligible spouse with respect to whom supplemental security income benefits are payable,

there shall be disregarded an amount equal to the greater of (A) the maximum amount of any earned or unearned income which could have been disregarded under the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973, and (B) the amount which would be required to be disregarded under section 1382a of this title without application of this subsection.

(i) Application and review requirements for certain individuals

For application and review requirements affecting the eligibility of certain individuals, see section 1383(j) of this title.

(Aug. 14, 1935, ch. 531, title XVI, §1611, as added Pub. L. 92–603, title III, §301, Oct. 30, 1972, 86 Stat. 1466; amended Pub. L. 93–66, title II, §210(a), (b), July 9, 1973, 87 Stat. 154; Pub. L. 93–233, §§4(b)(1), (2), 18(d), (e), Dec. 31, 1973, 87 Stat. 953, 968; Pub. L. 93–368, §6(a), Aug. 7, 1974, 88 Stat. 421; Pub. L. 94–566, title V, §§502, 505(a), Oct. 20, 1976, 90 Stat. 2685, 2686; Pub. L. 96–265, title III, §303(c)(2), June 9, 1980, 94 Stat. 453; Pub. L. 97–35, title XXIII, §2341(a), Aug. 13, 1981, 95 Stat. 865; Pub. L. 97–248, title I, §§181(a), 183(a), Sept. 3, 1982, 96 Stat. 404, 405; Pub. L. 98–21, title IV, §403(a), Apr. 20, 1983, 97 Stat. 140; Pub. L. 98–369, div. B, title VI, §§2611(a)–(c), 2663(g)(1), (2), July 18, 1984, 98 Stat. 1130, 1168; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–643, §§3(a), 4(c)(3), (d)(1), 9(a), Nov. 10, 1986, 100 Stat. 3574, 3577, 3579; Pub. L. 100–203, title IX, §§9106(a), 9107, 9113(a), 9115(a), 9119(a), Dec. 22, 1987, 101 Stat. 1330–301, 1330–302, 1330–304, 1330–308; Pub. L. 100–360, title III, §303(c)(2), July 1, 1988, 102 Stat. 762; Pub. L. 101–239, title VIII, §§8009(a), 8010(b), Dec. 19, 1989, 103 Stat. 2463, 2464; Pub. L. 103–66, title XIII, §13735(a), Aug. 10, 1993, 107 Stat. 662; Pub. L. 103–296, title I, §107(a)(4), title II, §§201(b)(3)(A), (B)(i), 204(a), Aug. 15, 1994, 108 Stat. 1478, 1502, 1504, 1508; Pub. L. 104–121, title I, §105(b)(4)(A), Mar. 29, 1996, 110 Stat. 854; Pub. L. 104–193, title I, §108(j), title II, §§201(a), 202(a), (b), 203(a)(1), 204(a), 214(a), Aug. 22, 1996, 110 Stat. 2169, 2185–2187, 2195; Pub. L. 105–33, title V, §§5521, 5522(c), Aug. 5, 1997, 111 Stat. 621, 623; Pub. L. 106–169, title II, §§204, 207(c), 212, Dec. 14, 1999, 113 Stat. 1833, 1838, 1843; Pub. L. 106–170, title IV, §402(a)(3), (c)(1)–(3), Dec. 17, 1999, 113 Stat. 1908, 1909; Pub. L. 108–203, title II, §203(b), title IV, §§433(a), (b), 436(a), Mar. 2, 2004, 118 Stat. 510, 539–541.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsec. (c)(5), is classified to section 601 et seq. of this title.

Section 501(a) of Public Law 96–422, referred to in subsec. (c)(5), is section 501(a) of Pub. L. 96–422, which is

set out as a note under section 1522 of Title 8, Aliens and Nationality.

The Internal Revenue Code of 1986, referred to in subsecs. (d) and (e)(5), is classified generally to Title 26, Internal Revenue Code.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (e)(1)(I)(iv), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§ 900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of this title, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of this title, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

Prior Provisions

A prior section 1382, act Aug. 14, 1935, ch. 531, title XVI, § 1602, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 198; amended Oct. 13, 1964, Pub. L. 88–650, § 5(b), 78 Stat. 1078; July 30, 1965, Pub. L. 89–97, title II, § 221(d)(3), title IV, § 403(e), 79 Stat. 358, 418; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 210(a)(5), 213(a)(4), 241(d), 81 Stat. 896, 898, 917; Oct. 30, 1972, Pub. L. 92–603, title IV, §§ 405(d), 406(d), 407(d), 410(d), 413(d), 86 Stat. 1488, 1489, 1491, 1492, set forth required contents of State plans for aid to aged, blind, or disabled, and for medical assistance for aged, prior to the general amendment of title XVI of the Social Security Act by Pub. L. 92–603, § 301, but is set out as a note below in view of its continued applicability to Puerto Rico, Guam, and the Virgin Islands.

Amendments

2004—Subsec. (c)(2)(B). Pub. L. 108–203, § 433(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''in the case of the month in which an application becomes effective or the first month following a period of ineligibility, if such application becomes effective, or eligibility is restored, after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if such application had become effective, or eligibility had been restored, on the first day of such month as the number of days in such month including and following the effective date of such application or restoration of eligibility bears to the total number of days in such month.''

Subsec. (c)(9). Pub. L. 108–203, § 433(a), added par. (9).

Subsec. (c)(10). Pub. L. 108–203, § 436(a), added par. (10).

Subsec. (e)(4). Pub. L. 108–203, § 203(b)(1), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), in cl. (i), substituted ''or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed'' for ''or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State'', and added subpars. (B) and (C).

Subsec. (e)(5)(A), (B). Pub. L. 108–203, § 203(b)(2), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

''(A) the recipient—

''(i) is described in subparagraph (A) or (B) of paragraph (4); and

''(ii) has information that is necessary for the officer to conduct the officer's official duties; and

''(B) the location or apprehension of the recipient is within the officer's official duties.''

1999—Subsec. (e)(1)(G). Pub. L. 106–169, § 212(b), substituted ''subparagraph (H) or (J)'' for ''subparagraph (H)'' in introductory provisions.

Subsec. (e)(1)(I)(i). Pub. L. 106–170, § 402(c)(2), substituted ''institution comprising a jail, prison, penal institution, or correctional facility, or with any other interested State or local institution a purpose of which is to confine individuals as described in section 402(x)(1)(A)(ii) of this title,'' for ''institution described in clause (i) or (ii) of section 402(x)(1)(A) of this title the primary purpose of which is to confine individuals as described in section 402(x)(1)(A) of this title,''.

Subsec. (e)(1)(I)(i)(I). Pub. L. 106–170, § 402(a)(3)(A), substituted ''and the other provisions of this subchapter; and'' for ''; and''.

Subsec. (e)(1)(I)(i)(II). Pub. L. 106–170, § 402(c)(1)(A), inserted ''(subject to reduction under clause (ii))'' after ''$400'' and ''$200''.

Subsec. (e)(1)(I)(ii). Pub. L. 106–170, § 402(c)(1)(C), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (e)(1)(I)(ii)(II). Pub. L. 106–170, § 402(a)(3)(B), substituted ''shall maintain, and shall provide on a reimbursable basis,'' for ''is authorized to provide, on a reimbursable basis,''.

Pub. L. 106–169, § 204, which directed substitution of ''shall'' for ''is authorized to'' in cl. (ii)(II), could not be executed in view of the redesignation of cl. (ii) as (iii) by Pub. L. 106–170, § 402(c)(1)(B). See note above and Effective Date of 1999 Amendment note below.

Subsec. (e)(1)(I)(iii). Pub. L. 106–170, § 402(c)(3)(B), substituted ''eligibility and other administrative purposes under such program'' for ''eligibility purposes''.

Pub. L. 106–170, § 402(c)(3)(A), struck out ''(II)'' before ''The Commissioner'' and struck out subcl. (I) which read as follows: ''The provisions of section 552a of title 5 shall not apply to any agreement entered into under clause (i) or to information exchanged pursuant to such agreement.''

Pub. L. 106–170, § 402(c)(1)(B), redesignated cl. (ii) as (iii). Former cl. (iii) redesignated (iv).

Subsec. (e)(1)(I)(iv). Pub. L. 106–170, § 402(c)(1)(B), redesignated cl. (iii) as (iv).

Subsec. (e)(1)(J). Pub. L. 106–169, § 212(a), added subpar. (J).

Subsec. (e)(4). Pub. L. 106–169, § 207(c)(1), (3), redesignated par. (5) as (4) and struck out former par. (4) which read as follows:

''(4)(A) No person shall be considered an eligible individual or eligible spouse for purposes of this subchapter during the 10-year period that begins on the date the person is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the person in order to receive assistance simultaneously from 2 or more States under programs that are funded under subchapter IV of this chapter, subchapter XIX of this chapter, or the Food Stamp Act of 1977, or benefits in 2 or more States under the supplemental security income program under this subchapter.

''(B) As soon as practicable after the conviction of a person in a Federal or State court as described in subparagraph (A), an official of such court shall notify the Commissioner of such conviction.''

Subsec. (e)(5). Pub. L. 106–169, § 207(c)(3), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (e)(6). Pub. L. 106–169, § 207(c)(2), (3), redesignated par. (6) as (5) and substituted ''(4)'' for ''(5)''.

1997—Subsec. (e)(1)(B). Pub. L. 105–33, § 5522(c)(1)(A), (D), in introductory provisions, substituted ''medical treatment facility'' for ''hospital, extended care facility, nursing home, or intermediate care facility'' and in closing provisions, substituted ''medical treatment facility that provides services described in section 1396p(c)(1)(C) of this title'' for ''hospital, extended care facility, nursing home, or intermediate care facility which is a 'medical institution or nursing facility' within the meaning of section 1396p(c) of this title''.

Subsec. (e)(1)(B)(ii). Pub. L. 105–33, § 5522(c)(1)(B), struck out ''hospital, home or'' before ''facility'' in introductory provisions and ''hospital, home, or'' before ''facility'' in subcl. (I).

Subsec. (e)(1)(B)(iii). Pub. L. 105–33, § 5522(c)(1)(C), struck out ''hospital, home, or'' before ''facility''.

Subsec. (e)(1)(E)(i)(II), (iii). Pub. L. 105–33, § 5522(c)(2), substituted ''medical treatment facility'' for ''hospital,

extended care facility, nursing home, or intermediate care facility''.

Subsec. (e)(1)(G). Pub. L. 105–33, §5522(c)(3), substituted ''or is in a medical treatment'' for ''or which is a hospital, extended care facility, nursing home, or intermediate care'' and inserted ''or, in the case of an individual who is a child under the age of 18, under any health insurance policy issued by a private provider of such insurance'' after ''subchapter XIX of this chapter''.

Subsec. (e)(1)(I)(i)(I). Pub. L. 105–33, §5521(c), substituted ''this paragraph'' for ''paragraph (1)''.

Subsec. (e)(1)(I)(i)(II). Pub. L. 105–33, §5521(b), substituted ''individual who receives in the month preceding the first month throughout which such individual is an inmate of the jail, prison, penal institution, or correctional facility that furnishes information respecting such individual pursuant to subclause (I), or is confined in the institution (that so furnishes such information) as described in section 402(x)(1)(A)(ii) of this title, a benefit under this subchapter for such preceding month, and who is determined by the Commissioner to be ineligible for benefits under this subchapter by reason of confinement based on the information provided by such institution'' for ''inmate of the institution who is eligible for a benefit under this subchapter for the month preceding the first month throughout which such inmate is in such institution and becomes ineligible for such benefit as a result of the application of this subparagraph''.

Subsec. (e)(3). Pub. L. 105–33, §5522(c)(4), substituted ''same medical treatment facility'' for ''same hospital, home, or facility'' and ''same such facility'' for ''same such hospital, home, or facility''.

Subsec. (e)(6). Pub. L. 105–33, §5521(a), inserted ''and section 1306(c) of this title'' after ''of 1986''.

1996—Subsec. (c)(5)(A). Pub. L. 104–193, §108(j), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''a State plan approved under part A of subchapter IV of this chapter (relating to aid to families with dependent children),''.

Subsec. (c)(7)(A), (B). Pub. L. 104–193, §204(a), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) the date such application is filed, or

''(B) the date such individual first becomes eligible for such benefits with respect to such application.''

Subsec. (e)(1)(B). Pub. L. 104–193, §214(a), inserted ''or, in the case of an eligible individual who is a child under the age of 18, receiving payments (with respect to such individual) under any health insurance policy issued by a private provider of such insurance'' after ''section 1382c(f)(2)(B) of this title,''.

Subsec. (e)(1)(I). Pub. L. 104–193, §203(a)(1), added subpar. (I).

Subsec. (e)(3). Pub. L. 104–193, §201(a), redesignated par. (5) as (3).

Pub. L. 104–121 struck out par. (3) which related to limitation on eligibility for benefits by reason of disability based on alcoholism or drug addiction.

Subsec. (e)(4). Pub. L. 104–193, §201(a), added par. (4).

Subsec. (e)(5). Pub. L. 104–193, §§201(a), 202(a), added par. (5) and redesignated former par. (5) as (3).

Subsec. (e)(6). Pub. L. 104–193, §202(b), added par. (6).

1994—Subsecs. (c), (d), (e)(1)(D), (H), (2). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (e)(3)(A). Pub. L. 103–296, §201(b)(3)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''No person who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1382c(a)(3) of this title) shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if such individual is medically determined to be a drug addict or an alcoholic unless such individual is undergoing any treatment that may be appropriate for his condition as a drug addict or alcoholic (as the case may be) at an institution or facility approved for purposes of this paragraph by the Secretary (so long as such treatment is available) and demonstrates that he is complying with the terms, conditions, and requirements of such treatment and with requirements imposed by the Secretary under subparagraph (B).''

Pub. L. 103–296, §107(a)(4), in subpar. (A) as amended by Pub. L. 103–296, §201(b)(3)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''Commissioner's'' for ''Secretary's'' wherever appearing.

Subsec. (e)(3)(B). Pub. L. 103–296, §201(b)(3)(B)(i), designated existing provisions as cl. (i), struck out ''The Secretary shall annually submit to the Congress a full and complete report on his activities under this paragraph.'' after first sentence, and added cls. (ii) and (iii).

Pub. L. 103–296, §107(a)(4), in subpar. (B) as amended by Pub. L. 103–296, §201(b)(3)(B)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in cl. (iii)(II)(aa).

Subsec. (e)(5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (f). Pub. L. 103–296, §204(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (f)(2)(B). Pub. L. 103–296, §107(a)(4), in subpar. (B) as added by Pub. L. 103–296, §204(a), substituted ''Commissioner of Social Security'' for ''Secretary''.

1993—Subsec. (c)(1). Pub. L. 103–66, §13735(a)(1), substituted ''(5), and (6)'' for ''and (5)''.

Subsec. (c)(6) to (8). Pub. L. 103–66, §13735(a)(2), (3), added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively.

1989—Subsec. (e)(1)(B). Pub. L. 101–239, §8010(b), inserted ''or an eligible individual is a child described in section 1382c(f)(2)(B) of this title,'' before ''the benefit under this subchapter'' in introductory provisions.

Subsec. (f). Pub. L. 101–239, §8009(a), inserted ''(other than a child described in section 1382c(a)(1)(B)(ii) of this title)'' after ''no individual''.

1988—Subsec. (e)(1)(B). Pub. L. 100–360 inserted at end ''For purposes of this subsection, a hospital, extended care facility, nursing home, or intermediate care facility which is a 'medical institution or nursing facility' within the meaning of section 1396p(c) of this title shall be considered to be receiving payments with respect to an individual under a State plan approved under subchapter XIX of this chapter during any period of ineligibility of such individual provided for under the State plan pursuant to section 1396p(c) of this title.''

1987—Subsec. (c)(1). Pub. L. 100–203, §9106(a)(1), substituted ''paragraphs (2), (3), (4), and (5)'' for ''paragraphs (2), (3), and (4)''.

Subsec. (c)(5) to (7). Pub. L. 100–203, §9106(a)(2), (3), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (e)(1)(A). Pub. L. 100–203, §9115(a)(1), substituted ''(E), and (G)'' for ''and (E)''.

Subsec. (e)(1)(B). Pub. L. 100–203, §9115(a)(2), inserted ''(subject to subparagraph (G))'' after ''throughout any month''.

Subsec. (e)(1)(B)(i) to (iii). Pub. L. 100–203, §9119(a), in cls. (i) and (ii)(I) substituted ''$360 per year'' for ''$300 per year'' and in cl. (iii) substituted ''$720 per year'' for ''$600 per year''.

Subsec. (e)(1)(D). Pub. L. 100–203, §9113(a), substituted ''6 months in any 9-month period'' for ''three months in any 12-month period''.

Subsec. (e)(1)(G), (H). Pub. L. 100–203, §9115(a)(3), added subpars. (G) and (H).

Subsec. (e)(5). Pub. L. 100–203, §9107, substituted ''living in the same hospital, home, or facility'' for ''sharing a room or comparable accommodation in a hospital, home, or facility'' and ''lived in the same such hospital, home, or facility'' for ''shared such a room or accommodation''.

1986—Subsec. (d). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (e)(1). Pub. L. 99–643, §3(a), in subpar. (A) substituted ''(D), and (E)'' for ''and (D)'', in subpar. (B) inserted ''(subject to subparagraph (E))'' after ''shall be payable'', and added subpars. (E) and (F).

Subsec. (e)(4). Pub. L. 99–643, §4(d)(1), struck out par. (4) which read as follows: ''No benefit shall be payable under this subchapter, except as provided in section 1382h of this title (or section 1382e(c)(3) of this title), with respect to an eligible individual or his eligible spouse who is an aged, blind, or disabled individual solely by application of section 1382c(a)(3)(F) of this title for any month, after the third month, in which he engages in substantial gainful activity during the fifteen-month period following the end of his trial work period determined by application of section 1382c(a)(4)(D)(i) of this title.''

Subsec. (e)(5). Pub. L. 99–643, §9(a), added par. (5).

Subsec. (i). Pub. L. 99–643, §4(c)(3), added subsec. (i).

1984—Subsec. (a)(1)(B). Pub. L. 98–369, §2611(a), substituted ''the applicable amount determined under paragraph (3)(A)'' for ''$2,250'' and ''the applicable amount determined under paragraph (3)(B)'' for ''$1,500''.

Subsec. (a)(2)(B). Pub. L. 98–369, §2611(b), substituted ''the applicable amount determined under paragraph (3)(A)'' for ''$2,250''.

Subsec. (a)(3). Pub. L. 98–369, §2611(c), added par. (3).

Subsec. (c). Pub. L. 98–369, §2663(g)(1), amended heading.

Subsec. (g). Pub. L. 98–369, §2663(g)(2), substituted ''or such individual'' for ''or individuals'' in provisions following par. (3).

1983—Subsec. (e)(1)(A). Pub. L. 98–21, §403(a)(1), inserted reference to subpar. (D).

Subsec. (e)(1)(D). Pub. L. 98–21, §403(a)(2), added subpar. (D).

1982—Subsec. (c)(1). Pub. L. 97–248, §183(a)(1), inserted reference to pars. (3) and (4).

Subsec. (c)(2). Pub. L. 97–248, §181(a), in par. (2) redesignated existing provisions as provisions preceding subpar. (A) and subpar. (A), and added subpar. (B).

Subsec. (c)(3) to (6). Pub. L. 97–248, §§181(a), 183(a)(2), (3), struck out par. (3) providing that an application shall be effective as of the first day of the month in which it is filed, added par. (3) providing that an application shall be effective on the later of the date it is filed or the date such individual first becomes eligible for such benefits with respect to such application and redesignated such par. (3) as (5), redesignated par. (4) as (6), and added pars. (3) and (4).

1981—Subsec. (c). Pub. L. 97–35 substituted provision that eligibility and benefit amount generally be determined on a one-month retrospective basis, with for the first month of eligibility, the month in which the application is filed, eligibility and benefit amount both determined on a prospective basis for provision that eligibility and benefit amount be determined on a quarterly prospective basis and inserted provision authorizing the Secretary to grant waivers.

1980—Subsec. (e)(4). Pub. L. 96–265 added par. (4).

1976—Subsec. (e)(1)(A). Pub. L. 94–566, §505(a), inserted reference to subparagraph (C).

Subsec. (e)(1)(B)(ii). Pub. L. 94–566, §502, inserted ''of the one who is in such hospital, home, or facility'' after ''section 1382a(b) of this title'' in parenthetical provisions that follow ''the rate of $300 per year'' and inserted ''(reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the other)'' after ''the applicable rate specified in subsection (b)(1) of this section''.

Subsec. (e)(1)(C). Pub. L. 94–566, §505(a), added subpar. (C).

1974—Pub. L. 93–368 inserted ''(or, if greater, the amount determined under section 1382f of this title)'' after ''$1,752'' in subsecs. (a)(1)(A) and (b)(1) and ''$2,628'' in subsecs. (a)(2)(A) and (b)(2).

1973—Subsec. (a)(1)(A). Pub. L. 93–233, §4(b)(1), substituted ''$1,752'' for ''$1,680''.

Pub. L. 93–66, §210(a), substituted ''$1,680'' for ''$1,560''.

Subsec. (a)(2)(A). Pub. L. 93–233, §4(b)(2), substituted ''$2,628'' for ''$2,520''.

Pub. L. 93–66, §210(b), substituted ''$2,520'' for ''$2,340''.

Subsec. (b)(1). Pub. L. 93–233, §4(b)(1), substituted ''$1,752'' for ''$1,680''.

Pub. L. 93–66, §210(a), substituted ''$1,680'' for ''$1,560''.

Subsec. (b)(2). Pub. L. 93–233, §4(b)(2), substituted ''$2,628'' for ''$2,520''.

Pub. L. 93–66, §210(b), substituted ''$2,520'' for ''$2,340''.

Subsec. (g). Pub. L. 93–233, §18(d), incorporated existing provisions in text designated as cl. (1), added cls. (2) and (3), and substituted final December ''1973'' for ''1972''.

Subsec. (h). Pub. L. 93–233, §18(e), incorporated existing text in provisions designated as cls. (1) and (2), added cls. (3) and (4), redesignated former cls. (1) and (2) as items (A) and (B), and in item (A) inserted ''under which he or they received such aid or assistance for December 1973''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 203(b) of Pub. L. 108–203 effective on the first day of the first month that begins on or after the date that is 9 months after Mar. 2, 2004, see section 203(d) of Pub. L. 108–203, set out as a note under section 402 of this title.

Pub. L. 108–203, title IV, §433(c), Mar. 2, 2004, 118 Stat. 540, provided that: ''The amendments made by this section [amending this section] shall be effective with respect to benefits payable for months that begin on or after 1 year after the date of enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title IV, §436(b), Mar. 2, 2004, 118 Stat. 541, provided that: ''The amendments made by this section [amending this section] shall apply to benefits payable for months that begin more than 90 days after the date of enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by section 402(a)(3) of Pub. L. 106–170 applicable to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after December 1999, see section 402(a)(4) of Pub. L. 106–170, set out as a note under section 402 of Title 42, The Public Health and Welfare.

Pub. L. 106–170, title IV, §402(c)(4), Dec. 17, 1999, 113 Stat. 1909, provided that: ''The amendments made by this subsection [amending this section] shall take effect as if included in the enactment of section 203(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2186). The reference to section 202(x)(1)(A)(ii) of the Social Security Act [section 402(x)(1)(A)(ii) of this title] in section 1611(e)(1)(I)(i) of the Social Security Act [subsec. (e)(1)(I)(i) of this section], as amended by paragraph (2) of this subsection, shall be deemed a reference to such section 202(x)(1)(A)(ii) of such Act as amended by subsection (b)(1)(C) of this section.''

Amendment by section 207(c) of Pub. L. 106–169 applicable to statements and representations made on or after Dec. 14, 1999, see section 207(e) of Pub. L. 106–169, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title II of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5528(a) of Pub. L. 105–33, set out as a note under section 903 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 108(j) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of enti-

tlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Section 201(b) of Pub. L. 104–193 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 22, 1996].''

Section 202(c) of Pub. L. 104–193 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 22, 1996].''

Section 203(a)(2) of Pub. L. 104–193 provided that: ''The amendment made by this subsection [amending this section] shall apply to individuals whose period of confinement in an institution commences on or after the first day of the seventh month beginning after the month in which this Act is enacted [August 1996].''

Section 204(d) of Pub. L. 104–193 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1382c and 1383 of this title] shall apply to applications for benefits under title XVI of the Social Security Act [this subchapter] filed on or after the date of the enactment of this Act [Aug. 22, 1996], without regard to whether regulations have been issued to implement such amendments.

''(2) BENEFITS UNDER TITLE XVI.—For purposes of this subsection, the term 'benefits under title XVI of the Social Security Act' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [section 1382e(a) of this title], and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66 [set out below].''

Section 214(b) of Pub. L. 104–193 provided that: ''The amendment made by this section [amending this section] shall apply to benefits for months beginning 90 or more days after the date of the enactment of this Act [Aug. 22, 1996], without regard to whether regulations have been issued to implement such amendments.''

Section 105(b)(5) of Pub. L. 104–121, as amended by Pub. L. 105–33, title V, §5525(a), (b), Aug. 5, 1997, 111 Stat. 624, provided that:

''(A) The amendments made by paragraphs (1) and (4) [amending this section and sections 1382c and 1383c of this title] shall apply to any individual who applies for, or whose claim is finally adjudicated with respect to, supplemental security income benefits under title XVI of the Social Security Act [this subchapter] based on disability on or after the date of the enactment of this Act [Mar. 29, 1996], and, in the case of any individual who has applied for, and whose claim has been finally adjudicated with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

''(B) The amendments made by paragraphs (2) and (3) [enacting section 1383e of this title and amending section 1383 of this title] shall take effect on July 1, 1996, with respect to any individual—

''(i) whose claim for benefits is finally adjudicated on or after the date of the enactment of this Act [Mar. 29, 1996], or

''(ii) whose eligibility for benefits is based upon an eligibility redetermination made pursuant to subparagraph (C).

''(C) Within 90 days after the date of the enactment of this Act [Mar. 29, 1996], the Commissioner of Social Security shall notify each individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection [enacting section 1383e of this title and amending this section and sections 1382c, 1383, and 1383c of this title]. If such an individual reapplies for supplemental security income benefits under title XVI of such Act (as amended by this Act) within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the eligibility redetermination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

''(D) For purposes of this paragraph, an individual's claim, with respect to supplemental security income benefits under title XVI of the Social Security Act [this subchapter] based on disability, which has been denied in whole before the date of the enactment of this Act [Mar. 29, 1996], may not be considered to be finally adjudicated before such date if, on or after such date—

''(i) there is pending a request for either administrative or judicial review with respect to such claim, or

''(ii) there is pending, with respect to such claim, a readjudication by the Commissioner of Social Security pursuant to relief in a class action or implementation by the Commissioner of a court remand order.

''(E) Notwithstanding the provisions of this paragraph, with respect to any individual for whom the Commissioner does not perform the eligibility redetermination before the date prescribed in subparagraph (C), the Commissioner shall perform such eligibility redetermination in lieu of a continuing disability review whenever the Commissioner determines that the individual's eligibility is subject to redetermination based on the preceding provisions of this paragraph, and the provisions of section 1614(a)(4) of the Social Security Act [section 1382c(a)(4) of this title] shall not apply to such redetermination.

''(F) For purposes of this paragraph, the phrase 'supplemental security income benefits under title XVI of the Social Security Act' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [section 1382e(a) of this title] and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66 [set out below].''

[Amendment by Pub. L. 105–33 to section 105(b)(5) of Pub. L. 104–121, set out above, effective as if included in the enactment of section 105 of Pub. L. 104–121, see section 5528(c)(1) of Pub. L. 105–33, set out as an Effective Date of 1997 Amendment note under section 903 of this title.]

EFFECTIVE DATE OF 1994 AMENDMENT; SUNSET PROVISION

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(b)(3)(C), (E), of Pub. L. 103–296 provided that:

''(C) SUNSET OF 36-MONTH RULE.—Section 1611(e)(3)(A)(v) of the Social Security Act [subsec. (e)(3)(A)(v) of this section] (added by subparagraph (A) of this paragraph) shall cease to be effective with respect to benefits for months after September 2004.

''(E) EFFECTIVE DATE.—

''(i) IN GENERAL.—Except as otherwise provided in this paragraph [amending this section and section 1383c of this title and enacting provisions set out as notes below], the amendments made by this paragraph shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act [this subchapter] by reason of disability which are otherwise payable in months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994]. The Secretary of Health and Human Services shall issue regulations necessary to carry out the amendments made by this paragraph not later than 180 days after such date of enactment.

''(ii) REFERRAL AND MONITORING AGENCIES.—The amendments made by subparagraph (B) [amending this section] shall take effect 180 days after the date of the enactment of this Act [Aug. 15, 1994].

''(iii) TERMINATION AFTER 36 MONTHS.—Clause (v) of section 1611(e)(3)(A) of the Social Security Act [subsec. (e)(3)(A) of this section] (added by the amendment made by subparagraph (A) of this paragraph) shall apply with respect to supplemental security in-

come benefits under title XVI of the Social Security Act [this subchapter] by reason of disability for months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994].''

Section 204(b) of Pub. L. 103–296 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13735(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to benefits paid for months after the calendar year 1994.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8009(c) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1382c of this title] shall apply with respect to benefits for months after March 1990.''

Section 8010(c) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1382c of this title] shall take effect on the 1st day of the 6th calendar month beginning after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–360 applicable to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, see section 303(g)(3) of Pub. L. 100–360, set out as a note under section 1396r–5 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9106(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

Section 9107 of Pub. L. 100–203 provided that the amendment made by that section is effective Nov. 10, 1986.

Section 9113(b) of Pub. L. 100–203 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall become effective January 1, 1988.

''(2) In the application of section 1611(e)(1)(D) of the Social Security Act [subsec. (e)(1)(D) of this section] on and after the effective date of such amendment, months before January 1988 in which a person was an eligible individual or eligible spouse by reason of such section shall not be taken into account.''

Section 9115(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 1396a of this title] shall become effective July 1, 1988.''

Section 9119(c) of Pub. L. 100–203 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1382g of this title] shall become effective July 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 3(a) and 4(c)(3), (d)(1) of Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Section 9(b) of Pub. L. 99–643 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2611(a)–(c) of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 657 of this title.

Amendment by section 2663(g)(1), (2) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 403(b) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to months after the month in which this Act is enacted [April 1983].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 181(b) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall become effective on October 1, 1982.''

Section 183(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective October 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITIONAL PROVISIONS

Section 2341(c) of Pub. L. 97–35 provided that:

''(1) The amendments made by this section [amending this section and section 1382a of this title] shall be effective with respect to months after the first calendar quarter which ends more than five months after the month in which this Act is enacted [August 1981].

''(2) The Secretary of Health and Human Services may, under conditions determined by him to be necessary and appropriate, make a transitional payment or payments during the first two months for which the amendments made by this section are effective. A transitional payment made under this section shall be deemed to be a payment of supplemental security income benefits.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, and applicable with respect to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 505(e) of Pub. L. 94–566 provided that: ''The amendments [amending this section and section 1382a of this title] and repeals [repealing section 1382e(e) of this title] made by this section, unless otherwise specified therein, shall take effect on October 1, 1976.''

EFFECTIVE DATE OF 1973 AMENDMENTS

Section 4(b) of Pub. L. 93–233 provided that the amendments made by section 4(b)(1), (2) of Pub. L. 93–233 are effective with respect to payments for months after June 1974.

Section 210(c) of Pub. L. 93–66, as amended Pub. L. 93–233, § 4(a)(1), Dec. 31, 1973, 87 Stat. 953, provided: ''The amendments made by this section [amending this section] shall apply with respect to payments for months after December 1973.''

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

REGULATIONS

Section 215 of title II of Pub. L. 104–193 provided that: ''Within 3 months after the date of the enactment of this Act [Aug. 22, 1996], the Commissioner of Social Security shall prescribe such regulations as may be necessary to implement the amendments made by this subtitle [subtitle B (§§ 211–215) of title II of Pub. L. 104–193, amending this section, sections 1382a to 1382c and 1383 of this title, sections 665e and 901 of Title 2, The Congress, and provisions set out as a note under section 401 of this title, and repealing provisions set out as a note below].''

CONSTRUCTION OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 to be executed as if Pub. L. 106–169 had been enacted after the enactment of

Pub. L. 106–170, see section 121(c)(1) of Pub. L. 106–169, set out as a note under section 1396a of this title.

STUDY OF DENIAL OF SSI BENEFITS FOR FAMILY FARMERS

Pub. L. 106–169, title II, § 261, Dec. 14, 1999, 113 Stat. 1856, provided that:

''(a) IN GENERAL.—The Commissioner of Social Security shall conduct a study of the reasons why family farmers with resources of less than $100,000 are denied supplemental security income benefits under title XVI of the Social Security Act [this subchapter], including whether the deeming process unduly burdens and discriminates against family farmers who do not institutionalize a disabled dependent, and shall determine the number of such farmers who have been denied such benefits during each of the preceding 10 years.

''(b) REPORT TO THE CONGRESS.—Within 1 year after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner of Social Security shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that contains the results of the study, and the determination, required by subsection (a).''

STUDY OF OTHER POTENTIAL IMPROVEMENTS IN COLLECTION OF INFORMATION RESPECTING PUBLIC INMATES

Section 203(b) of Pub. L. 104–193 provided that:

''(1) STUDY.—The Commissioner of Social Security shall conduct a study of the desirability, feasibility, and cost of—

''(A) establishing a system under which Federal, State, and local courts would furnish to the Commissioner such information respecting court orders by which individuals are confined in jails, prisons, or other public penal, correctional, or medical facilities as the Commissioner may require for the purpose of carrying out section 1611(e)(1) of the Social Security Act [subsec. (e)(1) of this section]; and

''(B) requiring that State and local jails, prisons, and other institutions that enter into agreements with the Commissioner under section 1611(e)(1)(I) of the Social Security Act [subsec. (e)(1)(I) of this section] furnish the information required by such agreements to the Commissioner by means of an electronic or other sophisticated data exchange system.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Aug. 22, 1996], the Commissioner of Social Security shall submit a report on the results of the study conducted pursuant to this subsection to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.''

ADDITIONAL REPORT TO CONGRESS

Section 203(c) of Pub. L. 104–193 provided that: ''Not later than October 1, 1998, the Commissioner of Social Security shall provide to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a list of the institutions that are and are not providing information to the Commissioner under section 1611(e)(1)(I) of the Social Security Act (as added by this section) [subsec. (e)(1)(I) of this section].''

STUDY BY GENERAL ACCOUNTING OFFICE

Pub. L. 104–193, title II, § 232, Aug. 22, 1996, 110 Stat. 2198, provided that, not later than Jan. 1, 1999, the Comptroller General was to study and report on the impact of the amendments and provisions of title II of Pub. L. 104–193 on the supplemental security income program under this subchapter and extra expenses incurred by families of children receiving benefits under this subchapter not covered by other Federal, State, or local programs.

REPORT TO CONGRESS ON REFERRAL, MONITORING AND TREATMENT ACTIVITIES RELATING TO ALCOHOLICS AND DRUG ADDICTS

Section 201(b)(3)(B)(ii) of Pub. L. 103–296, which directed Secretary of Health and Human Services to submit to Congress, not later than Dec. 31, 1996, a report on the Secretary's activities under subsec. (e)(3)(B) of this section, was repealed by Pub. L. 105–33, title V, § 5525(c), Aug. 5, 1997, 111 Stat. 625.

TRANSITION RULES FOR CURRENT BENEFICIARIES

Section 201(b)(3)(F) of Pub. L. 103–296 provided that: ''In any case in which an individual is eligible for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] by reason of disability, the determination of disability was made by the Secretary of Health and Human Services during or before the 180-day period following the date of the enactment of this Act [Aug. 15, 1994], and alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is disabled, for purposes of section 1611(e)(3)(A)(v) of the Social Security Act [subsec. (e)(3)(A)(v) of this section] (added by the amendment made by subparagraph (A) of this paragraph)—

''(i) the first month of such eligibility beginning after 180 days after the date of the enactment of this Act shall be treated as the individual's first month of such eligibility; and

''(ii) the Secretary shall notify the individual of the requirements of the amendments made by this paragraph [amending this section and section 1383c of this title] no later than 180 days after the date of the enactment of this Act.''

COMMISSION ON CHILDHOOD DISABILITY

Section 202 of Pub. L. 103–296 provided for establishment of a Commission on the Evaluation of Disability to conduct a study, in consultation with the National Academy of Sciences, of effects of definition of ''disability'' under this subchapter in effect on Aug. 15, 1994, as such definition applied to determining whether a child under age of 18 was eligible to receive benefits under this subchapter, the appropriateness of such definition, and the advantages and disadvantages of using any alternative definition of disability in determining whether a child under age 18 was eligible to receive benefits under this subchapter, and further provided for contents of study, appointment of Commission members, administrative provisions, assistance of experts, and for submission of report to Congress not later than Nov. 30, 1995.

DISABILITY REVIEW REQUIRED FOR SSI RECIPIENTS WHO ARE 18 YEARS OF AGE

Section 207 of Pub. L. 103–296, which required applicable State agency or Secretary of Health and Human Services to redetermine eligibility of qualified individual for supplemental security income benefits under this subchapter by reason of disability, by applying criteria used in determining eligibility for such benefits of applicants who have attained 18 years of age during 1-year period beginning on date qualified individual attains 18 years of age, and Secretary to conduct such redeterminations with respect to not less than ⅓ of qualified individuals in each of fiscal years 1996 through 1998, defined term ''qualified individual'', and provided that such redetermination was to be considered substitute for review required under section 1382c(a)(3)(G) of this title, that redetermination requirement was to have no force or effect after Oct. 1, 1998, and that not later than Oct. 1, 1998, Secretary was to submit to House Ways and Means and Senate Finance Committees report on such activities, was repealed by Pub. L. 104–193, title II, § 212(b)(2), Aug. 22, 1996, 110 Stat. 2193.

CONTINUING DISABILITY REVIEWS

Section 208 of Pub. L. 103–296 provided that:

''(a) TEMPORARY ANNUAL MINIMUM NUMBER OF REVIEWS.—During each year of the 3-year period that begins on October 1, 1995, the Secretary of Health and Human Services shall apply section 221(i) of the Social Security Act [section 421(i) of this title] in making disability determinations under title XVI of such Act [this subchapter] with respect to at least 100,000 recipients of supplemental security income benefits under such title.

''(b) REPORT TO THE CONGRESS.—Not later than October 1, 1998, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the activities conducted under subsection (a).''

NOTIFICATION OF POSSIBLE BENEFIT AVAILABILITY TO POTENTIAL SUPPLEMENTAL SECURITY INCOME RECIPIENTS

Section 405 of Pub. L. 98–21 provided that: ''Prior to July 1, 1984, the Secretary of Health and Human Services shall notify all elderly recipients of benefits under title II of the Social Security Act [subchapter II of this chapter] who may be eligible for supplemental security income benefits under title XVI of such Act [this subchapter] of the availability of the supplemental security income program, and shall encourage such recipients to contact the Social Security district office. Such notification shall also be made to all recipients prior to attainment of age 65, with the notification made with respect to eligibility for supplementary medical insurance.''

ASSISTANCE PAID UNDER CERTAIN HOUSING ACTS NOT CONSIDERED IN DETERMINING ELIGIBILITY FOR BENEFITS UNDER THIS SUBCHAPTER; EFFECTIVE DATE

Pub. L. 94–375, § 2(h), Aug. 3, 1976, 90 Stat. 1068, provided that: ''Notwithstanding any other provision of law, the value of any assistance paid with respect to a dwelling unit under the United States Housing Act of 1937 [section 1437 et seq. of this title], the National Housing Act [section 1701 et seq. of Title 12, Banks and Banking], section 101 of the Housing and Urban Development Act of 1965 [section 1701s of Title 12 and sections 1451 and 1465 of this title], or title V of the Housing Act of 1949 [section 1471 et seq. of this title] may not be considered as income or a resource for the purpose of determining the eligibility of, or the amount of the benefits payable to, any person living in such unit for assistance under title XVI of the Social Security Act [this subchapter]. This subsection shall become effective on October 1, 1976.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a benefit under the supplemental security income benefits program established by this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

ADJUSTMENT OF INDIVIDUAL'S MONTHLY SUPPLEMENTAL SECURITY INCOME PAYMENTS; REGULATIONS; LIMITATIONS

Pub. L. 93–335, § 2(b)(2), July 8, 1974, 88 Stat. 291, authorized the Secretary of Health, Education, and Welfare to prescribe regulations for the adjustment of an individual's monthly supplemental security income payment in accordance with any increase to which such individual might be entitled under the amendment made by subsection (a) of this section [amending section 212(a)(3)(B)(i) of Pub. L. 93–66, set out below]; provided that such adjustment in monthly payment, together with the remittance of any prior unpaid increments to which such individual might be entitled under such amendment, was to be made no later than the first day of the first month beginning more than sixty days after July 8, 1974.

MEDICAID ELIGIBILITY FOR INDIVIDUALS RECEIVING MANDATORY STATE SUPPLEMENTARY PAYMENTS; EFFECTIVE DATE

Additional requirement for approval of subchapter XIX State plan for medical assistance respecting medicaid eligibility for individuals receiving mandatory State supplementary payments, see section 13(c) of Pub. L. 93–233, set out as a note under section 1396a of this title.

FEDERAL PROGRAM OF SUPPLEMENTAL SECURITY INCOME; SUPPLEMENTAL SECURITY INCOME BENEFITS FOR ESSENTIAL PERSONS; DEFINITIONS OF QUALIFIED INDIVIDUAL AND ESSENTIAL PERSON

Section 211 of Pub. L. 93–66, as amended by Pub. L. 93–233, § 4(a)(2), (b)(3), Dec. 31, 1973, 87 Stat. 953, provided that:

''(a)(1) In determining (for purposes of title XVI of the Social Security Act [this subchapter], as in effect after December 1973) the eligibility for and the amount of the supplemental security income benefit payable to any qualified individual (as defined in subsection (b)), with respect to any period for which such individual has in his home an essential person (as defined in subsection (c))—

''(A) the dollar amounts specified in subsection (a)(1)(A) and (2)(A), and subsection (b)(1) and (2), of section 1611 of such Act [this section], shall each be increased by $876 for each such essential person, and

''(B) the income and resources of such individual shall (for purposes of such title XVI [this subchapter]) be deemed to include the income and resources of such essential person;

except that the provisions of this subsection shall not, in the case of any individual, be applicable for any period which begins in or after the first month that such individual—

''(C) does not but would (except for the provisions of subparagraph (B)) meet—

''(i) the criteria established with respect to income in section 1611(a) of such Act [subsec. (a) of this section], or

''(ii) the criteria established with respect to resources by such section 1611(a) [subsec. (a) of this section] (or, if applicable, by section 1611(g) of such Act [subsec. (g) of this section]).

''(2) The provisions of section 1611(g) of the Social Security Act [subsec. (g) of this section] (as in effect after December 1973) shall, in the case of any qualified individual (as defined in subsection (b)), be applied so as to include, in the resources of such individual, the resources of any person (described in subsection (b)(2)) whose needs were taken into account in determining the need of such individual for the aid or assistance referred to in subsection (b)(1).

''(b) For purposes of this section, an individual shall be a 'qualified individual' only if—

''(1) for the month of December 1973 such individual was a recipient of aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter], and

''(2) in determining the need of such individual for such aid or assistance for such month under such State plan, there were taken into account the needs of a person (other than such individual) who—

''(A) was living in the home of such individual, and

''(B) was not eligible (in his or her own right) for aid or assistance under such State plan for such month.

''(c) The term 'essential person', when used in connection with any qualified individual, means a person who—

''(1) for the month of December 1973 was a person (described in subsection (b)(2)) whose needs were

taken into account in determining the need of such individual for aid or assistance under a State plan referred to in subsection (b)(1) as such State plan was in effect for June 1973,

''(2) lives in the home of such individual,

''(3) is not eligible (in his or her own right) for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] (as in effect after December 1973), and

''(4) is not the eligible spouse (as that term is used in such title XVI [this subchapter]) of such individual or any other individual.

If for any month after December 1973 any person fails to meet the criteria specified in paragraph (2), (3), or (4) of the preceding sentence, such person shall not, for such month or any month thereafter be considered to be an essential person.''

[Amendment of section 211(a)(1)(A) of Pub. L. 93–66, set out above, by Pub. L. 93–233 effective with respect to payments for months after June 1974, see section 4(b) of Pub. L. 93–233.]

MANDATORY MINIMUM STATE SUPPLEMENTATION OF SUPPLEMENTAL SECURITY INCOME BENEFITS PROGRAM; DECEMBER 1973 INCOME; TITLE XVI BENEFIT PLUS OTHER INCOME; REDUCTION OF AMOUNT; ADMINISTRATION AGREEMENT; PAYMENTS TO COMMISSIONER; STATE CONSTITUTIONAL RESTRICTION

Section 212 of Pub. L. 93–66, as amended by Pub. L. 93–233, §10, Dec. 31, 1973, 87 Stat. 957; Pub. L. 93–335, §2(a), July 8, 1974, 88 Stat. 291; Pub. L. 96–265, title II, §201(b)(2), June 9, 1980, 94 Stat. 446; Pub. L. 103–66, title XIII, §13731(a)(2), Aug. 10, 1993, 107 Stat. 661; Pub. L. 105–33, title V, §5102(a)(2), (b)(1)(B), Aug. 5, 1997, 111 Stat. 595, 596; Pub. L. 105–78, title V, §516(a)(2), (b)(1)(B), Nov. 13, 1997, 111 Stat. 1518, 1519; Pub. L. 106–170, title IV, §410(a)(2), Dec. 17, 1999, 113 Stat. 1916, provided that:

''(a)(1) In order for any State (other than the Commonwealth of Puerto Rico, Guam, or the Virgin Islands) to be eligible for payments pursuant to title XIX [subchapter XIX of this chapter], with respect to expenditures for any quarter beginning after December 1973, such State must have in effect an agreement with the Commissioner of Social Security (hereinafter in this section referred to as the 'Commissioner of Social Security') whereby the State will provide to individuals residing in the State supplementary payments as required under paragraph (2).

''(2) Any agreement entered into by a State pursuant to paragraph (1) shall provide that each individual who—

''(A) is an aged, blind, or disabled individual (within the meaning of section 1614(a) of the Social Security Act [section 1382c(a) of this title], as enacted by section 301 of the Social Security Amendments of 1972), and

''(B) for the month of December 1973 was a recipient of (and was eligible to receive) aid or assistance (in the form of money payments) under a State plan of such State (approved under title I, X, XIV, or XVI, of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter])

shall be entitled to receive, from the State, the supplementary payment described in paragraph (3) for each month, beginning with January 1974, and ending with whichever of the following first occurs:

''(C) the month in which such individual dies, or

''(D) the first month in which such individual ceases to meet the condition specified in subparagraph (A);

except that no individual shall be entitled to receive such supplementary payment for any month, if, for such month, such individual was ineligible to receive supplemental income benefits under title XVI of the Social Security Act [this chapter] by reason of the provisions of section 1611(e)(1)(A), (2), or (3) [subsec. (e)(1)(A), (2), or (3) of this section], 1611(f) [subsec. (f) of this section], or 1615(c) of such Act [section 1382d(c) of this title].

''(3)(A) The supplementary payment referred to in paragraph (2) which shall be paid for any month to any individual who is entitled thereto under an agreement entered into pursuant to this subsection shall (except as provided in subparagraphs (D) and (E)) be an amount equal to (i) the amount by which such individual's 'December 1973 income' (as determined under subparagraph (B)) exceeds the amount of such individual's 'title XVI benefit plus other income' (as determined under subparagraph (C)) for such month, or (ii) if greater, such amount as the State may specify.

''(B) For purposes of subparagraph (A), an individual's 'December 1973 income' means an amount equal to the aggregate of—

''(i) the amount of the aid or assistance (in the form of money payments) which such individual would have received (including any part of such amount which is attributable to meeting the needs of any other person whose presence in such individual's home is essential to such individual's well-being) for the month of December 1973 under a plan (approved under title I, X, XIV, or XVI, of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter]) of the State entering into an agreement under this subsection, if the terms and conditions of such plan (relating to eligibility for and amount of such aid or assistance payable thereunder) were, for the month of December 1973, the same as those in effect, under such plan, for the month of June 1973, together with the bonus value of food stamps for January 1972, as defined in section 401(b)(3) of Public Law 92–603 [set out as a note under section 1382e of this title], if, for such month, such individual resides in a State which provides State supplementary payments (I) of the type described in section 1616(a) of the Social Security Act [section 1382e(a) of this title], and (II) the level of which has been found by the Commissioner of Social Security pursuant to section 8 of Public Law 93–233 [set out as notes under section 1382e of this title and sections 612c, 1431 and 2012 of Title 7, Agriculture] to have been specifically increased so as to include the bonus value of food stamps, and

''(ii) the amount of the income of such individual (other than the aid or assistance described in clause (i)) received by such individual in December 1973, minus any such income which did not result, but which if properly reported would have resulted in a reduction in the amount of such aid or assistance.

''(C) For purposes of subparagraph (A), the amount of an individual's 'title XVI benefit plus other income' for any month means an amount equal to the aggregate of—

''(i) the amount (if any) of the supplemental security income benefit to which such individual is entitled for such month under title XVI of the Social Security Act [this subchapter], and

''(ii) the amount of any income of such individual for such month (other than income in the form of a benefit described in clause (i)).

''(D) If the amount determined under subparagraph (B)(i) includes, in the case of any individual, an amount which was payable to such individual solely because of—

''(i) a special need of such individual (including any special allowance for housing, or the rental value of housing furnished in kind to such individual in lieu of a rental allowance) which existed in December 1973, or

''(ii) any special circumstance (such as the recognition of the needs of a person whose presence in such individual's home, in December 1973, was essential to such individual's well-being),

and, if for any month after December 1973 there is a change with respect to such special need or circumstance which, if such change had existed in December 1973, the amount described in subparagraph (B)(i) with respect to such individual would have been reduced on account of such change, then, for such month and for each month thereafter the amount of the supplementary payment payable under the agreement entered into under this subsection to such individual shall (unless the State, at its option, otherwise speci-

fies) be reduced by an amount equal to the amount by which the amount (described in subparagraph (B)(i)) would have been so reduced.

''(E)(i) In the case of an individual who, for December 1973 lived as a member of a family unit other members of which received aid (in the form of money payments) under a State plan of a State approved under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter], such State at its option, may (subject to clause (ii)) reduce such individual's December 1973 income (as determined under subparagraph (B)) to such extent as may be necessary to cause the supplementary payment (referred to in paragraph (2)) payable to such individual for January 1974 or any month thereafter to be reduced to a level designed to assure that the total income of such individual (and of the members of such family unit) for any month after December 1973 does not exceed the total income of such individual (and of the members of such family unit) for December 1973.

''(ii) The amount of the reduction (under clause (i)) of any individual's December 1973 income shall not be in an amount which would cause the supplementary payment (referred to in paragraph (2)) payable to such individual to be reduced below the amount of such supplementary payment which would be payable to such individual if he had, for the month of December 1973 not lived in a family, members of which were receiving aid under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter], and had had no income for such month other than that received as aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter].

''(4) Any State having an agreement with the Commissioner of Social Security under paragraph (1) may, at its option, include individuals receiving benefits under section 1619 of the Social Security Act [section 1382h of this title], or who would be eligible to receive such benefits but for their income, under the agreement as though they are aged, blind, or disabled individuals as specified in paragraph (2)(A).

''(b)(1) Any State having an agreement with the Commissioner of Social Security under subsection (a) may enter into an administration agreement with the Commissioner of Social Security whereby the Commissioner of Social Security will, on behalf of such State, make the supplementary payments required under the agreement entered into under subsection (a).

''(2) Any such administration agreement between the Commissioner of Social Security and a State entered into under this subsection shall provide that the State will (A) certify to the Commissioner of Social Security the names of each individual who, for December 1973, was a recipient of aid or assistance (in the form of money payments) under a plan of such State approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter], together with the amount of such assistance payable to each such individual and the amount of such individual's December 1973 income (as defined in subsection (a)(3)(B)), and (B) provide the Commissioner of Social Security with such additional data at such times as the Commissioner of Social Security may reasonably require in order properly, economically, and efficiently to carry out such administration agreement.

''(3)(A) Any State which has entered into an administration agreement under this subsection shall, in accordance with subparagraph (E), pay to the Commissioner of Social Security an amount equal to the expenditures made by the Commissioner of Social Security as supplementary payments to individuals entitled thereto under the agreement entered into with such State under subsection (a), plus an administration fee assessed in accordance with subparagraph (B) and any additional services fee charged in accordance with subparagraph (C).

''(B)(i) The Commissioner of Social Security shall assess each State an administration fee in an amount equal to—

''(I) the number of supplementary payments made by the Commissioner of Social Security on behalf of the State under this subsection for any month in a fiscal year; multiplied by

''(II) the applicable rate for the fiscal year.

''(ii) As used in clause (i), the term 'applicable rate' means—

''(I) for fiscal year 1994, $1.67;

''(II) for fiscal year 1995, $3.33;

''(III) for fiscal year 1996, $5.00;

''(IV) for fiscal year 1997, $5.00;

''(V) for fiscal year 1998, $6.20;

''(VI) for fiscal year 1999, $7.60;

''(VII) for fiscal year 2000, $7.80;

''(VIII) for fiscal year 2001, $8.10;

''(IX) for fiscal year 2002, $8.50; and

''(X) for fiscal year 2003 and each succeeding fiscal year—

''(aa) the applicable rate in the preceding fiscal year, increased by the percentage, if any, by which the Consumer Price Index for the month of June of the calendar year of the increase exceeds the Consumer Price Index for the month of June of the calendar year preceding the calendar year of the increase, and rounded to the nearest whole cent; or

''(bb) such different rate as the Commissioner determines is appropriate for the State.

''(iii) Upon making a determination under clause (ii)(X)(bb), the Commissioner of Social Security shall promulgate the determination in regulations, which may take into account the complexity of administering the State's supplementary payment program.

''(iv) All fees assessed pursuant to this subparagraph shall be transferred to the Commissioner of Social Security at the same time that amounts for such supplementary payments are required to be so transferred.

''(C)(i) The Commissioner of Social Security may charge a State an additional services fee if, at the request of the State, the Commissioner of Social Security provides additional services beyond the level customarily provided, in the administration of State supplementary payments pursuant to this subsection.

''(ii) The additional services fee shall be in an amount that the Commissioner of Social Security determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services referred to in clause (i).

''(D)(i) The first $5 of each administration fee assessed pursuant to subparagraph (B), upon collection, shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

''(ii) The portion of each administration fee in excess of $5, and 100 percent of each additional services fee charged pursuant to subparagraph (C), upon collection for fiscal year 1998 and each subsequent fiscal year, shall be credited to a special fund established in the Treasury of the United States for State supplementary payment fees. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out this section and title XVI of the Social Security Act [this subchapter] and related laws.

''(E)(i) Any State which has entered into an agreement with the Commissioner of Social Security under this section shall remit the payments and fees required under this paragraph with respect to monthly benefits paid to individuals under title XVI of the Social Security Act [this subchapter] no later than—

''(I) the business day preceding the date that the Commissioner pays such monthly benefits; or

''(II) with respect to such monthly benefits paid for the month that is the last month of the State's fiscal year, the fifth business day following such date.

''(ii) The Cash Management Improvement Act of 1990 [see Short Title of 1990 Amendment note set out under section 6501 of Title 31, Money and Finance] shall not apply to any payments or fees required under this paragraph that are paid by a State before the date required by clause (i).

''(iii) Notwithstanding clause (i), the Commissioner may make supplementary payments on behalf of a

State with funds appropriated for payment of supplemental security income benefits under title XVI of the Social Security Act [this subchapter], and subsequently to be reimbursed for such payments by the State at such times as the Commissioner and State may agree. Such authority may be exercised only if extraordinary circumstances affecting a State's ability to make payment when required by clause (i) are determined by the Commissioner to exist.

''(c)(1) Supplementary payments made pursuant to an agreement entered into under subsection (a) shall be excluded under section 1612(b)(6) of the Social Security Act [section 1382a(b)(6) of this title] (as in effect after December 1973) in determining income of individuals for purposes of title XVI of such Act [this subchapter] (as so in effect).

''(2) Supplementary payments made by the Commissioner of Social Security (pursuant to an administration agreement entered into under subsection (b)) shall, for purposes of section 401 of the Social Security Amendments of 1972 [set out as a note under section 1382e of this title], be considered to be payments made under an agreement entered into under section 1616 of the Social Security Act [section 1382e of this title] (as enacted by section 301 of the Social Security Amendments of 1972); except that nothing in this paragraph shall be construed to waive, with respect to the payments so made by the Commissioner of Social Security, the provisions of subsection (b) of such section 401 [set out as a note under section 1382e of this title].

''(d) For purposes of subsection (a)(1), a State shall be deemed to have entered into an agreement under subsection (a) of this section if such State has entered into an agreement with the Commissioner of Social Security under section 1616 of the Social Security Act [section 1382e of this title] under which—

''(1) individuals, other than individuals described in subsection (a)(2)(A) and (B), are entitled to receive supplementary payments, and

''(2) supplementary benefits are payable, to individuals described in subsection (a)(2)(A) and (B) at a level and under terms and conditions which meet the minimum requirements specified in subsection (a).

''(e) Except as the Commissioner of Social Security may by regulations otherwise provide, the provisions of title XVI of the Social Security Act [this subchapter] (as enacted by section 301 of the Social Security Amendments of 1972), including the provisions of part B of such title [part B of this subchapter], relating to the terms and conditions under which the benefits authorized by such title [this subchapter] are payable shall, where not inconsistent with the purposes of this section, be applicable to the payments made under an agreement under subsection (b) of this section; and the authority conferred upon the Commissioner of Social Security by such title [this subchapter] may, where appropriate, be exercised by him in the administration of this section.

''(f) The provisions of subsection (a)(1) shall not be applicable in the case of any State—

''(1) the Constitution of which contains provisions which make it impossible for such State to enter into and commence carrying out (on January 1, 1974) an agreement referred to in subsection (a), and

''(2) the Attorney General (or other appropriate State official) of which has, prior to July 1, 1973, made a finding that the State Constitution of such State contains limitations which prevent such State from making supplemental payments of the type described in section 1616 of the Social Security Act [section 1382e of this title].''

[For effective date of amendment to section 212 of Pub. L. 93–66, set out above, by Pub. L. 106–170, see section 410(b) of Pub. L. 106–170, set out as an Effective Date of 1999 Amendment note under section 1382e of this title.]

[For effective date of amendment to section 212 of Pub. L. 93–66, set out above, by Pub. L. 103–66, see section 13731(b) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 1382e of this title.]

[Section 2(b)(1) of Pub. L. 93–335, July 8, 1974, 88 Stat. 291, provided that the amendment of section 212 of Pub. L. 93–66, set out above, by Pub. L. 93–335 is effective Jan. 1, 1974.]

[Amendment of section 212 of Pub. L. 93–66, set out above, by Pub. L. 96–265 effective Jan. 1, 1981, see section 201(d) of Pub. L. 96–265, as amended, set out as an Effective Date note under section 1382h of this title.]

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of section 1602 of the Social Security Act [this section] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1602 of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92–603, and as amended, continues to apply and reads as follows:

§ 1382. State plans for aid to aged, blind, or disabled

(a) Contents

A State plan for aid to the aged, blind, or disabled, must—

(1) except to the extent permitted by the Commissioner of Social Security with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid or assistance under the plan is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing;

(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Commissioner of Social Security shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Commissioner of Social Security to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Commissioner of Social Security may from time to time require, and comply with such provisions as the Commissioner of Social Security may

from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;

(8) provide that all individuals wishing to make application for aid or assistance under the plan shall have opportunity to do so, and that such aid or assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes aid or assistance to or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for or recipients of aid or assistance under the plan to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

(11) provide that no aid or assistance will be furnished any individual under the plan with respect to any period with respect to which he is receiving assistance under the State plan approved under subchapter I of this chapter or assistance under a State program funded under part A of subchapter IV of this chapter or under subchapter X or XIV of this chapter;

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) include reasonable standards, consistent with the objectives of this subchapter, for determining eligibility for and the extent of aid or assistance under the plan;

(14) provide that the State agency shall, in determining need for aid to the aged, blind, or disabled, take into consideration any other income and resources of an individual claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination with respect to any individual—

(A) if such individual is blind, the State agency (i) shall disregard the first $85 per month of earned income plus one-half of earned income in excess of $85 per month, and (ii) shall, for a period not in excess of 12 months, and may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan,

(B) if such individual is not blind but is permanently and totally disabled, (i) of the first $80 per month of earned income, the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (ii) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation,

(C) if such individual has attained age 65 and is neither blind nor permanently and totally disabled, of the first $80 per month of earned income the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and

(D) the State agency may, before disregarding the amounts referred to above in this paragraph (14), disregard not more than $7.50 of any income; and

(15) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

Notwithstanding paragraph (3), if on January 1, 1962, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan of such State approved under subchapter X of this chapter was different from the State agency which administered or supervised the administration of the plan of such State approved under subchapter I of this chapter and the State agency which administered or supervised the administration of the plan of such State approved under subchapter XIV of this chapter, the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter may be designated to administer or supervise the administration of the portion of the State plan for aid to the aged, blind, or disabled which relates to blind individuals and a separate State agency may be established or designated to administer or supervise the administration of the rest of such plan; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter.

(b) Approval by Commissioner

The Commissioner of Social Security shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that the Commissioner shall not approve any plan which imposes, as a condition of eligibility for aid or assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for such aid and has resided therein continuously for one year immediately preceding the application; or

(3) any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Commissioner of Social Security as a condition for the approval of such plan under this subchapter. In the case of any State to which the provisions of section 344 of the Social Security Act Amendments of 1950 were applicable on January 1, 1962, and to which the sentence of section 1202(b) of this title following paragraph (2) thereof is applicable on the date on which its State plan for aid to the aged, blind, or disabled was submitted for approval under this subchapter, the Commissioner of Social Security shall approve the plan of such State for aid to the aged, blind, or disabled for purposes of this subchapter, even though it does not meet the requirements of paragraph (14) of subsection (a) of this section, if it meets all other requirements of this subchapter for an approved plan for aid to the aged, blind, or disabled; but payments under section 1383 of this title shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1383 of this title under a plan approved under this section without regard to the provisions of this sentence.

(c) Limitation on number of plans

Subject to the last sentence of subsection (a) of this section, nothing in this subchapter shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this subchapter.

(Aug. 14, 1935, ch. 531, title XVI, § 1602, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 198; amend-

ed Oct. 13, 1964, Pub. L. 88–650, § 5(b), 78 Stat. 1078; July 30, 1965, Pub. L. 89–97, title II, § 221(d)(3), title IV, § 403(e), 79 Stat. 358, 418; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 210(a)(5), 213(a)(4), 241(d), 81 Stat. 896, 898, 917; Oct. 30, 1972, Pub. L. 92–603, title IV, §§ 405(d), 406(d), 407(d), 410(d), 413(d), 86 Stat. 1488, 1489, 1491, 1492; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(d)(4), 95 Stat. 817; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2651(h), 98 Stat. 1150; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478; Aug. 22, 1996, Pub. L. 104–193, title I, § 108(i), 110 Stat. 2169.)

[Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.]

[Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

§ 1382a. Income; earned and unearned income defined; exclusions from income

(a) For purposes of this subchapter, income means both earned income and unearned income; and—

(1) earned income means only—

(A) wages as determined under section 403(f)(5)(C) of this title but without the application of section 410(j)(3) of this title;

(B) net earnings from self-employment, as defined in section 411 of this title (without the application of the second and third sentences following subsection (a)(11),[1] the last paragraph of subsection (a), and section 410(j)(3) of this title), including earnings for services described in paragraphs (4), (5), and (6) of subsection (c);

(C) remuneration received for services performed in a sheltered workshop or work activities center; and

(D) any royalty earned by an individual in connection with any publication of the work of the individual, and that portion of any honorarium which is received for services rendered; and

(2) unearned income means all other income, including—

(A) support and maintenance furnished in cash or kind; except that (i) in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) as specified in subsections (a) and (b) of section 1382 of this title shall be reduced by 33⅓ percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph, (ii) in the case of any individual or his eligible spouse who resides in a nonprofit retirement home or similar nonprofit institution, support and maintenance shall not be included to the extent that it is furnished to such individual or such spouse without such institution receiving payment therefor (unless such institution has expressly undertaken an obligation to furnish full support and maintenance to such individual or spouse without any current or future payment therefor) or payment therefor is made by another nonprofit organization, and (iii) support and maintenance shall not be included and the provisions of clause (i) shall not be applicable in the case of any individual (and his eligible spouse, if any) for the period which begins with the month in which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in a residential facility (including a private household) maintained by another person and ends with the close of the month in which such individual (or such individual and his eligible spouse) ceases to receive support and maintenance while living in such a residential facility (or, if earlier, with the close of the seventeenth month following the month in which such period began), if, not more than 30 days prior to the date on which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in such a residential facility, (I) such individual (or such individual and his eligible spouse) were residing in a household maintained by such individual (or by such individual and others) as his or their own home, (II) there occurred within the area in which such household is located (and while such individual, or such individual and his spouse, were residing in the household referred to in subclause (I)) a catastrophe on account of which the President declared a major disaster to exist therein for purposes of the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.], and (III) such individual declares that he (or he and his eligible spouse) ceased to continue living in the household referred to in subclause (II) because of such catastrophe;

(B) any payments received as an annuity, pension, retirement, or disability benefit, including veterans' compensation and pensions, workmen's compensation payments, old-age, survivors, and disability insurance benefits, railroad retirement annuities and pensions, and unemployment insurance benefits;

(C) prizes and awards;

(D) payments to the individual occasioned by the death of another person, to the extent that the total of such payments exceeds the amount expended by such individual for purposes of the deceased person's last illness and burial;

(E) support and alimony payments, and (subject to the provisions of subparagraph (D) excluding certain amounts expended for purposes of a last illness and burial) gifts (cash or otherwise) and inheritances;

(F) rents, dividends, interest, and royalties not described in paragraph (1)(E); and

(G) any earnings of, and additions to, the corpus of a trust established by an indi-

[1] So in original. Probably should be subsection ''(a)(15),''.

vidual (within the meaning of section 1382b(e) of this title), of which the individual is a beneficiary, to which section 1382b(e) of this title applies, and, in the case of an irrevocable trust, with respect to which circumstances exist under which a payment from the earnings or additions could be made to or for the benefit of the individual.

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

(1) subject to limitations (as to amount or otherwise) prescribed by the Commissioner of Social Security, if such individual is under the age of 22 and is, as determined by the Commissioner of Social Security, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment, the earned income of such individual;

(2)(A) the first $240 per year (or proportionately smaller amounts for shorter periods) of income (whether earned or unearned) other than income which is paid on the basis of the need of the eligible individual, and

(B) monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973 (or any program established prior to such date but subsequently amended so as to conform to State or Federal constitutional standards), if (i) such payments are made by the State of which the individual receiving such payments is a resident, (ii) eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 or any other age set by the State and residency in such State by such individual, and (iii) on or before September 30, 1985, such individual (I) first becomes an eligible individual or an eligible spouse under this title, and (II) satisfies the twenty-five-year residency requirement of such program as such program was in effect prior to January 1, 1983;

(3) in any calendar quarter, the first—

(A) $60 of unearned income, and

(B) $30 of earned income,

of such individual (and such spouse, if any) which, as determined in accordance with criteria prescribed by the Commissioner of Social Security, is received too infrequently or irregularly to be included;

(4)(A) if such individual (or such spouse) is blind (and has not attained age 65, or received benefits under this subchapter (or aid under a State plan approved under section 1202 or 1382 of this title) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof, (ii) an amount equal to any expenses reasonably attributable to the earning of any income, and (iii) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Commissioner of Social Security, as may be necessary for the fulfillment of such plan,

(B) if such individual (or such spouse) is disabled but not blind (and has not attained age 65, or received benefits under this subchapter (or aid under a State plan approved under section 1352 or 1382 of this title) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, (ii) such additional amounts of earned income of such individual, if such individual's disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, as may be necessary to pay the costs (to such individual) of attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions, except that the amounts to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe, (iii) one-half of the amount of earned income not excluded after the application of the preceding provisions of this subparagraph, and (iv) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Commissioner of Social Security, as may be necessary for the fulfillment of such plan, or

(C) if such individual (or such spouse) has attained age 65 and is not included under subparagraph (A) or (B), the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof;

(5) any amount received from any public agency as a return or refund of taxes paid on real property or on food purchased by such individual (or such spouse);

(6) assistance, furnished to or on behalf of such individual (and spouse), which is based on need and furnished by any State or political subdivision of a State;

(7) any portion of any grant, scholarship, fellowship, or gift (or portion of a gift) used to pay the cost of tuition and fees at any educational (including technical or vocational education) institution;

(8) home produce of such individual (or spouse) utilized by the household for its own consumption;

(9) if such individual is a child, one-third of any payment for his support received from an absent parent;

(10) any amounts received for the foster care of a child who is not an eligible individual but who is living in the same home as such individual and was placed in such home by a public or nonprofit private child-placement or child-care agency;

(11) assistance received under the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] or other assistance provided pursuant to a Federal statute on ac-

count of a catastrophe which is declared to be a major disaster by the President;

(12) interest income received on assistance funds referred to in paragraph (11) within the 9-month period beginning on the date such funds are received (or such longer periods as the Commissioner of Social Security shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period);

(13) any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Commissioner of Social Security by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which is (A) assistance furnished in kind by a private nonprofit agency, or (B) assistance furnished by a supplier of home heating oil or gas, by an entity providing home energy whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy;

(14) assistance paid, with respect to the dwelling unit occupied by such individual (or such individual and spouse), under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or section 202(h) of the Housing Act of 1959 [12 U.S.C. 1701q(h)];

(15) the value of any commercial transportation ticket, for travel by such individual (or spouse) among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, which is received as a gift by such individual (or such spouse) and is not converted to cash;

(16) interest accrued on the value of an agreement entered into by such individual (or such spouse) representing the purchase of a burial space excluded under section 1382b(a)(2)(B) of this title, and left to accumulate;

(17) any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime;

(18) relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636];

(19) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);

(20) special pay received pursuant to section 310 of title 37;

(21) the interest or other earnings on any account established and maintained in accordance with section 1383(a)(2)(F) of this title;

(22) any gift to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition, from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code—

(A) in the case of an in-kind gift, if the gift is not converted to cash; or

(B) in the case of a cash gift, only to the extent that the total amount excluded from the income of the individual pursuant to this paragraph in the calendar year in which the gift is made does not exceed $2,000; and

(23) interest or dividend income from resources—

(A) not excluded under section 1382b(a) of this title, or

(B) excluded pursuant to Federal law other than section 1382b(a) of this title.

(Aug. 14, 1935, ch. 531, title XVI, §1612, as added Pub. L. 92–603, title III, §301, Oct. 30, 1972, 86 Stat. 1468; amended Pub. L. 93–484, §4, Oct. 26, 1974, 88 Stat. 1460; Pub. L. 94–202, §9, Jan. 2, 1976, 89 Stat. 1140; Pub. L. 94–331, §§2(a), 4(a), June 30, 1976, 90 Stat. 781, 782; Pub. L. 94–455, title XXI, §2125, Oct. 4, 1976, 90 Stat. 1920; Pub. L. 94–566, title V, §505(b), Oct. 20, 1976, 90 Stat. 2686; Pub. L. 95–171, §8(a), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 96–222, title I, §101(a)(2)(B), Apr. 1, 1980, 94 Stat. 195; Pub. L. 96–265, title II, §202(a), title III, §302(b), June 9, 1980, 94 Stat. 449, 451; Pub. L. 96–473, §6(g), Oct. 19, 1980, 94 Stat. 2266; Pub. L. 97–35, title XXIII, §2341(b), Aug. 13, 1981, 95 Stat. 865; Pub. L. 97–424, title V, §545(a), Jan. 6, 1983, 96 Stat. 2198; Pub. L. 98–21, title IV, §404(a), Apr. 20, 1983, 97 Stat. 140; Pub. L. 98–369, div. B, title VI, §§2616(a), 2639(b), (c), 2663(g)(3), (4), July 18, 1984, 98 Stat. 1133, 1144, 1145, 1168; Pub. L. 99–514, §2, title XVIII, §1883(d)(2), (3), Oct. 22, 1986, 100 Stat. 2095, 2918; Pub. L. 100–203, title IX, §9120(a), Dec. 22, 1987, 101 Stat. 1330–309; Pub. L. 100–647, title VIII, §8103(a), Nov. 10, 1988, 102 Stat. 3795; Pub. L. 100–707, title I, §109(p), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 101–239, title VIII, §§8011(a), 8013(a), Dec. 19, 1989, 103 Stat. 2464; Pub. L. 101–508, title V, §§5031(a), 5033(a), 5034(a), 5035(a), title XI, §11115(b)(1), Nov. 5, 1990, 104 Stat. 1388–224, 1388–225, 1388–414; Pub. L. 103–66, title XIII, §13733(b), Aug. 10, 1993, 107 Stat. 662; Pub. L. 103–296, title I, §107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 103–432, title II, §§264(a), 267(a), Oct. 31, 1994, 108 Stat. 4467, 4469; Pub. L. 104–193, title II, §213(c), Aug. 22, 1996, 110 Stat. 2195; Pub. L. 105–306, §7(a), Oct. 28, 1998, 112 Stat. 2928; Pub. L. 106–169, title II, §205(b), Dec. 14, 1999, 113 Stat. 1834; Pub. L. 106–554, §1(a)(1) [title V, §519], Dec. 21, 2000, 114 Stat. 2763, 2763A–74; Pub. L. 108–203, title IV, §§430(a), (b), 432(a), 435(a), Mar. 2, 2004, 118 Stat. 538–540.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(19), (22), is classified generally to Title 26, Internal Revenue Code.

The Disaster Relief and Emergency Assistance Act, referred to in subsecs. (a)(2)(A) and (b)(11), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

Section 1382 of this title, referred to in subsec. (b)(4)(A), (B), is a reference to section 1382 of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1382 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

The United States Housing Act of 1937, referred to in subsec. (b)(14), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The National Housing Act, referred to in subsec. (b)(14), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (b)(14), is section 101 of Pub. L. 89–117, title I, Aug. 10, 1965, 79 Stat. 451, as amended, which enacted section 1701s of Title 12 and amended sections 1451 and 1465 of this title.

The Housing Act of 1949, referred to in subsec. (b)(14), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, referred to in subsec. (b)(18), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended. Title II of the Act enacted subchapter II (§ 4621 et seq.) of chapter 61 of this title, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealed sections 1465 and 3074 of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 23. For complete classification of title II to the Code, see Tables.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–203, § 432(a), substituted ''under the age of 22 and'' for ''a child who''.

Subsec. (b)(3). Pub. L. 108–203, § 430(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''(A) the total unearned income of such individual (and such spouse, if any) in a month which, as determined in accordance with criteria prescribed by the Commissioner of Social Security, is received too infrequently or irregularly to be included, if such income so received does not exceed $20 in such month, and (B) the total earned income of such individual (and such spouse, if any) in a month which, as determined in accordance with such criteria, is received too infrequently or irregularly to be included, if such income so received does not exceed $10 in such month;''.

Subsec. (b)(7). Pub. L. 108–203, § 435(a), substituted ''fellowship, or gift (or portion of a gift) used to pay'' for ''or fellowship received for use in paying''.

Subsec. (b)(23). Pub. L. 108–203, § 430(b), added par. (23).

2000—Subsec. (a)(1)(A). Pub. L. 106–554, § 1(a)(1) [title V, § 519(1)], inserted ''but without the application of section 410(j)(3) of this title'' before semicolon.

Subsec. (a)(1)(B). Pub. L. 106–554, § 1(a)(1) [title V, § 519(2)], substituted ''the last'' for ''and the last'' and inserted '', and section 410(j)(3) of this title'' after ''subsection (a)''.

1999—Subsec. (a)(2)(G). Pub. L. 106–169 added subpar. (G).

1998—Subsec. (b)(22). Pub. L. 105–306 added par. (22).

1996—Subsec. (b)(21). Pub. L. 104–193 added par. (21).

1994—Subsec. (a)(1)(C) to (E). Pub. L. 103–432, § 267(a), redesignated subpars. (D) and (E) as (C) and (D), respectively, and struck out former subpar. (C) which read as follows: ''any refund of Federal income taxes made by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit);''.

Subsec. (b)(1), (3)(A), (4)(A), (B), (12), (13). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (b)(17). Pub. L. 103–432, § 264(a), made technical correction to directory language of Pub. L. 101–508, § 5035(a)(2). See 1990 Amendment note below.

1993—Subsec. (b)(20). Pub. L. 103–66 added par. (20).

1990—Subsec. (a)(1)(E). Pub. L. 101–508, § 5034(a)(1), added subpar. (E).

Subsec. (a)(2)(F). Pub. L. 101–508, § 5034(a)(2), inserted ''not described in paragraph (1)(E)'' after ''royalties''.

Subsec. (b)(4)(B)(ii). Pub. L. 101–508, § 5033(a), struck out ''(for purposes of determining the amount of his or her benefits under this subchapter and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility)'' after ''income of such individual''.

Subsec. (b)(16). Pub. L. 101–508, § 5035(a)(1), struck out ''and'' at end.

Subsec. (b)(17). Pub. L. 101–508, § 5035(a)(2), as amended by Pub. L. 103–432, § 264(a), substituted ''; and'' for period at end.

Pub. L. 101–508, § 5031(a), added par. (17).

Subsec. (b)(18). Pub. L. 101–508, § 5035(a)(3), added par. (18).

Subsec. (b)(19). Pub. L. 101–508, § 11115(b)(1)(C), added par. (19).

1989—Subsec. (b)(15). Pub. L. 101–239, § 8011(a), added par. (15).

Subsec. (b)(16). Pub. L. 101–239, § 8013(a), added par. (16).

1988—Subsecs. (a)(2)(A), (b)(11). Pub. L. 100–707 substituted ''Disaster Relief and Emergency Assistance Act'' for ''Disaster Relief Act of 1974''.

Subsec. (b)(14). Pub. L. 100–647 added par. (14).

1987—Subsec. (a)(2)(D), (E). Pub. L. 100–203 amended subpars. (D) and (E) generally. Prior to amendment, subpars. (D) and (E) read as follows:

''(D) the proceeds of any life insurance policy to the extent that they exceed the amount expended by the beneficiary for purposes of the insured individual's last illness and burial or $1,500, whichever is less;

''(E) gifts (cash or otherwise), support and alimony payments, and inheritances; and''.

1986—Subsec. (a)(1)(C). Pub. L. 99–514, § 1883(d)(2), substituted ''section 32'' for ''section 43''.

Pub. L. 99–514, § 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(2). Pub. L. 99–514, § 1883(d)(3)(A), (B), substituted '', and'' for a semicolon in subpar. (A) and a semicolon for a period in subpar. (B).

Subsec. (b)(11) to (13). Pub. L. 99–514, § 1883(d)(3)(C), provided for technical corrections relating to concluding punctuation in pars. (11) to (13).

1984—Subsec. (b)(2)(B). Pub. L. 98–369, § 2663(g)(3), realigned margin of subpar. (B).

Pub. L. 98–369, § 2616(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973, if such payments are made by the State of which the individual receiving such payments is a resident, and if eligibility of any individual for such payments is

not based on need and is based solely on attainment of age 65 and duration of residence in such State by such individual;''.

Subsec. (b)(9). Pub. L. 98–369, § 2663(g)(4), inserted a comma after ''child''.

Subsec. (b)(13). Pub. L. 98–369, § 2639(b), temporarily amended par. (13) generally, redesignating former cls. (i) and (ii) as (A) and (B), respectively. See Effective and Termination Dates of 1984 Amendment note below.

1983—Subsec. (b)(13). Pub. L. 98–21 temporarily substituted ''any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which'' for ''any assistance received to assist in meeting the costs of home energy, including both heating and cooling, which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) (A) is based on need for such assistance, and (B)''. See Effective and Termination Dates of 1983 Amendments note below.

Pub. L. 97–424 temporarily added par. (13). See Effective and Termination Dates of 1983 Amendments note below.

1981—Subsec. (b)(3). Pub. L. 97–35 substituted ''month'' for ''calendar quarter'' wherever appearing, ''such month'' for ''such quarter'' wherever appearing, ''$20'' for ''$60'', and ''$10'' for ''$30''.

1980—Subsec. (a)(1). Pub. L. 96–473, § 6(g)(1), (2), in subpar. (B) substituted ''(a)(11)'' for ''(a)(10)'', and redesignated subpar. (C), as added by Pub. L. 96–265, § 202(a)(2), as (D).

Pub. L. 96–265, § 202(a)(2), added subpar. (C) which was subsequently redesignated (D) by Pub. L. 96–473, § 6(g)(2).

Pub. L. 96–222, § 101(a)(2)(B)(ii), added subpar. (C).

Subsec. (b)(2)(B). Pub. L. 96–473, § 6(g)(3), substituted ''monthly'' for ''Monthly'' and substituted a semicolon for the period at end of subpar. (B).

Subsec. (b)(4)(B). Pub. L. 96–265, § 302(b), inserted provisions relating to extraordinary work expenses due to severe disability.

1977—Subsec. (b)(12). Pub. L. 95–171 added par. (12).

1976—Subsec. (a)(2)(A)(iii). Pub. L. 94–455 substituted ''seventeenth month'' for ''fifth month''.

Pub. L. 94–331, § 4(a)(2), added cl. (iii).

Subsec. (b)(2). Pub. L. 94–202 designated existing provisions as par. (A) and added par. (B).

Subsec. (b)(6). Pub. L. 94–566 substituted ''assistance, furnished to or on behalf of such individual (and spouse), which'' for ''assistance described in section 1382e(a) of this title which''.

Subsec. (b)(11). Pub. L. 94–331, § 2(a)(3), added par. (11).

1974—Subsec. (a)(2)(A). Pub. L. 93–484 designated existing provisions as cl. (i) and added cl. (ii).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 430(c), Mar. 2, 2004, 118 Stat. 538, provided that: ''The amendments made by this section [amending this section] shall be effective with respect to benefits payable for months in calendar quarters that begin more than 90 days after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title IV, § 432(b), Mar. 2, 2004, 118 Stat. 539, provided that: ''The amendment made by this section [amending this section] shall be effective with respect to benefits payable for months that begin on or after 1 year after the date of enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title IV, § 435(c), Mar. 2, 2004, 118 Stat. 540, provided that: ''The amendments made by this section [amending this section and section 1382b of this title] shall apply to benefits payable for months that begin more than 90 days after the date of enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–169, title II, § 205(d), Dec. 14, 1999, 113 Stat. 1834, provided that: ''The amendments made by this section [amending this section and sections 1382b and 1396a of this title] shall take effect on January 1, 2000, and shall apply to trusts established on or after such date.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–306, § 7(c), Oct. 28, 1998, 112 Stat. 2928, provided that: ''The amendments made by this section [amending this section and section 1382b of this title] shall apply to gifts made on or after the date that is 2 years before the date of the enactment of this Act [Oct. 28, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 213(d) of Pub. L. 104–193 provided that: ''The amendments made by this section [amending this section and sections 1382b and 1383 of this title] shall apply to payments made after the date of the enactment of this Act [Aug. 22, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 264(a) of Pub. L. 103–432 effective as if included in the provision of Pub. L. 101–508 to which the amendment relates at the time such provision became law, see section 264(h) of Pub. L. 103–432, set out as a note under section 1320b–9 of this title.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13733(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 1382c of this title] shall take effect on the 1st day of the 2nd month that begins after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5031(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1382b and 1383 of this title] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

Section 5033(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to benefits payable for calendar months beginning after the date of the enactment of this Act [Nov. 5, 1990].''

Section 5034(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits for months beginning on or after the first day of the 13th calendar month following the month in which this Act is enacted [November 1990].''

Section 5035(c) of Pub. L. 101–508, as amended by Pub. L. 103–66, title XIII, § 13732, Aug. 10, 1993, 107 Stat. 662, provided that: ''The amendments made by this section [amending this section and section 1382b of this title] shall apply with respect to benefits for calendar months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

Section 11115(e) of Pub. L. 101–508 provided that: ''The amendments made by subsections (a) though [sic] (c) [amending this section and sections 602 and 1382b of this title] shall apply to determinations of income or resources made for any period after December 31, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8011(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the 1st day of the 3rd calendar month beginning after the date of the enactment of this Act [Dec. 19, 1989].''

Section 8013(c) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1382b of this title] shall take effect on the 1st day of the 4th month beginning after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8103(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 1382b of this title] shall be effective as though they had been included in section 162 of the Housing and Community Development Act of 1987 [Pub. L. 100–242, see Effective Date of 1988 Amendment note set out under 12 U.S.C. 1701q] at the time of its enactment [Feb. 5, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9120(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2616(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Section 2639(d) of Pub. L. 98–369, as amended by Pub. L. 100–203, title IX, §9101, Dec. 22, 1987, 101 Stat. 1330–299, provided that: ''The amendments made by this section [amending this section and section 602 of this title and repealing section 545(a)–(c) of Pub. L. 97–424 and section 404 of Pub. L. 98–21, which had previously amended this section and section 602 of this title and had provided effective dates for those prior amendments] shall be effective with respect to months which begin after September 30, 1984.''

[Section 9101 of Pub. L. 100–203 provided that the amendment made by that section to section 2639(d) of Pub. L. 98–369, set out as a note above, is effective as of Oct. 1, 1987.]

Amendment by section 2663(g)(3), (4) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

Section 545(c) of Pub. L. 97–424 and section 404(c) of Pub. L. 98–21, which had provided for the effective and termination dates covering the enactment and subsequent amendment of subsec. (b)(13) of this section by section 545(a) of Pub. L. 97–424 and section 404(a) of Pub. L. 98–21, were repealed by section 2639(c), (d) of Pub. L. 98–369, effective with respect to months beginning after Sept. 30, 1984.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective with respect to months after first calendar quarter which ends more than five months after August 1981, with provision for transitional payments, see section 2341(c) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment and Transitional Provisions note under section 1382 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 202(b) of Pub. L. 96–265 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to remuneration received in months after September 1980.''

Amendment by section 302(b) of Pub. L. 96–265 applicable with respect to expenses incurred on or after first day of sixth month which begins after June 9, 1980, see section 302(c) of Pub. L. 96–265, set out as a note under section 423 of this title.

Section 101(b)(1)(B) of Pub. L. 96–222 provided that: ''The amendments made by subparagraphs (A) and (B) of subsection (a)(2) [amending this section and section 602 of this title] shall apply to payments for months beginning after December 31, 1979.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 8(b) of Pub. L. 95–171 provided that: ''The amendment made by this section [amending this section] shall be effective July 1, 1976, with respect to catastrophes which occurred on or after June 1, 1976, and before December 31, 1976. With respect to catastrophes which occurred on or after December 31, 1976, the amendment made by this section shall be effective the first day of the calendar quarter following enactment of this Act [Nov. 12, 1977].''

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94–566 effective Oct. 1, 1976, see section 505(e) of Pub. L. 94–566, set out as a note under section 1382 of this title.

Section 2(b) of Pub. L. 94–331, as amended by Pub. L. 95–171, §6(a), Nov. 12, 1977, 91 Stat. 1355, effective the first day of calendar quarter following Nov. 12, 1977, provided that: ''The amendments made by this Act [amending this section and sections 815, 3402, 6153, and 6154 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 815 and 3402 of Title 26] shall be applicable only in the case of catastrophes which occur on or after June 1, 1976.''

Section 4(b) of Pub. L. 94–331, as amended by Pub. L. 95–171, §7(a), Nov. 12, 1977, 91 Stat. 1355, effective the first day of calendar quarter following Nov. 12, 1977, provided that: ''The amendments made by this Act [see section 2(b) of Pub. L. 94–331, set out above] shall be applicable only in the case of catastrophes which occur on or after June 1, 1976.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 4 of Pub. L. 93–484 provided that the amendment made by that section is effective Jan. 1, 1974.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1382b. Resources

(a) Exclusions from resources

In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

(1) the home (including the land that appertains thereto);

(2)(A) household goods, personal effects, and an automobile, to the extent that their total value does not exceed such amount as the Commissioner of Social Security determines to be reasonable; and

(B) the value of any burial space or agreement (including any interest accumulated thereon) representing the purchase of a burial space (subject to such limits as to size or

value as the Commissioner of Social Security may by regulation prescribe) held for the purpose of providing a place for the burial of the individual, his spouse, or any other member of his immediate family;

(3) other property which is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion, as determined in accordance with and subject to limitations prescribed by the Commissioner of Social Security, except that the Commissioner of Social Security shall not establish a limitation on property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is used in a trade or business or by such individual as an employee;

(4) such resources of an individual who is blind or disabled and who has a plan for achieving self-support approved by the Commissioner of Social Security, as may be necessary for the fulfillment of such plan;

(5) in the case of Natives of Alaska, shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 1606(h) and section 1607(c) of title 43;

(6) assistance referred to in section 1382a(b)(11) of this title for the 9-month period beginning on the date such funds are received (or for such longer period as the Commissioner of Social Security shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and, for purposes of this paragraph, the term ''assistance'' includes interest thereon which is excluded from income under section 1382a(b)(12) of this title;

(7) any amount received from the United States which is attributable to underpayments of benefits due for one or more prior months, under this subchapter or subchapter II of this chapter, to such individual (or spouse) or to any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this subchapter; but the application of this paragraph in the case of any such individual (and eligible spouse if any), with respect to any amount so received from the United States, shall be limited to the first 9 months following the month in which such amount is received, and written notice of this limitation shall be given to the recipient concurrently with the payment of such amount;

(8) the value of assistance referred to in section 1382a(b)(14) of this title, paid with respect to the dwelling unit occupied by such individual (or such individual and spouse);

(9) for the 9-month period beginning after the month in which received, any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime, to the extent that such individual (or such spouse) demonstrates that such amount was paid as compensation for expenses incurred or losses suffered as a result of a crime;

(10) for the 9-month period beginning after the month in which received, relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636];

(11) for the 9-month period beginning after the month in which received—

(A) notwithstanding section 203 of the Economic Growth and Tax Relief Reconciliation Act of 2001, any refund of Federal income taxes made to such individual (or such spouse) under section 24 of the Internal Revenue Code of 1986 (relating to child tax credit) by reason of subsection (d) thereof; and

(B) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);

(12) any account, including accrued interest or other earnings thereon, established and maintained in accordance with section 1383(a)(2)(F) of this title;

(13) any gift to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition, from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code—

(A) in the case of an in-kind gift, if the gift is not converted to cash; or

(B) in the case of a cash gift, only to the extent that the total amount excluded from the resources of the individual pursuant to this paragraph in the calendar year in which the gift is made does not exceed $2,000;

(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this subchapter as restitution for benefits under this subchapter, subchapter II of this chapter, or subchapter VIII of this chapter that a representative payee of such individual (or spouse) or such other person under section 405(j), 1007, or 1383(a)(2) of this title has misused; and

(15) for the 9-month period beginning after the month in which received, any grant, scholarship, fellowship, or gift (or portion of a gift) used to pay the cost of tuition and fees at any educational (including technical or vocational education) institution.

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is $1,500 or less, no part of the value of any such policy shall be taken into account.

(b) Disposition of resources; grounds for exemption from disposition requirements

(1) The Commissioner of Social Security shall prescribe the period or periods of time within

which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for benefits. Any portion of the individual's benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.

(2) Notwithstanding the provisions of paragraph (1), the Commissioner of Social Security shall not require the disposition of any real property for so long as it cannot be sold because (A) it is jointly owned (and its sale would cause undue hardship, due to loss of housing, for the other owner or owners), (B) its sale is barred by a legal impediment, or (C) as determined under regulations issued by the Commissioner of Social Security, the owner's reasonable efforts to sell it have been unsuccessful.

(c) Disposal of resources for less than fair market value

(1)(A)(i) If an individual or the spouse of an individual disposes of resources for less than fair market value on or after the look-back date described in clause (ii)(I), the individual is ineligible for benefits under this subchapter for months during the period beginning on the date described in clause (iii) and equal to the number of months calculated as provided in clause (iv).

(ii)(I) The look-back date described in this subclause is a date that is 36 months before the date described in subclause (II).

(II) The date described in this subclause is the date on which the individual applies for benefits under this subchapter or, if later, the date on which the individual (or the spouse of the individual) disposes of resources for less than fair market value.

(iii) The date described in this clause is the first day of the first month in or after which resources were disposed of for less than fair market value and which does not occur in any other period of ineligibility under this paragraph.

(iv) The number of months calculated under this clause shall be equal to—

(I) the total, cumulative uncompensated value of all resources so disposed of by the individual (or the spouse of the individual) on or after the look-back date described in clause (ii)(I); divided by

(II) the amount of the maximum monthly benefit payable under section 1382(b) of this title, plus the amount (if any) of the maximum State supplementary payment corresponding to the State's payment level applicable to the individual's living arrangement and eligibility category that would otherwise be payable to the individual by the Commissioner pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66, for the month in which occurs the date described in clause (ii)(II),

rounded, in the case of any fraction, to the nearest whole number, but shall not in any case exceed 36 months.

(B)(i) Notwithstanding subparagraph (A), this subsection shall not apply to a transfer of a resource to a trust if the portion of the trust attributable to the resource is considered a resource available to the individual pursuant to subsection (e)(3) of this section (or would be so considered but for the application of subsection (e)(4) of this section).

(ii) In the case of a trust established by an individual or an individual's spouse (within the meaning of subsection (e) of this section), if from such portion of the trust, if any, that is considered a resource available to the individual pursuant to subsection (e)(3) of this section (or would be so considered but for the application of subsection (e)(4) of this section) or the residue of the portion on the termination of the trust—

(I) there is made a payment other than to or for the benefit of the individual; or

(II) no payment could under any circumstance be made to the individual,

then, for purposes of this subsection, the payment described in clause (I) or the foreclosure of payment described in clause (II) shall be considered a transfer of resources by the individual or the individual's spouse as of the date of the payment or foreclosure, as the case may be.

(C) An individual shall not be ineligible for benefits under this subchapter by reason of the application of this paragraph to a disposal of resources by the individual or the spouse of the individual, to the extent that—

(i) the resources are a home and title to the home was transferred to—

(I) the spouse of the transferor;

(II) a child of the transferor who has not attained 21 years of age, or is blind or disabled;

(III) a sibling of the transferor who has an equity interest in such home and who was residing in the transferor's home for a period of at least 1 year immediately before the date the transferor becomes an institutionalized individual; or

(IV) a son or daughter of the transferor (other than a child described in subclause (II)) who was residing in the transferor's home for a period of at least 2 years immediately before the date the transferor becomes an institutionalized individual, and who provided care to the transferor which permitted the transferor to reside at home rather than in such an institution or facility;

(ii) the resources—

(I) were transferred to the transferor's spouse or to another for the sole benefit of the transferor's spouse;

(II) were transferred from the transferor's spouse to another for the sole benefit of the transferor's spouse;

(III) were transferred to, or to a trust (including a trust described in section 1396p(d)(4) of this title) established solely for the benefit of, the transferor's child who is blind or disabled; or

(IV) were transferred to a trust (including a trust described in section 1396p(d)(4) of this title) established solely for the benefit of an individual who has not attained 65 years of age and who is disabled;

(iii) a satisfactory showing is made to the Commissioner of Social Security (in accord-

ance with regulations promulgated by the Commissioner) that—

(I) the individual who disposed of the resources intended to dispose of the resources either at fair market value, or for other valuable consideration;

(II) the resources were transferred exclusively for a purpose other than to qualify for benefits under this subchapter; or

(III) all resources transferred for less than fair market value have been returned to the transferor; or

(iv) the Commissioner determines, under procedures established by the Commissioner, that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Commissioner.

(D) For purposes of this subsection, in the case of a resource held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the resource (or the affected portion of such resource) shall be considered to be disposed of by the individual when any action is taken, either by the individual or by any other person, that reduces or eliminates the individual's ownership or control of such resource.

(E) In the case of a transfer by the spouse of an individual that results in a period of ineligibility for the individual under this subsection, the Commissioner shall apportion the period (or any portion of the period) among the individual and the individual's spouse if the spouse becomes eligible for benefits under this subchapter.

(F) For purposes of this paragraph—

(i) the term ''benefits under this subchapter'' includes payments of the type described in section 1382e(a) of this title and of the type described in section 212(b) of Public Law 93–66;

(ii) the term ''institutionalized individual'' has the meaning given such term in section 1396p(e)(3) of this title; and

(iii) the term ''trust'' has the meaning given such term in subsection (e)(6)(A) of this section.

(2)(A) At the time an individual (and the individual's eligible spouse, if any) applies for benefits under this subchapter, and at the time the eligibility of an individual (and such spouse, if any) for such benefits is redetermined, the Commissioner of Social Security shall—

(i) inform such individual of the provisions of paragraph (1) and section 1396p(c) of this title providing for a period of ineligibility for benefits under this subchapter and subchapter XIX of this chapter, respectively, for individuals who make certain dispositions of resources for less than fair market value, and inform such individual that information obtained pursuant to clause (ii) will be made available to the State agency administering a State plan under subchapter XIX of this chapter (as provided in subparagraph (B)); and

(ii) obtain from such individual information which may be used in determining whether or not a period of ineligibility for such benefits would be required by reason of paragraph (1) or section 1396p(c) of this title.

(B) The Commissioner of Social Security shall make the information obtained under subparagraph (A)(ii) available, on request, to any State agency administering a State plan approved under subchapter XIX of this chapter.

(d) Funds set aside for burial expenses

(1) In determining the resources of an individual, there shall be excluded an amount, not in excess of $1,500 each with respect to such individual and his spouse (if any), that is separately identifiable and has been set aside to meet the burial and related expenses of such individual or spouse.

(2) The amount of $1,500, referred to in paragraph (1), with respect to an individual shall be reduced by an amount equal to (A) the total face value of all insurance policies on his life which are owned by him or his spouse and the cash surrender value of which has been excluded in determining the resources of such individual or of such individual and his spouse, and (B) the total of any amounts in an irrevocable trust (or other irrevocable arrangement) available to meet the burial and related expenses of such individual or his spouse.

(3) If the Commissioner of Social Security finds that any part of the amount excluded under paragraph (1) was used for purposes other than those for which it was set aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1382(a) of this title, the Commissioner shall reduce any future benefits payable to the eligible individual (or to such individual and his spouse) by an amount equal to such part.

(4) The Commissioner of Social Security may provide by regulations that whenever an amount set aside to meet burial and related expenses is excluded under paragraph (1) in determining the resources of an individual, any interest earned or accrued on such amount (and left to accumulate), and any appreciation in the value of prepaid burial arrangements for which such amount was set aside, shall also be excluded (to such extent and subject to such conditions or limitations as such regulations may prescribe) in determining the resources (and the income) of such individual.

(e) Trusts

(1) In determining the resources of an individual, paragraph (3) shall apply to a trust (other than a trust described in paragraph (5)) established by the individual.

(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if any assets of the individual (or of the individual's spouse) are transferred to the trust other than by will.

(B) In the case of an irrevocable trust to which are transferred the assets of an individual (or of the individual's spouse) and the assets of any other person, this subsection shall apply to the portion of the trust attributable to the assets of the individual (or of the individual's spouse).

(C) This subsection shall apply to a trust without regard to—

(i) the purposes for which the trust is established;

(ii) whether the trustees have or exercise any discretion under the trust;

(iii) any restrictions on when or whether distributions may be made from the trust; or

(iv) any restrictions on the use of distributions from the trust.

(3)(A) In the case of a revocable trust established by an individual, the corpus of the trust shall be considered a resource available to the individual.

(B) In the case of an irrevocable trust established by an individual, if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual (or of the individual's spouse), the portion of the corpus from which payment to or for the benefit of the individual (or of the individual's spouse) could be made shall be considered a resource available to the individual.

(4) The Commissioner of Social Security may waive the application of this subsection with respect to an individual if the Commissioner determines that such application would work an undue hardship (as determined on the basis of criteria established by the Commissioner) on the individual.

(5) This subsection shall not apply to a trust described in subparagraph (A) or (C) of section 1396p(d)(4) of this title.

(6) For purposes of this subsection—

(A) the term ''trust'' includes any legal instrument or device that is similar to a trust;

(B) the term ''corpus'' means, with respect to a trust, all property and other interests held by the trust, including accumulated earnings and any other addition to the trust after its establishment (except that such term does not include any such earnings or addition in the month in which the earnings or addition is credited or otherwise transferred to the trust); and

(C) the term ''asset'' includes any income or resource of the individual (or of the individual's spouse), including—

(i) any income excluded by section 1382a(b) of this title;

(ii) any resource otherwise excluded by this section; and

(iii) any other payment or property to which the individual (or of the individual's spouse) is entitled but does not receive or have access to because of action by—

(I) the individual or spouse;

(II) a person or entity (including a court) with legal authority to act in place of, or on behalf of, the individual or spouse; or

(III) a person or entity (including a court) acting at the direction of, or on the request of, the individual or spouse.

(Aug. 14, 1935, ch. 531, title XVI, § 1613, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1470; amended Pub. L. 94–569, § 5, Oct. 20, 1976, 90 Stat. 2700; Pub. L. 95–171, § 9(a), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 96–611, § 5(a), Dec. 28, 1980, 94 Stat. 3567; Pub. L. 97–248, title I, § 185(a), (b), Sept. 3, 1982, 96 Stat. 406; Pub. L. 98–369, div. B, title VI, §§ 2614, 2663(g)(5), July 18, 1984, 98 Stat. 1132, 1168; Pub. L. 100–203, title IX, §§ 9103(a), 9104(a), 9105(a), 9114(a), Dec. 22, 1987, 101 Stat. 1330–301, 1330–304; Pub. L. 100–360, title III, § 303(c)(1), July 1, 1988, 102 Stat. 762; Pub. L. 100–647, title VIII, § 8103(b), Nov. 10, 1988, 102 Stat. 3795; Pub. L. 101–239, title VIII, §§ 8013(b), 8014(a), Dec. 19, 1989, 103 Stat. 2465; Pub. L. 101–508, title V, §§ 5031(b), 5035(b), title XI, § 11115(b)(2), Nov. 5, 1990, 104 Stat. 1388–224, 1388–225, 1388–414; Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(h)(2), Aug. 15, 1994, 108 Stat. 1478, 1544; Pub. L. 104–193, title II, § 213(b), Aug. 22, 1996, 110 Stat. 2195; Pub. L. 105–306, § 7(b), Oct. 28, 1998, 112 Stat. 2928; Pub. L. 106–169, title II, §§ 205(a), 206(a), Dec. 14, 1999, 113 Stat. 1833, 1834; Pub. L. 108–203, title I, § 101(c)(2), title IV, §§ 431(a), (b), 435(b), Mar. 2, 2004, 118 Stat. 496, 539, 540.)

REFERENCES IN TEXT

The Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, referred to in subsec. (a)(10), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended. Title II of the Act enacted subchapter II (§ 4621 et seq.) of chapter 61 of this title, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealed sections 1465 and 3074 of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 23. For complete classification of title II to the Code, see Tables.

The Internal Revenue Code of 1986, referred to in subsec. (a)(11), (13), is classified generally to Title 26, Internal Revenue Code.

Section 203 of the Economic Growth and Tax Relief Reconciliation Act of 2001, referred to in subsec. (a)(11)(A), is section 203 of Pub. L. 107–16, which is set out as a note under section 24 of Title 26, Internal Revenue Code.

Section 212(b) of Public Law 93–66, referred to in subsec. (c)(1)(A)(iv)(II), (F)(i), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

2004—Subsec. (a)(7). Pub. L. 108–203, § 431(a), substituted ''limited to the first 9 months'' for ''limited to the first 6 months'' and struck out ''(or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989)'' after ''month in which such amount is received''.

Subsec. (a)(11). Pub. L. 108–203, § 431(b), amended par. (11) generally. Prior to amendment, par. (11) read as follows: ''for the month of receipt and the following month, any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);''.

Subsec. (a)(14). Pub. L. 108–203, § 101(c)(2), added par. (14).

Subsec. (a)(15). Pub. L. 108–203, § 435(b), added par. (15).

1999—Subsec. (c). Pub. L. 106–169, § 206(a)(1), struck out ''Notification of medicaid policy restricting eligibility of institutionalized individuals for benefits based on'' before ''Disposal'' in subsec. heading.

Subsec. (c)(1). Pub. L. 106–169, § 206(a)(5), added par. (1). Former par. (1) redesignated (2)(A).

Subsec. (c)(2)(A). Pub. L. 106–169, § 206(a)(4), redesignated par. (1) as (2)(A).

Subsec. (c)(2)(A)(i). Pub. L. 106–169, § 206(a)(2)(A), (C), redesignated par. (1)(A) as (2)(A)(i), inserted ''paragraph (1) and'' after ''provisions of'', and substituted ''bene-

fits under this subchapter and subchapter XIX of this chapter, respectively,'' for ''benefits under subchapter XIX of this chapter'', ''clause (ii)'' for ''subparagraph (B)'', and ''subparagraph (B)'' for ''paragraph (2)''.

Subsec. (c)(2)(A)(ii). Pub. L. 106–169, §206(a)(2)(B), (C), redesignated par. (1)(B) as (2)(A)(ii), struck out ''by the State agency'' after ''which may be used'', and substituted ''paragraph (1) or section 1396p(c) of this title.'' for ''section 1396p(c) of this title if such individual (or such spouse, if any) enters a medical institution or nursing facility.''

Subsec. (c)(2)(B). Pub. L. 106–169, §206(a)(3), redesignated par. (2) as (2)(B) and substituted ''subparagraph (A)(ii)'' for ''paragraph (1)(B)''.

Subsec. (e). Pub. L. 106–169, §205(a), added subsec. (e).

1998—Subsec. (a)(13). Pub. L. 105–306 added par. (13).

1996—Subsec. (a)(12). Pub. L. 104–193 added par. (12).

1994—Subsec. (a)(2) to (4), (6). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(9) to (11). Pub. L. 103–296, §321(h)(2), struck out ''and'' at end of par. (9), substituted ''; and'' for period at end of par. (10) relating to relocation assistance, and redesignated par. (10) relating to refunds of Federal income taxes as (11).

Subsecs. (b) to (d). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner shall'' for ''he shall'' in subsec. (d)(3).

1990—Subsec. (a)(9). Pub. L. 101–508, §5031(b), added par. (9).

Subsec. (a)(10). Pub. L. 101–508, §11115(b)(2), added par. (10) relating to refunds of Federal income taxes.

Pub. L. 101–508, §5053(b), added par. (10) relating to relocation assistance.

1989—Subsec. (a)(2)(B). Pub. L. 101–239, §8013(b), inserted ''or agreement (including any interest accumulated thereon) representing the purchase of a burial space''.

Subsec. (a)(3). Pub. L. 101–239, §8014(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''other property which, as determined in accordance with and subject to limitations prescribed by the Secretary, is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion;''.

1988—Subsec. (a)(8). Pub. L. 100–647 added par. (8).

Subsec. (c). Pub. L. 100–360 substituted ''Notification of medicaid policy restricting eligibility of institutionalized individuals for benefits based on disposal of resources for less than fair market value'' for ''Disposal of resources for less than fair market value'' in heading and amended text generally, substituting pars. (1) and (2) for former pars. (1) to (4).

1987—Subsec. (a)(7). Pub. L. 100–203, §9114(a), inserted ''(or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989)'' after ''such amount is received''.

Subsec. (b). Pub. L. 100–203, §9103, designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1). Pub. L. 100–203, §9104(a)(1), inserted '', and subject to paragraph (4) of this subsection'' after ''subsection (a) of this section''.

Subsec. (c)(4). Pub. L. 100–203, §9104(a)(2), added par. (4).

Subsec. (d)(1). Pub. L. 100–203, §9105(a)(1), struck out ''if the inclusion of any portion of such amount or amounts would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1382(a) of this title'' after ''individual or spouse''.

Subsec. (d)(3). Pub. L. 100–203, §9105(a)(2), substituted ''aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1382(a) of this title'' for ''aside''.

1984—Subsec. (a)(7). Pub. L. 98–369, §2614, added par. (7).

Subsec. (c). Pub. L. 98–369, §2663(g)(5), amended heading.

1982—Subsec. (a)(2). Pub. L. 97–248, §185(a), redesignated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d). Pub. L. 97–248, §185(b), added subsec. (d).

1980—Subsec. (c). Pub. L. 96–611 added subsec. (c).

1977—Subsec. (a)(6). Pub. L. 95–171 added par. (6).

1976—Subsec. (a)(1). Pub. L. 94–569 struck out '', to the extent that its value does not exceed such amount as the Secretary determines to be reasonable'' after ''the home (including the land that appertains thereto)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(c)(2) of Pub. L. 108–203 applicable to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after Jan. 1, 1995, see section 101(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Pub. L. 108–203, title IV, §431(c), Mar. 2, 2004, 118 Stat. 539, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Mar. 2, 2004], and shall apply to amounts described in paragraph (7) of section 1613(a) of the Social Security Act [subsec. (a)(7) of this section] and refunds of Federal income taxes described in paragraph (11) of such section, that are received by an eligible individual or eligible spouse on or after such date.''

Amendment by section 435(b) of Pub. L. 108–203 applicable to benefits payable for months that begin more than 90 days after Mar. 2, 2004, see section 435(c) of Pub. L. 108–203, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 205(a) of Pub. L. 106–169 effective Jan. 1, 2000, and applicable to trusts established on or after such date, see section 205(d) of Pub. L. 106–169, set out as a note under section 1382a of this title.

Pub. L. 106–169, title II, §206(c), Dec. 14, 1999, 113 Stat. 1837, provided that: ''The amendments made by this section [amending this section and section 1396a of this title] shall be effective with respect to disposals made on or after the date of the enactment of this Act [Dec. 14, 1999].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–306 applicable to gifts made on or after the date that is 2 years before Oct. 28, 1998, see section 7(c) of Pub. L. 105–306, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 213(b) of Pub. L. 104–193 applicable to payments made after Aug. 22, 1996, see section 213(d) of Pub. L. 104–193, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 321(h)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5031(b) of Pub. L. 101–508 applicable with respect to benefits for months beginning on or after the first day of the 6th calendar month following November 1990, see section 5031(d) of Pub. L.

101–508, set out as a note under section 1382a of this title.

Amendment by section 5035(b) of Pub. L. 101–508 applicable with respect to benefits for calendar months beginning on or after the first day of the 6th calendar month following November 1990, see section 5035(c) of Pub. L. 101–508, as amended, set out as a note under section 1382a of this title.

Amendment by section 11115(b)(2) of Pub. L. 101–508 applicable to determinations of income or resources made for any period after Dec. 31, 1990, see section 11115(e) of Pub. L. 101–508, set out as a note under section 1382a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 8013(b) of Pub. L. 101–239 effective on 1st day of 4th month beginning after Dec. 19, 1989, see section 8013(c) of Pub. L. 101–239, set out as a note under section 1382a of this title.

Section 8014(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 5th calendar month beginning after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 effective as though included in section 162 of Housing and Community Development Act of 1987, Pub. L. 100–242, at the time of its enactment, on Feb. 5, 1988, see section 8103(c) of Pub. L. 100–647, set out as a note under section 1382a of this title.

Amendment by Pub. L. 100–360 applicable to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, see section 303(g)(3) of Pub. L. 100–360, set out as a note under section 1396r–5 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9103(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

Section 9104(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

Section 9105(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

Section 9114(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective January 1, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2614 of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 657 of this title.

Amendment by section 2663(g)(5) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 185(c) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall take effect on the first day of the second month after the month in which this Act is enacted [September 1982].''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(c) of Pub. L. 96–611 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to applications for benefits under title XVI of the Social Security Act [this subchapter] filed on or after the first day of the first month which begins at least 60 days after the date of enactment of this Act [Dec. 28, 1980].''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 9(b) of Pub. L. 95–171 provided that: ''The amendment made by this section [amending this section] shall be effective July 1, 1976, with respect to catastrophes which occurred on or after June 1, 1976, and before December 31, 1976. With respect to catastrophes which occurred on or after December 1, 1976, the amendment made by this section shall be effective the first day of the calendar quarter following enactment of this Act [Nov. 12, 1977].''

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1382c. Definitions

(a)(1) For purposes of this subchapter, the term ''aged, blind, or disabled individual'' means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 1182(d)(5) of title 8), or

(ii) is a child who is a citizen of the United States, and who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.

(2) An individual shall be considered to be blind for purposes of this subchapter if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this subchapter if he is blind as defined under a State plan approved under subchapter X or XVI of this chapter as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this subchapter if he is unable to

engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

(B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), ''work which exists in the national economy'' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(C)(i) An individual under the age of 18 shall be considered disabled for the purposes of this subchapter if that individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(ii) Notwithstanding clause (i), no individual under the age of 18 who engages in substantial gainful activity (determined in accordance with regulations prescribed pursuant to subparagraph (E)) may be considered to be disabled.

(D) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(E) The Commissioner of Social Security shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe. Notwithstanding the provisions of subparagraph (B), an individual whose services or earnings meet such criteria shall be found not to be disabled. The Commissioner of Social Security shall make determinations under this subchapter with respect to substantial gainful activity, without regard to the legality of the activity.

(F) Notwithstanding the provisions of subparagraphs (A) through (E), an individual shall also be considered to be disabled for purposes of this subchapter if he is permanently and totally disabled as defined under a State plan approved under subchapter XIV or XVI of this chapter as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973 (and for at least one month prior to July 1973), so long as he is continuously disabled as so defined.

(G) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Commissioner of Social Security shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Commissioner of Social Security does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.

(H)(i) In making determinations with respect to disability under this subchapter, the provisions of sections 421(h), 421(k), and 423(d)(5) of this title shall apply in the same manner as they apply to determinations of disability under subchapter II of this chapter.

(ii)(I) Not less frequently than once every 3 years, the Commissioner shall review in accordance with paragraph (4) the continued eligibility for benefits under this subchapter of each individual who has not attained 18 years of age and is eligible for such benefits by reason of an impairment (or combination of impairments) which is likely to improve (or, at the option of the Commissioner, which is unlikely to improve).

(II) A representative payee of a recipient whose case is reviewed under this clause shall present, at the time of review, evidence demonstrating that the recipient is, and has been, receiving treatment, to the extent considered medically necessary and available, of the condition which was the basis for providing benefits under this subchapter.

(III) If the representative payee refuses to comply without good cause with the requirements of subclause (II), the Commissioner of Social Security shall, if the Commissioner determines it is in the best interest of the individual, promptly suspend payment of benefits to the representative payee, and provide for payment of benefits to an alternative representative payee of the individual or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(IV) Subclause (II) shall not apply to the representative payee of any individual with respect to whom the Commissioner determines such application would be inappropriate or unnecessary. In making such determination, the Commissioner shall take into consideration the nature

of the individual's impairment (or combination of impairments). Section 1383(c) of this title shall not apply to a finding by the Commissioner that the requirements of subclause (II) should not apply to an individual's representative payee.

(iii) If an individual is eligible for benefits under this subchapter by reason of disability for the month preceding the month in which the individual attains the age of 18 years, the Commissioner shall redetermine such eligibility—

(I) by applying the criteria used in determining initial eligibility for individuals who are age 18 or older; and

(II) either during the 1-year period beginning on the individual's 18th birthday or, in lieu of a continuing disability review, whenever the Commissioner determines that an individual's case is subject to a redetermination under this clause.

With respect to any redetermination under this clause, paragraph (4) shall not apply.

(iv)(I) Except as provided in subclause (VI), not later than 12 months after the birth of an individual, the Commissioner shall review in accordance with paragraph (4) the continuing eligibility for benefits under this subchapter by reason of disability of such individual whose low birth weight is a contributing factor material to the Commissioner's determination that the individual is disabled.

(II) A review under subclause (I) shall be considered a substitute for a review otherwise required under any other provision of this subparagraph during that 12-month period.

(III) A representative payee of a recipient whose case is reviewed under this clause shall present, at the time of review, evidence demonstrating that the recipient is, and has been, receiving treatment, to the extent considered medically necessary and available, of the condition which was the basis for providing benefits under this subchapter.

(IV) If the representative payee refuses to comply without good cause with the requirements of subclause (III), the Commissioner of Social Security shall, if the Commissioner determines it is in the best interest of the individual, promptly suspend payment of benefits to the representative payee, and provide for payment of benefits to an alternative representative payee of the individual or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(V) Subclause (III) shall not apply to the representative payee of any individual with respect to whom the Commissioner determines such application would be inappropriate or unnecessary. In making such determination, the Commissioner shall take into consideration the nature of the individual's impairment (or combination of impairments). Section 1383(c) of this title shall not apply to a finding by the Commissioner that the requirements of subclause (III) should not apply to an individual's representative payee.

(VI) Subclause (I) shall not apply in the case of an individual described in that subclause who, at the time of the individual's initial disability determination, the Commissioner determines has an impairment that is not expected to improve within 12 months after the birth of that individual, and who the Commissioner schedules for a continuing disability review at a date that is after the individual attains 1 year of age.

(I) In making any determination under this subchapter with respect to the disability of an individual who has not attained the age of 18 years and to whom section 421(h) of this title does not apply, the Commissioner of Social Security shall make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the disability of the individual (as determined by the Commissioner of Social Security) evaluates the case of such individual.

(J) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this subchapter if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.

(4) A recipient of benefits based on disability under this subchapter may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(A) in the case of an individual who is age 18 or older—

(i) substantial evidence which demonstrates that—

(I) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(II) the individual is now able to engage in substantial gainful activity; or

(ii) substantial evidence (except in the case of an individual eligible to receive benefits under section 1382h of this title) which—

(I) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

(aa) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(bb) the individual is now able to engage in substantial gainful activity, or

(II) demonstrates that—

(aa) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(bb) the individual is now able to engage in substantial gainful activity; or

(iii) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be

under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

(B) in the case of an individual who is under the age of 18—

(i) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments, and that such impairment or combination of impairments no longer results in marked and severe functional limitations; or

(ii) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments, is not as disabling as it was considered to be at the time of the most recent prior decision that the individual was under a disability or continued to be under a disability, and such impairment or combination of impairments does not result in marked and severe functional limitations; or

(C) in the case of any individual, substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability under this subchapter is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected (i) to restore his or her ability to engage in substantial gainful activity, or (ii) in the case of an individual under the age of 18, to eliminate or improve the individual's impairment or combination of impairments so that it no longer results in marked and severe functional limitations. Any determination under this paragraph shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Commissioner of Social Security. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.

(b) For purposes of this subchapter, the term ''eligible spouse'' means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual, and who, in a month, is living with such aged, blind, or disabled individual on the first day of the month or, in any case in which either spouse files an application for benefits, on the first day of the month following the date the application is filed, or, in any case in which either spouse requests restoration of eligibility under this subchapter during the month, at the time the request is filed. If two aged, blind, or disabled individuals are husband and wife as described in the preceding sentence, only one of them may be an ''eligible individual'' within the meaning of section 1382(a) of this title.

(c) For purposes of this subchapter, the term ''child'' means an individual who is neither married nor (as determined by the Commissioner of Social Security) the head of a household, and who is (1) under the age of eighteen, or (2) under the age of twenty-two and (as determined by the Commissioner of Social Security) a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment.

(d) In determining whether two individuals are husband and wife for purposes of this subchapter, appropriate State law shall be applied; except that—

(1) if a man and woman have been determined to be husband and wife under section 416(h)(1) of this title for purposes of subchapter II of this chapter they shall be considered (from and after the date of such determination or the date of their application for benefits under this subchapter, whichever is later) to be husband and wife for purposes of this subchapter, or

(2) if a man and woman are found to be holding themselves out to the community in which they reside as husband and wife, they shall be so considered for purposes of this subchapter notwithstanding any other provision of this section.

(e) For purposes of this subchapter, the term ''United States'', when used in a geographical sense, means the 50 States and the District of Columbia.

(f)(1) For purposes of determining eligibility for and the amount of benefits for any individual who is married and whose spouse is living with him in the same household but is not an eligible spouse, such individual's income and resources shall be deemed to include any income and resources of such spouse, whether or not available to such individual, except to the extent determined by the Commissioner of Social Security to be inequitable under the circumstances.

(2)(A) For purposes of determining eligibility for and the amount of benefits for any individual who is a child under age 18, such individual's income and resources shall be deemed to include any income and resources of a parent of such individual (or the spouse of such a parent) who is living in the same household as such individual, whether or not available to such individual, except to the extent determined by the Commissioner of Social Security to be inequitable under the circumstances.

(B) Subparagraph (A) shall not apply in the case of any child who has not attained the age of 18 years who—

(i) is disabled;

(ii) received benefits under this subchapter, pursuant to section 1382(e)(1)(B) of this title, while in an institution described in section 1382(e)(1)(B) of this title;

(iii) is eligible for medical assistance under a State home care plan approved by the Secretary under the provisions of section 1396n(c) of this title relating to waivers, or authorized under section 1396a(e)(3) of this title; and

(iv) but for this subparagraph, would not be eligible for benefits under this subchapter.

(3) For purposes of determining eligibility for and the amount of benefits for any individual who is an alien, such individual's income and resources shall be deemed to include the income and resources of his sponsor and such sponsor's spouse (if such alien has a sponsor) as provided in section 1382j of this title. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

(4) For purposes of paragraphs (1) and (2), a spouse or parent (or spouse of such a parent) who is absent from the household in which the individual lives due solely to a duty assignment as a member of the Armed Forces on active duty shall, in the absence of evidence to the contrary, be deemed to be living in the same household as the individual.

(Aug. 14, 1935, ch. 531, title XVI, § 1614, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1471; amended Pub. L. 93–233, § 9, Dec. 31, 1973, 87 Stat. 957; Pub. L. 96–265, title II, § 203(a), title III, §§ 302(a)(2), 303(c)(1), title V, § 504(a), June 9, 1980, 94 Stat. 449, 450, 453, 471; Pub. L. 98–369, div. B, title VI, § 2663(g)(6), (7), July 18, 1984, 98 Stat. 1168, 1169; Pub. L. 98–460, §§ 2(c), 3(a)(2), 4(b), 8(b), 10(b), Oct. 9, 1984, 98 Stat. 1796, 1799, 1800, 1804, 1805; Pub. L. 99–643, § 4(d)(2), (3)(A), Nov. 10, 1986, 100 Stat. 3577; Pub. L. 101–239, title VIII, §§ 8009(b), 8010(a), 8012(a), Dec. 19, 1989, 103 Stat. 2463, 2464; Pub. L. 101–508, title V, § 5036(a), Nov. 5, 1990, 104 Stat. 1388–225; Pub. L. 101–649, title I, § 162(e)(5), Nov. 29, 1990, 104 Stat. 5011; Pub. L. 103–66, title XIII, §§ 13733(a), 13734(a), Aug. 10, 1993, 107 Stat. 662; Pub. L. 103–296, title I, § 107(a)(4), title II, § 201(b)(4)(A), Aug. 15, 1994, 108 Stat. 1478, 1505; Pub. L. 103–432, title II, § 221(a), Oct. 31, 1994, 108 Stat. 4462; Pub. L. 104–121, title I, § 105(b)(1), Mar. 29, 1996, 110 Stat. 853; Pub. L. 104–193, title II, §§ 204(c)(1), 211(a), (c), 212(a), (b)(1), (c), Aug. 22, 1996, 110 Stat. 2188, 2189, 2192, 2193; Pub. L. 105–33, title V, § 5522(a), (d), Aug. 5, 1997, 111 Stat. 622, 623; Pub. L. 108–203, title IV, § 434(a), Mar. 2, 2004, 118 Stat. 540.)

AMENDMENTS

2004—Subsec. (a)(1)(B)(ii). Pub. L. 108–203 inserted ''and'' after ''citizen of the United States,'' and struck out '', and who, for the month before the parent reported for such assignment, received a benefit under this subchapter'' before period at end.

1997—Subsec. (a)(3)(H)(iii). Pub. L. 105–33, § 5522(a)(1), added subcls. (I) and (II) and concluding provisions and struck out former subcls. (I) and (II) and concluding provisions which read as follows:

''(I) during the 1-year period beginning on the individual's 18th birthday; and

''(II) by applying the criteria used in determining the initial eligibility for applicants who are age 18 or older.

With respect to a redetermination under this clause, paragraph (4) shall not apply and such redetermination shall be considered a substitute for a review or redetermination otherwise required under any other provision of this subparagraph during that 1-year period.''

Subsec. (a)(3)(H)(iv). Pub. L. 105–33, § 5522(a)(2), substituted ''Except as provided in subclause (VI), not'' for ''Not'' in subcl. (I) and added subcl. (VI).

Subsec. (a)(4). Pub. L. 105–33, § 5522(d), made technical correction to directory language of Pub. L. 104–193, § 211(c). See 1996 Amendment notes below.

1996—Subsec. (a)(3)(A). Pub. L. 104–193, § 211(a)(1), (2), substituted ''Except as provided in subparagraph (C), an individual'' for ''An individual'' and struck out ''(or, in the case of an individual under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity)'' before period at end.

Subsec. (a)(3)(C). Pub. L. 104–193, § 211(a)(4), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (a)(3)(D), (E). Pub. L. 104–193, § 211(a)(3), redesignated pars. (C) and (D) as (D) and (E), respectively. Former par. (E) redesignated (F).

Subsec. (a)(3)(F). Pub. L. 104–193, § 211(a)(3), (5), redesignated subpar. (E) as (F) and substituted ''subparagraphs (A) through (E)'' for ''subparagraphs (A) through (D)''. Former subpar. (F) redesignated (G).

Subsec. (a)(3)(G). Pub. L. 104–193, § 211(a)(3), redesignated subpar. (F) as (G). Former subpar. (G) redesignated (H).

Subsec. (a)(3)(H). Pub. L. 104–193, § 212(a), (b)(1), (c), designated existing provisions as cl. (i) and added cls. (ii) to (iv).

Pub. L. 104–193, § 211(a)(3), redesignated subpar. (G) as (H). Former subpar. (H) redesignated (I).

Subsec. (a)(3)(I). Pub. L. 104–193, § 211(a)(3), redesignated subpar. (H) as (I). Former subpar. (I) redesignated (J).

Pub. L. 104–121 added subpar. (I).

Subsec. (a)(3)(J). Pub. L. 104–193, § 211(a)(3), redesignated subpar. (I) as (J).

Subsec. (a)(4). Pub. L. 104–193, § 211(c)(7), as amended by Pub. L. 105–33, § 5522(d), in first sentence of concluding provisions inserted ''(i)'' before ''to restore'' and '', or'' before ''(ii)'' and added cl. (ii).

Pub. L. 104–193, § 211(c)(1)–(6), as amended by Pub. L. 105–33, § 5522(d), inserted ''(A) in the case of an individual who is age 18 or older—'' after ''if such finding is supported by—'', redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, in cl. (i) redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, in cl. (ii) redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, in subcls. (I) and (II) of cl. (ii) redesignated former subcls. (I) and (II) as items (aa) and (bb), respectively, added subpar. (B), redesignated former subpar. (D) as (C), and inserted ''in the case of any individual,'' before ''substantial evidence'' in that subpar.

Subsec. (b). Pub. L. 104–193, § 204(c)(1), substituted '', on the first day of the month following the date the application is filed, or, in any case in which either spouse requests'' for ''or requests'' and struck out ''application or'' before ''request is filed.''

1994—Subsec. (a)(3)(A). Pub. L. 103–432, § 221(a)(1), substituted ''an individual'' for ''a child'' before ''under the age of 18''.

Subsec. (a)(3)(D). Pub. L. 103–296, § 201(b)(4)(A), inserted at end ''The Secretary shall make determinations under this subchapter with respect to substantial gainful activity, without regard to the legality of the activity.''

Pub. L. 103–296, § 107(a)(4), in subpar. (D) as amended by Pub. L. 103–296, § 201(b)(4)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(3)(F). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (a)(3)(H). Pub. L. 103–432, § 221(a), substituted ''an individual'' for ''a child'', ''the individual'' for ''the child'', and ''such individual'' for ''such child''.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsecs. (a)(4), (c), (f)(1), (2)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1993—Subsec. (a)(1)(B)(ii). Pub. L. 103–66, § 13734(a), substituted ''and who, for the month before the parent reported for such assignment, received a benefit under this subchapter'' for ''the District of Columbia, Puerto Rico, and the territories and possessions of the United States, and who, during the month before the parent reported for such assignment, was receiving benefits under this subchapter''.

Subsec. (f)(4). Pub. L. 103–66, § 13733(a), added par. (4).

1990—Subsec. (a)(1)(B)(i). Pub. L. 101–649 struck out ''section 1153(a)(7) or'' after ''the provisions of''.

Subsec. (a)(3)(H). Pub. L. 101–508 added subpar. (H).

1989—Subsec. (a)(1)(B). Pub. L. 101–239, § 8009(b), designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, substituted '', or'' for period at end, and added cl. (ii).

Subsec. (b). Pub. L. 101–239, § 8012(a), amended first sentence generally. Prior to amendment, first sentence read as follows: ''For purposes of this subchapter, the term 'eligible spouse' means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who has not been living apart from such other aged, blind, or disabled individual for more than six months.''

Subsec. (f)(2). Pub. L. 101–239, § 8010(a), designated existing provisions as subpar. (A) and added subpar. (B).

1986—Subsec. (a)(3)(D). Pub. L. 99–643, § 4(d)(2)(A), struck out '', except for purposes of subparagraph (F) or paragraph (4),'' after ''such criteria''.

Subsec. (a)(3)(F) to (H). Pub. L. 99–643, § 4(d)(2)(B), redesignated subpars. (G) and (H) as (F) and (G), respectively, and struck out former subpar. (F) which read as follows: ''For purposes of this subchapter, an individual whose trial work period has ended by application of paragraph (4)(D)(i) shall, subject to section 1382(e)(4) of this title, nonetheless be considered (except for purposes of section 1383(a)(5) of this title) to be disabled through the end of the month preceding the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the earlier of (i) the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (ii) the first month, after the period of 15 consecutive months following the end of such period of trial work, in which such individual engages in or is determined to be able to engage in substantial gainful activity.''

Subsec. (a)(4), (5). Pub. L. 99–643, § 4(d)(3)(A), redesignated par. (5) as (4) and struck out former par. (4) which read as follows:

''(A) For purposes of this subchapter, any services rendered during a period of trial work (as defined in subparagraph (B)) by an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection) shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. As used in this paragraph, the term 'services' means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.

''(B) The term 'period of trial work', with respect to an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection), means a period of months beginning and ending as provided in subparagraphs (C) and (D).

''(C) A period of trial work for any individual shall begin with the month in which he becomes eligible for benefits under this subchapter on the basis of his disability; but no such period may begin for an individual who is eligible for benefits under this subchapter on the basis of a disability if he has had a previous period of trial work while eligible for benefits on the basis of the same disability.

''(D) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

''(i) the ninth month, beginning on or after the first day of such period, in which the individual renders services (whether or not such nine months are consecutive); or

''(ii) the month in which his disability (as determined under paragraph (3) of this subsection) ceases (as determined after the application of subparagraph (A) of this paragraph).''

1984—Subsec. (a)(3)(E). Pub. L. 98–369, § 2663(g)(6), realigned margin of subpar. (E).

Subsec. (a)(3)(G). Pub. L. 98–460, § 4(b), added subpar. (G).

Subsec. (a)(3)(H). Pub. L. 98–460, § 8(b), added subpar. (H).

Pub. L. 98–460, § 3(a)(2), inserted reference to section 423(d)(5) of this title.

Pub. L. 98–460, § 10(b), inserted reference to section 421(k) of this title.

Subsec. (a)(5). Pub. L. 98–460, § 2(c), added par. (5).

Subsec. (d)(1). Pub. L. 98–369, § 2663(g)(7), substituted ''man and woman'' for ''man and women''.

1980—Subsec. (a)(3)(D). Pub. L. 96–265, § 302(a)(2), inserted provisions relating to extraordinary work expenses due to severe disability.

Pub. L. 96–265, § 303(c)(1)(B), substituted reference to subparagraph (F) or paragraph (4) for reference to paragraph (4).

Subsec. (a)(3)(F). Pub. L. 96–265, § 303(c)(1)(A), added subpar. (F).

Subsec. (f)(2). Pub. L. 96–265, § 203(a), substituted ''under age 18'' for ''under age 21''.

Subsec. (f)(3). Pub. L. 96–265, § 504(a), added par. (3).

1973—Subsec. (a)(3)(A). Pub. L. 93–233, § 9(1), struck out last sentence defining a disabled individual as one permanently and totally disabled as defined under a State plan approved under subchapter XIV or XVI of this chapter as in effect for 1972 and receiving aid under such plan (on the basis of disability for December 1973, so long as the individual is continuously disabled as so defined, which provisions were covered in subsec. (a)(3)(E) of this section.

Subsec. (a)(3)(E). Pub. L. 93–233, § 9(2), incorporated provisions of last sentence of subpar. (A) in provisions designated as subpar. (E) and inserted introductory text ''Notwithstanding the provisions of subparagraphs (A) through (D)'' and parenthetical phrase ''(and for at least one month prior to July 1973)'' after ''December 1973''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 434(b), Mar. 2, 2004, 118 Stat. 540, provided that: ''The amendments made by this section [amending this section] shall be effective with respect to benefits payable for months beginning after the date of enactment of this Act [Mar. 2, 2004], but only on the basis of an application filed after such date.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title II of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5528(a) of Pub. L. 105–33, set out as a note under section 903 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 204(c)(1) of Pub. L. 104–193 applicable to applications for benefits under this subchapter filed on or after Aug. 22, 1996, without regard to whether regulations have been issued to implement amendments by section 204 of Pub. L. 104–193, see section 204(d) of Pub. L. 104–193, set out as a note under section 1382 of this title.

Section 211(d) of Pub. L. 104–193, as amended by Pub. L. 105–33, title V, § 5101, Aug. 5, 1997, 111 Stat. 595, provided that:

''(1) EFFECTIVE DATES.—

''(A) SUBSECTIONS (a) AND (b).—

''(i) IN GENERAL.—The provisions of, and amendments made by, subsections (a) [amending this sec-

tion] and (b) [110 Stat. 2189] of this section shall apply to any individual who applies for, or whose claim is finally adjudicated with respect to, benefits under title XVI of the Social Security Act [this subchapter] on or after the date of the enactment of this Act [Aug. 22, 1996], without regard to whether regulations have been issued to implement such provisions and amendments.

''(ii) DETERMINATION OF FINAL ADJUDICATION.—For purposes of clause (i), no individual's claim with respect to such benefits may be considered to be finally adjudicated before such date of enactment if, on or after such date, there is pending a request for either administrative or judicial review with respect to such claim that has been denied in whole, or there is pending, with respect to such claim, readjudication by the Commissioner of Social Security pursuant to relief in a class action or implementation by the Commissioner of a court remand order.

''(B) SUBSECTION (c).—The amendments made by subsection (c) of this section [amending this section] shall apply with respect to benefits under title XVI of the Social Security Act for months beginning on or after the date of the enactment of this Act, without regard to whether regulations have been issued to implement such amendments.

''(2) APPLICATION TO CURRENT RECIPIENTS.—

''(A) ELIGIBILITY REDETERMINATIONS.—During the period beginning on the date of the enactment of this Act [Aug. 22, 1996] and ending on the date which is 18 months after such date of enactment, the Commissioner of Social Security shall redetermine the eligibility of any individual under age 18 who is eligible for supplemental security income benefits by reason of disability under title XVI of the Social Security Act [this subchapter] as of the date of the enactment of this Act and whose eligibility for such benefits may terminate by reason of the provisions of, or amendments made by, subsections (a) and (b) of this section. Any redetermination required by the preceding sentence that is not performed before the end of the period described in the preceding sentence shall be performed as soon as is practicable thereafter. With respect to any redetermination under this subparagraph—

''(i) section 1614(a)(4) of the Social Security Act (42 U.S.C. 1382c(a)(4)) shall not apply;

''(ii) the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits under title XVI of such Act;

''(iii) the Commissioner shall give such redetermination priority over all continuing eligibility reviews and other reviews under such title; and

''(iv) such redetermination shall be counted as a review or redetermination otherwise required to be made under section 208 of the Social Security Independence and Program Improvements Act of 1994 [Pub. L. 103–296, set out as a note under section 1382 of this title] or any other provision of title XVI of the Social Security Act.

''(B) GRANDFATHER PROVISION.—The provisions of, and amendments made by, subsections (a) [amending this section] and (b) [110 Stat. 2189] of this section, and the redetermination under subparagraph (A), shall only apply with respect to the benefits of an individual described in subparagraph (A) for months beginning on or after the later of July 1, 1997, or the date of the redetermination with respect to such individual.

''(C) NOTICE.—Not later than January 1, 1997, the Commissioner of Social Security shall notify an individual described in subparagraph (A) of the provisions of this paragraph. Before commencing a redetermination under the 2nd sentence of subparagraph (A), in any case in which the individual involved has not already been notified of the provisions of this paragraph, the Commissioner of Social Security shall notify the individual involved of the provisions of this paragraph.

''(3) REPORT.—The Commissioner of Social Security shall report to the Congress regarding the progress made in implementing the provisions of, and amendments made by, this section [amending this section, sections 665e and 901 of Title 2, The Congress, and provisions set out as a note under section 401 of this title] on child disability evaluations not later than 180 days after the date of the enactment of this Act [Aug. 22, 1996].

''(4) REGULATIONS.—Notwithstanding any other provision of law, the Commissioner of Social Security shall submit for review to the committees of jurisdiction in the Congress any final regulation pertaining to the eligibility of individuals under age 18 for benefits under title XVI of the Social Security Act [this subchapter] at least 45 days before the effective date of such regulation. The submission under this paragraph shall include supporting documentation providing a cost analysis, workload impact, and projections as to how the regulation will effect the future number of recipients under such title.

''(5) CAP ADJUSTMENT FOR SSI ADMINISTRATIVE WORK REQUIRED BY WELFARE REFORM.—

''(A) AUTHORIZATION.—For the additional costs of continuing disability reviews and redeterminations under title XVI of the Social Security Act, there is hereby authorized to be appropriated to the Social Security Administration, in addition to amounts authorized under section 201(g)(1)(A) of the Social Security Act [section 401(g)(1)(A) of this title], $150,000,000 in fiscal year 1997 and $100,000,000 in fiscal year 1998.

''(B) CAP ADJUSTMENT.—[Amended section 901 of Title 2, The Congress.]

''(C) ADJUSTMENTS.—[Amended section 665e of Title 2.]

''(D) CONFORMING AMENDMENT.—[Amended section 103(d)(1) of Pub. L. 104–121, set out as a note under section 401 of this title.]

''(6) BENEFITS UNDER TITLE XVI.—For purposes of this subsection, the term 'benefits under title XVI of the Social Security Act' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [section 1382e(a) of this title], and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66 [set out as a note under section 1382 of this title].''

Section 212(d) of Pub. L. 104–193 provided that: ''The amendments made by this section [amending this section and repealing provisions set out as a note under section 1383 of this title] shall apply to benefits for months beginning on or after the date of the enactment of this Act [Aug. 22, 1996], without regard to whether regulations have been issued to implement such amendments.''

Amendment by Pub. L. 104–121 applicable to individual who applies for, or whose claim is finally adjudicated with respect to, supplemental security income benefits under this subchapter based on disability on or after Mar. 29, 1996, with special rule in case of individual who has applied for, and whose claim has been finally adjudicated with respect to, such benefits before Mar. 29, 1996, see section 105(b)(5) of Pub. L. 104–121, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 221(b) of Pub. L. 103–432 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to determinations made on or after the date of the enactment of this Act [Oct. 31, 1994].''

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(b)(4)(B) of Pub. L. 103–296 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13733(a) of Pub. L. 103–66 effective on first day of second month that begins after Aug.

10, 1993, see section 13733(c) of Pub. L. 103–66, set out as a note under section 1382a of this title.

Section 13734(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 3rd month that begins after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Section 5036(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to determinations made 6 or more months after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 8009(b) of Pub. L. 101–239 applicable with respect to benefits for months after March 1990, see section 8009(c) of Pub. L. 101–239, set out as a note under section 1382 of this title.

Amendment by section 8010(a) of Pub. L. 101–239 effective on 1st day of 6th calendar month beginning after Dec. 19, 1989, see section 8010(c) of Pub. L. 101–239, set out as a note under section 1382 of this title.

Section 8012(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 2(c) of Pub. L. 98–460 applicable to determinations made by the Secretary on or after Oct. 9, 1984, with certain enumerated exceptions and qualifications, see section 2(d) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 3(a)(2) of Pub. L. 98–460 applicable to determinations made prior to Jan. 1, 1987, see section 3(a)(3) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 4(b) of Pub. L. 98–460 applicable with respect to determinations made on or after the first day of the first month beginning after 30 days after Oct. 9, 1984, see section 4(c) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 8(b) of Pub. L. 98–460 applicable to determinations made after 60 days after Oct. 9, 1984, see section 8(c) of Pub. L. 98–460, set out as a note under section 421 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 203(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1980; except that the amendment made by such subsection shall not apply, in the case of any child who, in September 1980, was 18 or over and received a supplemental security income benefit for such month, during any period for which such benefit would be greater without the application of such amendment.''

Amendment by section 302(a)(2) of Pub. L. 96–265 applicable with respect to expenses incurred on or after the first day of the sixth month which begins after June 9, 1980, see section 302(c) of Pub. L. 96–265, set out as a note under section 423 of this title.

Amendment by section 303(c)(1) of Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, and applicable with respect to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

Amendment by section 504(a) of Pub. L. 96–265 effective with respect to individuals applying for supplemental security income benefits under this subchapter for the first time after Sept. 30, 1980, see section 504(c) of Pub. L. 96–265, set out as an Effective Date note under section 1382j of this title.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

REGULATIONS

For provisions requiring Secretary of Health and Human Services to prescribe regulations necessary to implement amendment to this section [adding subsec. (a)(5)] by section 2(c) of Pub. L. 98–460 not later than 180 days after Oct. 9, 1984, see section 2(g) of Pub. L. 98–460, set out as a note under section 423 of this title.

RETROACTIVE BENEFITS

For provisions relating to entitlement to retroactive benefits under section 2 of Pub. L. 98–460, which added subsec. (a)(5) of this section, see section 2(f) of Pub. L. 98–460, set out as a note under section 423 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1382d. Rehabilitation services for blind and disabled individuals

(a) Referral by Commissioner of eligible individuals to appropriate State agency

In the case of any blind or disabled individual who—

(1) has not attained age 16; and

(2) with respect to whom benefits are paid under this subchapter,

the Commissioner of Social Security shall make provision for referral of such individual to the appropriate State agency administering the State program under subchapter V of this chapter.

(b) Repealed. Pub. L. 97–35, title XXI, § 2193(c)(8)(B), Aug. 13, 1981, 95 Stat. 828

(c) Repealed. Pub. L. 106–170, title I, § 101(b)(2)(B), Dec. 17, 1999, 113 Stat. 1874

(d) Reimbursement by Commissioner to State agency of costs of providing services to referred individuals

The Commissioner of Social Security is authorized to reimburse the State agency administering or supervising the administration of a State plan for vocational rehabilitation services

approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.] for the costs incurred under such plan in the provision of rehabilitation services to individuals who are referred for such services pursuant to subsection (a) of this section, (1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (2) in cases where such individuals receive benefits as a result of section 1383(a)(6) of this title (except that no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by the Commissioner in the same manner as under section 422(d)(1) of this title.

(e) Reimbursement for vocational rehabilitation services furnished during certain months of nonpayment of insurance benefits

The Commissioner of Social Security may reimburse the State agency described in subsection (d) of this section for the costs described therein incurred in the provision of rehabilitation services—

(1) for any month for which an individual received—

(A) benefits under section 1382 or 1382h(a) of this title;

(B) assistance under section 1382h(b) of this title; or

(C) a federally administered State supplementary payment under section 1382e of this title or section 212(b) of Public Law 93–66; and

(2) for any month before the 13th consecutive month for which an individual, for a reason other than cessation of disability or blindness, was ineligible for—

(A) benefits under section 1382 or 1382h(a) of this title;

(B) assistance under section 1382h(b) of this title; or

(C) a federally administered State supplementary payment under section 1382e of this title or section 212(b) of Public Law 93–66.

(Aug. 14, 1935, ch. 531, title XVI, § 1615, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1474; amended Pub. L. 94–566, title V, § 501(a), Oct. 20, 1976, 90 Stat. 2683; Pub. L. 96–272, title III, § 304, June 17, 1980, 94 Stat. 529; Pub. L. 97–35, title XXI, § 2193(a)(4), (c)(8), title XXIII, § 2344, Aug. 13, 1981, 95 Stat. 827, 828, 867; Pub. L. 98–369, div. B, title VI, § 2663(g)(8), July 18, 1984, 98 Stat. 1169; Pub. L. 98–460, § 11(b), Oct. 9, 1984, 98 Stat. 1806; Pub. L. 101–508, title V, § 5037(a), Nov. 5, 1990, 104 Stat. 1388–226; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 105–33, title V, § 5523, Aug. 5, 1997, 111 Stat. 623; Pub. L. 106–170, title I, § 101(b)(2)(A), (B), Dec. 17, 1999, 113 Stat. 1874.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (d), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended. Title I of the Rehabilitation Act of 1973 is classified generally to subchapter I (§ 720 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Section 212(b) of Public Law 93–66, referred to in subsec. (e)(1)(C), (2)(C), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–170, § 101(b)(2)(A), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''In the case of any blind or disabled individual who—

''(1) has not attained age 65, and

''(2) is receiving benefits (or with respect to whom benefits are paid) under this subchapter,

the Commissioner of Social Security shall make provision for referral of such individual to the appropriate State agency administering the State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973, or, in the case of any such individual who has not attained age 16, to the State agency administering the State program under subchapter V of this chapter, and (except for individuals who have not attained age 16 and except in such other cases as the Commissioner may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the services made available to him under such plan.''

Subsec. (c). Pub. L. 106–170, § 101(b)(2)(B), struck out subsec. (c) which read as follows: ''Every individual age 16 or over with respect to whom the Commissioner of Social Security is required to make provision for referral under subsection (a) of this section shall accept such services as are made available to him under the State plan for vocational and rehabilitation services approved under title I of the Rehabilitation Act of 1973; and no such individual shall be an eligible individual or eligible spouse for purposes of this subchapter if he refuses without good cause to accept services for which he is referred under subsection (a) of this section.''

1997—Subsec. (d). Pub. L. 105–33, § 5523(2), substituted ''the Commissioner'' for ''him'' after ''determined by'' in last sentence.

Pub. L. 105–33, § 5523(1), which directed insertion of comma after ''subsection (a)(1)'' in first sentence, was executed by making the insertion after ''subsection (a) of this section'' to reflect the probable intent of Congress.

1994—Subsec. (a). Pub. L. 103–296 in closing provisions substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner may'' for ''he may''.

Subsec. (c). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d). Pub. L. 103–296 substituted ''The Commissioner of Social Security is'' for ''The Secretary is''.

Subsec. (e). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions.

1990—Subsec. (e). Pub. L. 101–508 added subsec. (e).

1984—Subsecs. (a), (c). Pub. L. 98–369, § 2663(g)(8), substituted ''title I of the Rehabilitation Act of 1973'' for ''the Vocational Rehabilitation Act''.

Subsec. (d). Pub. L. 98–460, § 11(b), designated existing provisions of first sentence as cl. (1), added cls. (2) and (3), and inserted requirement that the determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity and the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 422(d)(1) of this title.

Pub. L. 98–369, § 2663(g)(8), substituted ''title I of the Rehabilitation Act of 1973'' for ''the Vocational Rehabilitation Act''.

1981—Subsec. (a). Pub. L. 97–35, § 2193(c)(8)(A), substituted ''State agency administering the State program under subchapter V of this chapter (except for individuals who have not attained age 16 and except in such other cases'' for ''appropriate State agency administering the State plan under subsection (b) of this section, and (except in such cases''.

Subsec. (b). Pub. L. 97–35, § 2193(c)(8)(B), struck out subsec. (b) which provided criteria for approval of State plans.

Subsec. (d). Pub. L. 97–35, § 2344, substituted ''is authorized to reimburse'' for ''is authorized to pay to'', ''for the costs incurred'' for ''the costs incurred'', and ''individuals who are referred for such services pursuant to subsection (a) of this section if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months'' for ''individuals referred for such services pursuant to subsection (a) of this section'' and inserted provision that determination of the amount to be reimbursed be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 422(d)(1) of this title.

Subsec. (e). Pub. L. 97–35, § 2193(c)(8)(B), struck out subsec. (e) which provided for payment by the Secretary to a State agency charged with administering a State plan under subsec. (b), of the costs incurred each fiscal year from Sept. 30, 1976, to Oct. 1, 1982, in carrying out such State plan.

Subsec. (e)(1). Pub. L. 97–35, § 2193(a)(4)(A), inserted ''and subject to section 2194(b)(3) of the Maternal and Child Health Services Block Grant Act''.

Subsec. (e)(3). Pub. L. 97–35, § 2193(a)(4)(B), substituted ''$24,070,000'' for ''$30,000,000''.

1980—Subsec. (e). Pub. L. 96–272 corrected the error under which subsec. (e) had been added as (c) by Pub. L. 94–566 and, in subsec. (e)(1) as so designated, substituted ''October 1, 1982'' for ''October 1, 1979''.

1976—Subsec. (a). Pub. L. 94–566 inserted ''or, in the case of any such individual who has not attained age 16, to the appropriate State agency administering the State plan under subsection (b) of this section,'' after ''Vocational Rehabilitation Act,'' and substituted ''need for and utilization of the services'' for ''need for and utilization of the rehabilitation services''.

Subsec. (b). Pub. L. 94–566 added subsec. (b). Former subsec. (b) was split up and its parts were redistributed into subsecs. (c) and (d), respectively, and amended.

Subsec. (c). Pub. L. 94–566 combined into subsec. (c) the existing provisions of subsec. (c) covering the refusal by referred individuals to accept services and added thereto a part of former subsec. (b) covering the required acceptance of vocational and rehabilitation services by the referred individual, and in that provision substituted ''Every individual age 16 or over'' for ''Every individual''.

Subsec. (d). Pub. L. 94–566 redesignated as subsec. (d) the part of former subsec. (b) covering the payment by the Secretary to the State agency administering a State plan and in the provisions so redesignated substituted ''administration of a State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act'' for ''administration of such State plan''.

Subsec. (e). Pub. L. 94–566 added subsec. (e). See 1980 Amendment note above.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title II of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5528(a) of Pub. L. 105–33, set out as a note under section 903 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5037(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990] and shall apply to claims for reimbursement pending on or after such date.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after November 1984, see section 11(c) of Pub. L. 98–460, set out as a note under section 422 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1981 AMENDMENT

Section 2193(a)(4)(B) of Pub. L. 97–35 provided that the amendment made by that section is effective for fiscal year 1982.

For effective date, savings, and transitional provisions relating to amendments by section 2193(a)(4)(A) and (c)(8) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Section 2344 of Pub. L. 97–35 provided that the amendment made by that section is effective Oct. 1, 1981.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

PUBLICATION OF CRITERIA

Section 501(b) of Pub. L. 94–566 directed Secretary, within 120 days after Oct. 20, 1976, to publish criteria to be employed to determine disability (as defined in subsec. (a)(3) of this section) in the case of persons who have not attained the age of 18.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593,

set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1382e. Supplementary assistance by State or subdivision to needy individuals

(a) Exclusion of cash payments in determination of income of individuals for purposes of eligibility for benefits; agreement by Commissioner and State for Commissioner to make supplementary payments on behalf of State or subdivision

Any cash payments which are made by a State (or political subdivision thereof) on a regular basis to individuals who are receiving benefits under this subchapter or who would but for their income be eligible to receive benefits under this subchapter, as assistance based on need in supplementation of such benefits (as determined by the Commissioner of Social Security), shall be excluded under section 1382a(b)(6) of this title in determining the income of such individuals for purposes of this subchapter and the Commissioner of Social Security and such State may enter into an agreement which satisfies subsection (b) of this section under which the Commissioner of Social Security will, on behalf of such State (or subdivision) make such supplementary payments to all such individuals.

(b) Agreement between Commissioner and State; contents

Any agreement between the Commissioner of Social Security and a State entered into under subsection (a) of this section shall provide—

(1) that such payments will be made (subject to subsection (c) of this section) to all individuals residing in such State (or subdivision) who are receiving benefits under this subchapter, and

(2) such other rules with respect to eligibility for or amount of the supplementary payments, and such procedural or other general administrative provisions, as the Commissioner of Social Security finds necessary (subject to subsection (c) of this section) to achieve efficient and effective administration of both the program which the Commissioner conducts under this subchapter and the optional State supplementation.

At the option of the State (but subject to paragraph (2) of this subsection), the agreement between the Commissioner of Social Security and such State entered into under subsection (a) of this section shall be modified to provide that the Commissioner of Social Security will make supplementary payments, on and after an effective date to be specified in the agreement as so modified, to individuals receiving benefits determined under section 1382(e)(1)(B) of this title.

(c) Residence requirement by State or subdivision for supplementary payments; disregarding amounts of certain income by State or subdivision in determining eligibility for supplementary payments

(1) Any State (or political subdivision) making supplementary payments described in subsection (a) of this section may at its option impose as a condition of eligibility for such payments, and include in the State's agreement with the Commissioner of Social Security under such subsection, a residence requirement which excludes individuals who have resided in the State (or political subdivision) for less than a minimum period prior to application for such payments.

(2) Any State (or political subdivision), in determining the eligibility of any individual for supplementary payments described in subsection (a) of this section, may disregard amounts of earned and unearned income in addition to other amounts which it is required or permitted to disregard under this section in determining such eligibility, and shall include a provision specifying the amount of any such income that will be disregarded, if any.

(3) Any State (or political subdivision) making supplementary payments described in subsection (a) of this section shall have the option of making such payments to individuals who receive benefits under this subchapter under the provisions of section 1382h of this title, or who would be eligible to receive such benefits but for their income.

(d) Payment to Commissioner by State of amount equal to expenditures by Commissioner as supplementary payments; time and manner of payment by State; fees for Federal administration of State supplementary payments

(1) Any State which has entered into an agreement with the Commissioner of Social Security under this section which provides that the Commissioner of Social Security will, on behalf of the State (or political subdivision), make the supplementary payments to individuals who are receiving benefits under this subchapter (or who would but for their income be eligible to receive such benefits), shall, in accordance with paragraph (5), pay to the Commissioner of Social Security an amount equal to the expenditures made by the Commissioner of Social Security as such supplementary payments, plus an administration fee assessed in accordance with paragraph (2) and any additional services fee charged in accordance with paragraph (3).

(2)(A) The Commissioner of Social Security shall assess each State an administration fee in an amount equal to—

(i) the number of supplementary payments made by the Commissioner of Social Security on behalf of the State under this section for any month in a fiscal year; multiplied by

(ii) the applicable rate for the fiscal year.

(B) As used in subparagraph (A), the term ''applicable rate'' means—

(i) for fiscal year 1994, $1.67;
(ii) for fiscal year 1995, $3.33;
(iii) for fiscal year 1996, $5.00;
(iv) for fiscal year 1997, $5.00;
(v) for fiscal year 1998, $6.20;
(vi) for fiscal year 1999, $7.60;
(vii) for fiscal year 2000, $7.80;
(viii) for fiscal year 2001, $8.10;
(ix) for fiscal year 2002, $8.50; and
(x) for fiscal year 2003 and each succeeding fiscal year—

(I) the applicable rate in the preceding fiscal year, increased by the percentage, if any,

by which the Consumer Price Index for the month of June of the calendar year of the increase exceeds the Consumer Price Index for the month of June of the calendar year preceding the calendar year of the increase, and rounded to the nearest whole cent; or

(II) such different rate as the Commissioner determines is appropriate for the State.

(C) Upon making a determination under subparagraph (B)(x)(II), the Commissioner of Social Security shall promulgate the determination in regulations, which may take into account the complexity of administering the State's supplementary payment program.

(D) All fees assessed pursuant to this paragraph shall be transferred to the Commissioner of Social Security at the same time that amounts for such supplementary payments are required to be so transferred.

(3)(A) The Commissioner of Social Security may charge a State an additional services fee if, at the request of the State, the Commissioner of Social Security provides additional services beyond the level customarily provided, in the administration of State supplementary payments pursuant to this section.

(B) The additional services fee shall be in an amount that the Commissioner of Social Security determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services referred to in subparagraph (A).

(4)(A) The first $5 of each administration fee assessed pursuant to paragraph (2), upon collection, shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

(B) That portion of each administration fee in excess of $5, and 100 percent of each additional services fee charged pursuant to paragraph (3), upon collection for fiscal year 1998 and each subsequent fiscal year, shall be credited to a special fund established in the Treasury of the United States for State supplementary payment fees. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out this subchapter and related laws.

(5)(A)(i) Any State which has entered into an agreement with the Commissioner of Social Security under this section shall remit the payments and fees required under this subsection with respect to monthly benefits paid to individuals under this subchapter no later than—

(I) the business day preceding the date that the Commissioner pays such monthly benefits; or

(II) with respect to such monthly benefits paid for the month that is the last month of the State's fiscal year, the fifth business day following such date.

(ii) The Commissioner may charge States a penalty in an amount equal to 5 percent of the payment and the fees due if the remittance is received after the date required by clause (i).

(B) The Cash Management Improvement Act of 1990 shall not apply to any payments or fees required under this subsection that are paid by a State before the date required by subparagraph (A)(i).

(C) Notwithstanding subparagraph (A)(i), the Commissioner may make supplementary payments on behalf of a State with funds appropriated for payment of benefits under this subchapter, and subsequently to be reimbursed for such payments by the State at such times as the Commissioner and State may agree. Such authority may be exercised only if extraordinary circumstances affecting a State's ability to make payment when required by subparagraph (A)(i) are determined by the Commissioner to exist.

(e) State standards; establishment; annual public review; annual certification; payments to individuals

(1) Each State shall establish or designate one or more State or local authorities which shall establish, maintain, and insure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which (as determined by the State) a significant number of recipients of supplemental security income benefits is residing or is likely to reside. Such standards shall be appropriate to the needs of such recipients and the character of the facilities involved, and shall govern such matters as admission policies, safety, sanitation, and protection of civil rights.

(2) Each State shall annually make available for public review a summary of the standards established pursuant to paragraph (1), and shall make available to any interested individual a copy of such standards, along with the procedures available in the State to insure the enforcement of such standards and a list of any waivers of such standards and any violations of such standards which have come to the attention of the authority responsible for their enforcement.

(3) Each State shall certify annually to the Commissioner of Social Security that it is in compliance with the requirements of this subsection.

(4) Payments made under this subchapter with respect to an individual shall be reduced by an amount equal to the amount of any supplementary payment (as described in subsection (a) of this section) or other payment made by a State (or political subdivision thereof) which is made for or on account of any medical or any other type of remedical care provided by an institution of the type described in paragraph (1) to such individual as a resident or an inpatient of such institution if such institution is not approved as meeting the standards described in such paragraph by the appropriate State or local authorities.

(Aug. 14, 1935, ch. 531, title XVI, §1616, as added Pub. L. 92–603, title III, §301, Oct. 30, 1972, 86 Stat. 1474; amended Pub. L. 93–233, §14, Dec. 31, 1973, 87 Stat. 965; Pub. L. 94–566, title V, §505(c), (d), Oct. 20, 1976, 90 Stat. 2687; Pub. L. 96–265, title II, §201(b)(1), June 9, 1980, 94 Stat. 446; Pub. L. 97–35, title XXIII, §2353(n), Aug. 13, 1981, 95 Stat. 873; Pub. L. 99–272, title XII, §12201(b), Apr. 7, 1986, 100 Stat. 290; Pub. L. 103–66, title XIII, §13731(a)(1), Aug. 10, 1993, 107 Stat. 660; Pub. L. 103–296, title I, §107(a)(4), Aug. 15, 1994, 108 Stat.

1478; Pub. L. 105–33, title V, § 5102(a)(1), (b)(1)(A), Aug. 5, 1997, 111 Stat. 595, 596; Pub. L. 105–78, title V, § 516(a)(1), (b)(1)(A), Nov. 13, 1997, 111 Stat. 1517, 1518; Pub. L. 106–170, title IV, § 410(a)(1), Dec. 17, 1999, 113 Stat. 1916.)

REFERENCES IN TEXT

The Cash Management Improvement Act of 1990, referred to in subsec. (d)(5)(B), is Pub. L. 101–453, Oct. 24, 1990, 104 Stat. 1058, as amended. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 6501 of Title 31, Money and Finance, and Tables.

AMENDMENTS

1999—Subsec. (d)(1). Pub. L. 106–170, § 410(a)(1)(A), substituted ''in accordance with paragraph (5)'' for ''at such times and in such installments as may be agreed upon between the Commissioner of Social Security and such State''.

Subsec. (d)(5). Pub. L. 106–170, § 410(a)(1)(B), added par. (5).

1997—Subsec. (d)(2)(B)(iii) to (x). Pub. L. 105–33, § 5102(a)(1)(A), and Pub. L. 105–78, § 516(a)(1)(A), amended subpar. (B) identically, striking out ''and'' at end of cl. (iii), adding cls. (iv) to (x) and striking out former cl. (iv) which read as follows: ''for fiscal year 1997 and each succeeding fiscal year, $5.00, or such different rate as the Commissioner of Social Security determines is appropriate for the State.''

Subsec. (d)(2)(C). Pub. L. 105–33, § 5102(a)(1)(B), and Pub. L. 105–78, § 516(a)(1)(B), amended subpar. (C) identically, substituting ''subparagraph (B)(x)(II)'' for ''subparagraph (B)(iv)''.

Subsec. (d)(4). Pub. L. 105–78, § 516(b)(1)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

''(4)(A) The first $5 of each administration fee assessed pursuant to paragraph (2), upon collection, shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

''(B) That portion of each administration fee in excess of $5, and 100 percent of each additional services fee charged pursuant to paragraph (3), upon collection for fiscal year 1998 and each subsequent fiscal year, shall be credited to a special fund established in the Treasury of the United States for State supplementary payment fees. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out this subchapter and related laws. The amounts so credited shall not be scored as receipts under section 902 of title 2, and the amounts so credited shall be credited as a discretionary offset to discretionary spending to the extent that the amounts so credited are made available for expenditure in appropriations Acts.''

Pub. L. 105–33, § 5102(b)(1)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''All administration fees and additional services fees collected pursuant to this subsection shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.''

1994—Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner conducts'' for ''he conducts'' in subsec. (b)(2).

1993—Subsec. (d). Pub. L. 103–66 designated existing provisions as par. (1), inserted before period at end '', plus an administration fee assessed in accordance with paragraph (2) and any additional services fee charged in accordance with paragraph (3)'', and added pars. (2) to (4).

1986—Subsec. (b). Pub. L. 99–272 inserted provision at end relating to modification of the agreement at the option of the State to provide for supplementary payments on and after an effective date specified in the agreement.

1981—Subsec. (e)(2). Pub. L. 97–35 struck out '', as a part of the services program planning procedures established pursuant to section 1397c of this title'' after ''available for public review''.

1980—Subsec. (c)(3). Pub. L. 96–265 added par. (3).

1976—Subsec. (e). Pub. L. 94–566, § 505(d), added subsec. (e), effective Oct. 1, 1977. Pub. L. 94–566, § 505(c), repealed former subsec. (e) which provided for reduction of supplemental security income payments to individuals provided institutional medical or other remedial care, State financed under Federal grants for medical assistance, effective Oct. 1, 1976. See Effective Date of 1976 Amendment note below.

1973—Subsec. (e). Pub. L. 93–233 added subsec. (e).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title IV, § 410(b), Dec. 17, 1999, 113 Stat. 1917, as amended by Pub. L. 106–554, § 1(a)(1) [title V, § 515], Dec. 21, 2000, 114 Stat. 2763, 2763A–72, provided that: ''The amendments made by subsection (a) [amending this section and provisions set out as a note under section 1382 of this title] shall apply to payments and fees arising under an agreement between a State and the Commissioner of Social Security under section 1616 of the Social Security Act (42 U.S.C. 1382e) or under section 212 of Public Law 93-66 (42 U.S.C. 1382 note) with respect to monthly benefits paid to individuals under title XVI of the Social Security Act [this subchapter] for months after September 2001 (October 2001 in the case of a State with a fiscal year that coincides with the Federal fiscal year), without regard to whether the agreement has been modified to reflect such amendments or the Commissioner has promulgated regulations implementing such amendments.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13731(b) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 1382 of this title] shall apply to supplementary payments made pursuant to section 1616(a) of the Social Security Act [subsec. (a) of this section] or section 212(a) of Public Law 93–66 [set out as a note under section 1382 of this title] for any calendar month beginning after September 30, 1993, and to services furnished after such date, regardless of whether regulations to implement such amendments have been promulgated by such date, or whether any agreement entered into under such section 1616(a) or such section 212(a) has been modified.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 effective Jan. 1, 1981, see section 201(d) of Pub. L. 96–265, as amended, set out as an Effective Date note under section 1382h of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 505(c) of Pub. L. 94–566 effective Oct. 1, 1976, see section 505(e) of Pub. L. 94–566, set out as a note under section 1382 of this title.

Section 505(d) of Pub. L. 94–566 provided that the amendment made by that section is effective Oct. 1, 1977.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS

Section 516(b)(2) of Pub. L. 105–78 provided that: ''From amounts credited pursuant to section

1616(d)(4)(B) of the Social Security Act [subsec. (d)(4)(B) of this section] and section 212(b)(3)(D)(ii) of Public Law 93–66 [set out as a note under section 1382 of this title] to the special fund established in the Treasury of the United States for State supplementary payment fees, there is authorized to be appropriated an amount not to exceed $35,000,000 for fiscal year 1998, and such sums as may be necessary for each fiscal year thereafter, for administrative expenses in carrying out the supplemental security income program under title XVI of the Social Security Act [this subchapter] and related laws.''

Section 5102(b)(2) of Pub. L. 105–33 provided that: ''From amounts credited pursuant to section 1616(d)(4)(B) of the Social Security Act [subsec. (d)(4)(B) of this section] and section 212(b)(3)(D)(ii) of Public Law 93–66 [set out as a note under section 1382 of this title] to the special fund established in the Treasury of the United States for State supplementary payment fees, there is authorized to be appropriated an amount not to exceed $35,000,000 for fiscal year 1998, and such sums as may be necessary for each fiscal year thereafter.''

PERIOD WITHIN WHICH CALIFORNIA MAY MAKE CASH PAYMENTS IN LIEU OF FOOD STAMPS TO RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME BENEFITS

Pub. L. 95–458, §5(b), Oct. 14, 1978, 92 Stat. 1261, provided that: ''No additional cash payment under title XVI of the Social Security Act [this subchapter] may be made pursuant to the third sentence of section 8(d) of Public Law 93–233 (as added by subsection (a) of this section) [amending a note under this section] for any month beginning before October 1, 1978, or ending after September 30, 1979.''

ELIGIBILITY OF SUPPLEMENTAL SECURITY INCOME RECIPIENTS FOR FOOD STAMPS

Section 8(c) of Pub. L. 93–233, as amended by Pub. L. 95–113, title XIII, §1302(a)(3), Sept. 29, 1977, 91 Stat. 979, provided that: ''For purposes of section 6(g) of the Food Stamp Act of 1977 [section 2015(g) of Title 7, Agriculture] and subsections (b)(3) [set out as a note under section 612c of Title 7] and (f) [set out below] of this section, the level of State supplementary payment under section 1616(a) [subsec. (a) of this section] shall be found by the Secretary to have been specifically increased so as to include the bonus value of food stamps (1) only if, prior to October 1, 1973, the State has entered into an agreement with the Secretary or taken other positive steps which demonstrate its intention to provide supplementary payments under section 1616(a) [subsec. (a) of this section] at a level which is at least equal to the maximum level which can be determined under section 401(b)(1) of the Social Security Amendments of 1972 [set out as a note under this section] and which is such that the limitation on State fiscal liability under section 401 [set out as a note under this section] does result in a reduction in the amount which would otherwise be payable to the Secretary by the State, and (2) only with respect to such months as the State may, at its option, elect.''

[Section 1302(b) of Pub. L. 95–113 provided that the amendment of section 8(c) of Pub. L. 93–233 by section 1302(a)(3) of Pub. L. 95–113 is effective Oct. 1, 1977.]

Section 8(d) of Pub. L. 93–233, as added by Pub. L. 94–379, §1(a), Aug. 10, 1976, 90 Stat. 1111, and amended by Pub. L. 95–458, §5(a), Oct. 14, 1978, 92 Stat. 1260; Pub. L. 97–18, §2, June 30, 1981, 95 Stat. 102; Pub. L. 97–35, title XXIII, §2342(a), Aug. 13, 1981, 95 Stat. 866, provided that: ''Upon the request of a State, the Secretary shall find, for purposes of the provisions specified in subsection (c) [set out above], that the level of such State's supplementary payments of the type described in section 1616(a) of the Social Security Act [subsec. (a) of this section] has been specifically increased for any month so as to include the bonus value of food stamps (and that such State meets the applicable requirements of subsection (c)(1)) if—

''(1) the Secretary has found (under this subsection or subsection (c), as in effect in December 1980) that such State's supplementary payments in December 1980 were increased to include the bonus value of food stamps; and

''(2) such State continues without interruption to meet the requirements of section 1618 of such Act [section 1382g of this title] for each month after the month referred to in paragraph (1) and up to and including the month for which the Secretary is making the determination.''

[Section 2 of Pub. L. 97–18 provided that the amendment of section 8(d) of Pub. L. 93–233, set out above, by Pub. L. 97–18 is effective for the period July 1, 1981, to Aug. 31, 1981.]

[Section 2342(b) of Pub. L. 97–35 provided that the amendment of section 8(d) of Pub. L. 93–233, set out above, by section 2342(a) of Pub. L. 97–35 is effective July 1, 1981.]

ADJUSTED PAYMENT LEVEL; PAYMENT LEVEL MODIFICATION

Section 8(e), formerly §8(d) of Pub. L. 93–233, as renumbered §8(e) by Pub. L. 94–379, §1(a), Aug. 10, 1976, 90 Stat. 1111, provided that: ''Section 401(b)(1) of the Social Security Amendments of 1972 [set out below] is amended by striking out everything after the word 'exceed' and inserting in lieu thereof: 'a payment level modification (as defined in paragraph (2) of this subsection) with respect to such plans'.''

Section 8(f), formerly §8(e), of Pub. L. 93–233, as amended by Pub. L. 93–335, §1(b), July 8, 1974, 88 Stat. 291; Pub. L. 94–44, §3(b), June 28, 1975, 89 Stat. 235; Pub. L. 94–365, §2(2), July 14, 1976, 90 Stat. 990, and renumbered §8(f) and amended by Pub. L. 94–379, §1(a), (b), Aug. 10, 1976, 90 Stat. 1111; Pub. L. 95–59, §3(2), June 30, 1977, 91 Stat. 255; Pub. L. 95–113, title XIII, §1302(a)(4), Sept. 29, 1977, 91 Stat. 979, provided that: ''The amendment made by subsection (e) [set out above] shall not be effective in any State which provides supplementary payments of the type described in section 1616(a) of the Social Security Act [subsec. (a) of this section] the level of which has been found by the Secretary to have been specifically increased so as to include the bonus value of food stamps.''

[Amendment of section 8(e) [now §8(f)] of Pub. L. 93–233 by section 1(b) of Pub. L. 93–335, effective July 1, 1974, see section 1(c) of Pub. L. 93–335, set out as a note below.]

[Section 1(c) of Pub. L. 93–335, July 8, 1974, 88 Stat. 291, provided that amendments by section 1(a), (b) of Pub. L. 93–335 to section 8(a)(1), (2), (b)(1)–(3), and (e) of Pub. L. 93–233, Dec. 31, 1973, 87 Stat. 956, set out as notes under this section and sections 612c, 1431 and 2012 of Title 7, Agriculture, is effective as of July 1, 1974.]

[Section 3 of Pub. L. 95–59 provided that the amendment of section 8(f) of Pub. L. 93–233, set out above, by section 3(2) of Pub. L. 95–59 is effective July 1, 1977.]

[Section 1302(b) of Pub. L. 95–113 provided that the amendment of section 8(f) of Pub. L. 93–233, set out above, by section 1302(a)(4) of Pub. L. 95–113 is effective Oct. 1, 1977.]

COMMODITY DISTRIBUTION PROGRAM: INDIVIDUAL RECEIVING SUPPLEMENTAL SECURITY INCOME BENEFITS AS MEMBER OF HOUSEHOLD FOR ANY PURPOSE OF PROGRAM

Individual receiving supplemental security income benefits or payments as part of benefits or payments described in subsec. (a) of this section as member of a household for any purpose of the food distribution program, see section 4(c) of Pub. L. 93–86, set out as a note under section 612c of Title 7, Agriculture.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of

America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

LIMITATION ON FISCAL LIABILITY OF STATES FOR PAYMENT TO SECRETARY OF SUPPLEMENTARY PAYMENTS MADE BY SECRETARY PURSUANT TO AGREEMENT

Section 401 of Pub. L. 92–603, as amended by Pub. L. 93–233, § 18(h), Dec. 31, 1973, 87 Stat. 969; Pub. L. 94–566, title V, § 504(a), Oct. 20, 1976, 90 Stat. 2686; Pub. L. 94–585 § 2(b), Oct. 21, 1976, 90 Stat. 2902; Pub. L. 97–248, title I, § 184(a), Sept. 3, 1982, 96 Stat. 406, provided that:

''(a)(1) The amount payable to the Secretary by a State for any fiscal year, other than fiscal year 1974, pursuant to its agreement or agreements under section 1616 of the Social Security Act [this section] shall not exceed the non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of the State approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter] (as defined in subsection (c) of this section), and the amount payable for fiscal year 1974 pursuant to such agreement or agreements shall not exceed one-half of the non-Federal share of such expenditures.

''(2) Paragraph (1) of this subsection shall only apply with respect to that portion of the supplementary payments made by the Secretary on behalf of the State under such agreements in any fiscal year which does not exceed in the case of any individual the difference between—

''(A) the adjusted payment level under the appropriate approved plan of such State as in effect for January 1972 (as defined in subsection (b) of this section), and

''(B) the benefits under title XVI of the Social Security Act [this subchapter] (subject to the second sentence of this paragraph), plus income not excluded under section 1612(b) of such Act [section 1382a(b) of this title] in determining such benefits, paid to such individual in such fiscal year,

and shall not apply with respect to supplementary payments to any individual who (i) is not required by section 1616 of such Act [this section] to be included in any such agreement administered by the Secretary and (ii) would have been ineligible (for reasons other than income) for payments under the appropriate approved State plan as in effect for January 1972. In determining the difference between the level specified in subparagraph (A) and the benefits and income described in subparagraph (B) there shall be excluded any part of any such benefit which results from (and would not be payable but for) any cost-of-living increase in such benefits under section 1617 of such Act [section 1382f of this title] (or any general increase enacted by law in the dollar amounts referred to in such section) becoming effective after June 30, 1977.

''(b)(1) For purposes of subsection (a), the term 'adjusted payment level under the appropriate approved plan of a State as in effect for January 1972' means the amount of the money payment which an individual with no other income would have received under the plan of such State approved under title I, X, XIV, or XVI of the Social Security Act [subchapters I, X, XIV, or XVI of this chapter], as may be appropriate, and in effect for January 1972; except that the State may, at its option, increase such payment level with respect to any such plan by an amount which does not exceed the sum of—

''(A) a payment level modification (as defined in paragraph (2) of this subsection) with respect to such plan, and

''(B) the bonus value of food stamps in such State for January 1972 (as defined in paragraph (3) of this subsection).

''(2) For purposes of paragraph (1), the term 'payment level modification' with respect to any State plan means that amount by which a State which for January 1972 made money payments under such plan to individuals with no other income which were less than 100 per centum of its standard of need could have increased such money payments without increasing (if it reduced its standard of need under such plan so that such increased money payments equaled 100 per centum of such standard of need) the non-Federal share of expenditures as aid or assistance for quarters in calendar year 1972 under the plans of such State approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter].

''(3) For purposes of paragraph (1), the term 'bonus value of food stamps in a State for January 1972' (with respect to an individual) means—

''(A) the face value of the coupon allotment which would have been provided to such an individual under the Food Stamp Act of 1964 [section 2011 et seq. of Title 7, Agriculture] for January 1972, reduced by

''(B) the charge which such an individual would have paid for such coupon allotment,

if the income of such individual, for purposes of determining the charge it would have paid for its coupon allotment, had been equal to the adjusted payment level under the State plan (including any payment level modification with respect to the plan adopted pursuant to paragraph (2) (but not including any amount under this paragraph)). The total face value of food stamps and the cost thereof in January 1972 shall be determined in accordance with rules prescribed by the Secretary of Agriculture in effect in such month.

''(c) For purposes of this section, the term 'non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of a State approved under titles I, X, XIV, and XVI of the Social Security Act' [subchapters I, X, XIV, and XVI of this chapter] means the difference between—

''(1) the total expenditures in such quarters under such plans for aid or assistance (excluding expenditures authorized under section 1119 of such Act [section 1319 of this title] for repairing the home of an individual who was receiving aid or assistance under one of such plans (as such section was in effect prior to the enactment of this Act)), and

''(2) the total of the amounts determined under sections 3, 1003, 1403, and 1603 of the Social Security Act [sections 303, 1203, 1353, and 1383 note of this title], under section 1118 of such Act [section 1318 of this title], and under section 9 of the Act of April 19, 1950 [section 639 of Title 25, Indians], for such State with respect to such expenditures in such quarters.

''(d) In addition to the amount which a State must pay to the Secretary for the fiscal year 1983 or the fiscal year 1984, as determined under subsection (a), the State shall also pay, for the fiscal year 1983, 60 percent of the further amount that would be payable but for the limit specified in subsection (a), and, for the fiscal year 1984, 80 percent of such further amount. For each fiscal year thereafter, the limit prescribed in subsection (a) shall be inapplicable and a State shall pay to the Secretary the full amount of any supplementary payments he makes on behalf of such State.''

[Amendment of section 401(a)(2) of Pub. L. 92–603, set out above, by Pub. L. 94–585 inserting parenthetical text in subpar. (B) and enacting last sentence, such amendments being identical to amendments by Pub. L. 94–566 less the words ''and before July 1, 1979'' following ''June 30, 1977'', effective with respect to benefits payable for months after June 1977, see section 2(c) of Pub. L. 94–585, set out as a note under section 1382g of this title.]

[Amendment of section 401(a)(2) of Pub. L. 92–603, set out above, by Pub. L. 94–566 inserting parenthetical text in subpar. (B) and enacting last sentence effective under provisions of Pub. L. 94–566, title V, § 504(b), Oct. 20, 1976, 90 Stat. 2686, with respect to benefits payable for months after June 1977.]

[Amendment of section 401 of Pub. L. 92–603, set out above, by section 18(h) of Pub. L. 93–233 effective Jan. 1, 1974, see section 18(z–3)(1) of Pub. L. 93–233.]

[Section 184(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending section 401 of Pub. L. 92–603, set out above] shall become effective on the date of the enactment of this Act [Sept. 3, 1982].'']

TRANSITIONAL ADMINISTRATION OF PROGRAMS BY STATE PURSUANT TO AGREEMENT BETWEEN STATE AND SECRETARY

Section 402 of Pub. L. 92–603, as amended by Pub. L. 93–233, §18(i), Dec. 31, 1973, 87 Stat. 970, provided that: ''In order for a State to be eligible for any payments pursuant to title IV, V, XVI, or XIX of the Social Security Act [subchapter IV, V, XVI, or XIX of this chapter] with respect to expenditures for the third and fourth quarters in the fiscal year ending June 30, 1974, and any quarter in the fiscal year ending June 30, 1975, and for the purpose of providing an orderly transition from State to Federal administration of the Supplemental Security Income Program, such State shall enter into an agreement with the Secretary of Health, Education, and Welfare under which the State agencies responsible for administering or for supervising the administration of the plans approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter] will, on behalf of the Secretary, administer all or such part or parts of the program established by section 301 of this Act [enacting this subchapter], during such portion of the third and fourth quarters of the fiscal year ending June 30, 1974, and any quarter of the fiscal year ending June 30, 1975, as may be provided in such agreement.''

ELECTION OF PAYMENTS UNDER COMBINED STATE PLAN RATHER THAN SEPARATE PLANS

Pub. L. 87–543, §141(b), July 25, 1962, 76 Stat. 205, provided that: ''No payment may be made to a State under title I, X, or XIV of the Social Security Act [subchapter I, X, or XIV of this chapter] for any period for which such State receives any payments under title XVI of such Act or any period thereafter.''

OVERPAYMENT OR UNDERPAYMENT ADJUSTMENTS

Pub. L. 87–543, §141(f), July 25, 1962, 76 Stat. 205, provided that: ''In the case of any State which has a State plan approved under title XVI of the Social Security Act [this subchapter], any overpayment or underpayment which the Secretary determines was made to such State under section 3, 1003, or 1403 of such Act [section 303, 1203, or 1353 of this title] with respect to a period before the approval of the plan under such title XVI, and with respect to which adjustment has not been already made under subsection (b) of such section 3, 1003, or 1403 [section 303(b), 1203, or 1353 of this title], shall, for purposes of section 1603(b) of such Act [section 1383(b) of this title prior to its omission on Oct. 30, 1972], be considered an overpayment or underpayment (as the case may be) made under section 1603 of such Act [section 1383 of this title as it existed prior to Oct. 30, 1972].''

§ 1382f. Cost-of-living adjustments in benefits

(a) Increase of dollar amounts

Whenever benefit amounts under subchapter II of this chapter are increased by any percentage effective with any month as a result of a determination made under section 415(i) of this title—

(1) each of the dollar amounts in effect for such month under subsections (a)(1)(A), (a)(2)(A), (b)(1), and (b)(2) of section 1382 of this title, and subsection (a)(1)(A) of section 211 of Public Law 93–66, as specified in such subsections or as previously increased under this section, shall be increased by the amount (if any) by which—

(A) the amount which would have been in effect for such month under such subsection but for the rounding of such amount pursuant to paragraph (2), exceeds

(B) the amount in effect for such month under such subsection; and

(2) the amount obtained under paragraph (1) with respect to each subsection shall be further increased by the same percentage by which benefit amounts under subchapter II of this chapter are increased for such month, or, if greater (in any case where the increase under subchapter II of this chapter was determined on the basis of the wage increase percentage rather than the CPI increase percentage), the percentage by which benefit amounts under subchapter II of this chapter would be increased for such month if the increase had been determined on the basis of the CPI increase percentage, (and rounded, when not a multiple of $12, to the next lower multiple of $12), effective with respect to benefits for months after such month.

(b) Publication in Federal Register of new dollar amounts

The new dollar amounts to be in effect under section 1382 of this title and under section 211 of Public Law 93–66 by reason of subsection (a) of this section shall be published in the Federal Register together with, and at the same time as, the material required by section 415(i)(2)(D) of this title to be published therein by reason of the determination involved.

(c) Additional increases

Effective July 1, 1983—

(1) each of the dollar amounts in effect under subsections (a)(1)(A) and (b)(1) of section 1382 of this title, as previously increased under this section, shall be increased by $240 (and the dollar amount in effect under subsection (a)(1)(A) of section 211 of Public Law 93-66, as previously so increased, shall be increased by $120); and

(2) each of the dollar amounts in effect under subsections (a)(2)(A) and (b)(2) of section 1382 of this title, as previously increased under this section, shall be increased by $360.

(Aug. 14, 1935, ch. 531, title XVI, §1617, as added Pub. L. 93–368, §6(b), Aug. 7, 1974, 88 Stat. 421; amended Pub. L. 97–248, title I, §182(a), Sept. 3, 1982, 96 Stat. 404; Pub. L. 98–21, title IV, §401, Apr. 20, 1983, 97 Stat. 138.)

REFERENCES IN TEXT

Section 211 of Public Law 93–66, referred to in subsecs. (a)(1), (b), and (c)(1), is section 211 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 154, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

1983—Subsec. (a)(2). Pub. L. 98–21, §401(b), inserted provision that the amount obtained under par. (1) with respect to each subsection shall be further increased by the percentage by which benefit amounts under subchapter II of this chapter would be increased for such month if the increase had been determined on the basis of the CPI increase percentage, if greater, in any case where the increase under subchapter II of this chapter was determined on the basis of the wage increase percentage rather than the CPI increase percentage.

Subsec. (b). Pub. L. 98–21, § 401(a)(2), substituted ''subsection (a) of this subsection'' for ''this section''.

Subsec. (c). Pub. L. 98–21, § 401(a)(1), added subsec. (c).

1982—Pub. L. 97–248 redesignated existing provisions as subsec. (a), revised method of computation into pars. (1) and (2) and among other changes increased base for rounding-off from a multiple of $1.20 to a multiple of $12.00, and struck out provisions relating to publication of increased dollar amounts in the Federal Register, and added subsec. (b).

EFFECTIVE DATE OF 1982 AMENDMENT

Section 182(b) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall become effective on October 1, 1982.''

COST-OF-LIVING INCREASES; COST-OF-LIVING COMPUTATION QUARTER DETERMINATIONS

Payment of increased benefits under program covered in subchapter II of this chapter, see section 1 of Pub. L. 98–604, set out as a note under section 415 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

§ 1382g. Payments to State for operation of supplementation program

(a) Eligibility; agreement with Commissioner

In order for any State which makes supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), on or after June 30, 1977, to be eligible for payments pursuant to subchapter XIX of this chapter with respect to expenditures for any calendar quarter which begins—

(1) after June 30, 1977, or, if later,

(2) after the calendar quarter in which it first makes such supplementary payments,

such State must have in effect an agreement with the Commissioner of Social Security whereby the State will—

(3) continue to make such supplementary payments, and

(4) maintain such supplementary payments at levels which are not lower than the levels of such payments in effect in December 1976, or, if no such payments were made in that month, the levels for the first subsequent month in which such payments were made.

(b) Levels of supplementary payments

(1) The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) of this section with respect to the levels of its supplementary payments for a particular month or months if the State's expenditures for such payments in the twelve-month period (within which such month or months fall) beginning on the effective date of any increase in the level of supplemental security income benefits pursuant to section 1382f of this title are not less than its expenditures for such payments in the preceding twelve-month period.

(2) For purposes of determining under paragraph (1) whether a State's expenditures for supplementary payments in the 12-month period beginning on the effective date of any increase in the level of supplemental security income benefits are not less than the State's expenditures for such payments in the preceding 12-month period, the Commissioner of Social Security, in computing the State's expenditures, shall disregard, pursuant to a 1-time election of the State, all expenditures by the State for retroactive supplementary payments that are required to be made in connection with the retroactive supplemental security income benefits referred to in section 5041 of the Omnibus Budget Reconciliation Act of 1990.

(c) Election to apply subsection (a)(4)

Any State which satisfies the requirements of this section solely by reason of subsection (b) of this section for a particular month or months in any 12-month period (described in such subsection) ending on or after June 30, 1982, may elect, with respect to any month in any subsequent 12-month period (so described), to apply subsection (a)(4) of this section as though the reference to December 1976 in such subsection were a reference to the month of December which occurred in the 12-month period immediately preceding such subsequent period.

(d) Determinations respecting any portion of period July 1, 1980, through June 30, 1981

The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) of this section with respect to the levels of its supplementary payments for any portion of the period July 1, 1980, through June 30, 1981, if the State's expenditures for such payments in that twelve-month period were not less than its expenditures for such payments for the period July 1, 1976, through June 30, 1977 (or, if the State made no supplementary payments in the period July 1, 1976, through June 30, 1977, the expenditures for the first twelve-month period extending from July 1 through June 30 in which the State made such payments).

(e) Meeting subsection (a)(4) requirements for any month after March 1983

(1) For any particular month after March 1983, a State which is not treated as meeting the requirements imposed by paragraph (4) of subsection (a) of this section by reason of subsection (b) of this section shall be treated as meeting such requirements if and only if—

(A) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93–66, for that particular month,

is not less than—

(B) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93–66, for March 1983, increased by the amount of all cost-of-living adjustments under section 1382f of this title (and any other benefit increases under this subchapter) which have occurred after March 1983 and before that particular month.

(2) In determining the amount of any increase in the combined level involved under paragraph (1)(B) of this subsection, any portion of such amount which would otherwise be attributable to the increase under section 1382f(c) of this title shall be deemed instead to be equal to the amount of the cost-of-living adjustment which would have occurred in July 1983 (without regard to the 3-percent limitation contained in section 415(i)(1)(B) of this title) if section 111 of the Social Security Amendments of 1983 had not been enacted.

(f) Passthrough relating to optional State supplementation

The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by subsection (a) of this section with respect to the levels of its supplementary payments for the period January 1, 1984, through December 31, 1985, if in the period January 1, 1986, through December 31, 1986, its supplementary payment levels (other than to recipients of benefits determined under section 1382(e)(1)(B) of this title) are not less than those in effect in December 1976, increased by a percentage equal to the percentage by which payments under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93–66 have been increased as a result of all adjustments under section 1382f(a) and (c) of this title which have occurred after December 1976 and before February 1986.

(g) Mandatory pass-through of increased personal needs allowance

In order for any State which makes supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66) to recipients of benefits determined under section 1382(e)(1)(B) of this title, on or after October 1, 1987, to be eligible for payments pursuant to subchapter XIX of this chapter with respect to any calendar quarter which begins—

(1) after October 1, 1987, or, if later

(2) after the calendar quarter in which it first makes such supplementary payments to recipients of benefits so determined,

such State must have in effect an agreement with the Commissioner of Social Security whereby the State will—

(3) continue to make such supplementary payments to recipients of benefits so determined, and

(4) maintain such supplementary payments to recipients of benefits so determined at levels which assure (with respect to any particular month beginning with July 1988) that—

(A) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1382(e)(1)(B) of this title for that particular month,

is not less than—

(B) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1382(e)(1)(B) of this title for October 1987 (or, if no such supplementary payments were made for that month, the combined level for the first subsequent month for which such payments were made), increased—

(i) in a case to which clause (i) of such section 1382(e)(1)(B) of this title applies or (with respect to the individual or spouse who is in the hospital, home, or facility involved) to which clause (ii) of such section applies, by $5, and

(ii) in a case to which clause (iii) of such section 1382(e)(1)(B) of this title applies, by $10.

(Aug. 14, 1935, ch. 531, title XVI, §1618, as added Pub. L. 94–585, §2(a), Oct. 21, 1976, 90 Stat. 2901; amended Pub. L. 97–248, title I, §186, Sept. 3, 1982, 96 Stat. 407; Pub. L. 97–377, title I, §147, Dec. 21, 1982, 96 Stat. 1917; Pub. L. 98–21, title IV, §402, Apr. 20, 1983, 97 Stat. 139; Pub. L. 98–369, div. B, title VI, §2663(g)(9), July 18, 1984, 98 Stat. 1169; Pub. L. 99–272, title XII, §12201(a), Apr. 7, 1986, 100 Stat. 289; Pub. L. 100–203, title IX, §9119(b), Dec. 22, 1987, 101 Stat. 1330–309; Pub. L. 103–296, title I, §107(a)(4), title II, §209(a), Aug. 15, 1994, 108 Stat. 1478, 1517.)

REFERENCES IN TEXT

Sections 211(a)(1)(A) and 212(a) of Public Law 93–66, referred to in subsecs. (a), (e)(1), (f), and (g), are sections 211(a)(1)(A) and 212(a) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 154, 155, as amended, which are set out as notes under section 1382 of this title.

Section 5041 of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (b)(2), is section 5041 of Pub. L. 101–508, title V, Nov. 5, 1990, 104 Stat. 1388–227, which is not classified to the Code.

Section 111 of the Social Security Amendments of 1983, referred to in subsec. (e)(2), is section 111 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 72, which amended sections 402, 403, 415, and 430 of this title and enacted provisions set out as notes under sections 402 and 415 of this title and section 5123 of Title 38, Veterans' Benefits.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (b). Pub. L. 103–296, §209(a), designated existing provisions as par. (1) and added par. (2).

Pub. L. 103–296, §107(a)(4), in subsec. (b) as amended by Pub. L. 103–296, §209(a), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsecs. (d), (f), (g). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

1987—Subsec. (g). Pub. L. 100–203 added subsec. (g).

1986—Subsec. (f). Pub. L. 99–272 added subsec. (f).

1984—Subsec. (d). Pub. L. 98–369, §2663(g)(9)(A), realigned margin of subsec. (d).

Pub. L. 98–369, §2663(g)(9)(B), (C), struck out the comma after ''levels of its'', and inserted a comma after ''1980'' and after ''1976'', wherever appearing.

1983—Subsecs. (c), (d). Pub. L. 98–21 redesignated subsec. (c), added by Pub. L. 97–377, as (d).

Subsec. (e). Pub. L. 98–21 added subsec. (e).

1982—Subsec. (c). Pub. L. 97–377 added subsec. (c) relating to conditions under which the Secretary shall not find that a State has failed to meet the requirements of subsec. (a)(4) of this section concerning levels of supplementary payments.

Pub. L. 97–248 added subsec. (c) relating to conditions under which a State may elect to apply subsec. (a)(4) of this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 209(b) of Pub. L. 103–296 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to increases in the level of supplemental security income benefits under title XVI of the Social Security Act [this subchapter] whether occurring before, on, or after the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective July 1, 1988, see section 9119(c) of Pub. L. 100–203, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 2(c) of Pub. L. 94–585 provided that: ''The provisions of this section [enacting this section and provisions set out as a note under section 1382e of this title] shall be effective with respect to benefits payable for months after June 1977.''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

§ 1382h. Benefits for individuals who perform substantial gainful activity despite severe medical impairment

(a) Eligible individuals

(1) Except as provided in section 1383(j) of this title, any individual who was determined to be an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382 of this title (or a federally administered State supplementary payment) for a month and whose earnings in a subsequent month exceed the amount designated by the Commissioner of Social Security ordinarily to represent substantial gainful activity shall qualify for a monthly benefit under this subsection for such subsequent month (which shall be in lieu of any benefit under section 1382 of this title) equal to an amount determined under section 1382(b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382(b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered to be receiving supplemental security income benefits under this subchapter, for so long as—

(A) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability; and

(B) the income of such individual, other than income excluded pursuant to section 1382a(b) of this title, is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382 of this title and such individual meets all other non-disability-related requirements for eligibility for benefits under this subchapter.

(2) The Commissioner of Social Security shall make a determination under paragraph (1)(A) with respect to an individual not later than 12 months after the first month for which the individual qualifies for a benefit under this subsection.

(b) Blind or disabled individuals receiving supplemental security income benefits

(1) Except as provided in section 1383(j) of this title, for purposes of subchapter XIX of this chapter, any individual who was determined to be a blind or disabled individual eligible to receive a benefit under section 1382 of this title or any federally administered State supplementary payment for a month and who in a subsequent month is ineligible for benefits under this subchapter (and for any federally administered State supplementary payments) because of his or her income shall, nevertheless, be considered to be receiving supplemental security income benefits for such subsequent month provided that the Commissioner of Social Security determines under regulations that—

(A) such individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, meets all non-disability-related requirements for eligibility for benefits under this subchapter;

(B) the income of such individual would not, except for his earnings and increases pursuant to section 415(i) of this title in the level of monthly insurance benefits to which the individual is entitled under subchapter II of this chapter that occur while such individual is considered to be receiving supplemental security income benefits by reason of this subsection, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments);

(C) the termination of eligibility for benefits under subchapter XIX of this chapter would seriously inhibit his ability to continue his employment; and

(D) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under this subchapter (including any federally administered State supplementary payments), benefits under subchapter XIX of this chapter, and publicly funded attendant care services (including personal care assistance), which would be available to him in the absence of such earnings.

(2)(A) Determinations made under paragraph (1)(D) shall be based on information and data updated no less frequently than annually.

(B) In determining an individual's earnings for purposes of paragraph (1)(D), there shall be excluded from such earnings an amount equal to the sum of any amounts which are or would be excluded under clauses (ii) and (iv) of section 1382a(b)(4)(B) of this title (or under clauses (ii) and (iii) of section 1382a(b)(4)(A) of this title) in determining his or her income.

(3) In the case of a State that exercises the option under section 1396a(f) of this title, any individual who—

(A)(i) qualifies for a benefit under subsection (a) of this section, or

(ii) meets the requirements of paragraph (1); and

(B) was eligible for medical assistance under the State plan approved under subchapter XIX of this chapter in the month immediately preceding the first month in which the individual qualified for a benefit under such subsection or met such requirements,

shall remain eligible for medical assistance under such plan for so long as the individual qualifies for a benefit under such subsection or meets such requirements.

(c) Continuing disability or blindness reviews; limitation

Subsection (a)(2) of this section and section 1383(j)(2)(A) of this title shall not be construed, singly or jointly, to require more than 1 determination during any 12-month period with respect to the continuing disability or blindness of an individual.

(d) Information and training programs

The Commissioner of Social Security and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Commissioner of Social Security shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this subchapter and shall conduct such programs for the staffs of the district offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.

(Aug. 14, 1935, ch. 531, title XVI, §1619, as added Pub. L. 96–265, title II, §201(a), June 9, 1980, 94 Stat. 445; amended Pub. L. 97–35, title XXIII, §2353(*o*), Aug. 13, 1981, 95 Stat. 873; Pub. L. 98–460, §14(b), Oct. 9, 1984, 98 Stat. 1808; Pub. L. 99–643, §§4(a), (b), (c)(2), 7(a), Nov. 10, 1986, 100 Stat. 3575, 3577, 3579; Pub. L. 101–508, title V, §§5032(a), 5039(a), Nov. 5, 1990, 104 Stat. 1388–224, 1388–226; Pub. L. 103–296, title I, §107(a)(1), (4), title II, §205(a), Aug. 15, 1994, 108 Stat. 1477, 1478, 1509.)

AMENDMENTS

1994—Subsecs. (a)(1), (2), (b)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (b)(1)(B). Pub. L. 103–296, §205(a), inserted ''and increases pursuant to section 415(i) of this title in the level of monthly insurance benefits to which the individual is entitled under subchapter II of this chapter that occur while such individual is considered to be receiving supplemental security income benefits by reason of this subsection'' after ''earnings''.

Subsec. (d). Pub. L. 103–296, §107(a)(1), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

1990—Subsec. (b)(1). Pub. L. 101–508, §5032(a), struck out ''under age 65'' after ''any individual'' in introductory provisions.

Subsecs. (c), (d). Pub. L. 101–508, §5039(a), added subsec. (c) and redesignated former subsec. (c) as (d).

1986—Subsec. (a). Pub. L. 99–643, §4(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Any individual who is an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382(b) of this title or under this section for the month preceding the month for which eligibility for benefits under this section is now being determined, and who would otherwise be denied benefits by reason of section 1382(e)(4) of this title or ceases to be an eligible individual (or eligible spouse) because his earnings have demonstrated a capacity to engage in substantial gainful activity, shall nevertheless qualify for a monthly benefit equal to an amount determined under section 1382(b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382(b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered a disabled individual receiving supplemental security income benefits under this subchapter, for so long as the Secretary determines that—

''(1) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability, and continues to meet all non-disability-related requirements for eligibility for benefits under this subchapter; and

''(2) the income of such individual, other than income excluded pursuant to section 1382a(b) of this title, is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments).''

Subsec. (a)(1). Pub. L. 99–643, §4(c)(2)(A), substituted ''Except as provided in section 1383(j) of this section, any individual'' for ''Any individual''.

Subsec. (b). Pub. L. 99–643, §4(b)(1)–(4), substituted ''meets'' for ''continues to meet'' in former par. (1) and ''(including any federally administered State supplementary payments), benefits under subchapter XIX of this chapter, and publicly funded attendant care services (including personal care assistance),'' for ''and subchapter XIX of this chapter'' in former par. (4), redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), and substituted introductory provisions of such par. (1) for former undesignated introductory provisions which read as follows: ''For purposes of subchapter XIX of this chapter, any individual under age 65 who, for the month preceding the first month in the period to which this subsection applies, received—

''(i) a payment of supplemental security income benefits under section 1382(b) of this title on the basis of blindness or disability,

''(ii) a supplementary payment under section 1382e of this title or under section 212 of Public Law 93–66 on such basis,

''(iii) a payment of monthly benefits under subsection (a) of this section, or

''(iv) a supplementary payment under section 1382e(c)(3) of this title,

shall be considered to be a blind or disabled individual receiving supplemental security income benefits for so long as the Secretary determines under regulations that—''.

Subsec. (b)(1). Pub. L. 99–643, §4(c)(2)(B), substituted ''Except as provided in section 1383(j) of this title, for purposes of'' for ''For purposes of''.

Subsec. (b)(2). Pub. L. 99–643, §4(b)(5), added par. (2).

Subsec. (b)(3). Pub. L. 99–643, §7(a), added par. (3).

1984—Subsec. (c). Pub. L. 98–460 added subsec. (c).

1981—Subsec. (a). Pub. L. 97–35, §2353(*o*)(1), substituted in provision preceding par. (1) ''subchapter XIX of this chapter'' for ''subchapters XIX and XX of this chapter''.

Subsec. (b). Pub. L. 97–35, §2353(*o*), substituted in provision preceding cl. (i) and in par. (4) ''subchapter XIX of this chapter'' for ''subchapters XIX and XX of this

chapter'' and in par. (3) ''subchapter XIX of this chapter'' for ''subchapter XIX or XX of this chapter''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(1), (4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 205(b) of Pub. L. 103–296 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to eligibility determinations for months after December 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5032(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

Section 5039(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE

Section 201(d) of Pub. L. 96–265, as amended by Pub. L. 98–460, §14(a), Oct. 9, 1984, 98 Stat. 1808; Pub. L. 99–643, §2, Nov. 10, 1986, 100 Stat. 3574, provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending section 1382e of this title and provisions set out as a note under section 1382 of this title] shall become effective on January 1, 1981.''

[Section 10(a) of Pub. L. 99–643 provided that: ''The amendment made by section 2 [amending section 201(d) of Pub. L. 96–265, set out above] shall become effective on the date of the enactment of this Act [Nov. 10, 1986].'']

SEPARATE ACCOUNTS WITH RESPECT TO BENEFITS PAYABLE; EVALUATION OF PROGRAM

Section 201(e) of Pub. L. 96–265 provided that: ''The Secretary shall provide for separate accounts with respect to the benefits payable by reason of the amendments made by subsections (a) and (b) [enacting this section and amending section 1382e of this title and provisions set out as a note under section 1382 of this title] so as to provide for evaluation of the effects of such amendments on the programs established by titles II, XVI, XIX, and XX of the Social Security Act [subchapters II, XVI, XIX, and XX of this chapter].''

§ 1382i. Medical and social services for certain handicapped persons

(a) Authorization of appropriations for pilot program

There are authorized to be appropriated such sums as may be necessary to establish and carry out a 3-year Federal-State pilot program to provide medical and social services for certain handicapped individuals in accordance with this section.

(b) State allotments

(1) The total sum of $18,000,000 shall be allotted to the States for such program by the Commissioner of Social Security, during the period beginning September 1, 1981, and ending September 30, 1984, as follows:

(A) The total sum of $6,000,000 shall be allotted to the States for the fiscal year ending September 30, 1982 (which for purposes of this section shall include the month of September 1981).

(B) The total sum of $6,000,000, plus any amount remaining available (after the application of paragraph (4)) from the allotment made under subparagraph (A), shall be allotted to the States for the fiscal year ending September 30, 1983.

(C) The total sum of $6,000,000, plus any amount remaining available (after the application of paragraph (4)) from the allotments made under subparagraphs (A) and (B), shall be allotted to the States for the fiscal year ending September 30, 1984.

(2) The allotment to each State from the total sum allotted under paragraph (1) for any fiscal year shall bear the same ratio to such total sum as the number of individuals in such State who are over age 17 and under age 65 and are receiving supplemental security income benefits as disabled individuals in such year (as determined by the Commissioner of Social Security on the basis of the most recent data available) bears to the total number of such individuals in all the States. For purposes of the preceding sentence, the term ''supplemental security income benefits'' includes payments made pursuant to an agreement under section 1382e(a) of this title or under section 212(b) of Public Law 93–66.

(3) At the beginning of each fiscal year in which the pilot program under this section is in effect, each State that does not intend to use the allotment to which it is entitled for such year (or any allotment which was made to it for a prior fiscal year), or that does not intend to use the full amount of any such allotment, shall certify to the Commissioner of Social Security the amount of such allotment which it does not intend to use, and the State's allotment for the fiscal year (or years) involved shall thereupon be reduced by the amount so certified.

(4) The portion of the total amount available for allotment for any particular fiscal year under paragraph (1) which is not allotted to States for that year by reason of paragraph (3) (plus the amount of any reductions made at the beginning of such year in the allotments of States for prior fiscal years under paragraph (3)) shall be reallocated in such manner as the Commissioner of Social Security may determine to be appropriate to States which need, and will use, additional assistance in providing services to severely handicapped individuals in that particular year under their approved plans. Any amount reallocated to a State under this paragraph for use in a particular fiscal year shall be treated for purposes of this section as increasing such State's allotment for that year by an equivalent amount.

(c) Requisite features of State plans

In order to participate in the pilot program and be eligible to receive payments for any period under subsection (d) of this section, a State (during such period) must have a plan, approved

by the Commissioner of Social Security as meeting the requirements of this section, which provides medical and social services for severely handicapped individuals whose earnings are above the level which ordinarily demonstrates an ability to engage in substantial gainful activity and who are not receiving benefits under section 1382 or 1382h of this title or assistance under a State plan approved under section 1396a of this title, and which—

(1) declares the intent of the State to participate in the pilot program;

(2) designates an appropriate State agency to administer or supervise the administration of the program in the State;

(3) describes the criteria to be applied by the State in determining the eligibility of any individual for assistance under the plan and in any event requires a determination by the State agency to the effect that (A) such individual's ability to continue his employment would be significantly inhibited without such assistance and (B) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the cash and other benefits that would be available to him under this subchapter and subchapters XIX and XX of this chapter in the absence of those earnings;

(4) describes the process by which the eligibility of individuals for such assistance is to be determined (and such process may not involve the performance of functions by any State agency or entity which is engaged in making determinations of disability for purposes of disability insurance or supplemental security income benefits except when the use of a different agency or entity to perform those functions would not be feasible);

(5) describes the medical and social services to be provided under the plan;

(6) describes the manner in which the medical and social services involved are to be provided and, if they are not to be provided through the State's medical assistance and social services programs under subchapters XIX and XX of this chapter (with the Federal payments being made under subsection (d) of this section rather than under those subchapters), specifies the particular mechanisms and procedures to be used in providing such services; and

(7) contains such other provisions as the Commissioner of Social Security may find to be necessary or appropriate to meet the requirements of this section or otherwise carry out its purpose.

(d) Payments to States; computation of payments

(1) From its allotment under subsection (b) of this section for any fiscal year (and any amounts remaining available from allotments made to it for prior fiscal years), the Commissioner of Social Security shall from time to time pay to each State which has a plan approved under subsection (c) of this section an amount equal to 75 per centum of the total sum expended under such plan (including the cost of administration of such plan) in providing medical and social services to severely handicapped individuals who are eligible for such services under the plan.

(2) The method of computing and making payments under this section shall be as follows:

(A) The Commissioner of Social Security shall, prior to each period for which a payment is to be made to a State, estimate the amount to be paid to the State for such period under the provisions of this section.

(B) From the allotment available therefor, the Commissioner of Social Security shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this subsection) by which the Commissioner finds that the Commissioner's estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such period under this section.

(e) Rules and regulations

Within nine months after June 9, 1980, the Commissioner of Social Security shall prescribe and publish such regulations as may be necessary or appropriate to carry out the pilot program and otherwise implement this section.

(f) Reports

Each State participating in the pilot program under this section shall from time to time report to the Commissioner of Social Security on the operation and results of such program in that State, with particular emphasis upon the work incentive effects of the program. On or before October 1, 1983, the Commissioner of Social Security shall submit to the Congress a report on the program, incorporating the information contained in the State reports along with the Commissioner's findings and recommendations.

(Aug. 14, 1935, ch. 531, title XVI, §1620, as added Pub. L. 96–265, title II, §201(c), June 9, 1980, 94 Stat. 446; amended Pub. L. 97–35, title XXIII, §2353(p), Aug. 13, 1981, 95 Stat. 874; Pub. L. 103–296, title I, §107(a)(4), Aug. 15, 1994, 108 Stat. 1478.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in subsec. (b)(2), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

1994—Subsecs. (b) to (f). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner finds that the Commissioner's'' for ''he finds that his'' in subsec. (d)(2)(B), and ''the Commissioner's'' for ''his'' in subsec. (f).

1981—Subsec. (c). Pub. L. 97–35 struck out provision following par. (7) that the plan under this section may be developed and submitted as a separate State plan or may be submitted in the form of an amendment to the State's plan under section 1397b(d) of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

§ 1382j. Attribution of sponsor's income and resources to aliens

(a) Attribution as unearned income

For purposes of determining eligibility for and the amount of benefits under this subchapter for an individual who is an alien, the income and resources of any person who (as a sponsor of such individual's entry into the United States) executed an affidavit of support or similar agreement with respect to such individual, and the income and resources of the sponsor's spouse, shall be deemed to be the income and resources of such individual (in accordance with subsections (b) and (c) of this section) for a period of 3 years after the individual's entry into the United States. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

(b) Determination of amount and resources

(1) The amount of income of a sponsor (and his spouse) which shall be deemed to be the unearned income of an alien for any year shall be determined as follows:

(A) The total yearly rate of earned and unearned income (as determined under section 1382a(a) of this title) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined for such year.

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) the maximum amount of the Federal benefit under this subchapter for such year which would be payable to an eligible individual who has no other income and who does not have an eligible spouse (as determined under section 1382(b)(1) of this title), plus (ii) one-half of the amount determined under clause (i) multiplied by the number of individuals who are dependents of such sponsor (or such sponsor's spouse if such spouse is living with the sponsor), other than such alien and such alien's spouse.

(C) The amount of income which shall be deemed to be unearned income of such alien shall be at a yearly rate equal to the amount determined under subparagraph (B). The period for determination of such amount shall be the same as the period for determination of benefits under section 1382(c) of this title.

(2) The amount of resources of a sponsor (and his spouse) which shall be deemed to be the resources of an alien for any year shall be determined as follows:

(A) The total amount of the resources (as determined under section 1382b of this title) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined.

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) the applicable amount determined under section 1382(a)(3)(B) of this title in the case of a sponsor who has no spouse with whom he is living, or (ii) the applicable amount determined under section 1382(a)(3)(A) of this title in the case of a sponsor who has a spouse with whom he is living.

(C) The resources of such sponsor (and spouse) as determined under subparagraphs (A) and (B) shall be deemed to be resources of such alien in addition to any resources of such alien.

(c) Support and maintenance

In determining the amount of income of an alien during the period of 3 years after such alien's entry into the United States, the reduction in dollar amounts otherwise required under section 1382a(a)(2)(A)(i) of this title shall not be applicable if such alien is living in the household of a person who is a sponsor (or such sponsor's spouse) of such alien, and is receiving support and maintenance in kind from such sponsor (or spouse), nor shall support or maintenance furnished in cash or kind to an alien by such alien's sponsor (to the extent that it reflects income or resources which were taken into account in determining the amount of income and resources to be deemed to the alien under subsection (a) or (b) of this section) be considered to be income of such alien under section 1382a(a)(2)(A) of this title.

(d) Information and documentation; agreements with Secretary of State and Attorney General

(1) Any individual who is an alien shall, during the period of 3 years after entry into the United States, in order to be an eligible individual or eligible spouse for purposes of this subchapter, be required to provide to the Commissioner of Social Security such information and documentation with respect to his sponsor as may be necessary in order for the Commissioner of Social Security to make any determination required under this section, and to obtain any cooperation from such sponsor necessary for any such determination. Such alien shall also be required to provide to the Commissioner of Social Security such information and documentation as the Commissioner of Social Security may request and which such alien or his sponsor provided in support of such alien's immigration application.

(2) The Commissioner of Social Security shall enter into agreements with the Secretary of State and the Attorney General whereby any information available to such persons and required in order to make any determination under this section will be provided by such persons to the Commissioner of Social Security, and whereby such persons shall inform any sponsor of an alien, at the time such sponsor executes an affidavit of support or similar agreement, of the requirements imposed by this section.

(e) Joint and several liability of alien and sponsor for overpayments

Any sponsor of an alien, and such alien, shall be jointly and severally liable for an amount equal to any overpayment made to such alien during the period of 3 years after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause for such failure existed. Any such overpayment which is not repaid to the Commissioner of Social Security or recovered in accordance with section 1383(b) of this title shall be withheld from any subsequent payment to which

such alien or such sponsor is entitled under any provision of this chapter.

(f) Exemptions

(1) The provisions of this section shall not apply with respect to any individual who is an ''aged, blind, or disabled individual'' for purposes of this subchapter by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), from and after the onset of the impairment, if such blindness or disability commenced after the date of such individual's admission into the United States for permanent residence.

(2) The provisions of this section shall not apply with respect to any alien who is—

(A) admitted to the United States as a result of the application, prior to April 1, 1980, of the provisions of section 1153(a)(7) of title 8;

(B) admitted to the United States as a result of the application, after March 31, 1980, of the provisions of section 1157(c)(1) of title 8;

(C) paroled into the United States as a refugee under section 1182(d)(5) of title 8; or

(D) granted political asylum by the Attorney General.

(Aug. 14, 1935, ch. 531, title XVI, §1621, as added Pub. L. 96–265, title V, §504(b), June 9, 1980, 94 Stat. 471; amended Pub. L. 98–369, div. B, title VI, §§2611(d), 2663(g)(10), July 18, 1984, 98 Stat. 1131, 1169; Pub. L. 103–152, §7(a)(1), (b)(1), Nov. 24, 1993, 107 Stat. 1519; Pub. L. 103–296, title I, §107(a)(4), Aug. 15, 1994, 108 Stat. 1478.)

REFERENCES IN TEXT

Section 1153(a)(7) of title 8, referred to in subsec. (f)(2)(A), to be deemed a reference to such section as in effect prior to Apr. 1, 1980, and to sections 1157 and 1158 of Title 8, Aliens and Nationality. See section 203(h) of Pub. L. 96–212, set out as a note under section 1153 of Title 8.

AMENDMENTS

1994—Subsecs. (d), (e). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, except where appearing before ''of State'' in subsec. (d)(2).

1993—Pub. L. 103–152, §7(b)(1), substituted ''3 years'' for ''5 years'' in subsecs. (a), (c), (d)(1), and (e).

Pub. L. 103–152, §7(a)(1), substituted ''5 years'' for ''three years'' in subsecs. (a), (c), (d)(1), and (e).

1984—Subsec. (b)(2)(B). Pub. L. 98–369, §2611(d), substituted ''the applicable amount determined under section 1382(a)(3)(B) of this title'' for ''$1,500'' and ''the applicable amount determined under section 1382(a)(3)(A) of this title'' for ''$2,250''.

Subsec. (e). Pub. L. 98–369, §2663(g)(10), substituted ''severally'' for ''severably''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 7(a)(2) of Pub. L. 103–152 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 1994.''

Section 7(b)(2) of Pub. L. 103–152 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on October 1, 1996.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2611(d) of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 657 of this title.

Amendment by section 2663(g)(10) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 504(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [enacting this section and amending section 1382c of this title] shall be effective with respect to individuals applying for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] for the first time after September 30, 1980.''

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§1382k. Repealed. Pub. L. 97–123, §2(h), Dec. 29, 1981, 95 Stat. 1661

Section, act Aug. 14, 1935, ch. 531, title XVI, §1622, as added Aug. 13, 1981, Pub. L. 97–35, title XXII, §2201(g), 95 Stat. 833, related to benefits for individuals formerly receiving minimum benefits.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to benefits for months after December 1981, see section 2(j)(2) of Pub. L. 97–123, set out as an Effective Date of 1981 Amendment note under section 415 of this title.

Pub. L. 97–35, title XXII, §2201(h), Aug. 13, 1981, 95 Stat. 834, which provided for the effective date of this section and the other enactments and amendments made by section 2201 of Pub. L. 97–35, was repealed by Pub. L. 97–123, §2(j)(1), Dec. 29, 1981, 95 Stat. 1661.

PART B—PROCEDURAL AND GENERAL PROVISIONS

§1383. Procedure for payment of benefits

(a) Time, manner, form, and duration of payments; representative payees; promulgation of regulations

(1) Benefits under this subchapter shall be paid at such time or times and (subject to paragraph (10)) in such installments as will best effectuate the purposes of this subchapter, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

(2)(A)(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

(ii)(I) Upon a determination by the Commissioner of Social Security that the interest of such individual would be served thereby, such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's ''representative payee'') for the use and benefit of the individual or eligible spouse.

(II) In the case of an individual eligible for benefits under this subchapter by reason of disability, the payment of such benefits shall be

made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(iii) If the Commissioner of Social Security or a court of competent jurisdiction determines that the representative payee of an individual or eligible spouse has misused any benefits which have been paid to the representative payee pursuant to clause (ii) or section 405(j)(1) or 1007 of this title, the Commissioner of Social Security shall promptly terminate payment of benefits to the representative payee pursuant to this subparagraph, and provide for payment of benefits to an alternative representative payee of the individual or eligible spouse or, if the interest of the individual under this subchapter would be served thereby, to the individual or eligible spouse.

(iv) For purposes of this paragraph, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this subchapter for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term ''use and benefit'' for purposes of this clause.

(B)(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of—

(I) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practicable, include a face-to-face interview with such person; and

(II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Commissioner of Social Security in regulations).

(ii) As part of the investigation referred to in clause (i)(I), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under subchapter II of this chapter, subchapter VIII of this chapter, or this subchapter;

(II) verify the social security account number (or employer identification number) of such person;

(III) determine whether such person has been convicted of a violation of section 408, 1011, or 1383a of this title;

(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

(V) obtain information concerning whether such person is a person described in section 1382(e)(4)(A) of this title; and

(VI) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), whether the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, and whether certification of payment of benefits to such person has been revoked pursuant to section 405(j) of this title, by reason of misuse of funds paid as benefits under subchapter II of this chapter, subchapter VIII of this chapter, or this subchapter.

(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—

(I) such person has previously been convicted as described in clause (ii)(III);

(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause (ii)(VI), the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or certification of payment of benefits to such person under section 405(j) of this title has previously been revoked as described in section 405(j)(2)(B)(i)(VI) of this title;

(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration;

(IV) the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction; or

(V) such person is a person described in section 1382(e)(4)(A) of this title.

(iv) The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exemption from clause (iii)(II) to any person on a case-by-case basis if such exemption would be in the best interest of the individual or eligible spouse whose benefits under this subchapter would be paid to such person pursuant to subparagraph (A)(ii).

(v) Clause (iii)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual;

(II) a legal guardian or legal representative of such individual;

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State;

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the payment of benefits under this subchapter to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom the payment of such benefits would serve the best interests of such individual; or

(V) an individual who is determined by the Commissioner of Social Security, on the basis

of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(vi) The procedures referred to in clause (v)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary;

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest; and

(III) no other more suitable representative payee can be found.

(vii) In the case of an individual described in subparagraph (A)(ii)(II), when selecting such individual's representative payee, preference shall be given to—

(I) a certified community-based nonprofit social service agency (as defined in subparagraph (I));

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(III) a State or local government agency with fiduciary responsibilities; or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate,

unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(viii) Subject to clause (ix), if the Commissioner of Social Security makes a determination described in subparagraph (A)(ii) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subparagraph.

(ix)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (viii) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of the Commissioner's determination, legally incompetent, under the age of 15 years, or described in subparagraph (A)(ii)(II).

(x) Payment pursuant to this subparagraph of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual, or to the representative payee upon such selection, as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interests of the individual entitled to such benefits.

(xi) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to pay such individual's benefits to a representative payee under this subchapter, or with the designation of a particular person to serve as representative payee, shall be entitled to a hearing by the Commissioner of Social Security, and to judicial review of the Commissioner's final decision, to the same extent as is provided in subsection (c) of this section.

(xii) In advance of the first payment of an individual's benefit to a representative payee under subparagraph (A)(ii), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to make any such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(xiii) Any notice described in clause (xii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (xi) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(xiv) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subparagraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

(I) such person is described in section 1382(e)(4)(A) of this title,

(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

(III) the location or apprehension of such person is within the officer's official duties.

(C)(i) In any case where payment is made under this subchapter to a representative payee of an individual or spouse, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for re-

viewing such reports in order to identify instances in which such persons are not properly using such payments.

(ii) Clause (i) shall not apply in any case where the representative payee is a State institution. In such cases, the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(iii) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the representative payee is the institution.

(iv) Notwithstanding clauses (i), (ii), and (iii), the Commissioner of Social Security may require a report at any time from any representative payee, if the Commissioner of Social Security has reason to believe that the representative payee is misusing such payments.

(v) In any case in which the person described in clause (i) or (iv) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (iv), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.

(D)(i) Except as provided in the next sentence, a qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which an individual is described in subparagraph (A)(ii)(II)).

A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commissioner of Social Security shall adjust annually (after 1995) each dollar amount set forth in subclause (II) of this clause under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00. Any agreement providing for a fee in excess of the amount permitted under this clause shall be void and shall be treated as misuse by the organization of such individual's benefits.

(ii) For purposes of this subparagraph, the term ''qualified organization'' means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance with any applicable regulations of the Commissioner of Social Security—

(I) regularly provides services as a representative payee pursuant to subparagraph (A)(ii) or section 405(j)(4) or 1007 of this title concurrently to 5 or more individuals; and

(II) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from subclause (II) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(iii) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under clause (i) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, or imprisoned not more than 6 months, or both.

(iv) In the case of an individual who is no longer eligible for benefits under this subchapter but to whom any amount of past-due benefits under this subchapter has not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I).

(E) RESTITUTION.—In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. In any case in which a representative payee that—

(i) is not an individual (regardless of whether it is a ''qualified organization'' within the meaning of subparagraph (D)(ii)); or

(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this subchapter, subchapter II of this chapter, subchapter VIII of this chapter, or any combination of such subchapters;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii). The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(F)(i)(I) Each representative payee of an eligible individual under the age of 18 who is eligible for the payment of benefits described in subclause (II) shall establish on behalf of such individual an account in a financial institution into which such benefits shall be paid, and shall thereafter maintain such account for use in accordance with clause (ii).

(II) Benefits described in this subclause are past-due monthly benefits under this subchapter (which, for purposes of this subclause, include State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e of this title or section 212(b) of Public Law 93–66) in an amount (after any withholding by the Commissioner for reimbursement to a State for interim assistance under subsection (g) of this section and payment of attorney fees under subsection (d)(2)(B) of this section) that exceeds the product of—

(aa) 6, and

(bb) the maximum monthly benefit payable under this subchapter to an eligible individual.

(ii)(I) A representative payee shall use funds in the account established under clause (i) to pay for allowable expenses described in subclause (II).

(II) An allowable expense described in this subclause is an expense for—

(aa) education or job skills training;

(bb) personal needs assistance;

(cc) special equipment;

(dd) housing modification;

(ee) medical treatment;

(ff) therapy or rehabilitation; or

(gg) any other item or service that the Commissioner determines to be appropriate;

provided that such expense benefits such individual and, in the case of an expense described in item (bb), (cc), (dd), (ff), or (gg), is related to the impairment (or combination of impairments) of such individual.

(III) The use of funds from an account established under clause (i) in any manner not authorized by this clause—

(aa) by a representative payee shall be considered a misapplication of benefits for all purposes of this paragraph, and any representative payee who knowingly misapplies benefits from such an account shall be liable to the Commissioner in an amount equal to the total amount of such benefits; and

(bb) by an eligible individual who is his or her own payee shall be considered a misapplication of benefits for all purposes of this paragraph and in any case in which the individual knowingly misapplies benefits from such an account, the Commissioner shall reduce future benefits payable to such individual (or to such individual and his spouse) by an amount equal to the total amount of such benefits so misapplied.

(IV) This clause shall continue to apply to funds in the account after the child has reached age 18, regardless of whether benefits are paid directly to the beneficiary or through a representative payee.

(iii) The representative payee may deposit into the account established under clause (i) any other funds representing past due benefits under this subchapter to the eligible individual, provided that the amount of such past due benefits is equal to or exceeds the maximum monthly benefit payable under this subchapter to an eligible individual (including State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e of this title or section 212(b) of Public Law 93–66).

(iv) The Commissioner of Social Security shall establish a system for accountability monitoring whereby such representative payee shall report, at such time and in such manner as the Commissioner shall require, on activity respecting funds in the account established pursuant to clause (i).

(G)(i) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency that receives the benefits payable under this subchapter (alone or in combination with benefits payable under subchapter II of this chapter or subchapter VIII of this chapter) to another individual pursuant to the appointment of the person or agency as a representative payee under this paragraph, section 405(j) of this title, or section 1007 of this title in any case in which—

(I) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

(II) the representative payee is a certified community-based nonprofit social service agency (as defined in subparagraph (I) of this paragraph or section 405(j)(10) of this title); or

(III) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 or more such individuals.

(ii) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to clause (i) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this subchapter. Each such report shall describe in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include—

(I) the number of the reviews;

(II) the results of such reviews;

(III) the number of cases in which the representative payee was changed and why;

(IV) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(V) the number of cases discovered in which there was a misuse of funds;

(VI) how any such cases of misuse of funds were dealt with by the Commissioner;

(VII) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(VIII) such other information as the Commissioner deems appropriate.

(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to the representative payee under this

paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual's alternative representative payee.

(ii) The total of the amount paid to such individual or such individual's alternative representative payee under clause (i) and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.

(I) For purposes of this paragraph, the term ''certified community-based nonprofit social service agency'' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.

(3) The Commissioner of Social Security may by regulation establish ranges of incomes within which a single amount of benefits under this subchapter shall apply.

(4) The Commissioner of Social Security—

(A) may make to any individual initially applying for benefits under this subchapter who is presumptively eligible for such benefits for the month following the date the application is filed and who is faced with financial emergency a cash advance against such benefits, including any federally-administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility, which shall be repaid through proportionate reductions in such benefits over a period of not more than 6 months; and

(B) may pay benefits under this subchapter to an individual applying for such benefits on the basis of disability or blindness for a period not exceeding 6 months prior to the determination of such individual's disability or blindness, if such individual is presumptively disabled or blind and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) of this section solely because such individual is determined not to be disabled or blind.

(5) Payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.

(6) Notwithstanding any other provision of this subchapter, payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title) shall not be terminated or suspended because the blindness or other physical or mental impairment, on which the individual's eligibility for such benefit is based, has or may have ceased, if—

(A) such individual is participating in a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b–19 of this title or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security, and

(B) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the blindness and disability benefit rolls.

(7)(A) In any case where—

(i) an individual is a recipient of benefits based on disability or blindness under this subchapter,

(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Commissioner of Social Security shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after October 9, 1984, for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in clause (ii).

(ii) If the Commissioner of Social Security determines that the individual's appeal of his ter-

mination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1) of this section.

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after October 9, 1984, or prior to such date but only on the basis of a timely request for review or for a hearing.

(8)(A) In any case in which an administrative law judge has determined after a hearing as provided in subsection (c) of this section that an individual is entitled to benefits based on disability or blindness under this subchapter and the Commissioner of Social Security has not issued the Commissioner's final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month in which such 110-day period expires and ending with the month in which such final decision is issued.

(B) For purposes of subparagraph (A), in determining whether the 110-day period referred to in subparagraph (A) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Commissioner's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

(C) Any benefits currently paid under this subchapter pursuant to this paragraph (for the months described in subparagraph (A)) shall not be considered overpayments for any purposes of this subchapter, unless payment of such benefits was fraudulently obtained.

(9) Benefits under this subchapter shall not be denied to any individual solely by reason of the refusal of the individual to accept an amount offered as compensation for a crime of which the individual was a victim.

(10)(A) If an individual is eligible for past-due monthly benefits under this subchapter in an amount that (after any withholding for reimbursement to a State for interim assistance under subsection (g) of this section and payment of attorney fees under subsection (d)(2)(B) of this section) equals or exceeds the product of—

(i) 12, and

(ii) the maximum monthly benefit payable under this subchapter to an eligible individual (or, if appropriate, to an eligible individual and eligible spouse),

then the payment of such past-due benefits (after any such reimbursement to a State and payment of attorney fees under subsection (d)(2)(B) of this section) shall be made in installments as provided in subparagraph (B).

(B)(i) The payment of past-due benefits subject to this subparagraph shall be made in not to exceed 3 installments that are made at 6-month intervals.

(ii) Except as provided in clause (iii), the amount of each of the first and second installments may not exceed an amount equal to the product of clauses (i) and (ii) of subparagraph (A).

(iii) In the case of an individual who has—

(I) outstanding debt attributable to—

(aa) food,

(bb) clothing,

(cc) shelter, or

(dd) medically necessary services, supplies or equipment, or medicine; or

(II) current expenses or expenses anticipated in the near term attributable to—

(aa) medically necessary services, supplies or equipment, or medicine, or

(bb) the purchase of a home, and

such debt or expenses are not subject to reimbursement by a public assistance program, the Secretary under subchapter XVIII of this chapter, a State plan approved under subchapter XIX of this chapter, or any private entity legally liable to provide payment pursuant to an insurance policy, pre-paid plan, or other arrangement, the limitation specified in clause (ii) may be exceeded by an amount equal to the total of such debt and expenses.

(C) This paragraph shall not apply to any individual who, at the time of the Commissioner's determination that such individual is eligible for the payment of past-due monthly benefits under this subchapter—

(i) is afflicted with a medically determinable impairment that is expected to result in death within 12 months; or

(ii) is ineligible for benefits under this subchapter and the Commissioner determines that such individual is likely to remain ineligible for the next 12 months.

(D) For purposes of this paragraph, the term ''benefits under this subchapter'' includes supplementary payments pursuant to an agreement for Federal administration under section 1382e(a) of this title, and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

(b) Overpayments and underpayments; adjustment, recovery, or payment of amounts by Commissioner

(1)(A) Whenever the Commissioner of Social Security finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from such individual or his eligible spouse (or from the estate of either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment—

(i) to any surviving spouse of such individual, whether or not the individual's eligible spouse, if (within the meaning of the first sentence of section 402(i) of this title) such surviving husband or wife was living in the same household with the individual at the time of his death or within the 6 months immediately preceding the month of such death, or

(ii) if such individual was a disabled or blind child who was living with his parent or parents at the time of his death or within the 6 months immediately preceding the month of such death, to such parent or parents.

(B) The Commissioner of Social Security (i) shall make such provision as the Commissioner

finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this subchapter, or be against equity and good conscience, or (because of the small amount involved) impede efficient or effective administration of this subchapter, and (ii) shall in any event make the adjustment or recovery (in the case of payment of more than the correct amount of benefits), in the case of an individual or eligible spouse receiving monthly benefit payments under this subchapter (including supplementary payments of the type described in section 1382e(a) of this title and payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), in amounts which in the aggregate do not exceed (for any month) the lesser of (I) the amount of his or their benefit under this subchapter for that month or (II) an amount equal to 10 percent of his or their income for that month (including such benefit but excluding payments under subchapter II of this chapter when recovery is made from subchapter II payments pursuant to section 1320b–17 of this title and excluding income excluded pursuant to section 1382a(b) of this title), and in the case of an individual or eligible spouse to whom a lump sum is payable under this subchapter (including under section 1382e(a) of this title or under an agreement entered into under section 212(a) of Public Law 93–66) shall, as at least one means of recovering such overpayment, make the adjustment or recovery from the lump sum payment in an amount equal to not less than the lesser of the amount of the overpayment or the lump sum payment, unless fraud, willful misrepresentation, or concealment of material information was involved on the part of the individual or spouse in connection with the overpayment, or unless the individual requests that such adjustment or recovery be made at a higher or lower rate and the Commissioner of Social Security determines that adjustment or recovery at such rate is justified and appropriate. The availability (in the case of an individual who has been paid more than the correct amount of benefits) of procedures for adjustment or recovery at a limited rate under clause (ii) of the preceding sentence shall not, in and of itself, prevent or restrict the provision (in such case) of more substantial relief under clause (i) of such sentence.

(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

(C) such other person is the surviving spouse of the deceased individual, and was eligible for a payment under this subchapter (including any State supplementation payment paid by the Commissioner of Social Security) as an eligible spouse (or as either member of an eligible couple) for the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person. If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual's death, the representative payee shall be liable for the repayment of the overpayment, and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee.

(3) If any overpayment with respect to an individual (or an individual and his or her spouse) is attributable solely to the ownership or possession by such individual (and spouse if any) of resources having a value which exceeds the applicable dollar figure specified in paragraph (1)(B) or (2)(B) of section 1382(a) of this title by $50 or less, such individual (and spouse if any) shall be deemed for purposes of the second sentence of paragraph (1) to have been without fault in connection with the overpayment, and no adjustment or recovery shall be made under the first sentence of such paragraph, unless the Commissioner of Social Security finds that the failure of such individual (and spouse if any) to report such value correctly and in a timely manner was knowing and willful.

(4)(A) With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, 3717, and 3718 of title 31 and in section 5514 of title 5, all as in effect immediately after April 26, 1996.

(B) For purposes of subparagraph (A), the term ''delinquent amount'' means an amount—

(i) in excess of the correct amount of payment under this subchapter;

(ii) paid to a person after such person has attained 18 years of age; and

(iii) determined by the Commissioner of Social Security, under regulations, to be otherwise unrecoverable under this section after such person ceases to be a beneficiary under this subchapter.

(5) For payments for which adjustments are made by reason of a retroactive payment of benefits under subchapter II of this chapter, see section 1320a–6 of this title.

(6) For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1320b–17 of this title.

(c) Hearing to determine eligibility or amount of benefits; subsequent application; time within which to request hearing; time for determinations of Commissioner pursuant to hearing; judicial review

(1)(A) The Commissioner of Social Security is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this subchapter. Any such decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case,

in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based. The Commissioner of Social Security shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this subchapter with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse the Commissioner's findings of fact and such decision. The Commissioner of Social Security is further authorized, on the Commissioner's own motion, to hold such hearings and to conduct such investigations and other proceedings as the Commissioner may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under the rules of evidence applicable to court procedure. The Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation of such individual (including any lack of facility with the English language) in determining, with respect to the eligibility of such individual for benefits under this subchapter, whether such individual acted in good faith or was at fault, and in determining fraud, deception, or intent.

(B)(i) A failure to timely request review of an initial adverse determination with respect to an application for any payment under this subchapter or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any payment under this subchapter if the applicant demonstrates that the applicant, or any other individual referred to in subparagraph (A), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for payments in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 421 of this title.

(ii) In any notice of an adverse determination with respect to which a review may be requested under subparagraph (A), the Commissioner of Social Security shall describe in clear and specific language the effect on possible eligibility to receive payments under this subchapter of choosing to reapply in lieu of requesting review of the determination.

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves a disability (within the meaning of section 1382c(a)(3) of this title), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Commissioner of Social Security after a hearing under paragraph (1) shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Commissioner's final determinations under section 405 of this title.

(d) Procedures applicable; prohibition on assignment of payments; representation of claimants; maximum fees; penalties for violations

(1) The provisions of section 407 of this title and subsections (a), (d), and (e) of section 405 of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II of this chapter.

(2)(A) The provisions of section 406 of this title (other than subsections (a)(4) and (d) thereof) shall apply to this part to the same extent as they apply in the case of subchapter II of this chapter, except that such section shall be applied—

(i) by substituting, in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2)[1] the phrase ''(as determined before any applicable reduction under section 1383(g) of this title, and reduced by the amount of any reduction in benefits under this subchapter or subchapter II of this chapter made pursuant to section 1320a–6(a) of this title)'' for the parenthetical phrase contained therein;

(ii) by substituting, in subsections (a)(2)(B) and (b)(1)(B)(i), the phrase ''paragraph (7)(A) or (8)(A) of section 1383(a) of this title or the requirements of due process of law'' for the phrase ''subsection (g) or (h) of section 423 of this title'';

(iii) by substituting, in subsection (a)(2)(C)(i), the phrase ''under subchapter II of this chapter'' for the phrase ''under subchapter XVI of this chapter'';

(iv) by substituting, in subsection (b)(1)(A), the phrase ''pay the amount of such fee'' for the phrase ''certify the amount of such fee for payment'' and by striking, in subsection (b)(1)(A), the phrase ''or certified for payment''; and

(v) by substituting, in subsection (b)(1)(B)(ii), the phrase ''deemed to be such amounts as determined before any applicable reduction under section 1383(g) of this title, and reduced by the amount of any reduction in benefits under this subchapter or subchapter II of this chapter made pursuant to section 1320a–6(a) of this title'' for the phrase ''determined before any applicable reduction under section 1320a–6(a) of this title)''.[2]

(B) Subject to subparagraph (C), if the claimant is determined to be entitled to past-due benefits under this subchapter and the person representing the claimant is an attorney, the Commissioner of Social Security shall pay out of such past-due benefits to such attorney an amount equal to the lesser of—

(i) so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under subsection (g) of this section and re-

[1] So in original. Probably should be followed by a comma.

[2] So in original. Closing parenthesis after ''title'' probably should not appear.

duced by the amount of any reduction in benefits under this subchapter or subchapter II of this chapter pursuant to section 1320a–6(a) of this title), or

(ii) the amount of past-due benefits available after any applicable reductions under subsection (g) of this section and section 1320a–6(a) of this title.

(C)(i) Whenever a fee for services is required to be paid to an attorney from a claimant's past-due benefits pursuant to subparagraph (B), the Commissioner shall impose on the attorney an assessment calculated in accordance with clause (ii).

(ii)(I) The amount of an assessment under clause (i) shall be equal to the product obtained by multiplying the amount of the representative's fee that would be required to be paid by subparagraph (B) before the application of this subparagraph, by the percentage specified in subclause (II), except that the maximum amount of the assessment may not exceed $75. In the case of any calendar year beginning after the amendments made by section 302 of the Social Security Protection Act of 2003[3] take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(i)(2)(A)(ii) of this title, except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.

(II) The percentage specified in this subclause is such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and approving fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

(iii) The Commissioner may collect the assessment imposed on an attorney under clause (i) by offset from the amount of the fee otherwise required by subparagraph (B) to be paid to the attorney from a claimant's past-due benefits.

(iv) An attorney subject to an assessment under clause (i) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

(v) Assessments on attorneys collected under this subparagraph shall be deposited as miscellaneous receipts in the general fund of the Treasury.

(vi) The assessments authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this subchapter and related laws.

(D) The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

(e) Administrative requirements prescribed by Commissioner; criteria; reduction of benefits to individual for noncompliance with requirements; payment to homeless

(1)(A) The Commissioner of Social Security shall, subject to subparagraph (B) and subsection (j) of this section, prescribe such requirements with respect to the filing of applications, the suspension or termination of assistance, the furnishing of other data and material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this subchapter.

(B)(i) The requirements prescribed by the Commissioner of Social Security pursuant to subparagraph (A) shall require that eligibility for benefits under this subchapter will not be determined solely on the basis of declarations by the applicant concerning eligibility factors or other relevant facts, and that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct. For this purpose and for purposes of federally administered supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), the Commissioner of Social Security shall, as may be necessary, request and utilize information available pursuant to section 6103(*l*)(7) of the Internal Revenue Code of 1986, and any information which may be available from State systems under section 1320b–7 of this title, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(*l*)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1320b–7 of this title.

(ii)(I) The Commissioner of Social Security may require each applicant for, or recipient of, benefits under this subchapter to provide authorization by the applicant or recipient (or by any other person whose income or resources are material to the determination of the eligibility of the applicant or recipient for such benefits) for the Commissioner to obtain (subject to the cost reimbursement requirements of section 1115(a) of the Right to Financial Privacy Act [12 U.S.C. 3415]) from any financial institution (within the meaning of section 1101(1) of such Act [12 U.S.C. 3401(1)]) any financial record (within the meaning of section 1101(2) of such Act [12 U.S.C. 3401(2)]) held by the institution with respect to the applicant or recipient (or any such other person) whenever the Commissioner determines the record is needed in connection with a determination with respect to such eligibility or the amount of such benefits.

[3] See References in Text note below.

(II) Notwithstanding section 1104(a)(1) of the Right to Financial Privacy Act [12 U.S.C. 3404(a)(1)], an authorization provided by an applicant or recipient (or any other person whose income or resources are material to the determination of the eligibility of the applicant or recipient) pursuant to subclause (I) of this clause shall remain effective until the earliest of—

(aa) the rendering of a final adverse decision on the applicant's application for eligibility for benefits under this subchapter;

(bb) the cessation of the recipient's eligibility for benefits under this subchapter; or

(cc) the express revocation by the applicant or recipient (or such other person referred to in subclause (I)) of the authorization, in a written notification to the Commissioner.

(III)(aa) An authorization obtained by the Commissioner of Social Security pursuant to this clause shall be considered to meet the requirements of the Right to Financial Privacy Act [12 U.S.C. 3401 et seq.] for purposes of section 1103(a) of such Act [12 U.S.C. 3403(a)], and need not be furnished to the financial institution, notwithstanding section 1104(a) of such Act [12 U.S.C. 3404(a)].

(bb) The certification requirements of section 1103(b) of the Right to Financial Privacy Act [12 U.S.C. 3403(b)] shall not apply to requests by the Commissioner of Social Security pursuant to an authorization provided under this clause.

(cc) A request by the Commissioner pursuant to an authorization provided under this clause is deemed to meet the requirements of section 1104(a)(3) of the Right to Financial Privacy Act [12 U.S.C. 3404(a)(3)] and the flush language of section 1102 of such Act [12 U.S.C. 3402].

(IV) The Commissioner shall inform any person who provides authorization pursuant to this clause of the duration and scope of the authorization.

(V) If an applicant for, or recipient of, benefits under this subchapter (or any such other person referred to in subclause (I)) refuses to provide, or revokes, any authorization made by the applicant or recipient for the Commissioner of Social Security to obtain from any financial institution any financial record, the Commissioner may, on that basis, determine that the applicant or recipient is ineligible for benefits under this subchapter.

(C) For purposes of making determinations under section 1382(e) of this title, the requirements prescribed by the Commissioner of Social Security pursuant to subparagraph (A) of this paragraph shall require each administrator of a nursing home, extended care facility, or intermediate care facility, within 2 weeks after the admission of any eligible individual or eligible spouse receiving benefits under this subchapter, to transmit to the Commissioner a report of the admission.

(2) In case of the failure by any individual to submit a report of events and changes in circumstances relevant to eligibility for or amount of benefits under this subchapter as required by the Commissioner of Social Security under paragraph (1), or delay by any individual in submitting a report as so required, the Commissioner of Social Security (in addition to taking any other action the Commissioner may consider appropriate under paragraph (1)) shall reduce any benefits which may subsequently become payable to such individual under this subchapter by—

(A) $25 in the case of the first such failure or delay,

(B) $50 in the case of the second such failure or delay, and

(C) $100 in the case of the third or a subsequent such failure or delay,

except where the individual was without fault or good cause for such failure or delay existed.

(3) The Commissioner of Social Security shall provide a method of making payments under this subchapter to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

(4) A translation into English by a third party of a statement made in a foreign language by an applicant for or recipient of benefits under this subchapter shall not be regarded as reliable for any purpose under this subchapter unless the third party, under penalty of perjury—

(A) certifies that the translation is accurate; and

(B) discloses the nature and scope of the relationship between the third party and the applicant or recipient, as the case may be.

(5) In any case in which it is determined to the satisfaction of the Commissioner of Social Security that an individual failed as of any date to apply for benefits under this subchapter by reason of misinformation provided to such individual by any officer or employee of the Social Security Administration relating to such individual's eligibility for benefits under this subchapter, such individual shall be deemed to have applied for such benefits on the later of—

(A) the date on which such misinformation was provided to such individual, or

(B) the date on which such individual met all requirements for entitlement to such benefits (other than application therefor).

(6) In any case in which an individual visits a field office of the Social Security Administration and represents during the visit to an officer or employee of the Social Security Administration in the office that the individual's visit is occasioned by—

(A) the receipt of a notice from the Social Security Administration indicating a time limit for response by the individual, or

(B) the theft, loss, or nonreceipt of a benefit payment under this subchapter,

the Commissioner of Social Security shall ensure that the individual is granted a face-to-face interview at the office with an officer or employee of the Social Security Administration before the close of business on the day of the visit.

(7)(A)(i) The Commissioner of Social Security shall immediately redetermine the eligibility of an individual for benefits under this subchapter if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that such action by the

Commissioner of Social Security with regard to recipients in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.

(ii) When redetermining the eligibility, or making an initial determination of eligibility, of an individual for benefits under this subchapter, the Commissioner of Social Security shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.

(B) For purposes of subparagraph (A), similar fault is involved with respect to a determination if—

(i) an incorrect or incomplete statement that is material to the determination is knowingly made; or

(ii) information that is material to the determination is knowingly concealed.

(C) If, after redetermining the eligibility of an individual for benefits under this subchapter, the Commissioner of Social Security determines that there is insufficient evidence to support such eligibility, the Commissioner of Social Security may terminate such eligibility and may treat benefits paid on the basis of such insufficient evidence as overpayments.

(8)(A) The Commissioner of Social Security shall request the Immigration and Naturalization Service or the Centers for Disease Control to provide the Commissioner of Social Security with whatever medical information, identification information, and employment history either such entity has with respect to any alien who has applied for benefits under this subchapter to the extent that the information is relevant to any determination relating to eligibility for such benefits under this subchapter.

(B) Subparagraph (A) shall not be construed to prevent the Commissioner of Social Security from adjudicating the case before receiving such information.

(9) Notwithstanding any other provision of law, the Commissioner shall, at least 4 times annually and upon request of the Immigration and Naturalization Service (hereafter in this paragraph referred to as the ''Service''), furnish the Service with the name and address of, and other identifying information on, any individual who the Commissioner knows is not lawfully present in the United States, and shall ensure that each agreement entered into under section 1382e(a) of this title with a State provides that the State shall furnish such information at such times with respect to any individual who the State knows is not lawfully present in the United States.

(f) Furnishing of information by Federal agencies

The head of any Federal agency shall provide such information as the Commissioner of Social Security needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

(g) Reimbursement to States for interim assistance payments

(1) Notwithstanding subsection (d)(1) of this section and subsection (b) of this section as it relates to the payment of less than the correct amount of benefits, the Commissioner of Social Security may, upon written authorization by an individual, withhold benefits due with respect to that individual and may pay to a State (or a political subdivision thereof if agreed to by the Commissioner of Social Security and the State) from the benefits withheld an amount sufficient to reimburse the State (or political subdivision) for interim assistance furnished on behalf of the individual by the State (or political subdivision).

(2) For purposes of this subsection, the term ''benefits'' with respect to any individual means supplemental security income benefits under this subchapter, and any State supplementary payments under section 1382e of this title or under section 212 of Public Law 93–66 which the Commissioner of Social Security makes on behalf of a State (or political subdivision thereof), that the Commissioner of Social Security has determined to be due with respect to the individual at the time the Commissioner of Social Security makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3). A cash advance made pursuant to subsection (a)(4)(A) of this section shall not be considered as the first payment of benefits for purposes of the preceding sentence.

(3) For purposes of this subsection, the term ''interim assistance'' with respect to any individual means assistance financed from State or local funds and furnished for meeting basic needs (A) during the period, beginning with the month following the month in which the individual filed an application for benefits (as defined in paragraph (2)), for which he was eligible for such benefits, or (B) during the period beginning with the first month for which the individual's benefits (as defined in paragraph (2)) have been terminated or suspended if the individual was subsequently found to have been eligible for such benefits.

(4) In order for a State to receive reimbursement under the provisions of paragraph (1), the State shall have in effect an agreement with the Commissioner of Social Security which shall provide—

(A) that if the Commissioner of Social Security makes payment to the State (or a political subdivision of the State as provided for under the agreement) in reimbursement for interim assistance (as defined in paragraph (3)) for any individual in an amount greater than the reimbursable amount authorized by paragraph (1), the State (or political subdivision) shall pay to the individual the balance of such payment in excess of the reimbursable amount as expeditiously as possible, but in any event within ten working days or a shorter period specified in the agreement; and

(B) that the State will comply with such other rules as the Commissioner of Social Security finds necessary to achieve efficient and effective administration of this subsection and to carry out the purposes of the program established by this subchapter, including protection of hearing rights for any individual aggrieved by action taken by the State (or political subdivision) pursuant to this subsection.

(5) The provisions of subsection (c) of this section shall not be applicable to any disagreement

concerning payment by the Commissioner of Social Security to a State pursuant to the preceding provisions of this subsection nor the amount retained by the State (or political subdivision).

(h) Payment of certain travel expenses

The Commissioner of Social Security shall pay travel expenses, either on an actual cost or commuted basis, to individuals for travel incident to medical examinations requested by the Commissioner of Social Security in connection with disability determinations under this subchapter, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 1382c(e) of this title) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Commissioner of Social Security) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations. The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.

(i) Unnegotiated checks; notice to Commissioner; payment to States; notice to States; investigation of payees

(1) The Secretary of the Treasury shall, on a monthly basis, notify the Commissioner of Social Security of all benefit checks issued under this subchapter which include amounts representing State supplementary payments as described in paragraph (2) and which have not been presented for payment within one hundred and eighty days after the day on which they were issued.

(2) The Commissioner of Social Security shall from time to time determine the amount representing the total of the State supplementary payments made pursuant to agreements under section 1382e(a) of this title and under section 212(b) of Public Law 93–66 which is included in all such benefit checks not presented for payment within one hundred and eighty days after the day on which they were issued, and shall pay each State (or credit each State with) an amount equal to that State's share of all such amount. Amounts not paid to the States shall be returned to the appropriation from which they were originally paid.

(3) The Commissioner of Social Security, upon notice from the Secretary of the Treasury under paragraph (1), shall notify any State having an agreement described in paragraph (2) of all such benefit checks issued under that State's agreement which were not presented for payment within one hundred and eighty days after the day on which they were issued.

(4) The Commissioner of Social Security shall, to the maximum extent feasible, investigate the whereabouts and eligibility of the individuals whose benefit checks were not presented for payment within one hundred and eighty days after the day on which they were issued.

(j) Application and review requirements for certain individuals

(1) Notwithstanding any provision of section 1382 or 1382h of this title, any individual who—

(A) was an eligible individual (or eligible spouse) under section 1382 of this title or was eligible for benefits under or pursuant to section 1382h of this title, and

(B) who, after such eligibility, is ineligible for benefits under or pursuant to both such sections for a period of 12 consecutive months (or 24 consecutive months, in the case of such an individual whose ineligibility for benefits under or pursuant to both such sections is a result of being called to active duty pursuant to section 12301(d) or 12302 of title 10 or section 502(f) of title 32),

may not thereafter become eligible for benefits under or pursuant to either such section until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section, or has filed a request for reinstatement of eligibility under subsection (p)(2) of this section and been determined to be eligible for reinstatement.

(2)(A) Notwithstanding any provision of section 1382 of this title or section 1382h of this title (other than subsection (c) thereof), any individual who was eligible for benefits pursuant to section 1382h(b) of this title, and who—

(i)(I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible (other than pursuant to a request for reinstatement under subsection (p) of this section) for benefits under section 1382 or 1382h(a) of this title for a month that follows a period during which the individual was ineligible for benefits under sections 1382 and 1382h(a) of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments); or

(ii)(I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible under section 1382h(b) of this title for a month that follows a period during which the individual was ineligible under section 1382 of this title and section 1382h of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for such month or for any month in the

12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments);

shall, upon becoming eligible (as described in clause (i)(I) or (ii)(I)), be subject to a prompt review of the type described in section 1382c(a)(4) of this title.

(B) If the Commissioner of Social Security determines pursuant to a review required by subparagraph (A) that the impairment upon which the eligibility of an individual is based has ceased, does not exist, or is not disabling, such individual may not thereafter become eligible for a benefit under or pursuant to section 1382 of this title or section 1382h of this title until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section.

(k) Notifications to applicants and recipients

The Commissioner of Social Security shall notify an individual receiving benefits under section 1382 of this title on the basis of disability or blindness of his or her potential eligibility for benefits under or pursuant to section 1382h of this title—

(1) at the time of the initial award of benefits to the individual under section 1382 of this title (if the individual has attained the age of 18 at the time of such initial award), and

(2) at the earliest time after an initial award of benefits to an individual under section 1382 of this title that the individual's earned income for a month (other than income excluded pursuant to section 1382a(b) of this title) is $200 or more, and periodically thereafter so long as such individual has earned income (other than income so excluded) of $200 or more per month.

(*l*) Special notice to blind individuals with respect to hearings and other official actions

(1) In any case where an individual who is applying for or receiving benefits under this subchapter on the basis of blindness is entitled (under subsection (c) of this section or otherwise) to receive notice from the Commissioner of Social Security of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this subchapter, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Commissioner of Social Security and agreed to by the individual.

(2) The election under paragraph (1) may be made at any time; but an opportunity to make such an election shall in any event be given (A) to every individual who is an applicant for benefits under this subchapter on the basis of blindness, at the time of his or her application, and (B) to every individual who is a recipient of such benefits on the basis of blindness, at the time of each redetermination of his or her eligibility. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this subchapter until such time as it is revoked or changed.

(m) Pre-release procedures for institutionalized persons

The Commissioner of Social Security shall develop a system under which an individual can apply for supplemental security income benefits under this subchapter prior to the discharge or release of the individual from a public institution.

(n) Concurrent SSI and food stamp applications by institutionalized individuals

The Commissioner of Social Security and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this subchapter shall also be permitted to apply at the same time for participation in the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(*o*) Notice requirements

The Commissioner of Social Security shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this subchapter by the Commissioner of Social Security or by a State agency—

(1) is written in simple and clear language, and

(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.

(p) Reinstatement of eligibility on the basis of blindness or disability

(1)(A) Eligibility for benefits under this subchapter shall be reinstated in any case where the Commissioner determines that an individual described in subparagraph (B) has filed a request for reinstatement meeting the requirements of paragraph (2)(A) during the period prescribed in subparagraph (C). Reinstatement of eligibility shall be in accordance with the terms of this subsection.

(B) An individual is described in this subparagraph if—

(i) prior to the month in which the individual files a request for reinstatement—

(I) the individual was eligible for benefits under this subchapter on the basis of blindness or disability pursuant to an application filed therefor; and

(II) the individual thereafter was ineligible for such benefits due to earned income (or earned and unearned income) for a period of 12 or more consecutive months;

(ii) the individual is blind or disabled and the physical or mental impairment that is the basis for the finding of blindness or disability is the same as (or related to) the physical or mental impairment that was the basis for the finding of blindness or disability that gave rise to the eligibility described in clause (i);

(iii) the individual's blindness or disability renders the individual unable to perform substantial gainful activity; and

(iv) the individual satisfies the nonmedical requirements for eligibility for benefits under this subchapter.

(C)(i) Except as provided in clause (ii), the period prescribed in this subparagraph with respect to an individual is 60 consecutive months beginning with the month following the most recent month for which the individual was eligible for a benefit under this subchapter (including section 1382h of this title) prior to the period of ineligibility described in subparagraph (B)(i)(II).

(ii) In the case of an individual who fails to file a reinstatement request within the period prescribed in clause (i), the Commissioner may extend the period if the Commissioner determines that the individual had good cause for the failure to so file.

(2)(A)(i) A request for reinstatement shall be filed in such form, and containing such information, as the Commissioner may prescribe.

(ii) A request for reinstatement shall include express declarations by the individual that the individual meets the requirements specified in clauses (ii) through (iv) of paragraph (1)(B).

(B) A request for reinstatement filed in accordance with subparagraph (A) may constitute an application for benefits in the case of any individual who the Commissioner determines is not eligible for reinstated benefits under this subsection.

(3) In determining whether an individual meets the requirements of paragraph (1)(B)(ii), the provisions of section 1382c(a)(4) of this title shall apply.

(4)(A) Eligibility for benefits reinstated under this subsection shall commence with the benefit payable for the month following the month in which a request for reinstatement is filed.

(B)(i) Subject to clause (ii), the amount of the benefit payable for any month pursuant to the reinstatement of eligibility under this subsection shall be determined in accordance with the provisions of this subchapter.

(ii) The benefit under this subchapter payable for any month pursuant to a request for reinstatement filed in accordance with paragraph (2) shall be reduced by the amount of any provisional benefit paid to such individual for such month under paragraph (7).

(C) Except as otherwise provided in this subsection, eligibility for benefits under this subchapter reinstated pursuant to a request filed under paragraph (2) shall be subject to the same terms and conditions as eligibility established pursuant to an application filed therefor.

(5) Whenever an individual's eligibility for benefits under this subchapter is reinstated under this subsection, eligibility for such benefits shall be reinstated with respect to the individual's spouse if such spouse was previously an eligible spouse of the individual under this subchapter and the Commissioner determines that such spouse satisfies all the requirements for eligibility for such benefits except requirements related to the filing of an application. The provisions of paragraph (4) shall apply to the reinstated eligibility of the spouse to the same extent that they apply to the reinstated eligibility of such individual.

(6) An individual to whom benefits are payable under this subchapter pursuant to a reinstatement of eligibility under this subsection for twenty-four months (whether or not consecutive) shall, with respect to benefits so payable after such twenty-fourth month, be deemed for purposes of paragraph (1)(B)(i)(I) to be eligible for such benefits on the basis of an application filed therefor.

(7)(A) An individual described in paragraph (1)(B) who files a request for reinstatement in accordance with the provisions of paragraph (2)(A) shall be eligible for provisional benefits payable in accordance with this paragraph, unless the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration under paragraph (2)(A)(ii) is false. Any such determination by the Commissioner shall be final and not subject to review under paragraph (1) or (3) of subsection (c) of this section.

(B)(i) Except as otherwise provided in clause (ii), the amount of a provisional benefit for a month shall equal the amount of the monthly benefit that would be payable to an eligible individual under this subchapter with the same kind and amount of income.

(ii) If the individual has a spouse who was previously an eligible spouse of the individual under this subchapter and the Commissioner determines that such spouse satisfies all the requirements of section 1382c(b) of this title except requirements related to the filing of an application, the amount of a provisional benefit for a month shall equal the amount of the monthly benefit that would be payable to an eligible individual and eligible spouse under this subchapter with the same kind and amount of income.

(C)(i) Provisional benefits shall begin with the month following the month in which a request for reinstatement is filed in accordance with paragraph (2)(A).

(ii) Provisional benefits shall end with the earliest of—

(I) the month in which the Commissioner makes a determination regarding the individual's eligibility for reinstated benefits;

(II) the fifth month following the month for which provisional benefits are first payable under clause (i); or

(III) the month in which the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration made in accordance with paragraph (2)(A)(ii) is false.

(D) In any case in which the Commissioner determines that an individual is not eligible for reinstated benefits, any provisional benefits paid to the individual under this paragraph shall not be subject to recovery as an overpayment unless the Commissioner determines that the individual knew or should have known that the indi-

vidual did not meet the requirements of paragraph (1)(B).

(8) For purposes of this subsection other than paragraph (7), the term ''benefits under this subchapter'' includes State supplementary payments made pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66.

(Aug. 14, 1935, ch. 531, title XVI, § 1631, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1475; amended Pub. L. 93–233, § 18(g), Dec. 31, 1973, 87 Stat. 969; Pub. L. 93–368, § 5, Aug. 7, 1974, 88 Stat. 420; Pub. L. 94–202, §§ 1, 2, Jan. 2, 1976, 89 Stat. 1135; Pub. L. 94–365, § 1, July 14, 1976, 90 Stat. 990; Pub. L. 94–569, § 4(a), Oct. 20, 1976, 90 Stat. 2700; Pub. L. 96–222, title I, § 101(a)(2)(C), Apr. 1, 1980, 94 Stat. 195; Pub. L. 96–265, title III, §§ 301(b), 305(b), 310(b), title V, § 501(c), June 9, 1980, 94 Stat. 450, 457, 459, 470; Pub. L. 96–473, § 6(h), Oct. 19, 1980, 94 Stat. 2266; Pub. L. 97–35, title XXIII, § 2343(a), Aug. 13, 1981, 95 Stat. 866; Pub. L. 97–248, title I, § 187(a), Sept. 3, 1982, 96 Stat. 407; Pub. L. 98–369, div. B, title VI, §§ 2612(a), 2613, 2651(j), 2663(g)(11), (12), July 18, 1984, 98 Stat. 1131, 1150, 1169; Pub. L. 98–460, §§ 7(b), 16(b), Oct. 9, 1984, 98 Stat. 1803, 1809; Pub. L. 99–272, title XII, § 12113(b), Apr. 7, 1986, 100 Stat. 288; Pub. L. 99–514, § 2, title XVIII, § 1883(d)(1), Oct. 22, 1986, 100 Stat. 2095, 2918; Pub. L. 99–570, title XI, §§ 11005(a), 11006, Oct. 27, 1986, 100 Stat. 3207–169; Pub. L. 99–643, §§ 4(c)(1), (d)(3)(B), 5, 8(a), Nov. 10, 1986, 100 Stat. 3576–3579; Pub. L. 100–203, title IX, §§ 9109(a), 9110(a), (b), 9111(a)(1), 9112(a), 9123, Dec. 22, 1987, 101 Stat. 1330–302 to 1330–304, 1330–313; Pub. L. 100–647, title VIII, § 8001(b), Nov. 10, 1988, 102 Stat. 3779; Pub. L. 101–239, title X, §§ 10302(b)(1), 10303(b), 10305(e), 10307(a)(2), (b)(2), Dec. 19, 1989, 103 Stat. 2482, 2483, 2485; Pub. L. 101–508, title V, §§ 5031(c), 5038(a), 5039(b), 5040, 5105(a)(1)(B), (2)(A)(ii), (3)(A)(ii), (c)(2), (d)(1)(B), 5106(a)(2), (c), 5107(a)(2), 5109(a)(2), 5113(b), Nov. 5, 1990, 104 Stat. 1388–224, 1388–226, 1388–227, 1388–255, 1388–258, 1388–261, 1388–265, 1388–266, 1388–268, 1388–269, 1388–271, 1388–273; Pub. L. 103–296, title I, § 107(a)(4), title II, §§ 201(b)(1)(A), (B), (2)(A), (B), 206(a)(2), (d)(2), (f)(1), title III, § 321(f)(2)(B), (3)(A), (h)(1), Aug. 15, 1994, 108 Stat. 1478, 1499–1501, 1509, 1514, 1515, 1541, 1544; Pub. L. 103–387, § 6(a), Oct. 22, 1994, 108 Stat. 4077; Pub. L. 103–432, title II, §§ 264(b), (e)–(g), 267(b), 268, Oct. 31, 1994, 108 Stat. 4468–4470; Pub. L. 104–121, title I, § 105(b)(2), Mar. 29, 1996, 110 Stat. 853; Pub. L. 104–193, title II, §§ 204(b), (c)(2), 213(a), 221(a), (b), title IV, § 404(c), Aug. 22, 1996, 110 Stat. 2188, 2194, 2196, 2197, 2267; Pub. L. 105–33, title V, §§ 5522(b), 5564, Aug. 5, 1997, 111 Stat. 622, 639; Pub. L. 105–306, § 8(b)(2), Oct. 28, 1998, 112 Stat. 2929; Pub. L. 106–169, title II, §§ 201(b), 202(a), 203(a), 213, 251(b)(9), Dec. 14, 1999, 113 Stat. 1831, 1832, 1843, 1856; Pub. L. 106–170, title I, §§ 101(b)(2)(C), 112(b), Dec. 17, 1999, 113 Stat. 1874, 1884; Pub. L. 108–203, title I, §§ 101(c)(1), (3), 102(a)(2), (b)(3), 103(c), 104(b), 105(c), 106(c), title II, § 210(b)(4), title III, § 302(a), (b), Mar. 2, 2004, 118 Stat. 496, 497, 500, 502, 503, 505, 506, 517, 519, 521; Pub. L. 109–163, div. A, title VI, § 689, Jan. 6, 2006, 119 Stat. 3337.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(2)(B)(xiv) and (e)(1)(B)(i), is classified generally to Title 26, Internal Revenue Code.

Section 212 of Public Law 93–66, referred to in subsecs. (a)(2)(F)(i)(II), (iii), (10)(D), (b)(1)(B), (e)(1)(B)(i), (g)(2), (i)(2), and (p)(8), is section 212 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out in a note under section 1382 of this title.

Section 302 of the Social Security Protection Act of 2003, referred to in subsec. (d)(2)(C)(ii)(I), probably means section 302 of the Social Security Protection Act of 2004, Pub. L. 108–203, which amended this section and enacted provisions set out as a note under this section.

The Right to Financial Privacy Act, referred to in subsec. (e)(1)(B)(ii)(III)(aa), probably means the Right to Financial Privacy Act of 1978, title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, as amended, which is classified generally to chapter 35 (§ 3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

The Food Stamp Act of 1977, referred to in subsec. (n), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 1383, act Aug. 14, 1935, ch. 531, title XVI, § 1603, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 200; amended July 30, 1965, Pub. L. 89–97, title I, § 122, title II, § 221(d)(4), title IV, § 401(b), 79 Stat. 353, 359, 414; Jan. 2, 1968, Pub. L. 90–248, title II, § 212(d), 81 Stat. 898; Oct. 20, 1972, Pub. L. 92–512, title III, § 301(b), (d), (e), 86 Stat. 946, 947, related to determination of amounts payable to States, prior to the general amendment of title XVI of the Social Security Act by Pub. L. 92–603, § 301, but is set out below in view of its continued applicability to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

2006—Subsec. (j)(1)(B). Pub. L. 109–163 inserted ''(or 24 consecutive months, in the case of such an individual whose ineligibility for benefits under or pursuant to both such sections is a result of being called to active duty pursuant to section 12301(d) or 12302 of title 10 or section 502(f) of title 32)'' after ''for a period of 12 consecutive months''.

2004—Subsec. (a)(2)(A)(iv). Pub. L. 108–203, § 101(c)(3), added cl. (iv).

Subsec. (a)(2)(B)(ii)(IV) to (VI). Pub. L. 108–203, § 103(c)(1), added subcls. (IV) and (V) and redesignated former subcl. (IV) as (VI).

Subsec. (a)(2)(B)(iii)(II). Pub. L. 108–203, § 103(c)(2), substituted ''clause (ii)(VI)'' for ''clause (ii)(IV)'' and ''section 405(j)(2)(B)(i)(VI)'' for ''section 405(j)(2)(B)(i)(IV)''.

Subsec. (a)(2)(B)(iii)(IV), (V). Pub. L. 108–203, § 103(c)(3), added subcls. (IV) and (V).

Subsec. (a)(2)(B)(vii)(I). Pub. L. 108–203, § 102(a)(2)(A), substituted ''a certified community-based nonprofit social service agency (as defined in subparagraph (I))'' for ''a community-based nonprofit social service agency licensed or bonded by the State''.

Subsec. (a)(2)(B)(xiv). Pub. L. 108–203, § 103(c)(4), added cl. (xiv).

Subsec. (a)(2)(C)(v). Pub. L. 108–203, § 106(c), added cl. (v).

Subsec. (a)(2)(D)(i). Pub. L. 108–203, § 104(b), in introductory provisions, substituted ''Except as provided in the next sentence, a'' for ''A'' and, in concluding provisions, substituted ''A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commissioner'' for ''The Commissioner''.

Subsec. (a)(2)(D)(ii). Pub. L. 108–203, §102(a)(2)(B), substituted ''or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance'' for ''or any community-based nonprofit social service agency, which—

''(I) is bonded or licensed in each State in which the agency serves as a representative payee; and

''(II) in accordance'',

redesignated items (aa) and (bb) as subclauses (I) and (II), respectively, realigned margins, and substituted ''subclause (II)'' for ''subclause (II)(bb)'' in concluding provisions.

Subsec. (a)(2)(E). Pub. L. 108–203, §101(c)(1), inserted second and third sentences.

Subsec. (a)(2)(F)(i)(II). Pub. L. 108–203, §302(b)(1), inserted ''and payment of attorney fees under subsection (d)(2)(B) of this section'' after ''subsection (g) of this section'' in introductory provisions.

Subsec. (a)(2)(G). Pub. L. 108–203, §102(b)(3), amended subpar. (G) generally, substituting provisions relating to periodic onsite reviews and annual report on the results of such reviews for provisions directing the Commissioner of Social Security to include as part of the annual report required under former section 904 of this title certain information with respect to the implementation of the preceding provisions of this par.

Subsec. (a)(2)(G)(i)(II). Pub. L. 108–203, §105(c)(1), substituted ''section 405(j)(10)'' for ''section 405(j)(9)''.

Subsec. (a)(2)(H). Pub. L. 108–203, §105(c)(2), added subpar. (H) and struck out former subpar. (H) which read as follows: ''The Commissioner of Social Security shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after October 9, 1984. The Commissioner of Social Security shall include in the annual report required under section 904 of this title, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Commissioner's report under section 405(j)(4)(B) of this title.''

Subsec. (a)(2)(I). Pub. L. 108–203, §102(a)(2)(C), added subpar. (I).

Subsec. (a)(10)(A). Pub. L. 108–203, §302(b)(2), inserted ''and payment of attorney fees under subsection (d)(2)(B) of this section'' after ''subsection (g) of this section'' in introductory provisions and after ''State'' in concluding provisions.

Subsec. (b)(1)(B). Pub. L. 108–203, §210(b)(4)(A), substituted ''excluding payments under subchapter II of this chapter when recovery is made from subchapter II payments pursuant to section 1320b–17 of this title and excluding'' for ''excluding any other'' and struck out ''50 percent of'' before ''the lump sum payment,''.

Subsec. (b)(6). Pub. L. 108–203, §210(b)(4)(B), added par. (6) and struck out former par. (6) which read as follows: ''For provisions relating to the recovery of benefits incorrectly paid under this subchapter from benefits payable under subchapter II of this chapter, see section 1320b–17 of this title.''

Subsec. (d)(2)(A). Pub. L. 108–203, §302(a)(1), in introductory provisions, substituted ''section 406'' for ''section 406(a)'', ''(other than subsections (a)(4) and (d) thereof)'' for ''(other than paragraph (4) thereof)'', and ''such section'' for ''paragraph (2) thereof''.

Subsec. (d)(2)(A)(i). Pub. L. 108–203, §302(a)(2), substituted ''in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2)'' for ''in subparagraphs (A)(ii)(I) and (C)(i),'' and struck out ''and'' at end.

Subsec. (d)(2)(A)(ii) to (v). Pub. L. 108–203, §302(a)(3), added cls. (ii) to (v) and struck out former cl. (ii) which read as follows: ''by substituting 'section 1383(a)(7)(A) of this title or the requirements of due process of law' for 'subsection (g) or (h) of section 423 of this title'.''

Subsec. (d)(2)(B) to (D). Pub. L. 108–203, §302(a)(4), added subpars. (B) and (C) and redesignated former subpar. (B) as (D).

1999—Subsec. (a)(2)(A)(iii). Pub. L. 106–169, §251(b)(9)(A), inserted ''or 1007'' after ''405(j)(1)''.

Subsec. (a)(2)(B)(ii)(I). Pub. L. 106–169, §251(b)(9)(B), inserted '', subchapter VIII of this chapter,'' before ''or this subchapter''.

Subsec. (a)(2)(B)(ii)(III). Pub. L. 106–169, §251(b)(9)(C), inserted '', 1011,'' before ''or 1383a''.

Subsec. (a)(2)(B)(ii)(IV). Pub. L. 106–169, §251(b)(9)(D), inserted ''whether the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title,'' before ''and whether certification'' and '', subchapter VIII of this chapter,'' before ''or this subchapter''.

Subsec. (a)(2)(B)(iii)(II). Pub. L. 106–169, §251(b)(9)(E), inserted ''the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title,'' before ''or certification''.

Subsec. (a)(2)(D)(ii)(II)(aa). Pub. L. 106–169, §251(b)(9)(F), inserted ''or 1007'' after ''405(j)(4)''.

Subsec. (a)(6)(A). Pub. L. 106–170, §101(b)(2)(C), substituted ''a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b–19 of this title or another program of vocational rehabilitation services, employment services, or other support services'' for ''a program of vocational rehabilitation services''.

Subsec. (b)(1)(B)(ii). Pub. L. 106–169, §202(a), inserted ''monthly'' before ''benefit payments'' and ''and in the case of an individual or eligible spouse to whom a lump sum is payable under this subchapter (including under section 1382e(a) of this title or under an agreement entered into under section 212(a) of Public Law 93–66) shall, as at least one means of recovering such overpayment, make the adjustment or recovery from the lump sum payment in an amount equal to not less than the lesser of the amount of the overpayment or 50 percent of the lump sum payment,'' before ''unless fraud''.

Subsec. (b)(2). Pub. L. 106–169, §201(b), inserted at end ''If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual's death, the representative payee shall be liable for the repayment of the overpayment, and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee.''

Subsec. (b)(4) to (6). Pub. L. 106–169, §203(a), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (e)(1)(B). Pub. L. 106–169, §213, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (j)(1). Pub. L. 106–170, §112(b)(2)(A), inserted before period at end '', or has filed a request for reinstatement of eligibility under subsection (p)(2) of this section and been determined to be eligible for reinstatement''.

Subsec. (j)(2)(A)(i)(I). Pub. L. 106–170, §112(b)(2)(B), inserted ''(other than pursuant to a request for reinstatement under subsection (p) of this section)'' after ''eligible''.

Subsec. (p). Pub. L. 106–170, §112(b)(1), added subsec. (p).

1998—Subsec. (b)(5). Pub. L. 105–306 added par. (5).

1997—Subsec. (a)(2)(F)(ii)(III)(bb). Pub. L. 105–33, §5522(b)(1), substituted ''in any case in which the individual knowingly misapplies benefits from such an account, the Commissioner shall reduce future benefits payable to such individual (or to such individual and his spouse) by an amount equal to the total amount of such benefits so misapplied'' for ''the total amount of such benefits so used shall be considered to be the uncompensated value of a disposed resource and shall be subject to the provisions of section 1382b(c) of this title''.

Subsec. (a)(2)(F)(iii). Pub. L. 105–33, §5522(b)(2), added cl. (iii) and struck out former cl. (iii) which read as follows: ''The representative payee may deposit into the account established pursuant to clause (i)—

''(I) past-due benefits payable to the eligible individual in an amount less than that specified in clause (i)(II), and

''(II) any other funds representing an underpayment under this subchapter to such individual, provided that the amount of such underpayment is equal to or exceeds the maximum monthly benefit payable under this subchapter to an eligible individual.''

Subsec. (e)(9). Pub. L. 105–33, § 5564, substituted ''not lawfully present in the United States'' for ''unlawfully in the United States'' in two places.

1996—Subsec. (a)(1). Pub. L. 104–193, § 221(b), inserted ''(subject to paragraph (10))'' before ''in such installments''.

Subsec. (a)(2)(A)(ii)(II). Pub. L. 104–121, § 105(b)(2)(A), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''In the case of an individual eligible for benefits under this subchapter by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled, the payment of such benefits to a representative payee shall be deemed to serve the interest of the individual under this subchapter. In any case in which such payment is so deemed under this subclause to serve the interest of an individual, the Commissioner of Social Security shall include, in the individual's notification of such eligibility, a notice that alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled and that the Commissioner of Social Security is therefore required to pay the individual's benefits to a representative payee.''

Subsec. (a)(2)(B)(vii). Pub. L. 104–121, § 105(b)(2)(B), substituted ''described in subparagraph (A)(ii)(II)'' for ''eligible for benefits under this subchapter by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled''.

Subsec. (a)(2)(B)(ix)(II). Pub. L. 104–121, § 105(b)(2)(C), substituted ''described in subparagraph (A)(ii)(II).'' for ''(if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled) is eligible for benefits under this subchapter by reason of disability.''

Subsec. (a)(2)(D)(i)(II). Pub. L. 104–121, § 105(b)(2)(D), substituted ''described in subparagraph (A)(ii)(II)'' for ''eligible for benefits under this subchapter by reason of disability and alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled''.

Subsec. (a)(2)(F) to (H). Pub. L. 104–193, § 213(a), added subpar. (F) and redesignated former subpars. (F) and (G) as (G) and (H), respectively.

Subsec. (a)(4)(A). Pub. L. 104–193, § 204(b), inserted ''for the month following the date the application is filed'' after ''is presumptively eligible for such benefits'' and '', which shall be repaid through proportionate reductions in such benefits over a period of not more than 6 months'' before semicolon.

Subsec. (a)(10). Pub. L. 104–193, § 221(a), added par. (10).

Subsec. (e)(6) to (8). Pub. L. 104–193, § 404(c)(1), redesignated pars. (6), relating to suspicion of fraud or similar fault, and (7) as (7) and (8), respectively.

Subsec. (e)(9). Pub. L. 104–193, § 404(c)(2), added par. (9).

Subsec. (g)(3). Pub. L. 104–193, § 204(c)(2), inserted ''following the month'' after ''beginning with the month''.

1994—Subsec. (a)(2). Pub. L. 103–432, § 264(e), inserted par. (2) designation.

Subsec. (a)(2)(A)(ii). Pub. L. 103–296, § 201(b)(1)(A)(i), designated existing provisions as subcl. (I), struck out ''or in the case of any individual or eligible spouse referred to in section 1382(e)(3)(A) of this title,'' after ''served thereby,'', and added subcl. (II).

Pub. L. 103–296, § 107(a)(4), in cl. (ii) as amended by Pub. L. 103–296, § 201(b)(1)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in two places in subcl. (II).

Subsec. (a)(2)(A)(iii). Pub. L. 103–296, § 201(b)(1)(A)(ii), substituted ''to an alternative representative payee of the individual or eligible spouse or, if the interest of the individual under this subchapter would be served thereby, to the individual or eligible spouse'' for ''to the individual or eligible spouse or to an alternative representative payee of the individual or eligible spouse''.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (a)(2)(B)(i)(I), (ii), (iv) to (vi). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(2)(B)(vii). Pub. L. 103–296, § 201(b)(2)(A)(ii), added cl. (vii). Former cl. (vii) redesignated (viii).

Pub. L. 103–296, § 107(a)(4), in cl. (vii) as added by Pub. L. 103–296, § 201(b)(2)(A)(ii), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places and ''Commissioner's'' for ''Secretary's''.

Subsec. (a)(2)(B)(viii). Pub. L. 103–296, § 201(b)(2)(A)(i), (iii), redesignated cl. (vii) as (viii) and substituted ''clause (ix)'' for ''clause (viii)''. Former cl. (viii) redesignated (ix).

Pub. L. 103–296, § 201(b)(1)(B), in subcl. (II) substituted ''of 15 years, or (if alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is disabled) is eligible for benefits under this subchapter by reason of disability.'' for ''15 years, or a drug addict or alcoholic referred to in section 1382(e)(3)(A) of this title.''

Pub. L. 103–296, § 107(a)(4), in cl. (viii) as redesignated by Pub. L. 103–296, § 201(b)(2)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (a)(2)(B)(ix). Pub. L. 103–296, § 201(b)(2)(A)(i), (iv), redesignated cl. (viii) as (ix) and in subcl. (I) substituted ''clause (viii)'' for ''clause (vii)''. Former cl. (ix) redesignated (x).

Pub. L. 103–296, § 107(a)(4), in cl. (ix) as redesignated and amended by Pub. L. 103–296, § 201(b)(1)(B), (2)(A)(i), substituted ''Commissioner's'' for ''Secretary's'' in two places in subcl. (II).

Subsec. (a)(2)(B)(x) to (xii). Pub. L. 103–296, § 201(b)(2)(A)(i), redesignated cls. (ix) to (xi) as (x) to (xii), respectively. Former cl. (xii) redesignated (xiii).

Pub. L. 103–296, § 107(a)(4), in cls. (x) to (xii) as redesignated by Pub. L. 103–296, § 201(b)(2)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''Commissioner's'' for ''Secretary's'' wherever appearing.

Subsec. (a)(2)(B)(xiii). Pub. L. 103–296, § 201(b)(2)(A)(i), (v), redesignated cl. (xii) as (xiii) and substituted ''clause (xii)'' for ''clause (xi)'' and ''clause (xi)'' for ''clause (x)''.

Subsec. (a)(2)(C). Pub. L. 103–296, § 107(a)(4), in subpar. (C) as amended by Pub. L. 103–432, § 264(f), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(2)(C)(i). Pub. L. 103–432, § 264(f)(1), substituted ''to a representative payee'' for ''to representative payee''.

Subsec. (a)(2)(C)(ii). Pub. L. 103–432, § 264(f)(2), (3), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: ''Clause (i) shall not apply in any case where the representative payee is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.''

Subsec. (a)(2)(C)(iii). Pub. L. 103–432, § 264(f)(3), redesignated cl. (iv) as (iii). Former cl. (iii) redesignated (ii).

Subsec. (a)(2)(C)(iv). Pub. L. 103–432, § 264(f)(4), substituted ''Notwithstanding clauses (i), (ii), and (iii)'' for ''Notwithstanding clauses (i), (ii), (iii), and (iv)''.

Pub. L. 103–432, § 264(f)(3), redesignated cl. (v) as (iv). Former cl. (iv) redesignated (iii).

Subsec. (a)(2)(C)(v). Pub. L. 103–432, § 264(f)(3), redesignated cl. (v) as (iv).

Subsec. (a)(2)(D)(i). Pub. L. 103–296, § 201(b)(2)(B)(i)(I)(bb), inserted in closing provisions ''The Secretary shall adjust annually (after 1995) each dollar amount set forth in subclause (II) of this clause under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except

that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00.''

Pub. L. 103–296, §107(a)(4), in cl. (i) as amended by Pub. L. 103–296, §201(b)(2)(B)(i)(I)(bb), substituted ''Commissioner of Social Security'' for ''Secretary'' in closing provisions.

Subsec. (a)(2)(D)(i)(II). Pub. L. 103–296, §201(b)(2)(B)(i)(I)(aa), added subcl. (II) and struck out former subcl. (II) which read as follows: ''$25.00 per month.''

Pub. L. 103–296, §104(a)(7), in subcl. (II) as added by Pub. L. 103–296, §201(b)(2)(B)(i)(I)(aa), substituted ''Commissioner's'' for ''Secretary's''.

Subsec. (a)(2)(D)(ii). Pub. L. 103–296, §201(b)(2)(B)(ii), in introductory provisions inserted ''State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any'' after ''means any'' and a comma after ''service agency'', at end of subcl. (I) inserted ''and'', and in subcl. (II) inserted ''and'' at end of item (aa), substituted a period for ''; and'' at end of item (bb), and struck out item (cc) which read as follows: ''was in existence on October 1, 1988.''

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(2)(D)(iv). Pub. L. 103–296, §201(b)(2)(B)(iii)(II), redesignated cl. (v) as (iv).

Pub. L. 103–296, §201(b)(2)(B)(iii)(I), struck out cl. (iv) which read as follows: ''This subparagraph shall cease to be effective on July 1, 1994.''

Subsec. (a)(2)(D)(v). Pub. L. 103–296, §201(b)(2)(B)(iii)(II), redesignated cl. (v) as (iv).

Pub. L. 103–296, §201(b)(2)(B)(i)(II), added cl. (v).

Subsec. (a)(2)(E). Pub. L. 103–296, §321(f)(2)(B)(ii), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 103–296, §107(a)(4), in subpar. (E) as added by Pub. L. 103–296, §321(f)(2)(B)(ii), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(2)(F), (G). Pub. L. 103–296, §321(f)(2)(B)(i), redesignated subpars. (E) and (F) as (F) and (G), respectively.

Pub. L. 103–296, §107(a)(4), in subpars. (F) and (G) as redesignated by Pub. L. 103–296, §321(f)(2)(B)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in subpar. (G).

Subsec. (a)(3), (4), (6) to (8). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' in par. (8)(A), and ''Commissioner's'' for ''Secretary's'' in par. (8)(B).

Subsec. (b). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner finds'' for ''he finds'' in par. (1)(B).

Subsec. (b)(3) to (5). Pub. L. 103–432, §267(b), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: ''In any case in which advance payments for a taxable year made by all employers to an individual under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit) exceed the amount of such individual's earned income credit allowable under section 32 of such Code for such year, so that such individual is liable under section 32(g) of such Code for a tax equal to such excess, the Secretary shall provide for an appropriate adjustment of such individual's benefit amount under this subchapter so as to provide payment to such individual of an amount equal to the amount of such benefits lost by such individual on account of such excess advance payments.''

Subsec. (c)(1)(A). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''Commissioner's determination'' for ''Secretary's determination'', ''the Commissioner's findings'' for ''his findings'', ''the Commissioner's own motion'' for ''his own motion'', ''the Commissioner may deem'' for ''he may deem'', and ''the Commissioner may administer'' for ''he may administer''.

Subsec. (c)(1)(B). Pub. L. 103–432, §264(g), substituted ''subparagraph (A)'' for ''paragraph (1)'' in cls. (i) and (ii).

Subsec. (c)(1)(B)(ii). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''Commissioner's'' for ''Secretary's''.

Subsec. (d)(2)(A)(i). Pub. L. 103–296, §321(f)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''by substituting 'section 1320a–6(a) or 1383(g) of this title' for 'section 1320a–6(a) of this title'; and''.

Subsec. (d)(2)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (e)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (e)(1)(C). Pub. L. 103–387 added subpar. (C).

Subsec. (e)(2), (3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner may'' for ''he may'' in par. (2).

Subsec. (e)(4). Pub. L. 103–296, §206(a)(2), added par. (4).

Subsec. (e)(5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions.

Subsec. (e)(6). Pub. L. 103–432, §268, redesignated subpars. (1) and (2) of par. (6), relating to face-to-face interviews in field offices, as subpars. (A) and (B), respectively.

Pub. L. 103–296, §206(d)(2), added par. (6) relating to suspicion of fraud or similar fault.

Pub. L. 103–296, §107(a)(4), in par. (6), relating to suspicion of fraud or similar fault, as added by Pub. L. 103–296, §206(d)(2), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in closing provisions of par. (6) relating to face-to-face interviews in field offices.

Subsec. (e)(7). Pub. L. 103–296, §206(f)(1), added par. (7).

Pub. L. 103–296, §107(a)(4), in par. (7) as added by Pub. L. 103–296, §206(f)(1), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsecs. (f) to (m). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, except where appearing before ''of the Treasury'' in subsec. (i)(1) and (3).

Subsec. (n). Pub. L. 103–432, §264(b), which directed substitution of ''section'' for ''subsection'', could not be executed because of amendment by Pub. L. 103–296, §321(h)(1)(A), which substituted ''subchapter'' for ''subsection''. See below.

Pub. L. 103–296, §321(h)(1)(B), redesignated subsec. (n) relating to notice requirements as (*o*).

Pub. L. 103–296, §321(h)(1)(A), substituted ''subchapter'' for ''subsection'' in subsec. (n) relating to concurrent SSI and food stamp applications by institutionalized individuals.

Pub. L. 103–296, §107(a)(4), substituted ''The Commissioner of Social Security and'' for ''The Secretary and'' in subsec. (n) relating to concurrent SSI and food stamp applications by institutionalized individuals.

Subsec. (*o*). Pub. L. 103–296, §321(h)(1)(B), redesignated subsec. (n) relating to notice requirements as (*o*).

Pub. L. 103–296, §107(a)(4), in subsec. (*o*) as redesignated by Pub. L. 103–296, §321(h)(1)(B), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places in introductory provisions.

1990—Subsec. (a)(2)(A). Pub. L. 101–508, §5105(a)(1)(B)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Payments of the benefit of any individual may be made to any

such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse). Notwithstanding the provisions of the preceding sentence, in the case of any individual or eligible spouse referred to in section 1382(e)(3)(A) of this title, the Secretary shall provide for making payments of the benefit to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).''

Subsec. (a)(2)(B). Pub. L. 101–508, § 5105(a)(2)(A)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Any determination made under subparagraph (A) that payment should be made to a person other than the individual or spouse entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.''

Subsec. (a)(2)(C)(i). Pub. L. 101–508, § 5105(a)(1)(B)(ii)(I), substituted ''representative payee of an individual or spouse'' for ''a person other than the individual or spouse entitled to such payment''.

Subsec. (a)(2)(C)(ii) to (iv). Pub. L. 101–508, § 5105(a)(1)(B)(ii)(II), substituted ''representative payee'' for ''other person to whom such payment is made''.

Subsec. (a)(2)(C)(v). Pub. L. 101–508, § 5105(a)(1)(B)(ii)(III), substituted ''representative payee'' for ''person receiving payments on behalf of another'' and for ''person receiving such payments''.

Subsec. (a)(2)(D). Pub. L. 101–508, § 5105(a)(3)(A)(ii)(III)[(II)], added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(2)(E). Pub. L. 101–508, § 5105(c)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 101–508, § 5105(a)(3)(A)(ii)(I), redesignated subpar. (D) as (E).

Subsec. (a)(2)(F). Pub. L. 101–508, § 5105(d)(1)(B), which directed amendment of subsec. (a)(2)(E), as redesignated by section 5105(c)(2) of Pub. L. 101–508, by redesignating it as subpar. (E) and amending it generally, was executed to subpar. (E), as added by section 5105(c)(2) of Pub. L. 101–508, as the probable intent of Congress. Prior to amendment, subpar. (E) read as follows: ''In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.''

Pub. L. 101–508, § 5105(c)(2), redesignated subpar. (E) as (F).

Subsec. (a)(4)(B). Pub. L. 101–508, § 5038(a), substituted ''6 months'' for ''3 months''.

Subsec. (a)(6)(A). Pub. L. 101–508, § 5113(b)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: ''such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and''.

Subsec. (a)(6)(B). Pub. L. 101–508, § 5113(b)(2), substituted ''Secretary'' for ''Commissioner of Social Security''.

Subsec. (a)(9). Pub. L. 101–508, § 5031(c), added par. (9).

Subsec. (c)(1). Pub. L. 101–508, § 5107(a)(2), designated existing provision as subpar. (A) and added subpar. (B).

Subsec. (d)(2)(A). Pub. L. 101–508, § 5106(a)(2), amended subpar. (A) generally, substituting cls. (i) and (ii) for former single par. which authorized Secretary to prescribe regulations relating to representation of claimants before the Secretary, representation by attorneys, suspension of representatives, and maximum fees for representation, provided penalties for deceiving claimants and exceeding maximum fees, and required Secretary to maintain in the electronic information retrieval system of the Social Security Administration the identity of representatives of claimants.

Subsec. (h). Pub. L. 101–508, § 5106(c), inserted at end ''The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.''

Subsec. (j)(2)(A). Pub. L. 101–508, § 5039(b), inserted ''(other than subsection (c) thereof)'' after first reference to ''section 1382h of this title''.

Subsec. (m). Pub. L. 101–508, § 5040(1), struck out at end ''The Secretary and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this subchapter shall also be permitted to apply for participation in the food stamp program by executing a single application.''

Subsec. (n). Pub. L. 101–508, § 5109(a)(2), added subsec. (n) relating to notice requirements.

Pub. L. 101–508, § 5040(2), added subsec. (n) relating to concurrent SSI and food stamp applications by institutionalized individuals.

1989—Subsec. (c)(1). Pub. L. 101–239, § 10305(e), inserted at end ''The Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation of such individual (including any lack of facility with the English language) in determining, with respect to the eligibility of such individual for benefits under this subchapter, whether such individual acted in good faith or was at fault, and in determining fraud, deception, or intent.''

Subsec. (d)(2). Pub. L. 101–239, § 10307(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 101–239, § 10307(a)(2), inserted at end ''The Secretary shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Secretary, of the identity of any person representing such claimant in accordance with this paragraph.''

Subsec. (e)(5). Pub. L. 101–239, § 10302(b)(1), added par. (5).

Subsec. (e)(6). Pub. L. 101–239, § 10303(b), added par. (6).

1988—Subsec. (a)(8). Pub. L. 100–647 added par. (8).

1987—Subsec. (a)(4)(A). Pub. L. 100–203, § 9109(a), substituted ''a cash advance against such benefits, including any federally-administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility'' for ''a cash advance against such benefits in an amount not exceeding $100''.

Subsec. (a)(6). Pub. L. 100–203, § 9112(a), in introductory provision inserted ''blindness (as determined under section 1382c(a)(2) of this title) or'' before ''disability'' and ''blindness or other'' before ''physical'', and in subpar. (B) inserted ''blindness and'' before ''disability''.

Subsec. (g)(2). Pub. L. 100–203, § 9110(a), substituted ''at the time the Secretary makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3)'' for ''at the time the Secretary makes the first payment of benefits''.

Subsec. (g)(3). Pub. L. 100–203, § 9110(b), inserted cl. (A) designation after ''basic needs'' and added cl. (B).

Subsec. (j). Pub. L. 100–203, § 9123, redesignated subsec. (j), relating to pre-release procedures for institutionalized persons, as (m).

Subsec. (*l*). Pub. L. 100–203, § 9111(a)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 100–203, § 9123, redesignated subsec. (j), relating to pre-release procedures for institutionalized persons, as (m) and reenacted heading without change.

1986—Subsec. (b)(1). Pub. L. 99–643, § 8(a), substituted ''(A) Whenever the Secretary'' for ''Whenever the Sec-

retary'', ''by recovery from such individual or his eligible spouse (or from the estate of either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment—'' for ''by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary (A) shall make'', added subpar. (A)(i) and (ii), substituted ''(B) the Secretary (i) shall make such provision'' for ''such provision'', ''and (ii) shall in any event'' for ''and (B) shall in any event'', ''(I) the amount'' for ''(i) the amount'', ''(II) an amount'' for ''(ii) an amount'', ''clause (ii)'' for ''clause (B)'', and ''clause (i)'' for ''clause (A)''.

Subsec. (b)(2). Pub. L. 99–272 added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Pub. L. 99–272 redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (b)(4), (5). Pub. L. 99–272 redesignated pars. (3) and (4) as (4) and (5), respectively.

Subsec. (e)(1)(A). Pub. L. 99–643, §4(c)(1)(A), substituted ''subparagraph (B) and subsection (j) of this section'' for ''subparagraph (B)''.

Subsec. (e)(1)(B). Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (e)(3). Pub. L. 99–570, §11005(a), added par. (3).

Subsec. (g). Pub. L. 99–514, §1883(d)(1), amended heading generally.

Subsec. (j). Pub. L. 99–570, §11006, added subsec. (j) relating to pre-release procedures for institutionalized persons.

Pub. L. 99–643, §4(c)(1)(B), added subsec. (j) relating to application and review requirements for certain individuals.

Subsec. (j)(2)(A). Pub. L. 99–643, §4(d)(3)(B), in subsec. (j) relating to application and review requirements, substituted ''section 1382c(a)(4) of this title'' for ''section 1382c(a)(5) of this title'' in closing provisions.

Subsec. (k). Pub. L. 99–643, §5, added subsec. (k).

1984—Subsec. (a)(2). Pub. L. 98–460, §16(b), redesignated existing provisions as subpar. (A) and added subpars. (B) to (D).

Subsec. (a)(7). Pub. L. 98–460, §7(b), added par. (7).

Pub. L. 98–369, §2612(a), inserted ''(A)'' before ''shall make such provision'' in second sentence, and added cl. (B).

Subsec. (b)(1). Pub. L. 98–369, §2663(g)(11)(A), substituted ''equity and good conscience'' for ''equity or good conscience''.

Subsec. (b)(2). Pub. L. 98–369, §2663(g)(11)(B), substituted ''section 32'' and ''section 32(g)'' for ''section 43'' and ''section 43(g)'', respectively.

Subsec. (b)(3), (4). Pub. L. 98–369, §2613, added par. (3) and redesignated former par. (3) as (4).

Subsec. (d)(1). Pub. L. 98–369, §2663(g)(12), substituted ''and (e)'' for ''(e), and (f)''.

Subsec. (e)(1)(B). Pub. L. 98–369, §2651(j), inserted provision that for this purpose and for purposes of federally administered supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), the Secretary shall, as may be necessary, request and utilize information available pursuant to section 6103(*l*)(7) of the Internal Revenue Code of 1954, and any information which may be available from State systems under section 1320b–7 of this title, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(*l*)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1320b–7 of this title.

1982—Subsec. (i)(2). Pub. L. 97–248 substituted ''such benefit checks'' for ''checks payable to individuals entitled to benefits under this subchapter but''.

1981—Subsec. (i). Pub. L. 97–35 added subsec. (i).

1980—Subsec. (a)(6). Pub. L. 96–265, §301(b), added par. (6).

Subsec. (b). Pub. L. 96–473 redesignated par. (2) as added by Pub. L. 96–265, §501(c), as (3).

Pub. L. 96–265, §501(c), designated existing provisions as par. (1) and added par. (2), without reference to identical amendment made by Pub. L. 96–222. Such par. (2) was subsequently redesignated par. (3) by Pub. L. 96–473.

Pub. L. 96–222 designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1). Pub. L. 96–265, §305(b), inserted provisions relating to information that must accompany a decision of Secretary.

Subsec. (h). Pub. L. 96–265, §310(b), added subsec. (h).

1976—Subsec. (a)(4)(B). Pub. L. 94–569 inserted ''or blindness'' after ''disability'' and ''or blind'' after ''disabled'' wherever appearing.

Subsec. (c)(1). Pub. L. 94–202, §1, increased authority of Secretary by permitting him to hold hearings on his own motion, to administer oaths, examine witnesses, and receive evidence at hearings, and increased time within which a request for a hearing be made after notice of Secretary's determination is received from thirty to sixty days.

Subsec. (c)(2). Pub. L. 94–202, §1, reenacted par. (2) without change.

Subsec. (c)(3). Pub. L. 94–202, §1, struck out exception to judicial review which made factual determinations by the Secretary, after a hearing as provided by subsec. (c)(1), final and conclusive.

Subsec. (d)(2), (3). Pub. L. 94–202, §2, struck out par. (2) which related to appointment of individuals to serve as hearing examiners without meeting specific standards prescribed for hearing examiners, and redesignated par. (3) as par. (2).

Subsec. (g). Pub. L. 94–365 struck out par. (6) which provided that provisions of this subsection were to expire on June 30, 1976, at least sixty days prior to which, the Secretary was to submit to Congress a report assessing effects of actions taken pursuant to this subsection and including whatever recommendations the Secretary deemed appropriate.

1974—Subsec. (g). Pub. L. 93–368 added subsec. (g).

1973—Subsec. (a)(4)(B). Pub. L. 93–233 inserted ''solely because such individual is determined not to be disabled.''

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENT

Amendment by section 101(c)(1), (3) of Pub. L. 108–203 applicable to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after Jan. 1, 1995, see section 101(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 102(a)(2) of Pub. L. 108–203 effective on the first day of the thirteenth month beginning after Mar. 2, 2004, see section 102(a)(3) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 103(c) of Pub. L. 108–203 effective on the first day of the thirteenth month beginning after Mar. 2, 2004, see section 103(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 104(b) of Pub. L. 108–203 applicable to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after Mar. 2, 2004, see section 104(c) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 105(c) of Pub. L. 108–203 applicable to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after Mar. 2, 2004, see section 105(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 106(c) of Pub. L. 108–203 effective 180 days after Mar. 2, 2004, see section 106(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 210(b)(4) of Pub. L. 108–203 effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108–203, set out as a note under section 404 of this title.

Pub. L. 108–203, title III, § 302(c), Mar. 2, 2004, 118 Stat. 521, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply with respect to fees for representation of claimants which are first required to be paid under section 1631(d)(2) of the Social Security Act [subsec. (d)(2) of this section] on or after the date of the submission by the Commissioner of Social Security to each House of Congress pursuant to section 303(d) of this Act [set out as a note under section 406 of this title] of written notice of completion of full implementation of the requirements for operation of the demonstration project under section 303 of this Act [set out as a note under section 406 of this title].

''(2) SUNSET.—Such amendments shall not apply with respect to fees for representation of claimants in the case of any claim for benefits with respect to which the agreement for representation is entered into after 5 years after the date described in paragraph (1).''

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by section 101(b)(2)(C) of Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

Amendment by section 112(b) of Pub. L. 106–170 effective on the first day of the thirteenth month beginning after Dec. 17, 1999, and no benefit to be payable under this subchapter on the basis of a request for reinstatement filed under subsec. (p) of this section before such date, see section 112(c) of Pub. L. 106–170, set out as a note under section 423 of this title.

Amendment by section 201(b) of Pub. L. 106–169 applicable to overpayments made 12 months or more after Dec. 14, 1999, see section 201(c) of Pub. L. 106–169, set out as a note under section 404 of this title.

Pub. L. 106–169, title II, § 202(b), Dec. 14, 1999, 113 Stat. 1832, provided that: ''The amendments made by this section [amending this section] shall take effect 12 months after the date of the enactment of this Act [Dec. 14, 1999] and shall apply to amounts incorrectly paid which remain outstanding on or after such date.''

Amendment by section 203(a) of Pub. L. 106–169 applicable to debt outstanding on or after Dec. 14, 1999, see section 203(d) of Pub. L. 106–169, set out as a note under section 3701 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–306 effective Oct. 28, 1998, and applicable to amounts incorrectly paid which remain outstanding on or after such date, see section 8(c) of Pub. L. 105–306, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5522(b) of Pub. L. 105–33 effective as if included in the enactment of title II of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5528(a) of Pub. L. 105–33, set out as a note under section 903 of this title.

Amendment by section 5564 of Pub. L. 105–33 effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5582 of Pub. L. 105–33, set out as a note under section 1367 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 204(b), (c)(2) of Pub. L. 104–193 applicable to applications for benefits under this subchapter filed on or after Aug. 22, 1996, without regard to whether regulations have been issued to implement amendments by section 204 of Pub. L. 104–193, see section 204(d) of Pub. L. 104–193, set out as a note under section 1382 of this title.

Amendment by section 213(a) of Pub. L. 104–193 applicable to payments made after Aug. 22, 1996, see section 213(d) of Pub. L. 104–193, set out as a note under section 1382a of this title.

Section 221(c) of Pub. L. 104–193 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] are effective with respect to past-due benefits payable under title XVI of the Social Security Act [this subchapter] after the third month following the month in which this Act is enacted [August 1996].

''(2) BENEFITS PAYABLE UNDER TITLE XVI.—For purposes of this subsection, the term 'benefits payable under title XVI of the Social Security Act' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [section 1382e(a) of this title], and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66 [set out as a note under section 1382 of this title].''

Amendment by Pub. L. 104–121 effective July 1, 1996, with respect to any individual whose claim for benefits is finally adjudicated on or after Mar. 29, 1996, or whose eligibility for benefits is based upon eligibility redetermination made pursuant to section 105(b)(5)(C) of Pub. L. 104–121, see section 105(b)(5) of Pub. L. 104–121, as amended, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 264(b) and (e)–(g) of Pub. L. 103–432 effective as if included in the provision of Pub. L. 101–508 to which the amendment relates at the time such provision became law, see section 264(h) of Pub. L. 103–432, set out as a note under section 1320b–9 of this title.

Section 6(b) of Pub. L. 103–387 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to admissions occurring on or after October 1, 1995.''

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(b)(1)(C) of Pub. L. 103–296 provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994].''

Section 201(b)(2)(B)(iii)(I) of Pub. L. 103–296 provided that the amendment made by that section is effective July 1, 1994.

Section 201(b)(2)(C) of Pub. L. 103–296 provided that: ''Except as provided in subparagraph (B)(iii)(I) [amending this section and enacting provisions set out as a note above], the amendments made by this paragraph [amending this section] shall apply with respect to months beginning after 90 days after the date of the enactment of this Act [Aug. 15, 1994].''

Amendment by section 206(a)(2) of Pub. L. 103–296 applicable to translations made on or after Oct. 1, 1994, see section 206(a)(3) of Pub. L. 103–296, set out as a note under section 405 of this title.

Amendment by section 206(d)(2) of Pub. L. 103–296 effective Oct. 1, 1994, and applicable to determinations made before, on, or after such date, see section 206(d)(3) of Pub. L. 103–296, set out as a note under section 405 of this title.

Section 206(f)(2) of Pub. L. 103–296 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1994.''

Amendment by section 321(f)(2)(B), (3)(A) of Pub. L. 103–296 effective as if included in the provisions of Pub. L. 101–508 to which such amendment relates, see section 321(f)(5) of Pub. L. 103–296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5031(c) of Pub. L. 101–508 applicable with respect to benefits for months beginning on or after the first day of the 6th calendar month following November 1990, see section 5031(d) of Pub. L. 101–508, set out as a note under section 1382a of this title.

Section 5038(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

Amendment by section 5105(a)(1)(B), (2)(A)(ii) of Pub. L. 101–508 effective July 1, 1991, and applicable only with respect to (i) certifications of payment of benefits under subchapter II of this chapter to representative payees made on or after such date; and (ii) provisions for payment of benefits under this subchapter to representative payees made on or after such date, and amendment by section 5105(a)(3)(A)(ii) of Pub. L. 101–508 effective July 1, 1991, see section 5105(a)(5) of Pub. L. 101–508 set out as a note under section 405 of this title.

Amendment by section 5105(d)(1)(B) of Pub. L. 101–508 applicable with respect to annual reports issued for years after 1991, see section 5105(d)(2) of Pub. L. 101–508, set out as a note under section 405 of this title.

Amendment by section 5106(a)(2), (c) of Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d) of Pub. L. 101–508, set out as a note under section 401 of this title.

Amendment by section 5107(a)(2) of Pub. L. 101–508 applicable with respect to adverse determinations made on or after July 1, 1991, see section 5107(b) of Pub. L. 101–508, set out as a note under section 405 of this title.

Amendment by section 5109(a)(2) of Pub. L. 101–508 applicable with respect to notices issued on or after July 1, 1991, see section 5109(b) of Pub. L. 101–508, set out as a note under section 405 of this title.

Amendment by section 5113(b) of Pub. L. 101–508 effective with respect to benefits payable for months after the eleventh month following November 1990, and applicable only with respect to individuals whose blindness or disability has or may have ceased after such eleventh month, see section 5113(c) of Pub. L. 101–508, set out as a note under section 425 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10302(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to misinformation furnished on or after the date of the enactment of this Act [Dec. 19, 1989] and to benefits for months after the month in which this Act is enacted [December 1989].''

Amendment by section 10303(b) of Pub. L. 101–239 applicable to visits to field offices of Social Security Administration on or after Jan. 1, 1990, see section 10303(c) of Pub. L. 101–239, set out as a note under section 405 of this title.

Amendment by section 10305(e) of Pub. L. 101–239 applicable with respect to determinations made on or after July 1, 1990, see section 10305(f) of Pub. L. 101–239, set out as a note under section 403 of this title.

Amendment by section 10307(a)(2) of Pub. L. 101–239 effective June 1, 1991, see section 10307(a)(3) of Pub. L. 101–239, set out as a note under section 406 of this title.

Amendment by section 10307(b)(2) of Pub. L. 101–239 applicable with respect to adverse determinations made on or after Jan. 1, 1991, see section 10307(b)(3) of Pub. L. 101–239, set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to determinations by administrative law judges of entitlement to benefits made after 180 days after Nov. 10, 1988, see section 8001(c) of Pub. L. 100–647, set out as a note under section 423 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9109(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Dec. 22, 1987].''

Section 9110(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall become effective with the 13th month following the month in which this Act is enacted [December 1987], or, if sooner, with the first month for which the Secretary of Health and Human Services determines that it is administratively feasible.''

Section 9111(c) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective July 1, 1988.''

Section 9112(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by sections 4(c)(1), (d)(3)(B) and 5 of Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Section 8(b) of Pub. L. 99–643 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits payable for months after May 1986.''

Section 11005(c)(1) of Pub. L. 99–570 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 27, 1986].''

Amendment by Pub. L. 99–272 applicable only in the case of deaths of which the Secretary is first notified on or after Apr. 7, 1986, see section 12113(c) of Pub. L. 99–272, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 16(b) of Pub. L. 98–460 effective Oct. 9, 1984, see section 16(d) of Pub. L. 98–460, set out as a note under section 405 of this title.

Amendment by sections 2612(a) and 2613 of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 657 of this title.

Amendment by section 2651(j) of Pub. L. 98–369 effective July 18, 1984, see section 2651(*l*)(1) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

Amendment by section 2663(g)(11), (12) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 187(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective October 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2343(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective October 1, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 301(b) of Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, and applicable with respect to individuals whose disability has not been determined to have ceased prior to such first day, see section 301(c) of Pub. L. 96–265, set out as a note under section 425 of this title.

Amendment by section 305(b) of Pub. L. 96–265 applicable with respect to decisions made on or after the first day of the 13th month following June, 1980, see section 305(c) of Pub. L. 96–265, set out as a note under section 405 of this title.

Amendment by section 501(c) of Pub. L. 96–265 applicable in the case of payments of monthly insurance benefits under subchapter II of this chapter, entitlement for which is determined on or after July 1, 1981, see section 501(d) of Pub. L. 96–265, set out as an Effective Date note under section 1320a–6 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 4(b) of Pub. L. 94–569 provided that: ''The amendments made by this section [amending this section] shall apply with respect to months after the month following the month in which this Act is enacted [October 1976].''

Amendment by sections 1 and 2 of Pub. L. 94–202 effective Jan. 2, 1976, with the amendment by section 2 of Pub. L. 94–202, to the extent that it changes the period within which a hearing must be requested, applicable to any decision or determination which is received on or after Jan. 2, 1976, see section 5 of Pub. L. 94–202, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective Jan. 1, 1974, see section 18(z–3)(1) of Pub. L. 93–233.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

REGULATIONS

Section 222 of title II of Pub. L. 104–193 provided that: ''Within 3 months after the date of the enactment of this Act [Aug. 22, 1996], the Commissioner of Social Security shall prescribe such regulations as may be necessary to implement the amendments made by this subtitle [subtitle C (§§ 221, 222) of title II of Pub. L. 104–193, amending this section].''

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

PAYMENT OF TRAVEL EXPENSES

Pub. L. 102–394, title II, Oct. 6, 1992, 106 Stat. 1807, provided in part: ''That for fiscal year 1993 and thereafter, travel expense payments under section 1631(h) of such Act [subsec. (h) of this section] for travel to hearings may be made only when travel of more than seventy-five miles is required''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, Nov. 26, 1991, 105 Stat. 1122.

Pub. L. 101–517, title II, Nov. 5, 1990, 104 Stat. 2204.

Pub. L. 101–166, title II, Nov. 21, 1989, 103 Stat. 1173.

Pub. L. 100–436, title II, Sept. 20, 1988, 102 Stat. 1695.

Pub. L. 100–202, § 101(h) [title II], Dec. 22, 1987, 101 Stat. 1329–256, 1329–270.

Pub. L. 99–500, § 101(i) [H.R. 5233, title II], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, § 101(i) [H.R. 5233, title II], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title II, Dec. 12, 1985, 99 Stat. 1116.

Pub. L. 98–619, title II, Nov. 8, 1984, 98 Stat. 3318.

Pub. L. 98–139, title II, Oct. 31, 1983, 97 Stat. 884.

Pub. L. 97–377, title I, § 101(e)(1), Dec. 21, 1982, 96 Stat. 1891.

Pub. L. 97–92, § 101(a) [H.R. 4560, title II], Dec. 15, 1981, 95 Stat. 1183.

DEPOSIT OF OVERPAYMENTS IN GENERAL FUND OF TREASURY

Pub. L. 102–170, title II, Nov. 26, 1991, 105 Stat. 1122, provided: ''That for fiscal year 1992 and thereafter, all collections from repayments of overpayments shall be deposited in the general fund of the Treasury.''

OPPORTUNITY FOR INDIVIDUALS RECEIVING BENEFITS TO MAKE ELECTION FOR TYPE OF NOTICE OF HEARING OR OTHER OFFICIAL ACTION

Section 9111(a)(2) of Pub. L. 100–203 directed Secretary of Health and Human Services, not later than one year after July 1, 1988, to provide every individual receiving benefits under this subchapter on the basis of blindness an opportunity to make an election under subsec. (*l*)(1) of this section.

STUDY OF DESIRABILITY AND FEASIBILITY OF SPECIAL NOTICES OF HEARINGS AND OTHER ACTIONS TO OTHER INDIVIDUALS UNABLE TO READ

Section 9111(b) of Pub. L. 100–203 directed Secretary of Health and Human Services to study desirability and feasibility of extending special or supplementary notices of the type provided to blind individuals by subsec. (*l*) of this section to other individuals who may lack the ability to read and comprehend regular written notices, and report the results of such study to Congress, along with recommendations, within 12 months after Dec. 22, 1987.

DEMONSTRATION PROGRAM TO ASSIST HOMELESS INDIVIDUALS

Section 9117 of Pub. L. 100–203, as amended by Pub. L. 104–66, title I, § 1061(e), Dec. 21, 1995, 109 Stat. 720, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') is authorized to make grants to States for projects designed to demonstrate and test the feasibility of special procedures and services to ensure that homeless individuals are provided SSI and other benefits under the Social Security Act [this chapter] to which they are entitled and receive assistance in using such benefits to obtain permanent housing, food, and health care. Each project approved under this section shall meet such conditions and requirements, consistent with this section, as the Secretary shall prescribe.

''(b) SCOPE OF PROJECTS.—Projects for which grants are made under this section shall include, more specifically, procedures and services to overcome barriers which prevent homeless individuals (particularly the chronically mentally ill) from receiving and appropriately using benefits, including—

''(1) the creation of cooperative approaches between the Social Security Administration, State and local governments, shelters for the homeless, and other providers of services to the homeless;

''(2) the establishment, where appropriate, of multiagency SSI Outreach Teams (as described in subsection (c)), to facilitate communication between the agencies and staff involved in taking and processing claims for SSI and other benefits by the homeless who use shelters;

''(3) special efforts to identify homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act [this chapter];

''(4) the provision of special assistance to the homeless in applying for benefits, including assistance in obtaining and developing evidence of disability and supporting documentation for nondisability-related eligibility requirements;

''(5) the provision of special training and assistance to public and private agency staff, including shelter employees, on disability eligibility procedures and evidentiary requirements;

''(6) the provision of ongoing assistance to formerly homeless individuals to ensure their responding to information requests related to periodic redeterminations of eligibility for SSI and other benefits;

''(7) the provision of assistance in ensuring appropriate use of benefit funds for the purpose of enabling homeless individuals to obtain permanent housing,

nutrition, and physical and mental health care, including the use, where appropriate, of the disabled individual's representative payee for case management services; and

''(8) such other procedures and services as the Secretary may approve.

''(c) SSI OUTREACH TEAM PROJECTS.—(1) If a State applies for funds under this section for the purpose of establishing a multi-agency SSI Outreach Team, the membership and functions of such Team shall be as follows (except as provided in paragraph (2)):

''(A) The membership of the Team shall include a social services case worker (or case workers, if necessary); a consultative medical examiner who is qualified to provide consultative examinations for the Disability Determination Service of the State; a disability examiner, from the State Disability Determination Service; and a claims representative from an office of the Social Security Administration.

''(B) The Team shall have designated members responsible for—

''(i) identification of homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act [this chapter];

''(ii) ensuring that such individuals understand their rights under the programs;

''(iii) assisting such individuals in applying for benefits, including assistance in obtaining and developing evidence and supporting documentation relating to disability- and nondisability-related eligibility requirements;

''(iv) arranging transportation and accompanying applicants to necessary examinations, if needed; and

''(v) providing for the tracking and monitoring of all claims for benefits by individuals under the project.

''(2) If the Secretary determines that an application by a State for an SSI Outreach Team Project under this section which proposes a membership and functions for such Team different from those prescribed in paragraph (1) but which is expected to be as effective, the Secretary may waive the requirements of such paragraph.

[(d) Repealed. Pub. L. 104–66, title I, §1061(e), Dec. 21, 1995, 109 Stat. 720.]

''(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary—

''(A) the sum of $1,250,000 for the fiscal year 1988;

''(B) the sum of $2,500,000 for the fiscal year 1989; and

''(C) such sums as may be necessary for each fiscal year thereafter.''

NOTIFICATION OF ADJUSTMENT OF BENEFITS BY SECRETARY

Section 2612(b) of Pub. L. 98–369 provided that: ''If an adjustment referred to in section 1631(b)(1) of the Social Security Act [subsec. (b)(1) of this section] is in effect with respect to an individual or eligible spouse on the effective date of this subsection [Oct. 1, 1984], and the amount of such adjustment for a month is greater than the amount described in section 1631(b)(1)(B)(ii) of such Act [subsec. (b)(1)(B)(ii) of this section], as added by subsection (a), the Secretary shall notify the individual whose benefits are being adjusted, in writing, of his or her right to have the adjustment reduced to the amount described in such section 1631(b)(1)(B)(ii).''

PAYMENT OF COSTS OF REHABILITATION SERVICES

Amendment to sections 422 and 1382d of this title by section 11(a), (b) of Pub. L. 98–460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following October 1984, see section 11(c) of Pub. L. 98–460, set out as an Effective Date of 1984 Amendment note under section 422 of this title.

HEARING EXAMINERS APPOINTED PRIOR TO JANUARY 2, 1976

Pub. L. 95–216, title III, §371, Dec. 20, 1977, 91 Stat. 1559, provided that: ''The persons who were appointed to serve as hearing examiners under section 1631(d)(2) of the Social Security Act [subsec. (d)(2) of this section] (as in effect prior to January 2, 1976), and who by section 3 of Public Law 94–202 [set out as a note under this section] were deemed to be appointed under section 3105 of title 5, United States Code (with such appointments terminating no later than at the close of the period ending December 31, 1978), shall be deemed appointed to career-absolute positions as hearing examiners under and in accordance with section 3105 of title 5, United States Code, with the same authority and tenure (without regard to the expiration of such period) as hearing examiners appointed directly under such section 3105, and shall receive compensation at the same rate as hearing examiners appointed by the Secretary of Health, Education, and Welfare [now Health and Human Services] directly under such section 3105. All of the provisions of title 5, United States Code and the regulations promulgated pursuant thereto, which are applicable to hearing examiners appointed under such section 3105, shall apply to the persons described in the preceding sentence.''

Section 3 of Pub. L. 94–202 provided that: ''The persons appointed under section 1631(d)(2) of the Social Security Act [subsec. (d)(2) of this section] (as in effect prior to the enactment of this Act) to serve as hearing examiners in hearings under section 1631(c) of such Act [subsec. (c) of this section] may conduct hearings under titles II, XVI, and XVIII of the Social Security Act [subchapters II, XVI, and XVIII of this chapter] if the Secretary of Health, Education, and Welfare [now Health and Human Services] finds it will promote the achievement of the objectives of such titles [subchapters], notwithstanding the fact that their appointments were made without meeting the requirements for hearing examiners appointed under section 3105 of title 5, United States Code but their appointments shall terminate not later than at the close of the period ending December 31, 1978, and during that period they shall be deemed to be hearing examiners appointed under such section 3105 and subject as such to subchapter II of chapter 5 of title 5, United States Code, to the second sentence of such section 3105, and to all of the other provisions of such title 5 which apply to hearing examiners appointed under such section 3105.''

PRESUMPTIVE DISABILITY BENEFITS; TIME EXTENSION

Pub. L. 93–256, §1, Mar. 28, 1974, 88 Stat. 52, provided: ''That any individual who would be considered disabled under section 1614(a)(3)(E) of the Social Security Act [section 1382c(a)(3)(E) of this title] except that he did not receive aid under the appropriate State plan for at least one month prior to July 1973 may be considered to be presumptively disabled under section 1631(a)(4)(B) of that Act [subsec. (a)(4)(B) of this section] and may be paid supplemental security income benefits under title XVI of that Act [this subchapter] on the basis of such presumptive disability, and State supplementary payments under section 212 of Public Law 93–66 [set out as a note under section 1382 of this title] as though he had been determined to be disabled within the meaning of section 1614(a)(3) of the Social Security Act [section 1382c(a)(3) of this title], for any month in calendar year 1974 for which it has been determined that he is otherwise eligible for such benefits, without regard to the three-month limitation in section 1631(a)(4)(B) of that Act [subsec. (a)(4)(B) of this section] on the period for which benefits may be paid to presumptively disabled individuals, except that no such benefits may be paid on the basis of such presumptive disability for any month after the month in which the Secretary of Health, Education, and Welfare [now Health and

Human Services] has made a determination as to whether such individual is disabled, as defined in section 1614(a)(3)(A) of that Act [section 1382c(a)(3)(A) of this title].''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of section 1603 of the Social Security Act [this section] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1603 of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92–603, and as amended, continues to apply and reads as follows:

§ 1383. Payments to States; quarterly expenditures to exceed average of total expenditures for each quarter of fiscal year ending June 30, 1965

(a) From the sums appropriated therefor, the Commissioner of Social Security shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing October 1, 1962—

(1) Repealed. Pub. L. 97–35, title XXI, § 2184(d)(5)(A), Aug. 13, 1981, 95 Stat. 818.

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to—

(A) one-half of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month; plus

(B) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of $45 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month; and

(3) Repealed. Pub. L. 97–35, title XXI, § 2184(d)(5)(A), Aug. 13, 1981, 95 Stat. 818.

(4) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Commissioner of Social Security for the proper and efficient administration of the State plan.

(b)(1) Prior to the beginning of each quarter, the Commissioner of Social Security shall estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Commissioner of Social Security may find necessary.

(2) The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Commissioner of Social Security, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to aid or assistance furnished under the State plan, but excluding any amount of such aid or assistance recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased, shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(Aug. 14, 1935, ch. 531, title XVI, § 1603, as added Pub. L. 87–543, title I, § 141(a), July 25, 1962, 76 Stat. 200; amended Pub. L. 89–97, title I, § 122, title II, § 221(d)(4), title IV, § 401(b), July 30, 1965, 79 Stat. 353, 359, 414; Pub. L. 90–248, title II, § 212(d), Jan. 2, 1968, 81 Stat. 898; Pub. L. 92–512, title III, § 301(b), (d), Oct. 20, 1972, 86 Stat. 946, 947; Pub. L. 93–647, §§ 3(e)(2), 5(e), Jan. 4, 1975, 88 Stat. 2349, 2350; Pub. L. 97–35, title XXI, § 2184(d)(5), title XXIII, § 2353(m)(2), (3), Aug. 13, 1981, 95 Stat. 818, 873; Pub. L. 99–603, title I, § 121(b)(4), Nov. 6, 1986, 100 Stat. 3391; Pub. L. 103–66, title XIII, § 13741(b), Aug. 10, 1993, 107 Stat. 663; Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478.)

[Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

[Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Apr. 1, 1994, with special rule for States whose legislature meets biennially, and does not have regular session scheduled in calendar year 1994, see section 13741(c) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 303 of this title.]

[Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as an Effective Date of 1986 Amendment note under section 502 of this title.]

REIMBURSEMENT FOR ERRONEOUS STATE SUPPLEMENTARY PAYMENTS; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 95–216, title IV, § 405, Dec. 20, 1977, 91 Stat. 1564, provided that:

''(a) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare [now Health and Human Services] is authorized and directed to pay to each State an amount equal to the amount expended by such State for erroneous supplementary payments to aged, blind, or disabled individuals whenever, and to the extent to which, the Secretary through an audit by the Department of Health, Education, and Welfare [now Health and Human Services] which has been reviewed and concurred in by the Inspector General of such department determines that—

''(1) such amount was paid by such State as a supplementary payment during the calendar year 1974 pursuant to an agreement between the State and the Secretary required by section 212 of the Act entitled 'An Act to extend the Renegotiation Act of 1951 for one year, and for other purposes', approved July 9, 1973, [set out as a note under section 1382 of this title], or such amount was paid by such State as an optional State supplementation, as defined in section 1616 of the Social Security Act [section 1382 of this title], during the calendar year 1974,

''(2) the erroneous payments were the result of good faith reliance by such State upon erroneous or incomplete information supplied by the Department of Health, Education, and Welfare [now Health and Human Services], through the State data exchange, or good faith reliance upon incorrect supplemental

security income benefit payments made by such department, and

''(3) recovery of the erroneous payments by such State would be impossible or unreasonable.

''(b) There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section.''

§ 1383a. Penalties for fraud

(a) In general

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit under this subchapter,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit, or (B) the initial or continued right to any such benefit of any other individual in whose behalf he has applied for or is receiving such benefit, conceals or fails to disclose such event with an intent fraudulently to secure such benefit either in a greater amount or quantity than is due or when no such benefit is authorized, or

(4) having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and willfully converts such benefit or any part thereof to a use other than for the use and benefit of such other person,

shall be fined under title 18, imprisoned not more than 5 years, or both.

(b) Restitution

(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a) of this section, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Commissioner of Social Security, in any case in which such offense results in—

(A) the Commissioner of Social Security making a benefit payment that should not have been made, or

(B) an individual suffering a financial loss due to the defendant's violation of subsection (a) of this section in his or her capacity as the individual's representative payee appointed pursuant to section 1383(a)(2) of this title.

(2) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Commissioner of Social Security shall be considered the victim.

(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

(4)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited as miscellaneous receipts in the general fund of the Treasury.

(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (1)(B), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss as described in such paragraph, except that such amount may be reduced by any overpayment of benefits owed under this subchapter, subchapter II of this chapter, or subchapter VIII of this chapter by the individual.

(c) Prohibition on certification as representative payee

Any person or entity convicted of a violation of subsection (a) of this section or of section 408 of this title may not be certified as a representative payee under section 1383(a)(2) of this title.

(Aug. 14, 1935, ch. 531, title XVI, § 1632, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1478; amended Pub. L. 98–460, § 16(c)(1), Oct. 9, 1984, 98 Stat. 1810; Pub. L. 103–296, title II, § 206(c)(1), (2), Aug. 15, 1994, 108 Stat. 1513; Pub. L. 108–203, title II, § 209(c), Mar. 2, 2004, 118 Stat. 515.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–203, § 209(c)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 108–203, § 209(c)(1), (3), redesignated subsec. (b) as (c), struck out ''(2)'' before ''Any person'', and struck out par (1) which read as follows: ''If a person or entity violates subsection (a) of this section in the person's or entity's role as, or in applying to become, a representative payee under section 1383(a)(2) of this title on behalf of another individual (other than the person's eligible spouse), and the violation includes a willful misuse of funds by the person or entity, the court may also require that full or partial restitution of funds be made to such other individual.''

1994—Subsec. (a). Pub. L. 103–296, § 206(c)(1), inserted closing provisions and struck out former closing provisions which read as follows: ''shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.''

Subsec. (b). Pub. L. 103–296, § 206(c)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a) of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a payee under section 1383(a)(2) of this title on behalf of another individual (other than such person's eligible spouse), in lieu of the penalty set forth in subsection (a) of this section—

''(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both; and

''(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

''(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

''(3) Any person or entity convicted of a felony under this section or under section 408 of this title may not be certified as a payee under section 1383(a)(2) of this title.''

1984—Pub. L. 98–460 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 applicable with respect to violations occurring on or after Mar. 2, 2004, see section 209(d) of Pub. L. 108–203, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 206(c)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [amending this section] shall apply to conduct occurring on or after October 1, 1994.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–460 effective Oct. 9, 1984, and applicable with respect to violations occurring on or after such date, see section 16(d) of Pub. L. 98–460, set out as a note under section 405 of this title.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1383b. Administration

(a) Authority of Commissioner

Subject to subsection (b) of this section, the Commissioner of Social Security may make such administrative and other arrangements (including arrangements for the determination of blindness and disability under section 1382c(a)(2) and (3) of this title in the same manner and subject to the same conditions as provided with respect to disability determinations under section 421 of this title) as may be necessary or appropriate to carry out the Commissioner's functions under this subchapter.

(b) Examination to determine blindness

In determining, for purposes of this subchapter, whether an individual is blind, there shall be an examination of such individual by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select.

(c) Notification of review

(1) In any case in which the Commissioner of Social Security initiates a review under this subchapter, similar to the continuing disability reviews authorized for purposes of subchapter II of this chapter under section 421(i) of this title, the Commissioner of Social Security shall notify the individual whose case is to be reviewed in the same manner as required under section 421(i)(4) of this title.

(2) For suspension of continuing disability reviews and other reviews under this subchapter similar to reviews under section 421 of this title in the case of an individual using a ticket to work and self-sufficiency, see section 1320b–19(i) of this title.

(d) Regulations regarding completion of plans for achieving self-support

The Commissioner of Social Security shall establish by regulation criteria for time limits and other criteria related to individuals' plans for achieving self-support, that take into account—

(1) the length of time that the individual will need to achieve the individual's employment goal (within such reasonable period as the Commissioner of Social Security may establish); and

(2) other factors determined by the Commissioner of Social Security to be appropriate.

(Aug. 14, 1935, ch. 531, title XVI, § 1633, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1478; amended Pub. L. 93–66, title II, § 214, July 9, 1973, 87 Stat. 158; Pub. L. 98–460, § 6(b), Oct. 9, 1984, 98 Stat. 1802; Pub. L. 103–296, title I, § 107(a)(4), title II, § 203(a), Aug. 15, 1994, 108 Stat. 1478, 1508; Pub. L. 106–170, title I, § 101(b)(2)(D), Dec. 17, 1999, 113 Stat. 1874.)

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–170 designated existing provisions as par. (1) and added par. (2).

1994—Subsec. (a). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner's'' for ''his''.

Subsec. (c). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (d). Pub. L. 103–296, § 203(a), added subsec. (d).

Pub. L. 103–296, § 107(a)(4), in subsec. (d) as added by Pub. L. 103–296, § 203(a), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1984—Subsec. (c). Pub. L. 98–460 added subsec. (c).

1973—Subsec. (a). Pub. L. 93–66, § 214(1), (2), designated existing provisions as subsec. (a) and made the authority of the Secretary subject to subsec. (b) of this section.

Subsec. (b). Pub. L. 93–66, § 214(3), added subsec. (b).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 203(b) of Pub. L. 103–296 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1995.''

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

INSTITUTION OF NOTIFICATION SYSTEM

For provisions requiring the Secretary to institute the system of notification required by subsec. (c) of this section as soon as practicable after Oct. 9, 1984, see section 6(c) of Pub. L. 98–460, set out as a note under section 421 of this title.

FEDERAL PROGRAM OF SUPPLEMENTAL SECURITY INCOME; PREFERENCE FOR PRESENT STATE AND LOCAL EMPLOYEES

Section 213 of Pub. L. 93–66 provided that: ''The Secretary of Health, Education, and Welfare [now Health

and Human Services] in the recruitment and selection for employment of personnel whose services will be utilized in the administration of the Federal program of supplemental security income for the aged, blind, and disabled (established by title XVI of the Social Security Act [this subchapter]), shall give a preference, as among applicants whose qualifications are reasonably equal (subject to any preferences conferred by law or regulation on individuals who have been Federal employees and have been displaced from such employment), to applicants for employment who are or were employed in the administration of any State program approved under title I, X, XIV, or XVI of such Act [subchapter I, X, XIV, or XVI of this chapter] and are or were involuntarily displaced from their employment as a result of the displacement of such State program by such Federal program.''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1383c. Eligibility for medical assistance of aged, blind, or disabled individuals under State's medical assistance plan

(a) Determination by Commissioner pursuant to agreement between Commissioner and State; costs

The Commissioner of Social Security may enter into an agreement with any State which wishes to do so under which the Commissioner will determine eligibility for medical assistance in the case of aged, blind, or disabled individuals under such State's plan approved under subchapter XIX of this chapter. Any such agreement shall provide for payments by the State, for use by the Commissioner of Social Security in carrying out the agreement, of an amount equal to one-half of the cost of carrying out the agreement, but in computing such cost with respect to individuals eligible for benefits under this subchapter, the Commissioner of Social Security shall include only those costs which are additional to the costs incurred in carrying out this subchapter.

(b) Preservation of benefit status for certain disabled widows and widowers

(1) An eligible disabled widow or widower (described in paragraph (2)) who is entitled to a widow's or widower's insurance benefit based on a disability for any month under section 402(e) or (f) of this title but is not eligible for benefits under this subchapter in that month, and who applies for the protection of this subsection under paragraph (3), shall be deemed for purposes of subchapter XIX of this chapter to be an individual with respect to whom benefits under this subchapter are paid in that month if he or she—

(A) has been continuously entitled to such widow's or widower's insurance benefits from the first month for which the increase described in paragraph (2)(C) was reflected in such benefits through the month involved, and

(B) would be eligible for benefits under this subchapter in the month involved if the amount of the increase described in paragraph (2)(C) in his or her widow's or widower's insurance benefits, and any subsequent cost-of-living adjustments in such benefits under section 415(i) of this title, were disregarded.

(2) For purposes of paragraph (1), the term ''eligible disabled widow or widower'' means an individual who—

(A) was entitled to a monthly insurance benefit under subchapter II of this chapter for December 1983,

(B) was entitled to a widow's or widower's insurance benefit based on a disability under section 402(e) or (f) of this title for January 1984 and with respect to whom a benefit under this subchapter was paid in that month, and

(C) because of the increase in the amount of his or her widow's or widower's insurance benefits which resulted from the amendments made by section 134 of the Social Security Amendments of 1983 (Public Law 98–21) (eliminating the additional reduction factor for disabled widows and widowers under age 60), was ineligible for benefits under this subchapter in the first month in which such increase was paid to him or her (and in which a retroactive payment of such increase for prior months was not made).

(3) This subsection shall only apply to an individual who files a written application for protection under this subsection, in such manner and form as the Commissioner of Social Security may prescribe, no later than July 1, 1988.

(4) For purposes of this subsection, the term ''benefits under this subchapter'' includes payments of the type described in section 1382e(a) of this title or of the type described in section 212(a) of Public Law 93–66.

(c) Loss of benefits upon entitlement to child's insurance benefits based on disability

If any individual who has attained the age of 18 and is receiving benefits under this subchapter on the basis of blindness or a disability which began before he or she attained the age of 22—

(1) becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under section 402(d) of this title on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and

(2) ceases to be eligible for benefits under this subchapter because of such child's insurance benefits or because of the increase in such child's insurance benefits,

such individual shall be treated for purposes of subchapter XIX of this chapter as receiving benefits under this subchapter so long as he or she would be eligible for benefits under this subchapter in the absence of such child's insurance benefits or such increase.

(d) Retention of medicaid when SSI benefits are lost upon entitlement to early widow's or widower's insurance benefits

(1) This subsection applies with respect to any person who—

(A) applies for and obtains benefits under subsection (e) or (f) of section 402 of this title (or under any other subsection of section 402 of this title if such person is also eligible for benefits under such subsection (e) or (f) of this section) being then not entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter, and

(B) is determined to be ineligible (by reason of the receipt of such benefits under section 402 of this title) for supplemental security income benefits under this subchapter or for State supplementary payments of the type described in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66).

(2) For purposes of subchapter XIX of this chapter, each person with respect to whom this subsection applies—

(A) shall be deemed to be a recipient of supplemental security income benefits under this subchapter if such person received such a benefit for the month before the month in which such person began to receive a benefit described in paragraph (1)(A), and

(B) shall be deemed to be a recipient of State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) if such person received such a payment for the month before the month in which such person began to receive a benefit described in paragraph (1)(A),

for so long as such person (i) would be eligible for such supplemental security income benefits, or such State supplementary payments (or payments of the type described in section 212(a) of Public Law 93–66), in the absence of benefits described in paragraph (1)(A), and (ii) is not entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter.

(Aug. 14, 1935, ch. 531, title XVI, § 1634, as added Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1478; amended Pub. L. 99–272, title XII, § 12202(a), Apr. 7, 1986, 100 Stat. 290; Pub. L. 99–643, § 6(a), Nov. 10, 1986, 100 Stat. 3578; Pub. L. 100–203, title IX, §§ 9108, 9116(a), Dec. 22, 1987, 101 Stat. 1330–302, 1330–305; Pub. L. 101–508, title V, § 5103(c)(1), Nov. 5, 1990, 104 Stat. 1388–251; Pub. L. 103–296, title I, § 107(a)(4), title II, § 201(b)(3)(D), Aug. 15, 1994, 108 Stat. 1478, 1504; Pub. L. 104–121, title I, § 105(b)(4)(B), Mar. 29, 1996, 110 Stat. 854.)

REFERENCES IN TEXT

Section 134 of the Social Security Amendments of 1983 (Public Law 98–21), referred to in subsec. (b)(2)(C), is section 134 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 97, which amended section 402 of this title and enacted provisions set out as a note under section 402 of this title.

Section 212(a) of Public Law 93–66, referred to in subsecs. (b)(4) and (d)(1)(B), (2), is section 212(a) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

The effective date of this subsection, referred to in subsec. (c)(1), is July 1, 1987, except as otherwise provided. See section 10(b) of Pub. L. 99–643, set out as an Effective Date of 1986 Amendments note under section 1396a of this title.

Part A of subchapter XVIII of this chapter, referred to in subsec. (d)(2), is classified to section 1395c et seq. of this title.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–121 struck out subsec. (e) which read as follows: ''Each person to whom benefits under this subchapter by reason of disability are not payable for any month solely by reason of clause (i) or (v) of section 1382(e)(3)(A) of this title shall be treated, for purposes of subchapter XIX of this chapter, as receiving benefits under this subchapter for the month.''

1994—Subsecs. (a), (b)(3). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner will'' for ''he will'' in subsec. (a).

Subsec. (e). Pub. L. 103–296, § 201(b)(3)(D), added subsec. (e).

1990—Subsec. (d). Pub. L. 101–508 designated existing provisions as par. (1), substituted ''This subsection applies with respect to any person who—'' for ''If any person—'' in introductory provisions, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, in subpar. (A) substituted ''being then not entitled'' for ''as required by section 1382(e)(2) of this title, being then at least 60 years of age but not entitled'', in subpar. (B) substituted ''section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66).'' for ''section 1382e(a) of this title,'' and substituted par. (2) for former concluding provisions which read as follows: ''such person shall nevertheless be deemed to be a recipient of supplemental security income benefits under this subchapter for purposes of subchapter XIX of this chapter, so long as he or she (A) would be eligible for such supplemental security income benefits, or such State supplementary payments, in the absence of such benefits under section 402 of this title, and (B) is not entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter.''

1987—Subsec. (b)(3). Pub. L. 100–203, § 9108, substituted ''no later than July 1, 1988'' for ''during the 15-month period beginning with the month in which this subsection is enacted [April 1986]''.

Subsec. (d). Pub. L. 100–203, § 9116(a), added subsec. (d).

1986—Subsec. (a). Pub. L. 99–272, § 12202(a)(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 99–272, § 12202(a)(2), added subsec. (b).

Subsec. (c). Pub. L. 99–643 added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–121 applicable to any individual who applies for, or whose claim is finally adjudicated with respect to, supplemental security income benefits under this subchapter based on disability on or after Mar. 29, 1996, with special rule in case of any individual who has applied for, and whose claim has been finally adjudicated with respect to, such benefits before Mar. 29, 1996, see section 105(b)(5) of Pub. L. 104–121, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 201(b)(3)(D) of Pub. L. 103–296 applicable with respect to supplemental security income benefits under this subchapter by reason of disability which are otherwise payable in months beginning after 180 days after Aug. 15, 1994, with Secretary of Health and Human Services to issue regulations necessary to carry out such amendment not later than 180 days after Aug. 15, 1994, see section 201(b)(3)(E)(i) of Pub. L. 103–296, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to medical assistance provided after December 1990, see section 5103(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9108 of Pub. L. 100–203 provided that the amendment made by that section is effective July 1, 1987.

Section 9116(e) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to any individual without regard to whether the determination of his or her ineligibility for supplemental security income benefits by reason of the receipt of benefits under section 202 of the Social Security Act [section 402 of this title] (as described in section 1634(d)(2) of such Act [subsec. (d)(2) of this section]) occurred before, on, or after the date of the enactment of this Act [Dec. 22, 1987]; but no individual shall be eligible for assistance under title XIX of such Act [subchapter XIX of this chapter] by reason of such amendments for any period before July 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Section 12202(c) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall not have the effect of deeming an individual eligible for medical assistance for any month which begins less than two months after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

NOTICE OF POSSIBLE ELIGIBILITY FOR MEDICAID ASSISTANCE

Section 9116(b) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services, acting through the Social Security Administration, shall (within 3 months after the date of the enactment of this Act [Dec. 22, 1987]) issue a notice to all individuals who will have attained age 60 but not age 65 as of April 1, 1988, and who received supplemental security income benefits under title XVI of the Social Security Act [this subchapter] prior to attaining age 60 but lost those benefits by reason of the receipt of widow's or widower's insurance benefits (or other benefits as described in section 1634(d)(1) of that Act [subsec. (d)(1) of this section] as added by subsection (a) of this section) under title II of that Act [subchapter II of this chapter]. Each such notice shall set forth and explain the provisions of section 1634(d) of the Social Security Act (as so added), and shall inform the individual that he or she should contact the Secretary or the appropriate State agency concerning his or her possible eligibility for medical assistance benefits under such title XIX [subchapter XIX of this chapter].''

STATE DETERMINATIONS

Section 9116(c) of Pub. L. 100–203 provided that: ''Any determination required under section 1634(d) of the Social Security Act [subsec. (d) of this section] with respect to whether an individual would be eligible for benefits under title XVI of such Act [this subchapter] (or State supplementary payments) in the absence of benefits under section 202 [section 402 of this title] shall be made by the appropriate State agency.''

Section 6(b) of Pub. L. 99–643 provided that: ''Any determination required under section 1634(c) of the Social Security Act [subsec. (c) of this section] with respect to whether an individual would be eligible for benefits under title XVI of such Act [this subchapter] in the absence of children's benefits (or an increase thereof) shall be made by the appropriate State agency.''

IDENTIFICATION OF POTENTIAL BENEFICIARIES UNDER SUBSECTION (b) OF THIS SECTION

Section 12202(b) of Pub. L. 99–272 provided that:

''(1) As soon as possible after the date of the enactment of this Act [Apr. 7, 1986], the Secretary of Health and Human Services shall provide each State with the names of all individuals receiving widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act [section 402(e) or (f) of this title] based on a disability who might qualify for medical assistance under the plan of that State approved under title XIX of such Act [subchapter XIX of this chapter] by reason of the application of section 1634(b) of the Social Security Act [subsec. (b) of this section].

''(2) Each State shall—

''(A) using the information so provided and any other information it may have, promptly notify all individuals who may qualify for medical assistance under its plan by reason of such section 1634(b) of their right to make application for such assistance,

''(B) solicit their applications for such assistance, and

''(C) make the necessary determination of such individuals' eligibility for such assistance under such section and under such title XIX.''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1383d. Outreach program for children

(a) Establishment

The Commissioner of Social Security shall establish and conduct an ongoing program of outreach to children who are potentially eligible for benefits under this subchapter by reason of disability or blindness.

(b) Requirements

Under this program, the Commissioner of Social Security shall—

(1) aim outreach efforts at populations for whom such efforts would be most effective; and

(2) work in cooperation with other Federal, State, and private agencies, and nonprofit organizations, which serve blind or disabled individuals and have knowledge of potential recipients of supplemental security income benefits, and with agencies and organizations (including school systems and public and private social service agencies) which focus on the needs of children.

(Aug. 14, 1935, ch. 531, title XVI, § 1635, as added Pub. L. 101–239, title VIII, § 8008(a), Dec. 19, 1989, 103 Stat. 2463; amended Pub. L. 103–296, title I, § 107(a)(4), Aug. 15, 1994, 108 Stat. 1478.)

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 8008(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect 3 months after the date of the enactment of this Act [Dec. 19, 1989].''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

§ 1383e. Treatment referrals for individuals with alcoholism or drug addiction condition

In the case of any individual whose benefits under this subchapter are paid to a representative payee pursuant to section 1383(a)(2)(A)(ii)(II) of this title, the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).

(Aug. 14, 1935, ch. 531, title XVI, § 1636, as added Pub. L. 104–121, title I, § 105(b)(3), Mar. 29, 1996, 110 Stat. 854.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart II of part B of title XIX of the Act is classified generally to subpart II (§ 300x–21 et seq.) of part B of subchapter XVII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

EFFECTIVE DATE

Section effective July 1, 1996, with respect to any individual whose claim for benefits is finally adjudicated on or after Mar. 29, 1996, or whose eligibility for benefits is based upon eligibility redetermination made pursuant to section 105(b)(5)(C) of Pub. L. 104–121, see section 105(b)(5) of Pub. L. 104–121, as amended, set out as an Effective Date of 1996 Amendment note under section 1382 of this title.

§ 1383f. Annual report on program

(a) In general

Not later than May 30 of each year, the Commissioner of Social Security shall prepare and deliver a report annually to the President and the Congress regarding the program under this subchapter, including—

(1) a comprehensive description of the program;

(2) historical and current data on allowances and denials, including number of applications and allowance rates for initial determinations, reconsideration determinations, administrative law judge hearings, appeals council reviews, and Federal court decisions;

(3) historical and current data on characteristics of recipients and program costs, by recipient group (aged, blind, disabled adults, and disabled children);

(4) historical and current data on prior enrollment by recipients in public benefit programs, including State programs funded under part A of subchapter IV of this chapter and State general assistance programs;

(5) projections of future number of recipients and program costs, through at least 25 years;

(6) number of redeterminations and continuing disability reviews, and the outcomes of such redeterminations and reviews;

(7) data on the utilization of work incentives;

(8) detailed information on administrative and other program operation costs;

(9) summaries of relevant research undertaken by the Social Security Administration, or by other researchers;

(10) State supplementation program operations;

(11) a historical summary of statutory changes to this subchapter; and

(12) such other information as the Commissioner deems useful.

(b) Views of individual members of Social Security Advisory Board

Each member of the Social Security Advisory Board shall be permitted to provide an individual report, or a joint report if agreed, of views of the program under this subchapter, to be included in the annual report required under this section.

(Aug. 14, 1935, ch. 531, title XVI, § 1637, as added Pub. L. 104–193, title II, § 231, Aug. 22, 1996, 110 Stat. 2197.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsec. (a)(4), is classified to section 601 et seq. of this title.

§ 1384. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XVI, § 1604, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 204, related to operation of State plans, prior to the general revision of this subchapter by Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of subchapter XVI of the Social Security Act [this subchapter] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1604 of the Social Security Act [this section] as it existed prior to reenactment of this subchapter by Pub. L. 92–603 continues to apply and reads as follows:

§ 1384. Operation of State plans

If the Commissioner of Social Security, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this subchapter, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1332 of this title; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Commissioner of Social Security shall notify such State agency that further payments will not be made to the State (or, in the Commissioner's discretion, that payments will be limited to categories under or parts of

the State plan not affected by such failure), until the Commissioner of Social Security is satisfied that there will no longer be any such failure to comply. Until the Commissioner is so satisfied the Commissioner shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title XVI, § 1604, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 204; amended Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478.)

[Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

§ 1385. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XVI, § 1605, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 204; amended July 30, 1965, Pub. L. 89–97, title II, §§ 221(d)(1), (2), 222(b), title IV, § 402(b), 79 Stat. 358, 360, 416, defined ''aid to the aged, blind, or disabled'' and ''medical assistance for the aged'', prior to the general revision of this subchapter by Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of subchapter XVI of the Social Security Act [this subchapter] by section 301 of Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1605 of the Social Security Act [this section] as it existed prior to reenactment of this subchapter by Pub. L. 92–603, and as amended, continues to apply and to read as follows:

§ 1385. Definitions

(a) For purposes of this subchapter, the term ''aid to the aged, blind, or disabled'' means money payments to needy individuals who are 65 years of age or older, are blind, or are 18 years of age or over and permanently and totally disabled, but such term does not include—

(1) any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(2) any such payments to or care in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Commissioner of Social Security) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1382 of this title includes provision for—

(A) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the aged, blind, or disabled to be paid (and in conjunction with other income and resources), meet all the need [sic] of the individuals with respect to whom such payments are made;

(C) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(D) periodic review by such State agency of the determination under clause (A) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) of this subsection for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of ninety consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for thirty consecutive days in the case of such an individual who has maintained his residence in such State during such period or ninety consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.

(b) Repealed. Pub. L. 97–35, title XXI, § 2184(d)(6)(B), Aug. 13, 1981, 95 Stat. 818.

(Aug. 14, 1935, ch. 531, title XVI, § 1605, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 204; amended July 30, 1965, Pub. L. 89–97, title II, §§ 221(d)(1), (2), 222(b), title IV, § 402(b), 79 Stat. 358, 360, 416; Oct. 30, 1972, Pub. L. 92–603, title IV, §§ 408(d), 409(d), 86 Stat. 1490, 1491; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(d)(6), 95 Stat. 818; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478.)

[Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

SUBCHAPTER XVII—GRANTS FOR PLANNING COMPREHENSIVE ACTION TO COMBAT MENTAL RETARDATION

§ 1391. Authorization of appropriations

For the purpose of assisting the States (including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa) to plan for and take other steps leading to comprehensive State and community action to combat mental retardation, there is authorized to be appropriated the sum of $2,200,000. There are also authorized to be appropriated, for assisting such States in initiating the implementation and carrying out of planning and other steps to combat mental retardation, $2,750,000 for the fiscal year ending June 30, 1966, and $2,750,000 for the fiscal year ending June 30, 1967.

(Aug. 14, 1935, ch. 531, title XVII, § 1701, as added Pub. L. 88–156, § 5, Oct. 24, 1963, 77 Stat. 275; amended Pub. L. 89–97, title II, § 211(a), July 30, 1965, 79 Stat. 356.)

AMENDMENTS

1965—Pub. L. 89–97 authorized appropriations of $2,750,000 for fiscal years ending June 30, 1966 and 1967 for implementation of mental retardation planning.

SHORT TITLE

For short title of Pub. L. 88–156, which enacted this subchapter, as the ''Maternal and Child Health and

Mental Retardation Planning Amendments of 1963'', see section 1 of Pub. L. 88–156, set out as a Short Title of 1963 Amendment note under section 1305 of this title.

§ 1392. Availability of funds during certain fiscal years; limitation on amount; utilization of grant

The sums appropriated pursuant to the first sentence of section 1391 of this title shall be available for grants to States by the Secretary during the fiscal year ending June 30, 1964, and the succeeding fiscal year; and the sums appropriated pursuant to the second sentence of such section for the fiscal year ending June 30, 1966, shall be available for such grants during such year and the next two fiscal years, and sums appropriated pursuant thereto for the fiscal year ending June 30, 1967, shall be available for such grants during such year and the succeeding fiscal year. Any such grant to a State, which shall not exceed 75 per centum of the cost of the planning and related activities involved, may be used by it to determine what action is needed to combat mental retardation in the State and the resources available for this purpose, to develop public awareness of the mental retardation problem and of the need for combating it, to coordinate State and local activities relating to the various aspects of mental retardation and its prevention, treatment, or amelioration, and to plan other activities leading to comprehensive State and community action to combat mental retardation.

(Aug. 14, 1935, ch. 531, title XVII, § 1702, as added Pub. L. 88–156, § 5, Oct. 24, 1963, 77 Stat. 275; amended Pub. L. 89–97, title II, § 211(b), July 30, 1965, 79 Stat. 356.)

AMENDMENTS

1965—Pub. L. 89–97 inserted provision making appropriations for fiscal year ending June 30, 1966, available for grants during such fiscal year and the next two fiscal years and the appropriation for fiscal year ending June 30, 1967, available for grants during such fiscal year and the succeeding fiscal year.

§ 1393. Applications; single State agency designation; essential planning services; plans for expenditure; final activities report and other necessary reports; records; accounting

In order to be eligible for a grant under section 1392 of this title, a State must submit an application therefor which—

(1) designates or establishes a single State agency, which may be an interdepartmental agency, as the sole agency for carrying out the purposes of this subchapter;

(2) indicates the manner in which provision will be made to assure full consideration of all aspects of services essential to planning for comprehensive State and community action to combat mental retardation, including services in the fields of education, employment, rehabilitation, welfare, health, and the law, and services provided through community programs for and institutions for the mentally retarded;

(3) sets forth its plans for expenditure of such grant, which plans provide reasonable assurance of carrying out the purposes of this subchapter;

(4) provides for submission of a final report of the activities of the State agency in carrying out the purposes of this subchapter, and for submission of such other reports, in such form and containing such information, as the Secretary may from time to time find necessary for carrying out the purposes of this subchapter and for keeping such records and affording such access thereto as he may find necessary to assure the correctness and verification of such reports; and

(5) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this subchapter.

(Aug. 14, 1935, ch. 531, title XVII, § 1703, as added Pub. L. 88–156, § 5, Oct. 24, 1963, 77 Stat. 275.)

§ 1394. Payments to States; adjustments; advances or reimbursement; installments; conditions

Payment of grants under this subchapter may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may determine.

(Aug. 14, 1935, ch. 531, title XVII, § 1704, as added Pub. L. 88–156, § 5, Oct. 24, 1963, 77 Stat. 276.)

SUBCHAPTER XVIII—HEALTH INSURANCE FOR AGED AND DISABLED

§ 1395. Prohibition against any Federal interference

Nothing in this subchapter shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided, or over the selection, tenure, or compensation of any officer or employee of any institution, agency, or person providing health services; or to exercise any supervision or control over the administration or operation of any such institution, agency, or person.

(Aug. 14, 1935, ch. 531, title XVIII, § 1801, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 291.)

SHORT TITLE

For short title of title I of Pub. L. 89–97, which enacted this subchapter as the ''Health Insurance for the Aged Act'', see section 100 of Pub. L. 89–97, set out as a Short Title of 1965 Amendment note under section 1305 of this title.

§ 1395a. Free choice by patient guaranteed

(a) Basic freedom of choice

Any individual entitled to insurance benefits under this subchapter may obtain health services from any institution, agency, or person qualified to participate under this subchapter if such institution, agency, or person undertakes to provide him such services.

(b) Use of private contracts by medicare beneficiaries

(1) In general

Subject to the provisions of this subsection, nothing in this subchapter shall prohibit a physician or practitioner from entering into a private contract with a medicare beneficiary for any item or service—

(A) for which no claim for payment is to be submitted under this subchapter, and

(B) for which the physician or practitioner receives—

(i) no reimbursement under this subchapter directly or on a capitated basis, and

(ii) receives no amount for such item or service from an organization which receives reimbursement for such item or service under this subchapter directly or on a capitated basis.

(2) Beneficiary protections

(A) In general

Paragraph (1) shall not apply to any contract unless—

(i) the contract is in writing and is signed by the medicare beneficiary before any item or service is provided pursuant to the contract;

(ii) the contract contains the items described in subparagraph (B); and

(iii) the contract is not entered into at a time when the medicare beneficiary is facing an emergency or urgent health care situation.

(B) Items required to be included in contract

Any contract to provide items and services to which paragraph (1) applies shall clearly indicate to the medicare beneficiary that by signing such contract the beneficiary—

(i) agrees not to submit a claim (or to request that the physician or practitioner submit a claim) under this subchapter for such items or services even if such items or services are otherwise covered by this subchapter;

(ii) agrees to be responsible, whether through insurance or otherwise, for payment of such items or services and understands that no reimbursement will be provided under this subchapter for such items or services;

(iii) acknowledges that no limits under this subchapter (including the limits under section 1395w–4(g) of this title) apply to amounts that may be charged for such items or services;

(iv) acknowledges that Medigap plans under section 1395ss of this title do not, and other supplemental insurance plans may elect not to, make payments for such items and services because payment is not made under this subchapter; and

(v) acknowledges that the medicare beneficiary has the right to have such items or services provided by other physicians or practitioners for whom payment would be made under this subchapter.

Such contract shall also clearly indicate whether the physician or practitioner is excluded from participation under the medicare program under section 1320a–7 of this title.

(3) Physician or practitioner requirements

(A) In general

Paragraph (1) shall not apply to any contract entered into by a physician or practitioner unless an affidavit described in subparagraph (B) is in effect during the period any item or service is to be provided pursuant to the contract.

(B) Affidavit

An affidavit is described in this subparagraph if—

(i) the affidavit identifies the physician or practitioner and is in writing and is signed by the physician or practitioner;

(ii) the affidavit provides that the physician or practitioner will not submit any claim under this subchapter for any item or service provided to any medicare beneficiary (and will not receive any reimbursement or amount described in paragraph (1)(B) for any such item or service) during the 2-year period beginning on the date the affidavit is signed; and

(iii) a copy of the affidavit is filed with the Secretary no later than 10 days after the first contract to which such affidavit applies is entered into.

(C) Enforcement

If a physician or practitioner signing an affidavit under subparagraph (B) knowingly and willfully submits a claim under this subchapter for any item or service provided during the 2-year period described in subparagraph (B)(ii) (or receives any reimbursement or amount described in paragraph (1)(B) for any such item or service) with respect to such affidavit—

(i) this subsection shall not apply with respect to any items and services provided by the physician or practitioner pursuant to any contract on and after the date of such submission and before the end of such period; and

(ii) no payment shall be made under this subchapter for any item or service furnished by the physician or practitioner during the period described in clause (i) (and no reimbursement or payment of any amount described in paragraph (1)(B) shall be made for any such item or service).

(4) Limitation on actual charge and claim submission requirement not applicable

Section 1395w–4(g) of this title shall not apply with respect to any item or service provided to a medicare beneficiary under a contract described in paragraph (1).

(5) Definitions

In this subsection:

(A) Medicare beneficiary

The term ''medicare beneficiary'' means an individual who is entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter.

(B) Physician

The term ''physician'' has the meaning given such term by paragraphs (1), (2), (3), and (4) of section 1395x(r) of this title.

(C) Practitioner

The term ''practitioner'' has the meaning given such term by section 1395u(b)(18)(C) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1802, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 291; amended Pub. L. 105–33, title IV, § 4507(a)(1), (2)(A), Aug. 5, 1997, 111 Stat. 439, 441; Pub. L. 108–173, title VI, § 603, Dec. 8, 2003, 117 Stat. 2301.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (b)(5)(A), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (b)(5)(B). Pub. L. 108–173 substituted ''paragraphs (1), (2), (3), and (4) of section 1395x(r)'' for ''section 1395x(r)(1)''.

1997—Pub. L. 105–33 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4507(c) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section and section 1395y of this title] shall apply with respect to contracts entered into on and after January 1, 1998.''

REPORT TO CONGRESS ON EFFECT OF PRIVATE CONTRACTS

Section 4507(b) of title IV of Pub. L. 105–33 provided that: ''Not later than October 1, 2001, the Secretary of Health and Human Services shall submit a report to Congress on the effect on the program under this title [see Tables for classification] of private contracts entered into under the amendment made by subsection (a) [amending this section and section 1395y of this title]. Such report shall include—

''(1) analyses regarding—

''(A) the fiscal impact of such contracts on total Federal expenditures under title XVIII of the Social Security Act [this subchapter] and on out-of-pocket expenditures by medicare beneficiaries for health services under such title; and

''(B) the quality of the health services provided under such contracts; and

''(2) recommendations as to whether medicare beneficiaries should continue to be able to enter private contracts under section 1802(b) of such Act [subsec. (b) of this section] (as added by subsection (a)) and if so, what legislative changes, if any should be made to improve such contracts.''

§ 1395b. Option to individuals to obtain other health insurance protection

Nothing contained in this subchapter shall be construed to preclude any State from providing, or any individual from purchasing or otherwise securing, protection against the cost of any health services.

(Aug. 14, 1935, ch. 531, title XVIII, § 1803, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 291.)

IMPACT OF INCREASED INVESTMENTS IN HEALTH RESEARCH ON FUTURE MEDICARE COSTS

Pub. L. 105–78, title II, Nov. 13, 1997, 111 Stat. 1484, provided in part: ''That in carrying out its legislative mandate, the National Bipartisan Commission on the Future of Medicare shall examine the impact of increased investments in health research on future Medicare costs, and the potential for coordinating Medicare with cost-effective long-term care services''.

NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE

Pub. L. 105–33, title IV, § 4021, Aug. 5, 1997, 111 Stat. 347, established National Bipartisan Commission on the Future of Medicare which was directed to review and analyze long-term financial condition of medicare program, identify problems that threaten financial integrity of Federal Hospital Insurance Trust Fund and Federal Supplementary Medical Insurance Trust Fund, analyze potential solutions that will ensure both financial integrity of medicare program and provision of appropriate benefits under such program, and make recommendations for, among other things, restoring solvency of Federal Hospital Insurance Trust Fund and financial integrity of Federal Supplementary Medical Insurance Trust Fund, establishing appropriate financial structure of medicare program as a whole, and establishing appropriate balance of benefits covered and beneficiary contributions to medicare program, further provided for membership of Commission, meetings, personnel and staff matters, powers of Commission, appropriations, submission of final report to Congress not later than Mar. 1, 1999, and termination of Commission 30 days after submission of final report.

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

Pub. L. 101–239, title X, § 10202, Dec. 19, 1989, 103 Stat. 2473, provided that:

''(a) OLD-AGE, SURVIVORS, AND DISABILITY, AND HOSPITAL INSURANCE PROGRAMS.—For purposes of title II of the Social Security Act [subchapter II of this chapter] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.], the term 'wages' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988 [section 421 of Pub. L. 100–360, formerly set out as a note below].

''(b) RAILROAD RETIREMENT PROGRAM.—For purposes of chapter 22 of the Internal Revenue Code of 1986 [26 U.S.C. 3201 et seq.], the term 'compensation' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

''(c) FEDERAL UNEMPLOYMENT PROGRAMS.—

''(1) FEDERAL UNEMPLOYMENT TAX.—For purposes of chapter 23 of the Internal Revenue Code of 1986 [26 U.S.C. 3301 et seq.], the term 'wages' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

''(2) RAILROAD UNEMPLOYMENT CONTRIBUTIONS.—For purposes of the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.], the term 'compensation' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

''(3) RAILROAD UNEMPLOYMENT REPAYMENT TAX.—For purposes of chapter 23A of the Internal Revenue Code of 1986 [26 U.S.C. 3321 et seq.], the term 'rail wages' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

''(d) REPORTING REQUIREMENTS.—Any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988 shall be reported to the Secretary of the Treasury or his delegate and to the person to whom such refund is made in such manner as the Secretary of the Treasury or his delegate shall prescribe.

''(e) EFFECTIVE DATE.—This section shall apply with respect to refunds provided on or after January 1, 1989.''

UNITED STATES BIPARTISAN COMMISSION ON COMPREHENSIVE HEALTH CARE

Pub. L. 100–360, title IV, subtitle A, §§ 401–408, July 1, 1988, 102 Stat. 765–768, as amended by Pub. L. 100–647, title VIII, § 8414, Nov. 10, 1988, 102 Stat. 3801; Pub. L. 101–239, title VI, § 6220, Dec. 19, 1989, 103 Stat. 2254, established the United States Bipartisan Commission on Comprehensive Health Care, also known as the ''Claude Pepper Commission'' or the ''Pepper Commission'', and directed Commission to examine shortcomings in health care delivery and financing mechanisms that limit or prevent access of all individuals in United States to comprehensive health care, and make specific recommendations respecting Federal programs, policies, and financing needed to assure the availability of comprehensive long-term care services for elderly and disabled, as well as comprehensive health care services for all individuals in the United States, and further provided for membership of Commission, staff and consultants, powers, authorization of appropriations, submission of findings and recommendations to Congress not later than Nov. 9, 1989, and for termination of Commission 30 days after submissions to Congress.

MAINTENANCE OF EFFORT REGARDING DUPLICATIVE BENEFITS

Pub. L. 100–360, title IV, § 421, July 1, 1988, 102 Stat. 808, as amended by Pub. L. 100–485, title VI, § 608(a), Oct. 13, 1988, 102 Stat. 2411, which required employers who had been providing health care benefits to employees that were duplicative part A and part B benefits to provide the employees with additional benefits equal to the total actuarial value of such duplicative benefits, was repealed by Pub. L. 101–234, title III, § 301(a), Dec. 13, 1989, 103 Stat. 1985. [Repeal not applicable to duplicative part A benefits for periods before Jan. 1, 1990, see section 301(e)(1) of Pub. L. 101–234, set out as an Effective Date of 1989 Amendment note under section 1395u of this title.]

TASK FORCE ON LONG-TERM HEALTH CARE POLICIES

Pub. L. 99–272, title IX, § 9601, Apr. 7, 1986, 100 Stat. 221, as amended by Pub. L. 105–362, title VI, § 601(b)(3), Nov. 10, 1998, 112 Stat. 3286, directed Secretary of Health and Human Services, in consultation with National Association of Insurance Commissioners, to establish Task Force on Long-Term Health Care Policies to develop recommendations for long-term health care policies designed to limit marketing and agent abuse for those policies, to assure dissemination of such information to consumers as is necessary to permit informed choice in purchasing policies and to reduce purchase of unnecessary or duplicative coverage, to assure that benefits provided under policies are reasonable in relationship to premiums charged, and to promote development and availability of long-term health care policies which meet these recommendations, and further provided for composition of Task Force, definition of long-term health care policy, assurance of States' jurisdiction, submission of recommendations to Secretary and Congress not later than 18 months after Apr. 7, 1986, and termination of Task Force 90 days after submission of recommendations.

§ 1395b–1. Incentives for economy while maintaining or improving quality in provision of health services

(a) Grants and contracts to develop and engage in experiments and demonstration projects

(1) The Secretary of Health and Human Services is authorized, either directly or through grants to public or private agencies, institutions, and organizations or contracts with public or private agencies, institutions, and organizations, to develop and engage in experiments and demonstration projects for the following purposes:

(A) to determine whether, and if so which, changes in methods of payment or reimbursement (other than those dealt with in section 222(a) of the Social Security Amendments of 1972) for health care and services under health programs established by this chapter, including a change to methods based on negotiated rates, would have the effect of increasing the efficiency and economy of health services under such programs through the creation of additional incentives to these ends without adversely affecting the quality of such services;

(B) to determine whether payments for services other than those for which payment may be made under such programs (and which are incidental to services for which payment may be made under such programs) would, in the judgment of the Secretary, result in more economical provision and more effective utilization of services for which payment may be made under such program, where such services are furnished by organizations and institutions which have the capability of providing—

(i) comprehensive health care services,

(ii) mental health care services (as defined by section 2691(c)[1] of this title),

(iii) ambulatory health care services (including surgical services provided on an outpatient basis), or

(iv) institutional services which may substitute, at lower cost, for hospital care;

(C) to determine whether the rates of payment or reimbursement for health care services, approved by a State for purposes of the administration of one or more of its laws, when utilized to determine the amount to be paid for services furnished in such State under the health programs established by this chapter, would have the effect of reducing the costs of such programs without adversely affecting the quality of such services;

(D) to determine whether payments under such programs based on a single combined rate of reimbursement or charge for the teaching activities and patient care which residents, interns, and supervising physicians render in connection with a graduate medical education program in a patient facility would result in more equitable and economical patient care arrangements without adversely affecting the quality of such care;

(E) to determine whether coverage of intermediate care facility services and homemaker services would provide suitable alternatives to posthospital benefits presently provided under this subchapter; such experiment and demonstration projects may include:

(i) counting each day of care in an intermediate care facility as one day of care in a skilled nursing facility, if such care was for a condition for which the individual was hospitalized,

(ii) covering the services of homemakers for a maximum of 21 days, if institutional services are not medically appropriate,

(iii) determining whether such coverage would reduce long-range costs by reducing

[1] See References in Text note below.

the lengths of stay in hospitals and skilled nursing facilities, and

(iv) establishing alternative eligibility requirements and determining the probable cost of applying each alternative, if the project suggests that such extension of coverage would be desirable;

(F) to determine whether, and if so which type of, fixed price or performance incentive contract would have the effect of inducing to the greatest degree effective, efficient, and economical performance of agencies and organizations making payment under agreements or contracts with the Secretary for health care and services under health programs established by this chapter;

(G) to determine under what circumstances payment for services would be appropriate and the most appropriate, equitable, and noninflationary methods and amounts of reimbursement under health care programs established by this chapter for services, which are performed independently by an assistant to a physician, including a nurse practitioner (whether or not performed in the office of or at a place at which such physician is physically present), and—

(i) which such assistant is legally authorized to perform by the State or political subdivision wherein such services are performed, and

(ii) for which such physician assumes full legal and ethical responsibility as to the necessity, propriety, and quality thereof;

(H) to establish an experimental program to provide day-care services, which consist of such personal care, supervision, and services as the Secretary shall by regulation prescribe, for individuals eligible to enroll in the supplemental medical insurance program established under part B of this subchapter and subchapter XIX of this chapter, in day-care centers which meet such standards as the Secretary shall by regulation establish;

(I) to determine whether the services of clinical psychologists may be made more generally available to persons eligible for services under this subchapter and subchapter XIX of this chapter in a manner consistent with quality of care and equitable and efficient administration;

(J) to develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services under the health programs established by this chapter; and

(K) to determine whether the use of competitive bidding in the awarding of contracts, or the use of other methods of reimbursement, under part B of subchapter XI of this chapter would be efficient and effective methods of furthering the purposes of that part.

For purposes of this subsection, ''health programs established by this chapter'' means the program established by this subchapter and a program established by a plan of a State approved under subchapter XIX of this chapter.

(2) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under paragraph (1) shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1395i of this title) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1395t of this title) and from funds appropriated under subchapter XIX of this chapter. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under such subchapter XIX of this chapter) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

(b) Waiver of certain payment or reimbursement requirements; advice and recommendations of specialists preceding experiments and demonstration projects

In the case of any experiment or demonstration project under subsection (a) of this section, the Secretary may waive compliance with the requirements of this subchapter and subchapter XIX of this chapter insofar as such requirements relate to reimbursement or payment on the basis of reasonable cost, or (in the case of physicians) on the basis of reasonable charge, or to reimbursement or payment only for such services or items as may be specified in the experiment; and costs incurred in such experiment or demonstration project in excess of the costs which would otherwise be reimbursed or paid under such subchapters may be reimbursed or paid to the extent that such waiver applies to them (with such excess being borne by the Secretary). No experiment or demonstration project shall be engaged in or developed under subsection (a) of this section until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or demonstration project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct the proposed experiment or demonstration project, and its relationship to other similar experiments and projects already completed or in process.

(Pub. L. 90–248, title IV, § 402(a), (b), Jan. 2, 1968, 81 Stat. 930, 931; Pub. L. 92–603, title II, §§ 222(b), 278(b)(2), Oct. 30, 1972, 86 Stat. 1391, 1453; Pub. L. 95–142, § 17(d), Oct. 25, 1977, 91 Stat. 1202; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXI, § 2193(d), Aug. 13, 1981, 95 Stat. 828; Pub. L. 97–248, title I, § 147, Sept. 3, 1982, 96 Stat. 394; Pub. L. 98–369, div. B, title III, § 2331(b), July 18, 1984, 98 Stat. 1088.)

REFERENCES IN TEXT

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (a)(1)(A), is section 222(a) of Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a note below.

Section 2691(c) of this title, referred to in subsec. (a)(1)(B)(ii), was repealed by Pub. L. 94–103, title III, § 302(c), Oct. 4, 1975, 89 Stat. 507.

Part B of this subchapter, referred to in subsec. (a)(1)(H), is classified to section 1395j et seq. of this title.

Part B of subchapter XI of this chapter, referred to in subsec. (a)(1)(K), is classified to section 1320c et seq. of this title.

CODIFICATION

Section is comprised of subsecs. (a) and (b) of section 402 of Pub. L. 90–248. Subsec. (c) of such section 402 amended section 1395*ll*(b) of this title.

Section was enacted as a part of the Social Security Amendments of 1967, and not as a part of the Social Security Act which comprises this chapter.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–369 substituted ''grants to public or private agencies'' for ''grants to public or nonprofit private agencies'' in provisions preceding subpar. (A).

1982—Subsec. (a)(1)(K). Pub. L. 97–248 added subpar. (K).

1981—Subsec. (a)(1). Pub. L. 97–35, §2193(d)(1), substituted ''this subchapter and a program established by a plan of a State approved under subchapter XIX of this chapter'' for ''this subchapter, a program established by a plan of a State approved under subchapter XIX of this chapter, and a program established by a plan of a State approved under subchapter V of this chapter''.

Subsec. (a)(2). Pub. L. 97–35, §2193(d)(2), substituted reference to subchapter XIX of this chapter for reference to subchapters V and XIX of this chapter in two places.

Subsec. (b). Pub. L. 97–35, §2193(d)(3), substituted reference to subchapter XIX of this chapter for reference to subchapters V and XIX of this chapter.

1977—Subsec. (a)(1)(J). Pub. L. 95–142 added subpar. (J).

1972—Subsec. (a). Pub. L. 92–603, §§222(b)(1), 278(b)(2), substituted provisions spelling out in detail the purposes for which experiments and demonstration projects may be carried out for a general statement setting out the increase in efficiency and economy of health services as the purpose of experiments selected by the Secretary, inserted references to demonstration projects, and inserted references to the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund.

Subsec. (b). Pub. L. 92–603, §222(b)(2), inserted references to demonstration projects and inserted '', or to reimbursement or payment only for such services or items as may be specified in the experiment''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(1) pursuant to section 509(b) Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, see section 2331(c) of Pub. L. 98–369, set out as a note under section 1310 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

MEDICARE CARE MANAGEMENT PERFORMANCE DEMONSTRATION

Pub. L. 108–173, title VI, §649, Dec. 8, 2003, 117 Stat. 2329, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall establish a pay-for-performance demonstration program with physicians to meet the needs of eligible beneficiaries through the adoption and use of health information technology and evidence-based outcomes measures for—

''(A) promoting continuity of care;

''(B) helping stabilize medical conditions;

''(C) preventing or minimizing acute exacerbations of chronic conditions; and

''(D) reducing adverse health outcomes, such as adverse drug interactions related to polypharmacy.

''(2) SITES.—The Secretary shall designate no more than 4 sites at which to conduct the demonstration program under this section, of which—

''(A) two shall be in an urban area;

''(B) one shall be in a rural area; and

''(C) one shall be in a State with a medical school with a Department of Geriatrics that manages rural outreach sites and is capable of managing patients with multiple chronic conditions, one of which is dementia.

''(3) DURATION.—The Secretary shall conduct the demonstration program under this section for a 3-year period.

''(4) CONSULTATION.—In carrying out the demonstration program under this section, the Secretary shall consult with private sector and non-profit groups that are undertaking similar efforts to improve quality and reduce avoidable hospitalizations for chronically ill patients.

''(b) PARTICIPATION.—

''(1) IN GENERAL.—A physician who provides care for a minimum number of eligible beneficiaries (as specified by the Secretary) may participate in the demonstration program under this section if such physician agrees, to phase-in over the course of the 3-year demonstration period and with the assistance provided under subsection (d)(2)—

''(A) the use of health information technology to manage the clinical care of eligible beneficiaries consistent with paragraph (3); and

''(B) the electronic reporting of clinical quality and outcomes measures in accordance with requirements established by the Secretary under the demonstration program.

''(2) SPECIAL RULE.—In the case of the sites referred to in subparagraphs (B) and (C) of subsection (a)(2), a physician who provides care for a minimum number of beneficiaries with two or more chronic conditions, including dementia (as specified by the Secretary), may participate in the program under this section if such physician agrees to the requirements in subparagraphs (A) and (B) of paragraph (1).

''(3) PRACTICE STANDARDS.—Each physician participating in the demonstration program under this section must demonstrate the ability—

''(A) to assess each eligible beneficiary for conditions other than chronic conditions, such as impaired cognitive ability and co-morbidities, for the purposes of developing care management requirements;

''(B) to serve as the primary contact of eligible beneficiaries in accessing items and services for which payment may be made under the medicare program;

''(C) to establish and maintain health care information system for such beneficiaries;

''(D) to promote continuity of care across providers and settings;

''(E) to use evidence-based guidelines and meet such clinical quality and outcome measures as the Secretary shall require;

''(F) to promote self-care through the provision of patient education and support for patients or, where appropriate, family caregivers;

''(G) when appropriate, to refer such beneficiaries to community service organizations; and

''(H) to meet such other complex care management requirements as the Secretary may specify.

The guidelines and measures required under subparagraph (E) shall be designed to take into account beneficiaries with multiple chronic conditions.

''(c) PAYMENT METHODOLOGY.—Under the demonstration program under this section the Secretary shall pay a per beneficiary amount to each participating physician who meets or exceeds specific performance standards established by the Secretary with respect to the clinical quality and outcome measures reported under subsection (b)(1)(B). Such amount may vary based on different levels of performance or improvement.

''(d) ADMINISTRATION.—

''(1) USE OF QUALITY IMPROVEMENT ORGANIZATIONS.—The Secretary shall contract with quality improvement organizations or such other entities as the Secretary deems appropriate to enroll physicians and evaluate their performance under the demonstration program under this section.

''(2) TECHNICAL ASSISTANCE.—The Secretary shall require in such contracts that the contractor be responsible for technical assistance and education as needed to physicians enrolled in the demonstration program under this section for the purpose of aiding their adoption of health information technology, meeting practice standards, and implementing required clinical and outcomes measures.

''(e) FUNDING.—

''(1) IN GENERAL.—The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of the Social Security Act (42 U.S.C. 1395t) of such funds as are necessary for the costs of carrying out the demonstration program under this section.

''(2) BUDGET NEUTRALITY.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary estimates would have been paid if the demonstration program under this section was not implemented.

''(f) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act (42 U.S.C. 1301 et seq. and 1395 et seq.) as may be necessary for the purpose of carrying out the demonstration program under this section.

''(g) REPORT.—Not later than 12 months after the date of completion of the demonstration program under this section, the Secretary shall submit to Congress a report on such program, together with recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

''(h) DEFINITIONS.—In this section:

''(1) ELIGIBLE BENEFICIARY.—The term 'eligible beneficiary' means any individual who—

''(A) is entitled to benefits under part A and enrolled for benefits under part B of title XVIII of the Social Security Act [parts A and B of this subchapter] and is not enrolled in a plan under part C of such title [part C of this subchapter]; and

''(B) has one or more chronic medical conditions specified by the Secretary (one of which may be cognitive impairment).

''(2) HEALTH INFORMATION TECHNOLOGY.—The term 'health information technology' means email communication, clinical alerts and reminders, and other information technology that meets such functionality, interoperability, and other standards as prescribed by the Secretary.''

DEMONSTRATION PROJECT FOR DISEASE MANAGEMENT FOR SEVERELY CHRONICALLY ILL MEDICARE BENEFICIARIES

Pub. L. 106–554, § 1(a)(6) [title I, § 121], Dec. 21, 2000, 114 Stat. 2763, 2763A–474, provided that the Secretary of Health and Human Services was to conduct a demonstration project under this section to demonstrate the impact on costs and health outcomes of applying disease management to medicare beneficiaries with diagnosed, advanced-stage congestive heart failure, diabetes, or coronary heart disease, that the project was to last for not longer than 3 years, and that the Secretary was to submit a final report to Congress not later than 6 months after the project's completion.

CANCER PREVENTION AND TREATMENT DEMONSTRATION FOR ETHNIC AND RACIAL MINORITIES

Pub. L. 106–554, § 1(a)(6) [title I, § 122], Dec. 21, 2000, 114 Stat. 2763, 2763A–476, provided that:

''(a) DEMONSTRATION.—

''(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall conduct demonstration projects (in this section referred to as 'demonstration projects') for the purpose of developing models and evaluating methods that—

''(A) improve the quality of items and services provided to target individuals in order to facilitate reduced disparities in early detection and treatment of cancer;

''(B) improve clinical outcomes, satisfaction, quality of life, and appropriate use of medicare-covered services and referral patterns among those target individuals with cancer;

''(C) eliminate disparities in the rate of preventive cancer screening measures, such as pap smears and prostate cancer screenings, among target individuals; and

''(D) promote collaboration with community-based organizations to ensure cultural competency of health care professionals and linguistic access for persons with limited English proficiency.

''(2) TARGET INDIVIDUAL DEFINED.—In this section, the term 'target individual' means an individual of a racial and ethnic minority group, as defined by section 1707 of the Public Health Service Act [section 300u–6 of this title], who is entitled to benefits under part A, and enrolled under part B, of title XVIII of the Social Security Act [parts A and B of this subchapter].

''(b) PROGRAM DESIGN.—

''(1) INITIAL DESIGN.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary shall evaluate best practices in the private sector, community programs, and academic research of methods that reduce disparities among individuals of racial and ethnic minority groups in the prevention and treatment of cancer and shall design the demonstration projects based on such evaluation.

''(2) NUMBER AND PROJECT AREAS.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall implement at least nine demonstration projects, including the following:

''(A) Two projects for each of the four following major racial and ethnic minority groups:

''(i) American Indians, including Alaska Natives, Eskimos, and Aleuts.

''(ii) Asian Americans and Pacific Islanders.

''(iii) Blacks.

''(iv) Hispanics.

The two projects must target different ethnic subpopulations.

''(B) One project within the Pacific Islands.

''(C) At least one project each in a rural area and inner-city area.

''(3) EXPANSION OF PROJECTS; IMPLEMENTATION OF DEMONSTRATION PROJECT RESULTS.—If the initial report under subsection (c) contains an evaluation that demonstration projects—

''(A) reduce expenditures under the medicare program under title XVIII of the Social Security Act [this subchapter]; or

''(B) do not increase expenditures under the medicare program and reduce racial and ethnic health disparities in the quality of health care services provided to target individuals and increase satisfaction of beneficiaries and health care providers;

the Secretary shall continue the existing demonstration projects and may expand the number of demonstration projects.

''(c) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 2 years after the date the Secretary implements the initial demonstration projects, and biannually thereafter, the Secretary shall submit to Congress a report regarding the demonstration projects.

''(2) CONTENTS OF REPORT.—Each report under paragraph (1) shall include the following:

''(A) A description of the demonstration projects.

''(B) An evaluation of—

''(i) the cost-effectiveness of the demonstration projects;

''(ii) the quality of the health care services provided to target individuals under the demonstration projects; and

''(iii) beneficiary and health care provider satisfaction under the demonstration projects.

''(C) Any other information regarding the demonstration projects that the Secretary determines to be appropriate.

''(d) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act [this subchapter] to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

''(e) FUNDING.—

''(1) DEMONSTRATION PROJECTS.—

''(A) STATE PROJECTS.—Except as provided in subparagraph (B), the Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary [Medical] Insurance Trust Fund under title XVIII of the Social Security Act [this subchapter], in such proportions as the Secretary determines to be appropriate, of such funds as are necessary for the costs of carrying out the demonstration projects.

''(B) TERRITORY PROJECTS.—In the case of a demonstration project described in subsection (b)(2)(B), amounts shall be available only as provided in any Federal law making appropriations for the territories.

''(2) LIMITATION.—In conducting demonstration projects, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the sum of the amount which the Secretary would have paid under the program for the prevention and treatment of cancer if the demonstration projects were not implemented, plus $25,000,000.''

LIFESTYLE MODIFICATION PROGRAM DEMONSTRATION

Pub. L. 106–554, §1(a)(6) [title I, §128], Dec. 21, 2000, 114 Stat. 2763, 2763A–480, as amended by Pub. L. 108–173, title VII, §736(b)(13), Dec. 8, 2003, 117 Stat. 2356, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall carry out the demonstration project known as the Lifestyle Modification Program Demonstration, as described in the Health Care Financing Administration Memorandum of Understanding entered into on November 13, 2000, and as subsequently modified, (in this section referred to as the 'project') in accordance with the following requirements:

''(1) The project shall include no fewer than 1,800 medicare beneficiaries who complete under the project the entire course of treatment under the Lifestyle Modification Program.

''(2) The project shall be conducted over a course of 4 years.

''(b) STUDY ON COST-EFFECTIVENESS.—

''(1) STUDY.—The Secretary shall conduct a study on the cost-effectiveness of the Lifestyle Modification Program as conducted under the project. In determining whether such Program is cost-effective, the Secretary shall determine (using a control group under a matched paired experimental design) whether expenditures incurred for medicare beneficiaries enrolled under the project exceed expenditures for the control group of medicare beneficiaries with similar health conditions who are not enrolled under the project.

''(2) REPORTS.—

''(A) INITIAL REPORT.—Not later than 1 year after the date on which 900 medicare beneficiaries have completed the entire course of treatment under the Lifestyle Modification Program under the project, the Secretary shall submit to Congress an initial report on the study conducted under paragraph (1).

''(B) FINAL REPORT.—Not later than 1 year after the date on which 1,800 medicare beneficiaries have completed the entire course of treatment under such Program under the project, the Secretary shall submit to Congress a final report on the study conducted under paragraph (1).''

MEDICARE COORDINATED CARE DEMONSTRATION PROJECT

Pub. L. 105–33, title IV, §4016, Aug. 5, 1997, 111 Stat. 343, as amended by Pub. L. 106–113, div. B, §1000(a)(6) [title V, §535], Nov. 29, 1999, 113 Stat. 1536, 1501A–390, provided that:

''(a) DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall conduct demonstration projects for the purpose of evaluating methods, such as case management and other models of coordinated care, that—

''(A) improve the quality of items and services provided to target individuals; and

''(B) reduce expenditures under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for items and services provided to target individuals.

''(2) TARGET INDIVIDUAL DEFINED.—In this section, the term 'target individual' means an individual that has a chronic illness, as defined and identified by the Secretary, and is enrolled under the fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.; 1395j et seq.).

''(b) PROGRAM DESIGN.—

''(1) INITIAL DESIGN.—The Secretary shall evaluate best practices in the private sector of methods of coordinated care for a period of 1 year and design the demonstration project based on such evaluation.

''(2) NUMBER AND PROJECT AREAS.—Not later than 2 years after the date of enactment of this Act [Aug. 5, 1997], the Secretary shall implement at least 9 demonstration projects, including—

''(A) 5 projects in urban areas;

''(B) 3 projects in rural areas; and

''(C) 1 project within the District of Columbia which is operated by a nonprofit academic medical center that maintains a National Cancer Institute certified comprehensive cancer center.

''(3) EXPANSION OF PROJECTS; IMPLEMENTATION OF DEMONSTRATION PROJECT RESULTS.—

''(A) EXPANSION OF PROJECTS.—If the initial report under subsection (c) contains an evaluation that demonstration projects—

''(i) reduce expenditures under the medicare program; or

''(ii) do not increase expenditures under the medicare program and increase the quality of health care services provided to target individuals and satisfaction of beneficiaries and health care providers;

the Secretary shall continue the existing demonstration projects and may expand the number of demonstration projects.

''(B) IMPLEMENTATION OF DEMONSTRATION PROJECT RESULTS.—If a report under subsection (c) contains an evaluation as described in subparagraph (A), the Secretary may issue regulations to implement, on a permanent basis, the components of the demonstration project that are beneficial to the medicare program.

''(c) REPORT TO CONGRESS.—

''(1) IN GENERAL.—Not later than 2 years after the Secretary implements the initial demonstration projects under this section, and biannually thereafter, the Secretary shall submit to Congress a report

regarding the demonstration projects conducted under this section.

''(2) CONTENTS OF REPORT.—The report in paragraph (1) shall include the following:

''(A) A description of the demonstration projects conducted under this section.

''(B) An evaluation of—

''(i) the cost-effectiveness of the demonstration projects;

''(ii) the quality of the health care services provided to target individuals under the demonstration projects; and

''(iii) beneficiary and health care provider satisfaction under the demonstration project.

''(C) Any other information regarding the demonstration projects conducted under this section that the Secretary determines to be appropriate.

''(d) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

''(e) FUNDING.—

''(1) DEMONSTRATION PROJECTS.—

''(A) IN GENERAL.—

''(i) STATE PROJECTS.—Except as provided in clause (ii), the Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary [Medical] Insurance Trust Fund under title XVIII of the Social Security Act (42 U.S.C. 1395i, 1395t), in such proportions as the Secretary determines to be appropriate, of such funds as are necessary for the costs of carrying out the demonstration projects under this section.

''(ii) CANCER HOSPITAL.—In the case of the project described in subsection (b)(2)(C), the Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Insurance Trust Fund [Medical] under title XVIII of the Social Security Act (42 U.S.C. 1395i, 1395t), in such proportions as the Secretary determines to be appropriate, of such funds as are necessary to cover costs of the project, including costs for information infrastructure and recurring costs of case management services, flexible benefits, and program management.

''(B) LIMITATION.—In conducting the demonstration project under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration projects under this section were not implemented.

''(2) EVALUATION AND REPORT.—There are authorized to be appropriated such sums as are necessary for the purpose of developing and submitting the report to Congress under subsection (c).''

INFORMATICS, TELEMEDICINE, AND EDUCATION DEMONSTRATION PROJECT

Pub. L. 105–33, title IV, § 4207, Aug. 5, 1997, 111 Stat. 379, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 413], Nov. 29, 1999, 113 Stat. 1536, 1501A–377; Pub. L. 108–173, title IV, § 417, Dec. 8, 2003, 117 Stat. 2282, provided that:

''(a) PURPOSE AND AUTHORIZATION.—

''(1) IN GENERAL.—Not later than 9 months after the date of enactment of this section [Aug. 5, 1997], the Secretary of Health and Human Services shall provide for a demonstration project described in paragraph (2). The Secretary shall make an award for such project not later than 3 months after the date of the enactment of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 [Nov. 29, 1999]. The Secretary shall accept the proposal adjudged to be the best technical proposal as of such date of enactment without the need for additional review or resubmission of proposals.

''(2) DESCRIPTION OF PROJECT.—

''(A) IN GENERAL.—The demonstration project described in this paragraph is a single demonstration project to use eligible health care provider telemedicine networks to apply high-capacity computing and advanced networks to improve primary care (and prevent health care complications) to medicare beneficiaries with diabetes mellitus who are residents of medically underserved rural areas or residents of medically underserved inner-city areas that qualify as Federally designated medically underserved areas or health professional shortage areas at the time of enrollment of beneficiaries under the project.

''(B) MEDICALLY UNDERSERVED DEFINED.—As used in this paragraph, the term 'medically underserved' has the meaning given such term in section 330(b)(3) of the Public Health Service Act (42 U.S.C. 254b(b)(3)).

''(3) WAIVER.—The Secretary shall waive such provisions of title XVIII of the Social Security Act [this subchapter] as may be necessary to provide for payment for services under the project in accordance with subsection (d).

''(4) DURATION OF PROJECT.—The project shall be conducted over a 8-year period.

''(b) OBJECTIVES OF PROJECT.—The objectives of the project include the following:

''(1) Improving patient access to and compliance with appropriate care guidelines for individuals with diabetes mellitus through direct telecommunications link with information networks in order to improve patient quality-of-life and reduce overall health care costs.

''(2) Developing a curriculum to train health professionals (particularly primary care health professionals) in the use of medical informatics and telecommunications.

''(3) Demonstrating the application of advanced technologies, such as video-conferencing from a patient's home, remote monitoring of a patient's medical condition, interventional informatics, and applying individualized, automated care guidelines, to assist primary care providers in assisting patients with diabetes in a home setting.

''(4) Application of medical informatics to residents with limited English language skills.

''(5) Developing standards in the application of telemedicine and medical informatics.

''(6) Developing a model for the cost-effective delivery of primary and related care both in a managed care environment and in a fee-for-service environment.

''(c) ELIGIBLE HEALTH CARE PROVIDER TELEMEDICINE NETWORK DEFINED.—For purposes of this section, the term 'eligible health care provider telemedicine network' means a consortium that includes at least one tertiary care hospital (but no more than 2 such hospitals), at least one medical school, no more than 4 facilities in rural or urban areas, and at least one regional telecommunications provider and that meets the following requirements:

''(1) The consortium is located in an area with a high concentration of medical schools and tertiary care facilities in the United States and has appropriate arrangements (within or outside the consortium) with such schools and facilities, universities, and telecommunications providers, in order to conduct the project.

''(2) The consortium submits to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the use to which the consortium would apply any amounts received under the project.

''(3) The consortium guarantees that it will be responsible for payment for all costs of the project that are not paid under this section and that the maximum amount of payment that may be made to the consortium under this section shall not exceed the amount specified in subsection (d)(3).

''(d) COVERAGE AS MEDICARE PART B SERVICES.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, services related to the treatment or management of (including prevention of complications from) diabetes for medicare beneficiaries furnished under the project shall be considered to be services covered under part B of title XVIII of the Social Security Act [part B of this subchapter].

''(2) PAYMENTS.—

''(A) IN GENERAL.—Subject to paragraph (3), payment for such services shall be made for the costs that are related to the provision of such services. In computing such costs, the Secretary shall include costs described in subparagraph (B), but may not include costs described in subparagraph (C).

''(B) COSTS THAT MAY BE INCLUDED.—The costs described in this subparagraph are the permissible costs (as recognized by the Secretary) for the following:

''(i) The acquisition of telemedicine equipment for use in patients' homes or at sites providing health care to patients located in medically underserved areas.

''(ii) Curriculum development and training of health professionals in medical informatics and telemedicine.

''(iii) Payment of telecommunications costs (including salaries and maintenance of equipment), including costs of telecommunications between patients' homes and the eligible network and between the network and other entities under the arrangements described in subsection (c)(1).

''(iv) Payments to practitioners and providers under the medicare programs.

''(C) COSTS NOT INCLUDED.—The costs described in this subparagraph are costs for any of the following:

''(i) The purchase or installation of transmission equipment (other than such equipment used by health professionals for activities related to the project).

''(ii) The establishment or operation of a telecommunications common carrier network.

''(iii) Construction (except for minor renovations related to the installation of reimbursable equipment) or the acquisition or building of real property.

''(3) LIMITATION.—The total amount of the payments that may be made under this section shall not exceed $60,000,000 for the period of the project (described in subsection (a)(4)).

''(4) COST-SHARING.—The project may not impose cost-sharing on a medicare beneficiary for the receipt of services under the project. Project costs will cover all costs to medicare beneficiaries and providers related to participation in the project.

''(e) REPORTS.—The Secretary shall submit to the Committee on Ways and Means and the Committee [on] Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate interim reports on the project and a final report on the project within 6 months after the conclusion of the project. The final report shall include an evaluation of the impact of the use of telemedicine and medical informatics on improving access of medicare beneficiaries to health care services, on reducing the costs of such services, and on improving the quality of life of such beneficiaries.

''(f) DEFINITIONS.—For purposes of this section:

''(1) INTERVENTIONAL INFORMATICS.—The term 'interventional informatics' means using information technology and virtual reality technology to intervene in patient care.

''(2) MEDICAL INFORMATICS.—The term 'medical informatics' means the storage, retrieval, and use of biomedical and related information for problem solving and decision-making through computing and communications technologies.

''(3) PROJECT.—The term 'project' means the demonstration project under this section.''

CLARIFICATION OF SECRETARIAL WAIVER AUTHORITY FOR RURAL HOSPITAL DEMONSTRATIONS

Pub. L. 101–508, title IV, §4008(i)(1), Nov. 5, 1990, 104 Stat. 1388–50, as amended by Pub. L. 103–66, title XIII, §13507, Aug. 10, 1993, 107 Stat. 579, provided that: ''The Secretary of Health and Human Services is authorized to waive such provisions of title XVIII of the Social Security Act [this subchapter] as are necessary to conduct any demonstration project for limited-service rural hospitals with respect to which the Secretary has entered into an agreement before the date of the enactment of the Omnibus Budget Reconciliation Act of 1989 [Dec. 19, 1989]. The Secretary shall continue any such demonstration project until at least July 1, 1997.''

VOLUNTEER SENIOR AIDES DEMONSTRATION PROJECTS FOR BASIC MEDICAL ASSISTANCE AND SUPPORT TO FAMILIES WITH DISABLED OR ILL CHILDREN

Pub. L. 101–239, title X, §10404, Dec. 19, 1989, 103 Stat. 2488, provided that:

''(a) NUMBER OF PROJECTS.—In order to determine whether, and if so, the extent to which, the use of volunteer senior aides to provide basic medical assistance and support to families with moderately or severely disabled or chronically ill children contributes to reducing the costs of care for such children, not more than 10 communities may conduct demonstration projects under this section.

''(b) DUTIES OF THE SECRETARY.—

''(1) CONSIDERATION OF APPLICATIONS.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall consider all applications received from communities desiring to conduct demonstration projects under this section.

''(2) APPROVAL OF CERTAIN APPLICATIONS.—The Secretary shall approve not more than 10 applications to conduct projects which appear likely to contribute significantly to the achievement of the purpose of this section.

''(3) GRANTS.—The Secretary shall make grants to each community the application of which to conduct a demonstration project under this section is approved by the Secretary to assist the community in carrying out the project.

''(c) REQUIREMENTS.—Each community receiving a grant with respect to a demonstration project under this section shall conduct the project in accordance with such requirements as the Secretary may prescribe.

''(d) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.—For grants under this section, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed—

''(1) $1,000,000 for each of the fiscal years 1990 and 1991; and

''(2) $2,000,000 for each of the fiscal years 1992, 1993, and 1994.

''(e) EFFECTIVE DATE.—This section shall take effect on October 1, 1989.''

TREATMENT OF CERTAIN NURSING EDUCATION PROGRAMS

Pub. L. 100–647, title VIII, §8411, Nov. 10, 1988, 102 Stat. 3800, as amended by Pub. L. 101–239, title VI, §6205(a)(1)(B), Dec. 19, 1989, 103 Stat. 2243, provided that:

''(a) DEMONSTRATION OF JOINT NURSING GRADUATE EDUCATION PROGRAMS.—

''(1) The Secretary of Health and Human Services shall provide for demonstration programs under this subsection in each of 5 hospitals for cost reporting periods beginning on or after July 1, 1989, and before July 1, 1994.

''(2) Under each demonstration project, subject to paragraph (4), the reasonable costs incurred by a hospital pursuant to a written agreement with an educational institution for the activities described in paragraph (3) conducted as part of an approved educational program that—

''(A) involves a substantial clinical component (as determined by the Secretary), and

''(B) leads to a master's or doctoral degree in nursing,

shall be allowable as reasonable costs under title XVIII of the Social Security Act [this subchapter] and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program).

''(3) The activities described in this paragraph are the activities for which the reasonable costs of conducting such activities are allowable under title XVIII of the Social Security Act if conducted under a hospital-operated approved educational program (other than an approved graduate medical education program), but only to the extent such activities are directly related to the operation of the educational program conducted pursuant to the written agreement between the hospital and the educational institution.

''(4) The amount paid under a demonstration program under this subsection to a hospital for a cost reporting period may not exceed $200,000.

''(5) The Secretary shall report to Congress, by not later than January 1, 1995, on the demonstration programs conducted under this subsection and on the supply and characteristics of nurses trained under such programs.

''(b) JOINT UNDERGRADUATE EDUCATION PROGRAM.—In the case of a hospital which (1) was paid under a waiver under section 402 of the Social Security Amendments of 1967 [section 402 of Pub. L. 90–248, enacting this section and amending section 1395*ll* of this title] and section 222 of the Social Security Amendments of 1972 [section 222 of Pub. L. 92–603, amending this section and section 1395*ll* of this title and enacting provisions set out below], which waiver expired on September 30, 1985, and (2) during its cost reporting period beginning in fiscal year 1985 and for each subsequent cost reporting period, has been and is associated with, and has incurred and incurs substantial costs with respect to, a nursing college with which it has shared and shares common directors, educational activities of the nursing college shall be considered to be educational activities operated directly by such hospital for purposes of title XVIII of the Social Security Act [this subchapter], and shall be allowable as reasonable costs under such title and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program), for hospital cost reporting periods beginning in fiscal years 1986 though 1991.''

RESEARCH ON LONG-TERM CARE SERVICES FOR MEDICARE BENEFICIARIES

Pub. L. 100–360, title II, § 207, July 1, 1988, 102 Stat. 732, which provided for research on issues relating to the delivery and financing of long-term care services for medicare beneficiaries, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS

For requirement that Secretary of Health and Human Services modify contracts with health maintenance organizations under subsec. (a) of this section and section 222(a) of Pub. L. 92–603, set out below, so as to apply to such organizations and contracts the requirements imposed by the amendments made by Pub. L. 100–360, see section 222 of Pub. L. 100–360, set out as a note under section 1395mm of this title.

CASE MANAGEMENT DEMONSTRATION PROJECTS

Pub. L. 101–508, title IV, § 4207(f), formerly § 4027(f), Nov. 5, 1990, 104 Stat. 1388–123, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that:

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall resume the 3 case management demonstration projects described in paragraph (2) and approved under section 425 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360, formerly set out below] (in this subsection referred to as 'MCCA').

''(2) PROJECT DESCRIPTIONS.—The demonstration projects referred to in paragraph (1) are—

''(A) the project proposed to be conducted by Providence Hospital for case management of the elderly at risk for acute hospitalization as described in Project No. 18–P–99379/5–01;

''(B) the project proposed to be conducted by the Iowa Foundation for Medical Care to study patients with chronic congestive conditions to reduce repeated hospitalizations of such patients as described in Project No. P–99399/4–01; and

''(C) the project proposed to be conducted by Key Care Health Resources, Inc., to examine the effects of case management on 2,500 high cost medicare beneficiaries as described in Project No. 18–P–99396/5.

''(3) TERMS AND CONDITIONS.—Except as provided in paragraph (4), the demonstration projects resumed pursuant to paragraph (1) shall be subject to the same terms and conditions established under section 425 of MCCA. In determining the 2-year duration period of a project resumed pursuant to paragraph (1), the Secretary may not take into account any period of time for which the project was in effect under section 425 of MCCA.

''(4) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 425(g) of MCCA, there are authorized to be appropriated for administrative costs in carrying out the demonstration projects resumed pursuant to paragraph (1) $2,000,000 in each of fiscal years 1991 and 1992.''

Pub. L. 100–360, title IV, § 425, July 1, 1988, 102 Stat. 813, which directed Secretary of Health and Human Services to establish 4 demonstration projects under which an appropriate entity agreed to provide case management services, was repealed by Pub. L. 101–234, title III, § 301(a), Dec. 13, 1989, 103 Stat. 1985.

DEMONSTRATION PROJECTS WITH RESPECT TO CHRONIC VENTILATOR-DEPENDENT UNITS IN HOSPITALS

Pub. L. 100–360, title IV, § 429, July 1, 1988, 102 Stat. 817, as amended by Pub. L. 100–647, title VIII, § 8404(a), Nov. 10, 1988, 102 Stat. 3800, directed Secretary of Health and Human Services, in consultation with the Prospective Payment Assessment Commission, to provide for at least 5 demonstration projects, for at least 3 years each, to review appropriateness of classifying chronic ventilator-dependent units in hospitals as rehabilitation units.

RESEARCH AND DEMONSTRATION PROJECTS ON RURAL AND INNER-CITY HEALTH ISSUES

Pub. L. 100–203, title IV, § 4403, Dec. 22, 1987, 1330–226, as amended by Pub. L. 100–360, title IV, § 411(m)(2)(A), July 1, 1988, 102 Stat. 806, provided that:

''(a) SET ASIDES FOR ISSUES OF HEALTH CARE IN RURAL AREAS AND IN INNER-CITY AREAS.—(1) Not less than ten percent of the total amounts annually appropriated to, and expended by, the Health Care Financing Administration for the conduct of research and demonstration projects in fiscal years 1988, 1989, and 1990 shall be expended for research and demonstration projects relating exclusively or substantially to rural health issues, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act [section 1395ww(d) of this title] on the financial viability of small rural hospitals, the effect of medicare payment policies on the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, the appropriateness of medicare conditions of participation and staffing requirements for small rural hospitals, and the impact of medicare policies on access to (and the quality of) health care in rural areas.

''(2) Not less than ten percent of the total amounts annually appropriated to, and expended by, the Health

Care Financing Administration for the conduct of research and demonstration projects in fiscal years 1988, 1989, and 1990 shall be expended for research and demonstration projects relating exclusively or substantially to issues of providing health care in inner-city areas, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act on the financial viability of inner-city hospitals and the impact of medicare policies on access to (and the quality of) health care in inner-city areas.

''(b) AGENDA.—The Secretary of Health and Human Services shall establish an agenda of research and demonstration projects, relating exclusively or substantially to rural health issues or to inner-city health issues, that are in progress or have been proposed, and shall include such agenda in the annual report submitted pursuant to section 1875(b) of the Social Security Act [section 1395*ll*(b) of this title]. The agenda shall be accompanied by a statement setting forth the amounts that have been obligated and expended with respect to such projects in the current and most recently completed fiscal years.''

ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS

Pub. L. 99–509, title IX, §9342, Oct. 21, 1986, 100 Stat. 2038, as amended by Pub. L. 101–508, title IV, §4164(a)(2), Nov. 5, 1990, 104 Stat. 1388–101; Pub. L. 103–66, title XIII, §13552, Aug. 10, 1993, 107 Stat. 591, required Secretary of Health and Human Services to conduct at least 5 (and not more than 10) demonstration projects, each over a period of 5 years, to determine effectiveness, cost, and impact on health status and functioning of providing comprehensive services for individuals entitled to benefits under this subchapter who are victims of Alzheimer's disease or related disorders and to report to Congress upon completion of the projects.

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

For treatment of hospitals in States which have had a waiver approved under this section, upon termination of waiver, see section 9202(j) of Pub. L. 99–272, as amended, set out as a note under section 1395ww of this title.

EXTENSION OF CERTAIN MEDICARE MUNICIPAL HEALTH SERVICES DEMONSTRATION PROJECTS

Pub. L. 99–272, title IX, §9215, Apr. 7, 1986, 100 Stat. 180, as amended by Pub. L. 101–239, title VI, §6135, Dec. 19, 1989, 103 Stat. 2222; Pub. L. 103–66, title XIII, §13557, Aug. 10, 1993, 107 Stat. 592; Pub. L. 105–33, title IV, §4017, Aug. 5, 1997, 111 Stat. 345; Pub. L. 106–113, div. B, §1000(a)(6) [title V, §534], Nov. 29, 1999, 113 Stat. 1536, 1501A–390; Pub. L. 106–554, §1(a)(6) [title VI, §633], Dec. 21, 2000, 114 Stat. 2763, 2763A–568; Pub. L. 108–173, title II, §235, Dec. 8, 2003, 117 Stat. 2210, provided that:

''(a) The Secretary of Health and Human Services shall extend through December 31, 1997, approval of four municipal health services demonstration projects (located in Baltimore, Cincinnati, Milwaukee, and San Jose) authorized under section 402(a) of the Social Security Amendments of 1967 [subsec. (a) of this section]. The Secretary shall submit a report to Congress on the waiver program with respect to the quality of health care, beneficiary costs, costs to the medicaid program and other payers, access to care, outcomes, beneficiary satisfaction, utilization differences among the different populations served by the projects, and such other factors as may be appropriate. Subject to subsection (c), the Secretary may further extend such demonstration projects through December 31, 2006, but only with respect to individuals who received at least one service during the period beginning on January 1, 1996, and ending on the date of the enactment of the Balanced Budget Act of 1997 [Aug. 5, 1997].

''(b) The Secretary shall work with each such demonstration project to develop a plan, to be submitted to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate by March 31, 1998, for the orderly transition of demonstration projects and the project participants to a non-demonstration project health care delivery system, such as through integration with a private or public health plan, including a medicaid managed care or Medicare+Choice plan.

''(c) A demonstration project under subsection (a) which does not develop and submit a transition plan under subsection (b) by March 31, 1998, or, if later, 6 months after the date of the enactment of the Balanced Budget Act of 1997 [Aug. 5, 1997], shall be discontinued as of December 31, 1998. The Secretary shall provide appropriate technical assistance to assist in the transition so that disruption of medical services to project participants may be minimized.''

[References to Medicare+Choice deemed to refer to Medicare Advantage, see section 201(b) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.]

DEMONSTRATION PROGRAM FOR REDUCTION OF DISABILITY AND DEPENDENCY THROUGH PROVISION OF PREVENTIVE HEALTH SERVICES UNDER MEDICARE

Pub. L. 99–272, title IX, §9314, Apr. 7, 1986, 100 Stat. 194, as amended by Pub. L. 99–509, title IX, §9344(d), Oct. 21, 1986, 100 Stat. 2042; Pub. L. 101–508, title IV, §4164(a)(1), Nov. 5, 1990, 104 Stat. 1388–100, required Secretary of Health and Human Services to establish a 5-year demonstration program designed to reduce disability and dependency through the provision of preventive health services to individuals entitled to benefits under this subchapter and to submit reports to Congress including a final report on the project not later than April 1, 1995.

PAYMENT FOR COSTS OF HOSPITAL-BASED MOBILE INTENSIVE CARE UNITS

Section 2320 of Pub. L. 98–369 provided that:

''(a)(1) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall provide, except as provided in paragraph (2), that the amount of payments to hospitals covered under the project during the period described in paragraph (3) shall include payments for their operation of hospital-based mobile intensive care units (as defined by State statute) if the State provides satisfactory assurances that the total amount of payments to such hospitals under titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter] under the demonstration project (including any such additional amount of payment) would not exceed the total amount of payments which would have been paid under such titles if the demonstration project were not in effect.

''(2) Paragraph (1) shall not apply if the State in which the project is located notifies the Secretary, within 30 days after the date of the enactment of this section [July 18, 1984], that the State does not want paragraph (1) to apply to that project.

''(3) The period referred to in paragraph (1) begins on the date of the enactment of this section and continues so long as the Secretary continues the Statewide waiver referred to in subsection (b), but in no case ends earlier than 90 days after the date final regulations to implement section 1886(c) of the Social Security Act [section 1395ww(c) of this title] are published.

''(b) The project referred to in subsection (a) is the statewide demonstration project established in the State of New Jersey under section 402 of the Social Security Amendments of 1967, as amended by section 222(b) of the Social Security Amendments of 1972 (Public Law 92–603) [this section], which project provides for payments to hospitals in the State on a prospective basis and related to a classification of patients by diagnosis-related groups.

''(c) Payment for services described in this section shall be considered to be payments for services under part A of title XVIII of the Social Security Act [part A of this subchapter].''

CONTINUATION OF SECRETARY'S AUTHORITY REGARDING EXPERIMENTS AND DEMONSTRATION PROJECTS

Pub. L. 98–21, title VI, § 603(b), Apr. 20, 1983, 97 Stat. 167, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this title [amending sections 1320a–1, 1320c–2, 1395f, 1395i–2, 1395n, 1395r, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395ww, and 1395xx of this title, enacting provisions set out as notes under this section and sections 1395r, 1395x, 1395y, 1395cc, and 1395ww of this title, and amending provisions set out as a note under section 1395x of this title] shall not affect the authority of the Secretary to develop, carry out, or continue experiments and demonstration projects.

''(2) The Secretary shall provide that, upon the request of a State which has a demonstration project, for payment of hospitals under title XVIII of the Social Security Act [this subchapter] approved under section 402(a) of the Social Security Amendments of 1967 [subsec. (a) of this section] or section 222(a) of the Social Security Amendments of 1972 [set out as a note below], which (A) is in effect as of March 1, 1983, and (B) was entered into after August 1982 (or upon the request of another party to demonstration project agreement), the terms of the demonstration agreement shall be modified so that the demonstration project is not required to maintain the rate of increase in medicare hospital costs in that State below the national rate of increase in medicare hospital costs.''

ALTERNATIVE CARE DEMONSTRATION PROJECTS IN HOSPITALS SHORT OF SKILLED NURSING FACILITIES

Pub. L. 98–21, title VI, § 603(d), Apr. 20, 1983, 97 Stat. 168, provided that: ''The Secretary shall conduct demonstrations with hospitals in areas with critical shortages of skilled nursing facilities to study the feasibility of providing alternative systems of care or methods of payment.''

CONTINUATION OF HOSPICE DEMONSTRATION PROJECTS; REPORT TO CONGRESS

Section 122(i), formerly § 122(h), of Pub. L. 97–248, as redesignated and amended by Pub. L. 97–448, title III, § 309(a)(6), (e), Jan. 12, 1983, 96 Stat. 2408, 2410, provided that:

''(1) Notwithstanding any provision of law which has the effect of restricting the time period of a hospice demonstration project in effect on July 15, 1982, pursuant to section 402(a) of the Social Security Amendments of 1967 [subsec. (a) of this section], the Secretary of Health and Human Services, upon request of the hospice involved, shall permit continuation of the project until November 1, 1983, or, if later, the date on which payments can first be made to any hospice program under the amendments made by this section.

''(2) Prior to September 30, 1983, the Secretary shall submit to Congress a report on the effectiveness of demonstration projects referred to in paragraph (1), including an evaluation of the cost-effectiveness of hospice care, the reasonableness of the 40-percent cap amount for hospice care as provided in section 1814(i) of the Social Security Act [section 1395f(i) of this title] (as added by this section), proposed methodology for determining such cap amount, proposed standards for requiring and measuring the maintenance of effort for utilizing volunteers as required under section 1861(dd) of such Act [section 1395x(dd) of this title], an evaluation of physician reimbursement for services furnished as a part of hospice care and for services furnished to individuals receiving hospice care but which are not reimbursed as a part of the hospice care, and any proposed legislative changes in the hospice care provisions of title XVIII of such Act [this subchapter].

''(3)(A) Notwithstanding the provisions of paragraph (1), the Secretary of Health and Human Services, upon request of the hospice involved, shall permit continuation of a hospice demonstration project described in paragraph (1) until September 30, 1986, if the hospice involved in such demonstration project does not provide hospice care directly but acts as a channeling agency for the provision of hospice care.

''(B) During the period after the date on which a hospice demonstration project described in subparagraph (A) would otherwise have terminated under the provisions of paragraph (1), and prior to September 30, 1986, any such hospice demonstration project shall be subject to the same requirements as are imposed under the hospice program provided for under the amendments made by this section [amending sections 1395c to 1395f, 1395h, and 1395x to 1395cc of this title and section 231f of Title 45, Railroads, and enacting provisions set out as notes under sections 1395c and 1395f of this title] with respect to reimbursement and benefits, other than the requirement that certain benefits be provided directly by the hospice involved.''

STATE MEDICARE HOSPITAL REIMBURSEMENT DEMONSTRATION PROJECT LIMITATION

Pub. L. 96–499, title IX, § 903(c), Dec. 5, 1980, 94 Stat. 2615, which provided for a maximum number of six Statewide medicare hospital reimbursement demonstration projects, was repealed by Pub. L. 97–35, title XXI, § 2154, Aug. 13, 1981, 95 Stat. 802.

STUDY OF NEED FOR DUAL PARTICIPATION OF SKILLED NURSING FACILITIES

Pub. L. 96–499, title IX, § 919, Dec. 5, 1980, 94 Stat. 2627, required study of need for dual participation of skilled nursing facilities and submission of a report and recommendations to Congress within one year after Dec. 5, 1980.

DEMONSTRATION PROJECTS FOR PHYSICIAN-DIRECTED CLINICS IN URBAN MEDICALLY UNDERSERVED AREAS; REPORT SUBMITTED NO LATER THAN JANUARY 1, 1981

Pub. L. 95–210, § 3, Dec. 13, 1977, 91 Stat. 1489, required the Secretary to provide, through demonstration projects, reimbursement on a cost basis for services provided by physician-directed clinics in urban medically underserved areas for which payment may be made under this subchapter and, notwithstanding any other provision of this subchapter, for services provided by a physician assistant or nurse practitioner employed by such clinics which would otherwise be covered under this subchapter if provided by a physician. The Secretary was to evaluate the relative advantages and disadvantages of reimbursement on the basis of costs and fee-for-service for physician-directed clinics employing a physician assistant or nurse practitioner, the appropriate method of determining the compensation for physician services on a cost basis for the purposes of reimbursement of services provided in such clinics, the appropriate definition for such clinics, the appropriate criteria to use for the purposes of designating urban medically underserved areas, and such other possible changes in the provisions of this subchapter as might be appropriate for the efficient and cost-effective reimbursement of services provided in such clinics. Grants, payments under contracts, and other expenditures made for demonstration projects were to be made in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The Secretary was to submit to the Congress, no later than Jan. 1, 1981, a complete detailed report on the demonstration projects.

SCOPE OF GRANTS FOR EXPERIMENTS AND DEMONSTRATION PROJECTS TO DETERMINE METHODS FOR PROSPECTIVE PAYMENTS TO HOSPITALS, SKILLED NURSING FACILITIES, AND OTHER PROVIDERS OF SERVICES

Pub. L. 94–182, title I, § 107, Dec. 31, 1975, 89 Stat. 1053, provided that: ''Nothing contained in section 222(a) of Public Law 92–603 [set out below] shall be construed to preclude or prohibit the Secretary of Health, Education, and Welfare [now Health and Human Services] from including in any grant otherwise authorized to be made under such section moneys which are to be used for payments, to a participant in a demonstration or

experiment with respect to which the grant is made, for or on account of costs incurred or services performed by such participant for a period prior to the date that the project of such participant is placed in operation, if—

''(1) the applicant for such grant is a State or an agency thereof,

''(2) such participant is an individual practice association which has been in existence for at least 3 years prior to the date of enactment of this section [Dec. 31, 1975] and which has in effect a contract with such State (or an agency thereof), entered into prior to the date on which the grant is approved by the Secretary, under which such association will, for a period which begins before and ends after the date such grant is so approved, provide health care services for individuals entitled to care and services under the State plan of such State which is approved under title XIX of the Social Security Act [subchapter XIX of this chapter].

''(3) the purpose of the inclusion of the project of such association is to test the utility of a particular rate-setting methodology, designed to be employed in prepaid health plans, in an individual practice association operation, and

''(4) the applicant for such grant affirms that the use of moneys from such grant to make such payments to such individual practice association is necessary or useful in assuring that such association will be able to continue in operation and carry out the project described in clause (3).''

EXPERIMENTS AND DEMONSTRATION PROJECTS TO DETERMINE METHODS FOR PROSPECTIVE PAYMENTS TO HOSPITALS, SKILLED NURSING FACILITIES, AND OTHER PROVIDERS OF SERVICES FOR CARE AND SERVICES FURNISHED; SCOPE; WAIVER OF PAYMENT REQUIREMENTS; SOURCE AND MANNER OF PAYMENTS FOR GRANTS, ETC.; REPORTS TO CONGRESS

Section 222(a) of Pub. L. 92–603, as amended by Pub. L. 97–35, title XXI, § 2193(e), Aug. 13, 1981, 95 Stat. 828, provided that:

''(1) The Secretary of Health, Education, and Welfare [now Health and Human Services], directly or through contracts with, or grants to, public or private agencies or organizations, shall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of making payment on a prospective basis to hospitals, skilled nursing facilities, and other providers of services for care and services provided by them under title XVIII of the Social Security Act [this subchapter] and under State plans approved under title XIX of such Act [subchapter XIX of this chapter], including alternative methods for classifying providers, for establishing prospective rates of payment, and for implementing on a gradual, selective, or other basis the establishment of a prospective payment system, in order to stimulate such providers through positive (or negative) financial incentives to use their facilities and personnel more efficiently and thereby to reduce the total costs of the health programs involved without adversely affecting the quality of services by containing or lowering the rate of increase in provider costs that has been and is being experienced under the existing system of retroactive cost reimbursement.

''(2) The experiments and demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods of prospective payment under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the programs involved (without committing such programs to the adoption of any prospective payment system either locally or nationally).

''(3) In the case of any experiment or demonstration project under paragraph (1), the Secretary may waive compliance with the requirements of titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter] insofar as such requirements relate to methods of payment for services provided; and costs incurred in such experiment or project in excess of those which would otherwise be reimbursed or paid under such titles [subchapters] may be reimbursed or paid to the extent that such waiver applies to them (with such excess being borne by the Secretary). No experiment or demonstration project shall be developed or carried out under paragraph (1) until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct it, and its relationship to other similar experiments or projects already completed or in process; and no such experiment or project shall be actually placed in operation unless at least 30 days prior thereto a written report, prepared for purposes of notification and information only, containing a full and complete description thereof has been transmitted to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate.

''(4) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under this subsection shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act [section 1395i of this title]) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act [section 1395t of this title]) and from funds appropriated under title XIX of such Act [subchapter XIX of this chapter]. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under such title XIX) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

''(5) The Secretary shall submit to the Congress no later than July 1, 1974, a full report on the experiments and demonstration projects carried out under this subsection and on the experience of other programs with respect to prospective reimbursement together with any related data and materials which he may consider appropriate. Such report shall include detailed recommendations with respect to the specific methods which could be used in the full implementation of a system of prospective payment to providers of services under the programs involved.''

§ 1395b–2. Notice of medicare benefits; medicare and medigap information

(a) Notice of medicare benefits

The Secretary shall prepare (in consultation with groups representing the elderly and with health insurers) and provide for distribution of a notice containing—

(1) a clear, simple explanation of the benefits available under this subchapter and the major categories of health care for which benefits are not available under this subchapter,

(2) the limitations on payment (including deductibles and coinsurance amounts) that are imposed under this subchapter, and

(3) a description of the limited benefits for long-term care services available under this subchapter and generally available under State plans approved under subchapter XIX of this chapter.

Such notice shall be mailed annually to individuals entitled to benefits under part A or part B

of this subchapter and when an individual applies for benefits under part A of this subchapter or enrolls under part B of this subchapter.

(b) Medicare and medigap information

The Secretary shall provide information via a toll-free telephone number on the programs under this subchapter. The Secretary shall provide, through the toll-free telephone number 1–800–MEDICARE, for a means by which individuals seeking information about, or assistance with, such programs who phone such toll-free number are transferred (without charge) to appropriate entities for the provision of such information or assistance. Such toll-free number shall be the toll-free number listed for general information and assistance in the annual notice under subsection (a) of this section instead of the listing of numbers of individual contractors.

(c) Contents of notice

The notice provided under subsection (a) of this section shall include—

(1) a statement which indicates that because errors do occur and because medicare fraud, waste, and abuse is a significant problem, beneficiaries should carefully check any explanation of benefits or itemized statement furnished pursuant to section 1395b–7 of this title for accuracy and report any errors or questionable charges by calling the toll-free phone number described in paragraph (4);

(2) a statement of the beneficiary's right to request an itemized statement for medicare items and services (as provided in section 1395b–7(b) of this title);

(3) a description of the program to collect information on medicare fraud and abuse established under section 1395b–5(b) of this title; and

(4) a toll-free telephone number maintained by the Inspector General in the Department of Health and Human Services for the receipt of complaints and information about waste, fraud, and abuse in the provision or billing of services under this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1804, as added Pub. L. 100–360, title II, § 223(a), July 1, 1988, 102 Stat. 747; amended Pub. L. 103–432, title I, § 171(j)(1), Oct. 31, 1994, 108 Stat. 4450; Pub. L. 105–33, title IV, § 4311(a)(1), Aug. 5, 1997, 111 Stat. 384; Pub. L. 108–173, title IX, § 923(d)(1), Dec. 8, 2003, 117 Stat. 2394.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (a), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–173 inserted at end ''The Secretary shall provide, through the toll-free telephone number 1–800–MEDICARE, for a means by which individuals seeking information about, or assistance with, such programs who phone such toll-free number are transferred (without charge) to appropriate entities for the provision of such information or assistance. Such toll-free number shall be the toll-free number listed for general information and assistance in the annual notice under subsection (a) of this section instead of the listing of numbers of individual contractors.''

1997—Subsec. (c). Pub. L. 105–33 added subsec. (c).

1994—Pub. L. 103–432 inserted ''; medicare and medigap information'' in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4311(a)(2) of Pub. L. 105–33 provided that: ''The amendment made by this subsection [amending this section] shall apply to notices provided on or after January 1, 1998.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 171(*l*) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

EFFECTIVE DATE

Section 223(d)(1) of Pub. L. 100–360 provided that: ''The Secretary of Health and Human Services shall first distribute the notice required by the amendment made by subsection (a) [enacting this section] not later than January 31, 1989.''

MONITORING ACCURACY

Pub. L. 108–173, title IX, § 923(d)(2), Dec. 8, 2003, 117 Stat. 2395, provided that:

''(A) STUDY.—The Comptroller General of the United States shall conduct a study to monitor the accuracy and consistency of information provided to individuals entitled to benefits under part A [probably means part A of title XVIII of the Social Security Act which is classified to part A of this subchapter] or enrolled under part B [probably means part B of title XVIII of the Social Security Act which is classified to part B of this subchapter], or both, through the toll-free telephone number 1–800–MEDICARE, including an assessment of whether the information provided is sufficient to answer questions of such individuals. In conducting the study, the Comptroller General shall examine the education and training of the individuals providing information through such number.

''(B) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General shall submit to Congress a report on the study conducted under subparagraph (A).''

STATE REGULATORY PROGRAMS

For provisions relating to changes required to conform State regulatory programs to amendments by section 171 of Pub. L. 103–432, see section 171(m) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

DEMONSTRATION PROJECTS

Section 4361(b) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services is authorized to conduct demonstration projects in up to 5 States for the purpose of establishing statewide toll-free telephone numbers for providing information on medicare benefits, medicare supplemental policies available in the State, and benefits under the State medicaid program.''

NOTICE OF CHANGES UNDER REPEAL OF MEDICARE CATASTROPHIC COVERAGE

Pub. L. 101–234, title II, § 203(c), Dec. 13, 1989, 103 Stat. 1984, provided that: ''The Secretary of Health and Human Services shall provide, in the notice of medicare benefits provided under section 1804 of the Social Security Act [this section] for 1990, for a description of the changes in benefits under title XVIII of such Act [this subchapter] made by the amendments made by this Act [see Tables for classification].''

BENEFITS COUNSELING AND ASSISTANCE DEMONSTRATION PROJECT FOR CERTAIN MEDICARE AND MEDICAID BENEFICIARIES

Section 424 of Pub. L. 100–360, which directed Secretary of Health and Human Services to establish a demonstration project to demonstrate that its volunteers were adequately trained and competent to render effective benefits counseling and assistance to the el-

derly, was repealed by Pub. L. 101–234, title III, § 301(a), Dec. 13, 1989, 103 Stat. 1985.

§ 1395b–3. Health insurance advisory service for medicare beneficiaries

(a) In general

The Secretary of Health and Human Services shall establish a health insurance advisory service program (in this section referred to as the ''beneficiary assistance program'') to assist medicare-eligible individuals with the receipt of services under the medicare and medicaid programs and other health insurance programs.

(b) Outreach elements

The beneficiary assistance program shall provide assistance—

(1) through operation using local Federal offices that provide information on the medicare program,

(2) using community outreach programs, and

(3) using a toll-free telephone information service.

(c) Assistance provided

The beneficiary assistance program shall provide for information, counseling, and assistance for medicare-eligible individuals with respect to at least the following:

(1) With respect to the medicare program—

(A) eligibility,

(B) benefits (both covered and not covered),

(C) the process of payment for services,

(D) rights and process for appeals of determinations,

(E) other medicare-related entities (such as peer review organizations, fiscal intermediaries, and carriers), and

(F) recent legislative and administrative changes in the medicare program.

(2) With respect to the medicaid program—

(A) eligibility, benefits, and the application process,

(B) linkages between the medicaid and medicare programs, and

(C) referral to appropriate State and local agencies involved in the medicaid program.

(3) With respect to medicare supplemental policies—

(A) the program under section 1395ss of this title and standards required under such program,

(B) how to make informed decisions on whether to purchase such policies and on what criteria to use in evaluating different policies,

(C) appropriate Federal, State, and private agencies that provide information and assistance in obtaining benefits under such policies, and

(D) other issues deemed appropriate by the Secretary.

The beneficiary assistance program also shall provide such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the medicare program and to improve the relationship between beneficiaries and the program.

(d) Educational material

The Secretary, through the Administrator of the Centers for Medicare & Medicaid Services, shall develop appropriate educational materials and other appropriate techniques to assist employees in carrying out this section.

(e) Notice to beneficiaries

The Secretary shall take such steps as are necessary to assure that medicare-eligible beneficiaries and the general public are made aware of the beneficiary assistance program.

(f) Report

The Secretary shall include, in an annual report transmitted to the Congress, a report on the beneficiary assistance program and on other health insurance informational and counseling services made available to medicare-eligible individuals. The Secretary shall include in the report recommendations for such changes as may be desirable to improve the relationship between the medicare program and medicare-eligible individuals.

(Pub. L. 101–508, title IV, § 4359, Nov. 5, 1990, 104 Stat. 1388–137; Pub. L. 108–173, title IX, § 900(e)(6)(G), Dec. 8, 2003, 117 Stat. 2374.)

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–173 substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

BENEFICIARY OUTREACH DEMONSTRATION PROGRAM

Pub. L. 108–173, title IX, § 924, Dec. 8, 2003, 117 Stat. 2395, provided that:

''(a) IN GENERAL.—The Secretary [of Health and Human Services] shall establish a demonstration program (in this section referred to as the 'demonstration program') under which medicare specialists employed by the Department of Health and Human Services provide advice and assistance to individuals entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter], or enrolled under part B of such title [part B of this subchapter], or both, regarding the medicare program at the location of existing local offices of the Social Security Administration.

''(b) LOCATIONS.—

''(1) IN GENERAL.—The demonstration program shall be conducted in at least 6 offices or areas. Subject to paragraph (2), in selecting such offices and areas, the Secretary shall provide preference for offices with a high volume of visits by individuals referred to in subsection (a).

''(2) ASSISTANCE FOR RURAL BENEFICIARIES.—The Secretary shall provide for the selection of at least 2 rural areas to participate in the demonstration program. In conducting the demonstration program in such rural areas, the Secretary shall provide for medicare specialists to travel among local offices in a rural area on a scheduled basis.

''(c) DURATION.—The demonstration program shall be conducted over a 3-year period.

''(d) EVALUATION AND REPORT.—

''(1) EVALUATION.—The Secretary shall provide for an evaluation of the demonstration program. Such evaluation shall include an analysis of—

''(A) utilization of, and satisfaction of those individuals referred to in subsection (a) with, the assistance provided under the program; and

''(B) the cost-effectiveness of providing beneficiary assistance through out-stationing medicare specialists at local offices of the Social Security Administration.

''(2) REPORT.—The Secretary shall submit to Congress a report on such evaluation and shall include in such report recommendations regarding the feasibility of permanently out-stationing medicare specialists at local offices of the Social Security Administration.''

QUALIFIED MEDICARE BENEFICIARY OUTREACH

Pub. L. 103–432, title I, § 154, Oct. 31, 1994, 108 Stat. 4437, provided that: ''Not later than 1 year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services shall establish and implement a method for obtaining information from newly eligible medicare beneficiaries that may be used to determine whether such beneficiaries may be eligible for medical assistance for medicare cost-sharing under State medicaid plans as qualified medicare beneficiaries, and for transmitting such information to the State in which such a beneficiary resides.''

§ 1395b–4. Health insurance information, counseling, and assistance grants

(a) Grants

The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall make grants to States, with approved State regulatory programs under section 1395ss of this title, that submit applications to the Secretary that meet the requirements of this section for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate health insurance coverage to individuals who are eligible to receive benefits under this subchapter (in this section referred to as ''eligible individuals''). The Secretary shall prescribe regulations to establish a minimum level of funding for a grant issued under this section.

(b) Grant applications

(1) In submitting an application under this section, a State may consolidate and coordinate an application that consists of parts prepared by more than one agency or department of such State.

(2) As part of an application for a grant under this section, a State shall submit a plan for a State-wide health insurance information, counseling, and assistance program. Such program shall—

(A) establish or improve upon a health insurance information, counseling, and assistance program that provides counseling and assistance to eligible individuals in need of health insurance information, including—

(i) information that may assist individuals in obtaining benefits and filing claims under this subchapter and subchapter XIX of this chapter;

(ii) policy comparison information for medicare supplemental policies (as described in section 1395ss(g)(1) of this title) and information that may assist individuals in filing claims under such medicare supplemental policies;

(iii) information regarding long-term care insurance; and

(iv) information regarding other types of health insurance benefits that the Secretary determines to be appropriate;

(B) in conjunction with the health insurance information, counseling, and assistance program described in subparagraph (A), establish a system of referral to appropriate Federal or State departments or agencies for assistance with problems related to health insurance coverage (including legal problems), as determined by the Secretary;

(C) provide for a sufficient number of staff positions (including volunteer positions) necessary to provide the services of the health insurance information, counseling, and assistance program;

(D) provide assurances that staff members (including volunteer staff members) of the health insurance information, counseling, and assistance program have no conflict of interest in providing the counseling described in subparagraph (A);

(E) provide for the collection and dissemination of timely and accurate health care information to staff members;

(F) provide for training programs for staff members (including volunteer staff members);

(G) provide for the coordination of the exchange of health insurance information between the staff of departments and agencies of the State government and the staff of the health insurance information, counseling, and assistance program;

(H) make recommendations concerning consumer issues and complaints related to the provision of health care to agencies and departments of the State government and the Federal Government responsible for providing or regulating health insurance;

(I) establish an outreach program to provide the health insurance information and counseling described in subparagraph (A) and the referrals described in subparagraph (B) to eligible individuals; and

(J) demonstrate, to the satisfaction of the Secretary, an ability to provide the counseling and assistance required under this section.

(c) Special grants

(1) A State that is conducting a health insurance information, counseling, and assistance program that is substantially similar to a program described in subsection (b)(2) of this section shall, as a requirement for eligibility for a grant under this section, demonstrate, to the satisfaction of the Secretary, that such State shall maintain the activities of such program at least at the level that such activities were conducted immediately preceding the date of the issuance of any grant during the period of time covered by such grant under this section.

(2) If the Secretary determines that the existing health insurance information, counseling, and assistance program is substantially similar to a program described in subsection (b)(2) of this section, the Secretary may waive some or all of the requirements described in such subsection and issue a grant to the State for the purpose of increasing the number of services offered by the health insurance information, counseling, and assistance program, experimenting with new methods of outreach in conducting such program, or expanding such program to geographic areas of the State not previously served by the program.

(d) Criteria for issuing grants

In issuing a grant under this section, the Secretary shall consider—

(1) the commitment of the State to carrying out the health insurance information, counseling, and assistance program described in subsection (b)(2) of this section, including the level of cooperation demonstrated—

(A) by the office of the chief insurance regulator of the State, or the equivalent State entity;

(B) other officials of the State responsible for overseeing insurance plans issued by nonprofit hospital and medical service associations; and

(C) departments and agencies of such State responsible for—

(i) administering funds under subchapter XIX of this chapter, and

(ii) administering funds appropriated under the Older Americans Act [42 U.S.C. 3001 et seq.];

(2) the population of eligible individuals in such State as a percentage of the population of such State; and

(3) in order to ensure the needs of rural areas in such State, the relative costs and special problems associated with addressing the special problems of providing health care information, counseling, and assistance eligible[1] individuals residing in rural areas of such State.

(e) Annual State report

A State that receives a grant under this section shall, not later than 180 days after receiving such grant, and annually thereafter during the period of the grant, issue a report to the Secretary that includes information concerning—

(1) the number of individuals served by the health insurance information, counseling and assistance program of such State;

(2) an estimate of the amount of funds saved by the State, and by eligible individuals in the State, in the implementation of such program; and

(3) the problems that eligible individuals in such State encounter in procuring adequate and appropriate health care coverage.

(f) Report to Congress

Beginning with 1992, and annually thereafter, the Secretary shall issue a report to the Committee on Finance of the Senate, the Special Committee on Aging of the Senate, the Committee on Ways and Means of the House of Representatives, and the Committee on Energy and Commerce of the House of Representatives that—

(1) summarizes the allocation of funds authorized for grants under this section and the expenditure of such funds;

(2) outlines the problems that eligible individuals encounter in procuring adequate and appropriate health care coverage;

(3) makes recommendations that the Secretary determines to be appropriate to address the problems described in paragraph (3);[2] and

(4) in the case of the report issued 2 years after November 5, 1990, evaluates the effectiveness of counseling programs established under this program, and makes recommendations regarding continued authorization of funds for these purposes.

(g) Authorization of appropriations for grants

There are authorized to be appropriated, in equal parts from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, $10,000,000 for each of fiscal years 1991, 1992, 1993, 1994, 1995, and 1996, to fund the grant programs described in this section.

(Pub. L. 101–508, title IV, §4360, Nov. 5, 1990, 104 Stat. 1388–138; Pub. L. 103–432, title I, §171(i), Oct. 31, 1994, 108 Stat. 4450; Pub. L. 103–437, §15(b), Nov. 2, 1994, 108 Stat. 4591; Pub. L. 105–362, title VI, §602(b)(2), Nov. 10, 1998, 112 Stat. 3286.)

REFERENCES IN TEXT

The Older Americans Act, referred to in subsec. (d)(1)(C)(ii), probably means the Older Americans Act of 1965, which is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, and is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (f). Pub. L. 105–362 substituted ''Beginning with 1992'' for ''Not later than 180 days after November 5, 1990''.

1994—Subsec. (b)(2)(A)(ii). Pub. L. 103–432, §171(i)(1), inserted closing parenthesis after ''of this title''.

Subsec. (b)(2)(D). Pub. L. 103–432, §171(i)(2), substituted ''counseling'' for ''services'' before ''described in subparagraph (A)''.

Subsec. (b)(2)(I). Pub. L. 103–432, §171(i)(3), substituted ''referrals'' for ''assistance''.

Subsec. (c)(1). Pub. L. 103–432, §171(i)(4), struck out ''and that such activities will continue to be maintained at such level'' after ''covered by such grant under this section''.

Subsec. (d)(3). Pub. L. 103–432, §171(i)(5), substituted ''eligible individuals residing in rural areas'' for ''to the rural areas''.

Subsec. (e). Pub. L. 103–432, §171(i)(6)(A), (B), in introductory provisions, substituted ''this section'' for ''subsection (c) or (d) of this section'' and ''and annually thereafter during the period of the grant, issue a report'' for ''and annually thereafter, issue an annual report''.

Subsec. (e)(1). Pub. L. 103–432, §171(i)(6)(C), struck out ''State-wide'' before ''health insurance information''.

Subsec. (f). Pub. L. 103–437, §15(b)(1), in introductory provisions, substituted ''and the Committee on Energy and Commerce'' for ''the Committee on Energy and Commerce of the House of Representatives, and the Select Committee on Aging''.

Pub. L. 103–432, §171(i)(8)(B), and Pub. L. 103–437, §15(b)(2), made identical amendments, redesignating subsec. (f), relating to authorization of appropriations for grants, as (g).

Pub. L. 103–432, §171(i)(8)(A), in subsec. (f), relating to authorization of appropriations for grants, substituted ''1993, 1994, 1995, and 1996'' for ''and 1993''.

Subsec. (f)(2) to (5). Pub. L. 103–432, §171(i)(7), in subsec. (f), relating to report to Congress, redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out

[1] So in original. Probably should be preceded by ''to''.

[2] So in original. Probably should be paragraph ''(2)''.

former par. (2) which read as follows: ''summarizes the scope and content of training conferences convened under this section;''.

Subsec. (g). Pub. L. 103–432, § 171(i)(8)(B), and Pub. L. 103–437, § 15(b)(2), made identical amendments, redesignating subsec. (f), relating to authorization of appropriations for grants, as (g).

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 171(*l*) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

STATE REGULATORY PROGRAMS

For provisions relating to changes required to conform State regulatory programs to amendments by section 171 of Pub. L. 103–432, see section 171(m) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

§ 1395b–5. Beneficiary incentive programs

(a) Repealed. Pub. L. 105–33, title IV, § 4311(b)(2), Aug. 5, 1997, 111 Stat. 386

(b) Program to collect information on fraud and abuse

(1) Establishment of program

Not later than 3 months after August 21, 1996, the Secretary shall establish a program under which the Secretary shall encourage individuals to report to the Secretary information on individuals and entities who are engaging in or who have engaged in acts or omissions which constitute grounds for the imposition of a sanction under section 1320a–7, 1320a–7a, or 1320a–7b of this title, or who have otherwise engaged in fraud and abuse against the Medicare program under this subchapter for which there is a sanction provided under law. The program shall discourage provision of, and not consider, information which is frivolous or otherwise not relevant or material to the imposition of such a sanction.

(2) Payment of portion of amounts collected

If an individual reports information to the Secretary under the program established under paragraph (1) which serves as the basis for the collection by the Secretary or the Attorney General of any amount of at least $100 (other than any amount paid as a penalty under section 1320a–7b of this title), the Secretary may pay a portion of the amount collected to the individual (under procedures similar to those applicable under section 7623 of the Internal Revenue Code of 1986 to payments to individuals providing information on violations of such Code).

(c) Program to collect information on program efficiency

(1) Establishment of program

Not later than 3 months after August 21, 1996, the Secretary shall establish a program under which the Secretary shall encourage individuals to submit to the Secretary suggestions on methods to improve the efficiency of the Medicare program.

(2) Payment of portion of program savings

If an individual submits a suggestion to the Secretary under the program established under paragraph (1) which is adopted by the Secretary and which results in savings to the program, the Secretary may make a payment to the individual of such amount as the Secretary considers appropriate.

(Pub. L. 104–191, title II, § 203, Aug. 21, 1996, 110 Stat. 1998; Pub. L. 105–33, title IV, § 4311(b)(2), Aug. 5, 1997, 111 Stat. 386.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(2), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

Section was enacted as part of the Health Insurance Portability and Accountability Act of 1996, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33 struck out heading and text of subsec. (a). Text read as follows: ''The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall provide an explanation of benefits under the Medicare program under this subchapter with respect to each item or service for which payment may be made under the program which is furnished to an individual, without regard to whether or not a deductible or coinsurance may be imposed against the individual with respect to the item or service.''

§ 1395b–6. Medicare Payment Advisory Commission

(a) Establishment

There is hereby established the Medicare Payment Advisory Commission (in this section referred to as the ''Commission'').

(b) Duties

(1) Review of payment policies and annual reports

The Commission shall—

(A) review payment policies under this subchapter, including the topics described in paragraph (2);

(B) make recommendations to Congress concerning such payment policies;

(C) by not later than March 1 of each year (beginning with 1998), submit a report to Congress containing the results of such reviews and its recommendations concerning such policies; and

(D) by not later than June 15 of each year, submit a report to Congress containing an examination of issues affecting the medicare program, including the implications of changes in health care delivery in the

United States and in the market for health care services on the medicare program and including a review of the estimate of the conversion factor submitted under section 1395w–4(d)(1)(E)(ii) of this title.

(2) Specific topics to be reviewed

(A) Medicare+Choice program

Specifically, the Commission shall review, with respect to the Medicare+Choice program under part C of this subchapter, the following:

(i) The methodology for making payment to plans under such program, including the making of differential payments and the distribution of differential updates among different payment areas.

(ii) The mechanisms used to adjust payments for risk and the need to adjust such mechanisms to take into account health status of beneficiaries.

(iii) The implications of risk selection both among Medicare+Choice organizations and between the Medicare+Choice option and the original medicare fee-for-service option.

(iv) The development and implementation of mechanisms to assure the quality of care for those enrolled with Medicare+Choice organizations.

(v) The impact of the Medicare+Choice program on access to care for medicare beneficiaries.

(vi) Other major issues in implementation and further development of the Medicare+Choice program.

(B) Original medicare fee-for-service system

Specifically, the Commission shall review payment policies under parts A and B of this subchapter, including—

(i) the factors affecting expenditures for the efficient provision of services in different sectors, including the process for updating hospital, skilled nursing facility, physician, and other fees,

(ii) payment methodologies, and

(iii) their relationship to access and quality of care for medicare beneficiaries.

(C) Interaction of medicare payment policies with health care delivery generally

Specifically, the Commission shall review the effect of payment policies under this subchapter on the delivery of health care services other than under this subchapter and assess the implications of changes in health care delivery in the United States and in the general market for health care services on the medicare program.

(3) Comments on certain secretarial reports

If the Secretary submits to Congress (or a committee of Congress) a report that is required by law and that relates to payment policies under this subchapter, the Secretary shall transmit a copy of the report to the Commission. The Commission shall review the report and, not later than 6 months after the date of submittal of the Secretary's report to Congress, shall submit to the appropriate committees of Congress written comments on such report. Such comments may include such recommendations as the Commission deems appropriate.

(4) Agenda and additional reviews

The Commission shall consult periodically with the chairmen and ranking minority members of the appropriate committees of Congress regarding the Commission's agenda and progress towards achieving the agenda. The Commission may conduct additional reviews, and submit additional reports to the appropriate committees of Congress, from time to time on such topics relating to the program under this subchapter as may be requested by such chairmen and members and as the Commission deems appropriate.

(5) Availability of reports

The Commission shall transmit to the Secretary a copy of each report submitted under this subsection and shall make such reports available to the public.

(6) Appropriate committees of Congress

For purposes of this section, the term ''appropriate committees of Congress'' means the Committees on Ways and Means and Commerce of the House of Representatives and the Committee on Finance of the Senate.

(7) Voting and reporting requirements

With respect to each recommendation contained in a report submitted under paragraph (1), each member of the Commission shall vote on the recommendation, and the Commission shall include, by member, the results of that vote in the report containing the recommendation.

(8) Examination of budget consequences

Before making any recommendations, the Commission shall examine the budget consequences of such recommendations, directly or through consultation with appropriate expert entities.

(c) Membership

(1) Number and appointment

The Commission shall be composed of 17 members appointed by the Comptroller General.

(2) Qualifications

(A) In general

The membership of the Commission shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, health facility management, health plans and integrated delivery systems, reimbursement of health facilities, allopathic and osteopathic physicians, and other providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

(B) Inclusion

The membership of the Commission shall include (but not be limited to) physicians and other health professionals, experts in the area of pharmaco-economics or prescrip-

tion drug benefit programs, employers, third-party payers, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research and expertise in outcomes and effectiveness research and technology assessment. Such membership shall also include representatives of consumers and the elderly.

(C) Majority nonproviders

Individuals who are directly involved in the provision, or management of the delivery, of items and services covered under this subchapter shall not constitute a majority of the membership of the Commission.

(D) Ethical disclosure

The Comptroller General shall establish a system for public disclosure by members of the Commission of financial and other potential conflicts of interest relating to such members. Members of the Commission shall be treated as employees of Congress for purposes of applying title I of the Ethics in Government Act of 1978 (Public Law 95–521).

(3) Terms

(A) In general

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

(B) Vacancies

Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(4) Compensation

While serving on the business of the Commission (including traveltime), a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5; and while so serving away from home and the member's regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of the Commission. Physicians serving as personnel of the Commission may be provided a physician comparability allowance by the Commission in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, and for such purpose subsection (i) of such section shall apply to the Commission in the same manner as it applies to the Tennessee Valley Authority. For purposes of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.

(5) Chairman; Vice Chairman

The Comptroller General shall designate a member of the Commission, at the time of appointment of the member as Chairman and a member as Vice Chairman for that term of appointment, except that in the case of vacancy of the Chairmanship or Vice Chairmanship, the Comptroller General may designate another member for the remainder of that member's term.

(6) Meetings

The Commission shall meet at the call of the Chairman.

(d) Director and staff; experts and consultants

Subject to such review as the Comptroller General deems necessary to assure the efficient administration of the Commission, the Commission may—

(1) employ and fix the compensation of an Executive Director (subject to the approval of the Comptroller General) and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5 governing appointments in the competitive service);

(2) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(3) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 5 of title 41);

(4) make advance, progress, and other payments which relate to the work of the Commission;

(5) provide transportation and subsistence for persons serving without compensation; and

(6) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of the Commission.

(e) Powers

(1) Obtaining official data

The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of that department or agency shall furnish that information to the Commission on an agreed upon schedule.

(2) Data collection

In order to carry out its functions, the Commission shall—

(A) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section,

(B) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate, and

(C) adopt procedures allowing any interested party to submit information for the Commission's use in making reports and recommendations.

(3) Access of GAO to information

The Comptroller General shall have unrestricted access to all deliberations, records, and nonproprietary data of the Commission, immediately upon request.

(4) Periodic audit

The Commission shall be subject to periodic audit by the Comptroller General.

(f) Authorization of appropriations

(1) Request for appropriations

The Commission shall submit requests for appropriations in the same manner as the Comptroller General submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Comptroller General.

(2) Authorization

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Sixty percent of such appropriation shall be payable from the Federal Hospital Insurance Trust Fund, and 40 percent of such appropriation shall be payable from the Federal Supplementary Medical Insurance Trust Fund.

(Aug. 14, 1935, ch. 531, title XVIII, § 1805, as added Pub. L. 105–33, title IV, § 4022(a), Aug. 5, 1997, 111 Stat. 350; amended Pub. L. 105–277, div. J, title V, § 5202(a), Oct. 21, 1998, 112 Stat. 2681–917; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 211(a)(2)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–347; Pub. L. 106–554, § 1(a)(6) [title V, § 544(a)(1), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–551; Pub. L. 108–173, title VII, § 735(a)–(c)(1), (e)(1), Dec. 8, 2003, 117 Stat. 2353, 2354.)

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in subsec. (b)(2)(A), (B), are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

The Ethics in Government Act of 1978, referred to in subsec. (c)(2)(D), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. Title I of the Act is set out in the Appendix to Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5 and Tables.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (d)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

2003—Subsec. (b)(2)(B)(i). Pub. L. 108–173, § 735(b), inserted ''the efficient provision of'' after ''expenditures for''.

Subsec. (b)(8). Pub. L. 108–173, § 735(a), added par. (8).

Subsec. (c)(2)(B). Pub. L. 108–173, § 735(e)(1), inserted ''experts in the area of pharmaco-economics or prescription drug benefit programs,'' after ''other health professionals,''.

Subsec. (c)(2)(D). Pub. L. 108–173, § 735(c)(1), inserted at end ''Members of the Commission shall be treated as employees of Congress for purposes of applying title I of the Ethics in Government Act of 1978 (Public Law 95–521).''

2000—Subsec. (b)(1)(D). Pub. L. 106–554, § 1(a)(6) [title V, § 544(a)(1)], substituted ''June 15 of each year,'' for ''June 1 of each year (beginning with 1998),''.

Subsec. (b)(7). Pub. L. 106–554, § 1(a)(6) [title V, § 544(b)], added par. (7).

1999—Subsec. (b)(1)(D). Pub. L. 106–113 inserted ''and including a review of the estimate of the conversion factor submitted under section 1395w–4(d)(1)(E)(ii) of this title'' before period at end.

1998—Subsec. (c)(1). Pub. L. 105–277 substituted ''17'' for ''15''.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title VII, § 735(c)(2), Dec. 8, 2003, 117 Stat. 2354, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 2004.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title V, § 544(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–551, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply beginning with 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective in determining conversion factor under section 1395w–4(d) of this title for years beginning with 2001 and not applicable to or affecting any update (or any update adjustment factor) for any year before 2001, see section 1000(a)(6) [title II, § 211(d)] of Pub. L. 106–113, set out as a note under section 1395w–4 of this title.

EFFECTIVE DATE; TRANSITION; TRANSFER OF FUNCTIONS

Section 4022(c) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—The Comptroller General shall first provide for appointment of members to the Medicare Payment Advisory Commission (in this subsection referred to as 'MedPAC') by not later than September 30, 1997.

''(2) TRANSITION.—As quickly as possible after the date a majority of members of MedPAC are first appointed [Oct. 1, 1997, see 62 FR 52131], the Comptroller General, in consultation with the Prospective Payment Assessment Commission (in this subsection referred to as 'ProPAC') and the Physician Payment Review Commission (in this subsection referred to as 'PPRC'), shall provide for the termination of the ProPAC and the PPRC. As of the date of termination of the respective Commissions [Nov. 1, 1997, see 62 FR 59356], the amendments made by paragraphs (1) and (2), respectively, of subsection (b) [amending sections 1395w–4, 1395y, and 1395ww of this title and repealing section 1395w–1 of this title] become effective. The Comptroller General, to the extent feasible, shall provide for the transfer to the MedPAC of assets and staff of the ProPAC and the PPRC, without any loss of benefits or seniority by virtue of such transfers. Fund balances available to the ProPAC or the PPRC for any period shall be available to the MedPAC for such period for like purposes.

''(3) CONTINUING RESPONSIBILITY FOR REPORTS.—The MedPAC shall be responsible for the preparation and submission of reports required by law to be submitted (and which have not been submitted by the date of establishment of the MedPAC) by the ProPAC and the PPRC, and, for this purpose, any reference in law to either such Commission is deemed, after the appointment of the MedPAC, to refer to the MedPAC.''

APPOINTMENT OF EXPERTS IN PRESCRIPTION DRUGS

Pub. L. 108–173, title VII, § 735(e)(2), Dec. 8, 2003, 117 Stat. 2354, provided that: ''The Comptroller General of the United States shall ensure that the membership of the Commission [Medicare Payment Advisory Commission] complies with the amendment made by paragraph (1) [amending this section] with respect to appointments made on or after the date of the enactment of this Act [Dec. 8, 2003].''

MEDPAC ANALYSIS OF IMPACT OF VOLUME ON PER UNIT COST OF RURAL HOSPITALS WITH PSYCHIATRIC UNITS

Pub. L. 106–554, § 1(a)(6) [title II, § 214], Dec. 21, 2000, 114 Stat. 2763, 2763A–486, provided that: ''The Medicare

Payment Advisory Commission, in its study conducted pursuant to subsection (a) of section 411 of BBRA [Pub. L. 106–113, § 1000(a)(6) [title IV, § 411], set out as a note below] (113 Stat. 1501A–377), shall include—

''(1) in such study an analysis of the impact of volume on the per unit cost of rural hospitals with psychiatric units; and

''(2) in its report under subsection (b) of such section a recommendation on whether special treatment for such hospitals may be warranted.''

MEDPAC STUDY ON COMPLEXITY OF MEDICARE PROGRAM AND LEVELS OF BURDENS PLACED ON PROVIDERS THROUGH FEDERAL REGULATIONS

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 229(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–357, provided that:

''(1) STUDY.—The Medicare Payment Advisory Commission shall undertake a comprehensive study to review the regulatory burdens placed on all classes of health care providers under parts A and B of the medicare program under title XVIII of the Social Security Act [this subchapter] and to determine the costs these burdens impose on the nation's health care system. The study shall also examine the complexity of the current regulatory system and its impact on providers.

''(2) REPORT.—Not later than December 31, 2001, the Commission shall submit to Congress one or more reports on the study conducted under paragraph (1). The report shall include recommendations regarding—

''(A) how the Health Care Financing Administration can reduce the regulatory burdens placed on patients and providers; and

''(B) legislation that may be appropriate to reduce the complexity of the medicare program, including improvement of the rules regarding billing, compliance, and fraud and abuse.''

MEDPAC REPORT

Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 312(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–365, provided that: ''The Medicare Payment Advisory Commission shall include in its report submitted to Congress in March of 2001 recommendations regarding the appropriateness of the initial residency period used under section 1886(h)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(F)) for other residency training programs in a specialty that require preliminary years of study in another specialty.''

MEDPAC STUDY OF RURAL PROVIDERS

Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 411], Nov. 29, 1999, 113 Stat. 1536, 1501A–377, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study of rural providers furnishing items and services for which payment is made under title XVIII of the Social Security Act [this subchapter]. Such study shall examine and evaluate the adequacy and appropriateness of the categories of special payments (and payment methodologies) established for rural hospitals under the medicare program, and the impact of such categories on beneficiary access and quality of health care services.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Nov. 29, 1999], the Medicare Payment Advisory Commission shall submit to Congress a report on the study conducted under subsection (a).''

QUALITY IMPROVEMENT STANDARDS

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 520(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–386, provided that:

''(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the appropriate quality improvement standards that should apply to—

''(A) each type of Medicare+Choice plan described in section 1851(a)(2) of the Social Security Act (42 U.S.C. 1395w–21(a)(2)), including each type of Medicare+Choice plan that is a coordinated care plan (as described in subparagraph (A) of such section); and

''(B) the original medicare fee-for-service program under parts A and B [sic] title XVIII of such Act (42 U.S.C. 1395 et seq.) [parts A and B of this subchapter].

''(2) CONSIDERATIONS.—Such study shall specifically examine the effects, costs, and feasibility of requiring entities, physicians, and other health care providers that provide items and services under the original medicare fee-for-service program to comply with quality standards and related reporting requirements that are comparable to the quality standards and related reporting requirements that are applicable to Medicare+Choice organizations.

''(3) REPORT.—Not later than 2 years after the date of the enactment of this Act [Nov. 29, 1999], such Commission shall submit a report to Congress on the study conducted under this subsection, together with any recommendations for legislation that it determines to be appropriate as a result of such study.''

INITIAL TERMS OF ADDITIONAL MEMBERS

Pub. L. 105–277, div. J, title V, § 5202(b), Oct. 21, 1998, 112 Stat. 2681–917, provided that:

''(1) IN GENERAL.—For purposes of staggering the initial terms of members of the Medicare Payment Advisory Commission (under section 1805(c)(3) of such Act (42 U.S.C. 1395b–6(c)(3))[)], the initial terms of the two additional members of the Commission provided for by the amendment under subsection (a) [amending this section] are as follows:

''(A) One member shall be appointed for one year.

''(B) One member shall be appointed for two years.

''(2) COMMENCEMENT OF TERMS.—Such terms shall begin on May 1, 1999.''

INFORMATION INCLUDED IN ANNUAL RECOMMENDATIONS

Section 4804(c) of Pub. L. 105–33 provided that: ''The Medicare Payment Advisory Commission shall include in its annual report under section 1805(b)(1)(B) of the Social Security Act [subsec. (b)(1)(B) of this section] recommendations on the methodology and level of payments made to PACE providers under sections 1894(d) and 1934(d) of such Act [sections 1395eee(d) and 1396u–4(d) of this title] and on the treatment of private, for-profit entities as PACE providers.''

§ 1395b–7. Explanation of medicare benefits

(a) In general

The Secretary shall furnish to each individual for whom payment has been made under this subchapter (or would be made without regard to any deductible) a statement which—

(1) lists the item or service for which payment has been made and the amount of such payment for each item or service; and

(2) includes a notice of the individual's right to request an itemized statement (as provided in subsection (b) of this section).

(b) Request for itemized statement for medicare items and services

(1) In general

An individual may submit a written request to any physician, provider, supplier, or any other person (including an organization, agency, or other entity) for an itemized statement for any item or service provided to such individual by such person with respect to which payment has been made under this subchapter.

(2) 30-day period to furnish statement

(A) In general

Not later than 30 days after the date on which a request under paragraph (1) has been made, a person described in such paragraph shall furnish an itemized statement describ-

ing each item or service provided to the individual requesting the itemized statement.

(B) Penalty

Whoever knowingly fails to furnish an itemized statement in accordance with subparagraph (A) shall be subject to a civil money penalty of not more than $100 for each such failure. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(3) Review of itemized statement

(A) In general

Not later than 90 days after the receipt of an itemized statement furnished under paragraph (1), an individual may submit a written request for a review of the itemized statement to the Secretary.

(B) Specific allegations

A request for a review of the itemized statement shall identify—

(i) specific items or services that the individual believes were not provided as claimed, or

(ii) any other billing irregularity (including duplicate billing).

(4) Findings of Secretary

The Secretary shall, with respect to each written request submitted under paragraph (3), determine whether the itemized statement identifies specific items or services that were not provided as claimed or any other billing irregularity (including duplicate billing) that has resulted in unnecessary payments under this subchapter.

(5) Recovery of amounts

The Secretary shall take all appropriate measures to recover amounts unnecessarily paid under this subchapter with respect to a statement described in paragraph (4).

(Aug. 14, 1935, ch. 531, title XVIII, § 1806, as added Pub. L. 105–33, title IV, § 4311(b)(1), Aug. 5, 1997, 111 Stat. 385.)

EFFECTIVE DATE

Section 4311(b)(3) of Pub. L. 105–33 provided that:

''(A) STATEMENT BY SECRETARY.—Paragraph (1) of section 1806(a) of the Social Security Act [subsec. (a)(1) of this section], as added by paragraph (1), and the repeal made by paragraph (2) [amending section 1395b–5 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].

''(B) ITEMIZED STATEMENT.—Paragraph (2) of section 1806(a) and section 1806(b) of the Social Security Act [subsecs. (a)(2) and (b) of this section], as so added, shall take effect not later than January 1, 1999.''

INCLUSION OF ADDITIONAL INFORMATION IN NOTICES TO BENEFICIARIES ABOUT SKILLED NURSING FACILITY BENEFITS

Pub. L. 108–173, title IX, § 925, Dec. 8, 2003, 117 Stat. 2396, provided that:

''(a) IN GENERAL.—The Secretary [of Health and Human Services] shall provide that in medicare beneficiary notices provided (under section 1806(a) of the Social Security Act, 42 U.S.C. 1395b–7(a)) with respect to the provision of post-hospital extended care services under part A of title XVIII of the Social Security Act [part A of this subchapter], there shall be included information on the number of days of coverage of such services remaining under such part for the medicare beneficiary and spell of illness involved.

''(b) EFFECTIVE DATE.—Subsection (a) shall apply to notices provided during calendar quarters beginning more than 6 months after the date of the enactment of this Act [Dec. 8, 2003].''

§ 1395b–8. Chronic care improvement

(a) Implementation of chronic care improvement programs

(1) In general

The Secretary shall provide for the phased-in development, testing, evaluation, and implementation of chronic care improvement programs in accordance with this section. Each such program shall be designed to improve clinical quality and beneficiary satisfaction and achieve spending targets with respect to expenditures under this subchapter for targeted beneficiaries with one or more threshold conditions.

(2) Definitions

For purposes of this section:

(A) Chronic care improvement program

The term ''chronic care improvement program'' means a program described in paragraph (1) that is offered under an agreement under subsection (b) or (c) of this section.

(B) Chronic care improvement organization

The term ''chronic care improvement organization'' means an entity that has entered into an agreement under subsection (b) or (c) of this section to provide, directly or through contracts with subcontractors, a chronic care improvement program under this section. Such an entity may be a disease management organization, health insurer, integrated delivery system, physician group practice, a consortium of such entities, or any other legal entity that the Secretary determines appropriate to carry out a chronic care improvement program under this section.

(C) Care management plan

The term ''care management plan'' means a plan established under subsection (d) of this section for a participant in a chronic care improvement program.

(D) Threshold condition

The term ''threshold condition'' means a chronic condition, such as congestive heart failure, diabetes, chronic obstructive pulmonary disease (COPD), or other diseases or conditions, as selected by the Secretary as appropriate for the establishment of a chronic care improvement program.

(E) Targeted beneficiary

The term ''targeted beneficiary'' means, with respect to a chronic care improvement program, an individual who—

(i) is entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, but not enrolled in a plan under part C of this subchapter;

(ii) has one or more threshold conditions covered under such program; and

(iii) has been identified under subsection (d)(1) of this section as a potential participant in such program.

(3) Construction

Nothing in this section shall be construed as—

(A) expanding the amount, duration, or scope of benefits under this subchapter;

(B) providing an entitlement to participate in a chronic care improvement program under this section;

(C) providing for any hearing or appeal rights under section 1395ff, 1395*oo* of this title, or otherwise, with respect to a chronic care improvement program under this section; or

(D) providing benefits under a chronic care improvement program for which a claim may be submitted to the Secretary by any provider of services or supplier (as defined in section 1395x(d) of this title).

(b) Developmental phase (Phase I)

(1) In general

In carrying out this section, the Secretary shall enter into agreements consistent with subsection (f) of this section with chronic care improvement organizations for the development, testing, and evaluation of chronic care improvement programs using randomized controlled trials. The first such agreement shall be entered into not later than 12 months after December 8, 2003.

(2) Agreement period

The period of an agreement under this subsection shall be for 3 years.

(3) Minimum participation

(A) In general

The Secretary shall enter into agreements under this subsection in a manner so that chronic care improvement programs offered under this section are offered in geographic areas that, in the aggregate, consist of areas in which at least 10 percent of the aggregate number of medicare beneficiaries reside.

(B) Medicare beneficiary defined

In this paragraph, the term ''medicare beneficiary'' means an individual who is entitled to benefits under part A of this subchapter, enrolled under part B of this subchapter, or both, and who resides in the United States.

(4) Site selection

In selecting geographic areas in which agreements are entered into under this subsection, the Secretary shall ensure that each chronic care improvement program is conducted in a geographic area in which at least 10,000 targeted beneficiaries reside among other individuals entitled to benefits under part A of this subchapter, enrolled under part B of this subchapter, or both to serve as a control population.

(5) Independent evaluations of Phase I programs

The Secretary shall contract for an independent evaluation of the programs conducted under this subsection. Such evaluation shall be done by a contractor with knowledge of chronic care management programs and demonstrated experience in the evaluation of such programs. Each evaluation shall include an assessment of the following factors of the programs:

(A) Quality improvement measures, such as adherence to evidence-based guidelines and rehospitalization rates.

(B) Beneficiary and provider satisfaction.

(C) Health outcomes.

(D) Financial outcomes, including any cost savings to the program under this subchapter.

(c) Expanded implementation phase (Phase II)

(1) In general

With respect to chronic care improvement programs conducted under subsection (b) of this section, if the Secretary finds that the results of the independent evaluation conducted under subsection (b)(6) of this section indicate that the conditions specified in paragraph (2) have been met by a program (or components of such program), the Secretary shall enter into agreements consistent with subsection (f) of this section to expand the implementation of the program (or components) to additional geographic areas not covered under the program as conducted under subsection (b) of this section, which may include the implementation of the program on a national basis. Such expansion shall begin not earlier than 2 years after the program is implemented under subsection (b) of this section and not later than 6 months after the date of completion of such program.

(2) Conditions for expansion of programs

The conditions specified in this paragraph are, with respect to a chronic care improvement program conducted under subsection (b) of this section for a threshold condition, that the program is expected to—

(A) improve the clinical quality of care;

(B) improve beneficiary satisfaction; and

(C) achieve targets for savings to the program under this subchapter specified by the Secretary in the agreement within a range determined to be appropriate by the Secretary, subject to the application of budget neutrality with respect to the program and not taking into account any payments by the organization under the agreement under the program for risk under subsection (f)(3)(B) of this section.

(3) Independent evaluations of Phase II programs

The Secretary shall carry out evaluations of programs expanded under this subsection as the Secretary determines appropriate. Such evaluations shall be carried out in the similar manner as is provided under subsection (b)(5) of this section.

(d) Identification and enrollment of prospective program participants

(1) Identification of prospective program participants

The Secretary shall establish a method for identifying targeted beneficiaries who may

benefit from participation in a chronic care improvement program.

(2) Initial contact by Secretary

The Secretary shall communicate with each targeted beneficiary concerning participation in a chronic care improvement program. Such communication may be made by the Secretary and shall include information on the following:

(A) A description of the advantages to the beneficiary in participating in a program.

(B) Notification that the organization offering a program may contact the beneficiary directly concerning such participation.

(C) Notification that participation in a program is voluntary.

(D) A description of the method for the beneficiary to participate or for declining to participate and the method for obtaining additional information concerning such participation.

(3) Voluntary participation

A targeted beneficiary may participate in a chronic care improvement program on a voluntary basis and may terminate participation at any time.

(e) Chronic care improvement programs

(1) In general

Each chronic care improvement program shall—

(A) have a process to screen each targeted beneficiary for conditions other than threshold conditions, such as impaired cognitive ability and co-morbidities, for the purposes of developing an individualized, goal-oriented care management plan under paragraph (2);

(B) provide each targeted beneficiary participating in the program with such plan; and

(C) carry out such plan and other chronic care improvement activities in accordance with paragraph (3).

(2) Elements of care management plans

A care management plan for a targeted beneficiary shall be developed with the beneficiary and shall, to the extent appropriate, include the following:

(A) A designated point of contact responsible for communications with the beneficiary and for facilitating communications with other health care providers under the plan.

(B) Self-care education for the beneficiary (through approaches such as disease management or medical nutrition therapy) and education for primary caregivers and family members.

(C) Education for physicians and other providers and collaboration to enhance communication of relevant clinical information.

(D) The use of monitoring technologies that enable patient guidance through the exchange of pertinent clinical information, such as vital signs, symptomatic information, and health self-assessment.

(E) The provision of information about hospice care, pain and palliative care, and end-of-life care.

(3) Conduct of programs

In carrying out paragraph (1)(C) with respect to a participant, the chronic care improvement organization shall—

(A) guide the participant in managing the participant's health (including all co-morbidities, relevant health care services, and pharmaceutical needs) and in performing activities as specified under the elements of the care management plan of the participant;

(B) use decision-support tools such as evidence-based practice guidelines or other criteria as determined by the Secretary; and

(C) develop a clinical information database to track and monitor each participant across settings and to evaluate outcomes.

(4) Additional responsibilities

(A) Outcomes report

Each chronic care improvement organization offering a chronic care improvement program shall monitor and report to the Secretary, in a manner specified by the Secretary, on health care quality, cost, and outcomes.

(B) Additional requirements

Each such organization and program shall comply with such additional requirements as the Secretary may specify.

(5) Accreditation

The Secretary may provide that chronic care improvement programs and chronic care improvement organizations that are accredited by qualified organizations (as defined by the Secretary) may be deemed to meet such requirements under this section as the Secretary may specify.

(f) Terms of agreements

(1) Terms and conditions

(A) In general

An agreement under this section with a chronic care improvement organization shall contain such terms and conditions as the Secretary may specify consistent with this section.

(B) Clinical, quality improvement, and financial requirements

The Secretary may not enter into an agreement with such an organization under this section for the operation of a chronic care improvement program unless—

(i) the program and organization meet the requirements of subsection (e) of this section and such clinical, quality improvement, financial, and other requirements as the Secretary deems to be appropriate for the targeted beneficiaries to be served; and

(ii) the organization demonstrates to the satisfaction of the Secretary that the organization is able to assume financial risk for performance under the agreement (as applied under paragraph (3)(B)) with respect to payments made to the organization under such agreement through available reserves, reinsurance, withholds, or such other means as the Secretary determines appropriate.

(2) Manner of payment

Subject to paragraph (3)(B), the payment under an agreement under—

(A) subsection (b) of this section shall be computed on a per-member per-month basis; or

(B) subsection (c) of this section may be on a per-member per-month basis or such other basis as the Secretary and organization may agree.

(3) Application of performance standards

(A) Specification of performance standards

Each agreement under this section with a chronic care improvement organization shall specify performance standards for each of the factors specified in subsection (c)(2) of this section, including clinical quality and spending targets under this subchapter, against which the performance of the chronic care improvement organization under the agreement is measured.

(B) Adjustment of payment based on performance

(i) In general

Each such agreement shall provide for adjustments in payment rates to an organization under the agreement insofar as the Secretary determines that the organization failed to meet the performance standards specified in the agreement under subparagraph (A).

(ii) Financial risk for performance

In the case of an agreement under subsection (b) or (c) of this section, the agreement shall provide for a full recovery for any amount by which the fees paid to the organization under the agreement exceed the estimated savings to the programs under this subchapter attributable to implementation of such agreement.

(4) Budget neutral payment condition

Under this section, the Secretary shall ensure that the aggregate sum of medicare program benefit expenditures for beneficiaries participating in chronic care improvement programs and funds paid to chronic care improvement organizations under this section, shall not exceed the medicare program benefit expenditures that the Secretary estimates would have been made for such targeted beneficiaries in the absence of such programs.

(g) Funding

(1) Subject to paragraph (2), there are appropriated to the Secretary, in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, such sums as may be necessary to provide for agreements with chronic care improvement programs under this section.

(2) In no case shall the funding under this section exceed $100,000,000 in aggregate increased expenditures under this subchapter (after taking into account any savings attributable to the operation of this section) over the 3-fiscal-year period beginning on October 1, 2003.

(Aug. 14, 1935, ch. 531, title XVIII, § 1807, as added Pub. L. 108–173, title VII, § 721(a), Dec. 8, 2003, 117 Stat. 2341.)

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in subsecs. (a)(2)(E)(i) and (b)(3)(B), (4), are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

DEMONSTRATION PROJECT FOR CONSUMER-DIRECTED CHRONIC OUTPATIENT SERVICES

Pub. L. 108–173, title VI, § 648, Dec. 8, 2003, 117 Stat. 2327, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this section, the Secretary [of Health and Human Services] shall establish demonstration projects (in this section referred to as 'demonstration projects') under which the Secretary shall evaluate methods that improve the quality of care provided to individuals with chronic conditions and that reduce expenditures that would otherwise be made under the medicare program on behalf of such individuals for such chronic conditions, such methods to include permitting those beneficiaries to direct their own health care needs and services.

''(2) INDIVIDUALS WITH CHRONIC CONDITIONS DEFINED.—In this section, the term 'individuals with chronic conditions' means an individual entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter], and enrolled under part B of such title [part B of this subchapter], but who is not enrolled under part C of such title [part C of this subchapter] who is diagnosed as having one or more chronic conditions (as defined by the Secretary), such as diabetes.

''(b) DESIGN OF PROJECTS.—

''(1) EVALUATION BEFORE IMPLEMENTATION OF PROJECT.—

''(A) IN GENERAL.—In establishing the demonstration projects under this section, the Secretary shall evaluate best practices employed by group health plans and practices under State plans for medical assistance under the medicaid program under title XIX of the Social Security Act [subchapter XIX of this chapter], as well as best practices in the private sector or other areas, of methods that permit patients to self-direct the provision of personal care services. The Secretary shall evaluate such practices for a 1-year period and, based on such evaluation, shall design the demonstration project.

''(B) REQUIREMENT FOR ESTIMATE OF BUDGET NEUTRAL COSTS.—As part of the evaluation under subparagraph (A), the Secretary shall evaluate the costs of furnishing care under the projects. The Secretary may not implement the demonstration projects under this section unless the Secretary determines that the costs of providing care to individuals with chronic conditions under the project will not exceed the costs, in the aggregate, of furnishing care to such individuals under title XVIII of the Social Security Act [this subchapter], that would otherwise be paid without regard to the demonstration projects for the period of the project.

''(2) SCOPE OF SERVICES.—The Secretary shall determine the appropriate scope of personal care services that would apply under the demonstration projects.

''(c) VOLUNTARY PARTICIPATION.—Participation of providers of services and suppliers, and of individuals with chronic conditions, in the demonstration projects shall be voluntary.

''(d) DEMONSTRATION PROJECTS SITES.—Not later than 2 years after the date of the enactment of this Act [Dec. 8, 2003], the Secretary shall conduct a demonstration project in at least one area that the Secretary determines has a population of individuals entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter], and enrolled under part B of such title [part B of this subchapter], with a rate of incidence of diabetes that significantly exceeds the national average rate of all areas.

''(e) EVALUATION AND REPORT.—

''(1) EVALUATIONS.—The Secretary shall conduct evaluations of the clinical and cost effectiveness of the demonstration projects.

''(2) REPORTS.—Not later than 2 years after the commencement of the demonstration projects, and biannually thereafter, the Secretary shall submit to Congress a report on the evaluation, and shall include in the report the following:

''(A) An analysis of the patient outcomes and costs of furnishing care to the individuals with chronic conditions participating in the projects as compared to such outcomes and costs to other individuals for the same health conditions.

''(B) Evaluation of patient satisfaction under the demonstration projects.

''(C) Such recommendations regarding the extension, expansion, or termination of the projects as the Secretary determines appropriate.

''(f) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

''(g) AUTHORIZATION OF APPROPRIATIONS.—(1) Payments for the costs of carrying out the demonstration project under this section shall be made from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t).

''(2) There are authorized to be appropriated from such Trust Fund such sums as may be necessary for the Secretary to enter into contracts with appropriate organizations for the deign [sic], implementation, and evaluation of the demonstration project.

''(3) In no case may expenditures under this section exceed the aggregate expenditures that would otherwise have been made for the provision of personal care services.''

REPORTS

Pub. L. 108–173, title VII, § 721(b), Dec. 8, 2003, 117 Stat. 2346, provided that: ''The Secretary [of Health and Human Services] shall submit to Congress reports on the operation of section 1807 of the Social Security Act [this section], as added by subsection (a), as follows:

''(1) Not later than 2 years after the date of the implementation of such section, the Secretary shall submit to Congress an interim report on the scope of implementation of the programs under subsection (b) of such section, the design of the programs, and preliminary cost and quality findings with respect to those programs based on the following measures of the programs:

''(A) Quality improvement measures, such as adherence to evidence-based guidelines and rehospitalization rates.

''(B) Beneficiary and provider satisfaction.

''(C) Health outcomes.

''(D) Financial outcomes.

''(2) Not later than 3 years and 6 months after the date of the implementation of such section the Secretary shall submit to Congress an update to the report required under paragraph (1) on the results of such programs.

''(3) The Secretary shall submit to Congress 2 additional biennial reports on the chronic care improvement programs conducted under such section. The first such report shall be submitted not later than 2 years after the report is submitted under paragraph (2). Each such report shall include information on—

''(A) the scope of implementation (in terms of both regions and chronic conditions) of the chronic care improvement programs;

''(B) the design of the programs; and

''(C) the improvements in health outcomes and financial efficiencies that result from such implementation.''

CHRONICALLY ILL MEDICARE BENEFICIARY RESEARCH, DATA, DEMONSTRATION STRATEGY

Pub. L. 108–173, title VII, § 723, Dec. 8, 2003, 117 Stat. 2348, provided that:

''(a) DEVELOPMENT OF PLAN.—Not later than 6 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall develop a plan to improve quality of care and reduce the cost of care for chronically ill medicare beneficiaries.

''(b) PLAN REQUIREMENTS.—The plan will utilize existing data and identify data gaps, develop research initiatives, and propose intervention demonstration programs to provide better health care for chronically ill medicare beneficiaries. The plan shall—

''(1) integrate existing data sets including, the Medicare Current Beneficiary Survey (MCBS), Minimum Data Set (MDS), Outcome and Assessment Information Set (OASIS), data from Quality Improvement Organizations (QIO), and claims data;

''(2) identify any new data needs and a methodology to address new data needs;

''(3) plan for the collection of such data in a data warehouse; and

''(4) develop a research agenda using such data.

''(c) CONSULTATION.—In developing the plan under this section, the Secretary shall consult with experts in the fields of care for the chronically ill (including clinicians).

''(d) IMPLEMENTATION.—Not later than 2 years after the date of the enactment of this Act [Dec. 8, 2003], the Secretary shall implement the plan developed under this section. The Secretary may contract with appropriate entities to implement such plan.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary in fiscal years 2004 and 2005 to carry out this section.''

§ 1395b–9. Provisions relating to administration

(a) Coordinated administration of medicare prescription drug and Medicare Advantage programs

(1) In general

There is within the Centers for Medicare & Medicaid Services a center to carry out the duties described in paragraph (3).

(2) Director

Such center shall be headed by a director who shall report directly to the Administrator of the Centers for Medicare & Medicaid Services.

(3) Duties

The duties described in this paragraph are the following:

(A) The administration of parts C and D of this subchapter.

(B) The provision of notice and information under section 1395b–2 of this title.

(C) Such other duties as the Secretary may specify.

(4) Deadline

The Secretary shall ensure that the center is carrying out the duties described in paragraph (3) by not later than January 1, 2008.

(b) Employment of management staff

(1) In general

The Secretary may employ, within the Centers for Medicare & Medicaid Services, such individuals as management staff as the Secretary determines to be appropriate. With respect to the administration of parts C and D of this subchapter, such individuals shall include individuals with private sector expertise in negotiations with health benefits plans.

(2) Eligibility

To be eligible for employment under paragraph (1) an individual shall be required to have demonstrated, by their education and experience (either in the public or private sector), superior expertise in at least one of the following areas:

(A) The review, negotiation, and administration of health care contracts.

(B) The design of health care benefit plans.

(C) Actuarial sciences.

(D) Compliance with health plan contracts.

(E) Consumer education and decision making.

(F) Any other area specified by the Secretary that requires specialized management or other expertise.

(3) Rates of payment

(A) Performance-related pay

Subject to subparagraph (B), the Secretary shall establish the rate of pay for an individual employed under paragraph (1). Such rate shall take into account expertise, experience, and performance.

(B) Limitation

In no case may the rate of compensation determined under subparagraph (A) exceed the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5.

(c) Medicare Beneficiary Ombudsman

(1) In general

The Secretary shall appoint within the Department of Health and Human Services a Medicare Beneficiary Ombudsman who shall have expertise and experience in the fields of health care and education of (and assistance to) individuals entitled to benefits under this subchapter.

(2) Duties

The Medicare Beneficiary Ombudsman shall—

(A) receive complaints, grievances, and requests for information submitted by individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, with respect to any aspect of the medicare program;

(B) provide assistance with respect to complaints, grievances, and requests referred to in subparagraph (A), including—

(i) assistance in collecting relevant information for such individuals, to seek an appeal of a decision or determination made by a fiscal intermediary, carrier, MA organization, or the Secretary;

(ii) assistance to such individuals with any problems arising from disenrollment from an MA plan under part C of this subchapter; and

(iii) assistance to such individuals in presenting information under section 1395r(i)(4)(C) of this title (relating to income-related premium adjustment;[1] and

(C) submit annual reports to Congress and the Secretary that describe the activities of the Office and that include such recommendations for improvement in the administration of this subchapter as the Ombudsman determines appropriate.

The Ombudsman shall not serve as an advocate for any increases in payments or new coverage of services, but may identify issues and problems in payment or coverage policies.

(3) Working with health insurance counseling programs

To the extent possible, the Ombudsman shall work with health insurance counseling programs (receiving funding under section 1395b–4 of this title) to facilitate the provision of information to individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both regarding MA plans and changes to those plans. Nothing in this paragraph shall preclude further collaboration between the Ombudsman and such programs.

(Aug. 14, 1935, ch. 531, title XVIII, § 1808, as added and amended Pub. L. 108–173, title IX, §§ 900(a), (b), 923(a), Dec. 8, 2003, 117 Stat. 2369, 2393.)

REFERENCES IN TEXT

Parts A, B, C, and D of this subchapter, referred to in text, are classified to sections 1395c et seq., 1395j et seq., 1395w–21 et seq., and 1395w–101 et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–173, § 900(b), added subsec. (b).

Subsec. (c). Pub. L. 108–173, § 923(a), added subsec. (c).

DEADLINE FOR APPOINTMENT

Pub. L. 108–173, title IX, § 923(b), Dec. 8, 2003, 117 Stat. 2394, provided that: ''By not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall appoint the Medicare Beneficiary Ombudsman under section 1808(c) of the Social Security Act [subsec. (c) of this section], as added by subsection (a).''

PART A—HOSPITAL INSURANCE BENEFITS FOR AGED AND DISABLED

§ 1395c. Description of program

The insurance program for which entitlement is established by sections 426 and 426–1 of this title provides basic protection against the costs of hospital, related post-hospital, home health services, and hospice care in accordance with this part for (1) individuals who are age 65 or over and are eligible for retirement benefits under subchapter II of this chapter (or would be eligible for such benefits if certain government employment were covered employment under such subchapter) or under the railroad retirement system, (2) individuals under age 65 who have been entitled for not less than 24 months to benefits under subchapter II of this chapter (or would have been so entitled to such benefits if certain government employment were covered employment under such subchapter) or under the railroad retirement system on the basis of a disability, and (3) certain individuals who do not meet the conditions specified in either clause (1)

[1] So in original. A closing parenthesis probably should precede the semicolon.

or (2) but who are medically determined to have end stage renal disease.

(Aug. 14, 1935, ch. 531, title XVIII, § 1811, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 291; amended Pub. L. 92–603, title II, § 201(a)(2), Oct. 30, 1972, 86 Stat. 1371; Pub. L. 95–292, § 4(a), June 13, 1978, 92 Stat. 315; Pub. L. 96–265, title I, § 103(a)(2), June 9, 1980, 94 Stat. 444; Pub. L. 96–473, § 2(b), Oct. 19, 1980, 94 Stat. 2263; Pub. L. 96–499, title IX, § 930(a), Dec. 5, 1980, 94 Stat. 2631; Pub. L. 97–248, title I, § 122(a)(1), title II, § 278(b)(3), Sept. 3, 1982, 96 Stat. 356, 561; Pub. L. 99–272, title XIII, § 13205(b)(2)(C)(i), Apr. 7, 1986, 100 Stat. 317; Pub. L. 100–360, title I, § 104(d)(1), July 1, 1988, 102 Stat. 688; Pub. L. 101–234, title I, § 101(a), Dec. 13, 1989, 103 Stat. 1979.)

AMENDMENTS

1989—Pub. L. 101–234 repealed Pub. L. 100–360, § 104(d)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Pub. L. 100–360 substituted ''inpatient hospital services, extended care services'' for ''hospital, related post-hospital''.

1986—Pub. L. 99–272 substituted ''government employment'' for ''Federal employment'' in cls. (1) and (2).

1982—Pub. L. 97–248, § 122(a)(1), substituted ''home health services, and hospice care'' for ''and home health services''.

Pub. L. 97–248, § 278(b)(3), inserted ''(or would be eligible for such benefits if certain Federal employment were covered employment under such subchapter)'' after ''subchapter II of this chapter'' in cl. (1), and inserted ''(or would have been so entitled to such benefits if certain Federal employment were covered employment under such subchapter)'' after ''subchapter II of this chapter'' in cl. (2).

1980—Pub. L. 96–499 substituted '', related post-hospital, and home health services'' for ''and related post-hospital services''.

Pub. L. 96–473 substituted ''are eligible for'' for ''are entitled to''.

Pub. L. 96–265 substituted ''not less than 24 months'' for ''not less than 24 consecutive months''.

1978—Pub. L. 95–292 inserted references to section 426–1 of this title and to individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease.

1972—Pub. L. 92–603 designated existing provisions as cl. (1) and added cl. (2).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 101(d) of Pub. L. 101–234 provided that: ''The provisions of this section [amending this section and sections 1395d, 1395e, 1395f, 1395k, 1395x, 1395cc, and 1395tt of this title, enacting provisions set out as notes under sections 1395e and 1395ww of this title, and amending provisions set out as notes under sections 1395e and 1395ww of this title] shall take effect January 1, 1990, except that the amendments made by subsection (c) [amending provisions set out as a note under section 1395ww of this title] shall be effective as if included in the enactment of MCCA [Pub. L. 100–360].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99–272, set out as a note under section 410 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 122(h)(1) of Pub. L. 97–248, as amended by Pub. L. 99–272, title IX, § 9123(a), Apr. 7, 1986, 100 Stat. 168, provided that: ''The amendments made by this section [amending this section and sections 1395d to 1395f, 1395h, and 1395x to 1395cc of this title and section 231f of Title 45, Railroads, and enacting provisions set out as notes under sections 1395b–1 and 1395f of this title] apply to hospice care provided on or after November 1, 1983.''

Amendment by section 278(b)(3) of Pub. L. 97–248 effective on and after Jan. 1, 1983, and applicable to remuneration (for medicare qualified Federal employment) paid after Dec. 31, 1982, see section 278(c)(2)(A) of Pub. L. 97–248, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Amendment by Pub. L. 96–473 effective after second month beginning after Oct. 19, 1980, see section 2(d) of Pub. L. 96–473, set out as a note under section 426 of this title.

Amendment by Pub. L. 96–265 applicable with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after first day of sixth month which begins after June 9, 1980, see section 103(c) of Pub. L. 96–265, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

ADVISORY COUNCIL TO STUDY COVERAGE OF DISABLED UNDER THIS SUBCHAPTER

Pub. L. 90–248, title I, § 140, Jan. 2, 1968, 81 Stat. 854, directed Secretary of Health, Education, and Welfare to appoint an Advisory Council to study need for coverage of disabled under the health insurance programs of this subchapter, directed Council to submit a report on such study to Secretary by Jan. 1, 1969, and directed Secretary in turn to transmit such report to Congress, resulting in termination of Council's existence.

REIMBURSEMENT OF CHARGES UNDER PART A FOR SERVICES TO PATIENTS ADMITTED PRIOR TO 1968 TO CERTAIN HOSPITALS

Pub. L. 90–248, title I, § 142, Jan. 2, 1968, 81 Stat. 855, provided that:

''(a) Notwithstanding any provision of title XVIII of the Social Security Act [this subchapter] an individual who is entitled to hospital insurance benefits under section 226 of such Act [section 426 of this title] may, subject to subsections (b) and (c), receive, on the basis of an itemized bill, reimbursement for charges to him

for inpatient hospital services (as defined in section 1861 of such Act [section 1395x of this title], but without regard to subsection (e) of such section) furnished by, or under arrangements (as defined in section 1861(w) of such Act [section 1395x(w) of this title] with, a hospital if—

''(1) the hospital did not have an agreement in effect under section 1866 of such Act [section 1395cc of this title] but would have been eligible for payment under part A of title XVIII of such Act [this part] with respect to such services if at the time such services were furnished the hospital had such an agreement in effect;

''(2) the hospital (A) meets the requirements of paragraphs (5) and (7) of section 1861(e) of such Act [section 1395x(e) of this title], (B) is not primarily engaged in providing the services described in section 1961(j)(1)(A) of such Act [section 1395x(j)(1)(A) of this title], and (C) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of section 1861(r) of such Act [section 1395x(r) of this title], to inpatients (i) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (ii) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

''(3) the hospital did not meet the requirements that must be met to permit payment to the hospital under part A of title XVIII of such Act [this part]; and

''(4) an application is filed (submitted in such form and manner and by such person, and containing and supported by such information, as the Secretary shall by regulations prescribe) for reimbursement before January 1, 1969.

''(b) Payments under this section may not be made for inpatient hospital services (as described in subsection (a)) furnished to an individual—

''(1) prior to July 1, 1966,

''(2) after December 31, 1967, unless furnished with respect to an admission to the hospital prior to January 1, 1968, and

''(3) for more than—

''(A) 90 days in any spell of illness, but only if (i) prior to January 1, 1969, the hospital furnishing such services entered into an agreement under section 1866 of the Social Security Act [section 1395cc of this title] and (ii) the hospital's plan for utilization review, as provided for in section 1861(k) of such Act [section 1395x(k) of this title], has, in accordance with section 1814 of such Act [section 1395f of this title], been applied to the services furnished such individual, or

''(B) 20 days in any spell of illness, if the hospital did not meet the conditions of clauses (i) and (ii) of subparagraph (A).

''(c)(1) The amounts payable in accordance with subsection (a) with respect to inpatient hospital services shall, subject to paragraph (2) of this subsection, be paid from the Federal Hospital Insurance Trust Fund in amounts equal to 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the individual or in semi-private accommodations (as defined in section 1861(v)(4) of the Social Security Act [section 1395x(v)(4) of this title]) whichever is less, plus 80 percent of the hospital's reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital's reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semi-private accommodations (as so defined). For purposes of the preceding provisions of this paragraph, the term 'routine services' shall mean the regular room, dietary, and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made; the term 'ancillary services' shall mean those special services for which charges are customarily made in addition to routine services.

''(2) Before applying paragraph (1), payments made under this section shall be reduced to the extent provided for under section 1813 of the Social Security Act [section 1395e of this title] in the case of benefits payable to providers of services under part A of title XVIII of such Act [this part].

''(d) For the purposes of this section—

''(1) the 90-day period, referred to in subsection (b)(3)(A), shall be reduced by the number of days of inpatient hospital services furnished to such individual during the spell of illness, referred to therein, and with respect to which he was entitled to have payment made under part A of title XVIII of the Social Security Act [this part];

''(2) the 20-day period, referred to in subsection (b)(3)(B) shall be reduced by the number of days in excess of 70 days of inpatient hospital services furnished during the spell of illness, referred to therein, and with respect to which such individual was entitled to have payment made under such part A [this part];

''(3) the term 'spell of illness' shall have the meaning assigned to it by subsection (a) of section 1861 of such Act [section 1395x(a) of this title] except that the term 'inpatient hospital services' as it appears in such subsection shall have the meaning assigned to it by subsection (a) of this section.''

§ 1395d. Scope of benefits

(a) Entitlement to payment for inpatient hospital services, post-hospital extended care services, home health services, and hospice care

The benefits provided to an individual by the insurance program under this part shall consist of entitlement to have payment made on his behalf or, in the case of payments referred to in section 1395f(d)(2) of this title to him (subject to the provisions of this part) for—

(1) inpatient hospital services or inpatient critical access hospital services for up to 150 days during any spell of illness minus 1 day for each day of such services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2)(A) post-hospital extended care services for up to 100 days during any spell of illness, and (B) to the extent provided in subsection (f) of this section, extended care services that are not post-hospital extended care services;

(3) in the case of individuals not enrolled in part B of this subchapter, home health services, and in the case of individuals so enrolled, post-institutional home health services furnished during a home health spell of illness for up to 100 visits during such spell of illness;

(4) in lieu of certain other benefits, hospice care with respect to the individual during up to two periods of 90 days each and an unlimited number of subsequent periods of 60 days each with respect to which the individual makes an election under subsection (d)(1) of this section; and

(5) for individuals who are terminally ill, have not made an election under subsection (d)(1) of this section, and have not previously received services under this paragraph, services that are furnished by a physician (as defined in section 1395x(r)(1) of this title) who is either the medical director or an employee of a hospice program and that—

(A) consist of—

(i) an evaluation of the individual's need for pain and symptom management, including the individual's need for hospice care; and

(ii) counseling the individual with respect to hospice care and other care options; and

(B) may include advising the individual regarding advanced care planning.

(b) Services not covered

Payment under this part for services furnished an individual during a spell of illness may not (subject to subsection (c) of this section) be made for—

(1) inpatient hospital services furnished to him during such spell after such services have been furnished to him for 150 days during such spell minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2) post-hospital extended care services furnished to him during such spell after such services have been furnished to him for 100 days during such spell; or

(3) inpatient psychiatric hospital services furnished to him after such services have been furnished to him for a total of 190 days during his lifetime.

Payment under this part for post-institutional home health services furnished an individual during a home health spell of illness may not be made for such services beginning after such services have been furnished for a total of 100 visits during such spell.

(c) Inpatients of psychiatric hospitals

If an individual is an inpatient of a psychiatric hospital on the first day of the first month for which he is entitled to benefits under this part, the days on which he was an inpatient of such a hospital in the 150-day period immediately before such first day shall be included in determining the number of days limit under subsection (b)(1) of this section insofar as such limit applies to (1) inpatient psychiatric hospital services, or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness (but shall not be included in determining such number of days limit insofar as it applies to other inpatient hospital services or in determining the 190-day limit under subsection (b)(3) of this section).

(d) Hospice care; election; waiver of rights; revocation; change of election

(1) Payment under this part may be made for hospice care provided with respect to an individual only during two periods of 90 days each and an unlimited number of subsequent periods of 60 days each during the individual's lifetime and only, with respect to each such period, if the individual makes an election under this paragraph to receive hospice care under this part provided by, or under arrangements made by, a particular hospice program instead of certain other benefits under this subchapter.

(2)(A) Except as provided in subparagraphs (B) and (C) and except in such exceptional and unusual circumstances as the Secretary may provide, if an individual makes such an election for a period with respect to a particular hospice program, the individual shall be deemed to have waived all rights to have payment made under this subchapter with respect to—

(i) hospice care provided by another hospice program (other than under arrangements made by the particular hospice program) during the period, and

(ii) services furnished during the period that are determined (in accordance with guidelines of the Secretary) to be—

(I) related to the treatment of the individual's condition with respect to which a diagnosis of terminal illness has been made or

(II) equivalent to (or duplicative of) hospice care;

except that clause (ii) shall not apply to physicians' services furnished by the individual's attending physician (if not an employee of the hospice program) or to services provided by (or under arrangements made by) the hospice program.

(B) After an individual makes such an election with respect to a 90-day period or a subsequent 60-day period, the individual may revoke the election during the period, in which case—

(i) the revocation shall act as a waiver of the right to have payment made under this part for any hospice care benefits for the remaining time in such period and (for purposes of subsection (a)(4) of this section and subparagraph (A)) the individual shall be deemed to have been provided such benefits during such entire period, and

(ii) the individual may at any time after the revocation execute a new election for a subsequent period, if the individual otherwise is entitled to hospice care benefits with respect to such a period.

(C) An individual may, once in each such period, change the hospice program with respect to which the election is made and such change shall not be considered a revocation of an election under subparagraph (B).

(D) For purposes of this subchapter, an individual's election with respect to a hospice program shall no longer be considered to be in effect with respect to that hospice program after the date the individual's revocation or change of election with respect to that election takes effect.

(e) Services taken into account

For purposes of subsections (b) and (c) of this section, inpatient hospital services, inpatient psychiatric hospital services, and post-hospital extended care services shall be taken into account only if payment is or would be, except for this section or the failure to comply with the request and certification requirements of or under section 1395f(a) of this title, made with respect to such services under this part.

(f) Coverage of extended care services without regard to three-day prior hospitalization requirement

(1) The Secretary shall provide for coverage, under clause (B) of subsection (a)(2) of this section, of extended care services which are not post-hospital extended care services at such time and for so long as the Secretary determines, and under such terms and conditions (described in paragraph (2)) as the Secretary finds appropriate, that the inclusion of such services will not result in any increase in the total of payments made under this subchapter and will not alter the acute care nature of the benefit described in subsection (a)(2) of this section.

(2) The Secretary may provide—

(A) for such limitations on the scope and extent of services described in subsection (a)(2)(B) of this section and on the categories of individuals who may be eligible to receive such services, and

(B) notwithstanding sections 1395f, 1395x(v), and 1395ww of this title, for such restrictions and alternatives on the amounts and methods of payment for services described in such subsection,

as may be necessary to carry out paragraph (1).

(g) "Spell of illness" defined

For definitions of ''spell of illness'', and for definitions of other terms used in this part, see section 1395x of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1812, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 291; amended Pub. L. 90–248, title I, §§ 129(c)(2), 137(a), 138(a), 143(b), 146(a), Jan. 2, 1968, 81 Stat. 847, 853, 854, 857, 859; Pub. L. 96–499, title IX, §§ 930(b)–(d), 931(a), Dec. 5, 1980, 94 Stat. 2631, 2633; Pub. L. 97–35, title XXI, § 2121(a), Aug. 13, 1981, 95 Stat. 796; Pub. L. 97–248, title I, §§ 122(b), 123, Sept. 3, 1982, 96 Stat. 356, 364; Pub. L. 97–448, title III, § 309(b)(5), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 100–360, title I, § 101, July 1, 1988, 102 Stat. 684; Pub. L. 101–234, title I, § 101(a), Dec. 13, 1989, 103 Stat. 1979; Pub. L. 101–239, title VI, § 6003(g)(3)(B)(i), Dec. 19, 1989, 103 Stat. 2152; Pub. L. 101–508, title IV, § 4006(a), Nov. 5, 1990, 104 Stat. 1388–43; Pub. L. 103–432, title I, § 102(g)(1), Oct. 31, 1994, 108 Stat. 4404; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4443(a), (b)(1), 4611(a), Aug. 5, 1997, 111 Stat. 373, 423, 472; Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(k)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–366; Pub. L. 108–173, title V, § 512(a), title VII, § 736(c)(1), Dec. 8, 2003, 117 Stat. 2299, 2356.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsec. (a)(3), is classified to section 1395j et seq. of this title.

AMENDMENTS

2003—Subsec. (a)(3). Pub. L. 108–173, § 736(c)(1), substituted ''in the case of individuals not'' for ''for individuals not'' and ''in the case of individuals so'' for ''for individuals so''.

Subsec. (a)(5). Pub. L. 108–173, § 512(a), added par. (5).

1999—Subsec. (b). Pub. L. 106–113 inserted ''during'' after ''100 visits'' in concluding provisions.

1997—Subsec. (a)(1). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (a)(3). Pub. L. 105–33, § 4611(a)(1), substituted ''for individuals not enrolled in part B of this subchapter, home health services, and for individuals so enrolled, post-institutional home health services furnished during a home health spell of illness for up to 100 visits during such spell of illness'' for ''home health services''.

Subsec. (a)(4). Pub. L. 105–33, § 4443(a), substituted ''and an unlimited number of subsequent periods of 60 days each'' for '', a subsequent period of 30 days, and a subsequent extension period''.

Subsec. (b). Pub. L. 105–33, § 4611(a)(2), inserted closing provisions.

Subsec. (d)(1). Pub. L. 105–33, § 4443(a), substituted ''and an unlimited number of subsequent periods of 60 days each'' for '', a subsequent period of 30 days, and a subsequent extension period''.

Subsec. (d)(2)(B). Pub. L. 105–33, § 4443(b)(1), substituted ''90-day period or a subsequent 60-day period'' for ''90- or 30-day period or a subsequent extension period''.

1994—Subsec. (a)(1). Pub. L. 103–432 substituted ''inpatient hospital services or inpatient rural primary care hospital services'' for ''inpatient hospital services'' before ''for up to 150 days'' and ''such services'' for ''inpatient hospital services'' before ''in excess of 90'' and struck out ''and inpatient rural primary care hospital services'' after ''such payment made)''.

1990—Subsec. (a)(4). Pub. L. 101–508, § 4006(a)(1), substituted ''90 days each, a subsequent period of 30 days, and a subsequent extension period'' for ''90 days each and one subsequent period of 30 days''.

Subsec. (d)(1). Pub. L. 101–508, § 4006(a)(2)(A), substituted ''90 days each, a subsequent period of 30 days, and a subsequent extension period during the individual's lifetime'' for ''90 days each and one subsequent period of 30 days during the individual's lifetime''.

Subsec. (d)(2)(B). Pub. L. 101–508, § 4006(a)(2)(B), substituted ''a 90- or 30-day period or a subsequent extension period'' for ''a 90- or 30-day period''.

1989—Subsec. (a). Pub. L. 101–234 repealed Pub. L. 100–360, § 101(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1). Pub. L. 101–239 inserted ''and inpatient rural primary care hospital services'' before semicolon at end.

Subsecs. (b) to (d)(1), (2)(B), (e) to (g). Pub. L. 101–234 repealed Pub. L. 100–360, § 101(2)–(6), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (a). Pub. L. 100–360, § 101(1), struck out former pars. (1) to (4) and added new pars. (1) to (4) which read as follows:

''(1) inpatient hospital services;

''(2) extended care services for up to 150 days during any calendar year;

''(3) home health services; and

''(4) in lieu of certain other benefits, hospice care with respect to the individual during up to two periods of 90 days each, a subsequent period of 30 days, and a subsequent extension period with respect to which the individual makes an election under subsection (d)(1) of this section.''

Subsec. (b). Pub. L. 100–360, § 101(2), amended subsec. (b) generally, striking out par. (1) and renumbering and amending pars. (2) and (3) as (1) and (2), respectively.

Subsec. (c). Pub. L. 100–360, § 101(3), amended subsec. (c) generally, substituting pars. (1) to (4) limiting periods for inpatients of psychiatric hospitals for former single paragraph.

Subsec. (d)(1). Pub. L. 100–360, § 101(4)(A), substituted '', a subsequent period of 30 days, and a subsequent extension period'' for ''and one subsequent period of 30 days''.

Subsec. (d)(2)(B). Pub. L. 100–360, § 101(4)(B), inserted ''or a subsequent extension period'' after ''30-day period'' in introductory provisions.

Subsec. (e). Pub. L. 100–360, § 101(5), struck out ''post-hospital'' before ''extended care services''.

Subsec. (f). Pub. L. 100–360, §101(6), struck out subsec. (f) which provided coverage of extended care services without regard to three-day prior hospitalization requirement.

Subsec. (g). Pub. L. 100–360, §101(6), struck out subsec. (g) which cross-referenced section 1395x of this title for definitions of ''spell of illness'' and other terms used in this part.

1983—Subsec. (d)(2)(A). Pub. L. 97–448 substituted ''or to services'' for ''or to other than services'' after ''(if not an employee of the hospice program)''.

1982—Subsec. (a)(2). Pub. L. 97–248, §123(a), redesignated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(4). Pub. L. 97–248, §122(b)(1), added par. (4).

Subsec. (d). Pub. L. 97–248, §122(b)(2), added subsec. (d).

Subsecs. (f), (g). Pub. L. 97–248, §123(b), added subsec. (f) and redesignated former subsec. (f) as (g).

1981—Subsec. (a). Pub. L. 97–35 struck out par. (4) which related to alcohol detoxification facility services.

1980—Subsec. (a)(3). Pub. L. 96–499, §930(b), substituted ''home health services'' for ''post-hospital home health services for up to 100 visits (during the one-year period described in section 1395x(n) of this title) after the beginning of one spell of illness and before the beginning of the next''.

Subsec. (a)(4). Pub. L. 96–499, §931(a), added par. (4).

Subsec. (d). Pub. L. 96–499, §930(c), struck out subsec. (d) which authorized payment for post-hospital home health services furnished an individual only during the one year period described in section 1395x(n) of this title following his most recent hospital discharge which met the requirements of such section and only for the first 100 visits in such period.

Subsec. (e). Pub. L. 96–499, §930(d), substituted ''subsections (b) and (c)'' for ''subsections (b), (c), and (d)'' and ''and post-hospital extended care services'' for ''post-hospital extended care services, and post-hospital home health services''.

1968—Subsec. (a). Pub. L. 90–248, §143(b), inserted ''or, in the case of payments referred to in section 1395f(d)(2) of this title to him'' after ''on his behalf'' in text preceding par. (1).

Subsec. (a)(1). Pub. L. 90–248, §137(a)(1), increased the maximum duration of benefits from 90 to 150 days minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies that he does not desire to have such payment made).

Subsec. (a)(4). Pub. L. 90–248, §129(c)(2), struck out par. (4) which provided for payment for outpatient hospital diagnostic services.

Subsec. (b)(1). Pub. L. 90–248, §137(a)(2), changed the limitation on payments from 90 to 150 days minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies that he does not desire to have such payment made).

Subsec. (c). Pub. L. 90–248, §138(a), increased the limit from 90 to 150 days so that if an individual was an inpatient of a psychiatric or tuberculosis hospital on the first day of the first month for which he is entitled to benefits, the days he was an inpatient in the 150-day period immediately before such first day are included in determining the limit under subsec. (b)(1) insofar as such limit applies to (1) inpatient psychiatric hospital services and inpatient tuberculosis hospital services, or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness or tuberculosis (but are not included in determining such limit as it applies to other inpatient hospital services or in determining the 190-day limit under subsec. (b)(3)).

Pub. L. 90–248, §146(a), provided that the limitation of allowable days of inpatient hospital services will not apply to services provided to an inpatient of a tuberculosis hospital.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title V, §512(d), Dec. 8, 2003, 117 Stat. 2300, provided that: ''The amendments made by this section [amending this section and sections 1395f and 1395x of this title] shall apply to services provided by a hospice program on or after January 1, 2005.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(6) [title III, §321(m)], Nov. 29, 1999, 113 Stat. 1536, 1501A–368, provided that: ''Except as otherwise provided, the amendments made by this section [amending this section and sections 1395i, 1395i–4, 1395*l*, 1395m, 1395u, 1395w–3, 1395w–4, 1395w–21, 1395w–22, 1395w–24, 1395x, 1395y, 1395cc, 1395ss, 1395ww, 1395yy, and 1395fff of this title, repealing section 1320b–5 of this title, and amending provisions set out as notes under sections 1395f and 1395ww of this title] shall take effect as if included in the enactment of BBA [Balanced Budget Act of 1997, Pub. L. 105–33].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4449 of title IV of Pub. L. 105–33 provided that: ''Except as otherwise provided in this chapter [chapter 4 (§§4441–4449) of subtitle E of title IV of Pub. L. 105–33, amending this section and sections 1395f, 1395x, and 1395pp of this title and enacting provisions set out as notes under section 1395f and 1395x of this title], the amendments made by this chapter apply to benefits provided on or after the date of the enactment of this chapter [Aug. 5, 1997], regardless of whether or not an individual has made an election under section 1812(d) of the Social Security Act (42 U.S.C. 1395d(d)) before such date.''

Section 4611(f) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395u, 1395x, and 1395ff of this title] apply to services furnished on or after January 1, 1998. For purpose of applying such amendments, any home health spell of illness that began, but not [sic] did not end, before such date shall be considered to have begun as of such date.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 102(i) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and sections 1395e, 1395f, 1395i–4, 1395m, 1395x, and 1395ww of this title] shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4006(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1395f of this title] shall apply with respect to care and services furnished on or after January 1, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 104(a) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, §608(d)(3)(A), Oct. 13, 1988, 102 Stat. 2413, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), the amendments made by this subtitle [subtitle A (§§101–104) of title I of Pub. L. 100–360, amending this section and sections 1395c, 1395e, 1395f, 1395i–2, 1395k, 1395x, 1395cc, and 1395tt of this title] shall take effect on January 1, 1989, and shall apply—

''(A) to the inpatient hospital deductible for 1989 and succeeding years,

''(B) to care and services furnished on or after January 1, 1989,

''(C) to premiums for January 1989 and succeeding months, and

''(D) to blood or blood cells furnished on or after January 1, 1989.

''(2) ELIMINATION OF POST-HOSPITAL REQUIREMENT FOR EXTENDED CARE SERVICES.—The amendments made by this subtitle, insofar as they eliminate the requirement (under section 1812(a)(2) of the Social Security Act [subsec. (a)(2) of this section]) that extended care services are only covered under title XVIII of such Act [this subchapter] if they are post-hospital extended care services, shall only apply to extended care services furnished pursuant to an admission to a skilled nursing facility occurring on or after January 1, 1989.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(b) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2121(i) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 1320c–3, 1320c–4, 1320c–7, 1395f, and 1395x of this title] (other than by subsection (h) [repealing provisions set out as a note under section 1395*ll* of this title]) shall apply to services furnished in detoxification facilities for inpatient stays beginning on or after the tenth day after the date of the enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 930(b)–(d) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 931(e) of Pub. L. 96–499 provided that: ''The amendments made by subsections (a) through (d) of this section [amending this section and sections 1395f and 1395x of this title] shall become effective on April 1, 1981.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 129(d) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and sections 426, 1395e, 1395f, 1395k, 1395*l*, 1395n, 1395x, and 1395cc of this title and section 228s–2 of Title 45, Railroads] shall apply with respect to services furnished after March 31, 1968, except that subsection (c)(5) of such section [amending section 1395f of this title] shall become effective with respect to services furnished after the date of enactment of this Act [Jan. 2, 1968].''

Section 137(c) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395e of this title] shall apply with respect to services furnished after December 31, 1967.''

Section 138(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to payment for services furnished after December 31, 1967.''

Section 143(d) of Pub. L. 90–248 provided that: ''The provisions made by subsection (a) of this section [amending section 1395x of this title] shall become effective as of July 1, 1966, and the provisions made by subsections (b) and (c) of this section [amending this section and section 1395f of this title] shall apply to services furnished with respect to admissions occurring after December 31, 1967, and to outpatient hospital diagnostic services furnished after December 31, 1967, and before April 1, 1968.''

Section 146(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to payment for services furnished after December 31, 1967.''

RURAL HOSPICE DEMONSTRATION PROJECT

Pub. L. 108–173, title IV, § 409, Dec. 8, 2003, 117 Stat. 2271, provided that:

''(a) IN GENERAL.—The Secretary [of Health and Human Services] shall conduct a demonstration project for the delivery of hospice care to medicare beneficiaries in rural areas. Under the project medicare beneficiaries who are unable to receive hospice care in the facility for lack of an appropriate caregiver are provided such care in a facility of 20 or fewer beds which offers, within its walls, the full range of services provided by hospice programs under section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)).

''(b) SCOPE OF PROJECT.—The Secretary shall conduct the project under this section with respect to no more than 3 hospice programs over a period of not longer than 5 years each.

''(c) COMPLIANCE WITH CONDITIONS.—Under the demonstration project—

''(1) the hospice program shall comply with otherwise applicable requirements, except that it shall not be required to offer services outside of the home or to meet the requirements of section 1861(dd)(2)(A)(iii) of the Social Security Act [section 1395x(dd)(2)(A)(iii) of this title]; and

''(2) payments for hospice care shall be made at the rates otherwise applicable to such care under title XVIII of such Act [this subchapter].

The Secretary may require the program to comply with such additional quality assurance standards for its provision of services in its facility as the Secretary deems appropriate.

''(d) REPORT.—Upon completion of the project, the Secretary shall submit a report to Congress on the project and shall include in the report recommendations regarding extension of such project to hospice programs serving rural areas.''

OIG REPORT ON NOTICES RELATING TO USE OF HOSPITAL LIFETIME RESERVE DAYS

Pub. L. 108–173, title IX, § 953(d), Dec. 8, 2003, 117 Stat. 2428, provided that: ''Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Inspector General of the Department of Health and Human Services shall submit a report to Congress on—

''(1) the extent to which hospitals provide notice to medicare beneficiaries in accordance with applicable requirements before they use the 60 lifetime reserve days described in section 1812(a)(1) of the Social Security Act (42 U.S.C. 1395d(a)(1)); and

''(2) the appropriateness and feasibility of hospitals providing a notice to such beneficiaries before they completely exhaust such lifetime reserve days.''

MEDPAC REPORT ON ACCESS TO, AND USE OF, HOSPICE BENEFIT

Pub. L. 106–554, § 1(a)(6) [title III, § 323], Dec. 21, 2000, 114 Stat. 2763, 2763A–501, provided that:

''(a) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study to examine the factors affecting the use of hospice benefits under the medicare program under title XVIII of the Social Security Act [this subchapter], including a delay in the time (relative to death) of entry into a hospice program, and differences in such use between urban and rural hospice programs and based upon the presenting condition of the patient.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Com-

mission shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation that the Commission deems appropriate.''

TRANSITION

Section 4611(e) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—Notwithstanding any provision of title XVIII of the Social Security Act [this subchapter], the Secretary of Health and Human Services shall establish a transition for the aggregate amount of expenditures that are transferred from part A, to part B, of title XVIII of the Social Security Act [this part and part B of this subchapter], as a result of the amendments made by this section [amending this section and sections 1395u, 1395x, and 1395ff of this title], during each of the years during the period beginning with 1998 and ending with 2002 according to this subsection. Under the transition for each such year, the Secretary shall effect such transfer, between the trust funds under such parts, as will result in only the proportion (specified in paragraph (2)) of such aggregate expenditures for the year being transferred from such part A to such part B.

''(2) PROPORTION SPECIFIED.—The proportion specified in this paragraph for—

''(A) 1998 is 1/6,

''(B) 1999 is 1/3,

''(C) 2000 is 1/2,

''(D) 2001 is 2/3, and

''(E) 2002 is 5/6.

''(3) APPLICATION IN ESTABLISHING MONTHLY PREMIUMS FOR 1998 THROUGH 2003.—

''(A) IN GENERAL.—For purposes only of computing the monthly premium under section 1839 of the Social Security Act (42 U.S.C. 1395r), the monthly actuarial rate for enrollees age 65 and over shall be computed as though any reference in paragraph (1) of this subsection to 2002 were a reference to 2003 and as if the following proportions were substituted for the proportions specified in paragraph (2):

''(i) For 1998, 1/7.

''(ii) For 1999, 2/7.

''(iii) For 2000, 3/7.

''(iv) For 2001, 4/7.

''(v) For 2002, 5/7.

''(vi) For 2003, 6/7.

''(B) NO IMPACT ON GOVERNMENT CONTRIBUTION.—Subparagraph (A) does not apply in determining the amount of the Government contribution under section 1844 of the Social Security Act (42 U.S.C. 1395w).''

REPEAL OF 1988 EXPANSION OF MEDICARE PART A BENEFITS

For provisions repealing amendment by section 101 of Pub. L. 100–360, restoring or reviving this section as if section 101 of Pub. L. 100–360 had not been enacted, and providing a transition period for medicare beneficiaries with respect to inpatient hospital services and extended care services provided on or after Jan. 1, 1990, and providing an exception to such restoration for certain hospice care, see section 101(a)–(b)(2) of Pub. L. 101–234, set out as a note under section 1395e of this title.

§ 1395e. Deductibles and coinsurance

(a) Inpatient hospital services; outpatient hospital diagnostic services; blood; post-hospital extended care services

(1) The amount payable for inpatient hospital services or inpatient critical access hospital services furnished an individual during any spell of illness shall be reduced by a deduction equal to the inpatient hospital deductible or, if less, the charges imposed with respect to such individual for such services, except that, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed. Such amount shall be further reduced by a coinsurance amount equal to—

(A) one-fourth of the inpatient hospital deductible for each day (before the 91st day) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 60 days during such spell; and

(B) one-half of the inpatient hospital deductible for each day (before the day following the last day for which such individual is entitled under section 1395d(a)(1) of this title to have payment made on his behalf for inpatient hospital services or inpatient critical access hospital services during such spell of illness) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 90 days during such spell;

except that the reduction under this sentence for any day shall not exceed the charges imposed for that day with respect to such individual for such services (and for this purpose, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed).

(2)(A) The amount payable to any provider of services under this part for services furnished an individual shall be further reduced by a deduction equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during each calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence.

(B) The deductible under subparagraph (A) for blood or blood cells furnished an individual in a year shall be reduced to the extent that a deductible has been imposed under section 1395*l*(b) of this title to blood or blood cells furnished the individual in the year.

(3) The amount payable for post-hospital extended care services furnished an individual during any spell of illness shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day (before the 101st day) on which he is furnished such services after such services have been furnished to him for 20 days during such spell.

(4)(A) The amount payable for hospice care shall be reduced—

(i) in the case of drugs and biologicals provided on an outpatient basis by (or under arrangements made by) the hospice program, by

a coinsurance amount equal to an amount (not to exceed $5 per prescription) determined in accordance with a drug copayment schedule (established by the hospice program) which is related to, and approximates 5 percent of, the cost of the drug or biological to the program, and

(ii) in the case of respite care provided by (or under arrangements made by) the hospice program, by a coinsurance amount equal to 5 percent of the amount estimated by the hospice program (in accordance with regulations of the Secretary) to be equal to the amount of payment under section 1395f(i) of this title to that program for respite care;

except that the total of the coinsurance required under clause (ii) for an individual may not exceed for a hospice coinsurance period the inpatient hospital deductible applicable for the year in which the period began. For purposes of this subparagraph, the term ''hospice coinsurance period'' means, for an individual, a period of consecutive days beginning with the first day for which an election under section 1395d(d) of this title is in effect for the individual and ending with the close of the first period of 14 consecutive days on each of which such an election is not in effect for the individual.

(B) During the period of an election by an individual under section 1395d(d)(1) of this title, no copayments or deductibles other than those under subparagraph (A) shall apply with respect to services furnished to such individual which constitute hospice care, regardless of the setting in which such services are furnished.

(b) Inpatient hospital deductible; application

(1) The inpatient hospital deductible for 1987 shall be $520. The inpatient hospital deductible for any succeeding year shall be an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by the Secretary's best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1395ww(b)(3)(B) of this title) which are applied under section 1395ww(d)(3)(A) of this title for discharges in the fiscal year that begins on October 1 of such preceding calendar year, and adjusted to reflect changes in real case mix (determined on the basis of the most recent case mix data available). Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, to the next higher multiple of $4).

(2) The Secretary shall promulgate the inpatient hospital deductible and all coinsurance amounts under this section between September 1 and September 15 of the year preceding the year to which they will apply.

(3) The inpatient hospital deductible for a year shall apply to—

(A) the deduction under the first sentence of subsection (a)(1) of this section for the year in which the first day of inpatient hospital services or inpatient critical access hospital services occurs in a spell of illness, and

(B) to the coinsurance amounts under subsection (a) of this section for inpatient hospital services, inpatient critical access hospital services and post-hospital extended care services furnished in that year.

(Aug. 14, 1935, ch. 531, title XVIII, § 1813, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 292; amended Pub. L. 90–248, title I, §§ 129(c)(3), (4), 135(a), 137(b), Jan. 2, 1968, 81 Stat. 847, 848, 852, 854; Pub. L. 97–35, title XXI, §§ 2131(a), 2132(a), Aug. 13, 1981, 95 Stat. 797; Pub. L. 97–248, title I, § 122(e), Sept. 3, 1982, 96 Stat. 361; Pub. L. 99–272, title IX, § 9125(a), Apr. 7, 1986, 100 Stat. 168; Pub. L. 99–509, title IX, § 9301(a), Oct. 21, 1986, 100 Stat. 1981; Pub. L. 100–203, title IV, § 4002(f)(3), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(b)(1)(H)(ii), July 1, 1988, 102 Stat. 769; Pub. L. 100–360, title I, § 102, July 1, 1988, 102 Stat. 685; Pub. L. 101–234, title I, § 101(a), Dec. 13, 1989, 103 Stat. 1979; Pub. L. 103–432, title I, § 102(g)(2), (3), Oct. 31, 1994, 108 Stat. 4404; Pub. L. 105–33, title IV, § 4201(c)(1), Aug. 5, 1997, 111 Stat. 373.)

AMENDMENTS

1997—Pub. L. 105–33 substituted ''critical access'' for ''rural primary care'' wherever appearing.

1994—Subsec. (a)(1). Pub. L. 103–432, § 102(g)(2), substituted ''inpatient hospital services or inpatient rural primary care hospital services'' for ''inpatient hospital services'' in introductory provisions and in subpar. (B).

Subsec. (b)(3)(A). Pub. L. 103–432, § 102(g)(2), substituted ''inpatient hospital services or inpatient rural primary care hospital services'' for ''inpatient hospital services''.

Subsec. (b)(3)(B). Pub. L. 103–432, § 102(g)(3), substituted ''inpatient hospital services, inpatient rural primary care hospital services'' for ''inpatient hospital services''.

1989—Subsecs. (a)(1) to (3), (b)(3). Pub. L. 101–234 repealed Pub. L. 100–360, § 102, subject to an exception for blood deduction, and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (a)(1) to (3). Pub. L. 100–360, § 102(1), amended pars. (1) to (3) generally, revising and reorganizing former pars. (1)(A), (B), (2), and (3), as par. (1), consisting of subpars. (A) to (D), and pars. (2) and (3), each consisting of subpars. (A) and (B).

Subsec. (b)(1). Pub. L. 100–360, § 411(b)(1)(H)(ii), added Pub. L. 100–203, § 4002(f)(3), see 1987 Amendment note below.

Subsec. (b)(3). Pub. L. 100–360, § 102(2), struck out par. (3) which related to application of deductible.

1987—Subsec. (b)(1). Pub. L. 100–203, § 4002(f)(3), as added by Pub. L. 100–360, § 411(b)(1)(H)(ii), substituted ''Secretary's best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1395ww(b)(3)(B) of this title) which are applied'' for ''applicable percentage increase (as defined in section 1395ww(b)(3)(B) of this title) which is applied''.

1986—Subsec. (b). Pub. L. 99–509 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) The inpatient hospital deductible which shall be applicable for the purposes of subsection (a) of this section shall be $40 in the case of any spell of illness beginning before 1969.

''(2) The Secretary shall, between July 1 and September 15 of 1968, and of each year thereafter, determine and promulgate the inpatient hospital deductible which shall be applicable for the purposes of subsection (a) of this section in the case of any inpatient hospital services or post-hospital extended care services furnished during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $45 multiplied by the ratio of (A) the current average per diem rate for inpatient hospital services for the calendar

year preceding the promulgation, to (B) the current average per diem rate for such services for 1966. Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiplies of $4, to the next higher multiple of $4). The current average per diem rate for any year shall be determined by the Secretary on the basis of the best information available to him (at the time the determination is made) as to the amounts paid under this part on account of inpatient hospital services furnished during such year, by hospitals which have agreements in effect under section 1395cc of this title, to individuals who are entitled to hospital insurance benefits under section 426 of this title, plus the amount which would have been so paid but for subsection (a)(1) of this section.''

Subsec. (b)(2). Pub. L. 99–272 substituted ''September 15'' for ''October 1''.

1982—Subsec. (a)(4). Pub. L. 97–248 added par. (4).

1981—Subsec. (b)(2). Pub. L. 97–35 substituted ''any inpatient hospital services or post-hospital extended care services furnished during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $45'' for ''any spell of illness beginning during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $40''.

1968—Subsec. (a)(1). Pub. L. 90–248, §137(b), designated existing provisions as subpar. (A) and added subpar. (B) and the exception provision that the reduction for any day shall not exceed the charges for that day.

Subsec. (a)(2). Pub. L. 90–248, §135(a), made the three pint deductible applicable also to equivalent quantities of packed red blood cells, as defined by the Secretary under regulations.

Subsec. (a)(2) to (4). Pub. L. 90–248, §129(c)(3), struck out par. (2) which provided for reduction of amount payable for outpatient hospital diagnostic services furnished an individual during a diagnostic study, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (b)(1), (2). Pub. L. 90–248, §129(c)(4)(A), (B), struck out diagnostic studies from application of inpatient hospital deductible.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 102 of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Section 411(b)(1)(H)(iii) of Pub. L. 100–360 provided that: ''The amendment made by clause (ii) [amending Pub. L. 100–203] shall apply to the inpatient hospital deductible for years beginning with 1989.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9301(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to inpatient hospital services and post-hospital extended care services furnished on or after January 1, 1987, and to the monthly premium (under part A of title XVIII of the Social Security Act [this part]) for months beginning with January 1987.''

Section 9125(b) of Pub. L. 99–272 provided that: ''The amendment made by this section [amending this section] shall apply to calendar years after 1985.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2131(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] is effective for inpatient hospital services or post-hospital extended care services furnished on or after January 1, 1982.''

Section 2132(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to inpatient hospital services and post-hospital extended care services furnished in calendar years beginning with calendar year 1982.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 129(c)(3), (4) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 135(d) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and sections 1395*l* and 1395cc of this title] shall apply with respect to payment for blood (or packed red blood cells) furnished an individual after December 31, 1967.''

Amendment by section 137(b) of Pub. L. 90–248 applicable with respect to services furnished after Dec. 31, 1967, see section 137(c) of Pub. L. 90–248, set out as a note under section 1395d of this title.

REPEAL OF 1988 EXPANSION OF MEDICARE PART A BENEFITS

Section 101(a)–(b)(2) of Pub. L. 101–234, as amended by Pub. L. 101–508, title IV, §4008(m)(1), Nov. 5, 1990, 104 Stat. 1388–53, provided that:

''(a) IN GENERAL.—

''(1) GENERAL RULE.—Except as provided in paragraph (2), sections 101, 102, and 104(d) (other than paragraph (7)) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–360) [amending this section and sections 1395c, 1395d, 1395f, 1395k, 1395x, 1395cc, and 1395tt of this title] (in this Act referred to as 'MCCA') are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such section had not been enacted.

''(2) EXCEPTION FOR BLOOD DEDUCTION.—The repeal of section 102(1) of MCCA [amending this section] (relating to deductibles and coinsurance under part A) shall not apply, but only insofar as such section amended paragraph (2) of section 1813(a) of the Social Security Act [subsec. (a)(2) of this section] (relating to a deduction for blood).

''(b) TRANSITION PROVISIONS FOR MEDICARE BENEFICIARIES.—

''(1) INPATIENT HOSPITAL SERVICES AND POST-HOSPITAL EXTENDED CARE SERVICES.—In applying sections 1812 and 1813 of the Social Security Act [section 1395d of this title and this section], as restored by subsection (a)(1), with respect to inpatient hospital services and extended care services provided on or after January 1, 1990—

''(A) no day before January 1, 1990, shall be counted in determining the beginning (or period) of a spell of illness;

''(B) with respect to the limitation (other than the limitation under section 1812(c) of such Act [section 1395d(c) of this title]) on such services provided in a spell of illness, days of such services before January 1, 1990, shall not be counted, except that days of inpatient hospital services before January 1, 1989, which were applied with respect to an individual after receiving 90 days of services in a spell of illness (commonly known as 'lifetime reserve days') shall be counted;

''(C) the limitation of coverage of extended care services to post-hospital extended care services

shall not apply to an individual receiving such services from a skilled nursing facility during a continuous period beginning before (and including) January 1, 1990, until the end of the period of 30 consecutive days in which the individual is not provided inpatient hospital services or extended care services; and

''(D) the inpatient hospital deductible under section 1813(a)(1) of such Act [subsec. (a)(1) of this section] shall not apply—

''(i) in the case of an individual who is receiving inpatient hospital services during a continuous period beginning before (and including) January 1, 1990, with respect to the spell of illness beginning on such date, if such a deductible was imposed on the individual for a period of hospitalization during 1989;

''(ii) for a spell of illness beginning during January 1990, if such a deductible was imposed on the individual for a period of hospitalization that began in December 1989; and

''(iii) in the case of a spell of illness of an individual that began before January 1, 1990.

''(2) HOSPICE CARE.—The restoration of section 1812(a)(4) of the Social Security Act [section 1395d(a)(4) of this title], effected by subsection (a)(1), shall not apply to hospice care provided during the subsequent period (described in such section as in effect on December 31, 1989) with respect to which an election has been made before January 1, 1990.''

[Section 4008(m)(1) of Pub. L. 101–508 provided that amendment by that section to section 101(b)(1)(B) of Pub. L. 101–234, set out above, is effective as if included in enactment of Medicare Catastrophic Coverage Repeal Act of 1989, Pub. L. 101–234.]

HOLD HARMLESS PROVISIONS; APPLICATION OF SUBSECTION (a)(1) AND (2)

Section 104(b) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(3)(B), Oct. 13, 1988, 102 Stat. 2413; Pub. L. 101–234, title I, § 101(b)(3), Dec. 13, 1989, 103 Stat. 1980, provided that: ''In the case of an individual for whom a spell of illness (as defined in section 1861(a) of the Social Security Act [section 1395x(a) of this title], as in effect on December 31, 1988) began before January 1, 1989, and had not yet ended as of such date—

''(1)(A) section 1813(a)(1) of such Act [subsec. (a)(1) of this section] (as amended by this subtitle [subtitle A (§§ 101–104) of title I of Pub. L. 100–360]) shall not apply to services furnished during that spell of illness during 1989, and

''(B) if that individual begins a period of hospitalization (as defined in such section) during 1989 after the end of that spell of illness, the first period of hospitalization during 1989 that begins after that spell of illness shall be considered to be (for purposes of such section) the first period of hospitalization that begins during that year; and

''(2) the amount of any deductible under section 1813(a)(2) of such Act (as amended by this subtitle) shall be reduced during that spell of illness during 1989 to the extent the deductible under such section was applied during the spell of illness.''

PROMULGATION OF NEW DEDUCTIBLE

Section 9301(c) of Pub. L. 99–509 directed Secretary of Health and Human Services to provide, within 30 days after Oct. 21, 1986, for publication of inpatient hospital deductible, coinsurance amounts for inpatient hospital services and post-hospital extended care services, and monthly part A premiums for 1987, as modified under the amendment of this section made by subsection (a).

§ 1395f. Conditions of and limitations on payment for services

(a) Requirement of requests and certifications

Except as provided in subsections (d) and (g) of this section and in section 1395mm of this title, payment for services furnished an individual may be made only to providers of services which are eligible therefor under section 1395cc of this title and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services furnished in the last 3 calendar months of any calendar year to have been furnished in the succeeding calendar year) except that where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year;

(2) a physician, or, in the case of services described in subparagraph (B), a physician, or a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility but is working in collaboration with a physician, certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations, except that the first of such recertifications shall be required in each case of inpatient hospital services not later than the 20th day of such period) that—

(A) in the case of inpatient psychiatric hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the psychiatric treatment of an individual; and (i) such treatment can or could reasonably be expected to improve the condition for which such treatment is or was necessary or (ii) inpatient diagnostic study is or was medically required and such services are or were necessary for such purposes;

(B) in the case of post-hospital extended care services, such services are or were required to be given because the individual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1395x(e) of this title) prior to transfer to the skilled nursing facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services;

(C) in the case of home health services, such services are or were required because the individual is or was confined to his home (except when receiving items and services

referred to in section 1395x(m)(7) of this title) and needs or needed skilled nursing care (other than solely venipuncture for the purpose of obtaining a blood sample) on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; and such services are or were furnished while the individual was under the care of a physician; or

(D) in the case of inpatient hospital services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;

(3) with respect to inpatient hospital services (other than inpatient psychiatric hospital services) which are furnished over a period of time, a physician certifies that such services are required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is medically required and such services are necessary for such purpose, except that (A) such certification shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided by regulations, and (B) the first such certification required in accordance with clause (A) shall be furnished no later than the 20th day of such period;

(4) in the case of inpatient psychiatric hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving (A) intensive treatment services, (B) admission and related services necessary for a diagnostic study, or (C) equivalent services;

(5) with respect to inpatient hospital services furnished such individual after the 20th day of a continuous period of such services, there was not in effect, at the time of admission of such individual to the hospital, a decision under section 1395cc(d) of this title (based on a finding that utilization review of long-stay cases is not being made in such hospital);

(6) with respect to inpatient hospital services or post-hospital extended care services furnished such individual during a continuous period, a finding has not been made (by the physician members of the committee or group, as described in section 1395x(k)(4) of this title, including any finding made in the course of a sample or other review of admissions to the institution) pursuant to the system of utilization review that further inpatient hospital services or further post-hospital extended care services, as the case may be, are not medically necessary; except that, if such a finding has been made, payment may be made for such services furnished before the 4th day after the day on which the hospital or skilled nursing facility, as the case may be, received notice of such finding;

(7) in the case of hospice care provided an individual—

(A)(i) in the first 90-day period—

(I) the individual's attending physician (as defined in section 1395x(dd)(3)(B) of this title) (which for purposes of this subparagraph does not include a nurse practitioner), and

(II) the medical director (or physician member of the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program providing (or arranging for) the care,

each certify in writing at the beginning of the period, that the individual is terminally ill (as defined in section 1395x(dd)(3)(A) of this title) based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness, and

(ii) in a subsequent 90- or 60-day period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill based on such clinical judgment;

(B) a written plan for providing hospice care with respect to such individual has been established (before such care is provided by, or under arrangements made by, that hospice program) and is periodically reviewed by the individual's attending physician and by the medical director (and the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program; and

(C) such care is being or was provided pursuant to such plan of care; and

(8) in the case of inpatient critical access hospital services, a physician certifies that the individual may reasonably be expected to be discharged or transferred to a hospital within 96 hours after admission to the critical access hospital.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician, nurse practitioner, or clinical nurse specialist (as the case may be) makes certification of the kind provided in subparagraph (A), (B), (C), or (D) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan, except that such

prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary). For purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency. For purposes of paragraph (2)(C), an individual shall be considered to be ''confined to his home'' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered ''confined to his home'', the condition of the individual should be such that there exists a normal inability to leave home and that leaving home requires a considerable and taxing effort by the individual. Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State, or accredited, to furnish adult day-care services in the State shall not disqualify an individual from being considered to be ''confined to his home''. Any other absence of an individual from the home shall not so disqualify an individual if the absence is of infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration.

(b) Amount paid to provider of services

The amount paid to any provider of services (other than a hospice program providing hospice care, other than a critical access hospital providing inpatient critical access hospital services, and other than a home health agency with respect to durable medical equipment) with respect to services for which payment may be made under this part shall, subject to the provisions of sections 1395e, 1395ww, and 1395fff of this title, be—

(1) except as provided in paragraph (3), the lesser of (A) the reasonable cost of such services, as determined under section 1395x(v) of this title and as further limited by section 1395rr(b)(2)(B) of this title, or (B) the customary charges with respect to such services;

(2) if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph), free of charge or at nominal charges to the public, the amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such reasonable cost which the Secretary finds will provide fair compensation to such provider for such services; or

(3) if some or all of the hospitals in a State have been reimbursed for services (for which payment may be made under this part) pursuant to a reimbursement system approved as a demonstration project under section 402 of the Social Security Amendments of 1967 or section 222 of the Social Security Amendments of 1972, if the rate of increase in such hospitals in their costs per hospital inpatient admission of individuals entitled to benefits under this part over the duration of such project was equal to or less than such rate of increase for admissions of such individuals with respect to all hospitals in the United States during such period, and if either the State has legislative authority to operate such system and the State elects to have reimbursement to such hospitals made in accordance with this paragraph or the system is operated through a voluntary agreement of hospitals and such hospitals elect to have reimbursement to those hospitals made in accordance with this paragraph, then the Secretary may provide for continuation of reimbursement to such hospitals under such system until the Secretary determines that—

(A) a third-party payor reimburses such a hospital on a basis other than under such system, or

(B) the aggregate rate of increase from January 1, 1981, to the most recent date for which annual data are available in such hospitals in costs per hospital inpatient admission of individuals entitled to benefits under this part is greater than such rate of increase for admissions of such individuals with respect to all hospitals in the United States for such period.

In the case of any State which has had such a demonstration project reimbursement system in continuous operation since July 1, 1977, the Secretary shall provide under paragraph (3) for continuation of reimbursement to hospitals in the State under such system until the first day of the 37th month beginning after the date the Secretary determines and notifies the Governor of the State that either of the conditions described in subparagraph (A) or (B) of such paragraph has occurred. If, by the end of such 36-month period, the Secretary determines, based on evidence submitted by the Governor of the State, that neither of the conditions described in subparagraph (A) or (B) of paragraph (3) continues to apply, the Secretary shall continue without interruption payment to hospitals in the State under the State's system. If, by the end of such 36-month period, the Secretary determines, based on such evidence, that either of the conditions described in subparagraph (A) or (B) of such paragraph continues to apply, the Secretary shall (i) collect any net excess reimbursement to hospitals in the State during such 36-month period (basing such net excess reimbursement on the net difference, if any, in the rate of increase in costs per hospital inpatient admission under the State system compared to the rate of increase in such costs with respect to all hospitals in the United States over the 36-month period, as measured by including the cumulative savings under the State system based on the difference in the rate of increase in costs per hos-

pital inpatient admission under the State system as compared to the rate of increase in such costs with respect to all hospitals in the United States between January 1, 1981, and the date of the Secretary's initial notice), and (ii) provide a reasonable period, not to exceed 2 years, for transition from the State system to the national payment system.

(c) No payments to Federal providers of services

Subject to section 1395qq of this title, no payment may be made under this part (except under subsection (d) or subsection (h) of this section) to any Federal provider of services, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services for any item or service which such provider is obligated by a law of, or a contract with, the United States to render at public expense.

(d) Payments for emergency hospital services

(1) Payments shall also be made to any hospital for inpatient hospital services furnished in a calendar year, by the hospital or under arrangements (as defined in section 1395x(w) of this title) with it, to an individual entitled to hospital insurance benefits under section 426 of this title even though such hospital does not have an agreement in effect under this subchapter if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has elected to claim payments for all such inpatient emergency services and for the emergency outpatient services referred to in section 1395n(b) of this title furnished during such year. Such payments shall be made only in the amounts provided under subsection (b) of this section and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1395cc(a) of this title.

(2) Payment may be made on the basis of an itemized bill to an individual entitled to hospital insurance benefits under section 426 of this title for services described in paragraph (1) which are emergency services if (A) payment cannot be made under paragraph (1) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement.

(3) The amounts payable under the preceding paragraph with respect to services described therein shall, subject to the provisions of section 1395e of this title, be equal to 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the individual or in semiprivate accommodations (as defined in section 1395x(v)(4) of this title), whichever is less, plus 80 percent of the hospital's reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital's reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semiprivate accommodations. For purposes of the preceding provisions of this paragraph, the term ''routine services'' shall mean the regular room, dietary, and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made; the term ''ancillary services'' shall mean those special services for which charges are customarily made in addition to routine services.

(e) Payment for inpatient hospital services prior to notification of noneligibility

Notwithstanding that an individual is not entitled to have payment made under this part for inpatient hospital services furnished by any hospital, payment shall be made to such hospital (unless it elects not to receive such payment or, if payment has already been made by or on behalf of such individual, fails to refund such payment within the time specified by the Secretary) for such services which are furnished to the individual prior to notification to such hospital from the Secretary of his lack of entitlement, if such payments are precluded only by reason of section 1395d of this title and if such hospital complies with the requirements of and regulations under this subchapter with respect to such payments, has acted in good faith and without knowledge of such lack of entitlement, and has acted reasonably in assuming entitlement existed. Payment under the preceding sentence may not be made for services furnished an individual pursuant to any admission after the 6th elapsed day (not including as an elapsed day Saturday, Sunday, or a legal holiday) after the day on which such admission occurred.

(f) Payment for certain inpatient hospital services furnished outside United States

(1) Payment shall be made for inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 426 of this title by a hospital located outside the United States, or under arrangements (as defined in section 1395x(w) of this title) with it, if—

(A) such individual is a resident of the United States, and

(B) such hospital was closer to, or substantially more accessible from, the residence of such individual than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.

(2) Payment may also be made for emergency inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 426 of this title by a hospital located outside the United States if—

(A) such individual was physically present—

(i) in a place within the United States; or

(ii) at a place within Canada while traveling without unreasonable delay by the most direct route (as determined by the Secretary) between Alaska and another State;

at the time the emergency which necessitated such inpatient hospital services occurred, and

(B) such hospital was closer to, or substantially more accessible from, such place than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.

(3) Payment shall be made in the amount provided under subsection (b) of this section to any hospital for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual by the hospital or under arrangements (as defined in section 1395x(w) of this title) with it if (A) the Secretary would be required to make such payment if the hospital had an agreement in effect under this subchapter and otherwise met the conditions of payment hereunder, (B) such hospital elects to claim such payment, and (C) such hospital agrees to comply, with respect to such services, with the provisions of section 1395cc(a) of this title.

(4) Payment for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual entitled to hospital insurance benefits under section 426 of this title may be made on the basis of an itemized bill to such individual if (A) payment for such services cannot be made under paragraph (3) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and continuing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amount payable with respect to such services shall, subject to the provisions of section 1395e of this title, be equal to the amount which would be payable under subsection (d)(3) of this section.

(g) Payments to physicians for services rendered in teaching hospitals

For purposes of services for which the reasonable cost thereof is determined under section 1395x(v)(1)(D) of this title (or would be if section 1395ww of this title did not apply), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(1) such hospital has an agreement with the Secretary under section 1395cc of this title, and

(2) the Secretary has received written assurances that (A) such payment will be used by such fund solely for the improvement of care of hospital patients or for educational or charitable purposes and (B) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged, provision will be made for return of any moneys incorrectly collected).

(h) Payment for specified hospital services provided in Department of Veterans Affairs hospitals; amount of payment

(1) Payments shall also be made to any hospital operated by the Department of Veterans Affairs for inpatient hospital services furnished in a calendar year by the hospital, or under arrangements (as defined in section 1395x(w) of this title) with it, to an individual entitled to hospital benefits under section 426 of this title even though the hospital is a Federal provider of services if (A) the individual was not entitled to have the services furnished to him free of charge by the hospital, (B) the individual was admitted to the hospital in the reasonable belief on the part of the admitting authorities that the individual was a person who was entitled to have the services furnished to him free of charge, (C) the authorities of the hospital, in admitting the individual, and the individual, acted in good faith, and (D) the services were furnished during a period ending with the close of the day on which the authorities operating the hospital first became aware of the fact that the individual was not entitled to have the services furnished to him by the hospital free of charge, or (if later) ending with the first day on which it was medically feasible to remove the individual from the hospital by discharging him therefrom or transferring him to a hospital which has in effect an agreement under this subchapter.

(2) Payment for services described in paragraph (1) shall be in an amount equal to the charge imposed by the Secretary of Veterans Affairs for such services, or (if less) the amount that would be payable for such services under subsection (b) of this section and section 1395ww of this title (as estimated by the Secretary). Any such payment shall be made to the entity to which payment for the services involved would have been payable, if payment for such services had been made by the individual receiving the services involved (or by another private person acting on behalf of such individual).

(i) Payment for hospice care

(1)(A) Subject to the limitation under paragraph (2) and the provisions of section 1395e(a)(4) of this title and except as otherwise provided in this paragraph, the amount paid to a hospice program with respect to hospice care for which payment may be made under this part shall be an amount equal to the costs which are reasonable and related to the cost of providing hospice care or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations (including those authorized under section 1395x(v)(1)(A) of this title), except that no payment may be made for bereavement counseling and no reimbursement may be made for other counseling services (including nutritional and dietary counseling) as separate services.

(B) Notwithstanding subparagraph (A), for hospice care furnished on or after April 1, 1986, the daily rate of payment per day for routine home care shall be $63.17 and the daily rate of payment for other services included in hospice care shall be the daily rate of payment recognized under subparagraph (A) as of July 1, 1985, increased by $10.

(C)(i) With respect to routine home care and other services included in hospice care furnished on or after January 1, 1990, and on or before September 30, 1990, the payment rates for such care and services shall be 120 percent of such rates in effect as of September 30, 1989.

(ii) With respect to routine home care and other services included in hospice care furnished

during a subsequent fiscal year, the payment rates for such care and services shall be the payment rates in effect under this subparagraph during the previous fiscal year increased by—

(I) for a fiscal year ending on or before September 30, 1993, the market basket percentage increase (as defined in section 1395ww(b)(3)(B)(iii) of this title) for the fiscal year;

(II) for fiscal year 1994, the market basket percentage increase for the fiscal year minus 2.0 percentage points;

(III) for fiscal year 1995, the market basket percentage increase for the fiscal year minus 1.5 percentage points;

(IV) for fiscal year 1996, the market basket percentage increase for the fiscal year minus 1.5 percentage points;

(V) for fiscal year 1997, the market basket percentage increase for the fiscal year minus 0.5 percentage point;

(VI) for each of fiscal years 1998 through 2002, the market basket percentage increase for the fiscal year involved minus 1.0 percentage points, plus, in the case of fiscal year 2001, 5.0 percentage points; and

(VII) for a subsequent fiscal year, the market basket percentage increase for the fiscal year.

(2)(A) The amount of payment made under this part for hospice care provided by (or under arrangements made by) a hospice program for an accounting year may not exceed the ''cap amount'' for the year (computed under subparagraph (B)) multiplied by the number of medicare beneficiaries in the hospice program in that year (determined under subparagraph (C)).

(B) For purposes of subparagraph (A), the ''cap amount'' for a year is $6,500, increased or decreased, for accounting years that end after October 1, 1984, by the same percentage as the percentage increase or decrease, respectively, in the medical care expenditure category of the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, from March 1984 to the fifth month of the accounting year.

(C) For purposes of subparagraph (A), the ''number of medicare beneficiaries'' in a hospice program in an accounting year is equal to the number of individuals who have made an election under subsection (d) of this section with respect to the hospice program and have been provided hospice care by (or under arrangements made by) the hospice program under this part in the accounting year, such number reduced to reflect the proportion of hospice care that each such individual was provided in a previous or subsequent accounting year or under a plan of care established by another hospice program.

(D) A hospice program shall submit claims for payment for hospice care furnished in an individual's home under this subchapter only on the basis of the geographic location at which the service is furnished, as determined by the Secretary.

(3) Hospice programs providing hospice care for which payment is made under this subsection shall submit to the Secretary such data with respect to the costs for providing such care for each fiscal year, beginning with fiscal year 1999, as the Secretary determines necessary.

(4) The amount paid to a hospice program with respect to the services under section 1395d(a)(5) of this title for which payment may be made under this part shall be equal to an amount established for an office or other outpatient visit for evaluation and management associated with presenting problems of moderate severity and requiring medical decisionmaking of low complexity under the fee schedule established under section 1395w–4(b) of this title, other than the portion of such amount attributable to the practice expense component.

(5) In the case of hospice care provided by a hospice program under arrangements under section 1395x(dd)(5)(D) of this title made by another hospice program, the hospice program that made the arrangements shall bill and be paid for the hospice care.

(j) Elimination of lesser-of-cost-or-charges provision

(1) The lesser-of-cost-or-charges provisions (described in paragraph (2)) will not apply in the case of services provided by a class of provider of services if the Secretary determines and certifies to Congress that the failure of such provisions to apply to the services provided by that class of providers will not result in any increase in the amount of payments made for those services under this subchapter. Such change will take effect with respect to services furnished, or cost reporting periods of providers, on or after such date as the Secretary shall provide in the certification. Such change for a class of provider shall be discontinued if the Secretary determines and notifies Congress that such change has resulted in an increase in the amount of payments made under this subchapter for services provided by that class of provider.

(2) The lesser-of-cost-or-charges provisions referred to in paragraph (1) are as follows:

(A) Clause (B) of paragraph (1) and paragraph (2) of subsection (b) of this section.

(B) Section 1395m(a)(1)(B) of this title.

(C) So much of subparagraph (A) of section 1395*l*(a)(2) of this title as provides for payment other than of the reasonable cost of such services, as determined under section 1395x(v) of this title.

(D) Subclause (II) of clause (i) and clause (ii) of section 1395*l*(a)(2)(B) of this title.

(k) Payments to home health agencies for durable medical equipment

The amount paid to any home health agency with respect to durable medical equipment for which payment may be made under this part shall be the amount described in section 1395m(a)(1) of this title.

(*l*) Payment for inpatient critical access hospital services

(1) Except as provided in paragraph (2), the amount of payment under this part for inpatient critical access hospital services is equal to 101 percent of the reasonable costs of the critical access hospital in providing such services.

(2) In the case of a distinct part psychiatric or rehabilitation unit of a critical access hospital described in section 1395i–4(c)(2)(E) of this title, the amount of payment for inpatient critical access hospital services of such unit shall be equal

to the amount of the payment that would otherwise be made if such services were inpatient hospital services of a distinct part psychiatric or rehabilitation unit, respectively, described in the matter following clause (v) of section 1395ww(d)(1)(B) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1814, as added Pub. L. 89–87, title I, § 102(a), July 30, 1965, 79 Stat. 294; amended Pub. L. 90–248, title I, §§ 126(a), 129(c)(5), (6)(A), 143(c), Jan. 2, 1968, 81 Stat. 846, 848, 857; Pub. L. 92–603, title II, §§ 211(a), 226(c)(1), 227(b), 228(a), 233(a), 234(g)(1), 238(a), 247(a), 256(a), 278(a)(1)–(3), (b)(4), (17), 281(e), Oct. 30, 1972, 86 Stat. 1382, 1404, 1405, 1407, 1411, 1413, 1416, 1425, 1447, 1453, 1454, 1456; Pub. L. 93–233, § 18(k)(1), (2), Dec. 31, 1973, 87 Stat. 970; Pub. L. 94–437, title IV, § 401(a), Sept. 30, 1976, 90 Stat. 1408; Pub. L. 95–142, § 23(a), (b), Oct. 25, 1977, 91 Stat. 1208; Pub. L. 95–292, § 4(f), June 13, 1978, 92 Stat. 315; Pub. L. 96–499, title IX, §§ 903(a), 930(e), (f), 931(b), 936(b), 941(a), (b), Dec. 5, 1980, 94 Stat. 2614, 2631, 2633, 2640, 2641; Pub. L. 97–35, title XXI, §§ 2121(b), 2122(a)(1), Aug. 13, 1981, 95 Stat. 796; Pub. L. 97–248, title I, §§ 101(c)(1), 122(c)(1), (2), Sept. 3, 1982, 96 Stat. 335, 357, 358; Pub. L. 97–448, title III, § 309(b)(7), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–21, title VI, §§ 601(d), 602(b), (c), Apr. 20, 1983, 97 Stat. 152, 163; Pub. L. 98–90, Aug. 29, 1983, 97 Stat. 606; Pub. L. 98–369, div. B, title III, §§ 2308(b)(2)(A), 2321(a), (f), 2335(a), 2336(a), (b), 2354(b)(1), (c)(1)(A), July 18, 1984, 98 Stat. 1074, 1084, 1085, 1090, 1091, 1100, 1102; Pub. L. 98–617, §§ 1(a), 3(a)(3), (b)(1), Nov. 8, 1984, 98 Stat. 3294, 3295; Pub. L. 99–272, title IX, § 9123(b), Apr. 7, 1986, 100 Stat. 168; Pub. L. 100–203, title IV, §§ 4008(b)(1), 4024(a), 4062(d)(1), Dec. 22, 1987, 101 Stat. 1330–55, 1330–73, 1330–108; Pub. L. 100–360, title I, § 104(d)(2), July 1, 1988, 102 Stat. 688; Pub. L. 101–234, title I, § 101(a), Dec. 13, 1989, 103 Stat. 1979; Pub. L. 101–239, title VI, §§ 6003(g)(3)(B)(ii), (iii), 6005(a), (b), 6028, Dec. 19, 1989, 103 Stat. 2152, 2160, 2161, 2168; Pub. L. 101–508, title IV, §§ 4006(b), 4008(i)(3), (m)(3)(A), Nov. 5, 1990, 104 Stat. 1388–43, 1388–51, 1388–53; Pub. L. 102–54, § 13(q)(3)(A)(iii), (iv), (B)(iv), June 13, 1991, 105 Stat. 279; Pub. L. 103–66, title XIII, § 13504, Aug. 10, 1993, 107 Stat. 579; Pub. L. 103–432, title I, §§ 102(a)(3), (d), 106(b)(1)(A), 110(d)(1), Oct. 31, 1994, 108 Stat. 4402, 4403, 4405, 4408; Pub. L. 105–33, title IV, §§ 4201(c)(1), (3), 4441, 4442(a), 4443(b)(2), 4448, 4603(c)(1), 4615(a), Aug. 5, 1997, 111 Stat. 373, 422–424, 470, 475; Pub. L. 106–554, § 1(a)(6) [title III, §§ 321(a), (e), 322(a)(1), title V, § 507(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–500, 2763A–501, 2763A–532; Pub. L. 108–173, title IV, §§ 405(a)(1), (g)(2), 408(b), title V, § 512(b), title VII, § 736(a)(1), (2), (c)(2)(A), title IX, § 946(b), Dec. 8, 2003, 117 Stat. 2266, 2269, 2270, 2299, 2354, 2356, 2425.)

REFERENCES IN TEXT

Section 402 of the Social Security Amendments of 1967, referred to in subsec. (b)(3), means section 402 of Pub. L. 90–248, which amended sections 1395b–1 and 1395*ll* of this title.

Section 222 of the Social Security Amendments of 1972, referred to in subsec. (b)(3), means section 222 of Pub. L. 92–603, which amended sections 1395b–1 and 1395*ll* of this title and enacted a provision set out as a note under section 1395b–1 of this title.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173, § 736(a)(1)(A), (c)(2)(A), in concluding provisions, substituted ''leave home and'' for ''leave home,'' in sixth sentence and struck out ''The certification regarding terminal illness of an individual under paragraph (7) shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness.'' after ''taxing effort by the individual.''

Subsec. (a)(7)(A)(i). Pub. L. 108–173, § 736(a)(1)(B)(i), inserted ''based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness'' before '', and'' in concluding provisions.

Subsec. (a)(7)(A)(i)(I). Pub. L. 108–173, § 408(b), inserted ''(which for purposes of this subparagraph does not include a nurse practitioner)'' after ''attending physician (as defined in section 1395x(dd)(3)(B) of this title)''.

Subsec. (a)(7)(A)(ii). Pub. L. 108–173, § 736(a)(1)(B)(ii), inserted ''based on such clinical judgment'' before semicolon at end.

Subsec. (b). Pub. L. 108–173, § 736(a)(2), inserted comma after ''1395e'' in introductory provisions.

Subsec. (i)(4). Pub. L. 108–173, § 512(b), added par. (4).

Subsec. (i)(5). Pub. L. 108–173, § 946(b), added par. (5).

Subsec. (*l*). Pub. L. 108–173, § 405(g)(2), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the amount'' for ''The amount'', and added par. (2).

Pub. L. 108–173, § 405(a)(1), inserted ''equal to 101 percent of'' before ''the reasonable costs''.

2000—Subsec. (a). Pub. L. 106–554, § 1(a)(6) [title V, § 507(a)(1)(B)], inserted at end ''Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State, or accredited, to furnish adult day-care services in the State shall not disqualify an individual from being considered to be 'confined to his home'. Any other absence of an individual from the home shall not so disqualify an individual if the absence is of infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration.''

Pub. L. 106–554, § 1(a)(6) [title V, § 507(a)(1)(A)], which directed amendment of subsec. (a) by striking out in the last sentence '', and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment'', was executed by striking out that language after ''taxing effort by the individual'' in the penultimate sentence, to reflect the probable intent of Congress and the amendment by Pub. L. 106–554, § 1(a)(6) [title III, § 322(a)(1)]. See note below.

Pub. L. 106–554, § 1(a)(6) [title III, § 322(a)(1)], inserted at end ''The certification regarding terminal illness of an individual under paragraph (7) shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness.''

Subsec. (a)(7)(A)(ii). Pub. L. 106–554, § 1(a)(6) [title III, § 321(e)], substituted a semicolon for period at end.

Subsec. (i)(1)(C)(ii)(VI). Pub. L. 106–554, § 1(a)(6) [title III, § 321(a)], inserted '', plus, in the case of fiscal year 2001, 5.0 percentage points'' before semicolon.

1997—Subsec. (a)(2)(C). Pub. L. 105–33, § 4615(a), inserted ''(other than solely venipuncture for the purpose of obtaining a blood sample)'' after ''skilled nursing care''.

Subsec. (a)(7)(A)(i). Pub. L. 105–33, §§ 4443(b)(2)(A), 4448, in concluding provisions, substituted ''at the beginning of the period'' for '' not later than 2 days after hospice care is initiated (or, if each certify verbally not later than 2 days after hospice care is initiated, not later than 8 days after such care is initiated)'' and inserted ''and'' at end.

Subsec. (a)(7)(A)(ii). Pub. L. 105–33, § 4443(b)(2)(B), substituted ''60-day'' for ''30-day'' and substituted a period for '', and'' at end.

Subsec. (a)(7)(A)(iii). Pub. L. 105–33, § 4443(b)(2)(C), struck out cl. (iii) which read as follows: ''in a subse-

quent extension period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;''.

Subsec. (a)(8). Pub. L. 105–33, §4201(c)(1), (3)(A), substituted ''critical access'' for ''rural primary care'' in two places and ''96 hours'' for ''72 hours''.

Subsec. (b). Pub. L. 105–33, §4603(c)(1), substituted ''1395ww, and 1395fff of this title'' for ''and 1395ww of this title'' in introductory provisions.

Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care'' in two places in introductory provisions.

Subsec. (i)(1)(C)(ii)(V) to (VII). Pub. L. 105–33, §4441(a), struck out ''and'' at end of subcl. (V), added subcl. (VI), and redesignated former subcl. (VI) as (VII).

Subsec. (i)(2)(D). Pub. L. 105–33, §4442(a), added subpar. (D).

Subsec. (i)(3). Pub. L. 105–33, §4441(b), added par. (3).

Subsec. (*l*). Pub. L. 105–33, §4201(c)(3)(B), amended heading and text of subsec. (*l*) generally. Prior to amendment, text read as follows:

''(1) The amount of payment under this part for inpatient rural primary care hospital services—

''(A) in the case of the first 12-month cost reporting period for which the facility operates as such a hospital, is the reasonable costs of the facility in providing inpatient rural primary care hospital services during such period, as such costs are determined on a per diem basis, and

''(B) in the case of a later reporting period, is the per diem payment amount established under this paragraph for the preceding 12-month cost reporting period, increased by the applicable percentage increase under section 1395ww(b)(3)(B)(i) of this title for that particular cost reporting period applicable to hospitals located in a rural area.

The payment amounts otherwise determined under this paragraph shall be reduced, to the extent necessary, to avoid duplication of any payment made under section 1395i–4(a)(2) of this title (or under section 4005(e) of the Omnibus Budget Reconciliation Act of 1987) to cover the provision of inpatient rural primary care hospital services.

''(2) The Secretary shall develop a prospective payment system for determining payment amounts for inpatient rural primary care hospital services under this part furnished on or after January 1, 1996.''

1994—Subsec. (a)(5). Pub. L. 103–432, §106(b)(1)(A), struck out ''and with respect to post-hospital extended care services furnished after such day of a continuous period of such services as may be prescribed in or pursuant to regulations'' after ''continuous period of such services'', ''or skilled nursing facility, as the case may be'' after ''such individual to the hospital'', and ''or facility'' after ''made in such hospital''.

Subsec. (a)(8). Pub. L. 103–432, §102(a)(3), substituted ''the individual may reasonably be expected to be discharged or transferred to a hospital within 72 hours after admission to the rural primary care hospital.'' for ''such services were required to be immediately furnished on a temporary, inpatient basis.''

Subsec. (i)(1)(C)(i). Pub. L. 103–432, §110(d)(1), substituted ''September 30, 1990,'' for ''September 30, 1990,,''.

Subsec. (*l*)(2). Pub. L. 103–432, §102(d), substituted ''January 1, 1996'' for ''January 1, 1993''.

1993—Subsec. (i)(1)(C)(ii). Pub. L. 103–66 substituted ''increased by—'' and subcls. (I) to (VI) for ''increased by the market basket percentage increase (as defined in section 1395ww(b)(3)(B)(iii) of this title) otherwise applicable to discharges occurring in the fiscal year.''

1991—Subsec. (h). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in heading and par. (1) and ''Secretary of Veterans Affairs'' for ''Veterans' Administration'' in par. (2).

1990—Subsec. (a)(7)(A)(iii). Pub. L. 101–508, §4006(b), added cl. (iii).

Subsec. (b)(3). Pub. L. 101–508, §4008(i)(3), substituted ''January 1, 1981'' for ''October 1, 1983'' in subpar. (B) substituted ''37th month'' for ''seventh month'' in sentence following subpar. (B), and inserted at end provisions setting forth procedures to be followed by Secretary at end of 36-month period.

Subsec. (i)(1)(C)(i). Pub. L. 101–508, §4008(m)(3)(A), substituted ''on or after January 1, 1990, and on or before September 30, 1990,'' for ''during fiscal year 1990''.

1989—Subsec. (a). Pub. L. 101–239, §6028(2), substituted ''a physician, nurse practitioner, or clinical nurse specialist (as the case may be) makes'' for ''a physician makes'' in first sentence of concluding provisions.

Subsec. (a)(2). Pub. L. 101–239, §6028(1), substituted ''a physician, or, in the case of services described in subparagraph (B), a physician, or a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility but is working in collaboration with a physician,'' for ''a physician'' after ''(2)''.

Subsec. (a)(2)(B), (6). Pub. L. 101–234 repealed Pub. L. 100–360, §104(d)(2)(A), (B), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(7)(A)(i). Pub. L. 101–239, §6005(b), substituted ''certify in writing, not later than 2 days after hospice care is initiated (or, if each certify verbally not later than 2 days after hospice care is initiated, not later than 8 days after such care is initiated),'' for ''certify, not later than two days after hospice care is initiated,'' in concluding provisions.

Subsec. (a)(7)(A)(iii). Pub. L. 101–234 repealed Pub. L. 100–360, §104(d)(2)(C), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(8). Pub. L. 101–239, §6003(g)(3)(B)(ii), added par. (8).

Subsec. (b). Pub. L. 101–239, §6003(g)(3)(B)(iii)(I), inserted '', other than a rural primary care hospital providing inpatient rural primary care hospital services,'' after ''providing hospice care'' in introductory provisions.

Subsec. (d)(3). Pub. L. 101–234 repealed Pub. L. 100–360, §104(d)(2)(D), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (i)(1)(A). Pub. L. 101–239, §6005(a)(1), inserted ''and except as otherwise provided in this paragraph'' after ''section 1395e(a)(4) of this title''.

Subsec. (i)(1)(C). Pub. L. 101–239, §6005(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''With respect to care and services furnished on or after October 1, 1986, the Secretary shall, not less often than annually, review and make appropriate adjustments to the payment rate for routine home care and the payment rates for other services included in hospice care based on the costs that are reasonable and related to the costs of furnishing such care and services. The Secretary shall report to Congress on October 1 each year on such review and such adjustments and on the adequacy of the rates under this paragraph to ensure participation by an adequate number of hospice programs under this subchapter.''

Subsec. (*l*). Pub. L. 101–239, §6003(g)(3)(B)(iii)(II), added subsec. (*l*).

1988—Subsec. (a)(2)(B). Pub. L. 100–360, §104(d)(2)(A), (B), struck out ''post-hospital'' after ''in the case of'' and '', for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1395x(e) of this title) prior to transfer to the skilled nursing facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services'' before semicolon at end.

Subsec. (a)(6). Pub. L. 100–360, §104(d)(2)(A), struck out ''post-hospital'' before ''extended care services'' in two places.

Subsec. (a)(7)(A)(iii). Pub. L. 100–360, §104(d)(2)(C), added cl. (iii) which read as follows: ''in a subsequent extension period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;''.

Subsec. (d)(3). Pub. L. 100–360, §104(d)(2)(D), substituted ''equal to 100 percent'' for ''equal to 60 percent'' and ''plus 100 percent'' for ''plus 80 percent'' and struck out ''two-thirds of'' after ''based on''.

1987—Subsec. (a). Pub. L. 100–203, §4024(a), inserted two sentences at end clarifying ''confined to his home'' for purposes of par. (2)(C).

Subsec. (b)(3)(B). Pub. L. 100–203, §4008(b)(1), substituted ''aggregate rate of increase from October 1, 1983, to the most recent date for which annual data are available'' for ''rate of increase for the previous three-year period''.

Subsec. (j)(2)(B). Pub. L. 100–203, §4062(d)(1)(A), substituted ''Section 1395m(a)(1)(B) of this title'' for ''Subsection (k)(1)(B) of this section''.

Subsec. (k). Pub. L. 100–203, §4062(d)(1)(B), substituted ''the amount described in section 1395m(a)(1) of this title.'' for a dash and former pars. (1) and (2) which read as follows:

''(1) the lesser of—

''(A) the reasonable cost of such equipment, as determined under section 1395x(v) of this title, or

''(B) the customary charges with respect to such equipment,

less the amount the home health agency may charge as described in section 1395cc(a)(2)(A)(ii) of this title, but in no case may the payment for such equipment exceed 80 percent of such reasonable cost, or

''(2) if such equipment is furnished by a public home health agency, or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph), free of charge or at nominal charge to the public, 80 percent of the amount which the Secretary finds will provide fair compensation to the home health agency.''

1986—Subsec. (i)(1)(B). Pub. L. 99–272, §9123(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Notwithstanding subparagraph (A), the rate of payment per day for routine home care furnished during fiscal year 1985 shall be $53.17.''

Subsec. (i)(1)(C). Pub. L. 99–272, §9123(b)(2), substituted ''1986'' for ''1985''.

1984—Subsec. (a). Pub. L. 98–369, §2354(b)(1), as amended by Pub. L. 98–617, §3(a)(3), in concluding provisions, substituted ''contractual'' for ''contractural''.

Pub. L. 98–369, §2336(b), inserted before period at end of third sentence '', except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary)''.

Pub. L. 98–369, §2336(a), inserted sentence at end that for purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.

Pub. L. 98–369, §2335(a)(4), in concluding provisions, substituted ''or (D)'' for ''(D), or (E)''.

Subsec. (a)(2)(B) to (E). Pub. L. 98–369, §2335(a)(1), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which provided that payment could be made only if a physician certified, in the case of inpatient tuberculosis hospital services, that such services were required to be given on an inpatient basis, by or under the supervision of a physician, for the treatment of an individual for tuberculosis; and that such treatment could reasonably be expected to improve the condition for which such treatment was necessary or render the condition noncommunicable.

Subsec. (a)(3). Pub. L. 98–369, §2335(a)(2), struck out ''and inpatient tuberculosis hospital services'' after ''psychiatric hospital services''.

Subsec. (a)(5) to (8). Pub. L. 98–369, §2335(a)(3), redesignated pars. (6) to (8) as (5) to (7), respectively, and struck out former par. (5) which had provided that payment would be made only if, in the case of inpatient tuberculosis hospital services, the services were those which the records of the hospital indicate were furnished to the individual during periods when he was receiving treatment which could reasonably be expected to improve his condition or render it noncommunicable.

Subsec. (b). Pub. L. 98–369, §2321(a)(1), inserted in provisions preceding par. (1) ''and other than a home health agency with respect to durable medical equipment'' after ''hospice care''.

Subsec. (b)(2). Pub. L. 98–369, §2308(b)(2)(A), inserted '', or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph),''.

Subsec. (b)(3). Pub. L. 98–369, §2354(c)(1)(A), amended directory language of Pub. L. 96–449, §903(a)(4), resulting in no change in text. See 1980 Amendment note below.

Subsec. (i)(1). Pub. L. 98–617, §1(a), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (j)(2)(B) to (D). Pub. L. 98–369, §2321(f), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (k). Pub. L. 98–369, §2321(a)(2), added subsec. (k).

Subsec. (k)(2). Pub. L. 98–617, §3(b)(1), inserted '', or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph),'' after ''public home health agency'' and ''80 percent of'' before ''the amount''.

1983—Subsec. (g). Pub. L. 98–21, §602(b), inserted ''(or would be if section 1395ww of this title did not apply)'' after ''section 1395x(v)(1)(D) of this title''.

Subsec. (h)(2). Pub. L. 98–21, §602(c), substituted ''the amount that would be payable for such services under subsection (b) of this section and section 1395ww of this title'' for ''the reasonable costs for such services''.

Subsec. (i)(1). Pub. L. 97–448 inserted ''made'' before ''for bereavement counseling''.

Subsec. (i)(2)(A). Pub. L. 98–90, §1(1), struck out ''located in a region (as defined by the Secretary)'' after ''a hospice program'' and ''for the region'' after '' 'the cap amount' ''.

Subsec. (i)(2)(B). Pub. L. 98–90, §1(2), amended subpar. (B) generally, substituting provisions establishing a hospice reimbursement cap amount of $6,500, indexed by the medical care component of the Consumer Price Index, for provisions which had established a cap of 40% of the estimated regional average medicare expenditure per beneficiary in the regular medicare program during the six months of life for persons dying of cancer.

Subsec. (j). Pub. L. 98–21, §601(d)(2), added subsec. (j) by transferring and redesignating provisions formerly classified to subsec. (d) of section 1395ww of this title.

Subsec. (j)(2)(A). Pub. L. 98–21, §601(d)(1), substituted ''subsection (b) of this section'' for ''section 1395f(b) of this title''.

1982—Subsec. (a)(8). Pub. L. 97–248, §122(c)(1), added par. (8).

Subsec. (b). Pub. L. 97–248, §101(c)(1), substituted ''sections 1395e and 1395ww'' for ''section 1395e'' in provisions preceding par. (1), and substituted ''until the first day of the seventh month beginning after the date the Secretary determines and notifies the Governor of the State'' for ''until the Secretary determines'' in provisions following par. (3).

Pub. L. 97–248, §122(c)(2)(A), inserted ''(other than a hospice program providing hospice care)'' after ''The amount paid to any provider of services''.

Subsec. (i). Pub. L. 97–248, §122(c)(2)(B), added subsec. (i).

1981—Subsec. (a)(2)(D). Pub. L. 97–35, §2122(a)(1), substituted ''needs or needed skilled nursing care on an

intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy'' for ''needed skilled nursing care on an intermittent basis, or physical, occupational, or speech therapy''.

Subsec. (a)(2)(F). Pub. L. 97–35, §2121(b), struck out subpar. (F) which provided that in the case of alcohol detoxification facility services, such services were required on an inpatient basis (based upon an examination by such certifying physician made prior to initiation of alcohol detoxification).

1980—Subsec. (a). Pub. L. 96–499, §930(e), inserted provision at end of subsec. (a) authorizing the Secretary to prescribe regulations to prohibit significantly interested physicians from performing the physician certification required by par. (2) for home health services.

Subsec. (a)(2)(D). Pub. L. 96–499, §930(f), substituted ''home health services'' for ''post-hospital home health services'' and ''physical, occupational, or speech'' for ''physical or speech'' and deleted '', for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1395x(e) of this title) or post-hospital extended care services'' after ''therapy''.

Subsec. (a)(2)(E). Pub. L. 96–499, §936(b), inserted ''or because of the severity of the dental procedure'' and substituted ''such services'' for ''such dental services''.

Subsec. (a)(2)(F). Pub. L. 96–499, §931(b), added subpar. (F).

Subsec. (b)(1). Pub. L. 96–499, §903(a)(1), inserted ''except as provided in paragraph (3),''.

Subsec. (b)(3). Pub. L. 96–499, §903(a)(4), as amended by Pub. L. 98–369, §2354(c)(1)(A), added par. (3).

Subsec. (c). Pub. L. 96–499, §941(b), substituted ''subsection (h)'' for ''subsection (j)''.

Subsecs. (h) to (j). Pub. L. 96–499, §941(a), struck out subsecs. (h) and (i) and redesignated subsec. (j) as (h).

1978—Subsec. (b)(1). Pub. L. 95–292 inserted ''and as further limited by section 1395rr(b)(2)(B) of this title'' after ''section 1395x(v) of this title''.

1977—Subsec. (c). Pub. L. 95–142, §23(a), inserted reference to subsec. (j) of this section.

Subsec. (j). Pub. L. 95–142, §23(b), added subsec. (j).

1976—Subsec. (c). Pub. L. 94–437 substituted ''Subject to section 1395qq of this title, no payment'' for ''No payment''.

1973—Subsec. (a)(2)(E). Pub. L. 93–233, §18(k)(1), substituted ''the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status, requires hospitalization in connection with the provision of such dental services'' for ''a dental procedure, the individual suffers from impairments of such severity as to require hospitalization''.

Subsec. (a), last sentence. Pub. L. 93–233, §18(k)(2), inserted reference to subpar. (E) of par. (2).

1972—Subsec. (a). Pub. L. 92–603, §§226(c)(1), 227(b)(1), inserted reference to subsec. (g) of this section and section 1395mm of this title in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 92–603, §281(e), placed a 3-year time limitation on the time within which a written request for payment is filed, with provision for reduction of the limit to 1 year.

Subsec. (a)(2)(C). Pub. L. 92–603, §§234(g)(1), 247(a), 278(a)(1), substituted ''because the individual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis,'' for ''on an inpatient basis because the individual needs or needed skilled nursing care on a continuing basis'', ''skilled nursing facility'' for ''extended care facility'', and ''paragraphs (6) and (9) of section 1395x(e) of this title'' for ''paragraphs (6) and (8) of section 1395x(e) of this title''.

Subsec. (a)(2)(D). Pub. L. 92–603, §234(g)(1), substituted reference to par. (9) of section 1395x(e) of this title for reference to par. (8) of section 1395x(e) of this title.

Subsec. (a)(2)(E). Pub. L. 92–603, §256(a), added subpar. (E).

Subsec. (a)(6). Pub. L. 92–603, §278(a)(2), substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (a)(7). Pub. L. 92–603, §§238(a), 278(a)(3), inserted '', including any finding made in the course of a sample or other review of admissions to the institution'' after ''as described in section 1395x(k)(4) of this title'' in the parenthetical provisions covering the finding not made by the committee or group, and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (b). Pub. L. 92–603, §233(a), substituted pars. (1) and (2) for provisions describing the amount payable as the reasonable cost determined under section 1395x(v) of this title.

Subsec. (f). Pub. L. 92–603, §211(a), designated existing provisions as par. (2), added pars. (1) and (3), and in par. (2) as so redesignated inserted provisions covering individuals physically present at a place within Canada while traveling without unreasonable delay by the most direct route between Alaska and another State.

Subsec. (g). Pub. L. 92–603, §227(b)(2), added subsec. (g).

Subsec. (h). Pub. L. 92–603, §§228(a), 278(b)(4), (17), added subsec. (h) and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (i). Pub. L. 92–603, §228(a), added subsec. (i).

1968—Subsec. (a). Pub. L. 90–248, §§126(a)(5), 129(c)(5)(B), struck out references to former subpars. (E) and (F) in last sentence.

Subsec. (a)(2)(A) to (E). Pub. L. 90–248, §126(a)(1), (2), struck out subpar. (A) which provided that there be a physician's certification of medical necessity for admissions to hospitals other than psychiatric or tuberculosis institutions, and redesignated subpars. (B) to (E) as (A) to (D), respectively.

Subsec. (a)(2)(F). Pub. L. 90–248, §129(c)(5)(A), struck out subpar. (F) which provided that there be a physician's certification for services furnished to outpatients.

Subsec. (a)(3) to (7). Pub. L. 90–248, §126(a)(3), (4), added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (d). Pub. L. 90–248, §129(c)(6)(A), struck out reference to outpatient hospital diagnostic services from provisions requiring payment for emergency hospital services.

Subsec. (d)(1) to (3). Pub. L. 90–248, §143(c), designated existing provisions as par. (1), inserted ''in a calendar year'' after ''furnished'' in first sentence of par. (1), added subpar. (C) to par. (1), and added pars. (2) and (3).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IV, §405(a)(2), Dec. 8, 2003, 117 Stat. 2266, provided that: ''The amendments made by paragraph (1) [amending this section and sections 1395m and 1395tt of this title] shall apply to payments for services furnished during cost reporting periods beginning on or after January 1, 2004.''

Pub. L. 108–173, title IV, §405(g)(3), Dec. 8, 2003, 117 Stat. 2269, provided that: ''The amendments made by this subsection [amending this section and section 1395i–4 of this title] shall apply to cost reporting periods beginning on or after October 1, 2004.''

Amendment by section 512(b) of Pub. L. 108–173 applicable to services provided by a hospice program on or after Jan. 1, 2005, see section 512(d) of Pub. L. 108–173, set out as a note under section 1395d of this title.

Pub. L. 108–173, title IX, §946(c), Dec. 8, 2003, 117 Stat. 2425, provided that: ''The amendments made by this section [amending this section and section 1395x of this title] shall apply to hospice care provided on or after the date of the enactment of this Act [Dec. 8, 2003].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title III, §321(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–500, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to hospice care furnished on or after April 1, 2001. In applying clause (ii) of section 1814(i)(1)(C) of the Social Security Act (42 U.S.C. 1395f(i)(1)(C)) beginning with fiscal year 2002, the payment rates in effect under such section during the period beginning on April 1, 2001, and ending on September 30, shall be treated as the payment rates in effect during fiscal year 2001.''

Pub. L. 106–554, §1(a)(6) [title III, §322(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–501, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to certifications made on or after the date of the enactment of this Act [Dec. 21, 2000].''

Pub. L. 106–554, §1(a)(6) [title V, §507(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–532, provided that: ''The amendments made by paragraph (1) [amending this section and section 1395n of this title] shall apply to home health services furnished on or after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4201(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1320a–7a, 1320a–7b, 1320b–4, 1320b–8, 1395d, 1395e, 1395h, 1395i–4, 1395k to 1395n, 1395u, 1395x, 1395y, 1395aa, 1395cc, 1395dd, and 1395ww of this title] shall apply to services furnished on or after October 1, 1997.''

Pub. L. 105–33, title IV, §4442(b), Aug. 5, 1997, 111 Stat. 423, as amended by Pub. L. 106–113, div. B, §1000(a)(6) [title III, §321(i)], Nov. 29, 1999, 113 Stat. 1536, 1501A–366, provided that: ''The amendment made by subsection (a) [amending this section] applies to items and services furnished on or after October 1, 1997.''

Amendment by sections 4441, 4443(b)(2), and 4448 of Pub. L. 105–33 applicable to benefits provided on or after Aug. 5, 1997, except as otherwise provided, see section 4449 of Pub. L. 105–33, set out as a note under section 1395d of this title.

Amendment by section 4603(c)(1) of Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395fff of this title.

Section 4615(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section and section 1395n of this title] apply to home health services furnished after the 6-month period beginning after the date of enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 106(b)(1)(A) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 100–203, see section 106(b)(2) of Pub. L. 103–432, set out as a note under section 1395cc of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4006(b) of Pub. L. 101–508 applicable with respect to care and services furnished on or after Jan. 1, 1990, see section 4006(c) of Pub. L. 101–508, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6005(c) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §4008(m)(3)(B), Nov. 5, 1990, 104 Stat. 1388–54, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall become effective with respect to care and services furnished on or after January 1, 1990.''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4008(b)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 22, 1987].''

Section 4024(c) of Pub. L. 100–203 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395n of this title] shall apply to items and services provided on or after January 1, 1988.''

Section 4062(e) of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, §4152(h), Nov. 5, 1990, 104 Stat. 1388–80, provided that: ''The amendments made by this section [enacting section 1395m of this title, amending this section and sections 1395k, 1395*l*, and 1395cc of this title, and repealing section 1395zz of this title] shall apply to covered items (other than oxygen and oxygen equipment) furnished on or after January 1, 1989 and to oxygen and oxygen equipment furnished on or after June 1, 1989.''

[Section 4152(h) of Pub. L. 101–508 provided that amendment by that section to section 4062(e) of Pub. L. 100–203, set out above, is effective as if included in enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.]

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 1(b) of Pub. L. 98–617 provided that: ''The amendments made by this Act [probably means section 1 of Pub. L. 98–617, amending this section] shall apply to routine home care and other services included in hospice care furnished on or after October 1, 1984.''

Section 3(c) of Pub. L. 98–617 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395n, 1395r, 1395u, 1395x, 1395rr, 1395ww, 1396a, and 1396b of this title and amending provisions set out as notes under sections 1395h and 1395mm of this title] shall be effective as if they had been originally included in the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

Section 2321(g) of Pub. L. 98–369 provided that: ''The amendments made by this section [enacting section 1395zz of this title and amending this section and sections 1395*l*, 1395x, and 1395cc of this title] shall apply to items and services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Section 2335(g) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 1395x, 1395z, 1395cc, 1396a, and 1396d of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Section 2336(c)(1) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section and section 1395n of this title] shall apply to certifications and plans of care made or established on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(1) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2354(c)(1)(A) of Pub. L. 98–369 effective as if originally included in Pub. L. 96–499, see section 2354(e)(2) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(c)(1), (2) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2121(b) of Pub. L. 97–35 applicable to services furnished in detoxification facilities for inpatient stays beginning on or after the tenth day after Aug. 13, 1981, see section 2121(i) of Pub. L. 97–35, set out as a note under section 1395d of this title.

Section 2122(b) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 1395n of this title] shall apply to services furnished pursuant to plans of treatment implemented after the third month beginning after the date of the enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 930(e), (f) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Amendment by section 931(b) of Pub. L. 96–499 effective Apr. 1, 1981, see section 931(e) of Pub. L. 96–499, set out as a note under section 1395d of this title.

Section 936(d) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section and sections 1395x and 1395y of this title] shall apply with respect to services provided on or after July 1, 1981.''

Section 941(c) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 23(c) of Pub. L. 95–142 provided that: ''The amendments made by this section [amending this section] shall apply to inpatient hospital services furnished on and after July 1, 1974.''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 18(z–3)(2) of Pub. L. 93–233 provided that: ''The amendments made by subsection (k) [amending this section and section 1395y of this title] shall be effective with respect to admissions subject to the provisions of section 1814(a)(2) of the Social Security Act [subsec. (a)(2) of this section] which occur after December 31, 1972.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 211(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395u, 1395x, and 1395y of this title] shall apply to services furnished with respect to admissions occurring after December 31, 1972.''

Amendment by section 226(c)(1) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

Amendment by section 227(b) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 228(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] and any regulations adopted pursuant to such amendment shall apply with respect to plans of care initiated on or after January 1, 1973, and with respect to admission to skilled nursing facilities and home health plans initiated on or after such date.''

Section 233(f) of Pub. L. 92–603 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395*l* of this title] shall apply to services furnished by hospitals, extended care facilities, and home health agencies in accounting periods beginning after December 31, 1972. The amendments made by subsections (c), (d), and (e) [amending sections 706, 709, and 1396b of this title] shall apply with respect to services furnished by hospitals in accounting periods beginning after December 31, 1972.'' See, also, section 16 of Pub. L. 93–233, set out below.

Amendment by section 234(g)(1) of Pub. L. 92–603 applicable with respect to providers of services for fiscal years beginning after fifth month following October 1972, see section 234(i) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 238(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services furnished after the second month following the month in which this Act is enacted [October 1972].''

Section 247(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall be effective with respect to services furnished after December 31, 1972.''

Section 256(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395x and 1395y of this title] shall apply with respect to admissions occurring after the second month following the month in which this Act is enacted [October 1972].''

Amendment by section 281(e) of Pub. L. 92–603 applicable in the case of services furnished (or deemed to have been furnished) after 1970, see section 281(g) of Pub. L. 92–603, set out as a note under section 1395gg of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 126(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 1395n of this title] shall apply with respect to services furnished after the date of the enactment of this Act [Jan. 2, 1968].''

Amendment by section 129(c)(5), (6)(A) of Pub. L. 90–248 applicable with respect to services furnished after Jan. 2, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Amendment by section 143(c) of Pub. L. 90–248 applicable with respect to services furnished with respect to admissions occurring after Dec. 31, 1967, and to outpatient hospital diagnostic services furnished after

Dec. 31, 1967, and before Apr. 1, 1968, see section 143(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

STUDY AND REPORT ON EFFECT OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title V, §507(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–532, provided that:

''(1) IN GENERAL.—The Comptroller General of the United States shall conduct an evaluation of the effect of the amendment [amending this section and section 1395n of this title] on the cost of and access to home health services under the medicare program under title XVIII of the Social Security Act [this subchapter].

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).''

STUDY AND REPORT ON PHYSICIAN CERTIFICATION REQUIREMENT FOR HOSPICE BENEFITS

Pub. L. 106–554, §1(a)(6) [title III, §322(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–501, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall conduct a study to examine the appropriateness of the certification regarding terminal illness of an individual under section 1814(a)(7) of the Social Security Act (42 U.S.C. 1395f(a)(7)) that is required in order for such individual to receive hospice benefits under the medicare program under title XVIII of such Act [this subchapter]. In conducting such study, the Secretary shall take into account the effect of the amendment made by subsection (a) [amending this section].

''(2) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under paragraph (1), together with any recommendations for legislation that the Secretary deems appropriate.''

TEMPORARY INCREASE IN PAYMENT FOR HOSPICE CARE

Pub. L. 106–554, §1(a)(6) [title III, §321(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–501, provided that: ''The provisions of this section [amending this section and enacting provisions set out as a note under this section] shall have no effect on the application of section 131 of BBRA [Pub. L. 106–113, §1000(a)(6) [title I, §131], set out as a note below].''

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §131], Nov. 29, 1999, 113 Stat. 1536, 1501A–333, provided that:

''(a) INCREASE FOR FISCAL YEARS 2001 AND 2002.—For purposes of payments under section 1814(i)(1)(C) of the Social Security Act (42 U.S.C. 1395f(i)(1)(C)) for hospice care furnished during fiscal years 2001 and 2002, the Secretary of Health and Human Services shall increase the payment rate in effect (but for this section) for—

''(1) fiscal year 2001, by 0.5 percent, and

''(2) fiscal year 2002, by 0.75 percent.

''(b) ADDITIONAL PAYMENT NOT BUILT INTO THE BASE.—The Secretary of Health and Human Services shall not include any additional payment made under this subsection (a) in updating the payment rate, as increased by the applicable market basket percentage increase for the fiscal year involved under section 1814(i)(1)(C)(ii) of that Act (42 U.S.C. 1395f(i)(1)(C)(ii)).''

STUDY AND REPORT TO CONGRESS REGARDING MODIFICATION OF PAYMENT RATES FOR HOSPICE CARE

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §132], Nov. 29, 1999, 113 Stat. 1536, 1501A–333, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study to determine the feasibility and advisability of updating the payment rates and the cap amount determined with respect to a fiscal year under section 1814(i) of the Social Security Act (42 U.S.C. 1395f(i)) for routine home care and other services included in hospice care. Such study shall examine the cost factors used to determine such rates and such amount and shall evaluate whether such factors should be modified, eliminated, or supplemented with additional cost factors.

''(b) REPORT.—Not later than one year after the date of enactment of this Act [Nov. 29, 1999], the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation that the Comptroller General determines to be appropriate as a result of such study.''

STUDY OF METHODS TO COMPENSATE HOSPICES FOR HIGH-COST CARE

Section 6016 of Pub. L. 101–239 directed Secretary of Health and Human Services to conduct a study of high-cost hospice care provided to medicare beneficiaries under the medicare program, evaluate the ability of hospice programs participating in the medicare program to provide such high-cost care to such patients, develop methods to compensate such programs for providing such high-cost care, and submit, not later than Apr. 1, 1991, a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the study, including in the report any recommendations developed by the Secretary to compensate hospice programs for providing high-cost hospice care to medicare beneficiaries.

CONTINUATION OF BAD DEBT RECOGNITION FOR HOSPITAL SERVICES

Section 4008(c) of Pub. L. 100–203, as amended by Pub. L. 100–647, title VIII, §8402, Nov. 10, 1987, 102 Stat. 3798; Pub. L. 101–239, title VI, §6023(a), Dec. 19, 1989, 103 Stat. 2167, provided that: ''In making payments to hospitals under title XVIII of the Social Security Act [this subchapter], the Secretary of Health and Human Services shall not make any change in the policy in effect on August 1, 1987, with respect to payment under title XVIII of the Social Security Act to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title (including criteria for what constitutes a reasonable collection effort, including criteria for indigency determination procedures, for record keeping, and for determining whether to refer a claim to an external collection agency). The Secretary may not require a hospital to change its bad debt collection policy if a fiscal intermediary, in accordance with the rules in effect as of August 1, 1987, with respect to criteria for indigency determination procedures, record keeping, and determining whether to refer a claim to an external collection agency, has accepted such policy before that date, and the Secretary may not collect from the hospital on the basis of an expectation of a change in the hospital's collection policy.''

[Section 6023(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending section 4008(c) of Pub. L. 100–203, set out above] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].'']

[Pub. L. 100–647, title VIII, §8402, Nov. 10, 1988, 102 Stat. 3798, provided that amendment of section 4008(c) of Pub. L. 100–203, set out above, by section 8402 of Pub. L. 100–647 is effective as of date of enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, which was approved Dec. 22, 1987.]

PROVIDERS OF SERVICES TO CALCULATE AND REPORT LESSER-OF-COST-OR-CHARGES DETERMINATIONS SEPARATELY WITH RESPECT TO PAYMENTS UNDER PARTS A AND B OF THIS SUBCHAPTER; ISSUANCE OF REGULATIONS

Section 2308(a) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services shall issue regulations which require, for purposes of title XVIII of the Social Security Act [this subchapter], that providers of services calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under part A and services

under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h) [section 1395*l*(h) of this title]), and that payment under such title be based upon such separate determinations. Such regulations shall apply to cost reporting periods beginning on or after October 1, 1984.''

DETERMINATION OF NOMINAL CHARGES FOR APPLYING NOMINALITY TEST

Section 2308(b)(1) of Pub. L. 98–369 provided that: ''For purposes of applying the nominality test under sections 1814(b)(2) [subsec. (b)(2) of this section] and 1833(a)(2)(B)(ii) [section 1395*l*(a)(2)(B)(ii) of this title] of the Social Security Act, the Secretary shall, in addition to those rules for establishing nominality which the Secretary determines to be appropriate, provide that charges representing 60 percent or less of costs shall be considered nominal. The charges used in making such determinations shall be the charges actually billed to charge-paying patients who are not entitled to benefits under either part of such title [sections 1395c et seq., 1395j et seq. of this title]. Such determination shall be made separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h)), or on the basis of inpatient and outpatient services, except that the determination need not be made separately for home health services if the Secretary finds that such separation is not appropriate.''

REVISION OF REGULATIONS REGARDING ACCESS TO HOME HEALTH SERVICES

Section 2336(c)(2) of Pub. L. 98–369 provided that: ''The Secretary shall provide, not later than 90 days after the date of the enactment of this Act [July 18, 1984], for such revision of regulations as may be required to reflect the amendments made by subsection (b) [amending this section and section 1395n of this title].''

PROMULGATION OF REGULATIONS

Section 122(h)(2) of Pub. L. 97–248 provided that: ''In order to provide for the timely implementation of the amendments made by this Act [probably means section 122 of Pub. L. 97–248, which amended this section and sections 1395c to 1395e, 1395h, and 1395x to 1395cc of this title and section 231f of Title 45, Railroads, and enacted provisions set out as notes under this section and sections 1395b–1 and 1395c of this title], the Secretary of Health and Human Services shall, not later than September 1, 1983, promulgate such final regulations as may be necessary to set forth—

''(A) a description of the care included in 'hospice care' and the standards for qualification of a 'hospice program', under section 1861(dd) of the Social Security Act [section 1395x(dd) of this title], and

''(B) the standards for payment for hospice care under part A of title XVIII of such Act [this part], pursuant to section 1814(i) of such Act [subsec. (i) of this section].''

STUDY AND REPORT RELATING TO THE REIMBURSEMENT METHOD AND BENEFIT STRUCTURE FOR HOSPICE CARE; SUPERVISION OF REPORT BY COMPTROLLER GENERAL

Section 122(j), formerly §122(i), of Pub. L. 97–248, redesignated §122(i), by Pub. L. 97–448, title III, §309(a)(6), Jan. 12, 1983, 96 Stat. 2408, provided that:

''(1) The Secretary of Health and Human Services shall conduct a study and, prior to January 1, 1986, report to the Congress on whether or not the reimbursement method and benefit structure (including copayments) for hospice care under title XVIII of the Social Security Act [this subchapter] are fair and equitable and promote the most efficient provision of hospice care. Such report shall include the feasibility and advisability of providing for prospective reimbursement for hospice care, an evaluation of the inclusion of payment for outpatient drugs, an evaluation of the need to alter the method of reimbursement for nutritional, dietary, and bereavement counseling as hospice care, and any recommendations for legislative changes in the hospice care reimbursement or benefit structure.

''(2) The Comptroller General shall monitor and evaluate the study and the preparation of the report under paragraph (1).''

WAIVER OF LIMITATIONS TO ALLOW PRE-EXISTING HOSPICES TO PARTICIPATE AS A HOSPICE PROGRAM

Section 122(k), formerly §122(j), of Pub. L. 97–248, as redesignated and amended by Pub. L. 97–448, title III, §309(a)(6), (7), Jan. 12, 1983, 96 Stat. 2408, provided that: ''The Secretary of Health and Human Services shall grant waivers of the limitations imposed by section 1814(i)(2) of the Social Security Act [subsec. (i)(2) of this section] (relating to the cap amount), section 1861(dd)(1)(G) of such Act [section 1395x(dd)(1)(G) of this title] (relating to the limitations on the frequency and number of respite care days), and section 1861(dd)(2)(A)(iii) of such Act [section 1395x(dd)(2)(A)(iii) of this title] (relating to the aggregate limit on the number of days of inpatient care), as may be necessary to allow any institution which commenced operations as a hospice prior to January 1, 1975, to participate until October 1, 1986, in a viable manner as a hospice program under title XVIII of the Social Security Act [this subchapter].''

MEDICARE PAYMENT BASIS FOR SERVICES PROVIDED BY AGENCIES AND PROVIDERS; EFFECTIVE DATE

Section 16 of Pub. L. 93–233 provided that: ''In the administration of titles V, XVIII, and XIX of the Social Security Act [subchapters V, XVIII, and XIX of this chapter], the amount payable under such title to any provider of services on account of services provided by such hospital, skilled nursing facility, or home health agency shall be determined (for any period with respect to which the amendments made by section 233 of Public Law 92–603 [this section and sections 706, 709, 1395*l*, and 1396b of this title] would, except for the provisions of this section, be applicable) in like manner as if the date contained in the first and second sentences of subsection (f) of such section 233 [set out as an Effective Date of 1972 Amendment note above] were December 31, 1973, rather than December 31, 1972.''

§ 1395g. Payments to providers of services

(a) Determination of amount

The Secretary shall periodically determine the amount which should be paid under this part to each provider of services with respect to the services furnished by it, and the provider of services shall be paid, at such time or times as the Secretary believes appropriate (but not less often than monthly) and prior to audit or settlement by the Government Accountability Office, from the Federal Hospital Insurance Trust Fund, the amounts so determined, with necessary adjustments on account of previously made overpayments or underpayments; except that no such payments shall be made to any provider unless it has furnished such information as the Secretary may request in order to determine the amounts due such provider under this part for the period with respect to which the amounts are being paid or any prior period.

(b) Conditions

No payment shall be made to a provider of services which is a hospital for or with respect to services furnished by it for any period with respect to which it is deemed, under section 1395x(w)(2) of this title, to have in effect an arrangement with a quality control and peer re-

view organization for the conduct of utilization review activities by such organization unless such hospital has paid to such organization the amount due (as determined pursuant to such section) to such organization for the review activities conducted by it pursuant to such arrangements or such hospital has provided assurances satisfactory to the Secretary that such organization will promptly be paid the amount so due to it from the proceeds of the payment claimed by the hospital. Payment under this subchapter for utilization review activities provided by a quality control and peer review organization pursuant to an arrangement or deemed arrangement with a hospital under section 1395x(w)(2) of this title shall be calculated without any requirement that the reasonable cost of such activities be apportioned among the patients of such hospital, if any, to whom such activities were not applicable.

(c) Payments under assignment or power of attorney

No payment which may be made to a provider of services under this subchapter for any service furnished to an individual shall be made to any other person under an assignment or power of attorney; but nothing in this subsection shall be construed (1) to prevent the making of such a payment in accordance with an assignment from the provider if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (2) to preclude an agent of the provider of services from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such provider under this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

(d) Accrual of interest on balance of excess or deficit not paid

Whenever a final determination is made that the amount of payment made under this part to a provider of services was in excess of or less than the amount of payment that is due, and payment of such excess or deficit is not made (or effected by offset) within 30 days of the date of the determination, interest shall accrue on the balance of such excess or deficit not paid or offset (to the extent that the balance is owed by or owing to the provider) at a rate determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments.

(e) Periodic interim payments

(1) The Secretary shall provide payment under this part for inpatient hospital services furnished by a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title, and including a distinct psychiatric or rehabilitation unit of such a hospital) and a subsection (d) Puerto Rico hospital (as defined in section 1395ww(d)(9)(A) of this title) on a periodic interim payment basis (rather than on the basis of bills actually submitted) in the following cases:

(A) Upon the request of a hospital which is paid through an agency or organization with an agreement with the Secretary under section 1395h of this title, if the agency or organization, for three consecutive calendar months, fails to meet the requirements of subsection (c)(2) of such section and if the hospital meets the requirements (in effect as of October 1, 1986) applicable to payment on such a basis, until such time as the agency or organization meets such requirements for three consecutive calendar months.

(B) In the case of a hospital that—

(i) has a disproportionate share adjustment percentage (as established in clause (iv) of such section) of at least 5.1 percent (as computed for purposes of establishing the average standardized amounts for discharges occurring during fiscal year 1987), and

(ii) requests payment on such basis,

but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

(C) In the case of a hospital that—

(i) is located in a rural area,

(ii) has 100 or fewer beds, and

(iii) requests payment on such basis,

but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

(2) The Secretary shall provide (or continue to provide) for payment on a periodic interim payment basis (under the standards established under section 405.454(j) of title 42, Code of Federal Regulations, as in effect on October 1, 1986, in the cases described in subparagraphs (A) through (D)) with respect to—

(A) inpatient hospital services of a hospital that is not a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title);

(B) a hospital which is receiving payment under a State hospital reimbursement system under section 1395f(b)(3) or 1395ww(c) of this title, if payment on a periodic interim payment basis is an integral part of such reimbursement system;

(C) extended care services;

(D) hospice care; and

(E) inpatient critical access hospital services;

if the provider of such services elects to receive, and qualifies for, such payments.

(3) In the case of a subsection (d) hospital or a subsection (d) Puerto Rico hospital (as defined for purposes of section 1395ww of this title) which has significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary may make available appropriate accelerated payments.

(4) A hospital created by the merger or consolidation of 2 or more hospitals or hospital

campuses shall be eligible to receive periodic interim payment on the basis described in paragraph (1)(B) if—

(A) at least one of the hospitals or campuses received periodic interim payment on such basis prior to the merger or consolidation; and

(B) the merging or consolidating hospitals or campuses would each meet the requirement of paragraph (1)(B)(i) if such hospitals or campuses were treated as independent hospitals for purposes of this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1815, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 297; amended Pub. L. 94–182, title I, § 112(a)(2), Dec. 31, 1975, 89 Stat. 1055; Pub. L. 95–142, § 2(a)(2), Oct. 25, 1977, 91 Stat. 1175; Pub. L. 96–473, § 6(i), Oct. 19, 1980, 94 Stat. 2266; Pub. L. 97–248, title I, §§ 117(a)(1), 148(b), Sept. 3, 1982, 96 Stat. 354, 394; Pub. L. 99–509, title IX, § 9311(a)(1), Oct. 21, 1986, 100 Stat. 1996; Pub. L. 101–239, title VI, § 6021(a), Dec. 19, 1989, 103 Stat. 2166; Pub. L. 105–33, title IV, § 4603(b), Aug. 5, 1997, 111 Stat. 470; Pub. L. 108–173, title IV, § 405(c)(1), title VII, § 736(a)(3), Dec. 8, 2003, 117 Stat. 2266, 2354; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2003—Subsec. (e)(1)(B). Pub. L. 108–173, § 736(a)(3), substituted ''of a hospital'' for ''of hospital'' in introductory provisions.

Subsec. (e)(2). Pub. L. 108–173, § 405(c)(1)(A), inserted '', in the cases described in subparagraphs (A) through (D)'' after ''1986'' in introductory provisions.

Subsec. (e)(2)(E). Pub. L. 108–173, § 405(c)(1)(B)–(D), added subpar. (E).

1997—Subsec. (e)(2)(C) to (E). Pub. L. 105–33 inserted ''and'' at end of subpar. (C), redesignated subpar. (E) as (D), and struck out former subpar. (D) which read as follows: ''home health services; and''.

1989—Subsec. (e)(4). Pub. L. 101–239 added par. (4).

1986—Subsec. (e). Pub. L. 99–509 added subsec. (e).

1982—Subsec. (b). Pub. L. 97–248, § 148(b), substituted ''quality control and peer review organization'' for ''Professional Standards Review Organization'' wherever appearing.

Subsec. (d). Pub. L. 97–248, § 117(a)(1), added subsec. (d).

1980—Subsec. (c). Pub. L. 96–473 substituted ''for or in connection with'' for ''for on in connection with''.

1977—Subsec. (c). Pub. L. 95–142 added subsec. (c).

1975—Pub. L. 94–182 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IV, § 405(c)(3), Dec. 8, 2003, 117 Stat. 2267, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to payments made on or after July 1, 2004.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395fff of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6021(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments made for discharges occurring on or after the expiration of the 30-day period that begins on the date of the enactment of this Act [Dec. 19, 1989], regardless of the date of the merger or consolidation involved.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9311(a)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to claims received on or after July 1, 1987.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 117(b) of Pub. L. 97–248 provided that: ''The amendments made by subsection (a) [amending this section and section 1395*l* of this title] apply to final determinations made on or after the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 148(b) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 2(a)(4) of Pub. L. 95–142 provided that: ''The amendments made by this subsection [amending this section and sections 1395u and 1396a of this title] shall apply with respect to care and services furnished on or after the date of the enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–182 effective with respect to utilization review activities conducted on and after the first day of the first month which begins more than 30 days after Dec. 31, 1975, see section 112(d) of Pub. L. 94–182, set out as a note under section 1395x of this title.

DEVELOPMENT OF ALTERNATIVE TIMING METHODS OF PERIODIC INTERIM PAYMENTS

Pub. L. 108–173, title IV, § 405(c)(2), Dec. 8, 2003, 117 Stat. 2267, provided that: ''With respect to periodic interim payments to critical access hospitals for inpatient critical access hospital services under section 1815(e)(2)(E) of the Social Security Act [subsec. (e)(2)(E) of this section], as added by paragraph (1), the Secretary [of Health and Human Services] shall develop alternative methods for the timing of such payments.''

TRANSITION

Section 9311(a)(3) of Pub. L. 99–509 provided that: ''Upon the request of a hospital which—

''(A) as of June 30, 1987, is receiving payments under part A of title XVIII of such Act [this part] for inpatient hospital services on a periodic interim payment basis,

''(B) requests continuation of payment on such basis, and

''(C) is paid through an agency or organization with an agreement under section 1816 of such Act [section 1395h of this title],

the Secretary of Health and Human Services shall continue payment on such a basis until not earlier than the end of the first period of three consecutive calendar months (beginning no earlier than April 1987) during all of which the agency or organization has met the requirements of section 1816(c)(2) of such Act (relating to prompt payment of claims).''

DELAY IN PERIODIC INTERIM PAYMENTS

Section 120 of Pub. L. 97–248 provided that: ''Notwithstanding section 1815(a) of the Social Security Act [subsec. (a) of this section], in the case of a hospital which is paid periodic interim payments under such section, the Secretary of Health and Human Services shall provide that—

''(1) with respect to the last 21 days for which such payments would otherwise be made during fiscal year 1983, such payments shall be deferred until fiscal year 1984; and

''(2) with respect to the last 21 days for which such payments would otherwise be made during fiscal year 1984, such payments shall be deferred until fiscal year 1985.''

Pub. L. 96–499, title IX, § 959, Dec. 5, 1980, 94 Stat. 2650, provided for deferral of interim payments to be made during last twenty-one days of fiscal year 1981 until fiscal year 1982, prior to repeal by Pub. L. 97–35, title XXI, § 2155, Aug. 13, 1981, 95 Stat. 802.

§ 1395h. Provisions relating to the administration of part A

(a) In general

The administration of this part shall be conducted through contracts with medicare administrative contractors under section 1395kk–1 of this title.

(b) Repealed. Pub. L. 108–173, title IX, § 911(b)(3), Dec. 8, 2003, 117 Stat. 2383

(c) Prompt payment of claims

(1) Repealed. Pub. L. 108–173, title IX, § 911(b)(4)(A), Dec. 8, 2003, 117 Stat. 2383.

(2)(A) Each contract under section 1395kk–1 of this title that provides for making payments under this part shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this subchapter—

(i) which are clean claims, and

(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph:

(i) The term ''clean claim'' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this subchapter.

(ii) The term ''applicable number of calendar days'' means—

(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days,

(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period ending on or before September 30, 1993, 24 calendar days, and

(V) with respect to claims received in the 12-month period beginning October 1, 1993, and claims received in any succeeding 12-month period, 30 calendar days.

(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received from a hospital, critical access hospital, skilled nursing facility, home health agency, hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency that is not receiving payments on a periodic interim payment basis with respect to such services, interest shall be paid at the rate used for purposes of section 3902(a) of title 31 (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.

(3)(A) Each contract under section 1395kk–1 of this title that provides for making payments under this part shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this subchapter within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph, the term ''applicable number of calendar days'' means—

(i) with respect to claims submitted electronically as prescribed by the Secretary, 13 days, and

(ii) with respect to claims submitted otherwise, 26 days.

(d) to (i). Repealed. Pub. L. 108–173, title IX, § 911(b)(5), Dec. 8, 2003, 117 Stat. 2383

(j) Denial of claim; notification and reconsideration

A contract with a medicare administrative contractor under section 1395kk–1 of this title with respect to the administration of this part shall require that, with respect to a claim for home health services, extended care services, or post-hospital extended care services submitted by a provider to such medicare administrative contractor that is denied, such medicare administrative contractor—

(1) furnish the provider and the individual with respect to whom the claim is made with a written explanation of the denial and of the statutory or regulatory basis for the denial; and

(2) in the case of a request for reconsideration of a denial, promptly notify such individual and the provider of the disposition of such reconsideration.

(k) Annual reporting requirement on erroneous payment recovery

A contract with a medicare administrative contractor under section 1395kk–1 of this title with respect to the administration of this part shall require that such medicare administrative contractor submit an annual report to the Secretary describing the steps taken to recover payments made for items or services for which payment has been or could be made under a primary plan (as defined in section 1395y(b)(2)(A) of this title).

(*l*) Repealed. Pub. L. 108–173, title IX, § 911(b)(7), Dec. 8, 2003, 117 Stat. 2383

(Aug. 14, 1935, ch. 531, title XVIII, § 1816, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 297; amended Pub. L. 92–603, title II, § 243(b), Oct. 30, 1972, 86 Stat. 1422; Pub. L. 95–142, § 14(a), Oct. 25, 1977, 91 Stat. 1198; Pub. L. 96–499, title IX, § 930(*o*), Dec. 5, 1980, 94 Stat. 2632; Pub. L. 97–248, title I, § 122(c)(3), Sept. 3, 1982, 96 Stat. 359; Pub. L. 98–369, div. B, title III, § 2326(b),

(c)(1), (d)(1), July 18, 1984, 98 Stat. 1087; Pub. L. 99–509, title IX, §§ 9311(b), 9352(a)(2), Oct. 21, 1986, 100 Stat. 1997, 2044; Pub. L. 100–203, title IV, §§ 4031(a)(1), 4032(a), (b), 4035(a)(1), 4085(d)(1), Dec. 22, 1987, 101 Stat. 1330–75 to 1330–78, 1330–130; Pub. L. 100–360, title II, § 203(f), title IV, § 411(e)(1)(B), July 1, 1988, 102 Stat. 725, 775; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6003(g)(3)(D)(vi), 6202(d)(1), Dec. 19, 1989, 103 Stat. 2153, 2234; Pub. L. 101–508, title IV, § 4005(c)(1)(A), Nov. 5, 1990, 104 Stat. 1388–41; Pub. L. 103–66, title XIII, § 13568(a), (b), Aug. 10, 1993, 107 Stat. 608; Pub. L. 103–432, title I, §§ 110(d)(2), 151(b)(1)(A), (2)(A), Oct. 31, 1994, 108 Stat. 4408, 4433, 4434; Pub. L. 104–191, title II, § 202(b)(1), Aug. 21, 1996, 110 Stat. 1998; Pub. L. 105–33, title IV, § 4201(c)(1), Aug. 5, 1997, 111 Stat. 373; Pub. L. 108–173, title VII, § 736(a)(4), title IX, § 911(b), Dec. 8, 2003, 117 Stat. 2355, 2383.)

AMENDMENTS

2003—Pub. L. 108–173, § 911(b)(1), substituted ''Provisions relating to the administration of part A'' for ''Use of public or private agencies or organizations to facilitate payment to providers of services'' in section catchline.

Subsec. (a). Pub. L. 108–173, § 911(b)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) authorized Secretary to enter into agreements with agencies or organizations to determine and pay amounts under this part.

Subsec. (b). Pub. L. 108–173, § 911(b)(3), struck out subsec. (b), which set forth prerequisites for agreement or renewal of agreement.

Subsec. (c)(1). Pub. L. 108–173, § 911(b)(4)(A), struck out par. (1), which related to terms and conditions of agreements.

Subsec. (c)(2)(A). Pub. L. 108–173, § 911(b)(4)(B), substituted ''contract under section 1395kk–1 of this title that provides for making payments under this part'' for ''agreement under this section'' in introductory provisions.

Subsec. (c)(2)(B)(ii)(III). Pub. L. 108–173, § 736(a)(4)(A), struck out ''and'' at end.

Subsec. (c)(2)(B)(ii)(IV). Pub. L. 108–173, § 736(a)(4)(B), substituted '', and'' for period at end.

Subsec. (c)(3)(A). Pub. L. 108–173, § 911(b)(4)(B), substituted ''contract under section 1395kk–1 of this title that provides for making payments under this part'' for ''agreement under this section''.

Subsecs. (d) to (i). Pub. L. 108–173, § 911(b)(5), struck out subsecs. (d) to (i), which related to nomination of agency or organization, designation of agency or organization to perform provider services, standards, criteria, and procedures for evaluation of agency or organization performance, termination of agreement, bonding requirement for officers and employees, and liability of certifying and disbursing officers.

Subsec. (j). Pub. L. 108–173, § 911(b)(6), in introductory provisions, substituted ''A contract with a medicare administrative contractor under section 1395kk–1 of this title with respect to the administration of this part'' for ''An agreement with an agency or organization under this section'' and ''such medicare administrative contractor'' for ''such agency or organization'' in two places.

Subsec. (k). Pub. L. 108–173, § 911(b)(6), substituted ''A contract with a medicare administrative contractor under section 1395kk–1 of this title with respect to the administration of this part'' for ''An agreement with an agency or organization under this section'' and ''such medicare administrative contractor'' for ''such agency or organization''.

Subsec. (*l*). Pub. L. 108–173, § 911(b)(7), struck out subsec. (*l*), which prohibited any activity pursuant to an agreement under this section that is carried out pursuant to a contract under the Medicare Integrity Program.

1997—Subsec. (c)(2)(C). Pub. L. 105–33 substituted ''critical access'' for ''rural primary care''.

1996—Subsec. (*l*). Pub. L. 104–191 added subsec. (*l*).

1994—Subsec. (f)(1)(A). Pub. L. 103–432, § 151(b)(2)(A), inserted ''(including the agency's or organization's success in recovering payments made under this subchapter for services for which payment has been or could be made under a primary plan (as defined in section 1395y(b)(2)(A) of this title))'' after ''processing''.

Subsec. (f)(2)(A)(ii). Pub. L. 103–432, § 110(d)(2), substituted ''such agency's'' for ''such agency''.

Subsec. (k). Pub. L. 103–432, § 151(b)(1)(A), added subsec. (k).

1993—Subsec. (c)(2)(B)(ii)(IV), (V). Pub. L. 103–66, § 13568(b), substituted ''period ending on or before September 30, 1993'' for ''period'' in subcl. (IV) and added subcl. (V).

Subsec. (c)(3)(B). Pub. L. 103–66, § 13568(a), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days, and

''(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 14 days.''

1990—Subsec. (f). Pub. L. 101–508 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, struck out ''Such standards and criteria'' and all that follows, which was executed by striking out ''Such standards and criteria shall be published in the Federal Register, and opportunity shall be provided for public comment prior to implementation. Such standards and criteria shall include with respect to claims for services furnished under this part by any provider of services other than a hospital whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.'', and added par. (2).

1989—Subsec. (c)(1). Pub. L. 101–239, § 6202(d)(1), inserted at end ''The Secretary may not require, as a condition of entering into or renewing an agreement under this section or under section 1395hh of this title, that a fiscal intermediary match data obtained other than in its activities under this part with data used in the administration of this part for purposes of identifying situations in which the provisions of section 1395y(b) of this title may apply.''

Subsec. (c)(2)(C). Pub. L. 101–239, § 6003(g)(3)(D)(vi), inserted ''rural primary care hospital,'' after ''hospital,''.

Subsec. (k). Pub. L. 101–234 repealed Pub. L. 100–360, § 203(f), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (j)(2). Pub. L. 100–360, § 411(e)(1)(B), inserted ''in the case of a request for reconsideration of a denial,'' and substituted ''the disposition'' for ''disposition''.

Subsec. (k). Pub. L. 100–360, § 203(f), added subsec. (k) relating to use of regional intermediaries in administration of benefits.

1987—Subsec. (c)(1). Pub. L. 100–203, § 4035(a)(1), inserted at end ''The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for fiscal intermediaries under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.''

Subsec. (c)(2)(C). Pub. L. 100–203, § 4085(d)(1), substituted ''hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency'' for ''or hospice program''.

Subsec. (c)(3). Pub. L. 100–203, § 4031(a)(1), added par. (3).

Subsec. (f). Pub. L. 100–203, § 4023(b), inserted at end ''Such standards and criteria shall include with respect

to claims for services furnished under this part by any provider of services other than a hospital whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.''

Subsec. (j). Pub. L. 100–203, § 4032(a), added subsec. (j).

1986—Subsec. (a). Pub. L. 99–509, § 9352(a)(2), inserted at end ''As used in this subchapter and part B of subchapter XI of this chapter, the term 'fiscal intermediary' means an agency or organization with a contract under this section.''

Subsec. (c). Pub. L. 99–509, § 9311(b), designated existing provisions as par. (1) and added par. (2).

1984—Subsec. (c). Pub. L. 98–369, § 2326(d)(1), inserted provision that the Secretary, in determining the necessary and proper cost of administration with respect to each agreement, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated agency or organization in carrying out the terms of its agreement.

Subsec. (e)(4). Pub. L. 98–369, § 2326(b), inserted provision that not later than July 1, 1987, the Secretary limit the number of regional agencies or organizations to not more than ten.

Subsec. (f). Pub. L. 98–369, § 2326(c)(1), struck out in cl. (2) '', by regulation,'' after ''Secretary shall establish'' and inserted provision that the standards and criteria be published in the Federal Register and an opportunity be provided for public comment prior to implementation.

1982—Subsec. (e)(5). Pub. L. 97–248 added par. (5).

1980—Subsec. (e)(2). Pub. L. 96–499, § 930(*o*)(1), inserted ''(subject to the provisions of paragraph (4))''.

Subsec. (e)(4). Pub. L. 96–499, § 930(*o*)(2), added par. (4).

1977—Subsec. (a). Pub. L. 95–142, § 14(a)(1), inserted provisions relating to applicability to providers assigned to the agency or organization under subsec. (e) of this section.

Subsec. (b). Pub. L. 95–142, § 14(a)(2), substituted provisions setting forth criteria for agreements by the Secretary or renewal of such agreements with agencies or organizations, for provisions setting forth criteria for agreements by the Secretary with agencies or organizations.

Subsecs. (e), (f). Pub. L. 95–142, § 14(a)(4), (5), added subsecs. (e) and (f). Former subsecs. (e) and (f) redesignated (g) and (h), respectively.

Subsec. (g). Pub. L. 95–142, § 14(a)(3), (4), redesignated former subsec. (e) as (g) and inserted provisions relating to applicability of standards, etc., developed under subsec. (f) of this section. Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 95–142, § 14(a)(4), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1972—Subsec. (a). Pub. L. 92–603 inserted reference to provisions of section 1395*oo* of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 911(b) of Pub. L. 108–173 effective Oct. 1, 2005, except as otherwise provided, with transition rules authorizing Secretary of Health and Human Services to continue to enter into agreements under this section prior to such date, and provisions authorizing continuation of Medicare Integrity Program functions during the period that begins on Dec. 8, 2003, and ends on Oct. 1, 2011, see section 911(d) of Pub. L. 108–173, set out as an Effective Date; Transition Rule note under section 1395kk–1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 151(b)(4) of Pub. L. 103–432 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1395u of this title] shall apply to contracts with fiscal intermediaries and carriers under title XVIII of the Social Security Act [this subchapter] for contract years beginning with 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13568(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall apply to claims received on or after October 1, 1993.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6202(d)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1395u of this title] shall apply to agreements and contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 203(f) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(e)(1)(B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4031(a)(3)(A) of Pub. L. 100–203 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1395u of this title] shall apply to claims received on or after July 1, 1988.''

Section 4032(c)(1) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(e)(1)(C), July 1, 1988, 102 Stat. 775, provided that:

''(A) The amendment made by subsection (a) [amending this section] shall apply with respect to claims received on or after January 1, 1988.

''(B) The amendment made by subsection (b) [amending this section] shall apply with respect to reconsiderations requested on or after October 1, 1988.''

Section 4035(a)(3) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1395u and 1395hh of this title] shall take effect on the date of the enactment of this Act [Dec. 22, 1987] and shall apply to budgets for fiscal years beginning with fiscal year 1989.''

Section 4085(d)(2) of Pub. L. 100–203 provided that:

''(A) The amendment made by paragraph (1) [amending this section] shall apply to claims received on or after the date of enactment of this Act [Dec. 22, 1987].

''(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 [this section], and regulations, to such extent as may be necessary to implement the amendment made by paragraph (1).''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9311(d) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsections (b) and (c) [amending this section and section 1395u of this title] shall apply to claims received on or after November 1, 1986.

''(2) Sections 1816(c)(2)(C)) [sic] and 1842(c)(2)(C) of the Social Security Act [subsec. (c)(2)(C) of this section and section 1395u(c)(2)(C) of this title], as added by such amendments, shall apply to claims received on or after April 1, 1987.

''(3) The Secretary of Health and Human Services shall provide for such timely amendments to agree-

ments under section 1816 of the Social Security Act [this section] and contracts under section 1842 of such Act [section 1395u of this title], and regulations, to such extent as may be necessary to implement the provisions of this Act on a timely basis.''

Amendment by section 9352(a)(2) of Pub. L. 99–509 to be implemented by Secretary of Health and Human Services not later than 6 months after Oct. 21, 1986, see section 9352(c)(1) of Pub. L. 99–509, set out as a note under section 1320c–2 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2326(d)(3) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [amending this section and section 1395u of this title] shall apply to agreements and contracts entered into or renewed after September 30, 1984.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–499 effective Dec. 5, 1980, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 14(c), (d) of Pub. L. 95–142 provided that:

''(c) The amendment made by paragraphs (2) and (3) of subsection (a) [amending this section] to the extent that they require application of standards, criteria, and procedures developed under section 1816(f) of the Social Security Act [subsec. (f) of this section] shall apply to the entering into, renewal, or termination of agreements on and after October 1, 1978.

''(d) Except as provided in subsection (c), the amendment made by subsection (a)(2) [amending this section] shall apply to agreements entered into or renewed on or after the date of enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to cost reports of providers of services for accounting periods ending on or after June 30, 1973, see section 243(c) of Pub. L. 92–603, set out as an Effective Date note under section 1395*oo* of this title.

ADVISORY COMMITTEE ON MEDICARE HOME HEALTH CLAIMS

Section 427 of Pub. L. 100–360, which provided that the Administrator of the Health Care Financing Administration was to establish an advisory committee to be known as the Advisory Committee on Medicare Home Health Claims to study the reasons for the increase in the denial of claims for home health services during 1986 and 1987, the ramifications of such increase, and the need to reform the process involved in such denials, was repealed by Pub. L. 101–234, title III, §301(a), Dec. 13, 1989, 103 Stat. 1985.

AMENDMENTS TO AGREEMENTS AND CONTRACTS NECESSARY TO IMPLEMENT SECTION 4031(a) OF PUB. L. 100–203

Section 4031(a)(3)(B) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act [this section] and contracts under section 1842 of such Act [section 1395u of this title], and regulations, to such extent as may be necessary to implement the provisions of this subsection [amending this section and section 1395u of this title] on a timely basis.''

PROHIBITION OF POLICIES OTHER THAN AS PROVIDED BY SECTION 4031 OF PUB. L. 100–203 INTENDED TO SLOW DOWN MEDICARE PAYMENTS; BUDGET CONSIDERATIONS

Section 4031(b), (c) of Pub. L. 100–203 provided that, notwithstanding any other provision of law, the Secretary of Health and Human Services was not authorized to issue, after Dec. 22, 1987, and before Oct. 1, 1990, any final regulation, instruction, or other policy change which was primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under this subchapter, and that section 4031 of Pub. L. 100–203, amending this section and section 1395u of this title and enacting provisions set out as notes under this section, was a necessary (but secondary) result of a significant policy change.

AMENDMENTS TO AGREEMENTS AND CONTRACTS NECESSARY TO IMPLEMENT SECTION 4032(a), (b) OF PUB. L. 100–203

Section 4032(c)(2) provided that: ''The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 [this section] and contracts under section 1842 of the Social Security Act [section 1395u of this title], and regulations, to such extent as may be necessary to implement the amendments made by subsections (a) and (b) [amending this section] on a timely basis.''

REPLACEMENT OF AGENCY, ORGANIZATION, OR CARRIER PROCESSING MEDICARE CLAIMS; NUMBER OF AGREEMENTS AND CONTRACTS AUTHORIZED FOR FISCAL YEARS 1985 THROUGH 1993

Section 2326(a) of Pub. L. 98–369, as amended by Pub. L. 98–617, §3(a)(2), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–509, title IX, §9321(b), Oct. 21, 1986, 100 Stat. 2016; Pub. L. 101–239, title VI, §6215(a), Dec. 19, 1989, 103 Stat. 2252; Pub. L. 103–432, title I, §159(a), Oct. 31, 1994, 108 Stat. 4443, provided that: ''During each fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1993), the Secretary of Health and Human Services may enter into not more than two agreements under section 1816 of the Social Security Act [this section], and not more than two contracts under section 1842 of such Act [section 1395u of this title], on the basis of competitive bidding, without regard to the nominating process under section 1816(a) of such Act or cost reimbursement provisions under sections 1816(c) or 1842(c) of such Act during the term of the agreement. Such procedure may be used only for the purpose of replacing an agency or organization or carrier which over a 2-year period of time has been in the lowest 20th percentile of agencies and organizations or carriers having agreements or contracts under the respective section, as measured by the Secretary's cost and performance criteria. In addition, beginning with fiscal year 1990 and any subsequent fiscal year the Secretary may enter into such additional agreements and contracts without regard to such cost reimbursement provisions if the fiscal intermediary or carrier involved and the Secretary agree to waive such provisions, but the Secretary may not take any action that has the effect of requiring that the intermediary or carrier agree to waive such provisions, including requiring such a waiver as a condition for entering into or renewing such an agreement or contract. Any agency or organization or carrier selected on the basis of competitive bidding must perform all of the duties listed in section 1816(a) of such Act, or the duties listed in paragraphs (1) through (4) of section 1842(a) of such Act, as the case may be, and must be a health insuring organization (as determined by the Secretary).''

[Section 159(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending section 2326(a) of Pub. L. 98–369, set out above] shall apply beginning with fiscal year 1994.'']

[Section 6215(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending section

2326(a) of Pub. L. 98–369, set out above] shall apply beginning with fiscal year 1990.'']

AUDIT AND MEDICAL CLAIMS REVIEW

Pub. L. 97–248, title I, § 118, Sept. 3, 1982, 96 Stat. 355, as amended by Pub. L. 99–272, title IX, § 9216(a), Apr. 7, 1986, 100 Stat. 180, provided that, in addition to any funds otherwise provided for payments to intermediaries and carriers under agreements entered into under this section and section 1395u of this title, there were transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Fund an additional $45,000,000 for each of fiscal years 1983, 1984, and 1985, and $105,000,000 for each of fiscal years 1986, 1987, and 1988 for payments to such intermediaries and carriers under such agreements to be used exclusively for purposes of carrying out provider cost audits, of reviewing medical necessity, and of recovering third-party liability payments.

DEVELOPMENTAL DATE FOR STANDARDS, CRITERIA, AND PROCEDURES PURSUANT TO SUBSEC. (f) OF THIS SECTION

Section 14(b) of Pub. L. 95–142 directed the Secretary of Health, Education, and Welfare to develop the standards, criteria, and procedures described in subsection (f) of section 1816 of the Social Security Act [subsec. (f) of this section] (as added by subsection (a)(5)) not later than Oct. 1, 1978.

§ 1395i. Federal Hospital Insurance Trust Fund

(a) Creation; deposits; transfers from Treasury

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ''Federal Hospital Insurance Trust Fund'' (hereinafter in this section referred to as the ''Trust Fund''). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and such amounts as may be deposited in, or appropriated to, such fund as provided in this part. There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1966, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1986 with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages, which wages shall be certified by the Commissioner of Social Security on the basis of records of wages established and maintained by the Commissioner of Social Security in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of the Internal Revenue Code of 1986 with respect to self-employment income reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Commissioner of Social Security on the basis of records of self-employment established and maintained by the Commissioner of Social Security in accordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence.

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the ''Board of Trustees'') composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the ''Managing Trustee''). The Administrator of the Centers for Medicare & Medicaid Services shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years; Each report provided under paragraph (2) beginning with the report in 2005 shall include the information specified in section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.[1]

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the dis-

[1] So in original. See 2003 Amendment note below.

bursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

(c) Investment of Trust Fund by Managing Trustee

It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Authority of Managing Trustee to sell obligations

Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) Interest on and proceeds from sale or redemption of obligations

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) Payment of estimated taxes

(1) The Managing Trustee is directed to pay from time to time from the Trust Fund into the Treasury the amount estimated by him as taxes imposed under section 3101(b) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1986 with respect to wages paid after December 31, 1965. Such taxes shall be determined on the basis of the records of wages established and maintained by the Commissioner of Social Security in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1986, and the Commissioner of Social Security shall furnish the Managing Trustee such information as may be required by the Managing Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections.

(2) Repayments made under paragraph (1) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(g) Transfers from other Funds

There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(h) Payments from Trust Fund amounts certified by Secretary

The Managing Trustee shall also pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g)(1) of this title.

(i) Payment of travel expenses for travel within United States; reconsideration interviews and proceedings before administrative law judges

There are authorized to be made available for expenditure out of the Trust Fund such amounts

as are required to pay travel expenses, either on an actual cost or commuted basis, to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 410(i) of this title) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Secretary) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations. The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.

(j) Loans from other Funds; interest; repayment; report to Congress

(1) If at any time prior to January 1988 the Managing Trustee determines that borrowing authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Hospital Insurance Trust Fund, the Managing Trustee may, subject to paragraph (5), borrow such amounts as he determines to be appropriate from either the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund for transfer to and deposit in the Federal Hospital Insurance Trust Fund.

(2) In any case where a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made, from such Trust Fund to the lending Trust Fund, the total interest accrued to such day with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (c) of this section (even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan).

(3)(A) If in any month after a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Hospital Insurance Trust Fund, the Managing Trustee determines that the Hospital Insurance Trust Fund ratio exceeds 15 percent, he shall transfer from such Trust Fund to the lending trust fund an amount that—

(I) together with any amounts transferred to another lending trust fund under this paragraph for such year, will reduce the Hospital Insurance Trust Fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year in which the determination described in clause (i) is made.

(iii) For purposes of this subparagraph, the term ''Hospital Insurance Trust Fund ratio'' means, with respect to any calendar year, the ratio of—

(I) the balance in the Federal Hospital Insurance Trust Fund, as of the last day of such calendar year; to

(II) the amount estimated by the Secretary to be the total amount to be paid from the Federal Hospital Insurance Trust Fund during the calendar year following such calendar year (other than payments of interest on, and repayments of, loans from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under paragraph (1)), and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from the Railroad Retirement Account.

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987 and before January 1, 1990, the Managing Trustee shall transfer each month from the Federal Hospital Insurance Trust Fund to any Trust Fund that is owed any amount by the Federal Hospital Insurance Trust Fund on a loan made under paragraph (1), an amount not less than an amount equal to (I) the amount owed to such Trust Fund by the Federal Hospital Insurance Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsing after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.

(4) The Board of Trustees shall make a timely report to the Congress of any amounts transferred (including interest payments) under this subsection.

(5)(A) No amounts may be loaned by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund under paragraph (1) during any month if the OASDI trust fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term ''OASDI trust fund ratio'' means, with respect to any month, the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Trust Fund from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title, as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the total amount which (as estimated by the Secretary) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the month for which such ratio is to be determined for all purposes authorized by section 401 of this title (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account.

(k) Health Care Fraud and Abuse Control Account

(1) Establishment

There is hereby established in the Trust Fund an expenditure account to be known as the ''Health Care Fraud and Abuse Control Account'' (in this subsection referred to as the ''Account'').

(2) Appropriated amounts to Trust Fund

(A) In general

There are hereby appropriated to the Trust Fund—

(i) such gifts and bequests as may be made as provided in subparagraph (B);

(ii) such amounts as may be deposited in the Trust Fund as provided in sections 242(b) and 249(c) of the Health Insurance Portability and Accountability Act of 1996, and subchapter XI of this chapter; and

(iii) such amounts as are transferred to the Trust Fund under subparagraph (C).

(B) Authorization to accept gifts

The Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Trust Fund, for the benefit of the Account or any activity financed through the Account.

(C) Transfer of amounts

The Managing Trustee shall transfer to the Trust Fund, under rules similar to the rules in section 9601 of the Internal Revenue Code of 1986, an amount equal to the sum of the following:

(i) Criminal fines recovered in cases involving a Federal health care offense (as defined in section 24(a) of title 18).

(ii) Civil monetary penalties and assessments imposed in health care cases, including amounts recovered under this subchapter and subchapters XI and XIX of this chapter, and chapter 38 of title 31 (except as otherwise provided by law).

(iii) Amounts resulting from the forfeiture of property by reason of a Federal health care offense.

(iv) Penalties and damages obtained and otherwise creditable to miscellaneous receipts of the general fund of the Treasury obtained under sections 3729 through 3733 of title 31 (known as the False Claims Act), in cases involving claims related to the provision of health care items and services (other than funds awarded to a relator, for restitution or otherwise authorized by law).

(D) Application

Nothing in subparagraph (C)(iii) shall be construed to limit the availability of recoveries and forfeitures obtained under title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] for the purpose of providing equitable or remedial relief for employee welfare benefit plans, and for participants and beneficiaries under such plans, as authorized under such title.

(3) Appropriated amounts to Account for fraud and abuse control program, etc.

(A) Departments of Health and Human Services and Justice

(i) In general

There are hereby appropriated to the Account from the Trust Fund such sums as the Secretary and the Attorney General certify are necessary to carry out the purposes described in subparagraph (C), to be available without further appropriation, in an amount not to exceed—

(I) for fiscal year 1997, $104,000,000;

(II) for each of the fiscal years 1998 through 2003, the limit for the preceding fiscal year, increased by 15 percent; and

(III) for each fiscal year after fiscal year 2003, the limit for fiscal year 2003.

(ii) Medicare and medicaid activities

For each fiscal year, of the amount appropriated in clause (i), the following amounts shall be available only for the purposes of the activities of the Office of the Inspector General of the Department of Health and Human Services with respect to the programs under this subchapter and subchapter XIX of this chapter—

(I) for fiscal year 1997, not less than $60,000,000 and not more than $70,000,000;

(II) for fiscal year 1998, not less than $80,000,000 and not more than $90,000,000;

(III) for fiscal year 1999, not less than $90,000,000 and not more than $100,000,000;

(IV) for fiscal year 2000, not less than $110,000,000 and not more than $120,000,000;

(V) for fiscal year 2001, not less than $120,000,000 and not more than $130,000,000;

(VI) for fiscal year 2002, not less than $140,000,000 and not more than $150,000,000; and

(VII) for each fiscal year after fiscal year 2002, not less than $150,000,000 and not more than $160,000,000.

(B) Federal Bureau of Investigation

There are hereby appropriated from the general fund of the United States Treasury

and hereby appropriated to the Account for transfer to the Federal Bureau of Investigation to carry out the purposes described in subparagraph (C), to be available without further appropriation—

(i) for fiscal year 1997, $47,000,000;
(ii) for fiscal year 1998, $56,000,000;
(iii) for fiscal year 1999, $66,000,000;
(iv) for fiscal year 2000, $76,000,000;
(v) for fiscal year 2001, $88,000,000;
(vi) for fiscal year 2002, $101,000,000; and
(vii) for each fiscal year after fiscal year 2002, $114,000,000.

(C) Use of funds

The purposes described in this subparagraph are to cover the costs (including equipment, salaries and benefits, and travel and training) of the administration and operation of the health care fraud and abuse control program established under section 1320a–7c(a) of this title, including the costs of—

(i) prosecuting health care matters (through criminal, civil, and administrative proceedings);
(ii) investigations;
(iii) financial and performance audits of health care programs and operations;
(iv) inspections and other evaluations; and
(v) provider and consumer education regarding compliance with the provisions of subchapter XI of this chapter.

(4) Appropriated amounts to Account for Medicare Integrity Program

(A) In general

There are hereby appropriated to the Account from the Trust Fund for each fiscal year such amounts as are necessary to carry out the Medicare Integrity Program under section 1395ddd of this title, subject to subparagraph (B) and to be available without further appropriation.

(B) Amounts specified

The amount appropriated under subparagraph (A) for a fiscal year is as follows:

(i) For fiscal year 1997, such amount shall be not less than $430,000,000 and not more than $440,000,000.
(ii) For fiscal year 1998, such amount shall be not less than $490,000,000 and not more than $500,000,000.
(iii) For fiscal year 1999, such amount shall be not less than $550,000,000 and not more than $560,000,000.
(iv) For fiscal year 2000, such amount shall be not less than $620,000,000 and not more than $630,000,000.
(v) For fiscal year 2001, such amount shall be not less than $670,000,000 and not more than $680,000,000.
(vi) For fiscal year 2002, such amount shall be not less than $690,000,000 and not more than $700,000,000.
(vii) For each fiscal year after fiscal year 2002, such amount shall be not less than $710,000,000 and not more than $720,000,000.

(5) Annual report

Not later than January 1, the Secretary and the Attorney General shall submit jointly a report to Congress which identifies—

(A) the amounts appropriated to the Trust Fund for the previous fiscal year under paragraph (2)(A) and the source of such amounts; and
(B) the amounts appropriated from the Trust Fund for such year under paragraph (3) and the justification for the expenditure of such amounts.

(6) GAO report

Not later than June 1, 1998, and January 1 of 2000, 2002, and 2004, the Comptroller General of the United States shall submit a report to Congress which—

(A) identifies—
(i) the amounts appropriated to the Trust Fund for the previous two fiscal years under paragraph (2)(A) and the source of such amounts; and
(ii) the amounts appropriated from the Trust Fund for such fiscal years under paragraph (3) and the justification for the expenditure of such amounts;
(B) identifies any expenditures from the Trust Fund with respect to activities not involving the program under this subchapter;
(C) identifies any savings to the Trust Fund, and any other savings, resulting from expenditures from the Trust Fund; and
(D) analyzes such other aspects of the operation of the Trust Fund as the Comptroller General of the United States considers appropriate.

(Aug. 14, 1935, ch. 531, title XVIII, § 1817, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 299; amended Pub. L. 90–248, title I, § 169(a), Jan. 2, 1968, 81 Stat. 875; Pub. L. 92–603, title I, § 132(d), Oct. 30, 1972, 86 Stat. 1361; Pub. L. 95–292, § 5, June 13, 1978, 92 Stat. 315; Pub. L. 96–265, title III, § 310(c), June 9, 1980, 94 Stat. 460; Pub. L. 97–123, § 1(b), Dec. 29, 1981, 95 Stat. 1659; Pub. L. 98–21, title I, §§ 141(b), 142(b)(1), (2)(A), (3), (4), 154(b), title III, § 341(b), Apr. 20, 1983, 97 Stat. 98, 100, 101, 107, 135; Pub. L. 98–369, div. B, title III, §§ 2337(a), 2354(b)(2), title VI, § 2663(j)(2)(F)(i), July 18, 1984, 98 Stat. 1091, 1100, 1170; Pub. L. 99–272, title IX, § 9213(b), Apr. 7, 1986, 100 Stat. 180; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–360, title II, § 212(c)(3), July 1, 1988, 102 Stat. 741; Pub. L. 100–647, title VIII, § 8005(a), Nov. 10, 1988, 102 Stat. 3781; Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–508, title V, § 5106(c), Nov. 5, 1990, 104 Stat. 1388–268; Pub. L. 103–296, title I, § 108(c)(1), Aug. 15, 1994, 108 Stat. 1485; Pub. L. 104–191, title II, § 201(b), Aug. 21, 1996, 110 Stat. 1993; Pub. L. 105–33, title IV, § 4318, Aug. 5, 1997, 111 Stat. 392; Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(j)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–366; Pub. L. 108–173, title VII, § 736(a)(5), (6), title VIII, § 801(d)(1), title IX, § 900(e)(1)(D), Dec. 8, 2003, 117 Stat. 2355, 2359, 2371.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(1), (2), (f)(1), and (k)(2)(C), is classified generally to Title 26, Internal Revenue Code. Subtitle F of such Code appears at section 6001 et seq. of Title 26.

Section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (b)(2), is section 801(a) of Pub. L. 108–173, which is set out as a note under this section.

Sections 242(b) and 249(b) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (k)(2)(A)(ii), are sections 242(b) and 249(b) of Pub. L. 104–191, which are set out as notes under this section.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (k)(2)(D), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, as amended. Title I of the Act is classified generally to subchapter I (§1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–173, §900(e)(1)(D), in fifth sentence of introductory provisions, substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'', and, in second sentence of concluding provisions, substituted ''Chief Actuary of the Centers for Medicare & Medicaid Services'' for ''Chief Actuarial Officer of the Health Care Financing Administration''.

Subsec. (b)(2). Pub. L. 108–173, §801(d)(1), inserted at end ''Each report provided under paragraph (2) beginning with the report in 2005 shall include the information specified in section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.''

Subsec. (k)(3)(A)(i)(I). Pub. L. 108–173, §736(a)(5)(A), substituted semicolon for comma at end.

Subsec. (k)(3)(A)(ii). Pub. L. 108–173, §736(a)(5)(B), substituted ''the programs under this subchapter and subchapter XIX of this chapter'' for ''the Medicare and medicaid programs'' in introductory provisions.

Subsec. (k)(6)(B). Pub. L. 108–173, §736(a)(6), substituted ''program under this subchapter'' for ''Medicare program under this subchapter''.

1999—Subsec. (k)(2)(C)(i). Pub. L. 106–113 substituted ''section 24(a)'' for ''section 982(a)(6)(B)''.

1997—Subsec. (k)(6). Pub. L. 105–33 inserted ''June 1, 1998, and'' after ''Not later than'' in introductory provisions.

1996—Subsec. (k). Pub. L. 104–191 added subsec. (k).

1994—Subsec. (a). Pub. L. 103–296, §108(c)(1)(A), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' wherever appearing.

Subsec. (b). Pub. L. 103–296, §108(c)(1)(B), inserted ''the Commissioner of Social Security,'' after ''composed of'' in introductory provisions.

Subsec. (f)(1). Pub. L. 103–296, §108(c)(1)(C), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

1990—Subsec. (i). Pub. L. 101–508 inserted at end ''The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.''

1989—Subsec. (b). Pub. L. 101–234 repealed Pub. L. 100–360, §212(c)(3), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (b). Pub. L. 100–647 inserted after first sentence ''A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term.''

Pub. L. 100–360 inserted after sixth sentence ''Such report shall also identify (and treat separately) those outlays from the Trust Fund which are also outlays from the Medicare Catastrophic Coverage Account created under section 1395t–2 of this title and those outlays for which there are amounts transferred into the Federal Hospital Insurance Catastrophic Coverage Reserve Fund.''

1986—Subsec. (a)(1), (2). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b). Pub. L. 99–272 struck out provision at end of penultimate sentence that certification shall not refer to economic assumptions underlying Trustee's report.

Subsec. (f)(1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing.

1984—Subsec. (a). Pub. L. 98–369, §2337(a), in provisions following par. (2) substituted ''from time to time'' for ''monthly on the first day of each calendar month'', ''paid to or deposited into the Treasury'' for ''to be paid to or deposited into the Treasury during such month'', and struck out provision that all amounts transferred to the Trust Fund under the preceding sentence had to be invested by the Managing Trustee in the same manner and to the same extent as the other assets of the Trust Fund, and the Trust Fund had to pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsec. (c).

Subsec. (a)(1), (2). Pub. L. 98–369, §2663(j)(2)(F)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

Subsec. (c). Pub. L. 98–369, §2354(b)(2), substituted ''under chapter 31 of title 31'' for ''under the Second Liberty Bond Act, as amended''.

Subsecs. (f)(1), (g), (h). Pub. L. 98–369, §2663(j)(2)(F)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

1983—Subsec. (a). Pub. L. 98–21, §141(b)(1)(A), in provisions following par. (2) substituted ''monthly on the first day of each calendar month'' for ''from time to time'', substituted ''to be paid to or deposited into the Treasury during such month'' for ''paid to or deposited into the Treasury'', and inserted provision that all amounts transferred to the Trust Fund under existing provisions shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of the Trust Fund; and the Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on Jan. 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsection (c).

Subsec. (b). Pub. L. 98–21, §341(b)(1), substituted in provisions preceding par. (1) ''Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate'' for ''Secretary of Health, Education, and Welfare, all ex officio''.

Pub. L. 98–21, §154(b), inserted at end provision that the report referred to in par. (2) shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Pub. L. 98–21, §341(b)(2), inserted at end provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

Subsec. (j)(1). Pub. L. 98–21, §142(b)(1), substituted reference to January 1988 for reference to January 1983 and inserted '', subject to paragraph (5),'' after ''may''.

Subsec. (j)(2). Pub. L. 98–21, §142(b)(2)(A), substituted ''on the last day of each month after such loan is made'' for ''from time to time'', substituted ''the total interest accrued to such day'' for ''interest'', and inserted ''(even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan)''.

Subsec. (j)(3)(A). Pub. L. 98–21, §142(b)(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (j)(5). Pub. L. 98–21, §142(b)(4), added par. (5).

1981—Subsec. (j). Pub. L. 97–123 added subsec. (j).

1980—Subsec. (i). Pub. L. 96–265 added subsec. (i).

1978—Subsec. (b). Pub. L. 95–292 substituted ''Administrator of the Health Care Financing Administration'' for ''Commissioner of Social Security'' in provisions preceding par. (1).

1972—Subsec. (a). Pub. L. 92–603 inserted ''such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and'' after ''consist of'' and before ''such amounts'' in provisions preceding par. (1).

1968—Subsec. (b)(2). Pub. L. 90–248 substituted ''April'' for ''March''.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(6) [title III, §321(j)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–366, provided that: ''The amendment made by this subsection [amending this section] shall take effect as if included in the amendment made by section 201 of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 1992).''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d) of Pub. L. 101–508, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 202(b) of Pub. L. 100–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to members of Board of Trustees of Federal Hospital Insurance Trust Fund serving on such Board as members of the public on or after Nov. 10, 1988, see section 8005(b) of Pub. L. 100–647, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2337(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the first day of the month following the month in which this Act is enacted [July 1984].''

Amendment by section 2354(b)(2) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(j)(2)(F)(i) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 141(b) of Pub. L. 98–21 effective on first day of month following April 1983, see section 141(c) of Pub. L. 98–21, set out as a note under section 401 of this title.

Section 142(b)(2)(B) of Pub. L. 98–21 provided that: ''The amendment made by this paragraph [amending this section] shall apply with respect to months beginning more than 30 days after the date of enactment of this Act [Apr. 20, 1983].''

Amendment by sections 154(b) and 341(b) of Pub. L. 98–21 effective Apr. 20, 1983, see sections 154(e) and 341(d) of Pub. L. 98–21, set out as notes under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–123 effective Dec. 29, 1981, see section 1(c) of Pub. L. 97–123, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to gifts and bequests received after Oct. 30, 1972, see section 132(f) of Pub. L. 92–603, set out as a note under section 401 of this title.

RESTORATION OF MEDICARE TRUST FUNDS

Pub. L. 108–173, title VII, §734, Dec. 8, 2003, 117 Stat. 2352, provided that:

''(a) DEFINITIONS.—In this section:

''(1) CLERICAL ERROR.—The term 'clerical error' means a failure that occurs on or after April 15, 2001, to have transferred the correct amount from the general fund of the Treasury to a Trust Fund.

''(2) TRUST FUND.—The term 'Trust Fund' means the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t).

''(b) CORRECTION OF TRUST FUND HOLDINGS.—

''(1) IN GENERAL.—The Secretary of the Treasury shall take the actions described in paragraph (2) with respect to the Trust Fund with the goal being that, after such actions are taken, the holdings of the Trust Fund will replicate, to the extent practicable in the judgment of the Secretary of the Treasury, in consultation with the Secretary [of Health and Human Services], the holdings that would have been held by the Trust Fund if the clerical error involved had not occurred.

''(2) OBLIGATIONS ISSUED AND REDEEMED.—The Secretary of the Treasury shall—

''(A) issue to the Trust Fund obligations under chapter 31 of title 31, United States Code, that bear

issue dates, interest rates, and maturity dates that are the same as those for the obligations that—

''(i) would have been issued to the Trust Fund if the clerical error involved had not occurred; or

''(ii) were issued to the Trust Fund and were redeemed by reason of the clerical error involved; and

''(B) redeem from the Trust Fund obligations that would have been redeemed from the Trust Fund if the clerical error involved had not occurred.

''(c) APPROPRIATION.—There is appropriated to the Trust Fund, out of any money in the Treasury not otherwise appropriated, an amount determined by the Secretary of the Treasury, in consultation with the Secretary, to be equal to the interest income lost by the Trust Fund through the date on which the appropriation is being made as a result of the clerical error involved.

''(d) CONGRESSIONAL NOTICE.—In the case of a clerical error that occurs after April 15, 2001, the Secretary of the Treasury, before taking action to correct the error under this section, shall notify the appropriate committees of Congress concerning such error and the actions to be taken under this section in response to such error.

''(e) DEADLINE.—With respect to the clerical error that occurred on April 15, 2001, not later than 120 days after the date of the enactment of this Act [Dec. 8, 2003]—

''(1) the Secretary of the Treasury shall take the actions under subsection (b)(1); and

''(2) the appropriation under subsection (c) shall be made.''

INCLUSION IN ANNUAL REPORT OF MEDICARE TRUSTEES OF INFORMATION ON STATUS OF MEDICARE TRUST FUNDS

Pub. L. 108–173, title VIII, §801, Dec. 8, 2003, 117 Stat. 2357, provided that:

''(a) DETERMINATIONS OF EXCESS GENERAL REVENUE MEDICARE FUNDING.—

''(1) IN GENERAL.—The Board of Trustees of each medicare trust fund shall include in the annual reports submitted under subsection (b)(2) of sections 1817 and 1841 of the Social Security Act (42 U.S.C. 1395i and 1395t)—

''(A) the information described in subsection (b); and

''(B) a determination as to whether there is projected to be excess general revenue medicare funding (as defined in subsection (c)) for the fiscal year in which the report is submitted or for any of the succeeding 6 fiscal years.

''(2) MEDICARE FUNDING WARNING.—For purposes of section 1105(h) of title 31, United States Code, and this subtitle [subtitle A (§§801–804) of title VIII of Pub. L. 108–173, amending this section, section 1395t of this title, and section 1105 of Title 31, Money and Finance, and enacting provisions set out as a note under section 1105 of Title 31], an affirmative determination under paragraph (1)(B) in 2 consecutive annual reports shall be treated as a medicare funding warning in the year in which the second such report is made.

''(3) 7-FISCAL-YEAR REPORTING PERIOD.—For purposes of this subtitle, the term '7-fiscal-year reporting period' means, with respect to a year in which an annual report described in paragraph (1) is made, the period of 7 consecutive fiscal years beginning with the fiscal year in which the report is submitted.

''(b) INFORMATION.—The information described in this subsection for an annual report in a year is as follows:

''(1) PROJECTIONS OF GROWTH OF GENERAL REVENUE SPENDING.—A statement of the general revenue medicare funding as a percentage of the total medicare outlays for each of the following:

''(A) Each fiscal year within the 7-fiscal-year reporting period.

''(B) Previous fiscal years and as of 10, 50, and 75 years after such year.

''(2) COMPARISON WITH OTHER GROWTH TRENDS.—A comparison of the trend of such percentages with the annual growth rate in the following:

''(A) The gross domestic product.

''(B) Private health costs.

''(C) National health expenditures.

''(D) Other appropriate measures.

''(3) PART D SPENDING.—Expenditures, including trends in expenditures, under part D of title XVIII of the Social Security Act [part D of this subchapter], as added by section 101.

''(4) COMBINED MEDICARE TRUST FUND ANALYSIS.—A financial analysis of the combined medicare trust funds if general revenue medicare funding were limited to the percentage specified in subsection (c)(1)(B) of total medicare outlays.

''(c) DEFINITIONS.—For purposes of this section:

''(1) EXCESS GENERAL REVENUE MEDICARE FUNDING.—The term 'excess general revenue medicare funding' means, with respect to a fiscal year, that—

''(A) general revenue medicare funding (as defined in paragraph (2)), expressed as a percentage of total medicare outlays (as defined in paragraph (4)) for the fiscal year; exceeds

''(B) 45 percent.

''(2) GENERAL REVENUE MEDICARE FUNDING.—The term 'general revenue medicare funding' means for a year—

''(A) the total medicare outlays (as defined in paragraph (4)) for the year; minus

''(B) the dedicated medicare financing sources (as defined in paragraph (3)) for the year.

''(3) DEDICATED MEDICARE FINANCING SOURCES.—The term 'dedicated medicare financing sources' means the following:

''(A) HOSPITAL INSURANCE TAX.—Amounts appropriated to the Hospital Insurance Trust Fund under the third sentence of section 1817(a) of the Social Security Act (42 U.S.C. 1395i(a)) and amounts transferred to such Trust Fund under section 7(c)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(c)(2)).

''(B) TAXATION OF CERTAIN OASDI BENEFITS.—Amounts appropriated to the Hospital Insurance Trust Fund under section 121(e)(1)(B) of the Social Security Amendments of 1983 (Public Law 98–21) [set out as a note under section 401 of this title], as inserted by section 13215(c) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66).

''(C) STATE TRANSFERS.—The State share of amounts paid to the Federal Government by a State under section 1843 of the Social Security Act (42 U.S.C. 1395v) or pursuant to section 1935(c) of such Act [section 1396u–5(c) of this title].

''(D) PREMIUMS.—The following premiums:

''(i) PART A.—Premiums paid by non-Federal sources under sections 1818 and section [sic] 1818A (42 U.S.C. 1395i–2 and 1395i–2a) of such Act.

''(ii) PART B.—Premiums paid by non-Federal sources under section 1839 of such Act (42 U.S.C. 1395r), including any adjustments in premiums under such section.

''(iii) PART D.—Monthly beneficiary premiums paid under part D of title XVIII of such Act [part D of this subchapter], as added by section 101, and MA monthly prescription drug beneficiary premiums paid under part C of such title [part C of this subchapter] insofar as they are attributable to basic prescription drug coverage.

Premiums under clauses (ii) and (iii) shall be determined without regard to any reduction in such premiums attributable to a beneficiary rebate under section 1854(b)(1)(C) of such title [section 1395w–24(b)(1)(C) of this title], as amended by section 222(b)(1), and premiums under clause (iii) are deemed to include any amounts paid under section 1860D–13(b) of such title [section 1395w–113(b) of this title], as added by section 101.

''(E) GIFTS.—Amounts received by the medicare trust funds under section 201(i) of the Social Security Act (42 U.S.C. 401(i)).

''(4) TOTAL MEDICARE OUTLAYS.—The term 'total medicare outlays' means total outlays from the medicare trust funds and shall—

''(A) include payments made to plans under part C of title XVIII of the Social Security Act [part C of this subchapter] that are attributable to any rebates under section 1854(b)(1)(C) of such Act (42 U.S.C. 1395w–24(b)(1)(C)), as amended by section 222(b)(1);

''(B) include administrative expenditures made in carrying out title XVIII of such Act [this subchapter] and Federal outlays under section 1935(b) of such Act [section 1396u–5(b) of this title], as added by section 103(a)(2); and

''(C) offset outlays by the amount of fraud and abuse collections insofar as they are applied or deposited into a medicare trust fund.

''(5) MEDICARE TRUST FUND.—The term 'medicare trust fund' means—

''(A) the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i); and

''(B) the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t), including the Medicare Prescription Drug Account under such Trust Fund.

''(d) CONFORMING AMENDMENTS.—

''(1) FEDERAL HOSPITAL INSURANCE TRUST FUND [Amended section 1395i of this title].

''(2) FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND [Amended section 1395t of this title].

''(e) NOTICE OF MEDICARE FUNDING WARNING.—Whenever any report described in subsection (a) contains a determination that for any fiscal year within the 7-fiscal-year reporting period there will be excess general revenue medicare funding, Congress and the President should address the matter under existing rules and procedures.''

CRIMINAL FINES DEPOSITED IN FEDERAL HOSPITAL INSURANCE TRUST FUND

Section 242(b) of Pub. L. 104–191 provided that: ''The Secretary of the Treasury shall deposit into the Federal Hospital Insurance Trust Fund pursuant to section 1817(k)(2)(C) of the Social Security Act (42 U.S.C. 1395i) an amount equal to the criminal fines imposed under section 1347 of title 18, United States Code (relating to health care fraud).''

PROPERTY FORFEITED DEPOSITED IN FEDERAL HOSPITAL INSURANCE TRUST FUND

Section 249(c) of Pub. L. 104–191 provided that:

''(1) IN GENERAL.—After the payment of the costs of asset forfeiture has been made and after all restoration payments (if any) have been made, and notwithstanding any other provision of law, the Secretary of the Treasury shall deposit into the Federal Hospital Insurance Trust Fund pursuant to section 1817(k)(2)(C) of the Social Security Act [subsec. (k)(2)(C) of this section], as added by section 301(b), an amount equal to the net amount realized from the forfeiture of property by reason of a Federal health care offense pursuant to section 982(a)(6) of title 18, United States Code.

''(2) COSTS OF ASSET FORFEITURE.—For purposes of paragraph (1), the term 'payment of the costs of asset forfeiture' means—

''(A) the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell, or dispose of property under seizure, detention, or forfeited, or of any other necessary expenses incident to the seizure, detention, forfeiture, or disposal of such property, including payment for—

''(i) contract services;

''(ii) the employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and

''(iii) reimbursement of any Federal, State, or local agency for any expenditures made to perform the functions described in this subparagraph;

''(B) at the discretion of the Attorney General, the payment of awards for information or assistance leading to a civil or criminal forfeiture involving any Federal agency participating in the Health Care Fraud and Abuse Control Account;

''(C) the compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in State real estate law as necessary;

''(D) payment authorized in connection with remission or mitigation procedures relating to property forfeited; and

''(E) the payment of State and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order.

''(3) RESTORATION PAYMENT.—Notwithstanding any other provision of law, if the Federal health care offense referred to in paragraph (1) resulted in a loss to an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(1)], the Secretary of the Treasury shall transfer to such employee welfare benefit plan, from the amount realized from the forfeiture of property referred to in paragraph (1), an amount equal to such loss. For purposes of paragraph (1), the term 'restoration payment' means the amount transferred to an employee welfare benefit plan pursuant to this paragraph.''

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Notwithstanding subsec. (b)(2) of this section, the annual report of the Board of Trustees of the Trust Fund required for calendar year 1983 under this section may be filed at any time not later than forty-five days after Apr. 20, 1983, see section 154(d) of Pub. L. 98–21, set out as a note under section 401 of this title.

§ 1395i–1. Authorization of appropriations

There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1395i of this title) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under this part with respect to individuals who are qualified railroad retirement beneficiaries (as defined in section 426(c) of this title) and who are not, and upon filing application for monthly insurance benefits under section 402 of this title would not be, entitled to such benefits if service as an employee (as defined in the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.]) after December 31, 1936, had been included in the term ''employment'' as defined in this chapter,

(2) the additional administrative expenses resulting or expected to result therefrom, and

(3) any loss of interest to such Trust Fund resulting from the payment of such amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the individuals described in paragraph (1) had not been entitled to benefits under this part.

(Pub. L. 89–97, title I, § 111(d), July 30, 1965, 79 Stat. 343.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1937, referred to in text, is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and which was classified principally to subchapter III (§ 228a et seq.) of chapter 9 of Title 45, Railroads. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of title 45. For complete classification of these Acts to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Social Security Amendments of 1965 and also as part of the Health Insurance for the Aged Act, and not as part of the Social Security Act which comprises this chapter.

EFFECTIVE DATE

Section 111(e) of Pub. L. 89–97 provided that:

''(1) The amendments made by the preceding provisions of this section [enacting this section and section 228s–2 of Title 45, Railroads, and amending section 1395kk of this title and sections 1401, 3101, 3111, 3201, 3211, and 3221 of Title 26, Internal Revenue Code, and section 228e of Title 45] shall apply to the calendar year 1966 or to any subsequent calendar year, but only if the requirement in paragraph (2) has been met with respect to such calendar year.

''(2) The requirement referred to in paragraph (1) shall be deemed to have been met with respect to any calendar year if, as of the October 1 immediately preceding such calendar year, the Railroad Retirement Tax Act [section 3101 et seq. of Title 26] provides that the maximum amount of monthly compensation taxable under such Act during all months of such calendar year will be an amount equal to one-twelfth of the maximum wages which the Federal Insurance Contributions Act [section 3201 et seq. of Title 26] provides may be counted for such calendar year.''

§ 1395i–1a. Repealed. Pub. L. 101–234, title I, § 102(a), Dec. 13, 1989, 103 Stat. 1980

Section, act Aug. 14, 1935, ch. 531, title XVIII, § 1817A, as added July 1, 1988, Pub. L. 100–360, title I, § 112(a), 102 Stat. 698, provided for establishment and operation of Federal Hospital Insurance Catastrophic Coverage Reserve Fund.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1990, see section 102(d)(1) of Pub. L. 101–234, set out as a note under section 59B of Title 26, Internal Revenue Code.

ADJUSTMENTS FOR INTEREST LOST DUE TO DELAY OF TRANSFERS TO RESERVE FUND DURING 1989

Section 112(b) of Pub. L. 100–360, which directed Secretary of the Treasury, in July of 1990, to calculate interest lost to Federal Hospital Insurance Catastrophic Coverage Reserve Fund due to lag between outlays (attributable to amendments made by Pub. L. 100–360) from Federal Hospital Insurance Trust Fund during 1989 and transfers made to such Reserve Fund to cover such outlays, and provided that appropriations under subsection (a)(2) of this section include amount so calculated, was repealed by Pub. L. 101–234, title I, § 102(a), Dec. 13, 1989, 103 Stat. 1980.

§ 1395i–2. Hospital insurance benefits for uninsured elderly individuals not otherwise eligible

(a) Individuals eligible to enroll

Every individual who—

(1) has attained the age of 65,

(2) is enrolled under part B of this subchapter,

(3) is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this section, and

(4) is not otherwise entitled to benefits under this part,

shall be eligible to enroll in the insurance program established by this part. Except as otherwise provided, any reference to an individual entitled to benefits under this part includes an individual entitled to benefits under this part pursuant to an enrollment under this section or section 1395i–2a of this title.

(b) Time, manner, and form of enrollment

An individual may enroll under this section only in such manner and form as may be prescribed in regulations, and only during an enrollment period prescribed in or under this section.

(c) Period of enrollment; scope of coverage

The provisions of section 1395p of this title (except subsection (f) thereof), section 1395q of this title, subsection (b) of section 1395r of this title, and subsections (f) and (h) of section 1395s of this title shall apply to persons authorized to enroll under this section except that—

(1) individuals who meet the conditions of subsection (a)(1), (3), and (4) of this section on or before the last day of the seventh month after October 1972 may enroll under this part and (if not already so enrolled) may also enroll under part B of this subchapter during an initial general enrollment period which shall begin on the first day of the second month which begins after October 30, 1972, and shall end on the last day of the tenth month after October 1972;

(2) in the case of an individual who first meets the conditions of eligibility under this section on or after the first day of the eighth month after October 1972, the initial enrollment period shall begin on the first day of the third month before the month in which he first becomes eligible and shall end 7 months later;

(3) in the case of an individual who enrolls pursuant to paragraph (1) of this subsection, entitlement to benefits shall begin on—

(A) the first day of the second month after the month in which he enrolls,

(B) July 1, 1973, or

(C) the first day of the first month in which he meets the requirements of subsection (a) of this section,

whichever is the latest;

(4) an individual's entitlement under this section shall terminate with the month before the first month in which he becomes eligible for hospital insurance benefits under section 426 of this title or section 426a of this title; and upon such termination, such individual shall be deemed, solely for purposes of hospital insurance entitlement, to have filed in such first month the application required to establish such entitlement;

(5) termination of coverage for supplementary medical insurance shall result in simultaneous termination of hospital insurance benefits for uninsured individuals who are not otherwise entitled to benefits under this chapter;

(6) any percent increase effected under section 1395r(b) of this title in an individual's monthly premium may not exceed 10 percent and shall only apply to premiums paid during a period equal to twice the number of months in the full 12-month periods described in that section and shall be subject to reduction in accordance with subsection (d)(6) of this section;

(7) an individual who meets the conditions of subsection (a) of this section may enroll under this part during a special enrollment period that includes any month during any part of which the individual is enrolled under section 1395mm of this title with an eligible organization and ending with the last day of the 8th consecutive month in which the individual is at no time so enrolled;

(8) in the case of an individual who enrolls during a special enrollment period under paragraph (7)—

(A) in any month of the special enrollment period in which the individual is at any time enrolled under section 1395mm of this title with an eligible organization or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or

(B) in any other month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls; and

(9) in applying the provisions of section 1395r(b) of this title, there shall not be taken into account months for which the individual can demonstrate that the individual was enrolled under section 1395mm of this title with an eligible organization.

(d) Monthly premiums

(1) The Secretary shall, during September of each year (beginning with 1988), estimate the monthly actuarial rate for months in the succeeding year. Such actuarial rate shall be one-twelfth of the amount which the Secretary estimates (on an average, per capita basis) is equal to 100 percent of the benefits and administrative costs which will be payable from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in the succeeding year with respect to individuals age 65 and over who will be entitled to benefits under this part during that year.

(2) The Secretary shall, during September of each year[1] determine and promulgate the dollar amount which shall be applicable for premiums for months occurring in the following year. Subject to paragraphs (4) and (5), the amount of an individual's monthly premium under this section shall be equal to the monthly actuarial rate determined under paragraph (1) for that following year. Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not a multiple of $1, to the next higher multiple of $1).

(3) Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium under this section, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for individuals 65 and older as provided in paragraph (1).

(4)(A) In the case of an individual described in subparagraph (B), the monthly premium for a month shall be reduced by the applicable reduction percent specified in the following table:

For a month in:	The applicable reduction percent is:
1994	25 percent
1995	30 percent
1996	35 percent
1997	40 percent
1998 or subsequent year	45 percent.

(B) An individual described in this subparagraph with respect to a month is an individual who establishes to the satisfaction of the Secretary that, as of the last day of the previous month, the individual—

(i) had at least 30 quarters of coverage under subchapter II of this chapter;

(ii) was married (and had been married for the previous 1-year period) to an individual who had at least 30 quarters of coverage under such subchapter;

(iii) had been married to an individual for a period of at least 1 year (at the time of such individual's death) if at such time the individual had at least 30 quarters of coverage under such subchapter; or

(iv) is divorced from an individual and had been married to the individual for a period of at least 10 years (at the time of the divorce) if at such time the individual had at least 30 quarters of coverage under such subchapter.

(5)(A) The amount of the monthly premium shall be zero in the case of an individual who is a person described in subparagraph (B) for a month, if—

(i) the individual's premium under this section for the month is not (and will not be) paid for, in whole or in part, by a State (under subchapter XIX of this chapter or otherwise), a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions thereof; and

(ii) in each of 84 months before such month, the individual was enrolled in this part under this section and the payment of the individual's premium under this section for the month was not paid for, in whole or in part, by a State (under subchapter XIX of this chapter or otherwise), a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions thereof.

(B) A person described in this subparagraph for a month is a person who establishes to the

[1] So in original. Probably should be followed by a comma.

satisfaction of the Secretary that, as of the last day of the previous month—

(i)(I) the person was receiving cash benefits under a qualified State or local government retirement system (as defined in subparagraph (C)) on the basis of the person's employment in one or more positions covered under any such system, and (II) the person would have at least 40 quarters of coverage under subchapter II of this chapter if remuneration for medicare qualified government employment (as defined in paragraph (1) of section 410(p) of this title, but determined without regard to paragraph (3) of such section) paid to such person were treated as wages paid to such person and credited for purposes of determining quarters of coverage under section 413 of this title;

(ii)(I) the person was married (and had been married for the previous 1-year period) to an individual who is described in clause (i), or (II) the person met the requirement of clause (i)(II) and was married (and had been married for the previous 1-year period) to an individual described in clause (i)(I);

(iii) the person had been married to an individual for a period of at least 1 year (at the time of such individual's death) if (I) the individual was described in clause (i) at the time of the individual's death, or (II) the person met the requirement of clause (i)(II) and the individual was described in clause (i)(I) at the time of the individual's death; or

(iv) the person is divorced from an individual and had been married to the individual for a period of at least 10 years (at the time of the divorce) if (I) the individual was described in clause (i) at the time of the divorce, or (II) the person met the requirement of clause (i)(II) and the individual was described in clause (i)(I) at the time of the divorce.

(C) For purposes of subparagraph (B)(i)(I), the term ''qualified State or local government retirement system'' means a retirement system that—

(i) is established or maintained by a State or political subdivision thereof, or an agency or instrumentality of one or more States or political subdivisions thereof;

(ii) covers positions of some or all employees of such a State, subdivision, agency, or instrumentality; and

(iii) does not adjust cash retirement benefits based on eligibility for a reduction in premium under this paragraph.

(6)(A) In the case where a State, a political subdivision of a State, or an agency or instrumentality of a State or political subdivision thereof determines to pay, for the life of each individual, the monthly premiums due under paragraph (1) on behalf of each of the individuals in a qualified State or local government retiree group who meets the conditions of subsection (a) of this section, the amount of any increase otherwise applicable under section 1395r(b) of this title (as applied and modified by subsection (c)(6) of this section) with respect to the monthly premium for benefits under this part for an individual who is a member of such group shall be reduced by the total amount of taxes paid under section 3101(b) of the Internal Revenue Code of 1986 by such individual and under section 3111(b) of such Code by the employers of such individual on behalf of such individual with respect to employment (as defined in section 3121(b) of such Code).

(B) For purposes of this paragraph, the term ''qualified State or local government retiree group'' means all of the individuals who retire prior to a specified date that is before January 1, 2002, from employment in one or more occupations or other broad classes of employees of—

(i) the State;

(ii) a political subdivision of the State; or

(iii) an agency or instrumentality of the State or political subdivision of the State.

(e) Contract or other arrangement for payment of monthly premiums

Payment of the monthly premiums on behalf of any individual who meets the conditions of subsection (a) of this section may be made by any public or private agency or organization under a contract or other arrangement entered into between it and the Secretary if the Secretary determines that payment of such premiums under such contract or arrangement is administratively feasible.

(f) Deposit of amounts into Treasury

Amounts paid to the Secretary for coverage under this section shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund.

(g) Buy-in under this part for qualified medicare beneficiaries

(1) The Secretary shall, at the request of a State made after 1989, enter into a modification of an agreement entered into with the State pursuant to section 1395v(a) of this title under which the agreement provides for enrollment in the program established by this part of qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title).

(2)(A) Except as provided in subparagraph (B), the provisions of subsections (c), (d), (e), and (f) of section 1395v of this title shall apply to qualified medicare beneficiaries enrolled, pursuant to such agreement, in the program established by this part in the same manner and to the same extent as they apply to qualified medicare beneficiaries enrolled, pursuant to such agreement, in part B of this subchapter.

(B) For purposes of this subsection, section 1395v(d)(1) of this title shall be applied by substituting ''section 1395i–2 of this title'' for ''section 1395r of this title'' and ''subsection (c)(6) (with reference to subsection (b) of section 1395r of this title)'' for ''subsection (b)''.

(Aug. 14, 1935, ch. 531, title XVIII, § 1818, as added Pub. L. 92–603, title II, § 202, Oct. 30, 1972, 86 Stat. 1374; amended Pub. L. 98–21, title VI, § 606(a)(3)(D), (b), Apr. 20, 1983, 97 Stat. 170, 171; Pub. L. 98–369, div. B, title III, §§ 2315(e), 2354(b)(3), (4), July 18, 1984, 98 Stat. 1080, 1100; Pub. L. 99–272, title IX, § 9124(a), Apr. 7, 1986, 100 Stat. 168; Pub. L. 100–203, title IV, § 4009(j)(9), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(b)(8)(D), July 1, 1988, 102 Stat. 772; Pub. L. 100–360, title I, § 103, July 1, 1988, 102 Stat. 687; Pub. L. 100–485, title VI, § 608(d)(2), Oct. 13, 1988, 102 Stat. 2413; Pub. L. 101–239, title VI,

§§ 6012(a)(1), 6013(a), Dec. 19, 1989, 103 Stat. 2161, 2163; Pub. L. 101–508, title IV, § 4008(g)(1), (m)(3)(D), Nov. 5, 1990, 104 Stat. 1388–45, 1388–54; Pub. L. 103–66, title XIII, § 13508(a), Aug. 10, 1993, 107 Stat. 579; Pub. L. 105–33, title IV, § 4453(a), Aug. 5, 1997, 111 Stat. 425; Pub. L. 106–554, § 1(a)(6) [title III, § 331(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–502; Pub. L. 108–173, title I, § 101(e)(5), title VII, § 736(a)(7), Dec. 8, 2003, 117 Stat. 2151, 2355.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsecs. (a)(2), (c)(1), and (g)(2)(A), is classified to section 1395j et seq. of this title.

The Internal Revenue Code of 1986, referred to in subsec. (d)(6)(A), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173, § 101(e)(5), inserted at end of concluding provisions ''Except as otherwise provided, any reference to an individual entitled to benefits under this part includes an individual entitled to benefits under this part pursuant to an enrollment under this section or section 1395i–2a of this title.''

Subsec. (d)(6)(A). Pub. L. 108–173, § 736(a)(7)(A), inserted ''of such Code'' after ''3111(b)''.

Subsec. (g)(2)(B). Pub. L. 108–173, § 736(a)(7)(B), substituted ''subsection (b)'' for ''subsection (b).''

2000—Subsec. (c)(6). Pub. L. 106–554, § 1(a)(6) [title III, § 331(a)(1)], inserted ''and shall be subject to reduction in accordance with subsection (d)(6) of this section'' before semicolon.

Subsec. (d)(6). Pub. L. 106–554, § 1(a)(6) [title III, § 331(a)(2)], added par. (6).

1997—Subsec. (d)(2). Pub. L. 105–33, § 4453(a)(1), substituted ''paragraphs (4) and (5)'' for ''paragraph (4)''.

Subsec. (d)(5). Pub. L. 105–33, § 4453(a)(2), added par. (5).

1993—Subsec. (d)(2). Pub. L. 103–66, § 13508(a)(1), substituted ''Subject to paragraph (4), the amount of an individual's monthly premium under this section'' for ''Such amount''.

Subsec. (d)(4). Pub. L. 103–66, § 13508(a)(2), added par. (4).

1990—Subsec. (c)(7) to (9). Pub. L. 101–508, § 4008(g)(1), added pars. (7) to (9).

Subsec. (g)(2)(B). Pub. L. 101–508, § 4008(m)(3)(D), substituted '' 'subsection (c)(6)'' for '' 'subsection (c)''.

1989—Pub. L. 101–239, § 6012(a)(1), inserted ''elderly'' after ''uninsured'' in section catchline.

Subsec. (g). Pub. L. 101–239, § 6013(a), added subsec. (g).

1988—Subsec. (c)(4) to (7). Pub. L. 100–360, § 411(b)(8)(D), added Pub. L. 100–203, § 4009(j)(9), see 1987 Amendment note below.

Subsec. (d). Pub. L. 100–360, § 103, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(1) The monthly premium of each individual for each month in his coverage period before July 1974 shall be $33.

''(2) The Secretary shall, during the next to last calendar quarter of each year determine and promulgate the dollar amount (whether or not such dollar amount was applicable for premiums for any prior month) which shall be applicable for premiums for months occurring in the following calendar year. Such amount shall be equal to $33, multiplied by the ratio of (A) the inpatient hospital deductible for that following calendar year, as promulgated under section 1395e(b)(2) of this title, to (B) such deductible promulgated for 1973. Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest multiple of $1, or, if a multiple of 50 cents but not a multiple of $1, to the next higher multiple of $1.''

Subsec. (d)(1). Pub. L. 100–485 substituted ''during that year'' for ''during that entire year''.

1987—Subsec. (c)(4) to (7). Pub. L. 100–203, § 4009(j)(9), as added by Pub. L. 100–360, § 411(b)(8)(D), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4) which read as follows: ''termination of coverage under this section by the filing of notice that the individual no longer wishes to participate in the hospital insurance program shall take effect at the close of the month following the month in which such notice is filed;''.

1986—Subsec. (c)(7). Pub. L. 99–272 added par. (7).

1984—Subsec. (c). Pub. L. 98–369, § 2315(e), substituted ''subsection (b) of section 1395r of this title'' for ''subsection (a) of section 1395r of this title''.

Subsec. (c)(1). Pub. L. 98–369, § 2354(b)(3), substituted ''October 1972'' for ''the month in which this Act is enacted''.

Subsec. (d)(2). Pub. L. 98–369, § 2354(b)(4), substituted '', if a multiple of 50 cents but not a multiple of $1,'' for ''if midway between multiples of $1''.

1983—Subsec. (c). Pub. L. 98–21, § 606(a)(3)(D), substituted ''subsection (a) of section 1395r'' for ''subsection (c) of section 1395r''.

Subsec. (d)(2). Pub. L. 98–21, § 606(b), substituted ''during the next to last calendar quarter of each year'' for ''during the last calendar quarter of each year, beginning in 1973,'', ''the following calendar year'' for ''the 12-month period commencing July 1 of the next year'', and ''for that following calendar year'' for ''for such next year''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title III, § 331(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–502, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to premiums for months beginning with January 1, 2002.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4453(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to premiums for months beginning with January 1998, and months before such month may be taken into account for purposes of meeting the requirement of section 1818(d)(5)(B)(iii) of the Social Security Act [subsec. (d)(5)(B)(iii) of this section], as added by subsection (a).''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13508(b) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to monthly premiums under section 1818 of the Social Security Act [this section] for months beginning with January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(g)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on February 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6012(a)(1) of Pub. L. 101–239 effective Dec. 19, 1989, but not applicable so as to provide coverage under this part for any month before July 1990, see section 6012(b) of Pub. L. 101–239, set out as an Effective Date note under section 1395i–2a of this title.

Section 6013(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1395v of this title] shall become effective January 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if originally included in the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 103 of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after

Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(b)(8)(D) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9124(b) of Pub. L. 99–272 provided that:

''(1) The amendment made by subsection (a)(3) [amending this section] shall apply to premiums paid for months beginning with July 1986.

''(2) In applying that amendment, months (before, during, or after April 1986) in which an individual was required to pay a premium increased under the section that was so amended shall be taken into account in determining the month in which the premium will no longer be subject to an increase under that section as so amended.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2315(e) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2315(g) of Pub. L. 98–369, set out as an Effective and Termination Dates of 1984 Amendments note under section 1395ww of this title.

Amendment by section 2354(b)(3), (4) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; TRANSITIONAL RULE

Amendment by Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

SPECIAL ENROLLMENT PROVISIONS FOR MERCHANT SEAMEN

Pub. L. 97–248, title I, § 125, Sept. 3, 1982, 96 Stat. 365, provided that:

''(a) Any individual who—

''(1) was entitled to medical, surgical, and dental treatment and hospitalization under section 322(a) of the Public Health Service Act [section 249(a) of this title] (as in effect on September 30, 1981), including such entitlement on the basis of continuing medical care under 42 C.F.R. § 32.17, at any time during the period beginning on March 10, 1981, and ending on October 1, 1981, and

''(2) as of September 30, 1981, was eligible under section 1818(a) or section 1836 of the Social Security Act [this section or section 1395*o* of this title] to enroll in the insurance program established by part A or part B, respectively, of title XVIII of that Act [this subchapter] (hereinafter in this section referred to as the 'respective program'),

may enroll (if not otherwise enrolled) in the respective program during the period beginning on the first day of the first month beginning at least 20 days after the date of the enactment of this Act [Sept. 3, 1982] and ending on December 31, 1982.

''(b)(1) The coverage period under the respective program of an individual who enrolls under subsection (a) shall begin—

''(A) on the first day of the month following the month in which the individual enrolls, or

''(B) on October 1, 1981, if the individual files a request for this subparagraph to apply and pays the monthly premiums for the months so covered.

''(2) The coverage period under the respective program of an individual described in subsection (a) who enrolled in the respective program before the enrollment period described in that subsection shall be retroactively extended to October 1, 1981, if the individual files a request before January 1, 1983, for such retroactive extension and pays the monthly premiums for the months so covered.

''(c)(1) For purposes of section 1839(d) of the Social Security Act [section 1395r(d) of this title] with respect to the monthly premium for months after September 1981, if an individual described in subsection (a) has enrolled in the insurance program under part B of title XVIII of the Social Security Act [part B of this subchapter] at any time before the end of the enrollment period described in subsection (a), any month (before the end of that enrollment period) in which he was not enrolled in that program shall not be treated as a month in which he could have been enrolled in the program.

''(2) Paragraph (1) shall not apply to an individual—

''(A) if the individual has enrolled in the insurance program before March 10, 1981, unless the enrollment was terminated solely because the individual lost eligibility to be so enrolled, or

''(B) unless the individual applies for the benefit of such paragraph before January 1, 1983.

''(d)(1) The Secretary of Health and Human Services, beginning as soon as possible but not later than 30 days after the date of the enactment of this Act [Sept. 3, 1982], shall provide for the dissemination of information—

''(A) to unions and other associations representing or assisting seamen,

''(B) to offices enrolling individuals under the respective programs, and

''(C) to such other entities and in such a manner as will effectively inform individuals eligible for benefits under this section,

concerning the special benefits provided under this section.

''(2) An individual may establish that the individual was entitled at a date to medical, surgical, and dental treatment and hospitalization under section 322(a) of the Public Health Service Act [section 249(a) of this title] (as in effect before October 1, 1981) by providing—

''(A) documentation relating to the status under which the individual was provided care in (or under arrangements with) a Public Health Service facility on that date,

''(B) the individual's seamen's papers covering that date, or

''(C) such other reasonable documentation as the Secretary may require.''

§ 1395i–2a. Hospital insurance benefits for disabled individuals who have exhausted other entitlement

(a) Eligibility

Every individual who—

(1) has not attained the age of 65;

(2)(A) has been entitled to benefits under this part under section 426(b) of this title, and

(B)(i) continues to have the disabling physical or mental impairment on the basis of which the individual was found to be under a disability or to be a disabled qualified railroad retirement beneficiary, or (ii) is blind (within the meaning of section 416(i)(1) of this title), but

(C) whose entitlement under section 426(b) of this title ends due solely to the individual

having earnings that exceed the substantial gainful activity amount (as defined in section 423(d)(4) of this title); and

(3) is not otherwise entitled to benefits under this part,

shall be eligible to enroll in the insurance program established by this part.

(b) Enrollment

(1) An individual may enroll under this section only in such manner and form as may be prescribed in regulations, and only during an enrollment period prescribed in or under this section.

(2) The individual's initial enrollment period shall begin with the month in which the individual receives notice that the individual's entitlement to benefits under section 426(b) of this title will end due solely to the individual having earnings that exceed the substantial gainful activity amount (as defined in section 423(d)(4) of this title and shall end 7 months later.

(3) There shall be a general enrollment period during the period beginning on January 1 and ending on March 31 of each year (beginning with 1990).

(c) Coverage period

(1) The period (in this subsection referred to as a ''coverage period'') during which an individual is entitled to benefits under the insurance program under this part shall begin on whichever of the following is the latest:

(A) In the case of an individual who enrolls under subsection (b)(2) of this section before the month in which the individual first satisfies subsection (a) of this section, the first day of such month.

(B) In the case of an individual who enrolls under subsection (b)(2) of this section in the month in which the individual first satisfies subsection (a) of this section, the first day of the month following the month in which the individual so enrolls.

(C) In the case of an individual who enrolls under subsection (b)(2) of this section in the month following the month in which the individual first satisfies subsection (a) of this section, the first day of the second month following the month in which the individual so enrolls.

(D) In the case of an individual who enrolls under subsection (b)(2) of this section more than one month following the month in which the individual first satisfies subsection (a) of this section, the first day of the third month following the month in which the individual so enrolls.

(E) In the case of an individual who enrolls under subsection (b)(3) of this section, the July 1 following the month in which the individual so enrolls.

(2) An individual's coverage period under this section shall continue until the individual's enrollment is terminated as follows:

(A) As of the month following the month in which the Secretary provides notice to the individual that the individual no longer meets the condition described in subsection (a)(2)(B) of this section.

(B) As of the month following the month in which the individual files notice that the individual no longer wishes to participate in the insurance program established by this part.

(C) As of the month before the first month in which the individual becomes eligible for hospital insurance benefits under section 426(a) or 426–1 of this title.

(D) As of a date, determined under regulations of the Secretary, for nonpayment of premiums.

The regulations under subparagraph (D) may provide a grace period of not longer than 90 days, which may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period. Termination of coverage under this section shall result in simultaneous termination of any coverage affected under any other part of this subchapter.

(3) The provisions of subsections (h) and (i) of section 1395p of this title apply to enrollment and nonenrollment under this section in the same manner as they apply to enrollment and nonenrollment and special enrollment periods under section 1395i–2 of this title.

(d) Payment of premiums

(1)(A) Premiums for enrollment under this section shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe, and shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund.

(B)(i) Subject to clause (ii), such premiums shall be payable for the period commencing with the first month of an individual's coverage period and ending with the month in which the individual dies or, if earlier, in which the individual's coverage period terminates.

(ii) Such premiums shall not be payable for any month in which the individual is eligible for benefits under this part pursuant to section 426(b) of this title.

(2) The provisions of subsections (d) through (f) of section 1395i–2 of this title (relating to premiums) shall apply to individuals enrolled under this section in the same manner as they apply to individuals enrolled under that section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1818A, as added Pub. L. 101–239, title VI, § 6012(a)(2), Dec. 19, 1989, 103 Stat. 2161; amended Pub. L. 101–508, title IV, § 4008(m)(3)(C), Nov. 5, 1990, 104 Stat. 1388–54.)

AMENDMENTS

1990—Subsec. (d)(1)(A). Pub. L. 101–508, § 4008(m)(3)(C)(i), inserted ''for enrollment under this section'' after ''Premiums''.

Subsec. (d)(1)(C). Pub. L. 101–508, § 4008(m)(3)(C)(ii), struck out subpar. (C) which read as follows: ''For purposes of applying section 1395r(g) of this title and section 59B(f)(1)(B)(i) of the Internal Revenue Code of 1986, any reference to section 1395i–2 of this title shall be deemed to include a reference to this section.''

EFFECTIVE DATE

Section 6012(b) of Pub. L. 101–239 provided that: ''The amendments made by this section [enacting this section and amending section 1395i–2 of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989], but shall not apply so as to provide for coverage under part A of title XVIII of the Social Security Act [this part] for any month before July 1990.''

§ 1395i–3. Requirements for, and assuring quality of care in, skilled nursing facilities

(a) "Skilled nursing facility" defined

In this subchapter, the term ''skilled nursing facility'' means an institution (or a distinct part of an institution) which—

(1) is primarily engaged in providing to residents—

(A) skilled nursing care and related services for residents who require medical or nursing care, or

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons,

and is not primarily for the care and treatment of mental diseases;

(2) has in effect a transfer agreement (meeting the requirements of section 1395x(*l*) of this title) with one or more hospitals having agreements in effect under section 1395cc of this title; and

(3) meets the requirements for a skilled nursing facility described in subsections (b), (c), and (d) of this section.

(b) Requirements relating to provision of services

(1) Quality of life

(A) In general

A skilled nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

(B) Quality assessment and assurance

A skilled nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

(2) Scope of services and activities under plan of care

A skilled nursing facility must provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, in accordance with a written plan of care which—

(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

(3) Residents' assessment

(A) Requirement

A skilled nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which assessment—

(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A) of this section;

(iii) uses an instrument which is specified by the State under subsection (e)(5) of this section; and

(iv) includes the identification of medical problems.

(B) Certification

####### (i) In general

Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

####### (ii) Penalty for falsification

(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

(III) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

####### (iii) Use of independent assessors

If a State determines, under a survey under subsection (g) of this section or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(C) Frequency

####### (i) In general

Subject to the timeframes prescribed by the Secretary under section 1395yy(e)(6) of this title, such an assessment must be conducted—

(I) promptly upon (but no later than 14 days after the date of) admission for

each individual admitted on or after October 1, 1990, and by not later than January 1, 1991, for each resident of the facility on that date;

(II) promptly after a significant change in the resident's physical or mental condition; and

(III) in no case less often than once every 12 months.

(ii) Resident review

The skilled nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

(D) Use

The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

(E) Coordination

Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

(4) Provision of services and activities

(A) In general

To the extent needed to fulfill all plans of care described in paragraph (2), a skilled nursing facility must provide, directly or under arrangements (or, with respect to dental services, under agreements) with others for the provision of—

(i) nursing services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident;

(vi) routine and emergency dental services to meet the needs of each resident; and

(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

The services provided or arranged by the facility must meet professional standards of quality. Nothing in clause (vi) shall be construed as requiring a facility to provide or arrange for dental services described in that clause without additional charge.

(B) Qualified persons providing services

Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

(C) Required nursing care

(i) In general

Except as provided in clause (ii), a skilled nursing facility must provide 24-hour licensed nursing service which is sufficient to meet nursing needs of its residents and must use the services of a registered professional nurse at least 8 consecutive hours a day, 7 days a week.

(ii) Exception

To the extent that clause (i) may be deemed to require that a skilled nursing facility engage the services of a registered professional nurse for more than 40 hours a week, the Secretary is authorized to waive such requirement if the Secretary finds that—

(I) the facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individuals residing therein,

(II) the facility has one full-time registered professional nurse who is regularly on duty at such facility 40 hours a week,

(III) the facility either has only patients whose physicians have indicated (through physicians' orders or admission notes) that each such patient does not require the services of a registered nurse or a physician for a 48-hour period, or has made arrangements for a registered professional nurse or a physician to spend such time at such facility as may be indicated as necessary by the physician to provide necessary skilled nursing services on days when the regular full-time registered professional nurse is not on duty,

(IV) the Secretary provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12)[1] of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

(V) the facility that is granted such a waiver notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

A waiver under this subparagraph shall be subject to annual renewal.

(5) Required training of nurse aides

(A) In general

(i) Except as provided in clause (ii), a skilled nursing facility must not use on a

[1] See References in Text note below.

full-time basis any individual as a nurse aide in the facility on or after October 1, 1990 for more than 4 months unless the individual—

(I) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A) of this section, and

(II) is competent to provide nursing or nursing-related services.

(ii) A skilled nursing facility must not use on a temporary, per diem, leased, or on any basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).

(B) Offering competency evaluation programs for current employees

A skilled nursing facility must provide, for individuals used as a nurse aide[2] by the facility as of January 1, 1990, for a competency evaluation program approved by the State under subsection (e)(1) of this section and such preparation as may be necessary for the individual to complete such a program by October 1, 1990.

(C) Competency

The skilled nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information concerning the individual.

(D) Re-training required

For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program or a new competency evaluation program.

(E) Regular in-service education

The skilled nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(F) "Nurse aide" defined

In this paragraph, the term ''nurse aide'' means any individual providing nursing or nursing-related services to residents in a skilled nursing facility, but does not include an individual—

(i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietician, or

(ii) who volunteers to provide such services without monetary compensation.

(G) "Licensed health professional" defined

In this paragraph, the term ''licensed health professional'' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician.

(6) Physician supervision and clinical records

A skilled nursing facility must—

(A) require that the medical care of every resident be provided under the supervision of a physician;

(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)).

(7) Required social services

In the case of a skilled nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

(8) Information on nurse staffing

(A) In general

A skilled nursing facility shall post daily for each shift the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. The information shall be displayed in a uniform manner (as specified by the Secretary) and in a clearly visible place.

(B) Publication of data

A skilled nursing facility shall, upon request, make available to the public the nursing staff data described in subparagraph (A).

(c) Requirements relating to residents' rights

(1) General rights

(A) Specified rights

A skilled nursing facility must protect and promote the rights of each resident, including each of the following rights:

(i) Free choice

The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

[2] So in original. Probably should be ''as nurse aides''.

(ii) Free from restraints

The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

(I) to ensure the physical safety of the resident or other residents, and

(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(iii) Privacy

The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

(iv) Confidentiality

The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

(v) Accommodation of needs

The right—

(I) to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

(II) to receive notice before the room or roommate of the resident in the facility is changed.

(vi) Grievances

The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(vii) Participation in resident and family groups

The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(viii) Participation in other activities

The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(ix) Examination of survey results

The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

(x) Refusal of certain transfers

The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is a skilled nursing facility (for purposes of this subchapter) to a portion of the facility that is not such a skilled nursing facility.

(xi) Other rights

Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room. A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to benefits under this subchapter or to medical assistance under subchapter XIX of this chapter.

(B) Notice of rights and services

A skilled nursing facility must—

(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility;

(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under section 1396r(e)(6) of this title; and

(iii) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under this subchapter or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

(C) Rights of incompetent residents

In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this subchapter shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

(D) Use of psychopharmacologic drugs

Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed

and only if, at least annually, an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs. In determining whether such a consultant is qualified to conduct reviews under the preceding sentence, the Secretary shall take into account the needs of nursing facilities under this subchapter to have access to the services of such a consultant on a timely basis.

(E) Information respecting advance directives

A skilled nursing facility must comply with the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(2) Transfer and discharge rights

(A) In general

A skilled nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XIX of this chapter on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (v), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the cases described in clauses (iii) and (iv) the documentation must be made by a physician.

(B) Pre-transfer and pre-discharge notice

(i) In general

Before effecting a transfer or discharge of a resident, a skilled nursing facility must—

(I) notify the resident (and, if known, a family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

(III) include in the notice the items described in clause (iii).

(ii) Timing of notice

The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

(iii) Items included in notice

Each notice under clause (i) must include—

(I) for transfers or discharges effected on or after October 1, 1990, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3) of this section; and

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]).

(C) Orientation

A skilled nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(3) Access and visitation rights

A skilled nursing facility must—

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman described in paragraph (2)(B)(iii)(II), or by the resident's individual physician;

(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

(4) Equal access to quality care

A skilled nursing facility must establish and maintain identical policies and practices re-

garding transfer, discharge, and covered services under this subchapter for all individuals regardless of source of payment.

(5) Admissions policy

(A) Admissions

With respect to admissions practices, a skilled nursing facility must—

(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this subchapter or under a State plan under subchapter XIX of this chapter, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this subchapter or such a State plan, and (III) prominently display in the facility and provide to such individuals written information about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits; and

(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility.

(B) Construction

(i) No preemption of stricter standards

Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under this subchapter with respect to admissions practices of skilled nursing facilities.

(ii) Contracts with legal representatives

Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

(6) Protection of resident funds

(A) In general

The skilled nursing facility—

(i) may not require residents to deposit their personal funds with the facility, and

(ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(B) Management of personal funds

Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) Deposit

The facility must deposit any amount of personal funds in excess of $100 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credits[3] all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

(ii) Accounting and records

The facility must assure a full and complete separate accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(iii) Conveyance upon death

Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

(C) Assurance of financial security

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(D) Limitation on charges to personal funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this subchapter or subchapter XIX of this chapter.

(d) Requirements relating to administration and other matters

(1) Administration

(A) In general

A skilled nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5) of this section).

(B) Required notices

If a change occurs in—

(i) the persons with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the facility,

(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a–5(b) of this title) of the facility,

(iii) the corporation, association, or other company responsible for the management of the facility, or

(iv) the individual who is the administrator or director of nursing of the facility,

the skilled nursing facility must provide notice to the State agency responsible for the

[3] So in original. Probably should be ''credit''.

licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

(C) Skilled nursing facility administrator

The administrator of a skilled nursing facility must meet standards established by the Secretary under subsection (f)(4) of this section.

(2) Licensing and Life Safety Code

(A) Licensing

A skilled nursing facility must be licensed under applicable State and local law.

(B) Life Safety Code

A skilled nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in skilled nursing facilities.

(3) Sanitary and infection control and physical environment

A skilled nursing facility must—

(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

(4) Miscellaneous

(A) Compliance with Federal, State, and local laws and professional standards

A skilled nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a–3 of this title) and with accepted professional standards and principles which apply to professionals providing services in such a facility.

(B) Other

A skilled nursing facility must meet such other requirements relating to the health, safety, and well-being of residents or relating to the physical facilities thereof as the Secretary may find necessary.

(e) State requirements relating to skilled nursing facility requirements

The requirements, referred to in section 1395aa(d) of this title, with respect to a State are as follows:

(1) Specification and review of nurse aide training and competency evaluation programs and of nurse aide competency evaluation programs

The State must—

(A) by not later than January 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) of this section and that meet the requirements established under subsection (f)(2) of this section, and

(B) by not later than January 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii) of this section.

The failure of the Secretary to establish requirements under subsection (f)(2) of this section shall not relieve any State of its responsibility under this paragraph.

(2) Nurse aide registry

(A) In general

By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State, or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

(B) Information in registry

The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of this section of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings, but shall not include any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by the State under such subsection. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

(C) Prohibition against charges

A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

(3) State appeals process for transfers and discharges

The State, for transfers and discharges from skilled nursing facilities effected on or after

October 1, 1989, must provide for a fair mechanism for hearing appeals on transfers and discharges of residents of such facilities. Such mechanism must meet the guidelines established by the Secretary under subsection (f)(3) of this section; but the failure of the Secretary to establish such guidelines shall not relieve any State of its responsibility to provide for such a fair mechanism.

(4) Skilled nursing facility administrator standards

By not later than January 1, 1990, the State must have implemented and enforced the skilled nursing facility administrator standards developed under subsection (f)(4) of this section respecting the qualification of administrators of skilled nursing facilities.

(5) Specification of resident assessment instrument

Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii) of this section. Such instrument shall be—

(A) one of the instruments designated under subsection (f)(6)(B) of this section, or

(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A) of this section.

(f) Responsibilities of Secretary relating to skilled nursing facility requirements

(1) General responsibility

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in skilled nursing facilities under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) Requirements for nurse aide training and competency evaluation programs and for nurse aide competency evaluation programs

(A) In general

For purposes of subsections (b)(5) and (e)(1)(A) of this section, the Secretary shall establish, by not later than September 1, 1988—

(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights) and content of the curriculum, (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, residents' rights, and procedures for determination of competency;

(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs; and

(iv) requirements, under both such programs, that—

(I) provide procedures for determining competency that permit a nurse aide, at the nurse aide's option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed (unless the facility is described in subparagraph (B)(iii)(I)),

(II) prohibit the imposition on a nurse aide who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program of any charges (including any charges for textbooks and other required course materials and any charges for the competency evaluation) for either such program, and

(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata[4] basis during the period in which the nurse aide is so employed.

(B) Approval of certain programs

Such requirements—

(i) may permit approval of programs offered by or in facilities (subject to clause (iii)), as well as outside facilities (including employee organizations), and of programs in effect on December 22, 1987;

(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) of this section if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

(iii) subject to subparagraphs (C) and (D), shall prohibit approval of such a program—

(I) offered by or in a skilled nursing facility which, within the previous 2 years—

[4] So in original. Probably should be ''pro rata''.

(a) has operated under a waiver under subsection (b)(4)(C)(ii)(II) of this section;

(b) has been subject to an extended (or partial extended) survey under subsection (g)(2)(B)(i) of this section or section 1396r(g)(2)(B)(i) of this title, unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section; or

(c) has been assessed a civil money penalty described in subsection (h)(2)(B)(ii) of this section or section 1396r(h)(2)(A)(ii) of this title of not less than $5,000, or has been subject to a remedy described in clause (i) or (iii) of subsection (h)(2)(B) of this section, subsection (h)(4) of this section, section 1396r(h)(1)(B)(i) of this title, or in clause (i), (iii), or (iv) of section 1396r(h)(2)(A) of this title, or

(II) offered by or in a skilled nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in skilled nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the skilled nursing facility.

(C) Waiver authorized

Clause (iii)(I) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility (or skilled nursing facility for purposes of this subchapter) in a State if the State—

(i) determines that there is no other such program offered within a reasonable distance of the facility,

(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and

(iii) provides notice of such determination and assurances to the State long-term care ombudsman.

(D) Waiver of disapproval of nurse-aide training programs

Upon application of a nursing facility, the Secretary may waive the application of subparagraph (B)(iii)(I)(c) if the imposition of the civil monetary penalty was not related to the quality of care provided to residents of the facility. Nothing in this subparagraph shall be construed as eliminating any requirement upon a facility to pay a civil monetary penalty described in the preceding sentence.

(3) Federal guidelines for State appeals process for transfers and discharges

For purposes of subsections (c)(2)(B)(iii)(I) and (e)(3) of this section, by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) of this section must meet to provide a fair mechanism for hearing appeals on transfers and discharges of residents from skilled nursing facilities.

(4) Secretarial standards for qualification of administrators

For purposes of subsections (d)(1)(C) and (e)(4) of this section, the Secretary shall develop, by not later than March 1, 1989, standards to be applied in assuring the qualifications of administrators of skilled nursing facilities.

(5) Criteria for administration

The Secretary shall establish criteria for assessing a skilled nursing facility's compliance with the requirement of subsection (d)(1) of this section with respect to—

(A) its governing body and management,

(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other skilled nursing facilities,

(C) disaster preparedness,

(D) direction of medical care by a physician,

(E) laboratory and radiological services,

(F) clinical records, and

(G) resident and advocate participation.

(6) Specification of resident assessment data set and instruments

The Secretary shall—

(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3) of this section, and establish guidelines for utilization of the data set; and

(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) of this section for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii) of this section.

(7) List of items and services furnished in skilled nursing facilities not chargeable to the personal funds of a resident

(A) Regulations required

Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after December 22, 1987, that define those costs which may be charged to the personal funds of residents in skilled nursing facilities who are individuals receiving benefits under this part and those costs which are to be included in the reasonable cost (or other payment amount) under this subchapter for extended care services.

(B) Rule if failure to publish regulations

If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in such subparagraph, in the case of a resident of a skilled nursing fa-

cility who is eligible to receive benefits under this part, the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this subchapter) shall include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(g) Survey and certification process

(1) State and Federal responsibility

(A) In general

Pursuant to an agreement under section 1395aa of this title, each State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of skilled nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d) of this section. The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State skilled nursing facilities with the requirements of such subsections.

(B) Educational program

Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of skilled nursing facilities in order to present current regulations, procedures, and policies under this section.

(C) Investigation of allegations of resident neglect and abuse and misappropriation of resident property

The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after providing the individual involved with a written notice of the allegations (including a statement of the availability of a hearing for the individual to rebut the allegations) and the opportunity for a hearing on the record, make a written finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(D) Removal of name from nurse aide registry

(i) In general

In the case of a finding of neglect under subparagraph (C), the State shall establish a procedure to permit a nurse aide to petition the State to have his or her name removed from the registry upon a determination by the State that—

(I) the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and

(II) the neglect involved in the original finding was a singular occurrence.

(ii) Timing of determination

In no case shall a determination on a petition submitted under clause (i) be made prior to the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the registry under subparagraph (C).

(E) Construction

The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(2) Surveys

(A) Standard survey

(i) In general

Each skilled nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a skilled nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall review each State's procedures for the scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(ii) Contents

Each standard survey shall include, for a case-mix stratified sample of residents—

(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

(II) written plans of care provided under subsection (b)(2) of this section and an audit of the residents' assessments under subsection (b)(3) of this section to determine the accuracy of such assessments and the adequacy of such plans of care, and

(III) a review of compliance with residents' rights under subsection (c) of this section.

(iii) Frequency

(I) In general

Each skilled nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The Statewide average interval between standard surveys of skilled nursing facilities under this subsection shall not exceed 12 months.

(II) Special surveys

If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a skilled nursing facility, or the director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

(B) Extended surveys

(i) In general

Each skilled nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

(ii) Timing

The extended survey shall be conducted immediately after the standard survey (or, if not practicable, not later than 2 weeks after the date of completion of the standard survey).

(iii) Contents

In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d) of this section. Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

(iv) Construction

Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) of this section on the basis of findings in a standard survey.

(C) Survey protocol

Standard and extended surveys shall be conducted—

(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1990, and

(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

(D) Consistency of surveys

Each State and the Secretary shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

(E) Survey teams

(i) In general

Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

(ii) Prohibition of conflicts of interest

A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d) of this section, or who has a personal or familial financial interest in the facility being surveyed.

(iii) Training

The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(3) Validation surveys

(A) In general

The Secretary shall conduct onsite surveys of a representative sample of skilled nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual skilled nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

(B) Scope

With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of skilled nursing facili-

ties surveyed by the State in the year, but in no case less than 5 skilled nursing facilities in the State.

(C) Remedies for substandard performance

If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary shall provide for an appropriate remedy, which may include the training of survey teams in the State.

(D) Special surveys of compliance

Where the Secretary has reason to question the compliance of a skilled nursing facility with any of the requirements of subsections (b), (c), and (d) of this section, the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the skilled nursing facility meets such requirements.

(4) Investigation of complaints and monitoring compliance

Each State shall maintain procedures and adequate staff to—

(A) investigate complaints of violations of requirements by skilled nursing facilities, and

(B) monitor, on-site, on a regular, as needed basis, a skilled nursing facility's compliance with the requirements of subsections (b), (c), and (d) of this section, if—

(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against substandard skilled nursing facilities.

(5) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public—

(i) information respecting all surveys and certifications made respecting skilled nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,

(ii) copies of cost reports of such facilities filed under this subchapter or subchapter XIX of this chapter,

(iii) copies of statements of ownership under section 1320a–3 of this title, and

(iv) information disclosed under section 1320a–5 of this title.

(B) Notice to ombudsman

Each State shall notify the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d) of this section, or of any adverse action taken against a skilled nursing facility under paragraph (1), (2), or (4) of subsection (h) of this section, with respect to a skilled nursing facility in the State.

(C) Notice to physicians and skilled nursing facility administrator licensing board

If a State finds that a skilled nursing facility has provided substandard quality of care, the State shall notify—

(i) the attending physician of each resident with respect to which such finding is made, and

(ii) the State board responsible for the licensing of the skilled nursing facility administrator at the facility.

(D) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys and certifications under this subsection.

(h) Enforcement process

(1) In general

If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) of this section or otherwise, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), or (d) of this section, and further finds that the facility's deficiencies—

(A) immediately jeopardize the health or safety of its residents, the State shall recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(i); or

(B) do not immediately jeopardize the health or safety of its residents, the State may recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(ii).

If a State finds that a skilled nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but, as of a previous period, did not meet such requirements, the State may recommend a civil money penalty under paragraph (2)(B)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

(2) Secretarial authority

(A) In general

With respect to any skilled nursing facility in a State, if the Secretary finds, or pursuant to a recommendation of the State under paragraph (1) finds, that a skilled

nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) of this section, and further finds that the facility's deficiencies—

(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (B)(iii), or terminate the facility's participation under this subchapter and may provide, in addition, for one or more of the other remedies described in subparagraph (B); or

(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (B).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a skilled nursing facility's deficiencies. If the Secretary finds, or pursuant to the recommendation of the State under paragraph (1) finds, that a skilled nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (B)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

(B) Specified remedies

The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

(i) Denial of payment

The Secretary may deny any further payments under this subchapter with respect to all individuals entitled to benefits under this subchapter in the facility or with respect to such individuals admitted to the facility after the effective date of the finding.

(ii) Authority with respect to civil money penalties

The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(iii) Appointment of temporary management

In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

(I) there is an orderly closure of the facility, or

(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d) of this section.

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction.

(C) Continuation of payments pending remediation

The Secretary may continue payments, over a period of not longer than 6 months after the effective date of the findings, under this subchapter with respect to a skilled nursing facility not in compliance with a requirement of subsection (b), (c), or (d) of this section, if—

(i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility,

(ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(iii) the facility agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

(D) Assuring prompt compliance

If a skilled nursing facility has not complied with any of the requirements of subsections (b), (c), and (d) of this section, within 3 months after the date the facility is found to be out of compliance with such requirements, the Secretary shall impose the remedy described in subparagraph (B)(i) for all individuals who are admitted to the facility after such date.

(E) Repeated noncompliance

In the case of a skilled nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2) of this section, has been found to have provided substandard quality of care, the Secretary shall (regardless of what other remedies are provided)—

(i) impose the remedy described in subparagraph (B)(i), and

(ii) monitor the facility under subsection (g)(4)(B) of this section,

until the facility has demonstrated, to the satisfaction of the Secretary, that it is in compliance with the requirements of subsections (b), (c), and (d) of this section, and that it will remain in compliance with such requirements.

(3) Effective period of denial of payment

A finding to deny payment under this subsection shall terminate when the Secretary finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d) of this section.

(4) Immediate termination of participation for facility where Secretary finds noncompliance and immediate jeopardy

If the Secretary finds that a skilled nursing facility has not met a requirement of subsection (b), (c), or (d) of this section, and finds that the failure immediately jeopardizes the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(B)(iii), or the Secretary shall terminate the facility's participation under this subchapter. If the facility's participation under this subchapter is terminated, the State shall provide for the safe and orderly transfer of the residents eligible under this subchapter consistent with the requirements of subsection (c)(2) of this section.

(5) Construction

The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i),[5] and (iii) of paragraph (2)(B) may be imposed during the pendency of any hearing.

(6) Sharing of information

Notwithstanding any other provision of law, all information concerning skilled nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available by such facilities to Federal or State employees for purposes consistent with the effective administration of programs established under this subchapter and subchapter XIX of this chapter, including investigations by State medicaid fraud control units.

(i) Construction

Where requirements or obligations under this section are identical to those provided under section 1396r of this title, the fulfillment of those requirements or obligations under section 1396r of this title shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1819, as added and amended Pub. L. 100–203, title IV, §§ 4201(a)(3), 4202(a)(2), 4203(a)(2), 4206, Dec. 22, 1987, 101 Stat. 1330–160, 1330–175, 1330–179, 1330–182; Pub. L. 100–360, title IV, § 411(*l*)(1)(A), (2)(A)–(D), (F)–(L)(i), (4), (5), (7), (11), July 1, 1988, 102 Stat. 800–805, as amended Pub. L. 100–485, title VI, § 608(d)(27)(A), (C), (D), (I), (L), Oct. 13, 1988, 102 Stat. 2422, 2423; Pub. L. 101–239, title VI, § 6901(b)(1), (3), (d)(4), Dec. 19, 1989, 103 Stat. 2298, 2301; Pub. L. 101–508, title IV, §§ 4008(h)(1)(B)–(F)(i), (G), (2)(B)–(N), (m)(3)(F)[(E)], 4206(d)(1), Nov. 5, 1990, 104 Stat. 1388–46 to 1388–50, 1388–54, 1388–116; Pub. L. 102–375, title VII, § 708(a)(1)(A), Sept. 30, 1992, 106 Stat. 1291; Pub. L. 103–432, title I, §§ 106(c)(1)(A), (2)(A), (3)(A), (4)(A), (B), (d)(1)–(5), 110(b), Oct. 31, 1994, 108 Stat. 4406–4408; Pub. L. 105–15, § 1, May 15, 1997, 111 Stat. 34; Pub. L. 105–33, title IV, §§ 4432(b)(5)(A), 4755(a), Aug. 5, 1997, 111 Stat. 421, 526; Pub. L. 106–554, § 1(a)(6) [title IX, § 941(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–585; Pub. L. 108–173, title VII, § 736(a)(8), title IX, § 932(c)(2), Dec. 8, 2003, 117 Stat. 2355, 2401.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsecs. (b)(4)(C)(ii)(IV), (c)(2)(B)(iii)(II), and (g)(5)(B), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Section 307(a)(12) of the Act was repealed by Pub. L. 106–501, title III, § 306(5), Nov. 13, 2000, 114 Stat. 2244. Similar provisions are now contained in section 307(a)(9) of the Act, which is classified to section 3027(a)(9) of this title. Titles III and VII of the Act are classified generally to subchapters III (§ 3021 et seq.) and XI (§ 3058 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Subparagraphs (B), (C), and (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239], referred to in subsec. (e)(2)(A), are set out below.

Section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, referred to in subsec. (f)(7)(A), probably means section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments, Pub. L. 95–142, which is set out as a note under section 1395x of this title.

AMENDMENTS

2003—Subsec. (b)(4)(C)(i). Pub. L. 108–173, § 736(a)(8)(A), substituted ''at least'' for ''at least at least''.

Subsec. (d)(1)(A). Pub. L. 108–173, § 736(a)(8)(B), substituted ''physical, mental'' for ''physical mental''.

Subsec. (f)(2)(B)(iii). Pub. L. 108–173, § 932(c)(2)(A), substituted ''subparagraphs (C) and (D)'' for ''subparagraph (C)'' in introductory provisions.

Pub. L. 108–173, § 736(a)(8)(C), realigned margins of concluding provisions.

Subsec. (f)(2)(D). Pub. L. 108–173, § 932(c)(2)(B), added subpar. (D).

2000—Subsec. (b)(8). Pub. L. 106–554 added par. (8).

1997—Subsec. (b)(3)(C)(i). Pub. L. 105–33, § 4432(b)(5)(A), substituted ''Subject to the timeframes prescribed by the Secretary under section 1395yy(e)(6) of this title, such'' for ''Such'' in introductory provisions.

Subsec. (f)(2)(B)(iii). Pub. L. 105–15, § 1(1), inserted ''subject to subparagraph (C),'' after ''(iii)''.

Subsec. (f)(2)(C). Pub. L. 105–15, § 1(2), added subpar. (C).

Subsec. (g)(1)(D), (E). Pub. L. 105–33, § 4755(a), added subpar. (D) and redesignated former subpar. (D) as (E).

1994—Subsec. (b)(3)(C)(i)(I). Pub. L. 103–432, § 110(b), substituted ''but no later than 14 days'' for ''but no later than not later than 14 days''.

Subsec. (b)(5)(D). Pub. L. 103–432, § 106(d)(1), struck out comma before ''or a new competency evaluation program''.

Subsec. (b)(5)(G). Pub. L. 103–432, § 106(d)(2), substituted ''licensed or certified social worker, registered

[5] So in original. The comma probably should not appear.

respiratory therapist, or certified respiratory therapy technician'' for ''or licensed or certified social worker''.

Subsec. (c)(1)(D). Pub. L. 103–432, §106(c)(2)(A), inserted at end ''In determining whether such a consultant is qualified to conduct reviews under the preceding sentence, the Secretary shall take into account the needs of nursing facilities under this subchapter to have access to the services of such a consultant on a timely basis.''

Subsec. (c)(6)(B)(i). Pub. L. 103–432, §106(c)(3)(A), substituted ''$100'' for ''$50''.

Subsec. (e)(2)(B). Pub. L. 103–432, §106(c)(4)(A), inserted '', but shall not include any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by the State under such subsection'' after ''individual disputing the findings'' in first sentence.

Subsec. (f)(2)(B)(i). Pub. L. 103–432, §106(d)(3), substituted ''facilities (subject to clause (iii)),'' for ''facilities,''.

Subsec. (f)(2)(B)(iii)(I)(b). Pub. L. 103–432, §106(c)(1)(A), inserted before semicolon at end '', unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section''.

Subsec. (f)(2)(B)(iii)(I)(c). Pub. L. 103–432, §106(d)(4), substituted ''clause'' for ''clauses'' in two places.

Subsec. (g)(1)(C). Pub. L. 103–432, §106(c)(4)(B), substituted second sentence for former second sentence which read as follows: ''The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations.''

Subsec. (g)(5)(B). Pub. L. 103–432, §106(d)(5), substituted ''paragraph'' for ''paragraphs'' before ''(1), (2), or (4) of subsection (h)''.

1992—Subsecs. (c)(2)(B)(iii)(II), (g)(5)(B). Pub. L. 102–375 substituted ''title III or VII of the Older Americans Act of 1965 in accordance with section 712 of the Act'' for ''section 307(a)(12) of the Older Americans Act of 1965''.

1990—Subsec. (b)(1)(B). Pub. L. 101–508, §4008(h)(2)(B), inserted at end ''A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.''

Subsec. (b)(3)(C)(i)(I). Pub. L. 101–508, §4008(h)(2)(C), substituted ''not later than 14 days'' for ''4 days''.

Subsec. (b)(4)(A)(vii). Pub. L. 101–508, §4008(h)(2)(D), added cl. (vii).

Subsec. (b)(4)(C)(ii)(IV), (V). Pub. L. 101–508, §4008(h)(2)(E), added subcls. (IV) and (V).

Subsec. (b)(5)(A). Pub. L. 101–508, §4008(h)(1)(B), designated existing provisions as cl. (i), in introductory provisions substituted ''Except as provided in clause (ii), a skilled nursing facility'' for ''A skilled nursing facility'' and ''on a full-time basis'' for ''(on a full-time, temporary, per diem, or other basis)'', redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (b)(5)(C). Pub. L. 101–508, §4008(h)(1)(C), substituted ''any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information'' for ''the State registry established under subsection (e)(2)(A) of this section as to information in the registry''.

Subsec. (b)(5)(D). Pub. L. 101–508, §4008(h)(1)(D), inserted before period at end '', or a new competency evaluation program'' after ''and competency evaluation program''.

Subsec. (b)(5)(F)(i). Pub. L. 101–508, §4008(h)(2)(F), substituted ''(G)) or a registered dietician,'' for ''(G)),''.

Subsec. (c)(1)(A). Pub. L. 101–508, §4008(h)(2)(G)(B)[(ii)], inserted at end ''A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to benefits under this subchapter or to medical assistance under subchapter XIX of this chapter.''

Subsec. (c)(1)(A)(iv). Pub. L. 101–508, §4008(h)(2)(H), inserted before period at end ''and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request''.

Subsec. (c)(1)(A)(x), (xi). Pub. L. 101–508, §4008(h)(2)(G)(i), added cl. (x) and redesignated former cl. (x) as (xi).

Subsec. (c)(1)(B)(ii). Pub. L. 101–508, §4008(h)(2)(I), inserted ''including the notice (if any) of the State developed under section 1396r(e)(6) of this title'' after ''in such rights)''.

Subsec. (c)(1)(E). Pub. L. 101–508, §4206(d)(1), added subpar. (E).

Subsec. (e)(1)(A). Pub. L. 101–508, §4008(h)(2)(J), substituted ''subsection (f)(2) of this section'' for ''clause (i) or (ii) of subsection (f)(2)(A) of this section''.

Subsec. (e)(2)(A). Pub. L. 101–508, §4008(h)(2)(K)(i), inserted before period at end '', or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989''.

Subsec. (e)(2)(C). Pub. L. 101–508, §4008(h)(2)(K)(ii), added subpar. (C).

Subsec. (f)(2)(A)(ii). Pub. L. 101–508, §4008(m)(3)(F)[(E)], struck out ''and'' after semicolon at end.

Subsec. (f)(2)(A)(iv). Pub. L. 101–508, §4008(h)(1)(E), struck out ''and'' at end of subcl. (I), inserted ''who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program'' after ''nurse aide'' and substituted '', and'' for period at end of subcl. (II), and added subcl. (III).

Subsec. (f)(2)(B). Pub. L. 101–508, §4008(h)(1)(G), inserted ''(through subcontract or otherwise)'' after ''may not delegate'' in second sentence.

Subsec. (f)(2)(B)(iii)(I). Pub. L. 101–508, §4008(h)(1)(F)(i), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''offered by or in a skilled nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), or (d) of this section, within the previous 2 years, or''.

Subsec. (g)(1)(C). Pub. L. 101–508, §4008(h)(2)(L), inserted at end ''A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.''

Subsec. (g)(5)(A)(i). Pub. L. 101–508, §4008(h)(2)(M), substituted ''deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans'' for ''deficiencies and plans''.

Subsec. (g)(5)(B). Pub. L. 101–508, §4008(h)(2)(N), substituted ''or of any adverse action taken against a skilled nursing facility under paragraphs (1), (2), or (4) of subsection (h) of this section, with respect'' for ''with respect''.

1989—Subsec. (b)(5)(A). Pub. L. 101–239, §6901(b)(1)(A), substituted ''October 1, 1990'' for ''January 1, 1990'' in introductory provisions.

Subsec. (b)(5)(B). Pub. L. 101–239, §6901(b)(1)(B), substituted ''January 1, 1990'' and ''October 1, 1990'' for ''July 1, 1989'' and ''January 1, 1990'', respectively.

Subsec. (c)(1)(A)(ii)(II). Pub. L. 101–239, §6901(d)(4)(A), substituted ''Secretary until such an order could reasonably be obtained)'' for ''Secretary) until such an order could reasonably be obtained''.

Subsec. (c)(1)(A)(v)(I). Pub. L. 101–239, §6901(d)(4)(B), substituted ''accommodation'' for ''accommodations''.

Subsec. (f)(2)(A)(i)(I). Pub. L. 101–239, §6901(d)(4)(C), substituted ''and content of the curriculum'' for '', content of the curriculum''.

Pub. L. 101–239, §6901(b)(3)(A), inserted ''care of cognitively impaired residents,'' after ''social service needs,''.

Subsec. (f)(2)(A)(ii). Pub. L. 101–239, §6901(b)(3)(B), substituted ''recognition of mental health and social service needs, care of cognitively impaired residents'' for ''cognitive, behavioral and social care''.

Subsec. (f)(2)(A)(iv). Pub. L. 101–239, §6901(b)(3)(C), (D), added cl. (iv).

Subsec. (h)(2)(C). Pub. L. 101–239, §6901(d)(4)(D), inserted ''after the effective date of the findings'' after ''6 months'' in introductory provisions.

1988—Subsec. (b)(3)(A)(iii). Pub. L. 100–360, §411(*l*)(2)(B), struck out ''in the case of a resident eligible for benefits under subchapter XIX of this chapter,'' before ''uses an instrument''.

Subsec. (b)(3)(A)(iv). Pub. L. 100–360, §411(*l*)(2)(A), as amended by Pub. L. 100–485, §608(d)(27)(C), struck out ''in the case of a resident eligible for benefits under this part,'' before ''includes the identification''.

Subsec. (b)(3)(B)(ii)(III). Pub. L. 100–360, §411(*l*)(2)(C), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (b)(3)(C)(i)(I). Pub. L. 100–360, §411(*l*)(1)(A)(i), substituted ''than January 1, 1991'' for ''than October 1, 1990''.

Subsec. (b)(4)(C)(i). Pub. L. 100–360, §411(*l*)(1)(A)(ii), substituted ''24-hour licensed nursing'' for ''24-hour nursing'', ''must use'' for ''must employ'', and ''at least 8 consecutive hours a day,'' for ''during the day tour of duty (of at least 8 hours a day)''.

Subsec. (b)(5)(A). Pub. L. 100–360, §411(*l*)(2)(D)(i), as amended by Pub. L. 100–485, §608(d)(27)(D), struck out '', who is not a licensed health professional (as defined in subparagraph (E)),'' after ''any individual''.

Pub. L. 100–360, §411(*l*)(1)(A)(iii), substituted ''January 1, 1990'' for ''October 1, 1989, (or January 1, 1990, in the case of an individual used by the facility as a nurse aide before July 1, 1989)''.

Subsec. (b)(5)(A)(ii). Pub. L. 100–360, §411(*l*)(2)(D)(ii), substituted ''nursing or nursing-related services'' for ''such services''.

Subsec. (b)(5)(G). Pub. L. 100–360, §411(*l*)(2)(D)(iii), inserted ''physical or occupational therapy assistant,'' after ''occupational therapist,''.

Subsec. (c)(1)(D). Pub. L. 100–360, §411(*l*)(1)(A)(iv), as added by Pub. L. 100–485, §608(d)(27)(A), added subpar. (D).

Subsec. (c)(2)(A)(v). Pub. L. 100–360, §411(*l*)(2)(F), substituted ''for a stay at the facility'' for ''an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with this subchapter and subchapter XIX of this chapter''.

Subsec. (c)(6). Pub. L. 100–360, §411(*l*)(2)(G), substituted ''upon the written'' for ''once the facility accepts the written'' in subpar. (A)(ii), and ''Upon written'' for ''Upon a facility's acceptance of written'' in subpar. (B).

Subsec. (e)(1)(A). Pub. L. 100–360, §411(*l*)(1)(A)(v), formerly §411(*l*)(1)(A)(iv), as redesignated by Pub. L. 100–485, §608(d)(27)(A), substituted ''January'' for ''March''.

Subsec. (e)(1)(B). Pub. L. 100–360, §411(*l*)(1)(A)(vi), formerly §411(*l*)(1)(A)(v), as redesignated by Pub. L. 100–485, §608(d)(27)(A), substituted ''January'' for ''March''.

Subsec. (e)(2)(A). Pub. L. 100–360, §411(*l*)(1)(A)(vii), formerly §411(*l*)(1)(A)(vi), as redesignated by Pub. L. 100–485, §608(d)(27)(A), substituted ''January'' for ''March''.

Subsec. (e)(2)(B). Pub. L. 100–360, §411(*l*)(2)(H), inserted after first sentence ''The State shall make available to the public information in the registry.''

Subsec. (e)(3). Pub. L. 100–360, §411(*l*)(2)(I), inserted ''and discharges'' after ''transfers'' in heading and in two places in text.

Pub. L. 100–360, §411(*l*)(1)(A)(viii), formerly §411(*l*)(1)(A)(vii), as redesignated by Pub. L. 100–485, §608(d)(27)(A), substituted ''1989'' for ''1990''.

Subsec. (e)(5). Pub. L. 100–360, §411(*l*)(1)(A)(ix), formerly §411(*l*)(1)(A)(viii), as redesignated by Pub. L. 100–485, §608(d)(27)(A), substituted ''1990'' for ''1989'' in introductory provisions.

Subsec. (f)(2)(A)(i)(I). Pub. L. 100–360, §411(*l*)(2)(J), substituted ''recognition of mental health and social service needs'' for ''cognitive, behavioral and social care''.

Subsec. (f)(3). Pub. L. 100–360, §411(*l*)(2)(I), inserted ''and discharges'' after ''transfers'' in heading and in text.

Pub. L. 100–360, §411(*l*)(1)(A)(x), formerly §411(*l*)(1)(A)(ix), as redesignated by Pub. L. 100–485, §608(d)(27)(A), substituted ''1988'' for ''1989''.

Subsec. (f)(6)(A). Pub. L. 100–360, §411(*l*)(1)(A)(xi), formerly §411(*l*)(1)(A)(x), as redesignated by Pub. L. 100–485, §608(d)(27)(A), substituted ''January'' for ''July''.

Subsec. (f)(6)(B). Pub. L. 100–360, §411(*l*)(1)(A)(xii), formerly §411(*l*)(1)(A)(xi), as redesignated by Pub. L. 100–485, §608(d)(27)(A), substituted ''April'' for ''October''.

Subsec. (f)(7)(A). Pub. L. 100–360, §411(*l*)(2)(K), substituted ''residents'' for ''patients''.

Subsec. (f)(7)(B). Pub. L. 100–360, §411(*l*)(2)(L)(i), substituted ''shall include'' for ''shall not include''.

Subsec. (g)(1)(C). Pub. L. 100–360, §411(*l*)(5)(A)–(C), substituted ''and timely review'' for '', review,'', inserted ''or by another individual used by the facility in providing services to such a resident'' after ''a nursing facility'', and substituted ''The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority.'' for ''If the State finds, after notice to the nurse aide involved and a reasonable opportunity for a hearing for the nurse aide to rebut allegations, that a nurse aide whose name is contained in a nurse aide registry has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding.''

Subsec. (g)(1)(D). Pub. L. 100–360, §411(*l*)(5)(D), substituted ''to issue regulations to carry out this subsection'' for ''to establish standards under subsection (f) of this section''.

Subsec. (g)(2)(A)(i). Pub. L. 100–360, §411(*l*)(5)(E), amended third sentence generally. Prior to amendment, third sentence read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (g)(2)(B)(ii). Pub. L. 100–360, §411(*l*)(5)(F), as added by Pub. L. 100–485, §608(d)(27)(I), substituted ''practicable'' for ''practical''.

Subsec. (g)(2)(C)(i). Pub. L. 100–360, §411(*l*)(4), substituted ''January'' for ''October''.

Subsec. (g)(3)(D). Pub. L. 100–360, §411(*l*)(5)(G), formerly §411(*l*)(5)(F), as redesignated by Pub. L. 100–485, §608(d)(27)(I), substituted ''on the basis of that survey'' for ''on that basis''.

Subsec. (g)(4). Pub. L. 100–360, §411(*l*)(5)(H), formerly §411(*l*)(5)(G), as redesignated by Pub. L. 100–485, §608(d)(27)(I), struck out ''chronically'' after ''enforcement actions against'' in last sentence.

Subsec. (h)(2)(B)(ii). Pub. L. 100–360, §411(*l*)(7)(A), substituted ''. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.'' for ''and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1320a–7a of this title.''

Subsec. (h)(5). Pub. L. 100–360, §411(*l*)(11), as added by Pub. L. 100–485, §608(d)(27)(L), substituted ''clauses (i), and (iii) of paragraph (2)(B)'' for ''clauses (i), (iii), and (iv) of paragraph (2)(A)''.

Subsec. (h)(6). Pub. L. 100–360, § 411(*l*)(7)(B), inserted ''by such facilities'' after ''be made available''.

1987—Subsecs. (g) to (i). Pub. L. 100–203, §§ 4202(a)(2), 4203(a)(2), 4206, added subsecs. (g), (h), and (i), respectively.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 932(d), Dec. 8, 2003, 117 Stat. 2402, provided that: ''The amendments made by this section [amending this section and sections 1395cc, 1395ff, and 1396r of this title] shall apply to appeals filed on or after October 1, 2004.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title IX, § 941(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–586, provided that: ''The amendments made by this section [amending this section and section 1396r of this title] shall take effect on January 1, 2003.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4432(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395k, 1395*l*, 1395u, 1395x, 1395y, 1395cc, 1395tt, and 1395yy of this title] are effective for cost reporting periods beginning on or after July 1, 1998; except that the amendments made by subsection (b) [amending this section and sections 1395k, 1395*l*, 1395u, 1395x, 1395y, 1395cc, 1395tt, and 1395yy of this title] shall apply to items and services furnished on or after July 1, 1998.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 106(c)(1)(B) of Pub. L. 103–432 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

Section 106(c)(2)(B) of Pub. L. 103–432 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of OBRA–1987 [Pub. L. 100–203].''

Section 106(c)(3)(B) of Pub. L. 103–432 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect January 1, 1995.''

Section 106(c)(4)(C) of Pub. L. 103–432 provided that: ''The amendments made by this paragraph [amending this section] shall take effect January 1, 1995.''

Section 106(d)(7) of Pub. L. 103–432 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note below] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(h)(1)(F)(ii) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 106(d)(6), Oct. 31, 1994, 108 Stat. 4407, provided that:

''(I) The amendments made by clause (i) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203], except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a skilled nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

''(aa) had its participation terminated under title XVIII of the Social Security Act [this subchapter] or under the State plan under title XIX of such Act [subchapter XIX of this chapter];

''(bb) was subject to a denial of payment under either such title;

''(cc) was assessed a civil money penalty not less than $5,000 for deficiencies in skilled nursing facility standards;

''(dd) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

''(ee) pursuant to State action, was closed or had its residents transferred.

''(II) Notwithstanding subclause (I) and subject to section 1819(f)(2)(B)(iii)(I) of the Social Security Act [subsec. (f)(2)(B)(iii)(I) of this section] (as amended by clause (i)), a State may approve a training and competency evaluation program or a competency evaluation program offered by or in a skilled nursing facility described in subclause (I) if, during the previous 2 years, item (aa), (bb), (cc), (dd), or (ee) of subclause (I) did not apply to the facility.''

Section 4008(h)(1)(H) of Pub. L. 101–508 provided that: ''Except as provided in subparagraph (F) [amending this section and enacting provisions set out as a note above], the amendments made by this subsection [probably means this paragraph, amending this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Section 4008(h)(2)(P) of Pub. L. 101–508 provided that: ''The amendments made by this paragraph [amending this section and sections 1395x and 1395yy of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Section 4206(e)(1) of Pub. L. 101–508 provided that: ''The amendments made by subsections (a) and (d) [amending this section and sections 1395cc and 1395bbb of this title] shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6901(b)(6) of Pub. L. 101–239 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 1396b and 1396r of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].

''(B) EXCEPTION.—The amendments made by paragraph (3) [amending this section and section 1396r of this title] shall apply to nurse aide training and competency evaluation programs, and nurse aide competency evaluation programs, offered on or after the end of the 90-day period beginning on the date of the enactment of this Act [Dec. 19, 1989], but shall not affect competency evaluations conducted under programs offered before the end of such period.''

Section 6901(d)(6) of Pub. L. 101–239 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 1396i and 1396r of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].

''(B) EXCEPTION.—The amendment made by paragraph (1) [amending section 1396r of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if originally included in the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates

to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 4204 of title IV of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(*l*)(9), July 1, 1988, 102 Stat. 805; Pub. L. 100–485, title VI, § 608(d)(27)(K), Oct. 13, 1988, 102 Stat. 2423, provided that:

''(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1819 of the Social Security Act [this section], the amendments made by sections 4201 and 4202 [enacting and amending this section and amending sections 1395x, 1395aa, 1395tt, and 1395yy of this title] (relating to skilled nursing facility requirements and survey and certification requirements) shall apply to services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date.

''(b) ENFORCEMENT.—(1) Except as otherwise specifically provided in section 1819 of the Social Security Act [this section], the amendments made by section 4203 of this Act [amending this section and section 1395aa of this title] apply January 1, 1988, without regard to whether regulations to implement such amendments are promulgated by such date.

''(2) In applying the amendments made by section 4203 of this Act for services furnished by a skilled nursing facility before October 1, 1990, any reference to a requirement of subsection (b), (c), or (d), of section 1819 of the Social Security Act is deemed a reference to the provisions of section 1861(j) of such Act [section 1395x(j) of this title].

''(c) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part [part 1 of subtitle C (§§ 4201–4206), enacting this section, amending this section and sections 1395x, 1395aa, 1395tt, and 1395yy of this title, and enacting provisions set out as notes under this section] and implementing the amendments made by this part.''

REVIEW AND REPORT ON CURRENT STANDARDS OF PRACTICE FOR PHARMACY SERVICES PROVIDED TO PATIENTS IN NURSING FACILITIES

Pub. L. 108–173, title I, § 107(b), Dec. 8, 2003, 117 Stat. 2169, provided that:

''(1) REVIEW.—

''(A) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall conduct a thorough review of the current standards of practice for pharmacy services provided to patients in nursing facilities.

''(B) SPECIFIC MATTERS REVIEWED.—In conducting the review under subparagraph (A), the Secretary shall—

''(i) assess the current standards of practice, clinical services, and other service requirements generally used for pharmacy services in long-term care settings; and

''(ii) evaluate the impact of those standards with respect to patient safety, reduction of medication errors and quality of care.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than the date that is 18 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary shall submit a report to Congress on the study conducted under paragraph (1)(A).

''(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

''(i) a description of the plans of the Secretary to implement the provisions of this Act [see Tables for classification] in a manner consistent with applicable State and Federal laws designed to protect the safety and quality of care of nursing facility patients; and

''(ii) recommendations regarding necessary actions and appropriate reimbursement to ensure the provision of prescription drugs to medicare beneficiaries residing in nursing facilities in a manner consistent with existing patient safety and quality of care standards under applicable State and Federal laws.''

STUDY AND REPORT REGARDING STATE LICENSURE AND CERTIFICATION STANDARDS AND RESPIRATORY THERAPY COMPETENCY EXAMINATIONS

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 107], Nov. 29, 1999, 113 Stat. 1536, 1501A–328, provided that:

''(a) STUDY.—The Secretary of Health and Human Services shall conduct a study that—

''(1) identifies variations in State licensure and certification standards for health care providers (including nursing and allied health professionals) and other individuals providing respiratory therapy in skilled nursing facilities;

''(2) examines State requirements relating to respiratory therapy competency examinations for such providers and individuals; and

''(3) determines whether regular respiratory therapy competency examinations or certifications should be required under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for such providers and individuals.

''(b) REPORT.—Not later than 18 months after the date of enactment of this Act [Nov. 29, 1999], the Secretary of Health and Human Services shall submit to Congress a report on the results of the study conducted under this section, together with any recommendations for legislation that the Secretary determines to be appropriate as a result of such study.''

RETROACTIVE REVIEW

Section 4755(c) of Pub. L. 105–33 provided that: ''The procedures developed by a State under the amendments made by subsection[s] (a) and (b) [amending this section and section 1396r of this title] shall permit an individual to petition for a review of any finding made by a State under section 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i-3(g)(1)(C) or 1396r(g)(1)(C)) after January 1, 1995.''

STUDY AND REPORT ON DEEMING FOR NURSING FACILITIES AND RENAL DIALYSIS FACILITIES

Pub. L. 104–134, title I, § 101(d) [title V, § 516(d)], Apr. 26, 1996, 110 Stat. 1321–211, 1321–248; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall provide for—

''(A) a study concerning the effectiveness and appropriateness of the current mechanisms for surveying and certifying skilled nursing facilities for compliance with the conditions and requirements of sections 1819 and 1861(j) of the Social Security Act [this section and section 1395x(j) of this title] and nursing facilities for compliance with the conditions of section 1919 of such Act [section 1396r of this title], and

''(B) a study concerning the effectiveness and appropriateness of the current mechanisms for surveying and certifying renal dialysis facilities for compliance with the conditions and requirements of section 1881(b) of the Social Security Act [section 1395rr(b) of this title].

''(2) REPORT.—Not later than July 1, 1997, the Secretary shall transmit to Congress a report on each of the studies provided for under paragraph (1). The report on the study under paragraph (1)(A) shall include (and the report on the study under paragraph (1)(B) may include) a specific framework, where appropriate, for implementing a process under which facilities covered

under the respective study may be deemed to meet applicable medicare conditions and requirements if they are accredited by a national accreditation body.''

MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES

Section 4008(h)(2)(O) of Pub. L. 101–508 provided that: ''Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 [Dec. 22, 1987] with respect to services described in clauses (ii), (iv), and (v) of section 1819(b)(4)(A) of the Social Security Act [subsec. (b)(4)(A)(ii), (iv), and (v) of this section] shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.''

NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS; PUBLICATION OF PROPOSED REGULATIONS

Section 6901(b)(2) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall issue proposed regulations to establish the requirements described in sections 1819(f)(2) and 1919(f)(2) of the Social Security Act [subsec. (f)(2) of this section and section 1396r(f)(2) of this title] by not later than 90 days after the date of the enactment of this Act [Dec. 19, 1989].''

NURSE AIDE TRAINING AND COMPETENCY EVALUATION; SATISFACTION OF REQUIREMENTS; WAIVER

Section 6901(b)(4)(B)–(D) of Pub. L. 101–239 provided that:

''(B) A nurse aide shall be considered to satisfy the requirement of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act [subsec. (b)(5)(A) of this section and section 1396r(b)(5)(A) of this title] (of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act [subsec. (e)(1)(A) of this section and section 1396r(e)(1)(A) of this title]), if such aide would have satisfied such requirement as of July 1, 1989, if a number of hours (not less than 60 hours) were substituted for '75 hours' in sections 1819(f)(2) and 1919(f)(2) of such Act [subsec. (f)(2) of this section and section 1396r(f)(2) of this title], respectively, and if such aide had received, before July 1, 1989, at least the difference in the number of such hours in supervised practical nurse aide training or in regular in-service nurse aide education.

''(C) A nurse aide shall be considered to satisfy the requirement of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act (of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act), if such aide was found competent (whether or not by the State), before July 1, 1989, after the completion of a course of nurse aide training of at least 100 hours duration.

''(D) With respect to the nurse aide competency evaluation requirements described in sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act, a State may waive such requirements with respect to an individual who can demonstrate to the satisfaction of the State that such individual has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before the date of the enactment of this Act [Dec. 19, 1989].''

EVALUATION AND REPORT ON IMPLEMENTATION OF RESIDENT ASSESSMENT PROCESS

Section 4201(c) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1992, on the implementation of the resident assessment process for residents of skilled nursing facilities under the amendments made by this section [enacting this section and amending sections 1395x, 1395aa, 1395tt, and 1395yy of this title].''

ANNUAL REPORT ON STATUTORY COMPLIANCE AND ENFORCEMENT ACTIONS

Section 4205 of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall report to the Congress annually on the extent to which skilled nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1819 of the Social Security Act [subsecs. (b), (c), and (d) of this section] (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1819(h) of such Act (as added by section 4203 of this Act).''

§ 1395i–4. Medicare rural hospital flexibility program

(a) Establishment

Any State that submits an application in accordance with subsection (b) of this section may establish a medicare rural hospital flexibility program described in subsection (c) of this section.

(b) Application

A State may establish a medicare rural hospital flexibility program described in subsection (c) of this section if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing—

(1) assurances that the State—

(A) has developed, or is in the process of developing, a State rural health care plan that—

(i) provides for the creation of 1 or more rural health networks (as defined in subsection (d) of this section) in the State;

(ii) promotes regionalization of rural health services in the State; and

(iii) improves access to hospital and other health services for rural residents of the State; and

(B) has developed the rural health care plan described in subparagraph (A) in consultation with the hospital association of the State, rural hospitals located in the State, and the State Office of Rural Health (or, in the case of a State in the process of developing such plan, that assures the Secretary that the State will consult with its State hospital association, rural hospitals located in the State, and the State Office of Rural Health in developing such plan);

(2) assurances that the State has designated (consistent with the rural health care plan described in paragraph (1)(A)), or is in the process of so designating, rural nonprofit or public hospitals or facilities located in the State as critical access hospitals; and

(3) such other information and assurances as the Secretary may require.

(c) Medicare rural hospital flexibility program described

(1) In general

A State that has submitted an application in accordance with subsection (b) of this section, may establish a medicare rural hospital flexibility program that provides that—

(A) the State shall develop at least 1 rural health network (as defined in subsection (d) of this section) in the State; and

(B) at least 1 facility in the State shall be designated as a critical access hospital in accordance with paragraph (2).

(2) State designation of facilities

(A) In general

A State may designate 1 or more facilities as a critical access hospital in accordance with subparagraphs (B), (C), and (D).

(B) Criteria for designation as critical access hospital

A State may designate a facility as a critical access hospital if the facility—

(i) is a hospital that is located in a county (or equivalent unit of local government) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) or is treated as being located in a rural area pursuant to section 1395ww(d)(8)(E) of this title, and that—

(I) is located more than a 35-mile drive (or, in the case of mountainous terrain or in areas with only secondary roads available, a 15-mile drive) from a hospital, or another facility described in this subsection; or

(II) is certified before January 1, 2006, by the State as being a necessary provider of health care services to residents in the area;

(ii) makes available 24-hour emergency care services that a State determines are necessary for ensuring access to emergency care services in each area served by a critical access hospital;

(iii) provides not more than 25 acute care inpatient beds (meeting such standards as the Secretary may establish) for providing inpatient care for a period that does not exceed, as determined on an annual, average basis, 96 hours per patient;

(iv) meets such staffing requirements as would apply under section 1395x(e) of this title to a hospital located in a rural area, except that—

(I) the facility need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the facility must be open and fully staffed, except insofar as the facility is required to make available emergency care services as determined under clause (ii) and must have nursing services available on a 24-hour basis, but need not otherwise staff the facility except when an inpatient is present;

(II) the facility may provide any services otherwise required to be provided by a full-time, on site dietitian, pharmacist, laboratory technician, medical technologist, and radiological technologist on a part-time, off site basis under arrangements as defined in section 1395x(w)(1) of this title; and

(III) the inpatient care described in clause (iii) may be provided by a physician assistant, nurse practitioner, or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility; and

(v) meets the requirements of section 1395x(aa)(2)(I) of this title.

(C) Recently closed facilities

A State may designate a facility as a critical access hospital if the facility—

(i) was a hospital that ceased operations on or after the date that is 10 years before November 29, 1999; and

(ii) as of the effective date of such designation, meets the criteria for designation under subparagraph (B).

(D) Downsized facilities

A State may designate a health clinic or a health center (as defined by the State) as a critical access hospital if such clinic or center—

(i) is licensed by the State as a health clinic or a health center;

(ii) was a hospital that was downsized to a health clinic or health center; and

(iii) as of the effective date of such designation, meets the criteria for designation under subparagraph (B).

(E) Authority to establish psychiatric and rehabilitation distinct part units

(i) In general

Subject to the succeeding provisions of this subparagraph, a critical access hospital may establish—

(I) a psychiatric unit of the hospital that is a distinct part of the hospital; and

(II) a rehabilitation unit of the hospital that is a distinct part of the hospital,

if the distinct part meets the requirements (including conditions of participation) that would otherwise apply to the distinct part if the distinct part were established by a subsection (d) hospital in accordance with the matter following clause (v) of section 1395ww(d)(1)(B) of this title, including any regulations adopted by the Secretary under such section.

(ii) Limitation on number of beds

The total number of beds that may be established under clause (i) for a distinct part unit may not exceed 10.

(iii) Exclusion of beds from bed count

In determining the number of beds of a critical access hospital for purposes of applying the bed limitations referred to in subparagraph (B)(iii) and subsection (f) of this section, the Secretary shall not take into account any bed established under clause (i).

(iv) Effect of failure to meet requirements

If a psychiatric or rehabilitation unit established under clause (i) does not meet the requirements described in such clause with respect to a cost reporting period, no payment may be made under this subchapter to the hospital for services furnished in such unit during such period. Payment to the hospital for services furnished in the unit may resume only after

the hospital has demonstrated to the Secretary that the unit meets such requirements.

(d) "Rural health network" defined

(1) In general

In this section, the term ''rural health network'' means, with respect to a State, an organization consisting of—

(A) at least 1 facility that the State has designated or plans to designate as a critical access hospital; and

(B) at least 1 hospital that furnishes acute care services.

(2) Agreements

(A) In general

Each critical access hospital that is a member of a rural health network shall have an agreement with respect to each item described in subparagraph (B) with at least 1 hospital that is a member of the network.

(B) Items described

The items described in this subparagraph are the following:

(i) Patient referral and transfer.

(ii) The development and use of communications systems including (where feasible)—

(I) telemetry systems; and

(II) systems for electronic sharing of patient data.

(iii) The provision of emergency and nonemergency transportation among the facility and the hospital.

(C) Credentialing and quality assurance

Each critical access hospital that is a member of a rural health network shall have an agreement with respect to credentialing and quality assurance with at least—

(i) 1 hospital that is a member of the network;

(ii) 1 peer review organization or equivalent entity; or

(iii) 1 other appropriate and qualified entity identified in the State rural health care plan.

(e) Certification by Secretary

The Secretary shall certify a facility as a critical access hospital if the facility—

(1) is located in a State that has established a medicare rural hospital flexibility program in accordance with subsection (c) of this section;

(2) is designated as a critical access hospital by the State in which it is located; and

(3) meets such other criteria as the Secretary may require.

(f) Permitting maintenance of swing beds

Nothing in this section shall be construed to prohibit a State from designating or the Secretary from certifying a facility as a critical access hospital solely because, at the time the facility applies to the State for designation as a critical access hospital, there is in effect an agreement between the facility and the Secretary under section 1395tt of this title under which the facility's inpatient hospital facilities are used for the provision of extended care services, so long as the total number of beds that may be used at any time for the furnishing of either such services or acute care inpatient services does not exceed 25 beds. For purposes of the previous sentence, any bed of a unit of the facility that is licensed as a distinct-part skilled nursing facility at the time the facility applies to the State for designation as a critical access hospital shall not be counted.

(g) Grants

(1) Medicare rural hospital flexibility program

The Secretary may award grants to States that have submitted applications in accordance with subsection (b) of this section for—

(A) engaging in activities relating to planning and implementing a rural health care plan;

(B) engaging in activities relating to planning and implementing rural health networks; and

(C) designating facilities as critical access hospitals.

(2) Rural emergency medical services

(A) In general

The Secretary may award grants to States that have submitted applications in accordance with subparagraph (B) for the establishment or expansion of a program for the provision of rural emergency medical services.

(B) Application

An application is in accordance with this subparagraph if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing the assurances described in subparagraphs (A)(ii), (A)(iii), and (B) of subsection (b)(1) of this section and paragraph (3) of that subsection.

(3) Upgrading data systems

(A) Grants to hospitals

The Secretary may award grants to hospitals that have submitted applications in accordance with subparagraph (C) to assist eligible small rural hospitals in meeting the costs of implementing data systems required to meet requirements established under the medicare program pursuant to amendments made by the Balanced Budget Act of 1997.

(B) Eligible small rural hospital defined

For purposes of this paragraph, the term ''eligible small rural hospital'' means a non-Federal, short-term general acute care hospital that—

(i) is located in a rural area (as defined for purposes of section 1395ww(d) of this title); and

(ii) has less than 50 beds.

(C) Application

A hospital seeking a grant under this paragraph shall submit an application to the Secretary on or before such date and in such form and manner as the Secretary specifies.

(D) Amount of grant

A grant to a hospital under this paragraph may not exceed $50,000.

(E) Use of funds

A hospital receiving a grant under this paragraph may use the funds for the purchase of computer software and hardware, the education and training of hospital staff on computer information systems, and to offset costs related to the implementation of prospective payment systems.

(F) Reports

(i) Information

A hospital receiving a grant under this section shall furnish the Secretary with such information as the Secretary may require to evaluate the project for which the grant is made and to ensure that the grant is expended for the purposes for which it is made.

(ii) Timing of submission

(I) Interim reports

The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least annually on the grant program established under this section, including in such report information on the number of grants made, the nature of the projects involved, the geographic distribution of grant recipients, and such other matters as the Secretary deems appropriate.

(II) Final report

The Secretary shall submit a final report to such committees not later than 180 days after the completion of all of the projects for which a grant is made under this section.

(4) Additional requirements with respect to FLEX grants

With respect to grants awarded under paragraph (1) or (2) from funds appropriated for fiscal year 2005 and subsequent fiscal years—

(A) Consultation with the state hospital association and rural hospitals on the most appropriate ways to use grants

A State shall consult with the hospital association of such State and rural hospitals located in such State on the most appropriate ways to use the funds under such grant.

(B) Limitation on use of grant funds for administrative expenses

A State may not expend more than the lesser of—

(i) 15 percent of the amount of the grant for administrative expenses; or

(ii) the State's federally negotiated indirect rate for administering the grant.

(5) Use of funds for Federal administrative expenses

Of the total amount appropriated for grants under paragraphs (1) and (2) for a fiscal year (beginning with fiscal year 2005), up to 5 percent of such amount shall be available to the Health Resources and Services Administration for purposes of administering such grants.

(h) Grandfathering provisions

(1) In general

Any medical assistance facility operating in Montana and any rural primary care hospital designated by the Secretary under this section prior to August 5, 1997, shall be deemed to have been certified by the Secretary under subsection (e) of this section as a critical access hospital if such facility or hospital is otherwise eligible to be designated by the State as a critical access hospital under subsection (c) of this section.

(2) Continuation of medical assistance facility and rural primary care hospital terms

Notwithstanding any other provision of this subchapter, with respect to any medical assistance facility or rural primary care hospital described in paragraph (1), any reference in this subchapter to a ''critical access hospital'' shall be deemed to be a reference to a ''medical assistance facility'' or ''rural primary care hospital''.

(3) State authority to waive 35-mile rule

In the case of a facility that was designated as a critical access hospital before January 1, 2006, and was certified by the State as being a necessary provider of health care services to residents in the area under subsection (c)(2)(B)(i)(II) of this section, as in effect before such date, the authority under such subsection with respect to any redesignation of such facility shall continue to apply notwithstanding the amendment made by section 405(h)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(i) Waiver of conflicting part A provisions

The Secretary is authorized to waive such provisions of this part and part E of this subchapter as are necessary to conduct the program established under this section.

(j) Authorization of appropriations

There are authorized to be appropriated from the Federal Hospital Insurance Trust Fund for making grants to all States under subsection (g) of this section, $25,000,000 in each of the fiscal years 1998 through 2002, and for making grants to all States under paragraphs (1) and (2) of subsection (g) of this section, $35,000,000 in each of fiscal years 2005 through 2008.

(Aug. 14, 1935, ch. 531, title XVIII, § 1820, as added Pub. L. 101–239, title VI, § 6003(g)(1)(A), Dec. 19, 1989, 103 Stat. 2145; amended Pub. L. 101–508, title IV, § 4008(d)(1)–(3), (m)(2)(B), Nov. 5, 1990, 104 Stat. 1388–44, 1388–45, 1388–53; Pub. L. 103–432, title I, § 102(a)(1), (2), (b)(1)(A), (2), (c), (f), (h), Oct. 31, 1994, 108 Stat. 4401–4404; Pub. L. 105–33, title IV, §§ 4002(f)(1), 4201(a), Aug. 5, 1997, 111 Stat. 329, 369; Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(a), title IV, §§ 401(b)(2), 403(a)(1), (b), (c), 409], Nov. 29, 1999, 113 Stat. 1536, 1501A–365, 1501A–369, 1501A–370, 1501A–375; Pub. L. 108–173, title I, § 101(e)(1), title IV, § 405(e)(1), (2), (f), (g)(1), (h), Dec. 8, 2003, 117 Stat. 2150, 2267–2269.)

REFERENCES IN TEXT

The Balanced Budget Act of 1997, referred to in subsec. (g)(3)(A), is Pub. L. 105–33, Aug. 5, 1997, 111 Stat. 251.

For complete classification of this Act to the Code, see Tables.

Section 405(h)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (h)(3), is section 405(h)(1) of Pub. L. 108–173, which amended this section. See 2003 Amendment note below.

Part E of this subchapter, referred to in subsec. (i), is classified to section 1395x et seq. of this title.

AMENDMENTS

2003—Subsec. (c)(2)(B)(i)(II). Pub. L. 108–173, §405(h)(1), inserted ''before January 1, 2006,'' after ''is certified''.

Subsec. (c)(2)(B)(iii). Pub. L. 108–173, §405(e)(1), substituted ''25'' for ''15 (or, in the case of a facility under an agreement described in subsection (f) of this section, 25)''.

Subsec. (c)(2)(E). Pub. L. 108–173, §405(g)(1), added subpar. (E).

Subsec. (f). Pub. L. 108–173, §405(e)(2), struck out ''and the number of beds used at any time for acute care inpatient services does not exceed 15 beds'' after ''does not exceed 25 beds''.

Subsec. (g)(4), (5). Pub. L. 108–173, §405(f)(2), added pars. (4) and (5).

Subsec. (h). Pub. L. 108–173, §405(h)(2)(A), substituted ''provisions'' for ''of certain facilities'' in heading.

Subsec. (h)(3). Pub. L. 108–173, §405(h)(2)(B), added par. (3).

Subsec. (i). Pub. L. 108–173, §101(e)(1), substituted ''part E'' for ''part D''.

Subsec. (j). Pub. L. 108–173, §405(f)(1), inserted before period at end '', and for making grants to all States under paragraphs (1) and (2) of subsection (g) of this section, $35,000,000 in each of fiscal years 2005 through 2008''.

1999—Subsec. (c)(2)(A). Pub. L. 106–113, §1000(a)(6) [title IV, §403(c)(1)], substituted ''subparagraphs (B), (C), and (D)'' for ''subparagraph (B)''.

Subsec. (c)(2)(B)(i). Pub. L. 106–113, §1000(a)(6) [title IV, §403(b)], substituted ''hospital'' for ''nonprofit or public hospital''.

Pub. L. 106–113, §1000(a)(6) [title IV, §401(b)(2)], inserted ''or is treated as being located in a rural area pursuant to section 1395ww(d)(8)(E) of this title'' after ''section 1395ww(d)(2)(D) of this title)''.

Pub. L. 106–113, §1000(a)(6) [title III, §321(a)], substituted ''that is located in a county (or equivalent unit of local government) in a rural area (as defined in section 1395ww(d)(2)(D) of this title), and that'' for ''and is located in a county (or equivalent unit of local government) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) that''.

Subsec. (c)(2)(B)(iii). Pub. L. 106–113, §1000(a)(6) [title IV, §403(a)(1)], substituted ''for a period that does not exceed, as determined on an annual, average basis, 96 hours per patient;'' for ''for a period not to exceed 96 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions), except that a peer review organization or equivalent entity may, on request, waive the 96-hour restriction on a case-by-case basis;''.

Subsec. (c)(2)(C), (D). Pub. L. 106–113, §1000(a)(6) [title IV, §403(c)(2)], added subpars. (C) and (D).

Subsec. (g)(3). Pub. L. 106–113, §1000(a)(6) [title IV, §409], added par. (3).

1997—Pub. L. 105–33, §4201(a), amended section catchline and text generally, substituting provisions relating to medicare rural hospital flexibility program for provisions relating to essential access community hospital program.

Subsec. (j). Pub. L. 105–33, §4002(f)(1), substituted ''part D'' for ''part C''.

1994—Subsec. (c)(1). Pub. L. 103–432, §102(b)(2)(B)(i), substituted ''paragraph (3) or subsection (k) of this section'' for ''paragraph (3)''.

Subsec. (e)(1). Pub. L. 103–432, §102(b)(1)(A)(i), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: ''is located in a rural area (as defined in section 1395ww(d)(2)(D) of this title);''.

Subsec. (e)(1)(A). Pub. L. 103–432, §102(b)(1)(A)(ii), substituted ''except in the case of a hospital located in an urban area, is located'' for ''is located'' in introductory provisions, substituted ''or (ii)'' for '', (ii)'', and struck out ''or (iii) is located in an urban area that meets the criteria for classification as a regional referral center under such section,'' after ''section 1395ww(d)(5)(C) of this title,''.

Subsec. (e)(2) to (6). Pub. L. 103–432, §102(b)(1)(A)(i), redesignated pars. (2) to (6) as (1) to (5), respectively.

Subsec. (f)(1)(F). Pub. L. 103–432, §102(a)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''provides not more than 6 inpatient beds (meeting such conditions as the Secretary may establish) for providing inpatient care for a period not to exceed 72 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions) to patients requiring stabilization before discharge or transfer to a hospital;''.

Subsec. (f)(1)(H). Pub. L. 103–432, §102(f), inserted before period at end '', except that in determining whether a facility meets the requirements of this subparagraph, subparagraphs (E) and (F) of that paragraph shall be applied as if any reference to a 'physician' is a reference to a physician as defined in section 1395x(r)(1) of this title''.

Subsec. (f)(3). Pub. L. 103–432, §102(c), substituted ''because, at the time the facility applies to the State for designation as a rural primary care hospital, there is in effect an agreement between the facility and the Secretary under section 1395tt of this title under which the facility's inpatient hospital facilities are used for the furnishing of extended care services, except that the number of beds used for the furnishing of such services may not exceed the total number of licensed inpatient beds at the time the facility applies to the State for such designation (minus the number of inpatient beds used for providing inpatient care pursuant to paragraph (1)(F)). For purposes of the previous sentence, the number of beds of the facility used for the furnishing of extended care services shall not include any beds of a unit of the facility that is licensed as a distinct-part skilled nursing facility at the time the facility applies to the State for designation as a rural primary care hospital.'' for ''because the facility has entered into an agreement with the Secretary under section 1395tt of this title under which the facility's inpatient hospital facilities may be used for the furnishing of extended care services.''

Subsec. (f)(4). Pub. L. 103–432, §102(a)(2), added par. (4).

Subsec. (i)(1)(A). Pub. L. 103–432, §102(b)(2)(B)(ii), in cl. (i) inserted ''(except as provided in subsection (k) of this section)'' and in cl. (ii) inserted ''or subsection (k) of this section''.

Subsec. (i)(1)(B). Pub. L. 103–432, §102(b)(1)(A)(iii), substituted ''paragraph (2)'' for ''paragraph (3)''.

Subsec. (i)(2)(A). Pub. L. 103–432, §102(b)(2)(B)(ii), in cl. (i) inserted ''(except as provided in subsection (k) of this section)'' and in cl. (ii) inserted ''or subsection (k) of this section''.

Subsec. (k). Pub. L. 103–432, §102(b)(2)(A)(ii), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 103–432, §102(h), substituted ''1990 through 1997'' for ''1990, 1991, and 1992'' in introductory provisions.

Pub. L. 103–432, §102(b)(2)(A)(i), redesignated subsec. (k) as (*l*).

1990—Subsec. (d)(1). Pub. L. 101–508, §4008(m)(2)(B)(i), struck out ''demonstration'' before ''program''.

Subsec. (f)(1)(A). Pub. L. 101–508, §4008(d)(3), inserted before semicolon at end '', or is located in a county whose geographic area is substantially larger than the average geographic area for urban counties in the United States and whose hospital service area is characteristic of service areas of hospitals located in rural areas''.

Subsec. (f)(1)(B). Pub. L. 101–508, § 4008(d)(2), which directed the substitution of ''is a hospital (or, in the case of a facility that closed during the 12-month period that ends on the date the facility applies for such designation, at the time the facility closed),'' for ''is a hospital,'' was executed by making the substitution for ''is a hospital'' to reflect the probable intent of Congress.

Subsec. (g)(1)(A)(ii). Pub. L. 101–508, § 4008(m)(2)(B)(ii), substituted ''regional referral center'' for ''rural referral center''.

Subsec. (i)(2)(C). Pub. L. 101–508, § 4008(d)(1), inserted at end ''In designating facilities as rural primary care hospitals under this subparagraph, the Secretary shall give preference to facilities not meeting the requirements of clause (i) of subparagraph (A) that have entered into an agreement described in subsection (g)(2) of this section with a rural health network located in a State receiving a grant under subsection (a)(1) of this section.''

Subsec. (j). Pub. L. 101–508, § 4008(m)(2)(B)(iii), inserted ''and part C of this subchapter'' after ''this part''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IV, § 405(e)(3), Dec. 8, 2003, 117 Stat. 2267, provided that: ''The amendments made by this subsection [amending this section] shall apply to designations made before, on, or after January 1, 2004, but any election made pursuant to regulations promulgated to carry out such amendments shall only apply prospectively.''

Amendment by section 405(g)(1) of Pub. L. 108–173 applicable to cost reporting periods beginning on or after Oct. 1, 2004, see section 405(g)(3) of Pub. L. 108–173, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title III, § 321(a)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 401(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–369, provided that: ''The amendments made by this section [amending this section and sections 1395*l* and 1395ww of this title] shall become effective on January 1, 2000.''

Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 403(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–370, provided that: ''The amendment made by paragraph (1) [amending this section] takes effect on the date of the enactment of this Act [Nov. 29, 1999].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(a) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(d)(4) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1), (2), and (3) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

GAO STUDY ON CERTAIN ELIGIBILITY REQUIREMENTS FOR CRITICAL ACCESS HOSPITALS

Pub. L. 106–554, § 1(a)(6) [title II, § 206], Dec. 21, 2000, 114 Stat. 2763, 2763A–483, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study on the eligibility requirements for critical access hospitals under section 1820(c) of the Social Security Act (42 U.S.C. 1395i–4(c)) with respect to limitations on average length of stay and number of beds in such a hospital, including an analysis of—

''(1) the feasibility of having a distinct part unit as part of a critical access hospital for purposes of the medicare program under title XVIII of such Act [this subchapter]; and

''(2) the effect of seasonal variations in patient admissions on critical access hospital eligibility requirements with respect to limitations on average annual length of stay and number of beds.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under subsection (a) together with recommendations regarding—

''(1) whether distinct part units should be permitted as part of a critical access hospital under the medicare program;

''(2) if so permitted, the payment methodologies that should apply with respect to services provided by such units;

''(3) whether, and to what extent, such units should be included in or excluded from the bed limits applicable to critical access hospitals under the medicare program; and

''(4) any adjustments to such eligibility requirements to account for seasonal variations in patient admissions.''

TRANSITION FOR MAF

Section 4201(c)(6) of Pub. L. 105–33 provided that:

''(A) IN GENERAL.—The Secretary of Health and Human Services shall provide for an appropriate transition for a facility that, as of the date of the enactment of this Act [Aug. 5, 1997], operated as a limited service rural hospital under a demonstration described in section 4008(i)(1) of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508] (42 U.S.C. 1395b–1 note) from such demonstration to the program established under subsection (a) [amending this section]. At the conclusion of the transition period described in subparagraph (B), the Secretary shall end such demonstration.

''(B) TRANSITION PERIOD DESCRIBED.—

''(i) INITIAL PERIOD.—Subject to clause (ii), the transition period described in this subparagraph is the period beginning on the date of the enactment of this Act and ending on October 1, 1998.

''(ii) EXTENSION.—If the Secretary determines that the transition is not complete as of October 1, 1998, the Secretary shall provide for an appropriate extension of the transition period.''

GAO REPORTS

Section 102(a)(4) of Pub. L. 103–432 directed Comptroller General to submit to Congress, not later than 2 years after Oct. 31, 1994, reports on application of requirements under subsec. (f) of this section that rural primary care hospitals provide inpatient care only to those individuals whose attending physicians certify may reasonably be expected to be discharged within 72 hours after admission and maintain average length of inpatient stay during a year that does not exceed 72 hours, and extent to which such requirements have resulted in such hospitals providing inpatient care beyond their capabilities or have limited ability of such hospitals to provide needed services.

§ 1395i–5. Conditions for coverage of religious nonmedical health care institutional services

(a) In general

Subject to subsections (c) and (d) of this section, payment under this part may be made for inpatient hospital services or post-hospital extended care services furnished an individual in a religious nonmedical health care institution and for home health services furnished an individual by a religious nonmedical health care institution only if—

(1) the individual has an election in effect for such benefits under subsection (b) of this section; and

(2) the individual has a condition such that the individual would qualify for benefits under this part for inpatient hospital services, extended care services, or home health services, respectively, if the individual were an inpatient or resident in a hospital or skilled nursing facility, or receiving services from a home health agency, that was not such an institution.

(b) Election

(1) In general

An individual may make an election under this subsection in a form and manner specified by the Secretary consistent with this subsection. Unless otherwise provided, such an election shall take effect immediately upon its execution. Such an election, once made, shall continue in effect until revoked.

(2) Form

The election form under this subsection shall include the following:

(A) A written statement, signed by the individual (or such individual's legal representative), that—

(i) the individual is conscientiously opposed to acceptance of nonexcepted medical treatment; and

(ii) the individual's acceptance of nonexcepted medical treatment would be inconsistent with the individual's sincere religious beliefs.

(B) A statement that the receipt of nonexcepted medical services shall constitute a revocation of the election and may limit further receipt of services described in subsection (a) of this section.

(3) Revocation

An election under this subsection by an individual may be revoked by voluntarily notifying the Secretary in writing of such revocation and shall be deemed to be revoked if the individual receives nonexcepted medical treatment for which reimbursement is made under this subchapter.

(4) Limitation on subsequent elections

Once an individual's election under this subsection has been made and revoked twice—

(A) the next election may not become effective until the date that is 1 year after the date of most recent previous revocation, and

(B) any succeeding election may not become effective until the date that is 5 years after the date of the most recent previous revocation.

(5) Excepted medical treatment

For purposes of this subsection:

(A) Excepted medical treatment

The term ''excepted medical treatment'' means medical care or treatment (including medical and other health services)—

(i) received involuntarily, or

(ii) required under Federal or State law or law of a political subdivision of a State.

(B) Nonexcepted medical treatment

The term ''nonexcepted medical treatment'' means medical care or treatment (including medical and other health services) other than excepted medical treatment.

(c) Monitoring and safeguard against excessive expenditures

(1) Estimate of expenditures

Before the beginning of each fiscal year (beginning with fiscal year 2000), the Secretary shall estimate the level of expenditures under this part for services described in subsection (a) of this section for that fiscal year.

(2) Adjustment in payments

(A) Proportional adjustment

If the Secretary determines that the level estimated under paragraph (1) for a fiscal year will exceed the trigger level (as defined in subparagraph (C)) for that fiscal year, the Secretary shall, subject to subparagraph (B), provide for such a proportional reduction in payment amounts under this part for services described in subsection (a) of this section for the fiscal year involved as will assure that such level (taking into account any adjustment under subparagraph (B)) does not exceed the trigger level for that fiscal year.

(B) Alternative adjustments

The Secretary may, instead of making some or all of the reduction described in subparagraph (A), impose such other conditions or limitations with respect to the coverage of covered services (including limitations on new elections of coverage and new facilities) as may be appropriate to reduce the level of expenditures described in paragraph (1) to the trigger level.

(C) Trigger level

For purposes of this subsection—

(i) In general

Subject to adjustment under paragraph (3)(B), the ''trigger level'' for a year is the unadjusted trigger level described in clause (ii).

(ii) Unadjusted trigger level

The ''unadjusted trigger level'' for—

(I) fiscal year 1998, is $20,000,000, or

(II) a succeeding fiscal year is the amount specified under this clause for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) for the 12-month period ending with July preceding the beginning of the fiscal year.

(D) Prohibition of administrative and judicial review

There shall be no administrative or judicial review under section 1395ff of this title, 1395*oo* of this title, or otherwise of the estimation of expenditures under subparagraph (A) or the application of reduction amounts under subparagraph (B).

(E) Effect on billing

Notwithstanding any other provision of this subchapter, in the case of a reduction in

payment provided under this subsection for services of a religious nonmedical health care institution provided to an individual, the amount that the institution is otherwise permitted to charge the individual for such services is increased by the amount of such reduction.

(3) Monitoring expenditure level

(A) In general

The Secretary shall monitor the expenditure level described in paragraph (2)(A) for each fiscal year (beginning with fiscal year 1999).

(B) Adjustment in trigger level

(i) In general

If the Secretary determines that such level for a fiscal year exceeded, or was less than, the trigger level for that fiscal year, then, subject to clause (ii), the trigger level for the succeeding fiscal year shall be reduced, or increased, respectively, by the amount of such excess or deficit.

(ii) Limitation on carryforward

In no case may the increase effected under clause (i) for a fiscal year exceed $50,000,000.

(d) Sunset

If the Secretary determines that the level of expenditures described in subsection (c)(1) of this section for 3 consecutive fiscal years (with the first such year being not earlier than fiscal year 2002) exceeds the trigger level for such expenditures for such years (as determined under subsection (c)(2) of this section), benefits shall be paid under this part for services described in subsection (a) of this section and furnished on or after the first January 1 that occurs after such 3 consecutive years only with respect to an individual who has an election in effect under subsection (b) of this section as of such January 1 and only during the duration of such election.

(e) Annual report

At the beginning of each fiscal year (beginning with fiscal year 1999), the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an annual report on coverage and expenditures for services described in subsection (a) of this section under this part and under State plans under subchapter XIX of this chapter. Such report shall include—

(1) level of expenditures described in subsection (c)(1) of this section for the previous fiscal year and estimated for the fiscal year involved;

(2) trends in such level; and

(3) facts and circumstances of any significant change in such level from the level in previous fiscal years.

(Aug. 14, 1935, ch. 531, title XVIII, § 1821, as added Pub. L. 105–33, title IV, § 4454(a)(2), Aug. 5, 1997, 111 Stat. 428; amended Pub. L. 108–173, title VII, § 706(a), Dec. 8, 2003, 117 Stat. 2339.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173, § 706(a)(1), inserted ''and for home health services furnished an individual by a religious nonmedical health care institution'' after ''religious nonmedical health care institution'' in introductory provisions.

Subsec. (a)(2). Pub. L. 108–173, § 706(a)(2), substituted '', extended care services, or home health services'' for ''or extended care services'' and inserted '', or receiving services from a home health agency,'' after ''skilled nursing facility''.

EFFECTIVE DATE

Section 4454(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [enacting this section and amending sections 1320a–1, 1320c–11, 1395x, 1396a, and 1396g of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997] and shall apply to items and services furnished on or after such date. By not later than July 1, 1998, the Secretary of Health and Human Services shall first issue regulations to carry out such amendments. Such regulations may be issued so they are effective on an interim basis pending notice and opportunity for public comment. For periods before the effective date of such regulations, such regulations shall recognize elections entered into in good faith in order to comply with the requirements of section 1821(b) of the Social Security Act [subsec. (b) of this section].''

PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR AGED AND DISABLED

§ 1395j. Establishment of supplementary medical insurance program for aged and disabled

There is hereby established a voluntary insurance program to provide medical insurance benefits in accordance with the provisions of this part for aged and disabled individuals who elect to enroll under such program, to be financed from premium payments by enrollees together with contributions from funds appropriated by the Federal Government.

(Aug. 14, 1935, ch. 531, title XVIII, § 1831, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 301; amended Pub. L. 92–603, title II, § 201(a)(3), Oct. 30, 1972, 86 Stat. 1371.)

AMENDMENTS

1972—Pub. L. 92–603 substituted ''aged and disabled individuals'' for ''individuals 65 years of age or over''.

STUDY REGARDING COVERAGE UNDER PART B OF MEDICARE FOR NONREIMBURSABLE SERVICES PROVIDED BY OPTOMETRISTS FOR PROSTHETIC LENSES FOR PATIENTS WITH APHAKIA

Pub. L. 94–182, title I, § 109, Dec. 31, 1975, 89 Stat. 1053, provided that the Secretary of Health, Education, and Welfare conduct a study on the appropriateness of reimbursement under the insurance program established by this part for services performed by optometrists with respect to the provision of prosthetic lenses for patients with aphakia and submit such study to Congress not later than 4 months after Dec. 31, 1975.

STUDY TO DETERMINE FEASIBILITY OF INCLUSION OF CERTAIN ADDITIONAL SERVICES UNDER PART B

Pub. L. 90–248, title I, § 141, Jan. 2, 1968, 81 Stat. 855, directed Secretary to conduct a study relating to inclusion under the supplementary medical insurance program under this part of services of additional types of licensed practitioners performing health services in independent practice and submit such study to Congress prior to Jan. 1, 1969.

§ 1395k. Scope of benefits; definitions

(a) Scope of benefits

The benefits provided to an individual by the insurance program established by this part shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical and other health services, except those described in subparagraphs (B) and (D) of paragraph (2) and subparagraphs (E) and (F) of section 1395u(b)(6) of this title; and

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

(A) home health services (other than items described in subparagraph (G) or subparagraph (I));

(B) medical and other health services (other than items described in subparagraph (G) or subparagraph (I)) furnished by a provider of services or by others under arrangement with them made by a provider of services, excluding—

(i) physician services except where furnished by—

(I) a resident or intern of a hospital, or

(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1395x(b) of this title (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital) where the conditions specified in paragraph (7) of such section are met,

(ii) services for which payment may be made pursuant to section 1395n(b)(2) of this title,

(iii) services described by section 1395x(s)(2)(K)(i) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist;[1]

(iv) services of a nurse practitioner or clinical nurse specialist but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services; and[2]

(C) outpatient physical therapy services (other than services to which the second sentence of section 1395x(p) of this title applies) and outpatient occupational therapy services (other than services to which such sentence applies through the operation of section 1395x(g) of this title);

(D)(i) rural health clinic services and (ii) Federally qualified health center services;

(E) comprehensive outpatient rehabilitation facility services;

(F) facility services furnished in connection with surgical procedures specified by the Secretary—

(i) pursuant to section 1395*l*(i)(1)(A) of this title and performed in an ambulatory surgical center (which meets health, safety, and other standards specified by the Secretary in regulations) if the center has an agreement in effect with the Secretary by which the center agrees to accept the standard overhead amount determined under section 1395*l*(i)(2)(A) of this title as full payment for such services (including intraocular lens in cases described in section 1395*l*(i)(2)(A)(iii) of this title) and to accept an assignment described in section 1395u(b)(3)(B)(ii) of this title with respect to payment for all such services (including intraocular lens in cases described in section 1395*l*(i)(2)(A)(iii) of this title) furnished by the center to individuals enrolled under this part, or

(ii) pursuant to section 1395*l*(i)(1)(B) of this title and performed by a physician, described in paragraph (1), (2), or (3) of section 1395x(r) of this title, in his office, if the Secretary has determined that—

(I) a quality control and peer review organization (having a contract with the Secretary under part B of subchapter XI of this chapter) is willing, able, and has agreed to carry out a review (on a sample or other reasonable basis) of the physician's performing such procedures in the physician's office,

(II) the particular physician involved has agreed to make available to such organization such records as the Secretary determines to be necessary to carry out the review, and

(III) the physician is authorized to perform the procedure in a hospital located in the area in which the office is located,

and if the physician agrees to accept the standard overhead amount determined under section 1395*l*(i)(2)(B) of this title as full payment for such services and to accept payment on an assignment-related basis with respect to payment for all services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1395x(s) of this title and furnished in connection with such surgical procedure to individuals enrolled under this part;

(G) covered items (described in section 1395m(a)(13) of this title) furnished by a provider of services or by others under arrangements with them made by a provider of services;

(H) outpatient critical access hospital services (as defined in section 1395x(mm)(3) of this title);

(I) prosthetic devices and orthotics and prosthetics (described in section 1395m(h)(4) of this title) furnished by a provider of services or by others under arrangements with them made by a provider of services; and

(J) partial hospitalization services provided by a community mental health center (as described in section 1395x(ff)(2)(B) of this title).

(b) Definitions

For definitions of ''spell of illness'', ''medical and other health services'', and other terms used in this part, see section 1395x of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1832, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 302; amended Pub. L. 90–248, title I, §§ 129(c)(6)(B), 133(d), Jan. 2, 1968, 81 Stat. 848, 851; Pub. L. 92–603, title II, §§ 227(e)(1), 251(a)(4), Oct.

[1] So in original. The semicolon probably should be a comma.

[2] So in original. The word ''and'' probably should not appear.

30, 1972, 86 Stat. 1406, 1445; Pub. L. 95–210, § 1(a), Dec. 13, 1977, 91 Stat. 1485; Pub. L. 96–499, title IX, §§ 930(g), 933(a), 934(a), 948(a)(2), Dec. 5, 1980, 94 Stat. 2631, 2635, 2637, 2643; Pub. L. 97–248, title I, § 148(c), Sept. 3, 1982, 96 Stat. 394; Pub. L. 98–369, div. B, title III, §§ 2341(b), 2354(b)(6), July 18, 1984, 98 Stat. 1094, 1100; Pub. L. 99–509, title IX, §§ 9320(d), 9337(a), 9343(e)(1), Oct. 21, 1986, 100 Stat. 2013, 2033, 2041; Pub. L. 100–203, title IV, §§ 4062(d)(2), 4063(e)(2), 4073(b)(1), 4077(b)(2), 4085(i)(22)(A), Dec. 22, 1987, 101 Stat. 1330–108, 1330–118, 1330–120, as amended Pub. L. 100–360, title IV, § 411(g)(2)(E), (h)(4)(A), (7)(B), (i)(4)(C)(vi), July 1, 1988, 102 Stat. 783, 786, 787, 789; Pub. L. 100–360, title I, § 104(d)(3), title II, §§ 203(a), 205(a), July 1, 1988, 102 Stat. 689, 721, 729, 783; Pub. L. 101–234, title I, § 101(a), title II, § 201(a), Dec. 13, 1989, 103 Stat. 1979, 1981; Pub. L. 101–239, title VI, § 6116(a)(2), Dec. 19, 1989, 103 Stat. 2219; Pub. L. 101–508, title IV, §§ 4153(a)(2)(A), 4155(b)(1), 4157(b), 4161(a)(3)(A), 4162(b)(1), Nov. 5, 1990, 104 Stat. 1388–83, 1388–86, 1388–89, 1388–93, 1388–96; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4432(b)(5)(B), 4511(c), 4603(c)(2)(B)(ii), Aug. 5, 1997, 111 Stat. 373, 421, 443, 471; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 227(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–354; Pub. L. 106–554, § 1(a)(6) [title I, § 113(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473.)

REFERENCES IN TEXT

Part B of subchapter XI of this chapter, referred to in subsec. (a)(2)(F)(ii)(I), is classified to section 1320c et seq. of this title.

AMENDMENTS

2000—Subsecs. (b), (c). Pub. L. 106–554 redesignated subsec. (c) as (b) and struck out former subsec. (b), which related to extension of coverage of immunosuppressive drugs for individuals who would exhaust benefits under section 1395x(s)(2)(J)(v) of this title in a year during the 5-year period beginning with 2000, and set forth provisions relating to extension periods for each year.

1999—Subsecs. (b), (c). Pub. L. 106–113 added subsec. (b) and redesignated former subsec. (b) as (c).

1997—Subsec. (a)(1). Pub. L. 105–33, § 4603(c)(2)(B)(ii), substituted ''subparagraphs (E) and (F) of section 1395u(b)(6) of this title;'' for ''section 1395u(b)(6)(E) of this title;''.

Pub. L. 105–33, § 4432(b)(5)(B), substituted ''(2) and section 1395u(b)(6)(E) of this title;'' for ''(2);''.

Subsec. (a)(2)(B)(iv). Pub. L. 105–33, § 4511(c), substituted ''but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services'' for ''provided in a rural area (as defined in section 1395ww(d)(2)(D) of this title)''.

Subsec. (a)(2)(H). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

1990—Subsec. (a)(2)(A), (B). Pub. L. 101–508, § 4153(a)(2)(A)(i), substituted ''subparagraph (G) or subparagraph (I)'' for ''subparagraph (G)''.

Subsec. (a)(2)(B)(iii). Pub. L. 101–508, § 4157(b), amended cl. (iii) generally. Prior to amendment, cl. (iii) related to services of a certified registered nurse anesthetist.

Subsec. (a)(2)(B)(iv). Pub. L. 101–508, § 4155(b)(1), added cl. (iv).

Subsec. (a)(2)(D). Pub. L. 101–508, § 4161(a)(3)(A), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(2)(I). Pub. L. 101–508, § 4153(a)(2)(A)(ii)–(iv), added subpar. (I).

Subsec. (a)(2)(J). Pub. L. 101–508, § 4162(b)(1), added subpar. (J).

1989—Subsec. (a). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 203(a), 205(a), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(2)(H). Pub. L. 101–239 added subpar. (H).

Subsec. (b). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–360, § 205(a)(2), inserted sentence at end relating to in-home care provided to a chronically dependent individual on any day.

Subsec. (a)(2)(A). Pub. L. 100–360, § 205(a)(1), designated existing provisions as cl. (i) and added cl. (ii) relating to in-home care for a chronically dependent individual.

Pub. L. 100–360, § 203(a), inserted ''and home intravenous drug therapy services'' before semicolon at end.

Subsec. (a)(2)(B)(iv). Pub. L. 100–360, § 411(h)(7)(B), struck out Pub. L. 100–203, § 4077(b)(2), see 1987 Amendment note below.

Pub. L. 100–360, § 411(h)(4)(A), struck out Pub. L. 100–203, § 4073(b)(1), see 1987 Amendment note below.

Subsec. (a)(2)(F)(i). Pub. L. 100–360, § 411(g)(2)(E), added Pub. L. 100–203, § 4063(e)(2), see 1987 Amendment note below.

Subsec. (a)(2)(F)(ii). Pub. L. 100–360, § 411(i)(4) (C)(vi), added Pub. L. 100–203, § 4085(i)(22)(A), see 1987 Amendment note below.

Subsec. (b). Pub. L. 100–360, § 104(d)(3), substituted ''definitions of 'medical and other health services' and'' for ''definitions of 'spell of illness', 'medical and other health services', and''.

1987—Subsec. (a)(2)(A). Pub. L. 100–203, § 4062(d)(2)(A), inserted ''(other than items described in subparagraph (G))'' after ''services''.

Subsec. (a)(2)(B). Pub. L. 100–203, § 4062(d)(2)(B), inserted ''(other than items described in subparagraph (G))'' after ''health services''.

Subsec. (a)(2)(B)(iv). Pub. L. 100–203, § 4077(b)(2), which directed the addition of cl. (iv) relating to qualified psychologist services, was repealed by Pub. L. 100–360, § 411(h)(7)(B).

Pub. L. 100–203, § 4073(b)(1), which directed the addition of cl. (iv) relating to certified nurse-midwife services, was repealed by Pub. L. 100–360, § 411(h)(4)(A).

Subsec. (a)(2)(F)(i). Pub. L. 100–203, § 4063(e)(2), as added by Pub. L. 100–360, § 411(g)(2)(E), inserted ''(including intraocular lens in cases described in section 1395*l*(i)(2)(A)(iii) of this title)'' after ''services'' in two places.

Subsec. (a)(2)(F)(ii). Pub. L. 100–203, § 4085(i)(22)(A), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''payment on an assignment-related basis'' for ''an assignment described in section 1395u(b)(3)(B)(ii) of this title'' in concluding provisions.

Subsec. (a)(2)(G). Pub. L. 100–203, § 4062(d)(2)(C), added subpar. (G).

1986—Subsec. (a)(2)(B)(iii). Pub. L. 99–509, § 9320(d), added cl. (iii).

Subsec. (a)(2)(C). Pub. L. 99–509, § 9337(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''outpatient physical therapy services, other than services to which the next to last sentence of section 1395x(p) of this title applies;''.

Subsec. (a)(2)(F). Pub. L. 99–509, § 9343(e)(1), inserted ''standard overhead'' in cl. (i) and concluding provisions of cl. (ii).

1984—Subsec. (a)(2)(F)(ii). Pub. L. 98–369, § 2341(b), substituted ''paragraph (1), (2), or (3) of section 1395x(r) of this title'' for ''section 1395x(r)(1) of this title''.

Subsec. (a)(2)(F)(ii)(II). Pub. L. 98–369, § 2354(b)(6), substituted ''organization'' for ''Organization''.

1982—Subsec. (a)(2)(F)(ii)(I). Pub. L. 97–248 substituted ''quality control and peer review organization (having a contract with the Secretary'' for ''Professional Standards Review Organization (designated, conditionally or otherwise,''.

1980—Subsec. (a)(2)(A). Pub. L. 96–499, § 930(g), struck out restriction on home health services of 100 visits during a calendar year.

Subsec. (a)(2)(B)(i)(II). Pub. L. 96–499, §948(a)(2), substituted ''where the conditions specified in paragraph (7) of such section are met'' for '', unless either clause (A) or (B) of paragraph (7) of such section is met''.

Subsec. (a)(2)(E). Pub. L. 96–499, §933(a), added subpar. (E).

Subsec. (a)(2)(F). Pub. L. 96–499, §934(a), added subpar. (F).

1977—Subsec. (a)(1). Pub. L. 95–210, §1(a)(1), substituted ''subparagraphs (B) and (D) of paragraph (2)'' for ''paragraph (2)(B)''.

Subsec. (a)(2)(D). Pub. L. 95–210, §1(a)(2), added subpar. (D).

1972—Subsec. (a)(2)(B). Pub. L. 92–603, §227(e)(1), inserted provisions relating to medical and other health services performed by a physician to a patient in a hospital which has an approved teaching program.

Subsec. (a)(2)(C). Pub. L. 92–603, §251(a)(4), inserted '', other than services to which the next to last sentence of section 1395x(p) of this title applies''.

1968—Subsec. (a)(2)(B). Pub. L. 90–248, §129(c)(6)(B), inserted ''and the services for which payment may be made pursuant to section 1395n(b)(2) of this title'' after ''hospital''.

Subsec. (a)(2)(C). Pub. L. 90–248, §133(d), added subpar. (C).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4432(b)(5)(B) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Section 4511(e) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395x, 1395y, 1395cc, and 1395yy of this title] shall apply with respect to services furnished and supplies provided on and after January 1, 1998.''

Amendment by section 4603(c)(2)(B)(ii) of Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395fff of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4153(a)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and sections 1395*l* and 1395m of this title] shall apply to items furnished on or after January 1, 1991.''

Section 4155(e) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395u, and 1395x of this title] shall apply to services furnished on or after January 1, 1991.''

Section 4157(d) of Pub. L. 101–508 provided that: ''The amendments made by the preceding subsections [amending this section and sections 1395x, 1395y, and 1395cc of this title] apply to services furnished on or after January 1, 1991.''

Section 4161(a)(8) of Pub. L. 101–508 provided that:

''(A) Subject to subparagraphs (B) and (C), the amendments made by this section [probably means this subsection, which amended this section and sections 1320a–7b, 1395*l*, 1395x, 1395y, and 1395*oo* of this title] shall apply to services furnished on or after October 1, 1991.

''(B) In the case of a Federally qualified health care center that has elected, as of January 1, 1990, under part B of title XVIII of the Social Security Act [this part], to have the amount of payments for services under such part determined on a reasonable-charge basis, the amendment made by paragraph (3)(A) [amending this section] shall only apply on and after such date (not earlier than October 1, 1991) as the center may elect.

''(C) The amendment made by paragraph (6) [amending section 1395*oo* of this title] shall apply to cost reports for periods beginning on or after October 1, 1991.''

Section 4162(c) of Pub. L. 101–508 provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 1395x and 1395cc of this title] shall apply with respect to partial hospitalization services provided on or after October 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 101(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 104(d)(3) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Amendment by section 203(a) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Section 205(f) of Pub. L. 100–360, which provided that the amendments made by section 205 of Pub. L. 100–360 [amending this section and sections 1395*l*, 1395n, 1395x, and 1395y of this title] were applicable to items and services furnished on or after January 1, 1990, was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(g)(2)(E), (h)(4)(A), (7)(B), (i)(4)(C)(vi) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4062(d)(2) of Pub. L. 100–203 applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as a note under section 1395f of this title.

Section 4073(e) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395x, and 1396d of this title] shall be effective with respect to services performed on or after July 1, 1988.''

Section 4077(b)(5), formerly §4077(b)(6), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, §411(h)(7)(F), July 1, 1988, 102 Stat. 787, provided that: ''The amendments made by this subsection [amending this section and sections 1395*l* and 1395x of this title] shall be effective with respect to services performed on or after July 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9320(i) of Pub. L. 99–509, as amended by Pub. L. 100–485, title VI, §608(c)(1), Oct. 13, 1988, 102 Stat. 2412, provided that: ''Except as provided in subsection (k) [set out below], the amendments made by this section (other than subsection (a)) [amending this section and sections 1395*l*, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title] shall apply to services furnished on or after January 1, 1989.''

Section 9337(e) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this sec-

tion and sections 1395*l*, 1395n, 1395x, and 1395cc of this title] shall apply to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2341(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395x of this title] apply to services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(6) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 930(g) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 933(h) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section and sections 1395n, 1395x, 1395z, and 1395aa of this title] shall become effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.''

Amendment by section 948(a)(2) of Pub. L. 96–499 applicable with respect to cost accounting periods beginning on or after Oct. 1, 1978, see section 948(c)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 1(j) of Pub. L. 95–210 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395x, 1395y, and 1395aa of this title and enacting provisions set out as notes under sections 1395*l* and 1395x of this title] shall apply to services rendered on or after the first day of the third calendar month which begins after the date of enactment of this Act [Dec. 13, 1977].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 227(e)(1) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 251(a)(4) of Pub. L. 92–603 applicable with respect to services furnished on or after July 1, 1973, see section 251(d)(1) of Pub. L. 92–603, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 129(c)(6)(B) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 133(g) of Pub. L. 90–248 provided that: ''The amendments made by the preceding subsections of this section [amending this section and sections 1395n, 1395x, 1395aa, and 1395cc of this title] shall apply to services furnished after June 30, 1968.''

REPORT ON IMMUNOSUPPRESSIVE DRUG BENEFIT

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §227(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–356, which required the Secretary of Health and Human Services to submit to Congress not later than Mar. 1, 2003, a report on the operation of section 1000(a)(6) [title II, §227] of Pub. L. 106–113, amending this section and section 1395x of this title, including an analysis of impact and recommendations regarding an appropriate cost-effective method for providing coverage of immunosuppressive drugs under the medicare program on a permanent basis, was repealed by Pub. L. 106–554, §1(a)(6) [title I, §113(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473.

CONSTRUCTION OF SECTION 9320 OF PUB. L. 99–509

Section 9320(j) of Pub. L. 99–509 provided that: ''Nothing in this section or the amendments made by this section [amending this section and sections 1395*l*, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 1395ww of this title] shall contravene provisions of State law relating to the practice of medicine or nursing or State law requirements or institutional requirements regarding the administration of anesthesia and its medical direction or supervision.''

QUALITY AND UTILIZATION OF IN-HOME CARE FOR CHRONICALLY DEPENDENT INDIVIDUALS

Section 205(e)(2) of Pub. L. 100–360 directed Secretary of Health and Human Services to take appropriate efforts to assure quality and provide for appropriate utilization of in-home care for chronically dependent individuals under the amendments made by section 205 of Pub. L. 100–360 [amending this section and sections 1395*l*, 1395n, 1395x, and 1395y of this title], prior to repeal by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

STUDY OF ALTERNATIVE OUT-OF-HOME SERVICES

Section 205(g) of Pub. L. 100–360, which required Secretary of Health and Human Services to study, and report to Congress, not later than 18 months after July 1, 1988, on advisability of providing, to chronically dependent individuals eligible for in-home care under amendments made by section 205 of Pub. L. 100–360 [amending this section and sections 1395*l*, 1395n, 1395x, and 1395y of this title], out-of-home services as alternative services to in-home care, was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

CONTINUATION OF COST PASS-THROUGH FOR CERTIFIED REGISTERED NURSE ANESTHETISTS

Section 9320(k) of Pub. L. 99–509, as added by Pub. L. 100–485, title VI, §608(c)(2), Oct. 13, 1988, 102 Stat. 2412, and amended by Pub. L. 101–239, title VI, §6132(a), Dec. 19, 1989, 103 Stat. 2222, provided that:

''(1) Subject to paragraph (2), the amendments made by this section [amending this section and sections 1395*l*, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title and provisions set out as a note under section 1395ww of this title] shall not apply during a year (beginning with 1989) to a hospital located in a rural area (as defined for purposes of section 1886(d) of the Social Security Act [section 1395ww(d) of this title]) if the hospital establishes, at any time before the year[,] to the satisfaction of the Secretary of Health and Human Services that—

''(A) as of January 1, 1988, the hospital employed or contracted with a certified registered nurse anesthetist (but not more than one full-time equivalent certified registered nurse anesthetist),

''(B) in 1987 the hospital had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services that did not exceed 500 (or such higher number as the Secretary determines to be appropriate), and

''(C) each certified registered nurse anesthetist employed by, or under contract with, the hospital has agreed not to bill under part B of title XVIII of such Act [this part] for professional services furnished by the anesthetist at the hospital.

''(2) Paragraph (1) shall not apply in a year (after 1989) to a hospital unless the hospital establishes, be-

fore the beginning of the year, that the hospital has had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services in the previous year that did not exceed 500 (or such higher number as the Secretary determines to be appropriate).''

[Section 6132(b) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending section 9320(k) of Pub. L. 99–509, set out above] shall apply to services furnished on or after January 1, 1990.'']

PAYMENT FOR SERVICES OF PHYSICIANS RENDERED IN A TEACHING HOSPITAL FOR ACCOUNTING PERIODS BEGINNING AFTER JUNE 30, 1975, AND PRIOR TO OCTOBER 1, 1978; STUDIES, REPORTS, ETC.; EFFECTIVE DATES

Pub. L. 93–233, §15(a)(2), Dec. 31, 1973, 87 Stat. 966, provided that for the cost accounting periods beginning after June 30, 1975, and prior to Oct. 1, 1978, subsec. (a)(2)(B)(i) of this section will be administered as if subclause II of subsec. (a)(2)(B)(i) read as follows: ''(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1861(b) [section 1395x(b)(6) of this title] (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital), where the conditions specified in paragraph (7) of such section [section 1395x(b)(7) of this title] are met and''.

§ 1395*l*. Payment of benefits

(a) Amounts

Except as provided in section 1395mm of this title, and subject to the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part, amounts equal to—

(1) in the case of services described in section 1395k(a)(1) of this title—80 percent of the reasonable charges for the services; except that (A) an organization which provides medical and other health services (or arranges for their availability) on a prepayment basis (and either is sponsored by a union or employer, or does not provide, or arrange for the provision of, any inpatient hospital services) may elect to be paid 80 percent of the reasonable cost of services for which payment may be made under this part on behalf of individuals enrolled in such organization in lieu of 80 percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of subsection (b) of this section, (B) with respect to items and services described in section 1395x(s)(10)(A) of this title, the amounts paid shall be 100 percent of the reasonable charges for such items and services, (C) with respect to expenses incurred for those physicians' services for which payment may be made under this part that are described in section 1395y(a)(4) of this title, the amounts paid shall be subject to such limitations as may be prescribed by regulations, (D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (i) on the basis of a fee schedule under subsection (h)(1) of this section or section 1395m(d)(1) of this title, the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on an assignment-related basis) of the lesser of the amount determined under such fee schedule, the limitation amount for that test determined under subsection (h)(4)(B) of this section, or the amount of the charges billed for the tests, (ii) on the basis of a negotiated rate established under subsection (h)(6) of this section, the amount paid shall be equal to 100 percent of such negotiated rate, or (iii) on the basis of a rate established under a demonstration project under section 1395w–3(e) of this title, the amount paid shall be equal to 100 percent of such rate, (E) with respect to services furnished to individuals who have been determined to have end stage renal disease, the amounts paid shall be determined subject to the provisions of section 1395rr of this title, (F) with respect to clinical social worker services under section 1395x(s)(2)(N) of this title, the amounts paid shall be 80 percent of the lesser of (i) the actual charge for the services or (ii) 75 percent of the amount determined for payment of a psychologist under clause (L), (G) with respect to facility services furnished in connection with a surgical procedure specified pursuant to subsection (i)(1)(A) of this section and furnished to an individual in an ambulatory surgical center described in such subsection, for services furnished beginning with the implementation date of a revised payment system for such services in such facilities specified in subsection (i)(2)(D) of this section, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by the Secretary under such revised payment system, (H) with respect to services of a certified registered nurse anesthetist under section 1395x(s)(11) of this title, the amounts paid shall be 80 percent of the least of the actual charge, the prevailing charge that would be recognized (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395w–4 of this title) if the services had been performed by an anesthesiologist, or the fee schedule for such services established by the Secretary in accordance with subsection (*l*) of this section, (I) with respect to covered items (described in section 1395m(a)(13) of this title), the amounts paid shall be the amounts described in section 1395m(a)(1) of this title, and[1] (J) with respect to expenses incurred for radiologist services (as defined in section 1395m(b)(6) of this title), subject to section 1395w–4 of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount provided under the fee schedule established under section 1395m(b) of this title, (K) with respect to certified nurse-midwife services under section 1395x(s)(2)(L) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph (but in no event shall such fee schedule exceed 65 percent of the pre-

[1] So in original. The word ''and'' probably should not appear.

vailing charge that would be allowed for the same service performed by a physician, or, for services furnished on or after January 1, 1992, 65 percent of the fee schedule amount provided under section 1395w–4 of this title for the same service performed by a physician), (L) with respect to qualified psychologist services under section 1395x(s)(2)(M) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph, (M) with respect to prosthetic devices and orthotics and prosthetics (as defined in section 1395m(h)(4) of this title), the amounts paid shall be the amounts described in section 1395m(h)(1) of this title, (N) with respect to expenses incurred for physicians' services (as defined in section 1395w–4(j)(3) of this title), the amounts paid shall be 80 percent of the payment basis determined under section 1395w–4(a)(1) of this title, (O) with respect to services described in section 1395x(s)(2)(K) of this title (relating to services furnished by physician assistants, nurse practitioners, or clinic nurse specialists), the amounts paid shall be equal to 80 percent of (i) the lesser of the actual charge or 85 percent of the fee schedule amount provided under section 1395w–4 of this title, or (ii) in the case of services as an assistant at surgery, the lesser of the actual charge or 85 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery, (P) with respect to surgical dressings, the amounts paid shall be the amounts determined under section 1395m(i) of this title, (Q) with respect to items or services for which fee schedules are established pursuant to section 1395u(s) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge or the fee schedule established in such section, (R) with respect to ambulance services, (i) the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule established by the Secretary under section 1395m(*l*) of this title and (ii) with respect to ambulance services described in section 1395m(*l*)(8) of this title, the amounts paid shall be the amounts determined under section 1395m(g) of this title for outpatient critical access hospital services, (S) with respect to drugs and biologicals (including intravenous immune globulin (as defined in section 1395x(zz) of this title)) not paid on a cost or prospective payment basis as otherwise provided in this part (other than items and services described in subparagraph (B)), the amounts paid shall be 80 percent of the lesser of the actual charge or the payment amount established in section 1395u(*o*) of this title (or, if applicable, under section 1395w–3, 1395w–3a, or 1395w–3b of this title), (T) with respect to medical nutrition therapy services (as defined in section 1395x(vv) of this title), the amount paid shall be 80 percent of the lesser of the actual charge for the services or 85 percent of the amount determined under the fee schedule established under section 1395w–4(b) of this title for the same services if furnished by a physician, (U) with respect to facility fees described in section 1395m(m)(2)(B) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge or the amounts specified in such section, and (V) notwithstanding subparagraphs (I) (relating to durable medical equipment), (M) (relating to prosthetic devices and orthotics and prosthetics), and (Q) (relating to 1395u(s) items), with respect to competitively priced items and services (described in section 1395w–3(a)(2) of this title) that are furnished in a competitive area, the amounts paid shall be the amounts described in section 1395w–3(b)(5) of this title;

(2) in the case of services described in section 1395k(a)(2) of this title (except those services described in subparagraphs (C), (D), (E), (F), (G), (H), and (I) of such section and unless otherwise specified in section 1395rr of this title)—

(A) with respect to home health services (other than a covered osteoporosis drug) (as defined in section 1395x(kk) of this title), the amount determined under the prospective payment system under section 1395fff of this title;

(B) with respect to other items and services (except those described in subparagraph (C), (D), or (E) of this paragraph and except as may be provided in section 1395ww of this title or section 1395yy(e)(9) of this title)—

(i) furnished before January 1, 1999, the lesser of—

(I) the reasonable cost of such services, as determined under section 1395x(v) of this title, or

(II) the customary charges with respect to such services,

less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title, but in no case may the payment for such other services exceed 80 percent of such reasonable cost, or

(ii) if such services are furnished before January 1, 1999, by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this clause), free of charge or at nominal charges to the public, 80 percent of the amount determined in accordance with section 1395f(b)(2) of this title, or

(iii) if such services are furnished on or after January 1, 1999, the amount determined under subsection (t) of this section, or

(iv) if (and for so long as) the conditions described in section 1395f(b)(3) of this title are met, the amounts determined under the reimbursement system described in such section;

(C) with respect to services described in the second sentence of section 1395x(p) of this title, 80 percent of the reasonable charges for such services;

(D) with respect to clinical diagnostic laboratory tests for which payment is made

under this part (i) on the basis of a fee schedule determined under subsection (h)(1) of this section or section 1395m(d)(1) of this title, the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on an assignment-related basis or to a provider having an agreement under section 1395cc of this title) of the lesser of the amount determined under such fee schedule, the limitation amount for that test determined under subsection (h)(4)(B) of this section, or the amount of the charges billed for the tests, or (ii) on the basis of a negotiated rate established under subsection (h)(6) of this section, the amount paid shall be equal to 100 percent of such negotiated rate for such tests;

(E) with respect to—

(i) outpatient hospital radiology services (including diagnostic and therapeutic radiology, nuclear medicine and CAT scan procedures, magnetic resonance imaging, and ultrasound and other imaging services, but excluding screening mammography and, for services furnished on or after January 1, 2005, diagnostic mammography), and

(ii) effective for procedures performed on or after October 1, 1989, diagnostic procedures (as defined by the Secretary) described in section 1395x(s)(3) of this title (other than diagnostic x-ray tests and diagnostic laboratory tests),

the amount determined under subsection (n) of this section or, for services or procedures performed on or after January 1, 1999, subsection (t) of this section;

(F) with respect to a covered osteoporosis drug (as defined in section 1395x(kk) of this title) furnished by a home health agency, 80 percent of the reasonable cost of such service, as determined under section 1395x(v) of this title; and

(G) with respect to items and services described in section 1395x(s)(10)(A) of this title, the lesser of—

(i) the reasonable cost of such services, as determined under section 1395x(v) of this title, or

(ii) the customary charges with respect to such services,

or, if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision), free of charge or at nominal charges to the public, the amount determined in accordance with section 1395f(b)(2) of this title;

(3) in the case of services described in section 1395k(a)(2)(D) of this title—

(A) except as provided in subparagraph (B), the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1395x(v)(1)(A) of this title, less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title, but in no case may the payment for such services (other than for items and services described in section 1395x(s)(10)(A) of this title) exceed 80 percent of such costs; or

(B) with respect to the services described in clause (ii) of section 1395k(a)(2)(D) of this title that are furnished to an individual enrolled with a MA plan under part C of this subchapter pursuant to a written agreement described in section 1395w–23(a)(4) of this title, the amount (if any) by which—

(i) the amount of payment that would have otherwise been provided under subparagraph (A) (calculated as if ''100 percent'' were substituted for ''80 percent'' in such subparagraph) for such services if the individual had not been so enrolled; exceeds

(ii) the amount of the payments received under such written agreement for such services (not including any financial incentives provided for in such agreement such as risk pool payments, bonuses, or withholds),

less the amount the federally qualified health center may charge as described in section 1395w–27(e)(3)(B) of this title;

(4) in the case of facility services described in section 1395k(a)(2)(F) of this title, and outpatient hospital facility services furnished in connection with surgical procedures specified by the Secretary pursuant to subsection (i)(1)(A) of this section, the applicable amount as determined under paragraph (2) or (3) of subsection (i) of this section or subsection (t) of this section;

(5) in the case of covered items (described in section 1395m(a)(13) of this title) the amounts described in section 1395m(a)(1) of this title;

(6) in the case of outpatient critical access hospital services, the amounts described in section 1395m(g) of this title;

(7) in the case of prosthetic devices and orthotics and prosthetics (as described in section 1395m(h)(4) of this title), the amounts described in section 1395m(h) of this title;

(8) in the case of—

(A) outpatient physical therapy services (which includes outpatient speech-language pathology services) and outpatient occupational therapy services furnished—

(i) by a rehabilitation agency, public health agency, clinic, comprehensive outpatient rehabilitation facility, or skilled nursing facility,

(ii) by a home health agency to an individual who is not homebound, or

(iii) by another entity under an arrangement with an entity described in clause (i) or (ii); and

(B) outpatient physical therapy services (which includes outpatient speech-language pathology services) and outpatient occupational therapy services furnished—

(i) by a hospital to an outpatient or to a hospital inpatient who is entitled to benefits under part A of this subchapter but has exhausted benefits for inpatient hospital services during a spell of illness or is

not so entitled to benefits under part A of this subchapter, or

(ii) by another entity under an arrangement with a hospital described in clause (i),

the amounts described in section 1395m(k) of this title; and

(9) in the case of services described in section 1395k(a)(2)(E) of this title that are not described in paragraph (8), the amounts described in section 1395m(k) of this title.

(b) Deductible provision

Before applying subsection (a) of this section with respect to expenses incurred by an individual during any calendar year, the total amount of the expenses incurred by such individual during such year (which would, except for this subsection, constitute incurred expenses from which benefits payable under subsection (a) of this section are determinable) shall be reduced by a deductible of $75 for calendar years before 1991, $100 for 1991 through 2004, $110 for 2005, and for a subsequent year the amount of such deductible for the previous year increased by the annual percentage increase in the monthly actuarial rate under section 1395r(a)(1) of this title ending with such subsequent year (rounded to the nearest $1); except that (1) such total amount shall not include expenses incurred for items and services described in section 1395x(s)(10)(A) of this title, (2) such deductible shall not apply with respect to home health services (other than a covered osteoporosis drug (as defined in section 1395x(kk) of this title)), (3) such deductible shall not apply with respect to clinical diagnostic laboratory tests for which payment is made under this part (A) under subsection (a)(1)(D)(i) or (a)(2)(D)(i) of this section on an assignment-related basis, or to a provider having an agreement under section 1395cc of this title, or (B) on the basis of a negotiated rate determined under subsection (h)(6) of this section, (4) such deductible shall not apply to Federally qualified health center services, (5) such deductible shall not apply with respect to screening mammography (as described in section 1395x(jj) of this title), and (6) such deductible shall not apply with respect to screening pap smear and screening pelvic exam (as described in section 1395x(nn) of this title). The total amount of the expenses incurred by an individual as determined under the preceding sentence shall, after the reduction specified in such sentence, be further reduced by an amount equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during the calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence. The deductible under the previous sentence for blood or blood cells furnished an individual in a year shall be reduced to the extent that a deductible has been imposed under section 1395e(a)(2) of this title to blood or blood cells furnished the individual in the year.

(c) Mental disorders

Notwithstanding any other provision of this part, with respect to expenses incurred in any calendar year in connection with the treatment of mental, psychoneurotic, and personality disorders of an individual who is not an inpatient of a hospital at the time such expenses are incurred, there shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section only 62½ percent of such expenses. For purposes of this subsection, the term ''treatment'' does not include brief office visits (as defined by the Secretary) for the sole purpose of monitoring or changing drug prescriptions used in the treatment of such disorders or partial hospitalization services that are not directly provided by a physician.

(d) Nonduplication of payments

No payment may be made under this part with respect to any services furnished an individual to the extent that such individual is entitled (or would be entitled except for section 1395e of this title) to have payment made with respect to such services under part A of this subchapter.

(e) Information for determination of amounts due

No payment shall be made to any provider of services or other person under this part unless there has been furnished such information as may be necessary in order to determine the amounts due such provider or other person under this part for the period with respect to which the amounts are being paid or for any prior period.

(f) Maximum rate of payment per visit for independent rural health clinics

In establishing limits under subsection (a) of this section on payment for rural health clinic services provided by rural health clinics (other than such clinics in hospitals with less than 50 beds), the Secretary shall establish such limit, for services provided—

(1) in 1988, after March 31, at $46 per visit, and

(2) in a subsequent year, at the limit established under this subsection for the previous year increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) applicable to primary care services (as defined in section 1395u(i)(4) of this title) furnished as of the first day of that year.

(g) Physical therapy services

(1) Subject to paragraph (4), in the case of physical therapy services of the type described in section 1395x(p) of this title, but not described in subsection (a)(8)(B) of this section, and physical therapy services of such type which are furnished by a physician or as incident to physicians' services, with respect to expenses in-

curred in any calendar year, no more than the amount specified in paragraph (2) for the year shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.

(2) The amount specified in this paragraph—

(A) for 1999, 2000, and 2001, is $1,500, and

(B) for a subsequent year is the amount specified in this paragraph for the preceding year increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for such subsequent year;

except that if an increase under subparagraph (B) for a year is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

(3) Subject to paragraph (4), in the case of occupational therapy services (of the type that are described in section 1395x(p) of this title (but not described in subsection (a)(8)(B) of this section) through the operation of section 1395x(g) of this title and of such type which are furnished by a physician or as incident to physicians' services), with respect to expenses incurred in any calendar year, no more than the amount specified in paragraph (2) for the year shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.

(4) This subsection shall not apply to expenses incurred with respect to services furnished during 2000, 2001, 2002, 2004, and 2005.

(h) Fee schedules for clinical diagnostic laboratory tests; percentage of prevailing charge level; nominal fee for samples; adjustments; recipients of payments; negotiated payment rate

(1)(A) Subject to section 1395m(d)(1) of this title, the Secretary shall establish fee schedules for clinical diagnostic laboratory tests (including prostate cancer screening tests under section 1395x(*oo*) of this title consisting of prostate-specific antigen blood tests) for which payment is made under this part, other than such tests performed by a provider of services for an inpatient of such provider.

(B) In the case of clinical diagnostic laboratory tests performed by a physician or by a laboratory (other than tests performed by a qualified hospital laboratory (as defined in subparagraph (D)) for outpatients of such hospital), the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished on or after July 1, 1984.

(C) In the case of clinical diagnostic laboratory tests performed by a qualified hospital laboratory (as defined in subparagraph (D)) for outpatients of such hospital, the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished on or after July 1, 1984.

(D) In this subsection, the term ''qualified hospital laboratory'' means a hospital laboratory, in a sole community hospital (as defined in section 1395ww(d)(5)(D)(iii) of this title), which provides some clinical diagnostic laboratory tests 24 hours a day in order to serve a hospital emergency room which is available to provide services 24 hours a day and 7 days a week.

(2)(A)(i) Except as provided in paragraph (4), the Secretary shall set the fee schedules at 60 percent (or, in the case of a test performed by a qualified hospital laboratory (as defined in paragraph (1)(D)) for outpatients of such hospital, 62 percent) of the prevailing charge level determined pursuant to the third and fourth sentences of section 1395u(b)(3) of this title for similar clinical diagnostic laboratory tests for the applicable region, State, or area for the 12-month period beginning July 1, 1984, adjusted annually (to become effective on January 1 of each year) by a percentage increase or decrease equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average), and subject to such other adjustments as the Secretary determines are justified by technological changes.

(ii) Notwithstanding clause (i)—

(I) any change in the fee schedules which would have become effective under this subsection for tests furnished on or after January 1, 1988, shall not be effective for tests furnished during the 3-month period beginning on January 1, 1988,

(II) the Secretary shall not adjust the fee schedules under clause (i) to take into account any increase in the consumer price index for 1988,

(III) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1991, 1992, and 1993 shall be 2 percent, and

(IV) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1994 and 1995, 1998 through 2002, and 2004 through 2008 shall be 0 percent.

(iii) In establishing fee schedules under clause (i) with respect to automated tests and tests (other than cytopathology tests) which before July 1, 1984, the Secretary made subject to a limit based on lowest charge levels under the sixth sentence of section 1395u(b)(3) of this title performed after March 31, 1988, the Secretary shall reduce by 8.3 percent the fee schedules otherwise established for 1988, and such reduced fee schedules shall serve as the base for 1989 and subsequent years.

(B) The Secretary may make further adjustments or exceptions to the fee schedules to assure adequate reimbursement of (i) emergency laboratory tests needed for the provision of bona fide emergency services, and (ii) certain low volume high-cost tests where highly sophisticated equipment or extremely skilled personnel are necessary to assure quality.

(3) In addition to the amounts provided under the fee schedules, the Secretary shall provide for and establish (A) a nominal fee to cover the appropriate costs in collecting the sample on which a clinical diagnostic laboratory test was performed and for which payment is made under this part, except that not more than one such fee may be provided under this paragraph with respect to samples collected in the same encounter, and (B) a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect the sample, except that such a fee may be provided only with respect to an individual who is homebound or an inpatient in an inpatient facility

(other than a hospital). In establishing a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect a sample, the Secretary shall provide a method for computing the fee based on the number of miles traveled and the personnel costs associated with the collection of each individual sample, but the Secretary shall only be required to apply such method in the case of tests furnished during the period beginning on April 1, 1989, and ending on December 31, 1990, by a laboratory that establishes to the satisfaction of the Secretary (based on data for the 12-month period ending June 30, 1988) that (i) the laboratory is dependent upon payments under this subchapter for at least 80 percent of its collected revenues for clinical diagnostic laboratory tests, (ii) at least 85 percent of its gross revenues for such tests are attributable to tests performed with respect to individuals who are homebound or who are residents in a nursing facility, and (iii) the laboratory provided such tests for residents in nursing facilities representing at least 20 percent of the number of such facilities in the State in which the laboratory is located.

(4)(A) In establishing any fee schedule under this subsection, the Secretary may provide for an adjustment to take into account, with respect to the portion of the expenses of clinical diagnostic laboratory tests attributable to wages, the relative difference between a region's or local area's wage rates and the wage rate presumed in the data on which the schedule is based.

(B) For purposes of subsections (a)(1)(D)(i) and (a)(2)(D)(i) of this section, the limitation amount for a clinical diagnostic laboratory test performed—

(i) on or after July 1, 1986, and before April 1, 1988, is equal to 115 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1),

(ii) after March 31, 1988, and before January 1, 1990, is equal to the median of all the fee schedules established for that test for that laboratory setting under paragraph (1),

(iii) after December 31, 1989, and before January 1, 1991, is equal to 93 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1),

(iv) after December 31, 1990, and before January 1, 1994, is equal to 88 percent of such median,

(v) after December 31, 1993, and before January 1, 1995, is equal to 84 percent of such median,

(vi) after December 31, 1994, and before January 1, 1996, is equal to 80 percent of such median,

(vii) after December 31, 1995, and before January 1, 1998, is equal to 76 percent of such median, and

(viii) after December 31, 1997, is equal to 74 percent of such median (or 100 percent of such median in the case of a clinical diagnostic laboratory test performed on or after January 1, 2001, that the Secretary determines is a new test for which no limitation amount has previously been established under this subparagraph).

(5)(A) In the case of a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part on an assignment-related basis or under a provider agreement under section 1395cc of this title, payment may be made only to the person or entity which performed or supervised the performance of such test; except that—

(i) if a physician performed or supervised the performance of such test, payment may be made to another physician with whom he shares his practice,

(ii) in the case of a test performed at the request of a laboratory by another laboratory, payment may be made to the referring laboratory but only if—

(I) the referring laboratory is located in, or is part of, a rural hospital,

(II) the referring laboratory is wholly owned by the entity performing such test, the referring laboratory wholly owns the entity performing such test, or both the referring laboratory and the entity performing such test are wholly-owned by a third entity, or

(III) not more than 30 percent of the clinical diagnostic laboratory tests for which such referring laboratory (but not including a laboratory described in subclause (II)),[2] receives requests for testing during the year in which the test is performed[2] are performed by another laboratory, and

(iii) in the case of a clinical diagnostic laboratory test provided under an arrangement (as defined in section 1395x(w)(1) of this title) made by a hospital, critical access hospital, or skilled nursing facility, payment shall be made to the hospital or skilled nursing facility.

(B) In the case of such a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part, and which is not described in subparagraph (A), payment may be made to the beneficiary only on the basis of the itemized bill of the person or entity which performed or supervised the performance of the test.

(C) Payment for a clinical diagnostic laboratory test, including a test performed in a physician's office but excluding a test performed by a rural health clinic may only be made on an assignment-related basis or to a provider of services with an agreement in effect under section 1395cc of this title.

(D) A person may not bill for a clinical diagnostic laboratory test, including a test performed in a physician's office but excluding a test performed by a rural health clinic, other than on an assignment-related basis. If a person knowingly and willfully and on a repeated basis bills for a clinical diagnostic laboratory test in violation of the previous sentence, the Secretary may apply sanctions against the person in the same manner as the Secretary may apply sanctions against a physician in accordance with

[2] So in original. The comma after ''subclause (II))'' probably should follow ''is performed''.

paragraph (2) of section 1395u(j) of this title in the same manner such paragraphs apply[3] with respect to a physician. Paragraph (4) of such section shall apply in this subparagraph in the same manner as such paragraph applies to such section.

(6) In the case of any diagnostic laboratory test payment for which is not made on the basis of a fee schedule under paragraph (1), the Secretary may establish a payment rate which is acceptable to the person or entity performing the test and which would be considered the full charge for such tests. Such negotiated rate shall be limited to an amount not in excess of the total payment that would have been made for the services in the absence of such rate.

(7) Notwithstanding paragraphs (1) and (4), the Secretary shall establish a national minimum payment amount under this subsection for a diagnostic or screening pap smear laboratory test (including all cervical cancer screening technologies that have been approved by the Food and Drug Administration as a primary screening method for detection of cervical cancer) equal to $14.60 for tests furnished in 2000. For such tests furnished in subsequent years, such national minimum payment amount shall be adjusted annually as provided in paragraph (2).

(8)(A) The Secretary shall establish by regulation procedures for determining the basis for, and amount of, payment under this subsection for any clinical diagnostic laboratory test with respect to which a new or substantially revised HCPCS code is assigned on or after January 1, 2005 (in this paragraph referred to as ''new tests'').

(B) Determinations under subparagraph (A) shall be made only after the Secretary—

(i) makes available to the public (through an Internet website and other appropriate mechanisms) a list that includes any such test for which establishment of a payment amount under this subsection is being considered for a year;

(ii) on the same day such list is made available, causes to have published in the Federal Register notice of a meeting to receive comments and recommendations (and data on which recommendations are based) from the public on the appropriate basis under this subsection for establishing payment amounts for the tests on such list;

(iii) not less than 30 days after publication of such notice convenes a meeting, that includes representatives of officials of the Centers for Medicare & Medicaid Services involved in determining payment amounts, to receive such comments and recommendations (and data on which the recommendations are based);

(iv) taking into account the comments and recommendations (and accompanying data) received at such meeting, develops and makes available to the public (through an Internet website and other appropriate mechanisms) a list of proposed determinations with respect to the appropriate basis for establishing a payment amount under this subsection for each such code, together with an explanation of the reasons for each such determination, the data on which the determinations are based, and a request for public written comments on the proposed determination; and

(v) taking into account the comments received during the public comment period, develops and makes available to the public (through an Internet website and other appropriate mechanisms) a list of final determinations of the payment amounts for such tests under this subsection, together with the rationale for each such determination, the data on which the determinations are based, and responses to comments and suggestions received from the public.

(C) Under the procedures established pursuant to subparagraph (A), the Secretary shall—

(i) set forth the criteria for making determinations under subparagraph (A); and

(ii) make available to the public the data (other than proprietary data) considered in making such determinations.

(D) The Secretary may convene such further public meetings to receive public comments on payment amounts for new tests under this subsection as the Secretary deems appropriate.

(E) For purposes of this paragraph:

(i) The term ''HCPCS'' refers to the Health Care Procedure Coding System.

(ii) A code shall be considered to be ''substantially revised'' if there is a substantive change to the definition of the test or procedure to which the code applies (such as a new analyte or a new methodology for measuring an existing analyte-specific test).

(i) Outpatient surgery

(1) The Secretary shall, in consultation with appropriate medical organizations—

(A) specify those surgical procedures which are appropriately (when considered in terms of the proper utilization of hospital inpatient facilities) performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in an ambulatory surgical center (meeting the standards specified under section 1395k(a)(2)(F)(i) of this title), critical access hospital, or hospital outpatient department, and

(B) specify those surgical procedures which are appropriately (when considered in terms of the proper utilization of hospital inpatient facilities) performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in a physician's office.

The lists of procedures established under subparagraphs (A) and (B) shall be reviewed and updated not less often than every 2 years, in consultation with appropriate trade and professional organizations.

(2)(A) For services furnished prior to the implementation of the system described in subparagraph (D), the amount of payment to be made for facility services furnished in connection with a surgical procedure specified pursuant to paragraph (1)(A) and furnished to an individual in an ambulatory surgical center described in such paragraph shall be equal to 80 percent of a standard overhead amount established by the Secretary (with respect to each

[3] So in original. Probably should be ''such paragraph applies''.

such procedure) on the basis of the Secretary's estimate of a fair fee which—

(i) takes into account the costs incurred by such centers, or classes of centers, generally in providing services furnished in connection with the performance of such procedure, as determined in accordance with a survey (based upon a representative sample of procedures and facilities) of the actual audited costs incurred by such centers in providing such services,

(ii) takes such costs into account in such a manner as will assure that the performance of the procedure in such a center will result in substantially less amounts paid under this subchapter than would have been paid if the procedure had been performed on an inpatient basis in a hospital, and

(iii) in the case of insertion of an intraocular lens during or subsequent to cataract surgery includes payment which is reasonable and related to the cost of acquiring the class of lens involved.

Each amount so established shall be reviewed and updated not later than July 1, 1987, and annually thereafter to take account of varying conditions in different areas.

(B) The amount of payment to be made under this part for facility services furnished, in connection with a surgical procedure specified pursuant to paragraph (1)(B), in a physician's office shall be equal to 80 percent of a standard overhead amount established by the Secretary (with respect to each such procedure) on the basis of the Secretary's estimate of a fair fee which—

(i) takes into account additional costs, not usually included in the professional fee, incurred by physicians in securing, maintaining, and staffing the facilities and ancillary services appropriate for the performance of such procedure in the physician's office, and

(ii) takes such items into account in such a manner which will assure that the performance of such procedure in the physician's office will result in substantially less amounts paid under this subchapter than would have been paid if the services had been furnished on an inpatient basis in a hospital.

Each amount so established shall be reviewed and updated not later than July 1, 1987, and annually thereafter to take account of varying conditions in different areas.

(C)(i) Notwithstanding the second sentence of each of subparagraphs (A) and (B), except as otherwise specified in clauses (ii), (iii), and (iv), if the Secretary has not updated amounts established under such subparagraphs or under subparagraph (D), with respect to facility services furnished during a fiscal year (beginning with fiscal year 1986 or a calendar year (beginning with 2006)), such amounts shall be increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved.

(ii) In each of the fiscal years 1998 through 2002, the increase under this subparagraph shall be reduced (but not below zero) by 2.0 percentage points.

(iii) In fiscal year 2004, beginning with April 1, 2004, the increase under this subparagraph shall be the Consumer Price Index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with March 31, 2003, minus 3.0 percentage points.

(iv) In fiscal year 2005, the last quarter of calendar year 2005, and each of calendar years 2006 through 2009, the increase under this subparagraph shall be 0 percent.

(D)(i) Taking into account the recommendations in the report under section 626(d) of Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the Secretary shall implement a revised payment system for payment of surgical services furnished in ambulatory surgical centers.

(ii) In the year the system described in clause (i) is implemented, such system shall be designed to result in the same aggregate amount of expenditures for such services as would be made if this subparagraph did not apply, as estimated by the Secretary.

(iii) The Secretary shall implement the system described in clause (i) for periods in a manner so that it is first effective beginning on or after January 1, 2006, and not later than January 1, 2008.

(iv) There shall be no administrative or judicial review under section 1395ff, 1395*oo* of this title, or otherwise, of the classification system, the relative weights, payment amounts, and the geographic adjustment factor, if any, under this subparagraph.

(3)(A) The aggregate amount of the payments to be made under this part for outpatient hospital facility services or critical access hospital services furnished before January 1, 1999, in connection with surgical procedures specified under paragraph (1)(A) shall be equal to the lesser of—

(i) the amount determined with respect to such services under subsection (a)(2)(B) of this section; or

(ii) the blend amount (described in subparagraph (B)).

(B)(i) The blend amount for a cost reporting period is the sum of—

(I) the cost proportion (as defined in clause (ii)(I)) of the amount described in subparagraph (A)(i), and

(II) the ASC proportion (as defined in clause (ii)(II)) of the standard overhead amount payable with respect to the same surgical procedure as if it were provided in an ambulatory surgical center in the same area, as determined under paragraph (2)(A), less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title.

(ii) Subject to paragraph (4), in this paragraph:

(I) The term ''cost proportion'' means 75 percent for cost reporting periods beginning in fiscal year 1988, 50 percent for portions of cost reporting periods beginning on or after October 1, 1988, and ending on or before December 31, 1990, and 42 percent for portions of cost reporting periods beginning on or after January 1, 1991.

(II) The term ''ASC proportion'' means 25 percent for cost reporting periods beginning in fiscal year 1988, 50 percent for portions of cost

reporting periods beginning on or after October 1, 1988, and ending on or before December 31, 1990, and 58 percent for portions of cost reporting periods beginning on or after January 1, 1991.

(4)(A) In the case of a hospital that—

(i) makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary),

(ii) receives more than 30 percent of its total revenues from outpatient services, and

(iii) on October 1, 1987—

(I) was an eye specialty hospital or an eye and ear specialty hospital, or

(II) was operated as an eye or eye and ear unit (as defined in subparagraph (B)) of a general acute care hospital which, on the date of the application described in clause (i), operates less than 20 percent of the beds that the hospital operated on October 1, 1987, and has sold or otherwise disposed of a substantial portion of the hospital's other acute care operations,

the cost proportion and ASC proportion in effect under subclauses (I) and (II) of paragraph (3)(B)(ii) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning on or after October 1, 1988, and before January 1, 1995.

(B) For purposes of this[4] subparagraph (A)(iii)(II), the term ''eye or eye and ear unit'' means a physically separate or distinct unit containing separate surgical suites devoted solely to eye or eye and ear services.

(5)(A) The Secretary is authorized to provide by regulations that in the case of a surgical procedure, specified by the Secretary pursuant to paragraph (1)(A), performed in an ambulatory surgical center described in such paragraph, there shall be paid (in lieu of any amounts otherwise payable under this part) with respect to the facility services furnished by such center and with respect to all related services (including physicians' services, laboratory, X-ray, and diagnostic services) a single all-inclusive fee established pursuant to subparagraph (B), if all parties furnishing all such services agree to accept such fee (to be divided among the parties involved in such manner as they shall have previously agreed upon) as full payment for the services furnished.

(B) In implementing this paragraph, the Secretary shall establish with respect to each surgical procedure specified pursuant to paragraph (1)(A) the amount of the all-inclusive fee for such procedure, taking into account such factors as may be appropriate. The amount so established with respect to any surgical procedure shall be reviewed periodically and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

(6) Any person, including a facility having an agreement under section 1395k(a)(2)(F)(i) of this title, who knowingly and willfully presents, or causes to be presented, a bill or request for payment, for an intraocular lens inserted during or subsequent to cataract surgery for which payment may be made under paragraph (2)(A)(iii), is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(j) Accrual of interest on balance of excess or deficit not paid

Whenever a final determination is made that the amount of payment made under this part either to a provider of services or to another person pursuant to an assignment under section 1395u(b)(3)(B)(ii) of this title was in excess of or less than the amount of payment that is due, and payment of such excess or deficit is not made (or effected by offset) within 30 days of the date of the determination, interest shall accrue on the balance of such excess or deficit not paid or offset (to the extent that the balance is owed by or owing to the provider) at a rate determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments.

(k) Hepatitis B vaccine

With respect to services described in section 1395x(s)(10)(B) of this title, the Secretary may provide, instead of the amount of payment otherwise provided under this part, for payment of such an amount or amounts as reasonably reflects the general cost of efficiently providing such services.

***(l)* Fee schedule for services of certified registered nurse anesthetists**

(1)(A) The Secretary shall establish a fee schedule for services of certified registered nurse anesthetists under section 1395x(s)(11) of this title.

(B) In establishing the fee schedule under this paragraph the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology.

(C) The provisions of this subsection shall not apply to certain services furnished in certain hospitals in rural areas under the provisions of section 9320(k) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989.

(2) Except as provided in paragraph (3), the fee schedule established under paragraph (1) shall be initially based on audited data from cost reporting periods ending in fiscal year 1985 and such other data as the Secretary determines necessary.

(3)(A) In establishing the initial fee schedule for those services, the Secretary shall adjust the fee schedule to the extent necessary to ensure that the estimated total amount which will be paid under this subchapter for those services plus applicable coinsurance in 1989 will equal the estimated total amount which would be paid under this subchapter for those services in 1989 if the services were included as inpatient hospital services and payment for such services was made under part A of this subchapter in the same manner as payment was made in fiscal year 1987, adjusted to take into account changes

[4] So in original. The word ''this'' probably should not appear.

in prices and technology relating to the administration of anesthesia.

(B) The Secretary shall also reduce the prevailing charge of physicians for medical direction of a certified registered nurse anesthetist, or the fee schedule for services of certified registered nurse anesthetists, or both, to the extent necessary to ensure that the estimated total amount which will be paid under this subchapter plus applicable coinsurance for such medical direction and such services in 1989 and 1990 will not exceed the estimated total amount which would have been paid plus applicable coinsurance but for the enactment of the amendments made by section 9320 of the Omnibus Budget Reconciliation Act of 1986. A reduced prevailing charge under this subparagraph shall become the prevailing charge but for subsequent years for purposes of applying the economic index under the fourth sentence of section 1395u(b)(3) of this title.

(4)(A) Except as provided in subparagraphs (C) and (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, by a certified registered nurse anesthetist who is not medically directed—

(i) the conversion factor shall be—

(I) for services furnished in 1991, $15.50,

(II) for services furnished in 1992, $15.75,

(III) for services furnished in 1993, $16.00,

(IV) for services furnished in 1994, $16.25,

(V) for services furnished in 1995, $16.50,

(VI) for services furnished in 1996, $16.75, and

(VII) for services furnished in calendar years after 1996, the previous year's conversion factor increased by the update determined under section 1395w–4(d) of this title for physician anesthesia services for that year;

(ii) the payment areas to be used shall be the fee schedule areas used under section 1395w–4 of this title (or, in the case of services furnished during 1991, the localities used under section 1395u(b) of this title) for purposes of computing payments for physicians' services that are anesthesia services;

(iii) the geographic adjustment factors to be applied to the conversion factor under clause (i) for services in a fee schedule area or locality is—[5]

(I) in the case of services furnished in 1991, the geographic work index value and the geographic practice cost index value specified in section 1395u(q)(1)(B) of this title for physicians' services that are anesthesia services furnished in the area or locality, and

(II) in the case of services furnished after 1991, the geographic work index value, the geographic practice cost index value, and the geographic malpractice index value used for determining payments for physicians' services that are anesthesia services under section 1395w–4 of this title,

with 70 percent of the conversion factor treated as attributable to work and 30 percent as attributable to overhead for services furnished in 1991 (and the portions attributable to work, practice expenses, and malpractice expenses in 1992 and thereafter being the same as is applied under section 1395w–4 of this title).

(B)(i) Except as provided in clause (ii) and subparagraph (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, and before January 1, 1994, by a certified registered nurse anesthetist who is medically directed, the Secretary shall apply the same methodology specified in subparagraph (A).

(ii) The conversion factor used under clause (i) shall be—

(I) for services furnished in 1991, $10.50,

(II) for services furnished in 1992, $10.75, and

(III) for services furnished in 1993, $11.00.

(iii) In the case of services of a certified registered nurse anesthetist who is medically directed or medically supervised by a physician which are furnished on or after January 1, 1994, the fee schedule amount shall be one-half of the amount described in section 1395w–4(a)(5)(B) of this title with respect to the physician.

(C) Notwithstanding subclauses (I) through (V) of subparagraph (A)(i)—

(i) in the case of a 1990 conversion factor that is greater than $16.50, the conversion factor for a calendar year after 1990 and before 1996 shall be the 1990 conversion factor reduced by the product of the last digit of the calendar year and one-fifth of the amount by which the 1990 conversion factor exceeds $16.50; and

(ii) in the case of a 1990 conversion factor that is greater than $15.49 but less than $16.51, the conversion factor for a calendar year after 1990 and before 1996 shall be the greater of—

(I) the 1990 conversion factor, or

(II) the conversion factor specified in subparagraph (A)(i) for the year involved.

(D) Notwithstanding subparagraph (C), in no case may the conversion factor used to determine payment for services in a fee schedule area or locality under this subsection, as adjusted by the adjustment factors specified in subparagraphs[6] (A)(iii), exceed the conversion factor used to determine the amount paid for physicians' services that are anesthesia services in the area or locality.

(5)(A) Payment for the services of a certified registered nurse anesthetist (for which payment may otherwise be made under this part) may be made on the basis of a claim or request for payment presented by the certified registered nurse anesthetist furnishing such services, or by a hospital, critical access hospital, physician, group practice, or ambulatory surgical center with which the certified registered nurse anesthetist furnishing such services has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, critical access hospital, physician, group practice, or ambulatory surgical center.

(B) No hospital or critical access hospital that presents a claim or request for payment for services of a certified nurse anesthetist under this part may treat any uncollected coinsurance

[5] So in original. Probably should be ''are—''.

[6] So in original. Probably should be ''subparagraph''.

amount imposed under this part with respect to such services as a bad debt of such hospital or critical access hospital for purposes of this subchapter.

(6) If an adjustment under paragraph (3)(B) results in a reduction in the reasonable charge for a physicians' service and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part after the effective date of the reduction, the physician's actual charge is subject to a limit under section 1395u(j)(1)(D) of this title.

(m) Incentive payments for physicians' services furnished in underserved areas

(1) In the case of physicians' services furnished in a year to an individual, who is covered under the insurance program established by this part and who incurs expenses for such services, in an area that is designated (under section 254e(a)(1)(A) of this title) as a health professional shortage area as identified by the Secretary prior to the beginning of such year, in addition to the amount otherwise paid under this part, there also shall be paid to the physician (or to an employer or facility in the cases described in clause (A) of section 1395u(b)(6) of this title) (on a monthly or quarterly basis) from the Federal Supplementary Medical Insurance Trust Fund an amount equal to 10 percent of the payment amount for the service under this part.

(2) For each health professional shortage area identified in paragraph (1) that consists of an entire county, the Secretary shall provide for the additional payment under paragraph (1) without any requirement on the physician to identify the health professional shortage area involved. The Secretary may implement the previous sentence using the method specified in subsection (u)(4)(C) of this section.

(3) The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services a list of the health professional shortage areas identified in paragraph (1) that consist of a partial county to facilitate the additional payment under paragraph (1) in such areas.

(4) There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, respecting—

(A) the identification of a county or area;

(B) the assignment of a specialty of any physician under this paragraph;

(C) the assignment of a physician to a county under this subsection; or

(D) the assignment of a postal ZIP Code to a county or other area under this subsection.

(n) Payments to hospital outpatient departments for radiology; amount; definitions

(1)(A)[7] The aggregate amount of the payments to be made for all or part of a cost reporting period for services described in subsection (a)(2)(E)(i) of this section furnished under this part on or after October 1, 1988, and before January 1, 1999, and for services described in subsection (a)(2)(E)(ii) of this section furnished under this part on or after October 1, 1989, and before January 1, 1999, shall be equal to the lesser of—

(i) the amount determined with respect to such services under subsection (a)(2)(B) of this section, or

(ii) the blend amount for radiology services and diagnostic procedures determined in accordance with subparagraph (B).

(B)(i) The blend amount for radiology services and diagnostic procedures for a cost reporting period is the sum of—

(I) the cost proportion (as defined in clause (ii)) of the amount described in subparagraph (A)(i); and

(II) the charge proportion (as defined in clause (ii)(II)) of 62 percent (for services described in subsection (a)(2)(E)(i) of this section), or (for procedures described in subsection (a)(2)(E)(ii) of this section), 42 percent or such other percent established by the Secretary (or carriers acting pursuant to guidelines issued by the Secretary) based on prevailing charges established with actual charge data, of the prevailing charge or (for services described in subsection (a)(2)(E)(i) of this section furnished on or after April 1, 1989 and for services described in subsection (a)(2)(E)(ii) of this section furnished on or after January 1, 1992) the fee schedule amount established for participating physicians for the same services as if they were furnished in a physician's office in the same locality as determined under section 1395u(b) of this title (or, in the case of services furnished on or after January 1, 1992, under section 1395w–4 of this title), less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title.

(ii) In this subparagraph:

(I) The term ''cost proportion'' means 50 percent, except that such term means 65 percent in the case of outpatient radiology services for portions of cost reporting periods which occur in fiscal year 1989 and in the case of diagnostic procedures described in subsection (a)(2)(E)(ii) of this section for portions of cost reporting periods which occur in fiscal year 1990, and such term means 42 percent in the case of outpatient radiology services for portions of cost reporting periods beginning on or after January 1, 1991.

(II) The term ''charge proportion'' means 100 percent minus the cost proportion.

***(o)* Limitation on benefit for payment for therapeutic shoes for individuals with severe diabetic foot disease**

(1) In the case of shoes described in section 1395x(s)(12) of this title—

(A) no payment may be made under this part, with respect to any individual for any year, for the furnishing of—

(i) more than one pair of custom molded shoes (including inserts provided with such shoes) and 2 additional pairs of inserts for such shoes, or

(ii) more than one pair of extra-depth shoes (not including inserts provided with such shoes) and 3 pairs of inserts for such shoes, and

(B) with respect to expenses incurred in any calendar year, no more than the amount of

[7] So in original. No par. (2) has been enacted.

payment applicable under paragraph (2) shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.

Payment for shoes (or inserts) under this part shall be considered to include payment for any expenses for the fitting of such shoes (or inserts).

(2)(A) Except as provided by the Secretary under subparagraphs (B) and (C), the amount of payment under this paragraph for custom molded shoes, extra-depth shoes, and inserts shall be the amount determined for such items by the Secretary under section 1395m(h) of this title.

(B) The Secretary may establish payment amounts for shoes and inserts that are lower than the amount established under section 1395m(h) of this title if the Secretary finds that shoes and inserts of an appropriate quality are readily available at or below the amount established under such section.

(C) In accordance with procedures established by the Secretary, an individual entitled to benefits with respect to shoes described in section 1395x(s)(12) of this title may substitute modification of such shoes instead of obtaining one (or more, as specified by the Secretary) pair of inserts (other than the original pair of inserts with respect to such shoes). In such case, the Secretary shall substitute, for the payment amount established under section 1395m(h) of this title, a payment amount that the Secretary estimates will assure that there is no net increase in expenditures under this subsection as a result of this subparagraph.

(3) In this subchapter, the term ''shoes'' includes, except for purposes of subparagraphs (A)(ii) and (B) of paragraph (2), inserts for extra-depth shoes.

(p) Repealed. Pub. L. 103–432, title I, § 123(b)(2)(A)(ii), Oct. 31, 1994, 108 Stat. 4411

(q) Requests for payment to include information on referring physician

(1) Each request for payment, or bill submitted, for an item or service furnished by an entity for which payment may be made under this part and for which the entity knows or has reason to believe there has been a referral by a referring physician (within the meaning of section 1395nn of this title) shall include the name and unique physician identification number for the referring physician.

(2)(A) In the case of a request for payment for an item or service furnished by an entity under this part on an assignment-related basis and for which information is required to be provided under paragraph (1) but not included, payment may be denied under this part.

(B) In the case of a request for payment for an item or service furnished by an entity under this part not submitted on an assignment-related basis and for which information is required to be provided under paragraph (1) but not included—

(i) if the entity knowingly and willfully fails to provide such information promptly upon request of the Secretary or a carrier, the entity may be subject to a civil money penalty in an amount not to exceed $2,000, and

(ii) if the entity knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection to provide the information required under paragraph (1), the entity may be subject to exclusion from participation in the programs under this chapter for a period not to exceed 5 years, in accordance with the procedures of subsections (c), (f), and (g) of section 1320a–7 of this title.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under clause (i) in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(r) Cap on prevailing charge; billing on assignment-related basis

(1) With respect to services described in section 1395x(s)(2)(K)(ii) of this title (relating to nurse practitioner or clinical nurse specialist services), payment may be made on the basis of a claim or request for payment presented by the nurse practitioner or clinical nurse specialist furnishing such services, or by a hospital, critical access hospital, skilled nursing facility or nursing facility (as defined in section 1396r(a) of this title), physician, group practice, or ambulatory surgical center with which the nurse practitioner or clinical nurse specialist has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, physician, group practice, or ambulatory surgical center.

(2) No hospital or critical access hospital that presents a claim or request for payment under this part for services described in section 1395x(s)(2)(K)(ii) of this title may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital for purposes of this subchapter.

(s) Other prepaid organizations

The Secretary may not provide for payment under subsection (a)(1)(A) of this section with respect to an organization unless the organization provides assurances satisfactory to the Secretary that the organization meets the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(t) Prospective payment system for hospital outpatient department services

(1) Amount of payment

(A) In general

With respect to covered OPD services (as defined in subparagraph (B)) furnished during a year beginning with 1999, the amount of payment under this part shall be determined under a prospective payment system established by the Secretary in accordance with this subsection.

(B) Definition of covered OPD services

For purposes of this subsection, the term ''covered OPD services''—

(i) means hospital outpatient services designated by the Secretary;

(ii) subject to clause (iv), includes inpatient hospital services designated by the Secretary that are covered under this part

and furnished to a hospital inpatient who (I) is entitled to benefits under part A of this subchapter but has exhausted benefits for inpatient hospital services during a spell of illness, or (II) is not so entitled;

(iii) includes implantable items described in paragraph (3), (6), or (8) of section 1395x(s) of this title; but

(iv) does not include any therapy services described in subsection (a)(8) of this section or ambulance services, for which payment is made under a fee schedule described in section 1395m(k) of this title or section 1395m(*l*) of this title and does not include screening mammography (as defined in section 1395x(jj) of this title) and diagnostic mammography.

(2) System requirements

Under the payment system—

(A) the Secretary shall develop a classification system for covered OPD services;

(B) the Secretary may establish groups of covered OPD services, within the classification system described in subparagraph (A), so that services classified within each group are comparable clinically and with respect to the use of resources and so that an implantable item is classified to the group that includes the service to which the item relates;

(C) the Secretary shall, using data on claims from 1996 and using data from the most recent available cost reports, establish relative payment weights for covered OPD services (and any groups of such services described in subparagraph (B)) based on median (or, at the election of the Secretary, mean) hospital costs and shall determine projections of the frequency of utilization of each such service (or group of services) in 1999;

(D) the Secretary shall determine a wage adjustment factor to adjust the portion of payment and coinsurance attributable to labor-related costs for relative differences in labor and labor-related costs across geographic regions in a budget neutral manner;

(E) the Secretary shall establish, in a budget neutral manner, outlier adjustments under paragraph (5) and transitional pass-through payments under paragraph (6) and other adjustments as determined to be necessary to ensure equitable payments, such as adjustments for certain classes of hospitals;

(F) the Secretary shall develop a method for controlling unnecessary increases in the volume of covered OPD services;

(G) the Secretary shall create additional groups of covered OPD services that classify separately those procedures that utilize contrast agents from those that do not; and

(H) with respect to devices of brachytherapy consisting of a seed or seeds (or radioactive source), the Secretary shall create additional groups of covered OPD services that classify such devices separately from the other services (or group of services) paid for under this subsection in a manner reflecting the number, isotope, and radioactive intensity of such devices furnished, including separate groups for palladium-103 and iodine-125 devices.

For purposes of subparagraph (B), items and services within a group shall not be treated as ''comparable with respect to the use of resources'' if the highest median cost (or mean cost, if elected by the Secretary under subparagraph (C)) for an item or service within the group is more than 2 times greater than the lowest median cost (or mean cost, if so elected) for an item or service within the group; except that the Secretary may make exceptions in unusual cases, such as low volume items and services, but may not make such an exception in the case of a drug or biological that has been designated as an orphan drug under section 360bb of title 21.

(3) Calculation of base amounts

(A) Aggregate amounts that would be payable if deductibles were disregarded

The Secretary shall estimate the sum of—

(i) the total amounts that would be payable from the Trust Fund under this part for covered OPD services in 1999, determined without regard to this subsection, as though the deductible under subsection (b) of this section did not apply, and

(ii) the total amounts of copayments estimated to be paid under this subsection by beneficiaries to hospitals for covered OPD services in 1999, as though the deductible under subsection (b) of this section did not apply.

(B) Unadjusted copayment amount

(i) In general

For purposes of this subsection, subject to clause (ii), the ''unadjusted copayment amount'' applicable to a covered OPD service (or group of such services) is 20 percent of the national median of the charges for the service (or services within the group) furnished during 1996, updated to 1999 using the Secretary's estimate of charge growth during the period.

(ii) Adjusted to be 20 percent when fully phased in

If the pre-deductible payment percentage for a covered OPD service (or group of such services) furnished in a year would be equal to or exceed 80 percent, then the unadjusted copayment amount shall be 20 percent of amount determined under subparagraph (D).

(iii) Rules for new services

The Secretary shall establish rules for establishment of an unadjusted copayment amount for a covered OPD service not furnished during 1996, based upon its classification within a group of such services.

(C) Calculation of conversion factors

(i) For 1999

(I) In general

The Secretary shall establish a 1999 conversion factor for determining the medicare OPD fee schedule amounts for each covered OPD service (or group of

such services) furnished in 1999. Such conversion factor shall be established on the basis of the weights and frequencies described in paragraph (2)(C) and in such a manner that the sum for all services and groups of the products (described in subclause (II) for each such service or group) equals the total projected amount described in subparagraph (A).

(II) Product described

The Secretary shall determine for each service or group the product of the medicare OPD fee schedule amounts (taking into account appropriate adjustments described in paragraphs (2)(D) and (2)(E)) and the estimated frequencies for such service or group.

(ii) Subsequent years

Subject to paragraph (8)(B), the Secretary shall establish a conversion factor for covered OPD services furnished in subsequent years in an amount equal to the conversion factor established under this subparagraph and applicable to such services furnished in the previous year increased by the OPD fee schedule increase factor specified under clause (iv) for the year involved.

(iii) Adjustment for service mix changes

Insofar as the Secretary determines that the adjustments for service mix under paragraph (2) for a previous year (or estimates that such adjustments for a future year) did (or are likely to) result in a change in aggregate payments under this subsection during the year that are a result of changes in the coding or classification of covered OPD services that do not reflect real changes in service mix, the Secretary may adjust the conversion factor computed under this subparagraph for subsequent years so as to eliminate the effect of such coding or classification changes.

(iv) OPD fee schedule increase factor

For purposes of this subparagraph, the ''OPD fee schedule increase factor'' for services furnished in a year is equal to the market basket percentage increase applicable under section 1395ww(b)(3)(B)(iii) of this title to hospital discharges occurring during the fiscal year ending in such year, reduced by 1 percentage point for such factor for services furnished in each of 2000 and 2002. In applying the previous sentence for years beginning with 2000, the Secretary may substitute for the market basket percentage increase an annual percentage increase that is computed and applied with respect to covered OPD services furnished in a year in the same manner as the market basket percentage increase is determined and applied to inpatient hospital services for discharges occurring in a fiscal year.

(D) Calculation of medicare OPD fee schedule amounts

The Secretary shall compute a medicare OPD fee schedule amount for each covered OPD service (or group of such services) furnished in a year, in an amount equal to the product of—

(i) the conversion factor computed under subparagraph (C) for the year, and

(ii) the relative payment weight (determined under paragraph (2)(C)) for the service or group.

(E) Pre-deductible payment percentage

The pre-deductible payment percentage for a covered OPD service (or group of such services) furnished in a year is equal to the ratio of—

(i) the medicare OPD fee schedule amount established under subparagraph (D) for the year, minus the unadjusted copayment amount determined under subparagraph (B) for the service or group, to

(ii) the medicare OPD fee schedule amount determined under subparagraph (D) for the year for such service or group.

(4) Medicare payment amount

The amount of payment made from the Trust Fund under this part for a covered OPD service (and such services classified within a group) furnished in a year is determined, subject to paragraph (7), as follows:

(A) Fee schedule adjustments

The medicare OPD fee schedule amount (computed under paragraph (3)(D)) for the service or group and year is adjusted for relative differences in the cost of labor and other factors determined by the Secretary, as computed under paragraphs (2)(D) and (2)(E).

(B) Subtract applicable deductible

Reduce the adjusted amount determined under subparagraph (A) by the amount of the deductible under subsection (b) of this section, to the extent applicable.

(C) Apply payment proportion to remainder

The amount of payment is the amount so determined under subparagraph (B) multiplied by the pre-deductible payment percentage (as determined under paragraph (3)(E)) for the service or group and year involved, plus the amount of any reduction in the copayment amount attributable to paragraph (8)(C).

(5) Outlier adjustment

(A) In general

Subject to subparagraph (D), the Secretary shall provide for an additional payment for each covered OPD service (or group of services) for which a hospital's charges, adjusted to cost, exceed—

(i) a fixed multiple of the sum of—

(I) the applicable medicare OPD fee schedule amount determined under paragraph (3)(D), as adjusted under paragraph (4)(A) (other than for adjustments under this paragraph or paragraph (6)); and

(II) any transitional pass-through payment under paragraph (6); and

(ii) at the option of the Secretary, such fixed dollar amount as the Secretary may establish.

(B) Amount of adjustment

The amount of the additional payment under subparagraph (A) shall be determined by the Secretary and shall approximate the marginal cost of care beyond the applicable cutoff point under such subparagraph.

(C) Limit on aggregate outlier adjustments

(i) In general

The total of the additional payments made under this paragraph for covered OPD services furnished in a year (as estimated by the Secretary before the beginning of the year) may not exceed the applicable percentage (specified in clause (ii)) of the total program payments estimated to be made under this subsection for all covered OPD services furnished in that year. If this paragraph is first applied to less than a full year, the previous sentence shall apply only to the portion of such year.

(ii) Applicable percentage

For purposes of clause (i), the term ''applicable percentage'' means a percentage specified by the Secretary up to (but not to exceed)—

(I) for a year (or portion of a year) before 2004, 2.5 percent; and

(II) for 2004 and thereafter, 3.0 percent.

(D) Transitional authority

In applying subparagraph (A) for covered OPD services furnished before January 1, 2002, the Secretary may—

(i) apply such subparagraph to a bill for such services related to an outpatient encounter (rather than for a specific service or group of services) using OPD fee schedule amounts and transitional pass-through payments covered under the bill; and

(ii) use an appropriate cost-to-charge ratio for the hospital involved (as determined by the Secretary), rather than for specific departments within the hospital.

(E) Exclusion of separate drug and biological APCS from outlier payments

No additional payment shall be made under subparagraph (A) in the case of ambulatory payment classification groups established separately for drugs or biologicals.

(6) Transitional pass-through for additional costs of innovative medical devices, drugs, and biologicals

(A) In general

The Secretary shall provide for an additional payment under this paragraph for any of the following that are provided as part of a covered OPD service (or group of services):

(i) Current orphan drugs

A drug or biological that is used for a rare disease or condition with respect to which the drug or biological has been designated as an orphan drug under section 360bb of title 21 if payment for the drug or biological as an outpatient hospital service under this part was being made on the first date that the system under this subsection is implemented.

(ii) Current cancer therapy drugs and biologicals and brachytherapy

A drug or biological that is used in cancer therapy, including (but not limited to) a chemotherapeutic agent, an antiemetic, a hematopoietic growth factor, a colony stimulating factor, a biological response modifier, a bisphosphonate, and a device of brachytherapy or temperature monitored cryoablation, if payment for such drug, biological, or device as an outpatient hospital service under this part was being made on such first date.

(iii) Current radiopharmaceutical drugs and biological products

A radiopharmaceutical drug or biological product used in diagnostic, monitoring, and therapeutic nuclear medicine procedures if payment for the drug or biological as an outpatient hospital service under this part was being made on such first date.

(iv) New medical devices, drugs, and biologicals

A medical device, drug, or biological not described in clause (i), (ii), or (iii) if—

(I) payment for the device, drug, or biological as an outpatient hospital service under this part was not being made as of December 31, 1996; and

(II) the cost of the drug or biological or the average cost of the category of devices is not insignificant in relation to the OPD fee schedule amount (as calculated under paragraph (3)(D)) payable for the service (or group of services) involved.

(B) Use of categories in determining eligibility of a device for pass-through payments

The following provisions apply for purposes of determining whether a medical device qualifies for additional payments under clause (ii) or (iv) of subparagraph (A):

(i) Establishment of initial categories

(I) In general

The Secretary shall initially establish under this clause categories of medical devices based on type of device by April 1, 2001. Such categories shall be established in a manner such that each medical device that meets the requirements of clause (ii) or (iv) of subparagraph (A) as of January 1, 2001, is included in such a category and no such device is included in more than one category. For purposes of the preceding sentence, whether a medical device meets such requirements as of such date shall be determined on the basis of the program memoranda issued before such date.

(II) Authorization of implementation other than through regulations

The categories may be established under this clause by program memorandum or otherwise, after consultation with groups representing hospitals, man-

ufacturers of medical devices, and other affected parties.

(ii) Establishing criteria for additional categories

(I) In general

The Secretary shall establish criteria that will be used for creation of additional categories (other than those established under clause (i)) through rulemaking (which may include use of an interim final rule with comment period).

(II) Standard

Such categories shall be established under this clause in a manner such that no medical device is described by more than one category. Such criteria shall include a test of whether the average cost of devices that would be included in a category and are in use at the time the category is established is not insignificant, as described in subparagraph (A)(iv)(II).

(III) Deadline

Criteria shall first be established under this clause by July 1, 2001. The Secretary may establish in compelling circumstances categories under this clause before the date such criteria are established.

(IV) Adding categories

The Secretary shall promptly establish a new category of medical devices under this clause for any medical device that meets the requirements of subparagraph (A)(iv) and for which none of the categories in effect (or that were previously in effect) is appropriate.

(iii) Period for which category is in effect

A category of medical devices established under clause (i) or (ii) shall be in effect for a period of at least 2 years, but not more than 3 years, that begins—

(I) in the case of a category established under clause (i), on the first date on which payment was made under this paragraph for any device described by such category (including payments made during the period before April 1, 2001); and

(II) in the case of any other category, on the first date on which payment is made under this paragraph for any medical device that is described by such category.

(iv) Requirements treated as met

A medical device shall be treated as meeting the requirements of subparagraph (A)(iv), regardless of whether the device meets the requirement of subclause (I) of such subparagraph, if—

(I) the device is described by a category established and in effect under clause (i); or

(II) the device is described by a category established and in effect under clause (ii) and an application under section 360e of title 21 has been approved with respect to the device, or the device has been cleared for market under section 360(k) of title 21, or the device is exempt from the requirements of section 360(k) of title 21 pursuant to subsection (*l*) or (m) of section 360 of title 21 or section 360j(g) of title 21.

Nothing in this clause shall be construed as requiring an application or prior approval (other than that described in subclause (II)) in order for a covered device described by a category to qualify for payment under this paragraph.

(C) Limited period of payment

(i) Drugs and biologicals

The payment under this paragraph with respect to a drug or biological shall only apply during a period of at least 2 years, but not more than 3 years, that begins—

(I) on the first date this subsection is implemented in the case of a drug or biological described in clause (i), (ii), or (iii) of subparagraph (A) and in the case of a drug or biological described in subparagraph (A)(iv) and for which payment under this part is made as an outpatient hospital service before such first date; or

(II) in the case of a drug or biological described in subparagraph (A)(iv) not described in subclause (I), on the first date on which payment is made under this part for the drug or biological as an outpatient hospital service.

(ii) Medical devices

Payment shall be made under this paragraph with respect to a medical device only if such device—

(I) is described by a category of medical devices established and in effect under subparagraph (B); and

(II) is provided as part of a service (or group of services) paid for under this subsection and provided during the period for which such category is in effect under such subparagraph.

(D) Amount of additional payment

Subject to subparagraph (E)(iii), the amount of the payment under this paragraph with respect to a device, drug, or biological provided as part of a covered OPD service is—

(i) in the case of a drug or biological, the amount by which the amount determined under section 1395u(*o*) of this title (or if the drug or biological is covered under a competitive acquisition contract under section 1395w–3b of this title, an amount determined by the Secretary equal to the average price for the drug or biological for all competitive acquisition areas and year established under such section as calculated and adjusted by the Secretary for purposes of this paragraph) for the drug or biological exceeds the portion of the otherwise applicable medicare OPD fee schedule that the Secretary determines is associated with the drug or biological; or

(ii) in the case of a medical device, the amount by which the hospital's charges for

the device, adjusted to cost, exceeds the portion of the otherwise applicable medicare OPD fee schedule that the Secretary determines is associated with the device.

(E) Limit on aggregate annual adjustment

(i) In general

The total of the additional payments made under this paragraph for covered OPD services furnished in a year (as estimated by the Secretary before the beginning of the year) may not exceed the applicable percentage (specified in clause (ii)) of the total program payments estimated to be made under this subsection for all covered OPD services furnished in that year. If this paragraph is first applied to less than a full year, the previous sentence shall apply only to the portion of such year.

(ii) Applicable percentage

For purposes of clause (i), the term ''applicable percentage'' means—

(I) for a year (or portion of a year) before 2004, 2.5 percent; and

(II) for 2004 and thereafter, a percentage specified by the Secretary up to (but not to exceed) 2.0 percent.

(iii) Uniform prospective reduction if aggregate limit projected to be exceeded

If the Secretary estimates before the beginning of a year that the amount of the additional payments under this paragraph for the year (or portion thereof) as determined under clause (i) without regard to this clause will exceed the limit established under such clause, the Secretary shall reduce pro rata the amount of each of the additional payments under this paragraph for that year (or portion thereof) in order to ensure that the aggregate additional payments under this paragraph (as so estimated) do not exceed such limit.

(F) Limitation of application of functional equivalence standard

(i) In general

The Secretary may not publish regulations that apply a functional equivalence standard to a drug or biological under this paragraph.

(ii) Application

Clause (i) shall apply to the application of a functional equivalence standard to a drug or biological on or after December 8, 2003, unless—

(I) such application was being made to such drug or biological prior to December 8, 2003; and

(II) the Secretary applies such standard to such drug or biological only for the purpose of determining eligibility of such drug or biological for additional payments under this paragraph and not for the purpose of any other payments under this subchapter.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to effect the Secretary's authority to deem a particular drug to be identical to another drug if the 2 products are pharmaceutically equivalent and bioequivalent, as determined by the Commissioner of Food and Drugs.

(7) Transitional adjustment to limit decline in payment

(A) Before 2002

Subject to subparagraph (D), for covered OPD services furnished before January 1, 2002, for which the PPS amount (as defined in subparagraph (E)) is—

(i) at least 90 percent, but less than 100 percent, of the pre-BBA amount (as defined in subparagraph (F)), the amount of payment under this subsection shall be increased by 80 percent of the amount of such difference;

(ii) at least 80 percent, but less than 90 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount by which (I) the product of 0.71 and the pre-BBA amount, exceeds (II) the product of 0.70 and the PPS amount;

(iii) at least 70 percent, but less than 80 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount by which (I) the product of 0.63 and the pre-BBA amount, exceeds (II) the product of 0.60 and the PPS amount; or

(iv) less than 70 percent of the pre-BBA amount, the amount of payment under this subsection shall be increased by 21 percent of the pre-BBA amount.

(B) 2002

Subject to subparagraph (D), for covered OPD services furnished during 2002, for which the PPS amount is—

(i) at least 90 percent, but less than 100 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by 70 percent of the amount of such difference;

(ii) at least 80 percent, but less than 90 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount by which (I) the product of 0.61 and the pre-BBA amount, exceeds (II) the product of 0.60 and the PPS amount; or

(iii) less than 80 percent of the pre-BBA amount, the amount of payment under this subsection shall be increased by 13 percent of the pre-BBA amount.

(C) 2003

Subject to subparagraph (D), for covered OPD services furnished during 2003, for which the PPS amount is—

(i) at least 90 percent, but less than 100 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by 60 percent of the amount of such difference; or

(ii) less than 90 percent of the pre-BBA amount, the amount of payment under this subsection shall be increased by 6 percent of the pre-BBA amount.

(D) Hold harmless provisions

(i) Temporary treatment for certain rural hospitals

In the case of a hospital located in a rural area and that has not more than 100 beds or a sole community hospital (as defined in section 1395ww(d)(5)(D)(iii) of this title) located in a rural area, for covered OPD services furnished before January 1, 2006, for which the PPS amount is less than the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount of such difference.

(ii) Permanent treatment for cancer hospitals and children's hospitals

In the case of a hospital described in clause (iii) or (v) of section 1395ww(d)(1)(B) of this title, for covered OPD services for which the PPS amount is less than the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount of such difference.

(E) PPS amount defined

In this paragraph, the ''PPS amount'' means, with respect to covered OPD services, the amount payable under this subchapter for such services (determined without regard to this paragraph), including amounts payable as copayment under paragraph (8), coinsurance under section 1395cc(a)(2)(A)(ii) of this title, and the deductible under subsection (b) of this section.

(F) Pre-BBA amount defined

(i) In general

In this paragraph, the ''pre-BBA amount'' means, with respect to covered OPD services furnished by a hospital in a year, an amount equal to the product of the reasonable cost of the hospital for such services for the portions of the hospital's cost reporting period (or periods) occurring in the year and the base OPD payment-to-cost ratio for the hospital (as defined in clause (ii)).

(ii) Base payment-to-cost ratio defined

For purposes of this subparagraph, the ''base payment-to-cost ratio'' for a hospital means the ratio of—

(I) the hospital's reimbursement under this part for covered OPD services furnished during the cost reporting period ending in 1996 (or in the case of a hospital that did not submit a cost report for such period, during the first subsequent cost reporting period ending before 2001 for which the hospital submitted a cost report), including any reimbursement for such services through cost-sharing described in subparagraph (E), to

(II) the reasonable cost of such services for such period.

The Secretary shall determine such ratios as if the amendments made by section 4521 of the Balanced Budget Act of 1997 were in effect in 1996.

(G) Interim payments

The Secretary shall make payments under this paragraph to hospitals on an interim basis, subject to retrospective adjustments based on settled cost reports.

(H) No effect on copayments

Nothing in this paragraph shall be construed to affect the unadjusted copayment amount described in paragraph (3)(B) or the copayment amount under paragraph (8).

(I) Application without regard to budget neutrality

The additional payments made under this paragraph—

(i) shall not be considered an adjustment under paragraph (2)(E); and

(ii) shall not be implemented in a budget neutral manner.

(8) Copayment amount

(A) In general

Except as provided in subparagraphs (B) and (C), the copayment amount under this subsection is the amount by which the amount described in paragraph (4)(B) exceeds the amount of payment determined under paragraph (4)(C).

(B) Election to offer reduced copayment amount

The Secretary shall establish a procedure under which a hospital, before the beginning of a year (beginning with 1999), may elect to reduce the copayment amount otherwise established under subparagraph (A) for some or all covered OPD services to an amount that is not less than 20 percent of the medicare OPD fee schedule amount (computed under paragraph (3)(D)) for the service involved. Under such procedures, such reduced copayment amount may not be further reduced or increased during the year involved and the hospital may disseminate information on the reduction of copayment amount effected under this subparagraph.

(C) Limitation on copayment amount

(i) To inpatient hospital deductible amount

In no case shall the copayment amount for a procedure performed in a year exceed the amount of the inpatient hospital deductible established under section 1395e(b) of this title for that year.

(ii) To specified percentage

The Secretary shall reduce the national unadjusted copayment amount for a covered OPD service (or group of such services) furnished in a year in a manner so that the effective copayment rate (determined on a national unadjusted basis) for that service in the year does not exceed the following percentage:

(I) For procedures performed in 2001, on or after April 1, 2001, 57 percent.

(II) For procedures performed in 2002 or 2003, 55 percent.

(III) For procedures performed in 2004, 50 percent.

(IV) For procedures performed in 2005, 45 percent.

(V) For procedures performed in 2006 and thereafter, 40 percent.

(D) No impact on deductibles

Nothing in this paragraph shall be construed as affecting a hospital's authority to waive the charging of a deductible under subsection (b) of this section.

(E) Computation ignoring outlier and pass-through adjustments

The copayment amount shall be computed under subparagraph (A) as if the adjustments under paragraphs (5) and (6) (and any adjustment made under paragraph (2)(E) in relation to such adjustments) had not occurred.

(9) Periodic review and adjustments components of prospective payment system

(A) Periodic review

The Secretary shall review not less often than annually and revise the groups, the relative payment weights, and the wage and other adjustments described in paragraph (2) to take into account changes in medical practice, changes in technology, the addition of new services, new cost data, and other relevant information and factors. The Secretary shall consult with an expert outside advisory panel composed of an appropriate selection of representatives of providers to review (and advise the Secretary concerning) the clinical integrity of the groups and weights. Such panel may use data collected or developed by entities and organizations (other than the Department of Health and Human Services) in conducting such review.

(B) Budget neutrality adjustment

If the Secretary makes adjustments under subparagraph (A), then the adjustments for a year may not cause the estimated amount of expenditures under this part for the year to increase or decrease from the estimated amount of expenditures under this part that would have been made if the adjustments had not been made. In determining adjustments under the preceding sentence for 2004 and 2005, the Secretary shall not take into account under this subparagraph or paragraph (2)(E) any expenditures that would not have been made but for the application of paragraph (14).

(C) Update factor

If the Secretary determines under methodologies described in paragraph (2)(F) that the volume of services paid for under this subsection increased beyond amounts established through those methodologies, the Secretary may appropriately adjust the update to the conversion factor otherwise applicable in a subsequent year.

(10) Special rule for ambulance services

The Secretary shall pay for hospital outpatient services that are ambulance services on the basis described in section 1395x(v)(1)(U) of this title, or, if applicable, the fee schedule established under section 1395m(*l*) of this title.

(11) Special rules for certain hospitals

In the case of hospitals described in clause (iii) or (v) of section 1395ww(d)(1)(B) of this title—

(A) the system under this subsection shall not apply to covered OPD services furnished before January 1, 2000; and

(B) the Secretary may establish a separate conversion factor for such services in a manner that specifically takes into account the unique costs incurred by such hospitals by virtue of their patient population and service intensity.

(12) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, 1395*oo* of this title, or otherwise of—

(A) the development of the classification system under paragraph (2), including the establishment of groups and relative payment weights for covered OPD services, of wage adjustment factors, other adjustments, and methods described in paragraph (2)(F);

(B) the calculation of base amounts under paragraph (3);

(C) periodic adjustments made under paragraph (6);

(D) the establishment of a separate conversion factor under paragraph (8)(B); and

(E) the determination of the fixed multiple, or a fixed dollar cutoff amount, the marginal cost of care, or applicable percentage under paragraph (5) or the determination of insignificance of cost, the duration of the additional payments, the determination and deletion of initial and new categories (consistent with subparagraphs (B) and (C) of paragraph (6)), the portion of the medicare OPD fee schedule amount associated with particular devices, drugs, or biologicals, and the application of any pro rata reduction under paragraph (6).

(13) Authorization of adjustment for rural hospitals

(A) Study

The Secretary shall conduct a study to determine if, under the system under this subsection, costs incurred by hospitals located in rural areas by ambulatory payment classification groups (APCs) exceed those costs incurred by hospitals located in urban areas.

(B) Authorization of adjustment

Insofar as the Secretary determines under subparagraph (A) that costs incurred by hospitals located in rural areas exceed those costs incurred by hospitals located in urban areas, the Secretary shall provide for an appropriate adjustment under paragraph (2)(E) to reflect those higher costs by January 1, 2006.

(14) Drug APC payment rates

(A) In general

The amount of payment under this subsection for a specified covered outpatient drug (defined in subparagraph (B)) that is furnished as part of a covered OPD service (or group of services)—

(i) in 2004, in the case of—

(I) a sole source drug shall in no case be less than 88 percent, or exceed 95 percent, of the reference average wholesale price for the drug;

(II) an innovator multiple source drug shall in no case exceed 68 percent of the reference average wholesale price for the drug; or

(III) a noninnovator multiple source drug shall in no case exceed 46 percent of the reference average wholesale price for the drug;

(ii) in 2005, in the case of—

(I) a sole source drug shall in no case be less than 83 percent, or exceed 95 percent, of the reference average wholesale price for the drug;

(II) an innovator multiple source drug shall in no case exceed 68 percent of the reference average wholesale price for the drug; or

(III) a noninnovator multiple source drug shall in no case exceed 46 percent of the reference average wholesale price for the drug; or

(iii) in a subsequent year, shall be equal, subject to subparagraph (E)—

(I) to the average acquisition cost for the drug for that year (which, at the option of the Secretary, may vary by hospital group (as defined by the Secretary based on volume of covered OPD services or other relevant characteristics)), as determined by the Secretary taking into account the hospital acquisition cost survey data under subparagraph (D); or

(II) if hospital acquisition cost data are not available, the average price for the drug in the year established under section 1395u(*o*) of this title, section 1395w–3a of this title, or section 1395w–3b of this title, as the case may be, as calculated and adjusted by the Secretary as necessary for purposes of this paragraph.

(B) Specified covered outpatient drug defined

(i) In general

In this paragraph, the term ''specified covered outpatient drug'' means, subject to clause (ii), a covered outpatient drug (as defined in section 1396r–8(k)(2) of this title) for which a separate ambulatory payment classification group (APC) has been established and that is—

(I) a radiopharmaceutical; or

(II) a drug or biological for which payment was made under paragraph (6) (relating to pass-through payments) on or before December 31, 2002.

(ii) Exception

Such term does not include—

(I) a drug or biological for which payment is first made on or after January 1, 2003, under paragraph (6);

(II) a drug or biological for which a temporary HCPCS code has not been assigned; or

(III) during 2004 and 2005, an orphan drug (as designated by the Secretary).

(C) Payment for designated orphan drugs during 2004 and 2005

The amount of payment under this subsection for an orphan drug designated by the Secretary under subparagraph (B)(ii)(III) that is furnished as part of a covered OPD service (or group of services) during 2004 and 2005 shall equal such amount as the Secretary may specify.

(D) Acquisition cost survey for hospital outpatient drugs

(i) Annual GAO surveys in 2004 and 2005

(I) In general

The Comptroller General of the United States shall conduct a survey in each of 2004 and 2005 to determine the hospital acquisition cost for each specified covered outpatient drug. Not later than April 1, 2005, the Comptroller General shall furnish data from such surveys to the Secretary for use in setting the payment rates under subparagraph (A) for 2006.

(II) Recommendations

Upon the completion of such surveys, the Comptroller General shall recommend to the Secretary the frequency and methodology of subsequent surveys to be conducted by the Secretary under clause (ii).

(ii) Subsequent secretarial surveys

The Secretary, taking into account such recommendations, shall conduct periodic subsequent surveys to determine the hospital acquisition cost for each specified covered outpatient drug for use in setting the payment rates under subparagraph (A).

(iii) Survey requirements

The surveys conducted under clauses (i) and (ii) shall have a large sample of hospitals that is sufficient to generate a statistically significant estimate of the average hospital acquisition cost for each specified covered outpatient drug. With respect to the surveys conducted under clause (i), the Comptroller General shall report to Congress on the justification for the size of the sample used in order to assure the validity of such estimates.

(iv) Differentiation in cost

In conducting surveys under clause (i), the Comptroller General shall determine and report to Congress if there is (and the extent of any) variation in hospital acquisition costs for drugs among hospitals based on the volume of covered OPD services performed by such hospitals or other relevant characteristics of such hospitals (as defined by the Comptroller General).

(v) Comment on proposed rates

Not later than 30 days after the date the Secretary promulgated proposed rules setting forth the payment rates under subparagraph (A) for 2006, the Comptroller

General shall evaluate such proposed rates and submit to Congress a report regarding the appropriateness of such rates based on the surveys the Comptroller General has conducted under clause (i).

(E) Adjustment in payment rates for overhead costs

(i) MedPAC report on drug APC design

The Medicare Payment Advisory Commission shall submit to the Secretary, not later than July 1, 2005, a report on adjustment of payment for ambulatory payment classifications for specified covered outpatient drugs to take into account overhead and related expenses, such as pharmacy services and handling costs. Such report shall include—

(I) a description and analysis of the data available with regard to such expenses;

(II) a recommendation as to whether such a payment adjustment should be made; and

(III) if such adjustment should be made, a recommendation regarding the methodology for making such an adjustment.

(ii) Adjustment authorized

The Secretary may adjust the weights for ambulatory payment classifications for specified covered outpatient drugs to take into account the recommendations contained in the report submitted under clause (i).

(F) Classes of drugs

For purposes of this paragraph:

(i) Sole source drugs

The term ''sole source drug'' means—

(I) a biological product (as defined under section 1395x(t)(1) of this title); or

(II) a single source drug (as defined in section 1396r–8(k)(7)(A)(iv) of this title).

(ii) Innovator multiple source drugs

The term ''innovator multiple source drug'' has the meaning given such term in section 1396r–8(k)(7)(A)(ii) of this title.

(iii) Noninnovator multiple source drugs

The term ''noninnovator multiple source drug'' has the meaning given such term in section 1396r–8(k)(7)(A)(iii) of this title.

(G) Reference average wholesale price

The term ''reference average wholesale price'' means, with respect to a specified covered outpatient drug, the average wholesale price for the drug as determined under section 1395u(*o*) of this title as of May 1, 2003.

(H) Inapplicability of expenditures in determining conversion, weighting, and other adjustment factors

Additional expenditures resulting from this paragraph shall not be taken into account in establishing the conversion, weighting, and other adjustment factors for 2004 and 2005 under paragraph (9), but shall be taken into account for subsequent years.

(15) Payment for new drugs and biologicals until HCPCS code assigned

With respect to payment under this part for an outpatient drug or biological that is covered under this part and is furnished as part of covered OPD services for which a HCPCS code has not been assigned, the amount provided for payment for such drug or biological under this part shall be equal to 95 percent of the average wholesale price for the drug or biological.

(16) Miscellaneous provisions

(A) Application of reclassification of certain hospitals

If a hospital is being treated as being located in a rural area under section 1395ww(d)(8)(E) of this title, that hospital shall be treated under this subsection as being located in that rural area.

(B) Threshold for establishment of separate APCS for drugs

The Secretary shall reduce the threshold for the establishment of separate ambulatory payment classification groups (APCs) with respect to drugs or biologicals to $50 per administration for drugs and biologicals furnished in 2005 and 2006.

(C) Payment for devices of brachytherapy at charges adjusted to cost

Notwithstanding the preceding provisions of this subsection, for a device of brachytherapy consisting of a seed or seeds (or radioactive source) furnished on or after January 1, 2004, and before January 1, 2007, the payment basis for the device under this subsection shall be equal to the hospital's charges for each device furnished, adjusted to cost. Charges for such devices shall not be included in determining any outlier payment under this subsection.

(u) Incentive payments for physician scarcity areas

(1) In general

In the case of physicians' services furnished on or after January 1, 2005, and before January 1, 2008—

(A) by a primary care physician in a primary care scarcity county (identified under paragraph (4)); or

(B) by a physician who is not a primary care physician in a specialist care scarcity county (as so identified),

in addition to the amount of payment that would otherwise be made for such services under this part, there also shall be paid an amount equal to 5 percent of the payment amount for the service under this part.

(2) Determination of ratios of physicians to medicare beneficiaries in area

Based upon available data, the Secretary shall establish for each county or equivalent area in the United States, the following:

(A) Number of physicians practicing in the area

The number of physicians who furnish physicians' services in the active practice of

medicine or osteopathy in that county or area, other than physicians whose practice is exclusively for the Federal Government, physicians who are retired, or physicians who only provide administrative services. Of such number, the number of such physicians who are—

(i) primary care physicians; or

(ii) physicians who are not primary care physicians.

(B) Number of medicare beneficiaries residing in the area

The number of individuals who are residing in the county and are entitled to benefits under part A of this subchapter or enrolled under this part, or both (in this subsection referred to as ''individuals'').

(C) Determination of ratios

(i) Primary care ratio

The ratio (in this paragraph referred to as the ''primary care ratio'') of the number of primary care physicians (determined under subparagraph (A)(i)), to the number of individuals determined under subparagraph (B).

(ii) Specialist care ratio

The ratio (in this paragraph referred to as the ''specialist care ratio'') of the number of other physicians (determined under subparagraph (A)(ii)), to the number of individuals determined under subparagraph (B).

(3) Ranking of counties

The Secretary shall rank each such county or area based separately on its primary care ratio and its specialist care ratio.

(4) Identification of counties

(A) In general

The Secretary shall identify—

(i) those counties and areas (in this paragraph referred to as ''primary care scarcity counties'') with the lowest primary care ratios that represent, if each such county or area were weighted by the number of individuals determined under paragraph (2)(B), an aggregate total of 20 percent of the total of the individuals determined under such paragraph; and

(ii) those counties and areas (in this subsection referred to as ''specialist care scarcity counties'') with the lowest specialist care ratios that represent, if each such county or area were weighted by the number of individuals determined under paragraph (2)(B), an aggregate total of 20 percent of the total of the individuals determined under such paragraph.

(B) Periodic revisions

The Secretary shall periodically revise the counties or areas identified in subparagraph (A) (but not less often than once every three years) unless the Secretary determines that there is no new data available on the number of physicians practicing in the county or area or the number of individuals residing in the county or area, as identified in paragraph (2).

(C) Identification of counties where service is furnished

For purposes of paying the additional amount specified in paragraph (1), if the Secretary uses the 5-digit postal ZIP Code where the service is furnished, the dominant county of the postal ZIP Code (as determined by the United States Postal Service, or otherwise) shall be used to determine whether the postal ZIP Code is in a scarcity county identified in subparagraph (A) or revised in subparagraph (B).

(D) Judicial review

There shall be no administrative or judicial review under section 1395ff, 1395*oo* of this title, or otherwise, respecting—

(i) the identification of a county or area;

(ii) the assignment of a specialty of any physician under this paragraph;

(iii) the assignment of a physician to a county under paragraph (2); or

(iv) the assignment of a postal ZIP Code to a county or other area under this subsection.

(5) Rural census tracts

To the extent feasible, the Secretary shall treat a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)), as an equivalent area for purposes of qualifying as a primary care scarcity county or specialist care scarcity county under this subsection.

(6) Physician defined

For purposes of this paragraph, the term ''physician'' means a physician described in section 1395x(r)(1) of this title and the term ''primary care physician'' means a physician who is identified in the available data as a general practitioner, family practice practitioner, general internist, or obstetrician or gynecologist.

(7) Publication of list of counties; posting on website

With respect to a year for which a county or area is identified or revised under paragraph (4), the Secretary shall identify such counties or areas as part of the proposed and final rule to implement the physician fee schedule under section 1395w–4 of this title for the applicable year. The Secretary shall post the list of counties identified or revised under paragraph (4) on the Internet website of the Centers for Medicare & Medicaid Services.

(Aug. 14, 1935, ch. 531, title XVIII, § 1833, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 302; amended Pub. L. 90–248, title I, §§ 129(c)(7), (8), 131(a), (b), 132(b), 135(c), Jan. 2, 1968, 81 Stat. 848–850, 853; Pub. L. 92–603, title II, §§ 204(a), 211(c)(4), 226(c)(2), 233(b), 245(d), 251(a)(2), (3), 279, 299K(a), Oct. 30, 1972, 86 Stat. 1377, 1384, 1404, 1411, 1424, 1445, 1454, 1464; Pub. L. 95–142, § 16(a), Oct. 25, 1977, 91 Stat. 1200; Pub. L. 95–210, § 1(b), Dec. 13, 1977, 91 Stat. 1485; Pub. L. 95–292, § 4(b), (c), June 13, 1978, 92 Stat. 315; Pub. L. 96–473, § 6(j), Oct. 19, 1980, 94 Stat. 2266; Pub. L.

96–499, title IX, §§ 918(a)(4), 930(h), 932(a)(1), 934(b), (d)(1), (3), 935(a), 942, 943(a), Dec. 5, 1980, 94 Stat. 2626, 2631, 2634, 2637, 2639, 2641; Pub. L. 96–611, § 1(b)(1), (2), Dec. 28, 1980, 94 Stat. 3566; Pub. L. 97–35, title XXI, §§ 2106(a), 2133(a), 2134(a), Aug. 13, 1981, 95 Stat. 792, 797; Pub. L. 97–248, title I, §§ 101(c)(2), 112(a), (b), 117(a)(2), 148(d), Sept. 3, 1982, 96 Stat. 336, 340, 355, 394; Pub. L. 98–369, div. B, title III, §§ 2303(a)–(d), 2305(a)–(d), 2308(b)(2)(B), 2321(b), (d)(4)(A), 2323(b)(1), (2), (4), 2354(b)(5), (7), July 18, 1984, 98 Stat. 1064, 1069, 1070, 1074, 1084–1086, 1100; Pub. L. 98–617, § 3(b)(2), (3), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–272, title IX, §§ 9303(a)(1), (b)(1)–(3), 9401(b)–(2)(E), Apr. 7, 1986, 100 Stat. 188, 189, 198, 199; Pub. L. 99–509, title IX, §§ 9320(e)(1), (2), 9337(b), 9339(a)(1), (b)(1), (2), (c)(1), 9343(a), (b), (e)(2), Oct. 21, 1986, 100 Stat. 2014, 2033, 2036, 2039–2041; Pub. L. 100–203, title IV, §§ 4042(b)(2)(B), 4043(a), 4045(c)(2)(A), 4049(a)(1), 4055(a), formerly 4054(a), 4062(d)(3), 4063(b), (e)(1), 4064(a), (b)(1), (2), (c)(1), formerly (c), 4066(a), (b), 4067(a), 4068(a), 4070(a), (b)(4), 4072(b), 4073(b), formerly (b)(2), (3), 4077(b)(2), (3), formerly (b)(3), (4), 4084(a), (c)(2), 4085(b)(1), (i)(1)–(3), (21)(D)(i), (22)(B), (23), Dec. 22, 1987, 101 Stat. 1330–85, 1330–88, 1330–90, 1330–108 to 1330–115, 1330–117, 1330–118, 1330–120, 1330–121, 1330–129 to 1330–133, as amended Pub. L. 100–360, title IV, § 411(f)(2)(D), (8)(B)(i), (12)(A), (14), (g)(2)(E), (3)(A)–(C), (E), (F), (h)(3)(B), (4)(B), (C), (7)(C), (D), (F), (i)(3), (4)(C)(i), (ii), (iv), (vi), July 1, 1988, 102 Stat. 777, 779, 781, 783, 784, 786–789; Pub. L. 100–360, title I, § 104(d)(7), title II, §§ 201(a), 202(b)(1)–(3), 203(c)(1)(A)–(E), 204(d)(1), 205(c), 212(c)(2), title IV, § 411(f)(8)(C), (g)(1)(E), (2)(D), (3)(D), (4)(C), (5), (h)(1)(A), (i)(4)(B), July 1, 1988, 102 Stat. 699, 704, 722, 729, 730, 741, 779, 782–785, 789, as amended Pub. L. 100–485, title VI, § 608(d)(3)(G), Oct. 13, 1988, 102 Stat. 2414; Pub. L. 100–485, title VI, § 608(d)(4), (22)(B), (D), (23)(A), Oct. 13, 1988, 102 Stat. 2414, 2420, 2421; Pub. L. 100–647, title VIII, §§ 8421(a), 8422(a), Nov. 10, 1988, 102 Stat. 3802; Pub. L. 101–234, title II, §§ 201(a), 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6003(e)(2)(A), (g)(3)(D)(vii), 6102(c)(1), (e)(1), (5), (6)(A), (7), (f)(2), 6111(a), (b)(1), 6113(b)(3), (d), 6116(b)(1), 6131(a)(1), (b), 6133(a), 6204(b), Dec. 19, 1989, 103 Stat. 2143, 2153, 2184, 2187–2189, 2213, 2214, 2217, 2219, 2221, 2222, 2241; Pub. L. 101–508, title IV, §§ 4008(m)(2)(C), 4104(b)(1), 4118(f)(2)(D), 4151(c)(1), (2), 4153(a)(2)(B), (C), 4154(a), (b)(1), (c)(1), (e)(1), 4155(b)(2), (3), 4160, 4161(a)(3)(B), 4163(d)(1), 4206(b)(2), 4302, Nov. 5, 1990, 104 Stat. 1388–53, 1388–59, 1388–70, 1388–73, 1388–83 to 1388–87, 1388–91, 1388–93, 1388–100, 1388–116, 1388–125; Pub. L. 101–597, title IV, § 401(c)(2), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 103–66, title XIII, §§ 13516(b), 13532(a), 13544(b)(2), 13551, 13555(a), Aug. 10, 1993, 107 Stat. 584, 586, 590, 592; Pub. L. 103–432, title I, §§ 123(b)(2)(A), (e), 141(a), (c)(1), 147(a), (d), (e)(2), (3), (f)(6)(C), (D), 156(a)(2)(B), 160(d)(1), Oct. 31, 1994, 108 Stat. 4411, 4412, 4424, 4425, 4429, 4430, 4432, 4440, 4443; Pub. L. 105–33, title IV, §§ 4002(j)(1)(A), 4101(b), 4102(b), 4103(b), 4104(c)(1), (2), 4201(c)(1), 4205(a)(1)(A), (2), 4315(b), 4432(b)(5)(C), 4511(b), 4512(b)(1), 4521(a), (b), 4523(a), (d)(1)(A)(i), (B)–(3), 4531(b)(1), 4541(a)(1), (c), (d)(1), 4553(a), (b), 4555, 4556(b), 4603(c)(2)(A), Aug. 5, 1997, 111 Stat. 330, 360–362, 365, 373, 376, 390, 421, 442–445, 449, 450, 454, 456, 460, 462, 463, 470; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, §§ 201(a)–(e)(1), (f)–(h)(1), (i), (j), 202(a), 204(a),(b), 211(a)(3)(B), 221(a)(1), 224(a), title III, § 321(g)(2), (k)(2), title IV, §§ 401(b)(1), 403(e)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–336 to 1501A–342, 1501A–345, 1501A–348, 1501A–351, 1501A–353, 1501A–366, 1501A–369, 1501A–371; Pub. L. 106–554, § 1(a)(6) [title I, §§ 105(c), 111(a)(1), title II, §§ 201(b)(1), 205(b), 223(c), 224(a), title IV, §§ 401(a), (b)(1), 402(a), (b), 403(a), 405(a), 406(a), 421(a), 430(a), title V, § 531(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–472, 2763A–481, 2763A–483, 2763A–489, 2763A–490, 2763A–502, 2763A–503, 2763A–505 to 2763A–508, 2763A–516, 2763A–524, 2763A–547; Pub. L. 108–173, title II, § 237(a), title III, §§ 302(b)(2), 303(i)(3)(A), title IV, §§ 411(a)(1), (b), 413(a), (b)(1), title VI, §§ 614(a), (b), 621(a)(1)–(5), (b)(1), (2), 622, 624(a)(1), 626(a)–(c), 627(a), 628, 629, 642(b), title VII, § 736(b)(1), (2), title IX, § 942(b), Dec. 8, 2003, 117 Stat. 2212, 2229, 2254, 2274, 2275, 2277, 2306–2311, 2317–2322, 2355, 2421.)

REFERENCES IN TEXT

Part C of this subchapter, referred to in subsec. (a)(3)(B), is classified to section 1395w–21 et seq. of this title.

Part A of this subchapter, referred to in subsecs. (a)(8)(B)(i), (d), (*l*)(3)(A), (t)(1)(B)(ii)(I), and (u)(2)(B), is classified to section 1395c et seq. of this title.

Section 626(d) of Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (i)(2)(D)(i), is section 626(d) of Pub. L. 108–173, which is set out as a note under this section.

Section 9320(k) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (*l*)(1)(C), is section 9320(k) of Pub. L. 99–509, as amended, which is set out as a note under section 1395k of this title.

The amendments made by section 9320 of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (*l*)(3)(B), are amendments made by section 9320 of Pub. L. 99–509, which amended sections 1395k, 1395*l*, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title and provisions set out as a note under section 1395ww of this title.

Section 4521 of The Balanced Budget Act of 1997, referred to in subsec. (t)(7)(F), is section 4521 of Pub. L. 105–33, Aug. 5, 1997, 111 Stat. 444, which amended this section and enacted provisions set out as a note under this section.

AMENDMENTS

2003—Subsec. (a)(1)(D)(iii). Pub. L. 108–173, § 302(b)(2)(C), added subcl. (iii).

Subsec. (a)(1)(G). Pub. L. 108–173, § 626(c), added cl. (G).

Subsec. (a)(1)(S). Pub. L. 108–173, § 642(b), inserted ''(including intravenous immune globulin (as defined in section 1395x(zz) of this title))'' after ''with respect to drugs and biologicals''.

Pub. L. 108–173, § 303(i)(3)(A), inserted ''(or, if applicable, under section 1395w–3, 1395w–3a, or 1395w–3b of this title)'' after ''1395u(*o*) of this title''.

Subsec. (a)(1)(V). Pub. L. 108–173, § 302(b)(2)(A), (B), added cl. (V).

Subsec. (a)(2)(E)(i). Pub. L. 108–173, § 614(b), inserted ''and, for services furnished on or after January 1, 2005, diagnostic mammography'' after ''screening mammography''.

Subsec. (a)(3). Pub. L. 108–173, § 237(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''in the case of services described in section 1395k(a)(2)(D) of this title, the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1395x(v)(1)(A) of

this title, less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title, but in no case may the payment for such services (other than for items and services described in section 1395x(s)(10)(A) of this title) exceed 80 percent of such costs;''.

Subsec. (b). Pub. L. 108–173, § 629, substituted '', $100 for 1991 through 2004, $110 for 2005, and for a subsequent year the amount of such deductible for the previous year increased by the annual percentage increase in the monthly actuarial rate under section 1395r(a)(1) of this title ending with such subsequent year (rounded to the nearest $1)'' for ''and $100 for 1991 and subsequent years'' before semicolon in first sentence.

Subsec. (g)(4). Pub. L. 108–173, § 624(a)(1), substituted ''2002, 2004, and 2005'' for ''and 2002''.

Subsec. (h)(2)(A)(ii)(IV). Pub. L. 108–173, § 628, substituted '', 1998 through 2002, and 2004 through 2008'' for ''and 1998 through 2002''.

Subsec. (h)(5)(D). Pub. L. 108–173, § 736(b)(1), substituted ''clinic,'' for ''clinic,,''.

Subsec. (h)(8). Pub. L. 108–173, § 942(b), added par. (8).

Subsec. (i)(2)(A). Pub. L. 108–173, § 626(b)(1)(A), substituted ''For services furnished prior to the implementation of the system described in subparagraph (D), the'' for ''The'' in introductory provisions.

Subsec. (i)(2)(A)(i). Pub. L. 108–173, § 626(b)(1)(B), struck out ''taken not later than January 1, 1995, and every 5 years thereafter,'' before ''of the actual audited costs''.

Subsec. (i)(2)(C). Pub. L. 108–173, § 626(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Notwithstanding the second sentence of subparagraph (A) or the second sentence of subparagraph (B), if the Secretary has not updated amounts established under such subparagraphs with respect to facility services furnished during a fiscal year (beginning with fiscal year 1996), such amounts shall be increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved. In each of the fiscal years 1998 through 2002, the increase under this subparagraph shall be reduced (but not below zero) by 2.0 percentage points.''

Subsec. (i)(2)(D). Pub. L. 108–173, § 626(b)(2), added subpar. (D).

Subsec. (m). Pub. L. 108–173, § 413(b)(1), designated existing provisions as par. (1), inserted ''in a year'' after ''In the case of physicians' services furnished'' and ''as identified by the Secretary prior to the beginning of such year'' after ''as a health professional shortage area'', and added pars. (2) to (4).

Subsec. (*o*)(1)(B). Pub. L. 108–173, § 627(a)(1), substituted ''no more than the amount of payment applicable under paragraph (2)'' for ''no more than the limits established under paragraph (2)''.

Subsec. (*o*)(2). Pub. L. 108–173, § 627(a)(2), amended par. (2) generally, substituting provisions relating to determination of amount of payments pursuant to section 1395m of this title for provisions specifying dollar amounts of payments.

Subsec. (t)(1)(B)(iv). Pub. L. 108–173, § 614(a), inserted before period at end ''and does not include screening mammography (as defined in section 1395x(jj) of this title) and diagnostic mammography''.

Subsec. (t)(2)(H). Pub. L. 108–173, § 621(b)(2), which directed the amendment of par. (2) by adding a new subpar. (H) at the end, was executed by adding subpar. (H) after subpar. (G), to reflect the probable intent of Congress.

Subsec. (t)(3)(C)(ii). Pub. L. 108–173, § 736(b)(2), substituted ''clause (iv)'' for ''clause (iii)''.

Subsec. (t)(5)(E). Pub. L. 108–173, § 621(a)(3), added subpar. (E).

Subsec. (t)(6)(D)(i). Pub. L. 108–173, § 621(a)(4), inserted ''(or if the drug or biological is covered under a competitive acquisition contract under section 1395w–3b of this title, an amount determined by the Secretary equal to the average price for the drug or biological for all competitive acquisition areas and year established under such section as calculated and adjusted by the Secretary for purposes of this paragraph)'' after ''under section 1395u(*o*) of this title''.

Subsec. (t)(6)(F). Pub. L. 108–173, § 622, added subpar. (F).

Subsec. (t)(7)(D)(i). Pub. L. 108–173, § 411(a)(1)(A), (C), substituted ''certain'' for ''small'' in heading and ''2006'' for ''2004'' in text.

Pub. L. 108–173, § 411(a)(1)(B), inserted ''or a sole community hospital (as defined in section 1395ww(d)(5)(D)(iii) of this title) located in a rural area'' after ''100 beds''.

Subsec. (t)(9)(B). Pub. L. 108–173, § 621(a)(5), inserted at end ''In determining adjustments under the preceding sentence for 2004 and 2005, the Secretary shall not take into account under this subparagraph or paragraph (2)(E) any expenditures that would not have been made but for the application of paragraph (14).''

Subsec. (t)(13). Pub. L. 108–173, § 411(b)(2), added par. (13). Former par. (13) redesignated (16).

Subsec. (t)(14), (15). Pub. L. 108–173, § 621(a)(1), added pars. (14) and (15).

Subsec. (t)(16). Pub. L. 108–173, § 411(b)(1), redesignated par. (13) as (16).

Subsec. (t)(16)(B). Pub. L. 108–173, § 621(a)(2), added subpar. (B).

Subsec. (t)(16)(C). Pub. L. 108–173, § 621(b)(1), added subpar. (C).

Subsec. (u). Pub. L. 108–173, § 413(a), added subsec. (u).

2000—Subsec. (a)(1)(D)(i). Pub. L. 106–554, § 1(a)(6) [title II, § 201(b)(1)], struck out ''or which are furnished on an outpatient basis by a critical access hospital'' after ''on an assignment-related basis''.

Subsec. (a)(1)(R). Pub. L. 106–554, § 1(a)(6) [title II, § 205(b)], substituted ''ambulance services, (i)'' for ''ambulance service,'' and inserted before comma at end ''and (ii) with respect to ambulance services described in section 1395m(*l*)(8) of this title, the amounts paid shall be the amounts determined under section 1395m(g) of this title for outpatient critical access hospital services''.

Subsec. (a)(1)(T). Pub. L. 106–554, § 1(a)(6) [title I, § 105(c)], added cl. (T).

Subsec. (a)(1)(U). Pub. L. 106–554, § 1(a)(6) [title II, § 223(c)], added cl. (U).

Subsec. (a)(2)(D)(i). Pub. L. 106–554, § 1(a)(6) [title II, § 201(b)(1)], struck out ''or which are furnished on an outpatient basis by a critical access hospital'' after ''on an assignment-related basis''.

Subsec. (f). Pub. L. 106–554, § 1(a)(6) [title II, § 224(a)], substituted ''hospitals'' for ''rural hospitals'' in introductory provisions.

Subsec. (g)(4). Pub. L. 106–554, § 1(a)(6) [title IV, § 421(a)], substituted ''2000, 2001, and 2002.'' for ''2000 and 2001.''

Subsec. (h)(4)(B)(viii). Pub. L. 106–554, § 1(a)(6) [title V, § 531(a)], inserted before period at end ''(or 100 percent of such median in the case of a clinical diagnostic laboratory test performed on or after January 1, 2001, that the Secretary determines is a new test for which no limitation amount has previously been established under this subparagraph)''.

Subsec. (t)(2)(G). Pub. L. 106–554, § 1(a)(6) [title IV, § 430(a)], added subpar. (G).

Subsec. (t)(3)(C)(iii). Pub. L. 106–554, § 1(a)(6) [title IV, § 401(b)(1)(B)], added cl. (iii). Former cl. (iii) redesignated (iv).

Pub. L. 106–554, § 1(a)(6) [title IV, § 401(a)], substituted ''in each of 2000 and 2002'' for ''in each of 2000, 2001, and 2002''.

Subsec. (t)(3)(C)(iv). Pub. L. 106–554, § 1(a)(6) [title IV, § 401(b)(1)(A)], redesignated cl. (iii) as (iv).

Subsec. (t)(6)(A)(ii). Pub. L. 106–554, § 1(a)(6) [title IV, § 406(a)], inserted ''or temperature monitored cryoablation'' after ''device of brachytherapy''.

Subsec. (t)(6)(A)(iv)(II). Pub. L. 106–554, § 1(a)(6) [title IV, § 402(b)(1)], substituted ''the cost of the drug or biological or the average cost of the category of devices'' for ''the cost of the device, drug, or biological''.

Subsec. (t)(6)(B). Pub. L. 106–554, §1(a)(6) [title IV, §402(a)(2)], added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: ''The payment under this paragraph with respect to a medical device, drug, or biological shall only apply during a period of at least 2 years, but not more than 3 years, that begins—

''(i) on the first date this subsection is implemented in the case of a drug, biological, or device described in clause (i), (ii), or (iii) of subparagraph (A) and in the case of a device, drug, or biological described in subparagraph (A)(iv) and for which payment under this part is made as an outpatient hospital service before such first date; or

''(ii) in the case of a device, drug, or biological described in subparagraph (A)(iv) not described in clause (i), on the first date on which payment is made under this part for the device, drug, or biological as an outpatient hospital service.''

Subsec. (t)(6)(C). Pub. L. 106–554, §1(a)(6) [title IV, §402(a)(2)], added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (t)(6)(D). Pub. L. 106–554, §1(a)(6) [title IV, §402(b)(2)], substituted ''subparagraph (E)(iii)'' for ''subparagraph (D)(iii)'' in introductory provisions.

Pub. L. 106–554, §1(a)(6) [title IV, §402(a)(1)], redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (t)(6)(E). Pub. L. 106–554, §1(a)(6) [title IV, §402(a)(1)], redesignated subpar. (D) as (E).

Subsec. (t)(7)(D)(ii). Pub. L. 106–554, §1(a)(6) [title IV, §405(a)], in heading, inserted ''and children's hospitals'' after ''cancer hospitals'' and in text, substituted ''clause (iii) or (v) of section 1395ww(d)(1)(B) of this title'' for ''section 1395ww(d)(1)(B)(v) of this title''.

Subsec. (t)(7)(F)(ii)(I). Pub. L. 106–554, §1(a)(6) [title IV, §403(a)], inserted ''(or in the case of a hospital that did not submit a cost report for such period, during the first subsequent cost reporting period ending before 2001 for which the hospital submitted a cost report)'' after ''1996''.

Subsec. (t)(8)(C). Pub. L. 106–554, §1(a)(6) [title I, §111(a)(1)], amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''In no case shall the copayment amount for a procedure performed in a year exceed the amount of the inpatient hospital deductible established under section 1395e(b) of this title for that year.''

Subsec. (t)(11). Pub. L. 106–554, §1(a)(6) [title IV, §405(a)(2)], substituted ''clause (iii) or (v) of section 1395ww(d)(1)(B) of this title'' for ''section 1395ww(d)(1)(B)(v) of this title'' in introductory provisions.

Subsec. (t)(12)(E). Pub. L. 106–554, §1(a)(6) [title IV, §402(b)(3)], substituted ''additional payments, the determination and deletion of initial and new categories (consistent with subparagraphs (B) and (C) of paragraph (6))'' for ''additional payments (consistent with paragraph (6)(B))''.

1999—Subsec. (a)(1)(D)(i). Pub. L. 106–113, §1000(a)(6) [title IV, §403(e)(1)], inserted ''or which are furnished on an outpatient basis by a critical access hospital'' after ''on an assignment-related basis''.

Subsec. (a)(1)(O). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(2)], substituted a comma for the semicolon at end.

Subsec. (a)(2)(D)(i). Pub. L. 106–113, §1000(a)(6) [title IV, §403(e)(1)], inserted ''or which are furnished on an outpatient basis by a critical access hospital'' after ''on an assignment-related basis''.

Subsec. (g)(1), (3). Pub. L. 106–113, §1000(a)(6) [title II, §221(a)(1)(A)], substituted ''Subject to paragraph (4), in the case'' for ''In the case''.

Subsec. (g)(4). Pub. L. 106–113, §1000(a)(6) [title II, §221(a)(1)(B)], added par. (4).

Subsec. (h)(5)(A)(iii). Pub. L. 106–113, §1000(a)(6) [title III, §321(g)(2)], substituted '', critical access hospital, or skilled nursing facility,'' for ''or critical access hospital,'' and inserted ''or skilled nursing facility'' before period at end.

Subsec. (h)(7). Pub. L. 106–113, §1000(a)(6) [title II, §224(a)], added par. (7).

Subsec. (*l*)(4)(A)(i)(VII). Pub. L. 106–113, §1000(a)(6) [title II, §211(a)(3)(B)], substituted ''1395w–4(d) of this title'' for ''1395w–4(d)(3) of this title''.

Subsec. (t)(1)(B)(ii). Pub. L. 106–113, §1000(a)(6) [title II, §201(e)(1)(A)], substituted ''clause (iv)'' for ''clause (iii)'' and directed the striking out of ''but'' which was executed by striking out ''but'' after semicolon at end to reflect the probable intent of Congress.

Subsec. (t)(1)(B)(iii), (iv). Pub. L. 106–113, §1000(a)(6) [title II, §201(e)(1)(B)], added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (t)(2). Pub. L. 106–113, §1000(a)(6) [title II, §201(g)], inserted concluding provisions.

Subsec. (t)(2)(B). Pub. L. 106–113, §1000(a)(6) [title II, §201(e)(1)(C)], inserted ''and so that an implantable item is classified to the group that includes the service to which the item relates'' before semicolon at end.

Subsec. (t)(2)(C). Pub. L. 106–113, §1000(a)(6) [title II, §201(f)], inserted ''(or, at the election of the Secretary, mean)'' after ''median''.

Subsec. (t)(2)(E). Pub. L. 106–113, §1000(a)(6) [title II, §201(c)], substituted '', in a budget neutral manner, outlier adjustments under paragraph (5) and transitional pass-through payments under paragraph (6) and other adjustments as determined to be necessary to ensure equitable payments, such as'' for ''other adjustments, in a budget neutral manner, as determined to be necessary to ensure equitable payments, such as outlier adjustments or''.

Subsec. (t)(4). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(1)], inserted '', subject to paragraph (7),'' after ''is determined'' in introductory provisions.

Subsec. (t)(4)(C). Pub. L. 106–113, §1000(a)(6) [title II, §204(b)], inserted '', plus the amount of any reduction in the copayment amount attributable to paragraph (8)(C)'' before period at end.

Subsec. (t)(5). Pub. L. 106–113, §1000(a)(6) [title II, §201(a)(2)], added par. (5). Former par. (5) redesignated (7).

Subsec. (t)(6). Pub. L. 106–113, §1000(a)(6) [title II, §201(b)], added par. (6). Former par. (6) redesignated (8).

Subsec. (t)(7). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(3)], added par. (7). Former par. (7) redesignated (8).

Pub. L. 106–113, §1000(a)(6) [title II, §201(a)(1)], redesignated par. (5) as (7). Former par. (7) redesignated (9).

Subsec. (t)(7)(D). Pub. L. 106–113, §1000(a)(6) [title II, §201(i)], added subpar. (D).

Subsec. (t)(8). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(2)], redesignated par. (7) as (8). Former par. (8) redesignated (9).

Pub. L. 106–113, §1000(a)(6) [title II, §201(a)(1)], redesignated par. (6) as (8). Former par. (8) redesignated (10).

Subsec. (t)(8)(A). Pub. L. 106–113, §1000(a)(6) [title II, §204(a)(1)], substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Pub. L. 106–113, §1000(a)(6) [title II, §201(h)(1)(B)], inserted at end ''The Secretary shall consult with an expert outside advisory panel composed of an appropriate selection of representatives of providers to review (and advise the Secretary concerning) the clinical integrity of the groups and weights. Such panel may use data collected or developed by entities and organizations (other than the Department of Health and Human Services) in conducting such review.''

Pub. L. 106–113, §1000(a)(6) [title II, §201(h)(1)(A)], substituted ''shall review not less often than annually'' for ''may periodically review''.

Subsec. (t)(8)(C) to (E). Pub. L. 106–113, §1000(a)(6) [title II, §204(a)(2), (3)], added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (t)(9). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(2)], redesignated par. (8) as (9). Former par. (9) redesignated (10).

Pub. L. 106–113, §1000(a)(6) [title II, §201(j)], substituted ''section 1395x(v)(1)(U) of this title'' for ''the matter in subsection (a)(1) of this section preceding subparagraph (A)''.

Pub. L. 106–113, §1000(a)(6) [title II, §201(a)(1)], redesignated par. (7) as (9). Former par. (9) redesignated (11).

Subsec. (t)(10). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(2)], redesignated par. (9) as (10). Former par. (10) redesignated (11).

Pub. L. 106–113, §1000(a)(6) [title II, §201(a)(1)], redesignated par. (8) as (10).

Subsec. (t)(11). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(2)], redesignated par. (10) as (11). Former par. (11) redesignated (12).

Pub. L. 106–113, §1000(a)(6) [title II, §201(a)(1)], redesignated par. (9) as (11).

Subsec. (t)(11)(E). Pub. L. 106–113, §1000(a)(6) [title II, §201(d)], added subpar. (E).

Subsec. (t)(12). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(2)], redesignated par. (11) as (12).

Subsec. (t)(13). Pub. L. 106–113, §1000(a)(6) [title IV, §401(b)(1)], added par. (13).

1997—Subsec. (a)(1)(A). Pub. L. 105–33, §4002(j)(1)(A), inserted ''(and either is sponsored by a union or employer, or does not provide, or arrange for the provision of, any inpatient hospital services)'' after ''prepayment basis''.

Subsec. (a)(1)(D). Pub. L. 105–33, §4104(c), inserted ''or section 1395m(d)(1) of this title'' after ''subsection (h)(1) of this section''.

Subsec. (a)(1)(O). Pub. L. 105–33, §4512(b)(1), substituted ''section 1395x(s)(2)(K) of this title'' for ''section 1395x(s)(2)(K)(ii) of this title'' and ''services furnished by physician assistants, nurse practitioners, or clinic nurse specialists'' for ''nurse practitioner or clinical nurse specialist services''.

Pub. L. 105–33, §4511(b)(1), amended cl. (O) generally. Prior to amendment, cl. (O) read as follows: ''with respect to services described in section 1395x(s)(2)(K)(iii) of this title (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), the amounts paid shall be 80 percent of the lesser of the actual charge or the prevailing charge that would be recognized (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395w–4 of this title) if the services had been performed by a physician (subject to the limitation described in subsection (r)(2) of this section),''.

Subsec. (a)(1)(Q). Pub. L. 105–33, §4315(b), added cl. (Q).

Subsec. (a)(1)(R). Pub. L. 105–33, §4531(b)(1), added cl. (R).

Subsec. (a)(1)(S). Pub. L. 105–33, §4556(b), added cl. (S).

Subsec. (a)(2). Pub. L. 105–33, §4541(a)(1)(A), inserted ''(C),'' before ''(D)'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 105–33, §4603(c)(2)(A)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''with respect to home health services (other than a covered osteoporosis drug (as defined in section 1395x(kk) of this title)) and to items and services described in section 1395x(s)(10)(A) of this title, the lesser of—

''(i) the reasonable cost of such services, as determined under section 1395x(v) of this title, or

''(ii) the customary charges with respect to such services,

or, if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision), free of charge or at nominal charges to the public, the amount determined in accordance with section 1395f(b)(2) of this title;''.

Subsec. (a)(2)(B). Pub. L. 105–33, §4432(b)(5)(C), inserted ''or section 1395yy(e)(9) of this title'' after ''1395ww of this title'' in introductory provisions.

Pub. L. 105–33, §4523(d)(3), inserted ''furnished before January 1, 1999,'' after ''(i)'' in cl. (i), inserted ''before January 1, 1999,'' after ''furnished'' in cl. (ii), added cl. (iii), and redesignated former cl. (iii) as (iv).

Subsec. (a)(2)(D). Pub. L. 105–33, §4104(c)(1), inserted ''or section 1395m(d)(1) of this title'' after ''subsection (h)(1) of this section''.

Subsec. (a)(2)(E). Pub. L. 105–33, §4523(d)(2)(B), inserted ''or, for services or procedures performed on or after January 1, 1999, subsection (t) of this section'' before semicolon at end.

Subsec. (a)(2)(G). Pub. L. 105–33, §4603(c)(2)(A)(ii)–(iv), added subpar. (G).

Subsec. (a)(3). Pub. L. 105–33, §4541(a)(1)(B), substituted ''section 1395k(a)(2)(D) of this title'' for ''subparagraphs (D) and (E) of section 1395k(a)(2) of this title''.

Subsec. (a)(4). Pub. L. 105–33, §4523(d)(1)(B), inserted ''or subsection (t) of this section'' before semicolon at end.

Subsec. (a)(6). Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (a)(8), (9). Pub. L. 105–33, §4541(a)(1)(C)–(E), added pars. (8) and (9).

Subsec. (b)(5). Pub. L. 105–33, §4101(b), added cl. (5) at end of first sentence.

Subsec. (b)(6). Pub. L. 105–33, §4102(b), added cl. (6) at end of first sentence.

Subsec. (f). Pub. L. 105–33, §4205(a)(1)(A), substituted ''rural health clinics (other than such clinics in rural hospitals with less than 50 beds)'' for ''independent rural health clinics'' in introductory provisions.

Subsec. (f)(1). Pub. L. 105–33, §4205(a)(2), inserted ''per visit'' after ''$46''.

Subsec. (g). Pub. L. 105–33, §4541(d)(1), substituted ''the amount specified in paragraph (2) for the year'' for ''$900'' in two places, redesignated first sentence as par. (1) and last sentence as par. (3), and added par. (2).

Pub. L. 105–33, §4541(c), (d)(1)(A), substituted, in first sentence, ''physical therapy services of the type described in section 1395x(p) of this title, but not described in subsection (a)(8)(B) of this section, and physical therapy services of such type which are furnished by a physician or as incident to physicians' services'' for ''services described in the second sentence of section 1395x(p) of this title'', and substituted, in last sentence, ''occupational therapy services (of the type that are described in section 1395x(p) of this title (but not described in subsection (a)(8)(B) of this section) through the operation of section 1395x(g) of this title and of such type which are furnished by a physician or as incident to physicians' services)'' for ''outpatient occupational therapy services which are described in the second sentence of section 1395x(p) of this title through the operation of section 1395x(g) of this title''.

Subsec. (h)(1)(A). Pub. L. 105–33, §4104(c)(2), substituted ''Subject to section 1395m(d)(1) of this title, the Secretary'' for ''The Secretary''.

Pub. L. 105–33, §4103(b), inserted ''(including prostate cancer screening tests under section 1395x(*oo*) of this title consisting of prostate-specific antigen blood tests)'' after ''laboratory tests''.

Subsec. (h)(2)(A)(ii)(IV). Pub. L. 105–33, §4553(a), inserted ''and 1998 through 2002'' after ''1995''.

Subsec. (h)(4)(B)(vii). Pub. L. 105–33, §4553(b)(2)(A), inserted ''and before January 1, 1998,'' after ''December 31, 1995,''.

Subsec. (h)(4)(B)(viii). Pub. L. 105–33, §4553(b)(1), (2)(B), (3), added cl. (viii).

Subsec. (h)(5)(A)(iii). Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (i)(1)(A). Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (i)(2)(C). Pub. L. 105–33, §4555, inserted at end ''In each of the fiscal years 1998 through 2002, the increase under this subparagraph shall be reduced (but not below zero) by 2.0 percentage points.''

Subsec. (i)(3)(A). Pub. L. 105–33, §4523(d)(1)(A)(i), inserted ''before January 1, 1999,'' after ''furnished'' and struck out ''in a cost reporting period'' after ''paragraph (1)(A)''.

Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (i)(3)(B)(i)(II). Pub. L. 105–33, §4521(a), struck out ''of 80 percent'' before ''of the standard overhead amount'' and inserted before period at end '', less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title''.

Subsec. (*l*)(5). Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care'' wherever appearing.

Subsec. (n)(1)(A). Pub. L. 105–33, §4523(d)(2)(A), inserted ''and before January 1, 1999,'' after ''October 1, 1988,'' and after ''October 1, 1989,''.

Subsec. (n)(1)(B)(i)(II). Pub. L. 105–33, §4521(b), struck out ''of 80 percent'' before ''of the prevailing charge'' and inserted before period at end '', less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title''.

Subsec. (r)(1). Pub. L. 105–33, §4511(b)(2)(A), substituted ''section 1395x(s)(2)(K)(ii) of this title (relating to nurse practitioner or clinical nurse specialist services)'' for ''section 1395x(s)(2)(K)(iii) of this title (relating to nurse practitioner or clinical nurse specialist services provided in a rural area)''.

Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (r)(2). Pub. L. 105–33, §4511(b)(2)(B), (D), redesignated par. (3) as (2) and struck out former par. (2) which read as follows:

''(2)(A) For purposes of subsection (a)(1)(O) of this section, the prevailing charge for services described in section 1395x(s)(2)(K)(iii) of this title may not exceed the applicable percentage (as defined in subparagraph (B)) of the prevailing charge (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395w–4 of this title) determined for such services performed by physicians who are not specialists.

''(B) In subparagraph (A), the term 'applicable percentage' means—

''(i) 75 percent in the case of services performed in a hospital, and

''(ii) 85 percent in the case of other services.''

Subsec. (r)(3). Pub. L. 105–33, §4511(b)(2)(C), (D), redesignated par. (3) as (2) and substituted ''section 1395x(s)(2)(K)(ii) of this title'' for ''section 1395x(s)(2)(K)(iii) of this title''.

Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (t). Pub. L. 105–33, §4523(a), added subsec. (t).

1994—Subsec. (a)(1)(D)(i). Pub. L. 103–432, §156(a)(2)(B)(i), struck out '', or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)'' after ''assignment-related basis''.

Subsec. (a)(1)(G). Pub. L. 103–432, §156(a)(2)(B)(ii), struck out cl. (G) which read as follows: ''with respect to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion), the amounts paid shall be 100 percent of the reasonable charges for such items and services,''.

Subsec. (a)(2)(A). Pub. L. 103–432, §156(a)(2)(B)(iii), struck out '', to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),'' before ''and to items and services'' in introductory provisions.

Pub. L. 103–432, §147(f)(6)(C)(i), substituted ''health services (other than a covered osteoporosis drug (as defined in section 1395x(kk) of this title))'' for ''health services'' in introductory provisions.

Subsec. (a)(2)(D)(i). Pub. L. 103–432, §156(a)(2)(B)(iv), substituted ''assignment-related basis or'' for ''assignment-related basis,'' and struck out '', or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)'' after ''section 1395cc of this title''.

Subsec. (a)(2)(F). Pub. L. 103–432, §147(f)(6)(C)(ii)–(iv), added subpar. (F).

Subsec. (a)(3). Pub. L. 103–432, §156(a)(2)(B)(v), struck out ''and for items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title, or a third opinion, if the second opinion was in disagreement with the first opinion)'' after ''section 1395x(s)(10)(A) of this title''.

Subsec. (b)(2). Pub. L. 103–432, §147(f)(6)(D), inserted ''(other than a covered osteoporosis drug (as defined in section 1395x(kk) of this title))'' after ''services''.

Subsec. (b)(4), (5). Pub. L. 103–432, §156(a)(2)(B)(vi), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''such deductible shall not apply with respect to items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),''.

Subsec. (h)(5)(D). Pub. L. 103–432, §123(e), substituted ''paragraph (2) of section 1395u(j)'' for ''paragraphs (2) and (3) of section 1395u(j)'' and inserted at end ''Paragraph (4) of such section shall apply in this subparagraph in the same manner as such paragraph applies to such section.''

Subsec. (i)(1). Pub. L. 103–432, §141(a)(3), inserted before period at end of last sentence '', in consultation with appropriate trade and professional organizations''.

Subsec. (i)(2)(A). Pub. L. 103–432, §141(a)(2)(A), struck out ''and may be adjusted by the Secretary, when appropriate,'' after ''annually thereafter'' in last sentence.

Subsec. (i)(2)(A)(i). Pub. L. 103–432, §141(a)(1), inserted before comma at end '', as determined in accordance with a survey (based upon a representative sample of procedures and facilities) taken not later than January 1, 1995, and every 5 years thereafter, of the actual audited costs incurred by such centers in providing such services''.

Subsec. (i)(2)(B). Pub. L. 103–432, §141(a)(2)(A), struck out ''and may be adjusted by the Secretary, when appropriate,'' after ''annually thereafter'' in last sentence.

Subsec. (i)(2)(C). Pub. L. 103–432, §141(a)(2)(B), added subpar. (C).

Subsec. (i)(3)(B)(ii). Pub. L. 103–432, §141(c)(1), in subcls. (I) and (II) substituted ''for portions of cost reporting periods'' for ''for reporting periods'' and ''and ending on or before December 31, 1990'' for ''and on or before December 31, 1990''.

Subsec. (*l*)(5)(B), (C). Pub. L. 103–432, §123(b)(2)(A)(i), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows:

''(B)(i) Payment for the services of a certified registered nurse anesthetist under this part may be made only on an assignment-related basis, and any such assignment agreed to by a certified registered nurse anesthetist shall be binding upon any other person presenting a claim or request for payment for such services.

''(ii) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services of a certified registered nurse anesthetist for which payment may be made under this part only on an assignment-related basis is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (n)(1)(B)(i)(II). Pub. L. 103–432, §147(d)(2), substituted ''April 1, 1989'' for ''January 1, 1989''.

Pub. L. 103–432, §147(d)(1), inserted ''and for services described in subsection (a)(2)(E)(ii) of this section furnished on or after January 1, 1992'' after ''January 1, 1989'' and ''(or, in the case of services furnished on or after January 1, 1992, under section 1395w–4 of this title)'' before period at end.

Subsec. (p). Pub. L. 103–432, §123(b)(2)(A)(ii), struck out subsec. (p) which read as follows: ''In the case of certified nurse-midwife services for which payment may be made under this part only pursuant to section 1395x(s)(2)(L) of this title, in the case of qualified psychologists services for which payment may be made under this part only pursuant to section 1395x(s)(2)(M) of this title, and in the case of clinical social worker services for which payment may be made under this part only pursuant to section 1395x(s)(2)(N) of this title, payment may only be made under this part for such services on an assignment-related basis. Except for deductible and coinsurance amounts applicable under this section, whoever knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in the previous sentence, is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (q)(1). Pub. L. 103–432, §147(a), substituted ''unique physician identification number'' for ''provider number'' and struck out ''and indicate whether or not the referring physician is an interested investor (within the meaning of section 1395nn(h)(5) of this title)'' after ''for the referring physician''.

Subsec. (r). Pub. L. 103–432, §160(d)(1), redesignated subsec. (r), relating to other prepaid organizations, as (s).

Subsec. (r)(1). Pub. L. 103–432, §147(e)(2), substituted ''or ambulatory'' for ''ambulatory'' in two places and ''center'' for ''center,'' before ''with which the nurse''.

Subsec. (r)(2)(A). Pub. L. 103–432, §147(e)(3), substituted ''subsection (a)(1)(O) of this section'' for ''subsection (a)(1)(M) of this section''.

Subsec. (r)(3), (4). Pub. L. 103–432, §123(b)(2)(A)(iii), redesignated par. (4) as (3) and struck out former par. (3) which read as follows:

''(3)(A) Payment under this part for services described in section 1395x(s)(2)(K)(iii) of this title may be made only on an assignment-related basis, and any such assignment agreed to by a nurse practitioner or clinical nurse specialist shall be binding upon any other person presenting a claim or request for payment for such services.

''(B) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in section 1395x(s)(2)(K)(iii) of this title in violation of subparagraph (A) is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (s). Pub. L. 103–432, §160(d)(1), redesignated subsec. (r), relating to other prepaid organizations, as (s).

1993—Subsec. (a)(1). Pub. L. 103–66, §13544(b)(2), redesignated cl. (M) relating to nurse practitioner and clinical nurse specialist services as (O), inserted comma before ''(O)'', transferred and inserted such cl. to appear before semicolon at end, struck out ''and'' before ''(N)'', and inserted '', and'' and cl. (P) following cl. (O) and before semicolon at end.

Subsec. (g). Pub. L. 103–66, §13555(a), substituted ''$900'' for ''$750'' in two places.

Subsec. (h)(2)(A)(ii)(IV). Pub. L. 103–66, §13551(a), added subcl. (IV).

Subsec. (h)(4)(B)(iv) to (vii). Pub. L. 103–66, §13551(b), added cls. (iv) to (vii), and struck out former cl. (iv) which read as follows: ''after December 31, 1990, is equal to 88 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).''

Subsec. (i)(3)(B)(ii). Pub. L. 103–66, §13532(a)(1), in introductory provisions substituted ''paragraph (4)'' for ''the last sentence of this clause'' and struck out concluding provisions which read as follows: ''In the case of a hospital that makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary), receives more than 30 percent of its total revenues from outpatient services and was an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987, the cost proportion and ASC proportion in effect under subclauses (I) and (II) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning on or after October 1, 1988, and before January 1, 1995.''

Subsec. (i)(4). Pub. L. 103–66, §13532(a)(2), added par. (4).

Subsec. (*l*)(4)(B)(i). Pub. L. 103–66, §13516(b)(1), inserted ''and before January 1, 1994,'' after ''1991,''.

Subsec. (*l*)(4)(B)(ii). Pub. L. 103–66, §13516(b)(2), inserted ''and'' at end of subcl. (II), substituted a period for the comma at end of subcl. (III), and struck out subcls. (IV) to (VII) which read as follows:

''(IV) for services furnished in 1994, $11.25,

''(V) for services furnished in 1995, $11.50,

''(VI) for services furnished in 1996, $11.70, and

''(VII) for services furnished in calendar years after 1997, the previous year's conversion factor increased by the update determined under section 1395w–4(d)(3) of this title for physician anesthesia services for that year.''

Subsec. (*l*)(4)(B)(iii). Pub. L. 103–66, §13516(b)(3), added cl. (iii).

1990—Subsec. (a)(1)(H). Pub. L. 101–508, §4118(f)(2)(D), struck out '', as the case may be'' after ''section 1395w–4 of this title''.

Subsec. (a)(1)(J). Pub. L. 101–508, §4104(b)(1), struck out ''or physician pathology services'' after ''1395m(b)(6) of this title)'' and ''or section 1395m(f) of this title, respectively'' after ''1395m(b) of this title''.

Subsec. (a)(1)(K). Pub. L. 101–508, §4155(b)(2)(A), which directed amendment of cl. (K) by striking ''and'' at the end, could not be executed because of prior amendment by Pub. L. 101–508, §4153(a)(2)(B)(i), see below.

Pub. L. 101–508, §4153(a)(2)(B)(i), struck out ''and'' after ''by a physician),''.

Subsec. (a)(1)(L). Pub. L. 101–508, §4153(a)(2)(B)(ii), substituted ''subparagraph,'' for ''subparagraph and'' at end.

Subsec. (a)(1)(M). Pub. L. 101–508, §4155(b)(2)(B), added cl. (M) relating to nurse practitioner and clinical nurse specialist services.

Pub. L. 101–508, §4153(a)(2)(B)(ii), added cl. (M) relating to prosthetic devices and orthotics.

Subsec. (a)(2). Pub. L. 101–508, §4153(a)(2)(C)(i), substituted ''(H), and (I)'' for ''and (H)'' in introductory provisions.

Subsec. (a)(2)(E)(i). Pub. L. 101–508, §4163(d)(1), inserted '', but excluding screening mammography'' after ''imaging services''.

Subsec. (a)(7). Pub. L. 101–508, §4153(a)(2)(C)(ii)–(iv), added par. (7).

Subsec. (b). Pub. L. 101–508, §4302, inserted ''for calendar years before 1991 and $100 for 1991 and subsequent years'' after ''$75''.

Subsec. (b)(5). Pub. L. 101–508, §4161(a)(3)(B), added cl. (5) at end of first sentence.

Subsec. (h)(2)(A)(ii). Pub. L. 101–508, §4154(a)(1), substituted ''clause (i)'' for ''any other provision of this subsection'' in introductory provisions.

Subsec. (h)(2)(A)(ii)(III). Pub. L. 101–508, §4154(a)(2)–(4), added subcl. (III).

Subsec. (h)(4)(B). Pub. L. 101–508, §4154(b)(1)(B), struck out ''and'' at end of cl. (ii), inserted ''and before January 1, 1991,'' after ''1989,'' in cl. (iii), substituted '', and'' for period at end of cl. (iii), and added cl. (iv).

Subsec. (h)(5)(A)(ii)(II). Pub. L. 101–508, §4154(e)(1)(A), substituted ''wholly owned by'' for ''a wholly-owned subsidiary of''.

Subsec. (h)(5)(A)(ii)(III). Pub. L. 101–508, §4154(e)(1)(C), substituted ''receives requests for testing during the

year in which the test is performed'' for ''submits bills or requests for payment in any year''.

Pub. L. 101–508, §4154(e)(1)(B), which directed substitution of ''laboratory (but not including a laboratory described in subclause (II)),'' for ''laboratory'', was executed by making the substitution for ''laboratory'' the second time appearing to reflect the probable intent of Congress.

Subsec. (h)(5)(A)(iii). Pub. L. 101–508, §4008(m)(2)(C), which directed technical correction to Pub. L. 101–239, §6003(g)(3)(C)(vii)(I), was executed by making technical correction to Pub. L. 101–239, §6003(g)(3)(D)(vii)(I), resulting in no change in text. See 1989 Amendment note below.

Subsec. (h)(5)(C). Pub. L. 101–508, §4154(c)(1)(A), substituted ''test, including a test performed in a physician's office but excluding a test performed by a rural health clinic'' for ''test performed by a laboratory other than a rural health clinic''.

Subsec. (h)(5)(D). Pub. L. 101–508, §4154(c)(1)(B), substituted ''test, including a test performed in a physician's office but excluding a test performed by a rural health clinic,'' for ''test performed by a laboratory, other than a rural health clinic''.

Subsec. (i)(3)(B)(ii). Pub. L. 101–508, §4151(c)(1)(B), substituted ''on or after October 1, 1988, and before January 1, 1995'' for ''in fiscal year 1989 or fiscal year 1990'' in last sentence.

Subsec. (i)(3)(B)(ii)(I). Pub. L. 101–508, §4151(c)(1)(A)(i), substituted ''50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 42 percent for portions of cost reporting periods beginning on or after January 1, 1991'' for ''and 50 percent for other cost reporting periods''.

Subsec. (i)(3)(B)(ii)(II). Pub. L. 101–508, §4151(c)(1)(A)(ii), substituted ''50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 58 percent for portions of cost reporting periods beginning on or after January 1, 1991'' for ''and 50 percent for other cost reporting periods''.

Subsec. (*l*)(1). Pub. L. 101–508, §4160(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (*l*)(2). Pub. L. 101–508, §4160(2), struck out at end ''The fee schedule shall be adjusted annually (to become effective on January 1 of each calendar year) by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for that year.''

Subsec. (*l*)(4). Pub. L. 101–508, §4160(3), added par. (4) and struck out former par. (4) which read as follows: ''In establishing the fee schedule under paragraph (1), the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology. The Secretary may establish a nationwide fee schedule or adjust the fee schedule for geographic areas (as the Secretary may determine to be appropriate).''

Subsec. (m). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area''.

Subsec. (n)(1)(B)(ii)(I). Pub. L. 101–508, §4151(c)(2), inserted before period at end '', and such term means 42 percent in the case of outpatient radiology services for portions of cost reporting periods beginning on or after January 1, 1991''.

Subsec. (r). Pub. L. 101–508, §4206(b)(2), added subsec. (r) relating to other prepaid organizations.

Pub. L. 101–508, §4155(b)(3), added subsec. (r) relating to cap on prevailing charge and billing on assignment-related basis.

1989—Subsec. (a). Pub. L. 101–234, §202(a), repealed Pub. L. 100–360, §212(c)(2), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §205(c)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(F). Pub. L. 101–239, §6113(b)(3)(A), added cl. (F).

Subsec. (a)(1)(H). Pub. L. 101–239, §6102(e)(5), inserted ''(or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395w–4 of this title, as the case may be)'' after ''prevailing charge that would be recognized''.

Subsec. (a)(1)(J). Pub. L. 101–239, §6102(f)(2), inserted ''or physician pathology services'' after ''1395m(b)(6) of this title)'' and ''or section 1395m(f) of this title, respectively'' after ''1395m(b) of this title''.

Pub. L. 101–239, §6102(e)(6)(A), inserted ''subject to section 1395w–4 of this title,'' before ''the amounts''.

Subsec. (a)(1)(K). Pub. L. 101–239, §6102(e)(7), inserted '', or, for services furnished on or after January 1, 1992, 65 percent of the fee schedule amount provided under section 1395w–4 of this title for the same service performed by a physician'' after ''for the same service performed by a physician''.

Subsec. (a)(1)(M). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §201(b)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(N). Pub. L. 101–239, §6102(e)(1)(B), added cl. (N).

Subsec. (a)(2). Pub. L. 101–239, §6116(b)(1)(A), substituted ''(G), and (H)'' for ''and (G)'' in introductory provisions.

Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §§202(b)(2), 203(c)(1)(A)–(D), 204(d)(1), and 205(c)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(3). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §205(c)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(6). Pub. L. 101–239, §6116(b)(1)(B)–(D), added par. (6).

Subsec. (b). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §§202(b)(3), 203(c)(1)(E), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (c). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §201(a)(1), (4), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (d). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §201(a)(1)(D), (2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (d)(1). Pub. L. 101–239, §6113(d), substituted ''62½ percent of such expenses.'' for ''whichever of the following amounts is the smaller:

''(A) $1375.00, or

''(B) 62½ percent of such expenses.''

Subsec. (g). Pub. L. 101–239, §6133(a), substituted ''$750'' for ''$500'' in two places.

Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §201(a)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (h)(1)(B), (C). Pub. L. 101–239, §6111(a)(1), substituted ''on or after July 1, 1984'' for ''during the period beginning on July 1, 1984, and ending on December 31, 1989. For such tests furnished on or after January 1, 1990, the fee schedule shall be established on a nationwide basis.''

Subsec. (h)(1)(D). Pub. L. 101–239, §6003(e)(2)(A), substituted ''section 1395ww(d)(5)(D)(iii) of this title'' for ''the last sentence of section 1395ww(d)(5)(C)(ii) of this title''.

Subsec. (h)(4)(B)(ii). Pub. L. 101–239, §6111(a)(3)(A), (B), substituted ''after March 31, 1988, and before Janu-

ary 1, 1990,'' for ''after March 31, 1988, and so long as a fee schedule for the test has not been established on a nationwide basis,''.

Subsec. (h)(4)(B)(iii). Pub. L. 101–239, § 6111(a)(2), (3)(C), (4), added cl. (iii).

Subsec. (h)(5)(A)(ii). Pub. L. 101–239, § 6111(b)(1), substituted ''referring laboratory but only if—'' for ''referring laboratory, and'' in introductory provisions, and added subcls. (I) through (III).

Subsec. (h)(5)(A)(iii). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(I), as amended by Pub. L. 101–508, § 4008(m)(2)(C), substituted ''hospital or rural primary care hospital,'' for ''hospital,''.

Subsec. (i)(1)(A). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(II), inserted '', rural primary care hospital,'' after ''section 1395k(a)(2)(F)(i) of this title)''.

Subsec. (i)(3)(A). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(III), inserted ''or rural primary care hospital services'' after ''facility services'' in introductory provisions.

Subsec. (*l*)(5)(A). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(IV), inserted ''rural primary care hospital,'' after ''hospital,'' in two places.

Subsec. (*l*)(5)(C). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(V), substituted ''hospital or rural primary care hospital'' for ''hospital'' in two places.

Subsec. (m). Pub. L. 101–239, § 6102(c)(1), struck out ''class 1 or class 2'' before ''health manpower shortage area'' and substituted ''10 percent'' for ''5 percent''.

Subsec. (*o*)(1). Pub. L. 101–239, § 6131(a)(1)(C), inserted ''(or inserts)'' after ''shoes'' in two places in last sentence.

Subsec. (*o*)(1)(A). Pub. L. 101–239, § 6131(a)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''no payment may be made under this part for the furnishing of more than one pair of shoes for any individual for any calendar year, and''.

Subsec. (*o*)(1)(B), (2)(A). Pub. L. 101–239, § 6131(a)(1)(B), substituted ''limits'' for ''limit''.

Subsec. (*o*)(2)(A)(i). Pub. L. 101–239, § 6131(a)(1)(D), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''for the furnishing of one pair of custom molded shoes is $300''.

Subsec. (*o*)(2)(A)(ii)(II). Pub. L. 101–239, § 6131(a)(1)(E), inserted ''any pairs of'' after ''$50 for''.

Subsec. (*o*)(2)(D). Pub. L. 101–239, § 6131(b), added subpar. (D).

Subsec. (p). Pub. L. 101–239, § 6113(b)(3)(B), substituted ''1395x(s)(2)(L) of this title,'' for ''1395x(s)(2)(L) of this title and'' and inserted ''and in the case of clinical social worker services for which payment may be made under this part only pursuant to section 1395x(s)(2)(N) of this title,'' after ''section 1395x(s)(2)(M) of this title,''.

Subsec. (q). Pub. L. 101–239, § 6204(b), added subsec. (q).

1988—Subsec. (a). Pub. L. 100–360, § 212(c)(2), inserted ''or, as provided in section 1395t–1(c) of this title, from the Federal Catastrophic Drug Insurance Trust Fund'' after ''Fund'' in introductory provisions.

Pub. L. 100–360, § 205(c)(3), inserted provision at end relating to payment for in-home care for chronically dependent individuals.

Subsec. (a)(1)(D)(i). Pub. L. 100–360, § 411(i)(4)(C)(i), amended Pub. L. 100–203, § 4085(i)(1)(A), see 1987 Amendment note below.

Subsec. (a)(1)(F). Pub. L. 100–360, § 411(f)(12)(A), (14), added and renumbered Pub. L. 100–203, § 4055(a)(1), see 1987 Amendment note below.

Pub. L. 100–360, § 411(i)(4)(C)(iv), made technical amendment to directory language of Pub. L. 100–203, § 4085(i)(21)(D)(i), see 1987 Amendment note below.

Pub. L. 100–360, § 411(i)(4)(C)(ii), repealed Pub. L. 100–203, § 4085(i)(1)(B), see 1987 Amendment note below.

Pub. L. 100–360, § 411(h)(4)(B)(i), (ii), redesignated and amended directory language of Pub. L. 100–203, § 4073(b)(1)(A), see 1987 Amendment note below.

Subsec. (a)(1)(G). Pub. L. 100–360, § 411(h)(7)(C)(ii), repealed Pub. L. 100–203, § 4077(b)(3)(A), see 1987 Amendment note below.

Pub. L. 100–360, § 411(h)(4)(B)(iii), repealed Pub. L. 100–203, § 4073(b)(2)(B), see 1987 Amendment note below.

Subsec. (a)(1)(H). Pub. L. 100–360, § 411(h)(7)(C)(ii), repealed Pub. L. 100–203, § 4077(b)(3)(B), see 1987 Amendment note below.

Pub. L. 100–360, § 411(g)(1)(E), which directed the amendment of cl. (H) by striking ''and'' before ''(I)'' could not be executed because of the prior amendment by section 4049(a)(1) of Pub. L. 100–203, see 1987 Amendment note below.

Pub. L. 100–360, § 411(i)(3), added Pub. L. 100–203, § 4084(c)(2), see 1987 Amendment note below.

Subsec. (a)(1)(J). Pub. L. 100–360, § 411(f)(8)(B)(i), made technical amendment to directory language of Pub. L. 100–203, § 4049(a)(1), see 1987 Amendment note below.

Pub. L. 100–360, § 411(f)(8)(C), substituted ''section 1395m(b)(6) of this title'' for ''section 1395m(b)(5) of this title''.

Subsec. (a)(1)(K). Pub. L. 100–360, § 411(h)(7)(C)(iii), (F), redesignated and amended Pub. L. 100–203, § 4077(b)(2)(A), see 1987 Amendment note below.

Pub. L. 100–360, § 411(h)(4)(B)(i), (iv), (v), redesignated and amended Pub. L. 100–203, § 4073(b)(1)(B), see 1987 Amendment note below.

Subsec. (a)(1)(L). Pub. L. 100–360, § 411(h)(7)(C)(i), (iv), (v), (F), redesignated and amended Pub. L. 100–203, § 4077(b)(2)(B), see 1987 Amendment note below.

Subsec. (a)(1)(M). Pub. L. 100–360, § 202(b)(1), added cl. (M) relating to expenses incurred for covered outpatient drugs.

Subsec. (a)(2). Pub. L. 100–360, § 205(c)(1), inserted ''(A)(ii),'' after ''subparagraphs'' in introductory provisions.

Pub. L. 100–360, § 202(b)(2), inserted ''(other than covered outpatient drugs)'' after ''in the case of services'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 100–360, § 203(c)(1)(A), substituted ''(E), or (F)'' for ''or (E)'' in introductory provisions.

Subsec. (a)(2)(D)(i). Pub. L. 100–360, § 411(i)(4)(C)(i), amended Pub. L. 100–203, § 4085(i)(1)(A), see 1987 Amendment note below.

Subsec. (a)(2)(E)(i). Pub. L. 100–360, § 204(d)(1), inserted '', but excluding screening mammography'' after ''imaging services''.

Subsec. (a)(2)(F). Pub. L. 100–360, § 203(c)(1)(B)–(D), added cl. (F) relating to home intravenous drug therapy services.

Subsec. (a)(3). Pub. L. 100–360, § 205(c)(2), substituted ''subparagraphs (A)(ii), (D),'' for ''subparagraphs (D)''.

Subsec. (b). Pub. L. 100–360, § 104(d)(7), as added by Pub. L. 100–485, § 608(d)(3)(G), inserted at end ''The deductible under the previous sentence for blood or blood cells furnished an individual in a year shall be reduced to the extent that a deductible has been imposed under section 1395e(a)(2) of this title to blood or blood cells furnished the individual in the year.''

Subsec. (b)(1). Pub. L. 100–360, § 202(b)(3)(A), inserted ''or for covered outpatient drugs'' after ''section 1395x(s)(10)(A) of this title''.

Subsec. (b)(2). Pub. L. 100–360, § 203(c)(1)(E), substituted ''services and home intravenous drug therapy services'' for ''services''.

Pub. L. 100–360, § 202(b)(3)(B), inserted ''or with respect to covered outpatient drugs'' after ''home health services''.

Subsec. (b)(3) to (5). Pub. L. 100–360, § 411(f)(12)(A), (14), added and renumbered Pub. L. 100–203, § 4055(a)(2), see 1987 Amendment note below.

Subsec. (c). Pub. L. 100–360, § 201(a)(4), added subsec. (c) relating to limitation on out-of-pocket catastrophic cost-sharing, adjustment, buy-out plans, and conditions for payments with respect to plans other than buy-out plans. Former subsec. (c) redesignated (d)(1).

Pub. L. 100–360, § 411(h)(1)(A), substituted ''monitoring or changing drug prescriptions'' for ''prescribing or monitoring prescription drugs'' in last sentence.

Pub. L. 100–360, § 201(a)(1)(A), as amended by Pub. L. 100–485, § 608(d)(4), substituted ''subsections (a) through (c)'' for ''subsections (a) and (b)'' in introductory provisions.

Pub. L. 100–360, § 201(a)(1)(B), (C), redesignated former pars. (1) and (2) as subpars. (A) and (B) and substituted ''this paragraph'' for ''this subsection'' in last sentence.

Subsec. (d)(1). Pub. L. 100–360, §201(a)(1)(D), redesignated former subsec. (c) as subsec. (d)(1). Former subsec. (d) redesignated subsec. (d)(2).

Subsec. (d)(2). Pub. L. 100–360, §201(a)(2), redesignated former subsec. (d) as subsec. (d)(2).

Subsec. (f). Pub. L. 100–360, §411(g)(5), substituted ''MEI (as defined in section 1395u(i)(3) of this title) applicable to primary care services (as defined in section 1395u(i)(4) of this title)'' for ''medicare economic index (referred to in the fourth sentence of section 1395u(b)(3) of this title) applicable to physicians' services''.

Subsec. (g). Pub. L. 100–360, §201(a)(3), substituted ''subsections (a) through (c) of this section'' for ''subsections (a) and (b) of this section'' in two places.

Subsec. (h)(1)(D). Pub. L. 100–360, §411(g)(3)(E), (F), amended and redesignated Pub. L. 100–203, §4064(c)(1), see 1987 Amendment note below.

Subsec. (h)(2)(A)(i). Pub. L. 100–360, §411(g)(3)(A), added Pub. L. 100–203, §4064(a)(1), see 1987 Amendment note below.

Subsec. (h)(2)(A)(ii). Pub. L. 100–360, §411(g)(3)(A), added Pub. L. 100–203, §4064(a)(3), see 1987 Amendment note below.

Subsec. (h)(2)(A)(iii). Pub. L. 100–360, §411(g)(3)(B), (C), amended Pub. L. 100–203, §4064(b)(1), see 1987 Amendment note below.

Subsec. (h)(2)(B). Pub. L. 100–360, §411(g)(3)(A), added Pub. L. 100–203, §4064(a)(2), see 1987 Amendment note below.

Subsec. (h)(3). Pub. L. 100–647, §8421(a), inserted at end ''In establishing a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect a sample, the Secretary shall provide a method for computing the fee based on the number of miles traveled and the personnel costs associated with the collection of each individual sample, but the Secretary shall only be required to apply such method in the case of tests furnished during the period beginning on April 1, 1989, and ending on December 31, 1990, by a laboratory that establishes to the satisfaction of the Secretary (based on data for the 12-month period ending June 30, 1988) that (i) the laboratory is dependent upon payments under this subchapter for at least 80 percent of its collected revenues for clinical diagnostic laboratory tests, (ii) at least 85 percent of its gross revenues for such tests are attributable to tests performed with respect to individuals who are homebound or who are residents in a nursing facility, and (iii) the laboratory provided such tests for residents in nursing facilities representing at least 20 percent of the number of such facilities in the State in which the laboratory is located.''

Subsec. (h)(4)(B)(ii). Pub. L. 100–360, §411(g)(3)(D), inserted ''after'' before ''March 31, 1988''.

Subsec. (h)(5)(A). Pub. L. 100–360, §411(i)(4)(C)(vi), added Pub. L. 100–203, §4085(i)(22)(B), see 1987 Amendment note below.

Subsec. (h)(5)(C). Pub. L. 100–360, §411(i)(4)(C)(vi), added Pub. L. 100–203, §4085(i)(22)(B), see 1987 Amendment note below.

Subsec. (h)(5)(D). Pub. L. 100–360, §411(i)(4)(B), substituted ''A person may not bill for a clinical diagnostic laboratory test performed by a laboratory, other than a rural health clinic, other than on an assignment-related basis. If a person knowingly and willfully and on a repeated basis bills for a clinical diagnostic laboratory test in violation of the previous sentence'' for ''If a person knowingly and willfully and on a repeated basis bills an individual enrolled under this part for charges for a clinical diagnostic laboratory test for which payment may only be made on an assignment-related basis under subparagraph (C)'' and ''paragraphs (2) and (3) of section 1395u(j) of this title in the same manner such paragraphs apply with respect to a physician'' for ''section 1395u(j)(2) of this title''.

Subsec. (i)(2)(A)(iii). Pub. L. 100–360, §411(g)(2)(D), substituted ''insertion'' for ''implantation'' and inserted ''or subsequent to'' after ''during''.

Subsec. (i)(4). Pub. L. 100–360, §411(f)(12)(A), (14), added and renumbered Pub. L. 100–203, §4055(a)(3), see 1987 Amendment note below.

Subsec. (i)(6). Pub. L. 100–485, §608(d)(22)(B), substituted ''Any person, including'' for ''Any person, other than''.

Pub. L. 100–360, §411(g)(2)(E), added Pub. L. 100–203, §4063(e)(1), see 1987 Amendment note below.

Subsec. (*l*)(2). Pub. L. 100–360, §411(f)(2)(D), added Pub. L. 100–203, §4042(b)(2)(B), see 1987 Amendment note below.

Subsec. (*l*)(3)(B). Pub. L. 100–647, §8422(a), inserted ''plus applicable coinsurance'' after ''would have been paid''.

Subsec. (*l*)(5)(B)(ii). Pub. L. 100–360, §411(i)(4)(C)(vi), added Pub. L. 100–203, §4085(i)(23), see 1987 Amendment note below.

Subsec. (n)(1)(A). Pub. L. 100–360, §411(g)(4)(C)(i), as amended by Pub. L. 100–485, §608(d)(22)(D), substituted ''for services described in subsection (a)(2)(E)(i) of this section furnished under this part on or after October 1, 1988, and for services described in subsection (a)(2)(E)(ii) of this section furnished under this part on or after October 1, 1989,'' for ''beginning on or after October 1, 1988 under this part for services described in subsection (a)(2)(E) of this section'' in introductory provisions.

Subsec. (n)(1)(B)(i)(II). Pub. L. 100–360, §411(g)(4)(C)(ii), inserted ''or (for services described in subsection (a)(2)(E)(i) of this section furnished on or after January 1, 1989) the fee schedule amount established'' after ''the prevailing charge''.

Subsec. (n)(1)(B)(ii). Pub. L. 100–360, §411(g)(4)(C)(iii), amended subcls. (I) and (II) generally. Prior to amendment, subcls. (I) and (II) read as follows:

''(I) The term 'cost proportion' means 65 percent for all or any part of cost reporting periods which occur in fiscal year 1989 and 50 percent for other cost reporting periods.

''(II) The term 'charge proportion' means 35 percent for all or any parts of cost reporting periods which occur in fiscal year 1989 and 50 percent for other cost reporting periods.''

Subsec. (*o*). Pub. L. 100–360, §411(h)(3)(B), as amended by Pub. L. 100–485, §608(d)(23)(A), amended Pub. L. 100–203, §4072(b), see 1987 Amendment note below.

Subsec. (p). Pub. L. 100–360, §411(h)(7)(D), (F), redesignated and amended Pub. L. 100–203, §4077(b)(3), see 1987 Amendment note below.

Pub. L. 100–360, §411(h)(4)(C), redesignated and amended Pub. L. 100–203, §4073(b)(2), see 1987 Amendment note below.

1987—Subsec. (a)(1)(D)(i). Pub. L. 100–203, §4085(i)(1)(A), as amended by Pub. L. 100–360, §411(i)(4)(C)(i), substituted ''on an assignment-related basis,'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title,''.

Subsec. (a)(1)(F). Pub. L. 100–203, §4055(a)(1), formerly §4054(a)(1), as added and renumbered by Pub. L. 100–360, §411(f)(12)(A), (14), struck out cl. (F) which read as follows: ''with respect to expenses incurred for services described in subsection (i)(4) of this section under the conditions specified in such subsection, the amounts paid shall be the reasonable charge for such services,''.

Pub. L. 100–203, §4085(i)(21)(D)(i), as amended by Pub. L. 100–360, §411(i)(4)(C)(iv), amended Pub. L. 99–509, §9343(e)(2)(A), see 1986 Amendment note below.

Pub. L. 100–203, §4085(i)(1)(B), which directed striking out ''and'' at end, was repealed by Pub. L. 100–360, §411(i)(4)(C)(ii).

Pub. L. 100–203, §4073(b)(1)(A), formerly §4073(b)(2)(A), as redesignated and amended by Pub. L. 100–360, §411(h)(4)(B)(i), (ii), struck out ''and'' at end.

Subsec. (a)(1)(G). Pub. L. 100–203, §4077(b)(3)(A), which directed striking out ''and'' at end, was repealed by Pub. L. 100–360, §411(h)(7)(C)(ii).

Pub. L. 100–203, §4073(b)(2)(B), which directed substituting ''services,'' for ''services; and'', was repealed by Pub. L. 100–360, §411(h)(4)(B)(iii).

Pub. L. 100–203, §4062(d)(3)(A)(i), substituted ''services,'' for ''services; and''.

Subsec. (a)(1)(H). Pub. L. 100–203, §4077(b)(3)(B), which directed substituting ''services,'' for ''services; and'', was repealed by Pub. L. 100–360, §411(h)(7)(C)(ii).

Pub. L. 100–203, §4084(c)(2), as added by Pub. L. 100–360, §411(i)(3), substituted ''least of the actual charge, the prevailing charge that would be recognized if the services had been performed by an anesthesiologist,'' for ''lesser of the actual charge''.

Pub. L. 100–203, §4062(d)(3)(A)(ii), inserted ''and'' before the cl. (I) added by section 4062(d)(3)(A)(ii) of Pub. L. 100–203, see below.

Pub. L. 100–203, §4049(a)(1), struck out ''and'' before the cl. (I) added by section 4062(d)(3)(A)(ii) of Pub. L. 100–203, see below.

Subsec. (a)(1)(I). Pub. L. 100–203, §4062(d)(3)(A)(ii), added cl. (I).

Subsec. (a)(1)(J). Pub. L. 100–203, §4049(a)(1), as amended by Pub. L. 100–360, §411(f)(8)(B)(i), added cl. (J).

Subsec. (a)(1)(K). Pub. L. 100–203, §4077(b)(2)(A), formerly §4077(b)(3)(C), as redesignated and amended by Pub. L. 100–360, §411(h)(7)(C)(iii), (F), inserted ''and'' after ''performed by a physician),''.

Pub. L. 100–203, §4073(b)(1)(B), formerly §4073(b)(2)(C), as redesignated and amended by Pub. L. 100–360, §411(h)(4)(B)(i), (iv), (v), added cl. (K), formerly (I), relating to amounts paid with respect to certified nurse-midwife services under section 1395x(s)(2)(L) of this title.

Subsec. (a)(1)(L). Pub. L. 100–203, §4077(b)(2)(B), formerly §4077(b)(3)(D), as redesignated and amended by Pub. L. 100–360, §411(h)(7)(C)(i), (iv), (v), (F), added cl. (L), formerly (J), relating to amounts paid with respect to qualified psychologist services under section 1395x(s)(2)(M) of this title.

Subsec. (a)(2). Pub. L. 100–203, §4062(d)(3)(B)(i), inserted reference to subpar. (G).

Subsec. (a)(2)(A). Pub. L. 100–203, §4062(d)(3)(B)(ii), struck out ''(other than durable medical equipment)'' after ''home health services''.

Subsec. (a)(2)(B). Pub. L. 100–203, §4066(b), inserted reference to subpar. (E).

Subsec. (a)(2)(D)(i). Pub. L. 100–203, §4085(i)(1)(A), as amended by Pub. L. 100–360, §411(i)(4)(C)(i), substituted ''on an assignment-related basis,'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title,''.

Subsec. (a)(2)(E). Pub. L. 100–203, §4066(a)(1), added subpar. (E).

Subsec. (a)(5). Pub. L. 100–203, §4062(d)(3)(C)–(E), added par. (5).

Subsec. (b)(3). Pub. L. 100–203, §4055(a)(2), formerly §4054(a)(2), as added and renumbered by Pub. L. 100–360, §411(f)(12)(A), (14), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''such total amount shall not include expenses incurred for services the amount of payment for which is determined under subsection (a)(1)(F) of this section,''.

Pub. L. 100–203, §4085(i)(21)(D)(i), amended Pub. L. 99–509, §9343(e)(2)(A), see 1986 Amendment note below.

Subsec. (b)(4). Pub. L. 100–203, §4055(a)(2), formerly §4054(a)(2), as added and renumbered by Pub. L. 100–360, §411(f)(12)(A), (14), redesignated cl. (5) as (4). Former cl. (4) redesignated (3).

Subsec. (b)(4)(A). Pub. L. 100–203, §4085(i)(1)(C), substituted ''on an assignment-related basis'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title''.

Subsec. (b)(5). Pub. L. 100–203, §4055(a)(2), formerly §4054(a)(2), as added and renumbered by Pub. L. 100–360, §411(f)(12)(A), (14), redesignated cl. (5) as (4).

Subsec. (c). Pub. L. 100–203, §4070(b)(4), inserted ''or partial hospitalization services that are not directly provided by a physician'' before period at end of last sentence.

Pub. L. 100–203, §4070(a)(2), inserted sentence at end defining ''treatment''.

Subsec. (c)(1). Pub. L. 100–203, §4070(a)(1), substituted ''$1375.00'' for ''$312.50''.

Subsec. (f). Pub. L. 100–203, §4067(a), added subsec. (f).

Subsec. (h)(1)(C). Pub. L. 100–203, §4085(i)(2), inserted before period at end '', and ending on December 31, 1989. For such tests furnished on or after January 1, 1990, the fee schedule shall be established on a nationwide basis''.

Subsec. (h)(1)(D). Pub. L. 100–203, §4064(c)(1), formerly §4064(c), as amended and redesignated by Pub. L. 100–360, §411(g)(3)(E), (F), inserted '', in a sole community hospital (as defined in the last sentence of section 1395ww(d)(5)(C)(ii) of this title),''.

Subsec. (h)(2). Pub. L. 100–203, §4064(c), which had directed that ''laboratory in a sole community hospital'' be substituted for ''hospital laboratory'' in subsec. (h)(2), was redesignated §4064(c)(1) by section 411(g)(3)(F) of Pub. L. 100–360 and amended by section 411(g)(3)(E) of Pub. L. 100–360 to provide for amendment of subsec. (h)(1)(D) instead of subsec. (h)(2).

Subsec. (h)(2)(A)(i). Pub. L. 100–203, §4064(a)(1), as added by Pub. L. 100–360, §411(g)(3)(A), inserted ''(A)(i)'' after ''(2)''.

Subsec. (h)(2)(A)(ii). Pub. L. 100–203, §4064(a)(3), as added by Pub. L. 100–360, §411(g)(3)(A), added cl. (ii).

Subsec. (h)(2)(A)(iii). Pub. L. 100–203, §4064(b)(1), as amended by Pub. L. 100–360, §411(g)(3)(B), (C), set out as cl. (iii) provisions formerly set out in an otherwise undesignated sentence in par. (2) relating to the rebasing of fee schedules for certain automated and similar tests for 1988 and for the continuation of such reduced fee schedules as the base for 1989 and subsequent years.

Subsec. (h)(2)(B). Pub. L. 100–203, §4064(a)(2), as added by Pub. L. 100–360, §411(g)(3)(A), inserted subpar. (B) designation preceding second sentence and redesignated former subpars. (A) and (B) of par. (2) as cls. (i) and (ii).

Subsec. (h)(4)(B)(i). Pub. L. 100–203, §4064(b)(2)(A), substituted ''April'' for ''January''.

Subsec. (h)(4)(B)(ii). Pub. L. 100–203, §4064(b)(2)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''after December 31, 1987, and so long as a fee schedule for the test has not been established on a nationwide basis, is equal to 110 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).''

Subsec. (h)(5)(A). Pub. L. 100–203, §4085(i)(22)(B), as added by Pub. L. 100–360, §411(i)(4)(C)(vi), substituted ''on an assignment-related basis'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title,'' in introductory provisions.

Subsec. (h)(5)(A)(iii). Pub. L. 100–203, §4085(i)(3), added cl. (iii).

Subsec. (h)(5)(C). Pub. L. 100–203, §4085(i)(22)(B), as added by Pub. L. 100–360, §411(i)(4)(C)(vi), substituted ''on an assignment-related basis'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, in accordance with section 1395u(b)(6)(B) of this title, under the procedure described in section 1395gg(f)(1) of this title,''.

Subsec. (h)(5)(D). Pub. L. 100–203, §4085(b)(1), added subpar. (D).

Subsec. (i)(2)(A)(iii). Pub. L. 100–203, §4063(b), added cl. (iii).

Subsec. (i)(3)(B)(ii). Pub. L. 100–203, §4068(a)(1), substituted ''Subject to the last sentence of this clause, in'' for ''In''.

Pub. L. 100–203, §4068(a)(2), inserted sentence at end relating to cost and ASC proportions in the case of an eye or eye and ear specialty hospital.

Subsec. (i)(4). Pub. L. 100–203, §4055(a)(3), formerly §4054(a)(3), as added and renumbered by Pub. L. 100–360, §411(f)(12)(A), (14), struck out par. (4) which read as follows: ''In the case of services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1395x(s) of this title and furnished in connection with surgical procedures (specified pursuant to paragraph (1) of this subsection) in a physician's office, an ambulatory surgical center described in such paragraph, or a hospital outpatient department, payment for such services shall be determined in accordance with subsection (a)(1)(F) of this section if the physician accepts an assignment described in section 1395u(b)(3)(B)(ii) of this title with respect to payment for such services.''

Subsec. (i)(6). Pub. L. 100–203, § 4063(e)(1), as added by Pub. L. 100–360, § 411(g)(2)(E), added par. (6).

Subsec. (*l*)(2). Pub. L. 100–203, § 4084(a)(1), substituted ''1985 and such other data as the Secretary determines necessary'' for ''1985''.

Pub. L. 100–203, § 4042(b)(2)(B), as added by Pub. L. 100–360, § 411(f)(2)(D), substituted ''1395u(i)(3)'' for ''1395u(b)(4)(E)(ii)''.

Subsec. (*l*)(5)(A). Pub. L. 100–203, § 4084(a)(2), substituted ''group practice, or ambulatory surgical center'' for ''or group practice'' in two places.

Subsec. (*l*)(5)(B)(ii). Pub. L. 100–203, § 4085(i)(23), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''money penalty'' for ''monetary penalty'' and amended second sentence generally. Prior to amendment, second sentence read as follows: ''Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a–7a of this title with respect to actions described in subsection (a) of that section.''

Subsec. (*l*)(6). Pub. L. 100–203, § 4045(c)(2)(A)(i), (ii), struck out subpar. (A) designation and substituted ''after the effective date of the reduction, the physician's actual charge is subject to a limit under section 1395u(j)(1)(D) of this title.'' for ''(subject to subparagraph (D)), the physician may not charge the individual more than the limiting charge (as defined in subparagraph (B)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) ½ of the amount by which the physician's actual charges for the service for the previous 12-month period exceeds the limiting charge.''

Pub. L. 100–203, § 4045(c)(2)(A)(iii), struck out subpars. (B) to (D) which read as follows:

''(B) In subparagraph (A), the term 'limiting charge' means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction referred to in subparagraph (A).

''(C) If a physician knowingly and willfully imposes charges in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

''(D) This paragraph shall not apply to services furnished after the earlier of (i) December 31, 1990, or (ii) one-year after the date the Secretary reports to Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.''

Subsec. (m). Pub. L. 100–203, § 4043(a), added subsec. (m).

Subsec. (n). Pub. L. 100–203, § 4066(a)(2), added subsec. (n).

Subsec. (*o*). Pub. L. 100–203, § 4072(b), as amended by Pub. L. 100–360, § 411(h)(3)(B), as amended by Pub. L. 100–485, § 608(d)(23)(A), added subsec. (*o*) [originally added as subsec. (f)].

Subsec. (p). Pub. L. 100–203, § 4077(b)(3), formerly § 4077(b)(4), as redesignated and amended by Pub. L. 100–360, § 411(h)(7)(D), (F), inserted ''and in the case of qualified psychologists services for which payment may be made under this part only pursuant to section 1395x(s)(2)(M) of this title''.

Pub. L. 100–203, § 4073(b)(2), formerly § 4073(b)(3), as redesignated and amended by Pub. L. 100–360, § 411(h)(4)(C), added subsec. (p) [originally added as subsec. (m)] and inserted provision relating to monetary penalty for whoever knowingly and willfully presents, or causes to be presented, to an enrolled individual a bill or request for payment for described services.

1986—Subsec. (a)(1)(D). Pub. L. 99–272, § 9401(b)(2)(B), substituted '', under the procedure described in section 1395gg(f)(1) of this title, or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)'' for ''or under the procedure described in section 1395gg(f)(1) of this title''.

Subsec. (a)(1)(D)(i). Pub. L. 99–272, § 9303(b)(1), inserted '', the limitation amount for that test determined under subsection (h)(4)(B) of this section,'' after ''lesser of the amount determined under such fee schedule''.

Subsec. (a)(1)(F). Pub. L. 99–509, § 9343(e)(2)(A), as amended by Pub. L. 100–203, § 4085(i)(21)(D)(i), substituted ''(i)(4)'' for ''(i)(3)''.

Subsec. (a)(1)(G). Pub. L. 99–272, § 9401(b)(2)(A), added cl. (G).

Subsec. (a)(1)(H). Pub. L. 99–509, § 9320(e)(1), added cl. (H).

Subsec. (a)(2)(A). Pub. L. 99–272, § 9401(b)(2)(C), inserted '', to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),'' after ''(other than durable medical equipment)''.

Subsec. (a)(2)(D). Pub. L. 99–272, § 9401(b)(2)(D), substituted ''to a provider having an agreement under section 1395cc of this title, or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)'' for ''or to a provider having an agreement under section 1395cc of this title''.

Subsec. (a)(2)(D)(i). Pub. L. 99–272, § 9303(b)(1), inserted '', the limitation amount for that test determined under subsection (h)(4)(B) of this section,'' after ''lesser of the amount determined under such fee schedule''.

Subsec. (a)(3). Pub. L. 99–272, § 9401(b)(2)(E), inserted ''and for items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title, or a third opinion, if the second opinion was in disagreement with the first opinion'' after ''1395x(s)(10)(A) of this title''.

Subsec. (a)(4). Pub. L. 99–509, § 9343(a)(1)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''in the case of facility services described in subparagraph (F) of section 1395k(a)(2) of this title, the applicable amount described in paragraph (2) of subsection (i) of this section.''

Subsec. (b)(3). Pub. L. 99–509, § 9343(e)(2)(A), as amended by Pub. L. 100–203, § 4085(i)(21)(D)(i), which directed that cl. (3) be amended by striking ''or under subsection (i)(2) or (i)(4) of this section'', was executed by striking ''or under subsection (i)(2) or (i)(5) of this section'', to reflect the probable intent of Congress and an earlier amendment by Pub. L. 99–509, § 9343(a)(2), see below.

Pub. L. 99–509, § 9343(a)(2), substituted ''(i)(5)'' for ''(i)(4)''.

Subsec. (b)(5). Pub. L. 99–272, § 9401(b)(1), added cl. (5).

Subsec. (g). Pub. L. 99–509, § 9337(b), substituted ''second sentence'' for ''next to last sentence'', and inserted at end ''In the case of outpatient occupational therapy services which are described in the second sentence of section 1395x(p) of this title through the operation of section 1395x(g) of this title, with respect to expenses incurred in any calendar year, no more than $500 shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.''

Subsec. (h)(1)(B). Pub. L. 99–509, § 9339(b)(1), substituted ''December 31, 1989'' and ''January 1, 1990'' for ''December 31, 1987'' and ''January 1, 1988'', respectively.

Pub. L. 99–509, § 9339(a)(1)(A), substituted ''qualified hospital laboratory (as defined in subparagraph (D))'' for ''hospital laboratory''.

Pub. L. 99–272, § 9303(a)(1)(A), substituted ''December 31, 1987'' for ''June 30, 1987'' and ''January 1, 1988'' for ''July 1, 1987''.

Subsec. (h)(1)(C). Pub. L. 99–509, § 9339(a)(1)(B), substituted ''qualified hospital laboratory (as defined in subparagraph (D))'' for ''hospital laboratory'', struck out '', and ending on December 31, 1987'' after ''July 1, 1984'', and struck out ''For such tests furnished on or after January 1, 1988, the fee schedule under subparagraph (A) shall not apply with respect to clinical diagnostic laboratory tests performed by a hospital laboratory for outpatients of such hospital.'' which constituted second sentence.

Pub. L. 99–272, § 9303(a)(1)(A), substituted ''December 31, 1987'' for ''June 30, 1987'' and ''January 1, 1988'' for ''July 1, 1987''.

Subsec. (h)(1)(D). Pub. L. 99–509, §9339(a)(1)(C), added subpar. (D).

Subsec. (h)(2). Pub. L. 99–509, §9339(b)(2), struck out ''(or, effective January 1, 1988, for the United States)'' after ''applicable region, State, or area''.

Pub. L. 99–509, §9339(a)(1)(D), substituted ''qualified hospital laboratory (as defined in paragraph (1)(D))'' for ''hospital laboratory''.

Pub. L. 99–272, §9303(a)(1), substituted ''January 1, 1988'' for ''July 1, 1987'', and inserted ''(to become effective on January 1 of each year)'' after ''adjusted annually''.

Subsec. (h)(3). Pub. L. 99–509, §9339(c)(1), inserted cl. (A) designation after ''provide for and establish'', and added cl. (B).

Subsec. (h)(4). Pub. L. 99–272, §9303(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(5)(C). Pub. L. 99–272, §9303(b)(3), substituted ''laboratory other than'' for ''laboratory which is independent of a physician's office or''.

Subsec. (i)(1). Pub. L. 99–509, §9343(b)(2), inserted at end ''The lists of procedures established under subparagraphs (A) and (B) shall be reviewed and updated not less often than every 2 years.''

Subsec. (i)(2). Pub. L. 99–509, §9343(e)(2)(B), inserted ''80 percent of'' before ''a standard overhead amount'' in introductory provisions of subpars. (A) and (B).

Pub. L. 99–509, §9343(b)(1), substituted ''shall be reviewed and updated not later than July 1, 1987, and annually thereafter'' for ''shall be reviewed periodically'' in concluding provisions of subpars. (A) and (B).

Subsec. (i)(3) to (5). Pub. L. 99–509, §9343(a)(1)(B), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (*l*). Pub. L. 99–509, §9320(e)(2), added subsec. (*l*).

1984—Subsec. (a)(1). Pub. L. 98–369, §2354(b)(7), struck out ''and'' at the end.

Subsec. (a)(1)(B). Pub. L. 98–369, §2323(b)(1), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (a)(1)(D). Pub. L. 98–369, §2303(a), amended cl. (D) generally. Prior to amendment, cl. (D) read as follows: ''with respect to diagnostic tests performed in a laboratory for which payment is made under this part to the laboratory, the amounts paid shall be equal to 100 percent of the negotiated rate for such tests (as determined pursuant to subsection (h) of this section),''.

Subsec. (a)(1)(F), (G). Pub. L. 98–369, §2305(a), redesignated cl. (G) as (F), and struck out former cl. (F) which related to payment of reasonable charges for preadmission diagnostic services furnished by a physician to individuals enrolled under this part which are furnished in the outpatient department of a hospital within seven days of such individual's admission to the same hospital or another hospital or furnished in the physician's office within seven days of such individual's admission to a hospital as an inpatient.

Subsec. (a)(2). Pub. L. 98–369, §2305(c), struck out ''and in paragraph (5) of this subsection'' after ''of such section''.

Subsec. (a)(2)(A). Pub. L. 98–617, §3(b)(2), inserted '', or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision),''.

Pub. L. 98–369, §2354(b)(5), realigned margin of subpar. (A).

Pub. L. 98–369, §2321(b)(1), inserted in provision preceding cl. (i) ''(other than durable medical equipment)''.

Pub. L. 98–369, §2323(b)(1), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (a)(2)(B). Pub. L. 98–369, §2354(b)(5), realigned margin of subpar. (B).

Pub. L. 98–369, §2321(b)(2), inserted in provision preceding cl. (i) ''items and'' after ''to other''.

Pub. L. 98–369, §2303(b)(1), inserted ''or (D)'' after ''subparagraph (C)''.

Subsec. (a)(2)(B)(ii). Pub. L. 98–369, §2308(b)(2)(B), inserted '', or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this clause),''.

Subsec. (a)(2)(D). Pub. L. 98–369, §2303(b)(2)–(4), added subpar. (D).

Subsec. (a)(3). Pub. L. 98–369, §2323(b)(1), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (a)(5). Pub. L. 98–369, §2305(b), struck out par. (5) which related to payment of reasonable costs for preadmission diagnostic services described in section 1395x(s)(2)(C) of this title furnished to an individual by the outpatient department of a hospital within seven days of such individual's admission to the same hospital as an inpatient or to another hospital.

Subsec. (b)(1). Pub. L. 98–369, §2323(b)(2), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (b)(3). Pub. L. 98–369, §2305(d), substituted ''subsection (a)(1)(F)'' for ''subsection (a)(1)(G)''.

Subsec. (b)(4). Pub. L. 98–369, §2303(c), added cl. (4).

Subsec. (f). Pub. L. 98–369, §2321(d)(4)(A), transferred subsec. (f) to part C of this subchapter and redesignated its provisions as section 1889 of the Social Security Act, which is classified to section 1395zz of this title.

Subsec. (h). Pub. L. 98–369, §2303(d), amended subsec. (h) generally, substituting provisions directing the Secretary to establish fee schedules for clinical diagnostic laboratory tests at a percentage of the prevailing charge level and nominal fees to cover costs in collecting samples and authorizing the Secretary to make adjustments in the fee schedule, setting forth the recipients of payments, and authorizing the Secretary to establish a negotiated payment rate for provision authorizing the Secretary to establish a negotiated rate of payment with the laboratory which would be considered the full charge for such tests.

Subsec. (h)(5)(C). Pub. L. 98–617, §3(b)(3), inserted a comma before ''under the procedure described in section''.

Subsec. (i)(3). Pub. L. 98–369, §2305(d), substituted ''subsection (a)(1)(F)'' for ''subsection (a)(1)(G)''.

Subsec. (k). Pub. L. 98–369, §2323(b)(4), added subsec. (k).

1982—Subsec. (a)(1)(B). Pub. L. 97–248, §112(a)(1), substituted provisions that with respect to items and services described in section 1395x(s)(10) of this title, amounts paid shall be 100 percent of reasonable charges for such items and services for provision that with respect to expenses incurred for radiological or pathological services for which payment could be made under this part, furnished to any inpatient of a hospital by a physician in field of radiology or pathology who had in effect an agreement with Secretary by which the physician agreed to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients enrolled under this part, the amounts paid would be equal to 100 percent of the reasonable charges for such services.

Subsec. (a)(1)(H). Pub. L. 97–248, §112(a)(2), (3), struck out cl. (H) which provided that, with respect to items and services described in section 1395x(s)(10) of this title, the amount of benefits paid would be 100 percent of reasonable charges for such items and services.

Subsec. (a)(2)(B). Pub. L. 97–248, §101(c)(2), inserted ''and except as may be provided in section 1395ww of this title''.

Subsec. (b)(1). Pub. L. 97–248, §112(b), struck out subcl. (A) provision that total amount of expenses shall not include expenses incurred for radiological or pathological services furnished an individual as an inpatient of a hospital by a physician in field of radiology or pathology who has an agreement with Secretary by which physician agrees to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients under this part, and redesignated subcl. (B) provisions as cl. (1).

Subsec. (i)(1). Pub. L. 97–248, §148(d), struck out requirement of consultation with National Professional Standards Review Council.

Subsec. (j). Pub. L. 97–248, §117(a)(2), added subsec. (j).

1981—Subsec. (a)(2)(A). Pub. L. 97–35, §2106(a), substituted provisions that with respect to home health services and to items and services described in section 1395x(s)(10) of this title, the lesser of reasonable cost of such services as determined under section 1395x(v) of this title or customary charges with respect to such services, or if such services are furnished by a public provider of services free of charge or at nominal charges to the public, the amount determined in accordance with section 1395f(b)(2) of this title for provisions that with respect to home health services and to items and services described in section 1395x(s)(10) of this title, the reasonable cost of such services, as determined under section 1395x(v) of this title.

Subsec. (a)(2)(B). Pub. L. 97–35, §2106(a), substituted new formula in cls. (i) to (iii) with respect to other services for provisions providing for reasonable costs of such services less the amount a provider may charge as described in section 1395cc(a)(2)(A) of this title and that in no case may payment for such other services exceed 80 percent of such costs.

Subsec. (b). Pub. L. 97–35, §§2133(a), 2134(a), redesignated cls. (2) to (4) as (1) to (3), and struck out former cl. (1), which provided that amount of deductible for such calendar year as so determined shall first be reduced by amount of any expenses incurred by such individual in last three months of preceding calendar year and applied toward such individual's deductible under this section for such preceding year.

Pub. L. 97–35, §2134(a), substituted ''by a deductible of $75'' for ''by a deductible of $60''.

1980—Subsec. (a)(1)(B). Pub. L. 96–499, §943(a), inserted ''who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients enrolled under this part'' after ''radiology or pathology''.

Subsec. (a)(1)(D). Pub. L. 96–499, §918(a)(4), substituted ''subsection (h)'' for ''subsection (g)''.

Subsec. (a)(1)(F). Pub. L. 96–499, §932(a)(1)(B), added cl. (F).

Subsec. (a)(1)(G). Pub. L. 96–499, §934(d)(1), added cl. (G).

Subsec. (a)(1)(H). Pub. L. 96–611, §1(b)(1)(A), (B), added cl. (H).

Subsec. (a)(2). Pub. L. 96–611, §1(b)(1)(C), inserted in subpar. (A) ''and to items and services described in section 1395x(s)(10) of this title''.

Pub. L. 96–499, §942, authorized payment of reasonable cost of home health services and prescribed formulae for determining payment amounts for services other than home health services.

Subsec. (a)(3). Pub. L. 96–611, §1(b)(1)(D), inserted ''(other than for items and services described in section 1395x(s)(10) of this title)''.

Pub. L. 96–499, §942, prescribed a formula for determining payment amounts for services described in subpars. (D) and (E) of section 1395k(a)(2) of this title.

Subsec. (a)(4), (5). Pub. L. 96–499, §942, added pars. (4) and (5).

Subsec. (b)(2). Pub. L. 96–611, §1(b)(2), inserted ''(A)'' after ''expenses incurred'' and added cl. (B).

Pub. L. 96–499, §943(a), inserted ''who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients enrolled under this part''.

Subsec. (b)(3). Pub. L. 96–499, §930(h)(2), added cl. (3).

Subsec. (b)(4). Pub. L. 96–499, §934(d)(3), added cl. (4).

Subsec. (g). Pub. L. 96–499, §935(a), substituted ''$500'' for ''$100''.

Subsec. (h). Pub. L. 96–473 redesignated subsec. (g) as added by section 279(b) of Pub. L. 92–603 as (h), which for purposes of codification had been editorially set out as subsec. (h), thereby requiring no change in text. See 1972 Amendment note below.

Subsec. (i). Pub. L. 96–499, §934(b), added subsec. (i).

1978—Subsec. (a)(1)(E). Pub. L. 95–292, §4(b)(2), added cl. (E).

Subsec. (a)(2). Pub. L. 95–292, §4(c), inserted ''(unless otherwise specified in section 1395rr of this title)'' after ''and with respect to other services'' in provisions preceding subpar. (A).

1977—Subsec. (a)(2). Pub. L. 95–210, §1(b)(2), inserted parenthetical provisions preceding subpar. (A) excepting those services described in subparagraph (D) of section 1395k(a)(2) of this title.

Subsec. (a)(3). Pub. L. 95–210, §1(b)(1), (3), (4), added par. (3).

Subsec. (f)(1). Pub. L. 95–142 substituted provisions relating to determinations by Secretary with respect to presumptions regarding purchase price or practicality of buying or renting durable medical equipment, for provisions relating to purchase price of durable medical equipment authorized to be paid by Secretary.

Subsec. (f)(2). Pub. L. 95–142 substituted provisions relating to waiver of coinsurance amount in purchase of used durable medical equipment, for provisions relating to reimbursement procedures established by Secretary in cases of rental of durable medical equipment.

Subsec. (f)(3), (4). Pub. L. 95–142 added pars. (3) and (4).

1972—Subsec. (a). Pub. L. 92–603, §226(c)(2), inserted reference to section 1395mm of this title in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 92–603, §§211(c)(4), 279(a), added cls. (C) and (D).

Subsec. (a)(2). Pub. L. 92–603, §§233(b), 251(a)(3), 299K(a), substituted subpars. (A) and (B) for provisions relating to the amount payable by reference to section 1395x(v) of this title, added subpar. (C), and in provisions preceding subpar. (A), inserted ''with respect to home health services, 100 percent, and with respect to other services,'' before ''80 percent''.

Subsec. (b). Pub. L. 92–603, §204(a), substituted ''$60'' for ''$50''.

Subsec. (f). Pub. L. 92–603, §245(d), designated existing provisions as par. (1)(A) and added par. (1)(B) and (2).

Subsec. (g). Pub. L. 92–603, §251(a)(2), added subsec. (g).

Subsec. (h). Pub. L. 92–603, §279(b), added subsec. (h). Subsec. was in the original (g) and was changed to accommodate subsec. (g) as added by section 251(a)(2) of Pub. L. 92–603.

1968—Subsec. (a)(1). Pub. L. 90–248, §131(a)(1), (2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b). Pub. L. 90–248, §§129(c)(7), 131(b), struck out reference in cl. (1) to expenses regarded under former cl. (2) as incurred for services furnished in last three months of preceding year, struck out former cl. (2) which provided that amount of any deduction imposed by section 1395e(a)(2)(A) of this title for outpatient hospital diagnostic services furnished in any calendar year is to be regarded as an incurred expense for such year; and added cl. (2).

Pub. L. 90–248, §135(c), inserted last sentence providing that there shall be a deductible equal to expenses incurred for first three pints of whole blood (or equivalent quantities of packed red blood cells as defined under regulations) furnished to an individual during a calendar year which deductible is to be appropriately reduced to extent that such blood has been replaced, and such blood will be deemed to have been replaced when institution or person furnishing such blood is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells) furnished individual to which three pint deductible applies.

Subsec. (d). Pub. L. 90–248, §129(c)(8), struck out reference to subsection (a)(2)(A) of section 1395e of this title.

Subsec. (f). Pub. L. 90–248, §132(b), added subsec. (f).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 237(a) of Pub. L. 108–173 applicable to services provided on or after Jan. 1, 2006, and contract years beginning on or after such date, see section 237(e) of Pub. L. 108–173, set out as a note under section 1320a–7b of this title.

Pub. L. 108–173, title IV, §411(a)(2), Dec. 8, 2003, 117 Stat. 2274, provided that: ''The amendment made by paragraph (1)(B) [amending this section] shall apply with respect to cost reporting periods beginning on and after January 1, 2004.''

Pub. L. 108–173, title IV, §413(b)(2), Dec. 8, 2003, 117 Stat. 2277, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to physicians' services furnished on or after January 1, 2005.''

Pub. L. 108–173, title VI, §614(c), Dec. 8, 2003, 117 Stat. 2306, provided that: ''The amendments made by this section [amending this section] shall apply—

''(1) in the case of screening mammography, to services furnished on or after the date of the enactment of this Act [Dec. 8, 2003]; and

''(2) in the case of diagnostic mammography, to services furnished on or after January 1, 2005.''

Pub. L. 108–173, title VI, §621(a)(6), Dec. 8, 2003, 117 Stat. 2310, provided that: ''The amendments made by this subsection [amending this section] shall apply to items and services furnished on or after January 1, 2004.''

Pub. L. 108–173, title VI, §627(c), Dec. 8, 2003, 117 Stat. 2321, provided that: ''The amendments made by this section [amending this section and sections 1395m and 1395u of this title] shall apply to items furnished on or after January 1, 2005.''

Pub. L. 108–173, title VI, §642(c), Dec. 8, 2003, 117 Stat. 2322, provided that: ''The amendments made by this section [amending this section and section 1395x of this title] shall apply to items furnished administered [sic] on or after January 1, 2004.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title I, §105(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–472, provided that: ''The amendments made by this section [amending this section and sections 1395u and 1395x of this title] shall apply to services furnished on or after January 1, 2002.''

Pub. L. 106–554, §1(a)(6) [title I, §111(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to services furnished on or after April 1, 2001.''

Pub. L. 106–554, §1(a)(6) [title II, §201(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–481, provided that: ''The amendment made—

''(1) by subsection (a) [amending section 1395m of this title] shall apply to services furnished on or after the date of the enactment of BBRA [Pub. L. 106–113, §1000(a)(6), approved Nov. 29, 1999];

''(2) by subsection (b)(1) [amending this section] shall apply as if included in the enactment of section 403(e)(1) of BBRA (113 Stat. 1501A–371) [Pub. L. 106–113, §1000(a)(6) [title IV, §403(e)(1)]]; and

''(3) by subsection (b)(2) [amending provisions set out as a note under section 1395m of this title] shall apply as if included in the enactment of section 403(d)(2) of BBRA (113 Stat. 1501A–371) [Pub. L. 106–113, §1000(a)(6) [title IV, §403(d)(2)], set out as a note under section 1395m of this title].''

Pub. L. 106–554, §1(a)(6) [title II, §205(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–483, provided that: ''The amendments made by this section [amending this section and section 1395m of this title] shall apply to services furnished on or after the date of the enactment of this Act [Dec. 21, 2000].''

Pub. L. 106–554, §1(a)(6) [title II, §223(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–490, provided that: ''The amendments made by subsections (b) and (c) [amending this section and section 1395m of this title] shall be effective for services furnished on or after October 1, 2001.''

Pub. L. 106–554, §1(a)(6) [title II, §224(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–490, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after July 1, 2001.''

Pub. L. 106–554, §1(a)(6) [title IV, §401(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–503, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the enactment of BBA [Pub. L. 105–33].''

Pub. L. 106–554, §1(a)(6) [title IV, §402(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–505, provided that: ''The amendments made by this section [amending this section] take effect on the date of the enactment of this Act [Dec. 21, 2000].''

Pub. L. 106–554, §1(a)(6) [title IV, §403(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–506, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of BBRA [Pub. L. 106–113, §1000(a)(6)].''

Pub. L. 106–554, §1(a)(6) [title IV, §405(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–507, provided that: ''The amendments made by subsection (a) [amending this section] shall apply as if included in the enactment of section 202 of BBRA [Pub. L. 106–113, §1000(a)(6) [title II, §202]] (113 Stat. 1501A–342).''

Pub. L. 106–554, §1(a)(6) [title IV, §406(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–508, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to devices furnished on or after April 1, 2001.''

Pub. L. 106–554, §1(a)(6) [title IV, §430(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–525, provided that: ''The amendments made by this section [amending this section and section 1395x of this title] apply to items and services furnished on or after July 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §201(h)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–340, provided that: ''The Secretary of Health and Human Services shall first conduct the annual review under the amendment made by paragraph (1)(A) [amending this section] in 2001 for application in 2002 and the amendment made by paragraph (1)(B) [amending this section] takes effect on the date of the enactment of this Act [Nov. 29, 1999].''

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §201(m)], Nov. 29, 1999, 113 Stat. 1536, 1501A–341, provided that: ''Except as provided in this section, the amendments made by this section [amending this section and sections 1395m and 1395x of this title] shall be effective as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].''

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §202(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–344, provided that: ''The amendments made by this section [amending this section] shall be effective as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].''

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §204(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–345, provided that: ''The amendments made by this section [amending this section] apply as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33] and shall only apply to procedures performed for which payment is made on the basis of the prospective payment system under section 1833(t) of the Social Security Act [subsec. (t) of this section].''

Amendment by section 1000(a)(6) [title III, §321(g)(2), (k)(2)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Amendment by section 1000(a)(6) [title IV, §401(b)(1)] of Pub. L. 106–113 effective Jan. 1, 2000, see section 1000(a)(6) [title IV, §401(c)] of Pub. L. 106–113, set out as a note under section 1395i–4 of this title.

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §403(e)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–371, provided that:

''The amendments made by paragraph (1) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Nov. 29, 1999].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4002(j)(1)(B) of Pub. L. 105–33 provided that: ''The amendment made by subparagraph (A) [amending this section] applies to new contracts entered into after the date of enactment of this Act [Aug. 5, 1997] and, with respect to contracts in effect as of such date, shall apply to payment for services furnished after December 31, 1998.''

Section 4101(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and section 1395m of this title] shall apply to items and services furnished on or after January 1, 1998.''

Section 4102(e) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395w–4, 1395x, and 1395y of this title] shall apply to items and services furnished on or after January 1, 1998.''

Section 4103(e) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395w–4, 1395x, and 1395y of this title] shall apply to items and services furnished on or after January 1, 2000.''

Section 4104(e) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395m, 1395w–4, 1395x, and 1395y of this title] shall apply to items and services furnished on or after January 1, 1998.''

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4205(a)(1)(B) of Pub. L. 105–33 provided that: ''The amendment made by subparagraph (A) [amending this section] applies to services furnished on or after January 1, 1998.''

Section 4315(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] to the extent such amendments substitute fee schedules for reasonable charges, shall apply to particular services as of the date specified by the Secretary of Health and Human Services.''

Amendment by section 4432(b)(5)(C) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Amendment by section 4511(b) of Pub. L. 105–33 applicable with respect to services furnished and supplies provided on and after Jan. 1, 1998, see section 4511(e) of Pub. L. 105–33, set out as a note under section 1395k of this title.

Section 4512(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395u and 1395x of this title] shall apply with respect to services furnished and supplies provided on and after January 1, 1998.''

Section 4521(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished during portions of cost reporting periods occurring on or after October 1, 1997.''

Section 4523(d)(1)(A)(ii) of Pub. L. 105–33 provided that: ''The amendment made by clause (i) [amending this section] shall apply to services furnished on or after January 1, 1999.''

Section 4531(b)(3) of Pub. L. 105–33 provided that: ''The amendments made by this subsection [amending this section and section 1395m of this title] shall apply to services furnished on or after January 1, 2000.''

Section 4541(e) of Pub. L. 105–33 provided that:

''(1) The amendments made by subsections (a)(1), (a)(2), and (b) [amending this section and sections 1395m and 1395y of this title] apply to services furnished on or after January 1, 1998, including portions of cost reporting periods occurring on or after such date, except that section 1834(k) of the Social Security Act [section 1395m(k) of this title] (as added by subsection (a)(2)) shall not apply to services described in section 1833(a)(8)(B) of such Act [subsec. (a)(8)(B) of this section] (as added by subsection (a)(1)) that are furnished during 1998.

''(2) The amendments made by subsections (a)(3) and (c) [amending this section and section 1395cc of this title] apply to services furnished on or after January 1, 1999.

''(3) The amendments made by subsection (d)(1) [amending this section] apply to expenses incurred on or after January 1, 1999.''

Section 4556(d) of Pub. L. 105–33 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395u of this title] shall apply to drugs and biologicals furnished on or after January 1, 1998.''

Amendment by section 4603(c)(2)(A) of Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395fff of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 123(f)(1), (2) of Pub. L. 103–432 provided that:

''(1) ENFORCEMENT; MISCELLANEOUS AND TECHNICAL AMENDMENTS.—The amendments made by subsections (a) and (e) [amending this section and section 1395w–4 of this title] shall apply to services furnished on or after the date of the enactment of this Act [Oct. 31, 1994]; except that the amendments made by subsection (a) [amending section 1395w–4 of this title] shall not apply to services of a nonparticipating supplier or other person furnished before January 1, 1995.

''(2) PRACTITIONERS.—The amendments made by subsection (b) [amending this section and section 1395u of this title] shall apply to services furnished on or after January 1, 1995.''

Section 141(c)(2) of Pub. L. 103–432 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

Amendment by section 147(a), (e)(2), (3), (f)(6)(C), (D) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320a–3a of this title.

Section 147(d)(1), (2) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 101–239.

Amendment by section 156(a)(2)(B) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13532(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to portions of cost reporting periods beginning on or after January 1, 1994.''

Section 13544(b)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section and section 1395m of this title] shall apply to items furnished on or after January 1, 1994.''

Section 13555(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4104(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1395m and 1395w–4 of this title] shall apply to services furnished on or after January 1, 1991.''

Amendment by section 4153(a)(2)(B), (C) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 4153(a)(3) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Section 4154(b)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to tests furnished on or after January 1, 1991.''

Section 4154(c)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1)(A) [amending this section] shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272], and the amendment made by paragraph (1)(B) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Section 4154(e)(5) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §147(f)(2), Oct. 31, 1994, 108 Stat. 4431, provided that: ''The amendments made by paragraphs (1)(A), (1)(B), (2), and (4) [amending this section, section 1395w–2 of this title, and provisions set out as a note below] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239], and the amendment made by paragraph (1)(C) [amending this section] shall take effect January 1, 1991.''

Amendment by section 4155(b)(2), (3) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4155(e) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(a)(3)(B) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Section 4163(e) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §147(f)(5)(B), Oct. 31, 1994, 108 Stat. 4431, provided that: ''Except as provided in subsection (d)(3) [enacting provisions set out as a note under section 1395y of this title], the amendments made by this section [amending this section and sections 1395m, 1395x, 1395y, 1395z, 1395aa, and 1395bb of this title] shall apply to screening mammography performed on or after January 1, 1991.''

Section 4206(e)(2) of Pub. L. 101–508 provided that: ''The amendments made by subsection (b) [amending this section and section 1395mm of this title] shall apply to contracts under section 1876 of the Social Security Act [section 1395mm of this title] and payments under section 1833(a)(1)(A) of such Act [subsec. (a)(1)(A) of this section] as of first day of the first month beginning more than 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6102(c)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to services furnished on or after January 1, 1991.''

Section 6102(f)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1395m of this title] shall apply to services furnished on or after January 1, 1991.''

Section 6102(g) of Pub. L. 101–239 provided that: ''Except as otherwise provided in this section, this section, and the amendments made by this section [enacting section 1395w–4 of this title, amending this section and sections 1395m, 1395u, and 1395rr of this title, and enacting provisions set out as notes under this section and sections 1395m, 1395u, and 1395w–4 of this title], shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

Section 6111(b)(2) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §4154(e)(4), Nov. 5, 1990, 104 Stat. 1388–86, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to clinical diagnostic laboratory tests performed on or after May 1, 1990.''

Section 6113(e) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1395x of this title], and the provisions of subsection (c) [set out below], shall apply to services furnished on or after July 1, 1990, and the amendments made by subsection (d) [amending this section] shall apply to expenses incurred in a year beginning with 1990.''

Section 6131(c) of Pub. L. 101–239 provided that:

''(1) The amendments made by this section [amending this section and section 1395x of this title] shall apply with respect to therapeutic shoes and inserts furnished on or after July 1, 1989.

''(2) In applying the amendments made by this section, the increase under subparagraph (C) of section 1833(*o*)(2) of the Social Security Act [subsec. (*o*)(2)(C) of this section] shall apply to the dollar amounts specified under subparagraph (A) of such section (as amended by this section) in the same manner as the increase would have applied to the dollar amounts specified under subparagraph (A) of such section (as in effect before the date of the enactment of this Act [Dec. 19, 1989]).''

Section 6133(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1990.''

Amendment by section 6204(b) of Pub. L. 101–239 effective with respect to referrals made on or after Jan. 1, 1992, see section 6204(c) of Pub. L. 101–239, set out as a note under section 1395nn of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Amendment by section 202(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8422(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective as if included in the amendment made by section 9320(e)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(b)(1)–(3) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 203(c)(1)(A)–(E) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 204(d)(1) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 205(c) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(f) of Pub. L. 100–360, set out as a note under section 1395k of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(f)(2)(D), (8)(B)(i), (C), (12)(A), (14), (g)(1)(E), (2)(D), (E), (3)(A)–(F), (4)(C), (5), (h)(1)(A), (3)(B), (4)(B), (C), (7)(C), (D), (F), (i)(3), (4)(B)–(C)(ii), (iv), and (vi) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4043(c) of Pub. L. 100–203 provided that: ''The amendments made by this [sic] subsection (a) [amending this section] shall apply with respect to services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act [section 1395ww(d)(2)(D) of this title]) on or after January 1, 1989, and to other services furnished on or after January 1, 1991.''

Amendment by section 4045(c)(2)(A) of Pub. L. 100–203 applicable to items and services furnished on or after Apr. 1, 1988, see section 4045(d) of Pub. L. 100–203, set out as a note under section 1395u of this title.

Amendment by section 4049(a)(1) of Pub. L. 100–203 applicable to services performed on or after Apr. 1, 1989, see section 4049(b)(2) of Pub. L. 100–203, as amended, set out as a note under section 1395m of this title.

Section 4055(b), formerly §4054(b), of Pub. L. 100–203, as added and renumbered by Pub. L. 100–360, title IV, §411(f)(12)(A), (14), July 1, 1988, 102 Stat. 781, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1988.''

Amendment by section 4062(d)(3) of Pub. L. 100–203 applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as a note under section 1395f of this title.

Section 4063(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall apply to items furnished on or after July 1, 1988.''

Section 4064(b)(3) of Pub. L. 100–203 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to services furnished on or after April 1, 1988.''

Section 4064(c)(2) of Pub. L. 100–203, as added by Pub. L. 100–360, title IV, §411(g)(3)(F), July 1, 1988, 102 Stat. 784, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to diagnostic laboratory tests furnished on or after April 1, 1988.''

Section 4066(c) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to outpatient hospital radiology services furnished on or after October 1, 1988, and other diagnostic procedures performed on or after October 1, 1989.''

Section 4067(c) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1988.''

Section 4068(c) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as if included in the amendment made by section 9343(a)(1)(B) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4070(c)(1) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply with respect to calendar years beginning with 1988; except that with respect to 1988, any reference in section 1833(c) of the Social Security Act [subsec. (c) of this section], as amended by subsection (a), to '$1375.00' is deemed a reference to '$562.50'. The amendment made by subsection (a)(2) [amending this section] shall apply to services furnished on or after January 1, 1989.''

For effective date of amendment by section 4072(b) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendment by section 4073(b) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4073(e) of Pub. L. 100–203, set out as a note under section 1395k of this title.

Amendment by section 4077(b)(2), (3) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4077(b)(5) of Pub. L. 100–203, set out as a note under section 1395k of this title.

Section 4084(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply as if included in the amendment made by section 9320(e)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4084(c)(3) of Pub. L. 100–203, as added by Pub. L. 100–360, title IV, §411(i)(3), July 1, 1988, 102 Stat. 788, provided that: ''The amendments made by this subsection [amending this section and section 1395x of this title] shall apply to services furnished after December 31, 1988.''

Section 4085(b)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to procedures performed on or after January 1, 1988.''

Section 4085(i)(21) of Pub. L. 100–203 provided that the amendment to section 9343 of Pub. L. 99–509 by section 4085(i)(21)(D) of Pub. L. 100–203, amending this section and provisions set out as an Effective Date of 1986 Amendments note below, is effective as if included in the enactment of Pub. L. 99–509.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9320(e)(1), (2) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Amendment by section 9337(b) of Pub. L. 99–509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99–509, set out as a note under section 1395k of this title.

Section 9339(a)(2) of Pub. L. 99–509 provided that: ''The amendments made by this subsection [amending this section] apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.''

Section 9339(c)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to samples collected on or after January 1, 1987.''

Section 9343(h) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4085(i)(21)(D)(ii), (iii), Dec. 22, 1987, 101 Stat. 1330–134; Pub. L. 100–360, title IV, §411(i)(4)(C)(v), July 1, 1988, 102 Stat. 789, provided that:

''(1) The amendments made by subsection (a)(1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987.

''(2) The amendments made by subsections (b)(1) and (c) [amending this section and sections 1395y and 1395cc of this title] shall apply to services furnished after June 30, 1987.

''(3) The Secretary of Health and Human Services shall first provide, under the amendment made by subsection (b)(2) [amending this section], for the review and update of procedure lists within 6 months after the date of the enactment of this Act [Oct. 21, 1986].

''(4) The amendments made by subsection (d) [amending section 1320c–3 of this title] shall apply to contracts entered into or renewed after January 1, 1987.''

Section 9303(a)(2) of Pub. L. 99–272 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to clinical laboratory diagnostic tests performed on or after July 1, 1986.''

Section 9303(b)(5)(A), (B) of Pub. L. 99–272 provided that:

''(A) The amendments made by paragraphs (1) and (2) [amending this section] shall apply to clinical diagnostic laboratory tests performed on or after July 1, 1986.

''(B) The amendment made by paragraph (3) [amending this section] shall apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Section 2303(j) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 1395u, 1395cc, 1396a, and 1396b of this title and enacting provisions set out as notes under this section and section 1395u of this title] shall apply to clinical diagnostic laboratory tests furnished on or after July 1, 1984.

''(2) The amendments made by subsection (g)(2) [amending section 1396b of this title] shall apply to payments for calendar quarters beginning on or after October 1, 1984.

''(3) The amendments made by this section shall not apply to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of the Social Security Amendments of 1983 [section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title]. Payment for such services shall be made under part B of title XVIII of the Social Security Act [this part] at 80 percent (or 100 percent in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(ii) of the Social Security Act [section 1395u(b)(3)(B)(ii) of this title] or under the procedure described in section 1870(f)(1) of such Act [section 1395gg(f)(1) of this title]) of the reasonable charge for such service. The deductible under section 1833(b) of such Act [subsec. (b) of this section] shall not apply to such tests if payment is made on the basis of such an assignment or procedure.''

Section 2305(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and enacting provisions set out below] shall apply to services performed after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2321(b), (d)(4)(A) of Pub. L. 98–369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2323(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 1395x, 1395cc, and 1395rr of this title and enacting provisions set out below] apply to services furnished on or after September 1, 1984.''

Amendment by section 2354(b)(5), (7) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 112(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to items and services furnished on or after October 1, 1982.''

Amendment by section 117(a)(2) of Pub. L. 97–248 applicable to final determinations made on or after Sept. 3, 1982, see section 117(b) of Pub. L. 97–248, set out as a note under section 1395g of this title.

Amendment by section 148(d) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2106(c) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] is effective as of December 5, 1980, and the amendment made by subsection (b)(2) [amending section 1395q(b) of this title], is effective as of April 1, 1981.''

Section 2133(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] first apply to the deductible for calendar year 1982 with respect to expenses incurred on or after October 1, 1981.''

Section 2134(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1982, and shall apply to the deductible for calendar years beginning with 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 2 of Pub. L. 96–611 provided that: ''The amendments made by this Act [probably should be the amendments made by section 1 of this Act, which amended this section and sections 1395x, 1395y, 1395aa, and 1395cc of this title] shall take effect on, and apply to services furnished on or after, July 1, 1981.''

Amendment by section 930(h) of Pub. L. 96–499, effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 935(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to expenses incurred in calendar years beginning with calendar year 1982.''

Section 943(b) of Pub. L. 96–499 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished after the sixth calendar month beginning after the date of the enactment of this Act [Dec. 5, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95–210 applicable to services rendered on or after first day of third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95–210, set out as a note under section 1395k of this title.

Section 16(b) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to durable medical equipment purchased or rented on or after October 1, 1977.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 204(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1395n of this title] shall be effective with respect to calendar years after 1972 (except that, for purposes of applying clause (1) of the first sentence of section 1833(b) of the Social Security Act [subsec. (b) of this section], such amendments shall be deemed to have taken effect on January 1, 1972).''

Amendment by section 211(c)(4) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Amendment by section 226(c)(2) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

Amendment by section 233(b) of Pub. L. 92–603 applicable to services furnished by hospitals, extended care facilities, and home health agencies in accounting periods beginning after Dec. 31, 1972, see section 233(f) of Pub. L. 92–603, set out as a note under section 1395f of this title. See, also, Pub. L. 93–233, §16, Dec. 31, 1973, 87 Stat. 967, set out as a note under section 1395f of this title.

Amendment by section 251(a)(2), (3) of Pub. L. 92–603 applicable with respect to services furnished on or after July 1, 1973, see section 251(d)(1) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 299K(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished by home health agencies in accounting periods beginning after December 31, 1972.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 129(c)(7), (8) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 131(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to services furnished after March 31, 1968.''

Section 132(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 1395x of this title] shall apply only with respect to items purchased after December 31, 1967.''

Amendment by section 135(c) of Pub. L. 90–248 applicable with respect to payment for blood (or packed red blood cells) furnished an individual after Dec. 31, 1967, see section 135(d) of Pub. L. 90–248, set out as a note under section 1395e of this title.

CONSTRUCTION REGARDING LIMITING INCREASES IN COST-SHARING

Pub. L. 106–554, §1(a)(6) [title I, §111(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473, provided that: ''Nothing in this Act [H.R. 5661, as enacted by section 1(a)(6) of Pub. L. 106–554, see Tables for classification] or the Social Security Act [this chapter] shall be construed as preventing a hospital from waiving the amount of any coinsurance for outpatient hospital services under the medicare program under title XVIII of the Social Security Act [this subchapter] that may have been increased as a result of the implementation of the prospective payment system under section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t)).''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

GAO STUDY OF MEDICARE PAYMENT FOR INHALATION THERAPY

Pub. L. 108–173, title III, §305(b), Dec. 8, 2003, 117 Stat. 2255, provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study to examine the adequacy of current reimbursements for inhalation therapy under the medicare program.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).''

TREATMENT OF CERTAIN CLINICAL DIAGNOSTIC LABORATORY TESTS FURNISHED TO HOSPITAL OUTPATIENTS IN CERTAIN RURAL AREAS

Pub. L. 108–173, title IV, §416, Dec. 8, 2003, 117 Stat. 2282, provided that:

''(a) IN GENERAL.—Notwithstanding subsections (a), (b), and (h) of section 1833 of the Social Security Act (42 U.S.C. 1395*l*) and section 1834(d)(1) of such Act (42 U.S.C. 1395m(d)(1)), in the case of a clinical diagnostic laboratory test covered under part B of title XVIII of such Act [this part] that is furnished during a cost reporting period described in subsection (b) by a hospital with fewer than 50 beds that is located in a qualified rural area (identified under paragraph (12)(B)(iii) of section 1834(*l*) of the Social Security Act (42 U.S.C. 1395m(*l*)), as added by section 414(c)) as part of outpatient services of the hospital, the amount of payment for such test shall be 100 percent of the reasonable costs of the hospital in furnishing such test.

''(b) APPLICATION.—A cost reporting period described in this subsection is a cost reporting period beginning during the 2-year period beginning on July 1, 2004.

''(c) PROVISION AS PART OF OUTPATIENT HOSPITAL SERVICES.—For purposes of subsection (a), in determining whether clinical diagnostic laboratory services are furnished as part of outpatient services of a hospital, the Secretary [of Health and Human Services] shall apply the same rules that are used to determine whether clinical diagnostic laboratory services are furnished as an outpatient critical access hospital service under section 1834(g)(4) of the Social Security Act (42 U.S.C. 1395m(g)(4)).''

GAO REPORT ON PAYMENTS FOR BRACHYTHERAPY DEVICES

Pub. L. 108–173, title VI, §621(b)(3), Dec. 8, 2003, 117 Stat. 2311, provided that: ''The Comptroller General of the United States shall conduct a study to determine appropriate payment amounts under section 1833(t)(16)(C) of the Social Security Act [subsec. (t)(16)(C) of this section], as added by paragraph (1), for devices of brachytherapy. Not later than January 1, 2005, the Comptroller General shall submit to Congress and the Secretary [of Health and Human Services] a report on the study conducted under this paragraph, and shall include specific recommendations for appropriate payments for such devices.''

MORATORIUM ON PHYSICAL THERAPY SERVICES CAPS IN 2003

Pub. L. 108–173, title VI, §624(a)(2), Dec. 8, 2003, 117 Stat. 2317, provided that: ''For the period beginning on the date of the enactment of this Act [Dec. 8, 2003] and ending of [sic] December 31, 2003, the Secretary [of Health and Human Services] shall not apply the provisions of paragraphs (1), (2), and (3) of section 1833(g) [subsec. (g) of this section] to expenses incurred with respect to services described in such paragraphs during such period. Nothing in the preceding sentence shall be construed as affecting the application of such paragraphs by the Secretary before the date of the enactment of this Act.''

PROMPT SUBMISSION OF OVERDUE REPORTS ON PAYMENT AND UTILIZATION OF OUTPATIENT THERAPY SERVICES

Pub. L. 108–173, title VI, §624(b), Dec. 8, 2003, 117 Stat. 2317, provided that: ''Not later than March 31, 2004, the Secretary [of Health and Human Services] shall submit to Congress the reports required under section 4541(d)(2) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 457) [set out as a note under this section] (relating to alternatives to a single annual dollar cap on outpatient therapy) and under section 221(d) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Appendix F, 113 Stat. 1501A–352), as enacted into law by section 1000(a)(6) of Public Law 106–113 [set out as a note under this section] (relating to utilization patterns for outpatient therapy).''

GAO STUDY OF AMBULATORY SURGICAL CENTER PAYMENTS

Pub. L. 108–173, title VI, §626(d), Dec. 8, 2003, 117 Stat. 2319, provided that:

''(1) STUDY.—

''(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study that compares the relative costs of procedures furnished in ambulatory surgical centers to the relative costs of procedures furnished in hospital outpatient departments

under section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t)). The study shall also examine how accurately ambulatory payment categories reflect procedures furnished in ambulatory surgical centers.

''(B) CONSIDERATION OF ASC DATA.—In conducting the study under paragraph (1), the Comptroller General shall consider data submitted by ambulatory surgical centers regarding the matters described in clauses (i) through (iii) of paragraph (2)(B).

''(2) REPORT AND RECOMMENDATIONS.—

''(A) REPORT.—Not later than January 1, 2005, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).

''(B) RECOMMENDATIONS.—The report submitted under subparagraph (A) shall include recommendations on the following matters:

''(i) The appropriateness of using the groups of covered services and relative weights established under the outpatient prospective payment system as the basis of payment for ambulatory surgical centers.

''(ii) If the relative weights under such hospital outpatient prospective payment system are appropriate for such purpose—

''(I) whether the payment rates for ambulatory surgical centers should be based on a uniform percentage of the payment rates or weights under such outpatient system; or

''(II) whether the payment rates for ambulatory surgical centers should vary, or the weights should be revised, based on specific procedures or types of services (such as ophthalmology and pain management services).

''(iii) Whether a geographic adjustment should be used for payment of services furnished in ambulatory surgical centers, and if so, the labor and nonlabor shares of such payment.''

DEMONSTRATION PROJECT FOR COVERAGE OF CERTAIN PRESCRIPTION DRUGS AND BIOLOGICALS

Pub. L. 108–173, title VI, §641, Dec. 8, 2003, 117 Stat. 2321, provided that:

''(a) DEMONSTRATION PROJECT.—The Secretary [of Health and Human Services] shall conduct a demonstration project under part B of title XVIII of the Social Security Act [this part] under which payment is made for drugs or biologicals that are prescribed as replacements for drugs and biologicals described in section 1861(s)(2)(A) or 1861(s)(2)(Q) of such Act (42 U.S.C. 1395x(s)(2)(A), 1395x(s)(2)(Q)), or both, for which payment is made under such part. Such project shall provide for cost-sharing applicable with respect to such drugs or biologicals in the same manner as cost-sharing applies with respect to part D [part D of this subchapter] drugs under standard prescription drug coverage (as defined in section 1860D–2(b) of the Social Security Act [section 1395w–102(b) of this title], as added by section 101(a)).

''(b) DEMONSTRATION PROJECT SITES.—The project established under this section shall be conducted in sites selected by the Secretary.

''(c) DURATION.—The Secretary shall conduct the demonstration project for the 2-year period beginning on the date that is 90 days after the date of the enactment of this Act [Dec. 8, 2003], but in no case may the project extend beyond December 31, 2005.

''(d) LIMITATION.—Under the demonstration project over the duration of the project, the Secretary may not provide—

''(1) coverage for more than 50,000 patients; and

''(2) more than $500,000,000 in funding.

''(e) REPORT.—Not later than July 1, 2006, the Secretary shall submit to Congress a report on the project. The report shall include an evaluation of patient access to care and patient outcomes under the project, as well as an analysis of the cost effectiveness of the project, including an evaluation of the costs savings (if any) to the medicare program attributable to reduced physicians' services and hospital outpatient departments services for administration of the biological.''

PAYMENT FOR PANCREATIC ISLET CELL INVESTIGATIONAL TRANSPLANTS FOR MEDICARE BENEFICIARIES IN CLINICAL TRIALS

Pub. L. 108–173, title VII, §733, Dec. 8, 2003, 117 Stat. 2352, provided that:

''(a) CLINICAL TRIAL.—

''(1) IN GENERAL.—The Secretary [of Health and Human Services], acting through the National Institute of Diabetes and Digestive and Kidney Disorders, shall conduct a clinical investigation of pancreatic islet cell transplantation which includes medicare beneficiaries.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to conduct the clinical investigation under paragraph (1).

''(b) MEDICARE PAYMENT.—Not earlier than October 1, 2004, the Secretary shall pay for the routine costs as well as transplantation and appropriate related items and services (as described in subsection (c)) in the case of medicare beneficiaries who are participating in a clinical trial described in subsection (a) as if such transplantation were covered under title XVIII of such Act [this subchapter] and as would be paid under part A or part B of such title [part A of this subchapter or this part] for such beneficiary.

''(c) SCOPE OF PAYMENT.—For purposes of subsection (b):

''(1) The term 'routine costs' means reasonable and necessary routine patient care costs (as defined in the Centers for Medicare & Medicaid Services Coverage Issues Manual, section 30–1), including immunosuppressive drugs and other followup care.

''(2) The term 'transplantation and appropriate related items and services' means items and services related to the acquisition and delivery of the pancreatic islet cell transplantation, notwithstanding any national noncoverage determination contained in the Centers for Medicare & Medicaid Services Coverage Issues Manual.

''(3) The term 'medicare beneficiary' means an individual who is entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter], or enrolled under part B of such title [this part], or both.

''(d) CONSTRUCTION.—The provisions of this section shall not be construed—

''(1) to permit payment for partial pancreatic tissue or islet cell transplantation under title XVIII of the Social Security Act [this subchapter] other than payment as described in subsection (b); or

''(2) as authorizing or requiring coverage or payment conveying—

''(A) benefits under part A of such title [part A of this subchapter] to a beneficiary not entitled to such part A; or

''(B) benefits under part B of such title [this part] to a beneficiary not enrolled in such part B.''

GAO STUDY OF REDUCTION IN MEDIGAP PREMIUM LEVELS RESULTING FROM REDUCTIONS IN COINSURANCE

Pub. L. 106–554, §1(a)(6) [title I, §111(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473, provided that: ''The Comptroller General of the United States shall work, in concert with the National Association of Insurance Commissioners, to evaluate the extent to which the premium levels for medicare supplemental policies reflect the reductions in coinsurance resulting from the amendment made by subsection (a) [amending this section]. Not later than April 1, 2004, the Comptroller General shall submit to Congress a report on such evaluation and the extent to which the reductions in beneficiary coinsurance effected by such amendment have resulted in actual savings to medicare beneficiaries.''

MEDPAC STUDY ON LOW-VOLUME, ISOLATED RURAL HEALTH CARE PROVIDERS

Pub. L. 106–554, §1(a)(6) [title II, §225], Dec. 21, 2000, 114 Stat. 2763, 2763A–490, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the effect of low patient and procedure volume on the financial status of low-volume, isolated rural health care providers participating in the medicare program under title XVIII of the Social Security Act [this subchapter].

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under subsection (a) indicating—

''(1) whether low-volume, isolated rural health care providers are having, or may have, significantly decreased medicare margins or other financial difficulties resulting from any of the payment methodologies described in subsection (c);

''(2) whether the status as a low-volume, isolated rural health care provider should be designated under the medicare program and any criteria that should be used to qualify for such a status; and

''(3) any changes in the payment methodologies described in subsection (c) that are necessary to provide appropriate reimbursement under the medicare program to low-volume, isolated rural health care providers (as designated pursuant to paragraph (2)).

''(c) PAYMENT METHODOLOGIES DESCRIBED.—The payment methodologies described in this subsection are the following:

''(1) The prospective payment system for hospital outpatient department services under section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t)).

''(2) The fee schedule for ambulance services under section 1834(*l*) of such Act (42 U.S.C. 1395m(*l*)).

''(3) The prospective payment system for inpatient hospital services under section 1886 of such Act (42 U.S.C. 1395ww).

''(4) The prospective payment system for routine service costs of skilled nursing facilities under section 1888(e) of such Act (42 U.S.C. 1395yy(e)).

''(5) The prospective payment system for home health services under section 1895 of such Act (42 U.S.C. 1395fff).''

SPECIAL RULE FOR PAYMENT FOR 2001

Pub. L. 106–554, §1(a)(6) [title IV, §401(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–503, provided that: ''Notwithstanding the amendment made by subsection (a) [amending this section], for purposes of making payments under section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t)) for covered OPD services furnished during 2001, the medicare OPD fee schedule amount under such section—

''(1) for services furnished on or after January 1, 2001, and before April 1, 2001, shall be the medicare OPD fee schedule amount for 2001 as determined under the provisions of law in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(2) for services furnished on or after April 1, 2001, and before January 1, 2002, shall be the fee schedule amount (as determined taking into account the amendment made by subsection (a)), increased by a transitional percentage allowance equal to 0.32 percent (to account for the timing of implementation of the full market basket update).''

TRANSITION PROVISIONS APPLICABLE TO SUBSECTION (t)(6)(B)

Pub. L. 106–554, §1(a)(6) [title IV, §402(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–506, provided that:

''(1) IN GENERAL.—In the case of a medical device provided as part of a service (or group of services) furnished during the period before initial categories are implemented under subparagraph (B)(i) of section 1833(t)(6) of the Social Security Act [subsec. (t)(6)(B)(i) of this section] (as amended by subsection (a)), payment shall be made for such device under such section in accordance with the provisions in effect before the date of the enactment of this Act [Dec. 21, 2000]. In addition, beginning on the date that is 30 days after the date of the enactment of this Act, payment shall be made for such a device that is not included in a program memorandum described in such subparagraph if the Secretary of Health and Human Services determines that the device (including a device that would have been included in such program memoranda but for the requirement of subparagraph (A)(iv)(I) of that section) is likely to be described by such an initial category.

''(2) APPLICATION OF CURRENT PROCESS.—Notwithstanding any other provision of law, the Secretary shall continue to accept applications with respect to medical devices under the process established pursuant to paragraph (6) of section 1833(t) of the Social Security Act [subsec. (t)(6) of this section] (as in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]) through December 1, 2000, and any device—

''(A) with respect to which an application was submitted (pursuant to such process) on or before such date; and

''(B) that meets the requirements of clause (ii) or (iv) of subparagraph (A) of such paragraph (as determined pursuant to such process),

shall be treated as a device with respect to which an initial category is required to be established under subparagraph (B)(i) of such paragraph (as amended by subsection (a)(2)).''

STUDY ON STANDARDS FOR SUPERVISION OF PHYSICAL THERAPIST ASSISTANTS

Pub. L. 106–554, §1(a)(6) [title IV, §421(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–516, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of the implications—

''(A) of eliminating the 'in the room' supervision requirement for medicare payment for services of physical therapy assistants who are supervised by physical therapists; and

''(B) of such requirement on the cap imposed under section 1833(g) of the Social Security Act (42 U.S.C. 1395*l*(g)) on physical therapy services.

''(2) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Secretary shall submit to Congress a report on the study conducted under paragraph (1).''

DELAY IN IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM FOR AMBULATORY SURGICAL CENTERS

Pub. L. 106–554, §1(a)(6) [title IV, §424(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–518, provided that: ''The Secretary of Health and Human Services may not implement a revised prospective payment system for services of ambulatory surgical facilities under section 1833(i) of the Social Security Act (42 U.S.C. 1395*l*(i)) before January 1, 2002.''

MEDPAC STUDY AND REPORT ON MEDICARE REIMBURSEMENT FOR SERVICES PROVIDED BY CERTAIN PROVIDERS

Pub. L. 106–554, §1(a)(6) [title IV, §434], Dec. 21, 2000, 114 Stat. 2763, 2763A–526, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the appropriateness of the current payment rates under the medicare program under title XVIII of the Social Security Act [this subchapter] for services provided by a—

''(1) certified nurse-midwife (as defined in subsection (gg)(2) of section 1861 of such Act (42 U.S.C. 1395x));

''(2) physician assistant (as defined in subsection (aa)(5)(A) of such section);

''(3) nurse practitioner (as defined in such subsection); and

''(4) clinical nurse specialist (as defined in subsection (aa)(5)(B) of such section).

The study shall separately examine the appropriateness of such payment rates for orthopedic physician assistants, taking into consideration the requirements for accreditation, training, and education.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation that the Commission determines to be appropriate as a result of such study.''

MEDPAC STUDY ON ACCESS TO OUTPATIENT PAIN MANAGEMENT SERVICES

Pub. L. 106–554, §1(a)(6) [title IV, §438], Dec. 21, 2000, 114 Stat. 2763, 2763A–528, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the barriers to coverage and payment for outpatient interventional pain medicine procedures under the medicare program under title XVIII of the Social Security Act [this subchapter]. Such study shall examine—

''(1) the specific barriers imposed under the medicare program on the provision of pain management procedures in hospital outpatient departments, ambulatory surgery centers, and physicians' offices; and

''(2) the consistency of medicare payment policies for pain management procedures in those different settings.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study.''

ESTABLISHMENT OF CODING AND PAYMENT PROCEDURES FOR NEW CLINICAL DIAGNOSTIC LABORATORY TESTS AND OTHER ITEMS ON A FEE SCHEDULE

Pub. L. 106–554, §1(a)(6) [title V, §531(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–547, provided that: ''Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall establish procedures for coding and payment determinations for the categories of new clinical diagnostic laboratory tests and new durable medical equipment under part B of title XVIII of the Social Security Act [this part] that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for ICD–9–CM.''

REPORT ON PROCEDURES USED FOR ADVANCED, IMPROVED TECHNOLOGIES

Pub. L. 106–554, §1(a)(6) [title V, §531(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–547, provided that: ''Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall submit to Congress a report that identifies the specific procedures used by the Secretary under part B of title XVIII of the Social Security Act [this part] to adjust payments for clinical diagnostic laboratory tests and durable medical equipment which are classified to existing codes where, because of an advance in technology with respect to the test or equipment, there has been a significant increase or decrease in the resources used in the test or in the manufacture of the equipment, and there has been a significant improvement in the performance of the test or equipment. The report shall include such recommendations for changes in law as may be necessary to assure fair and appropriate payment levels under such part for such improved tests and equipment as reflects increased costs necessary to produce improved results.''

CONGRESSIONAL INTENTION REGARDING BASE AMOUNTS IN APPLYING HOPD PPS

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §201(*l*)], Nov. 29, 1999, 113 Stat. 1536, 1501A–341, provided that: ''With respect to determining the amount of copayments described in paragraph (3)(A)(ii) of section 1833(t) of the Social Security Act [subsec. (t) of this section], as added by section 4523(a) of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33], Congress finds that such amount should be determined without regard to such section, in a budget neutral manner with respect to aggregate payments to hospitals, and that the Secretary of Health and Human Services has the authority to determine such amount without regard to such section.''

STUDY AND REPORT TO CONGRESS REGARDING SPECIAL TREATMENT OF RURAL AND CANCER HOSPITALS IN PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §203], Nov. 29, 1999, 113 Stat. 1536, 1501A–344, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Medicare Payment Advisory Commission (referred to in this section as 'MedPAC') shall conduct a study to determine the appropriateness (and the appropriate method) of providing payments to hospitals described in paragraph (2) for covered OPD services (as defined in paragraph (1)(B) of section 1833(t) of the Social Security Act (42 U.S.C. 1395*l*(t))) based on the prospective payment system established by the Secretary in accordance with such section.

''(2) HOSPITALS DESCRIBED.—The hospitals described in this paragraph are the following:

''(A) A medicare-dependent, small rural hospital (as defined in section 1886(d)(5)(G)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(G)(iv))).

''(B) A sole community hospital (as defined in section 1886(d)(5)(D)(iii) of such Act (42 U.S.C. 1395ww(d)(5)(D)(iii))).

''(C) Rural health clinics (as defined in section 1861(aa)(2) of such Act (42 U.S.C. 1395x(aa)(2)).

''(D) Rural referral centers (as so classified under section 1886(d)(5)(C) of such Act (42 U.S.C. 1395ww(d)(5)(C)).

''(E) Any other rural hospital with not more than 100 beds.

''(F) Any other rural hospital that the Secretary determines appropriate.

''(G) A hospital described in section 1886(d)(1)(B)(v) of such Act (42 U.S.C. 1395ww(d)(1)(B)(v)).

''(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [Nov. 29, 1999], MedPAC shall submit a report to the Secretary of Health and Human Services and Congress on the study conducted under subsection (a), together with any recommendations for legislation that MedPAC determines to be appropriate as a result of such study.

''(c) COMMENTS.—Not later than 60 days after the date on which MedPAC submits the report under subsection (b) to the Secretary of Health and Human Services, the Secretary shall submit comments on such report to Congress.''

GAO STUDY ON RESOURCES REQUIRED TO PROVIDE SAFE AND EFFECTIVE OUTPATIENT CANCER THERAPY

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §213], Nov. 29, 1999, 113 Stat. 1536, 1501A–350, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a nationwide study to determine the physician and non-physician clinical resources necessary to provide safe outpatient cancer therapy services and the appropriate payment rates for such services under the medicare program. In making such determination, the Comptroller General shall—

''(1) determine the adequacy of practice expense relative value units associated with the utilization of those clinical resources;

''(2) determine the adequacy of work units in the practice expense formula; and

''(3) assess various standards to assure the provision of safe outpatient cancer therapy services.

''(b) REPORT TO CONGRESS.—The Comptroller General shall submit to Congress a report on the study conducted under subsection (a). The report shall include recommendations regarding practice expense adjustments to the payment methodology under part B of title XVIII of the Social Security Act [this part], including the development and inclusion of adequate work units to assure the adequacy of payment amounts

for safe outpatient cancer therapy services. The study shall also include an estimate of the cost of implementing such recommendations.''

FOCUSED MEDICAL REVIEWS OF CLAIMS DURING MORATORIUM PERIOD

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §221(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–351, as amended by Pub. L. 106–554, §1(a)(6) [title IV, §421(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–516, provided that: ''During years in which paragraph (4) of section 1833(g) of the Social Security Act (42 U.S.C. 1395*l*(g)) applies, the Secretary of Health and Human Services shall conduct focused medical reviews of claims for reimbursement for services described in paragraph (1) or (3) of such section, with an emphasis on such claims for services that are provided to residents of skilled nursing facilities.''

STUDY AND REPORT ON UTILIZATION

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §221(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–352, provided that:

''(1) STUDY.—

''(A) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study which compares—

''(i) utilization patterns (including nationwide patterns, and patterns by region, types of settings, and diagnosis or condition) of outpatient physical therapy services, outpatient occupational therapy services, and speech-language pathology services that are covered under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395) [this subchapter] and provided on or after January 1, 2000; with

''(ii) such patterns for such services that were provided in 1998 and 1999.

''(B) REVIEW OF CLAIMS.—In conducting the study under this subsection the Secretary of Health and Human Services shall review a statistically significant number of claims for reimbursement for the services described in subparagraph (A).

''(2) REPORT.—Not later than June 30, 2001, the Secretary of Health and Human Services shall submit a report to Congress on the study conducted under paragraph (1), together with any recommendations for legislation that the Secretary determines to be appropriate as a result of such study.''

PHASE-IN OF PPS FOR AMBULATORY SURGICAL CENTERS

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §226], Nov. 29, 1999, 113 Stat. 1536, 1501A–354, as amended by Pub. L. 106–554, §1(a)(6) [title IV, §424(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–518, 2763A–519, provided that: ''If the Secretary of Health and Human Services implements a revised prospective payment system for services of ambulatory surgical facilities under section 1833(i) of the Social Security Act (42 U.S.C. 1395*l*(i)), prior to incorporating data from the 1999 Medicare cost survey or a subsequent cost survey, such system shall be implemented in a manner so that—

''(1) in the first year of its implementation, only a proportion (specified by the Secretary and not to exceed one-fourth) of the payment for such services shall be made in accordance with such system and the remainder shall be made in accordance with current regulations; and

''(2) in each of the following 2 years a proportion (specified by the Secretary and not to exceed one-half and three-fourths, respectively) of the payment for such services shall be made under such system and the remainder shall be made in accordance with current regulations.

By not later than January 1, 2003, the Secretary shall incorporate data from a 1999 medicare cost survey or a subsequent cost survey for purposes of implementing or revising such system.''

MEDPAC STUDY ON POSTSURGICAL RECOVERY CARE CENTER SERVICES

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §229(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–356, provided that:

''(1) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study on the cost-effectiveness and efficacy of covering under the medicare program under title XVIII of the Social Security Act [this subchapter] services of a post-surgical recovery care center (that provides an intermediate level of recovery care following surgery). In conducting such study, the Commission shall consider data on these centers gathered in demonstration projects.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Nov. 29,1999], the Commission shall submit to Congress a report on such study and shall include in the report recommendations on the feasibility, costs, and savings of covering such services under the medicare program.''

MEDICARE REIMBURSEMENT FOR TELEHEALTH SERVICES

Section 4206 of Pub. L. 105–33, as amended by Pub. L. 106–554, §1(a)(6) [title II, §223(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–487, provided that:

''(a) IN GENERAL.—For services furnished on and after January 1, 1999, and before October 1, 2001, the Secretary of Health and Human Services shall make payments from the Federal Supplementary Medical Insurance Trust Fund under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.) in accordance with the methodology described in subsection (b) for professional consultation via telecommunications systems with a physician (as defined in section 1861(r) of such Act (42 U.S.C. 1395x(r)) or a practitioner (described in section 1842(b)(18)(C) of such Act (42 U.S.C. 1395u(b)(18)(C)) furnishing a service for which payment may be made under such part to a beneficiary under the medicare program residing in a county in a rural area (as defined in section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D))) that is designated as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)), notwithstanding that the individual physician or practitioner providing the professional consultation is not at the same location as the physician or practitioner furnishing the service to that beneficiary.

''(b) METHODOLOGY FOR DETERMINING AMOUNT OF PAYMENTS.—Taking into account the findings of the report required under section 192 of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 1988), the findings of the report required under paragraph (c), and any other findings related to the clinical efficacy and cost-effectiveness of telehealth applications, the Secretary shall establish a methodology for determining the amount of payments made under subsection (a) within the following parameters:

''(1) The payment shall [be] shared between the referring physician or practitioner and the consulting physician or practitioner. The amount of such payment shall not be greater than the current fee schedule of the consulting physician or practitioner for the health care services provided.

''(2) The payment shall not include any reimbursement for any telephone line charges or any facility fees, and a beneficiary may not be billed for any such charges or fees.

''(3) The payment shall be made subject to the coinsurance and deductible requirements under subsections (a)(1) and (b) of section 1833 of the Social Security Act (42 U.S.C. 1395*l*).

''(4) The payment differential of section 1848(a)(3) of such Act (42 U.S.C. 1395w–4(a)(3)) shall apply to services furnished by non-participating physicians. The provisions of section 1848(g) of such Act (42 U.S.C. 1395w–4(g)) and section 1842(b)(18) of such Act (42 U.S.C. 1395u(b)(18)) shall apply. Payment for such service shall be increased annually by the update factor for physicians' services determined under section 1848(d) of such Act (42 U.S.C. 1395w–4(d)).

''(c) SUPPLEMENTAL REPORT.—Not later than January 1, 1999, the Secretary shall submit a report to Congress which shall contain a detailed analysis of—

''(1) how telemedicine and telehealth systems are expanding access to health care services;

''(2) the clinical efficacy and cost-effectiveness of telemedicine and telehealth applications;

''(3) the quality of telemedicine and telehealth services delivered; and

''(4) the reasonable cost of telecommunications charges incurred in practicing telemedicine and telehealth in rural, frontier, and underserved areas.

''(d) EXPANSION OF TELEHEALTH SERVICES FOR CERTAIN MEDICARE BENEFICIARIES.—

''(1) IN GENERAL.—Not later than January 1, 1999, the Secretary shall submit a report to Congress that examines the possibility of making payments from the Federal Supplementary Medical Insurance Trust Fund under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.) for professional consultation via telecommunications systems with such a physician or practitioner furnishing a service for which payment may be made under such part to a beneficiary described in paragraph (2), notwithstanding that the individual physician or practitioner providing the professional consultation is not at the same location as the physician or practitioner furnishing the service to that beneficiary.

''(2) BENEFICIARY DESCRIBED.—A beneficiary described in this paragraph is a beneficiary under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) who does not reside in a rural area (as so defined) that is designated as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)), who is homebound or nursing homebound, and for whom being transferred for health care services imposes a serious hardship.

''(3) REPORT.—The report described in paragraph (1) shall contain a detailed statement of the potential costs and savings to the medicare program of making the payments described in that paragraph using various reimbursement schemes.''

REPORT ON COVERAGE OF OUTPATIENT OCCUPATIONAL THERAPY SERVICES

Pub. L. 105–33, title IV, § 4541(d)(2), Aug. 5, 1997, 111 Stat. 457, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 221(c)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–351, provided that: ''Not later than January 1, 2001, the Secretary of Health and Human Services shall submit to Congress a report that includes recommendations on—

''(A) the establishment of a mechanism for assuring appropriate utilization of outpatient physical therapy services, outpatient occupational therapy services, and speech-language pathology services that are covered under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395) [this subchapter]; and

''(B) the establishment of an alternative payment policy for such services based on classification of individuals by diagnostic category, functional status, prior use of services (in both inpatient and outpatient settings), and such other criteria as the Secretary determines appropriate, in place of the uniform dollar limitations specified in section 1833(g) of such Act [subsec. (g) of this section], as amended by paragraph (1).

The recommendations shall include how such a mechanism or policy might be implemented in a budget-neutral manner.''

[Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 221(c)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–352, provided that: ''The amendment made by paragraph (1) [amending section 4541(d)(2) of Pub. L. 105–33, set out above] shall take effect as if included in the enactment of section 4541 of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].'']

STUDY AND REPORT ON CLINICAL LABORATORY TESTS

Section 4553(c) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—The Secretary shall request the Institute of Medicine of the National Academy of Sciences to conduct a study of payments under part B of title XVIII of the Social Security Act [this part] for clinical laboratory tests. The study shall include a review of the adequacy of the current methodology and recommendations regarding alternative payment systems. The study shall also analyze and discuss the relationship between such payment systems and access to high quality laboratory tests for medicare beneficiaries, including availability and access to new testing methodologies.

''(2) REPORT TO CONGRESS.—The Secretary shall, not later than 2 years after the date of enactment of this section [Aug. 5, 1997], report to the Committees on Ways and Means and Commerce of the House of Representatives and the Committee on Finance of the Senate the results of the study described in paragraph (1), including any recommendations for legislation.''

ADJUSTMENTS TO PAYMENT AMOUNTS FOR NEW TECHNOLOGY INTRAOCULAR LENSES

Section 141(b) of Pub. L. 103–432 provided that:

''(1) ESTABLISHMENT OF PROCESS FOR REVIEW OF AMOUNTS.—Not later than 1 year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall develop and implement a process under which interested parties may request review by the Secretary of the appropriateness of the reimbursement amount provided under section 1833(i)(2)(A)(iii) of the Social Security Act [subsec. (i)(2)(A)(iii) of this section] with respect to a class of new technology intraocular lenses. For purposes of the preceding sentence, an intraocular lens may not be treated as a new technology lens unless it has been approved by the Food and Drug Administration.

''(2) FACTORS CONSIDERED.—In determining whether to provide an adjustment of payment with respect to a particular lens under paragraph (1), the Secretary shall take into account whether use of the lens is likely to result in reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

''(3) NOTICE AND COMMENT.—The Secretary shall publish notice in the Federal Register from time to time (but no less often than once each year) of a list of the requests that the Secretary has received for review under this subsection, and shall provide for a 30-day comment period on the lenses that are the subjects of the requests contained in such notice. The Secretary shall publish a notice of the Secretary's determinations with respect to intraocular lenses listed in the notice within 90 days after the close of the comment period.

''(4) EFFECTIVE DATE OF ADJUSTMENT.—Any adjustment of a payment amount (or payment limit) made under this subsection shall become effective not later than 30 days after the date on which the notice with respect to the adjustment is published under paragraph (3).''

STUDY OF MEDICARE COVERAGE OF PATIENT CARE COSTS ASSOCIATED WITH CLINICAL TRIALS OF NEW CANCER THERAPIES

Section 142 of Pub. L. 103–432 directed Secretary of Health and Human Services to conduct a study, and to submit a report to Congress not later than 2 years after Oct. 31, 1994, of effects of expressly covering under medicare program patient care costs for beneficiaries enrolled in clinical trials of new cancer therapies, where protocol for the trial has been approved by the National Cancer Institute or met similar scientific and ethical standards, including approval by an institutional review board.

STUDY OF ANNUAL CAP ON AMOUNT OF MEDICARE PAYMENT FOR OUTPATIENT PHYSICAL THERAPY AND OCCUPATIONAL THERAPY SERVICES

Section 143 of Pub. L. 103–432 directed Secretary of Health and Human Services to submit to Congress, not

later than Jan. 1, 1996, study and report on appropriateness of continuing annual limitation on amount of payment for outpatient services of independently practicing physical and occupational therapists under medicare program, which was to include such recommendations for changes in such annual limitation as Secretary found appropriate.

AMBULATORY SURGICAL CENTER SERVICES; INFLATION UPDATE

Section 13531 of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services shall not provide for any inflation update in the payment amounts under subparagraphs (A) and (B) of section 1833(i)(2) of the Social Security Act [subsec. (i)(2)(A) and (B) of this section] for fiscal year 1994 or for fiscal year 1995.''

FREEZE IN ALLOWANCE FOR INTRAOCULAR LENSES

Section 13533 of Pub. L. 103–66 provided that: ''Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act [subsec. (i)(2)(A)(iii) of this section], the amount of payment determined under such section for an intraocular lens inserted subsequent to or during cataract surgery in an ambulatory surgical center on or after January 1, 1994, and before January 1, 1999, shall be equal to $150.''

Section 4151(c)(3) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §141(d), Oct. 31, 1994, 108 Stat. 4426, provided that: ''Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act [subsec. (i)(2)(A)(iii) of this section], the amount of payment determined under such section for an intraocular lens inserted during or subsequent to cataract surgery furnished to an individual in an ambulatory surgical center on or after the date of the enactment of this Act [Nov. 5, 1990] and on or before December 31, 1992, shall be equal to $200.''

[Section 141(d) of Pub. L. 103–432 provided that the amendment made by that section to section 4151(c)(3) of Pub. L. 101–508, set out above, is effective as if included in the enactment of Pub. L. 101–508.]

REDUCTION IN PAYMENTS UNDER PART B DURING FINAL TWO MONTHS OF 1990

Section 4158 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law (including any other provision of this Act, other than subsection (b)(4)), payments under part B of title XVIII of the Social Security Act [this part] for items and services furnished during the period beginning on November 1, 1990, and ending on December 31, 1990, shall be reduced by 2 percent, in accordance with subsection (b).

''(b) SPECIAL RULES FOR APPLICATION OF REDUCTION.—

''(1) PAYMENT ON THE BASIS OF COST REPORTING PERIODS.—In the case in which payment for services of a provider of services is made under part B of such title on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, the reduction made under subsection (a) shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the period described in such subsection, but only in the same proportion as the fraction of the cost reporting period that occurs during such period.

''(2) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES.—If a reduction in payment amounts is made under subsection (a) for items or services for which payment under part B of such title is made on an assignment-related basis (as defined in section 1842(i)(1) of the Social Security Act [section 1395u(i)(1) of this title]), the person furnishing the items or services shall be considered to have accepted payment of the reasonable charge for the items or services, less any reduction in payment amount made under subsection (a), as payment in full.

''(3) TREATMENT OF PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS.—Subsection (a) shall not apply to payments under risk-sharing contracts under section 1876 of the Social Security Act [section 1395mm of this title] or under similar contracts under section 402 of the Social Security Amendments of 1967 [Pub. L. 90–248, enacting section 1395b–1 of this title and amending section 1395*ll* of this title] or section 222 of the Social Security Amendments of 1972 [Pub. L. 92–603, amending sections 1395b–1 and 1395*ll* of this title and enacting provisions set out as a note under section 1395b–1 of this title].''

EFFECT ON STATE LAW

Conscientious objections of health care provider under State law unaffected by enactment of subsecs. (a)(1)(Q) and (f) of this section, see section 4206(c) of Pub. L. 101–508, set out as a note under section 1395cc of this title.

DEVELOPMENT OF CRITERIA REGARDING CONSULTATION WITH A PHYSICIAN

Section 6113(c) of Pub. L. 101–239, as amended by Pub. L. 103–432, title I, §147(b), Oct. 31, 1994, 108 Stat. 4429, provided that: ''The Secretary of Health and Human Services shall, taking into consideration concerns for patient confidentiality, develop criteria with respect to payment for qualified psychologist services and clinical social worker services for which payment may be made directly to the psychologist or clinical social worker under part B of title XVIII of the Social Security Act [this part] under which such a psychologist or clinical social worker must agree to consult with a patient's attending physician in accordance with such criteria.''

[Section 147(b) of Pub. L. 103–432 provided that the amendment made by that section to section 6113(c) of Pub. L. 101–239, set out above, is effective with respect to services furnished on or after Jan. 1, 1991.]

STUDY OF REIMBURSEMENT FOR AMBULANCE SERVICES

Section 6136 of Pub. L. 101–239 directed Secretary of Health and Human Services to conduct a study to determine adequacy and appropriateness of payment amounts under this subchapter for ambulance services and, not later than one year after Dec. 19, 1989, submit a report to Congress on results of the study, with report to include such recommendations for changes in medicare payment policy with respect to ambulance services as may be needed to ensure access by medicare beneficiaries to quality ambulance services in metropolitan and rural areas.

PROPAC STUDY OF PAYMENTS FOR SERVICES IN HOSPITAL OUTPATIENT DEPARTMENTS

Section 6137 of Pub. L. 101–239, directed Prospective Payment Assessment Commission to conduct a study on payment under this subchapter for hospital outpatient services and, not later than July 1, 1990, and not later than Mar. 1, 1991, to submit reports to Congress on specified portions of the study, with the reports to include such recommendations as the Commission deemed appropriate, prior to repeal by Pub. L. 103–432, title I, §147(c)(1), Oct. 31, 1994, 108 Stat. 4429.

BUDGET NEUTRALITY

Section 8421(b) of Pub. L. 100–647 provided that: ''The Secretary of Health and Human Services shall adjust the fees for transportation and personnel established under section 1833(h)(3)(B) of the Social Security Act [subsec. (h)(3)(B) of this section] for tests not covered under the amendment made by subsection (a) [amending this section] in such manner that the total cost of fees under such section is the same as would have been the case without such amendment.''

ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS

For requirement that Secretary of Health and Human Services modify contracts under subsection (a)(1)(A) of this section to take into account amendments made by

Pub. L. 100–360 and that such organizations make appropriate adjustments in their agreements with medicare beneficiaries to take into account such amendments, see section 222 of Pub. L. 100–360, set out as a note under section 1395mm of this title.

STUDY AND REPORT TO CONGRESS RESPECTING INCENTIVE PAYMENTS FOR PHYSICIANS' SERVICES FURNISHED IN UNDERSERVED AREAS

Section 4043(b) of Pub. L. 100–203 directed Secretary of Health and Human Services to study and report to Congress, by not later than Jan. 1, 1990, on feasibility of making additional payments described in section 1395*l*(m) of this title with respect to physician services performed in health manpower shortage areas located in urban areas, prior to repeal by Pub. L. 101–508, title IV, § 4118(g)(1), Nov. 5, 1990, 104 Stat. 1388–70.

FEE SCHEDULES FOR PHYSICIAN PATHOLOGY SERVICES

Section 4050 of Pub. L. 100–203 directed Secretary of Health and Human Services to develop a relative value scale and fee schedules with updating index for payment of physician pathology services under this part, and to report to committees of Congress not later than Apr. 1, 1989, on the scale, schedules, and index, prior to repeal by Pub. L. 101–508, title IV, § 4104(b)(3), Nov. 5, 1990, 104 Stat. 1388–59.

APPLYING COPAYMENT AND DEDUCTIBLE TO CERTAIN OUTPATIENT PHYSICIANS' SERVICES

Section 4054 of Pub. L. 100–203, relating to payment under part B of title XVIII of the Social Security Act (this part) for physicians' services specified in subsec. (i) of this section and furnished on or after Apr. 1, 1988, in an ambulatory surgical center or hospital outpatient department on an assignment-related basis, was negated in the amendment of section 4054 by Pub. L. 100–360, title IV, § 411(f)(12)(A), July 1, 1988, 102 Stat. 781.

OTHER PHYSICIAN PAYMENT STUDIES

Section 4056(c), formerly § 4055(c), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(f)(14), July 1, 1988, 102 Stat. 781, provided directed Secretary to (1) conduct a study of changes in the payment system for physicians' services, under part B, that would be required for the implementation of a national fee schedule for such services furnished on or after Jan. 1, 1990, and report to Congress on such study by not later than July 1, 1989, (2) conduct a study of issues relating to the volume and intensity of physicians' services under part B and submit to Congress an interim report on such study not later than May 1, 1988, and a final report on such study not later than May 1, 1989, and (3) conduct a survey to determine distribution of (A) the liabilities and expenditures for health care services of individuals entitled to benefits under this subchapter, including liabilities for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized, and (B) the collection rates among different classes of physicians for such liabilities, including collection rates for required coinsurance and for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized, report to Congress on such study by not later than July 1, 1990.

STUDY OF PAYMENT FOR CHEMOTHERAPY IN PHYSICIANS' OFFICES

Section 4056(d), formerly § 4055(d), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(f)(14), July 1, 1988, 102 Stat. 781, directed Secretary to study ways of modifying part B to permit adequate payment under such part for costs associated with providing chemotherapy to cancer patients in physicians' offices, with the Secretary to report to Congress on results of study by not later than Apr. 1, 1989, prior to repeal by Pub. L. 105–362, title VI, § 601(b)(7), Nov. 10, 1998, 112 Stat. 3286.

CLINICAL DIAGNOSTIC LABORATORY TESTS; LIMITATION ON CHANGES IN FEE SCHEDULES

Section 4064(a) of Pub. L. 100–203 which provided 3-month freeze in fee schedules for clinical laboratory diagnostic laboratory tests under part B of title XVIII of the Social Security Act (this part) and directed the Secretary of Health and Human Services to not adjust the fee schedules established under subsec. (h) of this section to take into account any increase in the consumer price index, was negated in the amendment of section 4064(a) by Pub. L. 100–360, title IV, § 411(g)(3)(A), July 1, 1988, 102 Stat. 783.

GAO STUDY OF FEE SCHEDULES

Section 4064(b)(4) of Pub. L. 100–203 directed Comptroller General to conduct a study of level of fee schedules established for clinical diagnostic laboratory services under subsec. (h)(2) of this section to determine, based on costs of, and revenues received for, such tests the appropriateness of such schedules, with Comptroller General to report to Congress on results of such study by not later than Jan. 1, 1990, and with provision that suppliers of such tests which fail to provide Comptroller General with reasonable access to necessary records to carry out study being subject to exclusion from the medicare program under section 1320a–7(a) of this title.

AMOUNTS PAID FOR INDEPENDENT RURAL HEALTH CLINIC SERVICES

Section 4067(b) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall report to Congress, by not later than March 1, 1989, on the adequacy of the amounts paid under title XVIII of the Social Security Act [this subchapter] for rural health clinic services provided by independent rural health clinics.''

REPORT ON ESTABLISHMENT OF NATIONAL FEE SCHEDULES FOR PAYMENT OF CLINICAL DIAGNOSTIC LABORATORY TESTS

Section 9339(b)(3) of Pub. L. 99–509 directed Secretary of Health and Human Services to report to Congress, by not later than Apr. 1, 1988, on advisability and feasibility of, and methodology for, establishing national fee schedules for payment for clinical diagnostic laboratory tests under section 1395*l*(h) of this title, prior to repeal by Pub. L. 101–508, title IV, § 4154(e)(3), Nov. 5, 1990, 104 Stat. 1388–86, effective as if included in enactment of Pub. L. 99–509.

STATE STANDARDS FOR DIRECTORS OF CLINICAL LABORATORIES

Section 9339(d) of Pub. L. 99–509 provided that:

''(1) IN GENERAL.—If a State (as defined for purposes of title XVIII of the Social Security Act [this subchapter]) provides for the licensing or other standards with respect to the operation of clinical laboratories (including such laboratories in hospitals) in the State under which such a laboratory may be directed by an individual with certain qualifications, nothing in such title shall be construed as authorizing the Secretary of Health and Human Services to require such a laboratory, as a condition of payment or participation under such title, to be directed by an individual with other qualifications.

''(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on January 1, 1987.''

TRANSITIONAL PROVISIONS FOR PAYMENT OF FEES FOR CLINICAL DIAGNOSTIC LABORATORY TESTS

Section 9303(a)(3) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall provide that the annual adjustment under section 1833(h) of the Social Security Act [subsec. (h) of this section] for 1986—

''(A) shall take effect on January 1, 1987,

''(B) shall apply for the 12-month period beginning on that date, and

''(C) shall take into account the percentage increase or decrease in the Consumer Price Index for all urban consumers (United States city average) occurring over an 18-month period, rather than over a 12-month period.''

EXTENSION OF MEDICARE PHYSICIAN PAYMENT PROVISIONS

Amount of payment under this part for physicians' services furnished between Oct. 1, 1985, and Mar. 14, 1986, to be determined on the same basis as the amount of such services furnished on Sept. 30, 1985, see section 5(b) of Pub. L. 99–107, as amended, set out as a note under section 1395ww of this title.

FEE SCHEDULES FOR DIAGNOSTIC LABORATORY TESTS AND FEASIBILITY OF DIRECT PAYMENTS TO PHYSICIANS; REPORT TO CONGRESS

Section 2303(i) of Pub. L. 98–369 provided that:

''(1) The Comptroller General shall report to the Congress on—

''(A) the appropriateness of the fee schedules under section 1833(h) of the Social Security Act [subsec. (h) of this section] and their impact on the volume and quality of clinical diagnostic laboratory tests;

''(B) the potential impact of the adoption of a national fee schedule; and

''(C) the potential impact of applying a national fee schedule to clinical diagnostic laboratory tests provided by hospitals to their outpatients.

''(2) The Secretary of Health and Human Services shall report to the Congress with respect to the advisability and feasibility of a system of direct payment to any physician for all clinical diagnostic laboratory tests ordered by such physician.

''(3) The reports required by paragraphs (1) and (2) shall be submitted not later than January 1, 1987.''

PACEMAKER REIMBURSEMENT REVIEW AND REFORM

Section 2304(a) of Pub. L. 98–369 provided that:

''(1) The Secretary of Health and Human Services shall issue revisions to the current guidelines for the payment under part B of title XVIII of the Social Security Act [this part] for the transtelephonic monitoring of cardiac pacemakers. Such revised guidelines shall include provisions regarding the specifications for and frequency of transtelephonic monitoring procedures which will be found to be reasonable and necessary.

''(2)(A) Except as provided in subparagraph (B), if the guidelines required by paragraph (1) have not been issued and put into effect by October 1, 1984, and until such guidelines have been issued and put into effect, payment may not be made under part B of title XVIII of the Social Security Act for transtelephonic monitoring procedures, with respect to a single-chamber cardiac pacemaker powered by lithium batteries, conducted more frequently than—

''(i) weekly during the first month after implantation,

''(ii) once every two months during the period representing 80 percent of the estimated life of the implanted device, and

''(iii) monthly thereafter.

''(B) Subparagraph (A) shall not apply in cases where the Secretary determines that special medical factors (including possible evidence of pacemaker or lead malfunction) justify more frequent transtelephonic monitoring procedures.''

PAYMENT FOR PREADMISSION DIAGNOSTIC TESTING PERFORMED IN PHYSICIAN'S OFFICE

Section 2305(f) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and enacting provisions set out above] shall not be construed as prohibiting payment, subject to the applicable copayments, under part B of title XVIII of the Social Security Act [this part] for preadmission diagnostic testing performed in a physician's office to the extent such testing is otherwise reimbursable under regulations of the Secretary.''

PROVIDERS OF SERVICES TO CALCULATE AND REPORT LESSER-OF-COST-OR-CHARGES DETERMINATIONS SEPARATELY WITH RESPECT TO PAYMENTS UNDER PARTS A AND B OF THIS SUBCHAPTER; ISSUANCE OF REGULATIONS

For provision directing the Secretary to issue regulations requiring providers of services to calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under parts A and B of this subchapter other than diagnostic tests under subsec. (h) of this section, see section 2308(a) of Pub. L. 98–369, set out as a note under section 1395f of this title.

DETERMINATION OF NOMINAL CHARGES FOR APPLYING NOMINALITY TEST

For provision directing the Secretary to provide, in addition to other rules deemed appropriate, that charges representing 60 percent or less of costs be considered nominal for purposes of applying the nominality test under subsec. (a)(2)(B)(ii) of this section, see section 2308(b)(1) of Pub. L. 98–369, set out as a note under section 1395f of this title.

STUDY OF MEDICARE PART B PAYMENTS; COMPILATION OF CENTRALIZED CHARGE DATA BASE; REPORT TO CONGRESS

Section 2309 of Pub. L. 98–369 directed Director of Office of Technology Assessment to conduct a study of physician reimbursement under the Medicare program and make a report not later than Dec. 31, 1985, covering findings and recommendations on methods by which payment amounts and other program policies under the program might be modified, and directed that Secretary of Health and Human Services compile a centralized Medicare part B charge data base to aid in the study.

MONITORING PROVISION OF HEPATITIS B VACCINE; REVIEW OF CHANGES IN MEDICAL TECHNOLOGY

Section 2323(e) of Pub. L. 98–369 provided that: ''The Secretary shall monitor the provision of hepatitis B vaccine under part B of title XVIII of the Social Security Act [this part], and shall review any changes in medical technology which may have an effect on the amounts which should be paid for such service.''

REPORT ON PREADMISSION DIAGNOSTIC TESTING EXPENSES

Section 932(b) of Pub. L. 96–499 required a report to Congress, no later than one year after Dec. 5, 1980, on the policy respecting expenses incurred for preadmission diagnostic testing furnished to an individual at a hospital within seven days of an individual's admission to another hospital.

STUDY OF FEASIBILITY AND DESIRABILITY OF IMPOSING COPAYMENT REQUIREMENT ON RURAL HEALTH CLINIC VISITS; REPORT NOT LATER THAN DECEMBER 13, 1978

Section 1(c) of Pub. L. 95–210 directed Secretary of Health, Education, and Welfare to conduct a study of the feasibility and desirability of imposing a copayment for each visit to a rural health clinic for rural health clinic services under this part and that Secretary report to appropriate committee of Congress, not later than one year after Dec. 13, 1977, on such study.

PROHIBITION AGAINST PAYMENTS IN CASES OF NONENTITLEMENT TO MONTHLY BENEFITS UNDER SUBCHAPTER II OR SUSPENSION OF BENEFITS OF ALIENS OUTSIDE THE UNITED STATES

Section 104(b)(1) of Pub. L. 89–97 provided that: ''No payments shall be made under part B of title XVIII of the Social Security Act [this part] with respect to ex-

penses incurred by an individual during any month for which such individual may not be paid monthly benefits under title II of such Act [subchapter II of this chapter] (or for which such monthly benefits would be suspended if he were otherwise entitled thereto) by reason of section 202(t) of such Act [section 402(t) of this title] (relating to suspension of benefits of aliens who are outside the United States).''

§ 1395m. Special payment rules for particular items and services

(a) Payment for durable medical equipment

(1) General rule for payment

(A) In general

With respect to a covered item (as defined in paragraph (13)) for which payment is determined under this subsection, payment shall be made in the frequency specified in paragraphs (2) through (7) and in an amount equal to 80 percent of the payment basis described in subparagraph (B).

(B) Payment basis

Subject to subparagraph (F)(i), the payment basis described in this subparagraph is the lesser of—

(i) the actual charge for the item, or

(ii) the payment amount recognized under paragraphs (2) through (7) of this subsection for the item;

except that clause (i) shall not apply if the covered item is furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

(C) Exclusive payment rule

Subject to subparagraph (F)(ii), this subsection shall constitute the exclusive provision of this subchapter for payment for covered items under this part or under part A of this subchapter to a home health agency.

(D) Reduction in fee schedules for certain items

With respect to a seat-lift chair or transcutaneous electrical nerve stimulator furnished on or after April 1, 1990, the Secretary shall reduce the payment amount applied under subparagraph (B)(ii) for such an item by 15 percent, and, in the case of a transcutaneous electrical nerve stimulator furnished on or after January 1, 1991, the Secretary shall further reduce such payment amount (as previously reduced) by 45 percent.

(E) Clinical conditions for coverage

(i) In general

The Secretary shall establish standards for clinical conditions for payment for covered items under this subsection.

(ii) Requirements

The standards established under clause (i) shall include the specification of types or classes of covered items that require, as a condition of payment under this subsection, a face-to-face examination of the individual by a physician (as defined in section 1395x(r)(1) of this title), a physician assistant, nurse practitioner, or a clinical nurse specialist (as those terms are defined in section 1395x(aa)(5) of this title) and a prescription for the item.

(iii) Priority of establishment of standards

In establishing the standards under this subparagraph, the Secretary shall first establish standards for those covered items for which the Secretary determines there has been a proliferation of use, consistent findings of charges for covered items that are not delivered, or consistent findings of falsification of documentation to provide for payment of such covered items under this part.

(iv) Standards for power wheelchairs

Effective on December 8, 2003, in the case of a covered item consisting of a motorized or power wheelchair for an individual, payment may not be made for such covered item unless a physician (as defined in section 1395x(r)(1) of this title), a physician assistant, nurse practitioner, or a clinical nurse specialist (as those terms are defined in section 1395x(aa)(5) of this title) has conducted a face-to-face examination of the individual and written a prescription for the item.

(v) Limitation on payment for covered items

Payment may not be made for a covered item under this subsection unless the item meets any standards established under this subparagraph for clinical condition of coverage.

(F) Application of competitive acquisition; limitation of inherent reasonableness authority

In the case of covered items furnished on or after January 1, 2009, that are included in a competitive acquisition program in a competitive acquisition area under section 1395w–3(a) of this title—

(i) the payment basis under this subsection for such items and services furnished in such area shall be the payment basis determined under such competitive acquisition program; and

(ii) the Secretary may use information on the payment determined under such competitive acquisition programs to adjust the payment amount otherwise recognized under subparagraph (B)(ii) for an area that is not a competitive acquisition area under section 1395w–3 of this title and in the case of such adjustment, paragraph (10)(B) shall not be applied.

(2) Payment for inexpensive and other routinely purchased durable medical equipment

(A) In general

Payment for an item of durable medical equipment (as defined in paragraph (13))—

(i) the purchase price of which does not exceed $150,

(ii) which the Secretary determines is acquired at least 75 percent of the time by purchase, or

(iii) which is an accessory used in conjunction with a nebulizer, aspirator, or a ventilator excluded under paragraph (3)(A),

shall be made on a rental basis or in a lump-sum amount for the purchase of the item. The payment amount recognized for purchase or rental of such equipment is the amount specified in subparagraph (B) for purchase or rental, except that the total amount of payments with respect to an item may not exceed the payment amount specified in subparagraph (B) with respect to the purchase of the item.

(B) Payment amount

For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to the purchase or rental of an item furnished in a carrier service area—

(i) in 1989 and in 1990 is the average reasonable charge in the area for the purchase or rental, respectively, of the item for the 12-month period ending on June 30, 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987;

(ii) in 1991 is the sum of (I) 67 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(I) for 1991, and (II) 33 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1991;

(iii) in 1992 is the sum of (I) 33 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(II) for 1992, and (II) 67 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1992; and

(iv) in 1993 and each subsequent year is the national limited payment amount for the item or device computed under subparagraph (C)(ii) for that year (reduced by 10 percent, in the case of a blood glucose testing strip furnished after 1997 for an individual with diabetes).

(C) Computation of local payment amount and national limited payment amount

For purposes of subparagraph (B)—

(i) the local payment amount for an item or device for a year is equal to—

(I) for 1991, the amount specified in subparagraph (B)(i) for 1990 increased by the covered item update for 1991, and

(II) for 1992, 1993, and 1994, the amount determined under this clause for the preceding year increased by the covered item update for the year; and

(ii) the national limited payment amount for an item or device for a year is equal to—

(I) for 1991, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the weighted average of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the weighted average of all local payment amounts determined under such clause for such item,

(II) for 1992 and 1993, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year,

(III) for 1994, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the median of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the median of all local payment amounts determined under such clause for such item or device for that year, and

(IV) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year.

(3) Payment for items requiring frequent and substantial servicing

(A) In general

Payment for a covered item (such as IPPB machines and ventilators, excluding ventilators that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices) for which there must be frequent and substantial servicing in order to avoid risk to the patient's health shall be made on a monthly basis for the rental of the item and the amount recognized is the amount specified in subparagraph (B).

(B) Payment amount

For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to an item or device furnished in a carrier service area—

(i) in 1989 and in 1990 is the average reasonable charge in the area for the rental of the item or device for the 12-month period ending with June 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987;

(ii) in 1991 is the sum of (I) 67 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(I) for 1991, and (II) 33 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1991;

(iii) in 1992 is the sum of (I) 33 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(II) for 1992, and (II) 67 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1992; and

(iv) in 1993 and each subsequent year is the national limited payment amount for the item or device computed under subparagraph (C)(ii) for that year.

(C) Computation of local payment amount and national limited payment amount

For purposes of subparagraph (B)—

(i) the local payment amount for an item or device for a year is equal to—

(I) for 1991, the amount specified in subparagraph (B)(i) for 1990 increased by the covered item update for 1991, and

(II) for 1992, 1993, and 1994, the amount determined under this clause for the preceding year increased by the covered item update for the year; and

(ii) the national limited payment amount for an item or device for a year is equal to—

(I) for 1991, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the weighted average of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the weighted average of all local payment amounts determined under such clause for such item,

(II) for 1992 and 1993, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year,

(III) for 1994, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the median of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the median of all local payment amounts determined under such clause for such item or device for that year, and

(IV) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year.

(4) Payment for certain customized items

Payment with respect to a covered item that is uniquely constructed or substantially modified to meet the specific needs of an individual patient, and for that reason cannot be grouped with similar items for purposes of payment under this subchapter, shall be made in a lump-sum amount (A) for the purchase of the item in a payment amount based upon the carrier's individual consideration for that item, and (B) for the reasonable and necessary maintenance and servicing for parts and labor not covered by the supplier's or manufacturer's warranty, when necessary during the period of medical need, and the amount recognized for such maintenance and servicing shall be paid on a lump-sum, as needed basis based upon the carrier's individual consideration for that item.

(5) Payment for oxygen and oxygen equipment

(A) In general

Payment for oxygen and oxygen equipment shall be made on a monthly basis in the monthly payment amount recognized under paragraph (9) for oxygen and oxygen equipment (other than portable oxygen equipment), subject to subparagraphs (B), (C), and (E).

(B) Add-on for portable oxygen equipment

When portable oxygen equipment is used, but subject to subparagraph (D), the payment amount recognized under subparagraph (A) shall be increased by the monthly payment amount recognized under paragraph (9) for portable oxygen equipment.

(C) Volume adjustment

When the attending physician prescribes an oxygen flow rate—

(i) exceeding 4 liters per minute, the payment amount recognized under subparagraph (A), subject to subparagraph (D), shall be increased by 50 percent, or

(ii) of less than 1 liter per minute, the payment amount recognized under subparagraph (A) shall be decreased by 50 percent.

(D) Limit on adjustment

When portable oxygen equipment is used and the attending physician prescribes an oxygen flow rate exceeding 4 liters per minute, there shall only be an increase under either subparagraph (B) or (C), whichever increase is larger, and not under both such subparagraphs.

(E) Recertification for patients receiving home oxygen therapy

In the case of a patient receiving home oxygen therapy services who, at the time such services are initiated, has an initial arterial blood gas value at or above a partial pressure of 56 or an arterial oxygen saturation at or above 89 percent (or such other values, pressures, or criteria as the Secretary may specify) no payment may be made under this part for such services after the expiration of the 90-day period that begins on the date the patient first receives such services unless the patient's attending physician certifies that, on the basis of a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 30 days of such 90-day period, there is a medical need for the patient to continue to receive such services.

(6) Payment for other covered items (other than durable medical equipment)

Payment for other covered items (other than durable medical equipment and other covered items described in paragraph (3), (4), or (5)) shall be made in a lump-sum amount for the purchase of the item in the amount of the purchase price recognized under paragraph (8).

(7) Payment for other items of durable medical equipment

(A) In general

In the case of an item of durable medical equipment not described in paragraphs (2) through (6)—

(i) payment shall be made on a monthly basis for the rental of such item during the period of medical need (but payments under this clause may not extend over a period of continuous use of longer than 15 months, or, in the case of an item for which a purchase agreement has been entered into under clause (iii), a period of continuous use of longer than 13 months), and, subject to subparagraph (B), the amount recognized for each of the first 3 months of such period is 10 percent of the purchase price recognized under paragraph (8) with respect to the item, and for each of the remaining months of such period is 7.5 percent of such purchase price;

(ii) in the case of a power-driven wheelchair, at the time the supplier furnishes the item, the supplier shall offer the individual patient the option to purchase the item, and payment for such item shall be made on a lump-sum basis if the patient exercises such option;

(iii) during the 10th continuous month during which payment is made for the rental of an item under clause (i), the supplier of such item shall offer the individual patient the option to enter into a purchase agreement under which, if the patient notifies the supplier not later than 1 month after the supplier makes such offer that the patient agrees to accept such offer and exercise such option—

(I) the supplier shall transfer title to the item to the individual patient on the first day that begins after the 13th continuous month during which payment is made for the rental of the item under clause (i),

(II) after the supplier transfers title to the item under subclause (I), maintenance and servicing payments shall be made in accordance with clause (vi);

(iv) in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii), during the first 6-month period of medical need that follows the period of medical need during which payment is made under clause (i), no payment shall be made for rental or maintenance and servicing of the item;

(v) in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii), during the first month of each succeeding 6-month period of medical need, a maintenance and servicing payment may be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment) and the amount recognized for each such 6-month period is the lower of (I) a reasonable and necessary maintenance and servicing fee or fees established by the Secretary, or (II) 10 percent of the total of the purchase price recognized under paragraph (8) with respect to the item; and

(vi) in the case of an item for which a purchase agreement has been entered into under clause (ii) or clause (iii), maintenance and servicing payments may be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment), and such payments shall be in an amount established by the Secretary on the basis of reasonable charges in the locality for maintenance and servicing.

The Secretary shall determine the meaning of the term ''continuous'' in subparagraph (A).

(B) Range for rental amounts

(i) For 1989

For items furnished during 1989, the payment amount recognized under subparagraph (A)(i) shall not be more than 115 percent, and shall not be less than 85 percent, of the prevailing charge established for rental of the item in January 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987.

(ii) For 1990

For items furnished during 1990, clause (i) shall apply in the same manner as it applies to items furnished during 1989.

(C) Replacement of items

(i) Establishment of reasonable useful lifetime

In accordance with clause (iii), the Secretary shall determine and establish a reasonable useful lifetime for items of durable medical equipment for which payment may be made under this paragraph.

(ii) Payment for replacement items

If the reasonable lifetime of such an item, as so established, has been reached during a continuous period of medical need, or the carrier determines that the item is lost or irreparably damaged, the patient may elect to have payment for an item serving as a replacement for such item made—

(I) on a monthly basis for the rental of the replacement item in accordance with subparagraph (A); or

(II) in the case of an item for which a purchase agreement has been entered into under subparagraph (A)(ii) or (A)(iii), in a lump-sum amount for the purchase of the item.

(iii) Length of reasonable useful lifetime

The reasonable useful lifetime of an item of durable medical equipment under this subparagraph shall be equal to 5 years, ex-

cept that, if the Secretary determines that, on the basis of prior experience in making payments for such an item under this subchapter, a reasonable useful lifetime of 5 years is not appropriate with respect to a particular item, the Secretary shall establish an alternative reasonable lifetime for such item.

(8) Purchase price recognized for miscellaneous devices and items

For purposes of paragraphs (6) and (7), the amount that is recognized under this paragraph as the purchase price for a covered item is the amount described in subparagraph (C) of this paragraph, determined as follows:

(A) Computation of local purchase price

Each carrier under section 1395u of this title shall compute a base local purchase price for the item as follows:

(i) The carrier shall compute a base local purchase price, for each item described—

(I) in paragraph (6) equal to the average reasonable charge in the locality for the purchase of the item for the 12-month period ending with June 1987, or

(II) in paragraph (7) equal to the average of the purchase prices on the claims submitted on an assignment-related basis for the unused item supplied during the 6-month period ending with December 1986.

(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

(I) in 1989 and 1990, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987,

(II) in 1991, equal to the local purchase price computed under this clause for the previous year, increased by the covered item update for 1991, and decreased by the percentage by which the average of the reasonable charges for claims paid for all items described in paragraph (7) is lower than the average of the purchase prices submitted for such items during the final 9 months of 1988; [1] or

(III) in 1992, 1993, and 1994, equal to the local purchase price computed under this clause for the previous year increased by the covered item update for the year.

(B) Computation of national limited purchase price

With respect to the furnishing of a particular item in a year, the Secretary shall compute a national limited purchase price—

(i) for 1991, equal to the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year;

(ii) for 1992 and 1993, the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

(iii) for 1994, the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the median of all local purchase prices computed for the item under such subparagraph for the year and may not be less than 85 percent of the median of all local purchase prices computed under such subparagraph for the item for the year; and

(iv) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.

(C) Purchase price recognized

For purposes of paragraphs (6) and (7), the amount that is recognized under this paragraph as the purchase price for each item furnished—

(i) in 1989 or 1990, is 100 percent of the local purchase price computed under subparagraph (A)(ii)(I);

(ii) in 1991, is the sum of (I) 67 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1991, and (II) 33 percent of the national limited purchase price computed under subparagraph (B) for 1991;

(iii) in 1992, is the sum of (I) 33 percent of the local purchase price computed under subparagraph (A)(ii)(III) for 1992, and (II) 67 percent of the national limited purchase price computed under subparagraph (B) for 1992; and

(iv) in 1993 or a subsequent year, is the national limited purchase price computed under subparagraph (B) for that year.

(9) Monthly payment amount recognized with respect to oxygen and oxygen equipment

For purposes of paragraph (5), the amount that is recognized under this paragraph for payment for oxygen and oxygen equipment is the monthly payment amount described in subparagraph (C) of this paragraph. Such amount shall be computed separately (i) for all items of oxygen and oxygen equipment (other than portable oxygen equipment) and (ii) for portable oxygen equipment (each such group referred to in this paragraph as an ''item'').

(A) Computation of local monthly payment rate

Each carrier under this section shall compute a base local payment rate for each item as follows:

(i) The carrier shall compute a base local average monthly payment rate per beneficiary as an amount equal to (I) the total

[1] So in original. The semicolon probably should be a comma.

reasonable charges for the item during the 12-month period ending with December 1986, divided by (II) the total number of months for all beneficiaries receiving the item in the area during the 12-month period for which the carrier made payment for the item under this subchapter.

(ii) The carrier shall compute a local average monthly payment rate for the item applicable—

(I) to 1989 and 1990, equal to 95 percent of the base local average monthly payment rate computed under clause (i) for the item increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987, or

(II) to 1991, 1992, 1993, and 1994, equal to the local average monthly payment rate computed under this clause for the item for the previous year increased by the covered item increase for the year.

(B) Computation of national limited monthly payment rate

With respect to the furnishing of an item in a year, the Secretary shall compute a national limited monthly payment rate equal to—

(i) for 1991, the local monthly payment rate computed under subparagraph (A)(ii)(II) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year;

(ii) for 1992 and 1993, the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

(iii) for 1994, the local monthly payment rate computed under subparagraph (A)(ii) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the median of all local monthly payment rates computed for the item under such subparagraph for the year and may not be less than 85 percent of the median of all local monthly payment rates computed for the item under such subparagraph for the year;

(iv) for 1995, 1996, and 1997, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

(v) for 1998, 75 percent of the amount determined under this subparagraph for 1997; and

(vi) for 1999 and each subsequent year, 70 percent of the amount determined under this subparagraph for 1997.

(C) Monthly payment amount recognized

For purposes of paragraph (5), the amount that is recognized under this paragraph as the base monthly payment amount for each item furnished—

(i) in 1989 and in 1990, is 100 percent of the local average monthly payment rate computed under subparagraph (A)(ii) for the item;

(ii) in 1991, is the sum of (I) 67 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(II) for the item for 1991, and (II) 33 percent of the national limited monthly payment rate computed under subparagraph (B)(i) for the item for 1991;

(iii) in 1992, is the sum of (I) 33 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(II) for the item for 1992, and (II) 67 percent of the national limited monthly payment rate computed under subparagraph (B)(ii) for the item for 1992; and

(iv) in a subsequent year, is the national limited monthly payment rate computed under subparagraph (B) for the item for that year.

(D) Authority to create classes

(i) In general

Subject to clause (ii), the Secretary may establish separate classes for any item of oxygen and oxygen equipment and separate national limited monthly payment rates for each of such classes.

(ii) Budget neutrality

The Secretary may take actions under clause (i) only to the extent such actions do not result in expenditures for any year to be more or less than the expenditures which would have been made if such actions had not been taken.

(10) Exceptions and adjustments

(A) Areas outside continental United States

Exceptions to the amounts recognized under the previous provisions of this subsection shall be made to take into account the unique circumstances of covered items furnished in Alaska, Hawaii, or Puerto Rico.

(B) Adjustment for inherent reasonableness

The Secretary is authorized to apply the provisions of paragraphs (8) and (9) of section 1395u(b) of this title to covered items and suppliers of such items and payments under this subsection in an area and with respect to covered items and services for which the Secretary does not make a payment amount adjustment under paragraph (1)(F).

(C) Transcutaneous electrical nerve stimulator (TENS)

In order to permit an attending physician time to determine whether the purchase of a transcutaneous electrical nerve stimulator is medically appropriate for a particular patient, the Secretary may determine an appropriate payment amount for the initial rental of such item for a period of not more than 2 months. If such item is subsequently purchased, the payment amount with respect to such purchase is the payment amount determined under paragraph (2).

(11) Improper billing and requirement of physician order

(A) Improper billing for certain rental items

Notwithstanding any other provision of this subchapter, a supplier of a covered item for which payment is made under this subsection and which is furnished on a rental basis shall continue to supply the item without charge (other than a charge provided under this subsection for the maintenance and servicing of the item) after rental payments may no longer be made under this subsection. If a supplier knowingly and willfully violates the previous sentence, the Secretary may apply sanctions against the supplier under section 1395u(j)(2) of this title in the same manner such sanctions may apply with respect to a physician.

(B) Requirement of physician order

The Secretary is authorized to require, for specified covered items, that payment may be made under this subsection with respect to the item only if a physician has communicated to the supplier, before delivery of the item, a written order for the item.

(12) Regional carriers

The Secretary may designate, by regulation under section 1395u of this title, one carrier for one or more entire regions to process all claims within the region for covered items under this section.

(13) "Covered item" defined

In this subsection, the term ''covered item'' means durable medical equipment (as defined in section 1395x(n) of this title), including such equipment described in section 1395x(m)(5) of this title, but not including implantable items for which payment may be made under section 1395*l*(t) of this title.

(14) Covered item update

In this subsection, the term ''covered item update'' means, with respect to a year—

(A) for 1991 and 1992, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced by 1 percentage point;

(B) for 1993, 1994, 1995, 1996, and 1997, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year;

(C) for each of the years 1998 through 2000, 0 percentage points;

(D) for 2001, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June 2000;

(E) for 2002, 0 percentage points;

(F) for 2003, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June of 2002;

(G) for 2004 through 2006—

(i) subject to clause (ii), in the case of class III medical devices described in section 360c(a)(1)(C) of title 21, the percentage increase described in subparagraph (B) for the year involved; and

(ii) in the case of covered items not described in clause (i), 0 percentage points;

(H) for 2007—

(i) subject to clause (ii), in the case of class III medical devices described in section 360c(a)(1)(C) of title 21, the percentage change determined by the Secretary to be appropriate taking into account recommendations contained in the report of the Comptroller General of the United States under section 302(c)(1)(B) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and

(ii) in the case of covered items not described in clause (i), 0 percentage points; and

(I) for 2008—

(i) subject to clause (ii), in the case of class III medical devices described in section 360c(a)(1)(C) of title 21, the percentage increase described in subparagraph (B) (as applied to the payment amount for 2007 determined after the application of the percentage change under subparagraph (H)(i)); and

(ii) in the case of covered items not described in clause (i), 0 percentage points; and

(J) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June of the previous year.

(15) Advance determinations of coverage for certain items

(A) Development of lists of items by Secretary

The Secretary may develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization throughout a carrier's entire service area or a portion of such area.

(B) Development of lists of suppliers by Secretary

The Secretary may develop and periodically update a list of suppliers of items for which payment may be made under this subsection with respect to whom—

(i) the Secretary has found that a substantial number of claims for payment under this part for items furnished by the supplier have been denied on the basis of the application of section 1395y(a)(1) of this title; or

(ii) the Secretary has identified a pattern of overutilization resulting from the business practice of the supplier.

(C) Determinations of coverage in advance

A carrier shall determine in advance of delivery of an item whether payment for the item may not be made because the item is not covered or because of the application of section 1395y(a)(1) of this title if—

(i) the item is included on the list developed by the Secretary under subparagraph (A);

(ii) the item is furnished by a supplier included on the list developed by the Secretary under subparagraph (B); or

(iii) the item is a customized item (other than inexpensive items specified by the Secretary) and the patient to whom the item is to be furnished or the supplier requests that such advance determination be made.

(16) Disclosure of information and surety bond

The Secretary shall not provide for the issuance (or renewal) of a provider number for a supplier of durable medical equipment, for purposes of payment under this part for durable medical equipment furnished by the supplier, unless the supplier provides the Secretary on a continuing basis—

(A) with—

(i) full and complete information as to the identity of each person with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the supplier or in any subcontractor (as defined by the Secretary in regulations) in which the supplier directly or indirectly has a 5 percent or more ownership interest; and

(ii) to the extent determined to be feasible under regulations of the Secretary, the name of any disclosing entity (as defined in section 1320a–3(a)(2) of this title) with respect to which a person with such an ownership or control interest in the supplier is a person with such an ownership or control interest in the disclosing entity; and

(B) with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000.

The Secretary may waive the requirement of a bond under subparagraph (B) in the case of a supplier that provides a comparable surety bond under State law. The Secretary, at the Secretary's discretion, may impose the requirements of the first sentence with respect to some or all providers of items or services under part A of this subchapter or some or all suppliers or other persons (other than physicians or other practitioners, as defined in section 1395u(b)(18)(C) of this title) who furnish items or services under this part.

(17) Prohibition against unsolicited telephone contacts by suppliers

(A) In general

A supplier of a covered item under this subsection may not contact an individual enrolled under this part by telephone regarding the furnishing of a covered item to the individual unless 1 of the following applies:

(i) The individual has given written permission to the supplier to make contact by telephone regarding the furnishing of a covered item.

(ii) The supplier has furnished a covered item to the individual and the supplier is contacting the individual only regarding the furnishing of such covered item.

(iii) If the contact is regarding the furnishing of a covered item other than a covered item already furnished to the individual, the supplier has furnished at least 1 covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

(B) Prohibiting payment for items furnished subsequent to unsolicited contacts

If a supplier knowingly contacts an individual in violation of subparagraph (A), no payment may be made under this part for any item subsequently furnished to the individual by the supplier.

(C) Exclusion from program for suppliers engaging in pattern of unsolicited contacts

If a supplier knowingly contacts individuals in violation of subparagraph (A) to such an extent that the supplier's conduct establishes a pattern of contacts in violation of such subparagraph, the Secretary shall exclude the supplier from participation in the programs under this chapter, in accordance with the procedures set forth in subsections (c), (f), and (g) of section 1320a–7 of this title.

(18) Refund of amounts collected for certain disallowed items

(A) In general

If a nonparticipating supplier furnishes to an individual enrolled under this part a covered item for which no payment may be made under this part by reason of paragraph (17)(B), the supplier shall refund on a timely basis to the patient (and shall be liable to the patient for) any amounts collected from the patient for the item, unless—

(i) the supplier establishes that the supplier did not know and could not reasonably have been expected to know that payment may not be made for the item by reason of paragraph (17)(B), or

(ii) before the item was furnished, the patient was informed that payment under this part may not be made for that item and the patient has agreed to pay for that item.

(B) Sanctions

If a supplier knowingly and willfully fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against the supplier in accordance with section 1395u(j)(2) of this title.

(C) Notice

Each carrier with a contract in effect under this part with respect to suppliers of covered items shall send any notice of denial of payment for covered items by reason of paragraph (17)(B) and for which payment is not requested on an assignment-related basis to the supplier and the patient involved.

(D) Timely basis defined

A refund under subparagraph (A) is considered to be on a timely basis only if—

(i) in the case of a supplier who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the supplier receives a denial notice under subparagraph (C), or

(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the supplier receives notice of an adverse determination on reconsideration or appeal.

(19) Certain upgraded items

(A) Individual's right to choose upgraded item

Notwithstanding any other provision of this subchapter, the Secretary may issue regulations under which an individual may purchase or rent from a supplier an item of upgraded durable medical equipment for which payment would be made under this subsection if the item were a standard item.

(B) Payments to supplier

In the case of the purchase or rental of an upgraded item under subparagraph (A)—

(i) the supplier shall receive payment under this subsection with respect to such item as if such item were a standard item; and

(ii) the individual purchasing or renting the item shall pay the supplier an amount equal to the difference between the supplier's charge and the amount under clause (i).

In no event may the supplier's charge for an upgraded item exceed the applicable fee schedule amount (if any) for such item.

(C) Consumer protection safeguards

Any regulations under subparagraph (A) shall provide for consumer protection standards with respect to the furnishing of upgraded equipment under subparagraph (A). Such regulations shall provide for—

(i) determination of fair market prices with respect to an upgraded item;

(ii) full disclosure of the availability and price of standard items and proof of receipt of such disclosure information by the beneficiary before the furnishing of the upgraded item;

(iii) conditions of participation for suppliers in the billing arrangement;

(iv) sanctions of suppliers who are determined to engage in coercive or abusive practices, including exclusion; and

(v) such other safeguards as the Secretary determines are necessary.

(20) Identification of quality standards

(A) In general

Subject to subparagraph (C), the Secretary shall establish and implement quality standards for suppliers of items and services described in subparagraph (D) to be applied by recognized independent accreditation organizations (as designated under subparagraph (B)) and with which such suppliers shall be required to comply in order to—

(i) furnish any such item or service for which payment is made under this part; and

(ii) receive or retain a provider or supplier number used to submit claims for reimbursement for any such item or service for which payment may be made under this subchapter.

(B) Designation of independent accreditation organizations

Not later than the date that is 1 year after the date on which the Secretary implements the quality standards under subparagraph (A), notwithstanding section 1395bb(b) of this title, the Secretary shall designate and approve one or more independent accreditation organizations for purposes of such subparagraph.

(C) Quality standards

The quality standards described in subparagraph (A) may not be less stringent than the quality standards that would otherwise apply if this paragraph did not apply and shall include consumer services standards.

(D) Items and services described

The items and services described in this subparagraph are the following items and services, as the Secretary determines appropriate:

(i) Covered items (as defined in paragraph (13)) for which payment may otherwise be made under this subsection.

(ii) Prosthetic devices and orthotics and prosthetics described in subsection (h)(4) of this section.

(iii) Items and services described in section 1395u(s)(2) of this title.

(E) Implementation

The Secretary may establish by program instruction or otherwise the quality standards under this paragraph, after consultation with representatives of relevant parties. Such standards shall be applied prospectively and shall be published on the Internet website of the Centers for Medicare & Medicaid Services.

(21) Special payment rule for specified items and supplies

(A) In general

Notwithstanding the preceding provisions of this subsection, for specified items and supplies (described in subparagraph (B)) furnished during 2005, the payment amount otherwise determined under this subsection for such specified items and supplies shall be reduced by the percentage difference between—

(i) the amount of payment otherwise determined for the specified item or supply under this subsection for 2002, and

(ii) the amount of payment for the specified item or supply under chapter 89 of title 5, as identified in the column entitled ''Median FEHP Price'' in the table entitled ''SUMMARY OF MEDICARE PRICES COMPARED TO VA, MEDICAID, RETAIL, AND FEHP PRICES FOR 16 ITEMS'' included in the Testimony of the Inspector General before the Senate Committee on Appropriations, June 12, 2002, or any subsequent report by the Inspector General.

(B) Specified item or supply described

For purposes of subparagraph (A), a specified item or supply means oxygen and oxygen equipment, standard wheelchairs (in-

cluding standard power wheelchairs), nebulizers, diabetic supplies consisting of lancets and testing strips, hospital beds, and air mattresses, but only if the HCPCS code for the item or supply is identified in a table referred to in subparagraph (A)(ii).

(C) Application of update to special payment amount

The covered item update under paragraph (14) for specified items and supplies for 2006 and each subsequent year shall be applied to the payment amount under subparagraph (A) unless payment is made for such items and supplies under section 1395w–3 of this title.

(b) Fee schedules for radiologist services

(1) Development

The Secretary shall develop—

(A) a relative value scale to serve as the basis for the payment for radiologist services under this part, and

(B) using such scale and appropriate conversion factors and subject to subsection (c)(1)(A) of this section, fee schedules (on a regional, statewide, locality, or carrier service area basis) for payment for radiologist services under this part, to be implemented for such services furnished during 1989.

(2) Consultation

In carrying out paragraph (1), the Secretary shall regularly consult closely with the Physician Payment Review Commission, the American College of Radiology, and other organizations representing physicians or suppliers who furnish radiologist services and shall share with them the data and data analysis being used to make the determinations under paragraph (1), including data on variations in current medicare payments by geographic area, and by service and physician specialty.

(3) Considerations

In developing the relative value scale and fee schedules under paragraph (1), the Secretary—

(A) shall take into consideration variations in the cost of furnishing such services among geographic areas and among different sites where services are furnished, and

(B) may also take into consideration such other factors respecting the manner in which physicians in different specialties furnish such services as may be appropriate to assure that payment amounts are equitable and designed to promote effective and efficient provision of radiologist services by physicians in the different specialties.

(4) Savings

(A) Budget neutral fee schedules

The Secretary shall develop preliminary fee schedules for 1989, which are designed to result in the same amount of aggregate payments (net of any coinsurance and deductibles under sections 1395*l*(a)(1)(J) and 1395*l*(b) of this title) for radiologist services furnished in 1989 as would have been made if this subsection had not been enacted.

(B) Initial savings

The fee schedules established for payment purposes under this subsection for services furnished in 1989 shall be 97 percent of the amounts permitted under the preliminary fee schedules developed under subparagraph (A).

(C) 1990 fee schedules

For radiologist services (other than portable X-ray services) furnished under this part during 1990, after March 31 of such year, the conversion factors used under this subsection shall be 96 percent of the conversion factors that applied under this subsection as of December 31, 1989.

(D) 1991 fee schedules

For radiologist services (other than portable X-ray services) furnished under this part during 1991, the conversion factors used in a locality under this subsection shall, subject to clause (vii), be reduced to the adjusted conversion factor for the locality determined as follows:

(i) National weighted average conversion factor

The Secretary shall estimate the national weighted average of the conversion factors used under this subsection for services furnished during 1990 beginning on April 1, using the best available data.

(ii) Reduced national weighted average

The national weighted average estimated under clause (i) shall be reduced by 13 percent.

(iii) Computation of 1990 locality index relative to national average

The Secretary shall establish an index which reflects, for each locality, the ratio of the conversion factor used in the locality under this subsection to the national weighted average estimated under clause (i).

(iv) Adjusted conversion factor

The adjusted conversion factor for the professional or technical component of a service in a locality is the sum of ½ of the locally-adjusted amount determined under clause (v) and ½ of the GPCI-adjusted amount determined under clause (vi).

(v) Locally-adjusted amount

For purposes of clause (iv), the locally adjusted amount determined under this clause is the product of (I) the national weighted average conversion factor computed under clause (ii), and (II) the index value established under clause (iii) for the locality.

(vi) GPCI-adjusted amount

For purposes of clause (iv), the GPCI-adjusted amount determined under this clause is the sum of—

(I) the product of (a) the portion of the reduced national weighted average conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238–36243)); and

(II) the product of (a) the remaining portion of the reduced national weighted average conversion factor computed under clause (ii), and (b) the geographic practice cost index value specified in section 1395u(b)(14)(C)(iv) of this title for the locality.

In applying this clause with respect to the professional component of a service, 80 percent of the conversion factor shall be considered to be attributable to physician work and with respect to the technical component of the service, 0 percent shall be considered to be attributable to physician work.

(vii) Limits on conversion factor

The conversion factor to be applied to a locality to the professional or technical component of a service shall not be reduced under this subparagraph by more than 9.5 percent below the conversion factor applied in the locality under subparagraph (C) to such component, but in no case shall the conversion factor be less than 60 percent of the national weighted average of the conversion factors (computed under clause (i)).

(E) Rule for certain scanning services

In the case of the technical components of magnetic resonance imaging (MRI) services and computer assisted tomography (CAT) services furnished after December 31, 1990, the amount otherwise payable shall be reduced by 10 percent.

(F) Subsequent updating

For radiologist services furnished in subsequent years, the fee schedules shall be the schedules for the previous year updated by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for the year.

(G) Nonparticipating physicians and suppliers

Each fee schedule so established shall provide that the payment rate recognized for nonparticipating physicians and suppliers is equal to the appropriate percent (as defined in section 1395u(b)(4)(A)(iv) of this title) of the payment rate recognized for participating physicians and suppliers.

(5) Limiting charges of nonparticipating physicians and suppliers

(A) In general

In the case of radiologist services furnished after January 1, 1989, for which payment is made under a fee schedule under this subsection, if a nonparticipating physician or supplier furnishes the service to an individual entitled to benefits under this part, the physician or supplier may not charge the individual more than the limiting charge (as defined in subparagraph (B)).

(B) "Limiting charge" defined

In subparagraph (A), the term ''limiting charge'' means, with respect to a service furnished—

(i) in 1989, 125 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1),

(ii) in 1990, 120 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1), and

(iii) after 1990, 115 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1).

(C) Enforcement

If a physician or supplier knowingly and willfully bills in violation of subparagraph (A), the Secretary may apply sanctions against such physician or supplier in accordance with section 1395u(j)(2) of this title in the same manner as such sanctions may apply to a physician.

(6) "Radiologist services" defined

For the purposes of this subsection and section 1395*l*(a)(1)(J) of this title, the term ''radiologist services'' only includes radiology services performed by, or under the direction or supervision of, a physician—

(A) who is certified, or eligible to be certified, by the American Board of Radiology, or

(B) for whom radiology services account for at least 50 percent of the total amount of charges made under this part.

(c) Payment and standards for screening mammography

(1) In general

With respect to expenses incurred for screening mammography (as defined in section 1395x(jj) of this title), payment may be made only—

(A) for screening mammography conducted consistent with the frequency permitted under paragraph (2); and

(B) if the screening mammography is conducted by a facility that has a certificate (or provisional certificate) issued under section 263b of this title.

(2) Frequency covered

(A) In general

Subject to revision by the Secretary under subparagraph (B)—

(i) no payment may be made under this part for screening mammography performed on a woman under 35 years of age;

(ii) payment may be made under this part for only one screening mammography performed on a woman over 34 years of age, but under 40 years of age; and

(iii) in the case of a woman over 39 years of age, payment may not be made under this part for screening mammography performed within 11 months following the month in which a previous screening mammography was performed.

(B) Revision of frequency

(i) Review

The Secretary, in consultation with the Director of the National Cancer Institute,

shall review periodically the appropriate frequency for performing screening mammography, based on age and such other factors as the Secretary believes to be pertinent.

(ii) Revision of frequency

The Secretary, taking into consideration the review made under clause (i), may revise from time to time the frequency with which screening mammography may be paid for under this subsection.

(d) Frequency limits and payment for colorectal cancer screening tests

(1) Screening fecal-occult blood tests

(A) Payment amount

The payment amount for colorectal cancer screening tests consisting of screening fecal-occult blood tests is equal to the payment amount established for diagnostic fecal-occult blood tests under section 1395*l*(h) of this title.

(B) Frequency limit

No payment may be made under this part for a colorectal cancer screening test consisting of a screening fecal-occult blood test—

(i) if the individual is under 50 years of age; or

(ii) if the test is performed within the 11 months after a previous screening fecal-occult blood test.

(2) Screening flexible sigmoidoscopies

(A) Fee schedule

With respect to colorectal cancer screening tests consisting of screening flexible sigmoidoscopies, payment under section 1395w–4 of this title shall be consistent with payment under such section for similar or related services.

(B) Payment limit

In the case of screening flexible sigmoidoscopy services, payment under this part shall not exceed such amount as the Secretary specifies, based upon the rates recognized for diagnostic flexible sigmoidoscopy services.

(C) Facility payment limit

(i) In general

Notwithstanding subsections (i)(2)(A) and (t) of section 1395*l* of this title, in the case of screening flexible sigmoidoscopy services furnished on or after January 1, 1999, that—

(I) in accordance with regulations, may be performed in an ambulatory surgical center and for which the Secretary permits ambulatory surgical center payments under this part, and

(II) are performed in an ambulatory surgical center or hospital outpatient department,

payment under this part shall be based on the lesser of the amount under the fee schedule that would apply to such services if they were performed in a hospital outpatient department in an area or the amount under the fee schedule that would apply to such services if they were performed in an ambulatory surgical center in the same area.

(ii) Limitation on deductible and coinsurance

Notwithstanding any other provision of this subchapter, in the case of a beneficiary who receives the services described in clause (i)—

(I) in computing the amount of any applicable deductible or copayment, the computation of such deductible or coinsurance shall be based upon the fee schedule under which payment is made for the services, and

(II) the amount of such coinsurance is equal to 25 percent of the payment amount under the fee schedule described in subclause (I).

(D) Special rule for detected lesions

If during the course of such screening flexible sigmoidoscopy, a lesion or growth is detected which results in a biopsy or removal of the lesion or growth, payment under this part shall not be made for the screening flexible sigmoidoscopy but shall be made for the procedure classified as a flexible sigmoidoscopy with such biopsy or removal.

(E) Frequency limit

No payment may be made under this part for a colorectal cancer screening test consisting of a screening flexible sigmoidoscopy—

(i) if the individual is under 50 years of age; or

(ii) if the procedure is performed within the 47 months after a previous screening flexible sigmoidoscopy or, in the case of an individual who is not at high risk for colorectal cancer, if the procedure is performed within the 119 months after a previous screening colonoscopy.

(3) Screening colonoscopy

(A) Fee schedule

With respect to colorectal cancer screening test consisting of a screening colonoscopy, payment under section 1395w–4 of this title shall be consistent with payment amounts under such section for similar or related services.

(B) Payment limit

In the case of screening colonoscopy services, payment under this part shall not exceed such amount as the Secretary specifies, based upon the rates recognized for diagnostic colonoscopy services.

(C) Facility payment limit

(i) In general

Notwithstanding subsections (i)(2)(A) and (t) of section 1395*l* of this title, in the case of screening colonoscopy services furnished on or after January 1, 1999, that are performed in an ambulatory surgical cen-

ter or a hospital outpatient department, payment under this part shall be based on the lesser of the amount under the fee schedule that would apply to such services if they were performed in a hospital outpatient department in an area or the amount under the fee schedule that would apply to such services if they were performed in an ambulatory surgical center in the same area.

(ii) Limitation on deductible and coinsurance

Notwithstanding any other provision of this subchapter, in the case of a beneficiary who receives the services described in clause (i)—

(I) in computing the amount of any applicable deductible or coinsurance, the computation of such deductible or coinsurance shall be based upon the fee schedule under which payment is made for the services, and

(II) the amount of such coinsurance is equal to 25 percent of the payment amount under the fee schedule described in subclause (I).

(D) Special rule for detected lesions

If during the course of such screening colonoscopy, a lesion or growth is detected which results in a biopsy or removal of the lesion or growth, payment under this part shall not be made for the screening colonoscopy but shall be made for the procedure classified as a colonoscopy with such biopsy or removal.

(E) Frequency limit

No payment may be made under this part for a colorectal cancer screening test consisting of a screening colonoscopy for individuals at high risk for colorectal cancer if the procedure is performed within the 23 months after a previous screening colonoscopy or for other individuals if the procedure is performed within the 119 months after a previous screening colonoscopy or within 47 months after a previous screening flexible sigmoidoscopy.

(e) Repealed. Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981

(f) Reduction in payments for physician pathology services during 1991

(1) In general

For physician pathology services furnished under this part during 1991, the prevailing charges used in a locality under this part shall be 7 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

(2) Limitation

The prevailing charge for the technical and professional components of an[2] physician pathology service furnished by a physician through an independent laboratory shall not be reduced pursuant to paragraph (1) to the extent that such reduction would reduce such prevailing charge below 115 percent of the prevailing charge for the professional component of such service when furnished by a hospital-based physician in the same locality. For purposes of the preceding sentence, an independent laboratory is a laboratory that is independent of a hospital and separate from the attending or consulting physicians' office.

(g) Payment for outpatient critical access hospital services

(1) In general

The amount of payment for outpatient critical access hospital services of a critical access hospital is equal to 101 percent of the reasonable costs of the hospital in providing such services, unless the hospital makes the election under paragraph (2).

(2) Election of cost-based hospital outpatient service payment plus fee schedule for professional services

A critical access hospital may elect to be paid for outpatient critical access hospital services amounts equal to the sum of the following, less the amount that such hospital may charge as described in section 1395cc(a)(2)(A) of this title:

(A) Facility fee

With respect to facility services, not including any services for which payment may be made under subparagraph (B), the reasonable costs of the critical access hospital in providing such services.

(B) Fee schedule for professional services

With respect to professional services otherwise included within outpatient critical access hospital services, 115 percent of such amounts as would otherwise be paid under this part if such services were not included in outpatient critical access hospital services.

The Secretary may not require, as a condition for applying subparagraph (B) with respect to a critical access hospital, that each physician or other practitioner providing professional services in the hospital must assign billing rights with respect to such services, except that such subparagraph shall not apply to those physicians and practitioners who have not assigned such billing rights.

(3) Disregarding charges

The payment amounts under this subsection shall be determined without regard to the amount of the customary or other charge.

(4) No beneficiary cost-sharing for clinical diagnostic laboratory services

No coinsurance, deductible, copayment, or other cost-sharing otherwise applicable under this part shall apply with respect to clinical diagnostic laboratory services furnished as an outpatient critical access hospital service. Nothing in this subchapter shall be construed as providing for payment for clinical diagnostic laboratory services furnished as part of outpatient critical access hospital services, other than on the basis described in this subsection.

[2] So in original. Probably should be ''a''.

(5) Coverage of costs for certain emergency room on-call providers

In determining the reasonable costs of outpatient critical access hospital services under paragraphs (1) and (2)(A), the Secretary shall recognize as allowable costs, amounts (as defined by the Secretary) for reasonable compensation and related costs for physicians, physician assistants, nurse practitioners, and clinical nurse specialists who are on-call (as defined by the Secretary) to provide emergency services but who are not present on the premises of the critical access hospital involved, and are not otherwise furnishing services covered under this subchapter and are not on-call at any other provider or facility.

(h) Payment for prosthetic devices and orthotics and prosthetics

(1) General rule for payment

(A) In general

Payment under this subsection for prosthetic devices and orthotics and prosthetics shall be made in a lump-sum amount for the purchase of the item in an amount equal to 80 percent of the payment basis described in subparagraph (B).

(B) Payment basis

Except as provided in subparagraphs (C), (E), and (H)(i), the payment basis described in this subparagraph is the lesser of—

(i) the actual charge for the item; or

(ii) the amount recognized under paragraph (2) as the purchase price for the item.

(C) Exception for certain public home health agencies

Subparagraph (B)(i) shall not apply to an item furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

(D) Exclusive payment rule

Subject to subparagraph (H)(ii), this subsection shall constitute the exclusive provision of this subchapter for payment for prosthetic devices, orthotics, and prosthetics under this part or under part A of this subchapter to a home health agency.

(E) Exception for certain items

Payment for ostomy supplies, tracheostomy supplies, and urologicals shall be made in accordance with subparagraphs (B) and (C) of subsection (a)(2) of this section.

(F) Special payment rules for certain prosthetics and custom-fabricated orthotics

(i) In general

No payment shall be made under this subsection for an item of custom-fabricated orthotics described in clause (ii) or for an item of prosthetics unless such item is—

(I) furnished by a qualified practitioner; and

(II) fabricated by a qualified practitioner or a qualified supplier at a facility that meets such criteria as the Secretary determines appropriate.

(ii) Description of custom-fabricated item

(I) In general

An item described in this clause is an item of custom-fabricated orthotics that requires education, training, and experience to custom-fabricate and that is included in a list established by the Secretary in subclause (II). Such an item does not include shoes and shoe inserts.

(II) List of items

The Secretary, in consultation with appropriate experts in orthotics (including national organizations representing manufacturers of orthotics), shall establish and update as appropriate a list of items to which this subparagraph applies. No item may be included in such list unless the item is individually fabricated for the patient over a positive model of the patient.

(iii) Qualified practitioner defined

In this subparagraph, the term ''qualified practitioner'' means a physician or other individual who—

(I) is a qualified physical therapist or a qualified occupational therapist;

(II) in the case of a State that provides for the licensing of orthotics and prosthetics, is licensed in orthotics or prosthetics by the State in which the item is supplied; or

(III) in the case of a State that does not provide for the licensing of orthotics and prosthetics, is specifically trained and educated to provide or manage the provision of prosthetics and custom-designed or -fabricated orthotics, and is certified by the American Board for Certification in Orthotics and Prosthetics, Inc. or by the Board for Orthotist/Prosthetist Certification, or is credentialed and approved by a program that the Secretary determines, in consultation with appropriate experts in orthotics and prosthetics, has training and education standards that are necessary to provide such prosthetics and orthotics.

(iv) Qualified supplier defined

In this subparagraph, the term ''qualified supplier'' means any entity that is accredited by the American Board for Certification in Orthotics and Prosthetics, Inc. or by the Board for Orthotist/Prosthetist Certification, or accredited and approved by a program that the Secretary determines has accreditation and approval standards that are essentially equivalent to those of such Board.

(G) Replacement of prosthetic devices and parts

(i) In general

Payment shall be made for the replacement of prosthetic devices which are artificial limbs, or for the replacement of any part of such devices, without regard to

continuous use or useful lifetime restrictions if an ordering physician determines that the provision of a replacement device, or a replacement part of such a device, is necessary because of any of the following:

(I) A change in the physiological condition of the patient.

(II) An irreparable change in the condition of the device, or in a part of the device.

(III) The condition of the device, or the part of the device, requires repairs and the cost of such repairs would be more than 60 percent of the cost of a replacement device, or, as the case may be, of the part being replaced.

(ii) Confirmation may be required if device or part being replaced is less than 3 years old

If a physician determines that a replacement device, or a replacement part, is necessary pursuant to clause (i)—

(I) such determination shall be controlling; and

(II) such replacement device or part shall be deemed to be reasonable and necessary for purposes of section 1395y(a)(1)(A) of this title;

except that if the device, or part, being replaced is less than 3 years old (calculated from the date on which the beneficiary began to use the device or part), the Secretary may also require confirmation of necessity of the replacement device or replacement part, as the case may be.

(H) Application of competitive acquisition to orthotics; limitation of inherent reasonableness authority

In the case of orthotics described in paragraph (2)(C) of section 1395w–3(a) of this title furnished on or after January 1, 2009, that are included in a competitive acquisition program in a competitive acquisition area under such section—

(i) the payment basis under this subsection for such orthotics furnished in such area shall be the payment basis determined under such competitive acquisition program; and

(ii) the Secretary may use information on the payment determined under such competitive acquisition programs to adjust the payment amount otherwise recognized under subparagraph (B)(ii) for an area that is not a competitive acquisition area under section 1395w–3 of this title, and in the case of such adjustment, paragraphs (8) and (9) of section 1395u(b) of this title shall not be applied.

(2) Purchase price recognized

For purposes of paragraph (1), the amount that is recognized under this paragraph as the purchase price for prosthetic devices, orthotics, and prosthetics is the amount described in subparagraph (C) of this paragraph, determined as follows:

(A) Computation of local purchase price

Each carrier under section 1395u of this title shall compute a base local purchase price for the item as follows:

(i) The carrier shall compute a base local purchase price for each item equal to the average reasonable charge in the locality for the purchase of the item for the 12-month period ending with June 1987.

(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

(I) in 1989 and 1990, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 6-month period ending with December 1987, or

(II) in 1991, 1992 or 1993, equal to the local purchase price computed under this clause for the previous year increased by the applicable percentage increase for the year.

(B) Computation of regional purchase price

With respect to the furnishing of a particular item in each region (as defined by the Secretary), the Secretary shall compute a regional purchase price—

(i) for 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the applicable percentage increase for the year.

(C) Purchase price recognized

For purposes of paragraph (1) and subject to subparagraph (D), the amount that is recognized under this paragraph as the purchase price for each item furnished—

(i) in 1989, 1990, or 1991, is 100 percent of the local purchase price computed under subparagraph (A)(ii);

(ii) in 1992, is the sum of (I) 75 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1992, and (II) 25 percent of the regional purchase price computed under subparagraph (B) for 1992;

(iii) in 1993, is the sum of (I) 50 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1993, and (II) 50 percent of the regional purchase price computed under subparagraph (B) for 1993; and

(iv) in 1994 or a subsequent year, is the regional purchase price computed under subparagraph (B) for that year.

(D) Range on amount recognized

The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—

(i) in 1992, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90

percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.

(3) Applicability of certain provisions relating to durable medical equipment

Paragraphs (12), (15), and (17) and subparagraphs (A) and (B) of paragraph (10) and paragraph (11) of subsection (a) of this section shall apply to prosthetic devices, orthotics, and prosthetics in the same manner as such provisions apply to covered items under such subsection.

(4) Definitions

In this subsection—

(A) the term ''applicable percentage increase'' means—

(i) for 1991, 0 percent;

(ii) for 1992 and 1993, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;

(iii) for 1994 and 1995, 0 percent;

(iv) for 1996 and 1997, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;

(v) for each of the years 1998 through 2000, 1 percent;

(vi) for 2001, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June 2000;

(vii) for 2002, 1 percent;

(viii) for 2003, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;

(ix) for 2004, 2005, and 2006, 0 percent; and

(x) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;

(B) the term ''prosthetic devices'' has the meaning given such term in section 1395x(s)(8) of this title, except that such term does not include parenteral and enteral nutrition nutrients, supplies, and equipment and does not include an implantable item for which payment may be made under section 1395*l*(t) of this title; and

(C) the term ''orthotics and prosthetics'' has the meaning given such term in section 1395x(s)(9) of this title (and includes shoes described in section 1395x(s)(12) of this title), but does not include intraocular lenses or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1395x(m)(5) of this title.

(i) Payment for surgical dressings

(1) In general

Payment under this subsection for surgical dressings (described in section 1395x(s)(5) of this title) shall be made in a lump sum amount for the purchase of the item in an amount equal to 80 percent of the lesser of—

(A) the actual charge for the item; or

(B) a payment amount determined in accordance with the methodology described in subparagraphs (B) and (C) of subsection (a)(2) of this section (except that in applying such methodology, the national limited payment amount referred to in such subparagraphs shall be initially computed based on local payment amounts using average reasonable charges for the 12-month period ending December 31, 1992, increased by the covered item updates described in such subsection for 1993 and 1994).

(2) Exceptions

Paragraph (1) shall not apply to surgical dressings that are—

(A) furnished as an incident to a physician's professional service; or

(B) furnished by a home health agency.

(j) Requirements for suppliers of medical equipment and supplies

(1) Issuance and renewal of supplier number

(A) Payment

Except as provided in subparagraph (C), no payment may be made under this part after October 31, 1994, for items furnished by a supplier of medical equipment and supplies unless such supplier obtains (and renews at such intervals as the Secretary may require) a supplier number.

(B) Standards for possessing a supplier number

A supplier may not obtain a supplier number unless—

(i) for medical equipment and supplies furnished on or after October 31, 1994, and before January 1, 1996, the supplier meets standards prescribed by the Secretary in regulations issued on June 18, 1992; and

(ii) for medical equipment and supplies furnished on or after January 1, 1996, the supplier meets revised standards prescribed by the Secretary (in consultation with representatives of suppliers of medical equipment and supplies, carriers, and consumers) that shall include requirements that the supplier—

(I) comply with all applicable State and Federal licensure and regulatory requirements;

(II) maintain a physical facility on an appropriate site;

(III) have proof of appropriate liability insurance; and

(IV) meet such other requirements as the Secretary may specify.

(C) Exception for items furnished as incident to a physician's service

Subparagraph (A) shall not apply with respect to medical equipment and supplies furnished incident to a physician's service.

(D) Prohibition against multiple supplier numbers

The Secretary may not issue more than one supplier number to any supplier of med-

ical equipment and supplies unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

(E) Prohibition against delegation of supplier determinations

The Secretary may not delegate (other than by contract under section 1395u of this title) the responsibility to determine whether suppliers meet the standards necessary to obtain a supplier number.

(2) Certificates of medical necessity

(A) Limitation on information provided by suppliers on certificates of medical necessity

(i) In general

Effective 60 days after October 31, 1994, a supplier of medical equipment and supplies may distribute to physicians, or to individuals entitled to benefits under this part, a certificate of medical necessity for commercial purposes which contains no more than the following information completed by the supplier:

(I) An identification of the supplier and the beneficiary to whom such medical equipment and supplies are furnished.

(II) A description of such medical equipment and supplies.

(III) Any product code identifying such medical equipment and supplies.

(IV) Any other administrative information (other than information relating to the beneficiary's medical condition) identified by the Secretary.

(ii) Information on payment amount and charges

If a supplier distributes a certificate of medical necessity containing any of the information permitted to be supplied under clause (i), the supplier shall also list on the certificate of medical necessity the fee schedule amount and the supplier's charge for the medical equipment or supplies being furnished prior to distribution of such certificate to the physician.

(iii) Penalty

Any supplier of medical equipment and supplies who knowingly and willfully distributes a certificate of medical necessity in violation of clause (i) or fails to provide the information required under clause (ii) is subject to a civil money penalty in an amount not to exceed $1,000 for each such certificate of medical necessity so distributed. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) "Certificate of medical necessity" defined

For purposes of this paragraph, the term ''certificate of medical necessity'' means a form or other document containing information required by the carrier to be submitted to show that an item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

(3) Coverage and review criteria

The Secretary shall annually review the coverage and utilization of items of medical equipment and supplies to determine whether such items should be made subject to coverage and utilization review criteria, and if appropriate, shall develop and apply such criteria to such items.

(4) Limitation on patient liability

If a supplier of medical equipment and supplies (as defined in paragraph (5))—

(A) furnishes an item or service to a beneficiary for which no payment may be made by reason of paragraph (1);

(B) furnishes an item or service to a beneficiary for which payment is denied in advance under subsection (a)(15) of this section; or

(C) furnishes an item or service to a beneficiary for which payment is denied under section 1395y(a)(1) of this title;

any expenses incurred for items and services furnished to an individual by such a supplier not on an assigned basis shall be the responsibility of such supplier. The individual shall have no financial responsibility for such expenses and the supplier shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items or services. The provisions of subsection (a)(18) of this section shall apply to refunds required under the previous sentence in the same manner as such provisions apply to refunds under such subsection.

(5) "Medical equipment and supplies" defined

The term ''medical equipment and supplies'' means—

(A) durable medical equipment (as defined in section 1395x(n) of this title);

(B) prosthetic devices (as described in section 1395x(s)(8) of this title);

(C) orthotics and prosthetics (as described in section 1395x(s)(9) of this title);

(D) surgical dressings (as described in section 1395x(s)(5) of this title);

(E) such other items as the Secretary may determine; and

(F) for purposes of paragraphs (1) and (3)—

(i) home dialysis supplies and equipment (as described in section 1395x(s)(2)(F) of this title),

(ii) immunosuppressive drugs (as described in section 1395x(s)(2)(J) of this title),

(iii) therapeutic shoes for diabetics (as described in section 1395x(s)(12) of this title),

(iv) oral drugs prescribed for use as an anticancer therapeutic agent (as described in section 1395x(s)(2)(Q) of this title), and

(v) self-administered erythropoetin (as described in section 1395x(s)(2)(P) of this title).

(k) Payment for outpatient therapy services and comprehensive outpatient rehabilitation services

(1) In general

With respect to services described in section 1395*l*(a)(8) or 1395*l*(a)(9) of this title for which payment is determined under this subsection, the payment basis shall be—

(A) for services furnished during 1998, the amount determined under paragraph (2); or

(B) for services furnished during a subsequent year, 80 percent of the lesser of—

(i) the actual charge for the services, or

(ii) the applicable fee schedule amount (as defined in paragraph (3)) for the services.

(2) Payment in 1998 based upon adjusted reasonable costs

The amount under this paragraph for services is the lesser of—

(A) the charges imposed for the services, or

(B) the adjusted reasonable costs (as defined in paragraph (4)) for the services,

less 20 percent of the amount of the charges imposed for such services.

(3) Applicable fee schedule amount

In this subsection, the term ''applicable fee schedule amount'' means, with respect to services furnished in a year, the amount determined under the fee schedule established under section 1395w–4 of this title for such services furnished during the year or, if there is no such fee schedule established for such services, the amount determined under the fee schedule established for such comparable services as the Secretary specifies.

(4) Adjusted reasonable costs

In paragraph (2), the term ''adjusted reasonable costs'' means, with respect to any services, reasonable costs determined for such services, reduced by 10 percent. The 10-percent reduction shall not apply to services described in section 1395*l*(a)(8)(B) of this title (relating to services provided by hospitals).

(5) Uniform coding

For claims for services submitted on or after April 1, 1998, for which the amount of payment is determined under this subsection, the claim shall include a code (or codes) under a uniform coding system specified by the Secretary that identifies the services furnished.

(6) Restraint on billing

The provisions of subparagraphs (A) and (B) of section 1395u(b)(18) of this title shall apply to therapy services for which payment is made under this subsection in the same manner as they apply to services provided by a practitioner described in section 1395u(b)(18)(C) of this title.

***(l)* Establishment of fee schedule for ambulance services**

(1) In general

The Secretary shall establish a fee schedule for payment for ambulance services whether provided directly by a supplier or provider or under arrangement with a provider under this part through a negotiated rulemaking process described in title 5 and in accordance with the requirements of this subsection.

(2) Considerations

In establishing such fee schedule, the Secretary shall—

(A) establish mechanisms to control increases in expenditures for ambulance services under this part;

(B) establish definitions for ambulance services which link payments to the type of services provided;

(C) consider appropriate regional and operational differences;

(D) consider adjustments to payment rates to account for inflation and other relevant factors; and

(E) phase in the application of the payment rates under the fee schedule in an efficient and fair manner consistent with paragraph (11), except that such phase-in shall provide for full payment of any national mileage rate for ambulance services provided by suppliers that are paid by carriers in any of the 50 States where payment by a carrier for such services for all such suppliers in such State did not, prior to the implementation of the fee schedule, include a separate amount for all mileage within the county from which the beneficiary is transported.

(3) Savings

In establishing such fee schedule, the Secretary shall—

(A) ensure that the aggregate amount of payments made for ambulance services under this part during 2000 does not exceed the aggregate amount of payments which would have been made for such services under this part during such year if the amendments made by section 4531(a) of the Balanced Budget Act of 1997 continued in effect, except that in making such determination the Secretary shall assume an update in such payments for 2002 equal to percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced in the case of 2002 by 1.0 percentage points; and

(B) set the payment amounts provided under the fee schedule for services furnished in 2001 and each subsequent year at amounts equal to the payment amounts under the fee schedule for services furnished during the previous year, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced in the case of 2002 by 1.0 percentage points.

(4) Consultation

In establishing the fee schedule for ambulance services under this subsection, the Secretary shall consult with various national organizations representing individuals and entities who furnish and regulate ambulance services and share with such organizations relevant data in establishing such schedule.

(5) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title or otherwise of the amounts established under the fee schedule for ambulance services under this subsection, including matters described in paragraph (2).

(6) Restraint on billing

The provisions of subparagraphs (A) and (B) of section 1395u(b)(18) of this title shall apply to ambulance services for which payment is made under this subsection in the same manner as they apply to services provided by a practitioner described in section 1395u(b)(18)(C) of this title.

(7) Coding system

The Secretary may require the claim for any services for which the amount of payment is determined under this subsection to include a code (or codes) under a uniform coding system specified by the Secretary that identifies the services furnished.

(8) Services furnished by critical access hospitals

Notwithstanding any other provision of this subsection, the Secretary shall pay the reasonable costs incurred in furnishing ambulance services if such services are furnished—

(A) by a critical access hospital (as defined in section 1395x(mm)(1) of this title), or

(B) by an entity that is owned and operated by a critical access hospital,

but only if the critical access hospital or entity is the only provider or supplier of ambulance services that is located within a 35-mile drive of such critical access hospital.

(9) Transitional assistance for rural providers

In the case of ground ambulance services furnished on or after July 1, 2001, and before January 1, 2004, for which the transportation originates in a rural area (as defined in section 1395ww(d)(2)(D) of this title) or in a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)), the fee schedule established under this subsection shall provide that, with respect to the payment rate for mileage for a trip above 17 miles, and up to 50 miles, the rate otherwise established shall be increased by not less than ½ of the additional payment per mile established for the first 17 miles of such a trip originating in a rural area.

(10) Phase-in providing floor using blend of fee schedule and regional fee schedules

In carrying out the phase-in under paragraph (2)(E) for each level of ground service furnished in a year, the portion of the payment amount that is based on the fee schedule shall be the greater of the amount determined under such fee schedule (without regard to this paragraph) or the following blended rate of the fee schedule under paragraph (1) and of a regional fee schedule for the region involved:

(A) For 2004 (for services furnished on or after July 1, 2004), the blended rate shall be based 20 percent on the fee schedule under paragraph (1) and 80 percent on the regional fee schedule.

(B) For 2005, the blended rate shall be based 40 percent on the fee schedule under paragraph (1) and 60 percent on the regional fee schedule.

(C) For 2006, the blended rate shall be based 60 percent on the fee schedule under paragraph (1) and 40 percent on the regional fee schedule.

(D) For 2007, 2008, and 2009, the blended rate shall be based 80 percent on the fee schedule under paragraph (1) and 20 percent on the regional fee schedule.

(E) For 2010 and each succeeding year, the blended rate shall be based 100 percent on the fee schedule under paragraph (1).

For purposes of this paragraph, the Secretary shall establish a regional fee schedule for each of the nine census divisions (referred to in section 1395ww(d)(2) of this title) using the methodology (used in establishing the fee schedule under paragraph (1)) to calculate a regional conversion factor and a regional mileage payment rate and using the same payment adjustments and the same relative value units as used in the fee schedule under such paragraph.

(11) Adjustment in payment for certain long trips

In the case of ground ambulance services furnished on or after July 1, 2004, and before January 1, 2009, regardless of where the transportation originates, the fee schedule established under this subsection shall provide that, with respect to the payment rate for mileage for a trip above 50 miles the per mile rate otherwise established shall be increased by ¼ of the payment per mile otherwise applicable to miles in excess of 50 miles in such trip.

(12) Assistance for rural providers furnishing services in low population density areas

(A) In general

In the case of ground ambulance services furnished on or after July 1, 2004, and before January 1, 2010, for which the transportation originates in a qualified rural area (identified under subparagraph (B)(iii)), the Secretary shall provide for a percent increase in the base rate of the fee schedule for a trip established under this subsection. In establishing such percent increase, the Secretary shall estimate the average cost per trip for such services (not taking into account mileage) in the lowest quartile as compared to the average cost per trip for such services (not taking into account mileage) in the highest quartile of all rural county populations.

(B) Identification of qualified rural areas

(i) Determination of population density in area

Based upon data from the United States decennial census for the year 2000, the Secretary shall determine, for each rural area, the population density for that area.

(ii) Ranking of areas

The Secretary shall rank each such area based on such population density.

(iii) Identification of qualified rural areas

The Secretary shall identify those areas (in subparagraph (A) referred to as ''qualified rural areas'') with the lowest population densities that represent, if each such area were weighted by the population of such area (as used in computing such population densities), an aggregate total of 25 percent of the total of the population of all such areas.

(iv) Rural area

For purposes of this paragraph, the term ''rural area'' has the meaning given such term in section 1395ww(d)(2)(D) of this title. If feasible, the Secretary shall treat a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725) as a rural area for purposes of this paragraph.

(v) Judicial review

There shall be no administrative or judicial review under section 1395ff, 1395*oo* of this title, or otherwise, respecting the identification of an area under this subparagraph.

(13) Temporary increase for ground ambulance services

(A) In general

After computing the rates with respect to ground ambulance services under the other applicable provisions of this subsection, in the case of such services furnished on or after July 1, 2004, and before January 1, 2007, for which the transportation originates in—

(i) a rural area described in paragraph (9) or in a rural census tract described in such paragraph, the fee schedule established under this section shall provide that the rate for the service otherwise established, after the application of any increase under paragraphs (11) and (12), shall be increased by 2 percent; and

(ii) an area not described in clause (i), the fee schedule established under this subsection shall provide that the rate for the service otherwise established, after the application of any increase under paragraph (11), shall be increased by 1 percent.

(B) Application of increased payments after 2006

The increased payments under subparagraph (A) shall not be taken into account in calculating payments for services furnished after the period specified in such subparagraph.

(14) Providing appropriate coverage of rural air ambulance services

(A) In general

The regulations described in section 1395x(s)(7) of this title shall provide, to the extent that any ambulance services (whether ground or air) may be covered under such section, that a rural air ambulance service (as defined in subparagraph (C)) is reimbursed under this subsection at the air ambulance rate if the air ambulance service—

(i) is reasonable and necessary based on the health condition of the individual being transported at or immediately prior to the time of the transport; and

(ii) complies with equipment and crew requirements established by the Secretary.

(B) Satisfaction of requirement of medically necessary

The requirement of subparagraph (A)(i) is deemed to be met for a rural air ambulance service if—

(i) subject to subparagraph (D), such service is requested by a physician or other qualified medical personnel (as specified by the Secretary) who reasonably determines or certifies that the individual's condition is such that the time needed to transport the individual by land or the instability of transportation by land poses a threat to the individual's survival or seriously endangers the individual's health; or

(ii) such service is furnished pursuant to a protocol that is established by a State or regional emergency medical service (EMS) agency and recognized or approved by the Secretary under which the use of an air ambulance is recommended, if such agency does not have an ownership interest in the entity furnishing such service.

(C) Rural air ambulance service defined

For purposes of this paragraph, the term ''rural air ambulance service'' means fixed wing and rotary wing air ambulance service in which the point of pick up of the individual occurs in a rural area (as defined in section 1395ww(d)(2)(D) of this title) or in a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)).

(D) Limitation

(i) In general

Subparagraph (B)(i) shall not apply if there is a financial or employment relationship between the person requesting the rural air ambulance service and the entity furnishing the ambulance service, or an entity under common ownership with the entity furnishing the air ambulance service, or a financial relationship between an immediate family member of such requester and such an entity.

(ii) Exception

Where a hospital and the entity furnishing rural air ambulance services are under common ownership, clause (i) shall not apply to remuneration (through employment or other relationship) by the hospital of the requester or immediate family member if the remuneration is for

provider-based physician services furnished in a hospital (as described in section 1395xx of this title) which are reimbursed under part A of this subchapter and the amount of the remuneration is unrelated directly or indirectly to the provision of rural air ambulance services.

(m) Payment for telehealth services

(1) In general

The Secretary shall pay for telehealth services that are furnished via a telecommunications system by a physician (as defined in section 1395x(r) of this title) or a practitioner (described in section 1395u(b)(18)(C) of this title) to an eligible telehealth individual enrolled under this part notwithstanding that the individual physician or practitioner providing the telehealth service is not at the same location as the beneficiary. For purposes of the preceding sentence, in the case of any Federal telemedicine demonstration program conducted in Alaska or Hawaii, the term ''telecommunications system'' includes store-and-forward technologies that provide for the asynchronous transmission of health care information in single or multimedia formats.

(2) Payment amount

(A) Distant site

The Secretary shall pay to a physician or practitioner located at a distant site that furnishes a telehealth service to an eligible telehealth individual an amount equal to the amount that such physician or practitioner would have been paid under this subchapter had such service been furnished without the use of a telecommunications system.

(B) Facility fee for originating site

With respect to a telehealth service, subject to section 1395*l*(a)(1)(U) of this title, there shall be paid to the originating site a facility fee equal to—

(i) for the period beginning on October 1, 2001, and ending on December 31, 2001, and for 2002, $20; and

(ii) for a subsequent year, the facility fee specified in clause (i) or this clause for the preceding year increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for such subsequent year.

(C) Telepresenter not required

Nothing in this subsection shall be construed as requiring an eligible telehealth individual to be presented by a physician or practitioner at the originating site for the furnishing of a service via a telecommunications system, unless it is medically necessary (as determined by the physician or practitioner at the distant site).

(3) Limitation on beneficiary charges

(A) Physician and practitioner

The provisions of section 1395w–4(g) of this title and subparagraphs (A) and (B) of section 1395u(b)(18) of this title shall apply to a physician or practitioner receiving payment under this subsection in the same manner as they apply to physicians or practitioners under such sections.

(B) Originating site

The provisions of section 1395u(b)(18) of this title shall apply to originating sites receiving a facility fee in the same manner as they apply to practitioners under such section.

(4) Definitions

For purposes of this subsection:

(A) Distant site

The term ''distant site'' means the site at which the physician or practitioner is located at the time the service is provided via a telecommunications system.

(B) Eligible telehealth individual

The term ''eligible telehealth individual'' means an individual enrolled under this part who receives a telehealth service furnished at an originating site.

(C) Originating site

(i) In general

The term ''originating site'' means only those sites described in clause (ii) at which the eligible telehealth individual is located at the time the service is furnished via a telecommunications system and only if such site is located—

(I) in an area that is designated as a rural health professional shortage area under section 254e(a)(1)(A) of this title;

(II) in a county that is not included in a Metropolitan Statistical Area; or

(III) from an entity that participates in a Federal telemedicine demonstration project that has been approved by (or receives funding from) the Secretary of Health and Human Services as of December 31, 2000.

(ii) Sites described

The sites referred to in clause (i) are the following sites:

(I) The office of a physician or practitioner.

(II) A critical access hospital (as defined in section 1395x(mm)(1) of this title).

(III) A rural health clinic (as defined in section 1395x(aa)(2) of this title).

(IV) A Federally qualified health center (as defined in section 1395x(aa)(4) of this title).

(V) A hospital (as defined in section 1395x(e) of this title).

(D) Physician

The term ''physician'' has the meaning given that term in section 1395x(r) of this title.

(E) Practitioner

The term ''practitioner'' has the meaning given that term in section 1395u(b)(18)(C) of this title.

(F) Telehealth service

(i) In general

The term ''telehealth service'' means professional consultations, office visits, and office psychiatry services (identified

as of July 1, 2000, by HCPCS codes 99241–99275, 99201–99215, 90804–90809, and 90862 (and as subsequently modified by the Secretary)), and any additional service specified by the Secretary.

(ii) Yearly update

The Secretary shall establish a process that provides, on an annual basis, for the addition or deletion of services (and HCPCS codes), as appropriate, to those specified in clause (i) for authorized payment under paragraph (1).

(Aug. 14, 1935, ch. 531, title XVIII, § 1834, as added and amended Pub. L. 100–203, title IV, §§ 4049(a)(2), 4062(b), Dec. 22, 1987, 101 Stat. 1330–91, 1330–100; Pub. L. 100–360, title II, §§ 202(b)(4), 203(c)(1)(F), 204(b), title IV, § 411(a)(3)(A), (B)(ii), (C)(ii), (f)(8)(A), (B)(ii), (D), (g)(1)(A), (B), July 1, 1988, 102 Stat. 704, 722, 726, 768, 779, 781; Pub. L. 100–485, title VI, § 608(d)(21)(C), (22)(A), Oct. 13, 1988, 102 Stat. 2420; Pub. L. 101–234, title II, § 201(a), title III, § 301(b)(1), (c)(1), Dec. 13, 1989, 103 Stat. 1981, 1985; Pub. L. 101–239, title VI, §§ 6102(f)(1), 6105(a), 6112(a), (c), (d)(1), (e)(2), 6116(b)(2), 6140, Dec. 19, 1989, 103 Stat. 2188, 2210, 2214–2216, 2220, 2224; Pub. L. 101–508, title IV, §§ 4102(a), (d), (f), 4104(a), 4152(a)(1), (b), (c)(1)–(4)(B)(i), (e), (f)(1), (g)(1), 4153(a)(1), (2)(D), 4163(b), Nov. 5, 1990, 104 Stat. 1388–55, 1388–57, 1388–59, 1388–74, 1388–77 to 1388–81, 1388–83, 1388–97; Pub. L. 103–66, title XIII, §§ 13542(a), 13543(a), (b), 13544(a)(1), (2), (b)(1), 13545(a), 13546, Aug. 10, 1993, 107 Stat. 587, 589, 590; Pub. L. 103–432, title I, §§ 102(e), 126(b)(1), (2), (4), (5), (g)(1), (10)(B), 131(a), 132(a), (b), 133(a)(1), 134(a)(1), 135(a)(1), (b)(1), (3), (d)(1), (e)(2)–(5), 145(a), 156(a)(2)(C), Oct. 31, 1994, 108 Stat. 4403, 4414–4416, 4419, 4421, 4424, 4427, 4440; Pub. L. 105–33, title IV, §§ 4101(a), (c), 4104(b)(1), 4105(b)(2), 4201(c)(5), 4312(a), (c), 4316(b), 4531(b)(2), 4541(a)(2), 4551(a), (c)(1), 4552(a), (b), Aug. 5, 1997, 111 Stat. 360, 363, 367, 374, 386, 387, 392, 451, 455, 457–459; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 201(e)(2), title III, § 321(k)(3), title IV, § 403(d)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–340, 1501A–366, 1501A–371; Pub. L. 106–554, § 1(a)(6) [title I, §§ 103(b), 104(b), title II, §§ 201(a), 202(a), 204(a), 205(a), 221(a), 223(b), title IV, §§ 423(a)(1), (b)(1), 425(a), 426(a), 427(a), 428(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–468, 2763A–469, 2763A–481, 2763A–482, 2763A–486, 2763A–487, 2763A–518 to 2763A–520, 2763A–522; Pub. L. 108–173, title III, § 302(a), (c)(1)(A), (2), (3), (d)(1), (2), title IV, §§ 405(a)(1), (b)(1), (d)(1), 414(a)–(c)(1), (d), 415(a), title VI, § 627(b)(1), title VII, § 736(b)(4), (5), Dec. 8, 2003, 117 Stat. 2223, 2230–2232, 2266, 2267, 2278–2281, 2321, 2356.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsecs. (a)(1)(C), (16), (h)(1)(D), and (*l*)(14)(D)(ii), is classified to section 1395c et seq. of this title.

Section 302(c)(1)(B) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (a)(14)(H)(i), is section 302(c)(1)(B) of Pub. L. 108–173, which is set out as a note under this section.

Section 4531(a) of the Balanced Budget Act of 1997, referred to in subsec. (*l*)(3)(A), is section 4531(a) of Pub. L. 105–33, which amended sections 1395u and 1395x of this title.

CODIFICATION

Amendment of subsec. (a)(4) by Pub. L. 101–508, § 4152(c)(4)(B)(i), did not become effective pursuant to Pub. L. 101–508, § 4152(c)(4)(B)(ii), because of action of Secretary in developing specific criteria for the treatment of wheelchairs as customized items for purposes of subsec. (a)(4). See Effective Date of 1990 Amendment note below.

PRIOR PROVISIONS

A prior section 1395m, act Aug. 14, 1935, ch. 531, title XVIII, § 1834, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 303, prescribed limitations on payments for home health services, prior to repeal by Pub. L. 96–499, title IX, § 930(i), Dec. 5, 1980, 94 Stat. 2631, effective with respect to services furnished on or after July 1, 1981.

AMENDMENTS

2003—Subsec. (a)(1)(B). Pub. L. 108–173, § 302(d)(1)(A), substituted ''Subject to subparagraph (F)(i), the payment basis'' for ''The payment basis'' in introductory provisions.

Subsec. (a)(1)(C). Pub. L. 108–173, § 302(d)(1)(B), substituted ''Subject to subparagraph (F)(ii), this subsection'' for ''This subsection''.

Subsec. (a)(1)(E). Pub. L. 108–173, § 302(a)(2), added subpar. (E).

Subsec. (a)(1)(F). Pub. L. 108–173, § 302(d)(1)(C), added subpar. (F).

Subsec. (a)(10)(B). Pub. L. 108–173, § 302(d)(1)(D), inserted ''in an area and with respect to covered items and services for which the Secretary does not make a payment amount adjustment under paragraph (1)(F)'' after ''under this subsection''.

Subsec. (a)(14)(F). Pub. L. 108–173, § 302(c)(1)(A)(ii), substituted ''2003'' for ''a subsequent year'' and ''2002;'' for ''the previous year.''

Subsec. (a)(14)(G) to (J). Pub. L. 108–173, § 302(c)(1)(A)(i), (iii), added subpars (G) to (J).

Subsec. (a)(17), (19). Pub. L. 108–173, § 302(a)(1)(A), redesignated par. (17), relating to certain upgraded items, as (19) and transferred it to the end of subsec. (a).

Subsec. (a)(20). Pub. L. 108–173, § 302(a)(1)(B), added par. (20).

Subsec. (a)(21). Pub. L. 108–173, § 302(c)(2), added par. (21).

Subsec. (b)(4)(D)(iv). Pub. L. 108–173, § 736(b)(4), substituted ''clause (vi)'' for ''clauses (vi)''.

Subsec. (g)(1). Pub. L. 108–173, § 405(a)(1), inserted ''equal to 101 percent of'' before ''the reasonable costs''.

Subsec. (g)(2). Pub. L. 108–173, § 405(d)(1), inserted concluding provisions.

Subsec. (g)(5). Pub. L. 108–173, § 405(b)(1), in heading, inserted ''certain'' before ''emergency'' and substituted ''providers'' for ''physicians'', and, in text, substituted ''physicians, physician assistants, nurse practitioners, and clinical nurse specialists who are on-call (as defined by the Secretary) to provide emergency services'' for ''emergency room physicians who are on-call (as defined by the Secretary)'' and ''services covered under this subchapter'' for ''physicians' services''.

Subsec. (h)(1)(B). Pub. L. 108–173, § 302(d)(2)(A), substituted '', (E), and (H)(i)'' for ''and (E)'' in introductory provisions.

Subsec. (h)(1)(D). Pub. L. 108–173, § 302(d)(2)(B), substituted ''Subject to subparagraph (H)(ii), this subsection'' for ''This subsection''.

Subsec. (h)(1)(H). Pub. L. 108–173, § 302(d)(2)(C), added subpar. (H).

Subsec. (h)(4)(A)(viii). Pub. L. 108–173, § 302(c)(3)(B), substituted ''2003'' for ''a subsequent year''.

Subsec. (h)(4)(A)(ix), (x). Pub. L. 108–173, § 302(c)(3)(A), (C), added cls. (ix) and (x).

Subsec. (h)(4)(C). Pub. L. 108–173, § 627(b)(1), inserted ''(and includes shoes described in section 1395x(s)(12) of this title)'' after ''in section 1395x(s)(9) of this title''.

Subsec. (*l*)(2)(E). Pub. L. 108–173, § 414(a)(1), inserted ''consistent with paragraph (11)'' after ''in an efficient and fair manner''.

Subsec. (*l*)(8), (9). Pub. L. 108–173, § 414(a)(2), redesignated par. (8), relating to transitional assistance for rural providers, as (9).

Subsec. (*l*)(10). Pub. L. 108–173, § 414(a)(3), added par. (10).

Subsec. (*l*)(11). Pub. L. 108–173, § 414(b), added par. (11).

Subsec. (*l*)(12). Pub. L. 108–173, § 414(c)(1), added par. (12).

Subsec. (*l*)(13). Pub. L. 108–173, § 414(d), added par. (13).

Subsec. (*l*)(14). Pub. L. 108–173, § 415(a), added par. (14).

Subsec. (m)(4)(C)(ii)(III). Pub. L. 108–173, § 736(b)(5), substituted ''1395x(aa)(2)'' for ''1395x(aa)(s)''.

2000—Subsec. (a)(14)(C). Pub. L. 106–554, § 1(a)(6) [title IV, § 425(a)(2)], substituted ''through 2000'' for ''through 2002'' and struck out ''and'' at end.

Subsec. (a)(14)(D) to (F). Pub. L. 106–554, § 1(a)(6) [title IV, § 425(a)(1), (3)], added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

Subsec. (c). Pub. L. 106–554, § 1(a)(6) [title I, § 104(b)], amended heading and text generally, substituting present provisions for provisions which had set forth similar standards for screening mammography but had provided for payment limited to 80 percent of the least of the actual charge, a statutory fee schedule, if applicable, or the indexed dollar limit described, and which had set forth provisions relating to reduction of indexed dollar limit, application of limit in a hospital outpatient setting, and limitation of charges of nonparticipating physicians.

Subsec. (d)(2)(E)(ii). Pub. L. 106–554, § 1(a)(6) [title I, § 103(b)(1)], inserted before period at end ''or, in the case of an individual who is not at high risk for colorectal cancer, if the procedure is performed within the 119 months after a previous screening colonoscopy''.

Subsec. (d)(3). Pub. L. 106–554, § 1(a)(6) [title I, § 103(b)(2)(A)], struck out ''for individuals at high risk for colorectal cancer'' after ''colonoscopy'' in heading.

Subsec. (d)(3)(A). Pub. L. 106–554, § 1(a)(6) [title I, § 103(b)(2)(B)], struck out ''for individuals at high risk for colorectal cancer (as defined in section 1395x(pp)(2) of this title)'' after ''screening colonoscopy''.

Subsec. (d)(3)(E). Pub. L. 106–554, § 1(a)(6) [title I, § 103(b)(2)(C)], inserted before period at end ''or for other individuals if the procedure is performed within the 119 months after a previous screening colonoscopy or within 47 months after a previous screening flexible sigmoidoscopy''.

Subsec. (g)(2)(B). Pub. L. 106–554, § 1(a)(6) [title II, § 202(a)], inserted ''115 percent of'' before ''such amounts''.

Subsec. (g)(4). Pub. L. 106–554, § 1(a)(6) [title II, § 201(a)], added par. (4).

Subsec. (g)(5). Pub. L. 106–554, § 1(a)(6) [title II, § 204(a)], added par. (5).

Subsec. (h)(1)(F). Pub. L. 106–554, § 1(a)(6) [title IV, § 427(a)], added subpar. (F).

Subsec. (h)(1)(G). Pub. L. 106–554, § 1(a)(6) [title IV, § 428(a)], added subpar. (G).

Subsec. (h)(4)(A)(v). Pub. L. 106–554, § 1(a)(6) [title IV, § 426(a)(2)], substituted ''through 2000'' for ''through 2002'' and struck out ''and'' at end.

Subsec. (h)(4)(A)(vi) to (viii). Pub. L. 106–554, § 1(a)(6) [title IV, § 426(a)(1), (3)], added cls. (vi) and (vii) and redesignated former cl. (vi) as (viii).

Subsec. (*l*)(2)(E). Pub. L. 106–554, § 1(a)(6) [title IV, § 423(b)(1)], inserted before period at end '', except that such phase-in shall provide for full payment of any national mileage rate for ambulance services provided by suppliers that are paid by carriers in any of the 50 States where payment by a carrier for such services for all such suppliers in such State did not, prior to the implementation of the fee schedule, include a separate amount for all mileage within the county from which the beneficiary is transported''.

Subsec. (*l*)(3)(A), (B). Pub. L. 106–554, § 1(a)(6) [title IV, § 423(a)(1)], substituted ''reduced in the case of 2002'' for ''reduced in the case of 2001 and 2002''.

Subsec. (*l*)(8). Pub. L. 106–554, § 1(a)(6) [title II, § 221(a)], added par. (8) relating to transitional assistance for rural providers.

Pub. L. 106–554, § 1(a)(6) [title II, § 205(a)], added par. (8) relating to services furnished by critical access hospitals.

Subsec. (m). Pub. L. 106–554, § 1(a)(6) [title II, § 223(b)], added subsec. (m).

1999—Subsec. (a)(13). Pub. L. 106–113, § 1000(a)(6) [title II, § 201(e)(2)(A)], substituted ''1395x(m)(5) of this title, but not including implantable items for which payment may be made under section 1395*l*(t) of this title'' for ''1395x(m)(5) of this title)''.

Subsec. (g). Pub. L. 106–113, § 1000(a)(6) [title IV, § 403(d)(1)], amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows: ''The amount of payment under this part for outpatient critical access hospital services is the reasonable costs of the critical access hospital in providing such services.''

Subsec. (h)(4)(A)(i). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(3)(A)], substituted semicolon for comma at end.

Subsec. (h)(4)(A)(v). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(3)(B)], substituted ''; and'' for '', and'' at end.

Subsec. (h)(4)(B). Pub. L. 106–113, § 1000(a)(6) [title II, § 201(e)(2)(B)], inserted ''and does not include an implantable item for which payment may be made under section 1395*l*(t) of this title'' before the semicolon.

1997—Subsec. (a)(2)(B)(iv). Pub. L. 105–33, § 4105(b)(2), inserted before period at end ''(reduced by 10 percent, in the case of a blood glucose testing strip furnished after 1997 for an individual with diabetes)''.

Subsec. (a)(9)(B)(iv). Pub. L. 105–33, § 4552(a)(2)(A), substituted ''1995, 1996, and 1997'' for ''each subsequent year''.

Subsec. (a)(9)(B)(v), (vi). Pub. L. 105–33, § 4552(a)(1), (2)(B), (3), added cls. (v) and (vi).

Subsec. (a)(9)(D). Pub. L. 105–33, § 4552(b), which directed amendment of section 1848(a)(9) (42 U.S.C. 1395m(a)(9)) by adding subpar. (D) at end, was executed by adding subpar. (D) at end of subsec. (a)(9) of this section, to reflect the probable intent of Congress.

Subsec. (a)(10)(B). Pub. L. 105–33, § 4316(b), substituted ''The Secretary'' for ''For covered items furnished on or after January 1, 1991, the Secretary'' and struck out ''(other than subparagraph (D))'' before ''of section 1395u(b) of this title'' and ''as such provisions would otherwise apply to physicians' services and physicians and a reasonable charge under section 1395u(b) of this title but for the application of section 1395w–4(i)(3) of this title. In applying such provisions to payments for an item under this subsection, the Secretary shall make adjustments to the payment basis for the item described in paragraph (1)(B) if the Secretary determines (in accordance with such provisions and on the basis of prices and costs applicable at the time the item is furnished) that such payment basis is not inherently reasonable'' before period at end.

Subsec. (a)(14)(B). Pub. L. 105–33, § 4551(a)(1)(B)(i), substituted ''1993, 1994, 1995, 1996, and 1997'' for ''a subsequent year''.

Subsec. (a)(14)(C), (D). Pub. L. 105–33, § 4551(a)(1)(A), (B)(ii), (C), added subpars. (C) and (D).

Subsec. (a)(16). Pub. L. 105–33, § 4312(c), inserted at end ''The Secretary, at the Secretary's discretion, may impose the requirements of the first sentence with respect to some or all providers of items or services under part A of this subchapter or some or all suppliers or other persons (other than physicians or other practitioners, as defined in section 1395u(b)(18)(C) of this title) who furnish items or services under this part.''

Pub. L. 105–33, § 4312(a), added par. (16).

Subsec. (a)(17). Pub. L. 105–33, § 4551(c)(1), added par. (17) relating to certain upgraded items.

Subsec. (c)(1)(C). Pub. L. 105–33, § 4101(c), in introductory provisions, struck out '', subject to the deductible established under section 1395*l*(b) of this title,'' before ''be equal to 80''.

Subsec. (c)(2)(A)(iii). Pub. L. 105–33, § 4101(a)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''In the case of a woman over 39 years of age, but under 50 years of age, who—

''(I) is at a high risk of developing breast cancer (as determined pursuant to factors identified by the Secretary), payment may not be made under this part for a screening mammography performed within the 11 months following the month in which a previous screening mammography was performed, or

''(II) is not at a high risk of developing breast cancer, payment may not be made under this part for a screening mammography performed within the 23 months following the month in which a previous screening mammography was performed.''

Subsec. (c)(2)(A)(iv), (v). Pub. L. 105–33, §4101(a)(2), struck out cls. (iv) and (v), which read as follows:

''(iv) In the case of a woman over 49 years of age, but under 65 years of age, payment may not be made under this part for screening mammography performed within 11 months following the month in which a previous screening mammography was performed.

''(v) In the case of a woman over 64 years of age, payment may not be made for screening mammography performed within 23 months following the month in which a previous screening mammography was performed.''

Subsec. (d). Pub. L. 105–33, §4104(b)(1), added subsec. (d).

Subsec. (g). Pub. L. 105–33, §4201(c)(5), amended heading and text of subsec. (g) generally. Prior to amendment, text related to payment for outpatient rural primary care hospital services as determined, in par. (1), by either the cost-based facility fee plus professional charges method or the all-inclusive rate method and, in par. (2), by the prospective payment system.

Subsec. (h)(4)(A)(iv). Pub. L. 105–33, §4551(a)(2)(B), substituted ''1996 and 1997'' for ''a subsequent year''.

Subsec. (h)(4)(A)(v), (vi). Pub. L. 105–33, §4551(a)(2)(A), (C), added cls. (v) and (vi).

Subsec. (k). Pub. L. 105–33, §4541(a)(2), added subsec. (k).

Subsec. (*l*). Pub. L. 105–33, §4531(b)(2), added subsec. (*l*).

1994—Subsec. (a)(3)(D). Pub. L. 103–432, §135(e)(5), struck out heading and text of subpar. (D). Text read as follows: ''If the reasonable useful lifetime of such an item, as established under paragraph (7)(C), has been reached during a continuous period of medical need, or the Secretary determines on the basis of investigation by the carrier that the item is lost or irreparably damaged, payment for an item serving as a replacement for such item shall be made on a monthly basis for the rental of the replacement item in accordance with subparagraph (A).''

Subsec. (a)(5)(E). Pub. L. 103–432, §135(d)(1), substituted ''pressure of 56'' for ''pressure of 55''.

Subsec. (a)(7). Pub. L. 103–432, §135(e)(2), made technical amendment to directory language of Pub. L. 101–508, §4152(c)(2). See 1990 Amendment note below.

Subsec. (a)(7)(A)(iii)(II). Pub. L. 103–432, §135(e)(3), substituted ''clause (vi)'' for ''clause (v)''.

Subsec. (a)(7)(C)(i). Pub. L. 103–432, §135(e)(4), substituted ''this paragraph'' for ''this paragraph or paragraph (3)''.

Subsec. (a)(10)(B). Pub. L. 103–432, §134(a)(1), inserted at end ''In applying such provisions to payments for an item under this subsection, the Secretary shall make adjustments to the payment basis for the item described in paragraph (1)(B) if the Secretary determines (in accordance with such provisions and on the basis of prices and costs applicable at the time the item is furnished) that such payment basis is not inherently reasonable.''

Pub. L. 103–432, §126(g)(10)(B), substituted ''would otherwise apply to physicians' services'' for ''apply to physicians' services'' and inserted before period at end ''but for the application of section 1395w–4(i)(3) of this title''.

Subsec. (a)(14)(A). Pub. L. 103–432, §135(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''for 1991 and 1992, reduction of 1 percentage point; and''.

Subsec. (a)(15). Pub. L. 103–432, §135(b)(1), amended heading and text of par. (15) generally. Prior to amendment, text read as follows:

''(A) DEVELOPMENT OF LIST OF ITEMS BY SECRETARY.—The Secretary shall develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization, and shall include in such list seat-lift mechanisms, transcutaneous electrical nerve stimulators, and motorized scooters.

''(B) DETERMINATIONS OF COVERAGE IN ADVANCE.—A carrier shall determine in advance whether payment for an item included on the list developed by the Secretary under subparagraph (A) may not be made because of the application of section 1395y(a)(1) of this title.''

Subsec. (a)(16). Pub. L. 103–432, §131(a)(2), struck out heading and text of par. (16). Text read as follows:

''(A) IN GENERAL.—A supplier of a covered item under this subsection may not distribute to physicians or to individuals entitled to benefits under this part for commercial purposes any completed or partially completed forms or other documents required by the Secretary to be submitted to show that a covered item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

''(B) PENALTY.—Any supplier of a covered item who knowingly and willfully distributes a form or other document in violation of subparagraph (A) is subject to a civil money penalty in an amount not to exceed $1,000 for each such form or document so distributed. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (a)(17), (18). Pub. L. 103–432, §132(a)(1), (2), added pars. (17) and (18).

Subsec. (b)(4)(D). Pub. L. 103–432, §126(b)(2)(A), in introductory provisions substituted ''shall, subject to clause (vii), be reduced to the adjusted conversion factor for the locality determined as follows:'' for ''shall be determined as follows:''.

Subsec. (b)(4)(D)(iv). Pub. L. 103–432, §126(b)(2)(B), substituted ''Adjusted conversion factor'' for ''Local adjustment'' in heading and ''The adjusted conversion factor for'' for ''Subject to clause (vii), the conversion factor to be applied to'' in text.

Subsec. (b)(4)(D)(vii). Pub. L. 103–432, §126(b)(2)(C), (D), struck out ''under this subparagraph'' after ''applied to a locality'' and inserted ''reduced under this subparagraph by'' before ''more than 9.5 percent''.

Subsec. (b)(4)(E). Pub. L. 103–432, §126(b)(5), inserted heading ''Rule for certain scanning services''.

Pub. L. 103–432, §126(b)(4), made technical amendment to directory language of Pub. L. 101–508, §4102(d). See 1990 Amendment note below.

Pub. L. 103–432, §126(b)(1), redesignated subpar. (E), relating to subsequent updating, as (F).

Subsec. (b)(4)(F), (G). Pub. L. 103–432, §126(b)(1), redesignated subpars. (E), relating to subsequent updating, and (F) as (F) and (G), respectively.

Subsec. (c)(1)(B). Pub. L. 103–432, §145(a)(1), substituted ''is conducted by a facility that has a certificate (or provisional certificate) issued under section 263b of this title'' for ''meets the quality standards established under paragraph (3)''.

Subsec. (c)(1)(C)(iii). Pub. L. 103–432, §145(a)(2), substituted ''paragraph (3)'' for ''paragraph (4)''.

Subsec. (c)(3) to (5). Pub. L. 103–432, §145(a)(3), (4), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which directed Secretary to establish standards to assure the safety and accuracy of screening mammography performed under this part.

Subsec. (f). Pub. L. 103–432, §126(g)(1), substituted ''during 1991'' for ''during fiscal year 1991'' in heading.

Subsec. (g)(1). Pub. L. 103–432, §102(e)(1)(A), (2), substituted in introductory provisions ''during a year before the prospective payment system described in paragraph (2) is in effect'' for ''during a year before 1993''

and inserted at end ''The amount of payment shall be determined under either method without regard to the amount of the customary or other charge.''

Subsec. (g)(1)(B). Pub. L. 103–432, §156(a)(2)(C), struck out ''and for items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title, or a third opinion, if the second opinion was in disagreement with the first opinion'' after ''section 1395x(s)(10)(A) of this title''.

Subsec. (g)(2). Pub. L. 103–432, §102(e)(1)(B), substituted ''January 1, 1996'' for ''January 1, 1993''.

Subsec. (h)(3). Pub. L. 103–432, §135(b)(3), substituted ''Paragraphs (12), (15), and (17)'' for ''Paragraphs (12) and (17)''.

Pub. L. 103–432, §132(b), substituted ''Paragraphs (12) and (17)'' for ''Paragraph (12)''.

Subsec. (j). Pub. L. 103–432, §131(a)(1), added subsec. (j).

Subsec. (j)(4), (5). Pub. L. 103–432, §133(a)(1), added par. (4) and redesignated former par. (4) as (5).

1993—Subsec. (a)(1)(D). Pub. L. 103–66, §13545(a), substituted ''45 percent'' for ''15 percent'' after ''(as previously reduced) by''.

Subsec. (a)(2)(A)(iii). Pub. L. 103–66, §13543(b), added cl. (iii).

Subsec. (a)(2)(C). Pub. L. 103–66, §13542(a)(1), in cl. (i)(II), substituted ''for 1992, 1993, and 1994'' for ''for 1992'' and ''update for the year'' for ''update for 1992'', and in cl. (ii), struck out ''and'' at end of subcl. (I), added subcls. (II) and (III), and redesignated former subcl. (II) as (IV).

Subsec. (a)(3)(A). Pub. L. 103–66, §13543(a), substituted ''IPPB machines and ventilators, excluding ventilators that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices'' for ''ventilators, aspirators, IPPB machines, and nebulizers''.

Subsec. (a)(3)(C). Pub. L. 103–66, §13542(a)(1), in cl. (i)(II), substituted ''for 1992, 1993, and 1994'' for ''for 1992'' and ''update for the year'' for ''update for 1992'', and in cl. (ii), struck out ''and'' at end of subcl. (I), added subcls. (II) and (III), and redesignated former subcl. (II) as (IV).

Subsec. (a)(8)(A)(ii)(III). Pub. L. 103–66, §13542(a)(2)(A), substituted ''1992, 1993, and 1994'' for ''1992''.

Subsec. (a)(8)(B)(ii) to (iv). Pub. L. 103–66, §13542(a)(2)(B), added cls. (ii) and (iii) and redesignated former cl. (ii) as (iv).

Subsec. (a)(9)(A)(ii)(II). Pub. L. 103–66, §13542(a)(3)(A), substituted ''1991, 1992, 1993, and 1994'' for ''1991 and 1992''.

Subsec. (a)(9)(B)(ii) to (iv). Pub. L. 103–66, §13542(a)(3)(B), added cls. (ii) and (iii) and redesignated former cl. (ii) as (iv).

Subsec. (h)(1)(B). Pub. L. 103–66, §13544(a)(2), substituted ''subparagraphs (C) and (E)'' for ''subparagraph (C)'' in introductory provisions.

Subsec. (h)(1)(E). Pub. L. 103–66, §13544(a)(1), added subpar. (E).

Subsec. (h)(4)(A). Pub. L. 103–66, §13546, struck out ''and'' at end of cl. (i), substituted ''1992 and 1993'' for ''a subsequent year'' in cl. (ii), and added cls. (iii) and (iv).

Subsec. (i). Pub. L. 103–66, §13544(b)(1), added subsec. (i).

1990—Subsec. (a). Pub. L. 101–508, §4153(a)(2)(D)(i), struck out '', prosthetic devices, orthotics, and prosthetics'' after ''medical equipment'' in heading.

Subsec. (a)(1)(D). Pub. L. 101–508, §4152(a)(1), inserted before period at end '', and, in the case of a transcutaneous electrical nerve stimulator furnished on or after January 1, 1991, the Secretary shall further reduce such payment amount (as previously reduced) by 15 percent''.

Subsec. (a)(2)(A). Pub. L. 101–508, §4153(a)(2)(D)(ii), substituted ''(13)'' for ''(13)(A)''.

Pub. L. 101–508, §4152(c)(4)(A), inserted ''or'' after ''$150,'' in cl. (i), struck out ''or'' after ''purchase,'' in cl. (ii), and struck out cl. (iii) which read as follows: ''which is a power-driven wheelchair (other than a customized wheelchair that is classified as a customized item under paragraph (4) pursuant to criteria specified by the Secretary),''.

Subsec. (a)(2)(B). Pub. L. 101–508, §4152(b)(1)(A), (B), struck out ''or'' after ''1987;'' in cl. (i), added cls. (ii) to (iv), and struck out former cl. (ii) which read as follows: ''in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of that preceding year.''

Subsec. (a)(2)(C). Pub. L. 101–508, §4152(b)(1)(C), added subpar. (C).

Subsec. (a)(3)(B). Pub. L. 101–508, §4152(b)(1)(A), (B), struck out ''or'' after ''1987;'' in cl. (i), added cls. (ii) to (iv), and struck out former cl. (ii) which read as follows: ''in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of that preceding year.''

Subsec. (a)(3)(C). Pub. L. 101–508, §4152(b)(1)(C), added subpar. (C).

Subsec. (a)(3)(D). Pub. L. 101–508, §4152(c)(3), added subpar. (D).

Subsec. (a)(4). Pub. L. 101–508, §4152(c)(4)(B)(i), directed amendment of par. (4) by inserting at end ''In the case of a wheelchair furnished on or after January 1, 1992, the wheelchair shall be treated as a customized item for purposes of this paragraph if the wheelchair has been measured, fitted, or adapted in consideration of the patient's body size, disability, period of need, or intended use, and has been assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs that are intended for an individual patient's use in accordance with instructions from the patient's physician.'' The amendment did not become effective pursuant to Pub. L. 101–508, §4152(c)(4)(B)(ii). See Effective Date of 1990 Amendment note below.

Subsec. (a)(5)(A). Pub. L. 101–508, §4152(g)(1)(A), substituted ''(B), (C), and (E)'' for ''(B) and (C)''.

Subsec. (a)(5)(E). Pub. L. 101–508, §4152(g)(1)(B), added subpar. (E).

Subsec. (a)(7)(A)(i). Pub. L. 101–508, §4152(c)(2)(A), as amended by Pub. L. 103–432, §135(e)(2), substituted ''15 months, or, in the case of an item for which a purchase agreement has been entered into under clause (iii), a period of continuous use of longer than 13 months'' for ''15 months''.

Pub. L. 101–508, §4152(c)(1), substituted ''for each of the first 3 months of such period'' for ''for each such month'' and '', and for each of the remaining months of such period is 7.5 percent of such purchase price;'' for semicolon at end.

Subsec. (a)(7)(A)(ii), (iii). Pub. L. 101–508, §4152(c)(2)(D), as amended by Pub. L. 103–432, §135(e)(2), added cls. (ii) and (iii). Former cls. (ii) and (iii) redesignated (iv) and (v), respectively.

Subsec. (a)(7)(A)(iv). Pub. L. 101–508, §4152(c)(2)(B), as amended by Pub. L. 103–432, §135(e)(2), redesignated cl. (ii) as (iv), substituted ''in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii), during the first 6-month period of medical need that follows the period of medical need during which payment is made under clause (i),'' for ''during the succeeding 6-month period of medical need,'' and struck out ''and'' at end.

Subsec. (a)(7)(A)(v). Pub. L. 101–508, §4152(c)(2)(C), as amended by Pub. L. 103–432, §135(e)(2), redesignated cl. (iii) as (v), inserted at beginning ''in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii),'', and substituted ''; and'' for period at end.

Subsec. (a)(7)(A)(vi). Pub. L. 101–508, §4152(c)(2)(E), as amended by Pub. L. 103–432, §135(e)(2), added cl. (vi).

Subsec. (a)(7)(C). Pub. L. 101–508, §4152(c)(2)(F), as amended by Pub. L. 103–432, §135(e)(2), added subpar. (C).

Subsec. (a)(8)(A)(ii). Pub. L. 101–508, §4152(b)(2)(A), added subcl. (II), redesignated former subcl. (II) as (III), struck out ''1991 or'' before ''1992'', and substituted ''the covered item update for the year'' for ''the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year''.

Subsec. (a)(8)(B). Pub. L. 101–508, §4152(b)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''With respect to the furnishing of a particular item in each region (as defined by the Secretary), the Secretary shall compute a regional purchase price—

''(i) for 1991 and for 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

''(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.''

Subsec. (a)(8)(C). Pub. L. 101–508, §4152(b)(2)(C)(ii), struck out ''and subject to subparagraph (D)'' after ''and (7)'' in introductory provisions.

Subsec. (a)(8)(C)(ii). Pub. L. 101–508, §4152(b)(2)(C)(i), (iii), in subcl. (I) substituted ''67 percent'' for ''75 percent'' and in subcl. (II) substituted ''33 percent'' for ''25 percent'' and ''national limited purchase price'' for ''regional purchase price''.

Subsec. (a)(8)(C)(iii). Pub. L. 101–508, §4152(b)(2)(C)(i), (iv), in subcl. (I) substituted ''33 percent'' for ''50 percent'' and ''subparagraph (A)(ii)(III)'' for ''subparagraph (A)(ii)(II)'' and in subcl. (II) substituted ''67 percent'' for ''50 percent'' and ''national limited purchase price'' for ''regional purchase price''.

Subsec. (a)(8)(C)(iv). Pub. L. 101–508, §4152(b)(2)(C)(i), substituted ''national limited purchase price'' for ''regional purchase price''.

Subsec. (a)(8)(D). Pub. L. 101–508, §4152(b)(2)(D), struck out subpar. (D) which read as follows: ''The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—

''(i) in 1991, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

''(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.''

Subsec. (a)(9)(A)(ii)(II). Pub. L. 101–508, §4152(b)(3)(A), substituted ''the covered item increase for the year'' for ''the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year''.

Subsec. (a)(9)(B). Pub. L. 101–508, §4152(b)(3)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''With respect to the furnishing of an item in each region (as defined by the Secretary), the Secretary shall compute a regional monthly payment rate—

''(i) for 1991 and 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local monthly payment rates for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

''(ii) for each subsequent year, equal to the regional monthly payment rates computed under this subparagraph for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.''

Subsec. (a)(9)(C)(ii). Pub. L. 101–508, §4152(b)(3)(C)(i), (ii), in subcl. (I) substituted ''67 percent'' for ''75 percent'' and in subcl. (II) substituted ''33 percent'' for ''25 percent'' and ''national limited monthly payment rate'' for ''regional monthly payment rate''.

Subsec. (a)(9)(C)(iii). Pub. L. 101–508, §4152(b)(3)(C)(i), (iii), in subcl. (I) substituted ''33 percent'' for ''50 percent'' and in subcl. (II) substituted ''67 percent'' for ''50 percent'', ''national limited monthly payment rate'' for ''regional monthly payment rate'', and ''subparagraph (B)(ii)'' for ''subparagraph (B)(i)''.

Subsec. (a)(9)(C)(iv). Pub. L. 101–508, §4152(b)(3)(C)(i), substituted ''national limited monthly payment rate'' for ''regional monthly payment rate''.

Subsec. (a)(9)(D). Pub. L. 101–508, §4152(b)(3)(D), struck out subpar. (D) which read as follows: ''The amount that is recognized under subparagraph (C) as the base monthly payment amount for an item furnished—

''(i) in 1991, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the base monthly payment amounts recognized under such subparagraph for all the carrier service areas in the United States in that year; and

''(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the base monthly payment amounts recognized under such subparagraph for all the carrier service areas in the United States in that year.''

Subsec. (a)(12). Pub. L. 101–508, §4152(b)(5), struck out ''defined for purposes of paragraphs (8)(B) and (9)(B)'' after ''one or more entire regions''.

Subsec. (a)(13). Pub. L. 101–508, §4153(a)(2)(D)(iii), substituted ''means durable medical equipment (as defined in section 1395x(n) of this title), including such equipment described in section 1395x(m)(5) of this title).'' for ''means—

''(A) durable medical equipment (as defined in section 1395x(n) of this title), including such equipment described in section 1395x(m)(5) of this title;

''(B) prosthetic devices (described in section 1395x(s)(8) of this title), but not including parenteral and enteral nutrition nutrients, supplies, and equipment; and

''(C) orthotics and prosthetics (described in section 1395x(s)(9) of this title);

but does not include intraocular lenses or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1395x(m)(5) of this title.''

Subsec. (a)(14). Pub. L. 101–508, §4152(b)(4), added par. (14).

Subsec. (a)(15). Pub. L. 101–508, §4152(e), added par. (15).

Subsec. (a)(16). Pub. L. 101–508, §4152(f)(1), added par. (16).

Subsec. (b)(1)(B). Pub. L. 101–508, §4163(b)(1), inserted ''and subject to subsection (c)(1)(A) of this section'' after ''conversion factors''.

Pub. L. 101–508, §4102(f), inserted ''locality,'' after ''statewide,''.

Subsec. (b)(4)(D). Pub. L. 101–508, §4102(a)(2), added subpar. (D). Former subpar. (D) redesignated (E) relating to subsequent updating.

Subsec. (b)(4)(E). Pub. L. 101–508, §4102(d), as amended by Pub. L. 103–432, §126(b)(4), added subpar. (E) relating to rule for certain scanning services.

Pub. L. 101–508, §4102(a)(1), redesignated subpar. (D), relating to subsequent updating, as (E). Former subpar. (E) redesignated (F).

Subsec. (b)(4)(F). Pub. L. 101–508, §4102(a)(1), redesignated subpar. (E) as (F).

Subsec. (c). Pub. L. 101–508, §4163(b)(2), added subsec. (c).

Subsec. (f). Pub. L. 101–508, §4104(a), amended subsec. (f) generally, substituting provisions relating to reduction in payments for physician pathology services during 1991 for provisions directing Secretary to provide for application of a fee schedule with respect to such services.

Subsec. (h). Pub. L. 101–508, §4153(a)(1), added subsec. (h).

1989—Subsec. (a)(1)(D). Pub. L. 101–239, § 6112(c), added subpar. (D).

Subsec. (a)(2)(A)(iii). Pub. L. 101–239, § 6112(d)(1), added cl. (iii).

Subsec. (a)(2)(B)(i), (3)(B)(i). Pub. L. 101–239, § 6112(a)(1), inserted ''and in 1990'' after ''1989''.

Subsec. (a)(7)(A)(i). Pub. L. 101–239, § 6112(a)(4)(A), substituted ''this clause'' for ''this subparagraph''.

Subsec. (a)(7)(B)(i). Pub. L. 101–239, § 6112(a)(4)(B), inserted ''in'' after ''rental of the item''.

Subsec. (a)(7)(B)(ii). Pub. L. 101–239, § 6112(a)(4)(C), substituted ''clause (i) shall apply in the same manner as it applies to items furnished during 1989'' for ''the payment amount recognized under subparagraph (A)(i) shall not be more than the maximum amount established under clause (i), and shall not be less than the minimum amount established under such clause, for 1989, each such amount increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June 1989''.

Subsec. (a)(8)(A)(ii)(I). Pub. L. 101–239, § 6112(a)(2)(A), inserted ''and 1990'' after ''1989''.

Subsec. (a)(8)(A)(ii)(II). Pub. L. 101–239, § 6112(a)(2)(B), substituted ''1991 or 1992'' for ''1990, 1991, or 1992''.

Subsec. (a)(8)(D)(i). Pub. L. 101–239, § 6140(1), substituted ''1991, may not exceed 125 percent, and may not be lower than 85 percent'' for ''1991, may not exceed 130 percent, and may not be lower than 80 percent''.

Subsec. (a)(8)(D)(ii). Pub. L. 101–239, § 6140(2), substituted ''120 percent, and may not be lower than 90 percent'' for ''125 percent, and may not be lower than 85 percent''.

Subsec. (a)(9)(A)(ii)(I). Pub. L. 101–239, § 6112(a)(3)(A), inserted ''and 1990'' after ''1989''.

Subsec. (a)(9)(A)(ii)(II). Pub. L. 101–239, § 6112(a)(3)(B), substituted ''1991 and 1992'' for ''1990, 1991, and 1992''.

Subsec. (a)(9)(D)(i). Pub. L. 101–239, § 6140(1), substituted ''1991, may not exceed 125 percent, and may not be lower than 85 percent'' for ''1991, may not exceed 130 percent, and may not be lower than 80 percent''.

Subsec. (a)(9)(D)(ii). Pub. L. 101–239, § 6140(2), substituted ''120 percent, and may not be lower than 90 percent'' for ''125 percent, and may not be lower than 85 percent''.

Subsec. (a)(13). Pub. L. 101–239, § 6112(e)(2), inserted before period at end ''or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1395x(m)(5) of this title''.

Subsec. (b)(1)(B). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 204(b)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(4)(A). Pub. L. 101–234, § 301(b)(1), (c)(1), amended subpar. (A) identically, substituting ''coinsurance and deductibles under sections 1395*l*(a)(1)(J)'' for ''insurance and deductibles under section 1395n(a)(1)(I)''.

Subsec. (b)(4)(C) to (E). Pub. L. 101–239, § 6105(a), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsecs. (c) to (e). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 202(b)(4), 203(c)(1)(F), 204(b)(2), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (f). Pub. L. 101–239, § 6102(f)(1), added subsec. (f).

Subsec. (g). Pub. L. 101–239, § 6116(b)(2), added subsec. (g).

1988—Pub. L. 100–360, § 411(g)(1)(A), inserted ''items and'' in section catchline.

Subsec. (a)(1)(C). Pub. L. 100–360, § 411(g)(1)(B)(i), inserted ''or under part A of this subchapter to a home health agency'' before period at end.

Subsec. (a)(2)(A). Pub. L. 100–360, § 411(g)(1)(B)(iii), struck out ''rental'' before ''payments'' in concluding provisions.

Subsec. (a)(2)(B)(i). Pub. L. 100–360, § 411(g)(1) (B)(iii), substituted ''reasonable'' for ''allowed''.

Subsec. (a)(3)(A). Pub. L. 100–360, § 411(g)(1)(B)(iv), struck out the extra space appearing in text of original act after ''ventilators''.

Subsec. (a)(3)(B)(i). Pub. L. 100–360, § 411(g)(1) (B)(iii), substituted ''reasonable'' for ''allowable''.

Subsec. (a)(4). Pub. L. 100–360, § 411(g)(1) (B)(v)–(vii), inserted '', and for that reason cannot be grouped with similar items for purposes of payment under this subchapter,'' after ''individual patient'', inserted cl. (A) and (B) designations, and in cl. (B), substituted ''servicing'' for ''service'' in two places.

Subsec. (a)(7)(A)(ii). Pub. L. 100–360, § 411(g)(1) (B)(vii), inserted ''maintenance and'' before ''servicing''.

Subsec. (a)(7)(A)(iii). Pub. L. 100–360, § 411(g)(1) (B)(vii), (viii), substituted ''maintenance and servicing'' for ''service and maintenance'', and in subcl. (I) substituted ''fee or fees established by the Secretary'' for ''fee established by the carrier''.

Subsec. (a)(7)(B)(i). Pub. L. 100–360, § 411(a)(3)(A), (C)(ii), provided that subsec. (a)(7)(B)(i) of this section, as inserted by section 4062(b) of Pub. L. 100–203, is deemed to have a reference to ''1987'' immediately after ''December''.

Subsec. (a)(8)(A)(i)(I). Pub. L. 100–360, § 411(g)(1) (B)(iii), substituted ''reasonable'' for ''allowable''.

Subsec. (a)(8)(B). Pub. L. 100–360, § 411(g)(1)(B)(xi), as amended Pub. L. 100–485, § 608(d)(22)(A)(i), substituted ''(as defined by the Secretary)'' for ''(as defined in section 1395ww(d)(2)(D) of this title)'', and in cl. (i) struck out the comma after ''1991''.

Subsec. (a)(9)(A)(ii)(I). Pub. L. 100–360, § 411(g)(1) (B)(ix), substituted ''6-month'' for ''12-month''.

Subsec. (a)(9)(A)(ii)(II). Pub. L. 100–360, § 411(g)(1) (B)(x), substituted '', 1991, and 1992'' for ''and to 1991''.

Subsec. (a)(9)(B). Pub. L. 100–360, § 411(g)(1)(B)(xi), as amended by Pub. L. 100–485, § 608(d)(22)(A)(i), substituted ''(as defined by the Secretary)'' for ''(as defined in section 1395ww(d)(2)(D) of this title)'', and in cl. (i) struck out the comma after ''1991''.

Subsec. (a)(9)(C)(i). Pub. L. 100–360, § 411(g)(1) (B)(xii), substituted ''subparagraph (A)(ii)'' for ''subparagraph (A)(ii)(I)''.

Subsec. (a)(10)(B). Pub. L. 100–360, § 411(g)(1) (B)(xiii), inserted before period at end ''and payments under this subsection as such provisions apply to physicians' services and physicians and a reasonable charge under section 1395u(b) of this title''.

Subsec. (a)(11)(A). Pub. L. 100–360, § 411(g)(1) (B)(vii), (xiv), inserted ''maintenance and'' before ''servicing'' and substituted ''section 1395u(j)(2) of this title'' for ''subsection (j)(2) of this section''.

Subsec. (a)(12). Pub. L. 100–360, § 411(g)(1)(B)(xv), as amended by Pub. L. 100–485, § 608(d)(22)(A)(ii), substituted ''one or more entire regions defined for purposes of paragraphs (8)(B) and (9)(B)'' for ''each region (as defined in section 1395ww(d)(2)(D) of this title)''.

Subsec. (a)(14). Pub. L. 100–360, § 411(g)(1)(B)(xvi), struck out par. (14) which read as follows: ''In this subsection, any reference to the term 'carrier' includes a reference, with respect to durable medical equipment furnished by a home health agency as part of home health services, to a fiscal intermediary.''

Subsec. (b). Pub. L. 100–360, § 411(a)(3)(A), (B)(ii), (f)(8)(B)(ii), amended Pub. L. 100–203, § 4049(a)(2), see 1987 Amendment note below.

Subsec. (b)(1)(B). Pub. L. 100–360, § 204(b)(1), inserted ''and subject to subsection (e)(1)(A) of this section'' after ''conversion factors''.

Subsec. (b)(4)(C). Pub. L. 100–360, § 411(f)(8)(D)(ii), as added by Pub. L. 100–485, § 608(d)(21)(C), substituted ''For radiologist'' for ''Radiologist'' and ''1395u(i)(3) of this title'' for ''1395u(b)(4)(E)(ii) of this title''.

Subsec. (b)(4)(D), (5). Pub. L. 100–360, § 411(f)(8)(D)(i), inserted ''and suppliers'' after ''physicians'' in heading.

Subsec. (b)(5)(C). Pub. L. 100–360, § 411(f)(8)(D)(iii), (iv), formerly (ii), (iii), as redesignated by Pub. L. 100–485, § 608(d)(21)(C), substituted ''bills'' for ''imposes a charge'' and inserted ''in the same manner as such

sanctions may apply to a physician'' before period at end.

Subsec. (b)(6). Pub. L. 100–360, §411(f)(8)(D)(v), formerly (iv), as redesignated by Pub. L. 100–485, §608(d)(21)(C), substituted ''and section 1395*l*(a)(1)(J) of this title'' for '', section 1395*l*(a)(1)(I) of this title, and section 1395u(h)(1)(B) of this title''.

Pub. L. 100–360, §411(f)(8)(A), substituted ''radiology'' for ''radiologic''.

Subsec. (b)(6)(B). Pub. L. 100–360, §411(f)(8)(D)(vi), formerly (v), as redesignated by Pub. L. 100–485, §608(d)(21)(C), substituted ''the total amount of charges'' for ''billings''.

Pub. L. 100–360, §411(f)(8)(A), substituted ''radiology'' for ''radiologic''.

Subsec. (c). Pub. L. 100–360, §202(b)(4), added subsec. (c) relating to payment for covered outpatient drugs.

Subsec. (d). Pub. L. 100–360, §203(c)(1)(F), added subsec. (d) relating to home intravenous drug therapy services.

Subsec. (e). Pub. L. 100–360, §204(b)(2), added subsec. (e) relating to payments and standards for screening mammography.

1987—Subsec. (b). Pub. L. 100–203, §4049(a)(2), as amended by Pub. L. 100–360, §411(a)(3)(A), (B)(ii), (f)(8)(B)(ii), added subsec. (b).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 405(a)(1) of Pub. L. 108–173 applicable to payments for services furnished during cost reporting periods beginning on or after Jan. 1, 2004, see section 405(a)(2) of Pub. L. 108–173, set out as a note under section 1395f of this title.

Pub. L. 108–173, title IV, §405(b)(2), Dec. 8, 2003, 117 Stat. 2266, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to costs incurred for services furnished on or after January 1, 2005.''

Pub. L. 108–173, title IV, §405(d)(2), Dec. 8, 2003, 117 Stat. 2267, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after July 1, 2004.

''(B) RULE OF APPLICATION.—In the case of a critical access hospital that made an election under section 1834(g)(2) of the Social Security Act (42 U.S.C. 1395m(g)(2)) before November 1, 2003, the amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after July 1, 2001.''

Pub. L. 108–173, title IV, §415(c), Dec. 8, 2003, 117 Stat. 2282, provided that: ''The amendments made by this subsection [probably should be ''this section'', amending this section and section 1395x of this title] shall apply to services furnished on or after January 1, 2005.''

Amendment by section 627(b)(1) of Pub. L. 108–173 applicable to items furnished on or after Jan. 1, 2005, see section 627(c) of Pub. L. 108–173, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title I, §103(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–469, provided that: ''The amendments made by this section [amending this section and section 1395x of this title] shall apply to colorectal cancer screening services provided on or after July 1, 2001.''

Pub. L. 106–554, §1(a)(6) [title I, §104(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–470, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395w–4 of this title] shall apply with respect to screening mammographies furnished on or after January 1, 2002.''

Amendment by section 1(a)(6) [title II, §201(a)] of Pub. L. 106–554 applicable to services furnished on or after Nov. 29, 1999, see section 1(a)(6) [title II, §201(c)] of Pub. L. 106–554, set out as a note under section 1395*l* of this title.

Pub. L. 106–554, §1(a)(6) [title II, §202(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–481, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to items and services furnished on or after July 1, 2001.''

Pub. L. 106–554, §1(a)(6) [title II, §204(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–482, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 2001.''

Amendment by section 1(a)(6) [title II, §205(a)] of Pub. L. 106–554 applicable to services furnished on or after Dec. 21, 2000, see section 1(a)(6) [title II, §205(c)] of Pub. L. 106–554, set out as a note under section 1395*l* of this title.

Pub. L. 106–554, §1(a)(6) [title II, §221(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–487, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after July 1, 2001. In applying such amendment to services furnished on or after such date and before January 1, 2002, the amount of the rate increase provided under such amendment shall be equal to $1.25 per mile.''

Amendment by section 1(a)(6) [title II, §223(b)] of Pub. L. 106–554 effective for services furnished on or after Oct. 1, 2001, see section 1(a)(6) [title II, §223(e)] of Pub. L. 106–554, set out as a note under section 1395*l* of this title.

Pub. L. 106–554, §1(a)(6) [title IV, §423(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–518, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after July 1, 2001.''

Pub. L. 106–554, §1(a)(6) [title IV, §428(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–522, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to items replaced on or after April 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title II, §201(e)(2)] of Pub. L. 106–113 effective as if included in enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see §1000(a)(6) [title II, §201(m)] of Pub. L. 106–113, set out as a note under section 1395*l* of this title.

Amendment by section 1000(a)(6) [title III, §321(k)(3)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §403(d)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–371, as amended by Pub. L. 106–554, §1(a)(6) [title II, §201(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–481, provided that: ''Paragraphs (1) through (3) of section 1834(g) of the Social Security Act [subsec. (g) of this section] (as amended by paragraph (1)) apply for cost reporting periods beginning on or after October 1, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4101(a), (c) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4101(d) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4104(b)(1) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4104(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Section 4105(d) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1395w–4 and 1395x of this title] shall apply to items and services furnished on or after July 1, 1998.

''(2) TESTING STRIPS.—The amendment made by subsection (b)(2) [amending this section] shall apply with respect to blood glucose testing strips furnished on or after January 1, 1998.''

Amendment by section 4201(c)(5) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997,

see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4312(f)(1) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to suppliers of durable medical equipment with respect to such equipment furnished on or after January 1, 1998.''

Section 4312(f)(3) of Pub. L. 105–33 provided that: ''The amendments made by subsections (c) through (e) [amending this section and section 1395x of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997] and may be applied with respect to items and services furnished on or after January 1, 1998.''

Section 4316(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 4531(b)(2) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 2000, see section 4531(b)(3) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4541(a)(2) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1998, including portions of cost reporting periods occurring on or after such date, except that subsec. (k) of this section inapplicable to services described in section 1395*l*(a)(8)(B) of this title that are furnished during 1998, see section 4541(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Section 4551(c)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to purchases or rentals after the effective date of any regulations issued pursuant to such amendment.''

Section 4552(e) of Pub. L. 105–33 provided that:

''(1) OXYGEN.—The amendments made by subsection (a) [amending this section] shall apply to items furnished on and after January 1, 1998.

''(2) OTHER PROVISIONS.—The amendments made by this section other than subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 126(i) of Pub. L. 103–432 provided that: ''Except as provided in subsection (h) [amending section 1395u of this title, enacting provisions set out as notes under sections 1395u and 1395w–4 of this title, and amending provisions set out as a note under section 1395w–4 of this title], the amendments made by this section and the provisions of this section [amending this section and sections 1395u, 1395w–1, and 1395w–4 of this title, enacting provisions set out as notes under sections 1395u and 1395w–4 of this title, and amending provisions set out as notes under this section and sections 1395u and 1395w–4 of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

Section 131(a)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective 60 days after Oct. 31, 1994.

Section 132(c) of Pub. L. 103–432 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to items furnished after the expiration of the 60-day period that begins on the date of the enactment of this Act [Oct. 31, 1994].''

Section 133(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and sections 1395m and 1395pp of this title] shall apply to items or services furnished on or after January 1, 1995.''

Section 134(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

Section 135(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective on the date of the enactment of this Act [Oct. 31, 1994].''

Section 135(b)(1) of Pub. L. 103–432 provided that the amendment made by that section is effective Oct. 31, 1994.

Section 135(b)(3) of Pub. L. 103–432 provided that the amendment made by that section is effective Oct. 31, 1994.

Section 135(d)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective on the date of the enactment of this Act [Oct. 31, 1994].''

Section 135(e)(8) of Pub. L. 103–432 provided that: ''The amendments made by this subsection [amending this section and provisions set out as notes under this section and section 1395cc of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

Section 145(d) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and sections 1395x to 1395bb of this title] shall apply to mammography furnished by a facility on and after the first date that the certificate requirements of section 354(b) of the Public Health Service Act [section 263b(b) of this title] apply to such mammography conducted by such facility.''

Amendment by section 156(a)(2)(C) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13542(b) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to items furnished on or after January 1, 1994.''

Section 13543(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to items furnished on or after January 1, 1994.''

Section 13544(a)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section] shall apply to items furnished on or after January 1, 1994.''

Amendment by section 13544(b)(1) of Pub. L. 103–66 applicable to items furnished on or after Jan. 1, 1994, see section 13544(b)(3) of Pub. L. 103–66, set out as a note under section 1395*l* of this title.

Section 13545(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to items furnished on or after January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4102(i) of Pub. L. 101–508 provided that:

''(1) Except as otherwise provided, the amendments made by this section [amending this section, section 1395w–4 of this title, and provisions set out as a note below] shall apply to services furnished on or after January 1, 1991.

''(2) The amendment made by subsection (f) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Amendment by section 4104(a) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4104(d) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

Section 4152(a)(3) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 135(e)(1), Oct. 31, 1994, 108 Stat. 4424, provided that: ''The amendments made by this subsection [amending this section and section 1395x of this title] shall apply to items furnished on or after January 1, 1991.''

Section 4152(c)(4)(B)(ii) of Pub. L. 101–508 provided that: ''The amendment made by clause (i) [amending this section] shall apply to items furnished on or after January 1, 1992, unless the Secretary develops specific criteria before that date for the treatment of wheelchairs as customized items for purposes of section 1834(a)(4) of the Social Security Act [subsec. (a)(4) of

this section] (in which case the amendment made by such clause shall not become effective).'' [Criteria established by Secretary Nov. 1, 1991, see 56 F.R. 65995, Dec. 20, 1991, 42 CFR § 414.224.]

Section 4152(f)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to forms and documents distributed on or after January 1, 1991.''

Section 4152(g)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to patients who first receive home oxygen therapy services on or after January 1, 1991.''

Section 4152(i) of Pub. L. 101–508 provided that: ''Except as otherwise provided, the amendments made by this section [amending this section, section 1395x of this title, and provisions set out as a note under section 1395f of this title] shall apply to items furnished on or after January 1, 1991.''

Amendment by section 4153(a)(1), (2)(D) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 4153(a)(3) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4163(b) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6102(f)(1) of Pub. L. 101–239 applicable to services furnished on or after Jan. 1, 1991, see section 6102(f)(3) of Pub. L. 101–239, set out as a note under section 1395*l* of this title.

Section 6112(e)(4) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and sections 1395x and 1395cc of this title] shall apply with respect to items furnished on or after January 1, 1990.''

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Section 301(b)(1), (c)(1) of Pub. L. 101–234 provided that the amendments made by that section are effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(b)(4) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 203(c)(1)(F) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Section 204(e) of Pub. L. 100–360, which provided that the amendments made by section 204 of Pub. L. 100–360 [amending this section and sections 1395*l*, 1395x to 1395z, 1395aa, 1395bb, 1396a, and 1396n of this title] applied to screening mammography performed on or after January 1, 1990, and that subsec. (e)(5) of this section only applied until such time as the Secretary of Health and Human Services implemented the physician fee schedules based on relative value scale developed under section 1395w–1(e) of this title, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(a)(3)(A), (B)(ii), (C)(ii), (f)(8)(A), (B)(ii), (D), (g)(1)(A) and (B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4049(b)(2) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VI, § 6102(e)(6)(B), Dec. 19, 1989, 103 Stat. 2188; Pub. L. 101–508, title IV, § 4118(h)(2), Nov. 5, 1990, 104 Stat. 1388–70, provided that: ''The amendments made by this section [amending this section and section 1395*l* of this title] shall apply to services performed on or after April 1, 1989.''

[Section 4118(h) of Pub. L. 101–508 provided that the amendment by that section to section 4049(b)(2) of Pub. L. 100–203, set out above, is effective as if included in enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.]

EFFECTIVE DATE

Subsection (a) of this section applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as an Effective Date of 1987 Amendment note under section 1395f of this title.

REGULATIONS

Pub. L. 106–554, § 1(a)(6) [title IV, § 427(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–521, provided that: ''Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall promulgate revised regulations to carry out the amendment made by subsection (a) [amending this section] using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, United States Code.''

TRANSFER OF FUNCTIONS

Physician Payment Review Commission (PPRC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 4022(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395b–6 of this title. Section 4022(c)(2), (3) further provided that MedPAC was to be responsible for preparation and submission of reports required by law to be submitted by PPRC, and that, for that purpose, any reference in law to PPRC was to be deemed, after the appointment of MedPAC, to refer to MedPAC.

GAO REPORT ON CLASS III MEDICAL DEVICES

Pub. L. 108–173, title III, § 302(c)(1)(B), Dec. 8, 2003, 117 Stat. 2231, provided that: ''Not later than March 1, 2006, the Comptroller General of the United States shall submit to Congress, and transmit to the Secretary [of Health and Human Services], a report containing recommendations on the appropriate update percentage under section 1834(a)(14) of the Social Security Act (42 U.S.C. 1395m(a)(14)) for class III medical devices described in section 513(a)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)(C) [360c(a)(1)(C)]) furnished to medicare beneficiaries during 2007 and 2008.''

USE OF DATA

Pub. L. 108–173, title IV, § 414(c)(2), Dec. 8, 2003, 117 Stat. 2280, provided that: ''In order to promptly implement section 1834(*l*)(12) of the Social Security Act [subsec. (*l*)(12) of this section], as added by paragraph (1), the Secretary [of Health and Human Services] may use data furnished by the Comptroller General of the United States.''

IMPLEMENTATION OF 2003 AMENDMENT

Pub. L. 108–173, title IV, § 414(e), Dec. 8, 2003, 117 Stat. 2280, provided that: ''The Secretary [of Health and Human Services] may implement the amendments made by this section [amending this section, section 1395x of this title, and provisions set out as a note under this section], and revise the conversion factor applicable under section 1834(*l*) of the Social Security Act (42 U.S.C. 1395m(*l*)) for purposes of implementing such

amendments, on an interim final basis, or by program instruction.''

GAO REPORT ON COSTS AND ACCESS

Pub. L. 108–173, title IV, § 414(f), Dec. 8, 2003, 117 Stat. 2280, provided that: ''Not later than December 31, 2005, the Comptroller General of the United States shall submit to Congress an initial report on how costs differ among the types of ambulance providers and on access, supply, and quality of ambulance services in those regions and States that have a reduction in payment under the medicare ambulance fee schedule (under section 1834(*l*) of the Social Security Act [subsection (*l*) of this section], as amended by this Act). Not later than December 31, 2007, the Comptroller General shall submit to Congress a final report on such access and supply.''

REPORT ON DEMONSTRATION PROJECT PERMITTING SKILLED NURSING FACILITIES TO BE ORIGINATING TELEHEALTH SITES; AUTHORITY TO IMPLEMENT

Pub. L. 108–173, title IV, § 418, Dec. 8, 2003, 117 Stat. 2283, provided that:

''(a) EVALUATION.—The Secretary [of Health and Human Services], acting through the Administrator of the Health Resources and Services Administration in consultation with the Administrator of the Centers for Medicare & Medicaid Services, shall evaluate demonstration projects conducted by the Secretary under which skilled nursing facilities (as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a))[)] are treated as originating sites for telehealth services.

''(b) REPORT.—Not later than January 1, 2005, the Secretary shall submit to Congress a report on the evaluation conducted under subsection (a). Such report shall include recommendations on mechanisms to ensure that permitting a skilled nursing facility to serve as an originating site for the use of telehealth services or any other service delivered via a telecommunications system does not serve as a substitute for in-person visits furnished by a physician, or for in-person visits furnished by a physician assistant, nurse practitioner or clinical nurse specialist, as is otherwise required by the Secretary.

''(c) AUTHORITY TO EXPAND ORIGINATING TELEHEALTH SITES TO INCLUDE SKILLED NURSING FACILITIES.—Insofar as the Secretary concludes in the report required under subsection (b) that it is advisable to permit a skilled nursing facility to be an originating site for telehealth services under section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)), and that the Secretary can establish the mechanisms to ensure such permission does not serve as a substitute for in-person visits furnished by a physician, or for in-person visits furnished by a physician assistant, nurse practitioner or clinical nurse specialist, the Secretary may deem a skilled nursing facility to be an originating site under paragraph (4)(C)(ii) of such section beginning on January 1, 2006.''

PAYMENT FOR NEW TECHNOLOGIES

Pub. L. 106–554, § 1(a)(6) [title I, § 104(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–470, as amended by Pub. L. 108–173, title IX, § 900(e)(6)(H), Dec. 8, 2003, 117 Stat. 2374, provided that:

''(1) TESTS FURNISHED IN 2001.—

''(A) SCREENING.—For a screening mammography (as defined in section 1861(jj) of the Social Security Act (42 U.S.C. 1395x(jj))) furnished during the period beginning on April 1, 2001, and ending on December 31, 2001, that uses a new technology, payment for such screening mammography shall be made as follows:

''(i) In the case of a technology which directly takes a digital image (without involving film), in an amount equal to 150 percent of the amount of payment under section 1848 of such Act (42 U.S.C. 1395w–4) for a bilateral diagnostic mammography (under HCPCS code 76091) for such year.

''(ii) In the case of a technology which allows conversion of a standard film mammogram into a digital image and subsequently analyzes such resulting image with software to identify possible problem areas, in an amount equal to the limit that would otherwise be applied under section 1834(c)(3) of such Act (42 U.S.C. 1395m(c)(3)) for 2001, increased by $15.

''(B) BILATERAL DIAGNOSTIC MAMMOGRAPHY.—For a bilateral diagnostic mammography furnished during the period beginning on April 1, 2001, and ending on December 31, 2001, that uses a new technology described in subparagraph (A), payment for such mammography shall be the amount of payment provided for under such subparagraph.

''(C) ALLOCATION OF AMOUNTS.—The Secretary shall provide for an appropriate allocation of the amounts under subparagraphs (A) and (B) between the professional and technical components.

''(D) IMPLEMENTATION OF PROVISION.—The Secretary of Health and Human Services may implement the provisions of this paragraph by program memorandum or otherwise.

''(2) CONSIDERATION OF NEW HCPCS CODE FOR NEW TECHNOLOGIES AFTER 2001.—The Secretary shall determine, for such mammographies performed after 2001, whether the assignment of a new HCPCS code is appropriate for mammography that uses a new technology. If the Secretary determines that a new code is appropriate for such mammography, the Secretary shall provide for such new code for such tests furnished after 2001.

''(3) NEW TECHNOLOGY DESCRIBED.—For purposes of this subsection, a new technology with respect to a mammography is an advance in technology with respect to the test or equipment that results in the following:

''(A) A significant increase or decrease in the resources used in the test or in the manufacture of the equipment.

''(B) A significant improvement in the performance of the test or equipment.

''(C) A significant advance in medical technology that is expected to significantly improve the treatment of medicare beneficiaries.

''(4) HCPCS CODE DEFINED.—The term 'HCPCS code' means a code under the Health Care Common Procedure Coding System (HCPCS).''

MEDPAC STUDY AND REPORT ON MEDICARE COVERAGE OF CARDIAC AND PULMONARY REHABILITATION THERAPY SERVICES

Pub. L. 106–554, § 1(a)(6) [title I, § 127], Dec. 21, 2000, 114 Stat. 2763, 2763A–479, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study on coverage of cardiac and pulmonary rehabilitation therapy services under the medicare program under title XVIII of the Social Security Act [this subchapter].

''(2) FOCUS.—In conducting the study under paragraph (1), the Commission shall focus on the appropriate—

''(A) qualifying diagnoses required for coverage of cardiac and pulmonary rehabilitation therapy services;

''(B) level of physician direct involvement and supervision in furnishing such services; and

''(C) level of reimbursement for such services.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under subsection (a) together with such recommendations for legislation and administrative action as the Commission determines appropriate.''

GAO STUDIES ON COSTS OF AMBULANCE SERVICES FURNISHED IN RURAL AREAS

Pub. L. 106–554, § 1(a)(6) [title II, § 221(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–486, provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study on each of the matters described in paragraph (2).

''(2) MATTERS DESCRIBED.—The matters referred to in paragraph (1) are the following:

''(A) The cost of efficiently providing ambulance services for trips originating in rural areas, with special emphasis on collection of cost data from rural providers.

''(B) The means by which rural areas with low population densities can be identified for the purpose of designating areas in which the cost of providing ambulance services would be expected to be higher than similar services provided in more heavily populated areas because of low usage. Such study shall also include an analysis of the additional costs of providing ambulance services in areas designated under the previous sentence.

''(3) REPORT.—Not later than June 30, 2002, the Comptroller General shall submit to Congress a report on the results of the studies conducted under paragraph (1) and shall include recommendations on steps that should be taken to assure access to ambulance services in rural areas.''

ADJUSTMENT IN RURAL RATES

Pub. L. 106–554, §1(a)(6) [title II, §221(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–487, as amended by Pub. L. 108–173, title IV, §414(g)(1), Dec. 8, 2003, 117 Stat. 2281, provided that: ''In providing for adjustments under subparagraph (D) of section 1834(*l*)(2) of the Social Security Act (42 U.S.C. 1395m(*l*)(2)) for years beginning with 2004, the Secretary of Health and Human Services shall take into consideration the recommendations contained in the report under subsection (b)(3) [set out above] and shall adjust the fee schedule payment rates under such section for ambulance services provided in low density rural areas based on the increased cost (if any) of providing such services in such areas.''

STUDY AND REPORT ON ADDITIONAL COVERAGE FOR TELEHEALTH SERVICES

Pub. L. 106–554, §1(a)(6) [title II, §223(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–489, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall conduct a study to identify—

''(A) settings and sites for the provision of telehealth services that are in addition to those permitted under section 1834(m) of the Social Security Act [subsec. (m) of this section], as added by subsection (b);

''(B) practitioners that may be reimbursed under such section for furnishing telehealth services that are in addition to the practitioners that may be reimbursed for such services under such section; and

''(C) geographic areas in which telehealth services may be reimbursed that are in addition to the geographic areas where such services may be reimbursed under such section.

''(2) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 21, 2000], the Secretary shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislation that the Secretary determines are appropriate.''

SPECIAL RULES FOR PAYMENTS FOR 2001

Pub. L. 106–554, §1(a)(6) [title IV, §423(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–518, provided that: ''Notwithstanding the amendment made by paragraph (1) [amending this section], for purposes of making payments for ambulance services under part B of title XVIII of the Social Security Act [this part], for services furnished during 2001, the 'percentage increase in the consumer price index' specified in section 1834(*l*)(3)(B) of such Act (42 U.S.C. 1395m(*l*)(3)(B))—

''(A) for services furnished on or after January 1, 2001, and before July 1, 2001, shall be the percentage increase for 2001 as determined under the provisions of law in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(B) for services furnished on or after July 1, 2001, and before January 1, 2002, shall be equal to 4.7 percent.''

Pub. L. 106–554, §1(a)(6) [title IV, §425(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–519, provided that: ''Notwithstanding the amendments made by subsection (a) [amending this section], for purposes of making payments for durable medical equipment under section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), other than for oxygen and oxygen equipment specified in paragraph (9) of such section, the payment basis recognized for 2001 under such section—

''(1) for items furnished on or after January 1, 2001, and before July 1, 2001, shall be the payment basis for 2001 as determined under the provisions of law in effect on the day before the date of the enactment of this Act [Dec. 21, 2000] (including the application of section 228(a)(1) of BBRA [Pub. L. 106–113, §1000(a)(6) [title II, §228(a)(1)], set out as a note below]); and

''(2) for items furnished on or after July 1, 2001, and before January 1, 2002, shall be the payment basis that is determined under such section 1834(a) if such section 228(a)(1) did not apply and taking into account the amendment made by subsection (a), increased by a transitional percentage allowance equal to 3.28 percent (to account for the timing of implementation of the CPI update).''

Pub. L. 106–554, §1(a)(6) [title IV, §426(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–520, provided that: ''Notwithstanding the amendments made by subsection (a) [amending this section], for purposes of making payments for prosthetic devices and orthotics and prosthetics (as defined in subparagraphs (B) and (C) of paragraph (4) of section 1834(h) of the Social Security Act (42 U.S.C. 1395m(h)) under such section, the payment basis recognized for 2001 under paragraph (2) of such section—

''(1) for items furnished on or after January 1, 2001, and before July 1, 2001, shall be the payment basis for 2001 as determined under the provisions of law in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(2) for items furnished on or after July 1, 2001, and before January 1, 2002, shall be the payment basis that is determined under such section taking into account the amendments made by subsection (a), increased by a transitional percentage allowance equal to 2.6 percent (to account for the timing of implementation of the CPI update).''

PREEMPTION OF RULE

Pub. L. 106–554, §1(a)(6) [title IV, §428(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–522, provided that: ''The provisions of section 1834(h)(1)(G) [subsec. (h)(1)(G) of this section] as added by subsection (a) shall supersede any rule that as of the date of the enactment of this Act [Dec. 21, 2000] may have applied a 5-year replacement rule with regard to prosthetic devices.''

GAO STUDY AND REPORT ON COSTS OF EMERGENCY AND MEDICAL TRANSPORTATION SERVICES

Pub. L. 106–554, §1(a)(6) [title IV, §436], Dec. 21, 2000, 114 Stat. 2763, 2763A–527, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study on the costs of providing emergency and medical transportation services across the range of acuity levels of conditions for which such transportation services are provided.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under subsection (a), together with recommendations for any changes in methodology or payment level necessary to fairly compensate suppliers of emergency and medical transportation services and to ensure the access of beneficiaries under the medicare program under title XVIII of the Social Security Act [this subchapter].''

TREATMENT OF TEMPORARY PAYMENT INCREASES AFTER CALENDAR YEAR 2001

Pub. L. 106–554, §1(a)(6) [title V, §547(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–553, provided that: ''The payment increase provided under the following sections shall not apply after calendar year 2001 and shall not be taken into account in calculating the payment amounts applicable for items and services furnished after such year:

''(1) Section 401(c)(2) [set out as a note under section 1395*l* of this title] (relating to covered OPD services).

''(2) Section 422(e)(2) [set out as a note under section 1395rr of this title] (relating to renal dialysis services paid for on a composite rate basis).

''(3) Section 423(a)(2)(B) [set out above] (relating to ambulance services).

''(4) Section 425(b)(2) [set out above] (relating to durable medical equipment).

''(5) Section 426(b)(2) [set out above] (relating to prosthetic devices and orthotics and prosthetics).''

STUDY OF DELIVERY OF INTRAVENOUS IMMUNE GLOBULIN (IVIG) OUTSIDE HOSPITALS AND PHYSICIANS' OFFICES

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §201(n)], Nov. 29, 1999, 113 Stat. 1536, 1501A–341, required the Secretary of Health and Human Services to conduct a study of the extent to which intravenous immune globulin could be delivered and reimbursed under the medicare program outside of a hospital or physician's office and to submit a report on such study to Congress within 18 months after Nov. 29, 1999.

TEMPORARY INCREASE IN PAYMENT RATES FOR DURABLE MEDICAL EQUIPMENT AND OXYGEN

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §228], Nov. 29, 1999, 113 Stat. 1536, 1501A–356, provided that:

''(a) IN GENERAL.—For purposes of payments under section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) for covered items (as defined in paragraph (13) of that section) furnished during 2001 and 2002, the Secretary of Health and Human Services shall increase the payment amount in effect (but for this section) for such items for—

''(1) 2001 by 0.3 percent, and

''(2) 2002 by 0.6 percent.

''(b) LIMITING APPLICATION TO SPECIFIED YEARS.—The payment amount increase—

''(1) under subsection (a)(1) shall not apply after 2001 and shall not be taken into account in calculating the payment amounts applicable for covered items furnished after such year; and

''(2) under subsection (a)(2) shall not apply after 2002 and shall not be taken into account in calculating the payment amounts applicable for covered items furnished after such year.''

DEMONSTRATION OF COVERAGE OF AMBULANCE SERVICES UNDER MEDICARE THROUGH CONTRACTS WITH UNITS OF LOCAL GOVERNMENT

Pub. L. 105–33, title IV, §4532, Aug. 5, 1997, 111 Stat. 453, as amended by Pub. L. 106–113, div. B, §1000(a)(6) [title II, §225], Nov. 29, 1999, 113 Stat. 1536, 1501A–353, provided that:

''(a) DEMONSTRATION PROJECT CONTRACTS WITH LOCAL GOVERNMENTS.—The Secretary of Health and Human Services shall establish up to 3 demonstration projects under which, at the request of a unit of local government, the Secretary enters into a contract with the unit of local government under which—

''(1) the unit of local government furnishes (or arranges for the furnishing of) ambulance services for which payment may be made under part B of title XVIII of the Social Security Act [this part] for individuals residing in the unit of local government who are enrolled under such part, except that the unit of local government may not enter into the contract unless the contract covers at least 80 percent of the individuals residing in the unit of local government who are enrolled under such part but not in a Medicare+Choice plan;

''(2) any individual or entity furnishing ambulance services under the contract meets the requirements otherwise applicable to individuals and entities furnishing such services under such part; and

''(3) for each month during which the contract is in effect, the Secretary makes a capitated payment to the unit of local government in accordance with subsection (b).

The projects may extend over a period of not to exceed 3 years each. Not later than July 1, 2000, the Secretary shall publish a request for proposals for such projects.

''(b) AMOUNT OF PAYMENT.—

''(1) IN GENERAL.—The amount of the monthly payment made for months occurring during a calendar year to a unit of local government under a demonstration project contract under subsection (a) shall be equal to the product of—

''(A) the Secretary's estimate of the number of individuals covered under the contract for the month; and

''(B) 1/12 of the capitated payment rate for the year established under paragraph (2).

''(2) CAPITATED PAYMENT RATE DEFINED.—In this subsection, the term 'capitated payment rate' means, with respect to a demonstration project—

''(A) in its first year, a rate established for the project by the Secretary, using the most current available data, in a manner that ensures that aggregate payments under the project will not exceed the aggregate payment that would have been made for ambulance services under part B of title XVIII of the Social Security Act [this part] in the local area of government's jurisdiction; and

''(B) in a subsequent year, the capitated payment rate established for the previous year increased by an appropriate inflation adjustment factor.

''(c) OTHER TERMS OF CONTRACT.—The Secretary and the unit of local government may include in a contract under this section such other terms as the parties consider appropriate, including—

''(1) covering individuals residing in additional units of local government (under arrangements entered into between such units and the unit of local government involved);

''(2) permitting the unit of local government to transport individuals to non-hospital providers if such providers are able to furnish quality services at a lower cost than hospital providers; or

''(3) implementing such other innovations as the unit of local government may propose to improve the quality of ambulance services and control the costs of such services.

''(d) CONTRACT PAYMENTS IN LIEU OF OTHER BENEFITS.—Payments under a contract to a unit of local government under this section shall be instead of the amounts which (in the absence of the contract) would otherwise be payable under part B of title XVIII of the Social Security Act [this part] for the services covered under the contract which are furnished to individuals who reside in the unit of local government.

''(e) REPORT ON EFFECTS OF CAPITATED CONTRACTS.—

''(1) STUDY.—The Secretary shall evaluate the demonstration projects conducted under this section. Such evaluation shall include an analysis of the quality and cost-effectiveness of ambulance services furnished under the projects.

''(2) REPORT.—Not later than January 1, 2000, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in the report such recommendations as the Secretary considers appropriate, including recommendations regarding modifications to the methodology used to determine the amount of payments made under such contracts and extending or expanding such projects.''

[References to Medicare+Choice deemed to refer to Medicare Advantage, see section 201(b) of Pub. L.

108–173, set out as a note under section 1395w–21 of this title.]

[Pub. L. 106–113, div. B, §1000(a)(6) [title II, §225], Nov. 29, 1999, 113 Stat. 1536, 1501A–353, provided that the amendment made by that section to section 4532 of Pub. L. 105–33, set out above, is effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33.]

PAYMENT FREEZE FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT

Section 4551(b) of Pub. L. 105–33 provided that: ''In determining the amount of payment under part B of title XVIII of the Social Security Act [this part] with respect to parenteral and enteral nutrients, supplies, and equipment during each of the years 1998 through 2002, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such nutrients, supplies, and equipment during 1995.''

SERVICE STANDARDS FOR PROVIDERS OF OXYGEN AND OXYGEN EQUIPMENT

Section 4552(c) of Pub. L. 105–33 provided that: ''The Secretary shall as soon as practicable establish service standards for persons seeking payment under part B of title XVIII of the Social Security Act [this part] for the providing of oxygen and oxygen equipment to beneficiaries within their homes.''

ACCESS TO HOME OXYGEN EQUIPMENT

Section 4552(d) of Pub. L. 105–33 provided that:

''(1) STUDY.—The Comptroller General of the United States shall study issues relating to access to home oxygen equipment and shall, within 18 months after the date of the enactment of this Act [Aug. 5, 1997], report to the Committees on Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study, including recommendations (if any) for legislation.

''(2) PEER REVIEW EVALUATION.—The Secretary of Health and Human Services shall arrange for peer review organizations established under section 1154 of the Social Security Act [section 1320c–3 of this title] to evaluate access to, and quality of, home oxygen equipment.''

USE OF COVERED ITEMS BY DISABLED BENEFICIARIES

Section 131(b) of Pub. L. 103–432 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with representatives of suppliers of durable medical equipment under part B of the medicare program [this part] and individuals entitled to benefits under such program on the basis of disability, shall conduct a study of the effects of the methodology for determining payments for items of such equipment under such part on the ability of such individuals to obtain items of such equipment, including customized items.

''(2) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in the report such recommendations as the Secretary considers appropriate to assure that disabled medicare beneficiaries have access to items of durable medical equipment.''

CRITERIA FOR TREATMENT OF ITEMS AS PROSTHETIC DEVICES OR ORTHOTICS AND PROSTHETICS

Section 131(c) of Pub. L. 103–432 provided that not later than one year after Oct. 31, 1994, Secretary of Health and Human Services was to submit to Congress a report describing prosthetic devices or orthotics and prosthetics covered under this part that do not require individualized or custom fitting and adjustment to be used by a patient, including recommendations for appropriate methodology for determining amount of payment for such items.

ADJUSTMENT REQUIRED FOR CERTAIN ITEMS

Section 134(b) of Pub. L. 103–432 provided that:

''(1) IN GENERAL.—In accordance with section 1834(a)(10)(B) of the Social Security Act [subsec. (a)(10)(B) of this section] (as amended by subsection (a)), the Secretary of Health and Human Services shall determine whether the payment amounts for the items described in paragraph (2) are not inherently reasonable, and shall adjust such amounts in accordance with such section if the amounts are not inherently reasonable.

''(2) ITEMS DESCRIBED.—The items referred to in paragraph (1) are decubitus care equipment, transcutaneous electrical nerve stimulators, and any other items considered appropriate by the Secretary.''

LIMITATION ON PREVAILING CHARGE FOR PHYSICIANS' RADIOLOGY SERVICES FURNISHED DURING 1991; EXCEPTIONS

Section 4102(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §126(b)(3), Oct. 31, 1994, 108 Stat. 4415, provided that:

''(1) IN GENERAL.—In applying part B of title XVIII of the Social Security Act [this part], the prevailing charge for physicians' services, furnished during 1991, which are radiology services may not exceed the fee schedule amount established under section 1834(b) of such Act [subsec. (b) of this section] with respect to such services.

''(2) EXCEPTION.—Paragraph (1) shall not apply to nuclear medicine services.''

LIMITATION ON CARRIER ADJUSTMENTS FOR RADIOLOGIST SERVICES FURNISHED DURING 1991

Section 4102(e) of Pub. L. 101–508 provided that: ''For radiologist services furnished during 1991 for which payment is made under section 1834(b) of the Social Security Act [subsec. (b) of this section]—

''(1) a carrier may not make any adjustment, under section 1842(b)(3)(B) of such Act [section 1395u(b)(3)(B) of this title], in the payment amount for the service under section 1834(b) on the basis that the payment amount is higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier,

''(2) no payment adjustment may be made under section 1842(b)(8) of such Act, and

''(3) section 1842(b)(9) of such Act shall not apply.''

STUDY OF PAYMENTS FOR PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS

Section 4153(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §135(e)(6), Oct. 31, 1994, 108 Stat. 4424, directed Comptroller General to conduct a study of feasibility and desirability of establishing a separate fee schedule for use in determining the amount of payments for covered items under subsec. (h) of this section with respect to suppliers of prosthetic devices, orthotics, and prosthetics who provide professional services that would take into account the costs to such providers of providing such services and, not later than 1 year after Nov. 5, 1990, submit a report on the study to Committees on Energy and Commerce and Ways and Means of House of Representatives and Committee on Finance of Senate, including any recommendations regarding payments for prosthetic devices, orthotics, and prosthetics under the medicare program.

SPECIAL RULE FOR NUCLEAR MEDICINE PHYSICIANS

Section 6105(b) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §4102(g)(1), Nov. 5, 1990, 104 Stat. 1388–57, provided that: ''In applying section 1834(b) of the Social Security Act [subsec. (b) of this section] with respect to nuclear medicine services furnished by a physician for whom nuclear medicine services account for at least 80 percent of the total amount of charges made under part B of title XVIII of the Social

Security Act [this part] beginning April 1, 1990, and ending December 31, 1991, there shall be substituted for the fee schedule otherwise applicable a fee schedule based ⅓ on the fee schedule computed under such section (without regard to this subsection) and ⅔ on 101 percent of the 1988 prevailing charge for such services.''

SPECIAL RULE FOR INTERVENTIONAL RADIOLOGISTS; ''SPLIT BILLING''

Section 6105(c) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4102(h), Nov. 5, 1990, 104 Stat. 1388–58, provided that: ''In applying section 1834(b) of the Social Security Act [subsec. (b) of this section] to radiologist services furnished in 1990 or 1991, the exception for 'split billing' set forth at section 5262J of the Medicare Carriers Manual shall apply to services furnished in 1990 or 1991 in the same manner and to the same extent as the exception applied to services furnished in 1989.''

RENTAL PAYMENTS FOR ENTERAL AND PARENTERAL PUMPS

Section 6112(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any monthly rental payment under part B of title XVIII of the Social Security Act [this part] for an enteral or parenteral pump furnished on or after April 1, 1990, shall be determined in accordance with the methodology under which monthly rental payments for such pumps were determined during 1989.

''(2) CAP ON RENTAL PAYMENTS, SERVICING, AND REPAIRS.—In the case of an enteral or parenteral pump described in paragraph (1) that is furnished on a rental basis during a period of medical need—

''(A) monthly rental payments shall not be made under part B of title XVIII of the Social Security Act for more than 15 months during such period, and

''(B) after monthly rental payments have been made for 15 months during such period, payment under such part shall be made for maintenance and servicing of the pump in such amounts as the Secretary of Health and Human Services determines to be reasonable and necessary to ensure the proper operation of the pump.''

TREATMENT OF POWER-DRIVEN WHEELCHAIRS AS CUSTOMIZED ITEMS

Section 6112(d)(2) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall by regulation specify criteria to be used by carriers in making determinations on a case-by-case basis as whether to classify power-driven wheelchairs as a customized item (as described in section 1834(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) for purposes of reimbursement under title XVIII of such Act [this subchapter].''

STUDY OF PAYMENT FOR PORTABLE X-RAY SERVICES

Section 6134 of Pub. L. 101–239 directed Secretary of Health and Human Services to conduct a study of costs of furnishing, and payments for, portable x-ray services under part B and, not later than 1 year after Dec. 19, 1989, report to Congress on results of such study including a recommendation respecting whether payment for such services should be made in the same manner as for radiologists' services or on the basis of a separate fee schedule.

GAO STUDY OF STANDARDS FOR USE OF AND PAYMENT FOR ITEMS OF DURABLE MEDICAL EQUIPMENT

Section 6139 of Pub. L. 101–239 directed Comptroller General to conduct a study of appropriate uses of items of durable medical equipment and of appropriate criteria for making determinations of medical necessity under this subchapter for such items, with particular emphasis on items (including seat-lift chairs) that may be subject to abusive billing practices, such study to include an analysis of appropriate use of forms in making medical necessity determinations for items of durable medical equipment under such title, and procedures for identifying items of durable medical equipment that should no longer be covered under this subchapter, and to be conducted with a panel convened by the Comptroller General consisting of specialists in the disciplines of orthopedic medicine, rehabilitation, arthritis, and geriatric medicine, representatives of consumer organizations, and representatives of carriers under the medicare program, with the Comptroller General to submit not later than Apr. 1, 1991, a report to Committees on Ways and Means and Energy and Commerce of House of Representatives and Committee on Finance of Senate on the study including recommendations.

REPORTS ON MEDICARE BENEFICIARY DRUG EXPENSES

Section 202(i) of Pub. L. 100–360, directed Secretary of Health and Human Services, by not later than Apr. 1, 1989, to report to Congress on expenses incurred by medicare beneficiaries for outpatient prescription drugs, and to provide Director of Congressional Budget Office with such data from that Survey as Director might request to make required estimates, prior to repeal by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

ADDITIONAL STUDIES BY SECRETARY OR COMPTROLLER GENERAL

Section 202(k) of Pub. L. 100–360 directed Secretary of Health and Human Services to conduct a study, and make a report to Congress by Jan. 1, 1990, on possibility of including drugs which have not yet been approved under section 355 or 357 of Title 21, Food and Drugs, and biological products which have not been licensed under section 262 of this title but which are commonly used in the treatment of cancer or in immunosuppressive therapy and other experimental drugs and biological products as covered outpatient drugs under medicare program, to conduct a study, and report to Congress by Jan. 1, 1990, evaluating potential to use mail service pharmacies to reduce costs to medicare program and to medicare beneficiaries, to conduct a study, and report to Congress by Jan. 1, 1993, on methods to improve utilization review of covered outpatient drugs, and to conduct a longitudinal study, and report to Congress by Jan. 1, 1993, on use of outpatient prescription drugs by medicare beneficiaries with respect to medical necessity, potential for adverse drug interactions, cost (including whether lower cost drugs could have been used), and patient stockpiling or wastage, and which further directed Comptroller General to conduct studies, and report to Congress by not later than May 1, 1991, on comparing average wholesale prices with actual pharmacy acquisition costs by type of pharmacy, on determining the overhead costs of retail pharmacies, and on discounts given by pharmacies to other third-party insurers, prior to repeal by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

DEVELOPMENT OF STANDARD MEDICARE CLAIMS FORMS

Section 202(*l*) of Pub. L. 100–360 directed Secretary of Health and Human Services to develop, in consultation with representatives of pharmacies and other interested individuals, a standard claims form (and a standard electronic claims format) to be used in requests for payment for covered outpatient drugs under medicare program and other third-party payors, prior to repeal by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

STUDIES AND REPORTS ON SCREENING MAMMOGRAPHY

Section 204(f) of Pub. L. 100–360 directed Physician Payment Review Commission to study and report, by July 1, 1989, to Committees on Ways and Means and Energy and Commerce of the House of Representatives and Committee on Finance of the Senate concerning the cost of providing screening mammography in a variety of settings and at different volume levels, prior to repeal by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

DEADLINE FOR ESTABLISHMENT OF FEE SCHEDULES FOR RADIOLOGIST SERVICES; REPORT TO CONGRESS

Section 4049(b)(1) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(f)(8)(E), July 1, 1988, 102 Stat. 780; Pub. L. 101–508, title IV, § 4118(g)(3), Nov. 5, 1990, 104 Stat. 1388–70, directed Secretary of Health and Human Services to propose the relative value scale and fee schedules for radiologist services (under subsec. (b) of this section) by not later than Aug. 1, 1988.

STUDY AND EVALUATION

Section 4062(c) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(g)(1)(C), July 1, 1988, 102 Stat. 782, provided that:

''(1) The Secretary of Health and Human Services shall monitor the impact of the amendments made by this section [enacting this section, amending sections 1395f, 1395k, 1395*l*, and 1395cc of this title, and repealing section 1395zz of this title] on the availability of covered items and shall evaluate the appropriateness of the volume adjustment for oxygen and oxygen equipment under section 1834(a)(5)(C) of the Social Security Act [subsec. (a)(5)(C) of this section] (as amended by subsection (b) of this section). The Secretary shall report to Congress, by not later than January 1, 1991, on such impact and on the evaluation and shall include in such report recommendations for changes in payment methodology for covered items under section 1834(a) of such Act.

''(2) Before January 1, 1991, the Secretary may not conduct any demonstration project respecting alternative methods of payment for covered items under title XVIII of the Social Security Act [this subchapter].

''(3) In this subsection, the term 'covered item' has the meaning given such term in section 1834(a)(13) of the Social Security Act [subsec. (a)(13) of this section] (as amended by subsection (b) of this section).

''(4) The Secretary shall, upon written request and payment of a reasonable copying fee which the Secretary may establish, provide the data and information used in determining the payment amounts for covered items under section 1834(a) of the Social Security Act [subsec. (a) of this section], but only in a form which does not permit identification of individual suppliers.

''(5) The Comptroller General shall conduct a study on the appropriateness of the level of payments allowed for covered items under the medicare program, and shall report to Congress on the results of such study (including recommendations on the transition to regional or national rates) by not later than January 1, 1991. Entities furnishing such items which fail to provide the Comptroller General with reasonable access to necessary records to carry out the study under this paragraph are subject to exclusion from the medicare program under section 1128(a) of the Social Security Act [section 1320a–7(a) of this title].''

§ 1395n. Procedure for payment of claims of providers of services

(a) Conditions for payment for services described in section 1395k(a)(2) of this title

Except as provided in subsections (b), (c), and (e) of this section, payment for services described in section 1395k(a)(2) of this title furnished an individual may be made only to providers of services which are eligible therefor under section 1395cc(a) of this title, and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services furnished in the last 3 calendar months of any calendar year to have been furnished in the succeeding calendar year) except that, where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year; and

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations) that—

(A) in the case of home health services (i) such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1395x(m)(7) of this title) and needs or needed skilled nursing care (other than solely venipuncture for the purpose of obtaining a blood sample) on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy, (ii) a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(B) in the case of medical and other health services, except services described in subparagraphs (B), (C), and (D) of section 1395x(s)(2) of this title, such services are or were medically required;

(C) in the case of outpatient physical therapy services or outpatient occupational therapy services, (i) such services are or were required because the individual needed physical therapy services or occupational therapy services, respectively, (ii) a plan for furnishing such services has been established by a physician or by the qualified physical therapist or qualified occupational therapist, respectively, providing such services and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(D) in the case of outpatient speech pathology services, (i) such services are or were required because the individual needed speech pathology services, (ii) a plan for furnishing such services has been established by a physician or by the speech pathologist providing such services and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(E) in the case of comprehensive outpatient rehabilitation facility services, (i) such services are or were required because the individual needed skilled rehabilitation services, (ii) a plan for furnishing such services has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician; and

(F) in the case of partial hospitalization services, (i) the individual would require inpatient psychiatric care in the absence of such services, (ii) an individualized, written plan for furnishing such services has been established by a physician and is reviewed periodically by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician.

For purposes of this section, the term ''provider of services'' shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes a certification of the kind provided in subparagraph (A) or (B) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan, except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary). For purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency. For purposes of paragraph (2)(A), an individual shall be considered to be ''confined to his home'' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered ''confined to his home'', the condition of the individual should be such that there exists a normal inability to leave home and that leaving home requires a considerable and taxing effort by the individual. Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State, or accredited, to furnish adult day-care services in the State shall not disqualify an individual from being considered to be ''confined to his home''. Any other absence of an individual from the home shall not so disqualify an individual if the absence is of infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration.

(b) Conditions for payment for services described in section 1395x(s) of this title

(1) Payment may also be made to any hospital for services described in section 1395x(s) of this title furnished as an outpatient service by a hospital or by others under arrangements made by it to an individual entitled to benefits under this part even though such hospital does not have an agreement in effect under this subchapter if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has made an election pursuant to section 1395f(d)(1)(C) of this title with respect to the calendar year in which such emergency services are provided. Such payments shall be made only in the amounts provided under section 1395*l*(a)(2) of this title and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1395cc(a) of this title.

(2) Payment may also be made on the basis of an itemized bill to an individual for services described in paragraph (1) of this subsection if (A) payment cannot be made under such paragraph (1) solely because the hospital does not elect, in accordance with section 1395f(d)(1)(C) of this title, to claim such payments and (B) such individual files application (submitted within such time and in such form and manner, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amounts payable under this paragraph shall, subject to the provisions of section 1395*l* of this title, be equal to 80 percent of the hospital's reasonable charges for such services.

(c) Collection of charges from individuals for services specified in section 1395x(s) of this title

Notwithstanding the provisions of this section and sections 1395k, 1395*l*, and 1395cc(a)(1)(A) of this title, a hospital or a critical access hospital may, subject to such limitations as may be prescribed by regulations, collect from an individual the customary charges for services specified in section 1395x(s) of this title and furnished

to him by such hospital as an outpatient, but only if such charges for such services do not exceed the applicable supplementary medical insurance deductible, and such customary charges shall be regarded as expenses incurred by such individual with respect to which benefits are payable in accordance with section 1395*l*(a)(1) of this title. Payments under this subchapter to hospitals which have elected to make collections from individuals in accordance with the preceding sentence shall be adjusted periodically to place the hospital in the same position it would have been had it instead been reimbursed in accordance with section 1395*l*(a)(2) of this title (or, in the case of a critical access hospital, in accordance with section 1395*l*(a)(6) of this title).

(d) Payment to Federal provider of services or other Federal agencies prohibited

Subject to section 1395qq of this title, no payment may be made under this part to any Federal provider of services or other Federal agency, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services or other person for any item or service which such provider or person is obligated by a law of, or a contract with, the United States to render at public expense.

(e) Payment to fund designated by medical staff or faculty of medical school

For purposes of services (1) which are inpatient hospital services by reason of paragraph (7) of section 1395x(b) of this title or for which entitlement exists by reason of clause (II) of section 1395k(a)(2)(B)(i) of this title, and (2) for which the reasonable cost thereof is determined under section 1395x(v)(1)(D) of this title (or would be if section 1395ww of this title did not apply), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(A) such hospital has an agreement with the Secretary under section 1395cc of this title, and

(B) the Secretary has received written assurances that (i) such payment will be used by such fund solely for the improvement of care to patients in such hospital or for educational or charitable purposes and (ii) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged provision will be made for return of any moneys incorrectly collected).

(Aug. 14, 1935, ch. 531, title XVIII, § 1835, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 303; amended Pub. L. 90–248, title I, §§ 126(b), 129(c)(9)(A), (B), 130(a), (b), 133(e), Jan. 2, 1968, 81 Stat. 846, 848, 849, 851; Pub. L. 92–603, title II, §§ 204(b), 227(e)(2), 251(b)(2), 281(f), 283(b), Oct. 30, 1972, 86 Stat. 1377, 1406, 1445, 1456; Pub. L. 94–437, title IV, § 401(a), Sept. 30, 1976, 90 Stat. 1408; Pub. L. 96–499, title IX, §§ 930(e), (j), 933(b), 944(a), Dec. 5, 1980, 94 Stat. 2631, 2632, 2635, 2642; Pub. L. 97–35, title XXI, §§ 2106(b)(1), 2122(a)(1), Aug. 13, 1981, 95 Stat. 792, 796; Pub. L. 98–21, title VI, § 602(b), Apr. 20, 1983, 97 Stat. 163; Pub. L. 98–369, div. B, title III, §§ 2336(a), (b), 2342(b), 2354(b)(1), (8), (9), July 18, 1984, 98 Stat. 1091, 1094, 1100; Pub. L. 98–617, § 3(a)(3), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–509, title IX, § 9337(c), Oct. 21, 1986, 100 Stat. 2034; Pub. L. 100–203, title IV, §§ 4024(b), 4070(b)(3), 4085(i)(4), Dec. 22, 1987, 101 Stat. 1330–74, 1330–115, 1330–132; Pub. L. 100–360, title II, §§ 203(d)(1), 205(d), July 1, 1988, 102 Stat. 724, 731; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, § 6003(g)(3)(D)(viii), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 101–508, title IV, § 4008(m)(2)(D), Nov. 5, 1990, 104 Stat. 1388–53; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4615(a), Aug. 5, 1997, 111 Stat. 373, 475; Pub. L. 106–554, § 1(a)(6) [title V, § 507(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–532; Pub. L. 108–173, title VII, § 736(c)(2)(B), Dec. 8, 2003, 117 Stat. 2356.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173 substituted ''leave home and'' for ''leave home,'' in fifth sentence of concluding provisions.

2000—Subsec. (a). Pub. L. 106–554, in concluding provisions, struck out '', and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment'' after ''taxing effort by the individual'' and inserted at end ''Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State, or accredited, to furnish adult day-care services in the State shall not disqualify an individual from being considered to be 'confined to his home'. Any other absence of an individual from the home shall not so disqualify an individual if the absence is of infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration.''

1997—Subsec. (a)(2)(A). Pub. L. 105–33, § 4615(a), inserted ''(other than solely venipuncture for the purpose of obtaining a blood sample)'' after ''skilled nursing care''.

Subsec. (c). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' in two places.

1990—Subsec. (c). Pub. L. 101–508 substituted ''a hospital or a rural primary care hospital may'' for ''a hospital may'' in first sentence, substituted ''section 1395*l*(a)(2) of this title (or, in the case of a rural primary care hospital, in accordance with section 1395*l*(a)(6) of this title)'' for ''section 1395*l*(a)(2) of this title'' in second sentence, and struck out at end ''A rural primary care hospital shall be considered a hospital for purposes of this subsection.''

1989—Subsec. (a)(2)(G), (H). Pub. L. 101–234 repealed Pub. L. 100–360, §§ 203(d)(1), 205(d), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (c). Pub. L. 101–239 inserted at end ''A rural primary care hospital shall be considered a hospital for purposes of this subsection.''

1988—Subsec. (a)(2)(G). Pub. L. 100–360, § 203(d)(1), added subpar. (G) relating to home intravenous drug therapy services.

Subsec. (a)(2)(H). Pub. L. 100–360, § 205(d), added subpar. (H) relating to in-home care provided to chronically dependent individuals.

1987—Subsec. (a). Pub. L. 100–203, § 4024(b), inserted two sentences at end clarifying ''confined to his home'' for purposes of par. (2)(A).

Subsec. (a)(2)(C)(i). Pub. L. 100–203, § 4085(i)(4), struck out second comma at end.

Subsec. (a)(2)(F). Pub. L. 100–203, § 4070(b)(3), added subpar. (F).

1986—Subsec. (a)(2). Pub. L. 99–509, § 9337(c)(2), inserted in second sentence ''(or meets the requirements of such section through the operation of section 1395x(g) of this title)'' in two places, and ''or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services''.

Subsec. (a)(2)(C). Pub. L. 99–509, § 9337(c)(1), inserted ''or outpatient occupational therapy services'' in introductory provisions, ''or occupational therapy services, respectively,'' in cl. (i), and ''or qualified occupational therapist, respectively,'' in cl. (ii).

1984—Subsec. (a). Pub. L. 98–369, § 2354(b)(1), as amended by Pub. L. 98–617, § 3(a)(3), in concluding provisions, substituted ''contractual'' for ''contractural''.

Pub. L. 98–369, § 2336(b), inserted before period at end of fourth sentence '', except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary)''.

Pub. L. 98–369, § 2336(a), inserted sentence at end that for purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.

Subsec. (a)(2)(B), (C). Pub. L. 98–369, § 2354(b)(8)(A), struck out ''and'' at end.

Subsec. (a)(2)(C)(ii). Pub. L. 98–369, § 2342(b), substituted ''by a physician or by the qualified physical therapist providing such services and is periodically reviewed by a physician'' for '', and is periodically reviewed, by a physician''.

Subsec. (a)(2)(D). Pub. L. 98–369, § 2354(b)(8)(B), realigned margin of subpar. (D).

Subsec. (e)(2). Pub. L. 98–369, § 2354(b)(9), designated concluding pars. (1) and (2) as (A) and (B), respectively, and in par. (B) inserted ''(i)'' after ''written assurances that'' and substituted ''(ii) the individuals who'' for ''(B) the individuals who'' and ''return of'' for ''return for''.

1983—Subsec. (e). Pub. L. 98–21 inserted ''(or would be if section 1395ww of this title did not apply)'' after ''section 1395(v)(1)(D) of this title''.

1981—Subsec. (a)(2)(A). Pub. L. 97–35, § 2122(a)(1), substituted ''needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy'' for ''needed skilled nursing care on an intermittent basis, or physical, occupational, or speech therapy''.

Subsec. (a)(2)(D). Pub. L. 97–35, § 2106(b)(1), inserted ''and'' after ''physician;''.

Subsec. (a)(2)(E). Pub. L. 97–35, § 2106(b)(1), substituted a period for ''; and'' at the end.

1980—Subsec. (a). Pub. L. 96–499, § 930(e), inserted sentence at end authorizing Secretary to prescribe regulations to prohibit significantly interested physicians from performing physician certification required by par. (2) for home health services.

Subsec. (a)(2)(A). Pub. L. 96–499, § 930(j), substituted ''physical, occupational, or speech'' for ''physical or speech''.

Subsec. (a)(2)(D)(ii). Pub. L. 96–499, § 944(a), inserted ''by a physician or by the speech pathologist providing such services'', after ''has been established''.

Subsec. (a)(2)(E). Pub. L. 96–499, § 933(b), added subpar. (E).

1976—Subsec. (d). Pub. L. 94–437 substituted ''Subject to section 1395qq of this title, no payment'' for ''No payment''.

1972—Subsec. (a). Pub. L. 92–603, § 227(e)(2)(A), inserted reference to subsec. (e) of this section in introductory provisions.

Subsec. (a)(1). Pub. L. 92–603, § 281(f), placed a 3-year time limitation on time within which a written request for payment is filed, with provision for reduction of limit to 1 year.

Subsec. (a)(2)(C). Pub. L. 92–603, § 251(b)(2), substituted ''because the individual needed physical therapy services'' for ''because the individual needed physical therapy services on an outpatient basis''.

Subsec. (a)(2)(D). Pub. L. 92–603, § 283(b), added subpar. (D).

Subsec. (c). Pub. L. 92–603, § 204(b), substituted ''the applicable supplementary medical insurance deductible'' for ''$50''.

Subsec. (e). Pub. L. 92–603, § 227(e)(2)(B), added subsec. (e).

1968—Subsec. (a). Pub. L. 90–248, §§ 129(c)(9)(A), 130(a), inserted introductory exception phrase and included reference to subsec. (c).

Subsec. (a)(2). Pub. L. 90–248, § 133(e)(5), inserted sentence at end defining ''provider of services''.

Subsec. (a)(2)(B). Pub. L. 90–248, §§ 126(b), 133(e)(4), inserted ''except services described in subparagraphs (B) and (C) of section 1395x(s)(2) of this title,'' after ''health services,'' and inserted reference to subpar. (d).

Subsec. (a)(2)(C). Pub. L. 90–248, § 133(e)(1)–(3), added subpar. (C).

Subsec. (b). Pub. L. 90–248, § 129(c)(9)(B), added subsec. (b). Former subsec. (b) redesignated (c), in turn redesignated (d).

Subsec. (c). Pub. L. 90–248, § 130(b), added subsec. (c). Former subsec. (c), previously designated (b), redesignated (d).

Subsec. (d). Pub. L. 90–248, §§ 129(c)(9)(B), 130(b), redesignated former subsec. (b) as (c), in turn as (d), respectively.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to home health services furnished on or after Dec. 21, 2000, see section 1(a)(6) [title V, § 507(a)(2)] of Pub. L. 106–554, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4615(a) of Pub. L. 105–33 applicable to home health services furnished after 6-month period beginning after Aug. 5, 1997, see section 4615(b) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 203(d)(1) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 205(d) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(f) of Pub. L. 100–360, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4024(b) of Pub. L. 100–203 applicable to items and services provided on or after Jan. 1, 1988, see section 4024(c) of Pub. L. 100–203, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of

Pub. L. 99–509, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2336(a) of Pub. L. 98–369 applicable to certifications and plans of care made or established on or after July 18, 1984, see section 2336(c)(1) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2342(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395x of this title] apply to plans of care established on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(1), (8), (9) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2122(a)(1) of Pub. L. 97–35 applicable to services furnished pursuant to plans of treatment implemented after the third month beginning after Aug. 13, 1981, see section 2122(b) of Pub. L. 97–35, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 930(e), (j) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Amendment by section 933(b) of Pub. L. 96–499 effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period beginning on or after July 1, 1981, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395k of this title.

Section 944(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to plans for furnishing services established on or after January 1, 1981.''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 204(b) of Pub. L. 92–603 effective with respect to calendar years after 1972, see section 204(c) of Pub. L. 92–603, set out as a note under section 1395*l* of this title.

Amendment by section 227(e)(2) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 251(b)(2) of Pub. L. 92–603 applicable with respect to services furnished on or after Oct. 30, 1972, see section 251(d)(2) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 281(f) of Pub. L. 92–603 applicable in the case of services furnished (or deemed to have been furnished) after 1970, see section 281(g) of Pub. L. 92–603, set out as a note under section 1395gg of this title.

Section 283(c) of Pub. L. 92–603 provided that: ''The provisions of this section [amending this section and section 1395x of this title] shall apply with respect to services rendered after December 31, 1972.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 126(b) of Pub. L. 90–248 applicable with respect to services furnished after Jan. 2, 1968, see section 126(c) of Pub. L. 90–248, set out as a note under section 1395f of this title.

Amendment by section 129(c)(9)(A), (B) of Pub. L. 90–248 applicable with respect to services furnished after March 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 130(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to services furnished after March 31, 1968.''

Amendment by section 133(e) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub. L. 90–248, set out as a note under section 1395k of this title.

REGULATIONS

Secretary of Health and Human Services required to provide, not later than 90 days after July 18, 1984, for revision of regulations as may be required to reflect amendment to subsec. (a) by section 2336(b) of Pub. L. 98–369, see section 2336(c)(2) of Pub. L. 98–369, set out as a note under section 1395f of this title.

MEDPAC STUDY ON DIRECT ACCESS TO PHYSICAL THERAPY SERVICES

Pub. L. 108–173, title VI, § 647, Dec. 8, 2003, 117 Stat. 2326, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission (in this section referred to as the 'Commission') shall conduct a study on the feasibility and advisability of allowing medicare fee-for-service beneficiaries direct access to outpatient physical therapy services and physical therapy services furnished as comprehensive rehabilitation facility services.

''(b) REPORT.—Not later than January 1, 2005, the Commission shall submit to Congress a report on the study conducted under subsection (a) together with recommendations for such legislation or administrative action as the Commission determines to be appropriate.

''(c) DIRECT ACCESS DEFINED.—The term 'direct access' means, with respect to outpatient physical therapy services and physical therapy services furnished as comprehensive outpatient rehabilitation facility services, coverage of and payment for such services in accordance with the provisions of title XVIII of the Social Security Act [this subchapter], except that sections 1835(a)(2), 1861(p), and 1861(cc) of such Act (42 U.S.C. 1395n(a)(2), 1395x(p), and 1395x(cc), respectively) shall be applied—

''(1) without regard to any requirement that—

''(A) an individual be under the care of (or referred by) a physician; or

''(B) services be provided under the supervision of a physician; and

''(2) by allowing a physician or a qualified physical therapist to satisfy any requirement for—

''(A) certification and recertification; and

''(B) establishment and periodic review of a plan of care.''

HOME HEALTH PROSPECTIVE PAYMENT DEMONSTRATION PROJECT

Section 4027 of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(d)(6), July 1, 1988, 102 Stat. 775, directed Secretary of Health and Human Services to provide for a demonstration project to develop and test alternative methods of paying home health agencies on a prospective basis for services furnished under the medicare and medicaid programs, directed that the project be designed in a manner to enable the Secretary to evaluate the effects of various methods of prospective payment (including payments on a per-visit, per-case,

and per-episode basis) on program expenditures, access to, and quality of, home health care, and home health agency operations, directed Secretary to assure that services are first furnished under the project not later than Apr. 1, 1989, and, for this purpose, authorized Secretary to reinstate a previously awarded contract, or award a sole source contract, to carry out the project, provided for funding, and directed Secretary to submit to Congress, not later than one year after Dec. 22, 1987, an interim report on the demonstration project and, not later than four years after Dec. 22, 1987, a final report on results of the project.

§ 1395*o*. Eligible individuals

Every individual who—

(1) is entitled to hospital insurance benefits under part A of this subchapter, or

(2) has attained age 65 and is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this part,

is eligible to enroll in the insurance program established by this part.

(Aug. 14, 1935, ch. 531, title XVIII, § 1836, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 304; amended Pub. L. 92–603, title II, § 201(c)(1), Oct. 30, 1972, 86 Stat. 1372.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in par. (1), is classified to section 1395c et seq. of this title.

AMENDMENTS

1972—Pub. L. 92–603 designed former par. (2)(B) as par. (1), former par. (1) as introductory clause in par. (2), and former pars. (2)(A)(i) and (ii) as pars. (2)(A) and (B), and struck out ''(A)'' after ''(2)''.

PERSONS CONVICTED OF SUBVERSIVE ACTIVITIES

Section 104(b)(2) of Pub. L. 89–97 provided that: ''An individual who has been convicted of any offense under (A) chapter 37 [section 792 et seq. of Title 18, Crimes and Criminal Procedure] (relating to espionage and censorship), chapter 105 [section 2151 et seq. of Title 18] (relating to sabotage), or chapter 115 [section 2381 et seq. of Title 18] (relating to treason, sedition, and subversive activities) of title 18 of the United States Code, or (B) section 4, 112, or 113 of the Internal Security Act of 1950, as amended [section 783, 822, or 823 of Title 50, War and National Defense], may not enroll under part B of title XVIII of the Social Security Act [this part].''

§ 1395p. Enrollment periods

(a) Generally; regulations

An individual may enroll in the insurance program established by this part only in such manner and form as may be prescribed by regulations, and only during an enrollment period prescribed in or under this section.

(b) Repealed. Pub. L. 96–499, title IX, § 945(a), Dec. 5, 1980, 94 Stat. 2642

(c) Initial general enrollment period; eligible individuals before March 1, 1966

In the case of individuals who first satisfy paragraph (1) or (2) of section 1395*o* of this title before March 1, 1966, the initial general enrollment period shall begin on the first day of the second month which begins after July 30, 1965, and shall end on May 31, 1966. For purposes of this subsection and subsection (d) of this section, an individual who has attained age 65 and who satisfies paragraph (1) of section 1395*o* of this title but not paragraph (2) of such section shall be treated as satisfying such paragraph (1) on the first day on which he is (or on filing application would have been) entitled to hospital insurance benefits under part A of this subchapter.

(d) Eligible individuals on or after March 1, 1966

In the case of an individual who first satisfies paragraph (1) or (2) of section 1395*o* of this title on or after March 1, 1966, his initial enrollment period shall begin on the first day of the third month before the month in which he first satisfies such paragraphs and shall end seven months later. Where the Secretary finds that an individual who has attained age 65 failed to enroll under this part during his initial enrollment period (based on a determination by the Secretary of the month in which such individual attained age 65), because such individual (relying on documentary evidence) was mistaken as to his correct date of birth, the Secretary shall establish for such individual an initial enrollment period based on his attaining age 65 at the time shown in such documentary evidence (with a coverage period determined under section 1395q of this title as though he had attained such age at that time).

(e) General enrollment period

There shall be a general enrollment period during the period beginning on January 1 and ending on March 31 of each year.

(f) Individuals deemed enrolled in medical insurance program

Any individual—

(1) who is eligible under section 1395*o* of this title to enroll in the medical insurance program by reason of entitlement to hospital insurance benefits as described in paragraph (1) of such section, and

(2) whose initial enrollment period under subsection (d) of this section begins after March 31, 1973, and

(3) who is residing in the United States, exclusive of Puerto Rico,

shall be deemed to have enrolled in the medical insurance program established by this part.

(g) Commencement of enrollment period

All of the provisions of this section shall apply to individuals satisfying subsection (f) of this section, except that—

(1) in the case of an individual who satisfies subsection (f) of this section by reason of entitlement to disability insurance benefits described in section 426(b) of this title, his initial enrollment period shall begin on the first day of the later of (A) April 1973 or (B) the third month before the 25th month of such entitlement, and shall reoccur with each continuous period of eligibility (as defined in section 1395r(d) of this title) and upon attainment of age 65;

(2)(A) in the case of an individual who is entitled to monthly benefits under section 402 or 423 of this title on the first day of his initial

enrollment period or becomes entitled to monthly benefits under section 402 of this title during the first 3 months of such period, his enrollment shall be deemed to have occurred in the third month of his initial enrollment period, and

(B) in the case of an individual who is not entitled to benefits under section 402 of this title on the first day of his initial enrollment period and does not become so entitled during the first 3 months of such period, his enrollment shall be deemed to have occurred in the month in which he files the application establishing his entitlement to hospital insurance benefits provided such filing occurs during the last 4 months of his initial enrollment period; and

(3) in the case of an individual who would otherwise satisfy subsection (f) of this section but does not establish his entitlement to hospital insurance benefits until after the last day of his initial enrollment period (as defined in subsection (d) of this section), his enrollment shall be deemed to have occurred on the first day of the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section).

(h) Waiver of enrollment period requirements where individual's rights were prejudiced by administrative error or inaction

In any case where the Secretary finds that an individual's enrollment or nonenrollment in the insurance program established by this part or part A of this subchapter pursuant to section 1395i–2 of this title is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Federal Government, or its instrumentalities, the Secretary may take such action (including the designation for such individual of a special initial or subsequent enrollment period, with a coverage period determined on the basis thereof and with appropriate adjustments of premiums) as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction.

(i) Special enrollment periods

(1) In the case of an individual who—

(A) at the time the individual first satisfies paragraph (1) or (2) of section 1395*o* of this title, is enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual's (or the individual's spouse's) current employment status, and

(B) has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period,

there shall be a special enrollment period described in paragraph (3). In the case of an individual not described in the previous sentence who has not attained the age of 65, at the time the individual first satisfies paragraph (1) of section 1395*o* of this title, is enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iii) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual), and has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period, there shall be a special enrollment period described in paragraph (3)(B).

(2) In the case of an individual who—

(A)(i) has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period, or (ii) is an individual described in paragraph (1)(A);

(B) has enrolled in such program during any subsequent special enrollment period under this subsection during which the individual was not enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual's (or individual's spouse's) current employment status; and

(C) has not terminated enrollment under this section at any time at which the individual is not enrolled in such a group health plan by reason of the individual's (or individual's spouse's) current employment status,

there shall be a special enrollment period described in paragraph (3). In the case of an individual not described in the previous sentence who has not attained the age of 65, has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period, or is an individual described in the second sentence of paragraph (1), has enrolled in such program during any subsequent special enrollment period under this subsection during which the individual was not enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iii) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual), and has not terminated enrollment under this section at any time at which the individual is not enrolled in such a large group health plan by reason of the individual's current employment status (or the current employment status of a family member of the individual), there shall be a special enrollment period described in paragraph (3)(B).

(3)(A) The special enrollment period referred to in the first sentences of paragraphs (1) and (2) is the period including each month during any part of which the individual is enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of current employment status ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled.

(B) The special enrollment period referred to in the second sentences of paragraphs (1) and (2) is the period including each month during any part of which the individual is enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iii) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual) ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled.

(4)(A) In the case of an individual who is entitled to benefits under part A of this subchapter pursuant to section 426(b) of this title and—

(i) who at the time the individual first satisfies paragraph (1) of section 1395*o* of this title—

(I) is enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual's current or former employment or by reason of the current or former employment status of a member of the individual's family, and

(II) has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period; and

(ii) whose continuous enrollment under such group health plan is involuntarily terminated at a time when the enrollment under the plan is not by reason of the individual's current employment or by reason of the current employment of a member of the individual's family,

there shall be a special enrollment period described in subparagraph (B).

(B) The special enrollment period referred to in subparagraph (A) is the 6-month period beginning on the first day of the month which includes the date of the enrollment termination described in subparagraph (A)(ii).

(j) Special rules for individuals with ALS

In applying this section in the case of an individual who is entitled to benefits under part A of this subchapter pursuant to the operation of section 426(h) of this title, the following special rules apply:

(1) The initial enrollment period under subsection (d) of this section shall begin on the first day of the first month in which the individual satisfies the requirement of section 1395*o*(1) of this title.

(2) In applying subsection (g)(1) of this section, the initial enrollment period shall begin on the first day of the first month of entitlement to disability insurance benefits referred to in such subsection.

(Aug. 14, 1935, ch. 531, title XVIII, § 1837, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 304; amended Pub. L. 89–384, § 3(a), (b), Apr. 8, 1966, 80 Stat. 105; Pub. L. 90–248, title I, §§ 136(a), 145(a), (b), Jan. 2, 1968, 81 Stat. 853, 859; Pub. L. 92–603, title II, §§ 201(c)(2), 206(a), 259(a), 260, Oct. 30, 1972, 86 Stat. 1372, 1378, 1448; Pub. L. 96–265, title I, § 103(a)(3), June 9, 1980, 94 Stat. 444; Pub. L. 96–499, title IX, § 945(a), (b), Dec. 5, 1980, 94 Stat. 2642; Pub. L. 97–35, title XXI, § 2151(a)(1), (2), Aug. 13, 1981, 95 Stat. 801; Pub. L. 98–369, div. B, title III, §§ 2338(b), 2354(b)(10), July 18, 1984, 98 Stat. 1092, 1101; Pub. L. 99–272, title IX, §§ 9201(c)(1), 9219(a)(2), Apr. 7, 1986, 100 Stat. 171, 182; Pub. L. 99–509, title IX, § 9319(c)(1)–(3), Oct. 21, 1986, 100 Stat. 2011; Pub. L. 99–514, title XVIII, § 1895(b)(12), Oct. 22, 1986, 100 Stat. 2934; Pub. L. 101–239, title VI, § 6202(b)(4)(C), (c)(1), Dec. 19, 1989, 103 Stat. 2233; Pub. L. 103–432, title I, §§ 147(f)(1)(A), 151(c)(2), Oct. 31, 1994, 108 Stat. 4430, 4435; Pub. L. 105–33, title IV, §§ 4581(b)(1), 4631(a)(2), Aug. 5, 1997, 111 Stat. 465, 486; Pub. L. 106–554, § 1(a)(6) [title I, § 115(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–474.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsecs. (c), (h), (i)(4)(A), and (j), is classified to section 1395c et seq. of this title.

AMENDMENTS

2000—Subsec. (j). Pub. L. 106–554 added subsec. (j).

1997—Subsec. (i)(1) to (3). Pub. L. 105–33, § 4631(a)(2), substituted ''1395y(b)(1)(B)(iii) of this title'' for ''1395y(b)(1)(B)(iv) of this title'' wherever appearing.

Subsec. (i)(4). Pub. L. 105–33, § 4581(b)(1), added par. (4).

1994—Subsec. (i)(1). Pub. L. 103–432, § 151(c)(2)(A), in closing provisions substituted ''(as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual (as those terms are defined in section 1395y(b)(1)(B)(iv) of this title)''.

Subsec. (i)(1)(A). Pub. L. 103–432, § 151(c)(2)(D), inserted ''status'' after ''current employment''.

Subsec. (i)(2). Pub. L. 103–432, § 151(c)(2)(A), (C), in closing provisions substituted ''(as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual (as those terms are defined in section 1395y(b)(1)(B)(iv) of this title)'' and ''by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual''.

Subsec. (i)(2)(B), (C). Pub. L. 103–432, § 151(c)(2)(D), inserted ''status'' after ''current employment''.

Subsec. (i)(3)(A). Pub. L. 103–432, § 151(c)(2)(D), inserted ''status'' after ''current employment''.

Pub. L. 103–432, § 147(f)(1)(A), substituted ''including each month during any part of which the individual is enrolled'' for ''beginning with the first day of the first month in which the individual is no longer enrolled'' and ''ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled'' for ''and ending seven months later''.

Subsec. (i)(3)(B). Pub. L. 103–432, § 151(c)(2)(B), substituted ''in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual in a large group health plan (as such terms are defined in section 1395y(b)(1)(B)(iv) of this title)''.

Pub. L. 103–432, § 147(f)(1)(A), substituted ''including each month during any part of which the individual is enrolled'' for ''beginning with the first day of the first month in which the individual is no longer enrolled'' and ''ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled'' for ''and ending seven months later''.

1989—Subsec. (i)(1). Pub. L. 101–239, § 6202(c)(1)(A), redesignated subpars. (B) and (C) as (A) and (B), respectively, struck out former subpar. (A) which read as follows: ''has attained the age of 65,'', and inserted ''not described in the previous sentence'' after ''In the case of an individual'' in second sentence.

Pub. L. 101–239, § 6202(b)(4)(C), substituted ''section 1395y(b)(1)(A)(v)'' and ''section 1395y(b)(1)(B)(iv)'' for ''section 1395y(b)(3)(A)(iv)'' and ''section 1395y(b)(4)(B)'', respectively.

Subsec. (i)(2). Pub. L. 101–239, § 6202(c)(1)(B), substituted ''(1)(A)'' for ''(1)(B)'' in subpar. (B)(i), redesignated subpars. (B) and (C) as (A) and (B), respectively, struck out former subpar. (A) which read as follows: ''has attained the age of 65;'', and inserted ''not described in the previous sentence'' after ''In the case of an individual'' in second sentence.

Pub. L. 101–239, § 6202(b)(4)(C), substituted ''section 1395y(b)(1)(A)(v)'' and ''section 1395y(b)(1)(B)(iv)'' for ''section 1395y(b)(3)(A)(iv)'' and ''section 1395y(b)(4)(B)'', respectively.

Subsec. (i)(3). Pub. L. 101–239, §6202(b)(4)(C), substituted ''section 1395y(b)(1)(A)(v)'' and ''section 1395y(b)(1)(B)(iv)'' for ''section 1395y(b)(3)(A)(iv)'' and ''section 1395y(b)(4)(B)'', respectively.

1986—Subsec. (i)(1). Pub. L. 99–509, §9319(c)(1), inserted sentence at end providing for a special enrollment period described in paragraph (3)(B) for individuals not age 65, enrolled in a large health plan, and having elected not to enroll during initial enrollment period.

Subsec. (i)(1)(A). Pub. L. 99–514 realigned margins of subpar. (A).

Pub. L. 99–272, §9219(a)(2)(A), amended subpar. (A) generally, substituting ''has attained the age of 65'' for ''meets the conditions described in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title''.

Subsec. (i)(2). Pub. L. 99–509, §9319(c)(2), inserted sentence at end providing for a special enrollment period described in paragraph (3)(B) for individuals not age 65, enrolled or deemed enrolled in the medical insurance program established under this part, or is an individual described in the second sentence of paragraph (1), has enrolled in such program during a subsequent special enrollment period during which the individual was not enrolled in a large group health plan, and has not terminated enrollment.

Subsec. (i)(2)(A). Pub. L. 99–272, §9219(a)(2)(B), amended subpar. (A) generally, substituting ''has attained the age of 65;'' for ''meets the conditions described in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title,''.

Subsec. (i)(2)(B). Pub. L. 99–272, §9219(a)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period and any subsequent special enrollment period under this subsection during which the individual was not enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title by reason of the individual's (or individual's spouse's) current employment, and''.

Subsec. (i)(2)(C), (D). Pub. L. 99–272, §9219(a)(2)(B), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (i)(3). Pub. L. 99–509, §9319(c)(3), designated existing provisions as subpar. (A), inserted ''the first sentences of'' after ''referred to in'', and added subpar. (B).

Pub. L. 99–272, §9201(c)(1), amended par. (3) generally, striking out provision that special enrollment period could be period beginning with first day of third month before month in which the individual attains age of 70 and ending seven months later.

1984—Subsec. (g)(1). Pub. L. 98–369, §2354(b)(10), substituted ''section 426(b) of this title'' for ''section 426(a)(2)(B) of this title'' and ''section 1395r(d) of this title'' for ''section 1395(e) of this title''.

Subsec. (i). Pub. L. 98–369, §2338(b), added subsec. (i).

1981—Subsec. (e). Pub. L. 97–35, §2151(a)(1), substituted ''during the period beginning on January 1 and ending on March 31 of each year'' for ''which is any period after the period described in subsection (d) of this section''.

Subsec. (g)(3). Pub. L. 97–35, §2151(a)(2), substituted ''the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section)'' for ''the month in which the individual files an application establishing such entitlement''.

1980—Subsec. (b). Pub. L. 96–499, §945(a), struck out subsec. (b) which provided that no individual could enroll under this part more than twice.

Subsec. (e). Pub. L. 96–499, §945(b)(1), substituted ''which is any period after the period described in subsection (d) of this section'' for '', after the period described in subsection (c) of this section, during the period beginning on January 1 and ending on March 31 of each year beginning with 1969''.

Subsec. (g)(1). Pub. L. 96–265 substituted ''the 25th month'' for ''the 25th consecutive month''.

Subsec. (g)(3). Pub. L. 96–499, §945(b)(2), substituted ''the month in which the individual files an application establishing such entitlement'' for ''the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section)''.

1972—Subsec. (b). Pub. L. 92–603, §260, struck out provisions preventing enrollment under this part more than three years after first opportunity for such enrollment.

Subsec. (c). Pub. L. 92–603, §201(c)(2)(A), (B), substituted ''paragraph (1) or (2)'' for ''paragraphs (1) and (2)'', and substituted provisions relating to the treatment of an individual who has attained age 65 and who satisfies paragraph (1) of section 1395*o* of this title but not paragraph (2) of such section, for provisions relating to the treatment of an individual who satisfies paragraph (2) of section 1395*o* of this title solely by reason of subparagraph (B) thereof.

Subsec. (d). Pub. L. 92–603, §201(c)(2)(C), substituted ''paragraph (1) or (2)'' for ''paragraphs (1) and (2)''.

Subsecs. (f), (g). Pub. L. 92–603, §206(a), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 92–603, §259(a), added subsec. (h).

1968—Subsec. (b)(1). Pub. L. 90–248, §145(a), permitted an individual enrolling in supplementary medical insurance program for first time to enroll at any time in a general enrollment period which begins within 3 years of close of his initial enrollment period.

Subsec. (d). Pub. L. 90–248, §136(a), inserted last sentence providing that if an individual who has attained age 65 failed to enroll in program because, relying on erroneous documentary evidence, he was mistaken about his age, he may enroll using date of attainment of age 65 that he alleges under documentary evidence.

Subsec. (e). Pub. L. 90–248, §145(b), provided for an annual general enrollment period for supplementary medical insurance program beginning January 1 and ending March 31 of each year, commencing in 1969.

1966—Subsec. (c). Pub. L. 89–384, §3(a), delayed eligibility date from January 1, 1966, to March 1, 1966, and closing date for enrollment period from March 31, 1966, to May 31, 1966.

Subsec. (d). Pub. L. 89–384, §3(b), substituted March 1, 1966, for January 1, 1966.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to benefits for months beginning July 1, 2001, see section 1(a)(6) [title I, §115(c)] of Pub. L. 106–554, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4581(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395q and 1395r of this title] shall apply to involuntary terminations of coverage under a group health plan occurring on or after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 147(f)(1)(C) of Pub. L. 103–432 provided that: ''The amendments made by subparagraphs (A) and (B) [amending this section and section 1395q of this title] shall take effect on the first day of the first month that begins after the expiration of the 120-day period that begins on the date of the enactment of this Act [Oct. 31, 1994].''

Section 151(c)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 103–66.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6202(b)(4)(C) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 6202(c)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending

this section and section 1395r of this title] shall apply to enrollments occurring after, and premiums for months after, the second calendar quarter beginning after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 99–509 applicable to enrollments occurring on or after Jan. 1, 1987, see section 9319(f)(2) of Pub. L. 99–509, set out as a note under section 1395y of this title.

Section 9201(d)(2) of Pub. L. 99–272 provided that: ''The amendments made by subsections (b) and (c) [amending this section, section 1395q of this title, and sections 623 and 631 of Title 29, Labor] shall become effective on May 1, 1986.''

Section 9219(a)(3)(B) of Pub. L. 99–272 provided that:

''(i) The amendments made by paragraph (2) [amending this section] shall apply to enrollments in months beginning with the first effective month (as defined in clause (ii)), except that in the case of any individual who would have a special enrollment period under section 1837(i) of the Social Security Act [subsec. (i) of this section] that would have begun after November 1984 and before the first effective month, the period shall be deemed to begin with the first day of the first effective month.

''(ii) For purposes of clause (i), the term 'first effective month' means the first month that begins more than 90 days after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2338(d)(2) of Pub. L. 98–369 provided that:

''(A) The amendments made by subsections (b) and (c) [amending this section and section 1395q of this title] shall apply to enrollments in months beginning with the first effective month, except that in the case of any individual who would have had a special enrollment period under section 1837(i) of the Social Security Act [subsec. (i) of this section] that would have begun before such first effective month, such period shall be deemed to begin with the first day of such first effective month.

''(B) For purposes of subparagraph (A), the term 'first effective month' means the first month which begins more than 90 days after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(10) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2151(b) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 1395q and 1395r of this title] shall not apply to enrollments pursuant to written requests for enrollment filed before October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 945(d) of Pub. L. 96–499 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and sections 1395q and 1395r of this title] shall apply to enrollments occurring on or after April 1, 1981.''

Amendment by Pub. L. 96–265 applicable with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after the first day of the sixth month which begins after June 9, 1980, see section 103(c) of Pub. L. 96–265, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 259(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as of July 1, 1966.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 136(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to individuals enrolling under part B of title XVIII [this part] in months beginning after the date of the enactment of this Act [Jan. 2, 1968].''

Section 145(e) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and section 1395q of this title] shall become effective April 1, 1968. Notwithstanding the provisions of section 2 of Public Law 90–97, the amendments made by subsection (d) [amending section 1395r of this title] shall become effective December 1, 1968.''

MEDICARE PART B SPECIAL ENROLLMENT PERIOD

Pub. L. 108–173, title VI, § 625(b), Dec. 8, 2003, 117 Stat. 2318, provided that:

''(1) IN GENERAL.—In the case of any individual who, as of the date of the enactment of this Act [Dec. 8, 2003], is eligible to enroll but is not enrolled under part B of title XVIII of the Social Security Act [this part] and is a covered beneficiary (as defined in section 1072(5) of title 10, United States Code), the Secretary of Health and Human Services shall provide for a special enrollment period during which the individual may enroll under such part. Such period shall begin as soon as possible after the date of the enactment of this Act and shall end on December 31, 2004.

''(2) COVERAGE PERIOD.—In the case of an individual who enrolls during the special enrollment period provided under paragraph (1), the coverage period under part B of title XVIII of the Social Security Act [this part] shall begin on the first day of the month following the month in which the individual enrolls.''

EXTENSION THROUGH MARCH 31, 1968 OF 1967 GENERAL ENROLLMENT PERIOD

Pub. L. 90–97, § 1, Sept. 30, 1967, 81 Stat. 249, extended the general enrollment period under subsec. (e) of this section, beginning Oct. 1, 1967, and ending Dec. 31, 1967, for purposes of enrolling in the insurance program established under part B of title XVIII of such Act [this part] and of terminating such enrollment as provided in section 1395q(b)(1) of this title, through Mar. 31, 1968.

ENROLLMENT BEFORE OCT. 1, 1966, OF ELIGIBLE INDIVIDUALS FAILING FOR GOOD CAUSE TO ENROLL BEFORE JUNE 1, 1966; COMMENCEMENT OF COVERAGE PERIOD

Section 102(b) of Pub. L. 89–97, as amended by section 3(c) of Pub. L. 89–384, provided that: ''If—

''(1) an individual was eligible to enroll under section 1837(c) of the Social Security Act [subsec. (c) of this section] before June 1, 1966, but failed to enroll before such date, and

''(2) it is shown to the satisfaction of the Secretary of Health, Education, and Welfare [now Health and Human Services] that there was good cause for such failure to enroll before June 1, 1966,

such individual may enroll pursuant to this subsection at any time before October 1, 1966. The determination of what constitutes good cause for purposes of the preceding sentence shall be made in accordance with regulations of the Secretary. In the case of any individual who enrolls pursuant to this subsection, the coverage period (within the meaning of section 1838 of the Social Security Act [section 1395q of this title]) shall begin on the first day of the 6th month after the month in which he enrolls.''

§ 1395q. Coverage period

(a) Commencement

The period during which an individual is entitled to benefits under the insurance program established by this part (hereinafter referred to as his ''coverage period'') shall begin on whichever of the following is the latest:

(1) July 1, 1966, or (in the case of a disabled individual who has not attained age 65) July 1, 1973; or

(2)(A) in the case of an individual who enrolls pursuant to subsection (d) of section 1395p of this title before the month in which he first satisfies paragraph (1) or (2) of section 1395*o* of this title, the first day of such month, or

(B) in the case of an individual who enrolls pursuant to such subsection (d) in the month in which he first satisfies such paragraph, the first day of the month following the month in which he so enrolls, or

(C) in the case of an individual who enrolls pursuant to such subsection (d) in the month following the month in which he first satisfies such paragraph, the first day of the second month following the month in which he so enrolls, or

(D) in the case of an individual who enrolls pursuant to such subsection (d) more than one month following the month in which he satisfies such paragraph, the first day of the third month following the month in which he so enrolls, or

(E) in the case of an individual who enrolls pursuant to subsection (e) of section 1395p of this title, the July 1 following the month in which he so enrolls; or

(3)(A) in the case of an individual who is deemed to have enrolled on or before the last day of the third month of his initial enrollment period, the first day of the month in which he first meets the applicable requirements of section 1395*o* of this title or July 1, 1973, whichever is later, or

(B) in the case of an individual who is deemed to have enrolled on or after the first day of the fourth month of his initial enrollment period, as prescribed under subparagraphs (B), (C), (D), and (E) of paragraph (2) of this subsection.

(b) Continuation

An individual's coverage period shall continue until his enrollment has been terminated—

(1) by the filing of notice that the individual no longer wishes to participate in the insurance program established by this part, or

(2) for nonpayment of premiums.

The termination of a coverage period under paragraph (1) shall (except as otherwise provided in section 1395v(e) of this title) take effect at the close of the month following the month in which the notice is filed. The termination of a coverage period under paragraph (2) shall take effect on a date determined under regulations, which may be determined so as to provide a grace period in which overdue premiums may be paid and coverage continued. The grace period determined under the preceding sentence shall not exceed 90 days; except that it may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period.

Where an individual who is deemed to have enrolled for medical insurance pursuant to section 1395p(f) of this title files a notice before the first day of the month in which his coverage period begins advising that he does not wish to be so enrolled, the termination of the coverage period resulting from such deemed enrollment shall take effect with the first day of the month the coverage would have been effective. Where an individual who is deemed enrolled for medical insurance benefits pursuant to section 1395p(f) of this title files a notice requesting termination of his deemed coverage in or after the month in which such coverage becomes effective, the termination of such coverage shall take effect at the close of the month following the month in which the notice is filed.

(c) Termination

In the case of an individual satisfying paragraph (1) of section 1395*o* of this title whose entitlement to hospital insurance benefits under part A of this subchapter is based on a disability rather than on his having attained the age of 65, his coverage period (and his enrollment under this part) shall be terminated as of the close of the last month for which he is entitled to hospital insurance benefits.

(d) Payment of expenses incurred during coverage period

No payments may be made under this part with respect to the expenses of an individual unless such expenses were incurred by such individual during a period which, with respect to him, is a coverage period.

(e) Commencement of coverage for special enrollment periods

Notwithstanding subsection (a) of this section, in the case of an individual who enrolls during a special enrollment period pursuant to section 1395p(i)(3) or 1395p(i)(4)(B) of this title—

(1) in any month of the special enrollment period in which the individual is at any time enrolled in a plan (specified in subparagraph (A) or (B), as applicable, of section 1395p(i)(3) of this title or specified in section 1395p(i)(4)(A)(i) of this title) or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or

(2) in any other month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.

(Aug. 14, 1935, ch. 531, title XVIII, § 1838, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 305; amended Pub. L. 90–248, title I, § 145(c), Jan. 2, 1968, 81 Stat. 859; Pub. L. 92–603, title II, §§ 201(c)(3), 206(b), (c), 257(a), Oct. 30, 1972, 86 Stat. 1373, 1378, 1447; Pub. L. 96–499, title IX, §§ 945(c)(1), 947(b), Dec. 5, 1980, 94 Stat. 2642, 2643; Pub. L. 97–35, title XXI, §§ 2106(b)(2), 2151(a)(3), Aug. 13, 1981, 95 Stat. 792, 802; Pub. L. 98–369, div. B, title III, § 2338(c), July 18, 1984, 98 Stat. 1092;

Pub. L. 99–272, title IX, § 9201(c)(2), Apr. 7, 1986, 100 Stat. 171; Pub. L. 99–509, title IX, § 9344(b)(1), Oct. 21, 1986, 100 Stat. 2042; Pub. L. 103–432, title I, § 147(f)(1)(B), Oct. 31, 1994, 108 Stat. 4430; Pub. L. 105–33, title IV, § 4581(b)(2), Aug. 5, 1997, 111 Stat. 465; Pub. L. 108–173, title VII, § 736(b)(6), Dec. 8, 2003, 117 Stat. 2356.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (c), is classified to section 1395c et seq. of this title.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–173 inserted comma after ''1966''.

1997—Subsec. (e). Pub. L. 105–33 inserted ''or 1395p(i)(4)(B)'' after ''1395p(i)(3)'' in introductory provisions and ''or specified in section 1395p(i)(4)(A)(i) of this title'' after ''1395p(i)(3) of this title'' in par. (1).

1994—Subsec. (e). Pub. L. 103–432 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) in the first month of the special enrollment period, the coverage period shall begin on the first day of that month, or

''(2) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.''

1986—Subsec. (b). Pub. L. 99–509 substituted ''month following the month'' for ''calendar quarter following the calendar quarter'' in second and sixth sentences.

Subsec. (e). Pub. L. 99–272 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Notwithstanding subsection (a) of this section, in the case of an individual who enrolls during a special enrollment period pursuant to—

''(1) subparagraph (A) of section 1395p(i)(3) of this title—

''(A) before the month in which he attains the age of 70, the coverage period shall begin on the first day of the month in which he has attained the age of 70, or

''(B) in or after the month in which he attains the age of 70, the coverage period shall begin on the first day of the month following the month in which he so enrolls; or

''(2) subparagraph (B) of section 1395p(i)(3) of this title—

''(A) in the first month of the special enrollment period, the coverage period shall begin on the first day of such month, or

''(B) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which he so enrolls.''

1984—Subsec. (e). Pub. L. 98–369, § 2338(c), added subsec. (e).

1981—Subsec. (a)(2)(E). Pub. L. 97–35, § 2151(a)(3), substituted ''the July 1 following'' for ''the first day of the third month following''.

Subsec. (b). Pub. L. 97–35, § 2106(b)(2), struck out provision that notice filed by an individual enrolled pursuant to section 1395p(f) of this title shall not be considered a disenrollment for purposes of section 1395p(b) of this title.

1980—Subsec. (a)(2)(E). Pub. L. 96–499, § 945(c)(1), substituted ''the first day of the third month'' for ''the July 1''.

Subsec. (b). Pub. L. 96–499, § 947(b), inserted ''(except as otherwise provided in section 1395v(e) of this title)''.

1972—Subsec. (a)(1). Pub. L. 92–603, § 201(c)(3)(A), inserted ''or (in the case of a disabled individual who has not attained age 65) July 1, 1973'' after ''July 1, 1966''.

Subsec. (a)(2). Pub. L. 92–603, § 201(c)(3)(B), substituted in subpar. (A) ''paragraph (1) or (2)'' for ''paragraphs (1) and (2)'' and in subpars. (B) to (D) ''paragraph'' for ''paragraphs''.

Subsec. (a)(3). Pub. L. 92–603, § 206(b), added par. (3).

Subsec. (b). Pub. L. 92–603, §§ 206(c), 257(a), inserted provisions relating to an individual who is deemed to have enrolled for medical insurance pursuant to section 1395p(f) of this title and an individual who is deemed enrolled for medical insurance benefits pursuant to section 1395p(f) of this title and struck out provisions limiting the allowable grace period to 90 days and inserted provision for extension of such period of up to 180 days where failure to pay premiums is due to good cause.

Subsecs. (c), (d). Pub. L. 92–603, § 202(c)(3)(C), added subsec. (c) and redesignated former subsec. (c) as (d).

1968—Subsec. (b). Pub. L. 90–248 struck out '', during a general enrollment period described in section 1395p(e) of this title,'' after ''notice'' in par. (1), and substituted in first sentence following par. (2) ''the calendar quarter following the calendar quarter'' for ''December 31 of the year''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to involuntary terminations of coverage under a group health plan occurring on or after Aug. 5, 1997, see section 4581(c) of Pub. L. 105–33, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective on first day of first month beginning after expiration of the 120-day period that begins on Oct. 31, 1994, see section 147(f)(1)(C) of Pub. L. 103–432, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9344(b)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to notices filed on or after July 1, 1987.''

Amendment by Pub. L. 99–272 effective May 1, 1986, see section 9201(d)(2) of Pub. L. 99–272, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

For effective date of amendment by Pub. L. 98–369, see section 2338(d)(2) of Pub. L. 98–369, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2106(b)(2) of Pub. L. 97–35 effective Apr. 1, 1981, see section 2106(c) of Pub. L. 97–35, set out as a note under section 1395*l* of this title.

Amendment by section 2151(a)(3) of Pub. L. 97–35 not applicable to enrollments pursuant to written requests for enrollment filed before Oct. 1, 1981, see section 2151(b) of Pub. L. 97–35, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 945(c)(1) of Pub. L. 96–499 applicable to enrollments occurring on or after Apr. 1, 1981, see section 945(d) of Pub. L. 96–499, set out as a note under section 1395p of this title.

Amendment by section 947(b) of Pub. L. 96–499 applicable to notices filed after third calendar month beginning after Dec. 5, 1980, see section 947(d) of Pub. L. 96–499, set out as a note under section 1395v of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 257(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to nonpayment of premiums which become due and payable on or after the date of the enactment of this Act [Oct. 30, 1972] or which became payable within the 90-day period immediately preceding such date; and for purposes of such amendments any premium which became due and payable within such 90-day period shall be considered a premium becoming due and payable on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 effective Apr. 1, 1968, see section 145(e) of Pub. L. 90–248, set out as a note under section 1395p of this title.

COVERAGE PERIOD; TERMINATION DATES

Pub. L. 90–97, §3(a), Sept. 30, 1967, 81 Stat. 249, provided that: ''In the case of any individual who, pursuant to section 1838(b)(1) of the Social Security Act [subsec. (b)(1) of this section], terminates his enrollment in the insurance program established under part B of title XVIII of such Act [this part], his coverage period (as defined in section 1838(a) of such Act) [subsec. (a) of this section]—

''(1) shall terminate at the close of December 31, 1967, if he filed his notice of termination before January 1, 1968, or

''(2) shall terminate at the close of March 31, 1968, if he filed his notice of termination after December 31, 1967, and before April 1, 1968.

An individual whose coverage period terminated pursuant to paragraph (1) at the close of December 31, 1967, may, notwithstanding section 1837(b)(2) of such Act [section 1395p(b)(2) of this title], enroll in such program before April 1, 1968, and for purposes of sections 1838(a)(2)(E) [subsec. (a)(2)(E) of this section] and 1837(b)(2) of such Act [section 1395p(b)(2) of this title] such enrollment shall be deemed an enrollment under section 1837(e) of such Act [section 1395p(e) of this title] and a second enrollment under such part.''

EXTENSION OF 1967 GENERAL ENROLLMENT PERIOD THROUGH MARCH 31, 1968

Extension of the general enrollment period under section 1395p(e) of this title through March 31, 1968, see section 1 of Pub. L. 90–97, Sept. 30, 1967, 81 Stat. 249, set out as a note under section 1395p of this title.

COVERAGE PERIOD FOR INDIVIDUALS BECOMING ELIGIBLE IN MARCH 1966 WHO ENROLL IN MAY 1966

Pub. L. 89–384, §3(d), Apr. 8, 1966, 80 Stat. 105, provided that: ''In the case of an individual who first satisfies paragraphs (1) and (2) of section 1836 of the Social Security Act [section 1395*o* of this title] in March, 1966, and who enrolls pursuant to subsection (d) of section 1837 of such Act [section 1395p of this title] in May 1966, his coverage period shall, notwithstanding section 1838(a)(2)(D) of such Act [subsec. (a)(2)(D) of this section], begin on July 1, 1966.''

COMMENCEMENT OF COVERAGE PERIOD OF CERTAIN ENROLLEES

Commencement of coverage period upon enrollment before Oct. 1, 1966 of eligible individuals failing for good cause to enroll before June 1, 1966, see section 102(b) of Pub. L. 89–97, set out as a note under section 1395p of this title.

§ 1395r. Amount of premiums for individuals enrolled under this part

(a) Determination of monthly actuarial rates and premiums

(1) The Secretary shall, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for enrollees age 65 and over which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to those enrollees age 65 and older will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate, the Secretary shall include an appropriate amount for a contingency margin.

(2) The monthly premium of each individual enrolled under this part for each month after December 1983 shall be the amount determined under paragraph (3), adjusted as required in accordance with subsections (b), (c), (f), and (i) of this section, and to reflect any credit provided under section 1395w–24(b)(1)(C)(ii)(III) of this title.

(3) The Secretary, during September of each year, shall determine and promulgate a monthly premium rate for the succeeding calendar year that (except as provided in subsection (g) of this section) is equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1), for that succeeding calendar year. Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium rate for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for enrollees age 65 and older as provided in paragraph (1).

(4) The Secretary shall also, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for disabled enrollees under age 65 which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to disabled enrollees under age 65 will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate under this paragraph, the Secretary shall include an appropriate amount for a contingency margin.

(b) Increase in monthly premium

In the case of an individual whose coverage period began pursuant to an enrollment after his initial enrollment period (determined pursuant to subsection (c) or (d) of section 1395p of this title) and not pursuant to a special enrollment period under section 1395p(i)(4) of this title, the monthly premium determined under subsection (a) of this section (without regard to any adjustment under subsection (i) of this section) shall be increased by 10 percent of the monthly premium so determined for each full 12 months (in the same continuous period of eligibility) in which he could have been but was not enrolled. For purposes of the preceding sentence, there shall be taken into account (1) the months which elapsed between the close of his initial enrollment period and the close of the enrollment period in which he enrolled, plus (in the case of an individual who reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the close of the enrollment period in which he reenrolled, but there shall not be taken into account

months for which the individual can demonstrate that the individual was enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual's (or the individual's spouse's) current employment status or months during which the individual has not attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iii) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual). Any increase in an individual's monthly premium under the first sentence of this subsection with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which such individual may have. No increase in the premium shall be effected for a month in the case of an individual who enrolls under this part during 2001, 2002, 2003, or 2004 and who demonstrates to the Secretary before December 31, 2004, that the individual is a covered beneficiary (as defined in section 1072(5) of title 10). The Secretary of Health and Human Services shall consult with the Secretary of Defense in identifying individuals described in the previous sentence.

(c) Premiums rounded to nearest multiple of ten cents

If any monthly premium determined under the foregoing provisions of this section is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.

(d) "Continuous period of eligibility" defined

For purposes of subsection (b) of this section (and section 1395p(g)(1) of this title), an individual's ''continuous period of eligibility'' is the period beginning with the first day on which he is eligible to enroll under section 1395*o* of this title and ending with his death; except that any period during all of which an individual satisfied paragraph (1) of section 1395*o* of this title and which terminated in or before the month preceding the month in which he attained age 65 shall be a separate ''continuous period of eligibility'' with respect to such individual (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this section).

(e) State payment of part B late enrollment premium increases

(1) Upon the request of a State (or any appropriate State or local governmental entity specified by the Secretary), the Secretary may enter into an agreement with the State (or such entity) under which the State (or such entity) agrees to pay on a quarterly or other periodic basis to the Secretary (to be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund) an amount equal to the amount of the part B late enrollment premium increases with respect to the premiums for eligible individuals (as defined in paragraph (3)(A)).

(2) No part B late enrollment premium increase shall apply to an eligible individual for premiums for months for which the amount of such an increase is payable under an agreement under paragraph (1).

(3) In this subsection:

(A) The term ''eligible individual'' means an individual who is enrolled under this part B and who is within a class of individuals specified in the agreement under paragraph (1).

(B) The term ''part B late enrollment premium increase'' means any increase in a premium as a result of the application of subsection (b) of this section.

(f) Limitation on increase in monthly premium

For any calendar year after 1988, if an individual is entitled to monthly benefits under section 402 or 423 of this title or to a monthly annuity under section 3(a), 4(a), or 4(f) of the Railroad Retirement Act of 1974 [45 U.S.C. 231b(a), 231c(a), (f)] for November and December of the preceding year, if the monthly premium of the individual under this section for December and for January is deducted from those benefits under section 1395s(a)(1) of this title or section 1395s(b)(1) of this title, and if the amount of the individual's premium is not adjusted for such January under subsection (i) of this section, the monthly premium otherwise determined under this section for an individual for that year shall not be increased, pursuant to this subsection, to the extent that such increase would reduce the amount of benefits payable to that individual for that December below the amount of benefits payable to that individual for that November (after the deduction of the premium under this section). For purposes of this subsection, retroactive adjustments or payments and deductions on account of work shall not be taken into account in determining the monthly benefits to which an individual is entitled under section 402 or 423 of this title or under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

(g) Exclusions from estimate of benefits and administrative costs

In estimating the benefits and administrative costs which will be payable from the Federal Supplementary Medical Insurance Trust Fund for a year for purposes of determining the monthly premium rate under subsection (a)(3) of this section, the Secretary shall exclude an estimate of any benefits and administrative costs attributable to—

(1) the application of section 1395x(v)(1)(L)(viii) of this title or to the establishment under section 1395x(v)(1)(L)(i)(V) of this title of a per visit limit at 106 percent of the median (instead of 105 percent of the median), but only to the extent payment for home health services under this subchapter is not being made under section 1395fff of this title (relating to prospective payment for home health services); and

(2) the medicare prescription drug discount card and transitional assistance program under section 1395w–141 of this title.

(h) Potential application of comparative cost adjustment in CCA areas

(1) In general

Certain individuals who are residing in a CCA area under section 1395w–29 of this title who are not enrolled in an MA plan under part

C of this subchapter may be subject to a premium adjustment under subsection (f) of such section for months in which the CCA program under such section is in effect in such area.

(2) No effect on late enrollment penalty or income-related adjustment in subsidies

Nothing in this subsection or section 1395w–29(f) of this title shall be construed as affecting the amount of any premium adjustment under subsection (b) or (i) of this section. Subsection (f) of this section shall be applied without regard to any premium adjustment referred to in paragraph (1).

(3) Implementation

In order to carry out a premium adjustment under this subsection and section 1395w–29(f) of this title (insofar as it is effected through the manner of collection of premiums under section 1395s(a) of this title), the Secretary shall transmit to the Commissioner of Social Security—

(A) at the beginning of each year, the name, social security account number, and the amount of the premium adjustment (if any) for each individual enrolled under this part for each month during the year; and

(B) periodically throughout the year, information to update the information previously transmitted under this paragraph for the year.

(i) Reduction in premium subsidy based on income

(1) In general

In the case of an individual whose modified adjusted gross income exceeds the threshold amount under paragraph (2), the monthly amount of the premium subsidy applicable to the premium under this section for a month after December 2006 shall be reduced (and the monthly premium shall be increased) by the monthly adjustment amount specified in paragraph (3).

(2) Threshold amount

For purposes of this subsection, the threshold amount is—

(A) except as provided in subparagraph (B), $80,000, and

(B) in the case of a joint return, twice the amount applicable under subparagraph (A) for the calendar year.

(3) Monthly adjustment amount

(A) In general

Subject to subparagraph (B), the monthly adjustment amount specified in this paragraph for an individual for a month in a year is equal to the product of the following:

(i) Sliding scale percentage

The applicable percentage specified in the table in subparagraph (C) for the individual minus 25 percentage points.

(ii) Unsubsidized part B premium amount

200 percent of the monthly actuarial rate for enrollees age 65 and over (as determined under subsection (a)(1) of this section for the year).

(B) 5-year phase in

The monthly adjustment amount specified in this paragraph for an individual for a month in a year before 2011 is equal to the following percentage of the monthly adjustment amount specified in subparagraph (A):

(i) For 2007, 20 percent.

(ii) For 2008, 40 percent.

(iii) For 2009, 60 percent.

(iv) for 2010, 80 percent.

(C) Applicable percentage

(i) In general

If the modified adjusted gross income is:	The applicable percentage is:
More than $80,000 but not more than $100,000	35 percent
More than $100,000 but not more than $150,000	50 percent
More than $150,000 but not more than $200,000	65 percent
More than $200,000	80 percent.

(ii) Joint returns

In the case of a joint return, clause (i) shall be applied by substituting dollar amounts which are twice the dollar amounts otherwise applicable under clause (i) for the calendar year.

(iii) Married individuals filing separate returns

In the case of an individual who—

(I) is married as of the close of the taxable year (within the meaning of section 7703 of the Internal Revenue Code of 1986) but does not file a joint return for such year, and

(II) does not live apart from such individual's spouse at all times during the taxable year,

clause (i) shall be applied by reducing each of the dollar amounts otherwise applicable under such clause for the calendar year by the threshold amount for such year applicable to an unmarried individual.

(4) Modified adjusted gross income

(A) In general

For purposes of this subsection, the term ''modified adjusted gross income'' means adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986)—

(i) determined without regard to sections 135, 911, 931, and 933 of such Code; and

(ii) increased by the amount of interest received or accrued during the taxable year which is exempt from tax under such Code.

In the case of an individual filing a joint return, any reference in this subsection to the modified adjusted gross income of such individual shall be to such return's modified adjusted gross income.

(B) Taxable year to be used in determining modified adjusted gross income

(i) In general

In applying this subsection for an individual's premiums in a month in a year, subject to clause (ii) and subparagraph (C), the individual's modified adjusted gross income shall be such income determined for

the individual's last taxable year beginning in the second calendar year preceding the year involved.

(ii) Temporary use of other data

If, as of October 15 before a calendar year, the Secretary of the Treasury does not have adequate data for an individual in appropriate electronic form for the taxable year referred to in clause (i), the individual's modified adjusted gross income shall be determined using the data in such form from the previous taxable year. Except as provided in regulations prescribed by the Commissioner of Social Security in consultation with the Secretary, the preceding sentence shall cease to apply when adequate data in appropriate electronic form are available for the individual for the taxable year referred to in clause (i), and proper adjustments shall be made to the extent that the premium adjustments determined under the preceding sentence were inconsistent with those determined using such taxable year.

(iii) Non-filers

In the case of individuals with respect to whom the Secretary of the Treasury does not have adequate data in appropriate electronic form for either taxable year referred to in clause (i) or clause (ii), the Commissioner of Social Security, in consultation with the Secretary, shall prescribe regulations which provide for the treatment of the premium adjustment with respect to such individual under this subsection, including regulations which provide for—

(I) the application of the highest applicable percentage under paragraph (3)(C) to such individual if the Commissioner has information which indicates that such individual's modified adjusted gross income might exceed the threshold amount for the taxable year referred to in clause (i), and

(II) proper adjustments in the case of the application of an applicable percentage under subclause (I) to such individual which is inconsistent with such individual's modified adjusted gross income for such taxable year.

(C) Use of more recent taxable year

(i) In general

The Commissioner of Social Security in consultation with the Secretary of the Treasury shall establish a procedures under which an individual's modified adjusted gross income shall, at the request of such individual, be determined under this subsection—

(I) for a more recent taxable year than the taxable year otherwise used under subparagraph (B), or

(II) by such methodology as the Commissioner, in consultation with such Secretary, determines to be appropriate, which may include a methodology for aggregating or disaggregating information from tax returns in the case of marriage or divorce.

(ii) Standard for granting requests

A request under clause (i)(I) to use a more recent taxable year may be granted only if—

(I) the individual furnishes to such Commissioner with respect to such year such documentation, such as a copy of a filed Federal income tax return or an equivalent document, as the Commissioner specifies for purposes of determining the premium adjustment (if any) under this subsection; and

(II) the individual's modified adjusted gross income for such year is significantly less than such income for the taxable year determined under subparagraph (B) by reason of the death of such individual's spouse, the marriage or divorce of such individual, or other major life changing events specified in regulations prescribed by the Commissioner in consultation with the Secretary.

(5) Inflation adjustment

(A) In general

In the case of any calendar year beginning after 2007, each dollar amount in paragraph (2) or (3) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the percentage (if any) by which the average of the Consumer Price Index for all urban consumers (United States city average) for the 12-month period ending with August of the preceding calendar year exceeds such average for the 12-month period ending with August 2006.

(B) Rounding

If any dollar amount after being increased under subparagraph (A) is not a multiple of $1,000, such dollar amount shall be rounded to the nearest multiple of $1,000.

(6) Joint return defined

For purposes of this subsection, the term ''joint return'' has the meaning given to such term by section 7701(a)(38) of the Internal Revenue Code of 1986.

(Aug. 14, 1935, ch. 531, title XVIII, § 1839, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 305; amended Pub. L. 90–248, title I, § 145(d), Jan. 2, 1968, 81 Stat. 859; Pub. L. 92–603, title II, §§ 201(c)(4), (5), 203 (a)–(d), Oct. 30, 1972, 86 Stat. 1373, 1376, 1377; Pub. L. 94–182, title I, § 104(a), Dec. 31, 1975, 89 Stat. 1052; Pub. L. 95–216, title II, § 205(e), Dec. 20, 1977, 91 Stat. 1529; Pub. L. 96–499, title IX, § 945(c)(2), Dec. 5, 1980, 94 Stat. 2642; Pub. L. 97–35, title XXI, § 2151(a)(4), Aug. 13, 1981, 95 Stat. 802; Pub. L. 97–248, title I, § 124(a), (b), Sept. 3, 1982, 96 Stat. 364; Pub. L. 97–448, title III, § 309(b)(8), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–21, title VI, § 606(a)(1)–(3)(C), Apr. 20, 1983, 97 Stat. 169, 170; Pub. L. 98–369, div. B, title III, §§ 2302(a), (b), 2338(a), July 18, 1984, 98 Stat. 1063, 1091; Pub. L. 98–617, § 3(b)(4), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–272, title IX, §§ 9219(a)(1), 9313, Apr. 7, 1986, 100 Stat. 182, 194; Pub. L. 99–509, title IX, §§ 9001(c), 9319(c)(4), Oct. 21, 1986, 100 Stat. 1970, 2012; Pub. L. 100–203, title IV, § 4080, Dec. 22, 1987, 101 Stat. 1330–126; Pub. L. 100–360, title II,

§ 211(a)–(c)(1), July 1, 1988, 102 Stat. 733, 738; Pub. L. 100–485, title VI, § 608(d)(9), Oct. 13, 1988, 102 Stat. 2415; Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6202(b)(4)(C), (c)(2), 6301, Dec. 19, 1989, 103 Stat. 2233, 2234, 2258; Pub. L. 101–508, title IV, § 4301, Nov. 5, 1990, 104 Stat. 1388–125; Pub. L. 103–66, title XIII, § 13571, Aug. 10, 1993, 107 Stat. 609; Pub. L. 103–432, title I, §§ 144, 151(c)(3), Oct. 31, 1994, 108 Stat. 4427, 4435; Pub. L. 105–33, title IV, §§ 4571(a), (b)(1), 4581(a), 4582, 4631(a)(2), Aug. 5, 1997, 111 Stat. 464, 465, 486; Pub. L. 105–277, div. J, title V, § 5101(e), Oct. 21, 1998, 112 Stat. 2681–915; Pub. L. 106–554, § 1(a)(6) [title VI, § 606(a)(2)(B)(i)], Dec. 21, 2000, 114 Stat. 2763, 2763A–557; Pub. L. 108–173, title I, § 105(a), title II, §§ 222(*l*)(2)(A), 241(b)(2)(A), title VI, § 625(a)(1), title VII, § 736(b)(7), title VIII, § 811(a), (b)(1), Dec. 8, 2003, 117 Stat. 2166, 2206, 2220, 2317, 2356, 2364, 2367.)

REFERENCES IN TEXT

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

Part C of this subchapter, referred to in subsec. (h)(1), is classified to section 1395w–21 et seq. of this title.

The Internal Revenue Code of 1986, referred to in subsec. (i)(3)(C)(iii)(I), (4)(A), (6), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2003—Subsec. (a)(2). Pub. L. 108–173, § 811(b)(1)(A), substituted ''(f), and (i)'' for ''and (f)''.

Pub. L. 108–173, § 222(*l*)(2)(A), substituted ''any credit provided under section 1395w–24(b)(1)(C)(ii)(III)'' for ''80 percent of any reduction elected under section 1395w–24(f)(1)(E)''.

Subsec. (a)(4). Pub. L. 108–173, § 736(b)(7), substituted ''will equal one-half of the total'' for ''which will equal one-half of the total''.

Subsec. (b). Pub. L. 108–173, § 811(b)(1)(B), inserted ''(without regard to any adjustment under subsection (i) of this section)'' after ''subsection (a) of this section''.

Pub. L. 108–173, § 625(a)(1), inserted at end ''No increase in the premium shall be effected for a month in the case of an individual who enrolls under this part during 2001, 2002, 2003, or 2004 and who demonstrates to the Secretary before December 31, 2004, that the individual is a covered beneficiary (as defined in section 1072(5) of title 10). The Secretary of Health and Human Services shall consult with the Secretary of Defense in identifying individuals described in the previous sentence.''

Subsec. (f). Pub. L. 108–173, § 811(b)(1)(C), substituted ''if the monthly premium'' for ''and if the monthly premium'' and inserted ''and if the amount of the individual's premium is not adjusted for such January under subsection (i) of this section,'' after ''section 1395s(b)(1) of this title,''.

Subsec. (g). Pub. L. 108–173, § 105(a), substituted ''attributable to—'' for ''attributable to'', inserted par. (1) designation before ''the application of'', substituted ''; and'' for period at end, and added par. (2).

Subsec. (h). Pub. L. 108–173, § 241(b)(2)(A), added subsec. (h).

Subsec. (i). Pub. L. 108–173, § 811(a), added subsec. (i).

2000—Subsec. (a)(2). Pub. L. 106–554 substituted ''shall be the amount determined under paragraph (3), adjusted as required in accordance with subsections (b), (c), and (f) of this section, and to reflect 80 percent of any reduction elected under section 1395w–24(f)(1)(E) of this title.'' for ''shall, except as provided in subsections (b), (c), and (f) of this section, be the amount determined under paragraph (3).''

1998—Subsec. (a)(3). Pub. L. 105–277, § 5101(e)(1), inserted ''(except as provided in subsection (g) of this section)'' after ''year that''.

Subsec. (g). Pub. L. 105–277, § 5101(e)(2), added subsec. (g).

1997—Subsec. (a)(2). Pub. L. 105–33, § 4571(b)(1)(A), substituted ''subsections (b), (c), and (f)'' for ''subsections (b) and (e)''.

Subsec. (a)(3). Pub. L. 105–33, § 4571(b)(1)(B), in last sentence, inserted ''rate'' after ''monthly premium'' and struck out ''and the derivation of the dollar amounts specified in this paragraph'' before period at end.

Pub. L. 105–33, § 4571(a), substituted ''The Secretary, during September of each year, shall determine and promulgate a monthly premium rate for the succeeding calendar year that is equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1), for that succeeding calendar year.'' for ''The Secretary shall, during September of 1983 and of each year thereafter, determine and promulgate the monthly premium applicable for individuals enrolled under this part for the succeeding calendar year. The monthly premium shall (except as otherwise provided in subsection (e) of this section) be equal to the smaller of—

''(A) the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1) of this subsection, for that calendar year, or

''(B) the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 415(a)(1) of this title, based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on November 1 of the year before the year of the promulgation. He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals for the following November 1.''

Subsec. (b). Pub. L. 105–33, § 4631(a)(2), substituted ''1395y(b)(1)(B)(iii) of this title'' for ''1395y(b)(1)(B)(iv) of this title'' in second sentence.

Pub. L. 105–33, § 4571(b)(1)(C), struck out ''or (e)'' after ''determined under subsection (a)'' in first sentence.

Pub. L. 105–33, § 4581(a), inserted ''and not pursuant to a special enrollment period under section 1395p(i)(4) of this title'' after ''section 1395p of this title)'' in first sentence.

Subsec. (e). Pub. L. 105–33, § 4571(b)(1)(D), (E), redesignated subsec. (g) as (e) and struck out former subsec. (e) which read as follows:

''(1)(A) Notwithstanding the provisions of subsection (a) of this section, the monthly premium for each individual enrolled under this part for each month after after December 1995 and prior to January 1999 shall be an amount equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, as determined under subsection (a)(1) of this section and applicable to such month.

''(B) Notwithstanding the provisions of subsection (a) of this section, the monthly premium for each individual enrolled under this part for each month in—

''(i) 1991 shall be $29.90,

''(ii) 1992 shall be $31.80,

''(iii) 1993 shall be $36.60,

''(iv) 1994 shall be $41.10, and

''(v) 1995 shall be $46.10.

''(2) Any increases in premium amounts taking effect prior to January 1998 by reason of paragraph (1) shall be taken into account for purposes of determining increases thereafter under subsection (a)(3) of this section.''

Subsec. (e)(1). Pub. L. 105–33, § 4582, inserted ''(or any appropriate State or local governmental entity specified by the Secretary)'' after ''request of a State'' and inserted ''(or such entity)'' after ''agreement with the State'' and after ''which the State''.

Subsec. (g). Pub. L. 105–33, § 4571(b)(1)(E), redesignated subsec. (g) as (e).

1994—Subsec. (b). Pub. L. 103–432, § 151(c)(3), in second sentence, inserted ''status'' after ''current employment'' and substituted ''(as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual (as those terms are defined in section 1395y(b)(1)(B)(iv) of this title)''.

Subsec. (g). Pub. L. 103–432, § 144, added subsec. (g).

1993—Subsec. (e)(1)(A). Pub. L. 103–66, § 13571(1), substituted ''after December 1995 and prior to January 1999 shall be an amount equal to 50 percent'' for ''December 1983 and prior to January 1991 shall be an amount equal to 50 percent''.

Subsec. (e)(2). Pub. L. 103–66, § 13571(2), substituted ''1998'' for ''1991''.

1990—Subsec. (e)(1). Pub. L. 101–508 designated existing provisions as subpar. (A) and added subpar. (B).

1989—Subsec. (a). Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(1)(A)–(D), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (b). Pub. L. 101–239, § 6202(c)(2), struck out ''during which the individual has attained the age of 65 and'' after ''into account months'' in second sentence.

Pub. L. 101–239, § 6202(b)(4)(C), substituted ''section 1395y(b)(1)(A)(v)'' and ''section 1395y(b)(1)(B)(iv)'' for ''section 1395y(b)(3)(A)(iv)'' and ''section 1395y(b)(4)(B)'', respectively.

Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(1)(E), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (e). Pub. L. 101–239, § 6301, substituted ''1991'' for ''1990'' wherever appearing.

Subsec. (e)(1). Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(1)(F), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (g). Pub. L. 101–234 repealed Pub. L. 100–360, § 211(a), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a)(1). Pub. L. 100–360, § 211(c)(1)(A), (B), inserted ''(other than costs relating to the amendments made by the Medicare Catastrophic Coverage Act of 1988)'' before period at end of second sentence, and '', but shall not take into account any amounts in the Trust Fund that may be attributable to receipts or outlays relating to the Medicare Catastrophic Coverage Account'' before period at end of last sentence.

Subsec. (a)(2). Pub. L. 100–360, § 211(c)(1)(C), substituted '', (e), and (g)'' for ''and (e)''.

Subsec. (a)(3). Pub. L. 100–360, § 211(c)(1)(D), substituted ''subsections (e) and (g)'' for ''subsection (e)'' in introductory provisions.

Subsec. (a)(4). Pub. L. 100–360, § 211(c)(1)(A), (B), inserted ''(other than costs relating to the amendments made by the Medicare Catastrophic Coverage Act of 1988)'' before period at end of second sentence, and '', but shall not take into account any amounts in the Trust Fund that may be attributable to receipts or outlays relating to the Medicare Catastrophic Coverage Account'' before period at end of last sentence.

Subsec. (b). Pub. L. 100–360, § 211(c)(1)(E), substituted ''otherwise determined under this section (without regard to subsections (f) and (g)(6) of this section)'' for ''determined under subsection (a) or (e) of this section''.

Subsec. (e)(1). Pub. L. 100–360, § 211(c)(1)(F), inserted ''except as provided in subsection (g) of this section,'' after ''subsection (a) of this section''.

Subsec. (f). Pub. L. 100–485, § 608(d)(8)(B), substituted ''for that December below the amount of benefits payable to that individual for that November'' for ''for that January below the amount of benefits payable to that individual for that December''.

Pub. L. 100–360, § 211(b), amended subsec. (f) generally, substituting a single paragraph for former pars. (1) and (2).

Subsec. (g). Pub. L. 100–360, § 211(a), added subsec. (g) relating to adjustment in medicare part B premium.

Subsec. (g)(1)(B)(iii)(I). Pub. L. 100–485, § 608(d)(9)(A)(i), substituted ''year, over'' for ''year, and''.

Subsec. (g)(1)(B)(iii)(II). Pub. L. 100–485, § 608(d)(9)(A)(ii), substituted ''supplemental premium rate'' for ''supplemental rate''.

Subsec. (g)(7)(A)(ii). Pub. L. 100–485, § 608(d)(9)(A)(iii), substituted ''of each such year'' for ''of such year''.

1987—Subsec. (e). Pub. L. 100–203, § 4080(1), substituted ''1990'' for ''1989'' wherever appearing.

Subsec. (f)(1). Pub. L. 100–203, § 4080(2), substituted ''1987, or 1988'' for ''or 1987''.

Subsec. (f)(2). Pub. L. 100–203, § 4080(3), substituted ''1988, or 1989'' for ''or 1988''.

1986—Subsec. (b). Pub. L. 99–509, § 9319(c)(4), inserted ''or months during which the individual has not attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a large group health plan as an active individual (as those terms are defined in section 1395y(b)(4)(B) of this title)'' at end of second sentence.

Pub. L. 99–272, § 9219(a)(1), substituted ''months during which the individual has attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title'' for ''months in which the individual has met the conditions specified in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section''.

Subsec. (e). Pub. L. 99–272, § 9313(1), substituted ''1989'' for ''1988'' wherever appearing.

Subsec. (f)(1). Pub. L. 99–272, § 9313(2), substituted '', 1986, or 1987'' for ''or 1986''.

Subsec. (f)(2). Pub. L. 99–272, § 9313(3), substituted '', 1987, or 1988'' for ''or 1987''.

Subsec. (f)(2)(A). Pub. L. 99–509, § 9001(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the monthly premium amount determined under subsection (a)(2) of this section for that January reduced by the amount (if any) necessary to make the monthly benefits under section 402 or 423 of this title for that December after the deduction of the monthly premium (disregarding subsection (b) of this section) for that January at least equal to the monthly benefits under section 402 or 423 of this title for the preceding November after the deduction of the premium (disregarding subsection (b) of this section) for that individual for that December, or''.

1984—Subsec. (b). Pub. L. 98–369, § 2338(a), inserted provision that there shall not be taken into account months in which the individual has met conditions specified in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section by reason of the individual's (or the individual's spouse's) current employment.

Subsec. (e). Pub. L. 98–369, § 2302(a), substituted ''1988'' for ''1986'' in pars. (1) and (2).

Subsec. (f). Pub. L. 98–369, § 2302(b), added subsec. (f).

Subsec. (f)(2)(A). Pub. L. 98–617, § 3(b)(4), substituted ''for that December after the deduction'' for ''for that January after the deduction'' and ''for that December'' for ''for that November''.

1983—Subsec. (a). Pub. L. 98–21, § 606(a)(1), added subsec. (a) and struck out former subsec. (a) which pro-

vided that monthly premium of each individual enrolled under this part for each month before 1968 would be $3.

Subsec. (b). Pub. L. 98–21, §606(a)(3)(A), substituted ''subsection (a) or (e)'' for ''subsection (b), (c), or (g)''.

Pub. L. 98–21, §606(a)(1), (2), redesignated subsec. (d) as (b), and struck out former subsec. (b) which provided for determination by Secretary of monthly premium for each individual enrolled under this part for each month after 1967 and before July 1, 1973.

Subsec. (c). Pub. L. 98–21, §606(a)(1), (2), redesignated subsec. (e) as (c), and struck out former subsec. (c) which directed Secretary to determine during December of each year after 1972 the monthly actuarial rate for enrollees age 65 and over applicable to succeeding fiscal year (beginning July 1), provided for his determination of monthly premium for such period, and directed him to determine monthly actuarial rate for disabled enrollees under age 65.

Subsec. (d). Pub. L. 98–21, §606(a)(3)(B), which directed that ''purposes of subsection (b)'' be substituted for ''purposes of subsection (c)'' was executed by substituting ''purposes of subsection (b)'' for ''purposes of subsection (d)'', as the probable intent of Congress in view of previous substitution of ''subsection (d)'' for ''subsection (c)'' by Pub. L. 92–603, §203(d)(2).

Pub. L. 98–21, §606(a)(2), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (b).

Pub. L. 97–448 inserted reference to determination of monthly premium pursuant to subsec. (g) of this section.

Subsec. (e). Pub. L. 98–21, §606(a)(2), redesignated subsec. (g) as (e). Former subsec. (e) redesignated (c).

Subsec. (e)(1). Pub. L. 98–21, §606(a)(3)(C), substituted ''(a)'' for ''(c)'', ''(a)(1)'' for ''(c)(1)'', ''December 1983'' for ''June 1983'', and ''January 1986'' for ''July 1985''.

Subsec. (e)(2). Pub. L. 98–21, §606(a)(3)(C)(i), (iii), substituted ''(a)(3)'' for ''(c)(3)'' and ''January 1986'' for ''July 1985''.

Subsecs. (f), (g). Pub. L. 98–21, §606(a)(2), redesignated subsecs. (f) and (g) as (d) and (e), respectively.

1982—Subsec. (c)(2). Pub. L. 97–248, §124(a)(1), substituted ''except as provided in subsections (d) and (g)'' for ''except as provided in subsection (d)''.

Subsec. (c)(3). Pub. L. 97–248, §124(a)(2), inserted ''(except as otherwise provided in subsection (g) of this section)''.

Subsec. (g). Pub. L. 97–248, §124(b), added subsec. (g).

1981—Subsec. (d). Pub. L. 97–35 substituted ''the close of the enrollment period in which he reenrolled'' for ''the month after the month in which he reenrolled'' in cl. (2).

1980—Subsec. (d). Pub. L. 96–499 substituted ''who reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the month after the month in which he reenrolled'' for ''who enrolls for a second time) (2) the months which elapsed between the date of the termination of his first coverage period and the close of the enrollment period in which he enrolled for the second time''.

1977—Subsec. (c)(3)(B). Pub. L. 95–216 substituted ''the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 415(a)(1) of this title, based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on May 1 of the year of the promulgation'' for ''the monthly premium rate most recently promulgated by the Secretary under this paragraph or, in the case of the determination made in December 1971, such rate promulgated under subsection (b)(2) of this section multiplied by the ratio of (i) the amount in column IV of the table which, by reason of the law in effect at the time the promulgation is made, will be in effect as of May 1 next following such determination appears (or is deemed to appear) in section 415(a) of this title on the line which includes the figure '750' in column III of such table to (ii) the amount in column IV of the table which appeared (or was deemed to appear) in section 415(a) of this title on the line which included the figure '750' in column III as of May 1 of the year in which such determination is made'' and inserted ''He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals on the following May 1.''

1975—Subsec. (c)(3). Pub. L. 94–182 substituted ''May 1'' for ''June 1'' wherever appearing.

1972—Subsec. (b)(1). Pub. L. 92–603, §203(a), inserted ''and before July 1, 1973'' following ''1967''.

Subsec. (b)(2). Pub. L. 92–603, §203(b), substituted ''ending on or before December 31, 1971'' for ''thereafter''.

Subsec. (c). Pub. L. 92–603, §203(c), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 92–603, §§201(c)(4), 203(c), (d)(1), redesignated former subsec. (c) as (d), inserted reference to subsec. (c) after reference to subsec. (b), inserted ''(in the same continuous period of eligibility)'' after ''for each full 12 months'', and inserted provisions relating to any increase in an individual's monthly premium under the first sentence of this subsection. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 92–603, §203(c), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Pub. L. 92–603, §201(c)(5), added subsec. (e).

Subsec. (f). Pub. L. 92–603, §203(c), (d)(2), redesignated former subsec. (e) as (f) and substituted ''subsection (d)'' for ''subsection (c)''.

1968—Subsec. (b)(2). Pub. L. 90–248 required Secretary, during December of each year, beginning in 1968, to determine and announce amount (whether or not such amount was applicable for premiums for any prior month) of supplementary medical insurance premium for 12-month period beginning on July 1 of each following year, which premium is to be such that aggregate premiums will equal one-half estimated benefit and administrative expenses of supplementary medical insurance program for such 12-month period, and that at time of announcement of premium amount, Secretary must make public actuarial assumptions and bases used in deciding amount of premium.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 222(*l*)(2)(A) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Pub. L. 108–173, title VI, §625(a)(2), Dec. 8, 2003, 117 Stat. 2318, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to premiums for months beginning with January 2004. The Secretary [of Health and Human Services] shall establish a method for providing rebates of premium penalties paid for months on or after January 2004 for which a penalty does not apply under such amendment but for which a penalty was previously collected.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title VI, §606(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–558, provided that: ''The amendments made by subsection (a) [amending this section and sections 1395s, 1395w, 1395w–21, 1395w–23, and 1395w–24 of this title] shall apply to years beginning with 2003.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4581(a) of Pub. L. 105–33 applicable to involuntary terminations of coverage under a group health plan occurring on or after Aug. 5, 1997, see section 4581(c) of Pub. L. 105–33, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 151(c)(3) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 103–66.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6202(b)(4)(C) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 6202(c)(2) of Pub. L. 101–239 applicable to enrollments occurring after, and premiums for months after, second calendar quarter beginning after Dec. 19, 1989, see section 6202(c)(3) of Pub. L. 101–239, set out as a note under section 1395p of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, and applicable to premiums for months beginning after Dec. 31, 1989, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 211(d) of Pub. L. 100–360, which provided that the amendments made by section 211 of Pub. L. 100–360 [amending this section and sections 1395w and 1395mm of this title] applied (except as otherwise specified in such amendments) to monthly premiums for months beginning with January 1989, was repealed by Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9001(c) of Pub. L. 99–509 applicable with respect to monthly premiums under this section for months after December 1986, see section 9001(d)(3) of Pub. L. 99–509, set out as a note under section 415 of this title.

Amendment by section 9319(c)(4) of Pub. L. 99–509 applicable to enrollments occurring on or after Jan. 1, 1987, see section 9319(f)(2) of Pub. L. 99–509 set out as a note under section 1395y of this title.

Section 9219(a)(3)(A) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to months beginning with January 1983 for premiums for months beginning with the first month that begins more than 30 days after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Section 2302(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to premiums for months beginning with January 1986.''

Section 2338(d)(1) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to months beginning with January 1983 for premiums for months beginning with the first month which begins more than 30 days after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1983 AMENDMENTS; TRANSITIONAL RULE

Section 606(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and sections 1395i–2, 1395v, 1395w, and 1395mm of this title] shall apply to premiums for months beginning with January 1984, and for months after June 1983 and before January 1984—

''(1) the monthly premiums under part A and under part B of title XVIII of the Social Security Act [parts A and B of this subchapter] for individuals enrolled under each respective part shall be the monthly premium under that part for the month of June 1983, and

''(2) the amount of the Government contributions under section 1844(a)(1) of such Act [section 1395w(a)(1) of this title] shall be computed on the basis of the actuarially adequate rate which would have been in effect under part B of title XVIII of such Act for such months without regard to the amendments made by this section, but using the amount of the premium in effect for the month of June 1983.''

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 not applicable to enrollments pursuant to written requests for enrollment filed before Oct. 1, 1981, see section 2151(b) of Pub. L. 97–35, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–499 applicable to enrollments occurring on or after Apr. 1, 1981, see section 945(d) of Pub. L. 96–499, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective with respect to monthly benefits and lump-sum death payments for deaths occurring after December 1978, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 104(b) of Pub. L. 94–182 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to determinations made under section 1839(c)(3) of the Social Security Act [subsec. (c)(3) of this section] after the date of the enactment of this Act [Dec. 31, 1975].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 effective Dec. 1, 1968, see section 145(e) of Pub. L. 90–248, set out as a note under section 1395p of this title.

DETERMINATION OF PREMIUM AMOUNTS BY SECRETARY

Pub. L. 90–97, § 2, Sept. 30, 1967, 81 Stat. 249, provided that: ''Notwithstanding the provisions of section 1839(a) and (b) of the Social Security Act [subsecs. (a) and (b) of this section]—

''(1) the dollar amount applicable for premiums under part B of title XVIII of such Act [this part] for each month before April 1968 shall be $3, and

''(2) the Secretary of Health, Education, and Welfare may determine and promulgate such dollar amount for months after March 1968 and before January 1970 at any time on or before December 31, 1967.''

PERSONS ENROLLING BEFORE APRIL 1, 1968, WHO DID NOT ENROLL DURING THEIR INITIAL ENROLLMENT PERIOD

Pub. L. 90–97, § 3(b), Sept. 30, 1967, 81 Stat. 250, provided that: ''In the case of any individual who did not enroll in the insurance program established under part B of title XVIII of the Social Security Act [this part] in his initial enrollment period, but does so enroll before April 1, 1968, the enrollment period in which he so enrolls shall, for purposes of section 1839(c) of such Act [subsec. (c) of this section], be deemed to have closed on December 31, 1967.''

§ 1395s. Payment of premiums

(a) Deductions from section 402 or 423 monthly benefits

(1) In the case of an individual who is entitled to monthly benefits under section 402 or 423 of this title, his monthly premiums under this part

shall (except as provided in subsections (b)(1) and (c) of this section) be collected by deducting the amount thereof from the amount of such monthly benefits. Such deduction shall be made in such manner and at such times as the Commissioner of Social Security shall by regulation prescribe. Such regulations shall be prescribed after consultation with the Secretary.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates from benefits under section 402 or 423 of this title which are payable from such Trust Fund. Such transfer shall be made on the basis of a certification by the Commissioner of Social Security and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(b) Deductions from railroad retirement annuities or pensions

(1) In the case of an individual who is entitled to receive for a month an annuity under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] (whether or not such individual is also entitled for such month to a monthly insurance benefit under section 402 of this title), his monthly premiums under this part shall (except as provided in subsection (c) of this section) be collected by deducting the amount thereof from such annuity or pension. Such deduction shall be made in such manner and at such times as the Secretary shall by regulations prescribe. Such regulations shall be prescribed only after consultation with the Railroad Retirement Board.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Railroad Retirement Account to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfers shall be made on the basis of a certification by the Railroad Retirement Board and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(c) Portion of monthly premium in excess of deducted amount

If an individual to whom subsection (a) or (b) of this section applies estimates that the amount which will be available for deduction under such subsection for any premium payment period will be less than the amount of the monthly premiums for such period, he may (under regulations) pay to the Secretary such portion of the monthly premiums for such period as he desires.

(d) Deductions from civil service retirement annuities

(1) In the case of an individual receiving an annuity under subchapter III of chapter 83 of title 5 or any other law administered by the Director of the Office of Personnel Management providing retirement or survivorship protection, to whom neither subsection (a) nor subsection (b) of this section applies, his monthly premiums under this part (and the monthly premiums of the spouse of such individual under this part if neither subsection (a) nor subsection (b) of this section applies to such spouse and if such individual agrees) shall, upon notice from the Secretary of Health and Human Services to the Director of the Office of Personnel Management, be collected by deducting the amount thereof from each installment of such annuity. Such deduction shall be made in such manner and at such times as the Director of the Office of Personnel Management may determine. The Director of the Office of Personnel Management shall furnish such information as the Secretary of Health and Human Services may reasonably request in order to carry out his functions under this part with respect to individuals to whom this subsection applies. A plan described in section 8903 or 8903a of title 5 may reimburse each annuitant enrolled in such plan an amount equal to the premiums paid by him under this part if such reimbursement is paid entirely from funds of such plan which are derived from sources other than the contributions described in section 8906 of such title.

(2) The Secretary of the Treasury shall, from time to time, but not less often than quarterly, transfer from the Civil Service Retirement and Disability Fund, or the account (if any) applicable in the case of such other law administered by the Director of the Office of Personnel Management, to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfer shall be made on the basis of a certification by the Director of the Office of Personnel Management and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(e) Manner and time of payment prescribed by Secretary

In the case of an individual who participates in the insurance program established by this part but with respect to whom none of the preceding provisions of this section applies, or with respect to whom subsection (c) of this section applies, the premiums shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe.

(f) Deposit of amounts in Treasury

Amounts paid to the Secretary under subsection (c) or (e) of this section shall be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund.

(g) Premium payability period

In the case of an individual who participates in the insurance program established by this part, premiums shall be payable for the period commencing with the first month of his coverage period and ending with the month in which he dies or, if earlier, in which his coverage under such program terminates.

(h) Exempted monthly benefits

In the case of an individual who is enrolled under the program established by this part as a member of a coverage group to which an agreement with a State entered into pursuant to sec-

tion 1395v of this title is applicable, subsections (a), (b), (c), and (d) of this section shall not apply to his monthly premium for any month in his coverage period which is determined under section 1395v(d) of this title.

(i) Adjustments for individuals enrolled in Medicare+Choice plans

In the case of an individual enrolled in a Medicare+Choice plan, the Secretary shall provide for necessary adjustments of the monthly beneficiary premium to reflect 80 percent of any reduction elected under section 1395w–24(f)(1)(E) of this title and to reflect any credit provided under section 1395w–24(b)(1)(C)(iv) of this title. To the extent to which the Secretary determines that such an adjustment is appropriate, with the concurrence of any agency responsible for the administration of such benefits, such premium adjustment may be provided directly, as an adjustment to any social security, railroad retirement, or civil service retirement benefits, or, in the case of an individual who receives medical assistance under subchapter XIX of this chapter for medicare costs described in section 1396d(p)(3)(A)(ii) of this title, as an adjustment to the amount otherwise owed by the State for such medical assistance.

(Aug. 14, 1935, ch. 531, title XVIII, § 1840, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 306; amended Pub. L. 89–384, § 4(c), Apr. 8, 1966, 80 Stat. 106; Pub. L. 90–248, title I, § 166, title IV, § 403(g), Jan. 2, 1968, 81 Stat. 874, 932; Pub. L. 92–603, title II, §§ 201(c)(6), 263(a)–(d)(3), Oct. 30, 1972, 86 Stat. 1373, 1448, 1449; Pub. L. 93–445, title III, § 306, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 98–369, div. B, title III, § 2354(b)(11), title VI, § 2663(j)(2)(F)(ii), July 18, 1984, 98 Stat. 1101, 1170; Pub. L. 99–53, § 2(g), June 17, 1985, 99 Stat. 94; Pub. L. 100–360, title II, § 212(b)(1), July 1, 1988, 102 Stat. 740; Pub. L. 100–485, title VI, § 608(d)(10)(B), Oct. 13, 1988, 102 Stat. 2415; Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 103–296, title I, § 108(c)(2), Aug. 15, 1994, 108 Stat. 1485; Pub. L. 106–554, § 1(a)(6) [title VI, § 606(a)(2)(B)(ii)], Dec. 21, 2000, 114 Stat. 2763, 2763A–557; Pub. L. 108–173, title II, § 222(*l*)(2)(B), Dec. 8, 2003, 117 Stat. 2206.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (b)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

2003—Subsec. (i). Pub. L. 108–173 inserted ''and to reflect any credit provided under section 1395w–24(b)(1)(C)(iv) of this title'' after ''section 1395w–24(f)(1)(E) of this title'' in first sentence.

2000—Subsec. (i). Pub. L. 106–554 added subsec. (i).

1994—Subsec. (a)(1). Pub. L. 103–296, § 108(c)(2)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' and inserted at end ''Such regulations shall be prescribed after consultation with the Secretary.''

Subsec. (a)(2). Pub. L. 103–296, § 108(c)(2)(B), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

1989—Subsec. (i). Pub. L. 101–234 repealed Pub. L. 100–360, § 212(b)(1), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (i). Pub. L. 100–485 substituted ''Supplementary'' for ''Supplemental''.

Pub. L. 100–360 added subsec. (i) relating to transfer to flat prescription drug premiums to Federal Catastrophic Drug Insurance Trust Fund.

1985—Subsec. (d)(1). Pub. L. 99–53 inserted reference to section 8903a of title 5.

1984—Subsec. (a)(2). Pub. L. 98–369, § 2663(j)(2)(F)(ii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(1). Pub. L. 98–369, § 2354(b)(11), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission''.

Pub. L. 98–369, § 2663(j)(2)(F)(ii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(2). Pub. L. 98–369, § 2354(b)(11), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission''.

1974—Subsec. (b)(1). Pub. L. 93–445 substituted ''under the Railroad Retirement Act of 1974'' for ''or pension under the Railroad Retirement Act of 1937''.

1972—Subsec. (a)(1). Pub. L. 92–603, §§ 201(c)(6)(A), 263(a), substituted ''subsections (b)(1) and (c)'' for ''subsection (d)'' and inserted reference to section 423 of this title.

Subsec. (a)(2). Pub. L. 92–603, § 201(c)(6)(B), inserted reference to section 423 of this title.

Subsec. (b)(1). Pub. L. 92–603, § 263(b), inserted ''(whether or not such individual is also entitled for such month to a monthly insurance benefit under section 402 of this title)'' after ''1937'' and substituted ''subsection (c)'' for ''subsection (d)''.

Subsec. (c). Pub. L. 92–603, § 263(c), struck out subsec. (c) covering individuals entitled both to monthly benefits under section 402 of this title and to an annuity or pension under Railroad Retirement Act of 1937 and redesignated former subsec. (d) as (c).

Subsec. (d). Pub. L. 92–603, § 263(c), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 92–603, § 263(c), (d)(1), redesignated subsec. (f) as (e) and substituted ''subsection (c)'' for ''subsection (d)''. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 92–603, § 263(c), (d)(2), redesignated subsec. (g) as (f) and substituted ''subsections (c) or (e)'' for ''subsections (d) or (f)''. Former subsec. (f) redesignated (e) and amended.

Subsec. (g). Pub. L. 92–603, § 263(c), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f) and amended.

Subsecs. (h), (i). Pub. L. 92–603, § 263(c), (d)(3), redesignated subsec. (i) as (h) and substituted ''(c) and (d)'' for ''(c), (d), and (e)''. Former subsec. (h) redesignated (g).

1968—Subsec. (e). Pub. L. 90–248 provided for reimbursement of civil service retirement annuitants for certain premium payments under supplementary medical insurance program, and substituted ''subchapter III of chapter 83 of Title 5 or any other law'' and ''such other law'' for ''the Civil Service Retirement Act, or other Act'' and ''such other Act'', in pars. (1) and (2), respectively.

1966—Subsec. (i). Pub. L. 89–384 added subsec. (i).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006,

see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, § 606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(b)(11) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(j)(2)(F)(ii) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENT

Section 263(f) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395t and 1395u of this title] with respect to collection of premiums shall apply to premiums becoming due and payable after the fourth month following the month in which this Act is enacted [October 1972].''

§ 1395t. Federal Supplementary Medical Insurance Trust Fund

(a) Creation; deposits; fund transfers

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ''Federal Supplementary Medical Insurance Trust Fund'' (hereinafter in this section referred to as the ''Trust Fund''). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, such amounts as may be deposited in, or appropriated to, such fund as provided in this part, and such amounts as may be deposited in, or appropriated to, the Medicare Prescription Drug Account established by section 1395w–116 of this title or the Transitional Assistance Account established by section 1395w–141(k)(1) of this title.

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the ''Board of Trustees'') composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the ''Managing Trustee''). The Administrator of the Centers for Medicare & Medicaid Services shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years; Each report provided under paragraph (2) beginning with the report in 2005 shall include the information specified in section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.[1]

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall be printed as a House document of the session of

[1] So in original. See 2003 Amendment note below.

the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

(c) Investment of Trust Fund by Managing Trustee

It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Authority of Managing Trustee to sell obligations

Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) Interest on or proceeds from sale or redemption of obligations

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) Transfers to other Funds

There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(g) Payments from Trust Fund of amounts provided for by this part or with respect to administrative expenses

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g)(1) of this title. The payments provided for under part D of this subchapter, other than under section 1395w–141(k)(2) of this title, shall be made from the Medicare Prescription Drug Account in the Trust Fund. The payments provided for under section 1395w–141(k)(2) of this title shall be made from the Transitional Assistance Account in the Trust Fund.

(h) Payments from Trust Fund of costs incurred by Director of Office of Personnel Management

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to pay the costs incurred by the Director of the Office of Personnel Management in making deductions pursuant to section 1395s(d) of this title or pursuant to section 1395w–113(c)(1) or 1395w–24(d)(2)(A) of this title (in which case payments shall be made in appropriate part from the Medicare Prescription Drug Account in the Trust Fund). During each fiscal year, or after the close of such fiscal year, the Director of the Office of Personnel Management shall certify to the Secretary the amount of the costs the Director incurred in making such deductions, and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

(i) Payments from Trust Fund of costs incurred by Railroad Retirement Board

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to pay the costs incurred by the Railroad Retirement Board for services performed pursuant to section 1395s(b)(1) and section 1395u(g) of this title and pursuant to sections 1395w–113(c)(1) and 1395w–24(d)(2)(A) of this title (in which case payments shall be made in appropriate part from the Medicare Prescription Drug Account in the Trust Fund). During each fiscal year or after the close of such fiscal year, the Railroad Retirement Board shall certify to the Secretary the amount of the costs it incurred in performing such services and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

(Aug. 14, 1935, ch. 531, title XVIII, § 1841, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 308; amended Pub. L. 90–248, title I, § 169(a), Jan. 2, 1968, 81 Stat. 875; Pub. L. 92–603, title I, § 132(e), title II, § 263(d)(4), (e), Oct. 30, 1972, 86 Stat. 1361, 1449; Pub. L. 95–292, § 5, June 13, 1978, 92 Stat. 315; Pub. L. 98–21, title I, § 154(c), title III, § 341(c), Apr. 20, 1983, 97 Stat. 107, 135; Pub. L. 98–369, div. B, title III, § 2354(b)(2), (11), (12), title VI, § 2663(j)(2)(F)(iii), July 18, 1984, 98 Stat. 1100, 1101, 1170; Pub. L. 99–272, title IX, § 9213(b), Apr. 7, 1986, 100 Stat. 180; Pub. L. 100–360, title II, § 212(b)(2), (c)(4), July 1, 1988, 102 Stat. 740, 741; Pub. L. 100–647, title VIII, § 8005(a), Nov. 10, 1988, 102 Stat. 3781; Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 103–296, title I, § 108(c)(3), Aug. 15, 1994, 108 Stat. 1485; Pub. L. 108–173, title I, §§ 101(e)(3)(C), 105(d), title VIII, § 801(d)(2), title IX, § 900(e)(1)(E), Dec. 8, 2003, 117 Stat. 2151, 2166, 2359, 2371.)

REFERENCES IN TEXT

Section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (b)(2), is section 801(a) of Pub. L. 108–173, which is set out as a note under section 1395i of this title.

Part D of this subchapter, referred to in subsec. (g), is classified to section 1395w–101 et seq. of this title.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173, § 105(d)(1), inserted ''or the Transitional Assistance Account established by section 1395w–141(k)(1) of this title'' after ''section 1395w–116 of this title''.

Pub. L. 108–173, § 101(e)(3)(C)(i), substituted ''section 401(i)(1) of this title,'' for ''section 401(i)(1) of this title, and'' and inserted '', and such amounts as may be deposited in, or appropriated to, the Medicare Prescription Drug Account established by section 1395w–116 of this title'' before period at end.

Subsec. (b). Pub. L. 108–173, § 900(e)(1)(E), in introductory provisions, substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' and, in concluding provisions, substituted ''Chief Actuary of the Centers for Medicare & Medicaid Services'' for ''Chief Actuarial Officer of the Health Care Financing Administration''.

Subsec. (b)(2). Pub. L. 108–173, § 801(d)(2), inserted at end ''Each report provided under paragraph (2) beginning with the report in 2005 shall include the information specified in section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.''

Subsec. (g). Pub. L. 108–173, § 105(d)(2), inserted at end ''The payments provided for under section 1395w–141(k)(2) of this title shall be made from the Transitional Assistance Account in the Trust Fund.''

Pub. L. 108–173, § 101(e)(3)(C)(ii), inserted at end ''The payments provided for under part D of this subchapter, other than under section 1395w–141(k)(2) of this title, shall be made from the Medicare Prescription Drug Account in the Trust Fund.''

Subsec. (h). Pub. L. 108–173, § 101(e)(3)(C)(iii), inserted ''or pursuant to section 1395w–113(c)(1) or 1395w–24(d)(2)(A) of this title (in which case payments shall be made in appropriate part from the Medicare Prescription Drug Account in the Trust Fund)'' after ''section 1395s(d) of this title''.

Subsec. (i). Pub. L. 108–173, § 101(e)(3)(C)(iv), inserted ''and pursuant to sections 1395w–113(c)(1) and 1395w–24(d)(2)(A) of this title (in which case payments shall be made in appropriate part from the Medicare Prescription Drug Account in the Trust Fund)'' after ''section 1395u(g) of this title''.

1994—Subsec. (b). Pub. L. 103–296 inserted ''the Commissioner of Social Security,'' after ''composed of'' in introductory provisions.

1989—Subsecs. (a), (b). Pub. L. 101–234 repealed Pub. L. 100–360, § 212(b)(2), (c)(4), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (a). Pub. L. 100–360, § 212(b)(2), inserted three sentences at end providing for transfer of supplemental catastrophic coverage premiums into the Federal Supplementary Medical Insurance Trust Fund.

Subsec. (b). Pub. L. 100–647 inserted after first sentence ''A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term.''

Pub. L. 100–360, § 212(c)(4), inserted after sixth sentence ''Such report shall also identify (and treat separately) those receipts and outlays in the Trust Fund which are also receipts and outlays in the Medicare Catastrophic Coverage Account created under section 1395t–2 of this title.''

1986—Subsec. (b). Pub. L. 99–272 struck out provision at end of penultimate sentence that the certification shall not refer to economic assumptions underlying Trustee's report.

1984—Subsec. (c). Pub. L. 98–369, § 2354(b)(2), substituted ''under chapter 31 of title 31'' for ''under the Second Liberty Bond Act, as amended''.

Subsecs. (f), (g). Pub. L. 98–369, § 2663(j)(2)(F)(iii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

Subsec. (h). Pub. L. 98–369, § 2663(j)(2)(F)(iii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Pub. L. 98–369, § 2354(b)(11), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission'' in two places.

Pub. L. 98–369, § 2354(b)(12), substituted ''the Director'' for ''it''.

Subsec. (i). Pub. L. 98–369, § 2663(j)(2)(F)(iii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1983—Subsec. (b). Pub. L. 98–21, § 341(c)(1), substituted ''Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate'' for ''Secretary of Health, Education, and Welfare, all ex officio'' in provisions preceding par. (1).

Pub. L. 98–21, § 154(c), inserted at end provision that the report referred to in par. (2) shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable, and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Pub. L. 98–21, § 341(c)(2), inserted at end provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

1978—Subsec. (b). Pub. L. 95–292 substituted ''Administrator of the Health Care Financing Administration'' for ''Commissioner of Social Security'' in provisions preceding par. (1).

1972—Subsec. (a). Pub. L. 92–603, § 132(e), inserted ''such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and'' after ''consist of'' and before ''such amounts''.

Subsec. (h). Pub. L. 92–603, § 263(d)(4), substituted ''1395s(d)'' for ''1395s(e)''.

Subsec. (i). Pub. L. 92–603, § 263(e), added subsec. (i).

1968—Subsec. (b)(2). Pub. L. 90–248 substituted ''April'' for ''March''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to members of Board of Trustees of Federal Supplementary Medical Insurance Trust Fund serving on such Board as members of the public on or after Nov. 10, 1988, see section 8005(b) of Pub. L. 100–647, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(b)(2), (11), (12) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(j)(2)(F)(iii) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 154(c) and 341(c) of Pub. L. 98–21 effective Apr. 20, 1983, see sections 154(e) and 341(d) of Pub. L. 98–21, set out as notes under section 401 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 132(e) of Pub. L. 92–603 applicable with respect to gifts and bequests received after Oct. 30, 1972, see section 132(f) of Pub. L. 92–603, set out as a note under section 401 of this title.

Amendment by section 263(d)(4), (e) of Pub. L. 92–603 with respect to collection of premiums applicable to premiums becoming due and payable after the fourth month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 263(f) of Pub. L. 92–603, set out as a note under section 1395s of this title.

DISPOSAL OF FUNDS IN FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND

Section 102(c) of Pub. L. 101–234 provided that: ''Any balance in the Federal Hospital Insurance Catastrophic Coverage Reserve Fund (created under section 1817A(a) of the Social Security Act [former section 1395i–1a(a) of this title], as inserted by section 112(a) of MCCA [Pub. L. 100–360]) as of January 1, 1990, shall be transferred into the Federal Supplementary Medical Insurance Trust Fund and any amounts payable due to overpayments into such Trust Fund shall be payable from the Federal Supplementary Medical Insurance Trust Fund.''

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Notwithstanding subsec. (b)(2) of this section, the annual report of the Board of Trustees of the Trust Fund required for calendar year 1983 under this section may be filed at any time not later than forty-five days after Apr. 20, 1983, see section 154(d) of Pub. L. 98–21, set out as a note under section 401 of this title.

§§ 1395t–1, 1395t–2. Repealed. Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981

Section 1395t–1, act Aug. 14, 1935, ch. 531, title XVIII, § 1841A, as added July 1, 1988, Pub. L. 100–360, title II, § 212(a), 102 Stat. 739; amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(10)(A), 102 Stat. 2415, provided for the creation of the Federal Catastrophic Drug Insurance Trust Fund.

Section 1395t–2, act Aug. 14, 1935, ch. 531, title XVIII, § 1841B, as added July 1, 1988, Pub. L. 100–360, title II, § 213, formerly § 213(a), 102 Stat. 741, as redesignated Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(11), 102 Stat. 2415, provided for the creation of the Medicare Catastrophic Coverage Account.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1990, see section 202(b) of Pub. L. 101–234, set out as an Effective Date of 1989 Amendment note under section 401 of this title.

§ 1395u. Provisions relating to the administration of part B

(a) In general

The administration of this part shall be conducted through contracts with medicare administrative contractors under section 1395kk–1 of this title.

(b) Determination of reasonable charges

(1) Repealed. Pub. L. 108–173, title IX, § 911(c)(3)(A), Dec. 8, 2003, 117 Stat. 2384.

(2)(A), (B) Repealed. Pub. L. 108–173, title IX, § 911(c)(3)(B)(i), Dec. 8, 2003, 117 Stat. 2384.

(C) In the case of residents of nursing facilities who receive services described in clause (i) or (ii) of section 1395x(s)(2)(K) of this title performed by a member of a team, the Secretary shall instruct medicare administrative contractors to develop mechanisms which permit routine payment under this part for up to 1.5 visits per month per resident. In the previous sentence, the term ''team'' refers to a physician and includes a physician assistant acting under the supervision of the physician or a nurse practitioner working in collaboration with that physician, or both.

(3) The Secretary—

(A) shall take such action as may be necessary to assure that, where payment under this part for a service is on a cost basis, the cost is reasonable cost (as determined under section 1395x(v) of this title);

(B) shall take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable

service and under comparable circumstances, to the policyholders and subscribers of the medicare administrative contractor, and such payment will (except as otherwise provided in section 1395gg(f) of this title) be made—

(i) on the basis of an itemized bill; or

(ii) on the basis of an assignment under the terms of which (I) the reasonable charge is the full charge for the service, (II) the physician or other person furnishing such service agrees not to charge (and to refund amounts already collected) for services for which payment under this subchapter is denied under section 1320c–3(a)(2) of this title by reason of a determination under section 1320c–3(a)(1)(B) of this title, and (III) the physician or other person furnishing such service agrees not to charge (and to refund amounts already collected) for such service if payment may not be made therefor by reason of the provisions of paragraph (1) of section 1395y(a) of this title, and if the individual to whom such service was furnished was without fault in incurring the expenses of such service, and if the Secretary's determination that payment (pursuant to such assignment) was incorrect and was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter (except in the case of physicians' services and ambulance service furnished as described in section 1395y(a)(4) of this title, other than for purposes of section 1395gg(f) of this title);

but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the close of the calendar year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calendar year to have been furnished in the succeeding calendar year);

(C) to (E) Repealed. Pub. L. 108–173, title IX, § 911(c)(3)(C)(iv), Dec. 8, 2003, 117 Stat. 2384;

(F) shall take such action as may be necessary to assure that where payment under this part for a service rendered is on a charge basis, such payment shall be determined on the basis of the charge that is determined in accordance with this section on the basis of customary and prevailing charge levels in effect at the time the service was rendered or, in the case of services rendered more than 12 months before the year in which the bill is submitted or request for payment is made, on the basis of such levels in effect for the 12-month period preceding such year;

(G) shall, for a service that is furnished with respect to an individual enrolled under this part, that is not paid on an assignment-related basis, and that is subject to a limiting charge under section 1395w–4(g) of this title—

(i) determine, prior to making payment, whether the amount billed for such service exceeds the limiting charge applicable under section 1395w–4(g)(2) of this title;

(ii) notify the physician, supplier, or other person periodically (but not less often than once every 30 days) of determinations that amounts billed exceeded such applicable limiting charges; and

(iii) provide for prompt response to inquiries of physicians, suppliers, and other persons concerning the accuracy of such limiting charges for their services;

(H) shall implement—

(i) programs to recruit and retain physicians as participating physicians in the area served by the medicare administrative contractor, including educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and

(ii) programs to familiarize beneficiaries with the participating physician program and to assist such beneficiaries in locating participating physicians; [1]

(I) Repealed. Pub. L. 108–173, title IX, § 911(c)(3)(C)(vi), Dec. 8, 2003, 117 Stat. 2384;

(J), (K) Repealed. Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981;

(L) shall monitor and profile physicians' billing patterns within each area or locality and provide comparative data to physicians whose utilization patterns vary significantly from other physicians in the same payment area or locality.

In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services. No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (i) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the 12-month period ending on the June 30 last preceding the start of the calendar year in which the service is rendered. In the case of physicians' services the prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence may not exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, or (with respect to physicians' services furnished in a year after 1987) the level determined under this sentence (or under any other provision of law affecting the prevailing charge level) for the previous year except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by year-

[1] So in original. Probably should be followed by ''and''.

to-year economic changes. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1395x(s)(6) of this title, charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality. In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (I) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, medicare administrative contractor, or agent of the Department of Health and Human Services performing functions under this subchapter and acting within the scope of his or its authority, and (II) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected. Notwithstanding the provisions of the third and fourth sentences preceding this sentence, the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such third and fourth sentences for any calendar year after 1974 shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975, and shall remain at such prevailing charge level until the prevailing charge for a year (as adjusted by economic index data) equals or exceeds such prevailing charge level. The amount of any charges for outpatient services which shall be considered reasonable shall be subject to the limitations established by regulations issued by the Secretary pursuant to section 1395x(v)(1)(K) of this title, and in determining the reasonable charge for such services, the Secretary may limit such reasonable charge to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extent to which overhead costs associated with such outpatient services have been included in the reasonable cost or charge of the facility.

(4)(A)(i) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(ii)(I) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(II) In determining the prevailing charge levels under the fourth sentence of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall permit an additional one percentage point increase in the increase otherwise permitted under that sentence.

(iii) In determining the maximum allowable prevailing charges which may be recognized consistent with the index described in the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by participating physicians, the Secretary shall treat the maximum allowable prevailing charges recognized as of December 31, 1986, under such sentence with respect to participating physicians as having been justified by economic changes.

(iv) The reasonable charge for physicians' services furnished on or after January 1, 1987, and before January 1, 1992, by a nonparticipating physician shall be no greater than the applicable percent of the prevailing charge levels established under the third and fourth sentences of paragraph (3) (or under any other applicable provision of law affecting the prevailing charge level). In the previous sentence, the term ''applicable percent'' means for services furnished (I) on or after January 1, 1987, and before April 1, 1988, 96 percent, (II) on or after April 1, 1988, and before January 1, 1989, 95.5 percent, and (III) on or after January 1, 1989, 95 percent.

(v) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning January 1, 1987.

(vi) Before each year (beginning with 1989), the Secretary shall establish a prevailing charge floor for primary care services (as defined in subsection (i)(4) of this section) equal to 60 percent of the estimated average prevailing charge levels based on the best available data (determined, under the third and fourth sentences of paragraph (3) and under paragraph (4), without regard to this clause and without regard to physician specialty) for such service for all localities in the United States (weighted by the relative frequency of the service in each locality) for the year.

(vii) Beginning with 1987, the percentage increase in the MEI (as defined in subsection (i)(3) of this section) for each year shall be the same for nonparticipating physicians as for participating physicians.

(B)(i) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning July 1, 1983.

(ii) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services—

(I) if the physician was not a participating physician at any time during the 12-month period beginning on October 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning July 1, 1983, and

(II) if the physician was a participating physician at any time during the 12-month period beginning on October 1, 1984, the physician's customary charges shall be determined based upon the physician's actual charges billed during the 12-month period ending on March 31, 1985.

(iii) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning January 1, 1987.

(iv) In determining the reasonable charge under paragraph (3) for physicians' services (other than primary care services, as defined in subsection (i)(4) of this section) furnished during 1991, the customary charges shall be the same customary charges as were recognized under this section for the 9-month period beginning April 1, 1990. In a case in which subparagraph (F) applies (relating to new physicians) so as to limit the customary charges of a physician during 1990 to a percent of prevailing charges, the previous sentence shall not prevent such limit on customary charges under such subparagraph from increasing in 1991 to a higher percent of such prevailing charges.

(C) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during periods beginning after September 30, 1985, the Secretary shall treat the level as set under subparagraph (A)(i) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A)(i).

(D)(i) In determining the customary charges for physicians' services furnished during the 8-month period beginning May 1, 1986, or the 12-month period beginning January 1, 1987, by a physician who was not a participating physician (as defined in subsection (h)(1) of this section) on September 30, 1985, the Secretary shall not recognize increases in actual charges for services furnished during the 15-month period beginning on July 1, 1984, above the level of the physician's actual charges billed in the 3-month period ending on June 30, 1984.

(ii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) on April 30, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 7-month period beginning on October 1, 1985, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

(iii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, or January 1, 1988, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) on December 31, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 8-month period beginning on May 1, 1986, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

(iv) In determining the customary charges for a physicians' service furnished on or after January 1, 1988, if a physician was a nonparticipating physician in a previous year (beginning with 1987), the Secretary shall not recognize any amount of such actual charges (for that service furnished during such previous year) that exceeds the maximum allowable actual charge for such service established under subsection (j)(1)(C) of this section.

(E)(i) For purposes of this part for physicians' services furnished in 1987, the percentage increase in the MEI is 3.2 percent.

(ii) For purposes of this part for physicians' services furnished in 1988, on or after April 1, the percentage increase in the MEI is—

(I) 3.6 percent for primary care services (as defined in subsection (i)(4) of this section), and

(II) 1 percent for other physicians' services.

(iii) For purposes of this part for physicians' services furnished in 1989, the percentage increase in the MEI is—

(I) 3.0 percent for primary care services, and

(II) 1 percent for other physicians' services.

(iv) For purposes of this part for items and services furnished in 1990, after March 31, 1990, the percentage increase in the MEI is—

(I) 0 percent for radiology services, for anesthesia services, and for other services specified in the list referred to in paragraph (14)(C)(i),

(II) 2 percent for other services (other than primary care services), and

(III) such percentage increase in the MEI (as defined in subsection (i)(3) of this section) as would be otherwise determined for primary care services (as defined in subsection (i)(4) of this section).

(v) For purposes of this part for items and services furnished in 1991, the percentage increase in the MEI is—

(I) 0 percent for services (other than primary care services), and

(II) 2 percent for primary care services (as defined in subsection (i)(4) of this section).

(5) Repealed. Pub. L. 108–173, title IX, § 911(c)(3)(D), Dec. 8, 2003, 117 Stat. 2384.

(6) No payment under this part for a service provided to any individual shall (except as provided in section 1395gg of this title) be made to anyone other than such individual or (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) the physician or other person who provided the service, except that (A) payment may be made (i) to the employer of

such physician or other person if such physician or other person is required as a condition of his employment to turn over his fee for such service to his employer, or (ii) where the service was provided under a contractual arrangement between such physician or other person and an entity, to the entity if, under the contractual arrangement, the entity submits the bill for the service and the contractual arrangement meets such program integrity and other safeguards as the Secretary may determine to be appropriate, (B) payment may be made to an entity (i) which provides coverage of the services under a health benefits plan, but only to the extent that payment is not made under this part, (ii) which has paid the person who provided the service an amount (including the amount payable under this part) which that person has accepted as payment in full for the service, and (iii) to which the individual has agreed in writing that payment may be made under this part, (C) in the case of services described in clause (i) of section 1395x(s)(2)(K) of this title, payment shall be made to either (i) the employer of the physician assistant involved, or (ii) with respect to a physician assistant who was the owner of a rural health clinic (as described in section 1395x(aa)(2) of this title) for a continuous period beginning prior to August 5, 1997, and ending on the date that the Secretary determines such rural health clinic no longer meets the requirements of section 1395x(aa)(2) of this title, payment may be made directly to the physician assistant, (D) payment may be made to a physician for physicians' services (and services furnished incident to such services) furnished by a second physician to patients of the first physician if (i) the first physician is unavailable to provide the services; (ii) the services are furnished pursuant to an arrangement between the two physicians that (I) is informal and reciprocal, or (II) involves per diem or other fee-for-time compensation for such services; (iii) the services are not provided by the second physician over a continuous period of more than 60 days; and (iv) the claim form submitted to the medicare administrative contractor for such services includes the second physician's unique identifier (provided under the system established under subsection (r) of this section) and indicates that the claim meets the requirements of this subparagraph for payment to the first physician, (E) in the case of an item or service (other than services described in section 1395yy(e)(2)(A)(ii) of this title) furnished by, or under arrangements made by, a skilled nursing facility to an individual who (at the time the item or service is furnished) is a resident of a skilled nursing facility, payment shall be made to the facility, (F) in the case of home health services (including medical supplies described in section 1395x(m)(5) of this title, but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who (at the time the item or service is furnished) is under a plan of care of a home health agency, payment shall be made to the agency (without regard to whether or not the item or service was furnished by the agency, by others under arrangement with them made by the agency, or when any other contracting or consulting arrangement, or otherwise), and (G) in the case of services in a hospital or clinic to which section 1395qq(e) of this title applies, payment shall be made to such hospital or clinic. No payment which under the preceding sentence may be made directly to the physician or other person providing the service involved (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) shall be made to anyone else under a reassignment or power of attorney (except to an employer or entity as described in subparagraph (A) of such sentence); but nothing in this subsection shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the individual to whom the service was provided or a reassignment from the physician or other person providing such service if such assignment or reassignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of the physician or other person providing the service from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such physician or other person under this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment. For purposes of subparagraph (C) of the first sentence of this paragraph, an employment relationship may include any independent contractor arrangement, and employer status shall be determined in accordance with the law of the State in which the services described in such clause are performed.

(7)(A) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title but which does not meet the conditions described in section 1395x(b)(7) of this title, the Secretary shall not provide (except on the basis described in subparagraph (C)) for payment for such services under this part—

(i) unless—

(I) the physician renders sufficient personal and identifiable physicians' services to the patient to exercise full, personal control over the management of the portion of the case for which the payment is sought,

(II) the services are of the same character as the services the physician furnishes to patients not entitled to benefits under this subchapter, and

(III) at least 25 percent of the hospital's patients (during a representative past period, as determined by the Secretary) who were not entitled to benefits under this subchapter and who were furnished services described in subclauses (I) and (II) paid all or a substantial part of charges (other than nominal charges) imposed for such services; and

(ii) to the extent that the payment is based upon a reasonable charge for the services in excess of the customary charge as determined in accordance with subparagraph (B).

(B) The customary charge for such services in a hospital shall be determined in accordance

with regulations issued by the Secretary and taking into account the following factors:

(i) In the case of a physician who is not a teaching physician (as defined by the Secretary), the Secretary shall take into account the amounts the physician charges for similar services in the physician's practice outside the teaching setting.

(ii) In the case of a teaching physician, if the hospital, its physicians, or other appropriate billing entity has established one or more schedules of charges which are collected for medical and surgical services, the Secretary shall base payment under this subchapter on the greatest of—

(I) the charges (other than nominal charges) which are most frequently collected in full or substantial part with respect to patients who were not entitled to benefits under this subchapter and who were furnished services described in subclauses (I) and (II) of subparagraph (A)(i),

(II) the mean of the charges (other than nominal charges) which were collected in full or substantial part with respect to such patients, or

(III) 85 percent of the prevailing charges paid for similar services in the same locality.

(iii) If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished to patients in such hospital on an assignment-related basis, the customary charge for such services shall be equal to 90 percent of the prevailing charges paid for similar services in the same locality.

(C) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title but which does not meet the conditions described in section 1395x(b)(7) of this title, if the conditions described in subclauses (I) and (II) of subparagraph (A)(i) are met and if the physician elects payment to be determined under this subparagraph, the Secretary shall provide for payment for such services under this part on the basis of regulations of the Secretary governing reimbursement for the services of hospital-based physicians (and not on any other basis).

(D)(i) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title but which does not meet the conditions described in section 1395x(b)(7) of this title, no payment shall be made under this part for services of assistants at surgery with respect to a surgical procedure if such hospital has a training program relating to the medical specialty required for such surgical procedure and a qualified individual on the staff of the hospital is available to provide such services; except that payment may be made under this part for such services, to the extent that such payment is otherwise allowed under this paragraph, if such services, as determined under regulations of the Secretary—

(I) are required due to exceptional medical circumstances,

(II) are performed by team physicians needed to perform complex medical procedures, or

(III) constitute concurrent medical care relating to a medical condition which requires the presence of, and active care by, a physician of another specialty during surgery,

and under such other circumstances as the Secretary determines by regulation to be appropriate.

(ii) For purposes of this subparagraph, the term ''assistant at surgery'' means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

(iii) The Secretary shall determine appropriate methods of reimbursement of assistants at surgery where such services are reimbursable under this part.

(8)(A)(i) The Secretary shall by regulation—

(I) describe the factors to be used in determining the cases (of particular items or services) in which the application of this subchapter to payment under this part (other than to physicians' services paid under section 1395w–4 of this title) results in the determination of an amount that, because of its being grossly excessive or grossly deficient, is not inherently reasonable, and

(II) provide in those cases for the factors to be considered in determining an amount that is realistic and equitable.

(ii) Notwithstanding the determination made in clause (i), the Secretary may not apply factors that would increase or decrease the payment under this part during any year for any particular item or service by more than 15 percent from such payment during the preceding year except as provided in subparagraph (B).

(B) The Secretary may make a determination under this subparagraph that would result in an increase or decrease under subparagraph (A) of more than 15 percent of the payment amount for a year, but only if—

(i) the Secretary's determination takes into account the factors described in subparagraph (C) and any additional factors the Secretary determines appropriate,

(ii) the Secretary's determination takes into account the potential impacts described in subparagraph (D), and

(iii) the Secretary complies with the procedural requirements of paragraph (9).

(C) The factors described in this subparagraph are as follows:

(i) The programs established under this subchapter and subchapter XIX of this chapter are the sole or primary sources of payment for an item or service.

(ii) The payment amount does not reflect changing technology, increased facility with that technology, or reductions in acquisition or production costs.

(iii) The payment amount for an item or service under this part is substantially higher or lower than the payment made for the item or service by other purchasers.

(D) The potential impacts of a determination under subparagraph (B) on quality, access, and beneficiary liability, including the likely effects on assignment rates and participation rates.

(9)(A) The Secretary shall consult with representatives of suppliers or other individuals who furnish an item or service before making a determination under paragraph (8)(B) with regard to that item or service.

(B) The Secretary shall publish notice of a proposed determination under paragraph (8)(B) in the Federal Register—

(i) specifying the payment amount proposed to be established with respect to an item or service,

(ii) explaining the factors and data that the Secretary took into account in determining the payment amount so specified, and

(iii) explaining the potential impacts described in paragraph (8)(D).

(C) After publication of the notice required by subparagraph (B), the Secretary shall allow not less than 60 days for public comment on the proposed determination.

(D)(i) Taking into consideration the comments made by the public, the Secretary shall publish in the Federal Register a final determination under paragraph (8)(B) with respect to the payment amount to be established with respect to the item or service.

(ii) A final determination published pursuant to clause (i) shall explain the factors and data that the Secretary took into consideration in making the final determination.

(10)(A)(i) In determining the reasonable charge for procedures described in subparagraph (B) and performed during the 9-month period beginning on April 1, 1988, the prevailing charge for such procedure shall be the prevailing charge otherwise recognized for such procedure for 1987—

(I) subject to clause (iii), reduced by 2.0 percent, and

(II) further reduced by the applicable percentage specified in clause (ii).

(ii) For purposes of clause (i), the applicable percentage specified in this clause is—

(I) 15 percent, in the case of a prevailing charge otherwise recognized (without regard to this paragraph and determined without regard to physician specialty) that is at least 150 percent of the weighted national average (as determined by the Secretary) of such prevailing charges for such procedure for all localities in the United States for 1987;

(II) 0 percent, in the case of a prevailing charge that does not exceed 85 percent of such weighted national average; and

(III) in the case of any other prevailing charge, a percent determined on the basis of a straight-line sliding scale, equal to $\frac{3}{13}$ of a percentage point for each percent by which the prevailing charge exceeds 85 percent of such weighted national average.

(iii) In no case shall the reduction under clause (i) for a procedure result in a prevailing charge in a locality for 1988 which is less than 85 percent of the Secretary's estimate of the weighted national average of such prevailing charges for such procedure for all localities in the United States for 1987 (based upon the best available data and determined without regard to physician specialty) after making the reduction described in clause (i)(I).

(B) The procedures described in this subparagraph are as follows: bronchoscopy, carpal tunnel repair, cataract surgery (including subsequent insertion of an intraocular lens), coronary artery bypass surgery, diagnostic and/or therapeutic dilation and curettage, knee arthroscopy, knee arthroplasty, pacemaker implantation surgery, total hip replacement, suprapubic prostatectomy, transurethral resection of the prostate, and upper gastrointestinal endoscopy.

(C) In the case of a reduction in the reasonable charge for a physicians' service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of such reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(D) There shall be no administrative or judicial review under section 1395ff of this title or otherwise of any determination under subparagraph (A) or under paragraph (11)(B)(ii).

(11)(A) In providing payment for cataract eyeglasses and cataract contact lenses, and professional services relating to them, under this part, each carrier shall—

(i) provide for separate determinations of the payment amount for the eyeglasses and lenses and of the payment amount for the professional services of a physician (as defined in section 1395x(r) of this title), and

(ii) not recognize as reasonable for such eyeglasses and lenses more than such amount as the Secretary establishes in guidelines relating to the inherent reasonableness of charges for such eyeglasses and lenses.

(B)(i) In determining the reasonable charge under paragraph (3) for a cataract surgical procedure, subject to clause (ii), the prevailing charge for such procedure otherwise recognized for participating and nonparticipating physicians shall be reduced by 10 percent with respect to procedures performed in 1987.

(ii) In no case shall the reduction under clause (i) for a surgical procedure result in a prevailing charge in a locality for a year which is less than 75 percent of the weighted national average of such prevailing charges for such procedure for all the localities in the United States for 1986.

(C)(i) The prevailing charge level determined with respect to A-mode ophthalmic ultrasound procedures may not exceed 5 percent of the prevailing charge level established with respect to extracapsular cataract removal with lens insertion.

(ii) The reasonable charge for an intraocular lens inserted during or subsequent to cataract surgery in a physician's office may not exceed the actual acquisition cost for the lens (taking into account any discount) plus a handling fee (not to exceed 5 percent of such actual acquisition cost).

(D) In the case of a reduction in the reasonable charge for a physicians' service or item under subparagraph (B) or (C), if a nonparticipating physician furnishes the service or item to an individual entitled to benefits under this part after the effective date of such reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(12) Repealed. Pub. L. 105–33, title IV, § 4512(b)(2), Aug. 5, 1997, 111 Stat. 444.

(13)(A) In determining payments under section 1395*l*(*l*) of this title and section 1395w–4 of this

title for anesthesia services furnished on or after January 1, 1994, the methodology for determining the base and time units used shall be the same for services furnished by physicians, for medical direction by physicians of two, three, or four certified registered nurse anesthetists, or for services furnished by a certified registered nurse anesthetist (whether or not medically directed) and shall be based on the methodology in effect, for anesthesia services furnished by physicians, as of August 10, 1993.

(B) The Secretary shall require claims for physicians' services for medical direction of nurse anesthetists during the periods in which the provisions of subparagraph (A) apply to indicate the number of such anesthetists being medically directed concurrently at any time during the procedure, the name of each nurse anesthetist being directed, and the type of procedure for which the services are provided.

(14)(A)(i) In determining the reasonable charge for a physicians' service specified in subparagraph (C)(i) and furnished during the 9-month period beginning on April 1, 1990, the prevailing charge for such service shall be the prevailing charge otherwise recognized for such service for 1989 reduced by 15 percent or, if less, ⅓ of the percent (if any) by which the prevailing charge otherwise applied in the locality in 1989 exceeds the locally-adjusted reduced prevailing amount (as determined under subparagraph (B)(i)) for the service.

(ii) In determining the reasonable charge for a physicians' service specified in subparagraph (C)(i) and furnished during 1991, the prevailing charge for such service shall be the prevailing charge otherwise recognized for such service for the period during 1990 beginning on April 1, reduced by the same amount as the amount of the reduction effected under this paragraph (as amended by the Omnibus Budget Reconciliation Act of 1990) for such service during such period.

(B) For purposes of this paragraph:

(i) The ''locally-adjusted reduced prevailing amount'' for a locality for a physicians' service is equal to the product of—

(I) the reduced national weighted average prevailing charge for the service (specified under clause (ii)), and

(II) the adjustment factor (specified under clause (iii)) for the locality.

(ii) The ''reduced national weighted average prevailing charge'' for a physicians' service is equal to the national weighted average prevailing charge for the service (specified in subparagraph (C)(ii)) reduced by the percentage change (specified in subparagraph (C)(iii)) for the service.

(iii) The ''adjustment factor'', for a physicians' service for a locality, is the sum of—

(I) the practice expense component (percent), divided by 100, specified in appendix A (pages 187 through 194) of the Report of the Medicare and Medicaid Health Budget Reconciliation Amendments of 1989, prepared by the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, (Committee Print 101–M, 101st Congress, 1st Session) for the service, multiplied by the geographic practice cost index value (specified in subparagraph (C)(iv)) for the locality, and

(II) 1 minus the practice expense component (percent), divided by 100.

(C) For purposes of this paragraph:

(i) The physicians' services specified in this clause are the procedures specified (by code and description) in the Overvalued Procedures List for Finance Committee, Revised September 20, 1989, prepared by the Physician Payment Review Commission which specification is of physicians' services that have been identified as overvalued by at least 10 percent based on a comparison of payments for such services under a resource-based relative value scale and of the national average prevailing charges under this part.

(ii) The ''national weighted average prevailing charge'' specified in this clause, for a physicians' service specified in clause (i), is the national weighted average prevailing charge for the service in 1989 as determined by the Secretary using the best data available.

(iii) The ''percentage change'' specified in this clause, for a physicians' service specified in clause (i), is the percent difference (but expressed as a positive number) specified for the service in the list referred to in clause (i).

(iv) The geographic practice cost index value specified in this clause for a locality is the Geographic Overhead Costs Index specified for the locality in table 1 of the September 1989 Supplement to the Geographic Medicare Economic Index: Alternative Approaches (prepared by the Urban Institute and the Center for Health Economics Research).

(D) In the case of a reduction in the prevailing charge for a physicians' service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of such reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(15)(A) In determining the reasonable charge for surgery, radiology, and diagnostic physicians' services which the Secretary shall designate (based on their high volume of expenditures under this part) and for which the prevailing charge (but for this paragraph) differs by physician specialty, the prevailing charge for such a service may not exceed the prevailing charge or fee schedule amount for that specialty of physicians that furnish the service most frequently nationally.

(B) In the case of a reduction in the prevailing charge for a physician's service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of the reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(16)(A) In determining the reasonable charge for all physicians' services other than physicians' services specified in subparagraph (B) furnished during 1991, the prevailing charge for a locality shall be 6.5 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

(B) For purposes of subparagraph (A), the physicians' services specified in this subparagraph are as follows:

(i) Radiology, anesthesia and physician pathology services, the technical components of diagnostic tests specified in paragraph (17) and physicians' services specified in paragraph (14)(C)(i).

(ii) Primary care services specified in subsection (i)(4) of this section, hospital inpatient medical services, consultations, other visits, preventive medicine visits, psychiatric services, emergency care facility services, and critical care services.

(iii) Partial mastectomy; tendon sheath injections and small joint arthrocentesis; femoral fracture and trochanteric fracture treatments; endotracheal intubation; thoracentesis; thoracostomy; aneurysm repair; cystourethroscopy; transurethral fulguration and resection; tympanoplasty with mastoidectomy; and ophthalmoscopy.

(17) With respect to payment under this part for the technical (as distinct from professional) component of diagnostic tests (other than clinical diagnostic laboratory tests, tests specified in paragraph (14)(C)(i), and radiology services, including portable x-ray services) which the Secretary shall designate (based on their high volume of expenditures under this part), the reasonable charge for such technical component (including the applicable portion of a global service) may not exceed the national median of such charges for all localities, as estimated by the Secretary using the best available data.

(18)(A) Payment for any service furnished by a practitioner described in subparagraph (C) and for which payment may be made under this part on a reasonable charge or fee schedule basis may only be made under this part on an assignment-related basis.

(B) A practitioner described in subparagraph (C) or other person may not bill (or collect any amount from) the individual or another person for any service described in subparagraph (A), except for deductible and coinsurance amounts applicable under this part. No person is liable for payment of any amounts billed for such a service in violation of the previous sentence. If a practitioner or other person knowingly and willfully bills (or collects an amount) for such a service in violation of such sentence, the Secretary may apply sanctions against the practitioner or other person in the same manner as the Secretary may apply sanctions against a physician in accordance with subsection (j)(2) of this section in the same manner as such section applies with respect to a physician. Paragraph (4) of subsection (j) of this section shall apply in this subparagraph in the same manner as such paragraph applies to such section.

(C) A practitioner described in this subparagraph is any of the following:

(i) A physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1395x(aa)(5) of this title).

(ii) A certified registered nurse anesthetist (as defined in section 1395x(bb)(2) of this title).

(iii) A certified nurse-midwife (as defined in section 1395x(gg)(2) of this title).

(iv) A clinical social worker (as defined in section 1395x(hh)(1) of this title).

(v) A clinical psychologist (as defined by the Secretary for purposes of section 1395x(ii) of this title).

(vi) A registered dietitian or nutrition professional.

(D) For purposes of this paragraph, a service furnished by a practitioner described in subparagraph (C) includes any services and supplies furnished as incident to the service as would otherwise be covered under this part if furnished by a physician or as incident to a physician's service.

(19) For purposes of section 1395*l*(a)(1) of this title, the reasonable charge for ambulance services (as described in section 1395x(s)(7) of this title) provided during calendar year 1998 and calendar year 1999 may not exceed the reasonable charge for such services provided during the previous calendar year (after application of this paragraph), increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved reduced by 1.0 percentage point.

(c) Prompt payment of claims

(1) Repealed. Pub. L. 108–173, title IX, § 911(c)(4)(A), Dec. 8, 2003, 117 Stat. 2384.

(2)(A) Each contract under section 1395kk–1 of this title that provides for making payments under this part shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this part—

(i) which are clean claims, and

(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph:

(i) The term ''clean claim'' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.

(ii) The term ''applicable number of calendar days'' means—

(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days (or 19 calendar days with respect to claims submitted by participating physicians),

(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days (or 18 calendar days with respect to claims submitted by participating physicians),

(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period ending on or before September 30, 1993, 24 calendar days (or 17 calendar days with respect to claims submitted by participating physicians), and

(V) with respect to claims received in the 12-month period beginning October 1, 1993, and claims received in any succeeding 12-month period, 30 calendar days.

(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received, interest shall be paid at the rate used for purposes of section 3902(a) of title 31 (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.

(3)(A) Each contract under this section which provides for the disbursement of funds, as described in section 1395kk–1(a)(3)(B) of this title, shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this subchapter within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph, the term ''applicable number of calendar days'' means—

(i) with respect to claims submitted electronically as prescribed by the Secretary, 13 days, and

(ii) with respect to claims submitted otherwise, 26 days.

(4) Neither a medicare administrative contractor nor the Secretary may impose a fee under this subchapter—

(A) for the filing of claims related to physicians' services,

(B) for an error in filing a claim relating to physicians' services or for such a claim which is denied,

(C) for any appeal under this subchapter with respect to physicians' services,

(D) for applying for (or obtaining) a unique identifier under subsection (r) of this section, or

(E) for responding to inquiries respecting physicians' services or for providing information with respect to medical review of such services.

(d) to (f). Repealed. Pub. L. 108–173, title IX, § 911(c)(5), Dec. 8, 2003, 117 Stat. 2384

(g) Authority of Railroad Retirement Board to enter into contracts with medicare administrative contractors

The Railroad Retirement Board shall, in accordance with such regulations as the Secretary may prescribe, contract with a medicare administrative contractor or contractors to perform the functions set out in this section with respect to individuals entitled to benefits as qualified railroad retirement beneficiaries pursuant to section 426(a) of this title and section 231f(d) of title 45.

(h) Participating physician or supplier; agreement with Secretary; publication of directories; availability; inclusion of program in explanation of benefits; payment of claims on assignment-related basis

(1) Any physician or supplier may voluntarily enter into an agreement with the Secretary to become a participating physician or supplier. For purposes of this section, the term ''participating physician or supplier'' means a physician or supplier (excluding any provider of services) who, before the beginning of any year beginning with 1984, enters into an agreement with the Secretary which provides that such physician or supplier will accept payment under this part on an assignment-related basis for all items and services furnished to individuals enrolled under this part during such year. In the case of a newly licensed physician or a physician who begins a practice in a new area, or in the case of a new supplier who begins a new business, or in such similar cases as the Secretary may specify, such physician or supplier may enter into such an agreement after the beginning of a year, for items and services furnished during the remainder of the year.

(2) The Secretary shall maintain a toll-free telephone number or numbers at which individuals enrolled under this part may obtain the names, addresses, specialty, and telephone numbers of participating physicians and suppliers and may request a copy of an appropriate directory published under paragraph (4). The Secretary shall, without charge, mail a copy of such directory upon such a request.

(3)(A) In any case in which[2] medicare administrative contractor having a contract under section 1395kk–1 of this title that provides for making payments under this part is able to develop a system for the electronic transmission to such contractor of bills for services, such contractor shall establish direct lines for the electronic receipt of claims from participating physicians and suppliers.

(B) The Secretary shall establish a procedure whereby an individual enrolled under this part may assign, in an appropriate manner on the form claiming a benefit under this part for an item or service furnished by a participating physician or supplier, the individual's rights of payment under a medicare supplemental policy (described in section 1395ss(g)(1) of this title) in which the individual is enrolled. In the case such an assignment is properly executed and a payment determination is made by a medicare administrative contractor with a contract under this section, the contractor shall transmit to the private entity issuing the medicare supplemental policy notice of such fact and shall include an explanation of benefits and any additional information that the Secretary may determine to be appropriate in order to enable the entity to decide whether (and the amount of) any payment is due under the policy. The Secretary may enter into agreements for the transmittal of such information to entities electronically. The Secretary shall impose user fees for the transmittal of information under this subparagraph by a medicare administrative contractor, whether electronically or otherwise, and such user fees shall be collected and retained by the contractor.

(4) At the beginning of each year the Secretary shall publish directories (for appropriate local geographic areas) containing the name, address, and specialty of all participating physicians and suppliers (as defined in paragraph (1)) for that area for that year. Each directory shall be organized to make the most useful presentation of the information (as determined by the

[2] So in original. Probably should be followed by ''a''.

Secretary) for individuals enrolled under this part. Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.

(5)(A) The Secretary shall promptly notify individuals enrolled under this part through an annual mailing of the participation program under this subsection and the publication and availability of the directories and shall make the appropriate area directory or directories available in each district and branch office of the Social Security Administration, in the offices of medicare administrative contractors, and to senior citizen organizations.

(B) The annual notice provided under subparagraph (A) shall include—

(i) a description of the participation program,

(ii) an explanation of the advantages to beneficiaries of obtaining covered services through a participating physician or supplier,

(iii) an explanation of the assistance offered by medicare administrative contractors in obtaining the names of participating physicians and suppliers, and

(iv) the toll-free telephone number under paragraph (2)(A) for inquiries concerning the program and for requests for free copies of appropriate directories.

(6) The Secretary shall provide that the directories shall be available for purchase by the public. The Secretary shall provide that each appropriate area directory is sent to each participating physician located in that area and that an appropriate number of copies of each such directory is sent to hospitals located in the area. Such copies shall be sent free of charge.

(7) The Secretary shall provide that each explanation of benefits provided under this part for services furnished in the United States, in conjunction with the payment of claims under section 1395*l*(a)(1) of this title (made other than on an assignment-related basis), shall include—

(A) a prominent reminder of the participating physician and supplier program established under this subsection (including the limitation on charges that may be imposed by such physicians and suppliers and a clear statement of any amounts charged for the particular items or services on the claim involved above the amount recognized under this part),

(B) the toll-free telephone number or numbers, maintained under paragraph (2), at which an individual enrolled under this part may obtain information on participating physicians and suppliers,

(C)(i) an offer of assistance to such an individual in obtaining the names of participating physicians of appropriate specialty and (ii) an offer to provide a free copy of the appropriate participating physician directory; and

(D) in the case of services for which the billed amount exceeds the limiting charge imposed under section 1395w–4(g) of this title, information regarding such applicable limiting charge (including information concerning the right to a refund under section 1395w–4(g)(1)(A)(iv) of this title).

(8) The Secretary may refuse to enter into an agreement with a physician or supplier under this subsection, or may terminate or refuse to renew such agreement, in the event that such physician or supplier has been convicted of a felony under Federal or State law for an offense which the Secretary determines is detrimental to the best interests of the program or program beneficiaries.

(i) Definitions

For purposes of this subchapter:

(1) A claim is considered to be paid on an ''assignment-related basis'' if the claim is paid on the basis of an assignment described in subsection (b)(3)(B)(ii) of this section, in accordance with subsection (b)(6)(B) of this section, or under the procedure described in section 1395gg(f)(1) of this title.

(2) The term ''participating physician'' refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician (under subsection (h)(1) of this section); the term ''nonparticipating physician'' refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is not a participating physician; and the term ''nonparticipating supplier or other person'' means a supplier or other person (excluding a provider of services) that is not a participating physician or supplier (as defined in subsection (h)(1) of this section).

(3) The term ''percentage increase in the MEI'' means, with respect to physicians' services furnished in a year, the percentage increase in the medicare economic index (referred to in the fourth sentence of subsection (b)(3) of this section) applicable to such services furnished as of the first day of that year.

(4) The term ''primary care services'' means physicians' services which constitute office medical services, emergency department services, home medical services, skilled nursing, intermediate care, and long-term care medical services, or nursing home, boarding home, domiciliary, or custodial care medical services.

(j) Monitoring of charges of nonparticipating physicians; sanctions; restitution

(1)(A) In the case of a physician who is not a participating physician for items and services furnished during a portion of the 30-month period beginning July 1, 1984, the Secretary shall monitor the physician's actual charges to individuals enrolled under this part for physicians' services during that portion of that period. If such physician knowingly and willfully bills individuals enrolled under this part for actual charges in excess of such physician's actual charges for the calendar quarter beginning on April 1, 1984, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(B)(i) During any period (on or after January 1, 1987, and before the date specified in clause (ii)), during which a physician is a nonparticipating physician, the Secretary shall monitor the actual charges of each such physician for physicians' services furnished to individuals enrolled under this part. If such physician knowingly and willfully bills on a repeated basis for such a service an actual charge in excess of the

maximum allowable actual charge determined under subparagraph (C) for that service, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(ii) Clause (i) shall not apply to services furnished after December 31, 1990.

(C)(i) For a particular physicians' service furnished by a nonparticipating physician to individuals enrolled under this part during a year, for purposes of subparagraph (B), the maximum allowable actual charge is determined as follows: If the physician's maximum allowable actual charge for that service in the previous year was—

(I) less than 115 percent of the applicable percent (as defined in subsection (b)(4)(A)(iv) of this section) of the prevailing charge for the year and service involved, the maximum allowable actual charge for the year involved is the greater of the maximum allowable actual charge described in subclause (II) or the charge described in clause (ii), or

(II) equal to, or greater than, 115 percent of the applicable percent (as defined in subsection (b)(4)(A)(iv) of this section) of the prevailing charge for the year and service involved, the maximum allowable actual charge is 101 percent of the physician's maximum allowable actual charge for the service for the previous year.

(ii) For purposes of clause (i)(I), the charge described in this clause for a particular physicians' service furnished in a year is the maximum allowable actual charge for the service of the physician for the previous year plus the product of (I) the applicable fraction (as defined in clause (iii)) and (II) the amount by which 115 percent of the prevailing charge for the year involved for such service furnished by nonparticipating physicians, exceeds the physician's maximum allowable actual charge for the service for the previous year.

(iii) In clause (ii), the ''applicable fraction'' is—

(I) for 1987, ¼,

(II) for 1988, ⅓,

(III) for 1989, ½, and

(IV) for any subsequent year, 1.

(iv) For purposes of determining the maximum allowable actual charge under clauses (i) and (ii) for 1987, in the case of a physicians' service for which the physician has actual charges for the calendar quarter beginning on April 1, 1984, the ''maximum allowable actual charge'' for 1986 is the physician's actual charge for such service furnished during such quarter.

(v) For purposes of determining the maximum allowable actual charge under clauses (i) and (ii) for a year after 1986, in the case of a physicians' service for which the physician has no actual charges for the calendar quarter beginning on April 1, 1984, and for which a maximum allowable actual charge has not been previously established under this clause, the ''maximum allowable actual charge'' for the previous year shall be the 50th percentile of the customary charges for the service (weighted by frequency of the service) performed by nonparticipating physicians in the locality during the 12-month period ending June 30 of that previous year.

(vi) For purposes of this subparagraph, a ''physician's actual charge'' for a physicians' service furnished in a year or other period is the weighted average (or, at the option of the Secretary for a service furnished in the calendar quarter beginning April 1, 1984, the median) of the physician's charges for such service furnished in the year or other period.

(vii) In the case of a nonparticipating physician who was a participating physician during a previous period, for the purpose of computing the physician's maximum allowable actual charge during the physician's period of nonparticipation, the physician shall be deemed to have had a maximum allowable actual charge during the period of participation, and such deemed maximum allowable actual charge shall be determined according to clauses (i) through (vi).

(viii) Notwithstanding any other provision of this subparagraph, the maximum allowable actual charge for a particular physician's service furnished by a nonparticipating physician to individuals enrolled under this part during the 3-month period beginning on January 1, 1988, shall be the amount determined under this subparagraph for 1987. The maximum allowable actual charge for any such service otherwise determined under this subparagraph for 1988 shall take effect on April 1, 1988.

(ix) If there is a reduction under subsection (b)(13) of this section in the reasonable charge for medical direction furnished by a nonparticipating physician, the maximum allowable actual charge otherwise permitted under this subsection for such services shall be reduced in the same manner and in the same percentage as the reduction in such reasonable charge.

(D)(i) If an action described in clause (ii) results in a reduction in a reasonable charge for a physicians' service or item and a nonparticipating physician furnishes the service or item to an individual entitled to benefits under this part after the effective date of such action, the physician may not charge the individual more than 125 percent of the reduced payment allowance (as defined in clause (iii)) plus (for services or items furnished during the 12-month period (or 9-month period in the case of an action described in clause (ii)(II)) beginning on the effective date of the action) ½ of the amount by which the physician's maximum allowable actual charge for the service or item for the previous 12-month period exceeds such 125 percent level.

(ii) The first sentence of clause (i) shall apply to—

(I) an adjustment under subsection (b)(8)(B) of this section (relating to inherent reasonableness),

(II) a reduction under subsection (b)(10)(A) or (b)(14)(A) of this section (relating to certain overpriced procedures),

(III) a reduction under subsection (b)(11)(B) of this section (relating to certain cataract procedures),

(IV) a prevailing charge limit established under subsection (b)(11)(C)(i) or (b)(15)(A) of this section,

(V) a reasonable charge limit established under subsection (b)(11)(C)(ii) of this section, and

(VI) an adjustment under section 1395*l*(*l*)(3)(B) of this title (relating to physician supervision of certified registered nurse anesthetists).

(iii) In clause (i), the term ''reduced payment allowance'' means, with respect to an action—

(I) under subsection (b)(8)(B) of this section, the inherently reasonable charge established under subsection (b)(8) of this section;

(II) under subsection (b)(10)(A), (b)(11)(B), (b)(11)(C)(i), (b)(14)(A), or (b)(15)(A) of this section or under section 1395*l*(*l*)(3)(B) of this title, the prevailing charge for the service after the action; or

(III) under subsection (b)(11)(C)(ii) of this section, the payment allowance established under such subsection.

(iv) If a physician knowingly and willfully bills in violation of clause (i) (whether or not such charge violates subparagraph (B)), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(v) Clause (i) shall not apply to items and services furnished after December 31, 1990.

(2) Subject to paragraph (3), the sanctions which the Secretary may apply under this paragraph are—

(A) excluding a physician from participation in the programs under this chapter for a period not to exceed 5 years, in accordance with the procedures of subsections (c), (f), and (g) of section 1320a–7 of this title, or

(B) civil monetary penalties and assessments, in the same manner as such penalties and assessments are authorized under section 1320a–7a(a) of this title,

or both. The provisions of section 1320a–7a of this title (other than the first 2 sentences of subsection (a) and other than subsection (b)) shall apply to a civil money penalty and assessment under subparagraph (B) in the same manner as such provisions apply to a penalty, assessment, or proceeding under section 1320a–7a(a) of this title, except to the extent such provisions are inconsistent with subparagraph (A) or paragraph (3).

(3)(A) The Secretary may not exclude a physician pursuant to paragraph (2)(A) if such physician is a sole community physician or sole source of essential specialized services in a community.

(B) The Secretary shall take into account access of beneficiaries to physicians' services for which payment may be made under this part in determining whether to bar a physician from participation under paragraph (2)(A).

(4) The Secretary may, out of any civil monetary penalty or assessment collected from a physician pursuant to this subsection, make a payment to a beneficiary enrolled under this part in the nature of restitution for amounts paid by such beneficiary to such physician which was determined to be an excess charge under paragraph (1).

(k) Sanctions for billing for services of assistant at cataract operations

(1) If a physician knowingly and willfully presents or causes to be presented a claim or bills an individual enrolled under this part for charges for services as an assistant at surgery for which payment may not be made by reason of section 1395y(a)(15) of this title, the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section in the case of surgery performed on or after March 1, 1987.

(2) If a physician knowingly and willfully presents or causes to be presented a claim or bills an individual enrolled under this part for charges that includes a charge for an assistant at surgery for which payment may not be made by reason of section 1395y(a)(15) of this title, the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section in the case of surgery performed on or after March 1, 1987.

***(l)* Prohibition of unassigned billing of services determined to be medically unnecessary by carrier**

(1)(A) Subject to subparagraph (C), if—

(i) a nonparticipating physician furnishes services to an individual enrolled for benefits under this part,

(ii) payment for such services is not accepted on an assignment-related basis,

(iii)(I) a medicare administrative contractor determines under this part or a peer review organization determines under part B of subchapter XI of this chapter that payment may not be made by reason of section 1395y(a)(1) of this title because a service otherwise covered under this subchapter is not reasonable and necessary under the standards described in that section or (II) payment under this subchapter for such services is denied under section 1320c–3(a)(2) of this title by reason of a determination under section 1320c–3(a)(1)(B) of this title, and

(iv) the physician has collected any amounts for such services,

the physician shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts so collected.

(B) A refund under subparagraph (A) is considered to be on a timely basis only if—

(i) in the case of a physician who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the physician receives a denial notice under paragraph (2), or

(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the physician receives notice of an adverse determination on reconsideration or appeal.

(C) Subparagraph (A) shall not apply to the furnishing of a service by a physician to an individual in the case described in subparagraph (A)(iii)(I) if—

(i) the physician establishes that the physician did not know and could not reasonably have been expected to know that payment may not be made for the service by reason of section 1395y(a)(1) of this title, or

(ii) before the service was provided, the individual was informed that payment under this part may not be made for the specific service and the individual has agreed to pay for that service.

(2) Each medicare administrative contractor with a contract in effect under this section with respect to physicians and each peer review organization with a contract under part B of subchapter XI of this chapter shall send any notice of denial of payment for physicians' services based on section 1395y(a)(1) of this title and for which payment is not requested on an assignment-related basis to the physician and the individual involved.

(3) If a physician knowingly and willfully fails to make refunds in violation of paragraph (1)(A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(m) Disclosure of information of unassigned claims for certain physicians' services

(1) In the case of a nonparticipating physician who—

(A) performs an elective surgical procedure for an individual enrolled for benefits under this part and for which the physician's actual charge is at least $500, and

(B) does not accept payment for such procedure on an assignment-related basis,

the physician must disclose to the individual, in writing and in a form approved by the Secretary, the physician's estimated actual charge for the procedure, the estimated approved charge under this part for the procedure, the excess of the physician's actual charge over the approved charge, and the coinsurance amount applicable to the procedure. The written estimate may not be used as the basis for, or evidence in, a civil suit.

(2) A physician who fails to make a disclosure required under paragraph (1) with respect to a procedure shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected for the procedure in excess of the charges recognized and approved under this part.

(3) If a physician knowingly and willfully fails to comply with paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(4) The Secretary shall provide for such monitoring of requests for payment for physicians' services to which paragraph (1) applies as is necessary to assure compliance with paragraph (2).

(n) Elimination of markup for certain purchased services

(1) If a physician's bill or a request for payment for services billed by a physician includes a charge for a diagnostic test described in section 1395x(s)(3) of this title (other than a clinical diagnostic laboratory test) for which the bill or request for payment does not indicate that the billing physician personally performed or supervised the performance of the test or that another physician with whom the physician who shares a practice personally performed or supervised the performance of the test, the amount payable with respect to the test shall be determined as follows:

(A) If the bill or request for payment indicates that the test was performed by a supplier, identifies the supplier, and indicates the amount the supplier charged the billing physician, payment for the test (less the applicable deductible and coinsurance amounts) shall be the actual acquisition costs (net of any discounts) or, if lower, the supplier's reasonable charge (or other applicable limit) for the test.

(B) If the bill or request for payment (i) does not indicate who performed the test, or (ii) indicates that the test was performed by a supplier but does not identify the supplier or include the amount charged by the supplier, no payment shall be made under this part.

(2) A physician may not bill an individual enrolled under this part—

(A) any amount other than the payment amount specified in paragraph (1)(A) and any applicable deductible and coinsurance for a diagnostic test for which payment is made pursuant to paragraph (1)(A), or

(B) any amount for a diagnostic test for which payment may not be made pursuant to paragraph (1)(B).

(3) If a physician knowingly and willfully in repeated cases bills one or more individuals in violation of paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

***(o)* Reimbursement for drugs and biologicals**

(1) If a physician's, supplier's, or any other person's bill or request for payment for services includes a charge for a drug or biological for which payment may be made under this part and the drug or biological is not paid on a cost or prospective payment basis as otherwise provided in this part, the amount payable for the drug or biological is equal to the following:

(A) In the case of any of the following drugs or biologicals, 95 percent of the average wholesale price:

(i) A drug or biological furnished before January 1, 2004.

(ii) Blood clotting factors furnished during 2004.

(iii) A drug or biological furnished during 2004 that was not available for payment under this part as of April 1, 2003.

(iv) A vaccine described in subparagraph (A) or (B) of section 1395x(s)(10) of this title furnished on or after January 1, 2004.

(v) A drug or biological furnished during 2004 in connection with the furnishing of renal dialysis services if separately billed by renal dialysis facilities.

(B) In the case of a drug or biological furnished during 2004 that is not described in—

(i) clause (ii), (iii), (iv), or (v) of subparagraph (A),

(ii) subparagraph (D)(i), or

(iii) subparagraph (F),

the amount determined under paragraph (4).

(C) In the case of a drug or biological that is not described in subparagraph (A)(iv), (D)(i), or (F) furnished on or after January 1, 2005, the amount provided under section 1395w–3 of this title, section 1395w–3a of this title, section 1395w–3b of this title, or section 1395rr(b)(13) of this title, as the case may be for the drug or biological.

(D)(i) Except as provided in clause (ii), in the case of infusion drugs furnished through an

item of durable medical equipment covered under section 1395x(n) of this title on or after January 1, 2004, 95 percent of the average wholesale price for such drug in effect on October 1, 2003.

(ii) In the case of such infusion drugs furnished in a competitive acquisition area under section 1395w–3 of this title on or after January 1, 2007, the amount provided under section 1395w–3 of this title.

(E) In the case of a drug or biological, consisting of intravenous immune globulin, furnished—

(i) in 2004, the amount of payment provided under paragraph (4); and

(ii) in 2005 and subsequent years, the amount of payment provided under section 1395w–3a of this title.

(F) In the case of blood and blood products (other than blood clotting factors), the amount of payment shall be determined in the same manner as such amount of payment was determined on October 1, 2003.

(G) In the case of inhalation drugs or biologicals furnished through durable medical equipment covered under section 1395x(n) of this title that are furnished—

(i) in 2004, the amount provided under paragraph (4) for the drug or biological; and

(ii) in 2005 and subsequent years, the amount provided under section 1395w–3a of this title for the drug or biological.

(2) If payment for a drug or biological is made to a licensed pharmacy approved to dispense drugs or biologicals under this part, the Secretary may pay a dispensing fee (less the applicable deductible and coinsurance amounts) to the pharmacy. This paragraph shall not apply in the case of payment under paragraph (1)(C).

(3)(A) Payment for a charge for any drug or biological for which payment may be made under this part may be made only on an assignment-related basis.

(B) The provisions of subsection (b)(18)(B) of this section shall apply to charges for such drugs or biologicals in the same manner as they apply to services furnished by a practitioner described in subsection (b)(18)(C) of this section.

(4)(A) Subject to the succeeding provisions of this paragraph, the amount of payment for a drug or biological under this paragraph furnished in 2004 is equal to 85 percent of the average wholesale price (determined as of April 1, 2003) for the drug or biological.

(B) The Secretary shall substitute for the percentage under subparagraph (A) for a drug or biological the percentage that would apply to the drug or biological under the column entitled ''Average of GAO and OIG data (percent)'' in the table entitled ''Table 3.—Medicare Part B Drugs in the Most Recent GAO and OIG Studies'' published on August 20, 2003, in the Federal Register (68 Fed. Reg. 50445).

(C)(i) The Secretary may substitute for the percentage under subparagraph (A) a percentage that is based on data and information submitted by the manufacturer of the drug or biological by October 15, 2003.

(ii) The Secretary may substitute for the percentage under subparagraph (A) with respect to drugs and biologicals furnished during 2004 on or after April 1, 2004, a percentage that is based on data and information submitted by the manufacturer of the drug or biological after October 15, 2003, and before January 1, 2004.

(D) In no case may the percentage substituted under subparagraph (B) or (C) be less than 80 percent.

(5)(A) Subject to subparagraph (B), in the case of clotting factors furnished on or after January 1, 2005, the Secretary shall, after reviewing the January 2003 report to Congress by the Comptroller General of the United States entitled ''Payment for Blood Clotting Factor Exceeds Providers Acquisition Cost'', provide for a separate payment, to the entity which furnishes to the patient blood clotting factors, for items and services related to the furnishing of such factors in an amount that the Secretary determines to be appropriate. Such payment amount may take into account any or all of the following:

(i) The mixing (if appropriate) and delivery of factors to an individual, including special inventory management and storage requirements.

(ii) Ancillary supplies and patient training necessary for the self-administration of such factors.

(B) In determining the separate payment amount under subparagraph (A) for blood clotting factors furnished in 2005, the Secretary shall ensure that the total amount of payments under this part (as estimated by the Secretary) for such factors under paragraph (1)(C) and such separate payments for such factors does not exceed the total amount of payments that would have been made for such factors under this part (as estimated by the Secretary) if the amendments made by section 303 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 had not been enacted.

(C) The separate payment amount under this subparagraph for blood clotting factors furnished in 2006 or a subsequent year shall be equal to the separate payment amount determined under this paragraph for the previous year increased by the percentage increase in the consumer price index for medical care for the 12-month period ending with June of the previous year.

(6) In the case of an immunosuppressive drug described in subparagraph (J) of section 1395x(s)(2) of this title and an oral drug described in subparagraph (Q) or (T) of such section, the Secretary shall pay to the pharmacy a supplying fee for such a drug determined appropriate by the Secretary (less the applicable deductible and coinsurance amounts).

(7) There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, of determinations of payment amounts, methods, or adjustments under paragraphs (4) through (6).

(p) Requiring submission of diagnostic information

(1) Each request for payment, or bill submitted, for an item or service furnished by a physician or practitioner specified in subsection (b)(18)(C) of this section for which payment may be made under this part shall include the appro-

priate diagnosis code (or codes) as established by the Secretary for such item or service.

(2) In the case of a request for payment for an item or service furnished by a physician or practitioner specified in subsection (b)(18)(C) of this section on an assignment-related basis which does not include the code (or codes) required under paragraph (1), payment may be denied under this part.

(3) In the case of a request for payment for an item or service furnished by a physician not submitted on an assignment-related basis and which does not include the code (or codes) required under paragraph (1)—

(A) if the physician knowingly and willfully fails to provide the code (or codes) promptly upon request of the Secretary or a medicare administrative contractor, the physician may be subject to a civil money penalty in an amount not to exceed $2,000, and

(B) if the physician knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection, to include the code (or codes) required under paragraph (1), the physician may be subject to the sanction described in subsection (j)(2)(A) of this section.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under subparagraph (A) in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(4) In the case of an item or service defined in paragraph (3), (6), (8), or (9) of subsection 1395x(s) of this title ordered by a physician or a practitioner specified in subsection (b)(18)(C) of this section, but furnished by another entity, if the Secretary (or fiscal agent of the Secretary) requires the entity furnishing the item or service to provide diagnostic or other medical information in order for payment to be made to the entity, the physician or practitioner shall provide that information to the entity at the time that the item or service is ordered by the physician or practitioner.

(q) Anesthesia services; counting actual time units

(1)(A) The Secretary, in consultation with groups representing physicians who furnish anesthesia services, shall establish by regulation a relative value guide for use in all localities in making payment for physician anesthesia services furnished under this part. Such guide shall be designed so as to result in expenditures under this subchapter for such services in an amount that would not exceed the amount of such expenditures which would otherwise occur.

(B) For physician anesthesia services furnished under this part during 1991, the prevailing charge conversion factor used in a locality under this subsection shall, subject to clause (iv), be reduced to the adjusted prevailing charge conversion factor for the locality determined as follows:

(i) The Secretary shall estimate the national weighted average of the prevailing charge conversion factors used under this subsection for services furnished during 1990 after March 31, using the best available data.

(ii) The national weighted average estimated under clause (i) shall be reduced by 7 percent.

(iii) The adjusted prevailing charge conversion factor for a locality is the sum of—

(I) the product of (a) the portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238–36243)); and

(II) the product of (a) the remaining portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) and (b) the geographic practice cost index value specified in subsection (b)(14)(C)(iv) of this section for the locality.

In applying this clause, 70 percent of the prevailing charge conversion factor shall be considered to be attributable to physician work.

(iv) The prevailing charge conversion factor to be applied to a locality under this subparagraph shall not be reduced by more than 15 percent below the prevailing charge conversion factor applied in the locality for the period during 1990 after March 31, but in no case shall the prevailing charge conversion factor be less than 60 percent of the national weighted average of the prevailing charge conversion factors (computed under clause (i)).

(2) For purposes of payment for anesthesia services (whether furnished by physicians or by certified registered nurse anesthetists) under this part, the time units shall be counted based on actual time rather than rounded to full time units.

(r) Establishment of physician identification system

The Secretary shall establish a system which provides for a unique identifier for each physician who furnishes services for which payment may be made under this subchapter. Under such system, the Secretary may impose appropriate fees on such physicians to cover the costs of investigation and recertification activities with respect to the issuance of the identifiers.

(s) Application of fee schedule

(1) Subject to paragraph (3), the Secretary may implement a statewide or other areawide fee schedule to be used for payment of any item or service described in paragraph (2) which is paid on a reasonable charge basis. Any fee schedule established under this paragraph for such item or service shall be updated each year by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the preceding year, except that in no event shall a fee schedule for an item described in paragraph (2)(D) be updated before 2003.

(2) The items and services described in this paragraph are as follows:

(A) Medical supplies.

(B) Home dialysis supplies and equipment (as defined in section 1395rr(b)(8) of this title).

(C) Repealed. Pub. L. 108–173, title VI, § 627(b)(2), Dec. 8, 2003, 117 Stat. 2321.

(D) Parenteral and enteral nutrients, equipment, and supplies.

(E) Electromyogram devices.

(F) Salivation devices.

(G) Blood products.

(H) Transfusion medicine.

(3) In the case of items and services described in paragraph (2)(D) that are included in a competitive acquisition program in a competitive acquisition area under section 1395w–3(a) of this title—

(A) the payment basis under this subsection for such items and services furnished in such area shall be the payment basis determined under such competitive acquisition program; and

(B) the Secretary may use information on the payment determined under such competitive acquisition programs to adjust the payment amount otherwise applicable under paragraph (1) for an area that is not a competitive acquisition area under section 1395w–3 of this title, and in the case of such adjustment, paragraphs (8) and (9) of subsection (b) of this section shall not be applied.

(t) Facility provider number required on claims

Each request for payment, or bill submitted, for an item or service furnished to an individual who is a resident of a skilled nursing facility for which payment may be made under this part shall include the facility's medicare provider number.

(Aug. 14, 1935, ch. 531, title XVIII, § 1842, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 309; amended Pub. L. 90–248, title I, §§ 125(a), 154(d), Jan. 2, 1968, 81 Stat. 845, 863; Pub. L. 92–603, title II, §§ 211(c)(3), 224(a), 227(e)(3), 236(a), 258(a), 262(a), 263(d)(5), 281(d), Oct. 30, 1972, 86 Stat. 1384, 1395, 1407, 1414, 1447–1449, 1455; Pub. L. 93–445, title III, § 307, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 94–182, title I, § 101(a), Dec. 31, 1975, 89 Stat. 1051; Pub. L. 94–368, §§ 2, 3(a), (b), July 16, 1976, 90 Stat. 997; Pub. L. 95–142, § 2(a)(1), Oct. 25, 1977, 91 Stat. 1175; Pub. L. 95–216, title V, § 501(b), Dec. 20, 1977, 91 Stat. 1565; Pub. L. 96–499, title IX, §§ 918(a)(1), 946(a), (b), 948(b), Dec. 5, 1980, 94 Stat. 2625, 2642, 2643; Pub. L. 97–35, title XXI, § 2142(b), Aug. 13, 1981, 95 Stat. 798; Pub. L. 97–248, title I, §§ 104(a), 113(a), 128(d)(1), Sept. 3, 1982, 96 Stat. 336, 340, 367; Pub. L. 98–369, div. B, title III, §§ 2303(e), 2306(a), (b)(1), (c), 2307(a)(1), (2), 2326(c)(2), (d)(2), 2339, 2354(b)(13), (14), title VI, 2663(j)(2)(F)(iv), July 18, 1984, 98 Stat. 1066, 1070, 1071, 1073, 1087, 1088, 1093, 1101, 1170; Pub. L. 98–617, § 3(a)(1), (b)(5), (6), Nov. 8, 1984, 98 Stat. 3295, 3296; Pub. L. 99–272, title IX, §§ 9219(b)(1)(A), (2)(A), 9301(b)(1), (2), (c)(2)–(4), (d)(1)–(3), 9304(a), 9306(a), 9307(c), Apr. 7, 1986, 100 Stat. 182–188, 190, 193, 194; Pub. L. 99–509, title IX, §§ 9307(c)(2)(A), 9311(c), 9320(e)(3), 9331(a)(1)–(3), (b)(1)–(3), (c)(3)(A), 9332(a)(1), (b)(1), (2), (c)(1), (d)(1), 9333(a), (b), 9334(a), 9338(b), (c), 9341(a)(2), Oct. 21, 1986, 100 Stat. 1995, 1998, 2015, 2018–2026, 2028, 2035, 2038; Pub. L. 99–514, title XVIII, § 1895(b)(14)(A), (15), (16)(A), Oct. 22, 1986, 100 Stat. 2934; Pub. L. 100–93, § 8(c)(2), Aug. 18, 1987, 101 Stat. 692; Pub. L. 100–203, title IV, §§ 4031(a)(2), 4035(a)(2), 4041(a)(1), (3)(A), 4042(a), (b)(1), (2)(A), (c), 4044(a), 4045(a), (c)(1), (2)(B), (D), 4046(a), 4047(a), 4048(a), (e), 4051(a), 4053(a), formerly 4052(a), 4054(a), formerly 4053(a), 4063(a), 4081(a), 4082(c), 4085(g)(1), (i)(5)–(7), (22)(C), (24)–(27), 4096(a)(1), Dec. 22, 1987, 101 Stat. 1330–76, 1330–78, 1330–83 to 1330–89, 1330–93, 1330–97, 1330–109, 1330–126, 1330–128, 1330–131, 1330–132, 1330–139, as amended Pub. L. 100–360, title IV, § 411(f)(1)(A), (2)(C), (D), (F), (3)(A), (4)(B), (7)(B), (11)(A), (14), (g)(2)(C), (i)(2), (4)(C)(vi), (j)(4)(A), July 1, 1988, 102 Stat. 776–779, 781, 783, 788, 789, 791; Pub. L. 100–360, title II, §§ 201(c), 202(c)(1), (e)(1)–(3)(A), (C), (4)(A), (5), (g), 223(b), (c), title IV, § 411(a)(3)(A), (C)(i), (f)(1)(B), (2)(A), (B), (E), (3)(B), (4)(A), (C), (5), (6)(B), (7)(A), (9), (g)(2)(A), (B), (i)(1)(A), July 1, 1988, 102 Stat. 702, 713, 716–718, 747, 768, 776–780, 783, 787; Pub. L. 100–485, title VI, § 608(d)(5)(A)–(D), (F)–(H), (17), (21)(A), (B), (D), (24)(B), Oct. 13, 1988, 102 Stat. 2414, 2418, 2420, 2421; Pub. L. 101–234, title II, § 201(a), title III, § 301(b)(2), (6), (c)(2), (d)(3), Dec. 13, 1989, 103 Stat. 1981, 1985, 1986; Pub. L. 101–239, title VI, §§ 6003(g)(3)(D)(ix), 6102(b), (e)(2)–(4), (9), 6104, 6106(a), 6107(b), 6108(a)(1), (b)(1), (2), 6114(b), (c), 6202(d)(2), Dec. 19, 1989, 103 Stat. 2153, 2184, 2187, 2188, 2208, 2210, 2212, 2213, 2218, 2234; Pub. L. 101–508, title IV, §§ 4101(a), (b)(1), 4103, 4105(a)(1), (2), (b)(1), 4106(a)(1), (b)(2), 4108(a), 4110(a), 4118(a)(1), (2), (f)(2)(A)–(C), (i)(1), (j)(2), 4155(c), Nov. 5, 1990, 104 Stat. 1388–54, 1388–58 to 1388–63, 1388–66, 1388–67, 1388–69 to 1388–71, 1388–87; Pub. L. 101–597, title IV, § 401(c)(2), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 103–66, title XIII, §§ 13515(a)(2), 13516(a)(2), 13517(b), 13568(a), (b), Aug. 10, 1993, 107 Stat. 583–585, 608; Pub. L. 103–432, title I, §§ 123(b)(1), (2)(B), (c), 125(a), (b)(1), 126(a)(1), (c), (e), (g)(9), (h)(2), 135(b)(2), 151(b)(1)(B), (2)(B), Oct. 31, 1994, 108 Stat. 4411–4416, 4423, 4434; Pub. L. 104–191, title II, §§ 202(b)(2), 221(b), Aug. 21, 1996, 110 Stat. 1998, 2011; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4205(d)(3)(B), 4302(b), 4315(a), 4316(a), 4317(a), (b), 4432(b)(2), (4), 4512(b)(2), (c), 4531(a)(2), 4556(a), 4603(c)(2)(B)(i), 4611(d), Aug. 5, 1997, 111 Stat. 373, 377, 382, 390, 392, 421, 444, 450, 462, 471, 473; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 223(c), title III, §§ 305(a), 321(k)(4)], Nov. 29, 1999, 113 Stat. 1536, 1501A–353, 1501A–361, 1501A–366; Pub. L. 106–554, § 1(a)(6) [title I, §§ 105(d), 114(a), title II, § 222(a), title III, § 313(b)(1), (2), title IV, § 432(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–472, 2763A–473, 2763A–487, 2763A–499, 2763A–526; Pub. L. 108–173, title III, §§ 302(d)(3), 303(b), (e), (g)(1), (i)(1), 305(a), title VI, § 627(b)(2), title VII, § 736(b)(8), (9), title IX, §§ 911(c), 952(a), (b), Dec. 8, 2003, 117 Stat. 2233, 2238, 2252–2255, 2321, 2356, 2383, 2427.)

REFERENCES IN TEXT

The Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (b)(14)(A)(ii), is Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388. For complete classification of this Act to the Code, see Tables.

Part B of subchapter XI of this chapter, referred to in subsec. (*l*)(1)(A)(iii), (2), is classified to section 1320c et seq. of this title.

Section 303 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (*o*)(5)(B), is section 303 of Pub. L. 108–173, which enacted sections 1395w–3a and 1395w–3b of this title, amended this section and sections 1395*l*, 1395w–4, 1395x, 1395y, and 1396r–8 of this title, enacted provisions

set out as notes under this section and sections 1395w–3a, 1395w–3b, and 1395w–4 of this title, and repealed provisions set out as a note under this section.

AMENDMENTS

2003—Pub. L. 108–173, §911(c)(1), substituted ''Provisions relating to the administration of part B'' for ''Use of carriers for administration of benefits'' in section catchline.

Subsec. (a). Pub. L. 108–173, §911(c)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) authorized the Secretary to enter into contracts with carriers for the administration of benefits under this part.

Subsec. (b)(1). Pub. L. 108–173, §911(c)(3)(A), struck out par. (1), which provided that contracts with carriers under subsection (a) could be entered into without regard to section 5 of title 41 or any other provision of law requiring competitive bidding.

Subsec. (b)(2)(A), (B). Pub. L. 108–173, §911(c)(3)(B)(i), struck out subpars. (A) and (B), which conditioned entering into contract on Secretary's finding that carrier would perform obligations efficiently and effectively, provided for establishment and publication of standards and criteria for efficient and effective performance, and directed Secretary to establish standards for evaluating carriers' performance of reviews of initial carrier determinations and of fair hearings under former paragraph (3)(C).

Subsec. (b)(2)(C). Pub. L. 108–173, §911(c)(3)(B)(ii), substituted ''medicare administrative contractors'' for ''carriers''.

Subsec. (b)(2)(D), (E). Pub. L. 108–173, §911(c)(3)(B)(iii), struck out subpars. (D) and (E), which directed that carrier be subject to standards and criteria relating to the carrier's success in recovering payments for items or services for which payment has been or could be made under a primary plan and that Secretary could continue administration of claims for certain home health services through fiscal intermediaries under section 1395h of this title.

Subsec. (b)(3). Pub. L. 108–173, §911(c)(3)(C)(ix), inserted ''medicare administrative contractor,'' after ''carrier,'' in seventh sentence in concluding provisions.

Pub. L. 108–173, §911(c)(3)(C)(viii), struck out ''and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate.'' before ''In determining'' in concluding provisions.

Pub. L. 108–173, §911(c)(3)(C)(i), substituted ''The Secretary'' for ''Each such contract shall provide that the carrier'' in introductory provisions.

Subsec. (b)(3)(A). Pub. L. 108–173, §911(c)(3)(C)(ii), substituted ''shall take such action'' for ''will take such action''.

Subsec. (b)(3)(B). Pub. L. 108–173, §911(c)(3)(C)(iii), substituted ''to the policyholders and subscribers of the medicare administrative contractor'' for ''to the policyholders and subscribers of the carrier'' in introductory provisions.

Pub. L. 108–173, §911(c)(3)(C)(ii), substituted ''shall take such action'' for ''will take such action'' in introductory provisions.

Subsec. (b)(3)(C) to (E). Pub. L. 108–173, §911(c)(3)(C)(iv), struck out subpars. (C) to (E), which directed that each contract provide that the carrier would establish and maintain procedures for a fair hearing in any case where the amount in controversy was between $100 and $500, that the carrier would furnish to the Secretary such information and reports as he would find necessary in performing his functions under this part, and that the carrier would maintain such records and afford such access thereto as the Secretary would find necessary to assure the correctness and verification of the information and reports under former subpar. (D) and otherwise to carry out the purposes of this part.

Subsec. (b)(3)(F). Pub. L. 108–173, §911(c)(3)(C)(ii), substituted ''shall take such action'' for ''will take such action''.

Subsec. (b)(3)(G). Pub. L. 108–173, §911(c)(3)(C)(ii), substituted ''shall, for a service'' for ''will, for a service'' in introductory provisions.

Subsec. (b)(3)(H). Pub. L. 108–173, §911(c)(3)(C)(v)(I), struck out ''if it makes determinations or payments with respect to physicians' services,'' before ''shall implement'' in introductory provisions.

Pub. L. 108–173, §911(c)(3)(C)(ii), substituted ''shall implement'' for ''will implement'' in introductory provisions.

Subsec. (b)(3)(H)(i). Pub. L. 108–173, §911(c)(3)(C)(v)(II), substituted ''medicare administrative contractor'' for ''carrier''.

Subsec. (b)(3)(I). Pub. L. 108–173, §911(c)(3)(C)(vi), struck out subpar. (I), which directed that each contract would require the carrier to submit annual reports to the Secretary describing steps taken to recover payments made under this part for items or services for which payment had been or could have been made under a primary plan.

Subsec. (b)(3)(L). Pub. L. 108–173, §911(c)(3)(C)(vii), substituted period for semicolon at end.

Pub. L. 108–173, §911(c)(3)(C)(ii), substituted ''shall monitor'' for ''will monitor''.

Subsec. (b)(5). Pub. L. 108–173, §911(c)(3)(D), struck out par. (5), which provided that each contract under this section would be for a term of at least one year and could be made automatically renewable and authorized Secretary to terminate any contract where carrier had failed substantially to carry out the contract or was carrying out the contract in a manner inconsistent with the efficient and effective administration of the insurance program established by this part.

Subsec. (b)(6). Pub. L. 108–173, §952(b), substituted ''except to an employer or entity as described in subparagraph (A)'' for ''except to an employer or facility as described in clause (A)'' in second sentence.

Subsec. (b)(6)(A)(ii). Pub. L. 108–173, §952(a), added cl. (ii) and struck out former cl. (ii) which read as follows: ''(where the service was provided in a hospital, critical access hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service,''.

Subsec. (b)(6)(D)(iv). Pub. L. 108–173, §911(c)(3)(E), substituted ''medicare administrative contractor'' for ''carrier''.

Subsec. (b)(7). Pub. L. 108–173, §911(c)(3)(F), substituted ''the Secretary'' for ''the carrier'' in introductory provisions of subpar. (A), before ''shall take into account'' in subpar. (B)(i), in introductory provisions of subpar. (B)(ii), and before ''shall provide'' in subpar. (C).

Subsec. (c)(1). Pub. L. 108–173, §911(c)(4)(A), struck out par. (1), which provided that any contract entered into with a carrier under this section would provide for advances of funds for the making of payments and for payment for necessary and proper cost of administration, and directed the Secretary to cause to have published in the Federal Register, by not later than Sept. 1 each year, data, standards, and methodology to be used to establish budgets for carriers and to cause to be published in the Federal Register for public comment, at least 90 days before Sept. 1, the data, standards, and methodology proposed to be used.

Subsec. (c)(2)(A). Pub. L. 108–173, §911(c)(4)(B), substituted ''contract under section 1395kk–1 of this title that provides for making payments under this part'' for ''contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B) of this section,'' in introductory provisions.

Subsec. (c)(2)(B)(ii)(III). Pub. L. 108–173, §736(b)(8)(A), struck out ''and'' at end.

Subsec. (c)(2)(B)(ii)(IV). Pub. L. 108–173, §736(b)(8)(B), substituted '', and'' for period at end.

Subsec. (c)(3)(A). Pub. L. 108–173, §911(c)(4)(C), substituted ''section 1395kk–1(a)(3)(B) of this title'' for ''subsection (a)(1)(B) of this section''.

Subsec. (c)(4). Pub. L. 108–173, §911(c)(4)(D), substituted ''medicare administrative contractor'' for ''carrier'' in introductory provisions.

Subsec. (c)(5), (6). Pub. L. 108–173, §911(c)(4)(E), struck out pars. (5) and (6), which provided that each contract

would require the carrier to meet criteria to measure the timeliness of responses to requests for payment of items described in section 1395m(a)(15)(C) of this title and prohibited any carrier from carrying out any activity pursuant to a contract under the Medicare Integrity Program under section 1395ddd of this title.

Subsec. (d) to (f). Pub. L. 108–173, §911(c)(5), struck out subsecs. (d) to (f), which provided that contracts under this section could require surety bonds and that certifying or disbursing officers or carriers would not be liable with respect to payments in the absence of gross negligence or intent to defraud and defined ''carrier'' for purposes of this part.

Subsec. (g). Pub. L. 108–173, §911(c)(6), substituted ''medicare administrative contractor or contractors'' for ''carrier or carriers''.

Subsec. (h)(2). Pub. L. 108–173, §911(c)(7)(A), substituted ''The Secretary'' for ''Each carrier having an agreement with the Secretary under subsection (a) of this section'' in first sentence and for ''Each such carrier'' in last sentence.

Subsec. (h)(3)(A). Pub. L. 108–173, §911(c)(7)(B)(ii), which directed substitution of ''such contractor'' for ''such carrier'', was executed by making the substitution in two places to reflect the probable intent of Congress.

Pub. L. 108–173, §911(c)(7)(B)(i), substituted ''medicare administrative contractor having a contract under section 1395kk–1 of this title that provides for making payments under this part'' for ''a carrier having an agreement with the Secretary under subsection (a) of this section''.

Subsec. (h)(3)(B). Pub. L. 108–173, §911(c)(7)(C), substituted ''a medicare administrative contractor'' for ''a carrier'' in two places and ''the contractor'' for ''the carrier'' in two places.

Subsec. (h)(5)(A), (B)(iii). Pub. L. 108–173, §911(c)(7)(D), substituted ''medicare administrative contractors'' for ''carriers''.

Subsec. (i)(2). Pub. L. 108–173, §736(b)(9), substituted ''services, to a physician'' for ''services, a physician''.

Subsec. (*l*)(1)(A)(iii), (2). Pub. L. 108–173, §911(c)(8), substituted ''medicare administrative contractor'' for ''carrier''.

Subsec. (*o*)(1). Pub. L. 108–173, §303(b)(1), substituted ''equal to the following:'' for ''equal to 95 percent of the average wholesale price.'' and added subpars. (A) to (G).

Subsec. (*o*)(1)(G). Pub. L. 108–173, §305(a), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''The provisions of subparagraphs (A) through (F) of this paragraph shall not apply to an inhalation drug or biological furnished through durable medical equipment covered under section 1395x(n) of this title.''

Subsec. (*o*)(2). Pub. L. 108–173, §303(i)(1), inserted at end ''This paragraph shall not apply in the case of payment under paragraph (1)(C).''

Subsec. (*o*)(4). Pub. L. 108–173, §303(b)(2), added par. (4).

Subsec. (*o*)(5), (6). Pub. L. 108–173, §303(e), added pars. (5) and (6).

Subsec. (*o*)(7). Pub. L. 108–173, §303(g)(1), added par. (7).

Subsec. (p)(3)(A). Pub. L. 108–173, §911(c)(9), substituted ''medicare administrative contractor'' for ''carrier''.

Subsec. (q)(1)(A). Pub. L. 108–173, §911(c)(10), struck out ''carrier'' before ''localities''.

Subsec. (s)(1). Pub. L. 108–173, §302(d)(3)(A), substituted ''Subject to paragraph (3), the Secretary'' for ''The Secretary''.

Subsec. (s)(2)(C). Pub. L. 108–173, §627(b)(2), struck out subpar. (C) which read as follows: ''Therapeutic shoes.''

Subsec. (s)(3). Pub. L. 108–173, §302(d)(3)(B), added par. (3).

2000—Subsec. (b)(6)(C). Pub. L. 106–554, §1(a)(6) [title II, §222(a)], struck out ''for such services provided before January 1, 2003,'' before ''payment may be made'' and substituted comma for semicolon at end.

Subsec. (b)(6)(E). Pub. L. 106–554, §1(a)(6) [title III, §313(b)(1)], inserted ''by, or under arrangements made by, a skilled nursing facility'' before ''to an individual who'' and struck out ''or of a part of a facility that includes a skilled nursing facility (as determined under regulations)'' before '', payment shall be made'' and ''(without regard to whether or not the item or service was furnished by the facility, by others under arrangement with them made by the facility, under any other contracting or consulting arrangement, or otherwise)'' after ''to the facility''.

Subsec. (b)(6)(G). Pub. L. 106–554, §1(a)(6) [title IV, §432(b)(2)], added subpar. (G).

Subsec. (b)(18)(C)(vi). Pub. L. 106–554, §1(a)(6) [title I, §105(d)], added cl. (vi).

Subsec. (*o*)(3). Pub. L. 106–554, §1(a)(6) [title I, §114(a)], added par. (3).

Subsec. (t). Pub. L. 106–554, §1(a)(6) [title III, §313(b)(2)], struck out ''by a physician'' before ''to an individual'' and ''or of a part of a facility that includes a skilled nursing facility (as determined under regulations),'' before ''for which payment may be made''.

1999—Subsec. (b)(6)(F). Pub. L. 106–113, §1000(a)(6) [title III, §305(a)], inserted ''(including medical supplies described in section 1395x(m)(5) of this title, but excluding durable medical equipment to the extent provided for in such section)'' after ''home health services''.

Subsec. (b)(8)(A)(i)(I). Pub. L. 106–113, §1000(a)(6) [title II, §223(c)], substituted ''the application of this subchapter to payment under this part'' for ''the application of this part''.

Subsec. (s)(2)(E). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(4)], inserted period at end.

1997—Subsec. (b)(2)(E). Pub. L. 105–33, §4611(d), added subpar. (E).

Subsec. (b)(6). Pub. L. 105–33, §4512(c), inserted at end ''For purposes of subparagraph (C) of the first sentence of this paragraph, an employment relationship may include any independent contractor arrangement, and employer status shall be determined in accordance with the law of the State in which the services described in such clause are performed.''

Subsec. (b)(6)(A)(ii). Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (b)(6)(C). Pub. L. 105–33, §4205(d)(3)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''in the case of services described in clauses (i), (ii), or (iv) of section 1395x(s)(2)(K) of this title payment shall be made to the employer of the physician assistant or nurse practitioner involved, and''.

Subsec. (b)(6)(E). Pub. L. 105–33, §4432(b)(2), added subpar. (E).

Subsec. (b)(6)(F). Pub. L. 105–33, §4603(c)(2)(B)(i), added subpar. (F).

Subsec. (b)(8), (9). Pub. L. 105–33, §4316(a), amended pars. (8) and (9) generally. Prior to amendment, par. (8) related to determination of reasonable charges for physician services, including factors to be considered, provision for increase or decrease of charge, consideration of resource costs, accounting for regional differences in prevailing charges, and impact of changes in reasonable charges, and par. (9) related to notice of proposed reasonable charges to be published in Federal Register, provision for comments on proposed changes, and publication of final determinations with respect to change in reasonable charges.

Subsec. (b)(12). Pub. L. 105–33, §4512(b)(2), struck out par. (12) which read as follows:

''(12)(A) With respect to services described in clauses (i), (ii), or (iv) of section 1395x(s)(2)(K) of this title (relating to a physician assistants and nurse practitioners)—

''(i) payment under this part may only be made on an assignment-related basis; and

''(ii) the prevailing charges determined under paragraph (3) shall not exceed—

''(I) in the case of services performed as an assistant at surgery, 65 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery, or

''(II) in other cases, the applicable percentage (as defined in subparagraph (B)) of the prevailing

charge rate determined for such services (or, for services furnished on or after January 1, 1992, the fee schedule amount specified in section 1395w–4 of this title) performed by physicians who are not specialists.

''(B) In subparagraph (A)(ii)(II), the term 'applicable percentage' means—

''(i) 75 percent in the case of services performed (other than as an assistant at surgery) in a hospital, and

''(ii) 85 percent in the case of other services.''

Subsec. (b)(19). Pub. L. 105–33, §4531(a)(2), added par. (19).

Subsec. (h)(8). Pub. L. 105–33, §4302(b), added par. (8).

Subsec. (*o*). Pub. L. 105–33, §4556(a), added subsec. (*o*).

Subsec. (p)(1), (2). Pub. L. 105–33, §4317(a), inserted ''or practitioner specified in subsection (b)(18)(C) of this section'' after ''by a physician''.

Subsec. (p)(4). Pub. L. 105–33, §4317(b), added par. (4).

Subsec. (s). Pub. L. 105–33, §4315(a), added subsec. (s).

Subsec. (t). Pub. L. 105–33, §4432(b)(4), added subsec. (t).

1996—Subsec. (c)(6). Pub. L. 104–191, §202(b)(2), added par. (6).

Subsec. (r). Pub. L. 104–191, §221(b), inserted at end ''Under such system, the Secretary may impose appropriate fees on such physicians to cover the costs of investigation and recertification activities with respect to the issuance of the identifiers.''

1994—Subsec. (b)(2)(A). Pub. L. 103–432, §126(g)(9), made technical amendment to directory language of Pub. L. 101–508, §4118(j)(2). See 1990 Amendment note below.

Subsec. (b)(2)(D). Pub. L. 103–432, §151(b)(2)(B), added subpar. (D).

Subsec. (b)(3)(G). Pub. L. 103–432, §151(b)(1)(B)(i), which directed striking out ''and'' at end of subpar. (G), could not be executed because ''and'' did not appear at end of subpar. (G) subsequent to amendment by Pub. L. 103–432, §123(c)(2). See below.

Pub. L. 103–432, §123(c)(2), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''will provide to each nonparticipating physician, at the beginning of each year, a list of the physician's limiting charges established under section 1395w–4(g)(2) of this title for the year for the physicians' services mostly commonly furnished by that physician; and''.

Subsec. (b)(3)(H). Pub. L. 103–432, §151(b)(1)(B)(ii), which directed striking out ''and'' at end of subpar. (H), could not be executed because ''and'' does not appear at end.

Subsec. (b)(3)(I). Pub. L. 103–432, §151(b)(1)(B)(iii), added subpar. (I).

Subsec. (b)(6)(D). Pub. L. 103–432, §125(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''payment may be made to a physician who arranges for visit services (including emergency visits and related services) to be provided to an individual by a second physician on an occasional, reciprocal basis if (i) the first physician is unavailable to provide the visit services, (ii) the individual has arranged or seeks to receive the visit services from the first physician, (iii) the claim form submitted to the carrier includes the second physician's unique identifier (provided under the system established under subsection (r) of this section) and indicates that the claim is for such a 'covered visit service (and related services)', and (iv) the visit services are not provided by the second physician over a continuous period of longer than 60 days.''

Subsec. (b)(12)(C). Pub. L. 103–432, §123(b)(2)(B), struck out subpar. (C). Prior to amendment, subpar. (C) read as follows: ''Except for deductible and coinsurance amounts applicable under section 1395*l* of this title, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in clauses (i), (ii), or (iv) of section 1395x(s)(2)(K) of this title in violation of subparagraph (A)(i) is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (b)(16)(B)(iii). Pub. L. 103–432, §126(a)(1), struck out '', simple and subcutaneous'' after ''Partial'', substituted ''injections and small joint'' for ''injections; small joint'' and ''femoral fracture and'' for ''femoral fracture treatments;'', struck out ''lobectomy;'' after ''thoracostomy;'' and ''enterectomy; colectomy; cholecystectomy;'' after ''aneurysm repair;'', substituted ''fulguration and resection'' for ''fulguration; transurerethral resection'', and struck out ''sacral laminectomy;'' before ''tympanoplasty''.

Subsec. (b)(17). Pub. L. 103–432, §126(e), redesignated par. (18), relating to payment for technical component of diagnostic tests, as (17) and inserted '', tests specified in paragraph (14)(C)(i),'' after ''diagnostic laboratory tests''.

Subsec. (b)(18). Pub. L. 103–432, §126(e), redesignated par. (18), relating to payment for technical component of diagnostic tests, as (17).

Pub. L. 103–432, §123(b)(1), added par. (18), relating to payment for service furnished by a practitioner described in subpar. (C).

Subsec. (c)(1). Pub. L. 103–432, §126(h)(2), struck out subpar. (A) designation before ''Any contract entered'' and struck out subpar. (B) which read as follows: ''Of the amounts appropriated for administrative activities to carry out this part, the Secretary shall provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under this section, to reward carriers for their success in increasing the proportion of physicians in the carrier's service area who are participating physicians or in increasing the proportion of total payments for physicians' services which are payments for such services rendered by participating physicians.''

Subsec. (c)(4). Pub. L. 103–432, §125(a), added par. (4).

Subsec. (c)(5). Pub. L. 103–432, §135(b)(2), added par. (5).

Subsec. (h)(7)(C). Pub. L. 103–432, §123(c)(1)(B), struck out ''shall include'' before cl. (i).

Subsec. (h)(7)(D). Pub. L. 103–432, §123(c)(1)(A), (C), (D), added subpar. (D).

Subsec. (q)(1). Pub. L. 103–432, §126(c)(1), made technical amendment to Pub. L. 101–508, §4103(a). See 1990 Amendment note below.

Subsec. (q)(1)(B). Pub. L. 103–432, §126(c)(2)(A), substituted ''shall, subject to clause (iv), be reduced to the adjusted prevailing charge conversion factor for the locality determined as follows:'' for ''shall be determined as follows:'' in introductory provisions.

Subsec. (q)(1)(B)(iii). Pub. L. 103–432, §126(c)(2)(B), substituted ''The adjusted prevailing charge conversion factor for'' for ''Subject to clause (iv), the prevailing charge conversion factor to be applied in''.

1993—Subsec. (b)(4)(F). Pub. L. 103–66, §13515(a)(2), struck out subpar. (F) which related to prevailing charge or fee schedule amount in case of professional services of health care practitioner (other than primary care services and other than services furnished in rural area designated as health professional shortage area) furnished during practitioner's first through fourth years of practice.

Subsec. (b)(13)(A). Pub. L. 103–66, §13516(a)(2)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after April 1, 1988, and before January 1, 1996, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical direction for each concurrent procedure (other than cataract surgery or an iridectomy) shall be reduced by—

''(i) 10 percent, in the case of medical direction of 2 nurse anesthetists concurrently,

''(ii) 25 percent, in the case of medical direction of 3 nurse anesthetists concurrently, and

''(iii) 40 percent, in the case of medical direction of 4 nurse anesthetists concurrently.''

Subsec. (b)(13)(B), (C). Pub. L. 103–66, § 13516(a)(2), redesignated subpar. (C) as (B), substituted ''subparagraph (A)'' for ''subparagraph (A) or (B)'', and struck out former subpar. (B) which read as follows: ''In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after January 1, 1989, and before January 1, 1996, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical direction for each concurrent cataract surgery or iridectomy procedure shall be reduced by 10 percent.''

Subsec. (c)(2)(B)(ii). Pub. L. 103–66, § 13568(b), substituted ''period ending on or before September 30, 1993'' for ''period'' in subcl. (IV) and added subcl. (V).

Subsec. (c)(3)(B). Pub. L. 103–66, § 13568(a), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days, and

''(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 14 days.''

Subsec. (i)(2). Pub. L. 103–66, § 13517(b), substituted ''; the term'' for '', and the term'' and inserted before period at end ''; and the term 'nonparticipating supplier or other person' means a supplier or other person (excluding a provider of services) that is not a participating physician or supplier (as defined in subsection (h)(1) of this section)''.

1990—Subsec. (b)(2)(A). Pub. L. 101–508, § 4118(j)(2), as amended by Pub. L. 103–432, § 126(g)(9), substituted ''section 1395w–1(e)(2)'' for ''section 1395w–1(f)(2)''.

Subsec. (b)(3)(G). Pub. L. 101–508, § 4118(f)(2)(B), substituted ''section 1395w–4(g)(2) of this title'' for ''subsection (j)(1)(C) of this section''.

Subsec. (b)(4)(A)(vi). Pub. L. 101–508, § 4105(b)(1), substituted ''60 percent'' for ''50 percent''.

Subsec. (b)(4)(B)(iv). Pub. L. 101–508, § 4105(a)(2), added cl. (iv).

Subsec. (b)(4)(E)(iv)(I). Pub. L. 101–508, § 4118(a)(2), substituted ''the list referred to in paragraph (14)(C)(i)'' for ''Table #2 in the Joint Explanatory Statement of the Committee of Conference submitted with the Conference Report to accompany H.R. 3299 (the 'Omnibus Budget Reconciliation Act of 1989'), 101st Congress''.

Subsec. (b)(4)(E)(v). Pub. L. 101–508, § 4105(a)(1), added cl. (v).

Subsec. (b)(4)(F). Pub. L. 101–508, § 4106(a)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''In determining the customary charges for physicians' services furnished during a calendar year (other than primary care services and other than services furnished in a rural area (as defined in section 1395ww(d)(2)(D) of this title) that is designated, under section 254e(a)(1)(A) of this title, as a health manpower shortage area) for which adequate actual charge data are not available because a physician has not yet been in practice for a sufficient period of time, the Secretary shall set a customary charge at a level no higher than 80 percent of the prevailing charge for a service. For the first calendar year during which the preceding sentence no longer applies, the Secretary shall set the customary charge at a level no higher than 85 percent of the prevailing charge for the service.''

Subsec. (b)(4)(F)(i). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area''.

Pub. L. 101–508, § 4106(b)(2)(A), (B), substituted ''professional services'' for ''physicians' services and professional services'' and ''practitioner's first'' for ''physician's or practitioner's first''.

Subsec. (b)(4)(F)(ii)(II). Pub. L. 101–508, § 4106(b)(2)(C), substituted ''practitioner'' for ''physician or practitioner'' in two places.

Subsec. (b)(6)(C). Pub. L. 101–508, § 4155(c), substituted ''clauses (i), (ii), or (iv) of section 1395x(s)(2)(K)'' for ''section 1395x(s)(2)(K)''.

Subsec. (b)(6)(D). Pub. L. 101–508, § 4110(a), added subpar. (D).

Subsec. (b)(12)(A). Pub. L. 101–508, § 4155(c), substituted ''clauses (i), (ii), or (iv) of section 1395x(s)(2)(K)'' for ''section 1395x(s)(2)(K)'' in introductory provisions.

Subsec. (b)(12)(A)(ii)(II). Pub. L. 101–508, § 4118(f)(2)(C), struck out '', as the case may be'' after ''section 1395w–4 of this title''.

Pub. L. 101–508, § 4118(f)(2)(A), made technical correction to Pub. L. 101–239, § 6102(e)(4). See 1989 Amendment note below.

Subsec. (b)(12)(C). Pub. L. 101–508, § 4155(c), substituted ''clauses (i), (ii), or (iv) of section 1395x(s)(2)(K)'' for ''section 1395x(s)(2)(K)''.

Subsec. (b)(13)(A), (B). Pub. L. 101–508, § 4103(b), substituted ''1996'' for ''1991''.

Subsec. (b)(14)(A). Pub. L. 101–508, § 4101(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(14)(B)(iii)(I). Pub. L. 101–508, § 4118(a)(1)(A), which directed amendment of subcl. (I) by substituting ''practice expense component (percent), divided by 100, specified in appendix A (pages 187 through 194) of the Report of the Medicare and Medicaid Health Budget Reconciliation Amendments of 1989, prepared by the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, (Committee Print 101–M, 101st Congress, 1st Session) for the service'' for ''practice expense ratio for the service (specified in table #1 in the Joint Explanatory Statement referred to in subparagraph (C)(i))'', was executed by making the substitution for ''practice expense ratio for the service (specified in Table #1 in the Joint Explanatory Statement referred to in subparagraph (C)(i))'' to reflect the probable intent of Congress.

Subsec. (b)(14)(B)(iii)(II). Pub. L. 101–508, § 4118(a)(1)(B), substituted ''practice expense component (percent), divided by 100'' for ''practice expense ratio''.

Subsec. (b)(14)(C)(i). Pub. L. 101–508, § 4118(a)(1)(C), substituted ''procedures specified (by code and description) in the Overvalued Procedures List for Finance Committee, Revised September 20, 1989, prepared by the Physician Payment Review Commission'' for ''physicians' services specified in Table #2 in the Joint Explanatory Statement of the Committee of Conference submitted with the Conference Report to accompany H.R. 3299 (the 'Omnibus Budget Reconciliation Act of 1989'), 101st Congress,''.

Subsec. (b)(14)(C)(iii). Pub. L. 101–508, § 4118(a)(1)(D), which directed amendment of cl. (iii) by substituting ''The 'percentage change' specified in this clause, for a physicians' service specified in clause (i), is the percent difference (but expressed as a positive number) specified for the service in the list'' for ''The 'percent change' specified in this clause, for a physicians' service specified in clause (i), is the percent change specified for the service in table #2 in the Joint Explanatory Statement'', was executed by making the substitution for ''The 'percent change' specified in this clause, for a physicians' service specified in clause (i), is the percent change specified for the service in Table #2 in the Joint Explanatory Statement'' to reflect the probable intent of Congress.

Subsec. (b)(14)(C)(iv). Pub. L. 101–508, § 4118(a)(1)(E), which directed amendment of cl. (iv) by substituting ''the Geographic Overhead Costs Index specified for the locality in table 1 of the September 1989 Supplement to the Geographic Medicare Economic Index: Alternative Approaches (prepared by the Urban Institute and the Center for Health Economics Research)'' for ''such value specified for the locality in table #3 in the Joint Explanatory Statement referred to in clause (i)'', was executed by making the substitution for ''such value specified for the locality in Table #3 in the Joint Explanatory Statement referred to in clause (i)'' to reflect the probable intent of Congress.

Subsec. (b)(16). Pub. L. 101–508, § 4101(b), added par. (16).

Subsec. (b)(18). Pub. L. 101–508, § 4108(a), added par. (18).

Subsec. (q)(1). Pub. L. 101–508, §4103(a), as amended by Pub. L. 103–432, §126(c)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (r). Pub. L. 101–508, §4118(i)(1), added subsec. (r).

1989—Subsec. (b)(2)(A). Pub. L. 101–239, §6202(d)(2), inserted at end ''The Secretary may not require, as a condition of entering into or renewing a contract under this section or under section 1395hh of this title, that a carrier match data obtained other than in its activities under this part with data used in the administration of this part for purposes of identifying situations in which section 1395y(b) of this title may apply.''

Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §202(e)(3)(C), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(2)(C). Pub. L. 101–239, §6114(c)(2), added subpar. (C).

Subsec. (b)(3)(G). Pub. L. 101–239, §6102(e)(2), substituted ''limiting charges established under subsection (j)(1)(C) of this section'' for ''maximum allowable actual charges (established under subsection (j)(1)(C) of this section)''.

Subsec. (b)(3)(I) to (K). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §§201(c), 202(e)(2), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (b)(3)(L). Pub. L. 101–239, §6102(b), added subpar. (L).

Subsec. (b)(4)(A)(iv). Pub. L. 101–239, §6102(e)(3), inserted ''and before January 1, 1992,'' after ''January 1, 1987,''.

Subsec. (b)(4)(E)(iv). Pub. L. 101–239, §6107(b), added cl. (iv).

Subsec. (b)(4)(F). Pub. L. 101–239, §6108(a)(1), inserted ''furnished during a calendar year'' after ''physicians' services'' and inserted at end ''For the first calendar year during which the preceding sentence no longer applies, the Secretary shall set the customary charge at a level no higher than 85 percent of the prevailing charge for the service.''

Subsec. (b)(6)(A)(ii). Pub. L. 101–239, §6003(g)(3)(D)(ix), inserted ''rural primary care hospital,'' after ''hospital,''.

Subsec. (b)(6)(C). Pub. L. 101–239, §6114(c)(1), inserted ''or nurse practitioner'' after ''physician assistant''.

Subsec. (b)(12)(A). Pub. L. 101–239, §6114(b), substituted ''physician assistants and nurse practitioners'' for ''physician assistant acting under the supervision of a physician'' in introductory provisions.

Subsec. (b)(12)(A)(ii)(II). Pub. L. 101–239, §6102(e)(4), as amended by Pub. L. 101–508, §4118(f)(2)(A), inserted ''(or, for services furnished on or after January 1, 1992, the fee schedule amount specified in section 1395w–4 of this title, as the case may be)'' after ''prevailing charge rate determined for such services''.

Subsec. (b)(14). Pub. L. 101–239, §6104(a), added par. (14).

Subsec. (b)(15). Pub. L. 101–239, §6108(b)(1), added par. (15).

Subsecs. (c)(1)(A), (2)(A), (3)(A), (4), (f)(3), (h)(1), (2), (4). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §202(c)(1)(A), (B), (e)(1), (3)(A), (4)(A), (5), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (j)(1)(B)(ii). Pub. L. 101–239, §6102(e)(9), substituted ''December 31, 1990.'' for ''the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.''

Subsec. (j)(1)(C)(vii). Pub. L. 101–234, §301(b)(2), (c)(2), amended cl. (vii) identically, substituting ''according'' for ''accordingly''.

Subsec. (j)(1)(D)(ii)(II). Pub. L. 101–239, §6104(b)(1), inserted ''or (b)(14)(A)'' after ''(b)(10)(A)''.

Subsec. (j)(1)(D)(ii)(IV). Pub. L. 101–239, §6108(b)(2)(A), inserted ''or (b)(15)(A)'' after ''subsection (b)(11)(C)(i)''.

Subsec. (j)(1)(D)(iii)(II). Pub. L. 101–239, §6108(b)(2)(B), substituted ''(b)(14)(A), or (b)(15)(A)'' for ''or (b)(14)(A)''.

Pub. L. 101–239, §6104(b)(2), substituted ''(b)(11)(C)(i), or (b)(14)(A)'' for ''or (b)(11)(C)(i)''.

Subsec. (j)(1)(D)(v). Pub. L. 101–239, §6102(e)(9), substituted ''December 31, 1990.'' for ''the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.''

Subsec. (j)(2). Pub. L. 101–234, §301(b)(6), (d)(3), which directed identical amendments to subsec. (j)(2) by substituting ''subsections'' for ''paragraphs'' in subpar. (B) as amended by section 8(c)(2)(A) of the Medicare and Medicaid Fraud and Abuse Patient Protection Act of 1987 [probably meaning section 8(c)(2)(A) of Pub. L. 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987, which amended subpar. (A) of subsec. (j)(2), generally] could not be executed because the word ''paragraphs'' did not appear.

Subsec. (*o*). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §202(c)(1)(C), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (q). Pub. L. 101–239, §6106(a), added subsec. (q).

1988—Subsec. (b)(2). Pub. L. 100–360, §411(i)(2), amended Pub. L. 100–203, §4082(c), see 1987 Amendment note below.

Subsec. (b)(2)(A). Pub. L. 100–485, §608(d)(5)(G), inserted '', including claims processing functions'' after ''and related functions'' in last sentence.

Pub. L. 100–360, §411(f)(1)(B), inserted reference to section 1395w–1(f)(2) of this title in third sentence.

Pub. L. 100–360, §202(e)(3)(C), as amended by Pub. L. 100–485, §608(d)(5)(F), inserted at end ''With respect to activities relating to implementation and operation (and related functions) of the electronic system established under subsection (*o*)(4) of this section, the Secretary may enter into contracts with carriers under this section to perform such activities on a regional basis.''

Subsec. (b)(3). Pub. L. 100–360, §411(i)(4)(C)(vi), added Pub. L. 100–203, §4085(i)(24), see 1987 Amendment note below.

Pub. L. 100–360, §411(f)(4)(B)(ii), added Pub. L. 100–203, §4045(c)(2)(D), see 1987 Amendment note below.

Pub. L. 100–360, §411(f)(11)(A), (14), renumbered and amended Pub. L. 100–203, §4053(a), see 1987 Amendment note below.

Subsec. (b)(3)(B)(ii). Pub. L. 100–360, §411(j)(4)(A), made technical correction to directory language of Pub. L. 100–203, §4096(a)(1)(A), see 1987 Amendment note below.

Subsec. (b)(3)(I). Pub. L. 100–360, §201(c), added subpar. (I) requiring notice that an individual has reached the part B catastrophic limit on out-of-pocket cost sharing for the year.

Subsec. (b)(3)(J). Pub. L. 100–360, §202(e)(2), added subpar. (J) relating to requirements for determinations or payments with respect to covered outpatient drugs, to receive information and respond to requests by participating pharmacies.

Subsec. (b)(3)(K). Pub. L. 100–485, §608(d)(5)(C), inserted '', including claims processing functions,'' after ''and for related functions''.

Pub. L. 100–360, §202(e)(2), added subpar. (K) requiring contracts with organizations described in subsection (f)(3) of this section to implement and operate the electronic system established under subsection (*o*)(4) of this section for covered outpatient drugs.

Subsec. (b)(4)(A)(iv). Pub. L. 100–360, §411(f)(2)(F)(i), as amended by Pub. L. 100–485, §608(d)(21)(B), redesignated and amended Pub. L. 100–203, §4042(c)(1), see 1987 Amendment note below.

Subsec. (b)(4)(A)(iv)(II). Pub. L. 100–360, §411(f)(2)(E), substituted ''before January 1, 1989'' for ''before January 1, 1988''.

Subsec. (b)(4)(A)(vi). Pub. L. 100–360, § 411(f)(3)(A), made technical amendment to directory language of Pub. L. 100–203, § 4044(a), see 1987 Amendment note below.

Pub. L. 100–360, § 411(f)(3)(B), substituted ''subsection (i)(4) of this section'' for ''subparagraph (E)(iii)'' and ''the estimated average prevailing charge levels based on the best available data'' for ''the average of the prevailing charge levels'' and struck out ''for participating physicians'' before ''under the third''.

Subsec. (b)(4)(A)(vii). Pub. L. 100–360, § 411(f)(2)(D), added Pub. L. 100–203, § 4042(b)(2)(A), see 1987 Amendment note below.

Pub. L. 100–360, § 411(f)(3)(A), made technical amendment to directory language of Pub. L. 100–203, § 4044(a), see 1987 Amendment note below.

Subsec. (b)(4)(E). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(C), (D), see 1987 Amendment notes below.

Subsec. (b)(4)(F). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(D), see 1987 Amendment note below.

Subsec. (b)(4)(F)(ii)(I). Pub. L. 100–360, § 411(f)(2)(B), substituted ''subsection (i)(4) of this section'' for ''subparagraph (E)(iii)''.

Subsec. (b)(4)(F)(iii). Pub. L. 100–360, § 411(f)(2)(A), substituted ''services,'' for ''services;'' in subcl. (I) and ''physicians' '' for ''physician's'' in subcl. (II).

Subsec. (b)(4)(G). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(D), see 1987 Amendment note below.

Pub. L. 100–360, § 411(f)(6)(B), substituted ''other than primary care services'' for ''other primary care services'' and struck out ''(as determined under the third and fourth sentences of paragraph (3) and under paragraph (4))'' after ''the prevailing charge''.

Subsec. (b)(7)(B)(iii). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(22)(C), see 1987 Amendment note below.

Subsec. (b)(10)(A)(i). Pub. L. 100–360, § 411(f)(4)(A)(i), struck out ''under paragraph (3)'' after ''reasonable charge'', substituted ''subparagraph (B)'' for ''subparagraph (C)'', and struck out ''for participating and nonparticipating physicians'' after ''charge for such procedure''.

Subsec. (b)(10)(A)(iii). Pub. L. 100–360, § 411(f)(4)(A)(ii), substituted ''clause (i)(I)'' for ''clause (i)(II)''.

Subsec. (b)(10)(B). Pub. L. 100–360, § 411(f)(4)(A)(iii), inserted ''(including subsequent insertion of an intraocular lens)'' after ''cataract surgery''.

Subsec. (b)(10)(D). Pub. L. 100–360, § 411(f)(4)(A)(iv), substituted ''under section 1395ff'' for ''section 1395ff''.

Subsec. (b)(11)(B)(i). Pub. L. 100–360, § 411(f)(4)(B)(i), amended Pub. L. 100–203, § 4045(c)(2)(B), see 1987 Amendment note below.

Subsec. (b)(11)(C)(i). Pub. L. 100–360, § 411(f)(5)(A), substituted ''insertion'' for ''implantation''.

Subsec. (b)(11)(C)(ii). Pub. L. 100–360, § 411(g)(2)(A), substituted ''inserted during or subsequent to'' for ''implanted during''.

Subsec. (b)(12)(C). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(25), see 1987 Amendment note below.

Subsec. (b)(13), (14). Pub. L. 100–360, § 411(f)(7)(A), redesignated par. (14) as (13).

Subsec. (c)(1)(A). Pub. L. 100–360, § 202(e)(3)(A), designated existing provisions as cl. (i), inserted '', except as provided in clause (ii),'' after ''under this part, and'' and added cl. (ii) relating to payment for implementation and operation of the electronic system for covered outpatient drugs.

Subsec. (c)(1)(A)(ii). Pub. L. 100–485, § 608(d)(5)(D), inserted '', including claims processing functions'' after ''and related functions''.

Subsec. (c)(2)(A), (3)(A). Pub. L. 100–360, § 202(e)(5)(A), as amended by Pub. L. 100–485, § 608(d)(5)(H), substituted ''Except as provided in paragraph (4), each'' for ''Each''.

Subsec. (c)(4). Pub. L. 100–360, § 202(e)(5)(B), added par. (4) requiring contracts for the disbursement of funds with respect to claims for payment for covered outpatient drugs to provide for a payment cycle, and requiring interest if such requirements are not met.

Subsec. (f)(3). Pub. L. 100–485, § 608(d)(5)(B), inserted '', including claims processing functions'' after ''and related functions''.

Pub. L. 100–360, § 202(e)(1), added par. (3) which read as follows: ''with respect to implementation and operation (and related functions) of the electronic system established under subsection (*o*)(4) of this section, a voluntary association, corporation, partnership, or other nongovernmental organization, which the Secretary determines to be qualified to conduct such activities.''

Subsec. (h)(1). Pub. L. 100–360, § 202(c)(1)(A), inserted '', except that, with respect to a supplier of covered outpatient drugs, the term 'participating supplier' means a participating pharmacy (as defined in subsection (*o*)(1) of this section)'' after ''part during such year''.

Subsec. (h)(2). Pub. L. 100–360, § 202(e)(4)(A), inserted ''(other than a carrier described in subsection (f)(3) of this section)'' after ''Each carrier''.

Subsec. (h)(3)(B). Pub. L. 100–360, § 411(i)(1)(A), substituted ''payment determination'' for ''claims determination'', ''shall include an explanation of benefits and any additional information that the Secretary may determine to be appropriate in order'' for ''including such information as the Secretary determines is generally provided'', ''enter into agreements'' for ''enter into arrangements'', and ''under this subparagraph by a carrier'' for ''under this subparagraph'' and inserted '', and such user fees shall be collected and retained by the carrier''.

Subsec. (h)(4). Pub. L. 100–360, § 202(c)(1)(B), inserted at end ''In publishing directories under this paragraph, the Secretary shall provide for separate directories (wherever appropriate) for participating pharmacies.''

Subsec. (h)(5). Pub. L. 100–360, § 223(b), designated existing provisions as subpar. (A), inserted ''through an annual mailing'', struck out at end ''The Secretary shall include such notice in the mailing of appropriate benefit checks provided under subchapter II of this chapter.'', and added subpar. (B).

Subsec. (h)(7). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(A), see 1987 Amendment note below.

Pub. L. 100–360, § 223(c), in subpar. (A) inserted ''prominent'' before ''reminder'' and substituted ''and a clear statement of any amounts charged for the particular items or services on the claim involved above the amount recognized under this part),'' for ''7E), and'' and added subpar. (C).

Subsec. (h)(8). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(B), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(B), see 1987 Amendment note below.

Subsec. (i)(2), (3). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(C), see 1987 Amendment note below.

Subsec. (i)(3). Pub. L. 100–485, § 608(d)(21)(A), substituted ''subsection (b)(3) of this section'' for ''paragraph (3)''.

Subsec. (i)(4). Pub. L. 100–360, § 411(f)(2)(C), added Pub. L. 100–203, § 4042(b)(1)(E), see 1987 Amendment note below.

Subsec. (j)(1)(C)(i). Pub. L. 100–360, § 411(f)(2)(F)(ii), added Pub. L. 100–203, § 4042(c)(2), see 1987 Amendment note below.

Subsec. (j)(1)(C)(viii). Pub. L. 100–360, § 411(f)(1)(A), amended Pub. L. 100–203, § 4041(a)(1)(B), see 1987 Amendment note below.

Subsec. (j)(1)(C)(ix). Pub. L. 100–360, § 411(f)(7)(B), added Pub. L. 100–203, § 4048(e), see 1987 Amendment note below.

Subsec. (j)(1)(D)(ii)(IV). Pub. L. 100–360, § 411(f)(5)(B), struck out ''is'' after ''limit''.

Subsec. (j)(1)(D)(ii)(V). Pub. L. 100–360, § 411(g)(2)(B), redesignated subcl. (IV) as (V) and struck out ''is'' after ''limit''.

Subsec. (j)(1)(D)(iii). Pub. L. 100–360, § 411(g)(2)(C), amended Pub. L. 100–203, § 4063(a)(2)(B), see 1987 Amendment note below.

Subsec. (j)(1)(D)(iv). Pub. L. 100–360, § 411(f)(4)(C), substituted ''bills'' for ''imposes a charge''.

Subsec. (j)(2). Pub. L. 100–360, § 411(i)(4)(C)(vi), as amended by Pub. L. 100–485, § 608(d)(24)(B), added Pub. L. 100–203, § 4085(i)(26), see 1987 Amendment note below.

Subsec. (*l*)(1)(C)(i). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(27), see 1987 Amendment note below.

Subsec. (n)(1). Pub. L. 100–360, § 411(f)(9)(A), in introductory provisions, struck out ''to a patient'' after ''includes a charge'', inserted ''the bill or request for'' after ''for which'', and substituted ''shares a practice'' for ''shares his practice'' and ''supervised the performance of the test, the'' for ''supervised the test, the''.

Subsec. (n)(1)(A). Pub. L. 100–485, § 608(d)(17), substituted ''the supplier's'' for ''the the supplier's''.

Pub. L. 100–360, § 411(f)(9)(B), as amended by Pub. L. 100–485, § 608(d)(21)(D), substituted ''(or other applicable limit)'' for ''to individuals enrolled under this part''.

Pub. L. 100–360, § 411(a)(3)(A), (C)(i), clarified that illegible matter after ''or, if lower, the'' was ''the supplier's reasonable charge to individuals enrolled under this part for the test''.

Subsec. (n)(2)(A). Pub. L. 100–360, § 411(f)(9)(C), inserted ''the payment amount specified in paragraph (1)(A) and'' after ''other than''.

Subsec. (n)(3). Pub. L. 100–360, § 411(f)(9)(D), struck out ''or supplier'' after ''such physician''.

Subsec. (*o*). Pub. L. 100–360, § 202(c)(1)(C), added subsec. (*o*) relating to ''participating pharmacies'' as entities authorized under State law to dispense covered outpatient drugs which had entered into agreements with Secretary to participate in catastrophic coverage program.

Subsec. (*o*)(1)(A)(i). Pub. L. 100–485, § 608(d)(5)(A)(i), substituted ''paragraph (4)'' for ''subparagraph (D)(i)''.

Subsec. (*o*)(1)(B)(ii). Pub. L. 100–485, § 608(d)(5)(A)(ii), substituted ''an eligible organization'' for ''eligible organization''.

Subsec. (p). Pub. L. 100–360, § 202(g), added subsec. (p).

1987—Subsec. (b)(2). Pub. L. 100–203, § 4082(c), as amended by Pub. L. 100–360, § 411(i)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 100–203, § 4041(a)(3)(A)(i), inserted at end ''In establishing such standards and criteria, the Secretary shall provide a system to measure a carrier's performance of responsibilities described in paragraph (3)(H) and subsection (h) of this section.''

Subsec. (b)(3). Pub. L. 100–203, § 4085(i)(24), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''In the case of physicians' services'' for ''In the case of physician services'' and ''(with respect to physicians' services'' for ''(with respect to physicians services'' in fourth sentence.

Pub. L. 100–203, § 4045(c)(2)(D), as added by Pub. L. 100–360, § 411(f)(4)(B)(ii), inserted ''(or under any other provision of law affecting the prevailing charge level)'' in fourth sentence.

Pub. L. 100–203, § 4053(a), formerly § 4052(a), as renumbered and amended by Pub. L. 100–360, § 411(f)(11)(A), (14), inserted '', and shall remain at such prevailing charge level until the prevailing charge for a year (as adjusted by economic index data) equals or exceeds such prevailing charge level'' before period at end of penultimate sentence.

Subsec. (b)(3)(B)(ii). Pub. L. 100–203, § 4096(a)(1)(A), as amended by Pub. L. 100–360, § 411(j)(4)(A), added subcl. (II), redesignated former subcl. (II) as (III), and inserted ''(and to refund amounts already collected)''.

Subsec. (b)(3)(C). Pub. L. 100–203, § 4085(i)(5), substituted ''less than $500'' for ''not more than $500''.

Subsec. (b)(4)(A)(iv). Pub. L. 100–203, § 4042(c)(1), formerly § 4042(c), as redesignated and amended by Pub. L. 100–360, § 411(f)(2)(F)(i), and by Pub. L. 100–485, § 608(d)(21)(B), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''In determining the prevailing charge level under the third and fourth sentences of paragraph (3) for a physicians' service furnished on or after January 1, 1987, by a nonparticipating physician, the Secretary shall set the level at 96 percent of the prevailing charge levels established under such sentences with respect to such service furnished by participating physicians.''

Subsec. (b)(4)(A)(v). Pub. L. 100–203, § 4041(a)(1)(A)(i), added cl. (v). Former cl. (v) redesignated (vi).

Subsec. (b)(4)(A)(vi). Pub. L. 100–203, § 4044(a), as amended by Pub. L. 100–360, § 411(f)(3)(A), added cl. (vi). Former cl. (vi) redesignated (vii).

Pub. L. 100–203, § 4041(a)(1)(A)(i), redesignated former cl. (v) as (vi).

Subsec. (b)(4)(A)(vii). Pub. L. 100–203, § 4042(b)(2)(A), as added by Pub. L. 100–360, § 411(f)(2)(D), substituted ''subsection (i)(3) of this section'' for ''subparagraph (E)(ii)''.

Pub. L. 100–203, § 4044(a), as amended by Pub. L. 100–360, § 411(f)(3)(A), redesignated former cl. (vi) as (vii).

Subsec. (b)(4)(B)(iii). Pub. L. 100–203, § 4041(a)(1)(A)(ii), added cl. (iii).

Subsec. (b)(4)(E). Pub. L. 100–203, § 4042(b)(1)(D), as added by Pub. L. 100–360, § 411(f)(2)(C), redesignated subpar. (F) as (E). Former subpar. (E) transferred to subsec. (i).

Pub. L. 100–203, § 4042(b)(1)(C), as added by Pub. L. 100–360, § 411(f)(2)(C), struck out ''(E) In this section:'' before cl. (i), redesignated cls. (i) and (ii) as pars. (2) and (3), respectively, and transferred those pars. to subsec. (i).

Subsec. (b)(4)(F). Pub. L. 100–203, § 4042(b)(1)(D), as added by Pub. L. 100–360, § 411(f)(2)(C), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 100–203, § 4042(a), added subpar. (F).

Subsec. (b)(4)(G). Pub. L. 100–203, § 4042(b)(1)(D), as added by Pub. L. 100–360, § 411(f)(2)(C), redesignated subpar. (G) as (F).

Pub. L. 100–203, § 4047(a), added subpar. (G).

Subsec. (b)(7)(B)(iii). Pub. L. 100–203, § 4085(i)(22)(C), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''an assignment-related basis'' for ''the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title''.

Subsec. (b)(10). Pub. L. 100–203, § 4045(a), amended par. (10) generally, revising and restating as subpars. (A) to (D) provisions of former subpars. (A) to (C).

Subsec. (b)(11)(B)(i). Pub. L. 100–203, § 4045(c)(2)(B), as amended by Pub. L. 100–360, § 411(f)(4)(B)(i), struck out ''and shall be further reduced by 2 percent with respect to procedures performed in 1988'' after ''in 1987'' and struck out second sentence which read as follows: ''A reduced prevailing charge under this subparagraph shall become the prevailing charge level for subsequent years for purposes of applying the economic index under the fourth sentence of paragraph (3).''

Subsec. (b)(11)(C). Pub. L. 100–203, § 4063(a)(1)(A), designated existing provisions as cl. (i) and added cl. (ii).

Pub. L. 100–203, § 4046(a)(1)(B), (C), added subpar. (C) and redesignated former subpar. (C) as (D).

Pub. L. 100–203, § 4045(c)(1)(A), struck out former cl. (i) designation before ''In the case of'' and substituted '', the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.'' for ''(subject to clause (iv)), the physician may not charge the individual more than the limiting charge (as defined in clause (ii)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) ½ of the amount by which the physician's actual charges for the service for the previous 12-month period exceeds the limiting charge.'', and struck out former cls. (ii) to (iv) which read as follows:

''(ii) In clause (i), the term 'limiting charge' means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction referred to in clause (i).

''(iii) If a physician knowingly and willfully imposes charges in violation of clause (i), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

''(iv) This subparagraph shall not apply to services furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to

Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.''

Subsec. (b)(11)(D). Pub. L. 100–203, § 4063(a)(1)(B), which directed that subpar. (D) be amended by inserting ''or item'' after ''service'' or ''services'' each place either appears, was executed by inserting ''or item'' after ''service'' wherever appearing. The word ''services'' does not appear because of a prior amendment by section 4045(c)(1)(A) of Pub. L. 100–203 to subpar. (D), formerly (C), see above.

Pub. L. 100–203, § 4046(a)(1)(A), (B), redesignated former subpar. (C) as (D) and substituted ''subparagraph (B) or (C)'' for ''subparagraph (B)''.

Subsec. (b)(12)(C). Pub. L. 100–203, § 4085(i)(25), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''money penalty'' for ''monetary penalty'' and amended second sentence generally. Prior to amendment, second sentence read as follows: ''Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a–7a of this title with respect to actions described in subsection (a) of that section.''

Subsec. (b)(14). Pub. L. 100–203, § 4048(a), added par. (14).

Subsec. (c)(1). Pub. L. 100–203, § 4041(a)(3)(A)(ii), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 100–203, § 4035(a)(2), inserted at end ''The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for carriers under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.''

Subsec. (c)(3). Pub. L. 100–203, § 4031(a)(2), added par. (3).

Subsec. (h)(3). Pub. L. 100–203, § 4081(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(5). Pub. L. 100–203, § 4085(i)(6), substituted ''the participation program'' for ''the the participation program''.

Subsec. (h)(7). Pub. L. 100–203, § 4042(b)(1)(A), as added by Pub. L. 100–360, § 411(f)(2)(C), struck out '', described in paragraph (8)'' after ''assignment-related basis'' in introductory provisions.

Subsec. (h)(8). Pub. L. 100–203, § 4042(b)(1)(B), as added by Pub. L. 100–360, § 411(f)(2)(C), substituted ''(1) A'' for ''(8) For purposes of this subchapter, a'', indented such par. 2 ems, and inserted subsec. (i) designation and ''For purposes of this subchapter:'', effectively transferring former subsec. (h)(8) to subsec. (i).

Subsec. (i). Pub. L. 100–203, § 4042(b)(1)(B), as added by Pub. L. 100–360, § 411(f)(2)(C), transferred introductory provisions and par. (1) from former subsec. (h)(8).

Subsec. (i)(2), (3). Pub. L. 100–203, § 4042(b)(1)(C), as added by Pub. L. 100–360, § 411(f)(2)(C), transferred pars. (2) and (3) from subsec. (b)(4)(E).

Subsec. (i)(4). Pub. L. 100–203, § 4042(b)(1)(E), as added by Pub. L. 100–360, § 411(f)(2)(C), added par. (4).

Subsec. (j)(1)(B)(i). Pub. L. 100–203, § 4054(a)(1), (2), formerly § 4053(a)(1), (2), as renumbered by Pub. L. 100–360, § 411(f)(14), substituted ''the actual charges of each such physician'' for ''each such physician's actual charges'' and ''on a repeated basis for such a service an actual charge'' for ''for such a service a physician's actual charge (as defined in subparagraph (C)(vi)''.

Subsec. (j)(1)(C)(i). Pub. L. 100–203, § 4085(i)(7)(A), inserted ''maximum allowable'' after ''If the physician's''.

Pub. L. 100–203, § 4042(c)(2), as added by Pub. L. 100–360, § 411(f)(2)(F)(ii), substituted ''applicable percent (as defined in subsection (b)(4)(A)(iv) of this section) of the prevailing charge for the year and service involved'' for ''prevailing charge for the year involved for such service furnished by nonparticipating physicians'' in subcls. (I) and (II).

Subsec. (j)(1)(C)(v). Pub. L. 100–203, § 4085(i)(7)(B), substituted ''1986'' for ''1987''.

Subsec. (j)(1)(C)(vi). Pub. L. 100–203, § 4054(a)(3), formerly § 4053(a)(3), as renumbered by Pub. L. 100–360, § 411(f)(14), struck out ''and subparagraph (B)'' after ''purposes of this subparagraph''.

Subsec. (j)(1)(C)(vii). Pub. L. 100–203, § 4085(i)(7)(C), added cl. (vii).

Subsec. (j)(1)(C)(viii). Pub. L. 100–203, § 4041(a)(1)(B), as amended by Pub. L. 100–360, § 411(f)(1)(A), added cl. (viii).

Subsec. (j)(1)(C)(ix). Pub. L. 100–203, § 4048(e), as added by Pub. L. 100–360, § 411(f)(7)(B), added cl. (ix).

Subsec. (j)(1)(D). Pub. L. 100–203, § 4045(c)(1)(B), added subpar. (D).

Subsec. (j)(1)(D)(ii)(IV). Pub. L. 100–203, § 4063(a)(2)(A), added subcl. (IV) relating to establishment of reasonable charge limit under subsec. (b)(11)(C)(ii) of this section.

Pub. L. 100–203, § 4046(a)(2)(A), added subcl. (IV) relating to establishment of prevailing charge limit under subsec. (b)(11)(C)(i) of this section. Former subcl. (IV) redesignated (V).

Subsec. (j)(1)(D)(ii)(V), (VI). Pub. L. 100–203, § 4063(a)(2)(A), redesignated former subcl. (V) as (VI).

Pub. L. 100–203, § 4046(a)(2)(A), redesignated former subcl. (IV) as (V).

Subsec. (j)(1)(D)(iii). Pub. L. 100–203, § 4063(a)(2)(B), as amended by Pub. L. 100–360, § 411(g)(2)(C), struck out ''or'' at end of subcl. (I), substituted ''; or'' for period at end of subcl. (II), and added subcl. (III).

Pub. L. 100–203, § 4046(a)(2)(B), substituted '', (b)(11)(B), or (b)(11)(C)(i)'' for ''or (b)(11)(B)'' in subcl. (II).

Subsec. (j)(2). Pub. L. 100–203, § 4085(i)(26), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), and amended by Pub. L. 100–485, § 608(d)(24)(B), substituted ''chapter'' for ''subchapter'' in subpar. (A), struck out ''the imposition of'' before ''civil monetary penalties'' and inserted ''and assessments'' in subpar. (B), substituted ''chapter'' for ''subchapter'' in two places in last sentence, and amended last sentence generally. Prior to amendment, last sentence read as follows: ''No payment may be made under this chapter with respect to any item or service furnished by a physician during the period when he is excluded from participation in the programs under this chapter pursuant to this subsection.''

Pub. L. 100–93, § 8(c)(2)(A), amended subpar. (A) generally and substituted ''excluded from participation in the programs'' for ''barred from participation in the program'' in last sentence. Prior to amendment, subpar. (A) read as follows: ''barring a physician from participation under the program under this subchapter for a period not to exceed 5 years, in accordance with the procedures of paragraphs (2) and (3) of section 1395y(d) of this title, or''.

Subsec. (j)(3)(A). Pub. L. 100–93, § 8(c)(2)(B), substituted ''exclude'' for ''bar''.

Subsec. (k)(1), (2). Pub. L. 100–203, § 4085(g)(1), substituted ''subsection (j)(2) of this section in the case of surgery performed on or after March 1, 1987'' for ''subsection (j)(2) of this section''.

Subsec. (*l*)(1)(A)(iii). Pub. L. 100–203, § 4096(a)(1)(B), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (*l*)(1)(C). Pub. L. 100–203, § 4096(a)(1)(C), inserted ''in the case described in subparagraph (A)(iii)(I)'' after ''to an individual'' in introductory provisions.

Subsec. (*l*)(1)(C)(i). Pub. L. 100–203, § 4085(i)(27), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), inserted ''the physician establishes that'' after ''(i)''.

Subsec. (n). Pub. L. 100–203, § 4051(a), added subsec. (n).

1986—Subsec. (b)(3). Pub. L. 99–509, § 9331(c)(3)(A), inserted ''or (with respect to physicians services furnished in a year after 1987) the level determined under this sentence for the previous year'' after ''ending June 30, 1973,'' and ''year-to-year'' before ''economic changes'' in fourth sentence.

Pub. L. 99–272, § 9301(d)(1)(B), (C), substituted ''June 30 last preceding the start of the calendar year'' for ''March 31 last preceding the start of the twelve-month period (beginning October 1 of each year)'' in third sentence, and struck out ''the twelve-month period beginning on October 1 in'' before ''any calendar year after 1974'' in eighth sentence.

Subsec. (b)(3)(C). Pub. L. 99–509, § 9341(a)(2), substituted ''at least $100, but not more than $500'' for ''$100 or more''.

Subsec. (b)(3)(F). Pub. L. 99–272, § 9301(d)(1)(A), struck out ''(ending on September 30)'' after ''before the year''.

Subsec. (b)(3)(G). Pub. L. 99–509, § 9331(b)(2), added subpar. (G).

Subsec. (b)(3)(H). Pub. L. 99–509, § 9332(a)(1), added subpar. (H).

Subsec. (b)(4)(A)(i), (ii). Pub. L. 99–272, § 9301(b)(1)(A), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(4)(A)(iii). Pub. L. 99–509, § 9331(a)(1), added cl. (iii) and struck out former cl. (iii) which read as follows: ''In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during a 12-month period beginning on or after January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for services furnished during the previous calendar year (without regard to clause (ii)(II)) for physicians who were participating physicians during that year.''

Pub. L. 99–272, § 9301(b)(1)(A)(ii), added cl. (iii).

Subsec. (b)(4)(A)(iv), (v). Pub. L. 99–509, § 9331(a)(1), added cls. (iv) and (v).

Subsec. (b)(4)(B). Pub. L. 99–272, § 9301(b)(1)(B), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(4)(C). Pub. L. 99–509, § 9331(a)(2), directed amendment of subpar. (C) by striking out ''(i)'' after ''(C)'' and striking out cl. (ii), applicable to services furnished on or after Jan. 1, 1987, which is identical to amendment by Pub. L. 99–514, § 1895(b)(14)(A), as amended, effective as if included in enactment of Pub. L. 99–272.

Pub. L. 99–514, § 1895(b)(14)(A), as amended by Pub. L. 99–509, § 9307(c)(2)(A), struck out cl. (i) designation, and struck out cl. (ii) which read as follows: ''In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the periods beginning after December 31, 1986, by a physician who was not a participating physician on that date, the Secretary shall treat the level as set under subparagraph (A)(ii) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A)(ii).''

Pub. L. 99–272, § 9301(b)(1)(C), designated existing provisions as cl. (i), substituted ''subparagraph (A)(i)'' for ''subparagraph (A)'' wherever appearing, and added cl. (ii).

Subsec. (b)(4)(D)(i) to (iii). Pub. L. 99–272, § 9301(b)(1)(D), designated existing provisions as cl. (i), substituted ''In determining the customary charges for physicians' services furnished during the 8-month period beginning May 1, 1986, or the 12-month period beginning January 1, 1987, by a physician who was not a participating physician (as defined in subsection (h)(1) of this section) on September 30, 1985'' for ''In determining the customary charges for physicians' services furnished during the 12-month period beginning October 1, 1985, or October 1, 1986, by a physician who at no time for any services furnished during the 12-month period beginning October 1, 1984, was a participating physician (as defined in subsection (h)(1) of this section)'', and added cls. (ii) and (iii).

Subsec. (b)(4)(D)(iv). Pub. L. 99–509, § 9331(b)(3), added cl. (iv).

Subsec. (b)(4)(E). Pub. L. 99–509, § 9331(a)(3), added subpar. (E).

Subsec. (b)(6). Pub. L. 99–509, § 9338(c), substituted ''except that (A) payment may be made (i)'' for ''except that payment may be made (A)(i)'', substituted ''(B) payment may be made'' for ''or (B)'', and inserted before the period at end '', and (C) in the case of services described in section 1395x(s)(2)(K) of this title payment shall be made to the employer of the physician assistant involved''.

Subsec. (b)(7)(B)(ii)(III). Pub. L. 99–272, § 9219(b)(1)(A), realigned margin of subcl. (III).

Subsec. (b)(7)(B)(iii). Pub. L. 99–272, § 9219(b)(2)(A), realigned margin of cl. (iii).

Subsec. (b)(8). Pub. L. 99–509, § 9333(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B) and (C).

Pub. L. 99–272, § 9304(a), added par. (8).

Subsec. (b)(9). Pub. L. 99–509, § 9333(b), added par. (9). Former par. (9) redesignated (11).

Pub. L. 99–272, § 9306(a), added par. (9).

Subsec. (b)(10). Pub. L. 99–509, § 9333(b), added par. (10).

Subsec. (b)(11). Pub. L. 99–509, § 9334(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B) and (C).

Pub. L. 99–509, § 9333(b), redesignated former par. (9) as (11).

Subsec. (b)(12). Pub. L. 99–509, § 9338(b), added par. (12).

Subsec. (c). Pub. L. 99–509, § 9311(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (h)(1). Pub. L. 99–272, § 9301(d)(2), substituted ''before the beginning of any year beginning with 1984'' for ''before October 1 of any year beginning with 1984'', ''on an assignment-related basis'' for ''on the basis of an assignment described in subsection (b)(3)(B)(ii) of this section, in accordance with subsection (b)(6)(B) of this section, or under the procedure described in section 1395gg(f)(1) of this title'', ''during such year'' for ''during the 12-month period beginning on October 1 of such year'', ''after the beginning of a year'' for ''after October 1 of a year'', and ''during the remainder of the year'' for ''during the remainder of the 12-month period beginning on such October 1''.

Subsec. (h)(2). Pub. L. 99–509, § 9332(b)(1)(A), struck out period at end and substituted ''and may request a copy of an appropriate directory published under paragraph (4). Each such carrier shall, without charge, mail a copy of such directory upon such a request.''

Subsec. (h)(4). Pub. L. 99–509, § 9332(b)(2), inserted at end ''Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.''

Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (2) of subsec. (i) as par. (4) of this subsection.

Subsec. (h)(5). Pub. L. 99–509, § 9332(b)(1)(B), substituted ''the participation program under this subsection and the publication and availability of the directories'' for ''publication of the directories'' and inserted at end ''The Secretary shall include such notice in the mailing of appropriate benefit checks provided under subchapter II of this chapter.''

Pub. L. 99–514, § 1895(b)(15)(A), struck out ''such'' before ''the directories'' and before ''the appropriate area directory''.

Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (3) of subsec. (i) as par. (5) of this subsection.

Subsec. (h)(6). Pub. L. 99–509, § 9332(b)(1)(C), inserted before period at end of second sentence ''and that an appropriate number of copies of each such directory is sent to hospitals located in the area'' and inserted at end ''Such copies shall be sent free of charge.''

Pub. L. 99–514, § 1895(b)(15)(B), substituted ''the'' for ''the the'' before ''directories''.

Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (4) of subsec. (i) as par. (6) of this subsection.

Subsec. (h)(7), (8). Pub. L. 99–272, § 9301(c)(4), added pars. (7) and (8).

Subsec. (i)(1). Pub. L. 99–272, § 9301(c)(3)(A), struck out par. (1) which required the Secretary to publish a list containing the name, address, specialty, and percent of claims submitted with respect to each physician and

supplier during preceding year that were paid on the basis of an assignment described in subsec. (b)(3)(B)(ii) of this section, in accordance with subsec. (b)(6)(B) of this section, or under procedure described in section 1395gg(f)(1) of this title.

Subsec. (i)(2). Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (2) of this subsection as par. (4) of subsec. (h).

Pub. L. 99–272, § 9301(d)(3), substituted ''year'' for ''fiscal year'', wherever appearing.

Pub. L. 99–272, § 9301(c)(2)(A), (B), (3)(B), substituted ''shall publish directories (for appropriate local geographic areas)'' for ''shall publish a directory'', inserted ''for that area'' before ''for that fiscal year'', substituted ''Each directory shall'' for ''The directory shall'', and substituted ''paragraph (1)'' for ''subsection (h)(1) of this section''.

Subsec. (i)(3). Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (3) of this subsection as par. (5) of subsec. (h).

Pub. L. 99–272, § 9301(c)(2)(C), (3)(C), struck out ''directory'' first place it appeared and inserted in lieu ''the directories'', struck out ''directory'' second place it appeared and inserted in lieu ''the appropriate area directory or directories'', and struck out ''list and'' wherever appearing.

Subsec. (i)(4). Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (4) of this subsection as par. (6) of subsec. (h).

Pub. L. 99–272, § 9301(c)(2)(D), (3)(C), struck out ''list and'' after ''The Secretary shall provide that the'' in first sentence, substituted ''the directories shall'' for ''directory shall'', and inserted provision requiring the Secretary to provide that each appropriate area directory be sent to each participating physician located in that area.

Subsec. (j)(1). Pub. L. 99–509, § 9331(b)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Pub. L. 99–272, § 9301(b)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: ''In the case of a physician who is not a participating physician, the Secretary shall monitor each such physician's actual charges to individuals enrolled under this part for physicians' services furnished during the 15-month period beginning July 1, 1984.''

Subsec. (j)(2). Pub. L. 99–509, § 9320(e)(3), substituted ''this paragraph'' for ''paragraph (1) or subsection (k) of this section'' in introductory text.

Pub. L. 99–272, § 9307(c)(1), inserted reference to subsec. (k) of this section in introductory text.

Subsec. (k). Pub. L. 99–514, § 1895(b)(16)(A), inserted ''presents or causes to be presented a claim or'' in pars. (1) and (2).

Pub. L. 99–272, § 9307(c)(2), added subsec. (k).

Subsec. (*l*). Pub. L. 99–509, § 9332(c)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 99–509, § 9332(d)(1), added subsec. (m).

1984—Subsec. (b)(2). Pub. L. 98–369, § 2326(c)(2), inserted at end provision that the Secretary publish in the Federal Register standards and criteria for efficient and effective performance of contract obligations under this section and provide an opportunity for public comment prior to implementation.

Subsec. (b)(3). Pub. L. 98–369, § 2306(b)(1)(B), (C), substituted ''during the 12-month period ending on the March 31 last preceding'' for ''during the last preceding calendar year elapsing prior to'' in third sentence and substituted ''October 1'' for ''July 1'' wherever appearing in third and eighth sentences.

Pub. L. 98–369, § 2354(b)(14), substituted ''(I)'' and ''(II)'' for ''(i)'' and ''(ii)'', respectively in concluding provisions.

Pub. L. 98–369, § 2663(j)(2)(F)(iv), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' in concluding provisions.

Subsec. (b)(3)(B)(ii)(II). Pub. L. 98–369, § 2354(b)(13), struck out the period after ''subchapter''.

Subsec. (b)(3)(F). Pub. L. 98–369, § 2306(b)(1)(A), substituted ''September 30'' for ''June 30''.

Subsec. (b)(4), (5). Pub. L. 98–369, § 2306(a), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (b)(6). Pub. L. 98–369, § 2339, redesignated cl. (A) as cl. (A)(i) and former cl. (B) as cl. (A)(ii), added a new cl. (B), and in the provisions after cl. (B), substituted ''clause (A) of such sentence'' for ''clause (A) or (B) of such sentence''.

Pub. L. 98–369, § 2306(a), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 98–369, § 2306(a), redesignated par. (6) as (7).

Subsec. (b)(7)(A). Pub. L. 98–617, § 3(b)(5)(B), struck out at end ''If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.''

Pub. L. 98–369, § 2307(a)(1), as amended by Pub. L. 98–617, § 3(a)(1), inserted ''If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.'' at the end.

Subsec. (b)(7)(A)(ii). Pub. L. 98–617, § 3(b)(5)(A), substituted ''the payment is based upon a reasonable charge for the services in excess of the customary charge as determined in accordance with subparagraph (B)'' for ''the amount of the payment exceeds the reasonable charge for the services (with the customary charge determined consistent with subparagraph (B))''.

Subsec. (b)(7)(B)(i). Pub. L. 98–369, § 2307(a)(2)(A), (B), substituted ''physician who is not a teaching physician (as defined by the Secretary)'' for ''physician who has a substantial practice outside the teaching setting'' and ''practice outside the teaching setting'' for ''outside practice''.

Subsec. (b)(7)(B)(ii). Pub. L. 98–369, § 2307(a)(2)(C), (D), substituted ''In the case of a teaching physician'' for ''In the case of a physician who does not have a practice described in clause (i)'' and ''greatest'' for ''greater''.

Subsec. (b)(7)(B)(ii)(III). Pub. L. 98–369, § 2307(a)(2)(E)–(G), added subcl. (III).

Subsec. (b)(7)(B)(iii). Pub. L. 98–617, § 3(b)(6), added cl. (iii).

Subsec. (c). Pub. L. 98–369, § 2326(d)(2), inserted provision that the Secretary, in determining a carrier's necessary and proper cost of administration with respect to each contract, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated carrier in carrying out the terms of its contract.

Subsec. (h). Pub. L. 98–369, § 2306(c), added subsec. (h).

Pub. L. 98–369, § 2303(e), struck out subsec. (h) providing for payment for laboratory tests.

Subsecs. (i), (j). Pub. L. 98–369, § 2306(c), added subsecs. (i) and (j).

1982—Subsec. (b)(3)(B)(ii)(II). Pub. L. 97–248, § 128(d)(1), substituted ''section 1395y(a)'' for ''section 1395y''.

Subsec. (b)(3). Pub. L. 97–248, § 104(a), in provisions following subpar. (F), inserted provisions that in determining the reasonable charge for outpatient services, the Secretary may limit such reasonable charge to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extent to which overhead costs associated with such outpatient services have been included in the reasonable cost or charge of the facility.

Subsec. (b)(6)(D). Pub. L. 97–248, § 113(a), added subpar. (D).

1981—Subsec. (b)(3). Pub. L. 97–35 inserted provision that the amount of any charges for outpatient services which shall be considered reasonable shall be subject to the limitations established by regulations issued by the Secretary pursuant to section 1395x(v)(1)(K) of this title.

1980—Subsec. (b)(3). Pub. L. 96–499, §946(a), in provisions following subpar. (F), substituted ''service is rendered'' for ''bill is submitted or the request for payment is made''.

Subsec. (b)(3)(F). Pub. L. 96–499, §946(b), added subpar. (F).

Subsec. (b)(6). Pub. L. 96–499, §948(b), added par. (6).

Subsec. (h). Pub. L. 96–499, §918(a)(1), added subsec. (h).

1977—Subsec. (b)(3). Pub. L. 95–216 provided that, with respect to power-operated wheelchairs for which payment may be made in accordance with section 1395x(s)(6) of this title, charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality.

Subsec. (b)(5). Pub. L. 95–142 inserted provisions relating to payments under a reassignment or power of attorney in cases other than direct payments to physicians or service providers.

1976—Subsec. (b)(3). Pub. L. 94–368 substituted ''for the twelve-month period beginning on July 1 in any calendar year after 1974'' for ''for the fiscal year beginning July 1, 1975,'', ''prior to the start of the twelve-month period (beginning July 1, of each year) in which the bill is submitted or the request for payment is made'' for ''prior to the start of the fiscal year in which the bill is submitted or the request for payment is made'', and ''for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence'' for ''for any fiscal year beginning after June 30, 1973,''.

1975—Subsec. (b)(3). Pub. L. 94–182 inserted provisions relating to raising for fiscal year beginning July 1, 1975 inadequate prevailing charge levels for services of physicians in certain localities.

1974—Subsec. (g). Pub. L. 93–445 substituted ''section 231f(d) of title 45'' for ''section 228s–2(b) of title 45''.

1972—Subsec. (a). Pub. L. 92–603, §227(e)(3), substituted ''which involve payments for physicians' services on a reasonable charge basis'' for ''which involve payments for physicians' services''.

Subsec. (b)(3). Pub. L. 92–603, §§244(a), 258(a), inserted provisions relating to determination of reasonableness of physician charges, medical services, supplies, and equipment and for the extension of time for filing claims for supplementary medical insurance benefits where the delay is due to administrative error, at end thereof.

Subsec. (b)(3)(B)(ii). Pub. L. 92–603, §§211(c)(3), 281(d), designated existing provisions as subcl. (I), added subcl. II, inserted exception in the case of services furnished as described in section 1395y(a)(4) of this title, other than for purposes of section 1395gg(f) of this title.

Subsec. (b)(3)(C). Pub. L. 92–603, §262(a), inserted provisions setting a $100 minimum amount on claims to establish entitlement to a hearing.

Subsec. (b)(5). Pub. L. 92–603, §236(a), added par. (5).

Subsec. (g). Pub. L. 92–603, §263(d)(5), added subsec. (g).

1968—Subsec. (b)(3)(B). Pub. L. 90–248 provided that payment be made on the basis of an itemized bill instead of a receipted bill as formerly required, and established a time limit within which payment may be requested, and inserted ''(except as otherwise provided in section 1395gg(f) of this title)'' after ''payment will''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 627(b)(2) of Pub. L. 108–173 applicable to items furnished on or after Jan. 1, 2005, see section 627(c) of Pub. L. 108–173, set out as a note under section 1395*l* of this title.

Amendment by section 911(c) of Pub. L. 108–173 effective Oct. 1, 2005, except as otherwise provided, with transition rules authorizing Secretary of Health and Human Services to continue to enter into contracts under this section prior to such date, and provisions authorizing continuation of Medicare Integrity Program functions during the period that begins on Dec. 8, 2003, and ends on Oct. 1, 2011, see section 911(d) of Pub. L. 108–173, set out as an Effective Date; Transition Rule note under section 1395kk–1 of this title.

Pub. L. 108–173, title IX, §952(c), Dec. 8, 2003, 117 Stat. 2427, provided that: ''The amendments made by this section [amending this section] shall apply to payments made on or after the date of the enactment of this Act [Dec. 8, 2003].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title I, §105(d)] of Pub. L. 106–554 applicable to services furnished on or after Jan. 1, 2002, see section 1(a)(6) [title I, §105(e)] of Pub. L. 106–554, set out as a note under section 1395*l* of this title.

Pub. L. 106–554, §1(a)(6) [title I, §114(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–474, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to items furnished on or after January 1, 2001.''

Pub. L. 106–554, §1(a)(6) [title II, §222(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–487, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 21, 2000].''

Pub. L. 106–554, §1(a)(6) [title III, §313(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–499, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 1395y and 1395cc of this title] shall apply to services furnished on or after January 1, 2001.''

Pub. L. 106–554, §1(a)(6) [title IV, §432(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–526, provided that: ''The amendments made by this section [amending this section and sections 1395y and 1395qq of this title] shall apply to services furnished on or after July 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(6) [title III, §305(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–362, provided that: ''The amendments made by this section [amending this section and section 1395y of this title] shall apply to payments for services provided on or after the date of enactment of this Act [Nov. 29, 1999].''

Amendment by section 1000(a)(6) [title III, §321(k)(4)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4205(d)(3)(B) of Pub. L. 105–33 effective Aug. 5, 1997, see section 4205(d)(4) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Section 4302(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this sec-

tion and section 1395cc of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997] and apply to the entry and renewal of contracts on or after such date.''

Amendment by section 4315(a) of Pub. L. 105–33, to the extent such amendment substitutes fee schedules for reasonable charges, applicable to particular services as of date specified by the Secretary of Health and Human Services, see section 4315(c) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4316(a) of Pub. L. 105–33 effective Aug. 5, 1997, see section 4316(c) of Pub. L. 105–33, set out as a note under section 1395m of this title.

Section 4317(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall apply to items and services furnished on or after January 1, 1998.''

Amendment by section 4432(b)(2), (4) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Amendment by section 4512(b)(2), (c) of Pub. L. 105–33 applicable with respect to services furnished and supplies provided on and after Jan. 1, 1998, see section 4512(d) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4556(a) of Pub. L. 105–33 applicable to drugs and biologicals furnished on or after Jan. 1, 1998, see section 4556(d) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4603(c)(2)(B)(i) of Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395fff of this title.

Amendment by section 4611(d) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1998, and for purposes of applying such amendment, any home health spell of illness that began, but did not end, before such date, to be considered to have begun as of such date, see section 4611(f) of Pub. L. 105–33, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 123(b)(1), (2)(B) of Pub. L. 103–432 applicable to services furnished on or after Jan. 1, 1995, see section 123(f)(2) of Pub. L. 103–432, set out as a note under section 1395*l* of this title.

Section 123(f)(3), (4) of Pub. L. 103–432 provided that:

''(3) EOMBS.—The amendments made by subsection (c)(1) [amending this section] shall apply to explanations of benefits provided on or after July 1, 1995.

''(4) CARRIER DETERMINATIONS.—The amendments made by subsection (c)(2) [amending this section] shall apply to contracts as of January 1, 1995.''

Section 125(b)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Oct. 31, 1994].''

Amendment by section 126(a)(1), (c), (e), (g)(9) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 126(i) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Section 126(h)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective for payments for fiscal years beginning with fiscal year 1994.

Section 135(b)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective for standards applied for contract years beginning after Oct. 31, 1994.

Amendment by section 151(b)(1)(B), (2)(B) of Pub. L. 103–432 applicable to contracts with fiscal intermediaries and carriers under this subchapter for contract years beginning with 1995, see section 151(b)(4) of Pub. L. 103–432, set out as a note under section 1395h of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13515(d) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section and section 1395w–4 of this title] shall apply to services furnished on or after January 1, 1994.''

Amendment by section 13568(a), (b) of Pub. L. 103–66 applicable to claims received on or after Oct. 1, 1993, see section 13568(c) of Pub. L. 103–66, set out as a note under section 1395h of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4105(b)(3) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(g)(2)(A)(ii), Oct. 31, 1994, 108 Stat. 4415, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after January 1, 1991.''

Section 4106(d) of Pub. L. 101–508 provided that:

''(1) The amendments made by subsection (a) [amending this section and provisions set out below] apply to services furnished after 1990, except that—

''(A) the provisions concerning the third and fourth years of practice apply only to physicians' services furnished after 1990 and 1991, respectively, and

''(B) the provisions concerning the second, third, and fourth years of practice apply only to services of a health care practitioner furnished after 1991, 1992, and 1993, respectively.

''(2) The amendments made by subsection (b) [amending this section and section 1395w–4 of this title] shall apply to services furnished after 1991.''

Section 4108(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to tests and services furnished on or after January 1, 1991.''

Section 4110(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4118(a)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] apply to services furnished after March 1990.''

Section 4118(f)(2)(A) of Pub. L. 101–508 provided that the amendment by that section is effective as if included in the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239.

Section 4118(f)(2)(B) of Pub. L. 101–508 provided that the amendment by that section is effective Jan. 1, 1991.

Amendment by section 4155(c) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4155(e) of Pub. L. 101–508, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6102(e)(3) of Pub. L. 101–239 provided that the amendment made by that section is effective for physicians' services furnished on or after Jan. 1, 1992.

Section 6106(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1990.''

Section 6108(a)(2) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4106(a)(2), Nov. 5, 1990, 104 Stat. 1388–61, provided that:

''(A) Subject to subparagraph (B), the amendments made by paragraph (1) [amending this section] apply to services furnished in 1990 or 1991 which were subject to the first sentence of section 1842(b)(4)(F) of the Social Security Act [subsec. (b)(4)(F) of this section] in 1989 or 1990.

''(B) The amendments made by paragraph (1) shall not apply to services furnished in 1990 before April 1, 1990. With respect to physicians' services furnished during 1990 on and after April 1, such amendments shall be applied as though any reference, in the matter inserted by such amendments, to the 'first calendar year during which the preceding sentence no longer applies' were deemed a reference to the remainder of 1990.''

Section 6108(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending

this section] apply to procedures performed after March 31, 1990.''

Section 6114(f) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1395x of this title] shall apply to services furnished on or after April 1, 1990.''

Amendment by section 6202(d)(2) of Pub. L. 101–239 applicable to agreements and contracts entered into or renewed on or after Dec. 19, 1989, see section 6202(d)(3) of Pub. L. 101–239, set out as a note under section 1395h of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Section 301(e) of Pub. L. 101–234 provided that: ''The provisions of this section [amending this section and sections 1395m, 1395cc, 1395*ll*, and 1395ww of this title, enacting provisions set out as notes under section 1395m of this title, and repealing provisions set out as notes under sections 1395b, 1395b–1, 1395b–2, and 1395h of this title and section 8902 of Title 5, Government Organization and Employees] (other than subsections (c) and (d) [amending this section and sections 1395m, 1395cc, 1395*ll*, and 1395ww of this title and enacting provisions set out as a note under section 1395m of this title]) shall take effect January 1, 1990, except that—

''(1) the repeal of section 421 of MCCA [Pub. L. 100–360, set out as a note under section 1395b of this title] shall not apply to duplicative part A benefits for periods before January 1, 1990, and

''(2) the amendments made by subsection (b) [amending this section and sections 1395m, 1395cc, 1395*ll*, and 1395ww of this title] shall take effect on the date of the enactment of this Act [Dec. 13, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 202(m) of Pub. L. 100–360, as amended by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981, provided that:

''(1) [Repealed. Prior to repeal by Pub. L. 101–234, par. (1) read as follows: 'IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 1395w–3 of this title and amending this section and sections 1320a–7a, 1395*l*, 1395m, 1395x, 1395y, 1395cc, 1395mm, and 1396b of this title] shall apply to items dispensed on or after January 1, 1990.']

''(2) [Repealed. Prior to repeal by Pub. L. 101–234, par. (2) read as follows: 'CARRIERS.—The amendments made by subsection (e) [amending this section] shall take effect on the date of the enactment of this Act [July 1, 1988]; except that the amendments made by subsection (e)(5) [amending this section] shall take effect on January 1, 1991, but shall not be construed as requiring payment before February 1, 1991.']

''(3) [Repealed. Prior to repeal by Pub. L. 101–234, par. (3) read as follows: 'HMO/CMP ENROLLMENTS.—The amendment made by subsection (f) [amending section 1395mm of this title] shall apply to enrollments effected on or after January 1, 1990.']

''(4) DIAGNOSTIC CODING.—The amendment made by subsection (g) [amending this section] shall apply to services furnished after March 31, 1989.

''(5) [Repealed. Prior to repeal by Pub. L. 101–234, par. (5) read as follows: 'TRANSITION.—With respect to administrative expenses (and costs of the Prescription Drug Payment Review Commission) for periods before January 1, 1990, amounts otherwise payable from the Federal Catastrophic Drug Insurance Trust Fund shall be payable from the Federal Supplementary Medical Insurance Trust Fund and shall also be treated as a debit to the Medicare Catastrophic Coverage Account.'].''

[Amendment of section 202(m) of Pub. L. 100–360, set out above, effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as an Effective Date of 1989 Amendment note under section 1320a–7a of this title.]

Section 223(d)(2), (3) of Pub. L. 100–360 provided that:

''(2) The amendments made by subsection (b) [amending this section] shall apply to annual notices beginning with 1989.

''(3) The amendments made by subsection (c) [amending this section] shall first apply to explanations of benefits provided for items and services furnished on or after January 1, 1989.''

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(a)(3)(A), (C)(i), (f)(1)(A), (B), (2)–(4)(C), (5), (6)(B), (7), (9), (11)(A), (14), (g)(2)(A)–(C), (i)(1)(A), (2), (4)(C)(vi), and (j)(4)(A) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4031(a)(2) of Pub. L. 100–203 applicable to claims received on or after July 1, 1988, see section 4031(a)(3)(A) of Pub. L. 100–203, set out as a note under section 1395h of this title.

Amendment by section 4035(a)(2) of Pub. L. 100–203 effective Dec. 22, 1987, and applicable to budgets for fiscal years beginning with fiscal year 1989, see section 4035(a)(3) of Pub. L. 100–203, set out as a note under section 1395h of this title.

Section 4044(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payment for physicians' services furnished on or after January 1, 1989.''

Section 4045(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1395*l* and 1395w–1 of this title and amending provisions set out below] shall apply to items and services furnished on or after April 1, 1988, except the amendment made by subsection (c)(2)(B) [amending this section] shall apply to services furnished on or after January 1, 1988.''

Section 4046(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1988.''

Section 4047(b) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(f)(6)(C), July 1, 1988, 102 Stat. 779, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to physicians who first furnish services to medicare beneficiaries on or after April 1, 1988.''

Section 4051(c) of Pub. L. 100–203 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply to diagnostic tests performed on or after April 1, 1988.

''(2) The Secretary of Health and Human Services shall complete the review and make an appropriate adjustment of prevailing charge levels under subsection (b) [set out below] for items and services furnished no later than January 1, 1989.''

Section 4053(b), formerly §4052(b), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, §411(f)(11)(B), (14), July 1, 1988, 102 Stat. 781, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payment for services furnished on or after April 1, 1988.''

Section 4054(c), formerly §4053(c), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, §411(f)(14), July 1, 1988, 102 Stat. 781, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to charges imposed for services furnished on or after April 1, 1988.''

Amendment by section 4063(a) of Pub. L. 100–203 applicable to items furnished on or after July 1, 1988, see section 4063(c) of Pub. L. 100–203, set out as a note under section 1395(*l*) of this title.

Section 4081(c)(1) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending

this section] shall apply to contracts with carriers for claims for items and services furnished by participating physicians and suppliers on or after January 1, 1989.''

Section 4082(e)(3) of Pub. L. 100–203 provided that: ''The amendments made by subsection (c) [amending this section] shall apply to evaluation of performance of carriers under contracts entered into or renewed on or after October 1, 1988.''

Section 4085(g)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if included in section 9307(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Section 4085(i)(7) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.

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

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(16)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to claims presented after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by section 1895(b)(14)(A), (15) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 9307(c)(2) of Pub. L. 99–509 provided that the amendment made by section 9307(c)(2)(A) of Pub. L. 99–509 [amending directory language of section 1895(b)(14)(A)(ii) of Pub. L. 99–514 which amended this section] is effective as if included in the enactment of the Tax Reform Act of 1986, Pub. L. 99–514.

Amendment by section 9311(c) of Pub. L. 99–509 applicable to claims received on or after Nov. 1, 1986, with subsec. (c)(2)(C) of this section applicable to claims received on or after Apr. 1, 1987, see section 9311(d) of Pub. L. 99–509, set out as a note under section 1395h of this title.

Amendment by section 9320(e)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9331(a)(4) of Pub. L. 99–509 provided that: ''The amendments made by this subsection [amending this section] shall apply to services furnished on or after January 1, 1987.''

Section 9331(b)(4) of Pub. L. 99–509 provided that: ''The amendments made by this subsection [amending this section] shall apply to services furnished on or after January 1, 1987.''

Section 9331(c)(3)(B) of Pub. L. 99–509 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to physicians' services furnished on or after January 1, 1988.''

Section 9332(a)(4)(A) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective for contracts under section 1842 of the Social Security Act [this section] as of October 1, 1987.''

Section 9332(b)(3) of Pub. L. 99–509 provided that: ''The amendments made by this paragraph [probably means 'this subsection' which amended this section] shall first apply to directories for 1987.''

Section 9332(c)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after October 1, 1987.''

Section 9332(d)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to surgical procedures performed on or after October 1, 1987.''

Section 9333(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 21, 1986].''

Section 9334(c) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after January 1, 1987.''

Amendment by section 9338(b), (c) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1987, see section 9338(f) of Pub. L. 99–509 set out as a note under section 1395x of this title.

Amendment by section 9341(a)(2) of Pub. L. 99–509 applicable to items and services furnished on or after Jan. 1, 1987, see section 9341(b) of Pub. L. 99–509, set out as a note under section 1395ff of this title.

Section 9219(b)(1)(D) of Pub. L. 99–272 provided that: ''The amendments made by this paragraph [amending this section and sections 1395x and 1395yy of this title] shall be effective as if they had been originally included in the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

Section 9219(b)(2)(B) of Pub. L. 99–272 provided that: ''The amendment made by subparagraph (A) [amending this section] shall be effective as if it had been originally included in Public Law 98–617.''

Section 9301(b)(4) of Pub. L. 99–272 provided that: ''The amendments made by this subsection [amending this section and enacting provisions set out as a note under this section] shall apply to services furnished on or after May 1, 1986.''

Section 9301(c)(5) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(b)(14)(B), Oct. 22, 1986, 100 Stat. 2934, provided that: ''Section 1842(h)(7) of the Social Security Act [subsec. (h)(7) of this section], as added by paragraph (4) of this subsection, shall apply to explanations of benefits provided on or after such date (not later than October 1, 1986) as the Secretary of Health and Human Services shall specify.''

Section 9301(d)(4) of Pub. L. 99–272 provided that: ''The amendments made by this subsection [amending this section and enacting provisions set out as a note under this section] shall apply to items and services furnished on or after October 1, 1986.''

Section 9306(b) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section] shall apply to items and services furnished on or after April 1, 1986.''

Amendment by section 9307(c) of Pub. L. 99–272 applicable to services performed on or after April 1, 1986, see section 9307(e) of Pub. L. 99–272, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2303(e) of Pub. L. 98–369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title, see section 2303(j)(1), (3) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2306(b)(2) of Pub. L. 98–369 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to items and services furnished on or after October 1, 1985.''

Section 2307(a)(3) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [amending this section] shall apply to services furnished on or after July 1, 1984.''

Amendment by section 2326(d)(2) of Pub. L. 98–369 applicable to agreements and contracts entered into or renewed after Sept. 30, 1984, see section 2326(d)(3) of Pub. L. 98–369, set out as a note under section 1395h of this title.

Amendment by section 2354(b)(13), (14) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(j)(2)(F)(iv) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 104(b) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 309(a)(2), Jan. 12, 1983, 96 Stat. 2408, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to services furnished on or after October 1, 1982.''

Section 113(b)(1) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] is effective with respect to services performed on or after October 1, 1982.''

Amendment by section 128(d)(1) of Pub. L. 97–248 effective Sept. 3, 1982, see section 128(e)(3) of Pub. L. 97–248, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 918(a)(2) of Pub. L. 96–499 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to bills submitted and requests for payment made on or after such date (not later than April 1, 1981) as the Secretary of Health and Human Services prescribes by a notice published in the Federal Register.''

Section 946(c) of Pub. L. 96–499 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall become effective with respect to bills submitted or requests for payment made on or after July 1, 1981.''

Section 948(c)(2) of Pub. L. 96–499 provided that: ''The amendment made by subsection (b) [amending this section] shall apply with respect to cost accounting periods beginning on or after January 1, 1981.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95–216 effective in the case of items and services furnished after Dec. 20, 1977, see section 501(c) of Pub. L. 95–216, set out as a note under section 1395x of this title.

Amendment by Pub. L. 95–142 applicable with respect to care and services furnished on or after Oct. 25, 1977, see section 2(a)(4) of Pub. L. 95–142, set out as a note under section 1395g of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 4 of Pub. L. 94–368 provided that: ''The amendments made by sections 2 and 3 of this Act [amending this section and provisions set out as a note under section 390e of Title 7, Agriculture] shall be effective with respect to periods beginning after June 30, 1976; except that, for the twelve-month period beginning July 1, 1976, the amendments made by section 3 [amending this section and provisions set out as a note under section 390e of Title 7, Agriculture] shall be applicable with respect to claims filed under part B of title XVIII of the Social Security Act [this part] (after June 30, 1976, and before July 1, 1977) with a carrier designated pursuant to section 1842 of such Act [this section], and processed by such carrier after the appropriate changes were made pursuant to such section 3 in the prevailing charge levels for such twelve-month period under the third and fourth sentences of section 1842(b)(3) of the Social Security Act [subsec. (b)(3) of this section].''

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 211(c)(3) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Amendment by section 227(e)(3) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 236(c) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to bills submitted and requests for payments made after the date of the enactment of this Act [Oct. 30, 1972]. The amendments made by subsection (b) [amending section 1396a of this title] shall be effective January 1, 1973 (or earlier if the State plan so provides).''

Section 258(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to bills submitted and requests for payment made after March 1968.''

Section 262(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to hearings requested (under the procedures established under section 1842(b)(3)(C) of the Social Security Act [subsec. (b)(3)(C) of this section]) after the date of the enactment of this Act [Oct. 30, 1972].''

Amendment by section 263(d)(5) of Pub. L. 92–603 with respect to collection of premiums applicable to premiums becoming due and payable after the fourth month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 263(f) of Pub. L. 92–603, set out as a note under section 1395s of this title.

Amendment by section 281(d) of Pub. L. 92–603 to apply in the case of notices sent to individuals after 1968, see section 281(g) of Pub. L. 92–603, set out as a note under section 1395gg of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 125(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to claims on which a final determination has not been made on or before the date of enactment of this Act [Jan. 2, 1968].''

TRANSFER OF FUNCTIONS

Physician Payment Review Commission (PPRC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 4022(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395b–6 of this title. Section 4022(c)(2), (3) further provided that MedPAC was to be responsible for preparation and submission of reports required by law to be submitted by PPRC, and that, for that purpose, any reference in law to PPRC was to be deemed, after the appointment of MedPAC, to refer to MedPAC.

LINKAGE OF REVISED DRUG PAYMENTS AND INCREASES FOR DRUG ADMINISTRATION

Pub. L. 108–173, title III, § 303(f), Dec. 8, 2003, 117 Stat. 2253, provided that: ''The Secretary [of Health and Human Services] shall not implement the revisions in payment amounts for drugs and biologicals administered by physicians as a result of the amendments made by subsection (b) [amending this section] with respect to 2004 unless the Secretary concurrently makes adjustments to the practice expense payment adjustment under the amendments made by subsection (a) [amending section 1395w–4 of this title].''

CONTINUATION OF PAYMENT METHODOLOGY FOR RADIOPHARMACEUTICALS

Pub. L. 108–173, title III, § 303(h), Dec. 8, 2003, 117 Stat. 2253, provided that: ''Nothing in the amendments made by this section [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395*l*, 1395w–4, 1395x, 1395y, and 1396r–8 of this title, and repealing provisions set out as a note under this section] shall be construed as changing the payment methodology under part B of title XVIII of the Social Security Act [this part] for radiopharmaceuticals, including the use by carriers of invoice pricing methodology.''

IMPLEMENTATION OF 2003 AMENDMENT

Pub. L. 108–173, title III, § 303(i)(5), Dec. 8, 2003, 117 Stat. 2255, provided that: ''The provisions of chapter 8 of title 5, United States Code, shall not apply with respect to regulations implementing the amendments made by subsections (a), (b), and (e)(3) [sic] [amending this section and section 1395w–4 of this title], to regulations implementing section 304 [set out as a note under this section], and to regulations implementing the amendment made by section 305(a) [amending this section], insofar as such regulations apply in 2004.''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Pub. L. 108–173, title III, § 303(j), Dec. 8, 2003, 117 Stat. 2255, provided that: ''Insofar as the amendments made by this section [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395*l*, 1395w–4, 1395x, 1395y, and 1396r–8 of this title, and repealing provisions set out as a note under this section] apply to payments for drugs or biologicals and drug administration services furnished by physicians, such amendments shall only apply to physicians in the specialties of hematology, hematology/oncology, and medical oncology under title XVIII of the Social Security Act [this subchapter].''

Pub. L. 108–173, title III, § 304, Dec. 8, 2003, 117 Stat. 2255, provided that: ''Notwithstanding section 303(j) [set out above], the amendments made by section 303 [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395*l*, 1395w–4, 1395x, 1395y, and 1396r–8 of this title, and repealing provisions set out as a note under this section] shall also apply to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology.''

ISSUANCE OF TEMPORARY NATIONAL CODES

Pub. L. 108–173, title VII, § 731(c), Dec. 8, 2003, 117 Stat. 2351, provided that: ''Not later than July 1, 2004, the Secretary [of Health and Human Services] shall implement revised procedures for the issuance of temporary national HCPCS codes under part B of title XVIII of the Social Security Act [this part].''

REVISED PART B PAYMENT FOR DRUGS AND BIOLOGICALS AND RELATED SERVICES

Pub. L. 106–554, § 1(a)(6) [title IV, § 429], Dec. 21, 2000, 114 Stat. 2763, 2763A–522, provided that:

''(a) RECOMMENDATIONS FOR REVISED PAYMENT METHODOLOGY FOR DRUGS AND BIOLOGICALS.—

''(1) STUDY.—

''(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the reimbursement for drugs and biologicals under the current medicare payment methodology (provided under section 1842(*o*) of the Social Security Act (42 U.S.C. 1395u(*o*))) and for related services under part B of title XVIII of such Act [this part]. In the study, the Comptroller General shall—

''(i) identify the average prices at which such drugs and biologicals are acquired by physicians and other suppliers;

''(ii) quantify the difference between such average prices and the reimbursement amount under such section; and

''(iii) determine the extent to which (if any) payment under such part is adequate to compensate physicians, providers of services, or other suppliers of such drugs and biologicals for costs incurred in the administration, handling, or storage of such drugs or biologicals.

''(B) CONSULTATION.—In conducting the study under subparagraph (A), the Comptroller General shall consult with physicians, providers of services, and suppliers of drugs and biologicals under the medicare program under title XVIII of such Act [this subchapter], as well as other organizations involved in the distribution of such drugs and biologicals to such physicians, providers of services, and suppliers.

''(2) REPORT.—Not later than 9 months after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress and to the Secretary of Health and Human Services a report on the study conducted under this subsection, and shall include in such report recommendations for revised payment methodologies described in paragraph (3).

''(3) RECOMMENDATIONS FOR REVISED PAYMENT METHODOLOGIES.—

''(A) IN GENERAL.—The Comptroller General shall provide specific recommendations for revised payment methodologies for reimbursement for drugs and biologicals and for related services under the medicare program. The Comptroller General may include in the recommendations—

''(i) proposals to make adjustments under subsection (c) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for the practice expense component of the physician fee schedule under such section for the costs incurred in the administration, handling, or storage of certain categories of such drugs and biologicals, if appropriate; and

''(ii) proposals for new payments to providers of services or suppliers for such costs, if appropriate.

''(B) ENSURING PATIENT ACCESS TO CARE.—In making recommendations under this paragraph, the Comptroller General shall ensure that any proposed revised payment methodology is designed to ensure that medicare beneficiaries continue to have appropriate access to health care services under the medicare program.

''(C) MATTERS CONSIDERED.—In making recommendations under this paragraph, the Comptroller General shall consider—

''(i) the method and amount of reimbursement for similar drugs and biologicals made by large group health plans;

''(ii) as a result of any revised payment methodology, the potential for patients to receive inpatient or outpatient hospital services in lieu of services in a physician's office; and

''(iii) the effect of any revised payment methodology on the delivery of drug therapies by hospital outpatient departments.

''(D) COORDINATION WITH BBRA STUDY.—In making recommendations under this paragraph, the Comptroller General shall conclude and take into account the results of the study provided for under section 213(a) of BBRA [Pub. L. 106–113, § 1000(a)(6) [title II, § 213(a)], set out as a note under section 1395*l* of this title] (113 Stat. 1501A–350).

''(b) IMPLEMENTATION OF NEW PAYMENT METHODOLOGY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, based on the recommendations contained in the report under subsection (a), the Secretary of Health and Human Services, subject to paragraph (2), shall revise the payment methodology under section 1842(*o*) of the Social Security Act (42 U.S.C. 1395u(*o*)) for drugs and biologicals furnished under part B of the medicare program [this part]. To the extent the Secretary determines appropriate, the Secretary may provide for the adjustments to payments amounts re-

ferred to in subsection (a)(3)(A)(i) or additional payments referred to in subsection (a)(2)(A)(ii).

''(2) LIMITATION.—In revising the payment methodology under paragraph (1), in no case may the estimated aggregate payments for drugs and biologicals under the revised system (including additional payments referred to in subsection (a)(3)(A)(ii)) exceed the aggregate amount of payment for such drugs and biologicals, as projected by the Secretary, that would have been made under the payment methodology in effect under such section 1842(*o*).

''(c) MORATORIUM ON DECREASES IN PAYMENT RATES.—Notwithstanding any other provision of law, effective for drugs and biologicals furnished on or after January 1, 2001, the Secretary may not directly or indirectly decrease the rates of reimbursement (in effect as of such date) for drugs and biologicals under the current medicare payment methodology (provided under section 1842(*o*) of the Social Security Act (42 U.S.C. 1395u(*o*))) until such time as the Secretary has reviewed the report submitted under subsection (a)(2).''

IMPLEMENTATION OF INHERENT REASONABLENESS (IR) AUTHORITY

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §223(a), (b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–352, 1501A–353, provided that:

''(a) LIMITATION ON USE.—The Secretary of Health and Human Services may not use, or permit fiscal intermediaries or carriers to use, the inherent reasonableness authority provided under section 1842(b)(8) of the Social Security Act (42 U.S.C. 1395u(b)(8)) until after—

''(1) the Comptroller General of the United States releases a report pursuant to the request for such a report made on March 1, 1999, regarding the impact of the Secretary's, fiscal intermediaries', and carriers' use of such authority; and

''(2) the Secretary has published a notice of final rulemaking in the Federal Register that relates to such authority and that responds to such report and to comments received in response to the Secretary's interim final regulation relating to such authority that was published in the Federal Register on January 7, 1998.

''(b) REEVALUATION OF IR CRITERIA.—In promulgating the final regulation under subsection (a)(2), the Secretary shall—

''(1) reevaluate the appropriateness of the criteria included in such interim final regulation for identifying payments which are excessive or deficient; and

''(2) take appropriate steps to ensure the use of valid and reliable data when exercising such authority.''

INITIAL BUDGET NEUTRALITY

Section 4315(d) of Pub. L. 105–33 provided that: ''The Secretary, in developing a fee schedule for particular services (under the amendments made by this section [amending this section and section 1395*l* of this title]), shall set amounts for the first year period to which the fee schedule applies at a level so that the total payments under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for those services for that year period shall be approximately equal to the estimated total payments if such fee schedule had not been implemented.''

IMPROVEMENTS IN ADMINISTRATION OF LABORATORY TESTS BENEFIT

Section 4554 of Pub. L. 105–33 provided that:

''(a) SELECTION OF REGIONAL CARRIERS.—

''(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall—

''(A) divide the United States into no more than 5 regions, and

''(B) designate a single carrier for each such region, for the purpose of payment of claims under part B of title XVIII of the Social Security Act [this part] with respect to clinical diagnostic laboratory tests furnished on or after such date (not later than July 1, 1999) as the Secretary specifies.

''(2) DESIGNATION.—In designating such carriers, the Secretary shall consider, among other criteria—

''(A) a carrier's timeliness, quality, and experience in claims processing, and

''(B) a carrier's capacity to conduct electronic data interchange with laboratories and data matches with other carriers.

''(3) SINGLE DATA RESOURCE.—The Secretary shall select one of the designated carriers to serve as a central statistical resource for all claims information relating to such clinical diagnostic laboratory tests handled by all the designated carriers under such part.

''(4) ALLOCATION OF CLAIMS.—The allocation of claims for clinical diagnostic laboratory tests to particular designated carriers shall be based on whether a carrier serves the geographic area where the laboratory specimen was collected or other method specified by the Secretary.

''(5) SECRETARIAL EXCLUSION.—Paragraph (1) shall not apply with respect to clinical diagnostic laboratory tests furnished by physician office laboratories if the Secretary determines that such offices would be unduly burdened by the application of billing responsibilities with respect to more than one carrier.

''(b) ADOPTION OF NATIONAL POLICIES FOR CLINICAL LABORATORY TESTS BENEFIT.—

''(1) IN GENERAL.—Not later than January 1, 1999, the Secretary shall first adopt, consistent with paragraph (2), national coverage and administrative policies for clinical diagnostic laboratory tests under part B of title XVIII of the Social Security Act [this part], using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, United States Code.

''(2) CONSIDERATIONS IN DESIGN OF NATIONAL POLICIES.—The policies under paragraph (1) shall be designed to promote program integrity and national uniformity and simplify administrative requirements with respect to clinical diagnostic laboratory tests payable under such part in connection with the following:

''(A) Beneficiary information required to be submitted with each claim or order for laboratory tests.

''(B) The medical conditions for which a laboratory test is reasonable and necessary (within the meaning of section 1862(a)(1)(A) of the Social Security Act [section 1395y(a)(1)(A) of this title]).

''(C) The appropriate use of procedure codes in billing for a laboratory test, including the unbundling of laboratory services.

''(D) The medical documentation that is required by a medicare contractor at the time a claim is submitted for a laboratory test in accordance with section 1833(e) of the Social Security Act [section 1395*l*(e) of this title].

''(E) Recordkeeping requirements in addition to any information required to be submitted with a claim, including physicians' obligations regarding such requirements.

''(F) Procedures for filing claims and for providing remittances by electronic media.

''(G) Limitation on frequency of coverage for the same tests performed on the same individual.

''(3) CHANGES IN LABORATORY POLICIES PENDING ADOPTION OF NATIONAL POLICY.—During the period that begins on the date of the enactment of this Act [Aug. 5, 1997] and ends on the date the Secretary first implements national policies pursuant to regulations promulgated under this subsection, a carrier under such part may implement changes relating to requirements for the submission of a claim for clinical diagnostic laboratory tests.

''(4) USE OF INTERIM POLICIES.—After the date the Secretary first implements such national policies,

the Secretary shall permit any carrier to develop and implement interim policies of the type described in paragraph (1), in accordance with guidelines established by the Secretary, in cases in which a uniform national policy has not been established under this subsection and there is a demonstrated need for a policy to respond to aberrant utilization or provision of unnecessary tests. Except as the Secretary specifically permits, no policy shall be implemented under this paragraph for a period of longer than 2 years.

''(5) INTERIM NATIONAL POLICIES.—After the date the Secretary first designates regional carriers under subsection (a), the Secretary shall establish a process under which designated carriers can collectively develop and implement interim national policies of the type described in paragraph (1). No such policy shall be implemented under this paragraph for a period of longer than 2 years.

''(6) BIENNIAL REVIEW PROCESS.—Not less often than once every 2 years, the Secretary shall solicit and review comments regarding changes in the national policies established under this subsection. As part of such biennial review process, the Secretary shall specifically review and consider whether to incorporate or supersede interim policies developed under paragraph (4) or (5). Based upon such review, the Secretary may provide for appropriate changes in the national policies previously adopted under this subsection.

''(7) REQUIREMENT AND NOTICE.—The Secretary shall ensure that any policies adopted under paragraph (3), (4), or (5) shall apply to all laboratory claims payable under part B of title XVIII of the Social Security Act [this part], and shall provide for advance notice to interested parties and a 45-day period in which such parties may submit comments on the proposed change.

''(c) INCLUSION OF LABORATORY REPRESENTATIVE ON CARRIER ADVISORY COMMITTEES.—The Secretary shall direct that any advisory committee established by a carrier to advise such carrier with respect to coverage and administrative policies under part B of title XVIII of the Social Security Act [this part] shall include an individual to represent the independent clinical laboratories and such other laboratories as the Secretary deems appropriate. The Secretary shall consider recommendations from national and local organizations that represent independent clinical laboratories in such selection.''

WHOLESALE PRICE STUDY AND REPORT

Pub. L. 105–33, title IV, § 4556(c), Aug. 5, 1997, 111 Stat. 463, which directed the Secretary of Health and Human Services to study the effect on the average wholesale price of drugs and biologicals of the amendments to this section by section 4556(a) of Pub. L. 105–33, and to report to Congress the result of such study not later than July 1, 1999, was repealed by Pub. L. 108–173, title III, § 303(i)(6), Dec. 8, 2003, 117 Stat. 2255.

BUDGET NEUTRALITY ADJUSTMENT

Section 13515(b) of Pub. L. 103–66 provided that: ''Notwithstanding any other provision of law, the Secretary of Health and Human Services shall reduce the following values and amounts for 1994 (to be applied for that year and subsequent years) by such uniform percentage as the Secretary determines to be required to assure that the amendments made by subsection (a) [amending this section and section 1395w–4 of this title] will not result in expenditures under part B of title XVIII of the Social Security Act [this part] in 1994 that exceed the amount of such expenditures that would have been made if such amendments had not been made:

''(1) The relative values established under section 1848(c) of such Act [section 1395w–4(c) of this title] for services (other than anesthesia services) and, in the case of anesthesia services, the conversion factor established under section 1848 of such Act for such services.

''(2) The amounts determined under section 1848(a)(2)(B)(ii)(I) of such Act.

''(3) The prevailing charges or fee schedule amounts to be applied under such part for services of a health care practitioner (as defined in section 1842(b)(4)(F)(ii)(I) of such Act [subsec. (b)(4)(F)(ii)(I) of this section], as in effect before the date of the enactment of this Act [Aug. 10, 1993]).''

PROCEDURE CODES

Section 4101(b)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(a)(2), Oct. 31, 1994, 108 Stat. 4414, provided that: ''In applying section 1842(b)(16)(B) of the Social Security Act [subsec. (b)(16)(B) of this section]:

''(A) The codes for the procedures specified in clause (ii) are as follows: Hospital inpatient medical services (HCPCS codes 90200 through 90292), consultations (HCPCS codes 90600 through 90654), other visits (HCPCS code 90699), preventive medicine visits (HCPCS codes 90750 through 90764), psychiatric services (HCPCS codes 90801 through 90862), emergency care facility services (HCPCS codes 99062 through 99065), and critical care services (HCPCS codes 99160 through 99174).

''(B) The codes for the procedures specified in clause (iii) are as follows: Partial mastectomy (HCPCS code 19160); tendon sheath injections and small joint arthrocentesis (HCPCS codes 20550, 20600, 20605, and 20610); femoral fracture and trochanteric fracture treatments (HCPCS codes 27230, 27232, 27234, 27238, 27240, 27242, 27246, and 27248); endotracheal intubation (HCPCS code 31500); thoracentesis (HCPCS code 32000); thoracostomy (HCPCS codes 32020, 32035, and 32036); aneurysm repair (HCPCS codes 35111); cystourethroscopy (HCPCS code 52340); transurethral fulguration and resection (HCPCS codes 52606 and 52620); tympanoplasty with mastoidectomy (HCPCS code 69645); and ophthalmoscopy (HCPCS codes 92250 and 92260).''

STUDY OF RELEASE OF PREPAYMENT MEDICAL REVIEW SCREEN PARAMETERS

Section 4111 of Pub. L. 101–508 directed Secretary of Health and Human Services to conduct a study of effect of release of medicare prepayment medical review screen parameters on physician billings for services to which the parameters apply, such study to be based upon the release of the screen parameters at a minimum of six carriers, with Secretary to report results of study to Congress not later than Oct. 1, 1992.

FREEZE IN CHARGES FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT

Section 13541 of Pub. L. 103–66 provided that: ''In determining the amount of payment under part B of title XVIII of the Social Security Act [this part] with respect to parenteral and enteral nutrients, supplies, and equipment during 1994 and 1995, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such nutrients, supplies, and equipment during 1993.''

Section 4152(d) of Pub. L. 101–508 provided that: ''In determining the amount of payment under part B of title XVIII of the Social Security Act [this part] for enteral and parenteral nutrients, supplies, and equipment furnished during 1991, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such items for 1990.''

PROHIBITION ON REGULATIONS CHANGING COVERAGE OF CONVENTIONAL EYEWEAR

Section 4153(b)(1) of Pub. L. 101–508 provided that:

''(A) Notwithstanding any other provision of law (except as provided in subparagraph (B)) the Secretary of Health and Human Services (referred to in this subsection as the 'Secretary') may not issue any regula-

tion that changes the coverage of conventional eyewear furnished to individuals (enrolled under part B of title XVIII of the Social Security Act [this part]) following cataract surgery with insertion of an intraocular lens.

''(B) Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing the amendments made by paragraph (2).''

DIRECTORY OF UNIQUE PHYSICIAN IDENTIFIER NUMBERS

Section 4164(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §147(f)(7)(B), Oct. 31, 1994, 108 Stat. 4432, provided that: ''Not later than March 31, 1991, the Secretary of Health and Human Services shall publish, and shall periodically update, a directory of the unique physician identification numbers of all physicians providing services for which payment may be made under part B of title XVIII of the Social Security Act [this part], and shall include in such directory the names, provider numbers, and billing addressess [sic] of all listed physicians.''

TREATMENT OF CERTAIN EYE EXAMINATION VISITS AS PRIMARY CARE SERVICES

Section 6102(e)(10) of Pub. L. 101–239 provided that: ''In applying section 1842(i)(4) of the Social Security Act [subsec. (i)(4) of this section] for services furnished on or after January 1, 1990, intermediate and comprehensive office visits for eye examinations and treatments (codes 92002 and 92004) shall be considered to be primary care services.''

DELAY IN UPDATE UNTIL APRIL 1, 1990, AND REDUCTION IN PERCENTAGE INCREASE IN MEDICARE ECONOMIC INDEX

Section 6107(a) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Subject to the amendments made by this section [amending this section], any increase or adjustment in customary, prevailing, or reasonable charges, fee schedule amounts, maximum allowable actual charges, and other limits on actual charges with respect to physicians' services and other items and services described in paragraph (2) under part B of title XVIII of the Social Security Act [this part] which would otherwise occur as of January 1, 1990, shall be delayed so as to occur as of April 1, 1990, and, notwithstanding any other provision of law, the amount of payment under such part for such items and services which are furnished during the period beginning on January 1, 1990, and ending on March 31, 1990, shall be determined on the same basis as the amount of payment for such services furnished on December 31, 1989.

''(2) ITEMS AND SERVICES COVERED.—The items and services described in this paragraph are items and services (other than ambulance services and clinical diagnostic laboratory services) for which payment is made under part B of title XVIII of the Social Security Act on the basis of a reasonable charge or a fee schedule.

''(3) EXTENSION OF PARTICIPATION AGREEMENTS AND RELATED PROVISIONS.—Notwithstanding any other provision of law—

''(A) subject to the last sentence of this paragraph, each participation agreement in effect on December 31, 1989, under section 1842(h)(1) of the Social Security Act [subsec. (h)(1) of this section] shall remain in effect for the 3-month period beginning on January 1, 1990;

''(B) the effective period for such agreements under such section entered into for 1990 shall be the 9-month period beginning on April 1, 1990, and the Secretary of Health and Human Services shall provide an opportunity for physicians and suppliers to enroll as participating physicians and suppliers before April 1, 1990;

''(C) instead of publishing, under section 1842(h)(4) of the Social Security Act [subsec. (h)(4) of this section], at the beginning of 1990, directories of participating physicians and suppliers for 1990, the Secretary shall provide for such publication, at the beginning of the 9-month period beginning on April 1, 1990, of such directories of participating physicians and suppliers for such period; and

''(D) instead of providing to nonparticipating physicians under section 1842(b)(3)(G) of the Social Security Act [subsec. (b)(3)(G) of this section] at the beginning of 1990, a list of maximum allowable actual charges for 1990, the Secretary shall provide, at the beginning of the 9-month period beginning on April 1, 1990, such physicians such a list for such 9-month period.

An agreement with a participating physician or supplier described in subparagraph (A) in effect on December 31, 1989, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician or supplier requests on or before December 31, 1989, that the agreement be terminated.''

STATE DEMONSTRATION PROJECTS ON APPLICATION OF LIMITATION ON VISITS PER MONTH PER RESIDENT ON AGGREGATE BASIS FOR A TEAM

Section 6114(e) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall provide for at least 1 demonstration project under which, in the application of section 1842(b)(2)(C) of the Social Security Act [subsec. (b)(2)(C) of this section] (as added by subsection (c)(2) of this section) in one or more States, the limitation on the number of visits per month per resident would be applied on an average basis over the aggregate total of residents receiving services from members of the team.''

APPLICATION OF DIFFERENT PERFORMANCE STANDARDS FOR ELECTRONIC SYSTEM FOR COVERED OUTPATIENT DRUGS

Section 202(e)(3)(B) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, §608(d)(5)(E), Oct. 13, 1988, 102 Stat. 2414, which required Secretary of Health and Human Services, before entering into contracts under section 1395u of this title with respect to implementation and operation of electronic system for covered outpatient drugs, to establish standards with respect to performance with respect to such activities, was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

DELAY IN APPLICATION OF COORDINATION OF BENEFITS WITH PRIVATE HEALTH INSURANCE

Section 202(e)(4)(B) of Pub. L. 100–360, which provided that the provisions of section 1395u(h)(3) of this title not apply to covered outpatient drugs (other than drugs described in section 1395x(s)(2)(J) of this title as of July 1, 1988) dispensed before January 1, 1993, was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

EXTENSION OF PHYSICIAN PARTICIPATION AGREEMENTS AND RELATED PROVISIONS

Section 4041(a)(2) of Pub. L. 100–203 provided that: ''Notwithstanding any other provision of law—

''(A) subject to the last sentence of this paragraph, each agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act [subsec. (h)(1) of this section] shall remain in effect for the 3-month period beginning on January 1, 1988;

''(B) the effective period for agreements under such section entered into for 1988 shall be the nine-month period beginning on April 1, 1988, and the Secretary shall provide an opportunity for physicians to enroll as participating physicians prior to April 1, 1988;

''(C) instead of publishing, under section 1842(h)(4) of the Social Security Act [subsec. (h)(4) of this section] at the beginning of 1988, directories of participating physicians for 1988, the Secretary shall provide for such publication, at the beginning of the 9-month period beginning on April 1, 1988, of such directories of participating physicians for such period; and

''(D) instead of providing to nonparticipating physicians, under section 1842(b)(3)(G) of the Social Secu-

rity Act [subsec. (b)(3)(G) of this section] at the beginning of 1988, a list of maximum allowable actual charges for 1988, the Secretary shall provide, at the beginning of the 9-month period beginning on April 1, 1988, to such physicians such a list for such 9-month period.

An agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician requests on or before December 31, 1987, that the agreement be terminated.''

DEVELOPMENT OF UNIFORM RELATIVE VALUE GUIDE

Section 4048(b) of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, § 4118(h)(1), Nov. 5, 1990, 104 Stat. 1388–70, provided that: ''The Secretary of Health and Human Services, in consultation with groups representing physicians who furnish anesthesia services, shall establish by regulation a relative value guide for use in all carrier localities in making payment for physician anesthesia services furnished under part B of title XVIII of the Social Security Act [this part] on and after March 1, 1989. Such guide shall be designed so as to result in expenditures under such title [this subchapter] for such services in an amount that would not exceed the amount of such expenditures which would otherwise occur.''

[Section 4118(h) of Pub. L. 101–508 provided that the amendment by that section to section 4048(b) of Pub. L. 100–203, set out above, is effective as if included in enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.]

STUDY OF PREVAILING CHARGES FOR ANESTHESIA SERVICES

Section 4048(c) of Pub. L. 100–203, which required Secretary of Health and Human Services to study variations in conversion factors used by carriers under section 1395u(b) of this title to determine prevailing charge for anesthesia services and to report results of study and make recommendations for appropriate adjustments in such factors not later than Jan. 1, 1989, was repealed by Pub. L. 101–508, title IV, § 4118(g)(2), Nov. 5, 1990, 104 Stat. 1388–70.

GAO STUDIES

Section 4048(d) of Pub. L. 100–203 provided that:

''(1) The Comptroller General shall conduct a study—

''(A) to determine the average anesthesia times reported for medicare reimbursement purposes,

''(B) to verify those times from patient medical records,

''(C) to compare anesthesia times to average surgical times, and

''(D) to determine whether the current payments for physician supervision of nurse anesthetists are excessive.

The Comptroller General shall report to Congress, by not later than January 1, 1989, on such study and in the report include recommendations regarding the appropriateness of the anesthesia times recognized by medicare for reimbursement purposes and recommendations regarding adjustments of payments for physician supervision of nurse anesthetists.

''(2) The Comptroller General shall conduct a study on the impact of the amendment made by subsection (a) [amending this section], and shall report to Congress on the results of such study by April 1, 1990.''

ADJUSTMENT IN MEDICARE PREVAILING CHARGES

Section 4051(b) of Pub. L. 100–203 provided that:

''(1) REVIEW.—The Secretary of Health and Human Services shall review payment levels under part B of title XVIII of the Social Security Act [this part] for diagnostic tests (described in section 1861(s)(3) of such Act [section 1935x(s)(3) of this title], but excluding clinical diagnostic laboratory tests) which are commonly performed by independent suppliers, sold as a service to physicians, and billed by such physicians, in order to determine the reasonableness of payment amounts for such tests (and for associated professional services component of such tests). The Secretary may require physicians and suppliers to provide such information on the purchase or sale price (net of any discounts) for such tests as is necessary to complete the review and make the adjustments under this subsection. The Secretary shall also review the reasonableness of payment levels for comparable in-office diagnostic tests.

''(2) ESTABLISHMENT OF REVISED PAYMENT SCREENS.—If, as a result of such review, the Secretary determines, after notice and opportunity of at least 60 days for public comment, that the current prevailing charge levels (under the third and fourth sentences of section 1842(b) of the Social Security Act [subsec. (b) of this section]) for any such tests or associated professional services are excessive, the Secretary shall establish such charge levels at levels which, consistent with assuring that the test is widely and consistently available to medicare beneficiaries, reflect a reasonable price for the test without any markup. Alternatively, the Secretary, pursuant to guidelines published after notice and opportunity of at least 60 days for public comment, may delegate to carriers with contracts under section 1842 of the Social Security Act the establishment of new prevailing charge levels under this paragraph. When such charge levels are established, the provisions of section 1842(j)(1)(D) of such Act shall apply in the same manner as they apply to a reduction under section 1842(b)(8)(A) of such Act.''

ADJUSTMENT FOR MAXIMUM ALLOWABLE ACTUAL CHARGE

Section 4054(b), formerly § 4053(b), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(f)(14), July 1, 1988, 102 Stat. 781, provided that: ''In the case of a physician who did not have actual charges under title XVIII of the Social Security Act [this subchapter] for a procedure in the calendar quarter beginning on April 1, 1984, but who establishes to the satisfaction of a carrier that he or she had actual charges (whether under such title or otherwise) for the procedure performed prior to June 30, 1984, the carrier shall compute the maximum allowable actual charge under section 1842(j) of the Social Security Act [subsec. (j) of this section] for such procedure performed by such physician in 1988 based on such physician's actual charges for the procedure.''

PHYSICIAN PAYMENT STUDIES; DEFINITIONS OF MEDICAL AND SURGICAL PROCEDURES

Section 4056(a), formerly § 4055(a), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, § 411(f)(13)(A), (14), July 1, 1988, 102 Stat. 781; Pub. L. 101–508, title IV, § 4118(g)(4), Nov. 5, 1990, 104 Stat. 1388–70, provided that:

''(1) REPORT ON VARIATIONS IN CARRIER PAYMENT PRACTICE.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall conduct a study of variations in payment practices for physicians' services among the different carriers under section 1842 of the Social Security Act [this section]. Such study shall examine carrier variations in the services included in global fees and pre- and post-operative services included in payment for the operation.

''(2) UNIFORM DEFINITIONS OF PROCEDURES FOR PAYMENT PURPOSES.—The Secretary shall develop, in consultation with appropriate national medical specialty societies and by not later than July 1, 1989, uniform definitions of physicians' services (including appropriate classification scheme for procedures) which could serve as the basis for making payments for such services under part B of title XVIII of the Social Security Act [this part]. In developing such definitions, to the extent practicable—

''(A) ancillary services commonly performed in conjunction with a major procedure would be included with the major procedure;

''(B) pre- and post-procedure services would be included in the procedure; and

''(C) similar procedures would be listed together if the procedures are similar in resource requirements.''

PAYMENTS FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS; 1-YEAR FREEZE ON CHARGE LIMITATIONS

Section 4062(a) of Pub. L. 100–203 provided that:

''(1) IN GENERAL.—In imposing limitations on allowable charges for items and services (other than physicians' services) furnished in 1988 under part B of title XVIII of such Act [this part] and for which payment is made on the basis of the reasonable charge for the item or service, the Secretary of Health and Human Services shall not impose any limitation at a level higher than the same level as was in effect in December 1987.

''(2) TRANSITION.—The provisions of section 4041(a)(2) (other than subparagraph (D) thereof) of this subtitle [set out as a note above] shall apply to suppliers of items and services described in paragraph (1), and directories of participating suppliers of such items and services, in the same manner as such section applies to physicians furnishing physicians' services, and directories of participating physicians.''

SPECIAL RULE WITH RESPECT TO PAYMENT FOR INTRAOCULAR LENSES

Section 4063(d) of Pub. L. 100–203 provided that: ''With respect to the establishment of a reasonable charge limit under section 1842(b)(11)(C)(ii) of the Social Security Act [subsec. (b)(11)(C)(ii) of this section], in applying section 1842(j)(1)(D)(i) of such Act, the matter beginning with 'plus' shall be considered to have been deleted.''

STUDY ON COST EFFECTIVENESS OF HEARING PRIOR TO HEARING BY ADMINISTRATIVE LAW JUDGE ON CARRIER DETERMINATIONS; REPORT TO CONGRESS

Section 4082(d) of Pub. L. 100–203 provided that: ''The Comptroller General shall conduct a study concerning the cost effectiveness of requiring hearings with a carrier under part B of title XVIII of the Social Security Act [this part] before having a hearing before an administrative law judge respecting carrier determinations under that part. The Comptroller General shall report to the Congress on the results of such study by not later than June 30, 1989.''

CAPACITY TO SET GEOGRAPHIC PAYMENT LIMITS

Section 4085(e) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall develop the capability to implement (for services furnished on or after January 1, 1989) geographic limits on charges and payments under part B of title XVIII of the Social Security Act [this part] for physicians' services based on statewide, regional, or national average (or percentile in a distribution) of prevailing charges or payment amounts (weighted by frequency of services). Any such limits shall take into account adjustments for geographic differences in cost of practice and cost of living.''

UTILIZATION SCREENS FOR PHYSICIAN SERVICES PROVIDED TO PATIENTS IN REHABILITATION HOSPITALS

Section 4114 of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §126(g)(4), Oct. 31, 1994, 108 Stat. 4416, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall issue guidelines to assure a uniform level of review of physician visits to patients of a rehabilitation hospital or unit after the medical review screen parameter established under section 4085(h) of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203, set out below] has been exceeded.''

Section 4085(h) of Pub. L. 100–203 provided that:

''(1) The Secretary of Health and Human Services shall establish (in consultation with appropriate physician groups, including those representing rehabilitative medicine) a separate utilization screen for physician visits to patients in rehabilitation hospitals and rehabilitative units (and patients in long-term care hospitals receiving rehabilitation services) to be used by carriers under section 1842 of the Social Security Act [this section] in performing functions under subsection (a) of such section related to the utilization practices of physicians in such hospitals and units.

''(2) Not later than 12 months after the date of enactment of this Act [Dec. 22, 1987], the Secretary of Health and Human Services shall take appropriate steps to implement the utilization screen established under paragraph (1).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

AMENDMENTS IN CONTRACTS AND REGULATIONS

The Secretary of Health and Human Services to provide for such timely amendments to contracts under this section, and regulations, to such extent as may be necessary to implement Pub. L. 99–509 on a timely basis, see section 9311(d)(3) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 1395h of this title.

MEDICARE ECONOMIC INDEX

Section 9331(c)(1), (2), (4)–(6) of Pub. L. 99–509 provided that:

''(1) FOR 1987.—Notwithstanding any other provision of law, for purposes of part B of title XVIII of the Social Security Act [this part] for physicians' services furnished in 1987, the percentage increase in the MEI (as defined in section 1842(b)(4)(E)(ii) of the Social Security Act [subsec. (b)(4)(E)(ii) of this section]) shall be 3.2 percent.

''(2) PROHIBITING RETROACTIVE ADJUSTMENT OF MEDICARE ECONOMIC INDEX.—The Secretary of Health and Human Services is not authorized to revise the MEI in a manner that provides, for any period before January 1, 1985, for the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index.''

''(4) STUDY.—The Secretary shall conduct a study of the extent to which the MEI appropriately and equitably reflects economic changes in the provision of the physicians' services to medicare beneficiaries. In conducting such study the Secretary shall consult with appropriate experts.

''(5) LIMITATION ON CHANGES IN MEI METHODOLOGY.—The Secretary shall not change the methodology (including the basis and elements) used in the MEI from that in effect as of October 1, 1985, until completion of the study under paragraph (4). After the completion of the study, the Secretary may not change such methodology except after providing notice in the Federal Register and opportunity for public comment.

''(6) MEI DEFINED.—In this subsection, the term 'MEI' means the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act [subsec. (b)(3) of this section].''

DEVELOPMENT AND USE OF HCFA COMMON PROCEDURE CODING SYSTEM

Section 9331(d) of Pub. L. 99–509 provided that:

''(1) Not later than July 1, 1989, the Secretary of Health and Human Services (in this subsection referred to as the 'Secretary'), after public notice and opportunity for public comment and after consulation [con-

sultation] with appropriate medical and other experts, shall group the procedure codes contained in any HCFA Common Procedure Coding System for payment purposes to minimize inappropriate increases in the intensity or volume of services provided as a result of coding distinctions which do not reflect substantial differences in the services rendered.

''(2) Not later than January 1, 1990, each carrier with which the Secretary has entered into a contract under section 1842 of the Social Security Act [this section] shall make payments under part B of title XVIII of such Act [this part] based on the grouping of procedure codes effected under paragraph (1).''

MEASURING CARRIER PERFORMANCE; CARRIER BONUSES FOR GOOD PERFORMANCE

Section 9332(a)(2), (3) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4085(i)(21)(B), Dec. 22, 1987, 101 Stat. 1330–133, which provided that the Secretary of Health and Human Services was to provide, in the standards and criteria established under section 1842(b)(2) of the Social Security Act [subsec. (b)(2) of this section] for contracts under that section, a system to measure a carrier's performance of the responsibilities described in sections 1842(b)(3)(H) and 1842(h) of such Act and that, of the amounts appropriated for administrative activities to carry out part B of title XVIII of the Social Security Act [this part], the Secretary of Health and Human Services was to provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under section 1842 of such Act, to reward such carriers for their success in increasing the proportion of physicians in the carrier's service area who were participating physicians or in increasing the proportion of total payments for physicians' services which were payments for such services rendered by participating physicians, was repealed by Pub. L. 100–203, title IV, § 4041(a)(3)(B)(i), Dec. 22, 1987, 101 Stat. 1330–84.

Section 9332(a)(4)(B), (C) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4041(a)(3)(B)(ii), (iii), Dec. 22, 1987, 101 Stat. 1330–84; Pub. L. 100–360, title IV, § 411(f)(1)(C), July 1, 1988, 102 Stat. 776, provided that:

''(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under the last sentence of section 1842(b)(2) of the Social Security Act [subsec. (b)(2) of this section] by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

''(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under section 1842(c)(1)(B) of the Social Security Act [subsec. (c)(1)(B) of this section] not later than September 30, 1988, to reflect performance of carriers during the enrollment period before April 1, 1988.''

REVIEW OF PROCEDURES

Section 9333(c) of Pub. L. 99–509 provided that: ''Not later than October 1, 1987, the Secretary of Health and Human Services shall review the inherent reasonableness of the reasonable charges for at least 10 of the most costly procedures with respect to which payment is made under part B of title XVIII of the Social Security Act [this part] (determined on the basis of the aggregate annual payments under such part with respect to each such procedure).''

RATIFICATION OF REGULATIONS

Section 9334(b) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4045(c)(2)(C), Dec. 22, 1987, 101 Stat. 1330–88, provided that:

''(1) IN GENERAL.—The Congress hereby ratifies the final regulation of the Secretary of Health and Human Services published on page 35693 of volume 51 of the Federal Register on October 7, 1986, relating to reasonable charge payment limits for anesthesia services under the medicare program.

''(2) PATIENT PROTECTIONS.—In the case of any reduction in the reasonable charge for physicians' services effected under the regulation described in paragraph (1), the provisions of section 1842(j)(1)(D) of the Social Security Act [subsec. (j)(1)(D) of this section] (added by the amendment made by subsection (a)(3)) shall apply in the same manner and to the same extent as they apply to a reduction in the reasonable charge for a physicians' service effected under section 1842(b)(8) of such Act.''

PAYMENT FOR PARENTERAL AND ENTERAL NUTRITION SUPPLIES AND EQUIPMENT

Section 9340 of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall apply the sixth sentence of section 1842(b)(3) of the Social Security Act [subsec. (b)(3) of this section] to payment—

''(1) for enteral nutrition nutrients, supplies, and equipment and parenteral nutrition supplies and equipment furnished on or after January 1, 1987, and

''(2) for parenteral nutrition nutrients furnished on or after October 1, 1987.''

REPORTING OF OPD SERVICES USING HCPCS

Section 9343(g) of Pub. L. 99–509 provided that: ''Not later than July 1, 1987, each fiscal intermediary which processes claims under part B of title XVIII of the Social Security Act [this part] shall require hospitals, as a condition of payment for outpatient hospital services under that part, to report claims for payment for such services under such part using a HCFA Common Procedure Coding System.''

PERIOD FOR ENTERING INTO PARTICIPATION AGREEMENTS

Section 9301(b)(3) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall provide, during the month of April 1986, that physicians and suppliers may enter into an agreement under section 1842(h)(1) of the Social Security Act [subsec. (h)(1) of this section] for the 8-month period beginning May 1, 1986, or terminate such an agreement previously entered into for fiscal year 1986. In the case of a physician or supplier who entered into such an agreement for fiscal year 1986, the physician or supplier shall be deemed to have entered into such agreement for such 8-month period and for each succeeding year unless the physician or supplier terminates such agreement before the beginning of the respective period. At the beginning of such 8-month period, the Secretary shall publish a new directory (described in section 1842(h)(4) of that Act [subsec. (h)(4) of this section], as redesignated by subsection (c)(3)(D) of this section) of participating physicians and suppliers.''

TRANSITIONAL PROVISIONS FOR MEDICARE PART B PAYMENTS

Section 9301(d)(5) of Pub. L. 99–272 provided that: ''Notwithstanding any other provision of law, for purposes of making payment under part B of title XVIII of the Social Security Act [this part], customary and prevailing charges (and the lowest charges determined under the sixth sentence of section 1842(b)(3) of such Act [subsec. (b)(3) of this section]) for items and services furnished during the period beginning on October 1, 1986, and ending on December 31, 1986, shall be determined on the same basis as for items and services furnished on September 30, 1986.''

COMPUTATION OF CUSTOMARY CHARGES FOR CERTAIN FORMER HOSPITAL-COMPENSATED PHYSICIANS

Section 9304(b) of Pub. L. 99–272 provided that:

''(1) In applying section 1842(b) of the Social Security Act [subsec. (b) of this section] to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who at anytime during the period beginning on October 31, 1982, and ending on January 31, 1985, was a hospital-compensated physician (as defined in paragraph (3)) but

who, as of February 1, 1985, was no longer a hospital-compensated physician, the physician's customary charges shall—

''(A) be based upon the physician's actual charges billed during the 12-month period ending on March 31, 1985, and

''(B) in the case of a physician who was not a participating physician (as defined in section 1842(h)(1) of the Social Security Act [subsec. (h)(1) of this section]) on September 30, 1985, and who is not such a physician on May 1, 1986, be deflated (to take into account the legislative freeze on actual charges for non-participating physicians' services) by multiplying the physician's customary charges by .85.

''(2) In applying section 1842(b) of the Social Security Act [subsec. (b) of this section] to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who during the period beginning on February 1, 1985, and ending on December 31, 1986, changes from being a hospital-compensated physician to not being a hospital-compensated physician, the physician's customary charges shall be determined in the same manner as if the physician were considered to be a new physician.

''(3) In this subsection, the term 'hospital-compensated physician' means, with respect to services furnished to patients of a hospital, a physician who is compensated by the hospital for the furnishing of physicians' services for which payment may be made under this part.''

EXTENSION OF MEDICARE PHYSICIAN PAYMENT PROVISIONS

Period of 15 months referred to in subsec. (j)(1) of this section for monitoring the charges of nonparticipating physicians to be deemed to include the period Oct. 1, 1985, to Mar. 14, 1986, see section 5(b) of Pub. L. 99–107, set out as a note under section 1395ww of this title.

SIMPLIFICATION OF PROCEDURES WITH RESPECT TO CLAIMS AND PAYMENTS FOR CLINICAL DIAGNOSTIC LABORATORY TESTS

Section 2303(h) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services shall simplify the procedures under section 1842 of the Social Security Act [this section] with respect to claims and payments for clinical diagnostic laboratory tests so as to reduce unnecessary paperwork while assuring that sufficient information is supplied to identify instances of fraud and abuse.''

STUDY OF AMOUNTS BILLED FOR PHYSICIAN SERVICES AND PAID BY CARRIERS UNDER SUBSECTION (b)(7) OF THIS SECTION; REPORT TO CONGRESS

Section 2307(c) of Pub. L. 98–369 directed Comptroller General to conduct a study of the amounts billed for physician services and paid by carriers under subsec. (b)(7) of this section to determine whether such payments were made only where the physician satisfied the requirements of subsec. (b)(7)(A)(i) of this section, and to submit to Congress a report on results of such study not later than 18 months after July 18, 1984.

REPLACEMENT OF AGENCY, ORGANIZATION, OR CARRIER PROCESSING MEDICARE CLAIMS; NUMBER OF AGREEMENTS AND CONTRACTS AUTHORIZED FOR FISCAL YEARS 1985 THROUGH 1993

For provision authorizing two agreements under section 1395h of this title and two contracts under this section for replacement of an agency, organization, or carrier in the lowest 20th percentile, see section 2326(a) of Pub. L. 98–369, as amended, set out as a note under 1395h of this title.

RULES AND REGULATIONS

Section 113(b)(2) of Pub. L. 97–248 provided that: ''The Secretary of Health and Human Services shall first issue such final regulations (whether on an interim or other basis) before October 1, 1982, as may be necessary to implement the amendment made by subsection (a) [amending this section] on a timely basis. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than January 31, 1983.''

REPORT ON REIMBURSEMENT OF CLINICAL LABORATORIES

Section 918(a)(3) of Pub. L. 96–499 provided that not later than 24 months after an effective date (not later than Apr. 1, 1981) which was to have been prescribed by the Secretary of Health and Human Services, the Secretary was to report to the Congress (A) the proportion of bills and requests for payment submitted (during the 18-month period beginning on such effective date) under this subchapter for laboratory tests which did not identify who performed the tests, (B) the proportion of bills and requests for payment submitted during such period for laboratory tests with respect to which the amount paid under this subchapter was less than the amount that would otherwise have been payable in the absence of subsec. (h) of this section, (C) with respect to requests for payment described in subparagraph (B) which were submitted by patients, the average additional cost per laboratory test to patients resulting from reductions in payment that would otherwise have been made for such tests in the absence of such subsec. (h), and (D) with respect to bills described in subparagraph (B) which were submitted by physicians, the average reduction in payment per laboratory test to physicians resulting from the application of such subsec. (h).

PREVAILING CHARGE LEVELS FOR FISCAL YEAR BEGINNING JULY 1, 1975

Section 101(b) of Pub. L. 94–182 provided that: ''The amendment made by subsection (a) [amending subsec. (b)(3) of this section] shall be applicable with respect to claims filed under part B of title XVIII of the Social Security Act [this part] with a carrier designated pursuant to section 1842 of such Act [this section] and processed by such carrier after the appropriate changes were made in the prevailing charge levels for the fiscal year beginning July 1, 1975, on the basis of economic index data under the third and fourth sentences of section 1842(b)(3) of such Act [subsec. (b)(3) of this section]; except that (1) if less than the correct amount was paid (after the application of subsection (a) of this section) on any claim processed prior to the enactment of this section [Dec. 31, 1975], the correct amount shall be paid by such carrier at such time (not exceeding 6 months after the date of the enactment of this section) [Dec. 31, 1975] as is administratively feasible, and (2) no such payment shall be made on any claim where the difference between the amount paid and the correct amount due is less than $1.''

REPORT BY HEALTH INSURANCE BENEFITS ADVISORY COUNCIL ON METHODS OF REIMBURSEMENT OF PHYSICIANS FOR THEIR SERVICES

Section 224(b) of Pub. L. 92–603 directed Health Insurance Benefits Advisory Council to conduct a study of methods of reimbursement for physicians' services under Medicare with respect to fees, extent of assignments accepted by physicians, and share of physician-fee costs which Medicare program does not pay and submit such study to Congress by Jan. 1, 1973.

§ 1395v. Agreements with States

(a) Duty of Secretary; enrollment of eligible individuals

The Secretary shall, at the request of a State made before January 1, 1970, or during 1981 or after 1988, enter into an agreement with such

State pursuant to which all eligible individuals in either of the coverage groups described in subsection (b) of this section (as specified in the agreement) will be enrolled under the program established by this part.

(b) Coverage of groups to which applicable

An agreement entered into with any State pursuant to subsection (a) of this section may be applicable to either of the following coverage groups:

(1) individuals receiving money payments under the plan of such State approved under subchapter I of this chapter or subchapter XVI of this chapter; or

(2) individuals receiving money payments under all of the plans of such State approved under subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter.

Except as provided in subsection (g) of this section, there shall be excluded from any coverage group any individual who is entitled to monthly insurance benefits under subchapter II of this chapter or who is entitled to receive an annuity under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.]. Effective January 1, 1974, and subject to section 1396a(f) of this title, the Secretary shall, at the request of any State not eligible to participate in the State plan program established under subchapter XVI of this chapter, continue in effect the agreement entered into under this section with such State subject to such modifications as the Secretary may by regulations provide to take account of the termination of any plans of such State approved under subchapters I, X, XIV, and XVI of this chapter and the establishment of the supplemental security income program under subchapter XVI of this chapter.

(c) Eligible individuals

For purposes of this section, an individual shall be treated as an eligible individual only if he is an eligible individual (within the meaning of section 1395*o* of this title) on the date an agreement covering him is entered into under subsection (a) of this section or he becomes an eligible individual (within the meaning of such section) at any time after such date; and he shall be treated as receiving money payments described in subsection (b) of this section if he receives such payments for the month in which the agreement is entered into or any month thereafter.

(d) Monthly premiums; coverage periods

In the case of any individual enrolled pursuant to this section—

(1) the monthly premium to be paid by the State shall be determined under section 1395r of this title (without any increase under subsection (b) thereof);

(2) his coverage period shall begin on whichever of the following is the latest:

(A) July 1, 1966;

(B) the first day of the third month following the month in which the State agreement is entered into;

(C) the first day of the first month in which he is both an eligible individual and a member of a coverage group specified in the agreement under this section; or

(D) such date as may be specified in the agreement; and

(3) his coverage period attributable to the agreement with the State under this section shall end on the last day of whichever of the following first occurs:

(A) the month in which he is determined by the State agency to have become ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h) of this section) for medical assistance, or

(B) the month preceding the first month for which he becomes entitled to monthly benefits under subchapter II of this chapter or to an annuity or pension under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

(e) Subsection (d)(3) terminations deemed resulting in section 1395p enrollment

Any individual whose coverage period attributable to the State agreement is terminated pursuant to subsection (d)(3) of this section shall be deemed for purposes of this part (including the continuation of his coverage period under this part) to have enrolled under section 1395p of this title in the initial general enrollment period provided by section 1395p(c) of this title. The coverage period under this part of any such individual who (in the last month of his coverage period attributable to the State agreement or in any of the following six months) files notice that he no longer wishes to participate in the insurance program established by this part, shall terminate at the close of the month in which the notice is filed.

(f) "Carrier" as including State agency; provisions facilitating deductions, coinsurance, etc., and leading to economy and efficiency of operation

With respect to eligible individuals receiving money payments under the plan of a State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter, if the agreement entered into under this section so provides, the term ''carrier'' as defined in section 1395u(f)[1] of this title also includes the State agency, specified in such agreement, which administers or supervises the administration of the plan of such State approved under subchapter I, XVI, or XIX of this chapter. The agreement shall also contain such provisions as will facilitate the financial transactions of the State and the carrier with respect to deductions, coinsurance, and otherwise, and as will lead to economy and efficiency of operation, with respect to individuals receiving money payments under plans of the State approved under subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, and individuals eligible to receive medical assistance under the plan of the

[1] See References in Text note below.

State approved under subchapter XIX of this chapter.

(g) Subsection (b) exclusions from coverage groups

(1) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981 or after 1988, enter into a modification of an agreement entered into with such State pursuant to subsection (a) of this section under which the second sentence of subsection (b) of this section shall not apply with respect to such agreement.

(2) In the case of any individual who would (but for this subsection) be excluded from the applicable coverage group described in subsection (b) of this section by the second sentence of such subsection—

(A) subsections (c) and (d)(2) of this section shall be applied as if such subsections referred to the modification under this subsection (in lieu of the agreement under subsection (a) of this section), and

(B) subsection (d)(3)(B) of this section shall not apply so long as there is in effect a modification entered into by the State under this subsection.

(h) Modifications respecting subsection (b) coverage groups

(1) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981 or after 1988, enter into a modification of an agreement entered into with such State pursuant to subsection (a) of this section under which the coverage group described in subsection (b) of this section and specified in such agreement is broadened to include (A) individuals who are eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter, or (B) qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title).

(2) For purposes of this section, an individual shall be treated as eligible to receive medical assistance under the plan of the State approved under subchapter XIX of this chapter if, for the month in which the modification is entered into under this subsection or for any month thereafter, he has been determined to be eligible to receive medical assistance under such plan. In the case of any individual who would (but for this subsection) be excluded from the agreement, subsections (c) and (d)(2) of this section shall be applied as if they referred to the modification under this subsection (in lieu of the agreement under subsection (a) of this section), and subsection (d)(2)(C) of this section shall be applied (except in the case of qualified medicare beneficiaries, as defined in section 1396d(p)(1) of this title) by substituting ''second month following the first month'' for ''first month''.

(3) In this subsection, the term ''qualified medicare beneficiary'' also includes an individual described in section 1396a(a)(10)(E)(iii) of this title.

(i) Enrollment of qualified medicare beneficiaries

For provisions relating to enrollment of qualified medicare beneficiaries under part A of this subchapter, see section 1395i–2(g) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1843, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 312; amended Pub. L. 89–384, § 4(a), (b), Apr. 8, 1966, 80 Stat. 105; Pub. L. 90–248, title II, §§ 222(a), (b), (e), 241(e), Jan. 2, 1968, 81 Stat. 900, 901, 917; Pub. L. 93–233, § 18(*l*), Dec. 31, 1973, 87 Stat. 970; Pub. L. 93–445, title III, § 308, Oct. 16, 1974, 88 Stat. 1358; Pub. L. 96–499, title IX, §§ 945(e), 947(a), (c), Dec. 5, 1980, 94 Stat. 2642, 2643; Pub. L. 98–21, title VI, § 606(a)(3)(E), Apr. 20, 1983, 97 Stat. 171; Pub. L. 98–369, div. B, title III, § 2354(b)(15), July 18, 1984, 98 Stat. 1101; Pub. L. 100–360, title III, § 301(e)(1), July 1, 1988, 102 Stat. 749; Pub. L. 100–485, title VI, § 608(d)(14)(H), Oct. 13, 1988, 102 Stat. 2416; Pub. L. 101–239, title VI, § 6013(b), Dec. 19, 1989, 103 Stat. 2164; Pub. L. 101–508, title IV, § 4501(d), Nov. 5, 1990, 104 Stat. 1388–165.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsecs. (b)(2) and (f), is classified to section 601 et seq. of this title.

The Railroad Retirement Act of 1974, referred to in subsec. (d)(3)(B), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Section 1395u(f) of this title, referred to in subsec. (f), was repealed by Pub. L. 108–173, title IX, § 911(c)(5), Dec. 8, 2003, 117 Stat. 2384.

Part A of this subchapter, referred to in subsec. (i), is classified to section 1395c et seq. of this title.

AMENDMENTS

1990—Subsec. (h)(3). Pub. L. 101–508 added par. (3).

1989—Subsec. (i). Pub. L. 101–239 added subsec. (i).

1988—Subsecs. (a), (g)(1). Pub. L. 100–360, § 301(e)(1)(A), formerly § 301(e)(1), as redesignated by Pub. L. 100–485, § 608(d)(14)(H)(i), inserted ''or after 1988'' after ''during 1981''.

Subsec. (h)(1). Pub. L. 100–360, § 301(e)(1)(A), formerly § 301(e)(1), as redesignated by Pub. L. 100–485, § 608(d)(14)(H)(i), inserted ''or after 1988'' after ''during 1981''.

Pub. L. 100–360, § 301(e)(1)(B), as added by Pub. L. 100–485, § 608(d)(14)(H)(ii), inserted cl. (A) designation after ''include'' and added cl. (B).

Subsec. (h)(2). Pub. L. 100–360, § 301(e)(1)(C), as added by Pub. L. 100–485, § 608(d)(14)(H)(ii), inserted ''(except in the case of qualified medicare beneficiaries, as defined in section 1396d(p)(1) of this title)'' after ''shall be applied''.

1984—Subsec. (d)(3)(B). Pub. L. 98–369 substituted ''1974'' for ''1937''.

1983—Subsec. (d)(1). Pub. L. 98–21 substituted ''without any increase under subsection (b) thereof'' for ''without any increase under subsection (c) thereof''.

1980—Subsec. (a). Pub. L. 96–499, § 945(e), inserted ''or during 1981,'' after ''January 1, 1970,''.

Subsec. (e). Pub. L. 96–499, § 947(a), inserted provision that the coverage period under this part of any individual who filed notice that he no longer wished to participate in the insurance program established by this part was to terminate at the close of the month in which the notice was filed.

Subsec. (g)(1). Pub. L. 96–499, § 945(e), inserted ''or during 1981,'' after ''January 1, 1970,''.

Subsec. (g)(2)(C). Pub. L. 96–499, § 947(c)(3), struck out cl. (C) which authorized individuals facing exclusion from the applicable coverage group to terminate their enrollment under this part by the filing of a notice indicating he no longer wished to participate in the insurance program established by this part.

Subsec. (h)(1). Pub. L. 96–499, § 945(e), inserted ''or during 1981,'' after ''January 1, 1970,''.

1974—Subsec. (b). Pub. L. 93–445 substituted ''under the Railroad Retirement Act of 1974'' for ''or pension under the Railroad Retirement Act of 1937''.

1973—Subsec. (b). Pub. L. 93–233 provided for continuation of State agreements for coverage of certain individuals in connection with establishment of supplemental security income program.

1968—Pub. L. 90–248, § 222(b)(4), inserted ''(or are eligible for medical assistance)'' in section catchline.

Subsec. (a). Pub. L. 90–248, § 222(e)(1), substituted ''1970'' for ''1968''.

Subsec. (b)(2). Pub. L. 90–248, § 241(e)(1), struck out ''IV,'' after ''I,'' and inserted '', and part A of subchapter IV of this chapter'' after ''XVI of this chapter''.

Subsec. (c). Pub. L. 90–248, § 222(e)(2), struck out ''and before January 1, 1968'' after ''such date'' and ''before January 1968'' after ''thereafter'' just before the period.

Subsec. (d)(2)(D). Pub. L. 90–248, § 222(e)(3), struck out ''(not later than January 1, 1968)'' after ''such date''.

Subsec. (d)(3)(A). Pub. L. 90–248, § 222(b)(1), substituted ''ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h) of this section) for medical assistance'' for ''ineligible for money payments of a kind specified in the agreement''.

Subsec. (f). Pub. L. 90–248, § 222(b)(2), inserted ''or eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter'' and '', and individuals eligible to receive medical assistance under the plan of the State approved under subchapter XIX of this chapter'' after ''or part A of subchapter IV of this chapter'' and '', and part A of subchapter IV of this chapter'', respectively.

Pub. L. 90–248, § 241(e)(2), struck out ''IV,'' before ''X,'' in two places, and inserted ''or part A of subchapter IV of this chapter,'' after ''XVI of this chapter,'' first place it appears in first sentence and '', and part A of subchapter IV of this chapter'' after ''XVI of this chapter'' in second sentence.

Subsec. (g)(1). Pub. L. 90–248, § 222(b)(3), substituted ''1970'' for ''1968''.

Subsec. (h). Pub. L. 90–248, § 222(a), added subsec. (h).

1966—Subsec. (b). Pub. L. 89–384, § 4(a), inserted reference to subsec. (g) in exclusionary provision.

Subsec. (g). Pub. L. 89–384, § 4(b), added subsec. (g).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not regulations to implement such amendment are promulgated by such date, see section 4501(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective Jan. 1, 1990, see section 6013(c) of Pub. L. 101–239, set out as a note under section 1395i–2 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 301(e)(3) of Pub. L. 100–360 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1989, and the amendments made by paragraph (2) [amending section 1396a of this title] shall take effect on July 1, 1989.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; TRANSITIONAL RULE

Amendment by Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 947(d) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section and section 1395q of this title] apply to notices filed after the third calendar month beginning after the date of the enactment of this Act [Dec. 5, 1980].''

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective Jan. 1, 1974, see section 18(z–3)(1) of Pub. L. 93–233.

TERMINATION PERIOD FOR CERTAIN INDIVIDUALS COVERED PURSUANT TO STATE AGREEMENTS

Section 947(e) of Pub. L. 96–499 provided that: ''The coverage period under part B of title XVIII of the Social Security Act [this part] of an individual whose coverage period attributable to a State agreement under section 1843 of such Act [this section] is terminated and who has filed notice before the end of the third calendar month beginning after the date of the enactment of this Act [Dec. 5, 1980] that he no longer wishes to participate in the insurance program established by part B of title XVIII shall terminate on the earlier of (1) the day specified in section 1838 [section 1395q of this title] without the amendments made by this section, or (2) (unless the individual files notice before the day specified in this clause that he wishes his coverage period to terminate as provided in clause (1)) the day on which his coverage period would terminate if the individual filed notice in the fourth calendar month beginning after the date of the enactment of this Act.''

DISTRICT OF COLUMBIA; AGREEMENT OF COMMISSIONER WITH SECRETARY FOR SUPPLEMENTARY MEDICAL INSURANCE

Pub. L. 90–227, § 2, Dec. 27, 1967, 81 Stat. 745, provided that: ''The Commissioner [now Mayor of District of Columbia] may enter into an agreement (and any modifications of such agreement) with the Secretary under section 1843 of the Social Security Act [this section] pursuant to which (1) eligible individuals (as defined in section 1836 of the Social Security Act) [section 1395*o* of this title] who are eligible to receive medical assistance under the District of Columbia's plan for medical assistance approved under title XIX of the Social Security Act [subchapter XIX of this chapter] will be enrolled in the supplementary medical insurance program established under part B of title XVIII of the Social Security Act [this part], and (2) provisions will be made for payment of the monthly premiums of such individuals for such program.''

§ 1395w. Appropriations to cover Government contributions and contingency reserve

(a) In general

There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund—

(1)(A) a Government contribution equal to the aggregate premiums payable for a month

for enrollees age 65 and over under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee age 65 and over as determined under section 1395r(a)(1) of this title for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1395r(a)(3) of this title, to

(ii) the dollar amount of the premium per enrollee for such month, plus

(B) a Government contribution equal to the aggregate premiums payable for a month for enrollees under age 65 under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee under age 65 as determined under section 1395r(a)(4) of this title for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1395r(a)(3) of this title, to

(ii) the dollar amount of the premium per enrollee for such month; minus

(C) the aggregate amount of additional premium payments attributable to the application of section 1395r(i) of this title; plus

(2) such sums as the Secretary deems necessary to place the Trust Fund, at the end of any fiscal year occurring after June 30, 1967, in the same position in which it would have been at the end of such fiscal year if (A) a Government contribution representing the excess of the premiums deposited in the Trust Fund during the fiscal year ending June 30, 1967, over the Government contribution actually appropriated to the Trust Fund during such fiscal year had been appropriated to it on June 30, 1967, and (B) the Government contribution for premiums deposited in the Trust Fund after June 30, 1967, had been appropriated to it when such premiums were deposited.

(b) Contingency reserve

In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part, and to provide a contingency reserve, there is also authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, to remain available through the calendar year 1969 for repayable advances (without interest) to the Trust Fund, an amount equal to $18 multiplied by the number of individuals (as estimated by the Secretary) who could be covered in July 1966 by the insurance program established by this part if they had theretofore enrolled under this part.

(c) Election under section 1395w–24

The Secretary shall determine the Government contribution under subparagraphs (A) and (B) of subsection (a)(1) of this section without regard to any premium reduction resulting from an election under section 1395w–24(f)(1)(E) of this title or any credits provided under section 1395w–24(b)(1)(C)(iv) of this title and without regard to any premium adjustment effected under sections 1395r(h) and 1395w–29(f) of this title and without regard to any premium adjustment under section 1395r(i) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, §1844, as added Pub. L. 89–97, title I, §102(a), July 30, 1965, 79 Stat. 313; amended Pub. L. 90–248, title I, §167, Jan. 2, 1968, 81 Stat. 874; Pub. L. 92–603, title II, §203(e), Oct. 30, 1972, 86 Stat. 1377; Pub. L. 97–248, title I, §124(c), Sept. 3, 1982, 96 Stat. 364; Pub. L. 98–21, title VI, §606(a)(3)(F), (G), Apr. 20, 1983, 97 Stat. 171; Pub. L. 98–369, div. B, title III, §2354(b)(16), July 18, 1984, 98 Stat. 1101; Pub. L. 100–360, title II, §211(c)(2), July 1, 1988, 102 Stat. 738; Pub. L. 101–234, title II, §202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 105–33, title IV, §4571(b)(2), Aug. 5, 1997, 111 Stat. 464; Pub. L. 106–554, §1(a)(6) [title VI, §606(a)(2)(D)], Dec. 21, 2000, 114 Stat. 2763, 2763A–558; Pub. L. 108–173, title II, §§222(*l*)(2)(C), 241(b)(2)(B), title VIII, §811(b)(2), Dec. 8, 2003, 117 Stat. 2206, 2221, 2368.)

AMENDMENTS

2003—Subsec. (a)(1)(B)(ii). Pub. L. 108–173, §811(b)(2)(A)(i), substituted ''minus'' for ''plus''.

Subsec. (a)(1)(C). Pub. L. 108–173, §811(b)(2)(A)(ii), added subpar. (C).

Subsec. (c). Pub. L. 108–173, §811(b)(2)(B), inserted ''and without regard to any premium adjustment under section 1395r(i) of this title'' before period at end.

Pub. L. 108–173, §241(b)(2)(B), inserted ''and without regard to any premium adjustment effected under sections 1395r(h) and 1395w–29(f) of this title'' before period at end.

Pub. L. 108–173, §222(*l*)(2)(C), inserted ''or any credits provided under section 1395w–24(b)(1)(C)(iv) of this title'' after ''section 1395w–24(f)(1)(E) of this title''.

2000—Subsec. (c). Pub. L. 106–554 added subsec. (c).

1997—Subsec. (a)(1)(A)(i), (B)(i). Pub. L. 105–33 substituted ''section 1395r(a)(3) of this title'' for ''section 1395r(a)(3) or 1395r(e) of this title, as the case may be''.

1989—Subsec. (a). Pub. L. 101–234 repealed Pub. L. 100–360, §211(c)(2), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–360 inserted at end ''In computing the amount of aggregate premiums and premiums per enrollee under paragraph (1), there shall not be taken into account premiums attributable to section 1395r(g) of this title or section 59B of the Internal Revenue Code of 1986.''

1984—Subsec. (a)(1)(B)(ii). Pub. L. 98–369 substituted ''; plus'' for a period.

1983—Subsec. (a)(1)(A)(i). Pub. L. 98–21, §606(a)(3)(F), substituted ''section 1395r(a)(1)'' for ''section 1395r(c)(1)'' and ''section 1395r(a)(3) or 1395r(e)'' for ''section 1395r(c)(3) or 1395r(g)''.

Subsec. (a)(1)(B)(i). Pub. L. 98–21, §606(a)(3)(G), substituted ''1395r(a)(4)'' for ''1395r(c)(4)'' and ''1395r(a)(3) or 1395r(e)'' for ''1395r(c)(3) or 1395r(g)''.

1982—Subsec. (a)(1)(A)(i), (B)(i). Pub. L. 97–248 substituted ''section 1395r(c)(3) or 1395r(g) of this title, as the case may be'' for ''section 1395r(c)(3) of this title''.

1972—Subsec. (a)(1). Pub. L. 92–603 designated existing provisions as subpar. (A), substituted provisions relating to Government contributions equal to aggregate premiums payable for a month for enrollees age 65 and over under this part and deposited in Trust Fund, and multiplied by specified ratio, for provisions relating to Government contributions equal to aggregate premiums payable under this part and deposited in Trust Fund, and added subpar. (B).

1968—Subsec. (a). Pub. L. 90–248, §167(a), designated existing provisions as par. (1), inserted provision for deposit of Government contribution in Trust Fund, and added par. (2).

Subsec. (b). Pub. L. 90–248, §167(b), substituted ''1969'' for ''1967''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 222(*l*)(2)(C) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, § 606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, and applicable to premiums for months beginning after Dec. 31, 1989, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–360 applicable, except as otherwise specified in such amendment, to monthly premiums for months beginning with January 1989, see section 211(d) of Pub. L. 100–360, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; TRANSITIONAL RULE

Amendment by Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the amount of Government contributions under subsec. (a)(1) of this section shall be computed with the actuarially adequate rate which would have been in effect but for the amendments made by this section and using the amount of the premium in effect for June 1983, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 203(e) of Pub. L. 92–603 provided that the amendment made by that section is effective with respect to enrollee premiums payable for months after June 1973.

§ 1395w–1. Repealed. Pub. L. 105–33, title IV, § 4022(b)(2)(A), Aug. 5, 1997, 111 Stat. 354

Section, act Aug. 14, 1935, ch. 531, title XVIII, § 1845, as added and amended Apr. 7, 1986, Pub. L. 99–272, title IX, § 9305, 100 Stat. 190; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9331(e), 9344(a)(1), 100 Stat. 2021, 2042; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4045(b), 4083(a)(1), (c)(1), 4085(a), (i)(8), 101 Stat. 1330–87, 1330–129, 1330–130, 1330–132; July 1, 1988, Pub. L. 100–360, title IV, § 411(i)(4)(A), 102 Stat. 788; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8425(a), 102 Stat. 3803; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4002(g)(3), 4118(j)(1), 104 Stat. 1388–37, 1388–70; Oct. 31, 1994, Pub. L. 103–432, title I, § 126(g)(8), 108 Stat. 4416, related to Physician Payment Review Commission.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1997, the date of termination of the Prospective Payment Assessment Commission and the Physician Payment Review Commission, see section 4022(c)(2) of Pub. L. 105–33 set out as an Effective Date; Transition; Transfer of Functions note under section 1395b–6 of this title.

§ 1395w–2. Intermediate sanctions for providers or suppliers of clinical diagnostic laboratory tests

(a) If the Secretary determines that any provider or clinical laboratory approved for participation under this subchapter no longer substantially meets the conditions of participation or for coverage specified under this subchapter with respect to the provision of clinical diagnostic laboratory tests under this part, the Secretary may (for a period not to exceed one year) impose intermediate sanctions developed pursuant to subsection (b) of this section, in lieu of terminating immediately the provider agreement or cancelling immediately approval of the clinical laboratory.

(b)(1) The Secretary shall develop and implement—

(A) a range of intermediate sanctions to apply to providers or clinical laboratories under the conditions described in subsection (a), and

(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

(i) directed plans of correction,

(ii) civil money penalties in an amount not to exceed $10,000 for each day of substantial noncompliance,

(iii) payment for the costs of onsite monitoring by an agency responsible for conducting surveys, and

(iv) suspension of all or part of the payments to which a provider or clinical laboratory would otherwise be entitled under this subchapter with respect to clinical diagnostic laboratory tests furnished on or after the date on which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (a) of this section.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (ii) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law.

(3) The Secretary shall develop and implement specific procedures with respect to when and how each of the intermediate sanctions developed under paragraph (1) is to be applied, the amounts of any penalties, and the severity of each of these penalties. Such procedures shall be designed so as to minimize the time between identification of violations and imposition of these sanctions and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

(Aug. 14, 1935, ch. 531, title XVIII, § 1846, as added Pub. L. 100–203, title IV, § 4064(d)(1), Dec. 22, 1987, 101 Stat. 1330–111; amended Pub. L. 100–360, title II, § 203(e)(4), title IV, § 411(g)(3)(G), July 1, 1988, 102 Stat. 725, 784; Pub. L. 100–485, title VI, § 608(d)(22)(C), Oct. 13, 1988, 102 Stat. 2421; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat.

1981; Pub. L. 101–508, title IV, §4154(e)(2), Nov. 5, 1990, 104 Stat. 1388–86.)

AMENDMENTS

1990—Pub. L. 101–508 substituted ''providers or suppliers of'' for ''providers of'' in section catchline.

1989—Pub. L. 101–234 repealed Pub. L. 100–360, §203(e)(4), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

1988—Pub. L. 100–360, §203(e)(4)(A), inserted ''and for qualified home intravenous drug therapy providers'' at end of section catchline.

Subsec. (a). Pub. L. 100–360, §411(g)(3)(G)(i)(I), as amended by Pub. L. 100–485, substituted ''approved'' for ''certified''.

Pub. L. 100–360, §411(g)(3)(G)(i)(II), inserted ''or for coverage'' after ''conditions of participation''.

Pub. L. 100–360, §411(g)(3)(G)(i)(III), which directed amendment of subsec. (a) by substituting ''terminating immediately the provider agreement or cancelling immediately approval of the clinical laboratory'' for ''cancelling immediately the certification of the provider or clinical laboratory'', was executed by making the substitution for ''canceling immediately the certification of the provider or clinical laboratory'' to reflect the probable intent of Congress.

Pub. L. 100–360, §203(e)(4)(B), inserted ''or that a qualified home intravenous drug therapy provider that is certified for participation under this subchapter no longer substantially meets the requirements of section 1395x(jj)(3) of this title'' after ''under this part''.

Subsec. (b)(1)(A). Pub. L. 100–360, §411(g)(3)(G)(ii), struck out ''certified'' before ''clinical laboratories''.

Subsec. (b)(2)(A). Pub. L. 100–360, §411(g)(3)(G)(iv), inserted at end ''The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (ii) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (b)(2)(A)(ii). Pub. L. 100–360, §411(g)(3)(G)(iii), substituted ''civil money penalties in an amount not to exceed $10,000 for each day of substantial noncompliance'' for ''civil fines and penalties''.

Subsec. (b)(2)(A)(iii). Pub. L. 100–360, §411(g)(3)(G)(v), struck out ''certification'' before ''surveys''.

Subsec. (b)(2)(A)(iv). Pub. L. 100–360, §411(g)(3)(G)(ii), (vi), struck out ''certified'' before ''clinical laboratory'' and substituted ''furnished on or after the date on'' for ''provided on or after the date in''.

Pub. L. 100–360, §203(e)(4)(C), inserted ''or home intravenous drug therapy services'' after ''clinical diagnostic laboratory tests''.

Subsec. (b)(3). Pub. L. 100–360, §411(g)(3)(G)(vii), substituted ''any penalties'' for ''any fines'' and ''severe penalties'' for ''severe fines''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, see section 4154(e)(5) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 203(e)(4) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(g)(3)(G) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 4064(d)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [enacting this section] shall become effective on January 1, 1990.''

§ 1395w–3. Competitive acquisition of certain items and services

(a) Establishment of competitive acquisition programs

(1) Implementation of programs

(A) In general

The Secretary shall establish and implement programs under which competitive acquisition areas are established throughout the United States for contract award purposes for the furnishing under this part of competitively priced items and services (described in paragraph (2)) for which payment is made under this part. Such areas may differ for different items and services.

(B) Phased-in implementation

The programs—

(i) shall be phased in among competitive acquisition areas in a manner so that the competition under the programs occurs in—

(I) 10 of the largest metropolitan statistical areas in 2007;

(II) 80 of the largest metropolitan statistical areas in 2009; and

(III) additional areas after 2009; and

(ii) may be phased in first among the highest cost and highest volume items and services or those items and services that the Secretary determines have the largest savings potential.

(C) Waiver of certain provisions

In carrying out the programs, the Secretary may waive such provisions of the Federal Acquisition Regulation as are necessary for the efficient implementation of this section, other than provisions relating to confidentiality of information and such other provisions as the Secretary determines appropriate.

(2) Items and services described

The items and services referred to in paragraph (1) are the following:

(A) Durable medical equipment and medical supplies

Covered items (as defined in section 1395m(a)(13) of this title) for which payment would otherwise be made under section 1395m(a) of this title, including items used in infusion and drugs (other than inhalation drugs) and supplies used in conjunction with durable medical equipment, but excluding class III devices under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(B) Other equipment and supplies

Items and services described in section 1395u(s)(2)(D) of this title, other than parenteral nutrients, equipment, and supplies.

(C) Off-the-shelf orthotics

Orthotics described in section 1395x(s)(9) of this title for which payment would otherwise be made under section 1395m(h) of this title which require minimal self-adjustment for appropriate use and do not require expertise in trimming, bending, molding, assembling, or customizing to fit to the individual.

(3) Exception authority

In carrying out the programs under this section, the Secretary may exempt—

(A) rural areas and areas with low population density within urban areas that are not competitive, unless there is a significant national market through mail order for a particular item or service; and

(B) items and services for which the application of competitive acquisition is not likely to result in significant savings.

(4) Special rule for certain rented items of durable medical equipment and oxygen

In the case of a covered item for which payment is made on a rental basis under section 1395m(a) of this title and in the case of payment for oxygen under section 1395m(a)(5) of this title, the Secretary shall establish a process by which rental agreements for the covered items and supply arrangements with oxygen suppliers entered into before the application of the competitive acquisition program under this section for the item may be continued notwithstanding this section. In the case of any such continuation, the supplier involved shall provide for appropriate servicing and replacement, as required under section 1395m(a) of this title.

(5) Physician authorization

(A) In general

With respect to items or services included within a particular HCPCS code, the Secretary may establish a process for certain items and services under which a physician may prescribe a particular brand or mode of delivery of an item or service within such code if the physician determines that use of the particular item or service would avoid an adverse medical outcome on the individual, as determined by the Secretary.

(B) No effect on payment amount

A prescription under subparagraph (A) shall not affect the amount of payment otherwise applicable for the item or service under the code involved.

(6) Application

For each competitive acquisition area in which the program is implemented under this subsection with respect to items and services, the payment basis determined under the competition conducted under subsection (b) of this section shall be substituted for the payment basis otherwise applied under section 1395m(a) of this title, section 1395m(h) of this title, or section 1395u(s) of this title, as appropriate.

(b) Program requirements

(1) In general

The Secretary shall conduct a competition among entities supplying items and services described in subsection (a)(2) of this section for each competitive acquisition area in which the program is implemented under subsection (a) of this section with respect to such items and services.

(2) Conditions for awarding contract

(A) In general

The Secretary may not award a contract to any entity under the competition conducted in an[1] competitive acquisition area pursuant to paragraph (1) to furnish such items or services unless the Secretary finds all of the following:

(i) The entity meets applicable quality standards specified by the Secretary under section 1395m(a)(20) of this title.

(ii) The entity meets applicable financial standards specified by the Secretary, taking into account the needs of small providers.

(iii) The total amounts to be paid to contractors in a competitive acquisition area are expected to be less than the total amounts that would otherwise be paid.

(iv) Access of individuals to a choice of multiple suppliers in the area is maintained.

(B) Timely implementation of program

Any delay in the implementation of quality standards under section 1395m(a)(20) of this title or delay in the receipt of advice from the program oversight committee established under subsection (c) of this section shall not delay the implementation of the competitive acquisition program under this section.

(3) Contents of contract

(A) In general

A contract entered into with an entity under the competition conducted pursuant to paragraph (1) is subject to terms and conditions that the Secretary may specify.

(B) Term of contracts

The Secretary shall recompete contracts under this section not less often than once every 3 years.

(4) Limit on number of contractors

(A) In general

The Secretary may limit the number of contractors in a competitive acquisition area to the number needed to meet projected demand for items and services covered under the contracts. In awarding contracts, the Secretary shall take into account the ability of bidding entities to furnish items or services in sufficient quantities to meet the anticipated needs of individuals for such items or services in the geographic area covered under the contract on a timely basis.

[1] So in original. Probably should be ''a''.

(B) Multiple winners

The Secretary shall award contracts to multiple entities submitting bids in each area for an item or service.

(5) Payment

(A) In general

Payment under this part for competitively priced items and services described in subsection (a)(2) of this section shall be based on bids submitted and accepted under this section for such items and services. Based on such bids the Secretary shall determine a single payment amount for each item or service in each competitive acquisition area.

(B) Reduced beneficiary cost-sharing

(i) Application of coinsurance

Payment under this section for items and services shall be in an amount equal to 80 percent of the payment basis described in subparagraph (A).

(ii) Application of deductible

Before applying clause (i), the individual shall be required to meet the deductible described in section 1395*l*(b) of this title.

(C) Payment on assignment-related basis

Payment for any item or service furnished by the entity may only be made under this section on an assignment-related basis.

(D) Construction

Nothing in this section shall be construed as precluding the use of an advanced beneficiary notice with respect to a competitively priced item and service.

(6) Participating contractors

(A) In general

Except as provided in subsection (a)(4) of this section, payment shall not be made for items and services described in subsection (a)(2) of this section furnished by a contractor and for which competition is conducted under this section unless—

(i) the contractor has submitted a bid for such items and services under this section; and

(ii) the Secretary has awarded a contract to the contractor for such items and services under this section.

(B) Bid defined

In this section, the term ''bid'' means an offer to furnish an item or service for a particular price and time period that includes, where appropriate, any services that are attendant to the furnishing of the item or service.

(C) Rules for mergers and acquisitions

In applying subparagraph (A) to a contractor, the contractor shall include a successor entity in the case of a merger or acquisition, if the successor entity assumes such contract along with any liabilities that may have occurred thereunder.

(D) Protection of small suppliers

In developing procedures relating to bids and the awarding of contracts under this section, the Secretary shall take appropriate steps to ensure that small suppliers of items and services have an opportunity to be considered for participation in the program under this section.

(7) Consideration in determining categories for bids

The Secretary may consider the clinical efficiency and value of specific items within codes, including whether some items have a greater therapeutic advantage to individuals.

(8) Authority to contract for education, monitoring, outreach, and complaint services

The Secretary may enter into contracts with appropriate entities to address complaints from individuals who receive items and services from an entity with a contract under this section and to conduct appropriate education of and outreach to such individuals and monitoring quality of services with respect to the program.

(9) Authority to contract for implementation

The Secretary may contract with appropriate entities to implement the competitive bidding program under this section.

(10) No administrative or judicial review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, of—

(A) the establishment of payment amounts under paragraph (5);

(B) the awarding of contracts under this section;

(C) the designation of competitive acquisition areas under subsection (a)(1)(A) of this section;

(D) the phased-in implementation under subsection (a)(1)(B) of this section;

(E) the selection of items and services for competitive acquisition under subsection (a)(2) of this section; or

(F) the bidding structure and number of contractors selected under this section.

(c) Program Advisory and Oversight Committee

(1) Establishment

The Secretary shall establish a Program Advisory and Oversight Committee (hereinafter in this section referred to as the ''Committee'').

(2) Membership; terms

The Committee shall consist of such members as the Secretary may appoint who shall serve for such term as the Secretary may specify.

(3) Duties

(A) Advice

The Committee shall provide advice to the Secretary with respect to the following functions:

(i) The implementation of the program under this section.

(ii) The establishment of financial standards for purposes of subsection (b)(2)(A)(ii) of this section.

(iii) The establishment of requirements for collection of data for the efficient management of the program.

(iv) The development of proposals for efficient interaction among manufacturers, providers of services, suppliers (as defined in section 1395x(d) of this title), and individuals.

(v) The establishment of quality standards under section 1395m(a)(20) of this title.

(B) Additional duties

The Committee shall perform such additional functions to assist the Secretary in carrying out this section as the Secretary may specify.

(4) Inapplicability of FACA

The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply.

(5) Termination

The Committee shall terminate on December 31, 2009.

(d) Report

Not later than July 1, 2009, the Secretary shall submit to Congress a report on the programs under this section. The report shall include information on savings, reductions in cost-sharing, access to and quality of items and services, and satisfaction of individuals.

(e) Demonstration project for clinical laboratory services

(1) In general

The Secretary shall conduct a demonstration project on the application of competitive acquisition under this section to clinical diagnostic laboratory tests—

(A) for which payment would otherwise be made under section 1395*l*(h) of this title (other than for pap smear laboratory tests under paragraph (7) of such section) or section 1395m(d)(1) of this title (relating to colorectal cancer screening tests); and

(B) which are furnished by entities that did not have a face-to-face encounter with the individual.

(2) Terms and conditions

(A) In general

Except as provided in subparagraph (B), such project shall be under the same conditions as are applicable to items and services described in subsection (a)(2) of this section, excluding subsection (b)(5)(B) of this section and other conditions as the Secretary determines to be appropriate.

(B) Application of CLIA quality standards

The quality standards established by the Secretary under section 263a of this title for clinical diagnostic laboratory tests shall apply to such tests under the demonstration project under this section in lieu of quality standards described in subsection (b)(2)(A)(i) of this section.

(3) Report

The Secretary shall submit to Congress—

(A) an initial report on the project not later than December 31, 2005; and

(B) such progress and final reports on the project after such date as the Secretary determines appropriate.

(Aug. 14, 1935, ch. 531, title XVIII, § 1847, as added Pub. L. 105–33, title IV, § 4319(a), Aug. 5, 1997, 111 Stat. 392; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–366; Pub. L. 108–173, title III, § 302(b)(1), Dec. 8, 2003, 117 Stat. 2224.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a)(2)(A), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (c)(4), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 1395w–3, act Aug. 14, 1935, ch. 531, title XVIII, § 1847, as added July 1, 1988, Pub. L. 100–360, title II, § 202(j), 102 Stat. 719; amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(5)(I), 102 Stat. 2414, provided for appointment of Prescription Drug Payment Review Commission by Director of Congressional Office of Technology Assessment, prior to repeal by Pub. L. 101–234, title II, § 201(a), (c), Dec. 13, 1989, 103 Stat. 1981, effective Jan. 1, 1990.

AMENDMENTS

2003—Pub. L. 108–173 amended section catchline and text generally, substituting provisions relating to competitive acquisition of certain items and services for provisions relating to demonstration projects for competitive acquisition of items and services.

1999—Subsec. (b)(2). Pub. L. 106–113 inserted ''and'' after ''specified by the Secretary''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

GAO REPORT ON IMPACT OF COMPETITIVE ACQUISITION ON SUPPLIERS

Pub. L. 108–173, title III, § 302(b)(3), Dec. 8, 2003, 117 Stat. 2230, provided that:

''(A) STUDY.—The Comptroller General of the United States shall conduct a study on the impact of competitive acquisition of durable medical equipment under section 1847 of the Social Security Act [this section], as amended by paragraph (1), on suppliers and manufacturers of such equipment and on patients. Such study shall specifically examine the impact of such competitive acquisition on access to, and quality of, such equipment and service related to such equipment.

''(B) REPORT.—Not later than January 1, 2009, the Comptroller General shall submit to Congress a report on the study conducted under subparagraph (A) and shall include in the report such recommendations as the Comptroller General determines appropriate.''

REPORT ON ACTIVITIES OF SUPPLIERS

Pub. L. 108–173, title III, § 302(e), Dec. 8, 2003, 117 Stat. 2233, provided that: ''The Inspector General of the Department of Health and Human Services shall conduct a study to determine the extent to which (if any) suppliers of covered items of durable medical equipment that are subject to the competitive acquisition program under section 1847 of the Social Security Act [this section], as amended by subsection (a) [probably should be (b)(1)], are soliciting physicians to prescribe certain brands or modes of delivery of covered items based on profitability. Not later than July 1, 2009, the Inspector General shall submit to Congress a report on such study.''

STUDY BY GAO

Section 4319(c) of Pub. L. 105–33 provided that: ''The Comptroller of the United States shall study the effectiveness of the establishment of competitive acquisition areas under section 1847(a) of the Social Security Act [subsec. (a) of this section], as added by this section.''

§ 1395w–3a. Use of average sales price payment methodology

(a) Application

(1) In general

Except as provided in paragraph (2), this section shall apply to payment for drugs and biologicals that are described in section 1395u(*o*)(1)(C) of this title and that are furnished on or after January 1, 2005.

(2) Election

This section shall not apply in the case of a physician who elects under subsection (a)(1)(A)(ii) of section 1395w–3b of this title for that section to apply instead of this section for the payment for drugs and biologicals.

(b) Payment amount

(1) In general

Subject to subsections (d)(3)(C) and (e) of this section, the amount of payment determined under this section for the billing and payment code for a drug or biological (based on a minimum dosage unit) is, subject to applicable deductible and coinsurance—

(A) in the case of a multiple source drug (as defined in subsection (c)(6)(C) of this section), 106 percent of the amount determined under paragraph (3); or

(B) in the case of a single source drug or biological (as defined in subsection (c)(6)(D) of this section), 106 percent of the amount determined under paragraph (4).

(2) Specification of unit

(A) Specification by manufacturer

The manufacturer of a drug or biological shall specify the unit associated with each National Drug Code (including package size) as part of the submission of data under section 1396r–8(b)(3)(A)(iii) of this title.

(B) Unit defined

In this section, the term ''unit'' means, with respect to each National Drug Code (including package size) associated with a drug or biological, the lowest identifiable quantity (such as a capsule or tablet, milligram of molecules, or grams) of the drug or biological that is dispensed, exclusive of any diluent without reference to volume measures pertaining to liquids. For years after 2004, the Secretary may establish the unit for a manufacturer to report and methods for counting units as the Secretary determines appropriate to implement this section.

(3) Multiple source drug

For all drug products included within the same multiple source drug billing and payment code, the amount specified in this paragraph is the volume-weighted average of the average sales prices reported under section 1396r–8(b)(3)(A)(iii) of this title determined by—

(A) computing the sum of the products (for each National Drug Code assigned to such drug products) of—

(i) the manufacturer's average sales price (as defined in subsection (c) of this section); and

(ii) the total number of units specified under paragraph (2) sold; and

(B) dividing the sum determined under subparagraph (A) by the sum of the total number of units under subparagraph (A)(ii) for all National Drug Codes assigned to such drug products.

(4) Single source drug or biological

The amount specified in this paragraph for a single source drug or biological is the lesser of the following:

(A) Average sales price

The average sales price as determined using the methodology applied under paragraph (3) for all National Drug Codes assigned to such drug or biological product.

(B) Wholesale acquisition cost (WAC)

The wholesale acquisition cost (as defined in subsection (c)(6)(B) of this section) using the methodology applied under paragraph (3) for all National Drug Codes assigned to such drug or biological product.

(5) Basis for payment amount

The payment amount shall be determined under this subsection based on information reported under subsection (f) of this section and without regard to any special packaging, labeling, or identifiers on the dosage form or product or package.

(c) Manufacturer's average sales price

(1) In general

For purposes of this section, subject to paragraphs (2) and (3), the manufacturer's ''average sales price'' means, of a drug or biological for a National Drug Code for a calendar quarter for a manufacturer for a unit—

(A) the manufacturer's sales to all purchasers (excluding sales exempted in paragraph (2)) in the United States for such drug or biological in the calendar quarter; divided by

(B) the total number of such units of such drug or biological sold by the manufacturer in such quarter.

(2) Certain sales exempted from computation

In calculating the manufacturer's average sales price under this subsection, the following sales shall be excluded:

(A) Sales exempt from best price

Sales exempt from the inclusion in the determination of ''best price'' under section 1396r–8(c)(1)(C)(i) of this title.

(B) Sales at nominal charge

Such other sales as the Secretary identifies as sales to an entity that are merely nominal in amount (as applied for purposes

of section 1396r–8(c)(1)(C)(ii)(III) of this title, except as the Secretary may otherwise provide).

(3) Sale price net of discounts

In calculating the manufacturer's average sales price under this subsection, such price shall include volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks, and rebates (other than rebates under section 1396r–8 of this title). For years after 2004, the Secretary may include in such price other price concessions, which may be based on recommendations of the Inspector General, that would result in a reduction of the cost to the purchaser.

(4) Payment methodology in cases where average sales price during first quarter of sales is unavailable

In the case of a drug or biological during an initial period (not to exceed a full calendar quarter) in which data on the prices for sales for the drug or biological is not sufficiently available from the manufacturer to compute an average sales price for the drug or biological, the Secretary may determine the amount payable under this section for the drug or biological based on—

(A) the wholesale acquisition cost; or

(B) the methodologies in effect under this part on November 1, 2003, to determine payment amounts for drugs or biologicals.

(5) Frequency of determinations

(A) In general on a quarterly basis

The manufacturer's average sales price, for a drug or biological of a manufacturer, shall be calculated by such manufacturer under this subsection on a quarterly basis. In making such calculation insofar as there is a lag in the reporting of the information on rebates and chargebacks under paragraph (3) so that adequate data are not available on a timely basis, the manufacturer shall apply a methodology based on a 12-month rolling average for the manufacturer to estimate costs attributable to rebates and chargebacks. For years after 2004, the Secretary may establish a uniform methodology under this subparagraph to estimate and apply such costs.

(B) Updates in payment amounts

The payment amounts under subsection (b) of this section shall be updated by the Secretary on a quarterly basis and shall be applied based upon the manufacturer's average sales price calculated for the most recent calendar quarter for which data is available.

(C) Use of contractors; implementation

The Secretary may contract with appropriate entities to calculate the payment amount under subsection (b) of this section. Notwithstanding any other provision of law, the Secretary may implement, by program instruction or otherwise, any of the provisions of this section.

(6) Definitions and other rules

In this section:

(A) Manufacturer

The term ''manufacturer'' means, with respect to a drug or biological, the manufacturer (as defined in section 1396r–8(k)(5) of this title).

(B) Wholesale acquisition cost

The term ''wholesale acquisition cost'' means, with respect to a drug or biological, the manufacturer's list price for the drug or biological to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates or reductions in price, for the most recent month for which the information is available, as reported in wholesale price guides or other publications of drug or biological pricing data.

(C) Multiple source drug

(i) In general

The term ''multiple source drug'' means, for a calendar quarter, a drug for which there are 2 or more drug products which—

(I) are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of ''Approved Drug Products with Therapeutic Equivalence Evaluations''),

(II) except as provided in subparagraph (E), are pharmaceutically equivalent and bioequivalent, as determined under subparagraph (F) and as determined by the Food and Drug Administration, and

(III) are sold or marketed in the United States during the quarter.

(ii) Exception

With respect to single source drugs or biologicals that are within the same billing and payment code as of October 1, 2003, the Secretary shall treat such single source drugs or biologicals as if the single source drugs or biologicals were multiple source drugs.

(D) Single source drug or biological

The term ''single source drug or biological'' means—

(i) a biological; or

(ii) a drug which is not a multiple source drug and which is produced or distributed under a new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributors operating under the new drug application.

(E) Exception from pharmaceutical equivalence and bioequivalence requirement

Subparagraph (C)(ii) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph (C)(i), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (F).

(F) Determination of pharmaceutical equivalence and bioequivalence

For purposes of this paragraph—

(i) drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity; and

(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence.

(G) Inclusion of vaccines

In applying provisions of section 1396r–8 of this title under this section, ''other than a vaccine'' is deemed deleted from section 1396r–8(k)(2)(B) of this title.

(d) Monitoring of market prices

(1) In general

The Inspector General of the Department of Health and Human Services shall conduct studies, which may include surveys, to determine the widely available market prices of drugs and biologicals to which this section applies, as the Inspector General, in consultation with the Secretary, determines to be appropriate.

(2) Comparison of prices

Based upon such studies and other data for drugs and biologicals, the Inspector General shall compare the average sales price under this section for drugs and biologicals with—

(A) the widely available market price for such drugs and biologicals (if any); and

(B) the average manufacturer price (as determined under section 1396r–8(k)(1) of this title) for such drugs and biologicals.

(3) Limitation on average sales price

(A) In general

The Secretary may disregard the average sales price for a drug or biological that exceeds the widely available market price or the average manufacturer price for such drug or biological by the applicable threshold percentage (as defined in subparagraph (B)).

(B) Applicable threshold percentage defined

In this paragraph, the term ''applicable threshold percentage'' means—

(i) in 2005, in the case of an average sales price for a drug or biological that exceeds widely available market price or the average manufacturer price, 5 percent; and

(ii) in 2006 and subsequent years, the percentage applied under this subparagraph subject to such adjustment as the Secretary may specify for the widely available market price or the average manufacturer price, or both.

(C) Authority to adjust average sales price

If the Inspector General finds that the average sales price for a drug or biological exceeds such widely available market price or average manufacturer price for such drug or biological by the applicable threshold percentage, the Inspector General shall inform the Secretary (at such times as the Secretary may specify to carry out this subparagraph) and the Secretary shall, effective as of the next quarter, substitute for the amount of payment otherwise determined under this section for such drug or biological the lesser of—

(i) the widely available market price for the drug or biological (if any); or

(ii) 103 percent of the average manufacturer price (as determined under section 1396r–8(k)(1) of this title) for the drug or biological.

(4) Civil money penalty

(A) In general

If the Secretary determines that a manufacturer has made a misrepresentation in the reporting of the manufacturer's average sales price for a drug or biological, the Secretary may apply a civil money penalty in an amount of up to $10,000 for each such price misrepresentation and for each day in which such price misrepresentation was applied.

(B) Procedures

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under subparagraph (B) in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(5) Widely available market price

(A) In general

In this subsection, the term ''widely available market price'' means the price that a prudent physician or supplier would pay for the drug or biological. In determining such price, the Inspector General shall take into account the discounts, rebates, and other price concessions routinely made available to such prudent physicians or suppliers for such drugs or biologicals.

(B) Considerations

In determining the price under subparagraph (A), the Inspector General shall consider information from one or more of the following sources:

(i) Manufacturers.
(ii) Wholesalers.
(iii) Distributors.
(iv) Physician supply houses.
(v) Specialty pharmacies.
(vi) Group purchasing arrangements.
(vii) Surveys of physicians.
(viii) Surveys of suppliers.
(ix) Information on such market prices from insurers.
(x) Information on such market prices from private health plans.

(e) Authority to use alternative payment in response to public health emergency

In the case of a public health emergency under section 247d of this title in which there is a documented inability to access drugs and biologicals, and a concomitant increase in the price,[1] of a drug or biological which is not re-

[1] So in original. The comma probably should not appear.

flected in the manufacturer's average sales price for one or more quarters, the Secretary may use the wholesale acquisition cost (or other reasonable measure of drug or biological price) instead of the manufacturer's average sales price for such quarters and for subsequent quarters until the price and availability of the drug or biological has stabilized and is substantially reflected in the applicable manufacturer's average sales price.

(f) Quarterly report on average sales price

For requirements for reporting the manufacturer's average sales price (and, if required to make payment, the manufacturer's wholesale acquisition cost) for the drug or biological under this section, see section 1396r–8(b)(3) of this title.

(g) Judicial review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, of—

(1) determinations of payment amounts under this section, including the assignment of National Drug Codes to billing and payment codes;

(2) the identification of units (and package size) under subsection (b)(2) of this section;

(3) the method to allocate rebates, chargebacks, and other price concessions to a quarter if specified by the Secretary;

(4) the manufacturer's average sales price when it is used for the determination of a payment amount under this section; and

(5) the disclosure of the average manufacturer price by reason of an adjustment under subsection (d)(3)(C) or (e) of this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1847A, as added Pub. L. 108–173, title III, § 303(c)(1), Dec. 8, 2003, 117 Stat. 2239.)

REPORT ON SALES TO PHARMACY BENEFIT MANAGERS

Pub. L. 108–173, title III, § 303(c)(2), Dec. 8, 2003, 117 Stat. 2245, provided that:

''(A) STUDY.—The Secretary [of Health and Human Services] shall conduct a study on sales of drugs and biologicals to large volume purchasers, such as pharmacy benefit managers and health maintenance organizations, for purposes of determining whether the price at which such drugs and biologicals are sold to such purchasers does not represent the price such drugs and biologicals are made available for purchase to prudent physicians.

''(B) REPORT.—Not later than January 1, 2006, the Secretary shall submit to Congress a report on the study conducted under paragraph (1), and shall include recommendations on whether such sales to large volume purchasers should be excluded from the computation of a manufacturer's average sales price under section 1847A of the Social Security Act [this section], as added by paragraph (1).''

INSPECTOR GENERAL REPORT ON ADEQUACY OF REIMBURSEMENT RATE UNDER AVERAGE SALES PRICE METHODOLOGY

Pub. L. 108–173, title III, § 303(c)(3), Dec. 8, 2003, 117 Stat. 2245, provided that:

''(A) STUDY.—The Inspector General of the Department of Health and Human Services shall conduct a study on the ability of physician practices in the specialties of hematology, hematology/oncology, and medical oncology of different sizes, especially particularly large practices, to obtain drugs and biologicals for the treatment of cancer patients at 106 percent of the average sales price for the drugs and biologicals. In conducting the study, the Inspector General shall conduct an audit of a representative sample of such practices to determine the adequacy of reimbursement under section 1847A of the Social Security Act [this section], as added by paragraph (1).

''(B) REPORT.—Not later October 1, 2005, the Inspector General shall submit to Congress a report on the study conducted under subparagraph (A), and shall include recommendations on the adequacy of reimbursement for such drugs and biologicals under such section 1847A [this section].''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

§ 1395w–3b. Competitive acquisition of outpatient drugs and biologicals

(a) Implementation of competitive acquisition

(1) Implementation of program

(A) In general

The Secretary shall establish and implement a competitive acquisition program under which—

(i) competitive acquisition areas are established for contract award purposes for acquisition of and payment for categories of competitively biddable drugs and biologicals (as defined in paragraph (2)) under this part;

(ii) each physician is given the opportunity annually to elect to obtain drugs and biologicals under the program, rather than under section 1395w–3a of this title; and

(iii) each physician who elects to obtain drugs and biologicals under the program makes an annual selection under paragraph (5) of the contractor through which drugs and biologicals within a category of drugs and biologicals will be acquired and delivered to the physician under this part.

This section shall not apply in the case of a physician who elects section 1395w–3a of this title to apply.

(B) Implementation

For purposes of implementing the program, the Secretary shall establish categories of competitively biddable drugs and biologicals. The Secretary shall phase in the program with respect to those categories beginning in 2006 in such manner as the Secretary determines to be appropriate.

(C) Waiver of certain provisions

In order to promote competition, in carrying out the program the Secretary may

waive such provisions of the Federal Acquisition Regulation as are necessary for the efficient implementation of this section, other than provisions relating to confidentiality of information and such other provisions as the Secretary determines appropriate.

(D) Exclusion authority

The Secretary may exclude competitively biddable drugs and biologicals (including a class of such drugs and biologicals) from the competitive bidding system under this section if the application of competitive bidding to such drugs or biologicals—

(i) is not likely to result in significant savings; or

(ii) is likely to have an adverse impact on access to such drugs or biologicals.

(2) Competitively biddable drugs and biologicals and program defined

For purposes of this section—

(A) Competitively biddable drugs and biologicals defined

The term ''competitively biddable drugs and biologicals'' means a drug or biological described in section 1395u(*o*)(1)(C) of this title and furnished on or after January 1, 2006.

(B) Program

The term ''program'' means the competitive acquisition program under this section.

(C) Competitive acquisition area; area

The terms ''competitive acquisition area'' and ''area'' mean an appropriate geographic region established by the Secretary under the program.

(D) Contractor

The term ''contractor'' means an entity that has entered into a contract with the Secretary under this section.

(3) Application of program payment methodology

(A) In general

With respect to competitively biddable drugs and biologicals which are supplied under the program in an area and which are prescribed by a physician who has elected this section to apply—

(i) the claim for such drugs and biologicals shall be submitted by the contractor that supplied the drugs and biologicals;

(ii) collection of amounts of any deductible and coinsurance applicable with respect to such drugs and biologicals shall be the responsibility of such contractor and shall not be collected unless the drug or biological is administered to the individual involved; and

(iii) the payment under this section (and related amounts of any applicable deductible and coinsurance) for such drugs and biologicals—

(I) shall be made only to such contractor; and

(II) shall be conditioned upon the administration of such drugs and biologicals.

(B) Process for adjustments

The Secretary shall provide a process for adjustments to payments in the case in which payment is made for drugs and biologicals which were billed at the time of dispensing but which were not actually administered.

(C) Information for purposes of cost-sharing

The Secretary shall provide a process by which physicians submit information to contractors for purposes of the collection of any applicable deductible or coinsurance amounts under subparagraph (A)(ii).

(4) Contract required

Payment may not be made under this part for competitively biddable drugs and biologicals prescribed by a physician who has elected this section to apply within a category and a competitive acquisition area with respect to which the program applies unless—

(A) the drugs or biologicals are supplied by a contractor with a contract under this section for such category of drugs and biologicals and area; and

(B) the physician has elected such contractor under paragraph (5) for such category and area.

(5) Contractor selection process

(A) Annual selection

(i) In general

The Secretary shall provide a process for the selection of a contractor, on an annual basis and in such exigent circumstances as the Secretary may provide and with respect to each category of competitively biddable drugs and biologicals for an area by selecting physicians.

(ii) Timing of selection

The selection of a contractor under clause (i) shall be made at the time of the election described in section 1395w–3a(a) of this title for this section to apply and shall be coordinated with agreements entered into under section 1395u(h) of this title.

(B) Information on contractors

The Secretary shall make available to physicians on an ongoing basis, through a directory posted on the Internet website of the Centers for Medicare & Medicaid Services or otherwise and upon request, a list of the contractors under this section in the different competitive acquisition areas.

(C) Selecting physician defined

For purposes of this section, the term ''selecting physician'' means, with respect to a contractor and category and competitive acquisition area, a physician who has elected this section to apply and has selected to apply under this section such contractor for such category and area.

(b) Program requirements

(1) Contract for competitively biddable drugs and biologicals

The Secretary shall conduct a competition among entities for the acquisition of competi-

tively biddable drugs and biologicals. Notwithstanding any other provision of this subchapter, in the case of a multiple source drug, the Secretary shall conduct such competition among entities for the acquisition of at least one competitively biddable drug and biological within each billing and payment code within each category for each competitive acquisition area.

(2) Conditions for awarding contract

(A) In general

The Secretary may not award a contract to any entity under the competition conducted in a competitive acquisition area pursuant to paragraph (1) with respect to the acquisition of competitively biddable drugs and biologicals within a category unless the Secretary finds that the entity meets all of the following with respect to the contract period involved:

(i) Capacity to supply competitively biddable drug or biological within category

(I) In general

The entity has sufficient arrangements to acquire and to deliver competitively biddable drugs and biologicals within such category in the area specified in the contract.

(II) Shipment methodology

The entity has arrangements in effect for the shipment at least 5 days each week of competitively biddable drugs and biologicals under the contract and for the timely delivery (including for emergency situations) of such drugs and biologicals in the area under the contract.

(ii) Quality, service, financial performance and solvency standards

The entity meets quality, service, financial performance, and solvency standards specified by the Secretary, including—

(I) the establishment of procedures for the prompt response and resolution of complaints of physicians and individuals and of inquiries regarding the shipment of competitively biddable drugs and biologicals; and

(II) a grievance and appeals process for the resolution of disputes.

(B) Additional considerations

The Secretary may refuse to award a contract under this section, and may terminate such a contract, with an entity based upon—

(i) the suspension or revocation, by the Federal Government or a State government, of the entity's license for the distribution of drugs or biologicals (including controlled substances); or

(ii) the exclusion of the entity under section 1320a–7 of this title from participation under this subchapter.

(C) Application of Medicare Provider Ombudsman

For provision providing for a program-wide Medicare Provider Ombudsman to review complaints, see section 1395ee(b) of this title, as added by section 923 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.[1]

(3) Awarding multiple contracts for a category and area

The Secretary may limit (but not below 2) the number of qualified entities that are awarded such contracts for any category and area. The Secretary shall select among qualified entities based on the following:

(A) The bid prices for competitively biddable drugs and biologicals within the category and area.

(B) Bid price for distribution of such drugs and biologicals.

(C) Ability to ensure product integrity.

(D) Customer service.

(E) Past experience in the distribution of drugs and biologicals, including controlled substances.

(F) Such other factors as the Secretary may specify.

(4) Terms of contracts

(A) In general

A contract entered into with an entity under the competition conducted pursuant to paragraph (1) is subject to terms and conditions that the Secretary may specify consistent with this section.

(B) Period of contracts

A contract under this section shall be for a term of 3 years, but may be terminated by the Secretary or the entity with appropriate, advance notice.

(C) Integrity of drug and biological distribution system

A contractor (as defined in subsection (a)(2)(D) of this section) shall—

(i) acquire all drug and biological products it distributes directly from the manufacturer or from a distributor that has acquired the products directly from the manufacturer; and

(ii) comply with any product integrity safeguards as may be determined to be appropriate by the Secretary.

Nothing in this subparagraph shall be construed to relieve or exempt any contractor from the provisions of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] that relate to the wholesale distribution of prescription drugs or biologicals.

(D) Compliance with code of conduct and fraud and abuse rules

Under the contract—

(i) the contractor shall comply with a code of conduct, specified or recognized by the Secretary, that includes standards relating to conflicts of interest; and

(ii) the contractor shall comply with all applicable provisions relating to prevention of fraud and abuse, including compliance with applicable guidelines of the Department of Justice and the Inspector Gen-

[1] See References in Text note below.

eral of the Department of Health and Human Services.

(E) Direct delivery of drugs and biologicals to physicians

Under the contract the contractor shall only supply competitively biddable drugs and biologicals directly to the selecting physicians and not directly to individuals, except under circumstances and settings where an individual currently receives a drug or biological in the individual's home or other non-physician office setting as the Secretary may provide. The contractor shall not deliver drugs and biologicals to a selecting physician except upon receipt of a prescription for such drugs and biologicals, and such necessary data as may be required by the Secretary to carry out this section. This section does not—

(i) require a physician to submit a prescription for each individual treatment; or

(ii) change a physician's flexibility in terms of writing a prescription for drugs or biologicals for a single treatment or a course of treatment.

(5) Permitting access to drugs and biologicals

The Secretary shall establish rules under this section under which drugs and biologicals which are acquired through a contractor under this section may be used to resupply inventories of such drugs and biologicals which are administered consistent with safe drug practices and with adequate safeguards against fraud and abuse. The previous sentence shall apply if the physicians can demonstrate to the Secretary all of the following:

(A) The drugs or biologicals are required immediately.

(B) The physician could not have reasonably anticipated the immediate requirement for the drugs or biologicals.

(C) The contractor could not deliver to the physician the drugs or biologicals in a timely manner.

(D) The drugs or biologicals were administered in an emergency situation.

(6) Construction

Nothing in this section shall be construed as waiving applicable State requirements relating to licensing of pharmacies.

(c) Bidding process

(1) In general

In awarding a contract for a category of drugs and biologicals in an area under the program, the Secretary shall consider with respect to each entity seeking to be awarded a contract the bid price and the other factors referred to in subsection (b)(3) of this section.

(2) Bid defined

In this section, the term ''bid'' means an offer to furnish a competitively biddable drug or biological for a particular price and time period.

(3) Bidding on a national or regional basis

Nothing in this section shall be construed as precluding a bidder from bidding for contracts in all areas of the United States or as requiring a bidder to submit a bid for all areas of the United States.

(4) Uniformity of bids within area

The amount of the bid submitted under a contract offer for any competitively biddable drug or biological for an area shall be the same for that drug or biological for all portions of that area.

(5) Confidentiality of bids

The provisions of subparagraph (D) of section 1396r–8(b)(3) of this title shall apply to periods during which a bid is submitted with respect to a competitively biddable drug or biological under this section in the same manner as it applies to information disclosed under such section, except that any reference—

(A) in that subparagraph to a ''manufacturer or wholesaler'' is deemed a reference to a ''bidder'' under this section;

(B) in that section to ''prices charged for drugs'' is deemed a reference to a ''bid'' submitted under this section; and

(C) in clause (i) of that section to ''this section'', is deemed a reference to ''part B of subchapter XVIII of this chapter''.

(6) Inclusion of costs

The bid price submitted in a contract offer for a competitively biddable drug or biological shall—

(A) include all costs related to the delivery of the drug or biological to the selecting physician (or other point of delivery); and

(B) include the costs of dispensing (including shipping) of such drug or biological and management fees, but shall not include any costs related to the administration of the drug or biological, or wastage, spillage, or spoilage.

(7) Price adjustments during contract period; disclosure of costs

Each contract awarded shall provide for—

(A) disclosure to the Secretary the contractor's reasonable, net acquisition costs for periods specified by the Secretary, not more often than quarterly, of the contract; and

(B) appropriate price adjustments over the period of the contract to reflect significant increases or decreases in a contractor's reasonable, net acquisition costs, as so disclosed.

(d) Computation of payment amounts

(1) In general

Payment under this section for competitively biddable drugs or biologicals shall be based on bids submitted and accepted under this section for such drugs or biologicals in an area. Based on such bids the Secretary shall determine a single payment amount for each competitively biddable drug or biological in the area.

(2) Special rules

The Secretary shall establish rules regarding the use under this section of the alternative payment amount provided under section 1395w–3a of this title to the use of a price for specific competitively biddable drugs and biologicals in the following cases:

(A) New drugs and biologicals

A competitively biddable drug or biological for which a payment and billing code has not been established.

(B) Other cases

Such other exceptional cases as the Secretary may specify in regulations.

(e) Cost-sharing

(1) Application of coinsurance

Payment under this section for competitively biddable drugs and biologicals shall be in an amount equal to 80 percent of the payment basis described in subsection (d)(1) of this section.

(2) Deductible

Before applying paragraph (1), the individual shall be required to meet the deductible described in section 1395*l*(b) of this title.

(3) Collection

Such coinsurance and deductible shall be collected by the contractor that supplies the drug or biological involved. Subject to subsection (a)(3)(B) of this section, such coinsurance and deductible may be collected in a manner similar to the manner in which the coinsurance and deductible are collected for durable medical equipment under this part.

(f) Special payment rules

(1) Use in exclusion cases

If the Secretary excludes a drug or biological (or class of drugs or biologicals) under subsection (a)(1)(D) of this section, the Secretary may provide for payment to be made under this part for such drugs and biologicals (or class) using the payment methodology under section 1395w–3a of this title.

(2) Application of requirement for assignment

For provision requiring assignment of claims for competitively biddable drugs and biologicals, see section 1395u(*o*)(3) of this title.

(3) Protection for beneficiary in case of medical necessity denial

For protection of individuals against liability in the case of medical necessity determinations, see section 1395u(b)(3)(B)(ii)(III) of this title.

(g) Judicial review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, of—

(1) the establishment of payment amounts under subsection (d)(1) of this section;

(2) the awarding of contracts under this section;

(3) the establishment of competitive acquisition areas under subsection (a)(2)(C) of this section;

(4) the phased-in implementation under subsection (a)(1)(B) of this section;

(5) the selection of categories of competitively biddable drugs and biologicals for competitive acquisition under such subsection or the selection of a drug in the case of multiple source drugs; or

(6) the bidding structure and number of contractors selected under this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1847B, as added Pub. L. 108–173, title III, § 303(d)(1), Dec. 8, 2003, 117 Stat. 2245.)

REFERENCES IN TEXT

Section 1395ee(b) of this title, referred to in subsec. (b)(2)(C), was added by section 942(a)(5) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173, not section 923 of that Act, and relates to the Council for Technology and Innovation, not to the Medicare Provider Ombudsman.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. subsec. (b)(4)(C), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Part B of subchapter XVIII of this chapter, referred to in subsec. (c)(5)(C), is classified to section 1395j et seq. of this title.

REPORT

Pub. L. 108–173, title III, § 303(d)(2), Dec. 8, 2003, 117 Stat. 2252, provided that: ''Not later than July 1, 2008, the Secretary [of Health and Human Services] shall submit to Congress a report on the program conducted under section 1847B of the Social Security Act [this section], as added by paragraph (1). Such report shall include information on savings, reductions in cost-sharing, access to competitively biddable drugs and biologicals, the range of choices of contractors available to physicians, the satisfaction of physicians and of individuals enrolled under this part [probably means part B of title XVIII of the Social Security Act, which is classified to this part], and information comparing prices for drugs and biologicals under such section and section 1847A of such Act [section 1395w–3a of this title], as added by subsection (c).''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

§ 1395w–4. Payment for physicians' services

(a) Payment based on fee schedule

(1) In general

Effective for all physicians' services (as defined in subsection (j)(3) of this section) furnished under this part during a year (beginning with 1992) for which payment is otherwise made on the basis of a reasonable charge or on the basis of a fee schedule under section 1395m(b) of this title, payment under this part shall instead be based on the lesser of—

(A) the actual charge for the service, or

(B) subject to the succeeding provisions of this subsection, the amount determined under the fee schedule established under subsection (b) of this section for services furnished during that year (in this subsection referred to as the ''fee schedule amount'').

(2) Transition to full fee schedule

(A) Limiting reductions and increases to 15 percent in 1992

(i) Limit on increase

In the case of a service in a fee schedule area (as defined in subsection (j)(2) of this section) for which the adjusted historical payment basis (as defined in subparagraph (D)) is less than 85 percent of the fee schedule amount for services furnished in 1992, there shall be substituted for the fee schedule amount an amount equal to the adjusted historical payment basis plus 15 percent of the fee schedule amount otherwise established (without regard to this paragraph).

(ii) Limit in reduction

In the case of a service in a fee schedule area for which the adjusted historical payment basis exceeds 115 percent of the fee schedule amount for services furnished in 1992, there shall be substituted for the fee schedule amount an amount equal to the adjusted historical payment basis minus 15 percent of the fee schedule amount otherwise established (without regard to this paragraph).

(B) Special rule for 1993, 1994, and 1995

If a physicians' service in a fee schedule area is subject to the provisions of subparagraph (A) in 1992, for physicians' services furnished in the area—

(i) during 1993, there shall be substituted for the fee schedule amount an amount equal to the sum of—

(I) 75 percent of the fee schedule amount determined under subparagraph (A), adjusted by the update established under subsection (d)(3) of this section for 1993, and

(II) 25 percent of the fee schedule amount determined under paragraph (1) for 1993 without regard to this paragraph;

(ii) during 1994, there shall be substituted for the fee schedule amount an amount equal to the sum of—

(I) 67 percent of the fee schedule amount determined under clause (i), adjusted by the update established under subsection (d)(3) of this section for 1994 and as adjusted under subsection (c)(2)(F)(ii) of this section and under section 13515(b) of the Omnibus Budget Reconciliation Act of 1993, and

(II) 33 percent of the fee schedule amount determined under paragraph (1) for 1994 without regard to this paragraph; and

(iii) during 1995, there shall be substituted for the fee schedule amount an amount equal to the sum of—

(I) 50 percent of the fee schedule amount determined under clause (ii) adjusted by the update established under subsection (d)(3) of this section for 1995, and

(II) 50 percent of the fee schedule amount determined under paragraph (1) for 1995 without regard to this paragraph.

(C) Special rule for anesthesia and radiology services

With respect to physicians' services which are anesthesia services, the Secretary shall provide for a transition in the same manner as a transition is provided for other services under subparagraph (B). With respect to radiology services, ''109 percent'' and ''9 percent'' shall be substituted for ''115 percent'' and ''15 percent'', respectively, in subparagraph (A)(ii).

(D) "Adjusted historical payment basis" defined

(i) In general

In this paragraph, the term ''adjusted historical payment basis'' means, with respect to a physicians' service furnished in a fee schedule area, the weighted average prevailing charge applied in the area for the service in 1991 (as determined by the Secretary without regard to physician specialty and as adjusted to reflect payments for services with customary charges below the prevailing charge or other payment limitations imposed by law or regulation) adjusted by the update established under subsection (d)(3) of this section for 1992.

(ii) Application to radiology services

In applying clause (i) in the case of physicians' services which are radiology services (including radiologist services, as defined in section 1395m(b)(6) of this title), but excluding nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989, there shall be substituted for the weighted average prevailing charge the amount provided under the fee schedule established for the service for the fee schedule area under section 1395m(b) of this title.

(iii) Nuclear medicine services

In applying clause (i) in the case of physicians' services which are nuclear medicine services, there shall be substituted for the weighted average prevailing charge the amount provided under section 6105(b) of the Omnibus Budget Reconciliation Act of 1989.

(3) Incentives for participating physicians and suppliers

In applying paragraph (1)(B) in the case of a nonparticipating physician or a nonparticipating supplier or other person, the fee schedule amount shall be 95 percent of such amount otherwise applied under this subsection (without regard to this paragraph). In the case of physicians' services (including services which the Secretary excludes pursuant to subsection (j)(3) of this section) of a nonparticipating physician, supplier, or other person for which payment is made under this part on a basis other than the fee schedule amount, the payment shall be based on 95 percent of the payment basis for such services furnished by a

participating physician, supplier, or other person.

(4) Special rule for medical direction

(A) In general

With respect to physicians' services furnished on or after January 1, 1994, and consisting of medical direction of two, three, or four concurrent anesthesia cases, the fee schedule amount to be applied shall be equal to one-half of the amount described in subparagraph (B).

(B) Amount

The amount described in this subparagraph, for a physician's medical direction of the performance of anesthesia services, is the following percentage of the fee schedule amount otherwise applicable under this section if the anesthesia services were personally performed by the physician alone:

(i) For services furnished during 1994, 120 percent.

(ii) For services furnished during 1995, 115 percent.

(iii) For services furnished during 1996, 110 percent.

(iv) For services furnished during 1997, 105 percent.

(v) For services furnished after 1997, 100 percent.

(b) Establishment of fee schedules

(1) In general

Before November 1 of the preceding year, for each year beginning with 1998, the Secretary shall establish, by regulation, fee schedules that establish payment amounts for all physicians' services furnished in all fee schedule areas (as defined in subsection (j)(2) of this section) for the year. Except as provided in paragraph (2), each such payment amount for a service shall be equal to the product of—

(A) the relative value for the service (as determined in subsection (c)(2) of this section),

(B) the conversion factor (established under subsection (d) of this section) for the year, and

(C) the geographic adjustment factor (established under subsection (e)(2) of this section) for the service for the fee schedule area.

(2) Treatment of radiology services and anesthesia services

(A) Radiology services

With respect to radiology services (including radiologist services, as defined in section 1395m(b)(6) of this title), the Secretary shall base the relative values on the relative value scale developed under section 1395m(b)(1)(A) of this title, with appropriate modifications of the relative values to assure that the relative values established for radiology services which are similar or related to other physicians' services are consistent with the relative values established for those similar or related services.

(B) Anesthesia services

In establishing the fee schedule for anesthesia services for which a relative value guide has been established under section 4048(b) of the Omnibus Budget Reconciliation Act of 1987, the Secretary shall use, to the extent practicable, such relative value guide, with appropriate adjustment of the conversion factor, in a manner to assure that the fee schedule amounts for anesthesia services are consistent with the fee schedule amounts for other services determined by the Secretary to be of comparable value. In applying the previous sentence, the Secretary shall adjust the conversion factor by geographic adjustment factors in the same manner as such adjustment is made under paragraph (1)(C).

(C) Consultation

The Secretary shall consult with the Physician Payment Review Commission and organizations representing physicians or suppliers who furnish radiology services and anesthesia services in applying subparagraphs (A) and (B).

(3) Treatment of interpretation of electrocardiograms

The Secretary—

(A) shall make separate payment under this section for the interpretation of electrocardiograms performed or ordered to be performed as part of or in conjunction with a visit to or a consultation with a physician, and

(B) shall adjust the relative values established for visits and consultations under subsection (c) of this section so as not to include relative value units for interpretations of electrocardiograms in the relative value for visits and consultations.

(c) Determination of relative values for physicians' services

(1) Division of physicians' services into components

In this section, with respect to a physicians' service:

(A) "Work component" defined

The term ''work component'' means the portion of the resources used in furnishing the service that reflects physician time and intensity in furnishing the service. Such portion shall—

(i) include activities before and after direct patient contact, and

(ii) be defined, with respect to surgical procedures, to reflect a global definition including pre-operative and post-operative physicians' services.

(B) "Practice expense component" defined

The term ''practice expense component'' means the portion of the resources used in furnishing the service that reflects the general categories of expenses (such as office rent and wages of personnel, but excluding malpractice expenses) comprising practice expenses.

(C) "Malpractice component" defined

The term ''malpractice component'' means the portion of the resources used in furnishing the service that reflects malpractice expenses in furnishing the service.

(2) Determination of relative values

(A) In general

(i) Combination of units for components

The Secretary shall develop a methodology for combining the work, practice expense, and malpractice relative value units, determined under subparagraph (C), for each service in a manner to produce a single relative value for that service. Such relative values are subject to adjustment under subparagraph (F)(i) and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993.

(ii) Extrapolation

The Secretary may use extrapolation and other techniques to determine the number of relative value units for physicians' services for which specific data are not available and shall take into account recommendations of the Physician Payment Review Commission and the results of consultations with organizations representing physicians who provide such services.

(B) Periodic review and adjustments in relative values

(i) Periodic review

The Secretary, not less often than every 5 years, shall review the relative values established under this paragraph for all physicians' services.

(ii) Adjustments

(I) In general

The Secretary shall, to the extent the Secretary determines to be necessary and subject to subclause (II), adjust the number of such units to take into account changes in medical practice, coding changes, new data on relative value components, or the addition of new procedures. The Secretary shall publish an explanation of the basis for such adjustments.

(II) Limitation on annual adjustments

Subject to clause (iv), the adjustments under subclause (I) for a year may not cause the amount of expenditures under this part for the year to differ by more than $20,000,000 from the amount of expenditures under this part that would have been made if such adjustments had not been made.

(iii) Consultation

The Secretary, in making adjustments under clause (ii), shall consult with the Medicare Payment Advisory Commission and organizations representing physicians.

(iv) Exemption from budget neutrality

The additional expenditures attributable to—

(I) subparagraph (H) shall not be taken into account in applying clause (ii)(II) for 2004;

(II) subparagraph (I) insofar as it relates to a physician fee schedule for 2005 or 2006 shall not be taken into account in applying clause (ii)(II) for drug administration services under the fee schedule for such year for a specialty described in subparagraph (I)(ii)(II); and

(III) subparagraph (J) insofar as it relates to a physician fee schedule for 2005 or 2006 shall not be taken into account in applying clause (ii)(II) for drug administration services under the fee schedule for such year.

(C) Computation of relative value units for components

For purposes of this section for each physicians' service—

(i) Work relative value units

The Secretary shall determine a number of work relative value units for the service based on the relative resources incorporating physician time and intensity required in furnishing the service.

(ii) Practice expense relative value units

The Secretary shall determine a number of practice expense relative value units for the service for years before 1999 equal to the product of—

(I) the base allowed charges (as defined in subparagraph (D)) for the service, and

(II) the practice expense percentage for the service (as determined under paragraph (3)(C)(ii)),

and for years beginning with 1999 based on the relative practice expense resources involved in furnishing the service. For 1999, such number of units shall be determined based 75 percent on such product and based 25 percent on the relative practice expense resources involved in furnishing the service. For 2000, such number of units shall be determined based 50 percent on such product and based 50 percent on such relative practice expense resources. For 2001, such number of units shall be determined based 25 percent on such product and based 75 percent on such relative practice expense resources. For a subsequent year, such number of units shall be determined based entirely on such relative practice expense resources.

(iii) Malpractice relative value units

The Secretary shall determine a number of malpractice relative value units for the service for years before 2000 equal to the product of—

(I) the base allowed charges (as defined in subparagraph (D)) for the service, and

(II) the malpractice percentage for the service (as determined under paragraph (3)(C)(iii)),

and for years beginning with 2000 based on the malpractice expense resources involved in furnishing the service.

(D) "Base allowed charges" defined

In this paragraph, the term ''base allowed charges'' means, with respect to a physician's service, the national average allowed charges for the service under this part for

services furnished during 1991, as estimated by the Secretary using the most recent data available.

(E) Reduction in practice expense relative value units for certain services

(i) In general

Subject to clause (ii), the Secretary shall reduce the practice expense relative value units applied to services described in clause (iii) furnished in—

(I) 1994, by 25 percent of the number by which the number of practice expense relative value units (determined for 1994 without regard to this subparagraph) exceeds the number of work relative value units determined for 1994,

(II) 1995, by an additional 25 percent of such excess, and

(III) 1996, by an additional 25 percent of such excess.

(ii) Floor on reductions

The practice expense relative value units for a physician's service shall not be reduced under this subparagraph to a number less than 128 percent of the number of work relative value units.

(iii) Services covered

For purposes of clause (i), the services described in this clause are physicians' services that are not described in clause (iv) and for which—

(I) there are work relative value units, and

(II) the number of practice expense relative value units (determined for 1994) exceeds 128 percent of the number of work relative value units (determined for such year).

(iv) Excluded services

For purposes of clause (iii), the services described in this clause are services which the Secretary determines at least 75 percent of which are provided under this subchapter in an office setting.

(F) Budget neutrality adjustments

The Secretary—

(i) shall reduce the relative values for all services (other than anesthesia services) established under this paragraph (and, in the case of anesthesia services, the conversion factor established by the Secretary for such services) by such percentage as the Secretary determines to be necessary so that, beginning in 1996, the amendment made by section 13514(a) of the Omnibus Budget Reconciliation Act of 1993 would not result in expenditures under this section that exceed the amount of such expenditures that would have been made if such amendment had not been made, and

(ii) shall reduce the amounts determined under subsection (a)(2)(B)(ii)(I) of this section by such percentage as the Secretary determines to be required to assure that, taking into account the reductions made under clause (i), the amendment made by section 13514(a) of the Omnibus Budget Reconciliation Act of 1993 would not result in expenditures under this section in 1994 that exceed the amount of such expenditures that would have been made if such amendment had not been made.

(G) Adjustments in relative value units for 1998

(i) In general

The Secretary shall—

(I) subject to clauses (iv) and (v), reduce the practice expense relative value units applied to any services described in clause (ii) furnished in 1998 to a number equal to 110 percent of the number of work relative value units, and

(II) increase the practice expense relative value units for office visit procedure codes during 1998 by a uniform percentage which the Secretary estimates will result in an aggregate increase in payments for such services equal to the aggregate decrease in payments by reason of subclause (I).

(ii) Services covered

For purposes of clause (i), the services described in this clause are physicians' services that are not described in clause (iii) and for which—

(I) there are work relative value units, and

(II) the number of practice expense relative value units (determined for 1998) exceeds 110 percent of the number of work relative value units (determined for such year).

(iii) Excluded services

For purposes of clause (ii), the services described in this clause are services which the Secretary determines at least 75 percent of which are provided under this subchapter in an office setting.

(iv) Limitation on aggregate reallocation

If the application of clause (i)(I) would result in an aggregate amount of reductions under such clause in excess of $390,000,000, such clause shall be applied by substituting for 110 percent such greater percentage as the Secretary estimates will result in the aggregate amount of such reductions equaling $390,000,000.

(v) No reduction for certain services

Practice expense relative value units for a procedure performed in an office or in a setting out of an office shall not be reduced under clause (i) if the in-office or out-of-office practice expense relative value, respectively, for the procedure would increase under the proposed rule on resource-based practice expenses issued by the Secretary on June 18, 1997 (62 Federal Register 33158 et seq.).

(H) Adjustments in practice expense relative value units for certain drug administration services beginning in 2004

(i) Use of survey data

In establishing the physician fee schedule under subsection (b) of this section

with respect to payments for services furnished on or after January 1, 2004, the Secretary shall, in determining practice expense relative value units under this subsection, utilize a survey submitted to the Secretary as of January 1, 2003, by a physician specialty organization pursuant to section 212 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 if the survey—

(I) covers practice expenses for oncology drug administration services; and

(II) meets criteria established by the Secretary for acceptance of such surveys.

(ii) Pricing of clinical oncology nurses in practice expense methodology

If the survey described in clause (i) includes data on wages, salaries, and compensation of clinical oncology nurses, the Secretary shall utilize such data in the methodology for determining practice expense relative value units under subsection (c) of this section.

(iii) Work relative value units for certain drug administration services

In establishing the relative value units under this paragraph for drug administration services described in clause (iv) furnished on or after January 1, 2004, the Secretary shall establish work relative value units equal to the work relative value units for a level 1 office medical visit for an established patient.

(iv) Drug administration services described

The drug administration services described in this clause are physicians' services—

(I) which are classified as of October 1, 2003, within any of the following groups of procedures: therapeutic or diagnostic infusions (excluding chemotherapy); chemotherapy administration services; and therapeutic, prophylactic, or diagnostic injections;

(II) for which there are no work relative value units assigned under this subsection as of such date; and

(III) for which national relative value units have been assigned under this subsection as of such date.

(I) Adjustments in practice expense relative value units for certain drug administration services beginning with 2005

(i) In general

In establishing the physician fee schedule under subsection (b) of this section with respect to payments for services furnished on or after January 1, 2005 or 2006, the Secretary shall adjust the practice expense relative value units for such year consistent with clause (ii).

(ii) Use of supplemental survey data

(I) In general

Subject to subclause (II), if a specialty submits to the Secretary by not later than March 1, 2004, for 2005, or March 1, 2005, for 2006, data that includes expenses for the administration of drugs and biologicals for which the payment amount is determined pursuant to section 1395u(*o*) of this title, the Secretary shall use such supplemental survey data in carrying out this subparagraph for the years involved insofar as they are collected and provided by entities and organizations consistent with the criteria established by the Secretary pursuant to section 212(a) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999.

(II) Limitation on specialty

Subclause (I) shall apply to a specialty only insofar as not less than 40 percent of payments for the specialty under this subchapter in 2002 are attributable to the administration of drugs and biologicals, as determined by the Secretary.

(III) Application

This clause shall not apply with respect to a survey to which subparagraph (H)(i) applies.

(J) Provisions for appropriate reporting and billing for physicians' services associated with the administration of covered outpatient drugs and biologicals

(i) Evaluation of codes

The Secretary shall promptly evaluate existing drug administration codes for physicians' services to ensure accurate reporting and billing for such services, taking into account levels of complexity of the administration and resource consumption.

(ii) Use of existing processes

In carrying out clause (i), the Secretary shall use existing processes for the consideration of coding changes and, to the extent coding changes are made, shall use such processes in establishing relative values for such services.

(iii) Implementation

In carrying out clause (i), the Secretary shall consult with representatives of physician specialties affected by the implementation of section 1395w–3a of this title or section 1395w–3b of this title, and shall take such steps within the Secretary's authority to expedite such considerations under clause (ii).

(iv) Subsequent, budget neutral adjustments permitted

Nothing in subparagraph (H) or (I) or this subparagraph shall be construed as preventing the Secretary from providing for adjustments in practice expense relative value units under (and consistent with) subparagraph (B) for years after 2004, 2005, or 2006, respectively.

(3) Component percentages

For purposes of paragraph (2), the Secretary shall determine a work percentage, a practice expense percentage, and a malpractice percentage for each physician's service as follows:

(A) Division of services by specialty

For each physician's service or class of physicians' services, the Secretary shall determine the average percentage of each such service or class of services that is performed, nationwide, under this part by physicians in each of the different physician specialties (as identified by the Secretary).

(B) Division of specialty by component

The Secretary shall determine the average percentage division of resources, among the work component, the practice expense component, and the malpractice component, used by physicians in each of such specialties in furnishing physicians' services. Such percentages shall be based on national data that describe the elements of physician practice costs and revenues, by physician specialty. The Secretary may use extrapolation and other techniques to determine practice costs and revenues for specialties for which adequate data are not available.

(C) Determination of component percentages

(i) Work percentage

The work percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

(I) the average percentage division for the work component for each physician specialty (determined under subparagraph (B)), multiplied by

(II) the proportion (determined under subparagraph (A)) of such service (or services) performed by physicians in that specialty.

(ii) Practice expense percentage

For years before 2002, the practice expense percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

(I) the average percentage division for the practice expense component for each physician specialty (determined under subparagraph (B)), multiplied by

(II) the proportion (determined under subparagraph (A)) of such service (or services) performed by physicians in that specialty.

(iii) Malpractice percentage

For years before 1999, the malpractice percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

(I) the average percentage division for the malpractice component for each physician specialty (determined under subparagraph (B)), multiplied by

(II) the proportion (determined under subparagraph (A)) of such service (or services) performed by physicians in that specialty.

(D) Periodic recomputation

The Secretary may, from time to time, provide for the recomputation of work percentages, practice expense percentages, and malpractice percentages determined under this paragraph.

(4) Ancillary policies

The Secretary may establish ancillary policies (with respect to the use of modifiers, local codes, and other matters) as may be necessary to implement this section.

(5) Coding

The Secretary shall establish a uniform procedure coding system for the coding of all physicians' services. The Secretary shall provide for an appropriate coding structure for visits and consultations. The Secretary may incorporate the use of time in the coding for visits and consultations. The Secretary, in establishing such coding system, shall consult with the Physician Payment Review Commission and other organizations representing physicians.

(6) No variation for specialists

The Secretary may not vary the conversion factor or the number of relative value units for a physicians' service based on whether the physician furnishing the service is a specialist or based on the type of specialty of the physician.

(d) Conversion factors

(1) Establishment

(A) In general

The conversion factor for each year shall be the conversion factor established under this subsection for the previous year (or, in the case of 1992, specified in subparagraph (B)) adjusted by the update (established under paragraph (3)) for the year involved (for years before 2001) and, for years beginning with 2001, multiplied by the update (established under paragraph (4)) for the year involved.

(B) Special provision for 1992

For purposes of subparagraph (A), the conversion factor specified in this subparagraph is a conversion factor (determined by the Secretary) which, if this section were to apply during 1991 using such conversion factor, would result in the same aggregate amount of payments under this part for physicians' services as the estimated aggregate amount of the payments under this part for such services in 1991.

(C) Special rules for 1998

Except as provided in subparagraph (D), the single conversion factor for 1998 under this subsection shall be the conversion factor for primary care services for 1997, increased by the Secretary's estimate of the weighted average of the three separate updates that would otherwise occur were it not for the enactment of chapter 1 of subtitle F of title IV of the Balanced Budget Act of 1997.

(D) Special rules for anesthesia services

The separate conversion factor for anesthesia services for a year shall be equal to 46 percent of the single conversion factor established for other physicians' services, except as adjusted for changes in work, practice expense, or malpractice relative value units.

(E) Publication and dissemination of information

The Secretary shall—

(i) cause to have published in the Federal Register not later than November 1 of each year (beginning with 2000) the conversion factor which will apply to physicians' services for the succeeding year, the update determined under paragraph (4) for such succeeding year, and the allowed expenditures under such paragraph for such succeeding year; and

(ii) make available to the Medicare Payment Advisory Commission and the public by March 1 of each year (beginning with 2000) an estimate of the sustainable growth rate and of the conversion factor which will apply to physicians' services for the succeeding year and data used in making such estimate.

(2) Repealed. Pub. L. 105–33, title IV, § 4502(b), Aug. 5, 1997, 111 Stat. 433

(3) Update for 1999 and 2000

(A) In general

Unless otherwise provided by law, subject to subparagraph (D) and the budget-neutrality factor determined by the Secretary under subsection (c)(2)(B)(ii) of this section, the update to the single conversion factor established in paragraph (1)(C) for 1999 and 2000 is equal to the product of—

(i) 1 plus the Secretary's estimate of the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for the year (divided by 100), and

(ii) 1 plus the Secretary's estimate of the update adjustment factor for the year (divided by 100),

minus 1 and multiplied by 100.

(B) Update adjustment factor

For purposes of subparagraph (A)(ii), the ''update adjustment factor'' for a year is equal (as estimated by the Secretary) to—

(i) the difference between (I) the sum of the allowed expenditures for physicians' services (as determined under subparagraph (C)) for the period beginning April 1, 1997, and ending on March 31 of the year involved, and (II) the amount of actual expenditures for physicians' services furnished during the period beginning April 1, 1997, and ending on March 31 of the preceding year; divided by

(ii) the actual expenditures for physicians' services for the 12-month period ending on March 31 of the preceding year, increased by the sustainable growth rate under subsection (f) of this section for the fiscal year which begins during such 12-month period.

(C) Determination of allowed expenditures

For purposes of this paragraph and paragraph (4), the allowed expenditures for physicians' services for the 12-month period ending with March 31 of—

(i) 1997 is equal to the actual expenditures for physicians' services furnished during such 12-month period, as estimated by the Secretary; or

(ii) a subsequent year is equal to the allowed expenditures for physicians' services for the previous year, increased by the sustainable growth rate under subsection (f) of this section for the fiscal year which begins during such 12-month period.

(D) Restriction on variation from medicare economic index

Notwithstanding the amount of the update adjustment factor determined under subparagraph (B) for a year, the update in the conversion factor under this paragraph for the year may not be—

(i) greater than 100 times the following amount: (1.03 + (MEI percentage/100)) − 1; or

(ii) less than 100 times the following amount: (0.93 + (MEI percentage/100)) − 1,

where ''MEI percentage'' means the Secretary's estimate of the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for the year involved.

(4) Update for years beginning with 2001

(A) In general

Unless otherwise provided by law, subject to the budget-neutrality factor determined by the Secretary under subsection (c)(2)(B)(ii) of this section and subject to adjustment under subparagraph (F), the update to the single conversion factor established in paragraph (1)(C) for a year beginning with 2001 is equal to the product of—

(i) 1 plus the Secretary's estimate of the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for the year (divided by 100); and

(ii) 1 plus the Secretary's estimate of the update adjustment factor under subparagraph (B) for the year.

(B) Update adjustment factor

For purposes of subparagraph (A)(ii), subject to subparagraph (D) and paragraph (5), the ''update adjustment factor'' for a year is equal (as estimated by the Secretary) to the sum of the following:

(i) Prior year adjustment component

An amount determined by—

(I) computing the difference (which may be positive or negative) between the amount of the allowed expenditures for physicians' services for the prior year (as determined under subparagraph (C)) and the amount of the actual expenditures for such services for that year;

(II) dividing that difference by the amount of the actual expenditures for such services for that year; and

(III) multiplying that quotient by 0.75.

(ii) Cumulative adjustment component

An amount determined by—

(I) computing the difference (which may be positive or negative) between the amount of the allowed expenditures for physicians' services (as determined under subparagraph (C)) from April 1,

1996, through the end of the prior year and the amount of the actual expenditures for such services during that period;

(II) dividing that difference by actual expenditures for such services for the prior year as increased by the sustainable growth rate under subsection (f) of this section for the year for which the update adjustment factor is to be determined; and

(III) multiplying that quotient by 0.33.

(C) Determination of allowed expenditures

For purposes of this paragraph:

(i) Period up to April 1, 1999

The allowed expenditures for physicians' services for a period before April 1, 1999, shall be the amount of the allowed expenditures for such period as determined under paragraph (3)(C).

(ii) Transition to calendar year allowed expenditures

Subject to subparagraph (E), the allowed expenditures for—

(I) the 9-month period beginning April 1, 1999, shall be the Secretary's estimate of the amount of the allowed expenditures that would be permitted under paragraph (3)(C) for such period; and

(II) the year of 1999, shall be the Secretary's estimate of the amount of the allowed expenditures that would be permitted under paragraph (3)(C) for such year.

(iii) Years beginning with 2000

The allowed expenditures for a year (beginning with 2000) is equal to the allowed expenditures for physicians' services for the previous year, increased by the sustainable growth rate under subsection (f) of this section for the year involved.

(D) Restriction on update adjustment factor

The update adjustment factor determined under subparagraph (B) for a year may not be less than −0.07 or greater than 0.03.

(E) Recalculation of allowed expenditures for updates beginning with 2001

For purposes of determining the update adjustment factor for a year beginning with 2001, the Secretary shall recompute the allowed expenditures for previous periods beginning on or after April 1, 1999, consistent with subsection (f)(3) of this section.

(F) Transitional adjustment designed to provide for budget neutrality

Under this subparagraph the Secretary shall provide for an adjustment to the update under subparagraph (A)—

(i) for each of 2001, 2002, 2003, and 2004, of −0.2 percent; and

(ii) for 2005 of +0.8 percent.

(5) Update for 2004 and 2005

The update to the single conversion factor established in paragraph (1)(C) for each of 2004 and 2005 shall be not less than 1.5 percent.

(e) Geographic adjustment factors

(1) Establishment of geographic indices

(A) In general

Subject to subparagraphs (B), (C), (E), (F)[1] and (G), the Secretary shall establish—

(i) an index which reflects the relative costs of the mix of goods and services comprising practice expenses (other than malpractice expenses) in the different fee schedule areas compared to the national average of such costs,

(ii) an index which reflects the relative costs of malpractice expenses in the different fee schedule areas compared to the national average of such costs, and

(iii) an index which reflects ¼ of the difference between the relative value of physicians' work effort in each of the different fee schedule areas and the national average of such work effort.

(B) Class-specific geographic cost-of-practice indices

The Secretary may establish more than one index under subparagraph (A)(i) in the case of classes of physicians' services, if, because of differences in the mix of goods and services comprising practice expenses for the different classes of services, the application of a single index under such clause to different classes of such services would be substantially inequitable.

(C) Periodic review and adjustments in geographic adjustment factors

The Secretary, not less often than every 3 years, shall, in consultation with appropriate representatives of physicians, review the indices established under subparagraph (A) and the geographic index values applied under this subsection for all fee schedule areas. Based on such review, the Secretary may revise such index and adjust such index values, except that, if more than 1 year has elasped[2] since the date of the last previous adjustment, the adjustment to be applied in the first year of the next adjustment shall be ½ of the adjustment that otherwise would be made.

(D) Use of recent data

In establishing indices and index values under this paragraph, the Secretary shall use the most recent data available relating to practice expenses, malpractice expenses, and physician work effort in different fee schedule areas.

(E) Floor at 1.0 on work geographic index

After calculating the work geographic index in subparagraph (A)(iii), for purposes of payment for services furnished on or after January 1, 2004, and before January 1, 2007, the Secretary shall increase the work geographic index to 1.00 for any locality for which such work geographic index is less than 1.00.

[1] So in original. No subpar. (F) has been enacted.

[2] So in original. Probably should be ''elapsed''.

(G)[1] Floor for practice expense, malpractice, and work geographic indices for services furnished in Alaska

For purposes of payment for services furnished in Alaska on or after January 1, 2004, and before January 1, 2006, after calculating the practice expense, malpractice, and work geographic indices in clauses (i), (ii), and (iii) of subparagraph (A) and in subparagraph (B), the Secretary shall increase any such index to 1.67 if such index would otherwise be less than 1.67.

(2) Computation of geographic adjustment factor

For purposes of subsection (b)(1)(C) of this section, for all physicians' services for each fee schedule area the Secretary shall establish a geographic adjustment factor equal to the sum of the geographic cost-of-practice adjustment factor (specified in paragraph (3)), the geographic malpractice adjustment factor (specified in paragraph (4)), and the geographic physician work adjustment factor (specified in paragraph (5)) for the service and the area.

(3) Geographic cost-of-practice adjustment factor

For purposes of paragraph (2), the ''geographic cost-of-practice adjustment factor'', for a service for a fee schedule area, is the product of—

(A) the proportion of the total relative value for the service that reflects the relative value units for the practice expense component, and

(B) the geographic cost-of-practice index value for the area for the service, based on the index established under paragraph (1)(A)(i) or (1)(B) (as the case may be).

(4) Geographic malpractice adjustment factor

For purposes of paragraph (2), the ''geographic malpractice adjustment factor'', for a service for a fee schedule area, is the product of—

(A) the proportion of the total relative value for the service that reflects the relative value units for the malpractice component, and

(B) the geographic malpractice index value for the area, based on the index established under paragraph (1)(A)(ii).

(5) Geographic physician work adjustment factor

For purposes of paragraph (2), the ''geographic physician work adjustment factor'', for a service for a fee schedule area, is the product of—

(A) the proportion of the total relative value for the service that reflects the relative value units for the work component, and

(B) the geographic physician work index value for the area, based on the index established under paragraph (1)(A)(iii).

(f) Sustainable growth rate

(1) Publication

The Secretary shall cause to have published in the Federal Register not later than—

(A) November 1, 2000, the sustainable growth rate for 2000 and 2001; and

(B) November 1 of each succeeding year the sustainable growth rate for such succeeding year and each of the preceding 2 years.

(2) Specification of growth rate

The sustainable growth rate for all physicians' services for a fiscal year (beginning with fiscal year 1998 and ending with fiscal year 2000) and a year beginning with 2000 shall be equal to the product of—

(A) 1 plus the Secretary's estimate of the weighted average percentage increase (divided by 100) in the fees for all physicians' services in the applicable period involved,

(B) 1 plus the Secretary's estimate of the percentage change (divided by 100) in the average number of individuals enrolled under this part (other than Medicare+Choice plan enrollees) from the previous applicable period to the applicable period involved,

(C) 1 plus the Secretary's estimate of the annual average percentage growth in real gross domestic product per capita (divided by 100) during the 10-year period ending with the applicable period involved, and

(D) 1 plus the Secretary's estimate of the percentage change (divided by 100) in expenditures for all physicians' services in the applicable period (compared with the previous applicable period) which will result from changes in law and regulations, determined without taking into account estimated changes in expenditures resulting from the update adjustment factor determined under subsection (d)(3)(B) or (d)(4)(B) of this section, as the case may be,

minus 1 and multiplied by 100.

(3) Data to be used

For purposes of determining the update adjustment factor under subsection (d)(4)(B) of this section for a year beginning with 2001, the sustainable growth rates taken into consideration in the determination under paragraph (2) shall be determined as follows:

(A) For 2001

For purposes of such calculations for 2001, the sustainable growth rates for fiscal year 2000 and the years 2000 and 2001 shall be determined on the basis of the best data available to the Secretary as of September 1, 2000.

(B) For 2002

For purposes of such calculations for 2002, the sustainable growth rates for fiscal year 2000 and for years 2000, 2001, and 2002 shall be determined on the basis of the best data available to the Secretary as of September 1, 2001.

(C) For 2003 and succeeding years

For purposes of such calculations for a year after 2002—

(i) the sustainable growth rates for that year and the preceding 2 years shall be determined on the basis of the best data available to the Secretary as of September 1 of the year preceding the year for which the calculation is made; and

(ii) the sustainable growth rate for any year before a year described in clause (i) shall be the rate as most recently determined for that year under this subsection.

Nothing in this paragraph shall be construed as affecting the sustainable growth rates established for fiscal year 1998 or fiscal year 1999.

(4) Definitions

In this subsection:

(A) Services included in physicians' services

The term ''physicians' services'' includes other items and services (such as clinical diagnostic laboratory tests and radiology services), specified by the Secretary, that are commonly performed or furnished by a physician or in a physician's office, but does not include services furnished to a Medicare+Choice plan enrollee.

(B) Medicare+Choice plan enrollee

The term ''Medicare+Choice plan enrollee'' means, with respect to a fiscal year, an individual enrolled under this part who has elected to receive benefits under this subchapter for the fiscal year through a Medicare+Choice plan offered under part C of this subchapter, and also includes an individual who is receiving benefits under this part through enrollment with an eligible organization with a risk-sharing contract under section 1395mm of this title.

(C) Applicable period

The term ''applicable period'' means—

(i) a fiscal year, in the case of fiscal year 1998, fiscal year 1999, and fiscal year 2000; or

(ii) a calendar year with respect to a year beginning with 2000;

as the case may be.

(g) Limitation on beneficiary liability

(1) Limitation on actual charges

(A) In general

In the case of a nonparticipating physician or nonparticipating supplier or other person (as defined in section 1395u(i)(2) of this title) who does not accept payment on an assignment-related basis for a physician's service furnished with respect to an individual enrolled under this part, the following rules apply:

(i) Application of limiting charge

No person may bill or collect an actual charge for the service in excess of the limiting charge described in paragraph (2) for such service.

(ii) No liability for excess charges

No person is liable for payment of any amounts billed for the service in excess of such limiting charge.

(iii) Correction of excess charges

If such a physician, supplier, or other person bills, but does not collect, an actual charge for a service in violation of clause (i), the physician, supplier, or other person shall reduce on a timely basis the actual charge billed for the service to an amount not to exceed the limiting charge for the service.

(iv) Refund of excess collections

If such a physician, supplier, or other person collects an actual charge for a service in violation of clause (i), the physician, supplier, or other person shall provide on a timely basis a refund to the individual charged in the amount by which the amount collected exceeded the limiting charge for the service. The amount of such a refund shall be reduced to the extent the individual has an outstanding balance owed by the individual to the physician.

(B) Sanctions

If a physician, supplier, or other person—

(i) knowingly and willfully bills or collects for services in violation of subparagraph (A)(i) on a repeated basis, or

(ii) fails to comply with clause (iii) or (iv) of subparagraph (A) on a timely basis,

the Secretary may apply sanctions against the physician, supplier, or other person in accordance with paragraph (2) of section 1395u(j) of this title. In applying this subparagraph, paragraph (4) of such section applies in the same manner as such paragraph applies to such section and any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph.

(C) Timely basis

For purposes of this paragraph, a correction of a bill for an excess charge or refund of an amount with respect to a violation of subparagraph (A)(i) in the case of a service is considered to be provided ''on a timely basis'', if the reduction or refund is made not later than 30 days after the date the physician, supplier, or other person is notified by the carrier under this part of such violation and of the requirements of subparagraph (A).

(2) "Limiting charge" defined

(A) For 1991

For physicians' services of a physician furnished during 1991, other than radiologist services subject to section 1395m(b) of this title, the ''limiting charge'' shall be the same percentage (or, if less, 25 percent) above the recognized payment amount under this part with respect to the physician (as a nonparticipating physician) as the percentage by which—

(i) the maximum allowable actual charge (as determined under section 1395u(j)(1)(C) of this title as of December 31, 1990, or, if less, the maximum actual charge otherwise permitted for the service under this part as of such date) for the service of the physician, exceeds

(ii) the recognized payment amount for the service of the physician (as a nonparticipating physician) as of such date.

In the case of evaluation and management services (as specified in section

1395u(b)(16)(B)(ii) of this title), the preceding sentence shall be applied by substituting ''40 percent'' for ''25 percent''.

(B) For 1992

For physicians' services furnished during 1992, other than radiologist services subject to section 1395m(b) of this title, the ''limiting charge'' shall be the same percentage (or, if less, 20 percent) above the recognized payment amount under this part for nonparticipating physicians as the percentage by which—

(i) the limiting charge (as determined under subparagraph (A) as of December 31, 1991) for the service, exceeds

(ii) the recognized payment amount for the service for nonparticipating physicians as of such date.

(C) After 1992

For physicians' services furnished in a year after 1992, the ''limiting charge'' shall be 115 percent of the recognized payment amount under this part for nonparticipating physicians or for nonparticipating suppliers or other persons.

(D) Recognized payment amount

In this section, the term ''recognized payment amount'' means, for services furnished on or after January 1, 1992, the fee schedule amount determined under subsection (a) of this section (or, if payment under this part is made on a basis other than the fee schedule under this section, 95 percent of the other payment basis), and, for services furnished during 1991, the applicable percentage (as defined in section 1395u(b)(4)(A)(iv) of this title) of the prevailing charge (or fee schedule amount) for nonparticipating physicians for that year.

(3) Limitation on charges for medicare beneficiaries eligible for medicaid benefits

(A) In general

Payment for physicians' services furnished on or after April 1, 1990, to an individual who is enrolled under this part and eligible for any medical assistance (including as a qualified medicare beneficiary, as defined in section 1396d(p)(1) of this title) with respect to such services under a State plan approved under subchapter XIX of this chapter may only be made on an assignment-related basis and the provisions of section 1396a(n)(3)(A) of this title apply to further limit permissible charges under this section.

(B) Penalty

A person may not bill for physicians' services subject to subparagraph (A) other than on an assignment-related basis. No person is liable for payment of any amounts billed for such a service in violation of the previous sentence. If a person knowingly and willfully bills for physicians' services in violation of the first sentence, the Secretary may apply sanctions against the person in accordance with section 1395u(j)(2) of this title.

(4) Physician submission of claims

(A) In general

For services furnished on or after September 1, 1990, within 1 year after the date of providing a service for which payment is made under this part on a reasonable charge or fee schedule basis, a physician, supplier, or other person (or an employer or facility in the cases described in section 1395u(b)(6)(A) of this title)—

(i) shall complete and submit a claim for such service on a standard claim form specified by the Secretary to the carrier on behalf of a beneficiary, and

(ii) may not impose any charge relating to completing and submitting such a form.

(B) Penalty

(i) With respect to an assigned claim wherever a physician, provider, supplier or other person (or an employer or facility in the cases described in section 1395u(b)(6)(A) of this title) fails to submit such a claim as required in subparagraph (A), the Secretary shall reduce by 10 percent the amount that would otherwise be paid for such claim under this part.

(ii) If a physician, supplier, or other person (or an employer or facility in the cases described in section 1395u(b)(6)(A) of this title) fails to submit a claim required to be submitted under subparagraph (A) or imposes a charge in violation of such subparagraph, the Secretary shall apply the sanction with respect to such a violation in the same manner as a sanction may be imposed under section 1395u(p)(3) of this title for a violation of section 1395u(p)(1) of this title.

(5) Electronic billing; direct deposit

The Secretary shall encourage and develop a system providing for expedited payment for claims submitted electronically. The Secretary shall also encourage and provide incentives allowing for direct deposit as payments for services furnished by participating physicians. The Secretary shall provide physicians with such technical information as necessary to enable such physicians to submit claims electronically. The Secretary shall submit a plan to Congress on this paragraph by May 1, 1990.

(6) Monitoring of charges

(A) In general

The Secretary shall monitor—

(i) the actual charges of nonparticipating physicians for physicians' services furnished on or after January 1, 1991, to individuals enrolled under this part, and

(ii) changes (by specialty, type of service, and geographic area) in (I) the proportion of expenditures for physicians' services provided under this part by participating physicians, (II) the proportion of expenditures for such services for which payment is made under this part on an assignment-related basis, and (III) the amounts charged above the recognized payment amounts under this part.

(B) Report

The Secretary shall, by not later than April 15 of each year (beginning in 1992), report to the Congress information on the extent to which actual charges exceed limiting

charges, the number and types of services involved, and the average amount of excess charges and information regarding the changes described in subparagraph (A)(ii).

(C) Plan

If the Secretary finds that there has been a significant decrease in the proportions described in subclauses (I) and (II) of subparagraph (A)(ii) or an increase in the amounts described in subclause (III) of that subparagraph, the Secretary shall develop a plan to address such a problem and transmit to Congress recommendations regarding the plan. The Medicare Payment Advisory Commission shall review the Secretary's plan and recommendations and transmit to Congress its comments regarding such plan and recommendations.

(7) Monitoring of utilization and access

(A) In general

The Secretary shall monitor—

(i) changes in the utilization of and access to services furnished under this part within geographic, population, and service related categories,

(ii) possible sources of inappropriate utilization of services furnished under this part which contribute to the overall level of expenditures under this part, and

(iii) factors underlying these changes and their interrelationships.

(B) Report

The Secretary shall by not later than April 15,[3] of each year (beginning with 1991) report to the Congress on the changes described in subparagraph (A)(i) and shall include in the report an examination of the factors (including factors relating to different services and specific categories and groups of services and geographic and demographic variations in utilization) which may contribute to such changes.

(C) Recommendations

The Secretary shall include in each annual report under subparagraph (B) recommendations—

(i) addressing any identified patterns of inappropriate utilization,

(ii) on utilization review,

(iii) on physician education or patient education,

(iv) addressing any problems of beneficiary access to care made evident by the monitoring process, and

(v) on such other matters as the Secretary deems appropriate.

The Medicare Payment Advisory Commission shall comment on the Secretary's recommendations and in developing its comments, the Commission shall convene and consult a panel of physician experts to evaluate the implications of medical utilization patterns for the quality of and access to patient care.

(h) Sending information to physicians

Before the beginning of each year (beginning with 1992), the Secretary shall send to each physician or nonparticipating supplier or other person furnishing physicians' services (as defined in subsection (j)(3) of this section) furnishing physicians' services under this part, for services commonly performed by the physician, supplier, or other person, information on fee schedule amounts that apply for the year in the fee schedule area for participating and non-participating physicians, and the maximum amount that may be charged consistent with subsection (g)(2) of this section. Such information shall be transmitted in conjunction with notices to physicians, suppliers, and other persons under section 1395u(h) of this title (relating to the participating physician program) for a year.

(i) Miscellaneous provisions

(1) Restriction on administrative and judicial review

There shall be no administrative or judicial review under section 1395ff of this title or otherwise of—

(A) the determination of the adjusted historical payment basis (as defined in subsection (a)(2)(D)(i) of this section),

(B) the determination of relative values and relative value units under subsection (c) of this section, including adjustments under subsections (c)(2)(F), (c)(2)(H), and (c)(2)(I) of this section and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993,

(C) the determination of conversion factors under subsection (d) of this section, including without limitation a prospective redetermination of the sustainable growth rates for any or all previous fiscal years,

(D) the establishment of geographic adjustment factors under subsection (e) of this section, and

(E) the establishment of the system for the coding of physicians' services under this section.

(2) Assistants-at-surgery

(A) In general

Subject to subparagraph (B), in the case of a surgical service furnished by a physician, if payment is made separately under this part for the services of a physician serving as an assistant-at-surgery, the fee schedule amount shall not exceed 16 percent of the fee schedule amount otherwise determined under this section for the global surgical service involved.

(B) Denial of payment in certain cases

If the Secretary determines, based on the most recent data available, that for a surgical procedure (or class of surgical procedures) the national average percentage of such procedure performed under this part which involve the use of a physician as an assistant at surgery is less than 5 percent, no payment may be made under this part for services of an assistant at surgery involved in the procedure.

(3) No comparability adjustment

For physicians' services for which payment under this part is determined under this section—

(A) a carrier may not make any adjustment in the payment amount under section

[3] So in original. The comma probably should not appear.

1395u(b)(3)(B) of this title on the basis that the payment amount is higher than the charge applicable, for comparable services and under comparable circumstances, to the policyholders and subscribers of the carrier,

(B) no payment adjustment may be made under section 1395u(b)(8) of this title, and

(C) section 1395u(b)(9) of this title shall not apply.

(j) Definitions

In this section:

(1) Category

For services furnished before January 1, 1998, the term ''category'' means, with respect to physicians' services, surgical services, and all physicians' services other than surgical services (as defined by the Secretary and including anesthesia services), primary care services (as defined in section 1395u(i)(4) of this title), and all other physicians' services. The Secretary shall define surgical services and publish such definition in the Federal Register no later than May 1, 1990, after consultation with organizations representing physicians.

(2) Fee schedule area

The term ''fee schedule area'' means a locality used under section 1395u(b) of this title for purposes of computing payment amounts for physicians' services.

(3) Physicians' services

The term ''physicians' services'' includes items and services described in paragraphs (1), (2)(A), (2)(D), (2)(G), (2)(P) (with respect to services described in subparagraphs (A) and (C) of section 1395x(*oo*)(2) of this title), (2)(R) (with respect to services described in subparagraphs (B), (C), and (D) of section 1395x(pp)(1) of this title), (2)(S), (2)(W), (3), (4), (13), (14) (with respect to services described in section 1395x(nn)(2) of this title), and (15) of section 1395x(s) of this title (other than clinical diagnostic laboratory tests and, except for purposes of subsections (a)(3), (g), and (h) of this section[4] such other items and services as the Secretary may specify).

(4) Practice expenses

The term ''practice expenses'' includes all expenses for furnishing physicians' services, excluding malpractice expenses, physician compensation, and other physician fringe benefits.

(Aug. 14, 1935, ch. 531, title XVIII, § 1848, as added Pub. L. 101–239, title VI, § 6102(a), Dec. 19, 1989, 103 Stat. 2169; amended Pub. L. 101–508, title IV, §§ 4102(b), (g)(2), 4104(b)(2), 4105(a)(3), (c), 4106(b)(1), 4107(a)(1), 4109(a), 4116, 4118(b)–(f)(1), (k), Nov. 5, 1990, 104 Stat. 1388–56, 1388–57, 1388–59 to 1388–63, 1388–65, 1388–67, 1388–68, 1388–71; Pub. L. 103–66, title XIII, §§ 13511(a), 13512–13514(c), 13515(a)(1), (c), 13516(a)(1), 13517(a), 13518(a), Aug. 10, 1993, 107 Stat. 580–583, 585, 586; Pub. L. 103–432, title I, §§ 121(b)(1), (2), 122(a), (b), 123(a), (d), 126(b)(6), (g)(2)(B), (5)–(7), (10)(A), Oct. 31, 1994, 108 Stat. 4409, 4410, 4412, 4415, 4416; Pub. L. 105–33, title IV, §§ 4022(b)(2)(B), (C), 4102(d), 4103(d), 4104(d), 4105(a)(2), 4106(b), 4501, 4502(a)(1), (b), 4503, 4504(a), 4505(a), (b), (e), (f)(1), 4644(d), 4714(b)(2), Aug. 5, 1997, 111 Stat. 354, 355, 361, 362, 365, 366, 368, 432–437, 488, 510; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 211(a)(1), (2)(A), (3)(A), (b), title III, § 321(k)(5)], Nov. 29, 1999, 113 Stat. 1536, 1501A–345 to 1501A–348, 1501A–366; Pub. L. 106–554, § 1(a)(6) [title I, § 104(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–469; Pub. L. 108–7, div. N, title IV, § 402(a), Feb. 20, 2003, 117 Stat. 548; Pub. L. 108–173, title III, § 303(a)(1), (g)(2), title IV, § 412, title VI, §§ 601(a)(1), (2), (b)(1), 602, 611(c), title VII, § 736(b)(10), Dec. 8, 2003, 117 Stat. 2233, 2253, 2274, 2300, 2301, 2304, 2356.)

[4] So in original. Probably should be followed by a comma.

REFERENCES IN TEXT

Section 13515(b) of the Omnibus Budget Reconciliation Act of 1993, referred to in subsecs. (a)(2)(B)(ii)(I), (c)(2)(A)(i), and (i)(1)(B), is section 13515(b) of Pub. L. 103–66, which is set out as a note under section 1395u of this title.

Section 6105(b) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (a)(2)(D)(ii), (iii), is section 6105(b) of Pub. L. 101–239, which is set out as a note under section 1395m of this title.

Section 4048(b) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (b)(2)(B), is section 4048(b) of Pub. L. 100–203, which is set out as a note under section 1395u of this title.

Section 13514(a) of the Omnibus Budget Reconciliation Act of 1993, referred to in subsec. (c)(2)(F), is section 13514(a) of Pub. L. 103–66, which amended subsec. (b)(3) of this section. See 1993 Amendment note below.

Section 212 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, referred to in subsec. (c)(2)(H)(i), (I)(ii)(I), is section 1000(a)(6) [title II, § 212] of Pub. L. 106–113, which is set out as a note under this section.

The Balanced Budget Act of 1997, referred to in subsec. (d)(1)(C), is Pub. L. 105–33, Aug. 5, 1997, 111 Stat. 251. Chapter 1 of subtitle F of title IV of the Act is chapter 1 (§§ 4501–4513) of subtitle F of title IV of Pub. L. 105–33, which amended this section and sections 1395a, 1395k, 1395*l*, 1395u, 1395x, 1395y, 1395cc, and 1395yy of this title and enacted provisions set out as notes under this section and sections 1395a, 1395k, 1395*l*, 1395x, and 1395ww of this title. For complete classification of this Act to the Code, see Tables.

Part C of this subchapter, referred to in subsec. (f)(4)(B), is classified to section 1395w–21 et seq. of this title.

AMENDMENTS

2003—Subsec. (c)(2)(B)(ii)(II). Pub. L. 108–173, § 303(a)(1)(A)(i), substituted ''Subject to clause (iv), the adjustments'' for ''The adjustments''.

Subsec. (c)(2)(B)(iv). Pub. L. 108–173, § 303(a)(1)(A)(ii), added cl. (iv).

Subsec. (c)(2)(H) to (J). Pub. L. 108–173, § 303(a)(1)(B), added subpars. (H) to (J).

Subsec. (d)(4)(B). Pub. L. 108–173, § 601(a)(2), inserted ''and paragraph (5)'' after ''subparagraph (D)'' in introductory provisions.

Subsec. (d)(5). Pub. L. 108–173, § 601(a)(1), added par. (5).

Subsec. (e)(1)(A). Pub. L. 108–173, § 602(1), which directed amendment of subsec. (e)(1)(A), as amended by section 421, by substituting ''subparagraphs (B), (C), (E), (F) and (G)'' for ''subparagraphs (B), (C), (E), and (F)'', was executed to subsec. (e)(1)(A), as amended by section 412 of Pub. L. 108–173, by making the substitution for ''subparagraphs (B), (C), and (E)'', to reflect the probable intent of Congress. See below.

Pub. L. 108–173, § 412(1), substituted ''subparagraphs (B), (C), and (E)'' for ''subparagraphs (B) and (C)''.

Subsec. (e)(1)(E). Pub. L. 108–173, § 412(2), added subpar. (E).

Subsec. (e)(1)(G). Pub. L. 108–173, § 602(2), added subpar. (G).

Subsec. (f)(2)(C). Pub. L. 108–173, § 601(b)(1), substituted ''annual average'' for ''projected'' and ''during the 10-year period ending with the applicable period involved'' for ''from the previous applicable period to the applicable period involved''.

Subsec. (i)(1)(B). Pub. L. 108–173, § 303(g)(2), substituted ''subsections (c)(2)(F), (c)(2)(H), and (c)(2)(I) of this section'' for ''subsection (c)(2)(F) of this section''.

Subsec. (i)(1)(C). Pub. L. 108–7 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''the determination of conversion factors under subsection (d) of this section,''.

Subsec. (i)(3)(A). Pub. L. 108–173, § 736(b)(10), substituted ''comparable services'' for ''a comparable services''.

Subsec. (j)(3). Pub. L. 108–173, § 611(c), inserted ''(2)(W),'' after ''(2)(S),''.

2000—Subsec. (j)(3). Pub. L. 106–554 inserted ''(13),'' after ''(4),''.

1999—Subsec. (d)(1)(A). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(3)(A)(i)], inserted ''(for years before 2001) and, for years beginning with 2001, multiplied by the update (established under paragraph (4)) for the year involved'' before period at end.

Subsec. (d)(1)(E). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(2)(A)], amended heading and text of subpar. (E) generally. Prior to amendment, text read as follows: ''The Secretary shall cause to have published in the Federal Register, during the last 15 days of October of—

''(i) 1991, the conversion factor which will apply to physicians' services for 1992, and the update determined under paragraph (3) for 1992; and

''(ii) each succeeding year, the conversion factor which will apply to physicians' services for the following year and the update determined under paragraph (3) for such year.''

Subsec. (d)(3). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(1)(A)(i)], inserted ''for 1999 and 2000'' after ''Update'' in heading.

Subsec. (d)(3)(A). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(1)(A)(ii)], substituted ''1999 and 2000'' for ''a year beginning with 1999'' in introductory provisions.

Subsec. (d)(3)(C). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(1)(A)(iii)], inserted ''and paragraph (4)'' after ''For purposes of this paragraph'' in introductory provisions.

Subsec. (d)(4). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(1)(B)], added par. (4).

Subsec. (f)(1). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(1)], amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The Secretary shall cause to have published in the Federal Register the sustainable growth rate for each fiscal year beginning with fiscal year 1998. Such publication shall occur by not later than August 1 before each fiscal year, except that such rate for fiscal year 1998 shall be published not later than November 1, 1997.''

Subsec. (f)(2). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(2)(A)], substituted ''fiscal year 1998 and ending with fiscal year 2000) and a year beginning with 2000'' for ''fiscal year 1998)'' in introductory provisions.

Subsec. (f)(2)(A). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(2)(B)], substituted ''applicable period'' for ''fiscal year''.

Subsec. (f)(2)(B), (C). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(2)(B)], substituted ''applicable period'' for ''fiscal year'' in two places.

Subsec. (f)(2)(D). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(3)(A)(ii), (b)(2)(B)], substituted ''applicable period'' for ''fiscal year'' in two places and ''subsection (d)(3)(B) or (d)(4)(B) of this section, as the case may be'' for ''subsection (d)(3)(B) of this section''.

Subsec. (f)(3). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(5)], added par. (3). Former par. (3) redesignated (4).

Subsec. (f)(3)(C). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(3)], added subpar. (C).

Subsec. (f)(4). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(b)(4)], redesignated par. (3) as (4).

Subsec. (j)(3). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(5)], substituted ''section 1395x(*oo*)(2) of this title)'' for ''section 1395x(*oo*)(2) of this title,'', ''(B),'' for ''(B),'', and '', and (15)'' for ''and (15)''.

1997—Subsec. (b)(1). Pub. L. 105–33, § 4644(d), substituted ''Before November 1 of the preceding year, for each year beginning with 1998'' for ''Before January 1 of each year beginning with 1992'' in introductory provisions.

Subsec. (c)(2)(B)(iii). Pub. L. 105–33, § 4022(b)(2)(C), substituted ''Medicare Payment Advisory Commission'' for ''Physician Payment Review Commission''.

Subsec. (c)(2)(C)(ii). Pub. L. 105–33, § 4505(b)(1)(A), which directed an amendment striking the comma at the end of cl. (ii) and inserting a period and the following: ''For 1999, such number of units shall be determined based 75 percent on such product and based 25 percent on the relative practice expense resources involved in furnishing the service. For 2000, such number of units shall be determined based 50 percent on such product and based 50 percent on such relative practice expense resources. For 2001, such number of units shall be determined based 25 percent on such product and based 75 percent on such relative practice expense resources. For a subsequent year, such number of units shall be determined based entirely on such relative practice expense resources.'', was executed by making the insertion at end of cl. (ii) to reflect the probable intent of Congress, because cl. (ii) ended with a period rather than a comma.

Pub. L. 105–33, § 4505(a)(1), substituted ''1999'' for ''1998'' in two places.

Subsec. (c)(2)(C)(iii). Pub. L. 105–33, § 4505(f)(1)(A), inserted ''for the service for years before 2000'' before ''equal'' in introductory provisions, substituted comma for period at end of subcl. (II), and inserted concluding provisions.

Subsec. (c)(2)(G). Pub. L. 105–33, § 4505(e), added subpar. (G).

Subsec. (c)(3)(C)(ii). Pub. L. 105–33, § 4505(b)(2), substituted ''2002'' for ''1999'' in introductory provisions.

Pub. L. 105–33, § 4505(a)(2), substituted ''1999'' for ''1998'' in introductory provisions.

Subsec. (c)(3)(C)(iii). Pub. L. 105–33, § 4505(f)(1)(B), substituted ''For years before 1999, the malpractice'' for ''The malpractice'' in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 105–33, § 4501(b)(1), (2), struck out ''(or factors)'' after ''conversion factor'' in two places and struck out ''or updates'' after ''update''.

Subsec. (d)(1)(C). Pub. L. 105–33, § 4504(a)(1), substituted ''Except as provided in subparagraph (D), the single conversion factor'' for ''The single conversion factor''.

Pub. L. 105–33, § 4501(a)(2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(1)(D). Pub. L. 105–33, § 4504(a)(3), added subpar. (D). Former subpar. (D) redesignated (E).

Pub. L. 105–33, § 4501(b)(1), (3), struck out ''(or updates)'' after ''update'' in two places and struck out ''(or factors)'' after ''conversion factor'' in cl. (ii).

Pub. L. 105–33, § 4501(a)(1), redesignated subpar. (C) as (D).

Subsec. (d)(1)(E). Pub. L. 105–33, § 4504(a)(2), redesignated subpar. (D) as (E).

Subsec. (d)(2). Pub. L. 105–33, § 4502(b), struck out heading and text of par. (2) which related to recommendation of update.

Subsec. (d)(2)(F). Pub. L. 105–33, § 4022(b)(1)(B)(i), struck out heading and text of subpar. (F). Text read as follows: ''The Physician Payment Review Commission shall review the report submitted under subparagraph (A) in a year and shall submit to the Congress, by not later than May 15 of the year, a report including its recommendations respecting the update (or updates) in the conversion factor (or factors) for the following year.''

Subsec. (d)(3). Pub. L. 105–33, § 4502(a)(1), amended heading and text generally. Prior to amendment, text related to updates of conversion factor based on index and made provision for adjustments in update.

Subsec. (f). Pub. L. 105–33, § 4503(b), amended subsec. heading and heading and text of par. (1) generally.

Prior to amendment, par. (1) related to process for establishing medicare volume performance standard rates of increase.

Subsec. (f)(1)(B). Pub. L. 105–33, § 4022(b)(2)(B)(ii), struck out heading and text of subpar. (B). Text read as follows: ''The Physician Payment Review Commission shall review the recommendation transmitted during a year under subparagraph (A) and shall make its recommendation to Congress, by not later than May 15 of the year, respecting the performance standard rates of increase for the fiscal year beginning in that year.''

Subsec. (f)(2). Pub. L. 105–33, § 4503(a), added par. (2) and struck out heading and text of former par. (2) which related to specification of performance standard rates of increase for physician services for fiscal years beginning in 1991.

Subsec. (f)(3). Pub. L. 105–33, § 4503(a), added par. (3) and struck out heading and text of former par. (3). Text read as follows: ''The Secretary shall establish procedures for providing, on a quarterly basis to the the Congressional Budget Office, the Congressional Research Service, the Committees on Ways and Means and Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate, information on compliance with performance standard rates of increase established under this subsection.''

Pub. L. 105–33, § 4022(b)(2)(B)(iii), struck out ''Physician Payment Review Commission,'' before ''the Congressional Budget Office''.

Subsec. (f)(4), (5). Pub. L. 105–33, § 4503(a), struck out heading and text of par. (4) which related to separate group-specific performance standard rates of increase and par. (5) which defined ''physicians' services'' and ''HMO enrollee''.

Subsec. (g)(3)(A). Pub. L. 105–33, § 4714(b)(2), inserted before period at end ''and the provisions of section 1396a(n)(3)(A) of this title apply to further limit permissible charges under this section''.

Subsec. (g)(6)(C), (7)(C). Pub. L. 105–33, § 4022(b)(2)(C), substituted ''Medicare Payment Advisory Commission'' for ''Physician Payment Review Commission''.

Subsec. (j)(1). Pub. L. 105–33, § 4501(b)(4), substituted ''For services furnished before January 1, 1998, the term'' for ''The term''.

Subsec. (j)(3). Pub. L. 105–33, § 4106(b), substituted ''(4), (14)'' for ''(4) and (14)'' and inserted ''and (15)'' after ''1395x(nn)(2) of this title)''.

Pub. L. 105–33, § 4105(a)(2), inserted ''(2)(S),'' before ''(3)''.

Pub. L. 105–33, § 4103(d), inserted ''(2)(P) (with respect to services described in subparagraphs (A) and (C) of section 1395x(*oo*)(2) of this title,'' after ''(2)(G)''.

Pub. L. 105–33, §§ 4102(d), 4104(d), inserted ''(2)(R) (with respect to services described in subparagraphs (B) , (C), and (D) of section 1395x(pp)(1) of this title),'' before ''(3)'' and substituted ''(4) and (14) (with respect to services described in section 1395x(nn)(2) of this title)'' for ''and (4)''.

1994—Subsec. (a)(2)(D)(iii). Pub. L. 103–432, § 126(b)(6), struck out ''that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989'' after ''nuclear medicine services'' and substituted ''provided under section 6105(b) of the Omnibus Budget Reconciliation Act of 1989'' for ''provided under such section''.

Subsec. (c)(2)(C)(ii). Pub. L. 103–432, § 121(b)(1), inserted ''for the service for years before 1998'' before ''equal to'' in introductory provisions, substituted comma for period at end of subcl. (II), and inserted ''and for years beginning with 1998 based on the relative practice expense resources involved in furnishing the service.'' as closing provisions.

Subsec. (c)(3)(C)(ii). Pub. L. 103–432, § 121(b)(2), substituted ''For years before 1998, the practice'' for ''The practice''.

Subsec. (c)(4). Pub. L. 103–432, § 126(g)(6), made technical amendment to directory language of Pub. L. 101–508, § 4118(f)(1)(D). See 1990 Amendment note below.

Subsec. (e)(1)(C). Pub. L. 103–432, § 126(g)(5), inserted ''date of the'' before ''last previous adjustment''.

Pub. L. 103–432, § 122(a), substituted ''shall, in consultation with appropriate representatives of physicians, review'' for ''shall review''.

Subsec. (e)(1)(D). Pub. L. 103–432, § 122(b), added subpar. (D).

Subsec. (f)(2)(A)(i). Pub. L. 103–432, § 126(g)(7), made technical amendment to directory language of Pub. L. 101–508, § 4118(f)(1)(N)(ii). See 1990 Amendment note below.

Subsec. (f)(2)(C). Pub. L. 103–432, § 126(g)(2)(B), inserted heading.

Subsec. (g)(1). Pub. L. 103–432, § 123(a)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''If a nonparticipating physician or nonparticipating supplier or other person (as defined in section 1395u(i)(2) of this title) knowingly and willfully bills on a repeated basis for physicians' services (including services which the Secretary excludes pursuant to subsection (j)(3) of this section, furnished with respect to an individual enrolled under this part on or after January 1, 1991) an actual charge in excess of the limiting charge described in paragraph (2) and for which payment is not made on an assignment-related basis under this part, the Secretary may apply sanctions against such physician, supplier, or other person in accordance with section 1395u(j)(2) of this title. In applying this subparagraph, any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph.''

Subsec. (g)(3)(B). Pub. L. 103–432, § 123(a)(2), inserted after first sentence ''No person is liable for payment of any amounts billed for such a service in violation of the previous sentence.'' and in last sentence substituted ''first sentence'' for ''previous sentence''.

Subsec. (g)(6)(B). Pub. L. 103–432, § 123(d), inserted ''information on the extent to which actual charges exceed limiting charges, the number and types of services involved, and the average amount of excess charges and information'' after ''report to the Congress''.

Subsec. (i)(3). Pub. L. 103–432, § 126(g)(10)(A), struck out space before the period at end.

1993—Subsec. (a)(2)(B)(ii)(I). Pub. L. 103–66, § 13515(c)(1), inserted ''and under section 13515(b) of the Omnibus Budget Reconciliation Act of 1993'' after ''subsection (c)(2)(F)(ii) of this section''.

Pub. L. 103–66, § 13514(c)(1), inserted ''and as adjusted under subsection (c)(2)(F)(ii) of this section'' after ''for 1994''.

Subsec. (a)(3). Pub. L. 103–66, § 13517(a)(1), in heading inserted ''and suppliers'' after ''physicians'' and in text inserted ''or a nonparticipating supplier or other person'' after ''nonparticipating physician'' and inserted at end ''In the case of physicians' services (including services which the Secretary excludes pursuant to subsection (j)(3) of this section) of a nonparticipating physician, supplier, or other person for which payment is made under this part on a basis other than the fee schedule amount, the payment shall be based on 95 percent of the payment basis for such services furnished by a participating physician, supplier, or other person.''

Subsec. (a)(4). Pub. L. 103–66, § 13516(a)(1), added par. (4).

Pub. L. 103–66, § 13515(a)(1), struck out heading and text of par. (4). Text read as follows: ''In the case of physicians' services furnished by a physician before the end of the physician's first full calendar year of furnishing services for which payment may be made under this part, and during each of the 3 succeeding years, the fee schedule amount to be applied shall be 80 percent, 85 percent, 90 percent, and 95 percent, respectively, of the fee schedule amount applicable to physicians who are not subject to this paragraph. The preceding sentence shall not apply to primary care services or services furnished in a rural area (as defined in section 1395ww(d)(2) of this title) that is designated under section 249(a)(1)(A) of this title as a health manpower shortage area.''

Subsec. (b)(3). Pub. L. 103–66, § 13514(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''If payment is made under this part for a visit to a physician or consultation with a

physician and, as part of or in conjunction with the visit or consultation there is an electrocardiogram performed or ordered to be performed, no payment may be made under this part with respect to the interpretation of the electrocardiogram and no physician may bill an individual enrolled under this part separately for such an interpretation. If a physician knowingly and willfully bills one or more individuals in violation of the previous sentence, the Secretary may apply sanctions against the physician or entity in accordance with section 1395u(j)(2) of this title.''

Subsec. (c)(2)(A)(i). Pub. L. 103–66, §13515(c)(2), inserted before period at end ''and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993''.

Pub. L. 103–66, §13514(c)(2), inserted at end ''Such relative values are subject to adjustment under subparagraph (F)(i).''

Subsec. (c)(2)(E). Pub. L. 103–66, §13513, added subpar. (E).

Subsec. (c)(2)(F). Pub. L. 103–66, §13514(b), added subpar. (F).

Subsec. (d)(3)(A)(i). Pub. L. 103–66, §13511(a)(1)(A), substituted ''clauses (iii) through (v)'' for ''clause (iii)''.

Subsec. (d)(3)(A)(iv) to (vi). Pub. L. 103–66, §13511(a)(1)(B), added cls. (iv) to (vi).

Subsec. (d)(3)(B)(ii). Pub. L. 103–66, §13512(b), substituted ''1994'' for ''1994 or 1995'' in subcl. (II) and ''5'' for ''3'' in subcl. (III).

Subsec. (f)(2)(B). Pub. L. 103–66, §13512(a), added cls. (iii) to (v) and struck out former cl. (iii) which read as follows: ''for each succeeding year is 2 percentage points.''

Subsec. (g)(1). Pub. L. 103–66, §13517(a)(2)(C), (D), inserted '', supplier, or other person'' after ''such physician'' and inserted at end ''In applying this subparagraph, any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph.''

Pub. L. 103–66, §13517(a)(2)(B), which directed insertion of ''including services which the Secretary excludes pursuant to subsection (j)(3) of this section,'' after ''physician's services ('', was executed by making the insertion after ''physicians' services ('' to reflect the probable intent of Congress.

Pub. L. 103–66, §13517(a)(2)(A), inserted ''or nonparticipating supplier or other person (as defined in section 1395u(i)(2) of this title)'' after ''nonparticipating physician''.

Subsec. (g)(2)(C). Pub. L. 103–66, §13517(a)(3), inserted ''or for nonparticipating suppliers or other persons'' after ''nonparticipating physicians''.

Subsec. (g)(2)(D). Pub. L. 103–66, §13517(a)(4), inserted ''(or, if payment under this part is made on a basis other than the fee schedule under this section, 95 percent of the other payment basis)'' after ''subsection (a) of this section''.

Subsec. (h). Pub. L. 103–66, §13517(a)(5), inserted ''or nonparticipating supplier or other person furnishing physicians' services (as defined in subsection (j)(3) of this section)'' after ''each physician'', inserted '', supplier, or other person'' after ''by the physician'', and inserted '', suppliers, and other persons'' after ''notices to physicians''.

Subsec. (i)(1)(B). Pub. L. 103–66, §13515(c)(3), inserted ''and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993'' after ''subsection (c)(2)(F) of this section''.

Pub. L. 103–66, §13514(c)(3), inserted at end ''including adjustments under subsection (c)(2)(F) of this section,''.

Subsec. (j)(1). Pub. L. 103–66, §13511(a)(2), substituted ''Secretary and including anesthesia services), primary care services (as defined in section 1395u(i)(4) of this title),'' for ''Secretary)''.

Subsec. (j)(3). Pub. L. 103–66, §13518(a), inserted ''(2)(G),'' after ''(2)(D),''.

Pub. L. 103–66, §13517(a)(6), inserted '', except for purposes of subsections (a)(3), (g), and (h) of this section'' after ''tests and''.

1990—Subsec. (a)(1). Pub. L. 101–508, §4104(b)(2), struck out ''or 1395m(f)'' after ''section 1395m(b)'' in introductory provisions.

Subsec. (a)(2)(C). Pub. L. 101–508, §4102(b), inserted ''and radiology'' after ''Special rule for anesthesia'' in heading and inserted at end ''With respect to radiology services, '109 percent' and '9 percent' shall be substituted for '115 percent' and '15 percent', respectively, in subparagraph (A)(ii).''

Subsec. (a)(2)(D)(ii). Pub. L. 101–508, §4102(g)(2)(A), inserted '', but excluding nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989'' after ''section 1395m(b)(6) of this title)''.

Subsec. (a)(2)(D)(iii). Pub. L. 101–508, §4102(g)(2)(B), added cl. (iii).

Subsec. (a)(4). Pub. L. 101–508, §4106(b)(1), added par. (4).

Subsec. (b)(3). Pub. L. 101–508, §4109(a), added par. (3).

Subsec. (c)(1)(B). Pub. L. 101–508, §4118(f)(1)(A), struck out at end ''In this subparagraph, the term 'practice expenses' includes all expenses for furnishing physicians' services, excluding malpractice expenses, physician compensation, and other physician fringe benefits.''

Subsec. (c)(3). Pub. L. 101–508, §4118(f)(1)(C), redesignated par. (3), relating to ancillary policies, as (4).

Subsec. (c)(3)(C)(ii)(II), (iii)(II). Pub. L. 101–508, §4118(f)(1)(B), struck out ''by'' before ''the proportion''.

Subsec. (c)(4). Pub. L. 101–508, §4118(f)(1)(D), as amended by Pub. L. 103–432, §126(g)(6), substituted ''section'' for ''subsection''.

Pub. L. 101–508, §4118(f)(1)(C), redesignated par. (3), relating to ancillary policies, as (4). Former par. (4) redesignated (5).

Pub. L. 101–508, §4118(d), struck out ''only for services furnished on or after January 1, 1993'' after ''visits and consultations''.

Subsec. (c)(5), (6). Pub. L. 101–508, §4118(f)(1)(C), redesignated pars. (4) and (5) as (5) and (6), respectively.

Subsec. (d)(1)(A). Pub. L. 101–508, §4118(f)(1)(E), (F)(i)(III), amended subpar. (A) identically, substituting ''paragraph (3)'' for ''subparagraph (C)''.

Pub. L. 101–508, §4118(f)(1)(F)(i)(I), (II), substituted ''conversion factor (or factors)'' for ''conversion factor'' in two places and ''update or updates'' for ''update''.

Subsec. (d)(1)(C)(i). Pub. L. 101–508, §4118(f)(1)(F)(ii)(I), substituted ''conversion factor'' for ''conversion factor (or factors)''.

Subsec. (d)(1)(C)(ii). Pub. L. 101–508, §4118(f)(1)(F)(ii)(II), inserted ''the conversion factor (or factors) which will apply to physicians' services for the following year and'' before ''the update (or updates)'' and substituted ''such year'' for ''the following year''.

Subsec. (d)(2)(A). Pub. L. 101–508, §4118(f)(1)(G), (I), substituted ''physicians' services (as defined in subsection (f)(5)(A) of this section)'' for ''physicians' services'' in first sentence and ''proportion of individuals who are enrolled under this part who are HMO enrollees'' for ''proportion of HMO enrollees'' in last sentence.

Subsec. (d)(2)(A)(ii). Pub. L. 101–508, §4118(f)(1)(H), substituted ''and for the services involved'' for ''(as defined in subsection (f)(5)(A) of this section)'' and ''such services'' for ''all such physicians' services''.

Subsec. (d)(2)(E)(i). Pub. L. 101–508, §4118(f)(1)(J), inserted ''the'' before ''most recent''.

Subsec. (d)(2)(E)(ii)(I). Pub. L. 101–508, §4118(f)(1)(K), substituted ''payments for physicians' services'' for ''physicians' services''.

Subsec. (d)(3)(A)(i). Pub. L. 101–508, §4105(a)(3)(A), inserted ''except as provided in clause (iii),'' after ''subparagraph (B),''.

Subsec. (d)(3)(A)(iii). Pub. L. 101–508, §4105(a)(3)(B), added cl. (iii).

Subsec. (d)(3)(B)(i). Pub. L. 101–508, §4118(f)(1)(L)(i)(II), which directed amendment of cl. (i) by substituting ''services in such category'' for ''physicians' services (as defined in subsection (f)(5)(A))'', was executed by making the substitution for ''physicians' services (as defined in section (f)(5)(A))'' to reflect the probable intent of Congress.

Pub. L. 101–508, §4118(f)(1)(L)(i)(I), substituted ''update for a category of physicians' services for a year'' for ''update for a year''.

Subsec. (d)(3)(B)(ii). Pub. L. 101–508, § 4118(f)(1)(L)(ii), inserted ''more than'' after ''decrease of'' in introductory provisions and struck out ''more than'' before ''2 percentage points'' in subcl. (I).

Subsec. (e)(1)(A). Pub. L. 101–508, § 4118(c)(1), substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)'' in introductory provisions.

Subsec. (e)(1)(C). Pub. L. 101–508, § 4118(c)(2), added subpar. (C).

Subsec. (f)(1)(C). Pub. L. 101–508, § 4105(c)(1), substituted ''1991'' for ''1990'' after ''beginning with''.

Subsec. (f)(1)(D)(i). Pub. L. 101–508, § 4118(f)(1)(M), substituted ''portions of calendar years'' for ''calendar years''.

Subsec. (f)(2)(A). Pub. L. 101–508, § 4118(b)(1), (f)(1)(N)(i), in introductory provisions, substituted ''the performance standard rate of increase, for all physicians' services and for each category of physicians' services,'' for ''each performance standard rate of increase'' and ''product'' for ''sum''.

Pub. L. 101–508, § 4118(b)(6), substituted ''minus 1, multiplied by 100, and reduced'' for ''reduced'' in concluding provisions.

Subsec. (f)(2)(A)(i). Pub. L. 101–508, § 4118(f)(1)(N)(ii), as amended by Pub. L. 103–432, § 126(g)(7), substituted ''all physicians' services or for the category of physicians' services, respectively,'' for ''physicians' services (as defined in subsection (f)(5)(A) of this section)''.

Pub. L. 101–508, § 4118(f)(1)(M), substituted ''portions of calendar years'' for ''calendar years''.

Pub. L. 101–508, § 4118(b)(2), (3), substituted ''1 plus the Secretary's'' for ''the Secretary's'' and ''percentage increase (divided by 100)'' for ''percentage increase''.

Subsec. (f)(2)(A)(ii). Pub. L. 101–508, § 4118(b)(2), (4), substituted ''1 plus the Secretary's'' for ''the Secretary's'' and inserted ''(divided by 100)'' after ''decrease''.

Subsec. (f)(2)(A)(iii). Pub. L. 101–508, § 4118(f)(1)(N)(iii), substituted ''all physicians' services or of the category of physicians' services, respectively,'' for ''physicians' services''.

Pub. L. 101–508, § 4118(b)(2), (5), substituted ''1 plus the Secretary's'' for ''the Secretary's'' and inserted ''(divided by 100)'' after ''percentage growth''.

Subsec. (f)(2)(A)(iv). Pub. L. 101–508, § 4118(e), (f)(1)(N)(iv), substituted ''all physicians' services or of the category of physicians' services, respectively,'' for ''physicians' services (as defined in subsection (f)(5)(A) of this section)'' and inserted ''including changes in law and regulations affecting the percentage increase described in clause (i)'' after ''law or regulations''.

Pub. L. 101–508, § 4118(b)(2), (4), substituted ''1 plus the Secretary's'' for ''the Secretary's'' and ''decrease (divided by 100)'' for ''decrease''.

Subsec. (f)(2)(C). Pub. L. 101–508, § 4105(c)(2), added subpar. (C).

Subsec. (f)(4)(A). Pub. L. 101–508, § 4118(f)(1)(O), substituted ''subparagraph (B)'' for ''paragraph (B)''.

Subsec. (f)(4)(B). Pub. L. 101–508, § 4118(f)(1)(P), substituted ''specifically approved by law'' for ''Congress specifically approves the plan''.

Subsec. (g)(2)(A). Pub. L. 101–508, § 4118(f)(1)(Q), inserted ''other than radiologist services subject to section 1395m(b) of this title,'' after ''during 1991,'' in introductory provisions.

Pub. L. 101–508, § 4116, inserted at end ''In the case of evaluation and management services (as specified in section 1395u(b)(16)(B)(ii) of this title), the preceding sentence shall be applied by substituting '40 percent' for '25 percent'.''

Subsec. (g)(2)(B). Pub. L. 101–508, § 4118(f)(1)(Q), inserted ''other than radiologist services subject to section 1395m(b) of this title,'' after ''during 1992,'' in introductory provisions.

Subsec. (i)(1)(A). Pub. L. 101–508, § 4118(f)(1)(R), substituted ''adjusted historical payment basis (as defined in subsection (a)(2)(D)(i)'' for ''historical payment basis (as defined in subsection (a)(2)(C)(i)''.

Subsec. (i)(2). Pub. L. 101–508, § 4107(a)(1), added par. (2).

Subsec. (i)(3). Pub. L. 101–508, § 4118(k), added par. (3).

Subsec. (j)(1). Pub. L. 101–508, § 4118(f)(1)(S), which directed the amendment of par. (1) by substituting ''(as defined by the Secretary) and all other physicians' services'' for '', and such other'' and all that follows through the period was executed by making the substitution for '', and such other category or categories of physicians' services as the Secretary, from time to time, defines in regulation.'' to reflect the probable intent of Congress.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title VI, § 601(b)(2), Dec. 8, 2003, 117 Stat. 2301, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to computations of the sustainable growth rate for years beginning with 2003.''

Pub. L. 108–173, title VI, § 611(e), Dec. 8, 2003, 117 Stat. 2304, provided that: ''The amendments made by this section [amending this section and sections 1395x and 1395y of this title] shall apply to services furnished on or after January 1, 2005, but only for individuals whose coverage period under part B [probably means part B of title XVIII of the Social Security Act, which is classified to this part] begins on or after such date.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable with respect to screening mammographies furnished on or after Jan. 1, 2002, see section 1(a)(6) [title I, § 104(c)] of Pub. L. 106–554, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 211(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–350, provided that: ''The amendments made by this section [amending this section and sections 1395b–6 and 1395*l* of this title] shall be effective in determining the conversion factor under section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) for years beginning with 2001 and shall not apply to or affect any update (or any update adjustment factor) for any year before 2001.''

Amendment by section 1000(a)(6) [title III, § 321(k)(5)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4022(b)(2)(B), (C) of Pub. L. 105–33 effective Nov. 1, 1997, the date of termination of the Prospective Payment Assessment Commission and the Physician Payment Review Commission, see section 4022(c)(2) of Pub. L. 105–33 set out as an Effective Date; Transition; Transfer of Functions note under section 1395b–6 of this title.

Amendment by section 4102(d) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4102(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4103(d) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 2000, see section 4103(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4104(d) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4104(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4105(a)(2) of Pub. L. 105–33 applicable to items and services furnished on or after

July 1, 1998, see section 4105(d)(1) of Pub. L. 105–33, set out as a note under section 1395m of this title.

Amendment by section 4106(b) of Pub. L. 105–33 applicable to bone mass measurements performed on or after July 1, 1998, see section 4106(d) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Section 4502(a)(2) of Pub. L. 105–33 provided that: ''The amendment made by this subsection [amending this section] shall apply to the update for years beginning with 1999.''

Section 4504(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1998.''

Amendment by section 4714(b)(2) of Pub. L. 105–33 applicable to payment for (and with respect to provider agreements with respect to) items and services furnished on or after Aug. 5, 1997, see section 4714(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 123(a) of Pub. L. 103–432 applicable to services furnished on or after Oct. 31, 1994, but inapplicable to services of nonparticipating supplier or other person furnished before Jan. 1, 1995, see section 123(f)(1) of Pub. L. 103–432, set out as a note under section 1395*l* of this title.

Section 123(f)(5) of Pub. L. 103–432 provided that: ''The amendment made by subsection (d) [amending this section] shall apply to reports for years beginning with 1995.''

Amendment by section 126(b)(6), (g)(2)(B), (5)–(7), (10)(A) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 126(i) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13511(b) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after January 1, 1994; except that amendment made by subsection (a)(2) shall not apply—

''(1) to volume performance standard rates of increase established under section 1848(f) of the Social Security Act [subsec. (f) of this section] for fiscal years before fiscal year 1994, and

''(2) to adjustment in updates in the conversion factors for physicians' services under section 1848(d)(3)(B) of such Act for physicians' services to be furnished in calendar years before 1996.''

Section 13514(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after January 1, 1994.''

Amendment by section 13515(a)(1) of Pub. L. 103–66 applicable to services furnished on or after Jan. 1, 1994, see section 13515(d) of Pub. L. 103–66, set out as a note under section 1395u of this title.

Section 13517(c) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1994.''

Section 13518(c) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1995.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4102(b), (g)(2) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4102(i)(1) of Pub. L. 101–508, set out as a note under section 1395m of this title.

Amendment by section 4104(b)(2) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4104(d) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

Amendment by section 4106(b)(1) of Pub. L. 101–508 applicable to services furnished after 1991, see section 4106(d)(2) of Pub. L. 101–508, set out as a note under section 1395u of this title.

Section 4107(a)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(d)(2), Oct. 31, 1994, 108 Stat. 4415, provided that: ''Section 1848(i)(2) of the Social Security Act [subsec. (i)(2) of this section], as added by the amendment made by paragraph (1), shall apply to services furnished in 1991 in the same manner as it applies to services furnished after 1991. In applying the previous sentence, the prevailing charge shall be substituted for the fee schedule amount. In applying section 1848(g)(2)(D) of the Social Security Act for services of an assistant-at-surgery furnished during 1991, the recognized payment amount shall not exceed the maximum amount specified under section 1848(i)(2)(A) of such Act (as applied under this paragraph in such year).''

Section 4107(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(d)(1), Oct. 31, 1994, 108 Stat. 4415, provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply with respect to services furnished on or after January 1, 1992.''

Section 4109(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1992. In applying section 1848(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section] (in computing the initial budget-neutral conversion factor for 1991), the Secretary shall compute such factor assuming that section 1848(b)(3) of such Act (as added by the amendment made by subsection (a)) had applied to physicians' services furnished during 1991.''

TRANSFER OF FUNCTIONS

Physician Payment Review Commission (PPRC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 4022(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395b–6 of this title. Section 4022(c)(2), (3) further provided that MedPAC was to be responsible for preparation and submission of reports required by law to be submitted by PPRC, and that, for that purpose, any reference in law to PPRC was to be deemed, after the appointment of MedPAC, to refer to MedPAC.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 8 on page 94 identifies a reporting provision which, as subsequently amended, is contained in subsec. (g)(6)(B) of this section and in which item 9 on page 94 identifies a reporting provision which is contained in subsec. (g)(7)(B) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TREATMENT OF OTHER SERVICES CURRENTLY IN THE NONPHYSICIAN WORK POOL

Pub. L. 108–173, title III, § 303(a)(2), Dec. 8, 2003, 117 Stat. 2236, provided that: ''The Secretary [of Health and Human Services] shall make adjustments to the nonphysician work pool methodology (as such term is used in the final rule promulgated by the Secretary in the Federal Register on December 31, 2002 (67 Fed. Reg. 251)), for the determination of practice expense relative value units under the physician fee schedule under section 1848(c)(2)(C)(ii) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)(C)(ii)), so that the practice expense relative value units for services determined under such methodology are not affected relative to the practice expense relative value units of services not determined under such methodology, as a result of the amendments made by paragraph (1) [amending this section].''

PAYMENT FOR MULTIPLE CHEMOTHERAPY AGENTS FURNISHED ON A SINGLE DAY THROUGH THE PUSH TECHNIQUE

Pub. L. 108–173, title III, § 303(a)(3), Dec. 8, 2003, 117 Stat. 2236, provided that:

''(A) REVIEW OF POLICY.—The Secretary [of Health and Human Services] shall review the policy, as in effect on October 1, 2003, with respect to payment under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for the administration of more than 1 drug or biological to an individual on a single day through the push technique.

''(B) MODIFICATION OF POLICY.—After conducting the review under subparagraph (A), the Secretary shall modify such payment policy as the Secretary determines to be appropriate.

''(C) EXEMPTION FROM BUDGET NEUTRALITY UNDER PHYSICIAN FEE SCHEDULE.—If the Secretary modifies such payment policy pursuant to subparagraph (B), any increased expenditures under title XVIII of the Social Security Act [this subchapter] resulting from such modification shall be treated as additional expenditures attributable to subparagraph (H) of section 1848(c)(2) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)), as added by paragraph (1)(B), for purposes of applying the exemption to budget neutrality under subparagraph (B)(iv) of such section, as added by paragraph (1)(A).''

TRANSITIONAL ADJUSTMENT

Pub. L. 108–173, title III, §303(a)(4), Dec. 8, 2003, 117 Stat. 2237, provided that:

''(A) IN GENERAL.—In order to provide for a transition during 2004 and 2005 to the payment system established under the amendments made by this section [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395*l*, 1395u, 1395x, 1395y, and 1396r–8 of this title, and repealing provisions set out as a note under section 1395u of this title], in the case of physicians' services consisting of drug administration services described in subparagraph (H)(iv) of section 1848(c)(2) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)), as added by paragraph (1)(B), furnished on or after January 1, 2004, and before January 1, 2006, in addition to the amount determined under the fee schedule under section 1848(b) of such Act (42 U.S.C. 1395w–4(b)) there also shall be paid to the physician from the Federal Supplementary Medical Insurance Trust Fund an amount equal to the applicable percentage specified in subparagraph (B) of such fee schedule amount for the services so determined.

''(B) APPLICABLE PERCENTAGE.—The applicable percentage specified in this subparagraph for services furnished—

''(i) during 2004, is 32 percent; and

''(ii) during 2005, is 3 percent.''

MEDPAC REVIEW AND REPORTS; SECRETARIAL RESPONSE

Pub. L. 108–173, title III, §303(a)(5), Dec. 8, 2003, 117 Stat. 2237, provided that:

''(A) REVIEW.—The Medicare Payment Advisory Commission shall review the payment changes made under this section [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395*l*, 1395u, 1395x, 1395y, and 1396r–8 of this title, enacting provisions set out as notes under this section and sections 1395u, 1395w–3a, and 1395w–3b of this title, and repealing provisions set out as a note under section 1395u of this title] insofar as they affect payment under part B of title XVIII of the Social Security Act [this part]—

''(i) for items and services furnished by oncologists; and

''(ii) for drug administration services furnished by other specialists.

''(B) OTHER MATTERS STUDIED.—In conducting the review under subparagraph (A), the Commission shall also review such changes as they affect—

''(i) the quality of care furnished to individuals enrolled under part B and the satisfaction of such individuals with that care;

''(ii) the adequacy of reimbursement as applied in, and the availability in, different geographic areas and to different physician practice sizes; and

''(iii) the impact on physician practices.

''(C) REPORTS.—The Commission shall submit to the Secretary [of Health and Human Services] and Congress—

''(i) not later than January 1, 2006, a report on the review conducted under subparagraph (A)(i); and

''(ii) not later than January 1, 2007, a report on the review conducted under subparagraph (A)(ii).

Each such report may include such recommendations regarding further adjustments in such payments as the Commission deems appropriate.

''(D) SECRETARIAL RESPONSE.—As part of the rulemaking with respect to payment for physicians services under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for 2007, the Secretary may make appropriate adjustments to payment for items and services described in subparagraph (A)(i), taking into account the report submitted under such subparagraph (C)(i).''

MULTIPLE CHEMOTHERAPY AGENTS, OTHER SERVICES CURRENTLY ON THE NON-PHYSICIAN WORK POOL, AND TRANSITIONAL ADJUSTMENT

Pub. L. 108–173, title III, §303(g)(3), Dec. 8, 2003, 117 Stat. 2253, provided that: ''There shall be no administrative or judicial review under section 1869 [probably means section 1869 of the Social Security Act, which is classified to section 1395ff of this title], section 1878 [probably means section 1878 of the Social Security Act, which is classified to section 1395*oo* of this title], or otherwise, of determinations of payment amounts, methods, or adjustments under paragraphs (2) through (4) of subsection (a) [enacting provisions set out as notes under this section].''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

GAO STUDY OF GEOGRAPHIC DIFFERENCES IN PAYMENTS FOR PHYSICIANS' SERVICES

Pub. L. 108–173, title IV, §413(c), Dec. 8, 2003, 117 Stat. 2277, provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study of differences in payment amounts under the physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for physicians' services in different geographic areas. Such study shall include—

''(A) an assessment of the validity of the geographic adjustment factors used for each component of the fee schedule;

''(B) an evaluation of the measures used for such adjustment, including the frequency of revisions;

''(C) an evaluation of the methods used to determine professional liability insurance costs used in computing the malpractice component, including a review of increases in professional liability insurance premiums and variation in such increases by State and physician specialty and methods used to update the geographic cost of practice index and relative weights for the malpractice component; and

''(D) an evaluation of the effect of the adjustment to the physician work geographic index under section 1848(e)(1)(E) of the Social Security Act [subsection (e)(1)(E) of this section], as added by section 412, on

physician location and retention in areas affected by such adjustment, taking into account—

''(i) differences in recruitment costs and retention rates for physicians, including specialists, between large urban areas and other areas; and

''(ii) the mobility of physicians, including specialists, over the last decade.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1). The report shall include recommendations regarding the use of more current data in computing geographic cost of practice indices as well as the use of data directly representative of physicians' costs (rather than proxy measures of such costs).''

AMENDMENT BY PUB. L. 108–173 NOT TREATED AS CHANGE IN LAW AND REGULATION IN SUSTAINABLE GROWTH RATE DETERMINATION

Pub. L. 108–173, title VI, § 601(a)(3), Dec. 8, 2003, 117 Stat. 2301, provided that: ''The amendments made by this subsection [amending this section] shall not be treated as a change in law for purposes of applying section 1848(f)(2)(D) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)(D)).''

COLLABORATIVE DEMONSTRATION-BASED REVIEW OF PHYSICIAN PRACTICE EXPENSE GEOGRAPHIC ADJUSTMENT DATA

Pub. L. 108–173, title VI, § 605, Dec. 8, 2003, 117 Stat. 2302, provided that:

''(a) IN GENERAL.—Not later than January 1, 2005, the Secretary [of Health and Human Services] shall, in collaboration with State and other appropriate organizations representing physicians, and other appropriate persons, review and consider alternative data sources than those currently used in establishing the geographic index for the practice expense component under the medicare physician fee schedule under section 1848(e)(1)(A)(i) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)(A)(i)).

''(b) SITES.—The Secretary shall select two physician payment localities in which to carry out subsection (a). One locality shall include rural areas and at least one locality shall be a statewide locality that includes both urban and rural areas.

''(c) REPORT AND RECOMMENDATIONS.—

''(1) REPORT.—Not later than January 1, 2006, the Secretary shall submit to Congress a report on the review and consideration conducted under subsection (a). Such report shall include information on the alternative developed data sources considered by the Secretary under subsection (a), including the accuracy and validity of the data as measures of the elements of the geographic index for practice expenses under the medicare physician fee schedule as well as the feasibility of using such alternative data nationwide in lieu of current proxy data used in such index, and the estimated impacts of using such alternative data.

''(2) RECOMMENDATIONS.—The report submitted under paragraph (1) shall contain recommendations on which data sources reviewed and considered under subsection (a) are appropriate for use in calculating the geographic index for practice expenses under the medicare physician fee schedule.''

MEDPAC REPORT ON PAYMENT FOR PHYSICIANS' SERVICES

Pub. L. 108–173, title VI, § 606, Dec. 8, 2003, 117 Stat. 2302, provided that:

''(a) PRACTICE EXPENSE COMPONENT.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Medicare Payment Advisory Commission shall submit to Congress a report on the effect of refinements to the practice expense component of payments for physicians' services, after the transition to a full resource-based payment system in 2002, under section 1848 of the Social Security Act (42 U.S.C. 1395w–4). Such report shall examine the following matters by physician specialty:

''(1) The effect of such refinements on payment for physicians' services.

''(2) The interaction of the practice expense component with other components of and adjustments to payment for physicians' services under such section.

''(3) The appropriateness of the amount of compensation by reason of such refinements.

''(4) The effect of such refinements on access to care by medicare beneficiaries to physicians' services.

''(5) The effect of such refinements on physician participation under the medicare program.

''(b) VOLUME OF PHYSICIANS' SERVICES.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Medicare Payment Advisory Commission shall submit to Congress a report on the extent to which increases in the volume of physicians' services under part B [this part] of the medicare program are a result of care that improves the health and well-being of medicare beneficiaries. The study shall include the following:

''(1) An analysis of recent and historic growth in the components that the Secretary [of Health and Human Services] includes under the sustainable growth rate (under section 1848(f) of the Social Security Act (42 U.S.C. 1395w–4(f))).

''(2) An examination of the relative growth of volume in physicians' services between medicare beneficiaries and other populations.

''(3) An analysis of the degree to which new technology, including coverage determinations of the Centers for Medicare & Medicaid Services, has affected the volume of physicians' services.

''(4) An examination of the impact on volume of demographic changes.

''(5) An examination of shifts in the site of service or services that influence the number and intensity of services furnished in physicians' offices and the extent to which changes in reimbursement rates to other providers have effected these changes.

''(6) An evaluation of the extent to which the Centers for Medicare & Medicaid Services takes into account the impact of law and regulations on the sustainable growth rate.''

MEDPAC STUDY OF PAYMENT FOR CARDIO-THORACIC SURGEONS

Pub. L. 108–173, title VI, § 644, Dec. 8, 2003, 117 Stat. 2323, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission (in this section referred to as the 'Commission') shall conduct a study on the practice expense relative values established by the Secretary of Health and Human Services under the medicare physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for physicians in the specialties of thoracic and cardiac surgery to determine whether such values adequately take into account the attendant costs that such physicians incur in providing clinical staff for patient care in hospitals.

''(b) REPORT.—Not later than January 1, 2005, the Commission shall submit to Congress a report on the study conducted under subsection (a) together with recommendations for such legislation or administrative action as the Commission determines to be appropriate.''

REPORT ON PHYSICIAN COMPENSATION

Pub. L. 108–173, title IX, § 953(a)(2), Dec. 8, 2003, 117 Stat. 2428, provided that: ''Not later than 12 months after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General shall submit to Congress a report on all aspects of physician compensation for services furnished under title XVIII of the Social Security Act [this subchapter], and how those aspects interact and the effect on appropriate compensation for physician services. Such report shall review alternatives

for the physician fee schedule under section 1848 of such title (42 U.S.C. 1395w–4).''

TREATMENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES UNDER MEDICARE

Pub. L. 106–554, §1(a)(6) [title V, §542], Dec. 21, 2000, 114 Stat. 2763, 2763A–550, as amended by Pub. L. 108–173, title VII, §732, Dec. 8, 2003, 117 Stat. 2352, provided that:

''(a) IN GENERAL.—When an independent laboratory furnishes the technical component of a physician pathology service to a fee-for-service medicare beneficiary who is an inpatient or outpatient of a covered hospital, the Secretary of Health and Human Services shall treat such component as a service for which payment shall be made to the laboratory under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) and not as an inpatient hospital service for which payment is made to the hospital under section 1886(d) of such Act (42 U.S.C. 1395ww(d)) or as an outpatient hospital service for which payment is made to the hospital under section 1833(t) of such Act (42 U.S.C. 1395*l*(t)).

''(b) DEFINITIONS.—For purposes of this section:

''(1) COVERED HOSPITAL.—The term 'covered hospital' means, with respect to an inpatient or an outpatient, a hospital that had an arrangement with an independent laboratory that was in effect as of July 22, 1999, under which a laboratory furnished the technical component of physician pathology services to fee-for-service medicare beneficiaries who were hospital inpatients or outpatients, respectively, and submitted claims for payment for such component to a medicare carrier (that has a contract with the Secretary under section 1842 of the Social Security Act, 42 U.S.C. 1395u) and not to such hospital.

''(2) FEE-FOR-SERVICE MEDICARE BENEFICIARY.—The term 'fee-for-service medicare beneficiary' means an individual who—

''(A) is entitled to benefits under part A, or enrolled under part B, or both, of such title [part A or part B of this subchapter]; and

''(B) is not enrolled in any of the following:

''(i) A Medicare+Choice plan under part C of such title [part C of this subchapter].

''(ii) A plan offered by an eligible organization under section 1876 of such Act (42 U.S.C. 1395mm).

''(iii) A program of all-inclusive care for the elderly (PACE) under section 1894 of such Act (42 U.S.C. 1395eee).

''(iv) A social health maintenance organization (SHMO) demonstration project established under section 4018(b) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) [101 Stat. 1330–65].

''(c) EFFECTIVE DATE.—This section shall apply to services furnished during the 2-year period beginning on January 1, 2001, and for services furnished during 2005 and 2006.

''(d) GAO REPORT.—

''(1) STUDY.—The Comptroller General of the United States shall conduct a study of the effects of the previous provisions of this section on hospitals and laboratories and access of fee-for-service medicare beneficiaries to the technical component of physician pathology services.

''(2) REPORT.—Not later than April 1, 2002, the Comptroller General shall submit to Congress a report on such study. The report shall include recommendations about whether such provisions should be extended after the end of the period specified in subsection (c) for either or both inpatient and outpatient hospital services, and whether the provisions should be extended to other hospitals.''

ONE-TIME PUBLICATION OF INFORMATION ON TRANSITION

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §211(a)(2)(C)], Nov. 29, 1999, 113 Stat. 1536, 1501A–347, provided that: ''The Secretary of Health and Human Services shall cause to have published in the Federal Register, not later than 90 days after the date of the enactment of this section [Nov. 29, 1999], the Secretary's determination, based upon the best available data, of—

''(i) the allowed expenditures under subclauses (I) and (II) of subsection (d)(4)(C)(ii) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4), as added by subsection (a)(1)(B), for the 9-month period beginning on April 1, 1999, and for 1999;

''(ii) the estimated actual expenditures described in subsection (d) of such section for 1999; and

''(iii) the sustainable growth rate under subsection (f) of such section for 2000.''

USE OF DATA COLLECTED BY ORGANIZATIONS AND ENTITIES IN DETERMINING PRACTICE EXPENSE RELATIVE VALUES

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §212], Nov. 29, 1999, 113 Stat. 1536, 1501A–350, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall establish by regulation (after notice and opportunity for public comment) a process (including data collection standards) under which the Secretary will accept for use and will use, to the maximum extent practicable and consistent with sound data practices, data collected or developed by entities and organizations (other than the Department of Health and Human Services) to supplement the data normally collected by that Department in determining the practice expense component under section 1848(c)(2)(C)(ii) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)(C)(ii)) for purposes of determining relative values for payment for physicians' services under the fee schedule under section 1848 of such Act (42 U.S.C. 1395w–4). The Secretary shall first promulgate such regulation on an interim final basis in a manner that permits the submission and use of data in the computation of practice expense relative value units for payment rates for 2001.

''(b) PUBLICATION OF INFORMATION.—The Secretary shall include, in the publication of the estimated and final updates under section 1848(c) of such Act (42 U.S.C. 1395w–4(c)) for payments for 2001 and for 2002, a description of the process established under subsection (a) for the use of external data in making adjustments in relative value units and the extent to which the Secretary has used such external data in making such adjustments for each such year, particularly in cases in which the data otherwise used are inadequate because such data are not based upon a large enough sample size to be statistically reliable.''

CONSULTATION WITH ORGANIZATIONS IN ESTABLISHING PAYMENT AMOUNTS FOR SERVICES PROVIDED BY PHYSICIANS

Section 4105(a)(3) of Pub. L. 105–33 provided that: ''In establishing payment amounts under section 1848 of the Social Security Act [this section] for physicians' services consisting of diabetes outpatient self-management training services, the Secretary of Health and Human Services shall consult with appropriate organizations, including such organizations representing individuals or medicare beneficiaries with diabetes.''

REQUIREMENTS FOR DEVELOPING NEW RESOURCE-BASED PRACTICE EXPENSE RELATIVE VALUE UNITS

Section 4505(d) of Pub. L. 105–33 provided that:

''(1) DEVELOPMENT.—For purposes of section 1848(c)(2)(C)(ii) of the Social Security Act [subsec. (c)(2)(C)(ii) of this section], the Secretary of Health and Human Services shall develop new resource-based relative value units. In developing such units the Secretary shall—

''(A) utilize, to the maximum extent practicable, generally accepted cost accounting principles which (i) recognize all staff, equipment, supplies, and expenses, not just those which can be tied to specific procedures, and (ii) use actual data on equipment utilization and other key assumptions;

''(B) consult with organizations representing physicians regarding methodology and data to be used; and

''(C) develop a refinement process to be used during each of the 4 years of the transition period.

''(2) REPORT.—The Secretary shall transmit a report by March 1, 1998, on the development of resource-based relative value units under paragraph (1) to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate. The report shall include a presentation of data to be used in developing the value units and an explanation of the methodology.

''(3) NOTICE OF PROPOSED RULEMAKING.—The Secretary shall publish a notice of proposed rulemaking with the new resource-based relative value units on or before May 1, 1998, and shall allow for a 90-day public comment period.

''(4) ITEMS INCLUDED.—The new proposed rule shall consider the following:

''(A) Impact projections which compare new proposed payment amounts on data on actual physician practice expenses.

''(B) Impact projections for hospital-based and other specialties, geographic payment localities, and urban versus rural localities.''

APPLICATION OF CERTAIN BUDGET NEUTRALITY PROVISIONS

Section 4505(f)(2) of Pub. L. 105–33 provided that: ''In implementing the amendment made by paragraph (1)(A)(ii) [amending this section], the provisions of clauses (ii)(II) and (iii) of section 1848(c)(2)(B) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)(B)) shall apply in the same manner as they apply to adjustments under clause (ii)(I) of such section.''

DEVELOPMENT OF RESOURCE-BASED METHODOLOGY FOR PRACTICE EXPENSES

Section 121(a) of Pub. L. 103–432 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a methodology for implementing in 1998 a resource-based system for determining practice expense relative value units for each physicians' service. The methodology utilized shall recognize the staff, equipment, and supplies used in the provision of various medical and surgical services in various settings.

''(2) REPORT.—The Secretary shall transmit a report by June 30, 1996, on the methodology developed under paragraph (1) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate. The report shall include a presentation of data utilized in developing the methodology and an explanation of the methodology.''

APPLICATION OF SUBSECTION (c)(2)(B)(ii)(II), (iii)

Section 121(b)(3) of Pub. L. 103–432 provided that: ''In implementing the amendment made by paragraph (1)(C) [amending this section], the provisions of clauses (ii)(II) and (iii) of section 1848(c)(2)(B) of the Social Security Act [subsec. (c)(2)(B)(ii)(II), (iii) of this section] shall apply in the same manner as they apply to adjustments under clause (ii)(I) of such section.''

REPORT ON REVIEW PROCESS

Section 122(c) of Pub. L. 103–432 provided that not later than 1 year after Oct. 31, 1994, Secretary of Health and Human Services was to study and report to Congress on data necessary to review and revise indices established under subsec. (e)(1)(A) of this section, any limitations on availability of data necessary to review and revise such indices at least every three years, ways of addressing such limitations, with particular attention to the development of alternative data sources for input components for which current index values are based on data collected less frequently than every three years, and costs of developing more accurate and timely data.

RELATIVE VALUE FOR PEDIATRIC SERVICES

Section 124(a) of Pub. L. 103–432 provided that: ''The Secretary of Health and Human Services shall fully develop, by not later than July 1, 1995, relative values for the full range of pediatric physicians' services which are consistent with the relative values developed for other physicians' services under section 1848(c) of the Social Security Act [subsec. (c) of this section]. In developing such values, the Secretary shall conduct such refinements as may be necessary to produce appropriate estimates for such relative values.''

BUDGET NEUTRALITY ADJUSTMENT

For provisions requiring reduction of relative values established under subsec. (c) of this section and amounts determined under subsec. (a)(2)(B)(ii)(I) of this section for 1994 (to be applied for that year and subsequent years) in order to assure that the amendments to this section and section 1395u of this title by section 13515(a) of Pub. L. 103–66 will not result in expenditures under this part that exceed the amount of such expenditures that would have been made if such amendments had not been made, see section 13515(b) of Pub. L. 103–66, set out as a note under section 1395u of this title.

Section 13518(b) of Pub. L. 103–66 provided that: ''Notwithstanding any other provision of law, the Secretary of Health and Human Services shall implement the amendment made by subsection (a) [amending this section] in a manner to assure that such amendment will result in expenditures under part B of title XVIII of the Social Security Act [this part] in 1995 for services described in such amendment that shall be equal to the amount of expenditures for such services that would have been made if such amendment had not been made.''

ANCILLARY POLICIES; ADJUSTMENT FOR INDEPENDENT LABORATORIES FURNISHING PHYSICIAN PATHOLOGY SERVICES

Section 4104(c) of Pub. L. 101–508 provided: ''The Secretary of Health and Human Services, in establishing ancillary policies under section 1848(c)(3) of the Social Security Act [subsec. (c)(3) of this section], shall consider an appropriate adjustment to reflect the technical component of furnishing physician pathology services through a laboratory that is independent of a hospital and separate from an attending or consulting physician's office.''

COMPUTATION OF CONVERSION FACTOR FOR 1992

Section 4105(b)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(g)(2)(A)(i), Oct. 31, 1994, 108 Stat. 4415, provided that: ''In computing the conversion factor under section 1848(d)(1)(B) of the Social Security Act for 1992 [subsec. (d)(1)(B) of this section], the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B of title XVIII of such Act [this part] for physicians' services in 1991 assuming that the amendment made by this subsection [amending section 1395u of this title] did not apply.''

Section 4106(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(g)(3), Oct. 31, 1994, 108 Stat. 4416, provided that: ''In computing the conversion factor under section 1848(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section] for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B [this part] for physicians' services in 1991 assuming that the amendments made by this section [amending this section, section 1395u of this title, and provisions set out as a note under section 1395u of this title] (notwithstanding subsection (d) [set out as an Effective Date of 1990 Amendment note under section 1395u of this title]) applied to all services furnished during such year.''

PUBLICATION OF PERFORMANCE STANDARD RATES

Section 4105(d) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(g)(2)(C), Oct. 31, 1994, 108 Stat. 4416, provided that: ''Not later than 45 days after the

date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services, based on the most recent data available, shall estimate and publish in the Federal Register the performance standard rates of increase specified in section 1848(f)(2)(C) of the Social Security Act [subsec. (f)(2)(C) of this section] for fiscal year 1991.''

STUDY OF REGIONAL VARIATIONS IN IMPACT OF MEDICARE PHYSICIAN PAYMENT REFORM

Section 4115 of Pub. L. 101–508 provided that:

''(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of—

''(1) factors that may explain geographic variations in Medicare reasonable charges for physicians' services that are not attributable to variations in physician practice costs (including the supply of physicians in an area and area variations in the mix of services furnished);

''(2) the extent to which the geographic practice cost indices applied under the fee schedule established under section 1848 of the Social Security Act [this section] accurately reflect variations in practice costs and malpractice costs (and alternative sources of information upon which to base such indices);

''(3) the impact of the transition to a national, resource-based fee schedule for physicians' services under Medicare on access to physicians' services in areas that experience a disproportionately large reduction in payments for physicians' services under the fee schedule by reason of such variations; and

''(4) appropriate adjustments or modifications in the transition to, or manner of determining payments under, the fee schedule established under section 1848 of the Social Security Act, to compensate for such variations and ensure continued access to physicians' services for Medicare beneficiaries in such areas.

''(b) REPORT.—By not later than July 1, 1992, the Secretary shall submit to Congress a report on the study conducted under subsection (a).''

STATEWIDE FEE SCHEDULE AREAS FOR PHYSICIANS' SERVICES

Section 4117 of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §126(f), Oct. 31, 1994, 108 Stat. 4415, provided that: ''Notwithstanding section 1848(j)(2) of the Social Security Act (42 U.S.C. 1395w–4(j)(2)), in the case of the States of Nebraska and Oklahoma the Secretary of Health and Human Services (Secretary) shall treat the State as a single fee schedule area for purposes of determining—

''(1) the adjusted historical payment basis (as defined in section 1848(a)(2)(D) of such Act (42 U.S.C. 1395w–4(a)(2)(D))), and

''(2) the fee schedule amount (as referred to in section 1848(a) (42 U.S.C. 1395w–4(a)) of such Act),

for physicians' services (as defined in section 1848(j)(3) of such Act (42 U.S.C. 1395w–4(j)(3))) furnished on or after January 1, 1992.''

STUDIES

Pub. L. 101–239, title VI, §6102(d), Dec. 19, 1989, 103 Stat. 2185, as amended by Pub. L. 103–432, title I, §126(h)(1), Oct. 31, 1994, 108 Stat. 4416; Pub. L. 105–362, title VI, §601(b)(5), Nov. 10, 1998, 112 Stat. 3286, provided for various studies and reports as follows: (1) directed Comptroller General to conduct study of alternative payment methodology for malpractice component for physicians' services, and to submit report to Congress by not later than Apr. 1, 1991; (2) directed Secretary of Health and Human Services to conduct study of how payments under this section may affect payments to eligible organizations with risk-sharing contracts under section 1395mm of this title, and to submit report to Congress by not later than Apr. 1, 1990; (3) directed Secretary to conduct study of volume performance standard rates of increase for services furnished by geography, specialty, and type of service, and to submit report with appropriate recommendations to Congress by not later than July 1, 1990; (4) directed Physician Payment Review Commission to conduct study of payment for practice and malpractice expenses, including appropriate methods for allocating malpractice expenses to particular procedures which could be incorporated into the determination of relative values for such procedures using a consensus panel and other appropriate methodologies, and to submit report and recommendations to Congress by not later than July 1, 1991; (5) directed Physician Payment Review Commission to conduct study of feasibility and desirability of using Metropolitan Statistical Areas or other payment areas for purposes of payment for physicians' services under this part, and to submit report to Congress by not later than July 1, 1991; (6) directed Physician Payment Review Commission to conduct study of payment for nonphysician providers of medicare services, including physician assistants, clinical psychologists, nurse midwives, and other health practitioners whose services can be billed under medicare program on a fee-for-service basis, and to submit report to Congress by not later than July 1, 1991; (7) directed Physician Payment Review Commission to conduct study of physician fees under State medicaid programs established under subchapter XIX of this chapter, and to submit report with recommendations to Congress by no later than July 1, 1991; and (8) directed Comptroller General to conduct study of effect of anti-trust laws on ability of physicians to act in groups to educate and discipline peers of such physicians in order to reduce and eliminate ineffective practice patterns and inappropriate utilization, and to submit report to Congress by no later than July 1, 1991.

DISTRIBUTION OF MODEL FEE SCHEDULE

Section 6102(e)(11) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §4118(f)(2)(E), Nov. 5, 1990, 104 Stat. 1388–70, provided that: ''By September 1, 1990, the Secretary of Health and Human Services shall develop a Model Fee Schedule, using the methodology set forth in section 1848 of the Social Security Act [this section]. The Model Fee Schedule shall include as many services as the Secretary of Health and Human Services concludes can be assigned valid relative values. The Secretary of Health and Human Services shall submit the Model Fee Schedule to the appropriate committees of Congress and make it generally available to the public.''

PART C—MEDICARE+CHOICE PROGRAM

PRIOR PROVISIONS

A prior part C of this subchapter, consisting of section 1395x et seq., was redesignated part E of this subchapter.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

§ 1395w–21. Eligibility, election, and enrollment

(a) Choice of medicare benefits through Medicare+Choice plans

(1) In general

Subject to the provisions of this section, each Medicare+Choice eligible individual (as defined in paragraph (3)) is entitled to elect to receive benefits (other than qualified prescription drug benefits) under this subchapter—

(A) through the original medicare fee-for-service program under parts A and B of this subchapter, or

(B) through enrollment in a Medicare+Choice plan under this part,

and may elect qualified prescription drug coverage in accordance with section 1395w–101 of this title.

(2) Types of Medicare+Choice plans that may be available

A Medicare+Choice plan may be any of the following types of plans of health insurance:

(A) Coordinated care plans (including regional plans)

(i) In general

Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without point of service options), plans offered by provider-sponsored organizations (as defined in section 1395w–25(d) of this title), and regional or local preferred provider organization plans (including MA regional plans).

(ii) Specialized MA plans for special needs individuals

Specialized MA plans for special needs individuals (as defined in section 1395w–28(b)(6) of this title) may be any type of coordinated care plan.

(B) Combination of MSA plan and contributions to Medicare+Choice MSA

An MSA plan, as defined in section 1395w–28(b)(3) of this title, and a contribution into a Medicare+Choice medical savings account (MSA).

(C) Private fee-for-service plans

A Medicare+Choice private fee-for-service plan, as defined in section 1395w–28(b)(2) of this title.

(3) Medicare+Choice eligible individual

(A) In general

In this subchapter, subject to subparagraph (B), the term ''Medicare+Choice eligible individual'' means an individual who is entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter.

(B) Special rule for end-stage renal disease

Such term shall not include an individual medically determined to have end-stage renal disease, except that—

(i) an individual who develops end-stage renal disease while enrolled in a Medicare+Choice plan may continue to be enrolled in that plan; and

(ii) in the case of such an individual who is enrolled in a Medicare+Choice plan under clause (i) (or subsequently under this clause), if the enrollment is discontinued under circumstances described in subsection (e)(4)(A) of this section, then the individual will be treated as a ''Medicare+Choice eligible individual'' for purposes of electing to continue enrollment in another Medicare+Choice plan.

(b) Special rules

(1) Residence requirement

(A) In general

Except as the Secretary may otherwise provide and except as provided in subparagraph (C), an individual is eligible to elect a Medicare+Choice plan offered by a Medicare+Choice organization only if the plan serves the geographic area in which the individual resides.

(B) Continuation of enrollment permitted

Pursuant to rules specified by the Secretary, the Secretary shall provide that an MA local plan may offer to all individuals residing in a geographic area the option to continue enrollment in the plan, notwithstanding that the individual no longer resides in the service area of the plan, so long as the plan provides that individuals exercising this option have, as part of the benefits under the original medicare fee-for-service program option, reasonable access within that geographic area to the full range of basic benefits, subject to reasonable cost sharing liability in obtaining such benefits.

(C) Continuation of enrollment permitted where service changed

Notwithstanding subparagraph (A) and in addition to subparagraph (B), if a Medicare+Choice organization eliminates from its service area a Medicare+Choice payment area that was previously within its service area, the organization may elect to offer individuals residing in all or portions of the affected area who would otherwise be ineligible to continue enrollment the option to continue enrollment in an MA local plan it offers so long as—

(i) the enrollee agrees to receive the full range of basic benefits (excluding emergency and urgently needed care) exclusively at facilities designated by the organization within the plan service area; and

(ii) there is no other Medicare+Choice plan offered in the area in which the enrollee resides at the time of the organization's election.

(2) Special rule for certain individuals covered under FEHBP or eligible for veterans or military health benefits

(A) FEHBP

An individual who is enrolled in a health benefit plan under chapter 89 of title 5 is not eligible to enroll in an MSA plan until such time as the Director of the Office of Management and Budget certifies to the Secretary that the Office of Personnel Management has adopted policies which will ensure that the enrollment of such individuals in such plans will not result in increased expenditures for the Federal Government for health benefit plans under such chapter.

(B) VA and DOD

The Secretary may apply rules similar to the rules described in subparagraph (A) in the case of individuals who are eligible for health care benefits under chapter 55 of title 10 or under chapter 17 of title 38.

(3) Limitation on eligibility of qualified medicare beneficiaries and other medicaid beneficiaries to enroll in an MSA plan

An individual who is a qualified medicare beneficiary (as defined in section 1396d(p)(1) of this title), a qualified disabled and working individual (described in section 1396d(s) of this title), an individual described in section 1396a(a)(10)(E)(iii) of this title, or otherwise entitled to medicare cost-sharing under a State plan under subchapter XIX of this chapter is not eligible to enroll in an MSA plan.

(4) Coverage under MSA plans

(A) In general

Under rules established by the Secretary, an individual is not eligible to enroll (or continue enrollment) in an MSA plan for a year unless the individual provides assurances satisfactory to the Secretary that the individual will reside in the United States for at least 183 days during the year.

(B) Evaluation

The Secretary shall regularly evaluate the impact of permitting enrollment in MSA plans under this part on selection (including adverse selection), use of preventive care, access to care, and the financial status of the Trust Funds under this subchapter.

(C) Reports

The Secretary shall submit to Congress periodic reports on the numbers of individuals enrolled in such plans and on the evaluation being conducted under subparagraph (B).

(c) Process for exercising choice

(1) In general

The Secretary shall establish a process through which elections described in subsection (a) of this section are made and changed, including the form and manner in which such elections are made and changed. Such elections shall be made or changed only during coverage election periods specified under subsection (e) of this section and shall become effective as provided in subsection (f) of this section.

(2) Coordination through Medicare+Choice organizations

(A) Enrollment

Such process shall permit an individual who wishes to elect a Medicare+Choice plan offered by a Medicare+Choice organization to make such election through the filing of an appropriate election form with the organization.

(B) Disenrollment

Such process shall permit an individual, who has elected a Medicare+Choice plan offered by a Medicare+Choice organization and who wishes to terminate such election, to terminate such election through the filing of an appropriate election form with the organization.

(3) Default

(A) Initial election

(i) In general

Subject to clause (ii), an individual who fails to make an election during an initial election period under subsection (e)(1) of this section is deemed to have chosen the original medicare fee-for-service program option.

(ii) Seamless continuation of coverage

The Secretary may establish procedures under which an individual who is enrolled in a health plan (other than Medicare+Choice plan) offered by a Medicare+Choice organization at the time of the initial election period and who fails to elect to receive coverage other than through the organization is deemed to have elected the Medicare+Choice plan offered by the organization (or, if the organization offers more than one such plan, such plan or plans as the Secretary identifies under such procedures).

(B) Continuing periods

An individual who has made (or is deemed to have made) an election under this section is considered to have continued to make such election until such time as—

(i) the individual changes the election under this section, or

(ii) the Medicare+Choice plan with respect to which such election is in effect is discontinued or, subject to subsection (b)(1)(B) of this section, no longer serves the area in which the individual resides.

(d) Providing information to promote informed choice

(1) In general

The Secretary shall provide for activities under this subsection to broadly disseminate information to medicare beneficiaries (and prospective medicare beneficiaries) on the coverage options provided under this section in order to promote an active, informed selection among such options.

(2) Provision of notice

(A) Open season notification

At least 15 days before the beginning of each annual, coordinated election period (as defined in subsection (e)(3)(B) of this section), the Secretary shall mail to each Medicare+Choice eligible individual residing in an area the following:

(i) General information

The general information described in paragraph (3).

(ii) List of plans and comparison of plan options

A list identifying the Medicare+Choice plans that are (or will be) available to residents of the area and information described in paragraph (4) concerning such plans. Such information shall be presented in a comparative form.

(iii) Additional information

Any other information that the Secretary determines will assist the indi-

vidual in making the election under this section.

The mailing of such information shall be coordinated, to the extent practicable, with the mailing of any annual notice under section 1395b–2 of this title.

(B) Notification to newly eligible Medicare+Choice eligible individuals

To the extent practicable, the Secretary shall, not later than 30 days before the beginning of the initial Medicare+Choice enrollment period for an individual described in subsection (e)(1) of this section, mail to the individual the information described in subparagraph (A).

(C) Form

The information disseminated under this paragraph shall be written and formatted using language that is easily understandable by medicare beneficiaries.

(D) Periodic updating

The information described in subparagraph (A) shall be updated on at least an annual basis to reflect changes in the availability of Medicare+Choice plans and the benefits and Medicare+Choice monthly basic and supplemental beneficiary premiums for such plans.

(3) General information

General information under this paragraph, with respect to coverage under this part during a year, shall include the following:

(A) Benefits under original medicare fee-for-service program option

A general description of the benefits covered under the original medicare fee-for-service program under parts A and B of this subchapter, including—

(i) covered items and services,

(ii) beneficiary cost sharing, such as deductibles, coinsurance, and copayment amounts, and

(iii) any beneficiary liability for balance billing.

(B) Election procedures

Information and instructions on how to exercise election options under this section.

(C) Rights

A general description of procedural rights (including grievance and appeals procedures) of beneficiaries under the original medicare fee-for-service program and the Medicare+Choice program and the right to be protected against discrimination based on health status-related factors under section 1395w–22(b) of this title.

(D) Information on medigap and medicare select

A general description of the benefits, enrollment rights, and other requirements applicable to medicare supplemental policies under section 1395ss of this title and provisions relating to medicare select policies described in section 1395ss(t) of this title.

(E) Potential for contract termination

The fact that a Medicare+Choice organization may terminate its contract, refuse to renew its contract, or reduce the service area included in its contract, under this part, and the effect of such a termination, nonrenewal, or service area reduction may have on individuals enrolled with the Medicare+Choice plan under this part.

(F) Catastrophic coverage and single deductible

In the case of an MA regional plan, a description of the catastrophic coverage and single deductible applicable under the plan.

(4) Information comparing plan options

Information under this paragraph, with respect to a Medicare+Choice plan for a year, shall include the following:

(A) Benefits

The benefits covered under the plan, including the following:

(i) Covered items and services beyond those provided under the original medicare fee-for-service program.

(ii) Any beneficiary cost sharing, including information on the single deductible (if applicable) under section 1395w–27a(b)(1) of this title.

(iii) Any maximum limitations on out-of-pocket expenses.

(iv) In the case of an MSA plan, differences in cost sharing, premiums, and balance billing under such a plan compared to under other Medicare+Choice plans.

(v) In the case of a Medicare+Choice private fee-for-service plan, differences in cost sharing, premiums, and balance billing under such a plan compared to under other Medicare+Choice plans.

(vi) The extent to which an enrollee may obtain benefits through out-of-network health care providers.

(vii) The extent to which an enrollee may select among in-network providers and the types of providers participating in the plan's network.

(viii) The organization's coverage of emergency and urgently needed care.

(B) Premiums

(i) In general

The monthly amount of the premium charged to an individual.

(ii) Reductions

The reduction in part B premiums, if any.

(C) Service area

The service area of the plan.

(D) Quality and performance

To the extent available, plan quality and performance indicators for the benefits under the plan (and how they compare to such indicators under the original medicare fee-for-service program under parts A and B of this subchapter in the area involved), including—

(i) disenrollment rates for medicare enrollees electing to receive benefits through the plan for the previous 2 years (exclud-

ing disenrollment due to death or moving outside the plan's service area),

(ii) information on medicare enrollee satisfaction,

(iii) information on health outcomes, and

(iv) the recent record regarding compliance of the plan with requirements of this part (as determined by the Secretary).

(E) Supplemental benefits

Supplemental health care benefits, including any reductions in cost-sharing under section 1395w–22(a)(3) of this title and the terms and conditions (including premiums) for such benefits.

(5) Maintaining a toll-free number and Internet site

The Secretary shall maintain a toll-free number for inquiries regarding Medicare+Choice options and the operation of this part in all areas in which Medicare+Choice plans are offered and an Internet site through which individuals may electronically obtain information on such options and Medicare+Choice plans.

(6) Use of non-Federal entities

The Secretary may enter into contracts with non-Federal entities to carry out activities under this subsection.

(7) Provision of information

A Medicare+Choice organization shall provide the Secretary with such information on the organization and each Medicare+Choice plan it offers as may be required for the preparation of the information referred to in paragraph (2)(A).

(e) Coverage election periods

(1) Initial choice upon eligibility to make election if Medicare+Choice plans available to individual

If, at the time an individual first becomes entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, there is one or more Medicare+Choice plans offered in the area in which the individual resides, the individual shall make the election under this section during a period specified by the Secretary such that if the individual elects a Medicare+Choice plan during the period, coverage under the plan becomes effective as of the first date on which the individual may receive such coverage. If any portion of an individual's initial enrollment period under part B of this subchapter occurs after the end of the annual, coordinated election period described in paragraph (3)(B)(iii), the initial enrollment period under this part shall further extend through the end of the individual's initial enrollment period under part B of this subchapter.

(2) Open enrollment and disenrollment opportunities

Subject to paragraph (5)—

(A) Continuous open enrollment and disenrollment through 2005

At any time during the period beginning January 1, 1998, and ending on December 31, 2005, a Medicare+Choice eligible individual may change the election under subsection (a)(1) of this section.

(B) Continuous open enrollment and disenrollment for first 6 months during 2006

(i) In general

Subject to clause (ii), subparagraph (C)(iii), and subparagraph (D), at any time during the first 6 months of 2006, or, if the individual first becomes a Medicare+Choice eligible individual during 2006, during the first 6 months during 2006 in which the individual is a Medicare+Choice eligible individual, a Medicare+Choice eligible individual may change the election under subsection (a)(1) of this section.

(ii) Limitation of one change

An individual may exercise the right under clause (i) only once. The limitation under this clause shall not apply to changes in elections effected during an annual, coordinated election period under paragraph (3) or during a special enrollment period under the first sentence of paragraph (4).

(C) Continuous open enrollment and disenrollment for first 3 months in subsequent years

(i) In general

Subject to clauses (ii) and (iii) and subparagraph (D), at any time during the first 3 months of a year after 2006, or, if the individual first becomes a Medicare+Choice eligible individual during a year after 2006, during the first 3 months of such year in which the individual is a Medicare+Choice eligible individual, a Medicare+Choice eligible individual may change the election under subsection (a)(1) of this section.

(ii) Limitation of one change during open enrollment period each year

An individual may exercise the right under clause (i) only once during the applicable 3-month period described in such clause in each year. The limitation under this clause shall not apply to changes in elections effected during an annual, coordinated election period under paragraph (3) or during a special enrollment period under paragraph (4).

(iii) Limitation on exercise of right with respect to prescription drug coverage

Effective for plan years beginning on or after January 1, 2006, in applying clause (i) (and clause (i) of subparagraph (B)) in the case of an individual who—

(I) is enrolled in an MA plan that does provide qualified prescription drug coverage, the individual may exercise the right under such clause only with respect to coverage under the original fee-for-service plan or coverage under another MA plan that does not provide such coverage and may not exercise such right to obtain coverage under an

MA–PD plan or under a prescription drug plan under part D of this subchapter; or

(II) is enrolled in an MA–PD plan, the individual may exercise the right under such clause only with respect to coverage under another MA–PD plan (and not an MA plan that does not provide qualified prescription drug coverage) or under the original fee-for-service plan and coverage under a prescription drug plan under part D of this subchapter.

(D) Continuous open enrollment for institutionalized individuals

At any time after 2005 in the case of a Medicare+Choice eligible individual who is institutionalized (as defined by the Secretary), the individual may elect under subsection (a)(1) of this section—

(i) to enroll in a Medicare+Choice plan; or

(ii) to change the Medicare+Choice plan in which the individual is enrolled.

(3) Annual, coordinated election period

(A) In general

Subject to paragraph (5), each individual who is eligible to make an election under this section may change such election during an annual, coordinated election period.

(B) Annual, coordinated election period

For purposes of this section, the term ''annual, coordinated election period'' means—

(i) with respect to a year before 2002, the month of November before such year;

(ii) with respect to 2002, 2003, 2004, and 2005, the period beginning on November 15 and ending on December 31 of the year before such year;

(iii) with respect to 2006, the period beginning on November 15, 2005, and ending on May 15, 2006; and

(iv) with respect to 2007 and succeeding years, the period beginning on November 15 and ending on December 31 of the year before such year.

(C) Medicare+Choice health information fairs

During the fall season of each year (beginning with 1999) and during the period described in subparagraph (B)(iii), in conjunction with the annual coordinated election period defined in subparagraph (B), the Secretary shall provide for a nationally coordinated educational and publicity campaign to inform Medicare+Choice eligible individuals about Medicare+Choice plans and the election process provided under this section.

(D) Special information campaigns

During November 1998 the Secretary shall provide for an educational and publicity campaign to inform Medicare+Choice eligible individuals about the availability of Medicare+Choice plans, and eligible organizations with risk-sharing contracts under section 1395mm of this title, offered in different areas and the election process provided under this section. During the period described in subparagraph (B)(iii), the Secretary shall provide for an educational and publicity campaign to inform MA eligible individuals about the availability of MA plans (including MA–PD plans) offered in different areas and the election process provided under this section.

(4) Special election periods

Effective as of January 1, 2006, an individual may discontinue an election of a Medicare+Choice plan offered by a Medicare+Choice organization other than during an annual, coordinated election period and make a new election under this section if—

(A)(i) the certification of the organization or plan under this part has been terminated, or the organization or plan has notified the individual of an impending termination of such certification; or

(ii) the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides, or has notified the individual of an impending termination or discontinuation of such plan;

(B) the individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances (specified by the Secretary, but not including termination of the individual's enrollment on the basis described in clause (i) or (ii) of subsection (g)(3)(B) of this section);

(C) the individual demonstrates (in accordance with guidelines established by the Secretary) that—

(i) the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual (including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards); or

(ii) the organization (or an agent or other entity acting on the organization's behalf) materially misrepresented the plan's provisions in marketing the plan to the individual; or

(D) the individual meets such other exceptional conditions as the Secretary may provide.

Effective as of January 1, 2006, an individual who, upon first becoming eligible for benefits under part A of this subchapter at age 65, enrolls in a Medicare+Choice plan under this part, the individual may discontinue the election of such plan, and elect coverage under the original fee-for-service plan, at any time during the 12-month period beginning on the effective date of such enrollment.

(5) Special rules for MSA plans

Notwithstanding the preceding provisions of this subsection, an individual—

(A) may elect an MSA plan only during—

(i) an initial open enrollment period described in paragraph (1), or

(ii) an annual, coordinated election period described in paragraph (3)(B);

(B) subject to subparagraph (C), may not discontinue an election of an MSA plan ex-

cept during the periods described in clause (ii) or (iii) of subparagraph (A) and under the first sentence of paragraph (4); and

(C) who elects an MSA plan during an annual, coordinated election period, and who never previously had elected such a plan, may revoke such election, in a manner determined by the Secretary, by not later than December 15 following the date of the election.

(6) Open enrollment periods

Subject to paragraph (5), a Medicare+Choice organization—

(A) shall accept elections or changes to elections during the initial enrollment periods described in paragraph (1), during the month of November 1998 and during the annual, coordinated election period under paragraph (3) for each subsequent year, and during special election periods described in the first sentence of paragraph (4); and

(B) may accept other changes to elections at such other times as the organization provides.

(f) Effectiveness of elections and changes of elections

(1) During initial coverage election period

An election of coverage made during the initial coverage election period under subsection (e)(1) of this section shall take effect upon the date the individual becomes entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, except as the Secretary may provide (consistent with section 1395q of this title) in order to prevent retroactive coverage.

(2) During continuous open enrollment periods

An election or change of coverage made under subsection (e)(2) of this section shall take effect with the first day of the first calendar month following the date on which the election or change is made.

(3) Annual, coordinated election period

An election or change of coverage made during an annual, coordinated election period (as defined in subsection (e)(3)(B) of this section, other than the period described in clause (iii) of such subsection) in a year shall take effect as of the first day of the following year.

(4) Other periods

An election or change of coverage made during any other period under subsection (e)(4) of this section shall take effect in such manner as the Secretary provides in a manner consistent (to the extent practicable) with protecting continuity of health benefit coverage.

(g) Guaranteed issue and renewal

(1) In general

Except as provided in this subsection, a Medicare+Choice organization shall provide that at any time during which elections are accepted under this section with respect to a Medicare+Choice plan offered by the organization, the organization will accept without restrictions individuals who are eligible to make such election.

(2) Priority

If the Secretary determines that a Medicare+Choice organization, in relation to a Medicare+Choice plan it offers, has a capacity limit and the number of Medicare+Choice eligible individuals who elect the plan under this section exceeds the capacity limit, the organization may limit the election of individuals of the plan under this section but only if priority in election is provided—

(A) first to such individuals as have elected the plan at the time of the determination, and

(B) then to other such individuals in such a manner that does not discriminate, on a basis described in section 1395w–22(b) of this title, among the individuals (who seek to elect the plan).

The preceding sentence shall not apply if it would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the medicare population in the service area of the plan.

(3) Limitation on termination of election

(A) In general

Subject to subparagraph (B), a Medicare+Choice organization may not for any reason terminate the election of any individual under this section for a Medicare+Choice plan it offers.

(B) Basis for termination of election

A Medicare+Choice organization may terminate an individual's election under this section with respect to a Medicare+Choice plan it offers if—

(i) any Medicare+Choice monthly basic and supplemental beneficiary premiums required with respect to such plan are not paid on a timely basis (consistent with standards under section 1395w–26 of this title that provide for a grace period for late payment of such premiums),

(ii) the individual has engaged in disruptive behavior (as specified in such standards), or

(iii) the plan is terminated with respect to all individuals under this part in the area in which the individual resides.

(C) Consequence of termination

(i) Terminations for cause

Any individual whose election is terminated under clause (i) or (ii) of subparagraph (B) is deemed to have elected the original medicare fee-for-service program option described in subsection (a)(1)(A) of this section.

(ii) Termination based on plan termination or service area reduction

Any individual whose election is terminated under subparagraph (B)(iii) shall have a special election period under subsection (e)(4)(A) of this section in which to change coverage to coverage under another Medicare+Choice plan. Such an individual who fails to make an election during such period is deemed to have chosen

to change coverage to the original medicare fee-for-service program option described in subsection (a)(1)(A) of this section.

(D) Organization obligation with respect to election forms

Pursuant to a contract under section 1395w–27 of this title, each Medicare+Choice organization receiving an election form under subsection (c)(2) of this section shall transmit to the Secretary (at such time and in such manner as the Secretary may specify) a copy of such form or such other information respecting the election as the Secretary may specify.

(h) Approval of marketing material and application forms

(1) Submission

No marketing material or application form may be distributed by a Medicare+Choice organization to (or for the use of) Medicare+Choice eligible individuals unless—

(A) at least 45 days (or 10 days in the case described in paragraph (5)) before the date of distribution the organization has submitted the material or form to the Secretary for review, and

(B) the Secretary has not disapproved the distribution of such material or form.

(2) Review

The standards established under section 1395w–26 of this title shall include guidelines for the review of any material or form submitted and under such guidelines the Secretary shall disapprove (or later require the correction of) such material or form if the material or form is materially inaccurate or misleading or otherwise makes a material misrepresentation.

(3) Deemed approval (1-stop shopping)

In the case of material or form that is submitted under paragraph (1)(A) to the Secretary or a regional office of the Department of Health and Human Services and the Secretary or the office has not disapproved the distribution of marketing material or form under paragraph (1)(B) with respect to a Medicare+Choice plan in an area, the Secretary is deemed not to have disapproved such distribution in all other areas covered by the plan and organization except with regard to that portion of such material or form that is specific only to an area involved.

(4) Prohibition of certain marketing practices

Each Medicare+Choice organization shall conform to fair marketing standards, in relation to Medicare+Choice plans offered under this part, included in the standards established under section 1395w–26 of this title. Such standards—

(A) shall not permit a Medicare+Choice organization to provide for cash or other monetary rebates as an inducement for enrollment or otherwise, and

(B) may include a prohibition against a Medicare+Choice organization (or agent of such an organization) completing any portion of any election form used to carry out elections under this section on behalf of any individual.

(5) Special treatment of marketing material following model marketing language

In the case of marketing material of an organization that uses, without modification, proposed model language specified by the Secretary, the period specified in paragraph (1)(A) shall be reduced from 45 days to 10 days.

(i) Effect of election of Medicare+Choice plan option

(1) Payments to organizations

Subject to sections 1395w–22(a)(5), 1395w–23(a)(4), 1395w–23(g), 1395w–23(h), 1395ww(d)(11), and 1395ww(h)(3)(D) of this title, payments under a contract with a Medicare+Choice organization under section 1395w–23(a) of this title with respect to an individual electing a Medicare+Choice plan offered by the organization shall be instead of the amounts which (in the absence of the contract) would otherwise be payable under parts A and B of this subchapter for items and services furnished to the individual.

(2) Only organization entitled to payment

Subject to sections 1395w–23(a)(4), 1395w–23(e), 1395w–23(g), 1395w–23(h), 1395w–27(f)(2), 1395w–27a(h), 1395ww(d)(11), and 1395ww(h)(3)(D) of this title, only the Medicare+Choice organization shall be entitled to receive payments from the Secretary under this subchapter for services furnished to the individual.

(Aug. 14, 1935, ch. 531, title XVIII, § 1851, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 275; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(k)(6)(A), title V, §§ 501(a)(1), (b), (c), 502(a), 519(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–367, 1501A–378 to 1501A–380, 1501A–385; Pub. L. 106–554, § 1(a)(6) [title VI, §§ 606(a)(2)(C), 613(a), 619(a), 620(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–558, 2763A–560, 2763A–563; Pub. L. 107–188, title V, § 532(a), (c)(1), June 12, 2002, 116 Stat. 696; Pub. L. 108–173, title I, § 102(a), (c)(1), title II, §§ 221(a)(1), (d)(5), 222(*l*)(3)(A), (B), (D), (E), 231(a), 233(b), (d), 237(b)(2)(A), Dec. 8, 2003, 117 Stat. 2152, 2154, 2180, 2193, 2206, 2207, 2209, 2212.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

Part D of this subchapter, referred to in subsec. (e)(2)(C)(iii), is classified to section 1395w–101 et seq. of this title.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–173, § 102(c)(1)(A), (C), inserted ''(other than qualified prescription drug benefits)'' after ''benefits'' in introductory provisions and inserted concluding provisions.

Subsec. (a)(1)(B). Pub. L. 108–173, § 102(c)(1)(B), substituted comma for period at end.

Subsec. (a)(2)(A). Pub. L. 108–173, § 221(a)(1), substituted ''Coordinated care plans (including regional plans)'' for ''Coordinated care plans'' in heading, inserted cl. (i) designation and heading before ''Coordinated'', and inserted ''regional or local'' before ''pre-

ferred provider organization plans'' and ''(including MA regional plans)'' before period at end.

Subsec. (a)(2)(A)(ii). Pub. L. 108–173, §231(a), added cl. (ii).

Subsec. (a)(3)(B)(ii). Pub. L. 108–173, §222(*l*)(3)(D), made technical amendment to reference in original act which appears in text as reference to subsection (e)(4)(A) of this section.

Subsec. (b)(1)(B). Pub. L. 108–173, §222(*l*)(3)(A)(i), (ii), substituted ''an MA local plan'' for ''a plan'' and ''benefits under the original medicare fee-for-service program option'' for ''basic benefits described in section 1395w–22(a)(1)(A) of this title''.

Subsec. (b)(1)(C). Pub. L. 108–173, §222(*l*)(3)(A)(iii), substituted ''in an MA local plan'' for ''in a Medicare+Choice plan'' in introductory provisions.

Subsec. (b)(4). Pub. L. 108–173, §233(b)(1), struck out ''on a demonstration basis'' after ''plans'' in heading.

Subsec. (b)(4)(A). Pub. L. 108–173, §233(b)(2), struck out first sentence which read as follows: ''An individual is not eligible to enroll in an MSA plan under this part—

''(i) on or after January 1, 2003, unless the enrollment is the continuation of such an enrollment in effect as of such date; or

''(ii) as of any date if the number of such individuals so enrolled as of such date has reached 390,000.''

Subsec. (b)(4)(C). Pub. L. 108–173, §233(b)(3), struck out at end ''The Secretary shall submit such a report, by not later than March 1, 2002, on whether the time limitation under subparagraph (A)(i) should be extended or removed and whether to change the numerical limitation under subparagraph (A)(ii).''

Subsec. (d)(3)(F). Pub. L. 108–173, §222(*l*)(3)(B)(i), added subpar. (F).

Subsec. (d)(4)(A)(ii). Pub. L. 108–173, §222(*l*)(3)(B)(ii), inserted '', including information on the single deductible (if applicable) under section 1395w–27a(b)(1) of this title'' after ''cost sharing''.

Subsec. (d)(4)(B)(i). Pub. L. 108–173, §222(*l*)(3)(B)(iii), substituted ''monthly amount of the premium charged to an individual'' for ''Medicare+Choice monthly basic beneficiary premium and Medicare+Choice monthly supplemental beneficiary premium, if any, for the plan or, in the case of an MSA plan, the Medicare+Choice monthly MSA premium''.

Subsec. (d)(4)(E). Pub. L. 108–173, §222(*l*)(3)(B)(iv), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Whether the organization offering the plan includes mandatory supplemental benefits in its base benefit package or offers optional supplemental benefits and the terms and conditions (including premiums) for such coverage.''

Subsec. (e)(1). Pub. L. 108–173, §102(a)(4), inserted at end ''If any portion of an individual's initial enrollment period under part B of this subchapter occurs after the end of the annual, coordinated election period described in paragraph (3)(B)(iii), the initial enrollment period under this part shall further extend through the end of the individual's initial enrollment period under part B of this subchapter.''

Subsec. (e)(2). Pub. L. 108–173, §102(a)(1)(A), substituted ''2005'' and ''2006'' for ''2004'' and ''2005'', respectively, wherever appearing.

Subsec. (e)(2)(B)(i). Pub. L. 108–173, §102(a)(6)(A), inserted '', subparagraph (C)(iii),'' after ''clause (ii)''.

Subsec. (e)(2)(C)(i). Pub. L. 108–173, §102(a)(6)(B), substituted ''clauses (ii) and (iii)'' for ''clause (ii)''.

Subsec. (e)(2)(C)(iii). Pub. L. 108–173, §102(a)(6)(C), added cl. (iii).

Subsec. (e)(3)(B). Pub. L. 108–173, §102(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'annual, coordinated election period' means, with respect to a year before 2003 and after 2005, the month of November before such year and with respect to 2003, 2004, and 2005, the period beginning on November 15 and ending on December 31 of the year before such year.''

Subsec. (e)(3)(C). Pub. L. 108–173, §102(a)(3)(A), inserted ''and during the period described in subparagraph (B)(iii)'' after ''(beginning with 1999)''.

Subsec. (e)(3)(D). Pub. L. 108–173, §102(a)(3)(B), in heading, substituted ''campaigns'' for ''campaign in 1998'' and, in text, inserted at end ''During the period described in subparagraph (B)(iii), the Secretary shall provide for an educational and publicity campaign to inform MA eligible individuals about the availability of MA plans (including MA–PD plans) offered in different areas and the election process provided under this section.''

Subsec. (e)(4). Pub. L. 108–173, §102(a)(1)(B), substituted ''2006'' for ''2005'' in two places.

Subsec. (e)(5)(A)(i). Pub. L. 108–173, §233(d)(1), inserted ''or'' at end.

Subsec. (e)(5)(A)(ii). Pub. L. 108–173, §233(d)(2), substituted semicolon for '', or''.

Subsec. (e)(5)(A)(iii). Pub. L. 108–173, §233(d)(3), struck out cl. (iii) which read as follows: ''the month of November 1998;''.

Subsec. (f)(1). Pub. L. 108–173, §222(*l*)(3)(E), substituted ''subsection (e)(1)'' for ''subsection (e)(1)(A)''.

Subsec. (f)(3). Pub. L. 108–173, §102(a)(5), inserted '', other than the period described in clause (iii) of such subsection'' after ''subsection (e)(3)(B) of this section''.

Subsec. (i)(1). Pub. L. 108–173, §237(b)(2)(A)(i), inserted ''1395w–23(a)(4),'' after ''Subject to sections 1395w–22(a)(5),''.

Subsec. (i)(2). Pub. L. 108–173, §237(b)(2)(A)(ii), inserted ''1395w–23(a)(4),'' after ''Subject to sections''.

Pub. L. 108–173, §221(d)(5), inserted ''1395w–27a(h),'' after ''1395w–27(f)(2),''.

2002—Subsec. (e)(2)(A). Pub. L. 107–188, §532(a)(1), substituted ''through 2004'' for ''through 2001'' in heading and ''during the period beginning January 1, 1998, and ending on December 31, 2004'' for ''during 1998, 1999, 2000, and 2001'' in text.

Subsec. (e)(2)(B). Pub. L. 107–188, §532(a)(2), substituted ''during 2005'' for ''during 2002'' in heading.

Subsec. (e)(2)(B)(i), (C)(i). Pub. L. 107–188, §532(a)(3), substituted ''2005'' for ''2002'' wherever appearing.

Subsec. (e)(2)(D). Pub. L. 107–188, §532(a)(4), substituted ''2004'' for ''2001''.

Subsec. (e)(3)(B). Pub. L. 107–188, §532(c)(1)(A), substituted ''means, with respect to a year before 2003 and after 2005, the month of November before such year and with respect to 2003, 2004, and 2005, the period beginning on November 15 and ending on December 31 of the year before such year'' for ''means, with respect to a calendar year (beginning with 2000), the month of November before such year''.

Subsec. (e)(4). Pub. L. 107–188, §532(a)(5), substituted ''2005'' for ''2002'' in introductory and concluding provisions.

Subsec. (e)(6)(A). Pub. L. 107–188, §532(c)(1)(B), substituted ''during the annual, coordinated election period under paragraph (3) for each subsequent year'' for ''each subsequent year (as provided in paragraph (3))''.

2000—Subsec. (a)(3)(B). Pub. L. 106–554, §1(a)(6) [title VI, §620(a)], substituted ''except that—'' and cls. (i) and (ii) for ''except that an individual who develops end-stage renal disease while enrolled in a Medicare+Choice plan may continue to be enrolled in that plan.''

Subsec. (d)(4)(B). Pub. L. 106–554, §1(a)(6) [title VI, §606(a)(2)(C)], designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Subsec. (f)(2). Pub. L. 106–554, §1(a)(6) [title VI, §619(a)], struck out '', except that if such election or change is made after the 10th day of any calendar month, then the election or change shall not take effect until the first day of the second calendar month following the date on which the election or change is made'' before period at end.

Subsec. (h)(1)(A). Pub. L. 106–554, §1(a)(6) [title VI, §613(a)(1)], inserted ''(or 10 days in the case described in paragraph (5))'' after ''45 days''.

Subsec. (h)(5). Pub. L. 106–554, §1(a)(6) [title VI, §613(a)(2)], added par. (5).

1999—Subsec. (b)(1)(A). Pub. L. 106–113, §1000(a)(6) [title V, §501(c)(1)], inserted ''and except as provided in subparagraph (C)'' after ''may otherwise provide''.

Subsec. (b)(1)(C). Pub. L. 106–113, §1000(a)(6) [title V, §501(c)(2)], added subpar. (C).

Subsec. (e)(2)(B)(i). Pub. L. 106–113, §1000(a)(6) [title V, §501(b)(1)], inserted ''and subparagraph (D)'' after ''clause (ii)''.

Subsec. (e)(2)(C)(i). Pub. L. 106–113, §1000(a)(6) [title V, §501(b)(2)], inserted ''and subparagraph (D)'' after ''clause (ii)''.

Subsec. (e)(2)(D). Pub. L. 106–113, §1000(a)(6) [title V, §501(b)(3)], added subpar. (D).

Subsec. (e)(3)(C). Pub. L. 106–113, §1000(a)(6) [title V, §519(a)], substituted ''During the fall season'' for ''In the month of November''.

Subsec. (e)(4)(A). Pub. L. 106–113, §1000(a)(6) [title V, §501(a)(1)], added subpar. (A) and struck out former subpar. (A) which read as follows: ''the organization's or plan's certification under this part has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;''.

Subsec. (f)(2). Pub. L. 106–113, §1000(a)(6) [title V, §502(a)], inserted ''or change'' before ''is made'' and '', except that if such election or change is made after the 10th day of any calendar month, then the election or change shall not take effect until the first day of the second calendar month following the date on which the election or change is made'' before the period at end.

Subsec. (i)(2). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(6)(A)], struck out ''and'' after ''1395w–27(f)(2),''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title I, §102(c)(2), Dec. 8, 2003, 117 Stat. 2154, provided that: ''The amendments made by this subsection [amending this section] shall apply on and after January 1, 2006.''

Pub. L. 108–173, title II, §223(a), Dec. 8, 2003, 117 Stat. 2207, provided that: ''The amendments made by this subtitle [subtitle C (§§221–223) of title II of Pub. L. 108–173, enacting section 1395w–27a of this title and amending this section and sections 1395r, 1395s, 1395w, 1395w–22 to 1395w–24, 1395w–27, and 1395w–28 of this title] shall apply with respect to plan years beginning on or after January 1, 2006.''

Pub. L. 108–173, title II, §231(f)(1), Dec. 8, 2003, 117 Stat. 2208, provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and section 1395w–28 of this title] shall take effect upon the date of the enactment of this Act [Dec. 8, 2003].''

Amendment by section 237(b)(2)(A) of Pub. L. 108–173 applicable to services provided on or after Jan. 1, 2006, and contract years beginning on or after such date, see section 237(e) of Pub. L. 108–173, set out as a note under section 1320a–7b of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–188, title V, §532(c)(2), June 12, 2002, 116 Stat. 696, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to the annual, coordinated election period for years beginning with 2003.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title VI, §606(a)(2)(C)] of Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, §606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.

Pub. L. 106–554, §1(a)(6) [title VI, §613(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–560, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to marketing material submitted on or after January 1, 2001.''

Pub. L. 106–554, §1(a)(6) [title VI, §619(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–563, provided that: ''The amendment made by this section [amending this section] shall apply to elections and changes of coverage made on or after June 1, 2001.''

Pub. L. 106–554, §1(a)(6) [title VI, §620(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–564, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to terminations and discontinuations occurring on or after the date of the enactment of this Act [Dec. 21, 2000].

''(2) APPLICATION TO PRIOR PLAN TERMINATIONS.—Clause (ii) of section 1851(a)(3)(B) of the Social Security Act [subsection (a)(3)(B)(ii) of this section] (as inserted by subsection (a)) shall also apply to individuals whose enrollment in a Medicare+Choice plan was terminated or discontinued after December 31, 1998, and before the date of the enactment of this Act. In applying this paragraph, such an individual shall be treated, for purposes of part C of title XVIII of the Social Security Act [this part], as having discontinued enrollment in such a plan as of the date of the enactment of this Act.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title III, §321(k)(6)(A)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §501(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–379, provided that:

''(1) The amendments made by subsection (a) [amending this section and section 1395ss of this title] apply to notices of impending terminations or discontinuances made on or after the date of the enactment of this Act [Nov. 29, 1999].

''(2) The amendments made by subsection (c) [amending this section] apply to elections made on or after the date of the enactment of this Act [Nov. 29, 1999] with respect to eliminations of Medicare+Choice payment areas from a service area that occur before, on, or after the date of the enactment of this Act.''

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §502(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–380, provided that: ''The amendments made by this section [amending this section] apply to elections and changes of coverage made on or after January 1, 2000.''

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §519(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–385, provided that: ''The amendment made by subsection (a) [amending this section] first applies to campaigns conducted beginning in 2000.''

REGULATIONS

Pub. L. 108–173, title II, §223(b), Dec. 8, 2003, 117 Stat. 2207, provided that: ''The Secretary [of Health and Human Services] shall revise the regulations previously promulgated to carry out part C of title XVIII of the Social Security Act [this part] to carry out the provisions of this Act [see Tables for classification].''

CONSTRUCTION

Pub. L. 108–173, title II, §221(b)(2), Dec. 8, 2003, 117 Stat. 2181, provided that: ''Nothing in part C of title XVIII of the Social Security Act [this part] shall be construed as preventing an MSA plan or MA private fee-for-service plan from having a service area that covers one or more MA regions or the entire nation.''

IMPLEMENTATION OF MEDICARE ADVANTAGE PROGRAM

Pub. L. 108–173, title II, §201, Dec. 8, 2003, 117 Stat. 2176, provided that:

''(a) IN GENERAL.—There is hereby established the Medicare Advantage program. The Medicare Advantage program shall consist of the program under part C of title XVIII of the Social Security Act [this part] (as amended by this Act [see Tables for classification]).

''(b) REFERENCES.—Subject to subsection (c), any reference to the program under part C of title XVIII of the Social Security Act [this part] shall be deemed a reference to the Medicare Advantage program and, with respect to such part, any reference to 'Medicare+Choice' is deemed a reference to 'Medicare Advantage' and 'MA'.

''(c) TRANSITION.—In order to provide for an orderly transition and avoid beneficiary and provider confu-

sion, the Secretary [of Health and Human Services] shall provide for an appropriate transition in the use of the terms 'Medicare+Choice' and 'Medicare Advantage' (or 'MA') in reference to the program under part C of title XVIII of the Social Security Act [this part]. Such transition shall be fully completed for all materials for plan years beginning not later than January 1, 2006. Before the completion of such transition, any reference to 'Medicare Advantage' or 'MA' shall be deemed to include a reference to 'Medicare+Choice'.''

REPORT ON IMPACT OF INCREASED FINANCIAL ASSISTANCE TO MEDICARE ADVANTAGE PLANS

Pub. L. 108–173, title II, §211(g), Dec. 8, 2003, 117 Stat. 2178, provided that: ''Not later than July 1, 2006, the Secretary [of Health and Human Services] shall submit to Congress a report that describes the impact of additional financing provided under this Act [see Tables for classification] and other Acts (including the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 [H.R. 3426, as enacted by section 1000(a)(6) of Pub. L. 106–113, see Tables for classification] and BIPA [Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(6) of Pub. L. 106–554, see Tables for classification]) on the availability of Medicare Advantage plans in different areas and its impact on lowering premiums and increasing benefits under such plans.''

MEDPAC STUDY AND REPORT ON CLARIFICATION OF AUTHORITY REGARDING DISAPPROVAL OF UNREASONABLE BENEFICIARY COST-SHARING

Pub. L. 108–173, title II, §211(h), Dec. 8, 2003, 117 Stat. 2179, directed the Medicare Payment Advisory Commission, in consultation with beneficiaries, consumer groups, employers, and organizations offering plans under this part, to conduct a study to determine the extent to which the cost-sharing structures under such plans affect access to covered services or select enrollees based on the health status of eligible individuals described in subsection (a)(3) of this section, and to submit a report to Congress on such study not later than Dec. 31, 2004.

MORATORIUM ON NEW LOCAL PREFERRED PROVIDER ORGANIZATION PLANS

Pub. L. 108–173, title II, §221(a)(2), Dec. 8, 2003, 117 Stat. 2180, provided that: ''The Secretary [of Health and Human Services] shall not permit the offering of a local preferred provider organization plan under part C of title XVIII of the Social Security Act [this part] during 2006 or 2007 in a service area unless such plan was offered under such part (including under a demonstration project under such part) in such area as of December 31, 2005.''

AUTHORITY TO DESIGNATE OTHER PLANS AS SPECIALIZED MA PLANS

Pub. L. 108–173, title II, §231(d), Dec. 8, 2003, 117 Stat. 2208, provided that: ''In promulgating regulations to carry out section 1851(a)(2)(A)(ii) of the Social Security Act [subsec. (a)(2)(A)(ii) of this section] (as added by subsection (a)) and section 1859(b)(6) of such Act [section 1395w–28(b)(6) of this title] (as added by subsection (b)), the Secretary [of Health and Human Services] may provide (notwithstanding section 1859(b)(6)(A) of such Act) for the offering of specialized MA plans for special needs individuals by MA plans that disproportionately serve special needs individuals.''

REPORT ON IMPACT OF SPECIALIZED MA PLANS FOR SPECIAL NEEDS INDIVIDUALS

Pub. L. 108–173, title II, §231(e), Dec. 8, 2003, 117 Stat. 2208, provided that: ''Not later than December 31, 2007, the Secretary [of Health and Human Services] shall submit to Congress a report that assesses the impact of specialized MA plans for special needs individuals on the cost and quality of services provided to enrollees. Such report shall include an assessment of the costs and savings to the medicare program as a result of amendments made by subsections (a), (b), and (c) [amending this section and section 1395w–28 of this title].''

MEDPAC STUDY ON CONSUMER COALITIONS

Pub. L. 106–554, §1(a)(6) [title I, §124], Dec. 21, 2000, 114 Stat. 2763, 2763A–478, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study that examines the use of consumer coalitions in the marketing of Medicare+Choice plans under the medicare program under title XVIII of the Social Security Act [this subchapter]. The study shall examine—

''(1) the potential for increased efficiency in the medicare program through greater beneficiary knowledge of their health care options, decreased marketing costs of Medicare+Choice organizations, and creation of a group market;

''(2) the implications of Medicare+Choice plans and medicare supplemental policies (under section 1882 of the Social Security Act (42 U.S.C. 1395ss)) offering medicare beneficiaries in the same geographic location different benefits and premiums based on their affiliation with a consumer coalition;

''(3) how coalitions should be governed, how they should be accountable to the Secretary of Health and Human Services, and how potential conflicts of interest in the activities of consumer coalitions should be avoided; and

''(4) how such coalitions should be funded.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under subsection (a). The report shall include a recommendation on whether and how a demonstration project might be conducted for the operation of consumer coalitions under the medicare program.

''(c) CONSUMER COALITION DEFINED.—For purposes of this section, the term 'consumer coalition' means a nonprofit, community-based group of organizations that—

''(1) provides information to medicare beneficiaries about their health care options under the medicare program; and

''(2) negotiates benefits and premiums for medicare beneficiaries who are members or otherwise affiliated with the group of organizations with Medicare+Choice organizations offering Medicare+Choice plans, issuers of medicare supplemental policies, issuers of long-term care coverage, and pharmacy benefit managers.''

REPORT ON ACCOUNTING FOR VA AND DOD EXPENDITURES FOR MEDICARE BENEFICIARIES

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §551], Nov. 29, 1999, 113 Stat. 1536, 1501A–392, provided that: ''Not later [than] April 1, 2001, the Secretary of Health and Human Services, jointly with the Secretaries of Defense and of Veterans Affairs, shall submit to Congress a report on the estimated use of health care services furnished by the Departments of Defense and of Veterans Affairs to medicare beneficiaries, including both beneficiaries under the original medicare fee-for-service program and under the Medicare+Choice program. The report shall include an analysis of how best to properly account for expenditures for such services in the computation of Medicare+Choice capitation rates.''

REPORT ON MEDICARE MSA (MEDICAL SAVINGS ACCOUNT) PLANS

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §552(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–393, provided that: ''Not later than 1 year after the date of the enactment of this Act [Nov. 29, 1999], the Medicare Payment Assessment Commission shall submit to Congress a report on specific legislative changes that should be made to make MSA plans (as defined in section 1859(b)(3) of the

Social Security Act, 42 U.S.C. 1395w–29(b)(3) [1395w–28(b)(3)]) a viable option under the Medicare+Choice program.''

GAO AUDIT AND REPORTS ON PROVISION OF MEDICARE+CHOICE HEALTH INFORMATION TO BENEFICIARIES

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §553(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–393, provided that:

''(1) IN GENERAL.—Beginning in 2000, the Comptroller General shall conduct an annual audit of the expenditures by the Secretary of Health and Human Services during the preceding year in providing information regarding the Medicare+Choice program under part C of title XVIII of the Social Security Act (42 U.S.C. 1395w–21 et seq.) to eligible medicare beneficiaries.

''(3) [(2)] REPORTS.—Not later than March 31 of 2001, 2004, 2007, and 2010, the Comptroller General shall submit a report to Congress on the results of the audit of the expenditures of the preceding 3 years conducted pursuant to subsection (a) [enacting provisions set out as a note under section 1395ss of this title], together with an evaluation of the effectiveness of the means used by the Secretary of Health and Human Services in providing information regarding the Medicare+Choice program under part C of title XVIII of the Social Security Act (42 U.S.C. 1395w–21 et seq.) to eligible medicare beneficiaries.''

ENROLLMENT TRANSITION RULE

Section 4002(c) of Pub. L. 105–33 provided that: ''An individual who is enrolled on December 31, 1998, with an eligible organization under section 1876 of the Social Security Act (42 U.S.C. 1395mm) shall be considered to be enrolled with that organization on January 1, 1999, under part C of title XVIII of such Act [this part] if that organization has a contract under that part for providing services on January 1, 1999 (unless the individual has disenrolled effective on that date).''

SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL

Section 4002(f)(2) of title IV of Pub. L. 105–33 provided that: ''Not later than 6 months after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this chapter [chapter 1 (§§4001–4006) of subtitle A of title IV of Pub. L. 105–33, see Tables for classification].''

REPORT ON INTEGRATION AND TRANSITION

Section 4014(c) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall submit to Congress, by not later than January 1, 1999, a plan for the integration of health plans offered by social health maintenance organizations (including SHMO I and SHMO II sites developed under section 2355 of the Deficit Reduction Act of 1984 [Pub. L. 98–369, 98 Stat. 1103] and under the amendment made by section 4207(b)(3)(B)(i) of OBRA–1990 [Pub. L. 101–508, amending provisions set out as a note under section 1395pp of this title], respectively) and similar plans as an option under the Medicare+Choice program under part C of title XVIII of the Social Security Act [this part].

''(2) PROVISION FOR TRANSITION.—Such plan shall include a transition for social health maintenance organizations operating under demonstration project authority under such section.

''(3) PAYMENT POLICY.—The report shall also include recommendations on appropriate payment levels for plans offered by such organizations, including an analysis of the application of risk adjustment factors appropriate to the population served by such organizations.''

MEDICARE ENROLLMENT DEMONSTRATION PROJECT

Section 4018 of Pub. L. 105–33 provided that:

''(a) DEMONSTRATION PROJECT.—

''(1) ESTABLISHMENT.—The Secretary shall implement a demonstration project (in this section referred to as the 'project') for the purpose of evaluating the use of a third-party contractor to conduct the Medicare+Choice plan enrollment and disenrollment functions, as described in part C of title XVIII of the Social Security Act [this part] (as added by section 4001 of this Act), in an area.

''(2) CONSULTATION.—Before implementing the project under this section, the Secretary shall consult with affected parties on—

''(A) the design of the project;

''(B) the selection criteria for the third-party contractor; and

''(C) the establishment of performance standards, as described in paragraph (3).

''(3) PERFORMANCE STANDARDS.—

''(A) IN GENERAL.—The Secretary shall establish performance standards for the accuracy and timeliness of the Medicare+Choice plan enrollment and disenrollment functions performed by the third-party contractor.

''(B) NONCOMPLIANCE.—In the event that the third-party contractor is not in substantial compliance with the performance standards established under subparagraph (A), such enrollment and disenrollment functions shall be performed by the Medicare+Choice plan until the Secretary appoints a new third-party contractor.

''(b) REPORT TO CONGRESS.—The Secretary shall periodically report to Congress on the progress of the project conducted pursuant to this section.

''(c) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of part C of title XVIII of the Social Security Act [this part] (as amended by section 4001 of this Act) to such extent and for such period as the Secretary determines is necessary to conduct the project.

''(d) DURATION.—A demonstration project under this section shall be conducted for a 3-year period.

''(e) SEPARATE FROM OTHER DEMONSTRATION PROJECTS.—A project implemented by the Secretary under this section shall not be conducted in conjunction with any other demonstration project.''

§ 1395w–22. Benefits and beneficiary protections

(a) Basic benefits

(1) Requirement

(A) In general

Except as provided in section 1395w–28(b)(3) of this title for MSA plans and except as provided in paragraph (6) for MA regional plans, each Medicare+Choice plan shall provide to members enrolled under this part, through providers and other persons that meet the applicable requirements of this subchapter and part A of subchapter XI of this chapter, benefits under the original medicare fee-for-service program option (and, for plan years before 2006, additional benefits required under section 1395w–24(f)(1)(A) of this title).

(B) Benefits under the original medicare fee-for-service program option defined

(i) In general

For purposes of this part, the term ''benefits under the original medicare fee-for-service program option'' means those items and services (other than hospice care) for which benefits are available under parts A and B of this subchapter to individuals entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, with cost-shar-

ing for those services as required under parts A and B of this subchapter or an actuarially equivalent level of cost-sharing as determined in this part.

(ii) Special rule for regional plans

In the case of an MA regional plan in determining an actuarially equivalent level of cost-sharing with respect to benefits under the original medicare fee-for-service program option, there shall only be taken into account, with respect to the application of section 1395w–27a(b)(2) of this title, such expenses only with respect to subparagraph (A) of such section.

(2) Satisfaction of requirement

(A) In general

A Medicare+Choice plan (other than an MSA plan) offered by a Medicare+Choice organization satisfies paragraph (1)(A), with respect to benefits for items and services furnished other than through a provider or other person that has a contract with the organization offering the plan, if the plan provides payment in an amount so that—

(i) the sum of such payment amount and any cost sharing provided for under the plan, is equal to at least

(ii) the total dollar amount of payment for such items and services as would otherwise be authorized under parts A and B of this subchapter (including any balance billing permitted under such parts).

(B) Reference to related provisions

For provision relating to—

(i) limitations on balance billing against Medicare+Choice organizations for non-contract providers, see subsection (k) of this section and section 1395cc(a)(1)(O) of this title, and

(ii) limiting actuarial value of enrollee liability for covered benefits, see section 1395w–24(e) of this title.

(C) Election of uniform coverage determination

In the case of a Medicare+Choice organization that offers a Medicare+Choice plan in an area in which more than one local coverage determination is applied with respect to different parts of the area, the organization may elect to have the local coverage determination for the part of the area that is most beneficial to Medicare+Choice enrollees (as identified by the Secretary) apply with respect to all Medicare+Choice enrollees enrolled in the plan.

(3) Supplemental benefits

(A) Benefits included subject to Secretary's approval

Each Medicare+Choice organization may provide to individuals enrolled under this part, other than under an MSA plan (without affording those individuals an option to decline the coverage), supplemental health care benefits that the Secretary may approve. The Secretary shall approve any such supplemental benefits unless the Secretary determines that including such supplemental benefits would substantially discourage enrollment by Medicare+Choice eligible individuals with the organization.

(B) At enrollees' option

(i) In general

Subject to clause (ii), a Medicare+Choice organization may provide to individuals enrolled under this part supplemental health care benefits that the individuals may elect, at their option, to have covered.

(ii) Special rule for MSA plans

A Medicare+Choice organization may not provide, under an MSA plan, supplemental health care benefits that cover the deductible described in section 1395w–28(b)(2)(B) of this title. In applying the previous sentence, health benefits described in section 1395ss(u)(2)(B) of this title shall not be treated as covering such deductible.

(C) Application to Medicare+Choice private fee-for-service plans

Nothing in this paragraph shall be construed as preventing a Medicare+Choice private fee-for-service plan from offering supplemental benefits that include payment for some or all of the balance billing amounts permitted consistent with subsection (k) of this section and coverage of additional services that the plan finds to be medically necessary. Such benefits may include reductions in cost-sharing below the actuarial value specified in section 1395w–24(e)(4)(B) of this title.

(4) Organization as secondary payer

Notwithstanding any other provision of law, a Medicare+Choice organization may (in the case of the provision of items and services to an individual under a Medicare+Choice plan under circumstances in which payment under this subchapter is made secondary pursuant to section 1395y(b)(2) of this title) charge or authorize the provider of such services to charge, in accordance with the charges allowed under a law, plan, or policy described in such section—

(A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or

(B) such individual to the extent that the individual has been paid under such law, plan, or policy for such services.

(5) National coverage determinations and legislative changes in benefits

If there is a national coverage determination or legislative change in benefits required to be provided under this part made in the period beginning on the date of an announcement under section 1395w–23(b) of this title and ending on the date of the next announcement under such section and the Secretary projects that the determination will result in a significant change in the costs to a Medicare+Choice organization of providing the benefits that are the subject of such national coverage deter-

mination and that such change in costs was not incorporated in the determination of the annual Medicare+Choice capitation rate under section 1395w–23 of this title included in the announcement made at the beginning of such period, then, unless otherwise required by law—

(A) such determination or legislative change in benefits shall not apply to contracts under this part until the first contract year that begins after the end of such period, and

(B) if such coverage determination or legislative change provides for coverage of additional benefits or coverage under additional circumstances, section 1395w–21(i)(1) of this title shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period.

The projection under the previous sentence shall be based on an analysis by the Chief Actuary of the Centers for Medicare & Medicaid Services of the actuarial costs associated with the coverage determination or legislative change in benefits.

(6) Special benefit rules for regional plans

In the case of an MA plan that is an MA regional plan, benefits under the plan shall include the benefits described in paragraphs (1) and (2) of section 1395w–27a(b) of this title.

(b) Antidiscrimination

(1) Beneficiaries

(A) In general

A Medicare+Choice organization may not deny, limit, or condition the coverage or provision of benefits under this part, for individuals permitted to be enrolled with the organization under this part, based on any health status-related factor described in section 300gg–1(a)(1) of this title. The Secretary shall not approve a plan of an organization if the Secretary determines that the design of the plan and its benefits are likely to substantially discourage enrollment by certain MA eligible individuals with the organization.

(B) Construction

Subparagraph (A) shall not be construed as requiring a Medicare+Choice organization to enroll individuals who are determined to have end-stage renal disease, except as provided under section 1395w–21(a)(3)(B) of this title.

(2) Providers

A Medicare+Choice organization shall not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of such license or certification. This paragraph shall not be construed to prohibit a plan from including providers only to the extent necessary to meet the needs of the plan's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan.

(c) Disclosure requirements

(1) Detailed description of plan provisions

A Medicare+Choice organization shall disclose, in clear, accurate, and standardized form to each enrollee with a Medicare+Choice plan offered by the organization under this part at the time of enrollment and at least annually thereafter, the following information regarding such plan:

(A) Service area

The plan's service area.

(B) Benefits

Benefits offered under the plan, including information described in section 1395w–21(d)(3)(A) of this title and exclusions from coverage and, if it is an MSA plan, a comparison of benefits under such a plan with benefits under other Medicare+Choice plans.

(C) Access

The number, mix, and distribution of plan providers, out-of-network coverage (if any) provided by the plan, and any point-of-service option (including the supplemental premium for such option).

(D) Out-of-area coverage

Out-of-area coverage provided by the plan.

(E) Emergency coverage

Coverage of emergency services, including—

(i) the appropriate use of emergency services, including use of the 911 telephone system or its local equivalent in emergency situations and an explanation of what constitutes an emergency situation;

(ii) the process and procedures of the plan for obtaining emergency services; and

(iii) the locations of (I) emergency departments, and (II) other settings, in which plan physicians and hospitals provide emergency services and post-stabilization care.

(F) Supplemental benefits

Supplemental benefits available from the organization offering the plan, including—

(i) whether the supplemental benefits are optional,

(ii) the supplemental benefits covered, and

(iii) the Medicare+Choice monthly supplemental beneficiary premium for the supplemental benefits.

(G) Prior authorization rules

Rules regarding prior authorization or other review requirements that could result in nonpayment.

(H) Plan grievance and appeals procedures

All plan appeal or grievance rights and procedures.

(I) Quality improvement program

A description of the organization's quality improvement program under subsection (e) of this section.

(2) Disclosure upon request

Upon request of a Medicare+Choice eligible individual, a Medicare+Choice organization must provide the following information to such individual:

(A) The general coverage information and general comparative plan information made available under clauses (i) and (ii) of section 1395w–21(d)(2)(A) of this title.

(B) Information on procedures used by the organization to control utilization of services and expenditures.

(C) Information on the number of grievances, redeterminations, and appeals and on the disposition in the aggregate of such matters.

(D) An overall summary description as to the method of compensation of participating physicians.

(d) Access to services

(1) In general

A Medicare+Choice organization offering a Medicare+Choice plan may select the providers from whom the benefits under the plan are provided so long as—

(A) the organization makes such benefits available and accessible to each individual electing the plan within the plan service area with reasonable promptness and in a manner which assures continuity in the provision of benefits;

(B) when medically necessary the organization makes such benefits available and accessible 24 hours a day and 7 days a week;

(C) the plan provides for reimbursement with respect to services which are covered under subparagraphs (A) and (B) and which are provided to such an individual other than through the organization, if—

(i) the services were not emergency services (as defined in paragraph (3)), but (I) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition, and (II) it was not reasonable given the circumstances to obtain the services through the organization,

(ii) the services were renal dialysis services and were provided other than through the organization because the individual was temporarily out of the plan's service area, or

(iii) the services are maintenance care or post-stabilization care covered under the guidelines established under paragraph (2);

(D) the organization provides access to appropriate providers, including credentialed specialists, for medically necessary treatment and services; and

(E) coverage is provided for emergency services (as defined in paragraph (3)) without regard to prior authorization or the emergency care provider's contractual relationship with the organization.

(2) Guidelines respecting coordination of post-stabilization care

A Medicare+Choice plan shall comply with such guidelines as the Secretary may prescribe relating to promoting efficient and timely coordination of appropriate maintenance and post-stabilization care of an enrollee after the enrollee has been determined to be stable under section 1395dd of this title.

(3) "Emergency services" defined

In this subsection—

(A) In general

The term ''emergency services'' means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that—

(i) are furnished by a provider that is qualified to furnish such services under this subchapter, and

(ii) are needed to evaluate or stabilize an emergency medical condition (as defined in subparagraph (B)).

(B) Emergency medical condition based on prudent layperson

The term ''emergency medical condition'' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

(ii) serious impairment to bodily functions, or

(iii) serious dysfunction of any bodily organ or part.

(4) Assuring access to services in Medicare+Choice private fee-for-service plans

In addition to any other requirements under this part, in the case of a Medicare+Choice private fee-for-service plan, the organization offering the plan must demonstrate to the Secretary that the organization has sufficient number and range of health care professionals and providers willing to provide services under the terms of the plan. The Secretary shall find that an organization has met such requirement with respect to any category of health care professional or provider if, with respect to that category of provider—

(A) the plan has established payment rates for covered services furnished by that category of provider that are not less than the payment rates provided for under part A of this subchapter, part B of this subchapter, or both, for such services, or

(B) the plan has contracts or agreements (other than deemed contracts or agreements under subsection (j)(6) of this section) with a sufficient number and range of providers within such category to provide covered services under the terms of the plan,

or a combination of both. The previous sentence shall not be construed as restricting the persons from whom enrollees under such a plan may obtain covered benefits, except that, if a plan entirely meets such requirement with respect to a category of health care professional or provider on the basis of subparagraph

(B), it may provide for a higher beneficiary copayment in the case of health care professionals and providers of that category who do not have contracts or agreements (other than deemed contracts or agreements under subsection (j)(6) of this section) to provide covered services under the terms of the plan.

(e) Quality improvement program

(1) In general

Each MA organization shall have an ongoing quality improvement program for the purpose of improving the quality of care provided to enrollees in each MA plan offered by such organization (other than an MA private fee-for-service plan or an MSA plan).

(2) Chronic care improvement programs

As part of the quality improvement program under paragraph (1), each MA organization shall have a chronic care improvement program. Each chronic care improvement program shall have a method for monitoring and identifying enrollees with multiple or sufficiently severe chronic conditions that meet criteria established by the organization for participation under the program.

(3) Data

(A) Collection, analysis, and reporting

(i) In general

Except as provided in clauses (ii) and (iii) with respect to plans described in such clauses and subject to subparagraph (B), as part of the quality improvement program under paragraph (1), each MA organization shall provide for the collection, analysis, and reporting of data that permits the measurement of health outcomes and other indices of quality.

(ii) Application to MA regional plans

The Secretary shall establish as appropriate by regulation requirements for the collection, analysis, and reporting of data that permits the measurement of health outcomes and other indices of quality for MA organizations with respect to MA regional plans. Such requirements may not exceed the requirements under this subparagraph with respect to MA local plans that are preferred provider organization plans.

(iii) Application to preferred provider organizations

Clause (i) shall apply to MA organizations with respect to MA local plans that are preferred provider organization plans only insofar as services are furnished by providers or services, physicians, and other health care practitioners and suppliers that have contracts with such organization to furnish services under such plans.

(iv) Definition of preferred provider organization plan

In this subparagraph, the term ''preferred provider organization plan'' means an MA plan that—

(I) has a network of providers that have agreed to a contractually specified reimbursement for covered benefits with the organization offering the plan;

(II) provides for reimbursement for all covered benefits regardless of whether such benefits are provided within such network of providers; and

(III) is offered by an organization that is not licensed or organized under State law as a health maintenance organization.

(B) Limitations

(i) Types of data

The Secretary shall not collect under subparagraph (A) data on quality, outcomes, and beneficiary satisfaction to facilitate consumer choice and program administration other than the types of data that were collected by the Secretary as of November 1, 2003.

(ii) Changes in types of data

Subject to subclause (iii), the Secretary may only change the types of data that are required to be submitted under subparagraph (A) after submitting to Congress a report on the reasons for such changes that was prepared in consultation with MA organizations and private accrediting bodies.

(iii) Construction

Nothing in the[1] subsection shall be construed as restricting the ability of the Secretary to carry out the duties under section 1395w–21(d)(4)(D) of this title.

(4) Treatment of accreditation

(A) In general

The Secretary shall provide that a Medicare+Choice organization is deemed to meet all the requirements described in any specific clause of subparagraph (B) if the organization is accredited (and periodically reaccredited) by a private accrediting organization under a process that the Secretary has determined assures that the accrediting organization applies and enforces standards that meet or exceed the standards established under section 1395w–26 of this title to carry out the requirements in such clause.

(B) Requirements described

The provisions described in this subparagraph are the following:

(i) Paragraphs (1) through (3) of this subsection (relating to quality improvement programs).

(ii) Subsection (b) of this section (relating to antidiscrimination).

(iii) Subsection (d) of this section (relating to access to services).

(iv) Subsection (h) of this section (relating to confidentiality and accuracy of enrollee records).

(v) Subsection (i) of this section (relating to information on advance directives).

(vi) Subsection (j) of this section (relating to provider participation rules).

(vii) The requirements described in section 1395w–104(j) of this title, to the extent

[1] So in original. Probably should be ''this''.

such requirements apply under section 1395w–131(c) of this title.

(C) Timely action on applications

The Secretary shall determine, within 210 days after the date the Secretary receives an application by a private accrediting organization and using the criteria specified in section 1395bb(b)(2) of this title, whether the process of the private accrediting organization meets the requirements with respect to any specific clause in subparagraph (B) with respect to which the application is made. The Secretary may not deny such an application on the basis that it seeks to meet the requirements with respect to only one, or more than one, such specific clause.

(D) Construction

Nothing in this paragraph shall be construed as limiting the authority of the Secretary under section 1395w–27 of this title, including the authority to terminate contracts with Medicare+Choice organizations under subsection (c)(2) of such section.

(f) Grievance mechanism

Each Medicare+Choice organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and enrollees with Medicare+Choice plans of the organization under this part.

(g) Coverage determinations, reconsiderations, and appeals

(1) Determinations by organization

(A) In general

A Medicare+Choice organization shall have a procedure for making determinations regarding whether an individual enrolled with the plan of the organization under this part is entitled to receive a health service under this section and the amount (if any) that the individual is required to pay with respect to such service. Subject to paragraph (3), such procedures shall provide for such determination to be made on a timely basis.

(B) Explanation of determination

Such a determination that denies coverage, in whole or in part, shall be in writing and shall include a statement in understandable language of the reasons for the denial and a description of the reconsideration and appeals processes.

(2) Reconsiderations

(A) In general

The organization shall provide for reconsideration of a determination described in paragraph (1)(B) upon request by the enrollee involved. The reconsideration shall be within a time period specified by the Secretary, but shall be made, subject to paragraph (3), not later than 60 days after the date of the receipt of the request for reconsideration.

(B) Physician decision on certain reconsiderations

A reconsideration relating to a determination to deny coverage based on a lack of medical necessity shall be made only by a physician with appropriate expertise in the field of medicine which necessitates treatment who is other than a physician involved in the initial determination.

(3) Expedited determinations and reconsiderations

(A) Receipt of requests

(i) Enrollee requests

An enrollee in a Medicare+Choice plan may request, either in writing or orally, an expedited determination under paragraph (1) or an expedited reconsideration under paragraph (2) by the Medicare+Choice organization.

(ii) Physician requests

A physician, regardless whether the physician is affiliated with the organization or not, may request, either in writing or orally, such an expedited determination or reconsideration.

(B) Organization procedures

(i) In general

The Medicare+Choice organization shall maintain procedures for expediting organization determinations and reconsiderations when, upon request of an enrollee, the organization determines that the application of the normal time frame for making a determination (or a reconsideration involving a determination) could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

(ii) Expedition required for physician requests

In the case of a request for an expedited determination or reconsideration made under subparagraph (A)(ii), the organization shall expedite the determination or reconsideration if the request indicates that the application of the normal time frame for making a determination (or a reconsideration involving a determination) could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

(iii) Timely response

In cases described in clauses (i) and (ii), the organization shall notify the enrollee (and the physician involved, as appropriate) of the determination or reconsideration under time limitations established by the Secretary, but not later than 72 hours of the time of receipt of the request for the determination or reconsideration (or receipt of the information necessary to make the determination or reconsideration), or such longer period as the Secretary may permit in specified cases.

(4) Independent review of certain coverage denials

The Secretary shall contract with an independent, outside entity to review and resolve in a timely manner reconsiderations that affirm denial of coverage, in whole or in part.

The provisions of section 1395ff(c)(5) of this title shall apply to independent outside entities under contract with the Secretary under this paragraph.

(5) Appeals

An enrollee with a Medicare+Choice plan of a Medicare+Choice organization under this part who is dissatisfied by reason of the enrollee's failure to receive any health service to which the enrollee believes the enrollee is entitled and at no greater charge than the enrollee believes the enrollee is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 405(b) of this title, and in any such hearing the Secretary shall make the organization a party. If the amount in controversy is $1,000 or more, the individual or organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 405(g) of this title, and both the individual and the organization shall be entitled to be parties to that judicial review. In applying subsections (b) and (g) of section 405 of this title as provided in this paragraph, and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively. The provisions of section 1395ff(b)(1)(E)(iii) of this title shall apply with respect to dollar amounts specified in the first 2 sentences of this paragraph in the same manner as they apply to the dollar amounts specified in section 1395ff(b)(1)(E)(i) of this title.

(h) Confidentiality and accuracy of enrollee records

Insofar as a Medicare+Choice organization maintains medical records or other health information regarding enrollees under this part, the Medicare+Choice organization shall establish procedures—

(1) to safeguard the privacy of any individually identifiable enrollee information;

(2) to maintain such records and information in a manner that is accurate and timely; and

(3) to assure timely access of enrollees to such records and information.

(i) Information on advance directives

Each Medicare+Choice organization shall meet the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(j) Rules regarding provider participation

(1) Procedures

Insofar as a Medicare+Choice organization offers benefits under a Medicare+Choice plan through agreements with physicians, the organization shall establish reasonable procedures relating to the participation (under an agreement between a physician and the organization) of physicians under such a plan. Such procedures shall include—

(A) providing notice of the rules regarding participation,

(B) providing written notice of participation decisions that are adverse to physicians, and

(C) providing a process within the organization for appealing such adverse decisions, including the presentation of information and views of the physician regarding such decision.

(2) Consultation in medical policies

A Medicare+Choice organization shall consult with physicians who have entered into participation agreements with the organization regarding the organization's medical policy, quality, and medical management procedures.

(3) Prohibiting interference with provider advice to enrollees

(A) In general

Subject to subparagraphs (B) and (C), a Medicare+Choice organization (in relation to an individual enrolled under a Medicare+Choice plan offered by the organization under this part) shall not prohibit or otherwise restrict a covered health care professional (as defined in subparagraph (D)) from advising such an individual who is a patient of the professional about the health status of the individual or medical care or treatment for the individual's condition or disease, regardless of whether benefits for such care or treatment are provided under the plan, if the professional is acting within the lawful scope of practice.

(B) Conscience protection

Subparagraph (A) shall not be construed as requiring a Medicare+Choice plan to provide, reimburse for, or provide coverage of a counseling or referral service if the Medicare+Choice organization offering the plan—

(i) objects to the provision of such service on moral or religious grounds; and

(ii) in the manner and through the written instrumentalities such Medicare+Choice organization deems appropriate, makes available information on its policies regarding such service to prospective enrollees before or during enrollment and to enrollees within 90 days after the date that the organization or plan adopts a change in policy regarding such a counseling or referral service.

(C) Construction

Nothing in subparagraph (B) shall be construed to affect disclosure requirements under State law or under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.].

(D) "Health care professional" defined

For purposes of this paragraph, the term ''health care professional'' means a physician (as defined in section 1395x(r) of this title) or other health care professional if coverage for the professional's services is provided under the Medicare+Choice plan for the services of the professional. Such term includes a podiatrist, optometrist, chiropractor, psychologist, dentist, physician as-

sistant, physical or occupational therapist and therapy assistant, speech-language pathologist, audiologist, registered or licensed practical nurse (including nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, and certified nurse-midwife), licensed certified social worker, registered respiratory therapist, and certified respiratory therapy technician.

(4) Limitations on physician incentive plans

(A) In general

No Medicare+Choice organization may operate any physician incentive plan (as defined in subparagraph (B)) unless the organization provides assurances satisfactory to the Secretary that the following requirements are met:

(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or group.

(B) "Physician incentive plan" defined

In this paragraph, the term ''physician incentive plan'' means any compensation arrangement between a Medicare+Choice organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization under this part.

(5) Limitation on provider indemnification

A Medicare+Choice organization may not provide (directly or indirectly) for a health care professional, provider of services, or other entity providing health care services (or group of such professionals, providers, or entities) to indemnify the organization against any liability resulting from a civil action brought for any damage caused to an enrollee with a Medicare+Choice plan of the organization under this part by the organization's denial of medically necessary care.

(6) Special rules for Medicare+Choice private fee-for-service plans

For purposes of applying this part (including subsection (k)(1) of this section) and section 1395cc(a)(1)(O) of this title, a hospital (or other provider of services), a physician or other health care professional, or other entity furnishing health care services is treated as having an agreement or contract in effect with a Medicare+Choice organization (with respect to an individual enrolled in a Medicare+Choice private fee-for-service plan it offers), if—

(A) the provider, professional, or other entity furnishes services that are covered under the plan to such an enrollee; and

(B) before providing such services, the provider, professional, or other entity—

(i) has been informed of the individual's enrollment under the plan, and

(ii) either—

(I) has been informed of the terms and conditions of payment for such services under the plan, or

(II) is given a reasonable opportunity to obtain information concerning such terms and conditions,

in a manner reasonably designed to effect informed agreement by a provider.

The previous sentence shall only apply in the absence of an explicit agreement between such a provider, professional, or other entity and the Medicare+Choice organization.

(7) Promotion of e-prescribing by MA plans

(A) In general

An MA–PD plan may provide for a separate payment or otherwise provide for a differential payment for a participating physician that prescribes covered part D drugs in accordance with an electronic prescription drug program that meets standards established under section 1395w–104(e) of this title.

(B) Considerations

Such payment may take into consideration the costs of the physician in implementing such a program and may also be increased for those participating physicians who significantly increase—

(i) formulary compliance;

(ii) lower cost, therapeutically equivalent alternatives;

(iii) reductions in adverse drug interactions; and

(iv) efficiencies in filing prescriptions through reduced administrative costs.

(C) Structure

Additional or increased payments under this subsection may be structured in the same manner as medication therapy management fees are structured under section 1395w–104(c)(2)(E) of this title.

(k) Treatment of services furnished by certain providers

(1) In general

Except as provided in paragraph (2), a physician or other entity (other than a provider of services) that does not have a contract establishing payment amounts for services furnished to an individual enrolled under this part with a Medicare+Choice organization described in section 1395w–21(a)(2)(A) of this title or with an organization offering an MSA plan shall accept as payment in full for covered services under this subchapter that are furnished to such an individual the amounts that the physician or other entity could collect if the individual were not so enrolled. Any penalty or other provision of law that applies to

such a payment with respect to an individual entitled to benefits under this subchapter (but not enrolled with a Medicare+Choice organization under this part) also applies with respect to an individual so enrolled.

(2) Application to Medicare+Choice private fee-for-service plans

(A) Balance billing limits under Medicare+Choice private fee-for-service plans in case of contract providers

(i) In general

In the case of an individual enrolled in a Medicare+Choice private fee-for-service plan under this part, a physician, provider of services, or other entity that has a contract (including through the operation of subsection (j)(6) of this section) establishing a payment rate for services furnished to the enrollee shall accept as payment in full for covered services under this subchapter that are furnished to such an individual an amount not to exceed (including any deductibles, coinsurance, copayments, or balance billing otherwise permitted under the plan) an amount equal to 115 percent of such payment rate.

(ii) Procedures to enforce limits

The Medicare+Choice organization that offers such a plan shall establish procedures, similar to the procedures described in section 1395w–4(g)(1)(A) of this title, in order to carry out the previous sentence.

(iii) Assuring enforcement

If the Medicare+Choice organization fails to establish and enforce procedures required under clause (ii), the organization is subject to intermediate sanctions under section 1395w–27(g) of this title.

(B) Enrollee liability for noncontract providers

For provision—

(i) establishing minimum payment rate in the case of noncontract providers under a Medicare+Choice private fee-for-service plan, see subsection (a)(2) of this section; or

(ii) limiting enrollee liability in the case of covered services furnished by such providers, see paragraph (1) and section 1395cc(a)(1)(O) of this title.

(C) Information on beneficiary liability

(i) In general

Each Medicare+Choice organization that offers a Medicare+Choice private fee-for-service plan shall provide that enrollees under the plan who are furnished services for which payment is sought under the plan are provided an appropriate explanation of benefits (consistent with that provided under parts A and B of this subchapter and, if applicable, under medicare supplemental policies) that includes a clear statement of the amount of the enrollee's liability (including any liability for balance billing consistent with this subsection) with respect to payments for such services.

(ii) Advance notice before receipt of inpatient hospital services and certain other services

In addition, such organization shall, in its terms and conditions of payments to hospitals for inpatient hospital services and for other services identified by the Secretary for which the amount of the balance billing under subparagraph (A) could be substantial, require the hospital to provide to the enrollee, before furnishing such services and if the hospital imposes balance billing under subparagraph (A)—

(I) notice of the fact that balance billing is permitted under such subparagraph for such services, and

(II) a good faith estimate of the likely amount of such balance billing (if any), with respect to such services, based upon the presenting condition of the enrollee.

***(l)* Return to home skilled nursing facilities for covered post-hospital extended care services**

(1) Ensuring return to home SNF

(A) In general

In providing coverage of post-hospital extended care services, a Medicare+Choice plan shall provide for such coverage through a home skilled nursing facility if the following conditions are met:

(i) Enrollee election

The enrollee elects to receive such coverage through such facility.

(ii) SNF agreement

The facility has a contract with the Medicare+Choice organization for the provision of such services, or the facility agrees to accept substantially similar payment under the same terms and conditions that apply to similarly situated skilled nursing facilities that are under contract with the Medicare+Choice organization for the provision of such services and through which the enrollee would otherwise receive such services.

(B) Manner of payment to home SNF

The organization shall provide payment to the home skilled nursing facility consistent with the contract or the agreement described in subparagraph (A)(ii), as the case may be.

(2) No less favorable coverage

The coverage provided under paragraph (1) (including scope of services, cost-sharing, and other criteria of coverage) shall be no less favorable to the enrollee than the coverage that would be provided to the enrollee with respect to a skilled nursing facility the post-hospital extended care services of which are otherwise covered under the Medicare+Choice plan.

(3) Rule of construction

Nothing in this subsection shall be construed to do the following:

(A) To require coverage through a skilled nursing facility that is not otherwise qualified to provide benefits under part A of this subchapter for medicare beneficiaries not enrolled in a Medicare+Choice plan.

(B) To prevent a skilled nursing facility from refusing to accept, or imposing conditions upon the acceptance of, an enrollee for the receipt of post-hospital extended care services.

(4) Definitions

In this subsection:

(A) Home skilled nursing facility

The term ''home skilled nursing facility'' means, with respect to an enrollee who is entitled to receive post-hospital extended care services under a Medicare+Choice plan, any of the following skilled nursing facilities:

(i) SNF residence at time of admission

The skilled nursing facility in which the enrollee resided at the time of admission to the hospital preceding the receipt of such post-hospital extended care services.

(ii) SNF in continuing care retirement community

A skilled nursing facility that is providing such services through a continuing care retirement community (as defined in subparagraph (B)) which provided residence to the enrollee at the time of such admission.

(iii) SNF residence of spouse at time of discharge

The skilled nursing facility in which the spouse of the enrollee is residing at the time of discharge from such hospital.

(B) Continuing care retirement community

The term ''continuing care retirement community'' means, with respect to an enrollee in a Medicare+Choice plan, an arrangement under which housing and health-related services are provided (or arranged) through an organization for the enrollee under an agreement that is effective for the life of the enrollee or for a specified period.

(Aug. 14, 1935, ch. 531, title XVIII, § 1852, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 286; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(k)(6)(B), title V, §§ 518, 520(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–367, 1501A–384, 1501A–385; Pub. L. 106–554, § 1(a)(6) [title V, § 521(b), title VI, §§ 611(b), 615, 616, 621(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–543, 2763A–560, 2763A–561, 2763A–564; Pub. L. 108–173, title I, § 102(b), title II, §§ 211(j), 221(d)(3), 222(a)(2), (3), (h), (*l*)(1), 233(a)(1), (2), (c), title VII, § 722(a), (b), title IX, §§ 900(e)(1)(F), 940(b)(2)(A), 948(b)(2), Dec. 8, 2003, 117 Stat. 2153, 2180, 2193, 2195, 2196, 2204, 2206, 2209, 2347, 2348, 2371, 2417, 2426.)

REFERENCES IN TEXT

Part A of subchapter XI of this chapter, referred to in subsec. (a)(1)(A), is classified to section 1301 et seq. of this title.

Parts A and B of this subchapter, referred to in subsecs. (a)(1)(B)(i), (2)(A)(ii), (d)(4)(A), (k)(2)(C)(i), and (*l*)(3)(A), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (j)(3)(C), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, as amended, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–173, § 222(a)(2), substituted ''Requirement'' for ''In general'' in par. heading, designated existing provisions as subpar. (A), inserted heading, substituted ''chapter, benefits under the original medicare fee-for-service program option (and, for plan years before 2006, additional benefits required under section 1395w–24(f)(1)(A) of this title).'' for ''chapter—'', added subpar. (B), and struck out former subpars. (A) and (B) which read as follows:

''(A) those items and services (other than hospice care) for which benefits are available under parts A and B of this subchapter to individuals residing in the area served by the plan, and

''(B) additional benefits required under section 1395w–24(f)(1)(A) of this title.''

Pub. L. 108–173, § 221(d)(3)(A), inserted ''and except as provided in paragraph (6) for MA regional plans'' after ''MSA plans'' in introductory provisions.

Subsec. (a)(2)(C). Pub. L. 108–173, § 948(b)(2), substituted ''determination'' for ''policy'' wherever appearing in heading and text.

Subsec. (a)(3)(C). Pub. L. 108–173, § 222(a)(3), inserted at end ''Such benefits may include reductions in cost-sharing below the actuarial value specified in section 1395w–24(e)(4)(B) of this title.''

Subsec. (a)(5). Pub. L. 108–173, § 900(e)(1)(F), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in concluding provisions.

Subsec. (a)(6). Pub. L. 108–173, § 221(d)(3)(B), added par. (6).

Subsec. (b)(1)(A). Pub. L. 108–173, § 222(*l*)(1), inserted at end ''The Secretary shall not approve a plan of an organization if the Secretary determines that the design of the plan and its benefits are likely to substantially discourage enrollment by certain MA eligible individuals with the organization.''

Subsec. (c)(1)(I). Pub. L. 108–173, § 722(b), amended heading and text of subpar. (I) generally. Prior to amendment, text read as follows: ''A description of the organization's quality assurance program under subsection (e) of this section, if required under such section.''

Pub. L. 108–173, § 233(a)(2)(A), inserted '', if required under such section'' before period at end.

Subsec. (d)(4). Pub. L. 108–173, § 211(j)(2), inserted before period at end of concluding provisions '', except that, if a plan entirely meets such requirement with respect to a category of health care professional or provider on the basis of subparagraph (B), it may provide for a higher beneficiary copayment in the case of health care professionals and providers of that category who do not have contracts or agreements (other than deemed contracts or agreements under subsection (j)(6) of this section) to provide covered services under the terms of the plan''.

Subsec. (d)(4)(B). Pub. L. 108–173, § 211(j)(1), inserted ''(other than deemed contracts or agreements under subsection (j)(6) of this section)'' after ''the plan has contracts or agreements''.

Subsec. (e). Pub. L. 108–173, § 722(a)(1), substituted ''improvement'' for ''assurance'' in heading.

Subsec. (e)(1). Pub. L. 108–173, § 722(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Each Medicare+Choice organization must have arrangements, consistent with any regulation, for an ongoing quality assurance program for health care services it provides to individuals enrolled with Medicare+Choice plans (other than MSA plans) of the organization.''

Pub. L. 108–173, § 233(a)(1), inserted ''(other than MSA plans)'' after ''plans''.

Subsec. (e)(2). Pub. L. 108–173, § 722(a)(2), amended par. (2) generally, substituting provisions relating to chronic care improvement programs for provisions relating

to elements of the quality assurance program of an organization with respect to a Medicare+Choice plan.

Subsec. (e)(2)(A). Pub. L. 108–173, § 233(a)(2)(B), struck out '', a non-network MSA plan,'' after ''fee-for-service plan'' in introductory provisions.

Subsec. (e)(2)(B). Pub. L. 108–173, § 233(a)(2)(C), struck out '', non-network MSA plans,'' after ''fee-for-service plans'' in heading and '', a non-network MSA plan,'' after ''fee-for-service plan'' in introductory provisions.

Subsec. (e)(3). Pub. L. 108–173, § 722(a)(2), amended par. (3) generally, substituting provisions relating to collection, analysis, and reporting of data for provisions relating to external review by an independent quality review and improvement organization.

Subsec. (e)(4)(B)(i). Pub. L. 108–173, § 722(a)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''Paragraphs (1) and (2) of this subsection (relating to quality assurance programs).''

Subsec. (e)(4)(B)(vii). Pub. L. 108–173, § 722(a)(3)(B), added cl. (vii).

Subsec. (e)(5). Pub. L. 108–173, § 722(a)(4), struck out par. (5), which related to report to be submitted to Congress not later than 2 years after Dec. 21, 2000, and biennially thereafter, regarding how quality assurance programs focus on racial and ethnic minorities.

Subsec. (g)(5). Pub. L. 108–173, § 940(b)(2)(A), inserted at end ''The provisions of section 1395ff(b)(1)(E)(iii) of this title shall apply with respect to dollar amounts specified in the first 2 sentences of this paragraph in the same manner as they apply to the dollar amounts specified in section 1395ff(b)(1)(E)(i) of this title.''

Subsec. (j)(4)(A). Pub. L. 108–173, § 222(h)(1), inserted ''the organization provides assurances satisfactory to the Secretary that'' after ''unless'' in introductory provisions.

Subsec. (j)(4)(A)(ii). Pub. L. 108–173, § 222(h)(2), substituted ''the organization'' for ''the organization—'', struck out subcl. (I) designation before ''provides'', substituted period for '', and'' at end of subcl. (I), and struck out subcl. (II), which read as follows: ''conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.''

Subsec. (j)(4)(A)(iii). Pub. L. 108–173, § 222(h)(3), struck out cl. (iii) which read as follows: ''The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.''

Subsec. (j)(7). Pub. L. 108–173, § 102(b), added par. (7).

Subsec. (k)(1). Pub. L. 108–173, § 233(c), inserted ''or with an organization offering an MSA plan'' after ''section 1395w–21(a)(2)(A) of this title''.

2000—Subsec. (a)(2)(C). Pub. L. 106–554, § 1(a)(6) [title VI, § 615], added subpar. (C).

Subsec. (a)(5). Pub. L. 106–554, § 1(a)(6) [title VI, § 611(b)(5)], inserted concluding provisions.

Pub. L. 106–554, § 1(a)(6) [title VI, § 611(b)(1), (2)], inserted ''and legislative changes in benefits'' after ''National coverage determinations'' in heading and inserted ''or legislative change in benefits required to be provided under this part'' after ''there is a national coverage determination'' in introductory provisions.

Subsec. (a)(5)(A). Pub. L. 106–554, § 1(a)(6) [title VI, § 611(b)(3)], inserted ''or legislative change in benefits'' after ''such determination''.

Subsec. (a)(5)(B). Pub. L. 106–554, § 1(a)(6) [title VI, § 611(b)(4)], inserted ''or legislative change'' after ''if such coverage determination''.

Subsec. (e)(2)(A), (B). Pub. L. 106–554, § 1(a)(6) [title VI, § 616(a)], inserted concluding provisions.

Subsec. (e)(5). Pub. L. 106–554, § 1(a)(6) [title VI, § 616(b)], added par. (5).

Subsec. (g)(4). Pub. L. 106–554, § 1(a)(6) [title V, § 521(b)], inserted at end ''The provisions of section 1395ff(c)(5) of this title shall apply to independent outside entities under contract with the Secretary under this paragraph.''

Subsec. (*l*). Pub. L. 106–554, § 1(a)(6) [title VI, § 621(a)], added subsec. (*l*).

1999—Subsec. (a)(3)(A). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(B)(i)], struck out comma after ''MSA plan'' and inserted comma after ''the coverage)''.

Subsec. (e)(2)(A). Pub. L. 106–113, § 1000(a)(6) [title V, § 520(a)(1)], substituted '', a non-network MSA plan, or a preferred provider organization plan'' for ''or a non-network MSA plan'' in introductory provisions.

Subsec. (e)(2)(B). Pub. L. 106–113, § 1000(a)(6) [title V, § 520(a)(2)], substituted '', non-network MSA plans, and preferred provider organization plans'' for ''and non-network MSA plans'' in heading and '', a non-network MSA plan, or a preferred provider organization plan'' for ''or a non-network MSA plan'' in introductory provisions.

Subsec. (e)(2)(D). Pub. L. 106–113, § 1000(a)(6) [title V, § 520(a)(3)], added subpar. (D).

Subsec. (e)(4). Pub. L. 106–113, § 1000(a)(6) [title V, § 518], amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''The Secretary shall provide that a Medicare+Choice organization is deemed to meet requirements of paragraphs (1) and (2) of this subsection and subsection (h) of this section (relating to confidentiality and accuracy of enrollee records) if the organization is accredited (and periodically reaccredited) by a private organization under a process that the Secretary has determined assures that the organization, as a condition of accreditation, applies and enforces standards with respect to the requirements involved that are no less stringent than the standards established under section 1395w–26 of this title to carry out the respective requirements.''

Subsec. (g)(1)(B). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(B)(ii)(I)], inserted ''or'' after ''in whole''.

Subsec. (g)(3)(B)(ii). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(B)(ii)(II)], inserted period at end.

Subsec. (h)(2). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(B)(iii)], substituted a semicolon for a comma before ''and''.

Subsec. (k)(2)(C)(ii). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(B)(iv)], substituted ''balance'' for ''balancing'' before ''billing under subparagraph (A) could'' in introductory provisions.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by sections 221(d)(3) and 222(a)(2), (3), (h), (*l*)(1) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 1395w–21 of this title.

Pub. L. 108–173, title II, § 233(a)(3), Dec. 8, 2003, 117 Stat. 2209, provided that: ''The amendments made by this subsection [amending this section] shall apply on and after the date of the enactment of this Act [Dec. 8, 2003] but shall not apply to contract years beginning on or after January 1, 2006.''

Pub. L. 108–173, title VII, § 722(c), Dec. 8, 2003, 117 Stat. 2348, provided that: ''The amendments made by this section [amending this section] shall apply with respect to contract years beginning on and after January 1, 2006.''

Amendment by section 948(b)(2) of Pub. L. 108–173 effective, except as otherwise provided, as if included in the enactment of BIPA (the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(6) of Public Law 106–554), see section 948(e) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 1314 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title V, § 521(b)] of Pub. L. 106–554 applicable with respect to initial determinations made on or after Oct. 1, 2002, see section 1(a)(6) [title V, § 521(d)] of Pub. L. 106–554, set out as a note under section 1320c–3 of this title.

Pub. L. 106–554, § 1(a)(6) [title VI, § 611(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–560, provided that: ''The amendments made by this section [amending this section and section 1395w–23 of this title] are effective on the date of the enactment of this Act [Dec. 21, 2000] and shall apply to national coverage determinations and legislative changes in benefits occurring on or after such date.''

Pub. L. 106–554, § 1(a)(6) [title VI, § 621(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–565, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title III, § 321(k)(6)(B)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 520(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–386, provided that: ''The amendments made by subsection (a) [amending this section] apply to contract years beginning on or after January 1, 2000.''

MEDPAC STUDY

Pub. L. 106–554, § 1(a)(6) [title VI, § 621(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–565, provided that:

''(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study analyzing the effects of the amendment made by subsection (a) [amending this section] on Medicare+Choice organizations. In conducting such study, the Commission shall examine the effects (if any) such amendment has had—

''(A) on the scope of additional benefits provided under the Medicare+Choice program;

''(B) on the administrative and other costs incurred by Medicare+Choice organizations; and

''(C) on the contractual relationships between such organizations and skilled nursing facilities.

''(2) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under paragraph (1).''

TRANSITIONAL PASS-THROUGH OF ADDITIONAL COSTS UNDER MEDICARE+CHOICE PROGRAM FOR 2000

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 227(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–355, provided that: ''The provisions of subparagraphs (A) and (B) of section 1852(a)(5) of the Social Security Act (42 U.S.C. 1395w–22(a)(5)) shall apply with respect to the coverage of additional benefits for immunosuppressive drugs under the amendments made by this section [amending sections 1395k and 1395x of this title] for drugs furnished in 2000 in the same manner as if such amendments constituted a national coverage determination described in the matter in such section before subparagraph (A).''

§ 1395w–23. Payments to Medicare+Choice organizations

(a) Payments to organizations

(1) Monthly payments

(A) In general

Under a contract under section 1395w–27 of this title and subject to subsections (e), (g), and (i) of this section and section 1395w–28(e)(4) of this title, the Secretary shall make monthly payments under this section in advance to each Medicare+Choice organization, with respect to coverage of an individual under this part in a Medicare+Choice payment area for a month, in an amount determined as follows:

(i) Payment before 2006

For years before 2006, the payment amount shall be equal to 1/12 of the annual MA capitation rate (as calculated under subsection (c)(1) of this section) with respect to that individual for that area, adjusted under subparagraph (C) and reduced by the amount of any reduction elected under section 1395w–24(f)(1)(E) of this title.

(ii) Payment for original fee-for-service benefits beginning with 2006

For years beginning with 2006, the amount specified in subparagraph (B).

(B) Payment amount for original fee-for-service benefits beginning with 2006

(i) Payment of bid for plans with bids below benchmark

In the case of a plan for which there are average per capita monthly savings described in section 1395w–24(b)(3)(C) or 1395w–24(b)(4)(C) of this title, as the case may be, the amount specified in this subparagraph is equal to the unadjusted MA statutory non-drug monthly bid amount, adjusted under subparagraph (C) and (if applicable) under subparagraphs (F) and (G), plus the amount (if any) of any rebate under subparagraph (E).

(ii) Payment of benchmark for plans with bids at or above benchmark

In the case of a plan for which there are no average per capita monthly savings described in section 1395w–24(b)(3)(C) or 1395w–24(b)(4)(C) of this title, as the case may be, the amount specified in this subparagraph is equal to the MA area-specific non-drug monthly benchmark amount, adjusted under subparagraph (C) and (if applicable) under subparagraphs (F) and (G).

(iii) Payment of benchmark for MSA plans

Notwithstanding clauses (i) and (ii), in the case of an MSA plan, the amount specified in this subparagraph is equal to the MA area-specific non-drug monthly benchmark amount, adjusted under subparagraph (C).

(C) Demographic adjustment, including adjustment for health status

The Secretary shall adjust the payment amount under subparagraph (A)(i) and the amount specified under subparagraph (B)(i), (B)(ii), and (B)(iii) for such risk factors as age, disability status, gender, institutional status, and such other factors as the Secretary determines to be appropriate, including adjustment for health status under paragraph (3), so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such adjustment factors if

such changes will improve the determination of actuarial equivalence.

(D) Separate payment for Federal drug subsidies

In the case of an enrollee in an MA–PD plan, the MA organization offering such plan also receives—

(i) subsidies under section 1395w–115 of this title (other than under subsection (g)); and

(ii) reimbursement for premium and cost-sharing reductions for low-income individuals under section 1395w–114(c)(1)(C) of this title.

(E) Payment of rebate for plans with bids below benchmark

In the case of a plan for which there are average per capita monthly savings described in section 1395w–24(b)(3)(C) or 1395w–24(b)(4)(C) of this title, as the case may be, the amount specified in this subparagraph is the amount of the monthly rebate computed under section 1395w–24(b)(1)(C)(i) of this title for that plan and year (as reduced by the amount of any credit provided under section 1395w–24(b)(1)(C)(iv) of this title).

(F) Adjustment for intra-area variations

(i) Intra-regional variations

In the case of payment with respect to an MA regional plan for an MA region, the Secretary shall also adjust the amounts specified under subparagraphs (B)(i) and (B)(ii) in a manner to take into account variations in MA local payment rates under this part among the different MA local areas included in such region.

(ii) Intra-service area variations

In the case of payment with respect to an MA local plan for a service area that covers more than one MA local area, the Secretary shall also adjust the amounts specified under subparagraphs (B)(i) and (B)(ii) in a manner to take into account variations in MA local payment rates under this part among the different MA local areas included in such service area.

(G) Adjustment relating to risk adjustment

The Secretary shall adjust payments with respect to MA plans as necessary to ensure that—

(i) the sum of—

(I) the monthly payment made under subparagraph (A)(ii); and

(II) the MA monthly basic beneficiary premium under section 1395w–24(b)(2)(A) of this title; equals

(ii) the unadjusted MA statutory non-drug monthly bid amount, adjusted in the manner described in subparagraph (C) and, for an MA regional plan, subparagraph (F).

(H) Special rule for end-stage renal disease

The Secretary shall establish separate rates of payment to a Medicare+Choice organization with respect to classes of individuals determined to have end-stage renal disease and enrolled in a Medicare+Choice plan of the organization. Such rates of payment shall be actuarially equivalent to rates that would have been paid with respect to other enrollees in the MA payment area (or such other area as specified by the Secretary) under the provisions of this section as in effect before December 8, 2003. In accordance with regulations, the Secretary shall provide for the application of the seventh sentence of section 1395rr(b)(7) of this title to payments under this section covering the provision of renal dialysis treatment in the same manner as such sentence applies to composite rate payments described in such sentence. In establishing such rates, the Secretary shall provide for appropriate adjustments to increase each rate to reflect the demonstration rate (including the risk adjustment methodology associated with such rate) of the social health maintenance organization end-stage renal disease capitation demonstrations (established by section 2355 of the Deficit Reduction Act of 1984, as amended by section 13567(b) of the Omnibus Budget Reconciliation Act of 1993), and shall compute such rates by taking into account such factors as renal treatment modality, age, and the underlying cause of the end-stage renal disease. The Secretary may apply the competitive bidding methodology provided for in this section, with appropriate adjustments to account for the risk adjustment methodology applied to end stage renal disease payments.

(2) Adjustment to reflect number of enrollees

(A) In general

The amount of payment under this subsection may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled with an organization under this part and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(B) Special rule for certain enrollees

(i) In general

Subject to clause (ii), the Secretary may make retroactive adjustments under subparagraph (A) to take into account individuals enrolled during the period beginning on the date on which the individual enrolls with a Medicare+Choice organization under a plan operated, sponsored, or contributed to by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the organization under this part, except that for purposes of making such retroactive adjustments under this subparagraph, such period may not exceed 90 days.

(ii) Exception

No adjustment may be made under clause (i) with respect to any individual who does not certify that the organization provided the individual with the disclosure

statement described in section 1395w–22(c) of this title at the time the individual enrolled with the organization.

(3) Establishment of risk adjustment factors

(A) Report

The Secretary shall develop, and submit to Congress by not later than March 1, 1999, a report on the method of risk adjustment of payment rates under this section, to be implemented under subparagraph (C), that accounts for variations in per capita costs based on health status. Such report shall include an evaluation of such method by an outside, independent actuary of the actuarial soundness of the proposal.

(B) Data collection

In order to carry out this paragraph, the Secretary shall require Medicare+Choice organizations (and eligible organizations with risk-sharing contracts under section 1395mm of this title) to submit data regarding inpatient hospital services for periods beginning on or after July 1, 1997, and data regarding other services and other information as the Secretary deems necessary for periods beginning on or after July 1, 1998. The Secretary may not require an organization to submit such data before January 1, 1998.

(C) Initial implementation

(i) In general

The Secretary shall first provide for implementation of a risk adjustment methodology that accounts for variations in per capita costs based on health status and other demographic factors for payments by no later than January 1, 2000.

(ii) Phase-in

Except as provided in clause (iv), such risk adjustment methodology shall be implemented in a phased-in manner so that the methodology insofar as it makes adjustments to capitation rates for health status applies to—

(I) 10 percent of 1/12 of the annual Medicare+Choice capitation rate in 2000 and each succeeding year through 2003;

(II) 30 percent of such capitation rate in 2004;

(III) 50 percent of such capitation rate in 2005;

(IV) 75 percent of such capitation rate in 2006; and

(V) 100 percent of such capitation rate in 2007 and succeeding years.

(iii) Data for risk adjustment methodology

Such risk adjustment methodology for 2004 and each succeeding year, shall be based on data from inpatient hospital and ambulatory settings.

(iv) Full implementation of risk adjustment for congestive heart failure enrollees for 2001

(I) Exemption from phase-in

Subject to subclause (II), the Secretary shall fully implement the risk adjustment methodology described in clause (i) with respect to each individual who has had a qualifying congestive heart failure inpatient diagnosis (as determined by the Secretary under such risk adjustment methodology) during the period beginning on July 1, 1999, and ending on June 30, 2000, and who is enrolled in a coordinated care plan that is the only coordinated care plan offered on January 1, 2001, in the service area of the individual.

(II) Period of application

Subclause (I) shall only apply during the 1-year period beginning on January 1, 2001.

(D) Uniform application to all types of plans

Subject to section 1395w–28(e)(4) of this title, the methodology shall be applied uniformly without regard to the type of plan.

(4) Payment rule for federally qualified health center services

If an individual who is enrolled with an MA plan under this part receives a service from a federally qualified health center that has a written agreement with the MA organization that offers such plan for providing such a service (including any agreement required under section 1395w–27(e)(3) of this title)—

(A) the Secretary shall pay the amount determined under section 1395*l*(a)(3)(B) of this title directly to the federally qualified health center not less frequently than quarterly; and

(B) the Secretary shall not reduce the amount of the monthly payments under this subsection as a result of the application of subparagraph (A).

(b) Annual announcement of payment rates

(1) Annual announcements

(A) For 2005

The Secretary shall determine, and shall announce (in a manner intended to provide notice to interested parties), not later than the second Monday in May of 2004, with respect to each MA payment area, the following:

(i) MA capitation rates

The annual MA capitation rate for each MA payment area for 2005.

(ii) Adjustment factors

The risk and other factors to be used in adjusting such rates under subsection (a)(1)(C) of this section for payments for months in 2005.

(B) For 2006 and subsequent years

For a year after 2005—

(i) Initial announcement

The Secretary shall determine, and shall announce (in a manner intended to provide notice to interested parties), not later than the first Monday in April before the calendar year concerned, with respect to each MA payment area, the following:

(I) MA capitation rates; MA local area benchmark

The annual MA capitation rate for each MA payment area for the year.

(II) Adjustment factors

The risk and other factors to be used in adjusting such rates under subsection (a)(1)(C) of this section for payments for months in such year.

(ii) Regional benchmark announcement

The Secretary shall determine, and shall announce (in a manner intended to provide notice to interested parties), on a timely basis before the calendar year concerned, with respect to each MA region and each MA regional plan for which a bid was submitted under section 1395w–24 of this title, the MA region-specific non-drug monthly benchmark amount for that region for the year involved.

(iii) Benchmark announcement for CCA local areas

The Secretary shall determine, and shall announce (in a manner intended to provide notice to interested parties), on a timely basis before the calendar year concerned, with respect to each CCA area (as defined in section 1395w–29(b)(1)(A) of this title), the CCA non-drug monthly benchmark amount under section 1395w–29(e)(1) of this title for that area for the year involved.

(2) Advance notice of methodological changes

At least 45 days before making the announcement under paragraph (1) for a year, the Secretary shall provide for notice to Medicare+Choice organizations of proposed changes to be made in the methodology from the methodology and assumptions used in the previous announcement and shall provide such organizations an opportunity to comment on such proposed changes.

(3) Explanation of assumptions

In each announcement made under paragraph (1), the Secretary shall include an explanation of the assumptions and changes in methodology used in such announcement.

(4) Continued computation and publication of county-specific per capita fee-for-service expenditure information

The Secretary, through the Chief Actuary of the Centers for Medicare & Medicaid Services, shall provide for the computation and publication, on an annual basis beginning with 2001 at the time of publication of the annual Medicare+Choice capitation rates under paragraph (1), of the following information for the original medicare fee-for-service program under parts A and B of this subchapter (exclusive of individuals eligible for coverage under section 426–1 of this title) for each Medicare+Choice payment area for the second calendar year ending before the date of publication:

(A) Total expenditures per capita per month, computed separately for part A of this subchapter and for part B of this subchapter.

(B) The expenditures described in subparagraph (A) reduced by the best estimate of the expenditures (such as graduate medical education and disproportionate share hospital payments) not related to the payment of claims.

(C) The average risk factor for the covered population based on diagnoses reported for medicare inpatient services, using the same methodology as is expected to be applied in making payments under subsection (a) of this section.

(D) Such average risk factor based on diagnoses for inpatient and other sites of service, using the same methodology as is expected to be applied in making payments under subsection (a) of this section.

(c) Calculation of annual Medicare+Choice capitation rates

(1) In general

For purposes of this part, subject to paragraphs (6)(C) and (7), each annual Medicare+Choice capitation rate, for a Medicare+Choice payment area that is an MA local area for a contract year consisting of a calendar year, is equal to the largest of the amounts specified in the following subparagraph (A), (B), (C), or (D):

(A) Blended capitation rate

For a year before 2005, the sum of—

(i) the area-specific percentage (as specified under paragraph (2) for the year) of the annual area-specific Medicare+Choice capitation rate for the Medicare+Choice payment area, as determined under paragraph (3) for the year, and

(ii) the national percentage (as specified under paragraph (2) for the year) of the input-price-adjusted annual national Medicare+Choice capitation rate, as determined under paragraph (4) for the year,

multiplied (for a year other than 2004) by the budget neutrality adjustment factor determined under paragraph (5).

(B) Minimum amount

12 multiplied by the following amount:

(i) For 1998, $367 (but not to exceed, in the case of an area outside the 50 States and the District of Columbia, 150 percent of the annual per capita rate of payment for 1997 determined under section 1395mm(a)(1)(C) of this title for the area).

(ii) For 1999 and 2000, the minimum amount determined under clause (i) or this clause, respectively, for the preceding year, increased by the national per capita Medicare+Choice growth percentage described in paragraph (6)(A) applicable to 1999 or 2000, respectively.

(iii)(I) Subject to subclause (II), for 2001, for any area in a Metropolitan Statistical Area with a population of more than 250,000, $525, and for any other area $475.

(II) In the case of an area outside the 50 States and the District of Columbia, the amount specified in this clause shall not exceed 120 percent of the amount determined under clause (ii) for such area for 2000.

(iv) For 2002, 2003, and 2004, the minimum amount specified in this clause (or clause (iii)) for the preceding year increased by

the national per capita Medicare+Choice growth percentage, described in paragraph (6)(A) for that succeeding year.

(C) Minimum percentage increase

(i) For 1998, 102 percent of the annual per capita rate of payment for 1997 determined under section 1395mm(a)(1)(C) of this title for the Medicare+Choice payment area.

(ii) For 1999 and 2000, 102 percent of the annual Medicare+Choice capitation rate under this paragraph for the area for the previous year.

(iii) For 2001, 103 percent of the annual Medicare+Choice capitation rate under this paragraph for the area for 2000.

(iv) For 2002 and 2003, 102 percent of the annual Medicare+Choice capitation rate under this paragraph for the area for the previous year.

(v) For 2004 and each succeeding year, the greater of—

(I) 102 percent of the annual MA capitation rate under this paragraph for the area for the previous year; or

(II) the annual MA capitation rate under this paragraph for the area for the previous year increased by the national per capita MA growth percentage, described in paragraph (6) for that succeeding year, but not taking into account any adjustment under paragraph (6)(C) for a year before 2004.

(D) 100 percent of fee-for-service costs

(i) In general

For each year specified in clause (ii), the adjusted average per capita cost for the year involved, determined under section 1395mm(a)(4) of this title and adjusted as appropriate for the purpose of risk adjustment, for the MA payment area for individuals who are not enrolled in an MA plan under this part for the year, but adjusted to exclude costs attributable to payments under section 1395ww(h) of this title.

(ii) Periodic rebasing

The provisions of clause (i) shall apply for 2004 and for subsequent years as the Secretary shall specify (but not less than once every 3 years).

(iii) Inclusion of costs of VA and DOD military facility services to medicare-eligible beneficiaries

In determining the adjusted average per capita cost under clause (i) for a year, such cost shall be adjusted to include the Secretary's estimate, on a per capita basis, of the amount of additional payments that would have been made in the area involved under this subchapter if individuals entitled to benefits under this subchapter had not received services from facilities of the Department of Defense or the Department of Veterans Affairs.

(2) Area-specific and national percentages

For purposes of paragraph (1)(A)—

(A) for 1998, the ''area-specific percentage'' is 90 percent and the ''national percentage'' is 10 percent,

(B) for 1999, the ''area-specific percentage'' is 82 percent and the ''national percentage'' is 18 percent,

(C) for 2000, the ''area-specific percentage'' is 74 percent and the ''national percentage'' is 26 percent,

(D) for 2001, the ''area-specific percentage'' is 66 percent and the ''national percentage'' is 34 percent,

(E) for 2002, the ''area-specific percentage'' is 58 percent and the ''national percentage'' is 42 percent, and

(F) for a year after 2002, the ''area-specific percentage'' is 50 percent and the ''national percentage'' is 50 percent.

(3) Annual area-specific Medicare+Choice capitation rate

(A) In general

For purposes of paragraph (1)(A), subject to subparagraphs (B) and (E), the annual area-specific Medicare+Choice capitation rate for a Medicare+Choice payment area—

(i) for 1998 is, subject to subparagraph (D), the annual per capita rate of payment for 1997 determined under section 1395mm(a)(1)(C) of this title for the area, increased by the national per capita Medicare+Choice growth percentage for 1998 (described in paragraph (6)(A)); or

(ii) for a subsequent year is the annual area-specific Medicare+Choice capitation rate for the previous year determined under this paragraph for the area, increased by the national per capita Medicare+Choice growth percentage for such subsequent year.

(B) Removal of medical education from calculation of adjusted average per capita cost

(i) In general

In determining the area-specific Medicare+Choice capitation rate under subparagraph (A) for a year (beginning with 1998), the annual per capita rate of payment for 1997 determined under section 1395mm(a)(1)(C) of this title shall be adjusted to exclude from the rate the applicable percent (specified in clause (ii)) of the payment adjustments described in subparagraph (C).

(ii) Applicable percent

For purposes of clause (i), the applicable percent for—

(I) 1998 is 20 percent,

(II) 1999 is 40 percent,

(III) 2000 is 60 percent,

(IV) 2001 is 80 percent, and

(V) a succeeding year is 100 percent.

(C) Payment adjustment

(i) In general

Subject to clause (ii), the payment adjustments described in this subparagraph are payment adjustments which the Secretary estimates were payable during 1997—

(I) for the indirect costs of medical education under section 1395ww(d)(5)(B) of this title, and

(II) for direct graduate medical education costs under section 1395ww(h) of this title.

(ii) Treatment of payments covered under State hospital reimbursement system

To the extent that the Secretary estimates that an annual per capita rate of payment for 1997 described in clause (i) reflects payments to hospitals reimbursed under section 1395f(b)(3) of this title, the Secretary shall estimate a payment adjustment that is comparable to the payment adjustment that would have been made under clause (i) if the hospitals had not been reimbursed under such section.

(D) Treatment of areas with highly variable payment rates

In the case of a Medicare+Choice payment area for which the annual per capita rate of payment determined under section 1395mm(a)(1)(C) of this title for 1997 varies by more than 20 percent from such rate for 1996, for purposes of this subsection the Secretary may substitute for such rate for 1997 a rate that is more representative of the costs of the enrollees in the area.

(E) Inclusion of costs of DOD and VA military facility services to Medicare-eligible beneficiaries

In determining the area-specific MA capitation rate under subparagraph (A) for a year (beginning with 2004), the annual per capita rate of payment for 1997 determined under section 1395mm(a)(1)(C) of this title shall be adjusted to include in the rate the Secretary's estimate, on a per capita basis, of the amount of additional payments that would have been made in the area involved under this subchapter if individuals entitled to benefits under this subchapter had not received services from facilities of the Department of Defense or the Department of Veterans Affairs.

(4) Input-price-adjusted annual national Medicare+Choice capitation rate

(A) In general

For purposes of paragraph (1)(A), the input-price-adjusted annual national Medicare+Choice capitation rate for a Medicare+Choice payment area for a year is equal to the sum, for all the types of medicare services (as classified by the Secretary), of the product (for each such type of service) of—

(i) the national standardized annual Medicare+Choice capitation rate (determined under subparagraph (B)) for the year,

(ii) the proportion of such rate for the year which is attributable to such type of services, and

(iii) an index that reflects (for that year and that type of services) the relative input price of such services in the area compared to the national average input price of such services.

In applying clause (iii), the Secretary may, subject to subparagraph (C), apply those indices under this subchapter that are used in applying (or updating) national payment rates for specific areas and localities.

(B) National standardized annual Medicare+Choice capitation rate

In subparagraph (A)(i), the ''national standardized annual Medicare+Choice capitation rate'' for a year is equal to—

(i) the sum (for all Medicare+Choice payment areas) of the product of—

(I) the annual area-specific Medicare+Choice capitation rate for that year for the area under paragraph (3), and

(II) the average number of medicare beneficiaries residing in that area in the year, multiplied by the average of the risk factor weights used to adjust payments under subsection (a)(1)(A) of this section for such beneficiaries in such area; divided by

(ii) the sum of the products described in clause (i)(II) for all areas for that year.

(C) Special rules for 1998

In applying this paragraph for 1998—

(i) medicare services shall be divided into 2 types of services: part A services and part B services;

(ii) the proportions described in subparagraph (A)(ii)—

(I) for part A services shall be the ratio (expressed as a percentage) of the national average annual per capita rate of payment for part A of this subchapter for 1997 to the total national average annual per capita rate of payment for parts A and B of this subchapter for 1997, and

(II) for part B services shall be 100 percent minus the ratio described in subclause (I);

(iii) for part A services, 70 percent of payments attributable to such services shall be adjusted by the index used under section 1395ww(d)(3)(E) of this title to adjust payment rates for relative hospital wage levels for hospitals located in the payment area involved;

(iv) for part B services—

(I) 66 percent of payments attributable to such services shall be adjusted by the index of the geographic area factors under section 1395w–4(e) of this title used to adjust payment rates for physicians' services furnished in the payment area, and

(II) of the remaining 34 percent of the amount of such payments, 40 percent shall be adjusted by the index described in clause (iii); and

(v) the index values shall be computed based only on the beneficiary population who are 65 years of age or older and who are not determined to have end stage renal disease.

The Secretary may continue to apply the rules described in this subparagraph (or similar rules) for 1999.

(5) Payment adjustment budget neutrality factor

For purposes of paragraph (1)(A), for each year (other than 2004), the Secretary shall determine a budget neutrality adjustment factor so that the aggregate of the payments under this part (other than those attributable to subsections (a)(3)(C)(iv), (a)(4), and (i) of this section) shall equal the aggregate payments that would have been made under this part if payment were based entirely on area-specific capitation rates.

(6) "National per capita Medicare+Choice growth percentage" defined

(A) In general

In this part, the ''national per capita Medicare+Choice growth percentage'' for a year is the percentage determined by the Secretary, by March 1st before the beginning of the year involved, to reflect the Secretary's estimate of the projected per capita rate of growth in expenditures under this subchapter for an individual entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, reduced by the number of percentage points specified in subparagraph (B) for the year. Separate determinations may be made for aged enrollees, disabled enrollees, and enrollees with end-stage renal disease.

(B) Adjustment

The number of percentage points specified in this subparagraph is—

(i) for 1998, 0.8 percentage points,

(ii) for 1999, 0.5 percentage points,

(iii) for 2000, 0.5 percentage points,

(iv) for 2001, 0.5 percentage points,

(v) for 2002, 0.3 percentage points, and

(vi) for a year after 2002, 0 percentage points.

(C) Adjustment for over or under projection of national per capita Medicare+Choice growth percentage

Beginning with rates calculated for 1999, before computing rates for a year as described in paragraph (1), the Secretary shall adjust all area-specific and national Medicare+Choice capitation rates (and beginning in 2000, the minimum amount) for the previous year for the differences between the projections of the national per capita Medicare+Choice growth percentage for that year and previous years and the current estimate of such percentage for such years, except that for purposes of paragraph (1)(C)(v)(II), no such adjustment shall be made for a year before 2004.

(7) Adjustment for national coverage determinations and legislative changes in benefits

If the Secretary makes a determination with respect to coverage under this subchapter or there is a change in benefits required to be provided under this part that the Secretary projects will result in a significant increase in the costs to Medicare+Choice of providing benefits under contracts under this part (for periods after any period described in section 1395w–22(a)(5) of this title), the Secretary shall adjust appropriately the payments to such organizations under this part. Such projection and adjustment shall be based on an analysis by the Chief Actuary of the Centers for Medicare & Medicaid Services of the actuarial costs associated with the new benefits.

(d) MA payment area; MA local area; MA region defined

(1) MA payment area

In this part, except as provided in this subsection, the term ''MA payment area'' means—

(A) with respect to an MA local plan, an MA local area (as defined in paragraph (2)); and

(B) with respect to an MA regional plan, an MA region (as established under section 1395w–27a(a)(2) of this title).

(2) MA local area

The term ''MA local area'' means a county or equivalent area specified by the Secretary.

(3) Rule for ESRD beneficiaries

In the case of individuals who are determined to have end stage renal disease, the Medicare+Choice payment area shall be a State or such other payment area as the Secretary specifies.

(4) Geographic adjustment

(A) In general

Upon written request of the chief executive officer of a State for a contract year (beginning after 1998) made by not later than February 1 of the previous year, the Secretary shall make a geographic adjustment to a Medicare+Choice payment area in the State otherwise determined under paragraph (1) for MA local plans—

(i) to a single statewide Medicare+Choice payment area,

(ii) to the metropolitan based system described in subparagraph (C), or

(iii) to consolidating into a single Medicare+Choice payment area noncontiguous counties (or equivalent areas described in paragraph (1)(A)) within a State.

Such adjustment shall be effective for payments for months beginning with January of the year following the year in which the request is received.

(B) Budget neutrality adjustment

In the case of a State requesting an adjustment under this paragraph, the Secretary shall initially (and annually thereafter) adjust the payment rates otherwise established under this section with respect to MA local plans for Medicare+Choice payment areas in the State in a manner so that the aggregate of the payments under this section for such plans in the State shall not exceed the aggregate payments that would have been made under this section for such plans for Medicare+Choice payment areas in the State in the absence of the adjustment under this paragraph.

(C) Metropolitan based system

The metropolitan based system described in this subparagraph is one in which—

(i) all the portions of each metropolitan statistical area in the State or in the case of a consolidated metropolitan statistical area, all of the portions of each primary metropolitan statistical area within the consolidated area within the State, are treated as a single Medicare+Choice payment area, and

(ii) all areas in the State that do not fall within a metropolitan statistical area are treated as a single Medicare+Choice payment area.

(D) Areas

In subparagraph (C), the terms ''metropolitan statistical area'', ''consolidated metropolitan statistical area'', and ''primary metropolitan statistical area'' mean any area designated as such by the Secretary of Commerce.

(e) Special rules for individuals electing MSA plans

(1) In general

If the amount of the Medicare+Choice monthly MSA premium (as defined in section 1395w–24(b)(2)(C) of this title) for an MSA plan for a year is less than 1/12 of the annual Medicare+Choice capitation rate applied under this section for the area and year involved, the Secretary shall deposit an amount equal to 100 percent of such difference in a Medicare+Choice MSA established (and, if applicable, designated) by the individual under paragraph (2).

(2) Establishment and designation of Medicare+Choice medical savings account as requirement for payment of contribution

In the case of an individual who has elected coverage under an MSA plan, no payment shall be made under paragraph (1) on behalf of an individual for a month unless the individual—

(A) has established before the beginning of the month (or by such other deadline as the Secretary may specify) a Medicare+Choice MSA (as defined in section 138(b)(2) of the Internal Revenue Code of 1986), and

(B) if the individual has established more than one such Medicare+Choice MSA, has designated one of such accounts as the individual's Medicare+Choice MSA for purposes of this part.

Under rules under this section, such an individual may change the designation of such account under subparagraph (B) for purposes of this part.

(3) Lump-sum deposit of medical savings account contribution

In the case of an individual electing an MSA plan effective beginning with a month in a year, the amount of the contribution to the Medicare+Choice MSA on behalf of the individual for that month and all successive months in the year shall be deposited during that first month. In the case of a termination of such an election as of a month before the end of a year, the Secretary shall provide for a procedure for the recovery of deposits attributable to the remaining months in the year.

(f) Payments from Trust Funds

The payment to a Medicare+Choice organization under this section for individuals enrolled under this part with the organization and payments to a Medicare+Choice MSA under subsection (e)(1) of this section shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such proportion as the Secretary determines reflects the relative weight that benefits under part A of this subchapter and under part B of this subchapter represents of the actuarial value of the total benefits under this subchapter. Payments to MA organizations for statutory drug benefits provided under this subchapter are made from the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund. Monthly payments otherwise payable under this section for October 2000 shall be paid on the first business day of such month. Monthly payments otherwise payable under this section for October 2001 shall be paid on the last business day of September 2001. Monthly payments otherwise payable under this section for October 2006 shall be paid on the first business day of October 2006.

(g) Special rule for certain inpatient hospital stays

In the case of an individual who is receiving inpatient hospital services from a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title), a rehabilitation hospital described in section 1395ww(d)(1)(B)(ii) of this title or a distinct part rehabilitation unit described in the matter following clause (v) of section 1395ww(d)(1)(B) of this title, or a long-term care hospital (described in section 1395ww(d)(1)(B)(iv) of this title) as of the effective date of the individual's—

(1) election under this part of a Medicare+Choice plan offered by a Medicare+Choice organization—

(A) payment for such services until the date of the individual's discharge shall be made under this subchapter through the Medicare+Choice plan or the original medicare fee-for-service program option described in section 1395w–21(a)(1)(A) of this title (as the case may be) elected before the election with such organization,

(B) the elected organization shall not be financially responsible for payment for such services until the date after the date of the individual's discharge, and

(C) the organization shall nonetheless be paid the full amount otherwise payable to the organization under this part; or

(2) termination of election with respect to a Medicare+Choice organization under this part—

(A) the organization shall be financially responsible for payment for such services after such date and until the date of the individual's discharge,

(B) payment for such services during the stay shall not be made under section 1395ww(d) of this title or other payment provision under this subchapter for inpatient services for the type of facility, hospital, or unit involved, described in the matter pre-

ceding paragraph (1), as the case may be, or by any succeeding Medicare+Choice organization, and

(C) the terminated organization shall not receive any payment with respect to the individual under this part during the period the individual is not enrolled.

(h) Special rule for hospice care

(1) Information

A contract under this part shall require the Medicare+Choice organization to inform each individual enrolled under this part with a Medicare+Choice plan offered by the organization about the availability of hospice care if—

(A) a hospice program participating under this subchapter is located within the organization's service area; or

(B) it is common practice to refer patients to hospice programs outside such service area.

(2) Payment

If an individual who is enrolled with a Medicare+Choice organization under this part makes an election under section 1395d(d)(1) of this title to receive hospice care from a particular hospice program—

(A) payment for the hospice care furnished to the individual shall be made to the hospice program elected by the individual by the Secretary;

(B) payment for other services for which the individual is eligible notwithstanding the individual's election of hospice care under section 1395d(d)(1) of this title, including services not related to the individual's terminal illness, shall be made by the Secretary to the Medicare+Choice organization or the provider or supplier of the service instead of payments calculated under subsection (a) of this section; and

(C) the Secretary shall continue to make monthly payments to the Medicare+Choice organization in an amount equal to the value of the additional benefits required under section 1395w–24(f)(1)(A) of this title.

(i) New entry bonus

(1) In general

Subject to paragraphs (2) and (3), in the case of Medicare+Choice payment area in which a Medicare+Choice plan has not been offered since 1997 (or in which all organizations that offered a plan since such date have filed notice with the Secretary, as of October 13, 1999, that they will not be offering such a plan as of January 1, 2000, or filed notice with the Secretary as of October 3, 2000, that they will not be offering such a plan as of January 1, 2001), the amount of the monthly payment otherwise made under this section shall be increased—

(A) only for the first 12 months in which any Medicare+Choice plan is offered in the area, by 5 percent of the total monthly payment otherwise computed for such payment area; and

(B) only for the subsequent 12 months, by 3 percent of the total monthly payment otherwise computed for such payment area.

(2) Period of application

Paragraph (1) shall only apply to payment for Medicare+Choice plans which are first offered in a Medicare+Choice payment area during the 2-year period beginning on January 1, 2000.

(3) Limitation to organization offering first plan in an area

Paragraph (1) shall only apply to payment to the first Medicare+Choice organization that offers a Medicare+Choice plan in each Medicare+Choice payment area, except that if more than one such organization first offers such a plan in an area on the same date, paragraph (1) shall apply to payment for such organizations.

(4) Construction

Nothing in paragraph (1) shall be construed as affecting the calculation of the annual Medicare+Choice capitation rate under subsection (c) of this section for any payment area or as applying to payment for any period not described in such paragraph and paragraph (2).

(5) Offered defined

In this subsection, the term ''offered'' means, with respect to a Medicare+Choice plan as of a date, that a Medicare+Choice eligible individual may enroll with the plan on that date, regardless of when the enrollment takes effect or when the individual obtains benefits under the plan.

(j) Computation of benchmark amounts

For purposes of this part, the term ''MA area-specific non-drug monthly benchmark amount'' means for a month in a year—

(1) with respect to—

(A) a service area that is entirely within an MA local area, subject to section 1395w–29(d)(2)(A) of this title, an amount equal to 1/12 of the annual MA capitation rate under subsection (c)(1) of this section for the area for the year, adjusted as appropriate for the purpose of risk adjustment; or

(B) a service area that includes more than one MA local area, an amount equal to the average of the amounts described in subparagraph (A) for each such local MA area, weighted by the projected number of enrollees in the plan residing in the respective local MA areas (as used by the plan for purposes of the bid and disclosed to the Secretary under section 1395w–24(a)(6)(A)(iii) of this title), adjusted as appropriate for the purpose of risk adjustment; or

(2) with respect to an MA region for a month in a year, the MA region-specific non-drug monthly benchmark amount, as defined in section 1395w–27a(f) of this title for the region for the year.

(Aug. 14, 1935, ch. 531, title XVIII, § 1853, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 299; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title V, §§ 511(a), 512, 514(a), 517], Nov. 29, 1999, 113 Stat. 1536, 1501A–380, 1501A–382 to 1501A–384; Pub. L. 106–554, § 1(a)(6) [title VI, §§ 601(a), 602(a), 603, 605(a), 606(a)(2)(A), 607, 608(a), 611(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–554 to 2763A–559; Pub. L. 107–188, title V, § 532(d)(1), June 12, 2002, 116 Stat. 696; Pub. L. 108–173, title

I, § 101(e)(3)(D), title II, §§ 211(a)–(e)(1), 221(d)(1), (4), 222(d)–(f), (i), 237(b)(1), (2)(B), 241(b)(1), title VII, § 736(d)(1), title IX, § 900(e)(1)(G), Dec. 8, 2003, 117 Stat. 2151, 2176–2178, 2192, 2193, 2200–2202, 2204, 2212, 2213, 2220, 2357, 2371.)

REFERENCES IN TEXT

Section 2355 of the Deficit Reduction Act of 1984, as amended by section 13567(b) of the Omnibus Budget Reconciliation Act of 1993, referred to in subsec. (a)(1)(H), is section 2355 of Pub. L. 98–369, div. B, title III, July 18, 1984, 98 Stat. 1103, as amended by section 13567(b) of Pub. L. 103–66, title XIII, Aug. 10, 1993, 107 Stat. 608, which is not classified to the Code.

Parts A and B of this subchapter, referred to in subsecs. (b)(4), (c)(4)(C), (6)(A), and (f), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsec. (e)(2)(A), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2003—Subsec. (a)(1)(A). Pub. L. 108–173, § 222(e)(1)(B), substituted ''amount determined as follows:'' and cls. (i) and (ii) for ''amount'' and provisions describing amount equal to 1/12 of the annual Medicare+Choice capitation rate, reduced by the amount of any reduction elected under section 1395w–24(f)(1)(E) of this title and adjusted for certain factors.

Subsec. (a)(1)(B) to (G). Pub. L. 108–173, § 222(e)(1)(B), added subpars. (B) to (G). Former subpar. (B) redesignated (H).

Subsec. (a)(1)(H). Pub. L. 108–173, § 222(i), substituted as second sentence provisions relating to actuarial equivalence of rates of payment to rates that would have been paid with respect to other enrollees in the MA payment area under this section as in effect before Dec. 8, 2003, for provisions relating to actuarial equivalence of rates of payment to rates paid to other enrollees in the Medicare+Choice payment area and inserted sentence at end authorizing application of the competitive bidding methodology provided for in this section, with appropriate adjustments to account for the risk adjustment methodology applied to end stage renal disease payments.

Pub. L. 108–173, § 222(e)(1)(A), redesignated subpar. (B) as (H).

Subsec. (a)(3)(C)(ii). Pub. L. 108–173, § 736(d)(1)(A), substituted ''clause (iv)'' for ''clause (iii)'' in introductory provisions.

Subsec. (a)(3)(C)(iii), (iv). Pub. L. 108–173, § 736(d)(1)(B), redesignated cl. (iii), relating to full implementation of risk adjustment for congestive heart failure enrollees for 2001, as (iv).

Subsec. (a)(4). Pub. L. 108–173, § 237(b)(1), added par. (4).

Subsec. (b)(1). Pub. L. 108–173, § 222(f)(1), amended heading and text of par. (1) generally, substituting provisions relating to announcements of payment rates for 2005 and for 2006 and subsequent years for provisions relating to announcement for years before 2004, for 2004 and 2005, and for years after 2005.

Subsec. (b)(1)(B)(iii). Pub. L. 108–173, § 241(b)(1)(B), added cl. (iii).

Subsec. (b)(3). Pub. L. 108–173, § 222(f)(2), substituted ''in such announcement'' for ''in the announcement in sufficient detail so that Medicare+Choice organizations can compute monthly adjusted Medicare+Choice capitation rates for individuals in each Medicare+Choice payment area which is in whole or in part within the service area of such an organization''.

Subsec. (b)(4). Pub. L. 108–173, § 900(e)(1)(G)(i), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in introductory provisions.

Subsec. (c)(1). Pub. L. 108–173, § 221(d)(4), inserted ''that is an MA local area'' after ''for a Medicare+Choice payment area'' in introductory provisions.

Pub. L. 108–173, § 211(a)(2), substituted ''(C), or (D)'' for ''or (C)'' in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 108–173, § 211(b)(1), (c)(1)(A), substituted ''For a year before 2005, the sum'' for ''The sum'' in introductory provisions and inserted ''(for a year other than 2004)'' after ''multiplied'' in concluding provisions.

Subsec. (c)(1)(B)(iv). Pub. L. 108–173, § 211(c)(1)(B), substituted '', 2003, and 2004'' for ''and each succeeding year''.

Subsec. (c)(1)(C)(iv). Pub. L. 108–173, § 211(c)(1)(C), substituted ''and 2003'' for ''and each succeeding year''.

Subsec. (c)(1)(C)(v). Pub. L. 108–173, § 211(c)(1)(D), added cl. (v).

Subsec. (c)(1)(D). Pub. L. 108–173, § 211(a)(1), added subpar. (D).

Subsec. (c)(3)(A). Pub. L. 108–173, § 211(d)(1), substituted ''subparagraphs (B) and (E)'' for ''subparagraph (B)'' in introductory provisions.

Subsec. (c)(3)(E). Pub. L. 108–173, § 211(d)(2), added subpar. (E).

Subsec. (c)(5). Pub. L. 108–173, § 736(d)(1)(C), substituted ''(a)(3)(C)(iv)'' for ''(a)(3)(C)(iii)''.

Pub. L. 108–173, § 237(b)(2)(B), substituted ''subsections (a)(3)(C)(iii), (a)(4), and (i)'' for ''subsections (a)(3)(C)(iii) and (i)''.

Pub. L. 108–173, § 211(b)(2), inserted ''(other than 2004)'' after ''for each year''.

Subsec. (c)(6)(C). Pub. L. 108–173, § 211(c)(2), inserted '', except that for purposes of paragraph (1)(C)(v)(II), no such adjustment shall be made for a year before 2004'' before period at end.

Subsec. (c)(7). Pub. L. 108–173, § 900(e)(1)(G)(ii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

Subsec. (d). Pub. L. 108–173, § 221(d)(1)(A), substituted ''MA payment area; MA local area; MA region defined'' for '' 'Medicare+Choice payment area' defined'' in heading.

Subsec. (d)(1). Pub. L. 108–173, § 221(d)(1)(C), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''In this part, except as provided in paragraph (3), the term 'Medicare+Choice payment area' means a county, or equivalent area specified by the Secretary.''

Subsec. (d)(2), (3). Pub. L. 108–173, § 221(d)(1)(B), (D), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 108–173, § 221(d)(1)(B), redesignated par. (3) as (4).

Subsec. (d)(4)(A). Pub. L. 108–173, § 221(d)(1)(E)(i), inserted ''for MA local plans'' after ''paragraph (1)'' in introductory provisions.

Subsec. (d)(4)(A)(iii). Pub. L. 108–173, § 221(d)(1)(E)(ii), substituted ''paragraph (1)(A)'' for ''paragraph (1)''.

Subsec. (d)(4)(B). Pub. L. 108–173, § 221(d)(1)(E)(iii), inserted ''with respect to MA local plans'' after ''established under this section'' and ''for such plans'' after ''payments under this section'' and ''made under this section''.

Subsec. (f). Pub. L. 108–173, § 101(e)(3)(D), in heading, substituted ''Trust Funds'' for ''Trust Fund'' and, after first sentence, inserted ''Payments to MA organizations for statutory drug benefits provided under this subchapter are made from the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.''

Subsec. (g). Pub. L. 108–173, § 211(e)(1)(A), inserted '', a rehabilitation hospital described in section 1395ww(d)(1)(B)(ii) of this title or a distinct part rehabilitation unit described in the matter following clause (v) of section 1395ww(d)(1)(B) of this title, or a long-term care hospital (described in section 1395ww(d)(1)(B)(iv) of this title)'' after ''1395ww(d)(1)(B) of this title)'' in introductory provisions.

Subsec. (g)(2)(B). Pub. L. 108–173, § 211(e)(1)(B), inserted ''or other payment provision under this subchapter for inpatient services for the type of facility, hospital, or unit involved, described in the matter preceding paragraph (1), as the case may be,'' after ''1395ww(d) of this title''.

Subsec. (j). Pub. L. 108–173, §222(d), added subsec. (j).

Subsec. (j)(1)(A). Pub. L. 108–173, §241(b)(1)(A), inserted ''subject to section 1395w–29(d)(2)(A) of this title,'' after ''within an MA local area,''.

2002—Subsec. (b)(1). Pub. L. 107–188 in introductory provisions substituted ''for years before 2004 and after 2005 not later than March 1 before the calendar year concerned and for 2004 and 2005 not later than the second Monday in May before the respective calendar year'' for ''not later than March 1 before the calendar year concerned''.

2000—Subsec. (a)(1)(A). Pub. L. 106–554, §1(a)(6) [title VI, §606(a)(2)(A)], inserted ''reduced by the amount of any reduction elected under section 1395w–24(f)(1)(E) of this title and'' after ''for that area,''.

Subsec. (a)(1)(B). Pub. L. 106–554, §1(a)(6) [title VI, §605(a)], inserted at end ''In establishing such rates, the Secretary shall provide for appropriate adjustments to increase each rate to reflect the demonstration rate (including the risk adjustment methodology associated with such rate) of the social health maintenance organization end-stage renal disease capitation demonstrations (established by section 2355 of the Deficit Reduction Act of 1984, as amended by section 13567(b) of the Omnibus Budget Reconciliation Act of 1993), and shall compute such rates by taking into account such factors as renal treatment modality, age, and the underlying cause of the end-stage renal disease.''

Subsec. (a)(3)(C)(ii). Pub. L. 106–554, §1(a)(6) [title VI, §607(a)(1)], substituted ''Except as provided in clause (iii), such risk adjustment'' for ''Such risk adjustment''.

Subsec. (a)(3)(C)(ii)(I). Pub. L. 106–554, §1(a)(6) [title VI, §603(1)(A)], substituted ''and each succeeding year through 2003'' for ''and 2001'' and struck out ''and'' at end.

Subsec. (a)(3)(C)(ii)(II) to (V). Pub. L. 106–554, §1(a)(6) [title VI, §603(1)(B)], added subcls. (II) to (V) and struck out former subcl. (II) which read as follows: ''not more than 20 percent of such capitation rate in 2002.''

Subsec. (a)(3)(C)(iii). Pub. L. 106–554, §1(a)(6) [title VI, §607(a)(2)], added cl. (iii) relating to full implementation of risk adjustment for congestive heart failure enrollees for 2001.

Pub. L. 106–554, §1(a)(6) [title VI, §603(2)], added cl. (iii) relating to data for risk adjustment methodology.

Subsec. (c)(1)(B)(ii), (iii). Pub. L. 106–554, §1(a)(6) [title VI, §601(a)(2)], added cls. (ii) and (iii). Former cl. (ii) redesignated (iv).

Subsec. (c)(1)(B)(iv). Pub. L. 106–554, §1(a)(6) [title VI, §601(a)(1), (3)], redesignated cl. (ii) as (iv) and substituted ''2002 and each succeeding year'' for ''a succeeding year'' and ''clause (iii)'' for ''clause (i)''.

Subsec. (c)(1)(C)(ii), (iii). Pub. L. 106–554, §1(a)(6) [title VI, §602(a)(2)], added cls. (ii) and (iii). Former cl. (ii) redesignated (iv).

Subsec. (c)(1)(C)(iv). Pub. L. 106–554, §1(a)(6) [title VI, §602(a)(1), (3)], redesignated cl. (ii) as (iv) and substituted ''2002 and each succeeding year'' for ''a subsequent year''.

Subsec. (c)(5). Pub. L. 106–554, §1(a)(6) [title VI, §607(b)], substituted ''subsections (a)(3)(C)(iii) and (i)'' for ''subsection (i)''.

Subsec. (c)(7). Pub. L. 106–554, §1(a)(6) [title VI, §611(a)], amended heading and text of par. (7) generally. Prior to amendment, text read as follows: ''If the Secretary makes a determination with respect to coverage under this subchapter that the Secretary projects will result in a significant increase in the costs to Medicare+Choice of providing benefits under contracts under this part (for periods after any period described in section 1395w–22(a)(5) of this title), the Secretary shall adjust appropriately the payments to such organizations under this part.''

Subsec. (i)(1). Pub. L. 106–554, §1(a)(6) [title VI, §608(a)], in introductory provisions, inserted '', or filed notice with the Secretary as of October 3, 2000, that they will not be offering such a plan as of January 1, 2001'' after ''January 1, 2000''.

1999—Subsec. (a)(1)(A). Pub. L. 106–113, §1000(a)(6) [title V, §512(1)], substituted ''subsections (e), (g), and (i) of this section'' for ''subsections (e) and (f) of this section''.

Subsec. (a)(3)(C). Pub. L. 106–113, §1000(a)(6) [title V, §511(a)], designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Subsec. (b)(4). Pub. L. 106–113, §1000(a)(6) [title V, §514(a)], added par. (4).

Subsec. (c)(5). Pub. L. 106–113, §1000(a)(6) [title V, §512(2)], inserted ''(other than those attributable to subsection (i) of this section)'' after ''payments under this part''.

Subsec. (c)(6)(B)(v). Pub. L. 106–113, §1000(a)(6) [title V, §517], substituted ''0.3 percentage points'' for ''0.5 percentage points''.

Subsec. (i). Pub. L. 106–113, §1000(a)(6) [title V, §512(3)], added subsec. (i).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title II, §211(e)(2), Dec. 8, 2003, 117 Stat. 2178, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to contract years beginning on or after January 1, 2004.''

Amendment by sections 221(d)(1), (4) and 222(d)–(f), (i) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Amendment by section 237(b)(1), (2)(B) of Pub. L. 108–173 applicable to services provided on or after Jan. 1, 2006, and contract years beginning on or after such date, see section 237(e) of Pub. L. 108–173, set out as a note under section 1320a–7b of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–188, title V, §532(d)(2), June 12, 2002, 116 Stat. 697, provided that: ''The amendment made by paragraph (1) [amending this section] shall first apply to announcements for years after 2003.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title VI, §605(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–556, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments for months beginning with January 2002.''

Amendment by section 1(a)(6) [title VI, §606(a)(2)(A)] of Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, §606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.

Pub. L. 106–554, §1(a)(6) [title VI, §608(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–559, provided that: ''The amendment made by subsection (a) [amending this section] shall apply as if included in the enactment of BBRA [Pub. L. 106–113, §1000(a)(6)].''

Amendment by section 1(a)(6) [title VI, §611(a)] of Pub. L. 106–554 effective Dec. 21, 2000, and applicable to national coverage determinations and legislative changes in benefits occurring on or after such date, see section 1(a)(6) [title VI, §611(c)] of Pub. L. 106–554, set out as a note under section 1395w–22 of this title.

MEDPAC STUDY OF AAPCC

Pub. L. 108–173, title II, §211(f), Dec. 8, 2003, 117 Stat. 2178, directed the Medicare Payment Advisory Commission to conduct a study that would assess the method used for determining the adjusted average per capita cost (AAPCC) under section 1395mm(a)(4) of this title, as applied under subsection (c)(1)(A) of this section, and to submit to Congress a report on such study not later than 18 months after Dec. 8, 2003.

IMPLEMENTATION OF 2003 AMENDMENT

Pub. L. 108–173, title II, §211(i), Dec. 8, 2003, 117 Stat. 2179, provided that:

''(1) ANNOUNCEMENT OF REVISED MEDICARE ADVANTAGE PAYMENT RATES.—Within 6 weeks after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall determine, and shall announce (in a manner intended to provide notice to interested parties) MA capitation rates under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for 2004, revised in accordance with the provisions of this section [amending this section and section 1395w–22 of this title and enacting provisions set out as notes under this section and section 1395w–21 of this title].

''(2) TRANSITION TO REVISED PAYMENT RATES.—The provisions of section 604 of BIPA [the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(6) of Public Law 106–554, set out as a note under this section] (114 Stat. 2763A–555) (other than subsection (a)) shall apply to the provisions of subsections (a) through (d) of this section [amending this section] for 2004 in the same manner as the provisions of such section 604 applied to the provisions of BIPA for 2001.

''(3) SPECIAL RULE FOR PAYMENT RATES IN 2004.—

''(A) JANUARY AND FEBRUARY.—Notwithstanding the amendments made by subsections (a) through (d) [amending this section], for purposes of making payments under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for January and February 2004, the annual capitation rate for a payment area shall be calculated and the excess amount under section 1854(f)(1)(B) of such Act (42 U.S.C. 1395w–24(f)(1)(B)) shall be determined as if such amendments had not been enacted.

''(B) MARCH THROUGH DECEMBER.—Notwithstanding the amendments made by subsections (a) through (d) [amending this section], for purposes of making payments under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for March through December 2004, the annual capitation rate for a payment area shall be calculated and the excess amount under section 1854(f)(1)(B) of such Act (42 U.S.C. 1395w–24(f)(1)(B)) shall be determined, in such manner as the Secretary estimates will ensure that the total of such payments with respect to 2004 is the same as the amounts that would have been if subparagraph (A) had not been enacted.

''(C) CONSTRUCTION.—Subparagraphs (A) and (B) shall not be taken into account in computing such capitation rate for 2005 and subsequent years.

''(4) PLANS REQUIRED TO PROVIDE NOTICE OF CHANGES IN PLAN BENEFITS.—In the case of an organization offering a plan under part C of title XVIII of the Social Security Act [this part] that revises its submission of the information described in section 1854(a)(1) of such Act (42 U.S.C. 1395w–23(a)(1) [1395w–24(a)(1)]) for a plan pursuant to the application of paragraph (2), if such revision results in changes in beneficiary premiums, beneficiary cost-sharing, or benefits under the plan, then by not later than 3 weeks after the date the Secretary approves such submission, the organization offering the plan shall provide each beneficiary enrolled in the plan with written notice of such changes.

''(5) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869 or section 1878 of the Social Security Act (42 U.S.C. 1395ff and 1395*oo*), or otherwise of any determination made by the Secretary under this subsection or the application of the payment rates determined pursuant to this subsection.''

SPECIAL RULE FOR JANUARY AND FEBRUARY OF 2001

Pub. L. 106–554, §1(a)(6) [title VI, §601(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–554, provided that:

''(1) IN GENERAL.—Notwithstanding the amendments made by subsection (a) [amending this section], for purposes of making payments under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for January and February 2001, the annual Medicare+Choice capitation rate for a Medicare+Choice payment area shall be calculated, and the excess amount under section 1854(f)(1)(B) of such Act (42 U.S.C. 1395w–24(f)(1)(B)) shall be determined, as if such amendments had not been enacted.

''(2) CONSTRUCTION.—Paragraph (1) shall not be taken into account in computing such capitation rate for 2002 and subsequent years.''

Pub. L. 106–554, §1(a)(6) [title VI, §602(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–555, provided that: ''The provisions of section 601(b) [set out above] shall apply with respect to the amendments made by subsection (a) [amending this section] in the same manner as they apply to the amendments made by section 601(a) [amending this section].''

TRANSITION TO REVISED MEDICARE+CHOICE PAYMENT RATES

Pub. L. 106–554, §1(a)(6) [title VI, §604], Dec. 21, 2000, 114 Stat. 2763, 2763A–555, provided that:

''(a) ANNOUNCEMENT OF REVISED MEDICARE+CHOICE PAYMENT RATES.—Within 2 weeks after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall determine, and shall announce (in a manner intended to provide notice to interested parties) Medicare+Choice capitation rates under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for 2001, revised in accordance with the provisions of this Act.

''(b) REENTRY INTO PROGRAM PERMITTED FOR MEDICARE+CHOICE PROGRAMS.—A Medicare+Choice organization that provided notice to the Secretary of Health and Human Services before the date of the enactment of this Act [Dec. 21, 2000] that it was terminating its contract under part C of title XVIII of the Social Security Act [this part] or was reducing the service area of a Medicare+Choice plan offered under such part shall be permitted to continue participation under such part, or to maintain the service area of such plan, for 2001 if it submits the Secretary with the information described in section 1854(a)(1) of the Social Security Act (42 U.S.C. 1395w–24(a)(1)) within 2 weeks after the date revised rates are announced by the Secretary under subsection (a).

''(c) REVISED SUBMISSION OF PROPOSED PREMIUMS AND RELATED INFORMATION.—If—

''(1) a Medicare+Choice organization provided notice to the Secretary of Health and Human Services as of July 3, 2000, that it was renewing its contract under part C of title XVIII of the Social Security Act [this part] for all or part of the service area or areas served under its current contract, and

''(2) any part of the service area or areas addressed in such notice includes a payment area for which the Medicare+Choice capitation rate under section 1853(c) of such Act (42 U.S.C. 1395w–23(c)) for 2001, as determined under subsection (a), is higher than the rate previously determined for such year,

such organization shall revise its submission of the information described in section 1854(a)(1) of the Social Security Act (42 U.S.C. 1395w–24(a)(1)), and shall submit such revised information to the Secretary, within 2 weeks after the date revised rates are announced by the Secretary under subsection (a). In making such submission, the organization may only reduce beneficiary premiums, reduce beneficiary cost-sharing, enhance benefits, utilize the stabilization fund described in section 1854(f)(2) of such Act (42 U.S.C. 1395w–24(f)(2)), or stabilize or enhance beneficiary access to providers (so long as such stabilization or enhancement does not result in increased beneficiary premiums, increased beneficiary cost-sharing, or reduced benefits).

''(d) WAIVER OF LIMITS ON STABILIZATION FUND.—Any regulatory provision that limits the proportion of the excess amount that can be withheld in such stabilization fund for a contract period shall not apply with respect to submissions described in subsections (b) and (c).

''(e) DISREGARD OF NEW RATE ANNOUNCEMENT IN APPLYING PASS-THROUGH FOR NEW NATIONAL COVERAGE

DETERMINATIONS.—For purposes of applying section 1852(a)(5) of the Social Security Act (42 U.S.C. 1395w–22(a)(5)), the announcement of revised rates under subsection (a) shall not be treated as an announcement under section 1853(b) of such Act (42 U.S.C. 1395w–23(b)).''

PUBLICATION

Pub. L. 106–554, §1(a)(6) [title VI, §605(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–556, provided that: ''Not later than 6 months after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall publish for public comment a description of the appropriate adjustments described in the last sentence of section 1853(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w–23(a)(1)(B)), as added by subsection (a). The Secretary shall publish such adjustments in final form by not later than July 1, 2001, so that the amendment made by subsection (a) is implemented on a timely basis consistent with subsection (b) [set out as a note above].''

REPORT ON INCLUSION OF CERTAIN COSTS OF THE DEPARTMENT OF VETERANS AFFAIRS AND MILITARY FACILITY SERVICES IN CALCULATING MEDICARE+CHOICE PAYMENT RATES

Pub. L. 106–554, §1(a)(6) [title VI, §609], Dec. 21, 2000, 114 Stat. 2763, 2763A–559, provided that: ''The Secretary of Health and Human Services shall report to Congress by not later than January 1, 2003, on a method to phase-in the costs of military facility services furnished by the Department of Veterans Affairs, and the costs of military facility services furnished by the Department of Defense, to medicare-eligible beneficiaries in the calculation of an area's Medicare+Choice capitation payment. Such report shall include on a county-by-county basis—

''(1) the actual or estimated cost of such services to medicare-eligible beneficiaries;

''(2) the change in Medicare+Choice capitation payment rates if such costs are included in the calculation of payment rates;

''(3) one or more proposals for the implementation of payment adjustments to Medicare+Choice plans in counties where the payment rate has been affected due to the failure to calculate the cost of such services to medicare-eligible beneficiaries; and

''(4) a system to ensure that when a Medicare+Choice enrollee receives covered services through a facility of the Department of Veterans Affairs or the Department of Defense there is an appropriate payment recovery to the medicare program under title XVIII of the Social Security Act [this subchapter].''

MEDPAC STUDY AND REPORT

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §511(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–380, provided that:

''(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study that evaluates the methodology used by the Secretary of Health and Human Services in developing the risk factors used in adjusting the Medicare+Choice capitation rate paid to Medicare+Choice organizations under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) and includes the issues described in paragraph (2).

''(2) ISSUES TO BE STUDIED.—The issues described in this paragraph are the following:

''(A) The ability of the average risk adjustment factor applied to a Medicare+Choice plan to explain variations in plans' average per capita medicare costs, as reported by Medicare+Choice plans in the plans' adjusted community rate filings.

''(B) The year-to-year stability of the risk factors applied to each Medicare+Choice plan and the potential for substantial changes in payment for small Medicare+Choice plans.

''(C) For medicare beneficiaries newly enrolled in Medicare+Choice plans in a given year, the correspondence between the average risk factor calculated from medicare fee-for-service data for those individuals from the period prior to their enrollment in a Medicare+Choice plan and the average risk factor calculated for such individuals during their initial year of enrollment in a Medicare+Choice plan.

''(D) For medicare beneficiaries disenrolling from or switching among Medicare+Choice plans in a given year, the correspondence between the average risk factor calculated from data pertaining to the period prior to their disenrollment from a Medicare+Choice plan and the average risk factor calculated from data pertaining to the period after disenrollment.

''(E) An evaluation of the exclusion of 'discretionary' hospitalizations from consideration in the risk adjustment methodology.

''(F) Suggestions for changes or improvements in the risk adjustment methodology.

''(3) REPORT.—Not later than December 1, 2000, the Commission shall submit a report to Congress on the study conducted under paragraph (1), together with any recommendations for legislation that the Commission determines to be appropriate as a result of such study.''

STUDY AND REPORT REGARDING REPORTING OF ENCOUNTER DATA

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §511(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–381, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall conduct a study on how to reduce the costs and burdens on Medicare+Choice organizations of their complying with reporting requirements for encounter data imposed by the Secretary in establishing and implementing a risk adjustment methodology used in making payments to such organizations under section 1853 of the Social Security Act (42 U.S.C. 1395w–23). The Secretary shall consult with representatives of Medicare+Choice organizations in conducting the study. The study shall address the following issues:

''(A) Limiting the number and types of sites of services (that are in addition to inpatient sites) for which encounter data must be reported.

''(B) Establishing alternative risk adjustment methods that would require submission of less data.

''(C) The potential for Medicare+Choice organizations to misreport, overreport, or underreport prevalence of diagnoses in outpatient sites of care, the potential for increases in payments to Medicare+Choice organizations from changes in Medicare+Choice plan coding practices (commonly known as 'coding creep') and proposed methods for detecting and adjusting for such variations in diagnosis coding as part of the risk adjustment methodology using encounter data from multiple sites of care.

''(D) The impact of such requirements on the willingness of insurers to offer Medicare+Choice MSA plans and options for modifying encounter data reporting requirements to accommodate such plans.

''(E) Differences in the ability of Medicare+Choice organizations to report encounter data, and the potential for adverse competitive impacts on group and staff model health maintenance organizations or other integrated providers of care based on data reporting capabilities.

''(2) REPORT.—Not later than January 1, 2001, the Secretary shall submit a report to Congress on the study conducted under this subsection, together with any recommendations for legislation that the Secretary determines to be appropriate as a result of such study.''

SPECIAL RULE FOR 2001

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §514(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–384, provided that: ''In providing for the publication of information under section 1853(b)(4) of the Social Security Act (42 U.S.C. 1395w–23(b)(4)), as added by subsection (a), in 2001, the Secretary of Health and Human Services shall also in-

clude the information described in such section for 1998, as well as for 1999.''

DEVELOPMENT OF SPECIAL PAYMENT RULES UNDER MEDICARE+CHOICE PROGRAM FOR FRAIL ELDERLY ENROLLED IN SPECIALIZED PROGRAMS

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 552(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–392, provided that:

''(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the development of a payment methodology under the Medicare+Choice program for frail elderly Medicare+Choice beneficiaries enrolled in a Medicare+Choice plan under a specialized program for the frail elderly that—

''(A) accounts for the prevalence, mix, and severity of chronic conditions among such frail elderly Medicare+Choice beneficiaries;

''(B) includes medical diagnostic factors from all provider settings (including hospital and nursing facility settings); and

''(C) includes functional indicators of health status and such other factors as may be necessary to achieve appropriate payments for plans serving such beneficiaries.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Nov. 29, 1999], the Commission shall submit a report to Congress on the study conducted under paragraph (1), together with any recommendations for legislation that the Commission determines to be appropriate as a result of such study.''

PUBLICATION OF NEW CAPITATION RATES

Section 4002(i) of Pub. L. 105–33 provided that: ''Not later than 4 weeks after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall announce the annual Medicare+Choice capitation rates for 1998 under section 1853(b) of the Social Security Act [subsec. (b) of this section].''

MEDICARE+CHOICE COMPETITIVE PRICING DEMONSTRATION PROJECT

Pub. L. 105–33, title IV, §§ 4011, 4012, Aug. 5, 1997, 111 Stat. 334–336, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 533], Nov. 29, 1999, 113 Stat. 1536, 1501A–389, provided that:

''SEC. 4011. MEDICARE PREPAID COMPETITIVE PRICING DEMONSTRATION PROJECT.

''(a) ESTABLISHMENT OF PROJECT.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary of Health and Human Services (in this subchapter [subchapter A (§§ 4011–4012) of chapter 2 of subtitle A of title IV of Pub. L. 105–33] referred to as the 'Secretary') shall establish a demonstration project (in this subchapter referred to as the 'project') under which payments to Medicare+Choice organizations in medicare payment areas in which the project is being conducted are determined in accordance with a competitive pricing methodology established under this subchapter.

''(2) DELAY IN IMPLEMENTATION.—The Secretary shall not implement the project until January 1, 2002, or, if later, 6 months after the date the Competitive Pricing Advisory Committee has submitted to Congress a report on each of the following topics:

''(A) INCORPORATION OF ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM INTO PROJECT.—What changes would be required in the project to feasibly incorporate the original medicare fee-for-service program into the project in the areas in which the project is operational.

''(B) QUALITY ACTIVITIES.—The nature and extent of the quality reporting and monitoring activities that should be required of plans participating in the project, the estimated costs that plans will incur as a result of these requirements, and the current ability of the Health Care Financing Administration to collect and report comparable data, sufficient to support comparable quality reporting and monitoring activities with respect to beneficiaries enrolled in the original medicare fee-for-service program generally.

''(C) RURAL PROJECT.—The current viability of initiating a project site in a rural area, given the site specific budget neutrality requirements of the project under subsection (g), and insofar as the Committee decides that the addition of such a site is not viable, recommendations on how the project might best be changed so that such a site is viable.

''(D) BENEFIT STRUCTURE.—The nature and extent of the benefit structure that should be required of plans participating in the project, the rationale for such benefit structure, the potential implications that any benefit standardization requirement may have on the number of plan choices available to a beneficiary in an area designated under the project, the potential implications of requiring participating plans to offer variations on any standardized benefit package the committee might recommend, such that a beneficiary could elect to pay a higher percentage of out-of-pocket costs in exchange for a lower premium (or premium rebate as the case may be), and the potential implications of expanding the project (in conjunction with the potential inclusion of the original medicare fee-for-service program) to require medicare supplemental insurance plans operating in an area designated under the project to offer a coordinated and comparable standardized benefit package.

''(3) CONFORMING DEADLINES.—Any dates specified in the succeeding provisions of this section shall be delayed (as specified by the Secretary) in a manner consistent with the delay effected under paragraph (2).

''(b) DESIGNATION OF 7 MEDICARE PAYMENT AREAS COVERED BY PROJECT.—

''(1) IN GENERAL.—The Secretary shall designate, in accordance with the recommendations of the Competitive Pricing Advisory Committee under paragraphs (2) and (3), medicare payment areas as areas in which the project under this subchapter will be conducted. In this section, the term 'Competitive Pricing Advisory Committee' means the Competitive Pricing Advisory Committee established under section 4012(a).

''(2) INITIAL DESIGNATION OF 4 AREAS.—

''(A) IN GENERAL.—The Competitive Pricing Advisory Committee shall recommend to the Secretary, consistent with subparagraph (B), the designation of 4 specific areas as medicare payment areas to be included in the project. Such recommendations shall be made in a manner so as to ensure that payments under the project in 2 such areas will begin on January 1, 1999, and in 2 such areas will begin on January 1, 2000.

''(B) LOCATION OF DESIGNATION.—Of the 4 areas recommended under subparagraph (A), 3 shall be in urban areas and 1 shall be in a rural area.

''(3) DESIGNATION OF ADDITIONAL 3 AREAS.—Not later than December 31, 2001, the Competitive Pricing Advisory Committee may recommend to the Secretary the designation of up to 3 additional, specific medicare payment areas to be included in the project.

''(c) PROJECT IMPLEMENTATION.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall for each medicare payment area designated under subsection (b)—

''(A) in accordance with the recommendations of the Competitive Pricing Advisory Committee—

''(i) establish the benefit design among plans offered in such area,

''(ii) structure the method for selecting plans offered in such area; and

''(iii) establish beneficiary premiums for plans offered in such area in a manner such that a beneficiary who enrolls in an offered plan the per capita bid for which is less than the standard per capita government contribution (as established by the competitive pricing methodology estab-

lished for such area) may, at the plan's election, be offered a rebate of some or all of the medicare part B premium that such individual must otherwise pay in order to participate in a Medicare+Choice plan under the Medicare+Choice program; and

''(B) in consultation with such Committee—

''(i) establish methods for setting the price to be paid to plans, including, if the Secretaries determines appropriate, the rewarding and penalizing of Medicare+Choice plans in the area on the basis of the attainment of, or failure to attain, applicable quality standards, and

''(ii) provide for the collection of plan information (including information concerning quality and access to care), the dissemination of information, and the methods of evaluating the results of the project.

''(2) CONSULTATION.—The Secretary shall take into account the recommendations of the area advisory committee established in section 4012(b), in implementing a project design for any area, except that no modifications may be made in the project design without consultation with the Competitive Pricing Advisory Committee. In no case may the Secretary change the designation of an area based on recommendations of any area advisory committee.

''(d) MONITORING AND REPORT.—

''(1) MONITORING IMPACT.—Taking into consideration the recommendations of the Competitive Pricing Advisory Committee and the area advisory committees, the Secretary shall closely monitor and measure the impact of the project in the different areas on the price and quality of, and access to, medicare covered services, choice of health plans, changes in enrollment, and other relevant factors.

''(2) REPORT.—Not later than December 31, 2002, the Secretary shall submit to Congress a report on the progress under the project under this subchapter, including a comparison of the matters monitored under paragraph (1) among the different designated areas. The report may include any legislative recommendations for extending the project to the entire medicare population.

''(e) WAIVER AUTHORITY.—The Secretary of Health and Human Services may waive such requirements of title XVIII of the Social Security Act [this subchapter] (as amended by this Act) as may be necessary for the purposes of carrying out the project.

''(f) RELATIONSHIP TO OTHER AUTHORITY.—Except pursuant to this subchapter, the Secretary of Health and Human Services may not conduct or continue any medicare demonstration project relating to payment of health maintenance organizations, Medicare+Choice organizations, or similar prepaid managed care entities on the basis of a competitive bidding process or pricing system described in subsection (a).

''(g) NO ADDITIONAL COSTS TO MEDICARE PROGRAM.—The aggregate payments to Medicare+Choice organizations under the project for any designated area for a fiscal year may not exceed the aggregate payments to such organizations that would have been made under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), as amended by section 4001 [enacting this part and redesignating former part C of this subchapter as part D], if the project had not been conducted.

''(h) DEFINITIONS.—Any term used in this subchapter which is also used in part C of title XVIII of the Social Security Act [this part], as amended by section 4001, shall have the same meaning as when used in such part.

''SEC. 4012. ADVISORY COMMITTEES.

''(a) COMPETITIVE PRICING ADVISORY COMMITTEE.—

''(1) IN GENERAL.—Before implementing the project under this subchapter [subchapter A (§§ 4011–4012) of chapter 2 of subtitle A of title IV of Pub. L. 105–33], the Secretary shall appoint the Competitive Pricing Advisory Committee, including independent actuaries, individuals with expertise in competitive health plan pricing, and an employee of the Office of Personnel Management with expertise in the administration of the Federal Employees Health Benefit Program, to make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research design for implementing the project.

''(2) INITIAL RECOMMENDATIONS.—The Competitive Pricing Advisory Committee initially shall submit recommendations regarding the area selection, benefit design among plans offered, structuring choice among health plans offered, methods for setting the price to be paid to plans, collection of plan information (including information concerning quality and access to care), information dissemination, and methods of evaluating the results of the project.

''(3) QUALITY RECOMMENDATION.—The Competitive Pricing Advisory Committee shall study and make recommendations regarding the feasibility of providing financial incentives and penalties to plans operating under the project that meet, or fail to meet, applicable quality standards.

''(4) ADVICE DURING IMPLEMENTATION.—Upon implementation of the project, the Competitive Pricing Advisory Committee shall continue to advise the Secretary on the application of the design in different areas and changes in the project based on experience with its operations.

''(5) SUNSET.—The Competitive Pricing Advisory Committee shall terminate on December 31, 2004.

''(b) APPOINTMENT OF AREA ADVISORY COMMITTEE.—Upon the designation of an area for inclusion in the project, the Secretary shall appoint an area advisory committee, composed of representatives of health plans, providers, and medicare beneficiaries in the area, to advise the Secretary concerning how the project will be implemented in the area. Such advice may include advice concerning the marketing and pricing of plans in the area and other salient factors. The duration of such a committee for an area shall be for the duration of the operation of the project in the area.

''(c) SPECIAL APPLICATION.—Notwithstanding section 9(c) of the Federal Advisory Committee Act (5 U.S.C. App.), the Competitive Pricing Advisory Commission and any area advisory committee (described in subsection (b)) may meet as soon as the members of the commission or committee, respectively, are appointed.''

§ 1395w–24. Premiums and bid amounts

(a) Submission of proposed premiums, bid amounts, and related information

(1) In general

(A) Initial submission

Not later than the second Monday in September of 2002, 2003, and 2004 (or the first Monday in June of each subsequent year), each MA organization shall submit to the Secretary, in a form and manner specified by the Secretary and for each MA plan for the service area (or segment of such an area if permitted under subsection (h) of this section) in which it intends to be offered in the following year the following:

(i) The information described in paragraph (2), (3), (4), or (6)(A) for the type of plan and year involved.

(ii) The plan type for each plan.

(iii) The enrollment capacity (if any) in relation to the plan and area.

(B) Beneficiary rebate information

In the case of a plan required to provide a monthly rebate under subsection (b)(1)(C) of this section for a year, the MA organization offering the plan shall submit to the Sec-

retary, in such form and manner and at such time as the Secretary specifies, information on—

(i) the manner in which such rebate will be provided under clause (ii) of such subsection; and

(ii) the MA monthly prescription drug beneficiary premium (if any) and the MA monthly supplemental beneficiary premium (if any).

(C) Paperwork reduction for offering of MA regional plans nationally or in multi-region areas

The Secretary shall establish requirements for information submission under this subsection in a manner that promotes the offering of MA regional plans in more than one region (including all regions) through the filing of consolidated information.

(2) Information required for coordinated care plans before 2006

For a Medicare+Choice plan described in section 1395w–21(a)(2)(A) of this title for a year before 2006, the information described in this paragraph is as follows:

(A) Basic (and additional) benefits

For benefits described in section 1395w–22(a)(1)(A) of this title—

(i) the adjusted community rate (as defined in subsection (f)(3) of this section);

(ii) the Medicare+Choice monthly basic beneficiary premium (as defined in subsection (b)(2)(A) of this section);

(iii) a description of deductibles, coinsurance, and copayments applicable under the plan and the actuarial value of such deductibles, coinsurance, and copayments, described in subsection (e)(1)(A) of this section; and

(iv) if required under subsection (f)(1) of this section, a description of the additional benefits to be provided pursuant to such subsection and the value determined for such proposed benefits under such subsection.

(B) Supplemental benefits

For benefits described in section 1395w–22(a)(3) of this title—

(i) the adjusted community rate (as defined in subsection (f)(3) of this section);

(ii) the Medicare+Choice monthly supplemental beneficiary premium (as defined in subsection (b)(2)(B) of this section); and

(iii) a description of deductibles, coinsurance, and copayments applicable under the plan and the actuarial value of such deductibles, coinsurance, and copayments, described in subsection (e)(2) of this section.

(3) Requirements for MSA plans

For an MSA plan for any year, the information described in this paragraph is as follows:

(A) Basic (and additional) benefits

For benefits described in section 1395w–22(a)(1)(A) of this title, the amount of the Medicare+Choice monthly MSA premium.

(B) Supplemental benefits

For benefits described in section 1395w–22(a)(3) of this title, the amount of the Medicare+Choice monthly supplementary beneficiary premium.

(4) Requirements for private fee-for-service plans before 2006

For a Medicare+Choice plan described in section 1395w–21(a)(2)(C) of this title for benefits described in section 1395w–22(a)(1)(A) of this title for a year before 2006, the information described in this paragraph is as follows:

(A) Basic (and additional) benefits

For benefits described in section 1395w–22(a)(1)(A) of this title—

(i) the adjusted community rate (as defined in subsection (f)(3) of this section);

(ii) the amount of the Medicare+Choice monthly basic beneficiary premium;

(iii) a description of the deductibles, coinsurance, and copayments applicable under the plan, and the actuarial value of such deductibles, coinsurance, and copayments, as described in subsection (e)(4)(A) of this section; and

(iv) if required under subsection (f)(1) of this section, a description of the additional benefits to be provided pursuant to such subsection and the value determined for such proposed benefits under such subsection.

(B) Supplemental benefits

For benefits described in section 1395w–22(a)(3) of this title, the amount of the Medicare+Choice monthly supplemental beneficiary premium (as defined in subsection (b)(2)(B) of this section).

(5) Review

(A) In general

Subject to subparagraph (B), the Secretary shall review the adjusted community rates, the amounts of the basic and supplemental premiums, and values filed under paragraphs (2) and (4) of this subsection and shall approve or disapprove such rates, amounts, and values so submitted. The Chief Actuary of the Centers for Medicare & Medicaid Services shall review the actuarial assumptions and data used by the Medicare+Choice organization with respect to such rates, amounts, and values so submitted to determine the appropriateness of such assumptions and data.

(B) Exception

The Secretary shall not review, approve, or disapprove the amounts submitted under paragraph (3) or, in the case of an MA private fee-for-service plan, subparagraphs (A)(ii) and (B) of paragraph (4).

(6) Submission of bid amounts by MA organizations beginning in 2006

(A) Information to be submitted

For an MA plan (other than an MSA plan) for a plan year beginning on or after January 1, 2006, the information described in this subparagraph is as follows:

(i) The monthly aggregate bid amount for the provision of all items and services under the plan, which amount shall be based on average revenue requirements (as used for purposes of section 300e–1(8) of this title) in the payment area for an enrollee with a national average risk profile for the factors described in section 1395w–23(a)(1)(C) of this title (as specified by the Secretary).

(ii) The proportions of such bid amount that are attributable to—

(I) the provision of benefits under the original medicare fee-for-service program option (as defined in section 1395w–22(a)(1)(B) of this title);

(II) the provision of basic prescription drug coverage; and

(III) the provision of supplemental health care benefits.

(iii) The actuarial basis for determining the amount under clause (i) and the proportions described in clause (ii) and such additional information as the Secretary may require to verify such actuarial bases and the projected number of enrollees in each MA local area.

(iv) A description of deductibles, coinsurance, and copayments applicable under the plan and the actuarial value of such deductibles, coinsurance, and copayments, described in subsection (e)(4)(A) of this section.

(v) With respect to qualified prescription drug coverage, the information required under section 1395w–104 of this title, as incorporated under section 1395w–111(b)(2) of this title, with respect to such coverage.

In the case of a specialized MA plan for special needs individuals, the information described in this subparagraph is such information as the Secretary shall specify.

(B) Acceptance and negotiation of bid amounts

(i) Authority

Subject to clauses (iii) and (iv), the Secretary has the authority to negotiate regarding monthly bid amounts submitted under subparagraph (A) (and the proportions described in subparagraph (A)(ii)), including supplemental benefits provided under subsection (b)(1)(C)(ii)(I) of this section and in exercising such authority the Secretary shall have authority similar to the authority of the Director of the Office of Personnel Management with respect to health benefits plans under chapter 89 of title 5.

(ii) Application of FEHBP standard

Subject to clause (iv), the Secretary may only accept such a bid amount or proportion if the Secretary determines that such amount and proportions are supported by the actuarial bases provided under subparagraph (A) and reasonably and equitably reflects the revenue requirements (as used for purposes of section 300e–1(8) of this title) of benefits provided under that plan.

(iii) Noninterference

In order to promote competition under this part and part D of this subchapter and in carrying out such parts, the Secretary may not require any MA organization to contract with a particular hospital, physician, or other entity or individual to furnish items and services under this subchapter or require a particular price structure for payment under such a contract to the extent consistent with the Secretary's authority under this part.

(iv) Exception

In the case of a plan described in section 1395w–21(a)(2)(C) of this title, the provisions of clauses (i) and (ii) shall not apply and the provisions of paragraph (5)(B), prohibiting the review, approval, or disapproval of amounts described in such paragraph, shall apply to the negotiation and rejection of the monthly bid amounts and the proportions referred to in subparagraph (A).

(b) Monthly premium charged

(1) In general

(A) Rule for other than MSA plans

Subject to the rebate under subparagraph (C), the monthly amount (if any) of the premium charged to an individual enrolled in a Medicare+Choice plan (other than an MSA plan) offered by a Medicare+Choice organization shall be equal to the sum of the Medicare+Choice monthly basic beneficiary premium, the Medicare+Choice monthly supplementary beneficiary premium (if any), and, if the plan provides qualified prescription drug coverage, the MA monthly prescription drug beneficiary premium.

(B) MSA plans

The monthly amount of the premium charged to an individual enrolled in an MSA plan offered by a Medicare+Choice organization shall be equal to the Medicare+Choice monthly supplemental beneficiary premium (if any).

(C) Beneficiary rebate rule

(i) Requirement

The MA plan shall provide to the enrollee a monthly rebate equal to 75 percent of the average per capita savings (if any) described in paragraph (3)(C) or (4)(C), as applicable to the plan and year involved.

(ii) Form of rebate

A rebate required under this subparagraph shall be provided through the application of the amount of the rebate toward one or more of the following:

(I) Provision of supplemental health care benefits and payment for premium for supplemental benefits

The provision of supplemental health care benefits described in section 1395w–22(a)(3) of this title in a manner specified under the plan, which may include the reduction of cost-sharing otherwise applicable as well as additional

health care benefits which are not benefits under the original medicare fee-for-service program option, or crediting toward an MA monthly supplemental beneficiary premium (if any).

(II) Payment for premium for prescription drug coverage

Crediting toward the MA monthly prescription drug beneficiary premium.

(III) Payment toward part B premium

Crediting toward the premium imposed under part B of this subchapter (determined without regard to the application of subsections (b), (h), and (i) of section 1395r of this title).

(iii) Disclosure relating to rebates

The plan shall disclose to the Secretary information on the form and amount of the rebate provided under this subparagraph or the actuarial value in the case of supplemental health care benefits.

(iv) Application of part B premium reduction

Insofar as an MA organization elects to provide a rebate under this subparagraph under a plan as a credit toward the part B premium under clause (ii)(III), the Secretary shall apply such credit to reduce the premium under section 1395r of this title of each enrollee in such plan as provided in section 1395s(i) of this title.

(2) Premium and bid terminology defined

For purposes of this part:

(A) MA monthly basic beneficiary premium

The term ''MA monthly basic beneficiary premium'' means, with respect to an MA plan—

(i) described in section 1395w–23(a)(1)(B)(i) of this title (relating to plans providing rebates), zero; or

(ii) described in section 1395w–23(a)(1)(B)(ii) of this title, the amount (if any) by which the unadjusted MA statutory non-drug monthly bid amount (as defined in subparagraph (E)) exceeds the applicable unadjusted MA area-specific non-drug monthly benchmark amount (as defined in section 1395w–23(j) of this title).

(B) MA monthly prescription drug beneficiary premium

The term ''MA monthly prescription drug beneficiary premium'' means, with respect to an MA plan, the base beneficiary premium (as determined under section 1395w–113(a)(2) of this title and as adjusted under section 1395w–113(a)(1)(B) of this title), less the amount of rebate credited toward such amount under subsection (b)(1)(C)(ii)(II) of this section.

(C) MA monthly supplemental beneficiary premium

The term ''MA monthly supplemental beneficiary premium'' means, with respect to an MA plan, the portion of the aggregate monthly bid amount submitted under clause (i) of subsection (a)(6)(A) of this section for the year that is attributable under clause (ii)(III) of such subsection to the provision of supplemental health care benefits, less the amount of rebate credited toward such portion under subsection (b)(1)(C)(ii)(I) of this section.

(D) Medicare+Choice monthly MSA premium

The term ''Medicare+Choice monthly MSA premium'' means, with respect to a Medicare+Choice plan, the amount of such premium filed under subsection (a)(3)(A) of this section for the plan.

(E) Unadjusted MA statutory non-drug monthly bid amount

The term ''unadjusted MA statutory non-drug monthly bid amount'' means the portion of the bid amount submitted under clause (i) of subsection (a)(6)(A) of this section for the year that is attributable under clause (ii)(I) of such subsection to the provision of benefits under the original medicare fee-for-service program option (as defined in section 1395w–22(a)(1)(B) of this title).

(3) Computation of average per capita monthly savings for local plans

For purposes of paragraph (1)(C)(i), the average per capita monthly savings referred to in such paragraph for an MA local plan and year is computed as follows:

(A) Determination of statewide average risk adjustment for local plans

(i) In general

Subject to clause (iii), the Secretary shall determine, at the same time rates are promulgated under section 1395w–23(b)(1) of this title (beginning with 2006) for each State, the average of the risk adjustment factors to be applied under section 1395w–23(a)(1)(C) of this title to payment for enrollees in that State for MA local plans.

(ii) Treatment of States for first year in which local plan offered

In the case of a State in which no MA local plan was offered in the previous year, the Secretary shall estimate such average. In making such estimate, the Secretary may use average risk adjustment factors applied to comparable States or applied on a national basis.

(iii) Authority to determine risk adjustment for areas other than States

The Secretary may provide for the determination and application of risk adjustment factors under this subparagraph on the basis of areas other than States or on a plan-specific basis.

(B) Determination of risk adjusted benchmark and risk-adjusted bid for local plans

For each MA plan offered in a local area in a State, the Secretary shall—

(i) adjust the applicable MA area-specific non-drug monthly benchmark amount (as defined in section 1395w–23(j)(1) of this

title) for the area by the average risk adjustment factor computed under subparagraph (A); and

(ii) adjust the unadjusted MA statutory non-drug monthly bid amount by such applicable average risk adjustment factor.

(C) Determination of average per capita monthly savings

The average per capita monthly savings described in this subparagraph for an MA local plan is equal to the amount (if any) by which—

(i) the risk-adjusted benchmark amount computed under subparagraph (B)(i); exceeds

(ii) the risk-adjusted bid computed under subparagraph (B)(ii).

(4) Computation of average per capita monthly savings for regional plans

For purposes of paragraph (1)(C)(i), the average per capita monthly savings referred to in such paragraph for an MA regional plan and year is computed as follows:

(A) Determination of regionwide average risk adjustment for regional plans

(i) In general

The Secretary shall determine, at the same time rates are promulgated under section 1395w–23(b)(1) of this title (beginning with 2006) for each MA region the average of the risk adjustment factors to be applied under section 1395w–23(a)(1)(C) of this title to payment for enrollees in that region for MA regional plans.

(ii) Treatment of regions for first year in which regional plan offered

In the case of an MA region in which no MA regional plan was offered in the previous year, the Secretary shall estimate such average. In making such estimate, the Secretary may use average risk adjustment factors applied to comparable regions or applied on a national basis.

(iii) Authority to determine risk adjustment for areas other than regions

The Secretary may provide for the determination and application of risk adjustment factors under this subparagraph on the basis of areas other than MA regions or on a plan-specific basis.

(B) Determination of risk-adjusted benchmark and risk-adjusted bid for regional plans

For each MA regional plan offered in a region, the Secretary shall—

(i) adjust the applicable MA area-specific non-drug monthly benchmark amount (as defined in section 1395w–23(j)(2) of this title) for the region by the average risk adjustment factor computed under subparagraph (A); and

(ii) adjust the unadjusted MA statutory non-drug monthly bid amount by such applicable average risk adjustment factor.

(C) Determination of average per capita monthly savings

The average per capita monthly savings described in this subparagraph for an MA regional plan is equal to the amount (if any) by which—

(i) the risk-adjusted benchmark amount computed under subparagraph (B)(i); exceeds

(ii) the risk-adjusted bid computed under subparagraph (B)(ii).

(c) Uniform premium and bid amounts

Except as permitted under section 1395w–27(i) of this title, the MA monthly bid amount submitted under subsection (a)(6) of this section, the amounts of the MA monthly basic, prescription drug, and supplemental beneficiary premiums, and the MA monthly MSA premium charged under subsection (b) of this section of an MA organization under this part may not vary among individuals enrolled in the plan.

(d) Terms and conditions of imposing premiums

(1) In general

Each Medicare+Choice organization shall permit the payment of Medicare+Choice monthly basic, prescription drug, and supplemental beneficiary premiums on a monthly basis, may terminate election of individuals for a Medicare+Choice plan for failure to make premium payments only in accordance with section 1395w–21(g)(3)(B)(i) of this title, and may not provide for cash or other monetary rebates as an inducement for enrollment or otherwise.

(2) Beneficiary's option of payment through withholding from social security payment or use of electronic funds transfer mechanism

In accordance with regulations, an MA organization shall permit each enrollee, at the enrollee's option, to make payment of premiums (if any) under this part to the organization through—

(A) withholding from benefit payments in the manner provided under section 1395s of this title with respect to monthly premiums under section 1395r of this title;

(B) an electronic funds transfer mechanism (such as automatic charges of an account at a financial institution or a credit or debit card account); or

(C) such other means as the Secretary may specify, including payment by an employer or under employment-based retiree health coverage (as defined in section 1395w–132(c)(1) of this title) on behalf of an employee or former employee (or dependent).

All premium payments that are withheld under subparagraph (A) shall be credited to the appropriate Trust Fund (or Account thereof), as specified by the Secretary, under this subchapter and shall be paid to the MA organization involved. No charge may be imposed under an MA plan with respect to the election of the payment option described in subparagraph (A). The Secretary shall consult with the Commissioner of Social Security and the Secretary of the Treasury regarding methods for allocating premiums withheld under subparagraph (A) among the appropriate Trust Funds and Account.

(3) Information necessary for collection

In order to carry out paragraph (2)(A) with respect to an enrollee who has elected such paragraph to apply, the Secretary shall transmit to the Commissioner of Social Security—

(A) by the beginning of each year, the name, social security account number, consolidated monthly beneficiary premium described in paragraph (4) owed by such enrollee for each month during the year, and other information determined appropriate by the Secretary, in consultation with the Commissioner of Social Security; and

(B) periodically throughout the year, information to update the information previously transmitted under this paragraph for the year.

(4) Consolidated monthly beneficiary premium

In the case of an enrollee in an MA plan, the Secretary shall provide a mechanism for the consolidation of—

(A) the MA monthly basic beneficiary premium (if any);

(B) the MA monthly supplemental beneficiary premium (if any); and

(C) the MA monthly prescription drug beneficiary premium (if any).

(e) Limitation on enrollee liability

(1) For basic and additional benefits before 2006

For periods before 2006, in no event may—

(A) the Medicare+Choice monthly basic beneficiary premium (multiplied by 12) and the actuarial value of the deductibles, coinsurance, and copayments applicable on average to individuals enrolled under this part with a Medicare+Choice plan described in section 1395w–21(a)(2)(A) of this title of an organization with respect to required benefits described in section 1395w–22(a)(1)(A) of this title and additional benefits (if any) required under subsection (f)(1)(A) of this section for a year, exceed

(B) the actuarial value of the deductibles, coinsurance, and copayments that would be applicable on average to individuals entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter if they were not members of a Medicare+Choice organization for the year.

(2) For supplemental benefits before 2006

For periods before 2006, if the Medicare+Choice organization provides to its members enrolled under this part in a Medicare+Choice plan described in section 1395w–21(a)(2)(A) of this title with respect to supplemental benefits described in section 1395w–22(a)(3) of this title, the sum of the Medicare+Choice monthly supplemental beneficiary premium (multiplied by 12) charged and the actuarial value of its deductibles, coinsurance, and copayments charged with respect to such benefits may not exceed the adjusted community rate for such benefits (as defined in subsection (f)(3) of this section).

(3) Determination on other basis

If the Secretary determines that adequate data are not available to determine the actuarial value under paragraph (1)(A), (2), or (4), the Secretary may determine such amount with respect to all individuals in same geographic area, the State, or in the United States, eligible to enroll in the Medicare+Choice plan involved under this part or on the basis of other appropriate data.

(4) Special rule for private fee-for-service plans and for basic benefits beginning in 2006

With respect to a Medicare+Choice private fee-for-service plan (other than a plan that is an MSA plan) and for periods beginning with 2006, with respect to an MA plan described in section 1395w–21(a)(2)(A) of this title, in no event may—

(A) the actuarial value of the deductibles, coinsurance, and copayments applicable on average to individuals enrolled under this part with such a plan of an organization with respect to benefits under the original medicare fee-for-service program option, exceed

(B) the actuarial value of the deductibles, coinsurance, and copayments that would be applicable with respect to such benefits on average to individuals entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter if they were not members of a Medicare+Choice organization for the year.

(f) Requirement for additional benefits before 2006

(1) Requirement

(A) In general

For years before 2006, each Medicare+Choice organization (in relation to a Medicare+Choice plan, other than an MSA plan, it offers) shall provide that if there is an excess amount (as defined in subparagraph (B)) for the plan for a contract year, subject to the succeeding provisions of this subsection, the organization shall provide to individuals such additional benefits (as the organization may specify) in a value which the Secretary determines is at least equal to the adjusted excess amount (as defined in subparagraph (C)).

(B) Excess amount

For purposes of this paragraph, the ''excess amount'', for an organization for a plan, is the amount (if any) by which—

(i) the average of the capitation payments made to the organization under section 1395w–23 of this title for the plan at the beginning of contract year, exceeds

(ii) the actuarial value of the required benefits described in section 1395w–22(a)(1)(A) of this title under the plan for individuals under this part, as determined based upon an adjusted community rate described in paragraph (3) (as reduced for the actuarial value of the coinsurance, copayments, and deductibles under parts A and B of this subchapter).

(C) Adjusted excess amount

For purposes of this paragraph, the ''adjusted excess amount'', for an organization for a plan, is the excess amount reduced to

reflect any amount withheld and reserved for the organization for the year under paragraph (2).

(D) Uniform application

This paragraph shall be applied uniformly for all enrollees for a plan.

(E) Premium reductions

(i) In general

Subject to clause (ii), as part of providing any additional benefits required under subparagraph (A), a Medicare+Choice organization may elect a reduction in its payments under section 1395w–23(a)(1)(A) of this title with respect to a Medicare+Choice plan and the Secretary shall apply such reduction to reduce the premium under section 1395r of this title of each enrollee in such plan as provided in section 1395s(i) of this title.

(ii) Amount of reduction

The amount of the reduction under clause (i) with respect to any enrollee in a Medicare+Choice plan—

(I) may not exceed 125 percent of the premium described under section 1395r(a)(3) of this title; and

(II) shall apply uniformly to each enrollee of the Medicare+Choice plan to which such reduction applies.

(F) Construction

Nothing in this subsection shall be construed as preventing a Medicare+Choice organization from providing supplemental benefits (described in section 1395w–22(a)(3) of this title) that are in addition to the health care benefits otherwise required to be provided under this paragraph and from imposing a premium for such supplemental benefits.

(2) Stabilization fund

A Medicare+Choice organization may provide that a part of the value of an excess amount described in paragraph (1) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to stabilize and prevent undue fluctuations in the additional benefits offered in those subsequent periods by the organization in accordance with such paragraph. Any of such value of the amount reserved which is not provided as additional benefits described in paragraph (1)(A) to individuals electing the Medicare+Choice plan of the organization in accordance with such paragraph prior to the end of such periods, shall revert for the use of such trust funds.

(3) Adjusted community rate

For purposes of this subsection, subject to paragraph (4), the term ''adjusted community rate'' for a service or services means, at the election of a Medicare+Choice organization, either—

(A) the rate of payment for that service or services which the Secretary annually determines would apply to an individual electing a Medicare+Choice plan under this part if the rate of payment were determined under a ''community rating system'' (as defined in section 300e–1(8) of this title, other than subparagraph (C)), or

(B) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to such an individual, as the Secretary annually estimates is attributable to that service or services,

but adjusted for differences between the utilization characteristics of the individuals electing coverage under this part and the utilization characteristics of the other enrollees with the plan (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of individuals selecting other Medicare+Choice coverage, or Medicare+Choice eligible individuals in the area, in the State, or in the United States, eligible to elect Medicare+Choice coverage under this part and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).

(4) Determination based on insufficient data

For purposes of this subsection, if the Secretary finds that there is insufficient enrollment experience to determine an average of the capitation payments to be made under this part at the beginning of a contract period or to determine (in the case of a newly operated provider-sponsored organization or other new organization) the adjusted community rate for the organization, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this part and may determine such a rate using data in the general commercial marketplace.

(g) Prohibition of State imposition of premium taxes

No State may impose a premium tax or similar tax with respect to payments to Medicare+Choice organizations under section 1395w–23 of this title or premiums paid to such organizations under this part.

(h) Permitting use of segments of service areas

The Secretary shall permit a Medicare+Choice organization to elect to apply the provisions of this section uniformly to separate segments of a service area (rather than uniformly to an entire service area) as long as such segments are composed of one or more Medicare+Choice payment areas.

(Aug. 14, 1935, ch. 531, title XVIII, § 1854, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 308; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(k)(6)(C), title V, §§ 515(a), 516(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–367, 1501A–384; Pub. L. 106–554, § 1(a)(6) [title VI, §§ 606(a)(1), 622(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–557, 2763A–566; Pub. L. 107–188, title V, § 532(b)(1), June 12, 2002, 116 Stat. 696; Pub. L. 108–173, title II, §§ 222(a)(1), (b), (c), (g), 232(b), title IX, § 900(e)(1)(H), Dec. 8, 2003, 117 Stat. 2193, 2196, 2199, 2203, 2208, 2371.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in subsec. (a)(6)(B)(iii), is classified to section 1395w–101 et seq. of this title.

Parts A and B of this subchapter, referred to in subsecs. (b)(1)(C)(ii)(III), (iv), (e)(1)(B), (4)(B), and (f)(1)(B)(ii), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Pub. L. 108–173, § 222(g)(1)(A), substituted ''Premiums and bid amounts'' for ''Premiums'' in section catchline.

Subsec. (a). Pub. L. 108–173, § 222(g)(1)(B), inserted '', bid amounts,'' after ''premiums'' in heading.

Subsec. (a)(1). Pub. L. 108–173, § 222(a)(1)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Not later than the second Monday in September of 2002, 2003, and 2004 (or July 1 of each other year), each Medicare+Choice organization shall submit to the Secretary, in a form and manner specified by the Secretary and for each Medicare+Choice plan for the service area (or segment of such an area if permitted under subsection (h) of this section) in which it intends to be offered in the following year—

''(A) the information described in paragraph (2), (3), or (4) for the type of plan involved; and

''(B) the enrollment capacity (if any) in relation to the plan and area.''

Subsec. (a)(2). Pub. L. 108–173, § 222(g)(1)(C), inserted ''before 2006'' after ''for coordinated care plans'' in heading and ''for a year before 2006'' after ''section 1395w–21(a)(2)(A) of this title'' in introductory provisions.

Subsec. (a)(3). Pub. L. 108–173, § 222(g)(1)(D), substituted ''For an MSA plan for any year'' for ''For an MSA plan described'' in introductory provisions.

Subsec. (a)(4). Pub. L. 108–173, § 222(g)(1)(E), inserted ''before 2006'' after ''for private fee-for-service plans'' in heading and ''for a year before 2006'' after ''section 1395w–22(a)(1)(A) of this title'' in introductory provisions.

Subsec. (a)(5)(A). Pub. L. 108–173, § 900(e)(1)(H), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

Pub. L. 108–173, § 222(g)(1)(F), inserted ''paragraphs (2) and (4) of'' after ''filed under''.

Subsec. (a)(5)(B). Pub. L. 108–173, § 222(g)(1)(G), inserted '', in the case of an MA private fee-for-service plan,'' after ''paragraph (3) or''.

Subsec. (a)(6). Pub. L. 108–173, § 222(a)(1)(B), added par. (6).

Subsec. (b)(1)(A). Pub. L. 108–173, § 222(b)(1)(A), (g)(1)(H), substituted ''Subject to the rebate under subparagraph (C), the monthly amount (if any)'' for ''The monthly amount'' and a comma for ''and'' after ''basic beneficiary premium'' and inserted before period at end '', and, if the plan provides qualified prescription drug coverage, the MA monthly prescription drug beneficiary premium''.

Subsec. (b)(1)(C). Pub. L. 108–173, § 222(b)(1)(B), added subpar. (C).

Subsec. (b)(2). Pub. L. 108–173, § 222(b)(2), inserted ''and bid'' after ''Premium'' in heading, added subpars. (A) to (C) and (E), redesignated former subpar. (C) as (D), and struck out former subpars. (A) and (B) which defined the terms ''Medicare+Choice monthly basic beneficiary premium'' and ''Medicare+Choice monthly supplemental beneficiary premium''.

Subsec. (b)(3), (4). Pub. L. 108–173, § 222(b)(3), added pars. (3) and (4).

Subsec. (c). Pub. L. 108–173, § 222(g)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''The Medicare+Choice monthly basic and supplemental beneficiary premium, the Medicare+Choice monthly MSA premium charged under subsection (b) of this section of a Medicare+Choice organization under this part may not vary among individuals enrolled in the plan.''

Subsec. (d). Pub. L. 108–173, § 222(c), (g)(3), designated existing provisions as par. (1), inserted heading and '', prescription drug,'' after ''basic'', and added pars. (2) to (4).

Subsec. (e)(1). Pub. L. 108–173, § 222(g)(4)(A), inserted ''before 2006'' after ''benefits'' in heading and substituted ''For periods before 2006, in'' for ''In'' in introductory provisions.

Subsec. (e)(2). Pub. L. 108–173, § 222(g)(4)(B), inserted ''before 2006'' after ''benefits'' in heading and substituted ''For periods before 2006, if'' for ''If'' in text.

Subsec. (e)(3). Pub. L. 108–173, § 222(g)(4)(C), substituted '', (2), or (4)'' for ''or (2)''.

Subsec. (e)(4). Pub. L. 108–173, § 222(g)(4)(D)(i), (ii), inserted ''and for basic benefits beginning in 2006'' after ''plans'' in heading and ''and for periods beginning with 2006, with respect to an MA plan described in section 1395w–21(a)(2)(A) of this title'' after ''MSA plan)'' in introductory provisions.

Subsec. (e)(4)(A). Pub. L. 108–173, § 222(g)(4)(D)(iii), substituted ''benefits under the original medicare fee-for-service program option'' for ''required benefits described in section 1395w–22(a)(1) of this title''.

Subsec. (e)(4)(B). Pub. L. 108–173, § 222(g)(4)(D)(iv), inserted ''with respect to such benefits'' after ''would be applicable''.

Subsec. (f). Pub. L. 108–173, § 222(g)(5)(A), inserted ''before 2006'' after ''additional benefits'' in heading.

Subsec. (f)(1)(A). Pub. L. 108–173, § 222(g)(5)(B), substituted ''For years before 2006, each'' for ''Each''.

Subsec. (g). Pub. L. 108–173, § 232(b), inserted ''or premiums paid to such organizations under this part'' after ''section 1395w–23 of this title''.

2002—Subsec. (a)(1). Pub. L. 107–188 substituted ''Not later than the second Monday in September of 2002, 2003, and 2004 (or July 1 of each other year)'' for ''Not later than July 1 of each year'' in introductory provisions.

2000—Subsec. (a)(5)(A). Pub. L. 106–554, § 1(a)(6) [title VI, § 622(a)], substituted ''values so submitted'' for ''value so submitted'' and inserted at end ''The Chief Actuary of the Health Care Financing Administration shall review the actuarial assumptions and data used by the Medicare+Choice organization with respect to such rates, amounts, and values so submitted to determine the appropriateness of such assumptions and data.''

Subsec. (f)(1)(E), (F). Pub. L. 106–554, § 1(a)(6) [title VI, § 606(a)(1)], added subpar. (E) and redesignated former subpar. (E) as (F).

1999—Subsec. (a)(1). Pub. L. 106–113, § 1000(a)(6) [title V, § 516(a)], substituted ''July 1'' for ''May 1'' in introductory provisions.

Pub. L. 106–113, § 1000(a)(6) [title V, § 515(a)(1)], inserted ''(or segment of such an area if permitted under subsection (h) of this section)'' after ''service area'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(C)(i)(I)], inserted ''section'' before ''1395w–22(a)(1)(A) of this title'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(C)(i)(II)], inserted ''section'' after ''described in'' in introductory provisions.

Subsec. (a)(3)(A), (B). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(C)(ii)], inserted ''section'' after ''described in''.

Subsec. (a)(4). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(C)(iii)(I)], which directed insertion of ''section'' after ''described in'', was executed by making the insertion after ''described in'' the second time appearing in introductory provisions to reflect the probable intent of Congress.

Subsec. (a)(4)(A). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(C)(iii)(II)], inserted ''section'' after ''described in'' in introductory provisions.

Subsec. (a)(4)(B). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(6)(C)(iii)(III)], inserted ''section'' after ''described in''.

Subsec. (h). Pub. L. 106–113, § 1000(a)(6) [title V, § 515(a)(2)], added subsec. (h).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 222(a)(1), (b), (c), (g) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Pub. L. 108–173, title II, § 232(c), Dec. 8, 2003, 117 Stat. 2209, provided that: ''The amendments made by this subsection [probably should be ''this section'', amending this section and section 1395w–26 of this title] shall take effect on the date of the enactment of this Act [Dec. 8, 2003].''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–188, title V, § 532(b)(2), June 12, 2002, 116 Stat. 696, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to information submitted for years beginning with 2003.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title VI, § 606(a)(1)] of Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, § 606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.

Pub. L. 106–554, § 1(a)(6) [title VI, § 622(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–566, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to submissions made on or after May 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title III, § 321(k)(6)(C)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 515(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–384, provided that: ''The amendments made by this section [amending this section] apply to contract years beginning on or after January 1, 2001.''

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 516(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–384, provided that: ''The amendment made by subsection (a) [amending this section] applies to information submitted by Medicare+Choice organizations for years beginning with 1999.''

§ 1395w–25. Organizational and financial requirements for Medicare+Choice organizations; provider-sponsored organizations

(a) Organized and licensed under State law

(1) In general

Subject to paragraphs (2) and (3), a Medicare+Choice organization shall be organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers a Medicare+Choice plan.

(2) Special exception for provider-sponsored organizations

(A) In general

In the case of a provider-sponsored organization that seeks to offer a Medicare+Choice plan in a State, the Secretary shall waive the requirement of paragraph (1) that the organization be licensed in that State if—

(i) the organization files an application for such waiver with the Secretary by not later than November 1, 2002, and

(ii) the Secretary determines, based on the application and other evidence presented to the Secretary, that any of the grounds for approval of the application described in subparagraph (B), (C), or (D) has been met.

(B) Failure to act on licensure application on a timely basis

The ground for approval of such a waiver application described in this subparagraph is that the State has failed to complete action on a licensing application of the organization within 90 days of the date of the State's receipt of a substantially complete application. No period before August 5, 1997, shall be included in determining such 90-day period.

(C) Denial of application based on discriminatory treatment

The ground for approval of such a waiver application described in this subparagraph is that the State has denied such a licensing application and—

(i) the standards or review process imposed by the State as a condition of approval of the license imposes any material requirements, procedures, or standards (other than solvency requirements) to such organizations that are not generally applicable to other entities engaged in a substantially similar business, or

(ii) the State requires the organization, as a condition of licensure, to offer any product or plan other than a Medicare+Choice plan.

(D) Denial of application based on application of solvency requirements

With respect to waiver applications filed on or after the date of publication of solvency standards under section 1395w–26(a) of this title, the ground for approval of such a waiver application described in this subparagraph is that the State has denied such a licensing application based (in whole or in part) on the organization's failure to meet applicable solvency requirements and—

(i) such requirements are not the same as the solvency standards established under section 1395w–26(a) of this title; or

(ii) the State has imposed as a condition of approval of the license documentation or information requirements relating to solvency or other material requirements, procedures, or standards relating to solvency that are different from the requirements, procedures, and standards applied by the Secretary under subsection (d)(2) of this section.

For purposes of this paragraph, the term ''solvency requirements'' means requirements relating to solvency and other matters covered under the standards established under section 1395w–26(a) of this title.

(E) Treatment of waiver

In the case of a waiver granted under this paragraph for a provider-sponsored organization with respect to a State—

(i) Limitation to State

The waiver shall be effective only with respect to that State and does not apply to any other State.

(ii) Limitation to 36-month period

The waiver shall be effective only for a 36-month period and may not be renewed.

(iii) Conditioned on compliance with consumer protection and quality standards

The continuation of the waiver is conditioned upon the organization's compliance with the requirements described in subparagraph (G).

(iv) Preemption of State law

Any provisions of law of that State which relate to the licensing of the organization and which prohibit the organization from providing coverage pursuant to a contract under this part shall be superseded.

(F) Prompt action on application

The Secretary shall grant or deny such a waiver application within 60 days after the date the Secretary determines that a substantially complete waiver application has been filed. Nothing in this section shall be construed as preventing an organization which has had such a waiver application denied from submitting a subsequent waiver application.

(G) Application and enforcement of State consumer protection and quality standards

(i) In general

A waiver granted under this paragraph to an organization with respect to licensing under State law is conditioned upon the organization's compliance with all consumer protection and quality standards insofar as such standards—

(I) would apply in the State to the organization if it were licensed under State law;

(II) are generally applicable to other Medicare+Choice organizations and plans in the State; and

(III) are consistent with the standards established under this part.

Such standards shall not include any standard preempted under section 1395w–26(b)(3)(B) of this title.

(ii) Incorporation into contract

In the case of such a waiver granted to an organization with respect to a State, the Secretary shall incorporate the requirement that the organization (and Medicare+Choice plans it offers) comply with standards under clause (i) as part of the contract between the Secretary and the organization under section 1395w–27 of this title.

(iii) Enforcement

In the case of such a waiver granted to an organization with respect to a State, the Secretary may enter into an agreement with the State under which the State agrees to provide for monitoring and enforcement activities with respect to compliance of such an organization and its Medicare+Choice plans with such standards. Such monitoring and enforcement shall be conducted by the State in the same manner as the State enforces such standards with respect to other Medicare+Choice organizations and plans, without discrimination based on the type of organization to which the standards apply. Such an agreement shall specify or establish mechanisms by which compliance activities are undertaken, while not lengthening the time required to review and process applications for waivers under this paragraph.

(H) Report

By not later than December 31, 2001, the Secretary shall submit to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate a report regarding whether the waiver process under this paragraph should be continued after December 31, 2002. In making such recommendation, the Secretary shall consider, among other factors, the impact of such process on beneficiaries and on the long-term solvency of the program under this subchapter.

(3) Licensure does not substitute for or constitute certification

The fact that an organization is licensed in accordance with paragraph (1) does not deem the organization to meet other requirements imposed under this part.

(b) Assumption of full financial risk

The Medicare+Choice organization shall assume full financial risk on a prospective basis for the provision of the health care services for which benefits are required to be provided under section 1395w–22(a)(1) of this title, except that the organization—

(1) may obtain insurance or make other arrangements for the cost of providing to any enrolled member such services the aggregate value of which exceeds such aggregate level as the Secretary specifies from time to time,

(2) may obtain insurance or make other arrangements for the cost of such services provided to its enrolled members other than through the organization because medical necessity required their provision before they could be secured through the organization,

(3) may obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

(4) may make arrangements with physicians or other health care professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of

the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

(c) Certification of provision against risk of insolvency for unlicensed PSOs

(1) In general

Each Medicare+Choice organization that is a provider-sponsored organization, that is not licensed by a State under subsection (a) of this section, and for which a waiver application has been approved under subsection (a)(2) of this section, shall meet standards established under section 1395w–26(a) of this title relating to the financial solvency and capital adequacy of the organization.

(2) Certification process for solvency standards for PSOs

The Secretary shall establish a process for the receipt and approval of applications of a provider-sponsored organization described in paragraph (1) for certification (and periodic recertification) of the organization as meeting such solvency standards. Under such process, the Secretary shall act upon such a certification application not later than 60 days after the date the application has been received.

(d) "Provider-sponsored organization" defined

(1) In general

In this part, the term ''provider-sponsored organization'' means a public or private entity—

(A) that is established or organized, and operated, by a health care provider, or group of affiliated health care providers,

(B) that provides a substantial proportion (as defined by the Secretary in accordance with paragraph (2)) of the health care items and services under the contract under this part directly through the provider or affiliated group of providers, and

(C) with respect to which the affiliated providers share, directly or indirectly, substantial financial risk with respect to the provision of such items and services and have at least a majority financial interest in the entity.

(2) Substantial proportion

In defining what is a ''substantial proportion'' for purposes of paragraph (1)(B), the Secretary—

(A) shall take into account the need for such an organization to assume responsibility for providing—

(i) significantly more than the majority of the items and services under the contract under this section through its own affiliated providers; and

(ii) most of the remainder of the items and services under the contract through providers with which the organization has an agreement to provide such items and services,

in order to assure financial stability and to address the practical considerations involved in integrating the delivery of a wide range of service providers;

(B) shall take into account the need for such an organization to provide a limited proportion of the items and services under the contract through providers that are neither affiliated with nor have an agreement with the organization; and

(C) may allow for variation in the definition of substantial proportion among such organizations based on relevant differences among the organizations, such as their location in an urban or rural area.

(3) Affiliation

For purposes of this subsection, a provider is ''affiliated'' with another provider if, through contract, ownership, or otherwise—

(A) one provider, directly or indirectly, controls, is controlled by, or is under common control with the other,

(B) both providers are part of a controlled group of corporations under section 1563 of the Internal Revenue Code of 1986,

(C) each provider is a participant in a lawful combination under which each provider shares substantial financial risk in connection with the organization's operations, or

(D) both providers are part of an affiliated service group under section 414 of such Code.

(4) Control

For purposes of paragraph (3), control is presumed to exist if one party, directly or indirectly, owns, controls, or holds the power to vote, or proxies for, not less than 51 percent of the voting rights or governance rights of another.

(5) "Health care provider" defined

In this subsection, the term ''health care provider'' means—

(A) any individual who is engaged in the delivery of health care services in a State and who is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, and

(B) any entity that is engaged in the delivery of health care services in a State and that, if it is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, is so licensed.

(6) Regulations

The Secretary shall issue regulations to carry out this subsection.

(Aug. 14, 1935, ch. 531, title XVIII, § 1855, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 312.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (d)(3)(B), (D), is classified generally to Title 26, Internal Revenue Code.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of

House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 1395w–26. Establishment of standards

(a) Establishment of solvency standards for provider-sponsored organizations

(1) Establishment

(A) In general

The Secretary shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, standards described in section 1395w–25(c)(1) of this title (relating to the financial solvency and capital adequacy of the organization) that entities must meet to qualify as provider-sponsored organizations under this part.

(B) Factors to consider for solvency standards

In establishing solvency standards under subparagraph (A) for provider-sponsored organizations, the Secretary shall consult with interested parties and shall take into account—

(i) the delivery system assets of such an organization and ability of such an organization to provide services directly to enrollees through affiliated providers,

(ii) alternative means of protecting against insolvency, including reinsurance, unrestricted surplus, letters of credit, guarantees, organizational insurance coverage, partnerships with other licensed entities, and valuation attributable to the ability of such an organization to meet its service obligations through direct delivery of care, and

(iii) any standards developed by the National Association of Insurance Commissioners specifically for risk-based health care delivery organizations.

(C) Enrollee protection against insolvency

Such standards shall include provisions to prevent enrollees from being held liable to any person or entity for the Medicare+Choice organization's debts in the event of the organization's insolvency.

(2) Publication of notice

In carrying out the rulemaking process under this subsection, the Secretary, after consultation with the National Association of Insurance Commissioners, the American Academy of Actuaries, organizations representative of medicare beneficiaries, and other interested parties, shall publish the notice provided for under section 564(a) of title 5 by not later than 45 days after August 5, 1997.

(3) Target date for publication of rule

As part of the notice under paragraph (2), and for purposes of this subsection, the ''target date for publication'' (referred to in section 564(a)(5) of such title) shall be April 1, 1998.

(4) Abbreviated period for submission of comments

In applying section 564(c) of such title under this subsection, ''15 days'' shall be substituted for ''30 days''.

(5) Appointment of negotiated rulemaking committee and facilitator

The Secretary shall provide for—

(A) the appointment of a negotiated rulemaking committee under section 565(a) of such title by not later than 30 days after the end of the comment period provided for under section 564(c) of such title (as shortened under paragraph (4)), and

(B) the nomination of a facilitator under section 566(c) of such title by not later than 10 days after the date of appointment of the committee.

(6) Preliminary committee report

The negotiated rulemaking committee appointed under paragraph (5) shall report to the Secretary, by not later than January 1, 1998, regarding the committee's progress on achieving a consensus with regard to the rulemaking proceeding and whether such consensus is likely to occur before 1 month before the target date for publication of the rule. If the committee reports that the committee has failed to make significant progress towards such consensus or is unlikely to reach such consensus by the target date, the Secretary may terminate such process and provide for the publication of a rule under this subsection through such other methods as the Secretary may provide.

(7) Final committee report

If the committee is not terminated under paragraph (6), the rulemaking committee shall submit a report containing a proposed rule by not later than 1 month before the target date of publication.

(8) Interim, final effect

The Secretary shall publish a rule under this subsection in the Federal Register by not later than the target date of publication. Such rule shall be effective and final immediately on an interim basis, but is subject to change and revision after public notice and opportunity for a period (of not less than 60 days) for public comment. In connection with such rule, the Secretary shall specify the process for the timely review and approval of applications of entities to be certified as provider-sponsored organizations pursuant to such rules and consistent with this subsection.

(9) Publication of rule after public comment

The Secretary shall provide for consideration of such comments and republication of such rule by not later than 1 year after the target date of publication.

(b) Establishment of other standards

(1) In general

The Secretary shall establish by regulation other standards (not described in subsection (a) of this section) for Medicare+Choice organizations and plans consistent with, and to

carry out, this part. The Secretary shall publish such regulations by June 1, 1998. In order to carry out this requirement in a timely manner, the Secretary may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment.

(2) Use of current standards

Consistent with the requirements of this part, standards established under this subsection shall be based on standards established under section 1395mm of this title to carry out analogous provisions of such section.

(3) Relation to State laws

The standards established under this part shall supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect to MA plans which are offered by MA organizations under this part.

(4) Prohibition of midyear implementation of significant new regulatory requirements

The Secretary may not implement, other than at the beginning of a calendar year, regulations under this section that impose new, significant regulatory requirements on a Medicare+Choice organization or plan.

(Aug. 14, 1935, ch. 531, title XVIII, § 1856, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 317; amended Pub. L. 106–554, § 1(a)(6) [title VI, §§ 612(a), 614(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–560; Pub. L. 108–173, title II, § 232(a), Dec. 8, 2003, 117 Stat. 2208.)

AMENDMENTS

2003—Subsec. (b)(3). Pub. L. 108–173 reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) and (B) stating general rule and listing standards specifically superseded.

2000—Subsec. (b)(3)(B)(i). Pub. L. 106–554, § 1(a)(6) [title VI, § 614(a)(1)], inserted ''(including cost-sharing requirements)'' after ''Benefit requirements''.

Subsec. (b)(3)(B)(iv). Pub. L. 106–554, § 1(a)(6) [title VI, § 614(a)(2)], added cl. (iv).

Subsec. (b)(4). Pub. L. 106–554, § 1(a)(6) [title VI, § 612(a)], added par. (4).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title VI, § 612(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–560, provided that: ''The amendment made by subsection (a) [amending this section] takes effect on the date of the enactment of this Act [Dec. 21, 2000].''

Pub. L. 106–554, § 1(a)(6) [title VI, § 614(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–561, provided that: ''The amendments made by subsection (a) [amending this section] take effect on the date of the enactment of this Act [Dec. 21, 2000].''

§ 1395w–27. Contracts with Medicare+Choice organizations

(a) In general

The Secretary shall not permit the election under section 1395w–21 of this title of a Medicare+Choice plan offered by a Medicare+Choice organization under this part, and no payment shall be made under section 1395w–23 of this title to an organization, unless the Secretary has entered into a contract under this section with the organization with respect to the offering of such plan. Such a contract with an organization may cover more than 1 Medicare+Choice plan. Such contract shall provide that the organization agrees to comply with the applicable requirements and standards of this part and the terms and conditions of payment as provided for in this part.

(b) Minimum enrollment requirements

(1) In general

Subject to paragraph (2), the Secretary may not enter into a contract under this section with a Medicare+Choice organization unless the organization has—

(A) at least 5,000 individuals (or 1,500 individuals in the case of an organization that is a provider-sponsored organization) who are receiving health benefits through the organization, or

(B) at least 1,500 individuals (or 500 individuals in the case of an organization that is a provider-sponsored organization) who are receiving health benefits through the organization if the organization primarily serves individuals residing outside of urbanized areas.

(2) Application to MSA plans

In applying paragraph (1) in the case of a Medicare+Choice organization that is offering an MSA plan, paragraph (1) shall be applied by substituting covered lives for individuals.

(3) Allowing transition

The Secretary may waive the requirement of paragraph (1) during the first 3 contract years with respect to an organization.

(c) Contract period and effectiveness

(1) Period

Each contract under this section shall be for a term of at least 1 year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term.

(2) Termination authority

In accordance with procedures established under subsection (h) of this section, the Secretary may at any time terminate any such contract if the Secretary determines that the organization—

(A) has failed substantially to carry out the contract;

(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this part; or

(C) no longer substantially meets the applicable conditions of this part.

(3) Effective date of contracts

The effective date of any contract executed pursuant to this section shall be specified in the contract, except that in no case shall a contract under this section which provides for

coverage under an MSA plan be effective before January 1999 with respect to such coverage.

(4) Previous terminations

(A) In general

The Secretary may not enter into a contract with a Medicare+Choice organization if a previous contract with that organization under this section was terminated at the request of the organization within the preceding 2-year period, except as provided in subparagraph (B) and except in such other circumstances which warrant special consideration, as determined by the Secretary.

(B) Earlier re-entry permitted where change in payment policy

Subparagraph (A) shall not apply with respect to the offering by a Medicare+Choice organization of a Medicare+Choice plan in a Medicare+Choice payment area if during the 6-month period beginning on the date the organization notified the Secretary of the intention to terminate the most recent previous contract, there was a legislative change enacted (or a regulatory change adopted) that has the effect of increasing payment amounts under section 1395w–23 of this title for that Medicare+Choice payment area.

(5) Contracting authority

The authority vested in the Secretary by this part may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this subchapter.

(d) Protections against fraud and beneficiary protections

(1) Periodic auditing

The Secretary shall provide for the annual auditing of the financial records (including data relating to medicare utilization and costs, including allowable costs under section 1395w–27a(c) of this title) of at least one-third of the Medicare+Choice organizations offering Medicare+Choice plans under this part. The Comptroller General shall monitor auditing activities conducted under this subsection.

(2) Inspection and audit

Each contract under this section shall provide that the Secretary, or any person or organization designated by the Secretary—

(A) shall have the right to inspect or otherwise evaluate (i) the quality, appropriateness, and timeliness of services performed under the contract, and (ii) the facilities of the organization when there is reasonable evidence of some need for such inspection, and

(B) shall have the right to audit and inspect any books and records of the Medicare+Choice organization that pertain (i) to the ability of the organization to bear the risk of potential financial losses, or (ii) to services performed or determinations of amounts payable under the contract.

(3) Enrollee notice at time of termination

Each contract under this section shall require the organization to provide (and pay for) written notice in advance of the contract's termination, as well as a description of alternatives for obtaining benefits under this subchapter, to each individual enrolled with the organization under this part.

(4) Disclosure

(A) In general

Each Medicare+Choice organization shall, in accordance with regulations of the Secretary, report to the Secretary financial information which shall include the following:

(i) Such information as the Secretary may require demonstrating that the organization has a fiscally sound operation.

(ii) A copy of the report, if any, filed with the Secretary containing the information required to be reported under section 1320a–3 of this title by disclosing entities.

(iii) A description of transactions, as specified by the Secretary, between the organization and a party in interest. Such transactions shall include—

(I) any sale or exchange, or leasing of any property between the organization and a party in interest;

(II) any furnishing for consideration of goods, services (including management services), or facilities between the organization and a party in interest, but not including salaries paid to employees for services provided in the normal course of their employment and health services provided to members by hospitals and other providers and by staff, medical group (or groups), individual practice association (or associations), or any combination thereof; and

(III) any lending of money or other extension of credit between an organization and a party in interest.

The Secretary may require that information reported respecting an organization which controls, is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(B) "Party in interest" defined

For the purposes of this paragraph, the term ''party in interest'' means—

(i) any director, officer, partner, or employee responsible for management or administration of a Medicare+Choice organization, any person who is directly or indirectly the beneficial owner of more than 5 percent of the equity of the organization, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 percent of the organization, and, in the case of a Medicare+Choice organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law;

(ii) any entity in which a person described in clause (i)—

(I) is an officer or director;

(II) is a partner (if such entity is organized as a partnership);

(III) has directly or indirectly a beneficial interest of more than 5 percent of the equity; or

(IV) has a mortgage, deed of trust, note, or other interest valuing more than 5 percent of the assets of such entity;

(iii) any person directly or indirectly controlling, controlled by, or under common control with an organization; and

(iv) any spouse, child, or parent of an individual described in clause (i).

(C) Access to information

Each Medicare+Choice organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.

(5) Loan information

The contract shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties.

(e) Additional contract terms

(1) In general

The contract shall contain such other terms and conditions not inconsistent with this part (including requiring the organization to provide the Secretary with such information) as the Secretary may find necessary and appropriate.

(2) Cost-sharing in enrollment-related costs

(A) In general

A Medicare+Choice organization and a PDP sponsor under part D of this subchapter shall pay the fee established by the Secretary under subparagraph (B).

(B) Authorization

The Secretary is authorized to charge a fee to each Medicare+Choice organization with a contract under this part and each PDP sponsor with a contract under part D of this subchapter that is equal to the organization's or sponsor's pro rata share (as determined by the Secretary) of the aggregate amount of fees which the Secretary is directed to collect in a fiscal year. Any amounts collected shall be available without further appropriation to the Secretary for the purpose of carrying out section 1395w–21 of this title (relating to enrollment and dissemination of information), section 1395w–101(c) of this title, and section 1395b–4 of this title (relating to the health insurance counseling and assistance program).

(C) Authorization of appropriations

There are authorized to be appropriated for the purposes described in subparagraph (B) for each fiscal year beginning with fiscal year 2001 and ending with fiscal year 2005 an amount equal to $100,000,000, and for each fiscal year beginning with fiscal year 2006 an amount equal to $200,000,000, reduced by the amount of fees authorized to be collected under this paragraph and section 1395w–112(b)(3)(D) of this title for the fiscal year.

(D) Limitation

In any fiscal year the fees collected by the Secretary under subparagraph (B) shall not exceed the lesser of—

(i) the estimated costs to be incurred by the Secretary in the fiscal year in carrying out the activities described in section 1395w–21 of this title and section 1395w–101(c) of this title and section 1395b–4 of this title; or

(ii)(I) $200,000,000 in fiscal year 1998;

(II) $150,000,000 in fiscal year 1999;

(III) $100,000,000 in fiscal year 2000;

(IV) the Medicare+Choice portion (as defined in subparagraph (E)) of $100,000,000 in fiscal year 2001 and each succeeding fiscal year before fiscal year 2006; and

(V) the applicable portion (as defined in subparagraph (F)) of $200,000,000 in fiscal year 2006 and each succeeding fiscal year.

(E) Medicare+Choice portion defined

In this paragraph, the term ''Medicare+Choice portion'' means, for a fiscal year, the ratio, as estimated by the Secretary, of—

(i) the average number of individuals enrolled in Medicare+Choice plans during the fiscal year, to

(ii) the average number of individuals entitled to benefits under part A of this subchapter, and enrolled under part B of this subchapter, during the fiscal year.

(F) Applicable portion defined

In this paragraph, the term ''applicable portion'' means, for a fiscal year—

(i) with respect to MA organizations, the Secretary's estimate of the total proportion of expenditures under this subchapter that are attributable to expenditures made under this part (including payments under part D of this subchapter that are made to such organizations); or

(ii) with respect to PDP sponsors, the Secretary's estimate of the total proportion of expenditures under this subchapter that are attributable to expenditures made to such sponsors under part D of this subchapter.

(3) Agreements with federally qualified health centers

(A) Payment levels and amounts

A contract under this section with an MA organization shall require the organization to provide, in any written agreement described in section 1395w–23(a)(4) of this title between the organization and a federally qualified health center, for a level and amount of payment to the federally qualified health center for services provided by such health center that is not less than the level and amount of payment that the plan would make for such services if the services had been furnished by a entity providing similar services that was not a federally qualified health center.

(B) Cost-sharing

Under the written agreement referred to in subparagraph (A), a federally qualified health center must accept the payment amount referred to in such subparagraph plus the Federal payment provided for in section 1395*l*(a)(3)(B) of this title as payment in full for services covered by the agreement, except that such a health center may collect any amount of cost-sharing permitted under the contract under this section, so long as the amounts of any deductible, coinsurance, or copayment comply with the requirements under section 1395w–24(e) of this title.

(f) Prompt payment by Medicare+Choice organization

(1) Requirement

A contract under this part shall require a Medicare+Choice organization to provide prompt payment (consistent with the provisions of sections 1395h(c)(2) and 1395u(c)(2) of this title) of claims submitted for services and supplies furnished to enrollees pursuant to the contract, if the services or supplies are not furnished under a contract between the organization and the provider or supplier (or in the case of a Medicare+Choice private fee-for-service plan, if a claim is submitted to such organization by an enrollee).

(2) Secretary's option to bypass noncomplying organization

In the case of a Medicare+Choice eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with paragraph (1), the Secretary may provide for direct payment of the amounts owed to providers and suppliers (or, in the case of a Medicare+Choice private fee-for-service plan, amounts owed to the enrollees) for covered services and supplies furnished to individuals enrolled under this part under the contract. If the Secretary provides for the direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this part to reflect the amount of the Secretary's payments (and the Secretary's costs in making the payments).

(g) Intermediate sanctions

(1) In general

If the Secretary determines that a Medicare+Choice organization with a contract under this section—

(A) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(B) imposes premiums on individuals enrolled under this part in excess of the amount of the Medicare+Choice monthly basic and supplemental beneficiary premiums permitted under section 1395w–24 of this title;

(C) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this part;

(D) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this part) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

(E) misrepresents or falsifies information that is furnished—

(i) to the Secretary under this part, or

(ii) to an individual or to any other entity under this part;

(F) fails to comply with the applicable requirements of section 1395w–22(j)(3) or 1395w–22(k)(2)(A)(ii) of this title; or

(G) employs or contracts with any individual or entity that is excluded from participation under this subchapter under section 1320a–7 or 1320a–7a of this title for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services;

the Secretary may provide, in addition to any other remedies authorized by law, for any of the remedies described in paragraph (2).

(2) Remedies

The remedies described in this paragraph are—

(A) civil money penalties of not more than $25,000 for each determination under paragraph (1) or, with respect to a determination under subparagraph (D) or (E)(i) of such paragraph, of not more than $100,000 for each such determination, plus, with respect to a determination under paragraph (1)(B), double the excess amount charged in violation of such paragraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under paragraph (1)(D), $15,000 for each individual not enrolled as a result of the practice involved,

(B) suspension of enrollment of individuals under this part after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, or

(C) suspension of payment to the organization under this part for individuals enrolled after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

(3) Other intermediate sanctions

In the case of a Medicare+Choice organization for which the Secretary makes a determination under subsection (c)(2) of this section the basis of which is not described in paragraph (1), the Secretary may apply the following intermediate sanctions:

(A) Civil money penalties of not more than $25,000 for each determination under subsection (c)(2) of this section if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization's contract.

(B) Civil money penalties of not more than $10,000 for each week beginning after the initiation of civil money penalty procedures by the Secretary during which the deficiency that is the basis of a determination under subsection (c)(2) of this section exists.

(C) Suspension of enrollment of individuals under this part after the date the Secretary notifies the organization of a determination under subsection (c)(2) of this section and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.

(D) Civil monetary penalties of not more than $100,000, or such higher amount as the Secretary may establish by regulation, where the finding under subsection (c)(2)(A) of this section is based on the organization's termination of its contract under this section other than at a time and in a manner provided for under subsection (a) of this section.

(4) Civil money penalties

The provisions of section 1320a–7a (other than subsections (a) and (b)) of this title shall apply to a civil money penalty under paragraph (2) or (3) in the same manner as they apply to a civil money penalty or proceeding under section 1320a–7a(a) of this title.

(h) Procedures for termination

(1) In general

The Secretary may terminate a contract with a Medicare+Choice organization under this section in accordance with formal investigation and compliance procedures established by the Secretary under which—

(A) the Secretary provides the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's determination under subsection (c)(2) of this section; and

(B) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before terminating the contract.

(2) Exception for imminent and serious risk to health

Paragraph (1) shall not apply if the Secretary determines that a delay in termination, resulting from compliance with the procedures specified in such paragraph prior to termination, would pose an imminent and serious risk to the health of individuals enrolled under this part with the organization.

(i) Medicare+Choice program compatibility with employer or union group health plans

(1) Contracts with MA organizations

To facilitate the offering of Medicare+Choice plans under contracts between Medicare+Choice organizations and employers, labor organizations, or the trustees of a fund established by one or more employers or labor organizations (or combination thereof) to furnish benefits to the entity's employees, former employees (or combination thereof) or members or former members (or combination thereof) of the labor organizations, the Secretary may waive or modify requirements that hinder the design of, the offering of, or the enrollment in such Medicare+Choice plans.

(2) Employer sponsored MA plans

To facilitate the offering of MA plans by employers, labor organizations, or the trustees of a fund established by one or more employers or labor organizations (or combination thereof) to furnish benefits to the entity's employees, former employees (or combination thereof) or members or former members (or combination thereof) of the labor organizations, the Secretary may waive or modify requirements that hinder the design of, the offering of, or the enrollment in such MA plans. Notwithstanding section 1395w–21(g) of this title, an MA plan described in the previous sentence may restrict the enrollment of individuals under this part to individuals who are beneficiaries and participants in such plan.

(Aug. 14, 1935, ch. 531, title XVIII, § 1857, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 319; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title V, §§ 513(a), (b)(1), 522(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–383, 1501A–387; Pub. L. 106–554, § 1(a)(6) [title VI, §§ 617(a), 623(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–561, 2763A–566; Pub. L. 108–173, title II, §§ 222(j), (k), (*l*)(3)(C), 237(c), title IX, § 900(e)(1)(I), Dec. 8, 2003, 117 Stat. 2205, 2207, 2213, 2372.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in subsec. (e)(2)(A), (B), (F), is classified to section 1395w–101 et seq. of this title.

Parts A and B of this subchapter, referred to in subsec. (e)(2)(E)(ii), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (d)(1). Pub. L. 108–173, § 222(*l*)(3)(C), substituted ''and costs, including allowable costs under section 1395w–27a(c) of this title'' for '', costs, and computation of the adjusted community rate''.

Subsec. (d)(4)(A)(ii). Pub. L. 108–173, § 900(e)(1)(I), substituted ''Secretary'' for ''Health Care Financing Administration''.

Subsec. (e)(2)(A). Pub. L. 108–173, § 222(k)(1), inserted ''and a PDP sponsor under part D of this subchapter'' after ''organization''.

Subsec. (e)(2)(B). Pub. L. 108–173, § 222(k)(2), inserted ''and each PDP sponsor with a contract under part D of this subchapter'' after ''contract under this part'', ''or sponsor's'' after ''organization's'', and '', section 1395w–101(c) of this title,'' after ''information)''.

Subsec. (e)(2)(C). Pub. L. 108–173, § 222(k)(3), inserted ''and ending with fiscal year 2005'' after ''beginning with fiscal year 2001'', ''and for each fiscal year beginning with fiscal year 2006 an amount equal to $200,000,000,'' after ''$100,000,000,'', and ''and section 1395w–112(b)(3)(D) of this title'' after ''under this paragraph''.

Subsec. (e)(2)(D)(i). Pub. L. 108–173, § 222(k)(4)(A), inserted ''and section 1395w–101(c) of this title'' after ''section 1395w–21 of this title''.

Subsec. (e)(2)(D)(ii)(III). Pub. L. 108–173, § 222(k)(4)(B), struck out ''and'' at end.

Subsec. (e)(2)(D)(ii)(IV). Pub. L. 108–173, § 222(k)(4)(C), substituted ''each succeeding fiscal year before fiscal year 2006; and'' for ''each succeeding fiscal year.''

Subsec. (e)(2)(D)(ii)(V). Pub. L. 108–173, § 222(k)(4)(D), added subcl. (V).

Subsec. (e)(2)(F). Pub. L. 108–173, § 222(k)(5), added subpar. (F).

Subsec. (e)(3). Pub. L. 108–173, § 237(c), added par. (3).

Subsec. (i). Pub. L. 108–173, § 222(j), designated existing provisions as par. (1), inserted heading, and added par. (2).

2000—Subsec. (g)(3)(D). Pub. L. 106–554, § 1(a)(6) [title VI, § 623(a)], added subpar. (D).

Subsec. (i). Pub. L. 106–554, § 1(a)(6) [title VI, § 617(a)], added subsec. (i).

1999—Subsec. (c)(4). Pub. L. 106–113, § 1000(a)(6) [title V, § 513(b)(1)(B), (C)], designated existing provisions as subpar. (A), inserted heading, realigned margins, and added subpar. (B).

Pub. L. 106–113, § 1000(a)(6) [title V, § 513(a), (b)(1)(A)], substituted ''2-year period'' for ''5-year period'' and ''except as provided in subparagraph (B) and except in such other circumstances'' for ''except in circumstances''.

Subsec. (e)(2)(B). Pub. L. 106–113, § 1000(a)(6) [title V, § 522(a)(1)], substituted ''Any amounts collected shall be available without further appropriation to the Secretary for'' for ''Any amounts collected are authorized to be appropriated only for''.

Subsec. (e)(2)(C). Pub. L. 106–113, § 1000(a)(6) [title V, § 522(a)(2)], amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''For any fiscal year, the fees authorized under subparagraph (B) are contingent upon enactment in an appropriations act of a provision specifying the aggregate amount of fees the Secretary is directed to collect in a fiscal year. Fees collected during any fiscal year under this paragraph shall be deposited and credited as offsetting collections.''

Subsec. (e)(2)(D)(ii)(II). Pub. L. 106–113, § 1000(a)(6) [title V, § 522(a)(3)(A)], struck out ''and'' after semicolon.

Subsec. (e)(2)(D)(ii)(III). Pub. L. 106–113, § 1000(a)(6) [title V, § 522(a)(3)(B)], substituted ''; and'' for ''and each subsequent fiscal year.''

Subsec. (e)(2)(D)(ii)(IV). Pub. L. 106–113, § 1000(a)(6) [title V, § 522(a)(3)(C)], added subcl. (IV).

Subsec. (e)(2)(E). Pub. L. 106–113, § 1000(a)(6) [title V, § 522(a)(4)], added subpar. (E).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 222(j), (k), (*l*)(3)(C) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Amendment by section 237(c) of Pub. L. 108–173 applicable to services provided on or after Jan. 1, 2006, and contract years beginning on or after such date, see section 237(e) of Pub. L. 108–173, set out as a note under section 1320a–7b of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title VI, § 617(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–562, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to years beginning with 2001.''

Pub. L. 106–554, § 1(a)(6) [title VI, § 623(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–566, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to terminations occurring after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 513(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–383, provided that: ''The amendments made by this section [amending this section] apply to contract terminations occurring before, on, or after the date of the enactment of this Act [Nov. 29, 1999].''

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 522(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–387, provided that: ''The amendments made by subsection (a) [amending this section] apply to fees charged on or after January 1, 2001. The Secretary of Health and Human Services may not increase the fees charged under section 1857(e)(2) of the Social Security Act (42 U.S.C. 1395w–27(e)(2)) for the 3-month period beginning with October 2000 above the level in effect during the previous 9-month period.''

CONSTRUCTION RELATING TO ADDITIONAL EXCEPTIONS

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 513(b)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–383, provided that: ''Nothing in the amendment made by paragraph (1)(C) [amending this section] shall be construed to affect the authority of the Secretary of Health and Human Services to provide for exceptions in addition to the exception provided in such amendment, including exceptions provided under Operational Policy Letter #103 (OPL99.103).''

STUDY OF MULTI-YEAR CONTRACTS

Pub. L. 108–173, title I, § 107(d), Dec. 8, 2003, 117 Stat. 2171, provided that:

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall provide for a study on the feasibility and advisability of providing for contracting with PDP sponsors and MA organizations under parts C and D of title XVIII [this part and part D of this subchapter] on a multi-year basis.

''(2) REPORT.—Not later than January 1, 2007, the Secretary shall submit to Congress a report on the study under paragraph (1). The report shall include such recommendations as the Secretary deems appropriate.''

IMMEDIATE EFFECTIVE DATE FOR CERTAIN REQUIREMENTS FOR DEMONSTRATIONS

Section 4002(g) of Pub. L. 105–33 provided that: ''Section 1857(e)(2) of the Social Security Act [subsec. (e)(2) of this section] (requiring contribution to certain costs related to the enrollment process comparative materials) applies to demonstrations with respect to which enrollment is effected or coordinated under section 1851 of such Act [section 1395w–21 of this title].''

§ 1395w–27a. Special rules for MA regional plans

(a) Regional service area; establishment of MA regions

(1) Coverage of entire MA region

The service area for an MA regional plan shall consist of an entire MA region established under paragraph (2) and the provisions of section 1395w–24(h) of this title shall not apply to such a plan.

(2) Establishment of MA regions

(A) MA region

For purposes of this subchapter, the term ''MA region'' means such a region within the 50 States and the District of Columbia as established by the Secretary under this paragraph.

(B) Establishment

(i) Initial establishment

Not later than January 1, 2005, the Secretary shall first establish and publish MA regions.

(ii) Periodic review and revision of service areas

The Secretary may periodically review MA regions under this paragraph and, based on such review, may revise such regions if the Secretary determines such revision to be appropriate.

(C) Requirements for MA regions

The Secretary shall establish, and may revise, MA regions under this paragraph in a manner consistent with the following:

(i) Number of regions

There shall be no fewer than 10 regions, and no more than 50 regions.

(ii) Maximizing availability of plans

The regions shall maximize the availability of MA regional plans to all MA eligible individuals without regard to health status, especially those residing in rural areas.

(D) Market survey and analysis

Before establishing MA regions, the Secretary shall conduct a market survey and analysis, including an examination of current insurance markets, to determine how the regions should be established.

(3) National plan

Nothing in this subsection shall be construed as preventing an MA regional plan from being offered in more than one MA region (including all regions).

(b) Application of single deductible and catastrophic limit on out-of-pocket expenses

An MA regional plan shall include the following:

(1) Single deductible

Any deductible for benefits under the original medicare fee-for-service program option shall be a single deductible (instead of a separate inpatient hospital deductible and a part B deductible) and may be applied differentially for in-network services and may be waived for preventive or other items and services.

(2) Catastrophic limit

(A) In-network

A catastrophic limit on out-of-pocket expenditures for in-network benefits under the original medicare fee-for-service program option.

(B) Total

A catastrophic limit on out-of-pocket expenditures for all benefits under the original medicare fee-for-service program option.

(c) Portion of total payments to an organization subject to risk for 2006 and 2007

(1) Application of risk corridors

(A) In general

This subsection shall only apply to MA regional plans offered during 2006 or 2007.

(B) Notification of allowable costs under the plan

In the case of an MA organization that offers an MA regional plan in an MA region in 2006 or 2007, the organization shall notify the Secretary, before such date in the succeeding year as the Secretary specifies, of—

(i) its total amount of costs that the organization incurred in providing benefits covered under the original medicare fee-for-service program option for all enrollees under the plan in the region in the year and the portion of such costs that is attributable to administrative expenses described in subparagraph (C); and

(ii) its total amount of costs that the organization incurred in providing rebatable integrated benefits (as defined in subparagraph (D)) and with respect to such benefits the portion of such costs that is attributable to administrative expenses described in subparagraph (C) and not described in clause (i) of this subparagraph.

(C) Allowable costs defined

For purposes of this subsection, the term ''allowable costs'' means, with respect to an MA regional plan for a year, the total amount of costs described in subparagraph (B) for the plan and year, reduced by the portion of such costs attributable to administrative expenses incurred in providing the benefits described in such subparagraph.

(D) Rebatable integrated benefits

For purposes of this subsection, the term ''rebatable integrated benefits'' means such non-drug supplemental benefits under subclause (I) of section 1395w–24(b)(1)(C)(ii) of this title pursuant to a rebate under such section that the Secretary determines are integrated with the benefits described in subparagraph (B)(i).

(2) Adjustment of payment

(A) No adjustment if allowable costs within 3 percent of target amount

If the allowable costs for the plan for the year are at least 97 percent, but do not exceed 103 percent, of the target amount for the plan and year, there shall be no payment adjustment under this subsection for the plan and year.

(B) Increase in payment if allowable costs above 103 percent of target amount

(i) Costs between 103 and 108 percent of target amount

If the allowable costs for the plan for the year are greater than 103 percent, but not greater than 108 percent, of the target amount for the plan and year, the Secretary shall increase the total of the monthly payments made to the organization offering the plan for the year under section 1395w–23(a) of this title by an amount equal to 50 percent of the difference between such allowable costs and 103 percent of such target amount.

(ii) Costs above 108 percent of target amount

If the allowable costs for the plan for the year are greater than 108 percent of the

target amount for the plan and year, the Secretary shall increase the total of the monthly payments made to the organization offering the plan for the year under section 1395w–23(a) of this title by an amount equal to the sum of—

(I) 2.5 percent of such target amount; and

(II) 80 percent of the difference between such allowable costs and 108 percent of such target amount.

(C) Reduction in payment if allowable costs below 97 percent of target amount

(i) Costs between 92 and 97 percent of target amount

If the allowable costs for the plan for the year are less than 97 percent, but greater than or equal to 92 percent, of the target amount for the plan and year, the Secretary shall reduce the total of the monthly payments made to the organization offering the plan for the year under section 1395w–23(a) of this title by an amount (or otherwise recover from the plan an amount) equal to 50 percent of the difference between 97 percent of the target amount and such allowable costs.

(ii) Costs below 92 percent of target amount

If the allowable costs for the plan for the year are less than 92 percent of the target amount for the plan and year, the Secretary shall reduce the total of the monthly payments made to the organization offering the plan for the year under section 1395w–23(a) of this title by an amount (or otherwise recover from the plan an amount) equal to the sum of—

(I) 2.5 percent of such target amount; and

(II) 80 percent of the difference between 92 percent of such target amount and such allowable costs.

(D) Target amount described

For purposes of this paragraph, the term ''target amount'' means, with respect to an MA regional plan offered by an organization in a year, an amount equal to—

(i) the sum of—

(I) the total monthly payments made to the organization for enrollees in the plan for the year that are attributable to benefits under the original medicare fee-for-service program option (as defined in section 1395w–22(a)(1)(B) of this title);

(II) the total of the MA monthly basic beneficiary premium collectable for such enrollees for the year; and

(III) the total amount of the rebates under section 1395w–24(b)(1)(C)(ii) of this title that are attributable to rebatable integrated benefits; reduced by

(ii) the amount of administrative expenses assumed in the bid insofar as the bid is attributable to benefits described in clause (i)(I) or (i)(III).

(3) Disclosure of information

(A) In general

Each contract under this part shall provide—

(i) that an MA organization offering an MA regional plan shall provide the Secretary with such information as the Secretary determines is necessary to carry out this subsection; and

(ii) that, pursuant to section 1395w–27(d)(2)(B) of this title, the Secretary has the right to inspect and audit any books and records of the organization that pertain to the information regarding costs provided to the Secretary under paragraph (1)(B).

(B) Restriction on use of information

Information disclosed or obtained pursuant to the provisions of this subsection may be used by officers, employees, and contractors of the Department of Health and Human Services only for the purposes of, and to the extent necessary in, carrying out this subsection.

(d) Organizational and financial requirements

(1) In general

In the case of an MA organization that is offering an MA regional plan in an MA region and—

(A) meets the requirements of section 1395w–25(a)(1) of this title with respect to at least one such State in such region; and

(B) with respect to each other State in such region in which it does not meet requirements, it demonstrates to the satisfaction of the Secretary that it has filed the necessary application to meet such requirements,

the Secretary may waive such requirement with respect to each State described in subparagraph (B) for such period of time as the Secretary determines appropriate for the timely processing of such an application by the State (and, if such application is denied, through the end of such plan year as the Secretary determines appropriate to provide for a transition).

(2) Selection of appropriate State

In applying paragraph (1) in the case of an MA organization that meets the requirements of section 1395w–25(a)(1) of this title with respect to more than one State in a region, the organization shall select, in a manner specified by the Secretary among such States, one State the rules of which shall apply in the case of the States described in paragraph (1)(B).

(e) Stabilization Fund

(1) Establishment

The Secretary shall establish under this subsection an MA Regional Plan Stabilization Fund (in this subsection referred to as the ''Fund'') which shall be available for two purposes:

(A) Plan entry

To provide incentives to have MA regional plans offered in each MA region under paragraph (3).

(B) Plan retention

To provide incentives to retain MA regional plans in certain MA regions with

below-national-average MA market penetration under paragraph (4).

(2) Funding

(A) Initial funding

(i) In general

There shall be available to the Fund, for expenditures from the Fund during the period beginning on January 1, 2007, and ending on December 31, 2013, a total of $10,000,000,000.

(ii) Payment from trust funds

Such amount shall be available to the Fund, as expenditures are made from the Fund, from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in the proportion specified in section 1395w–23(f) of this title.

(B) Additional funding from savings

(i) In general

There shall also be made available to the Fund, 50 percent of savings described in clause (ii).

(ii) Savings

The savings described in this clause are 25 percent of the average per capita savings described in section 1395w–24(b)(4)(C) of this title for which monthly rebates are provided under section 1395w–24(b)(1)(C) of this title in the fiscal year involved that are attributable to MA regional plans.

(iii) Availability

Funds made available under this subparagraph shall be transferred into a special account in the Treasury from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in the proportion specified in section 1395w–23(f) of this title on a monthly basis.

(C) Obligations

Amounts in the Fund shall be available in advance of appropriations to MA regional plans in qualifying MA regions only in accordance with paragraph (5).

(D) Ordering

Expenditures from the Fund shall first be made from amounts made available under subparagraph (A).

(3) Plan entry funding

(A) In general

Funding is available under this paragraph for a year only as follows:

(i) National plan

For a national bonus payment described in subparagraph (B) for the offering by a single MA organization of an MA regional plan in each MA region in the year, but only if there was not such a plan offered in each such region in the previous year. Funding under this clause is only available with respect to any individual MA organization for a single year, but may be made available to more than one such organization in the same year.

(ii) Regional plans

Subject to clause (iii), for an increased amount under subparagraph (C) for an MA regional plan offered in an MA region which did not have any MA regional plan offered in the prior year.

(iii) Limitation on regional plan funding in case of national plan

In no case shall there be any payment adjustment under subparagraph (C) for a year for which a national payment adjustment is made under subparagraph (B).

(B) National bonus payment

The national bonus payment under this subparagraph shall—

(i) be available to an MA organization only if the organization offers MA regional plans in every MA region;

(ii) be available with respect to all MA regional plans of the organization regardless of whether any other MA regional plan is offered in any region; and

(iii) subject to amounts available under paragraph (5) for a year, be equal to 3 percent of the benchmark amount otherwise applicable for each MA regional plan offered by the organization.

(C) Regional payment adjustment

(i) In general

The increased amount under this subparagraph for an MA regional plan in an MA region for a year shall be an amount, determined by the Secretary, based on the bid submitted for such plan (or plans) and shall be available to all MA regional plans offered in such region and year. Such amount may be based on the mean, mode, or median, or other measure of such bids and may vary from region to region. The Secretary may not limit the number of plans or bids in a region.

(ii) Multi-year funding

(I) In general

Subject to amounts available under paragraph (5), funding under this subparagraph shall be available for a period determined by the Secretary.

(II) Report

If the Secretary determines that funding will be provided for a second consecutive year with respect to an MA region, the Secretary shall submit to the Congress a report that describes the underlying market dynamics in the region and that includes recommendations concerning changes in the payment methodology otherwise provided for MA regional plans under this part.

(iii) Application to all plans in a region

Funding under this subparagraph with respect to an MA region shall be made available with respect to all MA regional plans offered in the region.

(iv) Limitation on availability of plan retention funding in next year

If an increased amount is made available under this subparagraph with respect to an

MA region for a period determined by the Secretary under clause (ii)(I), in no case shall funding be available under paragraph (4) with respect to MA regional plans offered in the region in the year following such period.

(D) Application

Any additional payment under this paragraph provided for an MA regional plan for a year shall be treated as if it were an addition to the benchmark amount otherwise applicable to such plan and year, but shall not be taken into account in the computation of any benchmark amount for any subsequent year.

(4) Plan retention funding

(A) In general

Funding is available under this paragraph for a year with respect to MA regional plans offered in an MA region for the increased amount specified in subparagraph (B) but only if the region meets the requirements of subparagraphs (C) and (E).

(B) Payment increase

The increased amount under this subparagraph for an MA regional plan in an MA region for a year shall be an amount, determined by the Secretary, that does not exceed the greater of—

(i) 3 percent of the benchmark amount applicable in the region; or

(ii) such amount as (when added to the benchmark amount applicable to the region) will result in the ratio of—

(I) such additional amount plus the benchmark amount computed under section 1395w–24(b)(4)(B)(i) of this title for the region and year, to the adjusted average per capita cost for the region and year, as estimated by the Secretary under section 1395mm(a)(4) of this title and adjusted as appropriate for the purpose of risk adjustment; being equal to

(II) the weighted average of such benchmark amounts for all the regions and such year, to the average per capita cost for the United States and such year, as estimated by the Secretary under section 1395mm(a)(4) of this title and adjusted as appropriate for the purpose of risk adjustment.

(C) Regional requirements

The requirements of this subparagraph for an MA region for a year are as follows:

(i) Notification of plan exit

The Secretary has received notice (in such form and manner as the Secretary specifies) before a year that one or more MA regional plans that were offered in the region in the previous year will not be offered in the succeeding year.

(ii) Regional plans available from fewer than 2 MA organizations in the region

The Secretary determines that if the plans referred to in clause (i) are not offered in the year, fewer than 2 MA organizations will be offering MA regional plans in the region in the year involved.

(iii) Percentage enrollment in MA regional plans below national average

For the previous year, the Secretary determines that the average percentage of MA eligible individuals residing in the region who are enrolled in MA regional plans is less than the average percentage of such individuals in the United States enrolled in such plans.

(D) Application

Any additional payment under this paragraph provided for an MA regional plan for a year shall be treated as if it were an addition to the benchmark amount otherwise applicable to such plan and year, but shall not be taken into account in the computation of any benchmark amount for any subsequent year.

(E) 2-consecutive-year limitation

(i) In general

In no case shall any funding be available under this paragraph in an MA region in a period of consecutive years that exceeds 2 years.

(ii) Report

If the Secretary determines that funding will be provided under this paragraph for a second consecutive year with respect to an MA region, the Secretary shall submit to the Congress a report that describes the underlying market dynamics in the region and that includes recommendations concerning changes in the payment methodology otherwise provided for MA regional plans under this part.

(5) Funding limitation

(A) In general

The total amount expended from the Fund as a result of the application of this subsection through the end of a calendar year may not exceed the amount available to the Fund as of the first day of such year. For purposes of this subsection, amounts that are expended under this subchapter insofar as such amounts would not have been expended but for the application of this subsection shall be counted as amounts expended as a result of such application.

(B) Application of limitation

The Secretary may obligate funds from the Fund for a year only if the Secretary determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services and the appropriate budget officer certify) that there are available in the Fund at the beginning of the year sufficient amounts to cover all such obligations incurred during the year consistent with subparagraph (A). The Secretary shall take such steps, in connection with computing additional payment amounts under paragraphs (3) and (4) and including limitations on enrollment in MA regional plans receiving such payments, as will ensure that sufficient funds are available to make such payments for the entire year. Funds shall only be made available from the Fund pursuant to an apportion-

ment made in accordance with applicable procedures.

(6) Secretary reports

Not later than April 1 of each year (beginning in 2008), the Secretary shall submit a report to Congress and the Comptroller General of the United States that includes—

(A) a detailed description of—

(i) the total amount expended as a result of the application of this subsection in the previous year compared to the total amount that would have been expended under this subchapter in the year if this subsection had not been enacted;

(ii) the projections of the total amount that will be expended as a result of the application of this subsection in the year in which the report is submitted compared to the total amount that would have been expended under this subchapter in the year if this subsection had not been enacted;

(iii) amounts remaining within the funding limitation specified in paragraph (5); and

(iv) the steps that the Secretary will take under paragraph (5)(B) to ensure that the application of this subsection will not cause expenditures to exceed the amount available in the Fund; and

(B) a certification from the Chief Actuary of the Centers for Medicare & Medicaid Services that the description provided under subparagraph (A) is reasonable, accurate, and based on generally accepted actuarial principles and methodologies.

(7) Biennial GAO reports

Not later than January 1 of 2009, 2011, 2013, and 2015, the Comptroller General of the United States shall submit to the Secretary and Congress a report on the application of additional payments under this subsection. Each report shall include—

(A) an evaluation of—

(i) the quality of care provided to individuals enrolled in MA regional plans for which additional payments were made under this subsection;

(ii) the satisfaction of such individuals with benefits under such a plan;

(iii) the costs to the medicare program for payments made to such plans; and

(iv) any improvements in the delivery of health care services under such a plan;

(B) a comparative analysis of the performance of MA regional plans receiving payments under this subsection with MA regional plans not receiving such payments; and

(C) recommendations for such legislation or administrative action as the Comptroller General determines to be appropriate.

(f) Computation of applicable MA region-specific non-drug monthly benchmark amounts

(1) Computation for regions

For purposes of section 1395w–23(j)(2) of this title and this section, subject to subsection (e) of this section, the term ''MA region-specific non-drug monthly benchmark amount'' means, with respect to an MA region for a month in a year, the sum of the 2 components described in paragraph (2) for the region and year. The Secretary shall compute such benchmark amount for each MA region before the beginning of each annual, coordinated election period under section 1395w–21(e)(3)(B) of this title for each year (beginning with 2006).

(2) 2 components

For purposes of paragraph (1), the 2 components described in this paragraph for an MA region and a year are the following:

(A) Statutory component

The product of the following:

(i) Statutory region-specific non-drug amount

The statutory region-specific non-drug amount (as defined in paragraph (3)) for the region and year.

(ii) Statutory national market share

The statutory national market share percentage, determined under paragraph (4) for the year.

(B) Plan-bid component

The product of the following:

(i) Weighted average of MA plan bids in region

The weighted average of the plan bids for the region and year (as determined under paragraph (5)(A)).

(ii) Non-statutory market share

1 minus the statutory national market share percentage, determined under paragraph (4) for the year.

(3) Statutory region-specific non-drug amount

For purposes of paragraph (2)(A)(i), the term ''statutory region-specific non-drug amount'' means, for an MA region and year, an amount equal the sum (for each MA local area within the region) of the product of—

(A) MA area-specific non-drug monthly benchmark amount under section 1395w–23(j)(1)(A) of this title for that area and year; and

(B) the number of MA eligible individuals residing in the local area, divided by the total number of MA eligible individuals residing in the region.

(4) Computation of statutory market share percentage

(A) In general

The Secretary shall determine for each year a statutory national market share percentage that is equal to the proportion of MA eligible individuals nationally who were not enrolled in an MA plan during the reference month.

(B) Reference month defined

For purposes of this part, the term ''reference month'' means, with respect to a year, the most recent month during the previous year for which the Secretary determines that data are available to compute the percentage specified in subparagraph (A)

and other relevant percentages under this part.

(5) Determination of weighted average MA bids for a region

(A) In general

For purposes of paragraph (2)(B)(i), the weighted average of plan bids for an MA region and a year is the sum, for MA regional plans described in subparagraph (D) in the region and year, of the products (for each such plan) of the following:

(i) Monthly MA statutory non-drug bid amount

The unadjusted MA statutory non-drug monthly bid amount for the plan.

(ii) Plan's share of MA enrollment in region

The factor described in subparagraph (B) for the plan.

(B) Plan's share of MA enrollment in region

(i) In general

Subject to the succeeding provisions of this subparagraph, the factor described in this subparagraph for a plan is equal to the number of individuals described in subparagraph (C) for such plan, divided by the total number of such individuals for all MA regional plans described in subparagraph (D) for that region and year.

(ii) Single plan rule

In the case of an MA region in which only a single MA regional plan is being offered, the factor described in this subparagraph shall be equal to 1.

(iii) Equal division among multiple plans in year in which plans are first available

In the case of an MA region in the first year in which any MA regional plan is offered, if more than one MA regional plan is offered in such year, the factor described in this subparagraph for a plan shall (as specified by the Secretary) be equal to—

(I) 1 divided by the number of such plans offered in such year; or

(II) a factor for such plan that is based upon the organization's estimate of projected enrollment, as reviewed and adjusted by the Secretary to ensure reasonableness and as is certified by the Chief Actuary of the Centers for Medicare & Medicaid Services.

(C) Counting of individuals

For purposes of subparagraph (B)(i), the Secretary shall count for each MA regional plan described in subparagraph (D) for an MA region and year, the number of individuals who reside in the region and who were enrolled under such plan under this part during the reference month.

(D) Plans covered

For an MA region and year, an MA regional plan described in this subparagraph is an MA regional plan that is offered in the region and year and was offered in the region in the reference month.

(g) Election of uniform coverage determination

Instead of applying section 1395w–22(a)(2)(C) of this title with respect to an MA regional plan, the organization offering the plan may elect to have a local coverage determination for the entire MA region be the local coverage determination applied for any part of such region (as selected by the organization).

(h) Assuring network adequacy

(1) In general

For purposes of enabling MA organizations that offer MA regional plans to meet applicable provider access requirements under section 1395w–22 of this title with respect to such plans, the Secretary may provide for payment under this section to an essential hospital that provides inpatient hospital services to enrollees in such a plan where the MA organization offering the plan certifies to the Secretary that the organization was unable to reach an agreement between the hospital and the organization regarding provision of such services under the plan. Such payment shall be available only if—

(A) the organization provides assurances satisfactory to the Secretary that the organization will make payment to the hospital for inpatient hospital services of an amount that is not less than the amount that would be payable to the hospital under section 1395ww of this title with respect to such services; and

(B) with respect to specific inpatient hospital services provided to an enrollee, the hospital demonstrates to the satisfaction of the Secretary that the hospital's costs of such services exceed the payment amount described in subparagraph (A).

(2) Payment amounts

The payment amount under this subsection for inpatient hospital services provided by a subsection (d) hospital to an enrollee in an MA regional plan shall be, subject to the limitation of funds under paragraph (3), the amount (if any) by which—

(A) the amount of payment that would have been paid for such services under this subchapter if the enrollees were covered under the original medicare fee-for-service program option and the hospital were a critical access hospital; exceeds

(B) the amount of payment made for such services under paragraph (1)(A).

(3) Available amounts

There shall be available for payments under this subsection—

(A) in 2006, $25,000,000; and

(B) in each succeeding year the amount specified in this paragraph for the preceding year increased by the market basket percentage increase (as defined in section 1395ww(b)(3)(B)(iii) of this title) for the fiscal year ending in such succeeding year.

Payments under this subsection shall be made from the Federal Hospital Insurance Trust Fund.

(4) Essential hospital

In this subsection, the term ''essential hospital'' means, with respect to an MA regional plan offered by an MA organization, a subsection (d) hospital (as defined in section

1395ww(d) of this title) that the Secretary determines, based upon an application filed by the organization with the Secretary, is necessary to meet the requirements referred to in paragraph (1) for such plan.

(Aug. 14, 1935, ch. 531, title XVIII, § 1858, as added Pub. L. 108–173, title II, § 221(c), Dec. 8, 2003, 117 Stat. 2181.)

EFFECTIVE DATE

Section applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 1395w–21 of this title.

§ 1395w–28. Definitions; miscellaneous provisions

(a) Definitions relating to Medicare+Choice organizations

In this part—

(1) Medicare+Choice organization

The term ''Medicare+Choice organization'' means a public or private entity that is certified under section 1395w–26 of this title as meeting the requirements and standards of this part for such an organization.

(2) Provider-sponsored organization

The term ''provider-sponsored organization'' is defined in section 1395w–25(d)(1) of this title.

(b) Definitions relating to Medicare+Choice plans

(1) Medicare+Choice plan

The term ''Medicare+Choice plan'' means health benefits coverage offered under a policy, contract, or plan by a Medicare+Choice organization pursuant to and in accordance with a contract under section 1395w–27 of this title.

(2) Medicare+Choice private fee-for-service plan

The term ''Medicare+Choice private fee-for-service plan'' means a Medicare+Choice plan that—

(A) reimburses hospitals, physicians, and other providers at a rate determined by the plan on a fee-for-service basis without placing the provider at financial risk;

(B) does not vary such rates for such a provider based on utilization relating to such provider; and

(C) does not restrict the selection of providers among those who are lawfully authorized to provide the covered services and agree to accept the terms and conditions of payment established by the plan.

(3) MSA plan

(A) In general

The term ''MSA plan'' means a Medicare+Choice plan that—

(i) provides reimbursement for at least the items and services described in section 1395w–22(a)(1) of this title in a year but only after the enrollee incurs countable expenses (as specified under the plan) equal to the amount of an annual deductible (described in subparagraph (B));

(ii) counts as such expenses (for purposes of such deductible) at least all amounts that would have been payable under parts A and B of this subchapter, and that would have been payable by the enrollee as deductibles, coinsurance, or copayments, if the enrollee had elected to receive benefits through the provisions of such parts; and

(iii) provides, after such deductible is met for a year and for all subsequent expenses for items and services referred to in clause (i) in the year, for a level of reimbursement that is not less than—

(I) 100 percent of such expenses, or

(II) 100 percent of the amounts that would have been paid (without regard to any deductibles or coinsurance) under parts A and B of this subchapter with respect to such expenses,

whichever is less.

(B) Deductible

The amount of annual deductible under an MSA plan—

(i) for contract year 1999 shall be not more than $6,000; and

(ii) for a subsequent contract year shall be not more than the maximum amount of such deductible for the previous contract year under this subparagraph increased by the national per capita Medicare+Choice growth percentage under section 1395w–23(c)(6) of this title for the year.

If the amount of the deductible under clause (ii) is not a multiple of $50, the amount shall be rounded to the nearest multiple of $50.

(4) MA regional plan

The term ''MA regional plan'' means an MA plan described in section 1395w–21(a)(2)(A)(i) of this title—

(A) that has a network of providers that have agreed to a contractually specified reimbursement for covered benefits with the organization offering the plan;

(B) that provides for reimbursement for all covered benefits regardless of whether such benefits are provided within such network of providers; and

(C) the service area of which is one or more entire MA regions.

(5) MA local plan

The term ''MA local plan'' means an MA plan that is not an MA regional plan.

(6) Specialized MA plans for special needs individuals

(A) In general

The term ''specialized MA plan for special needs individuals'' means an MA plan that exclusively serves special needs individuals (as defined in subparagraph (B)).

(B) Special needs individual

The term ''special needs individual'' means an MA eligible individual who—

(i) is institutionalized (as defined by the Secretary);

(ii) is entitled to medical assistance under a State plan under subchapter XIX of this chapter; or

(iii) meets such requirements as the Secretary may determine would benefit from

enrollment in such a specialized MA plan described in subparagraph (A) for individuals with severe or disabling chronic conditions.

The Secretary may waive application of section 1395w–21(a)(3)(B) of this title in the case of an individual described in clause (i), (ii), or (iii) of this subparagraph and may apply rules similar to the rules of section 1395eee(c)(4) of this title for continued eligibility of special needs individuals.

(c) Other references to other terms

(1) Medicare+Choice eligible individual

The term ''Medicare+Choice eligible individual'' is defined in section 1395w–21(a)(3) of this title.

(2) Medicare+Choice payment area

The term ''Medicare+Choice payment area'' is defined in section 1395w–23(d) of this title.

(3) National per capita Medicare+Choice growth percentage

The ''national per capita Medicare+Choice growth percentage'' is defined in section 1395w–23(c)(6) of this title.

(4) Medicare+Choice monthly basic beneficiary premium; Medicare+Choice monthly supplemental beneficiary premium

The terms ''Medicare+Choice monthly basic beneficiary premium'' and ''Medicare+Choice monthly supplemental beneficiary premium'' are defined in section 1395w–24(a)(2) of this title.

(5) MA local area

The term ''MA local area'' is defined in section 1395w–23(d)(2) of this title.

(d) Coordinated acute and long-term care benefits under Medicare+Choice plan

Nothing in this part shall be construed as preventing a State from coordinating benefits under a medicaid plan under subchapter XIX of this chapter with those provided under a Medicare+Choice plan in a manner that assures continuity of a full-range of acute care and long-term care services to poor elderly or disabled individuals eligible for benefits under this subchapter and under such plan.

(e) Restriction on enrollment for certain Medicare+Choice plans

(1) In general

In the case of a Medicare+Choice religious fraternal benefit society plan described in paragraph (2), notwithstanding any other provision of this part to the contrary and in accordance with regulations of the Secretary, the society offering the plan may restrict the enrollment of individuals under this part to individuals who are members of the church, convention, or group described in paragraph (3)(B) with which the society is affiliated.

(2) Medicare+Choice religious fraternal benefit society plan described

For purposes of this subsection, a Medicare+Choice religious fraternal benefit society plan described in this paragraph is a Medicare+Choice plan described in section 1395w–21(a)(2) of this title that—

(A) is offered by a religious fraternal benefit society described in paragraph (3) only to members of the church, convention, or group described in paragraph (3)(B); and

(B) permits all such members to enroll under the plan without regard to health status-related factors.

Nothing in this subsection shall be construed as waiving any plan requirements relating to financial solvency.

(3) "Religious fraternal benefit society" defined

For purposes of paragraph (2)(A), a ''religious fraternal benefit society'' described in this section is an organization that—

(A) is described in section 501(c)(8) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of such Act;

(B) is affiliated with, carries out the tenets of, and shares a religious bond with, a church or convention or association of churches or an affiliated group of churches;

(C) offers, in addition to a Medicare+Choice religious fraternal benefit society plan, health coverage to individuals not entitled to benefits under this subchapter who are members of such church, convention, or group; and

(D) does not impose any limitation on membership in the society based on any health status-related factor.

(4) Payment adjustment

Under regulations of the Secretary, in the case of individuals enrolled under this part under a Medicare+Choice religious fraternal benefit society plan described in paragraph (2), the Secretary shall provide for such adjustment to the payment amounts otherwise established under section 1395w–24 of this title as may be appropriate to assure an appropriate payment level, taking into account the actuarial characteristics and experience of such individuals.

(f) Restriction on enrollment for specialized MA plans for special needs individuals

In the case of a specialized MA plan for special needs individuals (as defined in subsection (b)(6) of this section), notwithstanding any other provision of this part and in accordance with regulations of the Secretary and for periods before January 1, 2009, the plan may restrict the enrollment of individuals under the plan to individuals who are within one or more classes of special needs individuals.

(Aug. 14, 1935, ch. 531, title XVIII, § 1859, as added Pub. L. 105–33, title IV, § 4001, Aug. 5, 1997, 111 Stat. 325; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 523], Nov. 29, 1999, 113 Stat. 1536, 1501A–387; Pub. L. 108–173, title II, §§ 221(b)(1), (d)(2), 231(b), (c), Dec. 8, 2003, 117 Stat. 2180, 2193, 2207, 2208.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (b)(3)(A), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsec. (e)(3)(A), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2003—Subsec. (b)(4), (5). Pub. L. 108–173, §221(b)(1), added pars. (4) and (5).

Subsec. (b)(6). Pub. L. 108–173, §231(b), added par. (6).

Subsec. (c)(5). Pub. L. 108–173, §221(d)(2), added par. (5).

Subsec. (f). Pub. L. 108–173, §231(c), added subsec. (f).

1999—Subsec. (e)(2). Pub. L. 106–113 substituted ''section 1395w–21(a)(2) of this title'' for ''section 1395w–21(a)(2)(A) of this title'' in introductory provisions.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 221(b)(1), (d)(2) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Amendment by section 231(b), (c) of Pub. L. 108–173 effective Dec. 8, 2003, see section 231(f)(1) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

REGULATIONS

Pub. L. 108–173, title II, §231(f)(2), Dec. 8, 2003, 117 Stat. 2208, provided that: ''No later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall issue final regulations to establish requirements for special needs individuals under section 1859(b)(6)(B)(iii) of the Social Security Act [subsec. (b)(6)(B)(iii) of this section], as added by subsection (b).''

AUTHORITY TO DESIGNATE OTHER PLANS AS SPECIALIZED MA PLANS

Secretary of Health and Human Services authorized, in promulgating regulations to carry out subsection (b)(6) of this section, to provide, notwithstanding subsection (b)(6)(A) of this section, for the offering of specialized MA plans for special needs individuals by MA plans that disproportionately serve special needs individuals, see section 231(d) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

§ 1395w–29. Comparative cost adjustment (CCA) program

(a) Establishment of program

(1) In general

The Secretary shall establish a program under this section (in this section referred to as the ''CCA program'') for the application of comparative cost adjustment in CCA areas selected under this section.

(2) Duration

The CCA program shall begin January 1, 2010, and shall extend over a period of 6 years, and end on December 31, 2015.

(3) Report

Upon the completion of the CCA program, the Secretary shall submit a report to Congress. Such report shall include the following, with respect to both this part and the original medicare fee-for-service program:

(A) An evaluation of the financial impact of the CCA program.

(B) An evaluation of changes in access to physicians and other health care providers.

(C) Beneficiary satisfaction.

(D) Recommendations regarding any extension or expansion of the CCA program.

(b) Requirements for selection of CCA areas

(1) CCA area defined

(A) In general

For purposes of this section, the term ''CCA area'' means an MSA that meets the requirements of paragraph (2) and is selected by the Secretary under subsection (c) of this section.

(B) MSA defined

For purposes of this section, the term ''MSA'' means a Metropolitan Statistical Area (or such similar area as the Secretary recognizes).

(2) Requirements for CCA areas

The requirements of this paragraph for an MSA to be a CCA area are as follows:

(A) MA enrollment requirement

For the reference month (as defined under section 1395w–27a(f)(4)(B) of this title) with respect to 2010, at least 25 percent of the total number of MA eligible individuals who reside in the MSA were enrolled in an MA local plan described in section 1395w–21(a)(2)(A)(i) of this title.

(B) 2 plan requirement

There will be offered in the MSA during the annual, coordinated election period under section 1395w–21(e)(3)(B) of this title before the beginning of 2010 at least 2 MA local plans described in section 1395w–21(a)(2)(A)(i) of this title (in addition to the fee-for-service program under parts A and B of this subchapter), each offered by a different MA organization and each of which met the minimum enrollment requirements of paragraph (1) of section 1395w–27(b) of this title (as applied without regard to paragraph (3) thereof) as of the reference month.

(c) Selection of CCA areas

(1) General selection criteria

The Secretary shall select CCA areas from among those MSAs qualifying under subsection (b) of this section in a manner that—

(A) seeks to maximize the opportunity to test the application of comparative cost adjustment under this subchapter;

(B) does not seek to maximize the number of MA eligible individuals who reside in such areas; and

(C) provides for geographic diversity consistent with the criteria specified in paragraph (2).

(2) Selection criteria

With respect to the selection of MSAs that qualify to be CCA areas under subsection (b) of this section, the following rules apply, to the maximum extent feasible:

(A) Maximum number

The number of such MSAs selected may not exceed the lesser of (i) 6, or (ii) 25 per-

cent of the number of MSAs that meet the requirement of subsection (b)(2)(A) of this section.

(B) One of 4 largest areas by population

At least one such qualifying MSA shall be selected from among the 4 such qualifying MSAs with the largest total population of MA eligible individuals.

(C) One of 4 areas with lowest population density

At least one such qualifying MSA shall be selected from among the 4 such qualifying MSAs with the lowest population density (as measured by residents per square mile or similar measure of density).

(D) Multistate area

At least one such qualifying MSA shall be selected that includes a multi-State area. Such an MSA may be an MSA described in subparagraph (B) or (C).

(E) Limitation within same geographic region

No more than 2 such MSAs shall be selected that are, in whole or in part, within the same geographic region (as specified by the Secretary) of the United States.

(F) Priority to areas not within certain demonstration projects

Priority shall be provided for those qualifying MSAs that do not have a demonstration project in effect as of December 8, 2003, for medicare preferred provider organization plans under this part.

(d) Application of comparative cost adjustment

(1) In general

In the case of a CCA area for a year—

(A) for purposes of applying this part with respect to payment for MA local plans, any reference to an MA area-specific non-drug monthly benchmark amount shall be treated as a reference to such benchmark computed as if the CCA area-specific non-drug monthly benchmark amount (as defined in subsection (e)(1) of this section) were substituted for the amount described in section 1395w–23(j)(1)(A) of this title for the CCA area and year involved, as phased in under paragraph (3); and

(B) with respect to months in the year for individuals residing in the CCA area who are not enrolled in an MA plan, the amount of the monthly premium under section 1395r of this title is subject to adjustment under subsection (f) of this section.

(2) Exclusion of MA local areas with fewer than 2 organizations offering MA plans

(A) In general

In no case shall an MA local area that is within an MSA be included as part of a CCA area unless for 2010 (and, except as provided in subparagraph (B), for a subsequent year) there is offered in each part of such MA local area at least 2 MA local plans described in section 1395w–21(a)(2)(A)(i) of this title each of which is offered by a different MA organization.

(B) Continuation

If an MA local area meets the requirement of subparagraph (A) and is included in a CCA area for 2010, such local area shall continue to be included in such CCA area for a subsequent year notwithstanding that it no longer meets such requirement so long as there is at least one MA local plan described in section 1395w–21(a)(2)(A)(i) of this title that is offered in such local area.

(3) Phase-in of CCA benchmark

(A) In general

In applying this section for a year before 2013, paragraph (1)(A) shall be applied as if the phase-in fraction under subparagraph (B) of the CCA non-drug monthly benchmark amount for the year were substituted for such fraction of the MA area-specific non-drug monthly benchmark amount.

(B) Phase-in fraction

The phase-in fraction under this subparagraph is—

(i) for 2010 ¼; and

(ii) for a subsequent year is the phase-in fraction under this subparagraph for the previous year increased by ¼, but in no case more than 1.

(e) Computation of CCA benchmark amount

(1) CCA non-drug monthly benchmark amount

For purposes of this section, the term ''CCA non-drug monthly benchmark amount'' means, with respect to a CCA area for a month in a year, the sum of the 2 components described in paragraph (2) for the area and year. The Secretary shall compute such benchmark amount for each such CCA area before the beginning of each annual, coordinated election period under section 1395w–21(e)(3)(B) of this title for each year (beginning with 2010) in which the CCA area is so selected.

(2) 2 components

For purposes of paragraph (1), the 2 components described in this paragraph for a CCA area and a year are the following:

(A) MA local component

The product of the following:

(i) Weighted average of medicare advantage plan bids in area

The weighted average of the plan bids for the area and year (as determined under paragraph (3)(A)).

(ii) Non-FFS market share

One minus the fee-for-service market share percentage, determined under paragraph (4) for the area and year.

(B) Fee-for-service component

The product of the following:

(i) Fee-for-service area-specific non-drug amount

The fee-for-service area-specific non-drug amount (as defined in paragraph (5)) for the area and year.

(ii) Fee-for-service market share

The fee-for-service market share percentage, determined under paragraph (4) for the area and year.

(3) Determination of weighted average MA bids for a CCA area

(A) In general

For purposes of paragraph (2)(A)(i), the weighted average of plan bids for a CCA area and a year is, subject to subparagraph (D), the sum of the following products for MA local plans described in subparagraph (C) in the area and year:

(i) Monthly medicare advantage statutory non-drug bid amount

The accepted unadjusted MA statutory non-drug monthly bid amount.

(ii) Plan's share of medicare advantage enrollment in area

The number of individuals described in subparagraph (B), divided by the total number of such individuals for all MA plans described in subparagraph (C) for that area and year.

(B) Counting of individuals

The Secretary shall count, for each MA local plan described in subparagraph (C) for an area and year, the number of individuals who reside in the area and who were enrolled under such plan under this part during the reference month for that year.

(C) Exclusion of plans not offered in previous year

For an area and year, the MA local plans described in this subparagraph are MA local plans described in section 1395w–21(a)(2)(A)(i) of this title that are offered in the area and year and were offered in the CCA area in the reference month.

(D) Computation of weighted average of plan bids

In calculating the weighted average of plan bids for a CCA area under subparagraph (A)—

(i) in the case of an MA local plan that has a service area only part of which is within such CCA area, the MA organization offering such plan shall submit a separate bid for such plan for the portion within such CCA area; and

(ii) the Secretary shall adjust such separate bid (or, in the case of an MA local plan that has a service area entirely within such CCA area, the plan bid) as may be necessary to take into account differences between the service area of such plan within the CCA area and the entire CCA area and the distribution of plan enrollees of all MA local plans offered within the CCA area.

(4) Computation of fee-for-service market share percentage

The Secretary shall determine, for a year and a CCA area, the proportion (in this subsection referred to as the ''fee-for-service market share percentage'') equal to—

(A) the total number of MA eligible individuals residing in such area who during the reference month for the year were not enrolled in any MA plan; divided by

(B) the sum of such number and the total number of MA eligible individuals residing in such area who during such reference month were enrolled in an MA local plan described in section 1395w–21(a)(2)(A)(i) of this title,

or, if greater, such proportion determined for individuals nationally.

(5) Fee-for-service area-specific non-drug amount

(A) In general

For purposes of paragraph (2)(B)(i) and subsection (f)(2)(A) of this section, subject to subparagraph (C), the term ''fee-for-service area-specific non-drug amount'' means, for a CCA area and a year, the adjusted average per capita cost for such area and year involved, determined under section 1395mm(a)(4) of this title and adjusted as appropriate for the purpose of risk adjustment for benefits under the original medicare fee-for-service program option for individuals entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter who are not enrolled in an MA plan for the year, but adjusted to exclude costs attributable to payments under section 1395ww(h) of this title.

(B) Use of full risk adjustment to standardize fee-for-service costs to typical beneficiary

In determining the adjusted average per capita cost for an area and year under subparagraph (A), such costs shall be adjusted to fully take into account the demographic and health status risk factors established under section 1395w–23(a)(1)(A)(iv) of this title[1] so that such per capita costs reflect the average costs for a typical beneficiary residing in the CCA area.

(C) Inclusion of costs of VA and DOD military facility services to medicare-eligible beneficiaries

In determining the adjusted average per capita cost under subparagraph (A) for a year, such cost shall be adjusted to include the Secretary's estimate, on a per capita basis, of the amount of additional payments that would have been made in the area involved under this subchapter if individuals entitled to benefits under this subchapter had not received services from facilities of the Department of Veterans Affairs or the Department of Defense.

(f) Premium adjustment

(1) Application

(A) In general

Except as provided in subparagraph (B), in the case of an individual who is enrolled under part B of this subchapter, who resides in a CCA area, and who is not enrolled in an MA plan under this part, the monthly premium otherwise applied under part B of this subchapter (determined without regard to subsections (b), (f), and (i) of section 1395r of this title or any adjustment under this sub-

[1] See References in Text note below.

section) shall be adjusted in accordance with paragraph (2), but only in the case of premiums for months during the period in which the CCA program under this section for such area is in effect.

(B) No premium adjustment for subsidy eligible beneficiaries

No premium adjustment shall be made under this subsection for a premium for a month if the individual is determined to be a subsidy eligible individual (as defined in section 1395w–114(a)(3)(A) of this title) for the month.

(2) Amount of adjustment

(A) In general

Under this paragraph, subject to the exemption under paragraph (1)(B) and the limitation under subparagraph (B), if the fee-for-service area-specific non-drug amount (as defined in section[2] (e)(5)) for a CCA area in which an individual resides for a month—

(i) does not exceed the CCA non-drug monthly benchmark amount (as determined under subsection (e)(1) of this section) for such area and month, the amount of the premium for the individual for the month shall be reduced, by an amount equal to 75 percent of the amount by which such CCA benchmark exceeds such fee-for-service area-specific non-drug amount; or

(ii) exceeds such CCA non-drug benchmark, the amount of the premium for the individual for the month shall be adjusted to ensure, that—

(I) the sum of the amount of the adjusted premium and the CCA non-drug benchmark for the area; is equal to

(II) the sum of the unadjusted premium plus the amount of such fee-for-service area-specific non-drug amount for the area.

(B) Limitation

In no case shall the actual amount of an adjustment under subparagraph (A) for an area and month in a year result in an adjustment that exceeds the maximum adjustment permitted under subparagraph (C) for the area and year, or, if less, the maximum annual adjustment permitted under subparagraph (D) for the area and year.

(C) Phase-in of adjustment

The amount of an adjustment under subparagraph (A) for a CCA area and year may not exceed the product of the phase-in fraction for the year under subsection (d)(3)(B) of this section multiplied by the amount of the adjustment otherwise computed under subparagraph (A) for the area and year, determined without regard to this subparagraph and subparagraph (D).

(D) 5-percent limitation on adjustment

The amount of the adjustment under this subsection for months in a year shall not exceed 5 percent of the amount of the monthly premium amount determined for months in the year under section 1395r of this title without regard to subsections (b), (f), and (i) of such section and this subsection.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860C–1, as added Pub. L. 108–173, title II, § 241(a), Dec. 8, 2003, 117 Stat. 2214.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsecs. (b)(2)(B) and (e)(5)(A), is classified to section 1395c et seq. of this title.

Part B of this subchapter, referred to in subsecs. (b)(2)(B), (e)(5)(A), and (f)(1)(A), is classified to section 1395j et seq. of this title.

Section 1395w–23(a)(1)(A)(iv) of this title, referred to in subsec. (e)(5)(B), probably should be section 1395w–23(a)(1)(C) of this title, which relates to demographic adjustment, including adjustment for health status. Section 1395w–23 of this title does not contain a subsec. (a)(1)(A)(iv).

NO CHANGE IN MEDICARE'S DEFINED BENEFIT PACKAGE

Pub. L. 108–173, title II, § 241(c), Dec. 8, 2003, 117 Stat. 2221, provided that: ''Nothing in this part [probably should be this section, enacting this section and amending sections 1395r, 1395w, and 1395w–23 of this title] (or the amendments made by this part) shall be construed as changing the entitlement to defined benefits under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter].''

PART D—VOLUNTARY PRESCRIPTION DRUG BENEFIT PROGRAM

PRIOR PROVISIONS

A prior part D of this subchapter, consisting of section 1395x et seq., was redesignated part E of this subchapter.

SUBPART 1—PART D ELIGIBLE INDIVIDUALS AND PRESCRIPTION DRUG BENEFITS

§ 1395w–101. Eligibility, enrollment, and information

(a) Provision of qualified prescription drug coverage through enrollment in plans

(1) In general

Subject to the succeeding provisions of this part, each part D eligible individual (as defined in paragraph (3)(A)) is entitled to obtain qualified prescription drug coverage (described in section 1395w–102(a) of this title) as follows:

(A) Fee-for-service enrollees may receive coverage through a prescription drug plan

A part D eligible individual who is not enrolled in an MA plan may obtain qualified prescription drug coverage through enrollment in a prescription drug plan (as defined in section 1395w–151(a)(14) of this title).

(B) Medicare Advantage enrollees

(i) Enrollees in a plan providing qualified prescription drug coverage receive coverage through the plan

A part D eligible individual who is enrolled in an MA–PD plan obtains such coverage through such plan.

(ii) Limitation on enrollment of MA plan enrollees in prescription drug plans

Except as provided in clauses (iii) and (iv), a part D eligible individual who is en-

[2] So in original. Probably should be ''subsection''.

rolled in an MA plan may not enroll in a prescription drug plan under this part.

(iii) Private fee-for-service enrollees in MA plans not providing qualified prescription drug coverage permitted to enroll in a prescription drug plan

A part D eligible individual who is enrolled in an MA private fee-for-service plan (as defined in section 1395w–28(b)(2) of this title) that does not provide qualified prescription drug coverage may obtain qualified prescription drug coverage through enrollment in a prescription drug plan.

(iv) Enrollees in MSA plans permitted to enroll in a prescription drug plan

A part D eligible individual who is enrolled in an MSA plan (as defined in section 1395w–28(b)(3) of this title) may obtain qualified prescription drug coverage through enrollment in a prescription drug plan.

(2) Coverage first effective January 1, 2006

Coverage under prescription drug plans and MA–PD plans shall first be effective on January 1, 2006.

(3) Definitions

For purposes of this part:

(A) Part D eligible individual

The term ''part D eligible individual'' means an individual who is entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter.

(B) MA plan

The term ''MA plan'' has the meaning given such term in section 1395w–28(b)(1) of this title.

(C) MA–PD plan

The term ''MA–PD plan'' means an MA plan that provides qualified prescription drug coverage.

(b) Enrollment process for prescription drug plans

(1) Establishment of process

(A) In general

The Secretary shall establish a process for the enrollment, disenrollment, termination, and change of enrollment of part D eligible individuals in prescription drug plans consistent with this subsection.

(B) Application of MA rules

In establishing such process, the Secretary shall use rules similar to (and coordinated with) the rules for enrollment, disenrollment, termination, and change of enrollment with an MA–PD plan under the following provisions of section 1395w–21 of this title:

(i) Residence requirements

Section 1395w–21(b)(1)(A) of this title, relating to residence requirements.

(ii) Exercise of choice

Section 1395w–21(c) of this title (other than paragraph (3)(A) of such section), relating to exercise of choice.

(iii) Coverage election periods

Subject to paragraphs (2) and (3) of this subsection, section 1395w–21(e) of this title (other than subparagraphs (B) and (C) of paragraph (2) and the second sentence of paragraph (4) of such section), relating to coverage election periods, including initial periods, annual coordinated election periods, special election periods, and election periods for exceptional circumstances.

(iv) Coverage periods

Section 1395w–21(f) of this title, relating to effectiveness of elections and changes of elections.

(v) Guaranteed issue and renewal

Section 1395w–21(g) of this title (other than paragraph (2) of such section and clause (i) and the second sentence of clause (ii) of paragraph (3)(C) of such section), relating to guaranteed issue and renewal.

(vi) Marketing material and application forms

Section 1395w–21(h) of this title, relating to approval of marketing material and application forms.

In applying clauses (ii), (iv), and (v) of this subparagraph, any reference to section 1395w–21(e) of this title shall be treated as a reference to such section as applied pursuant to clause (iii) of this subparagraph.

(C) Special rule

The process established under subparagraph (A) shall include, in the case of a part D eligible individual who is a full-benefit dual eligible individual (as defined in section 1396u–5(c)(6) of this title) who has failed to enroll in a prescription drug plan or an MA–PD plan, for the enrollment in a prescription drug plan that has a monthly beneficiary premium that does not exceed the premium assistance available under section 1395w–114(a)(1)(A) of this title).[1] If there is more than one such plan available, the Secretary shall enroll such an individual on a random basis among all such plans in the PDP region. Nothing in the previous sentence shall prevent such an individual from declining or changing such enrollment.

(2) Initial enrollment period

(A) Program initiation

In the case of an individual who is a part D eligible individual as of November 15, 2005, there shall be an initial enrollment period that shall be the same as the annual, coordinated open election period described in section 1395w–21(e)(3)(B)(iii) of this title, as applied under paragraph (1)(B)(iii).

(B) Continuing periods

In the case of an individual who becomes a part D eligible individual after November 15, 2005, there shall be an initial enrollment period which is the period under section 1395w–21(e)(1) of this title, as applied under

[1] So in original. The closing parenthesis probably should not appear.

paragraph (1)(B)(iii) of this section, as if ''entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter'' were substituted for ''entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter'', but in no case shall such period end before the period described in subparagraph (A).

(3) Additional special enrollment periods

The Secretary shall establish special enrollment periods, including the following:

(A) Involuntary loss of creditable prescription drug coverage

(i) In general

In the case of a part D eligible individual who involuntarily loses creditable prescription drug coverage (as defined in section 1395w–113(b)(4) of this title).

(ii) Notice

In establishing special enrollment periods under clause (i), the Secretary shall take into account when the part D eligible individuals are provided notice of the loss of creditable prescription drug coverage.

(iii) Failure to pay premium

For purposes of clause (i), a loss of coverage shall be treated as voluntary if the coverage is terminated because of failure to pay a required beneficiary premium.

(iv) Reduction in coverage

For purposes of clause (i), a reduction in coverage so that the coverage no longer meets the requirements under section 1395w–113(b)(5) of this title (relating to actuarial equivalence) shall be treated as an involuntary loss of coverage.

(B) Errors in enrollment

In the case described in section 1395p(h) of this title (relating to errors in enrollment), in the same manner as such section applies to part B of this subchapter.

(C) Exceptional circumstances

In the case of part D eligible individuals who meet such exceptional conditions (in addition to those conditions applied under paragraph (1)(B)(iii)) as the Secretary may provide.

(D) Medicaid coverage

In the case of an individual (as determined by the Secretary) who is a full-benefit dual eligible individual (as defined in section 1396u–5(c)(6) of this title).

(E) Discontinuance of MA–PD election during first year of eligibility

In the case of a part D eligible individual who discontinues enrollment in an MA–PD plan under the second sentence of section 1395w–21(e)(4) of this title at the time of the election of coverage under such sentence under the original medicare fee-for-service program.

(4) Information to facilitate enrollment

(A) In general

Notwithstanding any other provision of law but subject to subparagraph (B), the Secretary may provide to each PDP sponsor and MA organization such identifying information about part D eligible individuals as the Secretary determines to be necessary to facilitate efficient marketing of prescription drug plans and MA–PD plans to such individuals and enrollment of such individuals in such plans.

(B) Limitation

(i) Provision of information

The Secretary may provide the information under subparagraph (A) only to the extent necessary to carry out such subparagraph.

(ii) Use of information

Such information provided by the Secretary to a PDP sponsor or an MA organization may be used by such sponsor or organization only to facilitate marketing of, and enrollment of part D eligible individuals in, prescription drug plans and MA–PD plans.

(5) Reference to enrollment procedures for MA–PD plans

For rules applicable to enrollment, disenrollment, termination, and change of enrollment of part D eligible individuals in MA–PD plans, see section 1395w–21 of this title.

(6) Reference to penalties for late enrollment

Section 1395w–113(b) of this title imposes a late enrollment penalty for part D eligible individuals who—

(A) enroll in a prescription drug plan or an MA–PD plan after the initial enrollment period described in paragraph (2); and

(B) fail to maintain continuous creditable prescription drug coverage during the period of non-enrollment.

(c) Providing information to beneficiaries

(1) Activities

The Secretary shall conduct activities that are designed to broadly disseminate information to part D eligible individuals (and prospective part D eligible individuals) regarding the coverage provided under this part. Such activities shall ensure that such information is first made available at least 30 days prior to the initial enrollment period described in subsection (b)(2)(A) of this section.

(2) Requirements

The activities described in paragraph (1) shall—

(A) be similar to the activities performed by the Secretary under section 1395w–21(d) of this title, including dissemination (including through the toll-free telephone number 1–800–MEDICARE) of comparative information for prescription drug plans and MA–PD plans; and

(B) be coordinated with the activities performed by the Secretary under such section and under section 1395b–2 of this title.

(3) Comparative information

(A) In general

Subject to subparagraph (B), the comparative information referred to in paragraph

(2)(A) shall include a comparison of the following with respect to qualified prescription drug coverage:

(i) Benefits

The benefits provided under the plan.

(ii) Monthly beneficiary premium

The monthly beneficiary premium under the plan.

(iii) Quality and performance

The quality and performance under the plan.

(iv) Beneficiary cost-sharing

The cost-sharing required of part D eligible individuals under the plan.

(v) Consumer satisfaction surveys

The results of consumer satisfaction surveys regarding the plan conducted pursuant to section 1395w–104(d) of this title.

(B) Exception for unavailability of information

The Secretary is not required to provide comparative information under clauses (iii) and (v) of subparagraph (A) with respect to a plan—

(i) for the first plan year in which it is offered; and

(ii) for the next plan year if it is impracticable or the information is otherwise unavailable.

(4) Information on late enrollment penalty

The information disseminated under paragraph (1) shall include information concerning the methodology for determining the late enrollment penalty under section 1395w–113(b) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D–1, as added Pub. L. 108–173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2071.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsecs. (a)(3)(A) and (b)(2)(B), is classified to section 1395c et seq. of this title.

Part B of this subchapter, referred to in subsecs. (a)(3)(A) and (b)(2)(B), (3)(B), is classified to section 1395j et seq. of this title.

SUBMISSION OF LEGISLATIVE PROPOSAL

Pub. L. 108–173, title I, §101(b), Dec. 8, 2003, 117 Stat. 2150, provided that: ''Not later than 6 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this title and title II [see Tables for classification].''

STUDY ON TRANSITIONING PART B PRESCRIPTION DRUG COVERAGE

Pub. L. 108–173, title I, §101(c), Dec. 8, 2003, 117 Stat. 2150, provided that: ''Not later than January 1, 2005, the Secretary [of Health and Human Services] shall submit a report to Congress that makes recommendations regarding methods for providing benefits under subpart 1 of part D of title XVIII of the Social Security Act [this subpart] for outpatient prescription drugs for which benefits are provided under part B of such title [part B of this subchapter].''

REPORT ON PROGRESS IN IMPLEMENTATION OF PRESCRIPTION DRUG BENEFIT

Pub. L. 108–173, title I, §101(d), Dec. 8, 2003, 117 Stat. 2150, provided that: ''Not later than March 1, 2005, the Secretary [of Health and Human Services] shall submit a report to Congress on the progress that has been made in implementing the prescription drug benefit under this title [see Tables for classification]. The Secretary shall include in the report specific steps that have been taken, and that need to be taken, to ensure a timely start of the program on January 1, 2006. The report shall include recommendations regarding an appropriate transition from the program under section 1860D–31 of the Social Security Act [section 1395w–141 of this title] to prescription drug benefits under subpart 1 of part D of title XVIII of such Act [this subpart].''

STATE PHARMACEUTICAL ASSISTANCE TRANSITION COMMISSION

Pub. L. 108–173, title I, §106, Dec. 8, 2003, 117 Stat. 2168, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is established, as of the first day of the third month beginning after the date of the enactment of this Act [Dec. 8, 2003], a State Pharmaceutical Assistance Transition Commission (in this section referred to as the 'Commission') to develop a proposal for addressing the unique transitional issues facing State pharmaceutical assistance programs, and program participants, due to the implementation of the voluntary prescription drug benefit program under part D of title XVIII of the Social Security Act [this part], as added by section 101.

''(2) DEFINITIONS.—For purposes of this section:

''(A) STATE PHARMACEUTICAL ASSISTANCE PROGRAM DEFINED.—The term 'State pharmaceutical assistance program' means a program (other than the medicaid program) operated by a State (or under contract with a State) that provides as of the date of the enactment of this Act [Dec. 8, 2003] financial assistance to medicare beneficiaries for the purchase of prescription drugs.

''(B) PROGRAM PARTICIPANT.—The term 'program participant' means a low-income medicare beneficiary who is a participant in a State pharmaceutical assistance program.

''(b) COMPOSITION.—The Commission shall include the following:

''(1) A representative of each Governor of each State that the Secretary [of Health and Human Services] identifies as operating on a statewide basis a State pharmaceutical assistance program that provides for eligibility and benefits that are comparable or more generous than the low-income assistance eligibility and benefits offered under section 1860D–14 of the Social Security Act [section 1395w–114 of this title].

''(2) Representatives from other States that the Secretary identifies have in operation other State pharmaceutical assistance programs, as appointed by the Secretary.

''(3) Representatives of organizations that have an inherent interest in program participants or the program itself, as appointed by the Secretary but not to exceed the number of representatives under paragraphs (1) and (2).

''(4) Representatives of Medicare Advantage organizations, pharmaceutical benefit managers, and other private health insurance plans, as appointed by the Secretary.

''(5) The Secretary (or the Secretary's designee) and such other members as the Secretary may specify.

The Secretary shall designate a member to serve as Chair of the Commission and the Commission shall meet at the call of the Chair.

''(c) DEVELOPMENT OF PROPOSAL.—The Commission shall develop the proposal described in subsection (a) in a manner consistent with the following principles:

''(1) Protection of the interests of program participants in a manner that is the least disruptive to such

participants and that includes a single point of contact for enrollment and processing of benefits.

''(2) Protection of the financial and flexibility interests of States so that States are not financially worse off as a result of the enactment of this title [see Tables for classification].

''(3) Principles of medicare modernization under this Act [see Tables for classification].

''(d) REPORT.—By not later than January 1, 2005, the Commission shall submit to the President and Congress a report that contains a detailed proposal (including specific legislative or administrative recommendations, if any) and such other recommendations as the Commission deems appropriate.

''(e) SUPPORT.—The Secretary shall provide the Commission with the administrative support services necessary for the Commission to carry out its responsibilities under this section.

''(f) TERMINATION.—The Commission shall terminate 30 days after the date of submission of the report under subsection (d).''

CONFLICT OF INTEREST STUDY

Pub. L. 108–173, title I, § 110, Dec. 8, 2003, 117 Stat. 2174, provided that:

''(a) STUDY.—The Federal Trade Commission shall conduct a study of differences in payment amounts for pharmacy services provided to enrollees in group health plans that utilize pharmacy benefit managers. Such study shall include the following:

''(1) An assessment of the differences in costs incurred by such enrollees and plans for prescription drugs dispensed by mail-order pharmacies owned by pharmaceutical benefit managers compared to mail-order pharmacies not owned by pharmaceutical benefit managers, and community pharmacies.

''(2) Whether such plans are acting in a manner that maximizes competition and results in lower prescription drug prices for enrollees.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003], the Commission shall submit to Congress a report on the study conducted under subsection (a). Such report shall include recommendations regarding any need for legislation to ensure the fiscal integrity of the voluntary prescription drug benefit program under part D of title XVIII [this part], as added by section 101, that may be appropriated as the result of such study.

''(c) EXEMPTION FROM PAPERWORK REDUCTION ACT.—Chapter 35 of title 44, United States Code, shall not apply to the collection of information under subsection (a).''

§ 1395w–102. Prescription drug benefits

(a) Requirements

(1) In general

For purposes of this part and part C of this subchapter, the term ''qualified prescription drug coverage'' means either of the following:

(A) Standard prescription drug coverage with access to negotiated prices

Standard prescription drug coverage (as defined in subsection (b) of this section) and access to negotiated prices under subsection (d) of this section.

(B) Alternative prescription drug coverage with at least actuarially equivalent benefits and access to negotiated prices

Coverage of covered part D drugs which meets the alternative prescription drug coverage requirements of subsection (c) of this section and access to negotiated prices under subsection (d) of this section, but only if the benefit design of such coverage is approved by the Secretary, as provided under subsection (c) of this section.

(2) Permitting supplemental prescription drug coverage

(A) In general

Subject to subparagraph (B), qualified prescription drug coverage may include supplemental prescription drug coverage consisting of either or both of the following:

(i) Certain reductions in cost-sharing

(I) In general

A reduction in the annual deductible, a reduction in the coinsurance percentage, or an increase in the initial coverage limit with respect to covered part D drugs, or any combination thereof, insofar as such a reduction or increase increases the actuarial value of benefits above the actuarial value of basic prescription drug coverage.

(II) Construction

Nothing in this paragraph shall be construed as affecting the application of subsection (c)(3) of this section.

(ii) Optional drugs

Coverage of any product that would be a covered part D drug but for the application of subsection (e)(2)(A) of this section.

(B) Requirement

A PDP sponsor may not offer a prescription drug plan that provides supplemental prescription drug coverage pursuant to subparagraph (A) in an area unless the sponsor also offers a prescription drug plan in the area that only provides basic prescription drug coverage.

(3) Basic prescription drug coverage

For purposes of this part and part C of this subchapter, the term ''basic prescription drug coverage'' means either of the following:

(A) Coverage that meets the requirements of paragraph (1)(A).

(B) Coverage that meets the requirements of paragraph (1)(B) but does not have any supplemental prescription drug coverage described in paragraph (2)(A).

(4) Application of secondary payor provisions

The provisions of section 1395w–22(a)(4) of this title shall apply under this part in the same manner as they apply under part C of this subchapter.

(5) Construction

Nothing in this subsection shall be construed as changing the computation of incurred costs under subsection (b)(4) of this section.

(b) Standard prescription drug coverage

For purposes of this part and part C of this subchapter, the term ''standard prescription drug coverage'' means coverage of covered part D drugs that meets the following requirements:

(1) Deductible

(A) In general

The coverage has an annual deductible—

(i) for 2006, that is equal to $250; or

(ii) for a subsequent year, that is equal to the amount specified under this paragraph for the previous year increased by the percentage specified in paragraph (6) for the year involved.

(B) Rounding

Any amount determined under subparagraph (A)(ii) that is not a multiple of $5 shall be rounded to the nearest multiple of $5.

(2) Benefit structure

(A) 25 percent coinsurance

The coverage has coinsurance (for costs above the annual deductible specified in paragraph (1) and up to the initial coverage limit under paragraph (3)) that is—

(i) equal to 25 percent; or

(ii) actuarially equivalent (using processes and methods established under section 1395w–111(c) of this title) to an average expected payment of 25 percent of such costs.

(B) Use of tiers

Nothing in this part shall be construed as preventing a PDP sponsor or an MA organization from applying tiered copayments under a plan, so long as such tiered copayments are consistent with subparagraph (A)(ii).

(3) Initial coverage limit

(A) In general

Except as provided in paragraph (4), the coverage has an initial coverage limit on the maximum costs that may be recognized for payment purposes (including the annual deductible)—

(i) for 2006, that is equal to $2,250; or

(ii) for a subsequent year, that is equal to the amount specified in this paragraph for the previous year, increased by the annual percentage increase described in paragraph (6) for the year involved.

(B) Rounding

Any amount determined under subparagraph (A)(ii) that is not a multiple of $10 shall be rounded to the nearest multiple of $10.

(4) Protection against high out-of-pocket expenditures

(A) In general

(i) In general

The coverage provides benefits, after the part D eligible individual has incurred costs (as described in subparagraph (C)) for covered part D drugs in a year equal to the annual out-of-pocket threshold specified in subparagraph (B), with cost-sharing that is equal to the greater of—

(I) a copayment of $2 for a generic drug or a preferred drug that is a multiple source drug (as defined in section 1396r–8(k)(7)(A)(i) of this title) and $5 for any other drug; or

(II) coinsurance that is equal to 5 percent.

(ii) Adjustment of amount

For a year after 2006, the dollar amounts specified in clause (i)(I) shall be equal to the dollar amounts specified in this subparagraph for the previous year, increased by the annual percentage increase described in paragraph (6) for the year involved. Any amount established under this clause that is not a multiple of a 5 cents shall be rounded to the nearest multiple of 5 cents.

(B) Annual out-of-pocket threshold

(i) In general

For purposes of this part, the ''annual out-of-pocket threshold'' specified in this subparagraph—

(I) for 2006, is equal to $3,600; or

(II) for a subsequent year, is equal to the amount specified in this subparagraph for the previous year, increased by the annual percentage increase described in paragraph (6) for the year involved.

(ii) Rounding

Any amount determined under clause (i)(II) that is not a multiple of $50 shall be rounded to the nearest multiple of $50.

(C) Application

In applying subparagraph (A)—

(i) incurred costs shall only include costs incurred with respect to covered part D drugs for the annual deductible described in paragraph (1), for cost-sharing described in paragraph (2), and for amounts for which benefits are not provided because of the application of the initial coverage limit described in paragraph (3), but does not include any costs incurred for covered part D drugs which are not included (or treated as being included) in the plan's formulary; and

(ii) such costs shall be treated as incurred only if they are paid by the part D eligible individual (or by another person, such as a family member, on behalf of the individual), under section 1395w–114 of this title, or under a State Pharmaceutical Assistance Program and the part D eligible individual (or other person) is not reimbursed through insurance or otherwise, a group health plan, or other third-party payment arrangement (other than under such section or such a Program) for such costs.

(D) Information regarding third-party reimbursement

(i) Procedures for exchanging information

In order to accurately apply the requirements of subparagraph (C)(ii), the Secretary is authorized to establish procedures, in coordination with the Secretary of the Treasury and the Secretary of Labor—

(I) for determining whether costs for part D eligible individuals are being reimbursed through insurance or otherwise, a group health plan, or other third-party payment arrangement; and

(II) for alerting the PDP sponsors and MA organizations that offer the prescription drug plans and MA–PD plans in which such individuals are enrolled about such reimbursement arrangements.

(ii) Authority to request information from enrollees

A PDP sponsor or an MA organization may periodically ask part D eligible individuals enrolled in a prescription drug plan or an MA–PD plan offered by the sponsor or organization whether such individuals have or expect to receive such third-party reimbursement. A material misrepresentation of the information described in the preceding sentence by an individual (as defined in standards set by the Secretary and determined through a process established by the Secretary) shall constitute grounds for termination of enrollment in any plan under section 1395w–21(g)(3)(B) of this title (and as applied under this part under section 1395w–101(b)(1)(B)(v) of this title) for a period specified by the Secretary.

(5) Construction

Nothing in this part shall be construed as preventing a PDP sponsor or an MA organization offering an MA–PD plan from reducing to zero the cost-sharing otherwise applicable to preferred or generic drugs.

(6) Annual percentage increase

The annual percentage increase specified in this paragraph for a year is equal to the annual percentage increase in average per capita aggregate expenditures for covered part D drugs in the United States for part D eligible individuals, as determined by the Secretary for the 12-month period ending in July of the previous year using such methods as the Secretary shall specify.

(c) Alternative prescription drug coverage requirements

A prescription drug plan or an MA–PD plan may provide a different prescription drug benefit design from standard prescription drug coverage so long as the Secretary determines (consistent with section 1395w–111(c) of this title) that the following requirements are met and the plan applies for, and receives, the approval of the Secretary for such benefit design:

(1) Assuring at least actuarially equivalent coverage

(A) Assuring equivalent value of total coverage

The actuarial value of the total coverage is at least equal to the actuarial value of standard prescription drug coverage.

(B) Assuring equivalent unsubsidized value of coverage

The unsubsidized value of the coverage is at least equal to the unsubsidized value of standard prescription drug coverage. For purposes of this subparagraph, the unsubsidized value of coverage is the amount by which the actuarial value of the coverage exceeds the actuarial value of the subsidy payments under section 1395w–115 of this title with respect to such coverage.

(C) Assuring standard payment for costs at initial coverage limit

The coverage is designed, based upon an actuarially representative pattern of utilization, to provide for the payment, with respect to costs incurred that are equal to the initial coverage limit under subsection (b)(3) of this section for the year, of an amount equal to at least the product of—

(i) the amount by which the initial coverage limit described in subsection (b)(3) of this section for the year exceeds the deductible described in subsection (b)(1) of this section for the year; and

(ii) 100 percent minus the coinsurance percentage specified in subsection (b)(2)(A)(i) of this section.

(2) Maximum required deductible

The deductible under the coverage shall not exceed the deductible amount specified under subsection (b)(1) of this section for the year.

(3) Same protection against high out-of-pocket expenditures

The coverage provides the coverage required under subsection (b)(4) of this section.

(d) Access to negotiated prices

(1) Access

(A) In general

Under qualified prescription drug coverage offered by a PDP sponsor offering a prescription drug plan or an MA organization offering an MA–PD plan, the sponsor or organization shall provide enrollees with access to negotiated prices used for payment for covered part D drugs, regardless of the fact that no benefits may be payable under the coverage with respect to such drugs because of the application of a deductible or other cost-sharing or an initial coverage limit (described in subsection (b)(3) of this section).

(B) Negotiated prices

For purposes of this part, negotiated prices shall take into account negotiated price concessions, such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations, for covered part D drugs, and include any dispensing fees for such drugs.

(C) Medicaid-related provisions

The prices negotiated by a prescription drug plan, by an MA–PD plan with respect to covered part D drugs, or by a qualified retiree prescription drug plan (as defined in section 1395w–132(a)(2) of this title) with respect to such drugs on behalf of part D eligible individuals, shall (notwithstanding any other provision of law) not be taken into account for the purposes of establishing the best price under section 1395r–8(c)(1)(C) of this title.

(2) Disclosure

A PDP sponsor offering a prescription drug plan or an MA organization offering an MA–PD plan shall disclose to the Secretary (in

a manner specified by the Secretary) the aggregate negotiated price concessions described in paragraph (1)(B) made available to the sponsor or organization by a manufacturer which are passed through in the form of lower subsidies, lower monthly beneficiary prescription drug premiums, and lower prices through pharmacies and other dispensers. The provisions of section 1396r–8(b)(3)(D) of this title apply to information disclosed to the Secretary under this paragraph.

(3) Audits

To protect against fraud and abuse and to ensure proper disclosures and accounting under this part and in accordance with section 1395w–27(d)(2)(B) of this title (as applied under section 1395w–112(b)(3)(C) of this title), the Secretary may conduct periodic audits, directly or through contracts, of the financial statements and records of PDP sponsors with respect to prescription drug plans and MA organizations with respect to MA–PD plans.

(e) Covered part D drug defined

(1) In general

Except as provided in this subsection, for purposes of this part, the term ''covered part D drug'' means—

(A) a drug that may be dispensed only upon a prescription and that is described in subparagraph (A)(i), (A)(ii), or (A)(iii) of section 1396r–8(k)(2) of this title; or

(B) a biological product described in clauses (i) through (iii) of subparagraph (B) of such section or insulin described in subparagraph (C) of such section and medical supplies associated with the injection of insulin (as defined in regulations of the Secretary),

and such term includes a vaccine licensed under section 262 of this title and any use of a covered part D drug for a medically accepted indication (as defined in section 1396r–8(k)(6) of this title).

(2) Exclusions

(A) In general

Such term does not include drugs or classes of drugs, or their medical uses, which may be excluded from coverage or otherwise restricted under section 1396r–8(d)(2) of this title, other than subparagraph (E) of such section (relating to smoking cessation agents), or under section 1396r–8(d)(3) of this title, as such sections were in effect on December 8, 2003. Such term also does not include a drug when used for the treatment of sexual or erectile dysfunction, unless such drug were used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the Food and Drug Administration.

(B) Medicare covered drugs

A drug prescribed for a part D eligible individual that would otherwise be a covered part D drug under this part shall not be so considered if payment for such drug as so prescribed and dispensed or administered with respect to that individual is available (or would be available but for the application of a deductible) under part A or B of this subchapter for that individual.

(3) Application of general exclusion provisions

A prescription drug plan or an MA–PD plan may exclude from qualified prescription drug coverage any covered part D drug—

(A) for which payment would not be made if section 1395y(a) of this title applied to this part; or

(B) which is not prescribed in accordance with the plan or this part.

Such exclusions are determinations subject to reconsideration and appeal pursuant to subsections (g) and (h), respectively, of section 1395w–104 of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–2, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2075; amended Pub. L. 109–91, title I, § 103(a), Oct. 20, 2005, 119 Stat. 2092.)

REFERENCES IN TEXT

Part C of this subchapter, referred to in subsecs. (a)(1), (3), (4) and (b), is classified to section 1395w–21 et seq. of this title.

Parts A and B of this subchapter, referred to in subsec. (e)(2)(B), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

2005—Subsec. (e)(2)(A). Pub. L. 109–91, § 103(a)(2), inserted at end ''Such term also does not include a drug when used for the treatment of sexual or erectile dysfunction, unless such drug were used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the Food and Drug Administration.''

Pub. L. 109–91, § 103(a)(1), inserted before period at end '', as such sections were in effect on December 8, 2003''.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–91, title I, § 103(c), Oct. 20, 2005, 119 Stat. 2092, provided that: ''The amendment made by subsection (a)(1) [amending this section] shall take effect as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173) and the amendment made by subsection (a)(2) [amending this section] shall apply to coverage for drugs dispensed on or after January 1, 2007.''

CONSTRUCTION

Pub. L. 109–91, title I, § 103(b), Oct. 20, 2005, 119 Stat. 2092, provided that: ''Nothing in this section [amending this section and enacting provisions set out as a note under this section] shall be construed as preventing a prescription drug plan or an MA–PD plan from providing coverage of drugs for the treatment of sexual or erectile dysfunction as supplemental prescription drug coverage under section 1860D–2(a)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1395w–102(a)(2)(A)(ii)).''

§ 1395w–103. Access to a choice of qualified prescription drug coverage

(a) Assuring access to a choice of coverage

(1) Choice of at least two plans in each area

The Secretary shall ensure that each part D eligible individual has available, consistent with paragraph (2), a choice of enrollment in at least 2 qualifying plans (as defined in paragraph (3)) in the area in which the individual resides, at least one of which is a prescription

drug plan. In any such case in which such plans are not available, the part D eligible individual shall be given the opportunity to enroll in a fallback prescription drug plan.

(2) Requirement for different plan sponsors

The requirement in paragraph (1) is not satisfied with respect to an area if only one entity offers all the qualifying plans in the area.

(3) Qualifying plan defined

For purposes of this section, the term ''qualifying plan'' means—

(A) a prescription drug plan; or

(B) an MA–PD plan described in section 1395w–21(a)(2)(A)(i) of this title that provides—

(i) basic prescription drug coverage; or

(ii) qualified prescription drug coverage that provides supplemental prescription drug coverage so long as there is no MA monthly supplemental beneficiary premium applied under the plan, due to the application of a credit against such premium of a rebate under section 1395w–24(b)(1)(C) of this title.

(b) Flexibility in risk assumed and application of fallback plan

In order to ensure access pursuant to subsection (a) of this section in an area—

(1) the Secretary may approve limited risk plans under section 1395w–111(f) of this title for the area; and

(2) only if such access is still not provided in the area after applying paragraph (1), the Secretary shall provide for the offering of a fallback prescription drug plan for that area under section 1395w–111(g) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–3, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2081.)

§ 1395w–104. Beneficiary protections for qualified prescription drug coverage

(a) Dissemination of information

(1) General information

(A) Application of MA information

A PDP sponsor shall disclose, in a clear, accurate, and standardized form to each enrollee with a prescription drug plan offered by the sponsor under this part at the time of enrollment and at least annually thereafter, the information described in section 1395w–22(c)(1) of this title relating to such plan, insofar as the Secretary determines appropriate with respect to benefits provided under this part, and including the information described in subparagraph (B).

(B) Drug specific information

The information described in this subparagraph is information concerning the following:

(i) Access to specific covered part D drugs, including access through pharmacy networks.

(ii) How any formulary (including any tiered formulary structure) used by the sponsor functions, including a description of how a part D eligible individual may obtain information on the formulary consistent with paragraph (3).

(iii) Beneficiary cost-sharing requirements and how a part D eligible individual may obtain information on such requirements, including tiered or other copayment level applicable to each drug (or class of drugs), consistent with paragraph (3).

(iv) The medication therapy management program required under subsection (c) of this section.

(2) Disclosure upon request of general coverage, utilization, and grievance information

Upon request of a part D eligible individual who is eligible to enroll in a prescription drug plan, the PDP sponsor offering such plan shall provide information similar (as determined by the Secretary) to the information described in subparagraphs (A), (B), and (C) of section 1395w–22(c)(2) of this title to such individual.

(3) Provision of specific information

(A) Response to beneficiary questions

Each PDP sponsor offering a prescription drug plan shall have a mechanism for providing specific information on a timely basis to enrollees upon request. Such mechanism shall include access to information through the use of a toll-free telephone number and, upon request, the provision of such information in writing.

(B) Availability of information on changes in formulary through the Internet

A PDP sponsor offering a prescription drug plan shall make available on a timely basis through an Internet website information on specific changes in the formulary under the plan (including changes to tiered or preferred status of covered part D drugs).

(4) Claims information

A PDP sponsor offering a prescription drug plan must furnish to each enrollee in a form easily understandable to such enrollees—

(A) an explanation of benefits (in accordance with section 1395b–7(a) of this title or in a comparable manner); and

(B) when prescription drug benefits are provided under this part, a notice of the benefits in relation to—

(i) the initial coverage limit for the current year; and

(ii) the annual out-of-pocket threshold for the current year.

Notices under subparagraph (B) need not be provided more often than as specified by the Secretary and notices under subparagraph (B)(ii) shall take into account the application of section 1395w–102(b)(4)(C) of this title to the extent practicable, as specified by the Secretary.

(b) Access to covered part D drugs

(1) Assuring pharmacy access

(A) Participation of any willing pharmacy

A prescription drug plan shall permit the participation of any pharmacy that meets the terms and conditions under the plan.

(B) Discounts allowed for network pharmacies

For covered part D drugs dispensed through in-network pharmacies, a prescription drug plan may, notwithstanding subparagraph (A), reduce coinsurance or copayments for part D eligible individuals enrolled in the plan below the level otherwise required. In no case shall such a reduction result in an increase in payments made by the Secretary under section 1395w–115 of this title to a plan.

(C) Convenient access for network pharmacies

(i) In general

The PDP sponsor of the prescription drug plan shall secure the participation in its network of a sufficient number of pharmacies that dispense (other than by mail order) drugs directly to patients to ensure convenient access (consistent with rules established by the Secretary).

(ii) Application of TRICARE standards

The Secretary shall establish rules for convenient access to in-network pharmacies under this subparagraph that are no less favorable to enrollees than the rules for convenient access to pharmacies included in the statement of work of solicitation (#MDA906–03–R–0002) of the Department of Defense under the TRICARE Retail Pharmacy (TRRx) as of March 13, 2003.

(iii) Adequate emergency access

Such rules shall include adequate emergency access for enrollees.

(iv) Convenient access in long-term care facilities

Such rules may include standards with respect to access for enrollees who are residing in long-term care facilities and for pharmacies operated by the Indian Health Service, Indian tribes and tribal organizations, and urban Indian organizations (as defined in section 1603 of title 25).

(D) Level playing field

Such a sponsor shall permit enrollees to receive benefits (which may include a 90-day supply of drugs or biologicals) through a pharmacy (other than a mail order pharmacy), with any differential in charge paid by such enrollees.

(E) Not required to accept insurance risk

The terms and conditions under subparagraph (A) may not require participating pharmacies to accept insurance risk as a condition of participation.

(2) Use of standardized technology

(A) In general

The PDP sponsor of a prescription drug plan shall issue (and reissue, as appropriate) such a card (or other technology) that may be used by an enrollee to assure access to negotiated prices under section 1395w–102(d) of this title.

(B) Standards

(i) In general

The Secretary shall provide for the development, adoption, or recognition of standards relating to a standardized format for the card or other technology required under subparagraph (A). Such standards shall be compatible with part C of subchapter XI of this chapter and may be based on standards developed by an appropriate standard setting organization.

(ii) Consultation

In developing the standards under clause (i), the Secretary shall consult with the National Council for Prescription Drug Programs and other standard setting organizations determined appropriate by the Secretary.

(iii) Implementation

The Secretary shall develop, adopt, or recognize the standards under clause (i) by such date as the Secretary determines shall be sufficient to ensure that PDP sponsors utilize such standards beginning January 1, 2006.

(3) Requirements on development and application of formularies

If a PDP sponsor of a prescription drug plan uses a formulary (including the use of tiered cost-sharing), the following requirements must be met:

(A) Development and revision by a pharmacy and therapeutic (P&T) committee

(i) In general

The formulary must be developed and reviewed by a pharmacy and therapeutic committee. A majority of the members of such committee shall consist of individuals who are practicing physicians or practicing pharmacists (or both).

(ii) Inclusion of independent experts

Such committee shall include at least one practicing physician and at least one practicing pharmacist, each of whom—

(I) is independent and free of conflict with respect to the sponsor and plan; and

(II) has expertise in the care of elderly or disabled persons.

(B) Formulary development

In developing and reviewing the formulary, the committee shall—

(i) base clinical decisions on the strength of scientific evidence and standards of practice, including assessing peer-reviewed medical literature, such as randomized clinical trials, pharmacoeconomic studies, outcomes research data, and on such other information as the committee determines to be appropriate; and

(ii) take into account whether including in the formulary (or in a tier in such formulary) particular covered part D drugs has therapeutic advantages in terms of safety and efficacy.

(C) Inclusion of drugs in all therapeutic categories and classes

(i) In general

The formulary must include drugs within each therapeutic category and class of covered part D drugs, although not necessarily all drugs within such categories and classes.

(ii) Model guidelines

The Secretary shall request the United States Pharmacopeia to develop, in consultation with pharmaceutical benefit managers and other interested parties, a list of categories and classes that may be used by prescription drug plans under this paragraph and to revise such classification from time to time to reflect changes in therapeutic uses of covered part D drugs and the additions of new covered part D drugs.

(iii) Limitation on changes in therapeutic classification

The PDP sponsor of a prescription drug plan may not change the therapeutic categories and classes in a formulary other than at the beginning of each plan year except as the Secretary may permit to take into account new therapeutic uses and newly approved covered part D drugs.

(D) Provider and patient education

The PDP sponsor shall establish policies and procedures to educate and inform health care providers and enrollees concerning the formulary.

(E) Notice before removing drug from formulary or changing preferred or tier status of drug

Any removal of a covered part D drug from a formulary and any change in the preferred or tiered cost-sharing status of such a drug shall take effect only after appropriate notice is made available (such as under subsection (a)(3) of this section) to the Secretary, affected enrollees, physicians, pharmacies, and pharmacists.

(F) Periodic evaluation of protocols

In connection with the formulary, the sponsor of a prescription drug plan shall provide for the periodic evaluation and analysis of treatment protocols and procedures.

The requirements of this paragraph may be met by a PDP sponsor directly or through arrangements with another entity.

(c) Cost and utilization management; quality assurance; medication therapy management program

(1) In general

The PDP sponsor shall have in place, directly or through appropriate arrangements, with respect to covered part D drugs, the following:

(A) A cost-effective drug utilization management program, including incentives to reduce costs when medically appropriate, such as through the use of multiple source drugs (as defined in section 1396r–8(k)(7)(A)(i) of this title).

(B) Quality assurance measures and systems to reduce medication errors and adverse drug interactions and improve medication use.

(C) A medication therapy management program described in paragraph (2).

(D) A program to control fraud, abuse, and waste.

Nothing in this section shall be construed as impairing a PDP sponsor from utilizing cost management tools (including differential payments) under all methods of operation.

(2) Medication therapy management program

(A) Description

(i) In general

A medication therapy management program described in this paragraph is a program of drug therapy management that may be furnished by a pharmacist and that is designed to assure, with respect to targeted beneficiaries described in clause (ii), that covered part D drugs under the prescription drug plan are appropriately used to optimize therapeutic outcomes through improved medication use, and to reduce the risk of adverse events, including adverse drug interactions. Such a program may distinguish between services in ambulatory and institutional settings.

(ii) Targeted beneficiaries described

Targeted beneficiaries described in this clause are part D eligible individuals who—

(I) have multiple chronic diseases (such as diabetes, asthma, hypertension, hyperlipidemia, and congestive heart failure);

(II) are taking multiple covered part D drugs; and

(III) are identified as likely to incur annual costs for covered part D drugs that exceed a level specified by the Secretary.

(B) Elements

Such program may include elements that promote—

(i) enhanced enrollee understanding to promote the appropriate use of medications by enrollees and to reduce the risk of potential adverse events associated with medications, through beneficiary education, counseling, and other appropriate means;

(ii) increased enrollee adherence with prescription medication regimens through medication refill reminders, special packaging, and other compliance programs and other appropriate means; and

(iii) detection of adverse drug events and patterns of overuse and underuse of prescription drugs.

(C) Development of program in cooperation with licensed pharmacists

Such program shall be developed in cooperation with licensed and practicing pharmacists and physicians.

(D) Coordination with care management plans

The Secretary shall establish guidelines for the coordination of any medication therapy management program under this paragraph with respect to a targeted beneficiary with any care management plan established with respect to such beneficiary under a chronic care improvement program under section 1395b–8 of this title.

(E) Considerations in pharmacy fees

The PDP sponsor of a prescription drug plan shall take into account, in establishing fees for pharmacists and others providing services under such plan, the resources used, and time required to, implement the medication therapy management program under this paragraph. Each such sponsor shall disclose to the Secretary upon request the amount of any such management or dispensing fees. The provisions of section 1396r–8(b)(3)(D) of this title apply to information disclosed under this subparagraph.

(d) Consumer satisfaction surveys

In order to provide for comparative information under section 1395w–101(c)(3)(A)(v) of this title, the Secretary shall conduct consumer satisfaction surveys with respect to PDP sponsors and prescription drug plans in a manner similar to the manner such surveys are conducted for MA organizations and MA plans under part C of this subchapter.

(e) Electronic prescription program

(1) Application of standards

As of such date as the Secretary may specify, but not later than 1 year after the date of promulgation of final standards under paragraph (4)(D), prescriptions and other information described in paragraph (2)(A) for covered part D drugs prescribed for part D eligible individuals that are transmitted electronically shall be transmitted only in accordance with such standards under an electronic prescription drug program that meets the requirements of paragraph (2).

(2) Program requirements

Consistent with uniform standards established under paragraph (3)—

(A) Provision of information to prescribing health care professional and dispensing pharmacies and pharmacists

An electronic prescription drug program shall provide for the electronic transmittal to the prescribing health care professional and to the dispensing pharmacy and pharmacist of the prescription and information on eligibility and benefits (including the drugs included in the applicable formulary, any tiered formulary structure, and any requirements for prior authorization) and of the following information with respect to the prescribing and dispensing of a covered part D drug:

(i) Information on the drug being prescribed or dispensed and other drugs listed on the medication history, including information on drug-drug interactions, warnings or cautions, and, when indicated, dosage adjustments.

(ii) Information on the availability of lower cost, therapeutically appropriate alternatives (if any) for the drug prescribed.

(B) Application to medical history information

Effective on and after such date as the Secretary specifies and after the establishment of appropriate standards to carry out this subparagraph, the program shall provide for the electronic transmittal in a manner similar to the manner under subparagraph (A) of information that relates to the medical history concerning the individual and related to a covered part D drug being prescribed or dispensed, upon request of the professional or pharmacist involved.

(C) Limitations

Information shall only be disclosed under subparagraph (A) or (B) if the disclosure of such information is permitted under the Federal regulations (concerning the privacy of individually identifiable health information) promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

(D) Timing

To the extent feasible, the information exchanged under this paragraph shall be on an interactive, real-time basis.

(3) Standards

(A) In general

The Secretary shall provide consistent with this subsection for the promulgation of uniform standards relating to the requirements for electronic prescription drug programs under paragraph (2).

(B) Objectives

Such standards shall be consistent with the objectives of improving—

(i) patient safety;

(ii) the quality of care provided to patients; and

(iii) efficiencies, including cost savings, in the delivery of care.

(C) Design criteria

Such standards shall—

(i) be designed so that, to the extent practicable, the standards do not impose an undue administrative burden on prescribing health care professionals and dispensing pharmacies and pharmacists;

(ii) be compatible with standards established under part C of subchapter XI of this chapter, standards established under subsection (b)(2)(B)(i) of this section, and with general health information technology standards; and

(iii) be designed so that they permit electronic exchange of drug labeling and drug listing information maintained by the Food and Drug Administration and the National Library of Medicine.

(D) Permitting use of appropriate messaging

Such standards shall allow for the messaging of information only if it relates to

the appropriate prescribing of drugs, including quality assurance measures and systems referred to in subsection (c)(1)(B) of this section.

(E) Permitting patient designation of dispensing pharmacy

(i) In general

Consistent with clause (ii), such standards shall permit a part D eligible individual to designate a particular pharmacy to dispense a prescribed drug.

(ii) No change in benefits

Clause (i) shall not be construed as affecting—

(I) the access required to be provided to pharmacies by a prescription drug plan; or

(II) the application of any differences in benefits or payments under such a plan based on the pharmacy dispensing a covered part D drug.

(4) Development, promulgation, and modification of standards

(A) Initial standards

Not later than September 1, 2005, the Secretary shall develop, adopt, recognize, or modify initial uniform standards relating to the requirements for electronic prescription drug programs described in paragraph (2) taking into consideration the recommendations (if any) from the National Committee on Vital and Health Statistics (as established under section 242k(k) of this title) under subparagraph (B).

(B) Role of NCVHS

The National Committee on Vital and Health Statistics shall develop recommendations for uniform standards relating to such requirements in consultation with the following:

(i) Standard setting organizations (as defined in section 1320d(8) of this title)[1]

(ii) Practicing physicians.

(iii) Hospitals.

(iv) Pharmacies.

(v) Practicing pharmacists.

(vi) Pharmacy benefit managers.

(vii) State boards of pharmacy.

(viii) State boards of medicine.

(ix) Experts on electronic prescribing.

(x) Other appropriate Federal agencies.

(C) Pilot project to test initial standards

(i) In general

During the 1-year period that begins on January 1, 2006, the Secretary shall conduct a pilot project to test the initial standards developed under subparagraph (A) prior to the promulgation of the final uniform standards under subparagraph (D) in order to provide for the efficient implementation of the requirements described in paragraph (2).

(ii) Exception

Pilot testing of standards is not required under clause (i) where there already is adequate industry experience with such standards, as determined by the Secretary after consultation with effected standard setting organizations and industry users.

(iii) Voluntary participation of physicians and pharmacies

In order to conduct the pilot project under clause (i), the Secretary shall enter into agreements with physicians, physician groups, pharmacies, hospitals, PDP sponsors, MA organizations, and other appropriate entities under which health care professionals electronically transmit prescriptions to dispensing pharmacies and pharmacists in accordance with such standards.

(iv) Evaluation and report

(I) Evaluation

The Secretary shall conduct an evaluation of the pilot project conducted under clause (i).

(II) Report to Congress

Not later than April 1, 2007, the Secretary shall submit to Congress a report on the evaluation conducted under subclause (I).

(D) Final standards

Based upon the evaluation of the pilot project under subparagraph (C)(iv)(I) and not later than April 1, 2008, the Secretary shall promulgate uniform standards relating to the requirements described in paragraph (2).

(5) Relation to State laws

The standards promulgated under this subsection shall supersede any State law or regulation that—

(A) is contrary to the standards or restricts the ability to carry out this part; and

(B) pertains to the electronic transmission of medication history and of information on eligibility, benefits, and prescriptions with respect to covered part D drugs under this part.

(6) Establishment of safe harbor

The Secretary, in consultation with the Attorney General, shall promulgate regulations that provide for a safe harbor from sanctions under paragraphs (1) and (2) of section 1320a–7b(b) of this title and an exception to the prohibition under subsection (a)(1) of section 1395nn of this title with respect to the provision of nonmonetary remuneration (in the form of hardware, software, or information technology and training services) necessary and used solely to receive and transmit electronic prescription information in accordance with the standards promulgated under this subsection—

(A) in the case of a hospital, by the hospital to members of its medical staff;

(B) in the case of a group practice (as defined in section 1395nn(h)(4) of this title), by the practice to prescribing health care professionals who are members of such practice; and

(C) in the case of a PDP sponsor or MA organization, by the sponsor or organization to

[1] So in original. Probably should be followed by a period.

pharmacists and pharmacies participating in the network of such sponsor or organization, and to prescribing health care professionals.

(f) Grievance mechanism

Each PDP sponsor shall provide meaningful procedures for hearing and resolving grievances between the sponsor (including any entity or individual through which the sponsor provides covered benefits) and enrollees with prescription drug plans of the sponsor under this part in accordance with section 1395w–22(f) of this title.

(g) Coverage determinations and reconsiderations

(1) Application of coverage determination and reconsideration provisions

A PDP sponsor shall meet the requirements of paragraphs (1) through (3) of section 1395w–22(g) of this title with respect to covered benefits under the prescription drug plan it offers under this part in the same manner as such requirements apply to an MA organization with respect to benefits it offers under an MA plan under part C of this subchapter.

(2) Request for a determination for the treatment of tiered formulary drug

In the case of a prescription drug plan offered by a PDP sponsor that provides for tiered cost-sharing for drugs included within a formulary and provides lower cost-sharing for preferred drugs included within the formulary, a part D eligible individual who is enrolled in the plan may request an exception to the tiered cost-sharing structure. Under such an exception, a nonpreferred drug could be covered under the terms applicable for preferred drugs if the prescribing physician determines that the preferred drug for treatment of the same condition either would not be as effective for the individual or would have adverse effects for the individual or both. A PDP sponsor shall have an exceptions process under this paragraph consistent with guidelines established by the Secretary for making a determination with respect to such a request. Denial of such an exception shall be treated as a coverage denial for purposes of applying subsection (h) of this section.

(h) Appeals

(1) In general

Subject to paragraph (2), a PDP sponsor shall meet the requirements of paragraphs (4) and (5) of section 1395w–22(g) of this title with respect to benefits (including a determination related to the application of tiered cost-sharing described in subsection (g)(2) of this section) in a manner similar (as determined by the Secretary) to the manner such requirements apply to an MA organization with respect to benefits under the original medicare fee-for-service program option it offers under an MA plan under part C of this subchapter. In applying this paragraph only the part D eligible individual shall be entitled to bring such an appeal.

(2) Limitation in cases on nonformulary determinations

A part D eligible individual who is enrolled in a prescription drug plan offered by a PDP sponsor may appeal under paragraph (1) a determination not to provide for coverage of a covered part D drug that is not on the formulary under the plan only if the prescribing physician determines that all covered part D drugs on any tier of the formulary for treatment of the same condition would not be as effective for the individual as the nonformulary drug, would have adverse effects for the individual, or both.

(3) Treatment of nonformulary determinations

If a PDP sponsor determines that a plan provides coverage for a covered part D drug that is not on the formulary of the plan, the drug shall be treated as being included on the formulary for purposes of section 1395w–102(b)(4)(C)(i) of this title.

(i) Privacy, confidentiality, and accuracy of enrollee records

The provisions of section 1395w–22(h) of this title shall apply to a PDP sponsor and prescription drug plan in the same manner as it applies to an MA organization and an MA plan.

(j) Treatment of accreditation

Subparagraph (A) of section 1395w–22(e)(4) of this title (relating to treatment of accreditation) shall apply to a PDP sponsor under this part with respect to the following requirements, in the same manner as it applies to an MA organization with respect to the requirements in subparagraph (B) (other than clause (vii) thereof) of such section:

(1) Subsection (b) of this section (relating to access to covered part D drugs).

(2) Subsection (c) of this section (including quality assurance and medication therapy management).

(3) Subsection (i) of this section (relating to confidentiality and accuracy of enrollee records).

(k) Public disclosure of pharmaceutical prices for equivalent drugs

(1) In general

A PDP sponsor offering a prescription drug plan shall provide that each pharmacy that dispenses a covered part D drug shall inform an enrollee of any differential between the price of the drug to the enrollee and the price of the lowest priced generic covered part D drug under the plan that is therapeutically equivalent and bioequivalent and available at such pharmacy.

(2) Timing of notice

(A) In general

Subject to subparagraph (B), the information under paragraph (1) shall be provided at the time of purchase of the drug involved, or, in the case of dispensing by mail order, at the time of delivery of such drug.

(B) Waiver

The Secretary may waive subparagraph (A) in such circumstances as the Secretary may specify.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D–4, as added Pub. L. 108–173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2082.)

REFERENCES IN TEXT

Part C of subchapter XI of this chapter, referred to in subsecs. (b)(2)(B)(i) and (e)(3)(C)(ii), is classified to section 1320d et seq. of this title.

Part C of this subchapter, referred to in subsecs. (d), (g)(1), and (h)(1), is classified to section 1395w–21 et seq. of this title.

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (e)(2)(C), is section 264(c) of Pub. L. 104–191, title II, Aug. 21, 1996, 110 Stat. 2033, which was formerly set out as a note under section 1320d–2 of this title.

GRANTS TO PHYSICIANS TO IMPLEMENT ELECTRONIC PRESCRIPTION DRUG PROGRAMS

Pub. L. 108–173, title I, § 108, Dec. 8, 2003, 117 Stat. 2172, provided that:

''(a) IN GENERAL.—The Secretary [of Health and Human Services] is authorized to make grants to physicians for the purpose of assisting such physicians to implement electronic prescription drug programs that comply with the standards promulgated or modified under section 1860D–4(e) of the Social Security Act [subsec. (e) of this section], as inserted by section 101(a).

''(b) AWARDING OF GRANTS.—

''(1) APPLICATION.—No grant may be made under this section except pursuant to a grant application that is submitted and approved in a time, manner, and form specified by the Secretary.

''(2) CONSIDERATIONS AND PREFERENCES.—In awarding grants under this section, the Secretary shall—

''(A) give special consideration to physicians who serve a disproportionate number of medicare patients; and

''(B) give preference to physicians who serve a rural or underserved area.

''(3) LIMITATION ON GRANTS.—Only 1 grant may be awarded under this section with respect to any physician or group practice of physicians.

''(c) TERMS AND CONDITIONS.—

''(1) IN GENERAL.—Grants under this section shall be made under such terms and conditions as the Secretary specifies consistent with this section.

''(2) USE OF GRANT FUNDS.—Funds provided under grants under this section may be used for any of the following:

''(A) For purchasing, leasing, and installing computer software and hardware, including handheld computer technologies.

''(B) Making upgrades and other improvements to existing computer software and hardware to enable e-prescribing.

''(C) Providing education and training to eligible physician staff on the use of technology to implement the electronic transmission of prescription and patient information.

''(3) PROVISION OF INFORMATION.—As a condition for the awarding of a grant under this section, an applicant shall provide to the Secretary such information as the Secretary may require in order to—

''(A) evaluate the project for which the grant is made; and

''(B) ensure that funding provided under the grant is expended only for the purposes for which it is made.

''(4) AUDIT.—The Secretary shall conduct appropriate audits of grants under this section.

''(5) MATCHING REQUIREMENT.—The applicant for a grant under this section shall agree, with respect to the costs to be incurred by the applicant in implementing an electronic prescription drug program, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 50 percent of such costs. Non-Federal contributions under the previous sentence may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such contributions.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 2007 and such sums as may be necessary for each of fiscal years 2008 and 2009.''

SUBPART 2—PRESCRIPTION DRUG PLANS; PDP SPONSORS; FINANCING

§ 1395w–111. PDP regions; submission of bids; plan approval

(a) Establishment of PDP regions; service areas

(1) Coverage of entire PDP region

The service area for a prescription drug plan shall consist of an entire PDP region established under paragraph (2).

(2) Establishment of PDP regions

(A) In general

The Secretary shall establish, and may revise, PDP regions in a manner that is consistent with the requirements for the establishment and revision of MA regions under subparagraphs (B) and (C) of section 1395w–27a(a)(2) of this title.

(B) Relation to MA regions

To the extent practicable, PDP regions shall be the same as MA regions under section 1395w–27a(a)(2) of this title. The Secretary may establish PDP regions which are not the same as MA regions if the Secretary determines that the establishment of different regions under this part would improve access to benefits under this part.

(C) Authority for territories

The Secretary shall establish, and may revise, PDP regions for areas in States that are not within the 50 States or the District of Columbia.

(3) National plan

Nothing in this subsection shall be construed as preventing a prescription drug plan from being offered in more than one PDP region (including all PDP regions).

(b) Submission of bids, premiums, and related information

(1) In general

A PDP sponsor shall submit to the Secretary information described in paragraph (2) with respect to each prescription drug plan it offers. Such information shall be submitted at the same time and in a similar manner to the manner in which information described in paragraph (6) of section 1395w–24(a) of this title is submitted by an MA organization under paragraph (1) of such section.

(2) Information described

The information described in this paragraph is information on the following:

(A) Coverage provided

The prescription drug coverage provided under the plan, including the deductible and other cost-sharing.

(B) Actuarial value

The actuarial value of the qualified prescription drug coverage in the region for a

part D eligible individual with a national average risk profile for the factors described in section 1395w–115(c)(1)(A) of this title (as specified by the Secretary).

(C) Bid

Information on the bid, including an actuarial certification of—

(i) the basis for the actuarial value described in subparagraph (B) assumed in such bid;

(ii) the portion of such bid attributable to basic prescription drug coverage and, if applicable, the portion of such bid attributable to supplemental benefits;

(iii) assumptions regarding the reinsurance subsidy payments provided under section 1395w–115(b) of this title subtracted from the actuarial value to produce such bid; and

(iv) administrative expenses assumed in the bid.

(D) Service area

The service area for the plan.

(E) Level of risk assumed

(i) In general

Whether the PDP sponsor requires a modification of risk level under clause (ii) and, if so, the extent of such modification. Any such modification shall apply with respect to all prescription drug plans offered by a PDP sponsor in a PDP region. This subparagraph shall not apply to an MA–PD plan.

(ii) Risk levels described

A modification of risk level under this clause may consist of one or more of the following:

(I) Increase in Federal percentage assumed in initial risk corridor

An equal percentage point increase in the percents applied under subparagraphs (B)(i), (B)(ii)(I), (C)(i), and (C)(ii)(I) of section 1395w–115(e)(2) of this title. In no case shall the application of previous sentence prevent the application of a higher percentage under section 1395w–115(e)(2)(B)(iii)[1] of this title.

(II) Increase in Federal percentage assumed in second risk corridor

An equal percentage point increase in the percents applied under subparagraphs (B)(ii)(II) and (C)(ii)(II) of section 1395w–115(e)(2) of this title.

(III) Decrease in size of risk corridors

A decrease in the threshold risk percentages specified in section 1395w–115(e)(3)(C) of this title.

(F) Additional information

Such other information as the Secretary may require to carry out this part.

(3) Paperwork reduction for offering of prescription drug plans nationally or in multi-region areas

The Secretary shall establish requirements for information submission under this subsection in a manner that promotes the offering of such plans in more than one PDP region (including all regions) through the filing of consolidated information.

(c) Actuarial valuation

(1) Processes

For purposes of this part, the Secretary shall establish processes and methods for determining the actuarial valuation of prescription drug coverage, including—

(A) an actuarial valuation of standard prescription drug coverage under section 1395w–102(b) of this title;

(B) actuarial valuations relating to alternative prescription drug coverage under section 1395w–102(c)(1) of this title;

(C) an actuarial valuation of the reinsurance subsidy payments under section 1395w–115(b) of this title;

(D) the use of generally accepted actuarial principles and methodologies; and

(E) applying the same methodology for determinations of actuarial valuations under subparagraphs (A) and (B).

(2) Accounting for drug utilization

Such processes and methods for determining actuarial valuation shall take into account the effect that providing alternative prescription drug coverage (rather than standard prescription drug coverage) has on drug utilization.

(3) Responsibilities

(A) Plan responsibilities

PDP sponsors and MA organizations are responsible for the preparation and submission of actuarial valuations required under this part for prescription drug plans and MA–PD plans they offer.

(B) Use of outside actuaries

Under the processes and methods established under paragraph (1), PDP sponsors offering prescription drug plans and MA organizations offering MA–PD plans may use actuarial opinions certified by independent, qualified actuaries to establish actuarial values.

(d) Review of information and negotiation

(1) Review of information

The Secretary shall review the information filed under subsection (b) of this section for the purpose of conducting negotiations under paragraph (2).

(2) Negotiation regarding terms and conditions

Subject to subsection (i) of this section, in exercising the authority under paragraph (1), the Secretary—

(A) has the authority to negotiate the terms and conditions of the proposed bid submitted and other terms and conditions of a proposed plan; and

(B) has authority similar to the authority of the Director of the Office of Personnel Management with respect to health benefits plans under chapter 89 of title 5.

(e) Approval of proposed plans

(1) In general

After review and negotiation under subsection (d) of this section, the Secretary shall

[1] See References in Text note below.

approve or disapprove the prescription drug plan.

(2) Requirements for approval

The Secretary may approve a prescription drug plan only if the following requirements are met:

(A) Compliance with requirements

The plan and the PDP sponsor offering the plan comply with the requirements under this part, including the provision of qualified prescription drug coverage.

(B) Actuarial determinations

The Secretary determines that the plan and PDP sponsor meet the requirements under this part relating to actuarial determinations, including such requirements under section 1395w–102(c) of this title.

(C) Application of FEHBP standard

(i) In general

The Secretary determines that the portion of the bid submitted under subsection (b) of this section that is attributable to basic prescription drug coverage is supported by the actuarial bases provided under such subsection and reasonably and equitably reflects the revenue requirements (as used for purposes of section 300e–1(8)(C) of this title) for benefits provided under that plan, less the sum (determined on a monthly per capita basis) of the actuarial value of the reinsurance payments under section 1395w–115(b) of this title.

(ii) Supplemental coverage

The Secretary determines that the portion of the bid submitted under subsection (b) of this section that is attributable to supplemental prescription drug coverage pursuant to section 1395w–102(a)(2) of this title is supported by the actuarial bases provided under such subsection and reasonably and equitably reflects the revenue requirements (as used for purposes of section 300e–1(8)(C) of this title) for such coverage under the plan.

(D) Plan design

(i) In general

The Secretary does not find that the design of the plan and its benefits (including any formulary and tiered formulary structure) are likely to substantially discourage enrollment by certain part D eligible individuals under the plan.

(ii) Use of categories and classes in formularies

The Secretary may not find that the design of categories and classes within a formulary violates clause (i) if such categories and classes are consistent with guidelines (if any) for such categories and classes established by the United States Pharmacopeia.

(f) Application of limited risk plans

(1) Conditions for approval of limited risk plans

The Secretary may only approve a limited risk plan (as defined in paragraph (4)(A)) for a PDP region if the access requirements under section 1395w–103(a) of this title would not be met for the region but for the approval of such a plan (or a fallback prescription drug plan under subsection (g) of this section).

(2) Rules

The following rules shall apply with respect to the approval of a limited risk plan in a PDP region:

(A) Limited exercise of authority

Only the minimum number of such plans may be approved in order to meet the access requirements under section 1395w–103(a) of this title.

(B) Maximizing assumption of risk

The Secretary shall provide priority in approval for those plans bearing the highest level of risk (as computed by the Secretary), but the Secretary may take into account the level of the bids submitted by such plans.

(C) No full underwriting for limited risk plans

In no case may the Secretary approve a limited risk plan under which the modification of risk level provides for no (or a de minimis) level of financial risk.

(3) Acceptance of all full risk contracts

There shall be no limit on the number of full risk plans that are approved under subsection (e) of this section.

(4) Risk-plans defined

For purposes of this subsection:

(A) Limited risk plan

The term ''limited risk plan'' means a prescription drug plan that provides basic prescription drug coverage and for which the PDP sponsor includes a modification of risk level described in subparagraph (E) of subsection (b)(2) of this section in its bid submitted for the plan under such subsection. Such term does not include a fallback prescription drug plan.

(B) Full risk plan

The term ''full risk plan'' means a prescription drug plan that is not a limited risk plan or a fallback prescription drug plan.

(g) Guaranteeing access to coverage

(1) Solicitation of bids

(A) In general

Separate from the bidding process under subsection (b) of this section, the Secretary shall provide for a process for the solicitation of bids from eligible fallback entities (as defined in paragraph (2)) for the offering in all fallback service areas (as defined in paragraph (3)) in one or more PDP regions of a fallback prescription drug plan (as defined in paragraph (4)) during the contract period specified in paragraph (5).

(B) Acceptance of bids

(i) In general

Except as provided in this subparagraph, the provisions of subsection (e) of this sec-

tion shall apply with respect to the approval or disapproval of fallback prescription drug plans. The Secretary shall enter into contracts under this subsection with eligible fallback entities for the offering of fallback prescription drug plans so approved in fallback service areas.

(ii) Limitation of 1 plan for all fallback service areas in a PDP region

With respect to all fallback service areas in any PDP region for a contract period, the Secretary shall approve the offering of only 1 fallback prescription drug plan.

(iii) Competitive procedures

Competitive procedures (as defined in section 403(5) of title 41) shall be used to enter into a contract under this subsection. The provisions of subsection (d) of section 1395kk–1 of this title shall apply to a contract under this section in the same manner as they apply to a contract under such section.

(iv) Timing

The Secretary shall approve a fallback prescription drug plan for a PDP region in a manner so that, if there are any fallback service areas in the region for a year, the fallback prescription drug plan is offered at the same time as prescription drug plans would otherwise be offered.

(V)[2] No national fallback plan

The Secretary shall not enter into a contract with a single fallback entity for the offering of fallback plans throughout the United States.

(2) Eligible fallback entity

For purposes of this section, the term ''eligible fallback entity'' means, with respect to all fallback service areas in a PDP region for a contract period, an entity that—

(A) meets the requirements to be a PDP sponsor (or would meet such requirements but for the fact that the entity is not a risk-bearing entity); and

(B) does not submit a bid under subsection (b) of this section for any prescription drug plan for any PDP region for the first year of such contract period.

For purposes of subparagraph (B), an entity shall be treated as submitting a bid with respect to a prescription drug plan if the entity is acting as a subcontractor of a PDP sponsor that is offering such a plan. The previous sentence shall not apply to entities that are subcontractors of an MA organization except insofar as such organization is acting as a PDP sponsor with respect to a prescription drug plan.

(3) Fallback service area

For purposes of this subsection, the term ''fallback service area'' means, for a PDP region with respect to a year, any area within such region for which the Secretary determines before the beginning of the year that the access requirements of the first sentence of section 1395w–103(a) of this title will not be met for part D eligible individuals residing in the area for the year.

(4) Fallback prescription drug plan

For purposes of this part, the term ''fallback prescription drug plan'' means a prescription drug plan that—

(A) only offers the standard prescription drug coverage and access to negotiated prices described in section 1395w–102(a)(1)(A) of this title and does not include any supplemental prescription drug coverage; and

(B) meets such other requirements as the Secretary may specify.

(5) Payments under the contract

(A) In general

A contract entered into under this subsection shall provide for—

(i) payment for the actual costs (taking into account negotiated price concessions described in section 1395w–102(d)(1)(B) of this title) of covered part D drugs provided to part D eligible individuals enrolled in a fallback prescription drug plan offered by the entity; and

(ii) payment of management fees that are tied to performance measures established by the Secretary for the management, administration, and delivery of the benefits under the contract.

(B) Performance measures

The performance measures established by the Secretary pursuant to subparagraph (A)(ii) shall include at least measures for each of the following:

(i) Costs

The entity contains costs to the Medicare Prescription Drug Account and to part D eligible individuals enrolled in a fallback prescription drug plan offered by the entity through mechanisms such as generic substitution and price discounts.

(ii) Quality programs

The entity provides such enrollees with quality programs that avoid adverse drug reactions and overutilization and reduce medical errors.

(iii) Customer service

The entity provides timely and accurate delivery of services and pharmacy and beneficiary support services.

(iv) Benefit administration and claims adjudication

The entity provides efficient and effective benefit administration and claims adjudication.

(6) Monthly beneficiary premium

Except as provided in section 1395w–113(b) of this title (relating to late enrollment penalty) and subject to section 1395w–114 of this title (relating to low-income assistance), the monthly beneficiary premium to be charged under a fallback prescription drug plan offered in all fallback service areas in a PDP region

[2] So in original. Probably should be ''(v)''.

shall be uniform and shall be equal to 25.5 percent of an amount equal to the Secretary's estimate of the average monthly per capita actuarial cost, including administrative expenses, under the fallback prescription drug plan of providing coverage in the region, as calculated by the Chief Actuary of the Centers for Medicare & Medicaid Services. In calculating such administrative expenses, the Chief Actuary shall use a factor that is based on similar expenses of prescription drug plans that are not fallback prescription drug plans.

(7) General contract terms and conditions

(A) In general

Except as may be appropriate to carry out this section, the terms and conditions of contracts with eligible fallback entities offering fallback prescription drug plans under this subsection shall be the same as the terms and conditions of contracts under this part for prescription drug plans.

(B) Period of contract

(i) In general

Subject to clause (ii), a contract approved for a fallback prescription drug plan for fallback service areas for a PDP region under this section shall be for a period of 3 years (except as may be renewed after a subsequent bidding process).

(ii) Limitation

A fallback prescription drug plan may be offered under a contract in an area for a year only if that area is a fallback service area for that year.

(C) Entity not permitted to market or brand fallback prescription drug plans

An eligible fallback entity with a contract under this subsection may not engage in any marketing or branding of a fallback prescription drug plan.

(h) Annual report on use of limited risk plans and fallback plans

The Secretary shall submit to Congress an annual report that describes instances in which limited risk plans and fallback prescription drug plans were offered under subsections (f) and (g) of this section. The Secretary shall include in such report such recommendations as may be appropriate to limit the need for the provision of such plans and to maximize the assumption of financial risk under section subsection (f) of this section.

(i) Noninterference

In order to promote competition under this part and in carrying out this part, the Secretary—

(1) may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors; and

(2) may not require a particular formulary or institute a price structure for the reimbursement of covered part D drugs.

(j) Coordination of benefits

A PDP sponsor offering a prescription drug plan shall permit State Pharmaceutical Assistance Programs and Rx plans under sections 1395w–133 and 1395w–134 of this title to coordinate benefits with the plan and, in connection with such coordination with such a Program, not to impose fees that are unrelated to the cost of coordination.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–11, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2092.)

REFERENCES IN TEXT

Section 1395w–115(e)(2)(B)(iii) of this title, referred to in subsec. (b)(2)(E)(ii)(I), was in the original ''section 1869D–15(e)(2)(B)(iii)'', and was translated as reading ''section 1860D–15(e)(2)(B)(iii)'', meaning 1860D–15(e)(2)(B)(iii) of the Social Security Act, to reflect the probable intent of Congress, because the Social Security Act does not contain a section 1869D–15 and section 1395w–115(e)(2)(B)(iii) of this title provides for an application of a higher percentage for years 2006 and 2007.

STUDY REGARDING REGIONAL VARIATIONS IN PRESCRIPTION DRUG SPENDING

Pub. L. 108–173, title I, § 107(a), Dec. 8, 2003, 117 Stat. 2169, provided that:

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall conduct a study that examines variations in per capita spending for covered part D drugs under part D of title XVIII of the Social Security Act [this part] among PDP regions and, with respect to such spending, the amount of such variation that is attributable to—

''(A) price variations (described in section 1860D–15(c)(2) of such Act [section 1395w–115(c)(2) of this title]); and

''(B) differences in per capita utilization that is not taken into account in the health status risk adjustment provided under section 1860D–15(c)(1) of such Act [section 1395w–115(c)(1) of this title].

''(2) REPORT AND RECOMMENDATIONS.—Not later than January 1, 2009, the Secretary shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include—

''(A) information regarding the extent of geographic variation described in paragraph (1)(B);

''(B) an analysis of the impact on direct subsidies under section 1860D–15(a)(1) of the Social Security Act [section 1395w–115(a)(1) of this title] in different PDP regions if such subsidies were adjusted to take into account the variation described in subparagraph (A); and

''(C) recommendations regarding the appropriateness of applying an additional geographic adjustment factor under section 1860D–15(c)(2) [section 1395w–115(c)(2) of this title] that reflects some or all of the variation described in subparagraph (A).''

§ 1395w–112. Requirements for and contracts with prescription drug plan (PDP) sponsors

(a) General requirements

Each PDP sponsor of a prescription drug plan shall meet the following requirements:

(1) Licensure

Subject to subsection (c) of this section, the sponsor is organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers a prescription drug plan.

(2) Assumption of financial risk for unsubsidized coverage

(A) In general

Subject to subparagraph (B), to the extent that the entity is at risk the entity assumes

financial risk on a prospective basis for benefits that it offers under a prescription drug plan and that is not covered under section 1395w–115(b) of this title.

(B) Reinsurance permitted

The plan sponsor may obtain insurance or make other arrangements for the cost of coverage provided to any enrollee to the extent that the sponsor is at risk for providing such coverage.

(3) Solvency for unlicensed sponsors

In the case of a PDP sponsor that is not described in paragraph (1) and for which a waiver has been approved under subsection (c) of this section, such sponsor shall meet solvency standards established by the Secretary under subsection (d) of this section.

(b) Contract requirements

(1) In general

The Secretary shall not permit the enrollment under section 1395w–101 of this title in a prescription drug plan offered by a PDP sponsor under this part, and the sponsor shall not be eligible for payments under section 1395w–114 or 1395w–115 of this title, unless the Secretary has entered into a contract under this subsection with the sponsor with respect to the offering of such plan. Such a contract with a sponsor may cover more than one prescription drug plan. Such contract shall provide that the sponsor agrees to comply with the applicable requirements and standards of this part and the terms and conditions of payment as provided for in this part.

(2) Limitation on entities offering fallback prescription drug plans

The Secretary shall not enter into a contract with a PDP sponsor for the offering of a prescription drug plan (other than a fallback prescription drug plan) in a PDP region for a year if the sponsor—

(A) submitted a bid under section 1395w–111(g) of this title for such year (as the first year of a contract period under such section) to offer a fallback prescription drug plan in any PDP region;

(B) offers a fallback prescription drug plan in any PDP region during the year; or

(C) offered a fallback prescription drug plan in that PDP region during the previous year.

For purposes of this paragraph, an entity shall be treated as submitting a bid with respect to a prescription drug plan or offering a fallback prescription drug plan if the entity is acting as a subcontractor of a PDP sponsor that is offering such a plan. The previous sentence shall not apply to entities that are subcontractors of an MA organization except insofar as such organization is acting as a PDP sponsor with respect to a prescription drug plan.

(3) Incorporation of certain medicare advantage contract requirements

Except as otherwise provided, the following provisions of section 1395w–27 of this title shall apply to contracts under this section in the same manner as they apply to contracts under section 1395w–27(a) of this title:

(A) Minimum enrollment

Paragraphs (1) and (3) of section 1395w–27(b) of this title, except that—

(i) the Secretary may increase the minimum number of enrollees required under such paragraph (1) as the Secretary determines appropriate; and

(ii) the requirement of such paragraph (1) shall be waived during the first contract year with respect to an organization in a region.

(B) Contract period and effectiveness

Section 1395w–27(c) of this title, except that in applying paragraph (4)(B) of such section any reference to payment amounts under section 1395w–23 of this title shall be deemed payment amounts under section 1395w–115 of this title.

(C) Protections against fraud and beneficiary protections

Section 1395w–27(d) of this title.

(D) Additional contract terms

Section 1395w–27(e) of this title; except that section 1395w–27(e)(2) of this title shall apply as specified to PDP sponsors and payments under this part to an MA–PD plan shall be treated as expenditures made under part D.

(E) Intermediate sanctions

Section 1395w–27(g) of this title (other than paragraph (1)(F) of such section), except that in applying such section the reference in section 1395w–27(g)(1)(B) of this title to section 1395w–24 of this title is deemed a reference to this part.

(F) Procedures for termination

Section 1395w–27(h) of this title.

(c) Waiver of certain requirements to expand choice

(1) Authorizing waiver

(A) In general

In the case of an entity that seeks to offer a prescription drug plan in a State, the Secretary shall waive the requirement of subsection (a)(1) of this section that the entity be licensed in that State if the Secretary determines, based on the application and other evidence presented to the Secretary, that any of the grounds for approval of the application described in paragraph (2) have been met.

(B) Application of regional plan waiver rule

In addition to the waiver available under subparagraph (A), the provisions of section 1395w–27a(d) of this title shall apply to PDP sponsors under this part in a manner similar to the manner in which such provisions apply to MA organizations under part C of this subchapter, except that no application shall be required under paragraph (1)(B) of such section in the case of a State that does not provide a licensing process for such a sponsor.

(2) Grounds for approval

(A) In general

The grounds for approval under this paragraph are—

(i) subject to subparagraph (B), the grounds for approval described in subparagraphs (B), (C), and (D) of section 1395w–25(a)(2) of this title; and

(ii) the application by a State of any grounds other than those required under Federal law.

(B) Special rules

In applying subparagraph (A)(i)—

(i) the ground of approval described in section 1395w–25(a)(2)(B) of this title is deemed to have been met if the State does not have a licensing process in effect with respect to the PDP sponsor; and

(ii) for plan years beginning before January 1, 2008, if the State does have such a licensing process in effect, such ground for approval described in such section is deemed to have been met upon submission of an application described in such section.

(3) Application of waiver procedures

With respect to an application for a waiver (or a waiver granted) under paragraph (1)(A) of this subsection, the provisions of subparagraphs (E), (F), and (G) of section 1395w–25(a)(2) of this title shall apply, except that clauses (i) and (ii) of such subparagraph (E) shall not apply in the case of a State that does not have a licensing process described in paragraph (2)(B)(i) in effect.

(4) References to certain provisions

In applying provisions of section 1395w–25(a)(2) of this title under paragraphs (2) and (3) of this subsection to prescription drug plans and PDP sponsors—

(A) any reference to a waiver application under section 1395w–25 of this title shall be treated as a reference to a waiver application under paragraph (1)(A) of this subsection; and

(B) any reference to solvency standards shall be treated as a reference to solvency standards established under subsection (d) of this section.

(d) Solvency standards for non-licensed entities

(1) Establishment and publication

The Secretary, in consultation with the National Association of Insurance Commissioners, shall establish and publish, by not later than January 1, 2005, financial solvency and capital adequacy standards for entities described in paragraph (2).

(2) Compliance with standards

A PDP sponsor that is not licensed by a State under subsection (a)(1) of this section and for which a waiver application has been approved under subsection (c) of this section shall meet solvency and capital adequacy standards established under paragraph (1). The Secretary shall establish certification procedures for such sponsors with respect to such solvency standards in the manner described in section 1395w–25(c)(2) of this title.

(e) Licensure does not substitute for or constitute certification

The fact that a PDP sponsor is licensed in accordance with subsection (a)(1) of this section or has a waiver application approved under subsection (c) of this section does not deem the sponsor to meet other requirements imposed under this part for a sponsor.

(f) Periodic review and revision of standards

(1) In general

Subject to paragraph (2), the Secretary may periodically review the standards established under this section and, based on such review, may revise such standards if the Secretary determines such revision to be appropriate.

(2) Prohibition of midyear implementation of significant new regulatory requirements

The Secretary may not implement, other than at the beginning of a calendar year, regulations under this section that impose new, significant regulatory requirements on a PDP sponsor or a prescription drug plan.

(g) Prohibition of State imposition of premium taxes; relation to State laws

The provisions of sections 1395w–24(g) and 1395w–26(b)(3) of this title shall apply with respect to PDP sponsors and prescription drug plans under this part in the same manner as such sections apply to MA organizations and MA plans under part C of this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–12, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2099.)

REFERENCES IN TEXT

Part C of this subchapter, referred to in subsecs. (c)(1)(B) and (g), is classified to section 1395w–21 et seq. of this title.

§ 1395w–113. Premiums; late enrollment penalty

(a) Monthly beneficiary premium

(1) Computation

(A) In general

The monthly beneficiary premium for a prescription drug plan is the base beneficiary premium computed under paragraph (2) as adjusted under this paragraph.

(B) Adjustment to reflect difference between bid and national average bid

(i) Above average bid

If for a month the amount of the standardized bid amount (as defined in paragraph (5)) exceeds the amount of the adjusted national average monthly bid amount (as defined in clause (iii)), the base beneficiary premium for the month shall be increased by the amount of such excess.

(ii) Below average bid

If for a month the amount of the adjusted national average monthly bid amount for the month exceeds the standardized bid amount, the base beneficiary premium for the month shall be decreased by the amount of such excess.

(iii) Adjusted national average monthly bid amount defined

For purposes of this subparagraph, the term ''adjusted national average monthly bid amount'' means the national average

monthly bid amount computed under paragraph (4), as adjusted under section 1395w–115(c)(2) of this title.

(C) Increase for supplemental prescription drug benefits

The base beneficiary premium shall be increased by the portion of the PDP approved bid that is attributable to supplemental prescription drug benefits.

(D) Increase for late enrollment penalty

The base beneficiary premium shall be increased by the amount of any late enrollment penalty under subsection (b) of this section.

(E) Decrease for low-income assistance

The monthly beneficiary premium is subject to decrease in the case of a subsidy eligible individual under section 1395w–114 of this title.

(F) Uniform premium

Except as provided in subparagraphs (D) and (E), the monthly beneficiary premium for a prescription drug plan in a PDP region is the same for all part D eligible individuals enrolled in the plan.

(2) Base beneficiary premium

The base beneficiary premium under this paragraph for a prescription drug plan for a month is equal to the product[1]—

(A) the beneficiary premium percentage (as specified in paragraph (3)); and

(B) the national average monthly bid amount (computed under paragraph (4)) for the month.

(3) Beneficiary premium percentage

For purposes of this subsection, the beneficiary premium percentage for any year is the percentage equal to a fraction—

(A) the numerator of which is 25.5 percent; and

(B) the denominator of which is 100 percent minus a percentage equal to—

(i) the total reinsurance payments which the Secretary estimates are payable under section 1395w–115(b) of this title with respect to the coverage year; divided by

(ii) the sum of—

(I) the amount estimated under clause (i) for the year; and

(II) the total payments which the Secretary estimates will be paid to prescription drug plans and MA–PD plans that are attributable to the standardized bid amount during the year, taking into account amounts paid by the Secretary and enrollees.

(4) Computation of national average monthly bid amount

(A) In general

For each year (beginning with 2006) the Secretary shall compute a national average monthly bid amount equal to the average of the standardized bid amounts (as defined in paragraph (5)) for each prescription drug plan and for each MA–PD plan described in section 1395w–21(a)(2)(A)(i) of this title. Such average does not take into account the bids submitted for MSA plans, MA private fee-for-service plan, and specialized MA plans for special needs individuals, PACE programs under section 1395eee of this title (pursuant to section 1395w–131(f) of this title), and under reasonable cost reimbursement contracts under section 1395mm(h) of this title (pursuant to section 1395w–131(e) of this title).

(B) Weighted average

(i) In general

The monthly national average monthly bid amount computed under subparagraph (A) for a year shall be a weighted average, with the weight for each plan being equal to the average number of part D eligible individuals enrolled in such plan in the reference month (as defined in section 1395w–27a(f)(4) of this title).

(ii) Special rule for 2006

For purposes of applying this paragraph for 2006, the Secretary shall establish procedures for determining the weighted average under clause (i) for 2005.

(5) Standardized bid amount defined

For purposes of this subsection, the term ''standardized bid amount'' means the following:

(A) Prescription drug plans

(i) Basic coverage

In the case of a prescription drug plan that provides basic prescription drug coverage, the PDP approved bid (as defined in paragraph (6)).

(ii) Supplemental coverage

In the case of a prescription drug plan that provides supplemental prescription drug coverage, the portion of the PDP approved bid that is attributable to basic prescription drug coverage.

(B) MA–PD plans

In the case of an MA–PD plan, the portion of the accepted bid amount that is attributable to basic prescription drug coverage.

(6) PDP approved bid defined

For purposes of this part, the term ''PDP approved bid'' means, with respect to a prescription drug plan, the bid amount approved for the plan under this part.

(b) Late enrollment penalty

(1) In general

Subject to the succeeding provisions of this subsection, in the case of a part D eligible individual described in paragraph (2) with respect to a continuous period of eligibility, there shall be an increase in the monthly beneficiary premium established under subsection (a) of this section in an amount determined under paragraph (3).

(2) Individuals subject to penalty

A part D eligible individual described in this paragraph is, with respect to a continuous pe-

[1] So in original. The word ''of'' probably should appear after ''product''.

riod of eligibility, an individual for whom there is a continuous period of 63 days or longer (all of which in such continuous period of eligibility) beginning on the day after the last date of the individual's initial enrollment period under section 1395w–101(b)(2) of this title and ending on the date of enrollment under a prescription drug plan or MA–PD plan during all of which the individual was not covered under any creditable prescription drug coverage.

(3) Amount of penalty

(A) In general

The amount determined under this paragraph for a part D eligible individual for a continuous period of eligibility is the greater of—

(i) an amount that the Secretary determines is actuarially sound for each uncovered month (as defined in subparagraph (B)) in the same continuous period of eligibility; or

(ii) 1 percent of the base beneficiary premium (computed under subsection (a)(2) of this section) for each such uncovered month in such period.

(B) Uncovered month defined

For purposes of this subsection, the term ''uncovered month'' means, with respect to a part D eligible individual, any month beginning after the end of the initial enrollment period under section 1395w–101(b)(2) of this title unless the individual can demonstrate that the individual had creditable prescription drug coverage (as defined in paragraph (4)) for any portion of such month.

(4) Creditable prescription drug coverage defined

For purposes of this part, the term ''creditable prescription drug coverage'' means any of the following coverage, but only if the coverage meets the requirement of paragraph (5):

(A) Coverage under prescription drug plan or MA–PD plan

Coverage under a prescription drug plan or under an MA–PD plan.

(B) Medicaid

Coverage under a medicaid plan under subchapter XIX of this chapter or under a waiver under section 1315 of this title.

(C) Group health plan

Coverage under a group health plan, including a health benefits plan under chapter 89 of title 5 (commonly known as the Federal employees health benefits program), and a qualified retiree prescription drug plan (as defined in section 1395w–132(a)(2) of this title).

(D) State pharmaceutical assistance program

Coverage under a State pharmaceutical assistance program described in section 1395w–133(b)(1) of this title.

(E) Veterans' coverage of prescription drugs

Coverage for veterans, and survivors and dependents of veterans, under chapter 17 of title 38.

(F) Prescription drug coverage under medigap policies

Coverage under a medicare supplemental policy under section 1395ss of this title that provides benefits for prescription drugs (whether or not such coverage conforms to the standards for packages of benefits under section 1395ss(p)(1) of this title).

(G) Military coverage (including TRICARE)

Coverage under chapter 55 of title 10.

(H) Other coverage

Such other coverage as the Secretary determines appropriate.

(5) Actuarial equivalence requirement

Coverage meets the requirement of this paragraph only if the coverage is determined (in a manner specified by the Secretary) to provide coverage of the cost of prescription drugs the actuarial value of which (as defined by the Secretary) to the individual equals or exceeds the actuarial value of standard prescription drug coverage (as determined under section 1395w–111(c) of this title).

(6) Procedures to document creditable prescription drug coverage

(A) In general

The Secretary shall establish procedures (including the form, manner, and time) for the documentation of creditable prescription drug coverage, including procedures to assist in determining whether coverage meets the requirement of paragraph (5).

(B) Disclosure by entities offering creditable prescription drug coverage

(i) In general

Each entity that offers prescription drug coverage of the type described in subparagraphs (B) through (H) of paragraph (4) shall provide for disclosure, in a form, manner, and time consistent with standards established by the Secretary, to the Secretary and part D eligible individuals of whether the coverage meets the requirement of paragraph (5) or whether such coverage is changed so it no longer meets such requirement.

(ii) Disclosure of non-creditable coverage

In the case of such coverage that does not meet such requirement, the disclosure to part D eligible individuals under this subparagraph shall include information regarding the fact that because such coverage does not meet such requirement there are limitations on the periods in a year in which the individuals may enroll under a prescription drug plan or an MA–PD plan and that any such enrollment is subject to a late enrollment penalty under this subsection.

(C) Waiver of requirement

In the case of a part D eligible individual who was enrolled in prescription drug coverage of the type described in subparagraphs (B) through (H) of paragraph (4) which is not creditable prescription drug coverage be-

cause it does not meet the requirement of paragraph (5), the individual may apply to the Secretary to have such coverage treated as creditable prescription drug coverage if the individual establishes that the individual was not adequately informed that such coverage did not meet such requirement.

(7) Continuous period of eligibility

(A) In general

Subject to subparagraph (B), for purposes of this subsection, the term ''continuous period of eligibility'' means, with respect to a part D eligible individual, the period that begins with the first day on which the individual is eligible to enroll in a prescription drug plan under this part and ends with the individual's death.

(B) Separate period

Any period during all of which a part D eligible individual is entitled to hospital insurance benefits under part A of this subchapter and—

(i) which terminated in or before the month preceding the month in which the individual attained age 65; or

(ii) for which the basis for eligibility for such entitlement changed between section 426(b) of this title and section 426(a) of this title, between 426(b)[2] of this title and section 426–1 of this title, or between section 426–1 of this title and section 426(a) of this title,

shall be a separate continuous period of eligibility with respect to the individual (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this paragraph).

(c) Collection of monthly beneficiary premiums

(1) In general

Subject to paragraphs (2) and (3), the provisions of section 1395w–24(d) of this title shall apply to PDP sponsors and premiums (and any late enrollment penalty) under this part in the same manner as they apply to MA organizations and beneficiary premiums under part C of this subchapter, except that any reference to a Trust Fund is deemed for this purpose a reference to the Medicare Prescription Drug Account.

(2) Crediting of late enrollment penalty

(A) Portion attributable to increased actuarial costs

With respect to late enrollment penalties imposed under subsection (b) of this section, the Secretary shall specify the portion of such a penalty that the Secretary estimates is attributable to increased actuarial costs assumed by the PDP sponsor or MA organization (and not taken into account through risk adjustment provided under section 1395w–115(c)(1) of this title or through reinsurance payments under section 1395w–115(b) of this title) as a result of such late enrollment.

(B) Collection through withholding

In the case of a late enrollment penalty that is collected from a part D eligible individual in the manner described in section 1395w–24(d)(2)(A) of this title, the Secretary shall provide that only the portion of such penalty estimated under subparagraph (A) shall be paid to the PDP sponsor or MA organization offering the part D plan in which the individual is enrolled.

(C) Collection by plan

In the case of a late enrollment penalty that is collected from a part D eligible individual in a manner other than the manner described in section 1395w–24(d)(2)(A) of this title, the Secretary shall establish procedures for reducing payments otherwise made to the PDP sponsor or MA organization by an amount equal to the amount of such penalty less the portion of such penalty estimated under subparagraph (A).

(3) Fallback plans

In applying this subsection in the case of a fallback prescription drug plan, paragraph (2) shall not apply and the monthly beneficiary premium shall be collected in the manner specified in section 1395w–24(d)(2)(A) of this title (or such other manner as may be provided under section 1395s of this title in the case of monthly premiums under section 1395r of this title).

(Aug. 14, 1935, ch. 531, title XVIII, §1860D–13, as added Pub. L. 108–173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2102.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (b)(7)(B), is classified to section 1395c et seq. of this title.

Part C of this subchapter, referred to in subsec. (c)(1), is classified to section 1395w–21 et seq. of this title.

§ 1395w–114. Premium and cost-sharing subsidies for low-income individuals

(a) Income-related subsidies for individuals with income up to 150 percent of poverty line

(1) Individuals with income below 135 percent of poverty line

In the case of a subsidy eligible individual (as defined in paragraph (3)) who is determined to have income that is below 135 percent of the poverty line applicable to a family of the size involved and who meets the resources requirement described in paragraph (3)(D) or who is covered under this paragraph under paragraph (3)(B)(i), the individual is entitled under this section to the following:

(A) Full premium subsidy

An income-related premium subsidy equal to—

(i) 100 percent of the amount described in subsection (b)(1) of this section, but not to exceed the premium amount specified in subsection (b)(2)(B) of this section; plus

(ii) 80 percent of any late enrollment penalties imposed under section 1395w–113(b) of this title for the first 60 months in which such penalties are im-

[2] So in original. Probably should be ''section 426(b)''.

posed for that individual, and 100 percent of any such penalties for any subsequent month.

(B) Elimination of deductible

A reduction in the annual deductible applicable under section 1395w–102(b)(1) of this title to $0.

(C) Continuation of coverage above the initial coverage limit

The continuation of coverage from the initial coverage limit (under paragraph (3) of section 1395w–102(b) of this title) for expenditures incurred through the total amount of expenditures at which benefits are available under paragraph (4) of such section, subject to the reduced cost-sharing described in subparagraph (D).

(D) Reduction in cost-sharing below out-of-pocket threshold

(i) Institutionalized individuals

In the case of an individual who is a full-benefit dual eligible individual and who is an institutionalized individual or couple (as defined in section 1396a(q)(1)(B) of this title), the elimination of any beneficiary coinsurance described in section 1395w–102(b)(2) of this title (for all amounts through the total amount of expenditures at which benefits are available under section 1395w–102(b)(4) of this title).

(ii) Lowest income dual eligible individuals

In the case of an individual not described in clause (i) who is a full-benefit dual eligible individual and whose income does not exceed 100 percent of the poverty line applicable to a family of the size involved, the substitution for the beneficiary coinsurance described in section 1395w–102(b)(2) of this title (for all amounts through the total amount of expenditures at which benefits are available under section 1395w–102(b)(4) of this title) of a copayment amount that does not exceed $1 for a generic drug or a preferred drug that is a multiple source drug (as defined in section 1396r–8(k)(7)(A)(i) of this title) and $3 for any other drug, or, if less, the copayment amount applicable to an individual under clause (iii).

(iii) Other individuals

In the case of an individual not described in clause (i) or (ii), the substitution for the beneficiary coinsurance described in section 1395w–102(b)(2) of this title (for all amounts through the total amount of expenditures at which benefits are available under section 1395w–102(b)(4) of this title) of a copayment amount that does not exceed the copayment amount specified under section 1395w–102(b)(4)(A)(i)(I) of this title for the drug and year involved.

(E) Elimination of cost-sharing above annual out-of-pocket threshold

The elimination of any cost-sharing imposed under section 1395w–102(b)(4)(A) of this title.

(2) Other individuals with income below 150 percent of poverty line

In the case of a subsidy eligible individual who is not described in paragraph (1), the individual is entitled under this section to the following:

(A) Sliding scale premium subsidy

An income-related premium subsidy determined on a linear sliding scale ranging from 100 percent of the amount described in paragraph (1)(A) for individuals with incomes at or below 135 percent of such level to 0 percent of such amount for individuals with incomes at 150 percent of such level.

(B) Reduction of deductible

A reduction in the annual deductible applicable under section 1395w–102(b)(1) of this title to $50.

(C) Continuation of coverage above the initial coverage limit

The continuation of coverage from the initial coverage limit (under paragraph (3) of section 1395w–102(b) of this title) for expenditures incurred through the total amount of expenditures at which benefits are available under paragraph (4) of such section, subject to the reduced coinsurance described in subparagraph (D).

(D) Reduction in cost-sharing below out-of-pocket threshold

The substitution for the beneficiary coinsurance described in section 1395w–102(b)(2) of this title (for all amounts above the deductible under subparagraph (B) through the total amount of expenditures at which benefits are available under section 1395w–102(b)(4) of this title) of coinsurance of ''15 percent'' instead of coinsurance of ''25 percent'' in section 1395w–102(b)(2) of this title.

(E) Reduction of cost-sharing above annual out-of-pocket threshold

Subject to subsection (c) of this section, the substitution for the cost-sharing imposed under section 1395w–102(b)(4)(A) of this title of a copayment or coinsurance not to exceed the copayment or coinsurance amount specified under section 1395w–102(b)(4)(A)(i)(I) of this title for the drug and year involved.

(3) Determination of eligibility

(A) Subsidy eligible individual defined

For purposes of this part, subject to subparagraph (F), the term ''subsidy eligible individual'' means a part D eligible individual who—

(i) is enrolled in a prescription drug plan or MA–PD plan;

(ii) has income below 150 percent of the poverty line applicable to a family of the size involved; and

(iii) meets the resources requirement described in subparagraph (D) or (E).

(B) Determinations

(i) In general

The determination of whether a part D eligible individual residing in a State is a

subsidy eligible individual and whether the individual is described in paragraph (1) shall be determined under the State plan under subchapter XIX of this chapter for the State under section 1396u–5(a) of this title or by the Commissioner of Social Security. There are authorized to be appropriated to the Social Security Administration such sums as may be necessary for the determination of eligibility under this subparagraph.

(ii) Effective period

Determinations under this subparagraph shall be effective beginning with the month in which the individual applies for a determination that the individual is a subsidy eligible individual and shall remain in effect for a period specified by the Secretary, but not to exceed 1 year.

(iii) Redeterminations and appeals through medicaid

Redeterminations and appeals, with respect to eligibility determinations under clause (i) made under a State plan under subchapter XIX of this chapter, shall be made in accordance with the frequency of, and manner in which, redeterminations and appeals of eligibility are made under such plan for purposes of medical assistance under such subchapter.

(iv) Redeterminations and appeals through Commissioner

With respect to eligibility determinations under clause (i) made by the Commissioner of Social Security—

(I) redeterminations shall be made at such time or times as may be provided by the Commissioner; and

(II) the Commissioner shall establish procedures for appeals of such determinations that are similar to the procedures described in the third sentence of section 1383(c)(1)(A) of this title.

(v) Treatment of medicaid beneficiaries

Subject to subparagraph (F), the Secretary—

(I) shall provide that part D eligible individuals who are full-benefit dual eligible individuals (as defined in section 1396u–5(c)(6) of this title) or who are recipients of supplemental security income benefits under subchapter XVI of this chapter shall be treated as subsidy eligible individuals described in paragraph (1); and

(II) may provide that part D eligible individuals not described in subclause (I) who are determined for purposes of the State plan under subchapter XIX of this chapter to be eligible for medical assistance under clause (i), (iii), or (iv) of section 1396a(a)(10)(E) of this title are treated as being determined to be subsidy eligible individuals described in paragraph (1).

Insofar as the Secretary determines that the eligibility requirements under the State plan for medical assistance referred to in subclause (II) are substantially the same as the requirements for being treated as a subsidy eligible individual described in paragraph (1), the Secretary shall provide for the treatment described in such subclause.

(C) Income determinations

For purposes of applying this section—

(i) in the case of a part D eligible individual who is not treated as a subsidy eligible individual under subparagraph (B)(v), income shall be determined in the manner described in section 1396d(p)(1)(B) of this title, without regard to the application of section 1396a(r)(2) of this title; and

(ii) the term ''poverty line'' has the meaning given such term in section 9902(2) of this title, including any revision required by such section.

Nothing in clause (i) shall be construed to affect the application of section 1396a(r)(2) of this title for the determination of eligibility for medical assistance under subchapter XIX of this chapter.

(D) Resource standard applied to full low-income subsidy to be based on three times SSI resource standard

The resources requirement of this subparagraph is that an individual's resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed—

(i) for 2006 three times the maximum amount of resources that an individual may have and obtain benefits under that program; and

(ii) for a subsequent year the resource limitation established under this clause for the previous year increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of such previous year.

Any resource limitation established under clause (ii) that is not a multiple of $10 shall be rounded to the nearest multiple of $10.

(E) Alternative resource standard

(i) In general

The resources requirement of this subparagraph is that an individual's resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed—

(I) for 2006, $10,000 (or $20,000 in the case of the combined value of the individual's assets or resources and the assets or resources of the individual's spouse); and

(II) for a subsequent year the dollar amounts specified in this subclause (or subclause (I)) for the previous year increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of such previous year.

Any dollar amount established under subclause (II) that is not a multiple of $10 shall be rounded to the nearest multiple of $10.

(ii) Use of simplified application form and process

The Secretary, jointly with the Commissioner of Social Security, shall—

(I) develop a model, simplified application form and process consistent with clause (iii) for the determination and verification of a part D eligible individual's assets or resources under this subparagraph; and

(II) provide such form to States.

(iii) Documentation and safeguards

Under such process—

(I) the application form shall consist of an attestation under penalty of perjury regarding the level of assets or resources (or combined assets and resources in the case of a married part D eligible individual) and valuations of general classes of assets or resources;

(II) such form shall be accompanied by copies of recent statements (if any) from financial institutions in support of the application; and

(III) matters attested to in the application shall be subject to appropriate methods of verification.

(iv) Methodology flexibility

The Secretary may permit a State in making eligibility determinations for premium and cost-sharing subsidies under this section to use the same asset or resource methodologies that are used with respect to eligibility for medical assistance for medicare cost-sharing described in section 1396d(p) of this title so long as the Secretary determines that the use of such methodologies will not result in any significant differences in the number of individuals determined to be subsidy eligible individuals.

(F) Treatment of territorial residents

In the case of a part D eligible individual who is not a resident of the 50 States or the District of Columbia, the individual is not eligible to be a subsidy eligible individual under this section but may be eligible for financial assistance with prescription drug expenses under section 1396u–5(e) of this title.

(4) Indexing dollar amounts

(A) Copayment for lowest income dual eligible individuals

The dollar amounts applied under paragraph (1)(D)(ii)—

(i) for 2007 shall be the dollar amounts specified in such paragraph increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of such previous year; or

(ii) for a subsequent year shall be the dollar amounts specified in this clause (or clause (i)) for the previous year increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of such previous year.

Any amount established under clause (i) or (ii), that is based on an increase of $1 or $3, that is not a multiple of 5 cents or 10 cents, respectively, shall be rounded to the nearest multiple of 5 cents or 10 cents, respectively.

(B) Reduced deductible

The dollar amount applied under paragraph (2)(B)—

(i) for 2007 shall be the dollar amount specified in such paragraph increased by the annual percentage increase described in section 1395w–102(b)(6) of this title for 2007; or

(ii) for a subsequent year shall be the dollar amount specified in this clause (or clause (i)) for the previous year increased by the annual percentage increase described in section 1395w–102(b)(6) of this title for the year involved.

Any amount established under clause (i) or (ii) that is not a multiple of $1 shall be rounded to the nearest multiple of $1.

(b) Premium subsidy amount

(1) In general

The premium subsidy amount described in this subsection for a subsidy eligible individual residing in a PDP region and enrolled in a prescription drug plan or MA–PD plan is the low-income benchmark premium amount (as defined in paragraph (2)) for the PDP region in which the individual resides or, if greater, the amount specified in paragraph (3).

(2) Low-income benchmark premium amount defined

(A) In general

For purposes of this subsection, the term ''low-income benchmark premium amount'' means, with respect to a PDP region in which—

(i) all prescription drug plans are offered by the same PDP sponsor, the weighted average of the amounts described in subparagraph (B)(i) for such plans; or

(ii) there are prescription drug plans offered by more than one PDP sponsor, the weighted average of amounts described in subparagraph (B) for prescription drug plans and MA–PD plans described in section 1395w–21(a)(2)(A)(i) of this title offered in such region.

(B) Premium amounts described

The premium amounts described in this subparagraph are, in the case of—

(i) a prescription drug plan that is a basic prescription drug plan, the monthly beneficiary premium for such plan;

(ii) a prescription drug plan that provides alternative prescription drug coverage the actuarial value of which is greater than that of standard prescription drug coverage, the portion of the monthly beneficiary premium that is attributable to basic prescription drug coverage; and

(iii) an MA–PD plan, the portion of the MA monthly prescription drug beneficiary premium that is attributable to basic prescription drug benefits (described in section 1395w–22(a)(6)(B)(ii) of this title[1]).

[1] So in original. Section 1395w–22(a)(6) of this title does not contain a subpar. (B).

The premium amounts described in this subparagraph do not include any amounts attributable to late enrollment penalties under section 1395w–113(b) of this title.

(3) Access to 0 premium plan

In no case shall the premium subsidy amount under this subsection for a PDP region be less than the lowest monthly beneficiary premium for a prescription drug plan that offers basic prescription drug coverage in the region.

(c) Administration of subsidy program

(1) In general

The Secretary shall provide a process whereby, in the case of a part D eligible individual who is determined to be a subsidy eligible individual and who is enrolled in a prescription drug plan or is enrolled in an MA–PD plan—

(A) the Secretary provides for a notification of the PDP sponsor or the MA organization offering the plan involved that the individual is eligible for a subsidy and the amount of the subsidy under subsection (a) of this section;

(B) the sponsor or organization involved reduces the premiums or cost-sharing otherwise imposed by the amount of the applicable subsidy and submits to the Secretary information on the amount of such reduction;

(C) the Secretary periodically and on a timely basis reimburses the sponsor or organization for the amount of such reductions; and

(D) the Secretary ensures the confidentiality of individually identifiable information.

In applying subparagraph (C), the Secretary shall compute reductions based upon imposition under subsections (a)(1)(D) and (a)(2)(E) of this section of unreduced copayment amounts applied under such subsections.

(2) Use of capitated form of payment

The reimbursement under this section with respect to cost-sharing subsidies may be computed on a capitated basis, taking into account the actuarial value of the subsidies and with appropriate adjustments to reflect differences in the risks actually involved.

(d) Relation to medicaid program

For special provisions under the medicaid program relating to medicare prescription drug benefits, see section 1396u–5 of this title.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D–14, as added Pub. L. 108–173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2107.)

GAO STUDY REGARDING IMPACT OF ASSETS TEST FOR SUBSIDY ELIGIBLE INDIVIDUALS

Pub. L. 108–173, title I, §107(e), Dec. 8, 2003, 117 Stat. 2171, provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine the extent to which drug utilization and access to covered part D drugs under part D of title XVIII of the Social Security Act [this part] by subsidy eligible individuals differs from such utilization and access for individuals who would qualify as such subsidy eligible individuals but for the application of section 1860D–14(a)(3)(A)(iii) of such Act [subsec. (a)(3)(A)(iii) of this section].

''(2) REPORT.—Not later than September 30, 2007, the Comptroller General shall submit a report to Congress on the study conducted under paragraph (1) that includes such recommendations for legislation as the Comptroller General determines are appropriate.''

§ 1395w–115. Subsidies for part D eligible individuals for qualified prescription drug coverage

(a) Subsidy payment

In order to reduce premium levels applicable to qualified prescription drug coverage for part D eligible individuals consistent with an overall subsidy level of 74.5 percent for basic prescription drug coverage, to reduce adverse selection among prescription drug plans and MA–PD plans, and to promote the participation of PDP sponsors under this part and MA organizations under part C of this subchapter, the Secretary shall provide for payment to a PDP sponsor that offers a prescription drug plan and an MA organization that offers an MA–PD plan of the following subsidies in accordance with this section:

(1) Direct subsidy

A direct subsidy for each part D eligible individual enrolled in a prescription drug plan or MA–PD plan for a month equal to—

(A) the amount of the plan's standardized bid amount (as defined in section 1395w–113(a)(5) of this title), adjusted under subsection (c)(1) of this section, reduced by

(B) the base beneficiary premium (as computed under paragraph (2) of section 1395w–113(a) of this title and as adjusted under paragraph (1)(B) of such section).

(2) Subsidy through reinsurance

The reinsurance payment amount (as defined in subsection (b) of this section).

This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this section.

(b) Reinsurance payment amount

(1) In general

The reinsurance payment amount under this subsection for a part D eligible individual enrolled in a prescription drug plan or MA–PD plan for a coverage year is an amount equal to 80 percent of the allowable reinsurance costs (as specified in paragraph (2)) attributable to that portion of gross covered prescription drug costs as specified in paragraph (3) incurred in the coverage year after such individual has incurred costs that exceed the annual out-of-pocket threshold specified in section 1395w–102(b)(4)(B) of this title.

(2) Allowable reinsurance costs

For purposes of this section, the term ''allowable reinsurance costs'' means, with respect to gross covered prescription drug costs under a prescription drug plan offered by a PDP sponsor or an MA–PD plan offered by an MA organization, the part of such costs that are actually paid (net of discounts, chargebacks, and average percentage rebates) by the sponsor or organization or by (or on behalf of) an enrollee under the plan, but in no

case more than the part of such costs that would have been paid under the plan if the prescription drug coverage under the plan were basic prescription drug coverage, or, in the case of a plan providing supplemental prescription drug coverage, if such coverage were standard prescription drug coverage.

(3) Gross covered prescription drug costs

For purposes of this section, the term ''gross covered prescription drug costs'' means, with respect to a part D eligible individual enrolled in a prescription drug plan or MA–PD plan during a coverage year, the costs incurred under the plan, not including administrative costs, but including costs directly related to the dispensing of covered part D drugs during the year and costs relating to the deductible. Such costs shall be determined whether they are paid by the individual or under the plan, regardless of whether the coverage under the plan exceeds basic prescription drug coverage.

(4) Coverage year defined

For purposes of this section, the term ''coverage year'' means a calendar year in which covered part D drugs are dispensed if the claim for such drugs (and payment on such claim) is made not later than such period after the end of such year as the Secretary specifies.

(c) Adjustments relating to bids

(1) Health status risk adjustment

(A) Establishment of risk adjustors

The Secretary shall establish an appropriate methodology for adjusting the standardized bid amount under subsection (a)(1)(A) of this section to take into account variation in costs for basic prescription drug coverage among prescription drug plans and MA–PD plans based on the differences in actuarial risk of different enrollees being served. Any such risk adjustment shall be designed in a manner so as not to result in a change in the aggregate amounts payable to such plans under subsection (a)(1) of this section and through that portion of the monthly beneficiary prescription drug premiums described in subsection (a)(1)(B) of this section and MA monthly prescription drug beneficiary premiums.

(B) Considerations

In establishing the methodology under subparagraph (A), the Secretary may take into account the similar methodologies used under section 1395w–23(a)(3) of this title to adjust payments to MA organizations for benefits under the original medicare fee-for-service program option.

(C) Data collection

In order to carry out this paragraph, the Secretary shall require—

(i) PDP sponsors to submit data regarding drug claims that can be linked at the individual level to part A and part B data and such other information as the Secretary determines necessary; and

(ii) MA organizations that offer MA–PD plans to submit data regarding drug claims that can be linked at the individual level to other data that such organizations are required to submit to the Secretary and such other information as the Secretary determines necessary.

(D) Publication

At the time of publication of risk adjustment factors under section 1395w–23(b)(1)(B)(i)(II) of this title, the Secretary shall publish the risk adjusters established under this paragraph for the succeeding year.

(2) Geographic adjustment

(A) In general

Subject to subparagraph (B), for purposes of section 1395w–113(a)(1)(B)(iii) of this title, the Secretary shall establish an appropriate methodology for adjusting the national average monthly bid amount (computed under section 1395w–113(a)(4) of this title) to take into account differences in prices for covered part D drugs among PDP regions.

(B) De minimis rule

If the Secretary determines that the price variations described in subparagraph (A) among PDP regions are de minimis, the Secretary shall not provide for adjustment under this paragraph.

(C) Budget neutral adjustment

Any adjustment under this paragraph shall be applied in a manner so as to not result in a change in the aggregate payments made under this part that would have been made if the Secretary had not applied such adjustment.

(d) Payment methods

(1) In general

Payments under this section shall be based on such a method as the Secretary determines. The Secretary may establish a payment method by which interim payments of amounts under this section are made during a year based on the Secretary's best estimate of amounts that will be payable after obtaining all of the information.

(2) Requirement for provision of information

(A) Requirement

Payments under this section to a PDP sponsor or MA organization are conditioned upon the furnishing to the Secretary, in a form and manner specified by the Secretary, of such information as may be required to carry out this section.

(B) Restriction on use of information

Information disclosed or obtained pursuant to subparagraph (A) may be used by officers, employees, and contractors of the Department of Health and Human Services only for the purposes of, and to the extent necessary in, carrying out this section.

(3) Source of payments

Payments under this section shall be made from the Medicare Prescription Drug Account.

(4) Application of enrollee adjustment

The provisions of section 1395w–23(a)(2) of this title shall apply to payments to PDP

sponsors under this section in the same manner as they apply to payments to MA organizations under section 1395w–23(a) of this title.

(e) Portion of total payments to a sponsor or organization subject to risk (application of risk corridors)

(1) Computation of adjusted allowable risk corridor costs

(A) In general

For purposes of this subsection, the term ''adjusted allowable risk corridor costs'' means, for a plan for a coverage year (as defined in subsection (b)(4) of this section)—

(i) the allowable risk corridor costs (as defined in subparagraph (B)) for the plan for the year, reduced by

(ii) the sum of (I) the total reinsurance payments made under subsection (b) of this section to the sponsor of the plan for the year, and (II) the total subsidy payments made under section 1395w–114 of this title to the sponsor of the plan for the year.

(B) Allowable risk corridor costs

For purposes of this subsection, the term ''allowable risk corridor costs'' means, with respect to a prescription drug plan offered by a PDP sponsor or an MA–PD plan offered by an MA organization, the part of costs (not including administrative costs, but including costs directly related to the dispensing of covered part D drugs during the year) incurred by the sponsor or organization under the plan that are actually paid (net of discounts, chargebacks, and average percentage rebates) by the sponsor or organization under the plan, but in no case more than the part of such costs that would have been paid under the plan if the prescription drug coverage under the plan were basic prescription drug coverage, or, in the case of a plan providing supplemental prescription drug coverage, if such coverage were basic prescription drug coverage taking into account the adjustment under section 1395w–111(c)(2) of this title. In computing allowable costs under this paragraph, the Secretary shall compute such costs based upon imposition under paragraphs (1)(D) and (2)(E) of section 1395w–114(a) of this title of the maximum amount of copayments permitted under such paragraphs.

(2) Adjustment of payment

(A) No adjustment if adjusted allowable risk corridor costs within risk corridor

If the adjusted allowable risk corridor costs (as defined in paragraph (1)) for the plan for the year are at least equal to the first threshold lower limit of the risk corridor (specified in paragraph (3)(A)(i)), but not greater than the first threshold upper limit of the risk corridor (specified in paragraph (3)(A)(iii)) for the plan for the year, then no payment adjustment shall be made under this subsection.

(B) Increase in payment if adjusted allowable risk corridor costs above upper limit of risk corridor

(i) Costs between first and second threshold upper limits

If the adjusted allowable risk corridor costs for the plan for the year are greater than the first threshold upper limit, but not greater than the second threshold upper limit, of the risk corridor for the plan for the year, the Secretary shall increase the total of the payments made to the sponsor or organization offering the plan for the year under this section by an amount equal to 50 percent (or, for 2006 and 2007, 75 percent or 90 percent if the conditions described in clause (iii) are met for the year) of the difference between such adjusted allowable risk corridor costs and the first threshold upper limit of the risk corridor.

(ii) Costs above second threshold upper limits

If the adjusted allowable risk corridor costs for the plan for the year are greater than the second threshold upper limit of the risk corridor for the plan for the year, the Secretary shall increase the total of the payments made to the sponsor or organization offering the plan for the year under this section by an amount equal to the sum of—

(I) 50 percent (or, for 2006 and 2007, 75 percent or 90 percent if the conditions described in clause (iii) are met for the year) of the difference between the second threshold upper limit and the first threshold upper limit; and

(II) 80 percent of the difference between such adjusted allowable risk corridor costs and the second threshold upper limit of the risk corridor.

(iii) Conditions for application of higher percentage for 2006 and 2007

The conditions described in this clause are met for 2006 or 2007 if the Secretary determines with respect to such year that—

(I) at least 60 percent of prescription drug plans and MA–PD plans to which this subsection applies have adjusted allowable risk corridor costs for the plan for the year that are more than the first threshold upper limit of the risk corridor for the plan for the year; and

(II) such plans represent at least 60 percent of part D eligible individuals enrolled in any prescription drug plan or MA–PD plan.

(C) Reduction in payment if adjusted allowable risk corridor costs below lower limit of risk corridor

(i) Costs between first and second threshold lower limits

If the adjusted allowable risk corridor costs for the plan for the year are less than the first threshold lower limit, but not less than the second threshold lower limit, of the risk corridor for the plan for the year,

the Secretary shall reduce the total of the payments made to the sponsor or organization offering the plan for the year under this section by an amount (or otherwise recover from the sponsor or organization an amount) equal to 50 percent (or, for 2006 and 2007, 75 percent) of the difference between the first threshold lower limit of the risk corridor and such adjusted allowable risk corridor costs.

(ii) Costs below second threshold lower limit

If the adjusted allowable risk corridor costs for the plan for the year are less the second threshold lower limit of the risk corridor for the plan for the year, the Secretary shall reduce the total of the payments made to the sponsor or organization offering the plan for the year under this section by an amount (or otherwise recover from the sponsor or organization an amount) equal to the sum of—

(I) 50 percent (or, for 2006 and 2007, 75 percent) of the difference between the first threshold lower limit and the second threshold lower limit; and

(II) 80 percent of the difference between the second threshold upper limit of the risk corridor and such adjusted allowable risk corridor costs.

(3) Establishment of risk corridors

(A) In general

For each plan year the Secretary shall establish a risk corridor for each prescription drug plan and each MA–PD plan. The risk corridor for a plan for a year shall be equal to a range as follows:

(i) First threshold lower limit

The first threshold lower limit of such corridor shall be equal to—

(I) the target amount described in subparagraph (B) for the plan; minus

(II) an amount equal to the first threshold risk percentage for the plan (as determined under subparagraph (C)(i)) of such target amount.

(ii) Second threshold lower limit

The second threshold lower limit of such corridor shall be equal to—

(I) the target amount described in subparagraph (B) for the plan; minus

(II) an amount equal to the second threshold risk percentage for the plan (as determined under subparagraph (C)(ii)) of such target amount.

(iii) First threshold upper limit

The first threshold upper limit of such corridor shall be equal to the sum of—

(I) such target amount; and

(II) the amount described in clause (i)(II).

(iv) Second threshold upper limit

The second threshold upper limit of such corridor shall be equal to the sum of—

(I) such target amount; and

(II) the amount described in clause (ii)(II).

(B) Target amount described

The target amount described in this paragraph is, with respect to a prescription drug plan or an MA–PD plan in a year, the total amount of payments paid to the PDP sponsor or MA–PD organization for the plan for the year, taking into account amounts paid by the Secretary and enrollees, based upon the standardized bid amount (as defined in section 1395w–113(a)(5) of this title and as risk adjusted under subsection (c)(1) of this section), reduced by the total amount of administrative expenses for the year assumed in such standardized bid.

(C) First and second threshold risk percentage defined

(i) First threshold risk percentage

Subject to clause (iii), for purposes of this section, the first threshold risk percentage is—

(I) for 2006 and 2007, and[1] 2.5 percent;

(II) for 2008 through 2011, 5 percent; and

(III) for 2012 and subsequent years, a percentage established by the Secretary, but in no case less than 5 percent.

(ii) Second threshold risk percentage

Subject to clause (iii), for purposes of this section, the second threshold risk percentage is—

(I) for 2006 and 2007, 5 percent;

(II) for 2008 through 2011, 10 percent; and

(III) for 2012 and subsequent years, a percentage established by the Secretary that is greater than the percent established for the year under clause (i)(III), but in no case less than 10 percent.

(iii) Reduction of risk percentage to ensure 2 plans in an area

Pursuant to section 1395w–111(b)(2)(E)(ii) of this title, a PDP sponsor may submit a bid that requests a decrease in the applicable first or second threshold risk percentages or an increase in the percents applied under paragraph (2).

(4) Plans at risk for entire amount of supplemental prescription drug coverage

A PDP sponsor and MA organization that offers a plan that provides supplemental prescription drug benefits shall be at full financial risk for the provision of such supplemental benefits.

(5) No effect on monthly premium

No adjustment in payments made by reason of this subsection shall affect the monthly beneficiary premium or the MA monthly prescription drug beneficiary premium.

(f) Disclosure of information

(1) In general

Each contract under this part and under part C of this subchapter shall provide that—

(A) the PDP sponsor offering a prescription drug plan or an MA organization offering an MA–PD plan shall provide the Sec-

[1] So in original. The word ''and'' probably should not appear.

retary with such information as the Secretary determines is necessary to carry out this section; and

(B) the Secretary shall have the right in accordance with section 1395w–27(d)(2)(B) of this title (as applied under section 1395w–112(b)(3)(C) of this title) to inspect and audit any books and records of a PDP sponsor or MA organization that pertain to the information regarding costs provided to the Secretary under subparagraph (A).

(2) Restriction on use of information

Information disclosed or obtained pursuant to the provisions of this section may be used by officers, employees, and contractors of the Department of Health and Human Services only for the purposes of, and to the extent necessary in, carrying out this section.

(g) Payment for fallback prescription drug plans

In lieu of the amounts otherwise payable under this section to a PDP sponsor offering a fallback prescription drug plan (as defined in section 1395w–111(g)(4) of this title[2]), the amount payable shall be the amounts determined under the contract for such plan pursuant to section 1395w–111(g)(5) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D–15, as added Pub. L. 108–173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2113.)

REFERENCES IN TEXT

Part C of this subchapter, referred to in subsecs. (a) and (f)(1), is classified to section 1395w–21 et seq. of this title.

Section 1395w–111(g)(4) of this title, referred to in subsec. (g), was in the original ''section 1860D–3(c)(4)'', and was translated as reading ''section 1860D–11(g)(4)'', meaning section 1860D–11(g)(4) of the Social Security Act, to reflect the probable intent of Congress, because section 1860D–3, which is classified to section 1395w–103 of this title, does not contain a subsec. (c), and section 1395w–111(g)(4) of this title defines ''fallback prescription drug plan'' for purposes of this part.

§ 1395w–116. Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund

(a) Establishment and operation of Account

(1) Establishment

There is created within the Federal Supplementary Medical Insurance Trust Fund established by section 1395t of this title an account to be known as the ''Medicare Prescription Drug Account'' (in this section referred to as the ''Account'').

(2) Funding

The Account shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, accrued interest on balances in the Account, and such amounts as may be deposited in, or appropriated to, such Account as provided in this part.

(3) Separate from rest of Trust Fund

Funds provided under this part to the Account shall be kept separate from all other funds within the Federal Supplementary Medical Insurance Trust Fund, but shall be invested, and such investments redeemed, in the same manner as all other funds and investments within such Trust Fund.

(b) Payments from Account

(1) In general

The Managing Trustee shall pay from time to time from the Account such amounts as the Secretary certifies are necessary to make payments to operate the program under this part, including—

(A) payments under section 1395w–114 of this title (relating to low-income subsidy payments);

(B) payments under section 1395w–115 of this title (relating to subsidy payments and payments for fallback plans);

(C) payments to sponsors of qualified retiree prescription drug plans under section 1395w–132(a) of this title; and

(D) payments with respect to administrative expenses under this part in accordance with section 401(g) of this title.

(2) Transfers to Medicaid account for increased administrative costs

The Managing Trustee shall transfer from time to time from the Account to the Grants to States for Medicaid account amounts the Secretary certifies are attributable to increases in payment resulting from the application of section 1396u–5(b) of this title.

(3) Payments of premiums withheld

The Managing Trustee shall make payment to the PDP sponsor or MA organization involved of the premiums (and the portion of late enrollment penalties) that are collected in the manner described in section 1395w–24(d)(2)(A) of this title and that are payable under a prescription drug plan or MA–PD plan offered by such sponsor or organization.

(4) Treatment in relation to part B premium

Amounts payable from the Account shall not be taken into account in computing actuarial rates or premium amounts under section 1395r of this title.

(c) Deposits into Account

(1) Low-income transfer

Amounts paid under section 1396u–5(c) of this title (and any amounts collected or offset under paragraph (1)(C) of such section) are deposited into the Account.

(2) Amounts withheld

Pursuant to sections 1395w–113(c) and 1395w–24(d) of this title (as applied under this part), amounts that are withheld (and allocated) to the Account are deposited into the Account.

(3) Appropriations to cover Government contributions

There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Account, an amount equivalent to the amount of payments made from the Account under subsection (b) of this section plus such amounts as the Managing Trustee certifies is

[2] See References in Text note below.

necessary to maintain an appropriate contingency margin, reduced by the amounts deposited under paragraph (1) or subsection (a)(2) of this section.

(4) Initial funding and reserve

In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part and to provide an initial contingency reserve, there are authorized to be appropriated to the Account, out of any moneys in the Treasury not otherwise appropriated, such amount as the Secretary certifies are required, but not to exceed 10 percent of the estimated total expenditures from such Account in 2006.

(5) Transfer of any remaining balance from Transitional Assistance Account

Any balance in the Transitional Assistance Account that is transferred under section 1395w–141(k)(5) of this title shall be deposited into the Account.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–16, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2120.)

SUBPART 3—APPLICATION TO MEDICARE ADVANTAGE PROGRAM AND TREATMENT OF EMPLOYER-SPONSORED PROGRAMS AND OTHER PRESCRIPTION DRUG PLANS

§ 1395w–131. Application to Medicare Advantage program and related managed care programs

(a) Special rules relating to offering of qualified prescription drug coverage

(1) In general

An MA organization on and after January 1, 2006—

(A) may not offer an MA plan described in section 1395w–21(a)(2)(A) of this title in an area unless either that plan (or another MA plan offered by the organization in that same service area) includes required prescription drug coverage (as defined in paragraph (2)); and

(B) may not offer prescription drug coverage (other than that required under parts A and B of this subchapter) to an enrollee—

(i) under an MSA plan; or

(ii) under another MA plan unless such drug coverage under such other plan provides qualified prescription drug coverage and unless the requirements of this section with respect to such coverage are met.

(2) Qualifying coverage

For purposes of paragraph (1)(A), the term ''required coverage'' means with respect to an MA–PD plan—

(A) basic prescription drug coverage; or

(B) qualified prescription drug coverage that provides supplemental prescription drug coverage, so long as there is no MA monthly supplemental beneficiary premium applied under the plan (due to the application of a credit against such premium of a rebate under section 1395w–24(b)(1)(C) of this title).

(b) Application of default enrollment rules

(1) Seamless continuation

In applying section 1395w–21(c)(3)(A)(ii) of this title, an individual who is enrolled in a health benefits plan shall not be considered to have been deemed to make an election into an MA–PD plan unless such health benefits plan provides any prescription drug coverage.

(2) MA continuation

In applying section 1395w–21(c)(3)(B) of this title, an individual who is enrolled in an MA plan shall not be considered to have been deemed to make an election into an MA–PD plan unless—

(A) for purposes of the election as of January 1, 2006, the MA plan provided as of December 31, 2005, any prescription drug coverage; or

(B) for periods after January 1, 2006, such MA plan is an MA–PD plan.

(3) Discontinuance of MA–PD election during first year of eligibility

In applying the second sentence of section 1395w–21(e)(4) of this title in the case of an individual who is electing to discontinue enrollment in an MA–PD plan, the individual shall be permitted to enroll in a prescription drug plan under part D at the time of the election of coverage under the original medicare fee-for-service program.

(4) Rules regarding enrollees in MA plans not providing qualified prescription drug coverage

In the case of an individual who is enrolled in an MA plan (other than an MSA plan) that does not provide qualified prescription drug coverage, if the organization offering such coverage discontinues the offering with respect to the individual of all MA plans that do not provide such coverage—

(i) the individual is deemed to have elected the original medicare fee-for-service program option, unless the individual affirmatively elects to enroll in an MA–PD plan; and

(ii) in the case of such a deemed election, the disenrollment shall be treated as an involuntary termination of the MA plan described in subparagraph (B)(ii) of section 1395ss(s)(3) of this title for purposes of applying such section.

The information disclosed under section 1395w–22(c)(1) of this title for individuals who are enrolled in such an MA plan shall include information regarding such rules.

(c) Application of part D rules for prescription drug coverage

With respect to the offering of qualified prescription drug coverage by an MA organization under this part on and after January 1, 2006—

(1) In general

Except as otherwise provided, the provisions of this part shall apply under part C of this subchapter with respect to prescription drug coverage provided under MA–PD plans in lieu of the other provisions of part C of this subchapter that would apply to such coverage under such plans.

(2) Waiver

The Secretary shall waive the provisions referred to in paragraph (1) to the extent the Secretary determines that such provisions duplicate, or are in conflict with, provisions otherwise applicable to the organization or plan under part C of this subchapter or as may be necessary in order to improve coordination of this part with the benefits under this part.

(3) Treatment of MA owned and operated pharmacies

The Secretary may waive the requirement of section 1395w–104(b)(1)(C) of this title in the case of an MA–PD plan that provides access (other than mail order) to qualified prescription drug coverage through pharmacies owned and operated by the MA organization, if the Secretary determines that the organization's pharmacy network is sufficient to provide comparable access for enrollees under the plan.

(d) Special rules for private fee-for-service plans that offer prescription drug coverage

With respect to an MA plan described in section 1395w–21(a)(2)(C) of this title that offers qualified prescription drug coverage, on and after January 1, 2006, the following rules apply:

(1) Requirements regarding negotiated prices

Subsections (a)(1) and (d)(1) of section 1395w–102 of this title and section 1395w–104(b)(2)(A) of this title shall not be construed to require the plan to provide negotiated prices (described in subsection (d)(1)(B) of such section), but shall apply to the extent the plan does so.

(2) Modification of pharmacy access standard and disclosure requirement

If the plan provides coverage for drugs purchased from all pharmacies, without charging additional cost-sharing, and without regard to whether they are participating pharmacies in a network or have entered into contracts or agreements with pharmacies to provide drugs to enrollees covered by the plan, subsections (b)(1)(C) and (k) of section 1395w–104 of this title shall not apply to the plan.

(3) Drug utilization management program and medication therapy management program not required

The requirements of subparagraphs (A) and (C) of section 1395w–104(c)(1) of this title shall not apply to the plan.

(4) Application of reinsurance

The Secretary shall determine the amount of reinsurance payments under section 1395w–115(b) of this title using a methodology that—

(A) bases such amount on the Secretary's estimate of the amount of such payments that would be payable if the plan were an MA–PD plan described in section 1395w–21(a)(2)(A)(i) of this title and the previous provisions of this subsection did not apply; and

(B) takes into account the average reinsurance payments made under section 1395w–115(b) of this title for populations of similar risk under MA–PD plans described in such section.

(5) Exemption from risk corridor provisions

The provisions of section 1395w–115(e) of this title shall not apply.

(6) Exemption from negotiations

Subsections (d) and (e)(2)(C) of section 1395w–111 of this title shall not apply and the provisions of section 1395w–24(a)(5)(B) of this title prohibiting the review, approval, or disapproval of amounts described in such section shall apply to the proposed bid and terms and conditions described in section 1395w–111(d) of this title.

(7) Treatment of incurred costs without regard to formulary

The exclusion of costs incurred for covered part D drugs which are not included (or treated as being included) in a plan's formulary under section 1395w–102(b)(4)(B)(i) of this title shall not apply insofar as the plan does not utilize a formulary.

(e) Application to reasonable cost reimbursement contractors

(1) In general

Subject to paragraphs (2) and (3) and rules established by the Secretary, in the case of an organization that is providing benefits under a reasonable cost reimbursement contract under section 1395mm(h) of this title and that elects to provide qualified prescription drug coverage to a part D eligible individual who is enrolled under such a contract, the provisions of this part (and related provisions of part C of this subchapter) shall apply to the provision of such coverage to such enrollee in the same manner as such provisions apply to the provision of such coverage under an MA–PD local plan described in section 1395–21(a)(2)(A)(i) of this title and coverage under such a contract that so provides qualified prescription drug coverage shall be deemed to be an MA–PD local plan.

(2) Limitation on enrollment

In applying paragraph (1), the organization may not enroll part D eligible individuals who are not enrolled under the reasonable cost reimbursement contract involved.

(3) Bids not included in determining national average monthly bid amount

The bid of an organization offering prescription drug coverage under this subsection shall not be taken into account in computing the national average monthly bid amount and low-income benchmark premium amount under this part.

(f) Application to PACE

(1) In general

Subject to paragraphs (2) and (3) and rules established by the Secretary, in the case of a PACE program under section 1395eee of this title that elects to provide qualified prescription drug coverage to a part D eligible individual who is enrolled under such program, the provisions of this part (and related provisions of part C of this subchapter) shall apply to the

provision of such coverage to such enrollee in a manner that is similar to the manner in which such provisions apply to the provision of such coverage under an MA–PD local plan described in section 1395w–21(a)(2)(A)(ii) of this title and a PACE program that so provides such coverage may be deemed to be an MA–PD local plan.

(2) Limitation on enrollment

In applying paragraph (1), the organization may not enroll part D eligible individuals who are not enrolled under the PACE program involved.

(3) Bids not included in determining standardized bid amount

The bid of an organization offering prescription drug coverage under this subsection is not be taken into account in computing any average benchmark bid amount and low-income benchmark premium amount under this part.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–21, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2122.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (a)(1)(B), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

Part C of this subchapter, referred to in subsecs. (c)(1), (2), (e)(1), and (f)(1), is classified to section 1395w–21 et seq. of this title.

§ 1395w–132. Special rules for employer-sponsored programs

(a) Subsidy payment

(1) In general

The Secretary shall provide in accordance with this subsection for payment to the sponsor of a qualified retiree prescription drug plan (as defined in paragraph (2)) of a special subsidy payment equal to the amount specified in paragraph (3) for each qualified covered retiree under the plan (as defined in paragraph (4)). This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this section.

(2) Qualified retiree prescription drug plan defined

For purposes of this subsection, the term ''qualified retiree prescription drug plan'' means employment-based retiree health coverage (as defined in subsection (c)(1) of this section) if, with respect to a part D eligible individual who is a participant or beneficiary under such coverage, the following requirements are met:

(A) Attestation of actuarial equivalence to standard coverage

The sponsor of the plan provides the Secretary, annually or at such other time as the Secretary may require, with an attestation that the actuarial value of prescription drug coverage under the plan (as determined using the processes and methods described in section 1395w–111(c) of this title) is at least equal to the actuarial value of standard prescription drug coverage.

(B) Audits

The sponsor of the plan, or an administrator of the plan designated by the sponsor, shall maintain (and afford the Secretary access to) such records as the Secretary may require for purposes of audits and other oversight activities necessary to ensure the adequacy of prescription drug coverage and the accuracy of payments made under this section. The provisions of section 1395w–102(d)(3) of this title shall apply to such information under this section (including such actuarial value and attestation) in a manner similar to the manner in which they apply to financial records of PDP sponsors and MA organizations.

(C) Provision of disclosure regarding prescription drug coverage

The sponsor of the plan shall provide for disclosure of information regarding prescription drug coverage in accordance with section 1395w–113(b)(6)(B) of this title.

(3) Employer and union special subsidy amounts

(A) In general

For purposes of this subsection, the special subsidy payment amount under this paragraph for a qualifying covered retiree for a coverage year enrolled with the sponsor of a qualified retiree prescription drug plan is, for the portion of the retiree's gross covered retiree plan-related prescription drug costs (as defined in subparagraph (C)(ii)) for such year that exceeds the cost threshold amount specified in subparagraph (B) and does not exceed the cost limit under such subparagraph, an amount equal to 28 percent of the allowable retiree costs (as defined in subparagraph (C)(i)) attributable to such gross covered prescription drug costs.

(B) Cost threshold and cost limit applicable

(i) In general

Subject to clause (ii)—

(I) the cost threshold under this subparagraph is equal to $250 for plan years that end in 2006; and

(II) the cost limit under this subparagraph is equal to $5,000 for plan years that end in 2006.

(ii) Indexing

The cost threshold and cost limit amounts specified in subclauses (I) and (II) of clause (i) for a plan year that ends after 2006 shall be adjusted in the same manner as the annual deductible and the annual out-of-pocket threshold, respectively, are annually adjusted under paragraphs (1) and (4)(B) of section 1395w–102(b) of this title.

(C) Definitions

For purposes of this paragraph:

(i) Allowable retiree costs

The term ''allowable retiree costs'' means, with respect to gross covered prescription drug costs under a qualified retiree prescription drug plan by a plan sponsor, the part of such costs that are ac-

tually paid (net of discounts, chargebacks, and average percentage rebates) by the sponsor or by or on behalf of a qualifying covered retiree under the plan.

(ii) Gross covered retiree plan-related prescription drug costs

For purposes of this section, the term ''gross covered retiree plan-related prescription drug costs'' means, with respect to a qualifying covered retiree enrolled in a qualified retiree prescription drug plan during a coverage year, the costs incurred under the plan, not including administrative costs, but including costs directly related to the dispensing of covered part D drugs during the year. Such costs shall be determined whether they are paid by the retiree or under the plan.

(iii) Coverage year

The term ''coverage year'' has the meaning given such term in section 1395w–115(b)(4) of this title.

(4) Qualifying covered retiree defined

For purposes of this subsection, the term ''qualifying covered retiree'' means a part D eligible individual who is not enrolled in a prescription drug plan or an MA–PD plan but is covered under a qualified retiree prescription drug plan.

(5) Payment methods, including provision of necessary information

The provisions of section 1395w–115(d) of this title (including paragraph (2), relating to requirement for provision of information) shall apply to payments under this subsection in a manner similar to the manner in which they apply to payment under section 1395w–115(b) of this title.

(6) Construction

Nothing in this subsection shall be construed as—

(A) precluding a part D eligible individual who is covered under employment-based retiree health coverage from enrolling in a prescription drug plan or in an MA–PD plan;

(B) precluding such employment-based retiree health coverage or an employer or other person from paying all or any portion of any premium required for coverage under a prescription drug plan or MA–PD plan on behalf of such an individual;

(C) preventing such employment-based retiree health coverage from providing coverage—

(i) that is better than standard prescription drug coverage to retirees who are covered under a qualified retiree prescription drug plan; or

(ii) that is supplemental to the benefits provided under a prescription drug plan or an MA–PD plan, including benefits to retirees who are not covered under a qualified retiree prescription drug plan but who are enrolled in such a prescription drug plan or MA–PD plan; or

(D) preventing employers to provide for flexibility in benefit design and pharmacy access provisions, without regard to the requirements for basic prescription drug coverage, so long as the actuarial equivalence requirement of paragraph (2)(A) is met.

(b) Application of MA waiver authority

The provisions of section 1395w–27(i) of this title shall apply with respect to prescription drug plans in relation to employment-based retiree health coverage in a manner similar to the manner in which they apply to an MA plan in relation to employers, including authorizing the establishment of separate premium amounts for enrollees in a prescription drug plan by reason of such coverage and limitations on enrollment to part D eligible individuals enrolled under such coverage.

(c) Definitions

For purposes of this section:

(1) Employment-based retiree health coverage

The term ''employment-based retiree health coverage'' means health insurance or other coverage of health care costs (whether provided by voluntary insurance coverage or pursuant to statutory or contractual obligation) for part D eligible individuals (or for such individuals and their spouses and dependents) under a group health plan based on their status as retired participants in such plan.

(2) Sponsor

The term ''sponsor'' means a plan sponsor, as defined in section 1002(16)(B) of title 29, in relation to a group health plan, except that, in the case of a plan maintained jointly by one employer and an employee organization and with respect to which the employer is the primary source of financing, such term means such employer.

(3) Group health plan

The term ''group health plan'' includes such a plan as defined in section 1167(1) of title 29 and also includes the following:

(A) Federal and State governmental plans

Such a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, including a health benefits plan offered under chapter 89 of title 5.

(B) Collectively bargained plans

Such a plan established or maintained under or pursuant to one or more collective bargaining agreements.

(C) Church plans

Such a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D–22, as added Pub. L. 108–173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2125.)

STUDY ON EMPLOYMENT-BASED RETIREE HEALTH COVERAGE

Pub. L. 108–173, title I, §111, Dec. 8, 2003, 117 Stat. 2174, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct an initial and final study under this subsection [probably should be this section] to examine trends in employment-based retiree health coverage (as defined in [sic] 1860D–22(c)(1) of the Social Security Act [subsec. (c)(1) of this section], as added by section 101), including coverage under the Federal Employees Health Benefits Program (FEHBP), and the options and incentives available under this Act [see Tables for classification] which may have an effect on the voluntary provision of such coverage.

''(b) CONTENT OF INITIAL STUDY.—The initial study under this section shall consider the following:

''(1) Trends in employment-based retiree health coverage prior to the date of the enactment of this Act [Dec. 8, 2003].

''(2) The opinions of sponsors of employment-based retiree health coverage concerning which of the options available under this Act [see Tables for classification] they are most likely to utilize for the provision of health coverage to their medicare-eligible retirees, including an assessment of the administrative burdens associated with the available options.

''(3) The likelihood of sponsors of employment-based retiree health coverage to maintain or adjust their levels of retiree health benefits beyond coordination with medicare, including for prescription drug coverage, provided to medicare-eligible retirees after the date of the enactment of this Act.

''(4) The factors that sponsors of employment-based retiree health coverage expect to consider in making decisions about any changes they may make in the health coverage provided to medicare-eligible retirees.

''(5) Whether the prescription drug plan options available, or the health plan options available under the Medicare Advantage program, are likely to cause employers and other entities that did not provide health coverage to retirees prior to the date of the enactment of this Act to provide supplemental coverage or contributions toward premium expenses for medicare-eligible retirees who may enroll in such options in the future.

''(c) CONTENTS OF FINAL STUDY.—The final study under this section shall consider the following:

''(1) Changes in the trends in employment-based retiree health coverage since the completion of the initial study by the Comptroller General.

''(2) Factors contributing to any changes in coverage levels.

''(3) The number and characteristics of sponsors of employment-based retiree health coverage who receive the special subsidy payments under section 1860D–22 of the Social Security Act [this section], as added by section 101, for the provision of prescription drug coverage to their medicare-eligible retirees that is the same or greater actuarial value as the prescription drug coverage available to other medicare beneficiaries without employment-based retiree health coverage.

''(4) The extent to which sponsors of employment-based retiree health coverage provide supplemental health coverage or contribute to the premiums for medicare-eligible retirees who enroll in a prescription drug plan or an MA–PD plan.

''(5) Other coverage options, including tax-preferred retirement or health savings accounts, consumer-directed health plans, or other vehicles that sponsors of employment-based retiree health coverage believe would assist retirees with their future health care needs and their willingness to sponsor such alternative plan designs.

''(6) The extent to which employers or other entities that did not provide employment-based retiree health coverage prior to the date of the enactment of this Act [Dec. 8, 2003] provided some form of coverage or financial assistance for retiree health care needs after the date of the enactment of this Act.

''(7) Recommendations by employers, benefits experts, academics, and others on ways that the voluntary provision of employment-based retiree health coverage may be improved and expanded.

''(d) REPORTS.—The Comptroller General shall submit a report to Congress on—

''(1) the initial study under subsection (b) not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003]; and

''(2) the final study under subsection (c) not later than January 1, 2007.

''(e) CONSULTATION.—The Comptroller General shall consult with sponsors of employment-based retiree health coverage, benefits experts, human resources professionals, employee benefits consultants, and academics with experience in health benefits and survey research in the development and design of the initial and final studies under this section.''

§ 1395w–133. State Pharmaceutical Assistance Programs

(a) Requirements for benefit coordination

(1) In general

Before July 1, 2005, the Secretary shall establish consistent with this section requirements for prescription drug plans to ensure the effective coordination between a part D plan (as defined in paragraph (5)) and a State Pharmaceutical Assistance Program (as defined in subsection (b) of this section) with respect to—

(A) payment of premiums and coverage; and

(B) payment for supplemental prescription drug benefits,

for part D eligible individuals enrolled under both types of plans.

(2) Coordination elements

The requirements under paragraph (1) shall include requirements relating to coordination of each of the following:

(A) Enrollment file sharing.

(B) The processing of claims, including electronic processing.

(C) Claims payment.

(D) Claims reconciliation reports.

(E) Application of the protection against high out-of-pocket expenditures under section 1395w–102(b)(4) of this title.

(F) Other administrative processes specified by the Secretary.

Such requirements shall be consistent with applicable law to safeguard the privacy of any individually identifiable beneficiary information.

(3) Use of lump sum per capita method

Such requirements shall include a method for the application by a part D plan of specified funding amounts from a State Pharmaceutical Assistance Program for enrolled individuals for supplemental prescription drug benefits.

(4) Consultation

In establishing requirements under this subsection, the Secretary shall consult with State Pharmaceutical Assistance Programs, MA organizations, States, pharmaceutical benefit managers, employers, representatives of part D eligible individuals, the data processing experts, pharmacists, pharmaceutical manufacturers, and other experts.

(5) Part D plan defined

For purposes of this section and section 1395w–134 of this title, the term ''part D plan'' means a prescription drug plan and an MA–PD plan.

(b) State Pharmaceutical Assistance Program

For purposes of this part, the term ''State Pharmaceutical Assistance Program'' means a State program—

(1) which provides financial assistance for the purchase or provision of supplemental prescription drug coverage or benefits on behalf of part D eligible individuals;

(2) which, in determining eligibility and the amount of assistance to part D eligible individuals under the Program, provides assistance to such individuals in all part D plans and does not discriminate based upon the part D plan in which the individual is enrolled; and

(3) which satisfies the requirements of subsections (a) and (c) of this section.

(c) Relation to other provisions

(1) Medicare as primary payor

The requirements of this section shall not change or affect the primary payor status of a part D plan.

(2) Use of a single card

A card that is issued under section 1395w–104(b)(2)(A) of this title for use under a part D plan may also be used in connection with coverage of benefits provided under a State Pharmaceutical Assistance Program and, in such case, may contain an emblem or symbol indicating such connection.

(3) Other provisions

The provisions of section 1395w–134(c) of this title shall apply to the requirements under this section.

(4) Special treatment under out-of-pocket rule

In applying section 1395w–102(b)(4)(C)(ii) of this title, expenses incurred under a State Pharmaceutical Assistance Program may be counted toward the annual out-of-pocket threshold.

(5) Construction

Nothing in this section shall be construed as requiring a State Pharmaceutical Assistance Program to coordinate or provide financial assistance with respect to any part D plan.

(d) Facilitation of transition and coordination with State Pharmaceutical Assistance Programs

(1) Transitional grant program

The Secretary shall provide payments to State Pharmaceutical Assistance Programs with an application approved under this subsection.

(2) Use of funds

Payments under this section may be used by a Program for any of the following:

(A) Educating part D eligible individuals enrolled in the Program about the prescription drug coverage available through part D plans under this part.

(B) Providing technical assistance, phone support, and counseling for such enrollees to facilitate selection and enrollment in such plans.

(C) Other activities designed to promote the effective coordination of enrollment, coverage, and payment between such Program and such plans.

(3) Allocation of funds

Of the amount appropriated to carry out this subsection for a fiscal year, the Secretary shall allocate payments among Programs that have applications approved under paragraph (4) for such fiscal year in proportion to the number of enrollees enrolled in each such Program as of October 1, 2003.

(4) Application

No payments may be made under this subsection except pursuant to an application that is submitted and approved in a time, manner, and form specified by the Secretary.

(5) Funding

Out of any funds in the Treasury not otherwise appropriated, there are appropriated for each of fiscal years 2005 and 2006, $62,500,000 to carry out this subsection.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D–23, as added Pub. L. 108–173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2128.)

§1395w–134. Coordination requirements for plans providing prescription drug coverage

(a) Application of benefit coordination requirements to additional plans

(1) In general

The Secretary shall apply the coordination requirements established under section 1395w–133(a) of this title to Rx plans described in subsection (b) of this section in the same manner as such requirements apply to a State Pharmaceutical Assistance Program.

(2) Application to treatment of certain out-of-pocket expenditures

To the extent specified by the Secretary, the requirements referred to in paragraph (1) shall apply to procedures established under section 1395w–102(b)(4)(D) of this title.

(3) User fees

(A) In general

The Secretary may impose user fees for the transmittal of information necessary for benefit coordination under section 1395w–102(b)(4)(D) of this title in a manner similar to the manner in which user fees are imposed under section 1395u(h)(3)(B) of this title, except that the Secretary may retain a portion of such fees to defray the Secretary's costs in carrying out procedures under section 1395w–102(b)(4)(D) of this title.

(B) Application

A user fee may not be imposed under subparagraph (A) with respect to a State Pharmaceutical Assistance Program.

(b) Rx Plan

An Rx plan described in this subsection is any of the following:

(1) Medicaid programs

A State plan under subchapter XIX of this chapter, including such a plan operating under

a waiver under section 1315 of this title, if it meets the requirements of section 1395w–133(b)(2) of this title.

(2) Group health plans

An employer group health plan.

(3) FEHBP

The Federal employees health benefits plan under chapter 89 of title 5.

(4) Military coverage (including TRICARE)

Coverage under chapter 55 of title 10.

(5) Other prescription drug coverage

Such other health benefit plans or programs that provide coverage or financial assistance for the purchase or provision of prescription drug coverage on behalf of part D eligible individuals as the Secretary may specify.

(c) Relation to other provisions

(1) Use of cost management tools

The requirements of this section shall not impair or prevent a PDP sponsor or MA organization from applying cost management tools (including differential payments) under all methods of operation.

(2) No affect[1] on treatment of certain out-of-pocket expenditures

The requirements of this section shall not affect the application of the procedures established under section 1395w–102(b)(4)(D) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–24, as added Pub. L. 108–173, title I, § 101(a)(2), Dec. 8, 2003, 117 Stat. 2130.)

SUBPART 4—MEDICARE PRESCRIPTION DRUG DISCOUNT CARD AND TRANSITIONAL ASSISTANCE PROGRAM

§ 1395w–141. Medicare prescription drug discount card and transitional assistance program

(a) Establishment of program

(1) In general

The Secretary shall establish a program under this section—

(A) to endorse prescription drug discount card programs that meet the requirements of this section in order to provide access to prescription drug discounts through prescription drug card sponsors for discount card eligible individuals throughout the United States; and

(B) to provide for transitional assistance for transitional assistance eligible individuals enrolled in such endorsed programs.

(2) Period of operation

(A) Implementation deadline

The Secretary shall implement the program under this section so that discount cards and transitional assistance are first available by not later than 6 months after December 8, 2003.

(B) Expediting implementation

The Secretary shall promulgate regulations to carry out the program under this section which may be effective and final immediately on an interim basis as of the date of publication of the interim final regulation. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comments on such regulation after the date of publication. The Secretary may change or revise such regulation after completion of the period of public comment.

(C) Termination and transition

(i) In general

Subject to clause (ii)—

(I) the program under this section shall not apply to covered discount card drugs dispensed after December 31, 2005; and

(II) transitional assistance shall be available after such date to the extent the assistance relates to drugs dispensed on or before such date.

(ii) Transition

In the case of an individual who is enrolled in an endorsed discount card program as of December 31, 2005, during the individual's transition period (if any) under clause (iii), in accordance with transition rules specified by the Secretary—

(I) such endorsed program may continue to apply to covered discount card drugs dispensed to the individual under the program during such transition period;

(II) no annual enrollment fee shall be applicable during the transition period;

(III) during such period the individual may not change the endorsed program plan in which the individual is enrolled; and

(IV) the balance of any transitional assistance remaining on January 1, 2006, shall remain available for drugs dispensed during the individual's transition period.

(iii) Transition period

The transition period under this clause for an individual is the period beginning on January 1, 2006, and ending in the case of an individual who—

(I) is enrolled in a prescription drug plan or an MA–PD plan before the last date of the initial enrollment period under section 1395w–101(b)(2)(A) of this title, on the effective date of the individual's coverage under such part; or

(II) is not so enrolled, on the last day of such initial period.

(3) Voluntary nature of program

Nothing in this section shall be construed as requiring a discount card eligible individual to enroll in an endorsed discount card program under this section.

(4) Glossary and definitions of terms

For purposes of this section:

(A) Covered discount card drug

The term ''covered discount card drug'' has the meaning given the term ''covered part D drug'' in section 1395w–102(e) of this title.

[1] So in original. Probably should be ''effect''.

(B) Discount card eligible individual

The term ''discount card eligible individual'' is defined in subsection (b)(1)(A) of this section.

(C) Endorsed discount card program; endorsed program

The terms ''endorsed discount card program'' and ''endorsed program'' mean a prescription drug discount card program that is endorsed (and for which the sponsor has a contract with the Secretary) under this section.

(D) Negotiated price

Negotiated prices are described in subsection (e)(1)(A)(ii) of this section.

(E) Prescription drug card sponsor; sponsor

The terms ''prescription drug card sponsor'' and ''sponsor'' are defined in subsection (h)(1)(A) of this section.

(F) State

The term ''State'' has the meaning given such term for purposes of subchapter XIX of this chapter.

(G) Transitional assistance eligible individual

The term ''transitional assistance eligible individual'' is defined in subsection (b)(2) of this section.

(b) Eligibility for discount card and for transitional assistance

For purposes of this section:

(1) Discount card eligible individual

(A) In general

The term ''discount card eligible individual'' means an individual who—

(i) is entitled to benefits, or enrolled, under part A of this subchapter or enrolled under part B of this subchapter; and

(ii) subject to paragraph (4), is not an individual described in subparagraph (B).

(B) Individual described

An individual described in this subparagraph is an individual described in subparagraph (A)(i) who is enrolled under subchapter XIX of this chapter (or under a waiver under section 1315 of this title of the requirements of such subchapter) and is entitled to any medical assistance for outpatient prescribed drugs described in section 1396d(a)(12) of this title.

(2) Transitional assistance eligible individual

(A) In general

Subject to subparagraph (B), the term ''transitional assistance eligible individual'' means a discount card eligible individual who resides in one of the 50 States or the District of Columbia and whose income (as determined under subsection (f)(1)(B) of this section) is not more than 135 percent of the poverty line (as defined in section 9902(2) of this title, including any revision required by such section) applicable to the family size involved (as determined under subsection (f)(1)(B) of this section).

(B) Exclusion of individuals with certain prescription drug coverage

Such term does not include an individual who has coverage of, or assistance for, covered discount card drugs under any of the following:

(i) A group health plan or health insurance coverage (as such terms are defined in section 300gg–91 of this title), other than coverage under a plan under part C of this subchapter and other than coverage consisting only of excepted benefits (as defined in such section).

(ii) Chapter 55 of title 10 (relating to medical and dental care for members of the uniformed services).

(iii) A plan under chapter 89 of title 5 (relating to the Federal employees' health benefits program).

(3) Special transitional assistance eligible individual

The term ''special transitional assistance eligible individual'' means a transitional assistance eligible individual whose income (as determined under subsection (f)(1)(B) of this section) is not more than 100 percent of the poverty line (as defined in section 9902(2) of this title, including any revision required by such section) applicable to the family size involved (as determined under subsection (f)(1)(B) of this section).

(4) Treatment of medicaid medically needy

For purposes of this section, the Secretary shall provide for appropriate rules for the treatment of medically needy individuals described in section 1396a(a)(10)(C) of this title as discount card eligible individuals and as transitional assistance eligible individuals.

(c) Enrollment and enrollment fees

(1) Enrollment process

The Secretary shall establish a process through which a discount card eligible individual is enrolled and disenrolled in an endorsed discount card program under this section consistent with the following:

(A) Continuous open enrollment

Subject to the succeeding provisions of this paragraph and subsection (h)(9) of this section, a discount card eligible individual who is not enrolled in an endorsed discount card program and is residing in a State may enroll in any such endorsed program—

(i) that serves residents of the State; and

(ii) at any time beginning on the initial enrollment date, specified by the Secretary, and before January 1, 2006.

(B) Use of standard enrollment form

An enrollment in an endorsed program shall only be effected through completion of a standard enrollment form specified by the Secretary. Each sponsor of an endorsed program shall transmit to the Secretary (in a form and manner specified by the Secretary) information on individuals who complete such enrollment forms and, to the extent provided under subsection (f) of this section, information regarding certification as a transitional assistance eligible individual.

(C) Enrollment only in one program

(i) In general

Subject to clauses (ii) and (iii), a discount card eligible individual may be enrolled in only one endorsed discount card program under this section.

(ii) Change in endorsed program permitted for 2005

The Secretary shall establish a process, similar to (and coordinated with) the process for annual, coordinated elections under section 1395w–21(e)(3) of this title during 2004, under which an individual enrolled in an endorsed discount card program may change the endorsed program in which the individual is enrolled for 2005.

(iii) Additional exceptions

The Secretary shall permit an individual to change the endorsed discount card program in which the individual is enrolled in the case of an individual who changes residence to be outside the service area of such program and in such other exceptional cases as the Secretary may provide (taking into account the circumstances for special election periods under section 1395w–21(e)(4) of this title). Under the previous sentence, the Secretary may consider a change in residential setting (such as placement in a nursing facility) or enrollment in or disenrollment from a plan under part C of this subchapter through which the individual was enrolled in an endorsed program to be an exceptional circumstance.

(D) Disenrollment

(i) Voluntary

An individual may voluntarily disenroll from an endorsed discount card program at any time. In the case of such a voluntary disenrollment, the individual may not enroll in another endorsed program, except under such exceptional circumstances as the Secretary may recognize under subparagraph (C)(iii) or during the annual coordinated enrollment period provided under subparagraph (C)(ii).

(ii) Involuntary

An individual who is enrolled in an endorsed discount card program and not a transitional assistance eligible individual may be disenrolled by the sponsor of the program if the individual fails to pay any annual enrollment fee required under the program.

(E) Application to certain enrollees

In the case of a discount card eligible individual who is enrolled in a plan described in section 1395w–21(a)(2)(A) of this title or under a reasonable cost reimbursement contract under section 1395mm(h) of this title that is offered by an organization that also is a prescription discount card sponsor that offers an endorsed discount card program under which the individual may be enrolled and that has made an election to apply the special rules under subsection (h)(9)(B) of this section for such an endorsed program, the individual may only enroll in such an endorsed discount card program offered by that sponsor.

(2) Enrollment fees

(A) In general

Subject to the succeeding provisions of this paragraph, a prescription drug card sponsor may charge an annual enrollment fee for each discount card eligible individual enrolled in an endorsed discount card program offered by such sponsor. The annual enrollment fee for either 2004 or 2005 shall not be prorated for portions of a year. There shall be no annual enrollment fee for a year after 2005.

(B) Amount

No annual enrollment fee charged under subparagraph (A) may exceed $30.

(C) Uniform enrollment fee

A prescription drug card sponsor shall ensure that the annual enrollment fee (if any) for an endorsed discount card program is the same for all discount card eligible individuals enrolled in the program and residing in the State.

(D) Collection

The annual enrollment fee (if any) charged for enrollment in an endorsed program shall be collected by the sponsor of the program.

(E) Payment of fee for transitional assistance eligible individuals

Under subsection (g)(1)(A) of this section, the annual enrollment fee (if any) otherwise charged under this paragraph with respect to a transitional assistance eligible individual shall be paid by the Secretary on behalf of such individual.

(F) Optional payment of fee by State

(i) In general

The Secretary shall establish an arrangement under which a State may provide for payment of some or all of the enrollment fee for some or all enrollees who are not transitional assistance eligible individuals in the State, as specified by the State under the arrangement. Insofar as such a payment arrangement is made with respect to an enrollee, the amount of the enrollment fee shall be paid directly by the State to the sponsor.

(ii) No Federal matching available under medicaid or SCHIP

Expenditures made by a State for enrollment fees described in clause (i) shall not be treated as State expenditures for purposes of Federal matching payments under subchapter XIX or XXI of this chapter.

(G) Rules in case of changes in program enrollment during a year

The Secretary shall provide special rules in the case of payment of an annual enrollment fee for a discount card eligible individual who changes the endorsed program in which the individual is enrolled during a year.

(3) Issuance of discount card

Each prescription drug card sponsor of an endorsed discount card program shall issue, in a standard format specified by the Secretary, to each discount card eligible individual enrolled in such program a card that establishes proof of enrollment and that can be used in a coordinated manner to identify the sponsor, program, and individual for purposes of the program under this section.

(4) Period of access

In the case of a discount card eligible individual who enrolls in an endorsed program, access to negotiated prices and transitional assistance, if any, under such endorsed program shall take effect on such date as the Secretary shall specify.

(d) Provision of information on enrollment and program features

(1) Secretarial responsibilities

(A) In general

The Secretary shall provide for activities under this subsection to broadly disseminate information to discount card eligible individuals (and prospective eligible individuals) regarding—

(i) enrollment in endorsed discount card programs; and

(ii) the features of the program under this section, including the availability of transitional assistance.

(B) Promotion of informed choice

In order to promote informed choice among endorsed prescription drug discount card programs, the Secretary shall provide for the dissemination of information which—

(i) compares the annual enrollment fee and other features of such programs, which may include comparative prices for covered discount card drugs; and

(ii) includes educational materials on the variability of discounts on prices of covered discount card drugs under an endorsed program.

The dissemination of information under clause (i) shall, to the extent practicable, be coordinated with the dissemination of educational information on other medicare options.

(C) Special rule for initial enrollment date under the program

To the extent practicable, the Secretary shall ensure, through the activities described in subparagraphs (A) and (B), that discount card eligible individuals are provided with such information at least 30 days prior to the initial enrollment date specified under subsection (c)(1)(A)(ii) of this section.

(D) Use of medicare toll-free number

The Secretary shall provide through the toll-free telephone number 1–800–MEDICARE for the receipt and response to inquiries and complaints concerning the program under this section and endorsed programs.

(2) Prescription drug card sponsor responsibilities

(A) In general

Each prescription drug card sponsor that offers an endorsed discount card program shall make available to discount card eligible individuals (through the Internet and otherwise) information that the Secretary identifies as being necessary to promote informed choice among endorsed discount card programs by such individuals, including information on enrollment fees and negotiated prices for covered discount card drugs charged to such individuals.

(B) Response to enrollee questions

Each sponsor offering an endorsed discount card program shall have a mechanism (including a toll-free telephone number) for providing upon request specific information (such as negotiated prices and the amount of transitional assistance remaining available through the program) to discount card eligible individuals enrolled in the program. The sponsor shall inform transitional assistance eligible individuals enrolled in the program of the availability of such toll-free telephone number to provide information on the amount of available transitional assistance.

(C) Information on balance of transitional assistance available at point-of-sale

Each sponsor offering an endorsed discount card program shall have a mechanism so that information on the amount of transitional assistance remaining under subsection (g)(1)(B) of this section is available (electronically or by telephone) at the point-of-sale of covered discount card drugs.

(3) Public disclosure of pharmaceutical prices for equivalent drugs

(A) In general

A prescription drug card sponsor offering an endorsed discount card program shall provide that each pharmacy that dispenses a covered discount card drug shall inform a discount card eligible individual enrolled in the program of any differential between the price of the drug to the enrollee and the price of the lowest priced generic covered discount card drug under the program that is therapeutically equivalent and bioequivalent and available at such pharmacy.

(B) Timing of notice

(i) In general

Subject to clause (ii), the information under subparagraph (A) shall be provided at the time of purchase of the drug involved, or, in the case of dispensing by mail order, at the time of delivery of such drug.

(ii) Waiver

The Secretary may waive clause (i) in such circumstances as the Secretary may specify.

(e) Discount card features

(1) Savings to enrollees through negotiated prices

(A) Access to negotiated prices

(i) In general

Each prescription drug card sponsor that offers an endorsed discount card program shall provide each discount card eligible individual enrolled in the program with access to negotiated prices.

(ii) Negotiated prices

For purposes of this section, negotiated prices shall take into account negotiated price concessions, such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations, for covered discount card drugs, and include any dispensing fees for such drugs.

(B) Ensuring pharmacy access

Each prescription drug card sponsor offering an endorsed discount card program shall secure the participation in its network of a sufficient number of pharmacies that dispense (other than solely by mail order) drugs directly to enrollees to ensure convenient access to covered discount card drugs at negotiated prices (consistent with rules established by the Secretary). The Secretary shall establish convenient access rules under this clause that are no less favorable to enrollees than the standards for convenient access to pharmacies included in the statement of work of solicitation (#MDA906–03–R–0002) of the Department of Defense under the TRICARE Retail Pharmacy (TRRx) as of March 13, 2003.

(C) Prohibition on charges for required services

(i) In general

Subject to clause (ii), a prescription drug card sponsor (and any pharmacy contracting with such sponsor for the provision of covered discount card drugs to individuals enrolled in such sponsor's endorsed discount card program) may not charge an enrollee any amount for any items and services required to be provided by the sponsor under this section.

(ii) Construction

Nothing in clause (i) shall be construed to prevent—

(I) the sponsor from charging the annual enrollment fee (except in the case of a transitional assistance eligible individual); and

(II) the pharmacy dispensing the covered discount card drug, from imposing a charge (consistent with the negotiated price) for the covered discount card drug dispensed, reduced by the amount of any transitional assistance made available.

(D) Inapplicability of medicaid best price rules

The prices negotiated from drug manufacturers for covered discount card drugs under an endorsed discount card program under this section shall (notwithstanding any other provision of law) not be taken into account for the purposes of establishing the best price under section 1396r–8(c)(1)(C) of this title.

(2) Reduction of medication errors and adverse drug interactions

Each endorsed discount card program shall implement a system to reduce the likelihood of medication errors and adverse drug interactions and to improve medication use.

(f) Eligibility procedures for endorsed programs and transitional assistance

(1) Determinations

(A) Procedures

The determination of whether an individual is a discount card eligible individual or a transitional assistance eligible individual or a special transitional assistance eligible individual (as defined in subsection (b) of this section) shall be determined under procedures specified by the Secretary consistent with this subsection.

(B) Income and family size determinations

For purposes of this section, the Secretary shall define the terms ''income'' and ''family size'' and shall specify the methods and period for which they are determined. If under such methods income or family size is determined based on the income or family size for prior periods of time, the Secretary shall permit (whether through a process of reconsideration or otherwise) an individual whose income or family size has changed to elect to have eligibility for transitional assistance determined based on income or family size for a more recent period.

(2) Use of self-certification for transitional assistance

(A) In general

Under the procedures specified under paragraph (1)(A) an individual who wishes to be treated as a transitional assistance eligible individual or a special transitional assistance eligible individual under this section (or another qualified person on such individual's behalf) shall certify on the enrollment form under subsection (c)(1)(B) of this section (or similar form specified by the Secretary), through a simplified means specified by the Secretary and under penalty of perjury or similar sanction for false statements, as to the amount of the individual's income, family size, and individual's prescription drug coverage (if any) insofar as they relate to eligibility to be a transitional assistance eligible individual or a special transitional assistance eligible individual. Such certification shall be deemed as consent to verification of respective eligibility under paragraph (3). A certification under this paragraph may be provided before, on, or after the time of enrollment under an endorsed program.

(B) Treatment of self-certification

The Secretary shall treat a certification under subparagraph (A) that is verified

under paragraph (3) as a determination that the individual involved is a transitional assistance eligible individual or special transitional assistance eligible individual (as the case may be) for the entire period of the enrollment of the individual in any endorsed program.

(3) Verification

(A) In general

The Secretary shall establish methods (which may include the use of sampling and the use of information described in subparagraph (B)) to verify eligibility for individuals who seek to enroll in an endorsed program and for individuals who provide a certification under paragraph (2).

(B) Information described

The information described in this subparagraph is as follows:

(i) Medicaid-related information

Information on eligibility under subchapter XIX of this chapter and provided to the Secretary under arrangements between the Secretary and States in order to verify the eligibility of individuals who seek to enroll in an endorsed program and of individuals who provide certification under paragraph (2).

(ii) Social security information

Financial information made available to the Secretary under arrangements between the Secretary and the Commissioner of Social Security in order to verify the eligibility of individuals who provide such certification.

(iii) Information from Secretary of the Treasury

Financial information made available to the Secretary under section 6103(*l*)(19) of title 26 in order to verify the eligibility of individuals who provide such certification.

(C) Verification in cases of medicaid enrollees

(i) In general

Nothing in this section shall be construed as preventing the Secretary from finding that a discount card eligible individual meets the income requirements under subsection (b)(2)(A) of this section if the individual is within a category of discount card eligible individuals who are enrolled under subchapter XIX of this chapter (such as qualified medicare beneficiaries (QMBs), specified low-income medicare beneficiaries (SLMBs), and certain qualified individuals (QI–1s)).

(ii) Availability of information for verification purposes

As a condition of provision of Federal financial participation to a State that is one of the 50 States or the District of Columbia under subchapter XIX of this chapter, for purposes of carrying out this section, the State shall provide the information it submits to the Secretary relating to such subchapter in a manner specified by the Secretary that permits the Secretary to identify individuals who are described in subsection (b)(1)(B) of this section or are transitional assistance eligible individuals or special transitional assistance eligible individuals.

(4) Reconsideration

(A) In general

The Secretary shall establish a process under which a discount card eligible individual, who is determined through the certification and verification methods under paragraphs (2) and (3) not to be a transitional assistance eligible individual or a special transitional assistance eligible individual, may request a reconsideration of the determination.

(B) Contract authority

The Secretary may enter into a contract to perform the reconsiderations requested under subparagraph (A).

(C) Communication of results

Under the process under subparagraph (A) the results of such reconsideration shall be communicated to the individual and the prescription drug card sponsor involved.

(g) Transitional assistance

(1) Provision of transitional assistance

An individual who is a transitional assistance eligible individual (as determined under this section) and who is enrolled with an endorsed program is entitled—

(A) to have payment made of any annual enrollment fee charged under subsection (c)(2) of this section for enrollment under the program; and

(B) to have payment made, up to the amount specified in paragraph (2), under such endorsed program of 90 percent (or 95 percent in the case of a special transitional assistance eligible individual) of the costs incurred for covered discount card drugs obtained through the program taking into account the negotiated price (if any) for the drug under the program.

(2) Limitation on dollar amount

(A) In general

Subject to subparagraph (B), the amount specified in this paragraph for a transitional assistance eligible individual—

(i) for costs incurred during 2004, is $600; or

(ii) for costs incurred during 2005, is—

(I) $600, plus

(II) except as provided in subparagraph (E), the amount by which the amount available under this paragraph for 2004 for that individual exceeds the amount of payment made under paragraph (1)(B) for that individual for costs incurred during 2004.

(B) Proration

(i) In general

In the case of an individual not described in clause (ii) with respect to a year, the Secretary may prorate the amount speci-

fied in subparagraph (A) for the balance of the year involved in a manner specified by the Secretary.

(ii) Individual described

An individual described in this clause is a transitional assistance eligible individual who—

(I) with respect to 2004, enrolls in an endorsed program, and provides a certification under subsection (f)(2) of this section, before the initial implementation date of the program under this section; and

(II) with respect to 2005, is enrolled in an endorsed program, and has provided such a certification, before February 1, 2005.

(C) Accounting for available balances in cases of changes in program enrollment

In the case of a transitional assistance eligible individual who changes the endorsed discount card program in which the individual is enrolled under this section, the Secretary shall provide a process under which the Secretary provides to the sponsor of the endorsed program in which the individual enrolls information concerning the balance of amounts available on behalf of the individual under this paragraph.

(D) Limitation on use of funds

Pursuant to subsection (a)(2)(C) of this section, no assistance shall be provided under paragraph (1)(B) with respect to covered discount card drugs dispensed after December 31, 2005.

(E) No rollover permitted in case of voluntary disenrollment

Except in such exceptional cases as the Secretary may provide, in the case of a transitional assistance eligible individual who voluntarily disenrolls from an endorsed plan, the provisions of subclause (II) of subparagraph (A)(ii) shall not apply.

(3) Payment

The Secretary shall provide a method for the reimbursement of prescription drug card sponsors for assistance provided under this subsection.

(4) Coverage of coinsurance

(A) Waiver permitted by pharmacy

Nothing in this section shall be construed as precluding a pharmacy from reducing or waiving the application of coinsurance imposed under paragraph (1)(B) in accordance with section 1320a–7b(b)(3)(G) of this title.

(B) Optional payment of coinsurance by State

(i) In general

The Secretary shall establish an arrangement under which a State may provide for payment of some or all of the coinsurance under paragraph (1)(B) for some or all enrollees in the State, as specified by the State under the arrangement. Insofar as such a payment arrangement is made with respect to an enrollee, the amount of the coinsurance shall be paid directly by the State to the pharmacy involved.

(ii) No Federal matching available under medicaid or SCHIP

Expenditures made by a State for coinsurance described in clause (i) shall not be treated as State expenditures for purposes of Federal matching payments under subchapter XIX or XXI of this chapter.

(iii) Not treated as medicare cost-sharing

Coinsurance described in paragraph (1)(B) shall not be treated as coinsurance under this subchapter for purposes of section 1396d(p)(3)(B) of this title.

(C) Treatment of coinsurance

The amount of any coinsurance imposed under paragraph (1)(B), whether paid or waived under this paragraph, shall not be taken into account in applying the limitation in dollar amount under paragraph (2).

(5) Ensuring access to transitional assistance for qualified residents of long-term care facilities and American Indians

(A) Residents of long-term care facilities

The Secretary shall establish procedures and may waive requirements of this section as necessary to negotiate arrangements with sponsors to provide arrangements with pharmacies that support long-term care facilities in order to ensure access to transitional assistance for transitional assistance eligible individuals who reside in long-term care facilities.

(B) American Indians

The Secretary shall establish procedures and may waive requirements of this section to ensure that, for purposes of providing transitional assistance, pharmacies operated by the Indian Health Service, Indian tribes and tribal organizations, and urban Indian organizations (as defined in section 1603 of title 25) have the opportunity to participate in the pharmacy networks of at least two endorsed programs in each of the 50 States and the District of Columbia where such a pharmacy operates.

(6) No impact on benefits under other programs

The availability of negotiated prices or transitional assistance under this section shall not be treated as benefits or otherwise taken into account in determining an individual's eligibility for, or the amount of benefits under, any other Federal program.

(7) Disregard for purposes of part C

Nonuniformity of benefits resulting from the implementation of this section (including the provision or nonprovision of transitional assistance and the payment or waiver of any enrollment fee under this section) shall not be taken into account in applying section 1395w–24(f) of this title.

(h) Qualification of prescription drug card sponsors and endorsement of discount card programs; beneficiary protections

(1) Prescription drug card sponsor and qualifications

(A) Prescription drug card sponsor and sponsor defined

For purposes of this section, the terms ''prescription drug card sponsor'' and ''sponsor'' mean any nongovernmental entity that the Secretary determines to be appropriate to offer an endorsed discount card program under this section, which may include—

(i) a pharmaceutical benefit management company;

(ii) a wholesale or retail pharmacy delivery system;

(iii) an insurer (including an insurer that offers medicare supplemental policies under section 1395ss of this title);

(iv) an organization offering a plan under part C of this subchapter; or

(v) any combination of the entities described in clauses (i) through (iv).

(B) Administrative qualifications

Each endorsed discount card program shall be operated directly, or through arrangements with an affiliated organization (or organizations), by one or more entities that have demonstrated experience and expertise in operating such a program or a similar program and that meets such business stability and integrity requirements as the Secretary may specify.

(C) Accounting for transitional assistance

The sponsor of an endorsed discount card program shall have arrangements satisfactory to the Secretary to account for the assistance provided under subsection (g) of this section on behalf of transitional assistance eligible individuals.

(2) Applications for program endorsement

(A) Submission

Each prescription drug card sponsor that seeks endorsement of a prescription drug discount card program under this section shall submit to the Secretary, at such time and in such manner as the Secretary may specify, an application containing such information as the Secretary may require.

(B) Approval; compliance with applicable requirements

The Secretary shall review the application submitted under subparagraph (A) and shall determine whether to endorse the prescription drug discount card program. The Secretary may not endorse such a program unless—

(i) the program and prescription drug card sponsor offering the program comply with the applicable requirements under this section; and

(ii) the sponsor has entered into a contract with the Secretary to carry out such requirements.

(C) Termination of endorsement and contracts

An endorsement of an endorsed program and a contract under subparagraph (B) shall be for the duration of the program under this section (including any transition applicable under subsection (a)(2)(C)(ii) of this section), except that the Secretary may, with notice and for cause (as defined by the Secretary), terminate such endorsement and contract.

(D) Ensuring choice of programs

(i) In general

The Secretary shall ensure that there is available to each discount card eligible individual a choice of at least 2 endorsed programs (each offered by a different sponsor).

(ii) Limitation on number

The Secretary may limit (but not below 2) the number of sponsors in a State that are awarded contracts under this paragraph.

(3) Service area encompassing entire States

Except as provided in paragraph (9), if a prescription drug card sponsor that offers an endorsed program enrolls in the program individuals residing in any part of a State, the sponsor must permit any discount card eligible individual residing in any portion of the State to enroll in the program.

(4) Savings to medicare beneficiaries

Each prescription drug card sponsor that offers an endorsed discount card program shall pass on to discount card eligible individuals enrolled in the program negotiated prices on covered discount card drugs, including discounts negotiated with pharmacies and manufacturers, to the extent disclosed under subsection (i)(1) of this section.

(5) Grievance mechanism

Each prescription drug card sponsor shall provide meaningful procedures for hearing and resolving grievances between the sponsor (including any entity or individual through which the sponsor carries out the endorsed discount card program) and enrollees in endorsed discount card programs of the sponsor under this section in a manner similar to that required under section 1395w–22(f) of this title.

(6) Confidentiality of enrollee records

(A) In general

For purposes of the program under this section, the operations of an endorsed program are covered functions and a prescription drug card sponsor is a covered entity for purposes of applying part C of subchapter XI of this chapter and all regulatory provisions promulgated thereunder, including regulations (relating to privacy) adopted pursuant to the authority of the Secretary under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).[1]

(B) Waiver authority

In order to promote participation of sponsors in the program under this section, the Secretary may waive such relevant portions

[1] See References in Text note below.

of regulations relating to privacy referred to in subparagraph (A), for such appropriate, limited period of time, as the Secretary specifies.

(7) Limitation on provision and marketing of products and services

The sponsor of an endorsed discount card program—

(A) may provide under the program—

(i) a product or service only if the product or service is directly related to a covered discount card drug; or

(ii) a discount price for nonprescription drugs; and

(B) may, to the extent otherwise permitted under paragraph (6) (relating to application of HIPAA requirements), market a product or service under the program only if the product or service is directly related to—

(i) a covered discount card drug; or

(ii) a drug described in subparagraph (A)(ii) and the marketing consists of information on the discounted price made available for the drug involved.

(8) Additional protections

Each endorsed discount card program shall meet such additional requirements as the Secretary identifies to protect and promote the interest of discount card eligible individuals, including requirements that ensure that discount card eligible individuals enrolled in endorsed discount card programs are not charged more than the lower of the price based on negotiated prices or the usual and customary price.

(9) Special rules for certain organizations

(A) In general

In the case of an organization that is offering a plan under part C of this subchapter or enrollment under a reasonable cost reimbursement contract under section 1395mm(h) of this title that is seeking to be a prescription drug card sponsor under this section, the organization may elect to apply the special rules under subparagraph (B) with respect to enrollees in any plan described in section 1395w–21(a)(2)(A) of this title that it offers or under such contract and an endorsed discount card program it offers, but only if it limits enrollment under such program to individuals enrolled in such plan or under such contract.

(B) Special rules

The special rules under this subparagraph are as follows:

(i) Limitation on enrollment

The sponsor limits enrollment under this section under the endorsed discount card program to discount card eligible individuals who are enrolled in the part C plan involved or under the reasonable cost reimbursement contract involved and is not required nor permitted to enroll other individuals under such program.

(ii) Pharmacy access

Pharmacy access requirements under subsection (e)(1)(B) of this section are deemed to be met if the access is made available through a pharmacy network (and not only through mail order) and the network used by the sponsor is approved by the Secretary.

(iii) Sponsor requirements

The Secretary may waive the application of such requirements for a sponsor as the Secretary determines to be duplicative or to conflict with a requirement of the organization under part C of this subchapter or section 1395mm of this title (as the case may be) or to be necessary in order to improve coordination of this section with the benefits under such part or section.

(i) Disclosure and oversight

(1) Disclosure

Each prescription drug card sponsor offering an endorsed discount card program shall disclose to the Secretary (in a manner specified by the Secretary) information relating to program performance, use of prescription drugs by discount card eligible individuals enrolled in the program, the extent to which negotiated price concessions described in subsection (e)(1)(A)(ii) of this section made available to the entity by a manufacturer are passed through to enrollees through pharmacies or otherwise, and such other information as the Secretary may specify. The provisions of section 1396r–8(b)(3)(D) of this title shall apply to drug pricing data reported under the previous sentence (other than data in aggregate form).

(2) Oversight; audit and inspection authority

The Secretary shall provide appropriate oversight to ensure compliance of endorsed discount card programs and their sponsors with the requirements of this section. The Secretary shall have the right to audit and inspect any books and records of a prescription discount card sponsor (and of any affiliated organization referred to in subsection (h)(1)(B) of this section) that pertain to the endorsed discount card program under this section, including amounts payable to the sponsor under this section.

(3) Sanctions for abusive practices

The Secretary may implement intermediate sanctions or may revoke the endorsement of a program offered by a sponsor under this section if the Secretary determines that the sponsor or the program no longer meets the applicable requirements of this section or that the sponsor has engaged in false or misleading marketing practices. The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for conduct that a party knows or should know is a violation of this section. The provisions of section 1320a–7a of this title (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(j) Treatment of territories

(1) In general

The Secretary may waive any provision of this section (including subsection (h)(2)(D)) in the case of a resident of a State (other than the 50 States and the District of Columbia) insofar as the Secretary determines it is necessary to secure access to negotiated prices for discount card eligible individuals (or, at the option of the Secretary, individuals described in subsection (b)(1)(A)(i) of this section).

(2) Transitional assistance

(A) In general

In the case of a State, other than the 50 States and the District of Columbia, if the State establishes a plan described in subparagraph (B) (for providing transitional assistance with respect to the provision of prescription drugs to some or all individuals residing in the State who are described in subparagraph (B)(i)), the Secretary shall pay to the State for the entire period of the operation of this section an amount equal to the amount allotted to the State under subparagraph (C).

(B) Plan

The plan described in this subparagraph is a plan that—

(i) provides transitional assistance with respect to the provision of covered discount card drugs to some or all individuals who are entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, who reside in the State, and who have income below 135 percent of the poverty line; and

(ii) assures that amounts received by the State under this paragraph are used only for such assistance.

(C) Allotment limit

The amount described in this subparagraph for a State is equal to $35,000,000 multiplied by the ratio (as estimated by the Secretary) of—

(i) the number of individuals who are entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter and who reside in the State (as determined by the Secretary as of July 1, 2003), to

(ii) the sum of such numbers for all States to which this paragraph applies.

(D) Continued availability of funds

Amounts made available to a State under this paragraph which are not used under this paragraph shall be added to the amount available to that State for purposes of carrying out section 1396u–5(e) of this title.

(k) Funding

(1) Establishment of Transitional Assistance Account

(A) In general

There is created within the Federal Supplementary Medical Insurance Trust Fund established by section 1395t of this title an account to be known as the ''Transitional Assistance Account'' (in this subsection referred to as the ''Account'').

(B) Funds

The Account shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, accrued interest on balances in the Account, and such amounts as may be deposited in, or appropriated to, the Account as provided in this subsection.

(C) Separate from rest of Trust Fund

Funds provided under this subsection to the Account shall be kept separate from all other funds within the Federal Supplementary Medical Insurance Trust Fund, but shall be invested, and such investments redeemed, in the same manner as all other funds and investments within such Trust Fund.

(2) Payments from account

(A) In general

The Managing Trustee shall pay from time to time from the Account such amounts as the Secretary certifies are necessary to make payments for transitional assistance provided under subsections (g) and (j)(2) of this section.

(B) Treatment in relation to part B premium

Amounts payable from the Account shall not be taken into account in computing actuarial rates or premium amounts under section 1395r of this title.

(3) Appropriations to cover benefits

There are appropriated to the Account in a fiscal year, out of any moneys in the Treasury not otherwise appropriated, an amount equal to the payments made from the Account in the year.

(4) For administrative expenses

There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the Secretary's responsibilities under this section.

(5) Transfer of any remaining balance to Medicare Prescription Drug Account

Any balance remaining in the Account after the Secretary determines that funds in the Account are no longer necessary to carry out the program under this section shall be transferred and deposited into the Medicare Prescription Drug Account under section 1395w–116 of this title.

(6) Construction

Nothing in this section shall be construed as authorizing the Secretary to provide for payment (other than payment of an enrollment fee on behalf of a transitional assistance eligible individual under subsection (g)(1)(A) of this section) to a sponsor for administrative expenses incurred by the sponsor in carrying out this section (including in administering the transitional assistance provisions of subsections (f) and (g) of this section).

(Aug. 14, 1935, ch. 531, title XVIII, §1860D–31, as added Pub. L. 108–173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2131.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (b)(1)(A)(i) and (j)(2)(B)(i), (C)(i), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

Part C of this subchapter, referred to in subsecs. (b)(2)(B)(i), (c)(1)(C)(iii), (g)(7), and (h)(1)(A)(iv), (9), is classified to section 1395w–21 et seq. of this title.

Part C of subchapter XI of this chapter, referred to in subsec. (h)(6)(A), is classified to section 1320d et seq. of this title.

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (h)(6)(A), is section 264(c) of Pub. L. 104–191, title II, Aug. 21, 1996, 110 Stat. 2033, which was formerly set out as a note under section 1320d–2 of this title.

RULES FOR IMPLEMENTATION

Pub. L. 108–173, title I, §105(c), Dec. 8, 2003, 117 Stat. 2166, provided that: ''The following rules shall apply to the medicare prescription drug discount card and transitional assistance program under section 1860D–31 of the Social Security Act [this section], as added by section 101(a):

''(1) In promulgating regulations pursuant to subsection (a)(2)(B) of such section 1860D–31 [subsec. (a)(2)(B) of this section]—

''(A) section 1871(a)(3) of the Social Security Act (42 U.S.C. 1395hh(a)(3)), as added by section 902(a)(1), shall not apply;

''(B) chapter 35 of title 44, United States Code, shall not apply; and

''(C) sections 553(d) and 801(a)(3)(A) of title 5, United States Code, shall not apply.

''(2) Section 1857(c)(5) of the Social Security Act (42 U.S.C. 1395w–27(c)(5)) shall apply with respect to section 1860D–31 of such Act, as added by section 101(a), in the same manner as it applies to part C of title XVIII of such Act [part C of this subchapter].

''(3) The administration of such program shall be made without regard to chapter 35 of title 44, United States Code.

''(4)(A) There shall be no judicial review of a determination not to endorse, or enter into a contract, with a prescription drug card sponsor under section 1860D–31 of the Social Security Act.

''(B) In the case of any order issued to enjoin any provision of section 1860D–31 of the Social Security Act (or of [sic] any provision of this section [amending sections 1395r, 1395t, and 1396r–8 of this title and sections 6103 and 7213 of Title 26, Internal Revenue Code]), such order shall not affect any other provision of such section (or of this section) and all such provisions shall be treated as severable.''

SUBPART 5—DEFINITIONS AND MISCELLANEOUS PROVISIONS

§ 1395w–151. Definitions; treatment of references to provisions in part C

(a) Definitions

For purposes of this part:

(1) Basic prescription drug coverage

The term ''basic prescription drug coverage'' is defined in section 1395w–102(a)(3) of this title.

(2) Covered part D drug

The term ''covered part D drug'' is defined in section 1395w–102(e) of this title.

(3) Creditable prescription drug coverage

The term ''creditable prescription drug coverage'' has the meaning given such term in section 1395w–113(b)(4) of this title.

(4) Part D eligible individual

The term ''part D eligible individual'' has the meaning given such term in section 1395w–101(a)(3)(A) of this title.[1]

(5) Fallback prescription drug plan

The term ''fallback prescription drug plan'' has the meaning given such term in section 1395w–111(g)(4) of this title.

(6) Initial coverage limit

The term ''initial coverage limit'' means such limit as established under section 1395w–102(b)(3) of this title, or, in the case of coverage that is not standard prescription drug coverage, the comparable limit (if any) established under the coverage.

(7) Insurance risk

The term ''insurance risk'' means, with respect to a participating pharmacy, risk of the type commonly assumed only by insurers licensed by a State and does not include payment variations designed to reflect performance-based measures of activities within the control of the pharmacy, such as formulary compliance and generic drug substitution.

(8) MA plan

The term ''MA plan'' has the meaning given such term in section 1395w–101(a)(3)(B) of this title.[1]

(9) MA–PD plan

The term ''MA–PD plan'' has the meaning given such term in section 1395w–101(a)(3)(C) of this title.[1]

(10) Medicare prescription drug account

The term ''Medicare Prescription Drug Account'' means the Account created under section 1395w–116(a) of this title.

(11) PDP approved bid

The term ''PDP approved bid'' has the meaning given such term in section 1395w–113(a)(6) of this title.

(12) PDP region

The term ''PDP region'' means such a region as provided under section 1395w–111(a)(2) of this title.

(13) PDP sponsor

The term ''PDP sponsor'' means a nongovernmental entity that is certified under this part as meeting the requirements and standards of this part for such a sponsor.

(14) Prescription drug plan

The term ''prescription drug plan'' means prescription drug coverage that is offered—

(A) under a policy, contract, or plan that has been approved under section 1395w–111(e) of this title; and

(B) by a PDP sponsor pursuant to, and in accordance with, a contract between the Secretary and the sponsor under section 1395w–112(b) of this title.

(15) Qualified prescription drug coverage

The term ''qualified prescription drug coverage'' is defined in section 1395w–102(a)(1) of this title.

[1] See References in Text note below.

(16) Standard prescription drug coverage

The term ''standard prescription drug coverage'' is defined in section 1395w–102(b) of this title.

(17) State Pharmaceutical Assistance Program

The term ''State Pharmaceutical Assistance Program'' has the meaning given such term in section 1395w–133(b) of this title.

(18) Subsidy eligible individual

The term ''subsidy eligible individual'' has the meaning given such term in section 1395w–114(a)(3)(A) of this title.

(b) Application of part C provisions under this part

For purposes of applying provisions of part C of this subchapter under this part with respect to a prescription drug plan and a PDP sponsor, unless otherwise provided in this part such provisions shall be applied as if—

(1) any reference to an MA plan included a reference to a prescription drug plan;

(2) any reference to an MA organization or a provider-sponsored organization included a reference to a PDP sponsor;

(3) any reference to a contract under section 1395w–27 of this title included a reference to a contract under section 1395w–112(b) of this title;

(4) any reference to part C of this subchapter included a reference to this part; and

(5) any reference to an election period under section 1395w–21 of this title were a reference to an enrollment period under section 1395w–101 of this title.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D–41, as added Pub. L. 108–173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2148.)

REFERENCES IN TEXT

Part C of this subchapter, referred to in subsec. (b), is classified to section 1395w–21 et seq. of this title.

Section 1395w–101(a)(3) of this title, referred to in subsec. (a)(4), (8), (9), was in the original ''section 1860D–1(a)(4)'', and was translated as meaning section 1860D–1(a)(3) of act Aug. 14, 1935, which is classified to section 1395w–101(a)(3) of this title, to reflect the probable intent of Congress, because section 1395w–101(a) of this title does not contain a par. (4) and par. (3) defines terms for purposes of this part.

§ 1395w–152. Miscellaneous provisions

(a) Access to coverage in territories

The Secretary may waive such requirements of this part, including section 1395w–103(a)(1) of this title, insofar as the Secretary determines it is necessary to secure access to qualified prescription drug coverage for part D eligible individuals residing in a State (other than the 50 States and the District of Columbia).

(b) Application of demonstration authority

The provisions of section 402 of the Social Security Amendments of 1967 (Public Law 90–248) shall apply with respect to this part and part C of this subchapter in the same manner it applies with respect to parts A and B of this subchapter, except that any reference with respect to a Trust Fund in relation to an experiment or demonstration project relating to prescription drug coverage under this part shall be deemed a reference to the Medicare Prescription Drug Account within the Federal Supplementary Medical Insurance Trust Fund.

(Aug. 14, 1935, ch. 531, title XVIII, §1860D–42, as added Pub. L. 108–173, title I, §101(a)(2), Dec. 8, 2003, 117 Stat. 2149.)

REFERENCES IN TEXT

Section 402 of the Social Security Amendments of 1967, referred to in subsec. (b), is section 402 of Pub. L. 90–248, title IV, Jan. 2, 1968, 81 Stat. 930, which enacted section 1395b–1 of this title and amended section 1395*ll* of this title.

Parts A, B, and C of this subchapter, referred to in subsec. (b), are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

PART E—MISCELLANEOUS PROVISIONS

AMENDMENTS

2003—Pub. L. 108–173, title I, §101(a)(1), Dec. 8, 2003, 117 Stat. 2071, redesignated part D of this subchapter as part E.

1997—Pub. L. 105–33, title IV, §4001, Aug. 5, 1997, 111 Stat. 275, redesignated part C of this subchapter as part D.

§ 1395x. Definitions

For purposes of this subchapter—

(a) Spell of illness

The term ''spell of illness'' with respect to any individual means a period of consecutive days—

(1) beginning with the first day (not included in a previous spell of illness) (A) on which such individual is furnished inpatient hospital services, inpatient critical access hospital services or extended care services, and (B) which occurs in a month for which he is entitled to benefits under part A of this subchapter, and

(2) ending with the close of the first period of 60 consecutive days thereafter on each of which he is neither an inpatient of a hospital or critical access hospital nor an inpatient of a facility described in section 1396r(a)(2) of this title or subsection (y)(1) of this section.

(b) Inpatient hospital services

The term ''inpatient hospital services'' means the following items and services furnished to an inpatient of a hospital and (except as provided in paragraph (3)) by the hospital—

(1) bed and board;

(2) such nursing services and other related services, such use of hospital facilities, and such medical social services as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients; and

(3) such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements;

excluding, however—

(4) medical or surgical services provided by a physician, resident, or intern, services de-

scribed by subsection (s)(2)(K) of this section, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; and

(5) the services of a private-duty nurse or other private-duty attendant.

Paragraph (4) shall not apply to services provided in a hospital by—

(6) an intern or a resident-in-training under a teaching program approved by the Council on Medical Education of the American Medical Association or, in the case of an osteopathic hospital, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, or, in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of dentistry, approved by the Council on Dental Education of the American Dental Association, or in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of podiatry, approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association; or

(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this subchapter for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this subchapter.

(c) Inpatient psychiatric hospital services

The term ''inpatient psychiatric hospital services'' means inpatient hospital services furnished to an inpatient of a psychiatric hospital.

(d) Supplier

The term ''supplier'' means, unless the context otherwise requires, a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services under this subchapter.

(e) Hospital

The term ''hospital'' (except for purposes of sections 1395f(d), 1395f(f), and 1395n(b) of this title, subsection (a)(2) of this section, paragraph (7) of this subsection, and subsection (i) of this section) means an institution which—

(1) is primarily engaged in providing, by or under the supervision of physicians, to inpatients (A) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) maintains clinical records on all patients;

(3) has bylaws in effect with respect to its staff of physicians;

(4) has a requirement that every patient with respect to whom payment may be made under this subchapter must be under the care of a physician, except that a patient receiving qualified psychologist services (as defined in subsection (ii) of this section) may be under the care of a clinical psychologist with respect to such services to the extent permitted under State law;

(5) provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times; except that until January 1, 1979, the Secretary is authorized to waive the requirement of this paragraph for any one-year period with respect to any institution, insofar as such requirement relates to the provision of twenty-four-hour nursing service rendered or supervised by a registered professional nurse (except that in any event a registered professional nurse must be present on the premises to render or supervise the nursing service provided, during at least the regular daytime shift), where immediately preceding such one-year period he finds that—

(A) such institution is located in a rural area and the supply of hospital services in such area is not sufficient to meet the needs of individuals residing therein,

(B) the failure of such institution to qualify as a hospital would seriously reduce the availability of such services to such individuals, and

(C) such institution has made and continues to make a good faith effort to comply with this paragraph, but such compliance is impeded by the lack of qualified nursing personnel in such area;

(6)(A) has in effect a hospital utilization review plan which meets the requirements of subsection (k) of this section and (B) has in place a discharge planning process that meets the requirements of subsection (ee) of this section;

(7) in the case of an institution in any State in which State or applicable local law provides for the licensing of hospitals, (A) is licensed pursuant to such law or (B) is approved, by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing;

(8) has in effect an overall plan and budget that meets the requirements of subsection (z) of this section; and

(9) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution.

For purposes of subsection (a)(2) of this section, such term includes any institution which meets the requirements of paragraph (1) of this subsection. For purposes of sections 1395f(d) and 1395n(b) of this title (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections), section 1395f(f)(2) of this title, and subsection (i) of this section, such term includes any institution which (i) meets the requirements of paragraphs (5) and (7) of this subsection, (ii) is not primarily engaged in providing the services described in subsection (j)(1)(A) of this section and (iii) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of subsection (r) of this section, to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation serv-

ices for the rehabilitation of injured, disabled, or sick persons. For purposes of section 1395f(f)(1) of this title, such term includes an institution which (i) is a hospital for purposes of sections 1395f(d), 1395f(f)(2), and 1395n(b) of this title and (ii) is accredited by the Joint Commission on Accreditation of Hospitals, or is accredited by or approved by a program of the country in which such institution is located if the Secretary finds the accreditation or comparable approval standards of such program to be essentially equivalent to those of the Joint Commission on Accreditation of Hospitals. Notwithstanding the preceding provisions of this subsection, such term shall not, except for purposes of subsection (a)(2) of this section, include any institution which is primarily for the care and treatment of mental diseases unless it is a psychiatric hospital (as defined in subsection (f) of this section). The term ''hospital'' also includes a religious nonmedical health care institution (as defined in subsection (ss)(1) of this section), but only with respect to items and services ordinarily furnished by such institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations consistent with section 1395i–5 of this title. For provisions deeming certain requirements of this subsection to be met in the case of accredited institutions, see section 1395bb of this title. The term ''hospital'' also includes a facility of fifty beds or less which is located in an area determined by the Secretary to meet the definition relating to a rural area described in subparagraph (A) of paragraph (5) of this subsection and which meets the other requirements of this subsection, except that—

(A) with respect to the requirements for nursing services applicable after December 31, 1978, such requirements shall provide for temporary waiver of the requirements, for such period as the Secretary deems appropriate, where (i) the facility's failure to fully comply with the requirements is attributable to a temporary shortage of qualified nursing personnel in the area in which the facility is located, (ii) a registered professional nurse is present on the premises to render or supervise the nursing service provided during at least the regular daytime shift, and (iii) the Secretary determines that the employment of such nursing personnel as are available to the facility during such temporary period will not adversely affect the health and safety of patients;

(B) with respect to the health and safety requirements promulgated under paragraph (9), such requirements shall be applied by the Secretary to a facility herein defined in such manner as to assure that personnel requirements take into account the availability of technical personnel and the educational opportunities for technical personnel in the area in which such facility is located, and the scope of services rendered by such facility; and the Secretary, by regulations, shall provide for the continued participation of such a facility where such personnel requirements are not fully met, for such period as the Secretary determines that (i) the facility is making good faith efforts to fully comply with the personnel requirements, (ii) the employment by the facility of such personnel as are available to the facility will not adversely affect the health and safety of patients, and (iii) if the Secretary has determined that because of the facility's waiver under this subparagraph the facility should limit its scope of services in order not to adversely affect the health and safety of the facility's patients, the facility is so limiting the scope of services it provides; and

(C) with respect to the fire and safety requirements promulgated under paragraph (9), the Secretary (i) may waive, for such period as he deems appropriate, specific provisions of such requirements which if rigidly applied would result in unreasonable hardship for such a facility and which, if not applied, would not jeopardize the health and safety of patients, and (ii) may accept a facility's compliance with all applicable State codes relating to fire and safety in lieu of compliance with the fire and safety requirements promulgated under paragraph (9), if he determines that such State has in effect fire and safety codes, imposed by State law, which adequately protect patients.

The term ''hospital'' does not include, unless the context otherwise requires, a critical access hospital (as defined in subsection (mm)(1) of this section).

(f) Psychiatric hospital

The term ''psychiatric hospital'' means an institution which—

(1) is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;

(2) satisfies the requirements of paragraphs (3) through (9) of subsection (e) of this section;

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals entitled to hospital insurance benefits under part A of this subchapter; and

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a ''psychiatric hospital''.

(g) Outpatient occupational therapy services

The term ''outpatient occupational therapy services'' has the meaning given the term ''outpatient physical therapy services'' in subsection (p) of this section, except that ''occupational'' shall be substituted for ''physical'' each place it appears therein.

(h) Extended care services

The term ''extended care services'' means the following items and services furnished to an in-

patient of a skilled nursing facility and (except as provided in paragraphs (3), (6), and (7)) by such skilled nursing facility—

(1) nursing care provided by or under the supervision of a registered professional nurse;

(2) bed and board in connection with the furnishing of such nursing care;

(3) physical or occupational therapy or speech-language pathology services furnished by the skilled nursing facility or by others under arrangements with them made by the facility;

(4) medical social services;

(5) such drugs, biologicals, supplies, appliances, and equipment, furnished for use in the skilled nursing facility, as are ordinarily furnished by such facility for the care and treatment of inpatients;

(6) medical services provided by an intern or resident-in-training of a hospital with which the facility has in effect a transfer agreement (meeting the requirements of subsection (*l*) of this section), under a teaching program of such hospital approved as provided in the last sentence of subsection (b) of this section, and other diagnostic or therapeutic services provided by a hospital with which the facility has such an agreement in effect; and

(7) such other services necessary to the health of the patients as are generally provided by skilled nursing facilities, or by others under arrangements with them made by the facility;

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital.

(i) Post-hospital extended care services

The term ''post-hospital extended care services'' means extended care services furnished an individual after transfer from a hospital in which he was an inpatient for not less than 3 consecutive days before his discharge from the hospital in connection with such transfer. For purposes of the preceding sentence, items and services shall be deemed to have been furnished to an individual after transfer from a hospital, and he shall be deemed to have been an inpatient in the hospital immediately before transfer therefrom, if he is admitted to the skilled nursing facility (A) within 30 days after discharge from such hospital, or (B) within such time as it would be medically appropriate to begin an active course of treatment, in the case of an individual whose condition is such that skilled nursing facility care would not be medically appropriate within 30 days after discharge from a hospital; and an individual shall be deemed not to have been discharged from a skilled nursing facility if, within 30 days after discharge therefrom, he is admitted to such facility or any other skilled nursing facility.

(j) Skilled nursing facility

The term ''skilled nursing facility'' has the meaning given such term in section 1395i–3(a) of this title.

(k) Utilization review

A utilization review plan of a hospital or skilled nursing facility shall be considered sufficient if it is applicable to services furnished by the institution to individuals entitled to insurance benefits under this subchapter and if it provides—

(1) for the review, on a sample or other basis, of admissions to the institution, the duration of stays therein, and the professional services (including drugs and biologicals) furnished, (A) with respect to the medical necessity of the services, and (B) for the purpose of promoting the most efficient use of available health facilities and services;

(2) for such review to be made by either (A) a staff committee of the institution composed of two or more physicians (of which at least two must be physicians described in subsection (r)(1) of this section), with or without participation of other professional personnel, or (B) a group outside the institution which is similarly composed and (i) which is established by the local medical society and some or all of the hospitals and skilled nursing facilities in the locality, or (ii) if (and for as long as) there has not been established such a group which serves such institution, which is established in such other manner as may be approved by the Secretary;

(3) for such review, in each case of inpatient hospital services or extended care services furnished to such an individual during a continuous period of extended duration, as of such days of such period (which may differ for different classes of cases) as may be specified in regulations, with such review to be made as promptly as possible, after each day so specified, and in no event later than one week following such day; and

(4) for prompt notification to the institution, the individual, and his attending physician of any finding (made after opportunity for consultation to such attending physician) by the physician members of such committee or group that any further stay in the institution is not medically necessary.

The review committee must be composed as provided in clause (B) of paragraph (2) rather than as provided in clause (A) of such paragraph in the case of any hospital or skilled nursing facility where, because of the small size of the institution, or (in the case of a skilled nursing facility) because of lack of an organized medical staff, or for such other reason or reasons as may be included in regulations, it is impracticable for the institution to have a properly functioning staff committee for the purposes of this subsection. If the Secretary determines that the utilization review procedures established pursuant to subchapter XIX of this chapter are superior in their effectiveness to the procedures required under this section, he may, to the extent that he deems it appropriate, require for purposes of this subchapter that the procedures established pursuant to subchapter XIX of this chapter be utilized instead of the procedures required by this section.

***(l)* Agreements for transfer between skilled nursing facilities and hospitals**

A hospital and a skilled nursing facility shall be considered to have a transfer agreement in effect if, by reason of a written agreement be-

tween them or (in case the two institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that—

(1) transfer of patients will be effected between the hospital and the skilled nursing facility whenever such transfer is medically appropriate as determined by the attending physician; and

(2) there will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between the institutions, or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions.

Any skilled nursing facility which does not have such an agreement in effect, but which is found by a State agency (of the State in which such facility is situated) with which an agreement under section 1395aa of this title is in effect (or, in the case of a State in which no such agency has an agreement under section 1395aa of this title, by the Secretary) to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of patients and the information referred to in paragraph (2), shall be considered to have such an agreement in effect if and for so long as such agency (or the Secretary, as the case may be) finds that to do so is in the public interest and essential to assuring extended care services for persons in the community who are eligible for payments with respect to such services under this subchapter.

(m) Home health services

The term ''home health services'' means the following items and services furnished to an individual, who is under the care of a physician, by a home health agency or by others under arrangements with them made by such agency, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (7), provided on a visiting basis in a place of residence used as such individual's home—

(1) part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse;

(2) physical or occupational therapy or speech-language pathology services;

(3) medical social services under the direction of a physician;

(4) to the extent permitted in regulations, part-time or intermittent services of a home health aide who has successfully completed a training program approved by the Secretary;

(5) medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care, and a covered osteoporosis drug (as defined in subsection (kk) of this section), but excluding other drugs and biologicals) and durable medical equipment while under such a plan;

(6) in the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in the last sentence of subsection (b) of this section; and

(7) any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or skilled nursing facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and—

(A) the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in such place of residence, or

(B) which are furnished at such facility while he is there to receive any such item or service described in clause (A),

but not including transportation of the individual in connection with any such item or service;

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital. For purposes of paragraphs (1) and (4), the term ''part-time or intermittent services'' means skilled nursing and home health aide services furnished any number of days per week as long as they are furnished (combined) less than 8 hours each day and 28 or fewer hours each week (or, subject to review on a case-by-case basis as to the need for care, less than 8 hours each day and 35 or fewer hours per week). For purposes of sections 1395f(a)(2)(C) and 1395n(a)(2)(A) of this title, ''intermittent'' means skilled nursing care that is either provided or needed on fewer than 7 days each week, or less than 8 hours of each day for periods of 21 days or less (with extensions in exceptional circumstances when the need for additional care is finite and predictable).

(n) Durable medical equipment

The term ''durable medical equipment'' includes iron lungs, oxygen tents, hospital beds, and wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) used in the patient's home (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) of this section or section 1395i–3(a)(1) of this title), whether furnished on a rental basis or purchased, and includes blood-testing strips and blood glucose monitors for individuals with diabetes without regard to whether the individual has Type I or Type II diabetes or to the individual's use of insulin (as determined under standards established by the Secretary in consultation with the appropriate organizations); except that such term does not include such equipment furnished by a supplier who has used, for the demonstration and use of specific equipment, an individual who has not met such minimum training standards as the Secretary may establish with respect to the demonstration and use

of such specific equipment. With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.

(*o*) Home health agency

The term ''home health agency'' means a public agency or private organization, or a subdivision of such an agency or organization, which—

(1) is primarily engaged in providing skilled nursing services and other therapeutic services;

(2) has policies, established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in paragraph (1)) which it provides, and provides for supervision of such services by a physician or registered professional nurse;

(3) maintains clinical records on all patients;

(4) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing agencies or organizations of this nature, as meeting the standards established for such licensing;

(5) has in effect an overall plan and budget that meets the requirements of subsection (z) of this section;

(6) meets the conditions of participation specified in section 1395bbb(a) of this title and such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such agency or organization;

(7) provides the Secretary with a surety bond—

(A) effective for a period of 4 years (as specified by the Secretary) or in the case of a change in the ownership or control of the agency (as determined by the Secretary) during or after such 4-year period, an additional period of time that the Secretary determines appropriate, such additional period not to exceed 4 years from the date of such change in ownership or control;

(B) in a form specified by the Secretary; and

(C) for a year in the period described in subparagraph (A) in an amount that is equal to the lesser of $50,000 or 10 percent of the aggregate amount of payments to the agency under this subchapter and subchapter XIX of this chapter for that year, as estimated by the Secretary; and

(8) meets such additional requirements (including conditions relating to bonding or establishing of escrow accounts as the Secretary finds necessary for the financial security of the program) as the Secretary finds necessary for the effective and efficient operation of the program;

except that for purposes of part A of this subchapter such term shall not include any agency or organization which is primarily for the care and treatment of mental diseases. The Secretary may waive the requirement of a surety bond under paragraph (7) in the case of an agency or organization that provides a comparable surety bond under State law.

(p) Outpatient physical therapy services

The term ''outpatient physical therapy services'' means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient—

(1) who is under the care of a physician (as defined in paragraph (1), (3), or (4) of subsection (r) of this section), and

(2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established by a physician (as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined);

excluding, however—

(3) any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital; and

(4) any such service—

(A) if furnished by a clinic or rehabilitation agency, or by others under arrangements with such clinic or agency, unless such clinic or rehabilitation agency—

(i) provides an adequate program of physical therapy services for outpatients and has the facilities and personnel required for such program or required for the supervision of such a program, in accordance with such requirements as the Secretary may specify,

(ii) has policies, established by a group of professional personnel, including one or more physicians (associated with the clinic or rehabilitation agency) and one or more qualified physical therapists, to govern the services (referred to in clause (i)) it provides,

(iii) maintains clinical records on all patients,

(iv) if such clinic or agency is situated in a State in which State or applicable local law provides for the licensing of institutions of this nature, (I) is licensed pursuant to such law, or (II) is approved by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; and

(v) meets such other conditions relating to the health and safety of individuals who are furnished services by such clinic or agency on an outpatient basis, as the Secretary may find necessary, and provides the Secretary on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000, or

(B) if furnished by a public health agency, unless such agency meets such other conditions relating to health and safety of indi-

viduals who are furnished services by such agency on an outpatient basis, as the Secretary may find necessary.

The term ''outpatient physical therapy services'' also includes physical therapy services furnished an individual by a physical therapist (in his office or in such individual's home) who meets licensing and other standards prescribed by the Secretary in regulations, otherwise than under an arrangement with and under the supervision of a provider of services, clinic, rehabilitation agency, or public health agency, if the furnishing of such services meets such conditions relating to health and safety as the Secretary may find necessary. In addition, such term includes physical therapy services which meet the requirements of the first sentence of this subsection except that they are furnished to an individual as an inpatient of a hospital or extended care facility. The term ''outpatient physical therapy services'' also includes speech-language pathology services furnished by a provider of services, a clinic, rehabilitation agency, or by a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient, subject to the conditions prescribed in this subsection. Nothing in this subsection shall be construed as requiring, with respect to outpatients who are not entitled to benefits under this subchapter, a physical therapist to provide outpatient physical therapy services only to outpatients who are under the care of a physician or pursuant to a plan of care established by a physician. The Secretary may waive the requirement of a surety bond under paragraph (4)(A)(v) in the case of a clinic or agency that provides a comparable surety bond under State law.

(q) Physicians' services

The term ''physicians' services'' means professional services performed by physicians, including surgery, consultation, and home, office, and institutional calls (but not including services described in subsection (b)(6) of this section).

(r) Physician

The term ''physician'', when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1301(a)(7) of this title), (2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions, (3) a doctor of podiatric medicine for the purposes of subsections (k), (m), (p)(1), and (s) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them, (4) a doctor of optometry, but only for purposes of subsection (p)(1) of this section and with respect to the provision of items or services described in subsection (s) of this section which he is legally authorized to perform as a doctor of optometry by the State in which he performs them, or (5) a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in which he performs such services), and who meets uniform minimum standards promulgated by the Secretary, but only for the purpose of subsections (s)(1) and (s)(2)(A) of this section and only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation) which he is legally authorized to perform by the State or jurisdiction in which such treatment is provided. For the purposes of section 1395y(a)(4) of this title and subject to the limitations and conditions provided in the previous sentence, such term includes a doctor of one of the arts, specified in such previous sentence, legally authorized to practice such art in the country in which the inpatient hospital services (referred to in such section 1395y(a)(4) of this title) are furnished.

(s) Medical and other health services

The term ''medical and other health services'' means any of the following items or services:

(1) physicians' services;

(2)(A) services and supplies (including drugs and biologicals which are not usually self-administered by the patient) furnished as an incident to a physician's professional service, of kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in the physicians' bills (or would have been so included but for the application of section 1395w–3b of this title);

(B) hospital services (including drugs and biologicals which are not usually self-administered by the patient) incident to physicians' services rendered to outpatients and partial hospitalization services incident to such services;

(C) diagnostic services which are—

(i) furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital, and

(ii) ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study;

(D) outpatient physical therapy services and outpatient occupational therapy services;

(E) rural health clinic services and Federally qualified health center services;

(F) home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies;

(G) antigens (subject to quantity limitations prescribed in regulations by the Secretary) prepared by a physician, as defined in subsection (r)(1) of this section, for a particular patient, including antigens so prepared which are forwarded to another qualified person (including a rural health clinic) for administration to such patient, from time to time, by or under the supervision of another such physician;

(H)(i) services furnished pursuant to a contract under section 1395mm of this title to a

member of an eligible organization by a physician assistant or by a nurse practitioner (as defined in subsection (aa)(5) of this section) and such services and supplies furnished as an incident to his service to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service; and

(ii) services furnished pursuant to a risk-sharing contract under section 1395mm(g) of this title to a member of an eligible organization by a clinical psychologist (as defined by the Secretary) or by a clinical social worker (as defined in subsection (hh)(2) of this section), and such services and supplies furnished as an incident to such clinical psychologist's services or clinical social worker's services to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service;

(I) blood clotting factors, for hemophilia patients competent to use such factors to control bleeding without medical or other supervision, and items related to the administration of such factors, subject to utilization controls deemed necessary by the Secretary for the efficient use of such factors;

(J) prescription drugs used in immunosuppressive therapy furnished, to an individual who receives an organ transplant for which payment is made under this subchapter;

(K)(i) services which would be physicians' services and services described in subsection (ww)(1) of this section if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a physician assistant (as defined in subsection (aa)(5) of this section) under the supervision of a physician (as so defined) and which the physician assistant is legally authorized to perform by the State in which the services are performed, and such services and supplies furnished as incident to such services as would be covered under subparagraph (A) if furnished incident to a physician's professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services,[1]

(ii) services which would be physicians' services and services described in subsection (ww)(1) of this section if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a nurse practitioner or clinical nurse specialist (as defined in subsection (aa)(5) of this section) working in collaboration (as defined in subsection (aa)(6) of this section) with a physician (as defined in subsection (r)(1) of this section) which the nurse practitioner or clinical nurse specialist is legally authorized to perform by the State in which the services are performed, and such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished incident to a physician's professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services;

(L) certified nurse-midwife services;

(M) qualified psychologist services;

(N) clinical social worker services (as defined in subsection (hh)(2) of this section);

(O) erythropoietin for dialysis patients competent to use such drug without medical or other supervision with respect to the administration of such drug, subject to methods and standards established by the Secretary by regulation for the safe and effective use of such drug, and items related to the administration of such drug;

(P) prostate cancer screening tests (as defined in subsection (*oo*) of this section);

(Q) an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an anticancer chemotherapeutic agent for a given indication, and containing an active ingredient (or ingredients), which is the same indication and active ingredient (or ingredients) as a drug which the carrier determines would be covered pursuant to subparagraph (A) or (B) if the drug could not be self-administered;

(R) colorectal cancer screening tests (as defined in subsection (pp) of this section); and[2]

(S) diabetes outpatient self-management training services (as defined in subsection (qq) of this section);

(T) an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an acute anti-emetic used as part of an anticancer chemotherapeutic regimen if the drug is administered by a physician (or as prescribed by a physician)—

(i) for use immediately before, at, or within 48 hours after the time of the administration of the anticancer chemotherapeutic agent; and

(ii) as a full replacement for the anti-emetic therapy which would otherwise be administered intravenously;

(U) screening for glaucoma (as defined in subsection (uu) of this section) for individuals determined to be at high risk for glaucoma, individuals with a family history of glaucoma and individuals with diabetes;

(V) medical nutrition therapy services (as defined in subsection (vv)(1) of this section) in the case of a beneficiary with diabetes or a renal disease who—

(i) has not received diabetes outpatient self-management training services within a time period determined by the Secretary;

(ii) is not receiving maintenance dialysis for which payment is made under section 1395rr of this title; and

(iii) meets such other criteria determined by the Secretary after consideration of protocols established by dietitian or nutrition professional organizations;

(W) an initial preventive physical examination (as defined in subsection (ww) of this section);

(X) cardiovascular screening blood tests (as defined in subsection (xx)(1) of this section);

(Y) diabetes screening tests (as defined in subsection (yy) of this section); and

(Z) intravenous immune globulin for the treatment of primary immune deficiency dis-

[1] So in original. Probably should be followed by ''and''.

[2] So in original. The word ''and'' probably should not appear.

eases in the home (as defined in subsection (zz) of this section);

(3) diagnostic X-ray tests (including tests under the supervision of a physician, furnished in a place of residence used as the patient's home, if the performance of such tests meets such conditions relating to health and safety as the Secretary may find necessary and including diagnostic mammography if conducted by a facility that has a certificate (or provisional certificate) issued under section 354 of the Public Health Service Act [42 U.S.C. 263b]), diagnostic laboratory tests, and other diagnostic tests;

(4) X-ray, radium, and radioactive isotope therapy, including materials and services of technicians;

(5) surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations;

(6) durable medical equipment;

(7) ambulance service where the use of other methods of transportation is contraindicated by the individual's condition, but, subject to section 1395m(*l*)(14) of this title, only to the extent provided in regulations;

(8) prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices, and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens;

(9) leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in the patient's physical condition;

(10)(A) pneumococcal vaccine and its administration and, subject to section 4071(b) of the Omnibus Budget Reconciliation Act of 1987, influenza vaccine and its administration; and

(B) hepatitis B vaccine and its administration, furnished to an individual who is at high or intermediate risk of contracting hepatitis B (as determined by the Secretary under regulations);

(11) services of a certified registered nurse anesthetist (as defined in subsection (bb) of this section);

(12) subject to section 4072(e) of the Omnibus Budget Reconciliation Act of 1987, extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes, if—

(A) the physician who is managing the individual's diabetic condition (i) documents that the individual has peripheral neuropathy with evidence of callus formation, a history of pre-ulcerative calluses, a history of previous ulceration, foot deformity, or previous amputation, or poor circulation, and (ii) certifies that the individual needs such shoes under a comprehensive plan of care related to the individual's diabetic condition;

(B) the particular type of shoes are prescribed by a podiatrist or other qualified physician (as established by the Secretary); and

(C) the shoes are fitted and furnished by a podiatrist or other qualified individual (such as a pedorthist or orthotist, as established by the Secretary) who is not the physician described in subparagraph (A) (unless the Secretary finds that the physician is the only such qualified individual in the area);

(13) screening mammography (as defined in subsection (jj) of this section);

(14) screening pap smear and screening pelvic exam; and

(15) bone mass measurement (as defined in subsection (rr) of this section).

No diagnostic tests performed in any laboratory, including a laboratory that is part of a rural health clinic, or a hospital (which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1395f(d) of this title) shall be included within paragraph (3) unless such laboratory—

(16) if situated in any State in which State or applicable local law provides for licensing of establishments of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing establishments of this nature, as meeting the standards established for such licensing; and

(17)(A) meets the certification requirements under section 353 of the Public Health Service Act [42 U.S.C. 263a]; and

(B) meets such other conditions relating to the health and safety of individuals with respect to whom such tests are performed as the Secretary may find necessary.

There shall be excluded from the diagnostic services specified in paragraph (2)(C) any item or service (except services referred to in paragraph (1)) which would not be included under subsection (b) of this section if it were furnished to an inpatient of a hospital. None of the items and services referred to in the preceding paragraphs (other than paragraphs (1) and (2)(A)) of this subsection which are furnished to a patient of an institution which meets the definition of a hospital for purposes of section 1395f(d) of this title shall be included unless such other conditions are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.

(t) Drugs and biologicals

(1) The term ''drugs'' and the term ''biologicals'', except for purposes of subsection (m)(5) of this section and paragraph (2), include only such drugs (including contrast agents) and biologicals, respectively, as are included (or approved for inclusion) in the United States Pharmacopoeia, the National Formulary, or the United States Homeopathic Pharmacopoeia, or in New Drugs or Accepted Dental Remedies (except for any drugs and biologicals unfavorably evaluated therein), or as are approved by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of the hospital furnishing such drugs and biologicals for use in such hospital.

(2)(A) For purposes of paragraph (1), the term ''drugs'' also includes any drugs or biologicals used in an anticancer chemotherapeutic regimen for a medically accepted indication (as described in subparagraph (B)).

(B) In subparagraph (A), the term ''medically accepted indication'', with respect to the use of a drug, includes any use which has been approved by the Food and Drug Administration for the drug, and includes another use of the drug if—

(i) the drug has been approved by the Food and Drug Administration; and

(ii)(I) such use is supported by one or more citations which are included (or approved for inclusion) in one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, the United States Pharmacopoeia-Drug Information, and other authoritative compendia as identified by the Secretary, unless the Secretary has determined that the use is not medically appropriate or the use is identified as not indicated in one or more such compendia, or

(II) the carrier involved determines, based upon guidance provided by the Secretary to carriers for determining accepted uses of drugs, that such use is medically accepted based on supportive clinical evidence in peer reviewed medical literature appearing in publications which have been identified for purposes of this subclause by the Secretary.

The Secretary may revise the list of compendia in clause (ii)(I) as is appropriate for identifying medically accepted indications for drugs.

(u) Provider of services

The term ''provider of services'' means a hospital, critical access hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, or, for purposes of section 1395f(g) and section 1395n(e) of this title, a fund.

(v) Reasonable costs

(1)(A) The reasonable cost of any services shall be the cost actually incurred, excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of needed health services, and shall be determined in accordance with regulations establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies, and services; except that in any case to which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such services. In prescribing the regulations referred to in the preceding sentence, the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates of costs of particular items or services, may provide for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonable based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this subchapter, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall (i) take into account both direct and indirect costs of providers of services (excluding therefrom any such costs, including standby costs, which are determined in accordance with regulations to be unnecessary in the efficient delivery of services covered by the insurance programs established under this subchapter) in order that, under the methods of determining costs, the necessary costs of efficiently delivering covered services to individuals covered by the insurance programs established by this subchapter will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and (ii) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive.

(B) In the case of extended care services, the regulations under subparagraph (A) shall not include provision for specific recognition of a return on equity capital.

(C) Where a hospital has an arrangement with a medical school under which the faculty of such school provides services at such hospital, an amount not in excess of the reasonable cost of such services to the medical school shall be included in determining the reasonable cost to the hospital of furnishing services—

(i) for which payment may be made under part A of this subchapter, but only if—

(I) payment for such services as furnished under such arrangement would be made under part A of this subchapter to the hospital had such services been furnished by the hospital, and

(II) such hospital pays to the medical school at least the reasonable cost of such services to the medical school, or

(ii) for which payment may be made under part B of this subchapter, but only if such hospital pays to the medical school at least the reasonable cost of such services to the medical school.

(D) Where (i) physicians furnish services which are either inpatient hospital services (including services in conjunction with the teaching programs of such hospital) by reason of paragraph (7) of subsection (b) of this section or for which entitlement exists by reason of clause (II) of section 1395k(a)(2)(B)(i) of this title, and (ii) such hospital (or medical school under arrangement with such hospital) incurs no actual cost in the furnishing of such services, the reasonable cost of such services shall (under regulations of the Secretary) be deemed to be the cost such hospital or medical school would have incurred had

it paid a salary to such physicians rendering such services approximately equivalent to the average salary paid to all physicians employed by such hospital (or if such employment does not exist, or is minimal in such hospital, by similar hospitals in a geographic area of sufficient size to assure reasonable inclusion of sufficient physicians in development of such average salary).

(E) Such regulations may, in the case of skilled nursing facilities in any State, provide for the use of rates, developed by the State in which such facilities are located, for the payment of the cost of skilled nursing facility services furnished under the State's plan approved under subchapter XIX of this chapter (and such rates may be increased by the Secretary on a class or size of institution or on a geographical basis by a percentage factor not in excess of 10 percent to take into account determinable items or services or other requirements under this subchapter not otherwise included in the computation of such State rates), if the Secretary finds that such rates are reasonably related to (but not necessarily limited to) analyses undertaken by such State of costs of care in comparable facilities in such State. Notwithstanding the previous sentence, such regulations with respect to skilled nursing facilities shall take into account (in a manner consistent with subparagraph (A) and based on patient-days of services furnished) the costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) of such facilities complying with the requirements of subsections (b), (c), and (d) of section 1395i–3 of this title (including the costs of conducting nurse aide training and competency evaluation programs and competency evaluation programs).

(F) Such regulations shall require each provider of services (other than a fund) to make reports to the Secretary of information described in section 1320a(a) of this title in accordance with the uniform reporting system (established under such section) for that type of provider.

(G)(i) In any case in which a hospital provides inpatient services to an individual that would constitute post-hospital extended care services if provided by a skilled nursing facility and a quality control and peer review organization (or, in the absence of such a qualified organization, the Secretary or such agent as the Secretary may designate) determines that inpatient hospital services for the individual are not medically necessary but post-hospital extended care services for the individual are medically necessary and such extended care services are not otherwise available to the individual (as determined in accordance with criteria established by the Secretary) at the time of such determination, payment for such services provided to the individual shall continue to be made under this subchapter at the payment rate described in clause (ii) during the period in which—

(I) such post-hospital extended care services for the individual are medically necessary and not otherwise available to the individual (as so determined),

(II) inpatient hospital services for the individual are not medically necessary, and

(III) the individual is entitled to have payment made for post-hospital extended care services under this subchapter,

except that if the Secretary determines that there is not an excess of hospital beds in such hospital and (subject to clause (iv)) there is not an excess of hospital beds in the area of such hospital, such payment shall be made (during such period) on the basis of the amount otherwise payable under part A with respect to inpatient hospital services.

(ii)(I) Except as provided in subclause (II), the payment rate referred to in clause (i) is a rate equal to the estimated adjusted State-wide average rate per patient-day paid for services provided in skilled nursing facilities under the State plan approved under subchapter XIX of this chapter for the State in which such hospital is located, or, if the State in which the hospital is located does not have a State plan approved under subchapter XIX of this chapter, the estimated adjusted State-wide average allowable costs per patient-day for extended care services under this subchapter in that State.

(II) If a hospital has a unit which is a skilled nursing facility, the payment rate referred to in clause (i) for the hospital is a rate equal to the lesser of the rate described in subclause (I) or the allowable costs in effect under this subchapter for extended care services provided to patients of such unit.

(iii) Any day on which an individual receives inpatient services for which payment is made under this subparagraph shall, for purposes of this chapter (other than this subparagraph), be deemed to be a day on which the individual received inpatient hospital services.

(iv) In determining under clause (i), in the case of a public hospital, whether or not there is an excess of hospital beds in the area of such hospital, such determination shall be made on the basis of only the public hospitals (including the hospital) which are in the area of the hospital and which are under common ownership with that hospital.

(H) In determining such reasonable cost with respect to home health agencies, the Secretary may not include—

(i) any costs incurred in connection with bonding or establishing an escrow account by any such agency as a result of the surety bond requirement described in subsection (*o*)(7) of this section and the financial security requirement described in subsection (*o*)(8) of this section;

(ii) in the case of home health agencies to which the surety bond requirement described in subsection (*o*)(7) of this section and the financial security requirement described in subsection (*o*)(8) of this section apply, any costs attributed to interest charged such an agency in connection with amounts borrowed by the agency to repay overpayments made under this subchapter to the agency, except that such costs may be included in reasonable cost if the Secretary determines that the agency was acting in good faith in borrowing the amounts;

(iii) in the case of contracts entered into by a home health agency after December 5, 1980, for the purpose of having services furnished

for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract which is entered into for a period exceeding five years; and

(iv) in the case of contracts entered into by a home health agency before December 5, 1980, for the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract, which determines the amount payable by the home health agency on the basis of a percentage of the agency's reimbursement or claim for reimbursement for services furnished by the agency, to the extent that such cost exceeds the reasonable value of the services furnished on behalf of such agency.

(I) In determining such reasonable cost, the Secretary may not include any costs incurred by a provider with respect to any services furnished in connection with matters for which payment may be made under this subchapter and furnished pursuant to a contract between the provider and any of its subcontractors which is entered into after December 5, 1980, and the value or cost of which is $10,000 or more over a twelve-month period unless the contract contains a clause to the effect that—

(i) until the expiration of four years after the furnishing of such services pursuant to such contract, the subcontractor shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the contract, and books, documents and records of such subcontractor that are necessary to certify the nature and extent of such costs, and

(ii) if the subcontractor carries out any of the duties of the contract through a subcontract, with a value or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

The Secretary shall prescribe in regulation[3] criteria and procedures which the Secretary shall use in obtaining access to books, documents, and records under clauses required in contracts and subcontracts under this subparagraph.

(J) Such regulations may not provide for any inpatient routine salary cost differential as a reimbursable cost for hospitals and skilled nursing facilities.

(K)(i) The Secretary shall issue regulations that provide, to the extent feasible, for the establishment of limitations on the amount of any costs or charges that shall be considered reasonable with respect to services provided on an outpatient basis by hospitals (other than bona fide emergency services as defined in clause (ii)) or clinics (other than rural health clinics), which are reimbursed on a cost basis or on the basis of cost related charges, and by physicians utilizing such outpatient facilities. Such limitations shall be reasonably related to the charges in the same area for similar services provided in physicians' offices. Such regulations shall provide for exceptions to such limitations in cases where similar services are not generally available in physicians' offices in the area to individuals entitled to benefits under this subchapter.

(ii) For purposes of clause (i), the term ''bona fide emergency services'' means services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(I) placing the patient's health in serious jeopardy;

(II) serious impairment to bodily functions; or

(III) serious dysfunction of any bodily organ or part.

(L)(i) The Secretary, in determining the amount of the payments that may be made under this subchapter with respect to services furnished by home health agencies, may not recognize as reasonable (in the efficient delivery of such services) costs for the provision of such services by an agency to the extent these costs exceed (on the aggregate for the agency) for cost reporting periods beginning on or after—

(I) July 1, 1985, and before July 1, 1986, 120 percent of the mean of the labor-related and nonlabor per visit costs for freestanding home health agencies,

(II) July 1, 1986, and before July 1, 1987, 115 percent of such mean,

(III) July 1, 1987, and before October 1, 1997, 112 percent of such mean,

(IV) October 1, 1997, and before October 1, 1998, 105 percent of the median of the labor-related and nonlabor per visit costs for freestanding home health agencies, or

(V) October 1, 1998, 106 percent of such median.

(ii) Effective for cost reporting periods beginning on or after July 1, 1986, such limitations shall be applied on an aggregate basis for the agency, rather than on a discipline specific basis. The Secretary may provide for such exemptions and exceptions to such limitation as he deems appropriate.

(iii) Not later than July 1, 1991, and annually thereafter (but not for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, or on or after July 1, 1997, and before October 1, 1997), the Secretary shall establish limits under this subparagraph for cost reporting periods beginning on or after such date by utilizing the area wage index applicable under section 1395ww(d)(3)(E) of this title and determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished (determined without regard to whether such hospitals have been re-

[3] So in original. Probably should be ''regulations''.

classified to a new geographic area pursuant to section 1395ww(d)(8)(B) of this title, a decision of the Medicare Geographic Classification Review Board under section 1395ww(d)(10) of this title, or a decision of the Secretary).

(iv) In establishing limits under this subparagraph for cost reporting periods beginning after September 30, 1997, the Secretary shall not take into account any changes in the home health market basket, as determined by the Secretary, with respect to cost reporting periods which began on or after July 1, 1994, and before July 1, 1996.

(v) For services furnished by home health agencies for cost reporting periods beginning on or after October 1, 1997, subject to clause (viii)(I), the Secretary shall provide for an interim system of limits. Payment shall not exceed the costs determined under the preceding provisions of this subparagraph or, if lower, the product of—

(I) an agency-specific per beneficiary annual limitation calculated based 75 percent on 98 percent of the reasonable costs (including non-routine medical supplies) for the agency's 12-month cost reporting period ending during fiscal year 1994, and based 25 percent on 98 percent of the standardized regional average of such costs for the agency's census division, as applied to such agency, for cost reporting periods ending during fiscal year 1994, such costs updated by the home health market basket index; and

(II) the agency's unduplicated census count of patients (entitled to benefits under this subchapter) for the cost reporting period subject to the limitation.

(vi) For services furnished by home health agencies for cost reporting periods beginning on or after October 1, 1997, the following rules apply:

(I) For new providers and those providers without a 12-month cost reporting period ending in fiscal year 1994 subject to clauses (viii)(II) and (viii)(III), the per beneficiary limitation shall be equal to the median of these limits (or the Secretary's best estimates thereof) applied to other home health agencies as determined by the Secretary. A home health agency that has altered its corporate structure or name shall not be considered a new provider for this purpose.

(II) For beneficiaries who use services furnished by more than one home health agency, the per beneficiary limitations shall be prorated among the agencies.

(vii)(I) Not later than January 1, 1998, the Secretary shall establish per visit limits applicable for fiscal year 1998, and not later than April 1, 1998, the Secretary shall establish per beneficiary limits under clause (v)(I) for fiscal year 1998.

(II) Not later than August 1 of each year (beginning in 1998) the Secretary shall establish the limits applicable under this subparagraph for services furnished during the fiscal year beginning October 1 of the year.

(viii)(I) In the case of a provider with a 12-month cost reporting period ending in fiscal year 1994, if the limit imposed under clause (v) (determined without regard to this subclause) for a cost reporting period beginning during or after fiscal year 1999 is less than the median described in clause (vi)(I) (but determined as if any reference in clause (v) to ''98 percent'' were a reference to ''100 percent''), the limit otherwise imposed under clause (v) for such provider and period shall be increased by ⅓ of such difference.

(II) Subject to subclause (IV), for new providers and those providers without a 12-month cost reporting period ending in fiscal year 1994, but for which the first cost reporting period begins before fiscal year 1999, for cost reporting periods beginning during or after fiscal year 1999, the per beneficiary limitation described in clause (vi)(I) shall be equal to the median described in such clause (determined as if any reference in clause (v) to ''98 percent'' were a reference to ''100 percent'').

(III) Subject to subclause (IV), in the case of a new provider for which the first cost reporting period begins during or after fiscal year 1999, the limitation applied under clause (vi)(I) (but only with respect to such provider) shall be equal to 75 percent of the median described in clause (vi)(I).

(IV) In the case of a new provider or a provider without a 12-month cost reporting period ending in fiscal year 1994, subclause (II) shall apply, instead of subclause (III), to a home health agency which filed an application for home health agency provider status under this subchapter before September 15, 1998, or which was approved as a branch of its parent agency before such date and becomes a subunit of the parent agency or a separate agency on or after such date.

(V) Each of the amounts specified in subclauses (I) through (III) are such amounts as adjusted under clause (iii) to reflect variations in wages among different areas.

(ix) Notwithstanding the per beneficiary limit under clause (viii), if the limit imposed under clause (v) (determined without regard to this clause) for a cost reporting period beginning during or after fiscal year 2000 is less than the median described in clause (vi)(I) (but determined as if any reference in clause (v) to ''98 percent'' were a reference to ''100 percent''), the limit otherwise imposed under clause (v) for such provider and period shall be increased by 2 percent.

(x) Notwithstanding any other provision of this subparagraph, in updating any limit under this subparagraph by a home health market basket index for cost reporting periods beginning during each of fiscal years 2000, 2002, and 2003, the update otherwise provided shall be reduced by 1.1 percentage points. With respect to cost reporting periods beginning during fiscal year 2001, the update to any limit under this subparagraph shall be the home health market basket index.

(M) Such regulations shall provide that costs respecting care provided by a provider of services, pursuant to an assurance under title VI or XVI of the Public Health Service Act [42 U.S.C. 291 et seq., 300q et seq.] that the provider will make available a reasonable volume of services to persons unable to pay therefor, shall not be allowable as reasonable costs.

(N) In determining such reasonable costs, costs incurred for activities directly related to

influencing employees respecting unionization may not be included.

(O)(i) In establishing an appropriate allowance for depreciation and for interest on capital indebtedness with respect to an asset of a provider of services which has undergone a change of ownership, such regulations shall provide, except as provided in clause (iii), that the valuation of the asset after such change of ownership shall be the historical cost of the asset, as recognized under this subchapter, less depreciation allowed, to the owner of record as of August 5, 1997 (or, in the case of an asset not in existence as of August 5, 1997, the first owner of record of the asset after August 5, 1997).

(ii) Such regulations shall not recognize, as reasonable in the provision of health care services, costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under this subchapter.

(iii) In the case of the transfer of a hospital from ownership by a State to ownership by a nonprofit corporation without monetary consideration, the basis for capital allowances to the new owner shall be the book value of the hospital to the State at the time of the transfer.

(P) If such regulations provide for the payment for a return on equity capital (other than with respect to costs of inpatient hospital services), the rate of return to be recognized, for determining the reasonable cost of services furnished in a cost reporting period, shall be equal to the average of the rates of interest, for each of the months any part of which is included in the period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(Q) Except as otherwise explicitly authorized, the Secretary is not authorized to limit the rate of increase on allowable costs of approved medical educational activities.

(R) In determining such reasonable cost, costs incurred by a provider of services representing a beneficiary in an unsuccessful appeal of a determination described in section 1395ff(b) of this title shall not be allowable as reasonable costs.

(S)(i) Such regulations shall not include provision for specific recognition of any return on equity capital with respect to hospital outpatient departments.

(ii)(I) Such regulations shall provide that, in determining the amount of the payments that may be made under this subchapter with respect to all the capital-related costs of outpatient hospital services, the Secretary shall reduce the amounts of such payments otherwise established under this subchapter by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1990, by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1991, and by 10 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1992 through 1999 and until the first date that the prospective payment system under section 1395*l*(t) of this title is implemented.

(II) The Secretary shall reduce the reasonable cost of outpatient hospital services (other than the capital-related costs of such services) otherwise determined pursuant to section 1395*l*(a)(2)(B)(i)(I) of this title by 5.8 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1991 through 1999 and until the first date that the prospective payment system under section 1395*l*(t) of this title is implemented.

(III) Subclauses (I) and (II) shall not apply to payments with respect to the costs of hospital outpatient services provided by any hospital that is a sole community hospital (as defined in section 1395ww(d)(5)(D)(iii) of this title) or a critical access hospital (as defined in subsection (mm)(1) of this section).

(IV) In applying subclauses (I) and (II) to services for which payment is made on the basis of a blend amount under section 1395*l*(i)(3)(A)(ii) or 1395*l*(n)(1)(A)(ii) of this title, the costs reflected in the amounts described in sections 1395*l*(i)(3)(B)(i)(I) and 1395*l*(n)(1)(B)(i)(I) of this title, respectively, shall be reduced in accordance with such subclause.[4]

(T) In determining such reasonable costs for hospitals, no reduction in copayments under section 1395*l*(t)(5)(B)[5] of this title shall be treated as a bad debt and the amount of bad debts otherwise treated as allowable costs which are attributable to the deductibles and coinsurance amounts under this subchapter shall be reduced—

(i) for cost reporting periods beginning during fiscal year 1998, by 25 percent of such amount otherwise allowable,

(ii) for cost reporting periods beginning during fiscal year 1999, by 40 percent of such amount otherwise allowable,

(iii) for cost reporting periods beginning during fiscal year 2000, by 45 percent of such amount otherwise allowable, and

(iv) for cost reporting periods beginning during a subsequent fiscal year, by 30 percent of such amount otherwise allowable.

(U) In determining the reasonable cost of ambulance services (as described in subsection (s)(7) of this section) provided during fiscal year 1998, during fiscal year 1999, and during so much of fiscal year 2000 as precedes January 1, 2000, the Secretary shall not recognize the costs per trip in excess of costs recognized as reasonable for ambulance services provided on a per trip basis during the previous fiscal year (after application of this subparagraph), increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the fiscal year involved reduced by 1.0 percentage point. For ambulance services provided after June 30, 1998, the Secretary may provide that claims for such services must include a code (or codes) under a uniform coding system specified by the Secretary that identifies the services furnished.

(2)(A) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations more

[4] So in original. Probably should be ''subclauses.''

[5] See References in Text note below.

expensive than semi-private accommodations, the amount taken into account for purposes of payment under this subchapter with respect to such services may not exceed the amount that would be taken into account with respect to such services if furnished in such semi-private accommodations unless the more expensive accommodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this subchapter furnishes to an individual items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B of this subchapter, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only the items or services with respect to which such payment may be made.

(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private accommodations and the use of such other accommodations rather than semi-private accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this subchapter, the amount of the payment with respect to such bed and board under part A of this subchapter shall be the amount otherwise payable under this subchapter for such bed and board furnished in semi-private accommodations minus the difference between the charge customarily made by the hospital or skilled nursing facility for bed and board in semi-private accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

(4) If a provider of services furnishes items or services to an individual which are in excess of or more expensive than the items or services determined to be necessary in the efficient delivery of needed health services and charges are imposed for such more expensive items or services under the authority granted in section 1395cc(a)(2)(B)(ii),[6] of this title, the amount of payment with respect to such items or services otherwise due such provider in any fiscal period shall be reduced to the extent that such payment plus such charges exceed the cost actually incurred for such items or services in the fiscal period in which such charges are imposed.

(5)(A) Where physical therapy services, occupational therapy services, speech therapy services, or other therapy services or services of other health-related personnel (other than physicians) are furnished under an arrangement with a provider of services or other organization, specified in the first sentence of subsection (p) of this section (including through the operation of subsection (g) of this section) the amount included in any payment to such provider or other organization under this subchapter as the reasonable cost of such services (as furnished under such arrangements) shall not exceed an amount equal to the salary which would reasonably have been paid for such services (together with any additional costs that would have been incurred by the provider or other organization) to the person performing them if they had been performed in an employment relationship with such provider or other organization (rather than under such arrangement) plus the cost of such other expenses (including a reasonable allowance for traveltime and other reasonable types of expense related to any differences in acceptable methods of organization for the provision of such therapy) incurred by such person, as the Secretary may in regulations determine to be appropriate.

(B) Notwithstanding the provisions of subparagraph (A), if a provider of services or other organization specified in the first sentence of subsection (p) of this section requires the services of a therapist on a limited part-time basis, or only to perform intermittent services, the Secretary may make payment on the basis of a reasonable rate per unit of service, even though such rate is greater per unit of time than salary related amounts, where he finds that such greater payment is, in the aggregate, less than the amount that would have been paid if such organization had employed a therapist on a full- or part-time salary basis.

(6) For purposes of this subsection, the term, ''semi-private accommodations'' means two-bed, three-bed, or four-bed accommodations.

(7)(A) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1320a–1 of this title.

(B) For further limitations on reasonable cost and determination of payment amounts for operating costs of inpatient hospital services and waivers for certain States, see section 1395ww of this title.

(C) For provisions restricting payment for provider-based physicians' services and for payments under certain percentage arrangements, see section 1395xx of this title.

(D) For further limitations on reasonable cost and determination of payment amounts for routine service costs of skilled nursing facilities, see subsections (a) through (c) of section 1395yy of this title.

(8) ITEMS UNRELATED TO PATIENT CARE.—Reasonable costs do not include costs for the following—

(i) entertainment, including tickets to sporting and other entertainment events;

(ii) gifts or donations;

(iii) personal use of motor vehicles;

(iv) costs for fines and penalties resulting from violations of Federal, State, or local laws; and

(v) education expenses for spouses or other dependents of providers of services, their employees or contractors.

(w) Arrangements for certain services; payments pursuant to arrangements for utilization review activities

(1) The term ''arrangements'' is limited to arrangements under which receipt of payment by the hospital, critical access hospital, skilled

[6] See References in Text note below.

nursing facility, home health agency, or hospice program (whether in its own right or as agent), with respect to services for which an individual is entitled to have payment made under this subchapter, discharges the liability of such individual or any other person to pay for the services.

(2) Utilization review activities conducted, in accordance with the requirements of the program established under part B of subchapter XI of this chapter with respect to services furnished by a hospital or critical access hospital to patients insured under part A of this subchapter or entitled to have payment made for such services under part B of this subchapter or under a State plan approved under subchapter XIX of this chapter, by a quality control and peer review organization designated for the area in which such hospital or critical access hospital is located shall be deemed to have been conducted pursuant to arrangements between such hospital or critical access hospital and such organization under which such hospital or critical access hospital is obligated to pay to such organization, as a condition of receiving payment for hospital or critical access hospital services so furnished under this part or under such a State plan, such amount as is reasonably incurred and requested (as determined under regulations of the Secretary) by such organization in conducting such review activities with respect to services furnished by such hospital or critical access hospital to such patients.

(x) State and United States

The terms ''State'' and ''United States'' have the meaning given to them by subsections (h) and (i), respectively, of section 410 of this title.

(y) Extended care in religious nonmedical health care institutions

(1) The term ''skilled nursing facility'' also includes a religious nonmedical health care institution (as defined in subsection (ss)(1) of this section), but only (except for purposes of subsection (a)(2) of this section) with respect to items and services ordinarily furnished by such an institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations consistent with section 1395i–5 of this title.

(2) Notwithstanding any other provision of this subchapter, payment under part A of this subchapter may not be made for services furnished an individual in a skilled nursing facility to which paragraph (1) applies unless such individual elects, in accordance with regulations, for a spell of illness to have such services treated as post-hospital extended care services for purposes of such part; and payment under part A of this subchapter may not be made for post-hospital extended care services—

(A) furnished an individual during such spell of illness in a skilled nursing facility to which paragraph (1) applies after—

(i) such services have been furnished to him in such a facility for 30 days during such spell, or

(ii) such services have been furnished to him during such spell in a skilled nursing facility to which such paragraph does not apply; or

(B) furnished an individual during such spell of illness in a skilled nursing facility to which paragraph (1) does not apply after such services have been furnished to him during such spell in a skilled nursing facility to which such paragraph applies.

(3) The amount payable under part A of this subchapter for post-hospital extended care services furnished an individual during any spell of illness in a skilled nursing facility to which paragraph (1) applies shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day before the 31st day on which he is furnished such services in such a facility during such spell (and the reduction under this paragraph shall be in lieu of any reduction under section 1395e(a)(3) of this title).

(4) For purposes of subsection (i) of this section, the determination of whether services furnished by or in an institution described in paragraph (1) constitute post-hospital extended care services shall be made in accordance with and subject to such conditions, limitations, and requirements as may be provided in regulations.

(z) Institutional planning

An overall plan and budget of a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, or home health agency shall be considered sufficient if it—

(1) provides for an annual operating budget which includes all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items (except that nothing in this paragraph shall require that there be prepared, in connection with any budget, an item-by-item identification of the components of each type of anticipated expenditure or income);

(2)(A) provides for a capital expenditures plan for at least a 3-year period (including the year to which the operating budget described in paragraph (1) is applicable) which includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $600,000 (or such lesser amount as may be established by the State under section 1320a–1(g)(1) of this title in which the hospital is located) related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(B) provides that such plan is submitted to the agency designated under section 1320a–1(b) of this title, or if no such agency is designated, to the appropriate health planning agency in the State (but this subparagraph shall not apply in the case of a facility exempt from review under section 1320a–1 of this title by reason of section 1320a–1(j) of this title);

(3) provides for review and updating at least annually; and

(4) is prepared, under the direction of the governing body of the institution or agency, by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff (if any) of the institution or agency.

(aa) Rural health clinic services and Federally qualified health center services

(1) The term ''rural health clinic services'' means—

(A) physicians' services and such services and supplies as are covered under subsection (s)(2)(A) of this section if furnished as an incident to a physician's professional service and items and services described in subsection (s)(10) of this section,

(B) such services furnished by a physician assistant or a nurse practitioner (as defined in paragraph (5)), by a clinical psychologist (as defined by the Secretary) or by a clinical social worker (as defined in subsection (hh)(1) of this section), and such services and supplies furnished as an incident to his service as would otherwise be covered if furnished by a physician or as an incident to a physician's service, and

(C) in the case of a rural health clinic located in an area in which there exists a shortage of home health agencies, part-time or intermittent nursing care and related medical supplies (other than drugs and biologicals) furnished by a registered professional nurse or licensed practical nurse to a homebound individual under a written plan of treatment (i) established and periodically reviewed by a physician described in paragraph (2)(B), or (ii) established by a nurse practitioner or physician assistant and periodically reviewed and approved by a physician described in paragraph (2)(B),

when furnished to an individual as an outpatient of a rural health clinic.

(2) The term ''rural health clinic'' means a facility which—

(A) is primarily engaged in furnishing to outpatients services described in subparagraphs (A) and (B) of paragraph (1);

(B) in the case of a facility which is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with one or more physicians (as defined in subsection (r)(1)) of this section under which provision is made for the periodic review by such physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such physicians of physician assistants and nurse practitioners, the preparation by such physicians of such medical orders for care and treatment of clinic patients as may be necessary, and the availability of such physicians for such referral of and consultation for patients as is necessary and for advice and assistance in the management of medical emergencies; and, in the case of a physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(C) maintains clinical records on all patients;

(D) has arrangements with one or more hospitals, having agreements in effect under section 1395cc of this title, for the referral and admission of patients requiring inpatient services or such diagnostic or other specialized services as are not available at the clinic;

(E) has written policies, which are developed with the advice of (and with provision for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services described in paragraph (1) which it furnishes;

(F) has a physician, physician assistant, or nurse practitioner responsible for the execution of policies described in subparagraph (E) and relating to the provision of the clinic's services;

(G) directly provides routine diagnostic services, including clinical laboratory services, as prescribed in regulations by the Secretary, and has prompt access to additional diagnostic services from facilities meeting requirements under this subchapter;

(H) in compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined by the Secretary to be necessary for the treatment of emergency cases (as defined in regulations) and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(I) has a quality assessment and performance improvement program, and appropriate procedures for review of utilization of clinic services, as the Secretary may specify;

(J) has a nurse practitioner, a physician assistant, or a certified nurse-midwife (as defined in subsection (gg) of this section) available to furnish patient care services not less than 50 percent of the time the clinic operates; and

(K) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

For the purposes of this subchapter, such term includes only a facility which (i) is located in an area that is not an urbanized area (as defined by the Bureau of the Census) and in which there are insufficient numbers of needed health care practitioners (as determined by the Secretary), and that, within the previous 3-year period, has been designated by the chief executive officer of the State and certified by the Secretary as an area with a shortage of personal health services or designated by the Secretary either (I) as an area with a shortage of personal health services under section 330(b)(3)[7] or 1302(7) [42 U.S.C. 300e–1(7)] of the Public Health Service Act, (II) as a health professional shortage area described in section 332(a)(1)(A) of that Act [42 U.S.C. 254e(a)(1)(A)] because of its shortage of primary medical care manpower, (III) as a high impact area described in section 329(a)(5)[7] of that Act, or (IV) as an area which includes a population

[7] See References in Text note below.

group which the Secretary determines has a health manpower shortage under section 332(a)(1)(B) of that Act [42 U.S.C. 254e(a)(1)(B)], (ii) has filed an agreement with the Secretary by which it agrees not to charge any individual or other person for items or services for which such individual is entitled to have payment made under this subchapter, except for the amount of any deductible or coinsurance amount imposed with respect to such items or services (not in excess of the amount customarily charged for such items and services by such clinic), pursuant to subsections (a) and (b) of section 1395*l* of this title, (iii) employs a physician assistant or nurse practitioner, and (iv) is not a rehabilitation agency or a facility which is primarily for the care and treatment of mental diseases. A facility that is in operation and qualifies as a rural health clinic under this subchapter or subchapter XIX of this chapter and that subsequently fails to satisfy the requirement of clause (i) shall be considered, for purposes of this subchapter and subchapter XIX of this chapter, as still satisfying the requirement of such clause if it is determined, in accordance with criteria established by the Secretary in regulations, to be essential to the delivery of primary care services that would otherwise be unavailable in the geographic area served by the clinic. If a State agency has determined under section 1395aa(a) of this title that a facility is a rural health clinic and the facility has applied to the Secretary for approval as such a clinic, the Secretary shall notify the facility of the Secretary's approval or disapproval not later than 60 days after the date of the State agency determination or the application (whichever is later).

(3) The term ''Federally qualified health center services'' means—

(A) services of the type described in subparagraphs (A) through (C) of paragraph (1), and

(B) preventive primary health services that a center is required to provide under sections 329, 330, and 340[7] of the Public Health Service Act,

when furnished to an individual as an outpatient of a Federally qualified health center and, for this purpose, any reference to a rural health clinic or a physician described in paragraph (2)(B) is deemed a reference to a Federally qualified health center or a physician at the center, respectively.

(4) The term ''Federally qualified health center'' means an entity which—

(A)(i) is receiving a grant under section 330 (other than subsection (h)) of the Public Health Service Act [42 U.S.C. 254b], or

(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and (II) meets the requirements to receive a grant under section 330 (other than subsection (h)) of such Act [42 U.S.C. 254b];

(B) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant;

(C) was treated by the Secretary, for purposes of part B of this subchapter, as a comprehensive Federally funded health center as of January 1, 1990; or

(D) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

(5)(A) The term ''physician assistant'' and the term ''nurse practitioner'' mean, for purposes of this subchapter, a physician assistant or nurse practitioner who performs such services as such individual is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law), and who meets such training, education, and experience requirements (or any combination thereof) as the Secretary may prescribe in regulations.

(B) The term ''clinical nurse specialist'' means, for purposes of this subchapter, an individual who—

(i) is a registered nurse and is licensed to practice nursing in the State in which the clinical nurse specialist services are performed; and

(ii) holds a master's degree in a defined clinical area of nursing from an accredited educational institution.

(6) The term ''collaboration'' means a process in which a nurse practitioner works with a physician to deliver health care services within the scope of the practitioner's professional expertise, with medical direction and appropriate supervision as provided for in jointly developed guidelines or other mechanisms as defined by the law of the State in which the services are performed.

(7)(A) The Secretary shall waive for a 1-year period the requirements of paragraph (2) that a rural health clinic employ a physician assistant, nurse practitioner or certified nurse midwife or that such clinic require such providers to furnish services at least 50 percent of the time that the clinic operates for any facility that requests such waiver if the facility demonstrates that the facility has been unable, despite reasonable efforts, to hire a physician assistant, nurse practitioner, or certified nurse-midwife in the previous 90-day period.

(B) The Secretary may not grant such a waiver under subparagraph (A) to a facility if the request for the waiver is made less than 6 months after the date of the expiration of any previous such waiver for the facility, or if the facility has not yet been determined to meet the requirements (including subparagraph (J) of the first sentence of paragraph (2)) of a rural health clinic.

(C) A waiver which is requested under this paragraph shall be deemed granted unless such request is denied by the Secretary within 60 days after the date such request is received.

(bb) Services of a certified registered nurse anesthetist

(1) The term ''services of a certified registered nurse anesthetist'' means anesthesia services and related care furnished by a certified registered nurse anesthetist (as defined in para-

graph (2)) which the nurse anesthetist is legally authorized to perform as such by the State in which the services are furnished.

(2) The term ''certified registered nurse anesthetist'' means a certified registered nurse anesthetist licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. In prescribing such requirements the Secretary may use the same requirements as those established by a national organization for the certification of nurse anesthetists. Such term also includes, as prescribed by the Secretary, an anesthesiologist assistant.

(cc) Comprehensive outpatient rehabilitation facility services

(1) The term ''comprehensive outpatient rehabilitation facility services'' means the following items and services furnished by a physician or other qualified professional personnel (as defined in regulations by the Secretary) to an individual who is an outpatient of a comprehensive outpatient rehabilitation facility under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician—

(A) physicians' services;

(B) physical therapy, occupational therapy, speech-language pathology services, and respiratory therapy;

(C) prosthetic and orthotic devices, including testing, fitting, or training in the use of prosthetic and orthotic devices;

(D) social and psychological services;

(E) nursing care provided by or under the supervision of a registered professional nurse;

(F) drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered;

(G) supplies and durable medical equipment; and

(H) such other items and services as are medically necessary for the rehabilitation of the patient and are ordinarily furnished by comprehensive outpatient rehabilitation facilities,

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital. In the case of physical therapy, occupational therapy, and speech pathology services, there shall be no requirement that the item or service be furnished at any single fixed location if the item or service is furnished pursuant to such plan and payments are not otherwise made for the item or service under this subchapter.

(2) The term ''comprehensive outpatient rehabilitation facility'' means a facility which—

(A) is primarily engaged in providing (by or under the supervision of physicians) diagnostic, therapeutic, and restorative services to outpatients for the rehabilitation of injured, disabled, or sick persons;

(B) provides at least the following comprehensive outpatient rehabilitation services: (i) physicians' services (rendered by physicians, as defined in subsection (r)(1) of this section, who are available at the facility on a full- or part-time basis); (ii) physical therapy; and (iii) social or psychological services;

(C) maintains clinical records on all patients;

(D) has policies established by a group of professional personnel (associated with the facility), including one or more physicians defined in subsection (r)(1) of this section to govern the comprehensive outpatient rehabilitation services it furnishes, and provides for the carrying out of such policies by a full- or part-time physician referred to in subparagraph (B)(i);

(E) has a requirement that every patient must be under the care of a physician;

(F) in the case of a facility in any State in which State or applicable local law provides for the licensing of facilities of this nature (i) is licensed pursuant to such law, or (ii) is approved by the agency of such State or locality, responsible for licensing facilities of this nature, as meeting the standards established for such licensing;

(G) has in effect a utilization review plan in accordance with regulations prescribed by the Secretary;

(H) has in effect an overall plan and budget that meets the requirements of subsection (z) of this section;

(I) provides the Secretary on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000; and

(J) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such facility, including conditions concerning qualifications of personnel in these facilities.

The Secretary may waive the requirement of a surety bond under subparagraph (I) in the case of a facility that provides a comparable surety bond under State law.

(dd) Hospice care; hospice program; definitions; certification; waiver by Secretary

(1) The term ''hospice care'' means the following items and services provided to a terminally ill individual by, or by others under arrangements made by, a hospice program under a written plan (for providing such care to such individual) established and periodically reviewed by the individual's attending physician and by the medical director (and by the interdisciplinary group described in paragraph (2)(B)) of the program—

(A) nursing care provided by or under the supervision of a registered professional nurse,

(B) physical or occupational therapy, or speech-language pathology services,

(C) medical social services under the direction of a physician,

(D)(i) services of a home health aide who has successfully completed a training program approved by the Secretary and (ii) homemaker services,

(E) medical supplies (including drugs and biologicals) and the use of medical appliances, while under such a plan,

(F) physicians' services,

(G) short-term inpatient care (including both respite care and procedures necessary for pain control and acute and chronic symptom

management) in an inpatient facility meeting such conditions as the Secretary determines to be appropriate to provide such care, but such respite care may be provided only on an intermittent, nonroutine, and occasional basis and may not be provided consecutively over longer than five days,

(H) counseling (including dietary counseling) with respect to care of the terminally ill individual and adjustment to his death, and

(I) any other item or service which is specified in the plan and for which payment may otherwise be made under this subchapter.

The care and services described in subparagraphs (A) and (D) may be provided on a 24-hour, continuous basis only during periods of crisis (meeting criteria established by the Secretary) and only as necessary to maintain the terminally ill individual at home.

(2) The term ''hospice program'' means a public agency or private organization (or a subdivision thereof) which—

(A)(i) is primarily engaged in providing the care and services described in paragraph (1) and makes such services available (as needed) on a 24-hour basis and which also provides bereavement counseling for the immediate family of terminally ill individuals and services described in section 1395d(a)(5) of this title,

(ii) provides for such care and services in individuals' homes, on an outpatient basis, and on a short-term inpatient basis, directly or under arrangements made by the agency or organization, except that—

(I) the agency or organization must routinely provide directly substantially all of each of the services described in subparagraphs (A), (C), and (H) of paragraph (1), except as otherwise provided in paragraph (5), and

(II) in the case of other services described in paragraph (1) which are not provided directly by the agency or organization, the agency or organization must maintain professional management responsibility for all such services furnished to an individual, regardless of the location or facility in which such services are furnished; and

(iii) provides assurances satisfactory to the Secretary that the aggregate number of days of inpatient care described in paragraph (1)(G) provided in any 12-month period to individuals who have an election in effect under section 1395d(d) of this title with respect to that agency or organization does not exceed 20 percent of the aggregate number of days during that period on which such elections for such individuals are in effect;

(B) has an interdisciplinary group of personnel which—

(i) includes at least—

(I) one physician (as defined in subsection (r)(1) of this section),

(II) one registered professional nurse, and

(III) one social worker,

employed by or, in the case of a physician described in subclause (I), under contract with the agency or organization, and also includes at least one pastoral or other counselor,

(ii) provides (or supervises the provision of) the care and services described in paragraph (1), and

(iii) establishes the policies governing the provision of such care and services;

(C) maintains central clinical records on all patients;

(D) does not discontinue the hospice care it provides with respect to a patient because of the inability of the patient to pay for such care;

(E)(i) utilizes volunteers in its provision of care and services in accordance with standards set by the Secretary, which standards shall ensure a continuing level of effort to utilize such volunteers, and (ii) maintains records on the use of these volunteers and the cost savings and expansion of care and services achieved through the use of these volunteers;

(F) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, is licensed pursuant to such law; and

(G) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are provided care and services by such agency or organization.

(3)(A) An individual is considered to be ''terminally ill'' if the individual has a medical prognosis that the individual's life expectancy is 6 months or less.

(B) The term ''attending physician'' means, with respect to an individual, the physician (as defined in subsection (r)(1) of this section) or nurse practitioner (as defined in subsection (aa)(5) of this section), who may be employed by a hospice program, whom the individual identifies as having the most significant role in the determination and delivery of medical care to the individual at the time the individual makes an election to receive hospice care.

(4)(A) An entity which is certified as a provider of services other than a hospice program shall be considered, for purposes of certification as a hospice program, to have met any requirements under paragraph (2) which are also the same requirements for certification as such other type of provider. The Secretary shall coordinate surveys for determining certification under this subchapter so as to provide, to the extent feasible, for simultaneous surveys of an entity which seeks to be certified as a hospice program and as a provider of services of another type.

(B) Any entity which is certified as a hospice program and as a provider of another type shall have separate provider agreements under section 1395cc of this title and shall file separate cost reports with respect to costs incurred in providing hospice care and in providing other services and items under this subchapter.

(5)(A) The Secretary may waive the requirements of paragraph (2)(A)(ii)(I) for an agency or organization with respect to all or part of the nursing care described in paragraph (1)(A) if such agency or organization—

(i) is located in an area which is not an urbanized area (as defined by the Bureau of the Census);

(ii) was in operation on or before January 1, 1983; and

(iii) has demonstrated a good faith effort (as determined by the Secretary) to hire a sufficient number of nurses to provide such nursing care directly.

(B) Any waiver, which is in such form and containing such information as the Secretary may require and which is requested by an agency or organization under subparagraph (A) or (C), shall be deemed to be granted unless such request is denied by the Secretary within 60 days after the date such request is received by the Secretary. The granting of a waiver under subparagraph (A) or (C) shall not preclude the granting of any subsequent waiver request should such a waiver again become necessary.

(C) The Secretary may waive the requirements of paragraph (2)(A)(i) and (2)(A)(ii) for an agency or organization with respect to the services described in paragraph (1)(B) and, with respect to dietary counseling, paragraph (1)(H), if such agency or organization—

(i) is located in an area which is not an urbanized area (as defined by the Bureau of Census), and

(ii) demonstrates to the satisfaction of the Secretary that the agency or organization has been unable, despite diligent efforts, to recruit appropriate personnel.

(D) In extraordinary, exigent, or other nonroutine circumstances, such as unanticipated periods of high patient loads, staffing shortages due to illness or other events, or temporary travel of a patient outside a hospice program's service area, a hospice program may enter into arrangements with another hospice program for the provision by that other program of services described in paragraph (2)(A)(ii)(I). The provisions of paragraph (2)(A)(ii)(II) shall apply with respect to the services provided under such arrangements.

(E) A hospice program may provide services described in paragraph (1)(A) other than directly by the program if the services are highly specialized services of a registered professional nurse and are provided non-routinely and so infrequently so that the provision of such services directly would be impracticable and prohibitively expensive.

(ee) Discharge planning process

(1) A discharge planning process of a hospital shall be considered sufficient if it is applicable to services furnished by the hospital to individuals entitled to benefits under this subchapter and if it meets the guidelines and standards established by the Secretary under paragraph (2).

(2) The Secretary shall develop guidelines and standards for the discharge planning process in order to ensure a timely and smooth transition to the most appropriate type of and setting for post-hospital or rehabilitative care. The guidelines and standards shall include the following:

(A) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning.

(B) Hospitals must provide a discharge planning evaluation for patients identified under subparagraph (A) and for other patients upon the request of the patient, patient's representative, or patient's physician.

(C) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge and to avoid unnecessary delays in discharge.

(D) A discharge planning evaluation must include an evaluation of a patient's likely need for appropriate post-hospital services, including hospice care and post-hospital extended care services, and the availability of those services, including the availability of home health services through individuals and entities that participate in the program under this subchapter and that serve the area in which the patient resides and that request to be listed by the hospital as available and, in the case of individuals who are likely to need post-hospital extended care services, the availability of such services through facilities that participate in the program under this subchapter and that serve the area in which the patient resides.

(E) The discharge planning evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient's representative).

(F) Upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

(G) Any discharge planning evaluation or discharge plan required under this paragraph must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel.

(H) Consistent with section 1395a of this title, the discharge plan shall—

(i) not specify or otherwise limit the qualified provider which may provide post-hospital home health services, and

(ii) identify (in a form and manner specified by the Secretary) any entity to whom the individual is referred in which the hospital has a disclosable financial interest (as specified by the Secretary consistent with section 1395cc(a)(1)(S) of this title) or which has such an interest in the hospital.

(3) With respect to a discharge plan for an individual who is enrolled with a Medicare+Choice organization under a Medicare+Choice plan and is furnished inpatient hospital services by a hospital under a contract with the organization—

(A) the discharge planning evaluation under paragraph (2)(D) is not required to include information on the availability of home health services through individuals and entities which do not have a contract with the organization; and

(B) notwithstanding subparagraph (H)(i)[8], the plan may specify or limit the provider (or providers) of post-hospital home health serv-

[8] So in original. Probably should be ''paragraph (2)(H)(i)''.

ices or other post-hospital services under the plan.

(ff) Partial hospitalization services

(1) The term ''partial hospitalization services'' means the items and services described in paragraph (2) prescribed by a physician and provided under a program described in paragraph (3) under the supervision of a physician pursuant to an individualized, written plan of treatment established and periodically reviewed by a physician (in consultation with appropriate staff participating in such program), which plan sets forth the physician's diagnosis, the type, amount, frequency, and duration of the items and services provided under the plan, and the goals for treatment under the plan.

(2) The items and services described in this paragraph are—

(A) individual and group therapy with physicians or psychologists (or other mental health professionals to the extent authorized under State law),

(B) occupational therapy requiring the skills of a qualified occupational therapist,

(C) services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients,

(D) drugs and biologicals furnished for therapeutic purposes (which cannot, as determined in accordance with regulations, be self-administered),

(E) individualized activity therapies that are not primarily recreational or diversionary,

(F) family counseling (the primary purpose of which is treatment of the individual's condition),

(G) patient training and education (to the extent that training and educational activities are closely and clearly related to individual's care and treatment),

(H) diagnostic services, and

(I) such other items and services as the Secretary may provide (but in no event to include meals and transportation);

that are reasonable and necessary for the diagnosis or active treatment of the individual's condition, reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization, and furnished pursuant to such guidelines relating to frequency and duration of services as the Secretary shall by regulation establish (taking into account accepted norms of medical practice and the reasonable expectation of patient improvement).

(3)(A) A program described in this paragraph is a program which is furnished by a hospital to its outpatients or by a community mental health center (as defined in subparagraph (B)), and which is a distinct and organized intensive ambulatory treatment service offering less than 24-hour-daily care.

(B) For purposes of subparagraph (A), the term ''community mental health center'' means an entity that—

(i)(I) provides the mental health services described in section 1913(c)(1) of the Public Health Service Act [42 U.S.C. 300x–2(c)(1)]; or

(II) in the case of an entity operating in a State that by law precludes the entity from providing itself the service described in subparagraph (E) of such section, provides for such service by contract with an approved organization or entity (as determined by the Secretary);

(ii) meets applicable licensing or certification requirements for community mental health centers in the State in which it is located; and

(iii) meets such additional conditions as the Secretary shall specify to ensure (I) the health and safety of individuals being furnished such services, (II) the effective and efficient furnishing of such services, and (III) the compliance of such entity with the criteria described in section 1931(c)(1) of the Public Health Service Act [42 U.S.C. 300x–31(c)(1)].

(gg) Certified nurse-midwife services

(1) The term ''certified nurse-midwife services'' means such services furnished by a certified nurse-midwife (as defined in paragraph (2)) and such services and supplies furnished as an incident to the nurse-midwife's service which the certified nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physicians' service.

(2) The term ''certified nurse-midwife'' means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary.

(hh) Clinical social worker; clinical social worker services

(1) The term ''clinical social worker'' means an individual who—

(A) possesses a master's or doctor's degree in social work;

(B) after obtaining such degree has performed at least 2 years of supervised clinical social work; and

(C)(i) is licensed or certified as a clinical social worker by the State in which the services are performed, or

(ii) in the case of an individual in a State which does not provide for licensure or certification—

(I) has completed at least 2 years or 3,000 hours of post-master's degree supervised clinical social work practice under the supervision of a master's level social worker in an appropriate setting (as determined by the Secretary), and

(II) meets such other criteria as the Secretary establishes.

(2) The term ''clinical social worker services'' means services performed by a clinical social worker (as defined in paragraph (1)) for the diagnosis and treatment of mental illnesses (other than services furnished to an inpatient of a hospital and other than services furnished to an inpatient of a skilled nursing facility which the facility is required to provide as a requirement for participation) which the clinical social worker is legally authorized to perform under State law (or the State regulatory mechanism

provided by State law) of the State in which such services are performed as would otherwise be covered if furnished by a physician or as an incident to a physician's professional service.

(ii) Qualified psychologist services

The term ''qualified psychologist services'' means such services and such services and supplies furnished as an incident to his service furnished by a clinical psychologist (as defined by the Secretary) which the psychologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physician's service.

(jj) Screening mammography

The term ''screening mammography'' means a radiologic procedure provided to a woman for the purpose of early detection of breast cancer and includes a physician's interpretation of the results of the procedure.

(kk) Covered osteoporosis drug

The term ''covered osteoporosis drug'' means an injectable drug approved for the treatment of post-menopausal osteoporosis provided to an individual by a home health agency if, in accordance with regulations promulgated by the Secretary—

(1) the individual's attending physician certifies that the individual has suffered a bone fracture related to post-menopausal osteoporosis and that the individual is unable to learn the skills needed to self-administer such drug or is otherwise physically or mentally incapable of self-administering such drug; and

(2) the individual is confined to the individual's home (except when receiving items and services referred to in subsection (m)(7) of this section).

(*ll*) Speech-language pathology services; audiology services

(1) The term ''speech-language pathology services'' means such speech, language, and related function assessment and rehabilitation services furnished by a qualified speech-language pathologist as the speech-language pathologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician.

(2) The term ''audiology services'' means such hearing and balance assessment services furnished by a qualified audiologist as the audiologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), as would otherwise be covered if furnished by a physician.

(3) In this subsection:

(A) The term ''qualified speech-language pathologist'' means an individual with a master's or doctoral degree in speech-language pathology who—

(i) is licensed as a speech-language pathologist by the State in which the individual furnishes such services, or

(ii) in the case of an individual who furnishes services in a State which does not license speech-language pathologists, has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience), performed not less than 9 months of supervised full-time speech-language pathology services after obtaining a master's or doctoral degree in speech-language pathology or a related field, and successfully completed a national examination in speech-language pathology approved by the Secretary.

(B) The term ''qualified audiologist'' means an individual with a master's or doctoral degree in audiology who—

(i) is licensed as an audiologist by the State in which the individual furnishes such services, or

(ii) in the case of an individual who furnishes services in a State which does not license audiologists, has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience), performed not less than 9 months of supervised full-time audiology services after obtaining a master's or doctoral degree in audiology or a related field, and successfully completed a national examination in audiology approved by the Secretary.

(mm) Critical access hospital; critical access hospital services

(1) The term ''critical access hospital'' means a facility certified by the Secretary as a critical access hospital under section 1395i–4(e) of this title.

(2) The term ''inpatient critical access hospital services'' means items and services, furnished to an inpatient of a critical access hospital by such facility, that would be inpatient hospital services if furnished to an inpatient of a hospital by a hospital.

(3) The term ''outpatient critical access hospital services'' means medical and other health services furnished by a critical access hospital on an outpatient basis.

(nn) Screening pap smear; screening pelvic exam

(1) The term ''screening pap smear'' means a diagnostic laboratory test consisting of a routine exfoliative cytology test (Papanicolaou test) provided to a woman for the purpose of early detection of cervical or vaginal cancer and includes a physician's interpretation of the results of the test, if the individual involved has not had such a test during the preceding 2 years, or during the preceding year in the case of a woman described in paragraph (3).

(2) The term ''screening pelvic exam'' means a pelvic examination provided to a woman if the woman involved has not had such an examination during the preceding 2 years, or during the preceding year in the case of a woman described in paragraph (3), and includes a clinical breast examination.

(3) A woman described in this paragraph is a woman who—

(A) is of childbearing age and has had a test described in this subsection during any of the preceding 3 years that indicated the presence

of cervical or vaginal cancer or other abnormality; or

(B) is at high risk of developing cervical or vaginal cancer (as determined pursuant to factors identified by the Secretary).

(*oo*) Prostate cancer screening tests

(1) The term ''prostate cancer screening test'' means a test that consists of any (or all) of the procedures described in paragraph (2) provided for the purpose of early detection of prostate cancer to a man over 50 years of age who has not had such a test during the preceding year.

(2) The procedures described in this paragraph are as follows:

(A) A digital rectal examination.

(B) A prostate-specific antigen blood test.

(C) For years beginning after 2002, such other procedures as the Secretary finds appropriate for the purpose of early detection of prostate cancer, taking into account changes in technology and standards of medical practice, availability, effectiveness, costs, and such other factors as the Secretary considers appropriate.

(pp) Colorectal cancer screening tests

(1) The term ''colorectal cancer screening test'' means any of the following procedures furnished to an individual for the purpose of early detection of colorectal cancer:

(A) Screening fecal-occult blood test.

(B) Screening flexible sigmoidoscopy.

(C) Screening colonoscopy.

(D) Such other tests or procedures, and modifications to tests and procedures under this subsection, with such frequency and payment limits, as the Secretary determines appropriate, in consultation with appropriate organizations.

(2) An ''individual at high risk for colorectal cancer'' is an individual who, because of family history, prior experience of cancer or precursor neoplastic polyps, a history of chronic digestive disease condition (including inflammatory bowel disease, Crohn's Disease, or ulcerative colitis), the presence of any appropriate recognized gene markers for colorectal cancer, or other predisposing factors, faces a high risk for colorectal cancer.

(qq) Diabetes outpatient self-management training services

(1) The term ''diabetes outpatient self-management training services'' means educational and training services furnished (at such times as the Secretary determines appropriate) to an individual with diabetes by a certified provider (as described in paragraph (2)(A)) in an outpatient setting by an individual or entity who meets the quality standards described in paragraph (2)(B), but only if the physician who is managing the individual's diabetic condition certifies that such services are needed under a comprehensive plan of care related to the individual's diabetic condition to ensure therapy compliance or to provide the individual with necessary skills and knowledge (including skills related to the self-administration of injectable drugs) to participate in the management of the individual's condition.

(2) In paragraph (1)—

(A) a ''certified provider'' is a physician, or other individual or entity designated by the Secretary, that, in addition to providing diabetes outpatient self-management training services, provides other items or services for which payment may be made under this subchapter; and

(B) a physician, or such other individual or entity, meets the quality standards described in this paragraph if the physician, or individual or entity, meets quality standards established by the Secretary, except that the physician or other individual or entity shall be deemed to have met such standards if the physician or other individual or entity meets applicable standards originally established by the National Diabetes Advisory Board and subsequently revised by organizations who participated in the establishment of standards by such Board, or is recognized by an organization that represents individuals (including individuals under this subchapter) with diabetes as meeting standards for furnishing the services.

(rr) Bone mass measurement

(1) The term ''bone mass measurement'' means a radiologic or radioisotopic procedure or other procedure approved by the Food and Drug Administration performed on a qualified individual (as defined in paragraph (2)) for the purpose of identifying bone mass or detecting bone loss or determining bone quality, and includes a physician's interpretation of the results of the procedure.

(2) For purposes of this subsection, the term ''qualified individual'' means an individual who is (in accordance with regulations prescribed by the Secretary)—

(A) an estrogen-deficient woman at clinical risk for osteoporosis;

(B) an individual with vertebral abnormalities;

(C) an individual receiving long-term glucocorticoid steroid therapy;

(D) an individual with primary hyperparathyroidism; or

(E) an individual being monitored to assess the response to or efficacy of an approved osteoporosis drug therapy.

(3) The Secretary shall establish such standards regarding the frequency with which a qualified individual shall be eligible to be provided benefits for bone mass measurement under this subchapter.

(ss) Religious nonmedical health care institution

(1) The term ''religious nonmedical health care institution'' means an institution that—

(A) is described in subsection (c)(3) of section 501 of the Internal Revenue Code of 1986 and is exempt from taxes under subsection (a) of such section;

(B) is lawfully operated under all applicable Federal, State, and local laws and regulations;

(C) provides only nonmedical nursing items and services exclusively to patients who choose to rely solely upon a religious method of healing and for whom the acceptance of medical health services would be inconsistent with their religious beliefs;

(D) provides such nonmedical items and services exclusively through nonmedical nursing personnel who are experienced in caring for the physical needs of such patients;

(E) provides such nonmedical items and services to inpatients on a 24-hour basis;

(F) on the basis of its religious beliefs, does not provide through its personnel or otherwise medical items and services (including any medical screening, examination, diagnosis, prognosis, treatment, or the administration of drugs) for its patients;

(G)(i) is not owned by, under common ownership with, or has an ownership interest in, a provider of medical treatment or services;

(ii) is not affiliated with—

(I) a provider of medical treatment or services, or

(II) an individual who has an ownership interest in a provider of medical treatment or services;

(H) has in effect a utilization review plan which—

(i) provides for the review of admissions to the institution, of the duration of stays therein, of cases of continuous extended duration, and of the items and services furnished by the institution,

(ii) requires that such reviews be made by an appropriate committee of the institution that includes the individuals responsible for overall administration and for supervision of nursing personnel at the institution,

(iii) provides that records be maintained of the meetings, decisions, and actions of such committee, and

(iv) meets such other requirements as the Secretary finds necessary to establish an effective utilization review plan;

(I) provides the Secretary with such information as the Secretary may require to implement section 1395i–5 of this title, including information relating to quality of care and coverage determinations; and

(J) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution.

(2) To the extent that the Secretary finds that the accreditation of an institution by a State, regional, or national agency or association provides reasonable assurances that any or all of the requirements of paragraph (1) are met or exceeded, the Secretary may treat such institution as meeting the condition or conditions with respect to which the Secretary made such finding.

(3)(A)(i) In administering this subsection and section 1395i–5 of this title, the Secretary shall not require any patient of a religious nonmedical health care institution to undergo medical screening, examination, diagnosis, prognosis, or treatment or to accept any other medical health care service, if such patient (or legal representative of the patient) objects thereto on religious grounds.

(ii) Clause (i) shall not be construed as preventing the Secretary from requiring under section 1395i–5(a)(2) of this title the provision of sufficient information regarding an individual's condition as a condition for receipt of benefits under part A of this subchapter for services provided in such an institution.

(B)(i) In administering this subsection and section 1395i–5 of this title, the Secretary shall not subject a religious nonmedical health care institution or its personnel to any medical supervision, regulation, or control, insofar as such supervision, regulation, or control would be contrary to the religious beliefs observed by the institution or such personnel.

(ii) Clause (i) shall not be construed as preventing the Secretary from reviewing items and services billed by the institution to the extent the Secretary determines such review to be necessary to determine whether such items and services were not covered under part A of this subchapter, are excessive, or are fraudulent.

(4)(A) For purposes of paragraph (1)(G)(i), an ownership interest of less than 5 percent shall not be taken into account.

(B) For purposes of paragraph (1)(G)(ii), none of the following shall be considered to create an affiliation:

(i) An individual serving as an uncompensated director, trustee, officer, or other member of the governing body of a religious nonmedical health care institution.

(ii) An individual who is a director, trustee, officer, employee, or staff member of a religious nonmedical health care institution having a family relationship with an individual who is affiliated with (or has an ownership interest in) a provider of medical treatment or services.

(iii) An individual or entity furnishing goods or services as a vendor to both providers of medical treatment or services and religious nonmedical health care institutions.

(tt) Post-institutional home health services; home health spell of illness

(1) The term ''post-institutional home health services'' means home health services furnished to an individual—

(A) after discharge from a hospital or critical access hospital in which the individual was an inpatient for not less than 3 consecutive days before such discharge if such home health services were initiated within 14 days after the date of such discharge; or

(B) after discharge from a skilled nursing facility in which the individual was provided post-hospital extended care services if such home health services were initiated within 14 days after the date of such discharge.

(2) The term ''home health spell of illness'' with respect to any individual means a period of consecutive days—

(A) beginning with the first day (not included in a previous home health spell of illness) (i) on which such individual is furnished post-institutional home health services, and (ii) which occurs in a month for which the individual is entitled to benefits under part A of this subchapter, and

(B) ending with the close of the first period of 60 consecutive days thereafter on each of which the individual is neither an inpatient of a hospital or critical access hospital nor an inpatient of a facility described in section

1395i–3(a)(1) of this title or subsection (y)(1) of this section nor provided home health services.

(uu)Screening for glaucoma

The term ''screening for glaucoma'' means a dilated eye examination with an intraocular pressure measurement, and a direct ophthalmoscopy or a slit-lamp biomicroscopic examination for the early detection of glaucoma which is furnished by or under the direct supervision of an optometrist or ophthalmologist who is legally authorized to furnish such services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished, as would otherwise be covered if furnished by a physician or as an incident to a physician's professional service, if the individual involved has not had such an examination in the preceding year.

(vv)Medical nutrition therapy services; registered dietitian or nutrition professional

(1) The term ''medical nutrition therapy services'' means nutritional diagnostic, therapy, and counseling services for the purpose of disease management which are furnished by a registered dietitian or nutrition professional (as defined in paragraph (2)) pursuant to a referral by a physician (as defined in subsection (r)(1) of this section).

(2) Subject to paragraph (3), the term ''registered dietitian or nutrition professional'' means an individual who—

(A) holds a baccalaureate or higher degree granted by a regionally accredited college or university in the United States (or an equivalent foreign degree) with completion of the academic requirements of a program in nutrition or dietetics, as accredited by an appropriate national accreditation organization recognized by the Secretary for this purpose;

(B) has completed at least 900 hours of supervised dietetics practice under the supervision of a registered dietitian or nutrition professional; and

(C)(i) is licensed or certified as a dietitian or nutrition professional by the State in which the services are performed; or

(ii) in the case of an individual in a State that does not provide for such licensure or certification, meets such other criteria as the Secretary establishes.

(3) Subparagraphs (A) and (B) of paragraph (2) shall not apply in the case of an individual who, as of December 21, 2000, is licensed or certified as a dietitian or nutrition professional by the State in which medical nutrition therapy services are performed.

(ww) Initial preventive physical examination

(1) The term ''initial preventive physical examination'' means physicians' services consisting of a physical examination (including measurement of height, weight, and blood pressure, and an electrocardiogram) with the goal of health promotion and disease detection and includes education, counseling, and referral with respect to screening and other preventive services described in paragraph (2), but does not include clinical laboratory tests.

(2) The screening and other preventive services described in this paragraph include the following:

(A) Pneumococcal, influenza, and hepatitis B vaccine and administration under subsection (s)(10) of this section.

(B) Screening mammography as defined in subsection (jj) of this section.

(C) Screening pap smear and screening pelvic exam as defined in subsection (nn) of this section.

(D) Prostate cancer screening tests as defined in subsection (*oo*) of this section.

(E) Colorectal cancer screening tests as defined in subsection (pp) of this section.

(F) Diabetes outpatient self-management training services as defined in subsection (qq)(1) of this section.

(G) Bone mass measurement as defined in subsection (rr) of this section.

(H) Screening for glaucoma as defined in subsection (uu) of this section.

(I) Medical nutrition therapy services as defined in subsection (vv) of this section.

(J) Cardiovascular screening blood tests as defined in subsection (xx)(1) of this section.

(K) Diabetes screening tests as defined in subsection (yy) of this section.

(xx) Cardiovascular screening blood test

(1) The term ''cardiovascular screening blood test'' means a blood test for the early detection of cardiovascular disease (or abnormalities associated with an elevated risk of cardiovascular disease) that tests for the following:

(A) Cholesterol levels and other lipid or triglyceride levels.

(B) Such other indications associated with the presence of, or an elevated risk for, cardiovascular disease as the Secretary may approve for all individuals (or for some individuals determined by the Secretary to be at risk for cardiovascular disease), including indications measured by noninvasive testing.

The Secretary may not approve an indication under subparagraph (B) for any individual unless a blood test for such is recommended by the United States Preventive Services Task Force.

(2) The Secretary shall establish standards, in consultation with appropriate organizations, regarding the frequency for each type of cardiovascular screening blood tests, except that such frequency may not be more often than once every 2 years.

(yy) Diabetes screening tests

(1) The term ''diabetes screening tests'' means testing furnished to an individual at risk for diabetes (as defined in paragraph (2)) for the purpose of early detection of diabetes, including—

(A) a fasting plasma glucose test; and

(B) such other tests, and modifications to tests, as the Secretary determines appropriate, in consultation with appropriate organizations.

(2) For purposes of paragraph (1), the term ''individual at risk for diabetes'' means an individual who has any of the following risk factors for diabetes:

(A) Hypertension.

(B) Dyslipidemia.

(C) Obesity, defined as a body mass index greater than or equal to 30 kg/m^2.

(D) Previous identification of an elevated impaired fasting glucose.

(E) Previous identification of impaired glucose tolerance.

(F) A risk factor consisting of at least 2 of the following characteristics:

(i) Overweight, defined as a body mass index greater than 25, but less than 30, kg/m^2.

(ii) A family history of diabetes.

(iii) A history of gestational diabetes mellitus or delivery of a baby weighing greater than 9 pounds.

(iv) 65 years of age or older.

(3) The Secretary shall establish standards, in consultation with appropriate organizations, regarding the frequency of diabetes screening tests, except that such frequency may not be more often than twice within the 12-month period following the date of the most recent diabetes screening test of that individual.

(zz) Intravenous immune globulin

The term ''intravenous immune globulin'' means an approved pooled plasma derivative for the treatment in the patient's home of a patient with a diagnosed primary immune deficiency disease, but not including items or services related to the administration of the derivative, if a physician determines administration of the derivative in the patient's home is medically appropriate.

(aaa) Extended care in religious nonmedical health care institutions

(1) The term ''home health agency'' also includes a religious nonmedical health care institution (as defined in subsection (ss)(1) of this section), but only with respect to items and services ordinarily furnished by such an institution to individuals in their homes, and that are comparable to items and services furnished to individuals by a home health agency that is not religious nonmedical health care institution.

(2)(A) Subject to subparagraphs (B), payment may be made with respect to services provided by such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations consistent with section 1395i–5 of this title.

(B) Notwithstanding any other provision of this subchapter, payment may not be made under subparagraph (A)—

(i) in a year insofar as such payments exceed $700,000; and

(ii) after December 31, 2006.

(Aug. 14, 1935, ch. 531, title XVIII, § 1861, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 313; amended Pub. L. 89–713, § 7, Nov. 2, 1966, 80 Stat. 1111; Pub. L. 90–248, title I, §§ 127(a), 129(a), (b), (c)(9)(C), (10), (11), 132(a), 133(a), (b), 134(a), 143(a), 144(a)–(d), Jan. 2, 1968, 81 Stat. 846–850, 852, 857, 858; Pub. L. 91–690, Jan. 12, 1971, 84 Stat. 2074; Pub. L. 92–603, title II, §§ 211(b), (c)(2), 221(c)(4), 223(a)–(d), (f), 227(a), (c), (d)(1), (f), 234(a)–(f), 237(c), 244(c), 246(b), 248, 249(b), 251(a)(1), (b)(1), (c), 252(a), 256(b), 264(a), 265, 267, 273(a), 276(a), 278(a) (4)–(15), (b)(6), (10), (11), (13), 283(a), Oct. 30, 1972, 86 Stat. 1383, 1384, 1389, 1393, 1394, 1404–1407, 1412, 1413, 1416, 1423–1426, 1445–1447, 1449–1454, 1456; Pub. L. 94–182, title I, §§ 102, 106(a), 112(a)(1), Dec. 31, 1975, 89 Stat. 1051, 1052, 1055; Pub. L. 95–142, §§ 3(a)(2), 5(m), 19(b)(1), 21(a), Oct. 25, 1977, 91 Stat. 1178, 1191, 1204, 1207; Pub. L. 95–210, § 1(d), (g), (h), Dec. 13, 1977, 91 Stat. 1485, 1487, 1488; Pub. L. 95–216, title V, § 501(a), Dec. 20, 1977, 91 Stat. 1564; Pub. L. 95–292, § 4(d), June 13, 1978, 92 Stat. 315; Pub. L. 96–499, title IX, §§ 902(a)(1), 915(a), 930(k)–(n), (p), 931(c), (d), 933(c)–(e), 936(a), 937(a), 938(a), 948(a)(1), 949, 950, 951(a), (b), 952(a), formerly 952, Dec. 5, 1980, 94 Stat. 2612, 2623, 2632, 2633, 2635, 2639, 2640, 2643, 2645, 2646; Pub. L. 96–611, § 1(a)(1), (b)(3), Dec. 28, 1980, 94 Stat. 3566; Pub. L. 97–35, title XXI, §§ 2102(a), 2114, 2121(c), (d), 2141(a), 2142(a), 2143(a), 2144(a), 2193(c)(9), Aug. 13, 1981, 95 Stat. 787, 796–799, 828; Pub. L. 97–248, title I, §§ 101(a)(2), (d), 102(a), 103(a), 105(a), 106(a), 107(a), 108(a)(2), 109(b), 114(b), 122(d), 127(1), 128(a)(1), (d)(2), 148(b), Sept. 3, 1982, 96 Stat. 335–339, 350, 359, 366, 367, 394; Pub. L. 97–448, title III, § 309(a)(4), Jan. 12, 1983, 96 Stat. 2408; Pub. L. 98–21, title VI, §§ 602(d), 607(b)(2), (d), Apr. 20, 1983, 97 Stat. 163, 171, 172; Pub. L. 98–369, div. B, title III, §§ 2314(a), 2318(a), (b), 2319(a), 2321(e), 2322(a), 2323(a), 2324(a), 2335(b), 2340(a), 2341(a), (c), 2342(a), 2343(a), (b), 2354(b)(18)–(29), July 18, 1984, 98 Stat. 1079, 1081, 1082, 1085, 1086, 1090, 1093, 1094, 1101; Pub. L. 98–617, § 3(a)(4), (b)(7), Nov. 8, 1984, 98 Stat. 3295, 3296; Pub. L. 99–272, title IX, §§ 9107(b), 9110(a), 9202(i)(1), 9219(b)(1)(B), (3)(A), Apr. 7, 1986, 100 Stat. 160, 162, 177, 182, 183; Pub. L. 99–509, title IX, §§ 9305(c)(1), (2), 9313(a)(2), 9315(a), 9320(b), (c), (f), 9335(c)(1), 9336(a), 9337(d), 9338(a), Oct. 21, 1986, 100 Stat. 1989, 2002, 2005, 2013, 2015, 2030, 2033, 2034; Pub. L. 100–203, title IV, §§ 4009(e)(1), (f), 4021(a), 4026(a)(1), 4039(b), 4064(e)(1), 4065(a), 4070(b)(1), (2), 4071(a), 4072(a), 4073(a), (c), 4074(a), (b), 4075(a), 4076(a), 4077(a)(1), (b)(1), (4), formerly (5), 4078, 4084(c)(1), 4085(i)(9)–(14), 4201(a)(1), (b)(1), (d)(1), (2), (5), formerly (d), Dec. 22, 1987, 101 Stat. 1330–57, 1330–58, 1330–67, 1330–74, 1330–81, 1330–111, 1330–112, 1330–114, 1330–116, 1330–118 to 1330–121, 1330–132, 1330–133, 1330–160, 1330–174, as amended Pub. L. 100–360, title IV, § 411(h)(4)(D), (5)–(7)(A), (E), (F), (i)(3), (4)(C)(iii), (*l*)(1)(B), (C), July 1, 1988, 102 Stat. 787–789, 801, as amended Pub. L. 100–485, title VI, § 608(d)(27)(B), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 100–360, title I, § 104(d)(4), title II, §§ 202(a), 203(b), (e)(1), 204(a), 205(b), 206(a), title IV, § 411(d)(1)(B)(i), (5)(A), (g)(3)(H), (h)(1)(B), (2), (3)(A), July 1, 1988, 102 Stat. 689, 702, 721, 725, 730, 731, 773, 774, 785, 786; Pub. L. 100–485, title VI, § 608(d)(6)(A), (23)(B), Oct. 13, 1988, 102 Stat. 2414, 2421; Pub. L. 100–647, title VIII, §§ 8423(a), 8424(a), Nov. 10, 1988, 102 Stat. 3803; Pub. L. 101–234, title I, § 101(a), title II, § 201(a), Dec. 13, 1989, 103 Stat. 1979, 1981; Pub. L. 101–239, title VI, §§ 6003(g)(3)(A), (C)(i), (D)(x), 6110, 6112(e)(1), 6113(a)–(b)(2), 6114(a), (d), 6115(a), 6116(a)(1), 6131(a)(2), 6141(a), 6213(a)–(c), Dec. 19, 1989, 103 Stat. 2151–2153, 2213, 2215–2219, 2221, 2225, 2250, 2251; Pub. L. 101–508, title IV, §§ 4008(h)(2)(A)(i), 4151(a), (b)(1), 4152(a)(2), 4153(b)(2)(A), 4155(a), (d), 4156(a), 4157(a), 4161(a)(1), (2), (5), (b)(1), (2), 4162(a), 4163(a), 4201(d)(1), 4207(d)(1), formerly 4027(d)(1), Nov. 5, 1990, 104 Stat. 1388–48, 1388–71, 1388–72, 1388–74,

1388–84, 1388–86 to 1388–88, 1388–93 to 1388–96, 1388–104, 1388–120, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 101–597, title IV, § 401(c)(2), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 103–66, title XIII, §§ 13503(c)(1)(A), 13521, 13522, 13553(a), (b), 13554(a), 13556(a), 13564(a)(2), (b)(1), 13565, 13566(b), Aug. 10, 1993, 107 Stat. 578, 586, 591, 592, 607; Pub. L. 103–432, title I, §§ 102(g)(4), 104, 107(a), 145(b), 146(a), (b), 147(e)(1), (4), (5), (f)(3), (4)(A), (6)(A), (B), (E), 158(a)(1), Oct. 31, 1994, 108 Stat. 4404, 4405, 4407, 4427–4432, 4442; Pub. L. 104–299, § 4(b)(1), Oct. 11, 1996, 110 Stat. 3645; Pub. L. 105–33, title IV, §§ 4102(a), (c), 4103(a), 4104(a)(1), 4105(a)(1), (b)(1), 4106(a), 4201(c)(1), (2), 4205(b)(1), (c)(1), (d)(1)–(3)(A), 4312(b)(1), (2), (d), (e), 4320, 4321(a), 4404(a), 4432(b)(5)(D), (E), 4444(a), 4445, 4446, 4451, 4454(a)(1), 4511(a)(1)–(2)(B), (d), 4512(a), 4513(a), 4522, 4531(a)(1), 4557(a), 4601(a), 4602(a)–(c), 4604(b), 4611(b), 4612(a), Aug. 5, 1997, 111 Stat. 360–362, 366, 367, 373, 376, 377, 386, 387, 394, 400, 421–426, 442–444, 450, 463, 466, 472, 474; Pub. L. 105–277, div. J, title V, § 5101(a), (b), (d)(1), Oct. 21, 1998, 112 Stat. 2681–913, 2681–914; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, §§ 201(k), 221(b)(1), 227(a), title III, §§ 303(a), 304(a), 321(k)(7)–(9), title V, § 521], Nov. 29, 1999, 113 Stat. 1536, 1501A–341, 1501A–351, 1501A–354, 1501A–360, 1501A–361, 1501A–367, 1501A–386; Pub. L. 106–554, § 1(a)(6) [title I, §§ 101(a), 102(a), (b), 103(a), 105(a), (b), 112(a), 113(a), title IV, §§ 430(b), 431(a), title V, §§ 502(a), 541], Dec. 21, 2000, 114 Stat. 2763, 2763A–467, 2763A–468, 2763A–471, 2763A–473, 2763A–525, 2763A–529, 2763A–550; Pub. L. 108–173, title III, § 303(i)(2), title IV, §§ 408(a), 414(g)(2), 415(b), title V, § 512(c), title VI, §§ 611(a), (b), (d)(2), 612(a), (b), 613(a), (b), 642(a), title VII, §§ 706(b), 736(a)(10), (11), (b)(3), (11), (12), (c)(4), title IX, §§ 901(b), 926(b)(1), 946(a), Dec. 8, 2003, 117 Stat. 2254, 2270, 2281, 2282, 2299, 2303–2305, 2322, 2339, 2355, 2356, 2374, 2396, 2424.)

References in Text

Parts A and B of this subchapter, referred to in text, are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

Section 4071(b) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (s)(10)(A), is section 4071(b) of Pub. L. 100–203, which is set out as a note below.

Section 4072(e) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (s)(12), is section 4072(e) of Pub. L. 100–203, which is set out as a note below.

The Public Health Service Act, referred to in subsec. (v)(1)(M), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. Titles VI and XVI of the Public Health Service Act are classified generally to subchapters IV (§ 291 et seq.) and XIV (§ 300q et seq.), respectively, of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Section 1395*l*(t)(5)(B) of this title, referred to in subsec. (v)(1)(T), was redesignated section 1395*l*(t)(8)(B) of this title by Pub. L. 106–113, div. B, § 1000(a)(6) [title II, §§ 201(a)(1), 202(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–336, 1501A–342.

Section 1395cc(a)(2)(B)(ii) of this title, referred to in subsec. (v)(4), was repealed by Pub. L. 101–239, title VI, § 6017(2), Dec. 19, 1989, 103 Stat. 2165.

Part B of subchapter XI of this chapter, referred to in subsec. (w)(2), is classified to section 1320c et seq. of this title.

Sections 329 and 330 of the Public Health Service Act, referred to in subsec. (aa)(2), (3)(B), were sections 329 and 330 of act July 1, 1944, which were classified, respectively, to sections 254b and 254c of this title and were omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of chapter 6A of this title by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

Section 340 of the Public Health Service Act, referred to in subsec. (aa)(3)(B), was section 340 of act July 1, 1944, which was classified to section 256 of this title prior to repeal by Pub. L. 104–299, § 4(a)(3), Oct. 11, 1996, 110 Stat. 3645.

The Indian Self-Determination Act, referred to in subsec. (aa)(4)(D), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (aa)(4)(D), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (ss)(1)(A), is classified generally to Title 26, Internal Revenue Code.

Amendments

2003—Subsec. (d). Pub. L. 108–173, § 901(b), added subsec. (d).

Subsec. (s)(2)(A). Pub. L. 108–173, § 303(i)(2), inserted ''(or would have been so included but for the application of section 1395w–3b of this title)'' after ''included in the physicians' bills''.

Subsec. (s)(2)(K)(i). Pub. L. 108–173, § 736(b)(11), substituted '', but'' for ''; and but''.

Pub. L. 108–173, § 611(d)(2), inserted ''and services described in subsection (ww)(1) of this section'' after ''services which would be physicians' services''.

Subsec. (s)(2)(K)(ii). Pub. L. 108–173, § 611(d)(2), inserted ''and services described in subsection (ww)(1) of this section'' after ''services which would be physicians' services''.

Subsec. (s)(2)(W). Pub. L. 108–173, § 611(a), added subpar. (W).

Subsec. (s)(2)(X). Pub. L. 108–173, § 612(a), added subpar. (X).

Subsec. (s)(2)(Y). Pub. L. 108–173, § 613(a), added subpar. (Y).

Subsec. (s)(2)(Z). Pub. L. 108–173, § 642(a)(1), added subpar. (Z).

Subsec. (s)(7). Pub. L. 108–173, § 415(b), inserted '', subject to section 1395m(*l*)(14) of this title,'' after ''but''.

Subsec. (v)(1)(S)(ii)(III). Pub. L. 108–173, § 736(b)(3), inserted closing parenthesis after ''as defined in section 1395ww(d)(5)(D)(iii) of this title''.

Subsec. (v)(1)(U). Pub. L. 108–173, § 414(g)(2), realigned margins.

Subsec. (v)(8). Pub. L. 108–173, § 736(c)(4), realigned margins.

Subsec. (aa)(1)(B). Pub. L. 108–173, § 736(b)(12), struck out second comma after ''(as defined in subsection (hh)(1) of this section),''.

Subsec. (dd)(2)(A)(i). Pub. L. 108–173, § 512(c), inserted ''and services described in section 1395d(a)(5) of this title'' before comma at end.

Subsec. (dd)(3)(B). Pub. L. 108–173, § 408(a), inserted ''or nurse practitioner (as defined in subsection (aa)(5) of this section)'' after ''the physician (as defined in subsection (r)(1) of this section)''.

Subsec. (dd)(5)(D), (E). Pub. L. 108–173, § 946(a), added subpars. (D) and (E).

Subsec. (ee)(2)(D). Pub. L. 108–173, § 926(b)(1), substituted ''hospice care and post-hospital extended care

services'' for ''hospice services'' and inserted before period at end ''and, in the case of individuals who are likely to need post-hospital extended care services, the availability of such services through facilities that participate in the program under this subchapter and that serve the area in which the patient resides''.

Subsec. (mm). Pub. L. 108–173, §736(a)(10), made technical amendment to heading.

Subsec. (tt)(1)(A), (2)(B). Pub. L. 108–173, §736(a)(11), substituted ''critical access hospital'' for ''rural primary care hospital''.

Subsec. (ww). Pub. L. 108–173, §611(b), added subsec. (ww).

Subsec. (xx). Pub. L. 108–173, §612(b), added subsec. (xx).

Subsec. (yy). Pub. L. 108–173, §613(b), added subsec. (yy).

Subsec. (zz). Pub. L. 108–173, §642(a)(2), added subsec. (zz).

Subsec. (aaa). Pub. L. 108–173, §706(b), added subsec. (aaa).

2000—Subsec. (s)(2)(A), (B). Pub. L. 106–554, §1(a)(6) [title I, §112(a)], substituted ''(including drugs and biologicals which are not usually self-administered by the patient)'' for ''(including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered)''.

Subsec. (s)(2)(J). Pub. L. 106–554, §1(a)(6) [title I, §113(a)], struck out provisions limiting application to drugs furnished within 12 months after the date of the transplant procedure for drugs furnished before 1995, to within 18 months after the date of the transplant procedure for drugs furnished during 1995, to within 24 months after the date of the transplant procedure for drugs furnished during 1996, to within 30 months after the date of the transplant procedure for drugs furnished during 1997, and to within 36 months after the date of the transplant procedure plus additional number of months provided under section 1395k(b) for drugs furnished during any year after 1997.

Subsec. (s)(2)(U). Pub. L. 106–554, §1(a)(6) [title I, §102(a)], added subpar. (U).

Subsec. (s)(2)(V). Pub. L. 106–554, §1(a)(6) [title I, §105(a)], added subpar. (V).

Subsec. (t)(1). Pub. L. 106–554, §1(a)(6) [title IV, §430(b)], inserted ''(including contrast agents)'' after ''only such drugs''.

Subsec. (v)(1)(L)(x). Pub. L. 106–554, §1(a)(6) [title V, §502(a)], struck out ''2001,'' after ''2000,'' and inserted at end ''With respect to cost reporting periods beginning during fiscal year 2001, the update to any limit under this subparagraph shall be the home health market basket index.''

Subsec. (v)(1)(T)(ii). Pub. L. 106–554, §1(a)(6) [title V, §541(1)], struck out ''and'' at end.

Subsec. (v)(1)(T)(iii). Pub. L. 106–554, §1(a)(6) [title V, §541(2)], substituted ''during fiscal year 2000'' for ''during a subsequent fiscal year'' and '', and'' for period at end.

Subsec. (v)(1)(T)(iv). Pub. L. 106–554, §1(a)(6) [title V, §541(3)], added cl. (iv).

Subsec. (ff)(3)(B). Pub. L. 106–554, §1(a)(6) [title IV, §431(a)], substituted ''entity that—'' for ''entity—'', added cls. (i) to (iii), and struck out former cls. (i) and (ii) which read as follows:

''(i) providing the services described in section 1916(c)(4) of the Public Health Service Act; and

''(ii) meeting applicable licensing or certification requirements for community mental health centers in the State in which it is located.''

Subsec. (nn)(1), (2). Pub. L. 106–554, §1(a)(6) [title I, §101(a)], substituted ''2 years'' for ''3 years''.

Subsec. (pp)(1)(C). Pub. L. 106–554, §1(a)(6) [title I, §103(a)(1)], substituted ''Screening colonoscopy'' for ''In the case of an individual at high risk for colorectal cancer, screening colonoscopy''.

Subsec. (pp)(2). Pub. L. 106–554, §1(a)(6) [title I, §103(a)(2)], substituted ''An'' for ''In paragraph (1)(C), an''.

Subsec. (uu). Pub. L. 106–554, §1(a)(6) [title I, §102(b)], added subsec. (uu).

Subsec. (vv). Pub. L. 106–554, §1(a)(6) [title I, §105(b)], added subsec. (vv).

1999—Subsec. (*o*)(7). Pub. L. 106–113, §1000(a)(6) [title III, §304(a)], amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''provides the Secretary on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000; and''.

Subsec. (p)(1). Pub. L. 106–113, §1000(a)(6) [title II, §221(b)(1)(A)], substituted '', (3), or (4)'' for ''or (3)''.

Subsec. (r)(4). Pub. L. 106–113, §1000(a)(6) [title II, §221(b)(1)(B)], inserted ''for purposes of subsection (p)(1) of this section and'' after ''but only''.

Subsec. (s)(2)(J)(v). Pub. L. 106–113, §1000(a)(6) [title II, §227(a)], inserted before semicolon at end ''plus such additional number of months (if any) provided under section 1395k(b) of this title''.

Subsec. (s)(2)(T)(ii). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(7)], substituted semicolon for period at end.

Subsec. (v)(1)(L)(ix), (x). Pub. L. 106–113, §1000(a)(6) [title III, §303(a)], added cl. (ix) and redesignated former cl. (ix) as (x).

Subsec. (v)(1)(S)(ii)(I), (II). Pub. L. 106–113, §1000(a)(6) [title II, §201(k)], substituted ''and until the first date that the prospective payment system under section 1395*l*(t) of this title is implemented'' for ''and during fiscal year 2000 before January 1, 2000''.

Subsec. (aa)(2)(I). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(8)], substituted semicolon for comma at end and realigned margins.

Subsec. (ee)(3). Pub. L. 106–113, §1000(a)(6) [title V, §521], added par. (3).

Subsec. (ss)(1)(G)(i). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(9)(B)], which directed substitution of ''or'' for ''of'', was executed by making the substitution for ''of'' the second time appearing to reflect the probable intent of Congress.

Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(9)(A)], substituted ''owned'' for ''owed''.

1998—Subsec. (v)(1)(L)(i)(III) to (V). Pub. L. 105–277, §5101(b), in subcl. (III) struck out ''or'' at end, in subcl. (IV) inserted ''and before October 1, 1998,'' after ''1997,'' and substituted '', or'' for period at end, and added subcl. (V).

Subsec. (v)(1)(L)(v). Pub. L. 105–277, §5101(a)(1), inserted ''subject to clause (viii)(I),'' before ''the Secretary'' in introductory provisions.

Subsec. (v)(1)(L)(vi)(I). Pub. L. 105–277, §5101(a)(2), inserted ''subject to clauses (viii)(II) and (viii)(III)'' after ''1994''.

Subsec. (v)(1)(L)(viii). Pub. L. 105–277, §5101(a)(3), added cl. (viii).

Subsec. (v)(1)(L)(ix). Pub. L. 105–277, §5101(d)(1), added cl. (ix).

1997—Subsec. (a). Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care'' in pars. (1) and (2).

Subsec. (b)(4). Pub. L. 105–33, §4511(a)(2)(B), substituted ''subsection (s)(2)(K)'' for ''clauses (i) or (iii) of subsection (s)(2)(K)''.

Subsec. (e). Pub. L. 105–33, §4454(a)(1)(A), in fifth sentence after par. (9), substituted ''includes a religious nonmedical health care institution (as defined in subsection (ss)(1) of this section),'' for ''includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts,'' and inserted ''consistent with section 1395i–5 of this title'' before the period.

Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care'' in last sentence.

Subsec. (h). Pub. L. 105–33, §4432(b)(5)(D)(i), substituted ''paragraphs (3), (6), and (7)'' for ''paragraphs (3) and (6)'' in introductory provisions.

Subsec. (h)(7). Pub. L. 105–33, §4432(b)(5)(D)(ii), inserted '', or by others under arrangements with them made by the facility'' after ''skilled nursing facilities''.

Subsec. (m). Pub. L. 105–33, §4612(a), inserted at end of closing provisions ''For purposes of paragraphs (1) and (4), the term 'part-time or intermittent services' means skilled nursing and home health aide services furnished

any number of days per week as long as they are furnished (combined) less than 8 hours each day and 28 or fewer hours each week (or, subject to review on a case-by-case basis as to the need for care, less than 8 hours each day and 35 or fewer hours per week). For purposes of sections 1395f(a)(2)(C) and 1395n(a)(2)(A) of this title, 'intermittent' means skilled nursing care that is either provided or needed on fewer than 7 days each week, or less than 8 hours of each day for periods of 21 days or less (with extensions in exceptional circumstances when the need for additional care is finite and predictable).''

Subsec. (n). Pub. L. 105–33, § 4105(b)(1), inserted before semicolon in first sentence '', and includes blood-testing strips and blood glucose monitors for individuals with diabetes without regard to whether the individual has Type I or Type II diabetes or to the individual's use of insulin (as determined under standards established by the Secretary in consultation with the appropriate organizations)''.

Subsec. (*o*). Pub. L. 105–33, § 4312(b)(1)(D), inserted at end of closing provisions ''The Secretary may waive the requirement of a surety bond under paragraph (7) in the case of an agency or organization that provides a comparable surety bond under State law.''

Subsec. (*o*)(7), (8). Pub. L. 105–33, § 4312(b)(1)(A)–(C), added par. (7) and redesignated former par. (7) as (8).

Subsec. (p). Pub. L. 105–33, § 4312(e)(2), inserted at end of closing provisions ''The Secretary may waive the requirement of a surety bond under paragraph (4)(A)(v) in the case of a clinic or agency that provides a comparable surety bond under State law.''

Subsec. (p)(4)(A)(v). Pub. L. 105–33, § 4312(e)(1), inserted ''and provides the Secretary on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000,'' after ''as the Secretary may find necessary,''.

Subsec. (r)(5). Pub. L. 105–33, § 4513(a), struck out ''demonstrated by x-ray to exist'' following ''(to correct a subluxation''.

Subsec. (s)(2)(K)(i). Pub. L. 105–33, §§ 4511(a)(2)(A)(i), 4512(a), struck out ''(I) in a hospital, skilled nursing facility, or nursing facility (as defined in section 1396r(a) of this title), (II) as an assistant at surgery, or (III) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health professional shortage area,'' after ''physician (as so defined)'' and inserted at end ''and such services and supplies furnished as incident to such services as would be covered under subparagraph (A) if furnished incident to a physician's professional service; and but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services,''.

Subsec. (s)(2)(K)(ii). Pub. L. 105–33, § 4511(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a nurse practitioner (as defined in subsection (aa)(5) of this section) working in collaboration (as defined in subsection (aa)(6) of this section) with a physician (as defined in subsection (r)(1) of this section) in a skilled nursing facility or nursing facility (as defined in section 1396r(a) of this title) which the nurse practitioner is legally authorized to perform by the State in which the services are performed,''.

Subsec. (s)(2)(K)(iii), (iv). Pub. L. 105–33, § 4511(a)(2)(A)(ii), struck out cls. (iii) and (iv) which read as follows:

''(iii) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a nurse practitioner or clinical nurse specialist (as defined in subsection (aa)(5) of this section) working in collaboration (as defined in subsection (aa)(6) of this section) with a physician (as defined in subsection (r)(1) of this section) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) which the nurse practitioner or clinical nurse specialist is authorized to perform by the State in which the services are performed, and such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service, and

''(iv) such services and supplies furnished as an incident to services described in clause (i) or (ii) as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service;''.

Subsec. (s)(2)(N) to (P). Pub. L. 105–33, § 4103(a)(1), struck out ''and'' at end of subpars. (N) and (O) and added subpar. (P).

Subsec. (s)(2)(R). Pub. L. 105–33, § 4104(a)(1)(A), added subpar. (R).

Subsec. (s)(2)(S). Pub. L. 105–33, § 4105(a)(1)(A), added subpar. (S).

Subsec. (s)(2)(T). Pub. L. 105–33, § 4557(a), added subpar. (T).

Subsec. (s)(12)(C). Pub. L. 105–33, § 4106(a)(1)(A), struck out ''and'' at end.

Subsec. (s)(14). Pub. L. 105–33, § 4102(c), inserted ''and screening pelvic exam'' after ''screening pap smear''.

Subsec. (s)(15) to (17). Pub. L. 105–33, § 4106(a)(1)(B)–(D), added par. (15) and redesignated former pars. (15) and (16) as (16) and (17), respectively.

Subsec. (u). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (v)(1)(H)(i). Pub. L. 105–33, § 4312(b)(2)(A), substituted ''the surety bond requirement described in subsection (*o*)(7) of this section and the financial security requirement described in subsection (*o*)(8) of this section'' for ''the financial security requirement described in subsection (*o*)(7) of this section''.

Subsec. (v)(1)(H)(ii). Pub. L. 105–33, § 4312(b)(2)(B), substituted ''the surety bond requirement described in subsection (*o*)(7) of this section and the financial security requirement described in subsection (*o*)(8) of this section apply'' for ''the financial security requirement described in subsection (*o*)(7) of this section applies''.

Subsec. (v)(1)(L)(i). Pub. L. 105–33, § 4602(a)(5), struck out closing provisions which read as follows: ''of the mean of the labor-related and nonlabor per visit costs for free standing home health agencies.''

Subsec. (v)(1)(L)(i)(I). Pub. L. 105–33, § 4602(a)(1), (2), inserted ''of the mean of the labor-related and nonlabor per visit costs for freestanding home health agencies'' before comma at end and realigned margins.

Subsec. (v)(1)(L)(i)(II). Pub. L. 105–33, § 4602(a)(1), (3), substituted ''of such mean,'' for '', or'' at end and realigned margins.

Subsec. (v)(1)(L)(i)(III). Pub. L. 105–33, § 4602(a)(1), (4), inserted ''and before October 1, 1997,'' after ''July 1, 1987,'', substituted ''of such mean, or'' for comma at end, and realigned margins.

Subsec. (v)(1)(L)(i)(IV). Pub. L. 105–33, § 4602(a)(5), added subcl. (IV).

Subsec. (v)(1)(L)(iii). Pub. L. 105–33, § 4604(b), substituted ''service is furnished'' for ''agency is located''.

Pub. L. 105–33, § 4602(b), inserted '', or on or after July 1, 1997, and before October 1, 1997'' after ''July 1, 1996''.

Subsec. (v)(1)(L)(iv). Pub. L. 105–33, § 4601(a), added cl. (iv).

Subsec. (v)(1)(L)(v) to (vii). Pub. L. 105–33, § 4602(c), added cls. (v) to (vii).

Subsec. (v)(1)(O)(i). Pub. L. 105–33, § 4404(a)(1), struck out ''and (if applicable) a return on equity capital'' after ''capital indebtedness'' and substituted ''provider of services'' for ''hospital or skilled nursing facility'', ''clause (iii)'' for ''clause (iv)'', and ''the historical cost of the asset, as recognized under this subchapter, less depreciation allowed, to the owner of record as of August 5, 1997 (or, in the case of an asset not in existence as of August 5, 1997, the first owner of record of the asset after August 5, 1997).'' for ''the lesser of the allowable acquisition cost of such asset to the owner of record as of July 18, 1984 (or, in the case of an asset not in existence as of such date, the first owner of record of the asset after such date), or the acquisition cost of such asset to the new owner.''

Subsec. (v)(1)(O)(ii) to (iv). Pub. L. 105–33, § 4404(a)(2), (3), redesignated cls. (iii) and (iv) as (ii) and (iii), re-

spectively, and struck out former cl. (ii) which read as follows: ''Such regulations shall provide for recapture of depreciation in the same manner as provided under the regulations in effect on June 1, 1984.''

Subsec. (v)(1)(S)(ii)(I), (II). Pub. L. 105–33, § 4522, substituted ''through 1999 and during fiscal year 2000 before January 1, 2000'' for ''through 1998''.

Subsec. (v)(1)(S)(ii)(III). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (v)(1)(T). Pub. L. 105–33, § 4451, added subpar. (T).

Subsec. (v)(1)(U). Pub. L. 105–33, § 4531(a)(1), added subpar. (U).

Subsec. (v)(7)(D). Pub. L. 105–33, § 4432(b)(5)(E), inserted ''subsections (a) through (c) of'' before ''section 1395yy of this title''.

Subsec. (v)(8). Pub. L. 105–33, § 4320, added par. (8).

Subsec. (w). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' wherever appearing.

Subsec. (y). Pub. L. 105–33, § 4454(a)(1)(B)(i), substituted ''Extended care in religious nonmedical health care institutions'' for ''Post-hospital extended care in Christian Science skilled nursing facilities'' in heading.

Subsec. (y)(1). Pub. L. 105–33, § 4454(a)(1)(B)(iii), which directed the amendment of this subsec. by inserting ''consistent with section 1395i–5 of this title'' before the period, was executed by making the insertion in par. (1) to reflect the probable intent of Congress.

Pub. L. 105–33, § 4454(a)(1)(B)(ii), substituted ''includes a religious nonmedical health care institution (as defined in subsection (ss)(1) of this section),'' for ''includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts,''.

Subsec. (aa)(2). Pub. L. 105–33, § 4205(d)(3)(A), in second sentence of concluding provisions inserted before period at end ''if it is determined, in accordance with criteria established by the Secretary in regulations, to be essential to the delivery of primary care services that would otherwise be unavailable in the geographic area served by the clinic''.

Pub. L. 105–33, § 4205(d)(1), (2), in cl. (i) of first sentence of concluding provisions substituted ''Bureau of the Census) and in which there are insufficient numbers of needed health care practitioners (as determined by the Secretary), and that, within the previous 3-year period, has been designated'' for ''Bureau of the Census) and that is designated'' and ''personal health services or designated by the Secretary'' for ''personal health services, or that is designated by the Secretary''.

Subsec. (aa)(2)(I). Pub. L. 105–33, § 4205(b)(1), amended subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: ''has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible;''.

Subsec. (aa)(5). Pub. L. 105–33, § 4511(d), designated existing provisions as subpar. (A), substituted ''The term 'physician assistant' and the term 'nurse practitioner' mean, for purposes of this subchapter, a physician assistant or nurse practitioner who performs'' for ''The term 'physician assistant', the term 'nurse practitioner', and the term 'clinical nurse specialist' mean, for purposes of this subchapter, a physician assistant, nurse practitioner, or clinical nurse specialist who performs'', and added subpar. (B).

Subsec. (aa)(7)(B). Pub. L. 105–33, § 4205(c)(1), inserted before period at end '', or if the facility has not yet been determined to meet the requirements (including subparagraph (J) of the first sentence of paragraph (2)) of a rural health clinic''.

Subsec. (cc)(2). Pub. L. 105–33, § 4312(d)(4), inserted concluding provisions.

Subsec. (cc)(2)(I), (J). Pub. L. 105–33, § 4312(d)(1)–(3), added subpar. (I) and redesignated former subpar. (I) as (J).

Subsec. (dd)(1)(I). Pub. L. 105–33, § 4444(a), added subpar. (I).

Subsec. (dd)(2)(A)(ii)(I). Pub. L. 105–33, § 4445(1), substituted ''subparagraphs (A), (C), and (H)'' for ''subparagraphs (A), (C), (F), and (H)''.

Subsec. (dd)(2)(B)(i). Pub. L. 105–33, § 4445(2), in concluding provisions, inserted ''or, in the case of a physician described in subclause (I), under contract with'' after ''employed by''.

Subsec. (dd)(5)(B). Pub. L. 105–33, § 4446(1), inserted ''or (C)'' after ''subparagraph (A)'' in two places.

Subsec. (dd)(5)(C). Pub. L. 105–33, § 4446(2), added subpar. (C).

Subsec. (ee)(2)(D). Pub. L. 105–33, § 4321(a)(1), inserted before period at end '', including the availability of home health services through individuals and entities that participate in the program under this subchapter and that serve the area in which the patient resides and that request to be listed by the hospital as available''.

Subsec. (ee)(2)(H). Pub. L. 105–33, § 4321(a)(2), added subpar. (H).

Subsec. (mm). Pub. L. 105–33, § 4201(c)(2), amended heading and text of subsec. (mm) generally. Prior to amendment, text read as follows:

''(1) The term 'rural primary care hospital' means a facility designated by the Secretary as a rural primary care hospital under section 1395i–4(i)(2) of this title.

''(2) The term 'inpatient rural primary care hospital services' means items and services, furnished to an inpatient of a rural primary care hospital by such a hospital, that would be inpatient hospital services if furnished to an inpatient of a hospital by a hospital.

''(3) The term 'outpatient rural primary care hospital services' means medical and other health services furnished by a rural primary care hospital.''

Subsec. (nn). Pub. L. 105–33, § 4102(a), substituted ''Screening pap smear; screening pelvic exam'' for ''Screening pap smear'' in heading, designated existing provisions as par. (1), inserted ''or vaginal'' after ''cervical'' in two places, substituted ''3 years, or during the preceding year in the case of a woman described in paragraph (3).'' for ''3 years (or such shorter period as the Secretary may specify in the case of a woman who is at high risk of developing cervical or vaginal cancer (as determined pursuant to factors identified by the Secretary)).'', and added pars. (2) and (3).

Subsec. (*oo*). Pub. L. 105–33, § 4103(a)(2), added subsec. (*oo*).

Subsec. (pp). Pub. L. 105–33, § 4104(a)(1)(B), added subsec. (pp).

Subsec. (qq). Pub. L. 105–33, § 4105(a)(1)(B), added subsec. (qq).

Subsec. (rr). Pub. L. 105–33, § 4106(a)(2), added subsec. (rr).

Subsec. (ss). Pub. L. 105–33, § 4454(a)(1)(C), added subsec. (ss).

Subsec. (tt). Pub. L. 105–33, § 4611(b), added subsec. (tt).

1996—Subsec. (aa)(4)(A)(i). Pub. L. 104–299 substituted ''section 330 (other than subsection (h))'' for ''section 329, 330, or 340''.

Subsec. (aa)(4)(A)(ii)(II). Pub. L. 104–299 which directed amendment of subcl. (I) by substituting ''section 330 (other than subsection (h))'' for ''section 329, 330, or 340'', was executed to subcl. (II) to reflect the probable intent of Congress.

1994—Subsec. (a)(1). Pub. L. 103–432, § 102(g)(4)(A), substituted ''inpatient hospital services, inpatient rural primary care hospital services'' for ''inpatient hospital services''.

Subsec. (a)(2). Pub. L. 103–432, § 102(g)(4)(B), substituted ''hospital or rural primary care hospital'' for ''hospital''.

Subsec. (b)(3). Pub. L. 103–432, § 147(f)(3), made technical amendment to Pub. L. 101–508, § 4157(a). See 1990 Amendment note below.

Subsec. (b)(4). Pub. L. 103–432, § 147(f)(3), made technical amendment to Pub. L. 101–508, § 4157(a). See 1990 Amendment note below.

Pub. L. 103–432, § 147(e)(4), substituted ''clauses (i) or (iii) of subsection (s)(2)(K) of this section'' for ''subsection (s)(2)(K)(i) of this section''.

Subsec. (e)(4). Pub. L. 103–432, § 104, substituted ''physician, except that a patient receiving qualified psychologist services (as defined in subsection (ii) of this

section) may be under the care of a clinical psychologist with respect to such services to the extent permitted under State law;'' for ''physician;''.

Subsec. (h)(3). Pub. L. 103–432, §146(b)(1), substituted ''or occupational therapy or speech-language pathology services'' for '', occupational, or speech therapy''.

Subsec. (m)(2). Pub. L. 103–432, §146(b)(2), substituted ''or occupational therapy or speech-language pathology services'' for '', occupational, or speech therapy''.

Subsec. (m)(5). Pub. L. 103–432, §147(f)(6)(B)(ii), substituted ''and a covered osteoporosis drug (as defined in subsection (kk) of this section), but excluding other drugs'' for ''but excluding drugs''.

Subsec. (p). Pub. L. 103–432, §146(b)(3), substituted ''speech-language pathology services'' for ''speech pathology services'' after ''term 'outpatient physical therapy services' also includes'' in third sentence of closing provisions.

Subsec. (s)(2)(K)(iii). Pub. L. 103–432, §147(e)(1), made an amendment identical to that made by Pub. L. 101–508, §4161(a)(5)(A), substituting ''subsection (aa)(5)'' for ''subsection (aa)(3)'' and ''subsection (aa)(6)'' for ''subsection (aa)(4)''.

Subsec. (s)(2)(N). Pub. L. 103–432, §147(f)(6)(B)(iii)(I), inserted ''and'' at end.

Subsec. (s)(2)(O), (P). Pub. L. 103–432, §147(f)(6)(B)(iii)(II), redesignated subpar. (P) as (O) and struck out former subpar. (O) which read as follows: ''a covered osteoporosis drug and its administration (as defined in subsection (jj) of this section) furnished on or after January 1, 1991, and on or before December 31, 1995; and''.

Subsec. (s)(3). Pub. L. 103–432, §145(b), inserted ''and including diagnostic mammography if conducted by a facility that has a certificate (or provisional certificate) issued under section 354 of the Public Health Service Act'' after ''necessary''.

Subsec. (v)(1)(L)(iii). Pub. L. 103–432, §158(a)(1), substituted ''and determined using the survey of the most recent available wages and wage-related costs of hospitals'' for ''as of such date to hospitals''.

Subsec. (aa)(2). Pub. L. 103–432, §147(f)(4)(A), in last sentence of closing provisions, substituted ''approval as such a clinic'' for ''certification as such a clinic'' and ''Secretary's approval or disapproval'' for ''the Secretary's approval or disapproval of the certification''.

Subsec. (aa)(5). Pub. L. 103–432, §147(e)(5), substituted ''this subchapter'' for ''this chapter''.

Subsec. (cc)(1)(B). Pub. L. 103–432, §146(b)(4), substituted ''speech-language pathology services'' for ''speech pathology services''.

Subsec. (dd)(1)(B). Pub. L. 103–432, §146(b)(5), substituted ''therapy, or speech-language pathology services'' for ''therapy or speech-language pathology''.

Subsec. (ee)(2)(D). Pub. L. 103–432, §107(a), inserted '', including hospice services,'' after ''post-hospital services''.

Subsec. (jj). Pub. L. 103–432, §147(f)(6)(E), redesignated subsec. (jj), defining ''covered osteoporosis drug'', as (kk).

Pub. L. 103–432, §147(f)(6)(A), (B)(i), amended subsec. (jj), defining ''covered osteoporosis drug'', in introductory provisions, by striking out ''a bone fracture related to'' before ''post-menopausal osteoporosis'' and substituting ''individual by a home health agency if'' for ''individual if'', and in par. (1), by substituting ''individual has suffered a bone fracture related to postmenopausal osteoporosis and that the individual'' for ''patient''.

Subsec. (kk). Pub. L. 103–432, §147(f)(6)(E), redesignated subsec. (jj), defining ''covered osteoporosis drug'', as (kk).

Subsec. (*ll*). Pub. L. 103–432, §146(a), added subsec. (*ll*).

1993—Subsec. (s)(2)(J). Pub. L. 103–66, §13565, substituted ''subchapter, but only in the case of drugs furnished—'' and cls. (i) to (v) for ''subchapter, within 1 year after the date of the transplant procedure;''.

Subsec. (s)(2)(P). Pub. L. 103–66, §13566(b), substituted ''dialysis'' for ''home dialysis'' and realigned margin.

Subsec. (s)(2)(Q). Pub. L. 103–66, §13553(a), added subpar. (Q).

Subsec. (t). Pub. L. 103–66, §13553(b), designated existing provisions as par. (1), inserted ''and paragraph (2)'', and added par. (2).

Subsec. (v)(1)(B). Pub. L. 103–66, §13503(c)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Such regulations in the case of extended care services furnished by proprietary facilities shall include provision for specific recognition of a reasonable return on equity capital, including necessary working capital, invested in the facility and used in the furnishing of such services, in lieu of other allowances to the extent that they reflect similar items. The rate of return recognized pursuant to the preceding sentence for determining the reasonable cost of any services furnished in any cost reporting period shall be equal to the average of the rates of interest, for each of the months any part of which is included in the period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.''

Subsec. (v)(1)(L)(ii). Pub. L. 103–66, §13564(b)(1), struck out '', with appropriate adjustment for administrative and general costs of hospital-based agencies'' after ''discipline specific basis''.

Subsec. (v)(1)(L)(iii). Pub. L. 103–66, §13564(a)(2), substituted ''thereafter (but not for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996)'' for ''thereafter''.

Subsec. (v)(1)(S)(ii)(I). Pub. L. 103–66, §13521, substituted ''fiscal years 1992 through 1998'' for ''fiscal year 1992, 1993, 1994, or 1995''.

Subsec. (v)(1)(S)(ii)(II). Pub. L. 103–66, §13522, substituted ''fiscal years 1991 through 1998'' for ''fiscal years 1991, 1992, 1993, 1994, or 1995''.

Subsec. (aa)(4)(D). Pub. L. 103–66, §13556(a), added subpar. (D).

Subsec. (gg)(2). Pub. L. 103–66, §13554(a), substituted a period for '', and performs services in the area of management of the care of mothers and babies throughout the maternity cycle.''

1990—Subsec. (b)(3). Pub. L. 101–508, §4157(a)(1), as amended by Pub. L. 103–432, §147(f)(3), struck out ''(including clinical psychologist (as defined by the Secretary))'' after ''the hospital or by others''.

Subsec. (b)(4). Pub. L. 101–508, §4157(a)(2), as amended by Pub. L. 103–432, §147(f)(3), substituted '', services described by subsection (s)(2)(K)(i) of this section, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; and'' for ''and anesthesia services provided by a certified registered nurse anesthetist; and''.

Subsec. (n). Pub. L. 101–508, §4152(a)(2), inserted at end ''With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.''

Subsec. (s)(2)(E). Pub. L. 101–508, §4161(a)(1), inserted ''and Federally qualified health center services'' after ''clinic services''.

Subsec. (s)(2)(H)(i). Pub. L. 101–508, §4161(a)(5)(A), substituted ''subsection (aa)(5)'' for ''subsection (aa)(3)''.

Subsec. (s)(2)(K)(i). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area''.

Pub. L. 101–508, §4161(a)(5)(A), substituted ''subsection (aa)(5)'' for ''subsection (aa)(3)''.

Subsec. (s)(2)(K)(ii). Pub. L. 101–508, §4161(a)(5)(A), substituted ''subsection (aa)(5)'' for ''subsection (aa)(3)'' and ''subsection (aa)(6)'' for ''subsection (aa)(4)''.

Subsec. (s)(2)(K)(iii). Pub. L. 101–508, §4161(a)(5)(A), substituted ''subsection (aa)(5)'' for ''subsection (aa)(3)'' and ''subsection (aa)(6)'' for ''subsection (aa)(4)''.

Pub. L. 101–508, §4155(a)(3), added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (s)(2)(K)(iv). Pub. L. 101–508, §4155(a)(2), redesignated cl. (iii) as (iv).

Subsec. (s)(2)(O). Pub. L. 101–508, §4156(a)(1), added subpar. (O).

Subsec. (s)(2)(P). Pub. L. 101–508, §4201(d)(1), added subpar. (P).

Subsec. (s)(8). Pub. L. 101–508, § 4153(b)(2)(A), inserted '', and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens'' after ''such devices''.

Subsec. (s)(13). Pub. L. 101–508, § 4163(a)(1), added par. (13).

Subsec. (v)(1)(E). Pub. L. 101–508, § 4008(h)(2)(A)(i), substituted ''the costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) of such facilities'' for ''the costs of such facilities'' in second sentence.

Subsec. (v)(1)(L)(iii). Pub. L. 101–508, § 4207(d)(1), formerly § 4027(d)(1), as renumbered by Pub. L. 103–432, § 160(d)(4), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''In establishing limits under this subparagraph, the Secretary shall—

''(I) utilize a wage index that is based on verified wage data obtained from home health agencies, and

''(II) base such limits on the most recent verified wage data available, which data may be for cost reporting periods beginning no earlier than July 1, 1985.

In the case of a home health agency that refuses to provide data, or deliberately provides false data, respecting wages for purposes of this clause upon the request of the Secretary, the Secretary may withhold up to 5 percent of the amount of the payments otherwise payable to the agency under this subchapter until such date as the Secretary determines that such data has been satisfactorily provided.''

Subsec. (v)(1)(S)(ii)(I). Pub. L. 101–508, § 4151(a)(1), inserted before period at end '', by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1991, and by 10 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1992, 1993, 1994, or 1995''.

Subsec. (v)(1)(S)(ii)(II). Pub. L. 101–508, § 4151(b)(1)(D), added subcl. (II). Former subcl. (II) redesignated (III).

Pub. L. 101–508, § 4151(b)(1)(A), substituted ''Subclauses (I) and (II)'' for ''Subclause (I)'' and ''costs of hospital outpatient services provided by any hospital'' for ''capital-related costs of any hospital''.

Pub. L. 101–508, § 4151(a)(2), substituted ''section 1395ww(d)(5)(D)(iii) of this title or a rural primary care hospital (as defined in subsection (mm)(1) of this section)'' for ''section 1395ww(d)(5)(D)(iii) of this title)''.

Subsec. (v)(1)(S)(ii)(III). Pub. L. 101–508, § 4151(b)(1)(C), redesignated former subcl. (II) as (III). Former subcl. (III) redesignated (IV).

Pub. L. 101–508, § 4151(b)(1)(B), substituted ''subclauses (I) and (II)'' for ''subclause (I)'' and ''the costs reflected'' for ''capital-related costs reflected''.

Subsec. (v)(1)(S)(ii)(IV). Pub. L. 101–508, § 4151(b)(1)(C), redesignated subcl. (III) as (IV).

Subsec. (aa). Pub. L. 101–508, § 4161(a)(2)(A), inserted ''and Federally qualified health center services'' after ''clinic services'' in heading.

Subsec. (aa)(1)(B). Pub. L. 101–508, § 4161(a)(5)(B), substituted ''paragraph (5)'' for ''paragraph (3)''.

Subsec. (aa)(2). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area'' in second sentence.

Pub. L. 101–508, § 4161(b)(1), inserted at end ''If a State agency has determined under section 1395aa(a) of this title that a facility is a rural health clinic and the facility has applied to the Secretary for certification as such a clinic, the Secretary shall notify the facility of the the Secretary's approval or disapproval of the certification not later than 60 days after the date of the State agency determination or the application (whichever is later).''

Subsec. (aa)(3). Pub. L. 101–508, § 4161(a)(2)(C), added par. (3). Former par. (3) redesignated (5).

Pub. L. 101–508, § 4161(a)(2)(B), which directed amendment of par. (3) by substituting ''the previous provisions of this subsection'' for ''paragraphs (1) and (2)'', could not be executed because the words ''paragraphs (1) and (2)'' did not appear after amendment by Pub. L. 101–508, § 4155(d). See below.

Pub. L. 101–508, § 4155(d), substituted ''The term 'physician assistant', the term 'nurse practitioner', and the term 'clinical nurse specialist' mean, for purposes of this chapter, a physician assistant, nurse practitioner, or clinical nurse specialist who performs'' for ''The term 'physician assistant' and the term 'nurse practitioner' mean, for the purposes of paragraphs (1) and (2), a physician assistant or nurse practitioner who performs''.

Subsec. (aa)(4) to (6). Pub. L. 101–508, § 4161(a)(2)(B), (C), added par. (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.

Subsec. (aa)(7). Pub. L. 101–508, § 4161(b)(2), added par. (7).

Subsec. (ff)(3). Pub. L. 101–508, § 4162(a), designated existing provision as subpar. (A), substituted ''outpatients or by a community mental health center (as defined in subparagraph (B)),'' for ''outpatients'', and added subpar. (B).

Subsec. (jj). Pub. L. 101–508, § 4163(a)(2), added subsec. (jj) defining ''screening mammography''.

Pub. L. 101–508, § 4156(a)(2), added subsec. (jj) defining ''covered osteoporosis drug''.

1989—Subsec. (a). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(A), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (e). Pub. L. 101–239, § 6003(g)(3)(D)(x)(I), inserted at end ''The term 'hospital' does not include, unless the context otherwise requires, a rural primary care hospital (as defined in subsection (mm)(1) of this section).''

Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(B), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (i). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 104(d)(4)(C), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (m). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 206(a), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (m)(5). Pub. L. 101–239, § 6112(e)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''medical supplies (other than drugs and biologicals) and durable medical equipment, while under such a plan;''.

Subsec. (s). Pub. L. 101–239, § 6141(a)(1), substituted '', including a laboratory that is part of'' for ''which is independent of a physician's office, a laboratory not independent of a physician's office that has a volume of clinical diagnostic laboratory tests exceeding 5,000 per year,'' in provisions following par. (14).

Subsec. (s)(2)(H)(ii). Pub. L. 101–239, § 6113(b)(2)(A), substituted ''subsection (hh)(2)'' for ''subsection (hh)''.

Subsec. (s)(2)(J). Pub. L. 101–239, § 6114(a)(1), struck out ''and'' at end.

Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 202(a)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (s)(2)(K). Pub. L. 101–239, § 6114(a)(2), added cl. (ii), redesignated former cl. (ii) as (iii), and substituted ''to services described in clause (i) or (ii)'' for ''to such services'' in cl. (iii).

Subsec. (s)(2)(N). Pub. L. 101–239, § 6113(b)(1), added subpar. (N).

Subsec. (s)(12). Pub. L. 101–239, § 6131(a)(2), inserted ''with inserts'' after ''custom molded shoes'' in introductory provisions.

Subsec. (s)(13). Pub. L. 101–234, § 201(a), which repealed Pub. L. 100–360, § 204(a)(1)(B)–(D), and directed that the

provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, was executed by striking out par. (13) as added by Pub. L. 100–360, § 204(a)(1)(B)–(D), but former par. (13) which was redesignated (14) was not restored in view of intervening redesignation as (15) by Pub. L. 101–239, § 6115(a)(1)(C), see 1988 Amendment note below.

Subsec. (s)(14). Pub. L. 101–239, § 6115(a)(1)(A), (B), (D), added par. (14). Former par. (14) redesignated (15).

Pub. L. 101–234, § 201(a), which repealed Pub. L. 100–360, § 204(a)(1)(A), and directed that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, was not executed in view of intervening redesignation of par. (14) as (15) by Pub. L. 101–239, § 6115(a)(1)(C), see 1988 Amendment note below.

Subsec. (s)(15). Pub. L. 101–239, § 6115(a)(1)(C), redesignated par. (14) as (15). Former par. (15) redesignated (16).

Pub. L. 101–234, § 201(a), which repealed Pub. L. 100–360, § 204(a)(1)(A), and directed that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, was not executed in view of intervening redesignation of par. (15) as (16) by Pub. L. 101–239, § 6115(a)(1)(C), see 1988 Amendment note below.

Subsec. (s)(16). Pub. L. 101–239, § 6141(a)(2), (3), added subpar. (A) and designated existing provisions as subpar. (B).

Pub. L. 101–239, § 6115(a)(1)(C), redesignated par. (15) as (16).

Subsec. (t). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 202(a)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (u). Pub. L. 101–239, § 6003(g)(3)(C)(i), inserted ''rural primary care hospital,'' after ''hospital,''.

Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 203(e)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (v)(1)(G)(i). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(D), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (v)(1)(S). Pub. L. 101–239, § 6110, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (v)(2)(A), (3). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(D), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (w)(1). Pub. L. 101–239, § 6003(g)(3)(D) (x)(II), inserted ''rural primary care hospital,'' after ''hospital,''.

Subsec. (w)(2). Pub. L. 101–239, § 6003(g)(3)(D) (x)(III), substituted ''hospital or rural primary care hospital'' for ''hospital'' in six places.

Subsec. (y). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(E), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (aa)(1)(B). Pub. L. 101–239, § 6213(b), substituted ''(as defined in paragraph (3)), by'' for ''(as defined in paragraph (3)), or by'' and inserted ''or by a clinical social worker (as defined in subsection (hh)(1) of this section),'' after ''Secretary)''.

Subsec. (aa)(2). Pub. L. 101–239, § 6213(c), in second sentence substituted ''designated by the chief executive officer of the State and certified by the Secretary as an area with a shortage of personal health services, or that is designated by the Secretary'' for ''designated by the Secretary'', ''section 330(b)(3) or 1302(7) of the Public Health Service Act,'' for ''section 1302(7) of the Public Health Service Act or'', and ''medical care manpower, (III) as a high impact area described in section 329(a)(5) of that Act, or (IV) as an area which includes a population group which the Secretary determines has a health manpower shortage under section 332(a)(1)(B) of that Act,'' for ''medical care manpower,''.

Subsec. (aa)(2)(J), (K). Pub. L. 101–239, § 6213(a), added subpar. (J) and redesignated former subpar. (J) as (K).

Subsec. (aa)(4). Pub. L. 101–239, § 6114(d), added par. (4).

Subsec. (hh). Pub. L. 101–239, § 6113(b)(2)(B), inserted ''; clinical social worker services'' after ''social worker'' in heading, redesignated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in subpar. (C), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, in cl. (ii), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added par. (2).

Subsec. (ii). Pub. L. 101–239, § 6113(a), struck out ''on-site at a community mental health center (as such term is used in the Public Health Service Act), and such services that are necessarily furnished off-site (other than at an off-site office of such psychologist) as part of a treatment plan because of the inability of the individual furnished such services to travel to the center by reason of physical or mental impairment, because of institutionalization, or because of similar circumstances of the individual,'' after ''as defined by the Secretary)''.

Subsecs. (jj) to (*ll*). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 203(b), 204(a)(2), 205(b), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (mm). Pub. L. 101–239, § 6003(g)(3)(A), added subsec. (mm).

Subsec. (mm)(3). Pub. L. 101–239, § 6116(a)(1), added par. (3).

Subsec. (nn). Pub. L. 101–239, § 6115(a)(2), added subsec. (nn).

1988—Subsec. (a). Pub. L. 100–360, § 104(d)(4)(A), struck out subsec. (a) which defined ''spell of illness''.

Subsec. (a)(2). Pub. L. 100–360, § 411(*l*)(1)(B)(i), (ii), redesignated and amended Pub. L. 100–203, § 4201(d)(1), see 1987 Amendment note below.

Subsec. (e). Pub. L. 100–360, § 104(d)(4)(B), substituted ''and paragraph (7) of this subsection'' for ''paragraph (7) of this subsection, and subsection (i) of this section'' in introductory provisions, struck out second sentence which read as follows: ''For purposes of subsection (a)(2) of this section, such term includes any institution which meets the requirements of paragraph (1) of this subsection.'', substituted ''and section 1395f(f)(2) of this title'' for ''section 1395f(f)(2) of this title, and subsection (i) of this section'' in third sentence, and struck out '', except for purposes of subsection (a)(2) of this section,'' after ''such term shall not'' in fifth sentence.

Subsec. (i). Pub. L. 100–360, § 104(d)(4)(C), struck out subsec. (i) which defined ''post-hospital extended care services''.

Subsec. (m). Pub. L. 100–360, § 206(a), inserted at end ''For purposes of paragraphs (1) and (4) and sections 1395f(a)(2)(C) and 1395n(a)(2)(A) of this title, nursing care and home health aide services shall be considered to be provided or needed on an 'intermittent' basis if they are provided or needed less than 7 days each week and, in the case they are provided or needed for 7 days each week, if they are provided or needed for a period of up to 38 consecutive days.''

Subsec. (n). Pub. L. 100–360, § 411(*l*)(1)(C), as added by Pub. L. 100–485, § 608(d)(27)(B), added Pub. L. 100–203, § 4201(d)(5), see 1987 Amendment note below.

Pub. L. 100–360, § 411(*l*)(1)(B)(iii), added Pub. L. 100–203, § 4201(d)(2), see 1987 Amendment note below.

Pub. L. 100–360, § 411(d)(1)(B)(i), inserted ''; except that such term does not include such equipment furnished by a supplier who has used, for the demonstration and use of specific equipment, an individual who has not met such minimum training standards as the Secretary may establish with respect to the demonstration and use of such specific equipment'' before period at end.

Subsec. (p). Pub. L. 100–647, § 8424(a), inserted at end ''Nothing in this subsection shall be construed as requiring, with respect to outpatients who are not entitled to benefits under this subchapter, a physical therapist to provide outpatient physical therapy services only to outpatients who are under the care of a physician or pursuant to a plan of care established by a physician.''

Subsec. (s). Pub. L. 100–360, § 411(g)(3)(H), inserted a comma before ''year'' in provisions immediately preceding par. (13).

Subsec. (s)(2)(H)(ii). Pub. L. 100–360, § 411(h)(5)(A), amended Pub. L. 100–203, § 4074(a), see 1987 Amendment note below.

Subsec. (s)(2)(J). Pub. L. 100–360, § 202(a)(1), amended subpar. (J) generally, substituting ''covered outpatient drugs (as defined in subsection (t) of this section); and'' for former provision which related to prescription drugs used in immunosuppressive therapy.

Subsec. (s)(2)(K)(i). Pub. L. 100–360, § 411(h)(6), amended Pub. L. 100–203, § 4076(a), see 1987 Amendment note below.

Subsec. (s)(2)(K)(i)(I). Pub. L. 100–485, § 608(d)(23)(B), substituted ''nursing facility (as defined in section 1396r(a) of this title)'' for ''intermediate care facility (as defined in section 1396d(c) of this title)''.

Subsec. (s)(2)(M). Pub. L. 100–360, § 411(h)(7)(A), made technical amendment to directory language of Pub. L. 100–203, § 4077(b)(1), see 1987 Amendment note below.

Subsec. (s)(10)(A). Pub. L. 100–360, § 411(h)(2), inserted '', subject to section 4071(b) of the Omnibus Budget Reconciliation Act of 1987,'' before ''influenza vaccine''.

Subsec. (s)(12). Pub. L. 100–360, § 411(h)(3)(A), inserted ''subject to section 4072(e) of the Omnibus Budget Reconciliation Act of 1987,'' in introductory provisions.

Subsec. (s)(13). Pub. L. 100–360, § 204(a)(1)(B)–(D), added par. (13) relating to screening mammography (as defined in subsection (kk) of this section). Former par. (13) redesignated (14).

Subsec. (s)(14). Pub. L. 100–360, § 204(a)(1)(A), redesignated par. (13) as (14). Former par. (14) redesignated (15).

Subsec. (s)(15). Pub. L. 100–360, § 411(i)(4)(C)(iii), amended directory language of Pub. L. 100–203, § 4085(i)(11), to correct an error, see 1987 Amendment note below.

Pub. L. 100–360, § 204(a)(1)(A), redesignated par. (14) as (15).

Subsec. (s)(16). Pub. L. 100–360, § 411(i)(4)(C)(iii), amended directory language of Pub. L. 100–203, § 4085(i)(11), to correct an error, see 1987 Amendment note below.

Subsec. (t). Pub. L. 100–360, § 202(a)(2), designated existing provisions as par. (1), inserted ''and paragraph (2)'', and added pars. (2) to (4) defining ''covered outpatient drug'' and ''covered home IV drug''.

Subsec. (u). Pub. L. 100–360, § 203(e)(1), inserted ''home intravenous drug therapy provider,'' after ''hospice program,''.

Subsec. (v)(1)(G)(i). Pub. L. 100–360, § 104(d)(4)(D), struck out ''post-hospital'' before ''extended care services'' in four places.

Subsec. (v)(1)(L)(iii). Pub. L. 100–360, § 411(d)(5)(A), substituted ''verified'' for ''audited'' in subcls. (I) and (II) and inserted at end ''In the case of a home health agency that refuses to provide data, or deliberately provides false data, respecting wages for purposes of this clause upon the request of the Secretary, the Secretary may withhold up to 5 percent of the amount of the payments otherwise payable to the agency under this subchapter until such date as the Secretary determines that such data has been satisfactorily provided.''

Subsec. (v)(2)(A), (3). Pub. L. 100–360, § 104(d)(4)(D), struck out ''post-hospital'' before ''extended care services''.

Subsec. (y). Pub. L. 100–360, § 104(d)(4)(E)(i), substituted ''Extended care'' for ''Post-hospital extended care'' in heading.

Subsec. (y)(1). Pub. L. 100–360, § 104(d)(4)(E)(ii), struck out ''(except for purposes of subsection (a)(2) of this section)'' after ''Massachusetts, but only''.

Subsec. (y)(2). Pub. L. 100–360, § 104(d)(4)(E)(i), (iii), (iv), struck out ''post-hospital'' before ''extended care services'' in two places, substituted ''year'' for ''spell of illness'' and ''spell'' wherever each appeared, and substituted ''45 days'' for ''30 days''.

Subsec. (y)(3). Pub. L. 100–360, § 104(d)(4)(E)(i), (iii), (v), struck out ''post-hospital'' before ''extended care services'' and substituted ''year'' for ''spell of illness'', ''the coinsurance amount established under section 1395e(a)(3)(C) of this title for each day before the 46th day'' for ''one-eighth of the inpatient hospital deductible for each day before the 31st day'', and ''year'' for ''spell''.

Subsec. (y)(4). Pub. L. 100–360, § 104(d)(4)(E)(vi), struck out par. (4) which provided that certain determinations about services provided by an institution described in par. (1) be made under regulations.

Subsec. (bb)(2). Pub. L. 100–360, § 411(i)(3), added Pub. L. 100–203, § 4084(c)(1), see 1987 Amendment note below.

Subsec. (ff). Pub. L. 100–360, § 411(h)(1)(B)(i), inserted heading.

Subsec. (ff)(3). Pub. L. 100–360, § 411(h)(1)(B)(ii), substituted ''furnished by a hospital to its outpatients'' for ''hospital-based or hospital-affiliated (as defined by the Secretary)''.

Subsec. (gg). Pub. L. 100–360, § 411(h)(4)(D), amended Pub. L. 100–203, § 4073(c), see 1987 Amendment note below.

Subsec. (hh). Pub. L. 100–360, § 411(h)(5)(B), amended Pub. L. 100–203, § 4074(b), see 1987 Amendment note below.

Subsec. (ii). Pub. L. 100–647, § 8423(a), inserted ''on-site'' before ''at a community mental health center'' and '', and such services that are necessarily furnished off-site (other than at an off-site office of such psychologist) as part of a treatment plan because of the inability of the individual furnished such services to travel to the center by reason of physical or mental impairment, because of institutionalization, or because of similar circumstances of the individual,'' after ''Public Health Service Act)''.

Pub. L. 100–360, § 411(h)(7)(E), (F), redesignated and amended Pub. L. 100–203, § 4077(b)(4), see 1987 Amendment note below.

Subsec. (jj). Pub. L. 100–485, § 608(d)(6)(A), inserted heading.

Pub. L. 100–360, § 203(b), added subsec. (jj) relating to home intravenous drug therapy services.

Subsec. (kk). Pub. L. 100–360, § 204(a)(2), added subsec. (kk) relating to screening mammography.

Subsec. (*ll*). Pub. L. 100–360, § 205(b), added subsec. (*ll*) relating to in-home care furnished to chronically dependent individual.

1987—Subsec. (a)(2). Pub. L. 100–203, § 4201(d)(1), formerly § 4201(d), as redesignated and amended by Pub. L. 100–360, § 411(*l*)(1)(B)(i), (ii), substituted ''facility described in section 1396i–3(a)(1) of this title or subsection (y)(1) of this section'' for ''skilled nursing facility''.

Subsec. (b)(3). Pub. L. 100–203, § 4009(e)(1), inserted ''(including clinical psychologist (as defined by the Secretary))'' before ''under arrangements''.

Subsec. (b)(4). Pub. L. 100–203, § 4085(i)(9), substituted ''and anesthesia'' for '', anesthesia'' and ''certified registered nurse'' for ''certified certified registered nurse''.

Subsec. (b)(6). Pub. L. 100–203, § 4039(b)(2), substituted ''Council on Podiatric Medical Education of the American Podiatric Medical Association'' for ''Council on Podiatry Education of the American Podiatry Association''.

Subsec. (e)(4). Pub. L. 100–203, § 4009(f), inserted ''with respect to whom payment may be made under this subchapter'' after ''patient''.

Subsec. (g). Pub. L. 100–203, § 4085(i)(10), made technical amendment to heading.

Subsec. (j). Pub. L. 100–203, § 4201(a)(1), amended subsec. generally, substituting provision defining ''skilled nursing facility'' as having the meaning given such term in section 1395i–3(a) of this title for provision defining ''skilled nursing facility'' as, except for purposes of subsec. (a)(2) of this section, an institution or a dis-

tinct part of an institution which has in effect a transfer agreement, meeting the requirements of subsec. (*l*) of this section, with one or more hospitals having agreements in effect under section 1395cc of this title and which meet a specified list of criteria.

Subsec. (n). Pub. L. 100–203, § 4201(d)(2), (5), as added by Pub. L. 100–360, § 411(*l*)(1)(B)(iii), and Pub. L. 100–360, § 411(*l*)(1)(C), as added by Pub. L. 100–485, § 608(d)(27)(B), made similar amendments, resulting in the substitution of ''subsection (e)(1) of this section or section 1395i–3(a)(1) of this title'' for ''subsection (e)(1) or (j)(1) of this section'' in introductory provisions.

Subsec. (*o*)(6). Pub. L. 100–203, § 4021(a), inserted ''the conditions of participation specified in section 1395bbb(a) of this title and'' after ''meets''.

Subsec. (r)(3). Pub. L. 100–203, § 4039(b)(1), substituted ''subsections (k), (m), (p)(1), and (s) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title'' for ''subsection (s) of this section'', and struck out ''; and for the purposes of subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only if his performance of functions under subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title is consistent with the policy of the institution or agency with respect to which he performs them and with the functions which he is legally authorized to perform''.

Subsec. (s). Pub. L. 100–203, § 4085(i)(11), substituted in closing provisions ''which would not be included under subsection (b) of this section if it were furnished to an inpatient of a hospital.'' for ''which—'' before par. (15) and struck out pars. (15) and (16).

Pub. L. 100–203, § 4064(e)(1), inserted ''a laboratory not independent of a physician's office that has a volume of clinical diagnostic laboratory tests exceeding 5,000 per year'' in provisions preceding par. (13).

Subsec. (s)(2)(B). Pub. L. 100–203, § 4070(b)(1), inserted ''and partial hospitalization services incident to such services'' before semicolon.

Subsec. (s)(2)(H)(ii). Pub. L. 100–203, § 4074(a), as amended by Pub. L. 100–360, § 411(h)(5)(A), inserted ''or by a clinical social worker (as defined in subsection (hh) of this section)'' after ''clinical psychologist (as defined by the Secretary)'', and substituted ''incident to such clinical psychologist's services or clinical social worker's services'' for ''incident to his services''.

Subsec. (s)(2)(J). Pub. L. 100–203, § 4075(a), substituted ''prescription drugs used in immunosuppressive therapy'' for ''immunosuppressive drugs''.

Subsec. (s)(2)(K)(i). Pub. L. 100–203, § 4076(a), as amended by Pub. L. 100–360, § 411(h)(6), inserted ''(I)'' and substituted '', (II) as an assistant at surgery, or (III) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health manpower shortage area,'' for ''or as an assistant at surgery''.

Subsec. (s)(2)(L). Pub. L. 100–203, § 4073(a), added subpar. (L).

Subsec. (s)(2)(M). Pub. L. 100–203, § 4077(b)(1), as amended by Pub. L. 100–360, § 411(h)(7)(A), added subpar. (M).

Subsec. (s)(10)(A). Pub. L. 100–203, § 4071(a), inserted ''and influenza vaccine and its administration'' before semicolon.

Subsec. (s)(12). Pub. L. 100–203, § 4072(a), added par. (12). Former par. (12) redesignated (13).

Subsec. (s)(13), (14). Pub. L. 100–203, § 4072(a)(1), redesignated pars. (12) and (13) as (13) and (14), respectively. Former par. (14) redesignated (15).

Subsec. (s)(15). Pub. L. 100–203, § 4085(i)(11), as amended by Pub. L. 100–360, § 411(i)(4)(C)(iii), struck out par. (15) which read as follows: ''would not be included under subsection (b) of this section if it were furnished to an inpatient of a hospital; or''.

Pub. L. 100–203, § 4072(a)(1), redesignated par. (14) as (15). Former par. (15) redesignated (16).

Subsec. (s)(16). Pub. L. 100–203, § 4085(i)(11), as amended by Pub. L. 100–360, § 411(i)(4)(C)(iii), struck out par. (16) which read as follows: ''is furnished under arrangements referred to in such paragraph (2)(C) unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff.''

Pub. L. 100–203, § 4072(a)(1), redesignated par. (15) as (16).

Subsec. (v)(1)(E). Pub. L. 100–203, § 4201(b)(1), inserted at end ''Notwithstanding the previous sentence, such regulations with respect to skilled nursing facilities shall take into account (in a manner consistent with subparagraph (A) and based on patient-days of services furnished) the costs of such facilities complying with the requirements of subsections (b), (c), and (d) of section 1395i–3 of this title (including the costs of conducting nurse aide training and competency evaluation programs and competency evaluation programs).''

Subsec. (v)(1)(L)(iii). Pub. L. 100–203, § 4026(a)(1), added cl. (iii).

Subsec. (v)(1)(S). Pub. L. 100–203, § 4065(a), added subpar. (S).

Subsec. (v)(5)(A). Pub. L. 100–203, § 4085(i)(12), substituted ''subsection (p)'' and ''subsection (g)'' for ''section 1861(p)'' and ''section 1861(g)'', respectively.

Subsec. (aa)(1)(B). Pub. L. 100–203, § 4077(a)(1), substituted ''physician assistant or a nurse practitioner (as defined in paragraph (3)), or by a clinical psychologist (as defined by the Secretary),'' for ''physician assistant or by a nurse practitioner''.

Subsec. (bb). Pub. L. 100–203, § 4085(i)(13), made technical amendment to heading.

Subsec. (bb)(2). Pub. L. 100–203, § 4084(c)(1), as added by Pub. L. 100–360, § 411(i)(3), inserted at end ''Such term also includes, as prescribed by the Secretary, an anesthesiologist assistant.''

Subsec. (cc)(1). Pub. L. 100–203, § 4078, inserted provision at end relating to location requirements in case of physical therapy, occupational therapy, and speech pathology services.

Subsec. (ee). Pub. L. 100–203, § 4085(i)(14), made technical amendment to heading.

Subsec. (ff). Pub. L. 100–203, § 4070(b)(2), added subsec. (ff).

Subsec. (gg). Pub. L. 100–203, § 4073(c), as amended by Pub. L. 100–360, § 411(h)(4)(D), added subsec. (gg).

Subsec. (hh). Pub. L. 100–203, § 4074(b), as amended by Pub. L. 100–360, § 411(h)(5)(B), added subsec. (hh).

Subsec. (ii). Pub. L. 100–203, § 4077(b)(4), formerly § 4077(b)(5), as redesignated and amended by Pub. L. 100–360, § 411(h)(7)(E), (F), added subsec. (ii).

1986—Subsec. (b)(4). Pub. L. 99–509, § 9320(f), inserted before the semicolon at end '', anesthesia services provided by a certified registered nurse anesthetist''.

Subsec. (e)(6). Pub. L. 99–509, § 9305(c)(1), inserted ''(A)'' after ''(6)'' and cl. (B).

Subsec. (g). Pub. L. 99–509, § 9337(d)(1), added subsec. (g).

Subsec. (n). Pub. L. 99–272, § 9219(b)(1)(B), substituted ''as his home'' for ''at his home''.

Subsec. (r)(4). Pub. L. 99–509, § 9336(a), amended cl. (4) generally. Prior to amendment, cl. (4) read as follows: ''a doctor of optometry who is legally authorized to practice optometry by the State in which he performs such function, but only with respect to services related to the condition of aphakia, or''.

Subsec. (s)(2)(D). Pub. L. 99–509, § 9337(d)(2), inserted ''and outpatient occupational therapy services''.

Subsec. (s)(2)(J). Pub. L. 99–509, § 9335(c)(1), added subpar. (J).

Subsec. (s)(2)(K). Pub. L. 99–509, § 9338(a), added subpar. (K).

Subsec. (s)(11) to (15). Pub. L. 99–509, § 9320(b), added par. (11) and redesignated former pars. (11) to (14) as (12) to (15), respectively.

Subsec. (v)(1)(B). Pub. L. 99–272, § 9107(b)(2), substituted ''any cost reporting period shall be equal to'' for ''any fiscal period shall not exceed one and one-half times'' and ''the period'' for ''such fiscal period''.

Subsec. (v)(1)(G)(i). Pub. L. 99–272, § 9219(b)(3)(A), inserted ''on the basis of'' after ''(during such period)'' in provisions following subcl. (III).

Subsec. (v)(1)(L). Pub. L. 99–509, §9315(a), inserted ''(i)'' after ''(L)'', struck out ''the 75th percentile of such costs per visit for free standing home health agencies, or, in the judgment of the Secretary, such lower percentile or such comparable or lower limit (based on or related to the mean of the costs of such agencies or otherwise) as the Secretary may determine.'', and substituted in lieu ''for cost reporting periods beginning on or after—

''(I) July 1, 1985, and before July 1, 1986, 120 percent,

''(II) July 1, 1986, and before July 1, 1987, 115 percent, or

''(III) July 1, 1987, 112 percent,

of the mean of the labor-related and nonlabor per visit costs for free standing home health agencies.

''(ii) Effective for cost reporting periods beginning on or after July 1, 1986, such limitations shall be applied on an aggregate basis for the agency, rather than on a discipline specific basis, with appropriate adjustment for administrative and general costs of hospital-based agencies.''

Subsec. (v)(1)(O)(i). Pub. L. 99–272, §9110(a)(1), inserted '', except as provided in clause (iv),'' after ''such regulations shall provide''.

Subsec. (v)(1)(O)(iv). Pub. L. 99–272, §9110(a)(2), added cl. (iv).

Subsec. (v)(1)(P). Pub. L. 99–272, §9107(b)(1), added subpar. (P).

Subsec. (v)(1)(Q). Pub. L. 99–272, §9202(i)(1), added subpar. (Q).

Subsec. (v)(1)(R). Pub. L. 99–509, §9313(a)(2), added subpar. (R).

Subsec. (v)(5)(A). Pub. L. 99–509, §9337(d)(3), inserted ''(including through the operation of subsection (g) of this section)'' after ''subsection (p) of this section''.

Subsec. (bb). Pub. L. 99–509, §9320(c), added subsec. (bb).

Subsec. (ee). Pub. L. 99–509, §9305(c)(2), added subsec. (ee).

1984—Subsec. (d). Pub. L. 98–369, §2335(b)(1), struck out subsec. (d) which defined ''inpatient tuberculosis hospital services'' as inpatient hospital services furnished to an inpatient of a tuberculosis hospital.

Subsec. (e). Pub. L. 98–369, §2335(b)(2), struck out ''or tuberculosis unless it is a tuberculosis hospital (as defined in subsection (g) of this section) or'' before ''unless it is a psychiatric hospital'' in provisions following par. (9).

Subsec. (f). Pub. L. 98–369, §2340(a), struck out par. (5) which provided that ''psychiatric hospital'' meant an institution which was accredited by the Joint Commission on Accreditation of Hospitals, and struck out ''if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary'' in concluding provisions.

Subsec. (g). Pub. L. 98–369, §2335(b)(1), struck out subsec. (g) which defined ''tuberculosis hospital''.

Subsec. (j). Pub. L. 98–369, §2335(b)(3), in provisions following par. (15), struck out ''or tuberculosis'' after ''treatment of mental diseases''.

Subsec. (j)(2). Pub. L. 98–369, §2354(b)(18), substituted ''provision for'' for ''provision of''.

Subsec. (j)(13). Pub. L. 98–369, §2354(b)(19), substituted ''an institution'' for ''a nursing home''.

Subsec. (m)(5). Pub. L. 98–369, §2321(e)(1), which directed the substitution of ''and durable medical equipment'' for '', and the use of medical applicances'' was executed by making the substitution for '', and the use of medical appliances'' as the probable intent of Congress.

Subsec. (n). Pub. L. 98–369, §2321(e)(3), added subsec. (n).

Subsec. (p)(1). Pub. L. 98–369, §2341(a), substituted ''paragraph (1) or (3) of subsection (r) of this section'' for ''subsection (r)(1) of this section''.

Subsec. (p)(2). Pub. L. 98–369, §2342(a), substituted ''by a physician as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined)'' for '', and is periodically reviewed, by a physician (as so defined)''.

Subsec. (r)(3). Pub. L. 98–617, §3(b)(7), substituted ''under subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title'' for ''under subsections (k) and (m) and sections 1395f(a) and 1395n of this title'' before ''is consistent with the policy''.

Pub. L. 98–369, §2341(c), substituted ''for the purposes of subsections (k), (m), and (p)(1) of this section'' for ''for the purposes of subsections (k) and (m) of this section'', and substituted ''sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only if'' for ''sections 1395f(a) and 1395n of this title but only if''.

Subsec. (s)(2)(H). Pub. L. 98–369, §2322(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (s)(2)(I). Pub. L. 98–369, §2324(a), added subpar. (I).

Subsec. (s)(6). Pub. L. 98–369, §2321(e)(2), struck out provision which included iron lungs, oxygen tents, etc. with durable medical equipment. See subsec. (n) of this section.

Subsec. (s)(10). Pub. L. 98–369, §2323(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (u). Pub. L. 98–369, §2354(b)(20), struck out ''or'' before ''home health agency''.

Subsec. (v)(1)(B). Pub. L. 98–369, §2354(b)(21)(A), realigned margin of subpar. (B).

Subsec. (v)(1)(C). Pub. L. 98–369, §2354(b)(21)(B), realigned margins of subpar. (C).

Subsec. (v)(1)(C)(i). Pub. L. 98–369, §2354(b)(22), inserted a dash after ''but only if''.

Subsec. (v)(1)(D). Pub. L. 98–369, §2354(b)(21)(B), realigned margin of subpar. (D).

Pub. L. 98–369, §2354(b)(21)(C), inserted a comma after ''section 1395k(a)(2)(B)(i) of this title''.

Subsec. (v)(1)(E). Pub. L. 98–369, §2319(a)(1), struck out cl. (i) which directed that such regulations provide that any determination of reasonable cost with respect to services provided by hospital-based skilled nursing facilities be made on the basis of a single standard based on the reasonableness of costs incurred by free standing skilled nursing facilities, subject to such adjustments as deemed appropriate by the Secretary, and struck out the designation ''(ii)''.

Pub. L. 98–369, §2354(b)(23), as amended by Pub. L. 98–617, §3(a)(4), substituted ''use'' for ''uses''.

Subsec. (v)(1)(I)(i), (ii). Pub. L. 98–369, §2354(b)(24), substituted ''by the Secretary, or upon request by the Comptroller General'' for ''to the Secretary, or upon request to the Comptroller General''.

Subsec. (v)(1)(K). Pub. L. 98–369, §2318(a), (b), designated existing provisions as cl. (i), substituted therein ''as defined in clause (ii)'' for ''provided in an emergency room'', and added cl. (ii).

Subsec. (v)(1)(O). Pub. L. 98–369, §2314(a), added subpar. (O).

Subsec. (v)(3). Pub. L. 98–369, §2354(b)(25), substituted ''semi-private'' for ''semiprivate'' after ''furnished in''.

Subsec. (v)(7)(D). Pub. L. 98–369, §2319(a)(2), added subpar. (D).

Subsec. (z)(2). Pub. L. 98–369, §2354(b)(26), substituted ''paragraph (1)'' for ''subparagraph (1)''.

Subsec. (aa)(2)(I). Pub. L. 98–369, §2354(b)(27), substituted ''utilization'' for ''ultilization''.

Subsec. (cc)(1)(F). Pub. L. 98–369, §2354(b)(28), substituted ''self-administered'' for ''self administered''.

Subsec. (cc)(1)(G). Pub. L. 98–369, §2321(e)(4), substituted ''and durable medical equipment'' for '', appliances, and equipment, including the purchase or rental of equipment''.

Subsec. (cc)(2)(F). Pub. L. 98–369, §2354(b)(29), substituted ''standards established'' for ''standard establishment''.

Subsec. (dd)(2)(A)(ii)(I). Pub. L. 98–369, §2343(a), inserted ''except as otherwise provided in paragraph (5),''.

Subsec. (dd)(5). Pub. L. 98–369, §2343(b), added par. (5).

1983—Subsec. (v)(1)(G)(i). Pub. L. 98–21, §602(d)(1), substituted ''the amount otherwise payable under part A with respect to'' for ''on the basis of the reasonable cost of'' in provisions following subcl. (III).

Subsec. (v)(2)(A). Pub. L. 98–21, § 602(d)(2), substituted ''the amount that would be taken into account with respect to'' for ''an amount equal to the reasonable cost of''.

Subsec. (v)(2)(B). Pub. L. 98–21, § 602(d)(3), struck out ''the equivalent of the reasonable cost of'' after ''only''.

Subsec. (v)(3). Pub. L. 98–21, § 602(d)(4), substituted ''the amount otherwise payable under this subchapter for such bed and board furnished in semiprivate accommodations'' for ''the reasonable cost of such bed and board furnished in semiprivate accommodations (determined pursuant to paragraph (1))''.

Subsec. (v)(7)(C). Pub. L. 97–448 amended directory language of Pub. L. 97–248, § 109(b)(2), to correct typographical error, and did not involve any change in text. See 1982 Amendment note below.

Subsec. (z)(2). Pub. L. 98–21, § 607(d), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 98–21, § 607(b)(2), substituted ''$600,000 (or such lesser amount as may be established by the State under section 1320a–1(g)(1) of this title in which the hospital is located)'' for ''$100,000''.

1982—Subsec. (e)(C). Pub. L. 97–248, § 128(d)(2), substituted ''(i) may'' for ''may (i),''.

Subsec. (s)(2)(H). Pub. L. 97–248, § 114(b), added subpar. (H).

Subsec. (u). Pub. L. 97–248, § 122(d)(1), inserted ''hospice program,'' after ''home health agency,''.

Subsec. (v)(1)(E). Pub. L. 97–248, § 102(a), struck out provisions that this subparagraph would not apply to any skilled nursing facility that either was a distinct part of or directly operated by a hospital or was in a close, formal satellite relationship with a participating hospital, and in the case of the latter, the reasonable cost of any services furnished by such facility as determined by the Secretary under this subsection would not exceed 150 percent of the costs determined by the application of this subparagraph, redesignated the remainder as cl. (ii), and added cl. (i).

Subsec. (v)(1)(G)(i). Pub. L. 97–248, § 148(b), substituted ''quality control and peer review organization'' for ''Professional Standards Review Organization''.

Subsec. (v)(1)(H)(iii). Pub. L. 97–248, § 109(b)(1), struck out ''(I)'' and '', or (II) which determines the amount payable by the home health agency on the basis of a percentage of the agency's reimbursement or claim for reimbursement for services furnished by the agency''.

Subsec. (v)(1)(I). Pub. L. 97–248, § 127(1), amended directory language of Pub. L. 96–499, § 952, by inserting ''(a)'' after ''952'', and did not involve any change in text. See 1980 Amendment note below.

Subsec. (v)(1)(J). Pub. L. 97–248, § 103(a), substituted provisions that cost regulations may not provide for any inpatient routine salary cost differential as a reimbursable cost for hospitals and skilled nursing facilities for provisions that such regulations would provide that an inpatient routine nursing salary cost differential would be allowable as a reimbursable cost of hospitals, at a rate not to exceed 5 percent, to be applied under the same methodology used for the nursing salary cost differential for the month of April 1981.

Subsec. (v)(1)(L). Pub. L. 97–248, § 101(a)(2), struck out cl. (i) which provided that the Secretary, in determining the amount of the payments that could be made under this subchapter with respect to routine operating costs for the provision of general inpatient hospital services, could not recognize as reasonable, routine operating costs for the provision of general inpatient hospital services by a hospital to the extent these costs exceeded 108 percent of the mean of such routine operating costs per diem for hospitals, or, in the judgment of the Secretary, such lower percentage or such comparable or lower limit as the Secretary could determine, and struck out ''(ii)''.

Pub. L. 97–248, § 105(a), inserted ''free standing'' after ''costs per visit for''.

Subsec. (v)(1)(M). Pub. L. 97–248, § 106(a), added subpar. (M).

Subsec. (v)(1)(N). Pub. L. 97–248, § 107(a), added subpar. (N).

Subsec. (v)(7). Pub. L. 97–248, § 101(d), redesignated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (v)(7)(C). Pub. L. 97–248, § 108(a)(2), added subpar. (C).

Pub. L. 97–248, § 109(b)(2), as amended by Pub. L. 97–448, § 309(a)(4), inserted ''and for payments under certain percentage arrangements''.

Subsec. (w)(1). Pub. L. 97–248, § 122(d)(2), substituted ''home health agency, or hospice program'' for ''or home health agency''.

Subsec. (w)(2). Pub. L. 97–248, § 148(b), substituted ''quality control and peer review organization'' for ''Professional Standards Review Organization''.

Subsec. (cc)(1). Pub. L. 97–248, § 128(a)(1), substituted ''inpatient'' for ''outpatient'' in provisions following subpar. (H).

Subsec. (dd). Pub. L. 97–248, § 122(d)(3), added subsec. (dd).

1981—Subsec. (u). Pub. L. 97–35, § 2121(c), struck out ''detoxification facility,'' after ''home health agency,''.

Subsec. (v)(1)(G)(i). Pub. L. 97–35, § 2102(a)(1), substituted ''there is not an excess of hospital beds in such hospital and (subject to clause (iv)) there is not an excess of hospital beds in the area of such hospital'' for ''the hospital had (during the immediately preceding calendar year) an average daily occupancy rate of 80 percent or more'' in provision following subcl. (III).

Pub. L. 97–35, § 2114, substituted ''the Secretary or such agent as the Secretary may designate'' for ''an organization or agency with review responsibility as is otherwise provided for under part A of subchapter XI of this chapter'' in provision preceding subcl. (I).

Subsec. (v)(1)(G)(iv). Pub. L. 97–35, § 2102(a)(2), substituted provisions that the determination under cl. (i) of this subparagraph, in the case of a public hospital, whether or not there is an excess of hospital beds in the area of such hospital, be made on the basis of only the public hospitals which are in the area of the hospital and which are under common ownership with that hospital for provisions that public hospitals under common ownership may elect to be treated as a single hospital, and beginning two years after the date this subparagraph is first applied with respect to a hospital, the Secretary, to the extent feasible, shall not treat as an inpatient an individual with respect to whom payment was made to the hospital only because of this subparagraph or section 1396a(h) of this title for such determination.

Subsec. (v)(1)(J). Pub. L. 97–35, § 2141(a), added subpar. (J).

Subsec. (v)(1)(K). Pub. L. 97–35, § 2142(a), added subpar. (K).

Subsec. (v)(1)(L). Pub. L. 97–35, § 2143(a), added subpar. (L).

Pub. L. 97–35, § 2144(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (w)(2). Pub. L. 97–35, § 2193(c)(9), substituted ''subchapter XIX of this chapter'' for ''subchapter V or XIX of this chapter''.

Subsec. (bb). Pub. L. 97–35, § 2121(d), struck out subsec. (bb) which defined ''alcohol detoxification facility services'' and ''detoxification facility''.

1980—Subsec. (b)(7). Pub. L. 96–499, § 948(a)(1), provided that par. (4) was not to apply to services provided in a hospital by a physician where the hospital had a teaching program approved as specified in par. (6) if the hospital elected to receive payment for reasonable costs of such services and all physicians in such hospital agreed not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this subchapter.

Subsec. (e). Pub. L. 96–499, § 930(k), substituted ''subsection (i)'' for ''subsections (i) and (n)'' in text preceding par. (1) and in text following par. (9).

Pub. L. 96–499, § 949, in text following par. (9), inserted provision defining ''hospital'' as a facility of fifty beds or less located in an area determined by the Secretary to meet definition relating to a rural area described in subpar. (A) of par. (5) and prescribing exceptions to such definition.

Subsec. (i). Pub. L. 96–499, §950, substituted ''30 days'' for ''14 days'' in three places and struck out former cl. (B) which related to admission to skilled nursing facilities within 28 days after hospital discharge of an individual unable to be admitted to such facilities within 14 days because of a shortage of appropriate bed space, and redesignated former cl. (C) as (B).

Subsec. (j)(13). Pub. L. 96–499, §915(a), substituted ''such edition (as is specified by the Secretary in regulations) of the Life Safety Code of the National Fire Protection Association'' for ''the Life Safety Code of the National Fire Protection Association (23rd edition, 1973)''.

Subsec. (k)(2)(A). Pub. L. 96–499, §951(b), inserted ''(of which at least two must be physicians described in subsection (r)(1) of this section)'' after ''two or more physicians''.

Subsec. (m)(4). Pub. L. 96–499, §930(*l*), inserted ''who has successfully completed a training program approved by the Secretary'' after ''health aide''.

Subsec. (n). Pub. L. 96–499, §930(m), struck out subsec. (n) which defined ''post-hospital home health services''.

Subsec. (*o*). Pub. L. 96–499, §930(n)(2), in provisions following par. (7), struck out provision that ''home health agency'' was not to include a private organization which was not a nonprofit organization exempt from Federal income taxation under section 501 of title 26 unless it were licensed pursuant to State law and met such additional standards and requirements as prescribed by regulations.

Subsec. (*o*)(7). Pub. L. 96–499, §930(n)(1), added par. (7).

Subsec. (r)(2). Pub. L. 96–499, §936(a), amended cl. (2) generally to expand definition of ''physician'' to include doctors of dental surgery or dental medicine acting within the scope of their licenses.

Subsec. (r)(3). Pub. L. 96–499, §951(a), substituted provisions relating to doctors of podiatric medicine for provisions relating to doctors of podiatry and surgical chiropody.

Subsec. (r)(4). Pub. L. 96–499, §937(a), substituted ''services related to the condition of aphakia'' for ''establishing the necessity for prosthetic lenses''.

Subsec. (s)(2)(G). Pub. L. 96–499, §938(a), added subpar. (G).

Subsec. (s)(10) to (14). Pub. L. 96–611, §1(a)(1), added par. (10) and redesignated former pars. (10) to (13) as (11) to (14), respectively.

Subsec. (u). Pub. L. 96–499, §933(c), inserted ''comprehensive outpatient rehabilitation facility,'' after ''nursing facility''.

Pub. L. 96–499, §931(c), inserted ''detoxification facility,''.

Subsec. (v)(1)(G). Pub. L. 96–499, §902(a)(1), added subpar. (G).

Subsec. (v)(1)(H). Pub. L. 96–499, §930(p), added subpar. (H).

Subsec. (v)(1)(I). Pub. L. 96–499, §952(a), formerly §952, as redesignated by Pub. L. 97–248, §127(1), added subpar. (I).

Subsec. (z). Pub. L. 96–499, §933(d), which purported to substitute ''skilled nursing facility, comprehensive outpatient rehabilitation facility,'' for ''extended care facility,'' was executed by inserting ''comprehensive outpatient rehabilitation facility,'' after ''skilled nursing facility,'' as the probable intent of Congress, in view of the substitution of ''skilled nursing facility'' for ''extended care facility'' by section 278(b)(6) of Pub. L. 92–603.

Subsec. (aa)(1)(A). Pub. L. 96–611, §1(b)(3), inserted reference to items and services described in subsection (s)(10) of this section.

Subsec. (bb). Pub. L. 96–499, §931(d), added subsec. (bb).

Subsec. (cc). Pub. L. 96–499, §933(e), added subsec. (cc).

1978—Subsec. (s)(2)(F). Pub. L. 95–292 added subpar. (F).

1977—Subsec. (j)(11). Pub. L. 95–142, §3(a)(2), substituted provisions relating to compliance with requirements of section 1320a–3 of this title, for provisions relating disclosure of ownership, corporate status, etc., information to the Secretary or his delegate.

Subsec. (j)(13). Pub. L. 95–142, §21(a), struck out ''; and'' after ''nursing facilities''.

Subsec. (j)(14). Pub. L. 95–142, §21(a), added par. (14).

Subsec. (s). Pub. L. 95–210, §1(g), (h), added subpar. (E) of par. (2) and in provisions following par. (9) inserted '', a rural health clinic,'' after ''independent of a physician's office''.

Subsec. (s)(6). Pub. L. 95–216 inserted ''(which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe)'' after ''wheelchairs''.

Subsec. (v)(1)(F). Pub. L. 95–142, §19(b)(1), added subpar. (F).

Subsec. (w)(2). Pub. L. 95–142, §5(m), inserted ''part B of this subchapter or under'' after ''or entitled to have payment made for such services under''.

Subsec. (aa). Pub. L. 95–210, §1(d), added subsec. (aa).

1975—Subsec. (e)(5). Pub. L. 94–182, §102, substituted ''January 1, 1979'' for ''January 1, 1976''.

Subsec. (j)(13). Pub. L. 94–182, §106(a), substituted ''23d edition, 1973'' for ''21st edition, 1967''.

Subsec. (w). Pub. L. 94–182, §112(a)(1), designated existing provisions as par. (1) and added par. (2).

1972—Subsec. (a)(2). Pub. L. 92–603, §278(a)(4), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

Subsec. (b)(6). Pub. L. 92–603, §§227(a), 276(a), redesignated existing second sentence of subsec. (b) as par. (6) and in subsec. (b)(6) as so designated inserted reference to services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of podiatry, approved by the Council on Podiatry Education of the American Podiatry Association.

Subsec. (b)(7). Pub. L. 92–603, §227(a), added par. (7).

Subsec. (e). Pub. L. 92–603, §211(b), inserted reference to section 1395f(f) of this title in the provisions preceding par. (1), inserted reference to sections 1395f(f)(2) of this title after ''For purposes of sections 1395f(d) and 1395n(b) of this title (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections),'', and inserted provisions for accreditation by the Joint Commission on Accreditation of Hospitals.

Subsec. (e)(8). Pub. L. 92–603, §234(a), added par. (8). Former par. (8) redesignated (9).

Subsec. (e)(9). Pub. L. 92–603, §§234(a), 244(c), redesignated former par. (8) as (9) and struck out provisions requiring that other requirements not be higher than the comparable requirements prescribed for the accreditation of hospitals by the Joint Commission on Accreditation of Hospitals.

Subsecs. (f)(2), (g)(2). Pub. L. 92–603, §234(b), (c), inserted reference to par. (9) of subsec. (e) of this section.

Subsec. (h). Pub. L. 92–603, §278(a)(5), substituted ''skilled nursing facility'' for ''extended care facility'', ''skilled nursing facilities'' for ''extended care facilities'' and ''a'' for ''an''.

Subsec. (i). Pub. L. 92–603, §§248, 278(a)(6), (b)(10), extended the class of persons qualifying to be deemed as having been an inpatient in a hospital immediately before transfer therefrom by designating as clause (A) the existing requirement that the person have been admitted to the skilled nursing facility within 14 days after discharge from such hospital and adding cls. (B) and (C) and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (j). Pub. L. 92–603, §278(a)(7), substituted ''skilled nursing facility'' for ''extended care facility'' in provisions preceding par. (1).

Subsec. (j)(10). Pub. L. 92–603, §234(d), added par. (10). Former par. (10) redesignated par. (11) by section 234(d)(2) of Pub. L. 92–603 and again redesignated par. (15) by section 246(b)(2) of Pub. L. 92–603.

Subsec. (j)(11) to (13). Pub. L. 92–603, §246(b)(3), added pars. (11) to (13).

Subsec. (j)(15). Pub. L. 92–603, §§234(d), 246(b)(2), (4), 265, 267, 278(b)(13), redesignated former par. (10) as (11),

amended par. (11) as thus redesignated by inserting provisions that the Secretary shall not require as a condition of participation that medical social services be furnished in any such institution, redesignated such par. (11) as thus amended as par. (15), and inserted provision that all information concerning skilled nursing facilities required to be filed with the Secretary be made available to Federal and state employees for purposes consistent with the effective administration of programs established under subchapters XVIII and XIX and inserted provision for the waiver of the registered nurse requirement in skilled nursing facilities in rural areas.

Subsec. (k). Pub. L. 92–603, §§237(c), 278(a)(8), inserted provisions authorizing the Secretary to utilize the procedures established under subchapter XIX of this chapter if such procedures were determined to be superior in their effectiveness and substituted ''skilled nursing facility'' for ''extended care facility'', ''skilled nursing facilities'' for ''extended care facilities'', and ''a'' for ''an''.

Subsec. (*l*). Pub. L. 92–603, §278(a)(9), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

Subsec. (m)(7). Pub. L. 92–603, §278(a)(10), substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (n). Pub. L. 92–603, §278(a)(11), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

Subsec. (*o*)(5), (6). Pub. L. 92–603, §234(e), added par. (5) and redesignated former par. (5) as (6).

Subsec. (p). Pub. L. 92–603, §§251(a)(1), (b)(1), 283(a), inserted provisions covering physical therapy services of a licensed physical therapist other than under an arrangement with and under the supervision of a provider of services, clinic, rehabilitation agency, or public health agency, inserted ''In addition, such term includes physical therapy services which meet the requirements of the first sentence of this subsection except that they are furnished to an individual as an inpatient of a hospital or extended care facility'', and extended definition of ''outpatient physical therapy services'' to include outpatient speech pathology services.

Subsec. (q). Pub. L. 92–603, §227(f), substituted ''subsection (b)(6) of this section'' for ''the last sentence of subsection (b) of this section'' in parenthetical phrase.

Subsec. (r). Pub. L. 92–603, §§211(c)(2), 256(b), 264(a), 273(a), inserted ''or (C) the certification required by section 1395x(a)(2)(E) of this title,'' inserted provision so as to include doctors in one of the specified arts legally authorized to practice such art in the country in which inpatient hospital services referred to in section 1395y(a)(4) are furnished, added cl. (4) covering doctors of optometry who are legally authorized to practice optometry by the State in which they perform such functions, but only with respect to establishing the necessity for prosthetic lenses, and added cl. (5) providing for the inclusion of chiropractor services.

Subsec. (s)(8). Pub. L. 92–603, §252(a), inserted ''(including colostomy bags and supplies directly related to colostomy care)'' after ''organ''.

Subsec. (u). Pub. L. 92–603, §§227(d)(1), 278(a)(12), substituted ''skilled nursing facility, or home health agency, or, for purposes of sections 1395(g) and 1395n(e) of this title, a fund.'' for ''extended care facility, or home health agency.''.

Subsec. (v)(1). Pub. L. 92–603, §§223(a), (b), (c), (d), 227(c)(1), (2), (3), (4), 249(b), 278(b)(11), inserted definition of the costs of services, inserted provision that the regulation for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonably based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this subchapter, inserted parenthetical provisions covering exclusion of costs, substituted ''the necessary costs of efficiently delivering covered services covered by the insurance programs'' for ''the costs with respect to individuals covered by the insurance programs'', designated existing provisions as subpars. (A) and (B), and added subpars. (C), (D), and (E), and substituted ''skilled nursing facilities'' for ''extended care facilities''.

Subsec. (v)(3). Pub. L. 92–603, §278(a)(13), substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (v)(4). Pub. L. 92–603, §223(f), added par. (4). Former par. (4) redesignated (6).

Subsec. (v)(5). Pub. L. 92–603, §251(c), added par. (5).

Subsec. (v)(6). Pub. L. 92–603, §§223(f), 251(c), redesignated former par. (4) as (6).

Subsec. (v)(7). Pub. L. 92–603, §§221(c)(4), 223(b), 251(c), added par. (7).

Subsecs. (w), (y). Pub. L. 92–603, §278(a)(14), (15), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

Subsec. (z). Pub. L. 92–603, §§234(b), 278(b)(6), added subsec. (z) and substituted ''skilled nursing facility'' for ''extended care facility''.

1971—Subsec. (e)(5). Pub. L. 91–690 authorized the Secretary, until January 1, 1976, to waive the requirement relating to the provision of 24 hour nursing service rendered or supervised by a registered professional nurse.

1968—Subsec. (e). Pub. L. 90–248, §129(c)(9)(C), inserted reference to section 1395n(b) in first and third sentences and inserted ''or diagnostic services'' after ''hospital services'' in third sentence.

Pub. L. 90–248, §143(a), in second sentence after par. (8), changed definition of hospitals for purposes of making payments for emergency hospital services by deleting provision that hospital meet requirements of pars. (1) to (4), by requiring that such hospitals have full-time nursing services, be licensed as a hospital, and be primarily engaged in providing not nursing care and related services but medical or rehabilitative care by or under the supervision of a doctor of medicine or osteopathy.

Subsec. (p). Pub. L. 90–248, §§129(c)(10), 133(b), struck out definition of ''outpatient hospital diagnostic services'' and inserted definition of ''outpatient physical therapy services'', respectively.

Subsec. (r)(3). Pub. L. 90–248, §127(a), added cl. (3).

Subsec. (s). Pub. L. 90–248, §144(a)–(c), struck out ''(unless they would otherwise constitute inpatient hospital services, extended care services, or home health services)'' after ''items or services'' in text preceding par. (1), inserted after ''hospital'' in sentence following par. (9) ''which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1395f(d) of this title)'', and inserted sentence following par. (13) providing that medical and other health services (other than physicians' services and services incident to physicians' services) furnished a patient of a facility which meets the definition of a hospital for emergency services will be covered under the medical insurance program only if such facility satisfies such health and safety requirements as are appropriate for the item or service furnished as the Secretary may determine are necessary.

Subsec. (s)(2)(A) to (C). Pub. L. 90–248, §129(a), designated existing provisions as subpars. (A) and (B) and added subpar. (C).

Subsec. (s)(2)(D). Pub. L. 90–248, §133(a), added subpar. (D).

Subsec. (s)(3). Pub. L. 90–248, §134(a), included in medical and other health services diagnostic X-ray tests furnished in the patient's home under the supervision of a physician if the tests meet such health and safety conditions as the Secretary finds necessary.

Subsec. (s)(6). Pub. L. 90–248, §132(a), provided that payments may be made with respect to expenses incurred in the purchase as well as in the rental of durable medical equipment.

Pub. L. 90–248, §144(d), inserted ''other than in institution that meets the requirements of subsection (e)(1) or (j)(1) of this section''.

Subsec. (s)(12), (13). Pub. L. 90–248, §129(b), added pars. (12) and (13) which excluded from the diagnostic services referred to in par. (2)(C) (other than physician's services) certain items or service.

Subsec. (y)(3). Pub. L. 90–248, §129(c)(11), substituted ''1395e(a)(3)'' for ''1395e(a)(4)''.

1966—Subsec. (v)(1). Pub. L. 89–713 inserted provisions which required that, in the case of extended care services furnished by proprietary facilities, the regulations include provision for specific recognition of a reasonable return on equity capital and which placed a limitation on the rate of return of one and one-half times the average of the rates of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 415(b) of Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2005, see section 415(c) of Pub. L. 108–173, set out as a note under section 1395m of this title.

Amendment by section 512(c) of Pub. L. 108–173 applicable to services provided by a hospice program on or after Jan. 1, 2005, see section 512(d) of Pub. L. 108–173, set out as a note under section 1395d of this title.

Amendment by section 611(a), (b), (d)(2) of Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2005, but only for individuals whose coverage period under this part begins on or after such date, see section 611(e) of Pub. L. 108–173, set out as a note under section 1395w–4 of this title.

Pub. L. 108–173, title VI, §612(d), Dec. 8, 2003, 117 Stat. 2305, provided that: ''The amendments made by this section [amending this section and section 1395y of this title] shall apply to tests furnished on or after January 1, 2005.''

Pub. L. 108–173, title VI, §613(d), Dec. 8, 2003, 117 Stat. 2306, provided that: ''The amendments made by this section [amending this section and section 1395y of this title] shall apply to tests furnished on or after January 1, 2005.''

Amendment by section 642(a) of Pub. L. 108–173 applicable to items furnished on or after Jan. 1, 2004, see section 642(c) of Pub. L. 108–173, set out as a note under section 1395*l* of this title.

Pub. L. 108–173, title IX, §926(b)(2), Dec. 8, 2003, 117 Stat. 2396, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to discharge plans made on or after such date as the Secretary [of Health and Human Services] shall specify, but not later than 6 months after the date the Secretary provides for availability of information under subsection (a) [enacting provisions set out as a note under this section].''

Amendment by section 946(a) of Pub. L. 108–173 applicable to hospice care provided on or after Dec. 8, 2003, see section 946(c) of Pub. L. 108–173, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title I, §101(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–468, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to items and services furnished on or after July 1, 2001.''

Pub. L. 106–554, §1(a)(6) [title I, §102(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–468, provided that: ''The amendments made by this section [amending this section and section 1395y of this title] shall apply to services furnished on or after January 1, 2002.''

Amendment by section 1(a)(6) [title I, §103(a)] of Pub. L. 106–554 applicable to colorectal cancer screening services provided on or after July 1, 2001, see section 1(a)(6) [title I, §103(c)] of Pub. L. 106–554, set out as a note under section 1395m of this title.

Amendment by section 1(a)(6) [title I, §105(a), (b)] of Pub. L. 106–554 applicable to services furnished on or after Jan. 1, 2002, see section 1(a)(6) [title I, §105(e)] of Pub. L. 106–554, set out as a note under section 1395*l* of this title.

Pub. L. 106–554, §1(a)(6) [title I, §112(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to drugs and biologicals administered on or after the date of the enactment of this Act [Dec. 21, 2000].''

Pub. L. 106–554, §1(a)(6) [title I, §113(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to drugs furnished on or after the date of the enactment of this Act [Dec. 21, 2000].''

Amendment by section 1(a)(6) [title IV, §430(b)] of Pub. L. 106–554 applicable to items and services furnished on or after July 1, 2001, see section 1(a)(6) [title IV, §430(c)] of Pub. L. 106–554, set out as a note under section 1395*l* of this title.

Pub. L. 106–554, §1(a)(6) [title IV, §431(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–525, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to community mental health centers with respect to services furnished on or after the first day of the third month beginning after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title II, §201(k)] of Pub. L. 106–113 effective as if included in enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see §1000(a)(6) [title II, §201(m)] of Pub. L. 106–113, set out as a note under section 1395*l* of this title.

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §221(b)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–351, provided that: ''The amendments made by paragraph (1) [amending this section] apply to services furnished on or after January 1, 2000.''

Pub. L. 106–113, div. B, §1000(a)(6) [title III, §303(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–361, provided that: ''The amendments made by this section [amending this section and section 1395fff of this title] shall apply to services furnished by home health agencies for cost reporting periods beginning on or after October 1, 1999.''

Pub. L. 106–113, div. B, §1000(a)(6) [title III, §304(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–361, provided that: ''The amendments made by this section [amending this section and enacting section 1320b–7f of this title] take effect on the date of the enactment of this Act [Nov. 29, 1999], and in applying section 1861(*o*)(7) of the Social Security Act (42 U.S.C. 1395x(*o*)(7)), as amended by subsection (a), the Secretary of Health and Human Services may take into account the previous period for which a home health agency had a surety bond in effect under such section before such date.''

Amendment by section 1000(a)(6) [title III, §321(k)(7)–(9)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4102(a), (c) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4102(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4103(a) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 2000, see section 4103(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4104(a)(1) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4104(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4105(a)(1), (b)(1) of Pub. L. 105–33 applicable to items and services furnished on or

after July 1, 1998, see section 4105(d)(1) of Pub. L. 105–33, set out as a note under section 1395m of this title.

Section 4106(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395w–4, 1395aa, 1396a, and 1396n of this title] shall apply to bone mass measurements performed on or after July 1, 1998.''

Amendment by section 4201(c)(1), (2) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4205(b)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1998.''

Section 4205(c)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] applies to waiver requests made on or after January 1, 1998.''

Section 4205(d)(4) of Pub. L. 105–33 provided that:

''(A) IN GENERAL.—Except as otherwise provided, the amendments made by the preceding paragraphs [amending this section and section 1395u of this title] take effect on the date of the enactment of this Act [Aug. 5, 1997].

''(B) CURRENT RURAL HEALTH CLINICS.—The amendments made by the preceding paragraphs take effect, with respect to entities that are rural health clinics under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) on the date of enactment of this Act, on the date of the enactment of this Act [sic].

''(C) GRANDFATHERED CLINICS.—

''(i) IN GENERAL.—The amendment made by paragraph (3)(A) [amending this section] shall take effect on the effective date of regulations issued by the Secretary under clause (ii).

''(ii) REGULATIONS.—The Secretary shall issue final regulations implementing paragraph (3)(A) that shall take effect no later than January 1, 1999.''

Amendment by section 4312(d), (e) of Pub. L. 105–33 effective Aug. 5, 1997, and may be applied with respect to items and services furnished on or after Jan. 1, 1998, see section 4312(f)(3) of Pub. L. 105–33, set out as a note under section 1395m of this title.

Section 4312(f)(2) of Pub. L. 105–33 provided that: ''The amendments made by subsection (b) [amending this section] shall apply to home health agencies with respect to services furnished on or after January 1, 1998. The Secretary of Health and Human Services shall modify participation agreements under section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) with respect to home health agencies to provide for implementation of such amendments on a timely basis.''

Section 4321(d)(1) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to discharges occurring on or after the date which is 90 days after the date of the enactment of this Act [Aug. 5, 1997].''

Section 4404(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] apply to changes of ownership that occur after the third month beginning after the date of enactment of this section [Aug. 5, 1997].''

Amendment by section 4432(b)(5)(D), (E) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Section 4444(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to items or services furnished on or after April 1, 1998.''

Amendment by sections 4445 and 4446 of Pub. L. 105–33 applicable to benefits provided on or after Aug. 5, 1997, except as otherwise provided, see section 4449 of Pub. L. 105–33, set out as a note under section 1395d of this title.

Amendment by section 4454(a)(1) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

Amendment by section 4511(a)(1)–(2)(B), (d) of Pub. L. 105–33 applicable to services furnished and supplies provided on and after Jan. 1, 1998, see section 4511(e) of Pub. L. 105–33, set out as a note under section 1395k of this title.

Amendment by section 4512(a) of Pub. L. 105–33 applicable to services furnished and supplies provided on and after Jan. 1, 1998, see section 4512(d) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Section 4513(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] applies to services furnished on or after January 1, 2000.''

Section 4557(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to items and services furnished on or after January 1, 1998.''

Section 4604(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and section 1395bbb of this title] apply to cost reporting periods beginning on or after October 1, 1997.''

Amendment by section 4611(b) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1998, and for purposes of applying such amendment, any home health spell of illness that began, but did not end, before such date, to be considered to have begun as of such date, see section 4611(f) of Pub. L. 105–33, set out as a note under section 1395d of this title.

Section 4612(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] applies to services furnished on or after October 1, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–299 effective Oct. 1, 1996, see section 5 of Pub. L. 104–299, as amended, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 107(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the first day of the first month beginning more than one year after the date of the enactment of this Act [Oct. 31, 1994].''

Amendment by section 145(b) of Pub. L. 103–432 applicable to mammography furnished by the facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Section 146(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 1995.''

Amendment by section 147(e)(1), (4), (5), (f)(3), (4)(A), (6)(A), (B), (E) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320a–3a of this title.

Section 158(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to cost reporting periods beginning on or after July 1, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13503(c)(2) of Pub. L. 103–66 provided that: ''The amendments made by paragraph (1) [amending this section and section 1395*oo* of this title] shall take effect October 1, 1993.''

Section 13553(c) of Pub. L. 103–66 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to items furnished on or after January 1, 1994.''

Section 13554(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to services furnished on or after January 1, 1994.''

Section 13556(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 4161(a)(2)(C) of OBRA–1990 [Pub. L. 101–508].''

Section 13564(b)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1993.''

Section 13566(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 1395rr of this title] shall apply to erythropoietin furnished on or after January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4008(h)(2)(A)(i) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 4008(h)(2)(P) of Pub. L. 101–508, set out as a note under section 1395i–3 of this title.

Amendment by section 4152(a)(2) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 4152(a)(3) of Pub. L. 101–508, set out as a note under section 1395m of this title.

Section 4153(b)(2)(C) of Pub. L. 101–508 provided that: ''The amendments made by subparagraphs (A) and (B) [amending this section and section 1395y of this title] shall apply to items furnished on or after January 1, 1991.''

Amendment by section 4155(a), (d) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4155(e) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4157(a) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4157(d) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(a)(1), (2), (5) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Section 4161(b)(5) of Pub. L. 101–508 provided that: ''This subsection [amending this section and section 1395*oo* of this title and enacting provisions set out as a note below] shall take effect on October 1, 1991, except that the amendment made by paragraph (4) [amending section 1395*oo* of this title] shall apply to cost reports for periods beginning on or after October 1, 1991.''

Amendment by section 4162(a) of Pub. L. 101–508 applicable with respect to partial hospitalization services provided on or after Oct. 1, 1991, see section 4162(c) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4163(a) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

Section 4201(d)(3)[(4)] of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1395rr of this title] shall apply to items and services furnished on or after July 1, 1991.''

Section 4207(d)(4), formerly 4027(d)(3), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, §160(d)(4), (10), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to home health agency cost reporting periods beginning on or after July 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6112(e)(1) of Pub. L. 101–239 applicable with respect to items furnished on or after Jan. 1, 1990, see section 6112(e)(4) of Pub. L. 101–239, set out as a note under section 1395m of this title.

Amendment by section 6113(a)–(b)(2) of Pub. L. 101–239 applicable to services furnished on or after July 1, 1990, see section 6113(e) of Pub. L. 101–239, set out as a note under section 1395*l* of this title.

Amendment by section 6114(a), (d) of Pub. L. 101–239 applicable to services furnished on or after Apr. 1, 1990, see section 6114(f) of Pub. L. 101–239, set out as a note under section 1395u of this title.

Section 6115(d) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and sections 1395y, 1395aa, 1395bb, 1396a, and 1396n of this title] shall apply to screening pap smears performed on or after July 1, 1990.''

Amendment by section 6131(a)(2) of Pub. L. 101–239 applicable with respect to therapeutic shoes and inserts furnished on or after July 1, 1989, with additional provisions regarding applicability of the increase under section 1395*l*(*o*)(2)(C) of this title, see section 6131(c) of Pub. L. 101–239, set out as a note under section 1395*l* of this title.

Section 6141(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

Section 6213(d) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §4207(k)(4), formerly §4027(k)(4), Nov. 5, 1990, 104 Stat. 1388–125, renumbered Pub. L. 103–432, title I, §160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by subsections (a) through (c) of this section [amending this section] shall apply to services furnished on or after October 1, 1989.''

Amendment by section 101(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8423(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to services furnished on or after January 1, 1989.''

Section 8424(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective with respect to services provided after December 31, 1988.''

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 104(d)(4) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Amendment by section 202(a) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 203(b), (e)(1) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 204(a) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 205(b) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(f) of Pub. L. 100–360, set out as a note under section 1395k of this title.

Section 206(b) of Pub. L. 100–360, which provided that the amendment of this section by section 206(a) of Pub. L. 100–360 applied to services furnished in cases of initial periods of home health services beginning on or

after January 1, 1990, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(d)(5)(A), (g)(3)(H), (h)(1)(B)–(3)(A), (4)(D), (5)–(7)(A), (E), (F), (i)(3), (4)(C)(iii), (*l*)(1)(B), (C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(d)(1)(B)(ii) of Pub. L. 100–360 provided that: ''The amendment made by clause (i) [amending this section] shall apply to equipment furnished on or after the effective date provided in section 4021(c) of OBRA [Pub. L. 100–203, set out below].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4009(e)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to services furnished on or after April 1, 1988.''

Section 4021(c) of Pub. L. 100–203 provided that: ''Except as otherwise provided, the amendments made by subsections (a) and (b) [enacting section 1395bbb of this title and amending this section] shall apply to home health agencies as of the first day of the 18th calendar month that begins after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4026(a)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(d)(5)(B), July 1, 1988, 102 Stat. 775, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after July 1, 1989.''

Section 4064(e)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to diagnostic tests performed on or after January 1, 1990.''

Section 4065(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 1395rr of this title] shall become effective on January 1, 1988.''

Section 4070(c)(2) of Pub. L. 100–203 provided that:

''(A) The amendments made by subsection (b) [amending this section and sections 1395*l* and 1395n of this title] shall become effective on the date of enactment of this Act [Dec. 22, 1987].

''(B) The Secretary of Health and Human Services shall implement the amendments made by subsection (b) so as to ensure that there is no additional cost to the medicare program by reason of such amendments.''

Section 4071(b) of Pub. L. 100–203 provided that:

''(1) The provisions of subsection (e) of section 4072 of this subpart [section 4072(e) of Pub. L. 100–203, set out below] shall apply to this section [amending this section] in the same manner as it applies to section 4072. [Amendments became effective pursuant to final report dated Apr. 26, 1993. See Cong. Rec., vol. 139, pt. 7, p. 10460, Ex. Comm. 1254.]

''(2) In conducting the demonstration project pursuant to paragraph (1), in order to determine the cost effectiveness of including influenza vaccine in the medicare program, the Secretary of Health and Human Services is required to conduct a demonstration of the provision of influenza vaccine as a service for medicare beneficiaries and to expend $25,000,000 each year of the demonstration project for this purpose. In conducting this demonstration, the Secretary is authorized to purchase in bulk influenza vaccine and to distribute it in a manner to make it widely available to medicare beneficiaries, to develop projects to provide vaccine in the same manner as other covered medicare services in large scale demonstration projects, including statewide projects, and to engage in other appropriate use of moneys to provide influenza vaccine to medicare beneficiaries and evaluate the cost effectiveness of its use. In determining cost effectiveness, the Secretary shall consider the direct cost of the vaccine, the utilization of vaccine which might otherwise not have occurred, the costs of illnesses and nursing home days avoided, and other relevant factors, except that extended life for beneficiaries shall not be considered to reduce the cost effectiveness of the vaccine.''

Section 4072(e) of Pub. L. 100–203 provided that:

''(1) The amendments made by this section [amending this section and sections 1395*l*, 1395y, 1395aa, 1395bb, 1396a, and 1396n of this title] shall become effective (if at all) in accordance with paragraph (2).

''(2)(A) The Secretary of Health and Human Services (in this paragraph referred to as the 'Secretary'), shall establish a demonstration project to begin on October 1, 1988, to test the cost-effectiveness of furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section to a sample group of medicare beneficiaries.

''(B)(i) The demonstration project under subparagraph (A) shall be conducted for an initial period of 24 months. Not later than October 1, 1990, the Secretary shall report to the Congress on the results of such project. If the Secretary finds, on the basis of existing data, that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is cost-effective, the Secretary shall include such finding in such report, such project shall be discontinued, and the amendments made by this section shall become effective on November 1, 1990.

''(ii) If the Secretary determines that such finding cannot be made on the basis of existing data, such project shall continue for an additional 24 months. Not later than April 1, 1993, the Secretary shall submit a final report to the Congress on the results of such project. The amendments made by this section shall become effective on the first day of the first month to begin after such report is submitted to the Congress unless the report contains a finding by the Secretary that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is not cost-effective (in which case the amendments made by this section shall not become effective).''

[Amendments by section 4072 of Pub. L. 100–203 became effective pursuant to final report dated Apr. 26, 1993. See Cong. Rec., vol. 139, pt. 7, p. 10460, Ex. Comm. 1252.]

Amendment by section 4073(a), (c) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4073(e) of Pub. L. 100–203, set out as a note under section 1395k of this title.

Section 4074(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to services performed on or after January 1, 1988.''

Section 4075(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to drugs dispensed on or after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4076(b) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply with respect to services furnished on or after January 1, 1989.''

Section 4077(a)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to services furnished on or after the date of enactment of this Act [Dec. 22, 1987].''

Amendment by section 4077(b)(1), (4) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4077(b)(5) of Pub. L. 100–203, as amended, set out as a note under section 1395k of this title.

Amendment by section 4084(c)(1) of Pub. L. 100–203 applicable to services furnished after Dec. 31, 1988, see section 4084(c)(3) of Pub. L. 100–203, as added, set out as a note under section 1395*l* of this title.

Amendments by section 4201(a)(1), (b)(1), (d)(1), (2), (5) of Pub. L. 100–203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations

to implement such amendments are promulgated by such date, except as otherwise specifically provided in section 1395i–3 of this title, see section 4204(a) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9305(c)(4) of Pub. L. 99–509 provided that: ''The amendments made by this subsection [amending this section and section 1395bb of this title] shall apply to hospitals as of one year after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9313(a)(3) of Pub. L. 99–509 provided that: ''The amendments made by this paragraph [probably means ''this subsection'' which amended this section and section 1395ff of this title] take effect on the date of the enactment of this Act [Oct. 21, 1986].''

Amendment by section 9320(b), (c), (f) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9335(c)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to immunosuppressive drugs furnished on or after January 1, 1987.''

Section 9336(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1987.''

Amendment by section 9337(d) of Pub. L. 99–509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99–509, set out as a note under section 1395k of this title.

Section 9338(f) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall apply to services furnished on or after January 1, 1987.''

Section 9107(c)(2) of Pub. L. 99–272 provided that: ''The amendments made by subsection (b) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1985.''

Section 9110(b) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall be applied as though they were originally included in the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

Section 9202(i)(2) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after July 1, 1985.''

Amendment by section 9219(b)(1)(B) of Pub. L. 99–272 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 9219(b)(1)(D) of Pub. L. 99–272, set out as a note under section 1395u of this title.

Section 9219(b)(3)(B) of Pub. L. 99–272 provided that: ''The amendment made by subparagraph (A) [amending this section] shall be effective as if it had been originally included in the Social Security Amendments of 1983 [Pub. L. 98–21].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Section 2314(c)(1), (2) of Pub. L. 98–369 provided that:

''(1) Clause (i) of section 1861(v)(1)(O) of the Social Security Act [subsec. (v)(1)(O)(i) of this section] shall not apply to changes of ownership of assets pursuant to an enforceable agreement entered into before the date of the enactment of this Act [July 18, 1984].

''(2) Clause (iii) of section 1861(v)(1)(O) of such Act [subsec. (v)(1)(O)(iii) of this section] shall apply to costs incurred on or after the date of the enactment of this Act.''

Section 2318(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2319(a) of Pub. L. 98–369 applicable to cost reporting periods beginning on or after July 1, 1984, see section 2319(c) of Pub. L. 98–369, set out as an Effective Date note under section 1395yy of this title.

Amendment by section 2321(e) of Pub. L. 98–369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2322(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2323(a) of Pub. L. 98–369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2324(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to items and services purchased on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2335(b) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2340(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2341(a), (c) of Pub. L. 98–369 applicable to services furnished on or after July 18, 1984, see section 2341(d) of Pub. L. 98–369, set out as a note under section 1395k of this title.

Amendment by section 2342(a) of Pub. L. 98–369 applicable to plans of care established on or after July 18, 1984, see section 2342(c) of Pub. L. 98–369, set out as a note under section 1395n of this title.

Section 2343(c) of Pub. L. 98–369 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(18)–(29) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 602(d) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 309(c)(1) of Pub. L. 97–448, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 101(a)(2) of Pub. L. 97–248 applicable to cost reporting periods beginning on or after Oct. 1, 1982, see section 101(b)(1) of Pub. L. 97–248, set out as an Effective Date note under section 1395ww of this title.

Section 102(b) of Pub. L. 97–248, as amended by Pub. L. 98–21, title VI, § 605(a), Apr. 20, 1983, 97 Stat. 169, pro-

vided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1983.''

Section 103(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods ending after September 30, 1982, but in the case of any cost reporting period beginning before October 1, 1982, any reduction in payments under title XVIII of the Social Security Act [this subchapter] to a hospital or skilled nursing facility resulting from such amendment shall be imposed only in proportion to the part of the period which occurs after September 30, 1982.''

Section 105(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods beginning on or after the date of the enactment of this Act [Sept. 3, 1982].''

Section 106(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to any costs incurred under title XVIII of the Social Security Act [this subchapter], except that it shall not apply to costs which have been allowed prior to the date of the enactment of this Act [Sept. 3, 1982] pursuant to the final court order affirmed by a United States Court of Appeals.''

Section 107(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to costs incurred after the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 109(b)(2) of Pub. L. 97–248 effective Sept. 3, 1982, see section 109(c)(1) of Pub. L. 97–248, set out as a note under section 1395xx of this title.

Section 109(c)(3) of Pub. L. 97–248 provided that: ''The amendment made by subsection (b)(1) [amending this section] shall not apply to contracts entered into before the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 122(d) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

Section 128(e) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Any amendment to the Omnibus Budget Reconciliaton [Reconciliation] Act of 1981 [Pub. L. 97–35] made by this section [amending provisions set out as notes under sections 426 and 1395x of this title] shall be effective as if it had been originally included in the provision of the Omnibus Budget Reconciliation Act of 1981 to which such amendment relates.

''(2) Except as otherwise provided in this section, any amendment to the Social Security Act [this chapter] or the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [Title 26, Internal Revenue Code] made by this section (other than subsection (d)) [amending this section and sections 1395y, 1395cc, and 1395uu of this title and section 162 of Title 26] shall be effective as if it had been originally included as a part of that provision of the Social Security Act or Internal Revenue Code of 1986 to which it relates, as such provision of such Act or Code was amended by the Omnibus Budget Reconciliaton [Reconciliation] Act of 1981 [Pub. L. 97–35].

''(3) The amendments made by subsection (d) [amending this section and sections 1395u, 1395bb, 1395cc, and 1395gg of this title] shall take effect upon enactment [Sept. 3, 1982].''

Amendment by section 148(b) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2102(b)(1) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section], shall apply to services provided on or after the first day of the first month beginning after the date of the enactment of this Act [Aug. 13, 1981].''

Amendment by section 2121(c), (d) of Pub. L. 97–35 applicable to services furnished in detoxification facilities for inpatient stays beginning on or after the tenth day after Aug. 13, 1981, see section 2121(i) of Pub. L. 97–35, set out as a note under section 1395d of this title.

Section 2141(c) of Pub. L. 97–35 provided that:

''(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to cost reporting periods ending after September 30, 1981.

''(2) In the case of a cost reporting period beginning before October 1, 1981, any reduction in payments resulting from the amendment made by subsection (a) shall be imposed only in proportion to the part of the period that occurs after September 30, 1981.''

Section 2143(b) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, § 128(c)(1), Sept. 3, 1982, 96 Stat. 367, provided that:

''(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to cost reporting periods ending after September 30, 1981.

''(2) In the case of a cost reporting period beginning before October 1, 1981, any reduction in payments resulting from the amendment made by subsection (a) shall be imposed only in proportion to the part of the period that occurs after September 30, 1981.''

Section 2144(b) of Pub. L. 97–35 provided that:

''(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to cost reporting periods ending after September 30, 1981.

''(2) In the case of a cost reporting period beginning before October 1, 1981, any reduction in payments resulting from the amendment made by subsection (a) shall be imposed only in proportion to the part of the period that occurs after September 30, 1981.''

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(9) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395*l* of this title.

Section 902(c) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section and sections 1320c–7 and 1396a of this title] shall become effective on the date of [probably should be ''on''] which final regulations, promulgated by the Secretary to implement such amendments, are first issued; and those regulations shall be issued not later than the first day of the sixth month following the month in which this Act is enacted [December 1980].''

Section 930(s) of Pub. L. 96–499 provided that:

''(1) the amendments made by this section [amending this section, sections 426, 1395c, 1395d, 1395f, 1395h, 1395k, 1395*l*, and 1395n of this title, and section 231f of Title 45, Railroads, and repealing section 1395m of this title] shall become effective with respect to services furnished on or after July 1, 1981, except that the amendments made by subsections (n)(1) and (*o*) [amending this section and section 1395h of this title] shall become effective on the date of the enactment of this Act [Dec. 5, 1980].

''(2) The Secretary of Health and Human Services shall take administrative action to assure that improvements, in accordance with the amendment made by subsection (n)(1) [amending this section], will be made not later than June 30, 1981.''

Amendment by section 931(c), (d) of Pub. L. 96–499 effective Apr. 1, 1981, see section 931(e) of Pub. L. 96–499, set out as a note under section 1395d of this title.

Amendment by section 933(c)–(e) of Pub. L. 96–499 effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period beginning on or after July 1, 1981, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395k of this title.

Amendment by section 936(a) of Pub. L. 96–499 applicable with respect to services provided on or after July 1, 1981, see section 936(d) of Pub. L. 96–499, set out as a note under section 1395f of this title.

Section 937(c) of Pub. L. 96–499, as amended by Pub. L. 98–369, div. B, title III, § 2354(c)(1)(B), July 18, 1984, 98 Stat. 1102, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after July 1, 1981.''

Section 938(b) of Pub. L. 96–499 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1981.''

Section 948(c)(1) of Pub. L. 96–499 provided that: ''The amendments made by subsection (a) [amending this section and section 1395k of this title] shall apply with respect to cost accounting periods beginning on or after October 1, 1978. A hospital's election under section 1861(b)(7)(A) of the Social Security Act [subsec. (b)(7)(A) of this section] (as administered in accordance with section 15 of Public Law 93–233) as of September 30, 1978, shall constitute such hospital's election under such section (as amended by subsection (a)(1)) on and after October 1, 1978, until otherwise provided by the hospital.''

Section 951(c) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENTS

Section 501(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall be effective in the case of items and services furnished after the date of the enactment of this Act [Dec. 20, 1977].''

Amendment by Pub. L. 95–210 applicable to services rendered on or after the first day of the third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95–210, set out as a note under section 1395k of this title.

Amendment by section 3(a)(2) of Pub. L. 95–142 effective Oct. 25, 1977, see section 3(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–3 of this title.

Amendment by section 19(b)(1) of Pub. L. 95–142 effective with respect to operation of a hospital, skilled nursing facility, or intermediate care facility on and after the first day of its first fiscal year which begins after the end of the six-month period beginning on the date a uniform reporting system is established under section 1320a(a) of this title for that type of health services facility, except that for other types of facilities or organizations effective with respect to operations on and after the first day of its first fiscal year which begins after such date as the Secretary determines to be appropriate for the implementation of the reporting requirement for that type of facility or organization, see section 19(c)(2) of Pub. L. 95–142, set out as a note under section 1396a of this title.

Section 21(c)(1) of Pub. L. 95–142 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective on the first day of the first calendar quarter which begins more than six months after the date of enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 106(b) of Pub. L. 94–182 provided that: ''Subject to subsection (c) [enacting provisions set out below], the amendment made by subsection (a) [amending this section] shall be effective on the first day of the sixth month which begins after the date of enactment of this Act [Dec. 31, 1975].''

Section 112(d) of Pub. L. 94–182 provided that: ''The amendments made by this section [amending this section and sections 1320c–17 and 1395g of this title] shall be effective with respect to utilization review activities conducted on and after the first day of the first month which begins more than 30 days after the date of enactment of this Act [Dec. 31, 1975].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 211(b), (c)(2) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Section 223(h) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1395cc of this title] shall be effective with respect to accounting periods beginning after December 31, 1972.''

Section 227(g) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395f, 1395k, 1395n, 1395u, and 1395cc of this title] shall apply with respect to accounting periods beginning after June 30, 1973.''

Section 234(i) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395f, 1395z, and 1395bb of this title] shall apply with respect to any provider of services for fiscal years (of such provider) beginning after the fifth month following the month in which this Act is enacted [October 1972].''

Section 246(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1396 of this title] shall be effective July 1, 1973.''

Section 251(d) of Pub. L. 92–603, as amended by Pub. L. 93–233, § 17(a), Dec. 31, 1973, 87 Stat. 967, provided that:

''(1) The amendments made by subsection (a) [amending this section and sections 1395*l* and 1395k of this title] shall apply with respect to services furnished on or after July 1, 1973.

''(2) The amendments made by subsection (b) [amending this section and section 1395n of this title] shall apply with respect to services furnished on or after the date of enactment of this Act [Oct. 30, 1972].

''(3) The amendments made by subsection (c) [amending this section] shall be effective with respect to accounting periods beginning after the month in which there are promulgated, by the Secretary of Health, Education, and Welfare, final regulations implementing the provisions of section 1861(v)(5) of the Social Security Act [subsec. (v)(5) of this section].''

Section 252(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to items furnished on or after the date of the enactment of this Act [Oct. 30, 1972].''

Amendment by section 256(b) of Pub. L. 92–603 applicable with respect to admissions occurring after the second month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 256(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Section 264(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to services performed on or after the date of the enactment of this Act [Oct. 30, 1972].''

Section 273(b) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to services furnished after June 30, 1973.''

Section 276(b) of Pub. L. 92–603 provided that: ''The amendment made by this section [amending this section] shall apply with respect to accounting periods beginning after December 31, 1972.''

Amendment by section 283(a) of Pub. L. 92–603 to apply with respect to services rendered after Dec. 31, 1972, see section 283(c) of Pub. L. 92–603, set out as a note under section 1395n of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 127(c) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395y of this title] shall apply with respect to services furnished after December 31, 1967.''

Amendment by section 129(a), (b), (c)(9)(C), (10), (11) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Amendment by section 132(a) of Pub. L. 90–248 applicable with respect to items purchased after Dec. 31, 1967, see section 132(c) of Pub. L. 90–248, set out as a note under section 1395*l* of this title.

Amendment by section 133(a), (b) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub. L. 90–248, set out as a note under section 1395k of this title.

Section 134(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services furnished after December 31, 1967.''

Amendment by section 143(a) of Pub. L. 90–248 effective July 1, 1966, see section 143(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 144(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to services furnished after March 31, 1968.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–713 effective Nov. 2, 1966, see section 6 of Pub. L. 89–713, set out as a note under section 6091 of Title 26, Internal Revenue Code.

CONFORMING REFERENCES TO PREVIOUS PART D

Pub. L. 108–173, title I, § 101(e)(1), Dec. 8, 2003, 117 Stat. 2150, provided that: ''Any reference in law (in effect before the date of the enactment of this Act [Dec. 8, 2003]) to part D of title XVIII of the Social Security Act [part D of this subchapter] is deemed a reference to part E of such title [this part] (as in effect after such date).''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

FRONTIER EXTENDED STAY CLINIC DEMONSTRATION PROJECT

Pub. L. 108–173, title IV, § 434, Dec. 8, 2003, 117 Stat. 2288, provided that:

''(a) AUTHORITY TO CONDUCT DEMONSTRATION PROJECT.—The Secretary [of Health and Human Services] shall waive such provisions of the medicare program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) as are necessary to conduct a demonstration project under which frontier extended stay clinics described in subsection (b) in isolated rural areas are treated as providers of items and services under the medicare program.

''(b) CLINICS DESCRIBED.—A frontier extended stay clinic is described in this subsection if the clinic—

''(1) is located in a community where the closest short-term acute care hospital or critical access hospital is at least 75 miles away from the community or is inaccessible by public road; and

''(2) is designed to address the needs of—

''(A) seriously or critically ill or injured patients who, due to adverse weather conditions or other reasons, cannot be transferred quickly to acute care referral centers; or

''(B) patients who need monitoring and observation for a limited period of time.

''(c) SPECIFICATION OF CODES.—The Secretary shall determine the appropriate life-safety codes for such clinics that treat patients for needs referred to in subsection (b)(2).

''(d) FUNDING.—

''(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated, in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, such sums as are necessary to conduct the demonstration project under this section.

''(2) BUDGET NEUTRAL IMPLEMENTATION.—In conducting the demonstration project under this section, the Secretary shall ensure that the aggregate payments made by the Secretary under the medicare program do not exceed the amount which the Secretary would have paid under the medicare program if the demonstration project under this section was not implemented.

''(e) THREE-YEAR PERIOD.—The Secretary shall conduct the demonstration under this section for a 3-year period.

''(f) REPORT.—Not later than the date that is 1 year after the date on which the demonstration project concludes, the Secretary shall submit to Congress a report on the demonstration project, together with such recommendations for legislation or administrative action as the Secretary determines appropriate.

''(g) DEFINITIONS.—In this section, the terms 'hospital' and 'critical access hospital' have the meanings given such terms in subsections (e) and (mm), respectively, of section 1861 of the Social Security Act (42 U.S.C. 1395x).''

MEDPAC STUDY OF COVERAGE OF SURGICAL FIRST ASSISTING SERVICES OF CERTIFIED REGISTERED NURSE FIRST ASSISTANTS

Pub. L. 108–173, title VI, § 643, Dec. 8, 2003, 117 Stat. 2322, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission (in this section referred to as the 'Commission') shall conduct a study on the feasibility and advisability of providing for payment under part B of title XVIII of the Social Security Act [part B of this subchapter] for surgical first assisting services furnished by a certified registered nurse first assistant to medicare beneficiaries.

''(b) REPORT.—Not later than January 1, 2005, the Commission shall submit to Congress a report on the study conducted under subsection (a) together with recommendations for such legislation or administrative action as the Commission determines to be appropriate.

''(c) DEFINITIONS.—In this section:

''(1) SURGICAL FIRST ASSISTING SERVICES.—The term 'surgical first assisting services' means services consisting of first assisting a physician with surgery and related preoperative, intraoperative, and postoperative care (as determined by the Secretary [of Health and Human Services]) furnished by a certified registered nurse first assistant (as defined in paragraph (2)) which the certified registered nurse first

assistant is legally authorized to perform by the State in which the services are performed.

''(2) CERTIFIED REGISTERED NURSE FIRST ASSISTANT.—The term 'certified registered nurse first assistant' means an individual who—

''(A) is a registered nurse and is licensed to practice nursing in the State in which the surgical first assisting services are performed;

''(B) has completed a minimum of 2,000 hours of first assisting a physician with surgery and related preoperative, intraoperative, and postoperative care; and

''(C) is certified as a registered nurse first assistant by an organization recognized by the Secretary.''

STUDIES RELATING TO VISION IMPAIRMENTS

Pub. L. 108–173, title VI, §645, Dec. 8, 2003, 117 Stat. 2323, provided that:

''(a) COVERAGE OF OUTPATIENT VISION SERVICES FURNISHED BY VISION REHABILITATION PROFESSIONALS UNDER PART B.—

''(1) STUDY.—The Secretary [of Health and Human Services] shall conduct a study to determine the feasibility and advisability of providing for payment for vision rehabilitation services furnished by vision rehabilitation professionals.

''(2) REPORT.—Not later than January 1, 2005, the Secretary shall submit to Congress a report on the study conducted under paragraph (1) together with recommendations for such legislation or administrative action as the Secretary determines to be appropriate.

''(3) VISION REHABILITATION PROFESSIONAL DEFINED.—In this subsection, the term 'vision rehabilitation professional' means an orientation and mobility specialist, a rehabilitation teacher, or a low vision therapist.

''(b) REPORT ON APPROPRIATENESS OF A DEMONSTRATION PROJECT TO TEST FEASIBILITY OF USING PPO NETWORKS TO REDUCE COSTS OF ACQUIRING EYEGLASSES FOR MEDICARE BENEFICIARIES AFTER CATARACT SURGERY.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Secretary shall submit to Congress a report on the feasibility of establishing a two-year demonstration project under which the Secretary enters into arrangements with vision care preferred provider organization networks to furnish and pay for conventional eyeglasses subsequent to each cataract surgery with insertion of an intraocular lens on behalf of Medicare beneficiaries. In such report, the Secretary shall include an estimate of potential cost savings to the Medicare program through the use of such networks, taking into consideration quality of service and beneficiary access to services offered by vision care preferred provider organization networks.''

DEMONSTRATION OF COVERAGE OF CHIROPRACTIC SERVICES UNDER MEDICARE

Pub. L. 108–173, title VI, §651, Dec. 8, 2003, 117 Stat. 2332, provided that:

''(a) DEFINITIONS.—In this section:

''(1) CHIROPRACTIC SERVICES.—The term 'chiropractic services' has the meaning given that term by the Secretary [of Health and Human Services] for purposes of the demonstration projects, but shall include, at a minimum—

''(A) care for neuromusculoskeletal conditions typical among eligible beneficiaries; and

''(B) diagnostic and other services that a chiropractor is legally authorized to perform by the State or jurisdiction in which such treatment is provided.

''(2) DEMONSTRATION PROJECT.—The term 'demonstration project' means a demonstration project established by the Secretary under subsection (b)(1).

''(3) ELIGIBLE BENEFICIARY.—The term 'eligible beneficiary' means an individual who is enrolled under part B of the medicare program.

''(4) MEDICARE PROGRAM.—The term 'medicare program' means the health benefits program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(b) DEMONSTRATION OF COVERAGE OF CHIROPRACTIC SERVICES UNDER MEDICARE.—

''(1) ESTABLISHMENT.—The Secretary shall establish demonstration projects in accordance with the provisions of this section for the purpose of evaluating the feasibility and advisability of covering chiropractic services under the medicare program (in addition to the coverage provided for services consisting of treatment by means of manual manipulation of the spine to correct a subluxation described in section 1861(r)(5) of the Social Security Act (42 U.S.C. 1395x(r)(5))).

''(2) NO PHYSICIAN APPROVAL REQUIRED.—In establishing the demonstration projects, the Secretary shall ensure that an eligible beneficiary who participates in a demonstration project, including an eligible beneficiary who is enrolled for coverage under a Medicare+Choice plan (or, on and after January 1, 2006, under a Medicare Advantage plan), is not required to receive approval from a physician or other health care provider in order to receive a chiropractic service under a demonstration project.

''(3) CONSULTATION.—In establishing the demonstration projects, the Secretary shall consult with chiropractors, organizations representing chiropractors, eligible beneficiaries, and organizations representing eligible beneficiaries.

''(4) PARTICIPATION.—Any eligible beneficiary may participate in the demonstration projects on a voluntary basis.

''(c) CONDUCT OF DEMONSTRATION PROJECTS.—

''(1) DEMONSTRATION SITES.—

''(A) SELECTION OF DEMONSTRATION SITES.—The Secretary shall conduct demonstration projects at 4 demonstration sites.

''(B) GEOGRAPHIC DIVERSITY.—Of the sites described in subparagraph (A)—

''(i) two shall be in rural areas; and

''(ii) two shall be in urban areas.

''(C) SITES LOCATED IN HPSAS.—At least 1 site described in clause (i) of subparagraph (B) and at least 1 site described in clause (ii) of such subparagraph shall be located in an area that is designated under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)) as a health professional shortage area.

''(2) IMPLEMENTATION; DURATION.—

''(A) IMPLEMENTATION.—The Secretary shall not implement the demonstration projects before October 1, 2004.

''(B) DURATION.—The Secretary shall complete the demonstration projects by the date that is 2 years after the date on which the first demonstration project is implemented.

''(d) EVALUATION AND REPORT.—

''(1) EVALUATION.—The Secretary shall conduct an evaluation of the demonstration projects—

''(A) to determine whether eligible beneficiaries who use chiropractic services use a lesser overall amount of items and services for which payment is made under the medicare program than eligible beneficiaries who do not use such services;

''(B) to determine the cost of providing payment for chiropractic services under the medicare program;

''(C) to determine the satisfaction of eligible beneficiaries participating in the demonstration projects and the quality of care received by such beneficiaries; and

''(D) to evaluate such other matters as the Secretary determines is appropriate.

''(2) REPORT.—Not later than the date that is 1 year after the date on which the demonstration projects conclude, the Secretary shall submit to Congress a report on the evaluation conducted under paragraph (1) together with such recommendations for legislation or administrative action as the Secretary determines is appropriate.

''(e) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of the medicare program to the extent and for the period the Secretary finds necessary to conduct the demonstration projects.

''(f) FUNDING.—

''(1) DEMONSTRATION PROJECTS.—

''(A) IN GENERAL.—Subject to subparagraph (B) and paragraph (2), the Secretary shall provide for the transfer from the Federal Supplementary Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t) of such funds as are necessary for the costs of carrying out the demonstration projects under this section.

''(B) LIMITATION.—In conducting the demonstration projects under this section, the Secretary shall ensure that the aggregate payments made by the Secretary under the medicare program do not exceed the amount which the Secretary would have paid under the medicare program if the demonstration projects under this section were not implemented.

''(2) EVALUATION AND REPORT.—There are authorized to be appropriated such sums as are necessary for the purpose of developing and submitting the report to Congress under subsection (d).''

DEMONSTRATION PROJECT TO CLARIFY THE DEFINITION OF HOMEBOUND

Pub. L. 108–173, title VII, § 702, Dec. 8, 2003, 117 Stat. 2335, provided that:

''(a) DEMONSTRATION PROJECT.—Not later than 180 days after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall conduct a 2-year demonstration project under part B of title XVIII of the Social Security Act [part B of this subchapter] under which medicare beneficiaries with chronic conditions described in subsection (b) are deemed to be homebound for purposes of receiving home health services under the medicare program.

''(b) MEDICARE BENEFICIARY DESCRIBED.—For purposes of subsection (a), a medicare beneficiary is eligible to be deemed to be homebound, without regard to the purpose, frequency, or duration of absences from the home, if—

''(1) the beneficiary has been certified by one physician as an individual who has a permanent and severe, disabling condition that is not expected to improve;

''(2) the beneficiary is dependent upon assistance from another individual with at least 3 out of the 5 activities of daily living for the rest of the beneficiary's life;

''(3) the beneficiary requires skilled nursing services for the rest of the beneficiary's life and the skilled nursing is more than medication management;

''(4) an attendant is required to visit the beneficiary on a daily basis to monitor and treat the beneficiary's medical condition or to assist the beneficiary with activities of daily living;

''(5) the beneficiary requires technological assistance or the assistance of another person to leave the home; and

''(6) the beneficiary does not regularly work in a paid position full-time or part-time outside the home.

''(c) DEMONSTRATION PROJECT SITES.—The demonstration project established under this section shall be conducted in 3 States selected by the Secretary to represent the Northeast, Midwest, and Western regions of the United States.

''(d) LIMITATION ON NUMBER OF PARTICIPANTS.—The aggregate number of such beneficiaries that may participate in the project may not exceed 15,000.

''(e) DATA.—The Secretary shall collect such data on the demonstration project with respect to the provision of home health services to medicare beneficiaries that relates to quality of care, patient outcomes, and additional costs, if any, to the medicare program.

''(f) REPORT TO CONGRESS.—Not later than 1 year after the date of the completion of the demonstration project under this section, the Secretary shall submit to Congress a report on the project using the data collected under subsection (e). The report shall include the following:

''(1) An examination of whether the provision of home health services to medicare beneficiaries under the project has had any of the following effects:

''(A) Has adversely affected the provision of home health services under the medicare program.

''(B) Has directly caused an increase of expenditures under the medicare program for the provision of such services that is directly attributable to such clarification.

''(2) The specific data evidencing the amount of any increase in expenditures that is directly attributable to the demonstration project (expressed both in absolute dollar terms and as a percentage) above expenditures that would otherwise have been incurred for home health services under the medicare program.

''(3) Specific recommendations to exempt permanently and severely disabled homebound beneficiaries from restrictions on the length, frequency, and purpose of their absences from the home to qualify for home health services without incurring additional costs to the medicare program.

''(g) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

''(h) CONSTRUCTION.—Nothing in this section shall be construed as waiving any applicable civil monetary penalty, criminal penalty, or other remedy available to the Secretary under title XI or title XVIII of the Social Security Act [this subchapter and subchapter XI of this chapter] for acts prohibited under such titles, including penalties for false certifications for purposes of receipt of items or services under the medicare program.

''(i) AUTHORIZATION OF APPROPRIATIONS.—Payments for the costs of carrying out the demonstration project under this section shall be made from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t).

''(j) DEFINITIONS.—In this section:

''(1) MEDICARE BENEFICIARY.—The term 'medicare beneficiary' means an individual who is enrolled under part B of title XVIII of the Social Security Act [part B of this subchapter].

''(2) HOME HEALTH SERVICES.—The term 'home health services' has the meaning given such term in section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)).

''(3) ACTIVITIES OF DAILY LIVING DEFINED.—The term 'activities of daily living' means eating, toileting, transferring, bathing, and dressing.''

INFORMATION ON MEDICARE-CERTIFIED SKILLED NURSING FACILITIES IN HOSPITAL DISCHARGE PLANS

Pub. L. 108–173, title IX, § 926(a), Dec. 8, 2003, 117 Stat. 2396, provided that: ''The Secretary [of Health and Human Services] shall publicly provide information that enables hospital discharge planners, medicare beneficiaries, and the public to identify skilled nursing facilities that are participating in the medicare program.''

IMPLEMENTATION OF AMENDMENTS BY PUB. L. 105–277

Pub. L. 105–277, div. J, title V, § 5101(i), Oct. 21, 1998, 112 Stat. 2681–916, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall promptly issue (without regard to chapter 8 of title 5, United States Code) such regulations or program memoranda as may be necessary to effect the amendments made by this section [amending this section, sections 1395r and 1395fff of this title, and provisions set out as notes under section 1395fff of this title] for cost reporting periods beginning during fiscal year 1999.

''(2) USE OF PAYMENT AMOUNTS AND LIMITS FROM PUBLISHED TABLES.—

''(A) PER BENEFICIARY LIMITS.—In effecting the amendments made by subsection (a) [amending this section] for cost reporting periods beginning in fiscal year 1999, the 'median' referred to in section 1861(v)(1)(L)(vi)(I) of the Social Security Act [subsec. (v)(1)(L)(vi)(I) of this section] for such periods shall be the national standardized per beneficiary limitation specified in Table 3C published in the Federal Register on August 11, 1998 (63 FR 42926) and the 'standardized regional average of such costs' referred to in section 1861(v)(1)(L)(v)(I) of such Act [subsec. (v)(1)(L)(v)(I) of this section] for a census division shall be the sum of the labor and nonlabor components of the standardized per beneficiary limitation for that census division specified in Table 3B published in the Federal Register on that date (63 FR 42926) (or in Table 3D as so published with respect to Puerto Rico and Guam), and adjusted to reflect variations in wages among different geographic areas as specified in Tables 4a and 4b published in the Federal Register on that date (63 FR 42926–42933).

''(B) PER VISIT LIMITS.—In effecting the amendments made by subsection (b) [amending this section] for cost reporting periods beginning in fiscal year 1999, the limits determined under section 1861(v)(1)(L)(i)(V) of such Act [subsec. (v)(1)(L)(i)(V) of this section] for cost reporting periods beginning during such fiscal year shall be equal to the per visit limits as specified in Table 3A published in the Federal Register on August 11, 1998 (63 FR 42925) and as subsequently corrected, multiplied by 106/105, and adjusted to reflect variations in wages among different geographic areas as specified in Tables 4a and 4b published in the Federal Register on August 11, 1998 (63 FR 42926–42933).''

STUDY ON EXPANSION OF MEDICAL NUTRITION THERAPY SERVICES BENEFIT

Pub. L. 106–554, §1(a)(6) [title I, §105(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–472, provided that: ''Not later than July 1, 2003, the Secretary of Health and Human Services shall submit to Congress a report that contains recommendations with respect to the expansion to other medicare beneficiary populations of the medical nutrition therapy services benefit (furnished under the amendments made by this section [amending this section and sections 1395*l* and 1395u of this title]).''

STUDY ON MEDICARE COVERAGE OF ROUTINE THYROID SCREENING

Pub. L. 106–554, §1(a)(6) [title I, §123], Dec. 21, 2000, 114 Stat. 2763, 2763A–478, provided that:

''(a) STUDY.—The Secretary of Health and Human Services shall request the National Academy of Sciences, and as appropriate in conjunction with the United States Preventive Services Task Force, to conduct a study on the addition of coverage of routine thyroid screening using a thyroid stimulating hormone test as a preventive benefit provided to medicare beneficiaries under title XVIII of the Social Security Act [this subchapter] for some or all medicare beneficiaries. In conducting the study, the Academy shall consider the short-term and long-term benefits, and costs to the medicare program, of such addition.

''(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall submit a report on the findings of the study conducted under subsection (a) to the Committee on Ways and Means and the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate.''

GAO STUDY ON COVERAGE OF SURGICAL FIRST ASSISTING SERVICES OF CERTIFIED REGISTERED NURSE FIRST ASSISTANTS

Pub. L. 106–554, §1(a)(6) [title IV, §433], Dec. 21, 2000, 114 Stat. 2763, 2763A–526, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study on the effect on the medicare program under title XVIII of the Social Security Act [this subchapter] and on medicare beneficiaries of coverage under the program of surgical first assisting services of certified registered nurse first assistants. The Comptroller General shall consider the following when conducting the study:

''(1) Any impact on the quality of care furnished to medicare beneficiaries by reason of such coverage.

''(2) Appropriate education and training requirements for certified registered nurse first assistants who furnish such first assisting services.

''(3) Appropriate rates of payment under the program to such certified registered nurse first assistants for furnishing such services, taking into account the costs of compensation, overhead, and supervision attributable to certified registered nurse first assistants.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under subsection (a).''

MEDPAC STUDY AND REPORT ON MEDICARE COVERAGE OF SERVICES PROVIDED BY CERTAIN NONPHYSICIAN PROVIDERS

Pub. L. 106–554, §1(a)(6) [title IV, §435], Dec. 21, 2000, 114 Stat. 2763, 2763A–527, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study to determine the appropriateness of providing coverage under the medicare program under title XVIII of the Social Security Act [this subchapter] for services provided by a—

''(A) surgical technologist;

''(B) marriage counselor;

''(C) marriage and family therapist;

''(D) pastoral care counselor; and

''(E) licensed professional counselor of mental health.

''(2) COSTS TO PROGRAM.—The study shall consider the short-term and long-term benefits, and costs to the medicare program, of providing the coverage described in paragraph (1).

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation that the Commission determines to be appropriate as a result of such study.''

DEVELOPMENT OF PATIENT ASSESSMENT INSTRUMENTS

Pub. L. 106–554, §1(a)(6) [title V, §545], Dec. 21, 2000, 114 Stat. 2763, 2763A–551, provided that:

''(a) DEVELOPMENT.—

''(1) IN GENERAL.—Not later than January 1, 2005, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means and the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate a report on the development of standard instruments for the assessment of the health and functional status of patients, for whom items and services described in subsection (b) are furnished, and include in the report a recommendation on the use of such standard instruments for payment purposes.

''(2) DESIGN FOR COMPARISON OF COMMON ELEMENTS.—The Secretary shall design such standard instruments in a manner such that—

''(A) elements that are common to the items and services described in subsection (b) may be readily comparable and are statistically compatible;

''(B) only elements necessary to meet program objectives are collected; and

''(C) the standard instruments supersede any other assessment instrument used before that date.

''(3) CONSULTATION.—In developing an assessment instrument under paragraph (1), the Secretary shall

consult with the Medicare Payment Advisory Commission, the Agency for Healthcare Research and Quality, and qualified organizations representing providers of services and suppliers under title XVIII [this subchapter].

''(b) DESCRIPTION OF SERVICES.—For purposes of subsection (a), items and services described in this subsection are those items and services furnished to individuals entitled to benefits under part A, or enrolled under part B, or both of title XVIII of the Social Security Act [part A or part B of this subchapter] for which payment is made under such title [this subchapter], and include the following:

''(1) Inpatient and outpatient hospital services.

''(2) Inpatient and outpatient rehabilitation services.

''(3) Covered skilled nursing facility services.

''(4) Home health services.

''(5) Physical or occupational therapy or speech-language pathology services.

''(6) Items and services furnished to such individuals determined to have end stage renal disease.

''(7) Partial hospitalization services and other mental health services.

''(8) Any other service for which payment is made under such title as the Secretary determines to be appropriate.''

CONFORMING REFERENCES TO PREVIOUS PART C

Section 4002(f)(1) of Pub. L. 105–33 provided that: ''Any reference in law (in effect before the date of the enactment of this Act [Aug. 5, 1997]) to part C of title XVIII of the Social Security Act [part C of this subchapter] is deemed a reference to part D of such title [this part] (as in effect after such date).''

DEADLINE FOR PUBLICATION OF DETERMINATION ON COVERAGE OF SCREENING BARIUM ENEMA

Section 4104(a)(2) of Pub. L. 105–33 provided that: ''Not later than the earlier of the date that is January 1, 1998, or 90 days after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall publish notice in the Federal Register with respect to the determination under paragraph (1)(D) of section 1861(pp) of the Social Security Act (42 U.S.C. 1395x(pp)), as added by paragraph (1), on the coverage of a screening barium enema as a colorectal cancer screening test under such section.''

ESTABLISHMENT OF OUTCOME MEASURES FOR BENEFICIARIES WITH DIABETES

Section 4105(c) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with appropriate organizations, shall establish outcome measures, including glysolated hemoglobin (past 90-day average blood sugar levels), for purposes of evaluating the improvement of the health status of medicare beneficiaries with diabetes mellitus.

''(2) RECOMMENDATIONS FOR MODIFICATIONS TO SCREENING BENEFITS.—Taking into account information on the health status of medicare beneficiaries with diabetes mellitus as measured under the outcome measures established under paragraph (1), the Secretary shall from time to time submit recommendations to Congress regarding modifications to the coverage of services for such beneficiaries under the medicare program.''

VACCINES OUTREACH EXPANSION

Section 4107 of Pub. L. 105–33 provided that:

''(a) EXTENSION OF INFLUENZA AND PNEUMOCOCCAL VACCINATION CAMPAIGN.—In order to increase utilization of pneumococcal and influenza vaccines in medicare beneficiaries, the Influenza and Pneumococcal Vaccination Campaign carried out by the Health Care Financing Administration in conjunction with the Centers for Disease Control and Prevention and the National Coalition for Adult Immunization, is extended until the end of fiscal year 2002.

''(b) AUTHORIZATION OF APPROPRIATION.—There are hereby authorized to be appropriated for each of fiscal years 1998 through 2002, $8,000,000 for the Campaign described in subsection (a). Of the amount so authorized to be appropriated in each fiscal year, 60 percent of the amount so appropriated shall be payable from the Federal Hospital Insurance Trust Fund, and 40 percent shall be payable from the Federal Supplementary Medical Insurance Trust Fund.''

STUDY ON PREVENTIVE AND ENHANCED BENEFITS

Section 4108 of Pub. L. 105–33 directed the Secretary of Health and Human Services to request the National Academy of Sciences to analyze the expansion or modification of preventive or other benefits provided to medicare beneficiaries under this subchapter, and not later than 2 years after Aug. 5, 1997, to submit a report on the findings of the analysis to Congress.

UTILIZATION GUIDELINES

Section 4513(c) of Pub. L. 105–33 provided that: ''The Secretary of Health and Human Services shall develop and implement utilization guidelines relating to the coverage of chiropractic services under part B of title XVIII of the Social Security Act [part B of this subchapter] in cases in which a subluxation has not been demonstrated by X-ray to exist.''

AUTHORIZING PAYMENT FOR PARAMEDIC INTERCEPT SERVICE PROVIDERS IN RURAL COMMUNITIES

Pub. L. 105–33, title IV, § 4531(c), Aug. 5, 1997, 111 Stat. 452, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 412(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–377, provided that: ''In promulgating regulations to carry out section 1861(s)(7) of the Social Security Act (42 U.S.C. 1395x(s)(7)) with respect to the coverage of ambulance service, the Secretary of Health and Human Services may include coverage of advanced life support services (in this subsection referred to as 'ALS intercept services') provided by a paramedic intercept service provider in a rural area if the following conditions are met:

''(1) The ALS intercept services are provided under a contract with one or more volunteer ambulance services and are medically necessary based on the health condition of the individual being transported.

''(2) The volunteer ambulance service involved—

''(A) is certified as qualified to provide ambulance service for purposes of such section,

''(B) provides only basic life support services at the time of the intercept, and

''(C) is prohibited by State law from billing for any services.

''(3) The entity supplying the ALS intercept services—

''(A) is certified as qualified to provide such services under the medicare program under title XVIII of the Social Security Act [this subchapter], and

''(B) bills all recipients who receive ALS intercept services from the entity, regardless of whether or not such recipients are medicare beneficiaries.

For purposes of this subsection, an area shall be treated as a rural area if it is designated as a rural area by any law or regulation of the State or if it is located in a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)).''

[Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 412(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–377, provided that: ''The amendment made by subsection (a) [amending section 4531(c) of Pub. L. 105–33, set out above] takes effect on January 1, 2000, and applies to ALS intercept services furnished on or after such date.'']

NO EXCEPTIONS PERMITTED BASED ON AMENDMENT TO SUBSECTION (v)(1)(L)

Section 4601(b) of Pub. L. 105–33 provided that: ''The Secretary of Health and Human Services shall not con-

sider the amendment made by subsection (a) [amending this section] in making any exemptions and exceptions pursuant to section 1861(v)(1)(L)(ii) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)(ii)).''

STUDY ON DEFINITION OF HOMEBOUND

Section 4613 of Pub. L. 105–33 provided that:

''(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of the criteria that should be applied, and the method of applying such criteria, in the determination of whether an individual is homebound for purposes of qualifying for receipt of benefits for home health services under the medicare program. Such criteria shall include the extent and circumstances under which a person may be absent from the home but nonetheless qualify.

''(b) REPORT.—Not later than October 1, 1998, the Secretary shall submit a report to Congress on the study conducted under subsection (a). The report shall include specific recommendations on such criteria and methods.''

REVISIONS OF COVERAGE FOR IMMUNOSUPPRESSIVE DRUG THERAPY

Section 160(c) of Pub. L. 103–432 provided that: ''The Secretary of Health and Human Services may administer section 1861(s)(2)(J) of the Social Security Act (42 U.S.C. 1395x(s)(2)(J)) in a manner such that the months of coverage of drugs described in such section are provided consecutively, so long as the total number of months of coverage provided is the same as the number of months described in such section.''

FREEZE IN PER VISIT COST LIMITS FOR HOME HEALTH SERVICES

Section 13564(a)(1) of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services shall not provide for any change in the per visit cost limits for home health services under section 1861(v)(1)(L) of such Act [subsec. (v)(1)(L) of this section] for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, except as may be necessary to take into account the amendment made by subsection (b)(1) [amending this section]. The effect of the preceding sentence shall not be considered by the Secretary in making adjustments pursuant to section 1861(v)(1)(L)(ii) of such Act to the payment limits for such services during such cost reporting periods.''

STUDY AND REPORT ON EFFECTS OF COVERAGE OF OSTEOPOROSIS DRUGS

Section 4156(b) of Pub. L. 101–508 directed Secretary of Health and Human Services to conduct a study analyzing effects of coverage of osteoporosis drugs under part B of this subchapter on health of individuals enrolled under such part and utilization of inpatient hospital and extended care services by such individuals, and, by not later than Oct. 1, 1994, to submit a report to Congress on such study, which was to include recommendations regarding expansion of coverage under the medicare program of items and services for individuals with post-menopausal osteoporosis as the Secretary considered appropriate.

PRODUCTIVITY SCREENING GUIDELINES APPLICATION TO STAFF IN RURAL HEALTH CLINICS

Section 4161(b)(3) of Pub. L. 101–508 provided that: ''In employing any screening guideline in determining the productivity of physicians, physician assistants, nurse practitioners, and certified nurse-midwives in a rural health clinic, the Secretary of Health and Human Services shall provide that the guideline shall take into account the combined services of such staff (and not merely the service within each class of practitioner).''

DEVELOPMENT OF PROSPECTIVE PAYMENT SYSTEM FOR HOME HEALTH SERVICES

Section 4207(c), formerly 4027(c), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, §160(d)(4), (9), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 105–362, title VI, §601(b)(2), Nov. 10, 1998, 112 Stat. 3286, directed Secretary of Health and Human Services to develop a proposal to modify the current system under which payment is made for home health services under this subchapter or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates, with Secretary to submit to Congress by not later than Apr. 1, 1993, the research findings upon which the proposal was to be based, and directed Prospective Payment Assessment Commission to submit to Congress by not later than Mar. 1, 1994, an analysis of and comments on the proposal.

APPLICATION OF BUDGET-NEUTRAL BASIS

Section 4207(d)(2), formerly 4027(d)(2), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, §160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''In updating the wage index for establishing limits under section 1861(v)(1)(L)(iii) of the Social Security Act [subsec. (v)(1)(L)(iii) of this section], the Secretary shall ensure that aggregate payments to home health agencies under title XVIII of such Act [this subchapter] will be no greater or lesser than such payments would have been without regard to such update.''

TRANSITION PROVISIONS FOR DETERMINING REASONABLE COSTS FOR HOME HEALTH AGENCY SERVICES

Section 4207(d)(3), formerly 4027(d)(3), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, §160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that, notwithstanding subsec. (v)(1)(L)(iii) of this section, the Secretary of Health and Human Services was to, in determining the limits of reasonable costs under this subchapter with respect to services furnished by a home health agency, utilize a wage index equal to (1) for cost reporting periods beginning on or after July 1, 1991, and on or before June 30, 1992, a combined area wage index consisting of 67 percent of the area wage index applicable to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States, and 33 percent of the area wage index applicable to hospitals located in the geographic area in which the home health agency was located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States, and (2) for cost reporting periods beginning on or after July 1, 1992, and on or before June 30, 1993, a combined area wage index consisting of 33 percent of the area wage index applicable to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States, and 67 percent of the area wage index applicable to hospitals located in the geographic area in which the home health agency was located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States.

PERMITTING DENTIST TO SERVE AS HOSPITAL MEDICAL DIRECTOR

Section 6025 of Pub. L. 101–239 provided that: ''Notwithstanding the requirement that the responsibility for organization and conduct of the medical staff of an institution be assigned only to a doctor of medicine or osteopathy in order for the institution to participate as a hospital under the medicare program, an institution that has a doctor of dental surgery or of dental medicine serving as its medical director shall be considered to meet such requirement if the laws of the State in which the institution is located permit a doctor of dental surgery or of dental medicine to serve as the medical staff director of a hospital.''

RECOGNITION OF COSTS OF CERTAIN HOSPITAL-BASED NURSING SCHOOLS

Section 6205(a)(1)(A) of Pub. L. 101–239 provided that: ''The reasonable costs incurred by a hospital in training students of a hospital-based nursing school shall be

allowable as reasonable costs under title XVIII of the Social Security Act [this subchapter] and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated educational program (other than an approved graduate medical education program) if, before June 15, 1989, and thereafter, the hospital demonstrates that for each year, it incurs at least 50 percent of the costs of training nursing students at such school, the nursing school and the hospital share some common board members, and all instruction is provided at the hospital or, if in another building, a building on the immediate grounds of the hospital.''

[Section 6205(a)(2) of Pub. L. 101–239 provided that: ''Paragraph (1)(A) [set out above] shall apply with respect to cost reporting periods beginning on or after the date of the enactment of this Act [Dec. 19, 1989] and on or before the date on which the Secretary issues regulations pursuant to subsection (b)(2)(A) [set out as a note under section 1395ww of this title].'']

DISSEMINATION OF RURAL HEALTH CLINIC INFORMATION

Section 6213(e) of Pub. L. 101–239 directed Secretary of Health and Human Services, not later than 60 days after Dec. 19, 1989, in consultation with the Director of the Office of Rural Health Policy, to disseminate to health care facilities and to the chief executive officer, chief health officer, and chief human services officer of each State, applications and other necessary information to enable such a facility to apply for designation as a rural health clinic for the purposes of this subchapter and subchapter XIX of this chapter.

TREATMENT OF CERTAIN FACILITIES AS RURAL HEALTH CLINICS

Section 6213(f) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall not deny certification of a facility as a rural health clinic under section 1861(aa)(2) of the Social Security Act [subsec. (aa)(2) of this section] if the facility is located on an island and would otherwise be qualified to be certified as such a facility but for the requirement that the services of a physician assistant or nurse practitioner be provided in the facility.''

CONTINUED USE OF HOME HEALTH WAGE INDEX IN EFFECT PRIOR TO JULY 1, 1989, UNTIL AFTER JULY 1, 1991

Section 6222 of Pub. L. 101–239 provided that: ''Notwithstanding the requirement of section 1861(v)(1)(L)(iii) of the Social Security Act [subsec. (v)(1)(L)(iii) of this section], the Secretary of Health and Human Services shall, in determining the limits of reasonable costs under title XVIII of the Social Security Act [this subchapter] with respect to services furnished by home health agencies, continue to utilize the wage index that was in effect for cost reporting periods beginning before July 1, 1989, until cost reporting periods beginning on or after July 1, 1991.''

PAYMENT FOR MEDICAL ESCORT OR MEDICAL ATTENDANT ON COMMERCIAL AIRLINER ALLOWED

Section 8427 of Pub. L. 100–647 provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall provide that in cases where (as of the date of the enactment of this Act [Nov. 10, 1988]) transportation on a commercial airliner is covered under section 1861(s)(7) of the Social Security Act [subsec. (s)(7) of this section], the Secretary shall also provide for payment for medically necessary services of a medical escort or medical attendant.

''(b) EFFECTIVE PERIOD.—Subsection (a) shall apply to payment for services furnished during the 5-year period beginning on July 1, 1989.''

SKILLED NURSING FACILITY; ACCESS AND VISITATION RIGHTS

Section 411(*l*)(2)(E) of Pub. L. 100–360 provided that: ''Effective as of the date of the enactment of this Act [July 1, 1988] and until the effective date of section 1819(c) of such Act [see Effective Date note set out under section 1395i–3 of this title], section 1861(j) of the Social Security Act [subsec. (j) of this section] is deemed to include the requirement described in section 1819(c)(3)(A) of such Act [section 1395i–3(c)(3)(A) of this title] (as added by section 4201(a)(3) of OBRA).''

MORATORIUM ON PRIOR AUTHORIZATION FOR HOME HEALTH AND POST-HOSPITAL EXTENDED CARE SERVICES

Section 4039(e) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall not implement any voluntary or mandatory program of prior authorization for home health services, extended care services, or post-hospital extended care services under part A or B of title XVIII of the Social Security Act [part A or B of this subchapter] at any time prior to six months after the date on which the Congress receives the report required under section 9305(k)(4) of the Omnibus Budget Reconciliation Act of 1986 [section 9305(k)(4) of Pub. L. 99–509, set out below].''

DELAY IN PUBLISHING REGULATIONS WITH RESPECT TO DEEMING STATUS OF ENTITIES

Section 4039(f) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall not deem any entity to be a provider of services (as defined in section 1861(u) of the Social Security Act [subsec. (u) of this section]) for purposes of title XVIII of such Act [this subchapter]—

''(1) on any date prior to 6 months after the date on which the Secretary has published a proposed rule with respect to the deeming of the entity, and

''(2) until the Secretary publishes a final rule with respect to the deeming of the entity.''

DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT INSTRUMENT

Section 9305(h) of Pub. L. 99–509 directed Secretary of Health and Human Services to develop a uniform needs assessment instrument that could be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating individual's need for post-hospital extended care services, home health services, and long-term care services of health-related or supportive nature, and further provided for creation of advisory panel to assist Secretary and for a report to Congress not later than Jan. 1, 1989.

PRIOR AND CONCURRENT AUTHORIZATION DEMONSTRATION PROJECT

Section 9305(k) of Pub. L. 99–509 directed Secretary of Health and Human Services to conduct a demonstration program concerning prior and concurrent authorization for post-hospital extended care services and home health services furnished under part A or part B of this subchapter, which was to include at least four projects and was to be initiated by not later than Jan. 1, 1987, under which the Secretary was to monitor the acceptance of individuals entitled to benefits under this subchapter by providers to ensure that the placement of such individuals was not delayed until the results of prior and concurrent review were known, and further directed Secretary to evaluate the demonstration program and report to Congress on such evaluation no later than Feb. 1, 1989.

CONSIDERATIONS IN ESTABLISHING LIMITS ON PAYMENT FOR HOME HEALTH SERVICES

Section 9315(b) of Pub. L. 99–509 provided that: ''In establishing limitations under section 1861(v)(1)(L) of the Social Security Act [subsec. (v)(1)(L) of this section] on payment for home health services for cost reporting periods beginning on or after July 1, 1986, the Secretary of Health and Human Services shall—

''(1) base such limitations on the most recent data available, which data may be for cost reporting periods beginning no earlier than October 1, 1983; and

''(2) take into account the changes in costs of home health agencies for billing and verification procedures that result from the Secretary's changing the requirements for such procedures, to the extent the changes in costs are not reflected in such data.

Paragraph (2) shall apply to changes in requirements effected before, on, or after July 1, 1986.''

COMPTROLLER GENERAL STUDY AND REPORT ON COST LIMITS FOR HOME HEALTH SERVICES

Section 9315(c) of Pub. L. 99–509 directed Comptroller General to study and report to Congress, not later than Feb. 1, 1988, on appropriateness and impact on medicare beneficiaries of applying the per visit cost limits for home health services under subsec. (v)(1)(L) of this section on a discipline-specific basis, rather than on an aggregate basis, for all home health services furnished by an agency, and appropriateness of the percentage limits so established.

REDUCTION IN PAYMENT TO AVOID DUPLICATE PAYMENT FOR SERVICES OF PHYSICIAN ASSISTANTS

Section 9338(d) of Pub. L. 99–509 directed Secretary of Health and Human Services to reduce the amount of payments otherwise made to hospitals and skilled nursing facilities under this subchapter to eliminate estimated duplicate payments for historical or current costs attributable to services described in section 1395x(s)(2)(K) of this title, prior to repeal by Pub. L. 101–508, title IV, § 4002(f), Nov. 5, 1990, 104 Stat. 1388–36, effective as if included in the enactment of Pub. L. 99–509.

STUDY AND REPORT ON PAYMENTS FOR PHYSICIAN ASSISTANTS

Section 9338(e) of Pub. L. 99–509 directed Secretary to report to Congress, by Apr. 1, 1988, concerning adjustments to amount of payment made, under part B for services described in subsec. (s)(2)(K) of this section, to ensure that amount of such payments reflects approximate cost of furnishing the services, taking into account compensation costs and overhead and supervision costs attributable to physician assistants.

COST LIMITS FOR ROUTINE SERVICES FOR URBAN AND RURAL HOSPITAL-BASED SKILLED NURSING FACILITIES; COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1982, AND PRIOR TO JULY 1, 1984

Section 2319(d) of Pub. L. 98–369 provided that: ''Notwithstanding limits on the cost of skilled nursing facilities which may have been issued under section 1861(v) of the Social Security Act [subsec. (v) of this section] prior to the date of the enactment of this Act [July 18, 1984], in the case of cost reporting periods beginning on or after October 1, 1982, and prior to July 1, 1984, the cost limits for routine services for urban and rural hospital-based skilled nursing facilities shall be 112 percent of the mean of the respective routine costs for urban and rural hospital-based skilled nursing facilities.''

STUDY AND REPORT RELATING TO REQUIREMENTS THAT CORE SERVICES BE FURNISHED DIRECTLY BY HOSPICES

Section 2343(d) of Pub. L. 98–369 directed Secretary of Health and Human Services to conduct a study of necessity and appropriateness of requirements that certain ''core'' services be furnished directly by a hospice, as required under subsec. (dd)(2)(A)(ii)(I) of this section and report results of such study to Congress with the report required under section 122(i)(1) [122(j)(1)] of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), set out as a note under section 1395f of this title.

REPORT ON EFFECT OF 1982 AMENDMENT ON HOSPITAL-BASED SKILLED NURSING FACILITIES

Section 605(b) of Pub. L. 98–21 directed Secretary of Health and Human Services, prior to Dec. 31, 1983, to complete a study and report to Congress with respect to (1) effect which implementation of section 102 of the Tax Equity and Fiscal Responsibility Act of 1982, amending this section, would have on hospital-based skilled nursing facilities, given the differences (if any) in patient populations served by such facilities and by community-based skilled nursing facilities and (2) impact on skilled nursing facilities of hospital prospective payment systems, and recommendations concerning payment of skilled nursing facilities.

Section 2319(e) of Pub. L. 98–369 directed Secretary of Health and Human Services to submit to Congress, prior to Dec. 1, 1984, the report required under section 605(b) of the Social Security Amendments of 1983 (Pub. L. 87–21), set out above.

ELIMINATION OF PRIVATE ROOM SUBSIDY

Section 111 of Pub. L. 97–248 provided that:

''(a) The Secretary of Health and Human Services shall, pursuant to section 1861(v)(2) of the Social Security Act [subsec. (v)(2) of this section], not allow as a reasonable cost the estimated amount by which the costs incurred by a hospital or skilled nursing facility for nonmedically necessary private accommodations for medicare beneficiaries exceeds the costs which would have been incurred by such hospital or facility for semiprivate accommodations.

''(b) The Secretary of Health and Human Services shall first issue such final regulations (whether on an interim or other basis) as may be necessary to implement subsection (a) by October 1, 1982. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than January 31, 1983.''

REGULATIONS REGARDING ACCESS TO BOOKS AND RECORDS

Section 952(b) of Pub. L. 96–499, as added by Pub. L. 97–248, title I, § 127(2), Sept. 3, 1982, 96 Stat. 366, provided that: ''Unless the Secretary of Health and Human Services first publishes final regulations prescribing the criteria and procedures described in the last sentence of section 1861(v)(1)(I) of the Social Security Act [subsec. (v)(1)(I) of this section] by January 1, 1983, after providing a period of not less than 60 days for public comment on proposed regulations, the amendment made by subsection (a) [amending this section] shall only apply to books, documents, and records relating to services furnished (pursuant to contract or subcontract) on or after the date on which final regulations of the Secretary are first published.''

COMPLIANCE WITH THE LIFE SAFETY CODE OR STATE FIRE AND SAFETY CODE

Section 915(b) of Pub. L. 96–499 provided that: ''Any institution (or part of an institution) which complied with the requirements of section 1861(j)(13) of the Social Security Act [subsec. (j)(13) of this section] on the day before the date of the enactment of this Act [Dec. 5, 1980] shall, so long as such compliance is maintained (either by meeting the applicable provisions of the Life Safety Code (21st edition, 1967, or 23d edition, 1973), with or without waivers of specific provisions, or by meeting the applicable provisions of a fire and safety code imposed by State law as provided for in such section 1861(j)(13)), be considered (for purposes of titles XVIII or XIX of such Act [this subchapter or subchapter XIX of this chapter]) to be in compliance with the requirements of such section 1861(j)(13), as it is amended by subsection (a) of this section.''

Section 106(c) of Pub. L. 94–182 provided that: ''Any institution (or part of an institution) which complied with the requirements of section 1861(j)(13) of the Social Security Act [subsec. (j)(13) of this section] on the day preceding the first day referred to in subsection (b) [enacting provisions set out as a note under this sec-

tion] shall, so long as such compliance is maintained (either by meeting the applicable provisions of the Life Safety Code (21st edition, 1967), with or without waivers of specific provisions, or by meeting the applicable provisions of a fire and safety code imposed by State law as provided for in such section 1861(j)(13)), be considered (for purposes of titles XVIII and XIX of such Act) [subchapters XVIII and XIX of this chapter] to be in compliance with the requirements of such section 1861(j)(13), as it is amended by subsection (a) of this section.''

PRIVATE, NONPROFIT HEALTH CARE CLINICS QUALIFYING, AS OF JULY 1, 1977, AS RURAL HEALTH CLINICS

Section 1(e) of Pub. L. 95–210 provided that: ''Any private, nonprofit health care clinic that—

''(1) on July 1, 1977, was operating and located in an area which on that date (A) was not an urbanized area (as defined by the Bureau of the Census) and (B) had a supply of physicians insufficient to meet the needs of the area (as determined by the Secretary), and

''(2) meets the definition of a rural health clinic under section 1861(aa)(2) [subsec. (aa)(2) of this section] or section 1905(*l*) of the Social Security Act [section 1396d(*l*) of this title], except for clause (i) of section 1861(aa)(2) [subsec. (aa)(2) of this section],

shall be considered, for the purposes of title XVIII or XIX, respectively, of the Social Security Act [this subchapter or subchapter XIX of this chapter], as satisfying the definition of a rural health clinic under such section.''

PROMULGATION OF REGULATIONS DEFINING COSTS CHARGEABLE TO PERSONAL FUNDS OF PATIENTS IN SKILLED NURSING FACILITIES; DATE OF ISSUANCE

Section 21(b) of Pub. L. 95–142 provided that: ''The Secretary of Health, Education, and Welfare [now Health and Human Services] shall, by regulation, define those costs which may be charged to the personal funds of patients in skilled nursing facilities who are individuals receiving benefits under the provisions of title XVIII [this subchapter], or under a State plan approved under the provisions of title XIX [subchapter XIX of this chapter], of the Social Security Act, and those costs which are to be included in the reasonable cost or reasonable charge for extended care services as determined under the provisions of title XVIII, or for skilled nursing and intermediate care facility services as determined under the provisions of title XIX, of such Act.''

[Section 21(c)(2) of Pub. L. 95–142 provided that: ''The Secretary of Health, Education, and Welfare shall issue the regulations required under subsection (b) [set out above] within ninety days after the date of enactment of this Act [Oct. 25, 1977].'']

HOME HEALTH SERVICES; GRANTS FOR ESTABLISHMENT, OPERATION, STAFFING, ETC., OF PUBLIC AND NONPROFIT PRIVATE AGENCIES AND ENTITIES; PROCEDURES; PAYMENTS; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 94–63, title VI, § 602, July 29, 1975, 89 Stat. 346, as amended by Pub. L. 94–460, title III, § 302, Oct. 8, 1976, 90 Stat. 1960; Pub. L. 95–83, title III, § 310, Aug. 1, 1977, 91 Stat. 397, which provided for a program of home health services and of training of professional and paraprofessional personnel, was repealed by Pub. L. 95–626, title II, § 207(b), Nov. 10, 1978, 92 Stat. 3586, effective Oct. 1, 1978.

PAYMENT FOR SERVICE OF PHYSICIANS RENDERED IN A TEACHING HOSPITAL FOR ACCOUNTING PERIODS BEGINNING AFTER JUNE 30, 1975, AND PRIOR TO OCTOBER 1, 1978; STUDIES, REPORTS, ETC.; EFFECTIVE DATES

Pub. L. 93–233, § 15(a)(1), (b)–(d), Dec. 31, 1973, 87 Stat. 965, as amended by Pub. L. 93–368, § 7, Aug. 7, 1974, 88 Stat. 422; Pub. L. 94–368, § 1, July 16, 1976, 90 Stat. 997; Pub. L. 95–292, § 7, June 13, 1978, 92 Stat. 316, provided that for the cost accounting periods beginning after June 30, 1975, and prior to October 1, 1978, subsec. (b) of this section will be administered as if paragraph (7) of subsec. (b) read as follows: ''(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this title [this subchapter] for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this title [this subchapter]'', provided for studies with respect to methods of reimbursement for physicians' services under subchapters XVIII and XIX of this chapter in hospitals which have a teaching program and a determination as to how and to what extent such funds are utilized, and provided that a final report be submitted to the Secretary of Health, Education, and Welfare, the Committee on Finance of the Senate, and the Committee on Ways and Means of the House of Representatives not later than Mar. 1, 1976.

PHYSICAL THERAPY SERVICES REQUIREMENTS; EFFECTIVE DATE POSTPONEMENT

Section 17(a) of Pub. L. 93–233 provided that: ''In the administration of title XVIII of the Social Security Act [this subchapter], the amount payable thereunder with respect to physical therapy and other services referred to in section 1861(v)(5)(A) of such Act [subsec. (v)(5)(A) of this section] (as added by section 151(c) [251(c)] of the Social Security Amendments of 1972) shall be determined (for the period with respect to which the amendment made by such section 151(c) [251(c)] would, except for the provisions of this section, be applicable) in like manner as if the 'December 31, 1972', which appears in such subsection (d)(3) of such section 151 [251(d)(3), set out as Effective Date of 1972 Amendment note above], read 'the month in which there are promulgated, by the Secretary of Health, Education, and Welfare [now Health and Human Services], final regulations implementing the provisions of section 1861(v)(5) of the Social Security Act [subsec. (v)(5) of this section]'.''

PAYMENT FOR DURABLE MEDICAL EQUIPMENT

Section 245(a)–(c) of Pub. L. 92–603 provided that:

''(a) The Secretary is authorized to conduct reimbursement experiments designed to eliminate unreasonable expenses resulting from prolonged rentals of durable medical equipment described in section 1861(s)(6) of the Social Security Act [subsec. (s)(6) of this section].

''(b) Such experiment may be conducted in one or more geographic areas, as the Secretary deems appropriate, and may, pursuant to agreements with suppliers, provide for reimbursement for such equipment on a lump-sum basis whenever it is determined (in accordance with guidelines established by the Secretary) that a lump-sum payment would be more economical than the anticipated period of rental payments. Such experiments may also provide for incentives to beneficiaries (including waiver of the 20 percent coinsurance amount applicable under section 1833 of the Social Security Act [section 1395*l* of this title]) to purchase used equipment whenever the purchase price is at least 25 percent less than the reasonable charge for new equipment.

''(c) The Secretary is authorized, at such time as he deems appropriate, to implement on a nationwide basis any such reimbursement procedures which he finds to be workable, desirable and economical and which are consistent with the purposes of this section.''

§ 1395y. Exclusions from coverage and medicare as secondary payer

(a) Items or services specifically excluded

Notwithstanding any other provision of this subchapter, no payment may be made under part

A or part B of this subchapter for any expenses incurred for items or services—

(1)(A) which, except for items and services described in a succeeding subparagraph, are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member,

(B) in the case of items and services described in section 1395x(s)(10) of this title, which are not reasonable and necessary for the prevention of illness,

(C) in the case of hospice care, which are not reasonable and necessary for the palliation or management of terminal illness,

(D) in the case of clinical care items and services provided with the concurrence of the Secretary and with respect to research and experimentation conducted by, or under contract with, the Medicare Payment Advisory Commission or the Secretary, which are not reasonable and necessary to carry out the purposes of section 1395ww(e)(6) of this title,[1]

(E) in the case of research conducted pursuant to section 1320b–12 of this title, which is not reasonable and necessary to carry out the purposes of that section,

(F) in the case of screening mammography, which is performed more frequently than is covered under section 1395m(c)(2) of this title or which is not conducted by a facility described in section 1395m(c)(1)(B) of this title, in the case of screening pap smear and screening pelvic exam, which is performed more frequently than is provided under section 1395x(nn) of this title, and, in the case of screening for glaucoma, which is performed more frequently than is provided under section 1395x(uu) of this title,

(G) in the case of prostate cancer screening tests (as defined in section 1395x(*oo*) of this title), which are performed more frequently than is covered under such section,

(H) in the case of colorectal cancer screening tests, which are performed more frequently than is covered under section 1395m(d) of this title,

(I) the frequency and duration of home health services which are in excess of normative guidelines that the Secretary shall establish by regulation,

(J) in the case of a drug or biological specified in section 1395w–3a(c)(6)(C) of this title for which payment is made under part B of this subchapter that is furnished in a competitive area under section 1395w–3b of this title, that is not furnished by an entity under a contract under such section,

(K) in the case of an initial preventive physical examination, which is performed not later than 6 months after the date the individual's first coverage period begins under part B of this subchapter,

(L) in the case of cardiovascular screening blood tests (as defined in section 1395x(xx)(1) of this title), which are performed more frequently than is covered under section 1395x(xx)(2) of this title, and

(M) in the case of a diabetes screening test (as defined in section 1395x(yy)(1) of this title), which is performed more frequently than is covered under section 1395x(yy)(3) of this title;

(2) for which the individual furnished such items or services has no legal obligation to pay, and which no other person (by reason of such individual's membership in a prepayment plan or otherwise) has a legal obligation to provide or pay for, except in the case of Federally qualified health center services;

(3) which are paid for directly or indirectly by a governmental entity (other than under this chapter and other than under a health benefits or insurance plan established for employees of such an entity), except in the case of rural health clinic services, as defined in section 1395x(aa)(1) of this title, in the case of Federally qualified health center services, as defined in section 1395x(aa)(3) of this title, in the case of services for which payment may be made under section 1395qq(e) of this title, and in such other cases as the Secretary may specify;

(4) which are not provided within the United States (except for inpatient hospital services furnished outside the United States under the conditions described in section 1395f(f) of this title and, subject to such conditions, limitations, and requirements as are provided under or pursuant to this subchapter, physicians' services and ambulance services furnished an individual in conjunction with such inpatient hospital services but only for the period during which such inpatient hospital services were furnished);

(5) which are required as a result of war, or of an act of war, occurring after the effective date of such individual's current coverage under such part;

(6) which constitute personal comfort items (except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C));

(7) where such expenses are for routine physical checkups, eyeglasses (other than eyewear described in section 1395x(s)(8) of this title) or eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, procedures performed (during the course of any eye examination) to determine the refractive state of the eyes, hearing aids or examinations therefor, or immunizations (except as otherwise allowed under section 1395x(s)(10) of this title and subparagraph (B), (F), (G), (H), or (K) of paragraph (1));

(8) where such expenses are for orthopedic shoes or other supportive devices for the feet, other than shoes furnished pursuant to section 1395x(s)(12) of this title;

(9) where such expenses are for custodial care (except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C));

(10) where such expenses are for cosmetic surgery or are incurred in connection therewith, except as required for the prompt repair of accidental injury or for improvement of the functioning of a malformed body member;

(11) where such expenses constitute charges imposed by immediate relatives of such individual or members of his household;

(12) where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures

[1] See References in Text note below.

directly supporting teeth, except that payment may be made under part A of this subchapter in the case of inpatient hospital services in connection with the provision of such dental services if the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;

(13) where such expenses are for—

(A) the treatment of flat foot conditions and the prescription of supportive devices therefor,

(B) the treatment of subluxations of the foot, or

(C) routine foot care (including the cutting or removal of corns or calluses, the trimming of nails, and other routine hygienic care);

(14) which are other than physicians' services (as defined in regulations promulgated specifically for purposes of this paragraph), services described by section 1395x(s)(2)(K) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist, and which are furnished to an individual who is a patient of a hospital or critical access hospital by an entity other than the hospital or critical access hospital, unless the services are furnished under arrangements (as defined in section 1395x(w)(1) of this title) with the entity made by the hospital or critical access hospital;

(15)(A) which are for services of an assistant at surgery in a cataract operation (including subsequent insertion of an intraocular lens) unless, before the surgery is performed, the appropriate utilization and quality control peer review organization (under part B of subchapter XI of this chapter) or a carrier under section 1395u of this title has approved of the use of such an assistant in the surgical procedure based on the existence of a complicating medical condition, or

(B) which are for services of an assistant at surgery to which section 1395w–4(i)(2)(B) of this title applies;

(16) in the case in which funds may not be used for such items and services under the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.];

(17) where the expenses are for an item or service furnished in a competitive acquisition area (as established by the Secretary under section 1395w–3(a) of this title) by an entity other than an entity with which the Secretary has entered into a contract under section 1395w–3(b) of this title for the furnishing of such an item or service in that area, unless the Secretary finds that the expenses were incurred in a case of urgent need, or in other circumstances specified by the Secretary;

(18) which are covered skilled nursing facility services described in section 1395yy(e)(2)(A)(i) of this title and which are furnished to an individual who is a resident of a skilled nursing facility during a period in which the resident is provided covered post-hospital extended care services (or, for services described in section 1395x(s)(2)(D) of this title, which are furnished to such an individual without regard to such period), by an entity other than the skilled nursing facility, unless the services are furnished under arrangements (as defined in section 1395x(w)(1) of this title) with the entity made by the skilled nursing facility;

(19) which are for items or services which are furnished pursuant to a private contract described in section 1395a(b) of this title;

(20) in the case of outpatient occupational therapy services or outpatient physical therapy services furnished as an incident to a physician's professional services (as described in section 1395x(s)(2)(A) of this title), that do not meet the standards and conditions (other than any licensing requirement specified by the Secretary) under the second sentence of section 1395x(p) of this title (or under such sentence through the operation of section 1395x(g) of this title) as such standards and conditions would apply to such therapy services if furnished by a therapist;

(21) where such expenses are for home health services (including medical supplies described in section 1395x(m)(5) of this title, but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who is under a plan of care of the home health agency if the claim for payment for such services is not submitted by the agency; or

(22) subject to subsection (h) of this section, for which a claim is submitted other than in an electronic form specified by the Secretary.

Paragraph (7) shall not apply to Federally qualified health center services described in section 1395x(aa)(3)(B) of this title. In making a national coverage determination (as defined in paragraph (1)(B) of section 1395ff(f) of this title) the Secretary shall ensure consistent with subsection (*l*) of this section that the public is afforded notice and opportunity to comment prior to implementation by the Secretary of the determination; meetings of advisory committees with respect to the determination are made on the record; in making the determination, the Secretary has considered applicable information (including clinical experience and medical, technical, and scientific evidence) with respect to the subject matter of the determination; and in the determination, provide a clear statement of the basis for the determination (including responses to comments received from the public), the assumptions underlying that basis, and make available to the public the data (other than proprietary data) considered in making the determination.

(b) Medicare as secondary payer

(1) Requirements of group health plans

(A) Working aged under group health plans

(i) In general

A group health plan—

(I) may not take into account that an individual (or the individual's spouse) who is covered under the plan by virtue of the individual's current employment status with an employer is entitled to benefits under this subchapter under section 426(a) of this title, and

(II) shall provide that any individual age 65 or older (and the spouse age 65 or older of any individual) who has current employment status with an employer shall be entitled to the same benefits under the plan under the same conditions as any such individual (or spouse) under age 65.

(ii) Exclusion of group health plan of a small employer

Clause (i) shall not apply to a group health plan unless the plan is a plan of, or contributed to by, an employer that has 20 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year or the preceding calendar year.

(iii) Exception for small employers in multiemployer or multiple employer group health plans

Clause (i) also shall not apply with respect to individuals enrolled in a multiemployer or multiple employer group health plan if the coverage of the individuals under the plan is by virtue of current employment status with an employer that does not have 20 or more individuals in current employment status for each working day in each of 20 or more calendar weeks in the current calendar year and the preceding calendar year; except that the exception provided in this clause shall only apply if the plan elects treatment under this clause.

(iv) Exception for individuals with end stage renal disease

Subparagraph (C) shall apply instead of clause (i) to an item or service furnished in a month to an individual if for the month the individual is, or (without regard to entitlement under section 426 of this title) would upon application be, entitled to benefits under section 426–1 of this title.

(v) "Group health plan" defined

In this subparagraph, and subparagraph (C), the term ''group health plan'' has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986, without regard to section 5000(d) of such Code.

(B) Disabled individuals in large group health plans

(i) In general

A large group health plan (as defined in clause (iii)) may not take into account that an individual (or a member of the individual's family) who is covered under the plan by virtue of the individual's current employment status with an employer is entitled to benefits under this subchapter under section 426(b) of this title.

(ii) Exception for individuals with end stage renal disease

Subparagraph (C) shall apply instead of clause (i) to an item or service furnished in a month to an individual if for the month the individual is, or (without regard to entitlement under section 426 of this title) would upon application be, entitled to benefits under section 426–1 of this title.

(iii) "Large group health plan" defined

In this subparagraph, the term ''large group health plan'' has the meaning given such term in section 5000(b)(2) of the Internal Revenue Code of 1986, without regard to section 5000(d) of such Code.

(C) Individuals with end stage renal disease

A group health plan (as defined in subparagraph (A)(v))—

(i) may not take into account that an individual is entitled to or eligible for benefits under this subchapter under section 426–1 of this title during the 12-month period which begins with the first month in which the individual becomes entitled to benefits under part A of this subchapter under the provisions of section 426–1 of this title, or, if earlier, the first month in which the individual would have been entitled to benefits under such part under the provisions of section 426–1 of this title if the individual had filed an application for such benefits; and

(ii) may not differentiate in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner;

except that clause (ii) shall not prohibit a plan from paying benefits secondary to this subchapter when an individual is entitled to or eligible for benefits under this subchapter under section 426–1 of this title after the end of the 12-month period described in clause (i). Effective for items and services furnished on or after February 1, 1991, and before August 5, 1997,[2] (with respect to periods beginning on or after February 1, 1990), this subparagraph shall be applied by substituting ''18-month'' for ''12-month'' each place it appears. Effective for items and services furnished on or after August 5, 1997,[2] (with respect to periods beginning on or after the date that is 18 months prior to August 5, 1997), clauses (i) and (ii) shall be applied by substituting ''30-month'' for ''12-month'' each place it appears.

(D) Treatment of certain members of religious orders

In this subsection, an individual shall not be considered to be employed, or an employee, with respect to the performance of services as a member of a religious order which are considered employment only by virtue of an election made by the religious order under section 3121(r) of the Internal Revenue Code of 1986.

(E) General provisions

For purposes of this subsection:

(i) Aggregation rules

(I) All employers treated as a single employer under subsection (a) or (b) of

[2] So in original. The comma probably should not appear.

section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer.

(II) All employees of the members of an affiliated service group (as defined in section 414(m) of such Code) shall be treated as employed by a single employer.

(III) Leased employees (as defined in section 414(n)(2) of such Code) shall be treated as employees of the person for whom they perform services to the extent they are so treated under section 414(n) of such Code.

In applying sections of the Internal Revenue Code of 1986 under this clause, the Secretary shall rely upon regulations and decisions of the Secretary of the Treasury respecting such sections.

(ii) "Current employment status" defined

An individual has ''current employment status'' with an employer if the individual is an employee, is the employer, or is associated with the employer in a business relationship.

(iii) Treatment of self-employed persons as employers

The term ''employer'' includes a self-employed person.

(F) Limitation on beneficiary liability

An individual who is entitled to benefits under this subchapter and is furnished an item or service for which such benefits are incorrectly paid is not liable for repayment of such benefits under this paragraph unless payment of such benefits was made to the individual.

(2) Medicare secondary payer

(A) In general

Payment under this subchapter may not be made, except as provided in subparagraph (B), with respect to any item or service to the extent that—

(i) payment has been made, or can reasonably be expected to be made, with respect to the item or service as required under paragraph (1), or

(ii) payment has been made, or can reasonably be expected to be made under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance.

In this subsection, the term ''primary plan'' means a group health plan or large group health plan, to the extent that clause (i) applies, and a workmen's compensation law or plan, an automobile or liability insurance policy or plan (including a self-insured plan) or no fault insurance, to the extent that clause (ii) applies. An entity that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part.

(B) Conditional payment

(i) Authority to make conditional payment

The Secretary may make payment under this subchapter with respect to an item or service if a primary plan described in subparagraph (A)(ii) has not made or cannot reasonably be expected to make payment with respect to such item or service promptly (as determined in accordance with regulations). Any such payment by the Secretary shall be conditioned on reimbursement to the appropriate Trust Fund in accordance with the succeeding provisions of this subsection.

(ii) Repayment required

A primary plan, and an entity that receives payment from a primary plan, shall reimburse the appropriate Trust Fund for any payment made by the Secretary under this subchapter with respect to an item or service if it is demonstrated that such primary plan has or had a responsibility to make payment with respect to such item or service. A primary plan's responsibility for such payment may be demonstrated by a judgment, a payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan's insured, or by other means. If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date notice of, or information related to, a primary plan's responsibility for such payment or other information is received, the Secretary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).

(iii) Action by United States

In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any or all entities that are or were required or responsible (directly, as an insurer or self-insurer, as a third-party administrator, as an employer that sponsors or contributes to a group health plan, or large group health plan, or otherwise) to make payment with respect to the same item or service (or any portion thereof) under a primary plan. The United States may, in accordance with paragraph (3)(A) collect double damages against any such entity. In addition, the United States may recover under this clause from any entity that has received payment from a primary plan or from the proceeds of a primary plan's payment to any entity. The United States may not recover from a third-party administrator under this clause in cases where the third-party administrator would

not be able to recover the amount at issue from the employer or group health plan and is not employed by or under contract with the employer or group health plan at the time the action for recovery is initiated by the United States or for whom it provides administrative services due to the insolvency or bankruptcy of the employer or plan.

(iv) Subrogation rights

The United States shall be subrogated (to the extent of payment made under this subchapter for such an item or service) to any right under this subsection of an individual or any other entity to payment with respect to such item or service under a primary plan.

(v) Waiver of rights

The Secretary may waive (in whole or in part) the provisions of this subparagraph in the case of an individual claim if the Secretary determines that the waiver is in the best interests of the program established under this subchapter.

(vi) Claims-filing period

Notwithstanding any other time limits that may exist for filing a claim under an employer group health plan, the United States may seek to recover conditional payments in accordance with this subparagraph where the request for payment is submitted to the entity required or responsible under this subsection to pay with respect to the item or service (or any portion thereof) under a primary plan within the 3-year period beginning on the date on which the item or service was furnished.

(C) Treatment of questionnaires

The Secretary may not fail to make payment under subparagraph (A) solely on the ground that an individual failed to complete a questionnaire concerning the existence of a primary plan.

(3) Enforcement

(A) Private cause of action

There is established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement) in accordance with paragraphs (1) and (2)(A).

(B) Reference to excise tax with respect to nonconforming group health plans

For provision imposing an excise tax with respect to nonconforming group health plans, see section 5000 of the Internal Revenue Code of 1986.

(C) Prohibition of financial incentives not to enroll in a group health plan or a large group health plan

It is unlawful for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits under this subchapter not to enroll (or to terminate enrollment) under a group health plan or a large group health plan which would (in the case of such enrollment) be a primary plan (as defined in paragraph (2)(A)). Any entity that violates the previous sentence is subject to a civil money penalty of not to exceed $5,000 for each such violation. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(4) Coordination of benefits

Where payment for an item or service by a primary plan is less than the amount of the charge for such item or service and is not payment in full, payment may be made under this subchapter (without regard to deductibles and coinsurance under this subchapter) for the remainder of such charge, but—

(A) payment under this subchapter may not exceed an amount which would be payable under this subchapter for such item or service if paragraph (2)(A) did not apply; and

(B) payment under this subchapter, when combined with the amount payable under the primary plan, may not exceed—

(i) in the case of an item or service payment for which is determined under this subchapter on the basis of reasonable cost (or other cost-related basis) or under section 1395ww of this title, the amount which would be payable under this subchapter on such basis, and

(ii) in the case of an item or service for which payment is authorized under this subchapter on another basis—

(I) the amount which would be payable under the primary plan (without regard to deductibles and coinsurance under such plan), or

(II) the reasonable charge or other amount which would be payable under this subchapter (without regard to deductibles and coinsurance under this subchapter),

whichever is greater.

(5) Identification of secondary payer situations

(A) Requesting matching information

(i) Commissioner of Social Security

The Commissioner of Social Security shall, not less often than annually, transmit to the Secretary of the Treasury a list of the names and TINs of medicare beneficiaries (as defined in section 6103(*l*)(12) of the Internal Revenue Code of 1986) and request that the Secretary disclose to the Commissioner the information described in subparagraph (A) of such section.

(ii) Administrator

The Administrator of the Centers for Medicare & Medicaid Services shall request, not less often than annually, the Commissioner of the Social Security Administration to disclose to the Administrator the information described in subparagraph (B) of section 6103(*l*)(12) of the Internal Revenue Code of 1986.

(B) Disclosure to fiscal intermediaries and carriers

In addition to any other information provided under this subchapter to fiscal intermediaries and carriers, the Administrator shall disclose to such intermediaries and carriers (or to such a single intermediary or carrier as the Secretary may designate) the information received under subparagraph (A) for purposes of carrying out this subsection.

(C) Contacting employers

(i) In general

With respect to each individual (in this subparagraph referred to as an ''employee'') who was furnished a written statement under section 6051 of the Internal Revenue Code of 1986 by a qualified employer (as defined in section 6103(*l*)(12)(E)(iii) of such Code), as disclosed under subparagraph (B), the appropriate fiscal intermediary or carrier shall contact the employer in order to determine during what period the employee or employee's spouse may be (or have been) covered under a group health plan of the employer and the nature of the coverage that is or was provided under the plan (including the name, address, and identifying number of the plan).

(ii) Employer response

Within 30 days of the date of receipt of the inquiry, the employer shall notify the intermediary or carrier making the inquiry as to the determinations described in clause (i). An employer (other than a Federal or other governmental entity) who willfully or repeatedly fails to provide timely and accurate notice in accordance with the previous sentence shall be subject to a civil money penalty of not to exceed $1,000 for each individual with respect to which such an inquiry is made. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(D) Obtaining information from beneficiaries

Before an individual applies for benefits under part A of this subchapter or enrolls under part B of this subchapter, the Administrator shall mail the individual a questionnaire to obtain information on whether the individual is covered under a primary plan and the nature of the coverage provided under the plan, including the name, address, and identifying number of the plan.

(6) Screening requirements for providers and suppliers

(A) In general

Notwithstanding any other provision of this subchapter, no payment may be made for any item or service furnished under part B of this subchapter unless the entity furnishing such item or service completes (to the best of its knowledge and on the basis of information obtained from the individual to whom the item or service is furnished) the portion of the claim form relating to the availability of other health benefit plans.

(B) Penalties

An entity that knowingly, willfully, and repeatedly fails to complete a claim form in accordance with subparagraph (A) or provides inaccurate information relating to the availability of other health benefit plans on a claim form under such subparagraph shall be subject to a civil money penalty of not to exceed $2,000 for each such incident. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(c) Drug products

No payment may be made under part B of this subchapter for any expenses incurred for—

(1) a drug product—

(A) which is described in section 107(c)(3) of the Drug Amendments of 1962,

(B) which may be dispensed only upon prescription,

(C) for which the Secretary has issued a notice of an opportunity for a hearing under subsection (e) of section 355 of title 21 on a proposed order of the Secretary to withdraw approval of an application for such drug product under such section because the Secretary has determined that the drug is less than effective for all conditions of use prescribed, recommended, or suggested in its labeling, and

(D) for which the Secretary has not determined there is a compelling justification for its medical need; and

(2) any other drug product—

(A) which is identical, related, or similar (as determined in accordance with section 310.6 of title 21 of the Code of Federal Regulations) to a drug product described in paragraph (1), and

(B) for which the Secretary has not determined there is a compelling justification for its medical need,

until such time as the Secretary withdraws such proposed order.

(d) Items or services provided for emergency medical conditions

For purposes of subsection (a)(1)(A) of this section, in the case of any item or service that is required to be provided pursuant to section 1395dd of this title to an individual who is entitled to benefits under this subchapter, determinations as to whether the item or service is reasonable and necessary shall be made on the basis of the information available to the treating physician or practitioner (including the patient's presenting symptoms or complaint) at the time the item or service was ordered or furnished by the physician or practitioner (and not on the patient's principal diagnosis). When making such determinations with respect to such an item or service, the Secretary shall not consider

the frequency with which the item or service was provided to the patient before or after the time of the admission or visit.

(e) Item or service by excluded individual or entity or at direction of excluded physician; limitation of liability of beneficiaries with respect to services furnished by excluded individuals and entities

(1) No payment may be made under this subchapter with respect to any item or service (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) furnished—

(A) by an individual or entity during the period when such individual or entity is excluded pursuant to section 1320a–7, 1320a–7a, 1320c–5 or 1395u(j)(2) of this title from participation in the program under this subchapter; or

(B) at the medical direction or on the prescription of a physician during the period when he is excluded pursuant to section 1320a–7, 1320a–7a, 1320c–5 or 1395u(j)(2) of this title from participation in the program under this subchapter and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).

(2) Where an individual eligible for benefits under this subchapter submits a claim for payment for items or services furnished by an individual or entity excluded from participation in the programs under this subchapter, pursuant to section 1320a–7, 1320a–7a, 1320c–5, 1320c–9 (as in effect on September 2, 1982), 1395u(j)(2), 1395y(d) (as in effect on August 18, 1987), or 1395cc of this title, and such beneficiary did not know or have reason to know that such individual or entity was so excluded, then, to the extent permitted by this subchapter, and notwithstanding such exclusion, payment shall be made for such items or services. In each such case the Secretary shall notify the beneficiary of the exclusion of the individual or entity furnishing the items or services. Payment shall not be made for items or services furnished by an excluded individual or entity to a beneficiary after a reasonable time (as determined by the Secretary in regulations) after the Secretary has notified the beneficiary of the exclusion of that individual or entity.

(f) Utilization guidelines for provision of home health services

The Secretary shall establish utilization guidelines for the determination of whether or not payment may be made, consistent with paragraph (1)(A) of subsection (a) of this section, under part A or part B of this subchapter for expenses incurred with respect to the provision of home health services, and shall provide for the implementation of such guidelines through a process of selective postpayment coverage review by intermediaries or otherwise.

(g) Contracts with utilization and quality control peer review organizations

The Secretary shall, in making the determinations under paragraphs (1) and (9) of subsection (a) of this section, and for the purposes of promoting the effective, efficient, and economical delivery of health care services, and of promoting the quality of services of the type for which payment may be made under this subchapter, enter into contracts with utilization and quality control peer review organizations pursuant to part B of subchapter XI of this chapter.

(h) Waiver of electronic form requirement

(1) The Secretary—

(A) shall waive the application of subsection (a)(22) of this section in cases in which—

(i) there is no method available for the submission of claims in an electronic form; or

(ii) the entity submitting the claim is a small provider of services or supplier; and

(B) may waive the application of such subsection in such unusual cases as the Secretary finds appropriate.

(2) For purposes of this subsection, the term ''small provider of services or supplier'' means—

(A) a provider of services with fewer than 25 full-time equivalent employees; or

(B) a physician, practitioner, facility, or supplier (other than provider of services) with fewer than 10 full-time equivalent employees.

(i) Awards and contracts for original research and experimentation of new and existing medical procedures; conditions

In order to supplement the activities of the Medicare Payment Advisory Commission under section 1395ww(e) of this title in assessing the safety, efficacy, and cost-effectiveness of new and existing medical procedures, the Secretary may carry out, or award grants or contracts for, original research and experimentation of the type described in clause (ii) of section 1395ww(e)(6)(E) of this title with respect to such a procedure if the Secretary finds that—

(1) such procedure is not of sufficient commercial value to justify research and experimentation by a commercial organization;

(2) research and experimentation with respect to such procedure is not of a type that may appropriately be carried out by an institute, division, or bureau of the National Institutes of Health; and

(3) such procedure has the potential to be more cost-effective in the treatment of a condition than procedures currently in use with respect to such condition.

(j) Nonvoting members and experts

(1) Any advisory committee appointed to advise the Secretary on matters relating to the interpretation, application, or implementation of subsection (a)(1) of this section shall assure the full participation of a nonvoting member in the deliberations of the advisory committee, and shall provide such nonvoting member access to all information and data made available to voting members of the advisory committee, other than information that—

(A) is exempt from disclosure pursuant to subsection (a) of section 552 of title 5 by reason of subsection (b)(4) of such section (relating to trade secrets); or

(B) the Secretary determines would present a conflict of interest relating to such nonvoting member.

(2) If an advisory committee described in paragraph (1) organizes into panels of experts according to types of items or services considered by the advisory committee, any such panel of experts may report any recommendation with respect to such items or services directly to the Secretary without the prior approval of the advisory committee or an executive committee thereof.

(k) Dental benefits under group health plans

(1) Subject to paragraph (2), a group health plan (as defined in subsection (a)(1)(A)(v)[3] of this section) providing supplemental or secondary coverage to individuals also entitled to services under this subchapter shall not require a medicare claims determination under this subchapter for dental benefits specifically excluded under subsection (a)(12) of this section as a condition of making a claims determination for such benefits under the group health plan.

(2) A group health plan may require a claims determination under this subchapter in cases involving or appearing to involve inpatient dental hospital services or dental services expressly covered under this subchapter pursuant to actions taken by the Secretary.

***(l)* National and local coverage determination process**

(1) Factors and evidence used in making national coverage determinations

The Secretary shall make available to the public the factors considered in making national coverage determinations of whether an item or service is reasonable and necessary. The Secretary shall develop guidance documents to carry out this paragraph in a manner similar to the development of guidance documents under section 371(h) of title 21.

(2) Timeframe for decisions on requests for national coverage determinations

In the case of a request for a national coverage determination that—

(A) does not require a technology assessment from an outside entity or deliberation from the Medicare Coverage Advisory Committee, the decision on the request shall be made not later than 6 months after the date of the request; or

(B) requires such an assessment or deliberation and in which a clinical trial is not requested, the decision on the request shall be made not later than 9 months after the date of the request.

(3) Process for public comment in national coverage determinations

(A) Period for proposed decision

Not later than the end of the 6-month period (or 9-month period for requests described in paragraph (2)(B)) that begins on the date a request for a national coverage determination is made, the Secretary shall make a draft of proposed decision on the request available to the public through the Internet website of the Centers for Medicare & Medicaid Services or other appropriate means.

(B) 30-day period for public comment

Beginning on the date the Secretary makes a draft of the proposed decision available under subparagraph (A), the Secretary shall provide a 30-day period for public comment on such draft.

(C) 60-day period for final decision

Not later than 60 days after the conclusion of the 30-day period referred to under subparagraph (B), the Secretary shall—

(i) make a final decision on the request;

(ii) include in such final decision summaries of the public comments received and responses to such comments;

(iii) make available to the public the clinical evidence and other data used in making such a decision when the decision differs from the recommendations of the Medicare Coverage Advisory Committee; and

(iv) in the case of a final decision under clause (i) to grant the request for the national coverage determination, the Secretary shall assign a temporary or permanent code (whether existing or unclassified) and implement the coding change.

(4) Consultation with outside experts in certain national coverage determinations

With respect to a request for a national coverage determination for which there is not a review by the Medicare Coverage Advisory Committee, the Secretary shall consult with appropriate outside clinical experts.

(5) Local coverage determination process

(A) Plan to promote consistency of coverage determinations

The Secretary shall develop a plan to evaluate new local coverage determinations to determine which determinations should be adopted nationally and to what extent greater consistency can be achieved among local coverage determinations.

(B) Consultation

The Secretary shall require the fiscal intermediaries or carriers providing services within the same area to consult on all new local coverage determinations within the area.

(C) Dissemination of information

The Secretary should serve as a center to disseminate information on local coverage determinations among fiscal intermediaries and carriers to reduce duplication of effort.

(6) National and local coverage determination defined

For purposes of this subsection—

(A) National coverage determination

The term ''national coverage determination'' means a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under this subchapter.

(B) Local coverage determination

The term ''local coverage determination'' has the meaning given that in section 1395ff(f)(2)(B) of this title.

[3] So in original. Probably should be ''(b)(1)(A)(v)''.

(m) Coverage of routine costs associated with certain clinical trials of category A devices

(1) In general

In the case of an individual entitled to benefits under part A of this subchapter, or enrolled under part B of this subchapter, or both who participates in a category A clinical trial, the Secretary shall not exclude under subsection (a)(1) of this section payment for coverage of routine costs of care (as defined by the Secretary) furnished to such individual in the trial.

(2) Category A clinical trial

For purposes of paragraph (1), a ''category A clinical trial'' means a trial of a medical device if—

(A) the trial is of an experimental/investigational (category A) medical device (as defined in regulations under section 405.201(b) of title 42, Code of Federal Regulations (as in effect as of September 1, 2003));

(B) the trial meets criteria established by the Secretary to ensure that the trial conforms to appropriate scientific and ethical standards; and

(C) in the case of a trial initiated before January 1, 2010, the device involved in the trial has been determined by the Secretary to be intended for use in the diagnosis, monitoring, or treatment of an immediately life-threatening disease or condition.

(Aug. 14, 1935, ch. 531, title XVIII, §1862, as added Pub. L. 89–97, title I, §102(a), July 30, 1965, 79 Stat. 325; amended Pub. L. 90–248, title I, §§127(b), 128, Jan. 2, 1968, 81 Stat. 846, 847; Pub. L. 92–603, title II, §§210, 211(c)(1), 229(a), 256(c), Oct. 30, 1972, 86 Stat. 1382, 1384, 1408, 1447; Pub. L. 93–233, §18(k)(3), Dec. 31, 1973, 87 Stat. 970; Pub. L. 93–480, §4(a), Oct. 26, 1974, 88 Stat. 1454; Pub. L. 94–182, title I, §103, Dec. 31, 1975, 89 Stat. 1051; Pub. L. 95–142, §§7(a), 13(a), (b)(1), (2), Oct. 25, 1977, 91 Stat. 1192, 1197, 1198; Pub. L. 95–210, §1(f), Dec. 13, 1977, 91 Stat. 1487; Pub. L. 96–272, title III, §308(a), June 17, 1980, 94 Stat. 531; Pub. L. 96–499, title IX, §§913(b), 936(c), 939(a), 953, Dec. 5, 1980, 94 Stat. 2620, 2640, 2647; Pub. L. 96–611, §1(a)(3), Dec. 28, 1980, 94 Stat. 3566; Pub. L. 97–35, title XXI, §§2103(a)(1), 2146(a), 2152(a), Aug. 13, 1981, 95 Stat. 787, 800, 802; Pub. L. 97–248, title I, §§116(b), 122(f), (g)(1), 128(a)(2)–(4), 142, 148(a), Sept. 3, 1982, 96 Stat. 353, 362, 366, 381, 394; Pub. L. 97–448, title III, §309(b)(10), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–21, title VI, §§601(f), 602(e), Apr. 20, 1983, 97 Stat. 162, 163; Pub. L. 98–369, div. B, title III, §§2301(a), 2304(c), 2313(c), 2344(a)–(c), 2354(b)(30), (31), July 18, 1984, 98 Stat. 1063, 1068, 1078, 1095, 1101, 1102; Pub. L. 99–272, title IX, §§9201(a), 9307(a), 9401(c)(1), Apr. 7, 1986, 100 Stat. 170, 193, 199; Pub. L. 99–509, title IX, §§9316(b), 9319(a), (b), 9320(h)(1), 9343(c)(1), Oct. 21, 1986, 100 Stat. 2007, 2010, 2011, 2016, 2040; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–93, §§8(c)(1), (3), 10, Aug. 18, 1987, 101 Stat. 692, 693, 696; Pub. L. 100–203, title IV, §§4009(j)(6)(C), 4034(a), 4036(a)(1), 4039(c)(1), 4072(c), 4085(i)(15), (16), Dec. 22, 1987, 101 Stat. 1330–59, 1330–77, 1330–79, 1330–82, 1330–117, 1330–133; Pub. L. 100–360, title II, §§202(d), 204(d)(2), 205(e)(1), title IV, §411(f)(4)(D)(i), (i)(4)(D), July 1, 1988, 102 Stat. 715, 729, 731, 778, 790; Pub. L. 100–485, title VI, §608(d)(7), (24)(C), Oct. 13, 1988, 102 Stat. 2415, 2421; Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§6003(g)(3)(D)(xi), 6103(b)(3)(B), 6115(b), 6202(a)(2)(A), (b)(1), (e)(1), 6411(d)(2), Dec. 19, 1989, 103 Stat. 2154, 2199, 2219, 2228, 2229, 2234, 2271; Pub. L. 101–508, title IV, §§4107(b), 4153(b)(2)(B), 4157(c)(1), 4161(a)(3)(C), 4163(d)(2), 4203(a)(1), (b), (c)(1), 4204(g)(1), Nov. 5, 1990, 104 Stat. 1388–62, 1388–84, 1388–89, 1388–94, 1388–100, 1388–107, 1388–112; Pub. L. 103–66, title XIII, §§13561(a)(1), (b)–(d)(1), (e)(1), 13581(b)(1), Aug. 10, 1993, 107 Stat. 593, 594, 611; Pub. L. 103–432, title I, §§145(c)(1), 147(e)(6), 151(a)(1)(A), (C), (2)(A), (b)(3)(A), (B), (c)(1), (4)–(6), (9)(B), 156(a)(2)(D), 157(b)(7), Oct. 31, 1994, 108 Stat. 4427, 4430, 4432–4436, 4441, 4442; Pub. L. 104–224, §1, Oct. 2, 1996, 110 Stat. 3031; Pub. L. 104–226, §1(b)(1), Oct. 2, 1996, 110 Stat. 3033; Pub. L. 105–12, §9(a)(1), Apr. 30, 1997, 111 Stat. 26; Pub. L. 105–33, title IV, §§4022(b)(1)(B), 4102(c), 4103(c), 4104(c)(3), 4201(c)(1), 4319(b), 4432(b)(1), 4507(a)(2)(B), 4511(a)(2)(C), 4541(b), 4603(c)(2)(C), 4614(a), 4631(a)(1), (b), (c)(1), 4632(a), 4633(a), (b), Aug. 5, 1997, 111 Stat. 354, 361, 362, 365, 373, 394, 420, 441, 442, 456, 471, 474, 486, 487; Pub. L. 106–113, div. B, §1000(a)(6) [title III, §§305(b), 321(k)(10)], Nov. 29, 1999, 113 Stat. 1536, 1501A–362, 1501A–367; Pub. L. 106–554, §1(a)(6) [title I, §102(c), title III, §313(a), title IV, §432(b)(1), title V, §522(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–468, 2763A–499, 2763A–526, 2763A–546; Pub. L. 107–105, §3(a), Dec. 27, 2001, 115 Stat. 1006; Pub. L. 108–173, title III, §§301(a)–(c), 303(i)(3)(B), title VI, §§611(d)(1), 612(c), 613(c), title VII, §731(a)(1), (b)(1), title IX, §§900(e)(1)(J), 944(a)(1), 948(a), 950(a), Dec. 8, 2003, 117 Stat. 2221, 2222, 2254, 2304–2306, 2349, 2351, 2372, 2422, 2425, 2426.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 1395ww(e)(6) of this title, referred to in subsec. (a)(1)(D), was repealed by Pub. L. 105–33, title IV, §4022(b)(1)(A)(i), Aug. 5, 1997, 111 Stat. 354.

Part B of subchapter XI of this chapter, referred to in subsecs. (a)(15) and (g), is classified to section 1320c et seq. of this title.

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (a)(16), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (b), is classified generally to Title 26, Internal Revenue Code.

Section 107(c)(3) of the Drug Amendments of 1962, referred to in subsec. (c)(1)(A), is section 107(c)(3) of Pub. L. 87–781, title I, Oct. 10, 1962, 76 Stat. 788, which is set out as an Effective Date of 1962 Amendment note under section 321 of Title 21, Food and Drugs.

CODIFICATION

Section 1314(i) of this title, which was transferred and redesignated as subsec. (j) of this section by Pub. L. 108–173, was based on act Aug. 14, 1935, ch. 531, title XI, §1114(i), as added Pub. L. 106–554, §1(a)(6) [title V, §522(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–546.

Amendments by section 301(a) to (c) of Pub. L. 108–173 were executed to this section as it read on the date of enactment of Pub. L. 108–173 to reflect the probable in-

tent of Congress, notwithstanding section 301(d) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note below, which provided that the amendments by section 301(a) of Pub. L. 108–173 be effective as if included in the enactment of title III of Pub. L. 98–369 and that the amendments by section 301(b), (c) of Pub. L. 108–173 be effective as if included in the enactment of section 953 of Pub. L. 96–499. The amendments by section 301(a) are incapable of being executed to this section as it read on the effective date of title III of Pub. L. 98–369, and the amendments by section 301(b), (c) are incapable of being executed to this section as it read on the effective date of section 953 of Pub. L. 96–499. See 2003 Amendment notes below.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173, §948(a)(2)(A), struck out ''established under section 1314(f) of this title'' after ''meetings of advisory committees'' in concluding provisions.

Pub. L. 108–173, §731(a)(1)(A), inserted ''consistent with subsection (*l*) of this section'' after ''the Secretary shall ensure'' in concluding provisions.

Subsec. (a)(1)(J). Pub. L. 108–173, §303(i)(3)(B), added subpar. (J).

Subsec. (a)(1)(K). Pub. L. 108–173, §611(d)(1)(A), added subpar. (K).

Subsec. (a)(1)(L). Pub. L. 108–173, §612(c), added subpar. (L).

Subsec. (a)(1)(M). Pub. L. 108–173, §613(c), added subpar. (M).

Subsec. (a)(7). Pub. L. 108–173, §611(d)(1)(B), substituted ''(H), or (K)'' for ''or (H)''.

Subsec. (b)(1)(A). Pub. L. 108–173, §301(c)(1), realigned margins.

Subsec. (b)(2)(A). Pub. L. 108–173, §301(b)(1), inserted at end of concluding provisions ''An entity that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part.''

Subsec. (b)(2)(A)(ii). Pub. L. 108–173, §301(a)(1), struck out ''promptly (as determined in accordance with regulations)'' after ''be expected to be made''.

Subsec. (b)(2)(B)(i). Pub. L. 108–173, §301(a)(2)(B), added cl. (i). Former cl. (i) redesignated (ii).

Subsec. (b)(2)(B)(ii). Pub. L. 108–173, §301(b)(2), substituted ''A primary plan, and an entity that receives payment from a primary plan, shall reimburse the appropriate Trust Fund for any payment made by the Secretary under this subchapter with respect to an item or service if it is demonstrated that such primary plan has or had a responsibility to make payment with respect to such item or service. A primary plan's responsibility for such payment may be demonstrated by a judgment, a payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan's insured, or by other means.'' for ''Any payment under this subchapter with respect to any item or service to which subparagraph (A) applies shall be conditioned on reimbursement to the appropriate Trust Fund established by this subchapter when notice or other information is received that payment for such item or service has been or could be made under such subparagraph.'' and ''on the date notice of, or information related to, a primary plan's responsibility for such payment or other information is received'' for ''on the date such notice or other information is received''.

Pub. L. 108–173, §301(a)(2)(A), redesignated cl. (i) as (ii). Former cl. (ii) redesignated (iii).

Subsec. (b)(2)(B)(iii). Pub. L. 108–173, §301(b)(3), substituted ''In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any or all entities that are or were required or responsible (directly, as an insurer or self-insurer, as a third-party administrator, as an employer that sponsors or contributes to a group health plan, or large group health plan, or otherwise) to make payment with respect to the same item or service (or any portion thereof) under a primary plan. The United States may, in accordance with paragraph (3)(A) collect double damages against any such entity. In addition, the United States may recover under this clause from any entity that has received payment from a primary plan or from the proceeds of a primary plan's payment to any entity.'' for ''In order to recover payment under this subchapter for such an item or service, the United States may bring an action against any entity which is required or responsible (directly, as a third-party administrator, or otherwise) to make payment with respect to such item or service (or any portion thereof) under a primary plan (and may, in accordance with paragraph (3)(A) collect double damages against that entity), or against any other entity (including any physician or provider) that has received payment from that entity with respect to the item or service, and may join or intervene in any action related to the events that gave rise to the need for the item or service.''

Pub. L. 108–173, §301(a)(2)(A), redesignated cl. (ii) as (iii). Former cl. (iii) redesignated (iv).

Subsec. (b)(2)(B)(iv) to (vi). Pub. L. 108–173, §301(a)(2)(A), redesignated cls. (iii) to (v) as (iv) to (vi), respectively.

Subsec. (b)(3)(A). Pub. L. 108–173, §301(c)(2), struck out ''such'' before ''paragraphs''.

Subsec. (b)(5)(A)(ii). Pub. L. 108–173, §900(e)(1)(J), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

Subsec. (d). Pub. L. 108–173, §944(a)(1), added subsec. (d).

Subsec. (j). Pub. L. 108–173, §948(a)(1), transferred subsec. (i) of section 1314 of this title and redesignated it as subsec. (j) of this section. See Codification note above.

Subsec. (j)(1). Pub. L. 108–173, §948(a)(2)(B), in introductory provisions, struck out ''under subsection (f) of this section'' after ''appointed'' and substituted ''subsection (a)(1) of this section'' for ''section 1395y(a)(1) of this title''.

Subsec. (k). Pub. L. 108–173, §950(a), added subsec. (k).

Subsec. (*l*). Pub. L. 108–173, §731(a)(1)(B), added subsec. (*l*).

Subsec. (m). Pub. L. 108–173, §731(b)(1), added subsec. (m).

2001—Subsec. (a)(22). Pub. L. 107–105, §3(a)(1), added par. (22).

Subsec. (h). Pub. L. 107–105, §3(a)(2), added subsec. (h).

2000—Subsec. (a). Pub. L. 106–554, §1(a)(6) [title V, §522(b)], inserted at end ''In making a national coverage determination (as defined in paragraph (1)(B) of section 1395ff(f) of this title) the Secretary shall ensure that the public is afforded notice and opportunity to comment prior to implementation by the Secretary of the determination; meetings of advisory committees established under section 1314(f) of this title with respect to the determination are made on the record; in making the determination, the Secretary has considered applicable information (including clinical experience and medical, technical, and scientific evidence) with respect to the subject matter of the determination; and in the determination, provide a clear statement of the basis for the determination (including responses to comments received from the public), the assumptions underlying that basis, and make available to the public the data (other than proprietary data) considered in making the determination.''

Subsec. (a)(1)(F). Pub. L. 106–554, §1(a)(6) [title I, §102(c)], struck out ''and,'' after ''section 1395m(c)(1)(B) of this title,'' and inserted at end ''and, in the case of screening for glaucoma, which is performed more frequently than is provided under section 1395x(uu) of this title,''.

Subsec. (a)(3). Pub. L. 106–554, §1(a)(6) [title IV, §432(b)(1)], struck out second comma after ''section 1395x(aa)(1) of this title'' and inserted ''in the case of services for which payment may be made under section

1395qq(e) of this title,'' after ''section 1395x(aa)(3) of this title,''.

Subsec. (a)(18). Pub. L. 106–554, §1(a)(6) [title III, §313(a)], substituted ''during a period in which the resident is provided covered post-hospital extended care services (or, for services described in section 1395x(s)(2)(D) of this title, which are furnished to such an individual without regard to such period),'' for ''or of a part of a facility that includes a skilled nursing facility (as determined under regulations),''.

1999—Subsec. (a)(7). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(10)], substituted ''subparagraph'' for ''subparagraphs''.

Subsec. (a)(21). Pub. L. 106–113, §1000(a)(6) [title III, §305(b)], inserted ''(including medical supplies described in section 1395x(m)(5) of this title, but excluding durable medical equipment to the extent provided for in such section)'' after ''home health services''.

1997—Subsec. (a)(1)(D). Pub. L. 105–33, §4022(b)(1)(B), substituted ''Medicare Payment Advisory Commission'' for ''Prospective Payment Assessment Commission''.

Subsec. (a)(1)(F). Pub. L. 105–33, §4102(c), inserted ''and screening pelvic exam'' after ''screening pap smear''.

Subsec. (a)(1)(G). Pub. L. 105–33, §4103(c)(1), added subpar. (G).

Subsec. (a)(1)(H). Pub. L. 105–33, §4104(c)(3)(A), added subpar. (H).

Subsec. (a)(1)(I). Pub. L. 105–33, §4614(a), added subpar. (I).

Subsec. (a)(7). Pub. L. 105–33, §4104(c)(3)(B), substituted ''(G), or (H)'' for ''or (G)''.

Pub. L. 105–33, §4103(c)(2), substituted ''subparagraphs (B), (F), or (G) of paragraph (1)'' for ''paragraph (1)(B) or under paragraph (1)(F)''.

Subsec. (a)(14). Pub. L. 105–33, §4511(a)(2)(C), substituted ''section 1395x(s)(2)(K) of this title'' for ''section 1395x(s)(2)(K)(i) or 1395x(s)(2)(K)(iii) of this title''.

Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care'' wherever appearing.

Subsec. (a)(16). Pub. L. 105–12 added par. (16).

Subsec. (a)(17). Pub. L. 105–33, §4319(b), added par. (17).

Subsec. (a)(18). Pub. L. 105–33, §4432(b)(1), added par. (18).

Subsec. (a)(19). Pub. L. 105–33, §4507(a)(2)(B), added par. (19).

Subsec. (a)(20). Pub. L. 105–33, §4541(b), added par. (20).

Subsec. (a)(21). Pub. L. 105–33, §4603(c)(2)(C), added par. (21).

Subsec. (b)(1)(B)(i). Pub. L. 105–33, §4631(a)(1)(A), substituted ''in clause (iii))'' for ''in clause (iv))''.

Subsec. (b)(1)(B)(iii), (iv). Pub. L. 105–33, §4631(a)(1)(B), (C), redesignated cl. (iv) as (iii) and struck out heading and text of former cl. (iii). Text read as follows: ''Clause (i) shall only apply to items and services furnished on or after January 1, 1987, and before October 1, 1998.''

Subsec. (b)(1)(C). Pub. L. 105–33, §4631(b), in concluding provisions, substituted ''August 5, 1997'' for ''October 1, 1998'' and inserted at end ''Effective for items and services furnished on or after August 5, 1997, (with respect to periods beginning on or after the date that is 18 months prior to August 5, 1997), clauses (i) and (ii) shall be applied by substituting '30-month' for '12-month' each place it appears.''

Subsec. (b)(1)(F). Pub. L. 105–33, §4633(b), added subpar. (F).

Subsec. (b)(2)(B)(ii). Pub. L. 105–33, §4633(a), substituted ''(directly, as a third-party administrator, or otherwise) to make payment'' for ''under this subsection to pay'' and inserted at end ''The United States may not recover from a third-party administrator under this clause in cases where the third-party administrator would not be able to recover the amount at issue from the employer or group health plan and is not employed by or under contract with the employer or group health plan at the time the action for recovery is initiated by the United States or for whom it provides administrative services due to the insolvency or bankruptcy of the employer or plan.''

Subsec. (b)(2)(B)(v). Pub. L. 105–33, §4632(a), added cl. (v).

Subsec. (b)(5)(C)(iii). Pub. L. 105–33, §4631(c)(1), struck out heading and text of cl. (iii). Text read as follows: ''Clause (ii) shall not apply to inquiries made after September 30, 1998.''

Subsec. (i). Pub. L. 105–33, §4022(b)(1)(B), substituted ''Medicare Payment Advisory Commission'' for ''Prospective Payment Assessment Commission'' in introductory provisions.

1996—Subsec. (b)(5)(B). Pub. L. 104–226, §1(b)(1)(A), substituted ''under subparagraph (A) for purposes of carrying out this subsection'' for ''under—

''(i) subparagraph (A), and

''(ii) section 1320b–14 of this title,

for purposes of carrying out this subsection''.

Subsec. (b)(5)(C)(i). Pub. L. 104–226, §1(b)(1)(B), substituted ''disclosed under subparagraph (B)'' for ''disclosed under subparagraph (B)(i)''.

Subsec. (h). Pub. L. 104–224 struck out subsec. (h) which required Secretary to provide registry of all cardiac pacemaker devices and pacemaker leads for which payment was made under this chapter.

1994—Subsec. (a)(1)(F). Pub. L. 103–432, §145(c)(1), substituted ''is not conducted by a facility described in section 1395m(c)(1)(B) of this title'' for ''or which does not meet the standards established under section 1395m(c)(3) of this title''.

Subsec. (a)(14). Pub. L. 103–432, §156(a)(2)(D)(i), inserted ''or'' at end.

Pub. L. 103–432, §147(e)(6), substituted ''section 1395x(s)(2)(K)(i) or 1395x(s)(2)(K)(iii) of this title'' for ''section 1395x(s)(2)(K)(i) of this title''.

Subsec. (a)(15). Pub. L. 103–432, §156(a)(2)(D)(ii), substituted period for ''; or'' at end.

Subsec. (a)(16). Pub. L. 103–432, §156(a)(2)(D)(iii), struck out par. (16) which read as follows: ''furnished in connection with a surgical procedure for which a second opinion is required under section 1320c–13(c)(2) of this title and has not been obtained.''

Subsec. (b)(1)(A)(i)(II). Pub. L. 103–432, §151(c)(1)(A), substituted ''older (and the spouse age 65 or older of any individual) who has current employment status with an employer'' for ''over (and the individual's spouse age 65 or older) who is covered under the plan by virtue of the individual's current employment status with an employer''.

Subsec. (b)(1)(A)(ii). Pub. L. 103–432, §151(c)(1)(B), substituted ''employer that has 20 or more employees'' for ''employer or employee organization that has 20 or more individuals in current employment status''.

Subsec. (b)(1)(A)(v). Pub. L. 103–432, §151(c)(9)(B), made technical amendment to directory language of Pub. L. 103–66, §13561(e)(1)(D). See 1993 Amendment note below.

Subsec. (b)(1)(C). Pub. L. 103–432, §151(c)(5), substituted ''paying benefits secondary to this subchapter when'' for ''taking into account that'' in closing provisions.

Pub. L. 103–432, §151(c)(4), substituted ''this subparagraph'' for ''clauses (i) and (ii)'' after ''February 1, 1990),'' in last sentence.

Subsec. (b)(2)(B)(i). Pub. L. 103–432, §151(b)(3)(A), (B), substituted ''Repayment required'' for ''Primary plans'' in heading and inserted at end ''If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date such notice or other information is received, the Secretary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).''

Subsec. (b)(2)(C). Pub. L. 103–432, §151(a)(1)(C), added subpar. (C).

Subsec. (b)(3)(C). Pub. L. 103–432, §157(b)(7), substituted ''group health plan or a large group health plan'' for ''group health plan'' in heading and text, struck out '', unless such incentive is also offered to all

individuals who are eligible for coverage under the plan'' after ''(as defined in paragraph (2)(A))'', and substituted ''(other than subsections (a) and (b))'' for ''(other than the first sentence of subsection (a) and other than subsection (b))''.

Subsec. (b)(5)(C)(i). Pub. L. 103–432, § 151(c)(6), substituted ''section 6103(*l*)(12)(E)(iii) of such Code'' for ''section 6103(*l*)(12)(D)(iii) of such Code''.

Subsec. (b)(5)(D). Pub. L. 103–432, § 151(a)(1)(A), added subpar. (D).

Subsec. (b)(6). Pub. L. 103–432, § 151(a)(2)(A), added par. (6).

1993—Subsec. (b)(1)(A)(i). Pub. L. 103–66, § 13561(e)(1)(A), amended subcls. (I) and (II) generally. Prior to amendment, subcls. (I) and (II) read as follows:

''(I) may not take into account, for any item or service furnished to an individual 65 years of age or older at the time the individual is covered under the plan by reason of the current employment of the individual (or the individual's spouse), that the individual is entitled to benefits under this subchapter under section 426(a) of this title, and

''(II) shall provide that any employee age 65 or older, and any employee's spouse age 65 or older, shall be entitled to the same benefits under the plan under the same conditions as any employee, and the spouse of such employee, under age 65.''

Subsec. (b)(1)(A)(ii). Pub. L. 103–66, § 13561(e)(1)(B), substituted ''unless the plan is a plan of, or contributed to by, an employer or employee organization that has 20 or more individuals in current employment status'' for ''unless the plan is sponsored by or contributed to by an employer that has 20 or more employees''.

Subsec. (b)(1)(A)(iii). Pub. L. 103–66, § 13561(e)(1)(C), substituted ''by virtue of current employment status with an employer that does not have 20 or more individuals in current employment status for each working day in each of 20 or more calendar weeks in the current calendar year and'' for ''by virtue of employment with an employer that does not have 20 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year or''.

Subsec. (b)(1)(A)(iv). Pub. L. 103–66, § 13561(c)(2), substituted ''Subparagraph (C) shall apply instead of clause (i)'' for ''Clause (i) shall not apply'' and inserted ''(without regard to entitlement under section 426 of this title)'' after ''individual is, or''.

Subsec. (b)(1)(A)(v). Pub. L. 103–66, § 13561(e)(1)(D), as amended by Pub. L. 103–432, § 151(c)(9)(B), inserted before period at end '', without regard to section 5000(d) of such Code''.

Subsec. (b)(1)(B). Pub. L. 103–66, § 13561(e)(1)(E), substituted ''individuals'' for ''active individuals'' in heading.

Subsec. (b)(1)(B)(i). Pub. L. 103–66, § 13561(e)(1)(F), substituted ''clause (iv)) may not take into account that an individual (or a member of the individual's family) who is covered under the plan by virtue of the individual's current employment status with an employer'' for ''clause (iv)(II)) may not take into account that an active individual (as defined in clause (iv)(I))''.

Subsec. (b)(1)(B)(ii). Pub. L. 103–66, § 13561(c)(2), substituted ''Subparagraph (C) shall apply instead of clause (i)'' for ''Clause (i) shall not apply'' and inserted ''(without regard to entitlement under section 426 of this title)'' after ''individual is, or''.

Subsec. (b)(1)(B)(iii). Pub. L. 103–66, § 13561(b), substituted ''1998'' for ''1995''.

Subsec. (b)(1)(B)(iv). Pub. L. 103–66, § 13561(e)(1)(G), amended heading and text generally. Prior to amendment, text defined ''active individual'' and ''large group health plan''.

Subsec. (b)(1)(C). Pub. L. 103–66, § 13561(c)(1), (3), substituted ''or eligible for benefits under this subchapter under'' for ''benefits under this subchapter solely by reason of'' in cl. (i) and concluding provisions and substituted ''before October 1, 1998'' for ''on or before January 1, 1996'' in concluding provisions.

Subsec. (b)(1)(E). Pub. L. 103–66, § 13561(e)(1)(H), added cls. (ii) and (iii).

Pub. L. 103–66, § 13561(d)(1), added subpar. (E).

Subsec. (b)(5)(B). Pub. L. 103–66, § 13581(b)(1)(A), substituted ''under—'' for ''under subparagraph (A) for the purposes of carrying out this subsection.'' and added cls. (i) and (ii) and concluding provisions.

Subsec. (b)(5)(C)(i). Pub. L. 103–66, § 13581(b)(1)(B), substituted ''subparagraph (B)(i)'' for ''subparagraph (B)''.

Subsec. (b)(5)(C)(iii). Pub. L. 103–66, § 13561(a)(1), substituted ''1998'' for ''1995''.

1990—Subsec. (a). Pub. L. 101–508, § 4161(a)(3)(C)(iii), inserted at end ''Paragraph (7) shall not apply to Federally qualified health center services described in section 1395x(aa)(3)(B) of this title.''

Subsec. (a)(1)(A). Pub. L. 101–508, § 4163(d)(2)(A)(i), substituted ''a succeeding subparagraph'' for ''subparagraph (B), (C), (D), or (E)''.

Subsec. (a)(1)(F). Pub. L. 101–508, § 4163(d)(2)(A)(ii)–(iv), added subpar. (F).

Subsec. (a)(2). Pub. L. 101–508, § 4161(a)(3)(C)(i), inserted before semicolon at end '', except in the case of Federally qualified health center services''.

Subsec. (a)(3). Pub. L. 101–508, § 4161(a)(3)(C)(ii), inserted '', in the case of Federally qualified health center services, as defined in section 1395x(aa)(3) of this title,'' after ''section 1395x(aa)(1) of this title,''.

Subsec. (a)(7). Pub. L. 101–508, § 4163(d)(2)(B), inserted ''or under paragraph (1)(F)'' after ''paragraph (1)(B)''.

Pub. L. 101–508, § 4153(b)(2)(B), inserted ''(other than eyewear described in section 1395x(s)(8) of this title)'' after first reference to ''eyeglasses''.

Subsec. (a)(14). Pub. L. 101–508, § 4157(c)(1), inserted '', services described by section 1395x(s)(2)(K)(i) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist,'' after ''this paragraph)'' and struck out before semicolon at end ''or are services of a certified registered nurse anesthetist''.

Subsec. (a)(15). Pub. L. 101–508, § 4107(b), designated existing provisions as par. (A), substituted '', or'' for ''; or'' at end, and added par. (B).

Subsec. (b)(1)(B)(iii). Pub. L. 101–508, § 4203(b), substituted ''October 1, 1995'' for ''January 1, 1992''.

Subsec. (b)(1)(C). Pub. L. 101–508, § 4203(c)(1)(B), inserted at end ''Effective for items and services furnished on or after February 1, 1991, and on or before January 1, 1996, (with respect to periods beginning on or after February 1, 1990), clauses (i) and (ii) shall be applied by substituting '18-month' for '12-month' each place it appears.''

Subsec. (b)(1)(C)(i). Pub. L. 101–508, § 4203(c)(1)(A), substituted ''during the 12-month period which begins with the first month in which the individual becomes entitled to benefits under part A of this subchapter under the provisions of section 426–1 of this title, or, if earlier, the first month in which the individual would have been entitled to benefits under such part under the provisions of section 426–1 of this title if the individual had filed an application for such benefits; and'' for ''during the 12-month period which begins with the earlier of—

''(I) the month in which a regular course of renal dialysis is initiated, or

''(II) in the case of an individual who receives a kidney transplant, the first month in which he would be eligible for benefits under part A of this subchapter (if he had filed an application for such benefits) under the provisions of section 426–1(b)(1)(B) of this title; and''.

Subsec. (b)(3)(C). Pub. L. 101–508, § 4204(g)(1), added subpar. (C).

Subsec. (b)(5)(C)(iii). Pub. L. 101–508, § 4203(a)(1), substituted ''September 30, 1995'' for ''September 30, 1991''.

1989—Pub. L. 101–239, § 6202(b)(1)(A), inserted ''and medicare as secondary payer'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 101–234 repealed Pub. L. 100–360, § 204(d)(2)(A)(i), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(E). Pub. L. 101–239, § 6103(b)(3)(B), substituted ''section 1320b–12'' for ''section 1395*ll*(c)''.

Subsec. (a)(1)(F). Pub. L. 101–239, § 6115(b), inserted before semicolon at end '', and, in the case of screening pap smear, which is performed more frequently than is provided under 1395x(nn) of this title''.

Pub. L. 101–234 repealed Pub. L. 100–360, § 204(d)(2)(A)(ii)–(iv), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(G), (6), (7). Pub. L. 101–234 repealed Pub. L. 100–360, §§ 204(d)(2)(B), 205(e)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(14). Pub. L. 101–239, § 6003(g)(3)(D)(xi), substituted ''hospital or rural primary care hospital'' for ''hospital'' in three places.

Subsec. (b). Pub. L. 101–239, § 6202(b)(1)(B), amended heading and text generally, substituting pars. (1) to (4) relating to medicare as secondary payer for former pars. (1) to (5) relating to items or services paid under workmen's compensation laws and end stage renal disease program.

Subsec. (b)(1)(D). Pub. L. 101–239, § 6202(e)(1), added subpar. (D).

Subsec. (b)(5). Pub. L. 101–239, § 6202(a)(2)(A), added par. (5).

Subsec. (c). Pub. L. 101–234 repealed Pub. L. 100–360, § 202(d), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (e)(1). Pub. L. 101–239, § 6411(d)(2), inserted '', not including items or services furnished in an emergency room of a hospital'' after ''(other than an emergency item or service''.

1988—Subsec. (a)(1)(A). Pub. L. 100–360, § 204(d)(2)(A)(i), substituted ''a succeeding subparagraph'' for ''subparagraph (B), (C), (D), or (E)''.

Subsec. (a)(1)(F). Pub. L. 100–360, § 204(d)(2)(A)(ii)–(iv), added subpar. (F) relating to screening mammography.

Subsec. (a)(1)(G). Pub. L. 100–360, § 205(e)(1)(A), as amended by Pub. L. 100–485, § 608(d)(7), added subpar. (G) relating to in-home care for chronically dependent individuals.

Subsec. (a)(6). Pub. L. 100–360, § 205(e)(1)(B), inserted ''and except, in the case of in-home care, as is otherwise permitted under paragraph (1)(G)'' after ''paragraph (1)(C)''.

Subsec. (a)(7). Pub. L. 100–360, § 204(d)(2)(B), inserted ''or under paragraph (1)(F)'' after ''(1)(B)''.

Subsec. (a)(15). Pub. L. 100–360, § 411(f)(4)(D)(i), inserted ''(including subsequent insertion of an intraocular lens)'' after ''operation''.

Subsec. (c). Pub. L. 100–360, § 202(d), designated existing provisions as par. (1), redesignated former par. (1) as subpar. (A), redesignated former subpars. (A) to (D) as cls. (i) to (iv), redesignated former par. (2) as subpar. (B), redesignated former subpar. (A) as cl. (i) and substituted ''subparagraph (A)'' for ''paragraph (1)'', redesignated former subpar. (B) as cl. (ii), and added par. (2) prohibiting payment for expenses incurred for a covered outpatient drug if the drug is dispensed in a quantity exceeding a supply of 30 days with an exception.

Subsec. (e)(1). Pub. L. 100–360, § 411(i)(4)(D)(i), as amended by Pub. L. 100–485, § 608(d)(24)(C)(i), designated existing provisions of subsec. (e) as par. (1), redesignated former par. (1) as subpar. (A), substituted '', 1320a–7a, 1320c–5 or 1395u(j)(2)'' for ''or section 1320a–7a'', redesignated former par. (2) as subpar. (B), and substituted '', 1320a–7a, 1320c–5 or 1395u(j)(2)'' for ''or section 1320a–7a''.

Subsec. (e)(2). Pub. L. 100–360, § 411(i)(4)(D)(ii), as amended by Pub. L. 100–485, § 608(d)(24)(C)(ii), amended former section 1395aaa of this title by striking out the catchline ''Limitation of liability of beneficiaries with respect to services furnished by excluded individuals and entities'', substituting ''(2)'' for the section designation, inserting ''1395u(j)(2),'' in text, and transferring the text to par. (2) of subsec. (e) of this section.

1987—Subsec. (a)(1)(A). Pub. L. 100–203, § 4085(i)(15), substituted ''(D), or (E)'' for ''or (D)''.

Subsec. (a)(8). Pub. L. 100–203, § 4072(c), inserted '', other than shoes furnished pursuant to section 1395x(s)(12) of this title'' before semicolon.

Subsec. (a)(14). Pub. L. 100–203, § 4085(i)(16), substituted ''a patient'' for ''an patient''.

Pub. L. 100–203, § 4009(j)(6)(C), made technical amendment to Pub. L. 99–509, § 9320(h)(1). See 1986 Amendment note below.

Subsec. (b)(2)(A)(ii). Pub. L. 100–203, § 4036(a)(1), substituted ''can reasonably be expected to be made under such a plan'' for ''the Secretary determines will be made under such a plan as promptly as would otherwise be the case if payment were made by the Secretary under this subchapter''.

Subsec. (b)(4)(B)(i). Pub. L. 100–203, § 4034(a), substituted ''subsection (b) of section 5000 of the Internal Revenue Code of 1986 without regard to subsection (d) of such section'' for ''section 5000(b) of the Internal Revenue Code of 1986''.

Subsec. (d). Pub. L. 100–93, § 8(c)(1)(A), struck out subsec. (d), which provided that no payment be made under this subchapter for any item or services to an individual by a person where Secretary determines such person knowingly and willfully made any false statement or representation of a material fact, submitted excessive bills or requests, or furnished excessive services or supplies, and provided a dissatisfied person with a hearing on determination of the Secretary.

Subsec. (e) [formerly § 1395aaa]. Pub. L. 100–93, § 10, added par. (2). See 1988 Amendment note above.

Pub. L. 100–93, § 8(c)(1)(B), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''No payment may be made under this subchapter with respect to any item or service furnished by a physician or other individual during the period when he is barred pursuant to section 1320a–7 of this title from participation in the program under this subchapter.''

Subsec. (h)(1)(B). Pub. L. 100–203, § 4039(c)(1)(A), substituted ''law (and any amount paid to a provider under any such warranty),'' for ''law,''.

Subsec. (h)(1)(D). Pub. L. 100–203, § 4039(c)(1)(B), inserted ''in determining the amount subject to repayment under paragraph (2)(C),'' after ''(3),''.

Subsec. (h)(2)(C). Pub. L. 100–203, § 4039(c)(1)(C), added subpar. (C).

Subsec. (h)(4). Pub. L. 100–93, § 8(c)(3), substituted ''subsections (c), (f), and (g) of section 1320a–7 of this title'' for ''paragraphs (2) and (3) of subsection (d) of this section''.

Subsec. (h)(4)(B). Pub. L. 100–203, § 4039(c)(1)(D), substituted '', has improperly'' for ''or has improperly'' and inserted ''or has failed to make repayment to the Secretary as required under paragraph (2)(C),'' after ''(2)(B),''.

1986—Subsec. (a)(1)(E). Pub. L. 99–509, § 9316(b), added subpar. (E).

Subsec. (a)(14). Pub. L. 99–509, § 9343(c)(1), substituted ''patient'' for ''inpatient''.

Pub. L. 99–509, § 9320(h)(1), as amended by Pub. L. 100–203, § 4009(j)(6)(C), inserted ''or are services of a certified registered nurse anesthetist'' after ''hospital'' at end.

Subsec. (a)(15). Pub. L. 99–272, § 9307(a), added par. (15).

Subsec. (a)(16). Pub. L. 99–272, § 9401(c)(1), added par. (16).

Subsec. (b)(2)(A). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(3)(A)(i). Pub. L. 99–272, § 9201(a)(1), substituted ''(or to the spouse of such individual)'' for ''who is under 70 years of age during any part of such month (or to the spouse of such individual, if the spouse is under 70 years of age during any part of such month)''.

Subsec. (b)(3)(A)(iii). Pub. L. 99–272, § 9201(a)(2), struck out ''and ending with the month before the month in which such individual attains the age of 70'' after ''section 426(a) of this title''.

Subsec. (b)(3)(A)(iv). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(4). Pub. L. 99–509, § 9319(a), added par. (4).

Subsec. (b)(5). Pub. L. 99–509, § 9319(b), added par. (5).

1984—Subsec. (a)(12). Pub. L. 98–369, § 2354(b)(30), struck out second comma after ''dental procedure''.

Subsec. (b)(1). Pub. L. 98–369, § 2344(a), substituted ''to be made promptly'' for ''to be made'' and ''has been or could be made under such a law'' for ''has been made under such a law'', and inserted ''In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a law, policy, plan, or insurance, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such law, policy, plan, or insurance, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a law, policy, plan, or insurance.''

Subsec. (b)(2)(B). Pub. L. 98–369, § 2344(b), substituted ''has been or could be made under a plan'' for ''has been made under a plan'', and inserted ''In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan.''

Subsec. (b)(3)(A)(i). Pub. L. 98–369, § 2301(a), struck out ''over 64 but'' before ''under 70 years'' in two places.

Subsec. (b)(3)(A)(ii). Pub. L. 98–369, § 2344(c), substituted ''has been or could be made under a group health plan'' for ''has been made under a group health plan'', and inserted ''In order to recover payment made under this title for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this title for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan.''

Subsec. (b)(3)(A)(iii). Pub. L. 98–369, § 2354(b)(31), inserted ''before the month'' after ''ending with the month''.

Subsec. (h). Pub. L. 98–369, § 2304(c), added subsec. (h).

Subsec. (i). Pub. L. 98–369, § 2313(c), added subsec. (i).

1983—Subsec. (a)(1)(A). Pub. L. 98–21, § 601(f)(1), inserted reference to subpar. (D).

Subsec. (a)(1)(D). Pub. L. 98–21, § 601(f)(2)–(4), added subpar. (D).

Subsec. (a)(14). Pub. L. 98–21, § 602(e), added par. (14).

Subsec. (b)(3)(A)(i). Pub. L. 97–448 inserted ''in any month'' after ''service furnished'', and ''during any part of such month'' after ''70 years of age'' wherever appearing.

1982—Subsec. (a)(1). Pub. L. 97–248, § 122(f)(1), designated existing provisions as subpars. (A) and (B), in subpar. (A) as so designated inserted exception to provisions for items and services described in subpar. (B) or (C), substituted ''and'' for ''or'' as the connector between provisions, and added subpar. (C).

Subsec. (a)(6). Pub. L. 97–248, § 122(f)(2), inserted ''(except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C))''.

Subsec. (a)(7). Pub. L. 97–248, § 122(f)(3), substituted ''paragraph (1)(B)'' for ''paragraph (1)''.

Subsec. (a)(9). Pub. L. 97–248, § 122(f)(4), inserted ''(except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C))''.

Subsec. (b)(1). Pub. L. 97–248, § 128(a)(2), struck out ''or plan'' after ''service has been made under such a law''.

Subsec. (b)(2)(A). Pub. L. 97–248, § 128(a)(3), substituted ''section 162(i)(2)'' for ''section 162(h)(2)''.

Subsec. (b)(2)(B). Pub. L. 97–248, § 128(a)(4), inserted ''furnished'' before ''to an individual''.

Subsec. (b)(3). Pub. L. 97–248, § 116(b), added par. (3).

Subsec. (d)(1)(C). Pub. L. 97–248, § 148(a), substituted ''on the basis of information acquired by the Secretary in the administration of this subchapter'' for '', on the basis of reports transmitted to him in accordance with section 1320c–6 of this title (or, in the absence of any such report, on the basis of such data as he acquires in the administration of the program under this subchapter),''.

Subsec. (f). Pub. L. 97–248, § 122(g)(1), substituted ''paragraph (1)(A)'' for ''paragraph (1)''.

Subsec. (g). Pub. L. 97–248, § 142, added subsec. (g).

1981—Subsec. (b). Pub. L. 97–35, § 2146(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 97–35, § 2103(a)(1), added subsec. (c).

Subsec. (f). Pub. L. 97–35, § 2152(a), added subsec. (f).

1980—Subsec. (a)(1). Pub. L. 96–611, § 1(a)(3)(A), inserted '', or, in the case of items and services described in section 1395x(s)(10) of this title, which are not reasonable and necessary for the prevention of illness'' after ''of a malformed body member''.

Subsec. (a)(7). Pub. L. 96–611, § 1(a)(3)(B), inserted ''(except as otherwise allowed under section 1395x(s)(10) of this title and paragraph (1))'' after ''immunizations''.

Subsec. (a)(12). Pub. L. 96–499, § 936(c), inserted ''or because of the severity of the dental procedure,'' after ''and clinical status''.

Subsec. (a)(13)(C). Pub. L. 96–499, § 939(a), struck out '', warts,'' after ''corns''.

Subsec. (b). Pub. L. 96–499, § 953, inserted ''or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance'' and '', policy, plan, or insurance'' after ''or a State'' and '', policy, plan, or insurance'' after ''law or plan'' and inserted provision authorizing the Secretary to waive the provisions of this subsection in the case of an individual claim if he determined that the probability of recovery or amount involved did not warrant the pursuit of the claim.

Subsec. (d)(4). Pub. L. 96–272 added par. (4).

Subsec. (e). Pub. L. 96–499, § 913(b), substituted provisions barring payment under this subchapter with respect to items or services furnished by a physician or other individual during a period when such physician or other individual was barred pursuant to section 1320a–7 of this title from participation under this subchapter for provisions authorizing the Secretary to suspend a physician or individual practitioner from participation under this subchapter upon determining that such physician or practitioner had been convicted of a criminal offense related to such physician's or practitioner's involvement in the programs under this subchapter or the program under subchapter XIX of this chapter.

1977—Subsec. (a)(3). Pub. L. 95–210 substituted ''except in the case of rural health clinic services, as defined in section 1395x(aa)(1) of this title, and in such other cases as the Secretary may specify'' for ''except in such cases as the Secretary may specify''.

Subsec. (d)(1)(B). Pub. L. 95–142, § 13(b)(1), struck out requirement for concurrence of appropriate program review team for finding of Secretary under this paragraph.

Subsec. (d)(1)(C). Pub. L. 95–142, § 13(b)(2), substituted provisions relating to determinations by the Secretary on the basis of reports transmitted to him in accordance with section 1320c–6 of this title or other data acquired in the administration of this subchapter, for provisions relating to determinations by the Secretary with the concurrence of appropriate review team members.

Subsec. (d)(4). Pub. L. 95–142, § 13(a), struck out par. (4) which set forth provisions relating to appointment and functions of program review teams.

Subsec. (e). Pub. L. 95–142, § 7(a), added subsec. (e).

1975—Subsec. (c). Pub. L. 94–182 struck out subsec. (c) prohibiting payments to Federal employees under this subchapter unless a determination and certification by the Secretary of a modification of any health benefits plan under chapter 89 of Title 5 was made which would allow a Federal employee benefits under part A or B of this subchapter.

1974—Subsec. (c). Pub. L. 93–480 substituted ''January 1, 1976'' for ''January 1, 1975''.

1973—Subsec. (a)(12). Pub. L. 93–233 substituted ''the provision of such dental services if the individual, because of his underlying medical condition and clinical status, requires hospitalization in connection with the provision of such services'' for ''a dental procedure where the individual suffers from impairments of such severity as to require hospitalization''.

1972—Subsec. (a)(4). Pub. L. 92–603, § 211(c)(1), inserted reference to physicians' services and ambulance services furnished an individual in conjunction with emergency inpatient hospital services.

Subsec. (a)(12). Pub. L. 92–603, § 256(c), authorized payment under part A in the case of inpatient hospital services in connection with a dental procedure where the individual suffers from impairments of such severity as to require hospitalization.

Subsec. (c). Pub. L. 92–603, § 210, added subsec. (c).

Subsec. (d). Pub. L. 92–603, § 229(a), added subsec. (d).

1968—Subsec. (a)(7). Pub. L. 90–248, § 128, prohibited payment for procedures performed (during the course of any eye examination) to determine the refractive state of the eyes.

Subsec. (a)(13). Pub. L. 90–248, § 127(b), added par. (13).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title III, § 301(d), Dec. 8, 2003, 117 Stat. 2222, provided that: ''The amendments made by this section [amending this section] shall be effective—

''(1) in the case of subsection (a), as if included in the enactment of title III [sic] of the Medicare and Medicaid Budget Reconciliation Amendments of 1984 (Public Law 98–369); and

''(2) in the case of subsections (b) and (c), as if included in the enactment of section 953 of the Omnibus Reconciliation Act of 1980 (Public Law 96–499; 94 Stat. 2647).''

Amendment by section 611(d)(1) of Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2005, but only for individuals whose coverage period under this part begins on or after such date, see section 611(e) of Pub. L. 108–173, set out as a note under section 1395w–4 of this title.

Amendment by section 612(c) of Pub. L. 108–173 applicable to tests furnished on or after Jan. 1, 2005, see section 612(d) of Pub. L. 108–173, set out as a note under section 1395x of this title.

Amendment by section 613(c) of Pub. L. 108–173 applicable to tests furnished on or after Jan. 1, 2005, see section 613(d) of Pub. L. 108–173, set out as a note under section 1395x of this title.

Pub. L. 108–173, title VII, § 731(a)(2), Dec. 8, 2003, 117 Stat. 2351, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to national coverage determinations as of January 1, 2004, and section 1862(*l*)(5) of the Social Security Act [subsec. (*l*)(5) of this section], as added by such paragraph, shall apply to local coverage determinations made on or after July 1, 2004.''

Pub. L. 108–173, title VII, § 731(b)(2), Dec. 8, 2003, 117 Stat. 2351, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to routine costs incurred on and after January 1, 2005, and, as of such date, section 411.15(*o*) of title 42, Code of Federal Regulations, is superseded to the extent inconsistent with section 1862(m) of the Social Security Act [subsec. (m) of this section], as added by such paragraph.''

Pub. L. 108–173, title IX, § 944(a)(2), Dec. 8, 2003, 117 Stat. 2423, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to items and services furnished on or after January 1, 2004.''

Amendment by section 948(a) of Pub. L. 108–173 effective, except as otherwise provided, as if included in the enactment of BIPA [the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(6) of Public Law 106–554], see section 948(e) of Pub. L. 108–173, set out as a note under section 1314 of this title.

Pub. L. 108–173, title IX, § 950(b), Dec. 8, 2003, 117 Stat. 2427, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date that is 60 days after the date of the enactment of this Act [Dec. 8, 2003].''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–105, § 3(b), Dec. 27, 2001, 115 Stat. 1007, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to claims submitted on or after October 16, 2003.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title I, § 102(c)] of Pub. L. 106–554 applicable to services furnished on or after Jan. 1, 2002, see section 1(a)(6) [title I, § 102(d)] of Pub. L. 106–554, set out as a note under section 1395x of this title.

Amendment by section 1(a)(6) [title III, § 313(a)] of Pub. L. 106–554 applicable to services furnished on or after Jan. 1, 2001, see section 1(a)(6) [title III, § 313(c)] of Pub. L. 106–554, set out as a note under section 1395u of this title.

Amendment by section 1(a)(6) [title IV, § 432(b)(1)] of Pub. L. 106–554 applicable to services furnished on or after July 1, 2001 see section 1(a)(6) [title IV, § 432(c)] of Pub. L. 106–554, set out as a note under section 1395u of this title.

Amendment by section 1(a)(6) [title V, § 522(b)] of Pub. L. 106–554 applicable with respect to a review of any national or local coverage determination filed, a request to make such a determination made, and a national coverage determination made, on or after Oct. 1, 2001, see section 1(a)(6) [title V, § 522(d)] of Pub. L. 106–554, set out as a note under section 1314 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title III, § 305(b)] of Pub. L. 106–113 applicable to payments for services provided on or after Nov. 29, 1999, see § 1000(a)(6) [title III, § 305(c)] of Pub. L. 106–113, set out as a note under section 1395u of this title.

Amendment by section 1000(a)(6) [title III, § 321(k)(10)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

Amendment by section 4022(b)(1)(B) of Pub. L. 105–33 effective Nov. 1, 1997, the date of termination of the Prospective Payment Assessment Commission and the Physician Payment Review Commission, see section 4022(c)(2) of Pub. L. 105–33, set out as an Effective Date; Transition; Transfer of Functions note under section 1395b–6 of this title.

Amendment by section 4102(c) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4102(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4103(c) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 2000, see section 4103(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4104(c)(3) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4104(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4432(b)(1) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Amendment by section 4507(a)(2)(B) of Pub. L. 105–33 applicable with respect to contracts entered into on and after Jan. 1, 1998, see section 4507(c) of Pub. L. 105–33, set out as a note under section 1395a of this title.

Amendment by section 4511(a)(2)(C) of Pub. L. 105–33 applicable with respect to services furnished and supplies provided on and after Jan. 1, 1998, see section 4511(e) of Pub. L. 105–33, set out as a note under section 1395k of this title.

Amendment by section 4541(b) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1998, including portions of cost reporting periods occurring on or after such date, see section 4541(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Amendment by section 4603(c)(2)(C) of Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395fff of this title.

Section 4614(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] apply to services furnished on or after October 1, 1997.''

Section 4632(b) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] apply to items and services furnished on or after the date of the enactment of this Act [Aug. 5, 1997].''

Section 4633(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] apply to items and services furnished on or after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 145(c)(1) of Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Amendment by section 147(e)(6) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320a–3a of this title.

Section 151(a)(2)(B) of Pub. L. 103–432 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to items and services furnished on or after the expiration of the 120-day period beginning on the date of the enactment of this Act [Oct. 31, 1994].''

Section 151(b)(3)(C) of Pub. L. 103–432 provided that: ''The amendments made by this paragraph [amending this section] shall apply to payments for items and services furnished on or after the date of the enactment of this Act [Oct. 31, 1994].''

Section 151(c)(1), (9) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 103–66.

Section 151(c)(4) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 101–508.

Section 151(c)(5), (6) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 101–239.

Amendment by section 156(a)(2)(D) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 1320c–3 of this title.

Section 157(b)(8) of Pub. L. 103–432 provided that: ''The amendments made by this subsection [amending this section, section 1395mm of this title, and provisions set out as notes under section 1395mm of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 151(c)(10) of Pub. L. 103–432 provided that: ''The amendment made by section 13561(e)(1)(G) of OBRA–1993 [Pub. L. 103–66, amending this section], to the extent it relates to the definition of large group health plan, shall be effective as if included in the enactment of OBRA–1989 [Pub. L. 101–239].''

Amendment by section 13561(d)(1) of Pub. L. 103–66 effective 90 days after Aug. 10, 1993, see section 13561(d)(3) of Pub. L. 103–66, set out as a note under section 5000 of Title 26, Internal Revenue Code.

Section 13561(e)(1)(D) of Pub. L. 103–66, as amended by Pub. L. 103–432, title I, § 151(c)(9)(A), Oct. 31, 1994, 108 Stat. 4436, provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 101–239.

Section 13581(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [enacting section 1320b–14 of this title and amending this section, section 1396a of this title, and section 552a of Title 5, Government Organization and Employees] shall take effect on January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4153(b)(2)(B) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 4153(b)(2)(C) of Pub. L. 101–508, set out as a note under section 1395x of this title.

Amendment by section 4157(c)(1) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4157(d) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(a)(3)(C) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4163(d)(2)(A)(i)–(iii), (B) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, as amended, set out as a note under section 1395*l* of this title.

Section 4163(d)(3) of Pub. L. 101–508, as added by Pub. L. 103–432, title I, § 147(f)(5)(A), Oct. 31, 1994, 108 Stat. 4431, provided that: ''The amendment made by paragraph (2)(A)(iv) [amending this section] shall apply to screening pap smears performed on or after July 1, 1990.''

Section 4204(g)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to incentives offered on or after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6115(b) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Amendment by section 6202(b)(1) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 6202(e)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to items and services furnished on or after October 1, 1989.''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(d) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 204(d)(2) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 205(e)(1) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(f) of Pub. L. 100–360, set out as a note under section 1395k of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(i)(4)(D) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(f)(4)(D)(ii) of Pub. L. 100–360 provided that: ''The amendment made by clause (i) [amending this section] shall apply to operations performed on or after 60 days after the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4009(j)(6) of Pub. L. 100–203, provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.

Section 4034(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of section 9319(a) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4036(a)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to items and services furnished on or after 30 days after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4039(c)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on January 1, 1988.''

For effective date of amendment by section 4072(c) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9319(f) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting section 5000 of Title 26, Internal Revenue Code, and amending this section and sections 1395p and 1395r of this title] shall apply to items and services furnished on or after January 1, 1987.

''(2) The amendments made by subsection (c) [amending sections 1395p and 1395r of this title] shall apply to enrollments occurring on or after January 1, 1987.''

Amendment by section 9320(h)(1) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Amendment by section 9343(c)(1) of Pub. L. 99–509 applicable to services furnished after June 30, 1987, see section 9343(h)(2) of Pub. L. 99–509, as amended, set out as a note under section 1395*l* of this title.

Section 9201(d)(1) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to items and services furnished on or after May 1, 1986.''

Amendment by section 9307(a) of Pub. L. 99–272 applicable to services performed on or after Apr. 1, 1986, see section 9307(e) of Pub. L. 99–272, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2301(c)(1) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to items and services furnished on or after January 1, 1985.''

Amendment by section 2304(c) of Pub. L. 98–369 applicable to pacemaker devices and leads implanted or removed on or after the effective date of final regulations promulgated to carry out such amendment, see section 2304(d) of Pub. L. 98–369, set out as a note below.

Section 2313(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395ww of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Section 2344(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to items and services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(30), (31) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 601(f) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, and amendment by section 602(e)(3) of Pub. L. 98–21 effective Oct. 1, 1983, see section 604(a)(1), (2) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 116(b) of Pub. L. 97–248 applicable with respect to items and services furnished on or after Jan. 1, 1983, see section 116(c) of Pub. L. 97–248, set out as a note under section 623 of Title 29, Labor.

Amendment by section 122(f), (g)(1) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

Amendment by section 128(a)(2)–(4) of Pub. L. 97–248 effective as if originally included as part of this section

as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 128(e)(2) of Pub. L. 97–248, set out as a note under section 1395x of this title.

Amendment by sections 142 and 148(a) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2103(a)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to expenses incurred on or after October 1, 1981.''

Section 2146(c)(1) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395*l* of this title.

Amendment by section 936(c) of Pub. L. 96–499 applicable with respect to services provided on or after July 1, 1981, see section 936(d) of Pub. L. 96–499, set out as a note under section 1395f of this title.

Section 939(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services furnished on or after July 1, 1981.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95–210 applicable to services rendered on or after first day of third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95–210, set out as a note under section 1395k of this title.

Section 13(c) of Pub. L. 95–142 provided that: ''The amendments made by this section [amending this section and sections 1320c–6 and 1395cc of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective with respect to admissions subject to the provisions of section 1395(a)(2) of this title which occur after Dec. 31, 1973, see section 18(z–3)(2) of Pub. L. 93–233, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 211(c)(1) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Amendment by section 256(c) of Pub. L. 92–603 applicable with respect to admissions occurring after the second month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 256(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 127(b) of Pub. L. 90–248 applicable with respect to services furnished after Dec. 31, 1967, see section 127(c) of Pub. L. 90–248, set out as a note under section 1395x of this title.

CONSTRUCTION OF 2003 AMENDMENT

Pub. L. 108–173, title VII, § 731(b)(3), Dec. 8, 2003, 117 Stat. 2351, provided that: ''Nothing in the amendment made by paragraph (1) [amending this section] shall be construed as applying to, or affecting, coverage or payment for a nonexperimental/investigational (category B) device.''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

TREATMENT OF HOSPITALS FOR CERTAIN SERVICES UNDER MEDICARE SECONDARY PAYOR (MSP) PROVISIONS

Pub. L. 108–173, title IX, § 943, Dec. 8, 2003, 117 Stat. 2422, provided that:

''(a) IN GENERAL.—The Secretary [of Health and Human Services] shall not require a hospital (including a critical access hospital) to ask questions (or obtain information) relating to the application of section 1862(b) of the Social Security Act [subsec. (b) of this section] (relating to medicare secondary payor provisions) in the case of reference laboratory services described in subsection (b), if the Secretary does not impose such requirement in the case of such services furnished by an independent laboratory.

''(b) REFERENCE LABORATORY SERVICES DESCRIBED.—Reference laboratory services described in this subsection are clinical laboratory diagnostic tests (or the interpretation of such tests, or both) furnished without a face-to-face encounter between the individual entitled to benefits under part A [probably means part A of title XVIII of the Social Security Act which is classified to part A of this subchapter] or enrolled under part B [probably means part B of title XVIII of the Social Security Act which is classified to part B of this subchapter], or both, and the hospital involved and in which the hospital submits a claim only for such test or interpretation.''

ANNUAL PUBLICATION OF LIST OF NATIONAL COVERAGE DETERMINATIONS

Pub. L. 108–173, title IX, § 953(b), Dec. 8, 2003, 117 Stat. 2428, provided that: ''The Secretary [of Health and Human Services] shall provide, in an appropriate annual publication available to the public, a list of national coverage determinations made under title XVIII of the Social Security Act [this subchapter] in the previous year and information on how to get more information with respect to such determinations.''

NOTIFICATION TO PHYSICIANS OF EXCESSIVE HOME HEALTH VISITS

Section 4614(b) of Pub. L. 105–33 provided that: ''The Secretary of Health and Human Services may establish a process for notifying a physician in cases in which the number of home health visits, furnished under title XVIII of the Social Security Act [this subchapter] pursuant to a prescription or certification of the physician, significantly exceeds such threshold (or thresholds) as the Secretary specifies. The Secretary may adjust such threshold to reflect demonstrated differences in the need for home health services among different beneficiaries.''

DISTRIBUTION OF QUESTIONNAIRE BY CONTRACTOR

Section 151(a)(1)(B) of Pub. L. 103–432 provided that: ''The Secretary of Health and Human Services shall enter into an agreement with an entity not later than 60 days after the date of the enactment of the Social

Security Act Amendments of 1994 [Oct. 31, 1994], to distribute the questionnaire described in section 1862(b)(5)(D) of the Social Security Act [subsec. (b)(5)(D) of this section] (as added by subparagraph (A)).''

RETROACTIVE EXEMPTION FOR CERTAIN SITUATIONS INVOLVING RELIGIOUS ORDERS

Section 13561(f) of Pub. L. 103–66 provided that: ''Section 1862(b)(1)(D) of the Social Security Act [subsec. (b)(1)(D) of this section] applies, with respect to items and services furnished before October 1, 1989, to any claims that the Secretary of Health and Human Services had not identified as of that date as subject to the provisions of section 1862(b) of such Act.''

GAO STUDY OF EXTENSION OF SECONDARY PAYER PERIOD

Section 4203(c)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §151(c)(7), Oct. 31, 1994, 108 Stat. 4436, directed Comptroller General to conduct study of impact of second sentence of subsec. (b)(1)(C) of this section and to submit preliminary report to Congress not later than Jan. 1, 1993, and final report not later than Jan. 1, 1995.

DEADLINE FOR FIRST TRANSMITTAL AND REQUEST OF MATCHING INFORMATION

Section 6202(a)(2)(B) of Pub. L. 101–239 provided that: ''The Commissioner of Social Security shall first—

''(i) transmit to the Secretary of the Treasury information under paragraph (5)(A)(i) of section 1862(b) of the Social Security Act [subsec. (b)(5)(A)(i) of this section] (as inserted by subparagraph (A)), and

''(ii) request from the Secretary disclosure of information described in section 6013(*l*)(12)(A) of the Internal Revenue Code of 1986 [26 U.S.C. 6013(*l*)(12)(A)],

by not later than 14 days after the date of the enactment of this Act [Dec. 19, 1989].''

DESIGNATION OF PEDIATRIC HOSPITALS AS MEETING CERTIFICATION AS HEART TRANSPLANT FACILITY

Section 4009(b) of Pub. L. 100–203 provided that: ''For purposes of determining whether a pediatric hospital that performs pediatric heart transplants meets the criteria established by the Secretary of Health and Human Services for facilities in which the heart transplants performed will be considered to meet the requirement of section 1862(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section], the Secretary shall treat such a hospital as meeting such criteria if—

''(1) the hospital's pediatric heart transplant program is operated jointly by the hospital and another facility that meets such criteria,

''(2) the unified program shares the same transplant surgeons and quality assurance program (including oversight committee, patient protocol, and patient selection criteria), and

''(3) the hospital demonstrates to the satisfaction of the Secretary that it is able to provide the specialized facilities, services, and personnel that are required by pediatric heart transplant patients.''

APPROVAL OF SURGICAL ASSISTANTS FOR PROCEDURES PERFORMED APRIL 1, 1986, TO DECEMBER 15, 1986

Section 1895(b)(16)(C) of Pub. L. 99–514 provided that: ''For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1395y(a)(15)), added by section 9307(a)(3) of COBRA, and for surgical procedures performed during the period beginning on April 1, 1986, and ending on December 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgery is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition before or during the surgery.''

EXTENDING WAIVER OF LIABILITY PROVISIONS TO HOSPICE PROGRAMS

Section 9305(f) of Pub. L. 99–509, as amended by Pub. L. 100–360, title IV, §426(a), July 1, 1988, 102 Stat. 814; Pub. L. 101–508, title IV, §4008(a)(2), Nov. 5, 1990, 104 Stat. 1388–44, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a hospice program should be denied pursuant to section 1862(a)(1)(C) of the Social Security Act [subsec. (a)(1)(C) of this section], apply (under section 1879(a) of such Act [section 1395pp(a) of this title]) a presumption of compliance of 2.5 percent (based on the number of days of hospice care billed) in a manner substantially similar to that provided to home health agencies under policies in effect as of July 1, 1985.

''(2) EFFECTIVE DATE.—Paragraph (1) shall apply to hospice care furnished on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act [Oct. 21, 1986] and before December 31, 1995.''

[Section 4008(a)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending section 9305(f) of Pub. L. 99–509, set out above, and section 9126(c) of Pub. L. 99–272, set out below] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].'']

STUDY OF IMPACT ON DISABLED BENEFICIARIES AND FAMILY OF AMENDMENTS RELATING TO LARGE GROUP HEALTH PLANS AND MEDICARE AS SECONDARY PAYER

Section 9319(e) of Pub. L. 99–509 directed Comptroller General to study and report to Congress, not later than Mar. 1, 1990, the impact of the amendments made by this section (enacting section 5000 of Title 26, Internal Revenue Code, and amending this section and sections 1395p and 1395r of this title) on access of disabled individuals and members of their family to employment and health insurance, such report to include information relating to number of disabled medicare beneficiaries for whom medicare has become secondary, either through their employment or the employment of a family member, amount of savings to the medicare program achieved annually through this provision, and effect on employment, and employment-based health coverage, of disabled individuals and family members.

REINSTATEMENT OF WAIVER OF LIABILITY PRESUMPTION

Section 9126(c) of Pub. L. 99–272, as amended by Pub. L. 100–360, title IV, §426(b), July 1, 1988, 102 Stat. 814; Pub. L. 101–508, title IV, §4008(a)(1), Nov. 5, 1990, 104 Stat. 1388–44, provided that: ''The Secretary of Health and Human Services shall, for purposes of determining whether payments to a skilled nursing facility should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section], apply the same presumption of compliance (5 percent) as in effect under regulations as of July 1, 1985. Such presumption shall apply for the period beginning with the first month beginning after the date of the enactment of this Act [Apr. 7, 1986] and ending on December 31, 1995.''

HOME HEALTH WAIVER OF LIABILITY

Section 9205 of Pub. L. 99–272, as amended by Pub. L. 100–360, title IV, §426(d), July 1, 1988, 102 Stat. 814; Pub. L. 103–432, title I, §158(b)(1), Oct. 31, 1994, 108 Stat. 4442, provided that: ''The Secretary of Health and Human Services shall, for purposes of determining whether payments to a home health agency should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section], apply a presumption of compliance (2.5 percent) in the same manner as under the regulations in effect as of July 1, 1985. Such presumption shall apply until December 31, 1995.''

[Section 158(b)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending section 9205 of Pub. L. 99–272, set out above] shall take ef-

fect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

RECOMMENDATIONS AND GUIDELINES FOR ELIMINATION OF ASSISTANTS AT SURGERY; REPORT TO CONGRESS

Section 9307(d) of Pub. L. 99–272 provided that the Secretary of Health and Human Services, after consultation with the Physician Payment Review Commission, develop recommendations and guidelines respecting other surgical procedures for which an assistant at surgery was generally not medically necessary and circumstances under which use of an assistant at surgery was generally appropriate but should be subject to prior approval of an appropriate entity and that the Secretary report to Congress, not later than January 1, 1987, on these recommendations and guidelines.

PACEMAKER REIMBURSEMENT REVIEW AND REFORM; PROMULGATION OF REGULATIONS; EFFECTIVE DATE OF PACEMAKER REGISTRATION

Section 2304(d) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services shall promulgate final regulations to carry out this section and the amendment made by this section [amending this section and enacting provisions set out as a note under section 1395*l* of this title] prior to January 1, 1985, and the amendment made by subsection (c) [amending this section] shall apply to pacemaker devices and leads implanted or removed on or after the effective date of such regulations.''

PAYMENT FOR DEBRIDEMENT OF MYCOTIC TOENAILS

Section 2325 of Pub. L. 98–369 provided that: ''The Secretary shall provide, pursuant to section 1862(a) of the Social Security Act [subsec. (a) of this section], that payment will not be made under part B of title XVIII of such Act [part B of this subchapter] for a physician's debridement of mycotic toenails to the extent such debridement is performed for a patient more frequently than once every 60 days, unless the medical necessity for more frequent treatment is documented by the billing physician.''

INTERIM WAIVER IN CERTAIN CASES OF BILLING RULE FOR ITEMS AND SERVICES OTHER THAN PHYSICIANS' SERVICES

Section 602(k) of Pub. L. 98–21, as amended by Pub. L. 99–272, title IX, § 9112(a), Apr. 7, 1986, 100 Stat. 163, provided that:

''(1) The Secretary of Health and Human Services may, for any cost reporting period beginning prior to October 1, 1986, waive the requirements of sections 1862(a)(14) and 1866(a)(1)(H) of the Social Security Act [subsec. (a)(14) of this section and section 1395cc(a)(1)(H) of this title] in the case of a hospital which has followed a practice, since prior to October 1, 1982, of allowing direct billing under part B of title XVIII of such Act [part B of this subchapter] for services (other than physicians' services) so extensively, that immediate compliance with those requirements would threaten the stability of patient care. Any such waiver shall provide that such billing may continue to be made under part B of such title but that the payments to such hospital under part A of such title [part A of this subchapter] shall be reduced by the amount of the billings for such services under part B of such title. If such a waiver is granted, at the end of the waiver period the Secretary may provide for such methods of payments under part A as is appropriate, given the organizational structure of the institution.

''(2) In the case of a hospital which is receiving payments pursuant to a waiver under paragraph (1), payment of the adjustment for indirect costs of approved educational activities shall be made as if the hospital were receiving under part A of title XVIII of the Social Security Act all the payments which are made under part B of such title solely by reason of such waiver.

''(3) Any waiver granted under paragraph (1) shall provide that, with respect to those items and services billed under part B of title XVIII of the Social Security Act solely by reason of such waiver—

''(A) payment under such part shall be equal to 100 percent of the reasonable charge or other applicable payment base for the items and services; and

''(B) the entity furnishing the items and services must agree to accept the amount paid pursuant to subparagraph (A) as the full charge for the items and services.''

[Section 9112(b) of Pub. L. 99–272 provided that:

[''(1) Section 602(k)(2) of the Social Security Amendments of 1983 (as added by subsection (a)) [set out above] shall apply to cost reporting periods beginning on or after January 1, 1986.

[''(2) Section 602(k)(3) of the Social Security Amendments of 1983 (as added by subsection (a)) [set out above] shall apply to items and services furnished after the end of the 10-day period beginning on the date of the enactment of this Act [Apr. 7, 1986].'']

PROHIBITION OF PAYMENT FOR INEFFECTIVE DRUGS

Section 115(b) of Pub. L. 97–248 provided that: ''No provision of law limiting the use of funds for purposes of enforcing or implementing section 1862(c) [subsec. (c) of this section] or section 1903(i)(5) [section 1396b(i)(5) of this title] of the Social Security Act, section 2103 of the Omnibus Budget Reconciliation Act of 1981 [section 2103 of Pub. L. 97–35, amending sections 1395y and 1396b of this title and enacting provisions set out as notes under sections 1395y and 1396b of this title], or any rule or regulation issued pursuant to any such section (including any provision contained in, or incorporated by reference into, any appropriation Act or resolution making continuing appropriations) shall apply to any period after September 30, 1982, unless such provision of law is enacted after the date of the enactment of this Act [Sept. 3, 1982] and specifically states that such provision is to supersede this section.''

ESTABLISHMENT AND IMPLEMENTATION OF GUIDELINES

Section 2152(b) of Pub. L. 97–35 directed the Secretary of Health and Human Services to establish, and provide for the implementation of, the guidelines described in subsec. (f) of this section not later than Oct. 1, 1981.

REPORT TO CONGRESSIONAL COMMITTEES ON IMPLEMENTATION OF CERTIFICATION REQUIREMENTS RELATING TO MODIFICATION OF HEALTH BENEFITS PLAN OR PROGRAM; FAILURE TO SUBMIT REPORT

Section 4(b) of Pub. L. 93–480 provided that the Civil Service Commission and the Secretary of Health, Education, and Welfare submit a report on or before Mar. 1, 1975, on the steps which have been taken, and the steps which are planned, to enable the Secretary to make the determination and certification referred to in former subsec. (c) of this section and that if such report is not submitted by Mar. 1, 1975, the date specified in former subsec. (c) shall be deemed to be July 1, 1975, rather than Jan. 1, 1976.

§ 1395z. Consultation with State agencies and other organizations to develop conditions of participation for providers of services

In carrying out his functions, relating to determination of conditions of participation by providers of services, under subsections (e)(9), (f)(4), (j)(15),[1] (*o*)(6), (cc)(2)(I), and[2] (dd)(2), and (mm)(1) of section 1395x of this title, or by ambulatory surgical centers under section 1395k(a)(2)(F)(i) of this title, the Secretary shall consult with appropriate State agencies and recognized national listing or accrediting bodies, and may consult with appropriate local agencies. Such conditions prescribed under any of

[1] See References in Text note below.

[2] So in original. The word ''and'' probably should not appear.

such subsections may be varied for different areas or different classes of institutions or agencies and may, at the request of a State, provide higher requirements for such State than for other States; except that, in the case of any State or political subdivision of a State which imposes higher requirements on institutions as a condition to the purchase of services (or of certain specified services) in such institutions under a State plan approved under subchapter I, XVI, or XIX of this chapter, the Secretary shall impose like requirements as a condition to the payment for services (or for the services specified by the State or subdivision) in such institutions in such State or subdivision.

(Aug. 14, 1935, ch. 531, title XVIII, § 1863, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 325; amended Pub. L. 92–603, title II, § 234(g)(2), Oct. 30, 1972, 86 Stat. 1413; Pub. L. 96–499, title IX, §§ 933(f), 934(c)(1), Dec. 5, 1980, 94 Stat. 2636, 2639; Pub. L. 97–248, title I, § 122(g)(2), Sept. 3, 1982, 96 Stat. 362; Pub. L. 98–369, div. B, title III, §§ 2335(c), 2349(b)(1), 2354(b)(32), July 18, 1984, 98 Stat. 1090, 1097, 1102; Pub. L. 100–360, title II, §§ 203(e)(2), 204(c)(1), July 1, 1988, 102 Stat. 725, 728; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, § 6003(g)(3)(C)(ii), Dec. 19, 1989, 103 Stat. 2152; Pub. L. 101–508, title IV, § 4163(c)(1), Nov. 5, 1990, 104 Stat. 1388–99; Pub. L. 103–432, title I, § 145(c)(2), Oct. 31, 1994, 108 Stat. 4427.)

REFERENCES IN TEXT

Subsection (j) of section 1395x of this title, referred to in text, was amended generally by Pub. L. 100–203, title IV, § 4201(a)(1), Dec. 22, 1987, 101 Stat. 1330–160, and, as so amended, does not contain a par. (15).

AMENDMENTS

1994—Pub. L. 103–432 struck out ''or whether screening mammography meets the standards established under section 1395m(c)(3) of this title,'' before ''the Secretary shall consult''.

1990—Pub. L. 101–508 inserted ''or whether screening mammography meets the standards established under section 1395m(c)(3) of this title,'' after ''section 1395k(a)(2)(F)(i) of this title,''.

1989—Pub. L. 101–239 substituted ''(jj)(3), and (mm)(1)'' for ''and (jj)(3)''.

Pub. L. 101–234 repealed Pub. L. 100–360, §§ 203(e)(2), 204(c)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

1988—Pub. L. 100–360, § 204(c)(1), inserted ''or whether screening mammography meets the standards established under section 1395m(e)(3) of this title,'' after ''1395k(a)(2)(F)(i) of this title,''.

Pub. L. 100–360, § 203(e)(2), substituted ''(dd)(2), and (jj)(3)'' for ''and (dd)(2)''.

1984—Pub. L. 98–369, § 2335(c), struck out ''(g)(4),'' after ''(e)(9), (f)(4),''.

Pub. L. 98–369, § 2354(b)(32), substituted ''(j)(15)'' for ''(j)(11)''.

Pub. L. 98–369, § 2349(b)(1), substituted ''appropriate State agencies'' for ''the Health Insurance Benefits Advisory Council established by section 1395dd of this title, appropriate State agencies,''.

1982—Pub. L. 97–248 substituted ''(cc)(2)(I), and (dd)(2)'' for ''and (cc)(2)(I)''.

1980—Pub. L. 96–499, § 933(f), substituted ''(*o*)(6), and (cc)(2)(I) of section 1395x'' for ''and (*o*)(6) of section 1395x''.

Pub. L. 96–499, § 934(c)(1), inserted ''or by ambulatory surgical centers under section 1395k(a)(2)(F)(i) of this title,''.

1972—Pub. L. 92–603 substituted ''subsections (e)(9), (f)(4), (g)(4), (j)(11), and (*o*)(6) of section 1395x of this title'' for ''subsections (e)(8), (f)(4), (g)(4), (j)(10), and (*o*)(5) of section 1395x of this title''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 203(e)(2) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 204(c)(1) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2335(c) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Amendment by section 2349(b)(1) of Pub. L. 98–369 effective July 18, 1984, see section 2349(c) of Pub. L. 98–369, set out as a note under section 907a of this title.

Amendment by section 2354(b)(32) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 933(f) of Pub. L. 96–499 effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period beginning on or after July 1, 1981, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to providers of services for fiscal years beginning after the fifth month following October 1972, see section 234(i) of Pub. L. 92–603, set out as a note under section 1395x of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Con-

gress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1395aa. Agreements with States

(a) Use of State agencies to determine compliance by providers of services with conditions of participation

The Secretary shall make an agreement with any State which is able and willing to do so under which the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by him for the purpose of determining whether an institution therein is a hospital or skilled nursing facility, or whether an agency therein is a home health agency, or whether an agency is a hospice program or whether a facility therein is a rural health clinic as defined in section 1395x(aa)(2) of this title, a critical access hospital, as defined in section 1395x(mm)(1) of this title, or a comprehensive outpatient rehabilitation facility as defined in section 1395x(cc)(2) of this title, or whether a laboratory meets the requirements of paragraphs (16) and (17) of section 1395x(s) of this title, or whether a clinic, rehabilitation agency or public health agency meets the requirements of subparagraph (A) or (B), as the case may be, of section 1395x(p)(4) of this title, or whether an ambulatory surgical center meets the standards specified under section 1395k(a)(2)(F)(i) of this title. To the extent that the Secretary finds it appropriate, an institution or agency which such a State (or local) agency certifies is a hospital, skilled nursing facility, rural health clinic, comprehensive outpatient rehabilitation facility, home health agency, or hospice program (as those terms are defined in section 1395x of this title) may be treated as such by the Secretary. Any State agency which has such an agreement may (subject to approval of the Secretary) furnish to a skilled nursing facility, after proper request by such facility, such specialized consultative services (which such agency is able and willing to furnish in a manner satisfactory to the Secretary) as such facility may need to meet one or more of the conditions specified in section 1395i–3(a) of this title. Any such services furnished by a State agency shall be deemed to have been furnished pursuant to such agreement. Within 90 days following the completion of each survey of any health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization by the appropriate State or local agency described in the first sentence of this subsection, the Secretary shall make public in readily available form and place, and require (in the case of skilled nursing facilities) the posting in a place readily accessible to patients (and patients' representatives), the pertinent findings of each such survey relating to the compliance of each such health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization with (1) the statutory conditions of participation imposed under this subchapter and (2) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization. Any agreement under this subsection shall provide for the appropriate State or local agency to maintain a toll-free hotline (1) to collect, maintain, and continually update information on home health agencies located in the State or locality that are certified to participate in the program established under this subchapter (which information shall include any significant deficiencies found with respect to patient care in the most recent certification survey conducted by a State agency or accreditation survey conducted by a private accreditation agency under section 1395bb of this title with respect to the home health agency, when that survey was completed, whether corrective actions have been taken or are planned, and the sanctions, if any, imposed under this subchapter with respect to the agency) and (2) to receive complaints (and answer questions) with respect to home health agencies in the State or locality. Any such agreement shall provide for such State or local agency to maintain a unit for investigating such complaints that possesses enforcement authority and has access to survey and certification reports, information gathered by any private accreditation agency utilized by the Secretary under section 1395bb of this title, and consumer medical records (but only with the consent of the consumer or his or her legal representative).

(b) Payment in advance or by way of reimbursement to State for performance of functions of subsection (a)

The Secretary shall pay any such State, in advance or by way of reimbursement, as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (a) of this section, and for the Federal Hospital Insurance Trust Fund's fair share of the costs attributable to the planning and other efforts directed toward coordination of activities in carrying out its agreement and other activities related to the provision of services similar to those for which payment may be made under part A of this subchapter, or related to the facilities and personnel required for the provision of such services, or related to improving the quality of such services.

(c) Use of State or local agencies to survey hospitals

The Secretary is authorized to enter into an agreement with any State under which the appropriate State or local agency which performs the certification function described in subsection (a) of this section will survey, on a selective sample basis (or where the Secretary finds that a survey is appropriate because of substantial allegations of the existence of a significant deficiency or deficiencies which would, if found to be present, adversely affect health and safety of patients), provider entities that, pursuant to

subsection (a) or (b)(1) of section 1395bb of this title, are treated as meeting the conditions or requirements of this subchapter. The Secretary shall pay for such services in the manner prescribed in subsection (b) of this section.

(d) Fulfillment of requirements by States

The Secretary may not enter an agreement under this section with a State with respect to determining whether an institution therein is a skilled nursing facility unless the State meets the requirements specified in section 1395i–3(e) of this title and section 1395i–3(g) of this title and the establishment of remedies under sections 1395i–3(h)(2)(B) and 1395i–3(h)(2)(C) of this title (relating to establishment and application of remedies).

(e) Prohibition of user fees for survey and certification

Notwithstanding any other provision of law, the Secretary may not impose, or require a State to impose, any fee on any facility or entity subject to a determination under subsection (a) of this section, or any renal dialysis facility subject to the requirements of section 1395rr(b)(1) of this title, for any such determination or any survey relating to determining the compliance of such facility or entity with any requirement of this subchapter (other than any fee relating to section 263a of this title).

(Aug. 14, 1935, ch. 531, title XVIII, § 1864, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 326; amended Pub. L. 90–248, title I, § 133(f), title II, § 228(b), Jan. 2, 1968, 81 Stat. 852, 904; Pub. L. 92–603, title II, §§ 244(a), 277, 278(a)(16), (b)(15), 299D(a), Oct. 30, 1972, 86 Stat. 1422, 1452–1454, 1461; Pub. L. 95–210, § 1(i), Dec. 13, 1977, 91 Stat. 1488; Pub. L. 96–499, title IX, §§ 933(g), 934(c)(2), Dec. 5, 1980, 94 Stat. 2639; Pub. L. 96–611, § 1(a)(2), Dec. 28, 1980, 94 Stat. 3566; Pub. L. 97–248, title I, § 122(g)(3), Sept. 3, 1982, 96 Stat. 362; Pub. L. 98–369, div. B, title III, § 2354(b)(17), July 18, 1984, 98 Stat. 1101; Pub. L. 99–509, title IX, § 9320(h)(3), Oct. 21, 1986, 100 Stat. 2016; Pub. L. 100–203, title IV, §§ 4025(a), 4072(d), 4201(a)(2), (d)(4), 4202(a)(1), (c), 4203(a)(1), 4212(b), Dec. 22, 1987, 101 Stat. 1330–74, 1330–117, 1330–160, 1330–174, 1330–179, 1330–212, as amended Pub. L. 100–360, title IV, § 411(*l*)(1)(C), (6)(B), July 1, 1988, 102 Stat. 804, as amended Pub. L. 100–485, title VI, § 608(d)(20)(B), (C), (27)(B), Oct. 13, 1988, 102 Stat. 2419, 2420, 2422; Pub. L. 100–360, title II, §§ 203(e)(3), 204(c)(2), (d)(3), title IV, § 411(d)(4)(A), July 1, 1988, 102 Stat. 725, 728, 729, 774; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6003(g)(3)(C)(iii), 6115(c), Dec. 19, 1989, 103 Stat. 2152, 2219; Pub. L. 101–508, title IV, §§ 4154(d)(1), 4163(c)(2), 4207(g), formerly 4027(g), Nov. 5, 1990, 104 Stat. 1388–85, 1388–100, 1388–123; Pub. L. 103–432, title I, §§ 145(c)(3), 160(a)(1), (d)(4), Oct. 31, 1994, 108 Stat. 4427, 4443, 4444; Pub. L. 104–134, title I, § 101(d) [title V, § 516(c)(1)], Apr. 26, 1996, 110 Stat. 1321–211, 1321–247; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–33, title IV, §§ 4106(c), 4201(c)(1), Aug. 5, 1997, 111 Stat. 368, 373.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (b), is classified to section 1395c et seq. of this title.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Pub. L. 105–33, § 4106(c), substituted ''paragraphs (16) and (17)'' for ''paragraphs (15) and (16)''.

1996—Subsec. (c). Pub. L. 104–134, in first sentence, substituted at end ''provider entities that, pursuant to subsection (a) or (b)(1) of section 1395bb of this title, are treated as meeting the conditions or requirements of this subchapter.'' for ''hospitals which have an agreement with the Secretary under section 1395cc of this title and which are accredited by the Joint Commission on Accreditation of Hospitals.''

1994—Subsec. (a). Pub. L. 103–432, § 160(a)(1)(B), struck out ''or (in the case of a laboratory that does not participate or seek to participate in the medicare program) the requirements of section 263a of this title'' after ''section 1395x(s) of this title'' in first sentence.

Pub. L. 103–432, § 145(c)(3), struck out '', or whether screening mammography meets the standards established under section 1395m(c)(3) of this title'' after ''section 1395k(a)(2)(F)(i) of this title'' in first sentence.

Subsec. (e). Pub. L. 103–432, § 160(a)(1)(A), inserted before period at end ''(other than any fee relating to section 263a of this title)''.

1990—Subsec. (a). Pub. L. 101–508, § 4163(c)(2), inserted before period at end of first sentence '', or whether screening mammography meets the standards established under section 1395m(c)(3) of this title''.

Pub. L. 101–508, § 4154(d)(1), substituted ''section 1395x(s) of this title or (in the case of a laboratory that does not participate or seek to participate in the medicare program) the requirements of section 263a of this title,'' for ''section 1395x(s) of this title,'' in first sentence.

Subsec. (e). Pub. L. 101–508, § 4207(g), formerly § 4027(g), as renumbered by Pub. L. 103–432, § 160(d)(4), added subsec. (e).

1989—Subsec. (a). Pub. L. 101–239, § 6115(c), substituted ''paragraphs (15) and (16)'' for ''paragraphs (14) and (15)''.

Pub. L. 101–239, § 6003(g)(3)(C)(iii), inserted '', a rural primary care hospital, as defined in section 1395x(mm)(1) of this title,'' after ''1395x(aa)(2) of this title''.

Pub. L. 101–234 repealed Pub. L. 100–360, §§ 203(e)(3), 204(c)(2), (d)(3), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 and 1989 Amendment notes.

1988—Subsec. (a). Pub. L. 100–360, § 411(*l*)(6)(B), amended Pub. L. 100–203, § 4212(b), see 1987 Amendment note below.

Pub. L. 100–360, § 411(*l*)(1)(C), as added by Pub. L. 100–485, § 608(d)(27)(B), added Pub. L. 100–203, § 4201(d)(4), see 1987 Amendment note below.

Pub. L. 100–360, § 411(d)(4)(A)(i), as amended by Pub. L. 100–485, § 608(d)(20)(B)(i), substituted ''most recent certification survey conducted by a State agency or accreditation survey conducted by a private accreditation agency under section 1395bb of this title with respect to the home health agency,'' for ''most recent certification survey conducted with respect to the agency,''.

Pub. L. 100–360, § 411(d)(4)(A)(ii)(I), as amended by Pub. L. 100–485, § 608(d)(20)(C), substituted ''such State or local agency to maintain a unit'' for ''such agency to maintain a unit''.

Pub. L. 100–360, § 411(d)(4)(A)(ii)(II), as amended by Pub. L. 100–485, § 608(d)(20)(B)(ii), substituted ''utilized by the Secretary under section 1395bb of this title'' for ''pursuant to an agreement with the Secretary under this section''.

Pub. L. 100–360, § 204(d)(3), substituted ''paragraphs (14) and (15)'' for ''paragraphs (13) and (14)''.

Pub. L. 100–360, § 204(c)(2), inserted '', or whether screening mammography meets the standards established under section 1395m(e)(3) of this title'' after ''section 1395k(a)(2)(F)(i) of this title''.

Pub. L. 100–360, § 203(e)(3), inserted ''or a home intravenous drug therapy provider,'' after ''hospice program'' and substituted ''hospice program, or home intravenous drug therapy provider'' for ''or hospice program''.

1987—Subsec. (a). Pub. L. 100–203, § 4212(b), which directed an amendment of subsec. (a) identical to Pub. L. 100–203, § 4202(c), was amended generally by Pub. L. 100–360, § 411(*l*)(6)(B), so that it does not amend this section but rather section 1396r of this title.

Pub. L. 100–203, § 4202(c), inserted '', and require (in the case of skilled nursing facilities) the posting in a place readily accessible to patients (and patients' representatives),'' after ''place'' in fifth sentence.

Pub. L. 100–203, § 4201(d)(4), as added by Pub. L. 100–360, § 411(*l*)(1)(C), as added by Pub. L. 100–485, § 608(d)(27)(B), substituted ''conditions specified in section 1395i–3(a) of this title'' for ''conditions specified in section 1395x(j) of this title''.

Pub. L. 100–203, § 4072(d), substituted ''paragraphs (13) and (14)'' for ''paragraphs (12) and (13)'' in first sentence.

Pub. L. 100–203, § 4025(a), inserted at end ''Any agreement under this subsection shall provide for the appropriate State or local agency to maintain a toll-free hotline (1) to collect, maintain, and continually update information on home health agencies located in the State or locality that are certified to participate in the program established under this subchapter (which information shall include any significant deficiencies found with respect to patient care in the most recent certification survey conducted with respect to the agency, when that survey was completed, whether corrective actions have been taken or are planned, and the sanctions, if any, imposed under this subchapter with respect to the agency) and (2) to receive complaints (and answer questions) with respect to home health agencies in the State or locality. Any such agreement shall provide for such agency to maintain a unit for investigating such complaints that possesses enforcement authority and has access to survey and certification reports, information gathered by any private accreditation agency pursuant to an agreement with the Secretary under this section, and consumer medical records (but only with the consent of the consumer or his or her legal representative).''

Subsec. (d). Pub. L. 100–203, § 4203(a)(1), inserted before period at end ''and the establishment of remedies under sections 1395i–3(h)(2)(B) and 1395i–3(h)(2)(C) of this title (relating to establishment and application of remedies)''.

Pub. L. 100–203, § 4202(a)(1), inserted ''and section 1395i–3(g) of this title'' before period at end.

Pub. L. 100–203, § 4201(a)(2), added subsec. (d).

1986—Subsec. (a). Pub. L. 99–509 substituted ''paragraphs (12) and (13)'' for ''paragraphs (11) and (12)''.

1984—Subsec. (c). Pub. L. 98–369 struck out ''the'' after ''Joint Commission on''.

1982—Subsec. (a). Pub. L. 97–248 inserted ''or whether an agency is a hospice program'' and substituted ''home health agency, or hospice program'' for ''or home health agency''.

1980—Subsec. (a). Pub. L. 96–611 substituted ''requirements of paragraphs (11) and (12) of section 1395x(s) of this title'' for ''requirements of paragraphs (10) and (11) of section 1395x(s) of this title''.

Pub. L. 96–499, § 933(g), inserted ''or a comprehensive outpatient rehabilitation facility as defined in section 1395x(cc)(2) of this title'' after ''section 1395x(aa)(2) of this title'' and ''comprehensive outpatient rehabilitation facility,'' after ''rural health clinic'' in four places.

Pub. L. 96–499, § 934(c)(2), inserted '', or whether an ambulatory surgical center meets the standards specified under section 1395k(a)(2)(F) of this title'' after ''section 1395x(p)(4) of this title'' and ''ambulatory surgical center,'' after ''health care facility,'' in three places.

1977—Subsec. (a). Pub. L. 95–210 expanded enumeration of institutions and agencies included under coverage of this subsection by inserting references to rural health clinics in five places.

1972—Subsec. (a). Pub. L. 92–603, §§ 277, 278(a)(16), (b)(15), 299D(a), provided for the furnishing of specialized consultative services to skilled nursing facilities, authorized the Secretary to make public the pertinent findings of each survey within 90 days following the completion of each survey of any health care facility, etc., and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (c). Pub. L. 92–603, § 244(a), added subsec. (c).

1968—Subsec. (a). Pub. L. 90–248, § 133(f), inserted clause at end of first sentence for determining whether a clinic, rehabilitation agency, or public health agency meets the requirements of section 1395x(p)(4)(A) or (B) of this title.

Pub. L. 90–248, § 228(b), struck out last sentence providing for utilization of State facilities to provide consultative services to institutions furnishing medical care, covered in section 1396a(a)(24) of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4106(c) of Pub. L. 105–33 applicable to bone mass measurements performed on or after July 1, 1998, see section 4106(d) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 145(c)(3) of Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4154(d)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of the Clinical Laboratory Improvement Amendments of 1988 [Pub. L. 100–578].''

Amendment by section 4163(c)(2) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 203(e)(3) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 204(c)(2), (d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(d)(4)(A), (*l*)(1)(C), (6)(B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L.

100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4025(c), formerly § 4025(b), of Pub. L. 100–203, as redesignated and amended by Pub. L. 100–360, title IV, § 411(d)(4)(B)(i), July 1, 1988, 102 Stat. 774, provided that: ''The amendment made by this section [amending this section and section 1395bb of this title] shall apply with respect to agreements entered into or renewed on or after the date of enactment of this Act [Dec. 22, 1987].''

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendments by sections 4201(a)(2), (d)(4) and 4202(a)(1), (c) of Pub. L. 100–203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date, except as otherwise specifically provided in section 1395i–3 of this title, see section 4204(a) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1395i–3 of this title.

Amendment by section 4203(a)(1) of Pub. L. 100–203 applicable Jan. 1, 1988, except as otherwise specifically provided in section 1395i–3 of this title, without regard to whether regulations to implement such amendment are promulgated by such date, and in applying amendment by section 4203(a)(1) of Pub. L. 100–203 for services furnished by a skilled nursing facility before Oct. 1, 1990, any reference to a requirement of section 1395i–3(b), (c), or (d) of this title is deemed a reference to section 1395x(j) of this title, see section 4204(b) of Pub. L. 100–203, as added by Pub. L. 100–485, set out as an Effective Date note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395*l* of this title.

For effective date of amendment by section 933(g) of Pub. L. 96–499, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–210 applicable to services rendered on or after first day of third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95–210, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 299D(c) of Pub. L. 92–603 provided that: ''The provisions of this section [amending this section and section 1396a of this title] shall be effective beginning January 1, 1973, or within 6 months following the enactment of this Act [Oct. 30, 1972], whichever is later.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 133(f) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub. L. 90–248, set out as a note under section 1395k of this title.

Section 228(b) of Pub. L. 90–248 provided that the amendment made by such section 228(b) is effective July 1, 1969.

PILOT PROGRAM FOR NATIONAL AND STATE BACKGROUND CHECKS ON DIRECT PATIENT ACCESS EMPLOYEES OF LONG-TERM CARE FACILITIES OR PROVIDERS

Pub. L. 108–173, title III, § 307, Dec. 8, 2003, 117 Stat. 2257, provided that:

''(a) AUTHORITY TO CONDUCT PROGRAM.—The Secretary [of Health and Human Services], in consultation with the Attorney General, shall establish a pilot program to identify efficient, effective, and economical procedures for long term care facilities or providers to conduct background checks on prospective direct patient access employees.

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—Under the pilot program, a long-term care facility or provider in a participating State, prior to employing a direct patient access employee that is first hired on or after the commencement date of the pilot program in the State, shall conduct a background check on the employee in accordance with such procedures as the participating State shall establish.

''(2) PROCEDURES.—

''(A) IN GENERAL.—The procedures established by a participating State under paragraph (1) should be designed to—

''(i) give a prospective direct access patient employee notice that the long-term care facility or provider is required to perform background checks with respect to new employees;

''(ii) require, as a condition of employment, that the employee—

''(I) provide a written statement disclosing any disqualifying information;

''(II) provide a statement signed by the employee authorizing the facility to request national and State criminal history background checks;

''(III) provide the facility with a rolled set of the employee's fingerprints; and

''(IV) provide any other identification information the participating State may require;

''(iii) require the facility or provider to check any available registries that would be likely to contain disqualifying information about a prospective employee of a long-term care facility or provider; and

''(iv) permit the facility or provider to obtain State and national criminal history background checks on the prospective employee through a 10-fingerprint check that utilizes State criminal records and the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.

''(B) ELIMINATION OF UNNECESSARY CHECKS.—The procedures established by a participating State under paragraph (1) shall permit a long-term care facility or provider to terminate the background check at any stage at which the facility or provider obtains disqualifying information regarding a prospective direct patient access employee.

''(3) PROHIBITION ON HIRING OF ABUSIVE WORKERS.—

''(A) IN GENERAL.—A long-term care facility or provider may not knowingly employ any direct patient access employee who has any disqualifying information.

''(B) PROVISIONAL EMPLOYMENT.—

''(i) IN GENERAL.—Under the pilot program, a participating State may permit a long-term care facility or provider to provide for a provisional period of employment for a direct patient access employee pending completion of a background check, subject to such supervision during the employee's provisional period of employment as the participating State determines appropriate.

''(ii) SPECIAL CONSIDERATION FOR CERTAIN FACILITIES AND PROVIDERS.—In determining what constitutes appropriate supervision of a provisional employee, a participating State shall take into account cost or other burdens that would be imposed on small rural long-term care facilities or providers, as well as the nature of care delivered by such facilities or providers that are home health agencies or providers of hospice care.

''(4) USE OF INFORMATION; IMMUNITY FROM LIABILITY.—

''(A) USE OF INFORMATION.—A participating State shall ensure that a long-term care facility or provider that obtains information about a direct patient access employee pursuant to a background check uses such information only for the purpose of determining the suitability of the employee for employment.

''(B) IMMUNITY FROM LIABILITY.—A participating State shall ensure that a long-term care facility or provider that, in denying employment for an individual selected for hire as a direct patient access employee (including during any period of provisional employment), reasonably relies upon information obtained through a background check of the individual, shall not be liable in any action brought by the individual based on the employment determination resulting from the information.

''(5) AGREEMENTS WITH EMPLOYMENT AGENCIES.—A participating State may establish procedures for facilitating the conduct of background checks on prospective direct patient access employees that are hired by a long-term care facility or provider through an employment agency (including a temporary employment agency).

''(6) PENALTIES.—A participating State may impose such penalties as the State determines appropriate to enforce the requirements of the pilot program conducted in that State.

''(c) PARTICIPATING STATES.—

''(1) IN GENERAL.—The Secretary shall enter into agreements with not more than 10 States to conduct the pilot program under this section in such States.

''(2) REQUIREMENTS FOR STATES.—An agreement entered into under paragraph (1) shall require that a participating State—

''(A) be responsible for monitoring compliance with the requirements of the pilot program;

''(B) have procedures by which a provisional employee or an employee may appeal or dispute the accuracy of the information obtained in a background check performed under the pilot program; and

''(C) agree to—

''(i) review the results of any State or national criminal history background checks conducted regarding a prospective direct patient access employee to determine whether the employee has any conviction for a relevant crime;

''(ii) immediately report to the entity that requested the criminal history background checks the results of such review; and

''(iii) in the case of an employee with a conviction for a relevant crime that is subject to reporting under section 1128E of the Social Security Act (42 U.S.C. 1320a–7e), report the existence of such conviction to the database established under that section.

''(3) APPLICATION AND SELECTION CRITERIA.—

''(A) APPLICATION.—A State seeking to participate in the pilot program established under this section, shall submit an application to the Secretary containing such information and at such time as the Secretary may specify.

''(B) SELECTION CRITERIA.—

''(i) IN GENERAL.—In selecting States to participate in the pilot program, the Secretary shall establish criteria to ensure—

''(I) geographic diversity;

''(II) the inclusion of a variety of long-term care facilities or providers;

''(III) the evaluation of a variety of payment mechanisms for covering the costs of conducting the background checks required under the pilot program; and

''(IV) the evaluation of a variety of penalties (monetary and otherwise) used by participating States to enforce the requirements of the pilot program in such States.

''(ii) ADDITIONAL CRITERIA.—The Secretary shall, to the greatest extent practicable, select States to participate in the pilot program in accordance with the following:

''(I) At least one participating State should permit long-term care facilities or providers to provide for a provisional period of employment pending completion of a background check and at least one such State should not permit such a period of employment.

''(II) At least one participating State should establish procedures under which employment agencies (including temporary employment agencies) may contact the State directly to conduct background checks on prospective direct patient access employees.

''(III) At least one participating State should include patient abuse prevention training (including behavior training and interventions) for managers and employees of long-term care facilities and providers as part of the pilot program conducted in that State.

''(iii) INCLUSION OF STATES WITH EXISTING PROGRAMS.—Nothing in this section shall be construed as prohibiting any State which, as of the date of the enactment of this Act [Dec. 8, 2003], has procedures for conducting background checks on behalf of any entity described in subsection (g)(5) from being selected to participate in the pilot program conducted under this section.

''(d) PAYMENTS.—Of the amounts made available under subsection (f) to conduct the pilot program under this section, the Secretary shall—

''(1) make payments to participating States for the costs of conducting the pilot program in such States; and

''(2) reserve up to 4 percent of such amounts to conduct the evaluation required under subsection (e).

''(e) EVALUATION.—The Secretary, in consultation with the Attorney General, shall conduct by grant, contract, or interagency agreement an evaluation of the pilot program conducted under this section. Such evaluation shall—

''(1) review the various procedures implemented by participating States for long-term care facilities or providers to conduct background checks of direct patient access employees and identify the most efficient, effective, and economical procedures for conducting such background checks;

''(2) assess the costs of conducting such background checks (including start-up and administrative costs);

''(3) consider the benefits and problems associated with requiring employees or facilities or providers to pay the costs of conducting such background checks;

''(4) consider whether the costs of conducting such background checks should be allocated between the medicare and medicaid programs and if so, identify an equitable methodology for doing so;

''(5) determine the extent to which conducting such background checks leads to any unintended consequences, including a reduction in the available workforce for such facilities or providers;

''(6) review forms used by participating States in order to develop, in consultation with the Attorney General, a model form for such background checks;

''(7) determine the effectiveness of background checks conducted by employment agencies; and

''(8) recommend appropriate procedures and payment mechanisms for implementing a national criminal background check program for such facilities and providers.

''(f) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out the pilot program under this section for the period of fiscal years 2004 through 2007, $25,000,000.

''(g) DEFINITIONS.—In this section:

''(1) CONVICTION FOR A RELEVANT CRIME.—The term 'conviction for a relevant crime' means any Federal or State criminal conviction for—

''(A) any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7); and

''(B) such other types of offenses as a participating State may specify for purposes of conducting the pilot program in such State.

''(2) DISQUALIFYING INFORMATION.—The term 'disqualifying information' means a conviction for a relevant crime or a finding of patient or resident abuse.

''(3) FINDING OF PATIENT OR RESIDENT ABUSE.—The term 'finding of patient or resident abuse' means any substantiated finding by a State agency under section 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i–3(g)(1)(C), 1396r(g)(1)(C)) or a Federal agency that a direct patient access employee has committed—

''(A) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or

''(B) such other types of acts as a participating State may specify for purposes of conducting the pilot program in such State.

''(4) DIRECT PATIENT ACCESS EMPLOYEE.—The term 'direct patient access employee' means any individual (other than a volunteer) that has access to a patient or resident of a long-term care facility or provider through employment or through a contract with such facility or provider, as determined by a participating State for purposes of conducting the pilot program in such State.

''(5) LONG-TERM CARE FACILITY OR PROVIDER.—

''(A) IN GENERAL.—The term 'long-term care facility or provider' means the following facilities or providers which receive payment for services under title XVIII or XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter]:

''(i) A skilled nursing facility (as defined in section 1819(a) of the Social Security Act) (42 U.S.C. 1395i–3(a)).

''(ii) A nursing facility (as defined in section 1919(a) in such Act) (42 U.S.C. 1396r(a)).

''(iii) A home health agency.

''(iv) A provider of hospice care (as defined in section 1861(dd)(1) of such Act) (42 U.S.C. 1395x(dd)(1)).

''(v) A long-term care hospital (as described in section 1886(d)(1)(B)(iv) of such Act) (42 U.S.C. 1395ww(d)(1)(B)(iv)).

''(vi) A provider of personal care services.

''(vii) A residential care provider that arranges for, or directly provides, long-term care services.

''(viii) An intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act) [(]42 U.S.C. 1396d(d)).

''(B) ADDITIONAL FACILITIES OR PROVIDERS.—During the first year in which a pilot program under this section is conducted in a participating State, the State may expand the list of facilities or providers under subparagraph (A) (on a phased-in basis or otherwise) to include such other facilities or providers of long-term care services under such titles as the participating State determines appropriate.

''(C) EXCEPTIONS.—Such term does not include—

''(i) any facility or entity that provides, or is a provider of, services described in subparagraph (A) that are exclusively provided to an individual pursuant to a self-directed arrangement that meets such requirements as the participating State may establish in accordance with guidance from the Secretary; or

''(ii) any such arrangement that is obtained by a patient or resident functioning as an employer.

''(6) PARTICIPATING STATE.—The term 'participating State' means a State with an agreement under subsection (c)(1).''

USE OF STATE OR LOCAL AGENCIES IN EVALUATING LABORATORIES

Section 160(a)(2) of Pub. L. 103–432 provided that: ''An agreement made by the Secretary of Health and Human Services with a State under section 1864(a) of the Social Security Act [subsec. (a) of this section] may include an agreement that the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by the Secretary for the purpose of determining whether a laboratory meets the requirements of section 353 of the Public Health Service Act [section 263a of this title].''

NURSE AID TRAINING AND COMPETENCY EVALUATION, FAILURE BY STATE TO MEET GUIDELINES

Section 4008(h)(1)(A) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services may not refuse to enter into an agreement or cancel an existing agreement with a State under section 1864 of the Social Security Act [this section] on the basis that the State failed to meet the requirement of section 1819(e)(1)(A) of such Act [section 1395i–3(e)(1)(A) of this title] before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1819(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.''

§ 1395bb. Effect of accreditation

(a) In general

Except as provided in subsection (b)[1] of this section and the second sentence of section 1395z of this title, if—

(1) an institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals, and

(2)(A) such institution authorizes the Commission to release to the Secretary upon his request (or such State agency as the Secretary may designate) a copy of the most current accreditation survey of such institution made by such Commission, together with any other information directly related to the survey as the Secretary may require (including corrective action plans),[2]

(B) such Commission releases such a copy and any such information to the Secretary,

then, such institution shall be deemed to meet the requirements of the numbered paragraphs of section 1395x(e) of this title; except—

(3) paragraph (6) thereof, and

(4) any standard, promulgated by the Secretary pursuant to paragraph (9) thereof, which is higher than the requirements prescribed for accreditation by such Commission.

If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan (or imposes another requirement which serves substantially the same purpose),

[1] See References in Text note below.

[2] So in original. Probably should be followed by ''and''.

requires a discharge planning process (or imposes another requirement which serves substantially the same purpose), or imposes a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in paragraph (4) of this subsection, the Secretary is authorized to find that all institutions so accredited by such Commission comply also with clause (A) or (B) of section 1395x(e)(6) of this title or the standard described in such paragraph (4), as the case may be.

(b) Accreditation by American Osteopathic Association or other national accreditation body

(1) In addition, if the Secretary finds that accreditation of a provider entity (as defined in paragraph (4)) by the American Osteopathic Association or any other national accreditation body demonstrates that all of the applicable conditions or requirements of this subchapter (other than the requirements of section 1395m(j) of this title or the conditions and requirements under section 1395rr(b) of this title) are met or exceeded—

(A) in the case of a provider entity not described in paragraph (3)(B), the Secretary shall treat such entity as meeting those conditions or requirements with respect to which the Secretary made such finding; or

(B) in the case of a provider entity described in paragraph (3)(B), the Secretary may treat such entity as meeting those conditions or requirements with respect to which the Secretary made such finding.

(2) In making such a finding, the Secretary shall consider, among other factors with respect to a national accreditation body, its requirements for accreditation, its survey procedures, its ability to provide adequate resources for conducting required surveys and supplying information for use in enforcement activities, its monitoring procedures for provider entities found out of compliance with the conditions or requirements, and its ability to provide the Secretary with necessary data for validation.

(3)(A) Except as provided in subparagraph (B), not later than 60 days after the date of receipt of a written request for a finding under paragraph (1) (with any documentation necessary to make a determination on the request), the Secretary shall publish a notice identifying the national accreditation body making the request, describing the nature of the request, and providing a period of at least 30 days for the public to comment on the request. The Secretary shall approve or deny a request for such a finding, and shall publish notice of such approval or denial, not later than 210 days after the date of receipt of the request (with such documentation). Such an approval shall be effective with respect to accreditation determinations made on or after such effective date (which may not be later than the date of publication of the approval) as the Secretary specifies in the publication notice.

(B) The 210-day and 60-day deadlines specified in subparagraph (A) shall not apply in the case of any request for a finding with respect to accreditation of a provider entity to which the conditions and requirements of sections 1395i–3 and 1395x(j) of this title apply.

(4) For purposes of this section, the term ''provider entity'' means a provider of services, supplier, facility, clinic, agency, or laboratory.

(c) Disclosure of accreditation survey

The Secretary may not disclose any accreditation survey (other than a survey with respect to a home health agency) made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body, except that the Secretary may disclose such a survey and information related to such a survey to the extent such survey and information relate to an enforcement action taken by the Secretary.

(d) Deficiencies

Notwithstanding any other provision of this subchapter, if the Secretary finds that a provider entity has significant deficiencies (as defined in regulations pertaining to health and safety), the entity shall, after the date of notice of such finding to the entity and for such period as may be prescribed in regulations, be deemed not to meet the conditions or requirements the entity has been treated as meeting pursuant to subsection (a) or (b)(1) of this section.

(e) State or local accreditation

For provisions relating to validation surveys of entities that are treated as meeting applicable conditions or requirements of this subchapter pursuant to subsection (a) or (b)(1) of this section, see section 1395aa(c) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1865, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 326; amended Pub. L. 92–603, title II, §§ 234(h), 244(b), Oct. 30, 1972, 86 Stat. 1413, 1423; Pub. L. 97–248, title I, §§ 122(g)(4), 128(d)(3), Sept. 3, 1982, 96 Stat. 362, 367; Pub. L. 98–369, div. B, title III, §§ 2345(a), 2346(a), July 18, 1984, 98 Stat. 1096; Pub. L. 99–509, title IX, §§ 9305(c)(3), 9320(h)(3), Oct. 21, 1986, 100 Stat. 1990, 2016; Pub. L. 100–203, title IV, §§ 4025(b), 4072(d), Dec. 22, 1987, 101 Stat. 1330–117, as amended Pub. L. 100–360, title IV, § 411(d)(4)(B)(ii), July 1, 1988, 102 Stat. 774; Pub. L. 100–360, title II, §§ 204(c)(3), (d)(3), July 1, 1988, 102 Stat. 728, 729; Pub. L. 100–485, title VI, § 608(d)(20)(D), Oct. 13, 1988, 102 Stat. 2420; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6003(g)(3)(C)(iv), 6019(a)–(c), 6115(c), Dec. 19, 1989, 103 Stat. 2153, 2165, 2166, 2219; Pub. L. 101–508, title IV, § 4163(c)(3), Nov. 5, 1990, 104 Stat. 1388–100; Pub. L. 103–432, title I, § 145(c)(4), Oct. 31, 1994, 108 Stat. 4427; Pub. L. 104–134, title I, § 101(d) [title V, § 516(b), (c)(2)], Apr. 26, 1996, 110 Stat. 1321–211, 1321–246, 1321–247; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 108–173, title VII, § 736(a)(12), Dec. 8, 2003, 117 Stat. 2355.)

REFERENCES IN TEXT

Subsection (b) of this section, referred to in subsec. (a), was redesignated subsec. (d) and a new subsec. (b) added by Pub. L. 104–134, title I, § 101(d) [title V, § 516(b)(1), (3)], Apr. 26, 1996, 110 Stat. 1321–211, 1321–246; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

AMENDMENTS

2003—Subsec. (b)(3)(B). Pub. L. 108–173 substituted ''sections'' for ''section''.

1996—Subsec. (a). Pub. L. 104–134, § 101(d) [title V, § 516(b)(2), (3)], struck out after second sentence: ''In addition, if the Secretary finds that accreditation of an entity by the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of section 1395k(a)(2)(F)(i), 1395x(e), 1395x(f), 1395x(j), 1395x(*o*), 1395x(p)(4)(A) or (B), paragraphs (15) and (16) of section 1395x(s), section 1395x(aa)(2), 1395x(cc)(2), 1395x(dd)(2), or 1395x(mm)(1) of this title, as the case may be, are met, he may, to the extent he deems it appropriate, treat such entity as meeting the condition or conditions with respect to which he made such finding.'' and redesignated fourth sentence as subsec. (c).

Subsec. (b). Pub. L. 104–134, § 101(d) [title V, § 516(b)(3)], added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 104–134, § 101(d) [title V, § 516(b)(2)], redesignated fourth sentence of subsec. (a) as subsec. (c).

Subsec. (d). Pub. L. 104–134, § 101(d) [title V, § 516(b)(1), (c)(2)(A)], redesignated subsec. (b) as (d) and substituted ''a provider entity'' for ''a hospital'', ''the entity'' for ''the hospital'' in two places, and ''the conditions or requirements the entity has been treated as meeting pursuant to subsection (a) or (b)(1) of this section'' for ''the requirements of the numbered paragraphs of section 1395x(e) of this title''.

Subsec. (e). Pub. L. 104–134, § 101(d) [title V, § 516(c)(2)(B)], added subsec. (e).

1994—Subsec. (a). Pub. L. 103–432 struck out ''1395m(c)(3),'' after ''conditions of section 1395k(a)(2)(F)(i),'' in closing provisions.

1990—Subsec. (a). Pub. L. 101–508 inserted ''1395m(c)(3),'' after ''1395k(a)(2)(F)(i),'' in second sentence.

1989—Subsec. (a). Pub. L. 101–239, § 6115(c), substituted ''paragraphs (15) and (16)'' for ''paragraphs (14) and (15)''.

Pub. L. 101–239, § 6019(b), inserted before period at end '', except that the Secretary may disclose such a survey and information related to such a survey to the extent such survey and information relate to an enforcement action taken by the Secretary''.

Pub. L. 101–239, § 6003(g)(3)(C)(iv), substituted ''1395x(dd)(2), or 1395x(mm)(1) of this title'' for ''or 1395x(dd)(2) of this title'' in third sentence.

Pub. L. 101–234 repealed Pub. L. 100–360, § 204(c)(3), (d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 and 1989 Amendment notes.

Subsec. (a)(2). Pub. L. 101–239, § 6019(a), designated existing provisions as subpar. (A), struck out ''(if it is included within a survey described in section 1395aa(c) of this title)'' after ''such institution'', inserted '', together with any other information directly related to the survey as the Secretary may require (including corrective action plans)'' after ''by such Commission'', and added subpar. (B).

Subsec. (b). Pub. L. 101–239, § 6019(c), struck out ''following a survey made pursuant to section 1395aa(c) of this title'' after ''if the Secretary finds''.

1988—Subsec. (a). Pub. L. 100–360, § 411(d)(4)(B)(ii), as amended by Pub. L. 100–485, § 608(d)(20)(D), added Pub. L. 100–203, § 4025(b), see 1987 Amendment note below.

Pub. L. 100–360, § 204(d)(3), substituted ''paragraphs (14) and (15)'' for ''paragraphs (13) and (14)'' in third sentence.

Pub. L. 100–360, § 204(c)(3), inserted ''1395m(e)(3),'' after ''1395k(a)(2)(F)(i),'' in third sentence.

1987—Subsec. (a). Pub. L. 100–203, § 4072(d), substituted ''paragraphs (13) and (14)'' for ''paragraphs (12) and (13)'' in penultimate sentence.

Pub. L. 100–203, § 4025(b), as added by Pub. L. 100–360, § 411(d)(4)(B)(ii), as amended by Pub. L. 100–485, § 608(d)(20)(D), inserted ''(other than a survey with respect to a home health agency)'' after ''survey'' in last sentence.

1986—Subsec. (a). Pub. L. 99–509, § 9305(c)(3), inserted '', requires a discharge planning process (or imposes another requirement which serves substantially the same purpose)'' after ''the same purpose)'', and ''clause (A) or (B) of'' after ''comply also with'' in second sentence.

Pub. L. 99–509, § 9320(h)(3), substituted ''paragraphs (12) and (13)'' for ''paragraphs (11) and (12)'' in third sentence.

1984—Subsec. (a). Pub. L. 98–369, § 2346(a), in provisions following par. (4), substituted ''section 1395k(a)(2)(F)(i), 1395x(e), 1395x(f), 1395x(j), 1395x(*o*), 1395x(p)(4)(A) or (B), paragraphs (11) and (12) of section 1395x(s), section 1395x(aa)(2), 1395x(cc)(2), or 1395x(dd)(2) of this title'' for ''section 1395x(e), (j), (*o*), or (dd) of this title'', and substituted ''entity'' for ''institution or agency'' in two places.

Pub. L. 98–369, § 2345(a), struck out ''(on a confidential basis)'' after ''release to the Secretary'' in par. (2), and inserted provision that the Secretary may not disclose any accreditation survey made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body, in provisions following par. (4).

1982—Subsec. (a). Pub. L. 97–248, § 122(g)(4), substituted ''(*o*), or (dd)'' for ''or (*o*)''.

Subsec. (b). Pub. L. 97–248, § 128(d)(3), substituted ''a hospital'' for ''an institution'' and ''the hospital'' for ''such institution''.

1972—Pub. L. 92–603 designated existing provisions as subsec. (a), inserted reference to subsec. (b) of this section in opening provisions, redesignated existing provisions as pars. (1) and (3) and added pars. (2) and (4) and in provisions following par. (4) inserted provisions for the imposition of a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in par. (4), and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6019(d) of Pub. L. 101–239 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].

''(2) The amendments made by subsection (a) [amending this section] shall take effect 6 months after the date of the enactment of this Act.''

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 204(c)(3), (d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(d)(4)(B)(ii) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4025(b) of Pub. L. 100–203 applicable with respect to agreements entered into or renewed on or after Dec. 22, 1987, see section 4025(c) of Pub. L. 100–203, as amended, set out as a note under section 1395aa of this title.

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 9305(c)(3) of Pub. L. 99–509 applicable to hospitals as of one year after Oct. 21, 1986, see section 9305(c)(4) of Pub. L. 99–509, set out as a note under section 1395x of this title.

Amendment by section 9320(h)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2345(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984], and shall apply with respect to surveys released to the Secretary on, before, or after such date.''

Section 2346(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(g)(4) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

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

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 234(h) of Pub. L. 92–603 applicable with respect to providers of services for fiscal years beginning after the fifth month following October 1972, see section 234(i) of Pub. L. 92–603, set out as a note under section 1395x of this title.

§ 1395cc. Agreements with providers of services; enrollment processes

(a) Filing of agreements; eligibility for payment; charges with respect to items and services

(1) Any provider of services (except a fund designated for purposes of section 1395f(g) and section 1395n(e) of this title) shall be qualified to participate under this subchapter and shall be eligible for payments under this subchapter if it files with the Secretary an agreement—

(A)(i) not to charge, except as provided in paragraph (2), any individual or any other person for items or services for which such individual is entitled to have payment made under this subchapter (or for which he would be so entitled if such provider of services had complied with the procedural and other requirements under or pursuant to this subchapter or for which such provider is paid pursuant to the provisions of section 1395f(e) of this title), and (ii) not to impose any charge that is prohibited under section 1396a(n)(3) of this title,

(B) not to charge any individual or any other person for items or services for which such individual is not entitled to have payment made under this subchapter because payment for expenses incurred for such items or services may not be made by reason of the provisions of paragraph (1) or (9) of section 1395y(a) of this title, but only if (i) such individual was without fault in incurring such expenses and (ii) the Secretary's determination that such payment may not be made for such items and services was made after the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter,

(C) to make adequate provision for return (or other disposition, in accordance with regulations) of any moneys incorrectly collected from such individual or other person,

(D) to promptly notify the Secretary of its employment of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity (as determined by the Secretary by regulation) by an agency or organization which serves as a fiscal intermediary or carrier (for purposes of part A or part B, or both, of this subchapter) with respect to the provider,

(E) to release data with respect to patients of such provider upon request to an organization having a contract with the Secretary under part B of subchapter XI of this chapter as may be necessary (i) to allow such organization to carry out its functions under such contract, or (ii) to allow such organization to carry out similar review functions under any contract the organization may have with a private or public agency paying for health care in the same area with respect to patients who authorize release of such data for such purposes,

(F)(i) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b), (c), or (d) of section 1395ww of this title, to maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located, under which the organization will perform functions under that part with respect to the review of the validity of diagnostic information provided by such hospital, the completeness, adequacy, and quality of care provided, the appropriateness of admissions and discharges, and the appropriateness of care provided for which additional payments are sought under section

1395ww(d)(5) of this title, with respect to inpatient hospital services for which payment may be made under part A of this subchapter (and for purposes of payment under this subchapter, the cost of such agreement to the hospital shall be considered a cost incurred by such hospital in providing inpatient services under part A of this subchapter, and (I) shall be paid directly by the Secretary to such organization on behalf of such hospital in accordance with a rate per review established by the Secretary, (II) shall be transferred from the Federal Hospital Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and (III) shall not be less in the aggregate for a fiscal year than the aggregate amount expended in fiscal year 1988 for direct and administrative costs (adjusted for inflation and for any direct or administrative costs incurred as a result of review functions added with respect to a subsequent fiscal year) of such reviews),

(ii) in the case of hospitals, critical access hospitals, skilled nursing facilities, and home health agencies, to maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital, facility, or agency is located) to perform the functions described in paragraph (3)(A),

(G) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b) or (d) of section 1395ww of this title, not to charge any individual or any other person for inpatient hospital services for which such individual would be entitled to have payment made under part A of this subchapter but for a denial or reduction of payments under section 1395ww(f)(2) of this title,

(H)(i) in the case of hospitals which provide services for which payment may be made under this subchapter and in the case of critical access hospitals which provide critical access hospital services, to have all items and services (other than physicians' services as defined in regulations for purposes of section 1395y(a)(14) of this title, and other than services described by section 1395x(s)(2)(K) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist) (I) that are furnished to an individual who is a patient of the hospital, and (II) for which the individual is entitled to have payment made under this subchapter, furnished by the hospital or otherwise under arrangements (as defined in section 1395x(w)(1) of this title) made by the hospital,

(ii) in the case of skilled nursing facilities which provide covered skilled nursing facility services—

(I) that are furnished to an individual who is a resident of the skilled nursing facility during a period in which the resident is provided covered post-hospital extended care services (or, for services described in section 1395x(s)(2)(D) of this title, that are furnished to such an individual without regard to such period), and

(II) for which the individual is entitled to have payment made under this subchapter,

to have items and services (other than services described in section 1395yy(e)(2)(A)(ii) of this title) furnished by the skilled nursing facility or otherwise under arrangements (as defined in section 1395x(w)(1) of this title) made by the skilled nursing facility,

(I) in the case of a hospital or critical access hospital—

(i) to adopt and enforce a policy to ensure compliance with the requirements of section 1395dd of this title and to meet the requirements of such section,

(ii) to maintain medical and other records related to individuals transferred to or from the hospital for a period of five years from the date of the transfer, and

(iii) to maintain a list of physicians who are on call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition,

(J) in the case of hospitals which provide inpatient hospital services for which payment may be made under this subchapter, to be a participating provider of medical care under any health plan contracted for under section 1079 or 1086 of title 10, or under section 1713[1] of title 38, in accordance with admission practices, payment methodology, and amounts as prescribed under joint regulations issued by the Secretary and by the Secretaries of Defense and Transportation, in implementation of sections 1079 and 1086 of title 10,

(K) not to charge any individual or any other person for items or services for which payment under this subchapter is denied under section 1320c–3(a)(2) of this title by reason of a determination under section 1320c–3(a)(1)(B) of this title,

(L) in the case of hospitals which provide inpatient hospital services for which payment may be made under this subchapter, to be a participating provider of medical care under section 1703 of title 38, in accordance with such admission practices, and such payment methodology and amounts, as are prescribed under joint regulations issued by the Secretary and by the Secretary of Veterans Affairs in implementation of such section,

(M) in the case of hospitals, to provide to each individual who is entitled to benefits under part A of this subchapter (or to a person acting on the individual's behalf), at or about the time of the individual's admission as an inpatient to the hospital, a written statement (containing such language as the Secretary prescribes consistent with this paragraph) which explains—

(i) the individual's rights to benefits for inpatient hospital services and for post-hospital services under this subchapter,

(ii) the circumstances under which such an individual will and will not be liable for charges for continued stay in the hospital,

[1] See References in Text note below.

(iii) the individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and

(iv) the individual's liability for payment for services if such a denial of benefits is upheld on appeal,

and which provides such additional information as the Secretary may specify,

(N) in the case of hospitals and critical access hospitals—

(i) to make available to its patients the directory or directories of participating physicians (published under section 1395u(h)(4) of this title) for the area served by the hospital or critical access hospital,

(ii) if hospital personnel (including staff of any emergency or outpatient department) refer a patient to a nonparticipating physician for further medical care on an outpatient basis, the personnel must inform the patient that the physician is a nonparticipating physician and, whenever practicable, must identify at least one qualified participating physician who is listed in such a directory and from whom the patient may receive the necessary services,

(iii) to post conspicuously in any emergency department a sign (in a form specified by the Secretary) specifying rights of individuals under section 1395dd of this title with respect to examination and treatment for emergency medical conditions and women in labor, and

(iv) to post conspicuously (in a form specified by the Secretary) information indicating whether or not the hospital participates in the medicaid program under a State plan approved under subchapter XIX of this chapter,

(O) to accept as payment in full for services that are covered under this subchapter and are furnished to any individual enrolled with a Medicare+Choice organization under part C of this subchapter, with a PACE provider under section 1395eee or 1396u–4 of this title, or with an eligible organization with a risk-sharing contract under section 1395mm of this title, under section 1395mm(i)(2)(A) of this title (as in effect before February 1, 1985), under section 1395b–1(a) of this title, or under section 222(a) of the Social Security Amendments of 1972, which does not have a contract (or, in the case of a PACE provider, contract or other agreement) establishing payment amounts for services furnished to members of the organization or PACE program eligible individuals enrolled with the PACE provider, the amounts that would be made as a payment in full under this subchapter (less any payments under sections 1395ww(d)(11) and 1395ww(h)(3)(D) of this title) if the individuals were not so enrolled,

(P) in the case of home health agencies which provide home health services to individuals entitled to benefits under this subchapter who require catheters, catheter supplies, ostomy bags, and supplies related to ostomy care (described in section 1395x(m)(5) of this title), to offer to furnish such supplies to such an individual as part of their furnishing of home health services,

(Q) in the case of hospitals, skilled nursing facilities, home health agencies, and hospice programs, to comply with the requirement of subsection (f) of this section (relating to maintaining written policies and procedures respecting advance directives),

(R) to contract only with a health care clearinghouse (as defined in section 1320d of this title) that meets each standard and implementation specification adopted or established under part C of subchapter XI of this chapter on or after the date on which the health care clearinghouse is required to comply with the standard or specification,

(S) in the case of a hospital that has a financial interest (as specified by the Secretary in regulations) in an entity to which individuals are referred as described in section 1395x(ee)(2)(H)(ii) of this title, or in which such an entity has such a financial interest, or in which another entity has such a financial interest (directly or indirectly) with such hospital and such an entity, to maintain and disclose to the Secretary (in a form and manner specified by the Secretary) information on—

(i) the nature of such financial interest,

(ii) the number of individuals who were discharged from the hospital and who were identified as requiring home health services, and

(iii) the percentage of such individuals who received such services from such provider (or another such provider),

(T) in the case of hospitals and critical access hospitals, to furnish to the Secretary such data as the Secretary determines appropriate pursuant to subparagraph (E) of section 1395ww(d)(12) of this title to carry out such section,

(U) in the case of hospitals which furnish inpatient hospital services for which payment may be made under this subchapter, to be a participating provider of medical care both—

(i) under the contract health services program funded by the Indian Health Service and operated by the Indian Health Service, an Indian tribe, or tribal organization (as those terms are defined in section 1603 of title 25), with respect to items and services that are covered under such program and furnished to an individual eligible for such items and services under such program; and

(ii) under any program funded by the Indian Health Service and operated by an urban Indian organization with respect to the purchase of items and services for an eligible urban Indian (as those terms are defined in such section 1603),

in accordance with regulations promulgated by the Secretary regarding admission practices, payment methodology, and rates of payment (including the acceptance of no more than such payment rate as payment in full for such items and services,[2] and

(V) in the case of hospitals that are not otherwise subject to the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.] (or a

[2] So in original. The comma probably should be preceded by a closing parenthesis.

State occupational safety and health plan that is approved under 18(b)[3] of such Act [29 U.S.C. 667(b)]), to comply with the Bloodborne Pathogens standard under section 1910.1030 of title 29 of the Code of Federal Regulations (or as subsequently redesignated).

In the case of a hospital which has an agreement in effect with an organization described in subparagraph (F), which organization's contract with the Secretary under part B of subchapter XI of this chapter is terminated on or after October 1, 1984, the hospital shall not be determined to be out of compliance with the requirement of such subparagraph during the six month period beginning on the date of the termination of that contract.

(2)(A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1395e(a)(1), (a)(3), or (a)(4), section 1395*l*(b), or section 1395x(y)(3) of this title with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider), and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B of this subchapter or which are durable medical equipment furnished as home health services (but in the case of items and services furnished to individuals with end-stage renal disease, an amount equal to 20 percent of the estimated amounts for such items and services calculated on the basis established by the Secretary). In the case of items and services described in section 1395*l*(c) of this title, clause (ii) of the preceding sentence shall be applied by substituting for 20 percent the proportion which is appropriate under such section. A provider of services may not impose a charge under clause (ii) of the first sentence of this subparagraph with respect to items and services described in section 1395x(s)(10)(A) of this title and with respect to clinical diagnostic laboratory tests for which payment is made under part B of this subchapter. Notwithstanding the first sentence of this subparagraph, a home health agency may charge such an individual or person, with respect to covered items subject to payment under section 1395m(a) of this title, the amount of any deduction imposed under section 1395*l*(b) of this title and 20 percent of the payment basis described in section 1395m(a)(1)(B) of this title. In the case of items and services for which payment is made under part B of this subchapter under the prospective payment system established under section 1395*l*(t) of this title, clause (ii) of the first sentence shall be applied by substituting for 20 percent of the reasonable charge, the applicable copayment amount established under section 1395*l*(t)(5)[1] of this title. In the case of services described in section 1395*l*(a)(8) of this title or section 1395*l*(a)(9) of this title for which payment is made under part B of this subchapter under section 1395m(k) of this title, clause (ii) of the first sentence shall be applied by substituting for 20 percent of the reasonable charge for such services 20 percent of the lesser of the actual charge or the applicable fee schedule amount (as defined in such section) for such services.

(B) Where a provider of services has furnished, at the request of such individual, items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this subchapter, such provider of services may also charge such individual or other person for such more expensive items or services to the extent that the amount customarily charged by it for the items or services furnished at such request exceeds the amount customarily charged by it for the items or services with respect to which payment may be made under this subchapter.

(C) A provider of services may in accordance with its customary practice also appropriately charge any such individual for any whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished him with respect to which a deductible is imposed under section 1395e(a)(2) of this title, except that (i) any excess of such charge over the cost to such provider for the blood (or equivalent quantities of packed red blood cells, as so defined) shall be deducted from any payment to such provider under this subchapter, (ii) no such charge may be imposed for the cost of administration of such blood (or equivalent quantities of packed red blood cells, as so defined), and (iii) such charge may not be made to the extent such blood (or equivalent quantities of packed red blood cells, as so defined) has been replaced on behalf of such individual or arrangements have been made for its replacement on his behalf. For purposes of this subparagraph, whole blood (or equivalent quantities of packed red blood cells, as so defined) furnished an individual shall be deemed replaced when the provider of services is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is imposed under section 1395e(a)(2) of this title.

(D) Where a provider of services customarily furnishes items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this subchapter, such provider, notwithstanding the preceding provisions of this paragraph, may not, under the authority of subparagraph (B)(ii) of this paragraph, charge any individual or other person any amount for such items or services in excess of the amount of the payment which may otherwise be made for such items or services under this subchapter if the admitting physician has a direct or indirect financial interest in such provider.

(3)(A) Under the agreement required under paragraph (1)(F)(ii), the peer review organization must perform functions (other than those covered under an agreement under paragraph (1)(F)(i)) under the third sentence of section 1320c–3(a)(4)(A) of this title and under section 1320c–3(a)(14) of this title with respect to services, furnished by the hospital, critical access hospital, facility, or agency involved, for which payment may be made under this subchapter.

[3] So in original. Probably should be preceded by ''section''.

(B) For purposes of payment under this subchapter, the cost of such an agreement to the hospital, critical access hospital, facility, or agency shall be considered a cost incurred by such hospital, critical access hospital, facility, or agency in providing covered services under this subchapter and shall be paid directly by the Secretary to the peer review organization on behalf of such hospital, critical access hospital, facility, or agency in accordance with a schedule established by the Secretary.

(C) Such payments—

(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

(ii) shall not be less in the aggregate for a fiscal year—

(I) in the case of hospitals, than the amount specified in paragraph (1)(F)(i)(III), and

(II) in the case of facilities, critical access hospitals, and agencies, than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such facilities, critical access hospitals, or agencies under part B of subchapter XI of this chapter.

(b) Termination or nonrenewal of agreements

(1) A provider of services may terminate an agreement with the Secretary under this section at such time and upon such notice to the Secretary and the public as may be provided in regulations, except that notice of more than six months shall not be required.

(2) The Secretary may refuse to enter into an agreement under this section or, upon such reasonable notice to the provider and the public as may be specified in regulations, may refuse to renew or may terminate such an agreement after the Secretary—

(A) has determined that the provider fails to comply substantially with the provisions of the agreement, with the provisions of this subchapter and regulations thereunder, or with a corrective action required under section 1395ww(f)(2)(B) of this title,

(B) has determined that the provider fails substantially to meet the applicable provisions of section 1395x of this title,

(C) has excluded the provider from participation in a program under this subchapter pursuant to section 1320a–7 of this title or section 1320a–7a of this title, or

(D) has ascertained that the provider has been convicted of a felony under Federal or State law for an offense which the Secretary determines is detrimental to the best interests of the program or program beneficiaries.

(3) A termination of an agreement or a refusal to renew an agreement under this subsection shall become effective on the same date and in the same manner as an exclusion from participation under the programs under this subchapter becomes effective under section 1320a–7(c) of this title.

(4)(A) A hospital that fails to comply with the requirement of subsection (a)(1)(V) of this section (relating to the Bloodborne Pathogens standard) is subject to a civil money penalty in an amount described in subparagraph (B), but is not subject to termination of an agreement under this section.

(B) The amount referred to in subparagraph (A) is an amount that is similar to the amount of civil penalties that may be imposed under section 17 of the Occupational Safety and Health Act of 1970 [29 U.S.C. 666] for a violation of the Bloodborne Pathogens standard referred to in subsection (a)(1)(U)[4] of this section by a hospital that is subject to the provisions of such Act [29 U.S.C. 651 et seq.].

(C) A civil money penalty under this paragraph shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(c) Refiling after termination or nonrenewal; agreements with skilled nursing facilities

(1) Where the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services, such provider may not file another agreement under this subchapter unless the Secretary finds that the reason for the termination or nonrenewal has been removed and that there is reasonable assurance that it will not recur.

(2) Where the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services, the Secretary shall promptly notify each State agency which administers or supervises the administration of a State plan approved under subchapter XIX of this chapter of such termination or nonrenewal.

(d) Decision to withhold payment for failure to review long-stay cases

If the Secretary finds that there is a substantial failure to make timely review in accordance with section 1395x(k) of this title of long-stay cases in a hospital, he may, in lieu of terminating his agreement with such hospital, decide that, with respect to any individual admitted to such hospital after a subsequent date specified by him, no payment shall be made under this subchapter for inpatient hospital services (including inpatient psychiatric hospital services) after the 20th day of a continuous period of such services. Such decision may be made effective only after such notice to the hospital and to the public, as may be prescribed by regulations, and its effectiveness shall terminate when the Secretary finds that the reason therefor has been removed and that there is reasonable assurance that it will not recur. The Secretary shall not make any such decision except after reasonable notice and opportunity for hearing to the institution or agency affected thereby.

(e) "Provider of services" defined

For purposes of this section, the term ''provider of services'' shall include—

(1) a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or re-

[4] So in original. Probably should be subsection ''(a)(1)(V)''.

habilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services; and

(2) a community mental health center (as defined in section 1395x(ff)(3)(B) of this title), but only with respect to the furnishing of partial hospitalization services (as described in section 1395x(ff)(1) of this title).

(f) Maintenance of written policies and procedures

(1) For purposes of subsection (a)(1)(Q) of this section and sections 1395i–3(c)(2)(E), 1395*l*(s), 1395w–25(i), 1395mm(c)(8), and 1395bbb(a)(6) of this title, the requirement of this subsection is that a provider of services, Medicare+Choice organization, or prepaid or eligible organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

(A) to provide written information to each such individual concerning—

(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

(ii) the written policies of the provider or organization respecting the implementation of such rights;

(B) to document in a prominent part of the individual's current medical record whether or not the individual has executed an advance directive;

(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives at facilities of the provider or organization; and

(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—

(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

(B) in the case of a skilled nursing facility, at the time of the individual's admission as a resident,

(C) in the case of a home health agency, in advance of the individual coming under the care of the agency,

(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

(E) in the case of an eligible organization (as defined in section 1395mm(b) of this title) or an organization provided payments under section 1395*l*(a)(1)(A) of this title or a Medicare+Choice organization, at the time of enrollment of the individual with the organization.

(3) In this subsection, the term ''advance directive'' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.

(4) For construction relating to this subsection, see section 14406 of this title (relating to clarification respecting assisted suicide, euthanasia, and mercy killing).

(g) Penalties for improper billing

Except as permitted under subsection (a)(2) of this section, any person who knowingly and willfully presents, or causes to be presented, a bill or request for payment inconsistent with an arrangement under subsection (a)(1)(H) of this section or in violation of the requirement for such an arrangement, is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(h) Dissatisfaction with determination of Secretary; appeal by institutions or agencies; single notice and hearing

(1)(A) Except as provided in paragraph (2), an institution or agency dissatisfied with a determination by the Secretary that it is not a provider of services or with a determination described in subsection (b)(2) of this section shall be entitled to a hearing thereon by the Secretary (after reasonable notice) to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(B) An institution or agency described in subparagraph (A) that has filed for a hearing under subparagraph (A) shall have expedited access to judicial review under this subparagraph in the same manner as providers of services, suppliers, and individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, may obtain expedited

access to judicial review under the process established under section 1395ff(b)(2) of this title. Nothing in this subparagraph shall be construed to affect the application of any remedy imposed under section 1395i–3 of this title during the pendency of an appeal under this subparagraph.

(C)(i) The Secretary shall develop and implement a process to expedite proceedings under this subsection in which—

(I) the remedy of termination of participation has been imposed;

(II) a remedy described in clause (i) or (iii) of section 1395i–3(h)(2)(B) of this title has been imposed, but only if such remedy has been imposed on an immediate basis; or

(III) a determination has been made as to a finding of substandard quality of care that results in the loss of approval of a skilled nursing facility's nurse aide training program.

(ii) Under such process under clause (i), priority shall be provided in cases of termination described in clause (i)(I).

(iii) Nothing in this subparagraph shall be construed to affect the application of any remedy imposed under section 1395i–3 of this title during the pendency of an appeal under this subparagraph.

(2) An institution or agency is not entitled to separate notice and opportunity for a hearing under both section 1320a–7 of this title and this section with respect to a determination or determinations based on the same underlying facts and issues.

(i) Intermediate sanctions for psychiatric hospitals

(1) If the Secretary determines that a psychiatric hospital which has an agreement in effect under this section no longer meets the requirements for a psychiatric hospital under this subchapter and further finds that the hospital's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the Secretary shall terminate such agreement; or

(B) do not immediately jeopardize the health and safety of its patients, the Secretary may terminate such agreement, or provide that no payment will be made under this subchapter with respect to any individual admitted to such hospital after the effective date of the finding, or both.

(2) If a psychiatric hospital, found to have deficiencies described in paragraph (1)(B), has not complied with the requirements of this subchapter—

(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the Secretary shall provide that no payment will be made under this subchapter with respect to any individual admitted to such hospital after the end of such 3-month period, or

(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no payment may be made under this subchapter with respect to any individual in the hospital until the Secretary finds that the hospital is in compliance with the requirements of this subchapter.

(j) Enrollment process for providers of services and suppliers

(1) Enrollment process

(A) In general

The Secretary shall establish by regulation a process for the enrollment of providers of services and suppliers under this subchapter.

(B) Deadlines

The Secretary shall establish by regulation procedures under which there are deadlines for actions on applications for enrollment (and, if applicable, renewal of enrollment). The Secretary shall monitor the performance of medicare administrative contractors in meeting the deadlines established under this subparagraph.

(C) Consultation before changing provider enrollment forms

The Secretary shall consult with providers of services and suppliers before making changes in the provider enrollment forms required of such providers and suppliers to be eligible to submit claims for which payment may be made under this subchapter.

(2) Hearing rights in cases of denial or non-renewal

A provider of services or supplier whose application to enroll (or, if applicable, to renew enrollment) under this subchapter is denied may have a hearing and judicial review of such denial under the procedures that apply under subsection (h)(1)(A) of this section to a provider of services that is dissatisfied with a determination by the Secretary.

(Aug. 14, 1935, ch. 531, title XVIII, § 1866, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 327; amended Pub. L. 90–248, title I, §§ 129(c)(12), 133(c), 135(b), Jan. 2, 1968, 81 Stat. 849, 851, 852; Pub. L. 92–603, title II, §§ 223(e), (g), 227(d)(2), 229(b), 249A(b)–(d), 278(a)(17), (b)(18), 281(c), Oct. 30, 1972, 86 Stat. 1394, 1406, 1409, 1427, 1453–1455; Pub. L. 95–142, §§ 3(b), 8(b), 13(b)(3), 15(a), Oct. 25, 1977, 91 Stat. 1178, 1194, 1195, 1198, 1200; Pub. L. 95–210, § 2(e), Dec. 13, 1977, 91 Stat. 1489; Pub. L. 95–292, § 4(e), June 13, 1978, 92 Stat. 315; Pub. L. 96–272, title III, § 308(b), June 17, 1980, 94 Stat. 531; Pub. L. 96–499, title IX, § 916(a), Dec. 5, 1980, 94 Stat. 2623; Pub. L. 96–611, § 1(b)(4), Dec. 28, 1980, 94 Stat. 3566; Pub. L. 97–35, title XXI, § 2153, Aug. 13, 1981, 95 Stat. 802; Pub. L. 97–248, title I, §§ 122(g)(5), (6), 128(a)(5), (d)(4), 144, Sept. 3, 1982, 96 Stat. 362, 366, 367, 393; Pub. L. 97–448, title III, § 309(a)(5), (b)(11), Jan. 12, 1983, 96 Stat. 2408, 2409; Pub. L. 98–21, title VI, § 602(f), (*l*), Apr. 20, 1983, 97 Stat. 163, 166; Pub. L. 98–369, div. B, title III, §§ 2303(f), 2315(d), 2321(c), 2323(b)(3), 2335(d), 2347(a), 2348(a), 2354(b)(33), (34), July 18, 1984, 98 Stat. 1066, 1080, 1084, 1086, 1090, 1096, 1097, 1102; Pub. L. 99–272, title IX, §§ 9121(a), 9122(a), 9401(b)(2)(F), 9402(a), 9403(b), Apr. 7, 1986, 100 Stat. 164, 167, 199, 200; Pub. L. 99–509, title IX, §§ 9305(b)(1), 9320(h)(2), 9332(e)(1), 9337(c)(2), 9343(c)(2), (3), 9353(e)(1), Oct. 21, 1986, 100 Stat. 1989, 2016, 2025, 2034, 2040, 2047; Pub. L. 99–514, title XVIII, § 1895(b)(5), Oct. 22, 1986, 100 Stat. 2933; Pub. L. 99–576, title II, § 233(a), Oct. 28, 1986, 100 Stat. 3265; Pub. L. 100–93, § 8(d), Aug. 18, 1987,

101 Stat. 693; Pub. L. 100–203, title IV, §§4012(a), 4062(d)(4), 4085(i)(17), (28), 4097(a), (b), 4212(e)(4), Dec. 22, 1987, 101 Stat. 1330–60, 1330–109, 1330–133, 1330–140, 1330–213, as amended Pub. L. 100–360, title IV, §411(i)(4)(C)(vi), (j)(5), July 1, 1988, 102 Stat. 790, 791; Pub. L. 100–360, title I, §104(d)(5), title II, §§201(b), (d), 202(h)(1), title IV, §411(c)(2)(A)(i), (C), (g)(1)(D), July 1, 1988, 102 Stat. 689, 702, 718, 772, 782, as amended Pub. L. 100–485, title VI, §608(d)(3)(F), (19)(A), Oct. 13, 1988, 102 Stat. 2414, 2419; Pub. L. 100–485, title VI, §608(f)(1), Oct. 13, 1988, 102 Stat. 2424; Pub. L. 101–234, title I, §101(a), title II, §201(a), title III, §301(b)(4), (d)(1), Dec. 13, 1989, 103 Stat. 1979, 1981, 1985, 1986; Pub. L. 101–239, title VI, §§6003(g)(3)(D)(xii), (xiii), 6017, 6018(a), 6020, 6112(e)(3), Dec. 19, 1989, 103 Stat. 2154, 2165, 2166, 2216; Pub. L. 101–508, title IV, §§4008(b)(3)(B), (m)(3)(G)[(F)], 4153(d)(1), 4157(c)(2), 4162(b)(2), 4206(a), Nov. 5, 1990, 104 Stat. 1388–44, 1388–54, 1388–84, 1388–89, 1388–96, 1388–115; Pub. L. 102–54, §13(q)(3)(F), June 13, 1991, 105 Stat. 280; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103–296, title I, §108(c)(5), Aug. 15, 1994, 108 Stat. 1485; Pub. L. 103–432, title I, §§106(b)(1)(B), 147(e)(7), 156(a)(2)(E), 160(d)(2), Oct. 31, 1994, 108 Stat. 4406, 4430, 4441, 4443; Pub. L. 104–191, title II, §262(b)(1), Aug. 21, 1996, 110 Stat. 2031; Pub. L. 105–12, §9(a)(2), Apr. 30, 1997, 111 Stat. 26; Pub. L. 105–33, title IV, §§4002(d), (e), 4201(c)(1), 4302(a), 4321(b), 4432(b)(5)(F), 4511(a)(2)(D), 4523(b), 4541(a)(3), 4641(a), 4714(b)(1), Aug. 5, 1997, 111 Stat. 329, 373, 382, 395, 422, 442, 449, 456, 487, 510; Pub. L. 106–113, div. B, §1000(a)(6) [title III, §321(k)(11), (12)], Nov. 29, 1999, 113 Stat. 1536, 1501A–368; Pub. L. 106–554, §1(a)(6) [title III, §313(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–499; Pub. L. 108–173, title II, §236(a)(1), title V, §§505(b), 506(a), title VII, §736(a)(13), title IX, §§932(b), (c)(1), 936(a), 947(a), Dec. 8, 2003, 117 Stat. 2210, 2294, 2355, 2400, 2401, 2411, 2425.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (a) and (h)(1)(B), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsec. (a)(1), (3)(C)(ii)(II), is classified to section 1320c et seq. of this title.

Section 1713 of title 38, referred to in subsec. (a)(1)(J), was renumbered section 1781 of title 38 by Pub. L. 107–135, title II, §208(c)(1), (2), Jan. 23, 2002, 115 Stat. 2463.

Part C of this subchapter, referred to in subsec. (a)(1)(O), is classified to section 1395w–21 et seq. of this title.

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (a)(1)(O)(i), is section 222(a) of Pub. L. 92–603, which is set out as a note under section 1395b–1 of this title.

Part C of subchapter XI of this chapter, referred to in subsec. (a)(1)(R), is classified to section 1320d et seq. of this title.

The Occupational Safety and Health Act of 1970, referred to in subsecs. (a)(1)(V) and (b)(4)(B), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

Section 1395*l*(t)(5) of this title, referred to in subsec. (a)(2)(A), was redesignated section 1395*l*(t)(8) of this title by Pub. L. 106–113, div. B, §1000(a)(6) [title II, §§201(a)(1), 202(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–336, 1501A–342.

AMENDMENTS

2003—Pub. L. 108–173, §936(a)(1), inserted ''; enrollment processes'' in section catchline.

Subsec. (a)(1)(O). Pub. L. 108–173, §236(a)(1), substituted ''part C of this subchapter, with a PACE provider under section 1395eee or 1396u–4 of this title, or'' for ''part C of this subchapter or'', struck out ''(i)'' before ''with a risk-sharing contract'', struck out ''and (ii)'' before ''which does not have a contract'', inserted ''(or, in the case of a PACE provider, contract or other agreement)'' after ''have a contract'', and substituted ''members of the organization or PACE program eligible individuals enrolled with the PACE provider,'' for ''members of the organization''.

Subsec. (a)(1)(T). Pub. L. 108–173, §505(b), added subpar. (T).

Subsec. (a)(1)(U). Pub. L. 108–173, §506(a), added subpar. (U).

Subsec. (a)(1)(V). Pub. L. 108–173, §947(a)(1), added subpar. (V).

Subsec. (b)(2)(D). Pub. L. 108–173, §736(a)(13), realigned margins.

Subsec. (b)(4). Pub. L. 108–173, §947(a)(2), added par. (4).

Subsec. (h)(1). Pub. L. 108–173, §932(b), (c)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (j). Pub. L. 108–173, §936(a)(2), added subsec. (j).

2000—Subsec. (a)(1)(H)(ii)(I). Pub. L. 106–554 inserted ''during a period in which the resident is provided covered post-hospital extended care services (or, for services described in section 1395x(s)(2)(D) of this title, that are furnished to such an individual without regard to such period)'' after ''skilled nursing facility''.

1999—Subsec. (a)(1)(I)(iii). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(11)(A)], substituted comma for semicolon at end.

Subsec. (a)(1)(N)(iv). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(11)(B)], struck out ''and'' at end.

Subsec. (a)(1)(O). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(11)(C)], substituted comma for semicolon at end.

Subsec. (a)(1)(Q). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(12)(A)], substituted comma for semicolon at end.

Subsec. (a)(1)(R). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(12)(B)], inserted '', and'' at end.

1997—Subsec. (a)(1)(A). Pub. L. 105–33, §4714(b)(1), designated existing provisions as cl. (i) and inserted before comma at end '', and (ii) not to impose any charge that is prohibited under section 1396a(n)(3) of this title''.

Subsec. (a)(1)(F)(ii). Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (a)(1)(H). Pub. L. 105–33, §4511(a)(2)(D), substituted ''section 1395x(s)(2)(K) of this title'' for ''section 1395x(s)(2)(K)(i) or 1395x(s)(2)(K)(iii) of this title''.

Pub. L. 105–33, §4432(b)(5)(F), designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care'' in two places.

Subsec. (a)(1)(I), (N). Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care'' in introductory provisions of subpars. (I) and (N) and in subpar. (N)(i).

Subsec. (a)(1)(O). Pub. L. 105–33, §4002(e), struck out ''in the case of hospitals and skilled nursing facilities,'' before ''to accept as payment in full for'', ''inpatient hospital and extended care'' after ''to accept as payment in full for'', and ''(in the case of hospitals) or limits (in the case of skilled nursing facilities)'' after ''the organization the amounts''; inserted ''with a Medicare+Choice organization under part C of this subchapter or'' after ''any individual enrolled'' and ''(less any payments under sections 1395ww(d)(11) and 1395ww(h)(3)(D) of this title)'' after ''under this subchapter''.

Subsec. (a)(1)(S). Pub. L. 105–33, §4321(b), added subpar. (S).

Subsec. (a)(2)(A). Pub. L. 105–33, § 4541(a)(3), which directed the amendment of subsec. (a)(2)(A)(ii) by inserting the following at the end ''In the case of services described in section 1395*l*(a)(8) of this title or section 1395*l*(a)(9) of this title for which payment is made under part B of this subchapter under section 1395m(k) of this title, clause (ii) of the first sentence shall be applied by substituting for 20 percent of the reasonable charge for such services 20 percent of the lesser of the actual charge or the applicable fee schedule amount (as defined in such section) for such services.'', was executed by inserting the material at the end of subpar. (A) to reflect the probable intent of Congress.

Pub. L. 105–33, § 4523(b), which directed the amendment of subsec. (a)(2)(A)(ii) by inserting the following at the end ''In the case of items and services for which payment is made under part B of this subchapter under the prospective payment system established under section 1395*l*(t) of this title, clause (ii) of the first sentence shall be applied by substituting for 20 percent of the reasonable charge, the applicable copayment amount established under section 1395*l*(t)(5) of this title.'', was executed by inserting the material at the end of subpar. (A) to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' wherever appearing.

Subsec. (b)(2)(D). Pub. L. 105–33, § 4302(a), added subpar. (D).

Subsec. (f)(1). Pub. L. 105–33, § 4002(d)(1), inserted ''1395w–25(i),'' after ''1395*l*(s),'' and '', Medicare+Choice organization,'' after ''provider of services'' in introductory provisions.

Subsec. (f)(1)(B). Pub. L. 105–33, § 4641(a), substituted ''in a prominent part of the individual's current medical record'' for ''in the individual's medical record''.

Subsec. (f)(2)(E). Pub. L. 105–33, § 4002(d)(2), inserted ''or a Medicare+Choice organization'' after ''section 1395*l*(a)(1)(A) of this title''.

Subsec. (f)(4). Pub. L. 105–12 added par. (4).

1996—Subsec. (a)(1)(R). Pub. L. 104–191 added subpar. (R).

1994—Subsec. (a)(1)(H). Pub. L. 103–432, § 147(e)(7), substituted ''section 1395x(s)(2)(K)(i) or 1395x(s)(2)(K)(iii) of this title'' for ''section 1395x(s)(2)(K)(i) of this title''.

Subsec. (a)(2)(A). Pub. L. 103–432, § 156(a)(2)(E), struck out '', with respect to items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),'' after ''section 1395x(s)(10)(A) of this title''.

Subsec. (d). Pub. L. 103–432, § 106(b)(1)(B), substituted ''long-stay cases in a hospital'' for ''long-stay cases in a hospital or skilled nursing facility'', ''such hospital'' for ''such hospital or facility'' in two places, ''period of such services'' for ''period of such services or for post-hospital extended care services after such day of a continuous period of such care as is prescribed in or pursuant to regulations, as the case may be'', and ''notice to the hospital'' for ''notice to the hospital, or (in the case of a skilled nursing facility) to the facility and the hospital or hospitals with which it has a transfer agreement,''.

Subsec. (f)(1). Pub. L. 103–432, § 160(d)(2), substituted ''1395*l*(s)'' for ''1395*l*(r)'' in introductory provisions.

Subsec. (h)(1). Pub. L. 103–296 inserted before period at end '', except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

1991—Subsec. (a)(1)(J). Pub. L. 102–83 substituted ''section 1713 of title 38'' for ''section 613 of title 38''.

Subsec. (a)(1)(L). Pub. L. 102–83 substituted ''section 1703 of title 38'' for ''section 603 of title 38''.

Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1990—Subsec. (a)(1)(F)(i). Pub. L. 101–508, § 4008(m)(3)(G)[(F)](i), substituted '','' for comma at end.

Subsec. (a)(1)(F)(ii). Pub. L. 101–508, § 4008(m)(3)(G)[(F)](ii), substituted ''paragraph (3)(A),'' for ''paragraph (4)(A);''.

Subsec. (a)(1)(H). Pub. L. 101–508, § 4157(c)(2), inserted ''services described by section 1395x(s)(2)(K)(i) of this title, certified nurse-midwife services, qualified psychologist services, and'' after ''and other than''.

Subsec. (a)(1)(I)(i). Pub. L. 101–508, § 4008(b)(3)(B), inserted ''and to meet the requirements of such section'' after ''section 1395dd of this title''.

Subsec. (a)(1)(P). Pub. L. 101–508, § 4153(d)(1), substituted ''catheters, catheter supplies, ostomy bags, and supplies related to ostomy care'' for ''ostomy supplies''.

Subsec. (a)(1)(Q). Pub. L. 101–508, § 4206(a)(1), added subpar. (Q).

Subsec. (e). Pub. L. 101–508, § 4162(b)(2), substituted ''include—'' and pars. (1) and (2) for ''include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services.''

Subsec. (f). Pub. L. 101–508, § 4206(a)(2), added subsec. (f).

1989—Subsec. (a)(1)(F)(i)(III). Pub. L. 101–234, § 301(b)(4), (d)(1), amended subcl. (III) identically substituting ''fiscal year)'' for ''fiscal year))'' before ''of such reviews,'' at end.

Subsec. (a)(1)(F)(ii). Pub. L. 101–239, § 6003(g)(3)(D)(xii)(I), inserted ''rural primary care hospitals,'' after ''hospitals,''.

Subsec. (a)(1)(H). Pub. L. 101–239, § 6003(g)(3)(D)(xii)(II), inserted ''and in the case of rural primary care hospitals which provide rural primary care hospital services'' after ''payment may be made under this subchapter''.

Subsec. (a)(1)(I). Pub. L. 101–239, § 6018(a)(1), amended subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: ''in the case of a hospital and in the case of a rural primary care hospital, to comply with the requirements of section 1395dd of this title to the extent applicable,''.

Pub. L. 101–239, § 6003(g)(3)(D)(xii)(III), inserted ''and in the case of a rural primary care hospital'' after ''hospital''.

Subsec. (a)(1)(N). Pub. L. 101–239, § 6003(g)(3)(D)(xii)(IV), substituted ''hospitals and rural primary care hospitals'' for ''hospitals'' in introductory provisions and ''hospital or rural primary care hospital,'' for ''hospital,'' in cl. (i).

Subsec. (a)(1)(N)(iii), (iv). Pub. L. 101–239, § 6018(a)(2), added cls. (iii) and (iv).

Subsec. (a)(1)(P). Pub. L. 101–239, § 6112(e)(3), added subpar. (P).

Subsec. (a)(2)(A). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 201(b), (d), 202(h)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(2)(B). Pub. L. 101–239, § 6017, redesignated cl. (i) as subpar. (B) and struck out cl. (ii) which authorized charges for items or services more expensive than determined to be necessary and which have not been requested by the individual to the extent that such costs in the second fiscal period preceding the fiscal period in which such charges are imposed exceed necessary costs, under certain circumstances.

Subsec. (a)(3)(A), (B). Pub. L. 101–239, § 6003(g)(3)(D)(xiii)(I), substituted ''hospital, rural primary care hospital,'' for ''hospital,'' wherever appearing.

Subsec. (a)(3)(C)(ii)(II). Pub. L. 101–239, § 6003(g)(3)(D)(xiii)(II), substituted ''facilities, rural primary care hospitals,'' for ''facilities'' in two places.

Subsec. (d). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(5), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (i). Pub. L. 101–239, § 6020, added subsec. (i).

1988—Subsec. (a)(1)(M). Pub. L. 100–360, § 411(c)(2)(C)(i), as added by Pub. L. 100–485, § 608(d)(19)(A), struck out ''and'' at end.

Subsec. (a)(1)(N). Pub. L. 100–360, § 411(c)(2)(C)(ii), as added by Pub. L. 100–485, § 608(d)(19)(A), substituted '', and'' for period at end.

Subsec. (a)(1)(O). Pub. L. 100–360, § 411(c)(2)(A)(i), substituted cls. (i) and (ii) for ''with a risk-sharing contract under section 1395mm of this title''.

Subsec. (a)(2)(A). Pub. L. 100–360, § 201(d), substituted ''section 1395*l*(d)(1) of this title'' for ''section 1395*l*(c) of this title'' in second sentence.

Pub. L. 100–360, § 411(g)(1)(D), substituted ''section 1395m(a)(1)(B) of this title'' for ''section 1395m(a)(2) of this title'' in last sentence.

Pub. L. 100–360, § 202(h)(1), inserted ''1395m(c),'' after ''1395*l*(b),'' and ''and in the case of covered outpatient drugs, applicable coinsurance percent (specified in section 1395m(c)(2)(C) of this title) of the lesser of the actual charges for the drugs or the payment limit (established under section 1395m(c)(3) of this title)'' after ''established by the Secretary''.

Pub. L. 100–360, § 201(b), inserted at end ''A provider of services may not impose a charge under the first sentence of this subparagraph for services for which payment is made to the provider pursuant to section 1395*l*(c) of this title (relating to catastrophic benefits).''

Subsec. (a)(3)(C)(ii). Pub. L. 100–360, § 411(j)(5), made technical correction to directory language of Pub. L. 100–203, § 4097(b), see 1987 Amendment note below.

Subsec. (d). Pub. L. 100–360, § 104(d)(5), as amended by Pub. L. 100–485, § 608(d)(3)(F), struck out ''post-hospital'' before ''extended care services''.

Subsec. (f). Pub. L. 100–485, § 608(f)(1), struck out subsec. (f) which provided for termination or decertification and alternatives thereto.

Subsec. (g). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(28), see 1987 Amendment note below.

1987—Subsec. (a)(1)(F)(i)(III). Pub. L. 100–203, § 4097(a), substituted ''1988'' for ''1986'' and inserted ''and for any direct or administrative costs incurred as a result of review functions added with respect to a subsequent fiscal year'' after ''inflation''.

Subsec. (a)(1)(O). Pub. L. 100–203, § 4012(a), added subpar. (O).

Subsec. (a)(2)(A). Pub. L. 100–203, § 4062(d)(4), inserted at end ''Notwithstanding the first sentence of this subparagraph, a home health agency may charge such an individual or person, with respect to covered items subject to payment under section 1395m(a) of this title, the amount of any deduction imposed under section 1395*l*(b) of this title and 20 percent of the payment basis described in section 1395m(a)(2) of this title.''

Subsec. (a)(3). Pub. L. 100–93, § 8(d)(1), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''The Secretary may refuse to enter into or renew an agreement under this section with a provider of services if any person who has a direct or indirect ownership or control interest of 5 percent or more in such provider, or who is an officer, director, agent, or managing employee (as defined in section 1320a–5(b) of this title) of such provider, is a person described in section 1320a–5(a) of this title.''

Subsec. (a)(3)(C)(ii). Pub. L. 100–203, § 4097(b), as amended by Pub. L. 100–360, § 411(j)(5), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''shall not be less in the aggregate for hospitals, facilities, and agencies for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such hospitals, facilities, or agencies under part B of subchapter XI of this chapter.''

Subsec. (a)(4). Pub. L. 100–93, § 8(d)(1)(B), redesignated par. (4) as (3).

Subsec. (b). Pub. L. 100–93, § 8(d)(2), amended subsec. (b) generally, substituting pars. (1) to (3) for former pars. (1) to (5).

Subsec. (c)(1). Pub. L. 100–93, § 8(d)(3), (4), substituted ''the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services'' for ''an agreement filed under this subchapter by a provider of services has been terminated by the Secretary'' and inserted ''or nonrenewal'' after ''termination''.

Subsec. (c)(2). Pub. L. 100–203, § 4212(e)(4), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''In the case of a skilled nursing facility participating in the programs established by this subchapter and subchapter XIX of this chapter, the Secretary may enter into an agreement under this section only if such facility has been approved pursuant to section 1396i(a) of this title, and the term of any such agreement shall be in accordance with the period of approval of eligibility specified by the Secretary pursuant to such section.''

Subsec. (c)(3). Pub. L. 100–203, § 4212(e)(4), redesignated par. (3) as (2).

Pub. L. 100–93, § 8(d)(3), (4), substituted ''the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services'' for ''an agreement filed under this subchapter by a provider of services has been terminated by the Secretary'' and inserted ''or nonrenewal'' after ''termination''.

Subsec. (g). Pub. L. 100–203, § 4085(i)(28), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''money penalty'' for ''monetary penalty'' in first sentence and amended second sentence generally. Prior to amendment, second sentence read as follows: ''Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a–7a of this title with respect to actions described in subsection (a) of that section.''

Pub. L. 100–203, § 4085(i)(17), substituted ''inconsistent with an arrangement under subsection (a)(1)(H) of this section or in violation of the requirement for such an arrangement'' for ''for a hospital outpatient service for which payment may be made under part B of this subchapter and such bill or request violates an arrangement under subsection (a)(1)(H) of this section''.

Subsec. (h). Pub. L. 100–93, § 8(d)(5), added subsec. (h).

1986—Subsec. (a)(1)(F). Pub. L. 99–509, § 9353(e)(1)(A), designated existing provisions as cl. (i) and in cl. (i), as so designated, redesignated former cls. (i) to (iii) as subcls. (I) to (III), and added cl. (ii).

Pub. L. 99–272, § 9402(a), redesignated cl. (iv) as (iii) and in cl. (iii), as so redesignated, substituted ''1986'' for ''1982'', and struck out former cl. (iii) which provided that the cost of such agreement to the hospital shall not be less than amount which reflects the rates per review established in fiscal year 1982 for both direct and administrative costs (adjusted for inflation).

Subsec. (a)(1)(H). Pub. L. 99–509, § 9343(c)(2), struck out ''inpatient hospital'' after ''hospitals which provide'' and substituted ''a patient'' for ''an inpatient''.

Pub. L. 99–509, § 9320(h)(2), inserted '', and other than services of a certified registered nurse anesthetist'' after ''section 1395y(a)(14) of this title''.

Subsec. (a)(1)(I). Pub. L. 99–514 redesignated subpar. (I) relating to agreement not to charge for certain items and services as subpar. (K).

Pub. L. 99–272, § 9403(b), added subpar. (I) relating to agreement not to charge for certain items or services.

Pub. L. 99–272, § 9121(a), added subpar. (I) relating to compliance with the requirements of section 1395dd of this title.

Subsec. (a)(1)(J). Pub. L. 99–272, § 9122(a), added subpar. (J).

Subsec. (a)(1)(K). Pub. L. 99–514 redesignated subpar. (I) relating to agreement not to charge for certain items and services as subpar. (K).

Subsec. (a)(1)(L). Pub. L. 99–576 added subpar. (L).

Subsec. (a)(1)(M). Pub. L. 99–509, § 9305(b)(1), added subpar. (M).

Subsec. (a)(1)(N). Pub. L. 99–509, § 9332(e)(1), added subpar. (N).

Subsec. (a)(2)(A). Pub. L. 99–272, § 9401(b)(2)(F), inserted '', with respect to items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),'' after ''1395x(s)(10)(A) of this title'' in last sentence.

Subsec. (a)(4). Pub. L. 99–509, § 9353(e)(1)(B), added par. (4).

Subsec. (e). Pub. L. 99–509, § 9337(c)(2), inserted in second sentence ''(or meets the requirements of such section through the operation of section 1395x(g) of this title)'' in two places, and inserted ''or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services'' after ''(as therein defined)''.

Subsec. (g). Pub. L. 99–509, § 9343(c)(3), added subsec. (g).

1984—Subsec. (a)(1)(E). Pub. L. 98–369, § 2354(b)(33), inserted a comma at end.

Subsec. (a)(1)(F). Pub. L. 98–369, § 2315(d), substituted ''(b), (c), or (d)'' for ''(c) or (d)''.

Pub. L. 98–369, § 2347(a)(1), substituted ''maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located, under which the organization'' for ''maintain an agreement with a utilization and quality control peer review organization (if there is such an organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located) under which the organization''.

Pub. L. 98–369, § 2347(a)(2), repealed amendment made by Pub. L. 98–21, § 602(*l*)(1). See 1983 Amendment note below.

Subsec. (a)(2)(A). Pub. L. 98–369, § 2303(f), inserted ''and with respect to clinical diagnostic laboratory tests'' after ''section 1395x(s)(10) of this title''.

Pub. L. 98–369, § 2321(c), inserted ''or which are durable medical equipment furnished as home health services'' after ''part B of this subchapter''.

Pub. L. 98–369, § 2323(b)(3), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (b)(3). Pub. L. 98–369, § 2335(d)(1), substituted ''(including inpatient psychiatric hospital services)'' for ''(including tuberculosis hospital services and inpatient psychiatric hospital services)''.

Pub. L. 98–369, § 2354(b)(34), realigned margin of par. (3).

Subsec. (b)(4). Pub. L. 98–369, § 2348(a), substituted ''more than 30 days after such effective date'' for ''after the calendar year in which such termination is effective''.

Subsec. (d). Pub. L. 98–369, § 2335(d)(2), substituted ''(including inpatient psychiatric hospital services)'' for ''(including inpatient tuberculosis hospital services and inpatient psychiatric hospital services)''.

1983—Subsec. (a)(1). Pub. L. 98–21, § 602(*l*)(2), inserted provision at end of par. (1) that in the case of a hospital which has an agreement in effect with an organization described in subparagraph (F), which organization's contract with the Secretary under part B of subchapter XI terminates on or after October 1, 1984, the hospital shall not be determined to be out of compliance with the requirement of such subparagraph during the six month period beginning on the date of the termination of that contract.

Subsec. (a)(1)(F). Pub. L. 98–21, § 602(*l*)(1), which provided that, effective Oct. 1, 1984, subpar. (F) is amended by substituting ''(with an organization'' for ''(if there is such an organization'', was repealed by Pub. L. 98–369, § 2347(a)(2), effective July 18, 1984.

Subsec. (a)(1)(F) to (H). Pub. L. 98–21, § 602(f)(1), added subpars. (F) to (H).

Subsec. (a)(2)(A). Pub. L. 97–448, § 309(b)(11), inserted a comma after ''1395e(a)(1)''.

Pub. L. 97–448, § 309(a)(5), amended directory language of Pub. L. 97–248, § 122(g)(5), to correct an error, and did not involve any change in text. See 1982 Amendment note below.

Subsec. (a)(2)(B)(ii). Pub. L. 98–21, § 602(f)(2), inserted ''and except with respect to inpatient hospital costs with respect to which amounts are payable under section 1395ww(d) of this title'' after ''(except with respect to emergency services)'' in provision preceding subcl. (I).

1982—Subsec. (a)(1)(B). Pub. L. 97–248, § 128(d)(4), inserted ''of section 1395y(a) of this title''.

Subsec. (a)(1)(E). Pub. L. 97–248, § 144, added subpar. (E).

Subsec. (a)(2)(A). Pub. L. 97–248, § 122(g)(5), as amended by Pub. L. 97–448, § 309(a)(5), substituted ''(a)(3), or (a)(4)'' for ''or (a)(3)''.

Subsec. (b). Pub. L. 97–248, § 128(a)(5), in provisions preceding par. (1), struck out ''(and in the case of a skilled nursing facility, prior to the end of the term specified in subsection (a)(1) of this section)'' after ''may be terminated''.

Subsec. (b)(4)(A). Pub. L. 97–248, § 122(g)(6), inserted ''or hospice care'' after ''home health services''.

1981—Subsec. (a)(1). Pub. L. 97–35 struck out provision following subpar. (D) which provided that an agreement with a skilled nursing facility be for a term not exceeding 12 months with the exception that the Secretary could extend the time in specified situations.

1980—Subsec. (a)(2)(A). Pub. L. 96–611 inserted provision that a provider of services may not impose a charge under clause (ii) of the first sentence of this subparagraph with respect to items and services described in section 1395x(s)(10) of this title for which payment is made under part B of this subchapter.

Subsec. (c)(3). Pub. L. 96–272 added par. (3).

Subsec. (f). Pub. L. 96–499 added subsec. (f).

1978—Subsec. (a)(2)(A). Pub. L. 95–292 provided for computation of and charging of coinsurance amounts for items and services furnished individuals with end stage renal disease on the basis established by the Secretary.

Subsec. (a)(3). Pub. L. 95–142, § 8(b)(1), added par. (3).

Subsec. (b)(2)(G). Pub. L. 95–142, § 8(b)(2), added cl. (G).

1977—Subsec. (a)(1)(D). Pub. L. 95–142, § 15(a), added subpar. (D).

Subsec. (b)(2)(C). Pub. L. 95–142, § 3(b), designated existing provisions as subcl. (i) and added subcl. (ii).

Subsec. (b)(2)(F). Pub. L. 95–142, § 13(b)(3), substituted ''of a quality which fails to meet professionally recognized standards of health care'' for ''harmful to individuals or to be of a grossly inferior quality'', and struck out provisions relating to approval by an appropriate program review team.

Subsec. (c)(2). Pub. L. 95–210 substituted ''section 1396i(a) of this title'' for ''section 1396i of this title''.

1972—Subsec. (a)(1). Pub. L. 92–603, §§ 227(d)(2), 249A(b), 278(a)(17), (b)(18), 281(c), substituted ''Any provider of services (except a fund designated for purposes of section 1395f(g) and section 1395n(e) of this title)'' for ''Any provider of services'', ''skilled nursing facility'' for ''extended care facility'', inserted provision that the agreement be for a term of not to exceed 12 months with an allowable extension of 2 months under specified circumstances, redesignated subpar. (B) as (C) and added subpar. (B).

Subsec. (a)(2)(B). Pub. L. 92–603, § 223(e), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(2)(C). Pub. L. 92–603, § 223(g)(2), substituted ''this subparagraph'' for ''clause (iii) of the preceding sentence''.

Subsec. (a)(2)(D). Pub. L. 92–603, § 223(g)(1), added subpar. (D).

Subsec. (b). Pub. L. 92–603, §§ 229(b), 249A(c), 278(a)(17), inserted ''(and in the case of an extended care facility,

prior to the end of the term specified in subsection (a)(1) of this section)'' in provision preceding par. (1), in par. (2), added cls. (D) to (F), and in par. (3), substituted ''(including tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services, with respect to services furnished after the effective date of such termination, except that payment may be made for up to thirty days with respect to inpatient institutional services furnished to any eligible individual who was admitted to such institution prior to'' for ''(including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services, with respect to such services furnished to any individual who is admitted to the hospital or extended care facility furnishing such services on or after'' and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (c). Pub. L. 92–603, §249A(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 92–603, §278(a)(17), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

1968—Subsec. (a)(2)(A). Pub. L. 90–248, §129(c)(12)(A)(i), (ii), substituted ''or (a)(3)'' for '', (a)(2), or (a)(4)'' in cl. (i), and deleted ''or, in the case of outpatient hospital diagnostic services, for which payment is made under part A'' in cl. (ii).

Subsec. (a)(2)(C). Pub. L. 90–248, §129(c)(12)(B), substituted ''1395e(a)(2)'' for ''1395e(a)(3)''.

Pub. L. 90–248, §135(b), authorized a provider of services to charge for blood in accordance with its customary practices, included, in addition to whole blood for which a provider of services may charge, equivalent quantities of packed red blood cells, and provided that blood furnished an individual will be deemed replaced when the provider is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells) furnished the individual to which the three pint deductible applies.

Subsec. (e). Pub. L. 90–248, §133(c), added subsec. (e).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title II, §236(c), Dec. 8, 2003, 117 Stat. 2212, provided that: ''The amendments made by this section [amending this section and sections 1395eee, 1396a, and 1396u–4 of this title] shall apply to services furnished on or after January 1, 2004.''

Amendment by section 505(b) of Pub. L. 108–173 first applicable to the wage index for discharges occurring on or after Oct. 1, 2004, see section 505(c) of Pub. L. 108–173, set out as a note under section 1395ww of this title.

Pub. L. 108–173, title V, §506(b), Dec. 8, 2003, 117 Stat. 2295, provided that: ''The amendments made by this section [amending this section] shall apply as of a date specified by the Secretary of Health and Human Services (but in no case later than 1 year after the date of enactment of this Act [Dec. 8, 2003]) to medicare participation agreements in effect (or entered into) on or after such date.''

Amendment by section 932(b), (c)(1) of Pub. L. 108–173 applicable to appeals filed on or after Oct. 1, 2004, see section 932(d) of Pub. L. 108–173, set out as a note under section 1395i–3 of this title.

Pub. L. 108–173, title IX, §936(b), Dec. 8, 2003, 117 Stat. 2412, provided that:

''(1) ENROLLMENT PROCESS.—The Secretary [of Health and Human Services] shall provide for the establishment of the enrollment process under section 1866(j)(1) of the Social Security Act [subsec. (j)(1) of this section], as added by subsection (a)(2), within 6 months after the date of the enactment of this Act [Dec. 8, 2003].

''(2) CONSULTATION.—Section 1866(j)(1)(C) of the Social Security Act [subsec. (j)(1)(C) of this section], as added by subsection (a)(2), shall apply with respect to changes in provider enrollment forms made on or after January 1, 2004.

''(3) HEARING RIGHTS.—Section 1866(j)(2) of the Social Security Act [subsec. (j)(2) of this section], as added by subsection (a)(2), shall apply to denials occurring on or after such date (not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003]) as the Secretary specifies.''

Pub. L. 108–173, title IX, §947(b), Dec. 8, 2003, 117 Stat. 2425, provided that: ''The amendments made by this [sic] subsection (a) [amending this section] shall apply to hospitals as of July 1, 2004.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to services furnished on or after Jan. 1, 2001, see section 1(a)(6) [title III, §313(c)] of Pub. L. 106–554, set out as a note under section 1395u of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4302(a) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to the entry and renewal of contracts on or after such date, see section 4302(c) of Pub. L. 105–33, set out as a note under section 1395u of this title.

Amendment by section 4321(b) of Pub. L. 105–33 effective as of date specified by Secretary of Health and Human Services in regulations to be issued by Secretary not later than date which is one year after Aug. 5, 1997, see section 4321(d)(2) of Pub. L. 105–33, set out as an Effective Date note under section 1320b–16 of this title.

Amendment by section 4432(b)(5)(F) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Amendment by section 4511(a)(2)(D) of Pub. L. 105–33 applicable with respect to services furnished and supplies provided on and after Jan. 1, 1998, see section 4511(e) of Pub. L. 105–33, set out as a note under section 1395k of this title.

Amendment by section 4541(a)(3) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1999, see section 4541(e) of Pub. L. 105–33, set out as a note under section 1395*l* of this title.

Section 4641(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to provider agreements entered into, renewed, or extended on or after such date (not later than 1 year after the date of the enactment of this Act [Aug. 5, 1997]) as the Secretary of Health and Human Services specifies.''

Amendments by section 4714(b)(1) of Pub. L. 105–33 applicable to payment for (and with respect to provider

agreements with respect to) items and services furnished on or after Aug. 5, 1997, see section 4714(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 106(b)(2) of Pub. L. 103–432 provided that: ''The amendments made by paragraph (1) [amending this section and section 1395f of this title] shall take effect as if included in the enactment of OBRA–1987 [Pub. L. 100–203].''

Amendment by section 147(e)(7) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320a–3a of this title.

Amendment by section 156(a)(2)(E) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 1320c–3 of this title.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(b)(4) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and section 1395dd of this title] shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4153(d)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 135(e)(7), Oct. 31, 1994, 108 Stat. 4424, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Amendment by section 4157(c)(2) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4157(d) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4162(b)(2) of Pub. L. 101–508 applicable with respect to partial hospitalization services provided on or after Oct. 1, 1991, see section 4162(c) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4206(a) of Pub. L. 101–508 applicable with respect to services furnished on or after the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4206(e)(1) of Pub. L. 101–508, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6018(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act [Dec. 19, 1989], without regard to whether regulations to carry out such amendments have been promulgated by such date.''

Amendment by section 6112(e)(3) of Pub. L. 101–239 applicable with respect to items furnished on or after Jan. 1, 1990, see section 6112(e)(4) of Pub. L. 101–239, set out as a note under section 1395m of this title.

Amendment by section 101(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 608(d)(3)(F), (19)(A) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, and amendment by section 608(f)(1) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(g)(1), (2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 104(d)(5) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Amendment by section 202(h)(1) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(c)(2)(C), (g)(1)(D), (i)(4)(C)(vi), (j)(5) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(c)(2)(A)(ii) of Pub. L. 100–360 provided that: ''The amendment made by clause (i) [amending this section] shall apply to admissions occurring on or after the first day of the fourth month beginning after the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4012(a) of Pub. L. 100–203 applicable to admissions occurring on or after Apr. 1, 1988, or, if later, the earliest date the Secretary can provide the information required under section 4012(c) of Pub. L. 100–203 [42 U.S.C. 1395mm note] in machine readable form, see section 4012(d) of Pub. L. 100–203, set out as a note under section 1395mm of this title.

Amendment by section 4062(d)(4) of Pub. L. 100–203 applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as a note under section 1395f of this title.

Section 4085(i)(17) of Pub. L. 100–203 provided that the amendment made by such section 4085(i)(17) is effective as if included in the enactment of Pub. L. 99–509.

Section 4097(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply with respect to fiscal years beginning on or after October 1, 1988.''

Amendment by section 4212(e)(4) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 233(b) of Pub. L. 99–576 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to inpatient hospital services provided pursuant to admissions to hospitals occurring after June 30, 1987.''

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 9305(b)(2) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall

first prescribe the language required under section 1866(a)(1)(M) of the Social Security Act [subsec. (a)(1)(M) of this section] not later than six months after the date of the enactment of this Act [Oct. 21, 1986]. The requirement of such section shall apply to admissions to hospitals occurring on such date (not later than 60 days after the date such language is first prescribed) as the Secretary shall provide.''

Amendment by section 9320(h)(2) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9332(e)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to agreements under section 1866(a) of the Social Security Act [subsec. (a) of this section] as of October 1, 1987.''

Amendment by section 9337(c)(2) of Pub. L. 99–509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99–509, set out as a note under section 1395k of this title.

Amendment by section 9343(c)(2), (3) of Pub. L. 99–509 applicable to services furnished after June 30, 1987, see section 9343(h)(4) of Pub. L. 99–509, as amended, set out as a note under section 1395*l* of this title.

Section 9353(e)(3)(A) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to provider agreements as of October 1, 1987.''

Amendment by section 9121(a) of Pub. L. 99–272 effective on first day of first month that begins at least 90 days after Apr. 7, 1986, see section 9121(c) of Pub. L. 99–272, set out as a note under section 1395dd of this title.

Section 9122(b) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, §1895(b)(6), Oct. 22, 1986, 100 Stat. 2933, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to inpatient hospital services provided pursuant to admissions to hospitals occurring on or after January 1, 1987.''

Section 9402(c)(1) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by section 9403(b) of Pub. L. 99–272 effective Apr. 7, 1986, see section 9403(c) of Pub. L. 99–272, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2303(f) of Pub. L. 98–369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title, see section 2303(j)(1), (3) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Amendment by section 2315(d) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2315(g) of Pub. L. 98–369, set out as an Effective and Termination Dates of 1984 Amendment note under section 1395ww of this title.

Amendment by section 2321(c) of Pub. L. 98–369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Amendment by section 2323(b)(3) of Pub. L. 98–369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Amendment by section 2335(d) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Amendment by section 2347(a) of Pub. L. 98–369 effective July 18, 1984, see section 2347(d) of Pub. L. 98–369, set out as a note under section 1320c–2 of this title.

Section 2348(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section] shall apply to terminations issued on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(33), (34) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 602(*l*) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title III, §2347(a)(2), July 18, 1984, 98 Stat. 1096, provided that the amendment made by that section is effective Oct. 1, 1984.

Amendment by section 602(f)(2) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Subsec. (a)(1)(F) to (H) of this section, as added by section 602(f)(1)(C) of Pub. L. 98–21, effective Oct. 1, 1983, see section 604(a)(2) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by section 309(a)(5) of Pub. L. 97–448 effective as if originally included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 309(c)(1) of Pub. L. 97–448, set out as a note under section 426 of this title.

Amendment by section 309(b)(11) of Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(g)(5), (6) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

Amendment by section 128(a)(5) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 128(e)(2) of Pub. L. 97–248, set out as a note under section 1395x of this title.

Amendment by section 128(d)(4) of Pub. L. 97–248 effective Sept. 3, 1982, see section 128(e)(3) of Pub. L. 97–248, set out as a note under section 1395x of this title.

Amendment by section 144 of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except

that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENTS

Section 2(f) of Pub. L. 95–210 provided that:

''(1) The amendments made by this section [amending this section and sections 1396a, 1396d, and 1396i of this title] shall (except as otherwise provided in paragraph (2)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act [subchapter XIX of this chapter], on and after the first day of the first calendar quarter that begins more than six months after the date of enactment of this Act [Dec. 13, 1977].

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [subchapter XIX of this chapter] which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title [subchapter] solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Dec. 13, 1977].''

Amendment by section 3(b) of Pub. L. 95–142 effective Oct. 25, 1977, see section 3(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–3 of this title.

Amendment by section 8(b) of Pub. L. 95–142 [amending this section] applicable with respect to contracts, agreements, etc., made on and after first day of fourth month beginning after Oct. 25, 1977, see section 8(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–5 of this title.

Amendment by section 13(b)(3) of Pub. L. 95–142 effective Oct. 25, 1977, see section 13(c) of Pub. L. 95–142, set out as a note under section 1395y of this title.

Section 15(b) of Pub. L. 95–142 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to agreements entered into or renewed on and after the date of enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 223(e), (g) of Pub. L. 92–603 effective with respect to accounting periods beginning after Dec. 31, 1972, see section 223(h) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 227(d)(2) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 249A(e) of Pub. L. 92–603 provided that: ''The provisions of this section [enacting section 1396 of this title and amending this section] shall be effective with respect to agreements filed with the Secretary under section 1866 of the Social Security Act [this section] by skilled nursing facilities (as defined in section 1861(j) of such Act [section 1395x(j) of this title]) before, on, or after the date of enactment of this Act [Oct. 30, 1972], but accepted by him on or after such date.''

Amendment by section 281(c) of Pub. L. 92–603 applicable in the case of notices sent to individuals after 1968, see section 281(g) of Pub. L. 92–603, set out as a note under section 1395gg of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 129(c)(12) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Amendment by section 133(c) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub. L. 90–248, set out as a note under section 1395k of this title.

Amendment by section 135(b) of Pub. L. 90–248 applicable with respect to payment for blood (or packed red blood cells) furnished an individual after Dec. 31, 1967, see section 135(d) of Pub. L. 90–248, set out as a note under section 1395e of this title.

REGULATIONS

Pub. L. 108–173, title V, § 506(c), Dec. 8, 2003, 117 Stat. 2295, provided that: ''The Secretary [of Health and Human Services] shall promulgate regulations to carry out the amendments made by subsection (a) [amending this section].''

GAO STUDY AND REPORT ON THE PROPAGATION OF CONCIERGE CARE

Pub. L. 108–173, title VI, § 650, Dec. 8, 2003, 117 Stat. 2331, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on concierge care (as defined in paragraph (2)) to determine the extent to which such care—

''(A) is used by medicare beneficiaries (as defined in section 1802(b)(5)(A) of the Social Security Act (42 U.S.C. 1395a(b)(5)(A))); and

''(B) has impacted upon the access of medicare beneficiaries (as so defined) to items and services for which reimbursement is provided under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(2) CONCIERGE CARE.—In this section, the term 'concierge care' means an arrangement under which, as a prerequisite for the provision of a health care item or service to an individual, a physician, practitioner (as described in section 1842(b)(18)(C) of the Social Security Act (42 U.S.C. 1395u(b)(18)(C))), or other individual—

''(A) charges a membership fee or another incidental fee to an individual desiring to receive the health care item or service from such physician, practitioner, or other individual; or

''(B) requires the individual desiring to receive the health care item or service from such physician, practitioner, or other individual to purchase an item or service.

''(b) REPORT.—Not later than the date that is 12 months after the date of enactment of this Act [Dec. 8, 2003], the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a)(1) together with such recommendations for legislative or administrative action as the Comptroller General determines to be appropriate.''

EFFECT ON STATE LAW

Section 4206(c) of Pub. L. 101–508 provided that: ''Nothing in subsections (a) and (b) [amending this section and sections 1395*l* and 1395mm of this title] shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which, as a matter of conscience, cannot implement an advance directive.''

REPORTS TO CONGRESS ON NUMBER OF HOSPITALS TERMINATING OR NOT RENEWING PROVIDER AGREEMENTS

Section 233(c) of Pub. L. 99–576 provided that:

''(1) The Secretary of Health and Human Services shall periodically submit to the Congress a report on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act [this section] as a result of the additional conditions imposed under the amendments made by subsection (a) [amending this section].

''(2) Not later than October 1, 1987, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding implementation of this section [amending this section]. Thereafter, the Adminis-

trator shall notify such committees if any hospital terminates or fails to renew an agreement described in paragraph (1) for the reasons described in that paragraph.''

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 7 on page 96 identifies a report on ''Hospitals that have terminated or failed to renew an agreement under section 1866 of Social Security Act as a result of the additional conditions imposed'' authorized by 42 U.S.C. 1395cc note), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

Section 9122(d) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall report to Congress periodically on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act [this section] as a result of the additional conditions imposed under the amendments made by subsection (a) [amending this section].''

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 7 on page 96 identifies a report on ''Hospitals that have terminated or failed to renew an agreement under section 1866 of Social Security Act as a result of the additional conditions imposed'' authorized by 42 U.S.C. 1395cc note), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

DELAY IN IMPLEMENTATION OF REQUIREMENT THAT HOSPITALS MAINTAIN AGREEMENTS WITH UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGANIZATION

Section 2347(b) of Pub. L. 98–369 provided that: ''Notwithstanding section 604(a)(2) of the Social Security Amendments of 1983 [section 604(a)(2) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 1395ww of this title], the requirement that a hospital maintain an agreement with a utilization and quality control peer review organization, as contained in section 1866(a)(1)(F) of the Social Security Act [subsec. (a)(1)(F) of this section], shall become effective on November 15, 1984.''

INTERIM WAIVER IN CERTAIN CASES OF BILLING RULE FOR ITEMS AND SERVICES OTHER THAN PHYSICIANS' SERVICES

For authority to waive the requirements of subsec. (a)(1)(H) of this section for any cost period prior to Oct. 1, 1986, where immediate compliance would threaten the stability of patient care, see section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title.

PRIVATE SECTOR REVIEW INITIATIVE

Section 119 of Pub. L. 97–248 provided that:

''(a) The Secretary of Health and Human Services shall undertake an initiative to improve medical review by intermediaries and carriers under title XVIII of the Social Security Act [this subchapter] and to encourage similar review efforts by private insurers and other private entities. The initiative shall include the development of specific standards for measuring the performance of such intermediaries and carriers with respect to the identification and reduction of unnecessary utilization of health services.

''(b) Where such review activity results in the denial of payment to providers of services under title XVIII of the Social Security Act [this subchapter], such providers shall be prohibited, in accordance with sections 1866 and 1879 of such title [this section and section 1395pp of this title], from collecting any payments from beneficiaries unless otherwise provided under such title.''

AGREEMENTS FILED AND ACCEPTED PRIOR TO OCT. 30, 1972, DEEMED TO BE FOR SPECIFIED TERM ENDING DEC. 31, 1973

Section 249A(f) of Pub. L. 92–603 provided that: ''Notwithstanding any other provision of law, any agreement, filed by a skilled nursing facility (as defined in section 1861(j) of the Social Security Act [section 1395x(j) of this title]) with the Secretary under section 1866 of such Act [this section] and accepted by him prior to the date of enactment of this Act [Oct. 30, 1972], which was in effect on such date shall be deemed to be for a specified term ending on December 31, 1973.''

§ 1395cc–1. Demonstration of application of physician volume increases to group practices

(a) Demonstration program authorized

(1) In general

The Secretary shall conduct demonstration projects to test and, if proven effective, expand the use of incentives to health care groups participating in the program under this subchapter that—

(A) encourage coordination of the care furnished to individuals under the programs under parts A and B of this subchapter by institutional and other providers, practitioners, and suppliers of health care items and services;

(B) encourage investment in administrative structures and processes to ensure efficient service delivery; and

(C) reward physicians for improving health outcomes.

Such projects shall focus on the efficiencies of furnishing health care in a group-practice setting as compared to the efficiencies of furnishing health care in other health care delivery systems.

(2) Administration by contract

Except as otherwise specifically provided, the Secretary may administer the program under this section in accordance with section 1395cc–2 of this title.

(3) Definitions

For purposes of this section, terms have the following meanings:

(A) Physician

Except as the Secretary may otherwise provide, the term ''physician'' means any individual who furnishes services which may be paid for as physicians' services under this subchapter.

(B) Health care group

The term ''health care group'' means a group of physicians (as defined in subparagraph (A)) organized at least in part for the purpose of providing physicians' services under this subchapter. As the Secretary finds appropriate, a health care group may include a hospital and any other individual or entity furnishing items or services for which payment may be made under this subchapter that is affiliated with the health care group under an arrangement structured so that such individual or entity partici-

pates in a demonstration under this section and will share in any bonus earned under subsection (d) of this section.

(b) Eligibility criteria

(1) In general

The Secretary is authorized to establish criteria for health care groups eligible to participate in a demonstration under this section, including criteria relating to numbers of health care professionals in, and of patients served by, the group, scope of services provided, and quality of care.

(2) Payment method

A health care group participating in the demonstration under this section shall agree with respect to services furnished to beneficiaries within the scope of the demonstration (as determined under subsection (c) of this section)—

(A) to be paid on a fee-for-service basis; and

(B) that payment with respect to all such services furnished by members of the health care group to such beneficiaries shall (where determined appropriate by the Secretary) be made to a single entity.

(3) Data reporting

A health care group participating in a demonstration under this section shall report to the Secretary such data, at such times and in such format as the Secretary requires, for purposes of monitoring and evaluation of the demonstration under this section.

(c) Patients within scope of demonstration

(1) In general

The Secretary shall specify, in accordance with this subsection, the criteria for identifying those patients of a health care group who shall be considered within the scope of the demonstration under this section for purposes of application of subsection (d) of this section and for assessment of the effectiveness of the group in achieving the objectives of this section.

(2) Other criteria

The Secretary may establish additional criteria for inclusion of beneficiaries within a demonstration under this section, which may include frequency of contact with physicians in the group or other factors or criteria that the Secretary finds to be appropriate.

(3) Notice requirements

In the case of each beneficiary determined to be within the scope of a demonstration under this section with respect to a specific health care group, the Secretary shall ensure that such beneficiary is notified of the incentives, and of any waivers of coverage or payment rules, applicable to such group under such demonstration.

(d) Incentives

(1) Performance target

The Secretary shall establish for each health care group participating in a demonstration under this section—

(A) a base expenditure amount, equal to the average total payments under parts A and B of this subchapter for patients served by the health care group on a fee-for-service basis in a base period determined by the Secretary; and

(B) an annual per capita expenditure target for patients determined to be within the scope of the demonstration, reflecting the base expenditure amount adjusted for risk and expected growth rates.

(2) Incentive bonus

The Secretary shall pay to each participating health care group (subject to paragraph (4)) a bonus for each year under the demonstration equal to a portion of the medicare savings realized for such year relative to the performance target.

(3) Additional bonus for process and outcome improvements

At such time as the Secretary has established appropriate criteria based on evidence the Secretary determines to be sufficient, the Secretary shall also pay to a participating health care group (subject to paragraph (4)) an additional bonus for a year, equal to such portion as the Secretary may designate of the saving to the program under this subchapter resulting from process improvements made by and patient outcome improvements attributable to activities of the group.

(4) Limitation

The Secretary shall limit bonus payments under this section as necessary to ensure that the aggregate expenditures under this subchapter (inclusive of bonus payments) with respect to patients within the scope of the demonstration do not exceed the amount which the Secretary estimates would be expended if the demonstration projects under this section were not implemented.

(Aug. 14, 1935, ch. 531, title XVIII, § 1866A, as added Pub. L. 106–554, § 1(a)(6) [title IV, § 412(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–509.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (a)(1)(A) and (d)(1)(A), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

GAO REPORT

Pub. L. 106–554, § 1(a)(6) [title IV, § 412(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–515, provided that: ''Not later than 2 years after the date on which the demonstration project under section 1866A of the Social Security Act [this section], as added by subsection (a), is implemented, the Comptroller General of the United States shall submit to Congress a report on such demonstration project. The report shall include such recommendations with respect to changes to the demonstration project that the Comptroller General determines appropriate.''

§ 1395cc–2. Provisions for administration of demonstration program

(a) General administrative authority

(1) Beneficiary eligibility

Except as otherwise provided by the Secretary, an individual shall only be eligible to

receive benefits under the program under section 1395cc–1 of this title (in this section referred to as the ''demonstration program'') if such individual—

(A) is enrolled under the program under part B of this subchapter and entitled to benefits under part A of this subchapter; and

(B) is not enrolled in a Medicare+Choice plan under part C of this subchapter, an eligible organization under a contract under section 1395mm of this title (or a similar organization operating under a demonstration project authority), an organization with an agreement under section 1395*l*(a)(1)(A) of this title, or a PACE program under section 1395eee of this title.

(2) Secretary's discretion as to scope of program

The Secretary may limit the implementation of the demonstration program to—

(A) a geographic area (or areas) that the Secretary designates for purposes of the program, based upon such criteria as the Secretary finds appropriate;

(B) a subgroup (or subgroups) of beneficiaries or individuals and entities furnishing items or services (otherwise eligible to participate in the program), selected on the basis of the number of such participants that the Secretary finds consistent with the effective and efficient implementation of the program;

(C) an element (or elements) of the program that the Secretary determines to be suitable for implementation; or

(D) any combination of any of the limits described in subparagraphs (A) through (C).

(3) Voluntary receipt of items and services

Items and services shall be furnished to an individual under the demonstration program only at the individual's election.

(4) Agreements

The Secretary is authorized to enter into agreements with individuals and entities to furnish health care items and services to beneficiaries under the demonstration program.

(5) Program standards and criteria

The Secretary shall establish performance standards for the demonstration program including, as applicable, standards for quality of health care items and services, cost-effectiveness, beneficiary satisfaction, and such other factors as the Secretary finds appropriate. The eligibility of individuals or entities for the initial award, continuation, and renewal of agreements to provide health care items and services under the program shall be conditioned, at a minimum, on performance that meets or exceeds such standards.

(6) Administrative review of decisions affecting individuals and entities furnishing services

An individual or entity furnishing services under the demonstration program shall be entitled to a review by the program administrator (or, if the Secretary has not contracted with a program administrator, by the Secretary) of a decision not to enter into, or to terminate, or not to renew, an agreement with the entity to provide health care items or services under the program.

(7) Secretary's review of marketing materials

An agreement with an individual or entity furnishing services under the demonstration program shall require the individual or entity to guarantee that it will not distribute materials that market items or services under the program without the Secretary's prior review and approval.

(8) Payment in full

(A) In general

Except as provided in subparagraph (B), an individual or entity receiving payment from the Secretary under a contract or agreement under the demonstration program shall agree to accept such payment as payment in full, and such payment shall be in lieu of any payments to which the individual or entity would otherwise be entitled under this subchapter.

(B) Collection of deductibles and coinsurance

Such individual or entity may collect any applicable deductible or coinsurance amount from a beneficiary.

(b) Contracts for program administration

(1) In general

The Secretary may administer the demonstration program through a contract with a program administrator in accordance with the provisions of this subsection.

(2) Scope of program administrator contracts

The Secretary may enter into such contracts for a limited geographic area, or on a regional or national basis.

(3) Eligible contractors

The Secretary may contract for the administration of the program with—

(A) an entity that, under a contract under section 1395h or 1395u of this title, determines the amount of and makes payments for health care items and services furnished under this subchapter; or

(B) any other entity with substantial experience in managing the type of program concerned.

(4) Contract award, duration, and renewal

(A) In general

A contract under this subsection shall be for an initial term of up to three years, renewable for additional terms of up to three years.

(B) Noncompetitive award and renewal for entities administering part A or part B payments

The Secretary may enter or renew a contract under this subsection with an entity described in paragraph (3)(A) without regard to the requirements of section 5 of title 41.

(5) Applicability of Federal Acquisition Regulation

The Federal Acquisition Regulation shall apply to program administration contracts under this subsection.

(6) Performance standards

The Secretary shall establish performance standards for the program administrator including, as applicable, standards for the quality and cost-effectiveness of the program administered, and such other factors as the Secretary finds appropriate. The eligibility of entities for the initial award, continuation, and renewal of program administration contracts shall be conditioned, at a minimum, on performance that meets or exceeds such standards.

(7) Functions of program administrator

A program administrator shall perform any or all of the following functions, as specified by the Secretary:

(A) Agreements with entities furnishing health care items and services

Determine the qualifications of entities seeking to enter or renew agreements to provide services under the demonstration program, and as appropriate enter or renew (or refuse to enter or renew) such agreements on behalf of the Secretary.

(B) Establishment of payment rates

Negotiate or otherwise establish, subject to the Secretary's approval, payment rates for covered health care items and services.

(C) Payment of claims or fees

Administer payments for health care items or services furnished under the program.

(D) Payment of bonuses

Using such guidelines as the Secretary shall establish, and subject to the approval of the Secretary, make bonus payments as described in subsection (c)(2)(B) of this section to entities furnishing items or services for which payment may be made under the program.

(E) Oversight

Monitor the compliance of individuals and entities with agreements under the program with the conditions of participation.

(F) Administrative review

Conduct reviews of adverse determinations specified in subsection (a)(6) of this section.

(G) Review of marketing materials

Conduct a review of marketing materials proposed by an entity furnishing services under the program.

(H) Additional functions

Perform such other functions as the Secretary may specify.

(8) Limitation of liability

The provisions of section 1320c–6(b) of this title shall apply with respect to activities of contractors and their officers, employees, and agents under a contract under this subsection.

(9) Information sharing

Notwithstanding section 1306 of this title and section 552a of title 5, the Secretary is authorized to disclose to an entity with a program administration contract under this subsection such information (including medical information) on individuals receiving health care items and services under the program as the entity may require to carry out its responsibilities under the contract.

(c) Rules applicable to both program agreements and program administration contracts

(1) Records, reports, and audits

The Secretary is authorized to require entities with agreements to provide health care items or services under the demonstration program, and entities with program administration contracts under subsection (b) of this section, to maintain adequate records, to afford the Secretary access to such records (including for audit purposes), and to furnish such reports and other materials (including audited financial statements and performance data) as the Secretary may require for purposes of implementation, oversight, and evaluation of the program and of individuals' and entities' effectiveness in performance of such agreements or contracts.

(2) Bonuses

Notwithstanding any other provision of law, but subject to subparagraph (B)(ii), the Secretary may make bonus payments under the demonstration program from the Federal Health Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in amounts that do not exceed the amounts authorized under the program in accordance with the following:

(A) Payments to program administrators

The Secretary may make bonus payments under the program to program administrators.

(B) Payments to entities furnishing services

(i) In general

Subject to clause (ii), the Secretary may make bonus payments to individuals or entities furnishing items or services for which payment may be made under the demonstration program, or may authorize the program administrator to make such bonus payments in accordance with such guidelines as the Secretary shall establish and subject to the Secretary's approval.

(ii) Limitations

The Secretary may condition such payments on the achievement of such standards related to efficiency, improvement in processes or outcomes of care, or such other factors as the Secretary determines to be appropriate.

(3) Antidiscrimination limitation

The Secretary shall not enter into an agreement with an entity to provide health care items or services under the demonstration program, or with an entity to administer the program, unless such entity guarantees that it will not deny, limit, or condition the coverage or provision of benefits under the program, for individuals eligible to be enrolled under such program, based on any health status-related

factor described in section 300gg–1(a)(1) of this title.

(d) Limitations on judicial review

The following actions and determinations with respect to the demonstration program shall not be subject to review by a judicial or administrative tribunal:

(1) Limiting the implementation of the program under subsection (a)(2) of this section.

(2) Establishment of program participation standards under subsection (a)(5) of this section or the denial or termination of, or refusal to renew, an agreement with an entity to provide health care items and services under the program.

(3) Establishment of program administration contract performance standards under subsection (b)(6) of this section, the refusal to renew a program administration contract, or the noncompetitive award or renewal of a program administration contract under subsection (b)(4)(B) of this section.

(4) Establishment of payment rates, through negotiation or otherwise, under a program agreement or a program administration contract.

(5) A determination with respect to the program (where specifically authorized by the program authority or by subsection (c)(2) of this section)—

(A) as to whether cost savings have been achieved, and the amount of savings; or

(B) as to whether, to whom, and in what amounts bonuses will be paid.

(e) Application limited to parts A and B

None of the provisions of this section or of the demonstration program shall apply to the programs under part C of this subchapter.

(f) Reports to Congress

Not later than two years after December 21, 2000, and biennially thereafter for six years, the Secretary shall report to Congress on the use of authorities under the demonstration program. Each report shall address the impact of the use of those authorities on expenditures, access, and quality under the programs under this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, §1866B, as added Pub. L. 106–554, §1(a)(6) [title IV, §412(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–511; amended Pub. L. 108–173, title VII, §736(c)(5), Dec. 8, 2003, 117 Stat. 2356.)

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in subsecs. (a)(1) and (e), are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (b)(7)(D). Pub. L. 108–173 substituted ''(c)(2)(B)'' for ''(c)(2)(A)(ii)''.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

§1395cc–3. Health care quality demonstration program

(a) Definitions

In this section:

(1) Beneficiary

The term ''beneficiary'' means an individual who is entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, including any individual who is enrolled in a Medicare Advantage plan under part C of this subchapter.

(2) Health care group

(A) In general

The term ''health care group'' means—

(i) a group of physicians that is organized at least in part for the purpose of providing physician's services under this subchapter;

(ii) an integrated health care delivery system that delivers care through coordinated hospitals, clinics, home health agencies, ambulatory surgery centers, skilled nursing facilities, rehabilitation facilities and clinics, and employed, independent, or contracted physicians; or

(iii) an organization representing regional coalitions of groups or systems described in clause (i) or (ii).

(B) Inclusion

As the Secretary determines appropriate, a health care group may include a hospital or any other individual or entity furnishing items or services for which payment may be made under this subchapter that is affiliated with the health care group under an arrangement structured so that such hospital, individual, or entity participates in a demonstration project under this section.

(3) Physician

Except as otherwise provided for by the Secretary, the term ''physician'' means any individual who furnishes services that may be paid for as physicians' services under this subchapter.

(b) Demonstration projects

The Secretary shall establish a 5-year demonstration program under which the Secretary shall approve demonstration projects that examine health delivery factors that encourage the delivery of improved quality in patient care, including—

(1) the provision of incentives to improve the safety of care provided to beneficiaries;

(2) the appropriate use of best practice guidelines by providers and services by beneficiaries;

(3) reduced scientific uncertainty in the delivery of care through the examination of variations in the utilization and allocation of services, and outcomes measurement and research;

(4) encourage shared decision making between providers and patients;

(5) the provision of incentives for improving the quality and safety of care and achieving the efficient allocation of resources;

(6) the appropriate use of culturally and ethnically sensitive health care delivery; and

(7) the financial effects on the health care marketplace of altering the incentives for care delivery and changing the allocation of resources.

(c) Administration by contract

(1) In general

Except as otherwise provided in this section, the Secretary may administer the demonstration program established under this section in a manner that is similar to the manner in which the demonstration program established under section 1395cc–1 of this title is administered in accordance with section 1395cc–2 of this title.

(2) Alternative payment systems

A health care group that receives assistance under this section may, with respect to the demonstration project to be carried out with such assistance, include proposals for the use of alternative payment systems for items and services provided to beneficiaries by the group that are designed to—

(A) encourage the delivery of high quality care while accomplishing the objectives described in subsection (b) of this section; and

(B) streamline documentation and reporting requirements otherwise required under this subchapter.

(3) Benefits

A health care group that receives assistance under this section may, with respect to the demonstration project to be carried out with such assistance, include modifications to the package of benefits available under the original medicare fee-for-service program under parts A and B of this subchapter or the package of benefits available through a Medicare Advantage plan under part C of this subchapter. The criteria employed under the demonstration program under this section to evaluate outcomes and determine best practice guidelines and incentives shall not be used as a basis for the denial of medicare benefits under the demonstration program to patients against their wishes (or if the patient is incompetent, against the wishes of the patient's surrogate) on the basis of the patient's age or expected length of life or of the patient's present or predicted disability, degree of medical dependency, or quality of life.

(d) Eligibility criteria

To be eligible to receive assistance under this section, an entity shall—

(1) be a health care group;

(2) meet quality standards established by the Secretary, including—

(A) the implementation of continuous quality improvement mechanisms that are aimed at integrating community-based support services, primary care, and referral care;

(B) the implementation of activities to increase the delivery of effective care to beneficiaries;

(C) encouraging patient participation in preference-based decisions;

(D) the implementation of activities to encourage the coordination and integration of medical service delivery; and

(E) the implementation of activities to measure and document the financial impact on the health care marketplace of altering the incentives of health care delivery and changing the allocation of resources; and

(3) meet such other requirements as the Secretary may establish.

(e) Waiver authority

The Secretary may waive such requirements of this subchapter and subchapter XI of this chapter as may be necessary to carry out the purposes of the demonstration program established under this section.

(f) Budget neutrality

With respect to the 5-year period of the demonstration program under subsection (b) of this section, the aggregate expenditures under this subchapter for such period shall not exceed the aggregate expenditures that would have been expended under this subchapter if the program established under this section had not been implemented.

(g) Notice requirements

In the case of an individual that receives health care items or services under a demonstration program carried out under this section, the Secretary shall ensure that such individual is notified of any waivers of coverage or payment rules that are applicable to such individual under this subchapter as a result of the participation of the individual in such program.

(h) Participation and support by Federal agencies

In carrying out the demonstration program under this section, the Secretary may direct—

(1) the Director of the National Institutes of Health to expand the efforts of the Institutes to evaluate current medical technologies and improve the foundation for evidence-based practice;

(2) the Administrator of the Agency for Healthcare Research and Quality to, where possible and appropriate, use the program under this section as a laboratory for the study of quality improvement strategies and to evaluate, monitor, and disseminate information relevant to such program; and

(3) the Administrator of the Centers for Medicare & Medicaid Services and the Administrator of the Center for Medicare Choices to support linkages of relevant medicare data to registry information from participating health care groups for the beneficiary populations served by the participating groups, for analysis supporting the purposes of the demonstration program, consistent with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996.

(Aug. 14, 1935, ch. 531, title XVIII, § 1866C, as added Pub. L. 108–173, title VI, § 646, Dec. 8, 2003, 117 Stat. 2324.)

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in subsecs. (a)(1) and (c)(3), are classified to sections 1395c

et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

The Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (h)(3), is Pub. L. 104–191, Aug. 21, 1996, 110 Stat. 1936. For complete classification of this Act to the Code, see section 1(a) of Pub. L. 104–191, set out as a Short Title of 1996 Amendments note under section 201 of this title and Tables.

§ 1395dd. Examination and treatment for emergency medical conditions and women in labor

(a) Medical screening requirement

In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1) of this section) exists.

(b) Necessary stabilizing treatment for emergency medical conditions and labor

(1) In general

If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or

(B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section.

(2) Refusal to consent to treatment

A hospital is deemed to meet the requirement of paragraph (1)(A) with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such examination and treatment, but the individual (or a person acting on the individual's behalf) refuses to consent to the examination and treatment. The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment.

(3) Refusal to consent to transfer

A hospital is deemed to meet the requirement of paragraph (1) with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with subsection (c) of this section and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such transfer, but the individual (or a person acting on the individual's behalf) refuses to consent to the transfer. The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such transfer.

(c) Restricting transfers until individual stabilized

(1) Rule

If an individual at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection (e)(3)(B) of this section), the hospital may not transfer the individual unless—

(A)(i) the individual (or a legally responsible person acting on the individual's behalf) after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility,

(ii) a physician (within the meaning of section 1395x(r)(1) of this title) has signed a certification that[1] based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child from effecting the transfer, or

(iii) if a physician is not physically present in the emergency department at the time an individual is transferred, a qualified medical person (as defined by the Secretary in regulations) has signed a certification described in clause (ii) after a physician (as defined in section 1395x(r)(1) of this title), in consultation with the person, has made the determination described in such clause, and subsequently countersigns the certification; and

(B) the transfer is an appropriate transfer (within the meaning of paragraph (2)) to that facility.

A certification described in clause (ii) or (iii) of subparagraph (A) shall include a summary of the risks and benefits upon which the certification is based.

(2) Appropriate transfer

An appropriate transfer to a medical facility is a transfer—

(A) in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;

(B) in which the receiving facility—

(i) has available space and qualified personnel for the treatment of the individual, and

(ii) has agreed to accept transfer of the individual and to provide appropriate medical treatment;

(C) in which the transferring hospital sends to the receiving facility all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency medical condition, observations of signs or symptoms, pre-

[1] So in original. Probably should be followed by a comma.

liminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1)(A), and the name and address of any on-call physician (described in subsection (d)(1)(C) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment;

(D) in which the transfer is effected through qualified personnel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer; and

(E) which meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals transferred.

(d) Enforcement

(1) Civil money penalties

(A) A participating hospital that negligently violates a requirement of this section is subject to a civil money penalty of not more than $50,000 (or not more than $25,000 in the case of a hospital with less than 100 beds) for each such violation. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply with respect to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) Subject to subparagraph (C), any physician who is responsible for the examination, treatment, or transfer of an individual in a participating hospital, including a physician on-call for the care of such an individual, and who negligently violates a requirement of this section, including a physician who—

(i) signs a certification under subsection (c)(1)(A) of this section that the medical benefits reasonably to be expected from a transfer to another facility outweigh the risks associated with the transfer, if the physician knew or should have known that the benefits did not outweigh the risks, or

(ii) misrepresents an individual's condition or other information, including a hospital's obligations under this section,

is subject to a civil money penalty of not more than $50,000 for each such violation and, if the violation is gross and flagrant or is repeated, to exclusion from participation in this subchapter and State health care programs. The provisions of section 1320a–7a of this title (other than the first and second sentences of subsection (a) and subsection (b)) shall apply to a civil money penalty and exclusion under this subparagraph in the same manner as such provisions apply with respect to a penalty, exclusion, or proceeding under section 1320a–7a(a) of this title.

(C) If, after an initial examination, a physician determines that the individual requires the services of a physician listed by the hospital on its list of on-call physicians (required to be maintained under section 1395cc(a)(1)(I) of this title) and notifies the on-call physician and the on-call physician fails or refuses to appear within a reasonable period of time, and the physician orders the transfer of the individual because the physician determines that without the services of the on-call physician the benefits of transfer outweigh the risks of transfer, the physician authorizing the transfer shall not be subject to a penalty under subparagraph (B). However, the previous sentence shall not apply to the hospital or to the on-call physician who failed or refused to appear.

(2) Civil enforcement

(A) Personal harm

Any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

(B) Financial loss to other medical facility

Any medical facility that suffers a financial loss as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for financial loss, under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

(C) Limitations on actions

No action may be brought under this paragraph more than two years after the date of the violation with respect to which the action is brought.

(3) Consultation with peer review organizations

In considering allegations of violations of the requirements of this section in imposing sanctions under paragraph (1) or in terminating a hospital's participation under this subchapter, the Secretary shall request the appropriate utilization and quality control peer review organization (with a contract under part B of subchapter XI of this chapter) to assess whether the individual involved had an emergency medical condition which had not been stabilized, and provide a report on its findings. Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall request such a review before effecting a sanction under paragraph (1) and shall provide a period of at least 60 days for such review. Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall also request such a review before making a compliance determination as part of the process of terminating a hospital's participation under this subchapter for violations related to the appropriateness of a medical screening examination, stabilizing treatment, or an appropriate transfer as required by this section, and shall provide a period of 5 days for such review. The Secretary shall provide a copy of the organization's report to the hospital or physician consistent with confidentiality requirements imposed on the organization under such part B.

(4) Notice upon closing an investigation

The Secretary shall establish a procedure to notify hospitals and physicians when an investigation under this section is closed.

(e) Definitions

In this section:

(1) The term ''emergency medical condition'' means—

(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

(ii) serious impairment to bodily functions, or

(iii) serious dysfunction of any bodily organ or part; or

(B) with respect to a pregnant woman who is having contractions—

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(2) The term ''participating hospital'' means a hospital that has entered into a provider agreement under section 1395cc of this title.

(3)(A) The term ''to stabilize'' means, with respect to an emergency medical condition described in paragraph (1)(A), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta).

(B) The term ''stabilized'' means, with respect to an emergency medical condition described in paragraph (1)(A), that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta).

(4) The term ''transfer'' means the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who (A) has been declared dead, or (B) leaves the facility without the permission of any such person.

(5) The term ''hospital'' includes a critical access hospital (as defined in section 1395x(mm)(1) of this title).

(f) Preemption

The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section.

(g) Nondiscrimination

A participating hospital that has specialized capabilities or facilities (such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers as identified by the Secretary in regulation) shall not refuse to accept an appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual.

(h) No delay in examination or treatment

A participating hospital may not delay provision of an appropriate medical screening examination required under subsection (a) of this section or further medical examination and treatment required under subsection (b) of this section in order to inquire about the individual's method of payment or insurance status.

(i) Whistleblower protections

A participating hospital may not penalize or take adverse action against a qualified medical person described in subsection (c)(1)(A)(iii) of this section or a physician because the person or physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee because the employee reports a violation of a requirement of this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1867, as added Pub. L. 99–272, title IX, § 9121(b), Apr. 7, 1986, 100 Stat. 164; amended Pub. L. 99–509, title IX, § 9307(c)(4), Oct. 21, 1986, 100 Stat. 1996; Pub. L. 99–514, title XVIII, § 1895(b)(4), Oct. 22, 1986, 100 Stat. 2933; Pub. L. 100–203, title IV, § 4009(a)(1), formerly § 4009(a)(1), (2), Dec. 22, 1987, 101 Stat. 1330–56, 1330–57; Pub. L. 100–360, title IV, § 411(b)(8)(A)(i), July 1, 1988, 102 Stat. 772; Pub. L. 100–485, title VI, § 608(d)(18)(E), Oct. 13, 1988, 102 Stat. 2419; Pub. L. 101–239, title VI, §§ 6003(g)(3)(D)(xiv), 6211(a)–(h), Dec. 19, 1989, 103 Stat. 2154, 2245–2248; Pub. L. 101–508, title IV, §§ 4008(b)(1)–(3)(A), 4207(a)(1)(A), (2), (3), (k)(3), formerly 4027(a)(1)(A), (2), (3), (k)(3), Nov. 5, 1990, 104 Stat. 1388–44, 1388–117, 1388–124, renumbered and amended Pub. L. 103–432, title I, § 160(d)(4), (5)(A), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 105–33, title IV, § 4201(c)(1), Aug. 5, 1997, 111 Stat. 373; Pub. L. 108–173, title VII, § 736(a)(14), title IX, § 944(b), (c)(1), Dec. 8, 2003, 117 Stat. 2355, 2423.)

REFERENCES IN TEXT

Part B of subchapter XI of this chapter, referred to in subsec. (d)(3), is classified to section 1320c et seq. of this title.

PRIOR PROVISIONS

A prior section 1395dd, act Aug. 14, 1935, ch. 531, title XVIII, § 1867, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 329; amended Jan. 2, 1968, Pub. L. 90–248, title I, § 164(a), 81 Stat. 873; Oct. 30, 1972, Pub. L. 92–603, title II, § 288, 86 Stat. 1457, related to creation, composition, meetings, and functions of the Health Insurance Benefits Advisory Council and the appointment of a Chairman and members thereto, and qualifications, terms of office, compensation, and reimbursement of travel expenses of members, prior to repeal by Pub. L. 98–369, div. B, title III, § 2349(a), July 18, 1984, 98 Stat. 1097, eff. July 18, 1984.

AMENDMENTS

2003—Subsec. (d)(1)(B). Pub. L. 108–173, §736(a)(14)(A), substituted ''if the violation is'' for ''if the violation is is'' in concluding provisions.

Subsec. (d)(3). Pub. L. 108–173, §944(c)(1), inserted ''or in terminating a hospital's participation under this subchapter'' after ''in imposing sanctions under paragraph (1)'' and inserted at end ''Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall also request such a review before making a compliance determination as part of the process of terminating a hospital's participation under this subchapter for violations related to the appropriateness of a medical screening examination, stabilizing treatment, or an appropriate transfer as required by this section, and shall provide a period of 5 days for such review. The Secretary shall provide a copy of the organization's report to the hospital or physician consistent with confidentiality requirements imposed on the organization under such part B.''

Subsec. (d)(4). Pub. L. 108–173, §944(b), added par. (4).

Subsec. (e)(1)(B). Pub. L. 108–173, §736(a)(14)(B), substituted ''a pregnant woman'' for ''a pregnant women''.

Subsec. (e)(2). Pub. L. 108–173, §736(a)(14)(C), substituted ''means a hospital'' for ''means hospital''.

1997—Subsec. (e)(5). Pub. L. 105–33 substituted ''critical access'' for ''rural primary care''.

1994—Subsec. (d)(3). Pub. L. 103–432, §160(d)(5)(A), made technical amendment to Pub. L. 101–508, §4207(a)(1)(A). See 1990 Amendment note below.

1990—Subsec. (c)(2)(C). Pub. L. 101–508, §4008(b)(3)(A)(iii), substituted ''subsection (d)(1)(C)'' for ''subsection (d)(2)(C)''.

Subsec. (d)(1). Pub. L. 101–508, §4008(b)(3)(A)(i), (ii), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: ''If a hospital knowingly and willfully, or negligently, fails to meet the requirements of this section, such hospital is subject to—

''(A) termination of its provider agreement under this subchapter in accordance with section 1395cc(b) of this title, or

''(B) at the option of the Secretary, suspension of such agreement for such period of time as the Secretary determines to be appropriate, upon reasonable notice to the hospital and to the public.''

Subsec. (d)(1)(B). Pub. L. 101–508, §4207(a)(2), (3), formerly §4027(a)(2), (3), as renumbered by Pub. L. 103–432, §160(d)(4), which directed amendment of par. (2)(B) by substituting ''negligently'' for ''knowingly'' and ''is gross and flagrant or is repeated'' for ''knowing and willful or negligent'', was executed by making the substitutions in par. (1)(B) to reflect the probable intent of Congress and the intervening redesignation of par. (2) as (1) by Pub. L. 101–508, §4008(b)(3)(A)(ii). See above.

Subsec. (d)(2). Pub. L. 101–508, §4008(b)(3)(A)(ii), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (d)(2)(A). Pub. L. 101–508, §4008(b)(1), (2), substituted ''negligently'' for ''knowingly'' and inserted ''(or not more than $25,000 in the case of a hospital with less than 100 beds)'' after ''$50,000''.

Subsec. (d)(3). Pub. L. 101–508, §4207(a)(1)(A), formerly §4027(a)(1)(A), as renumbered and amended by Pub. L. 103–432, §160(d)(4), (5)(A), added par. (3). Former par. (3) redesignated (2).

Subsec. (i). Pub. L. 101–508, §4207(k)(3), formerly §4027(k)(3), as renumbered by Pub. L. 103–432, §160(d)(4), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''A participating hospital may not penalize or take adverse action against a physician because the physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized.''

1989—Pub. L. 101–239, §6211(h)(2)(A), struck out ''active'' before ''labor'' in section catchline.

Subsec. (a). Pub. L. 101–239, §6211(h)(2)(B), which directed the amendment of subsec. (a) by striking out ''or to determine if the individual is in active labor (within the meaning of section (e)(2) of this section)'' was executed by striking out ''or to determine if the individual is in active labor (within the meaning of subsection (e)(2) of this section)'' after ''exists''.

Pub. L. 101–239, §6211(a), substituted ''hospital's emergency department, including ancillary services routinely available to the emergency department,'' for ''hospital's emergency department''.

Subsec. (b). Pub. L. 101–239, §6211(h)(2)(C), struck out ''active'' before ''labor'' in heading.

Subsec. (b)(1). Pub. L. 101–239, §6211(h)(2)(D)(i), struck out ''or is in active labor'' after ''emergency medical condition'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 101–239, §6211(h)(2)(D)(ii), struck out ''or to provide for treatment of the labor'' after ''stabilize the medical condition''.

Subsec. (b)(2). Pub. L. 101–239, §6211(b)(1), inserted ''and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such examination and treatment,'' after ''in that paragraph'', substituted ''and treatment.'' for ''or treatment.'', and inserted at end ''The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment.''

Subsec. (b)(3). Pub. L. 101–239, §6211(b)(2), inserted ''and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such transfer,'' after ''subsection (c) of this section'' and inserted at end ''The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such transfer.''

Subsec. (c). Pub. L. 101–239, §6211(g)(1)(A), substituted ''individual'' for ''patient'' in heading.

Subsec. (c)(1). Pub. L. 101–239, §6211(c)(4), (g)(1)(B), (h)(2)(E), in introductory provisions, substituted ''an individual'' for ''a patient'', ''subsection (e)(3)(B) of this section)'' for ''subsection (e)(4)(B) of this section) or is in active labor'', and ''the individual'' for ''the patient'', and inserted at end ''A certification described in clause (ii) or (iii) of subparagraph (A) shall include a summary of the risks and benefits upon which the certification is based.''

Subsec. (c)(1)(A)(i). Pub. L. 101–239, §6211(c)(1), (g)(1)(B), substituted ''the individual'' for ''the patient'', ''the individual's behalf'' for ''the patient's behalf'', and ''after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility'' for ''requests that the transfer be effected''.

Subsec. (c)(1)(A)(ii). Pub. L. 101–239, §6211(c)(2)(B), (3), (g)(1)(B), substituted ''has signed a certification that based upon the information available at the time of transfer'' for '', or other qualified medical personnel when a physician is not readily available in the emergency department, has signed a certification that, based upon the reasonable risks and benefits to the patient, and based upon the information available at the time'' and ''individual and, in the case of labor, to the unborn child'' for ''individual's medical condition''.

Subsec. (c)(1)(A)(iii). Pub. L. 101–239, §6211(c)(2)(A), (C), (D), added cl. (iii).

Subsec. (c)(2)(A). Pub. L. 101–239, §6211(c)(5), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (c)(2)(B). Pub. L. 101–239, §6211(c)(5)(A), (g)(1)(B), redesignated subpar. (A) as (B) and substituted ''the individual'' for ''the patient'' in cls. (i) and (ii). Former subpar. (B) redesignated (C).

Subsec. (c)(2)(C). Pub. L. 101–239, §6211(c)(5)(A), (d), redesignated subpar. (B) as (C) and substituted ''sends to'' for ''provides'' and ''all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1)(A), and the name and address of any on-call physician (described in subsection (d)(2)(C) of this section) who has refused or failed to appear

within a reasonable time to provide necessary stabilizing treatment'' for ''with appropriate medical records (or copies thereof) of the examination and treatment effected at the transferring hospital''. Former subpar. (C) redesignated (D).

Subsec. (c)(2)(D). Pub. L. 101–239, §6211(c)(5)(A), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (c)(2)(E). Pub. L. 101–239, §6211(c)(5)(A), (g)(1)(B), redesignated subpar. (D) as (E) and substituted ''individuals'' for ''patients''.

Subsec. (d)(2)(B). Pub. L. 101–239, §6211(e)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The responsible physician in a participating hospital with respect to the hospital's violation of a requirement of this subsection is subject to the sanctions described in section 1395u(j)(2) of this title, except that, for purposes of this subparagraph, the civil money penalty with respect to each violation may not exceed $50,000, rather than $2,000.''

Subsec. (d)(2)(C). Pub. L. 101–239, §6211(e)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''As used in this paragraph, the term 'responsible physician' means, with respect to a hospital's violation of a requirement of this section, a physician who—

''(i) is employed by, or under contract with, the participating hospital, and

''(ii) acting as such an employee or under such a contract, has professional responsibility for the provision of examinations or treatments for the individual, or transfers of the individual, with respect to which the violation occurred.''

Subsec. (e)(1). Pub. L. 101–239, §6211(h)(1)(A), substituted ''means—'' and subpars. (A) and (B) for ''means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

''(A) placing the patient's health in serious jeopardy,

''(B) serious impairment to bodily functions, or

''(C) serious dysfunction of any bodily organ or part.''

Subsec. (e)(2). Pub. L. 101–239, §6211(h)(1)(B), (E), redesignated par. (3) as (2) and struck out former par. (2) which defined ''active labor''.

Subsec. (e)(3). Pub. L. 101–239, §6211(h)(1)(E), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (e)(4). Pub. L. 101–239, §6211(h)(1)(E), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(4)(A). Pub. L. 101–239, §6211(h)(1)(C), substituted ''emergency medical condition described in paragraph (1)(A)'' for ''emergency medical condition'', ''likely to result from or occur during'' for ''likely to result from'', and ''from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta)'' for ''from a facility''.

Subsec. (e)(4)(B). Pub. L. 101–239, §6211(h)(1)(D), inserted ''described in paragraph (1)(A)'' after ''emergency medical condition'', ''or occur during'' after ''to result from'', and '', or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta)'' after ''from a facility''.

Subsec. (e)(5). Pub. L. 101–239, §6211(h)(1)(E), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 101–239, §6211(g)(2), substituted ''an individual'' for ''a patient'' in two places.

Subsec. (e)(6). Pub. L. 101–239, §6211(h)(1)(E), redesignated par. (6) as (5).

Pub. L. 101–239, §6003(g)(3)(D)(xiv), added par. (6).

Subsecs. (g) to (i). Pub. L. 101–239, §6211(f), added subsecs. (g) to (i).

1988—Subsec. (d)(1). Pub. L. 100–360, §411(b)(8)(A)(i), amended Pub. L. 100–203, §4009(a)(2), see 1987 Amendment note below.

Subsec. (d)(2). Pub. L. 100–360, §411(b)(8)(A)(i), as amended by Pub. L. 100–485, §608(d)(18)(E), amended Pub. L. 100–203, §4009(a)(1), see 1987 Amendment note below.

1987—Subsec. (d)(1). Pub. L. 100–203, §4009(a)(2), which directed insertion of a provision related to imposing the sanction described in section 1395u(j)(2)(A) of this title, was amended generally by Pub. L. 100–360, §411(b)(8)(A)(i), so that it does not amend par. (1).

Subsec. (d)(2). Pub. L. 100–203, §4009(a)(1), as amended by Pub. L. 100–360, §411(b)(8)(A)(i), as amended by Pub. L. 100–485, §608(d)(18)(E), substituted subpars. (A) and (B) for ''In addition to the other grounds for imposition of a civil money penalty under section 1320a–7a(a) of this title, a participating hospital that knowingly violates a requirement of this section and the responsible physician in the hospital with respect to such a violation are each subject, under that section, to a civil money penalty of not more than $25,000 for each such violation.'', designated second sentence as subpar. (C), substituted ''this paragraph'' for ''the previous sentence'', and redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (C).

1986—Subsec. (b)(2), (3). Pub. L. 99–509 struck out ''legally responsible'' after ''individual (or a''.

Subsec. (e)(3). Pub. L. 99–514 struck out ''and has, under the agreement, obligated itself to comply with the requirements of this section'' after ''section 1395cc of this title''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, §944(c)(2), Dec. 8, 2003, 117 Stat. 2423, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to terminations of participation initiated on or after the date of the enactment of this Act [Dec. 8, 2003].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4008(b)(1)–(3)(A) of Pub. L. 101–508 applicable to actions occurring on or after the first day of the sixth month beginning after Nov. 5, 1990, see section 4008(b)(4) of Pub. L. 101–508, set out as a note under section 1395cc of this title.

Amendment by section 4207(a)(1)(A) of Pub. L. 101–508 effective on the first day of the first month beginning more than 60 days after Nov. 5, 1990, see section 4207(a)(1)(C) of Pub. L. 101–508, as amended, set out as a note under section 1320c–3 of this title.

Section 4207(a)(4), formerly 4027(a)(4), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, §160(d)(4), (5)(B), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by paragraphs (2) and (3) [amending this section] shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6211(i) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act [Dec. 19, 1989], without regard to whether regulations to carry out such amendments have been promulgated by such date.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation

Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4009(a)(2), formerly §4009(a)(3), of Pub. L. 100–203, as redesignated by Pub. L. 100–360, title IV, §411(b)(8)(A)(ii), July 1, 1988, 102 Stat. 772, provided that: ''The amendments made by this subsection [amending this section] shall apply to actions occurring on or after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section 9121(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [enacting this section and amending section 1395cc of this title] shall take effect on the first day of the first month that begins at least 90 days after the date of the enactment of this Act [Apr. 7, 1986].''

SHORT TITLE

This section is popularly known as the Emergency Medical Treatment and Labor Act (EMTALA).

EMERGENCY MEDICAL TREATMENT AND LABOR ACT (EMTALA) TECHNICAL ADVISORY GROUP

Pub. L. 108–173, title IX, §945, Dec. 8, 2003, 117 Stat. 2423, provided that:

''(a) ESTABLISHMENT.—The Secretary [of Health and Human Services] shall establish a Technical Advisory Group (in this section referred to as the 'Advisory Group') to review issues related to the Emergency Medical Treatment and Labor Act (EMTALA) and its implementation. In this section, the term 'EMTALA' refers to the provisions of section 1867 of the Social Security Act (42 U.S.C. 1395dd).

''(b) MEMBERSHIP.—The Advisory Group shall be composed of 19 members, including the Administrator of the Centers for Medicare & Medicaid Services and the Inspector General of the Department of Health and Human Services and of which—

''(1) 4 shall be representatives of hospitals, including at least one public hospital, that have experience with the application of EMTALA and at least 2 of which have not been cited for EMTALA violations;

''(2) 7 shall be practicing physicians drawn from the fields of emergency medicine, cardiology or cardiothoracic surgery, orthopedic surgery, neurosurgery, pediatrics or a pediatric subspecialty, obstetrics-gynecology, and psychiatry, with not more than one physician from any particular field;

''(3) 2 shall represent patients;

''(4) 2 shall be staff involved in EMTALA investigations from different regional offices of the Centers for Medicare & Medicaid Services; and

''(5) 1 shall be from a State survey office involved in EMTALA investigations and 1 shall be from a peer review organization, both of whom shall be from areas other than the regions represented under paragraph (4).

In selecting members described in paragraphs (1) through (3), the Secretary shall consider qualified individuals nominated by organizations representing providers and patients.

''(c) GENERAL RESPONSIBILITIES.—The Advisory Group—

''(1) shall review EMTALA regulations;

''(2) may provide advice and recommendations to the Secretary with respect to those regulations and their application to hospitals and physicians;

''(3) shall solicit comments and recommendations from hospitals, physicians, and the public regarding the implementation of such regulations; and

''(4) may disseminate information on the application of such regulations to hospitals, physicians, and the public.

''(d) ADMINISTRATIVE MATTERS.—

''(1) CHAIRPERSON.—The members of the Advisory Group shall elect a member to serve as chairperson of the Advisory Group for the life of the Advisory Group.

''(2) MEETINGS.—The Advisory Group shall first meet at the direction of the Secretary. The Advisory Group shall then meet twice per year and at such other times as the Advisory Group may provide.

''(e) TERMINATION.—The Advisory Group shall terminate 30 months after the date of its first meeting.

''(f) WAIVER OF ADMINISTRATIVE LIMITATION.—The Secretary shall establish the Advisory Group notwithstanding any limitation that may apply to the number of advisory committees that may be established (within the Department of Health and Human Services or otherwise).''

FEDERAL REIMBURSEMENT OF EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS

Pub. L. 108–173, title X, §1011, Dec. 8, 2003, 117 Stat. 2432, provided that:

''(a) TOTAL AMOUNT AVAILABLE FOR ALLOTMENT.—

''(1) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary [of Health and Human Services] $250,000,000 for each of fiscal years 2005 through 2008 for the purpose of making allotments under this section for payments to eligible providers in States described in paragraph (1) or (2) of subsection (b).

''(2) AVAILABILITY.—Funds appropriated under paragraph (1) shall remain available until expended.

''(b) STATE ALLOTMENTS.—

''(1) BASED ON PERCENTAGE OF UNDOCUMENTED ALIENS.—

''(A) IN GENERAL.—Out of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall use $167,000,000 of such amount to make allotments for such fiscal year in accordance with subparagraph (B).

''(B) FORMULA.—The amount of the allotment for payments to eligible providers in each State for a fiscal year shall be equal to the product of—

''(i) the total amount available for allotments under this paragraph for the fiscal year; and

''(ii) the percentage of undocumented aliens residing in the State as compared to the total number of such aliens residing in all States, as determined by the Statistics Division of the Immigration and Naturalization Service, as of January 2003, based on the 2000 decennial census.

''(2) BASED ON NUMBER OF UNDOCUMENTED ALIEN APPREHENSION STATES.—

''(A) IN GENERAL.—Out of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall use $83,000,000 of such amount to make allotments, in addition to amounts allotted under paragraph (1), for such fiscal year for each of the 6 States with the highest number of undocumented alien apprehensions for such fiscal year.

''(B) DETERMINATION OF ALLOTMENTS.—The amount of the allotment for each State described in subparagraph (A) for a fiscal year shall be equal to the product of—

''(i) the total amount available for allotments under this paragraph for the fiscal year; and

''(ii) the percentage of undocumented alien apprehensions in the State in that fiscal year as compared to the total of such apprehensions for all such States for the preceding fiscal year.

''(C) DATA.—For purposes of this paragraph, the highest number of undocumented alien apprehensions for a fiscal year shall be based on the apprehension rates for the 4-consecutive-quarter period

ending before the beginning of the fiscal year for which information is available for undocumented aliens in such States, as reported by the Department of Homeland Security.

''(c) USE OF FUNDS.—

''(1) AUTHORITY TO MAKE PAYMENTS.—From the allotments made for a State under subsection (b) for a fiscal year, the Secretary shall pay the amount (subject to the total amount available from such allotments) determined under paragraph (2) directly to eligible providers located in the State for the provision of eligible services to aliens described in paragraph (5) to the extent that the eligible provider was not otherwise reimbursed (through insurance or otherwise) for such services during that fiscal year.

''(2) DETERMINATION OF PAYMENT AMOUNTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the payment amount determined under this paragraph shall be an amount determined by the Secretary that is equal to the lesser of—

''(i) the amount that the provider demonstrates was incurred for the provision of such services; or

''(ii) amounts determined under a methodology established by the Secretary for purposes of this subsection.

''(B) PRO-RATA REDUCTION.—If the amount of funds allotted to a State under subsection (b) for a fiscal year is insufficient to ensure that each eligible provider in that State receives the amount of payment calculated under subparagraph (A), the Secretary shall reduce that amount of payment with respect to each eligible provider to ensure that the entire amount allotted to the State for that fiscal year is paid to such eligible providers.

''(3) METHODOLOGY.—In establishing a methodology under paragraph (2)(A)(ii), the Secretary—

''(A) may establish different methodologies for types of eligible providers;

''(B) may base payments for hospital services on estimated hospital charges, adjusted to estimated cost, through the application of hospital-specific cost-to-charge ratios;

''(C) shall provide for the election by a hospital to receive either payments to the hospital for—

''(i) hospital and physician services; or

''(ii) hospital services and for a portion of the on-call payments made by the hospital to physicians; and

''(D) shall make quarterly payments under this section to eligible providers.

If a hospital makes the election under subparagraph (C)(i), the hospital shall pass on payments for services of a physician to the physician and may not charge any administrative or other fee with respect to such payments.

''(4) LIMITATION ON USE OF FUNDS.—Payments made to eligible providers in a State from allotments made under subsection (b) for a fiscal year may only be used for costs incurred in providing eligible services to aliens described in paragraph (5).

''(5) ALIENS DESCRIBED.—For purposes of paragraphs (1) and (2), aliens described in this paragraph are any of the following:

''(A) Undocumented aliens.

''(B) Aliens who have been paroled into the United States at a United States port of entry for the purpose of receiving eligible services.

''(C) Mexican citizens permitted to enter the United States for not more than 72 hours under the authority of a biometric machine readable border crossing identification card (also referred to as a 'laser visa') issued in accordance with the requirements of regulations prescribed under section 101(a)(6) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(6)).

''(d) APPLICATIONS; ADVANCE PAYMENTS.—

''(1) DEADLINE FOR ESTABLISHMENT OF APPLICATION PROCESS.—

''(A) IN GENERAL.—Not later than September 1, 2004, the Secretary shall establish a process under which eligible providers located in a State may request payments under subsection (c).

''(B) INCLUSION OF MEASURES TO COMBAT FRAUD AND ABUSE.—The Secretary shall include in the process established under subparagraph (A) measures to ensure that inappropriate, excessive, or fraudulent payments are not made from the allotments determined under subsection (b), including certification by the eligible provider of the veracity of the payment request.

''(2) ADVANCE PAYMENT; RETROSPECTIVE ADJUSTMENT.—The process established under paragraph (1) may provide for making payments under this section for each quarter of a fiscal year on the basis of advance estimates of expenditures submitted by applicants for such payments and such other investigation as the Secretary may find necessary, and for making reductions or increases in the payments as necessary to adjust for any overpayment or underpayment for prior quarters of such fiscal year.

''(e) DEFINITIONS.—In this section:

''(1) ELIGIBLE PROVIDER.—The term 'eligible provider' means a hospital, physician, or provider of ambulance services (including an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization).

''(2) ELIGIBLE SERVICES.—The term 'eligible services' means health care services required by the application of section 1867 of the Social Security Act (42 U.S.C. 1395dd), and related hospital inpatient and outpatient services and ambulance services (as defined by the Secretary).

''(3) HOSPITAL.—The term 'hospital' has the meaning given such term in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e)), except that such term shall include a critical access hospital (as defined in section 1861(mm)(1) of such Act (42 U.S.C. 1395x(mm)(1)).

''(4) PHYSICIAN.—The term 'physician' has the meaning given that term in section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

''(5) INDIAN TRIBE; TRIBAL ORGANIZATION.—The terms 'Indian tribe' and 'tribal organization' have the meanings given such terms in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

''(6) STATE.—The term 'State' means the 50 States and the District of Columbia.''

INSPECTOR GENERAL STUDY OF PROHIBITION ON HOSPITAL EMPLOYMENT OF PHYSICIANS

Section 4008(c) of Pub. L. 101–508 directed Secretary of Health and Human Services (acting through Inspector General of Department of Health and Human Services) to conduct a study of the effect of State laws prohibiting the employment of physicians by hospitals on the availability and accessibility of trauma and emergency care services, and include in such study an analysis of the effect of such laws on the ability of hospitals to meet the requirements of section 1867 of the Social Security Act (this section) relating to the examination and treatment of individuals with an emergency medical condition and women in labor, with Secretary to submit a report to Congress on the study not later than 1 year after Nov. 5, 1990.

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

(a) Practicing Physicians Advisory Council

(1) Appointment

The Secretary shall appoint, based upon nominations submitted by medical organizations representing physicians, a Practicing Physicians Advisory Council (in this subsection referred to as the ''Council'') to be composed of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under this subchapter in the previous

year. At least 11 of the members of the Council shall be physicians described in section 1395x(r)(1) of this title and the members of the Council shall include both participating and nonparticipating physicians and physicians practicing in rural areas and underserved urban areas.

(2) Meetings

The Council shall meet once during each calendar quarter to discuss certain proposed changes in regulations and carrier manual instructions related to physician services identified by the Secretary. To the extent feasible and consistent with statutory deadlines, such consultation shall occur before the publication of such proposed changes.

(3) Reimbursement of expenses

Members of the Council shall be entitled to receive reimbursement of expenses and per diem in lieu of subsistence in the same manner as other members of advisory councils appointed by the Secretary are provided such reimbursement and per diem under this subchapter.

(b) Council for Technology and Innovation

(1) Establishment

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

(2) Composition

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

(3) Duties

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

(4) Executive Coordinator for Technology and Innovation

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

(Aug. 14, 1935, ch. 531, title XVIII, § 1868, as added Pub. L. 101–508, title IV, § 4112, Nov. 5, 1990, 104 Stat. 1388–64; amended Pub. L. 108–173, title IX, § 942(a), Dec. 8, 2003, 117 Stat. 2420.)

PRIOR PROVISIONS

A prior section 1395ee, act Aug. 14, 1935, ch. 531, title XVIII, § 1868, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 329, provided for creation of a National Medical Review Committee, functions of such Committee, including submission of annual reports to the Secretary and Congress, employment of technical assistance, and for availability of assistance and data, prior to repeal by Pub. L. 90–248, title I, § 164(c), Jan. 2, 1968, 81 Stat. 874.

AMENDMENTS

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

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

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

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

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1395ff. Determinations; appeals

(a) Initial determinations

(1) Promulgations of regulations

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

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

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

(C) Any other initial determination with respect to a claim for benefits under such parts, including an initial determination by the Secretary that payment may not be made, or may no longer be made, for an item or service under such parts, an initial determination made by a utilization and quality control peer review organization under section 1320c–3(a)(2) of this title, and an initial determination made by an entity pursuant to a contract (other than a contract under section 1395w–22 of this title) with the Secretary to administer provisions of this subchapter or subchapter XI of this chapter.

(2) Deadlines for making initial determinations

(A) In general

Subject to subparagraph (B), in promulgating regulations under paragraph (1), initial determinations shall be concluded by not later than the 45-day period beginning on the date the fiscal intermediary or the carrier, as the case may be, receives a claim

for benefits from an individual as described in paragraph (1). Notice of such determination shall be mailed to the individual filing the claim before the conclusion of such 45-day period.

(B) Clean claims

Subparagraph (A) shall not apply with respect to any claim that is subject to the requirements of section 1395h(c)(2) or 1395u(c)(2) of this title.

(3) Redeterminations

(A) In general

In promulgating regulations under paragraph (1) with respect to initial determinations, such regulations shall provide for a fiscal intermediary or a carrier to make a redetermination with respect to a claim for benefits that is denied in whole or in part.

(B) Limitations

(i) Appeal rights

No initial determination may be reconsidered or appealed under subsection (b) of this section unless the fiscal intermediary or carrier has made a redetermination of that initial determination under this paragraph.

(ii) Decisionmaker

No redetermination may be made by any individual involved in the initial determination.

(C) Deadlines

(i) Filing for redetermination

A redetermination under subparagraph (A) shall be available only if notice is filed with the Secretary to request the redetermination by not later than the end of the 120-day period beginning on the date the individual receives notice of the initial determination under paragraph (2).

(ii) Concluding redeterminations

Redeterminations shall be concluded by not later than the 60-day period beginning on the date the fiscal intermediary or the carrier, as the case may be, receives a request for a redetermination. Notice of such determination shall be mailed to the individual filing the claim before the conclusion of such 60-day period.

(D) Construction

For purposes of the succeeding provisions of this section a redetermination under this paragraph shall be considered to be part of the initial determination.

(4) Requirements of notice of determinations

With respect to an initial determination insofar as it results in a denial of a claim for benefits—

(A) the written notice on the determination shall include—

(i) the reasons for the determination, including whether a local medical review policy or a local coverage determination was used;

(ii) the procedures for obtaining additional information concerning the determination, including the information described in subparagraph (B); and

(iii) notification of the right to seek a redetermination or otherwise appeal the determination and instructions on how to initiate such a redetermination under this section;

(B) such written notice shall be provided in printed form and written in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both; and

(C) the individual provided such written notice may obtain, upon request, information on the specific provision of the policy, manual, or regulation used in making the redetermination.

(5) Requirements of notice of redeterminations

With respect to a redetermination insofar as it results in a denial of a claim for benefits—

(A) the written notice on the redetermination shall include—

(i) the specific reasons for the redetermination;

(ii) as appropriate, a summary of the clinical or scientific evidence used in making the redetermination;

(iii) a description of the procedures for obtaining additional information concerning the redetermination; and

(iv) notification of the right to appeal the redetermination and instructions on how to initiate such an appeal under this section;

(B) such written notice shall be provided in printed form and written in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both; and

(C) the individual provided such written notice may obtain, upon request, information on the specific provision of the policy, manual, or regulation used in making the redetermination.

(b) Appeal rights

(1) In general

(A) Reconsideration of initial determination

Subject to subparagraph (D), any individual dissatisfied with any initial determination under subsection (a)(1) of this section shall be entitled to reconsideration of the determination, and, subject to subparagraphs (D) and (E), a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title and, subject to paragraph (2), to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title. For purposes of the preceding sentence, any reference to the ''Commissioner of Social Security'' or the ''Social Security Administration'' in subsection (g) or (*l*) of section 405 of this title shall be considered a reference to the ''Secretary'' or the ''Department of Health and Human Services'', respectively.

(B) Representation by provider or supplier

(i) In general

Sections 406(a), 1302, and 1395hh of this title shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this section by a person that furnishes or supplies the individual, directly or indirectly, with services or items, solely on the basis that the person furnishes or supplies the individual with such a service or item.

(ii) Mandatory waiver of right to payment from beneficiary

Any person that furnishes services or items to an individual may not represent an individual under this section with respect to the issue described in section 1395pp(a)(2) of this title unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal.

(iii) Prohibition on payment for representation

If a person furnishes services or items to an individual and represents the individual under this section, the person may not impose any financial liability on such individual in connection with such representation.

(iv) Requirements for representatives of a beneficiary

The provisions of section 405(j) of this title and of section 406 of this title (other than subsection (a)(4) of such section) regarding representation of claimants shall apply to representation of an individual with respect to appeals under this section in the same manner as they apply to representation of an individual under those sections.

(C) Succession of rights in cases of assignment

The right of an individual to an appeal under this section with respect to an item or service may be assigned to the provider of services or supplier of the item or service upon the written consent of such individual using a standard form established by the Secretary for such an assignment.

(D) Time limits for filing appeals

(i) Reconsiderations

Reconsideration under subparagraph (A) shall be available only if the individual described in subparagraph (A) files notice with the Secretary to request reconsideration by not later than the end of the 180-day period beginning on the date the individual receives notice of the redetermination under subsection (a)(3) of this section, or within such additional time as the Secretary may allow.

(ii) Hearings conducted by the Secretary

The Secretary shall establish in regulations time limits for the filing of a request for a hearing by the Secretary in accordance with provisions in sections 405 and 406 of this title.

(E) Amounts in controversy

(i) In general

A hearing (by the Secretary) shall not be available to an individual under this section if the amount in controversy is less than $100, and judicial review shall not be available to the individual if the amount in controversy is less than $1,000.

(ii) Aggregation of claims

In determining the amount in controversy, the Secretary, under regulations, shall allow two or more appeals to be aggregated if the appeals involve—

(I) the delivery of similar or related services to the same individual by one or more providers of services or suppliers, or

(II) common issues of law and fact arising from services furnished to two or more individuals by one or more providers of services or suppliers.

(iii) Adjustment of dollar amounts

For requests for hearings or judicial review made in a year after 2004, the dollar amounts specified in clause (i) shall be equal to such dollar amounts increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) for July 2003 to the July preceding the year involved. Any amount determined under the previous sentence that is not a multiple of $10 shall be rounded to the nearest multiple of $10.

(F) Expedited proceedings

(i) Expedited determination

In the case of an individual who has received notice from a provider of services that such provider plans—

(I) to terminate services provided to an individual and a physician certifies that failure to continue the provision of such services is likely to place the individual's health at significant risk, or

(II) to discharge the individual from the provider of services,

the individual may request, in writing or orally, an expedited determination or an expedited reconsideration of an initial determination made under subsection (a)(1) of this section, as the case may be, and the Secretary shall provide such expedited determination or expedited reconsideration.

(ii) Reference to expedited access to judicial review

For the provision relating to expedited access to judicial review, see paragraph (2).

(G) Reopening and revision of determinations

The Secretary may reopen or revise any initial determination or reconsidered determination described in this subsection under guidelines established by the Secretary in regulations.

(2) Expedited access to judicial review

(A) In general

The Secretary shall establish a process under which a provider of services or sup-

plier that furnishes an item or service or an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, who has filed an appeal under paragraph (1) (other than an appeal filed under paragraph (1)(F)(i)) may obtain access to judicial review when a review entity (described in subparagraph (D)), on its own motion or at the request of the appellant, determines that the Departmental Appeals Board does not have the authority to decide the question of law or regulation relevant to the matters in controversy and that there is no material issue of fact in dispute. The appellant may make such request only once with respect to a question of law or regulation for a specific matter in dispute in a case of an appeal.

(B) Prompt determinations

If, after or coincident with appropriately filing a request for an administrative hearing, the appellant requests a determination by the appropriate review entity that the Departmental Appeals Board does not have the authority to decide the question of law or regulations relevant to the matters in controversy and that there is no material issue of fact in dispute, and if such request is accompanied by the documents and materials as the appropriate review entity shall require for purposes of making such determination, such review entity shall make a determination on the request in writing within 60 days after the date such review entity receives the request and such accompanying documents and materials. Such a determination by such review entity shall be considered a final decision and not subject to review by the Secretary.

(C) Access to judicial review

(i) In general

If the appropriate review entity—

(I) determines that there are no material issues of fact in dispute and that the only issues to be adjudicated are ones of law or regulation that the Departmental Appeals Board does not have authority to decide; or

(II) fails to make such determination within the period provided under subparagraph (B),

then the appellant may bring a civil action as described in this subparagraph.

(ii) Deadline for filing

Such action shall be filed, in the case described in—

(I) clause (i)(I), within 60 days of the date of the determination described in such clause; or

(II) clause (i)(II), within 60 days of the end of the period provided under subparagraph (B) for the determination.

(iii) Venue

Such action shall be brought in the district court of the United States for the judicial district in which the appellant is located (or, in the case of an action brought jointly by more than one applicant, the judicial district in which the greatest number of applicants are located) or in the District Court for the District of Columbia.

(iv) Interest on any amounts in controversy

Where a provider of services or supplier is granted judicial review pursuant to this paragraph, the amount in controversy (if any) shall be subject to annual interest beginning on the first day of the first month beginning after the 60-day period as determined pursuant to clause (ii) and equal to the rate of interest on obligations issued for purchase by the Federal Supplementary Medical Insurance Trust Fund for the month in which the civil action authorized under this paragraph is commenced, to be awarded by the reviewing court in favor of the prevailing party. No interest awarded pursuant to the preceding sentence shall be deemed income or cost for the purposes of determining reimbursement due providers of services or suppliers under this subchapter.

(D) Review entity defined

For purposes of this subsection, the term ''review entity'' means an entity of up to three reviewers who are administrative law judges or members of the Departmental Appeals Board selected for purposes of making determinations under this paragraph.

(3) Requiring full and early presentation of evidence by providers

A provider of services or supplier may not introduce evidence in any appeal under this section that was not presented at the reconsideration conducted by the qualified independent contractor under subsection (c) of this section, unless there is good cause which precluded the introduction of such evidence at or before that reconsideration.

(c) Conduct of reconsiderations by independent contractors

(1) In general

The Secretary shall enter into contracts with qualified independent contractors to conduct reconsiderations of initial determinations made under subparagraphs (B) and (C) of subsection (a)(1) of this section. Contracts shall be for an initial term of three years and shall be renewable on a triennial basis thereafter.

(2) Qualified independent contractor

For purposes of this subsection, the term ''qualified independent contractor'' means an entity or organization that is independent of any organization under contract with the Secretary that makes initial determinations under subsection (a)(1) of this section, and that meets the requirements established by the Secretary consistent with paragraph (3).

(3) Requirements

Any qualified independent contractor entering into a contract with the Secretary under this subsection shall meet all of the following requirements:

(A) In general

The qualified independent contractor shall perform such duties and functions and as-

sume such responsibilities as may be required by the Secretary to carry out the provisions of this subsection, and shall have sufficient medical, legal, and other expertise (including knowledge of the program under this subchapter) and sufficient staffing to make reconsiderations under this subsection.

(B) Reconsiderations

(i) In general

The qualified independent contractor shall review initial determinations. Where an initial determination is made with respect to whether an item or service is reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1395y(a)(1)(A) of this title), such review shall include consideration of the facts and circumstances of the initial determination by a panel of physicians or other appropriate health care professionals and any decisions with respect to the reconsideration shall be based on applicable information, including clinical experience (including the medical records of the individual involved) and medical, technical, and scientific evidence.

(ii) Effect of national and local coverage determinations

(I) National coverage determinations

If the Secretary has made a national coverage determination pursuant to the requirements established under the third sentence of section 1395y(a) of this title, such determination shall be binding on the qualified independent contractor in making a decision with respect to a reconsideration under this section.

(II) Local coverage determinations

If the Secretary has made a local coverage determination, such determination shall not be binding on the qualified independent contractor in making a decision with respect to a reconsideration under this section. Notwithstanding the previous sentence, the qualified independent contractor shall consider the local coverage determination in making such decision.

(III) Absence of national or local coverage determination

In the absence of such a national coverage determination or local coverage determination, the qualified independent contractor shall make a decision with respect to the reconsideration based on applicable information, including clinical experience and medical, technical, and scientific evidence.

(C) Deadlines for decisions

(i) Reconsiderations

Except as provided in clauses (iii) and (iv), the qualified independent contractor shall conduct and conclude a reconsideration under subparagraph (B), and mail the notice of the decision with respect to the reconsideration by not later than the end of the 60-day period beginning on the date a request for reconsideration has been timely filed.

(ii) Consequences of failure to meet deadline

In the case of a failure by the qualified independent contractor to mail the notice of the decision by the end of the period described in clause (i) or to provide notice by the end of the period described in clause (iii), as the case may be, the party requesting the reconsideration or appeal may request a hearing before the Secretary, notwithstanding any requirements for a reconsidered determination for purposes of the party's right to such hearing.

(iii) Expedited reconsiderations

The qualified independent contractor shall perform an expedited reconsideration under subsection (b)(1)(F) of this section as follows:

(I) Deadline for decision

Notwithstanding section 416(j) of this title and subject to clause (iv), not later than the end of the 72-hour period beginning on the date the qualified independent contractor has received a request for such reconsideration and has received such medical or other records needed for such reconsideration, the qualified independent contractor shall provide notice (by telephone and in writing) to the individual and the provider of services and attending physician of the individual of the results of the reconsideration. Such reconsideration shall be conducted regardless of whether the provider of services or supplier will charge the individual for continued services or whether the individual will be liable for payment for such continued services.

(II) Consultation with beneficiary

In such reconsideration, the qualified independent contractor shall solicit the views of the individual involved.

(III) Special rule for hospital discharges

A reconsideration of a discharge from a hospital shall be conducted under this clause in accordance with the provisions of paragraphs (2), (3), and (4) of section 1320c–3(e) of this title as in effect on the date that precedes December 21, 2000.

(iv) Extension

An individual requesting a reconsideration under this subparagraph may be granted such additional time as the individual specifies (not to exceed 14 days) for the qualified independent contractor to conclude the reconsideration. The individual may request such additional time orally or in writing.

(D) Qualifications for reviewers

The requirements of subsection (g) of this section shall be met (relating to qualifications of reviewing professionals).

(E) Explanation of decision

Any decision with respect to a reconsideration of a qualified independent contractor

shall be in writing, be written in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and shall include (to the extent appropriate) and shall include[1] a detailed explanation of the decision as well as a discussion of the pertinent facts and applicable regulations applied in making such decision, and[2] a notification of the right to appeal such determination and instructions on how to initiate such appeal under this section[3] and[3] in the case of a determination of whether an item or service is reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1395y(a)(1)(A) of this title)[3] an explanation of the medical and scientific rationale for the decision.

(F) Notice requirements

Whenever a qualified independent contractor makes a decision with respect to a reconsideration under this subsection, the qualified independent contractor shall promptly notify the entity responsible for the payment of claims under part A of this subchapter or part B of this subchapter of such decision.

(G) Dissemination of decisions on reconsiderations

Each qualified independent contractor shall make available all decisions with respect to reconsiderations of such qualified independent contractors to fiscal intermediaries (under section 1395h of this title), carriers (under section 1395u of this title), peer review organizations (under part B of subchapter XI of this chapter), Medicare+Choice organizations offering Medicare+Choice plans under part C of this subchapter, other entities under contract with the Secretary to make initial determinations under part A of this subchapter or part B of this subchapter or subchapter XI of this chapter, and to the public. The Secretary shall establish a methodology under which qualified independent contractors shall carry out this subparagraph.

(H) Ensuring consistency in decisions

Each qualified independent contractor shall monitor its decisions with respect to reconsiderations to ensure the consistency of such decisions with respect to requests for reconsideration of similar or related matters.

(I) Data collection

(i) In general

Consistent with the requirements of clause (ii), a qualified independent contractor shall collect such information relevant to its functions, and keep and maintain such records in such form and manner as the Secretary may require to carry out the purposes of this section and shall permit access to and use of any such information and records as the Secretary may require for such purposes.

(ii) Type of data collected

Each qualified independent contractor shall keep accurate records of each decision made, consistent with standards established by the Secretary for such purpose. Such records shall be maintained in an electronic database in a manner that provides for identification of the following:

(I) Specific claims that give rise to appeals.

(II) Situations suggesting the need for increased education for providers of services, physicians, or suppliers.

(III) Situations suggesting the need for changes in national or local coverage determination.

(IV) Situations suggesting the need for changes in local coverage determinations.

(iii) Annual reporting

Each qualified independent contractor shall submit annually to the Secretary (or otherwise as the Secretary may request) records maintained under this paragraph for the previous year.

(J) Hearings by the Secretary

The qualified independent contractor shall (i) submit such information as is required for an appeal of a decision of the contractor, and (ii) participate in such hearings as required by the Secretary.

(K) Independence requirements

(i) In general

Subject to clause (ii), a qualified independent contractor shall not conduct any activities in a case unless the entity—

(I) is not a related party (as defined in subsection (g)(5) of this section);

(II) does not have a material familial, financial, or professional relationship with such a party in relation to such case; and

(III) does not otherwise have a conflict of interest with such a party.

(ii) Exception for reasonable compensation

Nothing in clause (i) shall be construed to prohibit receipt by a qualified independent contractor of compensation from the Secretary for the conduct of activities under this section if the compensation is provided consistent with clause (iii).

(iii) Limitations on entity compensation

Compensation provided by the Secretary to a qualified independent contractor in connection with reviews under this section shall not be contingent on any decision rendered by the contractor or by any reviewing professional.

(4) Number of qualified independent contractors

The Secretary shall enter into contracts with a sufficient number of qualified independent contractors (but not fewer than 4 such

[1] So in original.

[2] So in original. The word ''and'' probably should not appear.

[3] So in original. A comma probably should appear.

contractors) to conduct reconsiderations consistent with the timeframes applicable under this subsection.

(5) Limitation on qualified independent contractor liability

No qualified independent contractor having a contract with the Secretary under this subsection and no person who is employed by, or who has a fiduciary relationship with, any such qualified independent contractor or who furnishes professional services to such qualified independent contractor, shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this subsection or to a valid contract entered into under this subsection, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided due care was exercised in the performance of such duty, function, or activity.

(d) Deadlines for hearings by the Secretary; notice

(1) Hearing by administrative law judge

(A) In general

Except as provided in subparagraph (B), an administrative law judge shall conduct and conclude a hearing on a decision of a qualified independent contractor under subsection (c) of this section and render a decision on such hearing by not later than the end of the 90-day period beginning on the date a request for hearing has been timely filed.

(B) Waiver of deadline by party seeking hearing

The 90-day period under subparagraph (A) shall not apply in the case of a motion or stipulation by the party requesting the hearing to waive such period.

(2) Departmental Appeals Board review

(A) In general

The Departmental Appeals Board of the Department of Health and Human Services shall conduct and conclude a review of the decision on a hearing described in paragraph (1) and make a decision or remand the case to the administrative law judge for reconsideration by not later than the end of the 90-day period beginning on the date a request for review has been timely filed.

(B) DAB hearing procedure

In reviewing a decision on a hearing under this paragraph, the Departmental Appeals Board shall review the case de novo.

(3) Consequences of failure to meet deadlines

(A) Hearing by administrative law judge

In the case of a failure by an administrative law judge to render a decision by the end of the period described in paragraph (1), the party requesting the hearing may request a review by the Departmental Appeals Board of the Department of Health and Human Services, notwithstanding any requirements for a hearing for purposes of the party's right to such a review.

(B) Departmental Appeals Board review

In the case of a failure by the Departmental Appeals Board to render a decision by the end of the period described in paragraph (2), the party requesting the hearing may seek judicial review, notwithstanding any requirements for a hearing for purposes of the party's right to such judicial review.

(4) Notice

Notice of the decision of an administrative law judge shall be in writing in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and shall include—

(A) the specific reasons for the determination (including, to the extent appropriate, a summary of the clinical or scientific evidence used in making the determination);

(B) the procedures for obtaining additional information concerning the decision; and

(C) notification of the right to appeal the decision and instructions on how to initiate such an appeal under this section.

(e) Administrative provisions

(1) Limitation on review of certain regulations

A regulation or instruction that relates to a method for determining the amount of payment under part B of this subchapter and that was initially issued before January 1, 1981, shall not be subject to judicial review.

(2) Outreach

The Secretary shall perform such outreach activities as are necessary to inform individuals entitled to benefits under this subchapter and providers of services and suppliers with respect to their rights of, and the process for, appeals made under this section. The Secretary shall use the toll-free telephone number maintained by the Secretary under section 1395b–2(b) of this title to provide information regarding appeal rights and respond to inquiries regarding the status of appeals.

(3) Continuing education requirement for qualified independent contractors and administrative law judges

The Secretary shall provide to each qualified independent contractor, and, in consultation with the Commissioner of Social Security, to administrative law judges that decide appeals of reconsiderations of initial determinations or other decisions or determinations under this section, such continuing education with respect to coverage of items and services under this subchapter or policies of the Secretary with respect to part B of subchapter XI of this chapter as is necessary for such qualified independent contractors and administrative law judges to make informed decisions with respect to appeals.

(4) Reports

(A) Annual report to Congress

The Secretary shall submit to Congress an annual report describing the number of appeals for the previous year, identifying issues that require administrative or legislative actions, and including any recommenda-

tions of the Secretary with respect to such actions. The Secretary shall include in such report an analysis of determinations by qualified independent contractors with respect to inconsistent decisions and an analysis of the causes of any such inconsistencies.

(B) Survey

Not less frequently than every 5 years, the Secretary shall conduct a survey of a valid sample of individuals entitled to benefits under this subchapter who have filed appeals of determinations under this section, providers of services, and suppliers to determine the satisfaction of such individuals or entities with the process for appeals of determinations provided for under this section and education and training provided by the Secretary with respect to that process. The Secretary shall submit to Congress a report describing the results of the survey, and shall include any recommendations for administrative or legislative actions that the Secretary determines appropriate.

(f) Review of coverage determinations

(1) National coverage determinations

(A) In general

Review of any national coverage determination shall be subject to the following limitations:

(i) Such a determination shall not be reviewed by any administrative law judge.

(ii) Such a determination shall not be held unlawful or set aside on the ground that a requirement of section 553 of title 5 or section 1395hh(b) of this title, relating to publication in the Federal Register or opportunity for public comment, was not satisfied.

(iii) Upon the filing of a complaint by an aggrieved party, such a determination shall be reviewed by the Departmental Appeals Board of the Department of Health and Human Services. In conducting such a review, the Departmental Appeals Board—

(I) shall review the record and shall permit discovery and the taking of evidence to evaluate the reasonableness of the determination, if the Board determines that the record is incomplete or lacks adequate information to support the validity of the determination;

(II) may, as appropriate, consult with appropriate scientific and clinical experts; and

(III) shall defer only to the reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

(iv) The Secretary shall implement a decision of the Departmental Appeals Board within 30 days of receipt of such decision.

(v) A decision of the Departmental Appeals Board constitutes a final agency action and is subject to judicial review.

(B) Definition of national coverage determination

For purposes of this section, the term ''national coverage determination'' means a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under this subchapter, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this subchapter or a determination with respect to the amount of payment made for a particular item or service so covered.

(2) Local coverage determination

(A) In general

Review of any local coverage determination shall be subject to the following limitations:

(i) Upon the filing of a complaint by an aggrieved party, such a determination shall be reviewed by an administrative law judge. The administrative law judge—

(I) shall review the record and shall permit discovery and the taking of evidence to evaluate the reasonableness of the determination, if the administrative law judge determines that the record is incomplete or lacks adequate information to support the validity of the determination;

(II) may, as appropriate, consult with appropriate scientific and clinical experts; and

(III) shall defer only to the reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

(ii) Upon the filing of a complaint by an aggrieved party, a decision of an administrative law judge under clause (i) shall be reviewed by the Departmental Appeals Board of the Department of Health and Human Services.

(iii) The Secretary shall implement a decision of the administrative law judge or the Departmental Appeals Board within 30 days of receipt of such decision.

(iv) A decision of the Departmental Appeals Board constitutes a final agency action and is subject to judicial review.

(B) Definition of local coverage determination

For purposes of this section, the term ''local coverage determination'' means a determination by a fiscal intermediary or a carrier under part A of this subchapter or part B of this subchapter, as applicable, respecting whether or not a particular item or service is covered on an intermediary- or carrier-wide basis under such parts, in accordance with section 1395y(a)(1)(A) of this title.

(3) No material issues of fact in dispute

In the case of a determination that may otherwise be subject to review under paragraph (1)(A)(iii) or paragraph (2)(A)(i), where the moving party alleges that—

(A) there are no material issues of fact in dispute, and

(B) the only issue of law is the constitutionality of a provision of this subchapter, or that a regulation, determination, or ruling by the Secretary is invalid,

the moving party may seek review by a court of competent jurisdiction without filing a complaint under such paragraph and without otherwise exhausting other administrative remedies.

(4) Pending national coverage determinations

(A) In general

In the event the Secretary has not issued a national coverage or noncoverage determination with respect to a particular type or class of items or services, an aggrieved person (as described in paragraph (5)) may submit to the Secretary a request to make such a determination with respect to such items or services. By not later than the end of the 90-day period beginning on the date the Secretary receives such a request (notwithstanding the receipt by the Secretary of new evidence (if any) during such 90-day period), the Secretary shall take one of the following actions:

(i) Issue a national coverage determination, with or without limitations.

(ii) Issue a national noncoverage determination.

(iii) Issue a determination that no national coverage or noncoverage determination is appropriate as of the end of such 90-day period with respect to national coverage of such items or services.

(iv) Issue a notice that states that the Secretary has not completed a review of the request for a national coverage determination and that includes an identification of the remaining steps in the Secretary's review process and a deadline by which the Secretary will complete the review and take an action described in clause (i), (ii), or (iii).

(B) Deemed action by the Secretary

In the case of an action described in subparagraph (A)(iv), if the Secretary fails to take an action referred to in such clause by the deadline specified by the Secretary under such clause, then the Secretary is deemed to have taken an action described in subparagraph (A)(iii) as of the deadline.

(C) Explanation of determination

When issuing a determination under subparagraph (A), the Secretary shall include an explanation of the basis for the determination. An action taken under subparagraph (A) (other than clause (iv)) is deemed to be a national coverage determination for purposes of review under paragraph (1)(A).

(5) Standing

An action under this subsection seeking review of a national coverage determination or local coverage determination may be initiated only by individuals entitled to benefits under part A of this subchapter, or enrolled under part B of this subchapter, or both, who are in need of the items or services that are the subject of the coverage determination.

(6) Publication on the Internet of decisions of hearings of the Secretary

Each decision of a hearing by the Secretary with respect to a national coverage determination shall be made public, and the Secretary shall publish each decision on the Medicare[4] Internet site of the Department of Health and Human Services. The Secretary shall remove from such decision any information that would identify any individual, provider of services, or supplier.

(7) Annual report on national coverage determinations

(A) In general

Not later than December 1 of each year, beginning in 2001, the Secretary shall submit to Congress a report that sets forth a detailed compilation of the actual time periods that were necessary to complete and fully implement national coverage determinations that were made in the previous fiscal year for items, services, or medical devices not previously covered as a benefit under this subchapter, including, with respect to each new item, service, or medical device, a statement of the time taken by the Secretary to make and implement the necessary coverage, coding, and payment determinations, including the time taken to complete each significant step in the process of making and implementing such determinations.

(B) Publication of reports on the Internet

The Secretary shall publish each report submitted under clause (i) on the medicare Internet site of the Department of Health and Human Services.

(8) Construction

Nothing in this subsection shall be construed as permitting administrative or judicial review pursuant to this section insofar as such review is explicitly prohibited or restricted under another provision of law.

(g) Qualifications of reviewers

(1) In general

In reviewing determinations under this section, a qualified independent contractor shall assure that—

(A) each individual conducting a review shall meet the qualifications of paragraph (2);

(B) compensation provided by the contractor to each such reviewer is consistent with paragraph (3); and

(C) in the case of a review by a panel described in subsection (c)(3)(B) of this section composed of physicians or other health care professionals (each in this subsection referred to as a ''reviewing professional''), a reviewing professional meets the qualifications described in paragraph (4) and, where a claim is regarding the furnishing of treatment by a physician (allopathic or osteopathic) or the provision of items or services by a physician (allopathic or osteopathic), a reviewing professional shall be a physician (allopathic or osteopathic).

(2) Independence

(A) In general

Subject to subparagraph (B), each individual conducting a review in a case shall—

[4] So in original. Probably should not be capitalized.

(i) not be a related party (as defined in paragraph (5));

(ii) not have a material familial, financial, or professional relationship with such a party in the case under review; and

(iii) not otherwise have a conflict of interest with such a party.

(B) Exception

Nothing in subparagraph (A) shall be construed to—

(i) prohibit an individual, solely on the basis of a participation agreement with a fiscal intermediary, carrier, or other contractor, from serving as a reviewing professional if—

(I) the individual is not involved in the provision of items or services in the case under review;

(II) the fact of such an agreement is disclosed to the Secretary and the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, or such individual's authorized representative, and neither party objects; and

(III) the individual is not an employee of the intermediary, carrier, or contractor and does not provide services exclusively or primarily to or on behalf of such intermediary, carrier, or contractor;

(ii) prohibit an individual who has staff privileges at the institution where the treatment involved takes place from serving as a reviewer merely on the basis of having such staff privileges if the existence of such privileges is disclosed to the Secretary and such individual (or authorized representative), and neither party objects; or

(iii) prohibit receipt of compensation by a reviewing professional from a contractor if the compensation is provided consistent with paragraph (3).

For purposes of this paragraph, the term ''participation agreement'' means an agreement relating to the provision of health care services by the individual and does not include the provision of services as a reviewer under this subsection.

(3) Limitations on reviewer compensation

Compensation provided by a qualified independent contractor to a reviewer in connection with a review under this section shall not be contingent on the decision rendered by the reviewer.

(4) Licensure and expertise

Each reviewing professional shall be—

(A) a physician (allopathic or osteopathic) who is appropriately credentialed or licensed in one or more States to deliver health care services and has medical expertise in the field of practice that is appropriate for the items or services at issue; or

(B) a health care professional who is legally authorized in one or more States (in accordance with State law or the State regulatory mechanism provided by State law) to furnish the health care items or services at issue and has medical expertise in the field of practice that is appropriate for such items or services.

(5) Related party defined

For purposes of this section, the term ''related party'' means, with respect to a case under this subchapter involving a specific individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, any of the following:

(A) The Secretary, the medicare administrative contractor involved, or any fiduciary, officer, director, or employee of the Department of Health and Human Services, or of such contractor.

(B) The individual (or authorized representative).

(C) The health care professional that provides the items or services involved in the case.

(D) The institution at which the items or services (or treatment) involved in the case are provided.

(E) The manufacturer of any drug or other item that is included in the items or services involved in the case.

(F) Any other party determined under any regulations to have a substantial interest in the case involved.

(h) Prior determination process for certain items and services

(1) Establishment of process

(A) In general

With respect to a medicare administrative contractor that has a contract under section 1395kk–1 of this title that provides for making payments under this subchapter with respect to physicians' services (as defined in section 1395w–4(j)(3) of this title), the Secretary shall establish a prior determination process that meets the requirements of this subsection and that shall be applied by such contractor in the case of eligible requesters.

(B) Eligible requester

For purposes of this subsection, each of the following shall be an eligible requester:

(i) A participating physician, but only with respect to physicians' services to be furnished to an individual who is entitled to benefits under this subchapter and who has consented to the physician making the request under this subsection for those physicians' services.

(ii) An individual entitled to benefits under this subchapter, but only with respect to a physicians' service for which the individual receives, from a physician, an advance beneficiary notice under section 1395pp(a) of this title.

(2) Secretarial flexibility

The Secretary shall establish by regulation reasonable limits on the physicians' services for which a prior determination of coverage may be requested under this subsection. In establishing such limits, the Secretary may consider the dollar amount involved with respect to the physicians' service, administrative costs and burdens, and other relevant factors.

(3) Request for prior determination

(A) In general

Subject to paragraph (2), under the process established under this subsection an eligible requester may submit to the contractor a request for a determination, before the furnishing of a physicians' service, as to whether the physicians' service is covered under this subchapter consistent with the applicable requirements of section 1395y(a)(1)(A) of this title (relating to medical necessity).

(B) Accompanying documentation

The Secretary may require that the request be accompanied by a description of the physicians' service, supporting documentation relating to the medical necessity for the physicians' service, and any other appropriate documentation. In the case of a request submitted by an eligible requester who is described in paragraph (1)(B)(ii), the Secretary may require that the request also be accompanied by a copy of the advance beneficiary notice involved.

(4) Response to request

(A) In general

Under such process, the contractor shall provide the eligible requester with written notice of a determination as to whether—

(i) the physicians' service is so covered;

(ii) the physicians' service is not so covered; or

(iii) the contractor lacks sufficient information to make a coverage determination with respect to the physicians' service.

(B) Contents of notice for certain determinations

(i) Noncoverage

If the contractor makes the determination described in subparagraph (A)(ii), the contractor shall include in the notice a brief explanation of the basis for the determination, including on what national or local coverage or noncoverage determination (if any) the determination is based, and a description of any applicable rights under subsection (a) of this section.

(ii) Insufficient information

If the contractor makes the determination described in subparagraph (A)(iii), the contractor shall include in the notice a description of the additional information required to make the coverage determination.

(C) Deadline to respond

Such notice shall be provided within the same time period as the time period applicable to the contractor providing notice of initial determinations on a claim for benefits under subsection (a)(2)(A) of this section.

(D) Informing beneficiary in case of physician request

In the case of a request by a participating physician under paragraph (1)(B)(i), the process shall provide that the individual to whom the physicians' service is proposed to be furnished shall be informed of any determination described in subparagraph (A)(ii) (relating to a determination of non-coverage) and the right (referred to in paragraph (6)(B)) to obtain the physicians' service and have a claim submitted for the physicians' service.

(5) Binding nature of positive determination

If the contractor makes the determination described in paragraph (4)(A)(i), such determination shall be binding on the contractor in the absence of fraud or evidence of misrepresentation of facts presented to the contractor.

(6) Limitation on further review

(A) In general

Contractor determinations described in paragraph (4)(A)(ii) or (4)(A)(iii) (relating to pre-service claims) are not subject to further administrative appeal or judicial review under this section or otherwise.

(B) Decision not to seek prior determination or negative determination does not impact right to obtain services, seek reimbursement, or appeal rights

Nothing in this subsection shall be construed as affecting the right of an individual who—

(i) decides not to seek a prior determination under this subsection with respect to physicians' services; or

(ii) seeks such a determination and has received a determination described in paragraph (4)(A)(ii),

from receiving (and submitting a claim for) such physicians' services and from obtaining administrative or judicial review respecting such claim under the other applicable provisions of this section. Failure to seek a prior determination under this subsection with respect to physicians' service shall not be taken into account in such administrative or judicial review.

(C) No prior determination after receipt of services

Once an individual is provided physicians' services, there shall be no prior determination under this subsection with respect to such physicians' services.

(i) Mediation process for local coverage determinations

(1) Establishment of process

The Secretary shall establish a mediation process under this subsection through the use of a physician trained in mediation and employed by the Centers for Medicare & Medicaid Services.

(2) Responsibility of mediator

Under the process established in paragraph (1), such a mediator shall mediate in disputes between groups representing providers of services, suppliers (as defined in section 1395x(d) of this title), and the medical director for a medicare administrative contractor whenever the regional administrator (as defined by the Secretary) involved determines that there was a systematic pattern and a large volume of complaints from such groups regarding deci-

sions of such director or there is a complaint from the co-chair of the advisory committee for that contractor to such regional administrator regarding such dispute.

(Aug. 14, 1935, ch. 531, title XVIII, § 1869, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 330; amended Pub. L. 92–603, title II, § 299O(a), Oct. 30, 1972, 86 Stat. 1464; Pub. L. 98–369, div. B, title III, § 2354(b)(35), July 18, 1984, 98 Stat. 1102; Pub. L. 99–509, title IX, §§ 9313(a)(1), (b)(1), 9341(a)(1), Oct. 21, 1986, 100 Stat. 2002, 2037; Pub. L. 100–93, § 8(e), Aug. 18, 1987, 101 Stat. 694; Pub. L. 100–203, title IV, §§ 4082(a), (b), 4085(i)(18), (19), Dec. 22, 1987, 101 Stat. 1330–128, 1330–133; Pub. L. 103–296, title I, § 108(c)(5), Aug. 15, 1994, 108 Stat. 1485; Pub. L. 105–33, title IV, § 4611(c), Aug. 5, 1997, 111 Stat. 473; Pub. L. 106–554, § 1(a)(6) [title V, §§ 521(a), 522(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–534, 2763A–543; Pub. L. 108–173, title IX, §§ 931(d), 932(a), 933(a)(1), (b)–(d)(3), 938(a), 940(a), (b)(1), 940A(a), 948(b)(1), (c), Dec. 8, 2003, 117 Stat. 2399, 2402–2406, 2413, 2416, 2417, 2426.)

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in text, are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsecs. (c)(3)(G) and (e)(3), is classified to section 1320c et seq. of this title.

AMENDMENTS

2003—Subsec. (a)(3)(C)(ii). Pub. L. 108–173, § 940(a)(1), substituted ''60-day period'' for ''30-day period'' in two places.

Subsec. (a)(4), (5). Pub. L. 108–173, § 933(c)(1), added pars. (4) and (5).

Subsec. (b)(1)(A). Pub. L. 108–173, § 932(a)(1)(A), inserted '', subject to paragraph (2),'' before ''to judicial review of the Secretary's final decision''.

Subsec. (b)(1)(E)(iii). Pub. L. 108–173, § 940(b)(1), added cl. (iii).

Subsec. (b)(1)(F)(ii). Pub. L. 108–173, § 932(a)(2), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: ''In a hearing by the Secretary under this section, in which the moving party alleges that no material issues of fact are in dispute, the Secretary shall make an expedited determination as to whether any such facts are in dispute and, if not, shall render a decision expeditiously.''

Subsec. (b)(2). Pub. L. 108–173, § 932(a)(1)(B), added par. (2).

Subsec. (b)(3). Pub. L. 108–173, § 933(a)(1), added par. (3).

Subsec. (c)(3)(A). Pub. L. 108–173, § 933(d)(1)(A), substituted ''sufficient medical, legal, and other expertise (including knowledge of the program under this subchapter) and sufficient staffing'' for ''sufficient training and expertise in medical science and legal matters''.

Subsec. (c)(3)(B)(i). Pub. L. 108–173, § 933(b), inserted ''(including the medical records of the individual involved)'' after ''clinical experience''.

Subsec. (c)(3)(C)(i). Pub. L. 108–173, § 940(a)(2), substituted ''60-day period'' for ''30-day period''.

Subsec. (c)(3)(D). Pub. L. 108–173, § 933(d)(2)(A), amended heading and text of subpar. (D) generally, substituting provisions directing that subsec. (g) requirements be met for provisions prohibiting a physician or health care professional from reviewing a determination where such physician or health care professional had been directly responsible for furnishing services or had had a significant financial interest in the institution, organization, or agency which provided the services.

Subsec. (c)(3)(E). Pub. L. 108–173, § 933(c)(2), inserted ''be written in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and shall include (to the extent appropriate)'' after ''in writing,'' and ''and a notification of the right to appeal such determination and instructions on how to initiate such appeal under this section'' after ''such decision,''.

Subsec. (c)(3)(I)(ii)(III). Pub. L. 108–173, § 948(b)(1)(A), substituted ''determination'' for ''policy''.

Subsec. (c)(3)(I)(ii)(IV). Pub. L. 108–173, § 948(b)(1)(B), substituted ''coverage determinations'' for ''medical review policies''.

Subsec. (c)(3)(J)(i). Pub. L. 108–173, § 933(c)(4), substituted ''submit'' for ''prepare'' and struck out ''with respect to a reconsideration to the Secretary for a hearing, including as necessary, explanations of issues involved in the decision and relevant policies'' after ''decision of the contractor''.

Subsec. (c)(3)(K). Pub. L. 108–173, § 933(d)(1)(B), added subpar. (K).

Subsec. (c)(4). Pub. L. 108–173, § 933(d)(3), substituted ''a sufficient number of qualified independent contractors (but not fewer than 4 such contractors) to conduct reconsiderations consistent with the timeframes applicable under this subsection'' for ''not fewer than 12 qualified independent contractors under this subsection''.

Subsec. (d). Pub. L. 108–173, § 933(c)(3)(A), inserted ''; notice'' after ''Secretary'' in heading.

Subsec. (d)(4). Pub. L. 108–173, § 933(c)(3)(B), added par. (4).

Subsec. (f)(2)(A)(i). Pub. L. 108–173, § 931(d), struck out ''of the Social Security Administration'' after ''an administrative law judge'' in introductory provisions.

Subsec. (f)(4)(A)(iv). Pub. L. 108–173, § 948(c)(1), substituted ''clause (i), (ii), or (iii)'' for ''subclause (I), (II), or (III)''.

Subsec. (f)(4)(B). Pub. L. 108–173, § 948(c)(2), substituted ''subparagraph (A)(iv)'' for ''clause (i)(IV)'' and ''subparagraph (A)(iii)'' for ''clause (i)(III)''.

Subsec. (f)(4)(C). Pub. L. 108–173, § 948(c)(3), substituted ''subparagraph (A)'' for ''clause (i)'' in two places, ''clause (iv)'' for ''subclause (IV)'', and ''paragraph (1)(A)'' for ''subparagraph (A)''.

Subsec. (g). Pub. L. 108–173, § 933(d)(2)(B), added subsec. (g).

Subsec. (h). Pub. L. 108–173, § 938(a), added subsec. (h).

Subsec. (i). Pub. L. 108–173, § 940A(a), added subsec. (i).

2000—Pub. L. 106–554, § 1(a)(6) [title V, § 521(a)], amended section generally, completely revising and expanding provisions relating to determinations with respect to benefits under part A or part B of this subchapter, changing the structure of the section from two subsecs. lettered (a) and (b) to five subsecs. lettered (a) to (e).

Subsec. (f). Pub. L. 106–554, § 1(a)(6) [title V, § 522(a)], added subsec. (f).

1997—Subsec. (b)(2)(B). Pub. L. 105–33 inserted ''(or $100 in the case of home health services)'' after ''$500''.

1994—Subsec. (b)(1). Pub. L. 103–296 inserted '', except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively'' after ''section 405(g) of this title'' in closing provisions.

1987—Subsec. (a). Pub. L. 100–203, § 4085(i)(18), inserted ''or a claim for benefits with respect to home health services under part B of this subchapter'' before ''shall''.

Subsec. (b)(2). Pub. L. 100–203, § 4085(i)(19), inserted ''and (1)(D)'' after ''paragraph (1)(C)'' in two places.

Subsec. (b)(3)(B). Pub. L. 100–203, § 4082(a), substituted ''section 553'' for ''chapter 5''.

Subsec. (b)(5). Pub. L. 100–203, § 4082(b), added par. (5).

Subsec. (c). Pub. L. 100–93 struck out subsec. (c) which read as follows: ''Any institution or agency dissatisfied with any determination by the Secretary that it is not a provider of services, or with any determination described in section 1395cc(b)(2) of this title, shall

be entitled to a hearing thereon by the Secretary (after reasonable notice and opportunity for hearing) to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title.''

1986—Subsec. (a). Pub. L. 99–509, § 9341(a)(1)(A), inserted ''or part B'' after ''amount of benefits under part A''.

Pub. L. 99–509, § 9313(b)(1)(A), inserted ''and any other determination with respect to a claim for benefits under part A of this subchapter'' before ''shall''.

Subsec. (b)(1). Pub. L. 99–509, § 9313(a)(1), in concluding provisions, inserted at end ''Sections 406(a), 1302, and 1395hh of this title shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. Any person that furnishes services or items to an individual may not represent an individual under this subsection with respect to the issue described in section 1395pp(a)(2) of this title unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal. If a person furnishes services or items to an individual and represents the individual under this subsection, the person may not impose any financial liability on such individual in connection with such representation.''

Subsec. (b)(1)(C). Pub. L. 99–509, § 9341(a)(1)(B), inserted ''or part B''.

Subsec. (b)(1)(D). Pub. L. 99–509, § 9313(b)(1)(B), added subpar. (D).

Subsec. (b)(2). Pub. L. 99–509, § 9341(a)(1)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Notwithstanding the provisions of subparagraph (C) of paragraph (1) of this subsection, a hearing shall not be available to an individual by reason of such subparagraph (C) if the amount in controversy is less than $100; nor shall judicial review be available to an individual by reason of such subparagraph (C) if the amount in controversy is less than $1,000.''

Subsec. (b)(3), (4). Pub. L. 99–509, § 9341(a)(1)(D), added pars. (3) and (4).

1984—Subsec. (b)(1)(B). Pub. L. 98–369 struck out the comma before ''or section 1395i–2'' and struck out '', or section 1819'' after ''section 1395i–2 of this title''.

1972—Subsec. (b). Pub. L. 92–603 redesignated existing provisions as par. (1), generally amended conditions under which a dissatisfied individual shall be entitled to a hearing by Secretary and to judicial review of final decision of Secretary after such hearing, and added par. (2).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 932(a) of Pub. L. 108–173 applicable to appeals filed on or after Oct. 1, 2004, see section 932(d) of Pub. L. 108–173, set out as a note under section 1395i–3 of this title.

Pub. L. 108–173, title IX, § 933(a)(2), Dec. 8, 2003, 117 Stat. 2402, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 2004.''

Pub. L. 108–173, title IX, § 933(d)(4), Dec. 8, 2003, 117 Stat. 2406, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall be effective as if included in the enactment of the respective provisions of subtitle C of title V of BIPA [the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(6) of Public Law 106–554] (114 Stat. 2763A–534).''

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

''(1) EFFECTIVE DATE.—The Secretary [of Health and Human Services] shall establish the prior determination process under the amendment made by subsection (a) [amending this section] in such a manner as to provide for the acceptance of requests for determinations under such process filed not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003].

''(2) SUNSET.—Such prior determination process shall not apply to requests filed after the end of the 5-year period beginning on the first date on which requests for determinations under such process are accepted.

''(3) TRANSITION.—During the period in which the amendment made by subsection (a) [amending this section] has become effective but contracts are not provided under section 1874A of the Social Security Act [section 1395kk–1 of this title] with medicare administrative contractors, any reference in section 1869(g) [probably should be 1869(h)] of such Act [subsec. (h) of this section] (as added by such amendment) to such a contractor is deemed a reference to a fiscal intermediary or carrier with an agreement under section 1816, or contract under section 1842, respectively, of such Act [sections 1395h and 1395u of this title].

''(4) LIMITATION ON APPLICATION TO SGR.—For purposes of applying section 1848(f)(2)(D) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)(D)), the amendment made by subsection (a) [amending this section] shall not be considered to be a change in law or regulation.''

Amendment by section 948(b)(1), (c) of Pub. L. 108–173 effective, except as otherwise provided, as if included in the enactment of BIPA [the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(6) of Public Law 106–554], see section 948(e) of Pub. L. 108–173, set out as a note under section 1314 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section § 1(a)(6) [title V, § 521(a)] of Pub. L. 106–554 applicable with respect to initial determinations made on or after Oct. 1, 2002, see section 1(a)(6) [title V, § 521(d)] of Pub. L. 106–554, set out as a note under section 1320c–3 of this title.

Amendment by section 1(a)(6) [title V, § 522(a)] of Pub. L. 106–554 applicable with respect to a review of any national or local coverage determination filed, a request to make such a determination made, and a national coverage determination made, on or after Oct. 1, 2001, see section 1(a)(6) [title V, § 522(d)] of Pub. L. 106–554, set out as a note under section 1314 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1998, and for purposes of applying such amendment, any home health spell of illness that began, but did not end, before such date, to be considered to have begun as of such date, see section 4611(f) of Pub. L. 105–33, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4082(e)(1), (2) of Pub. L. 100–203 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 22, 1987].

''(2) The amendment made by subsection (b) [amending this section] shall apply to requests for hearings filed after the end of the 60-day period beginning on the date of the enactment of this Act.''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inappli-

cable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9313(b)(2) of Pub. L. 99–509 provided that: ''The amendments made by this subsection [amending this section] take effect on the date of the enactment of this Act [Oct. 21, 1986].''

Section 9341(b) of Pub. L. 99–509 provided that: ''The amendments made by subsection (a) [amending this section and sections 1395u and 1395pp of this title] shall apply to items and services furnished on or after January 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 299O(b) of Pub. L. 92–603 provided that:

''(1) The provisions of subparagraphs (A) and (B) of section 1869(b)(1) of the Social Security Act [subsec. (b)(1)(A), (B) of this section], as amended by subsection (a) of this section, shall be effective on the date of enactment of this Act [Oct. 30, 1972].

''(2) The provisions of paragraph (2) and subparagraph (C) of paragraph (1) of section 1869(b) of the Social Security Act [subsec. (b)(1)(C) and (b)(2) of this section], as amended by subsection (a) of this section, shall be effective with respect to any claims under part A of title XVIII of such Act [part A of this subchapter], filed—

''(A) in or after the month in which this Act is enacted [Oct. 1972], or

''(B) before the month in which this Act is enacted [Oct. 1972], but only if a civil action with respect to a final decision of the Secretary of Health, Education, and Welfare on such claim has not been commenced under such section 1869(b) [subsec. (b) of this section] before such month.''

TRANSFER OF RESPONSIBILITY FOR MEDICARE APPEALS

Pub. L. 108–173, title IX, §931(a)–(c), Dec. 8, 2003, 117 Stat. 2396–2398, provided that:

''(a) TRANSITION PLAN.—

''(1) IN GENERAL.—Not later than April 1, 2004, the Commissioner of Social Security and the Secretary [of Health and Human Services] shall develop and transmit to Congress and the Comptroller General of the United States a plan under which the functions of administrative law judges responsible for hearing cases under title XVIII of the Social Security Act [this subchapter] (and related provisions in title XI of such Act [subchapter XI of this chapter]) are transferred from the responsibility of the Commissioner and the Social Security Administration to the Secretary and the Department of Health and Human Services.

''(2) CONTENTS.—The plan shall include information on the following:

''(A) WORKLOAD.—The number of such administrative law judges and support staff required now and in the future to hear and decide such cases in a timely manner, taking into account the current and anticipated claims volume, appeals, number of beneficiaries, and statutory changes.

''(B) COST PROJECTIONS AND FINANCING.—Funding levels required for fiscal year 2005 and subsequent fiscal years to carry out the functions transferred under the plan.

''(C) TRANSITION TIMETABLE.—A timetable for the transition.

''(D) REGULATIONS.—The establishment of specific regulations to govern the appeals process.

''(E) CASE TRACKING.—The development of a unified case tracking system that will facilitate the maintenance and transfer of case specific data across both the fee-for-service and managed care components of the medicare program.

''(F) FEASIBILITY OF PRECEDENTIAL AUTHORITY.—The feasibility of developing a process to give decisions of the Departmental Appeals Board in the Department of Health and Human Services addressing broad legal issues binding, precedential authority.

''(G) ACCESS TO ADMINISTRATIVE LAW JUDGES.—The feasibility of—

''(i) filing appeals with administrative law judges electronically; and

''(ii) conducting hearings using tele- or videoconference technologies.

''(H) INDEPENDENCE OF ADMINISTRATIVE LAW JUDGES.—The steps that should be taken to ensure the independence of administrative law judges consistent with the requirements of subsection (b)(2).

''(I) GEOGRAPHIC DISTRIBUTION.—The steps that should be taken to provide for an appropriate geographic distribution of administrative law judges throughout the United States to carry out subsection (b)(3).

''(J) HIRING.—The steps that should be taken to hire administrative law judges (and support staff) to carry out subsection (b)(4).

''(K) PERFORMANCE STANDARDS.—The appropriateness of establishing performance standards for administrative law judges with respect to timelines for decisions in cases under title XVIII of the Social Security Act [this subchapter] taking into account requirements under subsection (b)(2) for the independence of such judges and consistent with the applicable provisions of title 5, United States Code[,] relating to impartiality.

''(L) SHARED RESOURCES.—The steps that should be taken to carry out subsection (b)(6) (relating to the arrangements with the Commissioner of Social Security to share office space, support staff, and other resources, with appropriate reimbursement).

''(M) TRAINING.—The training that should be provided to administrative law judges with respect to laws and regulations under title XVIII of the Social Security Act [this subchapter].

''(3) ADDITIONAL INFORMATION.—The plan may also include recommendations for further congressional action, including modifications to the requirements and deadlines established under section 1869 of the Social Security Act (42 U.S.C. 1395ff) (as amended by this Act).

''(4) GAO EVALUATION.—The Comptroller General of the United States shall evaluate the plan and, not later than the date that is 6 months after the date on which the plan is received by the Comptroller General, shall submit to Congress a report on such evaluation.

''(b) TRANSFER OF ADJUDICATION AUTHORITY.—

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

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

''(3) GEOGRAPHIC DISTRIBUTION.—The Secretary shall provide for an appropriate geographic distribution of

administrative law judges performing the administrative law judge functions transferred under paragraph (1) throughout the United States to ensure timely access to such judges.

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

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

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

''(c) INCREASED FINANCIAL SUPPORT.—In addition to any amounts otherwise appropriated, to ensure timely action on appeals before administrative law judges and the Departmental Appeals Board consistent with section 1869 of the Social Security Act (42 U.S.C. 1395ff) (as amended by this Act), there are authorized to be appropriated (in appropriate part from the Federal Hospital Insurance Trust Fund, established under section 1817 of the Social Security Act (42 U.S.C. 1395i), and the Federal Supplementary Medical Insurance Trust Fund, established under section 1841 of such Act (42 U.S.C. 1395t)) to the Secretary such sums as are necessary for fiscal year 2005 and each subsequent fiscal year to—

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

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

''(3) increase the staff of the Departmental Appeals Board.''

TRANSITION

Pub. L. 108–173, title IX, § 933(d)(5), Dec. 8, 2003, 117 Stat. 2406, provided that: ''In applying section 1869(g) of the Social Security Act [subsec. (g) of this section] (as added by paragraph (2)), any reference to a medicare administrative contractor shall be deemed to include a reference to a fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and a carrier under section 1842 of such Act (42 U.S.C. 1395u).''

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

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

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

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

STUDY OF AGGREGATION RULE FOR CLAIMS FOR SIMILAR PHYSICIANS' SERVICES

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

MEDICARE HEARINGS AND APPEALS

Section 4037 of Pub. L. 100–203 provided that:

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

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

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

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

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

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

Any payment under this subchapter to any provider of services or other person with respect to any items or services furnished any individual shall be regarded as a payment to such individual.

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

Where—

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

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

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

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

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

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

(c) Exception to subsection (b) payment adjustment

There shall be no adjustment as provided in subsection (b) of this section (nor shall there be recovery) in any case where the incorrect payment has been made (including payments under section 1395f(e) of this title) with respect to an individual who is without fault or where the adjustment (or recovery) would be made by decreasing payments to which another person who is without fault is entitled as provided in subsection (b)(4) of this section, if such adjustment (or recovery) would defeat the purposes of subchapter II or subchapter XVIII of this chapter or would be against equity and good conscience. Adjustment or recovery of an incorrect payment (or only such part of an incorrect payment as the Secretary determines to be inconsistent with the purposes of this subchapter) against an individual who is without fault shall be deemed to be against equity and good conscience if (A) the incorrect payment was made for expenses incurred for items or services for which payment may not be made under this subchapter by reason of the provisions of paragraph (1) or (9) of section 1395y(a) of this title and (B) if the Secretary's determination that such payment was incorrect was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) if the person or persons who furnished the services do not agree to the terms of assignment specified in section 1395u(b)(3)(B)(ii) of this title with respect to the services, payment for such services shall be made on the basis of an itemized bill to the person who has agreed to assume the legal obligation to make payment for such services and files a request for payment (with such accompanying evidence of such legal obligation as may be required in regulations),

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

(g) Refund of premiums for deceased individuals

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

(h) Appeals by providers of services or suppliers

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

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

REFERENCES IN TEXT

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

AMENDMENTS

2003—Subsec. (h). Pub. L. 108–173 added subsec. (h).

1988—Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(7), see 1987 Amendment note below.

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

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

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

1982—Subsec. (c). Pub. L. 97–248 substituted ''section 1395y(a)'' for ''section 1395y''.

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

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

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

as prerequisite to adjustment or recovery of incorrect payments.

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

Subsec. (g). Pub. L. 92–603, § 266, added subsec. (g).

1968—Pub. L. 90–248, § 154(b), provided for settlement of claims for benefits on behalf of deceased individuals in section catchline.

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

EFFECTIVE DATE OF 2003 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Section 954(b) of Pub. L. 96–499 provided that: ''The amendment made by this section [amending this section] shall apply only to claims filed on or after January 1, 1981.''

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENT

Section 261(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to waiver actions considered after the date of the enactment of this Act [Oct. 30, 1972].''

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

WAIVER OF LIABILITY LIMITING RECOUPMENT IN CERTAIN CASES

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

§ 1395hh. Regulations

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

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

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

(3)(A) The Secretary, in consultation with the Director of the Office of Management and Budget, shall establish and publish a regular timeline for the publication of final regulations based on the previous publication of a proposed regulation or an interim final regulation.

(B) Such timeline may vary among different regulations based on differences in the complexity of the regulation, the number and scope of comments received, and other relevant factors, but shall not be longer than 3 years except under exceptional circumstances. If the Secretary intends to vary such timeline with respect to the publication of a final regulation, the Secretary shall cause to have published in the Federal Register notice of the different timeline by not later than the timeline previously established with respect to such regulation. Such notice shall include a brief explanation of the justification for such variation.

(C) In the case of interim final regulations, upon the expiration of the regular timeline established under this paragraph for the publication of a final regulation after opportunity for public comment, the interim final regulation shall not continue in effect unless the Secretary publishes (at the end of the regular timeline and, if applicable, at the end of each succeeding 1-year period) a notice of continuation of the regulation that includes an explanation of why the regular timeline (and any subsequent 1-year extension) was not complied with. If such a notice is published, the regular timeline (or such

timeline as previously extended under this paragraph) for publication of the final regulation shall be treated as having been extended for 1 additional year.

(D) The Secretary shall annually submit to Congress a report that describes the instances in which the Secretary failed to publish a final regulation within the applicable regular timeline under this paragraph and that provides an explanation for such failures.

(4) If the Secretary publishes a final regulation that includes a provision that is not a logical outgrowth of a previously published notice of proposed rulemaking or interim final rule, such provision shall be treated as a proposed regulation and shall not take effect until there is the further opportunity for public comment and a publication of the provision again as a final regulation.

(b) Notice of proposed regulations; public comment

(1) Except as provided in paragraph (2), before issuing in final form any regulation under subsection (a) of this section, the Secretary shall provide for notice of the proposed regulation in the Federal Register and a period of not less than 60 days for public comment thereon.

(2) Paragraph (1) shall not apply where—

(A) a statute specifically permits a regulation to be issued in interim final form or otherwise with a shorter period for public comment,

(B) a statute establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the date of the enactment of the statute in which the deadline is contained, or

(C) subsection (b) of section 553 of title 5 does not apply pursuant to subparagraph (B) of such subsection.

(c) Publication of certain rules; public inspection; changes in data collection and retrieval

(1) The Secretary shall publish in the Federal Register, not less frequently than every 3 months, a list of all manual instructions, interpretative rules, statements of policy, and guidelines of general applicability which—

(A) are promulgated to carry out this subchapter, but

(B) are not published pursuant to subsection (a)(1) of this section and have not been previously published in a list under this subsection.

(2) Effective June 1, 1988, each fiscal intermediary and carrier administering claims for extended care, post-hospital extended care, home health care, and durable medical equipment benefits under this subchapter shall make available to the public all interpretative materials, guidelines, and clarifications of policies which relate to payments for such benefits.

(3) The Secretary shall to the extent feasible make such changes in automated data collection and retrieval by the Secretary and fiscal intermediaries with agreements under section 1395h of this title as are necessary to make easily accessible for the Secretary and other appropriate parties a data base which fairly and accurately reflects the provision of extended care, post-hospital extended care and home health care benefits pursuant to this subchapter, including such categories as benefit denials, results of appeals, and other relevant factors, and selectable by such categories and by fiscal intermediary, service provider, and region.

(e)[1] Retroactivity of substantive changes; reliance upon written guidance

(1)(A) A substantive change in regulations, manual instructions, interpretative rules, statements of policy, or guidelines of general applicability under this subchapter shall not be applied (by extrapolation or otherwise) retroactively to items and services furnished before the effective date of the change, unless the Secretary determines that—

(i) such retroactive application is necessary to comply with statutory requirements; or

(ii) failure to apply the change retroactively would be contrary to the public interest.

(B)(i) Except as provided in clause (ii), a substantive change referred to in subparagraph (A) shall not become effective before the end of the 30-day period that begins on the date that the Secretary has issued or published, as the case may be, the substantive change.

(ii) The Secretary may provide for such a substantive change to take effect on a date that precedes the end of the 30-day period under clause (i) if the Secretary finds that waiver of such 30-day period is necessary to comply with statutory requirements or that the application of such 30-day period is contrary to the public interest. If the Secretary provides for an earlier effective date pursuant to this clause, the Secretary shall include in the issuance or publication of the substantive change a finding described in the first sentence, and a brief statement of the reasons for such finding.

(C) No action shall be taken against a provider of services or supplier with respect to noncompliance with such a substantive change for items and services furnished before the effective date of such a change.

(2)(A) If—

(i) a provider of services or supplier follows the written guidance (which may be transmitted electronically) provided by the Secretary or by a medicare contractor (as defined in section 1395zz(g) of this title) acting within the scope of the contractor's contract authority, with respect to the furnishing of items or services and submission of a claim for benefits for such items or services with respect to such provider or supplier;

(ii) the Secretary determines that the provider of services or supplier has accurately presented the circumstances relating to such items, services, and claim to the contractor in writing; and

(iii) the guidance was in error;

the provider of services or supplier shall not be subject to any penalty or interest under this subchapter or the provisions of subchapter XI of this chapter insofar as they relate to this subchapter (including interest under a repayment plan under section 1395ddd of this title or other-

[1] So in original. No subsec. (d) has been enacted.

wise) relating to the provision of such items or service or such claim if the provider of services or supplier reasonably relied on such guidance.

(B) Subparagraph (A) shall not be construed as preventing the recoupment or repayment (without any additional penalty) relating to an overpayment insofar as the overpayment was solely the result of a clerical or technical operational error.

(f) Report on areas of inconsistency or conflict

(1) Not later than 2 years after December 8, 2003, and every 3 years thereafter, the Secretary shall submit to Congress a report with respect to the administration of this subchapter and areas of inconsistency or conflict among the various provisions under law and regulation.

(2) In preparing a report under paragraph (1), the Secretary shall collect—

(A) information from individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, providers of services, and suppliers and from the Medicare Beneficiary Ombudsman with respect to such areas of inconsistency and conflict; and

(B) information from medicare contractors that tracks the nature of written and telephone inquiries.

(3) A report under paragraph (1) shall include a description of efforts by the Secretary to reduce such inconsistency or conflicts, and recommendations for legislation or administrative action that the Secretary determines appropriate to further reduce such inconsistency or conflicts.

(Aug. 14, 1935, ch. 531, title XVIII, § 1871, as added Pub. L. 89–97, title I, § 102(a) July 30, 1965, 79 Stat. 331; amended Pub. L. 99–509, title IX, § 9321(e)(1), Oct. 21, 1986, 100 Stat. 2017; Pub. L. 100–203, title IV, § 4035(b), (c), Dec. 22, 1987, 101 Stat. 1330–78; Pub. L. 108–173, title IX, §§ 902(a)(1), (b)(1), 903(a)(1), (b)(1), (c)(1), 904(b), Dec. 8, 2003, 117 Stat. 2375–2377.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (f)(2)(A), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (a)(3). Pub. L. 108–173, § 902(a)(1), added par. (3).

Subsec. (a)(4). Pub. L. 108–173, § 902(b)(1), added par. (4).

Subsec. (e). Pub. L. 108–173, § 903(a)(1), added subsec. (e).

Subsec. (e)(1)(B), (C). Pub. L. 108–173, § 903(b)(1), added subpars. (B) and (C).

Subsec. (e)(2). Pub. L. 108–173, § 903(c)(1), added par. (2).

Subsec. (f). Pub. L. 108–173, § 904(b), added subsec. (f).

1987—Subsec. (a). Pub. L. 100–203, § 4035(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 100–203, § 4035(c), added subsec. (c).

1986—Pub. L. 99–509 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 902(a)(2), Dec. 8, 2003, 117 Stat. 2375, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003]. The Secretary [of Health and Human Services] shall provide for an appropriate transition to take into account the backlog of previously published interim final regulations.''

Pub. L. 108–173, title IX, § 902(b)(2), Dec. 8, 2003, 117 Stat. 2376, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to final regulations published on or after the date of the enactment of this Act [Dec. 8, 2003].''

Pub. L. 108–173, title IX, § 903(a)(2), Dec. 8, 2003, 117 Stat. 2376, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to substantive changes issued on or after the date of the enactment of this Act [Dec. 8, 2003].''

Pub. L. 108–173, title IX, § 903(b)(2), Dec. 8, 2003, 117 Stat. 2376, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to compliance actions undertaken on or after the date of the enactment of this Act [Dec. 8, 2003].''

Pub. L. 108–173, title IX, § 903(c)(2), Dec. 8, 2003, 117 Stat. 2377, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003] and shall only apply to a penalty or interest imposed with respect to guidance provided on or after July 24, 2003.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective Dec. 22, 1987, and applicable to budgets for fiscal years beginning with fiscal year 1989, see section 4035(a)(3) of Pub. L. 100–203, set out as a note under section 1395h of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9321(e)(3)(A) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to notices of proposed rulemaking issued after the date of the enactment of this Act [Oct. 21, 1986].''

REGULATIONS

Pub. L. 101–508, title IV, § 4207(j), formerly § 4027(j), Nov. 5, 1990, 104 Stat. 1388–124, as renumbered and amended by Pub. L. 103–432, title I, § 160(d)(4), (12), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subtitle [subtitle A (§§ 4000–4361) of title IV of Pub. L. 101–508, see Tables for classification] and the amendments made by this subtitle.''

Section 4039(g) of title IV of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subtitle and the amendments made by this subtitle [subtitle A (§§ 4001–4097) of title IV of Pub. L. 100–203, see Tables for classification].''

GAO STUDY ON ADVISORY OPINION AUTHORITY

Pub. L. 108–173, title IX, § 904(a), Dec. 8, 2003, 117 Stat. 2377, provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine the feasibility and appropriateness of establishing in the Secretary [of Health and Human Services] authority to provide legally binding advisory opinions on appropriate interpretation and application of regulations to carry out the medicare program under title XVIII of the Social Security Act [this subchapter]. Such study shall examine the appropriate timeframe for issuing such advisory opinions, as well as the need for additional staff and funding to provide such opinions.

''(2) REPORT.—The Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) by not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003].''

§ 1395ii. Application of certain provisions of subchapter II

The provisions of sections 406 and 416(j) of this title, and of subsections (a), (d), (e), (h), (i), (j), (k), and (*l*) of section 405 of this title, shall also apply with respect to this subchapter to the same extent as they are applicable with respect to subchapter II of this chapter, except that, in applying such provisions with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(Aug. 14, 1935, ch. 531, title XVIII, § 1872, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 332; amended Pub. L. 92–603, title II, § 242(a), Oct. 30, 1972, 86 Stat. 1419; Pub. L. 98–369, div. B, title III, § 2354(b)(36), July 18, 1984, 98 Stat. 1102; Pub. L. 103–296, title I, § 108(c)(4), Aug. 15, 1994, 108 Stat. 1485.)

AMENDMENTS

1994—Pub. L. 103–296 inserted before period at end '', except that, in applying such provisions with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

1984—Pub. L. 98–369 struck out the comma after ''406'' and struck out reference to subsec. (f) of section 405 of this title.

1972—Pub. L. 92–603 struck out reference to provisions of section 408 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 not applicable to any acts, statements, or representations made or committed prior to Oct. 30, 1972, see section 242(d) of Pub. L. 92–603, set out as an Effective Date note under section 1320a–7b of this title.

§ 1395jj. Designation of organization or publication by name

Designation in this subchapter, by name, of any nongovernmental organization or publication shall not be affected by change of name of such organization or publication, and shall apply to any successor organization or publication which the Secretary finds serves the purpose for which such designation is made.

(Aug. 14, 1935, ch. 531, title XVIII, § 1873, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 332.)

§ 1395kk. Administration of insurance programs

(a) Functions of Secretary; performance directly or by contract

Except as otherwise provided in this subchapter and in the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], the insurance programs established by this subchapter shall be administered by the Secretary. The Secretary may perform any of his functions under this subchapter directly, or by contract providing for payment in advance or by way of reimbursement, and in such installments, as the Secretary may deem necessary.

(b) Contracts to secure special data, actuarial information, etc.

The Secretary may contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under this subchapter.

(c) Oaths and affirmations

In the course of any hearing, investigation, or other proceeding that he is authorized to conduct under this subchapter, the Secretary may administer oaths and affirmations.

(Aug. 14, 1935, ch. 531, title XVIII, § 1874, as added and amended Pub. L. 89–97, title I, §§ 102(a), 111(a), July 30, 1965, 79 Stat. 332, 340; Pub. L. 92–603, title II, § 289, Oct. 30, 1972, 86 Stat. 1457; Pub. L. 93–445, title III, § 310, Oct. 16, 1974, 88 Stat. 1359.)

REFERENCES IN TEXT

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

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–445 substituted ''Railroad Retirement Act of 1974'' for ''Railroad Retirement Act of 1937''.

1972—Subsec. (c). Pub. L. 92–603 added subsec. (c).

1965—Subsec. (a). Pub. L. 89–97 inserted reference to Railroad Retirement Act of 1937 in first sentence.

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97.

§ 1395kk–1. Contracts with medicare administrative contractors

(a) Authority

(1) Authority to enter into contracts

The Secretary may enter into contracts with any eligible entity to serve as a medicare administrative contractor with respect to the

performance of any or all of the functions described in paragraph (4) or parts of those functions (or, to the extent provided in a contract, to secure performance thereof by other entities).

(2) Eligibility of entities

An entity is eligible to enter into a contract with respect to the performance of a particular function described in paragraph (4) only if—

(A) the entity has demonstrated capability to carry out such function;

(B) the entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement;

(C) the entity has sufficient assets to financially support the performance of such function; and

(D) the entity meets such other requirements as the Secretary may impose.

(3) Medicare administrative contractor defined

For purposes of this subchapter and subchapter XI of this chapter—

(A) In general

The term ''medicare administrative contractor'' means an agency, organization, or other person with a contract under this section.

(B) Appropriate medicare administrative contractor

With respect to the performance of a particular function in relation to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, a specific provider of services or supplier (or class of such providers of services or suppliers), the ''appropriate'' medicare administrative contractor is the medicare administrative contractor that has a contract under this section with respect to the performance of that function in relation to that individual, provider of services or supplier or class of provider of services or supplier.

(4) Functions described

The functions referred to in paragraphs (1) and (2) are payment functions (including the function of developing local coverage determinations, as defined in section 1395ff(f)(2)(B) of this title), provider services functions, and functions relating to services furnished to individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, as follows:

(A) Determination of payment amounts

Determining (subject to the provisions of section 1395*oo* of this title and to such review by the Secretary as may be provided for by the contracts) the amount of the payments required pursuant to this subchapter to be made to providers of services, suppliers and individuals.

(B) Making payments

Making payments described in subparagraph (A) (including receipt, disbursement, and accounting for funds in making such payments).

(C) Beneficiary education and assistance

Providing education and outreach to individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and providing assistance to those individuals with specific issues, concerns, or problems.

(D) Provider consultative services

Providing consultative services to institutions, agencies, and other persons to enable them to establish and maintain fiscal records necessary for purposes of this subchapter and otherwise to qualify as providers of services or suppliers.

(E) Communication with providers

Communicating to providers of services and suppliers any information or instructions furnished to the medicare administrative contractor by the Secretary, and facilitating communication between such providers and suppliers and the Secretary.

(F) Provider education and technical assistance

Performing the functions relating to provider education, training, and technical assistance.

(G) Additional functions

Performing such other functions, including (subject to paragraph (5)) functions under the Medicare Integrity Program under section 1395ddd of this title, as are necessary to carry out the purposes of this subchapter.

(5) Relationship to MIP contracts

(A) Nonduplication of duties

In entering into contracts under this section, the Secretary shall assure that functions of medicare administrative contractors in carrying out activities under parts A and B of this subchapter do not duplicate activities carried out under a contract entered into under the Medicare Integrity Program under section 1395ddd of this title. The previous sentence shall not apply with respect to the activity described in section 1395ddd(b)(5) of this title (relating to prior authorization of certain items of durable medical equipment under section 1395m(a)(15) of this title).

(B) Construction

An entity shall not be treated as a medicare administrative contractor merely by reason of having entered into a contract with the Secretary under section 1395ddd of this title.

(6) Application of Federal Acquisition Regulation

Except to the extent inconsistent with a specific requirement of this section, the Federal Acquisition Regulation applies to contracts under this section.

(b) Contracting requirements

(1) Use of competitive procedures

(A) In general

Except as provided in laws with general applicability to Federal acquisition and pro-

curement or in subparagraph (B), the Secretary shall use competitive procedures when entering into contracts with medicare administrative contractors under this section, taking into account performance quality as well as price and other factors.

(B) Renewal of contracts

The Secretary may renew a contract with a medicare administrative contractor under this section from term to term without regard to section 5 of title 41 or any other provision of law requiring competition, if the medicare administrative contractor has met or exceeded the performance requirements applicable with respect to the contract and contractor, except that the Secretary shall provide for the application of competitive procedures under such a contract not less frequently than once every 5 years.

(C) Transfer of functions

The Secretary may transfer functions among medicare administrative contractors consistent with the provisions of this paragraph. The Secretary shall ensure that performance quality is considered in such transfers. The Secretary shall provide public notice (whether in the Federal Register or otherwise) of any such transfer (including a description of the functions so transferred, a description of the providers of services and suppliers affected by such transfer, and contact information for the contractors involved).

(D) Incentives for quality

The Secretary shall provide incentives for medicare administrative contractors to provide quality service and to promote efficiency.

(2) Compliance with requirements

No contract under this section shall be entered into with any medicare administrative contractor unless the Secretary finds that such medicare administrative contractor will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, quality of services provided, and other matters as the Secretary finds pertinent.

(3) Performance requirements

(A) Development of specific performance requirements

(i) In general

The Secretary shall develop contract performance requirements to carry out the specific requirements applicable under this subchapter to a function described in subsection (a)(4) of this section and shall develop standards for measuring the extent to which a contractor has met such requirements. Such requirements shall include specific performance duties expected of a medical director of a medicare administrative contractor, including requirements relating to professional relations and the availability of such director to conduct medical determination activities within the jurisdiction of such a contractor.

(ii) Consultation

In developing such performance requirements and standards for measurement, the Secretary shall consult with providers of services, organizations representative of beneficiaries under this subchapter, and organizations and agencies performing functions necessary to carry out the purposes of this section with respect to such performance requirements.

(iii) Publication of standards

The Secretary shall make such performance requirements and measurement standards available to the public.

(B) Considerations

The Secretary shall include, as one of the standards developed under subparagraph (A), provider and beneficiary satisfaction levels.

(C) Inclusion in contracts

All contractor performance requirements shall be set forth in the contract between the Secretary and the appropriate medicare administrative contractor. Such performance requirements—

(i) shall reflect the performance requirements published under subparagraph (A), but may include additional performance requirements;

(ii) shall be used for evaluating contractor performance under the contract; and

(iii) shall be consistent with the written statement of work provided under the contract.

(4) Information requirements

The Secretary shall not enter into a contract with a medicare administrative contractor under this section unless the contractor agrees—

(A) to furnish to the Secretary such timely information and reports as the Secretary may find necessary in performing his functions under this subchapter; and

(B) to maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (A) and otherwise to carry out the purposes of this subchapter.

(5) Surety bond

A contract with a medicare administrative contractor under this section may require the medicare administrative contractor, and any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(c) Terms and conditions

(1) In general

A contract with any medicare administrative contractor under this section may contain such terms and conditions as the Sec-

retary finds necessary or appropriate and may provide for advances of funds to the medicare administrative contractor for the making of payments by it under subsection (a)(4)(B) of this section.

(2) Prohibition on mandates for certain data collection

The Secretary may not require, as a condition of entering into, or renewing, a contract under this section, that the medicare administrative contractor match data obtained other than in its activities under this subchapter with data used in the administration of this subchapter for purposes of identifying situations in which the provisions of section 1395y(b) of this title may apply.

(d) Limitation on liability of medicare administrative contractors and certain officers

(1) Certifying officer

No individual designated pursuant to a contract under this section as a certifying officer shall, in the absence of the reckless disregard of the individual's obligations or the intent by that individual to defraud the United States, be liable with respect to any payments certified by the individual under this section.

(2) Disbursing officer

No disbursing officer shall, in the absence of the reckless disregard of the officer's obligations or the intent by that officer to defraud the United States, be liable with respect to any payment by such officer under this section if it was based upon an authorization (which meets the applicable requirements for such internal controls established by the Comptroller General of the United States) of a certifying officer designated as provided in paragraph (1) of this subsection.

(3) Liability of medicare administrative contractor

(A) In general

No medicare administrative contractor shall be liable to the United States for a payment by a certifying or disbursing officer unless, in connection with such payment, the medicare administrative contractor acted with reckless disregard of its obligations under its medicare administrative contract or with intent to defraud the United States.

(B) Relationship to False Claims Act

Nothing in this subsection shall be construed to limit liability for conduct that would constitute a violation of sections 3729 through 3731 of title 31.

(4) Indemnification by Secretary

(A) In general

Subject to subparagraphs (B) and (D), in the case of a medicare administrative contractor (or a person who is a director, officer, or employee of such a contractor or who is engaged by the contractor to participate directly in the claims administration process) who is made a party to any judicial or administrative proceeding arising from or relating directly to the claims administration process under this subchapter, the Secretary may, to the extent the Secretary determines to be appropriate and as specified in the contract with the contractor, indemnify the contractor and such persons.

(B) Conditions

The Secretary may not provide indemnification under subparagraph (A) insofar as the liability for such costs arises directly from conduct that is determined by the judicial proceeding or by the Secretary to be criminal in nature, fraudulent, or grossly negligent. If indemnification is provided by the Secretary with respect to a contractor before a determination that such costs arose directly from such conduct, the contractor shall reimburse the Secretary for costs of indemnification.

(C) Scope of indemnification

Indemnification by the Secretary under subparagraph (A) may include payment of judgments, settlements (subject to subparagraph (D)), awards, and costs (including reasonable legal expenses).

(D) Written approval for settlements or compromises

A contractor or other person described in subparagraph (A) may not propose to negotiate a settlement or compromise of a proceeding described in such subparagraph without the prior written approval of the Secretary to negotiate such settlement or compromise. Any indemnification under subparagraph (A) with respect to amounts paid under a settlement or compromise of a proceeding described in such subparagraph are conditioned upon prior written approval by the Secretary of the final settlement or compromise.

(E) Construction

Nothing in this paragraph shall be construed—

(i) to change any common law immunity that may be available to a medicare administrative contractor or person described in subparagraph (A); or

(ii) to permit the payment of costs not otherwise allowable, reasonable, or allocable under the Federal Acquisition Regulation.

(e) Requirements for information security

(1) Development of information security program

A medicare administrative contractor that performs the functions referred to in subparagraphs (A) and (B) of subsection (a)(4) of this section (relating to determining and making payments) shall implement a contractor-wide information security program to provide information security for the operation and assets of the contractor with respect to such functions under this subchapter. An information security program under this paragraph shall meet the requirements for information security programs imposed on Federal agencies under paragraphs (1) through (8) of section 3544(b) of title 44 (other than the requirements under

paragraphs (2)(D)(i), (5)(A), and (5)(B) of such section).

(2) Independent audits

(A) Performance of annual evaluations

Each year a medicare administrative contractor that performs the functions referred to in subparagraphs (A) and (B) of subsection (a)(4) of this section (relating to determining and making payments) shall undergo an evaluation of the information security of the contractor with respect to such functions under this subchapter. The evaluation shall—

(i) be performed by an entity that meets such requirements for independence as the Inspector General of the Department of Health and Human Services may establish; and

(ii) test the effectiveness of information security control techniques of an appropriate subset of the contractor's information systems (as defined in section 3502(8) of title 44) relating to such functions under this subchapter and an assessment of compliance with the requirements of this subsection and related information security policies, procedures, standards and guidelines, including policies and procedures as may be prescribed by the Director of the Office of Management and Budget and applicable information security standards promulgated under section 11331 of title 40.

(B) Deadline for initial evaluation

(i) New contractors

In the case of a medicare administrative contractor covered by this subsection that has not previously performed the functions referred to in subparagraphs (A) and (B) of subsection (a)(4) of this section (relating to determining and making payments) as a fiscal intermediary or carrier under section 1395h or 1395u of this title, the first independent evaluation conducted pursuant to subparagraph (A) shall be completed prior to commencing such functions.

(ii) Other contractors

In the case of a medicare administrative contractor covered by this subsection that is not described in clause (i), the first independent evaluation conducted pursuant to subparagraph (A) shall be completed within 1 year after the date the contractor commences functions referred to in clause (i) under this section.

(C) Reports on evaluations

(i) To the Department of Health and Human Services

The results of independent evaluations under subparagraph (A) shall be submitted promptly to the Inspector General of the Department of Health and Human Services and to the Secretary.

(ii) To Congress

The Inspector General of the Department of Health and Human Services shall submit to Congress annual reports on the results of such evaluations, including assessments of the scope and sufficiency of such evaluations.

(iii) Agency reporting

The Secretary shall address the results of such evaluations in reports required under section 3544(c) of title 44.

(f) Incentives to improve contractor performance in provider education and outreach

The Secretary shall use specific claims payment error rates or similar methodology of medicare administrative contractors in the processing or reviewing of medicare claims in order to give such contractors an incentive to implement effective education and outreach programs for providers of services and suppliers.

(g) Communications with beneficiaries, providers of services and suppliers

(1) Communication strategy

The Secretary shall develop a strategy for communications with individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and with providers of services and suppliers under this subchapter.

(2) Response to written inquiries

Each medicare administrative contractor shall, for those providers of services and suppliers which submit claims to the contractor for claims processing and for those individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, with respect to whom claims are submitted for claims processing, provide general written responses (which may be through electronic transmission) in a clear, concise, and accurate manner to inquiries of providers of services, suppliers, and individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, concerning the programs under this subchapter within 45 business days of the date of receipt of such inquiries.

(3) Response to toll-free lines

The Secretary shall ensure that each medicare administrative contractor shall provide, for those providers of services and suppliers which submit claims to the contractor for claims processing and for those individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, with respect to whom claims are submitted for claims processing, a toll-free telephone number at which such individuals, providers of services, and suppliers may obtain information regarding billing, coding, claims, coverage, and other appropriate information under this subchapter.

(4) Monitoring of contractor responses

(A) In general

Each medicare administrative contractor shall, consistent with standards developed by the Secretary under subparagraph (B)—

(i) maintain a system for identifying who provides the information referred to in paragraphs (2) and (3); and

(ii) monitor the accuracy, consistency, and timeliness of the information so provided.

(B) Development of standards

(i) In general

The Secretary shall establish and make public standards to monitor the accuracy, consistency, and timeliness of the information provided in response to written and telephone inquiries under this subsection. Such standards shall be consistent with the performance requirements established under subsection (b)(3) of this section.

(ii) Evaluation

In conducting evaluations of individual medicare administrative contractors, the Secretary shall take into account the results of the monitoring conducted under subparagraph (A) taking into account as performance requirements the standards established under clause (i). The Secretary shall, in consultation with organizations representing providers of services, suppliers, and individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, establish standards relating to the accuracy, consistency, and timeliness of the information so provided.

(C) Direct monitoring

Nothing in this paragraph shall be construed as preventing the Secretary from directly monitoring the accuracy, consistency, and timeliness of the information so provided.

(5) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(h) Conduct of prepayment review

(1) Conduct of random prepayment review

(A) In general

A medicare administrative contractor may conduct random prepayment review only to develop a contractor-wide or program-wide claims payment error rates or under such additional circumstances as may be provided under regulations, developed in consultation with providers of services and suppliers.

(B) Use of standard protocols when conducting prepayment reviews

When a medicare administrative contractor conducts a random prepayment review, the contractor may conduct such review only in accordance with a standard protocol for random prepayment audits developed by the Secretary.

(C) Construction

Nothing in this paragraph shall be construed as preventing the denial of payments for claims actually reviewed under a random prepayment review.

(D) Random prepayment review

For purposes of this subsection, the term ''random prepayment review'' means a demand for the production of records or documentation absent cause with respect to a claim.

(2) Limitations on non-random prepayment review

(A) Limitations on initiation of non-random prepayment review

A medicare administrative contractor may not initiate non-random prepayment review of a provider of services or supplier based on the initial identification by that provider of services or supplier of an improper billing practice unless there is a likelihood of sustained or high level of payment error under section 1395ddd(f)(3)(A) of this title.

(B) Termination of non-random prepayment review

The Secretary shall issue regulations relating to the termination, including termination dates, of non-random prepayment review. Such regulations may vary such a termination date based upon the differences in the circumstances triggering prepayment review.

(Aug. 14, 1935, ch. 531, title XVIII, §1874A, as added and amended Pub. L. 108–173, title IX, §§911(a)(1), 912(a), 921(b)(1), (c)(1), 934(a), 940A(b), Dec. 8, 2003, 117 Stat. 2378, 2387–2389, 2406, 2417.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (a)(3)(B), (4), (5)(A) and (g)(1)–(3), (4)(B)(ii), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

2003—Subsec. (b)(3)(A)(i). Pub. L. 108–173, §940A(b), inserted at end ''Such requirements shall include specific performance duties expected of a medical director of a medicare administrative contractor, including requirements relating to professional relations and the availability of such director to conduct medical determination activities within the jurisdiction of such a contractor.''

Subsec. (e). Pub. L. 108–173, §912(a), added subsec. (e).

Subsec. (f). Pub. L. 108–173, §921(b)(1), added subsec. (f).

Subsec. (g). Pub. L. 108–173, §921(c)(1), added subsec. (g).

Subsec. (h). Pub. L. 108–173, §934(a), added subsec. (h).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, §921(c)(2), Dec. 8, 2003, 117 Stat. 2390, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect October 1, 2004.''

Pub. L. 108–173, title IX, §934(b), Dec. 8, 2003, 117 Stat. 2407, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) [amending this section] shall take effect 1 year after the date of the enactment of this Act [Dec. 8, 2003].

''(2) DEADLINE FOR PROMULGATION OF CERTAIN REGULATIONS.—The Secretary [of Health and Human Services] shall first issue regulations under section 1874A(h) of the Social Security Act [subsec. (h) of this section], as added by subsection (a), by not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003].

''(3) APPLICATION OF STANDARD PROTOCOLS FOR RANDOM PREPAYMENT REVIEW.—Section 1874A(h)(1)(B) of the Social Security Act [subsec. (h)(1)(B) of this section], as added by subsection (a), shall apply to random prepayment reviews conducted on or after such date (not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003]) as the Secretary shall specify.''

EFFECTIVE DATE; TRANSITION RULE

Pub. L. 108–173, title IX, §911(d), Dec. 8, 2003, 117 Stat. 2385, provided that:

''(1) EFFECTIVE DATE.—

''(A) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 1395h and 1395u of this title] shall take effect on October 1, 2005, and the Secretary [of Health and Human Services] is authorized to take such steps before such date as may be necessary to implement such amendments on a timely basis.

''(B) CONSTRUCTION FOR CURRENT CONTRACTS.—Such amendments shall not apply to contracts in effect before the date specified under subparagraph (A) that continue to retain the terms and conditions in effect on such date (except as otherwise provided under this Act [see Tables for classification], other than under this section) until such date as the contract is let out for competitive bidding under such amendments.

''(C) DEADLINE FOR COMPETITIVE BIDDING.—The Secretary shall provide for the letting by competitive bidding of all contracts for functions of medicare administrative contractors for annual contract periods that begin on or after October 1, 2011.

''(2) GENERAL TRANSITION RULES.—

''(A) AUTHORITY TO CONTINUE TO ENTER INTO NEW AGREEMENTS AND CONTRACTS AND WAIVER OF PROVIDER NOMINATION PROVISIONS DURING TRANSITION.—Prior to October 1, 2005, the Secretary may, consistent with subparagraph (B), continue to enter into agreements under section 1816 and contracts under section 1842 of the Social Security Act (42 U.S.C. 1395h, 1395u). The Secretary may enter into new agreements under section 1816 prior to October 1, 2005, without regard to any of the provider nomination provisions of such section.

''(B) APPROPRIATE TRANSITION.—The Secretary shall take such steps as are necessary to provide for an appropriate transition from agreements under section 1816 and contracts under section 1842 of the Social Security Act (42 U.S.C. 1395h, 1395u) to contracts under section 1874A [this section], as added by subsection (a)(1).

''(3) AUTHORIZING CONTINUATION OF MIP FUNCTIONS UNDER CURRENT CONTRACTS AND AGREEMENTS AND UNDER TRANSITION CONTRACTS.—Notwithstanding the amendments made by this section [enacting this section and amending sections 1395h and 1395u of this title], the provisions contained in the exception in section 1893(d)(2) of the Social Security Act (42 U.S.C. 1395ddd(d)(2)) shall continue to apply during the period that begins on the date of the enactment of this Act [Dec. 8, 2003] and ends on October 1, 2011, and any reference in such provisions to an agreement or contract shall be deemed to include a contract under section 1874A of such Act [this section], as inserted by subsection (a)(1), that continues the activities referred to in such provisions.''

CONSTRUCTION

Pub. L. 108–173, title IX, § 901(a), Dec. 8, 2003, 117 Stat. 2374, provided that: ''Nothing in this title [see Tables for classification] shall be construed—

''(1) to compromise or affect existing legal remedies for addressing fraud or abuse, whether it be criminal prosecution, civil enforcement, or administrative remedies, including under sections 3729 through 3733 of title 31, United States Code (commonly known as the 'False Claims Act'); or

''(2) to prevent or impede the Department of Health and Human Services in any way from its ongoing efforts to eliminate waste, fraud, and abuse in the medicare program.

Furthermore, the consolidation of medicare administrative contracting set forth in this division [Pub. L. 108–173 does not contain any divisions] does not constitute consolidation of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund or reflect any position on that issue.''

CONSIDERATION OF INCORPORATION OF CURRENT LAW STANDARDS

Pub. L. 108–173, title IX, § 911(a)(2), Dec. 8, 2003, 117 Stat. 2383, provided that: ''In developing contract performance requirements under section 1874A(b) of the Social Security Act [subsec. (b) of this section], as inserted by paragraph (1), the Secretary [of Health and Human Services] shall consider inclusion of the performance standards described in sections 1816(f)(2) of such Act [section 1395h(f)(2) of this title] (relating to timely processing of reconsiderations and applications for exemptions) and section 1842(b)(2)(B) of such Act [section 1395u(b)(2)(B) of this title] (relating to timely review of determinations and fair hearing requests), as such sections were in effect before the date of the enactment of this Act [Dec. 8, 2003].''

REFERENCES

Pub. L. 108–173, title IX, § 911(e), Dec. 8, 2003, 117 Stat. 2386, provided that: ''On and after the effective date provided under subsection (d)(1) [set out above], any reference to a fiscal intermediary or carrier under title XI or XVIII of the Social Security Act [subchapter XI of this chapter and this subchapter] (or any regulation, manual instruction, interpretative rule, statement of policy, or guideline issued to carry out such titles) shall be deemed a reference to a medicare administrative contractor (as provided under section 1874A of the Social Security Act [this section]).''

SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL

Pub. L. 108–173, title IX, § 911(f), Dec. 8, 2003, 117 Stat. 2386, provided that: ''Not later than 6 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this section [enacting this section, amending sections 1395h and 1395u of this title, and enacting provisions set out as notes under this section].''

REPORTS ON IMPLEMENTATION

Pub. L. 108–173, title IX, § 911(g), Dec. 8, 2003, 117 Stat. 2386, provided that:

''(1) PLAN FOR IMPLEMENTATION.—By not later than October 1, 2004, the Secretary [of Health and Human Services] shall submit a report to Congress and the Comptroller General of the United States that describes the plan for implementation of the amendments made by this section [enacting this section and amending sections 1395h and 1395u of this title]. The Comptroller General shall conduct an evaluation of such plan and shall submit to Congress, not later than 6 months after the date the report is received, a report on such evaluation and shall include in such report such recommendations as the Comptroller General deems appropriate.

''(2) STATUS OF IMPLEMENTATION.—The Secretary shall submit a report to Congress not later than October 1, 2008, that describes the status of implementation of such amendments and that includes a description of the following:

''(A) The number of contracts that have been competitively bid as of such date.

''(B) The distribution of functions among contracts and contractors.

''(C) A timeline for complete transition to full competition.

''(D) A detailed description of how the Secretary has modified oversight and management of medicare contractors to adapt to full competition.''

APPLICATION TO FISCAL INTERMEDIARIES AND CARRIERS

Pub. L. 108–173, title IX, § 912(b), Dec. 8, 2003, 117 Stat. 2388, provided that:

''(1) IN GENERAL.—The provisions of section 1874A(e)(2) of the Social Security Act [subsec. (e)(2) of

this section] (other than subparagraph (B)), as added by subsection (a), shall apply to each fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to medicare administrative contractors under such provisions.

''(2) DEADLINE FOR INITIAL EVALUATION.—In the case of such a fiscal intermediary or carrier with an agreement or contract under such respective section in effect as of the date of the enactment of this Act [Dec. 8, 2003], the first evaluation under section 1874A(e)(2)(A) of the Social Security Act [subsec. (e)(2)(A) of this section] (as added by subsection (a)), pursuant to paragraph (1), shall be completed (and a report on the evaluation submitted to the Secretary [of Health and Human Services]) by not later than 1 year after such date.''

Pub. L. 108–173, title IX, §921(b)(2), Dec. 8, 2003, 117 Stat. 2389, provided that: ''The provisions of section 1874A(f) of the Social Security Act [subsec. (f) of this section], as added by paragraph (1), shall apply to each fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to medicare administrative contractors under such provisions.''

Pub. L. 108–173, title IX, §921(c)(3), Dec. 8, 2003, 117 Stat. 2390, provided that: ''The provisions of section 1874A(g) of the Social Security Act [subsec. (g) of this section], as added by paragraph (1), shall apply to each fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to medicare administrative contractors under such provisions.''

Pub. L. 108–173, title IX, §934(c), Dec. 8, 2003, 117 Stat. 2407, provided that: ''The provisions of section 1874A(h) of the Social Security Act [subsec. (h) of this section], as added by subsection (a), shall apply to each fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to medicare administrative contractors under such provisions.''

POLICY DEVELOPMENT REGARDING EVALUATION AND MANAGEMENT (E & M) DOCUMENTATION GUIDELINES

Pub. L. 108–173, title IX, §941, Dec. 8, 2003, 117 Stat. 2418, provided that:

''(a) IN GENERAL.—The Secretary [of Health and Human Services] may not implement any new or modified documentation guidelines (which for purposes of this section includes clinical examples) for evaluation and management physician services under the [sic] title XVIII of the Social Security Act [this subchapter] on or after the date of the enactment of this Act [Dec. 8, 2003] unless the Secretary—

''(1) has developed the guidelines in collaboration with practicing physicians (including both generalists and specialists) and provided for an assessment of the proposed guidelines by the physician community;

''(2) has established a plan that contains specific goals, including a schedule, for improving the use of such guidelines;

''(3) has conducted appropriate and representative pilot projects under subsection (b) to test such guidelines;

''(4) finds, based on reports submitted under subsection (b)(5) with respect to pilot projects conducted for such or related guidelines, that the objectives described in subsection (c) will be met in the implementation of such guidelines; and

''(5) has established, and is implementing, a program to educate physicians on the use of such guidelines and that includes appropriate outreach.

The Secretary shall make changes to the manner in which existing evaluation and management documentation guidelines are implemented to reduce paperwork burdens on physicians.

''(b) PILOT PROJECTS TO TEST MODIFIED OR NEW EVALUATION AND MANAGEMENT DOCUMENTATION GUIDELINES.—

''(1) IN GENERAL.—With respect to proposed new or modified documentation guidelines referred to in subsection (a), the Secretary shall conduct under this subsection appropriate and representative pilot projects to test the proposed guidelines.

''(2) LENGTH AND CONSULTATION.—Each pilot project under this subsection shall—

''(A) be voluntary;

''(B) be of sufficient length as determined by the Secretary (but in no case to exceed 1 year) to allow for preparatory physician and medicare contractor education, analysis, and use and assessment of potential evaluation and management guidelines; and

''(C) be conducted, in development and throughout the planning and operational stages of the project, in consultation with practicing physicians (including both generalists and specialists).

''(3) RANGE OF PILOT PROJECTS.—Of the pilot projects conducted under this subsection with respect to proposed new or modified documentation guidelines—

''(A) at least one shall focus on a peer review method by physicians (not employed by a medicare contractor) which evaluates medical record information for claims submitted by physicians identified as statistical outliers relative to codes used for billing purposes for such services;

''(B) at least one shall focus on an alternative method to detailed guidelines based on physician documentation of face to face encounter time with a patient;

''(C) at least one shall be conducted for services furnished in a rural area and at least one for services furnished outside such an area; and

''(D) at least one shall be conducted in a setting where physicians bill under physicians' services in teaching settings and at least one shall be conducted in a setting other than a teaching setting.

''(4) STUDY OF IMPACT.—Each pilot project shall examine the effect of the proposed guidelines on—

''(A) different types of physician practices, including those with fewer than 10 full-time-equivalent employees (including physicians); and

''(B) the costs of physician compliance, including education, implementation, auditing, and monitoring.

''(5) REPORT ON PILOT PROJECTS.—Not later than 6 months after the date of completion of pilot projects carried out under this subsection with respect to a proposed guideline described in paragraph (1), the Secretary shall submit to Congress a report on the pilot projects. Each such report shall include a finding by the Secretary of whether the objectives described in subsection (c) will be met in the implementation of such proposed guideline.

''(c) OBJECTIVES FOR EVALUATION AND MANAGEMENT GUIDELINES.—The objectives for modified evaluation and management documentation guidelines developed by the Secretary shall be to—

''(1) identify clinically relevant documentation needed to code accurately and assess coding levels accurately;

''(2) decrease the level of non-clinically pertinent and burdensome documentation time and content in the physician's medical record;

''(3) increase accuracy by reviewers; and

''(4) educate both physicians and reviewers.

''(d) STUDY OF SIMPLER, ALTERNATIVE SYSTEMS OF DOCUMENTATION FOR PHYSICIAN CLAIMS.—

''(1) STUDY.—The Secretary shall carry out a study of the matters described in paragraph (2).

''(2) MATTERS DESCRIBED.—The matters referred to in paragraph (1) are—

''(A) the development of a simpler, alternative system of requirements for documentation accompanying claims for evaluation and management physician services for which payment is made under title XVIII of the Social Security Act [this subchapter]; and

''(B) consideration of systems other than current coding and documentation requirements for payment for such physician services.

''(3) CONSULTATION WITH PRACTICING PHYSICIANS.—In designing and carrying out the study under paragraph (1), the Secretary shall consult with practicing physicians, including physicians who are part of group practices and including both generalists and specialists.

''(4) APPLICATION OF HIPAA UNIFORM CODING REQUIREMENTS.—In developing an alternative system under paragraph (2), the Secretary shall consider requirements of administrative simplification under part C of title XI of the Social Security Act [part C of subchapter XI of this chapter].

''(5) REPORT TO CONGRESS.—

''(A) Not later than October 1, 2005, the Secretary shall submit to Congress a report on the results of the study conducted under paragraph (1).

''(B) The Medicare Payment Advisory Commission shall conduct an analysis of the results of the study included in the report under subparagraph (A) and shall submit a report on such analysis to Congress.

''(e) STUDY ON APPROPRIATE CODING OF CERTAIN EXTENDED OFFICE VISITS.—The Secretary shall conduct a study of the appropriateness of coding in cases of extended office visits in which there is no diagnosis made. Not later than October 1, 2005, the Secretary shall submit a report to Congress on such study and shall include recommendations on how to code appropriately for such visits in a manner that takes into account the amount of time the physician spent with the patient.

''(f) DEFINITIONS.—In this section—

''(1) the term 'rural area' has the meaning given that term in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D)); and

''(2) the term 'teaching settings' are those settings described in section 415.150 of title 42, Code of Federal Regulations.''

§ 1395*ll*. Studies and recommendations

(a) Health care of the aged and disabled

The Secretary shall carry on studies and develop recommendations to be submitted from time to time to the Congress relating to health care of the aged and the disabled, including studies and recommendations concerning (1) the adequacy of existing personnel and facilities for health care for purposes of the programs under parts A and B of this subchapter; (2) methods for encouraging the further development of efficient and economical forms of health care which are a constructive alternative to inpatient hospital care; and (3) the effects of the deductibles and coinsurance provisions upon beneficiaries, persons who provide health services, and the financing of the program.

(b) Operation and administration of insurance programs

The Secretary shall make a continuing study of the operation and administration of this subchapter (including a validation of the accreditation process of the Joint Commission on Accreditation of Hospitals, the operation and administration of health maintenance organizations authorized by section 226 of the Social Security Amendments of 1972 [42 U.S.C. 1395mm], the experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 [42 U.S.C. 1395b–1] and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972 [42 U.S.C. 1395b–1 note]), and shall transmit to the Congress annually a report concerning the operation of such programs.

(Aug. 14, 1935, ch. 531, title XVIII, § 1875, as added Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 332; amended Pub. L. 90–248, title IV, § 402(c), Jan. 2, 1968, 81 Stat. 931; Pub. L. 92–603, title II, §§ 201(c)(7), 222(c), 226(d), 244(d), Oct. 30, 1972, 86 Stat. 1373, 1393, 1404, 1423; Pub. L. 98–369, div. B, title III, § 2354(b)(17), July 18, 1984, 98 Stat. 1101; Pub. L. 99–509, title IX, § 9316(a), Oct. 21, 1986, 100 Stat. 2006; Pub. L. 100–203, title IV, § 4085(i)(20), Dec. 22, 1987, 101 Stat. 1330–133; Pub. L. 100–647, title VIII, § 8413, Nov. 10, 1988, 102 Stat. 3801; Pub. L. 101–234, title III, § 301(b)(5), (d)(2), Dec. 13, 1989, 103 Stat. 1985, 1986; Pub. L. 101–239, title VI, § 6103(b)(3)(A), Dec. 19, 1989, 103 Stat. 2199; Pub. L. 108–173, title I, § 101(e)(7), Dec. 8, 2003, 117 Stat. 2152.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (a), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 226 of the Social Security Amendments of 1972, referred to in subsec. (b), is section 226 of Pub. L. 92–603, which enacted section 1395mm of this title and provisions set out as notes under that section and amended this section and sections 1395f, 1395*l*, and 1396b of this title.

Section 402 of the Social Security Amendments of 1967, referred to in subsec. (b), is section 402 of Pub. L. 90–248, which enacted section 1395b–1 of this title and amended this section.

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (b), is section 222(a) of Pub. L. 92–603, which enacted provisions set out as note under section 1395b–1 of this title.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108–173 substituted ''this subchapter'' for ''the insurance programs under parts A and B of this subchapter''.

1989—Subsec. (c). Pub. L. 101–239 struck out subsec. (c) which related to patient outcome assessment research program.

Subsec. (c)(7). Pub. L. 101–234, § 301(b)(5), (d)(2), amended par. (7) identically, substituting ''date of the enactment of this section'' for ''date of the enactment of this Act''.

1988—Subsec. (c)(3). Pub. L. 100–647 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of carrying out the research program, there are authorized to be appropriated—

''(A) from the Federal Hospital Insurance Trust Fund $4,000,000 for fiscal year 1987 and $5,000,000 for each of fiscal years 1988 and 1989, and

''(B) from the Federal Supplementary Medical Insurance Trust Fund $2,000,000 for fiscal year 1987 and $2,500,000 for each of fiscal years 1988 and 1989.''

1987—Subsec. (c)(3)(B). Pub. L. 100–203 substituted ''fiscal year 1987'' for ''fiscal years 1987''.

1986—Subsec. (c). Pub. L. 99–509 added subsec. (c).

1984—Subsec. (b). Pub. L. 98–369 struck out ''the'' after ''Joint Commission on''.

1972—Subsec. (a). Pub. L. 92–603, § 201(c)(7), inserted ''and the disabled'' after ''aged''.

Subsec. (b). Pub. L. 92–603, §§ 222(c), 226(d)(1), 244(d), substituted ''(including a validation of the accreditation process of the Joint Commission on the Accreditation of Hospitals, the operation and administration of health maintenance organizations authorized by section 226 of the Social Security Amendments of 1972, the experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972)'' for ''(including the experimentation authorized by section 402 of the Social Security Amendments of 1967)''. Pub. L. 92–603, § 226(d)(2), which

directed the substitution of ''1972'' for ''1971'', could not be executed because ''1971'' did not appear.

1968—Subsec. (b). Pub. L. 90–248 inserted ''(including the experimentation authorized by section 402 of the Social Security Amendments of 1967'' after ''under parts A and B of this subchapter''.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6103(b)(3)(A) of Pub. L. 101–239 provided that the amendment made by that section is effective for fiscal years beginning after fiscal year 1990.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 226(d) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

INSTITUTE OF MEDICINE EVALUATION AND REPORT ON HEALTH CARE PERFORMANCE MEASURES

Pub. L. 108–173, title II, §238, Dec. 8, 2003, 117 Stat. 2213, provided that:

''(a) EVALUATION.—

''(1) IN GENERAL.—Not later than the date that is 2 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall enter into an arrangement under which the Institute of Medicine of the National Academy of Sciences (in this section referred to as the 'Institute') shall conduct an evaluation of leading health care performance measures in the public and private sectors and options to implement policies that align performance with payment under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(2) SPECIFIC MATTERS EVALUATED.—In conducting the evaluation under paragraph (1), the Institute shall—

''(A) catalogue, review, and evaluate the validity of leading health care performance measures;

''(B) catalogue and evaluate the success and utility of alternative performance incentive programs in public or private sector settings; and

''(C) identify and prioritize options to implement policies that align performance with payment under the medicare program that indicate—

''(i) the performance measurement set to be used and how that measurement set will be updated;

''(ii) the payment policy that will reward performance; and

''(iii) the key implementation issues (such as data and information technology requirements) that must be addressed.

''(3) SCOPE OF HEALTH CARE PERFORMANCE MEASURES.—The health care performance measures described in paragraph (2)(A) shall encompass a variety of perspectives, including physicians, hospitals, other health care providers, health plans, purchasers, and patients.

''(4) CONSULTATION WITH MEDPAC.—In evaluating the matters described in paragraph (2)(C), the Institute shall consult with the Medicare Payment Advisory Commission established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6).

''(b) REPORT.—Not later than the date that is 18 months after the date of enactment of this Act [Dec. 8, 2003], the Institute shall submit to the Secretary and appropriate committees of jurisdiction of the Senate and House of Representatives a report on the evaluation conducted under subsection (a)(1) describing the findings of such evaluation and recommendations for an overall strategy and approach for aligning payment with performance, including options for updating performance measures, in the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter], the Medicare Advantage program under part C of such title [part C of this subchapter], and any other programs under such title XVIII [this subchapter].

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for purposes of conducting the evaluation and preparing the report required by this section.''

GAO STUDY ON ACCESS TO PHYSICIANS' SERVICES

Pub. L. 108–173, title VI, §604, Dec. 8, 2003, 117 Stat. 2301, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study on access of medicare beneficiaries to physicians' services under the medicare program. The study shall include—

''(1) an assessment of the use by beneficiaries of such services through an analysis of claims submitted by physicians for such services under part B of the medicare program [part B of this subchapter];

''(2) an examination of changes in the use by beneficiaries of physicians' services over time; and

''(3) an examination of the extent to which physicians are not accepting new medicare beneficiaries as patients.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General shall submit to Congress a report on the study conducted under subsection (a). The report shall include a determination whether—

''(1) data from claims submitted by physicians under part B of the medicare program [part B of this subchapter] indicate potential access problems for medicare beneficiaries in certain geographic areas; and

''(2) access by medicare beneficiaries to physicians' services may have improved, remained constant, or deteriorated over time.''

STUDY ON ENROLLMENT PROCEDURES FOR GROUPS THAT RETAIN INDEPENDENT CONTRACTOR PHYSICIANS

Pub. L. 106–554, §1(a)(6) [title IV, §413], Dec. 21, 2000, 114 Stat. 2763, 2763A–515, provided that:

''(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the current medicare enrollment process for groups that retain independent contractor physicians with particular emphasis on hospital-based physicians, such as emergency department staffing groups. In conducting the evaluation, the Comptroller General shall consult with groups that retain independent contractor physicians and shall—

''(1) review the issuance of individual medicare provider numbers and the possible medicare program integrity vulnerabilities of the current process;

''(2) review direct and indirect costs associated with the current process incurred by the medicare program and groups that retain independent contractor physicians;

''(3) assess the effect on program integrity by the enrollment of groups that retain independent contractor hospital-based physicians; and

''(4) develop suggested procedures for the enrollment of these groups.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under subsection (a).''

GAO STUDIES AND REPORTS ON MEDICARE PAYMENTS

Pub. L. 106–554, §1(a)(6) [title IV, §437], Dec. 21, 2000, 114 Stat. 2763, 2763A–527, provided that:

''(a) GAO STUDY ON HCFA POST-PAYMENT AUDIT PROCESS.—

''(1) STUDY.—The Comptroller General of the United States shall conduct a study on the post-payment audit process under the medicare program under title XVIII of the Social Security Act [this subchapter] as such process applies to physicians, including the proper level of resources that the Health Care Financing Administration should devote to educating physicians regarding—

''(A) coding and billing;

''(B) documentation requirements; and

''(C) the calculation of overpayments.

''(2) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) together with specific recommendations for changes or improvements in the post-payment audit process described in such paragraph.

''(b) GAO STUDY ON ADMINISTRATION AND OVERSIGHT.—

''(1) STUDY.—The Comptroller General of the United States shall conduct a study on the aggregate effects of regulatory, audit, oversight, and paperwork burdens on physicians and other health care providers participating in the medicare program under title XVIII of the Social Security Act [this subchapter].

''(2) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) together with recommendations regarding any area in which—

''(A) a reduction in paperwork, an ease of administration, or an appropriate change in oversight and review may be accomplished; or

''(B) additional payments or education are needed to assist physicians and other health care providers in understanding and complying with any legal or regulatory requirements.''

STUDY AND REPORT REGARDING UTILIZATION OF PHYSICIANS' SERVICES BY MEDICARE BENEFICIARIES

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §211(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–349, provided that:

''(1) STUDY BY SECRETARY.—The Secretary of Health and Human Services, acting through the Administrator of the Agency for Health Care Policy and Research, shall conduct a study of the issues specified in paragraph (2).

''(2) ISSUES TO BE STUDIED.—The issues specified in this paragraph are the following:

''(A) The various methods for accurately estimating the economic impact on expenditures for physicians' services under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) [parts A and B of this subchapter] resulting from—

''(i) improvements in medical capabilities;

''(ii) advancements in scientific technology;

''(iii) demographic changes in the types of medicare beneficiaries that receive benefits under such program; and

''(iv) geographic changes in locations where medicare beneficiaries receive benefits under such program.

''(B) The rate of usage of physicians' services under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) among beneficiaries between ages 65 and 74, 75 and 84, 85 and over, and disabled beneficiaries under age 65.

''(C) Other factors that may be reliable predictors of beneficiary utilization of physicians' services under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(3) REPORT TO CONGRESS.—Not later than 3 years after the date of the enactment of this Act [Nov. 29, 1999], the Secretary of Health and Human Services shall submit a report to Congress setting forth the results of the study conducted pursuant to paragraph (1), together with any recommendations the Secretary determines are appropriate.

''(4) MEDPAC REPORT TO CONGRESS.—Not later than 180 days after the date of submission of the report under paragraph (3), the Medicare Payment Advisory Commission shall submit a report to Congress that includes—

''(A) an analysis and evaluation of the report submitted under paragraph (3); and

''(B) such recommendations as it determines are appropriate.''

STUDY OF ADULT DAY CARE SERVICES

Pub. L. 100–360, title II, §208, July 1, 1988, 102 Stat. 732, as amended by Pub. L. 100–485, title VI, §608(d)(8), Oct. 13, 1988, 102 Stat. 2415, directed Secretary of Health and Human Services to conduct a survey of adult day care services in United States and to report to Congress, by not later than 1 year after July 1, 1988, on the information collected in the survey, prior to repeal by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE

Section 9313(d) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4085(i)(21)(A), Dec. 22, 1987, 101 Stat. 1330–133, directed Secretary of Health and Human Services to arrange, with the National Academy of Sciences or other appropriate nonprofit private entity, for a study to design a strategy for reviewing and assuring the quality of care for which payment may be made under this subchapter, specified items to be included in the study, and directed Secretary to submit to Congress, not later than Jan. 1, 1990, a report on the study with recommendations with respect to strengthening quality assurancees and review activities for services furnished under the medicare program.

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

For treatment of hospitals in States which have had a waiver approved under this section, upon termination of waiver, see section 9202(j) of Pub. L. 99–272, as amended, set out as a note under section 1395ww of this title.

DRUG DETOXIFICATION MEDICARE COVERAGE AND FACILITY INCENTIVES

Pub. L. 96–499, title IX, §931(f), Dec. 5, 1980, 94 Stat. 2634, which related to a study of medicare coverage of certain additional detoxification-related services, was repealed by Pub. L. 97–35, title XXI, §2121(h), Aug. 13, 1981, 95 Stat. 796.

LEGISLATIVE RECOMMENDATIONS REGARDING REIMBURSEMENT FOR OPTOMETRISTS' SERVICES

Pub. L. 96–499, title IX, §937(b), Dec. 5, 1980, 94 Stat. 2640, provided that the Secretary of Health and Human Services submit to the Congress by Jan. 1, 1982, legislative recommendations with respect to reimbursement under title XVIII of the Social Security Act [this subchapter] for services furnished by optometrists in connection with cataracts and such other services which they are legally authorized to perform.

DEMONSTRATION PROJECTS, STUDIES, AND REPORTS: NUTRITIONAL THERAPY, SECOND OPINION COST-SHARING, SERVICES OF REGISTERED DIETITIANS, SERVICES OF CLINICAL SOCIAL WORKERS, ORTHOPEDIC SHOES, RESPIRATORY THERAPY SERVICES, AND FOOT CONDITIONS; GRANTS, PAYMENTS, AND EXPENDITURES

Pub. L. 96–499, title IX, §958, Dec. 5, 1980, 94 Stat. 2648, directed Secretary of Health and Human Services to carry out certain demonstration projects and conduct certain studies as follows: (a) a demonstration project to determine extent to which nutritional therapy in early renal failure could retard the disease with result-

ant substantive deferment of dialysis, and aspects of making such therapy available under this subchapter, report to Congress to be submitted within twenty-four months of Dec. 5, 1980; (b) demonstration projects with respect to waiving the applicable cost sharing amounts which beneficiaries under this subchapter had to pay for obtaining a second opinion on having surgery, report to be submitted within one year after Dec. 5, 1980; (c) a study of conditions under which services of registered dietitians could be covered as a home health benefit under this subchapter, report to be submitted within twenty-four months of Dec. 5, 1980; (d) demonstration projects to determine aspects of making services of clinical social workers more generally available under this subchapter, report to be submitted within twenty-four months of Dec. 5, 1980; (e) a study of methods for providing coverage under part B of this subchapter for orthopedic shoes for individuals with disabling or deforming conditions requiring special fitting considerations, or requiring special shoes in conjunction with the use of an orthosis or foot support, report to be submitted no later than July 1, 1981; (f) a study of conditions under which services with respect to respiratory therapy could be covered as a home health benefit under this subchapter, report to be submitted within twenty-four months of Dec. 5, 1980; and (g) a study analyzing cost effects of alternative approaches to improving coverage under this subchapter for treatment of various types of foot conditions, report to be submitted within twenty-four months of Dec. 5, 1980. Payments and expenditures for such studies and projects were to be made in appropriate part from the Federal Hospital Insurance Trust Fund established by section 1395i of this title, and the Federal Supplemental Medical Insurance Trust Fund established by section 1395t of this title.

DEMONSTRATION PROJECT RELATING TO THE TERMINALLY ILL

Pub. L. 96–265, title V, § 506, June 9, 1980, 94 Stat. 475, authorized Secretary of Health and Human Services to provide for participation, by Social Security Administration, in a demonstration project relating to the terminally ill then being conducted within the Department of Health and Human Services, the purpose of such participation to be to study impact on terminally ill of provisions of disability programs administered by Social Security Administration and to determine how best to provide services needed by persons who were terminally ill through programs over which the Social Security Administration had administrative responsibility, and authorized to be appropriated necessary sums not in excess of $2,000,000 for any fiscal year.

REPORT TO CONGRESS WITH RESPECT TO URBAN OR RURAL COMPREHENSIVE MENTAL HEALTH CENTERS AND CENTERS FOR TREATMENT OF ALCOHOLISM AND DRUG ABUSE; SUBMISSION NO LATER THAN JUNE 13, 1978

Pub. L. 95–210, § 4, Dec. 13, 1977, 91 Stat. 1490, directed Secretary of Health, Education, and Welfare to submit to Congress, no later than six months after Dec. 13, 1977, a report on the advantages and disadvantages of extending coverage under this subchapter to urban or rural comprehensive mental health centers and to centers for treatment of alcoholism and drug abuse.

STUDY AND REVIEW BY COMPTROLLER GENERAL OF ADMINISTRATIVE STRUCTURE FOR PROCESSING MEDICARE CLAIMS; REPORT TO CONGRESS

Pub. L. 95–142, § 12, Oct. 25, 1977, 91 Stat. 1197, directed Comptroller General to conduct a comprehensive study and review of administrative structure established for processing of claims under this subchapter for purpose of determining whether and to what extent more efficient claims administration under this subchapter could be achieved and directed Comptroller General to submit to Congress no later than July 1, 1979, a complete report with respect to such study and review.

REPORT BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE ON DELIVERY OF HOME HEALTH AND OTHER IN-HOME SERVICES; CONTENTS; CONSULTATION REQUIREMENTS; SUBMISSION TO CONGRESS

Pub. L. 95–142, § 18, Oct. 25, 1977, 91 Stat. 1202, directed Secretary of Health, Education, and Welfare, not later than one year after Oct. 25, 1977, to submit to appropriate committees of Congress a report analyzing, evaluating, and making recommendations with respect to all aspects of delivery of home health and other in-home services authorized to be provided under subchapters XVIII, XIX, and XX of this chapter.

§ 1395mm. Payments to health maintenance organizations and competitive medical plans

(a) Rates and adjustments

(1)(A) The Secretary shall annually determine, and shall announce (in a manner intended to provide notice to interested parties) not later than September 7 before the calendar year concerned—

(i) a per capita rate of payment for each class of individuals who are enrolled under this section with an eligible organization which has entered into a risk-sharing contract and who are entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, and

(ii) a per capita rate of payment for each class of individuals who are so enrolled with such an organization and who are enrolled under part B of this subchapter only.

For purposes of this section, the term ''risk-sharing contract'' means a contract entered into under subsection (g) of this section and the term ''reasonable cost reimbursement contract'' means a contract entered into under subsection (h) of this section.

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The annual per capita rate of payment for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in paragraph (4)) for that class.

(D) In the case of an eligible organization with a risk-sharing contract, the Secretary shall make monthly payments in advance and in accordance with the rate determined under subparagraph (C) and except as provided in subsection (g)(2) of this section, to the organization for each individual enrolled with the organization under this section.

(E)(i) The amount of payment under this paragraph may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(ii)(I) Subject to subclause (II), the Secretary may make retroactive adjustments under clause (i) to take into account individuals enrolled dur-

ing the period beginning on the date on which the individual enrolls with an eligible organization (which has a risk-sharing contract under this section) under a health benefit plan operated, sponsored, or contributed to by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the plan under this section, except that for purposes of making such retroactive adjustments under this clause, such period may not exceed 90 days.

(II) No adjustment may be made under subclause (I) with respect to any individual who does not certify that the organization provided the individual with the explanation described in subsection (c)(3)(E) of this section at the time the individual enrolled with the organization.

(F)(i) At least 45 days before making the announcement under subparagraph (A) for a year (beginning with the announcement for 1991), the Secretary shall provide for notice to eligible organizations of proposed changes to be made in the methodology or benefit coverage assumptions from the methodology and assumptions used in the previous announcement and shall provide such organizations an opportunity to comment on such proposed changes.

(ii) In each announcement made under subparagraph (A) for a year (beginning with the announcement for 1991), the Secretary shall include an explanation of the assumptions (including any benefit coverage assumptions) and changes in methodology used in the announcement in sufficient detail so that eligible organizations can compute per capita rates of payment for classes of individuals located in each county (or equivalent area) which is in whole or in part within the service area of such an organization.

(2) With respect to any eligible organization which has entered into a reasonable cost reimbursement contract, payments shall be made to such plan in accordance with subsection (h)(2) of this section rather than paragraph (1).

(3) Subject to subsections (c)(2)(B)(ii) and (c)(7) of this section, payments under a contract to an eligible organization under paragraph (1) or (2) shall be instead of the amounts which (in the absence of the contract) would be otherwise payable, pursuant to sections 1395f(b) and 1395l(a) of this title, for services furnished by or through the organization to individuals enrolled with the organization under this section.

(4) For purposes of this section, the term ''adjusted average per capita cost'' means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for services covered under parts A and B of this subchapter, or part B only, and types of expenses otherwise reimbursable under parts A and B of this subchapter, or part B only (including administrative costs incurred by organizations described in sections 1395h and 1395u of this title), if the services were to be furnished by other than an eligible organization or, in the case of services covered only under section 1395x(s)(2)(H) of this title, if the services were to be furnished by a physician or as an incident to a physician's service.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The portion of that payment to the organization for a month to be paid by each trust fund shall be determined as follows:

(A) In regard to expenditures by eligible organizations having risk-sharing contracts, the allocation shall be determined each year by the Secretary based on the relative weight that benefits from each fund contribute to the adjusted average per capita cost.

(B) In regard to expenditures by eligible organizations operating under a reasonable cost reimbursement contract, the initial allocation shall be based on the plan's most recent budget, such allocation to be adjusted, as needed, after cost settlement to reflect the distribution of actual expenditures.

The remainder of that payment shall be paid by the former trust fund.

(6) Subject to subsections (c)(2)(B)(ii) and (c)(7) of this section, if an individual is enrolled under this section with an eligible organization having a risk-sharing contract, only the eligible organization shall be entitled to receive payments from the Secretary under this subchapter for services furnished to the individual.

(b) Definitions; requirements

For purposes of this section, the term ''eligible organization'' means a public or private entity (which may be a health maintenance organization or a competitive medical plan), organized under the laws of any State, which—

(1) is a qualified health maintenance organization (as defined in section 300e–9(d)[1] of this title), or

(2) meets the following requirements:

(A) The entity provides to enrolled members at least the following health care services:

(i) Physicians' services performed by physicians (as defined in section 1395x(r)(1) of this title).

(ii) Inpatient hospital services.

(iii) Laboratory, X-ray, emergency, and preventive services.

(iv) Out-of-area coverage.

(B) The entity is compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member.

(C) The entity provides physicians' services primarily (i) directly through physi-

[1] See References in Text note below.

cians who are either employees or partners of such organization, or (ii) through contracts with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(D) The entity assumes full financial risk on a prospective basis for the provision of the health care services listed in subparagraph (A), except that such entity may—

(i) obtain insurance or make other arrangements for the cost of providing to any enrolled member health care services listed in subparagraph (A) the aggregate value of which exceeds $5,000 in any year,

(ii) obtain insurance or make other arrangements for the cost of health care service listed in subparagraph (A) provided to its enrolled members other than through the entity because medical necessity required their provision before they could be secured through the entity,

(iii) obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

(iv) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

(E) The entity has made adequate provision against the risk of insolvency, which provision is satisfactory to the Secretary.

Paragraph (2)(A)(ii) shall not apply to an entity which had contracted with a single State agency administering a State plan approved under subchapter XIX of this chapter for the provision of services (other than inpatient hospital services) to individuals eligible for such services under such State plan on a prepaid risk basis prior to 1970.

(c) Enrollment in plan; duties of organization to enrollees

(1) The Secretary may not enter into a contract under this section with an eligible organization unless it meets the requirements of this subsection and subsection (e) of this section with respect to members enrolled under this section.

(2)(A) The organization must provide to members enrolled under this section, through providers and other persons that meet the applicable requirements of this subchapter and part A of subchapter XI of this chapter—

(i) only those services covered under parts A and B of this subchapter, for those members entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or

(ii) only those services covered under part B of this subchapter, for those members enrolled only under such part,

which are available to individuals residing in the geographic area served by the organization, except that (I) the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered, and (II) in the case of an organization with a risk-sharing contract, the organization may provide such members with such additional health care services as the Secretary may approve. The Secretary shall approve any such additional health care services which the organization proposes to offer to such members, unless the Secretary determines that including such additional services will substantially discourage enrollment by covered individuals with the organization.

(B) If there is a national coverage determination made in the period beginning on the date of an announcement under subsection (a)(1)(A) of this section and ending on the date of the next announcement under such subsection that the Secretary projects will result in a significant change in the costs to the organization of providing the benefits that are the subject of such national coverage determination and that was not incorporated in the determination of the per capita rate of payment included in the announcement made at the beginning of such period—

(i) such determination shall not apply to risk-sharing contracts under this section until the first contract year that begins after the end of such period; and

(ii) if such coverage determination provides for coverage of additional benefits or under additional circumstances, subsection (a)(3) of this section shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period,

unless otherwise required by law.

(3)(A)(i) Each eligible organization must have an open enrollment period, for the enrollment of individuals under this section, of at least 30 days duration every year and including the period or periods specified under clause (ii), and must provide that at any time during which enrollments are accepted, the organization will accept up to the limits of its capacity (as determined by the Secretary) and without restrictions, except as may be authorized in regulations, individuals who are eligible to enroll under subsection (d) of this section in the order in which they apply for enrollment, unless to do so would result in failure to meet the requirements of subsection (f) of this section or would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the population in the geographic area served by the organization.

(ii)(I) If a risk-sharing contract under this section is not renewed or is otherwise terminated, eligible organizations with risk-sharing contracts under this section and serving a part of the same service area as under the terminated contract are required to have an open enrollment period for individuals who were enrolled under the terminated contract as of the date of notice of such termination. If a risk-sharing contract under this section is renewed in a manner that discontinues coverage for individuals residing in part of the service area, eligible organizations with risk-sharing contracts under

this section and enrolling individuals residing in that part of the service area are required to have an open enrollment period for individuals residing in the part of the service area who were enrolled under the contract as of the date of notice of such discontinued coverage.

(II) The open enrollment periods required under subclause (I) shall be for 30 days and shall begin 30 days after the date that the Secretary provides notice of such requirement.

(III) Enrollment under this clause shall be effective 30 days after the end of the open enrollment period, or, if the Secretary determines that such date is not feasible, such other date as the Secretary specifies.

(B) An individual may enroll under this section with an eligible organization in such manner as may be prescribed in regulations and may terminate his enrollment with the eligible organization as of the beginning of the first calendar month following the date on which the request is made for such termination (or, in the case of financial insolvency of the organization, as may be prescribed by regulations) or, in the case of such an organization with a reasonable cost reimbursement contract, as may be prescribed by regulations. In the case of an individual's termination of enrollment, the organization shall provide the individual with a copy of the written request for termination of enrollment and a written explanation of the period (ending on the effective date of the termination) during which the individual continues to be enrolled with the organization and may not receive benefits under this subchapter other than through the organization.

(C) The Secretary may prescribe the procedures and conditions under which an eligible organization that has entered into a contract with the Secretary under this subsection may inform individuals eligible to enroll under this section with the organization about the organization, or may enroll such individuals with the organization. No brochures, application forms, or other promotional or informational material may be distributed by an organization to (or for the use of) individuals eligible to enroll with the organization under this section unless (i) at least 45 days before its distribution, the organization has submitted the material to the Secretary for review and (ii) the Secretary has not disapproved the distribution of the material. The Secretary shall review all such material submitted and shall disapprove such material if the Secretary determines, in the Secretary's discretion, that the material is materially inaccurate or misleading or otherwise makes a material misrepresentation.

(D) The organization must provide assurances to the Secretary that it will not expel or refuse to re-enroll any such individual because of the individual's health status or requirements for health care services, and that it will notify each such individual of such fact at the time of the individual's enrollment.

(E) Each eligible organization shall provide each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee's rights under this section, including an explanation of—

(i) the enrollee's rights to benefits from the organization,

(ii) the restrictions on payments under this subchapter for services furnished other than by or through the organization,

(iii) out-of-area coverage provided by the organization,

(iv) the organization's coverage of emergency services and urgently needed care, and

(v) appeal rights of enrollees.

(F) Each eligible organization that provides items and services pursuant to a contract under this section shall provide assurances to the Secretary that in the event the organization ceases to provide such items and services, the organization shall provide or arrange for supplemental coverage of benefits under this subchapter related to a pre-existing condition with respect to any exclusion period, to all individuals enrolled with the entity who receive benefits under this subchapter, for the lesser of six months or the duration of such period.

(G)(i) Each eligible organization having a risk-sharing contract under this section shall notify individuals eligible to enroll with the organization under this section and individuals enrolled with the organization under this section that—

(I) the organization is authorized by law to terminate or refuse to renew the contract, and

(II) termination or nonrenewal of the contract may result in termination of the enrollments of individuals enrolled with the organization under this section.

(ii) The notice required by clause (i) shall be included in—

(I) any marketing materials described in subparagraph (C) that are distributed by an eligible organization to individuals eligible to enroll under this section with the organization, and

(II) any explanation provided to enrollees by the organization pursuant to subparagraph (E).

(4) The organization must—

(A) make the services described in paragraph (2) (and such other health care services as such individuals have contracted for) (i) available and accessible to each such individual, within the area served by the organization, with reasonable promptness and in a manner which assures continuity, and (ii) when medically necessary, available and accessible twenty-four hours a day and seven days a week, and

(B) provide for reimbursement with respect to services which are described in subparagraph (A) and which are provided to such an individual other than through the organization, if (i) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition and (ii) it was not reasonable given the circumstances to obtain the services through the organization.

(5)(A) The organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and members enrolled with the organization under this section.

(B) A member enrolled with an eligible organization under this section who is dissatisfied by

reason of his failure to receive any health service to which he believes he is entitled and at no greater charge than he believes he is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 405(b) of this title, and in any such hearing the Secretary shall make the eligible organization a party. If the amount in controversy is $1,000 or more, the individual or eligible organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 405(g) of this title, and both the individual and the eligible organization shall be entitled to be parties to that judicial review. In applying sections 405(b) and 405(g) of this title as provided in this subparagraph, and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively. The provisions of section 1395ff(b)(1)(E)(iii) of this title shall apply with respect to dollar amounts specified in the first 2 sentences of this subparagraph in the same manner as they apply to the dollar amounts specified in section 1395ff(b)(1)(E)(i) of this title.

(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals, which program (A) stresses health outcomes and (B) provides review by physicians and other health care professionals of the process followed in the provision of such health care services.

(7) A risk-sharing contract under this section shall provide that in the case of an individual who is receiving inpatient hospital services from a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title) as of the effective date of the individual's—

(A) enrollment with an eligible organization under this section—

(i) payment for such services until the date of the individual's discharge shall be made under this subchapter as if the individual were not enrolled with the organization,

(ii) the organization shall not be financially responsible for payment for such services until the date after the date of the individual's discharge, and

(iii) the organization shall nonetheless be paid the full amount otherwise payable to the organization under this section; or

(B) termination of enrollment with an eligible organization under this section—

(i) the organization shall be financially responsible for payment for such services after such date and until the date of the individual's discharge,

(ii) payment for such services during the stay shall not be made under section 1395ww(d) of this title, and

(iii) the organization shall not receive any payment with respect to the individual under this section during the period the individual is not enrolled.

(8) A contract under this section shall provide that the eligible organization shall meet the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(d) Right to enroll with contracting organization in geographic area

Subject to the provisions of subsection (c)(3) of this section, every individual entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter or enrolled under part B of this subchapter only (other than an individual medically determined to have end-stage renal disease) shall be eligible to enroll under this section with any eligible organization with which the Secretary has entered into a contract under this section and which serves the geographic area in which the individual resides.

(e) Limitation on charges; election of coverage; "adjusted community rate" defined; workmen's compensation and insurance benefits

(1) In no case may—

(A) the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under parts A and B of this subchapter) to individuals who are enrolled under this section with the organization and who are entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or

(B) the portion of its premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under part B of this subchapter) to individuals who are enrolled under this section with the organization and enrolled under part B of this subchapter only

exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or enrolled under part B only, respectively, if they were not members of an eligible organization.

(2) If the eligible organization provides to its members enrolled under this section services in addition to services covered under parts A and B of this subchapter, election of coverage for such additional services (unless such services have been approved by the Secretary under subsection (c)(2) of this section) shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services.

(3) For purposes of this section, the term ''adjusted community rate'' for a service or services means, at the election of an eligible organization, either—

(A) the rate of payment for that service or services which the Secretary annually determines would apply to a member enrolled under this section with an eligible organization if the rate of payment were determined under a ''community rating system'' (as defined in section 300e–1(8) of this title, other than subparagraph (C)), or

(B) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to a member enrolled under this section with the eligible organization, as the Secretary annually estimates is attributable to that service or services,

but adjusted for differences between the utilization characteristics of the members enrolled with the eligible organization under this section and the utilization characteristics of the other members of the organization (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of members in other eligible organizations, or individuals in the area, in the State, or in the United States, eligible to enroll under this section with an eligible organization and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).

(4) Notwithstanding any other provision of law, the eligible organization may (in the case of the provision of services to a member enrolled under this section for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or plan of the United States or a State, under an automobile or liability insurance policy or plan, including a self-insured plan, or under no fault insurance) charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law or policy—

(A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or

(B) such member to the extent that the member has been paid under such law, plan, or policy for such services.

(f) Membership requirements

(1) For contract periods beginning before January 1, 1999, each eligible organization with which the Secretary enters into a contract under this section shall have, for the duration of such contract, an enrolled membership at least one-half of which consists of individuals who are not entitled to benefits under this subchapter.

(2) Subject to paragraph (4), the Secretary may modify or waive the requirement imposed by paragraph (1) only—

(A) to the extent that more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter, or

(B) in the case of an eligible organization that is owned and operated by a governmental entity, only with respect to a period of three years beginning on the date the organization first enters into a contract under this section, and only if the organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter.

(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of enrollment of individuals under this section or of payment to the organization under this section for individuals newly enrolled with the organization, after the date the Secretary notifies the organization of such noncompliance.

(4) Effective for contract periods beginning after December 31, 1996, the Secretary may waive or modify the requirement imposed by paragraph (1) to the extent the Secretary finds that it is in the public interest.

(g) Risk-sharing contract

(1) The Secretary may enter a risk-sharing contract with any eligible organization, as defined in subsection (b) of this section, which has at least 5,000 members, except that the Secretary may enter into such a contract with an eligible organization that has fewer members if the organization primarily serves members residing outside of urbanized areas.

(2) Each risk-sharing contract shall provide that—

(A) if the adjusted community rate, as defined in subsection (e)(3) of this section, for services under parts A and B of this subchapter (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or

(B) if the adjusted community rate for services under part B of this subchapter (as reduced for the actuarial value of the coinsurance and deductibles under that part) for members enrolled under this section with the organization and entitled to benefits under part B of this subchapter only

is less than the average of the per capita rates of payment to be made under subsection (a)(1) of this section at the beginning of an annual contract period for members enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or enrolled in part B of this subchapter only, respectively, the eligible organization shall provide to members enrolled under a risk-sharing contract under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or enrolled in part B of this subchapter only, respectively,

the additional benefits described in paragraph (3) which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced); except that this paragraph shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced) and except that an organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (5). If the Secretary finds that there is insufficient enrollment experience to determine an average of the per capita rates of payment to be made under subsection (a)(1) of this section at the beginning of a contract period, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this section.

(3) The additional benefits referred to in paragraph (2) are—

(A) the reduction of the premium rate or other charges made with respect to services furnished by the organization to members enrolled under this section, or

(B) the provision of additional health benefits,

or both.

(4) Repealed. Pub. L. 100–203, title IV, § 4012(b), Dec. 22, 1987, 101 Stat. 1330–61.

(5) An organization having a risk-sharing contract under this section may (with the approval of the Secretary) provide that a part of the value of additional benefits otherwise required to be provided by reason of paragraph (2) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to stabilize and prevent undue fluctuations in the additional benefits offered in those subsequent periods by the organization in accordance with paragraph (3). Any of such value of additional benefits which is not provided to members of the organization in accordance with paragraph (3) prior to the end of such period, shall revert for the use of such trust funds.

(6)(A) A risk-sharing contract under this section shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1395h(c)(2) and 1395u(c)(2) of this title) of claims submitted for services and supplies furnished to individuals pursuant to such contract, if the services or supplies are not furnished under a contract between the organization and the provider or supplier.

(B) In the case of an eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with subparagraph (A), the Secretary may provide for direct payment of the amounts owed to providers and suppliers for such covered services furnished to individuals enrolled under this section under the contract. If the Secretary provides for such direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this section to reflect the amount of the Secretary's payments (and costs incurred by the Secretary in making such payments).

(h) Reasonable cost reimbursement contract; requirements

(1) If—

(A) the Secretary is not satisfied that an eligible organization has the capacity to bear the risk of potential losses under a risk-sharing contract under this section, or

(B) the eligible organization so elects or has an insufficient number of members to be eligible to enter into a risk-sharing contract under subsection (g)(1) of this section,

the Secretary may, if he is otherwise satisfied that the eligible organization is able to perform its contractual obligations effectively and efficiently, enter into a contract with such organization pursuant to which such organization is reimbursed on the basis of its reasonable cost (as defined in section 1395x(v) of this title) in the manner prescribed in paragraph (3).

(2) A reasonable cost reimbursement contract under this subsection may, at the option of such organization, provide that the Secretary—

(A) will reimburse hospitals and skilled nursing facilities either for the reasonable cost (as determined under section 1395x(v) of this title) or for payment amounts determined in accordance with section 1395ww of this title, as applicable, of services furnished to individuals enrolled with such organization pursuant to subsection (d) of this section, and

(B) will deduct the amount of such reimbursement from payment which would otherwise be made to such organization.

If such an eligible organization pays a hospital or skilled nursing facility directly, the amount paid shall not exceed the reasonable cost of the services (as determined under section 1395x(v) of this title) or the amount determined under section 1395ww of this title, as applicable, unless such organization demonstrates to the satisfaction of the Secretary that such excess payments are justified on the basis of advantages gained by the organization.

(3) Payments made to an organization with a reasonable cost reimbursement contract shall be subject to appropriate retroactive corrective adjustment at the end of each contract year so as to assure that such organization is paid for the reasonable cost actually incurred (excluding any part of incurred cost found to be unnecessary in the efficient delivery of health services) or the amounts otherwise determined under section 1395ww of this title for the types of expenses otherwise reimbursable under this subchapter for providing services covered under this subchapter to individuals described in subsection (a)(1) of this section.

(4) Any reasonable cost reimbursement contract with an eligible organization under this subsection shall provide that the Secretary shall require, at such time following the expiration of each accounting period of the eligible organiza-

tion (and in such form and in such detail) as he may prescribe—

(A) that the organization report to him in an independently certified financial statement its per capita incurred cost based on the types of components of expenses otherwise reimbursable under this subchapter for providing services described in subsection (a)(1) of this section, including therein, in accordance with accounting procedures prescribed by the Secretary, its methods of allocating costs between individuals enrolled under this section and other individuals enrolled with such organization;

(B) that failure to report such information as may be required may be deemed to constitute evidence of likely overpayment on the basis of which appropriate collection action may be taken;

(C) that in any case in which an eligible organization is related to another organization by common ownership or control, a consolidated financial statement shall be filed and that the allowable costs for such organization may not include costs for the types of expense otherwise reimbursable under this subchapter, in excess of those which would be determined to be reasonable in accordance with regulations (providing for limiting reimbursement to costs rather than charges to the eligible organization by related organizations and owners) issued by the Secretary; and

(D) that in any case in which compensation is paid by an eligible organization substantially in excess of what is normally paid for similar services by similar practitioners (regardless of method of compensation), such compensation may as appropriate be considered to constitute a distribution of profits.

(5)(A) After August 5, 1997, the Secretary may not enter into a reasonable cost reimbursement contract under this subsection (if the contract is not in effect as of August 5, 1997), except for a contract with an eligible organization which, immediately previous to entering into such contract, had an agreement in effect under section 1395*l*(a)(1)(A) of this title.

(B) Subject to subparagraph (C), the Secretary shall approve an application for a modification to a reasonable cost contract under this section in order to expand the service area of such contract if—

(i) such application is submitted to the Secretary on or before September 1, 2003; and

(ii) the Secretary determines that the organization with the contract continues to meet the requirements applicable to such organizations and contracts under this section.

(C)(i) Subject to clause (ii), a reasonable cost reimbursement contract under this subsection may be extended or renewed indefinitely.

(ii) For any period beginning on or after January 1, 2008, a reasonable cost reimbursement contract under this subsection may not be extended or renewed for a service area insofar as such area during the entire previous year was within the service area of—

(I) 2 or more MA regional plans described in clause (iii); or

(II) 2 or more MA local plans described in clause (iii).

(iii) A plan described in this clause for a year for a service area is a plan described in section 1395w–21(a)(2)(A)(i) of this title if the service area for the year meets the following minimum enrollment requirements:

(I) With respect to any portion of the area involved that is within a Metropolitan Statistical Area with a population of more than 250,000 and counties contiguous to such Metropolitan Statistical Area, 5,000 individuals.

(II) With respect to any other portion of such area, 1,500 individuals.

(i) Duration, termination, effective date, and terms of contract; powers and duties of Secretary

(1) Each contract under this section shall be for a term of at least one year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that in accordance with procedures established under paragraph (9), the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C) (whichever is applicable) on the eligible organization if the Secretary determines that the organization—

(A) has failed substantially to carry out the contract;

(B) is carrying out the contract in a manner substantially inconsistent with the efficient and effective administration of this section; or

(C) no longer substantially meets the applicable conditions of subsections (b), (c), (e), and (f) of this section.

(2) The effective date of any contract executed pursuant to this section shall be specified in the contract.

(3) Each contract under this section—

(A) shall provide that the Secretary, or any person or organization designated by him—

(i) shall have the right to inspect or otherwise evaluate (I) the quality, appropriateness, and timeliness of services performed under the contract and (II) the facilities of the organization when there is reasonable evidence of some need for such inspection, and

(ii) shall have the right to audit and inspect any books and records of the eligible organization that pertain (I) to the ability of the organization to bear the risk of potential financial losses, or (II) to services performed or determinations of amounts payable under the contract;

(B) shall require the organization with a risk-sharing contract to provide (and pay for) written notice in advance of the contract's termination, as well as a description of alternatives for obtaining benefits under this subchapter, to each individual enrolled under this section with the organization; and

(C)(i) shall require the organization to comply with subsections (a) and (c) of section 300e–17 of this title (relating to disclosure of certain financial information) and with the requirement of section 300e(c)(8)[2] of this title

[2] See References in Text note below.

(relating to liability arrangements to protect members);

(ii) shall require the organization to provide and supply information (described in section 1395cc(b)(2)(C)(ii) of this title) in the manner such information is required to be provided or supplied under that section;

(iii) shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties; and

(D) shall contain such other terms and conditions not inconsistent with this section (including requiring the organization to provide the Secretary with such information) as the Secretary may find necessary and appropriate.

(4) The Secretary may not enter into a risk-sharing contract with an eligible organization if a previous risk-sharing contract with that organization under this section was terminated at the request of the organization within the preceding five-year period, except in circumstances which warrant special consideration, as determined by the Secretary.

(5) The authority vested in the Secretary by this section may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this subchapter.

(6)(A) If the Secretary determines that an eligible organization with a contract under this section—

(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(ii) imposes premiums on individuals enrolled under this section in excess of the premiums permitted;

(iii) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this section;

(iv) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this section) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

(v) misrepresents or falsifies information that is furnished—

(I) to the Secretary under this section, or

(II) to an individual or to any other entity under this section;

(vi) fails to comply with the requirements of subsection (g)(6)(A) of this section or paragraph (8); or

(vii) in the case of a risk-sharing contract, employs or contracts with any individual or entity that is excluded from participation under this subchapter under section 1320a–7 or 1320a–7a of this title for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services;

the Secretary may provide, in addition to any other remedies authorized by law, for any of the remedies described in subparagraph (B).

(B) The remedies described in this subparagraph are—

(i) civil money penalties of not more than $25,000 for each determination under subparagraph (A) or, with respect to a determination under clause (iv) or (v)(I) of such subparagraph, of not more than $100,000 for each such determination, plus, with respect to a determination under subparagraph (A)(ii), double the excess amount charged in violation of such subparagraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under subparagraph (A)(iv), $15,000 for each individual not enrolled as a result of the practice involved,

(ii) suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, or

(iii) suspension of payment to the organization under this section for individuals enrolled after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

(C) In the case of an eligible organization for which the Secretary makes a determination under paragraph (1), the basis of which is not described in subparagraph (A), the Secretary may apply the following intermediate sanctions:

(i) Civil money penalties of not more than $25,000 for each determination under paragraph (1) if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization's contract.

(ii) Civil money penalties of not more than $10,000 for each week beginning after the initiation of procedures by the Secretary under paragraph (9) during which the deficiency that is the basis of a determination under paragraph (1) exists.

(iii) Suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.

(D) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under subparagraph (B)(i) or (C)(i) in the same manner as such provisions apply to a civil money penalty or proceeding under section 1320a–7a(a) of this title.

(7)(A) Each risk-sharing contract with an eligible organization under this section shall pro-

vide that the organization will maintain a written agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the eligible organization is located) or with an entity selected by the Secretary under section 1320c–3(a)(4)(C) of this title under which the review organization will perform functions under section 1320c–3(a)(4)(B) of this title and section 1320c–3(a)(14) of this title (other than those performed under contracts described in section 1395cc(a)(1)(F) of this title) with respect to services, furnished by the eligible organization, for which payment may be made under this subchapter.

(B) For purposes of payment under this subchapter, the cost of such agreement to the eligible organization shall be considered a cost incurred by a provider of services in providing covered services under this subchapter and shall be paid directly by the Secretary to the review organization on behalf of such eligible organization in accordance with a schedule established by the Secretary.

(C) Such payments—

(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

(ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of subchapter XI of this chapter.

(8)(A) Each contract with an eligible organization under this section shall provide that the organization may not operate any physician incentive plan (as defined in subparagraph (B)) unless the following requirements are met:

(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization—

(I) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or the physician group, and

(II) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.

(iii) The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.

(B) In this paragraph, the term ''physician incentive plan'' means any compensation arrangement between an eligible organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization.

(9) The Secretary may terminate a contract with an eligible organization under this section or may impose the intermediate sanctions described in paragraph (6) on the organization in accordance with formal investigation and compliance procedures established by the Secretary under which—

(A) the Secretary first provides the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's determination under paragraph (1) and the organization fails to develop or implement such a plan;

(B) in deciding whether to impose sanctions, the Secretary considers aggravating factors such as whether an organization has a history of deficiencies or has not taken action to correct deficiencies the Secretary has brought to the organization's attention;

(C) there are no unreasonable or unnecessary delays between the finding of a deficiency and the imposition of sanctions; and

(D) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before imposing any sanction or terminating the contract.

(j) Payment in full and limitation on actual charges; physicians, providers of services, or renal dialysis facilities not under contract with organization

(1)(A) In the case of physicians' services or renal dialysis services described in paragraph (2) which are furnished by a participating physician or provider of services or renal dialysis facility to an individual enrolled with an eligible organization under this section and enrolled under part B of this subchapter, the applicable participation agreement is deemed to provide that the physician or provider of services or renal dialysis facility will accept as payment in full from the eligible organization the amount that would be payable to the physician or provider of services or renal dialysis facility under part B of this subchapter and from the individual under such part, if the individual were not enrolled with an eligible organization under this section.

(B) In the case of physicians' services described in paragraph (2) which are furnished by a nonparticipating physician, the limitations on actual charges for such services otherwise applicable under part B of this subchapter (to serv-

ices furnished by individuals not enrolled with an eligible organization under this section) shall apply in the same manner as such limitations apply to services furnished to individuals not enrolled with such an organization.

(2) The physicians' services or renal dialysis services described in this paragraph are physicians' services or renal dialysis services which are furnished to an enrollee of an eligible organization under this section by a physician, provider of services, or renal dialysis facility who is not under a contract with the organization.

(k) Risk-sharing contracts

(1) Except as provided in paragraph (2)—

(A) on or after the date standards for Medicare+Choice organizations and plans are first established under section 1395w–26(b)(1) of this title, the Secretary shall not enter into any risk-sharing contract under this section with an eligible organization; and

(B) for any contract year beginning on or after January 1, 1999, the Secretary shall not renew any such contract.

(2) An individual who is enrolled in part B of this subchapter only and is enrolled in an eligible organization with a risk-sharing contract under this section on December 31, 1998, may continue enrollment in such organization in accordance with regulations described in section 1395w–26(b)(1) of this title.

(3) Notwithstanding subsection (a) of this section, the Secretary shall provide that payment amounts under risk-sharing contracts under this section for months in a year (beginning with January 1998) shall be computed—

(A) with respect to individuals entitled to benefits under both parts A and B of this subchapter, by substituting payment rates under section 1395w–23(a) of this title for the payment rates otherwise established under subsection (a) of this section, and

(B) with respect to individuals only entitled to benefits under part B of this subchapter, by substituting an appropriate proportion of such rates (reflecting the relative proportion of payments under this subchapter attributable to such part) for the payment rates otherwise established under subsection (a) of this section.

(4) The following requirements shall apply to eligible organizations with risk-sharing contracts under this section in the same manner as they apply to Medicare+Choice organizations under part C of this subchapter:

(A) Data collection requirements under section 1395w–23(a)(3)(B) of this title.

(B) Restrictions on imposition of premium taxes under section 1395w–24(g) of this title in relating to payments to such organizations under this section.

(C) The requirement to accept enrollment of new enrollees during November 1998 under section 1395w–21(e)(6) of this title.

(D) Payments under section 1395w–27(e)(2) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1876, as added and amended Pub. L. 92–603, title II, §§ 226(a), 278(b)(3), Oct. 30, 1972, 86 Stat. 1396, 1453; Pub. L. 93–233, § 18(m), (n), Dec. 31, 1973, 87 Stat. 970, 971; Pub. L. 94–460, title II, § 201(a)–(d), Oct. 8, 1976, 90 Stat. 1956, 1957; Pub. L. 95–292, § 5, June 13, 1978, 92 Stat. 315; Pub. L. 97–248, title I, § 114(a), Sept. 3, 1982, 96 Stat. 341; Pub. L. 97–448, title III, § 309(b)(12), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–21, title VI, §§ 602(g), 606(a)(3)(H), Apr. 20, 1983, 97 Stat. 164, 171; Pub. L. 98–369, div. B, title III, §§ 2350(a)(1), (b)(1), (2), (c), 2354(b)(37), (38), July 18, 1984, 98 Stat. 1097, 1098, 1102; Pub. L. 99–272, title IX, § 9211(a)–(d), Apr. 7, 1986, 100 Stat. 178, 179; Pub. L. 99–509, title IX, §§ 9312(b)(1), (c)(1), (2), (d)(1), (e)(1), (f), 9353(e)(2), Oct. 21, 1986, 100 Stat. 1999–2001, 2048; Pub. L. 99–514, title XVIII, § 1895(b)(11)(A), Oct. 22, 1986, 100 Stat. 2934; Pub. L. 100–203, title IV, §§ 4011(a)(1), (b)(1), 4012(b), 4013(a), 4014, 4018(a), 4039(h)(8), Dec. 22, 1987, 101 Stat. 1330–60, 1330–61, 1330–65, as amended Pub. L. 100–360, title IV, § 411(c)(3), (e)(3), July 1, 1988, 102 Stat. 773, 776; Pub. L. 100–360, title II, §§ 202(f), 211(c)(3), 224, title IV, § 411(c)(1), (4), (6), formerly (5), July 1, 1988, 102 Stat. 717, 738, 748, 772, 773, as amended Pub. L. 100–485, title VI, § 608(d)(19)(B), (C), Oct. 13, 1988, 102 Stat. 2419; Pub. L. 100–647, title VIII, § 8412(a)(1), Nov. 10, 1988, 102 Stat. 3801; Pub. L. 101–234, title II, §§ 201(a), 202(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6206(a)(1), (b)(1), 6212(b)(1), (c)(2), 6411(d)(3)(A), Dec. 19, 1989, 103 Stat. 2244, 2250, 2271; Pub. L. 101–508, title IV, §§ 4204(a)(1), (2), (c)(1), (2), (d)(1), (e)(1), 4206(b)(1), Nov. 5, 1990, 104 Stat. 1388–108 to 1388–111, 1388–116; Pub. L. 103–296, title I, § 108(c)(6), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 103–432, title I, § 157(b)(1), (4), Oct. 31, 1994, 108 Stat. 4442; Pub. L. 104–191, title II, §§ 215(a), (b), 231(g), Aug. 21, 1996, 110 Stat. 2005–2007, 2014; Pub. L. 105–33, title IV, § 4002(a)–(b)(2)(A), Aug. 5, 1997, 111 Stat. 328, 329; Pub. L. 106–113, div. B, 1000(a)(6) [title V, § 503], Nov. 29, 1999, 113 Stat. 1536, 1501A–380; Pub. L. 106–554, § 1(a)(6) [title VI, § 634], Dec. 21, 2000, 114 Stat. 2763, 2763A–568; Pub. L. 108–173, title II, § 234, title VII, § 736(d)(2), title IX, § 940(b)(2)(B), Dec. 8, 2003, 117 Stat. 2209, 2357, 2417.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 300e–9(d) of this title, referred to in subsec. (b)(1), was redesignated section 300e–9(c) of this title by Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

Parts A and B of subchapter XI of this chapter, referred to in subsecs. (c)(2) and (i)(7)(A), (B)(ii), are classified to sections 1301 et seq. and 1320c et seq., respectively, of this title.

Section 300e(c)(8) of this title, referred to in subsec. (i)(3)(C)(i), was redesignated section 300e(c)(7) of this title by Pub. L. 100–517, § 5(b), Oct. 24, 1988, 102 Stat. 2579.

Part C of this subchapter, referred to in subsec. (k)(4), is classified to section 1395w–21 et seq. of this title.

AMENDMENTS

2003—Subsec. (c)(2)(B). Pub. L. 108–173, § 736(d)(2)(A), substituted ''significant'' for ''signifcant'' in introductory provisions.

Subsec. (c)(5)(B). Pub. L. 108–173, § 940(b)(2)(B), which directed amendment of subsec. (b)(5)(B) by inserting at end ''The provisions of section 1395ff(b)(1)(E)(iii) of this title shall apply with respect to dollar amounts specified in the first 2 sentences of this subparagraph in the same manner as they apply to the dollar amounts specified in section 1395ff(b)(1)(E)(i) of this title.'', was executed by making the insertion at end of subsec.

(c)(5)(B), to reflect the probable intent of Congress. Subsec. (b) does not contain a par. (5)(B).

Subsec. (h)(5)(C). Pub. L. 108–173, §234, amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The Secretary may not extend or renew a reasonable cost reimbursement contract under this subsection for any period beyond December 31, 2004.''

Subsec. (j)(2). Pub. L. 108–173, §736(d)(2)(B), substituted ''this section'' for ''this setion''.

2000—Subsec. (h)(5)(B), (C). Pub. L. 106–554 added subpar. (B) and redesignated former subpar. (B) as (C).

1999—Subsec. (h)(5)(B). Pub. L. 106–113 substituted ''2004'' for ''2002''.

1997—Subsec. (f)(1). Pub. L. 105–33, §4002(a)(1), substituted ''For contract periods beginning before January 1, 1999, each'' for ''Each'' and struck out ''or under a State plan approved under subchapter XIX of this chapter'' before period at end.

Subsec. (f)(2). Pub. L. 105–33, §4002(a)(2), substituted ''Subject to paragraph (4), the Secretary'' for ''The Secretary''.

Subsec. (f)(4). Pub. L. 105–33, §4002(a)(3), added par. (4).

Subsec. (h)(5). Pub. L. 105–33, §4002(b)(2)(A), added par. (5).

Subsec. (k). Pub. L. 105–33, §4002(b)(1), added subsec. (k).

1996—Subsec. (i)(1). Pub. L. 104–191, §215(a)(1), substituted ''in accordance with procedures established under paragraph (9), the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C) (whichever is applicable) on the eligible organization if the Secretary determines that the organization—'' for ''the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the eligible organization involved as he may provide in regulations), if he finds that the organization—'' in introductory provisions, added subpars. (A) to (C), and struck out former subpars. (A) to (C) which read as follows:

''(A) has failed substantially to carry out the contract,

''(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this section, or

''(C) no longer substantially meets the applicable conditions of subsections (b), (c), (e), and (f) of this section.''

Subsec. (i)(6)(B). Pub. L. 104–191, §215(a)(4), struck out concluding provisions which read as follows: ''The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as they apply to a civil money penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (i)(6)(C). Pub. L. 104–191, §215(a)(2), added subpar. (C).

Subsec. (i)(6)(D). Pub. L. 104–191, §231(g), added subpar. (D).

Subsec. (i)(7)(A). Pub. L. 104–191, §215(b), substituted ''a written agreement'' for ''an agreement''.

Subsec. (i)(9). Pub. L. 104–191, §215(a)(3), added par. (9).

1994—Subsec. (a)(1)(E)(ii)(I). Pub. L. 103–432, §157(b)(4), struck out comma after ''contributed to''.

Subsec. (a)(3). Pub. L. 103–432, §157(b)(1), substituted ''subsections (c)(2)(B)(ii) and (c)(7) of this section'' for ''subsection (c)(7) of this section''.

Subsec. (c)(5)(B). Pub. L. 103–296 inserted at end ''In applying sections 405(b) and 405(g) of this title as provided in this subparagraph, and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.''

1990—Subsec. (a)(1)(E). Pub. L. 101–508, §4204(e)(1), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(6). Pub. L. 101–508, §4204(c)(2), substituted ''subsections (c)(2)(B)(ii) and (c)(7)'' for ''subsection (c)(7)''.

Subsec. (c)(2). Pub. L. 101–508, §4204(c)(1), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) and former cls. (i) and (ii) as cls. (i) and (ii) and subcls. (I) and (II), respectively, and added subpar. (B).

Subsec. (c)(8). Pub. L. 101–508, §4206(b)(1), added par. (8).

Subsec. (i)(6)(A)(vi). Pub. L. 101–508, §4204(a)(2), inserted ''or paragraph (8)'' after ''(g)(6)(A) of this section''.

Subsec. (i)(8). Pub. L. 101–508, §4204(a)(1), added par. (8).

Subsec. (j)(1)(A). Pub. L. 101–508, §4204(d)(1)(A), substituted ''physicians' services or renal dialysis services'' for ''physicians' services'', ''physician or provider of services or renal dialysis facility'' for ''physician'' in three places, and ''applicable participation agreement'' for ''participation agreement under section 1395u(h)(1) of this title''.

Subsec. (j)(2). Pub. L. 101–508, §4204(d)(1)(B), substituted ''physicians' services or renal dialysis services'' for ''physicians' services'' in two places and ''which are furnished to an enrollee of an eligible organization under this setion [sic] by a physician, provider of services, or renal dialysis facility who is not under a contract with the organization.'' for ''which—'' and subpars. (A) and (B) which read as follows:

''(A) are emergency services or out-of-area coverage (described in clauses (iii) and (iv) of subsection (b)(2)(A) of this section), and

''(B) are furnished to an enrollee of an eligible organization under this section by a person who is not under a contract with the organization.''

1989—Subsec. (a)(1)(F). Pub. L. 101–239, §6206(a)(1), added subpar. (F).

Subsec. (a)(5). Pub. L. 101–234, §202(a), repealed Pub. L. 100–360, §211(c)(3)(A), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (c)(3)(A)(i). Pub. L. 101–239, §6206(b)(1)(A), substituted ''period or periods'' for ''30-day period''.

Subsec. (c)(3)(A)(ii). Pub. L. 101–239, §6206(b)(1)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: ''For each area served by more than one eligible organization under this section, the Secretary (after consultation with such organizations) shall establish a single 30-day period each year during which all eligible organizations serving the area must provide for open enrollment under this section. The Secretary shall determine annual per capita rates under subsection (a)(1)(A) of this section in a manner that assures that individuals enrolling during such a 30-day period will not have premium charges increased or any additional benefits decreased for 12 months beginning on the date the individual's enrollment becomes effective. An eligible organization may provide for such other open enrollment period or periods as it deems appropriate consistent with this section.''

Subsecs. (e)(1), (g)(3)(A). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §202(f), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (g)(5). Pub. L. 101–239, §6212(c)(2), struck out ''and during a period of not longer than four years'' after first reference to ''Secretary''.

Subsec. (i)(6)(A)(vii). Pub. L. 101–239, §6411(d)(3)(A), added cl. (vii).

Subsec. (j). Pub. L. 101–239, §6212(b)(1), added subsec. (j).

1988—Subsec. (a)(5). Pub. L. 100–360, §211(c)(3)(B), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The portion of that payment to the organization for a month to be paid by the latter trust fund shall be equal to 200 percent of the sum of—

''(A) the product of (i) the number of such individuals for the month who have attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1395r(a)(1) of this title, and

''(B) the product of (i) the number of such individuals for the month who have not attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1395r(a)(4) of this title.''

Pub. L. 100–360, § 211(c)(3)(A), substituted '', the Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund'' for ''and the Federal Supplementary Medical Insurance Trust Fund'' in first sentence.

Subsec. (c)(3)(F). Pub. L. 100–360, § 411(c)(1), realigned margin with left margin of subpar. (G).

Subsec. (e)(1). Pub. L. 100–360, § 202(f)(1), inserted at end ''The preceding sentence shall be applied separately with respect to covered outpatient drugs.''

Subsec. (f)(3). Pub. L. 100–647 redesignated par. (4) as (3) and struck out former par. (3) which read as follows:

''(A) An eligible organization described in subparagraph (B) may elect, for purposes of enrollment and residency requirements under this section and for determining the compliance of a subdivision, subsidiary, or affiliate described in subparagraph (B)(iii) with the requirement of paragraph (1) for the period before October 1, 1992, to have members described in subparagraph (B)(iii) who receive services through the subdivision, subsidiary, or affiliate considered to be members of the parent organization.

''(B) An eligible organization described in this subparagraph is an eligible organization which—

''(i) is described in section 1396b(m)(2)(B)(iii) of this title;

''(ii) has members who have a collectively bargained contractual right to obtain health benefits from the organization;

''(iii) elects to provide benefits under a risk-sharing contract to individuals residing in a service area, who have a collectively bargained contractual right to obtain benefits from the organization, through a subdivision, subsidiary, or affiliate which itself is an eligible organization serving the area and which is owned or controlled by the parent eligible organization; and

''(iv) has assumed any risk of insolvency and quality assurance with respect to individuals receiving benefits through such a subdivision, subsidiary, or affiliate.''

Subsec. (f)(3)(A). Pub. L. 100–360, § 411(c)(6), formerly § 411(c)(5), as redesignated by Pub. L. 100–485, § 608(d)(19)(C), inserted ''enrollment and residency requirements under this section and for'' after ''for purposes of'' and substituted ''described in subparagraph (B)(iii) who receives services through the subdivision'' for ''of the subdivision''.

Subsec. (f)(4). Pub. L. 100–647 redesignated par. (4) as (3).

Subsec. (g)(3)(A). Pub. L. 100–360, § 202(f)(2), substituted ''rates'' for ''rate''.

Subsec. (g)(5). Pub. L. 100–360, § 411(c)(3), amended Pub. L. 100–203, § 4013, see 1987 Amendment note below.

Subsec. (i)(6)(A). Pub. L. 100–360, § 411(c)(4)(A), inserted '', in addition to any other remedies authorized by law,'' after ''the Secretary may provide'' in concluding provisions.

Subsec. (i)(6)(B). Pub. L. 100–360, § 411(c)(4)(C), formerly § 411(c)(4)(B), as redesignated by Pub. L. 100–485, § 608(d)(19)(B)(ii), substituted ''or proceeding under section 1320a–7a(a) of this title'' for ''under that section'' in last sentence.

Subsec. (i)(6)(B)(i). Pub. L. 100–360, § 411(c)(4)(B), as added by Pub. L. 100–485, § 608(d)(19)(B)(i), (iii), inserted ''of such subparagraph'' after ''(v)(I)''.

Pub. L. 100–360, § 224, inserted at end ''plus, with respect to a determination under subparagraph (A)(ii), double the excess amount charged in violation of such subparagraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under subparagraph (A)(iv), $15,000 for each individual not enrolled as a result of the practice involved,''.

Subsec. (i)(7)(A). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(8)(A), (B), see 1987 Amendment note below.

Subsec. (i)(7)(B). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(8)(C), see 1987 Amendment note below.

1987—Subsec. (c)(3)(F). Pub. L. 100–203, § 4011(a)(1), added subpar. (F).

Subsec. (c)(3)(G). Pub. L. 100–203, § 4011(b)(1), added subpar. (G).

Subsec. (f)(3), (4). Pub. L. 100–203, § 4018(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (g)(4). Pub. L. 100–203, § 4012(b), struck out par. (4) which read as follows: ''A risk-sharing contract under this subsection may, at the option of an eligible organization, provide that the Secretary—

''(A) will reimburse hospitals and skilled nursing facilities either for payment amounts determined in accordance with section 1395ww of this title, or, if applicable, for the reasonable cost (as determined under section 1395x(v) of this title) or other appropriate basis for payment established under this subchapter, of inpatient services furnished to individuals enrolled with such organization pursuant to subsection (d) of this section, and

''(B) will deduct the amount of such reimbursement for payment which would otherwise be made to such organization.''

Subsec. (g)(5). Pub. L. 100–203, § 4013, which directed amendment of par. (5) by substituting ''six years'' for ''four years'', was amended generally by Pub. L. 100–360, § 411(c)(3), so that it does not amend this section.

Subsec. (i)(6). Pub. L. 100–203, § 4014, amended par. (6) generally. Prior to amendment, par. (6) read as follows:

''(6)(A) Any eligible organization with a risk-sharing contract under this section that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $10,000 for each such failure.

''(B) The provisions of section 1320a–7a of this title (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.''

Subsec. (i)(7)(A). Pub. L. 100–203, § 4039(h)(8)(A), (B), as added by Pub. L. 100–360, § 411(e)(3), substituted ''Each'' for ''Except as provided under section 1320c–3(a)(4)(C) of this title, each'', inserted ''or with an entity selected by the Secretary under section 1320c–3(a)(4)(C) of this title'' after ''located)'', and substituted ''which the review organization'' for ''which the peer review organization''.

Subsec. (i)(7)(B). Pub. L. 100–203, § 4039(h)(8)(C), as added by Pub. L. 100–360, § 411(e)(3), substituted ''the review organization'' for ''the peer review organization''.

1986—Subsec. (a)(1)(A). Pub. L. 99–514 substituted ''announce (in a manner intended to provide notice to interested parties)'' for ''publish'' in introductory provisions.

Pub. L. 99–272, § 9211(d), inserted '', and shall publish not later than September 7 before the calendar year concerned'' after ''The Secretary shall annually determine'' in introductory provisions.

Subsec. (a)(3). Pub. L. 99–272, § 9211(a)(2), substituted ''Subject to subsection (c)(7) of this section, payments'' for ''Payments''.

Subsec. (a)(6). Pub. L. 99–272, § 9211(a)(3), substituted ''Subject to subsection (c)(7) of this section, if'' for ''If''.

Subsec. (c)(3)(B). Pub. L. 99–272, § 9211(b), substituted ''the date on which'' for ''a full calendar month after'',

and inserted provision at end that in the case of an individual's termination of enrollment, the organization shall provide the individual with a copy of the written request for termination of enrollment and a written explanation of the period (ending on the effective date of the termination) during which the individual continues to be enrolled with the organization and may not receive benefits under this subchapter other than through the organization.

Subsec. (c)(3)(C). Pub. L. 99–272, § 9211(c), inserted provisions at end that no brochures, application forms, or other promotional or informational material may be distributed by an organization to (or for the use of) individuals eligible to enroll with the organization under this section unless at least 45 days before its distribution, the organization has submitted the material to the Secretary for review and the Secretary has not disapproved the distribution of the material, and that Secretary shall review all such material submitted and shall disapprove such material if the Secretary determines, in the Secretary's discretion, that the material is materially inaccurate or misleading or otherwise makes a material misrepresentation.

Subsec. (c)(7). Pub. L. 99–272, § 9211(a)(1), added par. (7).

Subsec. (c)(3)(E). Pub. L. 99–509, § 9312(b)(1), added subpar. (E).

Subsec. (f)(2). Pub. L. 99–509, § 9312(c)(1), struck out ''if the Secretary determines that'' after ''imposed by paragraph (1) only'', added new subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

''(A) special circumstances warrant such modification or waiver, and

''(B) the eligible organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter.''

Subsec. (f)(3). Pub. L. 99–509, § 9312(c)(2)(A), added par. (3).

Subsec. (g)(6). Pub. L. 99–509, § 9312(d)(1), added par. (6).

Subsec. (i)(1)(C). Pub. L. 99–509, § 9312(c)(3)(B), substituted ''(e), and (f)'' for ''and (e)''.

Subsec. (i)(3)(C). Pub. L. 99–509, § 9312(e)(1), designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (i)(6). Pub. L. 99–509, § 9312(f), added par. (6).

Subsec. (i)(7). Pub. L. 99–509, § 9353(e)(2), added par. (7).

1984—Subsec. (b)(2)(D). Pub. L. 98–369, § 2354(b)(37), substituted ''subparagraph (A)'' for ''paragraph (1)''.

Subsec. (c)(3)(A). Pub. L. 98–369, § 2350(a)(1), designated existing provisions as cl. (i), inserted ''and including the 30-day period specified under clause (ii)'' after ''30 days duration every year'', and added cl. (ii).

Subsec. (c)(4)(A)(i). Pub. L. 98–369, § 2354(b)(38), substituted ''with reasonable promptness'' for ''promptly as appropriate''.

Subsec. (g)(2). Pub. L. 98–369, § 2350(b)(1), inserted ''and except that an organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (5)'' at end of first sentence.

Subsec. (g)(4)(A). Pub. L. 98–369, § 2350(c), inserted ''and skilled nursing facilities'' after ''hospitals'', inserted ''or the appropriate basis for payment established under this subchapter'' after ''section 1395x(v) of this title)'', and struck out ''hospital'' before ''services furnished to individuals''.

Subsec. (g)(5). Pub. L. 98–369, § 2350(b)(2), added par. (5).

1983—Subsec. (a)(5)(A)(ii), (B)(ii). Pub. L. 98–21, § 606(a)(3)(H), substituted ''1395r(a)(1)'' for ''1395r(c)(1)''.

Subsec. (g)(1). Pub. L. 97–448 substituted ''subsection (b)'' for ''subsection (b)(1)''.

Subsec. (g)(4). Pub. L. 98–21, § 602(g), added par. (4).

1982—Pub. L. 97–248 completely revised section, expanding its coverage to permit payments to both health maintenance organizations and competitive medical plans.

1978—Subsec. (b)(2)(B). Pub. L. 95–292 substituted ''Administrator of the Health Care Financing Administration'' for ''Commissioner of Social Security''.

1976—Subsec. (b). Pub. L. 94–460, § 201(a), struck out provisions defining a health maintenance organization as a public or private organization which provides physicians' services and a sufficient number of primary care and specialty care physicians, assures its members access to qualified practitioners in specialties available in area served by such organization, demonstrates financial responsibility and means to provide comprehensive health care services, has at least half of its enrolled members under age 65, assures prompt and qualified health service, and has an open enrollment period at least every year, and revised the definition and requirements of an health maintenance organization to conform to those set forth in the Public Health Service Act, except that the services which such an organization must provide are those covered in parts A and B of this subchapter rather than the basic health services defined in the Public Health Service Act, and inserted provisions requiring Secretary to administer determinations of whether an organization is a health maintenance organization through and in the office of the Assistant Secretary for Health, to integrate the administration of such functions and duties with the administration of provisions requiring the continued regulation of health maintenance organizations under the Public Health Service Act, and to administer other provisions of this section through the Commissioner of Social Security.

Subsec. (h). Pub. L. 94–460, § 201(b), substituted provisions that each health maintenance organization with which the Secretary enters into a contract under this section have an enrolled membership at least half of which consists of individuals who have not attained age 65, with the Secretary empowered to waive that requirement for a period of not more than three years from the date a health maintenance organization first enters into an agreement with the Secretary pursuant to subsection (i) of this section for provisions that such requirement not apply with respect to any health maintenance organization for such period not to exceed three years from the date such organization enters into an agreement with the Secretary pursuant to subsection (i) of this section, as the Secretary might permit.

Subsec. (i)(6)(B). Pub. L. 94–460, § 201(c), substituted ''(other than costs with respect to out-of-area services and, in the case of an organization which has entered into a risk-sharing contract with the Secretary pursuant to paragraph (2)(A), the cost of providing any member with basic health services the aggregate value of which exceeds $5,000 in any year)'' for ''(Other than those with respect to out-of-area services)''.

Subsec. (k). Pub. L. 94–460, § 201(d), added subsec. (k).

1973—Subsec. (a)(3)(A)(ii). Pub. L. 93–233, § 18(m), struck out '', with the apportionment of savings being proportional to the losses absorbed and not yet offset'' at end.

Subsec. (g)(2). Pub. L. 93–233, § 18(n), substituted ''portion of its premium rate or other charges'' for ''portion'' and ''shall not exceed'' for ''may not exceed'', and struck out cl. (i) designation preceding ''the actuarial value'' and provisions reading ''less (ii) the actuarial value of other charges made in lieu of such deductible and coinsurance'', respectively.

1972—Subsec. (i). Pub. L. 92–603, § 278(b)(3), substituted ''skilled nursing facility'' for ''extended care facility'' and ''skilled nursing facilities'' for ''extended care facilities''.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 215(c) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section] shall apply with respect to contract years beginning on or after January 1, 1997.''

Amendment by section 231(g) of Pub. L. 104–191 applicable to acts or omissions occurring on or after Jan. 1, 1997, see section 231(i) of Pub. L. 104–191, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 157(b)(8) of Pub. L. 103–432, set out as a note under section 1395y of this title.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4204(a)(4) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by paragraph (3) [amending section 1320a–7a of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 4204(c)(3) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §157(b)(2), Oct. 31, 1994, 108 Stat. 4442, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to national coverage determinations that are not incorporated in the determination of the per capita rate of payment for individuals enrolled for years beginning with 1991 with an eligible organization which has entered into a risk-sharing contract under section 1876 of the Social Security Act [this section].''

Section 4204(d)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §157(b)(3), Oct. 31, 1994, 108 Stat. 4442, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to items and services furnished on or after January 1, 1991.''

Section 4204(e)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §157(b)(5), Oct. 31, 1994, 108 Stat. 4442, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to individuals enrolling with an eligible organization under a health benefit plan operated, sponsored, or contributed to, by the individual's employer or former employer (or the employer or former employer of the individual's spouse) on or after January 1, 1991.''

Amendment by section 4206(b)(1) of Pub. L. 101–508 applicable to contracts under this section and payments under section 1395*l*(a)(1)(A) of this title as of the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4206(e)(2) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6206(b)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect 60 days after the date of the enactment of this Act [Dec. 19, 1989].''

Section 6212(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after April 1, 1990.''

Section 6212(c)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and repealing provisions set out as notes below] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

Section 6411(d)(4)(B) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (3) [amending this section and section 1396a of this title] shall apply to employment and contracts as of 90 days after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Amendment by section 202(a) of Pub. L. 101–234 effective Jan. 1, 1990, and applicable to premiums for months beginning after Dec. 31, 1989, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8412(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall not apply to contracts in effect on the date of the enactment of this Act [Nov. 10, 1988] or extensions (not exceeding 90 days) thereof.''

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(f) of Pub. L. 100–360 applicable to enrollments effected on or after Jan. 1, 1990, see section 202(m)(3) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 211(c)(3) of Pub. L. 100–360 applicable, except as specified in such amendment, to monthly premiums for months beginning with January 1989, see section 211(d) of Pub. L. 100–360, set out as a note under section 1395r of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(c)(1), (3), (4), (6), (e)(3) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4011(a)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act [Dec. 22, 1987].''

Section 4011(b)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4012(d) of Pub. L. 100–203 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395cc this title] shall apply to admissions occurring on or after April 1, 1988, or, if later, the earliest date the Secretary can provide the information required under subsection (c) [set out as a note below] in machine readable form.''

Section 4013(b) of Pub. L. 100–203, which provided the effective date for amendment made by section 4013(a) of Pub. L. 100–203, was omitted in the general amendment of section 4013 of Pub. L. 100–203 by Pub. L. 100–360, title IV, §411(c)(3), July 1, 1988, 102 Stat. 773.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(11)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to determinations of per capita payment rates for 1987 and subsequent years.''

Section 9312(b)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1987, and shall apply to enrollments effected on or after such date.''

Section 9312(c)(3) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4018(d), Dec. 22, 1987, 101 Stat. 1330–66; Pub. L. 101–239, title VI, §6212(a), Dec. 19, 1989, 103 Stat. 2249; Pub. L. 103–66, title XIII, §13569, Aug. 10, 1993, 107 Stat. 608, provided that:

''(A) NEW RESTRICTION.—The amendment made by paragraph (1) [amending this section] shall apply to modifications and waivers granted after the date of the enactment of this Act [Oct. 21, 1986].

''(B) SANCTIONS FOR NONCOMPLIANCE.—The amendments made by paragraph (2) [amending this section]

shall take effect on the date of the enactment of this Act.

''(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization (or successor organization) that—

''(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act [subsec. (f)(2) of this section], a modification or waiver of the requirement imposed by paragraph (1) of that section, but

''(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection,

the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary of Health and Human Services. If the Secretary determines that the organization has complied, or made significant progress towards compliance, with such schedule of compliance, the Secretary may extend such waiver. If the Secretary determines that the organization has not complied with such schedule, the Secretary may provide for a sanction described in section 1876(f)(3) of the Social Security Act [subsec. (f)(3) of this section] (as amended by this section) effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance.

''(D) TREATMENT OF CERTAIN WAIVERS.—In the case of an eligible organization (or successor organization) that is described in clauses (i) and (ii) of subparagraph (C) and that received a grant or grants totaling at least $3,000,000 in fiscal year 1987 under section 329(d)(1)(A) or 330(d)(1) of the Public Health Service Act [42 U.S.C. 254b(d)(1)(A), 254c(d)(1)]—

''(i) before January 1, 1996, section 1876(f) of the Social Security Act [subsec. (f) of this section] shall not apply to the organization;

''(ii) beginning on January 1, 1990, the Secretary of Health and Human Services shall conduct an annual review of the organization to determine the organization's compliance with the quality assurance requirements of section 1876(c)(6) of such Act [subsec. (c)(6) of this section]; and

''(iii) after January 1, 1990, if the organization receives an unfavorable review under clause (ii), the Secretary, after notice to the organization of the unfavorable review and an opportunity to correct any deficiencies identified during the review, may provide for the sanction described in section 1876(f)(3) of such Act [subsec. (f)(3) of this section] effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization that the organization is not in compliance with the requirements of section 1876(c)(6) of such Act.''

Section 9312(d)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to risk-sharing contracts under section 1876 of the Social Security Act [this section] with respect to services furnished on or after January 1, 1987.''

Section 9312(e)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to contracts as of January 1, 1987.''

Section 9353(e)(3)(B) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4039(h)(9)(C), as added by Pub. L. 100–360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 776, provided that: ''The amendment made by paragraph (2) [amending this section] shall apply to risk-sharing contracts with eligible organizations, under section 1876 of the Social Security Act [this section], as of April 1, 1987. The provisions of section 1876(i)(7) of the Social Security Act [subsec. (i)(7) of this section] (added by such amendment) shall apply to health maintenance organizations with contracts in effect under section 1876 of such Act (as in effect before the date of the enactment of Public Law 97–248 [Sept. 3, 1982]) in the same manner as it applies to eligible organizations with risk-sharing contracts in effect under section 1876 of such Act (as in effect on the date of the enactment of this Act [Dec. 22, 1987]).''

Section 9211(e) of Pub. L. 99–272 provided that:

''(1) FINANCIAL RESPONSIBILITY.—The amendments made by subsection (a) [amending this section] shall apply to enrollments and disenrollments that become effective on or after the date of the enactment of this Act [Apr. 7, 1986].

''(2) DISENROLLMENTS.—The amendments made by subsection (b) [amending this section] shall apply to requests for termination of enrollment submitted on or after May 1, 1986.

''(3) MATERIAL REVIEW.—(A) The amendment made by subsection (c) [amending this section] shall not apply to material which has been distributed before July 1, 1986.

''(B) Such amendment also shall not apply so as to require the submission of material which is distributed before July 1, 1986.

''(C) Such amendment shall also not apply to material which the Secretary determines has been prepared before the date of the enactment of this Act [Apr. 7, 1986] and for which a commitment for distribution has been made, if the application of such amendment would constitute a hardship for the organization involved.

''(4) PUBLICATION.—The amendment made by subsection (d) [amending this section] shall apply to determinations of per capita rates of payment for 1987 and subsequent years.

''(5) NECESSARY MODIFICATION OF CONTRACTS.—The Secretary of Health and Human Services shall provide for such changes in the risk-sharing contracts which have been entered into under section 1876 of the Social Security Act [this section] as may be necessary to conform to the requirements imposed by the amendments made by this section [amending this section] on a timely basis.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2350(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and enacting provisions set out as notes under this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(37), (38) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS; TRANSITIONAL RULE

Amendment by section 602(g) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by section 606(a)(3)(H) of Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

Amendment by section 309(b)(12) of Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 114(c) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. B, title III, § 2354(c)(3)(A), (B), July 18,

1984, 98 Stat. 1102; Pub. L. 98–617, §3(a)(5), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–509, title IX, §9312(a), Oct. 21, 1986, 100 Stat. 1999, provided that:

''(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to services furnished on or after the initial effective date (as defined in paragraph (4)), except that such amendment shall not apply—

''(A) with respect to services furnished by an eligible organization to any individual who is enrolled with that organization under an existing cost contract (as defined in paragraph (3)(A)) and entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act [this subchapter] at the time the organization first enters into a new risk-sharing contract (as defined in paragraph (3)(D)) unless—

''(i) the individual requests at any time that the amendment apply, or

''(ii) the Secretary determines at any time that the amendment should apply to all members of the organization because of administrative costs or other administrative burdens involved and so informs in advance each affected member of the eligible organization;

''(B) with respect to services furnished by an eligible organization during the five-year period beginning on the initial effective date, if—

''(i) the organization has an existing risk-sharing contract (as defined in paragraph (3)(B)) on the initial effective date, or

''(ii) on the date of the enactment of this Act [Sept. 3, 1982] the organization was furnishing services pursuant to an existing demonstration project (as defined in paragraph (3)(C)), such demonstration project is concluded before the initial effective date, and before such initial effective date the organization enters into an existing risk-sharing contract,

unless the organization requests that the amendment apply earlier; or

''(C) with respect to services furnished by an eligible organization during the period of an existing demonstration project if on the initial effective date the organization was furnishing services pursuant to the project and if the project concludes after such date.

''(2)(A) In the case of an eligible organization which has in effect an existing cost contract (as defined in paragraph (3)(A)) on the initial effective date, the organization may receive payment under a new risk-sharing contract with respect to a current, nonrisk medicare enrollee (as defined in subparagraph (C)) only to the extent that the organization enrolls, for each such enrollee, two new medicare enrollees (as defined in subparagraph (D)). The selection of those current nonrisk medicare enrollees with respect to whom payment may be so received under a new risk-sharing contract shall be made in a nonbiased manner.

''(B) Subparagraph (A) shall not be construed to prevent an eligible organization from providing for enrollment, on a basis described in subsection (a)(6) of section 1876 of the Social Security Act [subsec. (a)(6) of this section] (as amended by this Act [Pub. L. 97–248], other than under a reasonable cost reimbursement contract), of current, nonrisk medicare enrollees and from providing such enrollees with some or all of the additional benefits described in section 1876(g)(2) of the Social Security Act [subsec. (g)(2) of this section] (as amended by this Act [Pub. L. 97–248]), but (except as provided in subparagraph (A))—

''(i) payment to the organization with respect to such enrollees shall only be made in accordance with the terms of a reasonable cost reimbursement contract, and

''(ii) no payment may be made under section 1876 of such Act [this section] with respect to such enrollees for any such additional benefits.

Individuals enrolled with the organization under this subparagraph shall be considered to be individuals enrolled with the organization for the purpose of meeting the requirement of section 1876(g)(2) of the Social Security Act [subsec. (g)(2) of this section] (as amended by this Act [Pub. L. 97–248]).

''(C) For purposes of this paragraph, the term 'current, nonrisk medicare enrollee' means, with respect to an organization, an individual who on the initial effective date—

''(i) is enrolled with that organization under an existing cost contract, and

''(ii) is entitled to benefits under part A and enrolled under part B, or enrolled in part B, of title XVIII of the Social Security Act [this subchapter].

''(D) For purposes of this paragraph, the term 'new medicare enrollee' means, with respect to an organization, an individual who—

''(i) is enrolled with the organization after the date the organization first enters into a new risk-sharing contract,

''(ii) at the time of such enrollment is entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act [this subchapter], and

''(iii) was not enrolled with the organization at the time the individual became entitled to benefits under part A, or to enroll in part B, of such title [this subchapter].

''(E) The preceding provisions of this paragraph shall not to [sic] apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.

''(3) For purposes of this subsection:

''(A) The term 'existing cost contract' means a contract which is entered into under section 1876 of the Social Security Act [this section], as in effect before the initial effective date, or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act [section 1395*l*(a)(1)(A) of this title], and which is not an existing risk-sharing contract or an existing demonstration project.

''(B) The term 'existing risk-sharing contract' means a contract entered into under section 1876(i)(2)(A) of the Social Security Act [subsec. (i)(2)(A) of this section], as in effect before the initial effective date.

''(C) The term 'existing demonstration project' means a demonstration project under section 402(a) of the Social Security Amendments of 1967 [section 1395b–1(a) of this title] or under section 222(a) of the Social Security Amendments of 1972 [section 222(a) of Pub. L. 92–603, set out as a note under section 1395b–1 of this title], relating to the provision of services for which payment may be made under title XVIII of the Social Security Act [this subchapter].

''(D) The term 'new risk-sharing contract' means a contract entered into under section 1876(g) of the Social Security Act [subsec. (g) of this section], as amended by this Act [Pub. L. 97–248].

''(E) The term 'reasonable cost reimbursement contract' means a contract entered into under section 1876(h) of such Act [subsec. (h) of this section], as amended by this Act, or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act [section 1395*l*(a)(1)(A) of this title].

''(4) As used in this section, the term 'initial effective date' means—

''(A) the first day of the thirteenth month which begins after the date of the enactment of this Act [Sept. 3, 1982], or

''(B) the first day of the first month [Feb. 1, 1985] after the month in which the Secretary of Health and Human Services notifies the Committee on Finance of the Senate and the Committees on Ways and Means and on Energy and Commerce of the House of Representatives that he is reasonably certain that the methodology to make appropriate adjustments (referred to in section 1876(a)(4) of the Social Security Act [subsec. (a)(4) of this section], as amended by this Act [Pub. L. 97–248]) has been developed and can be implemented to assure actuarial equivalence in the estimation of adjusted average per capita costs under that section,

whichever is later.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 201(e) of Pub. L. 94–460 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to contracts entered into between the Secretary and health maintenance organizations under section 1876 of the Social Security Act [this section] on and after the first day of the first calendar month which begins more than 30 days after the date of enactment of this Act [Oct. 8, 1976].''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 18(z–3)(3) of Pub. L. 93–233 provided that: ''The amendments made by subsections (m) and (n) [amending this section] shall be effective with respect to services provided after June 30, 1973.''

EFFECTIVE DATE

Section 226(f) of Pub. L. 92–603 provided that: ''The amendments made by this section [enacting this section, amending sections 1395f, 1395*l*, 1395*ll*, and 1396b of this title, and enacting provisions set out as notes under this section] shall be effective with respect to services provided on or after July 1, 1973.''

REPORT ON IMPACT

Section 4002(b)(2)(B) of Pub. L. 105–33 provided that: ''By not later than January 1, 2001, the Secretary of Health and Human Services shall submit to Congress a report that analyzes the potential impact of termination of reasonable cost reimbursement contracts, pursuant to the amendment made by subparagraph (A), on medicare beneficiaries enrolled under such contracts and on the medicare program. The report shall include such recommendations regarding any extension or transition with respect to such contracts as the Secretary deems appropriate.''

TRANSITION RULE FOR PSO ENROLLMENT

Section 4002(h) of Pub. L. 105–33 provided that: ''In applying subsection (g)(1) of section 1876 of the Social Security Act (42 U.S.C. 1395mm) to a risk-sharing contract entered into with an eligible organization that is a provider-sponsored organization (as defined in section 1855(d)(1) of such Act [section 1395w–25(d)(1) of this title], as inserted by section 5001 [4001]) for a contract year beginning on or after January 1, 1998, there shall be substituted for the minimum number of enrollees provided under such section the minimum number of enrollees permitted under section 1857(b)(1) of such Act [1395w–27(b)(1) of this title] (as so inserted).''

REQUIREMENTS WITH RESPECT TO ACTUARIAL EQUIVALENCE OF AAPCC

Section 4204(b) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §157(a), Oct. 31, 1994, 108 Stat. 4441; Pub. L. 104–316, title I, §122(g), Oct. 19, 1996, 110 Stat. 3837, provided that:

''(1)(A) Not later than October 1, 1995, the Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall submit a proposal to the Congress that provides for revisions to the payment method to be applied in years beginning with 1997 for organizations with a risk-sharing contract under section 1876(g) of the Social Security Act [subsec. (g) of this section].

''(B) In proposing the revisions required under subparagraph (A), the Secretary shall consider—

''(i) the difference in costs associated with medicare beneficiaries with differing health status and demographic characteristics; and

''(ii) the effects of using alternative geographic classifications on the determinations of costs associated with beneficiaries residing in different areas.

''(2) Not later than 3 months after the date of submittal of the proposal under paragraph (1), the Comptroller General shall review the proposal and shall report to Congress on the appropriateness of the proposed modifications.''

[Amendment by section 122(g) of Pub. L. 104–316 to section 4204(b)(4), (5) of Pub. L. 101–508, set out above, could not be executed, because section 4204(b) of Pub. L. 101–508 did not contain pars. (4) and (5) subsequent to amendment by Pub. L. 103–432.]

STUDY OF CHIROPRACTIC SERVICES

Section 4204(f) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §157(b)(6), Oct. 31, 1994, 108 Stat. 4442, directed Secretary to conduct a study of the extent to which health maintenance organizations with contracts under section 1876 of the Social Security Act (this section) make available to enrollees entitled to benefits under title XVIII of such Act (this subchapter) chiropractic services that are covered under such title, such study to examine the arrangements under which such services are made available and the types of practitioners furnishing such services to such enrollees and to be based on contracts entered into or renewed on or after Jan. 1, 1991, and before Jan. 1, 1993, with Secretary to issue a report to Congress on results of the study not later than Jan. 1, 1993, including recommendations with respect to any legislative and regulatory changes determined necessary by Secretary to ensure access to such services.

EFFECT ON STATE LAW

Conscientious objections of health care provider under State law unaffected by enactment of subsec. (c)(8) of this section, see section 4206(c) of Pub. L. 101–508, set out as a note under section 1395cc of this title.

NOTICE OF METHODOLOGY USED IN MAKING ANNOUNCEMENTS UNDER SUBSECTION (a)(1)(A)

Section 6206(a)(2) of Pub. L. 101–239 provided that: ''Before July 1, 1990, the Secretary of Health and Human Services shall provide for notice to eligible organizations of the methodology used in making the announcement under section 1876(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section] for 1990.''

ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS

Section 203(b) of Pub. L. 101–234 provided that: ''Notwithstanding any other provision of this Act [see Tables for classification], the amendments made by this Act (other than the repeal of sections 1833(c)(5) and 1834(c)(6) of the Social Security Act [sections 1395*l*(c)(5) and 1395m(c)(6) of this title]) shall not apply to risk-sharing contracts, for contract year 1990—

''(1) with eligible organizations under section 1876 of the Social Security Act [this section], or

''(2) with health maintenance organizations under section 1876(i)(2)(A) of such Act [subsec. (i)(2)(A) of this section] (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967 [section 1395b–1(a) of this title], or under section 222(a) of the Social Security Amendments of 1972 [Pub. L. 92–603, set out as a note under section 1395b–1 of this title].''

ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS

Section 222 of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(13), Oct. 13, 1988, 102 Stat. 2415, provided that: ''The Secretary of Health and Human Services shall—

''(1) modify contracts under section 1876 of the Social Security Act [this section], for portions of contract years occurring after December 31, 1988, to take into account the amendments made by this Act [see Short Title of 1988 Amendment note under section 1305 of this title]; and

''(2) require such organizations and organizations paid under section 1833(a)(1)(A) of such Act [section 1395*l*(a)(1)(A) of this title] to make appropriate adjustments (including adjustments in premiums and benefits) in the terms of their agreements with medicare beneficiaries to take into account such amendments.

The Secretary shall also provide for appropriate modifications of contracts with health maintenance organizations under section 1876(i)(2)(A) of the Social Security Act [subsec. (i)(2)(A) of this section] (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967 [section 1395b–1(a) of this title], or under section 222(a) of the Social Security Amendments of 1972 [42 U.S.C. 1395b–1 note], for portions of contract years occurring after December 31, 1988, so as to apply to such organizations and contracts the requirements imposed by the amendments made by this Act upon an organization with a risk-sharing contract under section 1876 of the Social Security Act.''

PROVISION OF MEDICARE DRG RATES FOR CERTAIN PAYMENTS AND DATA ON INPATIENT COST PASS-THROUGH ITEMS

Section 4012(c) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(c)(2)(B), July 1, 1988, 102 Stat. 773, provided that: ''The Secretary of Health and Human Services shall provide (in machine readable form) to eligible organizations under section 1876 of the Social Security Act [this section] medicare DRG rates for payments required by the amendment made by subsection (a) [amending section 1395cc of this title] and data on cost pass-through items for all inpatient services provided to medicare beneficiaries enrolled with such organizations.''

MEDICARE PAYMENT DEMONSTRATION PROJECTS

Section 4015 of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(c)(5), as added by Pub. L. 100–485, title VI, § 608(d)(19)(C), Oct. 13, 1988, 102 Stat. 2419, provided that:

''(a) MEDICARE INSURED GROUP DEMONSTRATION PROJECTS.—

''(1) The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') may provide for capitation demonstration projects (in this subsection referred to as 'projects') with an entity which is an eligible organization with a contract with the Secretary under section 1876 of the Social Security Act [this section] or which meets the restrictions and requirements of this subsection. The Secretary may not approve a project unless it meets the requirements of this subsection.

''(2) The Secretary may not conduct more than 3 projects and may not expend, from funds under title XVIII of the Social Security Act [this subchapter], more than $600,000,000 in any fiscal year for all such projects.

''(3) The per capita rate of payment under a project—

''(A) may be based on the adjusted average per capita cost (as defined in section 1876(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) determined only with respect to the group of individuals involved (rather than with respect to medicare beneficiaries generally), but

''(B) the rate of payment may not exceed the lesser of—

''(i) 95 percent of the adjusted average per capita cost described in subparagraph (A), or

''(ii)(I) in the 4th year or 5th year of a project, 115 percent of the adjusted average per capita cost (as defined in section 1876(a)(4) of such Act [subsec. (a)(4) of this section]) for classes of individuals described in section 1876(a)(1)(B) of that Act [subsec. (a)(1)(B) of this section], or

''(II) in any subsequent year of a project, 95 percent of the adjusted average per capita cost (as defined in section 1876(a)(4) [subsec. (a)(4) of this section]) for such classes.

''(4) If the payment amounts made to a project are greater than the costs of the project (as determined by the Secretary or, if applicable, on the basis of adjusted community rates described in section 1876(e)(3) of the Social Security Act [subsec. (e)(3) of this section]), the project—

''(A) may retain the surplus, but not to exceed 5 percent of the average adjusted per capita cost determined in accordance with paragraph (3)(A), and

''(B) with respect to any additional surplus not retained by the project, shall apply such surplus to additional benefits for individuals served by the project or return such surplus to the Secretary.

''(5) Enrollment under the project shall be voluntary. Individuals enrolled with the project may terminate such enrollment as of the beginning of the first calendar month following the date on which the request is made for such termination. Upon such termination, such individuals shall retain the same rights to other health benefits that such individuals would have had if they had never enrolled with the project without any exclusion or waiting period for pre-existing conditions.

''(6) The requirements of—

''(A) subsection (c)(3)(C) (relating to dissemination of information),

''(B) subsection (c)(3)(E) (annual statement of rights),

''(C) subsection (c)(5) (grievance procedures),

''(D) subsection (c)(6) (on-going quality),

''(E) subsection (g)(6) (relating to prompt payment of claims),

''(F) subsection (i)(3)(A) and (B) (relating to access to information and termination notices),

''(G) subsection (i)(6) (relating to providing necessary services), and

''(H) subsection (i)(7) (relating to agreements with peer review organizations),

of section 1876 of the Social Security Act [this section] shall apply to a project in the same manner as they apply to eligible organizations with risk-sharing contracts under such section.

''(7) The benefits provided under a project must be at least actuarially equivalent to the combination of the benefits available under title XVIII of the Social Security Act [this subchapter] and the benefits available through any alternative plans in which the individual can enroll through the employer. The project shall guarantee the actuarial value of benefits available under the employer plan for the duration of the project.

''(8) A project shall comply with all applicable State laws.

''(9) The Secretary may not authorize a project unless the entity offering the project demonstrates to the satisfaction of the Secretary that it has the necessary financial reserves to pay for any liability for benefits under the project (including those liabilities for health benefits under medicare and any supplemental benefits).

''(10) The Comptroller General shall monitor projects under this subsection and shall report periodically (not less often than once every year) to the Committee on Finance of the Senate and the Committee on Energy and Commerce and Committee on Ways and Means of the House of Representatives on the status of such projects and the effect on such projects of the requirements of this section and shall

submit a final report to each such committee on the results of such projects.

''(b) PAYMENT METHODOLOGY REFORM DEMONSTRATIONS PROJECTS.—

''(1) The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') is specifically authorized to conduct demonstration projects under this subsection for the purpose of testing alternative payment methodologies pertaining to capitation payments under title XVIII of the Social Security Act [this subchapter], including—

''(A) computing adjustments to the average per capita cost under section 1876 of such Act [this section] on the basis of health status or prior utilization of services, and

''(B) accounting for geographic variations in cost in the adjusted average per capita costs applicable to an eligible organization under such section which differs from payments currently provided on a county-by-county basis.

''(2) No project may be conducted under this subsection—

''(A) with an entity which is not an eligible organization (as defined in section 1876(b) of the Social Security Act [subsec. (b) of this section]), and

''(B) unless the project meets all the requirements of subsections (c) and (i)(3) of section 1876 of such Act [subsecs. (c) and (i)(3) of this section].

''(3) There are authorized to be appropriated to carry out projects under this subsection $5,000,000 in each of fiscal years 1989 and 1990.

''(c) APPLICATION OF PROVISIONS.—The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 [section 1395b–1(a)(2), (b) of this title] shall apply to the demonstration projects under this section in the same manner as they apply to experiments under subsection (a)(1) of that section.''

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the requirement to report not less than once every year to certain committees of Congress under section 4015(a)(10) of Pub. L. 100–203, set out above, is listed on page 9), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

GAO STUDY AND REPORTS ON MEDICARE CAPITATION

Section 4017 of Pub. L. 100–203 directed Comptroller General to conduct a study on medicare capitation rates that would include an analysis and assessment of the current method for computing per capita rates of payment under section 1876 of the Social Security Act (this section), including the method for determining the United States per capita cost; the method for establishing relative costs for geographic areas and the data used to establish age, sex, and other weighting factors; ways to refine the calculation of adjusted average per capita costs under section 1876 of such Act, including making adjustments for health status or prior utilization of services and improvements in the definition of geographic areas; the extent to which individuals enrolled with organizations with a risk-sharing contract with the Secretary under section 1876 of such Act differ in utilization and cost from fee-for-service beneficiaries and ways for modifying enrollment patterns through program changes or for reflecting the differences in rates through group experience rating or other means; approaches for limiting the liability of the contracting organization under section 1876 of such Act in catastrophic cases; ways of establishing capitation rates on a basis other than fee-for-service experience in areas with high prepaid market penetration; and methods for providing the rate levels necessary to maintain access to quality prepaid services in rural or medically underserved areas, while maintaining cost savings; and directed Comptroller General, not later than January 1 of 1989 and 1990, to submit to Congress interim reports on the progress of the study and, not later than Jan. 1, 1991, a final report on the results of such study.

DEMONSTRATION PROJECTS TO PROVIDE PAYMENT ON A PREPAID, CAPITATED BASIS FOR COMMUNITY NURSING AND AMBULATORY CARE FURNISHED TO MEDICARE BENEFICIARIES

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 532], Nov. 29, 1999, 113 Stat. 1536, 1501A–388, as amended by Pub. L. 106–554, § 1(a)(6) [title VI, § 632(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–566, provided that:

''(a) EXTENSION.—Notwithstanding any other provision of law, any demonstration project conducted under section 4079 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–123 [Pub. L. 100–203]; 42 U.S.C. 1395mm note) and conducted for the additional period of 2 years as provided for under section 4019 of BBA [Pub. L. 105–33, set out as a note below], shall be conducted for an additional period of 2 years.

''(b) TERMS AND CONDITIONS.—

''(1) JANUARY THROUGH SEPTEMBER 2000.—For the 9-month period beginning with January 2000, any such demonstration project shall be conducted under the same terms and conditions as applied to such demonstration during 1999.

''(2) OCTOBER 2000 THROUGH DECEMBER 2001.—For the 15-month period beginning with October 2000, any such demonstration project shall be conducted under the same terms and conditions as applied to such demonstration during 1999, except that the following modifications shall apply:

''(A) BASIC CAPITATION RATE.—The basic capitation rate paid for services covered under the project (other than case management services) per enrollee per month and furnished during—

''(i) the period beginning with October 1, 2000, and ending with December 31, 2000, shall be determined by actuarially adjusting the actual capitation rate paid for such services in 1999 for inflation, utilization, and other changes to the CNO service package, and by reducing such adjusted capitation rate by 10 percent in the case of the demonstration sites located in Arizona, Minnesota, and Illinois, and 15 percent for the demonstration site located in New York; and

''(ii) 2001 shall be determined by actuarially adjusting the capitation rate determined under clause (i) for inflation, utilization, and other changes to the CNO service package.

''(B) TARGETED CASE MANAGEMENT FEE.—Effective October 1, 2000—

''(i) the case management fee per enrollee per month for—

''(I) the period described in subparagraph (A)(i) shall be determined by actuarially adjusting the case management fee for 1999 for inflation; and

''(II) 2001 shall be determined by actuarially adjusting the amount determined under subclause (I) for inflation; and

''(ii) such case management fee shall be paid only for enrollees who are classified as moderately frail or frail pursuant to criteria established by the Secretary.

''(C) GREATER UNIFORMITY IN CLINICAL FEATURES AMONG SITES.—Each project shall implement for each site—

''(i) protocols for periodic telephonic contact with enrollees based on—

''(I) the results of such standardized written health assessment; and

''(II) the application of appropriate care planning approaches;

''(ii) disease management programs for targeted diseases (such as congestive heart failure, arthritis, diabetes, and hypertension) that are highly prevalent in the enrolled populations;

''(iii) systems and protocols to track enrollees through hospitalizations, including pre-admission planning, concurrent management during inpa-

tient hospital stays, and post-discharge assessment, planning, and follow-up; and

''(iv) standardized patient educational materials for specified diseases and health conditions.

''(D) QUALITY IMPROVEMENT.—Each project shall implement at each site once during the 15-month period—

''(i) enrollee satisfaction surveys; and

''(ii) reporting on specified quality indicators for the enrolled population.

''(c) EVALUATION.—

''(1) PRELIMINARY REPORT.—Not later than July 1, 2001, the Secretary of Health and Human Services shall submit to the Committees on Ways and Means and Commerce [now Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate a preliminary report that—

''(A) evaluates such demonstration projects for the period beginning July 1, 1997, and ending December 31, 1999, on a site-specific basis with respect to the impact on per beneficiary spending, specific health utilization measures, and enrollee satisfaction; and

''(B) includes a similar evaluation of such projects for the portion of the extension period that occurs after September 30, 2000.

''(2) FINAL REPORT.—The Secretary shall submit a final report to such Committees on such demonstration projects not later than July 1, 2002. Such report shall include the same elements as the preliminary report required by paragraph (1), but for the period after December 31, 1999.

''(3) METHODOLOGY FOR SPENDING COMPARISONS.—Any evaluation of the impact of the demonstration projects on per beneficiary spending included in such reports shall include a comparison of—

''(A) data for all individuals who—

''(i) were enrolled in such demonstration projects as of the first day of the period under evaluation; and

''(ii) were enrolled for a minimum of 6 months thereafter; with

''(B) data for a matched sample of individuals who are enrolled under part B of title XVIII of the Social Security Act [part B of this subchapter] and are not enrolled in such a project, or in a Medicare+Choice plan under part C of such title [part C of this subchapter], a plan offered by an eligible organization under section 1876 of such Act [this section], or a health care prepayment plan under section 1833(a)(1)(A) of such Act [section 1395*l*(a)(1)(A) of this title].''

[Pub. L. 106–554, §1(a)(6) [title VI, §632(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–568, provided that: ''The amendments made by subsection (a) [amending section 1000(a)(6) [title V, §532] of Pub. L. 106–113, set out above] shall be effective as if included in the enactment of section 532 of BBRA [Pub. L. 106–113, §1000(a)(6) [title V, §532] (113 Stat. 1501A–388).'']

Section 4019 of Pub. L. 105–33 provided that: ''Notwithstanding any other provision of law, demonstration projects conducted under section 4079 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203, set out as a note below] may be conducted for an additional period of 2 years, and the deadline for any report required relating to the results of such projects shall be not later than 6 months before the end of such additional period.''

Section 4079 of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(h)(8), July 1, 1988, 102 Stat. 787, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall enter into an agreement with not less than four eligible organizations submitting applications under this section to conduct demonstration projects to provide payment on a prepaid, capitated basis for community nursing and ambulatory care furnished to any individual entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act [part A and part B of this subchapter] (other than an individual medically determined to have end-stage renal disease) who resides in the geographic area served by the organization and enrolls with such organization (in accordance with subsection (c)(2)).

''(b) DEFINITIONS OF COMMUNITY NURSING AND AMBULATORY CARE AND ELIGIBLE ORGANIZATION.—As used in this section:

''(1) The term 'community nursing and ambulatory care' means the following services:

''(A) Part-time or intermittent nursing care furnished by or under the supervision of registered professional nurses.

''(B) Physical, occupational, or speech therapy.

''(C) Social and related services supportive of a plan of ambulatory care.

''(D) Part-time or intermittent services of a home health aide.

''(E) Medical supplies (other than drugs and biologicals) and durable medical equipment while under a plan of care.

''(F) Medical and other health services described in paragraphs (2)(H)(ii) and (5) through (9) of section 1861(s) of the Social Security Act [section 1395x(s)(2)(H)(ii), (5)–(9) of this title].

''(G) Rural health clinic services described in section 1861(aa)(1)(C) of such Act [section 1395x(aa)(1)(C) of this title].

''(H) Certain other related services listed in section 1915(c)(4)(B) of such Act [section 1396n(c)(4)(B) of this title] to the extent the Secretary finds such services are appropriate to prevent the need for institutionalization of a patient.

''(2) The term 'eligible organization' means a public or private entity, organized under the laws of any State, which meets the following requirements:

''(A) The entity (or a division or part of such entity) is primarily engaged in the direct provision of community nursing and ambulatory care.

''(B) The entity provides directly, or through arrangements with other qualified personnel, the services described in paragraph (1).

''(C) The entity provides that all nursing care (including services of home health aids) is furnished by or under the supervision of a registered nurse.

''(D) The entity provides that all services are furnished by qualified staff and are coordinated by a registered professional nurse.

''(E) The entity has policies governing the furnishing of community nursing and ambulatory care that are developed by registered professional nurses in cooperation with (as appropriate) other professionals.

''(F) The entity maintains clinical records on all patients.

''(G) The entity has protocols and procedures to assure, when appropriate, timely referral to or consultation with other health care providers or professionals.

''(H) The entity complies with applicable State and local laws governing the provision of community nursing and ambulatory care to patients.

''(I) The requirements of subparagraphs (B), (D), and (E) of section 1876(b)(2) of the Social Security Act [42 U.S.C. 1395mm(b)(2)(B), (D), (E)].

''(c) AGREEMENTS WITH ELIGIBLE ORGANIZATIONS TO CONDUCT DEMONSTRATION PROJECTS.—

''(1) The Secretary may not enter into an agreement with an eligible organization to conduct a demonstration project under this section unless the organization meets the requirements of this subsection and subsection (e) with respect to members enrolled with the organization under this section.

''(2) The organization shall have an open enrollment period for the enrollment of individuals under this section. The duration of such period of enrollment and any other requirement pertaining to enrollment or termination of enrollment shall be specified in the agreement with the organization.

''(3) The organization must provide to members enrolled with the organization under this section,

through providers and other persons that meet the applicable requirements of titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter], community nursing and ambulatory care (as defined in subsection (b)(1)) which is generally available to individuals residing in the geographic area served by the organization, except that the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered.

''(4) The organization must make community nursing and ambulatory care (and such other health care services as such individuals have contracted for) available and accessible to each individual enrolled with the organization under this section, within the area served by the organization, with reasonable promptness and in a manner which assures continuity.

''(5) Section 1876(c)(5) of the Social Security Act [subsec. (c)(5) of this section] shall apply to organizations under this section in the same manner as it applies to organizations under section 1876 of such Act.

''(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals under the demonstration project conducted under this section, which program (A) stresses health outcomes and (B) provides review by health care professionals of the process followed in the provision of such health care services.

''(7) Under a demonstration project under this section—

''(A) the Secretary could require the organization to provide financial or other assurances (including financial risk-sharing) that minimize the inappropriate substitution of other services under title XVIII of such Act [this subchapter] for community nursing services; and

''(B) if the Secretary determines that the organization has failed to perform in accordance with the requirements of the project (including meeting financial responsibility requirements under the project, any pattern of disproportionate or inappropriate institutionalization) the Secretary shall, after notice, terminate the project.

''(d) DETERMINATION OF PER CAPITA PAYMENT RATES.—

''(1) The Secretary shall determine for each 12-month period in which a demonstration project is conducted under this section, and shall announce (in a manner intended to provide notice to interested parties) not later than three months before the beginning of such period, with respect to each eligible organization conducting a demonstration project under this section, a per capita rate of payment for each class of individuals who are enrolled with such organization who are entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act [part A and part B of this subchapter].

''(2)(A) Except as provided in paragraph (3), the per capita rate of payment under paragraph (1) shall be determined in accordance with this paragraph.

''(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

''(C) The per capita rate of payment under paragraph (1) for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in subparagraph (D)) for that class.

''(D) For purposes of subparagraph (C), the term 'adjusted average per capita cost' means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for those services covered under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter] and types of expenses otherwise reimbursable under such parts A and B which are described in subparagraphs (A) through (G) of subsection (b)(1) (including administrative costs incurred by organizations described in sections 1816 and 1842 of such Act [sections 1395h and 1395u of this title]), if the services were to be furnished by other than an eligible organization.

''(3) The Secretary shall, in consultation with providers, health policy experts, and consumer groups develop capitation-based reimbursement rates for such classes of individuals entitled to benefits under part A and enrolled under part B of the Social Security Act [probably means parts A and B of title XVIII of that Act, this subchapter] as the Secretary shall determine. Such rates shall be applied in determining per capita rates of payment under paragraph (1) with respect to at least one eligible organization conducting a demonstration project under this section.

''(4)(A) In the case of an eligible organization conducting a demonstration project under this section, the Secretary shall make monthly payments in advance and in accordance with the rate determined under paragraph (2) or (3), except as provided in subsection (e)(3)(B), to the organization for each individual enrolled with the organization.

''(B) The amount of payment under paragraph (2) or (3) may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

''(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A and enrolled under part B of the Social Security Act shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established under such Act [this chapter] in such proportions from each such trust fund as the Secretary deems to be fair and equitable taking into consideration benefits attributable to such parts A and B, respectively.

''(6) During any period in which an individual is enrolled with an eligible organization conducting a demonstration project under this section, only the eligible organization (and no other individual or person) shall be entitled to receive payments from the Secretary under this title [probably means title XVIII of the Social Security Act, this subchapter] for community nursing and ambulatory care (as defined in subsection (b)(1)) furnished to the individual.

''(e) RESTRICTION ON PREMIUMS, DEDUCTIBLES, COPAYMENTS, AND COINSURANCE.—

''(1) In no case may the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to community nursing and ambulatory care) to individuals who are enrolled under this section with the organization, exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B of the Social Security Act [probably means parts A and B of title XVIII of that Act, this subchapter], if they were not members of an eligible organization.

''(2) If the eligible organization provides to its members enrolled under this section services in addition to community nursing and ambulatory care, election of coverage for such additional services shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

''(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

''(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services (as defined in section 1876(e)(3) of the Social Security Act [subsec. (e)(3) of this section]).

''(3)(A) Subject to subparagraphs (B) and (C), each agreement to conduct a demonstration project under this section shall provide that if—

''(i) the adjusted community rate, referred to in paragraph (2), for community nursing and ambulatory care covered under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter] (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization,

is less than

''(ii) the average of the per capita rates of payment to be made under subsection (d)(1) at the beginning of the 12-month period (as determined on such basis as the Secretary determines appropriate) described in such subsection for members enrolled under this section with the organization,

the eligible organization shall provide to such members the additional benefits described in section 1876(g)(3) of the Social Security Act [subsec. (g)(3) of this section] which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced).

''(B) Subparagraph (A) shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced).

''(C) An organization conducting a demonstration project under this section may provide (with the approval of the Secretary) that a part of the value of such additional benefits under subparagraph (A) be withheld and reserved by the Secretary as provided in section 1876(g)(5) of the Social Security Act [subsec. (g)(5) of this section].

''(4) The provisions of paragraphs (3), (5), and (6) of section 1876(g) of the Social Security Act [subsec. (g)(3), (5), and (6) of this section] shall apply in the same manner to agreements under this section as they apply to risk-sharing contracts under section 1876 of such Act, and, for this purpose, any reference in such paragraphs to paragraph (2) is deemed a reference to paragraph (3) of this subsection.

''(5) Section 1876(e)(4) of the Social Security Act [subsec. (e)(4) of this section] shall apply to eligible organizations under this section in the same manner as it applies to eligible organizations under section 1876 of such Act.

''(f) COMMENCEMENT AND DURATION OF PROJECTS.—Each demonstration project under this section shall begin not later than July 1, 1989, and shall be conducted for a period of three years.

''(g) REPORT.—Not later than January 1, 1992, the Secretary shall submit to the Congress a report on the results of the demonstration projects conducted under this section.''

STUDY OF AAPCC AND ACR

Section 9312(g) of Pub. L. 99–509 directed Secretary of Health and Human Services to provide, through contract with an appropriate organization, for a study of the methods by which the adjusted average per capita cost (''AAPCC'', as defined in subsec. (a)(4) of this section) can be refined to more accurately reflect the average cost of providing care to different classes of patients, and the adjusted community rate (''ACR'', as defined in subsec. (e)(3) of this section) can be refined, with Secretary to submit to Congress, by not later than Jan. 1, 1988, specific legislative recommendations concerning methods by which the calculation of the AAPCC and the ACR could be refined.

ALLOWING MEDICARE BENEFICIARIES TO DISENROLL AT LOCAL SOCIAL SECURITY OFFICES

Section 9312(h) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall provide that individuals enrolled with an eligible organization under section 1876 of the Social Security Act [this section] may disenroll, on and after June 1, 1987, at any local office of the Social Security Administration.''

USE OF RESERVE FUNDS

Section 9312(i) of Pub. L. 99–509 provided that: ''Notwithstanding any provision of section 1876(g)(5) of the Social Security Act (42 U.S.C. 1395mm(g)(5)) to the contrary, funds reserved by an eligible organization under such section before the date of the enactment of this Act [Oct. 21, 1986] may be applied, at the organization's option, to offset the amount of any reduction in payment amounts to the organization effected under Public Law 99–177 [Dec. 12, 1985, 99 Stat. 1037, see Tables for classification] during fiscal year 1986.''

PHASE-IN OF ENROLLMENT PERIOD BY SECRETARY

Section 2350(a)(2) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services may phase in, over a period of not longer than three years, the application of the amendments made by paragraph (1) [amending this section] to all applicable areas in the United States if the Secretary determines that it is not administratively feasible to establish a single 30-day open enrollment period for all such applicable areas before the end of the period.''

STABILIZATION FUND; ESTABLISHMENT LIMITATION; USES; REPORT TO CONGRESS

Section 2350(b)(3), (4) of Pub. L. 98–369, as amended by Pub. L. 100–203, title IV, § 4013, Dec. 22, 1987, 101 Stat. 1330–61; Pub. L. 100–360, title IV, § 411(c)(3), July 1, 1988, 102 Stat. 773, prohibited Secretary of Health and Human Services from approving the establishment of a stabilization fund by an eligible organization under subsec. (g)(5) of this section for any contract period beginning later than Sept. 30, 1990, and directed Secretary to report to Congress with respect to use of stabilization funds by eligible organizations under subsec. (g)(5) of this section and to assess the need for such funds not later than 54 months after July 1984, prior to repeal by Pub. L. 101–239, title VI, § 6212(c)(1), Dec. 19, 1989, 103 Stat. 2250.

STUDY OF ADDITIONAL BENEFITS SELECTED BY ELIGIBLE ORGANIZATIONS

Section 114(d) of Pub. L. 97–248 directed Secretary of Health and Human Services to conduct a study of the additional benefits selected by eligible organizations pursuant to subsec. (g)(2) of this section, with Secretary to report to Congress within 24 months of the initial effective date (as defined in subsec. (c)(4) of section 114 of Pub. L. 97–248) with respect to the findings and conclusions made as a result of such study.

STUDY EVALUATING THE EXTENT OF, AND REASONS FOR, TERMINATION BY MEDICARE BENEFICIARIES OF MEMBERSHIP IN ORGANIZATIONS WITH CONTRACTS UNDER THIS SECTION

Section 114(e) of Pub. L. 97–248 directed Secretary of Health and Human Services to conduct a study evalu-

ating the extent of, and reasons for, the termination by medicare beneficiaries of their memberships in organizations with contracts under section 1876 of the Social Security Act (this section), with Secretary to submit an interim report to Congress, within two years after the initial effective date (as defined in subsec. (c)(4) of section 114 of Pub. L. 97–248), and a final report within five years after such date containing the respective interim and final findings and conclusions made as a result of such study.

REIMBURSEMENT FOR SERVICES

Section 226(b) of Pub. L. 92–603 provided that:

''(1) Notwithstanding the provisions of section 1814 and section 1833 of the Social Security Act [sections 1395*f* and 1395*l* of this title], any health maintenance organization which has entered into a contract with the Secretary pursuant to section 1876 of such Act [this section] shall, for the duration of such contract, (except as provided in paragraph (2)) be entitled to reimbursement only as provided in section 1876 of such Act [this section] for individuals who are members of such organizations.

''(2) With respect to individuals who are members of organizations which have entered into a risk-sharing contract with the Secretary pursuant to subsection (i)(2)(A) [of this section] prior to July 1, 1973, and who, although eligible to have payment made pursuant to section 1876 of such Act [this section] for services rendered to them, chose (in accordance with regulations) not to have such payment made pursuant to such section, the Secretary shall, for a period not to exceed three years commencing on July 1, 1973, pay to such organization on the basis of an interim per capita rate, determined in accordance with the provisions of section 1876(a)(2) of such Act [subsec. (a)(2) of this section], with appropriate actuarial adjustments to reflect the difference in utilization of out-of-plan services, which would have been considered sufficiently reasonable and necessary under the rules of the health maintenance organization to be provided by that organization, between such individuals and individuals who are enrolled with such organization pursuant to section 1876 of such Act [this section]. Payments under this paragraph shall be subject to retroactive adjustment at the end of each contract year as provided in paragraph (3).

''(3) If the Secretary determines that the per capita cost of any such organization in any contract year for providing services to individuals described in paragraph (2), when combined with the cost of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such year for providing out-of-plan services to such individuals, is less than or greater than the adjusted average per capita cost (as defined in section 1876(a)(3) of such Act) [subsec. (a)(3) of this section] of providing such services, the resulting savings shall be apportioned between such organization and such Trust Funds, or the resulting losses shall be absorbed by such organization, in the manner prescribed in section 1876(a)(3) of such Act [subsec. (a)(3) of this section].''

§ 1395nn. Limitation on certain physician referrals

(a) Prohibition of certain referrals

(1) In general

Except as provided in subsection (b) of this section, if a physician (or an immediate family member of such physician) has a financial relationship with an entity specified in paragraph (2), then—

(A) the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made under this subchapter, and

(B) the entity may not present or cause to be presented a claim under this subchapter or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a referral prohibited under subparagraph (A).

(2) Financial relationship specified

For purposes of this section, a financial relationship of a physician (or an immediate family member of such physician) with an entity specified in this paragraph is—

(A) except as provided in subsections (c) and (d) of this section, an ownership or investment interest in the entity, or

(B) except as provided in subsection (e) of this section, a compensation arrangement (as defined in subsection (h)(1) of this section) between the physician (or an immediate family member of such physician) and the entity.

An ownership or investment interest described in subparagraph (A) may be through equity, debt, or other means and includes an interest in an entity that holds an ownership or investment interest in any entity providing the designated health service.

(b) General exceptions to both ownership and compensation arrangement prohibitions

Subsection (a)(1) of this section shall not apply in the following cases:

(1) Physicians' services

In the case of physicians' services (as defined in section 1395x(q) of this title) provided personally by (or under the personal supervision of) another physician in the same group practice (as defined in subsection (h)(4) of this section) as the referring physician.

(2) In-office ancillary services

In the case of services (other than durable medical equipment (excluding infusion pumps) and parenteral and enteral nutrients, equipment, and supplies)—

(A) that are furnished—

(i) personally by the referring physician, personally by a physician who is a member of the same group practice as the referring physician, or personally by individuals who are directly supervised by the physician or by another physician in the group practice, and

(ii)(I) in a building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of designated health services, or

(II) in the case of a referring physician who is a member of a group practice, in another building which is used by the group practice—

(aa) for the provision of some or all of the group's clinical laboratory services, or

(bb) for the centralized provision of the group's designated health services (other than clinical laboratory services),

unless the Secretary determines other terms and conditions under which the provision of such services does not present a risk of program or patient abuse, and

(B) that are billed by the physician performing or supervising the services, by a group practice of which such physician is a member under a billing number assigned to the group practice, or by an entity that is wholly owned by such physician or such group practice,

if the ownership or investment interest in such services meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(3) Prepaid plans

In the case of services furnished by an organization—

(A) with a contract under section 1395mm of this title to an individual enrolled with the organization,

(B) described in section 1395*l*(a)(1)(A) of this title to an individual enrolled with the organization,

(C) receiving payments on a prepaid basis, under a demonstration project under section 1395b–1(a) of this title or under section 222(a) of the Social Security Amendments of 1972, to an individual enrolled with the organization,

(D) that is a qualified health maintenance organization (within the meaning of section 300e–9(d)[1] of this title) to an individual enrolled with the organization, or

(E) that is a Medicare+Choice organization under part C of this subchapter that is offering a coordinated care plan described in section 1395w–21(a)(2)(A) of this title to an individual enrolled with the organization.

(4) Other permissible exceptions

In the case of any other financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse.

(5) Electronic prescribing

An exception established by regulation under section 1395w–104(e)(6) of this title.[1]

(c) General exception related only to ownership or investment prohibition for ownership in publicly traded securities and mutual funds

Ownership of the following shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A) of this section:

(1) Ownership of investment securities (including shares or bonds, debentures, notes, or other debt instruments) which may be purchased on terms generally available to the public and which are—

(A)(i) securities listed on the New York Stock Exchange, the American Stock Exchange, or any regional exchange in which quotations are published on a daily basis, or foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis, or

(ii) traded under an automated interdealer quotation system operated by the National Association of Securities Dealers, and

(B) in a corporation that had, at the end of the corporation's most recent fiscal year, or on average during the previous 3 fiscal years, stockholder equity exceeding $75,000,000.

(2) Ownership of shares in a regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, if such company had, at the end of the company's most recent fiscal year, or on average during the previous 3 fiscal years, total assets exceeding $75,000,000.

(d) Additional exceptions related only to ownership or investment prohibition

The following, if not otherwise excepted under subsection (b) of this section, shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A) of this section:

(1) Hospitals in Puerto Rico

In the case of designated health services provided by a hospital located in Puerto Rico.

(2) Rural providers

In the case of designated health services furnished in a rural area (as defined in section 1395ww(d)(2)(D) of this title) by an entity, if—

(A) substantially all of the designated health services furnished by the entity are furnished to individuals residing in such a rural area; and

(B) effective for the 18-month period beginning on December 8, 2003, the entity is not a specialty hospital (as defined in subsection (h)(7) of this section).

(3) Hospital ownership

In the case of designated health services provided by a hospital (other than a hospital described in paragraph (1)) if—

(A) the referring physician is authorized to perform services at the hospital;

(B) effective for the 18-month period beginning on December 8, 2003, the hospital is not a specialty hospital (as defined in subsection (h)(7) of this section); and

(C) the ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital).

(e) Exceptions relating to other compensation arrangements

The following shall not be considered to be a compensation arrangement described in subsection (a)(2)(B) of this section:

(1) Rental of office space; rental of equipment

(A) Office space

Payments made by a lessee to a lessor for the use of premises if—

(i) the lease is set out in writing, signed by the parties, and specifies the premises covered by the lease,

(ii) the space rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee, except that the lessee may make payments for the use of space consisting of

[1] See References in Text note below.

common areas if such payments do not exceed the lessee's pro rata share of expenses for such space based upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using such common areas,

(iii) the lease provides for a term of rental or lease for at least 1 year,

(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(B) Equipment

Payments made by a lessee of equipment to the lessor of the equipment for the use of the equipment if—

(i) the lease is set out in writing, signed by the parties, and specifies the equipment covered by the lease,

(ii) the equipment rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee,

(iii) the lease provides for a term of rental or lease of at least 1 year,

(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(2) Bona fide employment relationships

Any amount paid by an employer to a physician (or an immediate family member of such physician) who has a bona fide employment relationship with the employer for the provision of services if—

(A) the employment is for identifiable services,

(B) the amount of the remuneration under the employment—

(i) is consistent with the fair market value of the services, and

(ii) is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician,

(C) the remuneration is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the employer, and

(D) the employment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

Subparagraph (B)(ii) shall not prohibit the payment of remuneration in the form of a productivity bonus based on services performed personally by the physician (or an immediate family member of such physician).

(3) Personal service arrangements

(A) In general

Remuneration from an entity under an arrangement (including remuneration for specific physicians' services furnished to a nonprofit blood center) if—

(i) the arrangement is set out in writing, signed by the parties, and specifies the services covered by the arrangement,

(ii) the arrangement covers all of the services to be provided by the physician (or an immediate family member of such physician) to the entity,

(iii) the aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement,

(iv) the term of the arrangement is for at least 1 year,

(v) the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and except in the case of a physician incentive plan described in subparagraph (B), is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(vi) the services to be performed under the arrangement do not involve the counseling or promotion or a business arrangement or other activity that violates any State or Federal law, and

(vii) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(B) Physician incentive plan exception

(i) In general

In the case of a physician incentive plan (as defined in clause (ii)) between a physician and an entity, the compensation may be determined in a manner (through a withhold, capitation, bonus, or otherwise) that takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties, if the plan meets the following requirements:

(I) No specific payment is made directly or indirectly under the plan to a physician or a physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the entity.

(II) In the case of a plan that places a physician or a physician group at sub-

stantial financial risk as determined by the Secretary pursuant to section 1395mm(i)(8)(A)(ii) of this title, the plan complies with any requirements the Secretary may impose pursuant to such section.

(III) Upon request by the Secretary, the entity provides the Secretary with access to descriptive information regarding the plan, in order to permit the Secretary to determine whether the plan is in compliance with the requirements of this clause.

(ii) "Physician incentive plan" defined

For purposes of this subparagraph, the term ''physician incentive plan'' means any compensation arrangement between an entity and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the entity.

(4) Remuneration unrelated to the provision of designated health services

In the case of remuneration which is provided by a hospital to a physician if such remuneration does not relate to the provision of designated health services.

(5) Physician recruitment

In the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate to the geographic area served by the hospital in order to be a member of the medical staff of the hospital, if—

(A) the physician is not required to refer patients to the hospital,

(B) the amount of the remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician, and

(C) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(6) Isolated transactions

In the case of an isolated financial transaction, such as a one-time sale of property or practice, if—

(A) the requirements described in subparagraphs (B) and (C) of paragraph (2) are met with respect to the entity in the same manner as they apply to an employer, and

(B) the transaction meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(7) Certain group practice arrangements with a hospital

(A)[2] In general

An arrangement between a hospital and a group under which designated health services are provided by the group but are billed by the hospital if—

(i) with respect to services provided to an inpatient of the hospital, the arrangement is pursuant to the provision of inpatient hospital services under section 1395x(b)(3) of this title.

(ii) the arrangement began before December 19, 1989, and has continued in effect without interruption since such date,

(iii) with respect to the designated health services covered under the arrangement, substantially all of such services furnished to patients of the hospital are furnished by the group under the arrangement,

(iv) the arrangement is pursuant to an agreement that is set out in writing and that specifies the services to be provided by the parties and the compensation for services provided under the agreement,

(v) the compensation paid over the term of the agreement is consistent with fair market value and the compensation per unit of services is fixed in advance and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(vi) the compensation is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the entity, and

(vii) the arrangement between the parties meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(8) Payments by a physician for items and services

Payments made by a physician—

(A) to a laboratory in exchange for the provision of clinical laboratory services, or

(B) to an entity as compensation for other items or services if the items or services are furnished at a price that is consistent with fair market value.

(f) Reporting requirements

Each entity providing covered items or services for which payment may be made under this subchapter shall provide the Secretary with the information concerning the entity's ownership, investment, and compensation arrangements, including—

(1) the covered items and services provided by the entity, and

(2) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subsection (a)(2)(A) of this section), or with a compensation arrangement (as described in subsection (a)(2)(B) of this section), in the entity, or whose immediate relatives have such an ownership or investment interest or who have such a compensation relationship with the entity.

Such information shall be provided in such form, manner, and at such times as the Secretary shall specify. The requirement of this subsection shall not apply to designated health services provided outside the United States or to

[2] So in original. No subpar. (B) has been enacted.

entities which the Secretary determines provides[3] services for which payment may be made under this subchapter very infrequently.

(g) Sanctions

(1) Denial of payment

No payment may be made under this subchapter for a designated health service which is provided in violation of subsection (a)(1) of this section.

(2) Requiring refunds for certain claims

If a person collects any amounts that were billed in violation of subsection (a)(1) of this section, the person shall be liable to the individual for, and shall refund on a timely basis to the individual, any amounts so collected.

(3) Civil money penalty and exclusion for improper claims

Any person that presents or causes to be presented a bill or a claim for a service that such person knows or should know is for a service for which payment may not be made under paragraph (1) or for which a refund has not been made under paragraph (2) shall be subject to a civil money penalty of not more than $15,000 for each such service. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(4) Civil money penalty and exclusion for circumvention schemes

Any physician or other entity that enters into an arrangement or scheme (such as a cross-referral arrangement) which the physician or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of this section, shall be subject to a civil money penalty of not more than $100,000 for each such arrangement or scheme. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(5) Failure to report information

Any person who is required, but fails, to meet a reporting requirement of subsection (f) of this section is subject to a civil money penalty of not more than $10,000 for each day for which reporting is required to have been made. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(6) Advisory opinions

(A) In general

The Secretary shall issue written advisory opinions concerning whether a referral relating to designated health services (other than clinical laboratory services) is prohibited under this section. Each advisory opinion issued by the Secretary shall be binding as to the Secretary and the party or parties requesting the opinion.

(B) Application of certain rules

The Secretary shall, to the extent practicable, apply the rules under subsections (b)(3) and (b)(4) of this section and take into account the regulations promulgated under subsection (b)(5) of section 1320a–7d of this title in the issuance of advisory opinions under this paragraph.

(C) Regulations

In order to implement this paragraph in a timely manner, the Secretary may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment.

(D) Applicability

This paragraph shall apply to requests for advisory opinions made after the date which is 90 days after August 5, 1997, and before the close of the period described in section 1320a–7d(b)(6) of this title.

(h) Definitions and special rules

For purposes of this section:

(1) Compensation arrangement; remuneration

(A) The term ''compensation arrangement'' means any arrangement involving any remuneration between a physician (or an immediate family member of such physician) and an entity other than an arrangement involving only remuneration described in subparagraph (C).

(B) The term ''remuneration'' includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

(C) Remuneration described in this subparagraph is any remuneration consisting of any of the following:

(i) The forgiveness of amounts owed for inaccurate tests or procedures, mistakenly performed tests or procedures, or the correction of minor billing errors.

(ii) The provision of items, devices, or supplies that are used solely to—

(I) collect, transport, process, or store specimens for the entity providing the item, device, or supply, or

(II) order or communicate the results of tests or procedures for such entity.

(iii) A payment made by an insurer or a self-insured plan to a physician to satisfy a claim, submitted on a fee for service basis, for the furnishing of health services by that physician to an individual who is covered by a policy with the insurer or by the self-insured plan, if—

(I) the health services are not furnished, and the payment is not made, pursuant to a contract or other arrangement between the insurer or the plan and the physician,

[3] So in original. Probably should be ''provide''.

(II) the payment is made to the physician on behalf of the covered individual and would otherwise be made directly to such individual,

(III) the amount of the payment is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account directly or indirectly the volume or value of any referrals, and

(IV) the payment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(2) Employee

An individual is considered to be ''employed by'' or an ''employee'' of an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

(3) Fair market value

The term ''fair market value'' means the value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes (not taking into account its intended use) and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(4) Group practice

(A) Definition of group practice

The term ''group practice'' means a group of 2 or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association—

(i) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment and personnel,

(ii) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed under a billing number assigned to the group and amounts so received are treated as receipts of the group,

(iii) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined,

(iv) except as provided in subparagraph (B)(i), in which no physician who is a member of the group directly or indirectly receives compensation based on the volume or value of referrals by the physician,

(v) in which members of the group personally conduct no less than 75 percent of the physician-patient encounters of the group practice, and

(vi) which meets such other standards as the Secretary may impose by regulation.

(B) Special rules

(i) Profits and productivity bonuses

A physician in a group practice may be paid a share of overall profits of the group, or a productivity bonus based on services personally performed or services incident to such personally performed services, so long as the share or bonus is not determined in any manner which is directly related to the volume or value of referrals by such physician.

(ii) Faculty practice plans

In the case of a faculty practice plan associated with a hospital, institution of higher education, or medical school with an approved medical residency training program in which physician members may provide a variety of different specialty services and provide professional services both within and outside the group, as well as perform other tasks such as research, subparagraph (A) shall be applied only with respect to the services provided within the faculty practice plan.

(5) Referral; referring physician

(A) Physicians' services

Except as provided in subparagraph (C), in the case of an item or service for which payment may be made under part B of this subchapter, the request by a physician for the item or service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), constitutes a ''referral'' by a ''referring physician''.

(B) Other items

Except as provided in subparagraph (C), the request or establishment of a plan of care by a physician which includes the provision of the designated health service constitutes a ''referral'' by a ''referring physician''.

(C) Clarification respecting certain services integral to a consultation by certain specialists

A request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, a request by a radiologist for diagnostic radiology services, and a request by a radiation oncologist for radiation therapy, if such services are furnished by (or under the supervision of) such pathologist, radiologist, or radiation oncologist pursuant to a consultation requested by another physician does not constitute a ''referral'' by a ''referring physician''.

(6) Designated health services

The term ''designated health services'' means any of the following items or services:

(A) Clinical laboratory services.

(B) Physical therapy services.

(C) Occupational therapy services.

(D) Radiology services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services.

(E) Radiation therapy services and supplies.

(F) Durable medical equipment and supplies.

(G) Parenteral and enteral nutrients, equipment, and supplies.

(H) Prosthetics, orthotics, and prosthetic devices and supplies.

(I) Home health services.

(J) Outpatient prescription drugs.

(K) Inpatient and outpatient hospital services.

(7) Specialty hospital

(A) In general

For purposes of this section, except as provided in subparagraph (B), the term ''specialty hospital'' means a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title) that is primarily or exclusively engaged in the care and treatment of one of the following categories:

(i) Patients with a cardiac condition.

(ii) Patients with an orthopedic condition.

(iii) Patients receiving a surgical procedure.

(iv) Any other specialized category of services that the Secretary designates as inconsistent with the purpose of permitting physician ownership and investment interests in a hospital under this section.

(B) Exception

For purposes of this section, the term ''specialty hospital'' does not include any hospital—

(i) determined by the Secretary—

(I) to be in operation before November 18, 2003; or

(II) under development as of such date;

(ii) for which the number of physician investors at any time on or after such date is no greater than the number of such investors as of such date;

(iii) for which the type of categories described in subparagraph (A) at any time on or after such date is no different than the type of such categories as of such date;

(iv) for which any increase in the number of beds occurs only in the facilities on the main campus of the hospital and does not exceed 50 percent of the number of beds in the hospital as of November 18, 2003, or 5 beds, whichever is greater; and

(v) that meets such other requirements as the Secretary may specify.

(Aug. 14, 1935, ch. 531, title XVIII, § 1877, as added Pub. L. 101–239, title VI, § 6204(a), Dec. 19, 1989, 103 Stat. 2236; amended Pub. L. 101–508, title IV, § 4207(e)(1)–(3), (k)(2), formerly § 4027(e)(1)–(3), (k)(2), Nov. 5, 1990, 104 Stat. 1388–121, 1388–122, 1388–124, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 103–66, title XIII, § 13562(a), Aug. 10, 1993, 107 Stat. 596; Pub. L. 103–432, title I, § 152(a), (b), Oct. 31, 1994, 108 Stat. 4436; Pub. L. 105–33, title IV, § 4314, Aug. 5, 1997, 111 Stat. 389; Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 524(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–387; Pub. L. 108–173, title I, § 101(e)(8)(B), title V, § 507(a), Dec. 8, 2003, 117 Stat. 2152, 2295.)

REFERENCES IN TEXT

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (b)(3)(C), is section 222(a) of Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a note under section 1395b–1 of this title.

Section 300e–9(d) of this title, referred to in subsec. (b)(3)(D), was redesignated section 300e–9(c) of this title by Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

Part C of this subchapter, referred to in subsec. (b)(3)(E), is classified to section 1395w–21 et seq. of this title.

Section 1395w–104(e)(6) of this title, referred to in subsec. (b)(5), was in the original ''section 1860D–3(e)(6)'', and was translated as reading ''section 1860D–4(e)(6)'', meaning section 1860D–4(e)(6) of the Social Security Act, to reflect the probable intent of Congress, because section 1860D–3, which is classified to section 1395w–103 of this title, does not contain a subsec. (e), and section 1860D–4(e)(6) relates to electronic prescription program regulations.

The Internal Revenue Code, referred to in subsecs. (c)(2) and (h)(2), is classified generally to Title 26, Internal Revenue Code.

Part B of this subchapter, referred to in subsec. (h)(5)(A), is classified to section 1395j et seq. of this title.

PRIOR PROVISIONS

A prior section 1395nn, act Aug. 14, 1935, ch. 531, title XVIII, § 1877, as added and amended Oct. 30, 1972, Pub. L. 92–603, title II, §§ 242(b), 278(b)(8), 86 Stat. 1419, 1454; Oct. 25, 1977, Pub. L. 95–142, § 4(a), 91 Stat. 1179; Dec. 5, 1980, Pub. L. 96–499, title IX, § 917, 94 Stat. 2625; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2306(f)(2), 98 Stat. 1073; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9321(a)(1), 100 Stat. 2016; Aug. 18, 1987, Pub. L. 100–93, § 4(c), 101 Stat. 689, enumerated offenses relating to the Medicare program and penalties for such offenses, prior to repeal by Pub. L. 100–93, §§ 4(e), 15(a), Aug. 18, 1987, 101 Stat. 689, 698, effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period.

AMENDMENTS

2003—Subsec. (b)(5). Pub. L. 108–173, § 101(e)(8)(B), added par. (5).

Subsec. (d)(2). Pub. L. 108–173, § 507(a)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''In the case of designated health services furnished in a rural area (as defined in section 1395ww(d)(2)(D) of this title) by an entity, if substantially all of the designated health services furnished by such entity are furnished to individuals residing in such a rural area.''

Subsec. (d)(3)(B), (C). Pub. L. 108–173, § 507(a)(1)(A), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (h)(7). Pub. L. 108–173, § 507(a)(1)(B), added par. (7).

1999—Subsec. (b)(3)(C). Pub. L. 106–113, § 1000(a)(6) [title V, § 524(a)(1)], struck out ''or'' at the end.

Subsec. (b)(3)(D). Pub. L. 106–113, § 1000(a)(6) [title V, § 524(a)(2)], substituted '', or'' for period at end.

Subsec. (b)(3)(E). Pub. L. 106–113, § 1000(a)(6) [title V, § 524(a)(3)], which directed addition of provisions at end of par. (3) but which separated directory language from language to be added because of the apparent placement out of sequence of pars. (2) and (3) of § 524(a), was executed by adding subpar. (E) at end of par. (3) to reflect the probable intent of Congress.

1997—Subsec. (g)(6). Pub. L. 105–33 added par. (6).

1994—Subsec. (f). Pub. L. 103–432, §152(a)(1), (4), (5), in introductory provisions, substituted ''ownership, investment, and compensation arrangements'' for ''ownership arrangements'', and in closing provisions, substituted ''designated health services'' for ''covered items and services'' and struck out ''Such information shall first be provided not later than October 1, 1991.'' after ''shall specify.'' and ''The Secretary may waive the requirements of this subsection (and the requirements of chapter 35 of title 44 with respect to information provided under this subsection) with respect to reporting by entities in a State (except for entities providing designated health services) so long as such reporting occurs in at least 10 States, and the Secretary may waive such requirements with respect to the providers in a State required to report so long as such requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease facilities, suppliers of ambulance services, hospitals, entities providing physical therapy services, and entities providing diagnostic imaging services of any type.'' at end.

Subsec. (f)(2). Pub. L. 103–432, §152(a)(2), (3), inserted '', or with a compensation arrangement (as described in subsection (a)(2)(B) of this section),'' after ''investment interest (as described in subsection (a)(2)(A) of this section)'' and ''interest or who have such a compensation relationship with the entity'' before period at end.

Subsec. (h)(6). Pub. L. 103–432, §152(b), in subpar. (D), substituted ''services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services'' for ''or other diagnostic services'', and in subpars. (E), (F), and (H), inserted ''and supplies'' before period at end.

1993—Subsecs. (a) to (e). Pub. L. 103–66, §13562(a)(1), amended headings and text of subsecs. (a) to (e) generally, substituting present provisions for provisions which related to: prohibition of certain referrals in subsec. (a), general exceptions to both ownership and compensation arrangement prohibitions in subsec. (b), general exception related only to ownership or investment prohibition for ownership in publicly-traded securities in subsec. (c), additional exceptions related only to ownership or investment prohibition in subsec. (d), and exceptions relating to other compensation arrangements in subsec. (e).

Subsec. (f). Pub. L. 103–66, §13562(a)(3), substituted ''designated health services'' for ''clinical laboratory services'' in concluding provisions.

Subsec. (g)(1). Pub. L. 103–66, §13562(a)(4), substituted ''designated health service'' for ''clinical laboratory service''.

Subsec. (h). Pub. L. 103–66, §13562(a)(2), amended heading and text of subsec. (h) generally, substituting pars. (1) to (6) for former pars. (1) to (7) which defined ''compensation arrangement'', ''remuneration'', ''employee'', ''fair market value'', ''group practice'', ''investor'', ''interested investor'', ''disinterested investor'', ''referral'', and ''referring physician''.

1990—Subsec. (b)(4), (5). Pub. L. 101–508, §4207(e)(2), formerly §4027(e)(2), as renumbered by Pub. L. 103–432, §160(d)(4), added par. (4) and redesignated former par. (4) as (5).

Subsec. (f). Pub. L. 101–508, §4207(e)(3)(B), (C), formerly §4027(e)(3)(B), (C), as renumbered by Pub. L. 103–432, §160(d)(4), substituted ''October 1, 1991'' for ''1 year after December 19, 1989'' in second sentence and inserted at end ''The requirement of this subsection shall not apply to covered items and services provided outside the United States or to entities which the Secretary determines provides services for which payment may be made under this subchapter very infrequently. The Secretary may waive the requirements of this subsection (and the requirements of chapter 35 of title 44 with respect to information provided under this subsection) with respect to reporting by entities in a State (except for entities providing clinical laboratory services) so long as such reporting occurs in at least 10 States, and the Secretary may waive such requirements with respect to the providers in a State required to report so long as such requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease facilities, suppliers of ambulance services, hospitals, entities providing physical therapy services, and entities providing diagnostic imaging services of any type.''

Subsec. (f)(2). Pub. L. 101–508, §4207(e)(3)(A), formerly §4027(e)(3)(A), as renumbered by Pub. L. 103–432, §160(d)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the names and all of the medicare provider numbers of the physicians who are interested investors or who are immediate relatives of interested investors.''

Subsec. (g)(5). Pub. L. 101–508, §4207(k)(2), formerly §4027(k)(2), as renumbered by Pub. L. 103–432, §160(d)(4), inserted at end ''The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (h)(6). Pub. L. 101–508, §4207(e)(1)(C), formerly §4027(e)(1)(C), as renumbered by Pub. L. 103–432, §160(d)(4), added par. (6). Former par. (6) redesignated (7).

Pub. L. 101–508, §4207(e)(1)(A), (B), formerly §4027(e)(1)(A), (B), as renumbered by Pub. L. 103–432, §160(d)(4), substituted ''in the case of an item or service for which payment may be made under part B of this subchapter, the request by a physician for the item or service,'' for ''in the case of a clinical laboratory service which under law is required to be provided by (or under the supervision of) a physician, the request by a physician for the service,'' in subpar. (A) and struck out ''in the case of another clinical laboratory service,'' after ''subparagraph (C),'' in subpar. (B).

Subsec. (h)(7). Pub. L. 101–508, §4207(e)(1)(C), formerly §4027(e)(1)(C), as renumbered by Pub. L. 103–432, §160(d)(4), redesignated par. (6) as (7).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §524(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–388, provided that: ''The amendment made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Nov. 29, 1999].''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 152(d)(1) of Pub. L. 103–432 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to referrals made on or after January 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13562(b) of Pub. L. 103–66, as amended by Pub. L. 103–432, title I, §152(c), Oct. 31, 1994, 108 Stat. 4437, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to referrals—

''(A) made on or after January 1, 1992, in the case of clinical laboratory services, and

''(B) made after December 31, 1994, in the case of other designated health services.

''(2) EXCEPTIONS.—With respect to referrals made for clinical laboratory services on or before December 31, 1994—

''(A) the second sentence of subsection (a)(2), and subsections (b)(2)(B) and (d)(2), of section 1877 of the Social Security Act [subsecs. (a)(2), (b)(2)(B), and (d)(2) of this section] (as in effect on the day before

the date of the enactment of this Act [Aug. 10, 1993]) shall apply instead of the corresponding provisions in section 1877 (as amended by this Act);

''(B) section 1877(b)(4) of the Social Security Act [subsec. (b)(4) of this section] (as in effect on the day before the date of the enactment of this Act) shall apply;

''(C) the requirements of section 1877(c)(2) of the Social Security Act [subsec. (c)(2) of this section] (as amended by this Act) shall not apply to any securities of a corporation that meets the requirements of section 1877(c)(2) of the Social Security Act (as in effect on the day before the date of the enactment of this Act);

''(D) section 1877(e)(3) of the Social Security Act [subsec. (e)(3) of this section] (as amended by this Act) shall apply, except that it shall not apply to any arrangement that meets the requirements of subsection (e)(2) or subsection (e)(3) of section 1877 of the Social Security Act (as in effect on the day before the date of the enactment of this Act);

''(E) the requirements of clauses (iv) and (v) of section 1877(h)(4)(A), and of clause (i) of section 1877(h)(4)(B), of the Social Security Act [subsec. (h)(4)(A)(iv), (v), (B)(i) of this section] (as amended by this Act) shall not apply; and

''(F) section 1877(h)(4)(B) of the Social Security Act [subsec. (h)(4)(B) of this section] (as in effect on the day before the date of the enactment of this Act) shall apply instead of section 1877(h)(4)(A)(ii) of such Act (as amended by this Act).''

[Section 152(d)(2) of Pub. L. 103–432 provided that: ''The amendment made by subsection (c) [amending section 13562(b) of Pub. L. 103–66, set out above] shall apply as if included in the enactment of OBRA–1993 [Pub. L. 103–66].'']

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4207(e)(5), formerly 4027(e)(5), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by this subsection [amending this section and provisions set out below] shall be effective as if included in the enactment of section 6204 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

EFFECTIVE DATE

Section 6204(c) of Pub. L. 101–239 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1395*l* of this title] shall become effective with respect to referrals made on or after January 1, 1992.

''(2) The reporting requirement of section 1877(f) of the Social Security Act [subsec. (f) of this section] shall take effect on October 1, 1990.''

DEADLINE FOR CERTAIN REGULATIONS

Section 6204(d) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4207(e)(4)(B), formerly § 4027(e)(4)(B), Nov. 5, 1990, 104 Stat. 1388–122, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The Secretary of Health and Human Services shall publish final regulations to carry out section 1877 of the Social Security Act [this section] by not later than October 1, 1991.''

APPLICATION OF EXCEPTION FOR HOSPITALS UNDER DEVELOPMENT

Pub. L. 108–173, title V, § 507(b), Dec. 8, 2003, 117 Stat. 2296, provided that: ''For purposes of section 1877(h)(7)(B)(i)(II) of the Social Security Act [subsec. (h)(7)(B)(i)(II) of this section], as added by subsection (a)(1)(B), in determining whether a hospital is under development as of November 18, 2003, the Secretary [of Health and Human Services] shall consider—

''(1) whether architectural plans have been completed, funding has been received, zoning requirements have been met, and necessary approvals from appropriate State agencies have been received; and

''(2) any other evidence the Secretary determines would indicate whether a hospital is under development as of such date.''

STUDIES

Pub. L. 108–173, title V, § 507(c), Dec. 8, 2003, 117 Stat. 2296, provided that:

''(1) MEDPAC STUDY.—The Medicare Payment Advisory Commission, in consultation with the Comptroller General of the United States, shall conduct a study to determine—

''(A) any differences in the costs of health care services furnished to patients by physician-owned specialty hospitals and the costs of such services furnished by local full-service community hospitals within specific diagnosis-related groups;

''(B) the extent to which specialty hospitals, relative to local full-service community hospitals, treat patients in certain diagnosis-related groups within a category, such as cardiology, and an analysis of the selection;

''(C) the financial impact of physician-owned specialty hospitals on local full-service community hospitals;

''(D) how the current diagnosis-related group system should be updated to better reflect the cost of delivering care in a hospital setting; and

''(E) the proportions of payments received, by type of payer, between the specialty hospitals and local full-service community hospitals.

''(2) HHS STUDY.—The Secretary [of Health and Human Services] shall conduct a study of a representative sample of specialty hospitals—

''(A) to determine the percentage of patients admitted to physician-owned specialty hospitals who are referred by physicians with an ownership interest;

''(B) to determine the referral patterns of physician owners, including the percentage of patients they referred to physician-owned specialty hospitals and the percentage of patients they referred to local full-service community hospitals for the same condition;

''(C) to compare the quality of care furnished in physician-owned specialty hospitals and in local full-service community hospitals for similar conditions and patient satisfaction with such care; and

''(D) to assess the differences in uncompensated care, as defined by the Secretary, between the specialty hospital and local full-service community hospitals, and the relative value of any tax exemption available to such hospitals.

''(3) REPORTS.—Not later than 15 months after the date of the enactment of this Act [Dec. 8, 2003], the Commission and the Secretary, respectively, shall each submit to Congress a report on the studies conducted under paragraphs (1) and (2), respectively, and shall include any recommendations for legislation or administrative changes.''

GAO STUDY OF OWNERSHIP BY REFERRING PHYSICIANS

Section 6204(e) of Pub. L. 101–239 directed Comptroller General to conduct a study of ownership of hospitals and other providers of medicare services by referring physicians and, by not later than Feb. 1, 1991, report to Congress on results of such study, prior to repeal by Pub. L. 104–316, title I, § 122(h)(1), Oct. 19, 1996, 110 Stat. 3837.

STATISTICAL SUMMARY OF COMPARATIVE UTILIZATION

Section 6204(f) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4207(e)(4)(A), formerly § 4027(e)(4)(A), Nov. 5, 1990, 104 Stat. 1388–122, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 104–316, title I, § 122(h)(2), Oct. 19, 1996, 110 Stat. 3837, directed Secretary of Health and Human Services, not later than June 30, 1992, to submit to Congress a statistical profile comparing utilization of items and services by medicare beneficiaries served

by entities in which the referring physician has a direct or indirect financial interest and by medicare beneficiaries served by other entities, for the States and entities specified in subsec. (f) of this section (other than entities providing clinical laboratory services).

§ 1395oo. Provider Reimbursement Review Board

(a) Establishment

Any provider of services which has filed a required cost report within the time specified in regulations may obtain a hearing with respect to such cost report by a Provider Reimbursement Review Board (hereinafter referred to as the ''Board'') which shall be established by the Secretary in accordance with subsection (h) of this section and (except as provided in subsection (g)(2) of this section) any hospital which receives payments in amounts computed under subsection (b) or (d) of section 1395ww of this title and which has submitted such reports within such time as the Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by the Board, if—

(1) such provider—

(A)(i) is dissatisfied with a final determination of the organization serving as its fiscal intermediary pursuant to section 1395h of this title as to the amount of total program reimbursement due the provider for the items and services furnished to individuals for which payment may be made under this subchapter for the period covered by such report, or

(ii) is dissatisfied with a final determination of the Secretary as to the amount of the payment under subsection (b) or (d) of section 1395ww of this title,

(B) has not received such final determination from such intermediary on a timely basis after filing such report, where such report complied with the rules and regulations of the Secretary relating to such report, or

(C) has not received such final determination on a timely basis after filing a supplementary cost report, where such cost report did not so comply and such supplementary cost report did so comply,

(2) the amount in controversy is $10,000 or more, and

(3) such provider files a request for a hearing within 180 days after notice of the intermediary's final determination under paragraph (1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary's final determination, or with respect to appeals pursuant to paragraph (1) (B) or (C), within 180 days after notice of such determination would have been received if such determination had been made on a timely basis.

(b) Appeals by groups

The provisions of subsection (a) of this section shall apply to any group of providers of services if each provider of services in such group would, upon the filing of an appeal (but without regard to the $10,000 limitation), be entitled to such a hearing, but only if the matters in controversy involve a common question of fact or interpretation of law or regulations and the amount in controversy is, in the aggregate, $50,000 or more.

(c) Right to counsel; rules of evidence

At such hearing, the provider of services shall have the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. Evidence may be received at any such hearing even though inadmissible under rules of evidence applicable to court procedure.

(d) Decisions of Board

A decision by the Board shall be based upon the record made at such hearing, which shall include the evidence considered by the intermediary and such other evidence as may be obtained or received by the Board, and shall be supported by substantial evidence when the record is viewed as a whole. The Board shall have the power to affirm, modify, or reverse a final determination of the fiscal intermediary with respect to a cost report and to make any other revisions on matters covered by such cost report (including revisions adverse to the provider of services) even though such matters were not considered by the intermediary in making such final determination.

(e) Rules and regulations

The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this subchapter or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this section. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d) and (e) of section 405 of this title with respect to subpenas shall apply to the Board to the same extent as they apply to the Secretary with respect to subchapter II of this chapter.

(f) Finality of decision; judicial review; determinations of Board authority; jurisdiction; venue; interest on amount in controversy

(1) A decision of the Board shall be final unless the Secretary, on his own motion, and within 60 days after the provider of services is notified of the Board's decision, reverses, affirms, or modifies the Board's decision. Providers shall have the right to obtain judicial review of any final decision of the Board, or of any reversal, affirmance, or modification by the Secretary, by a civil action commenced within 60 days of the date on which notice of any final decision by the Board or of any reversal, affirmance, or modification by the Secretary is received. Providers shall also have the right to obtain judicial review of any action of the fiscal intermediary which involves a question of law or regulations relevant to the matters in controversy whenever the Board determines (on its own motion or at the request of a provider of services as described in the following sentence) that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which notification of such determination is received. If a provider of services may obtain a hearing under subsection (a) of this section and has filed a request for such a hearing, such provider may file a request for a determination by the Board of its authority to decide the question of law or regulations relevant to the matters in controversy (accompanied by such documents

and materials as the Board shall require for purposes of rendering such determination). The Board shall render such determination in writing within thirty days after the Board receives the request and such accompanying documents and materials, and the determination shall be considered a final decision and not subject to review by the Secretary. If the Board fails to render such determination within such period, the provider may bring a civil action (within sixty days of the end of such period) with respect to the matter in controversy contained in such request for a hearing. Such action shall be brought in the district court of the United States for the judicial district in which the provider is located (or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located) or in the District Court for the District of Columbia and shall be tried pursuant to the applicable provisions under chapter 7 of title 5 notwithstanding any other provisions in section 405 of this title. Any appeal to the Board or action for judicial review by providers which are under common ownership or control or which have obtained a hearing under subsection (b) of this section must be brought by such providers as a group with respect to any matter involving an issue common to such providers.

(2) Where a provider seeks judicial review pursuant to paragraph (1), the amount in controversy shall be subject to annual interest beginning on the first day of the first month beginning after the 180-day period as determined pursuant to subsection (a)(3) of this section and equal to the rate of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund for the month in which the civil action authorized under paragraph (1) is commenced, to be awarded by the reviewing court in favor of the prevailing party.

(3) No interest awarded pursuant to paragraph (2) shall be deemed income or cost for the purposes of determining reimbursement due providers under this chapter.

(g) Certain findings not reviewable

(1) The finding of a fiscal intermediary that no payment may be made under this subchapter for any expenses incurred for items or services furnished to an individual because such items or services are listed in section 1395y of this title shall not be reviewed by the Board, or by any court pursuant to an action brought under subsection (f) of this section.

(2) The determinations and other decisions described in section 1395ww(d)(7) of this title shall not be reviewed by the Board or by any court pursuant to an action brought under subsection (f) of this section or otherwise.

(h) Composition and compensation

The Board shall be composed of five members appointed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive services. Two of such members shall be representative of providers of services. All of the members of the Board shall be persons knowledgeable in the field of payment of providers of services, and at least one of them shall be a certified public accountant. Members of the Board shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the rate specified (at the time the service involved is rendered by such members) for grade GS–18 in section 5332 of title 5. The term of office shall be three years, except that the Secretary shall appoint the initial members of the Board for shorter terms to the extent necessary to permit staggered terms of office.

(i) Technical and clerical assistance

The Board is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Board such secretarial, clerical, and other assistance as the Board may require to carry out its functions.

(j) "Provider of services" defined

In this section, the term ''provider of services'' includes a rural health clinic and a Federally qualified health center.

(Aug. 14, 1935, ch. 531, title XVIII, § 1878, as added Pub. L. 92–603, title II, § 243(a), Oct. 30, 1972, 86 Stat. 1420; amended Pub. L. 93–484, § 3(a), Oct. 26, 1974, 88 Stat. 1459; Pub. L. 96–499, title IX, § 955, Dec. 5, 1980, 94 Stat. 2647; Pub. L. 98–21, title VI, § 602(h), Apr. 20, 1983, 97 Stat. 165; Pub. L. 98–369, div. B, title III, §§ 2351(a)(1), (b)(1), 2354(b)(39), (40), July 18, 1984, 98 Stat. 1098, 1099, 1102; Pub. L. 101–508, title IV, § 4161(a)(6), (b)(4), Nov. 5, 1990, 104 Stat. 1388–94, 1388–95; Pub. L. 103–66, title XIII, § 13503(c)(1)(B), Aug. 10, 1993, 107 Stat. 579.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (h), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1993—Subsec. (f)(2). Pub. L. 103–66 substituted ''the rate of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund for the month in which'' for ''the rate of return on equity capital established by regulation pursuant to section 1395x(v)(1)(B) of this title and in effect at the time''.

1990—Subsec. (j). Pub. L. 101–508, § 4161(b)(4), inserted ''a rural health clinic and'' after ''includes''.

Pub. L. 101–508, § 4161(a)(6), added subsec. (j).

1984—Subsec. (c). Pub. L. 98–369, § 2354(b)(39), substituted ''inadmissible'' for ''inadmissable''.

Subsec. (e). Pub. L. 98–369, § 2354(b)(40), substituted ''and (e)'' for '', (e), and (f)''.

Subsec. (f)(1). Pub. L. 98–369, § 2351(a)(1), substituted ''notification of such determination is received'' for ''such determination is rendered'' in third sentence.

Pub. L. 98–369, § 2351(b)(1), inserted ''or which have obtained a hearing under subsection (b) of this section'' after ''common ownership or control'' in last sentence.

1983—Subsec. (a). Pub. L. 98–21, § 602(h)(1)(A), inserted provision in introductory text that, except as provided in subsec. (g)(2) of this section, any hospital which receives payments in amounts computed under section 1395ww(b) or (d) of this title and which has submitted such reports within such time as Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by Board.

Subsec. (a)(1)(A). Pub. L. 98–21, § 602(h)(1)(B), (C), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(3). Pub. L. 98–21, § 602(h)(1)(D), substituted ''(1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary's final determination,'' for ''(1)(A)''.

Subsec. (f)(1). Pub. L. 98–21, § 602(h)(2), inserted ''(or, in an action brought jointly by several providers, the judicial district in which the greatest number of such

providers are located)'' after ''the judicial district in which the provider is located'', and ''Any appeal to the Board or action for judicial review by providers which are under common ownership or control must be brought by such providers as a group with respect to any matter involving an issue common to such providers.''

Subsec. (g). Pub. L. 98–21, § 602(h)(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 98–21, § 602(h)(4), substituted ''payment of providers of services'' for ''cost reimbursement''.

1980—Subsec. (f)(1). Pub. L. 96–499 inserted provision empowering providers of services to obtain judicial review of any action of a fiscal intermediary involving a question of law or regulations relevant to matters in controversy whenever Board determined that it was without authority to decide such matters in controversy.

1974—Subsec. (f). Pub. L. 93–484 redesignated existing provisions as par. (1), inserted provisions authorizing judicial review for providers of final decisions of Board and judicial review of any affirmance by Secretary, and added pars. (2) and (3).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Oct. 1, 1993, see section 13503(c)(2) of Pub. L. 103–66, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4161(a)(6) of Pub. L. 101–508 applicable to cost reports for periods beginning on or after Oct. 1, 1991, see section 4161(a)(8)(C) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(b)(4) of Pub. L. 101–508 applicable to cost reports for periods beginning on or after Oct. 1, 1991, see section 4161(b)(5) of Pub. L. 101–508, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2351(a)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to any civil action commenced on or after the date of the enactment of this Act [July 18, 1984].''

Section 2351(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to any appeal or action brought on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(39), (40) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title. See, also, section 2351(c) of Pub. L. 98–369, set out as a note below.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3(b) of Pub. L. 93–484 provided that: ''The amendment made by subsection (a) [amending this section] shall be applicable to cost reports of providers of services for accounting periods ending on or after June 30, 1973.''

EFFECTIVE DATE

Section 243(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [enacting this section and amending section 1395h of this title] shall apply with respect to cost reports of providers of services, as defined in title XVIII of the Social Security Act [this subchapter], for accounting periods ending on or after June 30, 1973.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

REVIEW OF PROVIDER REIMBURSEMENT REVIEW BOARD DECISIONS

Section 2351(c) of Pub. L. 98–369 provided that: ''Notwithstanding section 604 of the Social Security Amendments of 1983 (Public Law 98–21) [set out as an Effective Date of 1983 Amendments note under section 1395ww of this title]—

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

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

§ 1395pp. Limitation on liability where claims are disallowed

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

Where—

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

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

then to the extent permitted by this subchapter, payment shall, notwithstanding such determination, be made for such items or services (and for such period of time as the Secretary finds will carry out the objectives of this subchapter), as though section 1395y(a)(1) and section 1395y(a)(9) of this title did not apply and as though the coverage denial described in subsection (g) of this section had not occurred. In each such case the Secretary shall notify both such individual and such provider of services or such other person, as the case may be, of the conditions under which payment for such items or services was made and in the case of comparable situations arising thereafter with respect to such indi-

vidual or such provider or such other person, each shall, by reason of such notice (or similar notices provided before the enactment of this section), be deemed to have knowledge that payment cannot be made for such items or services or reasonably comparable items or services. Any provider or other person furnishing items or services for which payment may not be made by reason of section 1395y(a)(1) or (9) of this title or by reason of a coverage denial described in subsection (g) of this section shall be deemed to have knowledge that payment cannot be made for such items or services if the claim relating to such items or services involves a case, provider or other person furnishing services, procedure, or test, with respect to which such provider or other person has been notified by the Secretary (including notification by a utilization and quality control peer review organization) that a pattern of inappropriate utilization has occurred in the past, and such provider or other person has been allowed a reasonable time to correct such inappropriate utilization.

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

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

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

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

(d) Exercise of rights

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

(e) Payment where beneficiary not at fault

Where payment for inpatient hospital services or extended care services may not be made under part A of this subchapter on behalf of an individual entitled to benefits under such part solely because of an unintentional, inadvertent, or erroneous action with respect to the transfer of such individual from a hospital or skilled nursing facility that meets the requirements of section 1395x(e) or (j) of this title by such a provider of services acting in good faith in accordance with the advice of a utilization review committee, quality control and peer review organization, or fiscal intermediary, or on the basis of a clearly erroneous administrative decision by a provider of services, the Secretary shall take such action with respect to the payment of such benefits as he determines may be necessary to correct the effects of such unintentional, inadvertent, or erroneous action.

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

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

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

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

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

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

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

(B) The agency program has reasonable procedures to notify promptly each patient (and the patient's physician) where it is determined

that a patient is being or will be furnished items or services which are excluded from coverage under this subchapter.

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

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

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

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

(g) Coverage denial defined

The coverage denial described in this subsection is—

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

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

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

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

(h) Supplier responsibility for items furnished on assignment basis

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

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

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

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

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

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

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to benefits provided on or after Aug. 5, 1997, except as otherwise

provided, see section 4449 of Pub. L. 105–33, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

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

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Section 956(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1981.''

EFFECTIVE DATE

Section 213(b) of Pub. L. 92–603 provided that: ''The amendments made by this section [enacting this section] shall be effective with respect to claims under part A or part B of title XVIII of the Social Security Act [part A or part B of this subchapter], filed with respect to items or services furnished after the date of the enactment of this Act [Oct. 30, 1972].''

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

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

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

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

''(3) GAO REPORT ON USE OF ADVANCE BENEFICIARY NOTICES.—Not later than 18 months after the date on which section 1869(h) of the Social Security Act [section 1395ff(h) of this title] (as added by subsection (a)) takes effect, the Comptroller General of the United States shall submit to Congress a report on the use of advance beneficiary notices under title XVIII of such Act [this subchapter]. Such report shall include information concerning the providers of services and other persons that have provided such notices and the response of beneficiaries to such notices.

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

''(A) information concerning—

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

''(ii) determinations made under the process;

''(iii) the percentage of beneficiaries prevailing;

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

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

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

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

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

REPORTS TO CONGRESS ON DENIALS OF BILLS FOR PAYMENT

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

§ 1395qq. Indian health service facilities

(a) Eligibility for payments; conditions and requirements

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

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

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

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

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

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

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

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

(1)(A) Notwithstanding section 1395n(d) of this title, subject to subparagraph (B), the Secretary shall make payment under part B of this subchapter to a hospital or an ambulatory care clinic (whether provider-based or freestanding) that is operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined for purposes of subsection (a) of this section) for services described in paragraph (2) (and for items and services furnished during the 5-year period beginning on January 1, 2005, all items and services for which payment may be made under part B of this subchapter) furnished in or at the direction of the hospital or clinic under the same situations, terms, and conditions as would apply if the services were furnished in or at the direction of such a hospital or clinic that was not operated by such Service, tribe, or organization.

(B) Payment shall not be made for services under subparagraph (A) to the extent that payment is otherwise made for such services under this subchapter.

(2) The services described in this paragraph are the following:

(A) Services for which payment is made under section 1395w–4 of this title.

(B) Services furnished by a practitioner described in section 1395u(b)(18)(C) of this title for which payment under part B of this subchapter is made under a fee schedule.

(C) Services furnished by a physical therapist or occupational therapist as described in section 1395x(p) of this title for which payment under part B of this subchapter is made under a fee schedule.

(3) Subsection (c) of this section shall not apply to payments made under this subsection.

(f) Cross reference

For provisions relating to the authority of certain Indian tribes, tribal organizations, and Alaska Native health organizations to elect to directly bill for, and receive payment for, health care services provided by a hospital or clinic of such tribes or organizations and for which payment may be made under this subchapter, see section 1645 of title 25.

(Aug. 14, 1935, ch. 531, title XVIII, § 1880, as added Pub. L. 94–437, title IV, § 401(b), Sept. 30, 1976, 90 Stat. 1408; amended Pub. L. 102–573, title VII, § 701(d), Oct. 29, 1992, 106 Stat. 4572; Pub. L. 106–417, § 3(b)(1), Nov. 1, 2000, 114 Stat. 1815; Pub. L. 106–554, § 1(a)(6) [title IV, § 432(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–525; Pub. L. 108–173, title VI, § 630, Dec. 8, 2003, 117 Stat. 2321.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsec. (e)(1)(A), (2)(B), (C), is classified to section 1395j et seq. of this title.

AMENDMENTS

2003—Subsec. (e)(1)(A). Pub. L. 108–173 inserted ''(and for items and services furnished during the 5-year period beginning on January 1, 2005, all items and services for which payment may be made under part B of this subchapter)'' after ''for services described in paragraph (2)''.

2000—Subsec. (e). Pub. L. 106–554, § 1(a)(6) [title IV, § 432(a)(2)], added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 106–417 added subsec. (e).

Subsec. (f). Pub. L. 106–554, § 1(a)(6) [title IV, § 432(a)(1)], redesignated subsec. (e) as (f).

1992—Subsec. (d). Pub. L. 102–573 made technical amendment to the reference to section 1671 of title 25 to reflect renumbering of corresponding section of original act.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title IV, § 432(a)] of Pub. L. 106–554 applicable to services furnished on or after July 1, 2001, see section 1(a)(6) [title IV, § 432(c)] of Pub. L. 106–554, set out as a note under section 1395u of this title.

Amendment by Pub. L. 106–417 effective Oct. 1, 2000, see section 3(c) of Pub. L. 106–417, set out as a note under section 1645 of Title 25, Indians.

MEDICARE PAYMENTS NOT CONSIDERED IN DETERMINING APPROPRIATIONS FOR INDIAN HEALTH CARE

Section 401(c) of Pub. L. 94–437 provided that any payments received for services provided to beneficiaries under this section were not to be considered in determining appropriations for health care and services to Indians, prior to the general amendment of section 401 of Pub. L. 94–437 by Pub. L. 102–573, title IV, § 401(a), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 401(a) of Pub. L. 94–437, which is classified to section 1641(a) of Title 25, Indians.

PREFERENCE IN SERVICES FOR INDIANS WITH MEDICARE COVERAGE NOT AUTHORIZED

Section 401(d) of Pub. L. 94–437, which provided that nothing in this section authorized the Secretary to provide services to an Indian beneficiary with coverage under this subchapter, in preference to an Indian beneficiary without such coverage, was omitted in the general amendment of section 401 of Pub. L. 94–437 by Pub. L. 102–573, title IV, § 401(a), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 401(b) of Pub. L. 94–437, which is classified to section 1641(b) of Title 25, Indians.

§ 1395rr. End stage renal disease program

(a) Type, duration, and scope of benefits

The benefits provided by parts A and B of this subchapter shall include benefits for individuals who have been determined to have end stage renal disease as provided in section 426–1 of this title, and benefits for kidney donors as provided in subsection (d) of this section. Notwithstanding any other provision of this subchapter, the type, duration, and scope of the benefit provided by parts A and B of this subchapter with respect to individuals who have been determined to have end stage renal disease and who are entitled to such benefits without regard to section 426–1 of this title shall in no case be less than the type, duration, and scope of the benefits so provided for individuals entitled to such benefits solely by reason of that section.

(b) Payments with respect to services; dialysis; regulations; physicians' services; target reimbursement rates; home dialysis supplies and equipment; self-care home dialysis support services; self-care dialysis units; hepatitis B vaccine

(1) Payments under this subchapter with respect to services, in addition to services for which payment would otherwise be made under this subchapter, furnished to individuals who have been determined to have end stage renal disease shall include (A) payments on behalf of such individuals to providers of services and renal dialysis facilities which meet such requirements as the Secretary shall by regulation prescribe for institutional dialysis services and supplies (including self-dialysis services in a self-care dialysis unit maintained by the provider or facility), transplantation services, self-care home dialysis support services which are furnished by the provider or facility, and routine professional services performed by a physician during a maintenance dialysis episode if payments for his other professional services furnished to an individual who has end stage renal disease are made on the basis specified in paragraph (3)(A) of this subsection, (B) payments to or on behalf of such individuals for home dialysis supplies and equipment, and (C) payments to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for self-administered erythropoietin as described in section 1395x(s)(2)(P)[1] of this title if the Secretary finds that the patient receiving such drug from such a supplier can safely and effectively administer the drug (in accordance with the applicable methods and standards established by the Secretary pursuant to such section). The requirements prescribed by the Secretary under subparagraph (A) shall include requirements for a minimum utilization rate for transplantations.

(2)(A) With respect to payments for dialysis services furnished by providers of services and renal dialysis facilities to individuals determined to have end stage renal disease for which payments may be made under part B of this subchapter, such payments (unless otherwise provided in this section) shall be equal to 80 percent of the amounts determined in accordance with subparagraph (B); and with respect to payments for services for which payments may be made under part A of this subchapter, the amounts of such payments (which amounts shall not exceed, in respect to costs in procuring organs attributable to payments made to an organ procurement agency or histocompatibility laboratory, the costs incurred by that agency or laboratory) shall be determined in accordance with section 1395x(v) of this title or section 1395ww of this title (if applicable). Payments shall be made to a renal dialysis facility only if it agrees to accept such payments as payment in full for covered services, except for payment by the individual of 20 percent of the estimated amounts for such services calculated on the basis established by the Secretary under subparagraph (B) and the deductible amount imposed by section 1395*l*(b) of this title.

(B) The Secretary shall prescribe in regulations any methods and procedures to (i) determine the costs incurred by providers of services and renal dialysis facilities in furnishing covered services to individuals determined to have end stage renal disease, and (ii) determine, on a cost-related basis or other economical and equitable basis (including any basis authorized under section 1395x(v) of this title) and consistent with any regulations promulgated under paragraph (7), the amounts of payments to be made for part B services furnished by such providers and facilities to such individuals.

(C) Such regulations, in the case of services furnished by proprietary providers and facilities (other than hospital outpatient departments) may include, if the Secretary finds it feasible and appropriate, provision for recognition of a reasonable rate of return on equity capital, providing such rate of return does not exceed the rate of return stipulated in section 1395x(v)(1)(B) of this title.

(D) For purposes of section 1395*oo* of this title, a renal dialysis facility shall be treated as a provider of services.

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[1] See References in Text note below.

(3) With respect to payments for physicians' services furnished to individuals determined to have end stage renal disease, the Secretary shall pay 80 percent of the amounts calculated for such services—

(A) on a reasonable charge basis (but may, in such case, make payment on the basis of the prevailing charges of other physicians for comparable services or, for services furnished on or after January 1, 1992, on the basis described in section 1395w–4 of this title) except that payment may not be made under this subparagraph for routine services furnished during a maintenance dialysis episode, or

(B) on a comprehensive monthly fee or other basis (which effectively encourages the efficient delivery of dialysis services and provides incentives for the increased use of home dialysis) for an aggregate of services provided over a period of time (as defined in regulations).

(4)(A) Pursuant to agreements with approved providers of services and renal dialysis facilities, the Secretary may make payments to such providers and facilities for the cost of home dialysis supplies and equipment and self-care home dialysis support services furnished to patients whose self-care home dialysis is under the direct supervision of such provider or facility, on the basis of a target reimbursement rate (as defined in paragraph (6)) or on the basis of a method established under paragraph (7).

(B) The Secretary shall make payments to a supplier of home dialysis supplies and equipment furnished to a patient whose self-care home dialysis is not under the direct supervision of an approved provider of services or renal dialysis facility only in accordance with a written agreement under which—

(i) the patient certifies that the supplier is the sole provider of such supplies and equipment to the patient,

(ii) the supplier agrees to receive payment for the cost of such supplies and equipment only on an assignment-related basis, and

(iii) the supplier certifies that it has entered into a written agreement with an approved provider of services or renal dialysis facility under which such provider or facility agrees to furnish to such patient all self-care home dialysis support services and all other necessary dialysis services and supplies, including institutional dialysis services and supplies and emergency services.

(5) An agreement under paragraph (4) shall require, in accordance with regulations prescribed by the Secretary, that the provider or facility will—

(A) assume full responsibility for directly obtaining or arranging for the provision of—

(i) such medically necessary dialysis equipment as is prescribed by the attending physician;

(ii) dialysis equipment maintenance and repair services;

(iii) the purchase and delivery of all necessary medical supplies; and

(iv) where necessary, the services of trained home dialysis aides;

(B) perform all such administrative functions and maintain such information and records as the Secretary may require to verify the transactions and arrangements described in subparagraph (A);

(C) submit such cost reports, data, and information as the Secretary may require with respect to the costs incurred for equipment, supplies, and services furnished to the facility's home dialysis patient population; and

(D) provide for full access for the Secretary to all such records, data, and information as he may require to perform his functions under this section.

(6) The Secretary shall establish, for each calendar year, commencing with January 1, 1979, a target reimbursement rate for home dialysis which shall be adjusted for regional variations in the cost of providing home dialysis. In establishing such a rate, the Secretary shall include—

(A) the Secretary's estimate of the cost of providing medically necessary home dialysis supplies and equipment;

(B) an allowance, in an amount determined by the Secretary, to cover the cost of providing personnel to aid in home dialysis; and

(C) an allowance, in an amount determined by the Secretary, to cover administrative costs and to provide an incentive for the efficient delivery of home dialysis;

but in no event (except as may be provided in regulations under paragraph (7)) shall such target rate exceed 75 percent of the national average payment, adjusted for regional variations, for maintenance dialysis services furnished in approved providers and facilities during the preceding fiscal year. Any such target rate so established shall be utilized, without renegotiation of the rate, throughout the calendar year for which it is established. During the last quarter of each calendar year, the Secretary shall establish a home dialysis target reimbursement rate for the next calendar year based on the most recent data available to the Secretary at the time. In establishing any rate under this paragraph, the Secretary may utilize a competitive-bid procedure, a prenegotiated rate procedure, or any other procedure (including methods established under paragraph (7)) which the Secretary determines is appropriate and feasible in order to carry out this paragraph in an effective and efficient manner.

(7) Subject to paragraph (12), the Secretary shall provide by regulation for a method (or methods) for determining prospectively the amounts of payments to be made for dialysis services furnished by providers of services and renal dialysis facilities to individuals in a facility and to such individuals at home. Such method (or methods) shall provide for the prospective determination of a rate (or rates) for each mode of care based on a single composite weighted formula (which takes into account the mix of patients who receive dialysis services at a facility or at home and the relative costs of providing such services in such settings) for hospital-based facilities and such a single composite weighted formula for other renal dialysis facilities, or based on such other method or combination of methods which differentiate between hospital-based facilities and other renal dialysis facilities and which the Secretary determines, after

detailed analysis, will more effectively encourage the more efficient delivery of dialysis services and will provide greater incentives for increased use of home dialysis than through the single composite weighted formulas. The amount of a payment made under any method other than a method based on a single composite weighted formula may not exceed the amount (or, in the case of continuous cycling peritoneal dialysis, 130 percent of the amount) of the median payment that would have been made under the formula for hospital-based facilities. Subject to section 422(a)(2) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, the Secretary shall provide for such exceptions to such methods as may be warranted by unusual circumstances (including the special circumstances of sole facilities located in isolated, rural areas and of pediatric facilities). Each application for such an exception shall be deemed to be approved unless the Secretary disapproves it by not later than 60 working days after the date the application is filed. The Secretary may provide that such method will serve in lieu of any target reimbursement rate that would otherwise be established under paragraph (6). The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the organizations (designated under subsection (c)(1)(A) of this section) for such organizations' necessary and proper administrative costs incurred in carrying out the responsibilities described in subsection (c)(2) of this section. The Secretary shall provide that amounts paid under the previous sentence shall be distributed to the organizations described in subsection (c)(1)(A) of this section to ensure equitable treatment of all such network organizations. The Secretary in distributing any such payments to network organizations shall take into account—

(A) the geographic size of the network area;

(B) the number of providers of end stage renal disease services in the network area;

(C) the number of individuals who are entitled to end stage renal disease services in the network area; and

(D) the proportion of the aggregate administrative funds collected in the network area.

The Secretary shall increase the amount of each composite rate payment for dialysis services furnished during 2000 by 1.2 percent above such composite rate payment amounts for such services furnished on December 31, 1999, for such services furnished on or after January 1, 2001, and before January 1, 2005, by 2.4 percent above such composite rate payment amounts for such services furnished on December 31, 2000, and for such services furnished on or after January 1, 2005, by 1.6 percent above such composite rate payment amounts for such services furnished on December 31, 2004.

(8) For purposes of this subchapter, the term ''home dialysis supplies and equipment'' means medically necessary supplies and equipment (including supportive equipment) required by an individual suffering from end stage renal disease in connection with renal dialysis carried out in his home (as defined in regulations), including obtaining, installing, and maintaining such equipment.

(9) For purposes of this subchapter, the term ''self-care home dialysis support services'', to the extent permitted in regulation, means—

(A) periodic monitoring of the patient's home adaptation, including visits by qualified provider or facility personnel (as defined in regulations), so long as this is done in accordance with a plan prepared and periodically reviewed by a professional team (as defined in regulations) including the individual's physician;

(B) installation and maintenance of dialysis equipment;

(C) testing and appropriate treatment of the water; and

(D) such additional supportive services as the Secretary finds appropriate and desirable.

(10) For purposes of this subchapter, the term ''self-care dialysis unit'' means a renal dialysis facility or a distinct part of such facility or of a provider of services, which has been approved by the Secretary to make self-dialysis services, as defined by the Secretary in regulations, available to individuals who have been trained for self-dialysis. A self-care dialysis unit must, at a minimum, furnish the services, equipment and supplies needed for self-care dialysis, have patient-staff ratios which are appropriate to self-dialysis (allowing for such appropriate lesser degree of ongoing medical supervision and assistance of ancillary personnel than is required for full care maintenance dialysis), and meet such other requirements as the Secretary may prescribe with respect to the quality and cost-effectiveness of services.

(11)(A) Hepatitis B vaccine and its administration, when provided to a patient determined to have end stage renal disease, shall not be included as dialysis services for purposes of payment under any prospective payment amount or comprehensive fee established under this section. Payment for such vaccine and its administration shall be made separately in accordance with section 1395*l* of this title.

(B) Erythropoietin, when provided to a patient determined to have end stage renal disease, shall not be included as a dialysis service for purposes of payment under any prospective payment amount or comprehensive fee established under this section, and subject to paragraphs (12) and (13) payment for such item shall be made separately—

(i) in the case of erythropoietin provided by a physician, in accordance with section 1395*l* of this title; and

(ii) in the case of erythropoietin provided by a provider of services, renal dialysis facility, or other supplier of home dialysis supplies and equipment—

(I) for erythropoietin provided during 1994, in an amount equal to $10 per thousand units (rounded to the nearest 100 units), and

(II) for erythropoietin provided during a subsequent year, in an amount determined to be appropriate by the Secretary, except that such amount may not exceed the amount determined under this clause for the

previous year increased by the percentage increase (if any) in the implicit price deflator for gross national product (as published by the Department of Commerce) for the second quarter of the preceding year over the implicit price deflator for the second quarter of the second preceding year.

(C) The amount payable to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for erythropoietin shall be determined in the same manner as the amount payable to a renal dialysis facility for such item.

(12)(A) In lieu of payment under paragraph (7) beginning with services furnished on January 1, 2005, the Secretary shall establish a basic case-mix adjusted prospective payment system for dialysis services furnished by providers of services and renal dialysis facilities in a year to individuals in a facility and to such individuals at home. The case-mix under such system shall be for a limited number of patient characteristics.

(B) The system described in subparagraph (A) shall include—

(i) the services comprising the composite rate established under paragraph (7); and

(ii) the difference between payment amounts under this subchapter for separately billed drugs and biologicals (including erythropoietin) and acquisition costs of such drugs and biologicals, as determined by the Inspector General reports to the Secretary as required by section 623(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—

(I) beginning with 2005, for such drugs and biologicals for which a billing code exists prior to January 1, 2004; and

(II) beginning with 2007, for such drugs and biologicals for which a billing code does not exist prior to January 1, 2004,

adjusted to 2005, or 2007, respectively, as determined to be appropriate by the Secretary.

(C)(i) In applying subparagraph (B)(ii) for 2005, such payment amounts under this subchapter shall be determined using the methodology specified in paragraph (13)(A)(i).

(ii) For 2006, the Secretary shall provide for an adjustment to the payments under clause (i) to reflect the difference between the payment amounts using the methodology under paragraph (13)(A)(i) and the payment amount determined using the methodology applied by the Secretary under paragraph (13)(A)(iii) of such paragraph, as estimated by the Secretary.

(D) The Secretary shall adjust the payment rates under such system by a geographic index as the Secretary determines to be appropriate. If the Secretary applies a geographic index under this paragraph that differs from the index applied under paragraph (7) the Secretary shall phase-in the application of the index under this paragraph over a multiyear period.

(E)(i) Such system shall be designed to result in the same aggregate amount of expenditures for such services, as estimated by the Secretary, as would have been made for 2005 if this paragraph did not apply.

(ii) The adjustment made under subparagraph (B)(ii)(II) shall be done in a manner to result in the same aggregate amount of expenditures after such adjustment as would otherwise have been made for such services for 2006 or 2007, respectively, as estimated by the Secretary, if this paragraph did not apply.

(F) Beginning with 2006, the Secretary shall annually increase the basic case-mix adjusted payment amounts established under this paragraph, by an amount determined by—

(i) applying the estimated growth in expenditures for drugs and biologicals (including erythropoietin) that are separately billable to the component of the basic case-mix adjusted system described in subparagraph (B)(ii); and

(ii) converting the amount determined in clause (i) to an increase applicable to the basic case-mix adjusted payment amounts established under subparagraph (B).

Nothing in this paragraph shall be construed as providing for an update to the composite rate component of the basic case-mix adjusted system under subparagraph (B).

(G) There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, of the case-mix system, relative weights, payment amounts, the geographic adjustment factor, or the update for the system established under this paragraph, or the determination of the difference between medicare payment amounts and acquisition costs for separately billed drugs and biologicals (including erythropoietin) under this paragraph and paragraph (13).

(13)(A) The payment amounts under this subchapter for separately billed drugs and biologicals furnished in a year, beginning with 2004, are as follows:

(i) For such drugs and biologicals (other than erythropoietin) furnished in 2004, the amount determined under section 1395u(*o*)(1)(A)(v) of this title for the drug or biological.

(ii) For such drugs and biologicals (including erythropoietin) furnished in 2005, the acquisition cost of the drug or biological, as determined by the Inspector General reports to the Secretary as required by section 623(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. Insofar as the Inspector General has not determined the acquisition cost with respect to a drug or biological, the Secretary shall determine the payment amount for such drug or biological.

(iii) For such drugs and biologicals (including erythropoietin) furnished in 2006 and subsequent years, such acquisition cost or the amount determined under section 1395w–3a of this title for the drug or biological, as the Secretary may specify.

(B)(i) Drugs and biologicals (including erythropoietin) which were separately billed under this subsection on the day before December 8, 2003, shall continue to be separately billed on and after such date.

(ii) Nothing in this paragraph, section 1395u(*o*) of this title, section 1395w–3a of this title, or section 1395w–3b of this title shall be construed as requiring or authorizing the bundling of payment for drugs and biologicals into the basic case-mix adjusted payment system under this paragraph.

(c) Renal disease network areas; coordinating councils, executive committees, and medical review boards; national end stage renal disease medical information system; functions of network organizations

(1)(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

(I) establish at least 17 end stage renal disease network areas, and

(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Secretary, shall establish (aa) a network council of renal dialysis and transplant facilities located in the area and (bb) a medical review board, which has a membership including at least one patient representative and physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consultation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization's capabilities to perform (and, in the case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2). The Secretary shall evaluate each applicant based on quality and scope of services and may not accord more than 20 percent of the weight of the evaluation to the element of price.

(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.

(B) At least one patient representative shall serve as a member of each network council and each medical review board.

(C) The Secretary shall, in regulations, prescribe requirements with respect to membership in network organizations by individuals (and the relatives of such individuals) (i) who have an ownership or control interest in a facility or provider which furnishes services referred to in section 1395x(s)(2)(F) of this title, or (ii) who have received remuneration from any such facility or provider in excess of such amounts as constitute reasonable compensation for services (including time and effort relative to the provision of professional medical services) or goods supplied to such facility or provider; and such requirements shall provide for the definition, disclosure, and, to the maximum extent consistent with effective administration, prevention of potential or actual financial or professional conflicts of interest with respect to decisions concerning the appropriateness, nature, or site of patient care.

(2) The network organizations of each network shall be responsible, in addition to such other duties and functions as may be prescribed by the Secretary, for—

(A) encouraging, consistent with sound medical practice, the use of those treatment settings most compatible with the successful rehabilitation of the patient and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs;

(B) developing criteria and standards relating to the quality and appropriateness of patient care and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs; and network goals with respect to the placement of patients in self-care settings and undergoing or preparing for transplantation;

(C) evaluating the procedure by which facilities and providers in the network assess the appropriateness of patients for proposed treatment modalities;

(D) implementing a procedure for evaluating and resolving patient grievances;

(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board or the Secretary), utilizing standards of care established by the network organization to assure proper medical care;

(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and to assure the maintenance of the registry established under paragraph (7);

(G) identifying facilities and providers that are not cooperating toward meeting network goals and assisting such facilities and providers in developing appropriate plans for correction and reporting to the Secretary on facilities and providers that are not providing appropriate medical care; and

(H) submitting an annual report to the Secretary on July 1 of each year which shall include a full statement of the network's goals, data on the network's performance in meeting its goals (including data on the comparative performance of facilities and providers with respect to the identification and placement of suitable candidates in self-care settings and transplantation and encouraging participation in vocational rehabilitation programs), identification of those facilities that have consistently failed to cooperate with network goals, and recommendations with respect to the need for additional or alternative services or facilities in the network in order to meet the network goals, including self-dialysis training, transplantation, and organ procurement facilities.

(3) Where the Secretary determines, on the basis of the data contained in the network's annual report and such other relevant data as may be available to him, that a facility or provider has consistently failed to cooperate with network plans and goals or to follow the recommendations of the medical review board, he may terminate or withhold certification of such facility or provider (for purposes of payment for services furnished to individuals with end stage renal disease) until he determines that such provider or facility is making reasonable and appropriate efforts to cooperate with the network's plans and goals. If the Secretary determines that the facility's or provider's failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

(4) The Secretary shall, in determining whether to certify additional facilities or expansion of existing facilities within a network, take into account the network's goals and performance as reflected in the network's annual report.

(5) The Secretary, after consultation with appropriate professional and planning organizations, shall provide such guidelines with respect to the planning and delivery of renal disease services as are necessary to assist network organizations in their development of their respective networks' goals to promote the optimum use of self-dialysis and transplantation by suitable candidates for such modalities.

(6) It is the intent of the Congress that the maximum practical number of patients who are medically, socially, and psychologically suitable candidates for home dialysis or transplantation should be so treated and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment. The Secretary shall consult with appropriate professional and network organizations and consider available evidence relating to developments in research, treatment methods, and technology for home dialysis and transplantation.

(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

(A) the preparation of the annual report to the Congress required under subsection (g)[1] of this section;

(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.

(8) The provisions of sections 1320c–6 and 1320c–9 of this title shall apply with respect to network administrative organizations (including such organizations as medical review boards) with which the Secretary has entered into agreements under this subsection.

(d) Donors of kidney for transplant surgery

Notwithstanding any provision to the contrary in section 426 of this title any individual who donates a kidney for transplant surgery shall be entitled to benefits under parts A and B of this subchapter with respect to such donation. Reimbursement for the reasonable expenses incurred by such an individual with respect to a kidney donation shall be made (without regard to the deductible, premium, and coinsurance provisions of this subchapter), in such manner as may be prescribed by the Secretary in regulations, for all reasonable preparatory, operation, and postoperation recovery expenses associated with such donation, including but not limited to the expenses for which payment could be made if he were an eligible individual for purposes of parts A and B of this subchapter without regard to this subsection. Payments for postoperation recovery expenses shall be limited to the actual period of recovery.

(e) Reimbursement of providers, facilities, and nonprofit entities for costs of artificial kidney and automated dialysis peritoneal machines for home dialysis

(1) Notwithstanding any other provision of this subchapter, the Secretary may, pursuant to agreements with approved providers of services, renal dialysis facilities, and nonprofit entities which the Secretary finds can furnish equipment economically and efficiently, reimburse such providers, facilities, and nonprofit entities (without regard to the deductible and coinsurance provisions of this subchapter) for the reasonable cost of the purchase, installation, maintenance and reconditioning for subsequent use of artificial kidney and automated dialysis peritoneal machines (including supportive equipment) which are to be used exclusively by entitled individuals dialyzing at home.

(2) An agreement under this subsection shall require that the provider, facility, or other entity will—

(A) make the equipment available for use only by entitled individuals dialyzing at home;

(B) recondition the equipment, as needed, for reuse by such individuals throughout the useful life of the equipment, including modification of the equipment consistent with advances in research and technology;

(C) provide for full access for the Secretary to all records and information relating to the purchase, maintenance, and use of the equipment; and

(D) submit such reports, data, and information as the Secretary may require with respect to the cost, management, and use of the equipment.

(3) For purposes of this section, the term ''supportive equipment'' includes blood pumps, heparin pumps, bubble detectors, other alarm systems, and such other items as the Secretary may determine are medically necessary.

(f) Experiments, studies, and pilot projects

(1) The Secretary shall initiate and carry out, at selected locations in the United States, pilot projects under which financial assistance in the purchase of new or used durable medical equipment for renal dialysis is provided to individuals suffering from end stage renal disease at the time home dialysis is begun, with provision for a trial period to assure successful adaptation to home dialysis before the actual purchase of such equipment.

(2) The Secretary shall conduct experiments to evaluate methods for reducing the costs of the end stage renal disease program. Such experiments shall include (without being limited to) reimbursement for nurses and dialysis technicians to assist with home dialysis, and reimbursement to family members assisting with home dialysis.

(3) The Secretary shall conduct experiments to evaluate methods of dietary control for reducing the costs of the end stage renal disease program, including (without being limited to) the use of protein-controlled products to delay the necessity for, or reduce the frequency of, dialysis in the treatment of end stage renal disease.

(4) The Secretary shall conduct a comprehensive study of methods for increasing public participation in kidney donation and other organ donation programs.

(5) The Secretary shall conduct a full and complete study of the reimbursement of physicians for services furnished to patients with end stage renal disease under this subchapter, giving particular attention to the range of payments to physicians for such services, the average amounts of such payments, and the number of hours devoted to furnishing such services to patients at home, in renal disease facilities, in hospitals, and elsewhere.

(6) The Secretary shall conduct a study of the number of patients with end stage renal disease who are not eligible for benefits with respect to such disease under this subchapter (by reason of this section or otherwise), and of the economic impact of such noneligibility of such individuals. Such study shall include consideration of mechanisms whereby governmental and other health plans might be instituted or modified to permit the purchase of actuarially sound coverage for the costs of end stage renal disease.

(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

(B) With respect to dialysis services furnished on or after January 1, 1988 (or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines), no dialysis facility may reuse dialysis supplies (other than dialyzer filters) unless the Secretary has established a protocol with respect to the reuse of such supplies and the facility follows the protocol so established.

(C) The Secretary shall incorporate protocols established under this paragraph, and the requirement of subparagraph (B), into the requirements for facilities prescribed under subsection (b)(1)(A) of this section and failure to follow such a protocol or requirement subjects such a facility to denial of participation in the program established under this section and to denial of payment for dialysis treatment not furnished in compliance with such a protocol or in violation of such requirement.

(8) The Secretary shall submit to the Congress no later than October 1, 1979, a full report on the experiments conducted under paragraphs (1), (2), (3), and (7), and the studies under paragraphs (4), (5), (6), and (7). Such report shall include any recommendations for legislative changes which the Secretary finds necessary or desirable as a result of such experiments and studies.

(g) Conditional approval of dialysis facilities; restriction-of-payments notice to public and facility; notice and hearing; judicial review

(1) In any case where the Secretary—

(A) finds that a renal dialysis facility is not in substantial compliance with requirements for such facilities prescribed under subsection (b)(1)(A) of this section,

(B) finds that the facility's deficiencies do not immediately jeopardize the health and safety of patients, and

(C) has given the facility a reasonable opportunity to correct its deficiencies,

the Secretary may, in lieu of terminating approval of the facility, determine that payment under this subchapter shall be made to the facility only for services furnished to individuals who were patients of the facility before the effective date of the notice.

(2) The Secretary's decision to restrict payments under this subsection shall be made effective only after such notice to the public and to the facility as may be prescribed in regulations, and shall remain in effect until (A) the Secretary finds that the facility is in substantial compliance with the requirements under subsection (b)(1)(A) of this section, or (B) the Secretary terminates the agreement under this subchapter with the facility.

(3) A facility dissatisfied with a determination by the Secretary under paragraph (1) shall be entitled to a hearing thereon by the Secretary (after reasonable notice) to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a

reference to the Secretary or the Department of Health and Human Services, respectively.

(Aug. 14, 1935, ch. 531, title XVIII, § 1881, as added Pub. L. 95–292, § 2, June 13, 1978, 92 Stat. 308; amended Pub. L. 96–499, title IX, § 957, Dec. 5, 1980, 94 Stat. 2648; Pub. L. 97–35, title XXI, § 2145(a), Aug. 13, 1981, 95 Stat. 799; Pub. L. 98–21, title VI, § 602(i), Apr. 20, 1983, 97 Stat. 165; Pub. L. 98–369, div. B, title III, §§ 2323(c), 2352(a), 2354(b)(41), July 18, 1984, 98 Stat. 1086, 1099, 1102; Pub. L. 98–617, § 3(b)(8), Nov. 8, 1984, 98 Stat. 3296; Pub. L. 99–509, title IX, § 9335(a)(2), (d)(1), (e)–(i)(1), (j)(1), (k)(1), Oct. 21, 1986, 100 Stat. 2029–2033; Pub. L. 100–93, § 12, Aug. 18, 1987, 101 Stat. 697; Pub. L. 100–203, title IV, §§ 4036(b), (c)(2), (d)(5), 4065(b), Dec. 22, 1987, 101 Stat. 1330–79, 1330–80, 1330–112; Pub. L. 101–239, title VI, §§ 6102(e)(8), 6203(b)(1), (2), 6219(a), (b), Dec. 19, 1989, 103 Stat. 2188, 2235, 2254; Pub. L. 101–508, title IV, § 4201(c)(1), (d)(2), formerly (d)(2), (3), Nov. 5, 1990, 104 Stat. 1388–103, 1388–104, renumbered Pub. L. 103–432, title I, § 160(d)(3), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 103–66, title XIII, § 13566(a), Aug. 10, 1993, 107 Stat. 607; Pub. L. 103–296, title I, § 108(c)(5), Aug. 15, 1994, 108 Stat. 1485; Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 222(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–352; Pub. L. 106–554, § 1(a)(6) [title IV, § 422(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–516; Pub. L. 108–173, title VI, § 623(a), (b)(2), (d), Dec. 8, 2003, 117 Stat. 2312, 2313.)

References in Text

Section 1395x(s)(2)(P) of this title, referred to in subsec. (b)(1), was redesignated section 1395x(s)(2)(O) of this title by Pub. L. 103–432, title I, § 147(f)(6)(B)(iii)(II), Oct. 31, 1994, 108 Stat. 4432.

Section 422(a)(2) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, referred to in subsec. (b)(7), is section 1(a)(6) [title IV, § 422(a)(2)] of Pub. L. 106–554, which is set out as a note under this section.

Section 623(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (b)(12)(B)(ii), (13)(A)(ii), is section 623(c) of Pub. L. 108–173, which is set out as a note under this section.

Subsection (g) of this section, referred to in subsec. (c)(7)(A), was repealed, and subsec. (h) was redesignated (g), by Pub. L. 100–203, title IV, §§ 4036(d)(5)(C), (D), Dec. 22, 1987, 101 Stat. 1330–80.

Amendments

2003—Subsec. (b)(7). Pub. L. 108–173, § 623(a), (b)(2), (d)(2), in first sentence substituted ''Subject to paragraph (12), the Secretary'' for ''The Secretary'', in fourth sentence substituted ''Subject to section 422(a)(2) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, the Secretary'' for ''The Secretary'', and, in concluding provisions, struck out ''and'' before ''for such services furnished on or after January 1, 2001,'', inserted ''and before January 1, 2005,'' after ''January 1, 2001,'', and inserted '', and for such services furnished on or after January 1, 2005, by 1.6 percent above such composite rate payment amounts for such services furnished on December 31, 2004'' before period at end.

Subsec. (b)(11)(B). Pub. L. 108–173, § 623(d)(3), inserted ''subject to paragraphs (12) and (13)'' before ''payment for such item'' in introductory provisions.

Subsec. (b)(12), (13). Pub. L. 108–173, § 623(d)(1), added pars. (12) and (13).

2000—Subsec. (b)(7). Pub. L. 106–554 substituted ''for such services furnished on or after January 1, 2001, by 2.4 percent'' for ''for such services furnished on or after January 1, 2001, by 1.2 percent'' in concluding provisions.

1999—Subsec. (b)(7). Pub. L. 106–113 inserted concluding provisions.

1994—Subsec. (g)(3). Pub. L. 103–296 inserted before period at end '', except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

1993—Subsec. (b)(1)(C). Pub. L. 103–66, § 13566(a)(1), substituted ''section 1395x(s)(2)(P)'' for ''section 1395x(s)(2)(Q)''.

Subsec. (b)(11)(B)(ii)(I). Pub. L. 103–66, § 13566(a)(2), substituted ''1994'' for ''1991'' and ''$10'' for ''$11''.

1990—Subsec. (b)(1). Pub. L. 101–508, § 4201(d)(2)(A), formerly § 4201(d)(2), as renumbered by Pub. L. 103–432, § 160(d)(3), added cl. (C).

Subsec. (b)(11). Pub. L. 101–508, § 4201(d)(2)(B), formerly § 4201(d)(3), as renumbered by Pub. L. 103–432, § 160(d)(3), added subpar. (C).

Pub. L. 101–508, § 4201(c)(1), designated existing provisions as subpar. (A) and added subpar. (B).

1989—Subsec. (b)(3)(A). Pub. L. 101–239, § 6102(e)(8), inserted ''or, for services furnished on or after January 1, 1992, on the basis described in section 1395w–4 of this title'' after ''comparable services''.

Subsec. (b)(4). Pub. L. 101–239, § 6203(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(7). Pub. L. 101–239, § 6219(a), substituted ''organizations (designated under subsection (c)(1)(A) of this section) for such organizations' necessary and proper administrative costs incurred in carrying out the responsibilities described in subsection (c)(2) of this section. The Secretary shall provide that amounts paid under the previous sentence shall be distributed to the organizations described in subsection (c)(1)(A) of this section to ensure equitable treatment of all such network organizations. The Secretary in distributing any such payments to network organizations shall take into account—'' and subpars. (A) to (D) for ''network administrative organization (designated under subsection (c)(1)(A) of this section for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2) of this section.'' in last sentence.

Pub. L. 101–239, § 6203(b)(1), inserted after second sentence ''The amount of a payment made under any method other than a method based on a single composite weighted formula may not exceed the amount (or, in the case of continuous cycling peritoneal dialysis, 130 percent of the amount) of the median payment that would have been made under the formula for hospital-based facilities.''

Subsec. (c)(8). Pub. L. 101–239, § 6219(b), added par. (8).

1987—Subsec. (b)(1). Pub. L. 100–203, § 4036(b), substituted ''transplantations'' for ''covered procedures and for self-dialysis training programs''.

Subsec. (b)(2)(C). Pub. L. 100–203, § 4065(b), substituted ''facilities (other than hospital outpatient departments)'' for ''facilities''.

Subsec. (c)(2)(F). Pub. L. 100–203, § 4036(d)(5)(A), struck out ''and subsection (g) of this section'' after ''required by subparagraph (H)''.

Subsec. (c)(6). Pub. L. 100–203, § 4036(d)(5)(B), struck out at end ''The Secretary shall periodically submit to the Congress such legislative recommendations as the Secretary finds warranted on the basis of such consultation and evidence to further the national objective of maximizing the use of home dialysis and transplantation consistent with good medical practice.''

Subsec. (f)(7)(B). Pub. L. 100–203, § 4036(c)(2), inserted ''(or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines)'' after ''January 1, 1988''.

Subsec. (g). Pub. L. 100–203, § 4036(d)(5)(C), (D), redesignated subsec. (h) as (g) and struck out former subsec. (g) which directed the Secretary to submit to Congress on July 1, 1979, and on July 1 of each year thereafter a report on end stage renal disease program.

Subsec. (h). Pub. L. 100–203, § 4036(d)(5)(D), redesignated subsec. (h) as (g).

Pub. L. 100–93 added subsec. (h).

1986—Subsec. (b)(7). Pub. L. 99–509, § 9335(j)(1), inserted at end ''The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) of this section for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2) of this section.''

Pub. L. 99–509, § 9335(a)(2), inserted ''and of pediatric facilities'' after ''isolated rural areas'' in third sentence, and inserted after third sentence ''Each application for such an exception shall be deemed to be approved unless the Secretary disapproves it by not later than 60 working days after the date the application is filed.''

Subsec. (c)(1)(A). Pub. L. 99–509, § 9335(d)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall establish, in accordance with such criteria as he finds appropriate, renal disease network areas, such network organizations (including a coordinating council, an executive committee of such council, and a medical review board, for each network area) as he finds necessary to accomplish such purpose, and a national end stage renal disease medical information system. The Secretary may by regulations provide for such coordination of network planning and quality assurance activities and such exchange of data and information among agencies with responsibilities for health planning and quality assurance activities under Federal law as is consistent with the economical and efficient administration of this section and with the responsibilities established for network organizations under this section.''

Subsec. (c)(1)(B). Pub. L. 99–509, § 9335(e), amended subpar. (B) generally, substituting ''network council and each medical review board'' for ''coordinating council and executive committee''.

Subsec. (c)(2)(A). Pub. L. 99–509, § 9335(f)(1), inserted ''and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs'' before the semicolon.

Subsec. (c)(2)(B). Pub. L. 99–509, § 9335(f)(2), inserted ''and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs'' before first semicolon.

Subsec. (c)(2)(D) to (F). Pub. L. 99–509, § 9335(f)(5), added subpars. (D) to (F). Former subpars. (D) and (E) redesignated (G) and (H), respectively.

Subsec. (c)(2)(G). Pub. L. 99–509, § 9335(f)(3), (5), redesignated former subpar. (D) as (G) and inserted ''and reporting to the Secretary on facilities and providers that are not providing appropriate medical care'' before the semicolon.

Subsec. (c)(2)(H). Pub. L. 99–509, § 9335(f)(4), (5), redesignated former subpar. (E) as (H) and inserted ''and encouraging participation in vocational rehabilitation programs'' after ''and transplantation''.

Subsec. (c)(3). Pub. L. 99–509, § 9335(g), inserted ''or to follow the recommendations of the medical review board'' after ''network plans and goals''.

Subsec. (c)(6). Pub. L. 99–509, § 9335(h), inserted ''and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment'' at end of first sentence.

Subsec. (c)(7). Pub. L. 99–509, § 9335(i)(1), added par. (7).

Subsec. (f)(7). Pub. L. 99–509, § 9335(k)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''The Secretary shall conduct a study of the medical appropriateness and safety of cleaning and reusing dialysis filters by home dialysis patients. In such cases in which the Secretary determines that such home cleaning and reuse of filters is a medically sound procedure, the Secretary shall conduct experiments to evaluate such home cleaning and reuse as a method of reducing the costs of the end stage renal disease program.''

1984—Subsecs. (a), (b)(1), (2)(A), (B), (3), (8). Pub. L. 98–369, § 2354(b)(41), substituted ''end stage'' for ''end-stage'' wherever appearing.

Subsec. (b)(11). Pub. L. 98–617 realigned margin of par. (11).

Pub. L. 98–369, § 2323(c), added par. (11).

Subsec. (c)(3). Pub. L. 98–369, § 2352(a), inserted provision that if the Secretary determines that the facility's or provider's failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

1983—Subsec. (b)(2)(A). Pub. L. 98–21 inserted ''or section 1395ww of this title (if applicable)'' after ''section 1395x(v) of this title''.

1981—Subsec. (b)(2)(B). Pub. L. 97–35, § 2145(a)(1), (2), substituted ''section 1395x(v) of this title) and consistent with any regulations promulgated under paragraph (7)'' for ''section 1395x(v) of this title)'' and struck out provisions that such regulations provide for the implementation of appropriate incentives for encouraging more efficient and effective delivery of services, and include a system for classifying comparable providers and facilities, and prospectively set rates or target rates with arrangements for sharing such reductions in costs as may be attributable to more efficient and effective delivery of services.

Subsec. (b)(3)(B). Pub. L. 97–35, § 2145(a)(3), substituted ''or other basis (which effectively encourages the efficient delivery of dialysis services and provides incentives for the increased use of home dialysis)'' for ''or other basis''.

Subsec. (b)(4). Pub. L. 97–35, § 2145(a)(4), inserted reference to alternative basis of a method established under par. (7).

Subsec. (b)(6). Pub. L. 97–35, § 2145(a)(5), (6), substituted ''(except as may be provided in regulations under paragraph (7)) shall such target rate exceed 75 percent'' and ''any other procedure (including methods established under paragraph (7)) which the Secretary'' for ''shall such target rate exceed 70 percent'' and ''any other procedure which the Secretary'', respectively.

Subsec. (b)(7) to (10). Pub. L. 97–35, § 2145(a)(7), (8), added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

1980—Subsec. (e)(1). Pub. L. 96–499, § 957(a)(1)–(3), substituted ''services, renal dialysis facilities, and nonprofit entities which the Secretary finds can furnish equipment economically and efficiently,'' for ''services and renal dialysis facilities'' and ''such providers, facilities, and nonprofit entities'' for ''such providers and facilities''.

Subsec. (e)(2). Pub. L. 96–499, § 957(a)(4), substituted '', facility, or other entity will'' for ''or facility will''.

Subsec. (g). Pub. L. 96–499, § 957(b), substituted ''July'' for ''April'' in two places.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to erythropoietin furnished on or after Jan. 1, 1994, see section 13566(c) of Pub. L. 103–66, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4201(c)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to erythropoietin furnished on or after January 1, 1991.''

Amendment by section 4201(d)(2) of Pub. L. 101–508 applicable to items and services furnished on or after July 1, 1991, see section 4201(d)(3)[(4)] of Pub. L. 101–508, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6203(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to dialysis services, supplies, and equipment furnished on or after February 1, 1990.''

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4065(b) of Pub. L. 100–203 effective Jan. 1, 1988, see section 4065(c) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9335(a)(3) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (2) [amending this section] shall apply to applications filed on or after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9335(j)(2) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4085(i)(21)(C), Dec. 22, 1987, 101 Stat. 1330–133, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to treatment furnished on or after January 1, 1987[,] except that, until network administrative organizations are established under section 1881(c)(1)(A) of the Social Security Act [subsec. (c)(1)(A) of this section] (as amended by subsection (d)(1) of this section), the distribution of payments described in the last sentence of section 1881(b)(7) of such Act shall be made based on the distribution of payments under section 1881 of such Act to network administrative organizations for fiscal year 1986.''

[Section 4085(i)(21) of Pub. L. 100–203 provided that the amendment of section 9335(j)(2) of Pub. L. 99–509, set out above, by section 4085(i)(21)(C) of Pub. L. 100–203 is effective as if included in the enactment of Pub. L. 99–509.]

Section 9335(*l*) of Pub. L. 99–509 provided that: ''The amendments made by subsections (e), (f), and (g) [amending this section] shall apply to network administrative organizations designated for network areas established under the amendment made by subsection (d)(1) [amending this section].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2323(c) of Pub. L. 98–369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2352(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section] shall apply to determinations made by the Secretary on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(41) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2145(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] apply to services furnished on or after October 1, 1981, and the Secretary of Health and Human Services shall first promulgate regulations to carry out section 1881(b)(7) of the Social Security Act [subsec. (b)(7) of this section] not later than October 1, 1981.''

EFFECTIVE DATE

Section effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

INSPECTOR GENERAL STUDIES ON ESRD DRUGS

Pub. L. 108–173, title VI, § 623(c), Dec. 8, 2003, 117 Stat. 2312, provided that:

''(1) IN GENERAL.—The Inspector General of the Department of Health and Human Services shall conduct two studies with respect to drugs and biologicals (including erythropoietin) furnished to end-stage renal disease patients under the medicare program which are separately billed by end stage renal disease facilities.

''(2) STUDIES ON ESRD DRUGS.—

''(A) EXISTING DRUGS.—The first study under paragraph (1) shall be conducted with respect to such drugs and biologicals for which a billing code exists prior to January 1, 2004.

''(B) NEW DRUGS.—The second study under paragraph (1) shall be conducted with respect to such drugs and biologicals for which a billing code does not exist prior to January 1, 2004.

''(3) MATTERS STUDIED.—Under each study conducted under paragraph (1), the Inspector General shall—

''(A) determine the difference between the amount of payment made to end stage renal disease facilities under title XVIII of the Social Security Act [this subchapter] for such drugs and biologicals and the acquisition costs of such facilities for such drugs and biologicals and which are separately billed by end stage renal disease facilities, and

''(B) estimate the rates of growth of expenditures for such drugs and biologicals billed by such facilities.

''(4) REPORTS.—

''(A) EXISTING ESRD DRUGS.—Not later than April 1, 2004, the Inspector General shall report to the Secretary [of Health and Human Services] on the study described in paragraph (2)(A).

''(B) NEW ESRD DRUGS.—Not later than April 1, 2006, the Inspector General shall report to the Secretary on the study described in paragraph (2)(B).''

DEMONSTRATION OF BUNDLED CASE-MIX ADJUSTED PAYMENT SYSTEM FOR ESRD SERVICES

Pub. L. 108–173, title VI, § 623(e), Dec. 8, 2003, 117 Stat. 2315, provided that:

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall establish a demonstration project of the use of a fully case-mix adjusted payment system for end stage renal disease services under section 1881 of the Social Security Act (42 U.S.C. 1395rr) for patient characteristics identified in the report under subsection (f) [set out as a note under this section] that bundles into such payment rates amounts for—

''(A) drugs and biologicals (including erythropoietin) furnished to end stage renal disease patients under the medicare program which are separately billed by end stage renal disease facilities (as of the date of the enactment of this Act [Dec. 8, 2003]); and

''(B) clinical laboratory tests related to such drugs and biologicals.

''(2) FACILITIES INCLUDED IN THE DEMONSTRATION.—In conducting the demonstration under this subsection, the Secretary shall ensure the participation of a sufficient number of providers of dialysis services and renal dialysis facilities, but in no case to exceed 500. In selecting such providers and facilities, the Secretary shall ensure that the following types of providers are included in the demonstration:

''(A) Urban providers and facilities.

''(B) Rural providers and facilities.

''(C) Not-for-profit providers and facilities.

''(D) For-profit providers and facilities.

''(E) Independent providers and facilities.

''(F) Specialty providers and facilities, including pediatric providers and facilities and small providers and facilities.

''(3) TEMPORARY ADD-ON PAYMENT FOR DIALYSIS SERVICES FURNISHED UNDER THE DEMONSTRATION.—

''(A) IN GENERAL.—During the period of the demonstration project, the Secretary shall increase payment rates that would otherwise apply under section 1881(b) of such Act (42 U.S.C. 1395rr(b)) by 1.6 percent for dialysis services furnished in facilities in the demonstration site.

''(B) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed as—

''(i) as an annual update under section 1881(b) of the Social Security Act (42 U.S.C. 1395rr(b));

''(ii) as increasing the baseline for payments under such section; or

''(iii) requiring the budget neutral implementation of the demonstration project under this subsection.

''(4) 3-YEAR PERIOD.—The Secretary shall conduct the demonstration under this subsection for the 3-year period beginning on January 1, 2006.

''(5) USE OF ADVISORY BOARD.—

''(A) IN GENERAL.—In carrying out the demonstration under this subsection, the Secretary shall establish an advisory board comprised of representatives described in subparagraph (B) to provide advice and recommendations with respect to the establishment and operation of such demonstration.

''(B) REPRESENTATIVES.—Representatives referred to in subparagraph (A) include representatives of the following:

''(i) Patient organizations.

''(ii) Individuals with expertise in end stage renal dialysis services, such as clinicians, economists, and researchers.

''(iii) The Medicare Payment Advisory Commission, established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6).

''(iv) The National Institutes of Health.

''(v) Network organizations under section 1881(c) of the Social Security Act (42 U.S.C. 1395rr(c)).

''(vi) Medicare contractors to monitor quality of care.

''(vii) Providers of services and renal dialysis facilities furnishing end stage renal disease services.

''(C) TERMINATION OF ADVISORY PANEL.—The advisory panel shall terminate on December 31, 2008.

''(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, $5,000,000 in fiscal year 2006 to conduct the demonstration under this subsection.''

REPORT ON A BUNDLED PROSPECTIVE PAYMENT SYSTEM FOR END STAGE RENAL DISEASE SERVICES

Pub. L. 108–173, title VI, § 623(f), Dec. 8, 2003, 117 Stat. 2316, provided that:

''(1) REPORT.—

''(A) IN GENERAL.—Not later than October 1, 2005, the Secretary [of Health and Human Services] shall submit to Congress a report detailing the elements and features for the design and implementation of a bundled prospective payment system for services furnished by end stage renal disease facilities including, to the maximum extent feasible, bundling of drugs, clinical laboratory tests, and other items that are separately billed by such facilities. The report shall include a description of the methodology to be used for the establishment of payment rates, including components of the new system described in paragraph (2).

''(B) RECOMMENDATIONS.—The Secretary shall include in such report recommendations on elements, features, and methodology for a bundled prospective payment system or other issues related to such system as the Secretary determines to be appropriate.

''(2) ELEMENTS AND FEATURES OF A BUNDLED PROSPECTIVE PAYMENT SYSTEM.—The report required under paragraph (1) shall include the following elements and features of a bundled prospective payment system:

''(A) BUNDLE OF ITEMS AND SERVICES.—A description of the bundle of items and services to be included under the prospective payment system.

''(B) CASE MIX.—A description of the case-mix adjustment to account for the relative resource use of different types of patients.

''(C) WAGE INDEX.—A description of an adjustment to account for geographic differences in wages.

''(D) RURAL AREAS.—The appropriateness of establishing a specific payment adjustment to account for additional costs incurred by rural facilities.

''(E) OTHER ADJUSTMENTS.—Such other adjustments as may be necessary to reflect the variation in costs incurred by facilities in caring for patients with end stage renal disease.

''(F) UPDATE FRAMEWORK.—A methodology for appropriate updates under the prospective payment system.

''(G) ADDITIONAL RECOMMENDATIONS.—Such other matters as the Secretary determines to be appropriate.''

PROHIBITION ON EXCEPTIONS

Pub. L. 106–554, § 1(a)(6) [title IV, § 422(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–516, as amended by Pub. L. 108–173, title VI, § 623(b)(1), Dec. 8, 2003 117 Stat. 2312, provided that:

''(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the Secretary of Health and Human Services may not provide for an exception under section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) on or after December 31, 2000.

''(B) DEADLINE FOR NEW APPLICATIONS.—Subject to subparagraph (D), in the case of a facility that during 2000 did not file for an exception rate under such section, the facility may submit an application for an exception rate by not later than July 1, 2001.

''(C) PROTECTION OF APPROVED EXCEPTION RATES.—Any exception rate under such section in effect on December 31, 2000 (or, in the case of an application under subparagraph (B), as approved under such application) shall continue in effect so long as such rate is greater than the composite rate as updated by the amendment made by paragraph (1) [amending this section].

''(D) INAPPLICABILITY TO PEDIATRIC FACILITIES.—Subparagraphs (A) and (B) shall not apply, as of October 1, 2002, to pediatric facilities that do not have an excep-

tion rate described in subparagraph (C) in effect on such date. For purposes of this subparagraph, the term 'pediatric facility' means a renal facility at least 50 percent of whose patients are individuals under 18 years of age.''

DEVELOPMENT OF ESRD MARKET BASKET

Pub. L. 106–554, §1(a)(6) [title IV, §422(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–516, provided that:

''(1) DEVELOPMENT.—The Secretary of Health and Human Services shall collect data and develop an ESRD market basket whereby the Secretary can estimate, before the beginning of a year, the percentage by which the costs for the year of the mix of labor and nonlabor goods and services included in the ESRD composite rate under section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) will exceed the costs of such mix of goods and services for the preceding year. In developing such index, the Secretary may take into account measures of changes in—

''(A) technology used in furnishing dialysis services;

''(B) the manner or method of furnishing dialysis services; and

''(C) the amounts by which the payments under such section for all services billed by a facility for a year exceed the aggregate allowable audited costs of such services for such facility for such year.

''(2) REPORT.—The Secretary of Health and Human Services shall submit to Congress a report on the index developed under paragraph (1) no later than July 1, 2002, and shall include in the report recommendations on the appropriateness of an annual or periodic update mechanism for renal dialysis services under the medicare program under title XVIII of the Social Security Act [this subchapter] based on such index.''

INCLUSION OF ADDITIONAL SERVICES IN COMPOSITE RATE

Pub. L. 106–554, §1(a)(6) [title IV, §422(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–517, provided that:

''(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a system which includes, to the maximum extent feasible, in the composite rate used for payment under section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)), payment for clinical diagnostic laboratory tests and drugs (including drugs paid under section 1881(b)(11)(B) of such Act (42 U.S.C. 1395rr(b)(11)(B)) that are routinely used in furnishing dialysis services to medicare beneficiaries but which are currently separately billable by renal dialysis facilities.

''(2) REPORT.—The Secretary shall include, as part of the report submitted under subsection (b)(2) [set out above], a report on the system developed under paragraph (1) and recommendations on the appropriateness of incorporating the system into medicare payment for renal dialysis services.''

GAO STUDY ON ACCESS TO SERVICES

Pub. L. 106–554, §1(a)(6) [title IV, §422(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–517, provided that:

''(1) STUDY.—The Comptroller General of the United States shall study access of medicare beneficiaries to renal dialysis services. Such study shall include whether there is a sufficient supply of facilities to furnish needed renal dialysis services, whether medicare payment levels are appropriate, taking into account audited costs of facilities for all services furnished, to ensure continued access to such services, and improvements in access (and quality of care) that may result in the increased use of long nightly and short daily hemodialysis modalities.

''(2) REPORT.—Not later than January 1, 2003, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).''

SPECIAL RULE FOR PAYMENT FOR 2001

Pub. L. 106–554, §1(a)(6) [title IV, §422(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–517, provided that: ''Notwithstanding the amendment made by subsection (a)(1) [amending this section], for purposes of making payments under section 1881(b) of the Social Security Act (42 U.S.C. 1395rr(b)) for dialysis services furnished during 2001, the composite rate payment under paragraph (7) of such section—

''(1) for services furnished on or after January 1, 2001, and before April 1, 2001, shall be the composite rate payment determined under the provisions of law in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(2) for services furnished on or after April 1, 2001, and before January 1, 2002, shall be the composite rate payment (as determined taking into account the amendment made by subsection (a)(1)) increased by a transitional percentage allowance equal to 0.39 percent (to account for the timing of implementation of the CPI update).''

STUDY ON PAYMENT LEVEL FOR HOME HEMODIALYSIS

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §222(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–352, provided that: ''The Medicare Payment Advisory Commission shall conduct a study on the appropriateness of the differential in payment under the medicare program for hemodialysis services furnished in a facility and such services furnished in a home. Not later than 18 months after the date of the enactment of this Act [Nov. 29, 1999], the Commission shall submit to Congress a report on such study and shall include recommendations regarding changes in medicare payment policy in response to the study.''

RENAL DIALYSIS-RELATED SERVICES

Pub. L. 105–33, title IV, §4558, Aug. 5, 1997, 111 Stat. 463, provided that:

''(a) AUDITING OF COST REPORTS.—Beginning with cost reports for 1996, the Secretary shall audit cost reports of each renal dialysis provider at least once every 3 years.

''(b) IMPLEMENTATION OF QUALITY STANDARDS.—The Secretary of Health and Human Services shall develop, by not later than January 1, 1999, and implement, by not later than January 1, 2000, a method to measure and report quality of renal dialysis services provided under the medicare program under title XVIII of the Social Security Act [this subchapter].''

PROPAC STUDY ON ESRD COMPOSITE RATES

Section 4201(b) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—

''(A) STUDY.—The Prospective Payment Assessment Commission (in this subsection referred to as the 'Commission') shall conduct a study to determine the costs and services and profits associated with various modalities of dialysis treatments provided to end stage renal disease patients provided under title XVIII of the Social Security Act [this subchapter].

''(B) RECOMMENDATIONS.—Based on information collected for the study described in subparagraph (A), the Commission shall make recommendations to Congress regarding the method or methods and the levels at which the payments made for the facility component of dialysis services by providers of service and renal dialysis facilities under title XVIII of the Social Security Act should be established for dialysis services furnished during fiscal year 1993 and the methodology to be used to update such payments for subsequent fiscal years. In making recommendations concerning the appropriate methodology the Commission shall consider—

''(i) hemodialysis and other modalities of treatment,

''(ii) the appropriate services to be included in such payments,

''(iii) the adjustment factors to be incorporated including facility characteristics, such as hospital versus free-standing facilities, urban versus rural, size and mix of services,

''(iv) adjustments for labor and nonlabor costs,

''(v) comparative profit margins for all types of renal dialysis providers of service and renal dialysis facilities,

''(vi) adjustments for patient complexity, such as age, diagnosis, case mix, and pediatric services, and

''(vii) efficient costs related to high quality of care and positive outcomes for all treatment modalities.

''(2) REPORT.—Not later than June 1, 1992, the Commission shall submit a report to the Committee on Finance of the Senate, and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on the study conducted under paragraph (1)(A) and shall include in the report the recommendations described in paragraph (1)(B), taking into account the factors described in paragraph (1)(B).

''(3) ANNUAL REPORT.—The Commission, not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1993) shall report its recommendations to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on an appropriate change factor which should be used for updating payments for services rendered in that fiscal year. The Commission in making such report to Congress shall consider conclusions and recommendations available from the Institute of Medicine.''

[Prospective Payment Assessment Commission (ProPAC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 4022(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395b–6 of this title. Section 4022(c)(2), (3) further provided that MedPAC was to be responsible for preparation and submission of reports required by law to be submitted by ProPAC, and that, for that purpose, any reference in law to ProPAC was to be deemed, after the appointment of MedPAC, to refer to MedPAC.]

STAFF-ASSISTED HOME DIALYSIS DEMONSTRATION PROJECT

Section 4202 of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 160(b), Oct. 31, 1994, 108 Stat. 4443, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall establish and carry out a 3-year demonstration project to determine whether the services of a home dialysis staff assistant providing services to a patient during hemodialysis treatment at the patient's home may be covered under the medicare program in a cost-effective manner that ensures patient safety.

''(2) NUMBER OF PARTICIPANTS.—The total number of eligible patients receiving services under the demonstration project established under paragraph (1) may not exceed 800.

''(b) PAYMENTS TO PARTICIPATING PROVIDERS AND FACILITIES.—

''(1) SERVICES FOR WHICH PAYMENT MAY BE MADE.—

''(A) IN GENERAL.—Under the demonstration project established under subsection (a), the Secretary shall make payments for 3 years under title XVIII of the Social Security Act [this subchapter] to providers of services (other than a skilled nursing facility) or renal dialysis facilities for services of a qualified home hemodialysis staff assistant (as described in subsection (d)) provided to an individual described in subsection (c) during hemodialysis treatment at the individual's home in an amount determined under paragraph (2).

''(B) SERVICES DESCRIBED.—For purposes of subparagraph (A), the term 'services of a home hemodialysis staff assistant' means—

''(i) technical assistance with the operation of a hemodialysis machine in the patient's home and with such patient's care during in-home hemodialysis; and

''(ii) administration of medications within the patient's home to maintain the patency of the extra corporeal circuit.

''(2) AMOUNT OF PAYMENT.—

''(A) IN GENERAL.—Payment to a provider of services or renal dialysis facility participating in the demonstration project established under subsection (a) for the services described in paragraph (1) shall be prospectively determined by the Secretary, made on a per treatment basis, and shall be in an amount determined under subparagraph (B).

''(B) DETERMINATION OF PAYMENT AMOUNT.—(i) The amount of payment made under subparagraph (A) shall be the product of—

''(I) the rate determined under clause (ii) with respect to a provider of services or a renal dialysis facility; and

''(II) the factor by which the labor portion of the composite rate determined under section 1881(b)(7) of the Social Security Act [subsec. (b)(7) of this section] is adjusted for differences in area wage levels.

''(ii) The rate determined under this clause, with respect to a provider of services or renal dialysis facility, shall be equal to the difference between—

''(I) two-thirds of the labor portion of the composite rate applicable under section 1881(b)(7) of such Act to the provider or facility, and

''(II) the product of the national median hourly wage for a home hemodialysis staff assistant and the national median time expended in the provision of home hemodialysis staff assistant services (taking into account time expended in travel and predialysis patient care).

''(iii) For purposes of clause (ii)(II)—

''(I) the national median hourly wage for a home hemodialysis staff assistant and the national median average time expended for home hemodialysis staff assistant services shall be determined annually on the basis of the most recent data available, and

''(II) the national median hourly wage for a home hemodialysis staff assistant shall be the sum of 65 percent of the national median hourly wage for a licensed practical nurse and 35 percent of the national median hourly wage for a registered nurse.

''(C) PAYMENT AS ADD-ON TO COMPOSITE RATE.—The amount of payment determined under this paragraph shall be in addition to the amount of payment otherwise made to the provider of services or renal dialysis facility under section 1881(b) of such Act.

''(c) INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES UNDER PROJECT.—

''(1) IN GENERAL.—An individual may receive services from a provider of services or renal dialysis facility participating in the demonstration project if—

''(A) the individual is not a resident of a nursing facility;

''(B) the individual is an end stage renal disease patient entitled to benefits under title XVIII of the Social Security Act [this subchapter];

''(C) the individual's physician certifies that the individual is confined to a bed or wheelchair and cannot transfer themselves [sic] from a bed to a chair;

''(D) the individual has a serious medical condition (as specified by the Secretary) which would be exacerbated by travel to and from a dialysis facility;

''(E) the individual is eligible for ambulance transportation to receive routine maintenance dialysis treatments, and, based on the individual's medical condition, there is reasonable expectation that such transportation will be used by the individual for a period of at least 6 consecutive months, such that the cost of ambulance transportation can reasonably be expected to meet or exceed the cost of home hemodialysis staff assistance as provided under subsection (b)(2); and

''(F) no family member or other individual is available to provide such assistance to the individual.

''(2) COVERAGE OF INDIVIDUALS CURRENTLY RECEIVING SERVICES.—Any individual who, on the date of the enactment of this Act [Nov. 5, 1990], is receiving staff assistance under the experimental authority provided under section 1881(f)(2) of the Social Security Act [subsec. (f)(2) of this section] shall be deemed to be an eligible individual for purposes of this subsection.

''(3) CONTINUATION OF COVERAGE UPON TERMINATION OF PROJECT.—Notwithstanding any provision of title XVIII of the Social Security Act, any individual receiving services under the demonstration project established under subsection (a) as of the date of the termination of the project shall continue to be eligible for home hemodialysis staff assistance after such date under such title on the same terms and conditions as applied under the demonstration project.

''(d) QUALIFICATIONS FOR HOME HEMODIALYSIS STAFF ASSISTANTS.—For purposes of subsection (b), a home dialysis aide is qualified if the aide—

''(1) meets minimum qualifications as specified by the Secretary; and

''(2) meets any applicable qualifications as specified under the law of the State in which the home hemodialysis staff assistant is providing services.

''(e) REPORTS.—

''(1) INTERIM STATUS REPORT.—Not later than December 1, 1992, the Secretary shall submit to Congress a preliminary report on the status of the demonstration project established under subsection (a).

''(2) FINAL REPORT.—Not later than December 31, 1995, the Secretary shall submit to Congress a final report evaluating the project, and shall include in such report recommendations regarding appropriate eligibility criteria and cost-control mechanisms for medicare coverage of the services of a home dialysis aide providing medical assistance to a patient during hemodialysis treatment at the patient's home.

''(f) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund (established under section 1841 of the Social Security Act [section 1395t of this title]) of not more than the following amounts to carry out the demonstration project established under subsection (a) (without regard to amounts appropriated in advance in appropriation Acts):

''(1) For fiscal year 1991, $4,000,000.

''(2) For fiscal year 1992, $4,000,000.

''(3) For fiscal year 1993, $3,000,000.

''(4) For fiscal year 1994, $2,000,000.

''(5) For fiscal year 1995, $1,000,000.''

STUDIES OF END-STAGE RENAL DISEASE PROGRAM

Section 4036(d)(1)–(4) of Pub. L. 100–203 provided that:

''(1) The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall arrange for a study of the end-stage renal disease program within the medicare program.

''(2) Among other items, the study shall address—

''(A) access to treatment by both individuals eligible for medicare benefits and those not eligible for such benefits;

''(B) the quality of care provided to end-stage renal disease beneficiaries, as measured by clinical indicators, functional status of patients, and patient satisfaction;

''(C) the effect of reimbursement on quality of treatment;

''(D) major epidemiological and demographic changes in the end-stage renal disease population that may affect access to treatment, the quality of care, or the resource requirements of the program; and

''(E) the adequacy of existing data systems to monitor these matters on a continuing basis.

''(3) The Secretary shall submit to Congress, not later than 3 years after the date of the enactment of this Act [Dec. 22, 1987], a report on the study.

''(4) The Secretary shall request the National Academy of Sciences, acting through the Institute of Medicine, to submit an application to conduct the study described in this section. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.''

RATES FOR DIALYSIS SERVICES

Pub. L. 99–509, title IX, §9335(a)(1), Oct. 21, 1986, 100 Stat. 2029, as amended by Pub. L. 101–239, title VI, §6203(a)(1), Dec. 19, 1989, 103 Stat. 2235; Pub. L. 101–508, title IV, §4201(a), Nov. 5, 1990, 104 Stat. 1388–102; Pub. L. 106–113, div. B, §1000(a)(6) [title II, §222(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–352, provided that: ''Effective with respect to dialysis services provided on or after October 1, 1986, and before December 31, 1990, the Secretary of Health and Human Services shall establish the base rate for routine dialysis treatment in a free-standing facility and in a hospital-based facility under section 1881(b)(7) of the Social Security Act [subsec. (b)(7) of this section] at a level equal to the respective rate in effect as of May 13, 1986, reduced by $2.00. With respect to services furnished on or after January 1, 1991, and before January 1, 2000, such base rate shall be equal to the respective rate in effect as of September 30, 1990 (determined without regard to any reductions imposed pursuant to section 6201 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, set out as a note under section 902 of Title 2, The Congress]), increased by $1.00. No change may be made in the base rate in effect as of September 30, 1990, unless the Secretary makes such change in accordance with notice and comment requirements set forth in section 1871(b)(1) of such Act [subsec. (b)(1) of this section].''

[Section 6203(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending section 9335(a)(1) of Pub. L. 99–509, set out above] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].'']

STUDY AND REPORT ON MEDICARE PAYMENT RATE REDUCTIONS FOR PATIENTS WITH END STAGE RENAL DISEASE

Section 9335(b) of Pub. L. 99–509 directed Secretary of Health and Human Services to provide for a study to evaluate the effects of reductions in the rates of payment for facility and physicians' services under the medicare program for patients with end stage renal disease on their access to care or on the quality of care, and a report to Congress on results of the study by not later than Jan. 1, 1988, with Secretary to enter into an appropriate arrangement with the National Academy of Sciences or other appropriate nonprofit private entity for the conduct of the study.

DEADLINE FOR ESTABLISHING NEW END STAGE RENAL DISEASE NETWORK AREAS; TRANSITION

Section 9335(d)(2), (3) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4009(j)(6)(E), Dec. 22, 1987, 101 Stat. 1330–59, provided that:

''(2) DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1) [amending this section], not later than May 1, 1987. The Secretary shall designate network administrative organizations for such areas by not later than July 1, 1987.

''(3) TRANSITION.—If, under the amendment made by paragraph (1), the Secretary designates a network administrative organization for an area which was not previously designated for that area, the Secretary shall offer to continue to fund the previously designated or-

ganization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area.''

REPORT ON ESTABLISHMENT OF NATIONAL END STAGE RENAL DISEASE REGISTRY

Section 9335(i)(2) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall submit to the Congress, no later than April 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1) [amending this section] and shall establish such registry by not later than January 1, 1988.''

DEADLINE FOR ESTABLISHMENT OF PROTOCOLS ON REUSE OF DIALYZER FILTERS

Section 9335(k)(2) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4036(c)(1)(A), Dec. 22, 1987, 101 Stat. 1330–79, provided that: ''The Secretary of Health and Human Services shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act [subsec. (f)(7)(A) of this section] by not later than October 1, 1987 (or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines).''

[Section 4036(c)(1)(B) of Pub. L. 100–203 provided that: ''The amendment made by subparagraph (A) [amending section 9335(k)(2) of Pub. L. 99–509, set out above] shall be effective as if included in the enactment of section 9335(k)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].'']

LIMITATION ON MERGER OF END STAGE RENAL DISEASE NETWORKS

Pub. L. 99–272, title IX, § 9214, Apr. 7, 1986, 100 Stat. 180, provided that: ''The Secretary of Health and Human Services shall maintain renal disease network organizations as authorized under section 1881(c) of the Social Security Act [subsec. (c) of this section], and may not merge the network organizations into other organizations or entities. The Secretary may consolidate such network organizations, but only if such consolidation does not result in fewer than 14 such organizations being permitted to exist.''

§ 1395ss. Certification of medicare supplemental health insurance policies

(a) Submission of policy by insurer

(1) The Secretary shall establish a procedure whereby medicare supplemental policies (as defined in subsection (g)(1) of this section) may be certified by the Secretary as meeting minimum standards and requirements set forth in subsection (c) of this section. Such procedure shall provide an opportunity for any insurer to submit any such policy, and such additional data as the Secretary finds necessary, to the Secretary for his examination and for his certification thereof as meeting the standards and requirements set forth in subsection (c) of this section. Subject to subsections (k)(3), (m), and (n) of this section, such certification shall remain in effect if the insurer files a notarized statement with the Secretary no later than June 30 of each year stating that the policy continues to meet such standards and requirements and if the insurer submits such additional data as the Secretary finds necessary to independently verify the accuracy of such notarized statement. Where the Secretary determines such a policy meets (or continues to meet) such standards and requirements, he shall authorize the insurer to have printed on such policy (but only in accordance with such requirements and conditions as the Secretary may prescribe) an emblem which the Secretary shall cause to be designed for use as an indication that a policy has received the Secretary's certification. The Secretary shall provide each State commissioner or superintendent of insurance with a list of all the policies which have received his certification.

(2) No medicare supplemental policy may be issued in a State on or after the date specified in subsection (p)(1)(C) of this section unless—

(A) the State's regulatory program under subsection (b)(1) of this section provides for the application and enforcement of the standards and requirements set forth in such subsection (including the 1991 NAIC Model Regulation or 1991 Federal Regulation (as the case may be)) by the date specified in subsection (p)(1)(C) of this section; or

(B) if the State's program does not provide for the application and enforcement of such standards and requirements, the policy has been certified by the Secretary under paragraph (1) as meeting the standards and requirements set forth in subsection (c) of this section (including such applicable standards) by such date.

Any person who issues a medicare supplemental policy, on and after the effective date specified in subsection (p)(1)(C) of this section, in violation of this paragraph is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(b) Standards and requirements; periodic review by Secretary

(1) Any medicare supplemental policy issued in any State which the Secretary determines has established under State law a regulatory program that—

(A) provides for the application and enforcement of standards with respect to such policies equal to or more stringent than the NAIC Model Standards (as defined in subsection (g)(2)(A) of this section), except as otherwise provided by subparagraph (H);

(B) includes requirements equal to or more stringent than the requirements described in paragraphs (2) through (5) of subsection (c) of this section;

(C) provides that—

(i) information with respect to the actual ratio of benefits provided to premiums collected under such policies will be reported to the State on forms conforming to those developed by the National Association of Insurance Commissioners for such purpose, or

(ii) such ratios will be monitored under the program in an alternative manner approved by the Secretary, and that a copy of each such policy, the most recent premium for each such policy, and a listing of the ratio of benefits provided to premiums collected for the most recent 3-year period for each such policy issued or sold in the State is maintained and made available to interested persons;

(D) provides for application and enforcement of the standards and requirements described in subparagraphs (A), (B), and (C) to all medicare supplemental policies (as defined in subsection (g)(1) of this section) issued in such State,

(E) provides the Secretary periodically (but at least annually) with a list containing the name and address of the issuer of each such policy and the name and number of each such policy (including an indication of policies that have been previously approved, newly approved, or withdrawn from approval since the previous list was provided),

(F) reports to the Secretary on the implementation and enforcement of standards and requirements of this paragraph at intervals established by the Secretary,

(G) provides for a process for approving or disapproving proposed premium increases with respect to such policies, and establishes a policy for the holding of public hearings prior to approval of a premium increase, and

(H) in the case of a policy that meets the standards under subparagraph (A) except that benefits under the policy are limited to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), provides for the application of requirements equal to or more stringent than the requirements under subsection (t) of this section,

shall be deemed (subject to subsections (k)(3), (m), and (n) of this section, for so long as the Secretary finds that such State regulatory program continues to meet the standards and requirements of this paragraph) to meet the standards and requirements set forth in subsection (c) of this section. Each report required under subparagraph (F) shall include information on loss ratios of policies sold in the State, frequency and types of instances in which policies approved by the State fail to meet the standards and requirements of this paragraph, actions taken by the State to bring such policies into compliance, information regarding State programs implementing consumer protection provisions, and such further information as the Secretary in consultation with the National Association of Insurance Commissioners may specify.

(2) The Secretary periodically shall review State regulatory programs to determine if they continue to meet the standards and requirements specified in paragraph (1). If the Secretary finds that a State regulatory program no longer meets the standards and requirements, before making a final determination, the Secretary shall provide the State an opportunity to adopt such a plan of correction as would permit the State regulatory program to continue to meet such standards and requirements. If the Secretary makes a final determination that the State regulatory program, after such an opportunity, fails to meet such standards and requirements, the program shall no longer be considered to have in operation a program meeting such standards and requirements.

(3) Notwithstanding paragraph (1), a medicare supplemental policy offered in a State shall not be deemed to meet the standards and requirements set forth in subsection (c) of this section, with respect to an advertisement (whether through written, radio, or television medium) used (or, at a State's option, to be used) for the policy in the State, unless the entity issuing the policy provides a copy of each advertisement to the Commissioner of Insurance (or comparable officer identified by the Secretary) of that State for review or approval to the extent it may be required under State law.

(c) Requisite findings

The Secretary shall certify under this section any medicare supplemental policy, or continue certification of such a policy, only if he finds that such policy (or, with respect to paragraph (3) or the requirement described in subsection (s) of this section, the issuer of the policy)—

(1) meets or exceeds (either in a single policy or, in the case of nonprofit hospital and medical service associations, in one or more policies issued in conjunction with one another) the NAIC Model Standards (except as otherwise provided by subsection (t) of this section);

(2) meets the requirements of subsection (r) of this section;

(3)(A) accepts a notice under section 1395u(h)(3)(B) of this title as a claim form for benefits under such policy in lieu of any claim form otherwise required and agrees to make a payment determination on the basis of the information contained in such notice;

(B) where such a notice is received—

(i) provides notice to such physician or supplier and the beneficiary of the payment determination under the policy, and

(ii) provides any payment covered by such policy directly to the participating physician or supplier involved;

(C) provides each enrollee at the time of enrollment a card listing the policy name and number and a single mailing address to which notices under section 1395u(h)(3)(B) of this title respecting the policy are to be sent;

(D) agrees to pay any user fees established under section 1395u(h)(3)(B) of this title with respect to information transmitted to the issuer of the policy; and

(E) provides to the Secretary at least annually, for transmittal to carriers, a single mailing address to which notices under section 1395u(h)(3)(B) of this title respecting the policy are to be sent;

(4) may, during a period of not less than 30 days after the policy is issued, be returned for a full refund of any premiums paid (without regard to the manner in which the purchase of the policy was solicited); and

(5) meets the applicable requirements of subsections (*o*) through (t) of this section.

(d) Criminal penalties; civil penalties for certain violations

(1) Whoever knowingly and willfully makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact with respect to the compliance of any policy with the standards and requirements set forth in subsection (c) of this section or in regulations promulgated pursuant to such subsection, or with respect to the use of

the emblem designed by the Secretary under subsection (a) of this section, shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act.

(2) Whoever falsely assumes or pretends to be acting, or misrepresents in any way that he is acting, under the authority of or in association with, the program of health insurance established by this subchapter, or any Federal agency, for the purpose of selling or attempting to sell insurance, or in such pretended character demands, or obtains money, paper, documents, or anything of value, shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act.

(3)(A)(i) It is unlawful for a person to sell or issue to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter (including an individual electing a Medicare+Choice plan under section 1395w–21 of this title)—

(I) a health insurance policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under this subchapter or subchapter XIX of this chapter,

(II) in the case of an individual not electing a Medicare+Choice plan, a medicare supplemental policy with knowledge that the individual is entitled to benefits under another medicare supplemental policy or in the case of an individual electing a Medicare+Choice plan, a medicare supplemental policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under the Medicare+Choice plan or under another medicare supplemental policy, or

(III) a health insurance policy (other than a medicare supplemental policy) with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled, other than benefits to which the individual is entitled under a requirement of State or Federal law.

(ii) Whoever violates clause (i) shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a person other than the issuer of the policy) for each such prohibited act.

(iii) A seller (who is not the issuer of a health insurance policy) shall not be considered to violate clause (i)(II) with respect to the sale of a medicare supplemental policy if the policy is sold in compliance with subparagraph (B).

(iv) For purposes of this subparagraph, a health insurance policy (other than a Medicare supplemental policy) providing for benefits which are payable to or on behalf of an individual without regard to other health benefit coverage of such individual is not considered to ''duplicate'' any health benefits under this subchapter, under subchapter XIX of this chapter, or under a health insurance policy, and subclauses (I) and (III) of clause (i) do not apply to such a policy.

(v) For purposes of this subparagraph, a health insurance policy (or a rider to an insurance contract which is not a health insurance policy) is not considered to ''duplicate'' health benefits under this subchapter or under another health insurance policy if it—

(I) provides health care benefits only for long-term care, nursing home care, home health care, or community-based care, or any combination thereof,

(II) coordinates against or excludes items and services available or paid for under this subchapter or under another health insurance policy, and

(III) for policies sold or issued on or after the end of the 90-day period beginning on August 21, 1996, discloses such coordination or exclusion in the policy's outline of coverage.

For purposes of this clause, the terms ''coordinates'' and ''coordination'' mean, with respect to a policy in relation to health benefits under this subchapter or under another health insurance policy, that the policy under its terms is secondary to, or excludes from payment, items and services to the extent available or paid for under this subchapter or under another health insurance policy.

(vi)(I) An individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter who is applying for a health insurance policy (other than a policy described in subclause (III)) shall be furnished a disclosure statement described in clause (vii) for the type of policy being applied for. Such statement shall be furnished as a part of (or together with) the application for such policy.

(II) Whoever issues or sells a health insurance policy (other than a policy described in subclause (III)) to an individual described in subclause (I) and fails to furnish the appropriate disclosure statement as required under such subclause shall be fined under title 18, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a person other than the issuer of the policy) for each such violation.

(III) A policy described in this subclause (to which subclauses (I) and (II) do not apply) is a Medicare supplemental policy, a policy described in clause (v), or a health insurance policy identified under 60 Federal Register 30880 (June 12, 1995) as a policy not required to have a disclosure statement.

(IV) Any reference in this section to the revised NAIC model regulation (referred to in subsection (m)(1)(A) of this section) is deemed a reference to such regulation as revised by section 171(m)(2) of the Social Security Act Amendments of 1994 (Public Law 103–432) and as modified by substituting, for the disclosure required under section 16D(2), disclosure under subclause (I) of an appropriate disclosure statement under clause (vii).

(vii) The disclosure statement described in this clause for a type of policy is the statement specified under subparagraph (D) of this paragraph (as in effect before August 21, 1996) for that type of policy, as revised as follows:

(I) In each statement, amend the second line to read as follows:

"THIS IS NOT MEDICARE SUPPLEMENT INSURANCE".

(II) In each statement, strike the third line and insert the following: ''**Some health care services paid for by Medicare may also trigger the payment of benefits under this policy.**''.

(III) In each statement not described in subclause (V), strike the boldface matter that begins ''**This insurance**'' and all that follows up to the next paragraph that begins ''**Medicare**''.

(IV) In each statement not described in subclause (V), insert before the boxed matter (that states ''**Before You Buy This Insurance**'') the following: ''**This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.**''.

(V) In a statement relating to policies providing both nursing home and non-institutional coverage, to policies providing nursing home benefits only, or policies providing home care benefits only, amend the sentence that begins ''Federal law'' to read as follows: ''Federal law requires us to inform you that in certain situations this insurance may pay for some care also covered by Medicare.''.

(viii)(I) Subject to subclause (II), nothing in this subparagraph shall restrict or preclude a State's ability to regulate health insurance policies, including any health insurance policy that is described in clause (iv), (v), or (vi)(III).

(II) A State may not declare or specify, in statute, regulation, or otherwise, that a health insurance policy (other than a Medicare supplemental policy) or rider to an insurance contract which is not a health insurance policy, that is described in clause (iv), (v), or (vi)(III) and that is sold, issued, or renewed to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter ''duplicates'' health benefits under this subchapter or under a Medicare supplemental policy.

(B)(i) It is unlawful for a person to issue or sell a medicare supplemental policy to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, whether directly, through the mail, or otherwise, unless—

(I) the person obtains from the individual, as part of the application for the issuance or purchase and on a form described in clause (ii), a written statement signed by the individual stating, to the best of the individual's knowledge, what health insurance policies (including any Medicare+Choice plan) the individual has, from what source, and whether the individual is entitled to any medical assistance under subchapter XIX of this chapter, whether as a qualified medicare beneficiary or otherwise, and

(II) the written statement is accompanied by a written acknowledgment, signed by the seller of the policy, of the request for and receipt of such statement.

(ii) The statement required by clause (i) shall be made on a form that—

(I) states in substance that a medicare-eligible individual does not need more than one medicare supplemental policy,

(II) states in substance that individuals may be eligible for benefits under the State medicaid program under subchapter XIX of this chapter and that such individuals who are entitled to benefits under that program usually do not need a medicare supplemental policy and that benefits and premiums under any such policy shall be suspended upon request of the policyholder during the period (of not longer than 24 months) of entitlement to benefits under such subchapter and may be reinstituted upon loss of such entitlement, and

(III) states that counseling services may be available in the State to provide advice concerning the purchase of medicare supplemental policies and enrollment under the medicaid program and may provide the telephone number for such services.

(iii)(I) Except as provided in subclauses (II) and (III), if the statement required by clause (i) is not obtained or indicates that the individual has a medicare supplemental policy or indicates that the individual is entitled to any medical assistance under subchapter XIX of this chapter, the sale of a medicare supplemental policy shall be considered to be a violation of subparagraph (A).

(II) Subclause (I) shall not apply in the case of an individual who has a medicare supplemental policy, if the individual indicates in writing, as part of the application for purchase, that the policy being purchased replaces such other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective and the issuer or seller certifies in writing that such policy will not, to the best of the issuer's or seller's knowledge, duplicate coverage (taking into account any such replacement).

(III) If the statement required by clause (i) is obtained and indicates that the individual is entitled to any medical assistance under subchapter XIX of this chapter, the sale of the policy is not in violation of clause (i) (insofar as such clause relates to such medical assistance), if (aa) a State medicaid plan under such subchapter pays the premiums for the policy, (bb) in the case of a qualified medicare beneficiary described in section 1396d(p)(1) of this title, the policy provides for coverage of outpatient prescription drugs, or (cc) the only medical assistance to which the individual is entitled under the State plan is medicare cost sharing described in section 1396d(p)(3)(A)(ii) of this title.

(iv) Whoever issues or sells a medicare supplemental policy in violation of this subparagraph shall be fined under title 18, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not the issuer of a policy) for each such violation.

(C) Subparagraph (A) shall not apply with respect to the sale or issuance of a group policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or for members or former members (or combination thereof) of the labor organizations.

(4)(A) Whoever knowingly, directly or through his agent, mails or causes to be mailed any mat-

ter for a prohibited purpose (as determined under subparagraph (B)) shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act.

(B) For purposes of subparagraph (A), a prohibited purpose means the advertising, solicitation, or offer for sale of a medicare supplemental policy, or the delivery of such a policy, in or into any State in which such policy has not been approved by the State commissioner or superintendent of insurance.

(C) Subparagraph (A) shall not apply in the case of a person who mails or causes to be mailed a medicare supplemental policy into a State if such person has ascertained that the party insured under such policy to whom (or on whose behalf) such policy is mailed is located in such State on a temporary basis.

(D) Subparagraph (A) shall not apply in the case of a person who mails or causes to be mailed a duplicate copy of a medicare supplemental policy previously issued to the party to whom (or on whose behalf) such duplicate copy is mailed.

(E) Subparagraph (A) shall not apply in the case of an issuer who mails or causes to be mailed a policy, certificate, or other matter solely to comply with the requirements of subsection (q) of this section.

(5) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under paragraphs (1), (2), (3)(A), and (4)(A) in the same manner as such provisions apply to penalties and proceedings under section 1320a–7a(a) of this title.

(e) Dissemination of information

(1) The Secretary shall provide to all individuals entitled to benefits under this subchapter (and, to the extent feasible, to individuals about to become so entitled) such information as will permit such individuals to evaluate the value of medicare supplemental policies to them and the relationship of any such policies to benefits provided under this subchapter.

(2) The Secretary shall—

(A) inform all individuals entitled to benefits under this subchapter (and, to the extent feasible, individuals about to become so entitled) of—

(i) the actions and practices that are subject to sanctions under subsection (d) of this section, and

(ii) the manner in which they may report any such action or practice to an appropriate official of the Department of Health and Human Services (or to an appropriate State official), and

(B) publish the toll-free telephone number for individuals to report suspected violations of the provisions of such subsection.

(3) The Secretary shall provide individuals entitled to benefits under this subchapter (and, to the extent feasible, individuals about to become so entitled) with a listing of the addresses and telephone numbers of State and Federal agencies and offices that provide information and assistance to individuals with respect to the selection of medicare supplemental policies.

(f) Study and evaluation of comparative effectiveness of various State approaches to regulating medicare supplemental policies; report to Congress no later than January 1, 1982; periodic evaluations

(1)(A) The Secretary shall, in consultation with Federal and State regulatory agencies, the National Association of Insurance Commissioners, private insurers, and organizations representing consumers and the aged, conduct a comprehensive study and evaluation of the comparative effectiveness of various State approaches to the regulation of medicare supplemental policies in (i) limiting marketing and agent abuse, (ii) assuring the dissemination of such information to individuals entitled to benefits under this subchapter (and to other consumers) as is necessary to permit informed choice, (iii) promoting policies which provide reasonable economic benefits for such individuals, (iv) reducing the purchase of unnecessary duplicative coverage, (v) improving price competition, and (vi) establishing effective approved State regulatory programs described in subsection (b) of this section.

(B) Such study shall also address the need for standards or certification of health insurance policies, other than medicare supplemental policies, sold to individuals eligible for benefits under this subchapter.

(C) The Secretary shall, no later than January 1, 1982, submit a report to the Congress on the results of such study and evaluation, accompanied by such recommendations as the Secretary finds warranted by such results with respect to the need for legislative or administrative changes to accomplish the objectives set forth in subparagraphs (A) and (B), including the need for a mandatory Federal regulatory program to assure the marketing of appropriate types of medicare supplemental policies, and such other means as he finds may be appropriate to enhance effective State regulation of such policies.

(2) The Secretary shall submit to the Congress no later than July 1, 1982, and periodically as may be appropriate thereafter (but not less often than once every 2 years), a report evaluating the effectiveness of the certification procedure and the criminal penalties established under this section, and shall include in such reports an analysis of—

(A) the impact of such procedure and penalties on the types, market share, value, and cost to individuals entitled to benefits under this subchapter of medicare supplemental policies which have been certified by the Secretary;

(B) the need for any change in the certification procedure to improve its administration or effectiveness; and

(C) whether the certification program and criminal penalties should be continued.

(3) The Secretary shall provide information via a toll-free telephone number on medicare supplemental policies (including the relationship of State programs under subchapter XIX of this chapter to such policies).

(g) Definitions

(1) For purposes of this section, a medicare supplemental policy is a health insurance policy or other health benefit plan offered by a private entity to individuals who are entitled to have payment made under this subchapter, which provides reimbursement for expenses incurred for services and items for which payment may be made under this subchapter but which are not reimbursable by reason of the applicability of deductibles, coinsurance amounts, or other limitations imposed pursuant to this subchapter; but does not include a prescription drug plan under part D of this subchapter or a Medicare+Choice plan or any such policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or for members or former members (or combination thereof) of the labor organizations and does not include a policy or plan of an eligible organization (as defined in section 1395mm(b) of this title) if the policy or plan provides benefits pursuant to a contract under section 1395mm of this title or an approved demonstration project described in section 603(c) of the Social Security Amendments of 1983, section 2355 of the Deficit Reduction Act of 1984, or section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, or a policy or plan of an organization if the policy or plan provides benefits pursuant to an agreement under section 1395*l*(a)(1)(A) of this title. For purposes of this section, the term ''policy'' includes a certificate issued under such policy.

(2) For purposes of this section:

(A) The term ''NAIC Model Standards'' means the ''NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act'', adopted by the National Association of Insurance Commissioners on June 6, 1979, as it applies to medicare supplemental policies.

(B) The term ''State with an approved regulatory program'' means a State for which the Secretary has made a determination under subsection (b)(1) of this section.

(C) The State in which a policy is issued means—

(i) in the case of an individual policy, the State in which the policyholder resides; and

(ii) in the case of a group policy, the State in which the holder of the master policy resides.

(h) Rules and regulations

The Secretary shall prescribe such regulations as may be necessary for the effective, efficient, and equitable administration of the certification procedure established under this section. The Secretary shall first issue final regulations to implement the certification procedure established under subsection (a) of this section not later than March 1, 1981.

(i) Commencement of certification program

(1) No medicare supplemental policy shall be certified and no such policy may be issued bearing the emblem authorized by the Secretary under subsection (a) of this section until July 1, 1982. On and after such date policies certified by the Secretary may bear such emblem, including policies which were issued prior to such date and were subsequently certified, and insurers may notify holders of such certified policies issued prior to such date using such emblem in the notification.

(2)(A) The Secretary shall not implement the certification program established under subsection (a) of this section with respect to policies issued in a State unless the Panel makes a finding that such State cannot be expected to have established, by July 1, 1982, an approved State regulatory program meeting the standards and requirements of subsection (b)(1) of this section. If the Panel makes such a finding, the Secretary shall implement such program under subsection (a) of this section with respect to medicare supplemental policies issued in such State, until such time as the Panel determines that such State has a program that meets the standards and requirements of subsection (b)(1) of this section.

(B) Any finding by the Panel under subparagraph (A) shall be transmitted in writing, not later than January 1, 1982, to the Committee on Finance of the Senate and to the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives and shall not become effective until 60 days after the date of its transmittal to the Committees of the Congress under this subparagraph. In counting such days, days on which either House is not in session because of an adjournment sine die or an adjournment of more than three days to a day certain are excluded in the computation.

(j) State regulation of policies issued in other States

Nothing in this section shall be construed so as to affect the right of any State to regulate medicare supplemental policies which, under the provisions of this section, are considered to be issued in another State.

(k) Amended NAIC Model Regulation or Federal model standards applicable; effective date; medicare supplemental policy and State regulatory program meeting applicable standards

(1)(A) If, within the 90-day period beginning on July 1, 1988, the National Association of Insurance Commissioners (in this subsection referred to as the ''Association'') amends the NAIC Model Regulation adopted on June 6, 1979 (as it relates to medicare supplemental policies), with respect to matters such as minimum benefit standards, loss ratios, disclosure requirements, and replacement requirements and provisions otherwise necessary to reflect the changes in law made by the Medicare Catastrophic Coverage Act of 1988, except as provided in subsection (m) of this section, subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the Model Regulation as amended by the Association in accordance with this paragraph (in this subsection and subsection (*l*) of this section referred to as the ''amended NAIC Model Regulation'').

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the amended NAIC Model Regulation or 1 year after the date the Association first adopts such amended Regulation.

(2)(A) If the Association does not amend the NAIC Model Regulation within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, Federal model standards (in this subsection and subsection (*l*) of this section referred to as ''Federal model standards'') for medicare supplemental policies to reflect the changes in law made by the Medicare Catastrophic Coverage Act of 1988, and subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to Federal model standards.

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the Federal model standards or 1 year after the date the Secretary first promulgates such standards.

(3) Notwithstanding any other provision of this section (except as provided in subsections (*l*), (m), and (n) of this section)—

(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a) of this section,

(B) no certification made pursuant to subsection (a) of this section shall remain in effect, and

(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A) of this section,

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the amended NAIC Model Regulation or the Federal model standards (as the case may be) by the date specified in paragraph (1)(B) or (2)(B) (as the case may be).

(*l*) Transitional compliance with NAIC Model Transition Regulation; "qualifying medicare supplemental policy" and "NAIC Model Transition Regulation" defined

(1) Until the date specified in paragraph (3), in the case of a qualifying medicare supplemental policy described in paragraph (2) issued—

(A) before January 1, 1989, the policy is deemed to remain in compliance with this section if the insurer issuing the policy complies with the NAIC Model Transition Regulation (including giving notices to subscribers and filing for premium adjustments with the State as described in section 5.B. of such Regulation) by January 1, 1989; or

(B) on or after January 1, 1989, the policy is deemed to be in compliance with this section if the insurer issuing the policy complies with the NAIC Model Transition Regulation before the date of the sale of the policy.

(2) In paragraph (1), the term ''qualifying medicare supplemental policy'' means a medicare supplemental policy—

(A) issued in a State which—

(i) has not adopted standards equal to or more stringent than the NAIC Model Transition Regulation by January 1, 1989, and

(ii) has not adopted standards equal to or more stringent than the amended NAIC Model Regulation (or Federal model standards) by January 1, 1989; and

(B) which has been issued in compliance with this section (as in effect on June 1, 1988).

(3)(A) The date specified in this paragraph is the earlier of—

(i) the first date a State adopts, after January 1, 1989, standards equal to or more stringent than the NAIC Model Transition Regulation or equal to or more stringent than the amended NAIC Model Regulation (or Federal model standards), as the case may be, or

(ii) the later of (I) the date specified in subsection (k)(1)(B) or (k)(2)(B) of this section (as the case may be), or (II) the date specified in subparagraph (B).

(B) In the case of a State which the Secretary identifies as—

(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A)(i), but

(ii) having a legislature which is not scheduled to meet in 1989 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1989, and in which legislation described in clause (i) may be considered. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(4) In the case of a medicare supplemental policy in effect on January 1, 1989, and offered in a State which, as of such date—

(A) has adopted standards equal to or more stringent than the amended NAIC Model Regulation (or Federal model standards), but

(B) does not have in effect standards equal to or more stringent than the NAIC Model Transition Regulation (or otherwise requiring notice substantially the same as the notice required in section 5.B. of such Regulation),

the policy shall not be deemed to meet the standards in subsection (c) of this section unless each individual who is entitled to benefits under this subchapter and is a policyholder under such policy on January 1, 1989, is sent such a notice in any appropriate form by not later than January 31, 1989, that explains—

(A) the improved benefits under this subchapter contained in the Medicare Catastrophic Coverage Act of 1988, and

(B) how these improvements affect the benefits contained in the policies and the premium for the policy.

(5) In this subsection, the term ''NAIC Model Transition Regulation'' refers to the standards contained in the ''Model Regulation to Imple-

ment Transitional Requirements for the Conversion of Medicare Supplement Insurance Benefits and Premiums to Conform to Medicare Program Revisions'' (as adopted by the National Association of Insurance Commissioners in September 1987).

(m) Revision of amended NAIC Model Regulation and amended Federal model standards; effective dates; medicare supplemental policy and State regulatory program meeting applicable standards

(1)(A) If, within the 90-day period beginning on December 13, 1989, the National Association of Insurance Commissioners (in this subsection and subsection (n) of this section referred to as the ''Association'') revises the amended NAIC Model Regulation (referred to in subsection (k)(1)(A) of this section and adopted on September 20, 1988) to improve such regulation and otherwise to reflect the changes in law made by the Medicare Catastrophic Coverage Repeal Act of 1989, subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the amended NAIC Model Regulation (referred to in subsection (k)(1)(A) of this section) as revised by the Association in accordance with this paragraph (in this subsection and subsection (n) of this section referred to as the ''revised NAIC Model Regulation'').

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised NAIC Model Regulation or 1 year after the date the Association first adopts such revised Regulation.

(2)(A) If the Association does not revise the amended NAIC Model Regulation, within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, revised Federal model standards (in this subsection and subsection (n) of this section referred to as ''revised Federal model standards'') for medicare supplemental policies to improve such standards and otherwise to reflect the changes in law made by the Medicare Catastrophic Coverage Repeal Act of 1989, subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised Federal model standards.

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised Federal model standards or 1 year after the date the Secretary first promulgates such standards.

(3) Notwithstanding any other provision of this section (except as provided in subsection (n) of this section)—

(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a) of this section,

(B) no certification made pursuant to subsection (a) of this section shall remain in effect, and

(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A) of this section,

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) by the date specified in paragraph (1)(B) or (2)(B) (as the case may be).

(n) Transition compliance with revision of NAIC Model Regulation and Federal model standards

(1) Until the date specified in paragraph (4), in the case of a qualifying medicare supplemental policy described in paragraph (3) issued in a State—

(A) before the transition deadline, the policy is deemed to remain in compliance with the standards described in subsection (b)(1)(A) of this section only if the insurer issuing the policy complies with the transition provision described in paragraph (2), or

(B) on or after the transition deadline, the policy is deemed to be in compliance with the standards described in subsection (b)(1)(A) of this section only if the insurer issuing the policy complies with the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) before the date of the sale of the policy.

In this paragraph, the term ''transition deadline'' means 1 year after the date the Association adopts the revised NAIC Model Regulation or 1 year after the date the Secretary promulgates revised Federal model standards (as the case may be).

(2) The transition provision described in this paragraph is—

(A) such transition provision as the Association provides, by not later than December 15, 1989, so as to provide for an appropriate transition (i) to restore benefit provisions which are no longer duplicative as a result of the changes in benefits under this subchapter made by the Medicare Catastrophic Coverage Repeal Act of 1989 and (ii) to eliminate the requirement of payment for the first 8 days of coinsurance for extended care services, or

(B) if the Association does not provide for a transition provision by the date described in subparagraph (A), such transition provision as the Secretary shall provide, by January 1, 1990, so as to provide for an appropriate transition described in subparagraph (A).

(3) In paragraph (1), the term ''qualifying medicare supplemental policy'' means a medicare supplemental policy which has been issued in compliance with this section as in effect on the date before December 13, 1989.

(4)(A) The date specified in this paragraph for a policy issued in a State is—

(i) the first date a State adopts, after December 13, 1989, standards equal to or more stringent than the revised NAIC Model Regulation (or revised Federal model standards), as the case may be, or

(ii) the date specified in subparagraph (B),

whichever is earlier.

(B) In the case of a State which the Secretary identifies, in consultation with the Association, as—

(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A)(i), but

(ii) having a legislature which is not scheduled to meet in 1990 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1990. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(5) In the case of a medicare supplemental policy in effect on January 1, 1990, the policy shall not be deemed to meet the standards in subsection (c) of this section unless each individual who is entitled to benefits under this subchapter and is a policyholder or certificate holder under such policy on such date is sent a notice in an appropriate form by not later than January 31, 1990, that explains—

(A) the changes in benefits under this subchapter effected by the Medicare Catastrophic Coverage Repeal Act of 1989, and

(B) how these changes may affect the benefits contained in such policy and the premium for the policy.

(6)(A) Except as provided in subparagraph (B), in the case of an individual who had in effect, as of December 31, 1988, a medicare supplemental policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy before December 13, 1989, no medicare supplemental policy of the insurer shall be deemed to meet the standards in subsection (c) of this section unless the insurer—

(i) provides written notice, no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described in clause (ii), and

(ii) offers the individual, during a period of at least 60 days beginning not later than February 1, 1990, reinstitution of coverage (with coverage effective as of January 1, 1990), under the terms which (I) do not provide for any waiting period with respect to treatment of pre-existing conditions, (II) provides for coverage which is substantially equivalent to coverage in effect before the date of such termination, and (III) provides for classification of premiums on which terms are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

(B) An insurer is not required to make the offer under subparagraph (A)(ii) in the case of an individual who is a policyholder or certificate holder in another medicare supplemental policy as of December 13, 1989, if (as of January 1, 1990) the individual is not subject to a waiting period with respect to treatment of a pre-existing condition under such other policy.

(*o*) Requirements of group benefits; core group benefits; uniform outline of coverage

The requirements of this subsection are as follows:

(1) Each medicare supplemental policy shall provide for coverage of a group of benefits consistent with subsections (p), (v), and (w) of this section.

(2) If the medicare supplemental policy provides for coverage of a group of benefits other than the core group of basic benefits described in subsection (p)(2)(B) of this section, the issuer of the policy must make available to the individual a medicare supplemental policy with only such core group of basic benefits.

(3) The issuer of the policy has provided, before the sale of the policy, an outline of coverage that uses uniform language and format (including layout and print size) that facilitates comparison among medicare supplemental policies and comparison with medicare benefits.

(p) Standards for group benefits

(1)(A) If, within 9 months after November 5, 1990, the National Association of Insurance Commissioners (in this subsection referred to as the ''Association'') changes the revised NAIC Model Regulation (described in subsection (m) of this section) to incorporate—

(i) limitations on the groups or packages of benefits that may be offered under a medicare supplemental policy consistent with paragraphs (2) and (3) of this subsection,

(ii) uniform language and definitions to be used with respect to such benefits,

(iii) uniform format to be used in the policy with respect to such benefits, and

(iv) other standards to meet the additional requirements imposed by the amendments made by the Omnibus Budget Reconciliation Act of 1990,

subsection (g)(2)(A) of this section shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the ''1991 NAIC Model Regulation'').

(B) If the Association does not make the changes in the revised NAIC Model Regulation within the 9-month period specified in subparagraph (A), the Secretary shall promulgate, not later than 9 months after the end of such period, a regulation and subsection (g)(2)(A) of this section shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised NAIC Model Regulation as changed by the Secretary under this subparagraph (such changed regulation referred to in this section as the ''1991 Federal Regulation'').

(C)(i) Subject to clause (ii), the date specified in this subparagraph for a State is the date the

State adopts the 1991 NAIC Model Regulation or 1991 Federal Regulation or 1 year after the date the Association or the Secretary first adopts such standards, whichever is earlier.

(ii) In the case of a State which the Secretary identifies, in consultation with the Association, as—

(I) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet the 1991 NAIC Model Regulation or 1991 Federal Regulation, but

(II) having a legislature which is not scheduled to meet in 1992 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1992. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(D) In promulgating standards under this paragraph, the Association or Secretary shall consult with a working group composed of representatives of issuers of medicare supplemental policies, consumer groups, medicare beneficiaries, and other qualified individuals. Such representatives shall be selected in a manner so as to assure balanced representation among the interested groups.

(E) If benefits (including deductibles and coinsurance) under this subchapter are changed and the Secretary determines, in consultation with the Association, that changes in the 1991 NAIC Model Regulation or 1991 Federal Regulation are needed to reflect such changes, the preceding provisions of this paragraph shall apply to the modification of standards previously established in the same manner as they applied to the original establishment of such standards.

(2) The benefits under the 1991 NAIC Model Regulation or 1991 Federal Regulation shall provide—

(A) for such groups or packages of benefits as may be appropriate taking into account the considerations specified in paragraph (3) and the requirements of the succeeding subparagraphs;

(B) for identification of a core group of basic benefits common to all policies; and

(C) that, subject to paragraph (4)(B), the total number of different benefit packages (counting the core group of basic benefits described in subparagraph (B) and each other combination of benefits that may be offered as a separate benefit package) that may be established in all the States and by all issuers shall not exceed 10 plus the 2 plans described in paragraph (11)(A).

(3) The benefits under paragraph (2) shall, to the extent possible—

(A) provide for benefits that offer consumers the ability to purchase the benefits that are available in the market as of November 5, 1990; and

(B) balance the objectives of (i) simplifying the market to facilitate comparisons among policies, (ii) avoiding adverse selection, (iii) providing consumer choice, (iv) providing market stability, and (v) promoting competition.

(4)(A)(i) Except as provided in subparagraph (B) or paragraph (6), no State with a regulatory program approved under subsection (b)(1) of this section may provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy unless such grouping meets the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation.

(ii) Except as provided in subparagraph (B), the Secretary may not provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy seeking approval by the Secretary unless such grouping meets the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation.

(B) With the approval of the State (in the case of a policy issued in a State with an approved regulatory program) or the Secretary (in the case of any other policy), the issuer of a medicare supplemental policy may offer new or innovative benefits in addition to the benefits provided in a policy that otherwise complies with the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation. Any such new or innovative benefits may include benefits that are not otherwise available and are cost-effective and shall be offered in a manner which is consistent with the goal of simplification of medicare supplemental policies.

(5)(A) Except as provided in subparagraph (B), this subsection shall not be construed as preventing a State from restricting the groups of benefits that may be offered in medicare supplemental policies in the State.

(B) A State with a regulatory program approved under subsection (b)(1) of this section may not restrict under subparagraph (A) the offering of a medicare supplemental policy consisting only of the core group of benefits described in paragraph (2)(B).

(6) The Secretary may waive the application of standards described in clauses (i) through (iii) of paragraph (1)(A) in those States that on November 5, 1990, had in place an alternative simplification program.

(7) This subsection shall not be construed as preventing an issuer of a medicare supplemental policy who otherwise meets the requirements of this section from providing, through an arrangement with a vendor, for discounts from that vendor to policyholders or certificateholders for the purchase of items or services not covered under its medicare supplemental policies.

(8) Any person who sells or issues a medicare supplemental policy, on and after the effective date specified in paragraph (1)(C) (but subject to paragraph (10)), in violation of the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation insofar as such regulation relates to the requirements of subsection (*o*) or (q) of this section or clause (i), (ii), or (iii) of paragraph (1)(A) is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not an issuer of a policy) for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection

(a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(9)(A) Anyone who sells a medicare supplemental policy to an individual shall make available for sale to the individual a medicare supplemental policy with only the core group of basic benefits (described in paragraph (2)(B)).

(B) Anyone who sells a medicare supplemental policy to an individual shall provide the individual, before the sale of the policy, an outline of coverage which describes the benefits under the policy. Such outline shall be on a standard form approved by the State regulatory program or the Secretary (as the case may be) consistent with the 1991 NAIC Model Regulation or 1991 Federal Regulation under this subsection.

(C) Whoever sells a medicare supplemental policy in violation of this paragraph is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not the issuer of the policy) for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(D) Subject to paragraph (10), this paragraph shall apply to sales of policies occurring on or after the effective date specified in paragraph (1)(C).

(10) No penalty may be imposed under paragraph (8) or (9) in the case of a seller who is not the issuer of a policy until the Secretary has published a list of the groups of benefit packages that may be sold or issued consistent with paragraph (1)(A)(i).

(11)(A) For purposes of paragraph (2), the benefit packages described in this subparagraph are as follows:

(i) The benefit package classified as ''F'' under the standards established by such paragraph, except that it has a high deductible feature.

(ii) The benefit package classified as ''J'' under the standards established by such paragraph, except that it has a high deductible feature.

(B) For purposes of subparagraph (A), a high deductible feature is one which—

(i) requires the beneficiary of the policy to pay annual out-of-pocket expenses (other than premiums) in the amount specified in subparagraph (C) before the policy begins payment of benefits, and

(ii) covers 100 percent of covered out-of-pocket expenses once such deductible has been satisfied in a year.

(C) The amount specified in this subparagraph—

(i) for 1998 and 1999 is $1,500, and

(ii) for a subsequent year, is the amount specified in this subparagraph for the previous year increased by the percentage increase in the Consumer Price Index for all urban consumers (all items; U.S. city average) for the 12-month period ending with August of the preceding year.

If any amount determined under clause (ii) is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

(q) Guaranteed renewal of policies; termination; suspension

The requirements of this subsection are as follows:

(1) Each medicare supplemental policy shall be guaranteed renewable and—

(A) the issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(B) the issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(2) If the medicare supplemental policy is terminated by the group policyholder and is not replaced as provided under paragraph (4), the issuer shall offer certificateholders an individual medicare supplemental policy which (at the option of the certificateholder)—

(A) provides for continuation of the benefits contained in the group policy, or

(B) provides for such benefits as otherwise meets[1] the requirements of this section.

(3) If an individual is a certificateholder in a group medicare supplemental policy and the individual terminates membership in the group, the issuer shall—

(A) offer the certificateholder the conversion opportunity described in paragraph (2), or

(B) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(4) If a group medicare supplemental policy is replaced by another group medicare supplemental policy purchased by the same policyholder, issuer[2] of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(5)(A) Each medicare supplemental policy shall provide that benefits and premiums under the policy shall be suspended at the request of the policyholder for the period (not to exceed 24 months) in which the policyholder has applied for and is determined to be entitled to medical assistance under subchapter XIX of this chapter, but only if the policyholder notifies the issuer of such policy within 90 days after the date the individual becomes entitled to such assistance. If such suspension occurs and if the policyholder or certificate holder loses entitlement to such medical assistance, such policy shall be automatically reinstituted (effective as of the date of termination of such entitlement) under terms described in subsection (n)(6)(A)(ii) of this section as of the termination of such entitlement

[1] So in original. Probably should be ''meet''.

[2] So in original. Probably should be preceded by ''the''.

if the policyholder provides notice of loss of such entitlement within 90 days after the date of such loss.

(B) Nothing in this section shall be construed as affecting the authority of a State, under subchapter XIX of this chapter, to purchase a medicare supplemental policy for an individual otherwise entitled to assistance under such subchapter.

(C) Any person who issues a medicare supplemental policy and fails to comply with the requirements of this paragraph or paragraph (6) is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(6) Each medicare supplemental policy shall provide that benefits and premiums under the policy shall be suspended at the request of the policyholder if the policyholder is entitled to benefits under section 426(b) of this title and is covered under a group health plan (as defined in section 1395y(b)(1)(A)(v) of this title). If such suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, such policy shall be automatically reinstituted (effective as of the date of such loss of coverage) under terms described in subsection (n)(6)(A)(ii) of this section as of the loss of such coverage if the policyholder provides notice of loss of such coverage within 90 days after the date of such loss.

(r) Required ratio of aggregate benefits to aggregate premiums

(1) A medicare supplemental policy may not be issued or renewed (or otherwise provide coverage after the date described in subsection (p)(1)(C) of this section) in any State unless—

(A) the policy can be expected for periods after the effective date of these provisions (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such periods and in accordance with a uniform methodology, including uniform reporting standards, developed by the National Association of Insurance Commissioners) to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 65 percent in the case of individual policies; and

(B) the issuer of the policy provides for the issuance of a proportional refund, or a credit against future premiums of a proportional amount, based on the premium paid and in accordance with paragraph (2), of the amount of premiums received necessary to assure that the ratio of aggregate benefits provided to the aggregate premiums collected (net of such refunds or credits) complies with the expectation required under subparagraph (A), treating policies of the same type as a single policy for each standard package.

For purposes of applying subparagraph (A) only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies. For the purpose of calculating the refund or credit required under paragraph (1)(B) for a policy issued before the date specified in subsection (p)(1)(C) of this section, the refund or credit calculation shall be based on the aggregate benefits provided and premiums collected under all such policies issued by an insurer in a State (separated as to individual and group policies) and shall be based only on aggregate benefits provided and premiums collected under such policies after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.

(2)(A) Paragraph (1)(B) shall be applied with respect to each type of policy by standard package. Paragraph (1)(B) shall not apply to a policy until 12 months following issue. The Comptroller General, in consultation with the National Association of Insurance Commissioners, shall submit to Congress a report containing recommendations on adjustment in the percentages under paragraph (1)(A) that may be appropriate. In the case of a policy issued before the date specified in subsection (p)(1)(C) of this section, paragraph (1)(B) shall not apply until 1 year after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.

(B) A refund or credit required under paragraph (1)(B) shall be made to each policyholder insured under the applicable policy as of the last day of the year involved.

(C) Such a refund or credit shall include interest from the end of the calendar year involved until the date of the refund or credit at a rate as specified by the Secretary for this purpose from time to time which is not less than the average rate of interest for 13-week Treasury notes.

(D) For purposes of this paragraph and paragraph (1)(B), refunds or credits against premiums due shall be made, with respect to a calendar year, not later than the third quarter of the succeeding calendar year.

(3) The provisions of this subsection do not preempt a State from requiring a higher percentage than that specified in paragraph (1)(A).

(4) The Secretary shall submit in October of each year (beginning with 1993) a report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on loss ratios under medicare supplemental policies and the use of sanctions, such as a required rebate or credit or the disallowance of premium increases, for policies that fail to meet the requirements of this subsection (relating to loss ratios). Such report shall include a list of the policies that failed to comply with such loss ratio requirements or other requirements of this section.

(5)(A) The Comptroller General shall periodically, not less often than once every 3 years, perform audits with respect to the compliance of medicare supplemental policies with the loss ratio requirements of this subsection and shall report the results of such audits to the State involved and to the Secretary.

(B) The Secretary may independently perform such compliance audits.

(6)(A) A person who fails to provide refunds or credits as required in paragraph (1)(B) is subject to a civil money penalty of not to exceed $25,000 for each policy issued for which such failure occurred. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) Each issuer of a policy subject to the requirements of paragraph (1)(B) shall be liable to the policyholder or, in the case of a group policy, to the certificate holder for credits required under such paragraph.

(s) Coverage for pre-existing conditions

(1) If a medicare supplemental policy replaces another medicare supplemental policy, the issuer of the replacing policy shall waive any time periods applicable to preexisting conditions, waiting period, elimination periods and probationary periods in the new medicare supplemental policy for similar benefits to the extent such time was spent under the original policy.

(2)(A) The issuer of a medicare supplemental policy may not deny or condition the issuance or effectiveness of a medicare supplemental policy, or discriminate in the pricing of the policy, because of health status, claims experience, receipt of health care, or medical condition in the case of an individual for whom an application is submitted prior to or during the 6 month period beginning with the first month as of the first day on which the individual is 65 years of age or older and is enrolled for benefits under part B of this subchapter.

(B) Subject to subparagraphs (C) and (D), subparagraph (A) shall not be construed as preventing the exclusion of benefits under a policy, during its first 6 months, based on a pre-existing condition for which the policyholder received treatment or was otherwise diagnosed during the 6 months before the policy became effective.

(C) If a medicare supplemental policy or certificate replaces another such policy or certificate which has been in effect for 6 months or longer, the replacing policy may not provide any time period applicable to pre-existing conditions, waiting periods, elimination periods, and probationary periods in the new policy or certificate for similar benefits.

(D) In the case of a policy issued during the 6-month period described in subparagraph (A) to an individual who is 65 years of age or older as of the date of issuance and who as of the date of the application for enrollment has a continuous period of creditable coverage (as defined in section 300gg(c) of this title) of—

(i) at least 6 months, the policy may not exclude benefits based on a pre-existing condition; or

(ii) less than 6 months, if the policy excludes benefits based on a preexisting condition, the policy shall reduce the period of any preexisting condition exclusion by the aggregate of the periods of creditable coverage (if any, as so defined) applicable to the individual as of the enrollment date.

The Secretary shall specify the manner of the reduction under clause (ii), based upon the rules used by the Secretary in carrying out section 300gg(a)(3) of this title.

(3)(A) The issuer of a medicare supplemental policy—

(i) may not deny or condition the issuance or effectiveness of a medicare supplemental policy described in subparagraph (C) that is offered and is available for issuance to new enrollees by such issuer;

(ii) may not discriminate in the pricing of such policy, because of health status, claims experience, receipt of health care, or medical condition; and

(iii) may not impose an exclusion of benefits based on a preexisting condition under such policy,

in the case of an individual described in subparagraph (B) who seeks to enroll under the policy during the period specified in subparagraph (E) and who submits evidence of the date of termination or disenrollment along with the application for such medicare supplemental policy.

(B) An individual described in this subparagraph is an individual described in any of the following clauses:

(i) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under this subchapter and the plan terminates or ceases to provide all such supplemental health benefits to the individual.

(ii) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of this subchapter, and there are circumstances permitting discontinuance of the individual's election of the plan under the first sentence of section 1395w–21(e)(4) of this title or the individual is 65 years of age or older and is enrolled with a PACE provider under section 1395eee of this title, and there are circumstances that would permit the discontinuance of the individual's enrollment with such provider under circumstances that are similar to the circumstances that would permit discontinuance of the individual's election under the first sentence of such section if such individual were enrolled in a Medicare+Choice plan.

(iii) The individual is enrolled with an eligible organization under a contract under section 1395mm of this title, a similar organization operating under demonstration project authority, effective for periods before April 1, 1999, with an organization under an agreement under section 1395*l*(a)(1)(A) of this title, or with an organization under a policy described in subsection (t) of this section, and such enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under the first sentence of section 1395w–21(e)(4) of this title and, in the case of a policy described in subsection (t) of this section, there is no provision under applicable State law for the continuation or conversion of coverage under such policy.

(iv) The individual is enrolled under a medicare supplemental policy under this section and such enrollment ceases because—

(I) of the bankruptcy or insolvency of the issuer or because of other involuntary termination of coverage or enrollment under such policy and there is no provision under applicable State law for the continuation or conversion of such coverage;

(II) the issuer of the policy substantially violated a material provision of the policy; or

(III) the issuer (or an agent or other entity acting on the issuer's behalf) materially misrepresented the policy's provisions in marketing the policy to the individual.

(v) The individual—

(I) was enrolled under a medicare supplemental policy under this section,

(II) subsequently terminates such enrollment and enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of this subchapter, any eligible organization under a contract under section 1395mm of this title, any similar organization operating under demonstration project authority, any PACE provider under section 1395eee of this title, or any policy described in subsection (t) of this section, and

(III) the subsequent enrollment under subclause (II) is terminated by the enrollee during any period within the first 12 months of such enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1395w–21(e) of this title).

(vi) The individual, upon first becoming eligible for benefits under part A of this subchapter at age 65, enrolls in a Medicare+Choice plan under part C of this subchapter or in a PACE program under section 1395eee of this title, and disenrolls from such plan or such program by not later than 12 months after the effective date of such enrollment.

(C)(i) Subject to clauses (ii) and (iii), a medicare supplemental policy described in this subparagraph is a medicare supplemental policy which has a benefit package classified as ''A'', ''B'', ''C'', or ''F'' under the standards established under subsection (p)(2) of this section.

(ii)(I) Subject to subclause (II), only for purposes of an individual described in subparagraph (B)(v), a medicare supplemental policy described in this subparagraph is the same medicare supplemental policy referred to in such subparagraph in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in clause (i).

(II) If the medicare supplemental policy referred to in subparagraph (B)(v) was a medigap Rx policy (as defined in subsection (v)(6)(A) of this section), a medicare supplemental policy described in this subparagraph is such policy in which the individual was most recently enrolled as modified under subsection (v)(2)(C)(i) of this section or, at the election of the individual, a policy referred to in subsection (v)(3)(A)(i) of this section.

(iii) Only for purposes of an individual described in subparagraph (B)(vi) and subject to subsection (v)(1) of this section, a medicare supplemental policy described in this subparagraph shall include any medicare supplemental policy.

(iv) For purposes of applying this paragraph in the case of a State that provides for offering of benefit packages other than under the classification referred to in clause (i), the references to benefit packages in such clause are deemed references to comparable benefit packages offered in such State.

(D) At the time of an event described in subparagraph (B) because of which an individual ceases enrollment or loses coverage or benefits under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, the insurer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the rights of the individual under this paragraph, and obligations of issuers of medicare supplemental policies, under subparagraph (A).

(E) For purposes of subparagraph (A), the time period specified in this subparagraph is—

(i) in the case of an individual described in subparagraph (B)(i), the period beginning on the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if no such notice is received, notice that a claim has been denied because of such a termination or cessation) and ending on the date that is 63 days after the applicable notice;

(ii) in the case of an individual described in clause (ii), (iii), (v), or (vi) of subparagraph (B) whose enrollment is terminated involuntarily, the period beginning on the date that the individual receives a notice of termination and ending on the date that is 63 days after the date the applicable coverage is terminated;

(iii) in the case of an individual described in subparagraph (B)(iv)(I), the period beginning on the earlier of (I) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice, if any, and (II) the date that the applicable coverage is terminated, and ending on the date that is 63 days after the date the coverage is terminated;

(iv) in the case of an individual described in clause (ii), (iii), (iv)(II), (iv)(III), (v), or (vi) of subparagraph (B) who disenrolls voluntarily, the period beginning on the date that is 60 days before the effective date of the disenrollment and ending on the date that is 63 days after such effective date; and

(v) in the case of an individual described in subparagraph (B) but not described in the preceding provisions of this subparagraph, the period beginning on the effective date of the disenrollment and ending on the date that is 63 days after such effective date.

(F)(i) Subject to clause (ii), for purposes of this paragraph—

(I) in the case of an individual described in subparagraph (B)(v) (or deemed to be so described, pursuant to this subparagraph) whose enrollment with an organization or provider described in subclause (II) of such subparagraph is involuntarily terminated within the

first 12 months of such enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, such subsequent enrollment shall be deemed to be an initial enrollment described in such subparagraph; and

(II) in the case of an individual described in clause (vi) of subparagraph (B) (or deemed to be so described, pursuant to this subparagraph) whose enrollment with a plan or in a program described in such clause is involuntarily terminated within the first 12 months of such enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, such subsequent enrollment shall be deemed to be an initial enrollment described in such clause.

(ii) For purposes of clauses (v) and (vi) of subparagraph (B), no enrollment of an individual with an organization or provider described in clause (v)(II), or with a plan or in a program described in clause (vi), may be deemed to be an initial enrollment under this clause after the 2-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

(4) Any issuer of a medicare supplemental policy that fails to meet the requirements of this subsection is subject to a civil money penalty of not to exceed $5,000 for each such failure. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(t) Medicare select policies

(1) If a medicare supplemental policy meets the 1991 NAIC Model Regulation or 1991 Federal Regulation and otherwise complies with the requirements of this section except that benefits under the policy are restricted to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), the policy shall nevertheless be treated as meeting those standards if—

(A) full benefits are provided for items and services furnished through a network of entities which have entered into contracts or agreements with the issuer of the policy;

(B) full benefits are provided for items and services furnished by other entities if the services are medically necessary and immediately required because of an unforeseen illness, injury, or condition and it is not reasonable given the circumstances to obtain the services through the network;

(C) the network offers sufficient access;

(D) the issuer of the policy has arrangements for an ongoing quality assurance program for items and services furnished through the network;

(E)(i) the issuer of the policy provides to each enrollee at the time of enrollment an explanation of (I) the restrictions on payment under the policy for services furnished other than by or through the network, (II) out of area coverage under the policy, (III) the policy's coverage of emergency services and urgently needed care, and (IV) the availability of a policy through the entity that meets the standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation without reference to this subsection and the premium charged for such policy, and

(ii) each enrollee prior to enrollment acknowledges receipt of the explanation provided under clause (i); and

(F) the issuer of the policy makes available to individuals, in addition to the policy described in this subsection, any policy (otherwise offered by the issuer to individuals in the State) that meets the standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation and other requirements of this section without reference to this subsection.

(2) If the Secretary determines that an issuer of a policy approved under paragraph (1)—

(A) fails substantially to provide medically necessary items and services to enrollees seeking such items and services through the issuer's network, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual,

(B) imposes premiums on enrollees in excess of the premiums approved by the State,

(C) acts to expel an enrollee for reasons other than nonpayment of premiums, or

(D) does not provide the explanation required under paragraph (1)(E)(i) or does not obtain the acknowledgment required under paragraph (1)(E)(ii),

the issuer is subject to a civil money penalty in an amount not to exceed $25,000 for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(3) The Secretary may enter into a contract with an entity whose policy has been certified under paragraph (1) or has been approved by a State under subsection (b)(1)(H) of this section to determine whether items and services (furnished to individuals entitled to benefits under this subchapter and under that policy) are not allowable under section 1395y(a)(1) of this title. Payments to the entity shall be in such amounts as the Secretary may determine, taking into account estimated savings under contracts with carriers and fiscal intermediaries and other factors that the Secretary finds appropriate. Paragraph (1), the first sentence of paragraph (2)(A), paragraph (2)(B), paragraph (3)(C), paragraph (3)(D), and paragraph (3)(E)[3] of section 1395u(b) of this title shall apply to the entity.

(u) Additional rules relating to individuals enrolled in MSA plans and in private fee-for-service plans

(1) It is unlawful for a person to sell or issue a policy described in paragraph (2) to an individual with knowledge that the individual has in effect under section 1395w–21 of this title an

[3] See References in Text note below.

election of an MSA plan or a Medicare+Choice private fee-for-service plan.

(2)(A) A policy described in this subparagraph is a health insurance policy (other than a policy described in subparagraph (B)) that provides for coverage of expenses that are otherwise required to be counted toward meeting the annual deductible amount provided under the MSA plan.

(B) A policy described in this subparagraph is any of the following:

(i) A policy that provides coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

(ii) A policy of insurance to which substantially all of the coverage relates to—

(I) liabilities incurred under workers' compensation laws,

(II) tort liabilities,

(III) liabilities relating to ownership or use of property, or

(IV) such other similar liabilities as the Secretary may specify by regulations.

(iii) A policy of insurance that provides coverage for a specified disease or illness.

(iv) A policy of insurance that pays a fixed amount per day (or other period) of hospitalization.

(v) Rules relating to medigap policies that provide prescription drug coverage

(1) Prohibition on sale, issuance, and renewal of new policies that provide prescription drug coverage

(A) In general

Notwithstanding any other provision of law, on or after January 1, 2006, a medigap Rx policy (as defined in paragraph (6)(A)) may not be sold, issued, or renewed under this section—

(i) to an individual who is a part D enrollee (as defined in paragraph (6)(B)); or

(ii) except as provided in subparagraph (B), to an individual who is not a part D enrollee.

(B) Continuation permitted for non-part D enrollees

Subparagraph (A)(ii) shall not apply to the renewal of a medigap Rx policy that was issued before January 1, 2006.

(C) Construction

Nothing in this subsection shall be construed as preventing the offering on and after January 1, 2006, of ''H'', ''I'', and ''J'' policies described in paragraph (2)(D)(i) if the benefit packages are modified in accordance with paragraph (2)(C).

(2) Elimination of duplicative coverage upon part D enrollment

(A) In general

In the case of an individual who is covered under a medigap Rx policy and enrolls under a part D plan—

(i) before the end of the initial part D enrollment period, the individual may—

(I) enroll in a medicare supplemental policy without prescription drug coverage under paragraph (3); or

(II) continue the policy in effect subject to the modification described in subparagraph (C)(i); or

(ii) after the end of such period, the individual may continue the policy in effect subject to such modification.

(B) Notice required to be provided to current policyholders with medigap Rx policy

No medicare supplemental policy of an issuer shall be deemed to meet the standards in subsection (c) of this section unless the issuer provides written notice (in accordance with standards of the Secretary established in consultation with the National Association of Insurance Commissioners) during the 60-day period immediately preceding the initial part D enrollment period, to each individual who is a policyholder or certificate holder of a medigap Rx policy (at the most recent available address of that individual) of the following:

(i) If the individual enrolls in a plan under part D of this subchapter during the initial enrollment period under section 1395w–101(b)(2)(A) of this title, the individual has the option of—

(I) continuing enrollment in the individual's current plan, but the plan's coverage of prescription drugs will be modified under subparagraph (C)(i); or

(II) enrolling in another medicare supplemental policy pursuant to paragraph (3).

(ii) If the individual does not enroll in a plan under part D of this subchapter during such period, the individual may continue enrollment in the individual's current plan without change, but—

(I) the individual will not be guaranteed the option of enrollment in another medicare supplemental policy pursuant to paragraph (3); and

(II) if the current plan does not provide creditable prescription drug coverage (as defined in section 1395w–113(b)(4) of this title), notice of such fact and that there are limitations on the periods in a year in which the individual may enroll under a part D plan and any such enrollment is subject to a late enrollment penalty.

(iii) Such other information as the Secretary may specify (in consultation with the National Association of Insurance Commissioners), including the potential impact of such election on premiums for medicare supplemental policies.

(C) Modification

(i) In general

The policy modification described in this subparagraph is the elimination of prescription coverage for expenses of prescription drugs incurred after the effective date of the individual's coverage under a part D plan and the appropriate adjustment of premiums to reflect such elimination of coverage.

(ii) Continuation of renewability and application of modification

No medicare supplemental policy of an issuer shall be deemed to meet the standards in subsection (c) of this section unless the issuer—

(I) continues renewability of medigap Rx policies that it has issued, subject to subclause (II); and

(II) applies the policy modification described in clause (i) in the cases described in clauses (i)(II) and (ii) of subparagraph (A).

(D) References to Rx policies

(i) H, I, and J policies

Any reference to a benefit package classified as ''H'', ''I'', or ''J'' (including the benefit package classified as ''J'' with a high deductible feature, as described in subsection (p)(11) of this section) under the standards established under subsection (p)(2) of this section shall be construed as including a reference to such a package as modified under subparagraph (C) and such packages as modified shall not be counted as a separate benefit package under such subsection.

(ii) Application in waivered States

Except for the modification provided under subparagraph (C), the waivers previously in effect under subsection (p)(2) of this section shall continue in effect.

(3) Availability of substitute policies with guaranteed issue

(A) In general

The issuer of a medicare supplemental policy—

(i) may not deny or condition the issuance or effectiveness of a medicare supplemental policy that has a benefit package classified as ''A'', ''B'', ''C'', or ''F'' (including the benefit package classified as ''F'' with a high deductible feature, as described in subsection (p)(11) of this section), under the standards established under subsection (p)(2) of this section, or a benefit package described in subparagraph (A) or (B) of subsection (w)(2) of this section and that is offered and is available for issuance to new enrollees by such issuer;

(ii) may not discriminate in the pricing of such policy, because of health status, claims experience, receipt of health care, or medical condition; and

(iii) may not impose an exclusion of benefits based on a pre-existing condition under such policy,

in the case of an individual described in subparagraph (B) who seeks to enroll under the policy not later than 63 days after the effective date of the individual's coverage under a part D plan.

(B) Individual covered

An individual described in this subparagraph with respect to the issuer of a medicare supplemental policy is an individual who—

(i) enrolls in a part D plan during the initial part D enrollment period;

(ii) at the time of such enrollment was enrolled in a medigap Rx policy issued by such issuer; and

(iii) terminates enrollment in such policy and submits evidence of such termination along with the application for the policy under subparagraph (A).

(C) Special rule for waivered States

For purposes of applying this paragraph in the case of a State that provides for offering of benefit packages other than under the classification referred to in subparagraph (A)(i), the references to benefit packages in such subparagraph are deemed references to comparable benefit packages offered in such State.

(4) Enforcement

(A) Penalties for duplication

The penalties described in subsection (d)(3)(A)(ii) of this section shall apply with respect to a violation of paragraph (1)(A).

(B) Guaranteed issue

The provisions of paragraph (4) of subsection (s) of this section shall apply with respect to the requirements of paragraph (3) in the same manner as they apply to the requirements of such subsection.

(5) Construction

Any provision in this section or in a medicare supplemental policy relating to guaranteed renewability of coverage shall be deemed to have been met with respect to a part D enrollee through the continuation of the policy subject to modification under paragraph (2)(C) or the offering of a substitute policy under paragraph (3). The previous sentence shall not be construed to affect the guaranteed renewability of such a modified or substitute policy.

(6) Definitions

For purposes of this subsection:

(A) Medigap Rx policy

The term ''medigap Rx policy'' means a medicare supplemental policy—

(i) which has a benefit package classified as ''H'', ''I'', or ''J'' (including the benefit package classified as ''J'' with a high deductible feature, as described in subsection (p)(11) of this section) under the standards established under subsection (p)(2) of this section, without regard to this subsection; and

(ii) to which such standards do not apply (or to which such standards have been waived under subsection (p)(6) of this section) but which provides benefits for prescription drugs.

Such term does not include a policy with a benefit package as classified under clause (i) which has been modified under paragraph (2)(C)(i).

(B) Part D enrollee

The term ''part D enrollee'' means an individual who is enrolled in a part D plan.

(C) Part D plan

The term ''part D plan'' means a prescription drug plan or an MA–PD plan (as defined for purposes of part D of this subchapter).

(D) Initial part D enrollment period

The term ''initial part D enrollment period'' means the initial enrollment period described in section 1395w–101(b)(2)(A) of this title.

(w) Development of new standards for medicare supplemental policies

(1) In general

The Secretary shall request the National Association of Insurance Commissioners to review and revise the standards for benefit packages under subsection (p)(1) of this section, taking into account the changes in benefits resulting from enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and to otherwise update standards to reflect other changes in law included in such Act. Such revision shall incorporate the inclusion of the 2 benefit packages described in paragraph (2). Such revisions shall be made consistent with the rules applicable under subsection (p)(1)(E) of this section with the reference to the ''1991 NAIC Model Regulation'' deemed a reference to the NAIC Model Regulation as published in the Federal Register on December 4, 1998, and as subsequently updated by the National Association of Insurance Commissioners to reflect previous changes in law (and subsection (v) of this section) and the reference to ''date of enactment of this subsection'' deemed a reference to December 8, 2003. To the extent practicable, such revision shall provide for the implementation of revised standards for benefit packages as of January 1, 2006.

(2) New benefit packages

The benefit packages described in this paragraph are the following (notwithstanding any other provision of this section relating to a core benefit package):

(A) First new benefit package

A benefit package consisting of the following:

(i) Subject to clause (ii), coverage of 50 percent of the cost-sharing otherwise applicable under parts A and B of this subchapter, except there shall be no coverage of the part B deductible and coverage of 100 percent of any cost-sharing otherwise applicable for preventive benefits.

(ii) Coverage for all hospital inpatient coinsurance and 365 extra lifetime days of coverage of inpatient hospital services (as in the current core benefit package).

(iii) A limitation on annual out-of-pocket expenditures under parts A and B of this subchapter to $4,000 in 2006 (or, in a subsequent year, to such limitation for the previous year increased by an appropriate inflation adjustment specified by the Secretary).

(B) Second new benefit package

A benefit package consisting of the benefit package described in subparagraph (A), except as follows:

(i) Substitute ''75 percent'' for ''50 percent'' in clause (i) of such subparagraph.

(ii) Substitute ''$2,000'' for ''$4,000'' in clause (iii) of such subparagraph.

(Aug. 14, 1935, ch. 531, title XVIII, §1882, as added Pub. L. 96–265, title V, §507(a), June 9, 1980, 94 Stat. 476; amended H. Res. 549, Mar. 25, 1980; Pub. L. 100–93, §13, Aug. 18, 1987, 101 Stat. 697; Pub. L. 100–203, title IV, §4081(b), Dec. 22, 1987, 101 Stat. 1330–127; Pub. L. 100–360, title II, §221(a)–(f), title IV, §§411(i)(1)(B), (C), 428(b), July 1, 1988, 102 Stat. 742–746, 788, 817; Pub. L. 101–234, title II, §203(a)(1), Dec. 13, 1989, 103 Stat. 1982; Pub. L. 101–508, title IV, §§4207(k)(1), formerly 4027(k)(1), 4351, formerly 4351(a), 4352, 4353(a)–(d)(1), 4354(a), (b), 4355(a)–(c), 4356(a), 4357(a), 4358(a), (b)(1), (2), Nov. 5, 1990, 104 Stat. 1388–124, 1388–125, 1388–129, 1388–130, 1388–132, 1388–134 to 1388–137; Pub. L. 103–432, title I, §§160(d)(4), 171(a)–(d)(3)(B), (4), (e)(1), (2), (f)(1), (g), (h)(1), (j)(2), (k), Oct. 31, 1994, 108 Stat. 4444–4451; Pub. L. 104–191, title II, §271(a), (b), Aug. 21, 1996, 110 Stat. 2034–2036; Pub. L. 105–33, title IV, §§4002(j)(2), 4003, 4031(a)–(c), 4032(a), Aug. 5, 1997, 111 Stat. 330, 355, 357, 359; Pub. L. 105–362, title VI, §601(b)(6), Nov. 10, 1998, 112 Stat. 3286; Pub. L. 106–113, div. B, §1000(a)(6) [title III, §321(k)(13), (14), title V, §§501(a)(2), 536(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–368, 1501A–378, 1501A–390; Pub. L. 106–170, title II, §205(a), Dec. 17, 1999, 113 Stat. 1899; Pub. L. 106–554, §1(a)(6) [title VI, §618], Dec. 21, 2000, 114 Stat. 2763, 2763A–562; Pub. L. 108–173, title I, §104(a), (b), title VII, §736(e), Dec. 8, 2003, 117 Stat. 2161, 2164, 2357.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (d)(3)(A)(i), (vi)(I), (viii)(II), (B)(i), (s)(2)(A), (3)(B)(vi), and (w)(2)(A)(i), (iii), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 171(m) of the Social Security Act Amendments of 1994, referred to in subsecs. (d)(3)(A)(vi)(IV) and (r)(1), (2)(A), is section 171(m) of Pub. L. 103–432, title I, Oct. 31, 1994, 108 Stat. 4452, which is set out as a note below.

Part D of this subchapter, referred to in subsecs. (g)(1) and (v)(2)(B)(i), (ii), (6)(C), is classified to section 1395w–101 et seq. of this title.

Section 603(c) of the Social Security Amendments of 1983, referred to in subsec. (g)(1), is section 603(c) of Pub. L. 98–21, title VI, Apr. 20, 1983, 97 Stat. 168, which was not classified to the Code, and was repealed by Pub. L. 105–33, title IV, §4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

Section 2355 of the Deficit Reduction Act of 1984, referred to in subsec. (g)(1), is section 2355 of Pub. L. 98–369, div. B, title III, July 18, 1984, 98 Stat. 1103, which is not classified to the Code.

Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (g)(1), is section 9412(b) of Pub. L. 99–509, title IX, Oct. 21, 1986, 100 Stat. 2062, which was not classified to the Code, and was repealed by Pub. L. 105–33, title IV, §4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

The Medicare Catastrophic Coverage Act of 1988, referred to in subsecs. (k)(1)(A), (2)(A) and (*l*)(4)(A), is Pub. L. 100–360, July 1, 1988, 102 Stat. 683, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1305 of this title and Tables.

The Medicare Catastrophic Coverage Repeal Act of 1989, referred to in subsecs. (m)(1)(A), (2)(A) and (n)(2)(A), (5)(A), is Pub. L. 101–234, Dec. 13, 1989, 103 Stat. 1979. For complete classification of this Act to

the Code, see Short Title of 1989 Amendment note set out under section 1305 of this title and Tables.

The Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (p)(1)(A)(iv), is Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388. For complete classification of this Act to the Code, see Tables.

Part C of this subchapter, referred to in subsec. (s)(3)(B)(ii), (v)(II), (vi), is classified to section 1395w–21 et seq. of this title.

Paragraphs (2)(A), (B) and (3)(C)–(E) of section 1395u(b) of this title, referred to in subsec. (t)(3), were repealed by Pub. L. 108–173, title IX, §911(c)(3)(B)(i), (C)(iv), Dec. 8, 2003, 117 Stat. 2384.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (w)(1), is Pub. L. 108–173, Dec. 8, 2003, 117 Stat. 2066. For complete classification of this Act to the Code, see Short Title of 2003 Amendment note set out under section 1305 of this title and Tables.

AMENDMENTS

2003—Subsec. (d)(3)(A)(i)(II). Pub. L. 108–173, §736(e)(1), substituted ''plan, a medicare supplemental policy'' for ''plan a medicare supplemental policy''.

Subsec. (d)(3)(B)(iii)(II). Pub. L. 108–173, §736(e)(2), substituted ''to the best of the issuer's or seller's knowledge'' for ''to the best of the issuer or seller's knowledge''.

Subsec. (g)(1). Pub. L. 108–173, §104(b)(2)(A), inserted ''a prescription drug plan under part D of this subchapter or'' after ''but does not include''.

Subsec. (g)(2)(A). Pub. L. 108–173, §736(e)(3), substituted ''medicare supplemental policies'' for ''medicare supplement policies''.

Subsec. (*o*)(1). Pub. L. 108–173, §104(b)(2)(B), substituted ''subsections (p), (v), and (w)'' for ''subsection (p)''.

Subsec. (p)(2)(B). Pub. L. 108–173, §736(e)(4), substituted ''; and'' for '', and'' at end.

Subsec. (s)(3)(A)(iii). Pub. L. 108–173, §736(e)(5), substituted ''preexisting'' for ''pre-existing''.

Subsec. (s)(3)(C)(ii). Pub. L. 108–173, §104(a)(2)(A), designated existing provisions as subcl. (I), substituted ''Subject to subclause (II), only'' for ''Only'', and added subcl. (II).

Subsec. (s)(3)(C)(iii). Pub. L. 108–173, §104(a)(2)(B), inserted ''and subject to subsection (v)(1) of this section'' after ''subparagraph (B)(vi)''.

Subsec. (v). Pub. L. 108–173, §104(a)(1), added subsec. (v).

Subsec. (w). Pub. L. 108–173, §104(b)(1), added subsec. (w).

2000—Subsec. (s)(3)(A). Pub. L. 106–554, §1(a)(6) [title VI, §618(a)(1)], in concluding provisions, substituted ''seeks to enroll under the policy during the period specified in subparagraph (E)'' for '', subject to subparagraph (E), seeks to enroll under the policy not later than 63 days after the date of the termination of enrollment described in such subparagraph''.

Subsec. (s)(3)(E). Pub. L. 106–554, §1(a)(6) [title VI, §618(a)(2)], added subpar. (E) and struck out former subpar. (E) which read as follows:

''(E)(i) An individual described in subparagraph (B)(ii) may elect to apply subparagraph (A) by substituting, for the date of termination of enrollment, the date on which the individual was notified by the Medicare+Choice organization of the impending termination or discontinuance of the Medicare+Choice plan it offers in the area in which the individual resides, but only if the individual disenrolls from the plan as a result of such notification.

''(ii) In the case of an individual making such an election, the issuer involved shall accept the application of the individual submitted before the date of termination of enrollment, but the coverage under subparagraph (A) shall only become effective upon termination of coverage under the Medicare+Choice plan involved.''

Subsec. (s)(3)(F). Pub. L. 106–554, §1(a)(6) [title VI, §618(b)], added subpar. (F).

1999—Subsec. (g)(1). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(13)], struck out ''or'' after ''; but does not include''.

Subsec. (q)(5)(C). Pub. L. 106–170, §205(a)(1), inserted ''or paragraph (6)'' after ''this paragraph''.

Subsec. (q)(6). Pub. L. 106–170, §205(a)(2), added par. (6).

Subsec. (s)(2)(D). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(14)], inserted ''section'' after ''(as defined in'' in introductory provisions.

Subsec. (s)(3)(A). Pub. L. 106–113, §1000(a)(6) [title V, §501(a)(2)(A)], inserted '', subject to subparagraph (E),'' after ''in the case of an individual described in subparagraph (B) who'' in concluding provisions.

Subsec. (s)(3)(B)(ii). Pub. L. 106–113, §1000(a)(6) [title V, §536(a)(1)], inserted before period at end ''or the individual is 65 years of age or older and is enrolled with a PACE provider under section 1395eee of this title, and there are circumstances that would permit the discontinuance of the individual's enrollment with such provider under circumstances that are similar to the circumstances that would permit discontinuance of the individual's election under the first sentence of such section if such individual were enrolled in a Medicare+Choice plan''.

Subsec. (s)(3)(B)(v)(II). Pub. L. 106–113, §1000(a)(6) [title V, §536(a)(2)], inserted ''any PACE provider under section 1395eee of this title,'' after ''demonstration project authority,''.

Subsec. (s)(3)(B)(vi). Pub. L. 106–113, §1000(a)(6) [title V, §536(a)(3)], inserted ''or in a PACE program under section 1395eee of this title'' after ''part C of this subchapter'' and substituted ''such plan or such program'' for ''such plan''.

Subsec. (s)(3)(E). Pub. L. 106–113, §1000(a)(6) [title V, §501(a)(2)(B)], added subpar. (E).

1998—Subsec. (*l*)(6). Pub. L. 105–362 struck out par. (6) which read as follows: ''The Secretary shall report to the Congress in March 1989 and in July 1990 on actions States have taken in adopting standards equal to or more stringent than the NAIC Model Transition Regulation or the amended NAIC Model Regulation (or Federal model standards).''

1997—Subsec. (d)(3)(A)(i). Pub. L. 105–33, §4003(a)(1)(A), inserted ''(including an individual electing a Medicare+Choice plan under section 1395w–21 of this title)'' after ''part B of this subchapter'' in introductory provisions.

Subsec. (d)(3)(A)(i)(II). Pub. L. 105–33, §4003(a)(1)(B), inserted ''in the case of an individual not electing a Medicare+Choice plan'' after ''(II)'' and inserted ''or in the case of an individual electing a Medicare+Choice plan, a medicare supplemental policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under the Medicare+Choice plan or under another medicare supplemental policy'' before comma at end.

Subsec. (d)(3)(A)(vi)(III). Pub. L. 105–33, §4031(c), inserted '', a policy described in clause (v),'' after ''Medicare supplemental policy''.

Subsec. (d)(3)(B)(i)(I). Pub. L. 105–33, §4003(a)(2), inserted ''(including any Medicare+Choice plan)'' after ''health insurance policies''.

Subsec. (g)(1). Pub. L. 105–33, §4003(a)(3), inserted ''or a Medicare+Choice plan or'' after ''does not include'' the first place appearing.

Pub. L. 105–33, §4002(j)(2), struck out '', during the period beginning on the date specified in subsection (p)(1)(C) of this section and ending on December 31, 1995,'' after ''Omnibus Budget Reconciliation Act of 1986, or''.

Subsec. (p)(2)(C). Pub. L. 105–33, §4032(a)(1), inserted before period at end ''plus the 2 plans described in paragraph (11)(A)''.

Subsec. (p)(11). Pub. L. 105–33, §4032(a)(2), added par. (11).

Subsec. (s)(2)(B). Pub. L. 105–33, §4031(b)(1), substituted ''subparagraphs (C) and (D)'' for ''subparagraph (C)''.

Subsec. (s)(2)(D). Pub. L. 105–33, §4031(b)(2), added subpar. (D).

Subsec. (s)(3). Pub. L. 105–33, §4031(a)(3), added par. (3). Former par. (3) redesignated (4).

Pub. L. 105–33, §4031(a)(1), (2), substituted ''requirements of this subsection'' for ''requirements of paragraphs (1) and (2)'' and redesignated par. (3) as (4).

Subsec. (s)(4). Pub. L. 105–33, §4031(a)(2), redesignated par. (3) as (4).

Subsec. (u). Pub. L. 105–33, §4003(b), added subsec. (u).

1996—Subsec. (d)(3)(A)(iii). Pub. L. 104–191, §271(a)(1), substituted ''clause (i)(II)'' for ''clause (i)''.

Subsec. (d)(3)(A)(iv) to (viii). Pub. L. 104–191, §271(a)(2), added cls. (iv) to (viii).

Subsec. (d)(3)(C). Pub. L. 104–191, §271(b)(1), substituted ''with respect to'' for ''with respect to (i)'' and struck out before period at end '', (ii) the sale or issuance of a policy or plan described in subparagraph (A)(i)(I) (other than a medicare supplemental policy to an individual entitled to any medical assistance under subchapter XIX of this chapter) under which all the benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual but only if (for policies sold or issued more than 60 days after the date the statements are published or promulgated under subparagraph (D)) there is disclosed in a prominent manner as part of (or together with) the application the applicable statement (specified under subparagraph (D)) of the extent to which benefits payable under the policy or plan duplicate benefits under this subchapter, or (iii) the sale or issuance of a policy or plan described in subparagraph (A)(i)(III) under which all the benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual''.

Subsec. (d)(3)(D). Pub. L. 104–191, §271(b)(2), struck out subpar. (D) which provided for development of statements for various types of health insurance policies sold or issued to persons entitled to health benefits under this subchapter regarding extent to which benefits payable under those policies duplicate benefits under this subchapter.

1994—Subsec. (a)(2). Pub. L. 103–432, §171(c)(1)(B), in closing provisions substituted ''on and after the effective date specified in subsection (p)(1)(C) of this section'' for ''after the effective date of the NAIC or Federal standards with respect to the policy''.

Subsec. (a)(2)(A). Pub. L. 103–432, §171(c)(1)(A), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC standards or the Federal standards''.

Subsec. (b)(1). Pub. L. 103–432, §171(e)(2), substituted ''subparagraph (F)'' for ''subsection (F)'' in last sentence.

Pub. L. 103–432, §171(c)(4), substituted ''the Secretary determines'' for ''the the Secretary determines'' in introductory provisions.

Pub. L. 103–432, §171(c)(2), in last sentence substituted ''Each report'' for ''The report'', ''fail to meet the standards and requirements'' for ''fail to meet the standards'', ''compliance, information regarding'' for ''compliance, and information regarding'', and ''Commissioners may specify'' for ''Commissioners, may specify''.

Subsecs. (b)(1)(B), (c)(5). Pub. L. 103–432, §171(a)(1), made technical amendment to Pub. L. 101–508, §4351. See 1990 Amendment notes below.

Subsec. (d)(3)(A). Pub. L. 103–432, §171(d)(1)(D), struck out at end ''This subsection shall not apply to such a seller until such date as the Secretary publishes a list of the standardized benefit packages that may be offered consistent with subsection (p) of this section.''

Pub. L. 103–432, §171(d)(1)(C), designated third sentence as cl. (iii), substituted ''clause (i) with respect to the sale of a medicare supplemental policy'' for ''the previous sentence'', and struck out ''and the statement under such subparagraph indicates on its face that the sale of the policy will not duplicate health benefits to which the individual is otherwise entitled'' after ''compliance with subparagraph (B)''.

Pub. L. 103–432, §171(d)(1)(B), designated second sentence as cl. (ii) and substituted ''Whoever violates clause (i)'' for ''Whoever violates the previous sentence''.

Pub. L. 103–432, §171(d)(1)(A), designated first sentence as cl. (i) and amended it generally. Prior to amendment, first sentence read as follows: ''It is unlawful for a person to sell or issue a health insurance policy to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, with knowledge that such policy duplicates health benefits to which such individual is otherwise entitled, other than benefits to which he is entitled under a requirement of State or Federal law (other than this subchapter or subchapter XIX of this chapter).''

Subsec. (d)(3)(B)(ii)(II). Pub. L. 103–432, §171(d)(2)(A), struck out ''65 years of age or older'' before ''may be eligible''.

Subsec. (d)(3)(B)(iii)(I). Pub. L. 103–432, §171(d)(2)(B), (C), substituted ''has a medicare supplemental policy'' for ''has another medicare supplemental policy'' and ''sale of a medicare supplemental policy'' for ''sale of such a policy''.

Subsec. (d)(3)(B)(iii)(II). Pub. L. 103–432, §171(d)(2)(D), substituted ''has a medicare supplemental policy'' for ''has another policy''.

Subsec. (d)(3)(B)(iii)(III). Pub. L. 103–432, §171(d)(2)(E), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''Subclause (I) also shall not apply if a State medicaid plan under subchapter XIX of this chapter pays the premiums for the policy, or pays less than an individual's (who is described in section 1396d(p)(1) of this title) full liability for medicare cost sharing as defined in section 1396d(p)(3)(A) of this title.''

Subsec. (d)(3)(C). Pub. L. 103–432, §171(d)(3)(A), substituted ''(i) the sale or issuance of a group policy'' for ''the selling of a group policy'' and added cls. (ii) and (iii).

Subsec. (d)(3)(D). Pub. L. 103–432, §171(d)(3)(B), added subpar. (D).

Subsec. (d)(4)(D). Pub. L. 103–432, §171(k)(1), struck out before period at end '', if such policy expires not more than 12 months after the date on which the duplicate copy is mailed''.

Subsec. (d)(4)(E). Pub. L. 103–432, §171(k)(2), added subpar. (E).

Subsec. (f)(3). Pub. L. 103–432, §171(j)(2), added par. (3).

Subsec. (g)(1). Pub. L. 103–432, §171(f)(1), substituted ''an eligible organization (as defined in section 1395mm(b) of this title) if the policy or plan provides benefits pursuant to a contract under section 1395mm of this title or an approved demonstration project described in section 603(c) of the Social Security Amendments of 1983, section 2355 of the Deficit Reduction Act of 1984, or section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, or, during the period beginning on the date specified in subsection (p)(1)(C) of this section and ending on December 31, 1995, a policy or plan of an organization if the policy or plan provides benefits pursuant to an agreement under section 1395*l*(a)(1)(A) of this title'' for ''a health maintenance organization or other direct service organization which offers benefits under this subchapter, including such services under a contract under under section 1395mm of this title or an agreement under section 1395*l* of this title.''

Subsec. (g)(2)(B). Pub. L. 103–432, §171(c)(3), substituted ''Secretary'' for ''Panel''.

Subsec. (*o*). Pub. L. 103–432, §171(a)(1), made technical amendment to Pub. L. 101–508, §4351. See 1990 Amendment note below.

Subsec. (p). Pub. L. 103–432, §171(a)(1), made technical amendment to Pub. L. 101–508, §4351. See 1990 Amendment note below.

Subsec. (p)(1)(A). Pub. L. 103–432, §171(a)(2)(A), in introductory provisions, substituted ''changes the revised NAIC Model Regulation (described in subsection (m) of this section) to incorporate'' for ''promulgates'', and in closing provisions, struck out ''(such limitations, language, definitions, format, and standards referred to collectively in this subsection as 'NAIC standards'),'' before ''subsection (g)(2)(A) of this section'' and sub-

stituted ''were a reference to the revised NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the '1991 NAIC Model Regulation')'' for ''included a reference to the NAIC standards''.

Subsec. (p)(1)(B). Pub. L. 103–432, §171(a)(2)(B), substituted ''make the changes in the revised NAIC Model Regulation'' for ''promulgate NAIC standards'', ''a regulation'' for ''limitations, language, definitions, format, and standards described in clauses (i) through (iv) of such subparagraph (in this subsection referred to collectively as 'Federal standards')'', and ''were a reference to the revised NAIC Model Regulation as changed by the Secretary under this subparagraph (such changed regulation referred to in this section as the '1991 Federal Regulation')'' for ''included a reference to the Federal standards''.

Subsec. (p)(1)(C)(i). Pub. L. 103–432, §171(a)(2)(C), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC standards or the Federal standards''.

Subsec. (p)(1)(C)(ii)(I), (E). Pub. L. 103–432, §171(a)(2)(D), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC or Federal standards''.

Subsec. (p)(2). Pub. L. 103–432, §171(a)(2)(D), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC or Federal standards'' in introductory provisions.

Subsec. (p)(2)(C). Pub. L. 103–432, §171(a)(2)(E), substituted ''paragraph (4)(B)'' for ''paragraph (5)(B)''.

Subsec. (p)(4). Pub. L. 103–432, §171(a)(2)(G), substituted ''applicable 1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''applicable standards'' wherever appearing.

Subsec. (p)(4)(A)(i). Pub. L. 103–432, §171(a)(2)(F), inserted ''or paragraph (6)'' after ''subparagraph (B)''.

Subsec. (p)(6). Pub. L. 103–432, §171(a)(2)(H), substituted ''described in clauses (i) through (iii) of paragraph (1)(A)'' for ''in regard to the limitation of benefits described in paragraph (4)''.

Subsec. (p)(7). Pub. L. 103–432, §171(a)(2)(I), substituted ''policyholders'' for ''policyholder''.

Subsec. (p)(8). Pub. L. 103–432, §171(a)(2)(J), substituted ''on and after the effective date specified in paragraph (1)(C) (but subject to paragraph (10)), in violation of the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation insofar as such regulation relates to the requirements of subsection (*o*) or (q) of this section or clause (i), (ii), or (iii) of paragraph (1)(A)'' for ''after the effective date of the NAIC or Federal standards with respect to the policy, in violation of the previous requirements of this subsection''.

Subsec. (p)(9)(B). Pub. L. 103–432, §171(a)(2)(D), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC or Federal standards''.

Subsec. (p)(9)(D). Pub. L. 103–432, §171(a)(2)(K), added subpar. (D).

Subsec. (p)(10). Pub. L. 103–432, §171(a)(2)(L), substituted ''consistent with paragraph (1)(A)(i)'' for ''consistent with this subsection''.

Subsec. (q)(2). Pub. L. 103–432, §171(b)(1), substituted ''paragraph (4)'' for ''paragraph (2)''.

Subsec. (q)(4). Pub. L. 103–432, §171(b)(2), substituted ''issuer of the replacement policy'' for ''the succeeding issuer''.

Subsec. (q)(5)(A), (B). Pub. L. 103–432, §171(d)(4), made technical amendment to the reference to subchapter XIX of this chapter to correct reference to corresponding provision of original act.

Subsec. (r)(1). Pub. L. 103–432, §171(e)(1)(A), (E), in introductory provisions substituted ''or renewed (or otherwise provide coverage after the date described in subsection (p)(1)(C) of this section)'' for ''or sold'' and inserted at end of closing provisions ''For the purpose of calculating the refund or credit required under paragraph (1)(B) for a policy issued before the date specified in subsection (p)(1)(C) of this section, the refund or credit calculation shall be based on the aggregate benefits provided and premiums collected under all such policies issued by an insurer in a State (separated as to individual and group policies) and shall be based only on aggregate benefits provided and premiums collected under such policies after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.''

Subsec. (r)(1)(A). Pub. L. 103–432, §171(e)(1)(C), substituted ''Commissioners)'' for ''Commissioners,''.

Pub. L. 103–432, §171(e)(1)(B), inserted ''for periods after the effective date of these provisions'' after ''the policy can be expected''.

Subsec. (r)(1)(B). Pub. L. 103–432, §171(e)(1)(D), inserted before period at end '', treating policies of the same type as a single policy for each standard package''.

Subsec. (r)(2)(A). Pub. L. 103–432, §171(e)(1)(F)–(I), substituted ''by standard package'' for ''by policy number'' in first sentence and ''until 12 months following issue'' for ''with respect to the first 2 years in which it is in effect'' in second sentence, struck out ''in order to apply paragraph (1)(B) to the first 2 years in which policies are effective'' after ''may be appropriate'' in third sentence, and inserted at end ''In the case of a policy issued before the date specified in subsection (p)(1)(C) of this section, paragraph (1)(B) shall not apply until 1 year after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.''

Subsec. (r)(2)(C), (D). Pub. L. 103–432, §171(e)(1)(J), substituted ''calendar year'' for ''policy year'' wherever appearing.

Subsec. (r)(4). Pub. L. 103–432, §171(e)(1)(K), substituted ''October'' for ''February'', ''disallowance'' for ''disllowance'', ''loss ratios'' for ''loss-ratios'' in two places, and ''loss ratio'' for ''loss-ratio''.

Subsec. (r)(6)(A). Pub. L. 103–432, §171(e)(1)(L), substituted ''fails to provide refunds or credits as required in paragraph (1)(B)'' for ''issues a policy in violation of the loss ratio requirements of this subsection'' and ''policy issued for which such failure occurred'' for ''such violation''.

Subsec. (r)(6)(B). Pub. L. 103–432, §171(e)(1)(M), substituted ''to the policyholder or, in the case of a group policy, to the certificate holder'' for ''to policyholders''.

Subsec. (s)(2)(A). Pub. L. 103–432, §171(g)(1), (2), substituted ''in the case of an individual for whom an application is submitted prior to or'' for ''for which an application is submitted'' and ''as of the first day on which the individual is 65 years of age or older and is enrolled for benefits under part B'' for ''in which the individual (who is 65 years of age or older) first is enrolled for benefits under part B''.

Subsec. (s)(2)(B). Pub. L. 103–432, §171(g)(3), substituted ''before the policy became effective'' for ''before it became effective''.

Subsec. (t)(1). Pub. L. 103–432, §171(h)(1)(A), (B), substituted ''If a medicare supplemental policy meets the 1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''If a policy meets the NAIC Model Standards''.

Subsec. (t)(1)(A). Pub. L. 103–432, §171(h)(1)(C), inserted ''or agreements'' after ''contracts''.

Subsec. (t)(1)(E)(i), (F). Pub. L. 103–432, §171(h)(1)(D), substituted ''standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC standards''.

Subsec. (t)(2). Pub. L. 103–432, §171(h)(1)(E), inserted ''the issuer'' before ''is subject to a civil money penalty'' in concluding provisions.

1990—Pub. L. 101–508, §4353(a)(1), struck out ''Voluntary'' at beginning of section catchline.

Subsec. (a). Pub. L. 101–508, §4353(a)(2), designated existing provisions as par. (1) and added par. (2).

Pub. L. 101–508, §4207(k)(1), formerly §4027(k)(1), as renumbered by Pub. L. 103–432, §160(d)(4), struck out ''(k)(4),'' after ''subsections (k)(3),'' in third sentence.

Subsec. (b)(1). Pub. L. 101–508, §4353(c)(5), inserted at end ''The report required under subsection (F) shall include information on loss ratios of policies sold in the State, frequency and types of instances in which policies approved by the State fail to meet the standards of

this paragraph, actions taken by the State to bring such policies into compliance, and information regarding State programs implementing consumer protection provisions, and such further information as the Secretary in consultation with the National Association of Insurance Commissioners, may specify.''

Pub. L. 101–508, §4353(b)(1), (2), substituted ''the Secretary'' for ''Supplemental Health Insurance Panel (established under paragraph (2))'' in introductory provisions and for ''the Panel'' in concluding provisions.

Pub. L. 101–508, §4207(k)(1), formerly §4027(k)(1), as renumbered by Pub. L. 103–432, §160(d)(4), which directed the amendment of third sentence of par. (1) by striking out ''(k)(4),'' was executed by making the deletion after ''subsections (k)(3),'' in concluding provisions to reflect the probable intent of Congress.

Subsec. (b)(1)(A). Pub. L. 101–508, §4358(b)(2)(A), inserted before semicolon at end '', except as otherwise provided by subparagraph (H)''.

Pub. L. 101–508, §4353(b)(3), inserted ''and enforcement'' after ''application''.

Subsec. (b)(1)(B). Pub. L. 101–508, §4351(1), formerly §4351(a)(1), as renumbered and amended by Pub. L. 103–432, §171(a)(1), substituted ''through (5)'' for ''through (4)''.

Subsec. (b)(1)(C). Pub. L. 101–508, §4355(b), substituted for semicolon at end '', and that a copy of each such policy, the most recent premium for each such policy, and a listing of the ratio of benefits provided to premiums collected for the most recent 3-year period for each such policy issued or sold in the State is maintained and made available to interested persons;''.

Subsec. (b)(1)(D). Pub. L. 101–508, §4353(b)(3), inserted ''and enforcement'' after ''application''.

Subsec. (b)(1)(F). Pub. L. 101–508, §4353(c)(1)–(3), added subpar. (F).

Subsec. (b)(1)(G). Pub. L. 101–508, §4355(c), which directed amendment of par. (1) by adding at the end thereof a new subpar. (G), was executed by adding the new subpar. (G) immediately after subpar. (F) to reflect the probable intent of Congress.

Subsec. (b)(1)(H). Pub. L. 101–508, §4358(b)(2)(B)–(D), added subpar. (H).

Subsec. (b)(2). Pub. L. 101–508, §4353(b)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(A) There is hereby established a panel (hereinafter in this section referred to as the 'Panel') to be known as the Supplemental Health Insurance Panel. The Panel shall consist of the Secretary, who shall serve as the Chairman, and four State commissioners or superintendents of insurance, who shall be appointed by the Secretary and serve at his pleasure. Such members shall first be appointed not later than December 31, 1980.

''(B) A majority of the members of the Panel shall constitute a quorum, but a lesser number may conduct hearings.

''(C) The Secretary shall provide such technical, secretarial, clerical, and other assistance as the Panel may require.

''(D) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

''(E) Members of the Panel shall be allowed, while away from their homes or regular places of business in the performance of services for the Panel, travel expenses (including per diem in lieu of subsistence) in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.''

Subsec. (c). Pub. L. 101–508, §4357(a)(1), inserted ''or the requirement described in subsection (s) of this section'' after ''paragraph (3)'' in introductory provisions.

Pub. L. 101–508, §4355(a)(2), struck out at end ''For purposes of paragraph (2), policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.''

Subsec. (c)(1). Pub. L. 101–508, §4358(b)(1), inserted before semicolon at end ''(except as otherwise provided by subsection (t) of this section)''.

Subsec. (c)(2). Pub. L. 101–508, §4355(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''can be expected (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such period and in accordance with accepted actuarial principles and practices) to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 60 percent of the aggregate amount of premiums collected in the case of individual policies;''.

Subsec. (c)(5). Pub. L. 101–508, §4351(2), formerly §4351(a)(2), as renumbered and amended by Pub. L. 103–432, §171(a)(1), added par. (5).

Subsec. (d)(3)(A). Pub. L. 101–508, §4354(a)(1), substituted ''It is unlawful for a person to sell or issue'' for ''Whoever knowingly sells'', ''duplicates health benefits'' for ''substantially duplicates health benefits'', ''. Whoever violates the previous sentence shall be fined'' for '', shall be fined'', ''(other than this subchapter or subchapter XIX of this chapter)'' for ''(other than this subchapter)'', and ''$25,000 (or $15,000 in the case of a person other than the issuer of the policy)'' for ''$5,000'' and inserted at end ''A seller (who is not the issuer of a health insurance policy) shall not be considered to violate the previous sentence if the policy is sold in compliance with subparagraph (B) and the statement under such subparagraph indicates on its face that the sale of the policy will not duplicate health benefits to which the individual is otherwise entitled. This subsection shall not apply to such a seller until such date as the Secretary publishes a list of the standardized benefit packages that may be offered consistent with subsection (p) of this section.''

Subsec. (d)(3)(B). Pub. L. 101–508, §4354(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this paragraph, benefits which are payable to or on behalf of an individual without regard to other health benefit coverage of such individual, shall not be considered as duplicative.''

Subsec. (d)(4)(B). Pub. L. 101–508, §4353(d)(1), struck out at end ''For purposes of this paragraph, a medicare supplemental policy shall be deemed to be approved by the commissioner or superintendent of insurance of a State if—

''(i) the policy has been certified by the Secretary pursuant to subsection (c) of this section or was issued in a State with an approved regulatory program (as defined in subsection (g)(2)(B) of this section);

''(ii) the policy has been approved by the commissioners or superintendents of insurance in States in which more than 30 percent of such policies are sold; or

''(iii) the State has in effect a law which the commissioner or superintendent of insurance of the State has determined gives him the authority to review, and to approve, or effectively bar from sale in the State, such policy;

except that such a policy shall not be deemed to be approved by a State commissioner or superintendent of insurance if the State notifies the Secretary that such policy has been submitted for approval to the State and has been specifically disapproved by such State after providing appropriate notice and opportunity for hearing pursuant to the procedures (if any) of the State.''

Subsec. (g)(1). Pub. L. 101–508, §4356(a), inserted before period at end of first sentence ''and does not include a policy or plan of a health maintenance organization or other direct service organization which offers benefits under this subchapter, including such services under a contract under under section 1395mm of this title or an agreement under section 1395*l* of this title''.

Subsecs. (*o*), (p). Pub. L. 101–508, §4351(3), formerly §4351(a)(3), as renumbered and amended by Pub. L. 103–432, §171(a)(1), added subsecs. (*o*) and (p).

Subsec. (q). Pub. L. 101–508, §4352, added subsec. (q).

Subsec. (q)(5). Pub. L. 101–508, §4354(b), added par. (5).

Subsec. (r). Pub. L. 101–508, § 4355(a)(3), added subsec. (r).

Subsec. (s). Pub. L. 101–508, § 4357(a)(2), added subsec. (s).

Subsec. (t). Pub. L. 101–508, § 4358(a), added subsec. (t).

1989—Subsecs. (a), (b)(1). Pub. L. 101–234, § 203(a)(1)(A), substituted ''subsections (k)(3), (k)(4), (m), and (n) of this section'' for ''subsection (k)(3) of this section''.

Subsec. (k)(1)(A). Pub. L. 101–234, § 203(a)(1)(B)(i), inserted ''except as provided in subsection (m) of this section,'' before ''subsection (g)(2)(A)''.

Subsec. (k)(3). Pub. L. 101–234, § 203(a)(1)(B)(ii), substituted ''subsections (*l*), (m), and (n) of this section'' for ''subsection (*l*) of this section''.

Subsecs. (m), (n). Pub. L. 101–234, § 203(a)(1)(C), added subsecs. (m) and (n).

1988—Subsec. (a). Pub. L. 100–360, § 221(d)(1), substituted ''Subject to subsection (k)(3) of this section, such'' for ''Such''.

Subsec. (b)(1). Pub. L. 100–360, § 221(d)(2), substituted ''(subject to subsection (k)(3) of this section, for so long as'' for ''(for so long as'' in concluding provisions.

Subsec. (b)(1)(B). Pub. L. 100–360, § 221(a)(1), substituted ''through (4)'' for ''and (3)''.

Subsec. (b)(1)(C). Pub. L. 100–360, § 221(b)(2), (3), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 100–360, § 221(b)(1), substituted ''(A), (B), and (C)'' for ''(A) and (B)''.

Subsec. (b)(1)(D), (E). Pub. L. 100–360, § 221(b)(2), redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (b)(2)(A). Pub. L. 100–360, § 221(f), substituted ''appointed by the Secretary'' for ''appointed by the President''.

Subsec. (b)(3). Pub. L. 100–360, § 221(e), added par. (3).

Subsec. (c). Pub. L. 100–360, § 411(i)(1)(B), added Pub. L. 100–203, § 4081(b)(2)(A), see 1987 Amendment note below.

Subsec. (c)(3). Pub. L. 100–360, § 411(i)(1)(B), redesignated Pub. L. 100–203, § 4081(b)(2)(B)–(D), see 1987 Amendment note below.

Subsec. (c)(3)(A). Pub. L. 100–360, § 411(i)(1)(C)(i), substituted ''claim form'' for ''claims form'' in two places and ''such notice'' for ''such claims form''.

Subsec. (c)(3)(B)(i). Pub. L. 100–360, § 411(i)(1)(C)(ii), inserted ''under the policy'' after ''payment determination''.

Subsec. (c)(3)(B)(ii). Pub. L. 100–360, § 411(i)(1)(C)(iii), substituted ''payment covered by such policy'' for ''appropriate payment''.

Subsec. (c)(4). Pub. L. 100–360, § 221(a)(2), added par. (4).

Subsec. (d). Pub. L. 100–360, § 428(b)(1), substituted ''shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act'' for ''shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both'' in pars. (1), (2), (3)(A), and (4)(A).

Subsec. (d)(5). Pub. L. 100–360, § 428(b)(2), added par. (5).

Subsec. (e). Pub. L. 100–360, § 221(c), designated existing provision as par. (1) and added pars. (2) and (3).

Subsecs. (k), (*l*). Pub. L. 100–360, § 221(d)(3), added subsecs. (k) and (*l*).

1987—Subsec. (b)(1)(B). Pub. L. 100–203, § 4081(b)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''includes a requirement equal to or more stringent than the requirement described in subsection (c)(2) of this section; and''.

Subsec. (b)(1)(D). Pub. L. 100–203, § 4081(b)(1)(B), (C), added subpar. (D).

Subsec. (c). Pub. L. 100–203, § 4081(b)(2)(A), as added by Pub. L. 100–360, § 411(i)(1)(B), inserted ''(or, with respect to paragraph (3), the issuer of the policy)'' in introductory provisions.

Subsec. (c)(3). Pub. L. 100–203, § 4081(b)(2)(B)–(D), formerly § 4081(b)(2), as redesignated by Pub. L. 100–360, § 411(i)(1)(B), added par. (3).

Subsec. (d)(1). Pub. L. 100–93 substituted ''knowingly and willfully'' for ''knowingly or willfully''.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Committee on Interstate and Foreign Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–170, title II, § 205(b), Dec. 17, 1999, 113 Stat. 1900, provided that: ''The amendments made by subsection (a) [amending this section] apply with respect to requests made after the date of the enactment of this Act [Dec. 17, 1999].''

Amendment by section 1000(a)(6) [title III, § 321(k)(13), (14)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Amendment by section 1000(a)(6) [title V, § 501(a)(2)] of Pub. L. 106–113 applicable to notices of impending terminations or discontinuances made on or after Nov. 29, 1999, see section 1000(a)(6) [title V, § 501(d)(1)] of Pub. L. 106–113, set out as a note under section 1395w–21 of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 536(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–391, provided that: ''The amendments made by this section [amending this section] shall apply to terminations or discontinuances made on or after the date of the enactment of this Act [Nov. 29, 1999].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4002(j)(2) of Pub. L. 105–33 provided that the amendment made by that section is effective Jan. 1, 1999.

Section 4031(d) of Pub. L. 105–33 provided that:

''(1) GUARANTEED ISSUE.—The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1998.

''(2) LIMIT ON PREEXISTING CONDITION EXCLUSIONS.—The amendment made by subsection (b) [amending this section] shall apply to policies issued on or after July 1, 1998.

''(3) CONFORMING AMENDMENT.—The amendment made by subsection (c) [amending this section] shall be effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191].''

Section 4032(b) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall take effect the date of the enactment of this Act [Aug. 5, 1997].

''(2) TRANSITION.—The provisions of section 4031(e) [set out as a note below] shall apply with respect to this section in the same manner as they apply to section 4031 [amending this section and enacting provisions set out as notes below].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 271(d) of Pub. L. 104–191 provided that:

''(1) Except as provided in this subsection, the amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of section 4354 of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508].

''(2)(A) Clause (vi) of section 1882(d)(3)(A) of the Social Security Act [subsec. (d)(3)(A)(vi) of this section], as added by subsection (a), shall only apply to individuals applying for—

''(i) a health insurance policy described in section 1882(d)(3)(A)(iv) of such Act (as added by subsection (a)), after the date of the enactment of this Act [Aug. 21, 1996], or

''(ii) another health insurance policy after the end of the 30-day period beginning on the date of the enactment of this Act.

''(B) A seller or issuer of a health insurance policy may substitute, for the disclosure statement described in clause (vii) of such section, the statement specified under section 1882(d)(3)(D) of the Social Security Act (as in effect before the date of the enactment of this Act), without the revision specified in such clause.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 171(*l*) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and sections 1320c–3, 1395b–2, and 1395b–4 of this title, repealing section 1395zz of this title, and enacting and amending provisions set out as notes below] shall be effective as if included in the enactment of OBRA–1990 [Pub. L. 101–508]; except that—

''(1) the amendments made by subsection (d)(1) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994], but no penalty shall be imposed under section 1882(d)(3)(A) of the Social Security Act [subsec. (d)(3)(A) of this section] (for an action occurring after the effective date of the amendments made by section 4354 of OBRA–1990 [see section 4354(c) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note below] and before the date of the enactment of this Act) with respect to the sale or issuance of a policy which is not unlawful under section 1882(d)(3)(A)(i)(II) of the Social Security Act [subsec. (d)(3)(A)(i)(II) of this section] (as amended by this section);

''(2) the amendments made by subsection (d)(2)(A) [amending this section] and by subparagraphs (A), (B), and (E) of subsection (e)(1) [amending this section] shall be effective on the date specified in subsection (m)(4) [set out as a note below]; and

''(3) the amendment made by subsection (g)(2) [amending this section] shall take effect on January 1, 1995, and shall apply to individuals who attain 65 years of age or older on or after the effective date of section 1882(s)(2) of the Social Security Act [subsec. (s)(2) of this section, for effective date see section 4357(b) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note below] (and, in the case of individuals who attained 65 years of age after such effective date and before January 1, 1995, and who were not covered under such section before January 1, 1995, the 6-month period specified in that section shall begin January 1, 1995).''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4353(d)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to policies mailed, or caused to be mailed, on and after July 1, 1991.''

Section 4354(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to policies issued or sold more than 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4355(d) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §171(e)(3), Oct. 31, 1994, 108 Stat. 4449, provided that: ''The amendments made by this section [amending this section] shall apply to policies issued or renewed (or otherwise providing coverage after the date described in section 1882(p)(1)(C) of the Social Security Act [subsec. (p)(1)(C) of this section]) on or after the date specified in section 1882(p)(1)(C) of the Social Security Act.''

Section 4356(b) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §171(f)(2), Oct. 31, 1994, 108 Stat. 4449, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date specified in section 1882(p)(1)(C) of the Social Security Act [subsec. (p)(1)(C) of this section].''

Section 4357(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

Amendment by section 4358(a), (b)(1), (2) of Pub. L. 101–508 only applicable in 15 States (as determined by Secretary of Health and Human Services) and such other States as elect such amendment to apply to them, and during the 6½-year period beginning with 1992, with such amendment to remain in effect beyond the 6½-year period unless the Secretary makes certain determinations, see section 4358(c) of Pub. L. 101–508, as amended, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 203(e) of Pub. L. 101–234 provided that: ''The provisions of this section [amending this section, enacting provisions set out as notes under sections 1395b–2 and 1395mm of this title, and amending provisions set out as a note under this section] shall take effect January 1, 1990, except that the amendment made by subsection (d) [amending provisions set out as an Effective Date of 1988 Amendment note under this section] shall be effective as if included in the enactment of MCCA [Pub. L. 100–360].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 221(g) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, §608(d)(12), Oct. 13, 1988, 102 Stat. 2415; Pub. L. 101–234, title II, §203(d), Dec. 13, 1989, 103 Stat. 1985, provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 1, 1988].

''(2) The amendments made by subsections (a) and (b) [amending this section] shall become effective on the date specified in subsection (k)(1)(B) or (k)(2)(B) of section 1882 of the Social Security Act [subsec. (k)(1)(B) or (k)(2)(B) of this section] (as added by subsection (d) of this section).

''(3) The amendment made by subsection (e) [amending this section] shall apply to medicare supplemental policies as of January 1, 1989, with respect to advertising used on or after such date.

''(4) The Secretary of Health and Human Services shall provide for the reappointment of members to the Supplemental Health Insurance Panel (under section 1882(b)(2) of the Social Security Act [subsec. (b)(2) of this section]) by not later than 90 days after the date of the enactment of this Act [July 1, 1988].''

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(i)(1)(B), (C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Amendment by section 428(b) of Pub. L. 100–360 effective July 1, 1988, and applicable only with respect to violations occurring on or after such date, see section 428(c) of Pub. L. 100–360, set out as an Effective Date note under section 1320b–10 of this title.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4081(c)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(i)(1)(D), (E), July 1, 1988,

102 Stat. 788; Pub. L. 100–485, title VI, §608(d)(24)(A), Oct. 13, 1988, 102 Stat. 2421, provided that:

''(A) The amendments made by subsection (b) [amending this section] shall apply to medicare supplemental policies as of January 1, 1989 (or, if applicable, the date established under subparagraph (B)).

''(B) In the case of a State which the Secretary of Health and Human Services identifies as—

''(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to be changed to meet the requirements of section 1882(c)(3) of the Social Security Act [subsec. (c)(3) of this section], and

''(ii) having a legislature which is not scheduled to meet in 1988 in a legislative session in which such legislation may be considered or which has not enacted such legislation before July 1, 1988,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1989, and in which legislation described in clause (i) may be considered.''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE

Section 507(b) of Pub. L. 96–265 provided that: ''The amendment made by this section [enacting this section] shall become effective on the date of the enactment of this Act [June 9, 1980], except that the provisions of paragraph (4) of section 1882(d) of the Social Security Act [subsec. (d)(4) of this section] (as added by this section) shall become effective on July 1, 1982.''

RULE OF CONSTRUCTION

Pub. L. 108–173, title I, §104(c), Dec. 8, 2003, 117 Stat. 2165, provided that:

''(1) IN GENERAL.—Nothing in this Act [see Tables for classification] shall be construed to require an issuer of a medicare supplemental policy under section 1882 of the Social Security Act (42 U.S.C. 1395rr) [42 U.S.C. 1395ss] to participate as a PDP sponsor under part D of title XVIII of such Act [part D of this subchapter], as added by section 101, as a condition for issuing such policy.

''(2) PROHIBITION ON STATE REQUIREMENT.—A State may not require an issuer of a medicare supplemental policy under section 1882 of the Social Security Act (42 U.S.C. 1395rr) [42 U.S.C. 1395ss] to participate as a PDP sponsor under such part D as a condition for issuing such policy.''

STUDY OF MEDIGAP POLICIES

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §553(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–393, provided that:

''(1) IN GENERAL.—The Comptroller General of the United States (in this section referred to as the 'Comptroller General') shall conduct a study of the issues described in paragraph (2) regarding medicare supplemental policies described in section 1882(g)(1) of the Social Security Act (42 U.S.C. 1395ss(g)(1)).

''(2) ISSUES TO BE STUDIED.—The issues described in this paragraph are the following:

''(A) The level of coverage provided by each type of medicare supplemental policy.

''(B) The current enrollment levels in each type of medicare supplemental policy.

''(C) The availability of each type of medicare supplemental policy to medicare beneficiaries over age 65½.

''(D) The number and type of medicare supplemental policies offered in each State.

''(E) The average out-of-pocket costs (including premiums) per beneficiary under each type of medicare supplemental policy.

''(2)[(3)] REPORT.—Not later than July 31, 2001, the Comptroller General shall submit a report to Congress on the results of the study conducted under this subsection, together with any recommendations for legislation that the Comptroller General determines to be appropriate as a result of such study.''

CONFORMING BENEFITS TO CHANGES IN TERMINOLOGY FOR HOSPITAL OUTPATIENT DEPARTMENT COST SHARING

Section 4031(f) of Pub. L. 105–33 provided that: ''For purposes of apply [sic] section 1882 of the Social Security Act (42 U.S.C. 1395ss) and regulations referred to in subsection (e) [set out as a note above], copayment amounts provided under section 1833(t)(5) of such Act [section 1395*l*(t)(5) of this title] with respect to hospital outpatient department services shall be treated under medicare supplemental policies in the same manner as coinsurance with respect to such services.''

TRANSITION PROVISIONS

Section 4031(e) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section [amending this section], the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act [this section] due solely to failure to make such change until the date specified in paragraph (4).

''(2) NAIC STANDARDS.—If, within 9 months after the date of the enactment of this Act [Aug. 5, 1997], the National Association of Insurance Commissioners (in this subsection referred to as the 'NAIC') modifies its NAIC Model Regulation relating to section 1882 of the Social Security Act [this section] (referred to in such section as the 1991 NAIC Model Regulation, as modified pursuant to section 171(m)(2) of the Social Security Act Amendments of 1994 (Public Law 103–432) [set out as a note below] and as modified pursuant to section 1882(d)(3)(A)(vi)(IV) of the Social Security Act [subsec. (d)(3)(A)(vi)(IV) of this section], as added by section 271(a) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) to conform to the amendments made by this section [amending this section], such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

''(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the appropriate Regulation for the purposes of such section.

''(4) DATE SPECIFIED.—

''(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

''(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

''(ii) 1 year after the date the NAIC or the Secretary first makes the modifications under paragraph (2) or (3), respectively.

''(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

''(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

''(ii) having a legislature which is not scheduled to meet in 1999 in a legislative session in which such legislation may be considered,

the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature

that begins on or after July 1, 1999. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 271(c) of Pub. L. 104–191 provided that:

''(1) NO PENALTIES.—Subject to paragraph (3), no criminal or civil money penalty may be imposed under section 1882(d)(3)(A) of the Social Security Act [subsec. (d)(3)(A) of this section] for any act or omission that occurred during the transition period (as defined in paragraph (4)) and that relates to any health insurance policy that is described in clause (iv) or (v) of such section (as amended by subsection (a)).

''(2) LIMITATION ON LEGAL ACTION.—Subject to paragraph (3), no legal action shall be brought or continued in any Federal or State court insofar as such action—

''(A) includes a cause of action which arose, or which is based on or evidenced by any act or omission which occurred, during the transition period; and

''(B) relates to the application of section 1882(d)(3)(A) of the Social Security Act to any act or omission with respect to the sale, issuance, or renewal of any health insurance policy that is described in clause (iv) or (v) of such section (as amended by subsection (a)).

''(3) DISCLOSURE CONDITION.—In the case of a policy described in clause (iv) of section 1882(d)(3)(A) of the Social Security Act that is sold or issued on or after the effective date of statements under section 171(d)(3)(C) of the Social Security Act Amendments of 1994 [Pub. L. 103–432, set out below] and before the end of the 30-day period beginning on the date of the enactment of this Act [Aug. 21, 1996], paragraphs (1) and (2) shall only apply if disclosure was made in accordance with section 1882(d)(3)(C)(ii) of the Social Security Act (as in effect before the date of the enactment of this Act).

''(4) TRANSITION PERIOD.—In this subsection, the term 'transition period' means the period beginning on November 5, 1991, and ending on the date of the enactment of this Act.''

APPLICABILITY OF DISCLOSURE REQUIREMENT

Section 171(d)(3)(C) of Pub. L. 103–432 provided that: ''The requirement of a disclosure under section 1882(d)(3)(C)(ii) of the Social Security Act [subsec. (d)(3)(C)(ii) of this section] shall not apply to an application made for a policy or plan before 60 days after the date the Secretary of Health and Human Services publishes or promulgates all the statements under section 1882(d)(3)(D) of such Act.''

STATE REGULATORY PROGRAMS

Section 171(m) of Pub. L. 103–432 provided that:

''(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section [amending this section and sections 1320c–3, 1395b–2, and 1395b–4 of this title, repealing section 1395zz of this title, and enacting and amending provisions set out as notes under this section], the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act [this section] due solely to failure to make such change until the date specified in paragraph (4).

''(2) NAIC STANDARDS.—If, within 6 months after the date of the enactment of this Act [Oct. 31, 1994], the National Association of Insurance Commissioners (in this subsection referred to as the 'NAIC') modifies its 1991 NAIC Model Regulation (adopted in July 1991) to conform to the amendments made by this section and to delete from section 15C the exception which begins with 'unless', such revised regulation incorporating the modifications shall be considered to be the 1991 Regulation for the purposes of section 1882 of the Social Security Act.

''(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the 1991 Regulation for the purposes of section 1882 of the Social Security Act.

''(4) DATE SPECIFIED.—

''(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

''(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

''(ii) 1 year after the date the NAIC or the Secretary first makes the modifications under paragraph (2) or (3), respectively.

''(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

''(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

''(ii) having a legislature which is not scheduled to meet in 1996 in a legislative session in which such legislation may be considered,

the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1996. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

EVALUATION OF 1990 AMENDMENTS

Section 4358(d) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall conduct an evaluation of the amendments made by this section [amending this section and section 1320c–3 of this title] and shall report to Congress on such evaluation by not later than January 1, 1995.''

§ 1395tt. Hospital providers of extended care services

(a) Hospital facility agreements; reasonable costs of services

(1) Any hospital which has an agreement under section 1395cc of this title may (subject to subsection (b) of this section) enter into an agreement with the Secretary under which its inpatient hospital facilities may be used for the furnishing of services of the type which, if furnished by a skilled nursing facility, would constitute extended care services.

(2)(A) Notwithstanding any other provision of this subchapter, payment to any hospital (other than a critical access hospital) for services furnished under an agreement entered into under this section shall be based upon the reasonable cost of the services as determined under subparagraph (B).

(B)(i) The reasonable cost of the services consists of the reasonable cost of routine services (determined under clause (ii)) and the reasonable cost of ancillary services (determined under clause (iii)).

(ii) The reasonable cost of routine services furnished during any calendar year by a hospital under an agreement under this section is equal to the product of—

(I) the number of patient-days during the year for which the services were furnished, and

(II) the average reasonable cost per patient-day, such average reasonable cost per patient-day being the average rate per patient-day paid for routine services during the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments for routine service costs of skilled nursing facilities under subsections (a) through (d) of section 1395yy of this title for subsequent cost reporting periods and up to and including such calendar year) under this subchapter to freestanding skilled nursing facilities in the region (as defined in section 1395ww(d)(2)(D) of this title) in which the facility is located.

(iii) The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(3) Notwithstanding any other provision of this subchapter, a critical access hospital shall be paid for covered skilled nursing facility services furnished under an agreement entered into under this section on the basis of equal to 101 percent of the reasonable costs of such services (as determined under section 1395x(v) of this title).

(b) Eligible facilities

The Secretary may not enter into an agreement under this section with any hospital unless, except as provided under subsection (g) of this section, the hospital is located in a rural area and has less than 100 beds.

(c) Terms and conditions of facility agreements

An agreement with a hospital under this section shall, except as otherwise provided under regulations of the Secretary, be of the same duration and subject to termination on the same conditions as are agreements with skilled nursing facilities under section 1395cc of this title and shall, where not inconsistent with any provision of this section, impose the same duties, responsibilities, conditions, and limitations, as those imposed under such agreements entered into under section 1395cc of this title; except that no such agreement with any hospital shall be in effect for any period during which the hospital does not have in effect an agreement under section 1395cc of this title. A hospital with respect to which an agreement under this section has been terminated shall not be eligible to enter into a new agreement until a two-year period has elapsed from the termination date.

(d) Post-hospital extended care services

Any agreement with a hospital under this section shall provide that payment for services will be made only for services for which payment would be made as post-hospital extended care services if those services had been furnished by a skilled nursing facility under an agreement entered into under section 1395cc of this title; and any individual who is furnished services, for which payment may be made under an agreement under this section, shall, for purposes of this subchapter (other than this section), be deemed to have received post-hospital extended care services in like manner and to the same extent as if the services furnished to him had been post-hospital extended care services furnished by a skilled nursing facility under an agreement under section 1395cc of this title.

(e) Reimbursement for routine hospital services

During a period for which a hospital has in effect an agreement under this section, in order to allocate routine costs between hospital and long-term care services for purposes of determining payment for inpatient hospital services, the total reimbursement due for routine services from all classes of long-term care patients (including this subchapter, subchapter XIX of this chapter, and private pay patients) shall be subtracted from the hospital's total routine costs before calculations are made to determine this subchapter reimbursement for routine hospital services.

(f) Conditions applicable to skilled nursing facilities

A hospital which enters into an agreement with the Secretary under this section shall be required to meet those conditions applicable to skilled nursing facilities relating to discharge planning and the social services function (and staffing requirements to satisfy it) which are promulgated by the Secretary under section 1395i–3 of this title. Services furnished by such a hospital which would otherwise constitute post-hospital extended care services if furnished by a skilled nursing facility shall be subject to the same requirements applicable to such services when furnished by a skilled nursing facility except for those requirements the Secretary determines are inappropriate in the case of these services being furnished by a hospital under this section.

(g) Agreements on demonstration basis

The Secretary may enter into an agreement under this section on a demonstration basis with any hospital which does not meet the requirement of subsection (b)(1) of this section, if the hospital otherwise meets the requirements of this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1883, as added Pub. L. 96–499, title IX, § 904(a)(1), Dec. 5, 1980, 94 Stat. 2615; amended Pub. L. 100–203, title IV, §§ 4005(b)(1), (2), 4201(d)(3), Dec. 22, 1987, 101 Stat. 1330–48, as amended Pub. L. 100–360, title IV, § 411(*l*)(1)(C), July 1, 1988, as added Pub. L. 100–485, title VI, § 608(d)(27)(B), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 100–360, title I, § 104(d)(6), title IV, § 411(b)(4)(D), July 1, 1988, 102 Stat. 689, 770; Pub. L. 101–234, title I, § 101(a), Dec. 13, 1989, 103 Stat. 1979; Pub. L. 101–508, title IV, § 4008(j)(1), Nov. 5, 1990, 104 Stat. 1388–51; Pub. L. 105–33, title IV, § 4432(b)(5)(G), Aug. 5, 1997, 111 Stat. 422; Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, §§ 403(f), 408(a), (b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–371, 1501A–375; Pub. L. 106–554, § 1(a)(6) [title II, § 203(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–482; Pub. L. 108–173, title IV, § 405(a)(1), Dec. 8, 2003, 117 Stat. 2266.)

AMENDMENTS

2003—Subsec. (a)(3). Pub. L. 108–173 inserted ''equal to 101 percent of'' before ''the reasonable costs''.

2000—Subsec. (a)(2)(A). Pub. L. 106–554, § 1(a)(6) [title II, § 203(b)(1)], inserted ''(other than a critical access hospital)'' after ''any hospital''.

Subsec. (a)(3). Pub. L. 106–554, §1(a)(6) [title II, §203(b)(2)], added par. (3).

1999—Subsec. (a)(1). Pub. L. 106–113, §1000(a)(6) [title IV, §403(f)(1)], struck out ''(other than a hospital which has in effect a waiver under subparagraph (A) of the last sentence of section 1395x(e) of this title)'' after ''Any hospital''.

Subsec. (b). Pub. L. 106–113, §1000(a)(6) [title IV, §408(a)], amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Secretary may not enter into an agreement under this section with any hospital unless—

''(1) except as provided under subsection (g) of this section, the hospital is located in a rural area and has less than 100 beds, and

''(2) the hospital has been granted a certificate of need for the provision of long-term care services from the State health planning and development agency (designated under section 300m of this title) for the State in which the hospital is located.''

Subsec. (c). Pub. L. 106–113, §1000(a)(6) [title IV, §403(f)(2)], struck out '', or during which there is in effect for the hospital a waiver under subparagraph (A) of the last sentence of section 1395x(e) of this title'' before the period at end of first sentence.

Subsec. (d). Pub. L. 106–113, §1000(a)(6) [title IV, §408(b)], struck out ''(1)'' before ''Any agreement with a hospital'' and struck out pars. (2) and (3), which related to limiting payments under extended care service agreements pursuant to this section to hospitals with more than 49 beds where skilled nursing facilities were available or where such payments exceeded a designated maximum.

1997—Subsec. (a)(2)(B)(ii)(II). Pub. L. 105–33 inserted ''subsections (a) through (d) of'' before ''section 1395yy''.

1990—Subsec. (a)(2)(B)(ii)(II). Pub. L. 101–508 substituted ''the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments for routine service costs of skilled nursing facilities under section 1395yy of this title for subsequent cost reporting periods and up to and including such calendar year) under this subchapter to freestanding skilled nursing facilities in the region (as defined in section 1395ww(d)(2)(D) of this title) in which the facility is located.'' for ''the previous calendar year'' and all that follows through the period, which was executed by making the substitution for ''the previous calendar year under the State plan (of the State in which the hospital is located) under subchapter XIX of this chapter to skilled nursing facilities located in the State and which meet the requirements specified in section 1396a(a)(28) of this title, or, in the case of a hospital located in a State which does not have such a State plan, the average rate per patient-day paid for routine services during the previous calendar year under this subchapter to skilled nursing facilities in such State.''

1989—Subsecs. (d)(1), (f). Pub. L. 101–234 repealed Pub. L. 100–360, §104(d)(6), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (d)(1). Pub. L. 100–360, §104(d)(6), struck out ''post-hospital'' before ''extended care services'' wherever appearing.

Subsec. (d)(3). Pub. L. 100–360, §411(b)(4)(D), inserted before period at end '', except that such payment shall continue to be made in the period for those patients who are receiving extended care services at the time the hospital reaches the limit specified in this paragraph''.

Subsec. (f). Pub. L. 100–360, §411(*l*)(1)(C), as added by Pub. L. 100–485, §608(d)(27)(B), added Pub. L. 100–203, §4201(d)(3), see 1987 Amendment note below.

Pub. L. 100–360, §104(d)(6), struck out ''post-hospital'' before ''extended care services''.

1987—Subsec. (b)(1). Pub. L. 100–203, §4005(b)(1), substituted ''100'' for ''50''.

Subsec. (d). Pub. L. 100–203, §4005(b)(2), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (f). Pub. L. 100–203, §4201(d)(3), as added by Pub. L. 100–360, §411(*l*)(1)(C), and Pub. L. 100–485, §608(d)(27)(B), substituted ''section 1395i–3'' for ''section 1395x(j)(15)''.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to payments for services furnished during cost reporting periods beginning on or after Jan. 1, 2004, see section 405(a)(2) of Pub. L. 108–173, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title II, §203(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–482, provided that: ''The amendments made by this section [amending this section and section 1395yy of this title] shall apply to cost reporting periods beginning on or after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §408(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–375, provided that: ''The amendments made by this section [amending this section] take effect on the date that is the first day after the expiration of the transition period under section 1888(e)(2)(E) of the Social Security Act (42 U.S.C. 1395yy(e)(2)(E)) for payments for covered skilled nursing facility services under the medicare program.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(j)(4) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after October 1, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 104(d)(6) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(b)(4)(D), (*l*)(1)(C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4005(b)(4) of Pub. L. 100–203 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply to agreements under section 1883 of the Social Security Act [this section] entered into after March 31, 1988.''

Amendment by section 4201(d)(3) of Pub. L. 100–203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations to implement such amendment are promulgated by such date, except as otherwise specifically provided in section 1395i–3 of this title, see section 4204(a) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1395i–3 of this title.

EFFECTIVE DATE

Section 904(d) of Pub. L. 96–499 provided that: ''The amendments made by this section [enacting this section and section 1396*l* of this title] shall become effective on the date on which final regulations, promulgated by the Secretary to implement such amendments, are first issued; and those regulations shall be issued not later than the first day of the sixth month following the month in which this Act is enacted [December 1980].''

HOLD HARMLESS FOR AMENDMENT BY PUB. L. 101–508

Section 4008(j)(2) of Pub. L. 101–508 provided that: ''If, as a result of the amendment made by paragraph (1) [amending this section], the reasonable cost of routine services furnished by a hospital during a calendar year (as determined under section 1883 of the Social Security Act [this section]) is less than the reasonable cost of such services determined under such section for the previous calendar year, the reasonable cost of such services furnished by the hospital during the calendar year under such section shall be equal to the reasonable cost determined under such section for the previous calendar year.''

SWING BEDS CERTIFIED PRIOR TO MAY 1, 1987

Section 4008(j)(3) of Pub. L. 101–508 provided that: ''Notwithstanding the requirement of section 1883(b)(1) of the Social Security Act [subsec. (b)(1) of this section] that the Secretary may not enter into an agreement under such section with a hospital that is not located in a rural area, any agreement entered into under such section on or before May 1, 1987, between the Secretary of Health and Human Services and a hospital located in an urban area shall remain in effect.''

REPORT OF HOSPITAL ADMISSIONS FOR EXTENDED CARE SERVICES

Section 4005(b)(3) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(4)(E), as added by Pub. L. 100–485, title VI, § 608(d)(18)(C), Oct. 13, 1988, 102 Stat. 2419, directed Secretary of Health and Human Services to report to Congress, not later than Feb. 1, 1989, concerning the proportion of admissions to hospitals for extended care services under this section which are denied or approved by a peer review organization, and recommendations for methods of encouraging hospitals that have a low occupancy rate, are eligible to enter (but have not entered) into an agreement under this section, and are located in areas with a need for additional providers of extended care services, to enter into such agreements.

REPORT ON HOSPITAL PROVIDERS OF EXTENDED CARE, SKILLED NURSING, AND INTERMEDIATE CARE SERVICES

Section 904(c) of Pub. L. 96–499 directed Secretary of Health and Human Services, within three years after Dec. 5, 1980, to submit to Congress a report evaluating programs established by the amendments made by this section (enacting this section and section 1396*l* of this title), including in such report an analysis of the extent and effect of the agreements under such programs on availability and effective and economical provision of long-term care services, whether such programs should be continued, the results of any demonstration projects conducted under such programs, and whether eligibility to participate in such programs should be extended to other hospitals, regardless of bed size or geographic location, where there is a shortage of long-term care beds.

§ 1395uu. Payments to promote closing or conversion of underutilized hospital facilities

(a) Transitional allowances; procedures applicable

Any hospital may file an application with the Secretary (in such form and including such data and information as the Secretary may require) for establishment of a transitional allowance under this subchapter with respect to the closing or conversion of an underutilized hospital facility. The Secretary also may establish procedures, consistent with this section, by which a hospital, before undergoing an actual closure or conversion of a hospital facility, can have a determination made as to whether or not it will be eligible for a transitional allowance under this section with respect to such closure or conversion.

(b) Allowable costs as transitional allowances; findings and determinations

If the Secretary finds, after consideration of an application under subsection (a) of this section, that—

(1) the hospital's closure or conversion—

(A) is formally initiated after September 30, 1981,

(B) is expected to benefit the program under this subchapter by (i) eliminating excess bed capacity, (ii) discontinuing an underutilized service for which there are adequate alternative sources, or (iii) substituting for the underutilized service some other service which is needed in the area, and

(C) is consistent with the findings of an appropriate health planning agency and with any applicable State program for reduction in the number of hospital beds in the State, and

(2) in the case of a complete closure of a hospital—

(A) the hospital is a private nonprofit hospital or a local governmental hospital, and

(B) the closure is not for replacement of the hospital,

the Secretary may include as an allowable cost in the hospital's reasonable cost (for the purpose of making payments to the hospital under this subchapter) an amount (in this section referred to as a ''transitional allowance''), as provided in subsection (c) of this section.

(c) Factors determinative of transitional allowance

(1) Each transitional allowance established shall be reasonably related to the prior or prospective use of the facility involved under this subchapter and shall recognize—

(A) in the case of a facility conversion or closure (other than a complete closure of a hospital)—

(i) in the case of a private nonprofit or local governmental hospital, that portion of the hospital's costs attributable to capital assets of the facility which have been taken into account in determining reasonable cost for purposes of determining the amount of payment to the hospital under this subchapter, and

(ii) in the case of any hospital, transitional operating cost increases related to the conversion or closure to the extent that such operating costs exceed amounts ordinarily reimbursable under this subchapter; and

(B) in the case of complete closure of a hospital, the outstanding portion of actual debt obligations previously recognized as reasonable for purposes of reimbursement under this subchapter, less any salvage value of the hospital.

(2) A transitional allowance shall be for a period (not to exceed 20 years) specified by the Secretary, except that, in the case of a complete closure described in paragraph (1)(B), the Secretary may provide for a lump-sum allowance where the Secretary determines that such a one-time allowance is more efficient and economical.

(3) A transitional allowance shall take effect on a date established by the Secretary, but not earlier than the date of completion of the closure or conversion concerned.

(4) A transitional allowance shall not be considered in applying the limits to costs recognized as reasonable pursuant to the third sentence of subparagraph (A) and subparagraph (L)(i) of section 1395x(v)(1) of this title, or in determining whether the reasonable cost exceeds the customary charges for a service for purposes of determining the amount to be paid to a provider pursuant to sections 1395f(b) and 1395*l*(a)(2) of this title.

(d) Hearing to review determination

A hospital dissatisfied with a determination of the Secretary on its application under this section may obtain an informal or formal hearing, at the discretion of the Secretary, by filing (in such form and within such time period as the Secretary establishes) a request for such a hearing. The Secretary shall make a final determination on such application within 30 days after the last day of such hearing.

(Aug. 14, 1935, ch. 531, title XVIII, § 1884, as added Pub. L. 97–35, title XXI, § 2101(a)[(1)], Aug. 13, 1981, 95 Stat. 785; amended Pub. L. 97–248, title I, § 128(a)(6), Sept. 3, 1982, 96 Stat. 366.)

AMENDMENTS

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

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE

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

PAYMENTS TO PROMOTE CLOSURE AND CONVERSION OF UNDERUTILIZED HOSPITAL FACILITIES

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

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

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

§ 1395vv. Withholding payments from certain medicaid providers

(a) Adjustments by Secretary

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

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

(2) from which (or from whom) such State agency (A) has been unable to recover overpayments made under the State plan, or (B) has been unable to collect the information necessary to enable it to determine the amount (if any) of the overpayments made to such institution or person under the State plan.

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

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

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

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

(3) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in

excess of overpayments under subchapter XIX of this chapter and to which the institution or person would otherwise be entitled under this subchapter.

(c) Payment to States of amounts recovered

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

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

§ 1395ww. Payments to hospitals for inpatient hospital services

(a) Determination of costs for inpatient hospital services; limitations; exemptions; "operating costs of inpatient hospital services" defined

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

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

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

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

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

(B)(i) For purposes of subparagraph (A) the Secretary shall establish case mix indexes for all short-term hospitals, and shall set limits for each hospital based upon the general mix of types of medical cases with respect to which such hospital provides services for which payment may be made under this subchapter.

(ii) The Secretary shall set such limits for a cost reporting period of a hospital—

(I) by updating available data for a previous period to the immediate preceding cost reporting period by the estimated average rate of change of hospital costs industry-wide, and

(II) by projecting for the cost reporting period by the applicable percentage increase (as defined in subsection (b)(3)(B) of this section).

(C) The limitation established under subparagraph (A) for any hospital shall in no event be lower than the allowable operating costs of inpatient hospital services (as defined in paragraph (4)) recognized under this subchapter for such hospital for such hospital's last cost reporting period prior to the hospital's first cost reporting period for which this section is in effect.

(D) Subparagraph (A) shall not apply to cost reporting periods beginning on or after October 1, 1983.

(2) The Secretary shall provide for such exemptions from, and exceptions and adjustments to, the limitation established under paragraph (1)(A) as he deems appropriate, including those which he deems necessary to take into account—

(A) the special needs of sole community hospitals, of new hospitals, of risk based health maintenance organizations, and of hospitals which provide atypical services or essential community services, and to take into account extraordinary circumstances beyond the hospital's control, medical and paramedical education costs, significantly fluctuating population in the service area of the hospital, and unusual labor costs,

(B) the special needs of psychiatric hospitals and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this subchapter, and

(C) a decrease in the inpatient hospital services that a hospital provides and that are customarily provided directly by similar hospitals which results in a significant distortion in the operating costs of inpatient hospital services.

(3) The limitation established under paragraph (1)(A) shall not apply with respect to any hospital which—

(A) is located outside of a standard metropolitan statistical area, and

(B)(i) has less than 50 beds, and

(ii) was in operation and had less than 50 beds on September 3, 1982.

(4) For purposes of this section, the term ''operating costs of inpatient hospital services'' includes all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis (as determined by the Secretary), and includes the costs of all services for which payment may be made under this subchapter that are provided by the hospital (or by an entity wholly owned or operated by the hospital) to the patient during the 3 days (or, in the case of a hospital that is not a subsection (d) hospital, during the 1 day) immediately preceding the date of the patient's admission if such services are diagnostic services (including clinical diagnostic laboratory tests) or are other services related to the admission (as defined by the Secretary). Such term does not include costs of approved educational activities, a return on equity capital, other capital-related costs (as defined by the Secretary for periods before October 1, 1987), or costs with respect to administering blood clotting factors to individuals with hemophilia.

(b) Computation of payment; definitions; exemptions; adjustments

(1) Notwithstanding section 1395f(b) of this title but subject to the provisions of section

1395e of this title, if the operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) of a hospital (other than a subsection (d) hospital, as defined in subsection (d)(1)(B) of this section and other than a rehabilitation facility described in subsection (j)(1) of this section) for a cost reporting period subject to this paragraph—

(A) are less than or equal to the target amount (as defined in paragraph (3)) for that hospital for that period, the amount of the payment with respect to such operating costs payable under part A of this subchapter on a per discharge or per admission basis (as the case may be) shall be equal to the amount of such operating costs, plus—

(i) 15 percent of the amount by which the target amount exceeds the amount of the operating costs, or

(ii) 2 percent of the target amount,

whichever is less;

(B) are greater than the target amount but do not exceed 110 percent of the target amount, the amount of the payment with respect to those operating costs payable under part A of this subchapter on a per discharge basis shall equal the target amount; or

(C) are greater than 110 percent of the target amount, the amount of the payment with respect to such operating costs payable under part A of this subchapter on a per discharge or per admission basis (as the case may be) shall be equal to (i) the target amount, plus (ii) in the case of cost reporting periods beginning on or after October 1, 1991, an additional amount equal to 50 percent of the amount by which the operating costs exceed 110 percent of the target amount (except that such additional amount may not exceed 10 percent of the target amount) after any exceptions or adjustments are made to such target amount for the cost reporting period;

plus the amount, if any, provided under paragraph (2), except that in no case may the amount payable under this subchapter (other than on the basis of a DRG prospective payment rate determined under subsection (d) of this section) with respect to operating costs of inpatient hospital services exceed the maximum amount payable with respect to such costs pursuant to subsection (a) of this section.

(2)(A) Except as provided in subparagraph (E), in addition to the payment computed under paragraph (1), in the case of an eligible hospital (described in subparagraph (B)) for a cost reporting period beginning on or after October 1, 1997, the amount of payment on a per discharge basis under paragraph (1) shall be increased by the lesser of—

(i) 50 percent of the amount by which the operating costs are less than the expected costs (as defined in subparagraph (D)) for the period; or

(ii) 1 percent of the target amount for the period.

(B) For purposes of this paragraph, an ''eligible hospital'' means with respect to a cost reporting period, a hospital—

(i) that has received payments under this subsection for at least 3 full cost reporting periods before that cost reporting period, and

(ii) whose operating costs for the period are less than the least of its target amount, its trended costs (as defined in subparagraph (C)), or its expected costs (as defined in subparagraph (D)) for the period.

(C) For purposes of subparagraph (B)(ii), the term ''trended costs'' means for a hospital cost reporting period ending in a fiscal year—

(i) in the case of a hospital for which its cost reporting period ending in fiscal year 1996 was its third or subsequent full cost reporting period for which it receives payments under this subsection, the lesser of the operating costs or target amount for that hospital for its cost reporting period ending in fiscal year 1996, or

(ii) in the case of any other hospital, the operating costs for that hospital for its third full cost reporting period for which it receives payments under this subsection,

increased (in a compounded manner) for each succeeding fiscal year (through the fiscal year involved) by the market basket percentage increase for the fiscal year.

(D) For purposes of this paragraph, the term ''expected costs'', with respect to the cost reporting period ending in a fiscal year, means the lesser of the operating costs of inpatient hospital services or target amount per discharge for the previous cost reporting period updated by the market basket percentage increase (as defined in paragraph (3)(B)(iii)) for the fiscal year.

(E)(i) In the case of an eligible hospital that is a hospital or unit that is within a class of hospital described in clause (ii) with a 12-month cost reporting period beginning before November 29, 1999, in determining the amount of the increase under subparagraph (A), the Secretary shall substitute for the percentage of the target amount applicable under subparagraph (A)(ii)—

(I) for a cost reporting period beginning on or after October 1, 2000, and before September 30, 2001, 1.5 percent; and

(II) for a cost reporting period beginning on or after October 1, 2001, and before September 30, 2002, 2 percent.

(ii) For purposes of clause (i), each of the following shall be treated as a separate class of hospital:

(I) Hospitals described in clause (i) of subsection (d)(1)(B) of this section and psychiatric units described in the matter following clause (v) of such subsection.

(II) Hospitals described in clause (iv) of such subsection.

(3)(A) Except as provided in subparagraph (C) and succeeding subparagraphs, and in paragraph (7)(A)(ii), for purposes of this subsection, the term ''target amount'' means, with respect to a hospital for a particular 12-month cost reporting period—

(i) in the case of the first such reporting period for which this subsection is in effect, the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for such hospital for the preceding 12-month cost reporting period, and

(ii) in the case of a later reporting period, the target amount for the preceding 12-month cost reporting period,

increased by the applicable percentage increase under subparagraph (B) for that particular cost reporting period.

(B)(i) For purposes of subsection (d) of this section and subsection (j) of this section for discharges occurring during a fiscal year, the ''applicable percentage increase'' shall be—

(I) for fiscal year 1986, ½ percent,

(II) for fiscal year 1987, 1.15 percent,

(III) for fiscal year 1988, 3.0 percent for hospitals located in a rural area, 1.5 percent for hospitals located in a large urban area (as defined in subsection (d)(2)(D) of this section), and 1.0 percent for hospitals located in other urban areas,

(IV) for fiscal year 1989, the market basket percentage increase minus 1.5 percent for hospitals located in a rural area, the market basket percentage increase minus 2.0 percentage points for hospitals located in a large urban area, and the market basket percentage increase minus 2.5 percentage points for hospitals located in other urban areas,

(V) for fiscal year 1990, the market basket percentage increase plus 4.22 percentage points for hospitals located in a rural area, the market basket percentage increase plus 0.12 percentage points for hospitals located in a large urban area, and the market basket percentage increase minus 0.53 percentage points for hospitals located in other urban areas,

(VI) for fiscal year 1991, the market basket percentage increase minus 2.0 percentage points for hospitals in a large urban or other urban area, and the market basket percentage increase minus 0.7 percentage point for hospitals located in a rural area,

(VII) for fiscal year 1992, the market basket percentage increase minus 1.6 percentage points for hospitals in a large urban or other urban area, and the market basket percentage increase minus 0.6 percentage point for hospitals located in a rural area,

(VIII) for fiscal year 1993, the market basket percentage increase minus 1.55 percentage point for hospitals in a large urban or other urban area, and the market basket percentage increase minus 0.55[1] for hospitals located in a rural area,

(IX) for fiscal year 1994, the market basket percentage increase minus 2.5 percentage points for hospitals located in a large urban or other urban area, and the market basket percentage increase minus 1.0 percentage point for hospitals located in a rural area,

(X) for fiscal year 1995, the market basket percentage increase minus 2.5 percentage points for hospitals located in a large urban or other urban area, and such percentage increase for hospitals located in a rural area as will provide for the average standardized amount determined under subsection (d)(3)(A) of this section for hospitals located in a rural area being equal to such average standardized amount for hospitals located in an urban area (other than a large urban area),

(XI) for fiscal year 1996, the market basket percentage increase minus 2.0 percentage points for hospitals in all areas,

(XII) for fiscal year 1997, the market basket percentage increase minus 0.5 percentage point for hospitals in all areas,

(XIII) for fiscal year 1998, 0 percent,

(XIV) for fiscal year 1999, the market basket percentage increase minus 1.9 percentage points for hospitals in all areas,

(XV) for fiscal year 2000, the market basket percentage increase minus 1.8 percentage points for hospitals in all areas,

(XVI) for fiscal year 2001, the market basket percentage increase for hospitals in all areas,

(XVII) for fiscal year 2002, the market basket percentage increase minus 0.55 percentage points for hospitals in all areas,

(XVIII) for fiscal year 2003, the market basket percentage increase minus 0.55 percentage points for hospitals in all areas,

(XIX) for each of fiscal years 2004 through 2007, subject to clause (vii), the market basket percentage increase for hospitals in all areas;[2] and

(XX) for fiscal year 2008 and each subsequent fiscal year, the market basket percentage increase for hospitals in all areas.

(ii) For purposes of subparagraphs (A) and (E), the ''applicable percentage increase'' for 12-month cost reporting periods beginning during—

(I) fiscal year 1986, is 0.5 percent,

(II) fiscal year 1987, is 1.15 percent,

(III) fiscal year 1988, is the market basket percentage increase minus 2.0 percentage points,

(IV) a subsequent fiscal year ending on or before September 30, 1993, is the market basket percentage increase,

(V) fiscal years 1994 through 1997, is the market basket percentage increase minus the applicable reduction (as defined in clause (v)(II)), or in the case of a hospital for a fiscal year for which the hospital's update adjustment percentage (as defined in clause (v)(I)) is at least 10 percent, the market basket percentage increase,

(VI) for fiscal year 1998, is 0 percent,

(VII) for fiscal years 1999 through 2002, is the applicable update factor specified under clause (vi) for the fiscal year, and

(VIII) subsequent fiscal years is the market basket percentage increase.

(iii) For purposes of this subparagraph, the term ''market basket percentage increase'' means, with respect to cost reporting periods and discharges occurring in a fiscal year, the percentage, estimated by the Secretary before the beginning of the period or fiscal year, by which the cost of the mix of goods and services (including personnel costs but excluding nonoperating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for the period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year.

[1] So in original. Probably should be followed by ''percentage point''.

[2] So in original. The semicolon probably should be a comma.

(iv) For purposes of subparagraphs (C) and (D), the ''applicable percentage increase'' is—

(I) for 12-month cost reporting periods beginning during fiscal years 1986 through 1993, the applicable percentage increase specified in clause (ii),

(II) for fiscal year 1994, the market basket percentage increase minus 2.3 percentage points (adjusted to exclude any portion of a cost reporting period beginning during fiscal year 1993 for which the applicable percentage increase is determined under subparagraph (I)),

(III) for fiscal year 1995, the market basket percentage increase minus 2.2 percentage points, and

(IV) for fiscal year 1996 and each subsequent fiscal year, the applicable percentage increase under clause (i).

(v) For purposes of clause (ii)(V)—

(I) a hospital's ''update adjustment percentage'' for a fiscal year is the percentage by which the hospital's allowable operating costs of inpatient hospital services recognized under this subchapter for the cost reporting period beginning in fiscal year 1990 exceeds the hospital's target amount (as determined under subparagraph (A)) for such cost reporting period, increased for each fiscal year (beginning with fiscal year 1994) by the sum of any of the hospital's applicable reductions under subclause (V) for previous fiscal years; and

(II) the ''applicable reduction'' with respect to a hospital for a fiscal year is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for the fiscal year.

(vi) For purposes of clause (ii)(VII) for a fiscal year, if a hospital's allowable operating costs of inpatient hospital services recognized under this subchapter for the most recent cost reporting period for which information is available—

(I) is equal to, or exceeds, 110 percent of the hospital's target amount (as determined under subparagraph (A)) for such cost reporting period, the applicable update factor specified under this clause is the market basket percentage;

(II) exceeds 100 percent, but is less than 110 percent, of such target amount for the hospital, the applicable update factor specified under this clause is 0 percent or, if greater, the market basket percentage minus 0.25 percentage points for each percentage point by which such allowable operating costs (expressed as a percentage of such target amount) is less than 110 percent of such target amount;

(III) is equal to, or less than 100 percent, but exceeds ⅔ of such target amount for the hospital, the applicable update factor specified under this clause is 0 percent or, if greater, the market basket percentage minus 2.5 percentage points; or

(IV) does not exceed ⅔ of such target amount for the hospital, the applicable update factor specified under this clause is 0 percent.

(vii)(I) For purposes of clause (i)(XIX) for each of fiscal years 2005 through 2007, in a case of a subsection (d) hospital that does not submit data to the Secretary in accordance with subclause (II) with respect to such a fiscal year, the applicable percentage increase under such clause for such fiscal year shall be reduced by 0.4 percentage points. Such reduction shall apply only with respect to the fiscal year involved, and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i)(XIX) for a subsequent fiscal year.

(II) Each subsection (d) hospital shall submit to the Secretary quality data (for a set of 10 indicators established by the Secretary as of November 1, 2003) that relate to the quality of care furnished by the hospital in inpatient settings in a form and manner, and at a time, specified by the Secretary for purposes of this clause, but with respect to fiscal year 2005, the Secretary shall provide for a 30-day grace period for the submission of data by a hospital.

(C) In the case of a hospital that is a sole community hospital (as defined in subsection (d)(5)(D)(iii) of this section), subject to subparagraph (I), the term ''target amount'' means—

(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the ''base cost reporting period'') preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

(II) the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period,

(ii) with respect to a later cost reporting period beginning before fiscal year 1994, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(iv) for discharges occurring in the fiscal year in which that later cost reporting period begins,

(iii) with respect to discharges occurring in fiscal year 1994, the target amount for the cost reporting period beginning in fiscal year 1993 increased by the applicable percentage increase under subparagraph (B)(iv), or

(iv) with respect to discharges occurring in fiscal year 1995 and each subsequent fiscal year, the target amount for the preceding year increased by the applicable percentage increase under subparagraph (B)(iv).

There shall be substituted for the base cost reporting period described in clause (i) a hospital's cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.

(D) For cost reporting periods ending on or before September 30, 1994, and for discharges beginning on or after October 1, 1997, and before October 1, 2006, in the case of a hospital that is a medicare-dependent, small rural hospital (as

defined in subsection (d)(5)(G) of this section), the term ''target amount'' means—

(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the ''base cost reporting period'') preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

(II) the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period, or

(ii) with respect to a later cost reporting period beginning before fiscal year 1994, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(iv) for discharges occurring in the fiscal year in which that later cost reporting period begins,

(iii) with respect to discharges occurring in fiscal year 1994, the target amount for the cost reporting period beginning in fiscal year 1993 increased by the applicable percentage increase under subparagraph (B)(iv), and

(iv) with respect to discharges occurring during fiscal year 1998 through fiscal year 2005, the target amount for the preceding year increased by the applicable percentage increase under subparagraph (B)(iv).

There shall be substituted for the base cost reporting period described in clause (i) a hospital's cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.

(E) In the case of a hospital described in clause (v) of subsection (d)(1)(B) of this section, the term ''target amount'' means—

(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the ''base cost reporting period'') preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

(II) the sum of the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period, or

(ii) with respect to a later cost reporting period, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(ii) for that later cost reporting period.

There shall be substituted for the base cost reporting period described in clause (i) a hospital's cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.

(F)(i) In the case of a hospital (or unit described in the matter following clause (v) of subsection (d)(1)(B) of this section) that received payment under this subsection for inpatient hospital services furnished during cost reporting periods beginning before October 1, 1990, that is within a class of hospital described in clause (iii), and that elects (in a form and manner determined by the Secretary) this subparagraph to apply to the hospital, the target amount for the hospital's 12-month cost reporting period beginning during fiscal year 1998 is equal to the average described in clause (ii).

(ii) The average described in this clause for a hospital or unit shall be determined by the Secretary as follows:

(I) The Secretary shall determine the allowable operating costs for inpatient hospital services for the hospital or unit for each of the 5 cost reporting periods for which the Secretary has the most recent settled cost reports as of August 5, 1997.

(II) The Secretary shall increase the amount determined under subclause (I) for each cost reporting period by the applicable percentage increase under subparagraph (B)(ii) for each subsequent cost reporting period up to the cost reporting period described in clause (i).

(III) The Secretary shall identify among such 5 cost reporting periods the cost reporting periods for which the amount determined under subclause (II) is the highest, and the lowest.

(IV) The Secretary shall compute the averages of the amounts determined under subclause (II) for the 3 cost reporting periods not identified under subclause (III).

(iii) For purposes of this subparagraph, each of the following shall be treated as a separate class of hospital:

(I) Hospitals described in clause (i) of subsection (d)(1)(B) of this section and psychiatric units described in the matter following clause (v) of such subsection.

(II) Hospitals described in clause (ii) of such subsection and rehabilitation units described in the matter following clause (v) of such subsection.

(III) Hospitals described in clause (iii) of such subsection.

(IV) Hospitals described in clause (iv) of such subsection.

(V) Hospitals described in clause (v) of such subsection.

(G)(i) In the case of a qualified long-term care hospital (as defined in clause (ii)) that elects (in a form and manner determined by the Secretary) this subparagraph to apply to the hospital, the target amount for the hospital's 12-month cost reporting period beginning during fiscal year 1998 is equal to the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period beginning

during fiscal year 1996, increased by the applicable percentage increase for the cost reporting period beginning during fiscal year 1997.

(ii) In clause (i), a ''qualified long-term care hospital'' means, with respect to a cost reporting period, a hospital described in clause (iv) of subsection (d)(1)(B) of this section during each of the 2 cost reporting periods for which the Secretary has the most recent settled cost reports as of August 5, 1997, for each of which—

(I) the hospital's allowable operating costs of inpatient hospital services recognized under this subchapter exceeded 115 percent of the hospital's target amount, and

(II) the hospital would have a disproportionate patient percentage of at least 70 percent (as determined by the Secretary under subsection (d)(5)(F)(vi) of this section) if the hospital were a subsection (d) hospital.

(H)(i) In the case of a hospital or unit that is within a class of hospital described in clause (iv), for a cost reporting period beginning during fiscal years 1998 through 2002, the target amount for such a hospital or unit may not exceed the amount as updated up to or for such cost reporting period under clause (ii).

(ii)(I) In the case of a hospital or unit that is within a class of hospital described in clause (iv), the Secretary shall estimate the 75th percentile of the target amounts for such hospitals within such class for cost reporting periods ending during fiscal year 1996, as adjusted under clause (iii).

(II) The Secretary shall update the amount determined under subclause (I), for each cost reporting period after the cost reporting period described in such subclause and up to the first cost reporting period beginning on or after October 1, 1997, by a factor equal to the market basket percentage increase.

(III) For cost reporting periods beginning during each of fiscal years 1999 through 2002, subject to subparagraph (J), the Secretary shall update such amount by a factor equal to the market basket percentage increase.

(iii) In applying clause (ii)(I) in the case of a hospital or unit, the Secretary shall provide for an appropriate adjustment to the labor-related portion of the amount determined under such subparagraph to take into account differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital.

(iv) For purposes of this subparagraph, each of the following shall be treated as a separate class of hospital:

(I) Hospitals described in clause (i) of subsection (d)(1)(B) of this section and psychiatric units described in the matter following clause (v) of such subsection.

(II) Hospitals described in clause (ii) of such subsection and rehabilitation units described in the matter following clause (v) of such subsection.

(III) Hospitals described in clause (iv) of such subsection.

(I)(i) For cost reporting periods beginning on or after October 1, 2000, in the case of a sole community hospital there shall be substituted for the amount otherwise determined under subsection (d)(5)(D)(i) of this section, if such substitution results in a greater amount of payment under this section for the hospital—

(I) with respect to discharges occurring in fiscal year 2001, 75 percent of the amount otherwise applicable to the hospital under subsection (d)(5)(D)(i) of this section (referred to in this clause as the ''subsection (d)(5)(D)(i) amount'') and 25 percent of the rebased target amount (as defined in clause (ii));

(II) with respect to discharges occurring in fiscal year 2002, 50 percent of the subsection (d)(5)(D)(i) amount and 50 percent of the rebased target amount;

(III) with respect to discharges occurring in fiscal year 2003, 25 percent of the subsection (d)(5)(D)(i) amount and 75 percent of the rebased target amount; and

(IV) with respect to discharges occurring after fiscal year 2003, 100 percent of the rebased target amount.

(ii) For purposes of this subparagraph, the ''rebased target amount'' has the meaning given the term ''target amount'' in subparagraph (C) except that—

(I) there shall be substituted for the base cost reporting period the 12-month cost reporting period beginning during fiscal year 1996;

(II) any reference in subparagraph (C)(i) to the ''first cost reporting period'' described in such subparagraph is deemed a reference to the first cost reporting period beginning on or after October 1, 2000; and

(III) applicable increase percentage shall only be applied under subparagraph (C)(iv) for discharges occurring in fiscal years beginning with fiscal year 2002.

(iii) In no case shall a hospital be denied treatment as a sole community hospital or payment (on the basis of a target rate as such as a hospital) because data are unavailable for any cost reporting period due to changes in ownership, changes in fiscal intermediaries, or other extraordinary circumstances, so long as data for at least one applicable base cost reporting period is available.

(J) For cost reporting periods beginning during fiscal year 2001, for a hospital described in subsection (d)(1)(B)(iv) of this section—

(i) the limiting or cap amount otherwise determined under subparagraph (H) shall be increased by 2 percent; and

(ii) the target amount otherwise determined under subparagraph (A) shall be increased by 25 percent (subject to the limiting or cap amount determined under subparagraph (H), as increased by clause (i)).

(4)(A)(i) The Secretary shall provide for an exception and adjustment to (and in the case of a hospital described in subsection (d)(1)(B)(iii) of this section, may provide an exemption from) the method under this subsection for determining the amount of payment to a hospital where events beyond the hospital's control or extraordinary circumstances, including changes in the case mix of such hospital, create a distortion in the increase in costs for a cost reporting period (including any distortion in the costs for

the base period against which such increase is measured). The Secretary may provide for such other exemptions from, and exceptions and adjustments to, such method as the Secretary deems appropriate, including the assignment of a new base period which is more representative, as determined by the Secretary, of the reasonable and necessary cost of inpatient services and including those which he deems necessary to take into account a decrease in the inpatient hospital services that a hospital provides and that are customarily provided directly by similar hospitals which results in a significant distortion in the operating costs of inpatient hospital services. The Secretary shall announce a decision on any request for an exemption, exception, or adjustment under this paragraph not later than 180 days after receiving a completed application from the intermediary for such exemption, exception, or adjustment, and shall include in such decision a detailed explanation of the grounds on which such request was approved or denied.

(ii) The payment reductions under paragraph (3)(B)(ii)(V) shall not be considered by the Secretary in making adjustments pursuant to clause (i). In making such reductions, the Secretary shall treat the applicable update factor described in paragraph (3)(B)(vi) for a fiscal year as being equal to the market basket percentage for that year.

(B) In determining under subparagraph (A) whether to assign a new base period which is more representative of the reasonable and necessary cost to a hospital of providing inpatient services, the Secretary shall take into consideration—

(i) changes in applicable technologies and medical practices, or differences in the severity of illness among patients, that increase the hospital's costs;

(ii) whether increases in wages and wage-related costs for hospitals located in the geographic area in which the hospital is located exceed the average of the increases in such costs paid by hospitals in the United States; and

(iii) such other factors as the Secretary considers appropriate in determining increases in the hospital's costs of providing inpatient services.

(C) Paragraph (1) shall not apply to payment of hospitals which is otherwise determined under paragraph (3) of section 1395f(b) of this title.

(5) In the case of any hospital having any cost reporting period of other than a 12-month period, the Secretary shall determine the 12-month period which shall be used for purposes of this section.

(6) In the case of any hospital which becomes subject to the taxes under section 3111 of the Internal Revenue Code of 1986, with respect to any or all of its employees, for part or all of a cost reporting period, and was not subject to such taxes with respect to any or all of its employees for all or part of the 12-month base cost reporting period referred to in subsection (b)(3)(A)(i) of this section, the Secretary shall provide for an adjustment by increasing the base period amount described in such subsection for such hospital by an amount equal to the amount of such taxes which would have been paid or accrued by such hospital for such base period if such hospital had been subject to such taxes for all of such base period with respect to all its employees, minus the amount of any such taxes actually paid or accrued for such base period.

(7)(A) Notwithstanding paragraph (1), in the case of a hospital or unit that is within a class of hospital described in subparagraph (B) which first receives payments under this section on or after October 1, 1997—

(i) for each of the first 2 cost reporting periods for which the hospital has a settled cost report, the amount of the payment with respect to operating costs described in paragraph (1) under part A of this subchapter on a per discharge or per admission basis (as the case may be) is equal to the lesser of—

(I) the amount of operating costs for such respective period, or

(II) 110 percent of the national median (as estimated by the Secretary) of the target amount for hospitals in the same class as the hospital for cost reporting periods ending during fiscal year 1996, updated by the hospital market basket increase percentage to the fiscal year in which the hospital first received payments under this section, as adjusted under subparagraph (C); and

(ii) for purposes of computing the target amount for the subsequent cost reporting period, the target amount for the preceding cost reporting period is equal to the amount determined under clause (i) for such preceding period.

(B) For purposes of this paragraph, each of the following shall be treated as a separate class of hospital:

(i) Hospitals described in clause (i) of subsection (d)(1)(B) of this section and psychiatric units described in the matter following clause (v) of such subsection.

(ii) Hospitals described in clause (ii) of such subsection and rehabilitation units described in the matter following clause (v) of such subsection.

(iii) Hospitals described in clause (iv) of such subsection.

(C) In applying subparagraph (A)(i)(II) in the case of a hospital or unit, the Secretary shall provide for an appropriate adjustment to the labor-related portion of the amount determined under such subparagraph to take into account differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital.

(c) Payment in accordance with State hospital reimbursement control system; amount of payment; discontinuance of payments

(1) The Secretary may provide, in his discretion, that payment with respect to services provided by a hospital in a State may be made in accordance with a hospital reimbursement control system in a State, rather than in accordance with the other provisions of this title, if the chief executive officer of the State requests such treatment and if—

(A) the Secretary determines that the system, if approved under this subsection, will apply (i) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the State and (ii) to the review of at least 75 percent of all revenues or expenses in the State for inpatient hospital services and of revenues or expenses for inpatient hospital services provided under the State's plan approved under subchapter XIX of this chapter;

(B) the Secretary has been provided satisfactory assurances as to the equitable treatment under the system of all entities (including Federal and State programs) that pay hospitals for inpatient hospital services, of hospital employees, and of hospital patients;

(C) the Secretary has been provided satisfactory assurances that under the system, over 36-month periods (the first such period beginning with the first month in which this subsection applies to that system in the State), the amount of payments made under this subchapter under such system will not exceed the amount of payments which would otherwise have been made under this subchapter not using such system;

(D) the Secretary determines that the system will not preclude an eligible organization (as defined in section 1395mm(b) of this title) from negotiating directly with hospitals with respect to the organization's rate of payment for inpatient hospital services; and

(E) the Secretary determines that the system requires hospitals to meet the requirement of section 1395cc(a)(1)(G) of this title and the system provides for the exclusion of certain costs in accordance with section 1395y(a)(14) of this title (except for such waivers thereof as the Secretary provides by regulation).

The Secretary cannot deny the application of a State under this subsection on the ground that the State's hospital reimbursement control system is based on a payment methodology other than on the basis of a diagnosis-related group or on the ground that the amount of payments made under this subchapter under such system must be less than the amount of payments which would otherwise have been made under this subchapter not using such system. If the Secretary determines that the conditions described in subparagraph (C) are based on maintaining payment amounts at no more than a specified percentage increase above the payment amounts in a base period, the State has the option of applying such test (for inpatient hospital services under part A of this subchapter) on an aggregate payment basis or on the basis of the amount of payment per inpatient discharge or admission. If the Secretary determines that the conditions described in subparagraph (C) are based on maintaining aggregate payment amounts below a national average percentage increase in total payments under part A of this subchapter for inpatient hospital services, the Secretary cannot deny the application of a State under this subsection on the ground that the State's rate of increase in such payments for such services must be less than such national average rate of increase.

(2) In determining under paragraph (1)(C) the amount of payment which would otherwise have been made under this subchapter for a State, the Secretary may provide for appropriate adjustment of such amount to take into account previous reductions effected in the amount of payments made under this subchapter in the State due to the operation of the hospital reimbursement control system in the State if the system has resulted in an aggregate rate of increase in operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) under this subchapter for hospitals in the State which is less than the aggregate rate of increase in such costs under this subchapter for hospitals in the United States.

(3) The Secretary shall discontinue payments under a system described in paragraph (1) if the Secretary—

(A) determines that the system no longer meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5), or

(B) has reason to believe that the assurances described in subparagraph (B) or (C) of paragraph (1) (or, if applicable, in paragraph (5)) are not being (or will not be) met.

(4) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), (D), and (E) of paragraph (1) have been met with respect to the system, and

(B) with respect to that system a waiver of certain requirements of this subchapter has been approved on or before (and which is in effect as of) April 20, 1983, pursuant to section 1395b–1(a) of this title or section 222(a) of the Social Security Amendments of 1972.

With respect to a State system described in this paragraph, the Secretary shall judge the effectiveness of such system on the basis of its rate of increase or inflation in inpatient hospital payments for individuals under this subchapter, as compared to the national rate of increase or inflation for such payments, with the State retaining the option to have the test applied on the basis of the aggregate payments under the State system as compared to aggregate payments which would have been made under the national system since October 1, 1984, to the most recent date for which annual data are available.

(5) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), (D), and (E) of paragraph (1) have been met with respect to the system;

(B) the Secretary determines that the system—

(i) is operated directly by the State or by an entity designated pursuant to State law,

(ii) provides for payment of hospitals covered under the system under a methodology (which sets forth exceptions and adjustments, as well as any method for changes in the methodology) by which rates or amounts to be paid for hospital services during a specified period are established under the system prior to the defined rate period, and

(iii) hospitals covered under the system will make such reports (in lieu of cost and

other reports, identified by the Secretary, otherwise required under this subchapter) as the Secretary may require in order to properly monitor assurances provided under this subsection;

(C) the State has provided the Secretary with satisfactory assurances that operation of the system will not result in any change in hospital admission practices which result in—

(i) a significant reduction in the proportion of patients (receiving hospital services covered under the system) who have no third-party coverage and who are unable to pay for hospital services,

(ii) a significant reduction in the proportion of individuals admitted to hospitals for inpatient hospital services for which payment is (or is likely to be) less than the anticipated charges for or costs of such services,

(iii) the refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital, or

(iv) the refusal to provide emergency services to any person who is in need of emergency services if the hospital provides such services;

(D) any change by the State in the system which has the effect of materially reducing payments to hospitals can only take effect upon 60 days notice to the Secretary and to the hospitals the payment to which is likely to be materially affected by the change; and

(E) the State has provided the Secretary with satisfactory assurances that in the development of the system the State has consulted with local governmental officials concerning the impact of the system on public hospitals.

The Secretary shall respond to requests of States under this paragraph within 60 days of the date the request is submitted to the Secretary.

(6) If the Secretary determines that the assurances described in paragraph (1)(C) have not been met with respect to any 36-month period, the Secretary may reduce payments under this subchapter to hospitals under the system in an amount equal to the amount by which the payment under this subchapter under such system for such period exceeded the amount of payments which would otherwise have been made under this subchapter not using such system.

(7) In the case of a State which made a request under paragraph (5) before December 31, 1984, for the approval of a State hospital reimbursement control system and which request was approved—

(A) in applying paragraphs (1)(C) and (6), a reference to a ''36-month period'' is deemed a reference to a ''48-month period'', and

(B) in order to allow the State the opportunity to provide the assurances described in paragraph (1)(C) for a 48-month period, the Secretary may not discontinue payments under the system, under the authority of paragraph (3)(A) because the Secretary has reason to believe that such assurances are not being (or will not be) met, before July 1, 1986.

(d) Inpatient hospital service payments on basis of prospective rates; Medicare Geographical Classification Review Board

(1)(A) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) of a subsection (d) hospital (as defined in subparagraph (B)) for inpatient hospital discharges in a cost reporting period or in a fiscal year—

(i) beginning on or after October 1, 1983, and before October 1, 1984, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A) of this section, but determined without the application of subsection (a) of this section), and

(II) the DRG percentage (as defined in subparagraph (C)) of the regional adjusted DRG prospective payment rate determined under paragraph (2) for such discharges;

(ii) beginning on or after October 1, 1984, and before October 1, 1987, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A) of this section, but determined without the application of subsection (a) of this section), and

(II) the DRG percentage (as defined in subparagraph (C)) of the applicable combined adjusted DRG prospective payment rate determined under subparagraph (D) for such discharges; or

(iii) beginning on or after April 1, 1988, is equal to—

(I) the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, or

(II) for discharges occurring during a fiscal year ending on or before September 30, 1996, the sum of 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges and 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph, but only if the average standardized amount (described in clause (i)(I) or clause (ii)(I) of paragraph (3)(D)) for hospitals within the region of, and in the same large urban or other area (or, for discharges occurring during a fiscal year ending on or before September 30, 1994, the same large urban or other area) as, the hospital is greater than the average standardized amount (described in the respective clause) for hospitals within the United States in that type of area for discharges occurring during such fiscal year.

(B) As used in this section, the term ''subsection (d) hospital'' means a hospital located in one of the fifty States or the District of Columbia other than—

(i) a psychiatric hospital (as defined in section 1395x(f) of this title),

(ii) a rehabilitation hospital (as defined by the Secretary),

(iii) a hospital whose inpatients are predominantly individuals under 18 years of age,

(iv)(I) a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days, or

(II) a hospital that first received payment under this subsection in 1986 which has an average inpatient length of stay (as determined by the Secretary) of greater than 20 days and that has 80 percent or more of its annual medicare inpatient discharges with a principal diagnosis that reflects a finding of neoplastic disease in the 12-month cost reporting period ending in fiscal year 1997, or

(v)(I) a hospital that the Secretary has classified, at any time on or before December 31, 1990,[3] (or, in the case of a hospital that, as of December 19, 1989, is located in a State operating a demonstration project under section 1395f(b) of this title, on or before December 31, 1991) for purposes of applying exceptions and adjustments to payment amounts under this subsection, as a hospital involved extensively in treatment for or research on cancer,

(II) a hospital that was recognized as a comprehensive cancer center or clinical cancer research center by the National Cancer Institute of the National Institutes of Health as of April 20, 1983, that is located in a State which, as of December 19, 1989, was not operating a demonstration project under section 1395f(b) of this title, that applied and was denied, on or before December 31, 1990, for classification as a hospital involved extensively in treatment for or research on cancer under this clause (as in effect on the day before August 5, 1997), that as of August 5, 1997, is licensed for less than 50 acute care beds, and that demonstrates for the 4-year period ending on December 31, 1996, that at least 50 percent of its total discharges have a principal finding of neoplastic disease, as defined in subparagraph (E), or

(III) a hospital that was recognized as a clinical cancer research center by the National Cancer Institute of the National Institutes of Health as of February 18, 1998, that has never been reimbursed for inpatient hospital services pursuant to a reimbursement system under a demonstration project under section 1395f(b) of this title, that is a freestanding facility organized primarily for treatment of and research on cancer and is not a unit of another hospital, that as of December 21, 2000, is licensed for 162 acute care beds, and that demonstrates for the 4-year period ending on June 30, 1999, that at least 50 percent of its total discharges have a principal finding of neoplastic disease, as defined in subparagraph (E);

and, in accordance with regulations of the Secretary, does not include a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital (as defined by the Secretary). A hospital that was classified by the Secretary on or before September 30, 1995, as a hospital described in clause (iv) shall continue to be so classified notwithstanding that it is located in the same building as, or on the same campus as, another hospital.

[3] So in original. The comma probably should not appear.

(C) For purposes of this subsection, for cost reporting periods beginning—

(i) on or after October 1, 1983, and before October 1, 1984, the ''target percentage'' is 75 percent and the ''DRG percentage'' is 25 percent;

(ii) on or after October 1, 1984, and before October 1, 1985, the ''target percentage'' is 50 percent and the ''DRG percentage'' is 50 percent;

(iii) on or after October 1, 1985, and before October 1, 1986, the ''target percentage'' is 45 percent and the ''DRG percentage'' is 55 percent; and

(iv) on or after October 1, 1986, and before October 1, 1987, the ''target percentage'' is 25 percent and the ''DRG percentage'' is 75 percent.

(D) For purposes of subparagraph (A)(ii)(II), the ''applicable combined adjusted DRG prospective payment rate'' for discharges occurring—

(i) on or after October 1, 1984, and before October 1, 1986, is a combined rate consisting of 25 percent of the national adjusted DRG prospective payment rate, and 75 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges; and

(ii) on or after October 1, 1986, and before October 1, 1987, is a combined rate consisting of 50 percent of the national adjusted DRG prospective payment rate, and 50 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges.

(E) For purposes of subclauses (II) and (III) of subparagraph (B)(v) only, the term ''principal finding of neoplastic disease'' means the condition established after study to be chiefly responsible for occasioning the admission of a patient to a hospital, except that only discharges with ICD–9–CM principal diagnosis codes of 140 through 239, V58.0, V58.1, V66.1, V66.2, or 990 will be considered to reflect such a principal diagnosis.

(2) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine a regional adjusted DRG prospective payment rate for such discharges in each region, for which payment may be made under part A of this subchapter. Each such rate shall be determined for hospitals located in urban or rural areas within the United States or within each such region, respectively, as follows:

(A) DETERMINING ALLOWABLE INDIVIDUAL HOSPITAL COSTS FOR BASE PERIOD.—The Secretary shall determine the allowable operating costs per discharge of inpatient hospital services for the hospital for the most recent cost reporting period for which data are available.

(B) UPDATING FOR FISCAL YEAR 1984.—The Secretary shall update each amount determined under subparagraph (A) for fiscal year 1984 by—

(i) updating for fiscal year 1983 by the estimated average rate of change of hospital costs industry-wide between the cost reporting period used under such subparagraph and

fiscal year 1983 and the most recent case-mix data available, and

(ii) projecting for fiscal year 1984 by the applicable percentage increase (as defined in subsection (b)(3)(B) of this section) for fiscal year 1984.

(C) STANDARDIZING AMOUNTS.—The Secretary shall standardize the amount updated under subparagraph (B) for each hospital by—

(i) excluding an estimate of indirect medical education costs (taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985), except that the Secretary shall not take into account any reduction in the amount of additional payments under paragraph (5)(B)(ii) resulting from the amendment made by section 4621(a)(1) of the Balanced Budget Act of 1997 or any additional payments under such paragraph resulting from the application of section 111 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, of section 302 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, or the Medicare Prescription Drug, Improvement, and Modernization Act of 2003,

(ii) adjusting for variations among hospitals by area in the average hospital wage level,

(iii) adjusting for variations in case mix among hospitals, and

(iv) for discharges occurring on or after October 1, 1986, excluding an estimate of the additional payments to certain hospitals to be made under paragraph (5)(F), except that the Secretary shall not exclude additional payments under such paragraph made as a result of the enactment of section 6003(c) of the Omnibus Budget Reconciliation Act of 1989, the enactment of section 4002(b) of the Omnibus Budget Reconciliation Act of 1990, the enactment of section 303 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, or the enactment of section 402(a)(1)[4] of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(D) COMPUTING URBAN AND RURAL AVERAGES.—The Secretary shall compute an average of the standardized amounts determined under subparagraph (C) for the United States and for each region—

(i) for all subsection (d) hospitals located in an urban area within the United States or that region, respectively, and

(ii) for all subsection (d) hospitals located in a rural area within the United States or that region, respectively.

For purposes of this subsection, the term ''region'' means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes; the term ''urban area'' means an area within a Metropolitan Statistical Area (as defined by the Office of Management and Budget) or within such similar area as the Secretary has recognized under subsection (a) of this section by regulation; the term ''large urban area'' means, with respect to a fiscal year, such an urban area which the Secretary determines (in the publications described in subsection (e)(5) of this section before the fiscal year) has a population of more than 1,000,000 (as determined by the Secretary based on the most recent available population data published by the Bureau of the Census); and the term ''rural area'' means any area outside such an area or similar area. A hospital located in a Metropolitan Statistical Area shall be deemed to be located in the region in which the largest number of the hospitals in the same Metropolitan Statistical Area are located, or, at the option of the Secretary, the region in which the majority of the inpatient discharges (with respect to which payments are made under this subchapter) from hospitals in the same Metropolitan Statistical Area are made.

(E) REDUCING FOR VALUE OF OUTLIER PAYMENTS.—The Secretary shall reduce each of the average standardized amounts determined under subparagraph (D) by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment rates which are additional payments described in paragraph (5)(A) (relating to outlier payments).

(F) MAINTAINING BUDGET NEUTRALITY.—The Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) of this section for that fiscal year.

(G) COMPUTING DRG-SPECIFIC RATES FOR URBAN AND RURAL HOSPITALS IN THE UNITED STATES AND IN EACH REGION.—For each discharge classified within a diagnosis-related group, the Secretary shall establish a national DRG prospective payment rate and shall establish a regional DRG prospective payment rate for each region, each of which is equal—

(i) for hospitals located in an urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in an urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(ii) for hospitals located in a rural area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in a rural area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

[4] See References in Text note below.

(H) ADJUSTING FOR DIFFERENT AREA WAGE LEVELS.—The Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the national and regional DRG prospective payment rates computed under subparagraph (G) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

(3) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in a fiscal year after fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine, for fiscal years before fiscal year 1997, a regional adjusted DRG prospective payment rate for such discharges in each region for which payment may be made under part A of this subchapter. Each such rate shall be determined for hospitals located in large urban, other urban, or rural areas within the United States and within each such region, respectively, as follows:

(A) UPDATING PREVIOUS STANDARDIZED AMOUNTS.—(i) For discharges occurring in a fiscal year beginning before October 1, 1987, the Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area within the United States and for hospitals located in an urban area and for hospitals located in a rural area within each region, equal to the respective average standardized amount computed for the previous fiscal year under paragraph (2)(D) or under this subparagraph, increased for the fiscal year involved by the applicable percentage increase under subsection (b)(3)(B) of this section. With respect to discharges occurring on or after October 1, 1987, the Secretary shall compute urban and rural averages on the basis of discharge weighting rather than hospital weighting, making appropriate adjustments to ensure that computation on such basis does not result in total payments under this section that are greater or less than the total payments that would have been made under this section but for this sentence, and making appropriate changes in the manner of determining the reductions under subparagraph (C)(ii).

(ii) For discharges occurring in a fiscal year beginning on or after October 1, 1987, and ending on or before September 30, 1994, the Secretary shall compute an average standardized amount for hospitals located in a large urban area, for hospitals located in a rural area, and for hospitals located in other urban areas, within the United States and within each region, equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) of this section with respect to hospitals located in the respective areas for the fiscal year involved.

(iii) For discharges occurring in the fiscal year beginning on October 1, 1994, the average standardized amount for hospitals located in a rural area shall be equal to the average standardized amount for hospitals located in an urban area. For discharges occurring on or after October 1, 1994, the Secretary shall adjust the ratio of the labor portion to non-labor portion of each average standardized amount to equal such ratio for the national average of all standardized amounts.

(iv)(I) Subject to subclause (II), for discharges occurring in a fiscal year beginning on or after October 1, 1995, the Secretary shall compute an average standardized amount for hospitals located in a large urban area and for hospitals located in other areas within the United States and within each region equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) of this section with respect to hospitals located in the respective areas for the fiscal year involved.

(II) For discharges occurring in a fiscal year (beginning with fiscal year 2004), the Secretary shall compute a standardized amount for hospitals located in any area within the United States and within each region equal to the standardized amount computed for the previous fiscal year under this subparagraph for hospitals located in a large urban area (or, beginning with fiscal year 2005, for all hospitals in the previous fiscal year) increased by the applicable percentage increase under subsection (b)(3)(B)(i) of this section for the fiscal year involved.

(v) Average standardized amounts computed under this paragraph shall be adjusted to reflect the most recent case-mix data available.

(vi) Insofar as the Secretary determines that the adjustments under paragraph (4)(C)(i) for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under this subsection during the fiscal year that are a result of changes in the coding or classification of discharges that do not reflect real changes in case mix, the Secretary may adjust the average standardized amounts computed under this paragraph for subsequent fiscal years so as to eliminate the effect of such coding or classification changes.

(B) REDUCING FOR VALUE OF OUTLIER PAYMENTS.—The Secretary shall reduce each of the average standardized amounts determined under subparagraph (A) by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments).

(C) MAINTAINING BUDGET NEUTRALITY FOR FISCAL YEAR 1985.—(i) For discharges occurring in fiscal year 1985, the Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) of this section for that fiscal year.

(ii) For discharges occurring after September 30, 1986, the Secretary shall further reduce each of the average standardized amounts (in a proportion which takes into ac-

count the differing effects of the standardization effected under paragraph (2)(C)(i)) so as to provide for a reduction in the total of the payments (attributable to this paragraph) made for discharges occurring on or after October 1, 1986, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987 if the factor described in clause (ii)(II) of paragraph (5)(B) (determined without regard to amendments made by the Omnibus Budget Reconciliation Act of 1990) were applied for discharges occurring on or after such date instead of the factor described in clause (ii) of that paragraph.

(D) COMPUTING DRG-SPECIFIC RATES FOR HOSPITALS.—For each discharge classified within a diagnosis-related group, the Secretary shall establish for the fiscal year a national DRG prospective payment rate and shall establish, for fiscal years before fiscal year 1997, a regional DRG prospective payment rate for each region which is equal—

(i) for fiscal years before fiscal year 2004, for hospitals located in a large urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C)) for the fiscal year for hospitals located in such a large urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group;

(ii) for fiscal years before fiscal year 2004, for hospitals located in other areas in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C)) for the fiscal year for hospitals located in other areas in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(iii) for a fiscal year beginning after fiscal year 2003, for hospitals located in all areas, to the product of—

(I) the applicable standardized amount (computed under subparagraph (A)), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C) for the fiscal year; and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(E) ADJUSTING FOR DIFFERENT AREA WAGE LEVELS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the DRG prospective payment rates computed under subparagraph (D) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level. Not later than October 1, 1990, and October 1, 1993 (and at least every 12 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of a survey conducted by the Secretary (and updated as appropriate) of the wages and wage-related costs of subsection (d) hospitals in the United States. Not less often than once every 3 years the Secretary (through such survey or otherwise) shall measure the earnings and paid hours of employment by occupational category and shall exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services. Any adjustments or updates made under this subparagraph for a fiscal year (beginning with fiscal year 1991) shall be made in a manner that assures that the aggregate payments under this subsection in the fiscal year are not greater or less than those that would have been made in the year without such adjustment. The Secretary shall apply the previous sentence for any period as if the amendments made by section 403(a)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 had not been enacted.

(ii) ALTERNATIVE PROPORTION TO BE ADJUSTED BEGINNING IN FISCAL YEAR 2005.—For discharges occurring on or after October 1, 2004, the Secretary shall substitute ''62 percent'' for the proportion described in the first sentence of clause (i), unless the application of this clause would result in lower payments to a hospital than would otherwise be made.

(4)(A) The Secretary shall establish a classification of inpatient hospital discharges by diagnosis-related groups and a methodology for classifying specific hospital discharges within these groups.

(B) For each such diagnosis-related group the Secretary shall assign an appropriate weighting factor which reflects the relative hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups.

(C)(i) The Secretary shall adjust the classifications and weighting factors established under subparagraphs (A) and (B), for discharges in fiscal year 1988 and at least annually thereafter, to reflect changes in treatment patterns, technology (including a new medical service or technology under paragraph (5)(K)), and other factors which may change the relative use of hospital resources.

(ii) For discharges in fiscal year 1990, the Secretary shall reduce the weighting factor for each diagnosis-related group by 1.22 percent.

(iii) Any such adjustment under clause (i) for discharges in a fiscal year (beginning with fiscal

year 1991) shall be made in a manner that assures that the aggregate payments under this subsection for discharges in the fiscal year are not greater or less than those that would have been made for discharges in the year without such adjustment.

(iv) The Secretary shall include recommendations with respect to adjustments to weighting factors under clause (i) in the annual report to Congress required under subsection (e)(3)(B)[5] of this section.

(5)(A)(i) For discharges occurring during fiscal years ending on or before September 30, 1997, the Secretary shall provide for an additional payment for a subsection (d) hospital for any discharge in a diagnosis-related group, the length of stay of which exceeds the mean length of stay for discharges within that group by a fixed number of days, or exceeds such mean length of stay by some fixed number of standard deviations, whichever is the fewer number of days.

(ii) For cases which are not included in clause (i), a subsection (d) hospital may request additional payments in any case where charges, adjusted to cost, exceed a fixed multiple of the applicable DRG prospective payment rate, or exceed such other fixed dollar amount, whichever is greater, or, for discharges in fiscal years beginning on or after October 1, 1994, exceed the sum of the applicable DRG prospective payment rate plus any amounts payable under subparagraphs (B) and (F) plus a fixed dollar amount determined by the Secretary.

(iii) The amount of such additional payment under clauses (i) and (ii) shall be determined by the Secretary and shall (except as payments under clause (i) are required to be reduced to take into account the requirements of clause (v)) approximate the marginal cost of care beyond the cutoff point applicable under clause (i) or (ii).

(iv) The total amount of the additional payments made under this subparagraph for discharges in a fiscal year may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made based on DRG prospective payment rates for discharges in that year.

(v) The Secretary shall provide that—

(I) the day outlier percentage for fiscal year 1995 shall be 75 percent of the day outlier percentage for fiscal year 1994;

(II) the day outlier percentage for fiscal year 1996 shall be 50 percent of the day outlier percentage for fiscal year 1994; and

(III) the day outlier percentage for fiscal year 1997 shall be 25 percent of the day outlier percentage for fiscal year 1994.

(vi) For purposes of this subparagraph, the term ''day outlier percentage'' means, for a fiscal year, the percentage of the total additional payments made by the Secretary under this subparagraph for discharges in that fiscal year which are additional payments under clause (i).

(B) The Secretary shall provide for an additional payment amount for subsection (d) hospitals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1, 1983) under subsection (a)(2) of this section, except as follows:

(i) The amount of such additional payment shall be determined by multiplying (I) the sum of the amount determined under paragraph (1)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (1)(A)(iii)) and, for cases qualifying for additional payment under subparagraph (A)(i), the amount paid to the hospital under subparagraph (A), by (II) the indirect teaching adjustment factor described in clause (ii).

(ii) For purposes of clause (i)(II), the indirect teaching adjustment factor is equal to c × (((1+r) to the nth power) −1), where ''r'' is the ratio of the hospital's full-time equivalent interns and residents to beds and ''n'' equals .405. Subject to clause (ix), for discharges occurring—

(I) on or after October 1, 1988, and before October 1, 1997, ''c'' is equal to 1.89;

(II) during fiscal year 1998, ''c'' is equal to 1.72;

(III) during fiscal year 1999, ''c'' is equal to 1.6;

(IV) during fiscal year 2000, ''c'' is equal to 1.47;

(V) during fiscal year 2001, ''c'' is equal to 1.54;

(VI) during fiscal year 2002, ''c'' is equal to 1.6;

(VII) on or after October 1, 2002, and before April 1, 2004, ''c'' is equal to 1.35;

(VIII) on or after April 1, 2004, and before October 1, 2004, ''c'' is equal to 1.47;

(IX) during fiscal year 2005, ''c'' is equal to 1.42;

(X) during fiscal year 2006, ''c'' is equal to 1.37;

(XI) during fiscal year 2007, ''c'' is equal to 1.32; and

(XII) on or after October 1, 2007, ''c'' is equal to 1.35.

(iii) In determining such adjustment the Secretary shall not distinguish between those interns and residents who are employees of a hospital and those interns and residents who furnish services to a hospital but are not employees of such hospital.

(iv) Effective for discharges occurring on or after October 1, 1997, all the time spent by an intern or resident in patient care activities under an approved medical residency training program at an entity in a nonhospital setting shall be counted towards the determination of full-time equivalency if the hospital incurs all, or substantially all, of the costs for the training program in that setting.

(v) In determining the adjustment with respect to a hospital for discharges occurring on or after October 1, 1997, the total number of full-time equivalent interns and residents in the fields of allopathic and osteopathic medicine in either a hospital or nonhospital setting may not exceed the number (or, 130 percent of such number in the case of a hospital located in a rural area) of such full-time equivalent interns and residents in the hospital with respect to the hospital's most recent cost reporting period ending on or before December 31,

[5] See References in Text note below.

1996. Rules similar to the rules of subsection (h)(4)(F)(ii) of this section shall apply for purposes of this clause. The provisions of subsection (h)(7) of this section shall apply with respect to the first sentence of this clause in the same manner as it applies with respect to subsection (h)(4)(F)(i) of this section.

(vi) For purposes of clause (ii)—

(I) ''r'' may not exceed the ratio of the number of interns and residents, subject to the limit under clause (v), with respect to the hospital for its most recent cost reporting period to the hospital's available beds (as defined by the Secretary) during that cost reporting period, and

(II) for the hospital's cost reporting periods beginning on or after October 1, 1997, subject to the limits described in clauses (iv) and (v), the total number of full-time equivalent residents for payment purposes shall equal the average of the actual full-time equivalent resident count for the cost reporting period and the preceding two cost reporting periods.

In the case of the first cost reporting period beginning on or after October 1, 1997, subclause (II) shall be applied by using the average for such period and the preceding cost reporting period.

(vii) If any cost reporting period beginning on or after October 1, 1997, is not equal to twelve months, the Secretary shall make appropriate modifications to ensure that the average full-time equivalent residency count pursuant to subclause (II) of clause (vi) is based on the equivalent of full twelve-month cost reporting periods.

(viii) Rules similar to the rules of subsection (h)(4)(H) of this section shall apply for purposes of clauses (v) and (vi).

(ix) For discharges occurring on or after July 1, 2005, insofar as an additional payment amount under this subparagraph is attributable to resident positions redistributed to a hospital under subsection (h)(7)(B) of this section, in computing the indirect teaching adjustment factor under clause (ii) the adjustment shall be computed in a manner as if ''c'' were equal to 0.66 with respect to such resident positions.

(C)(i) The Secretary shall provide for such exceptions and adjustments to the payment amounts established under this subsection (other than under paragraph (9)) as the Secretary deems appropriate to take into account the special needs of regional and national referral centers (including those hospitals of 275 or more beds located in rural areas). A hospital which is classified as a rural hospital may appeal to the Secretary to be classified as a rural referral center under this clause on the basis of criteria (established by the Secretary) which shall allow the hospital to demonstrate that it should be so reclassified by reason of certain of its operating characteristics being similar to those of a typical urban hospital located in the same census region and which shall not require a rural osteopathic hospital to have more than 3,000 discharges in a year in order to be classified as a rural referral center. Such characteristics may include wages, scope of services, service area, and the mix of medical specialties. The Secretary shall publish the criteria not later than August 17, 1984, for implementation by October 1, 1984. An appeal allowed under this clause must be submitted to the Secretary (in such form and manner as the Secretary may prescribe) during the quarter before the first quarter of the hospital's cost reporting period (or, in the case of a cost reporting period beginning during October 1984, during the first quarter of that period), and the Secretary must make a final determination with respect to such appeal within 60 days after the date the appeal was submitted. Any payment adjustments necessitated by a reclassification based upon the appeal shall be effective at the beginning of such cost reporting period.

(ii) The Secretary shall provide, under clause (i), for the classification of a rural hospital as a regional referral center if the hospital has a case mix index equal to or greater than the median case mix index for hospitals (other than hospitals with approved teaching programs) located in an urban area in the same region (as defined in paragraph (2)(D)), has at least 5,000 discharges a year or, if less, the median number of discharges in urban hospitals in the region in which the hospital is located (or, in the case of a rural osteopathic hospital, meets the criterion established by the Secretary under clause (i) with respect to the annual number of discharges for such hospitals), and meets any other criteria established by the Secretary under clause (i).

(D)(i) For any cost reporting period beginning on or after April 1, 1990, with respect to a subsection (d) hospital which is a sole community hospital, payment under paragraph (1)(A) shall be—

(I) an amount based on 100 percent of the hospital's target amount for the cost reporting period, as defined in subsection (b)(3)(C) of this section, or

(II) the amount determined under paragraph (1)(A)(iii),

whichever results in greater payment to the hospital.

(ii) In the case of a sole community hospital that experiences, in a cost reporting period compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services.

(iii) For purposes of this subchapter, the term ''sole community hospital'' means any hospital—

(I) that the Secretary determines is located more than 35 road miles from another hospital,

(II) that, by reason of factors such as the time required for an individual to travel to the nearest alternative source of appropriate inpatient care (in accordance with standards promulgated by the Secretary), location, weather

conditions, travel conditions, or absence of other like hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to individuals in a geographic area who are entitled to benefits under part A of this subchapter, or

(III) that is located in a rural area and designated by the Secretary as an essential access community hospital under section 1395i–4(i)(1) of this title as in effect on September 30, 1997.

(iv) The Secretary shall promulgate a standard for determining whether a hospital meets the criteria for classification as a sole community hospital under clause (iii)(II) because of the time required for an individual to travel to the nearest alternative source of appropriate inpatient care.

(v) If the Secretary determines that, in the case of a hospital located in a rural area and designated by the Secretary as an essential access community hospital under section 1395i–4(i)(1) of this title as in effect on September 30, 1997, the hospital has incurred increases in reasonable costs during a cost reporting period as a result of becoming a member of a rural health network (as defined in section 1395i–4(d) of this title) in the State in which it is located, and in incurring such increases, the hospital will increase its costs for subsequent cost reporting periods, the Secretary shall increase the hospital's target amount under subsection (b)(3)(C) of this section to account for such incurred increases.

(E)(i) The Secretary shall estimate the amount of reimbursement made for services described in section 1395y(a)(14) of this title with respect to which payment was made under part B of this subchapter in the base reporting periods referred to in paragraph (2)(A) and with respect to which payment is no longer being made.

(ii) The Secretary shall provide for an adjustment to the payment for subsection (d) hospitals in each fiscal year so as appropriately to reflect the net amount described in clause (i).

(F)(i) For discharges occurring on or after May 1, 1986, the Secretary shall provide, in accordance with this subparagraph, for an additional payment amount for each subsection (d) hospital which—

(I) serves a significantly disproportionate number of low-income patients (as defined in clause (v)), or

(II) is located in an urban area, has 100 or more beds, and can demonstrate that its net inpatient care revenues (excluding any of such revenues attributable to this subchapter or State plans approved under subchapter XIX of this chapter), during the cost reporting period in which the discharges occur, for indigent care from State and local government sources exceed 30 percent of its total of such net inpatient care revenues during the period.

(ii) Subject to clause (ix), the amount of such payment for each discharge shall be determined by multiplying (I) the sum of the amount determined under paragraph (1)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (1)(A)(iii)) and, for cases qualifying for additional payment under subparagraph (A)(i), the amount paid to the hospital under subparagraph (A) for that discharge, by (II) the disproportionate share adjustment percentage established under clause (iii) or (iv) for the cost reporting period in which the discharge occurs.

(iii) The disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (i)(II) is equal to 35 percent.

(iv) The disproportionate share adjustment percentage for a cost reporting period for a hospital that is not described in clause (i)(II) and that—

(I) is located in an urban area and has 100 or more beds or is described in the second sentence of clause (v), is equal to the percent determined in accordance with the applicable formula described in clause (vii);

(II) is located in an urban area and has less than 100 beds, is equal to 5 percent or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xiii);

(III) is located in a rural area and is not described in subclause (IV) or (V) or in the second sentence of clause (v), is equal to 4 percent or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xii);

(IV) is located in a rural area, is classified as a rural referral center under subparagraph (C), and is classified as a sole community hospital under subparagraph (D), is equal to 10 percent or, if greater, the percent determined in accordance with the applicable formula described in clause (viii) or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, the greater of the percentages determined under clause (x) or (xi);

(V) is located in a rural area, is classified as a rural referral center under subparagraph (C), and is not classified as a sole community hospital under subparagraph (D), is equal to the percent determined in accordance with the applicable formula described in clause (viii) or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xi); or

(VI) is located in a rural area, is classified as a sole community hospital under subparagraph (D), and is not classified as a rural referral center under subparagraph (C), is 10 percent or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (x).

(v) In this subparagraph, a hospital ''serves a significantly disproportionate number of low income patients'' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals, or exceeds—

(I) 15 percent, if the hospital is located in an urban area and has 100 or more beds,

(II) 30 percent (or 15 percent, for discharges occurring on or after April 1, 2001), if the hospital is located in a rural area and has more than 100 beds, or is located in a rural area and is classified as a sole community hospital under subparagraph (D),

(III) 40 percent (or 15 percent, for discharges occurring on or after April 1, 2001), if the hospital is located in an urban area and has less than 100 beds, or

(IV) 45 percent (or 15 percent, for discharges occurring on or after April 1, 2001), if the hospital is located in a rural area and is not described in subclause (II).

A hospital located in a rural area and with 500 or more beds also ''serves a significantly disproportionate number of low income patients'' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary.

(vi) In this subparagraph, the term ''disproportionate patient percentage'' means, with respect to a cost reporting period of a hospital, the sum of—

(I) the fraction (expressed as a percentage), the numerator of which is the number of such hospital's patient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of this subchapter and were entitled to supplementary security income benefits (excluding any State supplementation) under subchapter XVI of this chapter, and the denominator of which is the number of such hospital's patient days for such fiscal year which were made up of patients who (for such days) were entitled to benefits under part A of this subchapter, and

(II) the fraction (expressed as a percentage), the numerator of which is the number of the hospital's patient days for such period which consist of patients who (for such days) were eligible for medical assistance under a State plan approved under subchapter XIX of this chapter, but who were not entitled to benefits under part A of this subchapter, and the denominator of which is the total number of the hospital's patient days for such period.

(vii) The formula used to determine the disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (iv)(I) is—

(I) in the case of such a hospital with a disproportionate patient percentage (as defined in clause (vi)) greater than 20.2—

(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, $(P-20.2)(.65) + 5.62$,

(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, $(P-20.2)(.7) + 5.62$,

(c) for discharges occurring on or after October 1, 1993, and on or before September 30, 1994, $(P-20.2)(.8) + 5.88$, and

(d) for discharges occurring on or after October 1, 1994, $(P-20.2)(.825) + 5.88$; or

(II) in the case of any other such hospital—

(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, $(P-15)(.6) + 2.5$,

(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, $(P-15)(.6) + 2.5$,[6]

(c) for discharges occurring on or after October 1, 1993, $(P-15)(.65) + 2.5$,

where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(viii) Subject to clause (xiv), the formula used to determine the disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (iv)(IV) or (iv)(V) is the percentage determined in accordance with the following formula: $(P-30)(.6) + 4.0$, where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(ix) In the case of discharges occurring—

(I) during fiscal year 1998, the additional payment amount otherwise determined under clause (ii) shall be reduced by 1 percent;

(II) during fiscal year 1999, such additional payment amount shall be reduced by 2 percent;

(III) during fiscal years 2000 and 2001, such additional payment amount shall be reduced by 3 percent and 2 percent, respectively;

(IV) during fiscal year 2002, such additional payment amount shall be reduced by 3 percent; and

(V) during fiscal year 2003 and each subsequent fiscal year, such additional payment amount shall be reduced by 0 percent.

(x) Subject to clause (xiv), for purposes of clause (iv)(VI) (relating to sole community hospitals), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

(I) is less than 19.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: $(P-15)(.65) + 2.5$;

(II) is equal to or exceeds 19.3, but is less than 30.0, such adjustment percentage is equal to 5.25 percent; or

(III) is equal to or exceeds 30, such adjustment percentage is equal to 10 percent,

where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(xi) Subject to clause (xiv), for purposes of clause (iv)(V) (relating to rural referral centers), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

(I) is less than 19.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: $(P-15)(.65) + 2.5$;

(II) is equal to or exceeds 19.3, but is less than 30.0, such adjustment percentage is equal to 5.25 percent; or

(III) is equal to or exceeds 30, such adjustment percentage is determined in accordance with the following formula: $(P-30)(.6) + 5.25$,

where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(xii) Subject to clause (xiv), for purposes of clause (iv)(III) (relating to small rural hospitals generally), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

(I) is less than 19.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: $(P-15)(.65) + 2.5$; or

[6] So in original. Probably should be followed by ''and''.

(II) is equal to or exceeds 19.3, such adjustment percentage is equal to 5.25 percent,

where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(xiii) Subject to clause (xiv), for purposes of clause (iv)(II) (relating to urban hospitals with less than 100 beds), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

(I) is less than 19.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: (P − 15)(.65) + 2.5; or

(II) is equal to or exceeds 19.3, such adjustment percentage is equal to 5.25 percent,

where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(xiv)(I) In the case of discharges occurring on or after April 1, 2004, subject to subclause (II), there shall be substituted for the disproportionate share adjustment percentage otherwise determined under clause (iv) (other than subclause (I)) or under clause (viii), (x), (xi), (xii), or (xiii), the disproportionate share adjustment percentage determined under clause (vii) (relating to large, urban hospitals).

(II) Under subclause (I), the disproportionate share adjustment percentage shall not exceed 12 percent for a hospital that is not classified as a rural referral center under subparagraph (C).

(G)(i) For any cost reporting period beginning on or after April 1, 1990, and before October 1, 1994, or discharges occurring on or after October 1, 1997, and before October 1, 2006, in the case of a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be equal to the sum of the amount determined under clause (ii) and the amount determined under paragraph (1)(A)(iii).

(ii) The amount determined under this clause is—

(I) for discharges occurring during the 36-month period beginning with the first day of the cost reporting period that begins on or after April 1, 1990, the amount by which the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(D) of this section) exceeds the amount determined under paragraph (1)(A)(iii); and

(II) for discharges occurring during any subsequent cost reporting period (or portion thereof) and before October 1, 1994, or discharges occurring on or after October 1, 1997, and before October 1, 2006, 50 percent of the amount by which the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(D) of this section) exceeds the amount determined under paragraph (1)(A)(iii).

(iii) In the case of a medicare dependent, small rural hospital that experiences, in a cost reporting period compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services.

(iv) The term ''medicare-dependent, small rural hospital'' means, with respect to any cost reporting period to which clause (i) applies, any hospital—

(I) located in a rural area,

(II) that has not more than 100 beds,

(III) that is not classified as a sole community hospital under subparagraph (D), and

(IV) for which not less than 60 percent of its inpatient days or discharges during the cost reporting period beginning in fiscal year 1987, or two of the three most recently audited cost reporting periods for which the Secretary has a settled cost report, were attributable to inpatients entitled to benefits under part A of this subchapter.

(H) The Secretary may provide for such adjustments to the payment amounts under this subsection as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

(I)(i) The Secretary shall provide by regulation for such other exceptions and adjustments to such payment amounts under this subsection as the Secretary deems appropriate.

(ii) In making adjustments under clause (i) for transfer cases (as defined by the Secretary) in a fiscal year, not taking in account the effect of subparagraph (J), the Secretary may make adjustments to each of the average standardized amounts determined under paragraph (3) to assure that the aggregate payments made under this subsection for such fiscal year are not greater or lesser than those that would have otherwise been made in such fiscal year.

(J)(i) The Secretary shall treat the term ''transfer case'' (as defined in subparagraph (I)(ii)) as including the case of a qualified discharge (as defined in clause (ii)), which is classified within a diagnosis-related group described in clause (iii), and which occurs on or after October 1, 1998. In the case of a qualified discharge for which a substantial portion of the costs of care are incurred in the early days of the inpatient stay (as defined by the Secretary), in no case may the payment amount otherwise provided under this subsection exceed an amount equal to the sum of—

(I) 50 percent of the amount of payment under this subsection for transfer cases (as established under subparagraph (I)(i)), and

(II) 50 percent of the amount of payment which would have been made under this subsection with respect to the qualified discharge if no transfer were involved.

(ii) For purposes of clause (i), subject to clause (iii), the term ''qualified discharge'' means a discharge classified with a diagnosis-related group (described in clause (iii)) of an individual from a subsection (d) hospital, if upon such discharge the individual—

(I) is admitted as an inpatient to a hospital or hospital unit that is not a subsection (d) hospital for the provision of inpatient hospital services;

(II) is admitted to a skilled nursing facility;

(III) is provided home health services from a home health agency, if such services relate to

the condition or diagnosis for which such individual received inpatient hospital services from the subsection (d) hospital, and if such services are provided within an appropriate period (as determined by the Secretary); or

(IV) for discharges occurring on or after October 1, 2000, the individual receives post discharge services described in clause (iv)(I).

(iii) Subject to clause (iv), a diagnosis-related group described in this clause is—

(I) 1 of 10 diagnosis-related groups selected by the Secretary based upon a high volume of discharges classified within such groups and a disproportionate use of post discharge services described in clause (ii); and

(II) a diagnosis-related group specified by the Secretary under clause (iv)(II).

(iv) The Secretary shall include in the proposed rule published under subsection (e)(5)(A) of this section for fiscal year 2001, a description of the effect of this subparagraph. The Secretary may include in the proposed rule (and in the final rule published under paragraph (6)) for fiscal year 2001 or a subsequent fiscal year, a description of—

(I) post-discharge services not described in subclauses (I), (II), and (III) of clause (ii), the receipt of which results in a qualified discharge; and

(II) diagnosis-related groups described in clause (iii)(I) in addition to the 10 selected under such clause.

(K)(i) Effective for discharges beginning on or after October 1, 2001, the Secretary shall establish a mechanism to recognize the costs of new medical services and technologies under the payment system established under this subsection. Such mechanism shall be established after notice and opportunity for public comment (in the publications required by subsection (e)(5) of this section for a fiscal year or otherwise). Such mechanism shall be modified to meet the requirements of clause (viii).

(ii) The mechanism established pursuant to clause (i) shall—

(I) apply to a new medical service or technology if, based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges under this subsection is inadequate (applying a threshold specified by the Secretary that is the lesser of 75 percent of the standardized amount (increased to reflect the difference between cost and charges) or 75 percent of one standard deviation for the diagnosis-related group involved);

(II) provide for the collection of data with respect to the costs of a new medical service or technology described in subclause (I) for a period of not less than two years and not more than three years beginning on the date on which an inpatient hospital code is issued with respect to the service or technology;

(III) provide for additional payment to be made under this subsection with respect to discharges involving a new medical service or technology described in subclause (I) that occur during the period described in subclause (II) in an amount that adequately reflects the estimated average cost of such service or technology; and

(IV) provide that discharges involving such a service or technology that occur after the close of the period described in subclause (II) will be classified within a new or existing diagnosis-related group with a weighting factor under paragraph (4)(B) that is derived from cost data collected with respect to discharges occurring during such period.

(iii) For purposes of clause (ii)(II), the term ''inpatient hospital code'' means any code that is used with respect to inpatient hospital services for which payment may be made under this subsection and includes an alphanumeric code issued under the International Classification of Diseases, 9th Revision, Clinical Modification (''ICD–9–CM'') and its subsequent revisions.

(iv) For purposes of clause (ii)(III), the term ''additional payment'' means, with respect to a discharge for a new medical service or technology described in clause (ii)(I), an amount that exceeds the prospective payment rate otherwise applicable under this subsection to discharges involving such service or technology that would be made but for this subparagraph.

(v) The requirement under clause (ii)(III) for an additional payment may be satisfied by means of a new-technology group (described in subparagraph (L)), an add-on payment, a payment adjustment, or any other similar mechanism for increasing the amount otherwise payable with respect to a discharge under this subsection. The Secretary may not establish a separate fee schedule for such additional payment for such services and technologies, by utilizing a methodology established under subsection (a) or (h) of section 1395m of this title to determine the amount of such additional payment, or by other similar mechanisms or methodologies.

(vi) For purposes of this subparagraph and subparagraph (L), a medical service or technology will be considered a ''new medical service or technology'' if the service or technology meets criteria established by the Secretary after notice and an opportunity for public comment.

(vii) Under the mechanism under this subparagraph, the Secretary shall provide for the addition of new diagnosis and procedure codes in April 1 of each year, but the addition of such codes shall not require the Secretary to adjust the payment (or diagnosis-related group classification) under this subsection until the fiscal year that begins after such date.

(viii) The mechanism established pursuant to clause (i) shall be adjusted to provide, before publication of a proposed rule, for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of individuals entitled to benefits under part A of this subchapter as follows:

(I) The Secretary shall make public and periodically update a list of all the services and technologies for which an application for additional payment under this subparagraph is pending.

(II) The Secretary shall accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.

(III) The Secretary shall provide for a meeting at which organizations representing hospitals, physicians, such individuals, manufacturers, and any other interested party may present comments, recommendations, and data to the clinical staff of the Centers for Medicare & Medicaid Services before publication of a notice of proposed rulemaking regarding whether service or technology represents a substantial improvement.

(ix) Before establishing any add-on payment under this subparagraph with respect to a new technology, the Secretary shall seek to identify one or more diagnosis-related groups associated with such technology, based on similar clinical or anatomical characteristics and the cost of the technology. Within such groups the Secretary shall assign an eligible new technology into a diagnosis-related group where the average costs of care most closely approximate the costs of care of using the new technology. No add-on payment under this subparagraph shall be made with respect to such new technology and this clause shall not affect the application of paragraph (4)(C)(iii).

(L)(i) In establishing the mechanism under subparagraph (K), the Secretary may establish new-technology groups into which a new medical service or technology will be classified if, based on the estimated average costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges under this subsection is inadequate.

(ii) Such groups—

(I) shall not be based on the costs associated with a specific new medical service or technology; but

(II) shall, in combination with the applicable standardized amounts and the weighting factors assigned to such groups under paragraph (4)(B), reflect such cost cohorts as the Secretary determines are appropriate for all new medical services and technologies that are likely to be provided as inpatient hospital services in a fiscal year.

(iii) The methodology for classifying specific hospital discharges within a diagnosis-related group under paragraph (4)(A) or a new-technology group shall provide that a specific hospital discharge may not be classified within both a diagnosis-related group and a new-technology group.

(6) The Secretary shall provide for publication in the Federal Register, on or before the August 1 before each fiscal year (beginning with fiscal year 1984), of a description of the methodology and data used in computing the adjusted DRG prospective payment rates under this subsection, including any adjustments required under subsection (e)(1)(B) of this section.

(7) There shall be no administrative or judicial review under section 1395*oo* of this title or otherwise of—

(A) the determination of the requirement, or the proportional amount, of any adjustment effected pursuant to subsection (e)(1) of this section or the determination of the applicable percentage increase under paragraph (12)(A)(ii), and

(B) the establishment of diagnosis-related groups, of the methodology for the classification of discharges within such groups, and of the appropriate weighting factors thereof under paragraph (4).

(8)(A) In the case of any hospital which is located in an area which is, at any time after April 20, 1983, reclassified from an urban to a rural area, payments to such hospital for the first two cost reporting periods for which such reclassification is effective shall be made as follows:

(i) For the first such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal to two-thirds of the amount (if any) by which—

(I) the amount which would have been payable to such hospital for such reporting period on the basis of an urban classification, exceeds

(II) the amount payable to such hospital for such reporting period on the basis of the rural classification.

(ii) For the second such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal to one-third of the amount (if any) by which—

(I) the amount which would have been payable to such hospital for such reporting period on the basis of an urban classification, exceeds

(II) the amount payable to such hospital for such reporting period on the basis of the rural classification.

(B)(i) For purposes of this subsection, the Secretary shall treat a hospital located in a rural county adjacent to one or more urban areas as being located in the urban metropolitan statistical area to which the greatest number of workers in the county commute, if the rural county would otherwise be considered part of an urban area, under the standards for designating Metropolitan Statistical Areas (and for designating New England County Metropolitan Areas) described in clause (ii), if the commuting rates used in determining outlying counties (or, for New England, similar recognized areas) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous Metropolitan Statistical Areas (or New England County Metropolitan Areas).

(ii) The standards described in this clause for cost reporting periods beginning in a fiscal year—

(I) before fiscal year 2003, are the standards published in the Federal Register on January 3, 1980, or, at the election of the hospital with respect to fiscal years 2001 and 2002, standards so published on March 30, 1990; and

(II) after fiscal year 2002, are the standards published in the Federal Register by the Director of the Office of Management and Budget based on the most recent available decennial population data.

Subparagraphs (C) and (D) shall not apply with respect to the application of subclause (I).

(C)(i) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by treating hospitals located in a rural county or counties as being located in an urban area, or by treating hospitals located in one urban area as being located in another urban area—

(I) reduces the wage index for that urban area (as applied under this subsection) by 1 percentage point or less, the Secretary, in calculating such wage index under this subsection, shall exclude those hospitals so treated, or

(II) reduces the wage index for that urban area by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if such hospitals were located in such urban area).

(ii) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by treating hospitals located in a rural county or counties as not being located in the rural area in a State, reduces the wage index for that rural area (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection as if the hospitals so treated had not been excluded from calculation of the wage index for that rural area.

(iii) The application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10) may not result in the reduction of any county's wage index to a level below the wage index for rural areas in the State in which the county is located.

(iv) The application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or of the Secretary under paragraph (10) may not result in a reduction in an urban area's wage index if—

(I) the urban area has a wage index below the wage index for rural areas in the State in which it is located; or

(II) the urban area is located in a State that is composed of a single urban area.

(v) This subparagraph shall apply with respect to discharges occurring in a fiscal year only if the Secretary uses a method for making adjustments to the DRG prospective payment rate for area differences in hospital wage levels under paragraph (3)(E) for the fiscal year that is based on the use of Metropolitan Statistical Area classifications.

(D) The Secretary shall make a proportional adjustment in the standardized amounts determined under paragraph (3) to assure that the provisions of subparagraphs (B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10) do not result in aggregate payments under this section that are greater or less than those that would otherwise be made.

(E)(i) For purposes of this subsection, not later than 60 days after the receipt of an application (in a form and manner determined by the Secretary) from a subsection (d) hospital described in clause (ii), the Secretary shall treat the hospital as being located in the rural area (as defined in paragraph (2)(D)) of the State in which the hospital is located.

(ii) For purposes of clause (i), a subsection (d) hospital described in this clause is a subsection (d) hospital that is located in an urban area (as defined in paragraph (2)(D)) and satisfies any of the following criteria:

(I) The hospital is located in a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)).

(II) The hospital is located in an area designated by any law or regulation of such State as a rural area (or is designated by such State as a rural hospital).

(III) The hospital would qualify as a rural, regional, or national referral center under paragraph (5)(C) or as a sole community hospital under paragraph (5)(D) if the hospital were located in a rural area.

(IV) The hospital meets such other criteria as the Secretary may specify.

(9)(A) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating costs of inpatient hospital services of a subsection (d) Puerto Rico hospital for inpatient hospital discharges is equal to the sum of—

(i) the applicable Puerto Rico percentage (specified in subparagraph (E)) of the Puerto Rico adjusted DRG prospective payment rate (determined under subparagraph (B) or (C)) for such discharges,

(ii) the applicable Federal percentage (specified in subparagraph (E)) of—

(I) for discharges beginning in a fiscal year beginning on or after October 1, 1997, and before October 1, 2003, the discharge-weighted average of—

(aa) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in a large urban area,

(bb) such rate for hospitals located in other urban areas, and

(cc) such rate for hospitals located in a rural area,

for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels; and

(II) for discharges in a fiscal year beginning on or after October 1, 2003, the national DRG prospective payment rate determined under paragraph (3)(D)(iii) for hospitals located in any area for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels.

As used in this section, the term ''subsection (d) Puerto Rico hospital'' means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the 50 States.

(B) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this subchapter. Such rate shall be determined for such hospitals located in urban or rural areas within Puerto Rico, as follows:

(i) The Secretary shall determine the target amount (as defined in subsection (b)(3)(A) of this section) for the hospital for the cost reporting period beginning in fiscal year 1987 and increase such amount by prorating the applicable percentage increase (as defined in subsection (b)(3)(B) of this section) to update the amount to the midpoint in fiscal year 1988.

(ii) The Secretary shall standardize the amount determined under clause (i) for each hospital by—

(I) excluding an estimate of indirect medical education costs,

(II) adjusting for variations among hospitals by area in the average hospital wage level,

(III) adjusting for variations in case mix among hospitals, and

(IV) excluding an estimate of the additional payments to certain subsection (d) Puerto Rico hospitals to be made under subparagraph (D)(iii) (relating to disproportionate share payments).

(iii) The Secretary shall compute a discharge weighted average of the standardized amounts determined under clause (ii) for all hospitals located in an urban area and for all hospitals located in a rural area (as such terms are defined in paragraph (2)(D)).

(iv) The Secretary shall reduce the average standardized amount by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments).

(v) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

(I) the average standardized amount (computed under clause (iii) and reduced under clause (iv)) for hospitals located in an urban or rural area, respectively, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(vi) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (v) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

(C) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge after fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this subchapter. Such rate shall be determined for hospitals located in urban or rural areas within Puerto Rico as follows:

(i)(I) For discharges in a fiscal year after fiscal year 1988 and before fiscal year 2004, the Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area equal to the respective average standardized amount computed for the previous fiscal year under subparagraph (B)(iii) or under this clause, increased for fiscal year 1989 by the applicable percentage increase under subsection (b)(3)(B) of this section, and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4) of this section, and adjusted to reflect the most recent case-mix data available.

(II) For discharges occurring in a fiscal year (beginning with fiscal year 2004), the Secretary shall compute an average standardized amount for hospitals located in any area of Puerto Rico that is equal to the average standardized amount computed under subclause (I) for fiscal year 2003 for hospitals in a large urban area (or, beginning with fiscal year 2005, for all hospitals in the previous fiscal year) increased by the applicable percentage increase under subsection (b)(3)(B) of this section for the fiscal year involved.

(ii) The Secretary shall reduce each of the average standardized amounts (or for fiscal year 2004 and thereafter, the average standardized amount) by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments).

(iii) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

(I) the average standardized amount (computed under clause (i) and reduced under clause (ii)), and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(iv)(I) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (iii) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rico average hospital wage level. The second and third sentences of paragraph (3)(E)(i) shall apply to subsection (d) Puerto Rico hospitals under this clause in the same manner as they apply to subsection (d) hospitals under such

paragraph and, for purposes of this clause, any reference in such paragraph to a subsection (d) hospital is deemed a reference to a subsection (d) Puerto Rico hospital.

(II) For discharges occurring on or after October 1, 2004, the Secretary shall substitute ''62 percent'' for the proportion described in the first sentence of clause (i), unless the application of this subclause would result in lower payments to a hospital than would otherwise be made.

(D) The following provisions of paragraph (5) shall apply to subsection (d) Puerto Rico hospitals receiving payment under this paragraph in the same manner and to the extent as they apply to subsection (d) hospitals receiving payment under this subsection:

(i) Subparagraph (A) (relating to outlier payments).

(ii) Subparagraph (B) (relating to payments for indirect medical education costs), except that for this purpose the sum of the amount determined under subparagraph (A) of this paragraph and the amount paid to the hospital under clause (i) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(B)(i)(I).

(iii) Subparagraph (F) (relating to disproportionate share payments), except that for this purpose the sum described in clause (ii) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(F)(ii)(I).

(iv) Subparagraph (H) (relating to exceptions and adjustments).

(E) For purposes of subparagraph (A), for discharges occurring—

(i) on or after October 1, 1987, and before October 1, 1997, the applicable Puerto Rico percentage is 75 percent and the applicable Federal percentage is 25 percent;

(ii) on or after October 1, 1997, and before April 1, 2004, the applicable Puerto Rico percentage is 50 percent and the applicable Federal percentage is 50 percent;

(iii) on or after April 1, 2004, and before October 1, 2004, the applicable Puerto Rico percentage is 37.5 percent and the applicable Federal percentage is 62.5 percent; and

(iv) on or after October 1, 2004, the applicable Puerto Rico percentage is 25 percent and the applicable Federal percentage is 75 percent.

(10)(A) There is hereby established the Medicare Geographic Classification Review Board (hereinafter in this paragraph referred to as the ''Board'').

(B)(i) The Board shall be composed of 5 members appointed by the Secretary without regard to the provisions of title 5, governing appointments in the competitive service. Two of such members shall be representative of subsection (d) hospitals located in a rural area under paragraph (2)(D). At least 1 member shall be knowledgeable in the field of analyzing costs with respect to the provision of inpatient hospital services.

(ii) The Secretary shall make initial appointments to the Board as provided in this paragraph within 180 days after December 19, 1989.

(C)(i) The Board shall consider the application of any subsection (d) hospital requesting that the Secretary change the hospital's geographic classification for purposes of determining for a fiscal year—

(I) the hospital's average standardized amount under paragraph (2)(D), or

(II) the factor used to adjust the DRG prospective payment rate for area differences in hospital wage levels that applies to such hospital under paragraph (3)(E).

(ii) A hospital requesting a change in geographic classification under clause (i) for a fiscal year shall submit its application to the Board not later than the first day of the 13-month period ending on September 30 of the preceding fiscal year.

(iii)(I) The Board shall render a decision on an application submitted under clause (i) not later than 180 days after the deadline referred to in clause (ii).

(II) Appeal of decisions of the Board shall be subject to the provisions of section 557b[7] of title 5. The Secretary shall issue a decision on such an appeal not later than 90 days after the date on which the appeal is filed. The decision of the Secretary shall be final and shall not be subject to judicial review.

(D)(i) The Secretary shall publish guidelines to be utilized by the Board in rendering decisions on applications submitted under this paragraph, and shall include in such guidelines the following:

(I) Guidelines for comparing wages, taking into account (to the extent the Secretary determines appropriate) occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be classified.

(II) Guidelines for determining whether the county in which the hospital is located should be treated as being a part of a particular Metropolitan Statistical Area.

(III) Guidelines for considering information provided by an applicant with respect to the effects of the hospital's geographic classification on access to inpatient hospital services by medicare beneficiaries.

(IV) Guidelines for considering the appropriateness of the criteria used to define New England County Metropolitan Areas.

(ii) Notwithstanding clause (i), if the Secretary uses a method for making adjustments to the DRG prospective payment rate for area differences in hospital wage levels under paragraph (3)(E) that is not based on the use of Metropolitan Statistical Area classifications, the Secretary may revise the guidelines published under clause (i) to the extent such guidelines are used to determine the appropriateness of the geographic area in which the hospital is determined to be located for purposes of making such adjustments.

(iii) Under the guidelines published by the Secretary under clause (i), in the case of a hospital which has ever been classified by the Secretary as a rural referral center under paragraph (5)(C), the Board may not reject the application of the hospital under this paragraph on the basis of any comparison between the average hourly

[7] So in original. Probably should be section ''557(b)''.

wage of the hospital and the average hourly wage of hospitals in the area in which it is located.

(iv) The Secretary shall publish the guidelines described in clause (i) by July 1, 1990.

(v) Any decision of the Board to reclassify a subsection (d) hospital for purposes of the adjustment factor described in subparagraph (C)(i)(II) for fiscal year 2001 or any fiscal year thereafter shall be effective for a period of 3 fiscal years, except that the Secretary shall establish procedures under which a subsection (d) hospital may elect to terminate such reclassification before the end of such period.

(vi) Such guidelines shall provide that, in making decisions on applications for reclassification for the purposes described in clause (v) for fiscal year 2003 and any succeeding fiscal year, the Board shall base any comparison of the average hourly wage for the hospital with the average hourly wage for hospitals in an area on—

(I) an average of the average hourly wage amount for the hospital from the most recently published hospital wage survey data of the Secretary (as of the date on which the hospital applies for reclassification) and such amount from each of the two immediately preceding surveys; and

(II) an average of the average hourly wage amount for hospitals in such area from the most recently published hospital wage survey data of the Secretary (as of the date on which the hospital applies for reclassification) and such amount from each of the two immediately preceding surveys.

(E)(i) The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this subchapter or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this paragraph. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d) and (e) of section 405 of this title with respect to subpenas shall apply to the Board to the same extent as such provisions apply to the Secretary with respect to subchapter II of this chapter.

(ii) The Board is authorized to engage such technical assistance and to receive such information as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Board such secretarial, clerical, and other assistance as the Board may require to carry out its functions.

(F)(i) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for grade GS–18 of the General Schedule under section 5332 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Board. Each member of the Board who is an officer or employee of the United States shall serve without compensation in addition to that received for service as an officer or employee of the United States.

(ii) Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Board.

(11) ADDITIONAL PAYMENTS FOR MANAGED CARE ENROLLEES.—

(A) IN GENERAL.—For portions of cost reporting periods occurring on or after January 1, 1998, the Secretary shall provide for an additional payment amount for each applicable discharge of any subsection (d) hospital that has an approved medical residency training program.

(B) APPLICABLE DISCHARGE.—For purposes of this paragraph, the term ''applicable discharge'' means the discharge of any individual who is enrolled under a risk-sharing contract with an eligible organization under section 1395mm of this title and who is entitled to benefits under part A of this subchapter or any individual who is enrolled with a Medicare+ Choice organization under part C of this subchapter.

(C) DETERMINATION OF AMOUNT.—The amount of the payment under this paragraph with respect to any applicable discharge shall be equal to the applicable percentage (as defined in subsection (h)(3)(D)(ii) of this section) of the estimated average per discharge amount that would otherwise have been paid under paragraph (5)(B) if the individuals had not been enrolled as described in subparagraph (B).

(D) SPECIAL RULE FOR HOSPITALS UNDER REIMBURSEMENT SYSTEM.—The Secretary shall establish rules for the application of this paragraph to a hospital reimbursed under a reimbursement system authorized under section 1395f(b)(3) of this title in the same manner as it would apply to the hospital if it were not reimbursed under such section.

(12) PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS.—

(A) IN GENERAL.—In addition to any payments calculated under this section for a subsection (d) hospital, for discharges occurring during a fiscal year (beginning with fiscal year 2005), the Secretary shall provide for an additional payment amount to each low-volume hospital (as defined in subparagraph (C)(i)) for discharges occurring during that fiscal year that is equal to the applicable percentage increase (determined under subparagraph (B) for the hospital involved) in the amount paid to such hospital under this section for such discharges (determined without regard to this paragraph).

(B) APPLICABLE PERCENTAGE INCREASE.—The Secretary shall determine an applicable percentage increase for purposes of subparagraph (A) as follows:

(i) The Secretary shall determine the empirical relationship for subsection (d) hospitals between the standardized cost-per-case for such hospitals and the total number of discharges of such hospitals and the amount of the additional incremental costs (if any) that are associated with such number of discharges.

(ii) The applicable percentage increase shall be determined based upon such rela-

tionship in a manner that reflects, based upon the number of such discharges for a subsection (d) hospital, such additional incremental costs.

(iii) In no case shall the applicable percentage increase exceed 25 percent.

(C) DEFINITIONS.—

(i) LOW-VOLUME HOSPITAL.—For purposes of this paragraph, the term ''low-volume hospital'' means, for a fiscal year, a subsection (d) hospital (as defined in paragraph (1)(B)) that the Secretary determines is located more than 25 road miles from another subsection (d) hospital and has less than 800 discharges during the fiscal year.

(ii) DISCHARGE.—For purposes of subparagraph (B) and clause (i), the term ''discharge'' means an inpatient acute care discharge of an individual regardless of whether the individual is entitled to benefits under part A of this subchapter.

(13)(A) In order to recognize commuting patterns among geographic areas, the Secretary shall establish a process through application or otherwise for an increase of the wage index applied under paragraph (3)(E) for subsection (d) hospitals located in a qualifying county described in subparagraph (B) in the amount computed under subparagraph (D) based on out-migration of hospital employees who reside in that county to any higher wage index area.

(B) The Secretary shall establish criteria for a qualifying county under this subparagraph based on the out-migration referred to in subparagraph (A) and differences in the area wage indices. Under such criteria the Secretary shall, utilizing such data as the Secretary determines to be appropriate, establish—

(i) a threshold percentage, established by the Secretary, of the weighted average of the area wage index or indices for the higher wage index areas involved;

(ii) a threshold (of not less than 10 percent) for minimum out-migration to a higher wage index area or areas; and

(iii) a requirement that the average hourly wage of the hospitals in the qualifying county equals or exceeds the average hourly wage of all the hospitals in the area in which the qualifying county is located.

(C) For purposes of this paragraph, the term ''higher wage index area'' means, with respect to a county, an area with a wage index that exceeds that of the county.

(D) The increase in the wage index under subparagraph (A) for a qualifying county shall be equal to the percentage of the hospital employees residing in the qualifying county who are employed in any higher wage index area multiplied by the sum of the products, for each higher wage index area of—

(i) the difference between—

(I) the wage index for such higher wage index area, and

(II) the wage index of the qualifying county; and

(ii) the number of hospital employees residing in the qualifying county who are employed in such higher wage index area divided by the total number of hospital employees residing in the qualifying county who are employed in any higher wage index area.

(E) The process under this paragraph may be based upon the process used by the Medicare Geographic Classification Review Board under paragraph (10). As the Secretary determines to be appropriate to carry out such process, the Secretary may require hospitals (including subsection (d) hospitals and other hospitals) and critical access hospitals, as required under section 1395cc(a)(1)(T) of this title, to submit data regarding the location of residence, or the Secretary may use data from other sources.

(F) A wage index increase under this paragraph shall be effective for a period of 3 fiscal years, except that the Secretary shall establish procedures under which a subsection (d) hospital may elect to waive the application of such wage index increase.

(G) A hospital in a county that has a wage index increase under this paragraph for a period and that has not waived the application of such an increase under subparagraph (F) is not eligible for reclassification under paragraph (8) or (10) during that period.

(H) Any increase in a wage index under this paragraph for a county shall not be taken into account for purposes of—

(i) computing the wage index for portions of the wage index area (not including the county) in which the county is located; or

(ii) applying any budget neutrality adjustment with respect to such index under paragraph (8)(D).

(I) The thresholds described in subparagraph (B), data on hospital employees used under this paragraph, and any determination of the Secretary under the process described in subparagraph (E) shall be final and shall not be subject to judicial review.

(e) Proportional adjustments in applicable percentage increases

(1)(A) For cost reporting periods of hospitals beginning in fiscal year 1984 or fiscal year 1985, the Secretary shall provide for such proportional adjustment in the applicable percentage increase (otherwise applicable to the periods under subsection (b)(3)(B) of this section) as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(I) of this section for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1395cc(a)(1)(F) of this title),

are not greater or less than—

(ii) the target percentage (as defined in subsection (d)(1)(C) of this section) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before April 20, 1983 (excluding payments made under section 1395cc(a)(1)(F) of this title);

except that the adjustment made under this subparagraph shall apply only to subsection (d) hospitals and shall not apply for purposes of making computations under subsection (d)(2)(B)(ii)

of this section or subsection (d)(3)(A) of this section.

(B) For discharges occurring in fiscal year 1984 or fiscal year 1985, the Secretary shall provide under subsections (d)(2)(F) and (d)(3)(C) of this section for such equal proportional adjustment in each of the average standardized amounts otherwise computed for that fiscal year as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(II) and (d)(5) of this section for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1395cc(a)(1)(F) of this title),

are not greater or less than—

(ii) the DRG percentage (as defined in subsection (d)(1)(C) of this section) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before April 20, 1983 (excluding payments made under section 1395cc(a)(1)(F) of this title).

(C) For discharges occurring in fiscal year 1988, the Secretary shall provide for such equal proportional adjustment in each of the average standardized amounts otherwise computed under subsection (d)(3) of this section for that fiscal year as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsections (d)(1)(A)(iii), (d)(5), and (d)(9) of this section for that fiscal year for operating costs of inpatient hospital services of subsection (d) hospitals and subsection (d) Puerto Rico hospitals,

are not greater or less than—

(ii) the payment amounts that would have been payable for such services for those same hospitals for that fiscal year but for the enactment of the amendments made by section 9304 of the Omnibus Budget Reconciliation Act of 1986.

(2) Repealed. Pub. L. 105–33, title IV, § 4022(b)(1)(A)(i), Aug. 5, 1997, 111 Stat. 354.

(3) The Secretary, not later than April 1, 1987, for fiscal year 1988 and not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1989), shall report to the Congress the Secretary's initial estimate of the percentage change that the Secretary will recommend under paragraph (4) with respect to that fiscal year.

(4)(A) Taking into consideration the recommendations of the Commission, the Secretary shall recommend for each fiscal year (beginning with fiscal year 1988) an appropriate change factor for inpatient hospital services for discharges in that fiscal year which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. The appropriate change factor may be different for all large urban subsection (d) hospitals, other urban subsection (d) hospitals, urban subsection (d) Puerto Rico hospitals, rural subsection (d) hospitals, and rural subsection (d) Puerto Rico hospitals, and all other hospitals and units not paid under subsection (d) of this section, and may vary among such other hospitals and units.

(B) In addition to the recommendation made under subparagraph (A), the Secretary shall, taking into consideration the recommendations of the Commission under paragraph (2)(B), recommend for each fiscal year (beginning with fiscal year 1992) other appropriate changes in each existing reimbursement policy under this subchapter under which payments to an institution are based upon prospectively determined rates.

(5) The Secretary shall cause to have published in the Federal Register, not later than—

(A) the April 1 before each fiscal year (beginning with fiscal year 1986), the Secretary's proposed recommendations under paragraph (4) for that fiscal year for public comment, and

(B) the August 1 before such fiscal year after such consideration of public comment on the proposal as is feasible in the time available, the Secretary's final recommendations under such paragraph for that year.

The Secretary shall include in the publication referred to in subparagraph (A) for a fiscal year the report of the Commission's recommendations submitted under paragraph (3) for that fiscal year. To the extent that the Secretary's recommendations under paragraph (4) differ from the Commission's recommendations for that fiscal year, the Secretary shall include in the publication referred to in subparagraph (A) an explanation of the Secretary's grounds for not following the Commission's recommendations.

(f) Reporting of costs of hospitals receiving payments on basis of prospective rates

(1)(A) The Secretary shall maintain a system for the reporting of costs of hospitals receiving payments computed under subsection (d) of this section.

(B)(i) Subject to clause (ii), the Secretary shall place into effect a standardized electronic cost reporting format for hospitals under this subchapter.

(ii) The Secretary may delay or waive the implementation of such format in particular instances where such implementation would result in financial hardship (in particular with respect to hospitals with a small percentage of inpatients entitled to benefits under this subchapter).

(2) If the Secretary determines, based upon information supplied by a utilization and quality control peer review organization under part B of subchapter XI of this chapter, that a hospital, in order to circumvent the payment method established under subsection (b) or (d) of this section, has taken an action that results in the admission of individuals entitled to benefits under part A unnecessarily, unnecessary multiple admissions of the same such individuals, or other inappropriate medical or other practices with respect to such individuals, the Secretary may—

(A) deny payment (in whole or in part) under part A of this subchapter with respect to inpatient hospital services provided with respect to such an unnecessary admission (or subsequent admission of the same individual), or

(B) require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

(3) The provisions of subsections (c) through (g) of section 1320a–7 of this title shall apply to

determinations made under paragraph (2) in the same manner as they apply to exclusions effected under section 1320a–7(b)(13) of this title.

(g) Prospective payment for capital-related costs; return on equity capital for hospitals

(1)(A) Notwithstanding section 1395x(v) of this title, instead of any amounts that are otherwise payable under this subchapter with respect to the reasonable costs of subsection (d) hospitals and subsection (d) Puerto Rico hospitals for capital-related costs of inpatient hospital services, the Secretary shall, for hospital cost reporting periods beginning on or after October 1, 1991, provide for payments for such costs in accordance with a prospective payment system established by the Secretary. Aggregate payments made under subsection (d) of this section and this subsection during fiscal years 1992 through 1995 shall be reduced in a manner that results in a reduction (as estimated by the Secretary) in the amount of such payments equal to a 10 percent reduction in the amount of payments attributable to capital-related costs that would otherwise have been made during such fiscal year had the amount of such payments been based on reasonable costs (as defined in section 1395x(v) of this title). For discharges occurring after September 30, 1993, the Secretary shall reduce by 7.4 percent the unadjusted standard Federal capital payment rate (as described in 42 CFR 412.308(c), as in effect on August 10, 1993) and shall (for hospital cost reporting periods beginning on or after October 1, 1993) redetermine which payment methodology is applied to the hospital under such system to take into account such reduction. In addition to the reduction described in the preceding sentence, for discharges occurring on or after October 1, 1997, the Secretary shall apply the budget neutrality adjustment factor used to determine the Federal capital payment rate in effect on September 30, 1995 (as described in section 412.352 of title 42 of the Code of Federal Regulations), to (i) the unadjusted standard Federal capital payment rate (as described in section 412.308(c) of that title, as in effect on September 30, 1997), and (ii) the unadjusted hospital-specific rate (as described in section 412.328(e)(1) of that title, as in effect on September 30, 1997), and, for discharges occurring on or after October 1, 1997, and before October 1, 2002, reduce the rates described in clauses (i) and (ii) by 2.1 percent.

(B) Such system—

(i) shall provide for (I) a payment on a per discharge basis, and (II) an appropriate weighting of such payment amount as relates to the classification of the discharge;

(ii) may provide for an adjustment to take into account variations in the relative costs of capital and construction for the different types of facilities or areas in which they are located;

(iii) may provide for such exceptions (including appropriate exceptions to reflect capital obligations) as the Secretary determines to be appropriate, and

(iv) may provide for suitable adjustment to reflect hospital occupancy rate.

(C) In this paragraph, the term ''capital-related costs'' has the meaning given such term by the Secretary under subsection (a)(4) of this section as of September 30, 1987, and does not include a return on equity capital.

(2)(A) The Secretary shall provide that the amount which is allowable, with respect to reasonable costs of inpatient hospital services for which payment may be made under this subchapter, for a return on equity capital for hospitals shall, for cost reporting periods beginning on or after April 20, 1983, be equal to amounts otherwise allowable under regulations in effect on March 1, 1983, except that the rate of return to be recognized shall be equal to the applicable percentage (described in subparagraph (B)) of the average of the rates of interest, for each of the months any part of which is included in the reporting period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(B) In this paragraph, the ''applicable percentage'' is—

(i) 75 percent, for cost reporting periods beginning during fiscal year 1987,

(ii) 50 percent, for cost reporting periods beginning during fiscal year 1988,

(iii) 25 percent, for cost reporting periods beginning during fiscal year 1989, and

(iv) 0 percent, for cost reporting periods beginning on or after October 1, 1989.

(3)(A) Except as provided in subparagraph (B), in determining the amount of the payments that may be made under this subchapter with respect to all the capital-related costs of inpatient hospital services of a subsection (d) hospital and a subsection (d) Puerto Rico hospital, the Secretary shall reduce the amounts of such payments otherwise established under this subchapter by—

(i) 3.5 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1987,

(ii) 7 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1988 on or after October 1, 1987, and before January 1, 1988,

(iii) 12 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) in fiscal year 1988, occurring on or after January 1, 1988,

(iv) 15 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989, and

(v) 15 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during the period beginning January 1, 1990, and ending September 30, 1991.

(B) Subparagraph (A) shall not apply to payments with respect to the capital-related costs of any hospital that is a sole community hospital (as defined in subsection (d)(5)(D)(iii) of this section) or a critical access hospital (as defined in section 1395x(mm)(1) of this title).

(4) In determining the amount of the payments that are attributable to portions of cost reporting periods occurring during fiscal years 1998 through 2002 and that may be made under this subchapter with respect to capital-related

costs of inpatient hospital services of a hospital which is described in clause (i), (ii), or (iv) of subsection (d)(1)(B) of this section or a unit described in the matter after clause (v) of such subsection, the Secretary shall reduce the amounts of such payments otherwise determined under this subchapter by 15 percent.

(h) Payments for direct graduate medical education costs

(1) Substitution of special payment rules

Notwithstanding section 1395x(v) of this title, instead of any amounts that are otherwise payable under this subchapter with respect to the reasonable costs of hospitals for direct graduate medical education costs, the Secretary shall provide for payments for such costs in accordance with paragraph (3) of this subsection. In providing for such payments, the Secretary shall provide for an allocation of such payments between part A and part B of this subchapter (and the trust funds established under the respective parts) as reasonably reflects the proportion of direct graduate medical education costs of hospitals associated with the provision of services under each respective part.

(2) Determination of hospital-specific approved FTE resident amounts

The Secretary shall determine, for each hospital with an approved medical residency training program, an approved FTE resident amount for each cost reporting period beginning on or after July 1, 1985, as follows:

(A) Determining allowable average cost per FTE resident in a hospital's base period

The Secretary shall determine, for the hospital's cost reporting period that began during fiscal year 1984, the average amount recognized as reasonable under this subchapter for direct graduate medical education costs of the hospital for each full-time-equivalent resident.

(B) Updating to the first cost reporting period

(i) In general

The Secretary shall update each average amount determined under subparagraph (A) by the percentage increase in the consumer price index during the 12-month cost reporting period described in such subparagraph.

(ii) Exception

The Secretary shall not perform an update under clause (i) in the case of a hospital if the hospital's reporting period, described in subparagraph (A), began on or after July 1, 1984, and before October 1, 1984.

(C) Amount for first cost reporting period

For the first cost reporting period of the hospital beginning on or after July 1, 1985, the approved FTE resident amount for the hospital is equal to the amount determined under subparagraph (B) increased by 1 percent.

(D) Amount for subsequent cost reporting periods

(i) In general

Except as provided in a subsequent clause, for each subsequent cost reporting period, the approved FTE resident amount for the hospital is equal to the approved FTE resident amount determined under this paragraph for the previous cost reporting period updated, through the midpoint of the period, by projecting the estimated percentage change in the consumer price index during the 12-month period ending at that midpoint, with appropriate adjustments to reflect previous under- or over-estimations under this subparagraph in the projected percentage change in the consumer price index.

(ii) Freeze in update for fiscal years 1994 and 1995

For cost reporting periods beginning during fiscal year 1994 or fiscal year 1995, the approved FTE resident amount for a hospital shall not be updated under clause (i) for a resident who is not a primary care resident (as defined in paragraph (5)(H)) or a resident enrolled in an approved medical residency training program in obstetrics and gynecology.

(iii) Floor for locality adjusted national average per resident amount

The approved FTE resident amount for a hospital for the cost reporting period beginning during fiscal year 2001 shall not be less than 70 percent, and for the cost reporting period beginning during fiscal year 2002 shall not be less than 85 percent, of the locality adjusted national average per resident amount computed under subparagraph (E) for the hospital and period.

(iv) Adjustment in rate of increase for hospitals with FTE approved amount above 140 percent of locality adjusted national average per resident amount

(I) Freeze for fiscal years 2001 and 2002 and 2004 through 2013

For a cost reporting period beginning during fiscal year 2001 or fiscal year 2002 or during the period beginning with fiscal year 2004 and ending with fiscal year 2013, if the approved FTE resident amount for a hospital for the preceding cost reporting period exceeds 140 percent of the locality adjusted national average per resident amount computed under subparagraph (E) for that hospital and period, subject to subclause (III), the approved FTE resident amount for the period involved shall be the same as the approved FTE resident amount for the hospital for such preceding cost reporting period.

(II) 2 percent decrease in update for fiscal years 2003, 2004, and 2005

For the cost reporting period beginning during fiscal year 2003, if the approved FTE resident amount for a hos-

pital for the preceding cost reporting period exceeds 140 percent of the locality adjusted national average per resident amount computed under subparagraph (E) for that hospital and preceding period, the approved FTE resident amount for the period involved shall be updated in the manner described in subparagraph (D)(i) except that, subject to subclause (III), the consumer price index applied for a 12-month period shall be reduced (but not below zero) by 2 percentage points.

(III) No adjustment below 140 percent

In no case shall subclause (I) or (II) reduce an approved FTE resident amount for a hospital for a cost reporting period below 140 percent of the locality adjusted national average per resident amount computed under subparagraph (E) for such hospital and period.

(E) Determination of locality adjusted national average per resident amount

The Secretary shall determine a locality adjusted national average per resident amount with respect to a cost reporting period of a hospital beginning during a fiscal year as follows:

(i) Determining hospital single per resident amount

The Secretary shall compute for each hospital operating an approved graduate medical education program a single per resident amount equal to the average (weighted by number of full-time equivalent residents, as determined under paragraph (4)) of the primary care per resident amount and the non-primary care per resident amount computed under paragraph (2) for cost reporting periods ending during fiscal year 1997.

(ii) Standardizing per resident amounts

The Secretary shall compute a standardized per resident amount for each such hospital by dividing the single per resident amount computed under clause (i) by an average of the 3 geographic index values (weighted by the national average weight for each of the work, practice expense, and malpractice components) as applied under section 1395w–4(e) of this title for 1999 for the fee schedule area in which the hospital is located.

(iii) Computing of weighted average

The Secretary shall compute the average of the standardized per resident amounts computed under clause (ii) for such hospitals, with the amount for each hospital weighted by the average number of full-time equivalent residents at such hospital (as determined under paragraph (4)).

(iv) Computing national average per resident amount

The Secretary shall compute the national average per resident amount, for a hospital's cost reporting period that begins during fiscal year 2001, equal to the weighted average computed under clause (iii) increased by the estimated percentage increase in the consumer price index for all urban consumers during the period beginning with the month that represents the midpoint of the cost reporting periods described in clause (i) and ending with the midpoint of the hospital's cost reporting period that begins during fiscal year 2001.

(v) Adjusting for locality

The Secretary shall compute the product of—

(I) the national average per resident amount computed under clause (iv) for the hospital, and

(II) the geographic index value average (described and applied under clause (ii)) for the fee schedule area in which the hospital is located.

(vi) Computing locality adjusted amount

The locality adjusted national per resident amount for a hospital for—

(I) the cost reporting period beginning during fiscal year 2001 is the product computed under clause (v); or

(II) each subsequent cost reporting period is equal to the locality adjusted national per resident amount for the hospital for the previous cost reporting period (as determined under this clause) updated, through the midpoint of the period, by projecting the estimated percentage change in the consumer price index for all urban consumers during the 12-month period ending at that midpoint.

(F) Treatment of certain hospitals

In the case of a hospital that did not have an approved medical residency training program or was not participating in the program under this subchapter for a cost reporting period beginning during fiscal year 1984, the Secretary shall, for the first such period for which it has such a residency training program and is participating under this subchapter, provide for such approved FTE resident amount as the Secretary determines to be appropriate, based on approved FTE resident amounts for comparable programs.

(3) Hospital payment amount per resident

(A) In general

The payment amount, for a hospital cost reporting period beginning on or after July 1, 1985, is equal to the product of—

(i) the aggregate approved amount (as defined in subparagraph (B)) for that period, and

(ii) the hospital's medicare patient load (as defined in subparagraph (C)) for that period.

(B) Aggregate approved amount

As used in subparagraph (A), the term ''aggregate approved amount'' means, for a hospital cost reporting period, the product of—

(i) the hospital's approved FTE resident amount (determined under paragraph (2)) for that period, and

(ii) the weighted average number of full-time-equivalent residents (as determined under paragraph (4)) in the hospital's approved medical residency training programs in that period.

The Secretary shall reduce the aggregate approved amount to the extent payment is made under subsection (k) of this section for residents included in the hospital's count of full-time equivalent residents.

(C) Medicare patient load

As used in subparagraph (A), the term ''medicare patient load'' means, with respect to a hospital's cost reporting period, the fraction of the total number of inpatient-bed-days (as established by the Secretary) during the period which are attributable to patients with respect to whom payment may be made under part A of this subchapter.

(D) Payment for managed care enrollees

(i) In general

For portions of cost reporting periods occurring on or after January 1, 1998, the Secretary shall provide for an additional payment amount under this subsection for services furnished to individuals who are enrolled under a risk-sharing contract with an eligible organization under section 1395mm of this title and who are entitled to part A of this subchapter or with a Medicare+Choice organization under part C of this subchapter. The amount of such a payment shall equal, subject to clause (iii), the applicable percentage of the product of—

(I) the aggregate approved amount (as defined in subparagraph (B)) for that period; and

(II) the fraction of the total number of inpatient-bed days (as established by the Secretary) during the period which are attributable to such enrolled individuals.

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is—

(I) 20 percent in 1998,

(II) 40 percent in 1999,

(III) 60 percent in 2000,

(IV) 80 percent in 2001, and

(V) 100 percent in 2002 and subsequent years.

(iii) Proportional reduction for nursing and allied health education

The Secretary shall estimate a proportional adjustment in payments to all hospitals determined under clauses (i) and (ii) for portions of cost reporting periods beginning in a year (beginning with 2000) such that the proportional adjustment reduces payments in an amount for such year equal to the total additional payment amounts for nursing and allied health education determined under subsection (*l*) of this section for portions of cost reporting periods occurring in that year.

(iv) Special rule for hospitals under reimbursement system

The Secretary shall establish rules for the application of this subparagraph to a hospital reimbursed under a reimbursement system authorized under section 1395f(b)(3) of this title in the same manner as it would apply to the hospital if it were not reimbursed under such section.

(4) Determination of full-time-equivalent residents

(A) Rules

The Secretary shall establish rules consistent with this paragraph for the computation of the number of full-time-equivalent residents in an approved medical residency training program.

(B) Adjustment for part-year or part-time residents

Such rules shall take into account individuals who serve as residents for only a portion of a period with a hospital or simultaneously with more than one hospital.

(C) Weighting factors for certain residents

Subject to subparagraph (D), such rules shall provide, in calculating the number of full-time-equivalent residents in an approved residency program—

(i) before July 1, 1986, for each resident the weighting factor is 1.00,

(ii) on or after July 1, 1986, for a resident who is in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is 1.00,

(iii) on or after July 1, 1986, and before July 1, 1987, for a resident who is not in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is .75, and

(iv) on or after July 1, 1987, for a resident who is not in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is .50.

(D) Foreign medical graduates required to pass FMGEMS examination

(i) In general

Except as provided in clause (ii), such rules shall provide that, in the case of an individual who is a foreign medical graduate (as defined in paragraph (5)(D)), the individual shall not be counted as a resident on or after July 1, 1986, unless—

(I) the individual has passed the FMGEMS examination (as defined in paragraph (5)(E)), or

(II) the individual has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates.

(ii) Transition for current FMGS

On or after July 1, 1986, but before July 1, 1987, in the case of a foreign medical graduate who—

(I) has served as a resident before July 1, 1986, and is serving as a resident after that date, but

(II) has not passed the FMGEMS examination or a previous examination of the Educational Commission for Foreign Medical Graduates before July 1, 1986,

the individual shall be counted as a resident at a rate equal to one-half of the rate at which the individual would otherwise be counted.

(E) Counting time spent in outpatient settings

Such rules shall provide that only time spent in activities relating to patient care shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting.

(F) Limitation on number of residents in allopathic and osteopathic medicine

(i) In general

Such rules shall provide that for purposes of a cost reporting period beginning on or after October 1, 1997, subject to paragraph (7), the total number of full-time equivalent residents before application of weighting factors (as determined under this paragraph) with respect to a hospital's approved medical residency training program in the fields of allopathic medicine and osteopathic medicine may not exceed the number (or, 130 percent of such number in the case of a hospital located in a rural area) of such full-time equivalent residents for the hospital's most recent cost reporting period ending on or before December 31, 1996.

(ii) Counting primary care residents on certain approved leaves of absence in base year FTE count

(I) In general

In determining the number of such full-time equivalent residents for a hospital's most recent cost reporting period ending on or before December 31, 1996, for purposes of clause (i), the Secretary shall count an individual to the extent that the individual would have been counted as a primary care resident for such period but for the fact that the individual, as determined by the Secretary, was on maternity or disability leave or a similar approved leave of absence.

(II) Limitation to 3 FTE residents for any hospital

The total number of individuals counted under subclause (I) for a hospital may not exceed 3 full-time equivalent residents.

(G) Counting interns and residents for FY 1998 and subsequent years

(i) In general

For cost reporting periods beginning during fiscal years beginning on or after October 1, 1997, subject to the limit described in subparagraph (F), the total number of full-time equivalent residents for determining a hospital's graduate medical education payment shall equal the average of the actual full-time equivalent resident counts for the cost reporting period and the preceding two cost reporting periods.

(ii) Adjustment for short periods

If any cost reporting period beginning on or after October 1, 1997, is not equal to twelve months, the Secretary shall make appropriate modifications to ensure that the average full-time equivalent resident counts pursuant to clause (i) are based on the equivalent of full twelve-month cost reporting periods.

(iii) Transition rule for 1998

In the case of a hospital's first cost reporting period beginning on or after October 1, 1997, clause (i) shall be applied by using the average for such period and the preceding cost reporting period.

(H) Special rules for application of subparagraphs (F) and (G)

(i) New facilities

The Secretary shall, consistent with the principles of subparagraphs (F) and (G) and subject to paragraph (7), prescribe rules for the application of such subparagraphs in the case of medical residency training programs established on or after January 1, 1995. In promulgating such rules for purposes of subparagraph (F), the Secretary shall give special consideration to facilities that meet the needs of underserved rural areas.

(ii) Aggregation

The Secretary may prescribe rules which allow institutions which are members of the same affiliated group (as defined by the Secretary) to elect to apply the limitation of subparagraph (F) on an aggregate basis.

(iii) Data collection

The Secretary may require any entity that operates a medical residency training program and to which subparagraphs (F) and (G) apply to submit to the Secretary such additional information as the Secretary considers necessary to carry out such subparagraphs.

(iv) Nonrural hospitals operating training programs in rural areas

In the case of a hospital that is not located in a rural area but establishes separately accredited approved medical residency training programs (or rural tracks) in an[8] rural area or has an accredited training program with an integrated rural track, the Secretary shall adjust the limitation under subparagraph (F) in an appropriate manner insofar as it applies to such programs in such rural areas in order to encourage the training of physicians in rural areas.

(5) Definitions and special rules

As used in this subsection:

[8] So in original. Probably should be ''a''.

(A) Approved medical residency training program

The term ''approved medical residency training program'' means a residency or other postgraduate medical training program participation in which may be counted toward certification in a specialty or subspecialty and includes formal postgraduate training programs in geriatric medicine approved by the Secretary.

(B) Consumer price index

The term ''consumer price index'' refers to the Consumer Price Index for All Urban Consumers (United States city average), as published by the Secretary of Commerce.

(C) Direct graduate medical education costs

The term ''direct graduate medical education costs'' means direct costs of approved educational activities for approved medical residency training programs.

(D) Foreign medical graduate

The term ''foreign medical graduate'' means a resident who is not a graduate of—

(i) a school of medicine accredited by the Liaison Committee on Medical Education of the American Medical Association and the Association of American Medical Colleges (or approved by such Committee as meeting the standards necessary for such accreditation),

(ii) a school of osteopathy accredited by the American Osteopathic Association, or approved by such Association as meeting the standards necessary for such accreditation, or

(iii) a school of dentistry or podiatry which is accredited (or meets the standards for accreditation) by an organization recognized by the Secretary for such purpose.

(E) FMGEMS examination

The term ''FMGEMS examination'' means parts I and II of the Foreign Medical Graduate Examination in the Medical Sciences or any successor examination recognized by the Secretary for this purpose.

(F) Initial residency period

The term ''initial residency period'' means the period of board eligibility, except that—

(i) except as provided in clause (ii), in no case shall the initial period of residency exceed an aggregate period of formal training of more than five years for any individual, and

(ii) a period, of not more than two years, during which an individual is in a geriatric residency or fellowship program or a preventive medicine residency or fellowship program which meets such criteria as the Secretary may establish, shall be treated as part of the initial residency period, but shall not be counted against any limitation on the initial residency period.

Subject to subparagraph (G)(v), the initial residency period shall be determined, with respect to a resident, as of the time the resident enters the residency training program.

(G) Period of board eligibility

(i) General rule

Subject to clauses (ii), (iii), (iv), and (v), the term ''period of board eligibility'' means, for a resident, the minimum number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty for which the resident is training.

(ii) Application of 1985–1986 directory

Except as provided in clause (iii), the period of board eligibility shall be such period specified in the 1985–1986 Directory of Residency Training Programs published by the Accreditation Council on Graduate Medical Education.

(iii) Changes in period of board eligibility

On or after July 1, 1989, if the Accreditation Council on Graduate Medical Education, in its Directory of Residency Training Programs—

(I) increases the minimum number of years of formal training necessary to satisfy the requirements for a specialty, above the period specified in its 1985–1986 Directory, the Secretary may increase the period of board eligibility for that specialty, but not to exceed the period of board eligibility specified in that later Directory, or

(II) decreases the minimum number of years of formal training necessary to satisfy the requirements for a specialty, below the period specified in its 1985–1986 Directory, the Secretary may decrease the period of board eligibility for that specialty, but not below the period of board eligibility specified in that later Directory.

(iv) Special rule for certain primary care combined residency programs

(I) In the case of a resident enrolled in a combined medical residency training program in which all of the individual programs (that are combined) are for training a primary care resident (as defined in subparagraph (H)), the period of board eligibility shall be the minimum number of years of formal training required to satisfy the requirements for initial board eligibility in the longest of the individual programs plus one additional year.

(II) A resident enrolled in a combined medical residency training program that includes an obstetrics and gynecology program shall qualify for the period of board eligibility under subclause (I) if the other programs such resident combines with such obstetrics and gynecology program are for training a primary care resident.

(v) Child neurology training programs

In the case of a resident enrolled in a child neurology residency training program, the period of board eligibility and the initial residency period shall be the period of board eligibility for pediatrics plus 2 years.

(H) Primary care resident

The term ''primary care resident'' means a resident enrolled in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine, or osteopathic general practice.

(I) Resident

The term ''resident'' includes an intern or other participant in an approved medical residency training program.

(J) Adjustments for certain family practice residency programs

(i) In general

In the case of an approved medical residency training program (meeting the requirements of clause (ii)) of a hospital which received funds from the United States, a State, or a political subdivision of a State or an instrumentality of such a State or political subdivision (other than payments under this subchapter or a State plan under subchapter XIX of this chapter) for the program during the cost reporting period that began during fiscal year 1984, the Secretary shall—

(I) provide for an average amount under paragraph (2)(A) that takes into account the Secretary's estimate of the amount that would have been recognized as reasonable under this subchapter if the hospital had not received such funds, and

(II) reduce the payment amount otherwise provided under this subsection in an amount equal to the proportion of such program funds received during the cost reporting period involved that is allocable to this subchapter.

(ii) Additional requirements

A hospital's approved medical residency program meets the requirements of this clause if—

(I) the program is limited to training for family and community medicine;

(II) the program is the only approved medical residency program of the hospital; and

(III) the average amount determined under paragraph (2)(A) for the hospital (as determined without regard to the increase in such amount described in clause (i)(I)) does not exceed $10,000.

(6) Incentive payment under plans for voluntary reduction in number of residents

(A) In general

In the case of a voluntary residency reduction plan for which an application is approved under subparagraph (B), subject to subparagraph (F), each hospital which is part of the qualifying entity submitting the plan shall be paid an applicable hold harmless percentage (as specified in subparagraph (E)) of the sum of—

(i) the amount (if any) by which—

(I) the amount of payment which would have been made under this subsection if there had been a 5-percent reduction in the number of full-time equivalent residents in the approved medical education training programs of the hospital as of June 30, 1997, exceeds

(II) the amount of payment which is made under this subsection, taking into account the reduction in such number effected under the reduction plan; and

(ii) the amount of the reduction in payment under subsection (d)(5)(B) of this section for the hospital that is attributable to the reduction in number of residents effected under the plan below 95 percent of the number of full-time equivalent residents in such programs of the hospital as of June 30, 1997.

The determination of the amounts under clauses (i) and (ii) for any year shall be made on the basis of the provisions of this subchapter in effect on the application deadline date for the first calendar year to which the reduction plan applies.

(B) Approval of plan applications

The Secretary may not approve the application of an qualifying entity unless—

(i) the application is submitted in a form and manner specified by the Secretary and by not later than November 1, 1999,[9]

(ii) the application provides for the operation of a plan for the reduction in the number of full-time equivalent residents in the approved medical residency training programs of the entity consistent with the requirements of subparagraph (D);

(iii) the entity elects in the application the period of residency training years (not greater than 5) over which the reduction will occur;

(iv) the entity will not reduce the proportion of its residents in primary care (to the total number of residents) below such proportion as in effect as of the applicable time described in subparagraph (D)(v); and

(v) the Secretary determines that the application and the entity and such plan meet such other requirements as the Secretary specifies in regulations.

(C) Qualifying entity

For purposes of this paragraph, any of the following may be a qualifying entity:

(i) Individual hospitals operating one or more approved medical residency training programs.

(ii) Two or more hospitals that operate such programs and apply for treatment under this paragraph as a single qualifying entity.

(iii) A qualifying consortium (as described in section 4628 of the Balanced Budget Act of 1997).

(D) Residency reduction requirements

(i) Individual hospital applicants

In the case of a qualifying entity described in subparagraph (C)(i), the number of full-time equivalent residents in all the

[9] So in original. The comma probably should be a semicolon.

approved medical residency training programs operated by or through the entity shall be reduced as follows:

(I) If the base number of residents exceeds 750 residents, by a number equal to at least 20 percent of such base number.

(II) Subject to subclause (IV), if the base number of residents exceeds 600 but is less than 750 residents, by 150 residents.

(III) Subject to subclause (IV), if the base number of residents does not exceed 600 residents, by a number equal to at least 25 percent of such base number.

(IV) In the case of a qualifying entity which is described in clause (v) and which elects treatment under this subclause, by a number equal to at least 20 percent of the base number.

(ii) Joint applicants

In the case of a qualifying entity described in subparagraph (C)(ii), the number of full-time equivalent residents in the aggregate for all the approved medical residency training programs operated by or through the entity shall be reduced as follows:

(I) Subject to subclause (II), by a number equal to at least 25 percent of the base number.

(II) In the case of such a qualifying entity which is described in clause (v) and which elects treatment under this subclause, by a number equal to at least 20 percent of the base number.

(iii) Consortia

In the case of a qualifying entity described in subparagraph (C)(iii), the number of full-time equivalent residents in the aggregate for all the approved medical residency training programs operated by or through the entity shall be reduced by a number equal to at least 20 percent of the base number.

(iv) Manner of reduction

The reductions specified under the preceding provisions of this subparagraph for a qualifying entity shall be below the base number of residents for that entity and shall be fully effective not later than the 5th residency training year in which the application under subparagraph (B) is effective.

(v) Entities providing assurance of increase in primary care residents

An entity is described in this clause if—

(I) the base number of residents for the entity is less than 750 or the entity is described in subparagraph (C)(ii); and

(II) the entity represents in its application under subparagraph (B) that it will increase the number of full-time equivalent residents in primary care by at least 20 percent (from such number included in the base number of residents) by not later than the 5th residency training year in which the application under subparagraph (B) is effective.

If a qualifying entity fails to comply with the representation described in subclause (II) by the end of such 5th residency training year, the entity shall be subject to repayment of all amounts paid under this paragraph, in accordance with procedures established to carry out subparagraph (F).

(vi) "Base number of residents" defined

For purposes of this paragraph, the term ''base number of residents'' means, with respect to a qualifying entity (or its participating hospitals) operating approved medical residency training programs, the number of full-time equivalent residents in such programs (before application of weighting factors) of the entity as of the most recent residency training year ending before June 30, 1997, or, if less, for any subsequent residency training year that ends before the date the entity makes application under this paragraph.

(E) Applicable hold harmless percentage

For purposes of subparagraph (A), the ''applicable hold harmless percentage'' for the—

(i) first and second residency training years in which the reduction plan is in effect, 100 percent,

(ii) third such year, 75 percent,

(iii) fourth such year, 50 percent, and

(iv) fifth such year, 25 percent.

(F) Penalty for noncompliance

(i) In general

No payment may be made under this paragraph to a hospital for a residency training year if the hospital has failed to reduce the number of full-time equivalent residents (in the manner required under subparagraph (D)) to the number agreed to by the Secretary and the qualifying entity in approving the application under this paragraph with respect to such year.

(ii) Increase in number of residents in subsequent years

If payments are made under this paragraph to a hospital, and if the hospital increases the number of full-time equivalent residents above the number of such residents permitted under the reduction plan as of the completion of the plan, then, as specified by the Secretary, the entity is liable for repayment to the Secretary of the total amounts paid under this paragraph to the entity.

(G) Treatment of rotating residents

In applying this paragraph, the Secretary shall establish rules regarding the counting of residents who are assigned to institutions the medical residency training programs in which are not covered under approved applications under this paragraph.

(7) Redistribution of unused resident positions

(A) Reduction in limit based on unused positions

(i) Programs subject to reduction

(I) In general

Except as provided in subclause (II), if a hospital's reference resident level

(specified in clause (ii)) is less than the otherwise applicable resident limit (as defined in subparagraph (C)(ii)), effective for portions of cost reporting periods occurring on or after July 1, 2005, the otherwise applicable resident limit shall be reduced by 75 percent of the difference between such otherwise applicable resident limit and such reference resident level.

(II) Exception for small rural hospitals

This subparagraph shall not apply to a hospital located in a rural area (as defined in subsection (d)(2)(D)(ii) of this section) with fewer than 250 acute care inpatient beds.

(ii) Reference resident level

(I) In general

Except as otherwise provided in subclauses (II) and (III), the reference resident level specified in this clause for a hospital is the resident level for the most recent cost reporting period of the hospital ending on or before September 30, 2002, for which a cost report has been settled (or, if not, submitted (subject to audit)), as determined by the Secretary.

(II) Use of most recent accounting period to recognize expansion of existing programs

If a hospital submits a timely request to increase its resident level due to an expansion of an existing residency training program that is not reflected on the most recent settled cost report, after audit and subject to the discretion of the Secretary, the reference resident level for such hospital is the resident level for the cost reporting period that includes July 1, 2003, as determined by the Secretary.

(III) Expansions under newly approved programs

Upon the timely request of a hospital, the Secretary shall adjust the reference resident level specified under subclause (I) or (II) to include the number of medical residents that were approved in an application for a medical residency training program that was approved by an appropriate accrediting organization (as determined by the Secretary) before January 1, 2002, but which was not in operation during the cost reporting period used under subclause (I) or (II), as the case may be, as determined by the Secretary.

(iii) Affiliation

The provisions of clause (i) shall be applied to hospitals which are members of the same affiliated group (as defined by the Secretary under paragraph (4)(H)(ii)) as of July 1, 2003.

(B) Redistribution

(i) In general

The Secretary is authorized to increase the otherwise applicable resident limit for each qualifying hospital that submits a timely application under this subparagraph by such number as the Secretary may approve for portions of cost reporting periods occurring on or after July 1, 2005. The aggregate number of increases in the otherwise applicable resident limits under this subparagraph may not exceed the Secretary's estimate of the aggregate reduction in such limits attributable to subparagraph (A).

(ii) Considerations in redistribution

In determining for which hospitals the increase in the otherwise applicable resident limit is provided under clause (i), the Secretary shall take into account the demonstrated likelihood of the hospital filling the positions within the first 3 cost reporting periods beginning on or after July 1, 2005, made available under this subparagraph, as determined by the Secretary.

(iii) Priority for rural and small urban areas

In determining for which hospitals and residency training programs an increase in the otherwise applicable resident limit is provided under clause (i), the Secretary shall distribute the increase to programs of hospitals located in the following priority order:

(I) First, to hospitals located in rural areas (as defined in subsection (d)(2)(D)(ii) of this section).

(II) Second, to hospitals located in urban areas that are not large urban areas (as defined for purposes of subsection (d) of this section).

(III) Third, to other hospitals in a State if the residency training program involved is in a specialty for which there are not other residency training programs in the State.

Increases of residency limits within the same priority category under this clause shall be determined by the Secretary.

(iv) Limitation

In no case shall more than 25 full-time equivalent additional residency positions be made available under this subparagraph with respect to any hospital.

(v) Application of locality adjusted national average per resident amount

With respect to additional residency positions in a hospital attributable to the increase provided under this subparagraph, notwithstanding any other provision of this subsection, the approved FTE resident amount is deemed to be equal to the locality adjusted national average per resident amount computed under paragraph (4)(E) for that hospital.

(vi) Construction

Nothing in this subparagraph shall be construed as permitting the redistribution of reductions in residency positions attributable to voluntary reduction programs under paragraph (6), under a demonstra-

tion project approved as of October 31, 2003, under the authority of section 402 of Public Law 90–248, or as affecting the ability of a hospital to establish new medical residency training programs under paragraph (4)(H).

(C) Resident level and limit defined

In this paragraph:

(i) Resident level

The term ''resident level'' means, with respect to a hospital, the total number of full-time equivalent residents, before the application of weighting factors (as determined under paragraph (4)), in the fields of allopathic and osteopathic medicine for the hospital.

(ii) Otherwise applicable resident limit

The term ''otherwise applicable resident limit'' means, with respect to a hospital, the limit otherwise applicable under subparagraphs (F)(i) and (H) of paragraph (4) on the resident level for the hospital determined without regard to this paragraph.

(D) Judicial review

There shall be no administrative or judicial review under section 1395ff, 1395*oo* of this title, or otherwise, with respect to determinations made under this paragraph.

(i) Avoiding duplicative payments to hospitals participating in rural demonstration programs

The Secretary shall reduce any payment amounts otherwise determined under this section to the extent necessary to avoid duplication of any payment made under section 4005(e) of the Omnibus Budget Reconciliation Act of 1987.

(j) Prospective payment for inpatient rehabilitation services

(1) Payment during transition period

(A) In general

Notwithstanding section 1395f(b) of this title, but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating and capital costs of inpatient hospital services of a rehabilitation hospital or a rehabilitation unit (in this subsection referred to as a ''rehabilitation facility''), other than a facility making an election under subparagraph (F) in a cost reporting period beginning on or after October 1, 2000, and before October 1, 2002, is equal to the sum of—

(i) the TEFRA percentage (as defined in subparagraph (C)) of the amount that would have been paid under part A of this subchapter with respect to such costs if this subsection did not apply, and

(ii) the prospective payment percentage (as defined in subparagraph (C)) of the product of (I) the per unit payment rate established under this subsection for the fiscal year in which the payment unit of service occurs, and (II) the number of such payment units occurring in the cost reporting period.

(B) Fully implemented system

Notwithstanding section 1395f(b) of this title, but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating and capital costs of inpatient hospital services of a rehabilitation facility for a payment unit in a cost reporting period beginning on or after October 1, 2002, or, in the case of a facility making an election under subparagraph (F), for any cost reporting period described in such subparagraph, is equal to the per unit payment rate established under this subsection for the fiscal year in which the payment unit of service occurs.

(C) TEFRA and prospective payment percentages specified

For purposes of subparagraph (A), for a cost reporting period beginning—

(i) on or after October 1, 2000, and before October 1, 2001, the ''TEFRA percentage'' is 66⅔ percent and the ''prospective payment percentage'' is 33⅓ percent; and

(ii) on or after October 1, 2001, and before October 1, 2002, the ''TEFRA percentage'' is 33⅓ percent and the ''prospective payment percentage'' is 66⅔ percent.

(D) Payment unit

For purposes of this subsection, the term ''payment unit'' means a discharge.

(E) Construction relating to transfer authority

Nothing in this subsection shall be construed as preventing the Secretary from providing for an adjustment to payments to take into account the early transfer of a patient from a rehabilitation facility to another site of care.

(F) Election to apply full prospective payment system

A rehabilitation facility may elect, not later than 30 days before its first cost reporting period for which the payment methodology under this subsection applies to the facility, to have payment made to the facility under this subsection under the provisions of subparagraph (B) (rather than subparagraph (A)) for each cost reporting period to which such payment methodology applies.

(2) Patient case mix groups

(A) Establishment

The Secretary shall establish—

(i) classes of patient discharges of rehabilitation facilities by functional-related groups (each in this subsection referred to as a ''case mix group''), based on impairment, age, comorbidities, and functional capability of the patient and such other factors as the Secretary deems appropriate to improve the explanatory power of functional independence measure-function related groups; and

(ii) a method of classifying specific patients in rehabilitation facilities within these groups.

(B) Weighting factors

For each case mix group the Secretary shall assign an appropriate weighting which

reflects the relative facility resources used with respect to patients classified within that group compared to patients classified within other groups.

(C) Adjustments for case mix

(i) In general

The Secretary shall from time to time adjust the classifications and weighting factors established under this paragraph as appropriate to reflect changes in treatment patterns, technology, case mix, number of payment units for which payment is made under this subchapter, and other factors which may affect the relative use of resources. Such adjustments shall be made in a manner so that changes in aggregate payments under the classification system are a result of real changes and are not a result of changes in coding that are unrelated to real changes in case mix.

(ii) Adjustment

Insofar as the Secretary determines that such adjustments for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under the classification system during the fiscal year that are a result of changes in the coding or classification of patients that do not reflect real changes in case mix, the Secretary shall adjust the per payment unit payment rate for subsequent years so as to eliminate the effect of such coding or classification changes.

(D) Data collection

The Secretary is authorized to require rehabilitation facilities that provide inpatient hospital services to submit such data as the Secretary deems necessary to establish and administer the prospective payment system under this subsection.

(3) Payment rate

(A) In general

The Secretary shall determine a prospective payment rate for each payment unit for which such rehabilitation facility is entitled to receive payment under this subchapter. Subject to subparagraph (B), such rate for payment units occurring during a fiscal year shall be based on the average payment per payment unit under this subchapter for inpatient operating and capital costs of rehabilitation facilities using the most recent data available (as estimated by the Secretary as of the date of establishment of the system) adjusted—

(i) by updating such per-payment-unit amount to the fiscal year involved by the weighted average of the applicable percentage increases provided under subsection (b)(3)(B)(ii) of this section (for cost reporting periods beginning during the fiscal year) covering the period from the midpoint of the period for such data through the midpoint of fiscal year 2000 and by an increase factor (described in subparagraph (C)) specified by the Secretary for subsequent fiscal years up to the fiscal year involved;

(ii) by reducing such rates by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on prospective payment amounts which are additional payments described in paragraph (4) (relating to outlier and related payments);

(iii) for variations among rehabilitation facilities by area under paragraph (6);

(iv) by the weighting factors established under paragraph (2)(B); and

(v) by such other factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities.

(B) Budget neutral rates

The Secretary shall establish the prospective payment amounts under this subsection for payment units during fiscal years 2001 and 2002 at levels such that, in the Secretary's estimation, the amount of total payments under this subsection for such fiscal years (including any payment adjustments pursuant to paragraphs (4) and (6) but not taking into account any payment adjustment resulting from an election permitted under paragraph (1)(F)) shall be equal to 98 percent for fiscal year 2001 and 100 percent for fiscal year 2002 of the amount of payments that would have been made under this subchapter during the fiscal years for operating and capital costs of rehabilitation facilities had this subsection not been enacted. In establishing such payment amounts, the Secretary shall consider the effects of the prospective payment system established under this subsection on the total number of payment units from rehabilitation facilities and other factors described in subparagraph (A).

(C) Increase factor

For purposes of this subsection for payment units in each fiscal year (beginning with fiscal year 2001), the Secretary shall establish an increase factor. Such factor shall be based on an appropriate percentage increase in a market basket of goods and services comprising services for which payment is made under this subsection, which may be the market basket percentage increase described in subsection (b)(3)(B)(iii) of this section.

(4) Outlier and special payments

(A) Outliers

(i) In general

The Secretary may provide for an additional payment to a rehabilitation facility for patients in a case mix group, based upon the patient being classified as an outlier based on an unusual length of stay, costs, or other factors specified by the Secretary.

(ii) Payment based on marginal cost of care

The amount of such additional payment under clause (i) shall be determined by the Secretary and shall approximate the marginal cost of care beyond the cutoff point applicable under clause (i).

(iii) Total payments

The total amount of the additional payments made under this subparagraph for payment units in a fiscal year may not exceed 5 percent of the total payments projected or estimated to be made based on prospective payment rates for payment units in that year.

(B) Adjustment

The Secretary may provide for such adjustments to the payment amounts under this subsection as the Secretary deems appropriate to take into account the unique circumstances of rehabilitation facilities located in Alaska and Hawaii.

(5) Publication

The Secretary shall provide for publication in the Federal Register, on or before August 1 before each fiscal year (beginning with fiscal year 2001), of the classification and weighting factors for case mix groups under paragraph (2) for such fiscal year and a description of the methodology and data used in computing the prospective payment rates under this subsection for that fiscal year.

(6) Area wage adjustment

The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs which are attributable to wages and wage-related costs, of the prospective payment rates computed under paragraph (3) for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. Not later than October 1, 2001 (and at least every 36 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of information available to the Secretary (and updated as appropriate) of the wages and wage-related costs incurred in furnishing rehabilitation services. Any adjustments or updates made under this paragraph for a fiscal year shall be made in a manner that assures that the aggregated payments under this subsection in the fiscal year are not greater or less than those that would have been made in the year without such adjustment.

(7) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, 1395*oo* of this title, or otherwise of the establishment of—

(A) case mix groups, of the methodology for the classification of patients within such groups, and of the appropriate weighting factors thereof under paragraph (2),

(B) the prospective payment rates under paragraph (3),

(C) outlier and special payments under paragraph (4), and

(D) area wage adjustments under paragraph (6).

(k) Payment to nonhospital providers

(1) In general

For cost reporting periods beginning on or after October 1, 1997, the Secretary may establish rules for payment to qualified nonhospital providers for their direct costs of medical education, if those costs are incurred in the operation of an approved medical residency training program described in subsection (h) of this section. Such rules shall specify the amounts, form, and manner in which such payments will be made and the portion of such payments that will be made from each of the trust funds under this subchapter.

(2) Qualified nonhospital providers

For purposes of this subsection, the term ''qualified nonhospital providers'' means—

(A) a Federally[10] qualified health center, as defined in section 1395x(aa)(4) of this title;

(B) a rural health clinic, as defined in section 1395x(aa)(2) of this title;

(C) Medicare+Choice organizations; and

(D) such other providers (other than hospitals) as the Secretary determines to be appropriate.

***(l)* Payment for nursing and allied health education for managed care enrollees**

(1) In general

For portions of cost reporting periods occurring in a year (beginning with 2000), the Secretary shall provide for an additional payment amount for any hospital that receives payments for the costs of approved educational activities for nurse and allied health professional training under section 1395x(v)(1) of this title.

(2) Payment amount

The additional payment amount under this subsection for each hospital for portions of cost reporting periods occurring in a year shall be an amount specified by the Secretary in a manner consistent with the following:

(A) Determination of managed care enrollee payment ratio for graduate medical education payments

The Secretary shall estimate the ratio of payments for all hospitals for portions of cost reporting periods occurring in the year under subsection (h)(3)(D) of this section to total direct graduate medical education payments estimated for such portions of periods under subsection (h)(3) of this section.

(B) Application to fee-for-service nursing and allied health education payments

Such ratio shall be applied to the Secretary's estimate of total payments for nursing and allied health education determined under section 1395x(v) of this title for portions of cost reporting periods occurring in the year to determine a total amount of additional payments for nursing and allied health education to be distributed to hospitals under this subsection for portions of cost reporting periods occurring in the year; except that in no case shall such total amount exceed $60,000,000 in any year.

(C) Application to hospital

The amount of payment under this subsection to a hospital for portions of cost re-

[10] So in original. Probably should not be capitalized.

porting periods occurring in a year is equal to the total amount of payments determined under subparagraph (B) for the year multiplied by the ratio of—

(i) the product of (I) the Secretary's estimate of the ratio of the amount of payments made under section 1395x(v) of this title to the hospital for nursing and allied health education activities for the hospital's cost reporting period ending in the second preceding fiscal year, to the hospital's total inpatient days for such period, and (II) the total number of inpatient days (as established by the Secretary) for such period which are attributable to services furnished to individuals who are enrolled under a risk sharing contract with an eligible organization under section 1395mm of this title and who are entitled to benefits under part A of this subchapter or who are enrolled with a Medicare+Choice organization under part C of this subchapter; to

(ii) the sum of the products determined under clause (i) for such cost reporting periods.

(Aug. 14, 1935, ch. 531, title XVIII, § 1886, as added and amended Pub. L. 97–248, title I, §§ 101(a)(1), 110, Sept. 3, 1982, 96 Stat. 331, 339; Pub. L. 97–448, title III, § 309(b)(13)–(15), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–21, title VI, § 601(a)(1), (2), (b), (c), (d)(2), (e), Apr. 20, 1983, 97 Stat. 149, 150, 152; Pub. L. 98–369, div. B, title III, §§ 2307(b)(1), 2310(a), 2311(a)–(c), 2312(a), (b), 2313(a), (b), (d), 2315(a)–(c), 2354(b)(42)–(44), July 18, 1984, 98 Stat. 1073, 1075–1080, 1102; Pub. L. 98–617, § 3(b)(9), Nov. 8, 1984, 98 Stat. 3296; Pub. L. 99–272, title IX, §§ 9101(b), (c), 9102(a)–(c), 9104(a), (b), 9105(a)–(c), 9106(a), 9107(a), 9109(a), 9111(a), 9127(a), 9202(a), Apr. 7, 1986, 100 Stat. 153–155, 157–162, 170, 171; Pub. L. 99–349, title II, § 206, July 2, 1986, 100 Stat. 749; Pub. L. 99–509, title IX, §§ 9302(a)(1), (2), (b)(1), (c), (d)(1)(A), (e), 9303, 9304(a)–(c), 9306(a)–(c), 9307(c)(1), 9314(a), 9320(g), 9321(e)(2), Oct. 21, 1986, 100 Stat. 1982–1985, 1988, 1995, 2005, 2015, 2018; Pub. L. 99–514, § 2, title XVIII, § 1895(b)(1)(A)–(C), (2)(A)–(C), (3), (9), Oct. 22, 1986, 100 Stat. 2095, 2931–2933; Pub. L. 100–93, § 8(c)(4), Aug. 18, 1987, 101 Stat. 693; Pub. L. 100–203, title IV, §§ 4002(a)–(f)(1), 4003(a)–(c), 4004(a), 4005(a)(1), (c)(1), (d)(1)(A), 4006(a)–(b)(2), 4007(b)(1), 4009(d)(1), (j)(1)–(6)(B), 4083(b)(1), Dec. 22, 1987, 101 Stat. 1330–42 to 1330–44, 1330–46, 1330–47, 1330–49, 1330–52, 1330–53, 1330–57 to 1330–59, 1330–129, as amended Pub. L. 100–360, title IV, § 411(b)(1)(E), (3), (4)(C)(i), (5)(B), (6)(B), (8)(B), July 1, 1988, 102 Stat. 769, 770, 772; Pub. L. 100–360, title IV, § 411(b)(1)(A)–(D), (F)–(H)(i), (4)(A), (B), (5)(A), July 1, 1988, 102 Stat. 768–770; Pub. L. 100–485, title VI, § 608(d)(18)(A), (B), Oct. 13, 1988, 102 Stat. 2418; Pub. L. 100–647, title I, § 1018(r)(1), title VIII, §§ 8401, 8403(a), Nov. 10, 1988, 102 Stat. 3586, 3798; Pub. L. 101–234, title III, § 301(b)(3), (c)(3), Dec. 13, 1989, 103 Stat. 1985, 1986; Pub. L. 101–239, title VI, §§ 6002, 6003(a)(1), (b)–(c)(3), (e)(1), (2)(B)–(E), (f), (g)(2), (4)–(h)(4), (6), 6004(a)(1), (2), (b)(1), 6011(a), 6015(a), 6022, Dec. 19, 1989, 103 Stat. 2140–2144, 2151, 2154–2157, 2159–2161, 2164, 2167; Pub. L. 101–403, title I, § 115(b)(1), Oct. 1, 1990, 104 Stat. 870; Pub. L. 101–508, title IV, §§ 4001, 4002(a)(1), (b)(1)–(4), (c)(1), (2), (e)(1), (g)(1), (2), (h)(1)(A), (2)(B), 4003(a), 4005(a)(1), (c)(1)(B), (2), 4008(f)(1), (m)(2)(A), Nov. 5, 1990, 104 Stat. 1388–31 to 1388–38, 1388–40, 1388–42, 1388–45, 1388–53; Pub. L. 103–66, title XIII, §§ 13501(a), (b)(1), (c), (e)(1), (f), 13502, 13506, 13563(a), (b)(1), (c)(1), Aug. 10, 1993, 107 Stat. 572, 574, 575, 577, 579, 605; Pub. L. 103–432, title I, §§ 101(a)(1), (b), (c), 102(b)(1)(B), 105, 108–110(a), (c), 153(a), Oct. 31, 1994, 108 Stat. 4400–4402, 4405, 4407, 4408, 4437; Pub. L. 105–33, title IV, §§ 4022(b)(1)(A), 4201(c)(1), (4), 4202(a), 4204(a)(1), (2), 4401(a), 4402, 4403(a), 4405(a)–(c), 4406, 4407, 4411–4415(c), 4416, 4417(a)(1), (b)(1), 4418(a), 4419(a)(1), 4421(a), (b), 4621–4626(a), 4627(a), 4644(a)(1), (b)(1), (c)(1), Aug. 5, 1997, 111 Stat. 354, 373–375, 397, 398, 400, 401, 403–410, 413, 475–480, 483, 488; Pub. L. 106–113, div. B, § 1000(a)(6) [title I, §§ 111(a), (c), 112(a), 121(a), 122, 125(a), title III, §§ 311, 312(a), 321(b), (e), (f), (h), (k)(15)–(17), title IV, §§ 401(a), 402(a), 404(a), (b)(1), 405–407(a)(2), (b)(1), (2), (c)(1), title V, § 541], Nov. 29, 1999, 113 Stat. 1536, 1501A–329 to 1501A–332, 1501A–362 to 150A–366, 1501A–368, 1501A–369, 1501A–372 to 1501A–374, 1501A–391; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 152(a), (b)], § 1(a)(6) [title II, §§ 211, 212(a), 213(a), title III, §§ 301(a), (e)(1), 302(a), (c), (d), 303(a), (c), (d)(1), 304(a), (c)(2), 305(a), (b), 307(a)(1), title V, §§ 511, 512(a), 533(b)(1), (3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–251, 2763A–252, 2763A–483, 2763A–485, 2763A–491 to 2763A–496, 2763A–533, 2763A–548, 2763A–550; Pub. L. 108–173, title IV, §§ 401(a)–(c), 402, 403, 406, 407(a), 422(a), (b)(1), title V, §§ 501(a), (b), 502(a), (b), 503(a)–(d)(1), 504, 505(a), title VII, §§ 711, 736(a)(9), (15), (c)(6), Dec. 8, 2003, 117 Stat. 2262–2265, 2269, 2270, 2284, 2286, 2289–2293, 2340, 2355, 2356.)

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in text, are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsec. (b)(6), is classified generally to Title 26, Internal Revenue Code.

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (c)(4)(B), is section 222(a) of Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a note under section 1395b–1 of this title.

Section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985, referred to in subsec. (d)(2)(C)(i), is section 9104(a) of Pub. L. 99–272, which amended subsec. (d)(5)(B) of this section.

Section 4621(a)(1) of the Balanced Budget Act of 1997, referred to in subsec. (d)(2)(C)(i), is section 4621(a)(1) of Pub. L. 105–33, which amended subsec. (d)(5)(B)(ii) of this section.

Section 111 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, referred to in subsec. (d)(2)(C)(i), is section 1000(a)(6) [title I, § 111] of Pub. L. 106–113, which amended this section and enacted provisions set out as a note under this section.

Section 302 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, referred to in subsec. (d)(2)(C)(i), is section 1(a)(6) [title III, § 302] of Pub. L. 106–554, which amended this section and enacted provisions set out as a note under this section.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (d)(2)(C)(i), is Pub. L. 108–173, Dec. 8, 2003, 117 Stat. 2066. Section 402(a) of the Act, which amended this section, does not contain a par. (1). Section 403(a)(1) of the Act amended this section. For complete classification of this Act to the Code, see Short Title of 2003 Amendment note set out under section 1305 of this title and Tables.

Section 6003(c) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (d)(2)(C)(iv), is section

6003(c) of Pub. L. 101–239, which amended this section and enacted provisions set out below.

Section 4002(b) of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (d)(2)(C)(iv), is section 4002(b) of Pub. L. 101–508, which amended this section and enacted provisions set out below.

Section 303 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, referred to in subsec. (d)(2)(C)(iv), is section 1(a)(6) [title III, §303] of Pub. L. 106–554, which amended this section and enacted provisions set out as notes under this section.

Section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985, referred to in subsec. (d)(3)(C)(ii), is section 9104 of Pub. L. 99–272, which amended subsec. (d)(2)(C)(i), (3)(C), (D)(i)(I), (ii)(I), and (5)(B) of this section.

Section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (d)(3)(C)(ii), is section 4003(a)(1) of Pub. L. 100–203, which amended subsec. (d)(5)(B)(ii) of this section.

The Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (d)(3)(C)(ii), is Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388. For complete classification of this Act to the Code, see Tables.

Subsec. (e)(3)(B) of this section, referred to in subsec. (d)(4)(C)(iv), was redesignated subsec. (e)(3) of this section by section 4022(b)(1)(A)(ii) of Pub. L. 105–33.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (d)(10)(B)(i), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 9304 of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (e)(1)(C)(ii), is section 9304 of Pub. L. 99–509, which enacted subsecs. (d)(9) and (e)(1)(C) of this section and amended subsec. (d)(5)(C)(i)(I), (ii) of this section.

Part B of subchapter XI of this chapter, referred to in subsec. (f)(2), is classified to section 1320c et seq. of this title.

Section 4628 of the Balanced Budget Act of 1997, referred to in subsec. (h)(6)(C)(iii), is section 4628 of Pub. L. 105–33, which is set out as a note below.

Section 402 of Public Law 90–248, referred to in subsec. (h)(7)(B)(vi), is section 402 of Pub. L. 90–248, title IV, Jan. 2, 1968, 81 Stat. 930, which enacted section 1395b–1 of this title and amended section 1395*ll* of this title.

Section 4005(e) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (i), is section 4005(e) of Pub. L. 100–203, which is set out below.

AMENDMENTS

2003—Subsec. (b)(3)(B)(i)(XIX), (XX). Pub. L. 108–173, §501(a), added subcls. (XIX) and (XX) and struck out former subcl. (XIX) which read as follows: ''for fiscal year 2004 and each subsequent fiscal year, the market basket percentage increase for hospitals in all areas.''

Subsec. (b)(3)(B)(vii). Pub. L. 108–173, §501(b), added cl. (vii).

Subsec. (b)(3)(I)(i)(I). Pub. L. 108–173, §736(a)(9), substituted ''the amount'' for ''the the amount''.

Subsec. (b)(3)(I)(iii). Pub. L. 108–173, §407(a), added cl. (iii).

Subsec. (d)(2)(C)(i). Pub. L. 108–173, §502(b), substituted ''1999,'' for ''1999 or'' and inserted '', or the Medicare Prescription Drug, Improvement, and Modernization Act of 2003'' before comma at end.

Subsec. (d)(2)(C)(iv). Pub. L. 108–173, §402(b)(2), struck out ''or'' before ''the enactment of section 303'' and inserted '', or the enactment of section 402(a)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003'' before period at end.

Subsec. (d)(3). Pub. L. 108–173, §401(b)(2)(A), inserted '', for fiscal years before fiscal year 1997,'' before ''a regional adjusted DRG prospective payment rate'' in introductory provisions.

Subsec. (d)(3)(A)(iii). Pub. L. 108–173, §401(b)(3), substituted ''in an urban area'' for ''in an other urban area''.

Subsec. (d)(3)(A)(iv). Pub. L. 108–173, §401(a), designated existing provisions as subcl. (I), substituted ''Subject to subclause (II), for discharges'' for ''For discharges'', and added subcl. (II).

Subsec. (d)(3)(D). Pub. L. 108–173, §401(b)(1)(A), (B), (2)(B), in heading, struck out ''in different areas'' after ''hospitals'' and, in introductory provisions, inserted '', for fiscal years before fiscal year 1997,'' before ''a regional DRG prospective payment rate'' and struck out '', each of'' before ''which is equal—''.

Subsec. (d)(3)(D)(i). Pub. L. 108–173, §401(b)(1)(C)(i), inserted ''for fiscal years before fiscal year 2004,'' before ''for hospitals'' in introductory provisions.

Subsec. (d)(3)(D)(i)(II). Pub. L. 108–173, §401(b)(1)(C)(ii), struck out ''and'' at end.

Subsec. (d)(3)(D)(ii). Pub. L. 108–173, §401(b)(1)(D)(i), inserted ''for fiscal years before fiscal year 2004,'' before ''for hospitals'' in introductory provisions.

Subsec. (d)(3)(D)(ii)(II). Pub. L. 108–173, §401(b)(1)(D)(ii), substituted ''; and'' for period at end.

Subsec. (d)(3)(D)(iii). Pub. L. 108–173, §401(b)(1)(E), added cl. (iii).

Subsec. (d)(3)(E). Pub. L. 108–173, §403(a), designated existing provisions as cl. (i), inserted cl. heading, substituted ''Except as provided in clause (ii), the Secretary'' for ''The Secretary'', inserted at end ''The Secretary shall apply the previous sentence for any period as if the amendments made by section 403(a)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 had not been enacted.'', and added cl. (ii).

Subsec. (d)(5)(B)(ii). Pub. L. 108–173, §422(b)(1)(A), substituted ''Subject to clause (ix), for discharges'' for ''For discharges'' in introductory provisions.

Subsec. (d)(5)(B)(ii)(VI). Pub. L. 108–173, §502(a)(1), struck out ''and'' at end.

Subsec. (d)(5)(B)(ii)(VII). Pub. L. 108–173, §502(a)(2), inserted ''and before April 1, 2004,'' after ''on or after October 1, 2002,'' and substituted semicolon for period at end.

Subsec. (d)(5)(B)(ii)(VIII) to (XII). Pub. L. 108–173, §502(a)(3), added subcls. (VIII) to (XII).

Subsec. (d)(5)(B)(v). Pub. L. 108–173, §422(b)(1)(B), inserted at end ''The provisions of subsection (h)(7) of this section shall apply with respect to the first sentence of this clause in the same manner as it applies with respect to subsection (h)(4)(F)(i) of this section.''

Subsec. (d)(5)(B)(ix). Pub. L. 108–173, §422(b)(1)(C), added cl. (ix).

Subsec. (d)(5)(F)(iv)(II) to (VI). Pub. L. 108–173, §402(b)(1)(A), inserted ''subject to clause (xiv) and'' before ''for discharges occurring''.

Subsec. (d)(5)(F)(viii). Pub. L. 108–173, §402(b)(1)(B), substituted ''Subject to clause (xiv), the formula'' for ''The formula''.

Subsec. (d)(5)(F)(x) to (xiii). Pub. L. 108–173, §402(b)(1)(C), substituted ''Subject to clause (xiv), for purposes'' for ''For purposes'' in introductory provisions.

Subsec. (d)(5)(F)(xiv). Pub. L. 108–173, §402(a), added cl. (xiv).

Subsec. (d)(5)(K)(i). Pub. L. 108–173, §503(b)(2)(A), inserted at end ''Such mechanism shall be modified to meet the requirements of clause (viii).''

Subsec. (d)(5)(K)(ii)(I). Pub. L. 108–173, §503(b)(1), inserted ''(applying a threshold specified by the Secretary that is the lesser of 75 percent of the standardized amount (increased to reflect the difference between cost and charges) or 75 percent of one standard deviation for the diagnosis-related group involved)'' after ''is inadequate''.

Subsec. (d)(5)(K)(ii)(III). Pub. L. 108–173, §503(d)(1), struck out ''subject to paragraph (4)(C)(iii),'' before ''provide for additional payment''.

Subsec. (d)(5)(K)(vii). Pub. L. 108–173, §503(a), added cl. (vii).

Subsec. (d)(5)(K)(viii). Pub. L. 108–173, §503(b)(2)(B), added cl. (viii).

Subsec. (d)(5)(K)(ix). Pub. L. 108–173, §503(c), added cl. (ix).

Subsec. (d)(7)(A). Pub. L. 108–173, § 406(b), inserted ''or the determination of the applicable percentage increase under paragraph (12)(A)(ii)'' after ''to subsection (e)(1) of this section''.

Subsec. (d)(9)(A). Pub. L. 108–173, § 401(c)(1)(B), added cl. (ii) and concluding provisions and struck out former cl. (ii) which read as follows: ''for discharges beginning in a fiscal year beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987, and September 30, 1997, 25 percent) of the discharge-weighted average of—

''(I) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in a large urban area,

''(II) such rate for hospitals located in other urban areas, and

''(III) such rate for hospitals located in a rural area,

for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels. As used in this section, the term 'subsection (d) Puerto Rico hospital' means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the fifty States.''

Subsec. (d)(9)(A)(i). Pub. L. 108–173, §§ 401(c)(1)(A), 504(1)(A), substituted ''the applicable Puerto Rico percentage (specified in subparagraph (E))'' for ''for discharges beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987, and September 30, 1997, 75 percent)'' and struck out ''and'' at end.

Subsec. (d)(9)(A)(ii). Pub. L. 108–173, § 504(1)(B), which directed the substitution of ''the applicable Federal percentage (specified in subparagraph (E))'' for ''for discharges beginning in a fiscal year beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987, and September 30, 1997, 25 percent)'', could not be executed because of the amendment by Pub. L. 108–173, § 401(c)(1)(B). See above.

Subsec. (d)(9)(C)(i). Pub. L. 108–173, § 401(c)(2)(A), designated existing provisions as subcl. (I), substituted ''For discharges in a fiscal year after fiscal year 1988 and before fiscal year 2004, the Secretary'' for ''The Secretary'', and added subcl. (II).

Subsec. (d)(9)(C)(ii). Pub. L. 108–173, § 401(c)(2)(B), inserted ''(or for fiscal year 2004 and thereafter, the average standardized amount)'' after ''each of the average standardized amounts''.

Subsec. (d)(9)(C)(iii)(I). Pub. L. 108–173, § 401(c)(2)(C), struck out ''for hospitals located in an urban or rural area, respectively'' after ''reduced under clause (ii))''.

Subsec. (d)(9)(C)(iv). Pub. L. 108–173, § 403(b), designated existing provisions as subcl. (I), substituted ''paragraph (3)(E)(i)'' for ''paragraph (3)(E)'', and added subcl. (II).

Subsec. (d)(9)(E). Pub. L. 108–173, § 504(2), added subpar. (E).

Subsec. (d)(12). Pub. L. 108–173, § 406(a), added par. (12).

Subsec. (d)(13). Pub. L. 108–173, § 505(a), added par. (13).

Subsec. (g)(3)(B). Pub. L. 108–173, § 736(a)(15), inserted closing parenthesis after ''(as defined in subsection (d)(5)(D)(iii) of this section''.

Subsec. (h)(2)(D)(iv)(I). Pub. L. 108–173, § 711(1), in heading, inserted ''and 2004 through 2013'' after ''and 2002'' and, in text, inserted ''or during the period beginning with fiscal year 2004 and ending with fiscal year 2013'' after ''during fiscal year 2001 or fiscal year 2002''.

Subsec. (h)(2)(D)(iv)(II). Pub. L. 108–173, § 711(2), substituted ''For the'' for ''For a'' and struck out ''fiscal year 2004, or fiscal year 2005,'' after ''during fiscal year 2003,''.

Subsec. (h)(3)(D)(ii)(III). Pub. L. 108–173, § 736(c)(6), struck out ''and'' at end.

Subsec. (h)(4)(F)(i). Pub. L. 108–173, § 422(a)(1), inserted ''subject to paragraph (7),'' after ''October 1, 1997,''.

Subsec. (h)(4)(H)(i). Pub. L. 108–173, § 422(a)(2), inserted ''and subject to paragraph (7)'' after ''subparagraphs (F) and (G)''.

Subsec. (h)(7). Pub. L. 108–173, § 422(a)(3), added par. (7).

2000—Subsec. (b)(3)(B)(i)(XVI). Pub. L. 106–554, § 1(a)(6) [title III, § 301(a)(1)], substituted ''for hospitals in all areas,'' for ''minus 1.1 percentage points for hospitals (other than sole community hospitals) in all areas, and the market basket percentage increase for sole community hospitals,''.

Subsec. (b)(3)(B)(i)(XVII). Pub. L. 106–554, § 1(a)(6) [title III, § 301(a)(2)(B)], struck out ''and'' at end.

Pub. L. 106–554, § 1(a)(6) [title III, § 301(a)(2)(A)], which directed amendment of subcl. (XVII) by ''striking 'minus 1.1 percentage points' and inserting 'minus 0.55 percentage points; and'', was executed as if an end quotation mark for the inserted material followed ''points'', to reflect the probable intent of Congress.

Subsec. (b)(3)(B)(i)(XVIII). Pub. L. 106–554, § 1(a)(6) [title III, § 301(a)(5)], added subcl. (XVIII). Former subcl. (XVIII) redesignated (XIX).

Subsec. (b)(3)(B)(i)(XIX). Pub. L. 106–554, § 1(a)(6) [title III, § 301(a)(3), (4)], redesignated subcl. (XVIII) as (XIX) and substituted ''fiscal year 2004'' for ''fiscal year 2003''.

Subsec. (b)(3)(H)(ii)(III). Pub. L. 106–554, § 1(a)(6) [title III, § 307(a)(1)(A)], inserted ''subject to subparagraph (J),'' after ''2002,''.

Subsec. (b)(3)(I)(i). Pub. L. 106–554, § 1(a)(6) [title II, § 213(a)(1)], in introductory provisions, substituted ''there shall be substituted for the amount otherwise determined under subsection (d)(5)(D)(i) of this section, if such substitution results in a greater amount of payment under this section for the hospital'' for ''that for its cost reporting period beginning during 1999 is paid on the basis of the target amount applicable to the hospital under subparagraph (C) and that elects (in a form and manner determined by the Secretary) this subparagraph to apply to the hospital, there shall be substituted for such target amount''.

Subsec. (b)(3)(I)(i)(I). Pub. L. 106–554, § 1(a)(6) [title II, § 213(a)(2)], substituted ''the amount otherwise applicable to the hospital under subsection (d)(5)(D)(i) of this section (referred to in this clause as the 'subsection (d)(5)(D)(i) amount')'' for ''target amount otherwise applicable to the hospital under subparagraph (C) (referred to in this clause as the 'subparagraph (C) target amount')''.

Subsec. (b)(3)(I)(i)(II), (III). Pub. L. 106–554, § 1(a)(6) [title II, § 213(a)(3)], substituted ''subsection (d)(5)(D)(i) amount'' for ''subparagraph (C) target amount''.

Subsec. (b)(3)(J). Pub. L. 106–554, § 1(a)(6) [title III, § 307(a)(1)(B)], added subpar. (J).

Subsec. (d)(1)(B)(v)(III). Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 152(a)], added subcl. (III).

Subsec. (d)(1)(E). Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 152(b)], substituted ''For purposes of subclauses (II) and (III) of subparagraph (B)(v)'' for ''For purposes of subparagraph (B)(v)(II)''.

Subsec. (d)(2)(C)(i). Pub. L. 106–554, § 1(a)(6) [title III, § 302(c)], inserted ''or of section 302 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000'' after ''Balanced Budget Refinement Act of 1999''.

Subsec. (d)(2)(C)(iv). Pub. L. 106–554, § 1(a)(6) [title III, § 303(c)], substituted ''1989,'' for ''1989 or'' and inserted '', or the enactment of section 303 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000'' after ''Omnibus Budget Reconciliation Act of 1990''.

Subsec. (d)(3)(A)(vi). Pub. L. 106–554, § 1(a)(6) [title III, § 301(e)(1)], added cl. (vi).

Subsec. (d)(3)(E). Pub. L. 106–554, § 1(a)(6) [title III, § 304(c)(2)], in third sentence, substituted ''Not less often than once every 3 years the Secretary (through such survey or otherwise) shall measure'' for ''To the extent determined feasible by the Secretary, such survey shall measure''.

Subsec. (d)(4)(C)(i). Pub. L. 106–554, § 1(a)(6) [title V, § 533(b)(3)], substituted ''technology (including a new medical service or technology under paragraph (5)(K)),'' for ''technology,''.

Subsec. (d)(5)(B). Pub. L. 106–554, § 1(a)(6) [title III, § 302(d)], realigned margins.

Subsec. (d)(5)(B)(ii)(V). Pub. L. 106–554, § 1(a)(6) [title III, § 302(a)(1)], struck out ''and'' at end.

Subsec. (d)(5)(B)(ii)(VI). Pub. L. 106–554, §1(a)(6) [title III, §302(a)(4)], added subcl. (VI). Former subcl. (VI) redesignated (VII).

Subsec. (d)(5)(B)(ii)(VII). Pub. L. 106–554, §1(a)(6) [title III, §302(a)(2), (3)], redesignated subcl. (VI) as (VII) and substituted ''2002'' for ''2001''.

Subsec. (d)(5)(F)(i). Pub. L. 106–554, §1(a)(6) [title III, §303(d)(1)], struck out ''and before October 1, 1997,'' before ''the Secretary shall provide'' in introductory provisions.

Subsec. (d)(5)(F)(iv)(II). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(5)(A)], inserted ''or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xiii)'' after ''5 percent''.

Subsec. (d)(5)(F)(iv)(III). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(3)(A)], inserted ''or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xii)'' after ''4 percent''.

Subsec. (d)(5)(F)(iv)(IV). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(4)], inserted ''or, for discharges occurring on or after April 1, 2001, the greater of the percentages determined under clause (x) or (xi)'' after ''clause (viii)''.

Subsec. (d)(5)(F)(iv)(V). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(2)(A)], inserted ''or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xi)'' after ''clause (viii)''.

Subsec. (d)(5)(F)(iv)(VI). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(1)(A)], inserted ''or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (x)'' after ''10 percent''.

Subsec. (d)(5)(F)(v)(II). Pub. L. 106–554, §1(a)(6) [title II, §211(a)(1)], inserted ''(or 15 percent, for discharges occurring on or after April 1, 2001)'' after ''30 percent''.

Subsec. (d)(5)(F)(v)(III). Pub. L. 106–554, §1(a)(6) [title II, §211(a)(2)], inserted ''(or 15 percent, for discharges occurring on or after April 1, 2001)'' after ''40 percent''.

Subsec. (d)(5)(F)(v)(IV). Pub. L. 106–554, §1(a)(6) [title II, §211(a)(3)], inserted ''(or 15 percent, for discharges occurring on or after April 1, 2001)'' after ''45 percent''.

Subsec. (d)(5)(F)(ix)(III). Pub. L. 106–554, §1(a)(6) [title III, §303(a)(1)], struck out ''each of'' after ''during'' and inserted ''and 2 percent, respectively'' after ''3 percent''.

Subsec. (d)(5)(F)(ix)(IV). Pub. L. 106–554, §1(a)(6) [title III, §303(a)(2)], substituted ''3 percent'' for ''4 percent''.

Subsec. (d)(5)(F)(x). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(1)(B)], added cl. (x).

Subsec. (d)(5)(F)(xi). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(2)(B)], added cl. (xi).

Subsec. (d)(5)(F)(xii). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(3)(B)], added cl. (xii).

Subsec. (d)(5)(F)(xiii). Pub. L. 106–554, §1(a)(6) [title II, §211(b)(5)(B)], added cl. (xiii).

Subsec. (d)(5)(G)(iv)(IV). Pub. L. 106–554, §1(a)(6) [title II, §212(a)], inserted '', or two of the three most recently audited cost reporting periods for which the Secretary has a settled cost report,'' after ''1987''.

Subsec. (d)(5)(K), (L). Pub. L. 106–554, §1(a)(6) [title V, §533(b)(1)], added subpars. (K) and (L).

Subsec. (d)(10)(D)(v), (vi). Pub. L. 106–554, §1(a)(6) [title III, §304(a)], added cls. (v) and (vi).

Subsec. (h)(2)(D)(iii). Pub. L. 106–554, §1(a)(6) [title V, §511], in heading substituted ''for'' for ''in fiscal year 2001 at 70 percent of'' and in text inserted '', and for the cost reporting period beginning during fiscal year 2002 shall not be less than 85 percent,'' after ''70 percent''.

Subsec. (j)(1)(A). Pub. L. 106–554, §1(a)(6) [title III, §305(b)(1)(A)], inserted ''other than a facility making an election under subparagraph (F)'' before ''in a cost reporting period'' in introductory provisions.

Subsec. (j)(1)(B). Pub. L. 106–554, §1(a)(6) [title III, §305(b)(1)(B)], inserted ''or, in the case of a facility making an election under subparagraph (F), for any cost reporting period described in such subparagraph,'' after ''2002,''.

Subsec. (j)(1)(F). Pub. L. 106–554, §1(a)(6) [title III, §305(b)(1)(C)], added subpar. (F).

Subsec. (j)(3)(B). Pub. L. 106–554, §1(a)(6) [title III, §305(b)(2)], inserted ''but not taking into account any payment adjustment resulting from an election permitted under paragraph (1)(F)'' after ''paragraphs (4) and (6)''.

Pub. L. 106–554, §1(a)(6) [title III, §305(a)], substituted ''98 percent for fiscal year 2001 and 100 percent for fiscal year 2002'' for ''98 percent''.

Subsec. (*l*)(2)(C). Pub. L. 106–554, §1(a)(6) [title V, §512(a)], substituted ''the ratio of—'' and cls. (i) and (ii) for ''the Secretary's estimate of the ratio of the amount of payments made under section 1395x(v) of this title to the hospital for nursing and allied health education activities for the hospital's cost reporting period ending in the second preceding fiscal year to the total of such amounts for all hospitals for such cost reporting periods.''

1999—Subsec. (b)(1). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(15)(A)], inserted a comma after ''paragraph (2)'' in concluding provisions.

Subsec. (b)(2)(A). Pub. L. 106–113, §1000(a)(6) [title I, §122(1)], substituted ''Except as provided in subparagraph (E), in addition to'' for ''In addition to''.

Subsec. (b)(2)(E). Pub. L. 106–113, §1000(a)(6) [title I, §122(2)], added subpar. (E).

Subsec. (b)(3)(B)(i)(XVI) to (XVIII). Pub. L. 106–113, §1000(a)(6) [title IV, §406], added subcls. (XVI) and (XVII), redesignated former subcl. (XVII) as (XVIII), and struck out former subcl. (XVI) which read as follows: ''for each of fiscal years 2001 and 2002, the market basket percentage increase minus 1.1 percentage point for hospitals in all areas, and''.

Subsec. (b)(3)(B)(ii)(VI). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(15)(B)(i)], substituted comma for semicolon at end.

Subsec. (b)(3)(B)(ii)(VII). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(15)(B)(ii)], substituted ''year,'' for ''year;''.

Subsec. (b)(3)(C). Pub. L. 106–113, §1000(a)(6) [title IV, §405(1)], inserted ''subject to subparagraph (I),'' before ''the term 'target amount' means'' in introductory provisions.

Subsec. (b)(3)(D). Pub. L. 106–113, §1000(a)(6) [title IV, §404(b)(1)(A)], substituted ''and before October 1, 2006,'' for ''and before October 1, 2001,'' in introductory provisions.

Pub. L. 106–113, §1000(a)(6) [title III, §321(b)(2)], substituted ''and for discharges beginning on or after October 1, 1997, and before October 1, 2001,'' for ''and for cost reporting periods beginning on or after October 1, 1997, and before October 1, 2001,'' in introductory provisions.

Subsec. (b)(3)(D)(iv). Pub. L. 106–113, §1000(a)(6) [title IV, §404(b)(1)(B)], substituted ''fiscal year 2005'' for ''fiscal year 2000''.

Subsec. (b)(3)(H)(i) to (iii). Pub. L. 106–113, §1000(a)(6) [title I, §121(a)], added cl. (i), redesignated former cl. (i) as subcl. (I) of cl. (ii) and inserted '', as adjusted under clause (iii)'' after ''fiscal year 1996'', redesignated former cl. (ii) as subcl. (II) of cl. (ii) and substituted ''subclause (I)'' for ''clause (i)'' and ''such subclause'' for ''such clause'', added cl. (iii), and redesignated former cl. (iii) as subcl. (III) of cl. (ii).

Subsec. (b)(3)(I). Pub. L. 106–113, §1000(a)(6) [title IV, §405(2)], added subpar. (I).

Subsec. (b)(4)(A)(i). Pub. L. 106–113, §1000(a)(6) [title III, §321(f)], struck out ''or unit'' after ''(and in the case of a hospital''.

Subsec. (b)(7)(A)(i)(II). Pub. L. 106–113, §1000(a)(6) [title III, §321(h)], inserted ''(as estimated by the Secretary)'' after ''median''.

Subsec. (d)(2)(C)(i). Pub. L. 106–113, §1000(a)(6) [title I, §111(c)], inserted ''or any additional payments under such paragraph resulting from the application of section 111 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999'' after ''Balanced Budget Act of 1997''.

Subsec. (d)(5)(B)(ii)(V), (VI). Pub. L. 106–113, §1000(a)(6) [title I, §111(a)], added subcl. (V), redesignated former subcl. (V) as (VI), and substituted ''2001'' for ''2000'' in subcl. (VI).

Subsec. (d)(5)(B)(v). Pub. L. 106–113, §1000(a)(6) [title IV, §407(b)(2)], inserted ''(or, 130 percent of such number in the case of a hospital located in a rural area)'' after ''may not exceed the number''.

Pub. L. 106–113, §1000(a)(6) [title IV, §407(a)(2)], inserted at end ''Rules similar to the rules of subsection (h)(4)(F)(ii) of this section shall apply for purposes of this clause.''

Subsec. (d)(5)(F)(i). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(16)], inserted a comma after ''1986'' in introductory provisions.

Subsec. (d)(5)(F)(ix)(III). Pub. L. 106–113, §1000(a)(6) [title I, §112(a)(1)], substituted ''during each of fiscal years 2000 and 2001'' for ''during fiscal year 2000''.

Subsec. (d)(5)(F)(ix)(IV). Pub. L. 106–113, §1000(a)(6) [title I, §112(a)(2)–(4)], redesignated subcl. (V) as (IV), substituted ''reduced by 4 percent'' for ''reduced by 5 percent'', and struck out former subcl. (IV) which read as follows: ''during fiscal year 2001, such additional payment amount shall be reduced by 4 percent;''.

Subsec. (d)(5)(F)(ix)(V), (VI). Pub. L. 106–113, §1000(a)(6) [title I, §112(a)(3)], redesignated subcl. (VI) as (V). Former subcl. (V) redesignated (IV).

Subsec. (d)(5)(G)(i). Pub. L. 106–113, §1000(a)(6) [title IV, §404(a)(1)], substituted ''October 1, 2006,'' for ''October 1, 2001,''.

Pub. L. 106–113, §1000(a)(6) [title III, §321(b)(1)(A)], substituted ''or discharges occurring on or after October 1, 1997, and before October 1, 2001,'' for ''or beginning on or after October 1, 1997, and before October 1, 2001,''.

Subsec. (d)(5)(G)(ii)(II). Pub. L. 106–113, §1000(a)(6) [title IV, §404(a)(2)], substituted ''October 1, 2006,'' for ''October 1, 2001,''.

Pub. L. 106–113, §1000(a)(6) [title III, §321(b)(1)(B)], substituted ''or discharges occurring on or after October 1, 1997, and before October 1, 2001,'' for ''or beginning on or after October 1, 1997, and before October 1, 2001,''.

Subsec. (d)(8)(B). Pub. L. 106–113, §1000(a)(6) [title IV, §402(a)], designated existing provisions as cl. (i), substituted ''described in clause (ii)'' for ''published in the Federal Register on January 3, 1980'', and added cl. (ii).

Subsec. (d)(8)(E). Pub. L. 106–113, §1000(a)(6) [title IV, §401(a)], added subpar. (E).

Subsec. (d)(9)(A)(ii). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(17)], inserted a comma after ''1987'' in introductory provisions.

Subsec. (g)(1)(A). Pub. L. 106–113, §1000(a)(6) [title III, §321(e)], substituted ''October 1, 2002,'' for ''September 30, 2002,'' in last sentence.

Subsec. (h)(2)(D)(i). Pub. L. 106–113, §1000(a)(6) [title III, §311(a)(1), (b)(1)], inserted heading and substituted ''a subsequent clause'' for ''clause (ii)'' and ''the approved FTE resident amount determined'' for ''the amount determined''.

Subsec. (h)(2)(D)(ii). Pub. L. 106–113, §1000(a)(6) [title III, §311(b)(2)], inserted heading and realigned margins.

Subsec. (h)(2)(D)(iii), (iv). Pub. L. 106–113, §1000(a)(6) [title III, §311(a)(2)], added cls. (iii) and (iv).

Subsec. (h)(2)(E), (F). Pub. L. 106–113, §1000(a)(6) [title III, §311(a)(3), (4)], added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (h)(3)(D)(i). Pub. L. 106–113, §1000(a)(6) [title V, §541(b)(1)], inserted '', subject to clause (iii),'' after ''shall equal'' in introductory provisions.

Subsec. (h)(3)(D)(iii), (iv). Pub. L. 106–113, §1000(a)(6) [title V, §541(b)(2), (3)], added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (h)(4)(F). Pub. L. 106–113, §1000(a)(6) [title IV, §407(a)(1)], designated existing provisions as cl. (i), inserted heading, realigned margins, and added cl. (ii).

Subsec. (h)(4)(F)(i). Pub. L. 106–113, §1000(a)(6) [title IV, §407(b)(1)], inserted ''(or, 130 percent of such number in the case of a hospital located in a rural area)'' after ''may not exceed the number''.

Subsec. (h)(4)(H)(iv). Pub. L. 106–113, §1000(a)(6) [title IV, §407(c)(1)], added cl. (iv).

Subsec. (h)(5)(F). Pub. L. 106–113, §1000(a)(6) [title III, §312(a)(1)], substituted ''Subject to subparagraph (G)(v), the initial residency period'' for ''The initial residency period'' in concluding provisions.

Subsec. (h)(5)(G)(i). Pub. L. 106–113, §1000(a)(6) [title III, §312(a)(2)(A)], substituted ''(iv), and (v)'' for ''and (iv)''.

Subsec. (h)(5)(G)(v). Pub. L. 106–113, §1000(a)(6) [title III, §312(a)(2)(B)], added cl. (v).

Subsec. (j)(1)(D). Pub. L. 106–113, §1000(a)(6) [title I, §125(a)(1)], struck out '', day of inpatient hospital services, or other unit of payment defined by the Secretary'' before period at end.

Subsec. (j)(1)(E). Pub. L. 106–113, §1000(a)(6) [title I, §125(a)(3)], added subpar. (E).

Subsec. (j)(2)(A)(i). Pub. L. 106–113, §1000(a)(6) [title I, §125(a)(2)], amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''classes of patients of rehabilitation facilities (each in this subsection referred to as a 'case mix group'), based on such factors as the Secretary deems appropriate, which may include impairment, age, related prior hospitalization, comorbidities, and functional capability of the patient; and''.

Subsec. (*l*). Pub. L. 106–113, §1000(a)(6) [title V, §541(a)], added subsec. (*l*).

1997—Subsec. (b)(1). Pub. L. 105–33, §4421(b)(1), inserted ''and other than a rehabilitation facility described in subsection (j)(1) of this section'' after ''subsection (d)(1)(B) of this section'' in introductory provisions.

Pub. L. 105–33, §4415(b)(1), inserted ''plus the amount, if any, provided under paragraph (2)'' before ''except that in no case'' in concluding provisions.

Subsec. (b)(1)(A). Pub. L. 105–33, §4415(a), added cls. (i) and (ii) and concluding provisions and struck out former cls. (i) and (ii) and former concluding provisions which read as follows:

''(i) 50 percent of the amount by which the target amount exceeds the amount of the operating costs, or

''(ii) 5 percent of the target amount,

whichever is less; or''.

Subsec. (b)(1)(B). Pub. L. 105–33, §4415(c)(3), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (b)(1)(C). Pub. L. 105–33, §4415(c)(1), (2), redesignated subpar. (B) as (C) and substituted ''greater than 110 percent of the target amount'' for ''greater than the target amount'' and ''exceed 110 percent of the target amount'' for ''exceed the target amount''.

Subsec. (b)(2). Pub. L. 105–33, §4415(b)(2), added par. (2).

Subsec. (b)(3)(A). Pub. L. 105–33, §§4413(a)(1), 4416(2), in introductory provisions, substituted ''subparagraph (C) and succeeding subparagraph,'' for ''subparagraphs (C), (D), and (E),'' and inserted ''and in paragraph (7)(A)(ii),'' before ''for purposes of this subsection''.

Subsec. (b)(3)(B)(i). Pub. L. 105–33, §4421(b)(2), inserted ''and subsection (j) of this section'' after ''For purposes of subsection (d) of this section'' in introductory provisions.

Subsec. (b)(3)(B)(i)(XIII) to (XVII). Pub. L. 105–33, §4401(a), added subcls. (XIII) to (XVII) and struck out former subcl. (XIII) which read as follows: ''for fiscal year 1998 and each subsequent fiscal year, the market basket percentage increase for hospitals in all areas.''

Subsec. (b)(3)(B)(ii)(VI) to (VIII). Pub. L. 105–33, §4411(a)(1), added subcls. (VI) and (VII) and redesignated former subcl. (VI) as (VIII).

Subsec. (b)(3)(B)(vi). Pub. L. 105–33, §4411(a)(2), added cl. (vi).

Subsec. (b)(3)(D). Pub. L. 105–33, §4204(a)(2)(A), substituted ''September 30, 1994, and for cost reporting periods beginning on or after October 1, 1997, and before October 1, 2001,'' for ''September 30, 1994,'' in introductory provisions.

Subsec. (b)(3)(D)(iv). Pub. L. 105–33, §4204(a)(2)(B)–(D), added cl. (iv).

Subsec. (b)(3)(F), (G). Pub. L. 105–33, §4413(a)(2), (b), added subpars. (F) and (G).

Subsec. (b)(3)(H). Pub. L. 105–33, §4414, added subpar. (H).

Subsec. (b)(4)(A)(i). Pub. L. 105–33, §4419(a)(1), in first sentence, substituted ''The Secretary shall provide for

an exception and adjustment to (and in the case of a hospital or unit described in subsection (d)(1)(B)(iii) of this section, may provide an exemption from)'' for ''The Secretary shall provide for an exemption from, or an exception and adjustment to,''.

Subsec. (b)(4)(A)(ii). Pub. L. 105–33, § 4411(b), inserted at end ''In making such reductions, the Secretary shall treat the applicable update factor described in paragraph (3)(B)(vi) for a fiscal year as being equal to the market basket percentage for that year.''

Subsec. (b)(7). Pub. L. 105–33, § 4416(1), added par. (7).

Subsec. (d)(1)(B). Pub. L. 105–33, § 4417(a)(1), inserted at end ''A hospital that was classified by the Secretary on or before September 30, 1995, as a hospital described in clause (iv) shall continue to be so classified notwithstanding that it is located in the same building as, or on the same campus as, another hospital.''

Subsec. (d)(1)(B)(iv). Pub. L. 105–33, § 4417(b)(1), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (d)(1)(B)(v). Pub. L. 105–33, § 4418(a)(1), designated existing provisions as subcl. (I), substituted '', or'' for semicolon at end, and added subcl. (II).

Subsec. (d)(1)(E). Pub. L. 105–33, § 4418(a)(2), added subpar. (E).

Subsec. (d)(2)(C)(i). Pub. L. 105–33, § 4621(a)(2), inserted at end ''except that the Secretary shall not take into account any reduction in the amount of additional payments under paragraph (5)(B)(ii) resulting from the amendment made by section 4621(a)(1) of the Balanced Budget Act of 1997,''.

Subsec. (d)(5)(A)(ii). Pub. L. 105–33, § 4405(c), substituted ''exceed the sum of the applicable DRG prospective payment rate plus any amounts payable under subparagraphs (B) and (F)'' for ''exceed the applicable DRG prospective payment rate''.

Subsec. (d)(5)(B)(i)(I). Pub. L. 105–33, § 4405(a), inserted '', for cases qualifying for additional payment under subparagraph (A)(i),'' before ''the amount paid to the hospital''.

Subsec. (d)(5)(B)(ii). Pub. L. 105–33, § 4621(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''For purposes of clause (i)(II), the indirect teaching adjustment factor for discharges occurring on or after October 1, 1988, is equal to $1.89 \times (((1 + r)$ to the nth power) $- 1)$, where 'r' is the ratio of the hospital's full-time equivalent interns and residents to beds and 'n' equals .405.''

Subsec. (d)(5)(B)(iv). Pub. L. 105–33, § 4621(b)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''In determining such adjustment, the Secretary shall continue to count interns and residents assigned to outpatient services of the hospital or providing services at any entity receiving a grant under section 254c of this title that is under the ownership or control of the hospital (if the hospital incurs all, or substantially all, of the costs of the services furnished by such interns and residents) as part of the calculation of the full-time-equivalent number of interns and residents.''

Subsec. (d)(5)(B)(v) to (viii). Pub. L. 105–33, § 4621(b)(1), added cls. (v) to (viii).

Subsec. (d)(5)(D)(iii)(III). Pub. L. 105–33, § 4201(c)(4)(A), inserted ''as in effect on September 30, 1997'' before period at end.

Subsec. (d)(5)(D)(v). Pub. L. 105–33, § 4201(c)(4)(B), inserted ''as in effect on September 30, 1997'' after ''section 1395i–4(i)(1) of this title'' and substituted ''(as defined in section 1395i–4(d) of this title)'' for ''(as defined in section 1395i–4(g) of this title)''.

Subsec. (d)(5)(F)(i). Pub. L. 105–33, § 4403(a)(1), inserted ''and before October 1, 1997'' after ''May 1, 1986'' in introductory provisions.

Subsec. (d)(5)(F)(ii). Pub. L. 105–33, § 4403(a)(2), substituted ''Subject to clause (ix), the amount'' for ''The amount''.

Subsec. (d)(5)(F)(ii)(I). Pub. L. 105–33, § 4405(b), inserted '', for cases qualifying for additional payment under subparagraph (A)(i),'' before ''the amount paid to the hospital''.

Subsec. (d)(5)(F)(ix). Pub. L. 105–33, § 4403(a)(3), added cl. (ix).

Subsec. (d)(5)(G)(i), (ii)(II). Pub. L. 105–33, § 4204(a)(1), substituted ''October 1, 1994, or beginning on or after October 1, 1997, and before October 1, 2001,'' for ''October 1, 1994,''.

Subsec. (d)(5)(I)(ii). Pub. L. 105–33, § 4407(1), inserted ''not taking in account the effect of subparagraph (J),'' after ''in a fiscal year,''.

Subsec. (d)(5)(J). Pub. L. 105–33, § 4407(2), added subpar. (J).

Subsec. (d)(6). Pub. L. 105–33, § 4644(a)(1), substituted ''August 1'' for ''September 1''.

Subsec. (d)(9)(A). Pub. L. 105–33, § 4406(1), struck out ''in a fiscal year beginning on or after October 1, 1987,'' after ''inpatient hospital discharges'' in introductory provisions.

Subsec. (d)(9)(A)(i). Pub. L. 105–33, § 4406(2), substituted ''for discharges beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987, and September 30, 1997, 75 percent)'' for ''75 percent''.

Subsec. (d)(9)(A)(ii). Pub. L. 105–33, § 4406(3), substituted ''for discharges beginning in a fiscal year beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987 and September 30, 1997, 25 percent)'' for ''25 percent''.

Subsec. (d)(10)(C)(ii). Pub. L. 105–33, § 4644(c)(1), substituted ''the first day of the 13-month period ending on September 30 of the preceding fiscal year.'' for ''the first day of the preceding fiscal year.''

Subsec. (d)(10)(D)(iii), (iv). Pub. L. 105–33, § 4202(a), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (d)(11). Pub. L. 105–33, § 4622, added par. (11).

Subsec. (e)(2). Pub. L. 105–33, § 4022(b)(1)(A)(i), struck out par. (2) which related to appointment, composition, and responsibilities of the Prospective Payment Assessment Commission.

Subsec. (e)(3). Pub. L. 105–33, § 4022(b)(1)(A)(ii), redesignated subpar. (B) as par. (3) and struck out subpar. (A) which read as follows: ''The Commission, not later than the March 1 before the beginning of each fiscal year (beginning with fiscal year 1986), shall report its recommendations to Congress on an appropriate change factor which should be used for inpatient hospital services for discharges in that fiscal year, together with its general recommendations under paragraph (2)(B) regarding the effectiveness and quality of health care delivery systems in the United States.''

Subsec. (e)(5)(A). Pub. L. 105–33, § 4644(b)(1)(A), substituted ''April 1'' for ''May 1''.

Subsec. (e)(5)(B). Pub. L. 105–33, § 4644(b)(1)(B), substituted ''August 1'' for ''September 1''.

Subsec. (e)(6). Pub. L. 105–33, § 4022(b)(1)(A)(i), struck out par. (6) which related to appointments, membership, responsibilities, compensation, access to records and information, audits, and appropriations concerning the Prospective Payment Assessment Commission.

Subsec. (g)(1)(A). Pub. L. 105–33, § 4402, inserted at end ''In addition to the reduction described in the preceding sentence, for discharges occurring on or after October 1, 1997, the Secretary shall apply the budget neutrality adjustment factor used to determine the Federal capital payment rate in effect on September 30, 1995 (as described in section 412.352 of title 42 of the Code of Federal Regulations), to (i) the unadjusted standard Federal capital payment rate (as described in section 412.308(c) of that title, as in effect on September 30, 1997), and (ii) the unadjusted hospital-specific rate (as described in section 412.328(e)(1) of that title, as in effect on September 30, 1997), and, for discharges occurring on or after October 1, 1997, and before September 30, 2002, reduce the rates described in clauses (i) and (ii) by 2.1 percent.''

Subsec. (g)(3)(B). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (g)(4). Pub. L. 105–33, § 4412, added par. (4).

Subsec. (h)(3)(B). Pub. L. 105–33, § 4625(b), inserted concluding provisions.

Subsec. (h)(3)(D). Pub. L. 105–33, § 4624, added subpar. (D).

Subsec. (h)(4)(F) to (H). Pub. L. 105–33, §4623, added subpars. (F) to (H).

Subsec. (h)(5)(G). Pub. L. 105–33, §4627(a), substituted ''Subject to clauses (ii), (iii), and (iv)'' for ''Subject to clauses (ii) and (iii)'' in cl. (i) and added cl. (iv).

Subsec. (h)(6). Pub. L. 105–33, §4626(a), added par. (6).

Subsec. (j). Pub. L. 105–33, §4421(a), added subsec. (j).

Subsec. (k). Pub. L. 105–33, §4625(a), added subsec. (k).

1994—Subsec. (a)(4). Pub. L. 103–432, §110(a), inserted ''(or, in the case of a hospital that is not a subsection (d) hospital, during the 1 day)'' after ''3 days''.

Subsec. (b)(3)(B)(iv)(II). Pub. L. 103–432, §105(b), substituted ''(adjusted to exclude any portion of a cost reporting period beginning during fiscal year 1993 for which the applicable percentage increase is determined under subparagraph (I))'' for ''(taking into account any portion of the 12-month cost reporting period beginning during fiscal year 1993 that occurred during fiscal year 1994)''.

Subsec. (b)(3)(D). Pub. L. 103–432, §105(a)(2), substituted ''September 30, 1994'' for ''March 31, 1993'' in introductory provisions.

Subsec. (d)(3)(A)(iii). Pub. L. 103–432, §101(c), inserted at end ''For discharges occurring on or after October 1, 1994, the Secretary shall adjust the ratio of the labor portion to non-labor portion of each average standardized amount to equal such ratio for the national average of all standardized amounts.''

Subsec. (d)(5)(B)(ii). Pub. L. 103–432, §110(c), substituted ''October 1, 1988'' for ''May 1, 1986''.

Subsec. (d)(5)(D)(iii)(III). Pub. L. 103–432, §102(b)(1)(B)(i), substituted ''that is located in a rural area and designated'' for ''that is designated''.

Subsec. (d)(5)(D)(v). Pub. L. 103–432, §102(b)(1)(B)(ii), substituted ''in the case of a hospital located in a rural area and designated'' for ''in the case of a hospital designated''.

Subsec. (d)(5)(G)(ii)(I). Pub. L. 103–432, §105(a)(1), substituted ''the 36-month period beginning with the first day of the cost reporting period that begins'' for ''the first 3 12-month cost reporting periods that begin''.

Subsec. (d)(5)(I). Pub. L. 103–432, §109, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (d)(8)(C)(iv). Pub. L. 103–432, §101(b)(1)(A), substituted ''paragraph (10)'' for ''paragraph (1)''.

Subsec. (d)(8)(C)(v). Pub. L. 103–432, §101(b)(1)(B), added cl. (v).

Subsec. (d)(10)(C)(i)(II). Pub. L. 103–432, §101(b)(2)(A), substituted ''the factor used to adjust the DRG prospective payment rate for area differences in hospital wage levels that applies'' for ''the area wage index applicable''.

Subsec. (d)(10)(D)(i)(I). Pub. L. 103–432, §101(a)(1), inserted ''(to the extent the Secretary determines appropriate)'' after ''taking into account''.

Subsec. (d)(10)(D)(ii), (iii). Pub. L. 103–432, §101(b)(2)(B), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (e)(6)(B). Pub. L. 103–432, §108, substituted ''health facility management, reimbursement of health facilities or other providers of services which reflect the scope of the Commission's responsibilities'' for ''hospital reimbursement, hospital financial management''.

Subsec. (h)(5)(E). Pub. L. 103–432, §153(a), inserted ''or any successor examination'' after ''Medical Sciences''.

1993—Subsec. (b)(3)(B)(i)(IX). Pub. L. 103–66, §13501(a)(1)(A), substituted ''percentage increase minus 2.5 percentage points for hospitals'' for ''percentage increase for hospitals'' and ''percentage increase minus 1.0 percentage point'' for ''percentage increase plus 1.5 percentage points''.

Subsec. (b)(3)(B)(i)(X). Pub. L. 103–66, §13501(a)(1)(B), substituted ''percentage increase minus 2.5 percentage points for hospitals'' for ''percentage increase for hospitals'' and struck out ''and'' at end.

Subsec. (b)(3)(B)(i)(XI). Pub. L. 103–66, §13501(a)(1)(C), struck out ''and each subsequent fiscal year'' after ''1996'', inserted ''minus 2.0 percentage points'' after ''percentage increase'', and substituted a comma for period at end.

Subsec. (b)(3)(B)(i)(XII), (XIII). Pub. L. 103–66, §13501(a)(1)(D), added subcls. (XII) and (XIII).

Subsec. (b)(3)(B)(ii). Pub. L. 103–66, §13501(a)(2)(B)(i), struck out '', (C), (D),'' after ''subparagraphs (A)''.

Subsec. (b)(3)(B)(ii)(III) to (VI). Pub. L. 103–66, §13502(a)(1), struck out ''and'' at end of subcl. (III), in subcl. (IV), substituted ''a subsequent fiscal year ending on or before September 30, 1993,'' for ''subsequent fiscal years'' and a comma for the period at end, and added subcls. (V) and (VI).

Subsec. (b)(3)(B)(iv). Pub. L. 103–66, §13501(a)(2)(A), added cl. (iv).

Subsec. (b)(3)(B)(v). Pub. L. 103–66, §13502(a)(2), added cl. (v).

Subsec. (b)(3)(C)(i)(II). Pub. L. 103–66, §13501(a)(2)(B)(ii), struck out ''or'' at end.

Subsec. (b)(3)(C)(ii). Pub. L. 103–66, §13501(a)(2)(B)(iii), substituted ''period beginning before fiscal year 1994, the target'' for ''period, the target'', ''subparagraph (B)(iv)'' for ''subparagraph (B)(ii)'', and a comma for period at end.

Subsec. (b)(3)(C)(iii), (iv). Pub. L. 103–66, §13501(a)(2)(B)(iv), added cls. (iii) and (iv).

Subsec. (b)(3)(D)(ii). Pub. L. 103–66, §13501(a)(2)(B)(v), substituted ''period beginning before fiscal year 1994, the target'' for ''period, the target'', ''subparagraph (B)(iv)'' for ''subparagraph (B)(ii)'', and '', and'' for period at end.

Subsec. (b)(3)(D)(iii). Pub. L. 103–66, §13501(a)(2)(B)(vi), added cl. (iii).

Subsec. (b)(4)(A). Pub. L. 103–66, §13502(b), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (d)(1)(A)(iii). Pub. L. 103–66, §13501(f), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''beginning on or after April 1, 1988, and ending on September 30, 1993,, the sum of (I) 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, and (II) 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph.''

Subsec. (d)(5)(A)(i). Pub. L. 103–66, §13501(c)(1), substituted ''For discharges occurring during fiscal years ending on or before September 30, 1997, the Secretary'' for ''The Secretary''.

Subsec. (d)(5)(A)(ii). Pub. L. 103–66, §13501(c)(2), substituted '', or, for discharges in fiscal years beginning on or after October 1, 1994, exceed the applicable DRG prospective payment rate plus a fixed dollar amount determined by the Secretary.'' for period at end.

Subsec. (d)(5)(A)(iii). Pub. L. 103–66, §13501(c)(3), substituted ''shall (except as payments under clause (i) are required to be reduced to take into account the requirements of clause (v)) approximate'' for ''shall approximate''.

Subsec. (d)(5)(A)(v), (vi). Pub. L. 103–66, §13501(c)(4), added cls. (v) and (vi).

Subsec. (d)(5)(B)(iv). Pub. L. 103–66, §13506, inserted ''or providing services at any entity receiving a grant under section 254c of this title that is under the ownership or control of the hospital (if the hospital incurs all, or substantially all, of the costs of the services furnished by such interns and residents)'' after ''the hospital''.

Subsec. (d)(5)(G)(i). Pub. L. 103–66, §13501(e)(1)(A), which directed amendment of subsec. (d)(5)(G) in clause (i) in the matter preceding subclause (I), by striking ''ending on or before March 31, 1993,'' and all that follows and inserting ''before October 1, 1994, in the case of a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be equal to the sum of the amount determined under clause (ii) and the amount determined under paragraph (1)(A)(iii).'', was executed by substituting the new language for ''ending on or before March 31, 1993, with respect to a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be—

''(I) an amount based on 100 percent of the hospital's target amount for the cost reporting period, as defined in subsection (b)(3)(D) of this section, or

''(II) the amount determined under paragraph (1)(A)(iii),

whichever results in the greater payment to the hospital.'' to reflect the probable intent of Congress.

Subsec. (d)(5)(G)(ii) to (iv). Pub. L. 103–66, §13501(e)(1)(B), (C), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (d)(8)(C)(iv). Pub. L. 103–66, §13501(b)(1), added cl. (iv).

Subsec. (g)(1)(A). Pub. L. 103–66, §13501(a)(3), inserted at end ''For discharges occurring after September 30, 1993, the Secretary shall reduce by 7.4 percent the unadjusted standard Federal capital payment rate (as described in 42 CFR 412.308(c), as in effect on August 10, 1993) and shall (for hospital cost reporting periods beginning on or after October 1, 1993) redetermine which payment methodology is applied to the hospital under such system to take into account such reduction.''

Subsec. (h)(2)(D). Pub. L. 103–66, §13563(a)(1), designated existing provisions as cl. (i), substituted ''Except as provided in clause (ii), for each'' for ''For each'', and added cl. (ii).

Subsec. (h)(5)(F). Pub. L. 103–66, §13563(b)(1)(A), struck out ''plus one year'' after ''board eligibility'' in introductory provisions.

Subsec. (h)(5)(F)(ii). Pub. L. 103–66, §13563(b)(1)(B), inserted ''or a preventive medicine residency or fellowship program'' after ''fellowship program''.

Subsec. (h)(5)(H), (I). Pub. L. 103–66, §13563(a)(2), added subpar. (H) and redesignated former subpar. (H) as (I).

Subsec. (h)(5)(J). Pub. L. 103–66, §13563(c)(1), added subpar. (J).

1990—Subsec. (a)(4). Pub. L. 101–508, §4003(a), struck out period at end of first sentence and inserted '', and includes the costs of all services for which payment may be made under this subchapter that are provided by the hospital (or by an entity wholly owned or operated by the hospital) to the patient during the 3 days immediately preceding the date of the patient's admission if such services are diagnostic services (including clinical diagnostic laboratory tests) or are other services related to the admission (as defined by the Secretary).''

Subsec. (b)(1)(B)(ii). Pub. L. 101–508, §4005(a)(1), added cl. (ii) and struck out former cl. (ii) which read as follows: ''in the case of cost reporting periods beginning on or after October 1, 1982, and before October 1, 1984, 25 percent of the amount by which the amount of the operating costs exceeds the target amount;''.

Subsec. (b)(3)(B)(i)(V). Pub. L. 101–508, §4002(a)(1)(A), struck out ''and'' after semicolon at end.

Subsec. (b)(3)(B)(i)(VI). Pub. L. 101–508, §4002(c)(1)(A), substituted ''in a large urban or other urban area, and the market basket percentage increase minus 0.7 percentage point for hospitals located in a rural area'' for ''in all areas''.

Pub. L. 101–508, §4002(a)(1)(C), added subcl. (VI). Former subcl. (VI) redesignated (IX).

Pub. L. 101–508, §4002(a)(1)(B)(i), substituted ''1994'' for ''1991''.

Subsec. (b)(3)(B)(i)(VII). Pub. L. 101–508, §4002(c)(1)(B), substituted ''in a large urban or other urban area, and the market basket percentage increase minus 0.6 percentage point for hospitals located in a rural area'' for ''in all areas''.

Pub. L. 101–508, §4002(a)(1)(C), added subcl. (VII).

Subsec. (b)(3)(B)(i)(VIII). Pub. L. 101–508, §4002(c)(1)(C), substituted ''in a large urban or other urban area, and the market basket percentage increase minus 0.55 for hospitals located in a rural area,'' for ''in all areas, and''.

Pub. L. 101–508, §4002(a)(1)(C), added subcl. (VIII).

Subsec. (b)(3)(B)(i)(IX). Pub. L. 101–508, §4002(c)(1)(E), added subcl. (IX). Former subcl. (IX) redesignated (XI).

Pub. L. 101–508, §4002(c)(1)(D)(i), substituted ''1996'' for ''1994''.

Pub. L. 101–508, §4002(a)(1)(B)(ii), redesignated subcl. (VI) as (IX).

Subsec. (b)(3)(B)(i)(X). Pub. L. 101–508, §4002(c)(1)(E), added subcl. (X).

Subsec. (b)(3)(B)(i)(XI). Pub. L. 101–508, §4002(c)(1)(D)(ii), redesignated subcl. (IX) as (XI).

Subsec. (b)(3)(B)(ii). Pub. L. 101–508, §4002(c)(2)(A)(i), substituted ''(A), (C), (D), and (E),'' for ''(A) and (E),'' in introductory provisions.

Subsec. (b)(3)(C)(ii), (D)(ii). Pub. L. 101–508, §4002(c)(2)(A)(ii), substituted ''subparagraph (B)(ii)'' for ''subparagraph (B)(i)''.

Subsec. (b)(4)(A). Pub. L. 101–508, §4005(c)(1)(B), inserted at end ''The Secretary shall announce a decision on any request for an exemption, exception, or adjustment under this paragraph not later than 180 days after receiving a completed application from the intermediary for such exemption, exception, or adjustment, and shall include in such decision a detailed explanation of the grounds on which such request was approved or denied.''

Subsec. (b)(4)(B), (C). Pub. L. 101–508, §4005(c)(2), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (c)(4). Pub. L. 101–508, §4008(f)(1), substituted ''payments under the State system as compared to aggregate payments which would have been made under the national system since'' for ''rate of increase from'' in last sentence.

Subsec. (d)(1)(A)(iii). Pub. L. 101–508, §4002(e)(1), substituted ''beginning on or after April 1, 1988, and ending on September 30, 1993,'' for ''beginning on or after October 1, 1987, is equal to the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, or, if the average standardized amount (described in clause (i)(I) or clause (ii)(I) of paragraph (3)(D)) for hospitals within the region of, and in the same rural, large urban, or other urban area as, the hospital is greater than the average standardized amount (described in the respective clause) for hospitals within the United States in that type of area for discharges occurring during the period beginning on April 1, 1988, and ending on October 20, 1990''.

Pub. L. 101–508, §4002(c)(2)(B)(i), substituted ''large urban or other area'' for ''rural, large urban, or other urban area'' in text of cl. (iii)(II) as amended by Pub. L. 103–66, §13501(f). See 1993 Amendment note above.

Pub. L. 101–403 substituted ''October 20, 1990'' for ''September 30, 1990''.

Subsec. (d)(2)(C)(iv). Pub. L. 101–508, §4002(b)(4)(B), substituted ''1989 or the enactment of section 4002(b) of the Omnibus Budget Reconciliation Act of 1990.'' for ''1989.''

Pub. L. 101–508, §4002(b)(4)(A), struck out period at end and inserted '', except that the Secretary shall not exclude additional payments under such paragraph made as a result of the enactment of section 6003(c) of the Omnibus Budget Reconciliation Act of 1989.''

Pub. L. 101–508, §4002(b)(3)(A), struck out ''and before October 1, 1995,'' after ''October 1, 1986,''.

Subsec. (d)(3)(A)(ii). Pub. L. 101–508, §4002(c)(2)(B)(ii)(I), substituted ''and ending on or before September 30, 1994, the Secretary'' for ''the Secretary''.

Subsec. (d)(3)(A)(iii) to (v). Pub. L. 101–508, §4002(c)(2)(B)(ii)(II), (III), added cls. (iii) and (iv) and redesignated former cl. (iii) as (v).

Subsec. (d)(3)(B). Pub. L. 101–508, §4002(c)(2)(B)(iii), substituted ''by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments).'' for ''for hospitals located in an urban area and for hospitals located in a rural area by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments) for hospitals located in such respective area.''

Subsec. (d)(3)(C)(ii). Pub. L. 101–508, §4002(b)(3)(B)(B), substituted ''occurring on or after October 1, 1986,'' through the end of cl. (ii) for ''occurring—'' and subcls. (I) and (II) which read as follows:

''(I) on or after October 1, 1986, and before October 1, 1995, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987 if the factor described in clause (ii)(II) of paragraph (5)(B) were applied for discharges occurring during such period instead of the factor described in clause (ii)(I) of that paragraph, and

''(II) on or after October 1, 1995, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) for those discharges that has resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987.''

Subsec. (d)(3)(D)(i). Pub. L. 101–508, § 4002(c)(2)(B)(iv)(I), which directed amendment of cl. (i) by substituting ''a large urban area'' for ''an urban area (or,'' and all that follows through ''area),'' was executed by making the substitution for ''an urban area (or, for discharges occurring on or after April 1, 1988, in a large urban area or other urban area)'' to reflect the probable intent of Congress.

Subsec. (d)(3)(D)(i)(I). Pub. L. 101–508, § 4002(c)(2)(B)(iv)(II), substituted ''a large urban area'' for ''an urban area''.

Subsec. (d)(3)(D)(ii). Pub. L. 101–508, § 4002(c)(2)(B)(v), substituted ''other areas'' for ''a rural area'' in introductory provisions and in subcl. (I).

Subsec. (d)(4)(D). Pub. L. 101–508, § 4002(g)(2)(A), struck out subpar. (D) which read as follows: ''The Commission (established under subsection (e)(2) of this section) shall consult with and make recommendations to the Secretary with respect to the need for adjustments under subparagraph (C), based upon its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities. The Commission shall report to the Congress with respect to its evaluation of any adjustments made by the Secretary under subparagraph (C).''

Subsec. (d)(5)(B)(ii). Pub. L. 101–508, § 4002(b)(3)(B)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''For purposes of clause (i)(II), the indirect teaching adjustment factor for discharges occurring—

''(I) on or after May 1, 1986, and before October 1, 1995, is equal to $1.89\times((1+r)^{.405}-1)$, or

''(II) on or after October 1, 1995, is equal to $1.43\times((1+r)^{.5795}-1)$,

where 'r' is the ratio of the hospital's full-time equivalent interns and residents to beds.''

Subsec. (d)(5)(D)(iii). Pub. L. 101–508, § 4008(m)(2)(A), substituted ''For purposes of this subchapter, the term'' for ''The term'' at beginning.

Subsec. (d)(5)(F)(i). Pub. L. 101–508, § 4002(b)(3)(A), struck out ''and before October 1, 1995,'' after ''May 1, 1986,''.

Subsec. (d)(5)(F)(iii). Pub. L. 101–508, § 4002(b)(2), substituted ''35 percent'' for ''30 percent''.

Subsec. (d)(5)(F)(vii)(I). Pub. L. 101–508, § 4002(b)(1)(A), substituted ''greater than 20.2—'' and subdivs. (a) to (d) for ''greater than 20.2, $(P-20.2)(.65)+5.62$, or''.

Subsec. (d)(5)(F)(vii)(II). Pub. L. 101–508, § 4002(b)(1)(B), substituted ''hospital—'' and subdivs. (a) to (c) for ''hospital, $(P-15)(.6)+2.5$,''.

Subsec. (d)(8)(C)(i). Pub. L. 101–508, § 4002(h)(1)(A)(i), substituted ''area, or by treating hospitals located in one urban area as being located in another urban area—'' for ''area—''.

Subsec. (d)(8)(C)(i)(II). Pub. L. 101–508, § 4002(h)(1)(A)(ii), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''reduces the wage index for that urban area by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if each affected rural county were a separate urban area).''

Subsec. (d)(8)(C)(ii) to (iv). Pub. L. 101–508, § 4002(h)(1)(A)(iii), (iv), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: ''If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by reclassifying a county from a rural to an urban area or by reclassifying an urban county from one urban area to another urban area—

''(I) reduces the wage index for the urban area within which the county or counties is reclassified by 1 percentage point or less (as applied under this subsection), the Secretary, in calculating such wage index under this subsection, shall exclude those counties so reclassified, or

''(II) reduces the wage index for the urban area within which the county or counties is reclassified by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so reclassified) and to hospitals located in the counties so reclassified (as if each affected county were a separate area).''

Subsec. (d)(8)(D). Pub. L. 101–508, § 4002(c)(2)(B)(vi), struck out ''for hospitals located in an urban area'' after ''determined under paragraph (3)'' and struck out at end ''The Secretary shall make such adjustment in payments under this section to hospitals located in rural areas as are necessary to assure that the aggregate of payments to rural hospitals not affected by subparagraphs (B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10) are not changed as a result of the application of subparagraphs (B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10).''

Subsec. (d)(10)(A). Pub. L. 101–508, § 4002(h)(2)(B)(i), substituted ''Geographic'' for ''Geographical''.

Subsec. (d)(10)(B)(i). Pub. L. 101–508, § 4002(h)(2)(B)(ii), substituted ''representative'' for ''representatives'' and struck out ''1 member shall be a member of the Prospective Payment Assessment Commission, and at least'' after ''At least''.

Subsec. (d)(10)(B)(ii). Pub. L. 101–508, § 4002(h)(2)(B)(iii), substituted ''initial'' for ''all''.

Subsec. (d)(10)(C)(iii)(II). Pub. L. 101–508, § 4002(h)(2)(B)(iv), substituted ''Appeal of decisions of the Board shall be subject to the provisions of section 557b of title 5'' for ''A decision of the Board shall be final unless the unsuccessful applicant appeals such decision to the Secretary by not later than 15 days after the Board renders its decision. The Secretary in considering the appeal of an applicant shall receive no new evidence but shall consider the record as a whole as such record appeared before the Board'' and substituted ''after the date on which'' for ''after''.

Subsec. (e)(2). Pub. L. 101–508, § 4002(g)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (e)(2)(A). Pub. L. 101–508, § 4002(g)(2)(B), substituted ''The Commission'' for ''In addition to carrying out its functions under subsection (d)(4)(D) of this section, the Commission''.

Subsec. (e)(3)(A). Pub. L. 101–508, § 4002(g)(2)(C), substituted ''Congress'' for ''the Secretary'' and inserted before period at end '', together with its general recommendations under paragraph (2)(B) regarding the effectiveness and quality of health care delivery systems in the United States''.

Subsec. (e)(4). Pub. L. 101–508, § 4002(g)(2)(D), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e)(5). Pub. L. 101–508, § 4002(g)(2)(E), substituted ''recommendations'' for ''recommendation'' in subpars. (A) and (B) and inserted at end ''To the extent that the Secretary's recommendations under paragraph

(4) differ from the Commission's recommendations for that fiscal year, the Secretary shall include in the publication referred to in subparagraph (A) an explanation of the Secretary's grounds for not following the Commission's recommendations.''

Subsec. (e)(6)(G). Pub. L. 101–508, §4002(g)(2)(F), redesignated cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which read as follows: ''The Office shall report annually to the Congress on the functioning and progress of the Commission and on the status of the assessment of medical procedures and services by the Commission.''

Subsec. (g)(1)(A). Pub. L. 101–508, §4001(b), inserted at end ''Aggregate payments made under subsection (d) of this section and this subsection during fiscal years 1992 through 1995 shall be reduced in a manner that results in a reduction (as estimated by the Secretary) in the amount of such payments equal to a 10 percent reduction in the amount of payments attributable to capital-related costs that would otherwise have been made during such fiscal year had the amount of such payments been based on reasonable costs (as defined in section 1395x(v) of this title).''

Subsec. (g)(3)(A)(v). Pub. L. 101–508, §4001(a), substituted ''September 30, 1991'' for ''September 30, 1990''.

Subsec. (g)(3)(B). Pub. L. 101–508, §4001(c), substituted ''subsection (d)(5)(D)(iii) of this section or a rural primary care hospital (as defined in section 1395x(mm)(1) of this title)'' for ''subsection (d)(5)(D)(iii) of this section)''.

1989—Subsec. (a)(4). Pub. L. 101–239, §6011(a), struck out ''or,'' after ''equity capital,'' and substituted ''October 1, 1987), or costs with respect to administering blood clotting factors to individuals with hemophilia'' for ''October 1, 1987)''.

Subsec. (b)(3)(A). Pub. L. 101–239, §6004(b)(1)(A), substituted ''(C), (D), and (E)'' for ''(C) and (D)'' in introductory provisions.

Pub. L. 101–239, §6003(f)(2)(i), substituted ''subparagraphs (C) and (D)'' for ''subparagraph (C)'' in introductory provisions.

Pub. L. 101–239, §6003(e)(1)(B)(i), substituted ''(A) Except as provided in subparagraph (C), for purposes of this subsection'' for ''(A) For purposes of this subsection'' in introductory provisions.

Subsec. (b)(3)(B)(i)(V), (VI). Pub. L. 101–239, §6003(a)(1), added subcl. (V), redesignated former subcl. (V) as (VI), and substituted ''fiscal year 1991'' for ''fiscal year 1990'' in subcl. (VI).

Subsec. (b)(3)(B)(ii). Pub. L. 101–239, §6004(b)(1)(B), substituted ''For purposes of subparagraphs (A) and (E)'' for ''For purposes of subparagraph (A)'' in introductory provisions.

Subsec. (b)(3)(C). Pub. L. 101–239, §6003(e)(1)(B)(ii), added subpar. (C).

Subsec. (b)(3)(D). Pub. L. 101–239, §6003(f)(2)(ii), added subpar. (D).

Subsec. (b)(3)(E). Pub. L. 101–239, §6004(b)(1)(C), added subpar. (E).

Subsec. (b)(4)(A). Pub. L. 101–239, §6015(a), substituted ''deems appropriate, including the assignment of a new base period which is more representative, as determined by the Secretary, of the reasonable and necessary cost of inpatient services and'' for ''deems appropriate,''.

Subsec. (c)(4). Pub. L. 101–239, §6022, substituted ''the aggregate rate of increase from October 1, 1984, to the most recent date for which annual data are available'' for ''the aggregate payment or payments per inpatient admission or discharge during the three cost reporting periods beginning on or after October 1, 1983, after which such test, at the option of the Secretary, shall no longer apply, and such State systems shall be treated in the same manner as under other waivers'' in second sentence.

Subsec. (d)(1)(B)(v). Pub. L. 101–239, §6004(a)(1), added cl. (v).

Subsec. (d)(3)(E). Pub. L. 101–239, §6003(h)(6), substituted ''October 1, 1990, and October 1, 1993 (and at least every 12 months thereafter)'' for ''October 1, 1990 (and at least every 36 months thereafter)'' and inserted at end ''Any adjustments or updates made under this subparagraph for a fiscal year (beginning with fiscal year 1991) shall be made in a manner that assures that the aggregate payments under this subsection in the fiscal year are not greater or less than those that would have been made in the year without such adjustment.''

Subsec. (d)(4)(C). Pub. L. 101–239, §6003(b), designated existing provisions as cl. (i) and added cls. (ii) to (iv).

Subsec. (d)(5)(C). Pub. L. 101–239, §6003(e)(1)(A)(i), (ii), (iv), (2)(B), redesignated former cl. (i)(I) as cl. (i), redesignated former cl. (i)(II) as cl. (ii) and substituted ''clause (i)'' for ''subclause (I)'' in three places, and redesignated former cls. (ii), (iii), and (iv) as subpars. (D), (I), and (H), respectively.

Subsec. (d)(5)(D). Pub. L. 101–239, §6003(e)(1)(A)(iv), amended former subpar. (C)(ii) generally, redesignating it as subpar. (D) and substituting cls. (i) to (iv) relating to payments to sole community hospitals for cost reporting periods beginning on or after Apr. 1, 1990, for former single paragraph relating to payments to such hospitals for cost reporting periods beginning on or after Oct. 1, 1984.

Subsec. (d)(5)(D)(iii)(III). Pub. L. 101–239, §6003(g)(2)(A), added subcl. (III).

Subsec. (d)(5)(D)(v). Pub. L. 101–239, §6003(g)(2)(B), added cl. (v).

Subsec. (d)(5)(E). Pub. L. 101–239, §6003(e)(1)(A)(iii), redesignated subpar. (D) as (E).

Subsec. (d)(5)(F)(iii). Pub. L. 101–239, §6003(c)(3), substituted ''30 percent'' for ''25 percent''.

Subsec. (d)(5)(F)(iv)(I). Pub. L. 101–239, §6003(c)(1)(A), substituted ''the applicable formula described in clause (vii)'' for ''the following formula: (P − 15)(.5)+2.5, where 'P' is the hospital's disproportionate patient percentage (as defined in clause (vi))''.

Subsec. (d)(5)(F)(iv)(III). Pub. L. 101–239, §6003(c)(2)(A)(ii), inserted ''in subclause (IV) or (V) or'' after ''described''.

Subsec. (d)(5)(F)(iv)(IV) to (VI). Pub. L. 101–239, §6003(c)(2)(A)(i), (iii), (iv), added subcls. (IV) to (VI).

Subsec. (d)(5)(F)(v)(II) to (IV). Pub. L. 101–239, §6003(c)(2)(B), added subcl. (II), redesignated former subcls. (II) and (III) as (III) and (IV), respectively, and substituted ''area and is not described in subclause (II)'' for ''area'' in subcl. (IV).

Subsec. (d)(5)(F)(vii). Pub. L. 101–239, §6003(c)(1)(B), added cl. (vii).

Subsec. (d)(5)(F)(viii). Pub. L. 101–239, §6003(c)(2)(C), added cl. (viii).

Subsec. (d)(5)(G). Pub. L. 101–239, §6003(f)(1), added subpar. (G).

Subsec. (d)(5)(H). Pub. L. 101–239, §6003(e)(1)(A)(i), redesignated subpar. (C)(iv) as subpar. (H).

Subsec. (d)(5)(I). Pub. L. 101–239, §6004(a)(2), struck out ''(including exceptions and adjustments that may be appropriate with respect to hospitals involved extensively in treatment for and research on cancer)'' after ''deems appropriate''.

Pub. L. 101–239, §6003(e)(1)(A)(ii), redesignated subpar. (C)(iii) as subpar. (I).

Subsec. (d)(8)(C). Pub. L. 101–239, §6003(h)(3), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows:

''(i) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10),, [sic] by treating hospitals located in a rural county or counties as being located in an urban area, reduces the wage index for that urban area (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if each affected rural county were a separate urban area). If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10),, [sic] by treating the hospitals located in a rural county or counties as

not being located in the rural area in a State, reduces the wage index for that rural area (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection as if the hospitals so treated had not been excluded from calculation of the wage index for that rural area.

''(ii) Clause (i) shall only apply to discharges occurring on or after October 1, 1989, and before October 1, 1991.''

Subsec. (d)(8)(C)(i). Pub. L. 101–239, § 6003(h)(2), substituted ''subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10),'' for ''subparagraph (B)'' in two places.

Subsec. (d)(8)(C)(iv). Pub. L. 101–239, § 6003(h)(4), added cl. (iv).

Subsec. (d)(8)(D). Pub. L. 101–239, § 6003(h)(2)(B), substituted ''(B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10)'' for ''(B) and (C)'' in three places.

Subsec. (d)(9)(B)(ii)(IV). Pub. L. 101–239, § 6003(e)(2)(C), substituted ''subparagraph (D)(iii)'' for ''subparagraph (D)(v)''.

Subsec. (d)(9)(D)(iii). Pub. L. 101–239, § 6003(e)(2)(D)(ii), redesignated cl. (v) as (iii). Former cl. (iii) redesignated (iv).

Subsec. (d)(9)(D)(iv). Pub. L. 101–239, § 6003(e)(2)(D)(i), (ii), redesignated former cl. (iii) as (iv), substituted ''Subparagraph (H)'' for ''Subparagraph (C)(iii)'', and struck out former cl. (iv) which read as follows: ''Subparagraph (E) (relating to payments for costs of certified registered nurse anesthetists).''

Subsec. (d)(9)(D)(v). Pub. L. 101–239, § 6003(e)(2)(D)(iii), redesignated cl. (v) as (iii).

Subsec. (d)(10). Pub. L. 101–239, § 6003(h)(1), added par. (10).

Subsec. (g)(3)(A)(iv). Pub. L. 101–234, § 301(b)(3), (c)(3), amended cl. (iv) identically, substituting ''(as the case may be)'' for ''(as the case may) be''.

Subsec. (g)(3)(A)(v). Pub. L. 101–239, § 6002, added cl. (v).

Subsec. (g)(3)(B). Pub. L. 101–239, § 6003(e)(2)(E), substituted ''subsection (d)(5)(D)(iii)'' for ''subsection (d)(5)(C)(ii)''.

Subsec. (i). Pub. L. 101–239, § 6003(g)(4), added subsec. (i).

1988—Subsec. (b)(3)(B)(i)(III). Pub. L. 100–485, § 608(d)(18)(A), substituted ''for hospitals'' for ''for for hospitals'' before ''located in other urban areas''.

Pub. L. 100–360, § 411(b)(1)(A), substituted ''for hospitals located in other urban areas'' for ''other hospitals''.

Subsec. (b)(3)(B)(i)(IV). Pub. L. 100–485, § 608(d)(18)(A), substituted ''for hospitals'' for ''for for hospitals'' before ''located in other urban areas''.

Pub. L. 100–360, § 411(b)(1)(A), (B), substituted ''percentage points'' for ''percent'' in three places and ''for hospitals located in other urban areas'' for ''other hospitals''.

Subsec. (b)(3)(B)(i)(V). Pub. L. 100–360, § 411(b)(1)(C), inserted ''increase'' after ''market basket percentage''.

Subsec. (d)(1)(A)(iii). Pub. L. 100–360, § 411(b)(1)(G), substituted ''if the average standardized amount (described in clause (i)(I) or clause (ii)(I) of paragraph (3)(D)) for hospitals within the region of, and in the same rural, large urban, or other urban area as, the hospital is greater than the average standardized amount (described in the respective clause) for hospitals within the United States in that type of area'' for ''if greater''.

Subsec. (d)(2)(C)(i). Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). Previously, Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(A). See 1986 Amendment note below.

Subsec. (d)(2)(C)(iv). Pub. L. 100–647, § 8401, substituted ''1995'' for ''1990''.

Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). Previously, Pub. L. 99–509, § 9307(c)(1)(B)(i), as amended by Pub. L. 100–203, § 4009(j)(6)(A), struck out Pub. L. 99–514, § 1895(b)(2)(A). See 1986 Amendment note below.

Subsec. (d)(2)(D). Pub. L. 100–360, § 411(b)(1)(D), substituted ''the publications described in subsection (e)(5) of this section'' for ''the publication described in subsection (e)(5)(B) of this section'' in second sentence.

Pub. L. 100–360, § 411(b)(1)(H)(i), struck out at end ''For purposes of payment under this subsection, a hospital is considered to be located in an urban area or large urban area, respectively, if the hospital is paid under this subsection at the rate for hospitals located in such an area.''

Subsec. (d)(3)(A). Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). Previously, Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(B). See 1986 Amendment note below.

Subsec. (d)(3)(A)(i). Pub. L. 100–360, § 411(b)(1)(E)(i), as added by Pub. L. 100–485, § 608(d)(18)(B), substituted ''occurring'' for ''occuring'' in first sentence.

Pub. L. 100–360, § 411(b)(1)(E)(ii), formerly § 411(b)(1)(E), as redesignated by Pub. L. 100–485, § 608(d)(18)(B), made technical correction to Pub. L. 100–203, § 4002(c)(1)(B)(iii), see 1987 Amendment note below.

Subsec. (d)(3)(A)(ii). Pub. L. 100–360, § 411(b)(1)(F), substituted ''in other urban areas'' for ''in urban areas''.

Subsec. (d)(3)(C)(ii). Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). Previously, Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(C). See 1986 Amendment note below.

Subsec. (d)(3)(C)(ii)(I), (II). Pub. L. 100–647, § 8401, substituted ''1995'' for ''1990''.

Subsec. (d)(3)(C)(iii). Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). Previously, Pub. L. 99–509, § 9307(c)(1)(B)(i), as amended by Pub. L. 100–203, § 4009(j)(6)(A), struck out Pub. L. 99–514, § 1895(b)(2)(B). See 1986 Amendment note below.

Subsec. (d)(5)(B)(ii)(I), (II). Pub. L. 100–647, § 8401, substituted ''1995'' for ''1990''.

Subsec. (d)(5)(F)(i). Pub. L. 100–647, § 8401, substituted ''1995'' for ''1990''.

Subsec. (d)(5)(F)(vi)(I). Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). See 1986 Amendment note below.

Subsec. (d)(8). Pub. L. 100–360, § 411(b)(4)(C)(i), made technical correction to directory language of Pub. L. 100–203, § 4005(a)(1)(D), see 1987 Amendment note below.

Subsec. (d)(8)(B). Pub. L. 100–360, § 411(b)(4)(A)(i), substituted ''For purposes of this subsection, the Secretary'' for ''The Secretary''.

Pub. L. 100–360, § 411(b)(4)(A)(ii), substituted ''the rural county would otherwise be considered part of an urban area, under the standards for designating Metropolitan Statistical Areas (and for designating New England County Metropolitan Areas) published in the Federal Register on January 3, 1980, if the commuting rates used in determining outlying counties (or, for New England, similar recognized areas) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous Metropolitan Statistical Areas (or New England County Metropolitan Areas).'' for ''—

''(i) the rural county would otherwise be considered part of an urban area but for the fact that the rural county does not meet the standard relating to the rate of commutation between the rural county and the central county or counties of any adjacent urban area; and

''(ii) either (I) the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area is equal to at least 15 percent of the number of residents of the rural county who are employed, or (II) the sum of the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area and the number of residents of any adjacent urban area who commute for employment to the rural county is at least equal to 20 percent of the number of residents of the rural county who are employed.''

Subsec. (d)(8)(C). Pub. L. 100–647, § 8403(a)(2), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 100–360, § 411(b)(4)(B), substituted ''standardized amounts'' for ''standardized amount''.

Subsec. (d)(8)(D). Pub. L. 100–647, § 8403(a)(1), redesignated former subpar. (C) as (D) and substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)'' wherever appearing.

Subsec. (d)(9)(C)(iv). Pub. L. 100–360, § 411(b)(3), added Pub. L. 100–203, § 4004(a)(2), see 1987 Amendment note below.

Subsec. (e)(6)(B). Pub. L. 100–360, § 411(b)(8)(B), amended Pub. L. 100–203, § 4009(d)(1), see 1987 Amendment note below.

Subsec. (f)(1)(A). Pub. L. 100–360, § 411(b)(6)(B), added Pub. L. 100–203, § 4007(b)(1)(A), (B), see 1987 Amendment note below.

Subsec. (f)(1)(B). Pub. L. 100–360, § 411(b)(6)(B), added Pub. L. 100–203, § 4007(b)(1)(C), see 1987 Amendment note below.

Subsec. (g)(3)(A)(ii) to (iv). Pub. L. 100–360, § 411(b)(5)(B), made technical amendment to Pub. L. 100–203, § 4006(a), see 1987 Amendment note below.

Subsec. (g)(3)(A)(iv). Pub. L. 100–360, § 411(b)(5)(A), inserted ''for payments attributable'' after ''15 percent''.

1987—Subsec. (a)(4). Pub. L. 100–203, § 4009(j)(1), inserted a comma after ''educational activities''.

Pub. L. 100–203, § 4006(b)(2)(A), substituted ''other capital-related costs (as defined by the Secretary for periods before October 1, 1987)'' for ''with respect to costs incurred in cost reporting periods beginning prior to October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select), other capital-related costs, as defined by the Secretary''.

Subsec. (b)(3)(B)(i). Pub. L. 100–203, § 4002(e)(1), struck out ''subparagraph (A) for 12-month cost reporting periods beginning during a fiscal year and for purposes of'' after ''For purposes of''.

Subsec. (b)(3)(B)(i)(II). Pub. L. 100–203, § 4002(a), struck out ''and for fiscal year 1988, the market basket percentage increase (as defined in clause (ii)) minus 2.0 percentage points, and'' after ''1.15 percent,''.

Subsec. (b)(3)(B)(i)(III) to (V). Pub. L. 100–203, § 4002(a), added subcls. (III) to (V) and struck out former subcl. (III) which read ''for fiscal year 1989 and subsequent fiscal years, the percentage determined by the Secretary pursuant to subsection (e)(4) of this section.''

Subsec. (b)(3)(B)(ii), (iii). Pub. L. 100–203, § 4002(e)(2), (3), added cl. (ii), redesignated former cl. (ii) as (iii), and substituted ''For purposes of this subparagraph'' for ''For purposes of clause (i)''.

Subsec. (d)(1)(A)(iii). Pub. L. 100–203, § 4002(d), inserted before period at end '', or, if greater for discharges occurring during the period beginning on April 1, 1988, and ending on September 30, 1990, the sum of (I) 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, and (II) 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph''.

Subsec. (d)(2)(C)(iv). Pub. L. 100–203, § 4009(j)(6)(A), made technical amendment to Pub. L. 99–509, § 9307(c)(1)(B). See 1986 Amendment note below.

Pub. L. 100–203, § 4003(c), substituted ''1990'' for ''1989''.

Subsec. (d)(2)(D). Pub. L. 100–203, § 4002(f)(1)(A), inserted sentence at end providing that hospital is considered located in urban area or large urban area, respectively, if it is paid under this subsection at rate for hospitals located in such area.

Pub. L. 100–203, § 4002(b), in second sentence inserted definition of ''large urban area''.

Subsec. (d)(3). Pub. L. 100–203, § 4002(c)(1)(A), substituted ''large urban, other urban, or rural areas'' for ''urban or rural areas'' in second sentence.

Subsec. (d)(3)(A)(i). Pub. L. 100–203, § 4002(c)(1)(B), (C), as amended by Pub. L. 100–360, § 411(b)(1)(E)(ii), designated existing provisions as cl. (i), substituted ''For discharges occuring [sic] in a fiscal year beginning before October 1, 1987, the Secretary'' for ''The Secretary'' and ''the fiscal year involved'' for ''each of fiscal years 1985, 1986, 1987, and 1988'', struck out '', and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4) of this section, and adjusted to reflect the most recent case-mix data available'', and added cls. (ii) and (iii).

Subsec. (d)(3)(C)(ii). Pub. L. 100–203, § 4003(c), substituted ''1990'' for ''1989'' in subcls. (I) and (II).

Pub. L. 100–203, § 4003(a)(2), inserted ''and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987'' after ''Amendments of 1985'' in subcls. (I) and (II).

Subsec. (d)(3)(C)(iii). Pub. L. 100–203, § 4009(j)(6)(A), made technical amendment to Pub. L. 99–509, § 9307(c)(1)(B). See 1986 Amendment note below.

Subsec. (d)(3)(D). Pub. L. 100–203, § 4002(c)(1)(D)(i), substituted ''hospitals in different areas'' for ''urban and rural hospitals'' in heading.

Subsec. (d)(3)(D)(i). Pub. L. 100–203, § 4002(c)(1)(D)(ii), (iii), inserted ''(or, for discharges occurring on or after April 1, 1988, in a large urban area or other urban area)'' after first reference to ''urban area'', and in subcl. (I) inserted ''such'' before ''an urban area''.

Subsec. (d)(3)(E). Pub. L. 100–203, § 4004(a)(1), formerly § 4004(a), as redesignated by Pub. L. 100–360, § 411(b)(3), inserted at end ''Not later than October 1, 1990 (and at least every 36 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of a survey conducted by the Secretary (and updated as appropriate) of the wages and wage-related costs of subsection (d) hospitals in the United States. To the extent determined feasible by the Secretary, such survey shall measure the earnings and paid hours of employment by occupational category and shall exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services.''

Subsec. (d)(5)(B)(ii). Pub. L. 100–203, § 4003(c), substituted ''1990'' for ''1989'' in subcls. (I) and (II).

Pub. L. 100–203, § 4003(a)(1), substituted ''1.89'' for ''2'' in subcl. (I) and ''1.43'' for ''1.5'' in subcl. (II).

Subsec. (d)(5)(C)(i)(I). Pub. L. 100–203, § 4005(d)(1)(A), substituted ''275'' for ''500''.

Subsec. (d)(5)(C)(i)(II). Pub. L. 100–203, § 4009(j)(2), inserted ''index'' after ''case mix'' in two places.

Subsec. (d)(5)(C)(ii). Pub. L. 100–203, § 4005(c)(1), substituted ''1990'' for ''1988'' in second sentence and inserted after second sentence ''A subsection (d) hospital that meets the criteria for classification as a sole community hospital and otherwise qualifies for the adjustment authorized by the preceding sentence may qualify for such an adjustment without regard to the formula by which payments are determined for the hospital under paragraph (1)(A).''

Subsec. (d)(5)(F)(i). Pub. L. 100–203, § 4003(c), substituted ''1990'' for ''1989''.

Subsec. (d)(5)(F)(i)(II). Pub. L. 100–203, § 4009(j)(3)(A), substituted ''such net inpatient care revenues'' for second reference to ''such revenues''.

Subsec. (d)(5)(F)(iii). Pub. L. 100–203, § 4003(b)(1), substituted ''25 percent'' for ''15 percent''.

Subsec. (d)(5)(F)(iv)(I). Pub. L. 100–203, § 4009(j)(3)(B), substituted ''clause (v)'' for ''subclause (III)''.

Pub. L. 100–203, § 4003(b)(2), struck out ''the lesser of 15 percent, or'' after ''is equal to''.

Subsec. (d)(5)(F)(vi)(I). Pub. L. 100–203, § 4009(j)(6)(A), made technical amendment to Pub. L. 99–509, § 9307(c)(1)(B)(ii). See 1986 Amendment note below.

Subsec. (d)(8). Pub. L. 100–203, § 4005(a)(1), as amended by Pub. L. 100–360, § 411(b)(4)(C)(i), designated existing provisions as subpar. (A), redesignated former subpar. (A) and cls. (i) and (ii) as cl. (i) and subcls. (I) and (II), respectively, redesignated former subpar. (B) and cls. (i) and (ii) as cl. (ii) and subcl. (I) and (II), respectively, and added subpars. (B) and (C).

Subsec. (d)(9)(A)(ii). Pub. L. 100–203, § 4002(c)(2), substituted ''a large urban area,'' for ''an urban area, and'' in subcl. (I), added subcl. (II), and redesignated former subcl. (II) as (III).

Subsec. (d)(9)(B). Pub. L. 100–203, § 4009(j)(4), realigned margin of introductory provisions.

Subsec. (d)(9)(C)(iv). Pub. L. 100–203, § 4004(a)(2), as added by Pub. L. 100–360, § 411(b)(3), inserted at end

''The second and third sentences of paragraph (3)(E) shall apply to subsection (d) Puerto Rico hospitals under this clause in the same manner as they apply to subsection (d) hospitals under such paragraph and, for purposes of this clause, any reference in such paragraph to a subsection (d) hospital is deemed a reference to a subsection (d) Puerto Rico hospital.''

Subsec. (e)(3)(B). Pub. L. 100–203, § 4002(f)(1)(B), struck out ''or determine'' after ''recommend''.

Subsec. (e)(4). Pub. L. 100–203, § 4002(f)(1)(C), substituted ''for each fiscal year (beginning with fiscal year 1988)'' for ''for fiscal year 1988'', struck out ''and shall determine for each subsequent fiscal year the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B) of this section) for discharges in that fiscal year, and'' after ''in that fiscal year'', and amended last sentence generally. Prior to amendment, last sentence read as follows: ''The percentage change shall be the same for all subsection (d) hospitals and subsection (d) Puerto Rico hospitals, but may be different from that for other hospitals (and units not included as such hospitals) and may vary among such other hospitals and units.''

Subsec. (e)(5). Pub. L. 100–203, § 4009(j)(6)(B), amended Pub. L. 99–509, § 9302(a)(2)(C). See 1986 Amendment note below.

Pub. L. 100–203, § 4002(f)(1)(D), struck out ''or determination'' after ''recommendation'' in subpars. (A) and (B).

Subsec. (e)(6)(B). Pub. L. 100–203, § 4009(d)(1), as amended by Pub. L. 100–360, § 411(b)(8)(B), substituted ''include individuals with national recognition for their expertise in health economics, hospital reimbursement, hospital financial management, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives'' for ''provide expertise and experience in the provision and financing of health care'', and struck out last sentence which required Director to seek nominations from wide range of groups, including specified types of national organizations.

Subsec. (e)(6)(D). Pub. L. 100–203, § 4083(b)(1), inserted at end ''For purposes of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.''

Subsec. (f)(1)(A). Pub. L. 100–203, § 4007(b)(1)(A), (B), as added by Pub. L. 100–360, § 411(b)(6)(B), inserted subpar. (A) designation and struck out '', for a period ending not earlier than September 30, 1988,'' after ''shall maintain''.

Subsec. (f)(1)(B). Pub. L. 100–203, § 4007(b)(1)(C), as added by Pub. L. 100–360, § 411(b)(6)(B), added subpar. (B).

Subsec. (f)(3). Pub. L. 100–93 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The provisions of paragraphs (2), (3), and (4) of section 1395y(d) of this title shall apply to determinations under paragraph (2) of this subsection in the same manner as they apply to determinations made under section 1395y(d)(1) of this title.''

Subsec. (g)(1). Pub. L. 100–203, § 4006(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''If the Congress does not enact legislation, after April 20, 1983, and before October 1, 1987, respecting the payment under this subchapter for capital-related costs for inpatient hospital services, no payment may be made under this subchapter for capital-related costs of capital expenditures (as defined in section 1320a–1(g) of this title and except as provided in section 1320a–1(j) of this title) for inpatient hospital services in a State, which expenditures are obligated after September 30, 1987, unless the State has an agreement with the Secretary under section 1320a–1(b) of this title and under the agreement the State has recommended approval of the capital expenditures.''

Subsec. (g)(3)(A)(ii) to (iv). Pub. L. 100–203, § 4006(a), as amended by Pub. L. 100–360, § 411(b)(5)(B), substituted ''on or after October 1, 1987, and before January 1, 1988,'' for '', and'', at end of cl. (ii), added cls. (iii) and (iv), and struck out former cl. (iii) which read as follows: ''10 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989.''

Subsec. (g)(3)(C). Pub. L. 100–203, § 4006(b)(2)(B), struck out subpar. (C) which read as follows: ''If the Secretary provides, under subsection (a)(4) of this section, for the inclusion of other capital-related costs in operating costs of inpatient hospital services, the Secretary shall provide—

''(i) notwithstanding any other provision of this subchapter, for the continuation of payment under the reasonable cost methodology described in section 1395x(v)(1) of this title with respect to capital-related costs of any hospital that is such a sole community hospital for cost reporting periods beginning before October 1, 1990, and

''(ii) in the design of such payment system that the aggregate payment amounts under this subchapter for such other capital-related costs for payments attributable to portions of cost reporting periods occurring during fiscal year 1988 and fiscal year 1989 shall approximate the aggregate payment amount under this subchapter that would have been made (taking into account the provisions of subparagraphs (A) and (B)) during that fiscal year but for the inclusion of such costs by the Secretary.''

Subsec. (h)(4)(C). Pub. L. 100–203, § 4009(j)(5), substituted ''subparagraph (D)'' for ''subparagraph (E)''.

1986—Subsec. (a)(4). Pub. L. 99–509, § 9320(g)(1), struck out '', costs of anesthesia services provided by a certified registered nurse anesthetist,'' after ''approved educational activities''.

Pub. L. 99–509, § 9303(c), substituted ''October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select)'' for ''October 1, 1987''.

Pub. L. 99–349 substituted ''1987'' for ''1986''.

Pub. L. 99–272, § 9107(a)(2), inserted ''a return on equity capital,'' after ''anesthetist,'' and ''other'' before ''capital-related costs''.

Subsec. (b)(3)(B). Pub. L. 99–272, § 9101(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of subparagraph (A) and subsection (d) of this section and except as provided in subsection (e) of this section, the 'applicable percentage increase' for any 12-month cost reporting period or fiscal year shall be equal to one-quarter of 1 percentage point plus the percentage, estimated by the Secretary before the beginning of the period or year, by which the cost of the mix of goods and services (including personnel costs but excluding non-operating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for such cost reporting period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year. In determining a percentage change under subsection (e)(4) of this section with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after October 1, 1985, and before October 1, 1986, the Secretary may not establish a percentage increase which exceeds the applicable percentage increase otherwise determined for that period or fiscal year under the preceding sentence.''

Subsec. (b)(3)(B)(i)(II). Pub. L. 99–509, § 9302(a)(1), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''for fiscal years 1987 and 1988, a percentage determined by the Secretary pursuant to subsection (e)(4) of this section, but not to exceed the market basket percentage increase (as defined in clause (ii)), and''.

Subsec. (b)(6). Pub. L. 99–514, § 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (c)(7). Pub. L. 99–272, § 9109(a), added par. (7).

Subsec. (d)(1)(A). Pub. L. 99–272, § 9102(a), substituted ''1987'' for ''1986'' in cls. (ii) and (iii).

Subsec. (d)(1)(C). Pub. L. 99–272, § 9102(b), struck out '', or discharges occurring'' after ''periods beginning'' in introductory provision, and ''and'' after ''percent;'' in cl. (ii), added cl. (iii), redesignated former cl. (iii) as (iv), and in cl. (iv) substituted ''on or after October 1, 1986, and before October 1, 1987'' for ''on or after October 1, 1985, and before October 1, 1986''.

Subsec. (d)(1)(D). Pub. L. 99–272, § 9102(c), struck out ''cost reporting periods beginning, or'' before ''discharges occurring'' in introductory provision, in cl. (i) substituted ''1986'' for ''1985'', and in cl. (ii) substituted ''1986'' and ''1987'' for ''1985'' and ''1986'', respectively.

Subsec. (d)(2)(C)(i). Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(A), which had directed the striking out of ''(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)'' after ''medical education costs''.

Pub. L. 99–272, § 9104(b)(1), inserted ''(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)'' after ''medical education costs''.

Subsec. (d)(2)(C)(iv). Pub. L. 99–509, § 9306(c), substituted ''1989'' for ''1988''.

Pub. L. 99–509, § 9307(c)(1)(B)(i), as amended by Pub. L. 100–203, § 4009(j)(6)(A), struck out Pub. L. 99–514, § 1895(b)(2)(A), which had directed that cl. (iv) was to be struck out.

Pub. L. 99–272, § 9105(b), added cl. (iv).

Subsec. (d)(3)(A). Pub. L. 99–509, § 9302(a)(2)(A), (c), substituted ''1986, 1987, and 1988'' for ''and 1986'' and inserted provisions relating to the computation of urban and rural averages with respect to discharges occurring on or after October 1, 1987.

Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(B), which had directed insertion of ''If the formula under paragraph (5)(B) for determining payments for the indirect costs of medical education is changed for any fiscal year, the Secretary shall readjust the standardized amounts previously determined for each hospital to take into account the changes in that formula.''

Pub. L. 99–272, § 9101(c)(1), substituted ''for each of fiscal years 1985 and 1986'' for ''for fiscal year 1985''.

Subsec. (d)(3)(B). Pub. L. 99–509, § 9302(b)(1), inserted ''for hospitals located in an urban area and for hospitals located in a rural area'' after ''subparagraph (A)'', and inserted before the period ''for hospitals located in such respective area''.

Subsec. (d)(3)(C). Pub. L. 99–272, § 9104(b)(2), inserted ''for fiscal year 1985'' after ''neutrality'' in heading, designated existing provision as cl. (i), substituted ''For discharges occurring in fiscal year 1985, the Secretary'' for ''The Secretary'', and added cl. (ii).

Subsec. (d)(3)(C)(ii). Pub. L. 99–509, § 9306(c), substituted ''1989'' for ''1988'' in subcls. (I) and (II).

Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(C), which had directed a general amendment of cl. (ii) to read as follows: ''The Secretary shall further reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which is the difference between—

''(I) the sum of the additional payment amounts under paragraph (5)(B) (relating to indirect costs of medical education) if the indirect teaching adjustment factor were equal to 1.159r (as 'r' is defined in paragraph (5)(B)(ii)), and

''(II) that sum using the factor specified in paragraph (5)(B)(ii)(II).''

Subsec. (d)(3)(C)(iii). Pub. L. 99–509, § 9307(c)(1)(B)(i), as amended by Pub. L. 100–203, § 4009(j)(6)(A), struck out Pub. L. 99–514, § 1895(b)(2)(B), which had added cl. (iii) reading as follows: ''The Secretary shall further reduce each of the average standardized amounts by reducing the standardized amount for each hospital (as previously determined without regard to this clause) by a proportion equal to the proportion (established by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(F) (relating to disproportionate share payments) for subsection (d) hospitals.''

Subsec. (d)(3)(D)(i)(I), (ii)(I). Pub. L. 99–272, § 9104(b)(3), inserted ''or reduced'' after ''(B), and adjusted''.

Subsec. (d)(4)(C). Pub. L. 99–509, § 9302(e)(1), substituted ''in fiscal year 1988 and at least annually'' for ''in fiscal year 1986 and at least every four fiscal years''.

Subsec. (d)(5)(B). Pub. L. 99–272, § 9104(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The Secretary shall provide for an additional payment amount for subsection (d) hospitals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1, 1983) under subsection (a)(2) of this section, except that in the computation under this subparagraph the Secretary shall use an educational adjustment factor equal to twice the factor provided under such regulations. In determining such adjustment the Secretary shall not distinguish between those interns and residents who are employees of a hospital and those interns and residents who furnish services to a hospital but are not employees of such hospital.''

Subsec. (d)(5)(B)(ii). Pub. L. 99–509, § 9306(c), substituted ''1989'' for ''1988'' in subcls. (I) and (II).

Subsec. (d)(5)(C)(i). Pub. L. 99–509, § 9302(d)(1)(A), designated existing provisions as subcl. (I) and added subcl. (II).

Pub. L. 99–272, § 9106(a), inserted ''and which shall not require a rural osteopathic hospital to have more than 3,000 discharges in a year in order to be classified as a rural referral center'' before the period in second sentence.

Pub. L. 99–272, § 9105(c), struck out '', and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this subchapter'' after ''in rural areas)''.

Subsec. (d)(5)(C)(i)(I). Pub. L. 99–509, § 9304(b)(1), inserted ''(other than under paragraph (9))'' after ''established under this subsection'' in first sentence.

Subsec. (d)(5)(C)(ii). Pub. L. 99–509, § 9304(b)(2), inserted ''(other than under paragraph (9))'' after ''this subsection'' in second and third sentences.

Pub. L. 99–509, § 9302(e)(4), substituted ''1988'' for ''1986''.

Pub. L. 99–272, § 9111(a), inserted provision authorizing the Secretary to adjust amount of payments to sole community hospitals that realize a significant increase in operating costs in a cost reporting period attributable to addition of new inpatient facilities or services.

Subsec. (d)(5)(E). Pub. L. 99–509, § 9320(g)(2), struck out subpar. (E) which read as follows: ''The Secretary shall provide for an additional payment amount for any subsection (d) hospital equal to the reasonable costs incurred by such hospital for anesthesia services provided by a certified registered nurse anesthetist. Payment under this subparagraph shall be the only payment made to such hospital with respect to such services.''

Subsec. (d)(5)(F). Pub. L. 99–272, § 9105(a), added subpar. (F).

Subsec. (d)(5)(F)(i). Pub. L. 99–509, § 9306(c), substituted ''1989'' for ''1988''.

Subsec. (d)(5)(F)(iv)(I). Pub. L. 99–509, § 9306(b)(1), inserted ''or is described in the second sentence of subclause (III)'' after ''100 or more beds''.

Subsec. (d)(5)(F)(iv)(III). Pub. L. 99–509, § 9306(b)(2), inserted ''and is not described in the second sentence of clause (v)'' after ''rural area''.

Subsec. (d)(5)(F)(v). Pub. L. 99–509, § 9306(a), inserted at end ''A hospital located in a rural area and with 500

or more beds also 'serves a significantly disproportionate number of low income patients' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary.''

Subsec. (d)(5)(F)(vi)(I). Pub. L. 99–514, § 1895(b)(2)(A), formerly § 1895(b)(2)(C), as amended by Pub. L. 99–509, § 9307(c)(1)(B)(ii), as amended by Pub. L. 100–203, § 4009(j)(6)(A), which directed the substitution of ''supplemental'' for ''supplementary'' and ''period'' for ''fiscal year'', was repealed by Pub. L. 100–647, § 1018(r)(1).

Subsec. (d)(9). Pub. L. 99–509, § 9304(a), added par. (9).

Subsec. (e)(1)(C). Pub. L. 99–509, § 9304(c), added subpar. (C).

Subsec. (e)(3). Pub. L. 99–509, § 9302(e)(3), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 99–272, § 9101(c)(2), struck out ''(instead of the applicable percentage increase described in subsection (b)(3)(B) of this section)'' after ''should be used''.

Subsec. (e)(3)(A). Pub. L. 99–509, § 9321(e)(2)(A), substituted ''March'' for ''April''.

Subsec. (e)(4). Pub. L. 99–509, § 9302(a)(2)(B), (e)(2), substituted ''recommend for fiscal year 1988 an appropriate change factor for inpatient hospital services for discharges in that fiscal year and shall determine for each subsequent fiscal year'' for ''determine for each fiscal year (beginning with fiscal year 1987) and inserted at end ''The percentage change shall be the same for all subsection (d) hospitals and subsection (d) Puerto Rico hospitals, but may be different from that for other hospitals (and units not included as such hospitals) and may vary among such other hospitals and units.''

Pub. L. 99–272, § 9101(c)(3), substituted ''fiscal year 1987'' for ''fiscal year 1986''.

Subsec. (e)(5). Pub. L. 99–509, § 9302(a)(2)(C), as amended by Pub. L. 100–203, § 4009(j)(6)(B), inserted ''recommendation or'' before ''determination'' in subpars. (A) and (B).

Subsec. (e)(5)(A). Pub. L. 99–509, § 9321(e)(2)(B), substituted ''May'' for ''June''.

Subsec. (e)(6)(A). Pub. L. 99–272, § 9127(a), substituted ''17 individuals'' for ''15 individuals''.

Subsec. (g)(1). Pub. L. 99–349 substituted ''1987'' for ''1986'' in two places.

Subsec. (g)(2). Pub. L. 99–272, § 9107(a)(1), designated existing provision as subpar. (A), inserted ''the applicable percentage (described in subparagraph (B)) of'', and added subpar. (B).

Subsec. (g)(2)(B). Pub. L. 99–514, § 1895(b)(3), realigned margins of subpar. (B).

Subsec. (g)(3). Pub. L. 99–509, § 9303(a), added par. (3).

Subsec. (g)(3)(A). Pub. L. 99–509, § 9303(b), inserted ''and a subsection (d) Puerto Rico hospital'' after ''subsection (d) hospital''.

Subsec. (h). Pub. L. 99–272, § 9202(a), added subsec. (h).

Subsec. (h)(2)(C). Pub. L. 99–514, § 1895(b)(9)(A), substituted ''subparagraph (B)'' for ''paragraph (B)''.

Subsec. (h)(4)(D). Pub. L. 99–514, § 1895(b)(9)(B), (C), redesignated subpar. (E) as (D) and in cl. (ii) inserted ''but before July 1, 1987,''.

Subsec. (h)(4)(E). Pub. L. 99–509, § 9314(a), added subpar. (E).

Pub. L. 99–514, § 1895(b)(9)(C), redesignated former subpar. (E) as (D).

Subsec. (h)(5)(B). Pub. L. 99–514, § 1895(b)(9)(D), substituted ''The'' for ''As used in this paragraph, the''.

1984—Subsec. (a)(2)(B). Pub. L. 98–369, § 2354(b)(42), substituted ''disproportionate'' for ''disportionate''.

Subsec. (a)(4). Pub. L. 98–369, § 2312(b), temporarily inserted '', costs of anesthesia services provided by a certified registered nurse anesthetist'' after ''approved educational activities''. See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(3)(A)(ii). Pub. L. 98–369, § 2354(b)(43), inserted ''of'' after ''in the case''.

Subsec. (b)(3)(B). Pub. L. 98–369, § 2310(a), substituted ''one-quarter of 1 percentage point'' for ''1 percentage point'' and inserted provision that in determining the percentage change under subsec. (e) of this section with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after Oct. 1, 1985, and before Oct. 1, 1986, the Secretary may not establish a percentage increase which exceeds the applicable percentage increase otherwise determined for that period or fiscal year under the preceding sentence.

Subsec. (c)(4)(A). Pub. L. 98–369, § 2315(a), substituted ''(D), and (E)'' for ''and (D)''.

Subsec. (d)(2)(D). Pub. L. 98–369, § 2315(b), struck out ''Standard'' before ''Metropolitan'' in provision following cl. (ii).

Pub. L. 98–369, § 2311(b), inserted provision for determining the region a hospital located in a Metropolitan Statistical Area would be deemed to be located.

Subsec. (d)(3)(D)(i)(I). Pub. L. 98–369, § 2354(b)(44), substituted ''(C))'' for ''(C),''.

Subsec. (d)(5)(B). Pub. L. 98–369, § 2307(b)(1), inserted provision that in determining such adjustment the Secretary not distinguish between those interns and residents who are employees of a hospital and those who furnish services to a hospital but are not employees of such hospital.

Subsec. (d)(5)(C)(i). Pub. L. 98–617 substituted ''August 17, 1984'' for ''30 days after July 18, 1984'' before ''for implementation by''.

Pub. L. 98–369, § 2311(a), inserted provisions permitting a hospital classified as a rural hospital to appeal to the Secretary for reclassification as a rural referral center on the basis of criteria established and published by the Secretary and requiring the Secretary to make a final determination with respect to such appeal within 60 days after the date the appeal was submitted.

Subsec. (d)(5)(E). Pub. L. 98–369, § 2312(a), temporarily added subpar. (E). See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (d)(8). Pub. L. 98–369, § 2311(c), added par. (8).

Subsec. (e)(2). Pub. L. 98–369, § 2313(a), inserted ''(without regard to the provisions of title 5 governing appointments in the competitive service)'' after ''appointed by the Director''.

Subsec. (e)(5). Pub. L. 98–369, § 2315(c)(1), struck out ''for public comment'' after ''have published'' in provisions preceding subpar. (A).

Subsec. (e)(5)(A). Pub. L. 98–369, § 2315(c)(2), inserted ''for public comment'' after ''that fiscal year''.

Subsec. (e)(6)(C). Pub. L. 98–369, § 2313(b)(3), inserted provision that section 10(a)(1) of the Federal Advisory Committee Act not apply to any portion of a Commission meeting if the Commission, by majority vote, determines such portion of such meeting should be closed.

Subsec. (e)(6)(C)(i). Pub. L. 98–369, § 2313(b)(1), amended cl. (i) generally, substituting provision authorizing the Commission to employ and fix the compensation of an Executive Director, subject to the approval of the Director of the Office, and such other personnel, not to exceed 25, as necessary, without regard to the provisions of title 5 governing appointment in the competitive service, for provision authorizing the Commission to employ and fix the compensation of such personnel, not to exceed 25, as may be necessary to carry out its duties.

Subsec. (e)(6)(C)(iii). Pub. L. 98–369, § 2313(b)(2), inserted ''(without regard to section 5 of title 41)'' after ''Commission''.

Subsec. (e)(6)(D). Pub. L. 98–369, § 2313(b)(4), inserted provision relating to payment of physician comparability allowance in the same manner as provided under section 5948 of title 5 and providing that for such purpose subsec. (i) of such section apply to the Commission in the same manner as it applies to the Tennessee Valley Authority.

Subsec. (e)(6)(J). Pub. L. 98–369, § 2313(d), added subpar. (J).

1983—Subsec. (a)(1)(D). Pub. L. 98–21, § 601(a)(1), added subpar. (D).

Subsec. (a)(4). Pub. L. 98–21, § 601(a)(2), inserted provision that term ''operating costs of inpatient hospital services'' does not include costs of approved educational activities, or, with respect to costs incurred in cost reporting periods beginning prior to Oct. 1, 1986, capital-related costs, as defined by the Secretary.

Pub. L. 97–448, § 309(b)(13), substituted ''as such costs are determined'' for ''and such costs are determined''.

Subsec. (b)(1). Pub. L. 98–21, § 601(b)(1), (2), in provisions preceding subpar. (A), substituted ''Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title'' for ''Notwithstanding sections 1395f(b) of this title, but subject to the provisions of sections 1395e of this title'' and inserted ''(other than a subsection (d) hospital, as defined in subsection (d)(1)(B) of this section)''.

Pub. L. 98–21, § 601(b)(3), inserted ''(other than on the basis of a DRG prospective payment rate determined under subsection (d) of this section)'' in provisions following subpar. (B).

Pub. L. 97–448, § 309(b)(14), substituted ''section 1395f(b)'' for ''sections 1395f(b)'' in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 98–21, § 601(b)(4), struck out par. (2) which provided that par. (1) would not apply to cost reporting periods of hospitals beginning on or after Oct. 1, 1985.

Subsec. (b)(3)(B). Pub. L. 98–21, § 601(b)(5)–(8), inserted ''and subsection (d) of this section and except as provided in subsection (e) of this section'' after ''subparagraph (A)'', inserted ''or fiscal year'' after ''cost reporting period'' each place it appears, inserted ''before the beginning of the period or year'' after ''estimated by the Secretary'', and substituted ''will exceed'' for ''exceeds''.

Subsec. (b)(6). Pub. L. 98–21, § 601(b)(9), added par. (6) and repealed a prior par. (6) which directed the Secretary to provide for an adjustment under this paragraph in the amount of payment otherwise provided a hospital under this subsection in the case of a hospital which, as of Aug. 15, 1982, was subject to FICA taxes and which was not subject to such taxes for part or all of a cost reporting period beginning on or after Oct. 1, 1982, that in making such adjustment for a cost reporting period the Secretary was to estimate the amount of the operating costs of inpatient hospital services that would have resulted if the hospital was subject to the FICA taxes during that period, that in making such estimate the Secretary was to reduce the amount of such FICA taxes that would have been paid (but not below zero) by the amount of costs which the hospital demonstrated to the satisfaction of the Secretary were incurred in the period for pensions, health, and other fringe benefits for employees (and former employees and family members) comparable to, and in lieu of, the benefits provided under subchapter II of this chapter and this subchapter, that if a hospital's operating costs of inpatient hospital services estimated under subparagraph (B) was greater than the hospital's operating costs of inpatient hospital services determined without regard to this paragraph for a cost reporting period, then the Secretary was to reduce the amount otherwise paid the hospital (respecting operating costs of inpatient hospital services) under this title (taking into account any limitation under subsection (a) of this section) for the period by the amount by which (i) the amount that would have been paid the hospital if (I) the amount of the operating costs of inpatient hospital services estimated under subparagraph (B) were treated as the amount of the operating costs of inpatient hospital services and (II) subsection (a) of this section did not apply to the determination, exceeded (ii) the amount that would otherwise have been paid the hospital if subsection (a) of this section (and this paragraph) did not apply, except that, in making such determination for cost reporting periods beginning on or after Oct. 1, 1984, clause (ii) of paragraph (1)(B) was to continue to apply.

Subsec. (b)(6)(C). Pub. L. 97–448, § 309(b)(15), substituted ''under this subchapter (taking into account any limitation under subsection (a) of this section)'' for ''under this subsection'' in provisions preceding cl. (i).

Subsec. (c)(1). Pub. L. 98–21, § 601(c)(1), added subpars. (D) and (E) and provisions following subpar. (E).

Subsec. (c)(3)(A). Pub. L. 98–21, § 601(c)(2)(A), substituted ''meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5),'' for ''meets the requirement of paragraph (1)(A)''.

Subsec. (c)(3)(B). Pub. L. 98–21, § 601(c)(2)(B), inserted ''(or, if applicable, in paragraph (5))''.

Subsec. (c)(4) to (6). Pub. L. 98–21, § 601(c)(3), added pars. (4) to (6).

Subsec. (d). Pub. L. 98–21, § 601(d)(2), (e), added subsec. (d) and redesignated former subsec. (d), relating to the elimination of lesser-of-cost-or-charges provisions, as subsec. (j) of section 1814 of act Aug. 14, 1935, which is classified to subsec. (j) of section 1395f of this title.

Subsecs. (e) to (g). Pub. L. 98–21, § 601(e), added subsecs. (e) to (g).

1982—Subsec. (d). Pub. L. 97–248, § 110, added subsec. (d).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IV, § 407(b), Dec. 8, 2003, 117 Stat. 2270, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after January 1, 2004.''

Pub. L. 108–173, title V, § 502(c), Dec. 8, 2003, 117 Stat. 2291, provided that: ''The amendments made by this section [amending this section] shall apply to discharges occurring on or after April 1, 2004.''

Pub. L. 108–173, title V, § 503(e), Dec. 8, 2003, 117 Stat. 2292, provided that:

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall implement the amendments made by this section [amending this section] so that they apply to classification for fiscal years beginning with fiscal year 2005.

''(2) RECONSIDERATIONS OF APPLICATIONS FOR FISCAL YEAR 2004 THAT ARE DENIED.—In the case of an application for a classification of a medical service or technology as a new medical service or technology under section 1886(d)(5)(K) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(K)) that was filed for fiscal year 2004 and that is denied—

''(A) the Secretary shall automatically reconsider the application as an application for fiscal year 2005 under the amendments made by this section; and

''(B) the maximum time period otherwise permitted for such classification of the service or technology shall be extended by 12 months.''

Pub. L. 108–173, title V, § 505(c), Dec. 8, 2003, 117 Stat. 2294, provided that: ''The amendments made by this section [amending this section and section 1395cc of this title] shall first apply to the wage index for discharges occurring on or after October 1, 2004. In initially implementing such amendments, the Secretary [of Health and Human Services] may modify the deadlines otherwise applicable under clauses (ii) and (iii)(I) of section 1886(d)(10)(C) of the Social Security Act (42 U.S.C. 1395ww(d)(10)(C)), for submission of, and actions on, applications relating to changes in hospital geographic reclassification.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title II, § 212(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–485, provided that: ''The amendment made by this section [amending this section] shall apply with respect to cost reporting periods beginning on or after April 1, 2001.''

Pub. L. 106–554, § 1(a)(6) [title II, § 213(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–486, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the enactment of section 405 of BBRA [Pub. L. 106–113, § 1000(a)(6) [title IV, § 405]] (113 Stat. 1501A–372).''

Pub. L. 106–554, §1(a)(6) [title III, §301(e)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–492, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 2001.''

Pub. L. 106–554, §1(a)(6) [title III, §303(d)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–494, provided that: ''The amendment made by paragraph (1) [amending this section] is effective as if included in the enactment of BBA [Pub. L. 105–33].''

Pub. L. 106–554, §1(a)(6) [title III, §305(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–496, provided that: ''The amendments made by this section [amending this section] take effect as if included in the enactment of BBA [Pub. L. 105–33].''

Pub. L. 106–554, §1(a)(6) [title V, §512(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–534, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to portions of cost reporting periods occurring on or after January 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §121(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–330, provided that: ''The amendments made by subsection (a) [amending this section] apply to cost reporting periods beginning on or after October 1, 1999.''

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §125(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–333, provided that: ''The amendments made by subsection (a) [amending this section] are effective as if included in the enactment of section 4421(a) of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].''

Pub. L. 106–113, div. B, §1000(a)(6) [title III, §312(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–365, provided that: ''The amendments made by subsection (a) [amending this section] apply on and after July 1, 2000, to residency programs that began before, on, or after the date of the enactment of this Act [Nov. 29, 1999].''

Amendment by section 1000(a)(6) [title III, §321(b), (e), (f), (h), (k)(15)–(17)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Amendment by section 1000(a)(6) [title IV, §401(a)] of Pub. L. 106–113 effective Jan. 1, 2000, see section 1000(a)(6) [title IV, §401(c)] of Pub. L. 106–113, set out as a note under section 1395i–4 of this title.

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §402(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–370, provided that: ''The amendments made by subsection (a) [amending this section] apply with respect to discharges occurring during cost reporting periods beginning on or after October 1, 1999.''

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §407(a)(3)], Nov. 29, 1999, 113 Stat. 1536, 1501A–373, provided that:

''(A) DGME.—The amendments made by paragraph (1) [amending this section] apply to cost reporting periods that begin on or after the date of the enactment of this Act [Nov. 29, 1999].

''(B) IME.—The amendment made by paragraph (2) [amending this section] applies to discharges occurring in cost reporting periods that begin on or after such date of enactment.''

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §407(b)(3)], Nov. 29, 1999, 113 Stat. 1536, 1501A–374, provided that:

''(A) DGME.—The amendment made by paragraph (1) [amending this section] applies to cost reporting periods beginning on or after April 1, 2000.

''(B) IME.—The amendment made by paragraph (2) [amending this section] applies to discharges occurring on or after April 1, 2000.''

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §407(c)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–374, provided that: ''The amendment made by paragraph (1) [amending this section] applies with respect to—

''(A) payments to hospitals under section 1886(h) of the Social Security Act (42 U.S.C. 1395ww(h)) for cost reporting periods beginning on or after April 1, 2000; and

''(B) payments to hospitals under section 1886(d)(5)(B)(v) of such Act (42 U.S.C. 1395ww(d)(5)(B)(v)) for discharges occurring on or after April 1, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4022(b) of Pub. L. 105–33 effective Nov. 1, 1997, the date of termination of the Prospective Payment Assessment Commission and the Physician Payment Review Commission, see section 4022(c)(2) of Pub. L. 105–33, set out as an Effective Date; Transition; Transfer of Functions note under section 1395b–6 of this title.

Amendment by section 4201(c)(1), (4) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4204(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section and provisions set out as a note below] shall apply with respect to discharges occurring on or after October 1, 1997.''

Section 4405(d) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] apply to discharges occurring after September 30, 1997.''

Section 4415(e) of Pub. L. 105–33 provided that: ''The amendments made by subsections (a) and (c) [amending this section] shall apply with respect to cost reporting periods beginning on or after October 1, 1997.''

Section 4417(a)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1995.''

Section 4417(b)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after the date of the enactment of this Act [Aug. 5, 1997].''

Section 4419(a)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to hospitals or units that first qualify as a hospital or unit described in section 1886(d)(1)(B) (42 U.S.C. 1395ww(d)(1)(B)) for cost reporting periods beginning on or after October 1, 1997.''

Section 4421(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall apply to cost reporting periods beginning on or after October 1, 2000, except that the Secretary of Health and Human Services may require the submission of data under section 1886(j)(2)(D) of the Social Security Act [subsec. (j)(2)(D) of this section] (as added by subsection (a)) on and after the date of the enactment of this section [Aug. 5, 1997].''

Section 4627(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] apply to combined medical residency training programs in effect for residency years beginning on or after July 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 101(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of OBRA–1989 [Pub. L. 101–239].''

Section 153(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending this section] shall apply as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13501(b)(3) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1991.''

Section 13563(b)(2) of Pub. L. 103–66 provided that: ''The amendments made by paragraphs (1)(A) and (1)(B) [amending this section] shall take effect on July 1, 1995,

and the date of the enactment of this Act [Aug. 10, 1993], respectively.''

Section 13563(c)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to payments under section 1886(h) of the Social Security Act [subsec. (h) of this section] for cost reporting periods beginning on or after October 1, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4002(a)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to payments for discharges occurring on or after January 1, 1991.''

Section 4002(b)(5) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1), (3), and (4)(B) [amending this section] shall apply to discharges occurring on or after January 1, 1991, the amendment made by paragraph (2) [amending this section] shall apply to discharges occurring on or after October 1, 1991, and the amendment made by paragraph (4)(A) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Section 4002(c)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) and paragraph (2)(A) [amending this section] shall apply to payments for discharges occurring on or after January 1, 1991, and the amendments made by paragraph (2)(B) [amending this section] shall take effect October 1, 1994.''

Section 4002(e)(4)[(3)] of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1990.''

Section 4002(g)(5) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and section 1395w–1 of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 4002(h)(1)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to discharges occurring on or after January 1, 1991.''

Section 4003(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply—

''(1) in the case of any services provided during the day immediately preceding the date of a patient's admission (without regard to whether the services are related to the admission), to services furnished on or after the date of the enactment of this Act [Nov. 5, 1990] and before October 1, 1991;

''(2) in the case of diagnostic services (including clinical diagnostic laboratory tests), to services furnished on or after January 1, 1991; and

''(3) in the case of any other services, to services furnished on or after October 1, 1991.''

Section 4005(a)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1991.''

Section 4005(c)(4) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section and section 1395h of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], and the amendments made by paragraph (2) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Section 4008(f)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6003(a)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to payments for discharges occurring on or after January 1, 1990.''

Section 6003(c)(4) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to discharges occurring on or after April 1, 1990.''

Section 6003(h)(7) of Pub. L. 101–239 provided that: ''The amendments made by paragraphs (3) and (4) [amending this section] shall apply to discharges occurring on or after April 1, 1990.''

Section 6004(a)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to cost reporting periods beginning on or after October 1, 1989, except that—

''(A) in the case of a hospital classified by the Secretary of Health and Human Services as a hospital involved extensively in treatment for or research on cancer under section 1886(d)(5)(I) of the Social Security Act [subsec. (d)(5)(I) of this section] (as redesignated by section 6003(e)(1)(A)) after the date of the enactment of this Act [Dec. 19, 1989], such amendments shall apply with respect to cost reporting periods beginning on or after the date of such classification,

''(B) in the case of a hospital that is not described in subparagraph (A), such amendments shall apply with respect to portions of cost reporting periods or discharges occurring during and after fiscal year 1987 for purposes of section 1886(g) of the Social Security Act [subsec. (g) of this section], and

''(C) such amendments shall take effect 30 days after the date of the enactment of this Act for purposes of determining the eligibility of a hospital to receive periodic interim payments under section 1815(e)(2) of the Social Security Act [section 1395g(e)(2) of this title].''

Section 6004(b)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to cost reporting periods beginning on or after April 1, 1989.''

Section 6011(d) of Pub. L. 101–239, as amended by Pub. L. 103–66, title XIII, §13505, Aug. 10, 1993, 107 Stat. 579; Pub. L. 105–33, title IV, §4452, Aug. 5, 1997, 111 Stat. 425, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to items furnished 6 months after the date of enactment of this Act [Dec. 19, 1989] and on or before September 30, 1994, and on or after October 1, 1997.''

[Section 13505 of Pub. L. 103–66 provided in part that the amendment made by that section to section 6011(d) of Pub. L. 101–239, set out above, is effective as if included in the enactment of Pub. L. 101–239.]

Section 6015(c) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective with respect to cost reporting periods beginning on or after April 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1018(r)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4002(g) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(1)(I), July 1, 1988, 102 Stat. 769, provided that:

''(1) PPS HOSPITALS, DRG PORTION OF PAYMENT.—In the case of a subsection (d) hospital (as defined in paragraph (6))—

''(A) the amendments made by subsections (a) and (c) [amending this section] shall apply to payments made under section 1886(d)(1)(A)(iii) of the Social Security Act [subsec. (d)(1)(A)(iii) of this section] on the basis of discharges occurring on or after April 1, 1988, and

''(B) for discharges occurring on or after October 1, 1988, the applicable percentage increase (described in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section]) for discharges occurring during fiscal year 1987 is deemed to have been such percentage increase as amended by subsection (a).

''(2) PPS SOLE COMMUNITY HOSPITALS, HOSPITAL SPECIFIC PORTION OF PAYMENT.—In the case of a subsection (d) hospital which receives payments made under section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section] because it is a sole community hospital—

''(A) the amendment made by subsections (a) and (c) [amending this section] shall apply to payments under section 1886(d)(1)(A)(ii)(I) of the Social Security Act made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting period beginning on or after October 1, 1987;

''(B) notwithstanding subparagraph (A), for cost reporting period beginning during fiscal year 1988, the applicable percentage increase (as defined in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section]) for the—

''(i) first 51 days of the cost reporting period shall be 0 percent,

''(ii) next 132 days of such period shall be 2.7 percent, and

''(iii) remainder of such period of the cost reporting period shall be the applicable percentage increase (as so defined, as amended by subsection (a)); and

''(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the previous cost reporting period shall be deemed to have been the applicable percentage increase (as so defined, as amended by subsection (a)).

''(3) PPS-EXEMPT HOSPITALS.—In the case of a hospital that is not a subsection (d) hospital—

''(A) the amendments made by subsection (e) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987;

''(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1988, payment under title XVIII of the Social Security Act [this subchapter] shall be made as though the applicable percentage increase described in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section] were equal to the product of 2.7 percent and the ratio of 315 to 366; and

''(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1988 shall be deemed to have been 2.7 percent.

''(4) DEFINITION, REGIONAL FLOOR, AND TECHNICAL AND CONFORMING AMENDMENTS.—The amendments made by subsections (b) and (d) and paragraphs (1) and (2) of subsection (f) [amending this section and provisions set out as a note below] shall take effect on the date of the enactment of this Act [Dec. 22, 1987].

''(5) TRANSITION FOR LARGE URBAN AREA RATES.—In computing the average standardized amount for hospitals located in a large urban area or other urban area under section 1886(d)(3)(A)(ii) of the Social Security Act [subsec. (d)(3)(A)(ii) of this section] (as amended by subsection (c)) for fiscal year 1988, the reference to 'the respective average standardized amount computed for the previous fiscal year under this subparagraph' is deemed a reference to the average standardized amount computed for hospitals located in an urban area for the 51-day period beginning on October 1, 1987.

''(6) DEFINITION.—In this subsection, the term 'subsection (d) hospital' has the meaning given such term in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section].''

Section 4003(e) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply to payments for discharges occurring on or after October 1, 1988.''

Section 4005(a)(3) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(4)(C)(ii), July 1, 1988, 102 Stat. 770, provided that: ''This subsection [amending this section] shall apply to discharges occurring on or after October 1, 1988.''

Section 4005(c)(2)(A) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987[.]''

Section 4005(d)(1)(B) of Pub. L. 100–203 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to discharges occurring on or after April 1, 1988.''

Section 4006(b)(3) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1987. The amendments made by paragraph (2) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987.''

Section 4007(b)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(6)(B), July 1, 1988, 102 Stat. 770, provided that: ''The amendment made by paragraph (1)(C) [amending this section] shall apply to hospital cost reporting periods beginning on or after October 1, 1989.''

Section 4009(d)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to appointments made after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4009(j)(6) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.

Section 4083(b)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(1)(D) of Pub. L. 99–514, which provided for applicability of amendments to this section by section 1895(b)(1) of Pub. L. 99–514 to discharges occurring on or after Oct. 1, 1986, with certain exceptions, was repealed by Pub. L. 99–509, title IX, § 9307(c)(1)(A), Oct. 21, 1986, 100 Stat. 1995, and by Pub. L. 100–647, title I, § 1018(r)(1), Nov. 10, 1988, 102 Stat. 3586.

Section 1895(b)(2)(B), formerly § 1895(b)(2)(D), of Pub. L. 99–514, as amended by Pub. L. 99–509, title IX, § 9307(c)(1)(B)(iii), as amended by Pub. L. 100–203, title IV, § 4009(j)(6)(A), Dec. 22, 1987, 101 Stat. 1330–59, which provided for applicability of amendments to this section by section 1895(b)(2)(A) of Pub. L. 99–514 to discharges occurring on or after May 1, 1986, was repealed by Pub. L. 100–647, title I, § 1018(r)(1), Nov. 10, 1988, 102 Stat. 3586.

Amendment by section 1895(b)(3), (9) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 9302(a)(3) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1986 and, for purposes of section 1886(d) of the Social Security Act [subsec. (d) of this section], for cost reporting periods beginning and discharges occurring on or after October 1, 1986.''

Section 9302(b)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1986.''

Section 9302(d)(1)(B) of Pub. L. 99–509 provided that:

''(i) Subject to clause (ii), the amendments made by subparagraph (A) [amending this section] shall apply to payments for discharges occurring on or after October 1, 1986.

''(ii) An appeal for classification of a rural hospital as a regional referral center, pursuant to the amendments made by subparagraph (A), which is filed before January 1, 1987, and which is approved shall be effective with respect to discharges occurring on or after October 1, 1986.''

Section 9303(b) of Pub. L. 99–509 provided that the amendment made by such section 9303(b) is effective for cost reporting periods beginning and discharges occurring (as the case may be) on or after Oct. 1, 1987.

Section 9304(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall apply to discharges occurring on or after October 1, 1987.''

Section 9306(d) of Pub. L. 99–509 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to discharges occurring on or after October 1, 1986.''

Section 9307(c)(1) of Pub. L. 99–509 provided that the amendment made by such section 9307(c)(1) is effective as if included in the enactment of the Tax Reform Act of 1986 (Pub. L. 99–514), if H.Con.Res. 395, 99th Congress, 2d Session, is not adopted. H.Con.Res. 395 was not adopted.

Section 9314(b) of Pub. L. 99–509 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments for approved residency training programs as of July 1, 1987.''

Amendment by section 9320(g) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9321(e)(3)(B) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (2) [amending this section] shall take effect beginning with fiscal year 1989.''

Section 9101(d) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending section 5(c) of Pub. L. 99–107, set out below] shall take effect on March 15, 1986, and the amendments made by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9101(e) of Pub. L. 99–272 provided that:

''(1) PPS HOSPITALS, DRG PORTION OF PAYMENT.—In the case of a subsection (d) hospital (as defined in paragraph (4))—

''(A) the amendment made by subsection (b) [amending this section] shall apply to payments made under section 1886(d)(1)(A) of such Act [subsec. (d)(1)(A) of this section] made on the basis of discharges occurring on or after May 1, 1986; and

''(B) for discharges occurring on or after October 1, 1986, the applicable percentage increase (described in section 1886(b)(3)(B) [subsec. (b)(3)(B) of this section]) for discharges occurring during fiscal year 1986 shall be deemed to have been ½ percent.

''(2) PPS HOSPITALS, HOSPITAL SPECIFIC PORTION OF PAYMENT.—In the case of a subsection (d) hospital—

''(A) the amendment made by subsection (b) [amending this section] shall apply to payments under section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section] made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting periods beginning on or after October 1, 1985;

''(B) notwithstanding subparagraph (A), for the cost reporting period beginning during fiscal year 1986, the applicable percentage increase (as defined in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section]) for the—

''(i) first 7 months of the cost reporting period shall be 0 percent, and

''(ii) for the remaining 5 months of the cost reporting period shall be ½ percent; and

''(C) for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase (as so defined) with respect to the previous cost reporting period shall be deemed to have been ½ percent.

''(3) PPS-EXEMPT HOSPITALS.—In the case of a hospital that is not a subsection (d) hospital—

''(A) the amendment made by subsection (b) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1985;

''(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1986, payment under title XVIII of the Social Security Act [this subchapter] shall be made as though the applicable percentage increase described in section 1886(b)(3)(B) [subsec. (b)(3)(B) of this section] were equal to 5/24 of 1 percent; and

''(C) for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1986 shall be deemed to have been ½ percent.

''(4) DEFINITION.—In this subsection, the term 'subsection (d) hospital' has the meaning given such term in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section].''

Section 9102(d) of Pub. L. 99–272 provided that:

''(1) DELAY IN FINAL TRANSITION.—The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986].''

''(2) CHANGE IN HOSPITAL SPECIFIC PERCENTAGE.—The amendments made by subsection (b) [amending this section] shall apply—

''(A) to cost reporting periods beginning on or after October 1, 1985, but

''(B) notwithstanding subparagraph (A), for a hospital's cost reporting period beginning during fiscal year 1986, for purposes of section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section]—

''(i) during the first 7 months of the period the 'target percentage' is 50 percent and the 'DRG percentage' is 50 percent, and

''(ii) during the remaining 5 months of the period the 'target percentage' is 45 percent and the 'DRG percentage' is 55 percent.

''(3) CHANGE IN BLENDED RATE.—The amendments made by subsection (c) [amending this section] shall apply to discharges occurring on or after May 1, 1986.

''(4) EXCEPTION.—

''(A) Notwithstanding any other provision of this subsection, the amendments made by this section [amending this section] shall not apply to payments with respect to the operating costs of inpatient hospital services (as defined in section 1886(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) of a subsection (d) hospital (as defined in section 1886(d)(1)(B) of such Act [subsec. (d)(1)(B) of this section]) located in the State of Oregon.

''(B) Notwithstanding any other provision of law, for a cost reporting period beginning during fiscal year 1986 of a subsection (d) hospital to which the amendments made by this section [amending this section] do not apply, for purposes of section 1886(d)(1)(A) of of [sic] Social Security Act [subsec. (d)(1)(A) of this section]—

''(i) during the first 7 months of the period the 'target percentage' is 50 percent and the 'DRG percentage' is 50 percent, and

''(ii) during the remaining 5 months of the period the 'target percentage' is 25 percent and the 'DRG percentage' is 75 percent.

''(C) Notwithstanding any other provision of law, for purposes of section 1886(d)(1)(D) of such Act [subsec. (d)(1)(D) of this section], the applicable combined adjusted DRG prospective payment rate for a subsection (d) hospital to which the amendments made by this section [amending this section] do not apply is, for discharges occurring on or after October 1, 1985, and before May 1, 1986, a combined rate consisting of 25 percent of the national adjusted DRG prospective payment rate and 75 percent of the regional adjusted DRG prospective payment rate for such discharges.''

Section 9104(c) of Pub. L. 99–272 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to discharges occurring on or after May 1, 1986.

''(2) The amendments made by this section shall not first be applied to discharges occurring as of a date unless, for discharges occurring on that date, the amendments made by section 9105 [amending this section] are also being applied.''

Section 9105(e) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section] shall apply to discharges occurring on or after May 1, 1986.''

Section 9106(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after January 1, 1986.''

Section 9107(c)(1) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to hospital cost reporting periods beginning on or after October 1, 1986.''

Section 9109(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9111(b) of Pub. L. 99–272 provided that: ''The amendment made by this section [amending this section] shall apply to payments for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1989.''

Section 9202(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to hospital cost reporting periods beginning on or after July 1, 1985.''

Effective and Termination Dates of 1984 Amendments

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Section 2307(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1984.''

Section 2310(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to cost reporting periods beginning in, and discharges occurring in, fiscal year 1985 and thereafter.''

Section 2311(d) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsections (b) and (c) [amending this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1983, and the amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1984.

''(2) The amendment made by subsection (b) [amending this section] shall not apply so as to reduce any payment under section 1886(d) of the Social Security Act [subsec. (d) of this section] to a hospital the region of which is deemed to be changed pursuant to such amendment for discharges occurring in any cost reporting period beginning before October 1, 1984.''

Section 2312(c) of Pub. L. 98–369, as amended by Pub. L. 99–509, title IX, § 9320(a), Oct. 21, 1986, 100 Stat. 2013; Pub. L. 100–360, title IV, § 411(p), July 1, 1988, as added by Pub. L. 100–485, title VI, § 608(d)(29), Oct. 13, 1988, 102 Stat. 2424, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1984, and before January 1, 1989. In the case of a cost reporting period that begins before January 1, 1989, but ends after such date, additional payments under the amendment made by subsection (a) shall be proportionately reduced to reflect the portion of the period occurring after such date.''

Amendment by section 2313(a), (b), (d) of Pub. L. 98–369 effective July 18, 1984, see section 2313(e) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 1395y of this title.

Section 2315(g) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 1395i–2 and 1395cc of this title and enacting and amending provisions set out as notes under this section] shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 (Public Law 98–21).''

Amendment by section 2354(b)(42)–(44) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 1320a–1 of this title.

Effective Date of 1983 Amendments

Section 601(b)(9) of Pub. L. 98–21 provided that the repeal of subsec. (b)(6) of this section is effective with respect to cost reporting periods beginning on or after October 1, 1982, and that the enactment of a new subsec. (b)(6) of this section is effective with respect to cost reporting periods beginning on or after October 1, 1983.

Section 604 of title VI of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title III, § 2315(f)(1), July 18, 1984, 98 Stat. 1080, provided that:

''(a)(1) Except as provided in section 602(*l*) [amending section 1395cc of this title] and in paragraph (2), the amendments made by the preceding provisions of this title [amending this section and sections 1320c–2, 1395f, 1395n, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, and 1395xx of this title] apply to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983. A change in a hospital's cost reporting period that has been made after November 1982 shall be recognized for purposes of this section only if the Secretary finds good cause for that change.

''(2) Section 1866(a)(1)(F) of the Social Security Act [section 1395cc(a)(1)(F) of this title] (as added by section 602(f)(1)(C) of this title), section 1862(a)(14) [section 1395y(a)(14) of this title] (as added by section 602(e)(3) of this title) and sections 1886(a)(1)(G) and (H) of such Act [probably should be section 1866(a)(1)(G) and (H) which is classified to section 1395cc(a)(1)(G) and (H) of this title] (as added by section 602(f)(1)(C) of this title) take effect on October 1, 1983.

''(b) The Secretary shall make an appropriate reduction in the payment amount under section 1886(d) of the Social Security Act [subsec. (d) of this section] (as amended by this title) for any discharge, if the admission has occurred before a hospital's first cost reporting period that begins after September 1983, to take into account amounts payable under title XVIII of that Act [this subchapter] (as in effect before the date of the enactment of this Act [Apr. 20, 1983]) for items and services furnished before that period.

''(c)(1) The Secretary shall cause to be published in the Federal Register a notice of the interim final DRG prospective payment rates established under subsection (d) of section 1886 of the Social Security Act [subsec. (d) of this section] (as amended by this title) no later than September 1, 1983, and allow for a period of public comment thereon. Payment on the basis of prospective

rates shall become effective on October 1, 1983, without the necessity for consideration of comments received, but the Secretary shall, by notice published in the Federal Register, affirm or modify the amounts by December 31, 1983, after considering those comments.

''(2) A modification under paragraph (1) that reduces a prospective payment rate shall apply only to discharges occurring after 30 days after the date the notice of the modification is published in the Federal Register.

''(3) Rules to implement the amendments made by this title [amending this section and sections 1320a–1, 1320c–2, 1395f, 1395i–2, 1395n, 1395r, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, and 1395xx of this title, enacting provisions set out as notes under sections 1395r and 1395x of this title, and amending provisions set out as a note under section 1395x of this title] shall be established in accordance with the procedure described in this subsection.''

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE

Section 101(b)(1) of Pub. L. 97–248 provided that: ''The amendments made by subsection (a) [enacting this section and amending section 1395x of this title] shall apply to cost reporting periods beginning on or after October 1, 1982.''

REGULATIONS

Section 4003(c) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this section [amending this section and enacting provisions set out as a note above].''

Section 2315(f)(2) of Pub. L. 98–369 provided that: ''Notwithstanding section 604(c) of the Social Security Amendments of 1983 [section 604(c) of Pub. L. 98–21, set out above], the Secretary of Health and Human Services shall cause to be published in the Federal Register proposed regulations to carry out subsection (c) of section 1886 of the Social Security Act [subsec. (c) of this section] not later than July 1, 1984, and allow for a period of 45 days for public comment thereon. After consideration of the comments received, the Secretary shall cause to be published in the Federal Register final regulations to carry out such subsection not later than October 1, 1984.''

Section 101(b)(2)(A) of Pub. L. 97–248 provided that: ''The Secretary of Health and Human Services shall first issue such final regulations (whether on an interim or other basis) before October 1, 1982, as may be necessary to implement such amendments [amendments by section 101(a) of Pub. L. 97–248, enacting this section and amending section 1395x of this title] on a timely basis. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than March 31, 1983.''

TRANSFER OF FUNCTIONS

Prospective Payment Assessment Commission (ProPAC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 4022(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395b–6 of this title. Section 4022(c)(2), (3) further provided that MedPAC was to be responsible for preparation and submission of reports required by law to be submitted by ProPAC, and that, for that purpose, any reference in law to ProPAC was to be deemed, after the appointment of MedPAC, to refer to MedPAC.

MORE FREQUENT UPDATE IN WEIGHTS USED IN HOSPITAL MARKET BASKET

Pub. L. 108–173, title IV, §404, Dec. 8, 2003, 117 Stat. 2266, provided that:

''(a) MORE FREQUENT UPDATES IN WEIGHTS.—After revising the weights used in the hospital market basket under section 1886(b)(3)(B)(iii) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(iii)) to reflect the most current data available, the Secretary [of Health and Human Services] shall establish a frequency for revising such weights, including the labor share, in such market basket to reflect the most current data available more frequently than once every 5 years.

''(b) INCORPORATION OF EXPLANATION IN RULEMAKING.—The Secretary shall include in the publication of the final rule for payment for inpatient hospital services under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) for fiscal year 2006, an explanation of the reasons for, and options considered, in determining frequency established under subsection (a).''

RURAL COMMUNITY HOSPITAL DEMONSTRATION PROGRAM

Pub. L. 108–173, title IV, §410A, Dec. 8, 2003, 117 Stat. 2272, provided that:

''(a) ESTABLISHMENT OF RURAL COMMUNITY HOSPITAL (RCH) DEMONSTRATION PROGRAM.—

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall establish a demonstration program to test the feasibility and advisability of the establishment of rural community hospitals (as defined in subsection (f)(1)) to furnish covered inpatient hospital services (as defined in subsection (f)(2)) to medicare beneficiaries.

''(2) DEMONSTRATION AREAS.—The program shall be conducted in rural areas selected by the Secretary in States with low population densities, as determined by the Secretary.

''(3) APPLICATION.—Each rural community hospital that is located in a demonstration area selected under paragraph (2) that desires to participate in the demonstration program under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(4) SELECTION OF HOSPITALS.—The Secretary shall select from among rural community hospitals submitting applications under paragraph (3) not more than 15 of such hospitals to participate in the demonstration program under this section.

''(5) DURATION.—The Secretary shall conduct the demonstration program under this section for a 5-year period.

''(6) IMPLEMENTATION.—The Secretary shall implement the demonstration program not later than January 1, 2005, but may not implement the program before October 1, 2004.

''(b) PAYMENT.—

''(1) IN GENERAL.—The amount of payment under the demonstration program for covered inpatient hospital services furnished in a rural community hospital, other than such services furnished in a psychiatric or rehabilitation unit of the hospital which is a distinct part, is—

''(A) for discharges occurring in the first cost reporting period beginning on or after the implementation of the demonstration program, the reasonable costs of providing such services; and

''(B) for discharges occurring in a subsequent cost reporting period under the demonstration program, the lesser of—

''(i) the reasonable costs of providing such services in the cost reporting period involved; or

''(ii) the target amount (as defined in paragraph (2)[)], applicable to the cost reporting period involved.

''(2) TARGET AMOUNT.—For purposes of paragraph (1)(B)(ii), the term 'target amount' means, with respect to a rural community hospital for a particular 12-month cost reporting period—

''(A) in the case of the second such reporting period for which this subsection is in effect, the reasonable costs of providing such covered inpatient hospital services as determined under paragraph (1)(A), and

''(B) in the case of a later reporting period, the target amount for the preceding 12-month cost reporting period,

increased by the applicable percentage increase (under clause (i) of section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B))) in the market basket percentage increase (as defined in clause (iii) of such section) for that particular cost reporting period.

''(c) FUNDING.—

''(1) IN GENERAL.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) of such funds as are necessary for the costs of carrying out the demonstration program under this section.

''(2) BUDGET NEUTRALITY.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration program under this section was not implemented.

''(d) WAIVER AUTHORITY.—The Secretary may waive such requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) as may be necessary for the purpose of carrying out the demonstration program under this section.

''(e) REPORT.—Not later than 6 months after the completion of the demonstration program under this section, the Secretary shall submit to Congress a report on such program, together with recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

''(f) DEFINITIONS.—In this section:

''(1) RURAL COMMUNITY HOSPITAL DEFINED.—

''(A) IN GENERAL.—The term 'rural community hospital' means a hospital (as defined in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e))) that—

''(i) is located in a rural area (as defined in section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D))) or treated as being so located pursuant to section 1886(d)(8)(E) of such Act (42 U.S.C. 1395ww(d)(8)(E));

''(ii) subject to paragraph (2), has fewer than 51 acute care inpatient beds, as reported in its most recent cost report;

''(iii) makes available 24-hour emergency care services; and

''(iv) is not eligible for designation, or has not been designated, as a critical access hospital under section 1820 [probably means section 1820 of the Social Security Act which is classified to section 1395i–4 of this title].

''(B) TREATMENT OF PSYCHIATRIC AND REHABILITATION UNITS.—For purposes of paragraph (1)(B), beds in a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital shall not be counted.

''(2) COVERED INPATIENT HOSPITAL SERVICES.—The term 'covered inpatient hospital services' means inpatient hospital services, and includes extended care services furnished under an agreement under section 1883 of the Social Security Act (42 U.S.C. 1395tt).''

APPLICABILITY OF CHAPTER 35 OF TITLE 44

Pub. L. 108–173, title IV, § 422(b)(2), Dec. 8, 2003, 117 Stat. 2286, provided that: ''Chapter 35 of title 44, United States Code, shall not apply with respect to applications under section 1886(h)(7) of the Social Security Act [subsec. (h)(7) of this section], as added by subsection (a)(3).''

REPORT ON EXTENSION OF APPLICATIONS UNDER REDISTRIBUTION PROGRAM

Pub. L. 108–173, title IV, § 422(c), Dec. 8, 2003, 117 Stat. 2286, provided that: ''Not later than July 1, 2005, the Secretary [of Health and Human Services] shall submit to Congress a report containing recommendations regarding whether to extend the deadline for applications for an increase in resident limits under section 1886(h)(4)(I)(ii)(II) of the Social Security Act [section 1886(h)(4) (subsec. (h)(4) of this section) does not contain a subpar. (I)] (as added by subsection (a)).''

MEDPAC STUDY ON RURAL HOSPITAL PAYMENT ADJUSTMENTS

Pub. L. 108–173, title IV, § 433, Dec. 8, 2003, 117 Stat. 2288, provided that:

''(a) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study of the impact of sections 401 through 406, 411, 416, and 505 [amending this section and sections 1395f, 1395g, 1395i–4, 1395*l*, 1395m, 1395cc, and 1395tt of this title and enacting provisions set out as notes under this section and sections 1395f, 1395g, 1395i–4, 1395*l*, and 1395m of this title]. The Commission shall analyze the effect on total payments, growth in costs, capital spending, and such other payment effects under those sections.

''(b) REPORTS.—

''(1) INTERIM REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003], the Commission shall submit to Congress an interim report on the matters studied under subsection (a) with respect only to changes to the critical access hospital provisions under section 405 [amending sections 1395f, 1395g, 1395i–4, 1395m, and 1395tt of this title and enacting provisions set out as notes under sections 1395f, 1395g, 1395i–4, and 1395m of this title].

''(2) FINAL REPORT.—Not later than 3 years after the date of the enactment of this Act [Dec. 8, 2003], the Commission shall submit to Congress a final report on all matters studied under subsection (a).''

GAO STUDY AND REPORT ON APPROPRIATENESS OF PAYMENTS UNDER THE PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

Pub. L. 108–173, title V, § 501(c), Dec. 8, 2003, 117 Stat. 2290, provided that:

''(1) STUDY.—The Comptroller General of the United States, using the most current data available, shall conduct a study to determine—

''(A) the appropriate level and distribution of payments in relation to costs under the prospective payment system under section 1886 of the Social Security Act (42 U.S.C. 1395ww) for inpatient hospital services furnished by subsection (d) hospitals (as defined in subsection (d)(1)(B) of such section); and

''(B) whether there is a need to adjust such payments under such system to reflect legitimate differences in costs across different geographic areas, kinds of hospitals, and types of cases.

''(2) REPORT.—Not later than 24 months after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General of the United States shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislative and administrative action as the Comptroller General determines appropriate.''

NOT BUDGET NEUTRAL

Pub. L. 108–173, title V, § 503(d)(2), Dec. 8, 2003, 117 Stat. 2292, provided that: ''There shall be no reduction or other adjustment in payments under section 1886 of the Social Security Act [this section] because an additional payment is provided under subsection (d)(5)(K)(ii)(III) of such section.''

ONE-TIME APPEALS PROCESS FOR HOSPITAL WAGE INDEX CLASSIFICATION

Pub. L. 108–173, title V, § 508, Dec. 8, 2003, 117 Stat. 2297, provided that:

''(a) ESTABLISHMENT OF PROCESS.—

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall establish not later than January 1, 2004, by instruction or otherwise a process

under which a hospital may appeal the wage index classification otherwise applicable to the hospital and select another area within the State (or, at the discretion of the Secretary, within a contiguous State) to which to be reclassified.

''(2) PROCESS REQUIREMENTS.—The process established under paragraph (1) shall be consistent with the following:

''(A) Such an appeal may be filed as soon as possible after the date of the enactment of this Act [Dec. 8, 2003] but shall be filed by not later than February 15, 2004.

''(B) Such an appeal shall be heard by the Medicare Geographic Reclassification Review Board.

''(C) There shall be no further administrative or judicial review of a decision of such Board.

''(3) RECLASSIFICATION UPON SUCCESSFUL APPEAL.—If the Medicare Geographic Reclassification Review Board determines that the hospital is a qualifying hospital (as defined in subsection (c)), the hospital shall be reclassified to the area selected under paragraph (1). Such reclassification shall apply with respect to discharges occurring during the 3-year period beginning with April 1, 2004.

''(4) INAPPLICABILITY OF CERTAIN PROVISIONS.—Except as the Secretary may provide, the provisions of paragraphs (8) and (10) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) shall not apply to an appeal under this section.

''(b) APPLICATION OF RECLASSIFICATION.—In the case of an appeal decided in favor of a qualifying hospital under subsection (a), the wage index reclassification shall not affect the wage index computation for any area or for any other hospital and shall not be effected in a budget neutral manner. The provisions of this section shall not affect payment for discharges occurring after the end of the 3-year-period referred to in subsection (a).

''(c) QUALIFYING HOSPITAL DEFINED.—For purposes of this section, the term 'qualifying hospital' means a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act, 42 U.S.C. 1395ww(d)(1)(B)) that—

''(1) does not qualify for a change in wage index classification under paragraph (8) or (10) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) on the basis of requirements relating to distance or commuting; and

''(2) meets such other criteria, such as quality, as the Secretary may specify by instruction or otherwise.

The Secretary may modify the wage comparison guidelines promulgated under section 1886(d)(10)(D) of such Act (42 U.S.C. 1395ww(d)(10)(D)) in carrying out this section.

''(d) WAGE INDEX CLASSIFICATION.—For purposes of this section, the term 'wage index classification' means the geographic area in which it is classified for purposes of determining for a fiscal year the factor used to adjust the DRG prospective payment rate under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) for area differences in hospital wage levels that applies to such hospital under paragraph (3)(E) of such section.

''(e) LIMITATION ON EXPENDITURES.—The aggregate amount of additional expenditures resulting from the application of this section shall not exceed $900,000,000.

''(f) TRANSITIONAL EXTENSION.—Any reclassification of a county or other area made by Act of Congress for purposes of making payments under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) that expired on September 30, 2003, shall be deemed to be in effect during the period beginning on January 1, 2004, and ending on September 30, 2004.''

EXCEPTION TO INITIAL RESIDENCY PERIOD FOR GERIATRIC RESIDENCY OR FELLOWSHIP PROGRAMS

Pub. L. 108–173, title VII, §712, Dec. 8, 2003, 117 Stat. 2340, provided that:

''(a) CLARIFICATION OF CONGRESSIONAL INTENT.—Congress intended section 1886(h)(5)(F)(ii) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(F)(ii)), as added by section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272), to provide an exception to the initial residency period for geriatric residency or fellowship programs such that, where a particular approved geriatric training program requires a resident to complete 2 years of training to initially become board eligible in the geriatric specialty, the 2 years spent in the geriatric training program are treated as part of the resident's initial residency period, but are not counted against any limitation on the initial residency period.

''(b) INTERIM FINAL REGULATORY AUTHORITY AND EFFECTIVE DATE.—The Secretary [of Health and Human Services] shall promulgate interim final regulations consistent with the congressional intent expressed in this section after notice and pending opportunity for public comment to be effective for cost reporting periods beginning on or after October 1, 2003.''

TREATMENT OF VOLUNTEER SUPERVISION

Pub. L. 108–173, title VII, §713, Dec. 8, 2003, 117 Stat. 2340, provided that:

''(a) MORATORIUM ON CHANGES IN TREATMENT.—During the 1-year period beginning on January 1, 2004, for purposes of applying subsections (d)(5)(B) and (h) of section 1886 of the Social Security Act (42 U.S.C. 1395ww), the Secretary [of Health and Human Services] shall allow all hospitals to count residents in osteopathic and allopathic family practice programs in existence as of January 1, 2002, who are training at non-hospital sites, without regard to the financial arrangement between the hospital and the teaching physician practicing in the non-hospital site to which the resident has been assigned.

''(b) STUDY AND REPORT.—

''(1) STUDY.—The Inspector General of the Department of Health and Human Services shall conduct a study of the appropriateness of alternative payment methodologies under such sections for the costs of training residents in non-hospital settings.

''(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Inspector General shall submit to Congress a report on the study conducted under paragraph (1), together with such recommendations as the Inspector General determines appropriate.''

FURNISHING HOSPITALS WITH INFORMATION TO COMPUTE DSH FORMULA

Pub. L. 108–173, title IX, §951, Dec. 8, 2003, 117 Stat. 2427, provided that: ''Beginning not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall arrange to furnish to subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act, 42 U.S.C. 1395ww(d)(1)(B)) the data necessary for such hospitals to compute the number of patient days used in computing the disproportionate patient percentage under such section for that hospital for the current cost reporting year. Such data shall also be furnished to other hospitals which would qualify for additional payments under part A of title XVIII of the Social Security Act [part A of this subchapter] on the basis of such data.''

SPECIAL RULES FOR PAYMENT FOR FISCAL YEAR 2001

Pub. L. 106–554, §1(a)(6) [title III, §301(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–491, provided that: ''Notwithstanding the amendment made by subsection (a) [amending this section], for purposes of making payments for fiscal year 2001 for inpatient hospital services furnished by subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))[)], the 'applicable percentage increase' referred to in section 1886(b)(3)(B)(i) of such Act (42 U.S.C. 1395ww(b)(3)(B)(i))—

''(1) for discharges occurring on or after October 1, 2000, and before April 1, 2001, shall be determined in

accordance with subclause (XVI) of such section as in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(2) for discharges occurring on or after April 1, 2001, and before October 1, 2001, shall be equal to—

''(A) the market basket percentage increase plus 1.1 percentage points for hospitals (other than sole community hospitals) in all areas; and

''(B) the market basket percentage increase for sole community hospitals.''

Pub. L. 106–554, §1(a)(6) [title III, §302(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–493, provided that: ''Notwithstanding paragraph (5)(B)(ii)(V) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(ii)(V)), for purposes of making payments for subsection (d) hospitals (as defined in paragraph (1)(B) of such section) with indirect costs of medical education, the indirect teaching adjustment factor referred to in paragraph (5)(B)(ii) of such section shall be determined, for discharges occurring on or after April 1, 2001, and before October 1, 2001, as if 'c' in paragraph (5)(B)(ii)(V) of such section equalled 1.66 rather than 1.54.''

Pub. L. 106–554, §1(a)(6) [title III, §303(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–493, provided that: ''Notwithstanding the amendment made by subsection (a)(1) [amending this section], for purposes of making disproportionate share payments for subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))[)] for fiscal year 2001, the additional payment amount otherwise determined under clause (ii) of section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F))—

''(1) for discharges occurring on or after October 1, 2000, and before April 1, 2001, shall be adjusted as provided by clause (ix)(III) of such section as in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(2) for discharges occurring on or after April 1, 2001, and before October 1, 2001, shall, instead of being reduced by 3 percent as provided by clause (ix)(III) of such section as in effect after the date of the enactment of this Act, be reduced by 1 percent.''

Pub. L. 106–554, §1(a)(6) [title V, §547(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–553, provided that:

''(a) INPATIENT HOSPITAL SERVICES.—The payment increase provided under the following sections shall not apply to discharges occurring after fiscal year 2001 and shall not be taken into account in calculating the payment amounts applicable for discharges occurring after such fiscal year:

''(1) Section 301(b)(2)(A) [set out as a note above] (relating to acute care hospital payment update).

''(2) Section 302(b) [set out as a note above] (relating to IME percentage adjustment).

''(3) Section 303(b)(2) [set out as a note above] (relating to DSH payments).''

CONSIDERATION OF PRICE OF BLOOD AND BLOOD PRODUCTS IN MARKET BASKET INDEX

Pub. L. 106–554, §1(a)(6) [title III, §301(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–491, provided that: ''The Secretary of Health and Human Services shall, when next (after the date of the enactment of this Act [Dec. 21, 2000]) rebasing and revising the hospital market basket index (as defined in section 1886(b)(3)(B)(iii) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(iii))), consider the prices of blood and blood products purchased by hospitals and determine whether those prices are adequately reflected in such index.''

MEDPAC STUDY AND REPORT REGARDING CERTAIN HOSPITAL COSTS

Pub. L. 106–554, §1(a)(6) [title III, §301(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–491, provided that:

''(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on—

''(A) any increased costs incurred by subsection (d) hospitals (as defined in paragraph (1)(B) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d))) in providing inpatient hospital services to medicare beneficiaries under title XVIII of such Act [this subchapter] during the period beginning on October 1, 1983, and ending on September 30, 1999, that were attributable to—

''(i) complying with new blood safety measure requirements; and

''(ii) providing such services using new technologies;

''(B) the extent to which the prospective payment system for such services under such section provides adequate and timely recognition of such increased costs;

''(C) the prospects for (and to the extent practicable, the magnitude of) cost increases that hospitals will incur in providing such services that are attributable to complying with new blood safety measure requirements and providing such services using new technologies during the 10 years after the date of the enactment of this Act [Dec. 21, 2000]; and

''(D) the feasibility and advisability of establishing mechanisms under such payment system to provide for more timely and accurate recognition of such cost increases in the future.

''(2) CONSULTATION.—In conducting the study under this subsection, the Commission shall consult with representatives of the blood community, including—

''(A) hospitals;

''(B) organizations involved in the collection, processing, and delivery of blood; and

''(C) organizations involved in the development of new blood safety technologies.

''(3) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislation and administrative action as the Commission determines appropriate.''

PROCESS TO PERMIT STATEWIDE WAGE INDEX CALCULATION AND APPLICATION

Pub. L. 106–554, §1(a)(6) [title III, §304(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–494, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall establish a process (based on the voluntary process utilized by the Secretary of Health and Human Services under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for purposes of computing and applying a statewide geographic adjustment factor) under which an appropriate statewide entity may apply to have all the geographic areas in a State treated as a single geographic area for purposes of computing and applying the area wage index under section 1886(d)(3)(E) of such Act (42 U.S.C. 1395ww(d)(3)(E)). Such process shall be established by October 1, 2001, for reclassifications beginning in fiscal year 2003.

''(2) PROHIBITION ON INDIVIDUAL HOSPITAL RECLASSIFICATION.—Notwithstanding any other provision of law, if the Secretary applies a statewide geographic wage index under paragraph (1) with respect to a State, any application submitted by a hospital in that State under section 1886(d)(10) of the Social Security Act (42 U.S.C. 1395ww(d)(10)) for geographic reclassification shall not be considered.''

COLLECTION OF INFORMATION ON OCCUPATIONAL MIX

Pub. L. 106–554, §1(a)(6) [title III, §304(c)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–495, provided that: ''The Secretary of Health and Human Services shall provide for the collection of data every 3 years on occupational mix for employees of each subsection (d) hospital (as defined in section 1886(d)(1)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(D))) in the provision of inpatient hospital services, in order to construct an occupational mix adjustment in the hospital area wage index applied under section 1886(d)(3)(E) of such Act (42 U.S.C. 1395ww(d)(3)(E)).''

Pub. L. 106–554, §1(a)(6) [title III, §304(c)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–495, provided that: ''By not

later than September 30, 2003, for application beginning October 1, 2004, the Secretary shall first complete—

''(A) the collection of data under paragraph (1) [set out above]; and

''(B) the measurement under the third sentence of section 1886(d)(3)(E) [subsection (d)(3)(E) of this section], as amended by paragraph (2).''

PAYMENT FOR INPATIENT SERVICES OF PSYCHIATRIC HOSPITALS

Pub. L. 106–554, §1(a)(6) [title III, §306], Dec. 21, 2000, 114 Stat. 2763, 2763A–496, provided that: ''With respect to hospitals described in clause (i) of section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) and psychiatric units described in the matter following clause (v) of such section, in making incentive payments to such hospitals under section 1886(b)(1)(A) of such Act (42 U.S.C. 1395ww(b)(1)(A)) for cost reporting periods beginning on or after October 1, 2000, and before October 1, 2001, the Secretary of Health and Human Services, in clause (ii) of such section, shall substitute '3 percent' for '2 percent'.''

EXPEDITING RECOGNITION OF NEW TECHNOLOGIES INTO INPATIENT PPS CODING SYSTEM

Pub. L. 106–554, §1(a)(6) [title V, §533(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–548, provided that:

''(1) REPORT.—Not later than April 1, 2001, the Secretary of Health and Human Services shall submit to Congress a report on methods of expeditiously incorporating new medical services and technologies into the clinical coding system used with respect to payment for inpatient hospital services furnished under the medicare program under title XVIII of the Social Security Act [this subchapter], together with a detailed description of the Secretary's preferred methods to achieve this purpose.

''(2) IMPLEMENTATION.—Not later than October 1, 2001, the Secretary shall implement the preferred methods described in the report transmitted pursuant to paragraph (1).''

CONSULTATION PRIOR TO RULEMAKING

Pub. L. 106–554, §1(a)(6) [title V, §533(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–549, provided that: ''The Secretary of Health and Human Services shall consult with groups representing hospitals, physicians, and manufacturers of new medical technologies before publishing the notice of proposed rulemaking required by section 1886(d)(5)(K)(i) of the Social Security Act [subsection (d)(5)(K)(i) of this section] (as added by paragraph (1)).''

SPECIAL PAYMENTS TO MAINTAIN 6.5 PERCENT IME PAYMENT FOR FISCAL YEAR 2000

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §111(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–329, provided that:

''(1) ADDITIONAL PAYMENT.—In addition to payments made to each subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) under section 1886(d)(5)(B) of such Act (42 U.S.C. 1395ww(d)(5)(B))) which receives payment for the direct costs of medical education for discharges occurring in fiscal year 2000, the Secretary of Health and Human Services shall make one or more payments to each such hospital in an amount which, as estimated by the Secretary, is equal in the aggregate to the difference between the amount of payments to the hospital under such section for such discharges and the amount of payments that would have been paid under such section for such discharges if 'c' in clause (ii)(IV) of such section equalled 1.6 rather than 1.47. Additional payments made under this subsection shall be made applying the same structure as applies to payments made under section 1886(d)(5)(B) of such Act.

''(2) NO EFFECT ON OTHER PAYMENTS OR DETERMINATIONS.—In making such additional payments, the Secretary shall not change payments, determinations, or budget neutrality adjustments made for such period under section 1886(d) of such Act (42 U.S.C. 1395ww(d)).''

DATA COLLECTION

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §112(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–330, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall require any subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) to submit to the Secretary, in the cost reports submitted to the Secretary by such hospital for discharges occurring during a fiscal year, data on the costs incurred by the hospital for providing inpatient and outpatient hospital services for which the hospital is not compensated, including non-medicare bad debt, charity care, and charges for medicaid and indigent care.

''(2) EFFECTIVE DATE.—The Secretary shall require the submission of the data described in paragraph (1) in cost reports for cost reporting periods beginning on or after October 1, 2001.''

PER DISCHARGE PROSPECTIVE PAYMENT SYSTEM FOR LONG-TERM CARE HOSPITALS

Pub. L. 106–554, §1(a)(6) [title III, §307(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–496, provided that: ''The amendments made by subsection (a) [amending this section] and by section 122 of BBRA [Pub. L. 106–113, §1000(a)(6) [title I, §122], amending this section] (113 Stat. 1501A–331) shall not be taken into account in the development and implementation of the prospective payment system under section 123 of BBRA [Pub. L. 106–113, §1000(a)(6) [title I, §123], set out as a note below] (113 Stat. 1501A–331).''

Pub. L. 106–554, §1(a)(6) [title III, §307(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–496, provided that:

''(1) MODIFICATION OF REQUIREMENT.—In developing the prospective payment system for payment for inpatient hospital services provided in long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(iv)) under the medicare program under title XVIII of such Act [this subchapter] required under section 123 of BBRA [Pub. L. 106–113, §1000(a)(6) [title I, §123], set out as a note below], the Secretary of Health and Human Services shall examine the feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data. The Secretary shall examine and may provide for appropriate adjustments to the long-term hospital payment system, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment consistent with section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)).

''(2) DEFAULT IMPLEMENTATION OF SYSTEM BASED ON EXISTING DRG METHODOLOGY.—If the Secretary is unable to implement the prospective payment system under section 123 of the BBRA by October 1, 2002, the Secretary shall implement a prospective payment system for such hospitals that bases payment under such a system using existing hospital diagnosis-related groups (DRGs), modified where feasible to account for resource use of long-term care hospital patients using the most recently available hospital discharge data for such services furnished on or after that date.''

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §123], Nov. 29, 1999, 113 Stat. 1536, 1501A–331, provided that:

''(a) DEVELOPMENT OF SYSTEM.—

''(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a per discharge prospective payment system for payment for inpatient hospital services of long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(iv)) under the medicare program. Such system shall include an adequate patient classification system that is based on diagnosis-related groups (DRGs) and that reflects the differences in patient resource use and costs, and shall maintain budget neutrality.

''(2) COLLECTION OF DATA AND EVALUATION.—In developing the system described in paragraph (1), the Secretary may require such long-term care hospitals to submit such information to the Secretary as the Secretary may require to develop the system.

''(b) REPORT.—Not later than October 1, 2001, the Secretary shall submit to the appropriate committees of Congress a report that includes a description of the system developed under subsection (a)(1).

''(c) IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM.—Notwithstanding section 1886(b)(3) of the Social Security Act (42 U.S.C. 1395ww(b)(3)), the Secretary shall provide, for cost reporting periods beginning on or after October 1, 2002, for payments for inpatient hospital services furnished by long-term care hospitals under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) in accordance with the system described in subsection (a).''

PER DIEM PROSPECTIVE PAYMENT SYSTEM FOR PSYCHIATRIC HOSPITALS

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §124], Nov. 29, 1999, 113 Stat. 1536, 1501A–332, provided that:

''(a) DEVELOPMENT OF SYSTEM.—

''(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a per diem prospective payment system for payment for inpatient hospital services of psychiatric hospitals and units (as defined in paragraph (3)) under the medicare program. Such system shall include an adequate patient classification system that reflects the differences in patient resource use and costs among such hospitals and shall maintain budget neutrality.

''(2) COLLECTION OF DATA AND EVALUATION.—In developing the system described in paragraph (1), the Secretary may require such psychiatric hospitals and units to submit such information to the Secretary as the Secretary may require to develop the system.

''(3) DEFINITION.—In this section, the term 'psychiatric hospitals and units' means a psychiatric hospital described in clause (i) of section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) and psychiatric units described in the matter following clause (v) of such section.

''(b) REPORT.—Not later than October 1, 2001, the Secretary shall submit to the appropriate committees of Congress a report that includes a description of the system developed under subsection (a)(1).

''(c) IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM.—Notwithstanding section 1886(b)(3) of the Social Security Act (42 U.S.C. 1395ww(b)(3)), the Secretary shall provide, for cost reporting periods beginning on or after October 1, 2002, for payments for inpatient hospital services furnished by psychiatric hospitals and units under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) in accordance with the prospective payment system established by the Secretary under this section in a budget neutral manner.''

STUDY ON IMPACT OF IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §125(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–333, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of the impact on utilization and beneficiary access to services of the implementation of the medicare prospective payment system for inpatient hospital services or rehabilitation facilities under section 1886(j) of the Social Security Act (42 U.S.C. 1395ww(j)).

''(2) REPORT.—Not later than 3 years after the date such system is first implemented, the Secretary shall submit to Congress a report on such study.''

MEDPAC STUDY ON MEDICARE PAYMENT FOR NONPHYSICIAN HEALTH PROFESSIONAL CLINICAL TRAINING IN HOSPITALS

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §141], Nov. 29, 1999, 113 Stat. 1536, 1501A–334, provided that:

''(a) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study of medicare payment policy with respect to professional clinical training of different classes of nonphysician health care professionals (such as nurses, nurse practitioners, allied health professionals, physician assistants, and psychologists) and the basis for any differences in treatment among such classes.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Nov. 29, 1999], the Commission shall submit a report to Congress on the study conducted under subsection (a).''

NOT COUNTING AGAINST NUMERICAL LIMITATION CERTAIN INTERNS AND RESIDENTS TRANSFERRED FROM A VA RESIDENCY PROGRAM THAT LOSES ACCREDITATION

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §407(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–374, provided that:

''(1) IN GENERAL.—Any applicable resident described in paragraph (2) shall not be taken into account in applying any limitation regarding the number of residents or interns for which payment may be made under section 1886 of the Social Security Act (42 U.S.C. 1395ww).

''(2) APPLICABLE RESIDENT DESCRIBED.—An applicable resident described in this paragraph is a resident or intern who—

''(A) participated in graduate medical education at a facility of the Department of Veterans Affairs;

''(B) was subsequently transferred on or after January 1, 1997, and before July 31, 1998, to a hospital that was not a Department of Veterans Affairs facility; and

''(C) was transferred because the approved medical residency program in which the resident or intern participated would lose accreditation by the Accreditation Council on Graduate Medical Education if such program continued to train residents at the Department of Veterans Affairs facility.

''(3) EFFECTIVE DATE.—

''(A) IN GENERAL.—Paragraph (1) applies as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].

''(B) RETROACTIVE PAYMENTS.—If the Secretary of Health and Human Services determines that a hospital operating an approved medical residency program is owed payments as a result of enactment of this subsection, the Secretary shall make such payments not later than 60 days after the date of the enactment of this Act [Nov. 29, 1999].''

GAO STUDY ON GEOGRAPHIC RECLASSIFICATION

Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §410], Nov. 29, 1999, 113 Stat. 1536, 1501A–376, provided that:

''(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the current laws and regulations for geographic reclassification of hospitals to determine whether such reclassification is appropriate for purposes of applying wage indices under the medicare program and whether such reclassification results in more accurate payments for all hospitals. Such study shall examine data on the number of hospitals that are reclassified and their reclassified status in determining payments under the medicare program. The study shall evaluate—

''(1) the magnitude of the effect of geographic reclassification on rural hospitals that are not reclassified;

''(2) whether the current thresholds used in geographic reclassification reclassify hospitals to the appropriate labor markets;

''(3) the effect of eliminating geographic reclassification through use of the occupational mix data;

''(4) the group reclassification policy;

''(5) changes in the number of reclassifications and the compositions of the groups;

''(6) the effect of State-specific budget neutrality compared to national budget neutrality; and

''(7) whether there are sufficient controls over the intermediary evaluation of the wage data reported by hospitals.

''(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Nov. 29, 1999], the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a).''

CONTINUING TREATMENT OF PREVIOUSLY DESIGNATED CENTERS

Section 4202(b) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—Any hospital classified as a rural referral center by the Secretary of Health and Human Services under section 1886(d)(5)(C) of the Social Security Act [subsec. (d)(5)(C) of this section] for fiscal year 1991 shall be classified as such a rural referral center for fiscal year 1998 and each subsequent fiscal year.

''(2) BUDGET NEUTRALITY.—The provisions of section 1886(d)(8)(D) of the Social Security Act [subsec. (d)(8)(D) of this section] shall apply to reclassifications made pursuant to paragraph (1) in the same manner as such provisions apply to a reclassification under section 1886(d)(10) of such Act [subsec. (d)(10) of this section].''

HOSPITAL GEOGRAPHIC RECLASSIFICATION PERMITTED FOR PURPOSES OF DISPROPORTIONATE SHARE PAYMENT ADJUSTMENTS

Section 4203 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—For the period described in subsection (c), the Medicare Geographic Classification Review Board shall consider the application under section 1886(d)(10)(C)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(10)(C)(i)) of a hospital described in 1886(d)(1)(B) of such Act (42 U.S.C. 1395ww(d)(1)(B)) to change the hospital's geographic classification for purposes of determining for a fiscal year eligibility for and amount of additional payment amounts under section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)).

''(b) APPLICABLE GUIDELINES.—The Medicare Geographic Classification Review Board shall apply the guidelines established for reclassification under subclause (I) of section 1886(d)(10)(C)(i) of such Act to reclassification by reason of subsection (a) until the Secretary of Health and Human Services promulgates separate guidelines for such reclassification.

''(c) PERIOD DESCRIBED.—The period described in this subsection is the period beginning on the date of the enactment of this Act [Aug. 5, 1997] and ending 30 months after such date.''

TEMPORARY RELIEF FOR CERTAIN NON-TEACHING, NON-DSH HOSPITALS

Pub. L. 105–33, title IV, §4401(b), Aug. 5, 1997, 111 Stat. 397, as amended by Pub. L. 106–113, div. B, §1000(a)(6) [title III, §321(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–366, provided that:

''(1) IN GENERAL.—In the case of a hospital described in paragraph (2) for its cost reporting period—

''(A) beginning in fiscal year 1998 the amount of payment made to the hospital under section 1886(d) of the Social Security Act [subsec. (d) of this section] for discharges occurring during such fiscal year only shall be increased as though the applicable percentage increase (otherwise applicable to discharges occurring during fiscal year 1998 under section 1886(b)(3)(B)(i)(XIII) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)(XIII))) had been increased by 0.5 percentage points; and

''(B) beginning in fiscal year 1999 the amount of payment made to the hospital under section 1886(d) of the Social Security Act for discharges occurring during such fiscal year only shall be increased as though the applicable percentage increase (otherwise applicable to discharges occurring during fiscal year 1999 under section 1886(b)(3)(B)(i)(XIV) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)(XIV))) had been increased by 0.3 percentage points.

Subparagraph (A) shall not apply in computing the increase under subparagraph (B) and neither subparagraph shall affect payment for discharges for any hospital occurring during a fiscal year after fiscal year 1999. Payment increases under this subsection for discharges occurring during a fiscal year are subject to settlement after the close of the fiscal year.

''(2) HOSPITALS COVERED.—A hospital described in this paragraph for a cost reporting period is a hospital—

''(A) that is described in paragraph (3) for such period;

''(B) that is located in a State in which the amount of the aggregate payments under section 1886(d) of such Act [subsec. (d) of this section] for hospitals located in the State and described in paragraph (3) for their cost reporting periods beginning during fiscal year 1995 is less than the aggregate allowable operating costs of inpatient hospital services (as defined in section 1886(a)(4) of such Act) for all such hospitals in such State with respect to such cost reporting periods; and

''(C) with respect to which the payments under section 1886(d) of such Act (42 U.S.C. 1395ww(d)) for discharges occurring in the cost reporting period involved, as estimated by the Secretary, is less than the allowable operating costs of inpatient hospital services (as defined in section 1886(a)(4) of such Act (42 U.S.C. 1395ww(a)(4))[)] for such hospital for such period, as estimated by the Secretary.

''(3) NON-TEACHING, NON-DSH HOSPITALS DESCRIBED.—A hospital described in this paragraph for a cost reporting period is a subsection (d) hospital (as defined in section 1886(d)(1)(B) of such Act (42 U.S.C. 1395ww(d)(1)(B))) that—

''(A) is not receiving any additional payment amount described in section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)) for discharges occurring during the period;

''(B) is not receiving any additional payment under section 1886(d)(5)(B) of such Act (42 U.S.C. 1395ww(d)(5)(B)) or a payment under section 1886(h) of such Act (42 U.S.C. 1395ww(h)) for discharges occurring during the period; and

''(C) does not qualify for payment under section 1886(d)(5)(G) of such Act (42 U.S.C. 1395ww(d)(5)(G)) for the period.''

FORMULA FOR ADDITIONAL PAYMENT AMOUNTS; REPORT

Section 4403(b), (c) of Pub. L. 105–33 provided that:

''(b) REPORT ON NEW PAYMENT FORMULA.—

''(1) REPORT.—Not later than 1 year after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that contains a formula for determining additional payment amounts to hospitals under section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)).

''(2) FACTORS IN DETERMINATION OF FORMULA.—In determining such formula the Secretary shall—

''(A) establish a single threshold for costs incurred by hospitals in serving low-income patients, and

''(B) consider the costs described in paragraph (3).

''(3) The costs described in this paragraph are as follows:

''(A) The costs incurred by the hospital during a period (as determined by the Secretary) of furnishing hospital services to individuals who are entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter] and who receive supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter] (excluding any supplementation of those benefits by a State under section 1616 of such Act (42 U.S.C. 1382e)).

''(B) The costs incurred by the hospital during a period (as so determined) of furnishing hospital services to individuals who receive medical assistance under the State plan under title XIX of such Act [subchapter XIX of this chapter] and are not entitled to benefits under part A of title XVIII of

such Act [part A of this subchapter] (including individuals enrolled in a managed care organization (as defined in section 1903(m)(1)(A) of such Act (42 U.S.C. 1396b(m)(1)(A)) or any other managed care plan under such title and individuals who receive medical assistance under such title pursuant to a waiver approved by the Secretary under section 1115 of such Act (42 U.S.C. 1315)).

''(c) DATA COLLECTION.—In developing the formula described in subsection (b), the Secretary of Health and Human Services may require any subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) receiving additional payments by reason of section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)) to submit to the Secretary any information that the Secretary determines is necessary to develop such formula.''

GEOGRAPHIC RECLASSIFICATION FOR CERTAIN DISPROPORTIONATELY LARGE HOSPITALS

Section 4409 of Pub. L. 105–33 provided that:

''(a) NEW GUIDELINES FOR RECLASSIFICATION.—Notwithstanding the guidelines published under section 1886(d)(10)(D)(i)(I) of the Social Security Act (42 U.S.C. 1395ww(d)(10)(D)(i)(I)), the Secretary of Health and Human Services shall publish and use alternative guidelines under which a hospital described in subsection (b) qualifies for geographic reclassification under such section for a fiscal year beginning with fiscal year 1998.

''(b) HOSPITALS COVERED.—A hospital described in this subsection is a hospital that demonstrates that—

''(1) the average hourly wage paid by the hospital is not less than 108 percent of the average hourly wage paid by all other hospitals located in the Metropolitan Statistical Area (or the New England County Metropolitan Area) in which the hospital is located;

''(2) not less than 40 percent of the adjusted uninflated wages paid by all hospitals located in such Area is attributable to wages paid by the hospital; and

''(3) the hospital submitted an application requesting reclassification for purposes of wage index under section 1886(d)(10)(C) of such Act (42 U.S.C. 1395ww(d)(10)(C)) in each of fiscal years 1992 through 1997 and that such request was approved for each of such fiscal years.''

FLOOR ON AREA WAGE INDEX

Section 4410 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—For purposes of section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)) for discharges occurring on or after October 1, 1997, the area wage index applicable under such section to any hospital which is not located in a rural area (as defined in section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D))[)] may not be less than the area wage index applicable under such section to hospitals located in rural areas in the State in which the hospital is located.

''(b) IMPLEMENTATION.—The Secretary of Health and Human Services shall adjust the area wage index referred to in subsection (a) for hospitals not described in such subsection in a manner which assures that the aggregate payments made under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) in a fiscal year for the operating costs of inpatient hospital services are not greater or less than those which would have been made in the year if this section did not apply.

''(c) EXCLUSION OF CERTAIN WAGES.—In the case of a hospital that is owned by a municipality and that was reclassified as an urban hospital under section 1886(d)(10) of the Social Security Act [subsec. (d)(10) of this section] for fiscal year 1996, in calculating the hospital's average hourly wage for purposes of geographic reclassification under such section for fiscal year 1998, the Secretary of Health and Human Services shall exclude the general service wages and hours of personnel associated with a skilled nursing facility that is owned by the hospital of the same municipality and that is physically separated from the hospital to the extent that such wages and hours of such personnel are not shared with the hospital and are separately documented. A hospital that applied for and was denied reclassification as an urban hospital for fiscal year 1998, but that would have received reclassification had the exclusion required by this section been applied to it, shall be reclassified as an urban hospital for fiscal year 1998.''

REPORT ON EFFECT OF AMENDMENTS BY PUB. L. 105–33, § 4415, ON PSYCHIATRIC HOSPITALS

Section 4415(d) of Pub. L. 105–33 provided that: ''Not later than October 1, 1999, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that describes the effect of the amendments to section 1886(b)(1) of the Social Security Act (42 U.S.C. 1395ww(b)(1)), made under this section, on psychiatric hospitals (as defined in section 1886(d)(1)(B)(i) of such Act (42 U.S.C. 1395ww(d)(1)(B)(i)) that have approved medical residency training programs under title XVIII of such Act (42 U.S.C. 1395 et seq.)).''

TREATMENT OF CERTAIN CANCER HOSPITALS; PAYMENT

Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 152(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–252, provided that:

''(1) APPLICATION TO COST REPORTING PERIODS.—Any classification by reason of section 1886(d)(1)(B)(v)(III) of the Social Security Act [subsec. (d)(1)(B)(v)(III) of this section] (as added by subsection (a)) shall apply to 12-month cost reporting periods beginning on or after July 1, 1999.

''(2) BASE YEAR.—Notwithstanding the provisions of section 1886(b)(3)(E) of such Act (42 U.S.C. 1395ww(b)(3)(E)) or other provisions to the contrary, the base cost reporting period for purposes of determining the target amount for any hospital classified by reason of section 1886(d)(1)(B)(v)(III) of such Act [subsec. (d)(1)(B)(v)(III) of this section] (as added by subsection (a)) shall be the 12-month cost reporting period beginning on July 1, 1995.

''(3) DEADLINE FOR PAYMENTS.—Any payments owed to a hospital by reason of this subsection shall be made expeditiously, but in no event later than 1 year after the date of the enactment of this Act [Dec. 21, 2000].''

Section 4418(b) of Pub. L. 105–33 provided that:

''(1) APPLICATION TO COST REPORTING PERIODS.—Any classification by reason of section 1886(d)(1)(B)(v)(II) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(v)(II)) (as added by subsection (a)) shall apply to all cost reporting periods beginning on or after January 1, 1991.

''(2) BASE YEAR.—Notwithstanding the provisions of section 1886(b)(3)(E) of such Act (42 U.S.C. 1395ww(b)(3)(E)) or other provisions to the contrary, the base cost reporting period for purposes of determining the target amount for any hospital classified by reason of section 1886(d)(1)(B)(v)(II) of such Act shall be either—

''(A) the hospital's cost reporting period beginning during fiscal year 1990, or

''(B) pursuant to an election under 1886(b)(3)(G) of such Act (42 U.S.C. 1395ww(b)(3)(G)), as added in section 4413(b), the period provided for under such section.

''(3) DEADLINE FOR PAYMENTS.—Any payments owed to a hospital by reason of this subsection shall be made expeditiously, but in no event later than 1 year after the date of the enactment of this Act [Aug. 5, 1997].''

REPORT ON EXCEPTIONS

Section 4419(b) of Pub. L. 105–33 provided that: ''The Secretary of Health and Human Services shall publish annually in the Federal Register a report describing the total amount of payments made to hospitals by reason of section 1886(b)(4) of the Social Security Act

(42 U.S.C. 1395ww(b)(4)), as amended by subsection (a), ending during the previous fiscal year.''

DEVELOPMENT OF PROPOSAL ON PAYMENTS FOR LONG-TERM CARE HOSPITALS

Section 4422 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—

''(1) LEGISLATIVE PROPOSAL.—The Secretary of Health and Human Services shall develop a legislative proposal for establishing a case-mix adjusted prospective payment system for payment of long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(iv)) under the medicare program. Such system shall include an adequate patient classification system that reflects the differences in patient resource use and costs among such hospitals.

''(2) COLLECTION OF DATA AND EVALUATION.—In developing the legislative proposal described in paragraph (1), the Secretary—

''(A) may require such long-term care hospitals to submit such information to the Secretary as the Secretary may require to develop the proposal; and

''(B) shall consider several payment methodologies, including the feasibility of expanding the current diagnosis-related groups and prospective payment system established under section 1886(d) of the Social Security Act [subsec. (d) of this section] to apply to payments under the medicare program to long-term care hospitals.

''(b) REPORT.—Not later than October 1, 1999, the Secretary shall submit to the appropriate committees of Congress a report that includes the legislative proposal developed under subsection (a)(1).''

DISSEMINATION OF INFORMATION ON HIGH PER DISCHARGE RELATIVE VALUES FOR IN-HOSPITAL PHYSICIANS' SERVICES

Section 4506 of title IV of Pub. L. 105–33 provided that:

''(a) DETERMINATION AND NOTICE CONCERNING HOSPITAL-SPECIFIC PER DISCHARGE RELATIVE VALUES.—

''(1) IN GENERAL.—For 1999 and 2001 the Secretary of Health and Human Services shall determine for each hospital—

''(A) the hospital-specific per discharge relative value under subsection (b); and

''(B) whether the hospital-specific relative value is projected to be excessive (as determined based on such value represented as a percentage of the median of hospital-specific per discharge relative values determined under subsection (b)).

''(2) NOTICE TO SUBSET OF MEDICAL STAFFS; EVALUATION OF RESPONSES.—The Secretary shall notify the medical executive committee of a subset of the hospitals identified under paragraph (1)(B) as having an excessive hospital-specific relative value, of the determinations made with respect to the medical staff under paragraph (1). The Secretary shall evaluate the responses of the hospitals so notified with the responses of other hospitals so identified that were not so notified.

''(b) DETERMINATION OF HOSPITAL-SPECIFIC PER DISCHARGE RELATIVE VALUES.—

''(1) IN GENERAL.—For purposes of this section, the hospital-specific per discharge relative value for the medical staff of a hospital (other than a teaching hospital) for a year shall be equal to the average per discharge relative value (as determined under section 1848(c)(2) of the Social Security Act (42 U.S.C. 1395w–4(c)(2))[)] for physicians' services furnished to inpatients of the hospital by the hospital's medical staff (excluding interns and residents) during the second year preceding that calendar year, adjusted for variations in case-mix among hospitals and disproportionate share status and teaching status among hospitals (as determined by the Secretary under paragraph (3)).

''(2) SPECIAL RULE FOR TEACHING HOSPITALS.—The hospital-specific relative value projected for a teaching hospital in a year shall be equal to the sum of—

''(A) the average per discharge relative value (as determined under section 1848(c)(2) of such Act [section 1395w–4(c)(2) of this title]) for physicians' services furnished to inpatients of the hospital by the hospital's medical staff (excluding interns and residents) during the second year preceding that calendar year, and

''(B) the equivalent per discharge relative value (as determined under such section) for physicians' services furnished to inpatients of the hospital by interns and residents of the hospital during the second year preceding that calendar year, adjusted for variations in case-mix among hospitals, and in disproportionate share status and teaching status among hospitals (as determined by the Secretary under paragraph (3)).

The Secretary shall determine the equivalent relative value unit per discharge for interns and residents based on the best available data and may make such adjustment in the aggregate.

''(3) ADJUSTMENT FOR TEACHING AND DISPROPORTIONATE SHARE HOSPITALS.—The Secretary shall adjust the allowable per discharge relative values otherwise determined under this subsection to take into account the needs of teaching hospitals and hospitals receiving additional payments under subparagraphs (F) and (G) of section 1886(d)(5) of the Social Security Act (42 U.S.C. 1395ww(d)(5)). The adjustment for teaching status or disproportionate share shall not be less than zero.

''(c) DEFINITIONS.—For purposes of this section:

''(1) HOSPITAL.—The term 'hospital' means a subsection (d) hospital as defined in section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)).

''(2) MEDICAL STAFF.—An individual furnishing a physician's service is considered to be on the medical staff of a hospital—

''(A) if (in accordance with requirements for hospitals established by the Joint Commission on Accreditation of Health Organizations)—

''(i) the individual is subject to bylaws, rules, and regulations established by the hospital to provide a framework for the self-governance of medical staff activities,

''(ii) subject to the bylaws, rules, and regulations, the individual has clinical privileges granted by the hospital's governing body, and

''(iii) under the clinical privileges, the individual may provide physicians' services independently within the scope of the individual's clinical privileges, or

''(B) if the physician provides at least one service to an individual entitled to benefits under this title in that hospital.

''(3) PHYSICIANS' SERVICES.—The term 'physicians' services' means the services described in section 1848(j)(3) of the Social Security Act (42 U.S.C. 1395w–4(j)(3)).

''(4) RURAL AREA; URBAN AREA.—The terms 'rural area' and 'urban area' have the meaning given those terms under section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D)).

''(5) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

''(6) TEACHING HOSPITAL.—The term 'teaching hospital' means a hospital which has a teaching program approved as specified in section 1861(b)(6) of the Social Security Act (42 U.S.C. 1395x(b)(6)).''

INCENTIVE PAYMENTS UNDER PLANS FOR VOLUNTARY REDUCTION IN NUMBER OF RESIDENTS; RELATION TO DEMONSTRATION PROJECTS AND AUTHORITY; REGULATIONS

Section 4626(b), (c) of Pub. L. 105–33 provided that:

''(b) RELATION TO DEMONSTRATION PROJECTS AND AUTHORITY.—

''(1) Section 1886(h)(6) of the Social Security Act [subsec. (h)(6) of this section], added by subsection (a), other than subparagraph (F)(ii) thereof, shall not apply to any residency training program with respect

to which a demonstration project described in paragraph (3) has been approved by the Health Care Financing Administration as of May 27, 1997.

''(2) Effective May 27, 1997, the Secretary of Health and Human Services is not authorized to approve any demonstration project described in paragraph (3) for any residency training year beginning before July 1, 2006.

''(3) A demonstration project described in this paragraph is a project that primarily provides for additional payments under title XVIII of the Social Security Act [this subchapter] in connection with a reduction in the number of residents in a medical residency training program.

''(c) INTERIM, FINAL REGULATIONS.—In order to carry out the amendment made by subsection (a) in a timely manner, the Secretary of Health and Human Services may first promulgate regulations, that take effect on an interim basis, after notice and pending opportunity for public comment, by not later than 6 months after the date of the enactment of this Act [Aug. 5, 1997].''

DEMONSTRATION PROJECT ON USE OF CONSORTIA

Section 4628 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall establish a demonstration project under which, instead of making payments to teaching hospitals pursuant to section 1886(h) of the Social Security Act [subsec. (h) of this section], the Secretary shall make payments under this section to each consortium that meets the requirements of subsection (b) and that applies to be included under the project.

''(b) QUALIFYING CONSORTIA.—For purposes of subsection (a), a consortium meets the requirements of this subsection if the consortium is in compliance with the following:

''(1) The consortium consists of a teaching hospital with one or more approved medical residency training programs and one or more of the following entities:

''(A) A school of allopathic medicine or osteopathic medicine.

''(B) Another teaching hospital, which may be a children's hospital.

''(C) A Federally qualified health center.

''(D) A medical group practice.

''(E) A managed care entity.

''(F) An entity furnishing outpatient services.

''(G) Such other entity as the Secretary determines to be appropriate.

''(2) The members of the consortium have agreed to participate in the programs of graduate medical education that are operated by the entities in the consortium.

''(3) With respect to the receipt by the consortium of payments made pursuant to this section, the members of the consortium have agreed on a method for allocating the payments among the members.

''(4) The consortium meets such additional requirements as the Secretary may establish.

''(c) AMOUNT AND SOURCE OF PAYMENT.—The total of payments to a qualifying consortium for a fiscal year pursuant to subsection (a) shall not exceed the amount that would have been paid under section 1886(h) or (k) of the Social Security Act [subsecs. (h), (k) of this section] for the teaching hospital (or hospitals) in the consortium. Such payments shall be made in such proportion from each of the trust funds established under title XVIII of such Act [this subchapter] as the Secretary specifies.''

RECOMMENDATIONS ON LONG-TERM POLICIES REGARDING TEACHING HOSPITALS AND GRADUATE MEDICAL EDUCATION

Section 4629 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—The Medicare Payment Advisory Commission (established under section 1805 of the Social Security Act [section 1395b–6 of this title] and in this section referred to as the 'Commission') shall examine and develop recommendations on whether and to what extent medicare payment policies and other Federal policies regarding teaching hospitals and graduate medical education should be changed. Such recommendations shall include recommendations regarding each of the following:

''(1) Possible methodologies for making payments for graduate medical education and the selection of entities to receive such payments. Matters considered under this paragraph shall include—

''(A) issues regarding children's hospitals and approved medical residency training programs in pediatrics, and

''(B) whether and to what extent payments are being made (or should be made) for training in the nursing and other allied health professions.

''(2) Federal policies regarding international medical graduates.

''(3) The dependence of schools of medicine on service-generated income.

''(4) Whether and to what extent the needs of the United States regarding the supply of physicians, in the aggregate and in different specialties, will change during the 10-year period beginning on October 1, 1997, and whether and to what extent any such changes will have significant financial effects on teaching hospitals.

''(5) Methods for promoting an appropriate number, mix, and geographical distribution of health professionals.

''(b) CONSULTATION.—In conducting the study under subsection (a), the Commission shall consult with the Council on Graduate Medical Education and individuals with expertise in the area of graduate medical education, including—

''(1) deans from allopathic and osteopathic schools of medicine;

''(2) chief executive officers (or equivalent administrative heads) from academic health centers, integrated health care systems, approved medical residency training programs, and teaching hospitals that sponsor approved medical residency training programs;

''(3) chairs of departments or divisions from allopathic and osteopathic schools of medicine, schools of dentistry, and approved medical residency training programs in oral surgery;

''(4) individuals with leadership experience from representative fields of non-physician health professionals;

''(5) individuals with substantial experience in the study of issues regarding the composition of the health care workforce of the United States; and

''(6) individuals with expertise in health care payment policies.

''(c) REPORT.—Not later than 2 years after the date of the enactment of this Act [Aug. 5, 1997], the Commission shall submit to the Congress a report providing its recommendations under this section and the reasons and justifications for such recommendations.''

STUDY OF HOSPITAL OVERHEAD AND SUPERVISORY PHYSICIAN COMPONENTS OF DIRECT MEDICAL EDUCATION COSTS

Section 4630 of Pub. L. 105–33 provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study with respect to—

''(1) variations among hospitals in the hospital overhead and supervisory physician components of their direct medical education costs taken into account under section 1886(h) of the Social Security Act [subsec. (h) of this section], and

''(2) the reasons for such variations.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Aug. 5, 1997], the Secretary shall report the results of the study conducted under subsection (a) to the appropriate committees of Congress, including recommendations for legislation reducing variations described in subsection (a) that the Secretary finds inappropriate.''

DRG PROSPECTIVE PAYMENT RATE METHODOLOGY; TRANSITION RULE FOR FISCAL YEAR 1998

Section 4644(a)(2) of Pub. L. 105–33 provided that: ''With respect to the publication in the Federal Register of the DRG prospective payment rate methodology under such section for fiscal year 1998, the term '60 days' in section 801(a)(3)(A) and section 802(a) of title 5, United States Code, is deemed to be a reference to '30 days'.''

HOSPITAL PAYMENT UPDATES; TRANSITION RULE FOR FISCAL YEAR 1998

Section 4644(b)(2) of Pub. L. 105–33 provided that: ''With respect to the publication in the Federal Register of the appropriate change factor for inpatient hospital services for discharges in fiscal year 1998 under section 1886(e)(5)(B) (42 U.S.C. 1395ww(e)(5)(B)), the term '60 days' in section 801(a)(3)(A) and section 802(a) of title 5, United States Code, is deemed to be a reference to '30 days'.''

GEOGRAPHICAL RECLASSIFICATION; SPECIAL RULE FOR APPLICATIONS RECEIVED IN FISCAL YEAR 1997

Section 4644(c)(2) of Pub. L. 105–33 provided that: ''In the case of an application for a change in geographic classification under such section [subsec. (d)(10)(C)(ii) of this section] for fiscal year 1999, the Secretary of Health and Human Services shall shorten the deadlines under such section so as to permit completion of a final decision by the Secretary by June 15, 1998.''

NO STANDARDIZED AMOUNT ADJUSTMENTS FOR FISCAL YEARS 1992 OR 1993

Section 13501(b)(2) of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services shall not revise the fiscal year 1992 or fiscal year 1993 standardized amounts pursuant to subsections (d)(3)(B) and (d)(8)(D) of section 1886 of the Social Security Act [subsec. (d)(3)(B) and (d)(8)(D) of this section] to account for the amendment made by paragraph (1) [amending this section].''

EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATIONS THROUGH FISCAL YEAR 1994; RECLASSIFICATION

Section 13501(d) of Pub. L. 103–66 provided that:

''(1) EXTENSION OF CLASSIFICATION THROUGH FISCAL YEAR 1994.—Any hospital that is classified as a regional referral center under section 1886(d)(5)(C) of the Social Security Act [subsec. (d)(5)(C) of this section] as of September 30, 1992, shall continue to be so classified for cost reporting periods beginning during fiscal year 1993 or fiscal year 1994, unless the area in which the hospital is located is redesignated as a Metropolitan Statistical Area by the Office of Management and Budget for such a fiscal year.

''(2) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—If any hospital fails to qualify as a rural referral center under section 1886(d)(5)(C) of the Social Security Act as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act to reclassify the hospital as being located in an urban area for fiscal year 1993 or fiscal year 1994, the Secretary of Health and Human Services shall—

''(A) notify such hospital of such failure to qualify,

''(B) provide an opportunity for such hospital to decline such reclassification, and

''(C) if the hospital—

''(i) declines such reclassification, administer the Social Security Act [this chapter] (other than section 1886(d)(8)(D)) for such fiscal year as if the decision by the Review Board had not occurred, or

''(ii) fails to decline such reclassification, administer the Social Security Act without regard to paragraph (1).

''(3) REQUIRING LUMP-SUM RETROACTIVE PAYMENT FOR HOSPITALS LOSING CLASSIFICATION.—

''(A) IN GENERAL.—In the case of a hospital described in paragraph (1), the Secretary of Health and Human Services shall make a lump-sum payment to the hospital equal to the difference between the aggregate payment made to the hospital under section 1886 of such Act (excluding outlier payments under subsection (d)(5)(A) of such section) during the period of applicability described in subparagraph (B) and the aggregate payment that would have been made to the hospital under such section if, during the period of applicability, the hospital was classified a regional referral center under section 1886(d)(5)(C) of such Act.

''(B) PERIOD OF APPLICABILITY.—In subparagraph (A), the 'period of applicability' is the period that begins on October 1, 1992, and ends on the date of the enactment of this Act [Aug. 10, 1993].''

HOSPITALS DECLINING URBAN AREA RECLASSIFICATIONS; RETROACTIVE PAYMENTS

Pub. L. 103–66, title XIII, §13501(e)(2), (3), Aug. 10, 1993, 107 Stat. 576, as amended by Pub. L. 105–33, title IV, §4204(a)(3), Aug. 5, 1997, 111 Stat. 376; Pub. L. 106–113, div. B, §1000(a)(6) [title IV, §404(b)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–372, provided that:

''(2) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—If any hospital fails to qualify as a medicare-dependent, small rural hospital under section 1886(d)(5)(G)(i) of the Social Security Act [subsec. (d)(5)(G)(i) of this section] as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act to reclassify the hospital as being located in an urban area for fiscal year 1993, fiscal year 1994, fiscal year 1998, fiscal year 1999, or fiscal year 2000 through fiscal year 2005, the Secretary of Health and Human Services shall—

''(A) notify such hospital of such failure to qualify,

''(B) provide an opportunity for such hospital to decline such reclassification, and

''(C) if the hospital declines such reclassification, administer the Social Security Act [this chapter] (other than section 1886(d)(8)(D)) for such fiscal year as if the decision by the Review Board had not occurred.

''(3) REQUIRING LUMP-SUM RETROACTIVE PAYMENT.—

''(A) IN GENERAL.—In the case of a hospital treated as a medicare-dependent, small rural hospital under section 1886(d)(5)(G) of the Social Security Act, the Secretary of Health and Human Services shall make a lump-sum payment to the hospital equal to the difference between the aggregate payment made to the hospital under section 1886 of such Act (excluding outlier payments under subsection (d)(5)(A) of such section) during the period of applicability described in subparagraph (B) and the aggregate payment that would have been made to the hospital under such section if, during the period of applicability, section 1886(d)(5)(G) of such Act had been applied as if the amendments made by paragraph (1) [amending this section] had been in effect.

''(B) PERIOD OF APPLICABILITY.—In subparagraph (A), the 'period of applicability' is, with respect to a hospital, the period that begins on the first day of the hospital's first 12-month cost reporting period that begins after April 1, 1992, and ends on the date of the enactment of this Act [Aug. 10, 1993].''

ADJUSTMENT IN GME BASE-YEAR COSTS OF FEDERAL INSURANCE CONTRIBUTIONS ACT

Section 13563(d) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—In determining the amount of payment to be made under section 1886(h) of the Social Security Act [subsec. (h) of this section] in the case of a hospital described in paragraph (2) for cost reporting periods beginning on or after October 1, 1992, the Secretary of Health and Human Services shall redetermine the approved FTE resident amount to reflect the amount that would have been paid the hospital if, during the hospital's base cost reporting period, the hospital had been liable for FICA taxes or for contribu-

tions to the retirement system of a State, a political subdivision of a State, or an instrumentality of such a State or political subdivision with respect to interns and residents in its medical residency training program.

''(2) HOSPITALS AFFECTED.—A hospital described in this paragraph is a hospital that did not pay FICA taxes with respect to interns and residents in its medical residency training program during the hospital's base cost reporting period, but is required to pay FICA taxes or make contributions to a retirement system described in paragraph (1) with respect to such interns and residents because of the amendments made by section 11332(b) of OBRA–1990 [Pub. L. 101–508, amending section 3121 of Title 26, Internal Revenue Code].

''(3) DEFINITIONS.—In this subsection:

''(A) The 'base cost reporting period' for a hospital is the hospital's cost reporting period that began during fiscal year 1984.

''(B) The term 'FICA taxes' means, with respect to a hospital, the taxes under section 3111 of the Internal Revenue Code of 1986 [26 U.S.C. 3111].''

DETERMINATION OF AREA WAGE INDEX FOR DISCHARGES OCCURRING JANUARY 1, 1991 TO OCTOBER 1, 1993

Section 4002(d)(1) of Pub. L. 101–508 provided that:

''(A) For purposes of section 1886(d)(3)(E) of the Social Security Act [subsec. (d)(3)(E) of this section] for discharges occurring on or after January 1, 1991, and before October 1, 1993, the Secretary of Health and Human Services shall apply an area wage index determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section.

''(B) The Secretary shall apply the wage index described in subparagraph (A) without regard to a previous survey of wages and wage-related costs.''

STUDY AND REPORT ON RELATIONSHIP BETWEEN NON-WAGE-RELATED INPUT PRICES AND ADJUSTED AVERAGE STANDARDIZED AMOUNTS

Section 4002(e)(2) of Pub. L. 101–508 directed Secretary of Health and Human Services to collect sufficient data on the input prices associated with the non-wage-related portion of the adjusted average standardized amounts established under subsec. (d)(3) of this section to identify extent to which variations in such amounts among hospitals located in different geographic areas are attributable to differences in such prices, and, not later than June 1, 1993, submit a report to Congress analyzing such data, with such report to include recommendations regarding a methodology for adjusting such average standardized amounts to reflect such variations.

DEADLINE FOR SUBMISSION OF APPLICATIONS TO GEOGRAPHIC CLASSIFICATION REVIEW BOARD

Section 4002(h)(2)(A) of Pub. L. 101–508 provided that: ''For purposes of determining whether a hospital requesting a change in geographic classification for fiscal year 1992 under section 1886(d)(10) of the Social Security Act [subsec. (d)(10) of this section] has met the deadline described in subparagraph (C)(ii) of such section, an application submitted under such subparagraph shall be considered to have been submitted by the first day of the preceding fiscal year if it is submitted within 60 days of the date of publication of the guidelines described in subparagraph (D)(i) of such section.''

PAYMENTS FOR MEDICAL EDUCATION COSTS

Section 4004 of Pub. L. 101–508 provided that:

''(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT.—

''(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part A of title XVIII of the Social Security Act [part A of this subchapter] due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h) [subsec. (h) of this section].

''(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

''(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

''(b) UNIVERSITY HOSPITAL NURSING EDUCATION.—

''(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part A of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

''(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

''(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

''(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to the clinical training costs during the cost reporting period described in subparagraph (A);

''(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

''(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

''(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

''(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part A of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act [section 1395x(v) of this title]).

''(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act [Nov. 5, 1990], the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part A of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

''(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

''(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.''

Section 4159 of Pub. L. 101–508 provided that:

''(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT.—

''(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part B of title XVIII of the Social Security Act [part B of this subchapter] due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h) [subsec. (h) of this section].

''(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

''(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

''(b) UNIVERSITY HOSPITAL NURSING EDUCATION.—

''(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part B of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

''(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

''(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

''(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to clinical training costs during the cost reporting period described in subparagraph (A);

''(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

''(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

''(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

''(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part B of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act [section 1395x(v) of this title]).

''(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act [Nov. 5, 1990], the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part B of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

''(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

''(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.''

DEVELOPMENT OF NATIONAL PROSPECTIVE PAYMENT RATES FOR CURRENT NON-PPS HOSPITALS

Section 4005(b) of Pub. L. 101–508 provided that:

''(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section]) receive payment for the operating and capital-related costs of inpatient hospital services under part A [part A of this subchapter] of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of nationally-determined average standardized amounts. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

''(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

''(B) provide for adjustments to prospectively determined rates to account for changes in a hospital's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

''(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

''(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, costs related to graduate medical education programs, differences in wages and wage-related costs among hospitals located in various geographic areas, and other factors the Secretary considers appropriate; and

''(E) provide for the appropriate allocation of operating and capital-related costs of hospitals not subject to the new prospective payment system and distinct units of such hospitals that would be paid under such system.

''(2) REPORTS.—(A) By not later than April 1, 1992, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

''(B) By not later than June 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.''

GUIDANCE TO INTERMEDIARIES AND HOSPITALS

Section 4005(c)(3) of Pub. L. 101–508 provided that: ''The Administrator of the Health Care Financing Administration shall provide guidance to agencies and organizations performing functions pursuant to section 1816 of the Social Security Act [section 1395h of this title] and to hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of such Act [subsec. (d)(1)(B) of this section]) to assist such agencies, organizations, and hospitals in filing complete applications with the Administrator for exemptions, exceptions, and adjustments under section 1886(b)(4)(A) of such Act.''

FREEZE IN PAYMENTS UNDER PART A OF THIS SUBCHAPTER THROUGH DECEMBER 31, 1990

Section 4007 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, for purposes of determining the amount of payment for items or services under part A of title XVIII of the Social Security Act [part A of this subchapter] (including payments under section 1886 of such Act [this section] attributable to or allocated under such part) during the period described in subsection (b):

''(1) The market basket percentage increase (described in section 1886(b)(3)(B)(iii) of the Social Security Act) shall be deemed to be 0 for discharges occurring during such period.

''(2) The percentage increase or decrease in the medical care expenditure category of the consumer price index applicable under section 1814(i)(2)(B) of such Act [section 1395f(i)(2)(B) of this title] shall be deemed to be 0.

''(3) The area wage index applicable to a subsection (d) hospital under section 1886(d)(3)(E) of such Act shall be deemed to be the area wage index applicable to such hospital as of September 30, 1990.

''(4) The percentage change in the consumer price index applicable under section 1886(h)(2)(D) of such Act shall be deemed to be 0.

''(b) DESCRIPTION OF PERIOD.—The period referred to in subsection (a) is the period beginning on October 21, 1990, and ending on December 31, 1990.''

REVIEW OF HOSPITAL REGULATIONS WITH RESPECT TO RURAL HOSPITALS

Section 4008(*l*) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall review the requirements applicable under title XVIII of the Social Security Act [this subchapter] to determine which requirements could be made less administratively and economically burdensome (without diminishing the quality of care) for hospitals defined in section 1886(d)(1)(B) of such Act [subsec. (d)(1)(B) of this section] that are located in a rural area (as defined in section 1886(d)(2)(D) of such Act). Such review shall specifically include standards related to staffing requirements.

''(2) REPORT.—The Secretary of Health and Human Services shall report to Congress by April 1, 1992, on the results of the review conducted under subsection (a), and include conclusions on which regulations, if any, should be modified with respect to hospitals described in subsection (a).''

PROHIBITION ON COST SAVINGS POLICIES BEFORE BEGINNING OF FISCAL YEAR

Section 4207(b)(1), formerly 4027(b)(1), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, § 160(d)(4), (5)(C), Oct. 31, 1994, 108 Stat. 4444, provided that: ''Notwithstanding any other provision of law, the Secretary of Health and Human Services may not issue any proposed or final regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [this subchapter] in a fiscal year (beginning with fiscal year 1991 and ending with fiscal year 1993, or, if later, the last fiscal year for which there is a maximum deficit amount specified under section 601(a)(1) of the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 665(a)(1)]) of more than $50,000,000, except as follows:

''(A) The Secretary may issue such a proposed regulation, instruction, or other policy with respect to the fiscal year before the May 15 preceding the beginning of the fiscal year.

''(B) The Secretary may issue such a final regulation, instruction, or other policy with respect to the fiscal year on or after October 15 of the fiscal year.

''(C) The Secretary may, at any time, issue such a proposed or final regulation, instruction, or other policy with respect to the fiscal year if required to implement specific provisions under statute.''

PROHIBITION OF PAYMENT CYCLE CHANGES

Section 4207(b)(2), formerly 4027(b)(2), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''Notwithstanding any other provision of law, the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act [Nov. 5, 1990], any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down or speeding up claims processing, or delaying payment of claims, under title XVIII of the Social Security Act [this subchapter].''

EXTENSION OF AREA WAGE INDEX

Section 115(a) of Pub. L. 101–403 provided that: ''For purposes of determining the amount of payment made to a hospital under part A of title XVIII of the Social Security Act [part A of this subchapter] for the operating costs of inpatient hospital services for discharges occurring on or after October 1, 1990, and on or before October 20, 1990, the Secretary of Health and Human Services, in adjusting such amount under section 1886(d)(3)(E) of such Act [subsec. (d)(3)(E) of this section] to reflect the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage index, shall apply the area wage index applicable to such hospital as of September 30, 1990.''

ADJUSTMENTS RESULTING FROM EXTENSIONS OF REGIONAL FLOOR ON STANDARDIZED AMOUNTS

Section 115(b)(2) of Pub. L. 101–403 provided that: ''The Secretary of Health and Human Services shall make any adjustments resulting from the amendment made by paragraph (1) [amending this section] in the amount of the payments made to hospitals under section 1886(d) of the Social Security Act [subsec. (d) of this section] in a fiscal year for the operating costs of inpatient hospital services in a manner that ensures that the aggregate payments under such section are not greater or less than those that would have been made in the year without such adjustments.''

INDEXING OF FUTURE APPLICABLE PERCENTAGE INCREASES

Section 6003(a)(3) of Pub. L. 101–239 provided that: ''For discharges occurring on or after October 1, 1990, the applicable percentage increase (described in section 1886(b)(3)(B) of the Social Security Act [subsec. (b)(3)(B) of this section]) for discharges occurring during fiscal year 1990 is deemed to have been such percentage increase as amended by paragraph (1).''

CONTINUATION OF SOLE COMMUNITY HOSPITAL DESIGNATION FOR CURRENT SOLE COMMUNITY HOSPITALS

Section 6003(e)(3) of Pub. L. 101–239 provided that: ''Any hospital classified as a sole community hospital under section 1886(d)(5)(C)(ii) of the Social Security Act [subsec. (d)(5)(C)(ii) of this section] on the date of the enactment of this Act [Dec. 19, 1989] that will no longer be classified as a sole community hospital after such date as a result of the amendments made by paragraph (1) [amending this section] shall continue to be classified as a sole community hospital for purposes of section 1886(d)(5)(D) of such Act [subsec. (d)(5)(D) of this section].''

ADDITIONAL PAYMENT RESULTING FROM CORRECTIONS OF ERRONEOUSLY DETERMINED WAGE INDEX

Section 6003(h)(5) of Pub. L. 101–239 provided that:

''(A) IN GENERAL.—If the Secretary of Health and Human Services (hereinafter referred to as the 'Secretary') discovers an error with respect to the determination, adjustment, or computation of the area wage index described in section 1886(d)(3)(E) of the Social Security Act [subsec. (d)(3)(E) of this section] and subsequently corrects such error, the Secretary shall make an additional payment under title XVIII of such Act

[this subchapter] to a hospital affected by such error for inpatient hospital discharges occurring during the period when the erroneously determined, adjusted, or computed wage index was in effect.

''(B) CONDITIONS FOR ADDITIONAL PAYMENT.—A hospital is eligible for an additional payment under subparagraph (A) only if—

''(i) the error resulted from the submission of erroneous data, except that a hospital is not eligible for such additional payment if it submitted such erroneous data;

''(ii) the error was made with respect to the survey of the 1984 wages and wage-related costs of hospitals in the United States conducted under section 1886(d)(3)(E) of the Social Security Act; and

''(iii) the correction of the error resulted in an adjustment to the area wage index of not less than 3 percentage points.

''(C) PERIOD OF APPLICABILITY.—A hospital may not receive an additional payment under subparagraph (A) for discharges occurring after October 1, 1990.''

LEGISLATIVE PROPOSAL ELIMINATING SEPARATE AVERAGE STANDARDIZED AMOUNTS

Pub. L. 101–239, title VI, § 6003(i), Dec. 19, 1989, 103 Stat. 2158, directed Secretary of Health and Human Services to design a legislative proposal eliminating the system of determining separate average standardized amounts for subsection (d) hospitals classified as being located in large urban, other urban, or rural areas, prior to repeal by Pub. L. 105–362, title VI, § 601(b)(4), Nov. 10, 1998, 112 Stat. 3286.

DETERMINATION AND RECOMMENDATIONS OF PAYMENTS FOR COSTS OF ADMINISTERING BLOOD CLOTTING FACTORS TO INDIVIDUALS WITH HEMOPHILIA

Section 6011(b), (c) of Pub. L. 101–239 provided that:

''(b) DETERMINING PAYMENT AMOUNT.—The Secretary of Health and Human Services shall determine the amount of payment made to hospitals under part A of title XVIII of the Social Security Act [part A of this subchapter] for the costs of administering blood clotting factors to individuals with hemophilia by multiplying a predetermined price per unit of blood clotting factor (determined in consultation with the Prospective Payment Assessment Commission) by the number of units provided to the individual.

''(c) RECOMMENDATIONS ON PAYMENTS.—The Prospective Payment Assessment Commission and the Health Care Financing Administration shall develop recommendations with respect to payments to hospitals under part A of title XVIII of the Social Security Act for the costs of administering blood clotting factors to individuals with hemophilia, and shall submit such recommendations to Congress not later than 18 months after the date of enactment of this Act [Dec. 19, 1989].''

PUBLICATION OF INSTRUCTIONS RELATING TO EXCEPTIONS AND ADJUSTMENTS IN TARGET AMOUNTS

Section 6015(b) of Pub. L. 101–239 provided that: ''By not later than 180 days after the date of enactment of this Act [Dec. 19, 1989], the Secretary of Health and Human Services shall publish instructions specifying the application process to be used in providing exceptions and adjustments under section 1886(b)(4)(A) of the Social Security Act [subsec. (b)(4)(A) of this section].''

DELAY IN RECOUPMENT OF CERTAIN NURSING AND ALLIED EDUCATION COSTS

Section 6205(b) of Pub. L. 101–239 provided that:

''(1) The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall not, before October 1, 1990, recoup from, or otherwise reduce or adjust payments under title XVIII of the Social Security Act [this subchapter] to, hospitals because of alleged overpayments to such hospitals under such title due to a determination that costs which were reported by a hospital on its medicare cost reports relating to approved nursing and allied health education programs were allowable costs and are included in the definition of 'operating costs of inpatient hospital services' pursuant to section 1886(a)(4) of such Act [subsec. (a)(4) of this section], so that no pass-through of such costs was permitted under that section.

''(2)(A) Before July 1, 1990, the Secretary shall issue regulations respecting payment of costs described in paragraph (1).

''(B) In issuing such regulations—

''(i) the Secretary shall allow a comment period of not less than 60 days,

''(ii) the Secretary shall consult with the Prospective Payment Assessment Commission, and

''(iii) any final rule shall not be effective prior to October 1, 1990, or 30 days after publication of the final rule in the Federal Register, whichever is later.

''(C) Such regulations shall specify—

''(i) the relationship required between an approved nursing or allied health education program and a hospital for the program's costs to be attributed to the hospital;

''(ii) the types of costs related to nursing or allied health education programs that are allowable by medicare;

''(iii) the distinction between costs of approved educational activities as recognized under section 1886(a)(3) of the Social Security Act [subsec. (a)(3) of this section] and educational costs treated as operating costs of inpatient hospital services; and

''(iv) the treatment of other funding sources for the program.''

INNER-CITY HOSPITAL TRIAGE DEMONSTRATION PROJECT

Section 6217 of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4207(k)(5), formerly § 4027(k)(5), Nov. 5, 1990, 104 Stat. 1388–125, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that:

''(a) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a demonstration project in a public hospital that is located in a large urban area and that has established a triage system, under which the Secretary shall make payments out of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate in a year) for 3 years to reimburse the hospital for the reasonable costs of operating the system, including costs—

''(1) to train hospital personnel to operate and participate in the system; and

''(2) to provide services to patients who might otherwise be denied appropriate and prompt care.

''(b) LIMITATIONS ON PAYMENT.—(1) The Secretary may not make payment under the demonstration project established under subsection (a) for costs that the Secretary determines are not reasonable.

''(2) The amount of payment made under the demonstration project during a single year may not exceed $500,000.''

TRANSITION ADJUSTMENTS TO TARGET AMOUNTS FOR INPATIENT HOSPITAL SERVICES

Section 101(c)(2)(B) of title I of Pub. L. 101–234 provided that: ''The Secretary of Health and Human Services shall make an appropriate adjustment to the target amount established under section 1886(b)(3)(A) of the Social Security Act [subsec. (b)(3)(A) of this section] in the case of inpatient hospital services provided to an inpatient whose stay began before January 1, 1990, in order to take into account the target amount that would have applied but for the amendments made by this title [see Tables for classification].''

ELECTION OF PERSONNEL POLICY FOR PROPAC EMPLOYEES

Section 8405 of Pub. L. 100–647 provided that: ''With respect to employees of the Prospective Payment Assessment Commission hired before December 22, 1987, such employees shall have the option to elect within 60

days of the date of enactment of this Act [Nov. 10, 1988] to be covered under either the personnel policy in effect with respect to such employees before December 22, 1987, or under the employees coverage provided under the last sentence of section 1886(e)(6)(D) of the Social Security Act [subsec. (e)(6)(D) of this section].''

ADJUSTMENTS IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES

Section 104(c) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(3)(C)–(E), Oct. 13, 1988, 102 Stat. 2413; Pub. L. 101–234, title I, § 101(c)(1), (2)(A), Dec. 13, 1989, 103 Stat. 1980, provided that:

''(1) PPS HOSPITALS.—In adjusting DRG prospective payment rates under section 1886(d) of the Social Security Act [subsec. (d) of this section], outlier cutoff points under section 1886(d)(5)(A) of such Act, and weighting factors under section 1886(d)(4) of such Act for discharges occurring on or after October 1, 1988, and before January 1, 1990, the Secretary of Health and Human Services shall, to the extent appropriate, take into consideration the reductions in payments to hospitals by (or on behalf of) medicare beneficiaries resulting from the elimination of a day limitation on medicare inpatient hospital services (under the amendments made by section 101 [amending section 1395d of this title]).

''(2) PPS-EXEMPT HOSPITALS.—In adjusting target amounts under section 1886(b)(3) of the Social Security Act [subsec. (b)(3) of this section] for portions of cost reporting periods occurring on or after January 1, 1989, and before January 1, 1990, the Secretary shall, on a hospital-specific basis, take into consideration the reductions in payments to hospitals by (or on behalf of) medicare beneficiaries resulting from the elimination of a day limitation on medicare inpatient hospital services (under the amendments made by section 101 [amending section 1395d of this title]), without regard to whether such a hospital is paid on the basis described in subparagraph (A) or (B) of section 1886(b)(1) of such Act, without regard to whether any of such beneficiaries exhausted medicare inpatient hospital insurance benefits before January 1, 1989.''

[Amendment of section 104(c) of Pub. L. 100–360, set out above, by section 101(c)(1), (2)(A) of Pub. L. 101–234 effective as if included in enactment of Pub. L. 100–360, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title].

PROPAC STUDY

Section 203(c)(2) of Pub. L. 100–360 directed Prospective Payment Assessment Commission to conduct a study, and make recommendations to Congress and Secretary of Health and Human Services by not later than Mar. 1, 1991, concerning appropriate adjustment to payment amounts provided under subsec. (d) of this section for inpatient hospital services to account for reduced costs to hospitals resulting from amendments made by section 203 of Pub. L. 100–360, amending sections 1320c–3, 1395h, 1395k to 1395n, 1395w–2, 1395x, 1395z, and 1395aa of this title, prior to repeal by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

CLINIC HOSPITAL WAGE INDICES

Section 4004(b) of Pub. L. 100–203 provided that: ''In calculating the wage index under section 1886(d) of the Social Security Act [subsec. (d) of this section] for purposes of making payment adjustments after September 30, 1988, as required under paragraphs (2)(H) and (3)(E) of such section, in the case of any institution which received the waiver specified in section 602(k) of the Social Security Amendments of 1983 [section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title], the Secretary of Health and Human Services shall include wage costs paid to related organization employees directly involved in the delivery and administration of care provided by the related organization to hospital inpatients. For purposes of the preceding sentence, the term 'wage costs' does not include costs of overhead or home office administrative salaries or any costs that are not incurred in the hospital's Metropolitan Statistical Area.''

LIMITATION ON AMOUNTS PAID IN FISCAL YEARS 1988 AND 1989

Section 4005(c)(2)(B) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall take appropriate steps to ensure that the total amount paid in a fiscal year under title XVIII of the Social Security Act [this subchapter] by reason of the amendment made by paragraph (1)(B) [amending this section] does not exceed $5,000,000 in the case of fiscal year 1988 and $10,000,000 for fiscal year 1989.''

STUDY OF CRITERIA FOR CLASSIFICATION OF HOSPITALS AS RURAL REFERRAL CENTERS; REPORT

Section 4005(d)(2) of Pub. L. 100–203 directed Secretary of Health and Human Services to provide for a study of the criteria used for the classification of hospitals as rural referral centers, and report to Congress, by not later than Mar. 1, 1989, on the study and on recommendations for the criteria that should be applied for the classification of hospitals as rural referral centers for cost reporting periods beginning on or after Oct. 1, 1989.

GRANT PROGRAM FOR RURAL HEALTH CARE TRANSITION

Section 4005(e) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VI, § 6003(g)(1)(B)(i), Dec. 19, 1989, 103 Stat. 2150; Pub. L. 103–432, title I, § 103(a)(1), (b), (c), Oct. 31, 1994, 108 Stat. 4404, 4405, provided that:

''(1) The Administrator of the Health Care Financing Administration, in consultation with the Assistant Secretary for Health (or a designee), shall establish a program of grants to assist eligible small rural hospitals and their communities in the planning and implementation of projects to modify the type and extent of services such hospitals provide in order to adjust for one or more of the following factors:

''(A) Changes in clinical practice patterns.

''(B) Changes in service populations.

''(C) Declining demand for acute-care inpatient hospital capacity.

''(D) Declining ability to provide appropriate staffing for inpatient hospitals.

''(E) Increasing demand for ambulatory and emergency services.

''(F) Increasing demand for appropriate integration of community health services.

''(G) The need for adequate access (including appropriate transportation) to emergency care and inpatient care in areas in which a significant number of underutilized hospital beds are being eliminated.

''(H) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

Each demonstration project under this subsection shall demonstrate methods of strengthening the financial and managerial capability of the hospital involved to provide necessary services. Such methods may include programs of cooperation with other health care providers, of diversification in services furnished (including the provision of home health services), of physician recruitment, and of improved management systems. Grants under this paragraph may be used to provide instruction and consultation (and such other services as the Administrator determines appropriate) via telecommunications to physicians in such rural areas (within the meaning of section 1886(d)(2)(D) of the Social Security Act [subsec. (d)(2)(D) of this section]) as are designated either class 1 or class 2 health manpower shortage areas under section 332(a)(1)(A) of the Public Health Service Act [section 254e(a)(1)(A) of this title].

''(2) For purposes of this subsection, the term 'eligible small rural hospital' means any rural primary care hospital designated by the Secretary under section 1820(i)(2) of the Social Security Act [section 1395i–4(i)(2)

of this title], or any non-Federal, short-term general acute care hospital that—

''(A) is located in a rural area (as determined in accordance with subsection (d)),

''(B) has less than 100 beds, and

''(C) is not for profit.

''(3)(A) Any eligible small rural hospital that desires to modify the type or extent of health care services that it provides in order to adjust for one or more of the factors specified in paragraph (1) may submit an application to the Administrator and a copy of such application to the Governor of the State in which it is located. The application shall specify the nature of the project proposed by the hospital, the data and information on which the project is based, and a timetable (of not more than 24 months) for completion of the project. The application shall be submitted on or before a date specified by the Administrator and shall be in such form as the Administrator may require.

''(B) The Governor shall transmit to the Administrator, within a reasonable time after receiving a copy of an application pursuant to subparagraph (A), any comments with respect to the application that the Governor deems appropriate.

''(C) The Governor of a State may designate an appropriate State agency to receive and comment on applications submitted under subparagraph (A).

''(4) A hospital shall be considered to be located in a rural area for purposes of this subsection if it is treated as being located in a rural area for purposes of section 1886(d)(3)(D) of the Social Security Act [subsec. (d)(3)(D) of this section].

''(5) In determining which hospitals making application under paragraph (3) will receive grants under this subsection, the Administrator shall take into account—

''(A) any comments received under paragraph (3)(B) with respect to a proposed project;

''(B) the effect that the project will have on—

''(i) reducing expenditures from the Federal Hospital Insurance Trust Fund,

''(ii) improving the access of medicare beneficiaries to health care of a reasonable quality;

''(C) the extent to which the proposal of the hospital, using appropriate data, demonstrates an understanding of—

''(i) the primary market or service area of the hospital, and

''(ii) the health care needs of the elderly and disabled that are not currently being met by providers in such market or area, and

''(D) the degree of coordination that may be expected between the proposed project and—

''(i) other local or regional health care providers, and

''(ii) community and government leaders,

as evidenced by the availability of support for the project (in cash or in kind) and other relevant factors.

''(6) A grant to a hospital under this subsection may not exceed $50,000 a year and may not exceed a term of 3 years.

''(7)(A) Except as provided in subparagraphs (B) and (C), a hospital receiving a grant under this subsection may use the grant for any of expenses incurred in planning and implementing the project with respect to which the grant is made.

''(B) A hospital receiving a grant under this subsection for a project may not use the grant to retire debt incurred with respect to any capital expenditure made prior to the date on which the project is initiated.

''(C) Not more than one-third of any grant made under this subsection may be expended for capital-related costs (as defined by the Secretary for purposes of section 1886(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) of the project, except that this limitation shall not apply with respect to a grant used for the purposes described in subparagraph (D).

''(D) A hospital may use a grant received under this subsection to develop a plan for converting itself to a rural primary care hospital (as described in section 1820 of the Social Security Act [section 1395i–4 of this title]) or to develop a rural health network (as defined in section 1820(g) of such Act) in the State in which it is located if the State is receiving a grant under section 1820(a)(1).

''(8)(A) A hospital receiving a grant under this section [amending this section and section 1395tt of this title and enacting provisions set out as notes under this section and section 1395tt of this title] shall furnish the Administrator with such information as the Administrator may require to evaluate the project with respect to which the grant is made and to ensure that the grant is expended for the purposes for which it was made.

''(B) The Administrator shall report to the Congress at least once every 12 months on the program of grants established under this subsection. The report shall assess the functioning and status of the program, shall evaluate the progress made toward achieving the purposes of the program, and shall include any recommendations the Secretary may deem appropriate with respect to the program. In preparing the report, the Secretary shall solicit and include the comments and recommendations of private and public entities with an interest in rural health care.

''(C) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

''(9) For purposes of carrying out the program of grants under this subsection, there are authorized to be appropriated from the Federal Hospital Insurance Trust Fund $15,000,000 for fiscal year 1989, $25,000,000 for each of the fiscal years 1990, 1991, and 1992 and $30,000,000 for each of fiscal years 1993 through 1997.''

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 6 on page 100 identifies a reporting provision which, as subsequently amended, is contained in section 4005(e)(8)(B) of Pub. L. 100–203, set out above), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

[Section 103(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending section 4005(e)(2) of Pub. L. 100–203, set out above] shall apply to grants made on or after October 1, 1994.'']

[Pub. L. 103–432, § 103(c), which directed amendment of section 4008(e)(8)(B) of Pub. L. 100–203, was executed by amending section 4005(e)(8)(B) of Pub. L. 100–203, set out above, to reflect the probable intent of Congress.]

[Section 6003(g)(1)(B)(ii) of Pub. L. 101–239 provided that: ''The amendments made by clause (i) [amending section 4005(e) of Pub. L. 100–203, set out above] shall apply with respect to applications for grants under the Rural Health Care Transition Grant Program described in section 4005(e) of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203] submitted on or after October 1, 1989, except that the amendments made by subclauses (V) and (VII) of such clause shall take effect on the date of the enactment of this Act [Dec. 19, 1989].'']

REPORTING HOSPITAL INFORMATION

Section 4007 of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(6), July 1, 1988, 102 Stat. 770; Pub. L. 100–485, title VI, § 608(d)(18)(D), Oct. 13, 1988, 102 Stat. 2419, provided that:

''(a) DEVELOPMENT OF DATA BASE.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall develop and place into effect not later than June 1, 1989, a data base of the operating costs of inpatient hospital services with respect to all hospitals under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], which data base shall be updated at least once every quarter (and maintained for the 12-month period preceding any such update). The data base under this subsection may include data from preliminary cost reports (but the Secretary shall make

available an updated analysis of the differences between preliminary and settled cost reports).

''(b) [Amended subsec. (f) of this section and enacted provisions set out as an Effective Date of 1987 Amendment note above.]

''(c) DEMONSTRATION PROJECT.—

''(1) The Secretary of Health and Human Services shall provide for a demonstration project to develop, and determine the costs and benefits of establishing a uniform system for the reporting by medicare participating hospitals of balance sheet and information described in paragraph (2). In conducting the project, the Secretary shall require hospitals in at least 2 States, one of which maintains a uniform hospital reporting system, to report such information based on standard information established by the Secretary.

''(2) The information described in this paragraph is as follows:

''(A) Hospital discharges (classified by class of primary payer).

''(B) Patient days (classified by class of primary payer).

''(C) Licensed beds, staffed beds, and occupancy.

''(D) Inpatient charges and revenues (classified by class of primary payer).

''(E) Outpatient charges and revenues (classified by class of primary payer).

''(F) Inpatient and outpatient hospital expenses (by cost-center classified for operating and capital).

''(G) Reasonable costs.

''(H) Other income.

''(I) Bad debt and charity care.

''(J) Capital acquisitions.

''(K) Capital assets.

The Secretary shall develop a definition of 'outpatient visit' for purposes of reporting hospital information.

''(3) The Secretary shall develop the system under subsection (c) in a manner so as—

''(A) to facilitate the submittal of the information in the report in an electronic form, and

''(B) to be compatible with the needs of the medicare prospective payment system.

''(4) The Secretary shall prepare and submit, to the Prospective Payment Assessment Commission, the Comptroller General, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, by not later than 45 days after the end of each calendar quarter, data collected under the system.

''(5) In paragraph (2):

''(A) The term 'bad debt and charity care' has such meaning as the Secretary establishes.

''(B) The term 'class' means, with respect to payers at least, the programs under this title XVIII of the Social Security Act [this subchapter], a State plan approved under title XIX of such Act [subchapter XIX of this chapter], other third party-payers, and other persons (including self-paying individuals).

''(6) The Secretary shall set aside at least a total of $3,000,000 for fiscal years 1988, 1989, and 1990 from existing research funds or from operations funds to develop the format, according to paragraph (1) and for data collection and analysis, but total funds shall not exceed $15,000,000.

''(7) The Comptroller General shall analyze the adequacy of the existing system for reporting of hospital information and the costs and benefits of data reporting under the demonstration system and will recommend improvements in hospital data collection and in analysis and display of data in support of policy making.

''(d) CONSULTATION.—The Secretary shall consult representatives of the hospital industry in carrying out the provisions of this section.''

HOSPITAL OUTLIER PAYMENTS AND POLICY

Section 4008(d) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(7), July 1, 1988, 102 Stat. 771, provided that:

''(1) INCREASE IN OUTLIER PAYMENTS FOR BURN CENTER DRGS.—

''(A) IN GENERAL.—For discharges classified in diagnosis-related groups relating to burn cases and occurring on or after April 1, 1988, and before October 1, 1989, the marginal cost of care permitted by the Secretary of Health and Human Services under section 1886(d)(5)(A)(iii) of the Social Security Act [subsec. (d)(5)(A)(iii) of this section] shall be 90 percent of the appropriate per diem cost of care or 90 percent of the cost for cost outliers.

''(B) BUDGET NEUTRALITY.—Subparagraph (A) shall be implemented in a manner that ensures that total payments under section 1886(d) of the Social Security Act are not increased or decreased by reason of the adjustments required by such subparagraph.

''(2) LIMITATION ON CHANGES IN OUTLIER REGULATIONS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act [Dec. 22, 1987] and before September 1, 1988, any final regulation which changes the method of payment for outlier cases under section 1886(d)(5)(A) of the Social Security Act [subsec. (d)(5)(A) of this section].

''(B) PROPAC REPORT.—The chairman of the Prospective Payment Assessment Commission shall report to the Congress and the Secretary of Health and Human Services, by not later than June 1, 1988, on the method of payment for outlier cases under such section and providing more adequate and appropriate payments with respect to burn outlier cases.

''(3) REPORT ON OUTLIER PAYMENTS.—The Secretary of Health and Human Services shall include in the annual report submitted to the Congress pursuant to section 1875(b) of the Social Security Act [section 1395*ll*(b) of this title] a comparison with respect to hospitals located in an urban area and hospitals located in a rural area in the amount of reductions under section 1886(d)(3)(B) of the Social Security Act [subsec. (d)(3)(B) of this section] and additional payments under section 1886(d)(5)(A) of such Act.''

PROPAC STUDIES AND REPORTS

Section 4009(h) of Pub. L. 100–203 provided that:

''(1) PROPAC REPORTS ON STUDY OF DRG RATES FOR HOSPITALS IN RURAL AND URBAN AREAS.—The Prospective Payment Assessment Commission shall evaluate the study conducted by the Secretary of Health and Human Services pursuant to section 603(a)(2)(C)(i) of the Social Security Amendments of 1983 [section 603(a)(2)(C)(i) of Pub. L. 98–21, set out below] (relating to the feasibility, impact, and desirability of eliminating or phasing out separate urban and rural DRG prospective payment rates) and report its conclusions and recommendations to the Congress not later than March 1, 1988.

''(2) PROPAC REPORT ON SEPARATE URBAN PAYMENT RATES.—The Prospective Payment Assessment Commission shall evaluate the desirability of maintaining separate DRG prospective payment rates for hospitals located in large urban areas (as defined in section 1886(d)(2)(D)) of the Social Security Act [subsec. (d)(2)(D) of this section]) and in other urban areas, and shall report to Congress on such evaluation not later than January 1, 1989.

''(3) REPORT ON ADJUSTMENT FOR NON-LABOR COSTS.—The Prospective Payment Assessment Commission shall perform an analysis to determine the feasibility and appropriateness of adjusting the non-wage-related portion of the adjusted average standardized amounts under section 1886(d)(3) of the Social Security Act [subsec. (d)(3) of this section] based on area differences in hospitals' costs (other than wage-related costs) and input prices. The Commission shall report to the Congress on such analysis by not later than October 1, 1989.''

SPECIAL RULE FOR URBAN AREAS IN NEW ENGLAND

Section 4009(i) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(8)(C), July 1, 1988, 102 Stat. 772, provided that: ''In the case of urban areas in New England, the Secretary of Health and Human Services shall apply the second sentence of section 1886(d)(2)(D) of the Social Security Act [subsec. (d)(2)(D) of this section], as amended by section 4002(b) of this subtitle, as though 970,000 were substituted for 1,000,000.''

RURAL HEALTH MEDICAL EDUCATION DEMONSTRATION PROJECT

Section 4038 of Pub. L. 100–203, as amended by Pub. L. 101–239, title VI, § 6216, Dec. 19, 1989, 103 Stat. 2253, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall enter into agreements with 10 sponsoring hospitals submitting applications under this subsection to conduct demonstration projects to assist resident physicians in developing field clinical experience in rural areas.

''(b) NATURE OF PROJECT.—Under a demonstration project conducted under subsection (a), a sponsoring hospital entering into an agreement with the Secretary under such subsection shall enter into arrangements with a small rural hospital to provide to such rural hospital, for a period of one to three months of training, physicians (in such number as the agreement under subsection (a) may provide) who have completed one year of residency training.

''(c) SELECTION.—(1) In selecting from among applications submitted under subsection (a), the Secretary shall ensure that four small rural hospitals located in different counties participate in the demonstration project and that—

''(A) two of such hospitals are located in rural counties of more than 2,700 square miles (one of which is east of the Mississippi River and one of which is west of such river); and

''(B) two of such hospitals are located in rural counties with (as determined by the Secretary) a severe shortage of physicians (one of which is east of the Mississippi River and one of which is west of such river).

''(2) The provisions of paragraph (1) shall not apply with respect to applications submitted as a result of amendments made by section 6216 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, amending this note].

''(d) CLARIFICATION OF PAYMENT.—For purposes of section 1886 of the Social Security Act [this section]—

''(1) with respect to subsection (d)(5)(B) of such section, any resident physician participating in the project under subsection (a) for any part of a year shall be treated as if he or she were working at the appropriate sponsoring hospital with an agreement under subsection (a) on September 1 of such year (and shall not be treated as if working at the small rural hospital); and

''(2) with respect to subsection (h) of such section, the payment amount permitted under such subsection for a sponsoring hospital with an agreement under subsection (a) shall be increased (for the duration of the project only) by an amount equal to the amount of any direct graduate medical education costs (as defined in paragraph (5) of such subsection (h)) incurred by such hospital in supervising the education and training activities under a project under subsection (a).

''(e) DURATION OF PROJECT.—Each demonstration project under subsection (a) shall be commenced not later than six months after the date of enactment of this Act [Dec. 22, 1987] (or the date of the enactment of the Omnibus Budget Reconciliation Act of 1989 [Dec. 19, 1989], in the case of a project conducted as a result of the amendments made by section 6216 of such Act [Pub. L. 101–239, amending this note]) and shall be conducted for a period of three years.

''(f) DEFINITION.—In this section, the term 'sponsoring hospital' means a hospital that receives payments under sections 1886(d)(5)(B) and 1886(h) of the Social Security Act [subsecs. (d)(5)(B) and (h) of this section].''

PROHIBITION ON POLICY BY SECRETARY OF HEALTH AND HUMAN SERVICES TO REDUCE EXPENDITURES IN FISCAL YEARS 1989, 1990, AND 1991

Section 4039(d) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 426(e), July 1, 1988, 102 Stat. 814; Pub. L. 101–239, title VI, § 6207(b), Dec. 19, 1989, 103 Stat. 2245, provided that: ''Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act [Dec. 22, 1987] and before October 15, 1990, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [this subchapter] in fiscal year 1989 or in fiscal year 1990 or in fiscal year 1991 of more than $50,000,000.''

TEMPORARY EXTENSION OF PAYMENT POLICIES FOR INPATIENT HOSPITAL SERVICES

Pub. L. 100–119, title I, § 107(a)(1), Sept. 29, 1987, 101 Stat. 782, as amended by Pub. L. 100–203, title IV, § 4002(f)(2), Dec. 22, 1987, 101 Stat. 1330–45, provided that: ''Notwithstanding any other provision of law, with respect to payment for inpatient hospital services under section 1886 of the Social Security Act [this section]:

''(A) TEMPORARY FREEZE IN PPS HOSPITAL RATES.—For purposes of subsection (d) of such section for discharges occurring during the period beginning on October 1, 1987, and ending on November 20, 1987 (in this paragraph referred to as the 'extension period'), the applicable percentage increase under subsection (b)(3)(B) of such section with respect to fiscal year 1988 is deemed to be 0 percent.

''(B) TEMPORARY FREEZE IN PAYMENT BASIS.—

''(i) EXTENSION OF BLENDED DRG RATE.—For purposes of subsection (d)(1) of such section, the 'applicable combined adjusted DRG prospective payment rate' for discharges occurring—

''(I) during the extension period is the rate specified in subsection (d)(1)(D)(ii) of such section, or

''(II) after such period is the national adjusted prospective payment rate determined under subsection (d)(3) of such section.

''(ii) EXTENSION OF HOSPITAL-SPECIFIC PAYMENT.—For the first 51 days of a hospital cost reporting period beginning during fiscal year 1988, payment shall be made under clause (ii) (rather than clause (iii)) of subsection (d)(1)(A) of such section (subject to clause (i) of this subparagraph), the target percentage and DRG percentage shall be those specified in subsection (d)(1)(C)(iv) of such section, and the applicable percentage increase in a hospital's target amount shall be deemed to be 0 percent.

''(C) TEMPORARY FREEZE IN AMOUNTS OF PAYMENT FOR CAPITAL.—For payments attributable to portions of cost reporting periods occurring during the extension period, the percent specified in subsection (g)(3)(A)(ii) of such section is deemed to be 3.5 percent.

''(D) TEMPORARY FREEZE IN RETURN ON EQUITY REDUCTIONS.—For the first 51 days of a cost reporting period beginning during fiscal year 1988, subsection (g)(2) of such section shall be applied as though the applicable percentage were 75 percent.

''(E) TEMPORARY FREEZE IN PAYMENTS RATES FOR PPS-EXEMPT HOSPITALS.—For purposes of payment under subsection (b) of such section for cost reporting periods beginning during fiscal year 1988, with respect to the first 51 days of such a period the applicable percentage increase under paragraph (3)(B) of such subsection is deemed to be 0 percent.''

[Section 4002(f)(2) of Pub. L. 100–203 provided that the amendment of section 107(a)(1) of Pub. L. 100–119, set

out above, by section 4002(f)(2) of Pub. L. 100–203 is effective as of Sept. 29, 1987.]

FREEZING CERTAIN CHANGES IN MEDICARE PAYMENT REGULATIONS AND POLICIES

Pub. L. 100–119, title I, § 107(b), Sept. 29, 1987, 101 Stat. 783, provided that:

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services is not authorized to issue after September 18, 1987, and before November 21, 1987—

''(A) any final regulation that changes the policy with respect to payment under title XVIII of the Social Security Act [this subchapter] to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title;

''(B) any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under such title; or

''(C) any final regulation that changes the policy under such title with respect to payment for a return on equity capital for outpatient hospital services.

The final regulation of the Health Care Financing Administration published on September 1, 1987 (52 Federal Register 32920) and relating to changes to the return on equity capital provisions for outpatient hospital services is void and of no effect.

''(2) OTHER COST SAVINGS POLICIES.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after September 18, 1987, and before November 21, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1988 of more than $50,000,000. Any regulation, instruction, or policy which is issued in violation of this paragraph is void and of no effect.

''(3) EXCEPTION.—Paragraphs (1) and (2) shall not be construed to apply to any regulation, instruction, or policy required to implement the amendment made by section 9311(a) of the Omnibus Budget Reconciliation Act of 1986 [section 9311(a) of Pub. L. 99–509, which amended section 1395g of this title] (relating to periodic interim payments).''

MAINTAINING CURRENT OUTLIER POLICY IN FISCAL YEAR 1987

Section 9302(b)(3) of Pub. L. 99–509 provided that: ''For payments made under section 1886(d) of the Social Security Act [subsec. (d) of this section] for discharges occurring in fiscal year 1987—

''(A) the proportions under paragraph (3)(B) for hospitals located in urban and rural areas shall be established at such levels as produce the same total dollar reduction under such paragraph as if this section had not been enacted; and

''(B) the thresholds and standards used for making additional payments under paragraph (5) of such section shall be the same as those in effect as of October 1, 1986.''

EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATION

Section 6003(d) of Pub. L. 101–239 provided that: ''Any hospital that is classified as a regional referral center under section 1886(d)(5)(C) of the Social Security Act [subsec. (d)(5)(C) of this section] as of September 30, 1989, including a hospital so classified as a result of section 9302(d)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509, set out below], shall continue to be classified as a regional referral center for cost reporting periods beginning on or after October 1, 1989, and before October 1, 1992.''

Section 9302(d)(2) of Pub. L. 99–509 provided that: ''Any hospital that is classified as a regional referral center under section 1886(d)(5)(C)(i) of the Social Security Act [subsec. (d)(5)(C)(i) of this section] on the date of the enactment of this Act [Oct. 21, 1986] shall continue to be classified as a regional referral center for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989.''

BUDGET-NEUTRAL IMPLEMENTATION

Section 9302(d)(3) of Pub. L. 99–509 provided that: ''Paragraph (2) [set out as a note above] and the amendment made by paragraph (1)(A) [amending this section] shall be implemented in a manner that ensures that total payments under section 1886 of the Social Security Act [this section] are not increased or decreased by reason of the classifications required by such paragraph or amendment.''

PROMULGATION OF NEW RATE

Section 9302(f) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act [Oct. 21, 1986], for the publication of the payments rates that will apply under section 1886 of the Social Security Act [this section], for discharges occurring on or after October 1, 1986, taking into account the amendments made by this section [amending this section], without regard to the provisions of chapter 5 of title 5, United States Code.''

MISCELLANEOUS ACCOUNTING PROVISION

Section 9307(d) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4008(e), Dec. 22, 1987, 101 Stat. 1330–56, provided that: ''Notwithstanding any other provision of law, for purposes of section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section], in the case of a hospital that—

''(1) had a cost reporting period beginning on September 28, 29, or 30 of 1985,

''(2) is located in a State in which inpatient hospital services were paid in fiscal year 1985 pursuant to a Statewide demonstration project under section 402 of the Social Security Amendments of 1967 [section 402 of Pub. L. 90–248, enacting section 1395b–1 of this title and amending section 1395*ll* of this title] and section 222 of the Social Security Amendments of 1972 [section 222 of Pub. L. 92–603, amending sections 1395b–1 and 1395*ll* of this title and enacting provisions set out as a note under section 1395b–1 of this title], and

''(3) elects, by notice to the Secretary of Health and Human Services by not later than April 1, 1988, to have this subsection apply,

during the first 7 months of such cost reporting period the 'target percentage' shall be 75 percent and the 'DRG percentage' shall be 25 percent, and during the remaining 5 months of such period the 'target percentage' and the 'DRG percentage' shall each be 50 percent.''

[Section 4008(e) of Pub. L. 100–203 provided that the amendment of section 9307(d) of Pub. L. 99–509, set out above, by section 4008(e) of Pub. L. 100–203 is effective as if included in the enactment of Pub. L. 99–509.]

TREATMENT OF CAPITAL-RELATED REGULATIONS

Section 9321(c) of Pub. L. 99–509, as amended by Pub. L. 100–119, title I, § 107(a)(2), Sept. 29, 1987, 101 Stat. 783; Pub. L. 100–203, title IV, § 4009(j)(6)(D), (F), Dec. 22, 1987, 101 Stat. 1330–59, provided that:

''(1) PROHIBITION OF ISSUANCE OF FINAL REGULATIONS ON CAPITAL-RELATED COSTS AS PART OF PAYMENT FOR OPERATING COSTS BEFORE NOVEMBER 21, 1987.—Notwithstanding any other provision of law (except as provided in paragraph (3)), the Secretary of Health and Human Services may not issue, in final form, after September 1, 1986, and before November 21, 1987, any regulation that changes the methodology for computing the amount of payment for capital-related costs (as defined in paragraph (4)) for inpatient hospital services under part A of title XVIII of the Social Security Act [part A

of this subchapter]. Any regulation published in violation of the previous sentence is void and of no effect.

''(2) NOT INCLUDING CAPITAL-RELATED REGULATIONS IN BUDGET BASELINE.—Any reference in law to a regulation issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act [subsecs. (b)(3)(B), (d)(3)(A), and (e)(4) of this section] shall not include any regulation issued or proposed with respect to capital-related costs (as defined in paragraph (4)).

''(3) EXCEPTION.—Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing section 1861(v)(1)(O) and 1886(g)(2) of the Social Security Act [section 1395x(v)(1)(O) of this title and subsec. (g)(2) of this section] and section 1886(g)(3)(A) and (B) of the Social Security Act [subsec. (g)(3)(A) and (B) of this section] (as amended by section 9303(a) of this Act).

''(4) CAPITAL-RELATED COSTS DEFINED.—In this subsection, the term 'capital-related costs' means those capital-related costs that are specifically excluded, under the second sentence of section 1886(a)(4) of the Social Security Act [subsec. (a)(4) of this section], from the term 'operating costs of inpatient hospital services' (as defined in that section) for cost reporting periods beginning prior to October 1, 1987.''

LIMITATION ON AUTHORITY TO ISSUE CERTAIN FINAL REGULATIONS AND INSTRUCTIONS RELATING TO HOSPITALS OR PHYSICIANS

Section 9321(d) of Pub. L. 99–509 provided that: ''Notwithstanding any other provision of law, except as required to implement specific provisions required under statute and except as provided under subsection (c) [set out above] with respect to a regulation described in that subsection, the Secretary of Health and Human Services is not authorized to issue in final form after the date of the enactment of this Act [Oct. 21, 1986] and before September 1, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [this subchapter] in fiscal year 1988 of more than $50,000,000, and which relates to hospitals or physicians.''

STUDY OF METHODOLOGY FOR AREA WAGE ADJUSTMENT FOR CENTRAL CITIES; REPORT TO CONGRESS

Section 9103(b) of Pub. L. 99–272 provided that:

''(1) The Secretary of Health and Human Services, in consultation with the Prospective Payment Assessment Commission, shall collect information and shall develop one or more methodologies to permit the adjustment of the wage indices used for purposes of sections 1886(d)(2)(C)(ii), 1886(d)(2)(H), and 1886(d)(3)(E) of the Social Security Act [subsec. (d)(2)(C)(ii), (H), and (3)(E) of this section], in order to more accurately reflect hospital labor markets, by taking into account variations in wages and wage-related costs between the central city portion of urban areas and other parts of urban areas.

''(2) The Secretary shall report to Congress on the information collected and the methodologies developed under paragraph (1) not later than May 1, 1987. The report shall include a recommendation as to the feasibility and desirability of implementing such methodologies.''

CONTINUATION OF MEDICARE REIMBURSEMENT WAIVERS FOR CERTAIN HOSPITALS PARTICIPATING IN REGIONAL HOSPITAL REIMBURSEMENT DEMONSTRATIONS

Section 9108 of Pub. L. 99–272 provided that:

''(a) CONTINUATION OF WAIVERS.—A hospital reimbursement control system which, on January 1, 1985, was carrying out a demonstration under a contract which had been approved by the Secretary of Health and Human Services pursuant to section 222(a) of the Social Security Amendments of 1972 [section 222(a) of Pub. L. 92–603, set out as a note under section 1395b–1 of this title], or under section 402 of the Social Security Amendments of 1967 (as amended by section 222(b) of the Social Security Amendments of 1972) [section 1395b–1 of this title], shall be deemed to meet the requirements of section 1886(c)(1)(A) of the Social Security Act [subsec. (c)(1)(A) of this section] if such system applies—

''(1) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the geographic area served by such system on January 1, 1985, and

''(2) to the review of at least 75 percent of—

''(A) all revenues or expenses in such geographic area for inpatient hospital services, and

''(B) revenues or expenses in such geographic area for inpatient hospital services provided under the State's plan approved under title XIX [subchapter XIX of this chapter].

''(b) APPROVAL.—In the case of a hospital cost control system described in subsection (a), the requirements of section 1886(c) of the Social Security Act [subsec. (c) of this section] which apply to States shall instead apply to such system and, for such purposes, any reference to a State is deemed a reference to such system.

''(c) EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

INFORMATION ON IMPACT OF PPS PAYMENTS ON HOSPITALS

Section 9114 of Pub. L. 99–272 provided that:

''(a) DISCLOSURE OF INFORMATION.—The Secretary of Health and Human Services shall make available to the Prospective Payment Assessment Commission, the Congressional Budget Office, the Comptroller General, and the Congressional Research Service the most current information on the payments being made under section 1886 of the Social Security Act [this section] to individual hospitals. Such information shall be made available in a manner that permits examination of the impact of such section on hospitals.

''(b) CONFIDENTIALITY.—Information disclosed under subsection (a) shall be treated as confidential and shall not be subject to further disclosure in a manner that permits the identification of individual hospitals.''

SPECIAL RULES FOR IMPLEMENTATION OF HOSPITAL REIMBURSEMENT

Section 9115 of Pub. L. 99–272 provided that:

''(a) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this subpart and implementing the amendments made by this subpart [subpart A (§§ 9101–9115) of part 1 of subtitle A of title IX of Pub. L. 99–272, see Tables for classification].

''(b) USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subpart and the amendments made by this subpart.''

APPOINTMENT OF ADDITIONAL MEMBERS TO PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Section 9127(b) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(b)(8), Oct. 22, 1986, 100 Stat. 2933, provided that: ''The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Prospective Payment Assessment Commission, as required by the amendment made by subsection (a) [amending this section], no later than 60 days after the date of the enactment of this Act [Apr. 7, 1986], for terms of three years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of

no more than eight members will expire in any one year.''

STUDIES BY SECRETARY; GAO STUDY; REPORT ON UNIFORMITY OF APPROVED FTE RESIDENT AMOUNTS; STUDY ON FOREIGN MEDICAL GRADUATES; ESTABLISHING PHYSICIAN IDENTIFIER SYSTEM; PAPERWORK REDUCTION

Section 9202(c)–(h) of Pub. L. 99–272, as amended by Pub. L. 100–203, title IV, § 4085(f), Dec. 22, 1987, 101 Stat. 1330–131; Pub. L. 101–508, title IV, § 4118(i)(2), Nov. 5, 1990, 104 Stat. 1388–70, provided that:

''(c) STUDIES BY SECRETARY.—(1) The Secretary of Health and Human Services shall conduct a study with respect to approved educational activities relating to nursing and other health professions for which reimbursement is made to hospitals under title XVIII of the Social Security Act [this subchapter]. The study shall address—

''(A) the types and numbers of such programs, and number of students supported or trained under each program;

''(B) the fiscal and administrative relationships between the hospitals involved and the schools with which the programs and students are affiliated; and

''(C) the types and amounts of expenses of such programs for which reimbursement is made, and the financial and other contributions which accrue to the hospital as a consequence of having such programs.

The Secretary shall report the results of such study to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives prior to December 31, 1987.

''(2) The Secretary shall conduct a separate study of the advisability of continuing or terminating the exception under section 1886(h)(5)(F)(ii) of the Social Security Act [subsec. (h)(5)(F)(ii) of this section] for geriatric residencies and fellowships, and of expanding such exception to cover other educational activities, particularly those which are necessary to meet the projected health care needs of Medicare beneficiaries. Such study shall also examine the adequacy of the supply of faculty in the field of geriatrics. The Secretary shall report the results of such study to the committees described in paragraph (1) prior to July 1, 1990.

''(d) GAO STUDY.—(1) The Comptroller General shall conduct a study of the variation in the amounts of payments made under title XVIII of the Social Security Act [this subchapter] with respect to patients in different teaching hospital settings and in the amounts of such payments which are made with respect to patients who are treated in teaching and nonteaching hospital settings. Such study shall identify the components of such payments (including payments with respect to inpatient hospital services, physicians' services, and capital costs, and, in the case of teaching hospital patients, payments with respect to direct and indirect teaching costs) and shall account, to the extent feasible, for any variations in the amounts of the payment components between teaching and nonteaching settings and among different teaching settings.

''(2) In carrying out such study, the Comptroller General may utilize a sample of hospital patients and any other data sources which he deems appropriate, and shall, to the extent feasible, control for differences in severity of illness levels, area wage levels, levels of physician reasonable charges for like services and procedures, and for other factors which could affect the comparability of patients and of payments between teaching and nonteaching settings and among teaching settings. The information obtained in the study shall be coordinated with the information obtained in conducting the study of teaching physicians' services under section 2307(c) of the Deficit Reduction Act of 1984 [section 2307(c) of Pub. L. 98–369, set out as a note under section 1395u of this title].

''(3) The Comptroller General shall report the results of the study to the committees described in subsection (c)(1) prior to December 31, 1987.

''(e) REPORT ON UNIFORMITY OF APPROVED FTE RESIDENT AMOUNTS.—The Secretary of Health and Human Services shall report to the committees described in subsection (c)(1), not later than December 31, 1987, on whether section 1886(h) of the Social Security Act [subsec. (h) of this section] should be revised to provide for greater uniformity in the approved FTE resident amounts established under paragraph (2) of that section, and, if so, how such revisions should be implemented.

''(f) STUDY ON FOREIGN MEDICAL GRADUATES.—The Secretary of Health and Human Services shall study, and report to the committees described in subsection (c)(1), not later than December 31, 1987, respecting the use of physicians who are foreign medical graduates (within the meaning of section 1886(h)(5)(D) of the Social Security Act [subsec. (h)(5)(D) of this section]) in the provision of health care services (particularly inpatient and outpatient hospital services) to medicare beneficiaries. Such study shall evaluate—

''(1) the types of services provided;

''(2) the cost of providing such services, relative to the cost of other physicians providing the services or other approaches to providing the services;

''(3) any deficiencies in the quality of the services provided, and methods of assuring the quality of such services; and

''(4) the impact on costs of and access to services if medicare payment for hospitals' costs of graduate medical education of foreign medical graduates were phased out.

''[(g) Repealed. Pub. L. 101–508, title IV, § 4118(i)(2), Nov. 5, 1990, 104 Stat. 1388–70.]

''(h) PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this section and the amendments made by this section [amending this section and section 1395x of this title and enacting notes set out under this section and section 1395x of this title].''

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

Section 9202(j) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(b)(10), Oct. 22, 1986, 100 Stat. 2933, provided that: ''In the case of a hospital in a State that has had a waiver approved under section 1886(c) of the Social Security Act [subsec. (c) of this section] or section 402 of the Social Security Amendments of 1967 [section 1395b–1 of this title], for cost reporting periods beginning on or after January 1, 1986, if the waiver is terminated—

''(1) the Secretary of Health and Human Services shall permit the hospital to change the method by which it allocates administrative and general costs to the direct medical education cost centers to the method specified in the medicare cost report;

''(2) the Secretary may make appropriate adjustments in the regional adjusted DRG prospective payment rate (for the region in which the State is located), based on the assumption that all teaching hospitals in the State use the medicare cost report; and

''(3) the Secretary shall adjust the hospital-specific portion of payment under section 1886(d) of such Act [subsec. (d) of this section] for any such hospital that actually chooses to use the medicare cost report.

The Secretary shall implement this subsection based on the best available data.''

MORATORIUM ON LABORATORY PAYMENT DEMONSTRATIONS; COOPERATION IN STUDY; REPORT TO CONGRESS

Section 9204 of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, § 9339(e), Oct. 21, 1986, 100 Stat. 2037; Pub. L. 100–203, title IV, § 4085(c), Dec. 22, 1987, 101 Stat. 1330–130; Pub. L. 100–647, title VIII, § 8426, Nov. 10, 1988, 102 Stat. 3803, provided that:

''(a) MORATORIUM.—Prior to January 1, 1990, the Secretary of Health and Human Services shall not conduct

any demonstration projects relating to competitive bidding as a method of purchasing laboratory services under title XVIII of the Social Security Act [this subchapter]. The Secretary may contract for the design of, and site selection for, such demonstration projects.

''(b) COOPERATION IN STUDY.—The Secretary of Health and Human Services and the Comptroller General shall assist representatives of clinical laboratories in the industry's conduct of a study to determine whether methods exist which are better than competitive bidding for purposes of utilizing competitive market forces in setting payment levels for laboratory services under title XVIII of the Social Security Act [this subchapter]. If such a study is conducted by the clinical laboratory industry, the Secretary and the Comptroller General shall comment on such study and submit such comments and the study to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce.''

MEDICARE HOSPITAL AND PHYSICIAN PAYMENT PROVISIONS; EXTENSION PERIOD

Pub. L. 99–107, §5, Sept. 30, 1985, 99 Stat. 479, as amended by Pub. L. 99–155, §2(d), Nov. 14, 1985, 99 Stat. 814; Pub. L. 99–181, §4, Dec. 13, 1985, 99 Stat. 1172; Pub. L. 99–189, §4, Dec. 18, 1985, 99 Stat. 1184; Pub. L. 99–201, §2, Dec. 23, 1985, 99 Stat. 1665; Pub. L. 99–272, title IX, §§9101(a), 9301(a), Apr. 7, 1986, 100 Stat. 153, 184, provided that:

''(a) MAINTAINING EXISTING HOSPITAL PAYMENT RATES.—Notwithstanding any other provision of law, the amount of payment under section 1886 of the Social Security Act [this section] for inpatient hospital services for discharges occurring (and cost reporting periods beginning) during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services for a discharge occurring on (or the cost reporting period beginning immediately on or before) September 30, 1985.

''(b) MAINTAINING EXISTING PAYMENT RATES FOR PHYSICIANS' SERVICES.—Notwithstanding any other provision of law, the amount of payment under part B of title XVIII of the Social Security Act [part B of this subchapter] for physicians' services which are furnished during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services furnished on September 30, 1985, and the 15-month period, referred to in section 1842(j)(1) of such Act [section 1395u(j)(1) of this title], shall be deemed to include the extension period.

''(c) EXTENSION PERIOD DEFINED.—

''(1) HOSPITAL PAYMENTS.—For purposes of subsection (a), the term 'extension period' means the period beginning on October 1, 1985, and ending on April 30, 1986.

''(2) PHYSICIAN PAYMENTS.—For purposes of subsection (b), the term 'extension period' means the period beginning on October 1, 1985, and ending on April 30, 1986.''

[Amendment of section 5 of Pub. L. 99–107, set out above, by section 9101(a) of Pub. l. 99–272 effective Mar. 15, 1986, see section 9101(d) of Pub. L. 99–272, set out above.]

DEFINITION OF HOSPITAL SERVING SIGNIFICANTLY DISPROPORTIONATE NUMBER OF LOW-INCOME PATIENTS OR PATIENTS ENTITLED TO HOSPITAL INSURANCE BENEFITS FOR AGED AND DISABLED; IDENTIFICATION

Section 2315(h) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services shall, prior to December 31, 1984—

''(1) develop and publish a definition of 'hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A' of title XVIII of the Social Security Act [part A of this subchapter] for purposes of section 1886(d)(5)(C)(i) of that Act [subsec. (d)(5)(C)(i) of this section], and

''(2) identify those hospitals which meet such definition, and make such identity available to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

PROSPECTIVE PAYMENT WAGE INDEX; STUDIES AND REPORTS TO CONGRESS

Section 2316 of Pub. L. 98–369, as amended by Pub. L. 99–272, title IX, §9103(a)(1), Apr. 7, 1986, 100 Stat. 156, provided that:

''(a) The Secretary of Health and Human Services, in consultation with the Secretary of Labor, shall conduct a study to develop an appropriate index for purposes of adjusting payment amounts under section 1886(d) of the Social Security Act [subsec. (d) of this section] to reflect area differences in average hospital wage levels, as required under paragraphs (2)(H) and (3)(E) of such section [subsec. (d)(2)(H) and (3)(E) of this section], taking into account wage differences of full time and part time workers. The Secretary of Health and Human Services shall report the results of such study to the Congress not later than 30 days after the date of the enactment of this Act [July 18, 1984], including any changes which the Secretary determines to be necessary to provide for an appropriate index.

''(b) The Secretary shall adjust the payment amounts for hospitals for discharges occurring on or after May 1, 1986, to reflect the changes the Secretary has promulgated in final regulations (on September 3, 1985) relating to the hospital wage index under section 1886(d)(3)(E) of the Social Security Act [subsec. (d)(3)(E) of this section]. For discharges occurring after September 30, 1986, the Secretary shall provide for such periodic adjustments in the appropriate wage index used under that section as may be necessary, taking into account changes in the wage levels and relative proportions of full-time and part-time workers.

''(c) The Secretary shall conduct a study and report to the Congress on proposed criteria under which, in the case of a hospital that demonstrates to the Secretary in a current fiscal year that the adjustment being made under paragraph (2)(H) or (3)(E) of section 1886(d) of the Social Security Act [subsec. (d)(2)(H) or (3)(E) of this section] for that hospital's discharges in that fiscal year does not accurately reflect the wage levels in the labor market serving the hospital, the Secretary, to the extent he deems appropriate, would modify such adjustment for that hospital for discharges in the subsequent fiscal year to take into account a difference in payment amounts in that current fiscal year to the hospital that resulted from such inaccuracy.''

[Section 9103(a)(2) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this note] shall be effective as if it had been included in the Deficit Reduction Act of 1984 [Pub. L. 98–369].'']

DIFFERENT TREATMENT OF CAPITAL-PROJECTS-RELATED COSTS BEFORE AND AFTER IMPLEMENTATION OF SYSTEM FOR INCLUDING SUCH COSTS UNDER PROSPECTIVELY DETERMINED PAYMENT RATE

Section 601(a)(3) of Pub. L. 98–21 provided that: ''It is the intent of Congress that, in considering the implementation of a system for including capital-related costs under a prospectively determined payment rate for inpatient hospital services, costs related to capital projects for which expenditures are obligated on or after the effective date of the implementation of such a system, may or may not be distinguished and treated differently from costs of projects for which expenditures were obligated before such date.''

NEW ENGLAND HOSPITALS; CLASSIFICATION AS URBAN OR RURAL

Section 601(g) of Pub. L. 98–21 provided that: ''In determining whether a hospital is in an urban or rural area for purposes of section 1886(d) of the Social Security Act [subsec. (d) of this section], the Secretary of Health and Human Services shall classify any hospital located in New England as being located in an urban area if such hospital was classified as being located in

an urban area under the Standard Metropolitan Statistical Area system of classification in effect in 1979.''

REPORTS, EXPERIMENTS, AND DEMONSTRATION PROJECTS RELATED TO INCLUSION IN PROSPECTIVE PAYMENT AMOUNTS OF INPATIENT HOSPITAL SERVICE CAPITAL-RELATED COSTS

Section 603(a) of title VI of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title III, § 2317, July 18, 1984, 98 Stat. 1081; Pub. L. 99–509, title IX, § 9305(i)(1), Oct. 21, 1986, 100 Stat. 1993; Pub. L. 104–66, title I, § 1061(d), Dec. 21, 1995, 109 Stat. 720, directed Secretary of Health and Human Services to report to Congress within 18 months after Apr. 20, 1983, on legislation by which capital-related costs associated with inpatient hospital services could be included within the prospective payment amounts computed under subsec. (d) of this section, further provided that the Secretary was to study and report to Congress on reimbursement of sole community hospitals based on variations in occupancy, on coordination of an information transfer between parts A and B of this subchapter, on treatment of uncompensated care costs and adjustments appropriate for large rural teaching hospitals, and on advisability of having hospitals make cost-of-care information to certain patients, and further provided that the Secretary was to study and report to Congress on a method for including hospitals outside the 50 States and the District of Columbia under a prospective payment system.

INAPPLICABILITY OF COORDINATION OF FEDERAL INFORMATION POLICY TO THE COLLECTION OF INFORMATION

Section 101(b)(2)(B) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 309(a)(1), Jan. 12, 1983, 96 Stat. 2408, provided that: ''Chapter 35 of title 44, United States Code, shall not apply, until January 1, 1984, to collection of information and information collection requests which the Secretary of Health and Human Services determines to be necessary to carry out the amendments made by this section [amendments by section 101(a) of Pub. L. 97–248, enacting this section and amending section 1395x of this title].''

§ 1395xx. Payment of provider-based physicians and payment under certain percentage arrangements

(a) Criteria; amount of payments

(1) The Secretary shall by regulation determine criteria for distinguishing those services (including inpatient and outpatient services) rendered in hospitals or skilled nursing facilities—

(A) which constitute professional medical services, which are personally rendered for an individual patient by a physician and which contribute to the diagnosis or treatment of an individual patient, and which may be reimbursed as physicians' services under part B, and

(B) which constitute professional services which are rendered for the general benefit to patients in a hospital or skilled nursing facility and which may be reimbursed only on a reasonable cost basis or on the bases described in section 1395ww of this title.

(2)(A) For purposes of cost reimbursement, the Secretary shall recognize as a reasonable cost of a hospital or skilled nursing facility only that portion of the costs attributable to services rendered by a physician in such hospital or facility which are services described in paragraph (1)(B), apportioned on the basis of the amount of time actually spent by such physician rendering such services.

(B) In determining the amount of the payments which may be made with respect to services described in paragraph (1)(B), after apportioning costs as required by subparagraph (A), the Secretary may not recognize as reasonable (in the efficient delivery of health services) such portion of the provider's costs for such services to the extent that such costs exceed the reasonable compensation equivalent for such services. The reasonable compensation equivalent for any service shall be established by the Secretary in regulations.

(C) The Secretary may, upon a showing by a hospital or facility that it is unable to recruit or maintain an adequate number of physicians for the hospital or facility on account of the reimbursement limits established under this subsection, grant exceptions to such reimbursement limits as may be necessary to allow such provider to provide a compensation level sufficient to provide adequate physician services in such hospital or facility.

(b) Prohibition of recognition of payments under certain percentage agreements

(1) Except as provided in paragraph (2), in the case of a provider of services which is paid under this subchapter on a reasonable cost basis, or other basis related to costs that are reasonable, and which has entered into a contract for the purpose of having services furnished for or on behalf of it, the Secretary may not include any cost incurred by the provider under the contract if the amount payable under the contract by the provider for that cost is determined on the basis of a percentage (or other proportion) of the provider's charges, revenues, or claim for reimbursement.

(2) Paragraph (1) shall not apply—

(A) to services furnished by a physician and described in subsection (a)(1)(B) of this section and covered by regulations in effect under subsection (a) of this section, and

(B) under regulations established by the Secretary, where the amount involved under the percentage contract is reasonable and the contract—

(i) is a customary commercial business practice, or

(ii) provides incentives for the efficient and economical operation of the provider of services.

(Aug. 14, 1935, ch. 531, title XVIII, § 1887, as added and amended Pub. L. 97–248, title I, §§ 108(a)[(1)], 109(a), Sept. 3, 1982, 96 Stat. 337, 338; Pub. L. 98–21, title VI, § 602(j), Apr. 20, 1983, 97 Stat. 165.)

AMENDMENTS

1983—Subsec. (a)(1)(B). Pub. L. 98–21 inserted ''or on the bases described in section 1395ww of this title''.

1982—Subsec. (b). Pub. L. 97–248, § 109(a)(2), added subsec. (b).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 109(c)(1), (2) of Pub. L. 97–248 provided that:

''(1) The amendments made by this section [amending this section and section 1395x of this title] shall become effective on the date of the enactment of this Act [Sept. 3, 1982], except that section 1887(b)(1) of the Social Security Act [subsec. (b)(1) of this section] shall not apply before October 1, 1982, to services furnished by a physician and described in section 1887(a)(1)(B) of such Act [subsec. (a)(1)(B) of this section].

''(2) In the case of a contract with a provider of services entered into prior to the date of the enactment of this Act [Sept. 3, 1982], the amendment made by subsection (a) [amending this section] shall apply to payments under such contract (A) 30 days after the first date (after such date of enactment) the provider of services may unilaterally terminate the contract, or (B) one year after the date of the enactment of this Act, whichever is earlier.''

EFFECTIVE DATE OF REGULATIONS

Section 108(b), formerly §108(c), of Pub. L. 97–248, as redesignated by Pub. L. 97–448, title III, §309(a)(3), Jan. 12, 1983, 96 Stat. 2408, provided that: ''The Secretary of Health and Human Services shall first promulgate regulations to carry out section 1887(a) of the Social Security Act [subsec. (a) of this section] not later than October 1, 1982. Such regulations shall become effective on October 1, 1982, and shall be effective with respect to cost reporting periods ending after September 30, 1982, but in the case of any cost reporting period beginning before October 1, 1982, any reduction in payments under title XVIII of the Social Security Act [this subchapter] to a hospital or skilled nursing facility resulting from such regulations shall be imposed only in proportion to the part of the period which occurs after September 30, 1982.''

§ 1395yy. Payment to skilled nursing facilities for routine service costs

(a) Per diem limitations

The Secretary, in determining the amount of the payments which may be made under this subchapter with respect to routine service costs of extended care services shall not recognize as reasonable (in the efficient delivery of health services) per diem costs of such services to the extent that such per diem costs exceed the following per diem limits, except as otherwise provided in this section:

(1) With respect to freestanding skilled nursing facilities located in urban areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in urban areas.

(2) With respect to freestanding skilled nursing facilities located in rural areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in rural areas.

(3) With respect to hospital-based skilled nursing facilities located in urban areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in urban areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in urban areas exceeds the limit for freestanding skilled nursing facilities located in urban areas.

(4) With respect to hospital-based skilled nursing facilities located in rural areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in rural areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in rural areas exceeds the limit for freestanding skilled nursing facilities located in rural areas.

In applying this subsection the Secretary shall make appropriate adjustments to the labor related portion of the costs based upon an appropriate wage index, and shall, for cost reporting periods beginning on or after October 1, 1992, on or after October 1, 1995, and every 2 years thereafter, provide for an update to the per diem cost limits described in this subsection, except that the limits effective for cost reporting periods beginning on or after October 1, 1997, shall be based on the limits effective for cost reporting periods beginning on or after October 1, 1996.

(b) Excess overhead allocations for hospital-based facilities

With respect to a hospital-based skilled nursing facility, the Secretary may not recognize as reasonable the portion of the cost differences between hospital-based and freestanding skilled nursing facilities attributable to excess overhead allocations.

(c) Adjustments in limitations; publication of data

The Secretary may make adjustments in the limits set forth in subsection (a) of this section with respect to any skilled nursing facility to the extent the Secretary deems appropriate, based upon case mix or circumstances beyond the control of the facility. The Secretary shall publish the data and criteria to be used for purposes of this subsection on an annual basis.

(d) Access to skilled nursing facilities

(1) Subject to subsection (e) of this section, any skilled nursing facility may choose to be paid under this subsection on the basis of a prospective payment for all routine service costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) and capital-related costs of extended care services provided in a cost reporting period if such facility had, in the preceding cost reporting period, fewer than 1,500 patient days with respect to which payments were made under this subchapter. Such prospective payment shall be in lieu of payments which would otherwise be made for routine service costs pursuant to section 1395x(v) of this title and subsections (a) through (c) of this section and capital-related costs pursuant to section 1395x(v) of this title. This subsection shall not apply to a facility for any cost reporting period immediately following a cost reporting period in which such facility had 1,500 or more patient days with respect to which payments were made under this subchapter, without regard to whether payments were made under this subsection during such preceding cost reporting period.

(2)(A) The amount of the payment under this section shall be determined on a per diem basis.

(B) Subject to the limitations of subparagraph (C), for skilled nursing facilities located—

(i) in an urban area, the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service and capital-related costs of extended care services for skilled nursing facilities in urban areas within the same region, determined without regard to the limitations of subsection (a) of this section and adjusted for different area wage levels, and

(ii) in a rural area the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service and capital-related costs of extended care services for skilled nursing facilities in rural areas within the same region, determined without regard to the limitations of subsection (a) of this section and adjusted for different area wage levels.

(C) The per diem amounts determined under subparagraph (B) shall not exceed the limit on routine service costs determined under subsection (a) of this section with respect to the facility, adjusted to take into account average capital-related costs with respect to the type and location of the facility.

(3) For purposes of this subsection, urban and rural areas shall be determined in the same manner as for purposes of subsection (a) of this section, and the term ''region'' shall have the same meaning as under section 1395ww(d)(2)(D) of this title.

(4) The Secretary shall establish the prospective payment amounts for cost reporting periods beginning in a fiscal year at least 90 days prior to the beginning of such fiscal year, on the basis of the most recent data available for a 12-month period. A skilled nursing facility must notify the Secretary of its intention to be paid pursuant to this subsection for a cost reporting period no later than 30 days before the beginning of that period.

(5) The Secretary shall provide for a simplified cost report to be filed by facilities being paid pursuant to this subsection, which shall require only the cost information necessary for determining prospective payment amounts pursuant to paragraph (2) and reasonable costs of ancillary services.

(6) In lieu of payment on a cost basis for ancillary services provided by a facility which is being paid pursuant to this subsection, the Secretary may pay for such ancillary services on a reasonable charge basis if the Secretary determines that such payment basis will provide an equitable level of reimbursement and will ease the reporting burden of the facility.

(7) In computing the rates of payment to be made under this subsection, there shall be taken into account the costs described in the last sentence of section 1395x(v)(1)(E) of this title (relating to compliance with nursing facility requirements and of conducting nurse aide training and competency evaluation programs and competency evaluation programs).

(e) Prospective payment

(1) Payment provision

Notwithstanding any other provision of this subchapter, subject to paragraphs (7), (11), and (12), the amount of the payment for all costs (as defined in paragraph (2)(B)) of covered skilled nursing facility services (as defined in paragraph (2)(A)) for each day of such services furnished—

(A) in a cost reporting period during the transition period (as defined in paragraph (2)(E)), is equal to the sum of—

(i) the non-Federal percentage of the facility-specific per diem rate (computed under paragraph (3)), and

(ii) the Federal percentage of the adjusted Federal per diem rate (determined under paragraph (4)) applicable to the facility; and

(B) after the transition period is equal to the adjusted Federal per diem rate applicable to the facility.

(2) Definitions

For purposes of this subsection:

(A) Covered skilled nursing facility services

(i) In general

The term ''covered skilled nursing facility services''—

(I) means post-hospital extended care services as defined in section 1395x(i) of this title for which benefits are provided under part A of this subchapter; and

(II) includes all items and services (other than items and services described in clauses (ii), (iii), and (iv)) for which payment may be made under part B of this subchapter and which are furnished to an individual who is a resident of a skilled nursing facility during the period in which the individual is provided covered post-hospital extended care services.

(ii) Services excluded

Services described in this clause are physicians' services, services described by clauses (i) and (ii) of section 1395x(s)(2)(K) of this title, certified nurse-midwife services, qualified psychologist services, services of a certified registered nurse anesthetist, items and services described in subparagraphs (F) and (O) of section 1395x(s)(2) of this title, and, only with respect to services furnished during 1998, the transportation costs of electrocardiogram equipment for electrocardiogram test services (HCPCS Code R0076). Services described in this clause do not include any physical, occupational, or speech-language therapy services regardless of whether or not the services are furnished by, or under the supervision of, a physician or other health care professional.

(iii) Exclusion of certain additional items and services

Items and services described in this clause are the following:

(I) Ambulance services furnished to an individual in conjunction with renal dialysis services described in section 1395x(s)(2)(F) of this title.

(II) Chemotherapy items (identified as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600 (and as sub-

sequently modified by the Secretary)) and any additional chemotherapy items identified by the Secretary.

(III) Chemotherapy administration services (identified as of July 1, 1999, by HCPCS codes 36260–36262; 36489; 36530–36535; 36640; 36823; and 96405–96542 (and as subsequently modified by the Secretary)) and any additional chemotherapy administration services identified by the Secretary.

(IV) Radioisotope services (identified as of July 1, 1999, by HCPCS codes 79030–79440 (and as subsequently modified by the Secretary)) and any additional radioisotope services identified by the Secretary.

(V) Customized prosthetic devices (commonly known as artificial limbs or components of artificial limbs) under the following HCPCS codes (as of July 1, 1999 (and as subsequently modified by the Secretary)), and any additional customized prosthetic devices identified by the Secretary, if delivered to an inpatient for use during the stay in the skilled nursing facility and intended to be used by the individual after discharge from the facility: L5050–L5340; L5500–L5611; L5613–L5986; L5988; L6050–L6370; L6400–L6880; L6920–L7274; and L7362–7366.

(iv) Exclusion of certain rural health clinic and federally qualified health center services

Services described in this clause are—

(I) rural health clinic services (as defined in paragraph (1) of section 1395x(aa) of this title); and

(II) federally qualified health center services (as defined in paragraph (3) of such section);

that would be described in clause (ii) if such services were furnished by an individual not affiliated with a rural health clinic or a federally qualified health center.

(B) All costs

The term ''all costs'' means routine service costs, ancillary costs, and capital-related costs of covered skilled nursing facility services, but does not include costs associated with approved educational activities.

(C) Non-Federal percentage; Federal percentage

For—

(i) the first cost reporting period (as defined in subparagraph (D)) of a facility, the ''non-Federal percentage'' is 75 percent and the ''Federal percentage'' is 25 percent;

(ii) the next cost reporting period of such facility, the ''non-Federal percentage'' is 50 percent and the ''Federal percentage'' is 50 percent; and

(iii) the subsequent cost reporting period of such facility, the ''non-Federal percentage'' is 25 percent and the ''Federal percentage'' is 75 percent.

(D) First cost reporting period

The term ''first cost reporting period'' means, with respect to a skilled nursing facility, the first cost reporting period of the facility beginning on or after July 1, 1998.

(E) Transition period

(i) In general

The term ''transition period'' means, with respect to a skilled nursing facility, the 3 cost reporting periods of the facility beginning with the first cost reporting period.

(ii) Treatment of new skilled nursing facilities

In the case of a skilled nursing facility that first received payment for services under this subchapter on or after October 1, 1995, payment for such services shall be made under this subsection as if all services were furnished after the transition period.

(3) Determination of facility specific per diem rates

The Secretary shall determine a facility-specific per diem rate for each skilled nursing facility not described in paragraph (2)(E)(ii) for a cost reporting period as follows:

(A) Determining base payments

The Secretary shall determine, on a per diem basis, the total of—

(i) the allowable costs of extended care services for the facility for cost reporting periods beginning in fiscal year 1995, including costs associated with facilities described in subsection (d) of this section, with appropriate adjustments (as determined by the Secretary) to non-settled cost reports or, in the case of a facility participating in the Nursing Home Case-Mix and Quality Demonstration (RUGS–III), the RUGS–III rate received by the facility during the cost reporting period beginning in 1997, and

(ii) an estimate of the amounts that would be payable under part B of this subchapter (disregarding any applicable deductibles, coinsurance, and copayments) for covered skilled nursing facility services described in paragraph (2)(A)(i)(II) furnished during the applicable cost reporting period described in clause (i) to an individual who is a resident of the facility, regardless of whether or not the payment was made to the facility or to another entity.

In making appropriate adjustments under clause (i), the Secretary shall take into account exceptions and shall take into account exemptions but, with respect to exemptions, only to the extent that routine costs do not exceed 150 percent of the routine cost limits otherwise applicable but for the exemption.

(B) Update to first cost reporting period

The Secretary shall update the amount determined under subparagraph (A), for each cost reporting period after the applicable cost reporting period described in subpara-

graph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage increase minus 1.0 percentage point.

(C) Updating to applicable cost reporting period

The Secretary shall update the amount determined under subparagraph (B) for each cost reporting period beginning with the first cost reporting period and up to and including the cost reporting period involved by a factor equal to the facility-specific update factor.

(D) Facility-specific update factor

For purposes of this paragraph, the ''facility-specific update factor'' for cost reporting periods beginning during—

(i) during each of fiscal years 1998 and 1999, is equal to the skilled nursing facility market basket percentage increase for such fiscal year minus 1 percentage point, and

(ii) during each subsequent fiscal year is equal to the skilled nursing facility market basket percentage increase for such fiscal year.

(4) Federal per diem rate

(A) Determination of historical per diem for facilities

For each skilled nursing facility that received payments for post-hospital extended care services during a cost reporting period beginning in fiscal year 1995 and that was subject to (and not exempted from) the per diem limits referred to in paragraph (1) or (2) of subsection (a) of this section (and facilities described in subsection (d) of this section), the Secretary shall estimate, on a per diem basis for such cost reporting period, the total of—

(i) the allowable costs of extended care services (excluding exceptions payments) for the facility for cost reporting periods beginning in 1995 with appropriate adjustments (as determined by the Secretary) to non-settled cost reports, and

(ii) an estimate of the amounts that would be payable under part B of this subchapter (disregarding any applicable deductibles, coinsurance, and copayments) for covered skilled nursing facility services described in paragraph (2)(A)(i)(II) furnished during such period to an individual who is a resident of the facility, regardless of whether or not the payment was made to the facility or to another entity.

(B) Update to first fiscal year

The Secretary shall update the amount determined under subparagraph (A), for each cost reporting period after the cost reporting period described in subparagraph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage increase reduced (on an annualized basis) by 1 percentage point.

(C) Computation of standardized per diem rate

The Secretary shall standardize the amount updated under subparagraph (B) for each facility by—

(i) adjusting for variations among facilities by area in the average facility wage level per diem, and

(ii) adjusting for variations in case mix per diem among facilities.

(D) Computation of weighted average per diem rates

(i) All facilities

The Secretary shall compute a weighted average per diem rate for all facilities by computing an average of the standardized amounts computed under subparagraph (C), weighted for each facility by the number of days of extended care services furnished during the cost reporting period referred to in subparagraph (A).

(ii) Freestanding facilities

The Secretary shall compute a weighted average per diem rate for freestanding facilities by computing an average of the standardized amounts computed under subparagraph (C) only for such facilities, weighted for each facility by the number of days of extended care services furnished during the cost reporting period referred to in subparagraph (A).

(iii) Separate computation

The Secretary may compute and apply such averages separately for facilities located in urban and rural areas (as defined in section 1395ww(d)(2)(D) of this title).

(E) Updating

(i) Initial period

For the initial period beginning on July 1, 1998, and ending on September 30, 1999, the Secretary shall compute for skilled nursing facilities an unadjusted Federal per diem rate equal to the average of the weighted average per diem rates computed under clauses (i) and (ii) of subparagraph (D), increased by skilled nursing facility market basket percentage change for such period minus 1 percentage point.

(ii) Subsequent fiscal years

The Secretary shall compute an unadjusted Federal per diem rate equal to the Federal per diem rate computed under this subparagraph—

(I) for fiscal year 2000, the rate computed for the initial period described in clause (i), increased by the skilled nursing facility market basket percentage change for the initial period minus 1 percentage point;

(II) for fiscal year 2001, the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year;

(III) for each of fiscal years 2002 and 2003, the rate computed for the previous fiscal year increased by the skilled nurs-

ing facility market basket percentage change for the fiscal year involved minus 0.5 percentage points; and

(IV) for each subsequent fiscal year, the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year involved.

(F) Adjustment for case mix creep

Insofar as the Secretary determines that the adjustments under subparagraph (G)(i) for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under this subsection during the fiscal year that are a result of changes in the coding or classification of residents that do not reflect real changes in case mix, the Secretary may adjust unadjusted Federal per diem rates for subsequent fiscal years so as to eliminate the effect of such coding or classification changes.

(G) Determination of Federal rate

The Secretary shall compute for each skilled nursing facility for each fiscal year (beginning with the initial period described in subparagraph (E)(i)) an adjusted Federal per diem rate equal to the unadjusted Federal per diem rate determined under subparagraph (E), as adjusted under subparagraph (F), and as further adjusted as follows:

(i) Adjustment for case mix

The Secretary shall provide for an appropriate adjustment to account for case mix. Such adjustment shall be based on a resident classification system, established by the Secretary, that accounts for the relative resource utilization of different patient types. The case mix adjustment shall be based on resident assessment data and other data that the Secretary considers appropriate.

(ii) Adjustment for geographic variations in labor costs

The Secretary shall adjust the portion of such per diem rate attributable to wages and wage-related costs for the area in which the facility is located compared to the national average of such costs using an appropriate wage index as determined by the Secretary. Such adjustment shall be done in a manner that does not result in aggregate payments under this subsection that are greater or less than those that would otherwise be made if such adjustment had not been made.

(iii) Adjustment for exclusion of certain additional items and services

The Secretary shall provide for an appropriate proportional reduction in payments so that beginning with fiscal year 2001, the aggregate amount of such reductions is equal to the aggregate increase in payments attributable to the exclusion effected under clause (iii) of paragraph (2)(A).

(H) Publication of information on per diem rates

The Secretary shall provide for publication in the Federal Register, before May 1, 1998 (with respect to fiscal period described in subparagraph (E)(i)) and before the August 1 preceding each succeeding fiscal year (with respect to that succeeding fiscal year), of—

(i) the unadjusted Federal per diem rates to be applied to days of covered skilled nursing facility services furnished during the fiscal year,

(ii) the case mix classification system to be applied under subparagraph (G)(i) with respect to such services during the fiscal year, and

(iii) the factors to be applied in making the area wage adjustment under subparagraph (G)(ii) with respect to such services.

(5) Skilled nursing facility market basket index and percentage

For purposes of this subsection:

(A) Skilled nursing facility market basket index

The Secretary shall establish a skilled nursing facility market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered skilled nursing facility services.

(B) Skilled nursing facility market basket percentage

The term ''skilled nursing facility market basket percentage'' means, for a fiscal year or other annual period and as calculated by the Secretary, the percentage change in the skilled nursing facility market basket index (established under subparagraph (A)) from the midpoint of the prior fiscal year (or period) to the midpoint of the fiscal year (or other period) involved.

(6) Submission of resident assessment data

A skilled nursing facility, or a facility described in paragraph (7)(B), shall provide the Secretary, in a manner and within the timeframes prescribed by the Secretary, the resident assessment data necessary to develop and implement the rates under this subsection. For purposes of meeting such requirement, a skilled nursing facility, or a facility described in paragraph (7), may submit the resident assessment data required under section 1395i–3(b)(3) of this title, using the standard instrument designated by the State under section 1395i–3(e)(5) of this title.

(7) Treatment of medicare swing bed hospitals

(A) Transition

Subject to subparagraph (C), the Secretary shall determine an appropriate manner in which to apply this subsection to the facilities described in subparagraph (B) (other than critical access hospitals), taking into account the purposes of this subsection, and shall provide that at the end of the transition period (as defined in paragraph (2)(E)) such facilities shall be paid only under this

subsection. Payment shall not be made under this subsection to such facilities for cost reporting periods beginning before such date (not earlier than July 1, 1999) as the Secretary specifies.

(B) Facilities described

The facilities described in this subparagraph are facilities that have in effect an agreement described in section 1395tt of this title.

(C) Exemption from PPS of swing-bed services furnished in critical access hospitals

The prospective payment system established under this subsection shall not apply to services furnished by a critical access hospital pursuant to an agreement under section 1395tt of this title.

(8) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, 1395*oo* of this title, or otherwise of—

(A) the establishment of Federal per diem rates under paragraph (4), including the computation of the standardized per diem rates under paragraph (4)(C), adjustments and corrections for case mix under paragraphs (4)(F) and (4)(G)(i), adjustments for variations in labor-related costs under paragraph (4)(G)(ii), and adjustments under paragraph (4)(G)(iii);

(B) the establishment of facility specific rates before July 1, 1999 (except any determination of costs paid under part A of this subchapter); and

(C) the establishment of transitional amounts under paragraph (7).

(9) Payment for certain services

In the case of an item or service furnished to a resident of a skilled nursing facility or a part of a facility that includes a skilled nursing facility (as determined under regulations) for which payment would (but for this paragraph) be made under part B of this subchapter in an amount determined in accordance with section 1395*l*(a)(2)(B) of this title, the amount of the payment under such part shall be the amount provided under the fee schedule for such item or service. In the case of an item or service described in clause (iii) of paragraph (2)(A) that would be payable under part A of this subchapter but for the exclusion of such item or service under such clause, payment shall be made for the item or service, in an amount otherwise determined under part B of this subchapter for such item or service, from the Federal Hospital Insurance Trust Fund under section 1395i of this title (rather than from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title).

(10) Required coding

No payment may be made under part B of this subchapter for items and services (other than services described in paragraph (2)(A)(ii)) furnished to an individual who is a resident of a skilled nursing facility or of a part of a facility that includes a skilled nursing facility (as determined under regulations), unless the claim for such payment includes a code (or codes) under a uniform coding system specified by the Secretary that identifies the items or services furnished.

(11) Permitting facilities to waive 3-year transition

Notwithstanding paragraph (1)(A), a facility may elect to have the amount of the payment for all costs of covered skilled nursing facility services for each day of such services furnished in cost reporting periods beginning no earlier than 30 days before the date of such election determined pursuant to paragraph (1)(B).

(12) Adjustment for residents with AIDS

(A) In general

Subject to subparagraph (B), in the case of a resident of a skilled nursing facility who is afflicted with acquired immune deficiency syndrome (AIDS), the per diem amount of payment otherwise applicable (determined without regard to any increase under section 101 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, or under section 314(a) of Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000), shall be increased by 128 percent to reflect increased costs associated with such residents.

(B) Sunset

Subparagraph (A) shall not apply on and after such date as the Secretary certifies that there is an appropriate adjustment in the case mix under paragraph (4)(G)(i) to compensate for the increased costs associated with residents described in such subparagraph.

(Aug. 14, 1935, ch. 531, title XVIII, § 1888, as added Pub. L. 98–369, div. B, title III, § 2319(b), July 18, 1984, 98 Stat. 1082; amended Pub. L. 99–272, title IX, §§ 9126(a), (b), 9219(b)(1)(C), Apr. 7, 1986, 100 Stat. 168, 170, 182; Pub. L. 99–514, title XVIII, § 1895(b)(7)(A), (B), Oct. 22, 1986, 100 Stat. 2933; Pub. L. 100–203, title IV, § 4201(b)(2), Dec. 22, 1987, 101 Stat. 1330–174; Pub. L. 101–508, title IV, § 4008(e)(2), (h)(2)(A)(ii), Nov. 5, 1990, 104 Stat. 1388–45, 1388–48; Pub. L. 103–66, title XIII, § 13503(a)(2), (3)(A), Aug. 10, 1993, 107 Stat. 578; Pub. L. 105–33, title IV, §§ 4431, 4432(a), (b)(3), (5)(H), 4511(a)(2)(E), Aug. 5, 1997, 111 Stat. 414, 421, 422, 442; Pub. L. 106–113, div. B, § 1000(a)(6) [title I, §§ 102(a), 103(a), (b), 104(a), 105(a), title III, § 321(g)(1), (k)(18)], Nov. 29, 1999, 113 Stat. 1536, 1501A–325 to 1501A–327, 1501A–366, 1501A–368; Pub. L. 106–554, § 1(a)(6) [title II, § 203(a), title III, § 311(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–481, 2763A–497; Pub. L. 108–173, title IV, § 410(a), title V, § 511(a), Dec. 8, 2003, 117 Stat. 2271, 2298.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (e), are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

Section 101 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, referred to in subsec. (e)(12)(A), is section 1000(a)(6) [title I, § 101] of Pub. L. 106–113, div. B, Nov. 29, 1999, 113 Stat. 1536, 1501A–324, which is not classified to the Code.

Section 314(a) of Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, referred

to in subsec. (e)(12)(A), is section 1(a)(6) [title III, §314(a)] of Pub. L. 106–554, Dec. 21, 2000, 114 Stat. 2763, 2763A–499, which is not classified to the Code.

AMENDMENTS

2003—Subsec. (e)(2)(A)(i)(II). Pub. L. 108–173, §410(a)(1), substituted ''clauses (ii), (iii), and (iv)'' for ''clauses (ii) and (iii)''.

Subsec. (e)(2)(A)(iv). Pub. L. 108–173, §410(a)(2), added cl. (iv).

Subsec. (e)(12). Pub. L. 108–173, §511(a), amended heading and text of par. (12) generally, substituting provisions relating to upward adjustment of per diem payment for residents of a skilled nursing facility with AIDS for provisions relating to per diem payment rule for certain qualified acute skilled nursing facilities.

2000—Subsec. (e)(4)(E)(ii)(II). Pub. L. 106–554, §1(a)(6) [title III, §311(a)(3)], added subcl. (II). Former subcl. (II) redesignated (III).

Subsec. (e)(4)(E)(ii)(III). Pub. L. 106–554, §1(a)(6) [title III, §311(a)(1), (2)], redesignated subcl. (II) as (III) and substituted ''each of fiscal years 2002 and 2003'' for ''each of fiscal years 2001 and 2002'' and ''minus 0.5 percentage points'' for ''minus 1 percentage point''. Former subcl. (III) redesignated (IV).

Subsec. (e)(4)(E)(ii)(IV). Pub. L. 106–554, §1(a)(6) [title III, §311(a)(1)], redesignated subcl. (III) as (IV).

Subsec. (e)(7). Pub. L. 106–554, §1(a)(6) [title II, §203(a)(1)], substituted ''Treatment of'' for ''Transition for'' in heading.

Subsec. (e)(7)(A). Pub. L. 106–554, §1(a)(6) [title II, §203(a)(2), (3)], in heading substituted ''Transition'' for ''In general'' and in text substituted ''Subject to subparagraph (C), the'' for ''The'' and inserted ''(other than critical access hospitals)'' after ''facilities described in subparagraph (B)''.

Subsec. (e)(7)(B). Pub. L. 106–554, §1(a)(6) [title II, §203(a)(4)], struck out '', for which payment is made for the furnishing of extended care services on a reasonable cost basis under section 1395f(*l*) of this title (as in effect on and after such date)'' before period at end.

Subsec. (e)(7)(C). Pub. L. 106–554, §1(a)(6) [title II, §203(a)(5)], added subpar. (C).

1999—Subsec. (e)(1). Pub. L. 106–113, §1000(a)(6) [title I, §105(a)(1)], substituted ''subject to paragraphs (7), (11), and (12)'' for ''subject to paragraphs (7) and (11)'' in introductory provisions.

Pub. L. 106–113, §1000(a)(6) [title I, §102(a)(1)], substituted ''paragraphs (7) and (11)'' for ''paragraph (7)'' in introductory provisions.

Subsec. (e)(2)(A)(i)(II). Pub. L. 106–113, §1000(a)(6) [title I, §103(a)(1)], substituted ''items and services described in clauses (ii) and (iii)'' for ''services described in clause (ii)''.

Subsec. (e)(2)(A)(iii). Pub. L. 106–113, §1000(a)(6) [title I, §103(a)(2)], added cl. (iii).

Subsec. (e)(3)(A)(i). Pub. L. 106–113, §1000(a)(6) [title I, §104(a)(1)(A)], inserted ''or, in the case of a facility participating in the Nursing Home Case-Mix and Quality Demonstration (RUGS–III), the RUGS–III rate received by the facility during the cost reporting period beginning in 1997'' after ''to non-settled cost reports''.

Subsec. (e)(3)(A)(ii). Pub. L. 106–113, §1000(a)(6) [title I, §104(a)(1)(B)], substituted ''furnished during the applicable cost reporting period described in clause (i)'' for ''furnished during such period''.

Subsec. (e)(3)(B). Pub. L. 106–113, §1000(a)(6) [title I, §104(a)(2)], added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows:

''(i) IN GENERAL.—Subject to clause (ii), the Secretary shall update the amount determined under subparagraph (A), for each cost reporting period after the cost reporting period described in subparagraph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage increase minus 1 percentage point.

''(ii) CERTAIN DEMONSTRATION PROJECTS.—In the case of a facility participating in the Nursing Home Case-Mix and Quality Demonstration (RUGS–III), there shall be substituted for the amount described in clause (i) the RUGS–III rate received by the facility for 1997.''

Subsec. (e)(4)(E)(i). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(18)(A)], substituted ''Federal'' for ''federal''.

Subsec. (e)(4)(E)(ii). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(18)(B)], substituted ''Federal'' for ''federal'' in two places in introductory provisions.

Subsec. (e)(4)(G)(iii). Pub. L. 106–113, §1000(a)(6) [title I, §103(b)(1)], added cl. (iii).

Subsec. (e)(8)(A). Pub. L. 106–113, §1000(a)(6) [title I, §103(b)(2)], substituted ''adjustments for variations in labor-related costs under paragraph (4)(G)(ii), and adjustments under paragraph (4)(G)(iii)'' for ''and adjustments for variations in labor-related costs under paragraph (4)(G)(ii)''.

Subsec. (e)(8)(B). Pub. L. 106–113, §1000(a)(6) [title III, §321(g)(1)], substituted ''July 1, 1999'' for ''January 1, 1999,''.

Subsec. (e)(9). Pub. L. 106–113, §1000(a)(6) [title I, §103(a)(3)], inserted at end ''In the case of an item or service described in clause (iii) of paragraph (2)(A) that would be payable under part A of this subchapter but for the exclusion of such item or service under such clause, payment shall be made for the item or service, in an amount otherwise determined under part B of this subchapter for such item or service, from the Federal Hospital Insurance Trust Fund under section 1395i of this title (rather than from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title).''

Subsec. (e)(11). Pub. L. 106–113, §1000(a)(6) [title I, §102(a)(2)], added par. (11).

Subsec. (e)(12). Pub. L. 106–113, §1000(a)(6) [title I, §105(a)(2), (b)], temporarily added par. (12).

1997—Subsec. (a). Pub. L. 105–33, §4431, substituted ''described in this subsection, except that the limits effective for cost reporting periods beginning on or after October 1, 1997, shall be based on the limits effective for cost reporting periods beginning on or after October 1, 1996.'' for ''described in this subsection'' at end.

Subsec. (d)(1). Pub. L. 105–33, §4432(b)(5)(H), substituted ''Subject to subsection (e) of this section, any skilled nursing facility'' for ''Any skilled nursing facility''.

Subsec. (e). Pub. L. 105–33, §4432(a), added subsec. (e).

Subsec. (e)(2)(A)(ii). Pub. L. 105–33, §4511(a)(2)(E), substituted ''and (ii)'' for ''through (iii)''.

Subsec. (e)(9), (10). Pub. L. 105–33, §4432(b)(3), added pars. (9) and (10).

1993—Subsec. (a). Pub. L. 103–66, §13503(a)(2), inserted '', on or after October 1, 1995,'' after ''October 1, 1992'' in concluding provisions.

Subsec. (b). Pub. L. 103–66, §13503(a)(3)(A), substituted ''Secretary may not recognize'' for ''Secretary shall recognize'' and a period for ''(as determined by the Secretary) resulting from the reimbursement principles under this subchapter, notwithstanding the limits set forth in paragraph (3) or (4) of subsection (a) of this section.''

1990—Subsec. (a). Pub. L. 101–508, §4008(e)(2), struck out period at end and inserted '', and shall, for cost reporting periods beginning on or after October 1, 1992 and every 2 years thereafter, provide for an update to the per diem cost limits described in this subsection''.

Subsec. (d)(1). Pub. L. 101–508, §4008(h)(2)(A)(ii), substituted ''(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) and capital-related costs'' for ''(and capital-related costs)''.

1987—Subsec. (d)(7). Pub. L. 100–203 added par. (7).

1986—Subsec. (b). Pub. L. 99–272, §9219(b)(1)(C), substituted ''notwithstanding'' for ''nothwithstanding''.

Subsec. (c). Pub. L. 99–272, §9126(b), inserted provision requiring the Secretary to publish data and criteria to be used for purposes of this subsection on an annual basis.

Subsec. (d). Pub. L. 99–272, §9126(a), added subsec. (d).

Subsec. (d)(1). Pub. L. 99–514, §1895(b)(7)(A), substituted ''cost reporting period'' for ''fiscal year'' in five places.

Subsec. (d)(4). Pub. L. 99–514, §1895(b)(7)(B), substituted ''cost reporting periods beginning in a fiscal

year'' for ''each fiscal year'' and ''cost reporting period no later than 30 days before the beginning of that period'' for ''fiscal year within 60 days after the Secretary establishes the final prospective payment amounts for such fiscal year''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IV, § 410(b), Dec. 8, 2003, 117 Stat. 2271, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 2005.''

Pub. L. 108–173, title V, § 511(b), Dec. 8, 2003, 117 Stat. 2299, provided that: ''The amendment made by paragraph (1) [probably should be ''subsection (a)'', amending this section] shall apply to services furnished on or after October 1, 2004.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title II, § 203(a)] of Pub. L. 106–554 applicable to cost reporting periods beginning on or after Dec. 21, 2001, see section 1(a)(6) [title IV, § 203(c)] of Pub. L. 106–554, set out as a note under section 1395tt of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 102(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–325, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to elections made on or after December 15, 1999, except that no election shall be effective under such amendments for a cost reporting period beginning before January 1, 2000.''

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 103(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–326, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments made for items and services furnished on or after April 1, 2000.''

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 104(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–327, provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as if included in the enactment of section 4432(a) of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 105(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–328, provided that: ''The amendments made by subsection (a) [amending this section] shall apply for the period beginning on the date on which the first cost reporting period of the facility begins after the date of the enactment of this Act [Nov. 29, 1999] and ending on September 30, 2001, and applies to skilled nursing facilities furnishing covered skilled nursing facility services on the date of the enactment of this Act for which payment is made under title XVIII of the Social Security Act [this subchapter].''

Amendment by section 1000(a)(6) [title III, § 321(g)(1), (k)(18)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4432(a), (b)(3), (5)(H) of Pub. L. 105–33 effective for cost reporting periods beginning on or after July 1, 1998, except that amendment by section 4432(b) applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Amendment by section 4511(a)(2)(E) of Pub. L. 105–33 applicable with respect to services furnished and supplies provided on and after Jan. 1, 1998, see section 4511(e) of Pub. L. 105–33, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13503(a)(3)(B) of Pub. L. 103–66 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(e)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and provisions set out as a note below] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Amendment by section 4008(h)(2)(A)(ii) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 4008(h)(2)(P) of Pub. L. 101–508, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1395i–3 of this title, see section 4204(a) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(7)(D) of Pub. L. 99–514 provided that: ''The amendments made by subparagraphs (A) and (B) [amending this section] apply to cost reporting periods beginning on or after October 1, 1986.''

Amendment by section 9219(b)(1)(C) of Pub. L. 99–272 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 9219(b)(1)(D) of Pub. L. 99–272, set out as a note under section 1395u of this title.

Section 9126(d) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(b)(7)(C), Oct. 22, 1986, 100 Stat. 2933, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1986.

''(2) The amendment made by subsection (b) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE

Section 2319(c) of Pub. L. 98–369 provided that: ''The amendments made by subsections (a) [amending section 1395x of this title] and (b) [enacting this section] shall apply to cost reporting periods beginning on or after July 1, 1984.''

STUDY ON PORTABLE DIAGNOSTIC ULTRASOUND SERVICES FOR BENEFICIARIES IN SKILLED NURSING FACILITIES

Pub. L. 108–173, title V, § 513, Dec. 8, 2003, 117 Stat. 2300, directed the Comptroller General of the United States to conduct a study of portable diagnostic ultrasound services furnished to medicare beneficiaries in skilled nursing facilities and to submit to Congress a report on the study not later than 2 years after Dec. 8, 2003.

SPECIAL RULE FOR PAYMENT FOR FISCAL YEAR 2001

Pub. L. 106–554, § 1(a)(6) [title III, § 311(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–497, provided that: ''Notwithstanding the amendments made by subsection (a) [amending this section], for purposes of making payments for covered skilled nursing facility services under section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)) for fiscal year 2001, the Federal per diem rate referred to in paragraph (4)(E)(ii) of such section—

''(1) for the period beginning on October 1, 2000, and ending on March 31, 2001, shall be the rate determined in accordance with the law as in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

''(2) for the period beginning on April 1, 2001, and ending on September 30, 2001, shall be the rate that would have been determined under such section if

'plus 1 percentage point' had been substituted for 'minus 1 percentage point' under subclause (II) of such paragraph (as in effect on the day before the date of the enactment of this Act).''

Pub. L. 106–554, §1(a)(6) [title V, §547(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–553, provided that: ''The payment increase provided under section 311(b)(2) [set out as a note above] (relating to covered skilled nursing facility services) shall not apply to services furnished after fiscal year 2001 and shall not be taken into account in calculating the payment amounts applicable for services furnished after such fiscal year.''

GAO REPORT ON ADEQUACY OF SNF PAYMENT RATES

Pub. L. 106–554, §1(a)(6) [title III, §311(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–498, provided that: ''Not later than July 1, 2002, the Comptroller General of the United States shall submit to Congress a report on the adequacy of medicare payment rates to skilled nursing facilities and the extent to which medicare contributes to the financial viability of such facilities. Such report shall take into account the role of private payors, medicaid, and case mix on the financial performance of these facilities, and shall include an analysis (by specific RUG classification) of the number and characteristics of such facilities.''

HCFA STUDY OF CLASSIFICATION SYSTEMS FOR SNF RESIDENTS

Pub. L. 106–554, §1(a)(6) [title III, §311(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–498, provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of the different systems for categorizing patients in medicare skilled nursing facilities in a manner that accounts for the relative resource utilization of different patient types.

''(2) REPORT.—Not later than January 1, 2005, the Secretary shall submit to Congress a report on the study conducted under subsection (a). Such report shall include such recommendations regarding changes in law as may be appropriate.''

GAO AUDIT OF NURSING STAFF RATIOS

Pub. L. 106–554, §1(a)(6) [title III, §312(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–498, provided that:

''(1) AUDIT.—The Comptroller General of the United States shall conduct an audit of nursing staffing ratios in a representative sample of medicare skilled nursing facilities. Such sample shall cover selected States and shall include broad representation with respect to size, ownership, location, and medicare volume. Such audit shall include an examination of payroll records and medicaid cost reports of individual facilities.

''(2) REPORT.—Not later than August 1, 2002, the Comptroller General shall submit to Congress a report on the audits conducted under paragraph (1). Such report shall include an assessment of the impact of the increased payments under this subtitle [subtitle B, §§311–315, of title III of §1(a)(6) of Pub. L. 106–554, amending this section and sections 1395u, 1395y, and 1395cc of this title and enacting provisions set out as notes under this section and section 1395u of this title] on increased nursing staff ratios and shall make recommendations as to whether increased payments under subsection (a) [114 Stat. 2763A–498] should be continued.''

OVERSIGHT

Pub. L. 106–554, §1(a)(6) [title III, §313(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–499, provided that: ''The Secretary of Health and Human Services, through the Office of the Inspector General in the Department of Health and Human Services or otherwise, shall monitor payments made under part B of the title XVIII of the Social Security Act [part B of this subchapter] for items and services furnished to residents of skilled nursing facilities during a time in which the residents are not being provided medicare covered post-hospital extended care services to ensure that there is not duplicate billing for services or excessive services provided.''

ESTABLISHMENT OF PROCESS FOR GEOGRAPHIC RECLASSIFICATION

Pub. L. 106–554, §1(a)(6) [title III, §315], Dec. 21, 2000, 114 Stat. 2763, 2763A–500, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services may establish a procedure for the geographic reclassification of a skilled nursing facility for purposes of payment for covered skilled nursing facility services under the prospective payment system established under section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)). Such procedure may be based upon the method for geographic reclassifications for inpatient hospitals established under section 1886(d)(10) of the Social Security Act (42 U.S.C. 1395ww(d)(10)).

''(b) REQUIREMENT FOR SKILLED NURSING FACILITY WAGE DATA.—In no case may the Secretary implement the procedure under subsection (a) before such time as the Secretary has collected data necessary to establish an area wage index for skilled nursing facilities based on wage data from such facilities.''

REPORT TO CONGRESS

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §105(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–328, provided that: ''Not later than March 1, 2001, the Secretary of Health and Human Services shall assess the resource use of patients of skilled nursing facilities furnishing services under the medicare program who are immuno-compromised secondary to an infectious disease, with specific diagnoses as specified by the Secretary (under paragraph (12)(C), as added by subsection (a), of section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e))) to determine whether any permanent adjustments are needed to the RUGs to take into account the resource uses and costs of these patients.''

MEDICAL REVIEW PROCESS

Section 4432(c) of Pub. L. 105–33 provided that: ''In order to ensure that medicare beneficiaries are furnished appropriate services in skilled nursing facilities, the Secretary of Health and Human Services shall establish and implement a thorough medical review process to examine the effects of the amendments made by this section [amending this section and sections 1395i–3, 1395k, 1395*l*, 1395u, 1395x, 1395y, 1395cc, and 1395tt of this title] on the quality of covered skilled nursing facility services furnished to medicare beneficiaries. In developing such a medical review process, the Secretary shall place a particular emphasis on the quality of non-routine covered services and physicians' services for which payment is made under title XVIII of the Social Security Act [this subchapter].''

CONSTRUCTION OF WAGE INDEX FOR SKILLED NURSING FACILITIES

Pub. L. 103–432, title I, §106(a), Oct. 31, 1994, 108 Stat. 4405, provided that: ''Not later than 1 year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services shall begin to collect data on employee compensation and paid hours of employment in skilled nursing facilities for the purpose of constructing a skilled nursing facility wage index adjustment to the routine service cost limits required under section 1888(a)(4) of the Social Security Act [subsec. (a)(4) of this section].''

NO CHANGE IN LIMITS ON PER DIEM SERVICE COSTS FOR EXTENDED CARE SERVICES FOR FISCAL YEARS 1994 AND 1995

Section 13503(a)(1) of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services may not provide for any change in the limits on per diem routine service costs for extended care services under section 1888 of the Social Security Act [this section] for cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendments made by paragraph (3)(A) [amending this section]. The effect of the preceding

sentence shall not be considered by the Secretary in making adjustments pursuant to section 1888(c) of such Act to the payment limits for such services during such fiscal years.''

NO CHANGE IN PROSPECTIVE PAYMENTS FOR SERVICES FURNISHED DURING FISCAL YEARS 1994 AND 1995

Section 13503(b) of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services may not change the amount of any prospective payment paid to a skilled nursing facility under section 1888(d) of the Social Security Act [subsec. (d) of this section] for services furnished during cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendment made by subsection (c)(1)(A) [amending section 1395x of this title].''

PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITY SERVICES

Section 4008(k) of Pub. L. 101–508 provided that:

''(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under part A [part A of this subchapter] of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

''(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program without jeopardizing access to extended care services for individuals unable to care for themselves;

''(B) provide for adjustments to prospectively determined rates to account for changes in a facility's case mix, volume of cases, and the development of new technologies and standards of medical practice;

''(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

''(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, differences in wages and wage-related costs among facilities located in various geographic areas, and other factors the Secretary considers appropriate; and

''(E) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

''(2) REPORTS.—(A) By not later than April 1, 1991, the Secretary (acting through the Administrator of the Health Care Financing Administration) shall submit any research studies to be used in developing the proposal under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

''(B) By not later than September 1, 1991, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

''(C) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.''

USE OF MORE RECENT DATA REGARDING ROUTINE SERVICE COSTS OF SKILLED NURSING FACILITIES

Pub. L. 101–239, title VI, § 6024, Dec. 19, 1989, 103 Stat. 2167, as amended by Pub. L. 101–508, title IV, § 4008(e)(1), Nov. 5, 1990, 104 Stat. 1388–45, provided that: ''The Secretary of Health and Human Services shall determine mean per diem routine service costs for freestanding and hospital based skilled nursing facilities under section 1888(a) of the Social Security Act [subsec. (a) of this section] for cost reporting periods beginning on or after October 1, 1989, in accordance with regulations published by the Secretary that require the use of cost reports submitted by skilled nursing facilities for cost reporting periods beginning not earlier than October 1, 1985. The Secretary shall update such costs under such section for cost reporting periods beginning on or after October 1, 1989, by using cost reports submitted by skilled nursing facilities for cost reporting periods ending not earlier than January 31, 1988, and not later than December 31, 1988.''

§ 1395zz. Provider education and technical assistance

(a) Coordination of education funding

The Secretary shall coordinate the educational activities provided through medicare contractors (as defined in subsection (g) of this section, including under section 1395ddd of this title) in order to maximize the effectiveness of Federal education efforts for providers of services and suppliers.

(b) Enhanced education and training

(1) Additional resources

There are authorized to be appropriated to the Secretary (in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund) such sums as may be necessary for fiscal years beginning with fiscal year 2005.

(2) Use

The funds made available under paragraph (1) shall be used to increase the conduct by medicare contractors of education and training of providers of services and suppliers regarding billing, coding, and other appropriate items and may also be used to improve the accuracy, consistency, and timeliness of contractor responses.

(c) Tailoring education and training activities for small providers or suppliers

(1) In general

Insofar as a medicare contractor conducts education and training activities, it shall tailor such activities to meet the special needs of small providers of services or suppliers (as defined in paragraph (2)). Such education and training activities for small providers of services and suppliers may include the provision of technical assistance (such as review of billing systems and internal controls to determine program compliance and to suggest more efficient and effective means of achieving such compliance).

(2) Small provider of services or supplier

In this subsection, the term ''small provider of services or supplier'' means—

(A) a provider of services with fewer than 25 full-time-equivalent employees; or

(B) a supplier with fewer than 10 full-time-equivalent employees.

(d) Internet websites; FAQs

The Secretary, and each medicare contractor insofar as it provides services (including claims processing) for providers of services or suppliers, shall maintain an Internet website which—

(1) provides answers in an easily accessible format to frequently asked questions, and

(2) includes other published materials of the contractor,

that relate to providers of services and suppliers under the programs under this subchapter (and subchapter XI of this chapter insofar as it relates to such programs).

(e) Encouragement of participation in education program activities

A medicare contractor may not use a record of attendance at (or failure to attend) educational activities or other information gathered during an educational program conducted under this section or otherwise by the Secretary to select or track providers of services or suppliers for the purpose of conducting any type of audit or prepayment review.

(f) Construction

Nothing in this section or section 1395ddd(g)[1] of this title shall be construed as providing for disclosure by a medicare contractor—

(1) of the screens used for identifying claims that will be subject to medical review; or

(2) of information that would compromise pending law enforcement activities or reveal findings of law enforcement-related audits.

(g) Definitions

For purposes of this section, the term ''medicare contractor'' includes the following:

(1) A medicare administrative contractor with a contract under section 1395kk–1 of this title, including a fiscal intermediary with a contract under section 1395h of this title and a carrier with a contract under section 1395u of this title.

(2) An eligible entity with a contract under section 1395ddd of this title.

Such term does not include, with respect to activities of a specific provider of services or supplier an entity that has no authority under this subchapter or subchapter IX of this chapter with respect to such activities and such provider of services or supplier.

(Aug. 14, 1935, ch. 531, title XVIII, §1889, as added and amended Pub. L. 108–173, title IX, §921(a)(1), (d)(1), (e)(1), (f)(1), Dec. 8, 2003, 117 Stat. 2388, 2391.)

PRIOR PROVISIONS

A prior section 1395zz, act Aug. 14, 1935, ch. 531, title XVIII, §1889, as added Nov. 5, 1990, Pub. L. 101–508, title IV, §4361(a), 104 Stat. 1388–141, related to medicare and medigap information by telephone, prior to repeal by Pub. L. 103–432, title I, §171(j)(3), (*l*), Oct. 31, 1994, 108 Stat. 4451, effective as if included in the enactment of Pub. L. 101–508.

Another prior section 1395zz, act Aug. 14, 1935, ch. 531, title XVIII, §1889, formerly §1833(f), as added Jan. 2, 1968, Pub. L. 90–248, title I, §132(b), 81 Stat. 850, and amended Oct. 30, 1972, Pub. L. 92–603, title II, §245(d), 86 Stat. 1424; Oct. 25, 1977, Pub. L. 95–142, §16(a), 91 Stat. 1200; renumbered §1889 and amended July 18, 1984, Pub. L. 98–369, div. B, title III, §2321(d), 98 Stat. 1084, provided for purchase of durable medical equipment, covering (a) lease-purchase basis or rental and determination by Secretary, (b) waiver of coinsurance amount in purchase of used equipment, (c) reimbursement procedures, and (d) encouragement of lease-purchase basis, prior to repeal by Pub. L. 100–203, title IV, §4062(d)(5), (e), Dec. 22, 1987, 101 Stat. 1330–109, applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989.

AMENDMENTS

2003—Subsecs. (b), (c). Pub. L. 108–173, §921(d)(1), added subsecs. (b) and (c).

Subsec. (d). Pub. L. 108–173, §921(e)(1), added subsec. (d).

Subsecs. (e) to (g). Pub. L. 108–173, §921(f)(1), added subsecs. (e) to (g).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, §921(d)(2), Dec. 8, 2003, 117 Stat. 2391, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 2004.''

Pub. L. 108–173, title IX, §921(e)(2), Dec. 8, 2003, 117 Stat. 2391, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 2004.''

Pub. L. 108–173, title IX, §921(f)(2), Dec. 8, 2003, 117 Stat. 2392, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003].''

EFFECTIVE DATE

Pub. L. 108–173, title IX, §921(a)(2), Dec. 8, 2003, 117 Stat. 2388, provided that: ''The amendment made by paragraph (1) [enacting this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003].''

SMALL PROVIDER TECHNICAL ASSISTANCE DEMONSTRATION PROGRAM

Pub. L. 108–173, title IX, §922, Dec. 8, 2003, 117 Stat. 2392, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall establish a demonstration program (in this section referred to as the 'demonstration program') under which technical assistance described in paragraph (2) is made available, upon request and on a voluntary basis, to small providers of services or suppliers in order to improve compliance with the applicable requirements of the programs under medicare program under title XVIII of the Social Security Act [this subchapter] (including provisions of title XI of such Act [subchapter XI of this chapter] insofar as they relate to such title and are not administered by the Office of the Inspector General of the Department of Health and Human Services).

''(2) FORMS OF TECHNICAL ASSISTANCE.—The technical assistance described in this paragraph is—

''(A) evaluation and recommendations regarding billing and related systems; and

''(B) information and assistance regarding policies and procedures under the medicare program, including coding and reimbursement.

''(3) SMALL PROVIDERS OF SERVICES OR SUPPLIERS.—In this section, the term 'small providers of services or suppliers' means—

''(A) a provider of services with fewer than 25 full-time-equivalent employees; or

''(B) a supplier with fewer than 10 full-time-equivalent employees.

''(b) QUALIFICATION OF CONTRACTORS.—In conducting the demonstration program, the Secretary shall enter into contracts with qualified organizations (such as

[1] So in original. Section 1395ddd does not contain a subsec. (g).

peer review organizations or entities described in section 1889(g)(2) of the Social Security Act [subsec. (g)(2) of this section], as inserted by section 921(f)(1)) with appropriate expertise with billing systems of the full range of providers of services and suppliers to provide the technical assistance. In awarding such contracts, the Secretary shall consider any prior investigations of the entity's work by the Inspector General of Department of Health and Human Services or the Comptroller General of the United States.

''(c) DESCRIPTION OF TECHNICAL ASSISTANCE.—The technical assistance provided under the demonstration program shall include a direct and in-person examination of billing systems and internal controls of small providers of services or suppliers to determine program compliance and to suggest more efficient or effective means of achieving such compliance.

''(d) GAO EVALUATION.—Not later than 2 years after the date the demonstration program is first implemented, the Comptroller General, in consultation with the Inspector General of the Department of Health and Human Services, shall conduct an evaluation of the demonstration program. The evaluation shall include a determination of whether claims error rates are reduced for small providers of services or suppliers who participated in the program and the extent of improper payments made as a result of the demonstration program. The Comptroller General shall submit a report to the Secretary and the Congress on such evaluation and shall include in such report recommendations regarding the continuation or extension of the demonstration program.

''(e) FINANCIAL PARTICIPATION BY PROVIDERS.—The provision of technical assistance to a small provider of services or supplier under the demonstration program is conditioned upon the small provider of services or supplier paying an amount estimated (and disclosed in advance of a provider's or supplier's participation in the program) to be equal to 25 percent of the cost of the technical assistance.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from amounts not otherwise appropriated in the Treasury, such sums as may be necessary to carry out this section.''

§ 1395aaa. Transferred

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XVIII, § 1890, as added Aug. 18, 1987, Pub. L. 100–93, § 10, 101 Stat. 696, which related to limitation of liability of beneficiaries with respect to services furnished by excluded individuals and entities, was amended and transferred to section 1862(e)(2) of act Aug. 14, 1935, by Pub. L. 100–360, title IV, § 411(i)(4)(D)(ii), July 1, 1988, 102 Stat. 790, as amended by Pub. L. 100–485, title VI, § 608(d)(24)(C)(ii), Oct. 13, 1988, 102 Stat. 2421, and is classified to section 1395y(e)(2) of this title.

§ 1395bbb. Conditions of participation for home health agencies; home health quality

(a) Conditions of participation; protection of individual rights; notification of State entities; use of home health aides; medical equipment; individual's plan of care; compliance with Federal, State, and local laws and regulations

The conditions of participation that a home health agency is required to meet under this subsection are as follows:

(1) The agency protects and promotes the rights of each individual under its care, including each of the following rights:

(A) The right to be fully informed in advance about the care and treatment to be provided by the agency, to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual's well-being, and (except with respect to an individual adjudged incompetent) to participate in planning care and treatment or changes in care or treatment.

(B) The right to voice grievances with respect to treatment or care that is (or fails to be) furnished without discrimination or reprisal for voicing grievances.

(C) The right to confidentiality of the clinical records described in section 1395x(*o*)(3) of this title.

(D) The right to have one's property treated with respect.

(E) The right to be fully informed orally and in writing (in advance of coming under the care of the agency) of—

(i) all items and services furnished by (or under arrangements with) the agency for which payment may be made under this subchapter,

(ii) the coverage available for such items and services under this subchapter, subchapter XIX of this chapter, and any other Federal program of which the agency is reasonably aware,

(iii) any charges for items and services not covered under this subchapter and any charges the individual may have to pay with respect to items and services furnished by (or under arrangements with) the agency, and

(iv) any changes in the charges or items and services described in clause (i), (ii), or (iii).

(F) The right to be fully informed in writing (in advance of coming under the care of the agency) of the individual's rights and obligations under this subchapter.

(G) The right to be informed of the availability of the State home health agency hotline established under section 1395aa(a) of this title.

(2) The agency notifies the State entity responsible for the licensing or certification of the agency of a change in—

(A) the persons with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the agency,

(B) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a–5(b) of this title) of the agency, and

(C) the corporation, association, or other company responsible for the management of the agency.

Such notice shall be given at the time of the change and shall include the identity of each new person or company described in the previous sentence.

(3)(A) The agency must not use as a home health aide (on a full-time, temporary, per diem, or other basis), any individual to provide items or services described in section 1395x(m) of this title on or after January 1, 1990, unless the individual—

(i) has completed a training and competency evaluation program, or a competency evaluation program, that meets the

minimum standards established by the Secretary under subparagraph (D), and

(ii) is competent to provide such items and services.

For purposes of clause (i), an individual is not considered to have completed a training and competency evaluation program, or a competency evaluation program if, since the individual's most recent completion of such a program, there has been a continuous period of 24 consecutive months during none of which the individual provided items and services described in section 1395x(m) of this title for compensation.

(B)(i) The agency must provide, with respect to individuals used as a home health aide by the agency as of July 1, 1989, for a competency evaluation program (as described in subparagraph (A)(i)) and such preparation as may be necessary for the individual to complete such a program by January 1, 1990.

(ii) The agency must provide such regular performance review and regular in-service education as assures that individuals used to provide items and services described in section 1395x(m) of this title are competent to provide those items and services.

(C) The agency must not permit an individual, other than in a training and competency evaluation program that meets the minimum standards established by the Secretary under subparagraph (D), to provide items or services of a type for which the individual has not demonstrated competency.

(D)(i) The Secretary shall establish minimum standards for the programs described in subparagraph (A) by not later than October 1, 1988.

(ii) Such standards shall include the content of the curriculum, minimum hours of training, qualification of instructors, and procedures for determination of competency.

(iii) Such standards may permit approval of programs offered by or in home health agencies, as well as outside agencies (including employee organizations), and of programs in effect on December 22, 1987; except that they may not provide for the approval of a program offered by or in a home health agency which, within the previous 2 years—

(I) has been determined to be out of compliance with subparagraph (A), (B), or (C);

(II) has been subject to an extended (or partial extended) survey under subsection (c)(2)(D) of this section;

(III) has been assessed a civil money penalty described in subsection (f)(2)(A)(i) of this section of not less than $5,000; or

(IV) has been subject to the remedies described in subsection (e)(1) of this section or in clauses (ii) or (iii) of subsection (f)(2)(A) of this section.

(iv) Such standards shall permit a determination that an individual who has completed (before July 1, 1989) a training and competency evaluation program or a competency evaluation program shall be deemed for purposes of subparagraph (A) to have completed a program that is approved by the Secretary under the standards established under this subparagraph if the Secretary determines that, at the time the program was offered, the program met such standards.

(E) In this paragraph, the term ''home health aide'' means any individual who provides the items and services described in section 1395x(m) of this title, but does not include an individual—

(i) who is a licensed health professional (as defined in subparagraph (F)), or

(ii) who volunteers to provide such services without monetary compensation.

(F) In this paragraph, the term ''licensed health professional'' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(4) The agency includes an individual's plan of care required under section 1395x(m) of this title as part of the clinical records described in section 1395x(*o*)(3) of this title.

(5) The agency operates and provides services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a–3 of this title) and with accepted professional standards and principles which apply to professionals providing items and services in such an agency.

(6) The agency complies with the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(b) Duty of Secretary

It is the duty and responsibility of the Secretary to assure that the conditions of participation and requirements specified in or pursuant to section 1395x(*o*) of this title and subsection (a) of this section and the enforcement of such conditions and requirements are adequate to protect the health and safety of individuals under the care of a home health agency and to promote the effective and efficient use of public moneys.

(c) Surveys of home health agencies

(1) Any agreement entered into or renewed by the Secretary pursuant to section 1395aa of this title relating to home health agencies shall provide that the appropriate State or local agency shall conduct, without any prior notice, a standard survey of each home health agency. Any individual who notifies (or causes to be notified) a home health agency of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this paragraph in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a of this title. The Secretary shall review each State's or local agency's procedures for scheduling and conduct of standard surveys to assure that the State or agency has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(2)(A) Except as provided in subparagraph (B), each home health agency shall be subject to a standard survey not later than 36 months after the date of the previous standard survey conducted under this paragraph. The Secretary shall establish a frequency for surveys of home health agencies within this 36-month interval commensurate with the need to assure the delivery of quality home health services.

(B) If not otherwise conducted under subparagraph (A), a standard survey (or an abbreviated standard survey) of an agency—

(i) may be conducted within 2 months of any change of ownership, administration, or management of the agency to determine whether the change has resulted in any decline in the quality of care furnished by the agency, and

(ii) shall be conducted within 2 months of when a significant number of complaints have been reported with respect to the agency to the Secretary, the State, the entity responsible for the licensing of the agency, the State or local agency responsible for maintaining a toll-free hotline and investigative unit (under section 1395aa(a) of this title), or any other appropriate Federal, State, or local agency.

(C) A standard survey conducted under this paragraph with respect to a home health agency—

(i) shall include (to the extent practicable), for a case-mix stratified sample of individuals furnished items or services by the agency—

(I) visits to the homes of such individuals, but only with the consent of such individuals, for the purpose of evaluating (in accordance with a standardized reproducible assessment instrument (or instruments) approved by the Secretary under subsection (d) of this section) the extent to which the quality and scope of items and services furnished by the agency attained and maintained the highest practicable functional capacity of each such individual as reflected in such individual's written plan of care required under section 1395x(m) of this title and clinical records required under section 1395x(*o*)(3) of this title; and

(II) a survey of the quality of care and services furnished by the agency as measured by indicators of medical, nursing, and rehabilitative care;

(ii) shall be based upon a protocol that is developed, tested, and validated by the Secretary not later than January 1, 1989; and

(iii) shall be conducted by an individual—

(I) who meets minimum qualifications established by the Secretary not later than July 1, 1989,

(II) who is not serving (or has not served within the previous 2 years) as a member of the staff of, or as a consultant to, the home health agency surveyed respecting compliance with the conditions of participation specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section, and

(III) who has no personal or familial financial interest in the home health agency surveyed.

(D) Each home health agency that is found, under a standard survey, to have provided substandard care shall be subject to an extended survey to review and identify the policies and procedures which produced such substandard care and to determine whether the agency has complied with the conditions of participation specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section. Any other agency may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey). The extended survey shall be conducted immediately after the standard survey (or, if not practical, not later than 2 weeks after the date of completion of the standard survey).

(E) Nothing in this paragraph shall be construed as requiring an extended (or partial extended) survey as a prerequisite to imposing a sanction against an agency under subsection (e) of this section on the basis of the findings of a standard survey.

(d) Assessment process; reports to Congress

(1) Not later than January 1, 1989, the Secretary shall designate an assessment instrument (or instruments) for use by an agency in complying with subsection (c)(2)(C)(i)(I) of this section.

(2)(A) Not later than January 1, 1992, the Secretary shall—

(i) evaluate the assessment process,

(ii) report to Congress on the results of such evaluation, and

(iii) based on such evaluation, make such modifications in the assessment process as the Secretary determines are appropriate.

(B) The Secretary shall periodically update the evaluation conducted under subparagraph (A), report the results of such update to Congress, and, based on such update, make such modifications in the assessment process as the Secretary determines are appropriate.

(3) The Secretary shall provide for the comprehensive training of State and Federal surveyors in matters relating to the performance of standard and extended surveys under this section, including the use of any assessment instrument (or instruments) designated under paragraph (1).

(e) Enforcement

(1) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this subchapter is no longer in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section and determines that the deficiencies involved immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subsection (f)(2)(A)(iii) of this section or terminate the certification of the agency, and may provide, in addition, for 1 or more of the other remedies described in subsection (f)(2)(A) of this section.

(2) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is

certified for participation under this subchapter is no longer in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section and determines that the deficiencies involved do not immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary may (for a period not to exceed 6 months) impose intermediate sanctions developed pursuant to subsection (f) of this section, in lieu of terminating the certification of the agency. If, after such a period of intermediate sanctions, the agency is still no longer in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section, the Secretary shall terminate the certification of the agency.

(3) If the Secretary determines that a home health agency that is certified for participation under this subchapter is in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subsection (f)(2)(A)(i) of this section for the days in which it finds that the agency was not in compliance with such requirements.

(4) The Secretary may continue payments under this subchapter with respect to a home health agency not in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section over a period of not longer than 6 months, if—

(A) the State or local survey agency finds that it is more appropriate to take alternative action to assure compliance of the agency with the requirements than to terminate the certification of the agency,

(B) the agency has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(C) the agency agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by home health agencies under this subparagraph.

(f) Intermediate sanctions

(1) The Secretary shall develop and implement, by not later than April 1, 1989—

(A) a range of intermediate sanctions to apply to home health agencies under the conditions described in subsection (e) of this section, and

(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

(i) civil money penalties in an amount not to exceed $10,000 for each day of noncompliance,

(ii) suspension of all or part of the payments to which a home health agency would otherwise be entitled under this subchapter with respect to items and services furnished by a home health agency on or after the date on which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (e)(2) of this section, and

(iii) the appointment of temporary management to oversee the operation of the home health agency and to protect and assure the health and safety of the individuals under the care of the agency while improvements are made in order to bring the agency into compliance with all the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The temporary management under clause (iii) shall not be terminated until the Secretary has determined that the agency has the management capability to ensure continued compliance with all the requirements referred to in that clause.

(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law and shall not be construed as limiting other remedies, including any remedy available to an individual at common law.

(C) A finding to suspend payment under subparagraph (A)(ii) shall terminate when the Secretary finds that the home health agency is in substantial compliance with all the requirements specified in or pursuant to section 1395x(*o*) of this title and subsection (a) of this section.

(3) The Secretary shall develop and implement, by not later than April 1, 1989, specific procedures with respect to the conditions under which each of the intermediate sanctions developed under paragraph (1) is to be applied, including the amount of any fines and the severity of each of these sanctions. Such procedures shall be designed so as to minimize the time between identification of deficiencies and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

(g) Payment on basis of location of service

A home health agency shall submit claims for payment for home health services under this subchapter only on the basis of the geographic location at which the service is furnished, as determined by the Secretary.

(Aug. 14, 1935, ch. 531, title XVIII, § 1891, as added and amended Pub. L. 100–203, title IV, §§ 4021(b), 4022(a), 4023(a), Dec. 22, 1987, 101 Stat. 1330–67, 1330–69, 1330–71; Pub. L. 100–360, title IV, § 411(d)(1)(A), (2)–(3)(B), July 1, 1988, 102 Stat. 773, 774; Pub. L. 100–485, title VI, § 608(d)(20)(A), Oct. 13, 1988, 102 Stat. 2419; Pub. L. 101–508, title IV, §§ 4206(d)(2), 4207(i)(1), formerly 4027(i)(1), Nov. 5, 1990, 104 Stat. 1388–116, 1388–123, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 104–134, title I, § 101(d) [title V, § 516(a)], Apr. 26, 1996, 110 Stat. 1321–211,

1321–246; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–33, title IV, § 4604(a), Aug. 5, 1997, 111 Stat. 472; Pub. L. 108–173, title VII, § 736(c)(3), Dec. 8, 2003, 117 Stat. 2356.)

AMENDMENTS

2003—Subsec. (d)(1). Pub. L. 108–173 substituted ''subsection (c)(2)(C)(i)(I)'' for ''subsection (c)(2)(C)(I)''.

1997—Subsec. (g). Pub. L. 105–33 added subsec. (g).

1996—Subsec. (c)(2)(A). Pub. L. 104–134 substituted ''36 months'' for ''15 months'' in first sentence and amended last sentence generally. Prior to amendment, last sentence read as follows: ''The statewide average interval between standard surveys of any home health agency shall not exceed 12 months.''

1990—Subsec. (a)(3)(D)(iii). Pub. L. 101–508, § 4207(i)(1), formerly § 4027(i)(1), as renumbered by Pub. L. 103–432, substituted ''which, within the previous 2 years—'' and subcls. (I) to (IV) for ''which has been determined to be out of compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section within the previous 2 years.''

Subsec. (a)(6). Pub. L. 101–508, § 4206(d)(2), added par. (6).

1988—Subsec. (a)(3)(A). Pub. L. 100–360, § 411(d)(1)(A)(i), struck out ''who is not a licensed health care professional (as defined in subparagraph (F))'' after ''any individual'' in introductory provisions.

Subsec. (a)(3)(F). Pub. L. 100–360, § 411(d)(1)(A)(ii), inserted ''physical or occupational therapy assistant,'' after ''occupational therapist''.

Subsec. (a)(4) to (6). Pub. L. 100–360, § 411(d)(1)(A)(iii), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which read as follows: ''With respect to durable medical equipment furnished to individuals for whom the agency provides items and services, suppliers of such equipment do not use (on a full-time, temporary, per diem, or other basis) any individual who does not meet minimum training standards (established by the Secretary by October 1, 1988) for the demonstration and use of any such equipment furnished to individuals with respect to whom payments may be made under this subchapter.''

Subsec. (c)(1). Pub. L. 100–360, § 411(d)(2)(A), as amended by Pub. L. 100–485, § 608(d)(20)(A), amended third sentence generally. Prior to amendment, third sentence read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (d)(2)(A). Pub. L. 100–360, § 411(d)(2)(B), substituted ''1992'' for ''1991'' in introductory provisions.

Subsecs. (e), (f). Pub. L. 100–360, § 411(d)(3)(A), made technical amendment to Pub. L. 100–203, § 4023(a), see 1987 Amendment note below.

Subsec. (f)(2)(A). Pub. L. 100–360, § 411(d)(3)(B)(iii), inserted before last sentence ''The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Pub. L. 100–360, § 411(d)(3)(B)(i), realigned the margins of cls. (i) to (iii) and concluding provisions.

Subsec. (f)(2)(A)(i). Pub. L. 100–360, § 411(d)(3)(B)(ii), substituted ''in an amount not to exceed $10,000 for each day of noncompliance'' for ''for each day of noncompliance''.

1987—Subsecs. (c), (d). Pub. L. 100–203, § 4022(a), added subsecs. (c) and (d).

Subsecs. (e), (f). Pub. L. 100–203, § 4023(a), as amended by Pub. L. 100–360, § 411(d)(3)(A), added subsecs. (e) and (f).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1997, see section 4604(c) of Pub. L. 105–33, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4206(d)(2) of Pub. L. 101–508 applicable with respect to services furnished on or after the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4206(e)(1) of Pub. L. 101–508, set out as a note under section 1395i–3 of this title.

Section 4207(i)(1), formerly 4027(i)(1), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that the amendment made by that section is effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.

Section 4207(i)(2), formerly 4027(i)(2), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, § 160(d)(4), (11), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203], except that the Secretary may not permit approval of a training and competency evaluation program or a competency evaluation program offered by or in a home health agency which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

''(i) had its participation terminated under title XVIII of the Social Security Act [this subchapter];

''(ii) was assessed a civil money penalty not less than $5,000 for deficiencies in applicable quality standards for home health agencies;

''(iii) was subject to suspension by the Secretary of all or part of the payments to which it would otherwise be entitled under such title;

''(iv) operated under a temporary management appointed to oversee the operation of the agency and to ensure the health and safety of the agency's patients; or

''(v) pursuant to State action, was closed or had its patients transferred.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4022(b) of Pub. L. 100–203 provided that: ''Except as otherwise specifically provided in section 1891(d) of the Social Security Act [subsec. (d) of this section] (as added by subsection (a)), the amendment made by subsection (a) [amending this section] shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4023(b) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(d)(3)(C), July 1, 1988, 102 Stat. 774, provided that: ''Except as otherwise specifically provided in subsections (e) and (f) of section 1891 of the Social Security Act [subsecs. (e) and (f) of this section] (as added by subsection (a)), the amendment made by subsection (a) [amending this section] shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act [Dec. 22, 1987], and no intermediate sanction described in section 1891(f)(2)(A) of such Act [subsec. (f)(2)(A) of this section] shall be imposed for violations occurring before such effective date.''

EFFECTIVE DATE

Section applicable to home health agencies as of the first day of the 18th calendar month that begins after

Dec. 22, 1987, except as otherwise provided, see section 4021(c) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 1395x of this title.

TREATMENT OF BRANCH OFFICES; GAO STUDY ON SUPERVISION OF HOME HEALTH CARE PROVIDED IN ISOLATED RURAL AREAS

Pub. L. 106–554, §1(a)(6) [title V, §506], Dec. 21, 2000, 114 Stat. 2763, 2763A–531, provided that:

''(a) TREATMENT OF BRANCH OFFICES.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, in determining for purposes of title XVIII of the Social Security Act [this subchapter] whether an office of a home health agency constitutes a branch office or a separate home health agency, neither the time nor distance between a parent office of the home health agency and a branch office shall be the sole determinant of a home health agency's branch office status.

''(2) CONSIDERATION OF FORMS OF TECHNOLOGY IN DEFINITION OF SUPERVISION.—The Secretary of Health and Human Services may include forms of technology in determining what constitutes 'supervision' for purposes of determining a home heath [sic] agency's branch office status under paragraph (1).

''(b) GAO STUDY.—

''(1) STUDY.—The Comptroller General of the United States shall conduct a study of the provision of adequate supervision to maintain quality of home health services delivered under the medicare program under title XVIII of the Social Security Act [this subchapter] in isolated rural areas. The study shall evaluate the methods that home health agency branches and subunits use to maintain adequate supervision in the delivery of services to clients residing in those areas, how these methods of supervision compare to requirements that subunits independently meet medicare conditions of participation, and the resources utilized by subunits to meet such conditions.

''(2) REPORT.—Not later than January 1, 2002, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1). The report shall include recommendations on whether exceptions are needed for subunits and branches of home health agencies under the medicare program to maintain access to the home health benefit or whether alternative policies should be developed to assure adequate supervision and access and recommendations on whether a national standard for supervision is appropriate.''

§ 1395ccc. Offset of payments to individuals to collect past-due obligations arising from breach of scholarship and loan contract

(a) In general

(1)(A) Subject to subparagraph (B), the Secretary shall enter into an agreement under this section with any individual who, by reason of a breach of a contract entered into by such individual pursuant to the National Health Service Corps Scholarship Program, the Physician Shortage Area Scholarship Program, or the Health Education Assistance Loan Program, owes a past-due obligation to the United States (as defined in subsection (b) of this section).

(B) The Secretary shall not enter into an agreement with an individual under this section to the extent—

(i)(I) the individual has entered into a contract with the Secretary pursuant to section 204(a)(1) of the Public Health Service Amendments of 1987, and

(II) the individual has fulfilled or (as determined by the Secretary) is fulfilling the terms of such contract; or

(ii) the liability of the individual under such section 204(a)(1) has otherwise been relieved under such section; or

(iii) the individual is performing such physician's[1] service obligation under a forbearance agreement entered into with the Secretary under subpart II of part D of title III of the Public Health Service Act [42 U.S.C. 254d et seq.].

(2) The agreement under this section shall provide that—

(A) deductions shall be made from the amounts otherwise payable to the individual under this subchapter, in accordance with a formula and schedule agreed to by the Secretary and the individual, until such past-due obligation (and accrued interest) have been repaid;

(B) payment under this subchapter for services provided by such individual shall be made only on an assignment-related basis;

(C) if the individual does not provide services, for which payment would otherwise be made under this subchapter, of a sufficient quantity to maintain the offset collection according to the agreed upon formula and schedule—

(i) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

(ii) subject to paragraph (4), the Secretary shall immediately exclude the individual from the program under this subchapter, until such time as the entire past-due obligation has been repaid.

(3) If the individual refuses to enter into an agreement or breaches any provision of the agreement—

(A) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

(B) subject to paragraph (4), the Secretary shall immediately exclude the individual from the program under this subchapter, until such time as the entire past-due obligation has been repaid.

(4) The Secretary shall not exclude an individual pursuant to paragraph (2)(C)(ii) or paragraph (3)(B) if such individual is a sole community practitioner or sole source of essential specialized services in a community if a State requests that the individual not be excluded.

(b) Past-due obligation

For purposes of this section, a past-due obligation is any amount—

(1) owed by an individual to the United States by reason of a breach of a scholarship contract under section 338E of the Public Health Service Act [42 U.S.C. 254*o*] or under subpart III of part F of title VII of such Act (as in effect before October 1, 1976) and which has not been paid by the deadline established by the Secretary pursuant to such respective

[1] So in original. Probably should be ''individual's''.

section, and has not been canceled, waived, or suspended by the Secretary pursuant to such section; or

(2) owed by an individual to the United States by reason of a loan covered by Federal loan insurance under subpart I[2] of part C of title VII of the Public Health Service Act and payment for which has not been cancelled, waived, or suspended by the Secretary under such subpart.

(c) Collection under this section shall not be exclusive

This section shall not preclude the United States from applying other provisions of law otherwise applicable to the collection of obligations owed to the United States, including (but not limited to) the use of tax refund offsets pursuant to section 3720A of title 31 and the application of other procedures provided under chapter 37 of title 31.

(d) Collection from providers and health maintenance organizations

(1) In the case of an individual who owes a past-due obligation, and who is an employee of, or affiliated by a medical services agreement with, a provider having an agreement under section 1395cc of this title or a health maintenance organization or competitive medical plan having a contract under section 1395*l* of this title or section 1395mm of this title, the Secretary shall deduct the amounts of such past-due obligation from amounts otherwise payable under this subchapter to such provider, organization, or plan.

(2) Deductions shall be in accordance with a formula and schedule agreed to by the Secretary, the individual and the provider, organization, or plan. The deductions shall be made from the amounts otherwise payable to the individual under this subchapter as long as the individual continues to be employed or affiliated by a medical services agreement.

(3) Such deduction shall not be made until 6 months after the Secretary notifies the provider, organization, or plan of the amount to be deducted and the particular physicians[3] to whom the deductions are attributable.

(4) A deduction made under this subsection shall relieve the individual of the obligation (to the extent of the amount collected) to the United States, but the provider, organization, or plan shall have a right of action to collect from such individual the amount deducted pursuant to this subsection (including accumulated interest).

(5) No deduction shall be made under this subsection if, within the 6-month period after notice is given to the provider, organization, or plan, the individual pays the past-due obligation, or ceases to be employed by the provider, organization, or plan.

(6) The Secretary shall also apply the provisions of this subsection in the case of an individual who is a member of a group practice, if such group practice submits bills under this program as a group, rather than by individual physicians.[3]

(e) Transfer from trust funds

Amounts equal to the amounts deducted pursuant to this section shall be transferred from the Trust Fund from which the payment to the individual, provider, or other entity would otherwise have been made, to the general fund in the Treasury, and shall be credited as payment of the past-due obligation of the individual from whom (or with respect to whom) the deduction was made.

(Aug. 14, 1935, ch. 531, title XVIII, § 1892, as added Pub. L. 100–203, title IV, § 4052(a), Dec. 22, 1987, 101 Stat. 1330–95; amended Pub. L. 100–360, title IV, § 411(f)(10)(A), (C)(i), July 1, 1988, 102 Stat. 780; Pub. L. 100–485, title VI, § 608(d)(21)(E)–(H), Oct. 13, 1988, 102 Stat. 2420.)

REFERENCES IN TEXT

Section 204(a)(1) of the Public Health Service Amendments of 1987, referred to in subsec. (a)(1)(B), is section 204(a)(1) of Pub. L. 100–177, title II, Dec. 1, 1987, 101 Stat. 1000, which is set out as a note under section 254*o* of this title.

The Public Health Service Act, referred to in subsecs. (a)(1)(B)(iii) and (b), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart II of part D of title III of the Act is classified generally to subpart II (§ 254d et seq.) of part D of subchapter II of chapter 6A of this title. Subpart I of part C of title VII of the Act was classified generally to subpart I (§ 294 et seq.) of part C of subchapter V of chapter 6A of this title and was omitted in the general revision of subchapter V by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. See subpart I (§ 292 et seq.) of part A of subchapter V of chapter 6A of this title. Subpart III of part F of title VII of the Public Health Service Act (as in effect before October 1, 1976) was classified to subpart III (§ 295g–21 et seq.) of part F of subchapter V of chapter 6A of this title, prior to repeal by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

1988—Pub. L. 100–360, § 411(f)(10)(C)(i)(I), substituted ''individuals'' for ''physicians'' and inserted ''and loan'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 100–360, § 411(f)(10)(C)(i)(IV), as amended by Pub. L. 100–485, § 608(d)(21)(H), inserted '', the Physician Shortage Area Scholarship Program, or the Health Education Assistance Loan Program''.

Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' in two places.

Subsec. (a)(1)(B). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''an individual'' for ''a physician'' in introductory provisions and ''individual'' for ''physician'' in cls. (i)(I) and (II), (ii), and (iii).

Subsec. (a)(2)(A) to (C). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' wherever appearing.

Subsec. (a)(2)(C)(ii). Pub. L. 100–360, § 411(f)(10)(A)(i), substituted ''paragraph (4)'' for ''paragraph (3)''.

Subsec. (a)(3). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' in introductory provisions.

Subsec. (a)(3)(B). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician''.

Pub. L. 100–360, § 411(f)(10)(A)(i), substituted ''paragraph (4)'' for ''paragraph (3)''.

Subsec. (a)(4). Pub. L. 100–360, § 411(f)(10)(C)(i)(III), substituted ''community practitioner'' for ''community physician''.

[2] See References in Text note below.

[3] So in original. Probably should be ''individuals''.

Pub. L. 100–360, §411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, §608(d)(21)(G), substituted ''an individual'' for ''a physician'' and ''such individual'' for ''such physician''.

Pub. L. 100–360, §411(f)(10)(A)(iii), as amended by Pub. L. 100–360, §608(d)(21)(E), inserted before period at end ''if a State requests that the individual not be excluded''.

Pub. L. 100–360, §411(f)(10)(A)(ii), substituted ''exclude'' for ''bar''.

Subsec. (b). Pub. L. 100–360, §411(f)(10)(C)(i)(V), as amended by Pub. L. 100–485, §608(d)(21)(F)(i), substituted ''or under subpart III of part F of title VII of such Act (as in effect before October 1, 1976) and which has not been paid by the deadline established by the Secretary pursuant to such respective section'' for '', and (2) which has not been paid by the deadline established by the Secretary pursuant to section 338E of the Public Health Service Act''.

Subsec. (b)(1). Pub. L. 100–360, §411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, §608(d)(21)(G), substituted ''an individual'' for ''a physician''.

Subsec. (b)(2). Pub. L. 100–360, §411(f)(10)(C)(i)(VI), as amended by Pub. L. 100–485, §608(d)(21)(F)(i), added par. (2).

Subsec. (d)(1). Pub. L. 100–360, §411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, §608(d)(21)(G), substituted ''an individual'' for ''a physician''.

Subsec. (d)(2). Pub. L. 100–360, §411(f)(10)(C)(i)(VII), as added by Pub. L. 100–485, §608(d)(21)(F), substituted ''continues'' for ''continued''.

Pub. L. 100–360, §411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, §608(d)(21)(G), substituted ''individual'' for ''physician'' in three places.

Subsec. (d)(4) to (6). Pub. L. 100–360, §411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, §608(d)(21)(G), substituted ''individual'' for ''physician'' wherever appearing.

Subsec. (e). Pub. L. 100–360, §411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, §608(d)(21)(G), substituted ''individual'' for ''physician'' in two places.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(f)(10)(A) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(f)(10)(C)(iii) of Pub. L. 100–360 provided that: ''The Amendments made by this subparagraph [amending this section and former section 294f of this title] shall be effective 30 days after the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE

Section 4052(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting this section and amending section 254*o* of this title] shall be effective on the date of the enactment of this Act [Dec. 22, 1987].''

§ 1395ddd. Medicare Integrity Program

(a) Establishment of Program

There is hereby established the Medicare Integrity Program (in this section referred to as the ''Program'') under which the Secretary shall promote the integrity of the medicare program by entering into contracts in accordance with this section with eligible entities to carry out the activities described in subsection (b) of this section.

(b) Activities described

The activities described in this subsection are as follows:

(1) Review of activities of providers of services or other individuals and entities furnishing items and services for which payment may be made under this subchapter (including skilled nursing facilities and home health agencies), including medical and utilization review and fraud review (employing similar standards, processes, and technologies used by private health plans, including equipment and software technologies which surpass the capability of the equipment and technologies used in the review of claims under this subchapter as of August 21, 1996).

(2) Audit of cost reports.

(3) Determinations as to whether payment should not be, or should not have been, made under this subchapter by reason of section 1395y(b) of this title, and recovery of payments that should not have been made.

(4) Education of providers of services, beneficiaries, and other persons with respect to payment integrity and benefit quality assurance issues.

(5) Developing (and periodically updating) a list of items of durable medical equipment in accordance with section 1395m(a)(15) of this title which are subject to prior authorization under such section.

(c) Eligibility of entities

An entity is eligible to enter into a contract under the Program to carry out any of the activities described in subsection (b) of this section if—

(1) the entity has demonstrated capability to carry out such activities;

(2) in carrying out such activities, the entity agrees to cooperate with the Inspector General of the Department of Health and Human Services, the Attorney General, and other law enforcement agencies, as appropriate, in the investigation and deterrence of fraud and abuse in relation to this subchapter and in other cases arising out of such activities;

(3) the entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement; and

(4) the entity meets such other requirements as the Secretary may impose.

In the case of the activity described in subsection (b)(5) of this section, an entity shall be deemed to be eligible to enter into a contract under the Program to carry out the activity if the entity is a carrier with a contract in effect under section 1395u of this title.

(d) Process for entering into contracts

The Secretary shall enter into contracts under the Program in accordance with such procedures as the Secretary shall by regulation establish, except that such procedures shall include the following:

(1) Procedures for identifying, evaluating, and resolving organizational conflicts of interest that are generally applicable to Federal acquisition and procurement.

(2) Competitive procedures to be used—

(A) when entering into new contracts under this section;

(B) when entering into contracts that may result in the elimination of responsibilities of an individual fiscal intermediary or carrier under section 202(b) of the Health Insurance Portability and Accountability Act of 1996; and

(C) at any other time considered appropriate by the Secretary,

except that the Secretary may continue to contract with entities that are carrying out the activities described in this section pursuant to agreements under section 1395h of this title or contracts under section 1395u of this title in effect on August 21, 1996.

(3) Procedures under which a contract under this section may be renewed without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract.

The Secretary may enter into such contracts without regard to final rules having been promulgated.

(e) Limitation on contractor liability

The Secretary shall by regulation provide for the limitation of a contractor's liability for actions taken to carry out a contract under the Program, and such regulation shall, to the extent the Secretary finds appropriate, employ the same or comparable standards and other substantive and procedural provisions as are contained in section 1320c–6 of this title.

(f) Recovery of overpayments

(1) Use of repayment plans

(A) In general

If the repayment, within 30 days by a provider of services or supplier, of an overpayment under this subchapter would constitute a hardship (as described in subparagraph (B)), subject to subparagraph (C), upon request of the provider of services or supplier the Secretary shall enter into a plan with the provider of services or supplier for the repayment (through offset or otherwise) of such overpayment over a period of at least 6 months but not longer than 3 years (or not longer than 5 years in the case of extreme hardship, as determined by the Secretary). Interest shall accrue on the balance through the period of repayment. Such plan shall meet terms and conditions determined to be appropriate by the Secretary.

(B) Hardship

(i) In general

For purposes of subparagraph (A), the repayment of an overpayment (or overpayments) within 30 days is deemed to constitute a hardship if—

(I) in the case of a provider of services that files cost reports, the aggregate amount of the overpayments exceeds 10 percent of the amount paid under this subchapter to the provider of services for the cost reporting period covered by the most recently submitted cost report; or

(II) in the case of another provider of services or supplier, the aggregate amount of the overpayments exceeds 10 percent of the amount paid under this subchapter to the provider of services or supplier for the previous calendar year.

(ii) Rule of application

The Secretary shall establish rules for the application of this subparagraph in the case of a provider of services or supplier that was not paid under this subchapter during the previous year or was paid under this subchapter only during a portion of that year.

(iii) Treatment of previous overpayments

If a provider of services or supplier has entered into a repayment plan under subparagraph (A) with respect to a specific overpayment amount, such payment amount under the repayment plan shall not be taken into account under clause (i) with respect to subsequent overpayment amounts.

(C) Exceptions

Subparagraph (A) shall not apply if—

(i) the Secretary has reason to suspect that the provider of services or supplier may file for bankruptcy or otherwise cease to do business or discontinue participation in the program under this subchapter; or

(ii) there is an indication of fraud or abuse committed against the program.

(D) Immediate collection if violation of repayment plan

If a provider of services or supplier fails to make a payment in accordance with a repayment plan under this paragraph, the Secretary may immediately seek to offset or otherwise recover the total balance outstanding (including applicable interest) under the repayment plan.

(E) Relation to no fault provision

Nothing in this paragraph shall be construed as affecting the application of section 1395gg(c) of this title (relating to no adjustment in the cases of certain overpayments).

(2) Limitation on recoupment

(A) In general

In the case of a provider of services or supplier that is determined to have received an overpayment under this subchapter and that seeks a reconsideration by a qualified independent contractor on such determination under section 1395ff(b)(1) of this title, the Secretary may not take any action (or authorize any other person, including any medicare contractor, as defined in subparagraph (C)) to recoup the overpayment until the date the decision on the reconsideration has been rendered. If the provisions of section 1395ff(b)(1) of this title (providing for such a reconsideration by a qualified independent contractor) are not in effect, in applying the previous sentence any reference to such a reconsideration shall be treated as a reference to a redetermination by the fiscal intermediary or carrier involved.

(B) Collection with interest

Insofar as the determination on such appeal is against the provider of services or supplier, interest on the overpayment shall accrue on and after the date of the original notice of overpayment. Insofar as such determination against the provider of services or supplier is later reversed, the Secretary shall provide for repayment of the amount recouped plus interest at the same rate as would apply under the previous sentence for the period in which the amount was recouped.

(C) Medicare contractor defined

For purposes of this subsection, the term ''medicare contractor'' has the meaning given such term in section 1395zz(g) of this title.

(3) Limitation on use of extrapolation

A medicare contractor may not use extrapolation to determine overpayment amounts to be recovered by recoupment, offset, or otherwise unless the Secretary determines that—

(A) there is a sustained or high level of payment error; or

(B) documented educational intervention has failed to correct the payment error.

There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise, of determinations by the Secretary of sustained or high levels of payment errors under this paragraph.

(4) Provision of supporting documentation

In the case of a provider of services or supplier with respect to which amounts were previously overpaid, a medicare contractor may request the periodic production of records or supporting documentation for a limited sample of submitted claims to ensure that the previous practice is not continuing.

(5) Consent settlement reforms

(A) In general

The Secretary may use a consent settlement (as defined in subparagraph (D)) to settle a projected overpayment.

(B) Opportunity to submit additional information before consent settlement offer

Before offering a provider of services or supplier a consent settlement, the Secretary shall—

(i) communicate to the provider of services or supplier—

(I) that, based on a review of the medical records requested by the Secretary, a preliminary evaluation of those records indicates that there would be an overpayment;

(II) the nature of the problems identified in such evaluation; and

(III) the steps that the provider of services or supplier should take to address the problems; and

(ii) provide for a 45-day period during which the provider of services or supplier may furnish additional information concerning the medical records for the claims that had been reviewed.

(C) Consent settlement offer

The Secretary shall review any additional information furnished by the provider of services or supplier under subparagraph (B)(ii). Taking into consideration such information, the Secretary shall determine if there still appears to be an overpayment. If so, the Secretary—

(i) shall provide notice of such determination to the provider of services or supplier, including an explanation of the reason for such determination; and

(ii) in order to resolve the overpayment, may offer the provider of services or supplier—

(I) the opportunity for a statistically valid random sample; or

(II) a consent settlement.

The opportunity provided under clause (ii)(I) does not waive any appeal rights with respect to the alleged overpayment involved.

(D) Consent settlement defined

For purposes of this paragraph, the term ''consent settlement'' means an agreement between the Secretary and a provider of services or supplier whereby both parties agree to settle a projected overpayment based on less than a statistically valid sample of claims and the provider of services or supplier agrees not to appeal the claims involved.

(6) Notice of over-utilization of codes

The Secretary shall establish, in consultation with organizations representing the classes of providers of services and suppliers, a process under which the Secretary provides for notice to classes of providers of services and suppliers served by the contractor in cases in which the contractor has identified that particular billing codes may be overutilized by that class of providers of services or suppliers under the programs under this subchapter (or provisions of subchapter XI of this chapter insofar as they relate to such programs).

(7) Payment audits

(A) Written notice for post-payment audits

Subject to subparagraph (C), if a medicare contractor decides to conduct a post-payment audit of a provider of services or supplier under this subchapter, the contractor shall provide the provider of services or supplier with written notice (which may be in electronic form) of the intent to conduct such an audit.

(B) Explanation of findings for all audits

Subject to subparagraph (C), if a medicare contractor audits a provider of services or supplier under this subchapter, the contractor shall—

(i) give the provider of services or supplier a full review and explanation of the findings of the audit in a manner that is understandable to the provider of services or supplier and permits the development of an appropriate corrective action plan;

(ii) inform the provider of services or supplier of the appeal rights under this subchapter as well as consent settlement options (which are at the discretion of the Secretary);

(iii) give the provider of services or supplier an opportunity to provide additional information to the contractor; and

(iv) take into account information provided, on a timely basis, by the provider of services or supplier under clause (iii).

(C) Exception

Subparagraphs (A) and (B) shall not apply if the provision of notice or findings would compromise pending law enforcement activities, whether civil or criminal, or reveal findings of law enforcement-related audits.

(8) Standard methodology for probe sampling

The Secretary shall establish a standard methodology for medicare contractors to use in selecting a sample of claims for review in the case of an abnormal billing pattern.

(Aug. 14, 1935, ch. 531, title XVIII, § 1893, as added Pub. L. 104–191, title II, § 202(a), Aug. 21, 1996, 110 Stat. 1996; amended Pub. L. 108–173, title VII, § 736(c)(7), title IX, § 935(a), Dec. 8, 2003, 117 Stat. 2356, 2407.)

REFERENCES IN TEXT

Section 202(b) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (d)(2)(B), is section 202(b) of Pub. L. 104–191, which amended sections 1395h and 1395u of this title.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–173, § 736(c)(7), substituted ''medicare program'' for ''Medicare program''.

Subsec. (f). Pub. L. 108–173, § 935(a), added subsec. (f).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 935(b), Dec. 8, 2003, 117 Stat. 2411, provided that:

''(1) USE OF REPAYMENT PLANS.—Section 1893(f)(1) of the Social Security Act [subsec. (f)(1) of this section], as added by subsection (a), shall apply to requests for repayment plans made after the date of the enactment of this Act [Dec. 8, 2003].

''(2) LIMITATION ON RECOUPMENT.—Section 1893(f)(2) of the Social Security Act [subsec. (f)(2) of this section], as added by subsection (a), shall apply to actions taken after the date of the enactment of this Act.

''(3) USE OF EXTRAPOLATION.—Section 1893(f)(3) of the Social Security Act [subsec. (f)(3) of this section], as added by subsection (a), shall apply to statistically valid random samples initiated after the date that is 1 year after the date of the enactment of this Act.

''(4) PROVISION OF SUPPORTING DOCUMENTATION.—Section 1893(f)(4) of the Social Security Act [subsec. (f)(4) of this section], as added by subsection (a), shall take effect on the date of the enactment of this Act.

''(5) CONSENT SETTLEMENT.—Section 1893(f)(5) of the Social Security Act [subsec. (f)(5) of this section], as added by subsection (a), shall apply to consent settlements entered into after the date of the enactment of this Act.

''(6) NOTICE OF OVERUTILIZATION.—Not later than 1 year after the date of the enactment of this Act, the Secretary [of Health and Human Services] shall first establish the process for notice of overutilization of billing codes under section 1893A(f)(6) [1893(f)(6)] of the Social Security Act [probably means subsec. (f)(6) of this section], as added by subsection (a).

''(7) PAYMENT AUDITS.—Section 1893A(f)(7) [1893(f)(7)] of the Social Security Act [probably means subsec. (f)(7) of this section], as added by subsection (a), shall apply to audits initiated after the date of the enactment of this Act.

''(8) STANDARD FOR ABNORMAL BILLING PATTERNS.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall first establish a standard methodology for selection of sample claims for abnormal billing patterns under section 1893(f)(8) of the Social Security Act [subsec. (f)(8) of this section], as added by subsection (a).''

§ 1395eee. Payments to, and coverage of benefits under, programs of all-inclusive care for elderly (PACE)

(a) Receipt of benefits through enrollment in PACE program; definitions for PACE program related terms

(1) Benefits through enrollment in a PACE program

In accordance with this section, in the case of an individual who is entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter and who is a PACE program eligible individual (as defined in paragraph (5)) with respect to a PACE program offered by a PACE provider under a PACE program agreement—

(A) the individual may enroll in the program under this section; and

(B) so long as the individual is so enrolled and in accordance with regulations—

(i) the individual shall receive benefits under this subchapter solely through such program; and

(ii) the PACE provider is entitled to payment under and in accordance with this section and such agreement for provision of such benefits.

(2) "PACE program" defined

For purposes of this section, the term ''PACE program'' means a program of all-inclusive care for the elderly that meets the following requirements:

(A) Operation

The entity operating the program is a PACE provider (as defined in paragraph (3)).

(B) Comprehensive benefits

The program provides comprehensive health care services to PACE program eligible individuals in accordance with the PACE program agreement and regulations under this section.

(C) Transition

In the case of an individual who is enrolled under the program under this section and whose enrollment ceases for any reason (including that the individual no longer qualifies as a PACE program eligible individual, the termination of a PACE program agreement, or otherwise), the program provides assistance to the individual in obtaining necessary transitional care through appropriate referrals and making the individual's medical records available to new providers.

(3) "PACE provider" defined

(A) In general

For purposes of this section, the term ''PACE provider'' means an entity that—

(i) subject to subparagraph (B), is (or is a distinct part of) a public entity or a private, nonprofit entity organized for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986; and

(ii) has entered into a PACE program agreement with respect to its operation of a PACE program.

(B) Treatment of private, for-profit providers

Clause (i) of subparagraph (A) shall not apply—

(i) to entities subject to a demonstration project waiver under subsection (h) of this section; and

(ii) after the date the report under section 4804(b) of the Balanced Budget Act of 1997 is submitted, unless the Secretary determines that any of the findings described in subparagraph (A), (B), (C), or (D) of paragraph (2) of such section are true.

(4) "PACE program agreement" defined

For purposes of this section, the term ''PACE program agreement'' means, with respect to a PACE provider, an agreement, consistent with this section, section 1396u–4 of this title (if applicable), and regulations promulgated to carry out such sections, between the PACE provider and the Secretary, or an agreement between the PACE provider and a State administering agency for the operation of a PACE program by the provider under such sections.

(5) "PACE program eligible individual" defined

For purposes of this section, the term ''PACE program eligible individual'' means, with respect to a PACE program, an individual who—

(A) is 55 years of age or older;

(B) subject to subsection (c)(4) of this section, is determined under subsection (c) of this section to require the level of care required under the State medicaid plan for coverage of nursing facility services;

(C) resides in the service area of the PACE program; and

(D) meets such other eligibility conditions as may be imposed under the PACE program agreement for the program under subsection (e)(2)(A)(ii) of this section.

(6) "PACE protocol" defined

For purposes of this section, the term ''PACE protocol'' means the Protocol for the Program of All-inclusive Care for the Elderly (PACE), as published by On Lok, Inc., as of April 14, 1995, or any successor protocol that may be agreed upon between the Secretary and On Lok, Inc.

(7) "PACE demonstration waiver program" defined

For purposes of this section, the term ''PACE demonstration waiver program'' means a demonstration program under either of the following sections (as in effect before the date of their repeal):

(A) Section 603(c) of the Social Security Amendments of 1983 (Public Law 98–21), as extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).

(B) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509).

(8) "State administering agency" defined

For purposes of this section, the term ''State administering agency'' means, with respect to the operation of a PACE program in a State, the agency of that State (which may be the single agency responsible for administration of the State plan under subchapter XIX of this chapter in the State) responsible for administering PACE program agreements under this section and section 1396u–4 of this title in the State.

(9) "Trial period" defined

(A) In general

For purposes of this section, the term ''trial period'' means, with respect to a PACE program operated by a PACE provider under a PACE program agreement, the first 3 contract years under such agreement with respect to such program.

(B) Treatment of entities previously operating PACE demonstration waiver programs

Each contract year (including a year occurring before the effective date of this section) during which an entity has operated a PACE demonstration waiver program shall be counted under subparagraph (A) as a contract year during which the entity operated a PACE program as a PACE provider under a PACE program agreement.

(10) "Regulations" defined

For purposes of this section, the term ''regulations'' refers to interim final or final regulations promulgated under subsection (f) of this section to carry out this section and section 1396u–4 of this title.

(b) Scope of benefits; beneficiary safeguards

(1) In general

Under a PACE program agreement, a PACE provider shall—

(A) provide to PACE program eligible individuals enrolled with the provider, regardless of source of payment and directly or under contracts with other entities, at a minimum—

(i) all items and services covered under this subchapter (for individuals enrolled under this section) and all items and services covered under subchapter XIX of this chapter, but without any limitation or condition as to amount, duration, or scope and without application of deductibles, copayments, coinsurance, or other cost-sharing that would otherwise apply under this subchapter or such subchapter, respectively; and

(ii) all additional items and services specified in regulations, based upon those required under the PACE protocol;

(B) provide such enrollees access to necessary covered items and services 24 hours per day, every day of the year;

(C) provide services to such enrollees through a comprehensive, multidisciplinary

health and social services delivery system which integrates acute and long-term care services pursuant to regulations; and

(D) specify the covered items and services that will not be provided directly by the entity, and to arrange for delivery of those items and services through contracts meeting the requirements of regulations.

(2) Quality assurance; patient safeguards

The PACE program agreement shall require the PACE provider to have in effect at a minimum—

(A) a written plan of quality assurance and improvement, and procedures implementing such plan, in accordance with regulations; and

(B) written safeguards of the rights of enrolled participants (including a patient bill of rights and procedures for grievances and appeals) in accordance with regulations and with other requirements of this subchapter and Federal and State law that are designed for the protection of patients.

(3) Treatment of medicare services furnished by noncontract physicians and other entities

(A) Application of medicare advantage requirement with respect to medicare services furnished by noncontract physicians and other entities

Section 1395w–22(k)(1) of this title (relating to limitations on balance billing against MA organizations for noncontract physicians and other entities with respect to services covered under this subchapter) shall apply to PACE providers, PACE program eligible individuals enrolled with such PACE providers, and physicians and other entities that do not have a contract or other agreement establishing payment amounts for services furnished to such an individual in the same manner as such section applies to MA organizations, individuals enrolled with such organizations, and physicians and other entities referred to in such section.

(B) Reference to related provision for noncontract providers of services

For the provision relating to limitations on balance billing against PACE providers for services covered under this subchapter furnished by noncontract providers of services, see section 1395cc(a)(1)(O) of this title.

(4) Reference to related provision for services covered under subchapter XIX but not under this subchapter

For provisions relating to limitations on payments to providers participating under the State plan under subchapter XIX of this chapter that do not have a contract or other agreement with a PACE provider establishing payment amounts for services covered under such plan (but not under this subchapter) when such services are furnished to enrollees of that PACE provider, see section 1396a(a)(66) of this title.

(c) Eligibility determinations

(1) In general

The determination of whether an individual is a PACE program eligible individual—

(A) shall be made under and in accordance with the PACE program agreement; and

(B) who is entitled to medical assistance under subchapter XIX of this chapter, shall be made (or who is not so entitled, may be made) by the State administering agency.

(2) Condition

An individual is not a PACE program eligible individual (with respect to payment under this section) unless the individual's health status has been determined by the Secretary or the State administering agency, in accordance with regulations, to be comparable to the health status of individuals who have participated in the PACE demonstration waiver programs. Such determination shall be based upon information on health status and related indicators (such as medical diagnoses and measures of activities of daily living, instrumental activities of daily living, and cognitive impairment) that are part of a uniform minimum data set collected by PACE providers on potential PACE program eligible individuals.

(3) Annual eligibility recertifications

(A) In general

Subject to subparagraph (B), the determination described in subsection (a)(5)(B) of this section for an individual shall be reevaluated at least annually.

(B) Exception

The requirement of annual reevaluation under subparagraph (A) may be waived during a period in accordance with regulations in those cases where the State administering agency determines that there is no reasonable expectation of improvement or significant change in an individual's condition during the period because of the severity of chronic condition, or degree of impairment of functional capacity of the individual involved.

(4) Continuation of eligibility

An individual who is a PACE program eligible individual may be deemed to continue to be such an individual notwithstanding a determination that the individual no longer meets the requirement of subsection (a)(5)(B) of this section if, in accordance with regulations, in the absence of continued coverage under a PACE program the individual reasonably would be expected to meet such requirement within the succeeding 6-month period.

(5) Enrollment; disenrollment

(A) Voluntary disenrollment at any time

The enrollment and disenrollment of PACE program eligible individuals in a PACE program shall be pursuant to regulations and the PACE program agreement and shall permit enrollees to voluntarily disenroll without cause at any time.

(B) Limitations on disenrollment

(i) In general

Regulations promulgated by the Secretary under this section and section 1396u–4 of this title, and the PACE program agreement, shall provide that the

PACE program may not disenroll a PACE program eligible individual except—

(I) for nonpayment of premiums (if applicable) on a timely basis; or

(II) for engaging in disruptive or threatening behavior, as defined in such regulations (developed in close consultation with State administering agencies).

(ii) No disenrollment for noncompliant behavior

Except as allowed under regulations promulgated to carry out clause (i)(II), a PACE program may not disenroll a PACE program eligible individual on the ground that the individual has engaged in noncompliant behavior if such behavior is related to a mental or physical condition of the individual. For purposes of the preceding sentence, the term ''noncompliant behavior'' includes repeated noncompliance with medical advice and repeated failure to appear for appointments.

(iii) Timely review of proposed nonvoluntary disenrollment

A proposed disenrollment, other than a voluntary disenrollment, shall be subject to timely review and final determination by the Secretary or by the State administering agency (as applicable), prior to the proposed disenrollment becoming effective.

(d) Payments to PACE providers on capitated basis

(1) In general

In the case of a PACE provider with a PACE program agreement under this section, except as provided in this subsection or by regulations, the Secretary shall make prospective monthly payments of a capitation amount for each PACE program eligible individual enrolled under the agreement under this section in the same manner and from the same sources as payments are made to a Medicare+Choice organization under section 1395w–23 of this title (or, for periods beginning before January 1, 1999, to an eligible organization under a risk-sharing contract under section 1395mm of this title). Such payments shall be subject to adjustment in the manner described in section 1395w–23(a)(2) of this title or section 1395mm(a)(1)(E) of this title, as the case may be.

(2) Capitation amount

The capitation amount to be applied under this subsection for a provider for a contract year shall be an amount specified in the PACE program agreement for the year. Such amount shall be based upon payment rates established for purposes of payment under section 1395w–23 of this title (or, for periods before January 1, 1999, for purposes of risk-sharing contracts under section 1395mm of this title) and shall be adjusted to take into account the comparative frailty of PACE enrollees and such other factors as the Secretary determines to be appropriate. Such amount under such an agreement shall be computed in a manner so that the total payment level for all PACE program eligible individuals enrolled under a program is less than the projected payment under this subchapter for a comparable population not enrolled under a PACE program.

(e) PACE program agreement

(1) Requirement

(A) In general

The Secretary, in close cooperation with the State administering agency, shall establish procedures for entering into, extending, and terminating PACE program agreements for the operation of PACE programs by entities that meet the requirements for a PACE provider under this section, section 1396u–4 of this title, and regulations.

(B) Numerical limitation

(i) In general

The Secretary shall not permit the number of PACE providers with which agreements are in effect under this section or under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 to exceed—

(I) 40 as of August 5, 1997; or

(II) as of each succeeding anniversary of August 5, 1997, the numerical limitation under this subparagraph for the preceding year plus 20.

Subclause (II) shall apply without regard to the actual number of agreements in effect as of a previous anniversary date.

(ii) Treatment of certain private, for-profit providers

The numerical limitation in clause (i) shall not apply to a PACE provider that—

(I) is operating under a demonstration project waiver under subsection (h) of this section; or

(II) was operating under such a waiver and subsequently qualifies for PACE provider status pursuant to subsection (a)(3)(B)(ii) of this section.

(2) Service area and eligibility

(A) In general

A PACE program agreement for a PACE program—

(i) shall designate the service area of the program;

(ii) may provide additional requirements for individuals to qualify as PACE program eligible individuals with respect to the program;

(iii) shall be effective for a contract year, but may be extended for additional contract years in the absence of a notice by a party to terminate and is subject to termination by the Secretary and the State administering agency at any time for cause (as provided under the agreement);

(iv) shall require a PACE provider to meet all applicable State and local laws and requirements; and

(v) shall contain such additional terms and conditions as the parties may agree to, so long as such terms and conditions are consistent with this section and regulations.

(B) Service area overlap

In designating a service area under a PACE program agreement under subparagraph (A)(i), the Secretary (in consultation with the State administering agency) may exclude from designation an area that is already covered under another PACE program agreement, in order to avoid unnecessary duplication of services and avoid impairing the financial and service viability of an existing program.

(3) Data collection; development of outcome measures

(A) Data collection

(i) In general

Under a PACE program agreement, the PACE provider shall—

(I) collect data;

(II) maintain, and afford the Secretary and the State administering agency access to, the records relating to the program, including pertinent financial, medical, and personnel records; and

(III) make available to the Secretary and the State administering agency reports that the Secretary finds (in consultation with State administering agencies) necessary to monitor the operation, cost, and effectiveness of the PACE program under this section and section 1396u–4 of this title.

(ii) Requirements during trial period

During the first 3 years of operation of a PACE program (either under this section or under a PACE demonstration waiver program), the PACE provider shall provide such additional data as the Secretary specifies in regulations in order to perform the oversight required under paragraph (4)(A).

(B) Development of outcome measures

Under a PACE program agreement, the PACE provider, the Secretary, and the State administering agency shall jointly cooperate in the development and implementation of health status and quality of life outcome measures with respect to PACE program eligible individuals.

(4) Oversight

(A) Annual, close oversight during trial period

During the trial period (as defined in subsection (a)(9) of this section) with respect to a PACE program operated by a PACE provider, the Secretary (in cooperation with the State administering agency) shall conduct a comprehensive annual review of the operation of the PACE program by the provider in order to assure compliance with the requirements of this section and regulations. Such a review shall include—

(i) an on-site visit to the program site;

(ii) comprehensive assessment of a provider's fiscal soundness;

(iii) comprehensive assessment of the provider's capacity to provide all PACE services to all enrolled participants;

(iv) detailed analysis of the entity's substantial compliance with all significant requirements of this section and regulations; and

(v) any other elements the Secretary or State administering agency considers necessary or appropriate.

(B) Continuing oversight

After the trial period, the Secretary (in cooperation with the State administering agency) shall continue to conduct such review of the operation of PACE providers and PACE programs as may be appropriate, taking into account the performance level of a provider and compliance of a provider with all significant requirements of this section and regulations.

(C) Disclosure

The results of reviews under this paragraph shall be reported promptly to the PACE provider, along with any recommendations for changes to the provider's program, and shall be made available to the public upon request.

(5) Termination of PACE provider agreements

(A) In general

Under regulations—

(i) the Secretary or a State administering agency may terminate a PACE program agreement for cause; and

(ii) a PACE provider may terminate an agreement after appropriate notice to the Secretary, the State agency, and enrollees.

(B) Causes for termination

In accordance with regulations establishing procedures for termination of PACE program agreements, the Secretary or a State administering agency may terminate a PACE program agreement with a PACE provider for, among other reasons, the fact that—

(i) the Secretary or State administering agency determines that—

(I) there are significant deficiencies in the quality of care provided to enrolled participants; or

(II) the provider has failed to comply substantially with conditions for a program or provider under this section or section 1396u–4 of this title; and

(ii) the entity has failed to develop and successfully initiate, within 30 days of the date of the receipt of written notice of such a determination, a plan to correct the deficiencies, or has failed to continue implementation of such a plan.

(C) Termination and transition procedures

An entity whose PACE provider agreement is terminated under this paragraph shall implement the transition procedures required under subsection (a)(2)(C) of this section.

(6) Secretary's oversight; enforcement authority

(A) In general

Under regulations, if the Secretary determines (after consultation with the State ad-

ministering agency) that a PACE provider is failing substantially to comply with the requirements of this section and regulations, the Secretary (and the State administering agency) may take any or all of the following actions:

(i) Condition the continuation of the PACE program agreement upon timely execution of a corrective action plan.

(ii) Withhold some or all further payments under the PACE program agreement under this section or section 1396u–4 of this title with respect to PACE program services furnished by such provider until the deficiencies have been corrected.

(iii) Terminate such agreement.

(B) Application of intermediate sanctions

Under regulations, the Secretary may provide for the application against a PACE provider of remedies described in section 1395w–27(g)(2) (or, for periods before January 1, 1999, section 1395mm(i)(6)(B) of this title) or 1396b(m)(5)(B) of this title in the case of violations by the provider of the type described in section 1395w–27(g)(1) (or section 1395mm(i)(6)(A) of this title for such periods) or 1396b(m)(5)(A) of this title, respectively (in relation to agreements, enrollees, and requirements under this section or section 1396u–4 of this title, respectively).

(7) Procedures for termination or imposition of sanctions

Under regulations, the provisions of section 1395w–27(h) of this title (or for periods before January 1, 1999, section 1395mm(i)(9) of this title) shall apply to termination and sanctions respecting a PACE program agreement and PACE provider under this subsection in the same manner as they apply to a termination and sanctions with respect to a contract and a Medicare+Choice organization under part C of this subchapter (or for such periods an eligible organization under section 1395mm of this title).

(8) Timely consideration of applications for PACE program provider status

In considering an application for PACE provider program status, the application shall be deemed approved unless the Secretary, within 90 days after the date of the submission of the application to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information that is needed in order to make a final determination with respect to the application. After the date the Secretary receives such additional information, the application shall be deemed approved unless the Secretary, within 90 days of such date, denies such request.

(f) Regulations

(1) In general

The Secretary shall issue interim final or final regulations to carry out this section and section 1396u–4 of this title.

(2) Use of PACE protocol

(A) In general

In issuing such regulations, the Secretary shall, to the extent consistent with the provisions of this section, incorporate the requirements applied to PACE demonstration waiver programs under the PACE protocol.

(B) Flexibility

In order to provide for reasonable flexibility in adapting the PACE service delivery model to the needs of particular organizations (such as those in rural areas or those that may determine it appropriate to use nonstaff physicians according to State licensing law requirements) under this section and section 1396u–4 of this title, the Secretary (in close consultation with State administering agencies) may modify or waive provisions of the PACE protocol so long as any such modification or waiver is not inconsistent with and would not impair the essential elements, objectives, and requirements of this section, but may not modify or waive any of the following provisions:

(i) The focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.

(ii) The delivery of comprehensive, integrated acute and long-term care services.

(iii) The interdisciplinary team approach to care management and service delivery.

(iv) Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals.

(v) The assumption by the provider of full financial risk.

(C) Continuation of modifications or waivers of operational requirements under demonstration status

If a PACE program operating under demonstration authority has contractual or other operating arrangements which are not otherwise recognized in regulation and which were in effect on July 1, 2000, the Secretary (in close consultation with, and with the concurrence of, the State administering agency) shall permit any such program to continue such arrangements so long as such arrangements are found by the Secretary and the State to be reasonably consistent with the objectives of the PACE program.

(3) Application of certain additional beneficiary and program protections

(A) In general

In issuing such regulations and subject to subparagraph (B), the Secretary may apply with respect to PACE programs, providers, and agreements such requirements of part C of this subchapter (or, for periods before January 1, 1999, section 1395mm of this title) and sections 1396b(m) and 1396u–2 of this title relating to protection of beneficiaries and program integrity as would apply to Medicare+Choice organizations under part C of this subchapter (or for such periods eligible organizations under risk-sharing contracts under section 1395mm of this title) and to medicaid managed care organizations under prepaid capitation agreements under section 1396b(m) of this title.

(B) Considerations

In issuing such regulations, the Secretary shall—

(i) take into account the differences between populations served and benefits provided under this section and under part C of this subchapter (or, for periods before January 1, 1999, section 1395mm of this title) and section 1396b(m) of this title;

(ii) not include any requirement that conflicts with carrying out PACE programs under this section; and

(iii) not include any requirement restricting the proportion of enrollees who are eligible for benefits under this subchapter or subchapter XIX of this chapter.

(4) Construction

Nothing in this subsection shall be construed as preventing the Secretary from including in regulations provisions to ensure the health and safety of individuals enrolled in a PACE program under this section that are in addition to those otherwise provided under paragraphs (2) and (3).

(g) Waivers of requirements

With respect to carrying out a PACE program under this section, the following requirements of this subchapter (and regulations relating to such requirements) are waived and shall not apply:

(1) Section 1395d of this title, insofar as it limits coverage of institutional services.

(2) Sections 1395e, 1395f, 1395*l*, and 1395ww of this title, insofar as such sections relate to rules for payment for benefits.

(3) Sections 1395f(a)(2)(B), 1395f(a)(2)(C), and 1395n(a)(2)(A) of this title, insofar as they limit coverage of extended care services or home health services.

(4) Section 1395x(i) of this title, insofar as it imposes a 3-day prior hospitalization requirement for coverage of extended care services.

(5) Paragraphs (1) and (9) of section 1395y(a) of this title, insofar as they may prevent payment for PACE program services to individuals enrolled under PACE programs.

(h) Demonstration project for for-profit entities

(1) In general

In order to demonstrate the operation of a PACE program by a private, for-profit entity, the Secretary (in close consultation with State administering agencies) shall grant waivers from the requirement under subsection (a)(3) of this section that a PACE provider may not be a for-profit, private entity.

(2) Similar terms and conditions

(A) In general

Except as provided under subparagraph (B), and paragraph (1), the terms and conditions for operation of a PACE program by a provider under this subsection shall be the same as those for PACE providers that are nonprofit, private organizations.

(B) Numerical limitation

The number of programs for which waivers are granted under this subsection shall not exceed 10. Programs with waivers granted under this subsection shall not be counted against the numerical limitation specified in subsection (e)(1)(B) of this section.

(i) Miscellaneous provisions

Nothing in this section or section 1396u–4 of this title shall be construed as preventing a PACE provider from entering into contracts with other governmental or nongovernmental payers for the care of PACE program eligible individuals who are not eligible for benefits under part A of this subchapter, or enrolled under part B of this subchapter, or eligible for medical assistance under subchapter XIX of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1894, as added Pub. L. 105–33, title IV, § 4801, Aug. 5, 1997, 111 Stat. 528; amended Pub. L. 106–554, § 1(a)(6) [title IX, § 902(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–582; Pub. L. 108–173, title II, § 236(a)(2), Dec. 8, 2003, 117 Stat. 2210.)

REFERENCES IN TEXT

Parts A, B, and C of this subchapter, referred to in subsecs. (a)(1), (e)(7), (f)(3), and (i), are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsec. (a)(3)(A)(i), is classified generally to Title 26, Internal Revenue Code.

Section 4804(b) of the Balanced Budget Act of 1997, referred to in subsec. (a)(3)(B)(ii), is section 4804(b) of Pub. L. 105–33, which is set out as a note below.

Section 603(c) of the Social Security Amendments of 1983, referred to in subsec. (a)(7)(A), is section 603(c) of Pub. L. 98–21, title VI, Apr. 20, 1983, 97 Stat. 168, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, § 4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

Section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985, referred to in subsec. (a)(7)(A), is section 9220 of Pub. L. 99–272, title IX, Apr. 7, 1986, 100 Stat. 183, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, § 4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, referred to in subsecs. (a)(7)(B) and (e)(1)(B)(i), is section 9412(b) of Pub. L. 99–509, title IX, Oct. 21, 1986, 100 Stat. 2062, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, § 4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

For the effective date of this section, referred to in subsec. (a)(9)(B), see section 4803 of Pub. L. 105–33, set out below.

AMENDMENTS

2003—Subsec. (b)(3), (4). Pub. L. 108–173 added pars. (3) and (4).

2000—Subsec. (f)(2)(C). Pub. L. 106–554 added subpar. (C).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2004, see section 236(c) of Pub. L. 108–173, set out as a note under section 1395cc of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title IX, § 902(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–583, provided that: ''The amendments made by this section [amending this sec-

tion and section 1396u–4 of this title] shall be effective as [if] included in the enactment of BBA [Pub. L. 105–33].''

FLEXIBILITY IN EXERCISING WAIVER AUTHORITY

Pub. L. 106–554, §1(a)(6) [title IX, §903], Dec. 21, 2000, 114 Stat. 2763, 2763A–583, provided that: ''In applying sections 1894(f)(2)(B) and 1934(f)(2)(B) of the Social Security Act (42 U.S.C. 1395eee(f)(2)(B), 1396u–4(f)(2)(B)), the Secretary of Health and Human Services—

''(1) shall approve or deny a request for a modification or a waiver of provisions of the PACE protocol not later than 90 days after the date the Secretary receives the request; and

''(2) may exercise authority to modify or waive such provisions in a manner that responds promptly to the needs of PACE programs relating to areas of employment and the use of community-based primary care physicians.''

TRANSITION; REGULATIONS

Section 4803 of title IV of Pub. L. 105–33, as amended by Pub. L. 106–554, §1(a)(6) [title IX, §901], Dec. 21, 2000, 114 Stat. 2763, 2763A–582, provided that:

''(a) TIMELY ISSUANCE OF REGULATIONS; EFFECTIVE DATE.—The Secretary of Health and Human Services shall promulgate regulations to carry out this subtitle [subtitle I (§§4801–4804) of title IV of Pub. L. 105–33, enacting this section and section 1396u–4 of this title, amending sections 1396b, 1396d, 1396r–5, and 1396v of this title, and enacting provisions set out as notes under this section and section 1395b–6 of this title] in a timely manner. Such regulations shall be designed so that entities may establish and operate PACE programs under sections 1894 and 1934 of the Social Security Act [this section and section 1396u–4 of this title] (as added by sections 4801 and 4802 of this subtitle) for periods beginning not later than 1 year after the date of the enactment of this Act [Aug. 5, 1997].

''(b) EXPANSION AND TRANSITION FOR PACE DEMONSTRATION PROJECT WAIVERS.—

''(1) EXPANSION IN CURRENT NUMBER AND EXTENSION OF DEMONSTRATION PROJECTS.—Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 [see subsec. (d) below], as amended by section 4118(g) of the Omnibus Budget Reconciliation Act of 1987, is amended—

''(A) in paragraph (1), by inserting before the period at the end the following: ', except that the Secretary shall grant waivers of such requirements to up to the applicable numerical limitation specified in sections 1894(e)(1)(B) and 1934(e)(1)(B) of the Social Security Act' [subsec. (e)(1)(B) of this section and section 1396u–4(e)(1)(B) of this title]; and

''(B) in paragraph (2)—

''(i) in subparagraph (A), by striking ', including permitting the organization to assume progressively (over the initial 3-year period of the waiver) the full financial risk'; and

''(ii) in subparagraph (C), by adding at the end the following: 'In granting further extensions, an organization shall not be required to provide for reporting of information which is only required because of the demonstration nature of the project.'

''(2) ELIMINATION OF REPLICATION REQUIREMENT.—Section 9412(b)(2)(B) of such Act, as so amended, shall not apply to waivers granted under such section after the date of the enactment of this Act [Aug. 5, 1997].

''(3) TIMELY CONSIDERATION OF APPLICATIONS.—In considering an application for waivers under such section before the effective date of the repeals under subsection (d), subject to the numerical limitation under the amendment made by paragraph (1), the application shall be deemed approved unless the Secretary of Health and Human Services, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information which is needed in order to make a final determination with respect to the application. After the date the Secretary receives such additional information, the application shall be deemed approved unless the Secretary, within 90 days of such date, denies such request.

''(c) PRIORITY AND SPECIAL CONSIDERATION IN APPLICATION.—During the 3-year period beginning on the date of the enactment of this Act [Aug. 5, 1997]:

''(1) PROVIDER STATUS.—The Secretary of Health and Human Services shall give priority in processing applications of entities to qualify as PACE programs under section 1894 or 1934 of the Social Security Act [this section and section 1396u–4 of this title]—

''(A) first, to entities that are operating a PACE demonstration waiver program (as defined in sections 1894(a)(7) and 1934(a)(7) of such Act [subsec. (a)(7) of this section and section 1396u–4(a)(7) of this title]); and

''(B) then to entities that have applied to operate such a program as of May 1, 1997.

''(2) NEW WAIVERS.—The Secretary shall give priority, in the awarding of additional waivers under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 [see subsec. (d) below]—

''(A) to any entities that have applied for such waivers under such section as of May 1, 1997; and

''(B) to any entity that, as of May 1, 1997, has formally contracted with a State to provide services for which payment is made on a capitated basis with an understanding that the entity was seeking to become a PACE provider.

''(3) SPECIAL CONSIDERATION.—The Secretary shall give special consideration, in the processing of applications described in paragraph (1) and the awarding of waivers described in paragraph (2), to an entity which as of May 1, 1997, through formal activities (such as entering into contracts for feasibility studies) has indicated a specific intent to become a PACE provider.

''(d) REPEAL OF CURRENT PACE DEMONSTRATION PROJECT WAIVER AUTHORITY.—

''(1) IN GENERAL.—Subject to paragraph (2), the following provisions of law are repealed:

''(A) Section 603(c) of the Social Security Amendments of 1983 (Public Law 98–21) [97 Stat. 168].

''(B) Section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272) [100 Stat. 183].

''(C) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509) [100 Stat. 2062].

''(2) DELAY IN APPLICATION TO CURRENT WAIVERS.—

''(A) IN GENERAL.—Subject to subparagraph (B), in the case of waivers granted with respect to a PACE program before July 1, 2000, the repeals made by paragraph (1) shall not apply until the end of a transition period (of up to 36 months) that begins on the initial effective date of such regulations, and that allows sufficient time for an orderly transition from demonstration project authority to general authority provided under the amendments made by this subtitle [subtitle I (§§4801–4804) of title IV of Pub. L. 105–33, enacting this section and section 1396u–4 of this title and amending sections 1396b, 1396d, 1396r–5, and 1396v of this title].

''(B) STATE OPTION TO SEEK EXTENSION OF CURRENT PERIOD.—A State may elect to maintain the PACE programs which (as of the date of the enactment of this Act [Aug. 5, 1997]) were operating in the State under the authority described in paragraph (1) until a date (specified by the State) that is not later than 4 years after the initial effective date of regulations described in subsection (a). If a State makes such an election, the repeals made by paragraph (1) shall not apply to the programs until the date so specified, but only so long as such programs continue to operate under the same terms and conditions as apply to such programs as of the date of the enactment of this Act, and subparagraph (A) shall not apply to such programs.''

PACE PROGRAMS; STUDY AND REPORTS

Section 4804(a), (b) of title IV of Pub. L. 105–33 provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Secretary of Health and Human Services (in close consultation with State administering agencies, as defined in sections 1894(a)(8) and 1934(a)(8) of the Social Security Act [subsec. (a)(8) of this section and section 1396u–4(a)(8) of this title]) shall conduct a study of the quality and cost of providing PACE program services under the medicare and medicaid programs under the amendments made by this subtitle [subtitle I (§§ 4801–4804) of title IV of Pub. L. 105–33, enacting this section and section 1396u–4 of this title and amending sections 1396b, 1396d, 1396r–5, and 1396v of this title].

''(2) STUDY OF PRIVATE, FOR-PROFIT PROVIDERS.—Such study shall specifically compare the costs, quality, and access to services by entities that are private, for-profit entities operating under demonstration projects waivers granted under sections 1894(h) and 1934(h) of the Social Security Act [subsec. (h) of this section and section 1396u–4(h) of this title] with the costs, quality, and access to services of other PACE providers.

''(b) REPORT.—

''(1) IN GENERAL.—Not later than 4 years after the date of the enactment of this Act [Aug. 5, 1997], the Secretary shall provide for a report to Congress on the impact of such amendments on quality and cost of services. The Secretary shall include in such report such recommendations for changes in the operation of such amendments as the Secretary deems appropriate.

''(2) TREATMENT OF PRIVATE, FOR-PROFIT PROVIDERS.—The report shall include specific findings on whether any of the following findings is true:

''(A) The number of covered lives enrolled with entities operating under demonstration project waivers under sections 1894(h) and 1934(h) of the Social Security Act is fewer than 800 (or such lesser number as the Secretary may find statistically sufficient to make determinations respecting findings described in the succeeding subparagraphs).

''(B) The population enrolled with such entities is less frail than the population enrolled with other PACE providers.

''(C) Access to or quality of care for individuals enrolled with such entities is lower than such access or quality for individuals enrolled with other PACE providers.

''(D) The application of such section has resulted in an increase in expenditures under the medicare or medicaid programs above the expenditures that would have been made if such section did not apply.''

§ 1395fff. Prospective payment for home health services

(a) In general

Notwithstanding section 1395x(v) of this title, the Secretary shall provide, for portions of cost reporting periods occurring on or after October 1, 2000, for payments for home health services in accordance with a prospective payment system established by the Secretary under this section.

(b) System of prospective payment for home health services

(1) In general

The Secretary shall establish under this subsection a prospective payment system for payment for all costs of home health services. Under the system under this subsection all services covered and paid on a reasonable cost basis under the medicare home health benefit as of August 5, 1997, including medical supplies, shall be paid for on the basis of a prospective payment amount determined under this subsection and applicable to the services involved. In implementing the system, the Secretary may provide for a transition (of not longer than 4 years) during which a portion of such payment is based on agency-specific costs, but only if such transition does not result in aggregate payments under this subchapter that exceed the aggregate payments that would be made if such a transition did not occur.

(2) Unit of payment

In defining a prospective payment amount under the system under this subsection, the Secretary shall consider an appropriate unit of service and the number, type, and duration of visits provided within that unit, potential changes in the mix of services provided within that unit and their cost, and a general system design that provides for continued access to quality services.

(3) Payment basis

(A) Initial basis

(i) In general

Under such system the Secretary shall provide for computation of a standard prospective payment amount (or amounts) as follows:

(I) Such amount (or amounts) shall initially be based on the most current audited cost report data available to the Secretary and shall be computed in a manner so that the total amounts payable under the system for the 12-month period beginning on the date the Secretary implements the system shall be equal to the total amount that would have been made if the system had not been in effect and if section 1395x(v)(1)(L)(ix) of this title had not been enacted.

(II) For the 12-month period beginning after the period described in subclause (I), such amount (or amounts) shall be equal to the amount (or amounts) determined under subclause (I), updated under subparagraph (B).

(III) For periods beginning after the period described in subclause (II), such amount (or amounts) shall be equal to the amount (or amounts) that would have been determined under subclause (I) that would have been made for fiscal year 2001 if the system had not been in effect and if section 1395x(v)(1)(L)(ix) of this title had not been enacted but if the reduction in limits described in clause (ii) had been in effect, updated under subparagraph (B).

Each such amount shall be standardized in a manner that eliminates the effect of variations in relative case mix and area wage adjustments among different home health agencies in a budget neutral manner consistent with the case mix and wage level adjustments provided under paragraph (4)(A). Under the system, the Sec-

retary may recognize regional differences or differences based upon whether or not the services or agency are in an urbanized area.

(ii) Reduction

The reduction described in this clause is a reduction by 15 percent in the cost limits and per beneficiary limits described in section 1395x(v)(1)(L) of this title, as those limits are in effect on September 30, 2000.

(B) Annual update

(i) In general

The standard prospective payment amount (or amounts) shall be adjusted for fiscal year 2002 and for fiscal year 2003 and for each subsequent year (beginning with 2004) in a prospective manner specified by the Secretary by the home health applicable increase percentage (as defined in clause (ii)) applicable to the fiscal year or year involved.

(ii) Home health applicable increase percentage

For purposes of this subparagraph, the term ''home health applicable increase percentage'' means, with respect to—

(I) each of fiscal years 2002 and 2003, the home health market basket percentage increase (as defined in clause (iii)) minus 1.1 percentage points;

(II) for the last calendar quarter of 2003 and the first calendar quarter of 2004, the home health market basket percentage increase;

(III) the last 3 calendar quarters of 2004, and each of 2005 and 2006 the home health market basket percentage increase minus 0.8 percentage points; or

(IV) 2007 and any subsequent year, the home health market basket percentage increase.

(iii) Home health market basket percentage increase

For purposes of this subsection, the term ''home health market basket percentage increase'' means, with respect to a fiscal year or year, a percentage (estimated by the Secretary before the beginning of the fiscal year or year) determined and applied with respect to the mix of goods and services included in home health services in the same manner as the market basket percentage increase under section 1395ww(b)(3)(B)(iii) of this title is determined and applied to the mix of goods and services comprising inpatient hospital services for the fiscal year or year.

(iv) Adjustment for case mix changes

Insofar as the Secretary determines that the adjustments under paragraph (4)(A)(i) for a previous fiscal year or year (or estimates that such adjustments for a future fiscal year or year) did (or are likely to) result in a change in aggregate payments under this subsection during the fiscal year or year that are a result of changes in the coding or classification of different units of services that do not reflect real changes in case mix, the Secretary may adjust the standard prospective payment amount (or amounts) under paragraph (3) for subsequent fiscal years or years so as to eliminate the effect of such coding or classification changes.

(C) Adjustment for outliers

The Secretary shall reduce the standard prospective payment amount (or amounts) under this paragraph applicable to home health services furnished during a period by such proportion as will result in an aggregate reduction in payments for the period equal to the aggregate increase in payments resulting from the application of paragraph (5) (relating to outliers).

(4) Payment computation

(A) In general

The payment amount for a unit of home health services shall be the applicable standard prospective payment amount adjusted as follows:

(i) Case mix adjustment

The amount shall be adjusted by an appropriate case mix adjustment factor (established under subparagraph (B)).

(ii) Area wage adjustment

The portion of such amount that the Secretary estimates to be attributable to wages and wage-related costs shall be adjusted for geographic differences in such costs by an area wage adjustment factor (established under subparagraph (C)) for the area in which the services are furnished or such other area as the Secretary may specify.

(B) Establishment of case mix adjustment factors

The Secretary shall establish appropriate case mix adjustment factors for home health services in a manner that explains a significant amount of the variation in cost among different units of services.

(C) Establishment of area wage adjustment factors

The Secretary shall establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services in a geographic area compared to the national average applicable level. Such factors may be the factors used by the Secretary for purposes of section 1395ww(d)(3)(E) of this title.

(5) Outliers

The Secretary may provide for an addition or adjustment to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. The total amount of the additional payments or payment adjustments made under this paragraph with respect to a fiscal year or year may not exceed 5 percent of the total payments projected or estimated to be made based on the prospective

payment system under this subsection in that year.

(6) Proration of prospective payment amounts

If a beneficiary elects to transfer to, or receive services from, another home health agency within the period covered by the prospective payment amount, the payment shall be prorated between the home health agencies involved.

(c) Requirements for payment information

With respect to home health services furnished on or after October 1, 1998, no claim for such a service may be paid under this subchapter unless—

(1) the claim has the unique identifier (provided under section 1395u(r) of this title) for the physician who prescribed the services or made the certification described in section 1395f(a)(2) or 1395n(a)(2)(A) of this title; and

(2) in the case of a service visit described in paragraph (1), (2), (3), or (4) of section 1395x(m) of this title, the claim contains a code (or codes) specified by the Secretary that identifies the length of time of the service visit, as measured in 15 minute increments.

(d) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, 1395*oo* of this title, or otherwise of—

(1) the establishment of a transition period under subsection (b)(1) of this section;

(2) the definition and application of payment units under subsection (b)(2) of this section;

(3) the computation of initial standard prospective payment amounts under subsection (b)(3)(A) of this section (including the reduction described in clause (ii) of such subsection);

(4) the establishment of the adjustment for outliers under subsection (b)(3)(C) of this section;

(5) the establishment of case mix and area wage adjustments under subsection (b)(4) of this section; and

(6) the establishment of any adjustments for outliers under subsection (b)(5) of this section.

(e) Construction related to home health services

(1) Telecommunications

Nothing in this section shall be construed as preventing a home health agency furnishing a home health unit of service for which payment is made under the prospective payment system established by this section for such units of service from furnishing services via a telecommunication system if such services—

(A) do not substitute for in-person home health services ordered as part of a plan of care certified by a physician pursuant to section 1395f(a)(2)(C) or 1395n(a)(2)(A) of this title; and

(B) are not considered a home health visit for purposes of eligibility or payment under this subchapter.

(2) Physician certification

Nothing in this section shall be construed as waiving the requirement for a physician certification under section 1395f(a)(2)(C) or 1395n(a)(2)(A) of this title for the payment for home health services, whether or not furnished via a telecommunications system.

(Aug. 14, 1935, ch. 531, title XVIII, § 1895, as added Pub. L. 105–33, title IV, § 4603(a), Aug. 5, 1997, 111 Stat. 467; amended Pub. L. 105–277, div. J, title V, § 5101(c)(1), (d)(2), Oct. 21, 1998, 112 Stat. 2681–914; Pub. L. 106–113, div. B, § 1000(a)(6) [title III, §§ 302(b), 303(b), 306, 321(k)(19)], Nov. 29, 1999, 113 Stat. 1536, 1501A–359, 1501A–361, 1501A–362, 1501A–368; Pub. L. 106–554, § 1(a)(6) [title V, §§ 501(a), (c)(1), 504], Dec. 21, 2000, 114 Stat. 2763, 2763A–529, 2763A–531; Pub. L. 108–173, title VII, § 701, Dec. 8, 2003, 117 Stat. 2334.)

AMENDMENTS

2003—Subsec. (b)(3)(B)(i). Pub. L. 108–173, § 701(a)(1), substituted ''fiscal year 2002 and for fiscal year 2003 and for each subsequent year (beginning with 2004)'' for ''each fiscal year (beginning with fiscal year 2002)'' and inserted ''or year'' after ''the fiscal year''.

Subsec. (b)(3)(B)(ii)(I). Pub. L. 108–173, § 701(a)(2)(A), struck out ''or'' at end.

Subsec. (b)(3)(B)(ii)(II). Pub. L. 108–173, § 701(b)(1), struck out ''or'' at end.

Pub. L. 108–173, § 701(a)(2)(D), added subcl. (II). Former subcl. (II) redesignated (III).

Subsec. (b)(3)(B)(ii)(III). Pub. L. 108–173, § 701(b)(4), added subcl. (III). Former subcl. (III) redesignated (IV).

Pub. L. 108–173, § 701(a)(2)(B), (C), redesignated subcl. (II) as (III) and substituted ''2004 and any subsequent year'' for ''any subsequent fiscal year''.

Subsec. (b)(3)(B)(ii)(IV). Pub. L. 108–173, § 701(b)(2), (3), redesignated subcl. (III) as (IV) and substituted ''2007'' for ''2004''.

Subsec. (b)(3)(B)(iii). Pub. L. 108–173, § 701(a)(3), inserted ''or year'' after ''fiscal year'' wherever appearing.

Subsec. (b)(3)(B)(iv). Pub. L. 108–173, § 701(a)(4), inserted ''or year'' after ''fiscal year'' wherever appearing and ''or years'' after ''fiscal years''.

Subsec. (b)(5). Pub. L. 108–173, § 701(a)(5), inserted ''or year'' after ''fiscal year''.

2000—Subsec. (b)(3)(A)(i)(II). Pub. L. 106–554, § 1(a)(6) [title V, § 501(a)(3)], added subcl. (II). Former subcl. (II) redesignated (III).

Subsec. (b)(3)(A)(i)(III). Pub. L. 106–554, § 1(a)(6) [title V, § 501(a)(1), (2)], redesignated subcl. (II) as (III) and substituted ''described in subclause (II)'' for ''described in subclause (I)''.

Subsec. (b)(3)(B)(iv). Pub. L. 106–554, § 1(a)(6) [title V, § 501(c)(1)], added cl. (iv).

Subsec. (e). Pub. L. 106–554, § 1(a)(6) [title V, § 504], added subsec. (e).

1999—Subsec. (b)(1). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(19)], made technical amendment to reference in original act which appears in text as reference to August 5, 1997.

Subsec. (b)(3)(A)(i). Pub. L. 106–113, § 1000(a)(6) [title III, § 302(b)], amended heading and text of cl. (i) generally. Prior to amendment, text read as follows: ''Under such system the Secretary shall provide for computation of a standard prospective payment amount (or amounts). Such amount (or amounts) shall initially be based on the most current audited cost report data available to the Secretary and shall be computed in a manner so that the total amounts payable under the system for fiscal year 2001 shall be equal to the total amount that would have been made if the system had not been in effect but if the reduction in limits described in clause (ii) had been in effect. Such amount shall be standardized in a manner that eliminates the effect of variations in relative case mix and wage levels among different home health agencies in a budget neutral manner consistent with the case mix and wage level adjustments provided under paragraph (4)(A). Under the system, the Secretary may recognize re-

gional differences or differences based upon whether or not the services or agency are in an urbanized area.''

Subsec. (b)(3)(A)(i)(I). Pub. L. 106–113, §1000(a)(6) [title III, §303(b)(1)], which directed that the second sentence of cl. (i) be amended in subcl. (I) by the insertion of ''and if section 1395x(v)(1)(L)(ix) of this title had not been enacted'' before semicolon, was executed by making the insertion before the period at end of subcl. (I) to reflect the probable intent of Congress.

Subsec. (b)(3)(A)(i)(II). Pub. L. 106–113, §1000(a)(6) [title III, §303(b)(2)], inserted ''and if section 1395x(v)(1)(L)(ix) of this title had not been enacted'' after ''if the system had not been in effect''.

Subsec. (b)(3)(B)(ii)(I). Pub. L. 106–113, §1000(a)(6) [title III, §306], substituted ''each of fiscal years 2002 and 2003'' for ''fiscal year 2002 or 2003''.

1998—Subsec. (a). Pub. L. 105–277, §5101(c)(1)(A), substituted ''for portions of cost reporting periods occurring on or after October 1, 2000'' for ''for cost reporting periods beginning on or after October 1, 1999''.

Subsec. (b)(3)(A)(i). Pub. L. 105–277, §5101(c)(1)(B)(i), substituted ''fiscal year 2001'' for ''fiscal year 2000''.

Subsec. (b)(3)(A)(ii). Pub. L. 105–277, §5101(c)(1)(B)(ii), substituted ''September 30, 2000'' for ''September 30, 1999''.

Subsec. (b)(3)(B)(i). Pub. L. 105–277, §5101(d)(2)(A), substituted ''home health applicable increase percentage (as defined in clause (ii))'' for ''home health market basket percentage increase''.

Pub. L. 105–277, §5101(c)(1)(B)(iii), substituted ''fiscal year 2002'' for ''fiscal year 2001''.

Subsec. (b)(3)(B)(ii), (iii). Pub. L. 105–277, §5101(d)(2)(B), (C), added cl. (ii) and redesignated former cl. (ii) as (iii).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title V, §501(c)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–529, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to episodes concluding on or after October 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(6) [title III, §303(b)] of Pub. L.106–113 applicable to services furnished by home health agencies for cost reporting periods beginning on or after Oct. 1, 1999, see section 1000(a)(6) [title III, §303(c)] of Pub. L. 106–113, set out as a note under section 1395x of this title.

Amendment by section 1000(a)(6) [title III, §321(k)(19)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

EFFECTIVE DATE

Pub. L. 105–33, title IV, §4603(d), Aug. 5, 1997, 111 Stat. 471, as amended by Pub. L. 105–277, div. J, title V, §5101(c)(2), Oct. 21, 1998, 112 Stat. 2681–914, provided that: ''Except as otherwise provided, the amendments made by this section [enacting this section and amending sections 1395f, 1395g, 1395k, 1395*l*, 1395u, and 1395y of this title] shall apply to portions of cost reporting periods occurring on or after October 1, 2000.''

ONE-YEAR INCREASE FOR HOME HEALTH SERVICES FURNISHED IN A RURAL AREA

Pub. L. 108–173, title IV, §421, Dec. 8, 2003, 117 Stat. 2283, provided that:

''(a) IN GENERAL.—With respect to episodes and visits ending on or after April 1, 2004, and before April 1, 2005, in the case of home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D))), the Secretary [of Health and Human Services] shall increase the payment amount otherwise made under section 1895 of such Act (42 U.S.C. 1395fff) for such services by 5 percent.

''(b) WAIVING BUDGET NEUTRALITY.—The Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Social Security Act (42 U.S.C. 1395fff) applicable to home health services furnished during a period to offset the increase in payments resulting from the application of subsection (a).

''(c) NO EFFECT ON SUBSEQUENT PERIODS.—The payment increase provided under subsection (a) for a period under such subsection—

''(1) shall not apply to episodes and visits ending after such period; and

''(2) shall not be taken into account in calculating the payment amounts applicable for episodes and visits occurring after such period.''

DEMONSTRATION PROJECT FOR MEDICAL ADULT DAY-CARE SERVICES

Pub. L. 108–173, title VII, §703, Dec. 8, 2003, 117 Stat. 2336, provided that:

''(a) ESTABLISHMENT.—Subject to the succeeding provisions of this section, the Secretary [of Health and Human Services] shall establish a demonstration project (in this section referred to as the 'demonstration project') under which the Secretary shall, as part of a plan of an episode of care for home health services established for a medicare beneficiary, permit a home health agency, directly or under arrangements with a medical adult day-care facility, to provide medical adult day-care services as a substitute for a portion of home health services that would otherwise be provided in the beneficiary's home.

''(b) PAYMENT.—

''(1) IN GENERAL.—Subject to paragraph (2), the amount of payment for an episode of care for home health services, a portion of which consists of substitute medical adult day-care services, under the demonstration project shall be made at a rate equal to 95 percent of the amount that would otherwise apply for such home health services under section 1895 of the Social Security Act (42 U.S.C. 1395fff). In no case may a home health agency, or a medical adult day-care facility under arrangements with a home health agency, separately charge a beneficiary for medical adult day-care services furnished under the plan of care.

''(2) ADJUSTMENT IN CASE OF OVERUTILIZATION OF SUBSTITUTE ADULT DAY-CARE SERVICES TO ENSURE BUDGET NEUTRALITY.—The Secretary shall monitor the expenditures under the demonstration project and under title XVIII of the Social Security Act [this subchapter] for home health services. If the Secretary estimates that the total expenditures under the demonstration project and under such title XVIII for home health services for a period determined by the Secretary exceed expenditures that would have been made under such title XVIII for home health services for such period if the demonstration project had not been conducted, the Secretary shall adjust the rate of payment to medical adult day-care facilities under paragraph (1) in order to eliminate such excess.

''(c) DEMONSTRATION PROJECT SITES.—The demonstration project established under this section shall be conducted in not more than 5 sites in States selected by the Secretary that license or certify providers of services that furnish medical adult day-care services.

''(d) DURATION.—The Secretary shall conduct the demonstration project for a period of 3 years.

''(e) VOLUNTARY PARTICIPATION.—Participation of medicare beneficiaries in the demonstration project shall be voluntary. The total number of such beneficiaries that may participate in the project at any given time may not exceed 15,000.

''(f) PREFERENCE IN SELECTING AGENCIES.—In selecting home health agencies to participate under the demonstration project, the Secretary shall give preference to those agencies that are currently licensed or certified through common ownership and control to furnish medical adult day-care services.

''(g) WAIVER AUTHORITY.—The Secretary may waive such requirements of title XVIII of the Social Security

Act [this subchapter] as may be necessary for the purposes of carrying out the demonstration project, other than waiving the requirement that an individual be homebound in order to be eligible for benefits for home health services.

''(h) EVALUATION AND REPORT.—The Secretary shall conduct an evaluation of the clinical and cost-effectiveness of the demonstration project. Not later than 6 months after the completion of the project, the Secretary shall submit to Congress a report on the evaluation, and shall include in the report the following:

''(1) An analysis of the patient outcomes and costs of furnishing care to the medicare beneficiaries participating in the project as compared to such outcomes and costs to beneficiaries receiving only home health services for the same health conditions.

''(2) Such recommendations regarding the extension, expansion, or termination of the project as the Secretary determines appropriate.

''(i) DEFINITIONS.—In this section:

''(1) HOME HEALTH AGENCY.—The term 'home health agency' has the meaning given such term in section 1861(*o*) of the Social Security Act (42 U.S.C. 1395x(*o*)).

''(2) MEDICAL ADULT DAY-CARE FACILITY.—The term 'medical adult day-care facility' means a facility that—

''(A) has been licensed or certified by a State to furnish medical adult day-care services in the State for a continuous 2-year period;

''(B) is engaged in providing skilled nursing services and other therapeutic services directly or under arrangement with a home health agency;

''(C) is licensed and certified by the State in which it operates or meets such standards established by the Secretary to assure quality of care and such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the facility; and

''(D) provides medical adult day-care services.

''(3) MEDICAL ADULT DAY-CARE SERVICES.—The term 'medical adult day-care services' means—

''(A) home health service items and services described in paragraphs (1) through (7) of section 1861(m) [probably means section 1861(m) of the Social Security Act which is classified to section 1395x(m) of this title] furnished in a medical adult day-care facility;

''(B) a program of supervised activities furnished in a group setting in the facility that—

''(i) meet such criteria as the Secretary determines appropriate; and

''(ii) is designed to promote physical and mental health of the individuals; and

''(C) such other services as the Secretary may specify.

''(4) MEDICARE BENEFICIARY.—The term 'medicare beneficiary' means an individual entitled to benefits under part A of this title [probably means part A of title XVIII of the Social Security Act which is classified to part A of this subchapter], enrolled under part B of this title [probably means part B of title XVIII of the Social Security Act which is classified to part B of this subchapter], or both.''

TEMPORARY SUSPENSION OF OASIS REQUIREMENT FOR COLLECTION OF DATA ON NON-MEDICARE AND NON-MEDICAID PATIENTS

Pub. L. 108–173, title VII, § 704, Dec. 8, 2003, 117 Stat. 2338, provided that:

''(a) IN GENERAL.—During the period described in subsection (b), the Secretary [of Health and Human Services] may not require, under section 4602(e) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 467) [set out as a note under this section] or otherwise under OASIS, a home health agency to gather or submit information that relates to an individual who is not eligible for benefits under either title XVIII or title XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter] (such information in this section referred to as 'non-medicare/medicaid OASIS information').

''(b) PERIOD OF SUSPENSION.—The period described in this subsection—

''(1) begins on the date of the enactment of this Act [Dec. 8, 2003]; and

''(2) ends on the last day of the second month beginning after the date as of which the Secretary has published final regulations regarding the collection and use by the Centers for Medicare & Medicaid Services of non-medicare/medicaid OASIS information following the submission of the report required under subsection (c).

''(c) REPORT.—

''(1) STUDY.—The Secretary shall conduct a study on how non-medicare/medicaid OASIS information is and can be used by large home health agencies. Such study shall examine—

''(A) whether there are unique benefits from the analysis of such information that cannot be derived from other information available to, or collected by, such agencies; and

''(B) the value of collecting such information by small home health agencies compared to the administrative burden related to such collection.

In conducting the study the Secretary shall obtain recommendations from quality assessment experts in the use of such information and the necessity of small, as well as large, home health agencies collecting such information.

''(2) REPORT.—The Secretary shall submit to Congress a report on the study conducted under paragraph (1) by not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003].

''(d) CONSTRUCTION.—Nothing in this section shall be construed as preventing home health agencies from collecting non-medicare/medicaid OASIS information for their own use.''

MEDPAC STUDY ON MEDICARE MARGINS OF HOME HEALTH AGENCIES

Pub. L. 108–173, title VII, § 705, Dec. 8, 2003, 117 Stat. 2339, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study of payment margins of home health agencies under the home health prospective payment system under section 1895 of the Social Security Act (42 U.S.C. 1395fff). Such study shall examine whether systematic differences in payment margins are related to differences in case mix (as measured by home health resource groups (HHRGs)) among such agencies. The study shall use the partial or full-year cost reports filed by home health agencies.

''(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 8, 2003], the Commission shall submit to Congress a report on the study under subsection (a).''

SPECIAL RULE FOR PAYMENT FOR FISCAL YEAR 2001 BASED ON ADJUSTED PROSPECTIVE PAYMENT AMOUNTS

Pub. L. 106–554, § 1(a)(6) [title V, § 502(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–530, provided that:

''(1) IN GENERAL.—Notwithstanding the amendments made by subsection (a) [amending section 1395x of this title], for purposes of making payments under section 1895(b) of the Social Security Act (42 U.S.C. 1395fff(b)) for home health services furnished during fiscal year 2001, the Secretary of Health and Human Services shall—

''(A) with respect to episodes and visits ending on or after October 1, 2000, and before April 1, 2001, use the final standardized and budget neutral prospective payment amounts for 60-day episodes and standardized average per visit amounts for fiscal year 2001 as published by the Secretary in the Federal Register on July 3, 2000 (65 Fed. Reg. 41128–41214); and

''(B) with respect to episodes and visits ending on or after April 1, 2001, and before October 1, 2001, use such amounts increased by 2.2 percent.

''(2) NO EFFECT ON OTHER PAYMENTS OR DETERMINATIONS.—The Secretary shall not take the provisions of paragraph (1) into account for purposes of payments, determinations, or budget neutrality adjustments under section 1895 of the Social Security Act.''

TEMPORARY TWO-MONTH PERIODIC INTERIM PAYMENT

Pub. L. 106–554, §1(a)(6) [title V, §503], Dec. 21, 2000, 114 Stat. 2763, 2763A–530, provided that:

''(a) IN GENERAL.—Notwithstanding the amendments made by section 4603(b) of BBA [Pub. L. 105–33, amending section 1395g of this title] (42 U.S.C. 1395fff note), in the case of a home health agency that was receiving periodic interim payments under section 1815(e)(2) of the Social Security Act (42 U.S.C. 1395g(e)(2)) as of September 30, 2000, and that is not described in subsection (b), the Secretary of Health and Human Services shall, as soon as practicable, make a single periodic interim payment to such agency in an amount equal to four times the last full fortnightly periodic interim payment made to such agency under the payment system in effect prior to the implementation of the prospective payment system under section 1895(b) of such Act (42 U.S.C. 1395fff(b)). Such amount of such periodic interim payment shall be included in the tentative settlement of the last cost report for the home health agency under the payment system in effect prior to the implementation of such prospective payment system, regardless of the ending date of such cost report.

''(b) EXCEPTIONS.—The Secretary shall not make an additional periodic interim payment under subsection (a) in the case of a home health agency (determined as of the day that such payment would otherwise be made) that—

''(1) notifies the Secretary that such agency does not want to receive such payment;

''(2) is not receiving payments pursuant to section 405.371 of title 42, Code of Federal Regulations;

''(3) is excluded from the medicare program under title XI of the Social Security Act [subchapter XI of this chapter];

''(4) no longer has a provider agreement under section 1866 of such Act (42 U.S.C. 1395cc);

''(5) is no longer in business; or

''(6) is subject to a court order providing for the withholding of medicare payments under title XVIII of such Act [this subchapter].''

TEMPORARY INCREASE FOR HOME HEALTH SERVICES FURNISHED IN A RURAL AREA

Pub. L. 106–554, §1(a)(6) [title V, §508], Dec. 21, 2000, 114 Stat. 2763, 2763A–533, provided that:

''(a) 24-MONTH INCREASE BEGINNING APRIL 1, 2001.—In the case of home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D))) on or after April 1, 2001, and before April 1, 2003, the Secretary of Health and Human Services shall increase the payment amount otherwise made under section 1895 of such Act (42 U.S.C. 1395fff) for such services by 10 percent.

''(b) WAIVING BUDGET NEUTRALITY.—The Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Social Security Act (42 U.S.C. 1395fff) applicable to home health services furnished during a period to offset the increase in payments resulting from the application of subsection (a).''

CLARIFICATION OF APPLICATION OF TEMPORARY PAYMENT INCREASES FOR 2001

Pub. L. 106–554, §1(a)(6) [title V, §547(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–553, provided that:

''(1) TRANSITIONAL ALLOWANCE FOR FULL MARKETBASKET [SIC] INCREASE.—The payment increase provided under section 502(b)(1)(B) [set out as a note above] shall not apply to episodes and visits ending after fiscal year 2001 and shall not be taken into account in calculating the payment amounts applicable for subsequent episodes and visits.

''(2) TEMPORARY INCREASE FOR RURAL HOME HEALTH SERVICES.—The payment increase provided under section 508(a) [set out as a note above] for the period beginning on April 1, 2001, and ending on September 30, 2002, shall not apply to episodes and visits ending after such period, and shall not be taken into account in calculating the payment amounts applicable for episodes and visits occurring after such period.''

ADJUSTMENT TO REFLECT ADMINISTRATIVE COSTS NOT INCLUDED IN THE INTERIM PAYMENT SYSTEM; GAO REPORT ON COSTS OF COMPLIANCE WITH OASIS DATA COLLECTION REQUIREMENTS

Pub. L. 106–113, div. B, §1000(a)(6) [title III, §301], Nov. 29, 1999, 113 Stat. 1536, 1501A–358, provided that:

''(a) ADJUSTMENT TO REFLECT ADMINISTRATIVE COSTS

''(1) IN GENERAL.—In the case of a home health agency that furnishes home health services to a medicare beneficiary, for each such beneficiary to whom the agency furnished such services during the agency's cost reporting period beginning in fiscal year 2000, the Secretary of Health and Human Services shall pay the agency, in addition to any amount of payment made under section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)) for the beneficiary and only for such cost reporting period, an aggregate amount of $10 to defray costs incurred by the agency attributable to data collection and reporting requirements under the Outcome and Assessment Information Set (OASIS) required by reason of section 4602(e) of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33] (42 U.S.C. 1395fff note).

''(2) PAYMENT SCHEDULE

''(A) MIDYEAR PAYMENT.—Not later than April 1, 2000, the Secretary shall pay to a home health agency an amount that the Secretary estimates to be 50 percent of the aggregate amount payable to the agency by reason of this subsection.

''(B) UPON SETTLED COST REPORT.—The Secretary shall pay the balance of amounts payable to an agency under this subsection on the date that the cost report submitted by the agency for the cost reporting period beginning in fiscal year 2000 is settled.

''(3) PAYMENT FROM TRUST FUNDS.—Payments under this subsection shall be made, in appropriate part as specified by the Secretary, from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund.

''(4) DEFINITIONS.—In this subsection:

''(A) HOME HEALTH AGENCY.—The term 'home health agency' has the meaning given that term under section 1861(*o*) of the Social Security Act (42 U.S.C. 1395x(*o*)).

''(B) HOME HEALTH SERVICES.—The term 'home health services' has the meaning given that term under section 1861(m) of such Act (42 U.S.C. 1395x(m)).

''(C) MEDICARE BENEFICIARY.—The term 'medicare beneficiary' means a beneficiary described in section 1861(v)(1)(L)(vi)(II) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)(vi)(II)).

''(b) GAO REPORT ON COSTS OF COMPLIANCE WITH OASIS DATA COLLECTION REQUIREMENTS.—

''(1) REPORT TO CONGRESS.—

''(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [Nov. 29, 1999], the Comptroller General of the United States shall submit to Congress a report on the matters described in subparagraph (B) with respect to the data collection requirement of patients of such agencies under the Outcome and Assessment Information Set (OASIS) standard as part of the comprehensive assessment of patients.

''(B) MATTERS STUDIED.—For purposes of subparagraph (A), the matters described in this subparagraph include the following:

''(i) An assessment of the costs incurred by medicare home health agencies in complying with such data collection requirement.

''(ii) An analysis of the effect of such data collection requirement on the privacy interests of patients from whom data is collected.

''(C) AUDIT.—The Comptroller General shall conduct an independent audit of the costs described in subparagraph (B)(i). Not later than 180 days after receipt of the report under subparagraph (A), the Comptroller General shall submit to Congress a report describing the Comptroller General's findings with respect to such audit, and shall include comments on the report submitted to Congress by the Secretary of Health and Human Services under subparagraph (A).

''(2) DEFINITIONS.—In this subsection:

''(A) COMPREHENSIVE ASSESSMENT OF PATIENTS.—The term 'comprehensive assessment of patients' means the rule published by the Health Care Financing Administration that requires, as a condition of participation in the medicare program, a home health agency to provide a patient-specific comprehensive assessment that accurately reflects the patient's current status and that incorporates the Outcome and Assessment Information Set (OASIS).

''(B) OUTCOME AND ASSESSMENT INFORMATION SET.—The term 'Outcome and Assessment Information Set' means the standard provided under the rule relating to data items that must be used in conducting a comprehensive assessment of patients.''

REPORT TO CONGRESS ON NEED FOR REDUCTIONS

Pub. L. 106–113, div. B, §1000(a)(6) [title III, §302(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–360, as amended by Pub. L. 106–554, §1(a)(6) [title V, §501(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–529, provided that: ''Not later than April 1, 2002, the Comptroller General of the United States shall submit to Congress a report analyzing the need for the 15 percent reduction under subsection (b)(3)(A)(ii) of such section [subsec. (b)(3)(A)(ii) of this section], or for any reduction, in the computation of the base payment amounts under the prospective payment system for home health services established under such section.''

STUDY AND REPORT TO CONGRESS REGARDING EXEMPTION OF RURAL AGENCIES AND POPULATIONS FROM INCLUSION IN HOME HEALTH PROSPECTIVE PAYMENT SYSTEM

Pub. L. 106–113, div. B, §1000(a)(6) [title III, §307], Nov. 29, 1999, 113 Stat. 1536, 1501A–362, provided that:

''(a) STUDY.—The Medicare Payment Advisory Commission (referred to in this section as 'MedPAC') shall conduct a study to determine the feasibility and advisability of exempting home health services provided by a home health agency (or by others under arrangements with such agency) located in a rural area, or to an individual residing in a rural area, from payment under the prospective payment system for such services established by the Secretary of Health and Human Services in accordance with section 1895 of the Social Security Act (42 U.S.C. 1395fff).

''(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [Nov. 29, 1999], MedPAC shall submit a report to Congress on the study conducted under subsection (a), together with any recommendations for legislation that MedPAC determines to be appropriate as a result of such study.''

CASE MIX SYSTEM DEVELOPMENT

Section 4602(d) of Pub. L. 105–33 provided that: ''The Secretary of Health and Human Services shall expand research on a prospective payment system for home health agencies under the medicare program that ties prospective payments to a unit of service, including an intensive effort to develop a reliable case mix adjuster that explains a significant amount of the variances in costs.''

CASE MIX SYSTEM; SUBMISSION OF DATA

Section 4602(e) of Pub. L. 105–33 provided that: ''Effective for cost reporting periods beginning on or after October 1, 1997, the Secretary of Health and Human Services may require all home health agencies to submit additional information that the Secretary considers necessary for the development of a reliable case mix system.''

PROSPECTIVE PAYMENT SYSTEM CONTINGENCY

Pub. L. 105–33, title IV, §4603(e), Aug. 5, 1997, 111 Stat. 471, as amended by Pub. L. 105–277, div. J, title V, §5101(c)(3), Oct. 21, 1998, 112 Stat. 2681–914, provided that if the Secretary of Health and Human Services did not establish and implement the prospective payment system for home health services described in subsec. (b) of this section for portions of cost reporting periods described in section 4603(d) of Pub. L. 105–33 (set out as a note above), for such portions the Secretary was to provide for a reduction by 15 percent in the cost limits and per beneficiary limits described in section 1395x(v)(1)(L) of this title, as those limits would otherwise have been in effect on Sept. 30, 2000, prior to repeal by Pub. L. 106–113, div. B, §1000(a)(6) [title III, §302(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–359.

REPORTS TO CONGRESS REGARDING HOME HEALTH COST CONTAINMENT

Section 4616 of Pub. L. 105–33 provided that:

''(a) ESTIMATE.—Not later than October 1, 1997, the Secretary of Health and Human Services shall submit to the Committees on Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that includes an estimate of the outlays that will be made under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter] for the provision of home health services during each of fiscal years 1998 through 2002.

''(b) ANNUAL REPORT.—Not later than the end of each of years 1999 through 2002, the Secretary shall submit to such Committees a report that compares the actual outlays under such parts for such services during the fiscal year ending in the year, to the outlays estimated under subsection (a) for such fiscal year. If the Secretary finds that such actual outlays were greater than such estimated outlays for the fiscal year, the Secretary shall include in the report recommendations regarding beneficiary copayments for home health services provided under the medicare program or such other methods as will reduce the growth in outlays for home health services under the medicare program.''

§ 1395ggg. Medicare subvention demonstration project for military retirees

(a) Definitions

In this section:

(1) Administering Secretaries

The term ''administering Secretaries'' means the Secretary and the Secretary of Defense acting jointly.

(2) Demonstration project; project

The terms ''demonstration project'' and ''project'' mean the demonstration project carried out under this section.

(3) Designated provider

The term ''designated provider'' has the meaning given that term in section 721(5) of the National Defense Authorization Act For Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2593; 10 U.S.C. 1073 note).

(4) Medicare-eligible military retiree or dependent

The term ''medicare-eligible military retiree or dependent'' means an individual described in section 1074(b) or 1076(b) of title 10 who—

(A) is eligible for health benefits under section 1086 of such title by reason of subsection (c)(1) of such section;

(B)(i) is entitled to benefits under part A of this subchapter; and

(ii) if the individual was entitled to such benefits before July 1, 1997, received health care items or services from a health care facility of the uniformed services before that date, but after becoming entitled to benefits under part A of this subchapter;

(C) is enrolled for benefits under part B of this subchapter; and

(D) has attained age 65.

(5) Medicare health care services

The term ''medicare health care services'' means items or services covered under part A or B of this subchapter.

(6) Military treatment facility

The term ''military treatment facility'' means a facility referred to in section 1074(a) of title 10.

(7) TRICARE

The term ''TRICARE'' has the same meaning as the term ''TRICARE program'' under section 711 of the National Defense Authorization Act for Fiscal Year 1996 (10 U.S.C. 1073 note).

(8) Trust funds

The term ''trust funds'' means the Federal Hospital Insurance Trust Fund established in section 1395i of this title and the Federal Supplementary Medical Insurance Trust Fund established in section 1395t of this title.

(b) Demonstration project

(1) In general

(A) Establishment

The administering Secretaries are authorized to establish a demonstration project (under an agreement entered into by the administering Secretaries) under which the Secretary shall reimburse the Secretary of Defense, from the trust funds, for medicare health care services furnished to certain medicare-eligible military retirees or dependents in a military treatment facility or by a designated provider.

(B) Agreement

The agreement entered into under subparagraph (A) shall include at a minimum—

(i) a description of the benefits to be provided to the participants of the demonstration project established under this section;

(ii) a description of the eligibility rules for participation in the demonstration project, including any cost sharing requirements;

(iii) a description of how the demonstration project will satisfy the requirements under this subchapter;

(iv) a description of the sites selected under paragraph (2);

(v) a description of how reimbursement requirements under subsection (i) of this section and maintenance of effort requirements under subsection (j) of this section will be implemented in the demonstration project;

(vi) a statement that the Secretary shall have access to all data of the Department of Defense that the Secretary determines is necessary to conduct independent estimates and audits of the maintenance of effort requirement, the annual reconciliation, and related matters required under the demonstration project;

(vii) a description of any requirement that the Secretary waives pursuant to subsection (d) of this section; and

(viii) a certification, provided after review by the administering Secretaries, that any entity that is receiving payments by reason of the demonstration project has sufficient—

(I) resources and expertise to provide, consistent with payments under subsection (i) of this section, the full range of benefits required to be provided to beneficiaries under the project; and

(II) information and billing systems in place to ensure the accurate and timely submission of claims for benefits and to ensure that providers of services, physicians, and other health care professionals are reimbursed by the entity in a timely and accurate manner.

(2) Number of sites

The project established under this section shall be conducted in no more than 6 sites, designated jointly by the administering Secretaries after review of all TRICARE regions.

(3) Restriction

No new military treatment facilities will be built or expanded with funds from the demonstration project.

(4) Duration

The administering Secretaries shall conduct the demonstration project during the 4-year period beginning on January 1, 1998, except that the administering Secretaries may negotiate and (subject to section 712(f) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001) enter into a new or revised agreement under paragraph (1)(A) to continue the project after the end of such period. If the project is so continued, the administering Secretaries may terminate the agreement under which the program operates after providing notice to Congress in accordance with subsection (k)(2)(B)(v)[1] of this section.

(5) Report

At least 60 days prior to the commencement of the demonstration project, the administering Secretaries shall submit a copy of the agreement entered into under paragraph (1) to the committees of jurisdiction under this subchapter.

(c) Crediting of payments

A payment received by the Secretary of Defense under the demonstration project shall be

[1] See References in Text note below.

credited to the applicable Department of Defense medical appropriation (and within that appropriation). Any such payment received during a fiscal year for services provided during a prior fiscal year may be obligated by the Secretary of Defense during the fiscal year during which the payment is received.

(d) Waiver of certain medicare requirements

(1) Authority

(A) In general

Except as provided under subparagraph (B), the demonstration project shall meet all requirements of Medicare+Choice plans under part C of this subchapter and regulations pertaining thereto, and other requirements for receiving medicare payments, except that the prohibition of payments to Federal providers of services under sections 1395f(c) and 1395n(d) of this title, and paragraphs (2) and (3) of section 1395y(a) of this title shall not apply.

(B) Waiver

Except as provided in paragraph (2), the Secretary is authorized to waive any requirement described under subparagraph (A), or approve equivalent or alternative ways of meeting such a requirement, but only if such waiver or approval—

(i) reflects the unique status of the Department of Defense as an agency of the Federal Government; and

(ii) is necessary to carry out the demonstration project.

(2) Beneficiary protections and other matters

The demonstration project shall comply with the requirements of part C of this subchapter that relate to beneficiary protections and other matters, including such requirements relating to the following areas:

(A) Enrollment and disenrollment.
(B) Nondiscrimination.
(C) Information provided to beneficiaries.
(D) Cost-sharing limitations.
(E) Appeal and grievance procedures.
(F) Provider participation.
(G) Access to services.
(H) Quality assurance and external review.
(I) Advance directives.
(J) Other areas of beneficiary protections that the Secretary determines are applicable to such project.

(e) Inspector General

Nothing in the agreement entered into under subsection (b) of this section shall limit the Inspector General of the Department of Health and Human Services from investigating any matters regarding the expenditure of funds under this subchapter for the demonstration project, including compliance with the provisions of this subchapter and all other relevant laws.

(f) Voluntary participation

Participation of medicare-eligible military retirees or dependents in the demonstration project shall be voluntary.

(g) TRICARE health care plans

(1) Modification of TRICARE contracts

In carrying out the demonstration project, the Secretary of Defense is authorized to amend existing TRICARE contracts (including contracts with designated providers) in order to provide the medicare health care services to the medicare-eligible military retirees and dependents enrolled in the demonstration project consistent with part C of this subchapter.

(2) Health care benefits

The administering Secretaries shall prescribe the minimum health care benefits to be provided under such a plan to medicare-eligible military retirees or dependents enrolled in the plan. Those benefits shall include at least all medicare health care services covered under this subchapter.

(h) Additional plans

Notwithstanding any provisions of title 10, the administering Secretaries may agree to include in the demonstration project any of the Medicare+Choice plans described in section 1395w–21(a)(2)(A) of this title, and such agreement may include an agreement between the Secretary of Defense and the Medicare+Choice organization offering such plan to provide medicare health care services to medicare-eligible military retirees or dependents and for such Secretary to receive payments from such organization for the provision of such services.

(i) Payments based on regular medicare payment rates

(1) In general

Subject to the succeeding provisions of this subsection, the Secretary shall reimburse the Secretary of Defense for services provided under the demonstration project at a rate equal to 95 percent of the amount paid to a Medicare+Choice organization under part C of this subchapter with respect to such an enrollee. In cases in which a payment amount may not otherwise be readily computed, the Secretary shall establish rules for computing equivalent or comparable payment amounts.

(2) Exclusion of certain amounts

In computing the amount of payment under paragraph (1), the following shall be excluded:

(A) Special payments

Any amount attributable to an adjustment under subparagraphs (B) and (F) of section 1395ww(d)(5) of this title and subsection (h) of such section.

(B) Percentage of capital payments

An amount determined by the administering Secretaries for amounts attributable to payments for capital-related costs under subsection (g) of such section.

(3) Periodic payments from medicare trust funds

Payments under this subsection shall be made—

(A) on a periodic basis consistent with the periodicity of payments under this subchapter; and

(B) in appropriate part, as determined by the Secretary, from the trust funds.

(4) Cap on amount

The aggregate amount to be reimbursed under this subsection pursuant to the agree-

ment entered into between the administering Secretaries under subsection (b) of this section shall not exceed a total of—

(A) $50,000,000 for calendar year 1998;

(B) $60,000,000 for calendar year 1999;

(C) $65,000,000 for calendar year 2000; and

(D) $70,000,000 for calendar year 2001.

(j) Maintenance of effort

(1) Monitoring effect of demonstration program on costs to medicare program

(A) In general

The administering Secretaries, in consultation with the Comptroller General, shall closely monitor the expenditures made under the medicare program for medicare-eligible military retirees or dependents during the period of the demonstration project compared to the expenditures that would have been made for such medicare-eligible military retirees or dependents during that period if the demonstration project had not been conducted. The agreement entered into by the administering Secretaries under subsection (b) of this section shall require any participating military treatment facility to maintain the level of effort for space available care to medicare-eligible military retirees or dependents.

(B) Annual report by the Comptroller General

Not later than December 31 of each year during which the demonstration project is conducted, the Comptroller General shall submit to the administering Secretaries and the appropriate committees of Congress a report on the extent, if any, to which the costs of the Secretary under the medicare program under this subchapter increased during the preceding fiscal year as a result of the demonstration project.

(2) Required response in case of increase in costs

(A) In general

If the administering Secretaries find, based on paragraph (1), that the expenditures under the medicare program under this subchapter increased (or are expected to increase) during a fiscal year because of the demonstration project, the administering Secretaries shall take such steps as may be needed—

(i) to recoup for the medicare program the amount of such increase in expenditures; and

(ii) to prevent any such increase in the future.

(B) Steps

Such steps—

(i) under subparagraph (A)(i) shall include payment of the amount of such increased expenditures by the Secretary of Defense from the current medical care appropriation of the Department of Defense to the trust funds; and

(ii) under subparagraph (A)(ii) shall include suspending or terminating the demonstration project (in whole or in part) or lowering the amount of payment under subsection (i)(1) of this section.

(k) Evaluation and reports

(1) Independent evaluation

The Comptroller General of the United States shall conduct an evaluation of the demonstration project, and shall submit annual reports on the demonstration project to the administering Secretaries and to the committees of jurisdiction in the Congress. The first report shall be submitted not later than 12 months after the date on which the demonstration project begins operation, and the final report not later than 3½ years after that date. The evaluation and reports shall include an assessment, based on the agreement entered into under subsection (b) of this section, of the following:

(A) Any savings or costs to the medicare program under this subchapter resulting from the demonstration project.

(B) The cost to the Department of Defense of providing care to medicare-eligible military retirees and dependents under the demonstration project.

(C) A description of the effects of the demonstration project on military treatment facility readiness and training and the probable effects of the project on overall Department of Defense medical readiness and training.

(D) Any impact of the demonstration project on access to care for active duty military personnel and their dependents.

(E) An analysis of how the demonstration project affects the overall accessibility of the uniformed services treatment system and the amount of space available for point-of-service care, and a description of the unintended effects (if any) upon the normal treatment priority system.

(F) Compliance by the Department of Defense with the requirements under this subchapter.

(G) The number of medicare-eligible military retirees and dependents opting to participate in the demonstration project instead of receiving health benefits through another health insurance plan (including benefits under this subchapter).

(H) A list of the health insurance plans and programs that were the primary payers for medicare-eligible military retirees and dependents during the year prior to their participation in the demonstration project and the distribution of their previous enrollment in such plans and programs.

(I) Any impact of the demonstration project on private health care providers and beneficiaries under this subchapter that are not enrolled in the demonstration project.

(J) An assessment of the access to care and quality of care for medicare-eligible military retirees and dependents under the demonstration project.

(K) An analysis of whether, and in what manner, easier access to the uniformed services treatment system affects the number of medicare-eligible military retirees and dependents receiving medicare health care services.

(L) Any impact of the demonstration project on the access to care for medicare-eligible military retirees and dependents who did not enroll in the demonstration project and for other individuals entitled to benefits under this subchapter.

(M) A description of the difficulties (if any) experienced by the Department of Defense in managing the demonstration project and TRICARE contracts.

(N) Any additional elements specified in the agreement entered into under subsection (b) of this section.

(O) Any additional elements that the Comptroller General of the United States determines is appropriate to assess regarding the demonstration project.

(2) Repealed. Pub. L. 107–314, div. A, title VII, § 713, Dec. 2, 2002, 116 Stat. 2589

(Aug. 14, 1935, ch. 531, title XVIII, § 1896, as added Pub. L. 105–33, title IV, § 4015(a), Aug. 5, 1997, 111 Stat. 337; amended Pub. L. 106–398, § 1 [[div. A], title VII, § 712(a)(2), (b)–(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–177, 1654A–178; Pub. L. 107–314, div. A, title VII, § 713, Dec. 2, 2002, 116 Stat. 2589; Pub. L. 108–173, title VII, § 736(c)(8), Dec. 8, 2003, 117 Stat. 2356.)

AMENDMENT OF SECTION

Pub. L. 106–398, § 1 [[div. A], title VII, § 712(c)(2), (3), (d), (f)], Oct. 30, 2000, 114 Stat. 1654, 1654A–177 to 1654A–179, provided that, effective on the date as is provided for in the agreement proposed under the amendment made by section 1 [[div. A], title VII, § 712(c)(1)] of Pub. L. 106–398 to subsection (b)(4) of this section and as is provided for in an Act enacted after Oct. 30, 2000, this section is amended as follows:

(1) in the section catchline, by striking ''demonstration project'' and inserting ''program'';

(2) wherever appearing in text, by substituting ''program'' for ''demonstration project'' and for ''project'';

(3) by amending subsection (a)(2) to read as follows:

''(2) Program

''The term 'program' means the program carried out under this section.'';

(4) in subsection (b) heading, by substituting ''Program'' for ''Demonstration project'';

(5) by amending subsection (b)(2) to read as follows:

''(2) Location of sites

''Subject to subsection (k)(2)(B) of this section, the program shall be conducted in any site that is designated jointly by the administering Secretaries.'';

(6) in subsection (d)(2), by inserting '', or (subject to subsection (k)(2)(B) of this section) such comparable requirements as are included in the agreement under subsection (b)(1)(A) of this section'' after ''the following areas'';

(7) in subsection (i)(2), by inserting ''subject to paragraph (4),'' after ''paragraph (1)'';

(8) by amending subsection (i)(4) to read as follows:

''(4) Cap on amount

''The maximum aggregate expenditures from the trust funds under this subsection pursuant to the agreement entered into between the administering Secretaries under subsection (b) of this section for a fiscal year (before fiscal year 2006) shall not exceed the amount agreed by the Secretaries to be the amount that would have been expended from the trust funds on beneficiaries who enroll in the program, had the program not been established, plus the following:

''(A) $35,000,000 for fiscal year 2002.

''(B) $55,000,000 for fiscal year 2003.

''(C) $75,000,000 for fiscal year 2004.

''(D) $100,000,000 for fiscal year 2005.'';

(9) by striking subsection (i)(4) and inserting the following:

''(4) Modification of payment methodology

''The administering Secretaries may, subject to subsection (k)(2)(B) of this section, modify the payment methodology provided under paragraphs (1) and (2) so long as the amount of the reimbursement provided to the Secretary of Defense fully reimburses the Department of Defense for its cost of providing services under the program but does not exceed an amount that is estimated to be equivalent to the amount that otherwise would have been expended under this subchapter for such services if provided other than under the program (not including amounts described in paragraph (2)). Such limiting amount may be based for any site on the amount that would be payable to Medicare+Choice organizations under part C of this subchapter for the area of the site or the amounts that would be payable under parts A and B of this subchapter.''; and

(10) in subsection (j)(1) heading, by striking ''demonstration''.

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (a)(4), (5), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 711 of the National Defense Authorization Act for Fiscal Year 1996, referred to in subsec. (a)(7), is section 711 of Pub. L. 104–106, div. A, title VII, Feb. 10, 1996, 110 Stat. 374, which is set out as a note under section 1073 of Title 10, Armed Forces.

Section 712(f) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, referred to in subsec. (b)(4), is section 1 [[div. A], title VII, § 712(f)] of Pub. L. 106–398, which is set out as an Effective Date of 2000 Amendment note below.

Subsection (k)(2) of this section, referred to in subsec. (b)(4), was repealed by Pub. L. 107–314, div. A, title VII, § 713, Dec. 2, 2002, 116 Stat. 2589. See 2002 Amendment note below.

Part C of this subchapter, referred to in subsecs. (d), (g)(1), and (i)(1), is classified to section 1395w–21 et seq. of this title.

AMENDMENTS

2003—Subsec. (b)(4). Pub. L. 108–173 substituted ''712(f)'' for ''701(f)''.

2002—Subsec. (k)(2). Pub. L. 107–314 repealed heading and text of par. (2). Text read as follows: ''Not later than 6 months after the date of the submission of the final report by the Comptroller General of the United States under paragraph (1), the administering Secretaries shall submit to Congress a report containing their recommendation as to—

''(A) whether there is a cost to the health care program under this subchapter in conducting the demonstration project, and whether the demonstration project could be expanded without there being a cost to such health care program or to the Federal Government;

''(B) whether to extend the demonstration project or make the project permanent; and

''(C) whether the terms and conditions of the project should be continued (or modified) if the project is extended or expanded.''

Pub. L. 107–314 provided that the amendment by Pub. L. 106–398, §1 [[div. A], title VII, §712(e)], shall not take effect. See 2000 Amendment note below.

2000—Subsec. (a)(4)(A). Pub. L. 106–398, §1 [[div. A], title VII, §712(a)(2)], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''would be eligible for health benefits under section 1086 of such title by reason of subsection (c)(1) of such section 1086 but for the operation of subsection (d) of such section 1086;''.

Subsec. (b)(4). Pub. L. 106–398, §1 [[div. A], title VII, §712(c)(1)], inserted before period at end '', except that the administering Secretaries may negotiate and (subject to section 701(f) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001) enter into a new or revised agreement under paragraph (1)(A) to continue the project after the end of such period. If the project is so continued, the administering Secretaries may terminate the agreement under which the program operates after providing notice to Congress in accordance with subsection (k)(2)(B)(v) of this section''.

Pub. L. 106–398, §1 [[div. A], title VII, §712(b)(1)], substituted ''4-year period'' for ''3-year period''.

Subsec. (i)(4)(D). Pub. L. 106–398, §1 [[div. A], title VII, §712(b)(2)], added subpar. (D).

Subsec. (k)(2). Pub. L. 106–398, §1 [[div. A], title VII, §712(e)], directed substitution of ''Reports on program operation and changes'' for ''Report on extension and expansion of demonstration project'' in par. heading and amendment of text to read as follows:

''(A) ANNUAL REPORT.—The administering Secretaries shall submit to the Committees on Armed Services and Finance of the Senate and the Committees on Armed Services and Ways and Means of the House of Representatives an annual report on the program and its impact on costs and the provision of health services under this subchapter and title 10.

''(B) BEFORE MAKING CERTAIN PROGRAM CHANGES.—The administering Secretaries shall submit to such Committees a report at least 60 days before—

''(i) changing the designation of a site under subsection (b)(2) of this section;

''(ii) applying comparable requirements under subsection (d)(2) of this section;

''(iii) making significant changes in payment methodology or amounts under subsection (i)(4) of this section;

''(iv) making other significant changes in the operation of the program; or

''(v) terminating the agreement under the second sentence of subsection (b)(4) of this section.

''(C) EXPLANATION.—Each report under subparagraph (B) shall include justifications for the changes or termination to which the report refers.''

Pub. L. 107–314, §713, provided that the amendment made by Pub. L. 106–398, §1 [[div. A], title VII, §712(e)], shall not take effect. See 2002 Amendment note above.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1 [[div. A], title VII, §712(a)(2)] of Pub. L. 106–398 effective Oct. 1, 2001, see section 1 [[div. A], title VII, §712(a)(3)] of Pub. L. 106–398, set out as a note under section 1086 of Title 10, Armed Forces.

Pub. L. 106–398, §1 [[div. A], title VII, §712(f)], Oct. 30, 2000, 114 Stat. 1654, 1654A–179, provided that:

''(1) Upon negotiating an agreement under the amendment made by subsection (c)(1) [amending this section], the Secretary of Defense and the Secretary of Health and Human Services shall jointly transmit a notification of the proposed agreement to the Committee on Armed Services and the Committee on Finance of the Senate and the Committee on Armed Services and the Committee on Ways and Means of the House of Representatives, and shall include with the transmittal a copy of the proposed agreement and all related agreements and supporting documents.

''(2) Such proposed agreement shall take effect, and the amendments made by subsections (c)(2), (c)(3), (d), and (e) [amending this section] shall take effect, on such date as is provided for in such agreement and in an Act enacted after the date of the enactment of this Act [Oct. 30, 2000].''

REPEAL OF SUBSECTION (k)(2)

Pub. L. 107–314, div. A, title VII, §713, Dec. 2, 2002, 116 Stat. 2589, provided that: ''Notwithstanding subsection (f)(2) of section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [set out above] (as enacted into law by Public Law 106-398; 114 Stat. 1654A–179), the amendment made by subsection (e) of such section [amending this section] shall not take effect and the paragraph amended by such subsection is repealed.''

IMPLEMENTATION PLAN FOR VETERANS SUBVENTION

Section 4015(b) of Pub. L. 105–33 provided that: ''Not later than 12 months after the start of the demonstration project, the Secretary of Health and Human Services and the Secretary of Veterans Affairs shall jointly submit to Congress a detailed implementation plan for a subvention demonstration project (that follows the model of the demonstration project conducted under section 1896 of the Social Security Act [this section] (as added by subsection (a)) to begin in 1999 for veterans (as defined in section 101 of title 38, United States Code) that are eligible for benefits under title XVIII of the Social Security Act [this subchapter].''

§ 1395hhh. Health care infrastructure improvement program

(a) Establishment

The Secretary shall establish a loan program that provides loans to qualifying hospitals for payment of the capital costs of projects described in subsection (d) of this section.

(b) Application

No loan may be provided under this section to a qualifying hospital except pursuant to an application that is submitted and approved in a time, manner, and form specified by the Secretary. A loan under this section shall be on such terms and conditions and meet such requirements as the Secretary determines appropriate.

(c) Selection criteria

(1) In general

The Secretary shall establish criteria for selecting among qualifying hospitals that apply for a loan under this section. Such criteria shall consider the extent to which the project for which loan is sought is nationally or regionally significant, in terms of expanding or improving the health care infrastructure of the United States or the region or in terms of the medical benefit that the project will have.

(2) Qualifying hospital defined

For purposes of this section, the term ''qualifying hospital'' means a hospital or an entity described in paragraph (3) that—

(A) is engaged in research in the causes, prevention, and treatment of cancer; and

(B) is designated as a cancer center for the National Cancer Institute or is designated by the State legislature as the official cancer institute of the State and such designation by the State legislature occurred prior to December 8, 2003.

(3) Entity described

An entity described in this paragraph is an entity that—

(A) is described in section 501(c)(3) of title 26 and exempt from tax under section 501(a) of such title;

(B) has at least 1 existing memorandum of understanding or affiliation agreement with a hospital located in the State in which the entity is located; and

(C) retains clinical outpatient treatment for cancer on site as well as lab research and education and outreach for cancer in the same facility.

(d) Projects

A project described in this subsection is a project of a qualifying hospital that is designed to improve the health care infrastructure of the hospital, including construction, renovation, or other capital improvements.

(e) State and local permits

The provision of a loan under this section with respect to a project shall not—

(1) relieve any recipient of the loan of any obligation to obtain any required State or local permit or approval with respect to the project;

(2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or

(3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

(f) Forgiveness of indebtedness

The Secretary may forgive a loan provided to a qualifying hospital under this section under terms and conditions that are analogous to the loan forgiveness provision for student loans under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.), except that the Secretary shall condition such forgiveness on the establishment by the hospital of—

(A) an outreach program for cancer prevention, early diagnosis, and treatment that provides services to a substantial majority of the residents of a State or region, including residents of rural areas;

(B) an outreach program for cancer prevention, early diagnosis, and treatment that provides services to multiple Indian tribes; and

(C)(i) unique research resources (such as population databases); or

(ii) an affiliation with an entity that has unique research resources.

(g) Funding

(1) In general

There are appropriated, out of amounts in the Treasury not otherwise appropriated, to carry out this section, $200,000,000, to remain available during the period beginning on July 1, 2004, and ending on September 30, 2008.

(2) Administrative costs

From funds made available under paragraph (1), the Secretary may use, for the administration of this section, not more than $2,000,000 for each of fiscal years 2004 through 2008.

(3) Availability

Amounts appropriated under this section shall be available for obligation on July 1, 2004.

(h) Report to Congress

Not later than 4 years after December 8, 2003, the Secretary shall submit to Congress a report on the projects for which loans are provided under this section and a recommendation as to whether the Congress should authorize the Secretary to continue loans under this section beyond fiscal year 2008.

(i) Limitation on review

There shall be no administrative or judicial review of any determination made by the Secretary under this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1897, as added Pub. L. 108–173, title X, § 1016, Dec. 8, 2003, 117 Stat. 2447; amended Pub. L. 109–13, div. A, title VI, § 6045(a), (b), May 11, 2005, 119 Stat. 294.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (f), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part D of title IV of the Act is classified to part C (§ 1087a et seq.) of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2005—Subsec. (c)(2). Pub. L. 109–13, § 6045(a)(1)(A), inserted ''or an entity described in paragraph (3)'' after ''means a hospital'' in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 109–13, § 6045(a)(1)(B), inserted ''legislature'' after ''designated by the State'' and ''and such designation by the State legislature occurred prior to December 8, 2003'' before period at end.

Subsec. (c)(3). Pub. L. 109–13, § 6045(a)(2), added par. (3).

Subsec. (i). Pub. L. 109–13, § 6045(b), added subsec. (i).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–13, div. A, title VI, § 6045(c), May 11, 2005, 119 Stat. 295, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the enactment of section 1016 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2447).''

SUBCHAPTER XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

§ 1396. Appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and

individuals attain or retain capability for independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for medical assistance.

(Aug. 14, 1935, ch. 531, title XIX, § 1901, as added Pub. L. 89–97, title I, § 121(a), July 30, 1965, 79 Stat. 343; amended Pub. L. 93–233, § 13(a)(1), Dec. 31, 1973, 87 Stat. 960; Pub. L. 98–369, div. B, title VI, § 2663(j)(3)(C), July 18, 1984, 98 Stat. 1171.)

AMENDMENTS

1984—Pub. L. 98–369 struck out ''Health, Education, and Welfare'' after ''Secretary''.

1973—Pub. L. 93–233 substituted ''disabled individuals'' for ''permanently and totally disabled individuals'' in cl. (1).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective with respect to payments under section 1396b of this title for calendar quarters commencing after Dec. 31, 1973, see section 13(d) of Pub. L. 93–233, set out as a note under section 1396a of this title.

§ 1396a. State plans for medical assistance

(a) Contents

A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State equal to not less than 40 per centum of the non-Federal share of the expenditures under the plan with respect to which payments under section 1396b of this title are authorized by this subchapter; and, effective July 1, 1969, provide for financial participation by the State equal to all of such non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;

(3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness;

(4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency, (C) that each State or local officer, employee, or independent contractor who is responsible for the expenditure of substantial amounts of funds under the State plan, each individual who formerly was such an officer, employee, or contractor, and each partner of such an officer, employee, or contractor shall be prohibited from committing any act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, and (D) that each State or local officer, employee, or independent contractor who is responsible for selecting, awarding, or otherwise obtaining items and services under the State plan shall be subject to safeguards against conflicts of interest that are at least as stringent as the safeguards that apply under section 423 of title 41 to persons described in subsection (a)(2) of section 423 of title 41;

(5) either provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan; or provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan approved under subchapter I or XVI of this chapter (insofar as it relates to the aged) if the State is eligible to participate in the State plan program established under subchapter XVI of this chapter, or by the agency or agencies administering the supplemental security income program established under subchapter XVI or the State plan approved under part A of subchapter IV of this chapter if the State is not eligible to participate in the State plan program established under subchapter XVI of this chapter;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which restrict the use or disclosure of information concerning appli-

cants and recipients to purposes directly connected with—

(A) the administration of the plan; and

(B) at State option, the exchange of information necessary to verify the certification of eligibility of children for free or reduced price breakfasts under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] and free or reduced price lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], in accordance with section 9(b) of that Act [42 U.S.C. 1758(b)], using data standards and formats established by the State agency;

(8) provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide—

(A) that the State health agency, or other appropriate State medical agency (whichever is utilized by the Secretary for the purpose specified in the first sentence of section 1395aa(a) of this title), shall be responsible for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services,

(B) for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards, other than those relating to health, for such institutions, and

(C) that any laboratory services paid for under such plan must be provided by a laboratory which meets the applicable requirements of section 1395x(e)(9) of this title or paragraphs (16) and (17) of section 1395x(s) of this title, or, in the case of a laboratory which is in a rural health clinic, of section 1395x(aa)(2)(G) of this title;

(10) provide—

(A) for making medical assistance available, including at least the care and services listed in paragraphs (1) through (5), (17) and (21) of section 1396d(a) of this title, to—

(i) all individuals—

(I) who are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including individuals eligible under this subchapter by reason of section 602(a)(37),[1] 606(h),[1] or 673(b) of this title, or considered by the State to be receiving such aid as authorized under section 682(e)(6)[1] of this title),

(II) with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter (or were being paid as of the date of the enactment of section 211(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193)) and would continue to be paid but for the enactment of that section or who are qualified severely impaired individuals (as defined in section 1396d(q) of this title),

(III) who are qualified pregnant women or children as defined in section 1396d(n) of this title,

(IV) who are described in subparagraph (A) or (B) of subsection (*l*)(1) of this section and whose family income does not exceed the minimum income level the State is required to establish under subsection (*l*)(2)(A) of this section for such a family;[2]

(V) who are qualified family members as defined in section 1396d(m)(1) of this title,

(VI) who are described in subparagraph (C) of subsection (*l*)(1) of this section and whose family income does not exceed the income level the State is required to establish under subsection (*l*)(2)(B) of this section for such a family, or

(VII) who are described in subparagraph (D) of subsection (*l*)(1) of this section and whose family income does not exceed the income level the State is required to establish under subsection (*l*)(2)(C) of this section for such a family;[3]

(ii) at the option of the State, to[4] any group or groups of individuals described in section 1396d(a) of this title (or, in the case of individuals described in section 1396d(a)(i) of this title, to[4] any reasonable categories of such individuals) who are not individuals described in clause (i) of this subparagraph but—

(I) who meet the income and resources requirements of the appropriate State plan described in clause (i) or the supplemental security income program (as the case may be),

(II) who would meet the income and resources requirements of the appropriate State plan described in clause (i) if their work-related child care costs were paid from their earnings rather than by a State agency as a service expenditure,

(III) who would be eligible to receive aid under the appropriate State plan described in clause (i) if coverage under such plan was as broad as allowed under Federal law,

(IV) with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, aid or assistance under the appropriate State plan described in clause (i), supplemental security income benefits under subchapter XVI of this chapter, or a State supplementary payment;[2]

(V) who are in a medical institution for a period of not less than 30 consecutive days (with eligibility by reason of this subclause beginning on the first day of such period), who meet the resource re-

[1] See References in Text note below.

[2] So in original. The semicolon probably should be a comma.

[3] So in original. Probably should be followed by ''and''.

[4] So in original. The word ''to'' probably should not appear.

quirements of the appropriate State plan described in clause (i) or the supplemental security income program, and whose income does not exceed a separate income standard established by the State which is consistent with the limit established under section 1396b(f)(4)(C) of this title,

(VI) who would be eligible under the State plan under this subchapter if they were in a medical institution, with respect to whom there has been a determination that but for the provision of home or community-based services described in subsection (c), (d), or (e) of section 1396n of this title they would require the level of care provided in a hospital, nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan, and who will receive home or community-based services pursuant to a waiver granted by the Secretary under subsection (c), (d), or (e) of section 1396n of this title,

(VII) who would be eligible under the State plan under this subchapter if they were in a medical institution, who are terminally ill, and who will receive hospice care pursuant to a voluntary election described in section 1396d(*o*) of this title;[5]

(VIII) who is a child described in section 1396d(a)(i) of this title—

(aa) for whom there is in effect an adoption assistance agreement (other than an agreement under part E of subchapter IV of this chapter) between the State and an adoptive parent or parents,

(bb) who the State agency responsible for adoption assistance has determined cannot be placed with adoptive parents without medical assistance because such child has special needs for medical or rehabilitative care, and

(cc) who was eligible for medical assistance under the State plan prior to the adoption assistance agreement being entered into, or who would have been eligible for medical assistance at such time if the eligibility standards and methodologies of the State's foster care program under part E of subchapter IV of this chapter were applied rather than the eligibility standards and methodologies of the State's aid to families with dependent children program under part A of subchapter IV of this chapter;[5]

(IX) who are described in subsection (*l*)(1) of this section and are not described in clause (i)(IV), clause (i)(VI), or clause (i)(VII);[5]

(X) who are described in subsection (m)(1) of this section;[5]

(XI) who receive only an optional State supplementary payment based on need and paid on a regular basis, equal to the difference between the individual's countable income and the income standard used to determine eligibility for such supplementary payment (with countable income being the income remaining after deductions as established by the State pursuant to standards that may be more restrictive than the standards for supplementary security income benefits under subchapter XVI of this chapter), which are available to all individuals in the State (but which may be based on different income standards by political subdivision according to cost of living differences), and which are paid by a State that does not have an agreement with the Commissioner of Social Security under section 1382e or 1383c of this title;[5]

(XII) who are described in subsection (z)(1) of this section (relating to certain TB-infected individuals);[5]

(XIII) who are in families whose income is less than 250 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved, and who but for earnings in excess of the limit established under section 1396d(q)(2)(B) of this title, would be considered to be receiving supplemental security income (subject, notwithstanding section 1396*o* of this title, to payment of premiums or other cost-sharing charges (set on a sliding scale based on income) that the State may determine);[5]

(XIV) who are optional targeted low-income children described in section 1396d(u)(2)(B) of this title;[5]

(XV) who, but for earnings in excess of the limit established under section 1396d(q)(2)(B) of this title, would be considered to be receiving supplemental security income, who is at least 16, but less than 65, years of age, and whose assets, resources, and earned or unearned income (or both) do not exceed such limitations (if any) as the State may establish;[5]

(XVI) who are employed individuals with a medically improved disability described in section 1396d(v)(1) of this title and whose assets, resources, and earned or unearned income (or both) do not exceed such limitations (if any) as the State may establish, but only if the State provides medical assistance to individuals described in subclause (XV);[5]

(XVII) who are independent foster care adolescents (as defined in section 1396d(w)(1) of this title), or who are within any reasonable categories of such adolescents specified by the State; or

(XVIII) who are described in subsection (aa) of this section (relating to certain breast or cervical cancer patients);

(B) that the medical assistance made available to any individual described in subparagraph (A)—

[5] So in original. The semicolon probably should be a comma.

(i) shall not be less in amount, duration, or scope than the medical assistance made available to any other such individual, and

(ii) shall not be less in amount, duration, or scope than the medical assistance made available to individuals not described in subparagraph (A);

(C) that if medical assistance is included for any group of individuals described in section 1396d(a) of this title who are not described in subparagraph (A) or (E), then—

(i) the plan must include a description of (I) the criteria for determining eligibility of individuals in the group for such medical assistance, (II) the amount, duration, and scope of medical assistance made available to individuals in the group, and (III) the single standard to be employed in determining income and resource eligibility for all such groups, and the methodology to be employed in determining such eligibility, which shall be no more restrictive than the methodology which would be employed under the supplemental security income program in the case of groups consisting of aged, blind, or disabled individuals in a State in which such program is in effect, and which shall be no more restrictive than the methodology which would be employed under the appropriate State plan (described in subparagraph (A)(i)) to which such group is most closely categorically related in the case of other groups;

(ii) the plan must make available medical assistance—

(I) to individuals under the age of 18 who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A)(i), and

(II) to pregnant women, during the course of their pregnancy, who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A);

(iii) such medical assistance must include (I) with respect to children under 18 and individuals entitled to institutional services, ambulatory services, and (II) with respect to pregnant women, prenatal care and delivery services; and

(iv) if such medical assistance includes services in institutions for mental diseases or in an intermediate care facility for the mentally retarded (or both) for any such group, it also must include for all groups covered at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title or the care and services listed in any 7 of the paragraphs numbered (1) through (24) of such section;

(D) for the inclusion of home health services for any individual who, under the State plan, is entitled to nursing facility services;

(E)(i) for making medical assistance available for medicare cost-sharing (as defined in section 1396d(p)(3) of this title) for qualified medicare beneficiaries described in section 1396d(p)(1) of this title;

(ii) for making medical assistance available for payment of medicare cost-sharing described in section 1396d(p)(3)(A)(i) of this title for qualified disabled and working individuals described in section 1396d(s) of this title;

(iii) for making medical assistance available for medicare cost sharing described in section 1396d(p)(3)(A)(ii) of this title subject to section 1396d(p)(4) of this title, for individuals who would be qualified medicare beneficiaries described in section 1396d(p)(1) of this title but for the fact that their income exceeds the income level established by the State under section 1396d(p)(2) of this title but is less than 110 percent in 1993 and 1994, and 120 percent in 1995 and years thereafter of the official poverty line (referred to in such section) for a family of the size involved; and

(iv) subject to sections 1396u–3 and 1396d(p)(4) of this title, for making medical assistance available (but only for premiums payable with respect to months during the period beginning with January 1998, and ending with September 2007) for medicare cost-sharing described in section 1396d(p)(3)(A)(ii) of this title for individuals who would be qualified medicare beneficiaries described in section 1396d(p)(1) of this title but for the fact that their income exceeds the income level established by the State under section 1396d(p)(2) of this title and is at least 120 percent, but less than 135 percent, of the official poverty line (referred to in such section) for a family of the size involved and who are not otherwise eligible for medical assistance under the State plan;

(F) at the option of a State, for making medical assistance available for COBRA premiums (as defined in subsection (u)(2) of this section) for qualified COBRA continuation beneficiaries described in subsection (u)(1) of this section; and

(G) that, in applying eligibility criteria of the supplemental security income program under subchapter XVI of this chapter for purposes of determining eligibility for medical assistance under the State plan of an individual who is not receiving supplemental security income, the State will disregard the provisions of subsections (c) and (e) of section 1382b of this title;

except that (I) the making available of the services described in paragraph (4), (14), or (16) of section 1396d(a) of this title to individuals meeting the age requirements prescribed therein shall not, by reason of this paragraph (10), require the making available of any such services, or the making available of such services of the same amount, duration, and scope, to individuals of any other ages, (II) the making available of supplementary medical insurance benefits under part B of subchapter XVIII of this chapter to individuals eligible therefor (either pursuant to an agreement entered into under section 1395v of this title or by reason of the payment of premiums under such subchapter by the State agency on behalf of such individuals), or provision for meeting part or all of the cost of deductibles, cost sharing, or similar charges under part B of subchapter XVIII of this chapter for individuals eligible

for benefits under such part, shall not, by reason of this paragraph (10), require the making available of any such benefits, or the making available of services of the same amount, duration, and scope, to any other individuals, (III) the making available of medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in clause (A) to any classification of individuals approved by the Secretary with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment shall not, by reason of this paragraph (10), require the making available of any such assistance, or the making available of such assistance of the same amount, duration, and scope, to any other individuals not described in clause (A), (IV) the imposition of a deductible, cost sharing, or similar charge for any item or service furnished to an individual not eligible for the exemption under section 1396*o*(a)(2) or (b)(2) of this title shall not require the imposition of a deductible, cost sharing, or similar charge for the same item or service furnished to an individual who is eligible for such exemption, (V) the making available to pregnant women covered under the plan of services relating to pregnancy (including prenatal, delivery, and postpartum services) or to any other condition which may complicate pregnancy shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any other individuals, provided such services are made available (in the same amount, duration, and scope) to all pregnant women covered under the State plan, (VI) with respect to the making available of medical assistance for hospice care to terminally ill individuals who have made a voluntary election described in section 1396d(*o*) of this title to receive hospice care instead of medical assistance for certain other services, such assistance may not be made available in an amount, duration, or scope less than that provided under subchapter XVIII of this chapter, and the making available of such assistance shall not, by reason of this paragraph (10), require the making available of medical assistance for hospice care to other individuals or the making available of medical assistance for services waived by such terminally ill individuals, (VII) the medical assistance made available to an individual described in subsection (*l*)(1)(A) of this section who is eligible for medical assistance only because of subparagraph (A)(i)(IV) or (A)(ii)(IX) shall be limited to medical assistance for services related to pregnancy (including prenatal, delivery, postpartum, and family planning services) and to other conditions which may complicate pregnancy, (VIII) the medical assistance made available to a qualified medicare beneficiary described in section 1396d(p)(1) of this title who is only entitled to medical assistance because the individual is such a beneficiary shall be limited to medical assistance for medicare cost-sharing (described in section 1396d(p)(3) of this title), subject to the provisions of subsection (n) of this section and section 1396*o*(b) of this title, (IX) the making available of respiratory care services in accordance with subsection (e)(9) of this section shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any individuals not included under subsection (e)(9)(A) of this section, provided such services are made available (in the same amount, duration, and scope) to all individuals described in such subsection, (X) if the plan provides for any fixed durational limit on medical assistance for inpatient hospital services (whether or not such a limit varies by medical condition or diagnosis), the plan must establish exceptions to such a limit for medically necessary inpatient hospital services furnished with respect to individuals under one year of age in a hospital defined under the State plan, pursuant to section 1396r–4(a)(1)(A) of this title, as a disproportionate share hospital and subparagraph (B) (relating to comparability) shall not be construed as requiring such an exception for other individuals, services, or hospitals, (XI) the making available of medical assistance to cover the costs of premiums, deductibles, coinsurance, and other cost-sharing obligations for certain individuals for private health coverage as described in section 1396e of this title shall not, by reason of paragraph (10), require the making available of any such benefits or the making available of services of the same amount, duration, and scope of such private coverage to any other individuals, (XII) the medical assistance made available to an individual described in subsection (u)(1) of this section who is eligible for medical assistance only because of subparagraph (F) shall be limited to medical assistance for COBRA continuation premiums (as defined in subsection (u)(2) of this section), (XIII) the medical assistance made available to an individual described in subsection (z)(1) of this section who is eligible for medical assistance only because of subparagraph (A)(ii)(XII) shall be limited to medical assistance for TB-related services (described in subsection (z)(2) of this section), and (XIV) the medical assistance made available to an individual described in subsection (aa) of this section who is eligible for medical assistance only because of subparagraph (A)(10)(ii)(XVIII) shall be limited to medical assistance provided during the period in which such an individual requires treatment for breast or cervical cancer;

(11)(A) provide for entering into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services and vocational rehabilitation services in the State looking toward maximum utilization of such services in the provision of medical assistance under the plan, (B) provide, to the extent prescribed by the Secretary, for entering into agreements, with any agency, institution, or organization receiving payments under (or through an allotment under) subchapter V of this chapter, (i) providing for utilizing such agency, institu-

tion, or organization in furnishing care and services which are available under such subchapter or allotment and which are included in the State plan approved under this section[6] (ii) making such provision as may be appropriate for reimbursing such agency, institution, or organization for the cost of any such care and services furnished any individual for which payment would otherwise be made to the State with respect to the individual under section 1396b of this title, and (iii) providing for coordination of information and education on pediatric vaccinations and delivery of immunization services, and (C) provide for coordination of the operations under this subchapter, including the provision of information and education on pediatric vaccinations and the delivery of immunization services, with the State's operations under the special supplemental nutrition program for women, infants, and children under section 17 of the Child Nutrition Act of 1966 [42 U.S.C. 1786];

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) provide—

(A) for a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded under which—

(i) proposed rates, the methodologies underlying the establishment of such rates, and justifications for the proposed rates are published,

(ii) providers, beneficiaries and their representatives, and other concerned State residents are given a reasonable opportunity for review and comment on the proposed rates, methodologies, and justifications,

(iii) final rates, the methodologies underlying the establishment of such rates, and justifications for such final rates are published, and

(iv) in the case of hospitals, such rates take into account (in a manner consistent with section 1396r–4 of this title) the situation of hospitals which serve a disproportionate number of low-income patients with special needs; and

(B) for payment for hospice care in amounts no lower than the amounts, using the same methodology, used under part A of subchapter XVIII of this chapter and for payment of amounts under section 1396d(*o*)(3) of this title; except that in the case of hospice care which is furnished to an individual who is a resident of a nursing facility or intermediate care facility for the mentally retarded, and who would be eligible under the plan for nursing facility services or services in an intermediate care facility for the mentally retarded if he had not elected to receive hospice care, there shall be paid an additional amount, to take into account the room and board furnished by the facility, equal to at least 95 percent of the rate that would have been paid by the State under the plan for facility services in that facility for that individual;

(14) provide that enrollment fees, premiums, or similar charges, and deductions, cost sharing, or similar charges, may be imposed only as provided in section 1396*o* of this title;

(15) provide for payment for services described in clause (B) or (C) of section 1396d(a)(2) of this title under the plan in accordance with subsection (bb) of this section;

(16) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of medical assistance under the plan to individuals who are residents of the State but are absent therefrom;

(17) except as provided in subsections (*l*)(3), (m)(3), and (m)(4) of this section, include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter, based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this subchapter, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, except for income and resources, be eligible for aid or assistance in the form of money payments under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, or to have paid with respect to him supplemental security income benefits under subchapter XVI of this chapter) as would not be disregarded (or set aside for future needs) in determining his eligibility for such aid, assistance, or benefits, (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program); and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the

[6] So in original. Probably should be followed by a comma.

costs (whether in the form of insurance premiums, payments made to the State under section 1396b(f)(2)(B) of this title, or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof) incurred for medical care or for any other type of remedial care recognized under State law;

(18) comply with the provisions of section 1396p of this title with respect to liens, adjustments and recoveries of medical assistance correctly paid,,[7] transfers of assets, and treatment of certain trusts;

(19) provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients;

(20) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the institution; and

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 303(a)(4)(A)(i) and (ii)[8] or section 1383(a)(4)(A)(i) and (ii)[8] of this title which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out;

(21) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing facilities, and other alternatives to care in public institutions for mental diseases;

(22) include descriptions of (A) the kinds and numbers of professional medical personnel and supporting staff that will be used in the administration of the plan and of the responsibilities they will have, (B) the standards, for private or public institutions in which recipients of medical assistance under the plan may receive care or services, that will be utilized by the State authority or authorities responsible for establishing and maintaining such standards, (C) the cooperative arrangements with State health agencies and State vocational rehabilitation agencies entered into with a view to maximum utilization of and coordination of the provision of medical assistance with the services administered or supervised by such agencies, and (D) other standards and methods that the State will use to assure that medical or remedial care and services provided to recipients of medical assistance are of high quality;

(23) provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services, and (B) an enrollment of an individual eligible for medical assistance in a primary care case-management system (described in section 1396n(b)(1) of this title), a medicaid managed care organization, or a similar entity shall not restrict the choice of the qualified person from whom the individual may receive services under section 1396d(a)(4)(C) of this title, except as provided in subsection (g) of this section, in section 1396n of this title, and in section 1396u–2(a) of this title, except that this paragraph shall not apply in the case of Puerto Rico, the Virgin Islands, and Guam, and except that nothing in this paragraph shall be construed as requiring a State to provide medical assistance for such services furnished by a person or entity convicted of a felony under Federal or State law for an offense which the State agency determines is inconsistent with the best interests of beneficiaries under the State plan;

(24) effective July 1, 1969, provide for consultative services by health agencies and other appropriate agencies of the State to hospitals, nursing facilities, home health agencies, clinics, laboratories, and such other institutions as the Secretary may specify in order to assist them (A) to qualify for payments under this chapter, (B) to establish and maintain such fiscal records as may be necessary for the proper and efficient administration of this chapter, and (C) to provide information needed to determine payments due under this chapter on account of care and services furnished to individuals;

[7] So in original.

[8] See References in Text note below.

(25) provide—

(A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties (including health insurers, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)]), service benefit plans, and health maintenance organizations) to pay for care and services available under the plan, including—

(i) the collection of sufficient information (as specified by the Secretary in regulations) to enable the State to pursue claims against such third parties, with such information being collected at the time of any determination or redetermination of eligibility for medical assistance, and

(ii) the submission to the Secretary of a plan (subject to approval by the Secretary) for pursuing claims against such third parties, which plan shall be integrated with, and be monitored as a part of the Secretary's review of, the State's mechanized claims processing and information retrieval systems required under section 1396b(r) of this title;

(B) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;

(C) that in the case of an individual who is entitled to medical assistance under the State plan with respect to a service for which a third party is liable for payment, the person furnishing the service may not seek to collect from the individual (or any financially responsible relative or representative of that individual) payment of an amount for that service (i) if the total of the amount of the liabilities of third parties for that service is at least equal to the amount payable for that service under the plan (disregarding section 1396*o* of this title), or (ii) in an amount which exceeds the lesser of (I) the amount which may be collected under section 1396*o* of this title, or (II) the amount by which the amount payable for that service under the plan (disregarding section 1396*o* of this title) exceeds the total of the amount of the liabilities of third parties for that service;

(D) that a person who furnishes services and is participating under the plan may not refuse to furnish services to an individual (who is entitled to have payment made under the plan for the services the person furnishes) because of a third party's potential liability for payment for the service;

(E) that in the case of prenatal or preventive pediatric care (including early and periodic screening and diagnosis services under section 1396d(a)(4)(B) of this title) covered under the State plan, the State shall—

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to the liability of a third party for payment for such services; and

(ii) seek reimbursement from such third party in accordance with subparagraph (B);

(F) that in the case of any services covered under such plan which are provided to an individual on whose behalf child support enforcement is being carried out by the State agency under part D of subchapter IV of this chapter, the State shall—

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to any third-party liability for payment for such services, if such third-party liability is derived (through insurance or otherwise) from the parent whose obligation to pay support is being enforced by such agency, if payment has not been made by such third party within 30 days after such services are furnished; and

(ii) seek reimbursement from such third party in accordance with subparagraph (B);

(G) that the State prohibits any health insurer (including a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)], a service benefit plan, and a health maintenance organization), in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under a plan under this subchapter for such State, or any other State; and

(H) that to the extent that payment has been made under the State plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance, the State has in effect laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services;

(26) if the State plan includes medical assistance for inpatient mental hospital services, provide, with respect to each patient receiving such services, for a regular program of medical review (including medical evaluation) of his need for such services, and for a written plan of care;

(27) provide for agreements with every person or institution providing services under the State plan under which such person or institution agrees (A) to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan, and (B) to furnish the State agency or the Secretary with such information, regarding any payments claimed by such person or institution for providing services under the State plan, as the State agency or the Secretary may from time to time request;

(28) provide—

(A) that any nursing facility receiving payments under such plan must satisfy all the requirements of subsections (b) through (d) of section 1396r of this title as they apply to such facilities;

(B) for including in ''nursing facility services'' at least the items and services specified (or deemed to be specified) by the Secretary under section 1396r(f)(7) of this title and making available upon request a description of the items and services so included;

(C) for procedures to make available to the public the data and methodology used in establishing payment rates for nursing facilities under this subchapter; and

(D) for compliance (by the date specified in the respective sections) with the requirements of—

(i) section 1396r(e) of this title;

(ii) section 1396r(g) of this title (relating to responsibility for survey and certification of nursing facilities); and

(iii) sections 1396r(h)(2)(B) and 1396r(h)(2)(D) of this title (relating to establishment and application of remedies);

(29) include a State program which meets the requirements set forth in section 1396g of this title, for the licensing of administrators of nursing homes;

(30)(A) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

(B) provide, under the program described in subparagraph (A), that—

(i) each admission to a hospital, intermediate care facility for the mentally retarded, or hospital for mental diseases is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved, and who do not have a significant financial interest in any such institution and are not, except in the case of a hospital, employed by the institution providing the care involved, and

(ii) the information developed from such review or screening, along with the data obtained from prior reviews of the necessity for admission and continued stay of patients by such professional personnel, shall be used as the basis for establishing the size and composition of the sample of admissions to be subject to review and evaluation by such personnel, and any such sample may be of any size up to 100 percent of all admissions and must be of sufficient size to serve the purpose of (I) identifying the patterns of care being provided and the changes occurring over time in such patterns so that the need for modification may be ascertained, and (II) subjecting admissions to early or more extensive review where information indicates that such consideration is warranted to a hospital, intermediate care facility for the mentally retarded, or hospital for mental diseases;

(31) with respect to services in an intermediate care facility for the mentally retarded (where the State plan includes medical assistance for such services) provide, with respect to each patient receiving such services, for a written plan of care, prior to admission to or authorization of benefits in such facility, in accordance with regulations of the Secretary, and for a regular program of independent professional review (including medical evaluation) which shall periodically review his need for such services;

(32) provide that no payment under the plan for any care or service provided to an individual shall be made to anyone other than such individual or the person or institution providing such care or service, under an assignment or power of attorney or otherwise; except that—

(A) in the case of any care or service provided by a physician, dentist, or other individual practitioner, such payment may be made (i) to the employer of such physician, dentist, or other practitioner if such physician, dentist, or practitioner is required as a condition of his employment to turn over his fee for such care or service to his employer, or (ii) (where the care or service was provided in a hospital, clinic, or other facility) to the facility in which the care or service was provided if there is a contractual arrangement between such physician, dentist, or practitioner and such facility under which such facility submits the bill for such care or service;

(B) nothing in this paragraph shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the person or institution providing the care or service involved if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of such person or institution from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such person or institution under the plan is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment;

(C) in the case of services furnished (during a period that does not exceed 14 continuous days in the case of an informal reciprocal arrangement or 90 continuous days (or such longer period as the Secretary may provide) in the case of an arrangement involving per diem or other fee-for-time compensa-

tion) by, or incident to the services of, one physician to the patients of another physician who submits the claim for such services, payment shall be made to the physician submitting the claim (as if the services were furnished by, or incident to, the physician's services), but only if the claim identifies (in a manner specified by the Secretary) the physician who furnished the services; and

(D) in the case of payment for a childhood vaccine administered before October 1, 1994, to individuals entitled to medical assistance under the State plan, the State plan may make payment directly to the manufacturer of the vaccine under a voluntary replacement program agreed to by the State pursuant to which the manufacturer (i) supplies doses of the vaccine to providers administering the vaccine, (ii) periodically replaces the supply of the vaccine, and (iii) charges the State the manufacturer's price to the Centers for Disease Control and Prevention for the vaccine so administered (which price includes a reasonable amount to cover shipping and the handling of returns);

(33) provide—

(A) that the State health agency, or other appropriate State medical agency, shall be responsible for establishing a plan, consistent with regulations prescribed by the Secretary, for the review by appropriate professional health personnel of the appropriateness and quality of care and services furnished to recipients of medical assistance under the plan in order to provide guidance with respect thereto in the administration of the plan to the State agency established or designated pursuant to paragraph (5) and, where applicable, to the State agency described in the second sentence of this subsection; and

(B) that, except as provided in section 1396r(g) of this title, the State or local agency utilized by the Secretary for the purpose specified in the first sentence of section 1395aa(a) of this title, or, if such agency is not the State agency which is responsible for licensing health institutions, the State agency responsible for such licensing, will perform for the State agency administering or supervising the administration of the plan approved under this subchapter the function of determining whether institutions and agencies meet the requirements for participation in the program under such plan, except that, if the Secretary has cause to question the adequacy of such determinations, the Secretary is authorized to validate State determinations and, on that basis, make independent and binding determinations concerning the extent to which individual institutions and agencies meet the requirements for participation;

(34) provide that in the case of any individual who has been determined to be eligible for medical assistance under the plan, such assistance will be made available to him for care and services included under the plan and furnished in or after the third month before the month in which he made application (or application was made on his behalf in the case of a deceased individual) for such assistance if such individual was (or upon application would have been) eligible for such assistance at the time such care and services were furnished;

(35) provide that any disclosing entity (as defined in section 1320a–3(a)(2) of this title) receiving payments under such plan complies with the requirements of section 1320a–3 of this title;

(36) provide that within 90 days following the completion of each survey of any health care facility, laboratory, agency, clinic, or organization, by the appropriate State agency described in paragraph (9), such agency shall (in accordance with regulations of the Secretary) make public in readily available form and place the pertinent findings of each such survey relating to the compliance of each such health care facility, laboratory, clinic, agency, or organization with (A) the statutory conditions of participation imposed under this subchapter, and (B) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such facility, laboratory, clinic, agency, or organization;

(37) provide for claims payment procedures which (A) ensure that 90 per centum of claims for payment (for which no further written information or substantiation is required in order to make payment) made for services covered under the plan and furnished by health care practitioners through individual or group practices or through shared health facilities are paid within 30 days of the date of receipt of such claims and that 99 per centum of such claims are paid within 90 days of the date of receipt of such claims, and (B) provide for procedures of prepayment and postpayment claims review, including review of appropriate data with respect to the recipient and provider of a service and the nature of the service for which payment is claimed, to ensure the proper and efficient payment of claims and management of the program;

(38) require that an entity (other than an individual practitioner or a group of practitioners) that furnishes, or arranges for the furnishing of, items or services under the plan, shall supply (within such period as may be specified in regulations by the Secretary or by the single State agency which administers or supervises the administration of the plan) upon request specifically addressed to such entity by the Secretary or such State agency, the information described in section 1320a–7(b)(9) of this title;

(39) provide that the State agency shall exclude any specified individual or entity from participation in the program under the State plan for the period specified by the Secretary, when required by him to do so pursuant to section 1320a–7 of this title or section 1320a–7a of this title, and provide that no payment may be made under the plan with respect to any item or service furnished by such individual or entity during such period;

(40) require each health services facility or organization which receives payments under

the plan and of a type for which a uniform reporting system has been established under section 1320a(a) of this title to make reports to the Secretary of information described in such section in accordance with the uniform reporting system (established under such section) for that type of facility or organization;

(41) provide that whenever a provider of services or any other person is terminated, suspended, or otherwise sanctioned or prohibited from participating under the State plan, the State agency shall promptly notify the Secretary and, in the case of a physician and notwithstanding paragraph (7), the State medical licensing board of such action;

(42) provide that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan;

(43) provide for—

(A) informing all persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance including services described in section 1396d(a)(4)(B) of this title, of the availability of early and periodic screening, diagnostic, and treatment services as described in section 1396d(r) of this title and the need for age-appropriate immunizations against vaccine-preventable diseases,

(B) providing or arranging for the provision of such screening services in all cases where they are requested,

(C) arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services, and

(D) reporting to the Secretary (in a uniform form and manner established by the Secretary, by age group and by basis of eligibility for medical assistance, and by not later than April 1 after the end of each fiscal year, beginning with fiscal year 1990) the following information relating to early and periodic screening, diagnostic, and treatment services provided under the plan during each fiscal year:

(i) the number of children provided child health screening services,

(ii) the number of children referred for corrective treatment (the need for which is disclosed by such child health screening services),

(iii) the number of children receiving dental services, and

(iv) the State's results in attaining the participation goals set for the State under section 1396d(r) of this title;

(44) in each case for which payment for inpatient hospital services, services in an intermediate care facility for the mentally retarded, or inpatient mental hospital services is made under the State plan—

(A) a physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies at the time of admission, or, if later, the time the individual applies for medical assistance under the State plan (and a physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician, recertifies, where such services are furnished over a period of time, in such cases, at least as often as required under section 1396b(g)(6) of this title (or, in the case of services that are services provided in an intermediate care facility for the mentally retarded, every year), and accompanied by such supporting material, appropriate to the case involved, as may be provided in regulations of the Secretary), that such services are or were required to be given on an inpatient basis because the individual needs or needed such services, and

(B) such services were furnished under a plan established and periodically reviewed and evaluated by a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician;

(45) provide for mandatory assignment of rights of payment for medical support and other medical care owed to recipients, in accordance with section 1396k of this title;

(46) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title;

(47) at the option of the State, provide for making ambulatory prenatal care available to pregnant women during a presumptive eligibility period in accordance with section 1396r–1 of this title and provide for making medical assistance for items and services described in subsection (a) of section 1396r–1a of this title available to children during a presumptive eligibility period in accordance with such section and provide for making medical assistance available to individuals described in subsection (a) of section 1396r–1b of this title during a presumptive eligibility period in accordance with such section;

(48) provide a method of making cards evidencing eligibility for medical assistance available to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address;

(49) provide that the State will provide information and access to certain information respecting sanctions taken against health care practitioners and providers by State licensing authorities in accordance with section 1396r–2 of this title;

(50) provide, in accordance with subsection (q) of this section, for a monthly personal needs allowance for certain institutionalized individuals and couples;

(51) meet the requirements of section 1396r–5 of this title (relating to protection of community spouses);

(52) meet the requirements of section 1396r–6 of this title (relating to extension of eligibility for medical assistance);

(53) provide—

(A) for notifying in a timely manner all individuals in the State who are determined to be eligible for medical assistance and who are pregnant women, breastfeeding or postpartum women (as defined in section 17 of the Child Nutrition Act of 1966 [42 U.S.C. 1786]), or children below the age of 5, of the availability of benefits furnished by the special supplemental nutrition program under such section, and

(B) for referring any such individual to the State agency responsible for administering such program;

(54) in the case of a State plan that provides medical assistance for covered outpatient drugs (as defined in section 1396r–8(k) of this title), comply with the applicable requirements of section 1396r–8 of this title;

(55) provide for receipt and initial processing of applications of individuals for medical assistance under subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX) of this section—

(A) at locations which are other than those used for the receipt and processing of applications for aid under part A of subchapter IV of this chapter and which include facilities defined as disproportionate share hospitals under section 1396r–4(a)(1)(A) of this title and Federally-qualified health centers described in section 1396d(1)(2)(B)[9] of this title, and

(B) using applications which are other than those used for applications for aid under such part;

(56) provide, in accordance with subsection (s) of this section, for adjusted payments for certain inpatient hospital services;

(57) provide that each hospital, nursing facility, provider of home health care or personal care services, hospice program, or medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title) receiving funds under the plan shall comply with the requirements of subsection (w) of this section;

(58) provide that the State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives that would be distributed by providers or organizations under the requirements of subsection (w) of this section;

(59) maintain a list (updated not less often than monthly, and containing each physician's unique identifier provided under the system established under subsection (x) of this section) of all physicians who are certified to participate under the State plan;

(60) provide that the State agency shall provide assurances satisfactory to the Secretary that the State has in effect the laws relating to medical child support required under section 1396g–1 of this title;

(61) provide that the State must demonstrate that it operates a medicaid fraud and abuse control unit described in section 1396b(q) of this title that effectively carries out the functions and requirements described in such section, as determined in accordance with standards established by the Secretary, unless the State demonstrates to the satisfaction of the Secretary that the effective operation of such a unit in the State would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the State plan, and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a unit;

(62) provide for a program for the distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children in accordance with section 1396s of this title;

(63) provide for administration and determinations of eligibility with respect to individuals who are (or seek to be) eligible for medical assistance based on the application of section 1396u–1 of this title;

(64) provide, not later than 1 year after August 5, 1997, a mechanism to receive reports from beneficiaries and others and compile data concerning alleged instances of waste, fraud, and abuse relating to the operation of this subchapter;

(65) provide that the State shall issue provider numbers for all suppliers of medical assistance consisting of durable medical equipment, as defined in section 1395x(n) of this title, and the State shall not issue or renew such a supplier number for any such supplier unless—

(A)(i) full and complete information as to the identity of each person with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the supplier or in any subcontractor (as defined by the Secretary in regulations) in which the supplier directly or indirectly has a 5 percent or more ownership interest; and

(ii) to the extent determined to be feasible under regulations of the Secretary, the name of any disclosing entity (as defined in section 1320a–3(a)(2) of this title) with respect to which a person with such an ownership or control interest in the supplier is a person with such an ownership or control interest in the disclosing entity; and

(B) a surety bond in a form specified by the Secretary under section 1395m(a)(16)(B) of this title and in an amount that is not less than $50,000 or such comparable surety bond as the Secretary may permit under the second sentence of such section;

(66) provide for making eligibility determinations under section 1396u–5(a) of this title; and

(67) provide, with respect to services covered under the State plan (but not under sub-

[9] So in original. Probably should be section ''1396d(*l*)(2)(B)''.

chapter XVIII of this chapter) that are furnished to a PACE program eligible individual enrolled with a PACE provider by a provider participating under the State plan that does not have a contract or other agreement with the PACE provider that establishes payment amounts for such services, that such participating provider may not require the PACE provider to pay the participating provider an amount greater than the amount that would otherwise be payable for the service to the participating provider under the State plan for the State where the PACE provider is located (in accordance with regulations issued by the Secretary).

Notwithstanding paragraph (5), if on January 1, 1965, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan of such State approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) was different from the State agency which administered or supervised the administration of the State plan approved under subchapter I of this chapter (or subchapter XVI of this chapter, insofar as it relates to the aged), the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) may be designated to administer or supervise the administration of the portion of the State plan for medical assistance which relates to blind individuals and a different State agency may be established or designated to administer or supervise the administration of the rest of the State plan for medical assistance; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter (except for purposes of paragraph (10)). The provisions of paragraphs (9)(A), (31), and (33) and of section 1396b(i)(4) of this title shall not apply to a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).

For purposes of paragraph (10) any individual who, for the month of August 1972, was eligible for or receiving aid or assistance under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter and who for such month was entitled to monthly insurance benefits under subchapter II of this chapter shall for purposes of this subchapter only be deemed to be eligible for financial aid or assistance for any month thereafter if such individual would have been eligible for financial aid or assistance for such month had the increase in monthly insurance benefits under subchapter II of this chapter resulting from enactment of Public Law 92–336 not been applicable to such individual.

The requirement of clause (A) of paragraph (37) with respect to a State plan may be waived by the Secretary if he finds that the State has exercised good faith in trying to meet such requirement. For purposes of this subchapter, any child who meets the requirements of paragraph (1) or (2) of section 673(b) of this title shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of subchapter IV of this chapter in the State where such child resides. Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1396b(v) of this title.

(b) Approval by Secretary

The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan—

(1) an age requirement of more than 65 years; or

(2) any residence requirement which excludes any individual who resides in the State, regardless of whether or not the residence is maintained permanently or at a fixed address; or

(3) any citizenship requirement which excludes any citizen of the United States.

(c) Lower payment levels or applying for benefits as condition of applying for, or receiving, medical assistance

Notwithstanding subsection (b) of this section, the Secretary shall not approve any State plan for medical assistance if the State requires individuals described in subsection (*l*)(1) of this section to apply for assistance under the State program funded under part A of subchapter IV of this chapter as a condition of applying for or receiving medical assistance under this subchapter.

(d) Performance of medical or utilization review functions

If a State contracts with an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary, or a utilization and quality control peer review organization having a contract with the Secretary under part B of subchapter XI of this chapter for the performance of medical or utilization review functions required under this subchapter of a State plan with respect to specific services or providers (or services or providers in a geographic area of the State), such requirements shall be deemed to be met for those services or providers (or services or providers in that area) by delegation to such an entity or organization under the contract of the State's authority to conduct such review activities if the contract provides for the performance of activities not inconsistent with part B of subchapter XI of this chapter and provides for such assurances of satisfactory performance by such an entity or organization as the Secretary may prescribe.

(e) Continued eligibility of families determined ineligible because of income and resources or hours of work limitations of plan; individuals enrolled with health maintenance organizations; persons deemed recipients of supplemental security income or State supplemental payments; entitlement for certain newborns; postpartum eligibility for pregnant women

(1)(A) Notwithstanding any other provision of this subchapter, effective January 1, 1974, subject to subparagraph (B) each State plan approved under this subchapter must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of subchapter IV of this chapter in at least 3 of the 6 months immediately preceding the month in which such family became ineligible for such aid because of increased hours of, or increased income from, employment, shall, while a member of such family is employed, remain eligible for assistance under the plan approved under this subchapter (as though the family was receiving aid under the plan approved under part A of subchapter IV of this chapter) for 4 calendar months beginning with the month in which such family became ineligible for aid under the plan approved under part A of subchapter IV of this chapter because of income and resources or hours of work limitations contained in such plan.

(B) Subparagraph (A) shall not apply with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter during the period beginning on April 1, 1990, and ending on September 30, 2003. During such period, for provisions relating to extension of eligibility for medical assistance for certain families who have received aid pursuant to a State plan approved under part A of subchapter IV of this chapter and have earned income, see section 1396r–6 of this title.

(2)(A) In the case of an individual who is enrolled with a medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title), with a primary care case manager (as defined in section 1396d(t) of this title), or with an eligible organization with a contract under section 1395mm of this title and who would (but for this paragraph) lose eligibility for benefits under this subchapter before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this subchapter, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but, except for benefits furnished under section 1396d(a)(4)(C) of this title, only with respect to such benefits provided to the individual as an enrollee of such organization or entity or by or through the case manager.

(B) For purposes of subparagraph (A), the term ''minimum enrollment period'' means, with respect to an individual's enrollment with an organization or entity under a State plan, a period, established by the State, of not more than six months beginning on the date the individual's enrollment with the organization or entity becomes effective.

(3) At the option of the State, any individual who—

(A) is 18 years of age or younger and qualifies as a disabled individual under section 1382c(a) of this title;

(B) with respect to whom there has been a determination by the State that—

(i) the individual requires a level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded,

(ii) it is appropriate to provide such care for the individual outside such an institution, and

(iii) the estimated amount which would be expended for medical assistance for the individual for such care outside an institution is not greater than the estimated amount which would otherwise be expended for medical assistance for the individual within an appropriate institution; and

(C) if the individual were in a medical institution, would be eligible for medical assistance under the State plan under this subchapter,

shall be deemed, for purposes of this subchapter only, to be an individual with respect to whom a supplemental security income payment, or State supplemental payment, respectively, is being paid under subchapter XVI of this chapter.

(4) A child born to a woman eligible for and receiving medical assistance under a State plan on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of one year so long as the child is a member of the woman's household and the woman remains (or would remain if pregnant) eligible for such assistance. During the period in which a child is deemed under the preceding sentence to be eligible for medical assistance, the medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires).

(5) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance under the State plan, shall continue to be eligible under the plan, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan, through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends.

(6) In the case of a pregnant woman described in subsection (a)(10) of this section who, because of a change in income of the family of which she is a member, would not otherwise continue to be described in such subsection, the woman shall be deemed to continue to be an individual described in subsection (a)(10)(A)(i)(IV) of this section and subsection (*l*)(1)(A) of this section without regard to such change of income through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends. The preceding sentence shall not apply in the case of a woman who has been provided ambulatory prenatal care pursuant to section 1396r–1 of this

title during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.

(7) In the case of an infant or child described in subparagraph (B), (C), or (D) of subsection (*l*)(1) of this section or paragraph (2) of section 1396d(n) of this title—

(A) who is receiving inpatient services for which medical assistance is provided on the date the infant or child attains the maximum age with respect to which coverage is provided under the State plan for such individuals, and

(B) who, but for attaining such age, would remain eligible for medical assistance under such subsection,

the infant or child shall continue to be treated as an individual described in such respective provision until the end of the stay for which the inpatient services are furnished.

(8) If an individual is determined to be a qualified medicare beneficiary (as defined in section 1396d(p)(1) of this title), such determination shall apply to services furnished after the end of the month in which the determination first occurs. For purposes of payment to a State under section 1396b(a) of this title, such determination shall be considered to be valid for an individual for a period of 12 months, except that a State may provide for such determinations more frequently, but not more frequently than once every 6 months for an individual.

(9)(A) At the option of the State, the plan may include as medical assistance respiratory care services for any individual who—

(i) is medically dependent on a ventilator for life support at least six hours per day;

(ii) has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less) as an inpatient;

(iii) but for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, nursing facility, or intermediate care facility for the mentally retarded and would be eligible to have payment made for such inpatient care under the State plan;

(iv) has adequate social support services to be cared for at home; and

(v) wishes to be cared for at home.

(B) The requirements of subparagraph (A)(ii) may be satisfied by a continuous stay in one or more hospitals, nursing facilities, or intermediate care facilities for the mentally retarded.

(C) For purposes of this paragraph, respiratory care services means services provided on a part-time basis in the home of the individual by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State), payment for which is not otherwise included within other items and services furnished to such individual as medical assistance under the plan.

(10)(A) The fact that an individual, child, or pregnant woman may be denied aid under part A of subchapter IV of this chapter pursuant to section 602(a)(43)[10] of this title shall not be construed as denying (or permitting a State to deny) medical assistance under this subchapter to such individual, child, or woman who is eligible for assistance under this subchapter on a basis other than the receipt of aid under such part.

(B) If an individual, child, or pregnant woman is receiving aid under part A of subchapter IV of this chapter and such aid is terminated pursuant to section 602(a)(43)[10] of this title, the State may not discontinue medical assistance under this subchapter for the individual, child, or woman until the State has determined that the individual, child, or woman is not eligible for assistance under this subchapter on a basis other than the receipt of aid under such part.

(11)(A) In the case of an individual who is enrolled with a group health plan under section 1396e of this title and who would (but for this paragraph) lose eligibility for benefits under this subchapter before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this subchapter, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but only with respect to such benefits provided to the individual as an enrollee of such plan.

(B) For purposes of subparagraph (A), the term ''minimum enrollment period'' means, with respect to an individual's enrollment with a group health plan, a period established by the State, of not more than 6 months beginning on the date the individual's enrollment under the plan becomes effective.

(12) At the option of the State, the plan may provide that an individual who is under an age specified by the State (not to exceed 19 years of age) and who is determined to be eligible for benefits under a State plan approved under this subchapter under subsection (a)(10)(A) of this section shall remain eligible for those benefits until the earlier of—

(A) the end of a period (not to exceed 12 months) following the determination; or

(B) the time that the individual exceeds that age.

(f) Effective date of State plan as determinative of duty of State to provide medical assistance to aged, blind, or disabled individuals

Notwithstanding any other provision of this subchapter, except as provided in subsection (e) of this section and section 1382h(b)(3) of this title and section 1396r–5 of this title, except with respect to qualified disabled and working individuals (described in section 1396d(s) of this title), and except with respect to qualified medicare beneficiaries, qualified severely impaired individuals, and individuals described in subsection (m)(1) of this subsection, no State not eligible to participate in the State plan program established under subchapter XVI of this chapter shall be required to provide medical assistance to any aged, blind, or disabled individual (within the meaning of subchapter XVI of this chapter) for any month unless such State would be (or would have been) required to provide medical assistance to such individual for such month had its plan for medical assistance ap-

[10] See References in Text note below.

proved under this subchapter and in effect on January 1, 1972, been in effect in such month, except that for this purpose any such individual shall be deemed eligible for medical assistance under such State plan if (in addition to meeting such other requirements as are or may be imposed under the State plan) the income of any such individual as determined in accordance with section 1396b(f) of this title (after deducting any supplemental security income payment and State supplementary payment made with respect to such individual, and incurred expenses for medical care as recognized under State law regardless of whether such expenses are reimbursed under another public program of the State or political subdivision thereof) is not in excess of the standard for medical assistance established under the State plan as in effect on January 1, 1972. In States which provide medical assistance to individuals pursuant to paragraph (10)(C) of subsection (a) of this section, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under paragraph (10)(A) of that subsection if that individual is, or is eligible to be (1) an individual with respect to whom there is payable a State supplementary payment on the basis of which similarly situated individuals are eligible to receive medical assistance equal in amount, duration, and scope to that provided to individuals eligible under paragraph (10)(A), or (2) an eligible individual or eligible spouse, as defined in subchapter XVI of this chapter, with respect to whom supplemental security income benefits are payable; otherwise that individual shall be considered to be an individual eligible for medical assistance under paragraph (10)(C) of that subsection. In States which do not provide medical assistance to individuals pursuant to paragraph (10)(C) of that subsection, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under paragraph (10)(A) of that subsection.

(g) Reduction of aid or assistance to providers of services attempting to collect from beneficiary in violation of third-party provisions

In addition to any other sanction available to a State, a State may provide for a reduction of any payment amount otherwise due with respect to a person who furnishes services under the plan in an amount equal to up to three times the amount of any payment sought to be collected by that person in violation of subsection (a)(25)(C) of this section.

(h) Payments for hospitals serving disproportionate number of low-income patients and for home and community care

Nothing in this subchapter (including subsections (a)(13) and (a)(30) of this section) shall be construed as authorizing the Secretary to limit the amount of payment that may be made under a plan under this subchapter for home and community care.

(i) Termination of certification for participation of and suspension of State payments to intermediate care facilities for the mentally retarded

(1) In addition to any other authority under State law, where a State determines that a[11] intermediate care facility for the mentally retarded which is certified for participation under its plan no longer substantially meets the requirements for such a facility under this subchapter and further determines that the facility's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the State shall provide for the termination of the facility's certification for participation under the plan and may provide, or

(B) do not immediately jeopardize the health and safety of its patients, the State may, in lieu of providing for terminating the facility's certification for participation under the plan, establish alternative remedies if the State demonstrates to the Secretary's satisfaction that the alternative remedies are effective in deterring noncompliance and correcting deficiencies, and may provide

that no payment will be made under the State plan with respect to any individual admitted to such facility after a date specified by the State.

(2) The State shall not make such a decision with respect to a facility until the facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the requirements for such a facility under this subchapter, to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

(3) The State's decision to deny payment may be made effective only after such notice to the public and to the facility as may be provided for by the State, and its effectiveness shall terminate (A) when the State finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the requirements for such a facility under this subchapter, or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of the respective section on the date specified in such clause, the State shall terminate such facility's certification for participation under the plan effective with the first day of the first month following the month specified in such clause.

(j) Waiver or modification of subchapter requirements with respect to medical assistance program in American Samoa

Notwithstanding any other requirement of this subchapter, the Secretary may waive or modify any requirement of this subchapter with respect to the medical assistance program in American Samoa and the Northern Mariana Islands, other than a waiver of the Federal med-

[11] So in original. Probably should be ''an''.

ical assistance percentage, the limitation in section 1308(f) of this title, or the requirement that payment may be made for medical assistance only with respect to amounts expended by American Samoa or the Northern Mariana Islands for care and services described in a numbered paragraph of section 1396d(a) of this title.

(k) Repealed. Pub. L. 103–66, title XIII, § 13611(d)(1)(C), Aug. 10, 1993, 107 Stat. 627

(*l*) Description of group

(1) Individuals described in this paragraph are—

(A) women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy),

(B) infants under one year of age,

(C) children who have attained one year of age but have not attained 6 years of age, and

(D) children born after September 30, 1983 (or, at the option of a State, after any earlier date), who have attained 6 years of age but have not attained 19 years of age,

who are not described in any of subclauses (I) through (III) of subsection (a)(10)(A)(i) of this section and whose family income does not exceed the income level established by the State under paragraph (2) for a family size equal to the size of the family, including the woman, infant, or child.

(2)(A)(i) For purposes of paragraph (1) with respect to individuals described in subparagraph (A) or (B) of that paragraph, the State shall establish an income level which is a percentage (not less than the percentage provided under clause (ii) and not more than 185 percent) of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(ii) The percentage provided under this clause, with respect to eligibility for medical assistance on or after—

(I) July 1, 1989, is 75 percent, or, if greater, the percentage provided under clause (iii), and

(II) April 1, 1990, 133 percent, or, if greater, the percentage provided under clause (iv).

(iii) In the case of a State which, as of July 1, 1988, has elected to provide, and provides, medical assistance to individuals described in this subsection or has enacted legislation authorizing, or appropriating funds, to provide such assistance to such individuals before July 1, 1989, the percentage provided under clause (ii)(I) shall not be less than—

(I) the percentage specified by the State in an amendment to its State plan (whether approved or not) as of July 1, 1988, or

(II) if no such percentage is specified as of July 1, 1988, the percentage established under the State's authorizing legislation or provided for under the State's appropriations;

but in no case shall this clause require the percentage provided under clause (ii)(I) to exceed 100 percent.

(iv) In the case of a State which, as of December 19, 1989, has established under clause (i), or has enacted legislation authorizing, or appropriating funds, to provide for, a percentage (of the income official poverty line) that is greater than 133 percent, the percentage provided under clause (ii) for medical assistance on or after April 1, 1990, shall not be less than—

(I) the percentage specified by the State in an amendment to its State plan (whether approved or not) as of December 19, 1989, or

(II) if no such percentage is specified as of December 19, 1989, the percentage established under the State's authorizing legislation or provided for under the State's appropriations.

(B) For purposes of paragraph (1) with respect to individuals described in subparagraph (C) of such paragraph, the State shall establish an income level which is equal to 133 percent of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.

(C) For purposes of paragraph (1) with respect to individuals described in subparagraph (D) of that paragraph, the State shall establish an income level which is equal to 100 percent of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.

(3) Notwithstanding subsection (a)(17) of this section, for individuals who are eligible for medical assistance because of subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX) of this section—

(A) application of a resource standard shall be at the option of the State;

(B) any resource standard or methodology that is applied with respect to an individual described in subparagraph (A) of paragraph (1) may not be more restrictive than the resource standard or methodology that is applied under subchapter XVI of this chapter;

(C) any resource standard or methodology that is applied with respect to an individual described in subparagraph (B), (C), or (D) of paragraph (1) may not be more restrictive than the corresponding methodology that is applied under the State plan under part A of subchapter IV of this chapter;

(D) the income standard to be applied is the appropriate income standard established under paragraph (2); and

(E) family income shall be determined in accordance with the methodology employed under the State plan under part A or E of subchapter IV of this chapter (except to the extent such methodology is inconsistent with clause (D) of subsection (a)(17) of this section), and costs incurred for medical care or for any other type of remedial care shall not be taken into account.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(4)(A) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to provide medical assistance for pregnant women and infants under age 1 described in subsection (a)(10)(A)(i)(IV) of this section and for children

described in subsection (a)(10)(A)(i)(VI) of this section or subsection (a)(10)(A)(i)(VII) of this section in the same manner as the State would be required to provide such assistance for such individuals if the State had in effect a plan approved under this subchapter.

(B) In the case of a State which is not one of the 50 States or the District of Columbia, the State need not meet the requirement of subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), or (a)(10)(A)(i)(VII) of this section and, for purposes of paragraph (2)(A), the State may substitute for the percentage provided under clause (ii) of such paragraph any percentage.

(m) Description of individuals

(1) Individuals described in this paragraph are individuals—

(A) who are 65 years of age or older or are disabled individuals (as determined under section 1382c(a)(3) of this title),

(B) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program, except as provided in paragraph (2)(C)) does not exceed an income level established by the State consistent with paragraph (2)(A), and

(C) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

(2)(A) The income level established under paragraph (1)(B) may not exceed a percentage (not more than 100 percent) of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(B) In the case of a State that provides medical assistance to individuals not described in subsection (a)(10)(A) of this section and at the State's option, the State may use under paragraph (1)(C) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in subsection (a)(10)(A) of this section.

(C) The provisions of section 1396d(p)(2)(D) of this title shall apply to determinations of income under this subsection in the same manner as they apply to determinations of income under section 1396d(p) of this title.

(3) Notwithstanding subsection (a)(17) of this section, for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(X) of this section—

(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(4) Notwithstanding subsection (a)(17) of this section, for qualified medicare beneficiaries described in section 1396d(p)(1) of this title—

(A) the income standard to be applied is the income standard described in section 1396d(p)(1)(B) of this title, and

(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(n) Payment amounts

(1) In the case of medical assistance furnished under this subchapter for medicare cost-sharing respecting the furnishing of a service or item to a qualified medicare beneficiary, the State plan may provide payment in an amount with respect to the service or item that results in the sum of such payment amount and any amount of payment made under subchapter XVIII of this chapter with respect to the service or item exceeding the amount that is otherwise payable under the State plan for the item or service for eligible individuals who are not qualified medicare beneficiaries.

(2) In carrying out paragraph (1), a State is not required to provide any payment for any expenses incurred relating to payment for deductibles, coinsurance, or copayments for medicare cost-sharing to the extent that payment under subchapter XVIII of this chapter for the service would exceed the payment amount that otherwise would be made under the State plan under this subchapter for such service if provided to an eligible recipient other than a medicare beneficiary.

(3) In the case in which a State's payment for medicare cost-sharing for a qualified medicare beneficiary with respect to an item or service is reduced or eliminated through the application of paragraph (2)—

(A) for purposes of applying any limitation under subchapter XVIII of this chapter on the amount that the beneficiary may be billed or charged for the service, the amount of payment made under subchapter XVIII of this chapter plus the amount of payment (if any) under the State plan shall be considered to be payment in full for the service;

(B) the beneficiary shall not have any legal liability to make payment to a provider or to an organization described in section 1396b(m)(1)(A) of this title for the service; and

(C) any lawful sanction that may be imposed upon a provider or such an organization for excess charges under this subchapter or subchapter XVIII of this chapter shall apply to the imposition of any charge imposed upon the individual in such case.

This paragraph shall not be construed as preventing payment of any medicare cost-sharing

by a medicare supplemental policy or an employer retiree health plan on behalf of an individual.

(*o*) Certain benefits disregarded for purposes of determining post-eligibility contributions

Notwithstanding any provision of subsection (a) of this section to the contrary, a State plan under this subchapter shall provide that any supplemental security income benefits paid by reason of subparagraph (E) or (G) of section 1382(e)(1) of this title to an individual who—

(1) is eligible for medical assistance under the plan, and

(2) is in a hospital, skilled nursing facility, or intermediate care facility at the time such benefits are paid,

will be disregarded for purposes of determining the amount of any post-eligibility contribution by the individual to the cost of the care and services provided by the hospital, skilled nursing facility, or intermediate care facility.

(p) Exclusion power of State; exclusion as prerequisite for medical assistance payments; "exclude" defined

(1) In addition to any other authority, a State may exclude any individual or entity for purposes of participating under the State plan under this subchapter for any reason for which the Secretary could exclude the individual or entity from participation in a program under subchapter XVIII of this chapter under section 1320a–7, 1320a–7a, or 1395cc(b)(2) of this title.

(2) In order for a State to receive payments for medical assistance under section 1396b(a) of this title, with respect to payments the State makes to a medicaid managed care organization (as defined in section 1396b(m) of this title) or to an entity furnishing services under a waiver approved under section 1396n(b)(1) of this title, the State must provide that it will exclude from participation, as such an organization or entity, any organization or entity that—

(A) could be excluded under section 1320a–7(b)(8) of this title (relating to owners and managing employees who have been convicted of certain crimes or received other sanctions),

(B) has, directly or indirectly, a substantial contractual relationship (as defined by the Secretary) with an individual or entity that is described in section 1320a–7(b)(8)(B) of this title, or

(C) employs or contracts with any individual or entity that is excluded from participation under this subchapter under section 1320a–7 or 1320a–7a of this title for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services.

(3) As used in this subsection, the term ''exclude'' includes the refusal to enter into or renew a participation agreement or the termination of such an agreement.

(q) Minimum monthly personal needs allowance deduction; "institutionalized individual or couple" defined

(1)(A) In order to meet the requirement of subsection (a)(50) of this section, the State plan must provide that, in the case of an institutionalized individual or couple described in subparagraph (B), in determining the amount of the individual's or couple's income to be applied monthly to payment for the cost of care in an institution, there shall be deducted from the monthly income (in addition to other allowances otherwise provided under the State plan) a monthly personal needs allowance—

(i) which is reasonable in amount for clothing and other personal needs of the individual (or couple) while in an institution, and

(ii) which is not less (and may be greater) than the minimum monthly personal needs allowance described in paragraph (2).

(B) In this subsection, the term ''institutionalized individual or couple'' means an individual or married couple—

(i) who is an inpatient (or who are inpatients) in a medical institution or nursing facility for which payments are made under this subchapter throughout a month, and

(ii) who is or are determined to be eligible for medical assistance under the State plan.

(2) The minimum monthly personal needs allowance described in this paragraph[12] is $30 for an institutionalized individual and $60 for an institutionalized couple (if both are aged, blind, or disabled, and their incomes are considered available to each other in determining eligibility).

(r) Disregarding payments for certain medical expenses by institutionalized individuals

(1)(A) For purposes of sections 1396a(a)(17) and 1396r–5(d)(1)(D) of this title and for purposes of a waiver under section 1396n of this title, with respect to the post-eligibility treatment of income of individuals who are institutionalized or receiving home or community-based services under such a waiver, the treatment described in subparagraph (B) shall apply, there shall be disregarded reparation payments made by the Federal Republic of Germany, and there shall be taken into account amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) medicare and other health insurance premiums, deductibles, or coinsurance, and

(ii) necessary medical or remedial care recognized under State law but not covered under the State plan under this subchapter, subject to reasonable limits the State may establish on the amount of these expenses.

(B)(i) In the case of a veteran who does not have a spouse or a child, if the veteran—

(I) receives, after the veteran has been determined to be eligible for medical assistance under the State plan under this subchapter, a veteran's pension in excess of $90 per month, and

(II) resides in a State veterans home with respect to which the Secretary of Veterans Affairs makes per diem payments for nursing home care pursuant to section 1741(a) of title 38,

any such pension payment, including any payment made due to the need for aid and attend-

[12] So in original. Probably should be ''this subsection''.

ance, or for unreimbursed medical expenses, that is in excess of $90 per month shall be counted as income only for the purpose of applying such excess payment to the State veterans home's cost of providing nursing home care to the veteran.

(ii) The provisions of clause (i) shall apply with respect to a surviving spouse of a veteran who does not have a child in the same manner as they apply to a veteran described in such clause.

(2)(A) The methodology to be employed in determining income and resource eligibility for individuals under subsection (a)(10)(A)(i)(III), (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), (a)(10)(A)(ii), (a)(10)(C)(i)(III), or (f) of this section or under section 1396d(p) of this title may be less restrictive, and shall be no more restrictive, than the methodology—

(i) in the case of groups consisting of aged, blind, or disabled individuals, under the supplemental security income program under subchapter XVI of this chapter, or

(ii) in the case of other groups, under the State plan most closely categorically related.

(B) For purposes of this subsection and subsection (a)(10) of this section, methodology is considered to be ''no more restrictive'' if, using the methodology, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance.

(s) Adjustment in payment for hospital services furnished to low-income children under age of 6 years

In order to meet the requirements of subsection (a)(55)[13] of this section, the State plan must provide that payments to hospitals under the plan for inpatient hospital services furnished to infants who have not attained the age of 1 year, and to children who have not attained the age of 6 years and who receive such services in a disproportionate share hospital described in section 1396r–4(b)(1) of this title, shall—

(1) if made on a prospective basis (whether per diem, per case, or otherwise) provide for an outlier adjustment in payment amounts for medically necessary inpatient hospital services involving exceptionally high costs or exceptionally long lengths of stay,

(2) not be limited by the imposition of day limits with respect to the delivery of such services to such individuals, and

(3) not be limited by the imposition of dollar limits (other than such limits resulting from prospective payments as adjusted pursuant to paragraph (1)) with respect to the delivery of such services to any such individual who has not attained their first birthday (or in the case of such an individual who is an inpatient on his first birthday until such individual is discharged).

(t) Limitation on payments to States for expenditures attributable to taxes

Nothing in this subchapter (including sections 1396b(a) and 1396d(a) of this title) shall be construed as authorizing the Secretary to deny or limit payments to a State for expenditures, for medical assistance for items or services, attributable to taxes of general applicability imposed with respect to the provision of such items or services.

(u) Qualified COBRA continuation beneficiaries

(1) Individuals described in this paragraph are individuals—

(A) who are entitled to elect COBRA continuation coverage (as defined in paragraph (3)),

(B) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program) does not exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved,

(C) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program, and

(D) with respect to whose enrollment for COBRA continuation coverage the State has determined that the savings in expenditures under this subchapter resulting from such enrollment is likely to exceed the amount of payments for COBRA premiums made.

(2) For purposes of subsection (a)(10)(F) of this section and this subsection, the term ''COBRA premiums'' means the applicable premium imposed with respect to COBRA continuation coverage.

(3) In this subsection, the term ''COBRA continuation coverage'' means coverage under a group health plan provided by an employer with 75 or more employees provided pursuant to title XXII of the Public Health Service Act [42 U.S.C. 300bb–1 et seq.], section 4980B of the Internal Revenue Code of 1986, or title VI[14] of the Employee Retirement Income Security Act of 1974.

(4) Notwithstanding subsection (a)(17) of this section, for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(XI) of this section—

(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(10)(B) or (a)(17) of this section, require or permit such treatment for other individuals.

(v) State agency disability and blindness determinations for medical assistance eligibility

A State plan may provide for the making of determinations of disability or blindness for the purpose of determining eligibility for medical assistance under the State plan by the single

[13] So in original. Probably should be subsection ''(a)(56)''.

[14] See References in Text note below.

State agency or its designee, and make medical assistance available to individuals whom it finds to be blind or disabled and who are determined otherwise eligible for such assistance during the period of time prior to which a final determination of disability or blindness is made by the Social Security Administration with respect to such an individual. In making such determinations, the State must apply the definitions of disability and blindness found in section 1382c(a) of this title.

(w) Maintenance of written policies and procedures respecting advance directives

(1) For purposes of subsection (a)(57) of this section and sections 1396b(m)(1)(A) and 1396r(c)(2)(E) of this title, the requirement of this subsection is that a provider or organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

(A) to provide written information to each such individual concerning—

(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

(ii) the provider's or organization's written policies respecting the implementation of such rights;

(B) to document in the individual's medical record whether or not the individual has executed an advance directive;

(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives; and

(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—

(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

(B) in the case of a nursing facility, at the time of the individual's admission as a resident,

(C) in the case of a provider of home health care or personal care services, in advance of the individual coming under the care of the provider,

(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

(E) in the case of a medicaid managed care organization, at the time of enrollment of the individual with the organization.

(3) Nothing in this section shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which as a matter of conscience cannot implement an advance directive.

(4) In this subsection, the term ''advance directive'' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.

(5) For construction relating to this subsection, see section 14406 of this title (relating to clarification respecting assisted suicide, euthanasia, and mercy killing).

(x) Physician identifier system; establishment

The Secretary shall establish a system, for implementation by not later than July 1, 1991, which provides for a unique identifier for each physician who furnishes services for which payment may be made under a State plan approved under this subchapter.

(y) Intermediate sanctions for psychiatric hospitals

(1) In addition to any other authority under State law, where a State determines that a psychiatric hospital which is certified for participation under its plan no longer meets the requirements for a psychiatric hospital (referred to in section 1396d(h) of this title) and further finds that the hospital's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the State shall terminate the hospital's participation under the State plan; or

(B) do not immediately jeopardize the health and safety of its patients, the State may terminate the hospital's participation under the State plan, or provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the effective date of the finding, or both.

(2) Except as provided in paragraph (3), if a psychiatric hospital described in paragraph (1)(B) has not complied with the requirements for a psychiatric hospital under this subchapter—

(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the State shall provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the end of such 3-month period, or

(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no Federal financial participation shall be provided under section 1396b(a) of this title with respect to further services provided in the hospital until the State finds that the hospital is in compliance with the requirements of this subchapter.

(3) The Secretary may continue payments, over a period of not longer than 6 months from the date the hospital is found to be out of compliance with such requirements, if—

(A) the State finds that it is more appropriate to take alternative action to assure

compliance of the hospital with the requirements than to terminate the certification of the hospital,

(B) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(C) the State agrees to repay to the Federal Government payments received under this paragraph if the corrective action is not taken in accordance with the approved plan and timetable.

(z) Optional coverage of TB-related services

(1) Individuals described in this paragraph are individuals not described in subsection (a)(10)(A)(i) of this section—

(A) who are infected with tuberculosis;

(B) whose income (as determined under the State plan under this subchapter with respect to disabled individuals) does not exceed the maximum amount of income a disabled individual described in subsection (a)(10)(A)(i) of this section may have and obtain medical assistance under the plan; and

(C) whose resources (as determined under the State plan under this subchapter with respect to disabled individuals) do not exceed the maximum amount of resources a disabled individual described in subsection (a)(10)(A)(i) of this section may have and obtain medical assistance under the plan.

(2) For purposes of subsection (a)(10) of this section, the term ''TB-related services'' means each of the following services relating to treatment of infection with tuberculosis:

(A) Prescribed drugs.

(B) Physicians' services and services described in section 1396d(a)(2) of this title.

(C) Laboratory and X-ray services (including services to confirm the presence of infection).

(D) Clinic services and Federally-qualified health center services.

(E) Case management services (as defined in section 1396n(g)(2) of this title).

(F) Services (other than room and board) designed to encourage completion of regimens of prescribed drugs by outpatients, including services to observe directly the intake of prescribed drugs.

(aa) Certain breast or cervical cancer patients

Individuals described in this subsection are individuals who—

(1) are not described in subsection (a)(10)(A)(i) of this section;

(2) have not attained age 65;

(3) have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under title XV of the Public Health Service Act (42 U.S.C. 300k et seq.) in accordance with the requirements of section 1504 of that Act (42 U.S.C. 300n) and need treatment for breast or cervical cancer; and

(4) are not otherwise covered under creditable coverage, as defined in section 2701(c) of the Public Health Service Act (42 U.S.C. 300gg(c)), but applied without regard to paragraph (1)(F) of such section.

(bb) Payment for services provided by Federally-qualified health centers and rural health clinics

(1) In general

Beginning with fiscal year 2001 with respect to services furnished on or after January 1, 2001, and each succeeding fiscal year, the State plan shall provide for payment for services described in section 1396d(a)(2)(C) of this title furnished by a Federally-qualified health center and services described in section 1396d(a)(2)(B) of this title furnished by a rural health clinic in accordance with the provisions of this subsection.

(2) Fiscal year 2001

Subject to paragraph (4), for services furnished on and after January 1, 2001, during fiscal year 2001, the State plan shall provide for payment for such services in an amount (calculated on a per visit basis) that is equal to 100 percent of the average of the costs of the center or clinic of furnishing such services during fiscal years 1999 and 2000 which are reasonable and related to the cost of furnishing such services, or based on such other tests of reasonableness as the Secretary prescribes in regulations under section 1395*l*(a)(3) of this title, or, in the case of services to which such regulations do not apply, the same methodology used under section 1395*l*(a)(3) of this title, adjusted to take into account any increase or decrease in the scope of such services furnished by the center or clinic during fiscal year 2001.

(3) Fiscal year 2002 and succeeding fiscal years

Subject to paragraph (4), for services furnished during fiscal year 2002 or a succeeding fiscal year, the State plan shall provide for payment for such services in an amount (calculated on a per visit basis) that is equal to the amount calculated for such services under this subsection for the preceding fiscal year—

(A) increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) applicable to primary care services (as defined in section 1395u(i)(4) of this title) for that fiscal year; and

(B) adjusted to take into account any increase or decrease in the scope of such services furnished by the center or clinic during that fiscal year.

(4) Establishment of initial year payment amount for new centers or clinics

In any case in which an entity first qualifies as a Federally-qualified health center or rural health clinic after fiscal year 2000, the State plan shall provide for payment for services described in section 1396d(a)(2)(C) of this title furnished by the center or services described in section 1396d(a)(2)(B) of this title furnished by the clinic in the first fiscal year in which the center or clinic so qualifies in an amount (calculated on a per visit basis) that is equal to 100 percent of the costs of furnishing such services during such fiscal year based on the rates established under this subsection for the fiscal year for other such centers or clinics located in the same or adjacent area with a similar case load or, in the absence of such a

center or clinic, in accordance with the regulations and methodology referred to in paragraph (2) or based on such other tests of reasonableness as the Secretary may specify. For each fiscal year following the fiscal year in which the entity first qualifies as a Federally-qualified health center or rural health clinic, the State plan shall provide for the payment amount to be calculated in accordance with paragraph (3).

(5) Administration in the case of managed care

(A) In general

In the case of services furnished by a Federally-qualified health center or rural health clinic pursuant to a contract between the center or clinic and a managed care entity (as defined in section 1396u–2(a)(1)(B) of this title), the State plan shall provide for payment to the center or clinic by the State of a supplemental payment equal to the amount (if any) by which the amount determined under paragraphs (2), (3), and (4) of this subsection exceeds the amount of the payments provided under the contract.

(B) Payment schedule

The supplemental payment required under subparagraph (A) shall be made pursuant to a payment schedule agreed to by the State and the Federally-qualified health center or rural health clinic, but in no case less frequently than every 4 months.

(6) Alternative payment methodologies

Notwithstanding any other provision of this section, the State plan may provide for payment in any fiscal year to a Federally-qualified health center for services described in section 1396d(a)(2)(C) of this title or to a rural health clinic for services described in section 1396d(a)(2)(B) of this title in an amount which is determined under an alternative payment methodology that—

(A) is agreed to by the State and the center or clinic; and

(B) results in payment to the center or clinic of an amount which is at least equal to the amount otherwise required to be paid to the center or clinic under this section.

(Aug. 14, 1935, ch. 531, title XIX, §1902, as added Pub. L. 89–97, title I, §121(a), July 30, 1965, 79 Stat. 344; amended Pub. L. 90–248, title II, §§210(a)(6), 223(a), 224(a), (c)(1), 227(a), 228(a), 229(a), 231, 234(a), 235(a), 236(a), 237, 238, 241(f)(1)–(4), title III, §302(b), Jan. 2, 1968, 81 Stat. 896, 901–906, 908, 911, 917, 929; Pub. L. 91–56, §2(c), (d), Aug. 9, 1969, 83 Stat. 99; Pub. L. 92–223, §4(b), Dec. 28, 1971, 85 Stat. 809; Pub. L. 92–603, title II, §§208(a), 209(a), (b)(1), 221(c)(5), 231, 232(a), 236(b), 237(a)(2), 239(a), (b), 240, 246(a), 249(a), 255(a), 268(a), 274(a), 278(a)(18)–(20), (b)(14), 298, 299A, 299D(b), Oct. 30, 1972, 86 Stat. 1381, 1389, 1410, 1415–1418, 1424, 1426, 1446, 1450, 1452–1454, 1460, 1462; Pub. L. 93–233, §§13(a)(2)–(10), 18(*o*)–(q), (x)(1)–(4), Dec. 31, 1973, 87 Stat. 960–962, 971, 972; Pub. L. 93–368, §9(a), Aug. 7, 1974, 88 Stat. 422; Pub. L. 94–48, §§1, 2, July 1, 1975, 89 Stat. 247; Pub. L. 94–182, title I, §111(a), Dec. 31, 1975, 89 Stat. 1054; Pub. L. 94–552, §1, Oct. 18, 1976, 90 Stat. 2540; Pub. L. 95–142, §§2(a)(3), (b)(1), 3(c)(1), 7(b), (c), 9, 19(b)(2), 20(b), Oct. 25, 1977, 91 Stat. 1176, 1178, 1193, 1195, 1204, 1207; Pub. L. 95–210, §2(c), Dec. 13, 1977, 91 Stat. 1488; Pub. L. 95–559, §14(a)(1), Nov. 1, 1978, 92 Stat. 2140; Pub. L. 96–272, title III, §308(c), June 17, 1980, 94 Stat. 531; Pub. L. 96–499, title IX, §§902(b), 903(b), 905(a), 912(b), 913(c), (d), 914(b)(1), 916(b)(1), 918(b)(1), 962(a), 965(b), Dec. 5, 1980, 94 Stat. 2613, 2615, 2618–2621, 2624, 2626, 2650, 2652; Pub. L. 96–611, §5(b), Dec. 28, 1980, 94 Stat. 3568; Pub. L. 97–35, title XXI, §§2105(c), 2113(m), 2171(a), (b), 2172(a), 2173(a), (b)(1), 2174(a), 2175(a), (d)(1), 2178(b), 2181(a)(2), 2182, 2193(c)(9), Aug. 13, 1981, 95 Stat. 792, 795, 807–809, 811, 814–816, 828; Pub. L. 97–248, title I, §§131(a), (c), formerly (b), 132(a), (c), 134(a), 136(d), 137(a)(3), (b)(7)–(10), (e), 146(a), Sept. 3, 1982, 96 Stat. 367, 369, 370, 373, 375–378, 381, 394; Pub. L. 97–448, title III, §309(a)(8), Jan. 12, 1983, 96 Stat. 2408; Pub. L. 98–369, div. B, title III, §§2303(g)(1), 2314(b), 2335(e), 2361(a), 2362(a), 2363(a)(1), 2367(a), 2368(a), (b), 2373(b)(1)–(10), title VI, §2651(c), July 18, 1984, 98 Stat. 1066, 1079, 1091, 1104, 1105, 1108, 1109, 1111, 1149; Pub. L. 98–378, §20(c), Aug. 16, 1984, 98 Stat. 1322; Pub. L. 98–617, §3(a)(7), (b)(10), Nov. 8, 1984, 98 Stat. 3295, 3296; Pub. L. 99–272, title IX, §§9501(b), (c), 9503(a), 9505(b), (c)(1), (d), 9506(a), 9509(a), 9510(a), 9517(b), 9529(a)(1), (b)(1), title XII, §12305(b)(3), Apr. 7, 1986, 100 Stat. 201, 202, 205, 208–212, 216, 220, 293; Pub. L. 99–509, title IX, §§9320(h)(3), 9401(a)–(e)(1), 9402(a), (b), 9403(a), (c), (e)–(g)(1), (4)(A), 9404(a), 9405, 9406(b), 9407(a), 9408(a), (b), (c)(2), (3), 9431(a), (b)(1), 9433(a), 9435(b)(1), Oct. 21, 1986, 100 Stat. 2016, 2050–2058, 2060, 2061, 2066, 2068, 2069; Pub. L. 99–514, title XVIII, §1895(c)(1), (3)(B), (C), (7), Oct. 22, 1986, 100 Stat. 2935, 2936; Pub. L. 99–570, title XI, §11005(b), Oct. 27, 1986, 100 Stat. 3207–169; Pub. L. 99–643, §§3(b), 7(b), Nov. 10, 1986, 100 Stat. 3575, 3579; Pub. L. 100–93, §§5(a), 7, 8(f), Aug. 18, 1987, 101 Stat. 689, 691, 694; Pub. L. 100–203, title IV, §§4072(d), 4101(a)(1), (2), (b)(1)–(2)(B), (c)(2), (e)(1)–(5), 4102(b)(1), 4104, 4113(a)(2), (b)(1), (2), (c)(1), (2), (d)(2), 4116, 4118(c)(1), (h)(1), (2), (m)(1)(B), (p)(1)–(4), (6)–(8), 4211(b)(1), (h)(1)–(5), 4212(d)(2), (3), (e)(1), 4213(b)(1), 4218(a), title IX, §§9115(b), 9119(d)(1), Dec. 22, 1987, 101 Stat. 1330–117, 1330–140 to 1330–143, 1330–146, 1330–147, 1330–151, 1330–152, 1330–154 to 1330–157, 1330–159, 1330–203, 1330–205, 1330–213, 1330–219, 1330–220, 1330–305, as amended Pub. L. 100–360, title IV, §411(k)(5)(A), (7)(B)–(D), (10)(G)(ii), (iv), (*l*)(3)(H), (J), (8)(C), (n)(2), (4), formerly (3), July 1, 1988, 102 Stat. 791, 794, 796, 803, 805, 807, as amended Pub. L. 100–485, title VI, §608(d)(14)(I), (15)(A), (27)(F)–(H), (28), Oct. 13, 1988, 102 Stat. 2416, 2423; Pub. L. 100–360, title II, §204(d)(3), title III, §§301(a)(1), (e)(2), 302(a), (b)(1), (c)(1), (2), (d)–(e)(3), 303(d), (e), title IV, §411(k)(5)(B), (17)(B), (*l*)(3)(E), (6)(C), (D), July 1, 1988, 102 Stat. 729, 748–753, 762, 763, 792, 800, 803, 804; Pub. L. 100–485, title II, §202(c)(4), title III, §303(a)(2), (b)(1), (d), title IV, §401(d)(1), title VI, §608(d)(15)(B), (16)(C), Oct. 13, 1988, 102 Stat. 2378, 2391, 2392, 2396, 2416, 2418; Pub. L. 100–647, title VIII, §8434(b)(1), (2), Nov. 10, 1988, 102 Stat. 3805; Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§6115(c), 6401(a), 6402(a), (c)(2), 6403(b), (d)(1), 6404(c), 6405(b), 6406(a), 6408(c)(1), (d)(1), (4)(C), 6411(a)(1), (d)(3)(B), (e)(2), Dec. 19, 1989, 103 Stat. 2219, 2258, 2260, 2261, 2263–2265, 2268–2271; Pub. L. 101–508,

title IV, §§ 4401(a)(2), 4402(a)(1), (c), (d)(1), 4501(b), (e)(2), 4601(a)(1), 4602(a), 4603(a), 4604(a), (b), 4701(b)(1), 4704(a), (e)(1), 4708(a), 4711(c)(1), (d), 4713(a), 4715(a), 4723(b), 4724(a), 4732(b)(1), 4751(a), 4752(a)(1)(A), (c)(1), 4754(a), 4755(a)(2), (c)(1), 4801(e)(1)(A), (11)(A), Nov. 5, 1990, 104 Stat. 1388–143, 1388–161, 1388–163 to 1388–173, 1388–186, 1388–187, 1388–190, 1388–192, 1388–194, 1388–195, 1388–204, 1388–206, 1388–208 to 1388–210, 1388–215, 1388–217; Pub. L. 102–234, §§ 2(b)(1), 3(a), Dec. 12, 1991, 105 Stat. 1799; Pub. L. 103–66, title XIII, § 13581(b)(2), 13601(b), 13602(c), 13603(a)–(c), 13611(d)(1), 13622(a)(1), (b), (c), 13623(a), 13625(a), 13631(a), (e)(1), (f)(1), Aug. 10, 1993, 107 Stat. 611, 613, 619, 620, 626, 632, 633, 636, 643, 644; Pub. L. 103–296, title I, § 108(d)(1), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 103–448, title II, § 204(w)(2)(E), Nov. 2, 1994, 108 Stat. 4746; Pub. L. 104–193, title I, §§ 108(k), 114(b)–(d)(1), title IX, § 913, Aug. 22, 1996, 110 Stat. 2169, 2180, 2354; Pub. L. 104–226, § 1(b)(2), Oct. 2, 1996, 110 Stat. 3033; Pub. L. 104–248, § 1(a)(1), Oct. 9, 1996, 110 Stat. 3148; Pub. L. 105–12, § 9(b)(2), Apr. 30, 1997, 111 Stat. 26; Pub. L. 105–33, title IV, §§ 4106(c), 4454(b)(1), 4701(b)(2)(A)(i)–(iv), (d)(1), 4702(b)(2), 4709, 4711(a), 4712(a), (b)(1), (c)(1), 4714(a)(1), 4715(a), 4724(c)(1), (d), (f), (g)(1), 4731(a), (b), 4732(a), 4733, 4741(a), 4751(a), (b), 4752(a), 4753(b), 4911(b), 4912(b)(1), 4913(a), Aug. 5, 1997, 111 Stat. 368, 431, 493, 495, 506–510, 516, 517, 519, 520, 522–525, 571, 573; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, §§ 603(a)(1), 604(a)(1), (2)(A), (b)(1), 608(a)–(d), (y)(2), (aa)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394 to 1501A–398; Pub. L. 106–169, title I, § 121(a)(1), (c)(4), title II, §§ 205(c), 206(b), Dec. 14, 1999, 113 Stat. 1829, 1830, 1834, 1837; Pub. L. 106–170, title II, § 201(a)(1), (2)(A), Dec. 17, 1999, 113 Stat. 1891, 1892; Pub. L. 106–354, § 2(a)(1)–(3), (b)(2)(A), Oct. 24, 2000, 114 Stat. 1381–1383; Pub. L. 106–554, § 1(a)(6) [title VII, §§ 702(a)–(c)(1), 707(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–572 to 2763A–574, 2763A–577; Pub. L. 107–121, § 2(a), (b)(1), (2), Jan. 15, 2002, 115 Stat. 2384; Pub. L. 108–40, § 7(b), June 30, 2003, 117 Stat. 837; Pub. L. 108–89, title IV, § 401(a), Oct. 1, 2003, 117 Stat. 1134; Pub. L. 108–173, title I, § 103(a)(1), (f)(1), title II, § 236(b)(1), Dec. 8, 2003, 117 Stat. 2154, 2160, 2211; Pub. L. 108–265, title I, § 105(b), June 30, 2004, 118 Stat. 744; Pub. L. 108–448, § 1(a), Dec. 8, 2004, 118 Stat. 3467; Pub. L. 109–91, title I, § 101(a), Oct. 20, 2005, 119 Stat. 2091.)

REPEAL OF SUBSECTION (a)(29)

Pub. L. 101–508, title IV, § 4801(e)(11), Nov. 5, 1990, 104 Stat. 1388–217, provided that, effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1396r(f)(4) of this title, subsection (a)(29) of this section is repealed.

REFERENCES IN TEXT

Parts A, D, and E of subchapter IV of this chapter, referred to in subsecs. (a), (c), (e)(1), (10), and (*l*)(3), are classified to sections 601 et seq., 651 et seq., and 670 et seq., respectively, of this title.

The Child Nutrition Act of 1966, referred to in subsec. (a)(7)(B), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Richard B. Russell National School Lunch Act, referred to in subsec. (a)(7)(B), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (a)(10), (13)(B), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 602 of this title, referred to in subsecs. (a)(10)(A)(i)(I) and (e)(10), was repealed and a new section 602 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains subsec. (a)(37) or (a)(43).

Section 606 of this title, referred to in subsec. (a)(10)(A)(i)(I), was repealed and a new section 606 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (h).

Section 682 of this title, referred to in subsec. (a)(10)(A)(i)(I), was repealed by Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167.

The date of the enactment of section 211(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(10)(A)(i)(II), is the date of enactment of Pub. L. 104–193, which was approved Aug. 22, 1996. Section 211(a) of the Act amended section 1382c of this title.

Section 303(a)(4)(A) of this title, referred to in subsec. (a)(20)(C), was amended generally by Pub. L. 97–35, title XXIII, § 2353(a)(1)(A), Aug. 13, 1981, 95 Stat. 871, and, as so amended, no longer contained cls. (i) and (ii). Section 303(a)(4) was amended by Pub. L. 103–66, title XIII, § 13741(b), Aug. 10, 1993, 107 Stat. 663, and, as so amended, no longer contains subparagraphs.

Section 1383(a)(4)(A)(i) and (ii) of this title, referred to in subsec. (a)(20)(C), is a reference to section 1383(a)(4)(A)(i) and (ii) existing prior to the general revision of subchapter XVI of this chapter by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands. Subsec. (a)(4) of the prior section was amended generally by Pub. L. 97–35, title XXIII, § 2353(m)(2)(B), Aug. 13, 1981, 95 Stat. 973, and, as so amended, no longer contained clauses in subpar. (A). Subsec. (a)(4) of the prior section was also amended by Pub. L. 103–66, title XIII, § 13741(b), Aug. 10, 1993, 107 Stat. 663, and, as so amended, no longer contains subparagraphs.

Part B of subchapter XI of this chapter, referred to in subsec. (d), is classified to section 1320c et seq. of this title.

Public Law 92–336, referred to in provisions following subsec. (a)(52), is Pub. L. 92–336, July 1, 1972, 86 Stat. 406, which amended sections 401, 403, 409, 411, 415, 427, 428, and 430 of this title and sections 165, 1401, 1402, 3101, 3111, 3121, 3122, 3125, 6413, and 6654 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under sections 403, 409, 415, and 428 of this title and sections 165 and 1401 of Title 26.

The Public Health Service Act, referred to in subsecs. (u)(3) and (aa)(3), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Titles XV and XXII of the Act are classified generally to subchapters XIII (§ 300k et seq.) and XX (§ 300bb–1 et seq.), respectively, of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (u)(3), is classified generally to Title 26.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (u)(3), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title VI of the Act probably means part 6 of subtitle B of title I of the Act which is classified generally to part 6 (§ 1161 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor, because the Act has no title VI. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

2005—Subsec. (a)(10)(E)(iv). Pub. L. 109–91 substituted ''September 2007'' for ''September 2005''.

2004—Subsec. (a)(7). Pub. L. 108–265 designated part of existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10)(E)(iv). Pub. L. 108–448 substituted ''2005'' for ''2004''.

2003—Subsec. (a)(10)(E)(iv). Pub. L. 108–173, §103(f)(1), substituted ''ending with September 2004'' for ''ending with March 2004''.

Pub. L. 108–89 substituted ''March 2004'' for ''December 2002'', redesignated introductory provisions and subcl. (I) as cl. (iv), substituted semicolon for '', and'' after ''State plan'', and struck out subcl. (II) which read as follows: ''for the portion of medicare cost-sharing described in section 1396d(p)(3)(A)(ii) of this title that is attributable to the operation of the amendments made by (and subsection (e)(3) of) section 4611 of the Balanced Budget Act of 1997 for individuals who would be described in subclause (I) if '135 percent' and '175 percent' were substituted for '120 percent' and '135 percent' respectively;''.

Subsec. (a)(66). Pub. L. 108–173, §103(a)(1), added par. (66).

Subsec. (a)(67). Pub. L. 108–173, §236(b)(1), added par. (67).

Subsec. (e)(1)(B). Pub. L. 108–40 substituted ''2003'' for ''2002''.

2002—Subsec. (a)(15). Pub. L. 107–121, §2(b)(2), substituted ''subsection (bb)'' for ''subsection (aa)''.

Subsec. (aa). Pub. L. 107–121, §2(b)(1), redesignated subsec. (aa) relating to payment for services provided by federally-qualified health centers and rural health clinics as subsec. (bb).

Subsec. (aa)(4). Pub. L. 107–121, §2(a), inserted '', but applied without regard to paragraph (1)(F) of such section'' before period at end.

Subsec. (bb). Pub. L. 107–121, §2(b)(1), redesignated subsec. (aa) relating to payment for services provided by federally-qualified health centers and rural health clinics as subsec. (bb).

2000—Subsec. (a)(10). Pub. L. 106–354, §2(a)(3), in concluding provisions, substituted ''(XIII)'' for ''and (XIII)'' and inserted before semicolon at end '', and (XIV) the medical assistance made available to an individual described in subsection (aa) of this section who is eligible for medical assistance only because of subparagraph (A)(10)(ii)(XVIII) shall be limited to medical assistance provided during the period in which such an individual requires treatment for breast or cervical cancer''.

Subsec. (a)(10)(A)(ii)(XVIII). Pub. L. 106–354, §2(a)(1), added subcl. (XVIII).

Subsec. (a)(13)(A)(iv). Pub. L. 106–554, §1(a)(6) [title VII, §702(a)(1)(A)], inserted ''and'' at end.

Subsec. (a)(13)(B). Pub. L. 106–554, §1(a)(6) [title VII, §702(a)(1)(B)], struck out ''and'' at end.

Subsec. (a)(13)(C). Pub. L. 106–554, §1(a)(6) [title VII, §702(c)(1)], repealed Pub. L. 105–33, §4712(c)(1). See 1997 Amendment note below.

Pub. L. 106–554, §1(a)(6) [title VII, §702(a)(1)(C)], struck out subpar. (C) which read as follows: ''(C)(i) for payment for services described in clause (B) or (C) of section 1396d(a)(2) of this title under the plan of 100 percent (or 95 percent for services furnished during fiscal year 2000, fiscal year 2001, or fiscal year 2002, 90 percent for services furnished during fiscal year 2003, or 85 percent for services furnished during fiscal year 2004) of costs which are reasonable and related to the cost of furnishing such services or based on such other tests of reasonableness, as the Secretary prescribes in regulations under section 1395*l*(a)(3) of this title, or, in the case of services to which those regulations do not apply, on the same methodology used under section 1395*l*(a)(3) of this title and (ii) in carrying out clause (i) in the case of services furnished by a Federally-qualified health center or a rural health clinic pursuant to a contract between the center and an organization under section 1396b(m) of this title, for payment to the center or clinic at least quarterly by the State of a supplemental payment equal to the amount (if any) by which the amount determined under clause (i) exceeds the amount of the payments provided under such contract;''.

Subsec. (a)(15). Pub. L. 106–554, §1(a)(6) [title VII, §702(a)(2)], added par. (15).

Subsec. (a)(47). Pub. L. 106–354, §2(b)(2)(A), inserted before semicolon at end ''and provide for making medical assistance available to individuals described in subsection (a) of section 1396r–1b of this title during a presumptive eligibility period in accordance with such section''.

Subsec. (e)(1)(B). Pub. L. 106–554, §1(a)(6) [title VII, §707(b)], substituted ''2002'' for ''2001''.

Subsec. (aa). Pub. L. 106–554, §1(a)(6) [title VII, §702(b)], added subsec. (aa) relating to payment for services provided by Federally-qualified health centers and rural health clinics.

Pub. L. 106–354, §2(a)(2), added subsec. (aa) relating to certain breast or cervical cancer patients.

1999—Subsec. (a)(10)(A)(ii)(XIV). Pub. L. 106–113, §1000(a)(6) [title VI, §608(aa)(1)], substituted ''1396d(u)(2)(B) of this title'' for ''1396d(u)(2)(C) of this title''.

Subsec. (a)(10)(A)(ii)(XV). Pub. L. 106–169, §121(c)(4)(A), redesignated subcl. (XV), related to individuals who are independent foster care adolescents, as (XVII).

Pub. L. 106–169, §121(a)(1)(C), added subcl. (XV), related to individuals who are independent foster care adolescents.

Pub. L. 106–169, §121(a)(1)(A), which directed striking out of ''or'' at end of subcl. (XIII), was executed by amending subcl. (XV), related to individuals who would be considered to be receiving supplemental security income, etc. See Construction of 1999 Amendment note below.

Pub. L. 106–170, §201(a)(1), added subcl. (XV), related to individuals who would be considered to be receiving supplemental security income, etc.

Subsec. (a)(10)(A)(ii)(XVI). Pub. L. 106–169, §121(a)(1)(B), which directed insertion of ''or'' at end of subcl. (XIV), was executed to subcl. (XVI). See Construction of 1999 Amendment note below.

Pub. L. 106–170, §201(a)(2)(A), added subcl. (XVI).

Subsec. (a)(10)(A)(ii)(XVII). Pub. L. 106–169, §121(c)(4), redesignated subcl. (XV), related to individuals who are independent foster care adolescents, as (XVII) and substituted ''section 1396d(w)(1)'' for ''section 1396d(v)(1)''.

Subsec. (a)(10)(G). Pub. L. 106–169, §206(b), substituted ''subsections (c) and (e) of section 1382b'' for ''section 1382b(e)''.

Pub. L. 106–169, §205(c), added subpar. (G).

Subsec. (a)(13)(C)(i). Pub. L. 106–113, §1000(a)(6) [title VI, §603(a)(1)], substituted ''fiscal year 2001, or fiscal year 2002, 90 percent for services furnished during fiscal year 2003, or 85 percent for services furnished during fiscal year 2004'' for ''90 percent for services furnished during fiscal year 2001, 85 percent for services furnished during fiscal year 2002, or 70 percent for services furnished during fiscal year 2003''.

Subsec. (a)(30)(A). Pub. L. 106–113, §1000(a)(6) [title VI, §604(b)(1)(A)], inserted ''and'' at end.

Subsec. (a)(30)(B)(ii). Pub. L. 106–113, §1000(a)(6) [title VI, §604(b)(1)(B)], struck out ''and'' at end.

Subsec. (a)(30)(C). Pub. L. 106–113, §1000(a)(6) [title VI, §604(b)(1)(C)], struck out subpar. (C) which read as follows: ''use a utilization and quality control peer review organization (under part B of subchapter XI of this chapter), an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary, or a private accreditation body to conduct (on an annual basis) an independent, external review of the quality of services furnished under each contract under section 1396b(m) of this title, with the results of such review made available to the State and, upon request, to the Secretary, the Inspector General in the Department of Health and Human Services, and the Comptroller General;''.

Subsec. (a)(60). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(y)(2)], made technical amendment to reference in original act which appears in text as reference to section 1396g-1 of this title.

Subsec. (a)(64). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(a)], inserted ''and'' at end.

Subsec. (d). Pub. L. 106–113, § 1000(a)(6) [title VI, § 604(a)(2)(A)], struck out ''(including quality review functions described in subsection (a)(30)(C) of this section)'' after ''medical or utilization review functions''.

Pub. L. 106–113, § 1000(a)(6) [title VI, § 604(a)(1)], struck out ''for the performance of the quality review functions described in subsection (a)(30)(C) of this section,'' before ''or a utilization and quality control peer review organization''.

Subsec. (j). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(b)], substituted ''of'' for ''of of'' after ''numbered paragraph''.

Subsec. (*l*)(1)(C). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(c)(1)], substituted ''children'' for ''children children''.

Subsec. (*l*)(3). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(c)(2)], struck out first comma after ''(a)(10)(A)(i)(VII)'' in introductory provisions.

Subsec. (*l*)(4)(B). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(c)(3)], inserted comma after ''(a)(10)(A)(i)(IV)''.

Subsec. (v). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(d)], struck out par. (1) designation before ''A State plan may provide''.

1997—Subsec. (a). Pub. L. 105–33, § 4454(b)(1), in second sentence of flush concluding provisions, substituted ''to a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).'' for ''to a Christian Science sanatorium operated, or listed and certified, by The Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc..''

Subsec. (a)(4)(C), (D). Pub. L. 105–33, § 4724(c)(1), substituted ''(C)'' for ''and (C)'', ''local officer, employee, or independent contractor'' for ''local officer or employee'', and ''such an officer, employee, or contractor'' for ''such an officer or employee'' in two places and added subpar. (D).

Subsec. (a)(9)(C). Pub. L. 105–33, § 4106(c), substituted ''paragraphs (16) and (17)'' for ''paragraphs (15) and (16)''.

Subsec. (a)(10)(A)(i)(II). Pub. L. 105–33, § 4913(a), inserted ''(or were being paid as of the date of the enactment of section 211(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193)) and would continue to be paid but for the enactment of that section'' after ''subchapter XVI of this chapter''.

Subsec. (a)(10)(A)(ii)(XIII). Pub. L. 105–33, § 4733, added subcl. (XIII).

Subsec. (a)(10)(A)(ii)(XIV). Pub. L. 105–33, § 4911(b), added subcl. (XIV).

Subsec. (a)(10)(E)(iv). Pub. L. 105–33, § 4732(a), added cl. (iv).

Subsec. (a)(13)(A). Pub. L. 105–33, § 4711(a)(1), added subpar. (A) and struck out former subpar. (A) which related to payment of hospital services, nursing facility services, and services in intermediate care facilities for mentally retarded by use of rates which account for various specified costs.

Subsec. (a)(13)(B). Pub. L. 105–33, § 4711(a)(1)–(3), redesignated subpar. (D) as (B), inserted ''and'' at end, and struck out former subpar. (B) which read as follows: ''that the State shall provide assurances satisfactory to the Secretary that the payment methodology utilized by the State for payments to hospitals can reasonably be expected not to increase such payments, solely as a result of a change of ownership, in excess of the increase which would result from the application of section 1395x(v)(1)(O) of this title;''.

Subsec. (a)(13)(C). Pub. L. 105–33, § 4712(c)(1), which directed the repeal of subsec. (a)(13)(C), was repealed by Pub. L. 106–554, § 1(a)(6) [title VII, § 702(c)(1)]. See 2000 Amendment note above and Effective Date of 1997 Amendment note below.

Pub. L. 105–33, § 4712(b)(1), designated existing provisions as cl. (i) and added cl. (ii).

Pub. L. 105–33, § 4712(a), inserted ''(or 95 percent for services furnished during fiscal year 2000, 90 percent for services furnished during fiscal year 2001, 85 percent for services furnished during fiscal year 2002, or 70 percent for services furnished during fiscal year 2003)'' after ''100 percent''.

Pub. L. 105–33, § 4711(a)(1), (2), (4), redesignated subpar. (E) as (C), struck out ''and'' at end, and struck out former subpar. (C) which read as follows: ''that the State shall provide assurances satisfactory to the Secretary that the valuation of capital assets, for purposes of determining payment rates for nursing facilities and for intermediate care facilities for the mentally retarded, will not be increased (as measured from the date of acquisition by the seller to the date of the change of ownership), solely as a result of a change of ownership, by more than the lesser of—

''(i) one-half of the percentage increase (as measured over the same period of time, or, if necessary, as extrapolated retrospectively by the Secretary) in the Dodge Construction Systems Costs for Nursing Homes, applied in the aggregate with respect to those facilities which have undergone a change of ownership during the fiscal year, or

''(ii) one-half of the percentage increase (as measured over the same period of time) in the Consumer Price Index for All Urban Consumers (United States city average);''.

Subsec. (a)(13)(D), (E). Pub. L. 105–33, § 4711(a)(2), redesignated subpars. (D) and (E) as (B) and (C), respectively.

Subsec. (a)(13)(F). Pub. L. 105–33, § 4711(a)(5), struck out subpar. (F) which read as follows: ''for payment for home and community care (as defined in section 1396t(a) of this title and provided under such section) through rates which are reasonable and adequate to meet the costs of providing care, efficiently and economically, in conformity with applicable State and Federal laws, regulations, and quality and safety standards;''.

Subsec. (a)(23). Pub. L. 105–33, § 4724(d), struck out ''except as provided in subsection (g) of this section and in section 1396n and except in the case of Puerto Rico, the Virgin Islands, and Guam,'' after ''(23)'' and inserted before semicolon at end '', except as provided in subsection (g) of this section and in section 1396n of this title, except that this paragraph shall not apply in the case of Puerto Rico, the Virgin Islands, and Guam, and except that nothing in this paragraph shall be construed as requiring a State to provide medical assistance for such services furnished by a person or entity convicted of a felony under Federal or State law for an offense which the State agency determines is inconsistent with the best interests of beneficiaries under the State plan''.

Subsec. (a)(23)(B). Pub. L. 105–33, § 4701(d)(1), substituted '', in section 1396n of this title, and in section 1396u–2(a) of this title'' for ''and in section 1396n of this title''.

Pub. L. 105–33, § 4701(b)(2)(A)(i), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (a)(25)(A)(ii). Pub. L. 105–33, § 4753(b), substituted ''be integrated with, and be monitored as a part of the Secretary's review of, the State's mechanized claims processing and information retrieval systems required under section 1396b(r) of this title;'' for the dash that followed ''which plan shall'' and struck out subcls. (I) and (II) which read as follows:

''(I) be integrated with, and be monitored as a part of the Secretary's review of, the State's mechanized claims processing and information retrieval system under section 1396b(r) of this title, and

''(II) be subject to the provisions of section 1396b(r)(4) of this title relating to reductions in Federal payments for failure to meet conditions of approval, but shall not be subject to any other financial penalty as a result of any other monitoring, quality control, or auditing requirements;''.

Subsec. (a)(25)(G) to (I). Pub. L. 105–33, § 4741(a), redesignated subpars. (H) and (I) as (G) and (H), respectively, and struck out former subpar. (G) which read as follows: ''that the State plan shall meet the requirements of section 1396e of this title (relating to enrollment of individuals under group health plans in certain cases);''.

Subsec. (a)(26). Pub. L. 105–33, § 4751(a), substituted ''provide, with respect to each patient'' for ''provide—

''(A) with respect to each patient''

and struck out subpars. (B) and (C) which read as follows:

''(B) for periodic inspections to be made in all mental institutions within the State by one or more medical review teams (composed of physicians and other appropriate health and social service personnel) of the care being provided to each person receiving medical assistance, including (i) the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, (ii) the necessity and desirability of his continued placement in the institution, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

''(C) for full reports to the State agency by each medical review team of the findings of each inspection under subparagraph (B), together with any recommendations;''.

Subsec. (a)(31). Pub. L. 105–33, § 4751(b), substituted ''provide, with respect to each patient'' for ''provide—

''(A) with respect to each patient''

and struck out subpars. (B) and (C) which read as follows:

''(B) with respect to each intermediate care facility for the mentally retarded within the State, for periodic onsite inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), including with respect to each such person (i) the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, (ii) the necessity and desirability of his continued placement in the facility, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

''(C) for full reports to the State agency by each independent professional review team of the findings of each inspection under subparagraph (B), together with any recommendations;''.

Subsec. (a)(47). Pub. L. 105–33, § 4912(b)(1), inserted before semicolon at end ''and provide for making medical assistance for items and services described in subsection (a) of section 1396r–1a of this title available to children during a presumptive eligibility period in accordance with such section''.

Subsec. (a)(57). Pub. L. 105–33, § 4701(b)(2)(A)(ii), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (a)(63). Pub. L. 105–33, § 4724(g)(1)(A), struck out ''and'' at end.

Subsec. (a)(64). Pub. L. 105–33, § 4724(g)(1)(B), which directed the amendment of par. (64) by substituting ''; and'' for the period at end, could not be executed because there was no period at end.

Pub. L. 105–33, § 4724(f), added par. (64).

Subsec. (a)(65). Pub. L. 105–33, § 4724(g)(1)(C), added par. (65).

Subsec. (e)(2)(A). Pub. L. 105–33, § 4709(2), which directed the amendment of subsec. (e)(2) by inserting ''or by or through the case manager'' before period at end, was executed by making insertion before period at end of subpar. (A) to reflect the probable intent of Congress.

Pub. L. 105–33, § 4709(1), substituted ''who is enrolled with a medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title), with a primary care case manager (as defined in section 1396d(t) of this title),'' for ''who is enrolled with a qualified health maintenance organization (as defined in title XIII of the Public Health Service Act) or with an entity described in paragraph (2)(B)(iii), (2)(E), (2)(G), or (6) of section 1396b(m) of this title under a contract described in section 1396b(m)(2)(A) of this title''.

Subsec. (e)(12). Pub. L. 105–33, § 4731(a), added par. (12).

Subsec. (i)(1)(B). Pub. L. 105–33, § 4752(a), substituted ''establish alternative remedies if the State demonstrates to the Secretary's satisfaction that the alternative remedies are effective in deterring noncompliance and correcting deficiencies, and may provide'' for ''provide''.

Subsec. (j). Pub. L. 105–33, § 4702(b)(2), substituted ''a numbered paragraph of'' for ''paragraphs (1) through (25)''.

Subsec. (*l*)(1)(D). Pub. L. 105–33, § 4731(b), inserted ''(or, at the option of a State, after any earlier date)'' after ''children born after September 30, 1983''.

Subsec. (n). Pub. L. 105–33, § 4714(a)(1), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (p)(2). Pub. L. 105–33, § 4701(b)(2)(A)(iii), substituted ''medicaid managed care organization'' for ''health maintenance organization'' in introductory provisions.

Subsec. (r)(1). Pub. L. 105–33, § 4715(a), designated existing provisions as subpar. (A), inserted '', the treatment described in subparagraph (B) shall apply,'' after ''under such a waiver'', substituted '', and'' for ''and,'' after ''Federal Republic of Germany'', and added subpar. (B).

Subsec. (w)(2)(E). Pub. L. 105–33, § 4701(b)(2)(A)(iv), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (w)(5). Pub. L. 105–12 added par. (5).

1996—Subsec. (a). Pub. L. 104–193, § 913, which directed substitution of ''The Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.'' for ''The First Church of Christ, Scientist, Boston, Massachusetts'' in third sentence, was executed by making the substitution for ''the First Church of Christ, Scientist, Boston, Massachusetts'' in first undesignated closing par. to reflect the probable intent of Congress.

Subsec. (a)(25)(A)(i). Pub. L. 104–226 struck out ''including the use of information collected by the Medicare and Medicaid Coverage Data Bank under section 1320b–14 of this title and any additional measures'' before ''as specified by the Secretary in regulations)''.

Subsec. (a)(59). Pub. L. 104–248 substituted ''subsection (x)'' for ''subsection (v)''.

Subsec. (a)(63). Pub. L. 104–193, § 114(b), added par. (63).

Subsec. (c). Pub. L. 104–193, § 114(d)(1), substituted ''if the State requires individuals described in subsection (*l*)(1) of this section to apply for assistance under the State program funded under part A of subchapter IV of this chapter as a condition of applying for or receiving medical assistance under this subchapter.'' for ''if—

''(1) the State has in effect, under its plan established under part A of subchapter IV of this chapter, payment levels that are less than the payment levels in effect under such plan on May 1, 1988; or

''(2) the State requires individuals described in subsection (*l*)(1) of this section to apply for benefits under such part as a condition of applying for, or receiving, medical assistance under this subchapter.''

Subsec. (e)(1)(B). Pub. L. 104–193, § 114(c), substituted ''2001'' for ''1998''.

Subsec. (j). Pub. L. 104–193, § 108(k), substituted ''1308(f)'' for ''1308(c)''.

1994—Subsec. (a)(10)(A)(ii)(XI). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(11)(C), (53)(A). Pub. L. 103–448 substituted ''special supplemental nutrition program'' for ''special supplemental food program''.

1993—Subsec. (a)(10). Pub. L. 103–66, § 13603(c), in concluding provisions, substituted ''services, or hospitals, (XI)'' for ''services, or hospitals; and (XI)'' and ''other individuals, (XII)'' for ''other individuals, and (XI)'', and inserted '', and'' and subdiv. (XIII) before semicolon at end.

Subsec. (a)(10)(A)(ii)(XII). Pub. L. 103–66, §13603(a), added subcl. (XII).

Subsec. (a)(1)(C)(iv). Pub. L. 103–66, §13601(b)(1), substituted ''paragraphs numbered (1) through (24)'' for ''paragraphs numbered (1) through (21)''.

Subsec. (a)(11). Pub. L. 103–66, §13631(f)(1)(A), (B), in subpar. (B), struck out ''effective July 1, 1969,'' after ''(B)'' and ''and'' before ''(ii)'' and substituted ''to the individual under section 1396b of this title, and (iii) providing for coordination of information and education on pediatric vaccinations and delivery of immunization services'' for ''to him under section 1396b of this title'', and in subpar. (C), inserted '', including the provision of information and education on pediatric vaccinations and the delivery of immunization services,'' after ''operations under this subchapter''.

Subsec. (a)(18). Pub. L. 103–66, §13611(d)(1)(A), substituted '', transfers of assets, and treatment of certain trusts'' for ''and transfers of assets''.

Subsec. (a)(25)(A). Pub. L. 103–66, §13622(a), substituted ''insurers, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, and health maintenance organizations)'' for ''insurers)'' in introductory provisions.

Subsec. (a)(25)(A)(i). Pub. L. 103–66, §13581(b)(2), substituted ''(including the use of information collected by the Medicare and Medicaid Coverage Data Bank under section 1320b–14 of this title and any additional measures as specified'' for ''(as specified''.

Subsec. (a)(25)(H). Pub. L. 103–66, §13622(b), added subpar. (H).

Subsec. (a)(25)(I). Pub. L. 103–66, §13622(c), added subpar. (I).

Subsec. (a)(32)(D). Pub. L. 103–66, §13631(e)(1), added subpar. (D).

Subsec. (a)(43)(A). Pub. L. 103–66, §13631(f)(1)(C), inserted before comma at end ''and the need for age-appropriate immunizations against vaccine-preventable diseases''.

Subsec. (a)(51). Pub. L. 103–66, §13611(d)(1)(B), struck out ''(A)'' before ''meet the requirements'' and '', and (B) meet the requirement of section 1396p(c) of this title (relating to transfer of assets)'' after ''community spouses)''.

Subsec. (a)(54). Pub. L. 103–66, §13623(a)(1), which directed amendment of par. (54) by striking ''and'' at end, could not be executed because ''and'' did not appear at end subsequent to amendment by Pub. L. 103–66, §13602(c). See below.

Pub. L. 103–66, §13602(c), amended par. (54) generally. Prior to amendment, par. (54) read as follows:

''(A) provide that, any formulary or similar restriction (except as provided in section 1396r–8(d) of this title) on the coverage of covered outpatient drugs under the plan shall permit the coverage of covered outpatient drugs of any manufacturer which has entered into and complies with an agreement under section 1396r–8(a) of this title, which are prescribed for a medically accepted indication (as defined in subsection 1396r–8(k)(6) of this title), and

''(B) comply with the reporting requirements of section 1396r–8(b)(2)(A) of this title and the requirements of subsections (d) and (g) of section 1396r–8 of this title; and''.

Subsec. (a)(55). Pub. L. 103–66, §13623(a)(3), redesignated par. (55) relating to providing for adjusted payments as (56).

Pub. L. 103–66, §13623(a)(2), amended par. (55) relating to providing for receipt and initial processing of applications by substituting semicolon for period at end of subpar. (B).

Subsec. (a)(56). Pub. L. 103–66, §13623(a)(3), redesignated par. (55) relating to providing for adjusted payments as (56), transferred such par. to appear after par. (55) relating to providing for receipt and initial processing of applications, and substituted semicolon for period at end.

Subsec. (a)(57). Pub. L. 103–66, §13623(a)(4), transferred par. (57) to appear after par. (56) as redesignated by Pub. L. 103–66, §13623(a)(3). See above.

Subsec. (a)(58). Pub. L. 103–66, §13623(a)(6), redesignated par. (58) relating to maintaining a list as (59).

Pub. L. 103–66, §13623(a)(5), amended par. (58) relating to providing that a State develop a written description of advance directive laws by substituting a semicolon for period at end.

Pub. L. 103–66, §13623(a)(4), transferred par. (58) relating to providing that a State develop a written description of advance directive laws to follow par. (57) which was transferred by Pub. L. 103–66, §13623(a)(4), to appear after par. (56), as redesignated by Pub. L. 103–66, §13623(a)(3). See above.

Subsec. (a)(59). Pub. L. 103–66, §13625(a)(1), struck out ''and'' at end.

Pub. L. 103–66, §13623(a)(6), redesignated par. (58), relating to maintaining a list, as (59), transferred such par. to appear after par. (58) relating to providing that a State develop a written description of advance directive laws, and substituted ''; and'' for period at end.

Subsec. (a)(60). Pub. L. 103–66, §13623(a)(7), added par. (60).

Subsec. (a)(61). Pub. L. 103–66, §13625(a), added par. (61).

Subsec. (a)(62). Pub. L. 103–66, §13631(a), added par. (62).

Subsec. (j). Pub. L. 103–66, §13601(b)(2), substituted ''paragraphs (1) through (25)'' for ''paragraphs (1) through (22)''.

Subsec. (k). Pub. L. 103–66, §13611(d)(1)(C), struck out subsec. (k) which read as follows:

''(k)(1) In the case of a medicaid qualifying trust (described in paragraph (2)), the amounts from the trust deemed available to a grantor, for purposes of subsection (a)(17) of this section, is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the grantor, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the grantor. For purposes of the previous sentence, the term 'grantor' means the individual referred to in paragraph (2).

''(2) For purposes of this subsection, a 'medicaid qualifying trust' is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.

''(3) This subsection shall apply without regard to—

''(A) whether or not the medicaid qualifying trust is irrevocable or is established for purposes other than to enable a grantor to qualify for medical assistance under this subchapter; or

''(B) whether or not the discretion described in paragraph (2) is actually exercised.

''(4) The State may waive the application of this subsection with respect to an individual where the State determines that such application would work an undue hardship.''

Subsec. (z). Pub. L. 103–66, §13603(b), added subsec. (z).

1991—Subsec. (h). Pub. L. 102–234, §3(a), struck out ''to limit the amount of payment adjustments that may be made under a plan under this subchapter with respect to hospitals that serve a disproportionate number of low-income patients with special needs or'' after ''Secretary''.

Subsec. (t). Pub. L. 102–234, §2(b)(1), substituted ''Nothing'' for ''Except as provided in section 1396b(i) of this title, nothing'' and ''taxes of general applicability'' for ''taxes (whether or not of general applicability)''.

1990—Subsec. (a)(10). Pub. L. 101–508, §4713(a)(1)(D), which directed amendment of par. (10) by adding subdiv. (XI), relating to medical assistance available to an individual described in subsection (u)(1), in the matter following subparagraph (E), was executed in the matter following subpar. (F) to reflect the probable intent of Congress and the intervening amendment by Pub. L. 101–508, §4713(a)(1)(A)–(C), which added subpar.

(F). See below. Direction by section 4713(a)(1)(D) to strike ''and'' before ''(X)'' could not be executed because ''and'' did not appear after amendment by Pub. L. 101–508, § 4402(d)(1). See below.

Pub. L. 101–508, § 4402(d)(1), in closing provisions, struck out ''and'' at end of subdiv. (IX), inserted ''and'' at end of subdiv. (X), and added subdiv. (XI) relating to medical assistance to cover costs of premiums, etc.

Subsec. (a)(10)(A)(i)(VII). Pub. L. 101–508, § 4601(a)(1)(A), added subcl. (VII).

Subsec. (a)(10)(A)(ii)(IX). Pub. L. 101–508, § 4601(a)(1)(B), substituted '', clause (i)(VI), or clause (i)(VII)'' for ''or clause (i)(VI)''.

Subsec. (a)(10)(C)(iv). Pub. L. 101–508, §§ 4711(d)(2), 4755(c)(1)(A), amended cl. (iv) identically, substituting ''through (21)'' for ''through (20)''.

Subsec. (a)(10)(E)(iii). Pub. L. 101–508, § 4501(b), added cl. (iii).

Subsec. (a)(10)(F). Pub. L. 101–508, § 4713(a)(1)(A)–(C), added subpar. (F).

Subsec. (a)(13)(A). Pub. L. 101–508, § 4801(e)(1)(A), inserted ''(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter)'' after ''take into account the costs''.

Subsec. (a)(13)(E). Pub. L. 101–508, § 4704(e)(1), repealed Pub. L. 101–239, § 6402(c)(2). See 1989 Amendment note below.

Pub. L. 101–508, § 4704(a), substituted ''prescribes'' for ''may prescribe'' and ''on the same methodology used under section 1395*l*(a)(3) of this title'' for ''on such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph''.

Subsec. (a)(13)(F). Pub. L. 101–508, § 4711(c)(1)(A), added subpar. (F).

Subsec. (a)(17). Pub. L. 101–508, § 4723(b), inserted '', payments made to the State under section 1396b(f)(2)(B) of this title,'' after ''insurance premiums''.

Subsec. (a)(25)(G). Pub. L. 101–508, § 4402(a)(1), added subpar. (G).

Subsec. (a)(32)(C). Pub. L. 101–508, § 4708(a), added subpar. (C).

Subsec. (a)(41). Pub. L. 101–508, § 4754(a), substituted ''shall promptly notify the Secretary and, in the case of a physician and notwithstanding paragraph (7), the State medical licensing board'' for ''shall promptly notify the Secretary''.

Subsec. (a)(54). Pub. L. 101–508, § 4401(a)(2), added par. (54).

Subsec. (a)(55). Pub. L. 101–508, § 4604(b), added par. (55) relating to providing for adjusted payments.

Pub. L. 101–508, § 4602(a), added par. (55) relating to providing for receipt and initial processing of applications.

Subsec. (a)(57). Pub. L. 101–508, § 4751(a)(1), added par. (57).

Subsec. (a)(58). Pub. L. 101–508, § 4752(c), added par. (58) relating to maintaining a list.

Pub. L. 101–508, § 4751(a)(1), added par. (58) relating to providing that a State develop a written description of advance directive laws.

Subsec. (e)(2)(A). Pub. L. 101–508, § 4732(b)(1), inserted ''or with an eligible organization with a contract under section 1395mm of this title'' after ''section 1396b(m)(2)(A) of this title''.

Subsec. (e)(4). Pub. L. 101–508, § 4603(a)(1), inserted ''(or would remain if pregnant)'' after ''remains''.

Subsec. (e)(6). Pub. L. 101–508, § 4603(a)(2), substituted ''In'' for ''At the option of a State, in'', substituted ''the woman shall be deemed to continue to be'' for ''the State plan may nonetheless treat the woman as being'', and inserted at end ''The preceding sentence shall not apply in the case of a woman who has been provided ambulatory prenatal care pursuant to section 1396r–1 of this title during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.''

Subsec. (e)(11). Pub. L. 101–508, § 4402(c), added par. (11).

Subsec. (h). Pub. L. 101–508, § 4711(c)(1)(B), inserted before period at end ''or to limit the amount of payment that may be made under a plan under this subchapter for home and community care''.

Subsec. (j). Pub. L. 101–508, §§ 4711(d)(1), 4755(c)(1)(B), amended subsec. (j) identically substituting ''through (22)'' for ''through (21)''.

Subsec. (*l*)(1)(C). Pub. L. 101–508, § 4601(a)(1)(C)(i), inserted ''children'' after ''(C)''.

Subsec. (*l*)(1)(D). Pub. L. 101–508, § 4601(a)(1)(C)(ii), added subpar. (D) and struck out former subpar. (D) which read as follows: ''at the option of the State, children born after September 30, 1983, who have attained 6 years of age but have not attained 7 or 8 years of age (as selected by the State),''.

Subsec. (*l*)(2)(C). Pub. L. 101–508, § 4601(a)(1)(C)(iii), added subpar. (C) and struck out former subpar. (C) which read as follows: ''If a State elects, under subsection (a)(10)(A)(ii)(IX) of this section, to cover individuals not described in subparagraph (A) or (B) of paragraph (1), for purposes of that paragraph and with respect to individuals not described in such subparagraphs the State shall establish an income level which is a percentage (not more than 100 percent) of the income official poverty line described in subparagraph (A).''

Subsec. (*l*)(3). Pub. L. 101–508, § 4601(a)(1)(C)(iv), inserted '', (a)(10)(A)(i)(VII),'' after ''(a)(10)(A)(i)(VI)''.

Subsec. (*l*)(4)(A). Pub. L. 101–508, § 4601(a)(1)(C)(v), inserted ''or subsection (a)(10)(A)(i)(VII) of this section'' after ''(a)(10)(A)(i)(VI) of this section''.

Subsec. (*l*)(4)(B). Pub. L. 101–508, § 4601(a)(1)(C)(vi), substituted ''(a)(10)(A)(i)(VI), or (a)(10)(A)(i)(VII)'' for ''or (a)(10)(A)(i)(VI)''.

Subsec. (m)(1)(B). Pub. L. 101–508, § 4501(e)(2)(A), inserted '', except as provided in paragraph (2)(C)'' after ''program''.

Subsec. (m)(2)(C). Pub. L. 101–508, § 4501(e)(2)(B), added subpar. (C).

Subsec. (r)(1). Pub. L. 101–508, § 4715(a), inserted ''there shall be disregarded reparation payments made by the Federal Republic of Germany and'' after ''under such a waiver''.

Subsec. (r)(2)(A). Pub. L. 101–508, § 4601(a)(1)(D), inserted ''(a)(10)(A)(i)(VII),'' after ''(a)(10)(A)(i)(VI),''.

Subsec. (s). Pub. L. 101–508, § 4604(a), added subsec. (s).

Subsec. (t). Pub. L. 101–508, § 4701(b)(1), added subsec. (t).

Subsec. (u). Pub. L. 101–508, § 4713(a)(2), added subsec. (u).

Subsec. (v). Pub. L. 101–508, § 4724(a), added subsec. (v).

Subsec. (w). Pub. L. 101–508, § 4751(a)(2), added subsec. (w).

Subsec. (x). Pub. L. 101–508, § 4752(a)(1)(A), added subsec. (x).

Subsec. (y). Pub. L. 101–508, § 4755(a)(2), added subsec. (y).

1989—Subsec. (a)(9)(C). Pub. L. 101–239, § 6115(c), substituted ''paragraphs (15) and (16)'' for ''paragraphs (14) and (15)''.

Pub. L. 101–234 repealed Pub. L. 100–360, § 204(d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec.(a)(10)(A). Pub. L. 101–239, § 6405(b), substituted ''(1) through (5), (17) and (21)'' for ''(1) through (5) and (17)'' in introductory provisions.

Subsec. (a)(10)(A)(i)(VI). Pub. L. 101–239, § 6401(a)(1), added subcl. (VI).

Subsec. (a)(10)(A)(ii)(IX). Pub. L. 101–239, § 6401(a)(2), inserted ''or clause (i)(VI)'' after ''clause (i)(IV)''.

Subsec. (a)(10)(E). Pub. L. 101–239, § 6408(d)(1), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(11)(C). Pub. L. 101–239, § 6406(a)(1), added subpar. (C).

Subsec. (a)(13)(D). Pub. L. 101–239, § 6408(c)(1), substituted ''in amounts no lower than the amounts, using

the same methodology, used'' for ''in the same amounts, and using the same methodology, as used'', ''in the case of'' for ''a separate rate may be paid for'', and ''there shall be paid an additional amount, to take into account the room and board furnished by the facility, equal to at least 95 percent of the rate that would have been paid by the State under the plan for facility services in that facility for that individual'' for ''to take into account the room and board furnished by such facility''.

Subsec. (a)(13)(E). Pub. L. 101–239, § 6404(c), substituted ''clause (B) or (C) of section 1396d(a)(2) of this title'' for ''section 1396d(a)(2)(B) of this title provided by a rural health clinic''.

Pub. L. 101–239, § 6402(c)(2), which directed insertion of '', and for payment for services described in section 1396d(a)(2)(C) of this title under the plan,'' after ''provided by a rural health clinic under the plan'', was repealed by Pub. L. 101–508, § 4704(e)(1).

Subsec. (a)(30)(A). Pub. L. 101–239, § 6402(a), inserted before semicolon at end ''and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area''.

Subsec. (a)(43)(A). Pub. L. 101–239, § 6403(d)(1), substituted ''section 1396d(r)'' for ''section 1396d(a)(4)(B)''.

Subsec. (a)(43)(D). Pub. L. 101–239, § 6403(b), added subpar. (D).

Subsec. (a)(53). Pub. L. 101–239, § 6406(a)(2)–(4), added par. (53).

Subsec. (e)(7). Pub. L. 101–239, § 6401(a)(8), substituted '', (C), or (D)'' for ''or (C)'' in introductory provisions.

Subsec. (f). Pub. L. 101–239, § 6411(e)(2), inserted ''and section 1396r–5 of this title'' after ''section 1382h(b)(3) of this title''.

Pub. L. 101–239, § 6411(a)(1), inserted ''and except with respect to qualified medicare beneficiaries, qualified severely impaired individuals, and individuals described in subsection (m)(1) of this subsection'' before '', no State''.

Pub. L. 101–239, § 6408(d)(4)(C), inserted '', except with respect to qualified disabled and working individuals (described in section 1396d(s) of this title),'' after ''section 1382h(b)(3) of this title''.

Subsec. (*l*)(1)(C), (D). Pub. L. 101–239, § 6401(a)(3), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: ''at the option of the State, children born after September 30, 1983, who have attained one year of age but have not attained 2, 3, 4, 5, 6, 7, or 8 years of age (as selected by the State),''.

Subsec. (*l*)(2)(A)(ii)(II). Pub. L. 101–239, § 6401(a)(4)(A), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''July 1, 1990, is 100 percent.''

Subsec. (*l*)(2)(A)(iv). Pub. L. 101–239, § 6401(a)(4)(B), added cl. (iv).

Subsec. (*l*)(2)(B), (C). Pub. L. 101–239, § 6401(a)(5), (6), added subpar. (B), struck out '', or, if less, the percentage established under subparagraph (A)'' after ''not more than 100 percent'' in former subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (*l*)(3). Pub. L. 101–239, § 6401(a)(6)(A), inserted '', (a)(10)(A)(i)(VI),'' after ''(a)(10)(A)(i)(IV)'' in introductory provisions.

Subsec. (*l*)(3)(C). Pub. L. 101–239, § 6401(a)(6)(B), substituted ''(C), or (D)'' for ''or (C)''.

Subsec. (*l*)(4)(A). Pub. L. 101–239, § 6401(a)(7)(A), inserted ''and for children described in subsection (a)(10)(A)(i)(VI) of this section'' after ''(a)(10)(A)(i)(IV) of this section''.

Subsec. (*l*)(4)(B). Pub. L. 101–239, § 6401(a)(7)(B), inserted ''or (a)(10)(A)(i)(VI)'' after ''(a)(10)(A)(i)(IV)''.

Subsec. (p)(2)(C). Pub. L. 101–239, § 6411(d)(3)(B), added subpar. (C).

Subsec. (r)(2)(A). Pub. L. 101–239, § 6401(a)(9), inserted ''(a)(10)(A)(i)(VI),'' after ''(a)(10)(A)(i)(IV),'' in introductory provisions.

1988—Subsec. (a)(9)(C). Pub. L. 100–360, § 204(d)(3), substituted ''paragraphs (14) and (15)'' for ''paragraphs (13) and (14)''.

Subsec. (a)(10). Pub. L. 100–647, § 8434(b)(1), inserted ''who is only entitled to medical assistance because the individual is such a beneficiary'' after ''section 1396d(p)(1) of this title'' in subdiv. (VIII) of closing provisions.

Pub. L. 100–360, § 302(a)(1)(C), inserted ''(A)(i)(IV) or'' before ''(A)(ii)(X)'' in subdiv. (VII) of closing provisions.

Pub. L. 100–360, § 302(b)(1), added subdiv. (X) in closing provisions.

Subsec. (a)(10)(A)(i)(I). Pub. L. 100–485, § 202(c)(4), substituted ''section 682(e)(6) of this title'' for ''section 614(g) of this title''.

Subsec. (a)(10)(A)(i)(IV). Pub. L. 100–360, § 302(a)(1)(A), added subcl. (IV).

Subsec. (a)(10)(A)(i)(V). Pub. L. 100–485, § 401(d)(1), added subcl. (V).

Subsec. (a)(10)(A)(ii)(VI). Pub. L. 100–360, § 411(k)(17)(B), substituted ''(c), (d), or (e)'' for ''(c) or (d)'' in two places.

Subsec. (a)(10)(A)(ii)(IX). Pub. L. 100–360, § 302(a)(1)(B), amended subcl. (IX) generally. Prior to amendment, subcl. (IX) read as follows: ''subject to subsection (*l*)(4) of this section, who are described in subsection (*l*)(1) of this section;''.

Subsec. (a)(10)(A)(ii)(X). Pub. L. 100–360, § 301(e)(2)(A), struck out ''subject to subsection (m)(3) of this section,'' before ''who are described''.

Subsec. (a)(10)(A)(ii)(XI). Pub. L. 100–360, § 411(k)(5)(B), substituted ''may be more restrictive'' for ''are more restrictive'' and a semicolon for the period at end.

Pub. L. 100–360, § 411(k)(5)(A), amended Pub. L. 100–203, § 4104, see 1987 Amendment note below.

Subsec. (a)(10)(C)(i)(III). Pub. L. 100–360, § 303(e)(1), substituted ''no more restrictive than the methodology'' for ''the same methodology'' in two places.

Subsec. (a)(10)(E). Pub. L. 100–360, § 301(e)(2)(B), struck out ''subject to subsection (m)(3) of this section,'' before ''for making medical''.

Pub. L. 100–360, § 301(a)(1), struck out ''at the option of a State, but'' after ''(E)''.

Subsec. (a)(13)(A). Pub. L. 100–360, § 411(*l*)(3)(J), as added by Pub. L. 100–485, § 608(d)(27)(H), amended Pub. L. 100–203, § 4211(h)(2)(B), see 1987 Amendment note below.

Subsec. (a)(13)(C). Pub. L. 100–360, § 411(*l*)(3)(H)(i), as amended by Pub. L. 100–485, § 608(d)(27)(F), amended Pub. L. 100–203, § 4211(h)(2)(C), see 1987 Amendment note below.

Subsec. (a)(13)(D). Pub. L. 100–360, § 411(*l*)(3)(H)(ii), (iii), as amended by Pub. L. 100–485, § 608(d)(27)(G), amended Pub. L. 100–203, § 4211(h)(2)(D), see 1987 Amendment note below.

Subsec. (a)(15). Pub. L. 100–360, § 301(e)(2)(C), as added by Pub. L. 100–485, § 608(d)(14)(I)(iii), struck out par. (15) which read as follows: ''in the case of eligible individuals 65 years of age or older who are not qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title) but are covered by either or both of the insurance programs established by subchapter XVIII of this chapter, provide where, under the plan, all of any deductible, cost sharing, or similar charge imposed with respect to such individual under the insurance program established by such subchapter is not met, the portion thereof which is met shall be determined on a basis reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to such individual's income or his income and resources;''.

Subsec. (a)(17). Pub. L. 100–360, § 411(k)(10)(G)(ii), amended directory language of Pub. L. 100–203, § 4118(h)(1), see 1987 Amendment note below.

Pub. L. 100–360, § 301(e)(2)(D), formerly § 301(e)(2)(C), as redesignated and amended by Pub. L. 100–485, § 608(d)(14)(I)(i), substituted ''(m)(3), and (m)(4)'' for ''(m)(4), and (m)(5)''.

Subsec. (a)(28)(D)(i). Pub. L. 100–360, § 411(*l*)(3)(E), substituted ''section 1396r(e) of this title'' for ''section 1396r(f) of this title (relating to implementation of nursing facility requirements, including paragraph

(6)(B), relating to specification of resident assessment instrument)''.

Subsec. (a)(33)(B). Pub. L. 100–360, §411(*l*)(6)(C), substituted ''section 1396r(g) of this title'' for ''section 1396r(d) of this title''.

Subsec. (a)(44)(A). Pub. L. 100–360, §411(*l*)(6)(D), amended Pub. L. 100–203, §4212(e)(1)(B), see 1987 Amendment note below.

Subsec. (a)(50). Pub. L. 100–360, §411(n)(4), formerly §411(n)(3), as redesignated by Pub. L. 100–485, §608(d)(28), added Pub. L. 100–203, §9119(d)(1)(A), see 1987 Amendment note below.

Subsec. (a)(51). Pub. L. 100–360, §303(e)(2)–(4), added par. (51).

Subsec. (a)(52). Pub. L. 100–485, §303(a)(2), added par. (52).

Subsec. (c). Pub. L. 100–360, §302(c)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Notwithstanding subsection (b) of this section, the Secretary shall not approve any State plan for medical assistance if he determines that the approval and operation of the plan will result in a reduction in aid or assistance in the form of money payments (other than so much, if any, of the aid or assistance in such form as was, immediately prior to the effective date of the State plan under this subchapter, attributable to medical needs) provided for eligible individuals under a plan of such State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter.''

Subsec. (d). Pub. L. 100–360, §411(k)(7)(C), amended Pub. L. 100–203, §4113(b)(2)(ii), see 1987 Amendment note below.

Subsec. (e)(1). Pub. L. 100–485, §303(b)(1), designated existing provisions as subpar. (A), inserted ''subject to subparagraph (B)'' after ''January 1, 1974,'', and added subpar. (B).

Subsec. (e)(2)(A). Pub. L. 100–360, §411(k)(7)(D), repealed Pub. L. 100–203, §4113(d)(2), see 1987 Amendment note below.

Pub. L. 100–360, §411(k)(7)(B), amended Pub. L. 100–203, §4113(a)(2), see 1987 Amendment note below.

Subsec. (e)(6). Pub. L. 100–360, §302(e)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''At the option of a State, if a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX) of this section, the plan may provide that any woman described in such subsection and subsection (*l*)(1)(A) of this section shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) of this section without regard to any change in income of the family of which she is a member until the end of the 60-day period beginning on the last day of her pregnancy.''

Subsec. (e)(7). Pub. L. 100–360, §302(e)(2), in introductory provisions, substituted ''In the case'' for ''If a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX) of this section, in the case'' and inserted ''or paragraph (2) of section 1396d(n) of this title'', and, in concluding provisions, substituted ''such respective provision'' for ''subsection (a)(10)(A)(ii)(IX) of this section and subsection (*l*)(1) of this section''.

Subsec. (e)(10). Pub. L. 100–485, §303(d), added par. (10).

Subsec. (f). Pub. L. 100–360, §411(k)(10)(G)(iv), added Pub. L. 100–203, §4118(h)(2), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100–360, §411(*l*)(8)(C), amended Pub. L. 100–203, §4213(b)(1), see 1987 Amendment note below.

Subsec. (*l*)(1). Pub. L. 100–360, §302(e)(3)(A), inserted ''any of subclauses (I) through (III) of'' after ''described in'' in concluding provisions.

Subsec. (*l*)(1)(C). Pub. L. 100–360, §302(a)(2)(A), inserted ''at the option of the State,'' after ''(C)'' and struck out ''and'' after ''1983,''.

Subsec. (*l*)(2)(A). Pub. L. 100–360, §302(a)(2)(B), as amended by Pub. L. 100–485, §608(d)(15)(A), designated existing provisions as cl. (i), substituted ''(not less than the percentage provided under clause (ii) and not more than 185 percent)'' for ''(not more than 185 percent)'', and added cls. (ii) and (iii).

Subsec. (*l*)(2)(A)(ii). Pub. L. 100–485, §608(d)(15)(B)(i), in introductory provisions, substituted ''The'' for ''Subject to clause (iii), the'', and in subcl. (I), inserted ''or, if greater, the percentage provided under clause (iii),''.

Subsec. (*l*)(2)(A)(iii). Pub. L. 100–485, §608(d)(15)(B)(ii), substituted ''clause (ii)(I)'' for ''clause (ii)'' in introductory provisions and concluding provisions.

Subsec. (*l*)(3). Pub. L. 100–360, §302(e)(3)(B), inserted ''(a)(10)(A)(i)((IV) or'' after ''of subsection'' in introductory provisions.

Subsec. (*l*)(4). Pub. L. 100–360, §302(c)(2), (d), added par. (4) and struck out former par. (4) which read as follows:

''(A) A State plan may not elect the option of furnishing medical assistance to individuals described in subsection (a)(10)(A)(ii)(IX) of this section unless the State has in effect, under its plan established under part A of subchapter IV of this chapter, payment levels that are not less than the payment levels in effect under its plan on July 1, 1987.

''(B)(i) A State may not elect, under subsection (a)(10)(A)(ii)(IX) of this section, to cover only individuals described in paragraph (1)(A) or to cover only individuals described in paragraph (1)(B).

''(ii) A State may not elect, under subsection (a)(10)(A)(ii)(IX) of this section, to cover individuals described in subparagraph (C) of paragraph (1) unless the State has elected, under such subsection, to cover individuals described in the preceding subparagraphs of such paragraph.

''(C) A State plan may not provide, in its election of the option of furnishing medical assistance to individuals described in paragraph (1), that such individuals must apply for benefits under part A of subchapter IV of this chapter as a condition of applying for, or receiving, medical assistance under this subchapter.''

Subsec. (m)(3). Pub. L. 100–360, §301(e)(2)(E), formerly §301(e)(2)(D), as redesignated and amended by Pub. L. 100–485, §608(d)(14)(I)(ii), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''A State plan may not provide coverage for individuals under subsection (a)(10)(A)(ii)(X) of this section or coverage under subsection (a)(10)(E) of this section, unless the plan provides coverage of some or all of the individuals described in subsection (*l*)(1) of this section.''

Subsec. (m)(4). Pub. L. 100–360, §301(e)(2)(E), formerly §301(e)(2)(D), as redesignated and amended by Pub. L. 100–485, §608(d)(14)(I)(ii), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (m)(4)(A). Pub. L. 100–647, §8434(b)(2), substituted ''section 1396d(p)(1)(B)'' for ''section 1396d(p)(1)(C)''.

Subsec. (m)(5). Pub. L. 100–360, §301(e)(2)(E), formerly §301(e)(2)(D), as redesignated and amended by Pub. L. 100–485, §608(d)(14)(I)(ii), redesignated par. (5) as (4).

Subsec. (*o*). Pub. L. 100–360, §411(n)(2), made technical correction to directory language of Pub. L. 100–203, §9115(b), see 1987 Amendment note below.

Subsec. (q). Pub. L. 100–360, §411(n)(4), formerly §411(n)(3), as redesignated by Pub. L. 100–485, §608(d)(28), added Pub. L. 100–203, §9119(d)(1)(B), see 1987 Amendment note below.

Subsec. (r). Pub. L. 100–360, §303(e)(5), designated existing provisions as par. (1), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added par. (2).

Pub. L. 100–360, §303(d), added subsec. (r).

Subsec. (r)(2)(A). Pub. L. 100–485, §608(d)(16)(C), substituted '', or (f) of this section or under section 1396d(p) of this title'' for ''of this section, or under subsection (f) of this section'' in introductory provisions.

1987—Subsec. (a)(9)(C). Pub. L. 100–203, §4072(d), substituted ''paragraphs (13) and (14)'' for ''paragraphs (12) and (13)''.

Subsec. (a)(10). Pub. L. 100–203, §4101(e)(1), substituted ''postpartum, and family planning services'' for ''and postpartum services'' in subdiv. (VII) of closing provisions.

Subsec. (a)(10)(A)(ii)(VI). Pub. L. 100–203, §4211(h)(1)(A), substituted ''nursing facility or inter-

mediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility''.

Pub. L. 100–203, § 4102(b)(1), substituted ''subsection (c) or (d) of section 1396n of this title'' for ''section 1396n(c) of this title'' in two places.

Subsec. (a)(10)(A)(ii)(IX), (X). Pub. L. 100–203, § 4118(p)(1), (2), realigned margin of subcls. (IX) and (X).

Subsec. (a)(10)(A)(ii)(XI). Pub. L. 100–203, § 4104, as amended by Pub. L. 100–360, § 411(k)(5)(A), added subcl. (XI).

Subsec. (a)(10)(C)(iv). Pub. L. 100–203, § 4211(h)(1)(B), substituted ''in an intermediate care facility'' for ''intermediate care facility services''.

Subsec. (a)(10)(D). Pub. L. 100–203, § 4211(h)(1)(C), struck out ''skilled'' before ''nursing''.

Subsec. (a)(13)(A). Pub. L. 100–203, § 4211(h)(2)(B), as amended by Pub. L. 100–360, § 411(*l*)(3)(J), as added by Pub. L. 100–485, § 608(d)(27)(H), substituted '', nursing facility, and intermediate care facility for the mentally retarded and'' for '', skilled nursing facility, and intermediate care facility and''.

Pub. L. 100–203, § 4211(h)(2)(A), substituted ''services, nursing facility services, and services in an intermediate care facility for the mentally retarded'' for '', skilled nursing facility, and intermediate care facility services''.

Pub. L. 100–203, § 4211(b)(1)(A), inserted ''which, in the case of nursing facilities, take into account the costs of complying with subsections (b) (other than paragraph (3)(F) thereof), (c), and (d) of section 1396r of this title and provide (in the case of a nursing facility with a waiver under section 1396r(b)(4)(C)(ii) of this title) for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care,'' after second reference to ''State''.

Subsec. (a)(13)(C). Pub. L. 100–203, § 4211(h)(2)(C), as amended by Pub. L. 100–360, § 411(*l*)(3)(H)(i), as amended by Pub. L. 100–485, § 608(d)(27)(F), substituted ''nursing facilities and for intermediate care facilities for the mentally retarded'' for ''skilled nursing facilities and intermediate care facilities'' in introductory provisions.

Subsec. (a)(13)(D). Pub. L. 100–203, § 4211(h)(2)(D), as amended by Pub. L. 100–360, § 411(*l*)(3)(H)(ii), (iii), as amended by Pub. L. 100–485, § 608(d)(27)(G), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility'' and ''nursing facility services or services in an intermediate care facility for the mentally retarded'' for ''skilled nursing facility services or intermediate care facility services''.

Subsec. (a)(17). Pub. L. 100–203, § 4118(p)(3), substituted ''subsections (*l*)(3), (m)(4), and (m)(5) of this section'' for ''subsection (*l*)(3) of this section''.

Pub. L. 100–203, § 4118(h)(1), as amended by Pub. L. 100–360, § 411(k)(10)(G)(ii), substituted ''(whether in the form of insurance premiums or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof)'' for ''(whether in the form of insurance premiums or otherwise)''.

Subsec. (a)(23). Pub. L. 100–203, § 4113(c)(1), designated provision relating to the obtaining of medical assistance by an eligible individual as cl. (A) and added cl. (B).

Pub. L. 100–93, § 8(f)(1), inserted ''subsection (g) of this section and in'' after ''as provided in''.

Subsec. (a)(28). Pub. L. 100–203, § 4211(b)(1)(B), amended par. (28) generally. Prior to amendment, par. (28) read as follows: ''provide that any skilled nursing facility receiving payments under such plan must satisfy all of the requirements contained in section 1395x(j) of this title, except that the exclusion contained therein with respect to institutions which are primarily for the care and treatment of mental diseases shall not apply for purposes of this subchapter;''.

Subsec. (a)(30)(B)(i), (ii). Pub. L. 100–203, § 4211(h)(3), substituted ''intermediate care facility for the mentally retarded'' for ''skilled nursing facility, intermediate care facility''.

Subsec. (a)(30)(C). Pub. L. 100–203, § 4118(p)(4), substituted ''use'' for ''provide''.

Pub. L. 100–203, § 4113(b)(1), inserted '', an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary,'' before ''or a private accreditation body''.

Subsec. (a)(31). Pub. L. 100–203, § 4212(d)(2), in introductory provision substituted ''services in an intermediate care facility for the mentally retarded (where'' for ''skilled nursing facility services (and with respect to intermediate care facility services where'' and in subpar. (B) substituted ''intermediate care facility for the mentally retarded'' for ''skilled nursing or intermediate care facility''.

Subsec. (a)(33)(B). Pub. L. 100–203, § 4212(d)(3), inserted '', except as provided in section 1396r(d) of this title,'' after ''(B) that''.

Subsec. (a)(38). Pub. L. 100–93, § 8(f)(2), substituted ''the information described in section 1320a–7(b)(9) of this title'' for ''respectively, (A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom such entity has had, during the previous twelve months, business transactions in an aggregate amount in excess of $25,000, and (B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between such entity and any wholly owned supplier or between such entity and any subcontractor''.

Subsec. (a)(39). Pub. L. 100–93, § 8(f)(3), substituted ''exclude'' for ''bar'', ''individual or entity'' for ''person'' in two places, and inserted reference to section 1320a–7a of this title.

Subsec. (a)(42). Pub. L. 100–203, § 4118(m)(1)(B), struck out ''(A)'' after ''provide'', the comma after ''under the plan'', and cls. (B) and (C) which read as follows: ''(B) that such audits, for such entities also providing services under subchapter XVIII of this chapter, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such subchapter, and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1320a–8(a) of this title''.

Subsec. (a)(44). Pub. L. 100–203, § 4212(e)(1)(A), substituted ''services in an intermediate care facility for the mentally retarded'' for ''skilled nursing facility services, intermediate care facility services''.

Subsec. (a)(44)(A). Pub. L. 100–203, § 4218(a)(1), substituted ''physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies'' for ''physician certifies'' and ''a physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician,'' for ''the physician, or a physician assistant or nurse practitioner under the supervision of a physician,''.

Pub. L. 100–203, § 4212(e)(1)(B), as amended by Pub. L. 100–360, § 411(*l*)(6)(D), substituted ''that are services provided in an intermediate care facility for the mentally retarded'' for ''that are intermediate care facility services provided in an institution for the mentally retarded''.

Subsec. (a)(44)(B). Pub. L. 100–203, § 4218(a)(2), substituted ''a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician;'' for ''a physician;''.

Subsec. (a)(46). Pub. L. 100–93, § 5(a)(1), struck out ''and'' after ''title;''.

Subsec. (a)(47). Pub. L. 100–93, § 5(a)(2), (3), substituted semicolon for period at end of par. (47), relating to ambulatory prenatal care and redesignated par. (47), relating to cards evidencing eligibility, as (48).

Subsec. (a)(48). Pub. L. 100–93, § 5(a)(3), redesignated par. (47), relating to cards evidencing eligibility for medical assistance, as (48), and substituted ''address; and'' for ''address.''

Subsec. (a)(49). Pub. L. 100–93, § 5(a)(4), added par. (49).

Subsec. (a)(50). Pub. L. 100–203, § 9119(d)(1)(A), as added by Pub. L. 100–360, § 411(n)(4), formerly § 411(n)(3), as redesignated by Pub. L. 100–485, § 608(d)(28), added par. (50).

Subsec. (d). Pub. L. 100–203, § 4113(b)(2)(i), inserted ''an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary, for the performance of the quality review functions described in subsection (a)(30)(C) of this section, or'' after ''contracts with''.

Pub. L. 100–203, § 4113(b)(2)(ii), as amended by Pub. L. 100–360, § 411(k)(7)(C), substituted ''an entity or organization'' for ''organization (or organizations)'' in two places.

Subsec. (e)(2)(A). Pub. L. 100–203, § 4113(d)(2), which directed substitution of ''subparagraph (B)(iii), (E), or (G) of section 1396b(m)(2) of this title'' for ''section 1396a(m)(2)(G) of this title'', was repealed by Pub. L. 100–360, § 411(k)(7)(D).

Pub. L. 100–203, § 4113(a)(2), as amended by Pub. L. 100–360, § 411(k)(7)(B), substituted ''paragraph (2)(B)(iii), (2)(E), (2)(G), or (6) of section 1396b(m) of this title'' for ''section 1396b(m)(2)(G) of this title''.

Pub. L. 100–203, § 4113(c)(2), substituted ''but, except for benefits furnished under section 1396d(a)(4)(C) of this title, only'' for ''but only''.

Subsec. (e)(3)(B)(i). Pub. L. 100–203, § 4211(h)(4), substituted ''nursing facility, or intermediate care facility for the mentally retarded'' for ''skilled nursing facility, or intermediate care facility''.

Subsec. (e)(3)(C). Pub. L. 100–203, § 4118(c)(1), substituted ''for medical assistance under the State plan under this subchapter'' for ''to have a supplemental security income (or State supplemental) payment made with respect to him under subchapter XVI of this chapter''.

Subsec. (e)(4). Pub. L. 100–203, § 4101(a)(2), inserted sentence at end relating to child's medical assistance eligibility identification number and submission and payment of claims under such number during period in which a child is eligible for assistance.

Subsec. (e)(5). Pub. L. 100–203, § 4101(e)(2), substituted ''through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends'' for ''until the end of the 60-day period beginning on the last day of her pregnancy''.

Subsec. (e)(7). Pub. L. 100–203, § 4101(b)(2)(B), substituted ''subparagraph (B) or (C)'' for ''subparagraph (B), (C), (D), (E), or (F)''.

Subsec. (e)(9). Pub. L. 100–203, § 4118(p)(6), realigned margins of par. (9).

Subsec. (e)(9)(A)(iii). Pub. L. 100–203, § 4211(h)(5)(A), substituted ''nursing facility, or intermediate care facility for the mentally retarded'' for ''skilled nursing facility, or intermediate care facility,''.

Subsec. (e)(9)(B). Pub. L. 100–203, § 4211(h)(5)(B), substituted ''nursing facilities, or intermediate care facilities for the mentally retarded'' for ''skilled nursing facilities, or intermediate care facilities''.

Subsec. (f). Pub. L. 100–203, § 4118(h)(2), as added by Pub. L. 100–360, § 411(k)(10)(G)(iv), inserted ''regardless of whether such expenses are reimbursed under another public program of the State or political subdivision thereof'' after ''State law'' in first sentence.

Subsec. (i). Pub. L. 100–203, § 4213(b)(1), as amended by Pub. L. 100–360, § 411(*l*)(8)(C), in par. (1), substituted ''intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility'' and ''the requirements for such a facility under this subchapter'' for ''the provisions of section 1395x(j) of this title or section 1396d(c) of this title, respectively,'', and in pars. (2) and (3), substituted ''the requirements for such a facility under this subchapter'' for ''the provisions of section 1395x(j) of this title or section 1396d(c) of this title (as the case may be)''.

Subsec. (j). Pub. L. 100–203, § 4116, inserted reference to Northern Mariana Islands in two places.

Subsec. (*l*). Pub. L. 100–93, § 7, redesignated subsec. (*l*), relating to disregarding certain benefits for purposes of determining post-eligibility contributions, as (*o*).

Subsec. (*l*)(1). Pub. L. 100–203, § 4118(p)(7), made technical corrections in introductory provisions and substituted ''and whose'' for '', whose'' in closing provisions.

Subsec. (*l*)(1)(C). Pub. L. 100–203, § 4101(c)(2), substituted ''5, 6, 7, or 8 years of age'' for ''or 5 years of age''.

Pub. L. 100–203, § 4101(b)(1), added subpar. (C). Former subpar. (C), which related to children who have attained one year of age but have not attained two years of age, was struck out.

Subsec. (*l*)(1)(D) to (F). Pub. L. 100–203, § 4101(b)(1)(B), struck out subpars. (D) to (F) which related to children who have attained two years of age but have not attained three years of age, children who have attained three years of age but have not attained four years of age, and children who have attained four years of age but have not attained five years of age, respectively.

Subsec. (*l*)(2). Pub. L. 100–203, § 4118(p)(8), struck out ''nonfarm'' after second reference to ''income'' in subpar. (A).

Pub. L. 100–203, § 4101(a)(1)(A), designated existing provisions as subpar. (A), inserted ''with respect to individuals described in subparagraph (A) or (B) of that paragraph'', substituted ''185 percent'' for ''100 percent'', and added subpar. (B).

Subsec. (*l*)(3)(C). Pub. L. 100–203, § 4101(b)(2)(A)(i), substituted ''subparagraph (B) or (C)'' for ''subparagraph (B), (C), (D), (E), or (F)''.

Subsec. (*l*)(3)(D). Pub. L. 100–203, § 4101(a)(1)(B), inserted ''appropriate'' after ''applied is the''.

Subsec. (*l*)(3)(E). Pub. L. 100–203, § 4101(e)(3), inserted ''(except to the extent such methodology is inconsistent with clause (D) of subsection (a)(17) of this section)'' after ''subchapter IV of this chapter''.

Subsec. (*l*)(4)(A). Pub. L. 100–203, § 4101(e)(4), substituted ''July 1, 1987'' for ''April 17, 1986''.

Subsec. (*l*)(4)(B)(ii). Pub. L. 100–203, § 4101(b)(2)(A)(ii), substituted ''subparagraph (C)'' for ''subparagraph (C), (D), (E), or (F)''.

Subsec. (*l*)(4)(C). Pub. L. 100–203, § 4101(e)(5), added subpar. (C).

Subsec. (m)(2)(A). Pub. L. 100–203, § 4118(p)(8), struck out ''nonfarm'' before ''official''.

Subsec. (*o*). Pub. L. 100–203, § 9115(b), as amended by Pub. L. 100–360, § 411(n)(2), substituted ''subparagraph (E) or (G) of section 1382(e)(1) of this title'' for ''section 1382(e)(1)(E) of this title''.

Pub. L. 100–93, § 7, redesignated subsec. (*l*), relating to disregarding certain benefits for purposes of determining post-eligibility contributions, as (*o*).

Subsec. (p). Pub. L. 100–93, § 7, added subsec. (p).

Subsec. (q). Pub. L. 100–203, § 9119(d)(1)(B), as added by Pub. L. 100–360, § 411(n)(4), formerly § 411(n)(3), as redesignated by Pub. L. 100–485, § 608(d)(28), added subsec. (q).

1986—Subsec. (a). Pub. L. 99–509, § 9406(b), inserted at end ''Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1396b(v) of this title.''

Pub. L. 99–272, § 9529(a)(1), inserted at end ''For purposes of this subchapter, any child who meets the requirements of paragraph (1) or (2) of section 673(b) of this title shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of subchapter IV of this chapter in the State where such child resides.''

Subsec. (a)(9)(C). Pub. L. 99–509, § 9320(h)(3), substituted ''paragraphs (12) and (13)'' for ''paragraphs (11) and (12)''.

Subsec. (a)(10). Pub. L. 99–509, § 9408(b), added cl. (IX) at end.

Pub. L. 99–509, § 9403(c), added cl. (VIII) at end.

Pub. L. 99–509, § 9401(c), added cl. (VII) at end.

Pub. L. 99–272, § 9505(b)(1), added cl. (VI) at end.

Pub. L. 99–272, § 9501(b), added cl. (V) at end.

Subsec. (a)(10)(A)(i)(I). Pub. L. 99–272, § 12305(b)(3), substituted '', 606(h), or 673(b) of this title'' for ''or 606(h) of this title''.

Subsec. (a)(10)(A)(i)(II). Pub. L. 99–509, § 9404(a), inserted ''or who are qualified severely impaired individuals (as defined in section 1396d(q) of this title)'' after ''subchapter XVI of this chapter''.

Subsec. (a)(10)(A)(ii)(V). Pub. L. 99–272, § 9510(a), inserted ''for a period of not less than 30 consecutive days (with eligibility by reason of this subclause beginning on the first day of such period)'' after ''are in a medical institution''.

Subsec. (a)(10)(A)(ii)(VII). Pub. L. 99–514, § 1895(c)(7)(A), realigned margin of subcl. (VII).

Pub. L. 99–272, § 9505(b)(2), added subcl. (VII).

Subsec. (a)(10)(A)(ii)(VIII). Pub. L. 99–514, § 1895(c)(7)(B), realigned margins of subcl. (VIII).

Pub. L. 99–272, § 9529(b)(1), added subcl. (VIII).

Subsec. (a)(10)(A)(ii)(IX). Pub. L. 99–509, § 9401(a), added subcl. (IX).

Subsec. (a)(10)(A)(ii)(X). Pub. L. 99–509, § 9402(a)(1), added subcl. (X).

Subsec. (a)(10)(C). Pub. L. 99–509, § 9403(g)(1), inserted ''or (E)'' after ''subparagraph (A)'' in introductory text.

Subsec. (a)(10)(C)(iv). Pub. L. 99–509, § 9408(c)(3), substituted ''through (20)'' for ''through (19)''.

Pub. L. 99–514, § 1895(c)(3)(C), substituted ''through (19)'' for ''through (18)''.

Pub. L. 99–272, § 9505(d)(2), substituted ''through (18)'' for ''through (17)''.

Subsec. (a)(10)(E). Pub. L. 99–509, § 9403(a), added subpar. (E).

Subsec. (a)(13)(B). Pub. L. 99–272, § 9509(a)(1), substituted ''hospitals'' for ''hospitals, skilled nursing facilities, and intermediate care facilities''.

Subsec. (a)(13)(C). Pub. L. 99–272, § 9509(a)(4), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 99–272, § 9505(c)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (a)(13)(D). Pub. L. 99–514, § 1895(c)(1), inserted ''and'' after ''facility;''.

Pub. L. 99–509, § 9435(b)(1), inserted ''and for payment of amounts under section 1396d(*o*)(3) of this title'' before first semicolon.

Pub. L. 99–272, § 9509(a)(2), (3), redesignated former subpar. (C) as (D), and struck out ''and'' at the end thereof. Former subpar. (D) redesignated (E).

Pub. L. 99–272, § 9505(c)(1)(B), redesignated former subpar. (C) as (D).

Subsec. (a)(13)(E). Pub. L. 99–272, § 9509(a)(3), redesignated former subpar. (D) as (E).

Subsec. (a)(15). Pub. L. 99–509, § 9403(g)(4)(A), inserted ''are not qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title) but'' after ''older who''.

Subsec. (a)(17). Pub. L. 99–509, § 9401(e)(1), inserted ''except as provided in subsection (*l*)(3) of this section'' after ''(17)''.

Subsec. (a)(25). Pub. L. 99–272, § 9503(a)(1), amended par. (25) generally. Prior to amendment, par. (25) read as follows: ''provide (A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties to pay for care and services (available under the plan) arising out of injury, disease, or disability, (B) that where the State or local agency knows that a third party has such a legal liability such agency will treat such legal liability as a resource of the individual on whose behalf the care and services are made available for purposes of paragraph (17)(B), and (C) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;''.

Subsec. (a)(30)(C). Pub. L. 99–509, § 9431(a), added subpar. (C).

Subsec. (a)(47). Pub. L. 99–570 added par. (47) relating to cards evidencing eligibility for medical assistance.

Pub. L. 99–509, § 9407(a), added par. (47) relating to ambulatory prenatal care.

Subsec. (b)(2). Pub. L. 99–509, § 9405, inserted before semicolon '', regardless of whether or not the residence is maintained permanently or at a fixed address''.

Subsec. (d). Pub. L. 99–509, § 9431(b)(1), inserted ''(including quality review functions described in subsection (a)(30)(C) of this section)'' after ''medical or utilization review functions''.

Subsec. (e)(2)(A). Pub. L. 99–272, § 9517(b)(1), inserted reference to an entity described in section 1396b(m)(2)(G) of this title, and substituted ''such organization or entity'' for ''such organization''.

Subsec. (e)(2)(B). Pub. L. 99–272, § 9517(b)(2), substituted ''an organization or entity'' for ''a health maintenance organization'' and ''the organization or entity'' for ''the organization''.

Subsec. (e)(5). Pub. L. 99–272, § 9501(c), added par. (5).

Subsec. (e)(6), (7). Pub. L. 99–509, § 9401(d), added pars. (6) and (7).

Subsec. (e)(8). Pub. L. 99–509, § 9403(f)(2), added par. (8).

Subsec. (e)(9). Pub. L. 99–509, § 9408(a), added par. (9).

Subsec. (f). Pub. L. 99–643, § 7(b), substituted ''subsection (e) of this section and section 1382h(b)(3) of this title'' for ''subsection (e) of this section''.

Subsec. (g). Pub. L. 99–272, § 9503(a)(2), added subsec. (g).

Subsec. (h). Pub. L. 99–509, § 9433(a), added subsec. (d) to section 2173 of Pub. L. 97–35 in turn which added subsec. (h) of this section. See 1981 Amendment note below.

Subsec. (j). Pub. L. 99–509, § 9408(c)(2), substituted ''(21)'' for ''(20)''.

Pub. L. 99–514, § 1895(c)(3)(B), substituted ''(20)'' for ''(19)''.

Pub. L. 99–272, § 9505(d)(1), substituted ''(19)'' for ''(18)''.

Subsec. (k). Pub. L. 99–272, § 9506(a), added subsec. (k).

Subsec. (*l*). Pub. L. 99–643, § 3(b), added subsec. (*l*) relating to disregarding of certain benefits for purposes of determining post-eligibility contributions.

Pub. L. 99–509, § 9401(b), added subsec. (*l*) relating to description of group.

Subsec. (m). Pub. L. 99–509, § 9402(a)(2), (b), added subsec. (m).

Subsec. (m)(3). Pub. L. 99–509, § 9403(f)(1)(A), which directed insertion of ''or coverage under subsection (a)(10)(E) of this section'' after ''subsection (a)(10)(A)(ii)(IX) of this section'', was executed by making the insertion after ''subsection (a)(10)(A)(ii)(X) of this section'' as the probable intent of Congress.

Subsec. (m)(5). Pub. L. 99–509, § 9403(f)(1)(B), added par. (5).

Subsec. (n). Pub. L. 99–509, § 9403(e), added subsec. (n).

1984—Subsec. (a)(9)(C). Pub. L. 98–369, § 2373(b)(1), realigned margin of subpar. (C).

Subsec. (a)(10)(A). Pub. L. 98–369, § 2373(b)(2), realigned margins of subpar. (A).

Subsec. (a)(10)(A)(i). Pub. L. 98–369, § 2361(a), amended cl. (i) generally. Prior to the amendment cl. (i) read as follows: ''all individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including pregnant women deemed by the State to be receiving such aid as authorized in section 606(g) of this title and individuals considered by the State to be receiving such aid as authorized under section 614(g) of this title), or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter; and''.

Subsec. (a)(10(A)(i)(I). Pub. L. 98–378, § 20(c), substituted ''section 602(a)(37) or 606(h) of this title'' for ''section 602(a)(37) of this title''.

Subsec. (a)(13)(A). Pub. L. 98–369, §2373(b)(3), made clarifying amendment by striking out ''(A)'' and all that follows through ''hospital'' the first place it appears and inserting in lieu thereof ''(A) for payment (except where the State agency is subject to an order under section 1396m of this title) of the hospital'', resulting in no change in text.

Subsec. (a)(13)(B), (C). Pub. L. 98–369, §2314(b), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(20)(B). Pub. L. 98–369, §2373(b)(4), substituted ''periodic'' for ''periodical''.

Subsec. (a)(20)(C). Pub. L. 98–369, §2373(b)(5), struck out reference to section 803(a)(1)(A)(i) and (ii) of this title.

Subsec. (a)(26). Pub. L. 98–369, §2368(b), in amending par. (26) generally, revised existing provisions to continue their application to review of inpatient mental hospital service programs, and to sever provisions relating to review of skilled nursing programs. See par. (31) of this section.

Subsec. (a)(26)(B)(ii). Pub. L. 98–617, §3(a)(7), repealed the amendment made by Pub. L. 98–369, §2373(b)(6). See below.

Pub. L. 98–369, §2373(b)(6), provided that cl. (ii) is amended by substituting ''facilities'' for ''homes''.

Subsec. (a)(26)(C). Pub. L. 98–617, §3(b)(10), realigned margin of subpar. (C).

Subsec. (a)(28). Pub. L. 98–369, §2335(e), struck out ''and tuberculosis'' after ''mental diseases''.

Subsec. (a)(30). Pub. L. 98–369, §2363(a)(1)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(31). Pub. L. 98–369, §2368(a), in amending par. (31) generally, revised existing provisions to cover review of skilled nursing facilities.

Subsec. (a)(33)(A). Pub. L. 98–369, §2373(b)(7), substituted ''second sentence'' for ''penultimate sentence''.

Subsec. (a)(42). Pub. L. 98–369, §2373(b)(8), substituted ''subchapter'' for ''part'' after ''audits conducted for purposes of such''.

Subsec. (a)(43). Pub. L. 98–369, §2303(g)(1), redesignated par. (44) as (43), and struck out former par. (43) which provided that if the State plan makes provision for payment to a physician for laboratory services the performance of which such physician, or other physician with whom he shares his practice, did not personally perform or supervise, the plan include provision to insure that payment for such services not exceed the payment authorized by section 1395u(h) of this title.

Subsec. (a)(44). Pub. L. 98–369, §2363(a)(1)(B), added par. (44).

Pub. L. 98–369, §2303(g)(1)(C), redesignated former par. (44) as (43).

Subsec. (a)(45). Pub. L. 98–369, §2367(a), added par. (45).

Subsec. (a)(46). Pub. L. 98–369, §2651(c), added par. (46).

Subsec. (a), foll. par. (46). Pub. L. 98–369, §2373(b)(9), substituted ''The provisions of paragraph (9)(A), (31), and (33) and of section 1396b(i)(4) of this title shall not apply to'' for ''For purposes of paragraph (9)(A), (26), (31), and (33), and of section 1396b(i)(4) of this title, the term 'skilled nursing facility' and 'nursing home' do not include''.

Subsec. (e)(4). Pub. L. 98–369, §2362(a), added par. (4).

Subsec. (f). Pub. L. 98–369, §2373(b)(10), substituted ''paragraph (10)(A)'' and ''paragraph (10)(C)'' for ''clause (10)(A)'' and ''clause (10)(C)'', respectively, wherever appearing.

1982—Subsec. (a)(10)(A). Pub. L. 97–248, §137(b)(7), redesignated existing provisions as provisions preceding cl. (i) and cl. (i), and added cl. (ii).

Subsec. (a)(10)(C), (D). Pub. L. 97–248, §137(a)(3), amended directory language of Pub. L. 97–35, §2171(a)(3), to correct an error, and did not involve any change in text. See 1981 Amendment note below.

Subsec. (a)(10)(C)(i). Pub. L. 97–248, §137(b)(8), substituted '', (II)'' for ''and (II)'', and added subcl. (III).

Subsec. (a)(10)(C)(ii)(I). Pub. L. 97–248, §137(b)(9), substituted ''under the age of 18 who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A)(i)'' for ''described in section 1396d(a)(i) of this title''.

Subsec. (a)(10). Pub. L. 97–248, §131(c), formerly §131(b), as redesignated by Pub. L. 97–448, §309(a)(8), in provisions following subpar. (D) added cl. (IV).

Subsec. (a)(14). Pub. L. 97–248, §131(a), substituted provisions that a State plan for medical assistance must provide that enrollment fees, premiums, or similar charges, and deductions, cost sharing, or similar charges, may be imposed only as provided in section 1396*o* of this title for provisions that such plan must provide that, with respect to individuals receiving assistance, no enrollment fee, premium, or similar charge, and no deduction, cost sharing, or similar charge with respect to the care and services listed in pars. (1) through (5), (7), and (17) of section 1396d(a) of this title, would be imposed under the plan, and any deduction, cost sharing, or similar charge imposed under the plan with respect to other care and services would be nominal in amount (as determined in accordance with standards approved by the Secretary and included in the plan), and with respect to individuals not receiving assistance, there could be imposed an enrollment fee, premium, or similar charge (as determined in accordance with standards prescribed by the Secretary) related to the individual's income, and any deductible, cost-sharing, or similar charge imposed under the plan would be nominal.

Subsec. (a)(18). Pub. L. 97–248, §132(a), substituted provisions that a State plan for medical assistance must comply with the provisions of section 1396p of this title with respect to liens, adjustments and recoveries of medical assistance correctly paid, and transfers of assets for provisions that such plan must provide that no lien could be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there would be no adjustment or recovery (except, in the case of an individual who was 65 years of age or older when he received such assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he had no surviving child who was under age 21 or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), was blind or permanently and totally disabled, or was blind or disabled as defined in section 1382c of this title with respect to States which were not eligible to participate in such program) of any medical assistance correctly paid on behalf of such individual under the plan.

Subsec. (a). Pub. L. 97–248, §137(e), inserted '', (26)'' after ''(9)(A)'' in provisions following par. (44).

Subsec. (b)(2) to (4). Pub. L. 97–248, §137(b)(10), struck out par. (2) which provided that the Secretary would not approve any plan which imposed any age requirement which excluded any individual who had not attained the age of 19 and was a dependent child under part A of subchapter IV of this chapter, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (d). Pub. L. 97–248, §146(a), substituted references to utilization and quality control peer review organizations having a contract with the Secretary, for references to conditionally or otherwise designated Professional Standards Review Organizations, wherever appearing.

Subsec. (e)(3). Pub. L. 97–248, §134(a), added par. (3).

Subsec. (j). Pub. L. 97–248, §§132(c), 136(d), struck out subsec. (j) which related to the denial of medical assistance under a State plan because of an individual's disposal of resources for less than fair market value, the period of ineligibility, and the eligibility of certain individuals for medical assistance under a State plan who would otherwise be ineligible because of the provisions of section 1382b(c) of this title, and added a new subsec. (j) relating to waiver or modification of requirements with respect to American Samoa medical assistance program.

1981—Subsec. (a)(9)(C). Pub. L. 97–35, §2175(d)(1)(C), added subpar. (C).

Subsec. (a)(10)(A). Pub. L. 97–35, § 2171(a)(1), substituted ''including at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title, to all individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including pregnant women deemed by the State to be receiving such aid as authorized by section 606(g) of this title and individuals considered by the State to be receiving such aid as authorized under section 614(g) of this title)'' for ''to all individuals receiving aid or assistance under any plan of the State approved under subchapters I, X, XIV, or XVI, or part A of subchapter IV of this chapter''.

Subsec. (a)(10)(B). Pub. L. 97–35, § 2171(a)(2), substituted reference to subparagraph for reference to clause in two places.

Subsec. (a)(10)(C). Pub. L. 97–35, § 2171(a)(3), as amended by Pub. L. 97–248, § 137(a)(3), substituted provisions relating to plans for medical assistance included for any group of individuals described in section 1396d(a) of this title who are not described in subpar. (A) for provisions relating to medical assistance for any group of individuals not described in subpar. (A) and who do not meet the income and resources requirements of the appropriate State plan, or the supplementary security income program under subchapter XVI of this chapter, as the case may be, as determined in accordance with standards prescribed by the Secretary.

Subsec. (a)(10)(D). Pub. L. 97–35, § 2171(a)(3), as amended by Pub. L. 97–248, § 137(a)(3), added subpar. (D).

Subsec. (a)(11). Pub. L. 97–35, § 2193(c)(9), substituted ''under or through an allotment under) subchapter V of this chapter, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such subchapter or allotment'' for ''for part or all of the cost of plans or projects under subchapter V of this chapter, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such plan or project under subchapter V of this chapter''.

Subsec. (a)(13)(A). Pub. L. 97–35, §§ 2171(b), 2173(a)(1)(B), (C), struck out subpar. (A) which provided that a State plan must provide for the inclusion of some institutional and some noninstitutional care and services and for the inclusion of home health services for any individual who is entitled to skilled nursing facility services, redesignated subpar. (E) as (A), and in subpar. (A), as so redesignated, made the subsection applicable to hospital facilities, inserted reference to rates which take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs and provide, in the case of hospital patients receiving services at an inappropriate level of care under conditions similar to those described in section 1395x(v)(1)(G) of this title, for lower reimbursement rates reflecting the level of care actually received in a manner consistent with such section, and substituted ''safety standards and to assure that individuals eligible for medical assistance have reasonable access (taking into account geographic location and reasonable travel time) to inpatient hospital services of adequate quality'' for ''safety standards''.

Subsec. (a)(13)(B). Pub. L. 97–35, §§ 2171(b), 2173(a)(1)(C), struck out subpar. (B) which provided that a State plan must provide in the case of individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, for the inclusion of at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title, and redesignated subpar. (F) as (B).

Subsec. (a)(13)(C). Pub. L. 97–35, § 2171(b), struck out subpar. (C) which provided for care and services of individuals not included in former subpar. (B).

Subsec. (a)(13)(D). Pub. L. 97–35, § 2173(a)(1)(A), struck out subpar. (D) which provided for payment of reasonable cost of inpatient hospital services provided under the plan with provisions for determination of such costs with certain maximum limitations and for payment of reasonable cost of inappropriate inpatient services described in subsec. (h)(1) of this section.

Subsec. (a)(13)(E), (F). Pub. L. 97–35, § 2173(a)(1)(C), redesignated subpars. (E) and (F) as (A) and (B), respectively.

Subsec. (a)(20)(D). Pub. L. 97–35, § 2173(a)(2), struck out subpar. (D) which required provision for methods of determining reasonable cost of institutional care of such patients.

Subsec. (a)(23). Pub. L. 97–35, § 2175(a), substituted ''except as provided in section 1396n and except in the case of'' for ''except in the case of'', and struck out provision that a State plan shall not be deemed to be out of compliance with the requirements of this paragraph or pars. (1) and (10) of this subsection solely by reason of the fact that the State or any political subdivision thereof has entered into a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic.

Subsec. (a)(25)(C). Pub. L. 97–35, § 2182, substituted ''of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State'' for ''of the individual, the State''.

Subsec. (a)(30). Pub. L. 97–35, § 2174(a), substituted ''that payments are consistent'' for ''that payments (including payments for any drugs provided under the plan) are not in excess of reasonable charges consistent''.

Subsec. (a)(39). Pub. L. 97–35, § 2105(c), substituted ''person'' for ''individual'' in two places.

Subsec. (a)(44). Pub. L. 97–35, § 2181(a)(2)(C), added par. (44).

Subsec. (b)(2). Pub. L. 97–35, § 2172(a), substituted ''any age requirement which excludes any individual who has not attained the age of 19 and is a dependent child under part A of subchapter IV of this chapter;'' for ''effective July 1, 1967, any age requirement which excludes any individual who has not attained the age of 21 and is or would, except for the provisions of section 606(a)(2) of this title, be a dependent child under part A of subchapter IV of this chapter; or''.

Subsec. (d). Pub. L. 97–35, § 2113(m), added subsec. (d).

Subsec. (e). Pub. L. 97–35, § 2178(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 97–35, § 2173(b)(1), (d), as amended by Pub. L. 99–509, § 9433(a), added a new subsec. (h) and repealed former subsec. (h) which related to skilled nursing and intermediate care facility services.

1980—Subsec. (a)(13)(B). Pub. L. 96–499, § 965(b)(1), substituted ''paragraphs (1) through (5) and (17)'' for ''clauses (1) through (5)''.

Subsec. (a)(13)(C)(i). Pub. L. 96–499, § 965(b)(2), substituted ''paragraphs (1) through (5) and (17)'' for ''clauses (1) through (5)''.

Subsec. (a)(13)(C)(ii). Pub. L. 96–499, § 965(b)(3), substituted ''paragraphs numbered (1) through (17)'' for ''clauses numbered (1) through (16)''.

Subsec. (a)(13)(D). Pub. L. 96–499, § 902(b)(1), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(13)(D)(i). Pub. L. 96–499, §§ 903(b), 905(a), inserted ''(except where the State agency is subject to an order under section 1396m of this title)'' after ''payment'' and '', except that in the case of hospitals reimbursed for services under part A of subchapter XVIII of this chapter in accordance with section 1395f(b)(3) of this title, the plan must provide for payment of inpatient hospital services provided in such hospitals under the plan in accordance with the reimbursement system used under such section'' after ''subchapter XVIII of this chapter''.

Subsec. (a)(13)(E). Pub. L. 96–499, §905(a), inserted ''(except where the State agency is subject to an order under section 1396m of this title)''.

Pub. L. 96–499, §962(a), substituted provisions which required a State plan for medical assistance to provide for payment of skilled nursing facility and intermediate care facility services provided under such plan through the use of rates determined in accordance with methods and standards developed by the State rather than on a reasonable cost related basis, required the filing of uniform cost reports by each facility, and required periodic audits of such reports by the State.

Subsec. (a)(14)(A)(i). Pub. L. 96–499, §965(b)(4), substituted ''paragraphs (1) through (5), (7), and (17)'' for ''clauses (1) through (5) and (7)''.

Subsec. (a)(33)(B). Pub. L. 96–499, §916(b)(1)(B), inserted exception authorizing the Secretary where there was cause to question the adequacy of participation determinations to make independent determinations concerning the extent to which individual institutions and agencies met the requirements for participation.

Subsec. (a)(35). Pub. L. 96–499, §912(b), substituted ''disclosing entity (as defined in section 1320a–3(a)(2) of this title)'' for ''intermediate care facility''.

Subsec. (a)(39). Pub. L. 96–499, §913(c), substituted provisions requiring that State plans for medical assistance authorize the State agency to bar specified individuals from participation in the program under the State plan when required by the Secretary to do so pursuant to section 1320a–7 of this title for provisions requiring that State plans for medical assistance provide for the suspension of physicians or other individuals from participation in the State plan upon notification by the Secretary that such physician or other individual had been suspended from participation in the plan under subchapter XVIII of this chapter.

Subsec. (a)(41). Pub. L. 96–272 added par. (41).

Subsec. (a)(42). Pub. L. 96–499, §914(b)(1), added par. (42).

Subsec. (a)(43). Pub. L. 96–499, §918(b)(1)(C), added par. (43).

Subsec. (g). Pub. L. 96–499, §913(d), struck out subsec. (g) which related to waiver of suspension of payments to physicians or practitioners suspended from participation in approved State plans.

Subsec. (h). Pub. L. 96–499, §902(b)(2), added subsec. (h).

Subsec. (i). Pub. L. 96–499, §916(b)(1)(A), added subsec. (i).

Subsec. (j). Pub. L. 96–611 added subsec. (j).

1978—Subsec. (a)(4)(C). Pub. L. 95–559 added cl. (C).

1977—Subsec. (a)(13)(F). Pub. L. 95–210, §2(c)(1), added subpar. (F).

Subsec. (a)(23). Pub. L. 95–210, §2(c)(2), inserted '', or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic'' after ''who elect to obtain such care and services from such organization''.

Subsec. (a)(26). Pub. L. 95–142, §20(b), inserted provision relating to staff of skilled nursing facilities.

Subsec. (a)(27)(B). Pub. L. 95–142, §9, inserted ''or the Secretary'' after ''State agency'' wherever appearing.

Subsec. (a)(32). Pub. L. 95–142, §2(a)(3), substituted provisions relating to terms, conditions, etc., for payments under an assignment or power of attorney, for provisions relating to terms, conditions, etc., for payments to anyone other than the individual receiving any care or service provided by a physician, dentist, or other individual practitioner, or such physician, dentist, or practitioner.

Subsec. (a)(35). Pub. L. 95–142, §3(c)(1)(A), substituted provisions relating to requirements for intermediate care facilities to comply with section 1320a–3 of this title for provisions relating to disclosure requirements, effective Jan. 1, 1973, applicable to intermediate care facilities with respect to ownership, corporate, status, etc.

Subsec. (a)(37). Pub. L. 95–142, §§2(b)(1)(C), 3(c)(1)(C), 7(b)(1), added subsec. (a)(37) and made and struck out minor changes in phraseology, necessitating no changes in text.

Subsec. (a)(38). Pub. L. 95–142, §§3(c)(1)(D), 7(b)(2), 19(b)(2)(A), added par. (38) and made and struck out minor changes in phraseology necessitating no changes in text.

Subsec. (a)(39). Pub. L. 95–142, §§7(b)(3), 19(b)(2)(B), added par. (39).

Subsec. (a)(40). Pub. L. 95–142, §19(b)(2)(C), added par. (40).

Subsec. (a), foll. par. (40). Pub. L. 95–142, §2(b)(1)(D), added paragraph relating to waiver of requirement of cl. (A) of par. (37).

Subsec. (g). Pub. L. 95–142, §7(c), added subsec. (g).

1976—Subsec. (g). Pub. L. 94–552 struck out provisions for consent to suit and waiver of immunity by State.

1975—Subsec. (a). Pub. L. 94–48, §1, added undesignated paragraph at end of subsec. (a) relating to eligibility under this subchapter of any individual who was eligible for the month of August 1972, under a State plan approved under subchapters I, X, XIV, XVI, or part A of subchapter IV of this chapter if such individual would have been eligible for such month had the increase in monthly insurance benefits under subchapter II of this chapter resulting from enactment of Pub. L. 92–336 not been applicable to such individual.

Subsec. (a)(23). Pub. L. 94–48, §2, inserted ''except in the case of Puerto Rico, the Virgin Islands, and Guam,''.

Subsec. (g). Pub. L. 94–182 added subsec. (g).

1974—Subsec. (a)(14)(B)(i). Pub. L. 93–368 substituted ''may'' for ''shall''.

1973—Subsec. (a)(5). Pub. L. 93–233, §13(a)(2)(A), (B), substituted ''to administer or to supervise the administration of the plan'' for ''to administer the plan'' and ''to supervise the administration of the plan'' in that order and inserted after the parenthetical phrase the conditional provision ''if the State is eligible to participate in the State plan program established under subchapter XVI of this chapter, or by the agency or agencies administering the supplemental security income program established under subchapter XVI of this chapter or the State plan approved under part A of subchapter IV of this chapter if the State is not eligible to participate in the State plan program established under subchapter XVI of this chapter''.

Subsec. (a)(10). Pub. L. 93–233, §13(a)(3), incorporated existing text in provisions designated as cl. (A), providing therein for medical assistance to individuals with respect to whom supplemental security income benefits are paid; incorporated existing par. (A) in provisions designated as cl. (B); incorporated existing par. (B) in provisions designated as cl. (C), providing therein for individuals not meeting income and resources requirements of the supplemental security income program; substituted in cls. (B)(ii), (C), (C)(i)(ii) and ''medical assistance'' for ''medical or remedial care and services'' appearing in predecessor provisions and in cl. (C)(i) ''except for income and resources'' for ''if needy'' appearing in predecessor provision; and in the exception provisions included reference to par. (16) of section 1396(a) of this title in item (I), substituted ''deductibles'' for ''the deductibles'' in item (II), and added item (III).

Subsec. (a)(13)(B). Pub. L. 93–233, §13(a)(4), substituted ''any plan of the State approved'' for ''the State's plan approved'' and inserted after ''part A of subchapter IV of this chapter'' text reading '', or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter''.

Subsec. (a)(13)(C)(ii)(I). Pub. L. 93–233, §18(x)(1), substituted reference to cl. ''16'' for ''14''.

Subsec. (a)(14)(A). Pub. L. 93–233, §13(a)(5), substituted ''any plan of the State approved'' for ''a State plan approved'' and ''with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or who meet the income and resources requirements of the appropriate State plan, or the supplemental security income program under subchapter XVI of this chapter, as the case

may be, and individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in paragraph (10)(A)'' for ''who meet the income and resources requirements of the one of such State plans which is appropriate''.

Subsec. (a)(14)(B). Pub. L. 93–233, §13(a)(6)(A)–(D), inserted after ''with respect to individuals'' the parenthetical provision ''(other than individuals with respect to whom there is being paid, or who are eligible or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in paragraph (10)(A))''; inserted after ''any such State plan'' the clause ''and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter''; substituted ''the appropriate State plan, or the supplemental security income program under subchapter XVI of this chapter, as the case may be,'' for ''the one of such State plans which is appropriate''; and struck out ''or who, after December 31, 1973, are included under the State plan for medical assistance pursuant to subsection (a)(10)(B) of this section approved under this subchapter'' preceding the hyphen and cl. (i), respectively.

Subsec. (a)(17). Pub. L. 93–233, §13(a)(7)(A)–(D), (8), substituted: ''any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter'' for ''the State's plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter''; ''except for income and resources'' for ''if he met the requirements as to need''; ''any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, or to have paid with respect to him supplemental security income benefits under subchapter XVI of this chapter'' for ''a State plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter''; ''such aid, assistance, or benefits'' for ''and amount of such aid or assistance under such plan''; and ''(with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program)'' for ''is blind or permanently and totally disabled''.

Subsec. (a)(18). Pub. L. 93–233, §13(a)(8), substituted ''(with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program)'' for ''is blind or permanently and totally disabled''.

Subsec. (a)(20)(C). Pub. L. 93–233, §13(a)(9), inserted reference to section 803(a)(1)(A)(i) and (ii) of this title.

Subsec. (a)(21), (24). Pub. L. 93–233, §18(x)(4), provided for substitution of ''nursing facilities'' for ''nursing homes''.

Subsec. (a)(26)(B). Pub. L. 93–233, §18(x)(4), provided for substitution of ''nursing facility'' and ''nursing facilities'' for ''nursing home'' and ''nursing homes'', changes already executed under 1972 Amendment by Pub. L. 92–603, §278(a)(19).

Subsec. (a)(33)(A). Pub. L. 93–233, §18(x)(2), substituted ''penultimate sentence'' for ''last sentence''.

Subsec. (a)(34). Pub. L. 93–233, §18(*o*), inserted ''(or application was made on his behalf in the case of a deceased individual)'' after ''he made application''.

Subsec. (a)(35)(A). Pub. L. 93–233, §18(p), required the intermediate care facility to supply full and complete information respecting the person who is the owner (in whole or in part) of any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the intermediate care facility or any of the property or assets of the intermediate care facility.

Subsec. (a)(35) to (37). Pub. L. 93–233, §18(x)(3)(A), (B), substituted ''; and'' for ''.'' at end of par. (35); and corrected numerical sequence of paragraphs, redesignating par. (37) as (36), the original subsec. (a) having been enacted without a par. (36).

Subsec. (e). Pub. L. 93–233, §18(q), substituted ''each family which was receiving aid pursuant to a plan of the State approved under part A'' for ''each family which was eligible for assistance pursuant to part A'', ''for such aid because of increased hours of, or increased income from, employment'' for ''for such assistance because of increased income from employment'', and ''remain eligible for assistance under the plan approved under this subchapter (as though the family was receiving aid under the plan approved under part A of subchapter IV of this chapter) for 4 calendar months beginning with the month in which such family became ineligible for aid under the plan approved under part A of subchapter IV of this chapter because of income and resources or hours of work limitations'' for ''remain eligible for such assistance for 4 calendar months following the month in which such family would otherwise be determined to be ineligible for such assistance because of the income and resources limitations''.

Subsec. (f). Pub. L. 93–233, §13(a)(10)(A)–(D), substituted: ''no State not eligible to participate in the State plan program established under subchapter XVI of this chapter'' for ''no State'' and ''any supplemental security income payment and State supplementary payment made with respect to such individual'' for ''such individual's payment under subchapter XVI of this chapter'' and ''as recognized under State law'' for ''as defined in section 213 of Title 26'' in parenthetical text; and inserted two end sentences for consideration of certain individuals as eligible for medical assistance under cl. (10)(A) or (C) of subsec. (a) of this section or as eligible for such assistance under cl. (10)(A) in States not providing such assistance under cl. (10)(C), respectively.

1972—Subsec. (a). Pub. L. 92–603, §§268(a), 278(b)(14), inserted provisions exempting Christian Science sanatoriums from certain nursing facility and nursing home requirements.

Subsec. (a)(9). Pub. L. 92–603, §239(a), inserted provisions to utilize State health agency for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services.

Subsec. (a)(13)(A)(ii), (C). Pub. L. 92–603, §278(a)(18), (b)(14), substituted ''skilled nursing facility'' for ''skilled nursing home''.

Subsec. (a)(13)(D). Pub. L. 92–603, §§221(c)(5), 232(a), inserted provisions that the reasonable cost of inpatient hospital services shall not exceed the amount determined under section 1395x(v) of this title and inserted reference to the consistency of methods and standards with section 1320a–1 of this title for determining the reasonable cost of inpatient hospital services.

Subsec. (a)(13)(E). Pub. L. 92–603, §249(a), added subpar. (E).

Subsec. (a)(14). Pub. L. 92–603, §208(a), substituted a nominal amount for an amount reasonably related to the recipient's income as the amount of the deduction, cost sharing, or similar charge imposed under the plan and inserted provisions covering individuals who are not receiving aid or assistance under any state plan and who do not meet the income and resources requirements and covering individuals who are included under the state plan for medical assistance pursuant to subsec. (a)(10)(B) of this section approved under this subchapter.

Subsec. (a)(23). Pub. L. 92–603, §240, inserted provisions allowing States to adopt comprehensive health care programs while still complying with medicaid requirements.

Subsec. (a)(26). Pub. L. 92–603, §§ 274(a), 278(a)(19), (b)(14), substituted ''evaluation)'' for ''evaluation'' and ''care'' for ''care)'' and substituted ''skilled nursing facility'' and ''skilled nursing facilities'' for ''skilled nursing home'' and ''skilled nursing homes''.

Subsec. (a)(28). Pub. L. 92–603, §§ 246(a), 278(a)(20), substituted ''skilled nursing facility'' for ''skilled nursing home'' and substituted a simple reference to the requirements contained in section 1395x(j) of this title with a specified exception for provisions spelling out in detail the requirements for skilled nursing homes receiving payments.

Subsec. (a)(30). Pub. L. 92–603, § 237(a)(2), substituted ''under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title)'' for ''under the plan''.

Subsec. (a)(31)(A). Pub. L. 92–603, § 298, struck out ''which provides more than a minimum level of health care services'' after ''intermediate care facility''.

Subsec. (a)(32). Pub. L. 92–603, § 236(b)(3), added par. (32).

Subsec. (a)(33). Pub. L. 92–603, § 239(b)(3), added par. (33).

Subsec. (a)(34). Pub. L. 92–603, § 255(a)(3), added par. (34).

Subsec. (a)(35). Pub. L. 92–603, § 299A(3), added par. (35).

Subsec. (a)(37). Pub. L. 92–603, § 299D(b)(3), added par. (37).

Subsec. (d). Pub. L. 92–603, § 231, repealed subsec. (d) which related to modification of state plans for medical assistance under certain circumstances.

Subsec. (e). Pub. L. 92–603, § 209(a), added subsec. (e).

Subsec. (f). Pub. L. 92–603, § 209(b)(1), added subsec. (f).

1971—Subsec. (a)(31). Pub. L. 92–223 added par. (31).

1969—Subsec. (c). Pub. L. 91–56, § 2(c), substituted ''aid or assistance in the form of money payments (other than so much, if any, of the aid or assistance in such form as was, immediately prior to the effective date of the State plan under this subchapter, attributable to medical needs)'' for ''aid or assistance (other than so much of the aid or assistance as is provided for under the plan of the State approved under this subchapter)''.

Subsec. (d). Pub. L. 91–56, § 2(d), added subsec. (d).

1968—Subsec. (a)(2). Pub. L. 90–248, § 231, changed the date on which State plans must meet certain financial participation requirements by substituting ''July 1, 1969'' for ''July 1, 1970''.

Subsec. (a)(4). Pub. L. 90–248, § 210(a)(6), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10). Pub. L. 90–248, §§ 223(a), 241(f)(1), struck out ''IV,'' after ''I,'' and inserted '', and part A of subchapter IV of this chapter'' after ''XVI of this chapter'', and designated existing provisions as item I and added item II.

Subsec. (a)(11). Pub. L. 90–248, § 302(b), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(13). Pub. L. 90–248, § 224(a), designated existing provisions as subpar. (A), incorporated existing cl. (A) in provisions designated as subpars. (B) and (C)(i), making subpar. (B) and (C) applicable to individuals receiving aid or assistance under an approved State plan and to individuals not covered under subpar. (B), respectively, added cl. (ii) of subpar. (C), redesignated former cl. (B) as subpar. (D), and deleted effective date of July 1, 1967, for former cls. (A) and (B).

Subsec. (a)(13)(A). Pub. L. 90–248, § 224(c)(1), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(14)(A). Pub. L. 90–248, § 235(a)(1), inserted ''in the case of individuals receiving aid or assistance under State plans approved under subchapters I, X, XIV, XVI, and part A of subchapter IV of this chapter,''.

Subsec. (a)(14)(B). Pub. L. 90–248, § 235(a)(2), inserted ''inpatient hospital services or'' after ''respect to'' and substituted ''to an individual'' for ''him''.

Subsec. (a)(15). Pub. L. 90–248, § 235(a)(3), struck out subpar. (B) provision for meeting the full cost of any deductible imposed with respect to any such individual under the insurance program established by part A of such subchapter, deleted subpar. (B) designation preceding ''where, under the plan'', and substituted therein ''established by such subchapter'' for ''established by part B of such subchapter''.

Subsec. (a)(17). Pub. L. 90–248, § 238, inserted in parenthetical expression ''and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, based on the variations between shelter costs in urban areas and in rural areas'' after ''all groups''.

Pub. L. 90–248, § 241(f)(2), in cl. (B) struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter'' after ''XVI of this chapter''.

Subsec. (a)(23) to (30). Pub. L. 90–248, §§ 227(a), 228(a), 229(a), 234(a), 236(a), 237, added pars. (23), (24), (25), (26) to (28), (29), (30), respectively.

Subsec. (b)(2). Pub. L. 90–248, § 241(f)(3), inserted ''part A of'' before ''subchapter IV''.

Subsec. (c). Pub. L. 90–248, § 241(f)(4), struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter'' after ''XVI of this chapter''.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–91, title I, § 101(c), Oct. 20, 2005, 119 Stat. 2091, provided that: ''The amendments made by this section [amending this section and section 1396u–3 of this title] shall be effective as of September 30, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–265 effective July 1, 2005, see section 502(b)(4) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Pub. L. 108–173, title I, § 103(f)(3), Dec. 8, 2003, 117 Stat. 2160, provided that: ''The amendments made by this subsection [amending this section and section 1396u–3 of this title] shall apply to calendar quarters beginning on or after April 1, 2004.''

Amendment by section 236(b)(1) of Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2004, see section 236(c) of Pub. L. 108–173, set out as a note under section 1395cc of this title.

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–121, § 2(c), Jan. 15, 2002, 115 Stat. 2384, provided that:

''(1) BCCPTA TECHNICAL AMENDMENT.—The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Public Law 106–354; 114 Stat. 1381).

''(2) BIPA TECHNICAL AMENDMENTS.—The amendments made by subsection (b) [amending this section and section 1396n of this title] shall take effect as if included in the enactment of section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–572) (as enacted into law by section 1(a)(6) of Public Law 106–554).''

EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106–554, § 1(a)(6) [title VII, § 702(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574, provided that: ''The amendments made by this section [amending this section and sections 1396b and 1396n of this title and repealing provisions set out as a note under this section] take effect on January 1, 2001, and shall apply to services furnished on or after such date.''

Pub. L. 106–354, § 2(d), Oct. 24, 2000, 114 Stat. 1384, provided that: ''The amendments made by this section [enacting section 1396r–1b of this title and amending this

section and sections 1396b and 1396d of this title] apply to medical assistance for items and services furnished on or after October 1, 2000, without regard to whether final regulations to carry out such amendments have been promulgated by such date.''

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–170, title II, § 201(d), Dec. 17, 1999, 113 Stat. 1894, provided that: ''The amendments made by this section [amending this section and sections 1396b, 1396d, and 1396*o* of this title and enacting provisions set out as a note below] apply to medical assistance for items and services furnished on or after October 1, 2000.''

Pub. L. 106–169, title II, § 121(b), Dec. 14, 1999, 113 Stat. 1830, provided that: ''The amendments made by subsection (a) [amending this section and section 1396d of this title] apply to medical assistance for items and services furnished on or after October 1, 1999.''

Amendment by section 205(c) of Pub. L. 106–169 effective Jan. 1, 2000, and applicable to trusts established on or after such date, see section 205(d) of Pub. L. 106–169, set out as a note under section 1382a of this title.

Amendment by section 206(b) of Pub. L. 106–169 effective with respect to disposals made on or after Dec. 14, 1999, see section 206(c) of Pub. L. 106–169, set out as a note under section 1382b of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 603(a)(3)], Nov. 29, 1999, 113 Stat. 1536, 1501A–395, provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note under this section] shall take effect as if included in the enactment of section 4712 of BBA (111 Stat. 508) [the Balanced Budget Act of 1997, Pub. L. 105–33].''

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 604(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–395, provided that:

''(1) The amendment made by subsection (a)(1) [amending this section] applies to expenditures made on and after the date of the enactment of this Act [Nov. 29, 1999].

''(2) The amendments made by subsections (a)(2) and (b) [amending this section and section 1396b of this title] apply as of such date as the Secretary of Health and Human Services certifies to Congress that the Secretary is fully implementing section 1932(c)(2) of the Social Security Act (42 U.S.C. 1396u–2(c)(2)).''

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(aa)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398 provided that the amendment made by section 1000(a)(6) [title VI, § 608(aa)(1)] is effective as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(bb)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398, provided that: ''Except as otherwise provided, the amendments made by this section [amending this section and sections 1396b, 1396d, 1396g–1, 1396i, 1396n, 1396r, 1396r–1, 1396r–1a, 1396r–4, 1396r–6, 1396r–8, 1396t, 1396u–2, and 1396u–3 of this title] shall take effect on the date of enactment of this Act [Nov. 29, 1999].''

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by section 4106(c) of Pub. L. 105–33 applicable to bone mass measurements performed on or after July 1, 1998, see section 4106(d) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Amendment by section 4454(b)(1) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

Amendment by section 4701(b)(2)(A)(i)–(iv), (d)(1) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on Oct. 1, 1997, except as otherwise provided, see section 4710(a) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Amendment by section 4702(b)(2) of Pub. L. 105–33 applicable to primary care case management services furnished on or after Oct. 1, 1997, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, see section 4710(b)(1) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Amendment by section 4709 of Pub. L. 105–33 effective Oct. 1, 1997, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, see section 4710(b)(7) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Section 4711(d) of Pub. L. 105–33 provided that: ''This section [amending this section and sections 1396d and 1396r–4 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997] and the amendments made by subsections (a) and (c) [amending this section and sections 1396d and 1396r–4 of this title] shall apply to payment for items and services furnished on or after October 1, 1997.''

Section 4712(b)(3) of Pub. L. 105–33 provided that: ''The amendments made by this subsection [amending this section and section 1396b of this title] shall apply to services furnished on or after October 1, 1997.''

Pub. L. 105–33, title IV, § 4712(c), Aug. 5, 1997, 111 Stat. 509, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 603(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394, which provided that the amendment made by section 4712(c) was effective for services furnished on or after Oct. 1, 2004, was repealed by Pub. L. 106–554, § 1(a)(6) [title VII, § 702(c)(1), (e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574, effective Jan. 1, 2001, and applicable to services furnished on or after such date.

Section 4714(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and sections 1395w–4, 1395cc, 1396d of this title] shall apply to payment for (and with respect to provider agreements with respect to) items and services furnished on or after the date of the enactment of this Act [Aug. 5, 1997]. The amendments made by subsection (a) [amending this section and section 1396d of this title] shall also apply to payment by a State for items and services furnished before such date if such payment is the subject of a law suit that is based on the provisions of sections 1902(n) and 1905(p) of the Social Security Act [subsec. (n) of this section and section 1396d(p) of this title] and that is pending as of, or is initiated after, the date of the enactment of this Act.''

Section 4715(b) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall apply on and after October 1, 1997.''

Section 4724(c)(2) of Pub. L. 105–33 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 1998.''

Section 4724(g)(2) of Pub. L. 105–33 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to suppliers of medical assistance consisting of durable medical equipment furnished on or after January 1, 1998.''

Section 4731(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] shall apply to medical assistance for items and services furnished on or after October 1, 1997.''

Section 4741(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and section 1396e of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

Section 4751(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section] take effect on the date of the enactment of this Act [Aug. 5, 1997].''

Section 4752(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] takes effect on the date of the enactment of this Act [Aug. 5, 1997].''

Section 4753(c) of Pub. L. 105–33 provided that: ''Except as otherwise specifically provided, the amendments made by this section [amending this section and section 1396b of this title] shall take effect on January 1, 1998.''

Section 4911(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall apply to medical assistance for items and services furnished on or after October 1, 1997.''

Section 4912(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [enacting section 1396r–1a and amending this section and section 1396b of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

Section 4913(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] applies to medical assistance furnished on or after July 1, 1997.''

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 1(a)(2) of Pub. L. 104–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of the amendments made by section 4752(c)(1) of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508].''

Amendment by sections 108(k) and 114(b)–(d)(1), of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Section 913 of Pub. L. 104–193 provided that the amendment made by that section is effective Jan. 1, 1997.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13581(b)(2) of Pub. L. 103–66 effective Jan. 1, 1994, see section 13581(d) of Pub. L. 103–66, set out as a note under section 1395y of this title.

Section 13601(c) of Pub. L. 103–66 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1396d of this title] shall take effect as if included in the enactment of section 4721(a) of OBRA–1990 [Pub. L. 101–508].''

Amendment by section 13602(c) of Pub. L. 103–66 applicable to calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not regulations to carry out the amendments by section 13602(a)(1) and (c) of Pub. L. 103–66 have been promulgated by such date, see section 13602(d)(2) of Pub. L. 103–66, set out as a note under section 1396r–8 of this title.

Section 13603(f) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 1396d and 1396n of this title] shall apply to medical assistance furnished on or after January 1, 1994, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Amendment by section 13611(d)(1) of Pub. L. 103–66 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not final regulations to carry out the amendments by section 13611 of Pub. L. 103–66 have been promulgated by such date, see section 13611(e) of Pub. L. 103–66, set out as a note under section 1396p of this title.

Section 13622(d) of Pub. L. 103–66 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsections (a)(1), (b), and (c) [amending this section] shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsections (a) and (b) [amending this section and section 1396b of this title], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

''(3) The amendment made by subsection (a)(2) [amending section 1396b of this title] shall apply to items and services furnished on or after October 1, 1993.''

Amendment by section 13623(a) of Pub. L. 103–66 applicable, except as otherwise provided, to calendar quarters beginning on or after Apr. 1, 1994, without regard to whether or not final regulations to carry out the amendments by section 13623 of Pub. L. 103–66 have been promulgated by such date, see section 13623(c) of Pub. L. 103–66, set out as an Effective Date note under section 1396g–1 of this title.

Section 13625(b) of Pub. L. 103–66 provided that: ''Section 1902(a)(61) of the Social Security Act [subsec. (a)(61) of this section] (as added by subsection (a)) shall take effect January 1, 1995, and the standards referred to in such section shall be established not later than March 31, 1994.''

Section 13631(e)(2) of Pub. L. 103–66 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993].''

Section 13631(f)(3) of Pub. L. 103–66 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and section 1396d of this title] shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 13631(i) of Pub. L. 103–66 provided that: ''Except as otherwise provided in this section, the amendments made by this section [enacting section 1396s of this title, transferring former section 1396s of this title to section 1396v of this title, and amending this section and sections 1396b and 1396d of this title] shall apply to payments under State plans approved under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1994.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 2(c)(1) of Pub. L. 102–234 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall take effect January 1, 1992, without regard to whether or not regulations have been promulgated to carry out such amendments by such date.''

Section 3(e)(1) of Pub. L. 102–234 provided that: ''The amendments made by this section [amending this section and sections 1396b and 1396r–4 of this title] shall take effect January 1, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4402(e) of Pub. L. 101–508 provided that:

''(1) The amendments made by this section [enacting section 1396e of this title and amending this section and sections 1396b and 1396d of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (a) [enacting section 1396e of this title and amending this section], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 5, 1990]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 4501(f) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1395v and 1396d of this title] shall apply to calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulations to implement such amendments are promulgated by such date; except that the amendments made by subsection (e) [amending this section and section 1396d of this title] shall apply to determinations of income for months beginning with January 1991.''

Section 4601(b) of Pub. L. 101–508 provided that:

''(1) The amendments made by this subsection [probably should be ''section'', which amended this section and sections 1396b, 1396d, and 1396r–6 of this title] apply (except as otherwise provided in this subsection) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection [section], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 5, 1990]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 4602(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] apply to payments under title XIX of the Social Security Act [this subchapter] for calenar [sic] quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 4603(b) of Pub. L. 101–508 provided that:

''(1) INFANTS.—The amendment made by subsection (a)(1) [amending this section] shall apply to individuals born on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

''(2) PREGNANT WOMEN.—The amendments made by subsection (a)(2) [amending this section] shall apply with respect to determinations to terminate the eligibility of women, based on change of income, made on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 4604(d) of Pub. L. 101–508 provided that:

''(1) The amendments made by this subsection [probably should be ''section'', which amended this section and section 1396n of this title] shall become effective with respect to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection [section], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 5, 1990]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Amendment by section 4701(b)(1) of Pub. L. 101–508 effective Jan. 1, 1991, see section 4701(c) of Pub. L. 101–508, set out as a note under section 1396b of this title.

Section 4704(f) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1396b, 1396d, and 1396n of this title] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Section 4708(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4711(e) of Pub. L. 101–508 provided that:

''(1) Except as provided in this subsection, the amendments made by this section [enacting section 1396t of this title and amending this section and sections 1396b and 1396d of this title] shall apply to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2)(A) The amendments made by subsection (c)(1) [amending this section] shall apply to home and com-

munity care furnished on or after July 1, 1991, or, if later, 30 days after the date of publication of interim regulations under section 1929(k)(1) [section 1396t(k)(1) of this title].

''(B) The amendment made by subsection (c)(2) [amending section 1396b of this title] shall apply to civil money penalties imposed after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4713(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall apply to medical assistance furnished on or after January 1, 1991.''

Section 4715(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to treatment of income for months beginning more than 30 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4732(e) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 4751(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1396b and 1396r of this title] shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4752(c)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to medical assistance for calendar quarters beginning more than 60 days after the date of establishment of the physician identifier system under section 1902(x) of the Social Security Act [subsec. (x) of this section].''

Section 4754(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to sanctions effected more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4755(c)(1) of Pub. L. 101–508 provided that the amendment made by that section is effective July 1, 1990.

Section 4801(e)(11) of Pub. L. 101–508 provided that the amendment made by that section is effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1396r(f)(4) of this title.

Section 4801(e)(19) of Pub. L. 101–508 provided that: ''Except as provided in paragraphs (7), (11), and (16), the amendments made by this subsection [amending this section and sections 1396b and 1396r of this title, repealing section 1396g of this title, and amending provisions set out as a note under this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Section 6401(c) of Pub. L. 101–239 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396b of this title] shall apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after April 1, 1990, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Dec. 19, 1989]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 6402(c), formerly § 6402(d), of Pub. L. 101–239, as renumbered and amended by Pub. L. 101–508, title IV, § 4704(e)(2), Nov. 5, 1990, 104 Stat. 1388–172, provided that: ''The amendments made by this section [enacting section 1396r–7 of this title and amending this section] (except as otherwise provided in such amendments) shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

Section 6403(e) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall take effect on April 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 6404(d) of Pub. L. 101–239 provided that:

''(1) The amendments made by this section [amending this section and section 1396d of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after April 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Dec. 19, 1989]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 6405(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall become effective with respect to services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner on or after July 1, 1990.''

Section 6406(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 1, 1990, without regard to whether regulations to carry out such amendments have been promulgated by such date.''

Section 6408(c)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to services furnished on or after April 1, 1990, without regard to whether or not final regulations have been promulgated by such date to implement such amendments.''

Section 6408(d)(5) of Pub. L. 101–239 provided that:

''(A) The amendments made by this subsection [amending this section and sections 1396d and 1396*o* of this title] apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appro-

priating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Dec. 19, 1989]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 6411(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if it had been included in the enactment of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].''

Amendment by section 6411(d)(3)(B) of Pub. L. 101–239 applicable to employment and contracts as of 90 days after Dec. 19, 1989, see section 6411(d)(4)(B) of Pub. L. 101–239, set out as a note under section 1395mm of this title.

Section 6411(e)(4) of Pub. L. 101–239 provided that:

''(A) SPOUSAL TRANSFERS.—The amendments made by paragraph (1) [amending section 1396p of this title] shall apply to transfers occurring after the date of the enactment of this Act [Dec. 19, 1989].

''(B) OTHER AMENDMENTS.—Except as provided in subparagraph (A), the amendments made by this subsection [amending this section and sections 1396p and 1396r–5 of this title] shall apply as if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8434(c) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section and section 1396d of this title] shall be effective as if included in the enactment of section 301 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].''

Amendment by section 202(c)(4) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485 at such earlier effective dates, see section 204(a), (b)(1)(A) of Pub. L. 100–485, set out as a note under section 671 of this title.

Section 303(f) of Pub. L. 100–485, as amended by Pub. L. 101–239, title VI, § 6411(i)(2), Dec. 19, 1989, 103 Stat. 2273; Pub. L. 104–193, title I, § 110(q), Aug. 22, 1996, 110 Stat. 2175, provided that:

''(1) The amendments made by this section [enacting section 1396r–6 of this title, amending this section and section 1396d of this title] (other than subsections (b)(3), (d), and (e) [amending this section and section 602 of this title and provisions formerly set out as a note under section 606 of this title]) shall apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after April 1, 1990 (or, in the case of the Commonwealth of Kentucky, October 1, 1990) (without regard to whether regulations to implement such amendments are promulgated by such date), with respect to families that cease to be eligible for aid under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter] on or after such date.

''(2) The amendment made by subsection (b)(3) [amending section 602 of this title] shall become effective on April 1, 1990, but such amendment shall not apply with respect to families that cease to be eligible for aid under part A of title IV of the Social Security Act before such date.

''(3) The amendment made by subsection (d) [amending this section] shall become effective on the effective date of section 402(a)(43) of the Social Security Act, as inserted by section 403(a) of this Act [the first day of the first calendar quarter to begin one year or more after Oct. 13, 1988, see section 403(b) of Pub. L. 100–485, 102 Stat. 2398].

''(4) The amendment made by subsection (e) [amending provisions formerly set out as a note under section 606 of this title] shall take effect on October 1, 1988.''

Section 401(g) of Pub. L. 100–485, as amended by Pub. L. 103–432, title II, § 234(a), Oct. 31, 1994, 108 Stat. 4466, provided that:

''(1) Except as provided in paragraph (2), and in section 1905(m)(2) of the Social Security Act [section 1396d(m)(2) of this title] (as added by subsection (d)(2) of this section), the amendments made by this section [amending this section and sections 602, 607, and 1396d of this title] shall become effective on October 1, 1990.

''(2) The amendments made by this section shall not become effective with respect to Puerto Rico, American Samoa, Guam, or the Virgin Islands, until the date of the repeal of the limitations contained in section 1108(a) of the Social Security Act [section 1308(a) of this title] on payments to such jurisdictions for purposes of making maintenance payments under parts A and E of title IV of such Act [parts A and E of subchapter IV of this chapter].''

[Section 234(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending section 401(g)(2) of Pub. L. 100–485, set out above] shall take effect as if included in the provision of the Family Support Act of 1988 [Pub. L. 100–485] to which the amendment relates at the time such provision became law.'']

Amendment by section 608(d)(14)(I), (15)(A), (B), (16)(C), (27)(F)–(H), (28) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 204(d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 301(e)(2) of Pub. L. 100–360 effective July 1, 1989, see section 301(e)(3) of Pub. L. 100–360, set out as a note under section 1395v of this title.

Section 301(h) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(14)(K), Oct. 13, 1988, 102 Stat. 2416, provided that:

''(1) The amendments made by this section [amending this section and sections 1395v, 1396b, and 1396d of this title] apply (except as provided in subsections (e) and (f) [set out as notes under section 1395v and 1396b of this title] and under paragraph (2)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after January 1, 1989, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, with respect to medical assistance for—

''(A) monthly premiums under title XVIII of such Act [subchapter XVIII of this chapter] for months beginning with January 1989, and

''(B) items and services furnished on and after January 1, 1989.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first session of the State legislature that begins after the date of the enactment of this Act [July 1, 1988]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 302(f) of Pub. L. 100–360 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1396b and 1396r–4 of this title] apply (except as provided in this subsection) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1989, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) PAYMENT ADJUSTMENT.—The amendments made by subsection (b)(2) [amending section 1396r–4 of this title] shall take effect on the date of the enactment of this Act [July 1, 1988].

''(3) DELAY FOR STATE LEGISLATION.—In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section (other than subsection (b)(2)), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a regular legislative session of 2 years, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Amendment by section 303(d) of Pub. L. 100–360 effective on and after Apr. 8, 1988, with additional provision for supersedure of certain administrative regulations, see section 303(g)(4) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Amendment by section 303(e)(1), (5) of Pub. L. 100–360 applicable to medical assistance furnished on or after Oct. 1, 1982, see section 303(g)(6) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Subsec. (a)(51)(A), as enacted by section 303(e)(2)–(4) of Pub. L. 100–360, applicable to payments under this subchapter for calendar quarters beginning on or after Sept. 30, 1989, without regard to whether or not final regulations to carry out that paragraph have been promulgated by that date, see section 303(g)(1)(A) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Subsec. (a)(51)(B), as enacted by section 303(e)(2)–(4) of Pub. L. 100–360, applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1988 (except in certain situations requiring State legislative action), without regard to whether or not final regulations to carry out that paragraph have been promulgated by that date, with an exception for resources disposed of before July 1, 1988, see section 303(g)(2)(A), (C), (5) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(5), (7)(B)–(D), (10)(G)(ii), (iv), (17)(B), (*l*)(3)(E), (H), (J), (6)(C), (D), (8)(C), and (n)(2), (4) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Section 4101(a)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section] shall apply to medical assistance furnished on or after July 1, 1988.''

Section 4101(b)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section and provisions set out below] shall apply with respect to medical assistance furnished on or after July 1, 1988.''

Amendment by section 4101(c)(2) of Pub. L. 100–203 applicable to medical assistance furnished on or after Oct. 1, 1988, see section 4101(c)(3) of Pub. L. 100–203, set out as a note under section 1396d of this title.

Section 4101(e)(6) of Pub. L. 100–203 provided that:

''(A) The amendment made by paragraph (1) [amending this section] shall become effective on the date of enactment of this Act [Dec. 22, 1987].

''(B) The amendments made by paragraphs (2) and (3) [amending this section] shall be effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].

''(C) The amendment made by paragraph (4) [amending this section] shall apply to elections made on or after the enactment of this Act.

''(D) The amendment made by paragraph (5) [amending this section] shall apply as if included in the enactment of section 9401 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4113(c)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section] shall apply to services furnished on and after July 1, 1988.''

Section 4118(c)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if it were included in section 134 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].''

Section 4118(h)(3), formerly §4118(h)(2), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, §411(k)(10)(G)(iii), July 1, 1988, 102 Stat. 796, provided that: ''The amendments made by this subsection [amending this section and section 1396b of this title] shall apply to costs incurred after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4118(m)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section and repealing section 1320a–8 of this title] shall apply to audits conducted after the date of the enactment of this Act [Dec. 22, 1987].''

Amendments by sections 4211(b)(1), (h)(1)–(5), 4212(d)(2), (3), (e)(1) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, and except that subsec. (a)(28)(B) of this section as amended by section 4211(b) of Pub. L. 100–203 applicable to calendar quarters beginning more than 6 months after Dec. 22, 1987, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Section 4212(d)(4) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section and section 1396b of this title] shall not apply to a State until such date (not earlier than October 1, 1990) as of which the Secretary determines that—

''(A) the State has specified the resident assessment instrument under section 1919(e)(5) of the Social Security Act [section 1396r(e)(5) of this title], and

''(B) the State has begun conducting surveys under section 1919(g)(2) of such Act.''

Amendment by section 4213(b)(1) of Pub. L. 100–203 applicable to payments under this subchapter for calendar quarters beginning on or after Dec. 22, 1987, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(b) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Section 4218(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this

section] shall apply with respect to certifications or recertifications during the period beginning on July 1, 1988, and ending on October 1, 1990.''

Amendment by section 9115(b) of Pub. L. 100–203 effective July 1, 1988, see section 9115(c) of Pub. L. 100–203, set out as a note under section 1382 of this title.

Section 9119(d)(2) of Pub. L. 100–203, as added by Pub. L. 100–360, title IV, § 411(n)(4), formerly § 411(n)(3), July 1, 1988, 102 Stat. 807, and renumbered by Pub. L. 100–485, title VI, § 608(d)(28), Oct. 13, 1988, 102 Stat. 2423, provided that: ''The amendments made by paragraph (1) [amending this section] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Amendment by sections 5(a) and 8(f) of Pub. L. 100–93, applicable, with certain exception, to payments under subchapter XIX of this chapter for calendar quarters beginning more than thirty days after Aug. 18, 1987, without regard to whether or not final regulations to carry out such amendments have been published by such date, see section 15(c) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

Amendment by section 7 of Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 10(b) of Pub. L. 99–643 provided that:

''(1) Except as provided in paragraph (2), the amendments made by sections 3, 4, 5, 6, and 7 [amending this section and sections 1382, 1382c, 1382h, 1383, and 1396s of this title] shall become effective on July 1, 1987.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the requirements imposed by the amendments made by section 3(b) [amending this section] and section 7 of this Act [amending this section and section 1382h of this title], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such additional requirements until 60 days after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 10, 1986].''

Section 11005(c)(2) of Pub. L. 99–570 provided that: ''The amendments made by subsection (b) [amending this section] shall become effective on January 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 9320(h)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9401(f) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4101(b)(2)(C), Dec. 22, 1987, 101 Stat. 1330–141, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396b of this title] shall apply to medical assistance furnished in calendar quarters beginning on or after April 1, 1987.

''(2) Subparagraph (C) of section 1902(*l*)(1) of the Social Security Act [subsec. (*l*)(1)(C) of this section], as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1987.

''(3) An amendment made by this section shall become effective as provided in paragraph (1) or (2) without regard to whether or not final regulations to carry out such amendment have been promulgated by the applicable date.''

Section 9402(c) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall apply to payments to States for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 9403(h) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and sections 1396b, 1396d, and 1396*o* of this title] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 9404(c) of Pub. L. 99–509 provided that:

''(1) The amendments made by this section [amending this section and section 1396d of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement such amendments are promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9406(c) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396b of this title] shall apply to medical assistance furnished to aliens on or after January 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made in subsection (b) [amending this section], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9407(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [enacting section 1396r–1 of this title and amending this section and sections 1396b and 1396s of this title] shall apply to ambulatory prenatal care furnished in calendar quarters beginning on or after April 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 9408(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall apply to services furnished on or after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9431(c) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 9433(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [amending section 2173 of Pub. L. 97–35, which amended this section] shall apply as though it was included in the enactment of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35).''

Section 9435(f) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 1396d of this title and provisions set out as notes under this section and sections 1396d and 1396n of this title] shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Section 9501(d)(2), (3) of Pub. L. 99–272 provided that:

''(2) OPTIONAL SERVICES.—The amendments made by subsection (b) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].

''(3) CONTINUED COVERAGE.—The amendment made by subsection (c) [amending this section] shall apply to medical assistance furnished to a woman on or after the date of the enactment of this Act.''

Section 9503(g) of Pub. L. 99–272 provided that:

''(1) Except as otherwise provided, the amendments made by this section [amending this section and sections 1396b and 1396k of this title and section 1144 of Title 29, Labor, and enacting provisions set out as notes under this section and section 1144 of Title 29] shall apply to calendar quarters beginning on or after the date of the enactment of this Act [Apr. 7, 1986].

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

''(3) No penalty may be applied against any State for a violation of section 1902(a)(25) of the Social Security Act [subsec. (a)(25) of this section] occurring prior to the effective date of the amendments made by this section.

''(4) The amendment made by subsection (c) [enacting provisions set out below] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9505(e) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(d)(1), Oct. 21, 1986, 100 Stat. 2070, provided that: ''The amendments made by this section [amending this section and sections 1396d and 1396*o* of this title] shall apply to medical assistance provided for hospice care furnished on or after the date of the enactment of this Act [Apr. 7, 1986], without regard to whether or not regulations to carry out the amendments have been promulgated by that date.''

Section 9506(b), (c) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(c), Oct. 21, 1986, 100 Stat. 2070, provided that:

''(b) EFFECTIVE DATE.—The amendment made by subsection (a) [amending this section] shall apply to medical assistance furnished on or after the first day of the second month beginning after the date of the enactment of this Act [Apr. 7, 1986].

''(c) EXCEPTION.—The amendment made by subsection (a) [amending this section] shall not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded.''

Section 9509(b) of Pub. L. 99–272 provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and enacting provisions set out below] shall apply to medical assistance furnished on or after October 1, 1985, but only with respect to changes of ownership occurring on or after such date.

''(2) The amendments made by this section shall not apply with respect to a change of ownership pursuant to an enforceable agreement entered into prior to October 1, 1985.

''(3) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet the requirements imposed by the amendments made by this section before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Apr. 7, 1986].''

Section 9510(b) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(d)(2), Oct. 21, 1986, 100 Stat. 2070, provided that: ''The amendment made by this section [amending this section] shall apply with respect to payment for services furnished on or after October 1, 1985, without regard to whether or not regulations to carry out the amendment have been promulgated by that date.''

Section 9529(a)(2) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to medical assistance furnished on or after the first calendar quarter that begins more than 90 days after the date of the enactment of this Act [Apr. 7, 1986].''

Section 9529(b)(3) of Pub. L. 99–272 provided that: ''This subsection, and the amendments made by this subsection [amending this section and enacting provisions set out below], shall apply to adoption assistance agreements entered into before, on, or after the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by section 12305(b)(3) of Pub. L. 99–272 applicable to medical assistance furnished in or after first calendar quarter beginning more than 90 days after Apr. 7, 1986, see section 12305(c) of Pub. L. 99–272, set out as a note under section 673 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2303(g)(1) of Pub. L. 98–369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title, see section 2303(j)(1) and (3) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2314(c)(3) of Pub. L. 98–369 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section] shall apply to medical assistance furnished on or after October 1, 1984.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendments made by this section [amending this section and section 1395x of this title and en-

acting provisions set out as a note under section 1395x of this title], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2335(e) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2361(d) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 606 and 1396d of this title] shall apply to calendar quarters beginning on or after October 1, 1984, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 18, 1984].''

Section 2362(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to children born on or after October 1, 1984.''

Amendment by section 2363(a)(1) of Pub. L. 98–369 applicable to calendar quarters beginning on or after July 18, 1984, except that, in the case of individuals admitted to skilled nursing facilities before that date, the amendment shall not require recertifications sooner or more frequently than were required under the law in effect before that date, see section 2363(c) of Pub. L. 98–369, set out as a note under section 1396b of this title.

Section 2367(c) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396k of this title] shall become effective on October 1, 1984.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 18, 1984].''

Section 2368(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2651(c) of Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 131(a), (c) of Pub. L. 97–248 effective Oct. 1, 1982, see section 131(d) of Pub. L. 97–248, formerly §131(c), redesignated Pub. L. 97–448, title III, §309(a)(8), Jan. 12, 1983, 96 Stat. 2408, set out as an Effective Date note under section 1396*o* of this title.

Amendment by section 132(a), (c) of Pub. L. 97–248 effective Sept. 3, 1982, see section 132(d) of Pub. L. 97–248, set out as an Effective Date note under section 1396p of this title.

Section 134(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1982.''

Amendment by section 136(d) of Pub. L. 97–248 effective Oct. 1, 1982, see section 136(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

Section 137(d) of Pub. L. 97–248 provided that:

''(1) Except as otherwise provided in this section, any amendment to the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35] made by this section [amending this section and sections 1320a–1 and 1396b of this title and provisions set out as a note under section 603 of this title] shall be effective as if it had been originally included in the provision of the Omnibus Budget Reconciliation Act of 1981 to which such amendment relates.

''(2) Except as otherwise provided in this section, any amendment to the Social Security Act [this chapter] made by the preceding provisions of this section [amending this section and sections 701, 705, 1320a–7a, 1320b–4, 1396b, 1396d, and 1396n of this title] shall be effective as if it had been originally included as a part of that provision of the Social Security Act to which it relates, as such provision of the Social Security Act was amended by the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35].''

Amendment by section 146(a) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2113(*o*) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 1320c, 1320c–1, 1320c–3, 1320c–4, 1320c–7, 1320c–8, 1320c–9, 1320c–11, 1320c–17, 1320c–21, and 1396b of this title and repealing sections 1320c–13 and 1320c–20 of this title] apply to agreements with Professional Standards Review Organizations entered into on or after October 1, 1981.''

Section 2171(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [Aug. 13, 1981].''

Section 2172(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall become effective on the date of the enactment of this Act [Aug. 13, 1981].''

Section 2173(b)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall not apply with respect to services furnished before the date the Secretary of Health and Human Services first promulgates and has in effect final regulations (on an interim or other basis) to carry out section 1902(a)(13)(A) of the Social Security Act [subsec. (a)(13)(A) of this section] (as amended by this subtitle).''

Section 2174(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall apply to services furnished on or after October 1, 1981.''

Section 2175(d)(2) of Pub. L. 97–35 provided that:

''(A) The amendments made by paragraph (1) [amending this section] shall (except as provided under subparagraph (B)) be effective with respect to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1981.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendment made by paragraph (1)(C), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar year beginning

after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 13, 1981].''

Section 2178(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall apply with respect to services furnished, under a State plan approved under title XIX of the Social Security Act [this subchapter], on or after October 1, 1981; except that such amendments shall not apply with respect to services furnished by a health maintenance organization under a contract with a State entered into under such title before October 1, 1981 unless the organization requests that such amendments apply and the Secretary of Health and Human Services and the single State agency (administering or supervising the administration of the State plan under such title) agree to such request.''

Section 2181(b) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, §137(a)(4), Sept. 3, 1982, 96 Stat. 376, provided that: ''The amendment made by subsection (a)(1) [amending section 603 of this title] shall apply to reductions for calendar quarters beginning on or after June 30, 1974, and the amendments made by subsection (a)(2) [amending this section] shall take effect on October 1, 1981, except that, in the case of a State plan under title XIX of the Social Security Act [this subchapter] which the Secretary determines requires State legislation in order to incorporate the provisions required to be included by this section into such State plan, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to include the provisions required to be included in such State plan by subsection (a)(2) of this section before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 13, 1981], but the requirements previously set forth in paragraphs (1) through (3) of section 403(g) of the Social Security Act [section 603(g)(1)–(3) of this title] (prior to its repeal by this section) shall apply under title XIX of such Act to such State on and after October 1, 1981, whether or not the provisions required to be included by this section in the State plan under title XIX have been incorporated into such State plan.''

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(9) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 902(b) of Pub. L. 96–499 effective on date on which final regulations to implement the amendment are first issued, see section 902(c) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 914(b)(2) of Pub. L. 96–499, as amended by Pub. L. 97–248, title I, §137(c)(1), Sept. 3, 1982, 96 Stat. 381, provided that:

''(A) The amendments made by paragraph (1) [amending this section] shall (except as provided under subparagraph (B)) apply to cost reporting periods, beginning on or after April 1, 1981, of an entity providing services under a State plan approved under title XIX of the Social Security Act [this subchapter].''

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (1), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.''

Section 918(b)(2) of Pub. L. 96–499 provided that:

''(A) The amendments made by paragraph (1) [enacting this section] shall (except as otherwise provided in subparagraph (B)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act [this subchapter], on and after the first day of the first calendar quarter that begins more than six months after the date of the enactment of this Act [Dec. 5, 1980].

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (1), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.''

Section 962(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1980.''

Section 965(c) of Pub. L. 96–499 provided that:

''(1) The amendments made by this section [amending this section and section 1396d of this title] shall (except as provided under paragraph (2)) be effective with respect to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning more than one hundred and twenty days after the date of the enactment of this Act [Dec. 5, 1980].

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 14(a)(2) of Pub. L. 95–559 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by paragraph (1) [amending this section] shall take effect one hundred and eighty days after the date of the enactment of this Act [Nov. 1, 1978].

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary determines requires State legislation in order for the plan to meet the requirement added by the amendments made by paragraph (1), such amendments shall not apply with respect to such State plan before ninety days after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95–210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after the first day of the first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95–210, set out as a note under section 1395cc of this title.

Amendment by section 2(a)(3) of Pub. L. 95–142 applicable with respect to care and services furnished on or after Oct. 25, 1977, see section 2(a)(4) of Pub. L. 95–142, set out as a note under section 1395g of this title.

Section 2(b)(2) of Pub. L. 95–142 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to calendar quarters beginning on and after July 1, 1978, with respect to State plans approved under title XIX of the Social Security Act [this subchapter].''

Amendment by section 3(c)(1) of Pub. L. 95–142 effective Jan. 1, 1978, see section 3(e) of Pub. L. 95–142, set

out as an Effective Date note under section 1320a–3 of this title.

Section 7(e)(2) of Pub. L. 95–142 provided that: ''The amendment made by subsection (b) [amending this section] shall become effective on January 1, 1978.''

Section 19(c)(2) of Pub. L. 95–142 provided that:

''(A) The amendments made by subsection (b) [amending this section and section 1395x of this title] shall apply with respect to operations of a hospital, skilled nursing facility, or intermediate care facility, on and after the first day of its first fiscal year which begins after the end of the six-month period beginning on the date a uniform reporting system is established (under section 1121(a) of the Social Security Act) [section 1320a(a) of this title] for that type of health services facility.

''(B) The amendments made by subsection (b) [amending this section and section 1395x of this title] shall apply, with respect to the operation of a health services facility or organization which is neither a hospital, a skilled nursing facility, nor an intermediate care facility, on and after the first day of its first fiscal year which begins after such date as the Secretary of Health, Education, and Welfare [now Health and Human Services] determines to be appropriate for the implementation of the reporting requirement for that type of facility or organization.

''(C) Except as provided in subparagraphs (A) and (B), the amendments made by subsection (b)(2) [amending this section] shall apply, with respect to State plans approved under title XIX of the Social Security Act [this subchapter], on and after October 1, 1977.''

Amendment by section 20(b) of Pub. L. 95–142 effective Oct. 1, 1977, and the Secretary to adjust payments made to States under section 1396b of this title to reflect such amendment, see section 20(c) of Pub. L. 95–142, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2 of Pub. L. 94–552 provided that: ''The amendments made by the first section [amending this section and section 1396b of this title] shall take effect as of January 1, 1976.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 111(c) of Pub. L. 94–182 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall (except as otherwise provided for therein) become effective January 1, 1976.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 9(b) of Pub. L. 93–368 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective January 1, 1973.''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 13(d) of Pub. L. 93–233 provided that: ''The amendments made by subsection (a) [amending this section and sections 1396, 1396b, and 1396d of this title] shall be effective with respect to payments under section 1903 of the Social Security Act [section 1396b of this title] for calendar quarters commencing after December 31, 1973.''

Section 18(z–3)(4) of Pub. L. 93–233 provided that: ''The amendments made by subsections (*o*) and (u) [amending this section and section 1396b of this title] shall be effective July 1, 1973''.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 208(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective January 1, 1973 (or earlier if the State plan so provided).''

Section 209(b)(2) of Pub. L. 92–603 provided that: ''The amendment made by this subsection [amending this section] shall become effective on January 1, 1974.''

Section 232(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 705 of this title] shall be effective July 1, 1972 (or earlier if the State plan so provides).''

Amendment by section 236(b) of Pub. L. 92–603 effective Jan. 1, 1973, or earlier if the State plan so provides, see section 236(c) of Pub. L. 92–603, set out as a note under section 1395u of this title.

Section 237(d)(2) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall be effective July 1, 1973.''

Section 239(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 705 of this title] shall be effective January 1, 1973 (or earlier if the State plan so provides).''

Amendment by section 246(a) of Pub. L. 92–603 to be effective July 1, 1973, see section 246(c) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 255(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective July 1, 1973.''

Section 268(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1396g of this title] shall be effective on the date of the enactment of this Act [Oct. 30, 1972].''

Amendment by section 299D(b) of Pub. L. 92–603 effective beginning Jan. 1, 1973, or within 6 months following Oct. 30, 1972, whichever is later, see section 299D(c) of Pub. L. 92–603, set out as a note under section 1395aa of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 4(d) of Pub. L. 92–223, as amended by section 292 of Pub. L. 92–603, provided that: ''The amendments made by this section [amending this section and section 1396d of this title and repealing section 1320a of this title] shall become effective January 1, 1972; except that the repeal made by subsection (c) [repealing section 1320a of this title], shall not become effective in the case of any State, which on January 1, 1972 did not have in effect a State plan approved under title XIX of the Social Security Act [this subchapter], until the first day of the first month (occurring after such date) that such State does have in effect a State plan approved under such title [this subchapter].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 210(a)(6) of Pub. L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub. L. 90–248, set out as a note under section 302 of this title.

Section 223(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1967.''

Section 224(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after December 31, 1967.''

Section 224(c)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1970.''

Section 227(b) of Pub. L. 90–248, as amended by section 271A of Pub. L. 92–603, effective from and after July 1, 1972, provided that: ''The amendments made by this section [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1969; except that such amendments shall apply in the case of Puerto Rico, the Virgin Islands, and Guam only with respect to calendar quarters beginning after June 30, 1975.''

Section 229(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to legal liabilities of third parties arising after March 31, 1968.''

Section 234(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) of this section

[amending this section] (unless otherwise specified in the body of such amendments) shall take effect on January 1, 1969.''

Section 235(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective in the case of calendar quarters beginning after December 31, 1967.''

Enactment by section 236(a) of Pub. L. 90–248 effective July 1, 1970, except as otherwise specified in the text thereof, see section 236(c) of Pub. L. 90–248, set out as an Effective Date note under section 1396g of this title.

Section 237 of Pub. L. 90–248 provided that the amendment made by that section is effective Apr. 1, 1968.

Section 238 of Pub. L. 90–248 provided that the amendment made by that section is effective July 1, 1969.

CONSTRUCTION OF 1999 AMENDMENT

Pub. L. 106–169, title I, §121(c), Dec. 14, 1999, 113 Stat. 1830, provided that: ''If the Ticket to Work and Work Incentives Improvement Act of 1999 [Pub. L. 106–170] is enacted (whether before, on, or after the date of the enactment of this Act)—

''(1) the amendments made by that Act [see Tables for classification] shall be executed as if this Act [see Short Title of 1999 Amendment note under section 1305 of this title] had been enacted after the enactment of such other Act;

''(2) with respect to subsection (a)(1)(A) of this section [amending this section], any reference to subclause (XIII) is deemed a reference to subclause (XV);

''(3) with respect to subsection (a)(1)(B) of this section [amending this section], any reference to subclause (XIV) is deemed a reference to subclause (XVI);

''(4) [Amended this section.]

''(5) [Amended section 1396d of this title.]''

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Health and Human Services under subsec. (a)(4)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.

STUDY REGARDING BARRIERS TO PARTICIPATION OF FARMWORKERS IN HEALTH PROGRAMS

Pub. L. 107–251, title IV, §404, Oct. 26, 2002, 116 Stat. 1662, as amended by Pub. L. 108–163, §2(n)(1), Dec. 6, 2003, 117 Stat. 2023, provided that:

''(a) IN GENERAL.—The Secretary shall conduct a study of the problems experienced by farmworkers (including their families) under Medicaid and SCHIP. Specifically, the Secretary shall examine the following:

''(1) BARRIERS TO ENROLLMENT.—Barriers to their enrollment, including a lack of outreach and outstationed eligibility workers, complicated applications and eligibility determination procedures, and linguistic and cultural barriers.

''(2) LACK OF PORTABILITY.—The lack of portability of Medicaid and SCHIP coverage for farmworkers who are determined eligible in one State but who move to other States on a seasonal or other periodic basis.

''(3) POSSIBLE SOLUTIONS.—The development of possible solutions to increase enrollment and access to benefits for farmworkers, because, in part, of the problems identified in paragraphs (1) and (2), and the associated costs of each of the possible solutions described in subsection (b).

''(b) POSSIBLE SOLUTIONS.—Possible solutions to be examined shall include each of the following:

''(1) INTERSTATE COMPACTS.—The use of interstate compacts among States that establish portability and reciprocity for eligibility for farmworkers under the Medicaid and SCHIP and potential financial incentives for States to enter into such compacts.

''(2) DEMONSTRATION PROJECTS.—The use of multistate demonstration waiver projects under section 1115 of the Social Security Act (42 U.S.C. 1315) to develop comprehensive migrant coverage demonstration projects.

''(3) USE OF CURRENT LAW FLEXIBILITY.—Use of current law Medicaid and SCHIP State plan provisions relating to coverage of residents and out-of-State coverage.

''(4) NATIONAL MIGRANT FAMILY COVERAGE.—The development of programs of national migrant family coverage in which States could participate.

''(5) PUBLIC-PRIVATE PARTNERSHIPS.—The provision of incentives for development of public-private partnerships to develop private coverage alternatives for farmworkers.

''(6) OTHER POSSIBLE SOLUTIONS.—Such other solutions as the Secretary deems appropriate.

''(c) CONSULTATIONS.—In conducting the study, the Secretary shall consult with the following:

''(1) Farmworkers affected by the lack of portability of coverage under the Medicaid program or the State children's health insurance program (under titles XIX and XXI of the Social Security Act [this subchapter and subchapter XXI of this chapter]).

''(2) Individuals with expertise in providing health care to farmworkers, including designees of national and local organizations representing migrant health centers and other providers.

''(3) Resources with expertise in health care financing.

''(4) Representatives of foundations and other nonprofit entities that have conducted or supported research on farmworker health care financial issues.

''(5) Representatives of Federal agencies which are involved in the provision or financing of health care to farmworkers, including the Centers for Medicare & Medicaid Services and the Health Resources and Services Administration.

''(6) Representatives of State governments.

''(7) Representatives from the farm and agricultural industries.

''(8) Designees of labor organizations representing farmworkers.

''(d) DEFINITIONS.—For purposes of this section:

''(1) FARMWORKER.—The term 'farmworker' means a migratory agricultural worker or seasonal agricultural worker, as such terms are defined in section 330(g)(3) of the Public Health Service Act (42 U.S.C. 254c(g)(3) [254b(g)(3)]), and includes a family member of such a worker.

''(2) MEDICAID.—The term 'Medicaid' means the program under title XIX of the Social Security Act [this subchapter].

''(3) SCHIP.—The term 'SCHIP' means the State children's health insurance program under title XXI of the Social Security Act [subchapter XXI of this chapter].

''(e) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 26, 2002], the Secretary shall transmit a report to the President and the Congress on the study conducted under this section. The report shall contain a detailed statement of findings and conclusions of the study, together with its recommendations for such legislation and administrative actions as the Secretary considers appropriate.''

STUDY ON LIMITATION ON STATE PAYMENT FOR MEDICARE COST-SHARING AFFECTING ACCESS TO SERVICES FOR QUALIFIED MEDICARE BENEFICIARIES

Pub. L. 106–554, §1(a)(6) [title I, §125], Dec. 21, 2000, 114 Stat. 2763, 2763A–479, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine if access to certain services (including mental health services) for qualified medicare beneficiaries has been affected by limitations on a State's payment for medicare cost-sharing for such beneficiaries under section 1902(n) of the Social Security Act (42 U.S.C. 1396a(n)). As part of such study, the Secretary shall analyze the effect of such payment limitation on providers who serve a disproportionate share of such beneficiaries.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary

shall submit to Congress a report on the study under subsection (a). The report shall include recommendations regarding any changes that should be made to the State payment limits under section 1902(n) for qualified medicare beneficiaries to ensure appropriate access to services.''

GAO STUDY OF FUTURE REBASING

Pub. L. 106–554, §1(a)(6) [title VII, §702(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574, provided that: ''The Comptroller General of the United States shall provide for a study on the need for, and how to, rebase or refine costs for making payment under the medicaid program for services provided by Federally-qualified health centers and rural health clinics (as provided under the amendments made by this section [amending this section and sections 1396b and 1396n of this title and repealing provisions set out as a note under this section]). The Comptroller General shall provide for submittal of a report on such study to Congress by not later than 4 years after the date of the enactment of this Act [Dec. 21, 2000].''

GAO REPORTS

Pub. L. 106–170, title II, §201(c), Dec. 17, 1999, 113 Stat. 1893, provided that: ''Not later than 3 years after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General of the United States shall submit a report to the Congress regarding the amendments made by this section [amending this section and sections 1396b, 1396d, and 1396*o* of this title] that examines—

''(1) the extent to which higher health care costs for individuals with disabilities at higher income levels deter employment or progress in employment;

''(2) whether such individuals have health insurance coverage or could benefit from the State option established under such amendments to provide a medicaid buy-in; and

''(3) how the States are exercising such option, including—

''(A) how such States are exercising the flexibility afforded them with regard to income disregards;

''(B) what income and premium levels have been set;

''(C) the degree to which States are subsidizing premiums above the dollar amount specified in section 1916(g)(2) of the Social Security Act (42 U.S.C. 1396*o*(g)(2)); and

''(D) the extent to which there exists any crowd-out effect.''

Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §603(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–395, provided that: ''Not later than 1 year after the date of the enactment of this Act [Nov. 29, 1999], the Comptroller General of the United States shall submit a report to Congress that evaluates the effect on Federally-qualified health centers and rural health clinics and on the populations served by such centers and clinics of the phase-out and elimination of the reasonable cost basis for payment for Federally-qualified health center services and rural health clinic services provided under section 1902(a)(13)(C)(i) of the Social Security Act (42 U.S.C. 1396a(a)(13)(C)(i)), as amended by section 4712 of BBA (111 Stat. 508) [the Balanced Budget Act of 1997, Pub. L. 105–33] and subsection (a) of this section. Such report shall include an analysis of the amount, method, and impact of payments made by States that have provided for payment under title XIX of such Act [this subchapter] for such services on a basis other than payment of costs which are reasonable and related to the cost of furnishing such services, together with any recommendations for legislation, including whether a new payment system is needed, that the Comptroller General determines to be appropriate as a result of the study.''

DEMONSTRATION OF COVERAGE UNDER THE MEDICAID PROGRAM OF WORKERS WITH POTENTIALLY SEVERE DISABILITIES

Pub. L. 106–170, title II, §204, Dec. 17, 1999, 113 Stat. 1897, provided that:

''(a) STATE APPLICATION.—A State may apply to the Secretary of Health and Human Services (in this section referred to as the 'Secretary') for approval of a demonstration project (in this section referred to as a 'demonstration project') under which up to a specified maximum number of individuals who are workers with a potentially severe disability (as defined in subsection (b)(1)) are provided medical assistance equal to—

''(1) that provided under section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) to individuals described in section 1902(a)(10)(A)(ii)(XIII) of that Act (42 U.S.C. 1396a(a)(10)(A)(ii)(XIII)); or

''(2) in the case of a State that has not elected to provide medical assistance under that section to such individuals, such medical assistance as the Secretary determines is an appropriate equivalent to the medical assistance described in paragraph (1).

''(b) WORKER WITH A POTENTIALLY SEVERE DISABILITY DEFINED.—For purposes of this section—

''(1) IN GENERAL.—The term 'worker with a potentially severe disability' means, with respect to a demonstration project, an individual who—

''(A) is at least 16, but less than 65, years of age;

''(B) has a specific physical or mental impairment that, as defined by the State under the demonstration project, is reasonably expected, but for the receipt of items and services described in section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)), to become blind or disabled (as defined under section 1614(a) of the Social Security Act (42 U.S.C. 1382c(a))); and

''(C) is employed (as defined in paragraph (2)).

''(2) DEFINITION OF EMPLOYED.—An individual is considered to be 'employed' if the individual—

''(A) is earning at least the applicable minimum wage requirement under section 6 of the Fair Labor Standards Act (29 U.S.C. 206) and working at least 40 hours per month; or

''(B) is engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, as defined under the demonstration project and approved by the Secretary.

''(c) APPROVAL OF DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—Subject to paragraph (3), the Secretary shall approve applications under subsection (a) that meet the requirements of paragraph (2) and such additional terms and conditions as the Secretary may require. The Secretary may waive the requirement of section 1902(a)(1) of the Social Security Act (42 U.S.C. 1396a(a)(1)) to allow for sub-State demonstrations.

''(2) TERMS AND CONDITIONS OF DEMONSTRATION PROJECTS.—The Secretary may not approve a demonstration project under this section unless the State provides assurances satisfactory to the Secretary that the following conditions are or will be met:

''(A) MAINTENANCE OF STATE EFFORT.—Federal funds paid to a State pursuant to this section must be used to supplement, but not supplant, the level of State funds expended for workers with potentially severe disabilities under programs in effect for such individuals at the time the demonstration project is approved under this section.

''(B) INDEPENDENT EVALUATION.—The State provides for an independent evaluation of the project.

''(3) LIMITATIONS ON FEDERAL FUNDING.—

''(A) APPROPRIATION.—

''(i) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this section—

''(I) $42,000,000 for each of fiscal years 2001 through 2004; and

''(II) $41,000,000 for each of fiscal years 2005 and 2006.

''(ii) BUDGET AUTHORITY.—Clause (i) constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of the amounts appropriated under clause (i).

''(B) LIMITATION ON PAYMENTS.—In no case may—

''(i) the aggregate amount of payments made by the Secretary to States under this section exceed $250,000,000;

''(ii) the aggregate amount of payments made by the Secretary to States for administrative expenses relating to annual reports required under subsection (d) exceed $2,000,000 of such $250,000,000; or

''(iii) payments be provided by the Secretary for a fiscal year after fiscal year 2009.

''(C) FUNDS ALLOCATED TO STATES.—The Secretary shall allocate funds to States based on their applications and the availability of funds. Funds allocated to a State under a grant made under this section for a fiscal year shall remain available until expended.

''(D) FUNDS NOT ALLOCATED TO STATES.—Funds not allocated to States in the fiscal year for which they are appropriated shall remain available in succeeding fiscal years for allocation by the Secretary using the allocation formula established under this section.

''(E) PAYMENTS TO STATES.—The Secretary shall pay to each State with a demonstration project approved under this section, from its allocation under subparagraph (C), an amount for each quarter equal to the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1395d(b) [42 U.S.C. 1396d(b)]) of expenditures in the quarter for medical assistance provided to workers with a potentially severe disability.

''(d) ANNUAL REPORT.—A State with a demonstration project approved under this section shall submit an annual report to the Secretary on the use of funds provided under the grant. Each report shall include enrollment and financial statistics on—

''(1) the total population of workers with potentially severe disabilities served by the demonstration project; and

''(2) each population of such workers with a specific physical or mental impairment described in subsection (b)(1)(B) served by such project.

''(e) RECOMMENDATION.—Not later than October 1, 2004, the Secretary shall submit a recommendation to the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate regarding whether the demonstration project established under this section should be continued after fiscal year 2006.

''(f) STATE DEFINED.—In this section, the term 'State' has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).''

MEDICAL ASSISTANCE PAYMENTS FOR ELIGIBLE PACE PROGRAM ENROLLEES

Pub. L. 105–277, div. A, §101(f) [title VII, §710], Oct. 21, 1998, 112 Stat. 2681–337, 2681–391, provided that: ''For purposes of payments to States for medical assistance under title XIX of the Social Security Act [this subchapter] from amounts appropriated to carry out such title for fiscal year 1999 and for any subsequent fiscal year, individuals who are PACE program eligible individuals under section 1934 of that Act [section 1396u–4 of this title] and who meet the income and resource eligibility requirements of individuals who are eligible for medical assistance under section 1902(a)(10)(A)(ii)(VI) of that Act [subsec. (a)(10)(A)(ii)(VI) of this section] shall be treated as individuals described in such section 1902(a)(10)(A)(ii)(VI) during the period of their enrollment in the PACE program.''

STUDY AND REPORT BY SECRETARY OF HEALTH AND HUMAN SERVICES

Section 4711(b) of Pub. L. 105–33 provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall study the effect on access to, and the quality of, services provided to beneficiaries of the rate-setting methods used by States pursuant to section 1902(a)(13)(A) of the Social Security Act (42 U.S.C. 1396a(a)(13)(A)), as amended by subsection (a).

''(2) REPORT.—Not later than 4 years after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall submit a report to the appropriate committees of Congress on the conclusions of the study conducted under paragraph (1), together with any recommendations for legislation as a result of such conclusions.''

DUAL ELIGIBLES; MONITORING PAYMENTS

Section 4724(e) of Pub. L. 105–33 provided that: ''The Administrator of the Health Care Financing Administration shall develop mechanisms to improve the monitoring of, and to prevent, inappropriate payments under the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in the case of individuals who are dually eligible for benefits under such program and under the medicare program under title XVIII of such Act (42 U.S.C. 1395 et seq.).''

EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT

Section 4759 of title IV of Pub. L. 105–33 provided that: ''In the case of a State plan under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by a provision of this subtitle [subtitle H (§§4701–4759) of title IV of Pub. L. 105–33, enacting sections 1396u–2 and 1396u–3 of this title, amending this section and sections 1308, 1315, 1320a–3, 1320a–7b, 1395i–3, 1395w–4, 1395cc, 1396b, 1396d, 1396e, 1396n, 1396*o*, 1396r, 1396r–4, 1396r–6, 1396r–8, 1396u–2, and 1396v of this title, and repealing section 1396r–7 of this title], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 5, 1997]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.''

REFERENCES TO PROVISIONS OF PART A OF SUBCHAPTER IV CONSIDERED REFERENCES TO SUCH PROVISIONS AS IN EFFECT JULY 16, 1996

For provisions that certain references to provisions of part A (§601 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 16, 1996, see section 1396u–1(a) of this title.

DEMONSTRATION PROJECTS TO STUDY EFFECT OF ALLOWING STATES TO EXTEND MEDICAID COVERAGE TO CERTAIN LOW-INCOME FAMILIES NOT OTHERWISE QUALIFIED TO RECEIVE MEDICAID BENEFITS

Section 4745 of Pub. L. 101–508, as amended by Pub. L. 103–66, title XIII, §13643(a), Aug. 10, 1993, 107 Stat. 647, provided that:

''(a) DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—(A) The Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary') shall enter into agreements with 3 and no more than 4 States submitting applications under this section for the purpose of conducting demonstration projects to study the effect on access to, and costs of, health care of eliminating the categorical eligibility requirement for medicaid benefits for certain low-income individuals.

''(B) In entering into agreements with States under this section the Secretary shall provide that at least

1 and no more than 2 of the projects are conducted on a substate basis.

''(2) REQUIREMENTS.—(A) The Secretary may not enter into an agreement with a State to conduct a project unless the Secretary determines that—

''(i) the project can reasonably be expected to improve access to health insurance coverage for the uninsured;

''(ii) with respect to projects for which the statewideness requirement has not been waived, the State provides, under its plan under title XIX of the Social Security Act [this subchapter], for eligibility for medical assistance for all individuals described in subparagraphs (A), (B), (C), and (D) of paragraph (1) of section 1902(*l*) of such Act [subsec. (*l*)(1)(A), (B), (C), (D) of this section] (based on the State's election of certain eligibility options the highest income standards and, based on the State's waiver of the application of any resource standard);

''(iii) eligibility for benefits under the project is limited to individuals in families with income below 150 percent of the income official poverty line and who are not individuals receiving benefits under title XIX of the Social Security Act;

''(iv) if the Secretary determines that it is cost-effective for the project to utilize employer coverage (as described in section 1925(b)(4)(D) of the Social Security Act [section 1396r–6(b)(4)(D) of this title]), the project must require an employer contribution and benefits under the State plan under title XIX of such Act will continue to be made available to the extent they are not available under the employer coverage;

''(v) the project provides for coverage of benefits consistent with subsection (b); and

''(vi) the project only imposes premiums, coinsurance, and other cost-sharing consistent with subsection (c).

''(B) The Secretary may waive the requirements of clause (ii) of this paragraph [probably means subparagraph (A)] with respect to those projects described in subparagraph (B) of paragraph (1).

''(3) PERMISSIBLE RESTRICTIONS.—A project may limit eligibility to individuals whose assets are valued below a level specified by the State. For this purpose, any evaluation of such assets shall be made in a manner consistent with the standards for valuation of assets under the State plan under title XIX of the Social Security Act for individuals entitled to assistance under part A of title IV of such Act [part A of subchapter IV of this chapter]. Nothing in this section shall be construed as requiring a State to provide for eligibility for individuals for months before the month in which such eligibility is first established.

''(4) EXTENSION OF ELIGIBILITY.—A project may provide for extension of eligibility for medical assistance for individuals covered under the project in a manner similar to that provided under section 1925 of the Social Security Act to certain families receiving aid pursuant to a plan of the State approved under part A of title IV of such Act.

''(5) WAIVER OF REQUIREMENTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may waive such requirements of title XIX of the Social Security Act (except section 1903(m) of the Social Security Act [section 1396b(m) of this title]) as may be required to provide for additional coverage of individuals under projects under this section.

''(B) NONWAIVABLE PROVISIONS.—Except with respect to those projects described in subparagraph (B) of paragraph (1), the Secretary may not waive, under subparagraph (A), the statewideness requirement of section 1902(a)(1) of the Social Security Act [subsec. (a)(1) of this section] or the Federal medical assistance percentage specified in section 1905(b) of such Act [section 1396d(b) of this title].

''(b) BENEFITS.—

''(1) IN GENERAL.—Except as provided in this subsection, the amount, duration, and scope of medical assistance made available under a project shall be the same as the amount, duration, and scope of such assistance made available to individuals entitled to medical assistance under the State plan under section 1902(a)(10)(A)(i) of the Social Security Act [subsec. (a)(10)(A)(i) of this section].

''(2) LIMITS ON BENEFITS.—

''(A) REQUIRED.—Except with respect to those projects described in subparagraph (B) of paragraph (1), no medical assistance shall be made available under a project for nursing facility services or community-based long-term care services (as defined by the Secretary) or for pregnancy-related services. No medical assistance shall be made available under a project to individuals confined to a State correctional facility, county jail, local or county detention center, or other State institution.

''(B) PERMISSIBLE.—A State, with the approval of the Secretary, may limit or otherwise deny eligibility for medical assistance under the project and may limit coverage of items and services under the project, other than early and periodic screening, diagnostic, and treatment services for children under 18 years of age.

''(3) USE OF UTILIZATION CONTROLS.—Nothing in this subsection shall be construed as limiting a State's authority to impose controls over utilization of services, including preadmission requirements, managed care provisions, use of preferred providers, and use of second opinions before surgical procedures.

''(c) PREMIUMS AND COST-SHARING.—

''(1) NONE FOR THOSE WITH INCOME BELOW THE POVERTY LINE.—Under a project, there shall be no premiums, coinsurance, or other cost-sharing for individuals whose family income level does not exceed 100 percent of the income official poverty line (as defined in subsection (g)(1)) applicable to a family of the size involved.

''(2) LIMIT FOR THOSE WITH INCOME ABOVE THE POVERTY LINE.—Under a project, for individuals whose family income level exceeds 100 percent, but is less than 150 percent, of the income official poverty line applicable to a family of the size involved, the monthly average amount of premiums, coinsurance, and other cost-sharing for covered items and services shall not exceed 3 percent of the family's average gross monthly earnings.

''(3) INCOME DETERMINATION.—Each project shall provide for determinations of income in a manner consistent with the methodology used for determinations of income under title XIX of the Social Security Act [this subchapter] for individuals entitled to benefits under part A of title IV of such Act [part A of subchapter IV of this chapter].

''(d) DURATION.—Each project under this section shall commence not later than July 1, 1991 and shall be conducted for a 3-year period; except that the Secretary may terminate such a project if the Secretary determines that the project is not in substantial compliance with the requirements of this section.

''(e) LIMITS ON EXPENDITURES AND FUNDING.—

''(1) IN GENERAL.—(A) The Secretary in conducting projects shall limit the total amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act [this subchapter] to no more than $40,000,000.

''(B) Of the amounts appropriated under subparagraph (A), the Secretary shall provide that no more than one-third of such amounts shall be used to carry out the projects described in paragraph (1)(B) of subsection (a) (for which the statewideness requirement has been waived).

''(2) NO FUNDING OF CURRENT BENEFICIARIES.—No funding shall be available under a project with respect to medical assistance provided to individuals who are otherwise eligible for medical assistance under the plan without regard to the project.

''(3) NO INCREASE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Payments to a State under a project with respect to expenditures made for medical assist-

ance made available under the project may not exceed the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act [section 1396d(b) of this title]) of such expenditures.

''(f) EVALUATION AND REPORT.—

''(1) EVALUATIONS.—For each project the Secretary shall provide for an evaluation to determine the effect of the project with respect to—

''(A) access to, and costs of, health care,

''(B) private health care insurance coverage, and

''(C) premiums and cost-sharing.

''(2) REPORTS.—The Secretary shall prepare and submit to Congress an interim report on the status of the projects not later than January 1, 1993, and a final report containing such summary together with such further recommendations as the Secretary may determine appropriate not later than one year after the termination of the projects.

''(g) DEFINITIONS.—In this section:

''(1) The term 'income official poverty line' means such line as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [section 9902(2) of this title].

''(2) The term 'project' refers to a demonstration project under subsection (a).''

[Section 13643(a) of Pub. L. 103–66 provided in part that the amendment made by that section to section 4745 of Pub. L. 101–508, set out above, is effective as if included in enactment of Pub. L. 101–508.]

DEMONSTRATION PROJECT TO PROVIDE MEDICAID COVERAGE FOR HIV-POSITIVE INDIVIDUALS

Section 4747 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—Not later than 3 months after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary') shall provide for 2 demonstration projects to be administered by States that submit an application under this section, through programs administered by the States under title XIX of the Social Security Act [this subchapter]. Such demonstration projects shall provide coverage for the services described in subsection (c) to individuals whose income and resources do not exceed the maximum allowable amount for eligibility for any individual in any category of disability under the State plan under section 1902 of the Social Security Act [this section], and who have tested positive for the presence of HIV virus (without regard to the presence of any symptoms of AIDS or opportunistic diseases related to AIDS).

''(b) SERVICES AVAILABLE UNDER A DEMONSTRATION PROJECT.—(1) The medical assistance made available to individuals described in section 1902(a)(10)(A) of the Social Security Act [subsec. (a)(10)(A) of this section] shall be made available to individuals described in subsection (a) who receive services under a demonstration project under such paragraph.

''(2) A demonstration project under subsection (a) shall provide services in addition to the services described in paragraph (1) which shall be limited only on the basis of medical necessity or the appropriateness of such services. To the extent not provided as described in paragraph (1), such additional services shall include—

''(A) general and preventative medical care services (including inpatient, outpatient, residential care, physician visits, clinic visits, and hospice care);

''(B) prescription drugs, including drugs for the purposes of preventative health care services;

''(C) counseling and social services;

''(D) substance abuse treatment services (including services for multiple substances abusers);

''(E) home care services (including assistance in carrying out activities of daily living);

''(F) case management;

''(G) health education services;

''(H) respite care for caregivers;

''(I) dental services; and

''(J) diagnostic and laboratory services[.]

''(c) AGREEMENTS WITH STATES.—(1) Each State conducting a demonstration project under subsection (a) shall enter into an agreement with a hospital and at least one other nonprofit organization submitting applications to the State. The State shall require that such hospital and other entity have a demonstrated record of case management of patients who have tested positive for the presence of HIV virus and have access to a control group of such type of patients who are not receiving State or Federal payments for medical services (or other payments from private insurance coverage) before developing symptoms of AIDS. Under such agreement, the State shall agree to pay each such entity for the services provided under subsection (b) and not later than 12 months after the commencement of a demonstration project, institute a system of monthly payment to each such entity based on the average per capita cost of the services described in subsection (c) provided to individuals described in paragraphs (1) and (2) of subsection (a).

''(2) A demonstration project described in subsection (a) shall be limited to an enrollment of not more than 200 individuals.

''(3) A demonstration project conducted under subsection (a) shall commence not later than 9 months after the date of the enactment of this Act [Nov. 5, 1990] and shall terminate on the date that is 3 years after the date of commencement.

''(4)(A) The Secretary shall provide for an evaluation of the comparative costs of providing services to individuals who have tested positive for the presence of HIV virus at an early stage after detection of such virus and those that are treated at a later stage after such detection.

''(B) The Secretary shall report to Congress on the results of the evaluation conducted under subparagraph (A) no later than 6 months after the date of termination of the demonstration projects described in this section.

''(d) FEDERAL SHARE OF COSTS.—The Federal share of the cost of services described in paragraph (3) furnished under a demonstration project conducted under paragraph (1) shall be determined by the otherwise applicable Federal matching assistance percentage pursuant to section 1905(b) of the Social Security Act [section 1396d(b) of this title].

''(e) WAIVER OF REQUIREMENTS OF THE SOCIAL SECURITY ACT.—The Secretary may waive such requirements of the Social Security Act [this chapter] as the Secretary determines to be necessary to carry out the purposes of this section.

''(f) LIMITATION ON AMOUNT OF EXPENDITURES.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be $5,000,000 for fiscal year 1991, $12,000,000 for fiscal year 1992, and $13,000,000 for fiscal year 1993.''

PUBLIC EDUCATION CAMPAIGN

Section 4751(d) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The Secretary, no later than 6 months after the date of enactment of this section [Nov. 5, 1990], shall develop and implement a national campaign to inform the public of the option to execute advance directives and of a patient's right to participate and direct health care decisions.

''(2) DEVELOPMENT AND DISTRIBUTION OF INFORMATION.—The Secretary shall develop or approve nationwide informational materials that would be distributed by providers under the requirements of this section [amending this section and sections 1396b and 1396r of this title and enacting provisions set out above], to inform the public and the medical and legal profession of each person's right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment, and the existence of advance directives.

''(3) PROVIDING ASSISTANCE TO STATES.—The Secretary shall assist appropriate State agencies, associations, or other private entities in developing the State-specific

documents that would be distributed by providers under the requirements of this section. The Secretary shall further assist appropriate State agencies, associations, or other private entities in ensuring that providers are provided a copy of the documents that are to be distributed under the requirements of the section.

''(4) DUTIES OF SECRETARY.—The Secretary shall mail information to Social Security recipients, [and] add a page to the medicare handbook with respect to the provisions of this section.''

PHYSICIAN IDENTIFIER SYSTEM; DEADLINE AND CONSIDERATIONS

Section 4752(a)(1)(B) of Pub. L. 101–508 provided that: ''The system established under the amendment made by subparagraph (A) [amending this section] may be the same as, or different from, the system established under section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272, formerly set out in a note under section 1395ww of this title].''

FOREIGN MEDICAL GRADUATE CERTIFICATION

Section 4752(d) of Pub. L. 101–508 provided that:

''(1) PASSAGE OF FMGEMS EXAMINATION IN ORDER TO OBTAIN IDENTIFIER.—The Secretary of Health and Human Service[s] shall provide, in the identifier system established under section 1902(x) of the Social Security Act [subsec. (x) of this section], that no foreign medical graduate (as defined in section 1886(h)(5)(D) of such Act [section 1395ww(h)(5)(D) of this title]) shall be issued an identifier under such system unless the individual—

''(A) has passed the FMGEMS examination (as defined in section 1886(h)(5)(E) of such Act);

''(B) has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates; or

''(C) has held a license from 1 or more States continuously since 1958.

''(2) EFFECTIVE DATE.—Paragraph (1) shall apply with respect to issuance of an identifier applicable to services furnished on or after January 1, 1992.''

EXCLUSIONS IN DETERMINATION OF INCOME AND RESOURCES UNDER THIS SUBCHAPTER

Section 11115(c) of Pub. L. 101–508 provided that: ''Pursuant to section 1902(a)(17) of the Social Security Act (42 U.S.C. 1396a(a)(17)), the Secretary of Health and Human Services shall promulgate regulations to exempt from any determination of income and resources (for the month of receipt and the following month) under title XIX of the Social Security Act [this subchapter] any refund of Federal income taxes made to an individual by reason of section 32 of the Internal Revenue Code of 1986 [26 U.S.C. 32] (relating to earned income tax credit), and any payment made to an individual by an employer under section 3507 of such Code [26 U.S.C. 3507] (relating to advance payment of earned income credit).''

DEVELOPMENT OF MODEL APPLICATIONS FOR MEDICAID PROGRAM

Section 6506(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall, by not later than 1 year after the date of the enactment of this Act [Dec. 19, 1989], develop a model application form for use in applying for benefits under title XIX of the Social Security Act [this subchapter] for individuals who are not receiving cash assistance under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter], and who are not institutionalized. In developing such model application form, the Secretary is not authorized to require that such form be adopted by States as part of their State medicaid plan.

''(2) DISSEMINATION OF MODEL FORM.—The Secretary shall provide for publication in the Federal Register of the model application form developed under paragraph (1), and shall send a copy of such form to each State agency responsible for administering a State medicaid plan.''

CLARIFICATION OF FEDERAL FINANCIAL PARTICIPATION FOR CASE-MANAGEMENT SERVICES

Section 8435 of Pub. L. 100–647 provided that: ''The Secretary of Health and Human Services may not fail or refuse to approve an amendment to a State plan under title XIX of the Social Security Act [this subchapter] that provides for coverage of case-management services described in section 1915(g)(2) of such Act [section 1396n(g)(2) of this title], or to deny payment to a State for such services under section 1903(a)(1) of such Act [section 1396b(a)(1) of this title] on the basis that a State is required to provide such services under State law or on the basis that the State had paid or is paying for such services from non-Federal funds before or after April 7, 1986. Nothing in this section shall be construed as requiring the Secretary to make payment to a State under section 1903(a)(1) of such Act for such case-management services which are provided without charge to the users of such services.''

TREATMENT OF STATES OPERATING UNDER DEMONSTRATION PROJECTS

Section 301(g)(1) of Pub. L. 100–360 provided that: ''In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115(a) of the Social Security Act [section 1315(a) of this title], the Secretary of Health and Human Services shall require the State to meet the requirement of section 1902(a)(10)(E) of the Social Security Act [subsec. (a)(10)(E) of this section] in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under title XIX of such Act [this subchapter].''

ADJUSTMENT IN MEDICAID PAYMENT FOR INPATIENT HOSPITAL SERVICES FURNISHED BY DISPROPORTIONATE SHARE HOSPITALS

Pub. L. 100–203, title IV, § 4112, Dec. 22, 1987, 101 Stat. 1330–148, which related to adjustment in medicaid payment for inpatient hospital services furnished by disproportionate share hospitals was amended by Pub. L. 100–360, title IV, § 411(k)(6)(A)–(B)(i), July 1, 1988, 102 Stat. 792, 793, and so amended, § 4112 enacts the provisions of former section 4112 as section 1396r–4 of this title and amends sections 1396b and 1396s of this title.

AMENDMENT TO STATE PLAN TO PROVIDE ADJUSTMENT FOR SERVICES FURNISHED DURING FISCAL YEAR 1990

Section 4211(b)(2) of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, § 4801(e)(1)(B), Nov. 5, 1990, 104 Stat. 1388–215, provided that: ''A plan of a State under title XIX of the Social Security Act [this subchapter] shall not be considered to have met the requirement of section 1902(a)(13)(A) of the Social Security Act [subsec. (a)(13)(A) of this section] (as amended by paragraph (1)(A) of this subsection), as of the first day of a Federal fiscal year (beginning on or after October 1, 1990), unless the State has submitted to the Secretary of Health and Human Services, as of April 1 before the fiscal year, an amendment to such State plan to provide for an appropriate adjustment in payment amounts for nursing facility services furnished during the Federal fiscal year. Each such amendment shall include a detailed description of the specific methodology to be used in determining the appropriate adjustment in payment amounts for nursing facility services. The Secretary shall, not later than September 30 before the fiscal year concerned, review each such plan amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement. The absence of approval of such a plan amendment does not relieve the State or any nursing facility of any obligation or requirement

under title XIX of the Social Security Act (as amended by this Act).''

TECHNICAL ASSISTANCE WITH RESPECT TO FACILITIES THAT TAKE INTO ACCOUNT CASE MIX OF RESIDENTS

Section 4211(j) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall, upon request by a State, furnish technical assistance with respect to the development and implementation of reimbursement methods for nursing facilities that take into account the case mix of residents in the different facilities.''

STATE UTILIZATION REVIEW SYSTEMS

Section 9432 of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4118(p)(11), as added by Pub. L. 100–360, title IV, §411(k)(10)(M), July 1, 1988, 102 Stat. 797; Pub. L. 101–508, title IV, §4755(b), Nov. 5, 1990, 104 Stat. 1388–210, provided that:

''(a) IN GENERAL.—(1) The Secretary of Health and Human Services (in this section referred to as the 'Secretary') may not publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act [this subchapter] to include a program requiring second surgical opinions or a program of inpatient hospital preadmission review.

''(2) The Secretary may not, during the period beginning on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 [Nov. 5, 1990] and ending on the date that is 180 days after the date on which the report required by subsection (d) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act [this subchapter] to include a program for ambulatory surgery, preadmission testing, or same-day surgery.

''(b) REPORT.—

''(1) The Secretary shall report to Congress, by not later than October 1, 1988, for each State in a representative sample of States—

''(A) the identity of those procedures which are high volume or high cost procedures among patients who are covered under the State medicaid plan,

''(B) the payment rates under those plans for such procedures, and the aggregate annual payment amounts made under such plans for such procedures (including the Federal share of such payment amounts),

''(C) the rate at which each such procedure is performed on medicaid patients and (to the extent that data are available) comparisons to the rate at which such procedure is performed on patients of comparable age who are not medicaid patients,

''(D) with respect to each such procedure—

''(i) the number of board certified or board eligible physicians in the State who provide care and services to medicaid patients and who perform the procedure, and

''(ii) in the case of a State with a mandatory second surgical opinion program in operation, the number of physicians described in clause (i) who provide second opinions (of the type described in section 1164 of the Social Security Act [section 1320c–13 of this title]) for the procedure at prevailing payment rates under the State medicaid plan, and

''(E) in the case of a State with a mandatory second surgical opinion program or a program of inpatient hospital preadmission review in operation, a description of—

''(i) the extent to which such program impedes access to necessary care and services, and

''(ii) the measures that the State has taken to address such impediments, particularly in rural areas.

''(2) Such report shall also include a list of those surgical procedures which the Secretary believes meet the following criteria and for which a mandatory second opinion program under medicaid plans may be appropriate:

''(A) The procedure is one which generally can be postponed without undue risk to the patient.

''(B) The procedure is a high volume procedure among patients who are covered under State medicaid plans or is a high cost procedure.

''(C) The procedure has a comparatively high rate of nonconfirmation upon examination by another qualified physician, there is substantial geographic variation in the rates of performance of the procedure, or there are other reasons why requiring second opinions for 100 percent of such procedures would be cost effective.

''(3) The representative sample of States required to be included in the report shall include States with mandatory second surgical opinion programs in operation, States with programs of inpatient hospital preadmission review in operation, and States with neither such program in operation.

''(4) In this subsection and subsection (d), the term 'medicaid plan' means a State plan approved under title XIX of the Social Security Act [this subchapter].

''(c) STUDY.—

''(1) The Secretary shall conduct a study of the utilization of selected medical treatments and surgical procedures by medicaid beneficiaries in order to assess the appropriateness, necessity, and effectiveness of such treatments and procedures.

''(2) The study shall analyze the extent to which there is significant variation in the rate of utilization by medicaid beneficiaries of selected treatments and procedures for different geographic areas within States and among States.

''(3) The study shall also identify underutilized, medically necessary treatments and procedures for which—

''(A) a failure to furnish could have an adverse effect on health status, and

''(B) the rate of utilization by medicaid beneficiaries is significantly less than the rate for comparable, age-adjusted populations.

''(4) The study shall be coordinated, to the extent practicable, with the research program established pursuant to section 1875(c) of the Social Security Act [section 1395*ll*(c) of this title], with particular regard to the relationship of the variations described in paragraph (2) to patient outcomes.

''(5) The Secretary shall submit an interim report on the results of the study, including an analysis of the geographic variations under paragraph (2), to the Congress not later than January 1, 1990, and shall report the final results of the study to the Congress not later than January 1, 1992.

''(d) REPORT.—The Secretary shall report to Congress, by not later than January 1, 1993, for each State in a representative sample of States—

''(1) an analysis of the procedures for which programs for ambulatory surgery, preadmission testing, and same-day surgery are appropriate for patients who are covered under the State medicaid plan, and

''(2) the effects of such programs on access of such patients to necessary care, quality of care, and costs of care.

In selecting such a sample of States, the Secretary shall include some States with medicaid plans that include such programs.''

PROMULGATION OF REGULATIONS

Section 9503(c) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall promulgate final regulations necessary to carry out sections 1902(a)(25) and 1903(r)(6)(J) of the Social Security Act [subsec. (a)(25) of this section and section 1396b(r)(6)(J) of this title] within 6 months after the date of the enactment of this Act [Apr. 7, 1986].''

STUDY BY COMPTROLLER GENERAL OF EFFECT OF AMENDMENT TO SUBSECTION (a)(13)

Section 9509(c) of Pub. L. 99–272 directed Comptroller General to conduct a study of effects of the amend-

ments made by this section and report results of such study to Congress two years after Apr. 7, 1986.

TASK FORCE ON TECHNOLOGY-DEPENDENT CHILDREN

Section 9520 of Pub. L. 99–272 directed Secretary of Health and Human Services, within six months after Apr. 7, 1986, to establish a task force concerning alternatives to institutional care for technology-dependent children, such task force to (1) include representatives of Federal and State agencies with responsibilities relating to child health, health insurers, large employers (including those that self-insure for health care costs), providers of health care to technology-dependent children, and parents of technology-dependent children, (2) identify barriers that prevent the provision of appropriate care in a home or community setting to meet special needs of technology-dependent children, (3) recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children, and (4) make a final report to Secretary and to Congress on its activities not later than two years after Apr. 7, 1986.

MEDICAID COVERAGE RELATING TO ADOPTION ASSISTANCE AGREEMENTS ENTERED INTO BEFORE APRIL 7, 1986

Section 9529(b)(2) of Pub. L. 99–272 provided that: ''In the case of an adoption assistance agreement (other than an agreement under part E of title IV of the Social Security Act [part E of subchapter IV of this chapter]) entered into before the date of the enactment of this Act [Apr. 7, 1986]—

''(A) the requirements of subdivisions (aa) and (bb) of section 1902(a)(10)(A)(ii)(VIII) of the Social Security Act [subsec. (a)(10)(A)(ii)(VIII)(aa), (bb) of this section] shall be deemed to be met if the State agency responsible for adoption assistance agreements determines that—

''(i) at the time of adoptive placement the child had special needs for medical or rehabilitative care that made the child difficult to place; and

''(ii) there is in effect with respect to such child an adoption assistance agreement between the State and an adoptive parent or parents; and

''(B) the requirement of subdivision (cc) of such section shall be deemed to be met if the child was found by the State to be eligible for medical assistance prior to such agreement being entered into.''

PAYMENT FOR PSYCHIATRIC HOSPITAL SERVICES

Section 2366 of Pub. L. 98–369 provided that: ''The provisions of section 1902(a)(13) of the Social Security Act [subsec. (a)(13) of this section], in so far as they require a reduction of the amount of payment otherwise to be made to a public psychiatric hospital due to the level of care received in such hospital, shall not apply to payments to hospitals before July 1, 1985, and such a reduction made for payments during the 12-month period ending June 30, 1986, and during the 12-month period ending June 30, 1987, shall be one-third and two-thirds, respectively, of the amount of the reduction which would have been made without regard to this section.''

MORATORIUM ON REGULATORY ACTIONS BY SECRETARY

Section 2373(c) of Pub. L. 98–369, as amended by Pub. L. 100–93, § 9, Aug. 18, 1987, 101 Stat. 695, provided that:

''(1) The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to the moratorium period described in paragraph (2) by reason of such State's plan described in paragraph (5) under title XIX of the Social Security Act [this subchapter] (including any part of the plan operating pursuant to section 1902(f) of such Act [subsec. (f) of this section]), or the operation thereunder, being determined to be in violation of clause (IV), (V), or (VI) of section 1902(a)(10)(A)(ii) or section 1902(a)(10)(C)(i)(III) of such Act on account of such plan's (or its operation) having a standard or methodology which the Secretary interprets as being less restrictive than the standard or methodology required under such section, provided that such plan (or its operation) does not make ineligible any individual who would be eligible but for the provisions of this subsection.

''(2) The moratorium period is the period beginning on October 1, 1981, and ending 18 months after the date on which the Secretary submits the report required under paragraph (3).

''(3) The Secretary shall report to the Congress within 12 months after the date of the enactment of this Act [July 18, 1984] with respect to the appropriateness, and impact on States and recipients of medical assistance, of applying standards and methodologies utilized in cash assistance programs to those recipients of medical assistance who do not receive cash assistance, and any recommendations for changes in such requirements.

''(4) No provision of law shall repeal or suspend the moratorium imposed by this subsection unless such provision specifically amends or repeals this subsection.

''(5) In this subsection, a State plan is considered to include—

''(A) any amendment or other change in the plan which is submitted by a State, or

''(B) any policy or guideline delineated in the Medicaid operation or program manuals of the State which are submitted by the State to the Secretary,

whether before or after the date of enactment of this Act [July 18, 1984] and whether or not the amendment or change, or the operating or program manual was approved, disapproved, acted upon, or not acted upon by the Secretary.

''(6) During the moratorium period, the Secretary shall implement (and shall not change by any administrative action) the policy in effect at the beginning of such moratorium period with respect to—

''(A) the point in time at which an institutionalized individual must sell his home (in order that it not be counted as a resource); and

''(B) the time period allowed for sale of a home of any such individual,

who is an applicant for or recipient of medical assistance under the State plan as a medically needy individual (described in section 1902(a)(10)(C) of the Social Security Act [subsec. (a)(10)(C) of this section]) or as an optional categorically needy individual (described in section 1902(a)(10)(A)(ii) of such Act).''

[Amendment of section 2373(c) of Pub. L. 98–369, set out above, by section 9 of Pub. L. 100–93 applicable as though originally included in Pub. L. 98–369, § 2373(c), see section 15(e) of Pub. L. 100–93, set out as an Effective Date of 1987 Amendment note under section 1320a–7 of this title.]

EVALUATION AND STUDY OF REASONS FOR TERMINATION BY MEDICAID BENEFICIARIES OF MEMBERSHIP IN HEALTH MAINTENANCE ORGANIZATIONS

Section 2178(d) of Pub. L. 97–35 directed Secretary of Health and Human Services to conduct a study evaluating extent of, and reasons for, termination by medicaid beneficiaries of their memberships in health maintenance organizations, placing special emphasis on quantity and quality of medical care provided in health maintenance organizations and quality of such care when provided on a fee-for-service basis, with Secretary to submit an interim report to Congress, within two years after Aug. 13, 1981, and a final report within five years from such date containing, respectively, the interim and final findings and conclusions made as a result of such study.

CONTINUING MEDICAID ELIGIBILITY FOR CERTAIN RECIPIENTS OF VETERANS' ADMINISTRATION PENSIONS

Section 310(b)(1) of Pub. L. 96–272 provided that:

''(A) For purposes of section 1902(a)(10)(A) of the Social Security Act [subsec. (a)(10)(A) of this section], any individual who, prior to the date of enactment of this Act [June 17, 1980] and for the month of December 1978, was eligible for and received aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV of such Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter], or was eligible for and received supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter] (or a supplementary payment described in section 13(c) of Public Law 93–233) [set out as a note under this section], and was also in receipt of (or was a dependent, for purposes of chapter 15 of title 38, United States Code, as in effect on December 31, 1978, of an individual in receipt of) pension from the Veterans' Administration for the month of December 1978 shall (subject to subparagraph (B)) be deemed to have been receiving such aid, assistance, supplemental security income, or supplementary payment, for each calendar month thereafter (prior to the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under subparagraph (B)), if such individual would have been eligible therefor in December 1978 and in the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under subparagraph (B) had the increase in income of such individual (or of the family of which such individual is a member), attributable to an election (made by such individual or another member of such individual's family) under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [section 306 of Pub. L. 95–588, set out as a note under section 521 of Title 38, Veterans' Benefits], not occurred.

''(B)(i) The provisions of subparagraph (A) shall take effect on January 1, 1979, and shall cease to be effective, in the case of any individual, for and after the first calendar month beginning more than 10 days after an 'informed election' (as defined in subdivision (ii) of this subparagraph) has been made by such individual (or, if such individual is not eligible to make such an election, by a member of such individual's family who is eligible to make such an election which affects such individual's eligibility for aid, assistance, or benefits under a plan or program referred to in subparagraph (A)).

''(ii) The term 'informed election' means an election made under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [section 306 of Pub. L. 95–588, set out as a note under section 521 of Title 38] (or a reaffirmation of such an election which previously was made under such section 306) after the date of compliance by the Administrator of Veterans' Affairs (hereinafter in this section referred to as the 'Administrator') with the provisions of paragraph (2)(A) with respect to the individual concerned. An individual who fails, within the time limits prescribed in paragraph (2)(B), to disaffirm an election previously made by such individual under such section 306 shall be deemed, for purposes of this section and such section 306, to have reaffirmed such election.''

PRESERVATION OF MEDICAID ELIGIBILITY FOR INDIVIDUALS WHO CEASE TO BE ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME BENEFITS ON ACCOUNT OF COST-OF-LIVING INCREASES IN SOCIAL SECURITY BENEFITS

Pub. L. 94–566, title V, § 503, Oct. 20, 1976, 90 Stat. 2685, provided that: ''In addition to other requirements imposed by law as a condition for the approval of any State plan under title XIX of the Social Security Act [this subchapter], there is hereby imposed the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual, for any month after June 1977 for which such individual is entitled to a monthly insurance benefit under title II of such Act [subchapter II of this chapter] but is not eligible for benefits under title XVI of such Act [subchapter XVI of this chapter], in like manner and subject to the same terms and conditions as are applicable under such State plan in the case of individuals who are eligible for and receiving benefits under such title XVI [subchapter XVI of this chapter] for such month, if for such month such individual would be (or could become) eligible for benefits under such title XVI [subchapter XVI of this chapter] except for amounts of income received by such individual and his spouse (if any) which are attributable to increases in the level of monthly insurance benefits payable under title II of such Act [subchapter II of this chapter] which have occurred pursuant to section 215(i) of such Act [section 415(i) of this title], in the case of such individual, since the last month after April 1977 for which such individual was both eligible for (and received) benefits under such title XVI [subchapter XVI of this chapter] and was entitled to a monthly insurance benefit under such title II [subchapter II of this chapter], and, in the case of such individual's spouse (if any), since the last such month for which such spouse was both eligible for (and received) benefits under such title XVI [subchapter XVI of this chapter] and was entitled to a monthly insurance benefit under such title II [subchapter II of this chapter]. Solely for purposes of this section, payments of the type described in section 1616(a) of the Social Security Act [section 1382e(a) of this title] or of the type described in section 212(a) of Public Law 93–66 [set out as note under section 1382 of this title] shall be deemed to be benefits under title XVI of the Social Security Act [subchapter XVI of this chapter].''

MEDICAID ELIGIBILITY FOR INDIVIDUALS RECEIVING MANDATORY STATE SUPPLEMENTARY PAYMENTS; EFFECTIVE DATE

Section 13(c) of Pub. L. 93–233 provided that: ''In addition to other requirements imposed by law as conditions for the approval of any State plan under title XIX of the Social Security Act [this subchapter], there is hereby imposed (effective January 1, 1974) the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual—

''(1) for any month for which there (A) is payable with respect to such individual a supplementary payment pursuant to an agreement entered into between the State and the Secretary of Health, Education, and Welfare [now Health and Human Services] under section 212(a) of Public Law 93–66 [set out as note under section 1382 of this title], and (B) would be payable with respect to such individual such a supplementary payment, if the amount of the supplementary payments payable pursuant to such agreement were established without regard to paragraph (3)(A)(ii) of such section 212(a) [set out as note under section 1382 of this title], and

''(2) in like manner, and subject to the same terms and conditions, as medical assistance is provided under such plan to individuals with respect to whom benefits are payable for such month under the supplementary security income program established by title XVI of the Social Security Act [subchapter XVI of this chapter].

Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals who are eligible for such assistance under this subsection.''

COVERAGE OF ESSENTIAL PERSONS UNDER MEDICAID

Section 230 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 159, provided that: ''In the case of any State plan (approved under title XIX of the Social Security Act [this subchapter]) which for December 1973 provided medical assistance to persons described in section 1905(a)(vi) of such Act [section 1396d(a)(vi) of this title], there is hereby imposed the requirement (and such State plan shall be deemed to require) that medical assistance under such plan be provided to each such person (who for December 1973 was eligible for medical assistance under such plan) for each month (after December 1973) that—

''(1) the individual (referred to in the last sentence of section 1905(a) of such Act [section 1396d(a) of this title]) with whom such person is living continues to meet the criteria (as in effect for December 1973) for aid or assistance under a State plan (referred to in such sentence), and

''(2) such person continues to have the relationship with such individual described in such sentence and meets the other criteria (referred to in such sentence) with respect to a State plan (so referred to) as such plan was in effect for December 1973.

Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.''

PERSONS IN MEDICAL INSTITUTIONS

Section 231 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 159, as amended by Pub. L. 93–233, §13(b)(1), Dec. 31, 1973, 87 Stat. 964, provided that: ''For purposes of section 1902(a)(10) of the Social Security Act [subsec. (a)(10) of this section], any individual who, for all (or any part of) the month of December 1973—

''(1) was an inpatient in an institution qualified for reimbursement under title XIX of the Social Security Act [this subchapter], and

''(2)(A) received or would (except for his being an inpatient in such institution) have been eligible to receive aid or assistance under a State plan approved under title I, X, XIV, or XVI of such Act [subchapter I, X, XIV, or XVI of this chapter], and

''(B), [sic] on the basis of his status as described in subparagraph (A), was included as an individual eligible for medical assistance under a State plan approved under title XIX of such Act [this subchapter] (whether or not such individual actually received aid or assistance under a State plan referred to in subparagraph (A)),

shall be deemed to be receiving such aid or assistance for such month and for each succeeding month in a continuous period of months if, for each month in such period—

''(3) such individual continues to be (for all of such month) an inpatient in such an institution and would (except for his being an inpatient in such institution) continue to meet the conditions of eligibility to receive aid or assistance under such plan (as such plan was in effect for December 1973), and

''(4) such individual is determined (under the utilization review and other professional audit procedures applicable to State plans approved under title XIX of the Social Security Act [this subchapter]) to be in need of care in such an institution.

Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.''

BLIND AND DISABLED MEDICALLY INDIGENT PERSONS

Section 232 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 160, as amended by Pub. L. 93–233, §13(b)(2), Dec. 31, 1973, 87 Stat. 964, provided that: ''For purposes of section 1902(a)(10) of the Social Security Act [subsec. (a)(10) of this section], any individual who, for the month of December 1973 was eligible [subsec. (a)(10) of this section] for medical assistance by reason of his having been determined to meet the criteria for blindness or disability (established by a State plan approved under title I, X, XIV, or XVI of such Act [subchapter I, X, XIV, or XVI of this chapter]), shall be deemed for purposes of title XIX [this subchapter] to be an individual who is blind or disabled within the meaning of section 1614(a) of the Social Security Act [section 1382c(a) of this title] for each month in a continuous period of months (beginning with the month of January 1974), if, for each month in such period, such individual continues to meet the criteria for blindness or disability so established by such a State plan (as it was in effect for December 1973), and the other conditions of eligibility contained in the plan of the State approved under title XIX [this subchapter] (as it was in effect in December 1973). Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.''

IMPACT OF 1972 SOCIAL SECURITY BENEFITS INCREASE UNDER PUB. L. 92–336 UPON ELIGIBILITY FOR ASSISTANCE UNDER THIS SUBCHAPTER

Section 249E of Pub. L. 92–603, as amended by section 233 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 160, provided that: ''For purposes of section 1902(a)(10) of the Social Security Act [subsec. (a)(10) of this section] any individual who, for the month of August 1972, was eligible for or receiving aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV of such Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter] and who for such month was entitled to monthly insurance benefits under title II of such Act [subchapter II of this chapter] shall be deemed to be eligible for such aid or assistance for any month thereafter prior to July 1975 if such individual would have been eligible for such aid or assistance for such month had the increase in monthly insurance benefits under title II of such Act [subchapter II of this chapter] resulting from enactment of Pub. L. 92–336 [see Tables] not been applicable to such individual.''

NURSING HOMES ELIGIBLE FOR MATCHING FUNDS FOR HOME SERVICES WHEN MEETING STATE LICENSURE REQUIREMENTS AFTER JUNE 30, 1968

Section 234(c) of Pub. L. 90–248 provided that: ''Notwithstanding any other provision of law, after June 30, 1968, no Federal funds shall be paid to any State as Federal matching under title I, X, XIV, XVI, or XIX of the Social Security Act [subchapter I, X, XIV, XVI, or XIX of this chapter] for payments made to any nursing home for or on account of any nursing home services provided by such nursing home for any period during which such nursing home is determined not to meet fully all requirements of the State for licensure as a nursing home, except that the Secretary may prescribe a reasonable period or periods of time during which a nursing home which has formerly met such requirements will be eligible for payments which include Federal participation if during such period or periods such home promptly takes all necessary steps to again meet such requirements.''

DISTRICT OF COLUMBIA; PLAN FOR MEDICAL ASSISTANCE

Pub. L. 90–227, §1, Dec. 27, 1967, 81 Stat. 744, provided: ''That (a) the Commissioner of the District of Columbia [now Mayor] (hereafter in this Act [enacting this note and provisions set out as a note under section 1395v of this title] referred to as the 'Commissioner') may submit under title XIX of the Social Security Act [this subchapter] to the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereafter in this Act referred to as the 'Secretary') a plan for medical assistance (and any modifications of such plan) to enable the District of Columbia to receive Federal financial assistance under such title for a medical assistance program established by the Commissioner under such plan.

''(b)(1) Notwithstanding any other provision of law, the Commissioner may take such action as may be necessary to submit such plan to the Secretary and to establish and carry out such medical assistance program, except that in prescribing the standards for determining eligibility for and the extent of medical assistance under the District of Columbia's plan for medical assistance, the Commissioner may not (except to the extent required by title XIX of the Social Security Act [this subchapter])—

''(A) prescribe maximum income levels for recipients of medical assistance under such plan which exceed (i) the title XIX maximum income levels if such

levels are in effect, or (ii) the Commissioner's maximum income levels for the local medical assistance program if there are no title XIX maximum income levels in effect; or

''(B) prescribe criteria which would permit an individual or family to be eligible for such assistance if such individual or family would be ineligible, solely by reason of his or its resources, for medical assistance both under the plan of the State of Maryland approved under title XIX of the Social Security Act [this subchapter] and under the plan of the State of Virginia approved under such title.

''(2) For purposes of subparagraph (A) of paragraph (1) of this subsection—

''(A) the term 'title XIX maximum income levels' means any maximum income levels which may be specified by title XIX of the Social Security Act [this subchapter] for recipients of medical assistance under State plans approved under that title;

''(B) the term 'the Commissioner's maximum income levels for the local medical assistance program' means the maximum income levels prescribed for recipients of medical assistance under the District of Columbia's medical assistance program in effect in the fiscal year ending June 30, 1967; and

''(C) during any of the first four calendar quarters in which medical assistance is provided under such plan there shall be deemed to be no title XIX maximum income levels in effect if the title XIX maximum income levels in effect during such quarter are higher than the Commissioner's maximum income levels for the local medical assistance program.''

§ 1396b. Payment to States

(a) Computation of amount

From the sums appropriated therefor, the Secretary (except as otherwise provided in this section) shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing January 1, 1966—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title, subject to subsections (g) and (j) of this section and section 1396r–4(f) of this title) of the total amount expended during such quarter as medical assistance under the State plan; plus

(2)(A) an amount equal to 75 per centum of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to compensation or training of skilled professional medical personnel, and staff directly supporting such personnel, of the State agency or any other public agency; plus

(B) notwithstanding paragraph (1) or subparagraph (A), with respect to amounts expended for nursing aide training and competency evaluation programs, and competency evaluation programs, described in section 1396r(e)(1) of this title (including the costs for nurse aides to complete such competency evaluation programs), regardless of whether the programs are provided in or outside nursing facilities or of the skill of the personnel involved in such programs, an amount equal to 50 percent (or, for calendar quarters beginning on or after July 1, 1988, and before October 1, 1990, the lesser of 90 percent or the Federal medical assistance percentage plus 25 percentage points) of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to such programs; plus

(C) an amount equal to 75 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to preadmission screening and resident review activities conducted by the State under section 1396r(e)(7) of this title; plus

(D) for each calendar quarter during—

(i) fiscal year 1991, an amount equal to 90 percent,

(ii) fiscal year 1992, an amount equal to 85 percent,

(iii) fiscal year 1993, an amount equal to 80 percent, and

(iv) fiscal year 1994 and thereafter, an amount equal to 75 percent,

of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to State activities under section 1396r(g) of this title; plus

(3) an amount equal to—

(A)(i) 90 per centum of so much of the sums expended during such quarter as are attributable to the design, development, or installation of such mechanized claims processing and information retrieval systems as the Secretary determines are likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of subchapter XVIII of this chapter, including the State's share of the cost of installing such a system to be used jointly in the administration of such State's plan and the plan of any other State approved under this chapter, and

(ii) 90 per centum of so much of the sums expended during any such quarter in the fiscal year ending June 30, 1972, or the fiscal year ending June 30, 1973, as are attributable to the design, development, or installation of cost determination systems for State-owned general hospitals (except that the total amount paid to all States under this clause for either such fiscal year shall not exceed $150,000), and

(B) 75 per centum of so much of the sums expended during such quarter as are attributable to the operation of systems (whether such systems are operated directly by the State or by another person under a contract with the State) of the type described in subparagraph (A)(i) (whether or not designed, developed, or installed with assistance under such subparagraph) which are approved by the Secretary and which include provision for prompt written notice to each individual who is furnished services covered by the plan, or to each individual in a sample group of individuals who are furnished such services, of the specific services (other than confidential services) so covered, the name of the person or persons furnishing the services, the date or dates on which the services were furnished, and the amount of the pay-

ment or payments made under the plan on account of the services; and

(C)(i) 75 per centum of the sums expended with respect to costs incurred during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to the performance of medical and utilization review by a utilization and quality control peer review organization or by an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary, under a contract entered into under section 1396a(d) of this title; and

(ii) 75 percent of the sums expended with respect to costs incurred during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to the performance of independent external reviews conducted under section 1396u–2(c)(2) of this title; and

(D) 75 percent of so much of the sums expended by the State plan during a quarter in 1991, 1992, or 1993, as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of section 1396r–8(g) of this title; and

(E) 50 percent of the sums expended with respect to costs incurred during such quarter as are attributable to providing—

(i) services to identify and educate individuals who are likely to be eligible for medical assistance under this subchapter and who have Sickle Cell Disease or who are carriers of the sickle cell gene, including education regarding how to identify such individuals; or

(ii) education regarding the risks of stroke and other complications, as well as the prevention of stroke and other complications, in individuals who are likely to be eligible for medical assistance under this subchapter and who have Sickle Cell Disease; plus

(4) an amount equal to 100 percent of the sums expended during the quarter which are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title; plus

(5) an amount equal to 90 per centum of the sums expended during such quarter which are attributable to the offering, arranging, and furnishing (directly or on a contract basis) of family planning services and supplies;

(6) subject to subsection (b)(3) of this section, an amount equal to—

(A) 90 per centum of the sums expended during such a quarter within the twelve-quarter period beginning with the first quarter in which a payment is made to the State pursuant to this paragraph, and

(B) 75 per centum of the sums expended during each succeeding calendar quarter,

with respect to costs incurred during such quarter (as found necessary by the Secretary for the elimination of fraud in the provision and administration of medical assistance provided under the State plan) which are attributable to the establishment and operation of (including the training of personnel employed by) a State medicaid fraud control unit (described in subsection (q) of this section); plus

(7) subject to section 1396r(g)(3)(B) of this title, an amount equal to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) Quarterly expenditures beginning after December 31, 1969

(1) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) of this section for any State for any quarter beginning after December 31, 1969, shall not take into account any amounts expended as medical assistance with respect to individuals aged 65 or over and disabled individuals entitled to hospital insurance benefits under subchapter XVIII of this chapter which would not have been so expended if the individuals involved had been enrolled in the insurance program established by part B of subchapter XVIII of this chapter, other than amounts expended under provisions of the plan of such State required by section 1396a(a)(34) of this title.

(2) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1320a–1 of this title.

(3) The amount of funds which the Secretary is otherwise obligated to pay a State during a quarter under subsection (a)(6) of this section may not exceed the higher of—

(A) $125,000, or

(B) one-quarter of 1 per centum of the sums expended by the Federal, State, and local governments during the previous quarter in carrying out the State's plan under this subchapter.

(4) Amounts expended by a State for the use of an enrollment broker in marketing medicaid managed care organizations and other managed care entities to eligible individuals under this subchapter shall be considered, for purposes of subsection (a)(7) of this section, to be necessary for the proper and efficient administration of the State plan but only if the following conditions are met with respect to the broker:

(A) The broker is independent of any such entity and of any health care providers (whether or not any such provider participates in the State plan under this subchapter) that provide coverage of services in the same State in which the broker is conducting enrollment activities.

(B) No person who is an owner, employee, consultant, or has a contract with the broker either has any direct or indirect financial interest with such an entity or health care provider or has been excluded from participation in the program under this subchapter or subchapter XVIII of this chapter or debarred by any Federal agency, or subject to a civil money penalty under this chapter.

(5) Notwithstanding the preceding provisions of this section, the amount determined under

subsection (a)(1) of this section for any State shall be decreased in a quarter by the amount of any health care related taxes (described in subsection (w)(3)(A) of this section)[1] that are imposed on a hospital described in subsection (w)(3)(F) of this section in that quarter.

(c) Treatment of educationally-related services

Nothing in this subchapter shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) of this section for medical assistance for covered services furnished to a child with a disability because such services are included in the child's individualized education program established pursuant to part B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.] or furnished to an infant or toddler with a disability because such services are included in the child's individualized family service plan adopted pursuant to part C of such Act [20 U.S.C. 1431 et seq.].

(d) Estimates of State entitlement; installments; adjustments to reflect overpayments or underpayments; time for recovery or adjustment; uncollectable or discharged debts; obligated appropriations; disputed claims

(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsections (a) and (b) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2)(A) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(B) Expenditures for which payments were made to the State under subsection (a) of this section shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1396a(a)(25) of this title.

(C) For purposes of this subsection, when an overpayment is discovered, which was made by a State to a person or other entity, the State shall have a period of 60 days in which to recover or attempt to recover such overpayment before adjustment is made in the Federal payment to such State on account of such overpayment. Except as otherwise provided in subparagraph (D), the adjustment in the Federal payment shall be made at the end of the 60 days, whether or not recovery was made.

(D) In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of such debt having been discharged in bankruptcy or otherwise being uncollectable, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).

(3)(A) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(B)(i) Subparagraph (A) and paragraph (2)(B) shall not apply to any amount recovered or paid to a State as part of the comprehensive settlement of November 1998 between manufacturers of tobacco products, as defined in section 5702(d) of the Internal Revenue Code of 1986, and State Attorneys General, or as part of any individual State settlement or judgment reached in litigation initiated or pursued by a State against one or more such manufacturers.

(ii) Except as provided in subsection (i)(19) of this section, a State may use amounts recovered or paid to the State as part of a comprehensive or individual settlement, or a judgment, described in clause (i) for any expenditures determined appropriate by the State.

(4) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(5) In any case in which the Secretary estimates that there has been an overpayment under this section to a State on the basis of a claim by such State that has been disallowed by the Secretary under section 1316(d) of this title, and such State disputes such disallowance, the amount of the Federal payment in controversy shall, at the option of the State, be retained by such State or recovered by the Secretary pending a final determination with respect to such payment amount. If such final determination is to the effect that any amount was properly disallowed, and the State chose to retain payment of the amount in controversy, the Secretary shall offset, from any subsequent payments made to such State under this subchapter, an amount equal to the proper amount of the disallowance plus interest on such amount disallowed for the period beginning on the date such amount was disallowed and ending on the date of such final determination at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day treasury bill auction rates during such period.

(6)(A) Each State (as defined in subsection (w)(7)(D) of this section) shall include, in the first report submitted under paragraph (1) after the end of each fiscal year, information related to—

(i) provider-related donations made to the State or units of local government during such fiscal year, and

[1] See References in Text note below.

(ii) health care related taxes collected by the State or such units during such fiscal year.

(B) Each State shall include, in the first report submitted under paragraph (1) after the end of each fiscal year, information related to the total amount of payment adjustments made, and the amount of payment adjustments made to individual providers (by provider), under section 1396r–4(c) of this title during such fiscal year.

(e) Transition costs of closures or conversions permitted

A State plan approved under this subchapter may include, as a cost with respect to hospital services under the plan under this subchapter, periodic expenditures made to reflect transitional allowances established with respect to a hospital closure or conversion under section 1395uu of this title.

(f) Limitation on Federal participation in medical assistance

(1)(A) Except as provided in paragraph (4), payment under the preceding provisions of this section shall not be made with respect to any amount expended as medical assistance in a calendar quarter, in any State, for any member of a family the annual income of which exceeds the applicable income limitation determined under this paragraph.

(B)(i) Except as provided in clause (ii) of this subparagraph, the applicable income limitation with respect to any family is the amount determined, in accordance with standards prescribed by the Secretary, to be equivalent to 133⅓ percent of the highest amount which would ordinarily be paid to a family of the same size without any income or resources, in the form of money payments, under the plan of the State approved under part A of subchapter IV of this chapter.

(ii) If the Secretary finds that the operation of a uniform maximum limits payments to families of more than one size, he may adjust the amount otherwise determined under clause (i) to take account of families of different sizes.

(C) The total amount of any applicable income limitation determined under subparagraph (B) shall, if it is not a multiple of $100 or such other amount as the Secretary may prescribe, be rounded to the next higher multiple of $100 or such other amount, as the case may be.

(2)(A) In computing a family's income for purposes of paragraph (1), there shall be excluded any costs (whether in the form of insurance premiums or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof) incurred by such family for medical care or for any other type of remedial care recognized under State law or, (B) notwithstanding section 1396*o* of this title at State option, an amount paid by such family, at the family's option, to the State, provided that the amount, when combined with costs incurred in prior months, is sufficient when excluded from the family's income to reduce such family's income below the applicable income limitation described in paragraph (1). The amount of State expenditures for which medical assistance is available under subsection (a)(1) of this section will be reduced by amounts paid to the State pursuant to this subparagraph.

(3) For purposes of paragraph (1)(B), in the case of a family consisting of only one individual, the ''highest amount which would ordinarily be paid'' to such family under the State's plan approved under part A of subchapter IV of this chapter shall be the amount determined by the State agency (on the basis of reasonable relationship to the amounts payable under such plan to families consisting of two or more persons) to be the amount of the aid which would ordinarily be payable under such plan to a family (without any income or resources) consisting of one person if such plan provided for aid to such a family.

(4) The limitations on payment imposed by the preceding provisions of this subsection shall not apply with respect to any amount expended by a State as medical assistance for any individual described in section 1396a(a)(10)(A)(i)(III), 1396a(a)(10)(A)(i)(IV), 1396a(a)(10)(A)(i)(V), 1396a(a)(10)(A)(i)(VI), 1396a(a)(10)(A)(i)(VII), 1396a(a)(10)(A)(ii)(IX), 1396a(a)(10)(A)(ii)(X), 1396a(a)(10)(A)(ii)(XIII), 1396a(a)(10)(A)(ii)(XIV), or[2] 1396a(a)(10)(A)(ii)(XV), 1396a(a)(10)(A)(ii)(XVI), 1396a(a)(10)(A)(ii)(XVII), 1396a(a)(10)(A)(ii)(XVIII), 1396d(p)(1) of this title or for any individual—

(A) who is receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV or XVI, or part A of subchapter IV, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or

(B) who is not receiving such aid or assistance, and with respect to whom such benefits are not being paid, but (i) is eligible to receive such aid or assistance, or to have such benefits paid with respect to him, or (ii) would be eligible to receive such aid or assistance, or to have such benefits paid with respect to him if he were not in a medical institution, or

(C) with respect to whom there is being paid, or who is eligible, or would be eligible if he were not in a medical institution, to have paid with respect to him, a State supplementary payment and is eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title, or who is a PACE program eligible individual enrolled in a PACE program under section 1396u–4 of this title, but only if the income of such individual (as determined under section 1382a of this title, but without regard to subsection (b) thereof) does not exceed 300 percent of the supplemental security income benefit rate established by section 1382(b)(1) of this title,

at the time of the provision of the medical assistance giving rise to such expenditure.

(g) Decrease in Federal medical assistance percentage of amounts paid for services furnished under State plan after June 30, 1973

(1) Subject to paragraph (3), with respect to amounts paid for the following services fur-

[2] So in original. The word ''or'' probably should precede ''1396(p)(1)''.

nished under the State plan after June 30, 1973 (other than services furnished pursuant to a contract with a health maintenance organization as defined in section 1395mm of this title or which is a qualified health maintenance organization (as defined in section 300e–9(d)[3] of this title)), the Federal medical assistance percentage shall be decreased as follows: After an individual has received inpatient hospital services or services in an intermediate care facility for the mentally retarded for 60 days or inpatient mental hospital services for 90 days (whether or not such days are consecutive), during any fiscal year, the Federal medical assistance percentage with respect to amounts paid for any such care furnished thereafter to such individual shall be decreased by a per centum thereof (determined under paragraph (5)) unless the State agency responsible for the administration of the plan makes a showing satisfactory to the Secretary that, with respect to each calendar quarter for which the State submits a request for payment at the full Federal medical assistance percentage for amounts paid for inpatient hospital services or services in an intermediate care facility for the mentally retarded furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), such State has an effective program of medical review of the care of patients in mental hospitals and intermediate care facilities for the mentally retarded pursuant to paragraphs (26) and (31) of section 1396a(a) of this title whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams. In determining the number of days on which an individual has received services described in this subsection, there shall not be counted any days with respect to which such individual is entitled to have payments made (in whole or in part) on his behalf under section 1395d of this title.

(2) The Secretary shall, as part of his validation procedures under this subsection, conduct timely sample onsite surveys of private and public institutions in which recipients of medical assistance may receive care and services under a State plan approved under this subchapter, and his findings with respect to such surveys (as well as the showings of the State agency required under this subsection) shall be made available for public inspection.

(3)(A) No reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under this subsection shall take effect—

(i) if such reduction is due to the State's unsatisfactory or invalid showing made with respect to a calendar quarter beginning before January 1, 1977;

(ii) before January 1, 1978;

(iii) unless a notice of such reduction has been provided to the State at least 30 days before the date such reduction takes effect; or

(iv) due to the State's unsatisfactory or invalid showing made with respect to a calendar quarter beginning after September 30, 1977, unless notice of such reduction has been provided to the State no later than the first day of the fourth calendar quarter following the calendar quarter with respect to which such showing was made.

(B) The Secretary shall waive application of any reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under paragraph (1) because a showing by the State, made under such paragraph with respect to a calendar quarter ending after January 1, 1977, and before January 1, 1978, is determined to be either unsatisfactory under such paragraph or invalid under paragraph (2), if the Secretary determines that the State's showing made under paragraph (1) with respect to any calendar quarter ending on or before December 31, 1978, is satisfactory under such paragraph and is valid under paragraph (2).

(4)(A) The Secretary may not find the showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory if the showing is submitted to the Secretary later than the 30th day after the last day of the calendar quarter, unless the State demonstrates to the satisfaction of the Secretary good cause for not meeting such deadline.

(B) The Secretary shall find a showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory under such paragraph with respect to the requirement that the State conduct annual onsite inspections in mental hospitals and intermediate care facilities for the mentally retarded under paragraphs (26) and (31) of section 1396a(a) of this title, if the showing demonstrates that the State has conducted such an onsite inspection during the 12-month period ending on the last date of the calendar quarter—

(i) in each of not less than 98 per centum of the number of such hospitals and facilities requiring such inspection, and

(ii) in every such hospital or facility which has 200 or more beds,

and that, with respect to such hospitals and facilities not inspected within such period, the State has exercised good faith and due diligence in attempting to conduct such inspection, or if the State demonstrates to the satisfaction of the Secretary that it would have made such a showing but for failings of a technical nature only.

(5) In the case of a State's unsatisfactory or invalid showing made with respect to a type of facility or institutional services in a calendar quarter, the per centum amount of the reduction of the State's Federal medical assistance percentage for that type of services under paragraph (1) is equal to 33⅓ per centum multiplied by a fraction, the denominator of which is equal to the total number of patients receiving that type of services in that quarter under the State plan in facilities or institutions for which a showing was required to be made under this subsection, and the numerator of which is equal to the number of such patients receiving such type of services in that quarter in those facilities or institutions for which a satisfactory and valid showing was not made for that calendar quarter.

(6)(A) Recertifications required under section 1396a(a)(44) of this title shall be conducted at least every 60 days in the case of inpatient hospital services.

[3] See References in Text note below.

(B) Such recertifications in the case of services in an intermediate care facility for the mentally retarded shall be conducted at least—

(i) 60 days after the date of the initial certification,

(ii) 180 days after the date of the initial certification,

(iii) 12 months after the date of the initial certification,

(iv) 18 months after the date of the initial certification,

(v) 24 months after the date of the initial certification, and

(vi) every 12 months thereafter.

(C) For purposes of determining compliance with the schedule established by this paragraph, a recertification shall be considered to have been done on a timely basis if it was performed not later than 10 days after the date the recertification was otherwise required and the State establishes good cause why the physician or other person making such recertification did not meet such schedule.

(h) Repealed. Pub. L. 100–203, title IV, § 4211(g)(1), Dec. 22, 1987, 101 Stat. 1330–205

(i) Payment for organ transplants; item or service furnished by excluded individual, entity, or physician; other restrictions

Payment under the preceding provisions of this section shall not be made—

(1) for organ transplant procedures unless the State plan provides for written standards respecting the coverage of such procedures and unless such standards provide that—

(A) similarly situated individuals are treated alike; and

(B) any restriction, on the facilities or practitioners which may provide such procedures, is consistent with the accessibility of high quality care to individuals eligible for the procedures under the State plan; or

(2) with respect to any amount expended for an item or service (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) furnished—

(A) under the plan by any individual or entity during any period when the individual or entity is excluded from participation under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title, or

(B) at the medical direction or on the prescription of a physician, during the period when such physician is excluded from participation under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person); or

(3) with respect to any amount expended for inpatient hospital services furnished under the plan (other than amounts attributable to the special situation of a hospital which serves a disproportionate number of low income patients with special needs) to the extent that such amount exceeds the hospital's customary charges with respect to such services or (if such services are furnished under the plan by a public institution free of charge or at nominal charges to the public) exceeds an amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such payment which the Secretary finds will provide fair compensation to such institution for such services; or

(4) with respect to any amount expended for care or services furnished under the plan by a hospital unless such hospital has in effect a utilization review plan which meets the requirements imposed by section 1395x(k) of this title for purposes of subchapter XVIII of this chapter; and if such hospital has in effect such a utilization review plan for purposes of subchapter XVIII of this chapter, such plan shall serve as the plan required by this subsection (with the same standards and procedures and the same review committee or group) as a condition of payment under this subchapter; the Secretary is authorized to waive the requirements of this paragraph if the State agency demonstrates to his satisfaction that it has in operation utilization review procedures which are superior in their effectiveness to the procedures required under section 1395x(k) of this title; or

(5) with respect to any amount expended for any drug product for which payment may not be made under part B of subchapter XVIII of this chapter because of section 1395y(c) of this title; or

(6) with respect to any amount expended for inpatient hospital tests (other than in emergency situations) not specifically ordered by the attending physician or other responsible practitioner; or

(7) with respect to any amount expended for clinical diagnostic laboratory tests performed by a physician, independent laboratory, or hospital, to the extent such amount exceeds the amount that would be recognized under section 1395*l*(h) of this title for such tests performed for an individual enrolled under part B of subchapter XVIII of this chapter; or

(8) with respect to any amount expended for medical assistance (A) for nursing facility services to reimburse (or otherwise compensate) a nursing facility for payment of a civil money penalty imposed under section 1396r(h) of this title or (B) for home and community care to reimburse (or otherwise compensate) a provider of such care for payment of a civil money penalty imposed under this subchapter or subchapter XI of this chapter or for legal expenses in defense of an exclusion or civil money penalty under this subchapter or subchapter XI of this chapter if there is no reasonable legal ground for the provider's case; or

(9) Repealed. Pub. L. 104–193, title I, § 114(d)(2), Aug. 22, 1996, 110 Stat. 2180.

(10)(A) with respect to covered outpatient drugs unless there is a rebate agreement in effect under section 1396r–8 of this title with re-

spect to such drugs or unless section 1396r–8(a)(3) of this title applies, and

(B) with respect to any amount expended for an innovator multiple source drug (as defined in section 1396r–8(k) of this title) dispensed on or after July 1, 1991, if, under applicable State law, a less expensive multiple source drug could have been dispensed, but only to the extent that such amount exceeds the upper payment limit for such multiple source drug; or

(11) with respect to any amount expended for physicians' services furnished on or after the first day of the first quarter beginning more than 60 days after the date of establishment of the physician identifier system under section 1396a(x) of this title, unless the claim for the services includes the unique physician identifier provided under such system; or

(12) Repealed. Pub. L. 105–33, title IV, § 4742(a), Aug. 5, 1997, 111 Stat. 523.

(13) with respect to any amount expended to reimburse (or otherwise compensate) a nursing facility for payment of legal expenses associated with any action initiated by the facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action; or

(14) with respect to any amount expended on administrative costs to carry out the program under section 1396s of this title; or

(15) with respect to any amount expended for a single-antigen vaccine and its administration in any case in which the administration of a combined-antigen vaccine was medically appropriate (as determined by the Secretary); or

(16) with respect to any amount expended for which funds may not be used under the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.]; or

(17) with respect to any amount expended for roads, bridges, stadiums, or any other item or service not covered under a State plan under this subchapter; or

(18) with respect to any amount expended for home health care services provided by an agency or organization unless the agency or organization provides the State agency on a continuing basis a surety bond in a form specified by the Secretary under paragraph (7) of section 1395x(*o*) of this title and in an amount that is not less than $50,000 or such comparable surety bond as the Secretary may permit under the last sentence of such section; or

(19) with respect to any amount expended on administrative costs to initiate or pursue litigation described in subsection (d)(3)(B) of this section;

(20) with respect to amounts expended for medical assistance provided to an individual described in subclause (XV) or (XVI) of section 1396a(a)(10)(A)(ii) of this title for a fiscal year unless the State demonstrates to the satisfaction of the Secretary that the level of State funds expended for such fiscal year for programs to enable working individuals with disabilities to work (other than for such medical assistance) is not less than the level expended for such programs during the most recent State fiscal year ending before December 17, 1999; or

(21) with respect to amounts expended for covered outpatient drugs described in section 1396r–8(d)(2)(K) of this title (relating to drugs when used for treatment of sexual or erectile dysfunction).

Nothing in paragraph (1) shall be construed as permitting a State to provide services under its plan under this subchapter that are not reasonable in amount, duration, and scope to achieve their purpose. Paragraphs (1), (2), (16), (17), and (18) shall apply with respect to items or services furnished and amounts expended by or through a managed care entity (as defined in section 1396u–2(a)(1)(B) of this title) in the same manner as such paragraphs apply to items or services furnished and amounts expended directly by the State.

(j) Adjustment of amount

Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) of this section for any State for any quarter shall be adjusted in accordance with section 1396m of this title.

(k) Technical assistance to States

The Secretary is authorized to provide at the request of any State (and without cost to such State) such technical and actuarial assistance as may be necessary to assist such State to contract with any medicaid managed care organization which meets the requirements of subsection (m) of this section for the purpose of providing medical care and services to individuals who are entitled to medical assistance under this subchapter.

***(l)* Repealed. Pub. L. 94–552, § 1, Oct. 18, 1976, 90 Stat. 2540**

(m) "Medicaid managed care organization" defined; duties and functions of Secretary; payments to States; reporting requirements; remedies

(1)(A) The term ''medicaid managed care organization'' means a health maintenance organization, an eligible organization with a contract under section 1395mm of this title or a Medicare+Choice organization with a contract under part C of subchapter XVIII of this chapter, a provider sponsored organization, or any other public or private organization, which meets the requirement of section 1396a(w) of this title and—

(i) makes services it provides to individuals eligible for benefits under this subchapter accessible to such individuals, within the area served by the organization, to the same extent as such services are made accessible to individuals (eligible for medical assistance under the State plan) not enrolled with the organization, and

(ii) has made adequate provision against the risk of insolvency, which provision is satisfactory to the State, meets the requirements of subparagraph (C)(i) (if applicable), and which assures that individuals eligible for benefits under this subchapter are in no case held liable for debts of the organization in case of the organization's insolvency.

An organization that is a qualified health maintenance organization (as defined in section

300e–9(d)[4] of this title) is deemed to meet the requirements of clauses (i) and (ii).

(B) The duties and functions of the Secretary, insofar as they involve making determinations as to whether an organization is a medicaid managed care organization within the meaning of subparagraph (A), shall be integrated with the administration of section 300e–11(a) and (b) of this title.

(C)(i) Subject to clause (ii), a provision meets the requirements of this subparagraph for an organization if the organization meets solvency standards established by the State for private health maintenance organizations or is licensed or certified by the State as a risk-bearing entity.

(ii) Clause (i) shall not apply to an organization if—

(I) the organization is not responsible for the provision (directly or through arrangements with providers of services) of inpatient hospital services and physicians' services;

(II) the organization is a public entity;

(III) the solvency of the organization is guaranteed by the State; or

(IV) the organization is (or is controlled by) one or more Federally-qualified[5] health centers and meets solvency standards established by the State for such an organization.

For purposes of subclause (IV), the term ''control'' means the possession, whether direct or indirect, of the power to direct or cause the direction of the management and policies of the organization through membership, board representation, or an ownership interest equal to or greater than 50.1 percent.

(2)(A) Except as provided in subparagraphs (B), (C), and (G), no payment shall be made under this subchapter to a State with respect to expenditures incurred by it for payment (determined under a prepaid capitation basis or under any other risk basis) for services provided by any entity (including a health insuring organization) which is responsible for the provision (directly or through arrangements with providers of services) of inpatient hospital services and any other service described in paragraph (2), (3), (4), (5), or (7) of section 1396d(a) of this title or for the provision of any three or more of the services described in such paragraphs unless—

(i) the Secretary has determined that the entity is a medicaid managed care organization as defined in paragraph (1);

(ii) Repealed. Pub. L. 105–33, title IV, § 4703(a), Aug. 5, 1997, 111 Stat. 495.

(iii) such services are provided for the benefit of individuals eligible for benefits under this subchapter in accordance with a contract between the State and the entity under which prepaid payments to the entity are made on an actuarially sound basis and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of $1,000,000 for 1998 and, for a subsequent year, the amount established under this clause for the previous year increased by the percentage increase in the consumer price index for all urban consumers over the previous year;

(iv) such contract provides that the Secretary and the State (or any person or organization designated by either) shall have the right to audit and inspect any books and records of the entity (and of any subcontractor) that pertain (I) to the ability of the entity to bear the risk of potential financial losses, or (II) to services performed or determinations of amounts payable under the contract;

(v) such contract provides that in the entity's enrollment, reenrollment, or disenrollment of individuals who are eligible for benefits under this subchapter and eligible to enroll, reenroll, or disenroll with the entity pursuant to the contract, the entity will not discriminate among such individuals on the basis of their health status or requirements for health care services;

(vi) such contract (I) permits individuals who have elected under the plan to enroll with the entity for provision of such benefits to terminate such enrollment in accordance with section 1396u–2(a)(4) of this title, and (II) provides for notification in accordance with such section of each such individual, at the time of the individual's enrollment, of such right to terminate such enrollment;

(vii) such contract provides that, in the case of medically necessary services which were provided (I) to an individual enrolled with the entity under the contract and entitled to benefits with respect to such services under the State's plan and (II) other than through the organization because the services were immediately required due to an unforeseen illness, injury, or condition, either the entity or the State provides for reimbursement with respect to those services,[6]

(viii) such contract provides for disclosure of information in accordance with section 1320a–3 of this title and paragraph (4) of this subsection;

(ix) such contract provides, in the case of an entity that has entered into a contract for the provision of services with a Federally-qualified[5] health center or a rural health clinic, that the entity shall provide payment that is not less than the level and amount of payment which the entity would make for the services if the services were furnished by a provider which is not a Federally-qualified health center or a rural health clinic;

(x) any physician incentive plan that it operates meets the requirements described in section 1395mm(i)(8) of this title;

(xi) such contract provides for maintenance of sufficient patient encounter data to identify the physician who delivers services to patients; and

(xii) such contract, and the entity complies with the applicable requirements of section 1396u–2 of this title.

(B) Subparagraph (A)[7] except with respect to clause (ix) of subparagraph (A), does not apply with respect to payments under this subchapter to a State with respect to expenditures incurred

[4] See References in Text note below.

[5] So in original. Probably should not be capitalized.

[6] So in original. The comma probably should be a semicolon.

[7] So in original. Probably should be followed by a comma.

by it for payment for services provided by an entity which—

(i)(I) received a grant of at least $100,000 in the fiscal year ending June 30, 1976, under section 254b(d)(1)(A) or 254c(d)(1) of this title,[8] and for the period beginning July 1, 1976, and ending on the expiration of the period for which payments are to be made under this subchapter has been the recipient of a grant under either such section; and

(II) provides to its enrollees, on a prepaid capitation risk basis or on any other risk basis, all of the services and benefits described in paragraphs (1), (2), (3), (4)(C), and (5) of section 1396d(a) of this title and, to the extent required by section 1396a(a)(10)(D) of this title to be provided under a State plan for medical assistance, the services and benefits described in paragraph (7) of section 1396d(a) of this title; or

(ii) is a nonprofit primary health care entity located in a rural area (as defined by the Appalachian Regional Commission)—

(I) which received in the fiscal year ending June 30, 1976, at least $100,000 (by grant, subgrant, or subcontract) under the Appalachian Regional Development Act of 1965,[8] and

(II) for the period beginning July 1, 1976, and ending on the expiration of the period for which payments are to be made under this subchapter either has been the recipient of a grant, subgrant, or subcontract under such Act or has provided services under a contract (initially entered into during a year in which the entity was the recipient of such a grant, subgrant, or subcontract) with a State agency under this subchapter on a prepaid capitation risk basis or on any other risk basis; or

(iii) which has contracted with the single State agency for the provision of services (but not including inpatient hospital services) to persons eligible under this subchapter on a prepaid risk basis prior to 1970.

(C) to (E) Repealed. Pub. L. 105–33, title IV, § 4703(b)(1)(A), Aug. 5, 1997, 111 Stat. 495.

(F) Repealed. Pub. L. 105–33, title IV, § 4701(d)(2)(B), Aug. 5, 1997, 111 Stat. 494.

(G) In the case of an entity which is receiving (and has received during the previous two years) a grant of at least $100,000 under section 254b(d)(1)(A) or 254c(d)(1) of this title[8] or is receiving (and has received during the previous two years) at least $100,000 (by grant, subgrant, or subcontract) under the Appalachian Regional Development Act of 1965,[8] clause (i) of subparagraph (A) shall not apply.

(H) In the case of an individual who—

(i) in a month is eligible for benefits under this subchapter and enrolled with a medicaid managed care organization with a contract under this paragraph or with a primary care case manager with a contract described in section 1396d(t)(3) of this title,

(ii) in the next month (or in the next 2 months) is not eligible for such benefits, but

(iii) in the succeeding month is again eligible for such benefits,

the State plan, subject to subparagraph (A)(vi), may enroll the individual for that succeeding month with the organization described in clause (i) if the organization continues to have a contract under this paragraph with the State or with the manager described in such clause if the manager continues to have a contract described in section 1396d(t)(3) of this title with the State.

(3) Repealed. Pub. L. 101–508, title IV, § 4732(d)(2), Nov. 5, 1990, 104 Stat. 1388–196.

(4)(A) Each medicaid managed care organization which is not a qualified health maintenance organization (as defined in section 300e–9(d)[8] of this title) must report to the State and, upon request, to the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General a description of transactions between the organization and a party in interest (as defined in section 300e–17(b) of this title), including the following transactions:

(i) Any sale or exchange, or leasing of any property between the organization and such a party.

(ii) Any furnishing for consideration of goods, services (including management services), or facilities between the organization and such a party, but not including salaries paid to employees for services provided in the normal course of their employment.

(iii) Any lending of money or other extension of credit between the organization and such a party.

The State or Secretary may require that information reported respecting an organization which controls, or is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(B) Each organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.

(5)(A) If the Secretary determines that an entity with a contract under this subsection—

(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(ii) imposes premiums on individuals enrolled under this subsection in excess of the premiums permitted under this subchapter;

(iii) acts to discriminate among individuals in violation of the provision of paragraph (2)(A)(v), including expulsion or refusal to reenroll an individual or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this subsection) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

(iv) misrepresents or falsifies information that is furnished—

(I) to the Secretary or the State under this subsection, or

[8] See References in Text note below.

(II) to an individual or to any other entity under this subsection,[9] or

(v) fails to comply with the requirements of section 1395mm(i)(8) of this title,

the Secretary may provide, in addition to any other remedies available under law, for any of the remedies described in subparagraph (B).

(B) The remedies described in this subparagraph are—

(i) civil money penalties of not more than $25,000 for each determination under subparagraph (A), or, with respect to a determination under clause (iii) or (iv)(I) of such subparagraph, of not more than $100,000 for each such determination, plus, with respect to a determination under subparagraph (A)(ii), double the excess amount charged in violation of such subparagraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under subparagraph (A)(iii), $15,000 for each individual not enrolled as a result of a practice described in such subparagraph, or

(ii) denial of payment to the State for medical assistance furnished under the contract under this subsection for individuals enrolled after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(6)(A) For purposes of this subsection and section 1396a(e)(2)(A) of this title, in the case of the State of New Jersey, the term ''contract'' shall be deemed to include an undertaking by the State agency, in the State plan under this subchapter, to operate a program meeting all requirements of this subsection.

(B) The undertaking described in subparagraph (A) must provide—

(i) for the establishment of a separate entity responsible for the operation of a program meeting the requirements of this subsection, which entity may be a subdivision of the State agency administering the State plan under this subchapter;

(ii) for separate accounting for the funds used to operate such program; and

(iii) for setting the capitation rates and any other payment rates for services provided in accordance with this subsection using a methodology satisfactory to the Secretary designed to ensure that total Federal matching payments under this subchapter for such services will be lower than the matching payments that would be made for the same services, if provided under the State plan on a fee for service basis to an actuarially equivalent population.

(C) The undertaking described in subparagraph (A) shall be subject to approval (and annual reapproval) by the Secretary in the same manner as a contract under this subsection.

(D) The undertaking described in subparagraph (A) shall not be eligible for a waiver under section 1396n(b) of this title.

(n) Repealed. Pub. L. 100–93, § 8(h)(1), Aug. 18, 1987, 101 Stat. 694

(*o*) Restrictions on authorized payments to States

Notwithstanding the preceding provisions of this section, no payment shall be made to a State under the preceding provisions of this section for expenditures for medical assistance provided for an individual under its State plan approved under this subchapter to the extent that a private insurer (as defined by the Secretary by regulation and including a group health plan (as defined in section 1167(1) of title 29), a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided medical assistance under the plan.

(p) Assignment of rights of payment; incentive payments for enforcement and collection

(1) When a political subdivision of a State makes, for the State of which it is a political subdivision, or one State makes, for another State, the enforcement and collection of rights of support or payment assigned under section 1396k of this title, pursuant to a cooperative arrangement under such section (either within or outside of such State), there shall be paid to such political subdivision or such other State from amounts which would otherwise represent the Federal share of payments for medical assistance provided to the eligible individuals on whose behalf such enforcement and collection was made, an amount equal to 15 percent of any amount collected which is attributable to such rights of support or payment.

(2) Where more than one jurisdiction is involved in such enforcement or collection, the amount of the incentive payment determined under paragraph (1) shall be allocated among the jurisdictions in a manner to be prescribed by the Secretary.

(q) "State medicaid fraud control unit" defined

For the purposes of this section, the term ''State medicaid fraud control unit'' means a single identifiable entity of the State government which the Secretary certifies (and annually recertifies) as meeting the following requirements:

(1) The entity (A) is a unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations, (B) is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures, approved by the Secretary, that (i) assure its referral of suspected criminal violations relating to the program under this subchapter to the appropriate authority or authorities in the

[9] So in original. The comma probably should be a semicolon.

State for prosecution and (ii) assure its assistance of, and coordination with, such authority or authorities in such prosecutions, or (C) has a formal working relationship with the office of the State Attorney General and has formal procedures (including procedures for its referral of suspected criminal violations to such office) which are approved by the Secretary and which provide effective coordination of activities between the entity and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to the program under this subchapter.

(2) The entity is separate and distinct from the single State agency that administers or supervises the administration of the State plan under this subchapter.

(3) The entity's function is conducting a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with (A) any aspect of the provision of medical assistance and the activities of providers of such assistance under the State plan under this subchapter; and (B) upon the approval of the Inspector General of the relevant Federal agency, any aspect of the provision of health care services and activities of providers of such services under any Federal health care program (as defined in section 1320a–7b(f)(1) of this title), if the suspected fraud or violation of law in such case or investigation is primarily related to the State plan under this subchapter.

(4)(A) The entity has—

(i) procedures for reviewing complaints of abuse or neglect of patients in health care facilities which receive payments under the State plan under this subchapter;

(ii) at the option of the entity, procedures for reviewing complaints of abuse or neglect of patients residing in board and care facilities; and

(iii) procedures for acting upon such complaints under the criminal laws of the State or for referring such complaints to other State agencies for action.

(B) For purposes of this paragraph, the term ''board and care facility'' means a residential setting which receives payment (regardless of whether such payment is made under the State plan under this subchapter) from or on behalf of two or more unrelated adults who reside in such facility, and for whom one or both of the following is provided:

(i) Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse, or licensed nursing assistant.

(ii) A substantial amount of personal care services that assist residents with the activities of daily living, including personal hygiene, dressing, bathing, eating, toileting, ambulation, transfer, positioning, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry, and housework.

(5) The entity provides for the collection, or referral for collection to a single State agency, of overpayments that are made under the State plan or under any Federal health care program (as so defined) to health care facilities and that are discovered by the entity in carrying out its activities. All funds collected in accordance with this paragraph shall be credited exclusively to, and available for expenditure under, the Federal health care program (including the State plan under this subchapter) that was subject to the activity that was the basis for the collection.

(6) The entity employs such auditors, attorneys, investigators, and other necessary personnel and is organized in such a manner as is necessary to promote the effective and efficient conduct of the entity's activities.

(7) The entity submits to the Secretary an application and annual reports containing such information as the Secretary determines, by regulation, to be necessary to determine whether the entity meets the other requirements of this subsection.

(r) Mechanized claims processing and information retrieval systems; operational, etc., requirements

(1) In order to receive payments under subsection (a) of this section for use of automated data systems in administration of the State plan under this subchapter, a State must have in operation mechanized claims processing and information retrieval systems that meet the requirements of this subsection and that the Secretary has found—

(A) are adequate to provide efficient, economical, and effective administration of such State plan;

(B) are compatible with the claims processing and information retrieval systems used in the administration of subchapter XVIII of this chapter, and for this purpose—

(i) have a uniform identification coding system for providers, other payees, and beneficiaries under this subchapter or subchapter XVIII of this chapter;

(ii) provide liaison between States and carriers and intermediaries with agreements under subchapter XVIII of this chapter to facilitate timely exchange of appropriate data; and

(iii) provide for exchange of data between the States and the Secretary with respect to persons sanctioned under this subchapter or subchapter XVIII of this chapter;

(C) are capable of providing accurate and timely data;

(D) are complying with the applicable provisions of part C of subchapter XI of this chapter;

(E) are designed to receive provider claims in standard formats to the extent specified by the Secretary; and

(F) effective for claims filed on or after January 1, 1999, provide for electronic transmission of claims data in the format specified by the Secretary and consistent with the Medicaid Statistical Information System (MSIS) (including detailed individual enrollee encounter data and other information that the Secretary may find necessary).

(2) In order to meet the requirements of this paragraph, mechanized claims processing and in-

formation retrieval systems must meet the following requirements:

(A) The systems must be capable of developing provider, physician, and patient profiles which are sufficient to provide specific information as to the use of covered types of services and items, including prescribed drugs.

(B) The State must provide that information on probable fraud or abuse which is obtained from, or developed by, the systems, is made available to the State's medicaid fraud control unit (if any) certified under subsection (q) of this section.

(C) The systems must meet all performance standards and other requirements for initial approval developed by the Secretary.

(s) Limitations on certain physician referrals

Notwithstanding the preceding provisions of this section, no payment shall be made to a State under this section for expenditures for medical assistance under the State plan consisting of a designated health service (as defined in subsection (h)(6) of section 1395nn of this title) furnished to an individual on the basis of a referral that would result in the denial of payment for the service under subchapter XVIII of this chapter if such subchapter provided for coverage of such service to the same extent and under the same terms and conditions as under the State plan, and subsections (f) and (g)(5) of such section shall apply to a provider of such a designated health service for which payment may be made under this subchapter in the same manner as such subsections apply to a provider of such a service for which payment may be made under such subchapter.

(t) Repealed. Pub. L. 97–35, title XXI, § 2161(c)(2), Aug. 13, 1981, 95 Stat. 805, as amended by Pub. L. 97–248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376

(u) Limitation of Federal financial participation in erroneous medical assistance expenditures

(1)(A) Notwithstanding subsection (a)(1) of this section, if the ratio of a State's erroneous excess payments for medical assistance (as defined in subparagraph (D)) to its total expenditures for medical assistance under the State plan approved under this subchapter exceeds 0.03, for the period consisting of the third and fourth quarters of fiscal year 1983, or for any full fiscal year thereafter, then the Secretary shall make no payment for such period or fiscal year with respect to so much of such erroneous excess payments as exceeds such allowable error rate of 0.03.

(B) The Secretary may waive, in certain limited cases, all or part of the reduction required under subparagraph (A) with respect to any State if such State is unable to reach the allowable error rate for a period or fiscal year despite a good faith effort by such State.

(C) In estimating the amount to be paid to a State under subsection (d) of this section, the Secretary shall take into consideration the limitation on Federal financial participation imposed by subparagraph (A) and shall reduce the estimate he makes under subsection (d)(1) of this section, for purposes of payment to the State under subsection (d)(3) of this section, in light of any expected erroneous excess payments for medical assistance (estimated in accordance with such criteria, including sampling procedures, as he may prescribe and subject to subsequent adjustment, if necessary, under subsection (d)(2) of this section).

(D)(i) For purposes of this subsection, the term ''erroneous excess payments for medical assistance'' means the total of—

(I) payments under the State plan with respect to ineligible individuals and families, and

(II) overpayments on behalf of eligible individuals and families by reason of error in determining the amount of expenditures for medical care required of an individual or family as a condition of eligibility.

(ii) In determining the amount of erroneous excess payments for medical assistance to an ineligible individual or family under clause (i)(I), if such ineligibility is the result of an error in determining the amount of the resources of such individual or family, the amount of the erroneous excess payment shall be the smaller of (I) the amount of the payment with respect to such individual or family, or (II) the difference between the actual amount of such resources and the allowable resource level established under the State plan.

(iii) In determining the amount of erroneous excess payments for medical assistance to an individual or family under clause (i)(II), the amount of the erroneous excess payment shall be the smaller of (I) the amount of the payment on behalf of the individual or family, or (II) the difference between the actual amount incurred for medical care by the individual or family and the amount which should have been incurred in order to establish eligibility for medical assistance.

(iv) In determining the amount of erroneous excess payments, there shall not be included any error resulting from a failure of an individual to cooperate or give correct information with respect to third-party liability as required under section 1396k(a)(1)(C) or 602(a)(26)(C)[10] of this title or with respect to payments made in violation of section 1396e of this title.

(v) In determining the amount of erroneous excess payments, there shall not be included any erroneous payments made for ambulatory prenatal care provided during a presumptive eligibility period (as defined in section 1396r–1(b)(1) of this title), for items and services described in subsection (a) of section 1396r–1a of this title provided to a child during a presumptive eligibility period under such section, or for medical assistance provided to an individual described in subsection (a) of section 1396r–1b of this title during a presumptive eligibility period under such section.

(E) For purposes of subparagraph (D), there shall be excluded, in determining both erroneous excess payments for medical assistance and total expenditures for medical assistance—

(i) payments with respect to any individual whose eligibility therefor was determined ex-

[10] See References in Text note below.

clusively by the Secretary under an agreement pursuant to section 1383c of this title and such other classes of individuals as the Secretary may by regulation prescribe whose eligibility was determined in part under such an agreement; and

(ii) payments made as the result of a technical error.

(2) The State agency administering the plan approved under this subchapter shall, at such times and in such form as the Secretary may specify, provide information on the rates of erroneous excess payments made (or expected, with respect to future periods specified by the Secretary) in connection with its administration of such plan, together with any other data he requests that are reasonably necessary for him to carry out the provisions of this subsection.

(3)(A) If a State fails to cooperate with the Secretary in providing information necessary to carry out this subsection, the Secretary, directly or through contractual or such other arrangements as he may find appropriate, shall establish the error rates for that State on the basis of the best data reasonably available to him and in accordance with such techniques for sampling and estimating as he finds appropriate.

(B) In any case in which it is necessary for the Secretary to exercise his authority under subparagraph (A) to determine a State's error rates for a fiscal year, the amount that would otherwise be payable to such State under this subchapter for quarters in such year shall be reduced by the costs incurred by the Secretary in making (directly or otherwise) such determination.

(4) This subsection shall not apply with respect to Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, or American Samoa.

(v) Medical assistance to aliens not lawfully admitted for permanent residence

(1) Notwithstanding the preceding provisions of this section, except as provided in paragraph (2), no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(2) Payment shall be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

(A) such care and services are necessary for the treatment of an emergency medical condition of the alien,

(B) such alien otherwise meets the eligibility requirements for medical assistance under the State plan approved under this subchapter (other than the requirement of the receipt of aid or assistance under subchapter IV of this chapter, supplemental security income benefits under subchapter XVI of this chapter, or a State supplementary payment), and

(C) such care and services are not related to an organ transplant procedure.

(3) For purposes of this subsection, the term ''emergency medical condition'' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(A) placing the patient's health in serious jeopardy,

(B) serious impairment to bodily functions, or

(C) serious dysfunction of any bodily organ or part.

(w) Prohibition on use of voluntary contributions, and limitation on use of provider-specific taxes to obtain Federal financial participation under medicaid

(1)(A) Notwithstanding the previous provisions of this section, for purposes of determining the amount to be paid to a State (as defined in paragraph (7)(D)) under subsection (a)(1) of this section for quarters in any fiscal year, the total amount expended during such fiscal year as medical assistance under the State plan (as determined without regard to this subsection) shall be reduced by the sum of any revenues received by the State (or by a unit of local government in the State) during the fiscal year—

(i) from provider-related donations (as defined in paragraph (2)(A)), other than—

(I) bona fide provider-related donations (as defined in paragraph (2)(B)), and

(II) donations described in paragraph (2)(C);

(ii) from health care related taxes (as defined in paragraph (3)(A)), other than broad-based health care related taxes (as defined in paragraph (3)(B));

(iii) from a broad-based health care related tax, if there is in effect a hold harmless provision (described in paragraph (4)) with respect to the tax; or

(iv) only with respect to State fiscal years (or portions thereof) occurring on or after January 1, 1992, and before October 1, 1995, from broad-based health care related taxes to the extent the amount of such taxes collected exceeds the limit established under paragraph (5).

(B) Notwithstanding the previous provisions of this section, for purposes of determining the amount to be paid to a State under subsection (a)(7) of this section for all quarters in a Federal fiscal year (beginning with fiscal year 1993), the total amount expended during the fiscal year for administrative expenditures under the State plan (as determined without regard to this subsection) shall be reduced by the sum of any revenues received by the State (or by a unit of local government in the State) during such quarters from donations described in paragraph (2)(C), to the extent the amount of such donations exceeds 10 percent of the amounts expended under the State plan under this subchapter during the fiscal year for purposes described in paragraphs (2), (3), (4), (6), and (7) of subsection (a) of this section.

(C)(i) Except as otherwise provided in clause (ii), subparagraph (A)(i) shall apply to donations received on or after January 1, 1992.

(ii) Subject to the limits described in clause (iii) and subparagraph (E), subparagraph (A)(i)

shall not apply to donations received before the effective date specified in subparagraph (F) if such donations are received under programs in effect or as described in State plan amendments or related documents submitted to the Secretary by September 30, 1991, and applicable to State fiscal year 1992, as demonstrated by State plan amendments, written agreements, State budget documentation, or other documentary evidence in existence on that date.

(iii) In applying clause (ii) in the case of donations received in State fiscal year 1993, the maximum amount of such donations to which such clause may be applied may not exceed the total amount of such donations received in the corresponding period in State fiscal year 1992 (or not later than 5 days after the last day of the corresponding period).

(D)(i) Except as otherwise provided in clause (ii), subparagraphs (A)(ii) and (A)(iii) shall apply to taxes received on or after January 1, 1992.

(ii) Subparagraphs (A)(ii) and (A)(iii) shall not apply to impermissible taxes (as defined in clause (iii)) received before the effective date specified in subparagraph (F) to the extent the taxes (including the tax rate or base) were in effect, or the legislation or regulations imposing such taxes were enacted or adopted, as of November 22, 1991.

(iii) In this subparagraph and subparagraph (E), the term ''impermissible tax'' means a health care related tax for which a reduction may be made under clause (ii) or (iii) of subparagraph (A).

(E)(i) In no case may the total amount of donations and taxes permitted under the exception provided in subparagraphs (C)(ii) and (D)(ii) for the portion of State fiscal year 1992 occurring during calendar year 1992 exceed the limit under paragraph (5) minus the total amount of broad-based health care related taxes received in the portion of that fiscal year.

(ii) In no case may the total amount of donations and taxes permitted under the exception provided in subparagraphs (C)(ii) and (D)(ii) for State fiscal year 1993 exceed the limit under paragraph (5) minus the total amount of broad-based health care related taxes received in that fiscal year.

(F) In this paragraph in the case of a State—

(i) except as provided in clause (iii), with a State fiscal year beginning on or before July 1, the effective date is October 1, 1992,

(ii) except as provided in clause (iii), with a State fiscal year that begins after July 1, the effective date is January 1, 1993, or

(iii) with a State legislature which is not scheduled to have a regular legislative session in 1992, with a State legislature which is not scheduled to have a regular legislative session in 1993, or with a provider-specific tax enacted on November 4, 1991, the effective date is July 1, 1993.

(2)(A) In this subsection (except as provided in paragraph (6)), the term ''provider-related donation'' means any donation or other voluntary payment (whether in cash or in kind) made (directly or indirectly) to a State or unit of local government by—

(i) a health care provider (as defined in paragraph (7)(B)),

(ii) an entity related to a health care provider (as defined in paragraph (7)(C)), or

(iii) an entity providing goods or services under the State plan for which payment is made to the State under paragraph (2), (3), (4), (6), or (7) of subsection (a) of this section.

(B) For purposes of paragraph (1)(A)(i)(I), the term ''bona fide provider-related donation'' means a provider-related donation that has no direct or indirect relationship (as determined by the Secretary) to payments made under this subchapter to that provider, to providers furnishing the same class of items and services as that provider, or to any related entity, as established by the State to the satisfaction of the Secretary. The Secretary may by regulation specify types of provider-related donations described in the previous sentence that will be considered to be bona fide provider-related donations.

(C) For purposes of paragraph (1)(A)(i)(II), donations described in this subparagraph are funds expended by a hospital, clinic, or similar entity for the direct cost (including costs of training and of preparing and distributing outreach materials) of State or local agency personnel who are stationed at the hospital, clinic, or entity to determine the eligibility of individuals for medical assistance under this subchapter and to provide outreach services to eligible or potentially eligible individuals.

(3)(A) In this subsection (except as provided in paragraph (6)), the term ''health care related tax'' means a tax (as defined in paragraph (7)(F)) that—

(i) is related to health care items or services, or to the provision of, the authority to provide, or payment for, such items or services, or

(ii) is not limited to such items or services but provides for treatment of individuals or entities that are providing or paying for such items or services that is different from the treatment provided to other individuals or entities.

In applying clause (i), a tax is considered to relate to health care items or services if at least 85 percent of the burden of such tax falls on health care providers.

(B) In this subsection, the term ''broad-based health care related tax'' means a health care related tax which is imposed with respect to a class of health care items or services (as described in paragraph (7)(A)) or with respect to providers of such items or services and which, except as provided in subparagraphs (D), (E), and (F)—

(i) is imposed at least with respect to all items or services in the class furnished by all non-Federal, nonpublic providers in the State (or, in the case of a tax imposed by a unit of local government, the area over which the unit has jurisdiction) or is imposed with respect to all non-Federal, nonpublic providers in the class; and

(ii) is imposed uniformly (in accordance with subparagraph (C)).

(C)(i) Subject to clause (ii), for purposes of subparagraph (B)(ii), a tax is considered to be imposed uniformly if—

(I) in the case of a tax consisting of a licensing fee or similar tax on a class of health care items or services (or providers of such items or services), the amount of the tax imposed is the same for every provider providing items or services within the class;

(II) in the case of a tax consisting of a licensing fee or similar tax imposed on a class of health care items or services (or providers of such services) on the basis of the number of beds (licensed or otherwise) of the provider, the amount of the tax is the same for each bed of each provider of such items or services in the class;

(III) in the case of a tax based on revenues or receipts with respect to a class of items or services (or providers of items or services) the tax is imposed at a uniform rate for all items and services (or providers of such items or services) in the class on all the gross revenues or receipts, or net operating revenues, relating to the provision of all such items or services (or all such providers) in the State (or, in the case of a tax imposed by a unit of local government within the State, in the area over which the unit has jurisdiction); or

(IV) in the case of any other tax, the State establishes to the satisfaction of the Secretary that the tax is imposed uniformly.

(ii) Subject to subparagraphs (D) and (E), a tax imposed with respect to a class of health care items and services is not considered to be imposed uniformly if the tax provides for any credits, exclusions, or deductions which have as their purpose or effect the return to providers of all or a portion of the tax paid in a manner that is inconsistent with subclauses (I) and (II) of subparagraph (E)(ii) or provides for a hold harmless provision described in paragraph (4).

(D) A tax imposed with respect to a class of health care items and services is considered to be imposed uniformly—

(i) notwithstanding that the tax is not imposed with respect to items or services (or the providers thereof) for which payment is made under a State plan under this subchapter or subchapter XVIII of this chapter, or

(ii) in the case of a tax described in subparagraph (C)(i)(III), notwithstanding that the tax provides for exclusion (in whole or in part) of revenues or receipts from a State plan under this subchapter or subchapter XVIII of this chapter.

(E)(i) A State may submit an application to the Secretary requesting that the Secretary treat a tax as a broad-based health care related tax, notwithstanding that the tax does not apply to all health care items or services in class (or all providers of such items and services), provides for a credit, deduction, or exclusion, is not applied uniformly, or otherwise does not meet the requirements of subparagraph (B) or (C). Permissible waivers may include exemptions for rural or sole-community providers.

(ii) The Secretary shall approve such an application if the State establishes to the satisfaction of the Secretary that—

(I) the net impact of the tax and associated expenditures under this subchapter as proposed by the State is generally redistributive in nature, and

(II) the amount of the tax is not directly correlated to payments under this subchapter for items or services with respect to which the tax is imposed.

The Secretary shall by regulation specify types of credits, exclusions, and deductions that will be considered to meet the requirements of this subparagraph.

(F) In no case shall a tax not qualify as a broad-based health care related tax under this paragraph because it does not apply to a hospital that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code and that does not accept payment under the State plan under this subchapter or under subchapter XVIII of this chapter.

(4) For purposes of paragraph (1)(A)(iii), there is in effect a hold harmless provision with respect to a broad-based health care related tax imposed with respect to a class of items or services if the Secretary determines that any of the following applies:

(A) The State or other unit of government imposing the tax provides (directly or indirectly) for a payment (other than under this subchapter) to taxpayers and the amount of such payment is positively correlated either to the amount of such tax or to the difference between the amount of the tax and the amount of payment under the State plan.

(B) All or any portion of the payment made under this subchapter to the taxpayer varies based only upon the amount of the total tax paid.

(C) The State or other unit of government imposing the tax provides (directly or indirectly) for any payment, offset, or waiver that guarantees to hold taxpayers harmless for any portion of the costs of the tax.

The provisions of this paragraph shall not prevent use of the tax to reimburse health care providers in a class for expenditures under this subchapter nor preclude States from relying on such reimbursement to justify or explain the tax in the legislative process.

(5)(A) For purposes of this subsection, the limit under this subparagraph with respect to a State is an amount equal to 25 percent (or, if greater, the State base percentage, as defined in subparagraph (B)) of the non-Federal share of the total amount expended under the State plan during a State fiscal year (or portion thereof), as it would be determined pursuant to paragraph (1)(A) without regard to paragraph (1)(A)(iv).

(B)(i) In subparagraph (A), the term ''State base percentage'' means, with respect to a State, an amount (expressed as a percentage) equal to—

(I) the total of the amount of health care related taxes (whether or not broad-based) and the amount of provider-related donations (whether or not bona fide) projected to be collected (in accordance with clause (ii)) during State fiscal year 1992, divided by

(II) the non-Federal share of the total amount estimated to be expended under the State plan during such State fiscal year.

(ii) For purposes of clause (i)(I), in the case of a tax that is not in effect throughout State fis-

cal year 1992 or the rate (or base) of which is increased during such fiscal year, the Secretary shall project the amount to be collected during such fiscal year as if the tax (or increase) were in effect during the entire State fiscal year.

(C)(i) The total amount of health care related taxes under subparagraph (B)(i)(I) shall be determined by the Secretary based on only those taxes (including the tax rate or base) which were in effect, or for which legislation or regulations imposing such taxes were enacted or adopted, as of November 22, 1991.

(ii) The amount of provider-related donations under subparagraph (B)(i)(I) shall be determined by the Secretary based on programs in effect on September 30, 1991, and applicable to State fiscal year 1992, as demonstrated by State plan amendments, written agreements, State budget documentation, or other documentary evidence in existence on that date.

(iii) The amount of expenditures described in subparagraph (B)(i)(II) shall be determined by the Secretary based on the best data available as of December 12, 1991.

(6)(A) Notwithstanding the provisions of this subsection, the Secretary may not restrict States' use of funds where such funds are derived from State or local taxes (or funds appropriated to State university teaching hospitals) transferred from or certified by units of government within a State as the non-Federal share of expenditures under this subchapter, regardless of whether the unit of government is also a health care provider, except as provided in section 1396a(a)(2) of this title, unless the transferred funds are derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-Federal share under this section.

(B) For purposes of this subsection, funds the use of which the Secretary may not restrict under subparagraph (A) shall not be considered to be a provider-related donation or a health care related tax.

(7) For purposes of this subsection:

(A) Each of the following shall be considered a separate class of health care items and services:

(i) Inpatient hospital services.

(ii) Outpatient hospital services.

(iii) Nursing facility services (other than services of intermediate care facilities for the mentally retarded).

(iv) Services of intermediate care facilities for the mentally retarded.

(v) Physicians' services.

(vi) Home health care services.

(vii) Outpatient prescription drugs.

(viii) Services of a medicaid managed care organization with a contract under subsection (m) of this section.

(ix) Such other classification of health care items and services consistent with this subparagraph as the Secretary may establish by regulation.

(B) The term ''health care provider'' means an individual or person that receives payments for the provision of health care items or services.

(C) An entity is considered to be ''related'' to a health care provider if the entity—

(i) is an organization, association, corporation or partnership formed by or on behalf of health care providers;

(ii) is a person with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the provider;

(iii) is the employee, spouse, parent, child, or sibling of the provider (or of a person described in clause (ii)); or

(iv) has a similar, close relationship (as defined in regulations) to the provider.

(D) The term ''State'' means only the 50 States and the District of Columbia but does not include any State whose entire program under this subchapter is operated under a waiver granted under section 1315 of this title.

(E) The ''State fiscal year'' means, with respect to a specified year, a State fiscal year ending in that specified year.

(F) The term ''tax'' includes any licensing fee, assessment, or other mandatory payment, but does not include payment of a criminal or civil fine or penalty (other than a fine or penalty imposed in lieu of or instead of a fee, assessment, or other mandatory payment).

(G) The term ''unit of local government'' means, with respect to a State, a city, county, special purpose district, or other governmental unit in the State.

(Aug. 14, 1935, ch. 531, title XIX, § 1903, as added Pub. L. 89–97, title I, § 121(a), July 30, 1965, 79 Stat. 349; amended Pub. L. 90–248, title II, §§ 220(a), 222(c), (d), 225(a), 229(c), 241(f)(5), Jan. 2, 1968, 81 Stat. 898, 901, 902, 904, 917; Pub. L. 90–364, title III, § 303(a)(1), June 28, 1968, 82 Stat. 274; Pub. L. 91–56, § 2(a), Aug. 9, 1969, 83 Stat. 99; Pub. L. 92–603, title II, §§ 207(a), 221(c)(6), 224(c), 225, 226(e), 229(c), 230, 233(c), 235(a), 237(a)(1), 249B, 278(b)(1), (5), (7), (16), 290, 295, 299E(a), Oct. 30, 1972, 86 Stat. 1379, 1389, 1395, 1396, 1404, 1410, 1411, 1414, 1415, 1428, 1453, 1454, 1457, 1459, 1462; Pub. L. 93–66, title II, § 234(a), July 9, 1973, 87 Stat. 160; Pub. L. 93–233, §§ 13(a)(11), (12), 18(r)–(v), (x)(5), (6), (y)(1), Dec. 31, 1973, 87 Stat. 963, 971–973; Pub. L. 94–182, title I, §§ 110(a), 111(b), Dec. 31, 1975, 89 Stat. 1054; Pub. L. 94–460, title II, § 202(a), Oct. 8, 1976, 90 Stat. 1957; Pub. L. 94–552, § 1, Oct. 18, 1976, 90 Stat. 2540; Pub. L. 95–83, title I, § 105(a)(1), (2), Aug. 1, 1977, 91 Stat. 384; Pub. L. 95–142, §§ 3(c)(2), 8(c), 10(a), 11(a), 17(a)–(c), 20(a), Oct. 25, 1977, 91 Stat. 1179, 1195, 1196, 1201, 1205; Pub. L. 95–559, § 14(c), Nov. 1, 1978, 92 Stat. 2141; Pub. L. 95–626, title I, § 102(b)(3), Nov. 10, 1978, 92 Stat. 3551; Pub. L. 96–79, title I, § 128, Oct. 4, 1979, 93 Stat. 629; Pub. L. 96–398, title IX, § 901, Oct. 7, 1980, 94 Stat. 1609; Pub. L. 96–499, title IX, §§ 905(b), (c), 961(a), 963, 964, Dec. 5, 1980, 94 Stat. 2618, 2650, 2651; Pub. L. 97–35, title XXI, §§ 2101(a)(2), 2103(b)(1), 2106(b)(3), 2113(n), 2161, 2163, 2164(a), 2174(b), 2178(a), 2183(a), Aug. 13, 1981, 95 Stat. 786, 788, 792, 795, 803–806, 809, 813, 816; Pub. L. 97–248, title I, §§ 133(a), 137(a)(1), (2), (b)(11)–(16), (27), (g), 146(b), Sept. 3, 1982, 96 Stat. 373, 376, 378, 379, 381, 394; Pub. L. 97–448, title III, § 309(b)(16), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–369, div. B, title III, §§ 2303(g)(2), 2363(a)(2), (4), (b), 2364, 2373(b)(11)–(14), July 18, 1984, 98 Stat. 1066, 1106, 1107, 1111, 1112; Pub. L. 98–617, § 3(a)(6), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–272, title IX, §§ 9503(b), (f), 9507(a), 9512(a), 9517(a), (c)(1),

9518(a), Apr. 7, 1986, 100 Stat. 206, 207, 210, 212, 215, 216; Pub. L. 99–509, title IX, §§ 9401(e)(2), 9403(g)(2), 9406(a), 9407(c), 9431(b)(2), 9434(a)(1), (2), (b), Oct. 21, 1986, 100 Stat. 2052, 2055, 2057, 2060, 2066, 2068, 2069; Pub. L. 99–514, title XVIII, § 1895(c)(2), Oct. 22, 1986, 100 Stat. 2935; Pub. L. 99–603, title I, § 121(b)(2), Nov. 6, 1986, 100 Stat. 3390; Pub. L. 100–93, § 8(g), (h)(1), Aug. 18, 1987, 101 Stat. 694; Pub. L. 100–203, title IV, §§ 4112(b), 4113(a)(1), (b)(3), (d)(1), 4118(d)(1), (e)(11), (h)(1), (p)(5), 4211(d)(1), (g), (i), 4212(c)(1), (2), (d)(1), (e)(2), 4213(b)(2), Dec. 22, 1987, 101 Stat. 1330–149, 1330–150, 1330–152, 1330–155, 1330–159, 1330–204, 1330–205, 1330–207, 1330–212, 1330–213, 1330–219, as amended Pub. L. 100–360, title IV, § 411(a)(3)(A), (B)(iii), (k)(6)(B)(x), (7)(A), (D), (10)(D), (G)(ii), July 1, 1988, 102 Stat. 768, 794, 796; Pub. L. 100–360, title II, § 202(h)(2), title III, §§ 301(f), 302(c)(3), (e)(4), title IV, § 411(k)(12)(A), (13)(A), July 1, 1988, 102 Stat. 718, 750, 752, 753, 797, 798; Pub. L. 100–485, title VI, § 608(d)(26)(K)(ii), (f)(4), Oct. 13, 1988, 102 Stat. 2422, 2424; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§ 6401(b), 6411(d)(2), 6901(b)(5)(A), Dec. 19, 1989, 103 Stat. 2259, 2271, 2299; Pub. L. 101–508, title IV, §§ 4401(a)(1), (b)(1), 4402(b), (d)(3), 4601(a)(3)(A), 4701(b)(2), 4704(b)(1), (2), 4711(c)(2), 4723(a), 4731(a), (b)(2), 4732(a), (b)(2), (c), (d), 4751(b)(1), 4752(a)(2), (b)(1), (e), 4801(a)(8), (e)(16)(A), Nov. 5, 1990, 104 Stat. 1388–143, 1388–159, 1388–163, 1388–164, 1388–166, 1388–170, 1388–172, 1388–187, 1388–194 to 1388–196, 1388–205 to 1388–207, 1388–212, 1388–218; Pub. L. 102–119, § 26(i)(1), Oct. 7, 1991, 105 Stat. 607; Pub. L. 102–234, §§ 2(a), (b)(2), 3(b)(2)(B), 4(a), Dec. 12, 1991, 105 Stat. 1793, 1799, 1803, 1804; Pub. L. 103–66, title XIII, §§ 13602(b), 13604(a), 13622(a)(2), 13624(a), 13631(c), (h)(1), Aug. 10, 1993, 107 Stat. 619, 621, 632, 636, 643, 645; Pub. L. 104–193, title I, § 114(d)(2), Aug. 22, 1996, 110 Stat. 2180; Pub. L. 104–248, § 1(b)(1), Oct. 9, 1996, 110 Stat. 3148; Pub. L. 105–12, § 9(b)(1), Apr. 30, 1997, 111 Stat. 26; Pub. L. 105–33, title IV, §§ 4701(b)(1), (2)(A)(v)–(viii), (B), (C), (c), (d)(2), 4702(b)(1), 4703(a), (b)(1), 4705(b), 4706, 4707(b), 4708(a), (d), 4712(b)(2), (c)(2), 4722(a), (b), 4724(a), (b)(1), 4742(a), 4753(a), 4802(b)(2), 4912(b)(2), Aug. 5, 1997, 111 Stat. 492, 493, 495, 500, 501, 505, 506, 509, 514–516, 523, 525, 549, 573; Pub. L. 105–100, title I, § 162(4), Nov. 19, 1997, 111 Stat. 2189; Pub. L. 106–31, title III, § 3031(a), (b), May 21, 1999, 113 Stat. 103, 104; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, §§ 604(a)(2)(B), (b)(2), 608(e)–(k), (aa)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–395, 1501A–397, 1501A–398; Pub. L. 106–170, title II, § 201(a)(4), (b), title IV, § 407(a)–(c), Dec. 17, 1999, 113 Stat. 1893, 1913; Pub. L. 106–354, § 2(b)(2)(B), Oct. 24, 2000, 114 Stat. 1383; Pub. L. 106–554, § 1(a)(6) [title VII, §§ 702(c)(1), 710(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574, 2763A–578; Pub. L. 108–357, title VII, § 712(b), Oct. 22, 2004, 118 Stat. 1559; Pub. L. 108–446, title III, § 305(j)(1), Dec. 3, 2004, 118 Stat. 2806; Pub. L. 109–91, title I, § 104(b), Oct. 20, 2005, 119 Stat. 2092.)

REFERENCES IN TEXT

Parts A and B of subchapter XVIII of this chapter, referred to in subsecs. (b) and (i), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Subsection (w)(3)(A) of this section, referred to in subsec. (b)(5), was in the original ''section 1902(w)(3)(A)'', and was translated as reading ''section 1903(w)(3)(A)'', meaning section 1903(w)(3)(A) of the Social Security Act, to reflect the probable intent of Congress, because section 1902(w)(3), which is classified to section 1396a(w)(3) of this title, does not contain a subpar. (A), and subsec. (w)(3)(A) of this section relates to health care related taxes.

The Individuals with Disabilities Education Act, referred to in subsec. (c), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Parts B and C of the Act are classified generally to subchapters II (§ 1411 et seq.) and III (§ 1431 et seq.), respectively, of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

Part A of subchapter IV of this chapter, referred to in subsec. (f), is classified to section 601 et seq. of this title.

Section 300e–9(d) of this title, referred to in subsecs. (g)(1) and (m)(1)(A), (4)(A), was redesignated section 300e–9(c) of this title by Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (i)(16), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

Part C of subchapter XVIII of this chapter, referred to in subsec. (m)(1)(A), is classified to section 1395w–21 et seq. of this title.

Sections 254b and 254c of this title, referred to in subsec. (m)(2)(B)(i)(I), (G), were in the original references to sections 329 and 330 of the Public Health Service Act, act July 1, 1944, which were omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of chapter 6A of this title by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

The Appalachian Regional Development Act of 1965, referred to in subsec. (m)(2)(B)(ii), (G), is Pub. L. 89–4, Mar. 9, 1965, 79 Stat. 5, as amended, which was set out in the Appendix to former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted as subtitle IV (§ 14101 et seq.) of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Part C of subchapter XI of this chapter, referred to in subsec. (r)(1)(D), is classified to section 1320d et seq. of this title.

Section 602 of this title, referred to in subsec. (u)(1)(D)(iv), was repealed and a new section 602 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (a)(26)(C).

The Internal Revenue Code of 1986, referred to in subsecs. (d)(3)(B)(i) and (w)(3)(F), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2005—Subsec. (i)(21). Pub. L. 109–91 added par. (21).

2004—Subsec. (a)(3)(D). Pub. L. 108–357, § 712(b)(1), substituted ''and'' for ''plus''.

Subsec. (a)(3)(E). Pub. L. 108–357, § 712(b)(2), added subpar. (E).

Subsec. (c). Pub. L. 108–446 substituted ''part C'' for ''part H''.

2000—Subsec. (f)(4). Pub. L. 106–554, § 1(a)(6) [title VII, § 710(a)], inserted ''1396a(a)(10)(A)(ii)(XVII), 1396a(a)(10)(A)(ii)(XVIII),'' after ''1396a(a)(10)(A)(ii)(XVI),''.

Subsec. (m)(2)(A)(ix). Pub. L. 106–554, § 1(a)(6) [title VII, § 702(c)(1)], repealed Pub. L. 105–33, § 4712(c)(2). See 1997 Amendment note below.

Subsec. (u)(1)(D)(v). Pub. L. 106–354 substituted '', for items'' for ''or for items'' and inserted before period at end '', or for medical assistance provided to an individual described in subsection (a) of section 1396r–1b of this title during a presumptive eligibility period under such section''.

1999—Subsec. (a)(3)(C)(i). Pub. L. 106–113, §1000(a)(6) [title VI, §604(a)(2)(B)], struck out ''or quality review'' after ''medical and utilization review''.

Subsec. (b)(4). Pub. L. 106–113, §1000(a)(6) [title VI, §608(e)], inserted ''of'' after ''for the use'' in introductory provisions.

Subsec. (d)(3). Pub. L. 106–31, §3031(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(3)(B). Pub. L. 106–113, §1000(a)(6) [title VI, §608(f)], realigned margins.

Subsec. (f)(2). Pub. L. 106–113, §1000(a)(6) [title VI, §608(g)], struck out second period at end.

Subsec. (f)(4). Pub. L. 106–170, §201(b), inserted ''1396a(a)(10)(A)(ii)(XV), 1396a(a)(10)(A)(ii)(XVI),'' before ''1396d(p)(1)'' in introductory provisions.

Pub. L. 106–113, §1000(a)(6) [title VI, §608(aa)(2)], substituted ''1396a(a)(10)(A)(ii)(XIII), 1396a(a)(10)(A)(ii)(XIV), or 1396d(p)(1) of this title'' for ''1396d(p)(1), or 1396d(u) of this title'' in introductory provisions.

Subsec. (i)(14). Pub. L. 106–113, §1000(a)(6) [title VI, §608(h)], inserted ''or'' after semicolon.

Subsec. (i)(19). Pub. L. 106–31, §3031(b), added par. (19).

Subsec. (i)(20). Pub. L. 106–170, §201(a)(4), added par. (20).

Subsec. (m)(2)(A)(vi). Pub. L. 106–113, §1000(a)(6) [title VI, §608(i)(1)], struck out semicolon after ''section 1396u–2(a)(4) of this title''.

Subsec. (m)(2)(A)(xi), (xii). Pub. L. 106–113, §1000(a)(6) [title VI, §608(i)(2)], redesignated cl. (xi), relating to section 1396u–2, as (xii).

Subsec. (m)(6)(B)(ii). Pub. L. 106–113, §1000(a)(6) [title VI, §604(b)(2)(A)], inserted ''and'' at end.

Subsec. (m)(6)(B)(iii). Pub. L. 106–113, §1000(a)(6) [title VI, §604(b)(2)(B)], substituted a period for ''; and'' at end.

Subsec. (m)(6)(B)(iv). Pub. L. 106–113, §1000(a)(6) [title VI, §604(b)(2)(C)], struck out cl. (iv) which read as follows: ''that the State agency will contract, for purposes of meeting the requirement under section 1396a(a)(30)(C) of this title, with an organization or entity that under section 1320c–3 of this title reviews services provided by an eligible organization pursuant to a contract under section 1395mm of this title for the purpose of determining whether the quality of services meets professionally recognized standards of health care.''

Subsec. (*o*). Pub. L. 106–113, §1000(a)(6) [title VI, §608(j)], struck out second closing parenthesis after ''section 1167(1) of title 29''.

Subsec. (q)(3). Pub. L. 106–170, §407(a), inserted ''(A)'' after ''in connection with'' and added subpar. (B).

Subsec. (q)(4). Pub. L. 106–170, §407(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The entity has procedures for reviewing complaints of the abuse and neglect of patients of health care facilities which receive payments under the State plan under this subchapter, and, where appropriate, for acting upon such complaints under the criminal laws of the State or for referring them to other State agencies for action.''

Subsec. (q)(5). Pub. L. 106–170, §407(b), inserted ''or under any Federal health care program (as so defined)'' before ''to health care facilities'' and inserted at end ''All funds collected in accordance with this paragraph shall be credited exclusively to, and available for expenditure under, the Federal health care program (including the State plan under this subchapter) that was subject to the activity that was the basis for the collection.''

Subsec. (w)(1)(B). Pub. L. 106–113, §1000(a)(6) [title VI, §608(k)(1)], substituted ''purposes'' for ''puroses''.

Subsec. (w)(3)(B). Pub. L. 106–113, §1000(a)(6) [title VI, §608(k)(2)], inserted a comma after ''(D)'' in introductory provisions.

Subsec. (w)(7)(A)(viii). Pub. L. 106–113, §1000(a)(6) [title VI, §608(k)(3)], realigned margins.

1997—Subsec. (a)(3)(C). Pub. L. 105–33, §4705(b), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(4). Pub. L. 105–33, §4707(b), added par. (4).

Subsec. (b)(5). Pub. L. 105–33, §4722(b), added par. (5).

Subsec. (f)(4). Pub. L. 105–100 substituted ''1396d(p)(1), or 1396d(u) of this title'' for ''or 1396d(p)(1) of this title'' in introductory provisions.

Subsec. (f)(4)(C). Pub. L. 105–33, §4802(b)(2), inserted ''or who is a PACE program eligible individual enrolled in a PACE program under section 1396u–4 of this title,'' after ''section 1396a(a)(10)(A) of this title,''.

Subsec. (i). Pub. L. 105–33, §4708(d), inserted at end of closing provisions ''Paragraphs (1), (2), (16), (17), and (18) shall apply with respect to items or services furnished and amounts expended by or through a managed care entity (as defined in section 1396u–2(a)(1)(B) of this title) in the same manner as such paragraphs apply to items or services furnished and amounts expended directly by the State.''

Subsec. (i)(2). Pub. L. 105–33, §4724(a)(1), substituted ''; or'' for the period at end.

Subsec. (i)(10)(B), (11). Pub. L. 105–33, §4724(a)(2), inserted ''or'' at end.

Subsec. (i)(12). Pub. L. 105–33, §4742(a), struck out par. (12) which related to restrictions on payments, on or after Jan. 1, 1992, for physicians' services to children under 21 years of age and to pregnant women.

Subsec. (i)(13). Pub. L. 105–33, §4724(a)(2), inserted ''or'' at end.

Subsec. (i)(16). Pub. L. 105–12 added par. (16).

Subsec. (i)(17). Pub. L. 105–33, §4724(a)(1), (3), added par. (17).

Subsec. (i)(18). Pub. L. 105–33, §4724(b)(1), added par. (18).

Subsec. (k). Pub. L. 105–33, §4701(b)(2)(A)(v), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (m)(1)(A). Pub. L. 105–33, §4701(b)(1), in introductory provisions, substituted ''The term 'medicaid managed care organization' means a health maintenance organization, an eligible organization with a contract under section 1395mm of this title or a Medicare+Choice organization with a contract under part C of subchapter XVIII of this chapter, a provider sponsored organization, or any other public or private organization, which meets the requirement of section 1396a(w) of this title and—'' for ''The term 'health maintenance organization' means a public or private organization, organized under the laws of any State, which meets the requirement of section 1396a(w) of this title is a qualified health maintenance organization (as defined in section 300e–9(d) of this title) or which meets the requirement of section 1396a(a) of this title and—'' and inserted as closing provisions ''An organization that is a qualified health maintenance organization (as defined in section 300e–9(d) of this title) is deemed to meet the requirements of clauses (i) and (ii).''

Subsec. (m)(1)(A)(ii). Pub. L. 105–33, §4706(1), inserted '', meets the requirements of subparagraph (C)(i) (if applicable),'' after ''provision is satisfactory to the State''.

Subsec. (m)(1)(B). Pub. L. 105–33, §4701(b)(2)(A)(vi), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (m)(1)(C). Pub. L. 105–33, §4706(2), added subpar. (C).

Subsec. (m)(2)(A)(i). Pub. L. 105–33, §4701(b)(2)(A)(vii), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (m)(2)(A)(ii). Pub. L. 105–33, §4703(a), struck out cl. (ii) which read as follows: ''less than 75 percent of the membership of the entity which is enrolled on a prepaid basis consists of individuals who (I) are insured for benefits under part B of subchapter XVIII of this chapter or for benefits under both parts A and B of such subchapter, or (II) are eligible to receive benefits under this subchapter;''.

Subsec. (m)(2)(A)(iii). Pub. L. 105–33, §4708(a), substituted ''$1,000,000 for 1998 and, for a subsequent year, the amount established udner this clause for the previous year increased by the percentage increase in the consumer price index for all urban consumers over the previous year'' for ''$100,000''.

Subsec. (m)(2)(A)(vi). Pub. L. 105–33, § 4701(d)(2)(A), struck out ''except as provided under subparagraph (F),'' after ''such contract (I)'', substituted ''in accordance with section 1396u–2(a)(4) of this title;'' for ''without cause as of the beginning of the first calendar month following a full calendar month after the request is made for such termination'', and inserted ''in accordance with such section'' after ''provides for notification''.

Subsec. (m)(2)(A)(ix). Pub. L. 105–33, § 4712(c)(2), which directed the repeal of subsec. (m)(2)(A)(ix), was repealed by Pub. L. 106–554, § 1(a)(6) [title VII, § 702(c)(1)]. See 2000 Amendment note above and Effective Date of 1997 Amendment note below.

Pub. L. 105–33, § 4712(b)(2), amended cl. (ix) generally. Prior to amendment, cl. (ix) read as follows: ''such contract provides, in the case of an entity that has entered into a contract for the provision of services of such center with a federally qualified health center, that (I) rates of prepayment from the State are adjusted to reflect fully the rates of payment specified in section 1396a(a)(13)(E) of this title, and (II) at the election of such center payments made by the entity to such a center for services described in 1396d(a)(2)(C) of this title are made at the rates of payment specified in section 1396a(a)(13)(E) of this title;''.

Subsec. (m)(2)(A)(xi). Pub. L. 105–33, § 4701(c), added cl. (xi) relating to section 1396u–2.

Subsec. (m)(2)(C) to (E). Pub. L. 105–33, § 4703(b)(1)(A), struck out subpars. (C) to (E) which read as follows:

''(C) Subparagraph (A)(ii) shall not apply with respect to payments under this subchapter to a State with respect to expenditures incurred by it for payment for services by an entity during the three-year period beginning on October 8, 1976, or beginning on the date the entity qualifies as a health maintenance organization (as determined by the Secretary), whichever occurs later, but only if the entity demonstrates to the satisfaction of the Secretary by the submission of plans for each year of such three-year period that it is making continuous efforts and progress toward achieving compliance with subparagraph (A)(ii).

''(D) In the case of a health maintenance organization that is a public entity, the Secretary may modify or waive the requirement described in subparagraph (A)(ii) but only if the Secretary determines that the organization has taken and is taking reasonable efforts to enroll individuals who are not entitled to benefits under the State plan approved under this subchapter or under subchapter XVIII of this chapter.

''(E) In the case of a health maintenance organization that—

''(i) is a nonprofit organization with at least 25,000 members,

''(ii) is and has been a qualified health maintenance organization (as defined in section 300e–9(d) of this title) for a period of at least four years,

''(iii) provides basic health services through members of the staff of the organization,

''(iv) is located in an area designated as medically underserved under section 300e–1(7) of this title, and

''(v) previously received a waiver of the requirement described in subparagraph (A)(ii) under section 1315 of this title,

the Secretary may modify or waive the requirement described in subparagraph (A)(ii) but only if the Secretary determines that special circumstances warrant such modification or waiver and that the organization has taken and is taking reasonable efforts to enroll individuals who are not entitled to benefits under the State plan approved under this subchapter or under subchapter XVIII of this chapter.''

Subsec. (m)(2)(F). Pub. L. 105–33, § 4701(d)(2)(B), struck out subpar. (F) which read as follows: ''In the case of—

''(i) a contract with an entity described in subparagraph (E) or (G), with a qualified health maintenance organization (as defined in section 300e–9(d) of this title) which meets the requirement of subparagraph (A)(ii), or or with an eligible organization with a contract under section 1395mm of this title which meets the requirement of subparagraph (A)(ii), or

''(ii) a program pursuant to an undertaking described in paragraph (6) in which at least 25 percent of the membership enrolled on a prepaid basis are individuals who (I) are not insured for benefits under part B of subchapter XVIII of this chapter or eligible for benefits under this subchapter, and (II) (in the case of such individuals whose prepayments are made in whole or in part by any government entity) had the opportunity at the time of enrollment in the program to elect other coverage of health care costs that would have been paid in whole or in part by any governmental entity,

a State plan may restrict the period in which requests for termination of enrollment without cause under subparagraph (A)(vi)(I) are permitted to the first month of each period of enrollment, each such period of enrollment not to exceed six months in duration, but only if the State provides notification, at least twice per year, to individuals enrolled with such entity or organization of the right to terminate such enrollment and the restriction on the exercise of this right. Such restriction shall not apply to requests for termination of enrollment for cause.''

Subsec. (m)(2)(G). Pub. L. 105–33, § 4703(b)(1)(B), substituted ''clause (i)'' for ''clauses (i) and (ii)''.

Subsec. (m)(2)(H). Pub. L. 105–33, § 4702(b)(1)(B), in concluding provisions, inserted before period at end ''or with the manager described in such clause if the manager continues to have a contract described in section 1396d(t)(3) of this title with the State''.

Pub. L. 105–33, § 4701(b)(2)(B), struck out ''health maintenance'' before ''organization described'' in concluding provisions.

Subsec. (m)(2)(H)(i). Pub. L. 105–33, § 4702(b)(1)(A), inserted ''or with a primary care case manager with a contract described in section 1396d(t)(3) of this title'' before comma at end.

Pub. L. 105–33, § 4701(b)(2)(A)(vii), substituted ''medicaid managed care organization'' for ''health maintenance organization''.

Subsec. (m)(4)(A). Pub. L. 105–33, § 4701(b)(2)(A)(viii), substituted ''Each medicaid managed care organization'' for ''Each health maintenance organization''.

Subsec. (r)(1). Pub. L. 105–33, § 4753(a)(1), added par. (1) and struck out former par. (1) which read as follows:

''(1)(A) In order to receive payments under paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B).

''(B) The deadline for operation of such systems for a State is September 30, 1985.

''(C) If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section with respect to that State shall each be reduced by 5 percentage points for the first two quarters beginning on or after such deadline, and shall be further reduced by an additional 5 percentage points after each period consisting of two quarters during which the Secretary determines the State fails to meet the requirements of subparagraph (A); except that—

''(i) neither such per centum may be reduced by more than 25 percentage points by reason of this paragraph; and

''(ii) no reduction shall be made under this paragraph for any quarter following the quarter during which such State meets the requirements of subparagraph (A).''

Subsec. (r)(2). Pub. L. 105–33, § 4753(a)(1), (2)(B), (D), inserted introductory provisions, redesignated par. (5)(A)(i) to (iii) as par. (2)(A) to (C), and struck out former par. (2) which read as follows:

''(2)(A) In order to receive payments under paragraphs (2)(A) and (7) of subsection (a) of this section

without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must have its mechanized claims processing and information retrieval systems, of the type required to be operational under paragraph (1), initially approved by the Secretary in accordance with paragraph (5)(A) on or before the deadline established under subparagraph (B).

''(B) The deadline for approval of such systems for a State is the last day of the fourth quarter that begins after the date on which the Secretary determines that such systems became operational as required under paragraph (1).

''(C) If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section with respect to that State shall each be reduced by 5 percentage points for the first two quarters beginning after such deadline, and shall be further reduced by an additional 5 percentage points at the end of each period consisting of two quarters during which the State fails to meet the requirements of subparagraph (A); except that—

''(i) neither such per centum may be reduced by more than 25 percentage points by reason of this paragraph, and

''(ii) no reduction shall be made under this paragraph for any quarter following the quarter during which such State's systems are approved by the Secretary as provided in subparagraph (A).

''(D) Any State's systems which are approved by the Secretary for purposes of subsection (a)(3)(B) of this section on or before October 7, 1980, shall be deemed to be initially approved for purposes of this subsection.''

Subsec. (r)(3), (4). Pub. L. 105–33, §4753(a)(1), struck out pars. (3) and (4) which related to Federal matching funds and Secretary's periodic review of approved retrieval systems.

Subsec. (r)(5). Pub. L. 105–33, §4753(a)(2), struck out introductory provisions relating to requirements for Secretary's initial approval of mechanized claims processing and information retrieval systems and struck out ''under paragraph (6)'' before period at end of subpar. (A)(iii), redesignated subpar. (A)(i) to (iii) as par. (2)(A) to (C), and struck out subpar. (B) which related to requirements for Secretary's reapproval of mechanized claims processing and information retrieval systems.

Subsec. (r)(6) to (8). Pub. L. 105–33, §4753(a)(3), struck out pars. (6) to (8) which related to Secretary's development of performance standards for approval of State mechanized processing claims and information retrieval systems, waiver of certain requirements for initial operation, and applicability of per centum reductions in certain situations.

Subsec. (u)(1)(D)(v). Pub. L. 105–33, §4912(b)(2), inserted before period at end ''or for items and services described in subsection (a) of section 1396r–1a of this title provided to a child during a presumptive eligibility period under such section''.

Subsec. (w)(3)(B). Pub. L. 105–33, §4722(a)(1), substituted ''(E), and (F)'' for ''and (E)'' in introductory provisions.

Subsec. (w)(3)(F). Pub. L. 105–33, §4722(a)(2), added subpar. (F).

Subsec. (w)(7)(A)(viii). Pub. L. 105–33, §4701(b)(2)(C), amended cl. (viii) generally. Prior to amendment, cl. (viii) read as follows: ''Services of health maintenance organizations (and other organizations with contracts under subsection (m) of this section).''

1996—Subsec. (i)(9). Pub. L. 104–193 struck out par. (9) which read as follows: ''with respect to any amount of medical assistance for pregnant women and children described in section 1396a(a)(10)(A)(ii)(IX) of this title, if the State has in effect, under its plan established under part A of subchapter IV of this chapter, payment levels that are less than the payment levels in effect under such plan on July 1, 1987;''.

Subsec. (i)(12)(A)(i). Pub. L. 104–248, §1(b)(1)(A), inserted ''or is certified in family practice or pediatrics by the medical specialty board recognized by the American Osteopathic Association'' before comma at end.

Subsec. (i)(12)(A)(vi). Pub. L. 104–248, §1(b)(1)(C)(i), (iii), (iv), added cl. (vi) and redesignated former cl. (vi) as (vii).

Pub. L. 104–248, §1(b)(1)(C)(ii), inserted ''(or certified by the State in accordance with policies of the Secretary)'' after ''Secretary''.

Subsec. (i)(12)(A)(vii). Pub. L. 104–248, §1(b)(1)(C)(iii), redesignated cl. (vi) as (vii).

Subsec. (i)(12)(B)(i). Pub. L. 104–248, §1(b)(1)(B), inserted ''or is certified in family practice or obstetrics by the medical specialty board recognized by the American Osteopathic Association'' before comma at end.

Subsec. (i)(12)(B)(vi). Pub. L. 104–248, §1(b)(1)(C)(i), (iii), (iv), added cl. (vi) and redesignated former cl. (vi) as (vii).

Pub. L. 104–248, §1(b)(1)(C)(ii), inserted ''(or certified by the State in accordance with policies of the Secretary)'' after ''Secretary''.

Subsec. (i)(12)(B)(vii). Pub. L. 104–248, §1(b)(1)(C)(iii), redesignated cl. (vi) as (vii).

1993—Subsec. (i)(10). Pub. L. 103–66, §13631(c)(1), which directed the amendment of par. (10) by striking all that follows ''1396r–8(g) of this title'' and inserting a semicolon, could not be executed because ''1396r–8(g) of this title'' did not appear subsequent to the general amendment of par. (10) by Pub. L. 103–66, §13602(b). See below.

Pub. L. 103–66, §13602(b), amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''with respect to covered outpatient drugs of a manufacturer dispensed in any State unless, (A) except as provided in section 1396r–8(a)(3) of this title, the manufacturer complies with the rebate requirements of section 1396r–8(a) of this title with respect to the drugs so dispensed in all States, and (B) effective January 1, 1993, the State provides for drug use review in accordance with section 1396r–8(g) of this title; or''.

Subsec. (i)(11). Pub. L. 103–66, §13631(c)(2), redesignated par. (12) as (11), transferred such par. to appear after par. (10), and substituted semicolon for period at end. Former par. (11) redesignated (13).

Subsec. (i)(12). Pub. L. 103–66, §13631(c)(3), redesignated par. (14) as (12), transferred such par. to appear after par. (11), as redesignated by Pub. L. 103–66, §13631(c)(2), and substituted semicolon for period at end. Former par. (12) redesignated (11).

Subsec. (i)(13). Pub. L. 103–66, §13631(c)(4), redesignated par. (11) as (13), transferred such par. to appear after par. (12), as redesignated by Pub. L. 103–66, §13631(c)(3), and directed substitution of ''; or'' for period at end.

Subsec. (i)(14). Pub. L. 103–66, §13631(c)(5), added par. (14).

Subsec. (i)(15). Pub. L. 103–66, §13631(h)(1), added par. (15).

Subsec. (*o*). Pub. L. 103–66, §13622(a)(2), substituted ''regulation and including a group health plan (as defined in section 1167(1) of title 29)), a service benefit plan, and a health maintenance organization)'' for ''regulation)''.

Subsec. (s). Pub. L. 103–66, §13624(a), added subsec. (s).

Subsec. (v)(2)(C). Pub. L. 103–66, §13604(a), added subpar. (C).

1991—Subsec. (a)(1). Pub. L. 102–234, §3(b)(2)(B), inserted ''and section 1396r–4(f) of this title'' after ''of this section''.

Subsec. (c). Pub. L. 102–119 substituted ''child with a disability'' for ''handicapped child'', ''Individuals with Disabilities Education Act'' for ''Education of the Handicapped Act'', and ''an infant or toddler with a disability'' for ''a handicapped infant or toddler''.

Subsec. (d)(6). Pub. L. 102–234, §4(a), added par. (6).

Subsec. (i)(10). Pub. L. 102–234, §2(b)(2), struck out par. (10) added by Pub. L. 101–508, §4701(b)(2)(B), which read as follows: ''with respect to any amount expended for medical assistance for care or services furnished by a hospital, nursing facility, or intermediate care facility for the mentally retarded to reimburse the hospital or facility for the costs attributable to taxes imposed by the State soley [sic] with respect to hospitals or facilities.''

Subsec. (w). Pub. L. 102–234, §2(a), added subsec. (w).

1990—Subsec. (a)(1). Pub. L. 101–508, §4402(d)(3), struck out before semicolon ''(including expenditures for medicare cost-sharing and including expenditures for premiums under part B of subchapter XVIII of this chapter, for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title, and, except in the case of individuals sixty-five years of age or older and disabled individuals entitled to hospital insurance benefits under subchapter XVIII of this chapter who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums for medical or any other type of remedial care or the cost thereof)''.

Subsec. (a)(2)(B). Pub. L. 101–508, §4801(a)(8), substituted ''October 1, 1990'' for ''July 1, 1990''.

Subsec. (a)(3)(C), (D). Pub. L. 101–508, §4401(b)(1), substituted ''and'' for ''plus'' at end of subpar. (C) and added subpar. (D).

Subsec. (f)(2). Pub. L. 101–508, §4723(a), inserted ''(A)'' after ''(2)'' and added cl. (B).

Subsec. (f)(4). Pub. L. 101–508, §4601(a)(3)(A), substituted ''1396a(a)(10)(A)(i)(III), 1396a(a)(10) (A)(i)(IV), 1396a(a)(10)(A)(i)(V), 1396a(a)(10) (A)(i)(VI), 1396a(a)(10)(A)(i)(VII)'' for ''1396a(a)(10) (A)(i)(IV), 1396a(a)(10)(A)(i)(VI)''.

Subsec. (i)(8). Pub. L. 101–508, §4711(c)(2), inserted ''(A)'' after ''medical assistance'' and added cl. (B).

Subsec. (i)(10). Pub. L. 101–508, §4701(b)(2), added par. (10) relating to any amount expended for medical assistance for care or services.

Pub. L. 101–508, §4401(a)(1), added par. (10) relating to covered outpatient drugs.

Subsec. (i)(11). Pub. L. 101–508, §4801(e)(16)(A), added par. (11).

Subsec. (i)(12). Pub. L. 101–508, §4752(a)(2), added par. (12).

Subsec. (i)(14). Pub. L. 101–508, §4752(e), added par. (14).

Subsec. (m)(1)(A). Pub. L. 101–508, §4751(b)(1), inserted ''meets the requirement of section 1396a(w) of this title'' after ''State, which'' and ''meets the requirement of section 1396a(a) of this title and'' after ''or which''.

Subsec. (m)(2)(A)(i). Pub. L. 101–508, §4732(d)(1), struck out ''(or the State as authorized by paragraph (3))'' after ''the Secretary''.

Subsec. (m)(2)(A)(ix). Pub. L. 101–508, §4704(b)(1), added cl. (ix).

Subsec. (m)(2)(A)(x). Pub. L. 101–508, §4731(a), added cl. (x).

Subsec. (m)(2)(A)(xi). Pub. L. 101–508, §4752(b)(1), added cl. (xi).

Subsec. (m)(2)(B). Pub. L. 101–508, §4704(b)(2), inserted ''except with respect to clause (ix) of subparagraph (A),'' after ''Subparagraph (A)''.

Subsec. (m)(2)(D). Pub. L. 101–508, §4732(a), struck out ''(i) special circumstances warrant such modification or waiver, and (ii)'' after ''the Secretary determines that''.

Subsec. (m)(2)(F)(i). Pub. L. 101–508, §4732(b)(2), substituted ''(G),'' for ''(G) or'' and inserted at end ''or with an eligible organization with a contract under section 1395mm of this title which meets the requirement of subparagraph (A)(ii), or''.

Subsec. (m)(2)(H). Pub. L. 101–508, §4732(c), added subpar. (H).

Subsec. (m)(3). Pub. L. 101–508, §4732(d)(2), struck out par. (3) which read as follows: ''A State may, in the case of an entity which has submitted an application to the Secretary for determination that it is a health maintenance organization within the meaning of paragraph (1) and for which no such determination has been made within 90 days of the submission of the application, make a provisional determination for the purposes of this subchapter that such entity is such a health maintenance organization. Such provisional determination shall remain in force until such time as the Secretary makes a determination regarding the entity's qualification under paragraph (1).''

Subsec. (m)(5)(A)(v). Pub. L. 101–508, §4731(b)(2), added cl. (v).

Subsec. (u)(1)(D)(iv). Pub. L. 101–508, §4402(b), which directed amendment of subpar. (C)(iv) by inserting before period at end ''or with respect to payments made in violation of section 1396e of this title'', was executed to subpar. (D)(iv) to reflect the probable intent of Congress because subpar. (C) does not have a cl. (iv).

1989—Subsec. (a)(2)(B). Pub. L. 101–239, §6901(b)(5)(A), inserted ''(including the costs for nurse aides to complete such competency evaluation programs)'' after ''1396r(e)(1) of this title'' and ''(or, for calendar quarters beginning on or after July 1, 1988, and before July 1, 1990, the lesser of 90 percent or the Federal medical assistance percentage plus 25 percentage points)'' after ''50 percent''.

Subsec. (f)(4). Pub. L. 101–239, §6401(b), inserted ''1396a(a)(10)(A)(i)(VI),'' after ''1396a(a)(10)(A) (i)(IV),''.

Subsec. (i)(2). Pub. L. 101–239, §6411(d)(2), inserted '', not including items or services furnished in an emergency room of a hospital'' after ''emergency item or service''.

Subsec. (i)(5). Pub. L. 101–234 repealed Pub. L. 100–360, §202(h)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a)(1). Pub. L. 100–360, §301(f), amended Pub. L. 99–509, §9403(g)(2), see 1986 Amendment note below.

Subsec. (c). Pub. L. 100–360, §411(k)(13)(A), added subsec. (c).

Subsec. (f)(2). Pub. L. 100–360, §411(k)(10)(G)(ii), amended Pub. L. 100–203, §4118(h)(1), see 1987 Amendment note below.

Subsec. (f)(4). Pub. L. 100–360, §302(e)(4), inserted ''1396a(a)(10)(A)(i)(IV),'' before ''1396a(a)(10)(A)(ii)(IX)'' in introductory provisions.

Subsec. (i)(2)(A). Pub. L. 100–360, §411(k)(10)(D), as amended by Pub. L. 100–485, §608(d)(26)(K)(ii), added Pub. L. 100–203, §4118(e)(11)(A), see 1987 Amendment note below.

Subsec. (i)(2)(B). Pub. L. 100–360, §411(k)(10)(D), as amended by Pub. L. 100–485, §608(d)(26)(K)(ii), added Pub. L. 100–203, §4118(e)(11)(B), see 1987 Amendment note below.

Subsec. (i)(3). Pub. L. 100–360, §411(k)(6)(B)(x), added Pub. L. 100–203, §4112(b), see 1987 Amendment note below.

Subsec. (i)(5). Pub. L. 100–360, §202(h)(2), substituted ''section 1395y(c)(1)'' for ''section 1395y(c)''.

Subsec. (i)(9). Pub. L. 100–360, §302(c)(3), added par. (9).

Subsec. (m)(2)(B)(i)(II). Pub. L. 100–485, §608(f)(4), substituted ''1396a(a)(10)(D) of this title'' for ''1396a(a)(13)(A)(ii) of this title''.

Subsec. (m)(2)(F). Pub. L. 100–360, §411(k)(7)(D), repealed Pub. L. 100–203, §4113(d)(1), see 1987 Amendment note below.

Pub. L. 100–360, §411(a)(3)(A), (B)(iii), (k)(7)(A), amended Pub. L. 100–203, §4113(a)(1)(B), see 1987 Amendment note below.

Subsec. (m)(5). Pub. L. 100–360, §411(k)(12)(A), amended par. (5) generally. Prior to amendment, par. (5) read as follows:

''(A) Any entity with a contract under this subsection that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $10,000 for each such failure.

''(B) The provisions of section 1320a–7a of this title (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.''

1987—Subsec. (a)(1). Pub. L. 100–203, § 4211(g)(2), substituted ''and (j)'' for '', (h), and (j)''.

Subsec. (a)(2)(A) to (C). Pub. L. 100–203, § 4211(d)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (a)(2)(D). Pub. L. 100–203, § 4212(c)(1), added subpar. (D).

Subsec. (a)(3)(C). Pub. L. 100–203, § 4113(b)(3), inserted ''or by an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary,'' after ''organization''.

Subsec. (a)(7). Pub. L. 100–203, § 4212(e)(2), inserted ''subject to section 1396r(g)(3)(B) of this title,'' after ''(7)''.

Subsec. (f)(2). Pub. L. 100–203, § 4118(h)(1), as amended by Pub. L. 100–360, § 411(k)(10)(G)(ii), substituted ''(whether in the form of insurance premiums or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof)'' for ''(whether in the form of insurance premiums or otherwise)''.

Subsec. (f)(4). Pub. L. 100–203, § 4118(p)(5), inserted '', 1396a(a)(10)(A)(ii)(X), or 1396d(p)(1)'' after ''1396a(a)(10)(A)(ii)(IX)''.

Subsec. (g)(1). Pub. L. 100–203, § 4212(d)(1)(A), substituted ''or services in an intermediate care facility for the mentally retarded'' for first reference to ''or intermediate care facility services'', struck out '', skilled nursing facility services for 30 days,'' after first reference to ''60 days'', substituted ''or services in an intermediate care facility for the mentally retarded'' for '', skilled nursing facility services, or intermediate care facility services'', and substituted ''and intermediate care facilities for the mentally retarded'' for '', skilled nursing facilities, and intermediate care facilities''.

Subsec. (g)(4)(B). Pub. L. 100–203, § 4212(d)(1)(B), substituted ''and intermediate care facilities for the mentally retarded'' for '', skilled nursing facilities, and intermediate care facilities''.

Subsec. (g)(6)(B) to (D). Pub. L. 100–203, § 4212(d)(1)(C), redesignated subpar. (C) as (B) and substituted ''services in an intermediate care facility for the mentally retarded'' for ''intermediate care facility services'', redesignated subpar. (D) as (C), and struck out former subpar. (B) which read as follows: ''Such recertifications in the case of skilled nursing facility services shall be conducted at least—

''(i) 30 days after the date of the initial certification,

''(ii) 60 days after the date of the initial certification,

''(iii) 90 days after the date of the initial certification, and

''(iv) every 60 days thereafter.''

Subsec. (g)(7). Pub. L. 100–203, § 4212(d)(1)(D), struck out par. (7) which read as follows: ''It is the duty and responsibility of the Secretary to assure that standards which govern the provision of care in skilled nursing facilities and intermediate care facilities under plans approved under this subchapter, and the enforcement of such standards, are adequate to protect the health and safety of residents and to promote the effective and efficient use of public moneys.''

Subsec. (h). Pub. L. 100–203, § 4211(g)(1), struck out subsec. (h) which related to reduction by Secretary of amount otherwise considered as expenditures under State plan where reasonable cost differential between statewide average cost of skilled nursing facility services and statewide average cost of intermediate care facility services does not exist for any calendar quarter beginning after June 30, 1973.

Subsec. (i). Pub. L. 100–203, § 4118(d)(1)(B), inserted sentence at end that nothing in par. (1) be construed as permitting a State to provide services under its plan under this subchapter that are not reasonable in amount, duration, and scope to achieve their purpose.

Subsec. (i)(1). Pub. L. 100–203, § 4118(d)(1)(A), substituted ''; or'' for period at end.

Subsec. (i)(2). Pub. L. 100–93, § 8(g), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''with respect to any amount paid for services furnished under the plan after December 31, 1972, by a provider or other person during any period of time, if payment may not be made under subchapter XVIII of this chapter with respect to services furnished by such provider or person during such period of time solely by reason of a determination by the Secretary under section 1395y(d)(1) of this title or under clause (D), (E), or (F) of section 1395cc(b)(2) of this title, or by reason of noncompliance with a request made by the Secretary under clause (C)(ii) of such section 1395cc(b)(2) or under section 1396a(a)(38) of this title; or''.

Subsec. (i)(2)(A). Pub. L. 100–203, § 4118(e)(11)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(ii), substituted ''under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title'' for ''in the State plan under this subchapter pursuant to section 1320a–7 of this title or section 1320a–7a of this title''.

Subsec. (i)(2)(B). Pub. L. 100–203, § 4118(e)(11)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(ii), substituted ''from participation under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title'' for ''pursuant to section 1320a–7 of this title or section 1320a–7a of this title from participation in the program under this subchapter''.

Subsec. (i)(3). Pub. L. 100–203, § 4112(b), as added by Pub. L. 100–360, § 411(k)(6)(B)(x), inserted ''(other than amounts attributable to the special situation of a hospital which serves a disproportionate number of low income patients with special needs)'' before ''to the extent''.

Subsec. (i)(4). Pub. L. 100–203, § 4211(i), struck out ''or skilled nursing facility'' after ''hospital'' in three places.

Subsec. (i)(8). Pub. L. 100–203, § 4213(b)(2), added par. (8).

Subsec. (m)(2)(F). Pub. L. 100–203, § 4113(d)(1), which directed the substitution of ''subparagraphs (E) or (G)'' for ''subparagraph (G)'', was repealed by Pub. L. 100–360, § 411(k)(7)(D).

Pub. L. 100–203, § 4113(a)(1)(B), as amended by Pub. L. 100–360, § 411(a)(3)(A), (B)(iii), (k)(7)(A), substituted ''(F) In the case of—'' and cls. (i) and (ii) for ''(F) In the case of a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 300e–9(d) of this title) which meets the requirement of subparagraph (A)(ii),''.

Subsec. (m)(6). Pub. L. 100–203, § 4113(a)(1)(A), added par. (6).

Subsec. (n). Pub. L. 100–93, § 8(h)(1), struck out subsec. (n) which related to State agency action upon disclosure or failure to disclose required information by institution, organization, etc.

Subsec. (r). Pub. L. 100–203, § 4212(c)(2), substituted ''paragraphs (2)(A)'' for ''paragraphs (2)'' in pars. (1)(A), (C) and (2)(A), (C).

1986—Subsec. (a)(1). Pub. L. 99–509, § 9403(g)(2), as amended by Pub. L. 100–360, § 301(f), inserted ''including expenditures for medicare cost-sharing and'' before ''including expenditures''.

Subsec. (a)(3)(C). Pub. L. 99–509, § 9431(b)(2), inserted ''or quality review'' after ''medical and utilization review''.

Subsec. (a)(4). Pub. L. 99–603 added par. (4).

Subsec. (d)(2). Pub. L. 99–272, § 9512(a), designated first sentence as subpar. (A), designated second sentence as subpar. (B), properly indented and aligned below subpar. (A), and added subpars. (C) and (D).

Subsec. (f)(4). Pub. L. 99–509, § 9401(e)(2), inserted ''for any individual described in section

1396a(a)(10)(A)(ii)(IX) of this title or'' after ''as medical assistance''.

Subsec. (i)(1). Pub. L. 99–272, § 9507(a), added par. (1).

Subsec. (m)(2)(A). Pub. L. 99–272, § 9517(a)(1), substituted ''subparagraphs (B), (C), and (G)'' for ''subparagraphs (B) and (C)'' in introductory text.

Pub. L. 99–272, § 9517(c)(1), inserted ''(including a health insuring organization)'' after ''any entity'' and ''(directly or through arrangements with providers of services)'' after ''responsible for the provision'' in introductory text.

Subsec. (m)(2)(A)(iii). Pub. L. 99–509, § 9434(a)(2), inserted before the semicolon ''and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of $100,000''.

Subsec. (m)(2)(A)(viii). Pub. L. 99–509, § 9434(a)(1)(A), added cl. (viii).

Subsec. (m)(2)(F). Pub. L. 99–514, § 1895(c)(2), substituted ''In the case'' for ''in the case''.

Pub. L. 99–272, § 9517(a)(2), struck out designation ''(i)'' at beginning of subpar. (F), substituted ''in the case of a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 300e–9(d) of this title) which meets the requirement of subparagraph (A)(ii)'' for ''In the case of a contract with a health maintenance organization described in clause (ii)'', substituted ''such entity or organization'' for ''such organization'', and struck out cl. (ii) which defined a health maintenance organization.

Subsec. (m)(2)(G). Pub. L. 99–272, § 9517(a)(3), added subpar. (G).

Subsec. (m)(4). Pub. L. 99–509, § 9434(a)(1)(B), added par. (4).

Subsec. (m)(5). Pub. L. 99–509, § 9434(b), added par. (5).

Subsec. (r)(1)(B). Pub. L. 99–272, § 9518(a), substituted ''September 30, 1985'' for ''the earlier of (i) September 30, 1982, or (ii) the last day of the sixth month following the date specified for operation of such systems in the State's most recently approved advance planning document submitted before October 7, 1980''.

Subsec. (r)(4)(A). Pub. L. 99–272, § 9503(b)(2), substituted ''once every three years'' for ''once each fiscal year'' and inserted at end ''Reviews may, at the Secretary's discretion, constitute reviews of the entire system or of only those standards, systems requirements, and other conditions which have demonstrated weakness in previous reviews.''

Subsec. (r)(6)(J). Pub. L. 99–272, § 9503(b)(1), amended subpar. (J) generally. Prior to amendment, subsec. (J) read as follows: ''report on or before October 1, 1981, to the Congress on the extent to which States have developed and operated effective mechanized claims processing and information retrieval systems.''

Subsec. (u)(1)(D)(iv). Pub. L. 99–272, § 9503(f), added cl. (iv).

Subsec. (u)(1)(D)(v). Pub. L. 99–509, § 9407(c), added cl. (v).

Subsec. (v). Pub. L. 99–509, § 9406(a), added subsec. (v).

1984—Subsec. (g)(1). Pub. L. 98–369, § 2363(a)(2)(A), (B), in provision preceding subpar. (A), substituted ''inpatient hospital services or intermediate care facility services for 60 days, skilled nursing facility services for 30 days, or inpatient mental hospital services for'' for ''care as an inpatient in a hospital (including an institution for tuberculosis), skilled nursing facility or intermediate care facility on 60 days, or in a hospital for mental diseases on'', and struck out ''which for purposes of this section means the four calendar quarters ending with June 30,'' before ''the Federal medical assistance percentage'', and struck out ''in the same fiscal year'' before ''shall be decreased by a per centum thereof''.

Pub. L. 98–369, § 2363(a)(2)(C), substituted '', skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), such State has an effective program of medical review of the care of patients in mental hospitals, skilled nursing facilities, and intermediate care facilities pursuant to paragraphs (26) and (31) of section 1396a(a) of this title whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams'' for ''(including tuberculosis hospitals), skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), there is in operation in the State an effective program of control over utilization of such services; such a showing must include evidence that—'' and former subpars. (A) through (D) requirement for evidence concerning an effective program of utilization of certain medical services.

Subsec. (g)(4)(B). Pub. L. 98–369, § 2373(b)(11), substituted ''paragraphs (26)'' for ''paragraph (26)'' and ''diligence'' for ''deligence''.

Subsec. (g)(6). Pub. L. 98–369, § 2363(a)(4), in amending par. (6) generally, substituted provisions relating to recertifications for provisions relating to reports to Congress concerning Secretary's determination and review of showing respecting any decrease of Federal medical assistance percentage of amounts paid for services.

Subsec. (g)(7). Pub. L. 98–369, § 2363(b), as amended by Pub. L. 98–617, § 3(a)(6), added par. (7).

Subsec. (i)(7). Pub. L. 98–369, § 2303(g)(2), added par. (7).

Subsec. (m)(2)(A)(vi). Pub. L. 98–369, § 2364(1), inserted ''except as provided under subparagraph (F),'' after ''(I)''.

Subsec. (m)(2)(B)(i)(I). Pub. L. 98–369, § 2373(b)(12)(A), (C), struck out ''(II)'' before ''for the period'' and substituted ''period'' for ''peroid''.

Subsec. (m)(2)(B)(i)(II). Pub. L. 98–369, § 2373(b)(12)(B), substituted ''of section 1396d(a) of this title'' for ''of such section''.

Subsec. (m)(2)(C). Pub. L. 98–369, § 2373(b)(13), realigned margin of subpar. (C).

Subsec. (m)(2)(E), (F). Pub. L. 98–369, § 2364(2), added subpars. (E) and (F).

Subsec. (s)(3)(B). Pub. L. 98–369, § 2373(b)(14), substituted ''non-Federal'' for ''nonfederal''.

1983—Subsec. (t)(3). Pub. L. 97–448 substituted ''purposes'' for ''purpose'' and ''the lower of the Federal medical assistance percentage for the State in effect for fiscal year 1981, or the Federal medical assistance percentage for the State in effect for fiscal year 1982'' for ''the Federal medical assistance percentage for States in effect for fiscal year 1981, disregarding any change in such percentage after fiscal year 1981''.

1982—Subsec. (a)(3)(C). Pub. L. 97–248, § 146(b), substituted ''utilization and quality control peer review organization'' for ''Professional Standards Review Organization''.

Subsec. (f)(3). Pub. L. 97–248, § 137(g), struck out ''(without regard to section 608 of this title)'' after ''consisting of one person if such plan''.

Subsec. (g)(1). Pub. L. 97–248, § 137(b)(11), inserted ''or which is a qualified health maintenance organization (as defined in section 300e–9(d) of this title)''.

Subsec. (g)(1)(A). Pub. L. 97–248, § 137(b)(12), substituted ''provided in an institution for the mentally retarded'' for ''described in section 1396d(d) of this title''.

Subsec. (k). Pub. L. 97–248, § 137(b)(13), substituted ''subsection (m) of this section'' for ''section 1395mm of this title''.

Subsec. (m)(2)(A). Pub. L. 97–248, § 137(b)(14), substituted ''or'' for ''and'' before ''(II)'' in cl. (iv), and substituted ''unforeseen'' for ''unforseen'' in cl. (vii)(II).

Subsec. (s). Pub. L. 97–248, § 137(a)(2), amended directory language of Pub. L. 97–35, § 2161(c)(1), to correct an error, and did not involve any change in text. See 1981 Amendment note below.

Subsec. (s)(1)(A). Pub. L. 97–248, § 137(b)(15)(A), (B), in provisions following cl. (iii), substituted ''fiscal year 1982'' for ''fiscal year 1981'', and ''subsections (a)(6) and (t) of this section, without regard to payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service,'' for ''subsection (t) of this section''.

Subsec. (s)(1)(C). Pub. L. 97–248, §137(b)(15)(C), inserted ''a program in operation under'', before ''a plan approved''.

Subsec. (s)(3)(D). Pub. L. 97–248, §137(b)(15)(D), substituted ''must determine that'' for ''determines that'', ''most recent year (which shall consist of a 12-month period determined by the Secretary for this purpose)'' for ''most recent calendar year'', and ''2- or 3-year period'' for ''2 or 3 calendar year period'', and struck out ''calendar'' wherever appearing.

Subsec. (s)(4)(B). Pub. L. 97–248, §137(b)(15)(E), inserted ''and paragraph (3)(D)''.

Subsec. (s)(5)(A)(i). Pub. L. 97–248, §137(b)(15)(F), inserted ''(including amounts saved, to the extent such amounts can be documented to the satisfaction of the Secretary, by reason of the suspension or termination of a provider or other person for fraud or abuse, but only during the period of such suspension or termination or, if shorter, the 1-year period beginning on the date of such termination or suspension)'' after ''recovered or diverted''.

Subsec. (s)(5)(B). Pub. L. 97–248, §137(b)(27), inserted ''or quarters'' after ''carried forward to the following quarter''.

Subsec. (t). Pub. L. 97–248, §137(a)(1), (2), amended directory language of Pub. L. 97–35, §2161(b), (c)(2), to correct an error, and did not involve any change in text. See 1981 Amendment note below.

Subsec. (t)(1)(A). Pub. L. 97–248, §137(b)(16)(A), substituted ''payments under subsection (a)(6) of this section, interest paid under subsection (d)(5) of this section, and payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service'' for ''interest paid under subsection (d)(5) of this section''.

Subsec. (t)(1)(B). Pub. L. 97–248, §137(b)(16)(B), (D), substituted ''Consumer Price Index for all urban consumers (U.S. city average) published by the Bureau of Labor Statistics'' for ''consumer price index for all urban consumers (published by the Bureau of Labor Statistics)'' and ''for the 12-month period ending on September 30, 1983'' for ''between September 1982 and September 1983''.

Subsec. (t)(1)(C). Pub. L. 97–248, §137(b)(16)(C), (D), substituted ''Consumer Price Index for all urban consumers (U.S. city average) published by the Bureau of Labor Statistics'' for ''consumer price index for all urban consumers (published by the Bureau of Labor Statistics)'' and ''for the 24-month period ending on September 30, 1984'' for ''between September 1982 and September 1984''.

Subsec. (t)(2)(A). Pub. L. 97–248, §137(b)(16)(A), substituted ''payments under subsection (a)(6) of this section, interest paid under subsection (d)(5) of this section, and payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service'' for ''interest paid under subsection (d)(5) of this section''.

Subsec. (t)(3). Pub. L. 97–248, §137(b)(16)(E), substituted ''for fiscal years 1982, 1983, and 1984'' for ''for fiscal year 1984'' wherever appearing, ''years 1983, 1984, and 1985, respectively'' for ''year 1985'', ''in effect for fiscal year 1981'' for ''in effect for fiscal year 1983'', and ''after fiscal year 1981'' for ''between fiscal year 1983 and fiscal year 1984''.

Subsec. (u). Pub. L. 97–248, §133(a), added subsec. (u).

1981—Subsec. (a)(3)(B). Pub. L. 97–35, §2113(n), substituted ''and'' for ''plus'' at the end of subpar. (B) and added subpar. (C).

Subsec. (d)(5). Pub. L. 97–35, §2163, substituted ''determination at a rate'' for ''determination (but not to exceed a period of twelve months with respect to disallowances made prior to October 1, 1981, or six months with respect to disallowances made thereafter) at a rate''.

Subsec. (e). Pub. L. 97–35, §2101(a)(2), added subsec. (e).

Subsec. (g)(1)(A). Pub. L. 97–35, §2183(a), inserted ''and the physician, or a physician assistant or nurse practitioner under the supervision of a physician'' and ''or, in the case of services that are intermediate care facility services described in section 1396d(d) of this title, every year'' in parenthetical text.

Subsec. (i)(1). Pub. L. 97–35, §2174(b), struck out par. (1) which provided that payments shall not be made with respect to any amount paid for items or services furnished under the plan after Dec. 31, 1972, to the extent that such amount exceeds the charge which would be determined to be reasonable for such items or services under fourth and fifth sentences of section 1395u(b)(3) of this title.

Subsec. (i)(5). Pub. L. 97–35, §2103(b)(1), added par. (5).

Subsec. (i)(6). Pub. L. 97–35, §2164(a), added par. (6).

Subsec. (m)(1)(A). Pub. L. 97–35, §2178(a)(1), redefined ''Health Maintenance Organization'' substantially, and substituted reference to public and private organizations making services to individuals eligible for benefits under this subchapter and which makes adequate provision against the risk of insolvency for reference to a legal entity which provides health services to individuals enrolled in such organization and providing services and benefits to individuals eligible for benefits under specified provisions of this subchapter.

Subsec. (m)(2)(A). Pub. L. 97–35, §2178(a)(2), in cl. (ii), substituted ''75 percent of the membership of the entity which is enrolled on a prepaid basis'' for ''one-half of the membership of the entity'', and added cls. (iii) to (vii).

Subsec. (m)(2)(D). Pub. L. 97–35, §2178(a)(3), added subpar. (D).

Subsec. (n). Pub. L. 97–35, §2106(b)(3), struck out ''of this section'' after ''section 1395cc of this title'' thereby perfecting the amendment made by Pub. L. 96–499, §905(c)(2).

Subsec. (s). Pub. L. 97–35, §2161(c)(1), as amended by Pub. L. 97–248, §137(a)(2), repealed subsec. (s) which provided for reduction in medicaid payments to States, limitations on reductions, States included, and percentage reductions reduced under certain circumstances. See Effective Date of 1981 Amendment note below.

Pub. L. 97–35, §2161(a), added subsec. (s).

Subsec. (t). Pub. L. 97–35, §2161(c)(2), as amended by Pub. L. 97–248, §137(a)(2), repealed subsec. (t) which provided for offset for meeting Federal medicaid expenditure targets, and computation for meeting expenditure targets. See Effective Date of 1981 Amendment note below.

Pub. L. 97–35, §2161(b), as amended by Pub. L. 97–248, §137(a)(1), added subsec. (t).

1980—Subsec. (a)(1). Pub. L. 96–499, §905(b), inserted reference to subsection (j) of this section.

Subsec. (a)(6). Pub. L. 96–499, §963, substituted ''such a quarter within the twelve-quarter period beginning with the first quarter in which a payment is made to the State pursuant to this paragraph, and (B) 75 per centum of the sums expended during each succeeding calendar quarter'' for ''each quarter beginning on or after October 1, 1977, and ending before October 1, 1980''.

Subsec. (d)(5). Pub. L. 96–499, §961(a), added par. (5).

Subsec. (g)(3)(B). Pub. L. 96–499, §964, substituted ''January 1, 1978'' for ''October 1, 1977'' and ''any calendar quarter ending on or before December 31, 1978'' for ''the calendar quarter ending on December 31, 1977''.

Subsec. (j). Pub. L. 96–499, §905(c)(1), substituted provisions relating to the adjustment of amounts determined under subsec. (a)(1) of this section in accordance with section 1396m of this title for provisions relating to orders for suspension of payment.

Subsec. (n). Pub. L. 96–499, §905(c)(2), struck out ''or is subject to a suspension of payment order issued under subsection (j)'' after ''section 1395cc of this title''.

Subsec. (r). Pub. L. 96–398 added subsec. (r).

1979—Subsec. (m)(2)(C). Pub. L. 96–79 substituted ''the date the entity qualifies as a health maintenance organization (as determined by the Secretary)'' for ''the date the entity enters into a contract with the State under this subchapter for the provision of health services on a prepaid risk basis''.

1978—Subsec. (m)(1)(B). Pub. L. 95–559 struck out ''shall be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions'' after ''subparagraph (A),''.

Subsec. (m)(2)(B)(i)(I). Pub. L. 95–626 substituted ''section 254b(d)(1)(A)'' for ''section 247d(d)(1)(A)''.

1977—Subsec. (a)(3)(B). Pub. L. 95–142, §10(a), inserted provisions relating to notice to individuals in a sample group and provisions exempting notice respecting confidential services from notice requirements.

Subsec. (a)(6), (7). Pub. L. 95–142, §17(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (b)(3). Pub. L. 95–142, §17(b), added par. (3).

Subsec. (g). Pub. L. 95–142, §20(a), in par. (1) substituted ''Subject to paragraph (3), with respect to'' for ''With respect to'' and ''by a per centum thereof (determined under paragraph (5))'' for ''by 33⅓ per centum thereof'', in par. (2) inserted ''timely'' before ''sample onsite surveys'', and added pars. (3) to (6).

Subsec. (i)(2). Pub. L. 95–142, §3(c)(2), inserted provisions relating to noncompliance under sections 1395cc(b)(2) and 1396a(a)(38) of this title.

Subsec. (m)(2)(A). Pub. L. 95–83, §105(a)(1), in revising text, incorporated former cl. (i) (I) and (II) provisions in introductory text relating to responsibility for providing inpatient hospital services and other described services, substituting ''capitation basis'' for ''capitation risk basis'' and inserting ''unless''; redesignated as cl. (i) former cl. (ii), substituting ''has determined that the entity is a health maintenance organization'' for ''has not determined to be a health maintenance organization''; and redesignated as cl. (ii) former cl. (iii), substituting ''less than one-half of the membership of the entity consists of individuals who (I) are insured for benefits under part B of subchapter XVIII of this chapter or for benefits under both parts A and B of such subchapter, or (II) are eligible to receive benefits under this subchapter'' for ''more than one-half of the membership of which consists of individuals who are insured under parts A and B of subchapter XVIII of this chapter or recipients of benefits under this subchapter.''

Subsec. (m)(2)(C). Pub. L. 95–83, §105(a)(2), substituted reference to subpar. ''(A)(ii)'' for ''(A)(iii)'' wherever appearing.

Subsec. (n). Pub. L. 95–142, §8(c), added subsec. (n).

Subsecs. (*o*), (p). Pub. L. 95–142, §11(a), added subsecs. (*o*) and (p).

Subsec. (q). Pub. L. 95–142, §17(c), added subsec. (q).

1976—Subsec. (*l*). Pub. L. 94–552 repealed subsec. (*l*) which provided for reduction of amount of payments to States found not to be in compliance with section 1396a(g) of this title.

Subsec. (m). Pub. L. 94–460 added subsec. (m).

1975—Subsec. (g)(1)(C). Pub. L. 94–182, §110(a), inserted provisions specifying the method by which the size and composition of the sample of admissions subject to review is to be established.

Subsec. (*l*). Pub. L. 94–182, §111(b), added subsec. (*l*).

1973—Subsec. (a). Pub. L. 93–233, §18(x)(5), struck out reference to section 1317 of this title in introductory parenthetical phrase.

Subsec. (a)(1). Pub. L. 93–233, §§13(a)(11), 18(r)(1), substituted ''individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title'' for ''individuals who are recipients of money payments under a State plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter'' and inserted ''and disabled individuals entitled to hospital insurance benefits under subchapter XVIII of this chapter,'' after ''individuals sixty-five years of age or older''.

Subsec. (a)(4). Pub. L. 93–233, §18(s), substituted ''sums expended with respect to costs incurred'' for ''sums expended''.

Subsec. (a)(5). Pub. L. 93–233, §18(t), struck out ''(as found necessary by the Secretary for the proper and efficient administration of the plan)'' after ''such quarter''.

Subsec. (b). Pub. L. 93–233, §§18(r)(2), (u), (x)(6), inserted in par. (2) after ''individuals sixty-five years of age or older'' text reading ''and disabled individuals entitled to hospital insurance benefits under subchapter XVIII of this chapter'' and end text reading '', other than amounts expended under provisions of the plan of such State required by section 1396a(a)(34) of this title,'' and redesignated pars. (2) and (3) as (1) and (2), respectively.

Subsec. (c). Pub. L. 93–233, §18(y)(1)(A), struck out subsec. (c) which provided for Federal medical assistance percentage and Federal share of State medical expenses during fiscal year ending June 30, 1965.

Subsec. (d)(1). Pub. L. 93–233, §18(y)(1)(B), struck out reference to subsec. (c) of this section.

Subsec. (f)(4). Pub. L. 93–233, §13(a)(12), in subpar. (A), made payment limitations inapplicable to individual with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter; in subpar. (B), made payment limitations inapplicable to individual with respect to whom such benefits are not being paid, and in cls. (i) and (ii) inserted ''to have such benefits paid with respect to him'', and added subpar. (C).

Subsec. (g)(1)(C). Pub. L. 93–233, §18(v), substituted ''directly responsible for the care of the patient or financially interested in any such institution or, except in the case of hospitals, employed by the institution'' for ''directly responsible for the care of the patient and who are not employed by or financially interested in any such institution''.

Subsec. (j). Pub. L. 93–66 struck out provisions respecting skilled nursing facility services and intermediate care facility services.

1972—Subsec. (a)(1). Pub. L. 92–603, §207(a)(2), inserted reference to subsecs. (g) and (h) and of this section.

Subsec. (a)(3). Pub. L. 92–603, §235(a), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 92–603, §249B, temporarily added par. (4) which provided for payments to States of 100 per centum of sums expended for costs incurred during a quarter attributable to compensation or training of personnel responsible for inspecting public or private institutions providing long-term care to recipients of medical assistance to determine compliance with health or safety standards. Former par. 4 redesignated (5). See Effective Date of 1972 Amendment note below.

Pub. L. 92–603, §235(a), redesignated former par. (3) as (4).

Subsec. (a)(5). Pub. L. 92–603, §299E(a), added par. (5). Former par. (5) redesignated (6).

Pub. L. 92–603, §249B, redesignated former par. (4) as (5).

Subsec. (a)(6). Pub. L. 92–603, §299E, redesignated former par. (5) as (6).

Subsec. (b)(1). Pub. L. 92–603, §295, struck out par. (1) which related to amount of quarterly expenditures exceeding average of total expenditures for each quarter of fiscal year ending June 30, 1965.

Subsec. (b)(3). Pub. L. 92–603, §221(c)(6), added par. (3).

Subsec. (e). Pub. L. 92–603, §230, repealed subsec. (e) which related to furnishing for comprehensive care and services by July 1, 1977.

Subsec. (g). Pub. L. 92–603, §§207(a)(1), 278(b)(1), added subsec. (g) and substituted ''skilled nursing facility'' for ''skilled nursing home'' and ''skilled nursing facilities'' for ''skilled nursing homes'' wherever appearing.

Subsec. (h). Pub. L. 92–603, §§207(a)(1), 278(b)(1)(5), added subsec. (h) and substituted ''skilled nursing facility'' for ''skilled nursing home'' wherever appearing.

Subsec. (i). Pub. L. 92–603, §§224(c), 229(c), 233(c), 237(a)(1), 278(b)(7), added subsec. (i) and substituted ''skilled nursing facility'' for ''skilled nursing home'' wherever appearing.

Subsec. (j). Pub. L. 92–603, § 290, added subsec. (j) relating to orders for suspension of payment.

Pub. L. 92–603, §§ 225, 278(b)(16), added subsec. (j) relating to skilled nursing facilities services, and substituted ''skilled nursing facility'' for ''skilled nursing home'' wherever appearing.

Subsec. (k). Pub. L. 92–603, § 226(e), added subsec. (k).

1969—Subsec. (e). Pub. L. 91–56 extended from July 1, 1975, to July 1, 1977, the date by which comprehensive care and services for eligible individuals must be made available for a State to be eligible for payments.

1968—Subsec. (a)(1). Pub. L. 90–248, § 222(d), substituted ''and, except in the case of individuals sixty-five years of age or older who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums'' for ''and other insurance premiums''.

Pub. L. 90–248, § 241(f)(5), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XVI of this chapter,''.

Subsec. (a)(2). Pub. L. 90–248, § 225(a), substituted ''of the State agency or any other public agency'' for ''of the State agency (or of the local agency administering the State plan in the political subdivision)''.

Subsec. (b). Pub. L. 90–248, § 222(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(2). Pub. L. 90–364 substituted ''1969'' for ''1967''.

Subsec. (d)(2). Pub. L. 90–248, § 229(c), provided for treatment of expenditures for which payments were made to the State under subsec. (a) as an overpayment to the extent that the State or local agency administering the plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1396a(a)(25) of this title.

Subsec. (f). Pub. L. 90–248, § 220(a), added subsec. (f).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–91, title I, § 104(d), Oct. 20, 2005, 119 Stat. 2093, provided that: ''The amendments made by this section [amending this section and sections 1396r–8 and 1396u–5 of this title] shall apply to drugs dispensed on or after January 1, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, § 712(d), Oct. 22, 2004, 118 Stat. 1561, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1396d of this title] take effect on the date of enactment of this Act [Oct. 22, 2004] and apply to medical assistance and services provided under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after that date.''

EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by section 702(c)(1) of Pub. L. 106–554 effective Jan. 1, 2001, and applicable to services furnished on or after such date, see section 1(a)(6) [title VII, § 702(e)] of Pub. L. 106–554, set out as a note under section 1396a of this title.

Pub. L. 106–554, § 1(a)(6) [title VII, § 710(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–578, provided that:

''(1) The amendment made by subsection (a)(1) [amending this section] shall be effective as if included in the enactment of section 121 of the Foster Care Independence Act of 1999 (Public Law 106–169 [amending sections 1396a and 1396d of this title and enacting provisions set out as notes under section 1396a of this title]).

''(2) The amendment made by subsection (a)(2) [amending this section] shall be effective as if included in the enactment of the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Public Law 106–354).''

Amendment by Pub. L. 106–354 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, without regard to whether final regulations to carry out such amendments have been promulgated by such date, see section 2(d) of Pub. L. 106–354, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by section 201(a)(4), (b) of Pub. L. 106–170 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, see section 201(d) of Pub. L. 106–170, set out as a note under section 1396a of this title.

Pub. L. 106–170, title IV, § 407(d), Dec. 17, 1999, 113 Stat. 1914, provided that: ''The amendments made by this section [amending this section] take effect on the date of the enactment of this Act [Dec. 17, 1999].''

Amendment by section 1000(a)(6) [title VI, § 604(a)(2)(B), (b)(2)] of Pub. L. 106–113 applicable as of such date as the Secretary of Health and Human Services certifies to Congress that the Secretary is fully implementing section 1396u–2(c)(2) of this title, see section 1000(a)(6) [title VI, § 604(c)(2)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(aa)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398, provided that the amendment made by section 1000(a)(6) [title VI, § 608(aa)(2)] is effective as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].

Amendment by section 1000(a)(6) [title VI, § 608(e)–(k)] of Pub. L. 106–113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, § 608(bb)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

Pub. L. 106–31, title III, § 3031(c), May 21, 1999, 113 Stat. 104, provided that: ''This section [amending this section] and the amendments made by this section shall apply to amounts paid to a State prior to, on, or after the date of the enactment of this Act [May 21, 1999].''

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 162 of Pub. L. 105–100 provided that the amendment made by that section is effective as if included in the enactment of subtitle J (§§ 4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

Section 4710 of title IV of Pub. L. 105–33 provided that:

''(a) GENERAL EFFECTIVE DATE.—Except as otherwise provided in this chapter [chapter 1 (§§ 4701–4710) of subtitle H of title IV of Pub. L. 105–33, enacting section 1396u–2 of this title, amending this section and sections 1320a–3, 1320a–7b, 1396a, 1396d, 1396*o*, 1396r–6, 1396r–8, 1396u–2, and 1396v of this title, and enacting provisions set out as a note under section 1396u–2 of this title] and section 4759 [enacting provisions set out as a note under section 1396a of this title], the amendments made by this chapter shall take effect on the date of the enactment of this Act [Aug. 5, 1997] and shall apply to contracts entered into or renewed on or after October 1, 1997.

''(b) SPECIFIC EFFECTIVE DATES.—Subject to subsection (c) and section 4759—

''(1) PCCM OPTION.—The amendments made by section 4702 [amending this section and sections 1396a and 1396d of this title] shall apply to primary care case management services furnished on or after October 1, 1997.

''(2) 75:25 RULE.—The amendments made by section 4703 [amending this section and section 1396r–6 of this title] apply to contracts under section 1903(m) of the Social Security Act (42 U.S.C. 1396b(m)) on and after June 20, 1997.

''(3) QUALITY STANDARDS.—Section 1932(c)(1) of the Social Security Act [section 1396u–2(c)(1) of this title], as added by section 4705(a), shall take effect on January 1, 1999.

''(4) SOLVENCY STANDARDS.—

''(A) IN GENERAL.—The amendments made by section 4706 [amending this section] shall apply to contracts entered into or renewed on or after October 1, 1998.

''(B) TRANSITION RULE.—In the case of an organization that as of the date of the enactment of this Act [Aug. 5, 1997] has entered into a contract under section 1903(m) of the Social Security Act [subsec. (m) of this section] with a State for the provision of medical assistance under title XIX of such Act [this subchapter] under which the organization assumes full financial risk and is receiving capitation payments, the amendment made by section 4706 shall not apply to such organization until 3 years after the date of the enactment of this Act.

''(5) SANCTIONS FOR NONCOMPLIANCE.—Section 1932(e) of the Social Security Act [section 1396u–2(e) of this title], as added by section 4707(a), shall apply to contracts entered into or renewed on or after April 1, 1998.

''(6) LIMITATION ON FFP FOR ENROLLMENT BROKERS.—The amendment made by section 4707(b) [amending this section] shall apply to amounts expended on or after October 1, 1997.

''(7) 6-MONTH GUARANTEED ELIGIBILITY.—The amendments made by section 4709 [amending section 1396a of this title] shall take effect on October 1, 1997.

''(c) NONAPPLICATION TO WAIVERS.—Nothing in this chapter (or the amendments made by this chapter) shall be construed as affecting the terms and conditions of any waiver, or the authority of the Secretary of Health and Human Services with respect to any such waiver, under section 1115 or 1915 of the Social Security Act (42 U.S.C. 1315, 1396n).''

Amendment by section 4712(b)(2) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4712(b)(3) of Pub. L. 105–33, set out as a note under section 1396a of this title.

Pub. L. 105–33, title IV, §4712(c), Aug. 5, 1997, 111 Stat. 509, as amended by Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §603(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394, which provided that the amendment made by section 4712(c) was effective for services furnished on or after Oct. 1, 2004, was repealed by Pub. L. 106–554, §1(a)(6) [title VII, §702(c)(1), (e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574, effective Jan. 1, 2001, and applicable to services furnished on or after such date.

Section 4722(d) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxes imposed before, on, or after the date of the enactment of this Act [Aug. 5, 1997] and the amendment made by subsection (b) [amending this section] shall apply to taxes imposed on or after such date.''

Section 4724(b)(2) of Pub. L. 105–33 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to home health care services furnished on or after January 1, 1998.''

Section 4742(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 4753(a) of Pub. L. 105–33 effective Jan. 1, 1998, except as otherwise specifically provided, see section 4753(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

Amendment by section 4912(b)(2) of Pub. L. 105–33 effective Aug. 5, 1997, see section 4912(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 1(b)(2) of Pub. L. 104–248 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to physicians' services furnished on or after January 1, 1992.''

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13602(b) of Pub. L. 103–66 effective as if included in enactment of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, see section 13602(d)(1) of Pub. L. 103–66, set out as a note under section 1396r–8 of this title.

Section 13604(b) of Pub. L. 103–66 provided that:

''(1) Subject to paragraph (2), the amendments made by subsection (a) [amending this section] shall apply as if included in the enactment of OBRA–1986 [Pub. L. 99–509].

''(2) The Secretary of Health and Human Services shall not disallow expenditures made for the care and services described in section 1903(v)(2)(C) of the Social Security Act [subsec. (v)(2)(C) of this section], as added by subsection (a), furnished before the date of the enactment of this Act [Aug. 10, 1993].''

Amendment by section 13622(a)(2) of Pub. L. 103–66 applicable to items and services furnished on or after Oct. 1, 1993, see section 13622(d)(3) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Section 13624(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to referrals made on or after December 31, 1994.''

Section 13631(h)(2) of Pub. L. 103–66 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to amounts expended for vaccines administered on or after October 1, 1993.''

Amendment by section 13631(c) of Pub. L. 103–66 applicable to payments under State plans approved under this subchapter for calendar quarters beginning on or after Oct. 1, 1994, see section 13631(i) of Pub. L. 103–66, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendments by section 2(a), (b)(2) of Pub. L. 102–234 effective Jan. 1, 1992, without regard to whether or not regulations have been promulgated to carry out such amendments by such date, see section 2(c)(1) of Pub. L. 102–234, set out as a note under section 1396a of this title.

Amendment by section 3(b)(2)(B) of Pub. L. 102–234 effective Jan. 1, 1992, see section 3(e)(1) of Pub. L. 102–234, set out as a note under section 1396a of this title.

Section 4(b) of Pub. L. 102–234 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to fiscal years ending after the date of the enactment of this Act [Dec. 12, 1991].''

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by section 4402(b), (d)(3) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4402 of Pub. L. 101–508 have been promulgated by such date, see section 4402(e) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4601(a)(3)(A) of Pub. L. 101–508 applicable, except as otherwise provided, to payments

under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4601 of Pub. L. 101–508 have been promulgated by such date, see section 4601(b) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4701(c) of Pub. L. 101–508 provided that: ''The amendment made by subsection (b) [amending this section and section 1396a of this title] shall take effect on January 1, 1991.''

Amendment by section 4704(b)(1), (2) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, see section 4704(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4711(c)(2) of Pub. L. 101–508 applicable to civil money penalties imposed after Nov. 5, 1990, see section 4711(e)(2)(B) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4731(c) of Pub. L. 101–508 provided that: ''The amendments made by subsections (a) and (b)(2) [amending this section] shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by subsection (b)(1) [amending section 1320a–7a of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Amendment by section 4751(b)(1) of Pub. L. 101–508 applicable with respect to services furnished on or after first day of first month beginning more than 1 year after Nov. 5, 1990, see section 4751(c) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4752(b)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to contract years beginning after the date of the establishment of the system described in section 1902(x) of the Social Security Act [section 1396a(x) of this title].''

Section 4801(a)(9) of Pub. L. 101–508 provided that: ''Except as provided in paragraph (6), the amendments made by this subsection [amending this section and section 1396r of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Section 4801(e)(16)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply with respect to actions initiated on or after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6401(b) of Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out the amendments by section 6401 of Pub. L. 101–239 have been promulgated by such date, see section 6401(c) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6901(b)(5)(A) of Pub. L. 101–239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 6901(b)(6) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 608(d)(26)(K)(ii) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 608(f)(4) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(g)(2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(h)(2) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Section 301(f) of Pub. L. 100–360 provided that the amendment made by that section is effective as though included in the enactment of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509.

Amendment by section 302(c)(3) of Pub. L. 100–360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1989, with respect to eligibility for medical assistance on or after that date, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, see section 302(f) of Pub. L. 100–360, set out as a note under section 1396a of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(a)(3)(A), (B)(iii), (k)(6)(B)(x), (7)(A), (D), (10)(D), (G)(ii) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(k)(12)(B) of Pub. L. 100–360 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to actions occurring on or after the date of the enactment of this Act [July 1, 1988].''

Section 411(k)(13)(B) of Pub. L. 100–360 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4118(d)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall be effective as if included in the enactment of section 9507 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Amendment by section 4118(h)(1) of Pub. L. 100–203 applicable to costs incurred after Dec. 22, 1987, see section 4118(h)(3) of Pub. L. 100–203, as amended, set out as a note under section 1396a of this title.

Amendments by sections 4211(d)(1), (g), (i), 4212(c)(1), (2), (d)(1), (e)(2) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by section 4212(d)(1) of Pub. L. 100–203 not applicable until such date as of which the State has specified the resident assessment instrument under section 1396r(e)(5) of this title, and the State has begun conducting surveys under section 1396r(g)(2) of this title, see section 4212(d)(4) of Pub. L. 100–203, set out as a note under section 1396a of this title.

Amendment by section 4213(b)(2) of Pub. L. 100–203 applicable to payments under this subchapter for calendar quarters beginning on or after Dec. 22, 1987, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, see section 4214(b)(1) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of this title.

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 9401(e)(2) of Pub. L. 99–509 applicable to medical assistance furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether of not final regulations to carry out such amendment have been promulgated by such date, see section 9401(f) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9403(g)(2) of Pub. l. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9403(h) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9406(a) of Pub. L. 99–509 applicable, except as otherwise provided, to medical assistance furnished to aliens on or after Jan. 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9406(c) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9407(c) of Pub. L. 99–509 applicable to ambulatory prenatal care furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9407(d) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9431(b)(2) of Pub. L. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9431(c) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Section 9434(a)(3) of Pub. L. 99–509 provided that:

''(A) The amendments made by paragraph (1) [amending this section] shall take effect 6 months after the date of the enactment of this Act [Oct. 21, 1986].

''(B) The amendment made by paragraph (2) [amending this section] shall take effect on the date of the enactment of this Act and shall apply to contracts entered into, renewed, or extended after the end of the 30-day period beginning on the date of the enactment of this Act.''

Amendment by section 9503(b), (f) of Pub. L. 99–272 applicable to calendar quarters beginning on or after Apr. 7, 1986, except as otherwise provided, see section 9503(g)(1), (2) of Pub. L. 99–272, set out as a note under section 1396a of this title.

Section 9507(b) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to medical assistance furnished on or after January 1, 1987.''

Section 9512(b) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section] shall apply to overpayments identified for quarters beginning on or after October 1, 1985.''

Section 9517(c)(2), (3) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(e), Oct. 21, 1986, 100 Stat. 2070; Pub. L. 99–514, title XVIII, §1895(c)(4), Oct. 22, 1986, 100 Stat. 2935; Pub. L. 101–508, title IV, §4734, Nov. 5, 1990, 104 Stat. 1388–196; Pub. L. 104–240, §1(a), Oct. 8, 1996, 110 Stat. 3140; Pub. L. 106–554, §1(a)(6) [title VII, §704(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–575, provided that:

''(2)(A) Except as provided in subparagraph (B) and in paragraph (3), the amendments made by paragraph (1) [amending this section] shall apply to expenditures incurred for health insuring organizations which first become operational on or after January 1, 1986. For purposes of this paragraph, a health insuring organization is not considered to be operational until the date on which it first enrolls patients.

''(B) In the case of a health insuring organization—

''(i) which first becomes operational on or after January 1, 1986, but

''(ii) for which the Secretary of Health and Human Services has waived, under section 1915(b) of the Social Security Act [section 1396n(b) of this title] and before such date, certain requirements of section 1902 of such Act [section 1396a of this title],

clauses (ii) and (vi) of section 1903(m)(2)(A) of such Act [subsec. (m)(2)(A)(ii) and (vi) of this section] shall not apply during the period for which such waiver is effective.

''(C) In the case of the Hartford Health Network, Inc., clauses (ii) and (vi) of section 1903(m)(2)(A) of the Social Security Act shall not apply during the period for which a waiver by the Secretary of Health and Human Services, under section 1915(b) of such Act, of certain requirements of section 1902 of such Act is in effect (pursuant to a request for a waiver under section 1915(b) of such Act submitted before January 1, 1986).

''(D) Nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring a health-insuring organization to be organized under the health maintenance organization laws of a State.

''(3)(A) Subject to subparagraph (C), in the case of up to 3 health insuring organizations which are described in subparagraph (B), which first become operational on or after January 1, 1986, and which are designated by the Governor, and approved by the Legislature, of California, the amendments made by paragraph (1) shall not apply.

''(B) A health insuring organization described in this subparagraph is one that—

''(i) is operated directly by a public entity established by a county government in the State of California under a State enabling statute;

''(ii) enrolls all medicaid beneficiaries residing in the county or counties in which it operates;

''(iii) meets the requirements for health maintenance organizations under the Knox-Keene Act (Cal. Health and Safety Code, section 1340 et seq.) and the Waxman-Duffy Act (Cal. Welfare and Institutions Code, section 14450 et seq.);

''(iv) assures a reasonable choice of providers, which includes providers that have historically served medicaid beneficiaries and which does not impose any restriction which substantially impairs access to covered services of adequate quality where medically necessary;

''(v) provides for a payment adjustment for a disproportionate share hospital (as defined under State law consistent with section 1923 of the Social Security Act [section 1396r–4 of this title]) in a manner consistent with the requirements of such section; and

''(vi) provides for payment, in the case of childrens' hospital services provided to medicaid beneficiaries who are under 21 years of age, who are children with special health care needs under title V of the Social Security Act [subchapter V of this chapter], and who are receiving care coordination services under such title, at rates determined by the California Medical Assistance Commission.

''(C) Subparagraph (A) shall not apply with respect to any period for which the Secretary of Health and Human Services determines that the number of medicaid beneficiaries enrolled with health insuring organizations described in subparagraph (B) exceeds 14 percent of the number of such beneficiaries in the State of California.

''(D) In this paragraph, the term 'medicaid beneficiary' means an individual who is entitled to medical assistance under the State plan under title XIX of the Social Security Act [this subchapter], other than a qualified medicare beneficiary who is only entitled to such assistance because of section 1902(a)(10)(E) of such title [section 1396a(a)(10)(E) of this title].''

[Pub. L. 106–554, §1(a)(6) [title VII, §704(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–575, provided that: ''The amendment made by subsection (a) [amending section 9517(c)(3)(C) of Pub. L. 99–272, set out above] takes ef-

fect on the date of the enactment of this Act [Dec. 21, 2000].''']

[Pub. L. 104–240, § 1(b), Oct. 8, 1996, 110 Stat. 3140, provided that: ''The amendment made by subsection (a) [amending section 9517(c)(3)(B)(ii) of Pub. L. 99–272, set out above] shall apply to quarters beginning on or after October 1, 1996.''']

Section 9518(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payment under section 1903(a) of the Social Security Act [subsec. (a) of this section] for calendar quarters beginning on or after October 1, 1982.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2303(g)(2) of Pub. L. 98–369 applicable to payments for calendar quarters beginning on or after Oct. 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title, see section 2303(j)(2) and (3) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2363(c) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section and section 1396a of this title] apply to calendar quarters beginning on or after the date of the enactment of this Act [July 18, 1984], except that, in the case of individuals admitted to skilled nursing facilities before such date, the amendments made by such subsection shall not require recertifications sooner or more frequently than were required under the law in effect before such date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 133(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 137(a)(1), (2) of Pub. L. 97–248 effective as if originally included in the provision of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, to which such amendment relates, see section 137(d)(1) of Pub. L. 97–248, set out as a note under section 1396a of this title.

Amendment by section 137(b)(11)–(16), (27) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

Section 137(g) of Pub. L. 97–248 provided that the amendment made by that section is effective Oct. 1, 1982.

Amendment by section 146(b) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2101(a)(2) of Pub. L. 97–35 applicable only to services furnished by a hospital during any accounting year beginning on or after Oct. 1, 1981, see section 2101(c) of Pub. L. 97–35, set out as an Effective Date note under section 1395uu of this title.

Section 2103(b)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to amounts expended on or after October 1, 1981.''

Amendment by section 2113(n) of Pub. L. 97–35 applicable to agreements with Professional Standards Review Organizations entered into on or after Oct. 1, 1981, see section 2113(*o*) of Pub. L. 97–35, set out as a note under section 1396a of this title.

Section 2161(c)(1) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376, provided that the amendment made by such section 2161(c)(1) is effective for calendar quarters beginning on or after Oct. 1, 1984.

Section 2161(c)(2) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376, provided that the amendment made by such section 2161(c)(2) is effective after payments for the first quarter of fiscal year 1985.

Section 2164(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to tests occurring on or after October 1, 1981.''

Amendment by section 2174(b) of Pub. L. 97–35 applicable to services furnished on or after Oct. 1, 1981, see section 2174(c) of Pub. L. 97–35, set out as a note under section 1396a of this title.

Amendment by section 2178(a) of Pub. L. 97–35 applicable with respect to services furnished, under a State plan approved under this subchapter, on or before Oct. 1, 1981, except that such amendments not applicable with respect to services furnished by a health maintenance organization under a contract with a State entered into under this subchapter before Oct. 1, 1981, unless the organization requests that such amendments apply and the Secretary and the State agency agree to such request, see section 2178(c) of Pub. L. 97–35, set out as a note under section 1396a of this title.

Section 2183(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments made to States for calendar quarters beginning on or after October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 961(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to expenditures for services furnished on or after October 1, 1980.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by section 3(c)(2) of Pub. L. 95–142 effective Jan. 1, 1978, see section 3(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–3 of this title.

Amendment by section 8(c) of Pub. L. 95–142 effective with respect to contracts, agreements, etc., made on and after the first day of the fourth month beginning after Oct. 25, 1977, see section 8(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–5 of this title.

Section 10(b) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after the date of the enactment of this Act [Oct. 25, 1977].''

Section 11(c) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to medical assistance provided, under a State plan approved under title XIX of the Social Security Act [this subchapter], on and after January 1, 1978.''

Section 17(e)(1) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after September 30, 1977.''

Section 20(c) of Pub. L. 95–142, as amended by Pub. L. 95–292, § 8(e), June 13, 1978, 92 Stat. 316, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and

section 1396a of this title] shall be effective on October 1, 1977, and the Secretary of Health, Education, and Welfare shall promptly adjust payments made to States under section 1903 of the Social Security Act [this section] to reflect the changes made by such amendments.

''(2) The amount of any reduction in the Federal medical assistance percentage of a State, otherwise required to be imposed under section 1903(g)(1) of the Social Security Act [subsec. (g)(1) of this section] because of an unsatisfactory or invalid showing made by the State with respect to a calendar quarter beginning on or after January 1, 1977, shall be determined under such section as amended by this section. Subparagraph (B) of paragraph (4) of section 1903(g) of such Act [subsec. (g)(4)(B) of this section], as added by this section, shall apply to any showing made by a State under such section with respect to a calendar quarter beginning on or after January 1, 1977.''

Section 105(a)(3) of Pub. L. 95–83 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to payments under title XIX of the Social Security Act [this subchapter] to States for services provided—

''(A) after October 8, 1976, under contracts under such title [this subchapter] entered into or renegotiated after such date, or

''(B) after the expiration of the one-year period beginning on such date,

whichever occurs first.''

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94–552 effective Jan. 1, 1976, see section 2 of Pub. L. 94–552, set out as a note under section 1396a of this title.

Section 202(b) of Pub. L. 94–460 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to payments under title XIX of the Social Security Act [this subchapter] to States for services provided—

''(1) after the date of enactment of subsection (a) [Oct. 8, 1976] under contracts under such title entered into or renegotiated after such date, or

''(2) after the expiration of the 1-year period beginning on such date of enactment,

whichever occurs first.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 110(b) of Pub. L. 94–182 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first calendar month which begins not less than 90 days after the date of enactment of this Act [Dec. 31, 1975].''

Amendment by section 111(b) of Pub. L. 94–182 effective January 1, 1976, except as otherwise provided therein, see section 111(c) of Pub. L. 94–182, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by section 13(a)(11), (12) of Pub. L. 93–233 effective with respect to payments under this section for calendar quarters commencing after Dec. 31, 1973, see section 13(d) of Pub. L. 93–233, set out as a note under section 1396a of this title.

Amendment by section 18(u) of Pub. L. 93–233 effective July 1, 1973, see section 18(z–3)(4) of Pub. L. 93–233, set out as a note under section 1396a of this title.

Section 234(b) of Pub. L. 93–66 provided that: ''The amendment made by subsection (a) [amending this section] shall be applicable in the case of expenditures for skilled nursing services and for intermediate care facility services furnished in calendar quarters which begin after December 31, 1972.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 207(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall, except as otherwise provided therein, be effective July 1, 1973.''

Amendment by section 226(e) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

Amendment by section 233(c) of Pub. L. 92–603 applicable with respect to services furnished by hospitals in accounting periods beginning after Dec. 31, 1972, see section 233(f) of Pub. L. 92–603, set out as a note under section 1395f of this title. See, also, section 16 of Pub. L. 93–233, set out as an Effective Date note under section 1395f of this title.

Section 235(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to expenditures under State plans approved under title XIX of the Social Security Act [this subchapter], made after June 30, 1971.''

Section 237(d)(1) of Pub. L. 92–603 provided that: ''The amendments made by subsections (a)(1) and (b) [amending this section and section 706 of this title] shall apply with respect to services furnished in calendar quarters beginning after June 30, 1973.''

Section 249B of Pub. L. 92–603, as amended by Pub. L. 93–368, § 8, Aug. 7, 1974, 88 Stat. 422; Pub. L. 95–83, title III, § 309(b), Aug. 1, 1977, 91 Stat. 396, provided that the amendment made by that section is effective for period beginning Oct. 1, 1972, and ending Sept. 30, 1980.

EFFECTIVE DATE OF 1968 AMENDMENTS

Section 220(b) of Pub. L. 90–248 provided that:

''(b)(1) In the case of any State whose plan under title XIX of the Social Security Act [this subchapter] is approved by the Secretary of Health, Education, and Welfare under section 1902 [section 1396a of this title] after July 25, 1967, the amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after the date of enactment of this Act [Jan. 2, 1968].

''(2) In the case of any State whose plan under title XIX of the Social Security Act [this subchapter] was approved by the Secretary of Health, Education, and Welfare under section 1902 of the Social Security Act [section 1396a of this title] prior to July 26, 1967, amendments made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1968, except that—

''(A) with respect to the third and fourth calendar quarters of 1968, such subsection shall be applied by substituting in subsection (f) of section 1903 of the Social Security Act [subsec. (f) of this section] 150 percent for 133½ percent each time such latter figure appears in such subsection (f), and

''(B) with respect to all calendar quarters during 1969, such subsection shall be applied by substituting in subsection (f) of section 1903 of such Act [subsec. (f) of this section] 140 percent for 133½ percent each time such latter figure appears in such subsection (f).''

Section 222(d) of Pub. L. 90–248, as amended by section 303(a)(2) of Pub. L. 90–364, provided that the amendment made by such section 222(d) is effective with respect to calendar quarters beginning after December 31, 1969.

Section 225(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to expenditures made after December 31, 1967.''

Section 303(b) of Pub. L. 90–364 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to calendar quarters beginning after December 31, 1967.''

REGULATIONS

Section 5 of Pub. L. 102–234 provided that:

''(a) IN GENERAL.—Subject to subsection (b), the Secretary of Health and Human Services shall issue such regulations (on an interim final or other basis) as may be necessary to implement this Act [see Short Title of 1991 Amendment note set out under section 1305 of this title] and the amendments made by this Act.

''(b) REGULATIONS CHANGING TREATMENT OF INTERGOVERNMENTAL TRANSFERS.—The Secretary may not issue

any interim final regulation that changes the treatment (specified in section 433.45(a) of title 42, Code of Federal Regulations) of public funds as a source of State share of financial participation under title XIX of the Social Security Act [this subchapter], except as may be necessary to permit the Secretary to deny Federal financial participation for public funds described in section 1903(w)(6)(A) of such Act [subsection (w)(6)(A) of this section] (as added by section 2(a) of this Act) that are derived from donations or taxes that would not otherwise be recognized as the non-Federal share under section 1903(w) of such Act.

''(c) CONSULTATION WITH STATES.—The Secretary shall consult with the States before issuing any regulations under this Act.''

Secretary of Health and Human Services to promulgate final regulations necessary to carry out subsec. (r)(6)(j) of this section within 6 months after Apr. 7, 1986, see section 9503(c) of Pub. L. 99–272, set out as a note under section 1396a of this title.

REFERENCES TO PROVISIONS OF PART A OF SUBCHAPTER IV CONSIDERED REFERENCES TO SUCH PROVISIONS AS IN EFFECT JULY 16, 1996

For provisions that certain references to provisions of part A (§ 601 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 16, 1996, see section 1396u–1(a) of this title.

CLARIFICATION REGARDING NON-REGULATION OF TRANSFERS

Pub. L. 108–173, title X, § 1001(e), Dec. 8, 2003, 117 Stat. 2431, provided that:

''(1) IN GENERAL.—Nothing in section 1903(w) of the Social Security Act (42 U.S.C. 1396b(w)) shall be construed by the Secretary [of Health and Human Services] as prohibiting a State's use of funds as the non-Federal share of expenditures under title XIX of such Act [this subchapter] where such funds are transferred from or certified by a publicly-owned regional medical center located in another State and described in paragraph (2), so long as the Secretary determines that such use of funds is proper and in the interest of the program under title XIX.

''(2) CENTER DESCRIBED.—A center described in this paragraph is a publicly-owned regional medical center that—

''(A) provides level 1 trauma and burn care services;

''(B) provides level 3 neonatal care services;

''(C) is obligated to serve all patients, regardless of State of origin;

''(D) is located within a Standard Metropolitan Statistical Area (SMSA) that includes at least 3 States, including the States described in paragraph (1);

''(E) serves as a tertiary care provider for patients residing within a 125 mile radius; and

''(F) meets the criteria for a disproportionate share hospital under section 1923 of such Act [section 1396r–4 of this title] in at least one State other than the one in which the center is located.

''(3) EFFECTIVE PERIOD.—This subsection shall apply through December 31, 2005.''

TREATMENT OF DONATION OR TAX PROCEEDS PRIOR TO EFFECTIVE DATE OF SUBSECTION (w)

Section 2(c)(2) of Pub. L. 102–234 provided that: ''Except as specifically provided in section 1903(w) of the Social Security Act [subsec. (w) of this section] and notwithstanding any other provision of such Act [this chapter], the Secretary of Health and Human Services shall not, with respect to expenditures prior to the effective date specified in section 1903(w)(1)(F) of such Act, disallow any claim submitted by a State for, or otherwise withhold Federal financial participation with respect to, amounts expended for medical assistance under title XIX of the Social Security Act [this subchapter] by reason of the fact that the source of the funds used to constitute the non-Federal share of such expenditures is a tax imposed on, or a donation received from, a health care provider, or on the ground that the amount of any donation or tax proceeds must be credited against the amount of the expenditure.''

TEMPORARY INCREASE IN FEDERAL MATCH FOR ADMINISTRATIVE COSTS

Section 4401(b)(2) of Pub. L. 101–508 provided that: ''The per centum to be applied under section 1903(a)(7) of the Social Security Act [subsec. (a)(7) of this section] for amounts expended during calendar quarters in fiscal year 1991 which are attributable to administrative activities necessary to carry out section 1927 (other than subsection (g)) of such Act [section 1396r–8 of this title] shall be 75 percent, rather than 50 percent; after fiscal year 1991, the match shall revert back to 50 percent.''

REPORT ON ERRORS IN ELIGIBILITY DETERMINATIONS; ERROR RATE TRANSITION RULES

Section 4607 of Pub. L. 101–508 directed Secretary of Health and Human Services to report to Congress, by not later than July 1, 1991, on error rates by States in determining eligibility of individuals described in subparagraph (A) or (B) of section 1396a(*l*)(1) of this title for medical assistance under plans approved under this subchapter, and directed that there should not be taken into account, for purposes of subsec. (u) of this section, payments and expenditures for medical assistance attributable to medical assistance for individuals described in such subparagraph (A) or (B), and made on or after July 1, 1989, and before the first calendar quarter that begins more than 12 months after the date of submission of the Secretary's report.

MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 1-MEMBER FAMILIES

Section 4718 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—For purposes of section 1903(f)(1)(B) [probably means subsec. (f)(1)(B) of this section], for payments made before, on, or after the date of the enactment of this Act [Nov. 5, 1990], a State described in subparagraph (B) may use, in determining the 'highest amount which would ordinarily be paid to a family of the same size' (under the State's plan approved under part A of title IV of such Act [probably means part A of subchapter IV of this chapter]) in the case of a family consisting only of one individual and without regard to whether or not such plan provides for aid to families consisting only of one individual, an amount reasonably related to the highest money payment which would ordinarily be made under such a plan to a family of two without income or resources.

''(b) STATES COVERED.—Subsection (a) shall only apply to a State the State plan of which (under title XIX of the Social Security Act [this subchapter]) as of June 1, 1989, provided for the policy described in such paragraph. For purposes of the previous sentence, a State plan includes all the matter included in a State plan under section 2373(c)(5) of the Deficit Reduction Act of 1984 [Pub. L. 98–369, set out as a note under section 1396a of this title] (as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987 [Pub. L. 100–93]).''

DAY HABILITATION AND RELATED SERVICES

Section 6411(g) of Pub. L. 101–239 provided that:

''(1) PROHIBITION OF DISALLOWANCE PENDING ISSUANCE OF REGULATIONS.—Except as specifically permitted under paragraph (3), the Secretary of Health and Human Services may not—

''(A) withhold, suspend, disallow, or deny Federal financial participation under section 1903(a) of the Social Security Act [subsec. (a) of this section] for day habilitation and related services under paragraph (9) or (13) of section 1905(a) of such Act [section 1396d(a)(9), (13) of this title] on behalf of persons with mental retardation or with related conditions pursuant to a provision of its State plan as approved on or before June 30, 1989, or

''(B) withdraw Federal approval of any such State plan provision.

''(2) REQUIREMENTS FOR REGULATION.—A final regulation described in this paragraph is a regulation, promulgated after a notice of proposed rule-making and a period of at least 60 days for public comment, that—

''(A) specifies the types of day habilitation and related services that a State may cover under paragraph (9) or (13) of section 1905(a) of the Social Security Act on behalf of persons with mental retardation or with related conditions, and

''(B) any requirements respecting such coverage.

''(3) PROSPECTIVE APPLICATION OF REGULATION.—If the Secretary promulgates a final regulation described in paragraph (2) and the Secretary determines that a State plan under title XIX of the Social Security Act [this subchapter] does not comply with such regulation, the Secretary shall notify the State of the determination and its basis, and such determination shall not apply to day habilitation and related services furnished before the first day of the first calendar quarter beginning after the date of the notice to the State.''

NURSE AIDE TRAINING AND EVALUATION PROGRAMS; ALLOCATION OF COSTS BEFORE OCTOBER 1, 1990

Section 6901(b)(5)(B) of Pub. L. 101–239 provided that: ''In making payments under section 1903(a)(2)(B) of the Social Security Act [subsec. (a)(2)(B) of this section] for amounts expended for nurse aide training and competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1) of such Act [section 1396r(e)(1) of this title], in the case of activities conducted before October 1, 1990, the Secretary of Health and Human Services shall not take into account, or allocate amounts on the basis of, the proportion of residents of nursing facilities that is entitled to benefits under title XVIII or XIX of such Act [this subchapter and subchapter XVIII of this chapter].''

CLARIFICATION OF FEDERAL MATCHING RATE FOR SURVEY AND CERTIFICATION ACTIVITIES

Section 6901(d)(2) of Pub. L. 101–239 provided that: ''During the period before October 1, 1990, the Federal percentage matching payment rate under section 1903(a) of the Social Security Act [subsec. (a) of this section] for so much of the sums expended under a State plan under title XIX of such Act [this subchapter] as are attributable to compensation or training of personnel responsible for inspecting public or private skilled nursing or intermediate care facilities to individuals receiving medical assistance to determine compliance with health or safety standards shall be 75 percent.''

QUALITY CONTROL TRANSITION PROVISIONS

Section 608(h) of Pub. L. 100–485 provided that: ''There shall not be taken into account, for purposes of section 1903(u) of the Social Security Act [subsec. (u) of this section], payments and expenditures for medical assistance which are made on or after January 1, 1989, and before July 1, 1989, and which are attributable to medicare-cost [sic] sharing for qualified medicare beneficiaries (as defined in section 1905(p) of such Act [section 1396d(p) of this title]).''

DELAY QUALITY CONTROL SANCTIONS FOR MEDICAID

Section 4117 of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall not, prior to July 1, 1988, implement any reductions in payments to States pursuant to section 1903(u) of the Social Security Act [subsec. (u) of this section] (or any provision of law described in subsection (c) of section 133 of the Tax Equity and Fiscal Responsibility Act of 1982 [section 133(c) of Pub. L. 97–248, set out below]).''

TEMPORARY TECHNICAL ERROR DEFINITION

Section 4118(n) of Pub. L. 100–203 provided that: ''For purposes of section 1903(u)(1)(E)(ii) of the Social Security Act [subsec. (u)(1)(E)(ii) of this section], effective for the period beginning on the date of enactment of this Act [Dec. 22, 1987] and ending December 31, 1988, a 'technical error' is an error in eligibility condition (such as assignment of social security numbers and assignment of rights to third-party benefits as a condition of eligibility) that, if corrected, would not result in a difference in the amount of medical assistance paid.''

ENHANCED FUNDING FOR NURSE AIDE TRAINING

Section 4211(d)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(*l*)(3)(F), July 1, 1988, 102 Stat. 803, provided that: ''For the 8 calendar quarters (beginning with the calendar quarter that begins on July 1, 1988), with respect to payment under section 1903(a)(2)(B) of the Social Security Act [subsec. (a)(2)(B) of this section] to a State for additional amounts expended by the State under its plan approved under title XIX of such Act [this subchapter] for nursing aide training and competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1) of such title [section 1396r(e)(1) of this title], any reference to '50 percent' is deemed a reference to the sum of the Federal medical assistance percentage (determined under section 1905(b) of such Act [section 1396d(b) of this title]) plus 25 percentage points, but not to exceed 90 percent.''

EXPENSES INCURRED FOR REVIEW OF CARE PROVIDED TO RESIDENTS OF NURSING FACILITIES

Section 4212(c)(3) of Pub. L. 100–203 provided that: ''For purposes of section 1903(a) of the Social Security Act [subsec. (a) of this section], proper expenses incurred by a State for medical review by independent professionals of the care provided to residents of nursing facilities who are entitled to medical assistance under title XIX of such Act [this subchapter] shall be reimbursable as expenses necessary for the proper and efficient administration of the State plan under that title.''

QUALITY CONTROL STUDIES AND PENALTY MORATORIUM

Section 12301 of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVII, § 1710, Oct. 22, 1986, 100 Stat. 2783; Pub. L. 100–485, title VI, § 609(b), Oct. 13, 1988, 102 Stat. 2425, provided that:

''(a) STUDIES.—(1) The Secretary of Health and Human Services (hereafter referred to in this section as the 'Secretary') shall conduct a study of quality control systems for the Aid to Families with Dependent Children Program under title IV–A of the Social Security Act [part A of subchapter IV of this chapter] and for the Medicaid Program under title XIX of such Act [this subchapter]. The study shall examine how best to operate such systems in order to obtain information which will allow program managers to improve the quality of administration, and provide reasonable data on the basis of which Federal funding may be withheld for States with excessive levels of erroneous payments.

''(2) The Secretary shall also contract with the National Academy of Sciences to conduct a concurrent independent study for the purpose described in paragraph (1). For purposes of such study, the Secretary shall provide to the National Academy of Sciences any relevant data available to the Secretary at the onset of the study and on an ongoing basis.

''(3) The Secretary and the National Academy of Sciences shall report the results of their respective studies to the Congress within one year after the date the Secretary and the National Academy of Sciences enter into the contract required under paragraph (2).

''(b) MORATORIUM ON PENALTIES.—(1) During the 24-month period beginning with the first calendar quarter which begins after the date of the enactment of this Act [Apr. 7, 1986] (hereafter in this section referred to as the 'moratorium period'), the Secretary shall not impose any reductions in payments to States pursuant to section 403(i) of the Social Security Act [section 603(i) of this title] (or prior regulations), or pursuant to

any comparable provision of law relating to the programs under title IV–A of such Act [part A of subchapter IV of this chapter] in Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Northern Mariana Islands.

''(2) During the moratorium period, the Secretary and the States shall continue to operate the quality control systems in effect under title IV–A of the Social Security Act, and to calculate the error rates under the provisions referred to in paragraph (1).

''(c) RESTRUCTURED QUALITY CONTROL SYSTEMS.—(1) Not later than 6 months after the date on which the results of both studies required under subsection (a)(3) have been reported, the Secretary shall publish regulations which shall—

''(A) restructure the quality control systems under title XIX of the Social Security Act [this subchapter] to the extent the Secretary determines to be appropriate, taking into account the studies conducted under subsection (a); and

''(B) establish, taking into account the studies conducted under subsection (a), criteria for adjusting the reductions which shall be made for quarters prior to the implementation of the restructured quality control systems so as to eliminate reductions for those quarters which would not be required if the restructured quality control systems had been in effect during those quarters.

''(2) Beginning with the first calendar quarter after the moratorium period, the Secretary shall implement the revised quality control systems under title XIX, and shall reduce payments to States—

''(A) for quarters after the moratorium period in accordance with the restructured quality control systems; and

''(B) for quarters in and before the moratorium period, as provided under the regulations described in paragraph (1)(B).

''(d) EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVENESS OF LAWS LIMITING FEDERAL FINANCIAL PARTICIPATION WITH RESPECT TO ERRONEOUS PAYMENTS MADE BY STATES UNDER A STATE PLAN APPROVED UNDER THIS SUBCHAPTER

Section 133(c) of Pub. L. 97–248 provided that: ''No provision of law limiting Federal financial participation with respect to erroneous payments made by States under a State plan approved under title XIX of the Social Security Act [this subchapter] (including any provision contained in, or incorporated by reference into, any appropriation Act or resolution making continuing appropriations), other than the limitations contained in section 1903 of such Act [this section], shall be effective with respect to payments to States under such section 1903 for quarters beginning on or after October 1, 1982, unless such provision of law is enacted after the date of the date of the enactment of this Act [Sept. 3, 1982] and expressly provides that such limitation is in addition to or in lieu of the limitations contained in section 1903 of the Social Security Act.''

MEDICAID PAYMENTS FOR INDIAN HEALTH SERVICE FACILITIES TO BE PAID ENTIRELY BY FEDERAL FUNDS; EXCLUSION OF PAYMENTS TO STATES IN COMPUTATION OF TARGET AMOUNT OF FEDERAL MEDICAID EXPENDITURES

Pub. L. 97–92, §§ 102, 118, Dec. 15, 1981, 95 Stat. 1193, 1197, as amended by Pub. L. 97–161, Mar. 31, 1982, 96 Stat. 22, provided, for the period Dec. 15, 1981, to not later than Sept. 30, 1982, that: ''Notwithstanding section 1903(s) of the Social Security Act [subsec. (s) of this section], all medicaid payments to the States for Indian health service facilities as defined by section 1911 of the Social Security Act [section 1396j of this title] shall be paid entirely by Federal funds, and notwithstanding section 1903(t) of the Social Security Act [subsec. (t) of this section], all medicaid payments to the States for Indian health service facilities shall not be included in the computation of the target amount of Federal medicaid expenditures.''

PROMULGATION OF REGULATIONS FOR IMPLEMENTATION OF AMENDMENTS BY SECTION 17 OF PUB. L. 95–142

Section 17(e)(2) of Pub. L. 95–142 required Secretary of Health, Education, and Welfare to establish regulations, not later than 90 days after Oct. 25, 1977, to carry out amendments made by section 17 (amending sections 1395b–1 and 1396b of this title). See section 1302 of this title.

DEFERRAL OF IMPLEMENTATION OF DECREASES IN MATCHING FUNDS

Section 6 of Pub. L. 95–59, June 30, 1977, 91 Stat. 255, provided that: ''Notwithstanding the provisions of subsection (g) of section 1903 of the Social Security Act [subsec. (g) of this section], the amount payable to any State for the calendar quarters during the period commencing April 1, 1977, and ending September 30, 1977, on account of expenditures made under a State plan approved under title XIX of such Act [this subchapter], shall not be decreased by reason of the application of the provisions of such subsection with respect to any period for which such State plan was in operation prior to April 1, 1977.''

COMPREHENSIVE CARE AND SERVICES FOR ELIGIBLE INDIVIDUALS BY JULY 1, 1977; REQUIREMENT INAPPLICABLE FOR ANY PERIOD PRIOR TO JULY 1, 1971; REGULATIONS; ADVICE TO STATES

Section 2(b) of Pub. L. 91–56, which provided that subsection (e) of this section was inapplicable to the period prior to July 1, 1971, and which authorized the Secretary to issue regulations, was repealed by Pub. L. 92–603, title II, § 230, Oct. 30, 1972, 86 Stat. 1410.

EXEMPTION OF PUERTO RICO, THE VIRGIN ISLANDS, AND GUAM FROM LIMITATIONS ON FEDERAL PAYMENTS FOR MEDICAL ASSISTANCE

Section 248(d) of Pub. L. 90–248 provided that: ''The amendment made by section 220(a) of this Act [amending this section] shall not apply in the case of Puerto Rico, the Virgin Islands, or Guam.''

NONDUPLICATION OF PAYMENTS TO STATES; LIMITATION ON INSTITUTIONAL CARE

Section 121(b) of Pub. L. 89–97, as amended by section 249D of Pub. L. 92–603, provided that: ''No payment may be made to any State under title I, IV, X, XIV, or XVI of the Social Security Act [subchapter I, IV, X, XIV, or XVI of this chapter] with respect to aid or assistance in the form of medical or any other type of remedial care for any period for which such State receives payments under title XIX of such Act [this subchapter], or for any period after December 31, 1969. After the date of enactment of the Social Security Amendments of 1972 [Oct. 30, 1972], Federal matching shall not be available for any portion of any payment by any State under title I, X, XIV, or XVI, or part A of title IV, of the Social Security Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter] for or on account of any medical or any other type of remedial care provided by an institution to any individual as an inpatient thereof, in the case of any State which has a plan approved under title XIX of such Act [this subchapter], if such care is (or could be) provided under a State plan approved under title XIX of such Act [this subchapter] by an institution certified under such title XIX [this subchapter].''

§ 1396c. Operation of State plans

If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this subchapter, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1396a of this title; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title XIX, § 1904, as added Pub. L. 89–97, title I, § 121(a), July 30, 1965, 79 Stat. 351.)

§ 1396d. Definitions

For purposes of this subchapter—

(a) Medical assistance

The term ''medical assistance'' means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance or, in the case of medicare cost-sharing with respect to a qualified medicare beneficiary described in subsection (p)(1) of this section, if provided after the month in which the individual becomes such a beneficiary) for individuals, and, with respect to physicians' or dentists' services, at the option of the State, to individuals (other than individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title) not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter, who are—

(i) under the age of 21, or, at the option of the State, under the age of 20, 19, or 18 as the State may choose,

(ii) relatives specified in section 606(b)(1)[1] of this title with whom a child is living if such child is (or would, if needy, be) a dependent child under part A of subchapter IV of this chapter,

(iii) 65 years of age or older,

(iv) blind, with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,

(v) 18 years of age or older and permanently and totally disabled, with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,

(vi) persons essential (as described in the second sentence of this subsection) to individuals receiving aid or assistance under State plans approved under subchapter I, X, XIV, or XVI of this chapter,

(vii) blind or disabled as defined in section 1382c of this title, with respect to States not eligible to participate in the State plan program established under subchapter XVI of this chapter,

(viii) pregnant women,

(ix) individuals provided extended benefits under section 1396r–6 of this title,

(x) individuals described in section 1396a(u)(1) of this title,

(xi) individuals described in section 1396a(z)(1) of this title,

(xii) employed individuals with a medically improved disability (as defined in subsection (v) of this section), or

(xiii) individuals described in section 1396a(aa)[2] of this title,

but whose income and resources are insufficient to meet all of such cost—

(1) inpatient hospital services (other than services in an institution for mental diseases);

(2)(A) outpatient hospital services, (B) consistent with State law permitting such services, rural health clinic services (as defined in subsection (*l*)(1) of this section) and any other ambulatory services which are offered by a rural health clinic (as defined in subsection (*l*)(1) of this section) and which are otherwise included in the plan, and (C) Federally-qualified health center services (as defined in subsection (*l*)(2) of this section) and any other ambulatory services offered by a Federally-qualified health center and which are otherwise included in the plan;

(3) other laboratory and X-ray services;

(4)(A) nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older; (B) early and periodic screening, diagnostic, and treatment services (as defined in subsection (r) of this section) for individuals who are eligible under the plan and are under the age of 21; and (C) family planning services and supplies furnished (directly or under arrangements with others) to individuals of child-bearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies;

(5)(A) physicians' services furnished by a physician (as defined in section 1395x(r)(1) of this title), whether furnished in the office, the patient's home, a hospital, or a nursing facility, or elsewhere, and (B) medical and surgical services furnished by a dentist (described in section 1395x(r)(2) of this title) to the extent such services may be performed under State law either by a doctor of medicine or by a doctor of dental surgery or dental medicine and would be described in clause (A) if furnished by a physician (as defined in section 1395x(r)(1) of this title);

(6) medical care, or any other type of remedial care recognized under State law, fur-

[1] See References in Text note below.

[2] Probably means the subsec. (aa) of section 1396a relating to certain breast or cervical cancer patients.

nished by licensed practitioners within the scope of their practice as defined by State law;

(7) home health care services;

(8) private duty nursing services;

(9) clinic services furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician, including such services furnished outside the clinic by clinic personnel to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address;

(10) dental services;

(11) physical therapy and related services;

(12) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(13) other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level;

(14) inpatient hospital services and nursing facility services for individuals 65 years of age or over in an institution for mental diseases;

(15) services in an intermediate care facility for the mentally retarded (other than in an institution for mental diseases) for individuals who are determined, in accordance with section 1396a(a)(31) of this title, to be in need of such care;

(16) effective January 1, 1973, inpatient psychiatric hospital services for individuals under age 21, as defined in subsection (h) of this section;

(17) services furnished by a nurse-midwife (as defined in section 1395x(gg) of this title) which the nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider, and without regard to whether or not the services are performed in the area of management of the care of mothers and babies throughout the maternity cycle;

(18) hospice care (as defined in subsection (*o*) of this section);

(19) case management services (as defined in section 1396n(g)(2) of this title) and TB-related services described in section 1396a(z)(2)(F) of this title;

(20) respiratory care services (as defined in section 1396a(e)(9)(C) of this title);

(21) services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner (as defined by the Secretary) which the certified pediatric nurse practitioner or certified family nurse practitioner is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the certified pediatric nurse practitioner or certified family nurse practitioner is under the supervision of, or associated with, a physician or other health care provider;

(22) home and community care (to the extent allowed and as defined in section 1396t of this title) for functionally disabled elderly individuals;

(23) community supported living arrangements services (to the extent allowed and as defined in section 1396u of this title);

(24) personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are (A) authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and (C) furnished in a home or other location;

(25) primary care case management services (as defined in subsection (t) of this section);

(26) services furnished under a PACE program under section 1396u–4 of this title to PACE program eligible individuals enrolled under the program under such section;

(27) subject to subsection (x) of this section, primary and secondary medical strategies and treatment and services for individuals who have Sickle Cell Disease; and

(28) any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary,

except as otherwise provided in paragraph (16), such term does not include—

(A) any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for mental diseases.

For purposes of clause (vi) of the preceding sentence, a person shall be considered essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under subchapter I, X, XIV, or XVI of this chapter), and such person is determined, under such a State plan, to be essential to the well-being of such individual. The payment described in the first sentence may include expenditures for medicare cost-sharing and for premiums under part B of subchapter XVIII of this chapter for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for

medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title, and, except in the case of individuals 65 years of age or older and disabled individuals entitled to health insurance benefits under subchapter XVIII of this chapter who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums for medical or any other type of remedial care or the cost thereof. No service (including counseling) shall be excluded from the definition of ''medical assistance'' solely because it is provided as a treatment service for alcoholism or drug dependency.

(b) Federal medical assistance percentage; State percentage; Indian health care percentage

Subject to section 1396u–3(d) of this title, the term ''Federal medical assistance percentage'' for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum, (3) for purposes of this subchapter and subchapter XXI of this chapter, the Federal medical assistance percentage for the District of Columbia shall be 70 percent, and (4) the Federal medical assistance percentage shall be equal to the enhanced FMAP described in section 1397ee(b) of this title with respect to medical assistance provided to individuals who are eligible for such assistance only on the basis of section 1396a(a)(10)(A)(ii)(XVIII) of this title. The Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of section 1301(a)(8)(B) of this title. Notwithstanding the first sentence of this section, the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 1603 of title 25). Notwithstanding the first sentence of this subsection, in the case of a State plan that meets the condition described in subsection (u)(1) of this section, with respect to expenditures (other than expenditures under section 1396r–4 of this title) described in subsection (u)(2)(A) of this section or subsection (u)(3) of this section for the State for a fiscal year, and that do not exceed the amount of the State's available allotment under section 1397dd of this title, the Federal medical assistance percentage is equal to the enhanced FMAP described in section 1397ee(b) of this title.

(c) Nursing facility

For definition of the term ''nursing facility'', see section 1396r(a) of this title.

(d) Intermediate care facility for mentally retarded

The term ''intermediate care facility for the mentally retarded'' means an institution (or distinct part thereof) for the mentally retarded or persons with related conditions if—

(1) the primary purpose of such institution (or distinct part thereof) is to provide health or rehabilitative services for mentally retarded individuals and the institution meets such standards as may be prescribed by the Secretary;

(2) the mentally retarded individual with respect to whom a request for payment is made under a plan approved under this subchapter is receiving active treatment under such a program; and

(3) in the case of a public institution, the State or political subdivision responsible for the operation of such institution has agreed that the non-Federal expenditures in any calendar quarter prior to January 1, 1975, with respect to services furnished to patients in such institution (or distinct part thereof) in the State will not, because of payments made under this subchapter, be reduced below the average amount expended for such services in such institution in the four quarters immediately preceding the quarter in which the State in which such institution is located elected to make such services available under its plan approved under this subchapter.

(e) Physicians' services

In the case of any State the State plan of which (as approved under this subchapter)—

(1) does not provide for the payment of services (other than services covered under section 1396a(a)(12) of this title) provided by an optometrist; but

(2) at a prior period did provide for the payment of services referred to in paragraph (1);

the term ''physicians' services'' (as used in subsection (a)(5) of this section) shall include services of the type which an optometrist is legally authorized to perform where the State plan specifically provides that the term ''physicians' services'', as employed in such plan, includes services of the type which an optometrist is legally authorized to perform, and shall be reimbursed whether furnished by a physician or an optometrist.

(f) Nursing facility services

For purposes of this subchapter, the term ''nursing facility services'' means services which are or were required to be given an individual who needs or needed on a daily basis nursing care (provided directly by or requiring the supervision of nursing personnel) or other rehabilitation services which as a practical matter can only be provided in a nursing facility on an inpatient basis.

(g) Chiropractors' services

If the State plan includes provision of chiropractors' services, such services include only—

(1) services provided by a chiropractor (A) who is licensed as such by the State and (B) who meets uniform minimum standards promulgated by the Secretary under section 1395x(r)(5) of this title; and

(2) services which consist of treatment by means of manual manipulation of the spine which the chiropractor is legally authorized to perform by the State.

(h) Inpatient psychiatric hospital services for individuals under age 21

(1) For purposes of paragraph (16) of subsection (a) of this section, the term ''inpatient psychiatric hospital services for individuals under age 21'' includes only—

(A) inpatient services which are provided in an institution (or distinct part thereof) which is a psychiatric hospital as defined in section 1395x(f) of this title or in another inpatient setting that the Secretary has specified in regulations;

(B) inpatient services which, in the case of any individual (i) involve active treatment which meets such standards as may be prescribed in regulations by the Secretary, and (ii) a team, consisting of physicians and other personnel qualified to make determinations with respect to mental health conditions and the treatment thereof, has determined are necessary on an inpatient basis and can reasonably be expected to improve the condition, by reason of which such services are necessary, to the extent that eventually such services will no longer be necessary; and

(C) inpatient services which, in the case of any individual, are provided prior to (i) the date such individual attains age 21, or (ii) in the case of an individual who was receiving such services in the period immediately preceding the date on which he attained age 21, (I) the date such individual no longer requires such services, or (II) if earlier, the date such individual attains age 22;

(2) Such term does not include services provided during any calendar quarter under the State plan of any State if the total amount of the funds expended, during such quarter, by the State (and the political subdivisions thereof) from non-Federal funds for inpatient services included under paragraph (1), and for active psychiatric care and treatment provided on an outpatient basis for eligible mentally ill children, is less than the average quarterly amount of the funds expended, during the 4-quarter period ending December 31, 1971, by the State (and the political subdivisions thereof) from non-Federal funds for such services.

(i) Institution for mental diseases

The term ''institution for mental diseases'' means a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.

(j) State supplementary payment

The term ''State supplementary payment'' means any cash payment made by a State on a regular basis to an individual who is receiving supplemental security income benefits under subchapter XVI of this chapter or who would but for his income be eligible to receive such benefits, as assistance based on need in supplementation of such benefits (as determined by the Commissioner of Social Security), but only to the extent that such payments are made with respect to an individual with respect to whom supplemental security income benefits are payable under subchapter XVI of this chapter, or would but for his income be payable under that subchapter.

(k) Supplemental security income benefits

Increased supplemental security income benefits payable pursuant to section 211 of Public Law 93–66 shall not be considered supplemental security income benefits payable under subchapter XVI of this chapter.

***(l)* Rural health clinics**

(1) The terms ''rural health clinic services'' and ''rural health clinic'' have the meanings given such terms in section 1395x(aa) of this title, except that (A) clause (ii) of section 1395x(aa)(2) of this title shall not apply to such terms, and (B) the physician arrangement required under section 1395x(aa)(2)(B) of this title shall only apply with respect to rural health clinic services and, with respect to other ambulatory care services, the physician arrangement required shall be only such as may be required under the State plan for those services.

(2)(A) The term ''Federally-qualified health center services'' means services of the type described in subparagraphs (A) through (C) of section 1395x(aa)(1) of this title when furnished to an individual as an[3] patient of a Federally-qualified health center and, for this purpose, any reference to a rural health clinic or a physician described in section 1395x(aa)(2)(B) of this title is deemed a reference to a Federally-qualified health center or a physician at the center, respectively.

(B) The term ''Federally-qualified health center'' means an entity which—

(i) is receiving a grant under section 254b of this title,

(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and

(II) meets the requirements to receive a grant under section 254b of this title,

(iii) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant, including requirements of the Secretary that an entity may not be owned, controlled, or operated by another entity, or

(iv) was treated by the Secretary, for purposes of part B of subchapter XVIII of this chapter, as a comprehensive Federally funded health center as of January 1, 1990;

and includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93–638) [25 U.S.C. 450f et seq.] or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.] for the provision of primary health services. In applying clause (ii),[4] the Secretary may waive any re-

[3] So in original. Probably should be ''a''.

[4] So in original. Probably should be clause ''(iii),''. See References in Text note below.

quirement referred to in such clause for up to 2 years for good cause shown.

(m) Qualified family member

(1) Subject to paragraph (2), the term ''qualified family member'' means an individual (other than a qualified pregnant woman or child, as defined in subsection (n) of this section) who is a member of a family that would be receiving aid under the State plan under part A of subchapter IV of this chapter pursuant to section 607[5] of this title if the State had not exercised the option under section 607(b)(2)(B)(i)[5] of this title.

(2) No individual shall be a qualified family member for any period after September 30, 1998.

(n) "Qualified pregnant woman or child" defined

The term ''qualified pregnant woman or child'' means—

(1) a pregnant woman who—

(A) would be eligible for aid to families with dependent children under part A of subchapter IV of this chapter (or would be eligible for such aid if coverage under the State plan under part A of subchapter IV of this chapter included aid to families with dependent children of unemployed parents pursuant to section 607 of this title) if her child had been born and was living with her in the month such aid would be paid, and such pregnancy has been medically verified;

(B) is a member of a family which would be eligible for aid under the State plan under part A of subchapter IV of this chapter pursuant to section 607 of this title if the plan required the payment of aid pursuant to such section; or

(C) otherwise meets the income and resources requirements of a State plan under part A of subchapter IV of this chapter; and

(2) a child who has not attained the age of 19, who was born after September 30, 1983 (or such earlier date as the State may designate), and who meets the income and resources requirements of the State plan under part A of subchapter IV of this chapter.

(*o*) Optional hospice benefits

(1)(A) Subject to subparagraph (B), the term ''hospice care'' means the care described in section 1395x(dd)(1) of this title furnished by a hospice program (as defined in section 1395x(dd)(2) of this title) to a terminally ill individual who has voluntarily elected (in accordance with paragraph (2)) to have payment made for hospice care instead of having payment made for certain benefits described in section 1395d(d)(2)(A) of this title and for which payment may otherwise be made under subchapter XVIII of this chapter and intermediate care facility services under the plan. For purposes of such election, hospice care may be provided to an individual while such individual is a resident of a skilled nursing facility or intermediate care facility, but the only payment made under the State plan shall be for the hospice care.

(B) For purposes of this subchapter, with respect to the definition of hospice program under section 1395x(dd)(2) of this title, the Secretary may allow an agency or organization to make the assurance under subparagraph (A)(iii) of such section without taking into account any individual who is afflicted with acquired immune deficiency syndrome (AIDS).

(2) An individual's voluntary election under this subsection—

(A) shall be made in accordance with procedures that are established by the State and that are consistent with the procedures established under section 1395d(d)(2) of this title;

(B) shall be for such a period or periods (which need not be the same periods described in section 1395d(d)(1) of this title) as the State may establish; and

(C) may be revoked at any time without a showing of cause and may be modified so as to change the hospice program with respect to which a previous election was made.

(3) In the case of an individual—

(A) who is residing in a nursing facility or intermediate care facility for the mentally retarded and is receiving medical assistance for services in such facility under the plan,

(B) who is entitled to benefits under part A of subchapter XVIII of this chapter and has elected, under section 1395d(d) of this title, to receive hospice care under such part, and

(C) with respect to whom the hospice program under such subchapter and the nursing facility or intermediate care facility for the mentally retarded have entered into a written agreement under which the program takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual,

instead of any payment otherwise made under the plan with respect to the facility's services, the State shall provide for payment to the hospice program of an amount equal to the additional amount determined in section 1396a(a)(13)(B) of this title and, if the individual is an individual described in section 1396a(a)(10)(A) of this title, shall provide for payment of any coinsurance amounts imposed under section 1395e(a)(4) of this title.

(p) Qualified medicare beneficiary; medicare cost-sharing

(1) The term ''qualified medicare beneficiary'' means an individual—

(A) who is entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter (including an individual entitled to such benefits pursuant to an enrollment under section 1395i–2 of this title, but not including an individual entitled to such benefits only pursuant to an enrollment under section 1395i–2a of this title),

(B) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program, except as provided in paragraph (2)(D)) does not exceed an income level established by the State consistent with paragraph (2), and

(C) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of re-

[5] See References in Text note below.

sources that an individual may have and obtain benefits under that program.

(2)(A) The income level established under paragraph (1)(B) shall be at least the percent provided under subparagraph (B) (but not more than 100 percent) of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(B) Except as provided in subparagraph (C), the percent provided under this clause, with respect to eligibility for medical assistance on or after—

(i) January 1, 1989, is 85 percent,

(ii) January 1, 1990, is 90 percent, and

(iii) January 1, 1991, is 100 percent.

(C) In the case of a State which has elected treatment under section 1396a(f) of this title and which, as of January 1, 1987, used an income standard for individuals age 65 or older which was more restrictive than the income standard established under the supplemental security income program under subchapter XVI of this chapter, the percent provided under subparagraph (B), with respect to eligibility for medical assistance on or after—

(i) January 1, 1989, is 80 percent,

(ii) January 1, 1990, is 85 percent,

(iii) January 1, 1991, is 95 percent, and

(iv) January 1, 1992, is 100 percent.

(D)(i) In determining under this subsection the income of an individual who is entitled to monthly insurance benefits under subchapter II of this chapter for a transition month (as defined in clause (ii)) in a year, such income shall not include any amounts attributable to an increase in the level of monthly insurance benefits payable under such subchapter which have occurred pursuant to section 415(i) of this title for benefits payable for months beginning with December of the previous year.

(ii) For purposes of clause (i), the term ''transition month'' means each month in a year through the month following the month in which the annual revision of the official poverty line, referred to in subparagraph (A), is published.

(3) The term ''medicare cost-sharing'' means (subject to section 1396a(n)(2) of this title) the following costs incurred with respect to a qualified medicare beneficiary, without regard to whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan:

(A)(i) premiums under section 1395i–2 or 1395i–2a of this title, and

(ii) premiums under section 1395r of this title,[6]

(B) Coinsurance under subchapter XVIII of this chapter (including coinsurance described in section 1395e of this title).

(C) Deductibles established under subchapter XVIII of this chapter (including those described in section 1395e of this title and section 1395*l*(b) of this title).

(D) The difference between the amount that is paid under section 1395*l*(a) of this title and the amount that would be paid under such section if any reference to ''80 percent'' therein were deemed a reference to ''100 percent''.

Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1395mm of this title.

(4) Notwithstanding any other provision of this subchapter, in the case of a State (other than the 50 States and the District of Columbia)—

(A) the requirement stated in section 1396a(a)(10)(E) of this title shall be optional, and

(B) for purposes of paragraph (2), the State may substitute for the percent provided under subparagraph (B)[7] or[8] 1396a(a)(10)(E)(iii) of this title of such paragraph[7] any percent.

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirement of section 1396a(a)(10)(E) of this title in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(5)(A) The Secretary shall develop and distribute to States a simplified application form for use by individuals (including both qualified medicare beneficiaries and specified low-income medicare beneficiaries) in applying for medical assistance for medicare cost-sharing under this subchapter in the States which elect to use such form. Such form shall be easily readable by applicants and uniform nationally.

(B) In developing such form, the Secretary shall consult with beneficiary groups and the States.

(6) For provisions relating to outreach efforts to increase awareness of the availability of medicare cost-sharing, see section 1320b–14 of this title.

(q) Qualified severely impaired individual

The term ''qualified severely impaired individual'' means an individual under age 65—

(1) who for the month preceding the first month to which this subsection applies to such individual—

(A) received (i) a payment of supplemental security income benefits under section 1382(b) of this title on the basis of blindness or disability, (ii) a supplementary payment under section 1382e of this title or under section 212 of Public Law 93–66 on such basis, (iii) a payment of monthly benefits under section 1382h(a) of this title, or (iv) a supplementary payment under section 1382e(c)(3), and

(B) was eligible for medical assistance under the State plan approved under this subchapter; and

(2) with respect to whom the Commissioner of Social Security determines that—

(A) the individual continues to be blind or continues to have the disabling physical or

[6] So in original. The comma probably should be a period.

[7] So in original. The words ''of such paragraph'' probably should follow ''subparagraph (B)''.

[8] So in original. Probably should be ''or section''.

mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non-disability-related requirements for eligibility for benefits under subchapter XVI of this chapter,

(B) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments),

(C) the lack of eligibility for benefits under this subchapter would seriously inhibit his ability to continue or obtain employment, and

(D) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under subchapter XVI of this chapter (including any federally administered State supplementary payments), this subchapter, and publicly funded attendant care services (including personal care assistance) that would be available to him in the absence of such earnings.

In the case of an individual who is eligible for medical assistance pursuant to section 1382h(b) of this title in June, 1987, the individual shall be a qualified severely impaired individual for so long as such individual meets the requirements of paragraph (2).

(r) Early and periodic screening, diagnostic, and treatment services

The term ''early and periodic screening, diagnostic, and treatment services'' means the following items and services:

(1) Screening services—

(A) which are provided—

(i) at intervals which meet reasonable standards of medical and dental practice, as determined by the State after consultation with recognized medical and dental organizations involved in child health care and, with respect to immunizations under subparagraph (B)(iii), in accordance with the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of certain physical or mental illnesses or conditions; and

(B) which shall at a minimum include—

(i) a comprehensive health and developmental history (including assessment of both physical and mental health development),

(ii) a comprehensive unclothed physical exam,

(iii) appropriate immunizations (according to the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines) according to age and health history,

(iv) laboratory tests (including lead blood level assessment appropriate for age and risk factors), and

(v) health education (including anticipatory guidance).

(2) Vision services—

(A) which are provided—

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include diagnosis and treatment for defects in vision, including eyeglasses.

(3) Dental services—

(A) which are provided—

(i) at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

(4) Hearing services—

(A) which are provided—

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include diagnosis and treatment for defects in hearing, including hearing aids.

(5) Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.

Nothing in this subchapter shall be construed as limiting providers of early and periodic screening, diagnostic, and treatment services to providers who are qualified to provide all of the items and services described in the previous sentence or as preventing a provider that is qualified under the plan to furnish one or more (but not all) of such items or services from being qualified to provide such items and services as part of early and periodic screening, diagnostic, and treatment services. The Secretary shall, not later than July 1, 1990, and every 12 months thereafter, develop and set annual participation goals for each State for participation of individuals who are covered under the State plan under this subchapter in early and periodic screening, diagnostic, and treatment services.

(s) Qualified disabled and working individual

The term ''qualified disabled and working individual'' means an individual—

(1) who is entitled to enroll for hospital insurance benefits under part A of subchapter XVIII of this chapter under section 1395i–2a of this title;

(2) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program) does not exceed 200 percent of the official poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved;

(3) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual or a couple (in the case of an individual with a spouse) may have and obtain benefits for supplemental security income benefits under subchapter XVI of this chapter; and

(4) who is not otherwise eligible for medical assistance under this subchapter.

(t) Primary care case management services; primary care case manager; primary care case management contract; and primary care

(1) The term ''primary care case management services'' means case-management related services (including locating, coordinating, and monitoring of health care services) provided by a primary care case manager under a primary care case management contract.

(2) The term ''primary care case manager'' means any of the following that provides services of the type described in paragraph (1) under a contract referred to in such paragraph:

(A) A physician, a physician group practice, or an entity employing or having other arrangements with physicians to provide such services.

(B) At State option—

(i) a nurse practitioner (as described in subsection (a)(21) of this section);

(ii) a certified nurse-midwife (as defined in section 1395x(gg) of this title); or

(iii) a physician assistant (as defined in section 1395x(aa)(5) of this title).

(3) The term ''primary care case management contract'' means a contract between a primary care case manager and a State under which the manager undertakes to locate, coordinate, and monitor covered primary care (and such other covered services as may be specified under the contract) to all individuals enrolled with the manager, and which—

(A) provides for reasonable and adequate hours of operation, including 24-hour availability of information, referral, and treatment with respect to medical emergencies;

(B) restricts enrollment to individuals residing sufficiently near a service delivery site of the manager to be able to reach that site within a reasonable time using available and affordable modes of transportation;

(C) provides for arrangements with, or referrals to, sufficient numbers of physicians and other appropriate health care professionals to ensure that services under the contract can be furnished to enrollees promptly and without compromise to quality of care;

(D) prohibits discrimination on the basis of health status or requirements for health care services in enrollment, disenrollment, or reenrollment of individuals eligible for medical assistance under this subchapter;

(E) provides for a right for an enrollee to terminate enrollment in accordance with section 1396u–2(a)(4) of this title; and

(F) complies with the other applicable provisions of section 1396u–2 of this title.

(4) For purposes of this subsection, the term ''primary care'' includes all health care services customarily provided in accordance with State licensure and certification laws and regulations, and all laboratory services customarily provided by or through, a general practitioner, family medicine physician, internal medicine physician, obstetrician/gynecologist, or pediatrician.

(u) Conditions for State plans

(1) The conditions described in this paragraph for a State plan are as follows:

(A) The State is complying with the requirement of section 1397ee(d)(1) of this title.

(B) The plan provides for such reporting of information about expenditures and payments attributable to the operation of this subsection as the Secretary deems necessary in order to carry out the fourth sentence of subsection (b) of this section.

(2)(A) For purposes of subsection (b) of this section, the expenditures described in this subparagraph are expenditures for medical assistance for optional targeted low-income children described in subparagraph (B).

(B) For purposes of this paragraph, the term ''optional targeted low-income child'' means a targeted low-income child as defined in section 1397jj(b)(1) of this title (determined without regard to that portion of subparagraph (C) of such section concerning eligibility for medical assistance under this subchapter) who would not qualify for medical assistance under the State plan under this subchapter as in effect on March 31, 1997 (but taking into account the expansion of age of eligibility effected through the operation of section 1396a(*l*)(1)(D) of this title).

(3) For purposes of subsection (b) of this section, the expenditures described in this paragraph are expenditures for medical assistance for children who are born before October 1, 1983, and who would be described in section 1396a(*l*)(1)(D) of this title if they had been born on or after such date, and who are not eligible for such assistance under the State plan under this subchapter based on such State plan as in effect as of March 31, 1997.

(4) The limitations on payment under subsections (f) and (g) of section 1308 of this title shall not apply to Federal payments made under section 1396b(a)(1) of this title based on an enhanced FMAP described in section 1397ee(b) of this title.

(v) Employed individual with a medically improved disability

(1) The term ''employed individual with a medically improved disability'' means an individual who—

(A) is at least 16, but less than 65, years of age;

(B) is employed (as defined in paragraph (2));

(C) ceases to be eligible for medical assistance under section 1396a(a)(10)(A)(ii)(XV) of this title because the individual, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer be eligible for benefits under section 423(d) or 1382c(a)(3) of this title; and

(D) continues to have a severe medically determinable impairment, as determined under regulations of the Secretary.

(2) For purposes of paragraph (1), an individual is considered to be ''employed'' if the individual—

(A) is earning at least the applicable minimum wage requirement under section 206 of title 29 and working at least 40 hours per month; or

(B) is engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, as defined by the State and approved by the Secretary.

(w) Independent foster care adolescent

(1) For purposes of this subchapter, the term ''independent foster care adolescent'' means an individual—

(A) who is under 21 years of age;

(B) who, on the individual's 18th birthday, was in foster care under the responsibility of a State; and

(C) whose assets, resources, and income do not exceed such levels (if any) as the State may establish consistent with paragraph (2).

(2) The levels established by a State under paragraph (1)(C) may not be less than the corresponding levels applied by the State under section 1396u–1(b) of this title.

(3) A State may limit the eligibility of independent foster care adolescents under section 1396a(a)(10)(A)(ii)(XVII) of this title to those individuals with respect to whom foster care maintenance payments or independent living services were furnished under a program funded under part E of subchapter IV of this chapter before the date the individuals attained 18 years of age.

(x) Strategies, treatment, and services

For purposes of subsection (a)(27) of this section, the strategies, treatment, and services described in that subsection include the following:

(1) Chronic blood transfusion (with deferoxamine chelation) to prevent stroke in individuals with Sickle Cell Disease who have been identified as being at high risk for stroke.

(2) Genetic counseling and testing for individuals with Sickle Cell Disease or the sickle cell trait to allow health care professionals to treat such individuals and to prevent symptoms of Sickle Cell Disease.

(3) Other treatment and services to prevent individuals who have Sickle Cell Disease and who have had a stroke from having another stroke.

(Aug. 14, 1935, ch. 531, title XIX, §1905, as added Pub. L. 89–97, title I, §121(a), July 30, 1965, 79 Stat. 351; amended Pub. L. 90–248, title II, §§230, 233, 241(f)(6), 248(e), title III, §302(a), Jan. 2, 1968, 81 Stat. 905, 917, 919, 929; Pub. L. 92–223, §4(a), Dec. 28, 1971, 85 Stat. 809; Pub. L. 92–603, title II, §§212(a), 247(b), 275(a), 278(a)(21)–(23), 280, 297(a), 299, 299B, 299E(b), 299L, Oct. 30, 1972, 86 Stat. 1384, 1425, 1452–1454, 1459–1462, 1464; Pub. L. 93–233, §§13(a)(13)–(88), 18(w), (x)(7)–(10), (y)(2), Dec. 31, 1973, 87 Stat. 963, 964, 972, 973; Pub. L. 94–437, title IV, §402(e), Sept. 30, 1976, 90 Stat. 1410; Pub. L. 95–210, §2(a), (b), Dec. 13, 1977, 91 Stat. 1488; Pub. L. 95–292, §8(a), (b), June 13, 1978, 92 Stat. 316; Pub. L. 96–473, §6(k), Oct. 19, 1980, 94 Stat. 2266; Pub. L. 96–499, title IX, §965(a), Dec. 5, 1980, 94 Stat. 2651; Pub. L. 97–35, title XXI, §§2162(a)(2), 2172(b), Aug. 13, 1981, 95 Stat. 806, 808; Pub. L. 97–248, title I, §§136(c), 137(b)(17), (18), (f), Sept. 3, 1982, 96 Stat. 376, 379, 381; Pub. L. 98–369, div. B, title III, §§2335(f), 2340(b), 2361(b), 2371(a), 2373(b)(15)–(20), July 18, 1984, 98 Stat. 1091, 1093, 1104, 1110, 1112; Pub. L. 99–272, title IX, §§9501(a), 9505(a), 9511(a), Apr. 7, 1986, 100 Stat. 201, 208, 212; Pub. L. 99–509, title IX, §§9403(b), (d), (g)(3), 9404(b), 9408(c)(1), 9435(b)(2), Oct. 21, 1986, 100 Stat. 2053, 2054, 2056, 2061, 2070; Pub. L. 99–514, title XVIII, §1895(c)(3)(A), Oct. 22, 1986, 100 Stat. 2935; Pub. L. 100–203, title IV, §§4073(d), 4101(c)(1), 4103(a), 4105(a), 4114, 4118(p)(8), 4211(e), (f), (h)(6), Dec. 22, 1987, 101 Stat. 1330–119, 1330–141, 1330–146, 1330–147, 1330–152, 1330–159, 1330–204 to 1330–206; Pub. L. 100–360, title III, §301(a)(2)–(d), (g)(2), title IV, §411(h)(4)(E), (k)(4), (8), (14)(A), July 1, 1988, 102 Stat. 748–750, 787, 791, 794, 798; Pub. L. 100–485, title III, §303(b)(2), title IV, §401(d)(2), title VI, §608(d)(14)(A)–(G), (J), (f)(3), Oct. 13, 1988, 102 Stat. 2392, 2396, 2415, 2416, 2424; Pub. L. 100–647, title VIII, §8434(a), (b)(3), (4), Nov. 10, 1988, 102 Stat. 3805; Pub. L. 101–234, title II, §201(b), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§6402(c)(1), 6403(a), (c), (d)(2), 6404(a), (b), 6405(a), 6408(d)(2), (4)(A), (B), Dec. 19, 1989, 103 Stat. 2261–2265, 2268, 2269; Pub. L. 101–508, title IV, §§4402(d)(2), 4501(a), (c), (e)(1), 4601(a)(2), 4704(c), (d), (e)(1), 4705(a), 4711(a), 4712(a), 4713(b), 4717, 4719(a), 4721(a), 4722, 4755(a)(1)(A), Nov. 5, 1990, 104 Stat. 1388–163 to 1388–166, 1388–172, 1388–174, 1388–187, 1388–191, 1388–193, 1388–194, 1388–209; Pub. L. 103–66, title XIII, §§13601(a), 13603(e), 13605(a), 13606(a), 13631(f)(2), (g)(1), Aug. 10, 1993, 107 Stat. 612, 620, 621, 644, 645; Pub. L. 103–296, title I, §108(d)(2), (3), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 104–299, §4(b)(2), Oct. 11, 1996, 110 Stat. 3645; Pub. L. 105–33, title IV, §§4702(a), 4711(c)(1), 4712(d)(1), 4714(a)(2), 4725(b)(1), 4732(b), 4802(a)(1), 4911(a), Aug. 5, 1997, 111 Stat. 494, 508–510, 518, 520, 538, 570; Pub. L. 105–100, title I, §162(1), (2), Nov. 19, 1997, 111 Stat. 2188; Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §§605(a), 608(*l*), (m), (aa)(3)], Nov. 29, 1999, 113 Stat. 1536, 1501A–396 to 1501A–398; Pub. L. 106–169, title I, §121(a)(2), (c)(5), Dec. 14, 1999, 113 Stat. 1829, 1830; Pub. L. 106–170, title II, §201(a)(2)(B), (C), Dec. 17, 1999, 113 Stat. 1892; Pub. L. 106–354, §2(a)(4), (c), Oct. 24, 2000, 114 Stat. 1382, 1384; Pub. L. 106–554, §1(a)(6) [title VII, §709(a), title VIII, §802(d)(1), (2), title IX, §911(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–578, 2763A–581, 2763A–584; Pub. L. 108–357, title VII, §712(a)(1), Oct. 22, 2004, 118 Stat. 1558.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsecs. (a), (m)(1), and (n), is classified to section 601 et seq. of this title.

Parts A and B of subchapter XVIII of this chapter, referred to in subsecs. (a), (*l*)(2)(B)(iv), (*o*)(3)(B), (p)(1)(A), and (s)(1), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 606 of this title, referred to in subsec. (a)(ii), was repealed and a new section 606 enacted by Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (b)(1).

Section 211 of Pub. L. 93–66, referred to in subsec. (k), is section 211 of Pub. L. 93–66, July 9, 1973, 87 Stat. 152, as amended, which is set out as a note under section 1382 of this title.

The Indian Self-Determination Act, referred to in subsec. (*l*)(2)(B), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (*l*)(2)(B), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§1651 et seq.) of chapter 18 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

Clause (ii), referred to in subsec. (*l*)(2)(B), was redesignated as cl. (iii) by Pub. L. 101–508, title IV, §4704(c)(3), Nov. 5, 1990, 104 Stat. 1388–172.

Section 607 of this title, referred to in subsec. (m)(1), was repealed and a new section 607 enacted by Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (b)(2)(B)(i).

Section 212 of Public Law 93–66, referred to in subsec. (q)(1)(A), is section 212 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

2004—Subsec. (a)(27), (28). Pub. L. 108–357, §712(a)(1)(A), added par. (27) and redesignated former par. (27) as (28).

Subsec. (x). Pub. L. 108–357, §712(a)(1)(B), added subsec. (x).

2000—Subsec. (a)(xiii). Pub. L. 106–354, §2(a)(4), added cl. (xiii).

Subsec. (b). Pub. L. 106–554, §1(a)(6) [title VIII, §802(d)(1)], in last sentence, substituted ''the State's available allotment under section 1397dd of this title'' for ''the State's allotment under section 1397dd of this title (not taking into account reductions under section 1397dd(d)(2) of this title) for the fiscal year reduced by the amount of any payments made under section 1397ee of this title to the State from such allotment for such fiscal year''.

Pub. L. 106–354, §2(c), in first sentence, struck out ''and'' before ''(3)'' and inserted before period at end '', and (4) the Federal medical assistance percentage shall be equal to the enhanced FMAP described in section 1397ee(b) of this title with respect to medical assistance provided to individuals who are eligible for such assistance only on the basis of section 1396a(a)(10)(A)(ii)(XVIII) of this title''.

Subsec. (p)(5). Pub. L. 106–554, §1(a)(6) [title VII, §709(a)], added par. (5).

Subsec. (p)(6). Pub. L. 106–554, §1(a)(6) [title IX, §911(a)(2)], added par. (6).

Subsec. (u)(1)(B). Pub. L. 106–554, §1(a)(6) [title VIII, §802(d)(2)], struck out ''and section 1397dd(d) of this title'' before period at end.

1999—Subsec. (a)(xii). Pub. L. 106–170, §201(a)(2)(C), added cl. (xii).

Subsec. (a)(15). Pub. L. 106–113, §1000(a)(6) [title VI, §608(aa)(3)], substituted ''1396a(a)(31) of this title'' for ''1396a(a)(31)(A) of this title''.

Subsec. (b). Pub. L. 106–113, §1000(a)(6) [title VI, §605(a)], inserted ''(other than expenditures under section 1396r–4 of this title)'' after ''with respect to expenditures'' in last sentence.

Subsec. (b)(1). Pub. L. 106–113, §1000(a)(6) [title VI, §608(*l*)], substituted ''83 per centum,'' for ''83 per centum,,''.

Subsec. (*l*)(2)(B). Pub. L. 106–113, §1000(a)(6) [title VI, §608(m)], substituted ''an entity'' for ''a entity'' in introductory provisions.

Subsec. (v). Pub. L. 106–169, §121(c)(5)(A), redesignated subsec. (v), related to independent foster care adolescent, as (w).

Pub. L. 106–169, §121(a)(2), added subsec. (v), related to independent foster care adolescent.

Pub. L. 106–170, §201(a)(2)(B), added subsec. (v).

Subsec. (w). Pub. L. 106–169, §121(c)(5), redesignated subsec. (v) as (w) and substituted ''1396a(a)(10)(A)(ii)(XVII)'' for ''1396a(a)(10)(A)(ii)(XV)''.

1997—Subsec. (a)(25). Pub. L. 105–33, §4702(a)(1), added par. (25). Former par. (25) redesignated (26).

Subsec. (a)(26). Pub. L. 105–33, §4802(a)(1), added par. (26). Former par. (26) redesignated (27).

Pub. L. 105–33, §4702(a)(1)(B), redesignated par. (25) as (26) and substituted comma for period at end.

Subsec. (a)(27). Pub. L. 105–33, §4802(a)(1)(B), redesignated par. (26) as (27).

Subsec. (b). Pub. L. 105–100, §162(1), inserted ''for the State for a fiscal year, and that do not exceed the amount of the State's allotment under section 1397dd of this title (not taking into account reductions under section 1397dd(d)(2) of this title) for the fiscal year reduced by the amount of any payments made under section 1397ee of this title to the State from such allotment for such fiscal year,'' after ''subsection (u)(3) of this section''.

Pub. L. 105–33, §4911(a)(1), inserted at end ''Notwithstanding the first sentence of this subsection, in the case of a State plan that meets the condition described in subsection (u)(1) of this section, with respect to expenditures described in subsection (u)(2)(A) of this section or subsection (u)(3) of this section the Federal medical assistance percentage is equal to the enhanced FMAP described in section 1397ee(b) of this title.''

Pub. L. 105–33, §4732(b), substituted ''Subject to section 1396u–3(d) of this title, the term'' for ''The term''.

Pub. L. 105–33, §4725(b)(1), in first sentence, substituted '', (2)'' for ''and (2)'' and inserted before period '', and (3) for purposes of this subchapter and subchapter XXI of this chapter, the Federal medical assistance percentage for the District of Columbia shall be 70 percent''.

Subsec. (*l*)(2)(B)(iii). Pub. L. 105–33, §4712(d)(1), inserted ''including requirements of the Secretary that an entity may not be owned, controlled, or operated by another entity,'' after ''such a grant,''.

Subsec. (*o*)(3). Pub. L. 105–33, §4711(c)(1), substituted ''amount determined in section 1396a(a)(13)(B) of this title'' for ''amount described in section 1396a(a)(13)(D) of this title'' in concluding provisions.

Subsec. (p)(3). Pub. L. 105–33, §4714(a)(2), inserted ''(subject to section 1396a(n)(2) of this title)'' after ''means'' in introductory provisions.

Subsec. (t). Pub. L. 105–33, §4702(a)(2), added subsec. (t).

Subsec. (u). Pub. L. 105–33, §4911(a)(2), added subsec. (u).

Subsec. (u)(1)(B). Pub. L. 105–100, §162(2)(A), substituted ''the fourth sentence of subsection (b) of this section'' for ''paragraph (2)''.

Subsec. (u)(2)(A). Pub. L. 105–100, §162(2)(B), substituted ''subparagraph (B)'' for ''subparagraph (C), but not in excess, for a State for a fiscal year, of the amount described in subparagraph (B) for the State and fiscal year''.

Subsec. (u)(2)(B), (C). Pub. L. 105–100, §162(2)(C), added subpar. (B) and struck out former subpars. (B) and (C) which read as follows:

''(B) The amount described in this subparagraph, for a State for a fiscal year, is the amount of the State's

allotment under section 1397dd of this title (not taking into account reductions under section 1397dd(d)(2) of this title) for the fiscal year reduced by the amount of any payments made under section 1397ee of this title to the State from such allotment for such fiscal year.

''(C) For purposes of this paragraph, the term 'optional targeted low-income child' means a targeted low-income child as defined in section 1397jj(b)(1) of this title who would not qualify for medical assistance under the State plan under this subchapter based on such plan as in effect on April 15, 1997 (but taking into account the expansion of age of eligibility effected through the operation of section 1396a(*l*)(2)(D) of this title).''

Subsec. (u)(3). Pub. L. 105–100, §162(2)(D), substituted ''described in this paragraph'' for ''described in this subparagraph'' and ''March 31, 1997'' for ''April 15, 1997''.

Subsec. (u)(4). Pub. L. 105–100, §162(2)(E), added par. (4).

1996—Subsec. (*l*)(2)(B)(i), (ii)(II). Pub. L. 104–299 substituted ''section 254b of this title'' for ''section 254b, 254c, 256, or 256a of this title''.

1994—Subsecs. (j), (q)(2). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

1993—Subsec. (a)(xi). Pub. L. 103–66, §13603(e)(1)–(3), added cl. (xi).

Subsec. (a)(7). Pub. L. 103–66, §13601(a)(1), struck out ''including personal care services (A) prescribed by a physician for an individual in accordance with a plan of treatment, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, (C) supervised by a registered nurse, and (D) furnished in a home or other location; but not including such services furnished to an inpatient or resident of a nursing facility'' after ''services''.

Subsec. (a)(17). Pub. L. 103–66, §13605(a), inserted before semicolon at end '', and without regard to whether or not the services are performed in the area of management of the care of mothers and babies throughout the maternity cycle''.

Subsec. (a)(19). Pub. L. 103–66, §13603(e)(4), amended par. (19) generally, inserting reference to TB-related services described in section 1396a(z)(2)(F) of this title.

Subsec. (a)(21). Pub. L. 103–66, §13601(a)(2), struck out ''and'' at end.

Subsec. (a)(22). Pub. L. 103–66, §13601(a)(4), redesignated par. (23) as (22). Former par. (22) redesignated (25).

Subsec. (a)(23). Pub. L. 103–66, §13601(a)(4), redesignated par. (24) as (23). Former par. (23) redesignated (22).

Subsec. (a)(24). Pub. L. 103–66, §13601(a)(5), added par. (24). Former par. (24) redesignated (23).

Pub. L. 103–66, §13601(a)(3), which directed amendment of par. (24) by substituting semicolon for comma at end, was executed by substituting semicolon for period at end to reflect the probable intent of Congress.

Subsec. (a)(25). Pub. L. 103–66, §13601(a)(4), redesignated par. (22) as (25), transferred such par. to appear after par. (23), and substituted period for semicolon at end.

Subsec. (*l*)(2)(B). Pub. L. 103–66, §13631(f)(2)(B), in concluding provisions, inserted ''or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act for the provision of primary health services'' before ''. In applying clause''.

Subsec. (*l*)(2)(B)(i). Pub. L. 103–66, §13631(f)(2)(A), substituted ''256, or 256a'' for ''or 256''.

Pub. L. 103–66, §13606(a)(1), struck out ''or'' at end.

Subsec. (*l*)(2)(B)(ii). Pub. L. 103–66, §13631(f)(2)(A), substituted ''256, or 256a'' for ''or 256'' in subcl. (II).

Pub. L. 103–66, §13606(a)(2), (3), realigned margin and substituted a comma for semicolon at end.

Subsec. (*l*)(2)(B)(iv). Pub. L. 103–66, §13606(a)(4), (5), added cl. (iv).

Subsec. (r)(1)(A)(i). Pub. L. 103–66, §13631(g)(1)(A), inserted ''and, with respect to immunizations under subparagraph (B)(iii), in accordance with the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines'' after ''child health care''.

Subsec. (r)(1)(B)(iii). Pub. L. 103–66, §13631(g)(1)(B), inserted ''(according to the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines)'' after ''appropriate immunizations''.

1990—Subsec. (a). Pub. L. 101–508, §4722, inserted at end ''No service (including counseling) shall be excluded from the definition of 'medical assistance' solely because it is provided as a treatment service for alcoholism or drug dependency.''

Pub. L. 101–508, §4402(d)(2), inserted at end ''The payment described in the first sentence may include expenditures for medicare cost-sharing and for premiums under part B of subchapter XVIII of this chapter for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title, and, except in the case of individuals 65 years of age or older and disabled individuals entitled to health insurance benefits under subchapter XVIII of this chapter who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums for medical or any other type of remedial care or the cost thereof.''

Subsec. (a)(x). Pub. L. 101–508, §4713(b), added cl. (x).

Subsec. (a)(2)(C). Pub. L. 101–508, §4704(e)(1), repealed Pub. L. 101–239, §6402(c)(1). See 1989 Amendment note below.

Subsec. (a)(7). Pub. L. 101–508, §4721(a), substituted ''services including personal care services'' for ''services'' and added subpars. (A) to (D).

Subsec. (a)(13). Pub. L. 101–508, §4719(a), inserted before semicolon at end '', including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level''.

Subsec. (a)(22). Pub. L. 101–508, §4711(a)(1), which directed amendment of par. (22) by striking ''and'' at end, could not be executed because the word did not appear.

Subsec. (a)(23). Pub. L. 101–508, §4712(a)(1), inserted ''and'' after semicolon at end.

Pub. L. 101–508, §4711(a)(2), (3), which directed amendment of subsec. (a) by redesignating par. (23) as (24) and adding a new par. (23), was executed by adding the new par. (23), there being no former par. (23).

Subsec. (a)(24). Pub. L. 101–508, §4712(a)(2), (3), which directed amendment of subsec. (a) by redesignating par. (24) as (25) and adding a new par. (24), was executed by adding the new par. (24), there being no former par. (24).

Subsec. (h)(1)(A). Pub. L. 101–508, §4755(a)(1)(A), inserted ''or in another inpatient setting that the Secretary has specified in regulations'' after ''section 1395x(f) of this title''.

Subsec. (*l*)(2)(A). Pub. L. 101–508, §4704(c)(1), substituted ''patient'' for ''outpatient''.

Subsec. (*l*)(2)(B). Pub. L. 101–508, §4704(d)(2), which directed amendment of subpar. (B) by inserting ''and includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93–638).'' after and below cl. (ii), was executed by inserting the new language after cl. (iii) to reflect the probable intent of Congress and the intervening redesignation of former cl. (ii) as (iii) by Pub. L. 101–508, §4704(c)(3). See below.

Pub. L. 101–508, §4704(c)(2), substituted ''entity'' for ''facility'' in introductory provisions.

Subsec. (*l*)(2)(B)(ii), (iii). Pub. L. 101–508, §4704(c)(3), (d)(1), added cl. (ii), redesignated former cl. (ii) as (iii), and substituted comma for period at end of cl. (iii).

Subsec. (n)(2). Pub. L. 101–508, § 4601(a)(2), substituted ''age of 19'' for ''age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)''.

Subsec. (*o*)(1)(A). Pub. L. 101–508, § 4717, inserted ''and for which payment may otherwise be made under subchapter XVIII of this chapter'' after ''section 1395d(d)(2)(A) of this title''.

Subsec. (*o*)(3). Pub. L. 101–508, § 4705(a)(1), struck out ''a State which elects not to provide medical assistance for hospice care, but provides medical assistance for skilled nursing or intermediate care facility services with respect to'' after ''In the case of'' in introductory provisions.

Pub. L. 101–508, § 4705(a)(3), (4), in concluding provisions, substituted ''the additional amount described in section 1396a(a)(13)(D) of this title'' for ''the amounts allocated under the plan for room and board in the facility, in accordance with the rates established under section 1396a(a)(13) of this title,'' and struck out at end ''For purposes of this paragraph and section 1396a(a)(13)(D) of this title, the term 'room and board' includes performance of personal care services, including assistance in activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervising and assisting in the use of durable medical equipment and prescribed therapies.''

Subsec. (*o*)(3)(A), (C). Pub. L. 101–508, § 4705(a)(2), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing or intermediate care facility''.

Subsec. (p)(1)(B). Pub. L. 101–508, § 4501(e)(1)(A), which directed amendment of subpar. (B) by inserting '', except as provided in paragraph (2)(D)'' after ''supplementary social security income program'', was executed by inserting the new language after ''supplemental security income program'' to reflect the probable intent of Congress.

Subsec. (p)(2)(B). Pub. L. 101–508, § 4501(a)(1), inserted ''and'' at end of cl. (ii), substituted ''100 percent.'' for ''95 percent, and'' in cl. (iii), and struck out cl. (iv) which read as follows: ''January 1, 1992, is 100 percent.''

Subsec. (p)(2)(C). Pub. L. 101–508, § 4501(a)(2), substituted ''95 percent, and'' for ''90 percent,'' in cl. (iii) and ''100 percent.'' for ''95 percent, and'' in cl. (iv) and struck out cl. (v) which read as follows: ''January 1, 1993, is 100 percent.''

Subsec. (p)(2)(D). Pub. L. 101–508, § 4501(e)(1)(B), added subpar. (D).

Subsec. (p)(4). Pub. L. 101–508, § 4501(c)(2), inserted at end ''In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirement of section 1396a(a)(10)(E) of this title in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.''

Subsec. (p)(4)(B). Pub. L. 101–508, § 4501(c)(1), inserted ''or 1396a(a)(10)(E)(iii) of this title'' after ''subparagraph (B)''.

1989—Subsec. (a)(2)(B). Pub. L. 101–239, § 6404(a)(2), substituted ''subsection (*l*)(1)'' for ''subsection (*l*)'' in two places.

Subsec. (a)(2)(C). Pub. L. 101–239, § 6404(a)(3), added cl. (C) relating to Federally-qualified health center services.

Pub. L. 101–239, § 6402(c)(1), which directed addition of cl. (C) relating to ambulatory services, was repealed by Pub. L. 101–508, § 4704(e)(1).

Subsec. (a)(4)(B). Pub. L. 101–239, § 6403(d)(2), amended cl. (B) generally. Prior to amendment, cl. (B) read as follows: ''effective July 1, 1969, such early and periodic screening and diagnosis of individuals who are eligible under the plan and are under the age of 21 to ascertain their physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary; and''.

Subsec. (a)(21), (22). Pub. L. 101–239, § 6405(a), added par. (21) and redesignated former par. (21) as (22).

Subsec. (*l*). Pub. L. 101–239, § 6404(b), designated existing provisions as par. (1), redesignated former cls. (1) and (2) as (A) and (B), respectively, and added par. (2).

Subsec. (p)(1)(A). Pub. L. 101–239, § 6408(d)(4)(B), inserted '', but not including an individual entitled to such benefits only pursuant to an enrollment under section 1395i–2a of this title'' after ''section 1395i–2 of this title''.

Subsec. (p)(3)(A). Pub. L. 101–239, § 6408(d)(4)(A)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Premiums under subchapter XVIII of this chapter (including under part B and, if applicable, under section 1395i–2 of this title).''

Subsec. (p)(3)(A)(i). Pub. L. 101–239, § 6408(d)(4)(A)(ii), substituted ''section 1395i–2 or 1395i–2a'' for ''section 1395i–2''.

Subsec. (p)(3)(C). Pub. L. 101–234, § 201(b)(1), substituted ''Deductibles'' for ''Subject to paragraph (4), deductibles'' and ''section 1395e of this title and section 1395*l*(b) of this title)'' for ''section 1395e of this title, section 1395*l*(b) of this title, and section 1395m(c)(1) of this title''.

Subsec. (p)(4), (5). Pub. L. 101–234, § 201(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''In a State which provides medical assistance for prescribed drugs under subsection (a)(12) of this section, instead of providing to qualified medicare beneficiaries, under paragraph (3)(C), medicare cost-sharing with respect to the annual deductible for covered outpatient drugs under section 1395m(c)(1) of this title, the State may provide to such beneficiaries, before charges for covered outpatient drugs for a year reach such deductible amount, benefits for prescribed drugs in the same amount, duration, and scope as the benefits made available under the State plan for individuals described in section 1396a(a)(10)(A)(i) of this title.''

Subsec. (r). Pub. L. 101–239, § 6403(c), inserted at end ''The Secretary shall, not later than July 1, 1990, and every 12 months thereafter, develop and set annual participation goals for each State for participation of individuals who are covered under the State plan under this subchapter in early and periodic screening, diagnostic, and treatment services.''

Pub. L. 101–239, § 6403(a), added subsec. (r).

Subsec. (s). Pub. L. 101–239, § 6408(d)(2), added subsec. (s).

1988—Subsec. (a). Pub. L. 100–647, § 8434(b)(3), substituted ''in the case of medicare cost-sharing with respect to a qualified medicare beneficiary'' for ''in the case of a qualified medicare beneficiary'' in introductory provisions.

Subsec. (a)(ix). Pub. L. 100–485, § 303(b)(2), added cl. (ix).

Subsec. (a)(5)(B). Pub. L. 100–360, § 411(k)(4), substituted ''described in clause (A) if'' for ''described in subparagraph (A) if''.

Subsec. (a)(17). Pub. L. 100–360, § 411(h)(4)(E), amended Pub. L. 100–203, § 4073(d)(1), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100–360, § 411(k)(14)(A), added subsec. (i).

Subsec. (m). Pub. L. 100–485, § 401(d)(2), added subsec. (m).

Subsec. (*o*)(1). Pub. L. 100–360, § 411(k)(8)(A), made clarifying amendment to directory language of Pub. L. 100–203, § 4114, see 1987 Amendment note below.

Subsec. (*o*)(1)(B). Pub. L. 100–360, § 411(k)(8)(B), struck out ''only'' after ''For purposes of this subchapter'' and substituted ''immune deficiency syndrome (AIDS)'' for ''immunodeficiency syndrome''.

Subsec. (*o*)(3). Pub. L. 100–485, § 608(f)(3), realigned the margin of par. (3).

Subsec. (p)(1). Pub. L. 100–647, § 8434(a), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read: ''who, but for section 1396a(a)(10)(E) of this title, is not eligible for medical assistance under the plan,''.

Subsec. (p)(1)(B). Pub. L. 100–360, § 301(a)(2), struck out ''and the election of the State'' after ''1396a(a)(10)(E) of this title''.

Subsec. (p)(1)(C). Pub. L. 100–360, § 301(c)(1), as amended by Pub. L. 100–485, § 608(d)(14)(E)(i), substituted ''paragraph (2)'' for ''paragraph (2)(A)''.

Subsec. (p)(1)(D). Pub. L. 100–360, § 301(c)(2), as amended by Pub. L. 100–485, § 608(d)(14)(E)(ii), substituted ''twice'' for ''(except as provided in paragraph (2)(B))''.

Subsec. (p)(2)(A). Pub. L. 100–647, § 8434(b)(4), substituted ''paragraph (1)(B)'' for ''paragraph (1)(C)''.

Pub. L. 100–360, § 301(b)(1), as amended by Pub. L. 100–485, § 608(d)(14)(A), substituted ''shall be at least the percent provided under subparagraph (B) (but not more than 100 percent)'' for ''may not exceed a percentage (not more than 100 percent)''.

Pub. L. 100–360, § 301(c)(3)(A), which directed amendment of subpar. (A) by striking ''(2)(A)'' and inserting ''(2)'', was repealed by Pub. L. 100–485, § 608(d)(14)(E)(iii).

Pub. L. 100–360, § 301(b)(2), which directed amendment of subpar. (A) by inserting ''(i)'' after ''(2)(A)'', was repealed by Pub. L. 100–485, § 608(d)(14)(B).

Subsec. (p)(2)(B). Pub. L. 100–360, § 301(b)(2), formerly § 301(b)(3), as renumbered and amended by Pub. L. 100–485, § 608(d)(14)(B)–(D)(ii), added subpar. (B) and struck out former subpar. (B) which read as follows: ''In the case of a State that provides medical assistance to individuals not described in section 1396a(a)(10)(A) of this title and at the State's option, the State may use under paragraph (1)(D) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1396a(a)(10)(A) of this title.''

Pub. L. 100–360, § 301(c)(3)(B), which directed amendment of par. (2) by striking subpar. (B), was repealed by Pub. L. 100–485, § 608(d)(14)(E)(iii).

Subsec. (p)(2)(C). Pub. L. 100–360, § 301(b)(2), formerly § 301(b)(3), as renumbered and amended by Pub. L. 100–485, § 608(d)(14)(B), (C), (D)(i), (iii), added subpar. (C).

Subsec. (p)(3). Pub. L. 100–360, § 301(d)(1), as added by Pub. L. 100–485, § 608(d)(14)(G)(ii), inserted ''without regard to whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan'' after ''qualified medicare beneficiary'' in introductory provisions.

Subsec. (p)(3)(A). Pub. L. 100–360, § 301(d)(2), formerly § 301(d)(1), as renumbered by Pub. L. 100–485, § 608(d)(14)(G)(i), substituted ''under subchapter XVIII of this chapter (including under part B and, if applicable, under section 1395i–2 of this title)'' for ''under part B and (if applicable) under section 1395i–2 of this title''.

Subsec. (p)(3)(B). Pub. L. 100–360, § 301(d)(3), formerly § 301(d)(2), as renumbered by Pub. L. 100–485, § 608(d)(14)(G)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Deductibles and coinsurance described in section 1395e of this title.''

Subsec. (p)(3)(C). Pub. L. 100–360, § 301(d)(3), formerly § 301(d)(2), as renumbered and amended by Pub. L. 100–485, § 608(d)(14)(F), (G)(i), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The annual deductible described in section 1395*l*(b) of this title.''

Subsec. (p)(4). Pub. L. 100–360, § 301(d)(4), formerly § 301(d)(3), as renumbered by Pub. L. 100–485, § 618(d)(14)(G)(i), added par. (4).

Subsec. (p)(5). Pub. L. 100–360, § 301(g)(2), as amended by Pub. L. 100–485, § 608(d)(14)(J), added par. (5).

1987—Subsec. (a)(4)(A). Pub. L. 100–203, § 4211(f), struck out ''skilled'' before ''nursing''.

Subsec. (a)(5). Pub. L. 100–203, § 4211(h)(6)(A), struck out ''skilled'' before ''nursing'' in cl. (A).

Pub. L. 100–203, § 4103(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(9). Pub. L. 100–203, § 4105(a), inserted provision including services furnished to an eligible individual who does not reside in a permanent dwelling or have a fixed home or mailing address.

Subsec. (a)(14). Pub. L. 100–203, § 4211(h)(6)(B), substituted ''and nursing facility services'' for '', skilled nursing facility services, and intermediate care facility services''.

Subsec. (a)(15). Pub. L. 100–203, § 4211(h)(6)(C), substituted ''services in an intermediate care facility for the mentally retarded (other than'' for ''intermediate care facility services (other than such services''.

Subsec. (a)(17). Pub. L. 100–203, § 4073(d)(1), as amended by Pub. L. 100–360, § 411(h)(4)(E), substituted ''(as defined in section 1395x(gg) of this title)'' for ''(as defined in subsection (m) of this section)''.

Subsec. (c). Pub. L. 100–203, § 4211(e)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) defined ''intermediate care facility''.

Subsec. (d). Pub. L. 100–203, § 4211(e)(2), substituted ''intermediate care facility for the mentally retarded'' for ''intermediate care facility'' and ''means an'' for ''may include services in a public'', and in par. (3) inserted ''in the case of a public institution'' after ''(3)''.

Subsec. (f). Pub. L. 100–203, § 4211(e)(3), struck out ''skilled'' before ''nursing'' in four places and before ''rehabilitation''.

Subsec. (i). Pub. L. 100–203, § 4211(e)(4), struck out subsec. (i) which provided that for purposes of this subchapter ''skilled nursing facility'' also includes any institution which is located in a State on an Indian reservation and is certified by the Secretary as being a qualified skilled nursing facility by meeting the requirements of section 1395x(j) of this title.

Subsec. (m). Pub. L. 100–203, § 4073(d)(2), struck out subsec. (m) which defined ''nurse-midwife''. See section 1395x(gg) of this title.

Subsec. (n)(2). Pub. L. 100–203, § 4101(c)(1), substituted ''has not attained the age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)'' for ''is under 5 years of age''.

Subsec. (*o*)(1). Pub. L. 100–203, § 4114, as amended by Pub. L. 100–360, § 411(k)(8)(A), designated existing provisions as subpar. (A), substituted ''Subject to subparagraph (B), the'' for ''The'', and added subpar. (B).

Subsec. (p)(2)(A). Pub. L. 100–203, § 4118(p)(8), struck out ''nonfarm'' before ''official''.

1986—Subsec. (a). Pub. L. 99–509, § 9403(g)(3), inserted ''or, in the case of a qualified medicare beneficiary described in subsection (p)(1) of this section, if provided after the month in which the individual becomes such a beneficiary'' after ''makes application for assistance''.

Subsec. (a)(18). Pub. L. 99–272, § 9505(a)(1), added par. (18). Former par. (18) redesignated (19).

Subsec. (a)(19). Pub. L. 99–514, § 1895(c)(3)(A), added par. (19). Former par. (19) redesignated (20).

Pub. L. 99–272, § 9505(a)(1)(B), redesignated former par. (18) as (19).

Subsec. (a)(20). Pub. L. 99–509, § 9408(c)(1), added par. (20). Former par. (20) redesignated (21).

Pub. L. 99–514, § 1895(c)(3)(A)(ii), redesignated former par. (19) as (20).

Subsec. (a)(21). Pub. L. 99–509, § 9408(c)(1)(B), redesignated former par. (20) as (21).

Subsec. (n)(1)(C). Pub. L. 99–272, § 9501(a), added subpar. (C).

Subsec. (n)(2). Pub. L. 99–272, § 9511(a), inserted ''(or such earlier date as the State may designate)'' after ''September 30, 1983''.

Subsec. (*o*). Pub. L. 99–272, § 9505(a)(2), added subsec. (*o*).

Subsec. (*o*)(3). Pub. L. 99–509, § 9435(b)(2), added par. (3).

Subsec. (p). Pub. L. 99–509, § 9403(b), (d), added subsec. (p).

Subsec. (q). Pub. L. 99–509, § 9404(b), added subsec. (q).

1984—Subsec. (a). Pub. L. 98–369, § 2335(f), substituted ''mental diseases'' for ''tuberculosis or mental diseases'' in subd. (B) following par. (18).

Pub. L. 98–369, § 2373(b)(17), substituted ''clause (vi)'' for ''clauses (vi)'' and ''well-being'' for ''well being'' in last sentence.

Subsec. (a)(1). Pub. L. 98–369, § 2335(f), substituted ''mental diseases'' for ''tuberculosis or mental diseases''.

Subsec. (a)(4). Pub. L. 98–369, § 2335(f), substituted ''mental diseases'' for ''tuberculosis or mental diseases''.

Pub. L. 98–369, §2373(b)(15), inserted a semicolon before ''(B)''.

Subsec. (a)(9). Pub. L. 98–369, §2371(a), amended par. (9) generally, inserting ''furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician''.

Subsec. (a)(14), (15). Pub. L. 98–369, §2335(f), substituted ''mental diseases'' for ''tuberculosis or mental diseases''.

Subsec. (a)(17). Pub. L. 98–369, §2373(b)(16), substituted ''the nurse-midwife'' for ''he'' in two places.

Subsec. (b). Pub. L. 98–369, §2373(b)(18), substituted ''section 1301(a)(8)(B) of this title'' for ''subparagraph (B) of section 1301(a)(8) of this title''.

Subsec. (d)(1). Pub. L. 98–369, §2373(b)(19), substituted ''the institution meets'' for ''which meet''.

Subsec. (h)(1)(A). Pub. L. 98–369, §2340(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''inpatient services which are provided in an institution which is accredited as a psychiatric hospital by the Joint Commission on Accreditation of Hospitals;''.

Subsec. (m). Pub. L. 98–369, §2373(b)(20), substituted ''the nurse'' for ''he'' in two places.

Subsec. (n). Pub. L. 98–369, §2361(b), added subsec. (n).

1982—Subsec. (a)(i). Pub. L. 97–248, §137(b)(17), struck out ''or any reasonable category of such individuals,'' after ''as the State may choose,''.

Subsec. (a)(viii). Pub. L. 97–248, §137(b)(18), added cl. (viii).

Subsec. (b)(2). Pub. L. 97–248, §136(c), substituted ''the Northern Mariana Islands, and American Samoa'' for ''and the Northern Mariana Islands''.

Subsec. (h)(1)(C). Pub. L. 97–248, §137(f), redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, and redesignated cls. (A) and (B) as cls. (i) and (ii), respectively.

1981—Subsec. (a). Pub. L. 97–35, §2172(b), in cl. (i), inserted ''or, at the option of the State, under the age of 20, 19, or 18 as the State may choose, or any reasonable category of such individuals,'' and in cl. (ii), struck out reference to section 606(a)(2) of this title.

Subsec. (b). Pub. L. 97–35, §2162(a)(2), inserted reference to Northern Mariana Islands.

1980—Subsec. (a)(17), (18). Pub. L. 96–499, §965(a)(1)(B), (C), added par. (17) and redesignated former par. (17) as (18).

Subsec. (c). Pub. L. 96–473 substituted ''clause (1)'' for ''clauses (1)''.

Subsec. (m). Pub. L. 96–499, §965(a)(2), added subsec. (m).

1978—Subsec. (c). Pub. L. 95–292 added cl. (4) to first sentence relating to a requirement that intermediate care facilities meet section 1395x(j)(14) of this title with respect to protection of patients' personal funds, and inserted reference to that cl. (4) in provisions covering intermediate care facilities on Indian reservations.

1977—Subsec. (a)(2). Pub. L. 95–210, §2(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (*l*). Pub. L. 95–210, §2(b), added subsec. (*l*).

1976—Subsec. (b). Pub. L. 94–437 inserted provision requiring that the Federal medical assistance percentage be 100 per centum for services received through an Indian Health Service facility.

1973—Subsec. (a). Pub. L. 93–233, §13(a)(13), substituted in introductory text ''individuals (other than individuals with respect to whom there is being paid, or who are eligible or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title) not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter'' for ''individuals not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter''.

Subsec. (a)(iv). Pub. L. 93–233, §13(a)(14), inserted ''with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,'' after ''blind,''.

Subsec. (a)(v). Pub. L. 93–233, §13(a)(15), substituted ''with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,'' for ''or''.

Subsec. (a)(vi). Pub. L. 93–233, §13(a)(16), inserted ''or'' at end of text.

Subsec. (a)(vii). Pub. L. 93–233, §13(a)(17), added cl. (vii).

Subsec. (a)(16). Pub. L. 93–233, §18(x)(7), substituted ''under age 21, as defined in subsection (h) of this section; and'' for ''under 21, as defined in subsection (e) of this section;''.

Subsec. (b). Pub. L. 93–233, §18(y)(2), struck out ''; except that the Secretary shall promulgate such percentage as soon as possible after July 30, 1965, which promulgation shall be conclusive for each of the six quarters in the period beginning January 1, 1966, and ending with the close of June 30, 1966'' after ''section 1301(a)(8) of this title''.

Subsec. (c). Pub. L. 93–233, §18(x)(8), substituted ''skilled nursing facility'' for ''skilled nursing home'' wherever appearing.

Subsec. (h)(1)(B). Pub. L. 93–233, §18(w), substituted ''(i) involve active treatment'' for '', involves active treatment (i)''; struck out ''pursuant to subchapter XVIII of this chapter'' after ''may be prescribed''; and substituted ''(ii)'' for ''(ii) which'', respectively.

Subsec. (h)(2). Pub. L. 93–233, §18(x)(10), substituted ''paragraph (1)'' for ''paragraph (e)(1)''.

Subsec. (i). Pub. L. 93–233, §18(x)(9), redesignated subsec. (h) as added by Pub. L. 92–603, §299L(b), as subsec. (i).

Subsecs. (j), (k). Pub. L. 93–233, §13(a)(18), added subsecs. (j) and (k).

1972—Subsec. (a). Pub. L. 92–603, §299B(c), in text following redesignated subsec. (a)(17) substituted ''as otherwise provided in paragraph (16),'' for ''that''.

Subsec. (a)(4). Pub. L. 92–603, §§278(a)(21), 299E(b), substituted ''skilled nursing facility'' for ''skilled nursing home'' and added cl. (C).

Subsec. (a)(5). Pub. L. 92–603, §§278(a)(22), 280, substituted ''skilled nursing facility'' for ''skilled nursing home'' and inserted ''furnished by a physician (as defined in section 1395x(r)(1) of this title) after ''physicians' services''.

Subsec. (a)(14). Pub. L. 92–603, §§278(a)(23), 297(a), substituted ''skilled nursing facility'' for ''skilled nursing home'' and inserted reference to intermediate care facility services.

Subsec. (a)(15) to (17). Pub. L. 92–603, §299B(a), added par. (16) and redesignated existing pars. (15) and (16) as (17) and (15), respectively.

Subsec. (c). Pub. L. 92–603, §299L(a), inserted provision defining ''intermediate care facility'' with respect to any institution located in a State on an Indian reservation.

Subsec. (d)(3). Pub. L. 92–603, §299, inserted provisions relating to reduction of non-Federal expenditures in any calendar quarter prior to January 1, 1975.

Subsec. (e). Pub. L. 92–603, §212(a), added subsec. (e).

Subsec. (f). Pub. L. 92–603, §247(b), added subsec. (f).

Subsec. (g). Pub. L. 92–603, §275(a), added subsec. (g).

Subsec. (h). Pub. L. 92–603, §299B(b), added subsec. (h).

Subsec. (i). Pub. L. 92–603, §299L(b), added subsec. (i).

1971—Subsec. (a)(16). Pub. L. 92–223, §4(a)(1)(C), added cl. (16).

Subsecs. (c), (d). Pub. L. 92–223, §4(a)(2), added subsecs. (c) and (d).

1968—Subsec. (a). Pub. L. 90–248, §230, inserted '', and with respect to physicians' or dentists' services, at the option of the State, to individuals not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, XVI of this chapter, or part A of subchapter IV of this chapter'' after ''for individuals'' in text preceding cl. (i).

Pub. L. 90–248, § 233(b), inserted provision deeming, for purposes of cl. (vi) of the preceding sentence, a person as essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under subchapter I, X, XIV, or XV of this chapter, and such person is determined, under such a State plan, to be essential to the well being of such individual.

Subsec. (a)(ii). Pub. L. 90–248, § 241(f)(6), inserted ''part A of'' before ''subchapter IV''.

Subsec. (a)(vi). Pub. L. 90–248, § 233(a), added cl. (vi).

Subsec. (a)(4). Pub. L. 90–248, § 302(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (b). Pub. L. 90–248, § 248(e), substituted in cl. (2) of first sentence ''50'' for ''55''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Oct. 22, 2004, and applicable to medical assistance and services provided under this subchapter on or after that date, see section 712(d) of Pub. L. 108–357, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106–554, § 1(a)(6) [title VII, § 709(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–578, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect 1 year after the date of the enactment of this Act [Dec. 21, 2000], regardless of whether regulations have been promulgated to carry out such amendment by such date. The Secretary of Health and Human Services shall develop the uniform application form under such amendment by not later than 9 months after the date of the enactment of this Act.''

Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–582, provided that: ''The amendments made by this section [amending this section and sections 1397dd, 1397ee, and 1397jj of this title] shall be effective as if included in the enactment of section 4901 of the BBA [Pub. L. 105–33] (111 Stat. 552).''

Amendment by section 1(a)(6) [title IX, § 911(a)(2)] of Pub. L. 106–554 effective one year after Dec. 21, 2000, see section 1(a)(6) [title IX, § 911(c)] of Pub. L. 106–554, set out as an Effective Date note under section 1320b–14 of this title.

Amendment by Pub. L. 106–354 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, without regard to whether final regulations to carry out such amendments have been promulgated by such date, see section 2(d) of Pub. L. 106–354, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–170 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, see section 201(d) of Pub. L. 106–170, set out as a note under section 1396a of this title.

Amendment by section 121(a)(2) of Pub. L. 106–169 applicable to medical assistance for items and services furnished on or after Oct. 1, 1999, see section 121(b) of Pub. L. 106–169, set out as a note under section 1396a of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 605(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–396, provided that: ''The amendment made by subsection (a) [amending this section] takes effect on October 1, 1999, and applies to expenditures made on or after such date.''

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(aa)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398, provided that the amendment made by section 1000(a)(6) [title VI, § 608(aa)(3)] is effective as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].

Amendment by section 1000(a)(6) [title VI, § 608(*l*), (m)] of Pub. L. 106–113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, § 608(bb)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 162 of Pub. L. 105–100 provided that the amendment made by that section is effective as if included in the enactment of subtitle J (§§ 4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

Amendment by section 4702(a) of Pub. L. 105–33 applicable to primary care case management services furnished on or after Oct. 1, 1997, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, see section 4710(b)(1) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Amendment by section 4711(c)(1) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to payment for items and services furnished on or after Oct. 1, 1997, see section 4711(d) of Pub. L. 105–33, set out as a note under section 1396a of this title.

Section 4712(d)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 4714(a)(2) of Pub. L. 105–33 applicable to payment for (and with respect to provider agreements with respect to) items and services furnished on or after Aug. 5, 1997, and to payment by a State for items and services furnished before such date if such payment is subject of lawsuit that is based on subsection (p) of this section and section 1396a(n) of this title and that is pending as of, or is initiated after Aug. 5, 1997, see section 4714(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

Section 4725(b)(2) of Pub. L. 105–33 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to—

''(A) items and services furnished on or after October 1, 1997;

''(B) payments made on a capitation or other risk-basis for coverage occurring on or after such date; and

''(C) payments attributable to DSH allotments for such States determined under section 1923(f) of such Act (42 U.S.C. 1396r–4(f)) for fiscal years beginning with fiscal year 1998.''

Amendment by section 4911(a) of Pub. L. 105–33 applicable to medical assistance for items and services furnished on or after Oct. 1, 1997, see section 4911(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–299 effective Oct. 1, 1996, see section 5 of Pub. L. 104–299, as amended, set out as a note under section 233 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13601(a) of Pub. L. 103–66 effective as if included in enactment of section 4721(a) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, see section 13601(c) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Amendment by section 13603(e) of Pub. L. 103–66 applicable to medical assistance furnished on or after Jan. 1, 1994, without regard to whether or not final regulations to carry out the amendments by section 13603 of Pub. L. 103–66 have been promulgated by such date, see section 13603(f) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Section 13605(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after October 1, 1993.''

Section 13606(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this

section] shall apply to calendar quarters beginning on or after July 1, 1993.''

Amendment by section 13631(f)(2) of Pub. L. 103–66 applicable, except as otherwise provided, to calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not final regulations to carry out the amendments by section 13631(f) of Pub. L. 103–66 have been promulgated by such date, see section 13631(f)(3) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Section 13631(g)(2) of Pub. L. 103–66 provided that: ''The amendments made by subparagraphs (A) and (B) of paragraph (1) [amending this section] shall first apply 90 days after the date the schedule referred to in subparagraphs (A)(i) and subparagraph (B)(iii) of section 1905(r)(1) of the Social Security Act [subsec. (r)(1)(B)(iii) of this section] (as amended by such respective subparagraphs) is first established.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4402(d)(2) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4402 of Pub. L. 101–508 have been promulgated by such date, see section 4402(e) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4501(a), (c), (e)(1) of Pub. L. 101–508 applicable to calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not regulations to implement the amendments by section 4501 of Pub. L. 101–508 are promulgated by such date, except that amendment by section 4501(e)(1) of Pub. L. 101–508 is applicable to determinations of income for months beginning with January 1991, see section 4501(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4601(a)(2) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4601 of Pub. L. 101–508 have been promulgated by such date, see section 4601(b) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4704(c), (d), (e)(1) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, see section 4704(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4705(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as if included in the amendments made by section 6408(c)(1) of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, amending section 1396a of this title].''

Amendment by section 4711(a) of Pub. L. 101–508 applicable to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4711 of Pub. L. 101–508 have been promulgated by such date, see section 4711(e) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4712(a) of Pub. L. 101–508 applicable to community supported living arrangements services furnished on or after the later of July 1, 1991, or 30 days after the publication of regulations setting forth interim requirements under section 1396u(h) of this title without regard to whether or not final regulations to carry out the amendments by section 4712 of Pub. L. 101–508 have been promulgated by such date, see section 4712(c) of Pub. L. 101–508, set out as an Effective Date note under section 1396u of this title.

Amendment by section 4713(b) of Pub. L. 101–508 applicable to medical assistance furnished on or after Jan. 1, 1991, see section 4713(c) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4719(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 4721(b) of Pub. L. 101–508 provided that: ''The amendment made by this section [amending this section] shall become effective with respect to personal care services provided on or after October 1, 1994.''

Section 4755(a)(1)(B) of Pub. L. 101–508 provided that: ''The amendment made by subparagraph (A) [amending this section] shall be effective as if included in the enactment of the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6403(a), (c), (d)(2) of Pub. L. 101–239 effective Apr. 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6403 of Pub. L. 101–239 have been promulgated by such date, see section 6403(e) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6404(a), (b) of Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6404 of Pub. L. 101–239 have been promulgated by such date, see section 6404(d) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6405(a) of Pub. L. 101–239 effective with respect to services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner on or after July 1, 1990, see section 6405(c) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6408(d)(2), (4)(A), (B) of Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6408(d) of Pub. L. 101–239 have been promulgated by such date, see section 6408(d)(5) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 effective as if included in the enactment of section 301 of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 8434(c) of Pub. L. 100–647, set out as a note under section 1396a of this title.

Amendment by section 303(b)(2) of Pub. L. 100–485 applicable to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990 (or, in the case of the Commonwealth of Kentucky, Oct. 1, 1990) (without regard to whether regulations to implement such amendment are promulgated by such date), with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter on or after that date, see section 303(f)(1) of Pub. L. 100–485, set out as a note under section 1396a of this title.

Amendment by section 401(d)(2) of Pub. L. 100–485 effective Oct. 1, 1990, except as provided in subsec. (m)(2) of this section and not effective for Puerto Rico, Guam, American Samoa, and the Virgin Islands, until the date of repeal of limitations contained in section 1308(a) of this title on payments to such jurisdictions for purposes of making maintenance payments under this part and part E of this subchapter, see section 401(g) of Pub. L. 100–485, as amended, set out as a note under section 1396a of this title.

Amendment by section 608(d)(14)(A)–(G), (J) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 608(f)(3) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(g)(2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 301(a)(2)–(d) of Pub. L. 100–360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1989, without regard to whether or not final regulations to carry out such amendment have been promulgated by that date, with respect to medical assistance for monthly premiums under subchapter XVIII of this chapter for months beginning with January 1989, and items and services furnished on and after Jan. 1, 1989, see section 301(h) of Pub. L. 100–360, set out as a note under section 1396a of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(h)(4)(E), (k)(4), (8) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(k)(14)(B) of Pub. L. 100–360 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4073(d) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4073(e) of Pub. L. 100–203, set out as a note under section 1395k of this title.

Section 4101(c)(3) of Pub. L. 100–203 provided that:

''(A) The amendments made by this subsection [amending this section and section 1396a of this title] shall apply to medical assistance furnished on or after October 1, 1988.

''(B) For purposes of section 1905(n)(2) of the Social Security Act [section 1396d(n)(2) of this title] (as amended by subsection (a) [probably means ''subsection (c)'']) for medical assistance furnished during fiscal year 1989, any reference to 'age of 7' is deemed to be a reference to 'age of 6'.''

Section 4103(b) of Pub. L. 100–203 provided that:

''(1) The amendment made by subsection (a) [amending this section] applies (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Dec. 22, 1987].''

Section 4105(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1988, without regard to whether regulations to implement such amendment are promulgated by such date.''

Amendments by section 4211(e), (f), (h)(6) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 9403(b), (d), (g)(3) of Pub. L. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9403(h) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9404(b) of Pub. L. 99–509 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement such amendments are promulgated by such date, see section 9404(c) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9408(c)(1) of Pub. L. 99–509 applicable to services furnished on or after Oct. 21, 1986, see section 9408(d) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Section 9501(d)(1) of Pub. L. 99–272 provided that:

''(A) The amendments made by subsection (a) [amending this section] apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after the [sic] July 1, 1986, without regard to whether or not final regulations to carry out the amendments have been promulgated by that date.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by section 9505(a) of Pub. L. 99–272 applicable to medical assistance provided for hospice care furnished on or after Apr. 7, 1986, see section 9505(e) of Pub. L. 99–272, set out as a note under section 1396a of this title.

Section 9511(b) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(d)(2), Oct. 21, 1986, 100 Stat. 2070, provided that: ''The amendment made by this section [amending this section] shall apply to services furnished on or after April 1, 1986, without regard to whether or not regulations to carry out the amendment have been promulgated by that date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2335(f) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Amendment by section 2340(b) of Pub. L. 98–369 effective July 18, 1984, see section 2340(c) of Pub. L. 98–369, set out as a note under section 1395x of this title.

Amendment by section 2361(b) of Pub. L. 98–369 applicable to calendar quarters beginning on or after Oct. 1, 1984, without regard to whether or not final regulations to carry out the amendment have been promulgated by such date, except as otherwise provided, see section 2361(d) of Pub. L. 98–369, set out as a note under section 1396a of this title.

Section 2371(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 136(c) of Pub. L. 97–248 effective Oct. 1, 1982, see section 136(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

Amendment by section 137(b)(17), (18) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2172(b) of Pub. L. 97–35 effective Aug. 13, 1981, see section 2172(c) of Pub. L. 97–35, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–499, see section 965(c) of Pub. L. 96–499, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 8(d)(1) of Pub. L. 95–292 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall become effective on July 1, 1978.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after the first day of the first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95–210, set out as a note under section 1395cc of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by section 13(a)(13)–(18) of Pub. L. 93–233 effective with respect to payments under section 1396b of this title for calendar quarters commencing after Dec. 31, 1973, see section 13(d) of Pub. L. 93–233, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 212(b) of Pub. L. 92–603 provided that: ''The provisions of subsection (e) of section 1905 of the Social Security Act [subsec. (e) of this section] (as added by subsection (a) of this section) shall be applicable in the case of services performed on or after the date of enactment of this Act [Oct. 30, 1972].''

Amendment by section 247(b) of Pub. L. 92–603 effective with respect to services furnished after Dec. 31, 1972, see section 247(c) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Section 275(b) of Pub. L. 92–603 provided that: ''The amendment made by this section [amending this section] shall be effective with respect to services furnished after June 30, 1973.''

Section 297(b) of Pub. L. 92–603 provided that: ''The amendment made by this section [amending this section] shall apply with respect to services furnished after December 31, 1972.''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–223 effective Jan. 1, 1972, see section 4(d) of Pub. L. 92–223, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 248(e) of Pub. L. 90–248 provided that the amendment made by that section is effective with respect to quarters after 1967.

CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108–357, title VII, § 712(a)(2), Oct. 22, 2004, 118 Stat. 1558, provided that: ''Nothing in subsections (a)(27) or (x) of section 1905 of the Social Security Act (42 U.S.C. 1396d), as added by paragraph (1), shall be construed as implying that a State medicaid program under title XIX of such Act [this subchapter] could not have treated, prior to the date of enactment of this Act [Oct. 22, 2004], any of the primary and secondary medical strategies and treatment and services described in such subsections as medical assistance under such program, including as early and periodic screening, diagnostic, and treatment services under section 1905(r) of such Act [subsec. (r) of this section].''

CONSTRUCTION OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 to be executed as if Pub. L. 106–169 had been enacted after the enactment of Pub. L. 106–170, see section 121(c)(1) of Pub. L. 106–169, set out as a note under section 1396a of this title.

TEMPORARY STATE FISCAL RELIEF

Pub. L. 108–27, title IV, § 401(a), May 28, 2003, 117 Stat. 764, as amended by Pub. L. 108–74, § 2(a), Aug. 15, 2003, 117 Stat. 896, which authorized $10,000,000,000 for an increase of the Medicaid Federal medical assistance percentage (FMAP) for the last 2 calendar quarters of fiscal year 2003 and the first 3 quarters of fiscal year 2004 and set forth State eligibility requirements, and was repealed effective Oct. 1, 2004, by Pub. L. 108–27, title IV, § 401(a)(9), May 28, 2003, 117 Stat. 766.

ALASKA FMAPS

Pub. L. 106–554, § 1(a)(6) [title VII, § 706], Dec. 21, 2000, 114 Stat. 2763, 2763A–577, provided that: ''Notwithstanding the first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), only with respect to each of fiscal years 2001 through 2005, for purposes of titles XIX and XXI of the Social Security Act [this subchapter and subchapter XXI of this chapter], the State percentage used to determine the Federal medical assistance percentage for Alaska shall be that percentage which bears the same ratio to 45 percent as the square of the adjusted per capita income of Alaska (determined by dividing the State's 3-year average per capita income by 1.05) bears to the square of the per capita income of the 50 States.''

Section 4725(a) of Pub. L. 105–33 provided that: ''Notwithstanding the first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), the Federal medical assistance percentage determined under such sentence for Alaska shall be 59.8 percent but only with respect to—

''(1) items and services furnished under a State plan under title XIX [this subchapter] or under a State child health plan under title XXI of such Act [subchapter XXI of this chapter] during fiscal years 1998, 1999, and 2000;

''(2) payments made on a capitation or other risk-basis under such titles for coverage occurring during such period; and

''(3) payments under title XIX of such Act attributable to DSH allotments for such State determined under section 1923(f) of such Act (42 U.S.C. 1396r–4(f)) for such fiscal years.''

EPSDT BENEFIT STUDY AND REPORT

Section 4744 of Pub. L. 105–33 provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with Governors, directors of State medicaid programs, the American Academy of Actuaries, and representatives of appropriate provider and beneficiary organizations, shall conduct a study of the provision of early and periodic screening, diagnostic, and treatment services under the medicaid program under title XIX of the Social Security Act [this subchapter] in accordance with the requirements of section 1905(r) of such Act (42 U.S.C. 1396d(r)).

''(2) REQUIRED CONTENTS.—The study conducted under paragraph (1) shall include examination of the actuarial value of the provision of such services under the medicaid program and an examination of the portions of such actuarial value that are attributable to paragraph (5) of section 1905(r) of such Act and to the second sentence of such section.

''(b) REPORT.—Not later than 12 months after the date of the enactment of this Act [Aug. 5, 1997], the Sec-

retary of Health and Human Services shall submit a report to Congress on the results of the study conducted under subsection (a).''

REFERENCES TO PROVISIONS OF PART A OF SUBCHAPTER IV CONSIDERED REFERENCES TO SUCH PROVISIONS AS IN EFFECT JULY 16, 1996

For provisions that certain references to provisions of part A (§ 601 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 16, 1996, see section 1396u–1(a) of this title.

LIMITATION ON DISALLOWANCES OR DEFERRAL OF FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR INDIVIDUALS UNDER AGE 21

Section 4706 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—(1) If the Secretary of Health and Human Services makes a determination that a psychiatric facility has failed to comply with certification of need requirements for inpatient psychiatric hospital services for individuals under age 21 pursuant to section 1905(h) of the Social Security Act [subsec. (h) of this section], and such determination has not been subject to a final judicial decision, any disallowance or deferral of Federal financial participation under such Act [this chapter] based on such determination shall only apply to the period of time beginning with the first day of noncompliance and ending with the date by which the psychiatric facility develops documentation (using plan of care or utilization review procedures) of the need for inpatient care with respect to such individuals.

''(2) Any disallowance of Federal financial participation under title XIX of the Social Security Act [this subchapter] relating to the failure of a psychiatric facility to comply with certification of need requirements—

''(A) shall not exceed 25 percent of the amount of Federal financial participation for the period described in paragraph (1); and

''(B) shall not apply to any fiscal year before the fiscal year that is 3 years before the fiscal year in which the determination of noncompliance described in paragraph (1) is made.

''(b) EFFECTIVE DATE.—Subsection (a) shall apply to disallowance actions and deferrals of Federal financial participation with respect to services provided before the date of enactment of this Act [Nov. 5, 1990].''

INTERMEDIATE CARE FACILITY; ACCESS AND VISITATION RIGHTS

Section 411(*l*)(3)(C)(i), formerly § 411(*l*)(3)(C), of Pub. L. 100–360, as redesignated by Pub. L. 100–485, title VI, § 608(d)(27)(E), Oct. 13, 1988, 102 Stat. 2423, provided that: ''Effective as of the date of the enactment of this Act [July 1, 1988] and until the effective date of section 1919(c) of such Act [section 1396r(c) of this title, see Effective Date note set out under section 1396r of this title], section 1905(c) of the Social Security Act [subsec. (c) of this section] is deemed to include the requirement described in section 1919(c)(3)(A) of such Act (as inserted by section 4211(a)(3) of OBRA).''

REGULATIONS FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

Section 9514 of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall promulgate proposed regulations revising standards for intermediate care facilities for the mentally retarded under title XIX of the Social Security Act [this subchapter] within 60 days after the date of the enactment of this Act [Apr. 7, 1986].''

LIFE SAFETY CODE RECOGNITION

Section 9515 of Pub. L. 99–272 provided that: ''For purposes of section 1905(c) of the Social Security Act [subsec. (c) of this section], an intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act) which meets the requirements of the relevant sections of the 1985 edition of the Life Safety Code of the National Fire Protection Association shall be deemed to meet the fire safety requirements for intermediate care facilities for the mentally retarded until such time as the Secretary specifies a later edition of the Life Safety Code for purposes of such section, or the Secretary determines that more stringent standards are necessary to protect the safety of residents of such facilities.''

STUDY OF FEDERAL MEDICAL ASSISTANCE PERCENTAGE FORMULA AND OF ADJUSTMENTS OF TARGET AMOUNTS FOR FEDERAL MEDICAID EXPENDITURES; REPORT TO CONGRESS

Section 2165 of Pub. L. 97–35 directed the Comptroller General, in consultation with the Advisory Committee for Intergovernmental Relations, to study the Federal medical assistance percentage formula as applicable to distribution of Federal funds to States, with a view to revising the medicaid matching formula so as to take into account factors which might result in a more equitable distribution of Federal funds to States under this chapter, and to report to Congress on such study not later than Oct. 1, 1982.

COSTS CHARGED TO PERSONAL FUNDS OF PATIENTS IN INTERMEDIATE CARE FACILITIES; COSTS INCLUDED IN CHARGES FOR SERVICES; REGULATIONS

Section 8(c), (d)(2) of Pub. L. 95–292 required the Secretary of Health, Education, and Welfare to issue regulations, within 90 days after enactment of Pub. L. 95–292 but not later than July 1, 1978, defining those costs that may be charged to the personal funds of patients in intermediate care facilities who are individuals receiving medical assistance under a State plan approved under title XIX of the Social Security Act, and those costs that are to be included in the reasonable cost or reasonable charge for intermediate care facility services. See section 1302 of this title.

§ 1396e. Enrollment of individuals under group health plans

(a) Requirements of each State plan; guidelines

Each State plan—

(1) may implement guidelines established by the Secretary, consistent with subsection (b) of this section, to identify those cases in which enrollment of an individual otherwise entitled to medical assistance under this subchapter in a group health plan (in which the individual is otherwise eligible to be enrolled) is cost-effective (as defined in subsection (e)(2) of this section);

(2) may require, in case of an individual so identified and as a condition of the individual being or remaining eligible for medical assistance under this subchapter and subject to subsection (b)(2) of this section, notwithstanding any other provision of this subchapter, that the individual (or in the case of a child, the child's parent) apply for enrollment in the group health plan; and

(3) in the case of such enrollment (except as provided in subsection (c)(1)(B) of this section), shall provide for payment of all enrollee premiums for such enrollment and all deductibles, coinsurance, and other cost-sharing obligations for items and services otherwise covered under the State plan under this subchapter (exceeding the amount otherwise permitted under section 1396*o* of this title), and shall treat coverage under the group

health plan as a third party liability (under section 1396a(a)(25) of this title).

(b) Timing of enrollment; failure to enroll

(1) In establishing guidelines under subsection (a)(1) of this section, the Secretary shall take into account that an individual may only be eligible to enroll in group health plans at limited times and only if other individuals (not entitled to medical assistance under the plan) are also enrolled in the plan simultaneously.

(2) If a parent of a child fails to enroll the child in a group health plan in accordance with subsection (a)(2) of this section, such failure shall not affect the child's eligibility for benefits under this subchapter.

(c) Premiums considered payments for medical assistance; eligibility

(1)(A) In the case of payments of premiums, deductibles, coinsurance, and other cost-sharing obligations under this section shall be considered, for purposes of section 1396b(a) of this title, to be payments for medical assistance.

(B) If all members of a family are not eligible for medical assistance under this subchapter and enrollment of the members so eligible in a group health plan is not possible without also enrolling members not so eligible—

(i) payment of premiums for enrollment of such other members shall be treated as payments for medical assistance for eligible individuals, if it would be cost-effective (taking into account payment of all such premiums), but

(ii) payment of deductibles, coinsurance, and other cost-sharing obligations for such other members shall not be treated as payments for medical assistance for eligible individuals.

(2) The fact that an individual is enrolled in a group health plan under this section shall not change the individual's eligibility for benefits under the State plan, except insofar as section 1396a(a)(25) of this title provides that payment for such benefits shall first be made by such plan.

(d) Repealed. Pub. L. 105–33, title IV, § 4741(b)(2), Aug. 5, 1997, 111 Stat. 523

(e) Definitions

In this section:

(1) The term ''group health plan'' has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986, and includes the provision of continuation coverage by such a plan pursuant to title XXII of the Public Health Service Act [42 U.S.C. 300bb–1 et seq.], section 4980B of the Internal Revenue Code of 1986, or title VI[1] of the Employee Retirement Income Security Act of 1974.

(2) The term ''cost-effective'' means, as established by the Secretary, that the reduction in expenditures under this subchapter with respect to an individual who is enrolled in a group health plan is likely to be greater than the additional expenditures for premiums and cost-sharing required under this section with respect to such enrollment.

(Aug. 14, 1935, ch. 531, title XIX, § 1906, as added Pub. L. 101–508, title IV, § 4402(a)(2), Nov. 5, 1990, 104 Stat. 1388–161; amended Pub. L. 105–33, title IV, § 4741(b), Aug. 5, 1997, 111 Stat. 523.)

[1] See References in Text note below.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (e)(1), is classified generally to Title 26, Internal Revenue Code.

The Public Health Service Act, referred to in subsec. (e)(1), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XXII of the Act is classified generally to subchapter XX (§ 300bb–1 et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (e)(1), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title VI of the Act probably means part 6 of subtitle B of title I of the Act which is classified generally to part 6 (§ 1161 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor, because the Act has no title VI. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 1396e, act Aug. 14, 1935, ch. 531, title XIX, § 1906, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 226, 81 Stat. 903, created Advisory Council on Medical Assistance, set forth composition of Council, term of membership of members, and purposes of Council, and provided for compensation of members, prior to repeal by Pub. L. 92–603, title II, § 287, Oct. 30, 1972, 86 Stat. 1457, effective on the first day of the third calendar month following Oct. 30, 1972.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33, § 4741(b)(1), in introductory provisions, substituted ''Each'' for ''For purposes of section 1396a(a)(25)(G) of this title and subject to subsection (d) of this section, each'' and, in pars. (1) and (2), substituted ''may'' for ''shall''.

Subsec. (d). Pub. L. 105–33, § 4741(b)(2), struck out subsec. (d) which read as follows:

''(1) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

''(2) This section, and section 1396a(a)(25)(G) of this title, shall only apply to a State that is one of the 50 States or the District of Columbia.''

EFFECTIVE DATE

Section applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4402 of Pub. L. 101–508 have been promulgated by such date, see section 4402(e) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 1396a of this title.

§ 1396f. Observance of religious beliefs

Nothing in this subchapter shall be construed to require any State which has a plan approved under this subchapter to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parent or guardian objects) thereto on religious grounds.

(Aug. 14, 1935, ch. 531, title XIX, § 1907, as added Pub. L. 90–248, title II, § 232, Jan. 2, 1968, 81 Stat. 905.)

§ 1396g. State programs for licensing of administrators of nursing homes

(a) Nature of State program

For purposes of section 1396a(a)(29) of this title, a ''State program for the licensing of administrators of nursing homes'' is a program which provides that no nursing home within the State may operate except under the supervision of an administrator licensed in the manner provided in this section.

(b) Licensing by State agency or board representative of concerned professions and institutions

Licensing of nursing home administrators shall be carried out by the agency of the State responsible for licensing under the healing arts licensing act of the State, or, in the absence of such act or such an agency, a board representative of the professions and institutions concerned with care of chronically ill and infirm aged patients and established to carry out the purposes of this section.

(c) Functions and duties of State agency or board

It shall be the function and duty of such agency or board to—

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards; and

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.

(d) Waiver of standards other than good character or suitability standards

No State shall be considered to have failed to comply with the provisions of section 1396a(a)(29) of this title because the agency or board of such State (established pursuant to subsection (b) of this section) shall have granted any waiver, with respect to any individual who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1396a(a)(29) of this title are first met by the State, has served as a nursing home administrator, of any of the standards developed, imposed, and enforced by such agency or board pursuant to subsection (c) of this section.

(e) "Nursing home" and "nursing home administrator" defined

As used in this section, the term—

(1) ''nursing home'' means any institution or facility defined as such for licensing purposes under State law, or, if State law does not employ the term nursing home, the equivalent term or terms as determined by the Secretary, but does not include a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).[1]

(2) ''nursing home administrator'' means any individual who is charged with the general administration of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more other individuals.

(Aug. 14, 1935, ch. 531, title XIX, § 1908, as added Pub. L. 90–248, title II, § 236(b), Jan. 2, 1968, 81 Stat. 908; amended Pub. L. 92–603, title II, §§ 268(b), 269, 274(b), Oct. 30, 1972, 86 Stat. 1451, 1452; Pub. L. 93–233, § 18(y)(3), Dec. 31, 1973, 87 Stat. 973; Pub. L. 104–193, title IX, § 913, Aug. 22, 1996, 110 Stat. 2354; Pub. L. 105–33, title IV, § 4454(b)(2), Aug. 5, 1997, 111 Stat. 431.)

REPEAL OF SECTION

Pub. L. 101–508, title IV, § 4801(e)(11), Nov. 5, 1990, 104 Stat. 1388–217, provided that, effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1396r(f)(4) of this title, this section is repealed.

CODIFICATION

Another section 1908 of act Aug. 14, 1935, was renumbered section 1908A and is classified to section 1396g–1 of this title.

AMENDMENTS

1997—Subsec. (e)(1). Pub. L. 105–33 which directed substitution of ''a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).'' for ''a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts; and'' in ''Section 1908(e)(1) (42 U.S.C. 1396g–1(e)(1))'' of the Social Security Act, was executed by making the substitution in subsec. (e)(1) of

[1] So in original. The period probably should be ''; and''.

this section to reflect the probable intent of Congress, because section 1396g–1 of this title, which is also section 1908 of the Social Security Act, does not have a subsec. (e).

1996—Subsec. (e)(1). Pub. L. 104–193, which directed substitution of ''The Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.'' for ''The First Church of Christ, Scientist, Boston, Massachusetts'' in section 1908(e)(1) of the Social Security Act (42 U.S.C. 1396g–1(e)(1)) could not be executed to this section or section 1396g–1 of this title, both of which are section 1908. Section 1396g–1 does not have a subsec. (e) and subsec. (e)(1) of this section does not contain the quoted language with the word ''the'' capitalized.

1973—Subsec. (d). Pub. L. 93–233 struck out second sentence reading substantially the same as the first sentence but containing the following additional text reading ''other than such standards as relate to good character or suitability if—

''(1) such waiver is for a period which ends after being in effect for two years or on June 30, 1972, whichever is earlier, and

''(2) there is provided in the State (during all of the period for which waiver is in effect), a program of training and instruction designed to enable all individuals with respect to whom any such waiver is granted, to attain the qualifications necessary in order to meet such standards'' and also ''calendar year'' instead of ''three calendar years'' and reference to ''subsection (c)(1) of this section'' instead of ''subsection (c) of this section''.

Subsec. (e). Pub. L. 93–233 redesignated subsec. (g) as (e), and repealed prior subsec. (e) relating to authorization of appropriations for fiscal years 1968 through 1972 and to limitation of grants.

Subsec. (f). Pub. L. 93–233 repealed subsec. (f) providing for creation of National Advisory Council on Nursing Home Administration and for its composition, appointment of members, the Chairman, representation of interests, functions and duties, compensation and travel expenses, technical assistance, availability of assistance and data, and termination date of Dec. 31, 1971.

Subsec. (g). Pub. L. 93–233, redesignated subsec. (g) as (e).

1972—Subsec. (d). Pub. L. 92–603, §§ 269, 274(b), inserted references to the grant of waivers to individuals who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1396a(a)(29) of this title are first met by the State, have served as nursing home administrators and substituted ''subsection (c)(1)'' for ''subsection (b)(1)''.

Subsec. (g)(1). Pub. L. 92–603, § 268(b), inserted '', but does not include a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts'' after ''Secretary''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 913 of Pub. L. 104–193 provided that the amendment made by that section is effective Jan. 1, 1997.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 268(b) of Pub. L. 92–603 effective Oct. 30, 1972, see section 268(c) of Pub. L. 92–603, set out as a note under section 1396a of this title.

EFFECTIVE DATE

Section 236(c) of Pub. L. 90–248 provided that: ''Except as otherwise specified in the text thereof, the amendments made by this section [enacting this section and amending section 1396a of this title] shall take effect on July 1, 1970.''

§ 1396g–1. Required laws relating to medical child support

(a) In general

The laws relating to medical child support, which a State is required to have in effect under section 1396a(a)(60) of this title, are as follows:

(1) A law that prohibits an insurer from denying enrollment of a child under the health coverage of the child's parent on the ground that—

(A) the child was born out of wedlock,

(B) the child is not claimed as a dependent on the parent's Federal income tax return, or

(C) the child does not reside with the parent or in the insurer's service area.

(2) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, a law that requires such insurer—

(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this subchapter or part D of subchapter IV of this chapter; and

(C) not to disenroll (or eliminate coverage of) such a child unless the insurer is provided satisfactory written evidence that—

(i) such court or administrative order is no longer in effect, or

(ii) the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment.

(3) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an employer doing business in the State, a law that requires such employer—

(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this subchapter or part D of subchapter IV of this chapter; and

(C) not to disenroll (or eliminate coverage of) any such child unless—

(i) the employer is provided satisfactory written evidence that—

(I) such court or administrative order is no longer in effect, or

(II) the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment, or

(ii) the employer has eliminated family health coverage for all of its employees; and

(D) to withhold from such employee's compensation the employee's share (if any) of premiums for health coverage (except that the amount so withheld may not exceed the maximum amount permitted to be withheld under section 1673(b) of title 15), and to pay such share of premiums to the insurer, except that the Secretary may provide by regulation for appropriate circumstances under which an employer may withhold less than such employee's share of such premiums.

(4) A law that prohibits an insurer from imposing requirements on a State agency, which has been assigned the rights of an individual eligible for medical assistance under this subchapter and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

(5) A law that requires an insurer, in any case in which a child has health coverage through the insurer of a noncustodial parent—

(A) to provide such information to the custodial parent as may be necessary for the child to obtain benefits through such coverage;

(B) to permit the custodial parent (or provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and

(C) to make payment on claims submitted in accordance with subparagraph (B) directly to such custodial parent, the provider, or the State agency.

(6) A law that permits the State agency under this subchapter to garnish the wages, salary, or other employment income of, and requires withholding amounts from State tax refunds to, any person who—

(A) is required by court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance under this subchapter,

(B) has received payment from a third party for the costs of such services to such child, but

(C) has not used such payments to reimburse, as appropriate, either the other parent or guardian of such child or the provider of such services,

to the extent necessary to reimburse the State agency for expenditures for such costs under its plan under this subchapter, but any claims for current or past-due child support shall take priority over any such claims for the costs of such services.

(b) "Insurer" defined

For purposes of this section, the term ''insurer'' includes a group health plan, as defined in section 1167(1) of title 29, a health maintenance organization, and an entity offering a service benefit plan.

(Aug. 14, 1935, ch. 531, title XIX, § 1908A, formerly § 1908, as added Pub. L. 103–66, title XIII, § 13623(b), Aug. 10, 1993, 107 Stat. 633, renumbered § 1908A, Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(y)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398.)

REFERENCES IN TEXT

Part D of subchapter IV of this chapter, referred to in subsec. (a)(2)(B), (3)(B), is classified to section 651 et seq. of this title.

EFFECTIVE DATE

Section 13623(c) of Pub. L. 103–66 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1396a of this title] apply to calendar quarters beginning on or after April 1, 1994, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

§ 1396h. Transferred

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XIX, § 1909, as added and amended Oct. 30, 1972, Pub. L. 92–603, title II, §§ 242(c), 278(b)(9), 86 Stat. 1419, 1454; Oct. 25, 1977, Pub. L. 95–142, § 4(b), 91 Stat. 1181; Dec. 5, 1980, Pub. L. 96–499, title IX, § 917, 94 Stat. 2625; Aug. 18, 1987, Pub. L. 100–93, § 4(a)–(c), 101 Stat. 688, 689, which related to criminal penalties for acts involving Medicare and State health care programs, was renumbered section 1128B of title XI of act Aug. 14, 1935, by section 4(d) of Pub. L. 100–93 and transferred to section 1320a–7b of this title.

§ 1396i. Certification and approval of rural health clinics and intermediate care facilities for mentally retarded

(a)(1) Whenever the Secretary certifies a facility in a State to be qualified as a rural health clinic under subchapter XVIII of this chapter, such facility shall be deemed to meet the standards for certification as a rural health clinic for purposes of providing rural health clinic services under this title.

(2) The Secretary shall notify the State agency administering the medical assistance plan of his approval or disapproval of any facility in that State which has applied for certification by him as a qualified rural health clinic.

(b)(1) The Secretary may cancel approval of any intermediate care facility for the mentally retarded at any time if he finds on the basis of a determination made by him as provided in section 1396a(a)(33)(B) of this title that a facility

fails to meet the requirements contained in section 1396a(a)(31) of this title or section 1396d(d) of this title, or if he finds grounds for termination of his agreement with the facility pursuant to section 1395cc(b) of this title. In that event the Secretary shall notify the State agency and the intermediate care facility for the mentally retarded that approval of eligibility of the facility to participate in the programs established by this subchapter and subchapter XVIII of this chapter shall be terminated at a time specified by the Secretary. The approval of eligibility of any such facility to participate in such programs may not be reinstated unless the Secretary finds that the reason for termination has been removed and there is reasonable assurance that it will not recur.

(2) Any intermediate care facility for the mentally retarded which is dissatisfied with a determination by the Secretary that it no longer qualifies as a[1] intermediate care facility for the mentally retarded for purposes of this subchapter, shall be entitled to a hearing by the Secretary to the same extent as is provided in section 405(b) of this title and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively. Any agreement between such facility and the State agency shall remain in effect until the period for filing a request for a hearing has expired or, if a request has been filed, until a decision has been made by the Secretary; except that the agreement shall not be extended if the Secretary makes a written determination, specifying the reasons therefor, that the continuation of provider status constitutes an immediate and serious threat to the health and safety of patients, and the Secretary certifies that the facility has been notified of its deficiencies and has failed to correct them.

(Aug. 14, 1935, ch. 531, title XIX, § 1910, as added and amended Pub. L. 92–603, title II, §§ 249A(a), 278(b)(12), Oct. 30, 1972, 86 Stat. 1426, 1454; Pub. L. 95–210, § 2(d), Dec. 13, 1977, 91 Stat. 1489; Pub. L. 96–499, title IX, § 916(b)(2), Dec. 5, 1980, 94 Stat. 2624; Pub. L. 100–203, title IV, § 4212(e)(3), Dec. 22, 1987, 101 Stat. 1330–213; Pub. L. 100–360, title IV, § 411(*l*)(6)(F), July 1, 1988, as added Pub. L. 100–485, title VI, § 608(d)(27)(J), Oct. 13, 1988, 102 Stat. 2423; Pub. L. 101–239, title VI, § 6901(d)(5), Dec. 19, 1989, 103 Stat. 2301; Pub. L. 103–296, title I, § 108(d)(4), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(n)], Nov. 29, 1999, 113 Stat. 1536, 1501A–397.)

AMENDMENTS

1999—Pub. L. 106–113 struck out ''of'' after ''approval of'' in section catchline.

1994—Subsec. (b)(2). Pub. L. 103–296 inserted before period at end of first sentence '', except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

1989—Pub. L. 101–239, § 6901(d)(5)(A), substituted ''rural health clinics and intermediate care facilities for the mentally retarded'' for ''rural health clinics'' in section catchline.

Subsec. (b)(1). Pub. L. 101–239, § 6901(d)(5)(B)–(D), substituted ''any intermediate care facility for the mentally retarded'' for ''any skilled nursing or intermediate care facility'', ''section 1396a(a)(31) of this title or section 1396d(d) of this title'' for ''section 1396a(a)(28) of this title or section 1396r of this title or section 1396d(c) of this title'', and ''the intermediate care facility for the mentally retarded'' for ''the skilled nursing facility or intermediate care facility''.

Subsec. (b)(2). Pub. L. 101–239, § 6901(d)(5)(D), substituted ''intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility'' in two places.

1988—Subsec. (b)(1). Pub. L. 100–360, § 411(*l*)(6)(F), as added by Pub. L. 100–485, § 608(d)(27)(J), inserted ''or section 1396r of this title'' after ''1396a(a)(28) of this title''.

1987—Pub. L. 100–203 struck out ''skilled nursing facilities and'' before ''of rural'' in section catchline, redesignated subsecs. (b) and (c) as (a) and (b), respectively, and struck out former subsec. (a) which related to certification and approval of skilled nursing facilities.

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

1977—Pub. L. 95–210 substituted ''facilities and of rural health clinics'' for ''facilities'' in section catchline, redesignated existing subsecs. (a) and (b) as (a)(1) and (2), respectively, and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 6901(d)(6) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after first day of first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L.

[1] So in original. Probably should be ''an''.

95–210, set out as a note under section 1395cc of this title.

EFFECTIVE DATE

Section effective with respect to agreements filed with Secretary under section 1395cc of this title by skilled nursing facilities before, on, or after Oct. 30, 1972, but accepted by him on or after such date, see section 249A(e) of Pub. L. 92–603, set out as an Effective Date of 1972 Amendment note under section 1395cc of this title.

§ 1396j. Indian health service facilities

(a) Eligibility for reimbursement for medical assistance

A facility of the Indian Health Service (including a hospital, nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan), whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 1603 of title 25), shall be eligible for reimbursement for medical assistance provided under a State plan if and for so long as it meets all of the conditions and requirements which are applicable generally to such facilities under this subchapter.

(b) Facilities deemed to meet requirements upon submission of acceptable plan for achieving compliance

Notwithstanding subsection (a) of this section, a facility of the Indian Health Service (including a hospital, nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan) which does not meet all of the conditions and requirements of this title which are applicable generally to such facility, but which submits to the Secretary within six months after September 30, 1976, an acceptable plan for achieving compliance with such conditions and requirements, shall be deemed to meet such conditions and requirements (and to be eligible for reimbursement under this subchapter), without regard to the extent of its actual compliance with such conditions and requirements, during the first twelve months after the month in which such plan is submitted.

(c) Agreement to reimburse State agency for providing care and services

The Secretary is authorized to enter into agreements with the State agency for the purpose of reimbursing such agency for health care and services provided in Indian Health Service facilities to Indians who are eligible for medical assistance under the State plan.

(d) Cross reference

For provisions relating to the authority of certain Indian tribes, tribal organizations, and Alaska Native health organizations to elect to directly bill for, and receive payment for, health care services provided by a hospital or clinic of such tribes or organizations and for which payment may be made under this subchapter, see section 1645 of title 25.

(Aug. 14, 1935, ch. 531, title XIX, § 1911, as added Pub. L. 94–437, title IV, § 402(a), Sept. 30, 1976, 90 Stat. 1409; amended Pub. L. 100–203, title IV, §§ 4118(f)(1), 4211(h)(8), Dec. 22, 1987, 101 Stat. 1330–155, 1330–206; Pub. L. 100–360, title IV, § 411(k)(10)(E), July 1, 1988, 102 Stat. 796; Pub. L. 106–417, § 3(b)(2), Nov. 1, 2000, 114 Stat. 1815.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–417 added subsec. (d).

1988—Subsecs. (a), (b). Pub. L. 100–360, § 411(k)(10)(E), made technical correction to directory language of Pub. L. 100–203, § 4118(f)(1)(A), see 1987 Amendment note below.

1987—Subsecs. (a), (b). Pub. L. 100–203, § 4118(f)(1)(A), as amended by Pub. L. 100–360, § 411(k)(10)(E), substituted '', nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan'' for ''or nursing facility''.

Pub. L. 100–203, § 4211(h)(8), substituted ''or nursing facility'' for '', intermediate care facility, or skilled nursing facility'' wherever appearing.

Subsec. (c). Pub. L. 100–203, § 4118(f)(1)(B), added subsec. (c).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–417 effective Oct. 1, 2000, see section 3(c) of Pub. L. 106–417, set out as a note under section 1645 of Title 25, Indians.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4118(f)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to health care services performed on or after the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by section 4211(h)(8) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

AGREEMENTS TO REIMBURSE STATE AGENCY FOR HEALTH CARE AND SERVICES PROVIDED BY AGENCY TO INDIANS

Pub. L. 94–437, title IV, § 402(b), Sept. 30, 1976, 90 Stat. 1409, which authorized Secretary to enter into agreements to reimburse State agencies for health care and services provided in Service facilities to Indians eligible for medical assistance under this subchapter, was repealed by Pub. L. 100–713, title IV, § 401(b), Nov. 23, 1988, 102 Stat. 4818, applicable to services performed on or after the Nov. 23, 1988.

PAYMENTS INTO SPECIAL FUND TO IMPROVE INDIAN HEALTH SERVICE FACILITIES TO ACHIEVE COMPLIANCE WITH CONDITIONS AND REQUIREMENTS; CERTIFICATION OF COMPLIANCE BY SECRETARY

Section 402(c) of Pub. L. 94–437, as amended by Pub. L. 100–713, title IV, § 401(a), Nov. 23, 1988, 102 Stat. 4818, provided that payments to which any Indian Health Service facility was entitled by reason of this section were to be placed in a special fund of the Secretary for improvements of facilities of the Service to comply with requirements of this subchapter, required minimum funding for each service unit making collections for such facilities, and provided for section 402(c) of Pub. L. 94–437 to cease to apply when Secretary deter-

mined that substantially all such facilities complied with requirements of this subchapter, prior to the general amendment of section 402 of Pub. L. 94–437 by Pub. L. 102–573, title IV, § 401(b)(1), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 402(a) of Pub. L. 94–437 which is classified to section 1642(a) of Title 25, Indians.

MEDICAID PAYMENTS NOT CONSIDERED IN DETERMINING APPROPRIATIONS FOR INDIAN HEALTH CARE

Section 402(d) of Pub. L. 94–437 provided that any payments received for services provided recipients under this section were not to be considered in determining appropriations for the provision of health care and services to Indians, prior to the general amendment of section 402 of Pub. L. 94–437 by Pub. L. 102–573, title IV, § 401(b)(1), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 402(b) of Pub. L. 94–437 which is classified to section 1642(b) of Title 25, Indians.

§ 1396k. Assignment, enforcement, and collection of rights of payments for medical care; establishment of procedures pursuant to State plan; amounts retained by State

(a) For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the State plan approved under this subchapter, a State plan for medical assistance shall—

(1) provide that, as a condition of eligibility for medical assistance under the State plan to an individual who has the legal capacity to execute an assignment for himself, the individual is required—

(A) to assign the State any rights, of the individual or of any other person who is eligible for medical assistance under this subchapter and on whose behalf the individual has the legal authority to execute an assignment of such rights, to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party;

(B) to cooperate with the State (i) in establishing the paternity of such person (referred to in subparagraph (A)) if the person is a child born out of wedlock, and (ii) in obtaining support and payments (described in subparagraph (A)) for himself and for such person, unless (in either case) the individual is described in section 1396a(*l*)(1)(A) of this title or the individual is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(2) provide for entering into cooperative arrangements (including financial arrangements), with any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, with a State's agency established or designated under section 654(3) of this title) and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the State plan with respect to (A) the enforcement and collection of rights to support or payment assigned under this section and (B) any other matters of common concern.

(b) Such part of any amount collected by the State under an assignment made under the provisions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.

(Aug. 14, 1935, ch. 531, title XIX, § 1912, as added Pub. L. 95–142, § 11(b), Oct. 25, 1977, 91 Stat. 1196; amended Pub. L. 98–369, div. B, title III, § 2367(b), July 18, 1984, 98 Stat. 1109; Pub. L. 99–272, title IX, § 9503(e), Apr. 7, 1986, 100 Stat. 207; Pub. L. 101–508, title IV, § 4606(a), Nov. 5, 1990, 104 Stat. 1388–170.)

AMENDMENTS

1990—Subsec. (a)(1)(B). Pub. L. 101–508 inserted ''the individual is described in section 1396a(*l*)(1)(A) of this title or'' after ''unless (in either case)''.

1986—Subsec. (a)(1)(C). Pub. L. 99–272 added subpar. (C).

1984—Subsec. (a). Pub. L. 98–369 substituted ''State plan for medical assistance shall'' for ''State plan for medical assistance may''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4606(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to calendar quarters beginning on or after Apr. 7, 1986, except as otherwise provided, see section 9503(g)(1), (2) of Pub. L. 99–272, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise provided, see section 2367(c) of Pub. L. 98–369, set out as a note under section 1396a of this title.

§ 1396*l*. Hospital providers of nursing facility services

(a) Notwithstanding any other provision of this subchapter, payment may be made, in accordance with this section, under a State plan approved under this subchapter for nursing facility services furnished by a hospital which has in effect an agreement under section 1395tt of this title and which, with respect to the provision of such services, meets the requirements of subsections (b) through (d) of section 1396r of this title.

(b)(1) Except as provided in paragraph (3), payment to any such hospital, for any nursing facil-

ity services furnished pursuant to subsection (a) of this section, shall be at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the State plan to nursing facilities, respectively,[1] located in the State in which the hospital is located. The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(2) With respect to any period for which a hospital has an agreement under section 1395tt of this title, in order to allocate routine costs between hospital and long-term care services, the total reimbursement for routine services due from all classes of long-term care patients (including subchapter XVIII of this chapter, this subchapter, and private pay patients) shall be subtracted from the hospital total routine costs before calculations are made to determine reimbursement for routine hospital services under the State plan.

(3) Payment to all such hospitals, for any nursing facility services furnished pursuant to subsection (a) of this section, may be made at a payment rate established by the State in accordance with the requirements of section 1396a(a)(13)(A) of this title.

(Aug. 14, 1935, ch. 531, title XIX, § 1913, as added Pub. L. 96–499, title IX, § 904(b), Dec. 5, 1980, 94 Stat. 2617; amended Pub. L. 98–369, div. B, title III, § 2369(a), July 18, 1984, 98 Stat. 1110; Pub. L. 100–203, title IV, § 4211(h)(9), Dec. 22, 1987, 101 Stat. 1330–206.)

AMENDMENTS

1987—Pub. L. 100–203, § 4211(h)(9)(A), substituted ''nursing facility services'' for ''skilled nursing and intermediate care services'' in section catchline.

Subsec. (a). Pub. L. 100–203, § 4211(h)(9)(B), substituted ''nursing facility services'' for ''skilled nursing facility services and intermediate care facility services'' and inserted ''and which, with respect to the provision of such services, meets the requirements of subsections (b) through (d) of section 1396r of this title'' before period at end.

Subsec. (b)(1). Pub. L. 100–203, § 4211(h)(9)(C), substituted ''nursing facility services'' for ''skilled nursing or intermediate care facility services'' and ''nursing facilities'' for ''skilled nursing and intermediate care facilities''.

Subsec. (b)(3). Pub. L. 100–203, § 4211(h)(9)(D), substituted ''nursing facility services'' for ''skilled nursing or intermediate care facility services''.

1984—Subsec. (b)(1). Pub. L. 98–369, § 2369(a)(1), substituted ''Except as provided in paragraph (3), payment'' for ''Payment''.

Subsec. (b)(3). Pub. L. 98–369, § 2369(a)(2), added par. (3).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2369(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to payments for services furnished after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE

Section effective on date on which final regulations to implement the section are first issued, see section 904(d) of Pub. L. 96–499, set out as an Effective Date note under section 1395tt of this title.

[1] So in original, '', respectively,'' probably should not appear.

§ 1396m. Withholding of Federal share of payments for certain medicare providers

(a) Adjustment of Federal matching payments

The Secretary may adjust, in accordance with this section, the Federal matching payment to a State with respect to expenditures for medical assistance for care or services furnished in any quarter by—

(1) an institution (A) which has or previously had in effect an agreement with the Secretary under section 1395cc of this title; and (B)(i) from which the Secretary has been unable to recover overpayments made under subchapter XVIII of this chapter, or (ii) from which the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such institution under subchapter XVIII of this chapter; and

(2) any person (A) who (i) has previously accepted payment on the basis of an assignment under section 1395u(b)(3)(B)(ii) of this title, and (ii) during the annual period immediately preceding such quarter submitted no claims for payment under subchapter XVIII of this chapter, or submitted claims for payment under subchapter XVIII of this chapter which aggregated less than the amount of overpayments made to him, and (B)(i) from whom the Secretary has been unable to recover overpayments received in violation of the terms of such assignment, or (ii) from whom the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such person under subchapter XVIII of this chapter.

(b) Reductions in payments to and by States

The Secretary may (subject to the remaining provisions of this section) reduce payment to a State under this subchapter for any quarter by an amount equal to the lesser of the Federal matching share of payments to any institution or person specified in subsection (a) of this section, or the total overpayments to such institution or person under subchapter XVIII of this chapter, and may require the State to reduce its payment to such institution or person by such amount.

(c) Notice

The Secretary shall not make any adjustment in the payment to a State, nor require any adjustment in the payment to an institution or person, pursuant to subsection (b) of this section until after he has provided adequate notice (which shall be not less than 60 days) to the State agency and the institution or person.

(d) Regulations

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

which procedures shall (1) determine the amount of the Federal payment to which the institution or person would otherwise be entitled under this section which shall be treated as a setoff against overpayments under subchapter XVIII of this chapter, and (2) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under subchapter XVIII of this chapter and to which the institution or person would otherwise be entitled under this subchapter.

(e) Restoration to trust funds of recovered amounts

The Secretary shall restore to the trust funds established under sections 1395i and 1395t of this title, as appropriate, amounts recovered under this section as setoffs against overpayments under subchapter XVIII of this chapter.

(f) Liability of States for withheld payments

Notwithstanding any other provision of this subchapter, an institution or person shall not be entitled to recover from any State any amount in payment for medical care and services under this subchapter which is withheld by the State agency pursuant to an order by the Secretary under subsection (b) of this section.

(Aug. 14, 1935, ch. 531, title XIX, § 1914, as added Pub. L. 96–499, title IX, § 905(d), Dec. 5, 1980, 94 Stat. 2618.)

§ 1396n. Compliance with State plan and payment provisions

(a) Activities deemed as compliance

A State shall not be deemed to be out of compliance with the requirements of paragraphs (1), (10), or (23) of section 1396a(a) of this title solely by reason of the fact that the State (or any political subdivision thereof)—

(1) has entered into—

(A) a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic; or

(B) arrangements through a competitive bidding process or otherwise for the purchase of laboratory services referred to in section 1396d(a)(3) of this title or medical devices if the Secretary has found that—

(i) adequate services or devices will be available under such arrangements, and

(ii) any such laboratory services will be provided only through laboratories—

(I) which meet the applicable requirements of section 1395x(e)(9) of this title or paragraphs (16) and (17) of section 1395x(s) of this title, and such additional requirements as the Secretary may require, and

(II) no more than 75 percent of whose charges for such services are for services provided to individuals who are entitled to benefits under this subchapter or under part A or part B of subchapter XVIII of this chapter; or

(2) restricts for a reasonable period of time the provider or providers from which an individual (eligible for medical assistance for items or services under the State plan) can receive such items or services, if—

(A) the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the individual has utilized such items or services at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), and

(B) under such restriction, individuals eligible for medical assistance for such services have reasonable access (taking into account geographic location and reasonable travel time) to such services of adequate quality.

(b) Waivers to promote cost-effectiveness and efficiency

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s)) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State—

(1) to implement a primary care case-management system or a specialty physician services arrangement which restricts the provider from (or through) whom an individual (eligible for medical assistance under this subchapter) can obtain medical care services (other than in emergency circumstances), if such restriction does not substantially impair access to such services of adequate quality where medically necessary,

(2) to allow a locality to act as a central broker in assisting individuals (eligible for medical assistance under this subchapter) in selecting among competing health care plans, if such restriction does not substantially impair access to services of adequate quality where medically necessary,

(3) to share (through provision of additional services) with recipients of medical assistance under the State plan cost savings resulting from use by the recipient of more cost-effective medical care, and

(4) to restrict the provider from (or through) whom an individual (eligible for medical assistance under this subchapter) can obtain services (other than in emergency circumstances) to providers or practitioners who undertake to provide such services and who meet, accept, and comply with the reimbursement, quality, and utilization standards under the State plan, which standards shall be consistent with the requirements of section 1396r–4 of this title and are consistent with access, quality, and efficient and economic provision of covered care and services, if such restriction does not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in

providing those services and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1396a(a)(37)(A) of this title.

No waiver under this subsection may restrict the choice of the individual in receiving services under section 1396d(a)(4)(C) of this title.

(c) Waiver respecting medical assistance requirement in State plan; scope, etc.; "habilitation services" defined; imposition of certain regulatory limits prohibited; computation of expenditures for certain disabled patients; coordinated services; substitution of participants

(1) The Secretary may by waiver provide that a State plan approved under this subchapter may include as ''medical assistance'' under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan. For purposes of this subsection, the term ''room and board'' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) the State will provide, with respect to individuals who—

(i) are entitled to medical assistance for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded under the State plan,

(ii) may require such services, and

(iii) may be eligible for such home or community-based care under such waiver,

for an evaluation of the need for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded;

(C) such individuals who are determined to be likely to require the level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded are informed of the feasible alternatives, if available under the waiver, at the choice of such individuals, to the provision of inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded;

(D) under such waiver the average per capita expenditure estimated by the State in any fiscal year for medical assistance provided with respect to such individuals does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such individuals if the waiver had not been granted; and

(E) the State will provide to the Secretary annually, consistent with a data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(1) of this title (relating to statewideness), section 1396a(a)(10)(B) of this title (relating to comparability), and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community). A waiver under this subsection shall be for an initial term of three years and, upon the request of a State, shall be extended for additional five-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under that waiver, that the maximum amount of the individual's income which may be disregarded for any month for the maintenance needs of the individual may be an amount greater than the maximum allowed for that purpose under regulations in effect on July 1, 1985.

(4) A waiver granted under this subsection may, consistent with paragraph (2)—

(A) limit the individuals provided benefits under such waiver to individuals with respect to whom the State has determined that there is a reasonable expectation that the amount of medical assistance provided with respect to the individual under such waiver will not exceed the amount of such medical assistance provided for such individual if the waiver did not apply, and

(B) provide medical assistance to individuals (to the extent consistent with written plans of care, which are subject to the approval of the State) for case management services, homemaker/home health aide services and personal care services, adult day health services, habilitation services, respite care, and such other services requested by the State as the Secretary may approve and for day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness.

Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection.

(5) For purposes of paragraph (4)(B), the term ''habilitation services''—

(A) means services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community based settings; and

(B) includes (except as provided in subparagraph (C)) prevocational, educational, and supported employment services; but

(C) does not include—

(i) special education and related services (as such terms are defined in section 1401 of title 20) which otherwise are available to the individual through a local educational agency; and

(ii) vocational rehabilitation services which otherwise are available to the individual through a program funded under section 730 of title 29.

(6) The Secretary may not require, as a condition of approval of a waiver under this section under paragraph (2)(D), that the actual total expenditures for home and community-based services under the waiver (and a claim for Federal financial participation in expenditures for the services) cannot exceed the approved estimates for these services. The Secretary may not deny Federal financial payment with respect to services under such a waiver on the ground that, in order to comply with paragraph (2)(D), a State has failed to comply with such a requirement.

(7)(A) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with a particular illness or condition who are inpatients in, or who would require the level of care provided in, hospitals, nursing facilities, or intermediate care facilities for the mentally retarded, the State may determine the average per capita expenditure that would have been made in a fiscal year for those individuals under the State plan separately from the expenditures for other individuals who are inpatients in, or who would require the level of care provided in, those respective facilities.

(B) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with developmental disabilities who are inpatients in a nursing facility and whom the State has determined, on the basis of an evaluation under paragraph (2)(B), to need the level of services provided by an intermediate care facility for the mentally retarded, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals under the State plan on the basis of the average per capita expenditures under the State plan for services to individuals who are inpatients in an intermediate care facility for the mentally retarded, without regard to the availability of beds for such inpatients.

(C) In making estimates under paragraph (2)(D) in the case of a waiver to the extent that it applies to individuals with mental retardation or a related condition who are resident in an intermediate care facility for the mentally retarded the participation of which under the State plan is terminated, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals without regard to any such termination.

(8) The State agency administering the plan under this subchapter may, whenever appropriate, enter into cooperative arrangements with the State agency responsible for administering the program for children with special health care needs under subchapter V of this chapter in order to assure improved access to coordinated services to meet the needs of such children.

(9) In the case of any waiver under this subsection which contains a limit on the number of individuals who shall receive home or community-based services, the State may substitute additional individuals to receive such services to replace any individuals who die or become ineligible for services under the State plan.

(10) The Secretary shall not limit to fewer than 200 the number of individuals in the State who may receive home and community-based services under a waiver under this subsection.

(d) Home and community-based services for elderly

(1) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this subchapter shall include as ''medical assistance'' under such plan payment for part or all of the cost of home or community-based services (other than room and board) which are provided pursuant to a written plan of care to individuals 65 years of age or older with respect to whom there has been a determination that but for the provision of such services the individuals would be likely to require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan. For purposes of this subsection, the term ''room and board'' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) with respect to individuals 65 years of age or older who—

(i) are entitled to medical assistance for skilled nursing or intermediate care facility services under the State plan,

(ii) may require such services, and

(iii) may be eligible for such home or community-based services under such waiver,

the State will provide for an evaluation of the need for such skilled nursing facility or intermediate care facility services; and

(C) such individuals who are determined to be likely to require the level of care provided

in a skilled nursing facility or intermediate care facility are informed of the feasible alternatives to the provision of skilled nursing facility or intermediate care facility services, which such individuals may choose if available under the waiver.

Each State with a waiver under this subsection shall provide to the Secretary annually, consistent with a reasonable data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(1) of this title (relating to statewideness), section 1396a(a)(10)(B) of this title (relating to comparability), and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community). Subject to a termination by the State (with notice to the Secretary) at any time, a waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional 5-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under the waiver, that the maximum amount of the individual's income which may be disregarded for any month is equal to the amount that may be allowed for that purpose under a waiver under subsection (c) of this section.

(4) A waiver under this subsection may, consistent with paragraph (2), provide medical assistance to individuals for case management services, homemaker/home health aide services and personal care services, adult day health services, respite care, and other medical and social services that can contribute to the health and well-being of individuals and their ability to reside in a community-based care setting.

(5)(A) In the case of a State having a waiver approved under this subsection, notwithstanding any other provision of section 1396b of this title to the contrary, the total amount expended by the State for medical assistance with respect to skilled nursing facility services, intermediate care facility services, and home and community-based services under the State plan for individuals 65 years of age or older during a waiver year under this subsection may not exceed the projected amount determined under subparagraph (B).

(B) For purposes of subparagraph (A), the projected amount under this subparagraph is the sum of the following:

(i) The aggregate amount of the State's medical assistance under this subchapter for skilled nursing facility services and intermediate care facility services furnished to individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year involved or the sum of—

(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the beginning of the base year and the beginning of the waiver year involved, plus

(II) the percentage increase between the beginning of the base year and the beginning of the waiver year involved in the number of residents in the State who have attained the age of 65, plus

(III) 2 percent for each year (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year.

(ii) The aggregate amount of the State's medical assistance under this subchapter for home and community-based services for individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year involved or the sum of—

(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the beginning of the base year and the beginning of the waiver year involved, plus

(II) the percentage increase between the beginning of the base year and the beginning of the waiver year involved in the number of residents in the State who have attained the age of 65, plus

(III) 2 percent for each year (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year.

(iii) The Secretary shall develop and promulgate by regulation (by not later than October 1, 1989)—

(I) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise both skilled nursing facility services and intermediate care facility services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (i)(I);

(II) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise home and community-based services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (ii)(I); and

(III) a method for projecting, on a State specific basis, the percentage increase in the number of residents in each State who are over 65 years of age for any period.

The Secretary shall develop (by not later than October 1, 1989) a method for projecting, on a State-specific basis, the percentage increase in the number of residents in each State who are over 65 years of age for any period. Effective on and after the date the Secretary promul-

gates the regulation under clause (iii), any reference in this subparagraph to the ''lesser of 7 percent'' shall be deemed to be a reference to the ''greater of 7 percent''.

(iv) If there is enacted after December 22, 1987, an Act which amends this subchapter whose provisions become effective on or after such date and which results in an increase in the aggregate amount of medical assistance under this subchapter for nursing facility services and home and community-based services for individuals who have attained the age of 65 years, the Secretary, at the request of a State with a waiver under this subsection for a waiver year or years and in close consultation with the State, shall adjust the projected amount computed under this subparagraph for the waiver year or years to take into account such increase.

(C) In this paragraph:

(i) The term ''home and community-based services'' includes services described in sections 1396d(a)(7) and 1396d(a)(8) of this title, services described in subsection (c)(4)(B) of this section, services described in paragraph (4), and personal care services.

(ii)(I) Subject to subclause (II), the term ''base year'' means the most recent year (ending before December 22, 1987) for which actual final expenditures under this subchapter have been reported to, and accepted by, the Secretary.

(II) For purposes of subparagraph (C), in the case of a State that does not report expenditures on the basis of the age categories described in such subparagraph for a year ending before December 22, 1987, the term ''base year'' means fiscal year 1989.

(iii) The term ''intermediate care facility services'' does not include services furnished in an institution certified in accordance with section 1396d(d) of this title.

(6)(A) A determination by the Secretary to deny a request for a waiver (or extension of waiver) under this subsection shall be subject to review to the extent provided under section 1316(b) of this title.

(B) Notwithstanding any other provision of this chapter, if the Secretary denies a request of the State for an extension of a waiver under this subsection, any waiver under this subsection in effect on the date such request is made shall remain in effect for a period of not less than 90 days after the date on which the Secretary denies such request (or, if the State seeks review of such determination in accordance with subparagraph (A), the date on which a final determination is made with respect to such review).

(e) Waiver for children infected with AIDS or drug dependent at birth

(1)(A) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this subchapter shall include as ''medical assistance'' under such plan payment for part or all of the cost of nursing care, respite care, physicians' services, prescribed drugs, medical devices and supplies, transportation services, and such other services requested by the State as the Secretary may approve which are provided pursuant to a written plan of care to a child described in subparagraph (B) with respect to whom there has been a determination that but for the provision of such services the infants would be likely to require the level of care provided in a hospital or nursing facility the cost of which could be reimbursed under the State plan.

(B) Children described in this subparagraph are individuals under 5 years of age who—

(i) at the time of birth were infected with (or tested positively for) the etiologic agent for acquired immune deficiency syndrome (AIDS),

(ii) have such syndrome, or

(iii) at the time of birth were dependent on heroin, cocaine, or phencyclidine,

and with respect to whom adoption or foster care assistance is (or will be) made available under part E of subchapter IV of this chapter.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) under such waiver the average per capita expenditure estimated by the State in any fiscal year for medical assistance provided with respect to such individuals does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such individuals if the waiver had not been granted; and

(C) the State will provide to the Secretary annually, consistent with a data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(1) of this title (relating to statewideness) and section 1396a(a)(10)(B) of this title (relating to comparability). A waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional five-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met.

(4) The provisions of paragraph (6) of subsection (d) of this section shall apply to this subsection in the same manner as it applies to subsection (d) of this section.

(f) Monitor of implementation of waivers; termination of waiver for noncompliance; time limitation for action on requests for plan approval, amendments, or waivers

(1) The Secretary shall monitor the implementation of waivers granted under this section to assure that the requirements for such waiver are being met and shall, after notice and opportunity for a hearing, terminate any such waiver where he finds noncompliance has occurred.

(2) A request to the Secretary from a State for approval of a proposed State plan or plan amendment or a waiver of a requirement of this subchapter submitted by the State pursuant to a provision of this subchapter shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.

(g) Optional targeted case management services

(1) A State may provide, as medical assistance, case management services under the plan without regard to the requirements of section 1396a(a)(1) of this title and section 1396a(a)(10)(B) of this title. The provision of case management services under this subsection shall not restrict the choice of the individual to receive medical assistance in violation of section 1396a(a)(23) of this title. A State may limit the provision of case management services under this subsection to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either, or to individuals described in section 1396a(z)(1)(A) of this title and a State may limit the provision of case management services under this subsection to individuals with chronic mental illness. The State may limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or with chronic mental illness in order to ensure that the case managers for such individuals are capable of ensuring that such individuals receive needed services.

(2) For purposes of this subsection, the term ''case management services'' means services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.

(h) Period of waivers; continuations

No waiver under this section (other than a waiver under subsection (c), (d), or (e) of this section) may extend over a period of longer than two years unless the State requests continuation of such waiver, and such request shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.

(Aug. 14, 1935, ch. 531, title XIX, §1915, as added Pub. L. 97–35, title XXI, §2175(b), Aug. 13, 1981, 95 Stat. 809; amended Pub. L. 97–35, title XXI, §§2176, 2177(a), Aug. 13, 1981, 95 Stat. 812, 813; Pub. L. 97–248, title I, §137(b)(19)(A), (20)–(25), Sept. 3, 1982, 96 Stat. 380; Pub. L. 97–448, title III, §309(b)(17), Jan. 12, 1983, 96 Stat. 2409; Pub. L. 98–369, div. B, title III, §2373(b)(21), July 18, 1984, 98 Stat. 1112; Pub. L. 99–272, title IX, §§9502(a)–(e), (g)–(i), 9508(a), Apr. 7, 1986, 100 Stat. 202–204, 210; Pub. L. 99–509, title IX, §§9320(h)(3), 9411(a)–(d), Oct. 21, 1986, 100 Stat. 2016, 2061, 2062; Pub. L. 100–93, §8(h)(2), Aug. 18, 1987, 101 Stat. 694; Pub. L. 100–203, title IV, §§4072(d), 4102(a)(1), (b)(2), 4118(a)(1), (b), (i)(1), (k), (*l*)(1), (p)(10), 4211(h)(10), Dec. 22, 1987, 101 Stat. 1330–117, 1330–143, 1330–146, 1330–154 to 1330–157, 1330–160, 1330–206; Pub. L. 100–360, title II, §204(d)(3), title IV, §411(k)(3), (10)(A), (H), (I), (17)(A), (*l*)(3)(G), July 1, 1988, 102 Stat. 729, 791, 794, 796, 799, 803; Pub. L. 100–485, title VI, §608(d)(26)(M), (f)(2), Oct. 13, 1988, 102 Stat. 2422, 2424; Pub. L. 100–647, title VIII, §§8432(a), (b), 8437(a), Nov. 10, 1988, 102 Stat. 3804, 3806; Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, §§6115(c), 6411(c)(2), Dec. 19, 1989, 103 Stat. 2219, 2270; Pub. L. 101–508, title IV, §§4604(c), 4704(b)(3), 4741, 4742(a), (c)(1), (d)(1), Nov. 5, 1990, 104 Stat. 1388–169, 1388–172, 1388–197, 1388–198; Pub. L. 102–119, §26(i)(2), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103–66, title XIII, §13603(d), Aug. 10, 1993, 107 Stat. 620; Pub. L. 105–33, title IV, §§4106(c), 4743(a), Aug. 5, 1997, 111 Stat. 368, 524; Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §608(*o*), (z)], Nov. 29, 1999, 113 Stat. 1536, 1501A–397, 1501A–398; Pub. L. 106–554, §1(a)(6) [title VII, §702(c)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574; Pub. L. 107–121, §2(b)(3), Jan. 15, 2002, 115 Stat. 2384; Pub. L. 108–446, title III, §305(j)(2), Dec. 3, 2004, 118 Stat. 2806.)

REFERENCES IN TEXT

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (a)(1)(B)(ii)(II), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part E of subchapter IV of this chapter, referred to in subsec. (e)(1)(B), is classified to section 670 et seq. of this title.

AMENDMENTS

2004—Subsec. (c)(5)(C)(i). Pub. L. 108–446, which directed the substitution of ''(as such terms are defined in section 1401 of title 20)'' for ''as defined in section 1401(16) and (17) of title 20)'', was executed by making the substitution for ''(as defined in paragraphs (16) and (17) of section 1401(a) of title 20)'' to reflect the probable intent of Congress and the amendment by Pub. L. 102–119. See 1991 Amendment note below.

2002—Subsec. (b). Pub. L. 107–121 substituted ''1396a(bb)'' for ''1396a(aa)''.

2000—Subsec. (b). Pub. L. 106–554 substituted ''1396a(a)(15), 1396a(aa),'' for ''1396a(a)(13)(C)'' in introductory provisions.

1999—Subsec. (b). Pub. L. 106–113, §1000(a)(6) [title VI, §608(z)], which directed, effective Oct. 1, 2004, substitution of ''section'' for ''sections 1396a(a)(13)(C) and'' in introductory provisions, could not be executed due to the amendment by Pub. L. 106–554. See 2000 Amendment note above.

Pub. L. 106–113, §1000(a)(6) [title VI, §608(*o*)(1)], substituted ''1396a(a)(13)(C)'' for ''1396a(a)(13)(E)'' in introductory provisions.

Subsec. (d)(5)(B)(iii). Pub. L. 106–113, §1000(a)(6) [title VI, §608(*o*)(2)], which directed substitution of ''65'' for ''75'' in last sentence of cl. (iii), was executed by making the substitution in the penultimate sentence to reflect the probable intent of Congress.

Subsec. (h). Pub. L. 106–113, §1000(a)(6) [title VI, §608(*o*)(3)], substituted ''90 days of such date'' for ''90 day of such date''.

1997—Subsec. (a)(1)(B)(ii)(I). Pub. L. 105–33, § 4106(c), substituted ''paragraphs (16) and (17)'' for ''paragraphs (15) and (16)''.

Subsec. (c)(5). Pub. L. 105–33, § 4743(a), in introductory provisions, struck out '', with respect to individuals who receive such services after discharge from a nursing facility or intermediate care facility for the mentally retarded'' after '' 'habilitation services' ''.

1993—Subsec. (g)(1). Pub. L. 103–66 inserted ''or to individuals described in section 1396a(z)(1)(A) of this title'' after ''or with either,''.

1991—Subsec. (c)(5)(C)(i). Pub. L. 102–119 substituted ''(as defined in paragraphs (16) and (17) of section 1401(a) of title 20)'' for ''(as defined in section 1401(16) and (17) of title 20)''. The reference to section 1401 of title 20 includes the substitution of ''Individuals with Disabilities Education Act'' for ''Education of the Handicapped Act'' in the original.

1990—Subsec. (b). Pub. L. 101–508, § 4704(b)(3), inserted ''(other than sections 1396a(a)(13)(E) and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title)'' after ''section 1396a of this title'' in introductory provisions.

Pub. L. 101–508, § 4604(c), which directed amendment of subsec. (b) by inserting ''(other than subsection (s))'' after ''Section 1396a of this title'', was executed by inserting the new language after ''section 1396a of this title'' to reflect the probable intent of Congress.

Subsec. (b)(4). Pub. L. 101–508, § 4742(a), inserted before period at end ''and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1396a(a)(37)(A) of this title''.

Subsec. (c)(1). Pub. L. 101–508, § 4741(a), inserted at end ''For purposes of this subsection, the term 'room and board' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.''

Subsec. (c)(4). Pub. L. 101–508, § 4742(d)(1), inserted at end ''Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection.''

Subsec. (c)(7)(C). Pub. L. 101–508, § 4742(c)(1), added subpar. (C).

Subsec. (d)(1). Pub. L. 101–508, § 4741(a), inserted at end ''For purposes of this subsection, the term 'room and board' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.''

Subsec. (d)(5)(B)(iv). Pub. L. 101–508, § 4741(b), substituted ''this subchapter whose provisions become effective on or after such date'' for first reference to ''this subchapter''.

1989—Subsec. (a)(1)(B)(ii)(I). Pub. L. 101–239, § 6115(c), substituted ''paragraphs (15) and (16)'' for ''paragraphs (14) and (15)''.

Pub. L. 101–234 repealed Pub. L. 100–360, § 204(d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(4). Pub. L. 101–239, § 6411(c)(2), inserted ''shall be consistent with the requirements of section 1396r–4 of this title and'' after ''which standards''.

1988—Subsec. (a)(1)(B)(ii)(I). Pub. L. 100–360, § 204(d)(3), substituted ''paragraphs (14) and (15)'' for ''paragraphs (13) and (14)''.

Subsec. (a)(2). Pub. L. 100–485, § 608(f)(2), substituted ''restricts'' for ''Restricts'' in introductory provisions.

Subsec. (c)(7). Pub. L. 100–360, § 411(*l*)(3)(G), amended Pub. L. 100–203, § 4211(h)(10)(G), see 1987 Amendment note below.

Subsec. (c)(7)(A). Pub. L. 100–647, § 8437(a), substituted ''who are inpatients in, or who would require the level of care provided in, hospitals,'' for ''who are inpatients in hospitals,'' and ''who are inpatients in, or who would require the level of care provided in, those respective facilities'' for ''who are inpatients of those respective facilities''.

Subsec. (c)(7)(B). Pub. L. 100–360, § 411(k)(10)(H), inserted '', without regard to the availability of beds for such inpatients'' before period at end.

Subsec. (c)(10). Pub. L. 100–360, § 411(k)(10)(A), substituted ''The Secretary shall not limit to fewer than 200'' for ''No waiver under this subsection shall limit by an amount less than 200'' and ''under a waiver under this subsection'' for ''under such waiver''.

Subsec. (d)(5)(B)(i), (ii). Pub. L. 100–647, § 8432(b), in introductory provisions, substituted ''the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year'' for ''the number of years beginning after the base year and ending before the waiver year'', in subcls. (I) and (II), substituted ''between the beginning of the base year and the beginning of the waiver year'' for ''between the base year and the waiver year'', and in subcl. (III), inserted ''(rounded to the nearest quarter of a year)'' after ''for each year'' and substituted ''at the end of the waiver year'' for ''before the waiver year''.

Subsec. (d)(5)(B)(iii). Pub. L. 100–360, § 411(k)(3)(A)(ii), inserted before last sentence ''The Secretary shall develop (by not later than October 1, 1989) a method for projecting, on a State-specific basis, the percentage increase in the number of residents in each State who are over 75 years of age for any period.''

Subsec. (d)(5)(B)(iii)(III). Pub. L. 100–360, § 411(k)(3)(A)(i), substituted ''65'' for ''75''.

Subsec. (d)(5)(B)(iv). Pub. L. 100–647, § 8432(a), added cl. (iv).

Subsec. (d)(5)(C)(i). Pub. L. 100–360, § 411(k)(3)(B), substituted ''paragraph (4), and personal care services'' for ''paragraph (4)(B), personal care services, and services furnished pursuant to a waiver under subsection (c) of this section''.

Subsec. (e). Pub. L. 100–360, § 411(k)(17)(A)(ii), (iii), added subsec. (e), redesignated former subsec. (e)(1) as (f)(1), and struck out former subsec. (e)(2) which read as follows: ''The Secretary shall report, not later than September 30, 1984, to Congress on waivers granted under this section.''

Subsec. (f)(1). Pub. L. 100–360, § 411(k)(17)(A)(ii), redesignated former subsec. (e)(1) as (f)(1).

Subsec. (f)(2). Pub. L. 100–360, § 411(k)(17)(A)(i), redesignated former subsec. (f) as subsec. (f)(2).

Subsec. (h). Pub. L. 100–360, § 411(k)(10)(I), made technical amendment to directory language of Pub. L. 100–203, § 4118(*l*)(1), see 1987 Amendment note below.

Pub. L. 100–360, § 411(k)(17)(A)(iv), as amended by Pub. L. 100–485, § 608(d)(26)(M), substituted '', (d), or (e)'' for ''or (d)''.

1987—Subsec. (a)(1)(B)(ii)(I). Pub. L. 100–203, § 4072(d), substituted ''paragraphs (13) and (14)'' for ''paragraphs (12) and (13)''.

Subsec. (a)(2). Pub. L. 100–93 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''restricts—

''(A) for a reasonable period of time the provider or providers from which an individual (eligible for medical assistance for items or services under the State plan) can receive such items or services, if the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the individual has utilized such items or services at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), or

''(B) (through suspension or otherwise) for a reasonable period of time the participation of a provider of

items or services under the State plan, if the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the provider has (in a significant number or proportion of cases) provided such items or services either (i) at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), or (ii) of a quality which does not meet professionally recognized standards of health care,

if, under such restriction, individuals eligible for medical assistance for such services have reasonable access (taking into account geographic location and reasonable travel time) to such services of adequate quality.''

Subsec. (c)(1). Pub. L. 100–203, §4211(h)(10)(A), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility''.

Subsec. (c)(2)(B). Pub. L. 100–203, §4211(h)(10)(C), in closing provisions, substituted ''need for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded'' for ''need for such inpatient hospital, skilled nursing facility or intermediate care facility services''.

Pub. L. 100–203, §4118(p)(10), in closing provisions inserted ''such'' after ''need for''.

Subsec. (c)(2)(B)(i). Pub. L. 100–203, §4211(h)(10)(B), substituted ''services, nursing facility services, or services in an intermediate care facility for the mentally retarded'' for '', skilled nursing facility, or intermediate care facility services''.

Subsec. (c)(2)(C). Pub. L. 100–203, §4211(h)(10)(D), (E), substituted '', nursing facility, or intermediate care facility for the mentally retarded'' for ''or skilled nursing facility or intermediate care facility'' and '', nursing facility services, or services in an intermediate care facility for the mentally retarded'' for ''or skilled nursing facility or intermediate care facility services''.

Subsec. (c)(3). Pub. L. 100–203, §4118(a)(1), substituted '', section 1396a(a)(10)(B) of this title (relating to comparability), and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community)'' for ''and section 1396a(a)(10)(B) of this title (relating to comparability)''.

Subsec. (c)(5). Pub. L. 100–203, §4211(h)(10)(F), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility''.

Subsec. (c)(7). Pub. L. 100–203, §4211(h)(10)(G), as amended by Pub. L. 100–360, §411(*l*)(3)(G), substituted '', nursing facilities, or intermediate care facilities for the mentally retarded'' for ''or in skilled nursing or intermediate care facilities'' in subpar. (A) and ''nursing facility'' for ''skilled nursing facility or intermediate care facility'' in subpar. (B).

Pub. L. 100–203, §4118(k), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(10). Pub. L. 100–203, §4118(b), added par. (10).

Subsec. (d). Pub. L. 100–203, §4102(a)(1), added subsec. (d). Former subsec. (d) redesignated (h).

Subsec. (g)(1). Pub. L. 100–203, §4118(i)(1), inserted at end ''The State may limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or with chronic mental illness in order to ensure that the case managers for such individuals are capable of ensuring that such individuals receive needed services.''

Subsec. (h). Pub. L. 100–203, §4118(*l*)(1), as amended by Pub. L. 100–360, §411(k)(10)(I), substituted '', within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 day of such date, denies such request.'' for ''denies such request in writing within 90 days after the date of its submission to the Secretary.''

Pub. L. 100–203, §4102(b)(2), substituted ''subsection (c) or (d) of this section'' for ''subsection (c) of this section''.

Pub. L. 100–203, §4102(a)(1)(A), redesignated former subsec. (d) as (h).

1986—Subsec. (a)(1)(B)(ii)(I). Pub. L. 99–509, §9320(h)(3), substituted ''paragraphs (12) and (13)'' for ''paragraphs (11) and (12)''.

Subsec. (b). Pub. L. 99–272, §9508(a)(2), inserted provision, following par. (4), that no waiver under this subsection may restrict the choice of the individual in receiving services under section 1396d(a)(4)(C) of this title.

Subsec. (c)(1). Pub. L. 99–509, §9411(a)(1), inserted ''a hospital or'' after ''level of care provided in'', and struck out provision added by Pub. L. 99–272, §9502(b)(1).

Pub. L. 99–272, §9502(b)(1), inserted provision relating to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would continue to receive inpatient hospital services, skilled nursing facility services, or intermediate care facility services because they are dependent on ventilator support the cost of which is reimbursed under the State plan.

Subsec. (c)(2)(B). Pub. L. 99–509, §9411(a)(2), substituted ''inpatient hospital, skilled nursing facility, or'' for ''skilled nursing facility or'' in cl. (i) and inserted ''inpatient hospital,'' after ''need for'' in concluding provision following cl. (iii).

Subsec. (c)(2)(C). Pub. L. 99–272, §9502(b)(2), inserted ''hospital or'' after ''provided in a'', and ''inpatient hospital services or'' after ''the provision of''.

Subsec. (c)(2)(D). Pub. L. 99–272, §9502(c)(1), inserted ''100 percent of'' after ''does not exceed''.

Subsec. (c)(3). Pub. L. 99–509, §9411(c), substituted ''and section 1396a(a)(10)(B) of this title (relating to comparability)'' for ''and section 1396a(a)(10) of this title''.

Pub. L. 99–272, §9502(g), substituted ''additional five-year periods'' for ''additional three-year periods'', and ''previous waiver period'' for ''previous three-year period''.

Pub. L. 99–272, §9502(e), inserted at end ''A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under that waiver, that the maximum amount of the individual's income which may be disregarded for any month for the maintenance needs of the individual may be an amount greater than the maximum allowed for that purpose under regulations in effect on July 1, 1985.''

Subsec. (c)(4)(B). Pub. L. 99–509, §9411(d), inserted before the period ''and for day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness''.

Subsec. (c)(5). Pub. L. 99–272, §9502(a), added par. (5).

Subsec. (c)(6). Pub. L. 99–272, §9502(c)(2), added par. (6).

Subsec. (c)(7). Pub. L. 99–509, §9411(a)(3), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''In making estimates under paragraph (2)(D) in the case of a waiver which applies only to physically disabled individuals who are inpatients in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure which would have been made in a fiscal year for those individuals under the State plan separately from the expenditure for other individuals who are inpatients of those facilities.''

Pub. L. 99–272, §9502(d), added par. (7).

Subsec. (c)(8). Pub. L. 99–272, §9502(h), added par. (8).

Subsec. (c)(9). Pub. L. 99–272, §9502(i), added par. (9).

Subsec. (g). Pub. L. 99–272, §9508(a)(1), added subsec. (g).

Subsec. (g)(1). Pub. L. 99–509, §9411(b), inserted provision at end allowing a State to limit case management services to AIDS victims or to individuals with chronic mental illness.

1984—Subsec. (c)(1). Pub. L. 98–369 substituted ''under this subchapter'' for ''under this part''.

1983—Subsec. (c)(2)(B). Pub. L. 97–448 substituted ''need for such skilled nursing facility or intermediate care facility services'' for ''need for such services'' in provisions following cl. (iii).

1982—Subsec. (b). Pub. L. 97–248, § 137(b)(19)(A), struck out ''and section 1396b(m) of this title'' after ''section 1396a of this title''.

Subsec. (b)(1). Pub. L. 97–248, § 137(b)(20), inserted ''primary care'' before ''case-management system'', and substituted ''medical care services'' for ''primary care services''.

Subsec. (c)(1). Pub. L. 97–248, § 137(b)(21), inserted ''payment for part or all of the cost of'' after ''may include as 'medical assistance' under such plan''.

Subsec. (c)(2)(B). Pub. L. 97–248, § 137(b)(22), redesignated existing provisions as cls. (i) and (ii) and added cl. (iii).

Subsec. (c)(3). Pub. L. 97–248, § 137(b)(23), substituted ''section 1396a(a)(1) of this title'' for ''subsection (a)(1) of this section'' and ''section 1396a(a)(10) of this title'' for ''subsection (a)(10) of section 1396a of this title''.

Subsec. (c)(4). Pub. L. 97–248, § 137(b)(24), substituted ''this subsection'' for ''this section''.

Subsec. (f). Pub. L. 97–248, § 137(b)(25), inserted ''approval of'' before ''a proposed State plan''.

1981—Subsecs. (c) to (e). Pub. L. 97–35, § 2176, added subsec. (c), redesignated former subsec. (c) as (d) and inserted ''(other than a waiver under subsection (c) of this section)'', and redesignated former subsec. (d) as (e).

Subsec. (f). Pub. L. 97–35, § 2177(a), added subsec. (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–121 effective as if included in the enactment of section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 as enacted into law by section 1(a)(6) of Pub. L. 106–554, see section 2(c)(2) of Pub. L. 107–121, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective Jan. 1, 2001, and applicable to services furnished on or after such date, see section 1(a)(6) [title VII, § 702(e)] of Pub. L. 106–554, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(z)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398, provided that the amendment made by section 1000(a)(6) [title VI, § 608(z)] is effective Oct. 1, 2004.

Amendment by section 1000(a)(6) [title VI, § 608*o*] of Pub. L. 106–113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, § 608(bb)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4106(c) of Pub. L. 105–33 applicable to bone mass measurements performed on or after July 1, 1998, see section 4106(d) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Section 4743(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] apply to services furnished on or after October 1, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to medical assistance furnished on or after Jan. 1, 1994, without regard to whether or not final regulations to carry out the amendments by section 13603 of Pub. L. 103–66 have been promulgated by such date, see section 13603(f) of Pub. L. 103–66, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by section 4604(c) of Pub. L. 101–508 effective with respect to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4604 of Pub. L. 101–508 have been promulgated by such date, see section 4604(d) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4704(b)(3) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, see section 4704(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4742(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as of the first calendar quarter beginning more than 30 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4742(c)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35], but shall only apply to facilities the participation of which under a State plan under title XIX of the Social Security Act [this subchapter] is terminated on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4742(d)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Section 6411(c)(4) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (2) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8432(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to waiver years beginning during or after fiscal year 1989.''

Section 8437(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to waiver applications submitted before, on, or after the date of the enactment of this Act [Nov. 10, 1988].''

Amendment by section 608(d)(26)(M) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 608(f)(2) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(g)(2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 204(d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(3), (10)(A), (H), (I), (17)(A), (*l*)(3)(G) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Section 4102(a)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on January 1, 1988.''

Section 4118(a)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4118(i)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as though it were included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Section 4118(*l*)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to requests for continuation of waivers received after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4118(p)(10) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.

Amendment by section 4211(h)(10) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9320(h)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9411(e) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall apply to applications for waivers (or renewals thereof) approved on or after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9502(j) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(a), Oct. 21, 1986, 100 Stat. 2069; Pub. L. 100–203, title IV, §4118(j), Dec. 22, 1987, 101 Stat. 1330–156, provided that:

''(1) HABILITATION SERVICES.—The amendment made by subsection (a) [amending this section] shall be effective for services furnished on or after the date of the enactment of this Act [Apr. 7, 1986] to individuals eligible for services under a waiver granted under section 1915(c) of the Social Security Act [subsec. (c) of this section], without regard to whether such individuals were receiving institutional services before their participation in the waiver.

''(2) HOSPITALIZED PATIENTS.—The amendments made by subsection (b) [amending this section] shall be effective for services furnished on or after October 1, 1985.

''(3) PROHIBITION OF REGULATORY LIMITS AND TREATMENT OF CERTAIN PHYSICALLY DISABLED INDIVIDUALS.—The amendments made by subsections (c) and (d) [amending this section] shall apply to applications for waivers (or renewals thereof) filed before, on, or after, the date of the enactment of this Act [Apr. 7, 1986] and for services furnished on or after August 13, 1981.

''(4) INCOME STANDARDS.—The amendment made by subsection (e) [amending this section] shall apply to waivers (or renewals thereof) approved before, on, or after the date of the enactment of this Act [Apr. 7, 1986].

''(5) WAIVER EXTENSIONS.—Subsection (f) [enacting provisions set out below] shall apply to waivers expiring on or after September 30, 1985, and before September 30, 1986.

''(6) WAIVER RENEWALS.—The amendments made by subsection (g) [amending this section] shall become effective on September 30, 1986.

''(7) COORDINATED SERVICES AND SUBSTITUTION OF PARTICIPANTS.—The amendments made by subsections (h) and (i) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9508(b) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(d)(1), Oct. 21, 1986, 100 Stat. 2070, provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Apr. 7, 1986], without regard to whether or not regulations to carry out the amendments have been promulgated by that date.''

[Section 4118(j) of Pub. L. 100–203 provided that the amendment made by that section to section 9502(j)(1) of Pub. L. 99–272, set out above, is effective as if included in the enactment of section 9502 of Pub. L. 99–272.]

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 137(b)(19)(B) of Pub. L. 97–248 provided that: ''The amendment made by subparagraph (A) [amending this section] shall not apply with respect to any waiver if such waiver was granted, and the arrangement covered by the waiver was in place, prior to August 10, 1982.''

Amendment by section 137(b)(20)–(25) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2177(b) of Pub. L. 97–35 provided that: ''The amendment made by this section [amending this section] shall become effective 90 days after the date of the enactment of this Act [Aug. 13, 1981]''.

PERMITTING ADJUSTMENT IN ESTIMATES TO TAKE INTO ACCOUNT PREADMISSION SCREENING REQUIREMENT

Section 4742(e) of Pub. L. 101–508 provided that: ''In the case of a waiver under section 1915(c) of the Social Security Act [subsec. (c) of this section] for individuals with mental retardation or a related condition in a State, the Secretary of Health and Human Services shall permit the State to adjust the estimate of average per capita expenditures submitted under paragraph (2)(D) of such section, with respect to such expenditures made on or after January 1, 1989, to take into account increases in expenditures for, or utilization of, intermediate care facilities for the mentally retarded resulting from implementation of section 1919(e)(7)(A) of such Act [section 1396r(e)(7)(A) of this title].''

EXTENSIONS OF WAIVERS UNDER SUBSECTION (c)

Section 4102(c) of Pub. L. 100–203 provided that: ''In the case of a State which, as of December 1, 1987, has a waiver approved with respect to elderly individuals under section 1915(c) of the Social Security Act [subsec. (c) of this section], which waiver is scheduled to expire before July 1, 1988, if the State notifies the Secretary of Health and Human Services of the State's intention to file an application for a waiver under section 1915(d) of such Act (as amended by subsection (a) of this section), the Secretary shall extend approval of the State's waiver, under section 1915(c) of such Act, on the same terms and conditions through September 30, 1988.''

Section 9502(f) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall extend,

upon request of the State, any waiver under section 1915(c) of the Social Security Act [subsec. (c) of this section] which expires on or after September 30, 1985, and before September 30, 1986. Such extension shall be for a period of not less than one year nor more than five years, subject to section 1915(e)(1) of such Act.''

§ 1396*o*. Use of enrollment fees, premiums, deductions, cost sharing, and similar charges

(a) Imposition of certain charges under plan in case of individuals described in section 1396a(a)(10)(A) or (E)

Subject to subsection (g) of this section, the State plan shall provide that in the case of individuals described in subparagraph (A) or (E)(i) of section 1396a(a)(10) of this title who are eligible under the plan—

(1) no enrollment fee, premium, or similar charge will be imposed under the plan (except for a premium imposed under subsection (c) of this section);

(2) no deduction, cost sharing or similar charge will be imposed under the plan with respect to—

(A) services furnished to individuals under 18 years of age (and, at the option of the State, individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over),

(B) services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy (or, at the option of the State, any services furnished to pregnant women),

(C) services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs,

(D) emergency services (as defined by the Secretary), family planning services and supplies described in section 1396d(a)(4)(C) of this title, or

(E) services furnished to an individual who is receiving hospice care (as defined in section 1396d(*o*) of this title); and

(3) any deduction, cost sharing, or similar charge imposed under the plan with respect to other such individuals or other care and services will be nominal in amount (as determined by the Secretary in regulations which shall, if the definition of ''nominal'' under the regulations in effect on July 1, 1982 is changed, take into account the level of cash assistance provided in such State and such other criteria as the Secretary determines to be appropriate); except that a deduction, cost-sharing, or similar charge of up to twice the nominal amount established for outpatient services may be imposed by a State under a waiver granted by the Secretary for services received at a hospital emergency room if the services are not emergency services (referred to in paragraph (2)(D)) and the State has established to the satisfaction of the Secretary that individuals eligible for services under the plan have actually available and accessible to them alternative sources of nonemergency, outpatient services.

(b) Imposition of certain charges under plan in case of individuals other than those described in section 1396a(a)(10)(A) or (E)

The State plan shall provide that in the case of individuals other than those described in subparagraph (A) or (E) of section 1396a(a)(10) of this title who are eligible under the plan—

(1) there may be imposed an enrollment fee, premium, or similar charge, which (as determined in accordance with standards prescribed by the Secretary) is related to the individual's income,

(2) no deduction, cost sharing, or similar charge will be imposed under the plan with respect to—

(A) services furnished to individuals under 18 years of age (and, at the option of the State, individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over),

(B) services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy (or, at the option of the State, any services furnished to pregnant women),

(C) services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs,

(D) emergency services (as defined by the Secretary), family planning services and supplies described in section 1396d(a)(4)(C) of this title, or

(E) services furnished to an individual who is receiving hospice care (as defined in section 1396d(*o*) of this title); and

(3) any deduction, cost sharing, or similar charge imposed under the plan with respect to other such individuals or other care and services will be nominal in amount (as determined by the Secretary in regulations which shall, if the definition of ''nominal'' under the regulations in effect on July 1, 1982 is changed, take into account the level of cash assistance provided in such State and such other criteria as the Secretary determines to be appropriate); except that a deduction, cost-sharing, or similar charge of up to twice the nominal amount established for outpatient services may be imposed by a State under a waiver granted by the Secretary for services received at a hospital emergency room if the services are not emergency services (referred to in paragraph (2)(D)) and the State has established to the satisfaction of the Secretary that individuals eligible for services under the plan have actually available and accessible to them alternative sources of nonemergency, outpatient services.

(c) Imposition of monthly premium; persons affected; amount; prepayment; failure to pay; use of funds from other programs

(1) The State plan of a State may at the option of the State provide for imposing a monthly premium (in an amount that does not exceed the limit established under paragraph (2)) with respect to an individual described in subparagraph (A) or (B) of section 1396a(*l*)(1) of this title who is receiving medical assistance on the basis of section 1396a(a)(10)(A)(ii)(IX) of this title and whose family income (as determined in accordance with the methodology specified in section 1396a(*l*)(3) of this title) equals or exceeds 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(2) In no case may the amount of any premium imposed under paragraph (1) exceed 10 percent of the amount by which the family income (less expenses for the care of a dependent child) of an individual exceeds 150 percent of the line described in paragraph (1).

(3) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of an individual for medical assistance under this subchapter on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

(4) A State may permit State or local funds available under other programs to be used for payment of a premium imposed under paragraph (1). Payment of a premium with such funds shall not be counted as income to the individual with respect to whom such payment is made.

(d) Premiums for qualified disabled and working individuals described in section 1396d(s)

With respect to a qualified disabled and working individual described in section 1396d(s) of this title whose income (as determined under paragraph (3) of that section) exceeds 150 percent of the official poverty line referred to in that paragraph, the State plan of a State may provide for the charging of a premium (expressed as a percentage of the medicare cost-sharing described in section 1396d(p)(3)(A)(i) of this title provided with respect to the individual) according to a sliding scale under which such percentage increases from 0 percent to 100 percent, in reasonable increments (as determined by the Secretary), as the individual's income increases from 150 percent of such poverty line to 200 percent of such poverty line.

(e) Prohibition of denial of services on basis of individual's inability to pay certain charges

The State plan shall require that no provider participating under the State plan may deny care or services to an individual eligible for such care or services under the plan on account of such individual's inability to pay a deduction, cost sharing, or similar charge. The requirements of this subsection shall not extinguish the liability of the individual to whom the care or services were furnished for payment of the deduction, cost sharing, or similar charge.

(f) Charges imposed under waiver authority of Secretary

No deduction, cost sharing, or similar charge may be imposed under any waiver authority of the Secretary, except as provided in subsections (a)(3) and (b)(3) of this section, unless such waiver is for a demonstration project which the Secretary finds after public notice and opportunity for comment—

(1) will test a unique and previously untested use of copayments,

(2) is limited to a period of not more than two years,

(3) will provide benefits to recipients of medical assistance which can reasonably be expected to be equivalent to the risks to the recipients,

(4) is based on a reasonable hypothesis which the demonstration is designed to test in a methodologically sound manner, including the use of control groups of similar recipients of medical assistance in the area, and

(5) is voluntary, or makes provision for assumption of liability for preventable damage to the health of recipients of medical assistance resulting from involuntary participation.

(g) Individuals provided medical assistance under section 1396a(a)(10)(A)(ii)(XV) or (XVI)

With respect to individuals provided medical assistance only under subclause (XV) or (XVI) of section 1396a(a)(10)(A)(ii) of this title—

(1) a State may (in a uniform manner for individuals described in either such subclause)—

(A) require such individuals to pay premiums or other cost-sharing charges set on a sliding scale based on income that the State may determine; and

(B) require payment of 100 percent of such premiums for such year in the case of such an individual who has income for a year that exceeds 250 percent of the income official poverty line (referred to in subsection (c)(1) of this section) applicable to a family of the size involved, except that in the case of such an individual who has income for a year that does not exceed 450 percent of such poverty line, such requirement may only apply to the extent such premiums do not exceed 7.5 percent of such income; and

(2) such State shall require payment of 100 percent of such premiums for a year by such an individual whose adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) for such year exceeds $75,000, except that a State may choose to subsidize such premiums by using State funds which may not be federally matched under this subchapter.

In the case of any calendar year beginning after 2000, the dollar amount specified in paragraph (2) shall be increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title.

(Aug. 14, 1935, ch. 531, title XIX, §1916, as added Pub. L. 97–248, title I, §131(b), Sept. 3, 1982, 96 Stat. 367; amended Pub. L. 97–448, title III, §309(b)(18)–(20), Jan. 12, 1983, 96 Stat. 2409, 2410; Pub. L. 99–272, title IX, §9505(c)(2), Apr. 7, 1986,

100 Stat. 209; Pub. L. 99–509, title IX, § 9403(g)(4)(B), Oct. 21, 1986, 100 Stat. 2056; Pub. L. 100–203, title IV, §§ 4101(d)(1), 4211(h)(11), Dec. 22, 1987, 101 Stat. 1330–142, 1330–207; Pub. L. 100–360, title IV, § 411(k)(2), July 1, 1988, 102 Stat. 791; Pub. L. 101–239, title VI, § 6408(d)(3), Dec. 19, 1989, 103 Stat. 2269; Pub. L. 105–33, title IV, § 4708(b), Aug. 5, 1997, 111 Stat. 506; Pub. L. 106–170, title II, § 201(a)(3), Dec. 17, 1999, 113 Stat. 1893.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (g)(2), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–170, § 201(a)(3)(A), substituted ''Subject to subsection (g) of this section, the State plan'' for ''The State plan'' in introductory provisions.

Subsec. (g). Pub. L. 106–170, § 201(a)(3)(B), added subsec. (g).

1997—Subsec. (a)(2)(D). Pub. L. 105–33, § 4708(b)(1), struck out ''or services furnished to such an individual by a health maintenance organization (as defined in section 1396b(m) of this title) in which he is enrolled,'' after ''section 1396d(a)(4)(C) of this title,''.

Subsec. (b)(2)(D). Pub. L. 105–33, § 4708(b)(2), struck out ''or (at the option of the State) services furnished to such an individual by a health maintenance organization (as defined in section 1396b(m) of this title) in which he is enrolled,'' after ''section 1396d(a)(4)(C) of this title,''.

1989—Subsec. (a). Pub. L. 101–239, § 6408(d)(3)(A), substituted ''subparagraph (A) or (E)(i)'' for ''subparagraph (A) or (E)'' in introductory provisions.

Subsecs. (d) to (f). Pub. L. 101–239, § 6408(d)(3)(B), (C), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1988—Subsec. (c)(1). Pub. L. 100–360 struck out ''non-farm'' after ''150 percent of the''.

1987—Subsec. (a)(1). Pub. L. 100–203, § 4101(d)(1)(A), inserted ''(except for a premium imposed under subsection (c) of this section)'' after ''plan''.

Subsecs. (a)(2)(C), (b)(2)(C). Pub. L. 100–203, § 4211(h)(11), substituted ''nursing facility, intermediate care facility for the mentally retarded'' for ''skilled nursing facility, intermediate care facility''.

Subsecs. (c) to (e). Pub. L. 100–203, § 4101(d)(1)(B), (C), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1986—Subsec. (a). Pub. L. 99–509 substituted ''subparagraph (A) or (E) of section 1396a(a)(10) of this title'' for ''section 1396a(a)(10)(A) of this title''.

Subsec. (a)(2)(E). Pub. L. 99–272 added subpar. (E).

Subsec. (b). Pub. L. 99–509 substituted ''subparagraph (A) or (E) of section 1396a(a)(10) of this title'' for ''section 1396a(a)(10)(A) of this title''.

Subsec. (b)(2)(E). Pub. L. 99–272 added subpar. (E).

1983—Subsec. (c). Pub. L. 97–448, § 309(b)(18), substituted ''subsection'' for ''subparagraph''.

Subsec. (d). Pub. L. 97–448, § 309(b)(19), (20), substituted in introductory text '', except as provided in subsections (a)(3) and (b)(3) of this section'' for ''unless authorized under this section'', and in cl. (5) substituted ''is voluntary, or makes provision'' for ''in which participation is voluntary, or in which provision is made''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, see section 201(d) of Pub. L. 106–170, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105–33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations have been promulgated by such date, see section 6408(d)(5) of Pub. L. 101–239, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4101(d)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on July 1, 1988.''

Amendment by section 4211(h)(11) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9403(h) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by Pub. L. 99–272 applicable to medical assistance provided for hospice care furnished on or after Apr. 7, 1986, see section 9505(e) of Pub. L. 99–272, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE

Section 131(d), formerly § 131(c), of Pub. L. 97–248, redesignated by section 309(a)(8) of Pub. L. 97–448, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1396a of this title] shall become effective on October 1, 1982.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Sept. 3, 1982].''

§ 1396p. Liens, adjustments and recoveries, and transfers of assets

(a) Imposition of lien against property of an individual on account of medical assistance rendered to him under a State plan

(1) No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan, except—

(A) pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual, or

(B) in the case of the real property of an individual—

(i) who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs, and

(ii) with respect to whom the State determines, after notice and opportunity for a hearing (in accordance with procedures established by the State), that he cannot reasonably be expected to be discharged from the medical institution and to return home,

except as provided in paragraph (2).

(2) No lien may be imposed under paragraph (1)(B) on such individual's home if—

(A) the spouse of such individual,

(B) such individual's child who is under age 21, or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title, or

(C) a sibling of such individual (who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution),

is lawfully residing in such home.

(3) Any lien imposed with respect to an individual pursuant to paragraph (1)(B) shall dissolve upon that individual's discharge from the medical institution and return home.

(b) Adjustment or recovery of medical assistance correctly paid under a State plan

(1) No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:

(A) In the case of an individual described in subsection (a)(1)(B) of this section, the State shall seek adjustment or recovery from the individual's estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of the individual.

(B) In the case of an individual who was 55 years of age or older when the individual received such medical assistance, the State shall seek adjustment or recovery from the individual's estate, but only for medical assistance consisting of—

(i) nursing facility services, home and community-based services, and related hospital and prescription drug services, or

(ii) at the option of the State, any items or services under the State plan.

(C)(i) In the case of an individual who has received (or is entitled to receive) benefits under a long-term care insurance policy in connection with which assets or resources are disregarded in the manner described in clause (ii), except as provided in such clause, the State shall seek adjustment or recovery from the individual's estate on account of medical assistance paid on behalf of the individual for nursing facility and other long-term care services.

(ii) Clause (i) shall not apply in the case of an individual who received medical assistance under a State plan of a State which had a State plan amendment approved as of May 14, 1993, which provided for the disregard of any assets or resources—

(I) to the extent that payments are made under a long-term care insurance policy; or

(II) because an individual has received (or is entitled to receive) benefits under a long-term care insurance policy.

(2) Any adjustment or recovery under paragraph (1) may be made only after the death of the individual's surviving spouse, if any, and only at a time—

(A) when he has no surviving child who is under age 21, or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title; and

(B) in the case of a lien on an individual's home under subsection (a)(1)(B) of this section, when—

(i) no sibling of the individual (who was residing in the individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution), and

(ii) no son or daughter of the individual (who was residing in the individual's home for a period of at least two years immediately before the date of the individual's admission to the medical institution, and who establishes to the satisfaction of the State that he or she provided care to such individual which permitted such individual to reside at home rather than in an institution),

is lawfully residing in such home who has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution.

(3) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency shall

waive the application of this subsection (other than paragraph (1)(C)) if such application would work an undue hardship as determined on the basis of criteria established by the Secretary.

(4) For purposes of this subsection, the term ''estate'', with respect to a deceased individual—

(A) shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law; and

(B) may include, at the option of the State (and shall include, in the case of an individual to whom paragraph (1)(C)(i) applies), any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

(c) Taking into account certain transfers of assets

(1)(A) In order to meet the requirements of this subsection for purposes of section 1396a(a)(18) of this title, the State plan must provide that if an institutionalized individual or the spouse of such an individual (or, at the option of a State, a noninstitutionalized individual or the spouse of such an individual) disposes of assets for less than fair market value on or after the look-back date specified in subparagraph (B)(i), the individual is ineligible for medical assistance for services described in subparagraph (C)(i) (or, in the case of a noninstitutionalized individual, for the services described in subparagraph (C)(ii)) during the period beginning on the date specified in subparagraph (D) and equal to the number of months specified in subparagraph (E).

(B)(i) The look-back date specified in this subparagraph is a date that is 36 months (or, in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to paragraph (3)(A)(iii) or (3)(B)(ii) of subsection (d) of this section, 60 months) before the date specified in clause (ii).

(ii) The date specified in this clause, with respect to—

(I) an institutionalized individual is the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State plan, or

(II) a noninstitutionalized individual is the date on which the individual applies for medical assistance under the State plan or, if later, the date on which the individual disposes of assets for less than fair market value.

(C)(i) The services described in this subparagraph with respect to an institutionalized individual are the following:

(I) Nursing facility services.

(II) A level of care in any institution equivalent to that of nursing facility services.

(III) Home or community-based services furnished under a waiver granted under subsection (c) or (d) of section 1396n of this title.

(ii) The services described in this subparagraph with respect to a noninstitutionalized individual are services (not including any services described in clause (i)) that are described in paragraph (7), (22), or (24) of section 1396d(a) of this title, and, at the option of a State, other long-term care services for which medical assistance is otherwise available under the State plan to individuals requiring long-term care.

(D) The date specified in this subparagraph is the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this subsection.

(E)(i) With respect to an institutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall be equal to—

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(ii) With respect to a noninstitutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall not be greater than a number equal to—

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(iii) The number of months of ineligibility otherwise determined under clause (i) or (ii) with respect to the disposal of an asset shall be reduced—

(I) in the case of periods of ineligibility determined under clause (i), by the number of months of ineligibility applicable to the individual under clause (ii) as a result of such disposal, and

(II) in the case of periods of ineligibility determined under clause (ii), by the number of months of ineligibility applicable to the individual under clause (i) as a result of such disposal.

(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that—

(A) the assets transferred were a home and title to the home was transferred to—

(i) the spouse of such individual;

(ii) a child of such individual who (I) is under age 21, or (II) (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title;

(iii) a sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(iv) a son or daughter of such individual (other than a child described in clause (ii)) who was residing in such individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who (as determined by the State) provided care to such individual which permitted such individual to reside at home rather than in such an institution or facility;

(B) the assets—

(i) were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse,

(ii) were transferred from the individual's spouse to another for the sole benefit of the individual's spouse,

(iii) were transferred to, or to a trust (including a trust described in subsection (d)(4) of this section) established solely for the benefit of, the individual's child described in subparagraph (A)(ii)(II), or

(iv) were transferred to a trust (including a trust described in subsection (d)(4) of this section) established solely for the benefit of an individual under 65 years of age who is disabled (as defined in section 1382c(a)(3) of this title);

(C) a satisfactory showing is made to the State (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual; or

(D) the State determines, under procedures established by the State (in accordance with standards specified by the Secretary), that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Secretary;[1]

(3) For purposes of this subsection, in the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

(4) A State (including a State which has elected treatment under section 1396a(f) of this title) may not provide for any period of ineligibility for an individual due to transfer of resources for less than fair market value except in accordance with this subsection. In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.

(5) In this subsection, the term ''resources'' has the meaning given such term in section 1382b of this title, without regard to the exclusion described in subsection (a)(1) thereof.

(d) Treatment of trust amounts

(1) For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this subchapter, subject to paragraph (4), the rules specified in paragraph (3) shall apply to a trust established by such individual.

(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:

(i) The individual.

(ii) The individual's spouse.

(iii) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse.

(iv) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(B) In the case of a trust the corpus of which includes assets of an individual (as determined under subparagraph (A)) and assets of any other person or persons, the provisions of this subsection shall apply to the portion of the trust attributable to the assets of the individual.

(C) Subject to paragraph (4), this subsection shall apply without regard to—

(i) the purposes for which a trust is established,

(ii) whether the trustees have or exercise any discretion under the trust,

(iii) any restrictions on when or whether distributions may be made from the trust, or

(iv) any restrictions on the use of distributions from the trust.

(3)(A) In the case of a revocable trust—

(i) the corpus of the trust shall be considered resources available to the individual,

(ii) payments from the trust to or for the benefit of the individual shall be considered income of the individual, and

(iii) any other payments from the trust shall be considered assets disposed of by the individual for purposes of subsection (c) of this section.

(B) In the case of an irrevocable trust—

(i) if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income—

[1] So in original. The semicolon probably should be a period.

(I) to or for the benefit of the individual, shall be considered income of the individual, and

(II) for any other purpose, shall be considered a transfer of assets by the individual subject to subsection (c) of this section; and

(ii) any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of subsection (c) of this section, and the value of the trust shall be determined for purposes of such subsection by including the amount of any payments made from such portion of the trust after such date.

(4) This subsection shall not apply to any of the following trusts:

(A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.

(B) A trust established in a State for the benefit of an individual if—

(i) the trust is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust),

(ii) the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter; and

(iii) the State makes medical assistance available to individuals described in section 1396a(a)(10)(A)(ii)(V) of this title, but does not make such assistance available to individuals for nursing facility services under section 1396a(a)(10)(C) of this title.

(C) A trust containing the assets of an individual who is disabled (as defined in section 1382c(a)(3) of this title) that meets the following conditions:

(i) The trust is established and managed by a non-profit association.

(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c(a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this subchapter.

(5) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency waives the application of this subsection with respect to an individual if the individual establishes that such application would work an undue hardship on the individual as determined on the basis of criteria established by the Secretary.

(6) The term ''trust'' includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the Secretary specifies.

(e) Definitions

In this section, the following definitions shall apply:

(1) The term ''assets'', with respect to an individual, includes all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action—

(A) by the individual or such individual's spouse,

(B) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse, or

(C) by any person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse.

(2) The term ''income'' has the meaning given such term in section 1382a of this title.

(3) The term ''institutionalized individual'' means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title.

(4) The term ''noninstitutionalized individual'' means an individual receiving any of the services specified in subsection (c)(1)(C)(ii) of this section.

(5) The term ''resources'' has the meaning given such term in section 1382b of this title, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

(Aug. 14, 1935, ch. 531, title XIX, § 1917, as added Pub. L. 97–248, title I, § 132(b), Sept. 3, 1982, 96 Stat. 370; amended Pub. L. 97–448, title III, § 309(b)(21), (22), Jan. 12, 1983, 96 Stat. 2410; Pub. L. 100–203, title IV, § 4211(h)(12), Dec. 22, 1987, 101 Stat. 1330–207; Pub. L. 100–360, title III, § 303(b), title IV, § 411(*l*)(3)(I), July 1, 1988, 102 Stat. 760, 803; Pub. L. 100–485, title VI, § 608(d)(16)(B), Oct. 13, 1988, 102 Stat. 2417; Pub. L. 101–239, title VI, § 6411(e)(1), Dec. 19, 1989, 103 Stat. 2271; Pub. L. 103–66, title XIII, §§ 13611(a)–(c), 13612(a)–(c), Aug. 10, 1993, 107 Stat. 622–628.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–66, § 13612(a), substituted ''except that the State shall seek adjustment

or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:'' and subpars. (A) to (C) for ''except—'' and former subpars. (A) and (B) which read as follows:

''(A) in the case of an individual described in subsection (a)(1)(B) of this section, from his estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of such individual, and

''(B) in the case of any other individual who was 65 years of age or older when he received such assistance, from his estate.''

Subsec. (b)(3). Pub. L. 103–66, §13612(b), added par. (3).

Subsec. (b)(4). Pub. L. 103–66, §13612(c), added par. (4).

Subsec. (c)(1). Pub. L. 103–66, §13611(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In order to meet the requirements of this subsection (for purposes of section 1396a(a)(51)(B) of this title), the State plan must provide for a period of ineligibility for nursing facility services and for a level of care in a medical institution equivalent to that of nursing facility services and for services under section 1396n(c) of this title in the case of an institutionalized individual (as defined in paragraph (3)) who, or whose spouse, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State plan on such date) or, if the individual is not so entitled, the date the individual applies for such assistance while an institutionalized individual, disposed of resources for less than fair market value. The period of ineligibility shall begin with the month in which such resources were transferred and the number of months in such period shall be equal to the lesser of—

''(A) 30 months, or

''(B)(i) the total uncompensated value of the resources so transferred, divided by (ii) the average cost, to a private patient at the time of the application, of nursing facility services in the State or, at State option, in the community in which the individual is institutionalized.''

Subsec. (c)(2)(A). Pub. L. 103–66, §13611(a)(2)(A), substituted ''assets'' for ''resources'' in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 103–66, §13611(a)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the resources were transferred (i) to or from (or to another for the sole benefit of) the individual's spouse, or (ii) to the individual's child described in subparagraph (A)(ii)(II);''.

Subsec. (c)(2)(C). Pub. L. 103–66, §13611(a)(2)(C), in introductory provisions, substituted ''with regulations'' for ''with any regulations'', in cl. (i), substituted ''assets'' for ''resources'' and struck out ''or'' at end, in cl. (ii), substituted ''assets'' for ''resources'' and '', or'' for ''; or'', and added cl. (iii).

Subsec. (c)(2)(D). Pub. L. 103–66, §13611(a)(2)(D), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''the State determines that denial of eligibility would work an undue hardship.''

Subsec. (c)(3). Pub. L. 103–66, §13611(a)(2)(E), added par. (3) and struck out former par. (3) which read as follows: ''In this subsection, the term 'institutionalized individual' means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title.''

Subsec. (c)(4). Pub. L. 103–66, §13611(a)(2)(F), inserted at end ''In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.''

Subsec. (d). Pub. L. 103–66, §13611(b), added subsec. (d).

Subsec. (e). Pub. L. 103–66, §13611(c), added subsec. (e).

1989—Subsec. (c)(1). Pub. L. 101–239, §6411(e)(1)(A), inserted ''or whose spouse,'' after ''an institutionalized individual (as defined in paragraph (3)) who,''.

Subsec. (c)(2)(B)(i). Pub. L. 101–239, §6411(e)(1)(B)(i), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''to (or to another for the sole benefit of) the community spouse, as defined in section 1396r–5(h)(2) of this title,,''.

Subsec. (c)(2)(B)(ii), (iii). Pub. L. 101–239, §6411(e)(1)(B)(ii), struck out '', or'' after ''subparagraph (A)(ii)(II)'' in cl. (ii) and struck out cl. (iii) which read as follows: ''to (or to another for the sole benefit of) the individual's spouse if such spouse does not transfer such resources to another person other than the spouse for less than fair market value''.

1988—Subsec. (c). Pub. L. 100–360, §303(b), amended subsec. (c) generally, substituting pars. (1) to (4) relating to taking into account certain transfers of assets, for former pars. (1) to (3) relating to denial of medical assistance, period of eligibility, and exceptions.

Subsec. (c)(1). Pub. L. 100–485, §608(d)(16)(B)(i), substituted ''period of ineligibility for nursing facility services and for a level of care in a medical institution equivalent to that of nursing facility services and for services under section 1396n(c) of this title in the case of an institutionalized individual (as defined in paragraph (3)) who, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State plan on such date) or, if the individual is not so entitled, the date the individual applies for such assistance while an institutionalized individual'' for ''period of ineligibility in the case of an institutionalized individual (as defined in paragraph (3)) who, at any time during the 30-month period immediately before the individual's application for medical assistance under the State plan''.

Subsec. (c)(2)(A)(ii). Pub. L. 100–485, §608(d)(16)(B)(ii), inserted subcl. (I) and (II) designations.

Subsec. (c)(2)(A)(iii). Pub. L. 100–485, §608(d)(16)(B)(iii), substituted ''the individual becomes an institutionalized individual'' for ''of the individual's admission to the medical institution or nursing facility''.

Subsec. (c)(2)(A)(iv). Pub. L. 100–485, §608(d)(16)(B)(iv), substituted ''the individual becomes an institutionalized individual'' for ''of such individual's admission to the medical institution or nursing facility''.

Subsec. (c)(2)(B). Pub. L. 100–485, §608(d)(16)(B)(v), inserted cl. (i) designation, substituted ''section 1396r–5(h)(2) of this title,,'' for ''section 1396r–5(h)(2) of this title, or the individual's child who is blind or permanently and totally disabled'', and added cl. (ii).

Subsec. (c)(2)(B)(ii). Pub. L. 100–360, §411(*l*)(3)(I), amended Pub. L. 100–203, §4211(h)(12)(B), see 1987 Amendment note below.

Subsec. (c)(3). Pub. L. 100–485, §608(d)(16)(B)(vi), substituted ''in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title'' for ''in a medical institution or nursing facility''.

Subsec. (c)(5). Pub. L. 100–485, §608(d)(16)(B)(vii), added par. (5).

1987—Subsecs. (a)(1)(B)(i), (c)(2)(B)(i). Pub. L. 100–203, §4211(h)(12)(A), substituted ''nursing facility, intermediate care facility for the mentally retarded'' for ''skilled nursing facility, intermediate care facility''.

Subsec. (c)(2)(B)(ii). Pub. L. 100–203, §4211(h)(12)(B), as amended by Pub. L. 100–360, §411(*l*)(3)(I), substituted ''a nursing facility'' for ''a skilled nursing facility'' in two places each in subcls. (I) and (II).

1983—Subsec. (b)(2)(B). Pub. L. 97–448, §309(b)(21), substituted ''who'' for ''and'' before ''has lawfully resided''.

Subsec. (c)(2)(B)(iii). Pub. L. 97–448, §309(b)(22), substituted in subcl. (I) ''can'' for ''cannot'' and struck out from subcl. (IV) the introductory word ''if''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13611(e) of Pub. L. 103–66 provided that:

''(1) The amendments made by this section [amending this section and sections 1396a and 1396r–5 of this title] shall apply, except as provided in this subsection, to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) The amendments made by this section shall not apply—

''(A) to medical assistance provided for services furnished before October 1, 1993,

''(B) with respect to assets disposed of on or before the date of the enactment of this Act [Aug. 10, 1993], or

''(C) with respect to trusts established on or before the date of the enactment of this Act.

''(3) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendment made by subsection (b) [amending this section], the State plan shall not be regarded as failing to comply with the requirements imposed by such amendment solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 13612(d) of Pub. L. 103–66 provided that:

''(1)(A) Except as provided in subparagraph (B), the amendments made by this section [amending this section] shall apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements imposed by such amendments solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

''(2) The amendments made by this section shall not apply to individuals who died before October 1, 1993.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to transfers occurring after Dec. 19, 1989, see section 6411(e)(4) of Pub. L. 101–239, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 303(b) of Pub. L. 100–360 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1988 (except in certain situations requiring State legislative action), without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, and subsection (c) of this section, as amended by section 303(b) of Pub. L. 100–360, applicable to resources disposed of on or after July 1, 1988, but not applicable with respect to inter-spousal transfers occurring before Oct. 1, 1989, see section 303(g)(2), (5) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(*l*)(3)(I) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE

Section 132(d) of Pub. L. 97–248 provided that: ''The amendments made by this section [enacting this section and amending section 1396a of this title] shall become effective on the date of the enactment of this Act [Sept. 3, 1982], but the provisions of section 1917(c)(2)(B) of the Social Security Act [subsec. (c)(2)(B) of this section] shall not apply with respect to a transfer of assets which took place prior to such date of enactment.''

§ 1396q. Application of provisions of subchapter II relating to subpoenas

The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this subchapter to the same extent as they are applicable with respect to subchapter II of this chapter, except that, in so applying such subsections, and in applying section 405(*l*) of this title thereto, with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(Aug. 14, 1935, ch. 531, title XIX, § 1918, as added Pub. L. 98–369, div. B, title III, § 2370(a), July 18, 1984, 98 Stat. 1110; amended Pub. L. 103–296, title I, § 108(d)(5), Aug. 15, 1994, 108 Stat. 1486.)

AMENDMENTS

1994—Pub. L. 103–296 inserted before period at end '', except that, in so applying such subsections, and in applying section 405(*l*) of this title thereto, with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 2370(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [enacting this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

§ 1396r. Requirements for nursing facilities

(a) "Nursing facility" defined

In this subchapter, the term ''nursing facility'' means an institution (or a distinct part of an institution) which—

(1) is primarily engaged in providing to residents—

(A) skilled nursing care and related services for residents who require medical or nursing care,

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities,

and is not primarily for the care and treatment of mental diseases;

(2) has in effect a transfer agreement (meeting the requirements of section 1395x(*l*) of this title) with one or more hospitals having agreements in effect under section 1395cc of this title; and

(3) meets the requirements for a nursing facility described in subsections (b), (c), and (d) of this section.

Such term also includes any facility which is located in a State on an Indian reservation and is certified by the Secretary as meeting the requirements of paragraph (1) and subsections (b), (c), and (d) of this section.

(b) Requirements relating to provision of services

(1) Quality of life

(A) In general

A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

(B) Quality assessment and assurance

A nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

(2) Scope of services and activities under plan of care

A nursing facility must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care which—

(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

(3) Residents' assessment

(A) Requirement

A nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which assessment—

(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A) of this section;

(iii) uses an instrument which is specified by the State under subsection (e)(5) of this section; and

(iv) includes the identification of medical problems.

(B) Certification

(i) In general

Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

(ii) Penalty for falsification

(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

(III) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty

under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(iii) Use of independent assessors

If a State determines, under a survey under subsection (g) of this section or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(C) Frequency

(i) In general

Such an assessment must be conducted—

(I) promptly upon (but no later than 14 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than October 1, 1991, for each resident of the facility on that date;

(II) promptly after a significant change in the resident's physical or mental condition; and

(III) in no case less often than once every 12 months.

(ii) Resident review

The nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

(D) Use

The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

(E) Coordination

Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort. In addition, a nursing facility shall notify the State mental health authority or State mental retardation or developmental disability authority, as applicable, promptly after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded.

(F) Requirements relating to preadmission screening for mentally ill and mentally retarded individuals

Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A) of this section, a nursing facility must not admit, on or after January 1, 1989, any new resident who—

(i) is mentally ill (as defined in subsection (e)(7)(G)(i) of this section) unless the State mental health authority has determined (based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority) prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental illness, or

(ii) is mentally retarded (as defined in subsection (e)(7)(G)(ii) of this section) unless the State mental retardation or developmental disability authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental retardation.

A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(4) Provision of services and activities

(A) In general

To the extent needed to fulfill all plans of care described in paragraph (2), a nursing facility must provide (or arrange for the provision of)—

(i) nursing and related services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident;

(vi) routine dental services (to the extent covered under the State plan) and emergency dental services to meet the needs of each resident; and

(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

The services provided or arranged by the facility must meet professional standards of quality.

(B) Qualified persons providing services

Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be

provided by qualified persons in accordance with each resident's written plan of care.

(C) Required nursing care; facility waivers

(i) General requirements

With respect to nursing facility services provided on or after October 1, 1990, a nursing facility—

(I) except as provided in clause (ii), must provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents, and

(II) except as provided in clause (ii), must use the services of a registered professional nurse for at least 8 consecutive hours a day, 7 days a week.

(ii) Waiver by State

To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if—

(I) the facility demonstrates to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel,

(II) the State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility,

(III) the State finds that, for any such periods in which licensed nursing services are not available, a registered professional nurse or a physician is obligated to respond immediately to telephone calls from the facility,

(IV) the State agency granting a waiver of such requirements provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12)[1] of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

(V) the nursing facility that is granted such a waiver by a State notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

A waiver under this clause shall be subject to annual review and to the review of the Secretary and subject to clause (iii) shall be accepted by the Secretary for purposes of this subchapter to the same extent as is the State's certification of the facility. In granting or renewing a waiver, a State may require the facility to use other qualified, licensed personnel.

(iii) Assumption of waiver authority by Secretary

If the Secretary determines that a State has shown a clear pattern and practice of allowing waivers in the absence of diligent efforts by facilities to meet the staffing requirements, the Secretary shall assume and exercise the authority of the State to grant waivers.

(5) Required training of nurse aides

(A) In general

(i) Except as provided in clause (ii), a nursing facility must not use on a full-time basis any individual as a nurse aide in the facility on or after October 1, 1990, for more than 4 months unless the individual—

(I) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A) of this section, and

(II) is competent to provide nursing or nursing-related services.

(ii) A nursing facility must not use on a temporary, per diem, leased, or on any other basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).

(B) Offering competency evaluation programs for current employees

A nursing facility must provide, for individuals used as a nurse aide by the facility as of January 1, 1990, for a competency evaluation program approved by the State under subsection (e)(1) of this section and such preparation as may be necessary for the individual to complete such a program by October 1, 1990.

(C) Competency

The nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information concerning the individual.

(D) Re-training required

For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program, or a new competency evaluation program.

(E) Regular in-service education

The nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

[1] See References in Text note below.

(F) "Nurse aide" defined

In this paragraph, the term ''nurse aide'' means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual—

(i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietician, or

(ii) who volunteers to provide such services without monetary compensation.

(G) Licensed health professional defined

In this paragraph, the term ''licensed health professional'' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(6) Physician supervision and clinical records

A nursing facility must—

(A) require that the health care of every resident be provided under the supervision of a physician (or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician);

(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)), as well as the results of any preadmission screening conducted under subsection (e)(7) of this section.

(7) Required social services

In the case of a nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

(8) Information on nurse staffing

(A) In general

A nursing facility shall post daily for each shift the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. The information shall be displayed in a uniform manner (as specified by the Secretary) and in a clearly visible place.

(B) Publication of data

A nursing facility shall, upon request, make available to the public the nursing staff data described in subparagraph (A).

(c) Requirements relating to residents' rights

(1) General rights

(A) Specified rights

A nursing facility must protect and promote the rights of each resident, including each of the following rights:

(i) Free choice

The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

(ii) Free from restraints

The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

(I) to ensure the physical safety of the resident or other residents, and

(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(iii) Privacy

The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

(iv) Confidentiality

The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

(v) Accommodation of needs

The right—

(I) to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

(II) to receive notice before the room or roommate of the resident in the facility is changed.

(vi) Grievances

The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(vii) Participation in resident and family groups

The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(viii) Participation in other activities

The right of the resident to participate in social, religious, and community activi-

ties that do not interfere with the rights of other residents in the facility.

(ix) Examination of survey results

The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

(x) Refusal of certain transfers

The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of subchapter XVIII of this chapter) to a portion of the facility that is such a skilled nursing facility.

(xi) Other rights

Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room. A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this subchapter or a State's entitlement to Federal medical assistance under this subchapter with respect to services furnished to such a resident.

(B) Notice of rights

A nursing facility must—

(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility and of the requirements and procedures for establishing eligibility for medical assistance under this subchapter, including the right to request an assessment under section 1396r–5(c)(1)(B) of this title;

(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under subsection (e)(6) of this section;

(iii) inform each resident who is entitled to medical assistance under this subchapter—

(I) at the time of admission to the facility or, if later, at the time the resident becomes eligible for such assistance, of the items and services (including those specified under section 1396a(a)(28)(B) of this title) that are included in nursing facility services under the State plan and for which the resident may not be charged (except as permitted in section 1396*o* of this title), and of those other items and services that the facility offers and for which the resident may be charged and the amount of the charges for such items and services, and

(II) of changes in the items and services described in subclause (I) and of changes in the charges imposed for items and services described in that subclause; and

(iv) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under subchapter XVIII of this chapter or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

(C) Rights of incompetent residents

In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this subchapter shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

(D) Use of psychopharmacologic drugs

Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs.

(2) Transfer and discharge rights

(A) In general

A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XVIII of this chapter on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must

be made by the resident's physician, and in the case described in clause (iv) the documentation must be made by a physician. For purposes of clause (v), in the case of a resident who becomes eligible for assistance under this subchapter after admission to the facility, only charges which may be imposed under this subchapter shall be considered to be allowable.

(B) Pre-transfer and pre-discharge notice

(i) In general

Before effecting a transfer or discharge of a resident, a nursing facility must—

(I) notify the resident (and, if known, an immediate family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

(III) include in the notice the items described in clause (iii).

(ii) Timing of notice

The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

(iii) Items included in notice

Each notice under clause (i) must include—

(I) for transfers or discharges effected on or after October 1, 1989, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3) of this section;

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]);

(III) in the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals established under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.]; and

(IV) in the case of mentally ill residents (as defined in subsection (e)(7)(G)(i) of this section), the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act[2] [42 U.S.C. 10801 et seq.].

(C) Orientation

A nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(D) Notice on bed-hold policy and readmission

(i) Notice before transfer

Before a resident of a nursing facility is transferred for hospitalization or therapeutic leave, a nursing facility must provide written information to the resident and an immediate family member or legal representative concerning—

(I) the provisions of the State plan under this subchapter regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and

(II) the policies of the facility regarding such a period, which policies must be consistent with clause (iii).

(ii) Notice upon transfer

At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and an immediate family member or legal representative of the duration of any period described in clause (i).

(iii) Permitting resident to return

A nursing facility must establish and follow a written policy under which a resident—

(I) who is eligible for medical assistance for nursing facility services under a State plan,

(II) who is transferred from the facility for hospitalization or therapeutic leave, and

(III) whose hospitalization or therapeutic leave exceeds a period paid for under the State plan for the holding of a bed in the facility for the resident,

will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a semiprivate room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

(E) Information respecting advance directives

A nursing facility must comply with the requirement of section 1396a(w) of this title (relating to maintaining written policies and procedures respecting advance directives).

[2] See References in Text note below.

(F) Continuing rights in case of voluntary withdrawal from participation

(i) In general

In the case of a nursing facility that voluntarily withdraws from participation in a State plan under this subchapter but continues to provide services of the type provided by nursing facilities—

(I) the facility's voluntary withdrawal from participation is not an acceptable basis for the transfer or discharge of residents of the facility who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to medical assistance as of such day);

(II) the provisions of this section continue to apply to such residents until the date of their discharge from the facility; and

(III) in the case of each individual who begins residence in the facility after the effective date of such withdrawal, the facility shall provide notice orally and in a prominent manner in writing on a separate page at the time the individual begins residence of the information described in clause (ii) and shall obtain from each such individual at such time an acknowledgment of receipt of such information that is in writing, signed by the individual, and separate from other documents signed by such individual.

Nothing in this subparagraph shall be construed as affecting any requirement of a participation agreement that a nursing facility provide advance notice to the State or the Secretary, or both, of its intention to terminate the agreement.

(ii) Information for new residents

The information described in this clause for a resident is the following:

(I) The facility is not participating in the program under this subchapter with respect to that resident.

(II) The facility may transfer or discharge the resident from the facility at such time as the resident is unable to pay the charges of the facility, even though the resident may have become eligible for medical assistance for nursing facility services under this subchapter.

(iii) Continuation of payments and oversight authority

Notwithstanding any other provision of this subchapter, with respect to the residents described in clause (i)(I), a participation agreement of a facility described in clause (i) is deemed to continue in effect under such plan after the effective date of the facility's voluntary withdrawal from participation under the State plan for purposes of—

(I) receiving payments under the State plan for nursing facility services provided to such residents;

(II) maintaining compliance with all applicable requirements of this subchapter; and

(III) continuing to apply the survey, certification, and enforcement authority provided under subsections (g) and (h) of this section (including involuntary termination of a participation agreement deemed continued under this clause).

(iv) No application to new residents

This paragraph (other than subclause (III) of clause (i)) shall not apply to an individual who begins residence in a facility on or after the effective date of the withdrawal from participation under this subparagraph.

(3) Access and visitation rights

A nursing facility must—

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman or agency described in subclause (II), (III), or (IV) of paragraph (2)(B)(iii), or by the resident's individual physician;

(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

(4) Equal access to quality care

(A) In general

A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment.

(B) Construction

(i) Nothing prohibiting any charges for non-medicaid patients

Subparagraph (A) shall not be construed as prohibiting a nursing facility from charging any amount for services furnished, consistent with the notice in paragraph (1)(B) describing such charges.

(ii) No additional services required

Subparagraph (A) shall not be construed as requiring a State to offer additional services on behalf of a resident than are otherwise provided under the State plan.

(5) Admissions policy

(A) Admissions

With respect to admissions practices, a nursing facility must—

(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this subchapter or subchapter XVIII of this chapter, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this subchapter or subchapter XVIII of this chapter, and (III) prominently display in the facility written information, and provide to such individuals oral and written information, about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits;

(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility; and

(iii) in the case of an individual who is entitled to medical assistance for nursing facility services, not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan under this subchapter, any gift, money, donation, or other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay in the facility.

(B) Construction

(i) No preemption of stricter standards

Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under the State plan with respect to admissions practices of nursing facilities.

(ii) Contracts with legal representatives

Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

(iii) Charges for additional services requested

Subparagraph (A)(iii) shall not be construed as preventing a facility from charging a resident, eligible for medical assistance under the State plan, for items or services the resident has requested and received and that are not specified in the State plan as included in the term ''nursing facility services''.

(iv) Bona fide contributions

Subparagraph (A)(iii) shall not be construed as prohibiting a nursing facility from soliciting, accepting, or receiving a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident (or potential resident), but only to the extent that such contribution is not a condition of admission, expediting admission, or continued stay in the facility.

(6) Protection of resident funds

(A) In general

The nursing facility—

(i) may not require residents to deposit their personal funds with the facility, and

(ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(B) Management of personal funds

Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) Deposit

The facility must deposit any amount of personal funds in excess of $50 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a noninterest bearing account or petty cash fund.

(ii) Accounting and records

The facility must assure a full and complete separate accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(iii) Notice of certain balances

The facility must notify each resident receiving medical assistance under the State plan under this subchapter when the amount in the resident's account reaches $200 less than the dollar amount determined under section 1382(a)(3)(B) of this title and the fact that if the amount in the account (in addition to the value of the resident's other nonexempt resources) reaches the amount determined under such section the resident may lose eligibility for such medical assistance or for benefits under subchapter XVI of this chapter.

(iv) Conveyance upon death

Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

(C) Assurance of financial security

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(D) Limitation on charges to personal funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this subchapter or subchapter XVIII of this chapter.

(7) Limitation on charges in case of medicaid-eligible individuals

(A) In general

A nursing facility may not impose charges, for certain medicaid-eligible individuals for nursing facility services covered by the State under its plan under this subchapter, that exceed the payment amounts established by the State for such services under this subchapter.

(B) "Certain medicaid-eligible individual" defined

In subparagraph (A), the term ''certain medicaid-eligible individual'' means an individual who is entitled to medical assistance for nursing facility services in the facility under this subchapter but with respect to whom such benefits are not being paid because, in determining the amount of the individual's income to be applied monthly to payment for the costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this subchapter.

(8) Posting of survey results

A nursing facility must post in a place readily accessible to residents, and family members and legal representatives of residents, the results of the most recent survey of the facility conducted under subsection (g) of this section.

(d) Requirements relating to administration and other matters

(1) Administration

(A) In general

A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5) of this section).

(B) Required notices

If a change occurs in—

(i) the persons with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the facility,

(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a–5(b) of this title) of the facility,

(iii) the corporation, association, or other company responsible for the management of the facility, or

(iv) the individual who is the administrator or director of nursing of the facility,

the nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

(C) Nursing facility administrator

The administrator of a nursing facility must meet standards established by the Secretary under subsection (f)(4) of this section.

(2) Licensing and Life Safety Code

(A) Licensing

A nursing facility must be licensed under applicable State and local law.

(B) Life Safety Code

A nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in nursing facilities.

(3) Sanitary and infection control and physical environment

A nursing facility must—

(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

(4) Miscellaneous

(A) Compliance with Federal, State, and local laws and professional standards

A nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a–3 of this title) and with accepted professional standards and principles which apply to professionals providing services in such a facility.

(B) Other

A nursing facility must meet such other requirements relating to the health and safety of residents or relating to the physical facilities thereof as the Secretary may find necessary.

(e) State requirements relating to nursing facility requirements

As a condition of approval of its plan under this subchapter, a State must provide for the following:

(1) Specification and review of nurse aide training and competency evaluation programs and of nurse aide competency evaluation programs

The State must—

(A) by not later than January 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) of this section and that meet the requirements established under subsection (f)(2) of this section, and

(B) by not later than January 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii) of this section.

The failure of the Secretary to establish requirements under subsection (f)(2) of this section shall not relieve any State of its responsibility under this paragraph.

(2) Nurse aide registry

(A) In general

By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State, or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

(B) Information in registry

The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of this section of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

(C) Prohibition against charges

A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

(3) State appeals process for transfers and discharges

The State, for transfers and discharges from nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism, meeting the guidelines established under subsection (f)(3) of this section, for hearing appeals on transfers and discharges of residents of such facilities; but the failure of the Secretary to establish such guidelines under such subsection shall not relieve any State of its responsibility under this paragraph.

(4) Nursing facility administrator standards

By not later than July 1, 1989, the State must have implemented and enforced the nursing facility administrator standards developed under subsection (f)(4) of this section respecting the qualification of administrators of nursing facilities.

(5) Specification of resident assessment instrument

Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii) of this section. Such instrument shall be—

(A) one of the instruments designated under subsection (f)(6)(B) of this section, or

(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A) of this section.

(6) Notice of medicaid rights

Each State, as a condition of approval of its plan under this subchapter, effective April 1, 1988, must develop (and periodically update) a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under this subchapter.

(7) State requirements for preadmission screening and resident review

(A) Preadmission screening

(i) In general

Effective January 1, 1989, the State must have in effect a preadmission screening program, for making determinations (using any criteria developed under subsection (f)(8) of this section) described in subsection (b)(3)(F) of this section for mentally ill and mentally retarded individuals (as defined in subparagraph (G)) who are admitted to nursing facilities on or after January 1, 1989. The failure of the Secretary to develop minimum criteria under subsection (f)(8) of this section shall not relieve any State of its responsibility to have a preadmission screening program under this subparagraph or to perform resident reviews under subparagraph (B).

(ii) Clarification with respect to certain readmissions

The preadmission screening program under clause (i) need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.

(iii) Exception for certain hospital discharges

The preadmission screening program under clause (i) shall not apply to the ad-

mission to a nursing facility of an individual—

(I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

(II) who requires nursing facility services for the condition for which the individual received care in the hospital, and

(III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.

(B) State requirement for resident review

(i) For mentally ill residents

As of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must review and determine (using any criteria developed under subsection (f)(8) of this section and based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority)—

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in section 1396d(h) of this title) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older; and

(II) whether or not the resident requires specialized services for mental illness.

(ii) For mentally retarded residents

As of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (f)(8) of this section)—

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1396d(d) of this title; and

(II) whether or not the resident requires specialized services for mental retardation.

(iii) Review required upon change in resident's condition

A review and determination under clause (i) or (ii) must be conducted promptly after a nursing facility has notified the State mental health authority or State mental retardation or developmental disability authority, as applicable, under subsection (b)(3)(E) of this section with respect to a mentally ill or mentally retarded resident, that there has been a significant change in the resident's physical or mental condition.

(iv) Prohibition of delegation

A State mental health authority, a State mental retardation or developmental disability authority, and a State may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(C) Response to preadmission screening and resident review

As of April 1, 1990, the State must meet the following requirements:

(i) Long-term residents not requiring nursing facility services, but requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

(I) inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident,

(II) offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting,

(III) clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility (including its effect on readmission to the facility), and

(IV) regardless of the resident's choice, provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

A State shall not be denied payment under this subchapter for nursing facility services for a resident described in this clause because the resident does not require the level of services provided by such a facility, if the resident chooses to remain in such a facility.

(ii) Other residents not requiring nursing facility services, but requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retardation, and who has not continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

(I) arrange for the safe and orderly discharge of the resident from the facility,

consistent with the requirements of subsection (c)(2) of this section,

(II) prepare and orient the resident for such discharge, and

(III) provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

(iii) Residents not requiring nursing facility services and not requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility and not to require specialized services for mental illness or mental retardation, the State must—

(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2) of this section, and

(II) prepare and orient the resident for such discharge.

(iv) Annual report

Each State shall report to the Secretary annually concerning the number and disposition of residents described in each of clauses (ii) and (iii).

(D) Denial of payment

(i) For failure to conduct preadmission screening or review

No payment may be made under section 1396b(a) of this title with respect to nursing facility services furnished to an individual for whom a determination is required under subsection (b)(3)(F) of this section or subparagraph (B) but for whom the determination is not made.

(ii) For certain residents not requiring nursing facility level of services

No payment may be made under section 1396b(a) of this title with respect to nursing facility services furnished to an individual (other than an individual described in subparagraph (C)(i)) who does not require the level of services provided by a nursing facility.

(E) Permitting alternative disposition plans

With respect to residents of a nursing facility who are mentally retarded or mentally ill and who are determined under subparagraph (B) not to require the level of services of such a facility, but who require specialized services for mental illness or mental retardation, a State and the nursing facility shall be considered to be in compliance with the requirements of subparagraphs (A) through (C) of this paragraph if, before April 1, 1989, the State and the Secretary have entered into an agreement relating to the disposition of such residents of the facility and the State is in compliance with such agreement. Such an agreement may provide for the disposition of the residents after the date specified in subparagraph (C). The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.

(F) Appeals procedures

Each State, as a condition of approval of its plan under this subchapter, effective January 1, 1989, must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (A) or (B).

(G) Definitions

In this paragraph and in subsection (b)(3)(F) of this section:

(i) An individual is considered to be ''mentally ill'' if the individual has a serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health) and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder) or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness.

(ii) An individual is considered to be ''mentally retarded'' if the individual is mentally retarded or a person with a related condition (as described in section 1396d(d) of this title).

(iii) The term ''specialized services'' has the meaning given such term by the Secretary in regulations, but does not include, in the case of a resident of a nursing facility, services within the scope of services which the facility must provide or arrange for its residents under subsection (b)(4) of this section.

(f) Responsibilities of Secretary relating to nursing facility requirements

(1) General responsibility

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in nursing facilities under State plans approved under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) Requirements for nurse aide training and competency evaluation programs and for nurse aide competency evaluation programs

(A) In general

For purposes of subsections (b)(5) and (e)(1)(A) of this section, the Secretary shall establish, by not later than September 1, 1988—

(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired

residents, basic restorative services, and residents' rights) and content of the curriculum, (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights, and procedures for determination of competency;

(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs; and

(iv) requirements, under both such programs, that—

(I) provide procedures for determining competency that permit a nurse aide, at the nurse aide's option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed (unless the facility is described in subparagraph (B)(iii)(I)),

(II) prohibit the imposition on a nurse aide who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program of any charges (including any charges for textbooks and other required course materials and any charges for the competency evaluation) for either such program, and

(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.

(B) Approval of certain programs

Such requirements—

(i) may permit approval of programs offered by or in facilities, as well as outside facilities (including employee organizations), and of programs in effect on December 22, 1987;

(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) of this section if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

(iii) subject to subparagraphs (C) and (D), shall prohibit approval of such a program—

(I) offered by or in a nursing facility which, within the previous 2 years—

(a) has operated under a waiver under subsection (b)(4)(C)(ii) of this section that was granted on the basis of a demonstration that the facility is unable to provide the nursing care required under subsection (b)(4)(C)(i) of this section for a period in excess of 48 hours during a week;

(b) has been subject to an extended (or partial extended) survey under section 1395i–3(g)(2)(B)(i) of this title or subsection (g)(2)(B)(i) of this section; or

(c) has been assessed a civil money penalty described in section 1395i–3(h)(2)(B)(ii) of this title or subsection (h)(2)(A)(ii) of this section of not less than $5,000, or has been subject to a remedy described in subsection (h)(1)(B)(i) of this section, clauses[3] (i), (iii), or (iv) of subsection (h)(2)(A) of this section, clauses[3] (i) or (iii) of section 1395i–3(h)(2)(B) of this title, or section 1395i–3(h)(4) of this title, or

(II) offered by or in a nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the nursing facility.

(C) Waiver authorized

Clause (iii)(I) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility (or skilled nursing facility for purposes of subchapter XVIII of this chapter) in a State if the State—

(i) determines that there is no other such program offered within a reasonable distance of the facility,

(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and

(iii) provides notice of such determination and assurances to the State long-term care ombudsman.

(D) Waiver of disapproval of nurse-aide training programs

Upon application of a nursing facility, the Secretary may waive the application of subparagraph (B)(iii)(I)(c) if the imposition of the civil monetary penalty was not related to the quality of care provided to residents of the facility. Nothing in this subparagraph shall be construed as eliminating any requirement upon a facility to pay a civil monetary penalty described in the preceding sentence.

[3] So in original. Probably should be ''clause''.

(3) Federal guidelines for State appeals process for transfers and discharges

For purposes of subsections (c)(2)(B)(iii) and (e)(3) of this section, by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) of this section must meet to provide a fair mechanism for hearing appeals on transfers and discharges of residents from nursing facilities.

(4) Secretarial standards qualification of administrators

For purposes of subsections (d)(1)(C) and (e)(4) of this section, the Secretary shall develop, by not later than March 1, 1988, standards to be applied in assuring the qualifications of administrators of nursing facilities.

(5) Criteria for administration

The Secretary shall establish criteria for assessing a nursing facility's compliance with the requirement of subsection (d)(1) of this section with respect to—

(A) its governing body and management,

(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other nursing facilities,

(C) disaster preparedness,

(D) direction of medical care by a physician,

(E) laboratory and radiological services,

(F) clinical records, and

(G) resident and advocate participation.

(6) Specification of resident assessment data set and instruments

The Secretary shall—

(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3) of this section, and establish guidelines for utilization of the data set; and

(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) of this section for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii) of this section.

(7) List of items and services furnished in nursing facilities not chargeable to the personal funds of a resident

(A) Regulations required

Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after December 22, 1987, that define those costs which may be charged to the personal funds of residents in nursing facilities who are individuals receiving medical assistance with respect to nursing facility services under this subchapter and those costs which are to be included in the payment amount under this subchapter for nursing facility services.

(B) Rule if failure to publish regulations

If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in that subparagraph, in the case of a resident of a nursing facility who is eligible to receive benefits for nursing facility services under this subchapter, for purposes of section 1396a(a)(28)(B) of this title, the Secretary shall be deemed to have promulgated regulations under this paragraph which provide that the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this subchapter) include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(8) Federal minimum criteria and monitoring for preadmission screening and resident review

(A) Minimum criteria

The Secretary shall develop, by not later than October 1, 1988, minimum criteria for States to use in making determinations under subsections (b)(3)(F) and (e)(7)(B) of this section and in permitting individuals adversely affected to appeal such determinations, and shall notify the States of such criteria.

(B) Monitoring compliance

The Secretary shall review, in a sufficient number of cases to allow reasonable inferences, each State's compliance with the requirements of subsection (e)(7)(C)(ii) of this section (relating to discharge and placement for active treatment of certain residents).

(9) Criteria for monitoring State waivers

The Secretary shall develop, by not later than October 1, 1988, criteria and procedures for monitoring State performances in granting waivers pursuant to subsection (b)(4)(C)(ii) of this section.

(g) Survey and certification process

(1) State and Federal responsibility

(A) In general

Under each State plan under this subchapter, the State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d) of this section. The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State nursing facilities with the requirements of such subsections.

(B) Educational program

Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of nursing facilities in order to present current regulations, procedures, and policies under this section.

(C) Investigation of allegations of resident neglect and abuse and misappropriation of resident property

The State shall provide, through the agency responsible for surveys and certification

of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(D) Removal of name from nurse aide registry

(i) In general

In the case of a finding of neglect under subparagraph (C), the State shall establish a procedure to permit a nurse aide to petition the State to have his or her name removed from the registry upon a determination by the State that—

(I) the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and

(II) the neglect involved in the original finding was a singular occurrence.

(ii) Timing of determination

In no case shall a determination on a petition submitted under clause (i) be made prior to the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the registry under subparagraph (C).

(E) Construction

The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(2) Surveys

(A) Annual standard survey

(i) In general

Each nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall review each State's procedures for scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(ii) Contents

Each standard survey shall include, for a case-mix stratified sample of residents—

(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

(II) written plans of care provided under subsection (b)(2) of this section and an audit of the residents' assessments under subsection (b)(3) of this section to determine the accuracy of such assessments and the adequacy of such plans of care, and

(III) a review of compliance with residents' rights under subsection (c) of this section.

(iii) Frequency

(I) In general

Each nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The statewide average interval between standard surveys of a nursing facility shall not exceed 12 months.

(II) Special surveys

If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a nursing facility, or director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

(B) Extended surveys

(i) In general

Each nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

(ii) Timing

The extended survey shall be conducted immediately after the standard survey (or, if not practicable, not later than 2 weeks after the date of completion of the standard survey).

(iii) Contents

In such an extended survey, the survey team shall review and identify the policies

and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d) of this section. Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

(iv) Construction

Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) of this section on the basis of findings in a standard survey.

(C) Survey protocol

Standard and extended surveys shall be conducted—

(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1990, and

(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

(D) Consistency of surveys

Each State shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

(E) Survey teams

(i) In general

Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

(ii) Prohibition of conflicts of interest

A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d) of this section, or who has a personal or familial financial interest in the facility being surveyed.

(iii) Training

The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(3) Validation surveys

(A) In general

The Secretary shall conduct onsite surveys of a representative sample of nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

(B) Scope

With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of nursing facilities surveyed by the State in the year, but in no case less than 5 nursing facilities in the State.

(C) Reduction in administrative costs for substandard performance

If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary may provide for the training of survey teams in the State and shall provide for a reduction of the payment otherwise made to the State under section 1396b(a)(2)(D) of this title with respect to a quarter equal to 33 percent multiplied by a fraction, the denominator of which is equal to the total number of residents in nursing facilities surveyed by the Secretary that quarter and the numerator of which is equal to the total number of residents in nursing facilities which were found pursuant to such surveys to be not in compliance with any of the requirements of subsections (b), (c), and (d) of this section. A State that is dissatisfied with the Secretary's findings under this subparagraph may obtain reconsideration and review of the findings under section 1316 of this title in the same manner as a State may seek reconsideration and review under that section of the Secretary's determination under section 1316(a)(1) of this title.

(D) Special surveys of compliance

Where the Secretary has reason to question the compliance of a nursing facility with any of the requirements of subsections (b), (c), and (d) of this section, the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the nursing facility meets such requirements.

(4) Investigation of complaints and monitoring nursing facility compliance

Each State shall maintain procedures and adequate staff to—

(A) investigate complaints of violations of requirements by nursing facilities, and

(B) monitor, on-site, on a regular, as needed basis, a nursing facility's compliance with the requirements of subsections (b), (c), and (d) of this section, if—

(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against substandard nursing facilities.

(5) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public—

(i) information respecting all surveys and certifications made respecting nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,

(ii) copies of cost reports of such facilities filed under this subchapter or under subchapter XVIII of this chapter,

(iii) copies of statements of ownership under section 1320a–3 of this title, and

(iv) information disclosed under section 1320a–5 of this title.

(B) Notice to ombudsman

Each State shall notify the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d) of this section, or of any adverse action taken against a nursing facility under paragraphs[4] (1), (2), or (3) of subsection (h) of this section, with respect to a nursing facility in the State.

(C) Notice to physicians and nursing facility administrator licensing board

If a State finds that a nursing facility has provided substandard quality of care, the State shall notify—

(i) the attending physician of each resident with respect to which such finding is made, and

(ii) any State board responsible for the licensing of the nursing facility administrator of the facility.

(D) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys and certifications under this subsection.

(h) Enforcement process

(1) In general

If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) of this section or otherwise, that a nursing facility no longer meets a requirement of subsection (b), (c), or (d) of this section, and further finds that the facility's deficiencies—

(A) immediately jeopardize the health or safety of its residents, the State shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in paragraph (2); or

(B) do not immediately jeopardize the health or safety of its residents, the State may—

(i) terminate the facility's participation under the State plan,

(ii) provide for one or more of the remedies described in paragraph (2), or

(iii) do both.

Nothing in this paragraph shall be construed as restricting the remedies available to a State to remedy a nursing facility's deficiencies. If a State finds that a nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

(2) Specified remedies

(A) Listing

Except as provided in subparagraph (B)(ii), each State shall establish by law (whether statute or regulation) at least the following remedies:

(i) Denial of payment under the State plan with respect to any individual admitted to the nursing facility involved after such notice to the public and to the facility as may be provided for by the State.

(ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (b), (c), or (d) of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsections (b)(3)(B)(ii)(I), (b)(3)(B)(ii)(II), or

[4] So in original. Probably should be ''paragraph''.

(g)(2)(A)(i) of this section) shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(iii) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

(I) there is an orderly closure of the facility, or

(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be terminated under subclause (II) until the State has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d) of this section.

(iv) The authority, in the case of an emergency, to close the facility, to transfer residents in that facility to other facilities, or both.

The State also shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the State may provide for other specified remedies, such as directed plans of correction.

(B) Deadline and guidance

(i) Except as provided in clause (ii), as a condition for approval of a State plan for calendar quarters beginning on or after October 1, 1989, each State shall establish the remedies described in clauses (i) through (iv) of subparagraph (A) by not later than October 1, 1989. The Secretary shall provide, through regulations by not later than October 1, 1988, guidance to States in establishing such remedies; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedies.

(ii) A State may establish alternative remedies (other than termination of participation) other than those described in clauses (i) through (iv) of subparagraph (A), if the State demonstrates to the Secretary's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as those described in subparagraph (A).

(C) Assuring prompt compliance

If a nursing facility has not complied with any of the requirements of subsections (b), (c), and (d) of this section, within 3 months after the date the facility is found to be out of compliance with such requirements, the State shall impose the remedy described in subparagraph (A)(i) for all individuals who are admitted to the facility after such date.

(D) Repeated noncompliance

In the case of a nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2) of this section, has been found to have provided substandard quality of care, the State shall (regardless of what other remedies are provided)—

(i) impose the remedy described in subparagraph (A)(i), and

(ii) monitor the facility under subsection (g)(4)(B) of this section,

until the facility has demonstrated, to the satisfaction of the State, that it is in compliance with the requirements of subsections (b), (c), and (d) of this section, and that it will remain in compliance with such requirements.

(E) Funding

The reasonable expenditures of a State to provide for temporary management and other expenses associated with implementing the remedies described in clauses (iii) and (iv) of subparagraph (A) shall be considered, for purposes of section 1396b(a)(7) of this title, to be necessary for the proper and efficient administration of the State plan.

(F) Incentives for high quality care

In addition to the remedies specified in this paragraph, a State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to medical assistance under this subchapter. For purposes of section 1396b(a)(7) of this title, proper expenses incurred by a State in carrying out such a program shall be considered to be expenses necessary for the proper and efficient administration of the State plan under this subchapter.

(3) Secretarial authority

(A) For State nursing facilities

With respect to a State nursing facility, the Secretary shall have the authority and duties of a State under this subsection, including the authority to impose remedies described in clauses (i), (ii), and (iii) of paragraph (2)(A).

(B) Other nursing facilities

With respect to any other nursing facility in a State, if the Secretary finds that a nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) of this section, and further finds that the facility's deficiencies—

(i) immediately jeopardize the health or safety of its residents, the Secretary shall

take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (C)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in subparagraph (C); or

(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (C).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a nursing facility's deficiencies. If the Secretary finds that a nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

(C) Specified remedies

The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

(i) Denial of payment

The Secretary may deny any further payments to the State for medical assistance furnished by the facility to all individuals in the facility or to individuals admitted to the facility after the effective date of the finding.

(ii) Authority with respect to civil money penalties

The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(iii) Appointment of temporary management

In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

(I) there is an orderly closure of the facility, or

(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d) of this section.

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction.

(D) Continuation of payments pending remediation

The Secretary may continue payments, over a period of not longer than 6 months after the effective date of the findings, under this subchapter with respect to a nursing facility not in compliance with a requirement of subsection (b), (c), or (d) of this section, if—

(i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility, and

(ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

(4) Effective period of denial of payment

A finding to deny payment under this subsection shall terminate when the State or Secretary (or both, as the case may be) finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d) of this section.

(5) Immediate termination of participation for facility where State or Secretary finds noncompliance and immediate jeopardy

If either the State or the Secretary finds that a nursing facility has not met a requirement of subsection (b), (c), or (d) of this section, and finds that the failure immediately jeopardizes the health or safety of its residents, the State or the Secretary, respectively[5] shall notify the other of such finding, and the State or the Secretary, respectively, shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii) or (3)(C)(iii), or terminate the facility's participation under the State plan. If the facility's participation in the State plan is terminated by either the State or the Secretary, the State shall provide for the safe and orderly transfer of the residents eligible under the State plan consistent with the requirements of subsection (c)(2) of this section.

(6) Special rules where State and Secretary do not agree on finding of noncompliance

(A) State finding of noncompliance and no Secretarial finding of noncompliance

If the Secretary finds that a nursing facility has met all the requirements of sub-

[5] So in original. Probably should be followed by a comma.

sections (b), (c), and (d) of this section, but a State finds that the facility has not met such requirements and the failure does not immediately jeopardize the health or safety of its residents, the State's findings shall control and the remedies imposed by the State shall be applied.

(B) Secretarial finding of noncompliance and no State finding of noncompliance

If the Secretary finds that a nursing facility has not met all the requirements of subsections (b), (c), and (d) of this section, and that the failure does not immediately jeopardize the health or safety of its residents, but the State has not made such a finding, the Secretary—

(i) may impose any remedies specified in paragraph (3)(C) with respect to the facility, and

(ii) shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D).

(7) Special rules for timing of termination of participation where remedies overlap

If both the Secretary and the State find that a nursing facility has not met all the requirements of subsections (b), (c), and (d) of this section, and neither finds that the failure immediately jeopardizes the health or safety of its residents—

(A)(i) if both find that the facility's participation under the State plan should be terminated, the State's timing of any termination shall control so long as the termination date does not occur later than 6 months after the date of the finding to terminate;

(ii) if the Secretary, but not the State, finds that the facility's participation under the State plan should be terminated, the Secretary shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D); or

(iii) if the State, but not the Secretary, finds that the facility's participation under the State plan should be terminated, the State's decision to terminate, and timing of such termination, shall control; and

(B)(i) if the Secretary or the State, but not both, establishes one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, such additional or alternative remedies shall also be applied, or

(ii) if both the Secretary and the State establish one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, only the additional or alternative remedies of the Secretary shall apply.

(8) Construction

The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i), (iii), and (iv) of paragraph (2)(A) may be imposed during the pendency of any hearing. The provisions of this subsection shall apply to a nursing facility (or portion thereof) notwithstanding that the facility (or portion thereof) also is a skilled nursing facility for purposes of subchapter XVIII of this chapter.

(9) Sharing of information

Notwithstanding any other provision of law, all information concerning nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available by such facilities to Federal or State employees for purposes consistent with the effective administration of programs established under this subchapter and subchapter XVIII of this chapter, including investigations by State medicaid fraud control units.

(i) Construction

Where requirements or obligations under this section are identical to those provided under section 1395i–3 of this title, the fulfillment of those requirements or obligations under section 1395i–3 of this title shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

(Aug. 14, 1935, ch. 531, title XIX, § 1919, as added and amended Pub. L. 100–203, title IV, §§ 4211(a)(3), (c), 4212(a), (b), 4213(a), 4216, Dec. 22, 1987, 101 Stat. 1330–182, 1330–196, 1330–207, 1330–213, 1330–220, as amended Pub. L. 100–360, title IV, § 411(*l*)(3)(C)(ii), (6)(B), (8)(A), July 1, 1988, 102 Stat. 803–805; Pub. L. 100–360, title III, § 303(a)(2), title IV, § 411(*l*)(2)(A)–(D), (F)–(K), (L)(ii), (3)(A), (B), (C)(iii), (D), (5), (6)(A), (7), (8)(B), July 1, 1988, 102 Stat. 760, 801–805, as amended Pub. L. 100–485, title VI, § 608(d)(27)(C)–(E), (I), Oct. 13, 1988, 102 Stat. 2423; Pub. L. 101–239, title VI, § 6901(b)(1), (3), (4)(A), (d)(1), (4), Dec. 19, 1989, 103 Stat. 2298–2301; Pub. L. 101–508, title IV, §§ 4751(b)(2), 4801(a)(2)–(6)(A), (7), (b)(2)–(5)(A), (6)–(8), (d)(1), (e)(2)–(7)(A), (8)–(10), (12)–(15), (18), Nov. 5, 1990, 104 Stat. 1388–205, 1388–211 to 1388–219; Pub. L. 102–375, title VII, § 708(a)(1)(B), Sept. 30, 1992, 106 Stat. 1292; Pub. L. 104–315, §§ 1(a), 2(a), (b), Oct. 19, 1996, 110 Stat. 3824; Pub. L. 105–15, § 1, May 15, 1997, 111 Stat. 34; Pub. L. 105–33, title IV, §§ 4754(a), 4755(b), Aug. 5, 1997, 111 Stat. 526; Pub. L. 106–4, § 2(a), Mar. 25, 1999, 113 Stat. 7; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(p)], Nov. 29, 1999, 113 Stat. 1536, 1501A–397; Pub. L. 106–402, title IV, § 401(b)(6)(A), Oct. 30, 2000, 114 Stat. 1738; Pub. L. 106–554, § 1(a)(6) [title IX, § 941(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–586; Pub. L. 108–173, title IX, § 932(c)(2), Dec. 8, 2003, 117 Stat. 2401.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsecs. (b)(4)(C)(ii)(IV), (c)(2)(B)(iii)(II), and (g)(5)(B), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Section 307(a)(12) of the Act was repealed by Pub. L. 106–501, title III, § 306(5), Nov. 13, 2000, 114 Stat. 2244, and provisions formerly appearing in section 307(a)(12) of the Act are now contained in section 307(a)(9) of the Act, which is classified to section 3027(a)(9) of this title. Titles III and VII of the Act are classified generally to subchapters III (§ 3021 et seq.) and XI (§ 3058 et seq.), respectively, of chapter 35 of this title. For complete

classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (c)(2)(B)(iii)(III), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§ 15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act [of 1986], referred to in subsec. (c)(2)(B)(iii)(IV), was Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended. Pub. L. 99–319 was renamed the Protection and Advocacy for Individuals with Mental Illness Act by Pub. L. 106–310, div. B, title XXXII, § 3206(a), Oct. 17, 2000, 114 Stat. 1193, and is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

Section 6901(b)(4)(B)–(D) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (e)(2)(A), is section 6901(b)(4)(B)–(D) of Pub. L. 101–239, which is set out as a note under section 1395i–3 of this title.

Section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, referred to in subsec. (f)(7)(A), probably means section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments, Pub. L. 95–142, which is set out as a note under section 1395x of this title.

Prior Provisions

A prior section 1919 of act Aug. 14, 1935, was renumbered section 1922 and is classified to section 1396r–3 of this title.

Amendments

2003—Subsec. (f)(2)(B)(iii). Pub. L. 108–173, § 932(c)(2)(A), substituted ''subparagraphs (C) and (D)'' for ''subparagraph (C)'' in introductory provisions.

Subsec. (f)(2)(D). Pub. L. 108–173, § 932(c)(2)(B), added subpar. (D).

2000—Subsec. (b)(8). Pub. L. 106–554 added par. (8).

Subsec. (c)(2)(B)(iii)(III). Pub. L. 106–402 substituted ''subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000'' for ''part C of the Developmental Disabilities Assistance and Bill of Rights Act''.

1999—Subsec. (b)(3)(C)(i)(I). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(p)(1)], struck out ''not later than'' before ''14 days''.

Subsec. (c)(2)(F). Pub. L. 106–4 added subpar. (F).

Subsec. (d)(4)(A). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(p)(2)], inserted closing parenthesis after ''section 1320a–3 of this title''.

1997—Subsec. (f)(2)(B)(iii). Pub. L. 105–15, § 1(1), inserted ''subject to subparagraph (C),'' after ''(iii)''.

Subsec. (f)(2)(C). Pub. L. 105–15, § 1(2), added subpar. (C).

Subsec. (g)(1)(D), (E). Pub. L. 105–33, § 4755(b), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (h)(3)(D). Pub. L. 105–33, § 4754(a), inserted ''and'' at end of cl. (i), substituted a period for '', and'' at end of cl. (ii), and struck out cl. (iii) which read as follows: ''the State agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.''

1996—Subsec. (b)(3)(E). Pub. L. 104–315, § 2(a), inserted at end ''In addition, a nursing facility shall notify the State mental health authority or State mental retardation or developmental disability authority, as applicable, promptly after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded.''

Subsec. (e)(7)(B). Pub. L. 104–315, § 1(a)(1)(A), struck out ''annual'' before ''resident review'' in heading.

Subsec. (e)(7)(B)(iii). Pub. L. 104–315, § 2(b), added cl. (iii).

Pub. L. 104–315, § 1(a)(1)(B), struck out cl. (iii) which related to frequency of reviews as annual, preadmission, and initial.

Subsec. (e)(7)(D)(i). Pub. L. 104–315, § 1(a)(2), struck out ''annual'' before ''review'' in heading.

1992—Subsecs. (c)(2)(B)(iii)(II), (g)(5)(B). Pub. L. 102–375 substituted ''title III or VII of the Older Americans Act of 1965 in accordance with section 712 of the Act'' for ''section 307(a)(12) of the Older Americans Act of 1965''.

1990—Subsec. (b)(1)(B). Pub. L. 101–508, § 4801(e)(2), inserted at end ''A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.''

Subsec. (b)(3)(C)(i)(I). Pub. L. 101–508, § 4801(e)(3), substituted ''not later than 14 days'' for ''4 days''.

Subsec. (b)(3)(F). Pub. L. 101–508, § 4801(b)(8), substituted ''specialized services'' for ''active treatment'' in cls. (i) and (ii).

Pub. L. 101–508, § 4801(b)(4)(A), inserted at end ''A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).''

Pub. L. 101–508, § 4801(b)(2)(A), substituted ''Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A) of this section, a nursing facility'' for ''A nursing facility'' in introductory provisions.

Subsec. (b)(4)(A)(vii). Pub. L. 101–508, § 4801(e)(4), added cl. (vii).

Subsec. (b)(4)(C)(ii). Pub. L. 101–508, § 4801(e)(5)(A), substituted ''To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if'' for ''A State may waive the requirement of subclause (I) or (II) of clause (i) with respect to a facility if'' in introductory provisions.

Subsec. (b)(4)(C)(ii)(IV), (V). Pub. L. 101–508, § 4801(e)(5)(B)–(D), which directed amendment of cl. (ii) by adding subcls. (IV) and (V) at the end, was executed by adding subcls. (IV) and (V) after subcl. (III) and before concluding provisions to reflect the probable intent of Congress.

Subsec. (b)(5)(A). Pub. L. 101–508, § 4801(a)(2), designated existing provision as cl. (i), substituted ''Except as provided in clause (ii), a nursing facility'' for ''A nursing facility'' and ''on a full-time basis'' for ''(on a full-time, temporary, per diem, or other basis)'', redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (b)(5)(C). Pub. L. 101–508, § 4801(a)(3), substituted ''any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information'' for ''the State registry established under subsection (e)(2)(A) of this section as to information in the registry''.

Subsec. (b)(5)(D). Pub. L. 101–508, § 4801(a)(4), inserted before period at end '', or a new competency evaluation program''.

Subsec. (b)(5)(F)(i). Pub. L. 101–508, § 4801(e)(6), substituted ''(G)) or a registered dietician'' for ''(G))''.

Subsec. (b)(6)(A). Pub. L. 101–508, § 4801(d)(1), inserted before semicolon at end ''(or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician)''.

Subsec. (c)(1)(A). Pub. L. 101–508, § 4801(e)(8)(B), inserted at end ''A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this subchapter or a State's entitlement to Federal medical assistance under this subchapter with respect to services furnished to such a resident.''

Subsec. (c)(1)(A)(iv). Pub. L. 101–508, § 4801(e)(9), inserted before period at end ''and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request''.

Subsec. (c)(1)(A)(x), (xi). Pub. L. 101–508, § 4801(e)(8)(A), added cl. (x) and redesignated former cl. (x) as (xi).

Subsec. (c)(1)(B)(ii). Pub. L. 101–508, § 4801(e)(10), inserted ''including the notice (if any) of the State developed under subsection (e)(6) of this section'' after ''in such rights)''.

Subsec. (c)(2)(E). Pub. L. 101–508, § 4751(b)(2), added subpar. (E).

Subsec. (c)(7), (8). Pub. L. 101–508, § 4801(e)(7)(A), added par. (7) and redesignated former par. (7) as (8).

Subsec. (e)(1)(A). Pub. L. 101–508, § 4801(e)(18), substituted ''under subsection (f)(2) of this section'' for ''under clause (i) or (ii) of subsection (f)(2)(A) of this section''.

Subsec. (e)(2)(A). Pub. L. 101–508, § 4801(e)(12)(A), inserted '', or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989'' after ''in the State''.

Subsec. (e)(2)(C). Pub. L. 101–508, § 4801(e)(12)(B), added subpar. (C).

Subsec. (e)(7)(A). Pub. L. 101–508, § 4801(b)(2)(B), designated existing provision as cl. (i), inserted cl. (i) heading, and added cls. (ii) and (iii).

Subsec. (e)(7)(B)(i)(II), (ii)(II). Pub. L. 101–508, § 4801(b)(8), substituted ''specialized services'' for ''active treatment''.

Subsec. (e)(7)(B)(iv). Pub. L. 101–508, § 4801(b)(4)(B), added cl. (iv).

Subsec. (e)(7)(C)(i) to (iii). Pub. L. 101–508, § 4801(b)(8), substituted ''specialized services'' for ''active treatment'' wherever appearing.

Subsec. (e)(7)(C)(iv). Pub. L. 101–508, § 4801(b)(5)(A), added cl. (iv).

Subsec. (e)(7)(D). Pub. L. 101–508, § 4801(b)(3)(A), struck out ''where failure to conduct preadmission screening'' after ''Denial of payment'' in heading, designated existing provisions as cl. (i), inserted cl. (i) heading, and added cl. (ii).

Subsec. (e)(7)(E). Pub. L. 101–508, § 4801(b)(8), substituted ''specialized services'' for ''active treatment''.

Pub. L. 101–508, § 4801(b)(6), inserted at end ''The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.''

Pub. L. 101–508, § 4801(b)(3)(B), substituted ''the requirements of subparagraphs (A) through (C) of this paragraph'' for ''the requirement of this paragraph''.

Subsec. (e)(7)(G)(i). Pub. L. 101–508, § 4801(b)(7), substituted ''serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)'' for ''primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition)'' and inserted before period at end ''or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness''.

Subsec. (e)(7)(G)(iii). Pub. L. 101–508, § 4801(b)(8), substituted ''specialized services'' for ''active treatment''.

Subsec. (f)(2)(A)(iv)(II). Pub. L. 101–508, § 4801(a)(5)(B), inserted ''who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program'' after ''nurse aide''.

Subsec. (f)(2)(A)(iv)(III). Pub. L. 101–508, § 4801(a)(5)(A), (C), (D), added subcl. (III).

Subsec. (f)(2)(B). Pub. L. 101–508, § 4801(a)(7), inserted ''(through subcontract or otherwise)'' after ''may not delegate'' in last sentence.

Subsec. (f)(2)(B)(iii)(I). Pub. L. 101–508, § 4801(a)(6)(A), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''offered by or in a nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), or (d) of this section, within the previous 2 years, or''.

Subsec. (g)(1)(C). Pub. L. 101–508, § 4801(e)(13), inserted at end ''A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.''

Subsec. (g)(5)(A)(i). Pub. L. 101–508, § 4801(e)(14), substituted ''deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans'' for ''deficiencies and plans''.

Subsec. (g)(5)(B). Pub. L. 101–508, § 4801(e)(15), substituted ''or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (h) of this section, with respect'' for ''with respect''.

1989—Subsec. (b)(5)(A). Pub. L. 101–239, § 6901(b)(1)(A), substituted ''October 1, 1990'' for ''January 1, 1990'' in introductory provisions.

Subsec. (b)(5)(B). Pub. L. 101–239, § 6901(b)(1)(B), substituted ''January 1, 1990'' and ''October 1, 1990'' for ''July 1, 1989'' and ''January 1, 1990'', respectively.

Subsec. (c)(1)(A)(ii)(II). Pub. L. 101–239, § 6901(d)(4)(A), substituted ''Secretary until such an order could reasonably be obtained)'' for ''Secretary) until such an order could reasonably be obtained''.

Subsec. (c)(1)(A)(v)(I). Pub. L. 101–239, § 6901(d)(4)(B), substituted ''accommodation'' for ''accommodations''.

Subsec. (f)(2)(A)(i)(I). Pub. L. 101–239, § 6901(d)(4)(C), substituted ''and content of the curriculum'' for '', content of the curriculum''.

Pub. L. 101–239, § 6901(b)(3)(A), inserted ''care of cognitively impaired residents,'' after ''social service needs,''.

Subsec. (f)(2)(A)(ii). Pub. L. 101–239, § 6901(b)(3)(B), substituted ''recognition of mental health and social service needs, care of cognitively impaired residents'' for ''cognitive, behavioral and social care''.

Subsec. (f)(2)(A)(iv). Pub. L. 101–239, § 6901(b)(3)(C), (D), added cl. (iv).

Subsec. (f)(2)(B)(ii). Pub. L. 101–239, § 6901(b)(4)(A), substituted ''July 1, 1989'' for ''January 1, 1989''.

Subsec. (h)(3)(D). Pub. L. 101–239, § 6901(d)(4)(D), substituted ''not longer than 6 months after the effective date of the findings'' for ''not longer than 6 months''.

Subsec. (h)(8). Pub. L. 101–239, § 6901(d)(1), inserted at end ''The provisions of this subsection shall apply to a nursing facility (or portion thereof) notwithstanding that the facility (or portion thereof) also is a skilled nursing facility for purposes of subchapter XVIII of this chapter.''

1988—Subsec. (b)(3)(A)(iii). Pub. L. 100–360, § 411(*l*)(2)(B), struck out ''in the case of a resident eligible for benefits under this subchapter,'' before ''uses an instrument''.

Subsec. (b)(3)(A)(iv). Pub. L. 100–360, § 411(*l*)(2)(A), as amended by Pub. L. 100–485, § 608(d)(27)(C), struck out ''in the case of a resident eligible for benefits under part A of subchapter XVIII of this chapter,'' before ''includes the identification of medical problems''.

Subsec. (b)(3)(B)(ii)(III). Pub. L. 100–360, § 411(*l*)(2)(C), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (b)(4)(C)(i)(II). Pub. L. 100–360, § 411(*l*)(3)(A)(i), inserted ''professional'' after ''registered''.

Subsec. (b)(4)(C)(ii). Pub. L. 100–360, § 411(*l*)(3)(A)(i)–(iv), in heading, substituted ''(ii) Waiver'' for ''(ii) Facility waivers.—(i) Waiver'', in subcl. (III), inserted ''professional'' after ''registered'', and in concluding provisions, substituted ''clause (iii)'' for ''clause (ii)'' and ''use'' for ''employ''.

Subsec. (b)(4)(C)(iii). Pub. L. 100–360, § 411(*l*)(3)(A)(v), (vi), substituted ''(iii) Assumption'' for ''(ii) Assumption'' in heading and ''exercise'' for ''excercise'' in text.

Subsec. (b)(5)(A). Pub. L. 100–360, § 411(*l*)(3)(B), which directed amendment of subpar. (A) by striking ''subparagraph (E)'' and inserting ''subparagraph (F)'', could not be executed because of prior amendment by Pub. L. 100–360, § 411(*l*)(2)(D)(i), see Amendment note below.

Pub. L. 100–360, § 411(*l*)(2)(D)(i), as amended by Pub. L. 100–485, § 608(d)(27)(D), struck out '', who is not a licensed health professional (as defined in subparagraph (E)),'' after ''any individual'' in introductory provisions.

Subsec. (b)(5)(A)(ii). Pub. L. 100–360, § 411(*l*)(2)(D)(ii), substituted ''nursing or nursing-related services'' for ''such services''.

Subsec. (b)(5)(G). Pub. L. 100–360, § 411(*l*)(2)(D)(iii), inserted ''physical or occupational therapy assistant,'' after ''occupational therapist,''.

Subsec. (c)(1)(B)(i). Pub. L. 100–360, § 303(a)(2), inserted before semicolon at end ''and of the requirements and procedures for establishing eligibility for medical assistance under this subchapter, including the right to request an assessment under section 1396r–5(c)(1)(B) of this title''.

Subsec. (c)(2)(A)(v). Pub. L. 100–360, § 411(*l*)(2)(F), substituted ''for a stay at the facility'' for ''an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with this subchapter and subchapter XVIII of this chapter''.

Subsec. (c)(2)(B)(iii)(III). Pub. L. 100–360, § 411(*l*)(3)(C)(iii), as added by Pub. L. 100–485, § 608(d)(27)(E), substituted ''responsible'' for ''responsibile''.

Subsec. (c)(6). Pub. L. 100–360, § 411(*l*)(2)(G), substituted ''upon the written'' for ''once the facility accepts the written'' in subpar. (A)(ii) and ''Upon written'' for ''Upon a facility's acceptance of written'' in subpar. (B).

Subsec. (c)(7). Pub. L. 100–360, § 411(*l*)(6)(B), amended Pub. L. 100–203, § 4212(b), see 1987 Amendment note below.

Subsec. (e). Pub. L. 100–360, § 411(*l*)(3)(C)(ii), as added by Pub. L. 100–485, § 608(d)(27)(E), amended Pub. L. 100–203, § 4211, see 1987 Amendment note below.

Subsec. (e)(1). Pub. L. 100–360, § 411(*l*)(3)(D)(i), (ii), substituted ''January 1, 1989'' for ''September 1, 1988'' in subpar. (A) and ''January'' for ''September'' in subpar. (B).

Subsec. (e)(2)(B). Pub. L. 100–360, § 411(*l*)(2)(H), inserted after first sentence ''The State shall make available to the public information in the registry.''

Subsec. (e)(3). Pub. L. 100–360, § 411(*l*)(2)(I), inserted ''and discharges'' after ''transfers'' in heading and two places in text.

Subsec. (e)(7)(E). Pub. L. 100–360, § 411(*l*)(3)(D)(iii), substituted ''April 1, 1989'' for ''October 1, 1988''.

Subsec. (f). Pub. L. 100–360, § 411(*l*)(3)(C)(ii), as added by Pub. L. 100–485, § 608(d)(27)(E), amended Pub. L. 100–203, § 4211, see 1987 Amendment note below.

Subsec. (f)(2)(A). Pub. L. 100–360, § 411(*l*)(3)(D)(iv), substituted ''September'' for ''July'' in introductory provisions.

Subsec. (f)(2)(A)(i)(I). Pub. L. 100–360, § 411(*l*)(2)(J), substituted ''recognition of mental health and social service needs'' for ''cognitive, behavioral and social care''.

Subsec. (f)(3). Pub. L. 100–360, § 411(*l*)(2)(I), inserted ''and discharges'' after ''transfers'' in heading and in text.

Subsec. (f)(7)(A). Pub. L. 100–360, § 411(*l*)(2)(K), substituted ''residents'' for ''patients''.

Subsec. (f)(7)(B). Pub. L. 100–360, § 411(*l*)(2)(L)(ii), substituted ''include'' for ''do not include''.

Subsec. (g)(1)(C). Pub. L. 100–360, § 411(*l*)(5)(A)–(C), substituted ''and timely review'' for '', review,'', inserted ''or by another individual used by the facility in providing services to such a resident'' after ''a nursing facility'', and substituted ''The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority'' for ''If the State finds, after notice to the nurse aide involved and a reasonable opportunity for a hearing for the nurse aide to rebut allegations, that a nurse aide whose name is contained in a nurse aide registry has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding''.

Subsec. (g)(1)(D). Pub. L. 100–360, § 411(*l*)(5)(D), substituted ''to issue regulations to carry out this subsection'' for ''to establish standards under subsection (f) of this section''.

Subsec. (g)(2)(A)(i). Pub. L. 100–360, § 411(*l*)(5)(E), amended third sentence generally. Prior to amendment, third sentence read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (g)(2)(B)(ii). Pub. L. 100–360, § 411(*l*)(5)(F), as added by Pub. L. 100–485, § 608(d)(27)(I), substituted ''practicable'' for ''practical''.

Subsec. (g)(3)(C). Pub. L. 100–360, § 411(*l*)(6)(A), redesignated subpar. (C), relating to special surveys of compliance, as (D).

Subsec. (g)(3)(D). Pub. L. 100–360, § 411(*l*)(5)(G), formerly § 411(*l*)(5)(F), as redesignated by Pub. L. 100–485, § 608(d)(27)(I), substituted ''on the basis of that survey'' for ''on that basis''.

Subsec. (g)(4). Pub. L. 100–360, § 411(*l*)(5)(H), formerly § 411(*l*)(5)(G), as redesignated by Pub. L. 100–485, § 608(d)(27)(I), struck out ''chronically'' after ''enforcement actions against'' in last sentence.

Subsec. (h). Pub. L. 100–360, § 411(*l*)(8)(A), made technical correction to directory language of Pub. L. 100–203, § 4213(a), see 1987 Amendment note below.

Subsec. (h)(1). Pub. L. 100–360, § 411(*l*)(8)(B)(i), substituted ''paragraph (2)(A)(ii)''for ''paragraph (2)(A)(i)'' in last sentence.

Subsec. (h)(2)(B)(i). Pub. L. 100–360, § 411(*l*)(8)(B)(ii), struck out ''or otherwise'' after ''regulations''.

Subsec. (h)(3)(C)(ii). Pub. L. 100–360, § 411(*l*)(7)(A), substituted ''. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title'' for ''and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1320a–7a of this title''.

Subsec. (h)(5). Pub. L. 100–360, § 411(*l*)(8)(B)(iii), substituted ''State or the Secretary, respectively'' for ''State and the Secretary''.

Subsec. (h)(9). Pub. L. 100–360, § 411(*l*)(7)(B), inserted ''by such facilities'' after ''be made available''.

1987—Subsec. (c)(7). Pub. L. 100–203, § 4212(b), as amended by Pub. L. 100–360, § 411(*l*)(6)(B), added par. (7).

Subsecs. (e), (f). Pub. L. 100–203, § 4211, which contained two subsecs. (c), the first of which amended this section and the second of which enacted provisions set out as a note below, was amended by Pub. L. 100–360, § 411(*l*)(3)(C)(ii), to delete the designation, heading, and directory language of the first subsec. (c), resulting in subsecs. (e) and (f) being added by section 4211(a)(3) of Pub. L. 100–203, which enacted subsecs. (a) to (d) of this section.

Subsec. (g). Pub. L. 100–203, § 4212(a), added subsec. (g).

Subsec. (h). Pub. L. 100–203, § 4213(a), as amended by Pub. L. 100–360, § 411(*l*)(8)(A), added subsec. (h).

Subsec. (i). Pub. L. 100–203, § 4216, added subsec. (i).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to appeals filed on or after Oct. 1, 2004, see section 932(d) of Pub.

L. 108–173, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective Jan. 1, 2003, see section 1(a)(6) [title IX, § 941(c)] of Pub. L. 106–554, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–4, § 2(b), Mar. 25, 1999, 113 Stat. 8, provided that: ''The amendment made by subsection (a) [amending this section] applies to voluntary withdrawals from participation occurring on or after the date of the enactment of this Act [Mar. 25, 1999].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 4754(b) of Pub. L. 105–33 provided that: ''The amendments made by subsection (a) [amending this section] take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1(b) of Pub. L. 104–315 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 19, 1996].''

Section 2(c) of Pub. L. 104–315 provided that: ''The amendments made by this section [amending this section] shall apply to changes in physical or mental condition occurring on or after the date of the enactment of this Act [Oct. 19, 1996].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4751(b)(2) of Pub. L. 101–508 applicable with respect to services furnished on or after the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4751(c) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4801(a)(6)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203], except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

''(i) had its participation terminated under title XVIII of the Social Security Act [subchapter XVIII of this chapter] or under the State plan under title XIX of such Act [this subchapter];

''(ii) was subject to a denial of payment under either such title;

''(iii) was assessed a civil money penalty not less than $5,000 for deficiencies in nursing facility standards;

''(iv) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

''(v) pursuant to State action, was closed or had its residents transferred.''

Amendment by section 4801(a)(2)–(5), (7) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 4801(a)(9) of Pub. L. 101–508, set out as a note under section 1396b of this title.

Section 4801(b)(9) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].

''(B) EXCEPTION.—The amendments made by paragraphs (4), (6), and (8) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], without regard to whether or not regulations to implement such amendments have been promulgated.''

Section 4801(d)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] applies with respect to nursing facility servics furnished on or after October 1, 1990, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.''

Section 4801(e)(7)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], without regard to whether or not regulations to implement such amendments have been promulgated.''

Amendment by section 4801(e)(2)–(6), (8)–(10), (12)–(15), and (18) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 4801(e)(19) of Pub. L. 101–508, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6901(b)(1), (4)(A) of Pub. L. 101–239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, and amendment by section 6901(b)(3) of Pub. L. 101–239 applicable to nurse aide training and competency evaluation programs, and nurse aide competency evaluation programs, offered on or after end of 90-day period beginning on Dec. 19, 1989, but not to affect competency evaluations conducted under programs offered before end of that period, see section 6901(b)(6) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

Amendment by section 6901(d)(1) of Pub. L. 101–239 effective Dec. 19, 1989, and amendment by section 6901(d)(4) of Pub. L. 101–239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 6901(d)(6) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 303(a)(2) of Pub. L. 100–360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Sept. 30, 1989, without regard to whether or not final regulations to carry out such amendment has been promulgated by such date, see section 303(g)(1)(A), (5) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(*l*)(2)(A)–(D), (F)–(K), (L)(ii), (3)(A), (B), (C)(ii), (iii), (D), (5), (6)(A), (B), (7), and (8)(A), (B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 4214 of title IV of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(*l*)(10), July 1, 1988, 102 Stat. 806, provided that:

''(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1919 of the Social Security Act [this section], the amendments made by sections 4211 [enacting this section, amending sections 1320a–7b, 1396a, 1396b, 1396d, 1396j, 1396*l*, 1396n, 1396*o*, 1396p, 1396r, and 1396s of this title, redesignating section 1396r of this title as section 1396r–3 of this title, and amending provisions set out as a note under section 1396r–3 of this title] and 4212 [amending sections 1395cc, 1396a, 1396b, 1396i, and 1396r of this title] (relating to nursing facility requirements and survey and certification requirements) shall apply to nursing facility services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date; except that section 1902(a)(28)(B) of the Social Security Act [section 1396a(a)(28)(B) of this title] (as amended by section 4211(b) of this Act), relating to requiring State medical assistance plans to specify the services included in nursing facility services, shall apply to calendar quarters beginning more than 6 months after the date of the enactment of this Act [Dec. 22, 1987], without regard to whether regulations to implement such section are promulgated by such date.

''(b) ENFORCEMENT.—(1) Except as otherwise specifically provided in section 1919 of the Social Security Act [this section], the amendments made by section 4213 of this Act [amending this section and sections 1396a and 1396b of this title] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after the date of the enactment of this Act [Dec. 22, 1987], without regard to whether regulations to implement such amendments are promulgated by such date.

''(2) In applying the amendments made by this part [part 2 of subtitle C (§§ 4211–4218) of title IV of Pub. L. 100–203, see Tables for classification] for services furnished before October 1, 1990—

''(A) any reference to a nursing facility is deemed a reference to a skilled nursing facility or intermediate care facility (other than an intermediate care facility for the mentally retarded), and

''(B) with respect to such a skilled nursing facility or intermediate care facility, any reference to a requirement of subsection (b), (c), or (d) of section 1919 of the Social Security Act [subsec. (b), (c), or (d) of this section], is deemed a reference to the provisions of section 1861(j) or section 1905(c), respectively, of the Social Security Act [section 1395x(j) or 1396d(c) of this title].

''(c) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part.''

RETROACTIVE REVIEW

For requirement that procedures developed by a State permit individual to petition for review of any finding made by a State under subsec. (g)(1)(C) of this section or section 1395i–3(g)(1)(C) of this title after Jan. 1, 1995, see section 4755(c) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

NURSE AIDE TRAINING AND COMPETENCY EVALUATION; COMPLIANCE ACTIONS

Section 4801(a)(1) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act [section 1396c of this title] on the basis of the State's failure to meet the requirement of section 1919(e)(1)(A) of such Act [subsec. (e)(1)(A) of this section] before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1919(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.''

PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW; COMPLIANCE ACTIONS

Section 4801(b)(1) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 or section 1919(e)(7)(D) of the Social Security Act [section 1396c of this title and subsec. (e)(7)(D) of this section] on the basis of the State's failure to meet the requirement of section 1919(e)(7)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing minimum criteria under section 1919(f)(8)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.''

RESTRICTION ON ENFORCEMENT PROCESS

Section 4801(c) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act [section 1396c of this title] on the basis of the State's failure to meet the requirements of section 1919(h)(2) of such Act [subsec. (h)(2) of this section] before the effective date of guidelines, issued by the Secretary, regarding the establishment of remedies by the State under such section, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirements before such effective date.''

STAFFING REQUIREMENTS

Pub. L. 101–508, title IV, § 4801(e)(17), Nov. 5, 1990, 104 Stat. 1388–218, as amended by Pub. L. 105–362, title VI, § 602(b)(1), Nov. 10, 1998, 112 Stat. 3286, provided that:

''(A) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES.—Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 [Dec. 22, 1987] with respect to services described in clauses (ii), (iv), and (v) of section 1919(b)(4)(A) of the Social Security Act [subsec. (b)(4)(A)(ii), (iv), (v) of this section] shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

''(B) STUDY ON STAFFING REQUIREMENTS IN NURSING FACILITIES.—The Secretary shall conduct a study and report to Congress no later than January 1, 1999, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for skilled nursing facilities serving as providers of services under title XVIII of the Social Security Act [subchapter XVIII of this chapter] and nursing facilities receiving payments under a State plan under title XIX of the Social Security Act [this subchapter], and shall include in such study recommendations regarding appropriate minimum ratios.''

NURSE AIDE TRAINING AND COMPETENCY EVALUATION; SATISFACTION OF REQUIREMENTS; WAIVER

For satisfaction of training and competency evaluation requirements of subsec. (b)(5)(A) of this section and section 1395i–3(b)(5)(A) of this title and authorization for a State to waive such competency evaluation requirements, see section 6901(b)(4)(B)–(D) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

PUBLICATION OF PROPOSED REGULATIONS RESPECTING PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW

Section 6901(c) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall issue proposed regulations to establish the criteria described in section 1919(f)(8)(A) of the Social Security Act [subsec. (f)(8)(A) of this section] by not later than 90 days after the date of the enactment of this Act [Dec. 19, 1989].''

EVALUATION AND REPORT ON IMPLEMENTATION OF RESIDENT ASSESSMENT PROCESS

Section 4211(c) of Pub. L. 100–203 directed Secretary of Health and Human Services to evaluate and report to Congress by not later than Jan. 1, 1993, on implementation of resident assessment process for residents of nursing facilities under amendments made by section 4211(c).

REPORT ON STAFFING REQUIREMENTS

Section 4211(k) of Pub. L. 100–203 directed Secretary of Health and Human Services to report to Congress, by not later than Jan. 1, 1993, on progress made in implementing the nursing facility staffing requirements of 42 U.S.C. 1396r(b)(4)(C), including the number and types of waivers approved under subparagraph (C)(ii) of such section and the number of facilities which received waivers.

ANNUAL REPORT ON STATUTORY COMPLIANCE AND ENFORCEMENT ACTIONS

Section 4215 of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, § 4801(b)(5)(B), Nov. 5, 1990, 104 Stat. 1388–214, provided that: ''The Secretary of Health and Human Services shall report to the Congress annually on the extent to which nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1919 of the Social Security Act [subsecs. (b), (c), and (d) of this section] (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1919(h) of such Act (as added by section 4213 of this Act). Each such report shall also include a summary of the information reported by States under section 1919(e)(7)(C)(iv) of such Act.''

§ 1396r–1. Presumptive eligibility for pregnant women

(a) Ambulatory prenatal care

A State plan approved under section 1396a of this title may provide for making ambulatory prenatal care available to a pregnant woman during a presumptive eligibility period.

(b) Definitions

For purposes of this section—

(1) the term ''presumptive eligibility period'' means, with respect to a pregnant woman, the period that—

(A) begins with the date on which a qualified provider determines, on the basis of preliminary information, that the family income of the woman does not exceed the applicable income level of eligibility under the State plan, and

(B) ends with (and includes) the earlier of—

(i) the day on which a determination is made with respect to the eligibility of the woman for medical assistance under the State plan, or

(ii) in the case of a woman who does not file an application by the last day of the month following the month during which the provider makes the determination referred to in subparagraph (A), such last day; and

(2) the term ''qualified provider'' means any provider that—

(A) is eligible for payments under a State plan approved under this subchapter,

(B) provides services of the type described in subparagraph (A) or (B) of section 1396d(a)(2) of this title or in section 1396d(a)(9) of this title,

(C) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A), and

(D)(i) receives funds under—

(I) section 254b or 254c of this title,

(II) subchapter V of this chapter, or

(III) title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.];

(ii) participates in a program established under—

(I) section 1786 of this title, or

(II) section 4(a) of the Agriculture and Consumer Protection Act of 1973;

(iii) participates in a State perinatal program; or

(iv) is the Indian Health Service or is a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93–638) [25 U.S.C. 450f et seq.].

(c) Duties of State agency, qualified providers, and presumptively eligible pregnant women

(1) The State agency shall provide qualified providers with—

(A) such forms as are necessary for a pregnant woman to make application for medical assistance under the State plan, and

(B) information on how to assist such women in completing and filing such forms.

(2) A qualified provider that determines under subsection (b)(1)(A) of this section that a pregnant woman is presumptively eligible for medical assistance under a State plan shall—

(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and

(B) inform the woman at the time the determination is made that she is required to make application for medical assistance under the State plan by not later than the last day of the month following the month during which the determination is made.

(3) A pregnant woman who is determined by a qualified provider to be presumptively eligible for medical assistance under a State plan shall make application for medical assistance under such plan by not later than the last day of the month following the month during which the determination is made, which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(*l*)(1)(A) of this title.

(d) Ambulatory prenatal care as medical assistance

Notwithstanding any other provision of this subchapter, ambulatory prenatal care that—

(1) is furnished to a pregnant woman—

(A) during a presumptive eligibility period,

(B) by a provider that is eligible for payments under the State plan; and

(2) is included in the care and services covered by a State plan;

shall be treated as medical assistance provided by such plan for purposes of section 1396b of this title.

(Aug. 14, 1935, ch. 531, title XIX, § 1920, as added Pub. L. 99–509, title IX, § 9407(b), Oct. 21, 1986, 100 Stat. 2058; amended Pub. L. 100–360, title IV, § 411(k)(16)(A), (B), July 1, 1988, 102 Stat. 799; Pub. L. 100–485, title VI, § 608(d)(26)(L), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 101–508, title IV, § 4605(a), (b), Nov. 5, 1990, 104 Stat. 1388–169; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(q)], Nov. 29, 1999, 113 Stat. 1536, 1501A–397.)

REFERENCES IN TEXT

The Indian Health Care Improvement Act, referred to in subsec. (b)(2)(D)(i)(III), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Indian Health Care Improvement Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

Section 4(a) of the Agriculture and Consumer Protection Act of 1973, referred to in subsec. (b)(2)(D)(ii)(II), is section 4(a) of Pub. L. 93–86, Aug. 10, 1973, 87 Stat. 249, as amended, which is set out as a note under section 612c of Title 7, Agriculture.

The Indian Self-Determination Act (Public Law 93–638), referred to in subsec. (b)(2)(D)(iv), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 1920 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1999—Subsec. (b)(2)(D)(i)(I). Pub. L. 106–113 substituted ''section 254b or 254c of this title,'' for ''section 254b, 254c, or 256 of this title,''.

1990—Subsec. (b)(1)(B). Pub. L. 101–508, § 4605(a)(1), inserted ''or'' at end of cl. (i), redesignated cl. (iii) as (ii) and amended it generally, and struck out former cl. (ii). Prior to amendment, cls. (ii) and (iii) read as follows:

''(ii) the day that is 45 days after the date on which the provider makes the determination referred to in subparagraph (A), or

''(iii) in the case of a woman who does not file an application for medical assistance within 14 calendar days after the date on which the provider makes the determination referred to in subparagraph (A), the fourteenth calendar day after such determination is made; and''.

Subsec. (c)(2)(B). Pub. L. 101–508, § 4605(a)(2), substituted ''by not later than the last day of the month following the month during which'' for ''within 14 calendar days after the date on which''.

Subsec. (c)(3). Pub. L. 101–508, § 4605(b), inserted before period at end '', which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(*l*)(1)(A) of this title''.

Pub. L. 101–508, § 4605(a)(2), substituted ''by not later than the last day of the month following the month during which'' for ''within 14 calendar days after the date on which''.

1988—Subsec. (b)(2)(D)(i). Pub. L. 100–360, § 411(k)(16)(B)(i), substituted ''section 254b, 254c, or 256 of this title,'' for ''section 254b of this title or section 254c of this title, or'' in subcl. (I), substituted ''chapter, or'' for ''chapter;'' in subcl. (II), and added subcl. (III).

Subsec. (b)(2)(D)(ii)(II). Pub. L. 100–360, § 411(k)(16)(B)(ii), as amended by Pub. L. 100–485, § 608(d)(26)(L)(i), struck out ''or'' after ''1973;''.

Subsec. (b)(2)(D)(iii). Pub. L. 100–360, § 411(k)(16)(B)(iii), as added by Pub. L. 100–485, § 608(d)(26)(L)(iii), substituted ''program; or'' for ''program.''

Subsec. (b)(2)(D)(iv). Pub. L. 100–360, § 411(k)(16)(B)(iv), formerly § 411(k)(16)(B)(iii), as redesignated by Pub. L. 100–485, § 608(d)(26)(L)(ii), added cl. (iv).

Subsec. (d)(1)(B). Pub. L. 100–360, § 411(k)(16)(A), substituted ''by a provider that is eligible for payments under the State plan'' for ''by a qualified provider''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4605(c) of Pub. L. 101–508 provided that:

''(1) The amendments made by subsection (a) [amending this section] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) The amendment made by subsection (b) [amending this section] shall be effective as if included in the enactment of section 9407(b) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509, enacting this section].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 411(k)(16)(C) of Pub. L. 100–360 provided that: ''The amendments made by this paragraph [amending this section] shall be effective as if they were included in section 9407(b) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

EFFECTIVE DATE

Section applicable to ambulatory prenatal care furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether or not final regulations to carry out such section have been promulgated, see section 9407(d) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 1396a of this title.

§ 1396r–1a. Presumptive eligibility for children

(a) In general

A State plan approved under section 1396a of this title may provide for making medical assistance with respect to health care items and services covered under the State plan available to a child during a presumptive eligibility period.

(b) Definitions; regulations

For purposes of this section:

(1) The term ''child'' means an individual under 19 years of age.

(2) The term ''presumptive eligibility period'' means, with respect to a child, the period that—

(A) begins with the date on which a qualified entity determines, on the basis of preliminary information, that the family income of the child does not exceed the applicable income level of eligibility under the State plan, and

(B) ends with (and includes) the earlier of—

(i) the day on which a determination is made with respect to the eligibility of the child for medical assistance under the State plan, or

(ii) in the case of a child on whose behalf an application is not filed by the last day of the month following the month during

which the entity makes the determination referred to in subparagraph (A), such last day.

(3)(A) Subject to subparagraph (B), the term ''qualified entity'' means any entity that—

(i)(I) is eligible for payments under a State plan approved under this subchapter and provides items and services described in subsection (a) of this section, (II) is authorized to determine eligibility of a child to participate in a Head Start program under the Head Start Act (42 U.S.C. 9831 et seq.), eligibility of a child to receive child care services for which financial assistance is provided under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.), eligibility of an infant or child to receive assistance under the special supplemental nutrition program for women, infants, and children (WIC) under section 1786 of this title[1] eligibility of a child for medical assistance under the State plan under this subchapter, or eligibility of a child for child health assistance under the program funded under subchapter XXI of this chapter, (III) is an elementary school or secondary school, as such terms are defined in section 8801 of title 20,[2] an elementary or secondary school operated or supported by the Bureau of Indian Affairs, a State or tribal child support enforcement agency, an organization that is providing emergency food and shelter under a grant under the Stewart B. McKinney Homeless Assistance Act[2] [42 U.S.C. 11301 et seq.], or a State or tribal office or entity involved in enrollment in the program under this subchapter, under part A of subchapter IV of this chapter, under subchapter XXI of this chapter, or that determines eligibility for any assistance or benefits provided under any program of public or assisted housing that receives Federal funds, including the program under section 8 [42 U.S.C. 1437f] or any other section of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.), or (IV) any other entity the State so deems, as approved by the Secretary; and

(ii) is determined by the State agency to be capable of making determinations of the type described in paragraph (2).

(B) The Secretary may issue regulations further limiting those entities that may become qualified entities in order to prevent fraud and abuse and for other reasons.

(C) Nothing in this section shall be construed as preventing a State from limiting the classes of entities that may become qualified entities, consistent with any limitations imposed under subparagraph (B).

(c) Application for medical assistance; procedure upon determination of presumptive eligibility

(1) The State agency shall provide qualified entities with—

(A) such forms as are necessary for an application to be made on behalf of a child for medical assistance under the State plan, and

(B) information on how to assist parents, guardians, and other persons in completing and filing such forms.

(2) A qualified entity that determines under subsection (b)(2) of this section that a child is presumptively eligible for medical assistance under a State plan shall—

(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and

(B) inform the parent or custodian of the child at the time the determination is made that an application for medical assistance under the State plan is required to be made by not later than the last day of the month following the month during which the determination is made.

(3) In the case of a child who is determined by a qualified entity to be presumptively eligible for medical assistance under a State plan, the parent, guardian, or other person shall make application on behalf of the child for medical assistance under such plan by not later than the last day of the month following the month during which the determination is made, which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(*l*)(1) of this title.

(d) Treatment of medical assistance

Notwithstanding any other provision of this subchapter, medical assistance for items and services described in subsection (a) of this section that—

(1) are furnished to a child—

(A) during a presumptive eligibility period,

(B) by an entity that is eligible for payments under the State plan; and

(2) are included in the care and services covered by a State plan;

shall be treated as medical assistance provided by such plan for purposes of section 1396b of this title.

(Aug. 14, 1935, ch. 531, title XIX, § 1920A, as added Pub. L. 105–33, title IV, § 4912(a), Aug. 5, 1997, 111 Stat. 571; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(r)], Nov. 29, 1999, 113 Stat. 1536, 1501A–397; Pub. L. 106–554, § 1(a)(6) [title VII, § 708], Dec. 21, 2000, 114 Stat. 2763, 2763A–577.)

REFERENCES IN TEXT

Section 8801 of title 20, referred to in subsec. (b)(3)(A)(i)(III), was repealed by Pub. L. 107–110, title X, § 1011(5)(C), Jan. 8, 2002, 115 Stat. 1986. See section 7801 of Title 20, Education.

The Head Start Act, referred to in subsec. (b)(3)(A)(i)(II), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (b)(3)(A)(i)(II), is subchapter C (§§ 658A–658R) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V,

[1] So in original. A comma probably should appear after ''title''.

[2] See References in Text note below.

§ 5082(2), Nov. 5, 1990, 104 Stat. 1388–236, as amended, which is classified generally to subchapter II–B (§ 9858 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Stewart B. McKinney Homeless Assistance Act, referred to in subsec. (b)(3)(A)(i)(III), was Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended. Pub. L. 100–77 was renamed the McKinney-Vento Homeless Assistance Act by Pub. L. 106–400, § 1, Oct. 30, 2000, 114 Stat. 1675, and is classified principally to chapter 119 (§ 11301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

Part A of subchapter IV of this chapter, referred to in subsec. (b)(3)(A)(i)(III), is classified to section 601 et seq. of this title.

The United States Housing Act of 1937, referred to in subsec. (b)(3)(A)(i)(III), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (b)(3)(A)(i)(III), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

AMENDMENTS

2000—Subsec. (b)(3)(A)(i). Pub. L. 106–554, § 1(a)(6) [title VII, § 708(b)(1)], substituted ''42 U.S.C. 9831'' for ''42 U.S.C. 9821''.

Pub. L. 106–554, § 1(a)(6) [title VII, § 708(a)(2)], inserted before semicolon ''eligibility of a child for medical assistance under the State plan under this subchapter, or eligibility of a child for child health assistance under the program funded under subchapter XXI of this chapter, (III) is an elementary school or secondary school, as such terms are defined in section 8801 of title 20, an elementary or secondary school operated or supported by the Bureau of Indian Affairs, a State or tribal child support enforcement agency, an organization that is providing emergency food and shelter under a grant under the Stewart B. McKinney Homeless Assistance Act, or a State or tribal office or entity involved in enrollment in the program under this subchapter, under part A of subchapter IV of this chapter, under subchapter XXI of this chapter, or that determines eligibility for any assistance or benefits provided under any program of public or assisted housing that receives Federal funds, including the program under section 8 or any other section of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.), or (IV) any other entity the State so deems, as approved by the Secretary''.

Pub. L. 106–554, § 1(a)(6) [title VII, § 708(a)(1)], substituted '', (II)'' for ''or (II)''.

Subsec. (b)(3)(A)(ii). Pub. L. 106–554, § 1(a)(6) [title VII, § 708(b)(2)], substituted ''paragraph (2)'' for ''paragraph (1)(A)''.

Subsec. (c)(2). Pub. L. 106–554, § 1(a)(6) [title VII, § 708(b)(3)], substituted ''subsection (b)(2)'' for ''subsection (b)(1)(A)'' in introductory provisions.

1999—Subsec. (d)(1)(B). Pub. L. 106–113 substituted ''an entity'' for ''a entity''.

§ 1396r–1b. Presumptive eligibility for certain breast or cervical cancer patients

(a) State option

A State plan approved under section 1396a of this title may provide for making medical assistance available to an individual described in section 1396a(aa) of this title (relating to certain breast or cervical cancer patients) during a presumptive eligibility period.

(b) Definitions

For purposes of this section:

(1) Presumptive eligibility period

The term ''presumptive eligibility period'' means, with respect to an individual described in subsection (a) of this section, the period that—

(A) begins with the date on which a qualified entity determines, on the basis of preliminary information, that the individual is described in section 1396a(aa) of this title; and

(B) ends with (and includes) the earlier of—

(i) the day on which a determination is made with respect to the eligibility of such individual for services under the State plan; or

(ii) in the case of such an individual who does not file an application by the last day of the month following the month during which the entity makes the determination referred to in subparagraph (A), such last day.

(2) Qualified entity

(A) In general

Subject to subparagraph (B), the term ''qualified entity'' means any entity that—

(i) is eligible for payments under a State plan approved under this subchapter; and

(ii) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A).

(B) Regulations

The Secretary may issue regulations further limiting those entities that may become qualified entities in order to prevent fraud and abuse and for other reasons.

(C) Rule of construction

Nothing in this paragraph shall be construed as preventing a State from limiting the classes of entities that may become qualified entities, consistent with any limitations imposed under subparagraph (B).

(c) Administration

(1) In general

The State agency shall provide qualified entities with—

(A) such forms as are necessary for an application to be made by an individual described in subsection (a) of this section for medical assistance under the State plan; and

(B) information on how to assist such individuals in completing and filing such forms.

(2) Notification requirements

A qualified entity that determines under subsection (b)(1)(A) of this section that an individual described in subsection (a) of this section is presumptively eligible for medical assistance under a State plan shall—

(A) notify the State agency of the determination within 5 working days after the date on which determination is made; and

(B) inform such individual at the time the determination is made that an application for medical assistance under the State plan is required to be made by not later than the last day of the month following the month during which the determination is made.

(3) Application for medical assistance

In the case of an individual described in subsection (a) of this section who is determined by a qualified entity to be presumptively eligible for medical assistance under a State plan, the individual shall apply for medical assistance under such plan by not later than the last day of the month following the month during which the determination is made.

(d) Payment

Notwithstanding any other provision of this subchapter, medical assistance that—

(1) is furnished to an individual described in subsection (a) of this section—

(A) during a presumptive eligibility period;

(B) by a[1] entity that is eligible for payments under the State plan; and

(2) is included in the care and services covered by the State plan,

shall be treated as medical assistance provided by such plan for purposes of clause (4) of the first sentence of section 1396d(b) of this title.

(Aug. 14, 1935, ch. 531, title XIX, § 1920B, as added Pub. L. 106–354, § 2(b)(1), Oct. 24, 2000, 114 Stat. 1382.)

EFFECTIVE DATE

Section applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, without regard to whether final regulations to carry out such amendments have been promulgated by such date, see section 2(d) of Pub. L. 106–354, set out as an Effective Date of 2000 Amendment note under section 1396a of this title.

§ 1396r–2. Information concerning sanctions taken by State licensing authorities against health care practitioners and providers

(a) Information reporting requirement

The requirement referred to in section 1396a(a)(49) of this title is that the State must provide for the following:

(1) Information reporting system

The State must have in effect a system of reporting the following information with respect to formal proceedings (as defined by the Secretary in regulations) concluded against a health care practitioner or entity by any authority of the State (or of a political subdivision thereof) responsible for the licensing of health care practitioners (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners) or entities:

(A) Any adverse action taken by such licensing authority as a result of the proceeding, including any revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation.

(B) Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction.

(C) Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender, or otherwise.

(D) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.

(2) Access to documents

The State must provide the Secretary (or an entity designated by the Secretary) with access to such documents of the authority described in paragraph (1) as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations described in such paragraph for the purpose of carrying out this chapter.

(b) Form of information

The information described in subsection (a)(1) of this section shall be provided to the Secretary (or to an appropriate private or public agency, under suitable arrangements made by the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of information) in such a form and manner as the Secretary determines to be appropriate in order to provide for activities of the Secretary under this chapter and in order to provide, directly or through suitable arrangements made by the Secretary, information—

(1) to agencies administering Federal health care programs, including private entities administering such programs under contract,

(2) to licensing authorities described in subsection (a)(1) of this section,

(3) to State agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title),

(4) to utilization and quality control peer review organizations described in part B of subchapter XI of this chapter and to appropriate entities with contracts under section 1320c–3(a)(4)(C) of this title with respect to eligible organizations reviewed under the contracts,

(5) to State medicaid fraud control units (as defined in section 1396b(q) of this title),

(6) to hospitals and other health care entities (as defined in section 431 of the Health Care Quality Improvement Act of 1986 [42 U.S.C. 11151]), with respect to physicians or other licensed health care practitioners that have entered (or may be entering) into an employment or affiliation relationship with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or other health care entities (and such information shall be deemed to be disclosed pursuant to section 427 [42 U.S.C. 11137] of, and be subject to the provisions of, that Act [42 U.S.C. 11101 et seq.]),

(7) to the Attorney General and such other law enforcement officials as the Secretary deems appropriate, and

(8) upon request, to the Comptroller General,

in order for such authorities to determine the fitness of individuals to provide health care

[1] So in original. Probably should be ''an''.

services, to protect the health and safety of individuals receiving health care through such programs, and to protect the fiscal integrity of such programs.

(c) Confidentiality of information provided

The Secretary shall provide for suitable safeguards for the confidentiality of the information furnished under subsection (a) of this section. Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure.

(d) Appropriate coordination

The Secretary shall provide for the maximum appropriate coordination in the implementation of subsection (a) of this section and section 422 of the Health Care Quality Improvement Act of 1986 [42 U.S.C. 11132].

(Aug. 14, 1935, ch. 531, title XIX, § 1921, as added Pub. L. 100–93, § 5(b), Aug. 18, 1987, 101 Stat. 690; amended Pub. L. 101–508, title IV, § 4752(f)(1), Nov. 5, 1990, 104 Stat. 1388–208.)

REFERENCES IN TEXT

Part B of subchapter XI of this chapter, referred to in subsec. (b)(4), is classified to section 1320c et seq. of this title.

That Act, referred to in subsec. (b)(6), is title IV of Pub. L. 99–660, Nov. 14, 1986, 100 Stat. 3784, as amended, known as the Health Care Quality Improvement Act of 1986, which is classified generally to chapter 117 (§ 11101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11101 of this title and Tables.

PRIOR PROVISIONS

A prior section 1921 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–508, § 4752(f)(1)(A), inserted ''(or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners)'' after ''health care practitioners'' in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 101–508, § 4752(f)(1)(B), added subpar. (D).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4752(f)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to State information reporting systems as of January 1, 1992, without regard to whether or not the Secretary of Health and Human Services has promulgated any regulations to carry out such amendments by such date.''

EFFECTIVE DATE

Section applicable, with certain exceptions, to payments under subchapter XIX of this chapter for calendar quarters beginning more than thirty days after Aug. 18, 1987, without regard to whether or not final regulations to carry out this section have been published by that date, see section 15(c)(1), (2) of Pub. L. 100–93 set out as an Effective Date of 1987 Amendment note under section 1320a–7 of this title.

§ 1396r–3. Correction and reduction plans for intermediate care facilities for mentally retarded

(a) Written plans to remedy substantial deficiencies; time for submission

If the Secretary finds that an intermediate care facility for the mentally retarded has substantial deficiencies which do not pose an immediate threat to the health and safety of residents (including failure to provide active treatment), the State may elect, subject to the limitations in this section, to—

(1) submit, within the number of days specified by the Secretary in regulations which apply to submission of compliance plans with respect to deficiencies of such type, a written plan of correction which details the extent of the facility's current compliance with the standards promulgated by the Secretary, including all deficiencies identified during a validation survey, and which provides for a timetable for completion of necessary steps to correct all staffing deficiencies within 6 months, and a timetable for rectifying all physical plant deficiencies within 6 months; or

(2) submit, within a time period consisting of the number of days specified for submissions under paragraph (1) plus 35 days, a written plan for permanently reducing the number of certified beds, within a maximum of 36 months, in order to permit any noncomplying buildings (or distinct parts thereof) to be vacated and any staffing deficiencies to be corrected (hereinafter in this section referred to as a ''reduction plan'').

(b) Conditions for approval of reduction plans

As conditions of approval of any reduction plan submitted pursuant to subsection (a)(2) of this section, the State must—

(1) provide for a hearing to be held at the affected facility at least 35 days prior to submission of the reduction plan, with reasonable notice thereof to the staff and residents of the facility, responsible members of the residents' families, and the general public;

(2) demonstrate that the State has successfully provided home and community services similar to the services proposed to be provided under the reduction plan for similar individuals eligible for medical assistance; and

(3) provide assurances that the requirements of subsection (c) of this section shall be met with respect to the reduction plan.

(c) Contents of reduction plan

The reduction plan must—

(1) identify the number and service needs of existing facility residents to be provided home or community services and the timetable for providing such services, in 6 month intervals, within the 36-month period;

(2) describe the methods to be used to select such residents for home and community services and to develop the alternative home and community services to meet their needs effectively;

(3) describe the necessary safeguards that will be applied to protect the health and welfare of the former residents of the facility who are to receive home or community services, including adequate standards for consumer and provider participation and assurances that applicable State licensure and applicable State and Federal certification requirements will be met in providing such home or community services;

(4) provide that residents of the affected facility who are eligible for medical assistance

while in the facility shall, at their option, be placed in another setting (or another part of the affected facility) so as to retain their eligibility for medical assistance;

(5) specify the actions which will be taken to protect the health and safety of, and to provide active treatment for, the residents who remain in the affected facility while the reduction plan is in effect;

(6) provide that the ratio of qualified staff to residents at the affected facility (or the part thereof) which is subject to the reduction plan will be the higher of—

(A) the ratio which the Secretary determines is necessary in order to assure the health and safety of the residents of such facility (or part thereof); or

(B) the ratio which was in effect at the time that the finding of substantial deficiencies (referred to in subsection (a) of this section) was made; and

(7) provide for the protection of the interests of employees affected by actions under the reduction plan, including—

(A) arrangements to preserve employee rights and benefits;

(B) training and retraining of such employees where necessary;

(C) redeployment of such employees to community settings under the reduction plan; and

(D) making maximum efforts to guarantee the employment of such employees (but this requirement shall not be construed to guarantee the employment of any employee).

(d) Notice and comment; approval of more than 15 reduction plans in any fiscal year; corrections costing $2,000,000 or more

(1) The Secretary must provide for a period of not less than 30 days after the submission of a reduction plan by a State, during which comments on such reduction plan may be submitted to the Secretary, before the Secretary approves or disapproves such reduction plan.

(2) If the Secretary approves more than 15 reduction plans under this section in any fiscal year, any reduction plans approved in addition to the first 15 such plans approved, must be for a facility (or part thereof) for which the costs of correcting the substantial deficiencies (referred to in subsection (a) of this section) are $2,000,000 or greater (as demonstrated by the State to the satisfaction of the Secretary).

(e) Termination of provider agreements; disallowance of percentage amounts for purposes of Federal financial participation

(1) If the Secretary, at the conclusion of the 6-month plan of correction described in subsection (a)(1) of this section, determines that the State has substantially failed to correct the deficiencies described in subsection (a) of this section, the Secretary may terminate the facility's provider agreement in accordance with the provisions of section 1396i(b) of this title.

(2) In the case of a reduction plan described in subsection (a)(2) of this section, if the Secretary determines, at the conclusion of the initial 6-month period or any 6-month interval thereafter, that the State has substantially failed to meet the requirements of subsection (c) of this section, the Secretary shall—

(A) terminate the facility's provider agreement in accordance with the provisions of section 1396i(b) of this title; or

(B) if the State has failed to meet such requirements despite good faith efforts, disallow, for purposes of Federal financial participation, an amount equal to 5 percent of the cost of care for all eligible individuals in the facility for each month for which the State fails to meet such requirements.

(f) Applicability of section limited to plans approved by January 1, 1990

The provisions of this section shall apply only to plans of correction and reduction plans approved by the Secretary by January 1, 1990.

(Aug. 14, 1935, ch. 531, title XIX, § 1922, formerly § 1919, as added Pub. L. 99–272, title IX, § 9516(a), Apr. 7, 1986, 100 Stat. 213; renumbered § 1922 and amended Pub. L. 100–203, title IV, §§ 4211(a)(2), 4212(e)(5), Dec. 22, 1987, 101 Stat. 1330–182; amended Pub. L. 100–360, title IV, § 411(*l*)(6)(E), July 1, 1988, 102 Stat. 804; Pub. L. 100–647, title VIII, § 8433(a), Nov. 10, 1988, 102 Stat. 3804.)

PRIOR PROVISIONS

A prior section 1922 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, § 8433(a)(1), inserted ''(including failure to provide active treatment)'' after ''residents'' in introductory provisions.

Subsec. (c)(5). Pub. L. 100–647, § 8433(a)(2), inserted '', and to provide active treatment for,'' after ''safety of''.

Subsec. (e)(1), (2)(A). Pub. L. 100–360, § 411(*l*)(6)(E), substituted ''1396i(b)'' for ''1396i(c)''.

Subsec. (f). Pub. L. 100–647, § 8433(a)(3), substituted ''by January 1, 1990'' for ''within 3 years after the effective date of final regulations implementing this section''.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8433(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Nov. 10, 1988], and shall apply to any proceeding where there has not yet been a final determination by the Secretary (as defined for purposes of judicial review) as of the date of the enactment of this Act.''

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 9516(b) of Pub. L. 99–272 provided that:

''(1) The amendment made by this section [enacting this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].

''(2) The Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to section 1919 of the Social Security Act [this section] within 60 days after the date of the enactment of this Act, and shall allow a period of 30 days for comment thereon prior to promulgating final regulations implementing such section.''

REGULATIONS

Section 4217 of Pub. L. 100–203 provided that:

''(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act [Dec. 22, 1987], the Secretary of Health and Human Services shall promulgate final regulations to implement the amendments made by section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [enacting this section].

''(b) The regulations promulgated under paragraph (1) shall be effective as if promulgated on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Apr. 7, 1986].''

REPORT TO CONGRESS ON IMPLEMENTATION AND RESULTS OF THIS SECTION

Section 9516(c) of Pub. L. 99–272, as amended by Pub. L. 100–203, title IV, §4211(*l*), Dec. 22, 1987, 101 Stat. 1330–207, directed Secretary of Health and Human Services to submit a report to Congress on implementation and results of this section, such report to be submitted not later than 30 months after the effective date of final regulations promulgated to implement this section.

§ 1396r–4. Adjustment in payment for inpatient hospital services furnished by disproportionate share hospitals

(a) Implementation of requirement

(1) A State plan under this subchapter shall not be considered to meet the requirement of section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs), as of July 1, 1988, unless the State has submitted to the Secretary, by not later than such date, an amendment to such plan that—

(A) specifically defines the hospitals so described (and includes in such definition any disproportionate share hospital described in subsection (b)(1) of this section which meets the requirements of subsection (d) of this section), and

(B) provides, effective for inpatient hospital services provided not later than July 1, 1988, for an appropriate increase in the rate or amount of payment for such services provided by such hospitals, consistent with subsection (c) of this section.

(2)(A) In order to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1989, the State must submit to the Secretary by not later than April 1, 1989, the State plan amendment described in paragraph (1), consistent with subsection (c) of this section, effective for inpatient hospital services provided on or after July 1, 1989.

(B) In order to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1990, the State must submit to the Secretary by not later than April 1, 1990, the State plan amendment described in paragraph (1), consistent with subsections (c) and (f) of this section, effective for inpatient hospital services provided on or after July 1, 1990.

(C) If a State plan under this subchapter provides for payments for inpatient hospital services on a prospective basis (whether per diem, per case, or otherwise), in order for the plan to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1989, the State must submit to the Secretary by not later than April 1, 1989, a State plan amendment that provides, in the case of hospitals defined by the State as disproportionate share hospitals under paragraph (1)(A), for an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1989, involving exceptionally high costs or exceptionally long lengths of stay for individuals under one year of age.

(D) A State plan under this subchapter shall not be considered to meet the requirements of section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs), as of October 1, 1998, unless the State has submitted to the Secretary by such date a description of the methodology used by the State to identify and to make payments to disproportionate share hospitals, including children's hospitals, on the basis of the proportion of low-income and medicaid patients (including such patients who receive benefits through a managed care entity) served by such hospitals. The State shall provide an annual report to the Secretary describing the disproportionate share payments to each such disproportionate share hospital.

(3) The Secretary shall, not later than 90 days after the date a State submits an amendment under this subsection, review each such amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement.

(4) The requirement of this subsection may not be waived under section 1396n(b)(4) of this title.

(b) Hospitals deemed disproportionate share

(1) For purposes of subsection (a)(1) of this section, a hospital which meets the requirements of subsection (d) of this section is deemed to be a disproportionate share hospital if—

(A) the hospital's medicaid inpatient utilization rate (as defined in paragraph (2)) is at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State; or

(B) the hospital's low-income utilization rate (as defined in paragraph (3)) exceeds 25 percent.

(2) For purposes of paragraph (1)(A), the term ''medicaid inpatient utilization rate'' means, for a hospital, a fraction (expressed as a percentage), the numerator of which is the hospital's number of inpatient days attributable to patients who (for such days) were eligible for medical assistance under a State plan approved under this subchapter in a period (regardless of whether such patients receive medical assistance on a fee-for-service basis or through a managed care entity), and the denominator of which is the total number of the hospital's inpatient days in that period. In this paragraph, the term ''inpatient day'' includes each day in which an individual (including a newborn) is an inpatient

in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.

(3) For purposes of paragraph (1)(B), the term ''low-income utilization rate'' means, for a hospital, the sum of—

(A) the fraction (expressed as a percentage)—

(i) the numerator of which is the sum (for a period) of (I) the total revenues paid the hospital for patient services under a State plan under this subchapter (regardless of whether the services were furnished on a fee-for-service basis or through a managed care entity) and (II) the amount of the cash subsidies for patient services received directly from State and local governments, and

(ii) the denominator of which is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the period; and

(B) a fraction (expressed as a percentage)—

(i) the numerator of which is the total amount of the hospital's charges for inpatient hospital services which are attributable to charity care in a period, less the portion of any cash subsidies described in clause (i)(II) of subparagraph (A) in the period reasonably attributable to inpatient hospital services, and

(ii) the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the hospital in the period.

The numerator under subparagraph (B)(i) shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under a State plan approved under this subchapter).

(4) The Secretary may not restrict a State's authority to designate hospitals as disproportionate share hospitals under this section. The previous sentence shall not be construed to affect the authority of the Secretary to reduce payments pursuant to section 1396b(w)(1)(A)(iii) of this title if the Secretary determines that, as a result of such designations, there is in effect a hold harmless provision described in section 1396b(w)(4) of this title.

(c) Payment adjustment

Subject to subsections (f) and (g) of this section, in order to be consistent with this subsection, a payment adjustment for a disproportionate share hospital must either—

(1) be in an amount equal to at least the product of (A) the amount paid under the State plan to the hospital for operating costs for inpatient hospital services (of the kind described in section 1395ww(a)(4) of this title), and (B) the hospital's disproportionate share adjustment percentage (established under section 1395ww(d)(5)(F)(iv) of this title);

(2) provide for a minimum specified additional payment amount (or increased percentage payment) and (without regard to whether the hospital is described in subparagraph (A) or (B) of subsection (b)(1) of this section) for an increase in such a payment amount (or percentage payment) in proportion to the percentage by which the hospital's medicaid utilization rate (as defined in subsection (b)(2) of this section) exceeds one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State or the hospital's low-income utilization rate (as defined in paragraph [1] (b)(3) of this section); or

(3) provide for a minimum specified additional payment amount (or increased percentage payment) that varies according to type of hospital under a methodology that—

(A) applies equally to all hospitals of each type; and

(B) results in an adjustment for each type of hospital that is reasonably related to the costs, volume, or proportion of services provided to patients eligible for medical assistance under a State plan approved under this subchapter or to low-income patients,

except that, for purposes of paragraphs (1)(B) and (2)(A) of subsection (a) of this section, the payment adjustment for a disproportionate share hospital is consistent with this subsection if the appropriate increase in the rate or amount of payment is equal to at least one-third of the increase otherwise applicable under this subsection (in the case of such paragraph (1)(B)) and at least two-thirds of such increase (in the case of paragraph (2)(A)). In the case of a hospital described in subsection (d)(2)(A)(i) of this section (relating to children's hospitals), in computing the hospital's disproportionate share adjustment percentage for purposes of paragraph (1)(B) of this subsection, the disproportionate patient percentage (defined in section 1395ww(d)(5)(F)(vi) of this title) shall be computed by substituting for the fraction described in subclause (I) of such section the fraction described in subclause (II) of that section. If a State elects in a State plan amendment under subsection (a) of this section to provide the payment adjustment described in paragraph (2), the State must include in the amendment a detailed description of the specific methodology to be used in determining the specified additional payment amount (or increased percentage payment) to be made to each hospital qualifying for such a payment adjustment and must publish at least annually the name of each hospital qualifying for such a payment adjustment and the amount of such payment adjustment made for each such hospital.

(d) Requirements to qualify as disproportionate share hospital

(1) Except as provided in paragraph (2), no hospital may be defined or deemed as a disproportionate share hospital under a State plan under this subchapter or under subsection (b) of this section unless the hospital has at least 2 obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to individuals who are entitled to medical assistance for such services under such State plan.

(2)(A) Paragraph (1) shall not apply to a hospital—

[1] So in original. Probably should be ''subsection''.

(i) the inpatients of which are predominantly individuals under 18 years of age; or

(ii) which does not offer nonemergency obstetric services to the general population as of December 22, 1987.

(B) In the case of a hospital located in a rural area (as defined for purposes of section 1395ww of this title), in paragraph (1) the term ''obstetrician'' includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(3) No hospital may be defined or deemed as a disproportionate share hospital under a State plan under this subchapter or under subsection (b) or (e) of this section unless the hospital has a medicaid inpatient utilization rate (as defined in subsection (b)(2) of this section) of not less than 1 percent.

(e) Special rule

(1) A State plan shall be considered to meet the requirement of section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs) without regard to the requirement of subsection (a) of this section if (A)(i) the plan provided for payment adjustments based on a pooling arrangement involving a majority of the hospitals participating under the plan for disproportionate share hospitals as of January 1, 1984, or (ii) the plan as of January 1, 1987, provided for payment adjustments based on a statewide pooling arrangement involving all acute care hospitals and the arrangement provides for reimbursement of the total amount of uncompensated care provided by each participating hospital, (B) the aggregate amount of the payment adjustments under the plan for such hospitals is not less than the aggregate amount of such adjustments otherwise required to be made under such subsection, and (C) the plan meets the requirement of subsection (d)(3) of this section and such payment adjustments are made consistent with the last sentence of subsection (c) of this section.

(2) In the case of a State that used a health insuring organization before January 1, 1986, to administer a portion of its plan on a statewide basis, beginning on July 1, 1988—

(A) the requirements of subsections (b) and (c) of this section (other than the last sentence of subsection (c) of this section) shall not apply if the aggregate amount of the payment adjustments under the plan for disproportionate share hospitals (as defined under the State plan) is not less than the aggregate amount of payment adjustments otherwise required to be made if such subsections applied,

(B) subsection (d)(2)(B) of this section shall apply to hospitals located in urban areas, as well as in rural areas,

(C) subsection (d)(3) of this section shall apply, and

(D) subsection (g) of this section shall apply.

(f) Limitation on Federal financial participation

(1) In general

Payment under section 1396b(a) of this title shall not be made to a State with respect to any payment adjustment made under this section for hospitals in a State for quarters in a fiscal year in excess of the disproportionate share hospital (in this subsection referred to as ''DSH'') allotment for the State for the fiscal year, as specified in paragraphs (2) and (3).

(2) State DSH allotments for fiscal years 1998 through 2002

Subject to paragraph (4), the DSH allotment for a State for each fiscal year during the period beginning with fiscal year 1998 and ending with fiscal year 2002 is determined in accordance with the following table:

State or District	DSH Allotment (in millions of dollars)				
	FY 98	FY 99	FY 00	FY 01	FY 02
Alabama	293	269	248	246	246
Alaska	10	10	10	9	9
Arizona	81	81	81	81	81
Arkansas	2	2	2	2	2
California	1,085	1,068	986	931	877
Colorado	93	85	79	74	74
Connecticut	200	194	164	160	160
Delaware	4	4	4	4	4
District of Columbia	23	23	32	32	32
Florida	207	203	197	188	160
Georgia	253	248	241	228	215
Hawaii	0	0	0	0	0
Idaho	1	1	1	1	1
Illinois	203	199	193	182	172
Indiana	201	197	191	181	171
Iowa	8	8	8	8	8
Kansas	51	49	42	36	33
Kentucky	137	134	130	123	116
Louisiana	880	795	713	658	631
Maine	103	99	84	84	84
Maryland	72	70	68	64	61
Massachusetts	288	282	273	259	244
Michigan	249	244	237	224	212
Minnesota	16	16	33	33	33
Mississippi	143	141	136	129	122
Missouri	436	423	379	379	379
Montana	0.2	0.2	0.2	0.2	0.2
Nebraska	5	5	5	5	5
Nevada	37	37	37	37	37
New Hampshire	140	136	130	130	130
New Jersey	600	582	515	515	515
New Mexico	5	5	9	9	9
New York	1,512	1,482	1,436	1,361	1,285
North Carolina	278	272	264	250	236
North Dakota	1	1	1	1	1
Ohio	382	374	363	344	325
Oklahoma	16	16	16	16	16
Oregon	20	20	20	20	20
Pennsylvania	529	518	502	476	449
Rhode Island	62	60	58	55	52
South Carolina	313	303	262	262	262
South Dakota	1	1	1	1	1
Tennessee	0	0	0	0	0
Texas	979	950	806	765	765
Utah	3	3	3	3	3
Vermont	18	18	18	18	18
Virginia	70	68	66	63	59
Washington	174	171	166	157	148
West Virginia	64	63	61	58	54
Wisconsin	7	7	7	7	7
Wyoming	0	0	0.1	0.1	0.1.

(3) State DSH allotments for fiscal year 2003 and thereafter

(A) In general

Except as provided in paragraph (6), the DSH allotment for any State for fiscal year

2003 and each succeeding fiscal year is equal to the DSH allotment for the State for the preceding fiscal year under paragraph (2) or this paragraph, increased, subject to subparagraphs (B) and (C) and paragraph (5) by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for the previous fiscal year.

(B) Limitation

The DSH allotment for a State shall not be increased under subparagraph (A) for a fiscal year to the extent that such an increase would result in the DSH allotment for the year exceeding the greater of—

(i) the DSH allotment for the previous year, or

(ii) 12 percent of the total amount of expenditures under the State plan for medical assistance during the fiscal year.

(C) Special, temporary increase in allotments on a one-time, non-cumulative basis

The DSH allotment for any State (other than a State with a DSH allotment determined under paragraph (5))—

(i) for fiscal year 2004 is equal to 116 percent of the DSH allotment for the State for fiscal year 2003 under this paragraph, notwithstanding subparagraph (B); and

(ii) for each succeeding fiscal year is equal to the DSH allotment for the State for fiscal year 2004 or, in the case of fiscal years beginning with the fiscal year specified in subparagraph (D) for that State, the DSH allotment for the State for the previous fiscal year increased by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for the previous fiscal year.

(D) Fiscal year specified

For purposes of subparagraph (C)(ii), the fiscal year specified in this subparagraph for a State is the first fiscal year for which the Secretary estimates that the DSH allotment for that State will equal (or no longer exceed) the DSH allotment for that State under the law as in effect before December 8, 2003.

(4) Special rule for fiscal years 2001 and 2002

(A) In general

Notwithstanding paragraph (2), the DSH allotment for any State for—

(i) fiscal year 2001, shall be the DSH allotment determined under paragraph (2) for fiscal year 2000 increased, subject to subparagraph (B) and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average) for fiscal year 2000; and

(ii) fiscal year 2002, shall be the DSH allotment determined under clause (i) increased, subject to subparagraph (B) and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average) for fiscal year 2001.

(B) Limitation

Subparagraph (B) of paragraph (3) shall apply to subparagraph (A) of this paragraph in the same manner as that subparagraph (B) applies to paragraph (3)(A).

(C) No application to allotments after fiscal year 2002

The DSH allotment for any State for fiscal year 2003 or any succeeding fiscal year shall be determined under paragraph (3) without regard to the DSH allotments determined under subparagraph (A) of this paragraph.

(5) Special rule for low DSH States

(A) For fiscal years 2001 through 2003 for extremely low DSH States

In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 1999, as reported to the Administrator of the Health Care Financing Administration as of August 31, 2000, is greater than 0 but less than 1 percent of the State's total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for fiscal year 2001 shall be increased to 1 percent of the State's total amount of expenditures under such plan for such assistance during such fiscal year. In subsequent fiscal years before fiscal year 2004, such increased allotment is subject to an increase for inflation as provided in paragraph (3)(A).

(B) For fiscal year 2004 and subsequent fiscal years

In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 2000, as reported to the Administrator of the Centers for Medicare & Medicaid Services as of August 31, 2003, is greater than 0 but less than 3 percent of the State's total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for the State with respect to—

(i) fiscal year 2004 shall be the DSH allotment for the State for fiscal year 2003 increased by 16 percent;

(ii) each succeeding fiscal year before fiscal year 2009 shall be the DSH allotment for the State for the previous fiscal year increased by 16 percent; and

(iii) fiscal year 2009 and any subsequent fiscal year, shall be the DSH allotment for the State for the previous year subject to an increase for inflation as provided in paragraph (3)(A).

(6) Allotment adjustment

Only with respect to fiscal year 2004 or 2005, if a statewide waiver under section 1315 of this title is revoked or terminated before the end of either such fiscal year and there is no DSH allotment for the State, the Secretary shall—

(A) permit the State whose waiver was revoked or terminated to submit an amendment to its State plan that would describe the methodology to be used by the State (after the effective date of such revocation or termination) to identify and make pay-

ments to disproportionate share hospitals, including children's hospitals and institutions for mental diseases or other mental health facilities (other than State-owned institutions or facilities), on the basis of the proportion of patients served by such hospitals that are low-income patients with special needs; and

(B) provide for purposes of this subsection for computation of an appropriate DSH allotment for the State for fiscal year 2004 or 2005 (or both) that would not exceed the amount allowed under paragraph (3)(B)(ii) and that does not result in greater expenditures under this subchapter than would have been made if such waiver had not been revoked or terminated.

In determining the amount of an appropriate DSH allotment under subparagraph (B) for a State, the Secretary shall take into account the level of DSH expenditures for the State for the fiscal year preceding the fiscal year in which the waiver commenced.

(7) "State" defined

In this subsection, the term ''State'' means the 50 States and the District of Columbia.

(g) Limit on amount of payment to hospital

(1) Amount of adjustment subject to uncompensated costs

(A) In general

A payment adjustment during a fiscal year shall not be considered to be consistent with subsection (c) of this section with respect to a hospital if the payment adjustment exceeds the costs incurred during the year of furnishing hospital services (as determined by the Secretary and net of payments under this subchapter, other than under this section, and by uninsured patients) by the hospital to individuals who either are eligible for medical assistance under the State plan or have no health insurance (or other source of third party coverage) for services provided during the year. For purposes of the preceding sentence, payments made to a hospital for services provided to indigent patients made by a State or a unit of local government within a State shall not be considered to be a source of third party payment.

(B) Limit to public hospitals during transition period

With respect to payment adjustments during a State fiscal year that begins before January 1, 1995, subparagraph (A) shall apply only to hospitals owned or operated by a State (or by an instrumentality or a unit of government within a State).

(C) Modifications for private hospitals

With respect to hospitals that are not owned or operated by a State (or by an instrumentality or a unit of government within a State), the Secretary may make such modifications to the manner in which the limitation on payment adjustments is applied to such hospitals as the Secretary considers appropriate.

(2) Additional amount during transition period for certain hospitals with high disproportionate share

(A) In general

In the case of a hospital with high disproportionate share (as defined in subparagraph (B)), a payment adjustment during a State fiscal year that begins before January 1, 1995, shall be considered consistent with subsection (c) of this section if the payment adjustment does not exceed 200 percent of the costs of furnishing hospital services described in paragraph (1)(A) during the year, but only if the Governor of the State certifies to the satisfaction of the Secretary that the hospital's applicable minimum amount is used for health services during the year. In determining the amount that is used for such services during a year, there shall be excluded any amounts received under the Public Health Service Act [42 U.S.C. 201 et seq.], subchapter V of this chapter, subchapter XVIII of this chapter, or from third party payors (not including the State plan under this subchapter) that are used for providing such services during the year.

(B) "Hospital with high disproportionate share" defined

In subparagraph (A), a hospital is a ''hospital with high disproportionate share'' if—

(i) the hospital is owned or operated by a State (or by an instrumentality or a unit of government within a State); and

(ii) the hospital—

(I) meets the requirement described in subsection (b)(1)(A) of this section, or

(II) has the largest number of inpatient days attributable to individuals entitled to benefits under the State plan of any hospital in such State for the previous State fiscal year.

(C) "Applicable minimum amount" defined

In subparagraph (A), the ''applicable minimum amount'' for a hospital for a fiscal year is equal to the difference between the amount of the hospital's payment adjustment for the fiscal year and the costs to the hospital of furnishing hospital services described in paragraph (1)(A) during the fiscal year.

(h) Limitation on certain State DSH expenditures

(1) In general

Payment under section 1396b(a) of this title shall not be made to a State with respect to any payment adjustments made under this section for quarters in a fiscal year (beginning with fiscal year 1998) to institutions for mental diseases or other mental health facilities, to the extent the aggregate of such adjustments in the fiscal year exceeds the lesser of the following:

(A) 1995 IMD DSH payment adjustments

The total State DSH expenditures that are attributable to fiscal year 1995 for payments to institutions for mental diseases and other

mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary).

(B) Applicable percentage of 1995 total DSH payment allotment

The amount of such payment adjustments which are equal to the applicable percentage of the Federal share of payment adjustments made to hospitals in the State under subsection (c) of this section that are attributable to the 1995 DSH allotment for the State for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary).

(2) Applicable percentage

(A) In general

For purposes of paragraph (1), the applicable percentage with respect to—

(i) each of fiscal years 1998, 1999, and 2000, is the percentage determined under subparagraph (B); or

(ii) a succeeding fiscal year is the lesser of the percentage determined under subparagraph (B) or the following percentage:

(I) For fiscal year 2001, 50 percent.

(II) For fiscal year 2002, 40 percent.

(III) For each succeeding fiscal year, 33 percent.

(B) 1995 percentage

The percentage determined under this subparagraph is the ratio (determined as a percentage) of—

(i) the Federal share of payment adjustments made to hospitals in the State under subsection (c) of this section that are attributable to the 1995 DSH allotment for the State (as reported by the State not later than January 1, 1997, on HCFA Form 64, and as approved by the Secretary) for payments to institutions for mental diseases and other mental health facilities, to

(ii) the State 1995 DSH spending amount.

(C) State 1995 DSH spending amount

For purposes of subparagraph (B)(ii), the ''State 1995 DSH spending amount'', with respect to a State, is the Federal medical assistance percentage (for fiscal year 1995) of the payment adjustments made under subsection (c) of this section under the State plan that are attributable to the fiscal year 1995 DSH allotment for the State (as reported by the State not later than January 1, 1997, on HCFA Form 64, and as approved by the Secretary).

(i) Requirement for direct payment

(1) In general

No payment may be made under section 1396b(a)(1) of this title with respect to a payment adjustment made under this section, for services furnished by a hospital on or after October 1, 1997, with respect to individuals eligible for medical assistance under the State plan who are enrolled with a managed care entity (as defined in section 1396u–2(a)(1)(B) of this title) or under any other managed care arrangement unless a payment, equal to the amount of the payment adjustment—

(A) is made directly to the hospital by the State; and

(B) is not used to determine the amount of a prepaid capitation payment under the State plan to the entity or arrangement with respect to such individuals.

(2) Exception for current arrangements

Paragraph (1) shall not apply to a payment adjustment provided pursuant to a payment arrangement in effect on July 1, 1997.

(j) Annual reports and other requirements regarding payment adjustments

With respect to fiscal year 2004 and each fiscal year thereafter, the Secretary shall require a State, as a condition of receiving a payment under section 1396b(a)(1) of this title with respect to a payment adjustment made under this section, to do the following:

(1) Report

The State shall submit an annual report that includes the following:

(A) An identification of each disproportionate share hospital that received a payment adjustment under this section for the preceding fiscal year and the amount of the payment adjustment made to such hospital for the preceding fiscal year.

(B) Such other information as the Secretary determines necessary to ensure the appropriateness of the payment adjustments made under this section for the preceding fiscal year.

(2) Independent certified audit

The State shall annually submit to the Secretary an independent certified audit that verifies each of the following:

(A) The extent to which hospitals in the State have reduced their uncompensated care costs to reflect the total amount of claimed expenditures made under this section.

(B) Payments under this section to hospitals that comply with the requirements of subsection (g) of this section.

(C) Only the uncompensated care costs of providing inpatient hospital and outpatient hospital services to individuals described in paragraph (1)(A) of such subsection are included in the calculation of the hospital-specific limits under such subsection.

(D) The State included all payments under this subchapter, including supplemental payments, in the calculation of such hospital-specific limits.

(E) The State has separately documented and retained a record of all of its costs under this subchapter, claimed expenditures under this subchapter, uninsured costs in determining payment adjustments under this section, and any payments made on behalf of the uninsured from payment adjustments under this section.

(Aug. 14, 1935, ch. 531, title XIX, § 1923, formerly Pub. L. 100–203, title IV, § 4112, Dec. 22, 1987, 101 Stat. 1330–148; renumbered § 1923 of act Aug. 14,

1935, and amended Pub. L. 100–360, title III, § 302(b)(2), title IV, § 411(k)(6)(A)–(B)(ix), July 1, 1988, 102 Stat. 752, 792–794; Pub. L. 100–485, title VI, § 608(d)(15)(C), (26)(A)–(F), Oct. 13, 1988, 102 Stat. 2417, 2421, 2422; Pub. L. 101–239, title VI, § 6411(c)(1), Dec. 19, 1989, 103 Stat. 2270; Pub. L. 101–508, title IV, §§ 4702(a), 4703(a)–(c), Nov. 5, 1990, 104 Stat. 1388–171; Pub. L. 102–234, §§ 3(b)(1), (2)(A), (c), Dec. 12, 1991, 105 Stat. 1799, 1802, 1803; Pub. L. 103–66, title XIII, § 13621(a)(1), (b)(1), (2), Aug. 10, 1993, 107 Stat. 629–631; Pub. L. 105–33, title IV, §§ 4711(c)(2), 4721(a)(1), (b)–(d), Aug. 5, 1997, 111 Stat. 508, 511, 513, 514; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, §§ 601(a), 608(s)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394, 1501A–397; Pub. L. 106–554, § 1(a)(6) [title VII, § 701(a)(1), (2), (b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–569, 2763A–570; Pub. L. 108–173, title X, § 1001(a)–(d), Dec. 8, 2003, 117 Stat. 2428–2430.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (g)(2)(A), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Prior to redesignation by Pub. L. 100–360, section 4112 of Pub. L. 100–203, cited in the credits to this section, was classified as a note under section 1396a of this title.

PRIOR PROVISIONS

A prior section 1923 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

2003—Subsec. (f)(3)(A). Pub. L. 108–173, § 1001(a)(1), (c)(1), substituted ''Except as provided in paragraph (6), the DSH'' for ''The DSH'' and ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Subsec. (f)(3)(C), (D). Pub. L. 108–173, § 1001(a)(2), added subpars. (C) and (D).

Subsec. (f)(5). Pub. L. 108–173, § 1001(b)(1), (2), (4), struck out ''extremely'' before ''low DSH States'' in heading, designated existing provisions as subpar. (A) and inserted subpar. heading, and added subpar. (B).

Subsec. (f)(5)(A). Pub. L. 108–173, § 1001(b)(3), which directed insertion of ''before fiscal year 2004'' after ''In subsequent years'', was executed by making the insertion after ''In subsequent fiscal years'' to reflect the probable intent of Congress.

Subsec. (f)(6), (7). Pub. L. 108–173, § 1001(c)(2), (3), added par. (6) and redesignated former par. (6) as (7).

Subsec. (j). Pub. L. 108–173, § 1001(d), added subsec. (j).

2000—Subsec. (a)(2)(D). Pub. L. 106–554, § 1(a)(6) [title VII, § 701(b)(2)(A)], inserted ''(including such patients who receive benefits through a managed care entity)'' after ''the proportion of low-income and medicaid patients''.

Subsec. (b)(2). Pub. L. 106–554, § 1(a)(6) [title VII, § 701(b)(2)(B)], inserted ''(regardless of whether such patients receive medical assistance on a fee-for-service basis or through a managed care entity)'' after ''a State plan approved under this subchapter in a period''.

Subsec. (b)(3)(A)(i)(I). Pub. L. 106–554, § 1(a)(6) [title VII, § 701(b)(2)(C)], inserted ''(regardless of whether the services were furnished on a fee-for-service basis or through a managed care entity)'' after ''under a State plan under this subchapter''.

Subsec. (f)(2). Pub. L. 106–554, § 1(a)(6) [title VII, § 701(a)(1)(A)(i)], substituted ''Subject to paragraph (4), the DSH allotment'' for ''The DSH allotment'' in introductory provisions.

Subsec. (f)(3)(A). Pub. L. 106–554, § 1(a)(6) [title VII, § 701(a)(2)(B)], inserted ''and paragraph (5)'' after ''subparagraph (B)''.

Subsec. (f)(4). Pub. L. 106–554, § 1(a)(6) [title VII, § 701(a)(1)(A)(iii)], added par. (4). Former par. (4) redesignated (6).

Subsec. (f)(5). Pub. L. 106–554, § 1(a)(6) [title VII, § 701(a)(2)(A)], added par. (5).

Subsec. (f)(6). Pub. L. 106–554, § 1(a)(6) [title VII, § 701(a)(1)(A)(ii)], redesignated par. (4) as (6).

1999—Subsec. (c)(3)(B). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(s)], substituted comma for period at end.

Subsec. (f)(2). Pub. L. 106–113, § 1000(a)(6) [title VI, § 601(a)], under each of the columns for FY 00, FY 01, and FY 02, substituted ''32'' for ''23'' in the entry for the District of Columbia, ''33'' for ''16'' in the entry for Minnesota, ''9'' for ''5'' in the entry for New Mexico, and ''0.1'' for ''0'' in the entry for Wyoming.

1997—Subsec. (a)(1). Pub. L. 105–33, § 4711(c)(2), substituted ''1396a(a)(13)(A)(iv)'' for ''1396a(a)(13)(A)''.

Subsec. (a)(2)(D). Pub. L. 105–33, § 4721(c), added subpar. (D).

Subsec. (e)(1). Pub. L. 105–33, § 4711(c)(2), substituted ''1396a(a)(13)(A)(iv)'' for ''1396a(a)(13)(A)''.

Subsec. (f). Pub. L. 105–33, § 4721(a)(1), amended heading and text of subsec. (f) generally. Prior to amendment, subsec. (f) related to denial of Federal financial participation for payments in excess of certain limits.

Subsec. (h). Pub. L. 105–33, § 4721(b), added subsec. (h).

Subsec. (i). Pub. L. 105–33, § 4721(d), added subsec. (i).

1993—Subsec. (a)(1)(A). Pub. L. 103–66, § 13621(a)(1)(A), substituted ''requirements'' for ''requirement''.

Subsec. (b)(1). Pub. L. 103–66, § 13621(a)(1)(B), substituted ''requirements'' for ''requirement'' in introductory provisions.

Subsec. (c). Pub. L. 103–66, § 13621(b)(2)(A), substituted ''subsections (f) and (g)'' for ''subsection (f)'' in introductory provisions.

Subsec. (d). Pub. L. 103–66, § 13621(a)(1)(C), substituted ''Requirements'' for ''Requirement'' in heading.

Subsec. (d)(3). Pub. L. 103–66, § 13621(a)(1)(D), added par. (3).

Subsec. (e)(1)(C). Pub. L. 103–66, § 13621(a)(1)(E), added cl. (C).

Subsec. (e)(2)(A). Pub. L. 103–66, § 13621(a)(1)(F)(i), inserted ''(other than the last sentence of subsection (c) of this section)'' before ''shall not apply''.

Subsec. (e)(2)(C). Pub. L. 103–66, § 13621(a)(1)(F)(ii)–(iv), added subpar. (C).

Subsec. (e)(2)(D). Pub. L. 103–66, § 13621(b)(2)(B), added subpar. (D).

Subsec. (g). Pub. L. 103–66, § 13621(b)(1), added subsec. (g).

1991—Subsec. (a)(2)(B). Pub. L. 102–234, § 3(b)(2)(A)(i), substituted ''subsections (c) and (f)'' for ''subsection (c)''.

Subsec. (b)(4). Pub. L. 102–234, § 3(c), added par. (4).

Subsec. (c). Pub. L. 102–234, § 3(b)(2)(A)(ii), substituted ''Subject to subsection (f) of this section, in order'' for ''In order''.

Subsec. (f). Pub. L. 102–234, § 3(b)(1), added subsec. (f).

1990—Subsec. (b)(2). Pub. L. 101–508, § 4702(a), inserted at end ''In this paragraph, the term 'inpatient day' includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.''

Subsec. (c)(2). Pub. L. 101–508, § 4703(c), inserted before semicolon at end ''or the hospital's low-income utilization rate (as defined in paragraph (b)(3) of this section)''.

Subsec. (c)(3). Pub. L. 101–508, § 4703(a), added par. (3).

Subsec. (e)(2). Pub. L. 101–508, § 4703(b), struck out ''during the 3-year period'' before ''beginning on''.

1989—Subsec. (e)(1). Pub. L. 101–239 designated portion of existing provisions as cls. (A) and (B), and in cl. (A) designated existing provisions as subcl. (i) and added subcl. (ii).

1988—Pub. L. 100–360, § 411(k)(6)(A)–(B)(ix), as amended by Pub. L. 100–485, § 608(d)(26)(F), amended Pub. L.

100–203, § 4112, so as to redesignate section 4112 of Pub. L. 100–203 as this section.

Subsec. (a). Pub. L. 100–360, § 411(k)(6)(B)(iv), struck out ''of Health and Human Services'' after ''to the Secretary'' wherever appearing in pars. (1) and (2).

Subsec. (a)(1). Pub. L. 100–360, § 411(k)(6)(B)(ii), (iii), substituted ''A State plan under this subchapter'' for ''A State's plan under title XIX of the Social Security Act'', and made technical amendment to reference to section 1396a(a)(13)(A) of this title involving underlying provisions of original act.

Subsec. (a)(2)(A). Pub. L. 100–360, § 411(k)(6)(A)(i), substituted ''April 1, 1989'' for ''such date'' and inserted before period at end '', effective for inpatient hospital services provided on or after July 1, 1989''.

Subsec. (a)(2)(B). Pub. L. 100–360, § 411(k)(6)(A)(ii), substituted ''April 1, 1990'' for ''such date'' and inserted before period at end '', effective for inpatient hospital services provided on or after July 1, 1990''.

Subsec. (a)(2)(C). Pub. L. 100–485, § 608(d)(15)(C), realigned the margin of subpar. (C).

Pub. L. 100–360, § 302(b)(2), added subpar. (C).

Subsec. (a)(3). Pub. L. 100–360, § 411(k)(6)(A)(iii), inserted par. (3) designation and substituted ''90 days after the date a State submits an amendment'' for ''June 30 of each year in which the State is required to submit an amendment''.

Subsec. (a)(4). Pub. L. 100–360, § 411(k)(6)(A)(iii)(II), (III), (B)(v), inserted par. (4) designation and made technical amendment to reference to section 1396n(b)(4) of this title involving underlying provisions of original act.

Subsec. (b)(2). Pub. L. 100–360, § 411(k)(6)(A)(iv), substituted ''a State plan'' for ''the State plan''.

Pub. L. 100–360, § 411(k)(6)(B)(vi), as amended by Pub. L. 100–485, § 608(d)(26)(F), substituted ''under this subchapter'' for ''under subchapter XIX of this chapter''.

Subsec. (b)(3). Pub. L. 100–360, § 411(k)(6)(B)(vi), as amended by Pub. L. 100–485, § 608(d)(26)(F), substituted ''under this subchapter'' for ''under subchapter XIX of this chapter'' in last sentence.

Subsec. (b)(3)(A)(i). Pub. L. 100–360, § 411(k)(6)(B)(vi), as amended by Pub. L. 100–485, § 608(d)(26)(F), substituted ''under this subchapter'' for ''under subchapter XIX of this chapter''.

Subsec. (b)(3)(B)(i). Pub. L. 100–485, § 608(d)(26)(D), inserted ''of subparagraph (A)'' after ''clause (i)(II)''.

Pub. L. 100–360, § 411(k)(6)(A)(v), inserted '', less the portion of any cash subsidies described in clause (i)(II) in the period reasonably attributable to inpatient hospital services'' after ''charity care in a period''.

Subsec. (c). Pub. L. 100–485, § 608(d)(26)(E), substituted ''this subsection'' for ''subsection (c)'' in concluding provisions.

Pub. L. 100–360, § 411(k)(6)(A)(vi)(I), (II), (V), in concluding provisions, substituted ''paragraphs (1)(B) and (2)(A) of subsection (a) of this section'' for ''paragraphs (2)(A) and (2)(B)'', ''such paragraph (1)(B)'' for ''paragraph (2)(A)'', and ''such paragraph (2)(A)'' for ''paragraph (2)(B)'' and inserted ''at least'' before ''one-third'' and ''two-thirds''.

Pub. L. 100–360, § 411(k)(6)(A)(vi)(VI), inserted at end ''In the case of a hospital described in subsection (d)(2)(A)(i) of this section (relating to children's hospitals), in computing the hospital's disproportionate share adjustment percentage for purposes of paragraph (1)(B) of this subsection, the disproportionate patient percentage (defined in section 1395ww(d)(5)(F)(vi) of this title) shall be computed by substituting for the fraction described in subclause (I) of such section the fraction described in subclause (II) of that section. If a State elects in a State plan amendment under subsection (a) of this section to provide the payment adjustment described in paragraph (2), the State must include in the amendment a detailed description of the specific methodology to be used in determining the specified additional payment amount (or increased percentage payment) to be made to each hospital qualifying for such a payment adjustment and must publish at least annually the name of each hospital qualifying for such a payment adjustment and the amount of such payment adjustment made for each such hospital.''

Subsec. (c)(1). Pub. L. 100–360, § 411(k)(6)(A)(vi)(III), inserted ''at least'' after ''equal to''.

Subsec. (c)(2). Pub. L. 100–360, § 411(k)(6)(A)(vi)(IV), as amended by Pub. L. 100–485, § 608(d)(26)(A), inserted ''(without regard to whether the hospital is described in subparagraph (A) or (B) of subsection (b)(1) of this section)'' after ''payment) and''.

Subsec. (d)(1). Pub. L. 100–360, § 411(k)(6)(B)(vi), as amended by Pub. L. 100–485, § 608(d)(26)(F), substituted ''under this subchapter'' for ''under subchapter XIX of this chapter''.

Subsec. (d)(2)(B). Pub. L. 100–360, § 411(k)(6)(B)(vii), made technical amendment to reference to section 1395ww of this title involving underlying provisions of original Act.

Subsec. (e). Pub. L. 100–360, § 411(k)(6)(A)(vii), as amended by Pub. L. 100–485, § 608(d)(26)(B), (C), designated existing provisions as par. (1), inserted ''based on a pooling arrangement involving a majority of the hospitals participating under the plan'' after first reference to ''payment adjustments'', added par. (2) and substituted ''statewide'' for ''Statewide'' in par. (2).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title VII, § 701(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–570, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] take effect on the date the final regulation required under section 705(a) [114 Stat. 2763A–575] (relating to the application of an aggregate upper payment limit test for State medicaid spending for inpatient hospital services, outpatient hospital services, nursing facility services, intermediate care facility services for the mentally retarded, and clinic services provided by government facilities that are not State-owned or operated facilities) is published in the Federal Register.'' [The final regulation was published Jan. 12, 2001, 66 Fed. Reg. 3147.]

Pub. L. 106–554, § 1(a)(6) [title VII, § 701(b)(3)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A–571, provided that: ''The amendments made by paragraph (2) [amending this section] shall apply to payments made on or after January 1, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 601(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394, provided that: ''The amendments made by subsection (a) [amending this section] take effect on October 1, 1999, and applies [sic] to expenditures made on or after such date.''

Amendment by section 1000(a)(6) [title VI, § 608(s)] of Pub. L. 106–113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, § 608(bb)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4711(c)(2) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to payment for items and services furnished on or after Oct. 1, 1997, see section 4711(d) of Pub. L. 105–33, set out as a note under 1396a of this title.

Section 4721(a)(2) of Pub. L. 105–33 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to payment adjustments attributable to DSH allotments for fiscal years beginning with fiscal year 1998.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13621(a)(2) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section] shall apply to payments to States under section 1903(a) of the Social Security Act [section 1396b(a) of this title] for payments to hospitals made under State plans after—

''(A) the end of the State fiscal year that ends during 1994, or

''(B) in the case of a State with a State legislature which is not scheduled to have a regular legislative

session in 1994, the end of the State fiscal year that ends during 1995;

without regard to whether or not final regulations to carry out such amendments have been promulgated by either such date.''

Section 13621(b)(3) of Pub. L. 103–66 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall apply to payments to States under section 1903(a) of the Social Security Act [section 1396b(a) of this title] for payments to hospitals made under State plans after—

''(i) the end of the State fiscal year that ends during 1994, or

''(ii) in the case of a State with a State legislature which is not scheduled to have a regular legislative session in 1994, the end of the State fiscal year that ends during 1995;

without regard to whether or not final regulations to carry out such amendments have been promulgated by either such date.

''(B) DELAY IN IMPLEMENTATION FOR PRIVATE HOSPITALS.—With respect to a hospital that is not owned or operated by a State (or by an instrumentality or a unit of government within a State), the amendments made by this subsection shall apply to payments to States under section 1903(a) for payments to hospitals made under State plans for State fiscal years that begin during or after 1995, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendments by Pub. L. 102–234 effective Jan. 1, 1992, see section 3(e)(1) of Pub. L. 102–234, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4702(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1990.''

Section 4703(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the enactment of section 412(a)(2)[4112(a)(2)] of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203, enacting this section].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 302(b)(2) of Pub. L. 100–360 effective July 1, 1988, see section 302(f)(2) of Pub. L. 100–360, set out as a note under section 1396a of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(6)(A)–(B)(ix) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

APPLICATION OF MEDICAID DSH TRANSITION RULE TO PUBLIC HOSPITALS IN ALL STATES

Pub. L. 106–554, §1(a)(6) [title VII, §701(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–571, provided that:

''(1) IN GENERAL.—During the period described in paragraph (3), with respect to a State, section 4721(e) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 514) [set out as a note below], as amended by section 607 of BBRA [Pub. L. 106–113, §1000(a)(6) [title VI, §607(a)]] (113 Stat. 1501A–396), shall be applied as though—

''(A) 'September 30, 2002' were substituted for 'July 1, 1997' each place it appears;

''(B) 'hospitals owned or operated by a State (as defined for purposes of title XIX of such Act [this subchapter]), or by an instrumentality or a unit of government within a State (as so defined)' were substituted for 'the State of California';

''(C) paragraph (3) were redesignated as paragraph (4);

''(D) 'and' were omitted from the end of paragraph (2); and

''(E) the following new paragraph were inserted after paragraph (2):

'(3) ''(as defined in subparagraph (B) but without regard to clause (ii) of that subparagraph and subject to subsection (d))'' were substituted for ''(as defined in subparagraph (B))'' in subparagraph (A) of such section; and'.

''(2) SPECIAL RULE.—With respect to California, section 4721(e) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 514), as so amended, shall be applied without regard to paragraph (1).

''(3) PERIOD DESCRIBED.—The period described in this paragraph is the period that begins, with respect to a State, on the first day of the first State fiscal year that begins after September 30, 2002, and ends on the last day of the succeeding State fiscal year.

''(4) APPLICATION TO WAIVERS.—With respect to a State operating under a waiver of the requirements of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) under section 1115 of such Act (42 U.S.C. 1315), the amount by which any payment adjustment made by the State under title XIX of such Act (42 U.S.C. 1396 et seq.), after the application of section 4721(e) of the Balanced Budget Act of 1997 under paragraph (1) to such State, exceeds the costs of furnishing hospital services provided by hospitals described in such section shall be fully reflected as an increase in the baseline expenditure limit for such waiver.''

ASSISTANCE FOR CERTAIN PUBLIC HOSPITALS

Pub. L. 106–554, §1(a)(6) [title VII, §701(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–571, provided that:

''(1) IN GENERAL.—Beginning with fiscal year 2002, notwithstanding section 1923(f) of the Social Security Act (42 U.S.C. 1396r–4(f)) and subject to paragraph (3), with respect to a State, payment adjustments made under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) [this subchapter] to a hospital described in paragraph (2) shall be made without regard to the DSH allotment limitation for the State determined under section 1923(f) of that Act (42 U.S.C. 1396r–4(f)).

''(2) HOSPITAL DESCRIBED.—A hospital is described in this paragraph if the hospital—

''(A) is owned or operated by a State (as defined for purposes of title XIX of the Social Security Act [this subchapter]), or by an instrumentality or a unit of government within a State (as so defined);

''(B) as of October 1, 2000—

''(i) is in existence and operating as a hospital described in subparagraph (A); and

''(ii) is not receiving disproportionate share hospital payments from the State in which it is located under title XIX of such Act [this subchapter]; and

''(C) has a low-income utilization rate (as defined in section 1923(b)(3) of the Social Security Act (42 U.S.C. 1396r–4(b)(3))) in excess of 65 percent.

''(3) LIMITATION ON EXPENDITURES.—

''(A) IN GENERAL.—With respect to any fiscal year, the aggregate amount of Federal financial participation that may be provided for payment adjustments described in paragraph (1) for that fiscal year for all States may not exceed the amount described in subparagraph (B) for the fiscal year.

''(B) AMOUNT DESCRIBED.—The amount described in this subparagraph for a fiscal year is as follows:

''(i) For fiscal year 2002, $15,000,000.

''(ii) For fiscal year 2003, $176,000,000.

''(iii) For fiscal year 2004, $269,000,000.

''(iv) For fiscal year 2005, $330,000,000.

''(v) For fiscal year 2006 and each fiscal year thereafter, $375,000,000.''

DSH PAYMENT ACCOUNTABILITY STANDARDS

Pub. L. 106–554, §1(a)(6) [title VII, §701(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–572, provided that: ''Not later than September 30, 2002, the Secretary of Health and Human Services shall implement accountability standards to ensure that Federal funds provided with respect to disproportionate share hospital adjustments made under section 1923 of the Social Security Act (42 U.S.C. 1396r–4) are used to reimburse States and hospitals eligible for such payment adjustments for providing uncompensated health care to low-income patients and are otherwise made in accordance with the requirements of section 1923 of that Act.''

DSH ALLOTMENTS FOR SPECIFIC YEARS

Pub. L. 105–277, div. A, §101(f) [title VII, §702], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389, provided that: ''The amount of the DSH allotment for the State of Minnesota for fiscal year 1999, specified in the table under section 1923(f)(2) of the Social Security Act [subsection (f)(2) of this section] (as amended by section 4721(a)(1) of Public Law 105–33) is deemed to be $33,000,000.''

Similar provisions were contained in the following prior appropriations act:

Pub. L. 105–78, title VI, §601, Nov. 13, 1997, 111 Stat. 1519.

Pub. L. 105–277, div. A, §101(f) [title VII, §703], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389, provided that: ''The amount of the DSH allotment for the State of New Mexico for fiscal year 1999, specified in the table under section 1923(f)(2) of the Social Security Act [subsection (f)(2) of this section] (as amended by section 4721(a)(1) of Public Law 105–33) is deemed to be $9,000,000.''

Pub. L. 105–277, div. A, §101(f) [title VII, §704], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389, provided that: ''Notwithstanding section 1923(f)(2) of the Social Security Act (42 U.S.C. 1396r–4(f)(2)) (as amended by section 4721(a)(1) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 511)[)], the amount of the DSH allotment for Wyoming for fiscal year 1999 is deemed to be $95,000.''

Similar provisions were contained in the following prior appropriations act:

Pub. L. 105–78, title VI, §602, Nov. 13, 1997, 111 Stat. 1519.

CALIFORNIA TRANSITION RULE

Pub. L. 105–33, title IV, §4721(e), Aug. 5, 1997, 111 Stat. 514, as amended by Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §607(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–396, provided that: ''Effective July 1, 1997, section 1923(g)(2) of the Social Security Act (42 U.S.C. 1396r–4(g)(2)) shall be applied to the State of California as though—

''(1) '(or that begins on or after July 1, 1997)' were inserted in subparagraph (A) of such section after 'January 1, 1995,';

''(2) '(or 175 percent in the case of a State fiscal year that begins on or after July 1, 1997)' were inserted in subparagraph (A) of such section after '200 percent'; and

''(3) effective for State fiscal years that begin on or after July 1, 1999, 'or (b)(1)(B)' were inserted in section 1923(g)(2)(B)(ii)(I) after '(b)(1)(A)'.''

[Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §607(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–396, provided that: ''The amendments made by subsection (a) [amending section 4721(e) of Pub. L. 105–33, set out above] shall take effect as if included in the enactment of section 4721(e) of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].'']

STUDY OF DSH PAYMENT ADJUSTMENTS

Section 3(d) of Pub. L. 102–234 directed Prospective Payment Assessment Commission to conduct a study concerning feasibility and desirability of establishing maximum and minimum payment adjustments under subsec. (c) of this section for hospitals deemed disproportionate share hospitals under State medicaid plans, and criteria (other than criteria described in clause (i) or (ii) of subsec. (f)(1)(D)) that are appropriate for the designation of disproportionate share hospitals under this section, specified items to be included in study, and directed that, not later than Jan. 1, 1994, Commission submit a report on the study to Committee on Finance of Senate and Committee on Energy and Commerce of House of Representatives, such report to include such recommendations respecting designation of disproportionate share hospitals and the establishment of maximum and minimum payment adjustments for such hospitals under this section as may be appropriate.

§ 1396r–5. Treatment of income and resources for certain institutionalized spouses

(a) Special treatment for institutionalized spouses

(1) Supersedes other provisions

In determining the eligibility for medical assistance of an institutionalized spouse (as defined in subsection (h)(1) of this section), the provisions of this section supersede any other provision of this subchapter (including sections 1396a(a)(17) and 1396a(f) of this title) which is inconsistent with them.

(2) No comparable treatment required

Any different treatment provided under this section for institutionalized spouses shall not, by reason of paragraph (10) or (17) of section 1396a(a) of this title, require such treatment for other individuals.

(3) Does not affect certain determinations

Except as this section specifically provides, this section does not apply to—

(A) the determination of what constitutes income or resources, or

(B) the methodology and standards for determining and evaluating income and resources.

(4) Application in certain States and territories

(A) Application in States operating under demonstration projects

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(B) No application in commonwealths and territories

This section shall only apply to a State that is one of the 50 States or the District of Columbia.

(5) Application to individuals receiving services under PACE programs

This section applies to individuals receiving institutional or noninstitutional services under a PACE demonstration waiver program (as defined in section 1396u–4(a)(7) of this title) or under a PACE program under section 1396u–4 or 1395eee of this title.

(b) Rules for treatment of income

(1) Separate treatment of income

During any month in which an institutionalized spouse is in the institution, except as pro-

vided in paragraph (2), no income of the community spouse shall be deemed available to the institutionalized spouse.

(2) Attribution of income

In determining the income of an institutionalized spouse or community spouse for purposes of the post-eligibility income determination described in subsection (d) of this section, except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply:

(A) Non-trust property

Subject to subparagraphs (C) and (D), in the case of income not from a trust, unless the instrument providing the income otherwise specifically provides—

(i) if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

(ii) if payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

(iii) if payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

(B) Trust property

In the case of a trust—

(i) except as provided in clause (ii), income shall be attributed in accordance with the provisions of this subchapter (including sections 1396a(a)(17) and 1396p(d) of this title), and

(ii) income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust—

(I) if payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

(II) if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

(III) if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

(C) Property with no instrument

In the case of income not from a trust in which there is no instrument establishing ownership, subject to subparagraph (D), one-half of the income shall be considered to be available to the institutionalized spouse and one-half to the community spouse.

(D) Rebutting ownership

The rules of subparagraphs (A) and (C) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence, that the ownership interests in income are other than as provided under such subparagraphs.

(c) Rules for treatment of resources

(1) Computation of spousal share at time of institutionalization

(A) Total joint resources

There shall be computed (as of the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse)—

(i) the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest, and

(ii) a spousal share which is equal to ½ of such total value.

(B) Assessment

At the request of an institutionalized spouse or community spouse, at the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse and upon the receipt of relevant documentation of resources, the State shall promptly assess and document the total value described in subparagraph (A)(i) and shall provide a copy of such assessment and documentation to each spouse and shall retain a copy of the assessment for use under this section. If the request is not part of an application for medical assistance under this subchapter, the State may, at its option as a condition of providing the assessment, require payment of a fee not exceeding the reasonable expenses of providing and documenting the assessment. At the time of providing the copy of the assessment, the State shall include a notice indicating that the spouse will have a right to a fair hearing under subsection (e)(2) of this section.

(2) Attribution of resources at time of initial eligibility determination

In determining the resources of an institutionalized spouse at the time of application for benefits under this subchapter, regardless of any State laws relating to community property or the division of marital property—

(A) except as provided in subparagraph (B), all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse, and

(B) resources shall be considered to be available to an institutionalized spouse, but

only to the extent that the amount of such resources exceeds the amount computed under subsection (f)(2)(A) of this section (as of the time of application for benefits).

(3) Assignment of support rights

The institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where—

(A) the institutionalized spouse has assigned to the State any rights to support from the community spouse;

(B) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or

(C) the State determines that denial of eligibility would work an undue hardship.

(4) Separate treatment of resources after eligibility for benefits established

During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for benefits under this subchapter, no resources of the community spouse shall be deemed available to the institutionalized spouse.

(5) Resources defined

In this section, the term ''resources'' does not include—

(A) resources excluded under subsection (a) or (d) of section 1382b of this title, and

(B) resources that would be excluded under section 1382b(a)(2)(A) of this title but for the limitation on total value described in such section.

(d) Protecting income for community spouse

(1) Allowances to be offset from income of institutionalized spouse

After an institutionalized spouse is determined or redetermined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

(A) A personal needs allowance (described in section 1396a(q)(1) of this title), in an amount not less than the amount specified in section 1396a(q)(2) of this title.

(B) A community spouse monthly income allowance (as defined in paragraph (2)), but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse.

(C) A family allowance, for each family member, equal to at least ⅓ of the amount by which the amount described in paragraph (3)(A)(i) exceeds the amount of the monthly income of that family member.

(D) Amounts for incurred expenses for medical or remedial care for the institutionalized spouse (as provided under section 1396a(r) of this title).

In subparagraph (C), the term ''family member'' only includes minor or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse.

(2) Community spouse monthly income allowance defined

In this section (except as provided in paragraph (5)), the ''community spouse monthly income allowance'' for a community spouse is an amount by which—

(A) except as provided in subsection (e) of this section, the minimum monthly maintenance needs allowance (established under and in accordance with paragraph (3)) for the spouse, exceeds

(B) the amount of monthly income otherwise available to the community spouse (determined without regard to such an allowance).

(3) Establishment of minimum monthly maintenance needs allowance

(A) In general

Each State shall establish a minimum monthly maintenance needs allowance for each community spouse which, subject to subparagraph (C), is equal to or exceeds—

(i) the applicable percent (described in subparagraph (B)) of 1/12 of the income official poverty line (defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title) for a family unit of 2 members; plus

(ii) an excess shelter allowance (as defined in paragraph (4)).

A revision of the official poverty line referred to in clause (i) shall apply to medical assistance furnished during and after the second calendar quarter that begins after the date of publication of the revision.

(B) Applicable percent

For purposes of subparagraph (A)(i), the ''applicable percent'' described in this paragraph, effective as of—

(i) September 30, 1989, is 122 percent,

(ii) July 1, 1991, is 133 percent, and

(iii) July 1, 1992, is 150 percent.

(C) Cap on minimum monthly maintenance needs allowance

The minimum monthly maintenance needs allowance established under subparagraph (A) may not exceed $1,500 (subject to adjustment under subsections (e) and (g) of this section).

(4) Excess shelter allowance defined

In paragraph (3)(A)(ii), the term ''excess shelter allowance'' means, for a community spouse, the amount by which the sum of—

(A) the spouse's expenses for rent or mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge, for the community spouse's principal residence, and

(B) the standard utility allowance (used by the State under section 2014(e) of title 7) or, if the State does not use such an allowance, the spouse's actual utility expenses,

exceeds 30 percent of the amount described in paragraph (3)(A)(i), except that, in the case of a condominium or cooperative, for which a maintenance charge is included under subparagraph (A), any allowance under subparagraph (B) shall be reduced to the extent the maintenance charge includes utility expenses.

(5) Court ordered support

If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered.

(e) Notice and fair hearing

(1) Notice

Upon—

(A) a determination of eligibility for medical assistance of an institutionalized spouse, or

(B) a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse,

each State shall notify both spouses (in the case described in subparagraph (A)) or the spouse making the request (in the case described in subparagraph (B)) of the amount of the community spouse monthly income allowance (described in subsection (d)(1)(B) of this section), of the amount of any family allowances (described in subsection (d)(1)(C) of this section), of the method for computing the amount of the community spouse resources allowance permitted under subsection (f) of this section, and of the spouse's right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

(2) Fair hearing

(A) In general

If either the institutionalized spouse or the community spouse is dissatisfied with a determination of—

(i) the community spouse monthly income allowance;

(ii) the amount of monthly income otherwise available to the community spouse (as applied under subsection (d)(2)(B) of this section);

(iii) the computation of the spousal share of resources under subsection (c)(1) of this section;

(iv) the attribution of resources under subsection (c)(2) of this section; or

(v) the determination of the community spouse resource allowance (as defined in subsection (f)(2) of this section);

such spouse is entitled to a fair hearing described in section 1396a(a)(3) of this title with respect to such determination if an application for benefits under this subchapter has been made on behalf of the institutionalized spouse. Any such hearing respecting the determination of the community spouse resource allowance shall be held within 30 days of the date of the request for the hearing.

(B) Revision of minimum monthly maintenance needs allowance

If either such spouse establishes that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A) of this section, an amount adequate to provide such additional income as is necessary.

(C) Revision of community spouse resource allowance

If either such spouse establishes that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance under subsection (f)(2) of this section, an amount adequate to provide such a minimum monthly maintenance needs allowance.

(f) Permitting transfer of resources to community spouse

(1) In general

An institutionalized spouse may, without regard to section 1396p(c)(1) of this title, transfer an amount equal to the community spouse resource allowance (as defined in paragraph (2)), but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer under the preceding sentence shall be made as soon as practicable after the date of the initial determination of eligibility, taking into account such time as may be necessary to obtain a court order under paragraph (3).

(2) Community spouse resource allowance defined

In paragraph (1), the ''community spouse resource allowance'' for a community spouse is an amount (if any) by which—

(A) the greatest of—

(i) $12,000 (subject to adjustment under subsection (g) of this section), or, if greater (but not to exceed the amount specified in clause (ii)(II)) an amount specified under the State plan,

(ii) the lesser of (I) the spousal share computed under subsection (c)(1) of this section, or (II) $60,000 (subject to adjustment under subsection (g) of this section),

(iii) the amount established under subsection (e)(2) of this section; or

(iv) the amount transferred under a court order under paragraph (3);

exceeds

(B) the amount of the resources otherwise available to the community spouse (determined without regard to such an allowance).

(3) Transfers under court orders

If a court has entered an order against an institutionalized spouse for the support of the

community spouse, section 1396p of this title shall not apply to amounts of resources transferred pursuant to such order for the support of the spouse or a family member (as defined in subsection (d)(1) of this section).

(g) Indexing dollar amounts

For services furnished during a calendar year after 1989, the dollar amounts specified in subsections (d)(3)(C), (f)(2)(A)(i), and (f)(2)(A)(ii)(II) of this section shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved.

(h) Definitions

In this section:

(1) The term ''institutionalized spouse'' means an individual who—

(A) is in a medical institution or nursing facility or who (at the option of the State) is described in section 1396a(a)(10)(A)(ii)(VI) of this title, and

(B) is married to a spouse who is not in a medical institution or nursing facility;

but does not include any such individual who is not likely to meet the requirements of subparagraph (A) for at least 30 consecutive days.

(2) The term ''community spouse'' means the spouse of an institutionalized spouse.

(Aug. 14, 1935, ch. 531, title XIX, § 1924, as added Pub. L. 100–360, title III, § 303(a)(1)(B), July 1, 1988, 102 Stat. 754; amended Pub. L. 100–485, title VI, § 608(d)(16)(A), Oct. 13, 1988, 102 Stat. 2417; Pub. L. 101–239, title VI, § 6411(e)(3), Dec. 19, 1989, 103 Stat. 2271; Pub. L. 101–508, title IV, §§ 4714(a)–(c), 4744(b)(1), Nov. 5, 1990, 104 Stat. 1388–192, 1388–198; Pub. L. 103–66, title XIII, §§ 13611(d)(2), 13643(c)(1), Aug. 10, 1993, 107 Stat. 627, 647; Pub. L. 103–252, title I, § 125(b), May 18, 1994, 108 Stat. 650; Pub. L. 105–33, title IV, § 4802(b)(1), Aug. 5, 1997, 111 Stat. 548.)

PRIOR PROVISIONS

A prior section 1924 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1997—Subsec. (a)(5). Pub. L. 105–33, in heading substituted ''under PACE programs'' for ''from organizations receiving certain waivers'' and in text substituted ''under a PACE demonstration waiver program (as defined in section 1396u–4(a)(7) of this title) or under a PACE program under section 1396u–4 or 1395eee of this title.'' for ''from any organization receiving a frail elderly demonstration project waiver under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 or a waiver under section 603(c) of the Social Security Amendments of 1983.''

1994—Subsec. (d)(3)(A)(i). Pub. L. 103–252 substituted ''section 9902(2)'' for ''sections 9847 and 9902(2)''.

1993—Subsec. (a)(5). Pub. L. 103–66, § 13643(c)(1), substituted ''1986 or a waiver under section 603(c) of the Social Security Amendments of 1983'' for ''1986''.

Subsec. (b)(2)(B)(i). Pub. L. 103–66, § 13611(d)(2), substituted ''1396p(d) of this title'' for ''1396a(k) of this title''.

1990—Subsec. (a)(5). Pub. L. 101–508, § 4744(b)(1), added par. (5).

Subsec. (b)(2). Pub. L. 101–508, § 4714(a), substituted ''for purposes of the post-eligibility income determination described in subsection (d) of this section'' for '', after the institutionalized spouse has been determined or redetermined to be eligible for medical assistance''.

Subsec. (c)(1). Pub. L. 101–508, § 4714(c), substituted ''the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse'' for ''the beginning of a continuous period of institutionalization of the institutionalized spouse'' in subpars. (A) and (B).

Subsec. (f)(1). Pub. L. 101–508, § 4714(b), substituted ''section 1396p(c)(1)'' for ''section 1396p''.

1989—Subsecs. (b)(2), (d)(1). Pub. L. 101–239 inserted ''or redetermined'' after ''determined''.

1988—Subsec. (c)(1)(B). Pub. L. 100–485, § 608(d)(16)(A)(i), substituted ''will have a right to a fair hearing under subsection (e)(2) of this section'' for ''has right to a fair hearing under subsection (e)(2)(E) of this section with respect to the determination of the community spouse resource allowance, to provide for an allowance adequate to raise the spouse's income to the minimum monthly maintenance needs allowance''.

Subsec. (c)(2)(B). Pub. L. 100–485, § 608(d)(16)(A)(ii), substituted ''resources shall be considered to be available to an institutionalized spouse, but only to the extent that the amount of such resources exceeds'' for ''resources shall not be considered to be available to an institutionalized spouse, to the extent that the amount of such resources does not exceed''.

Subsec. (d)(3)(A)(i). Pub. L. 100–485, § 608(d)(16)(A)(iii), struck out ''nonfarm'' before ''official poverty line''.

Subsec. (d)(4). Pub. L. 100–485, § 608(d)(16)(A)(iv), substituted ''subparagraph (B)'' for ''subparagraph (C)'' in concluding provisions.

Subsec. (e)(2)(A). Pub. L. 100–485, § 608(d)(16)(A)(v), inserted ''if an application for benefits under this subchapter has been made on behalf of the institutionalized spouse'' after ''with respect to such determination'' before period at end of first sentence.

Subsec. (f)(1). Pub. L. 100–485, § 608(d)(16)(A)(vi), substituted ''transfer an amount'' for ''transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount'' and ''as soon as practicable'' for ''as soon as pacticable''.

Subsec. (f)(3). Pub. L. 100–485, § 608(d)(16)(A)(vii), substituted ''spouse or a family member'' for ''spouse of a family member''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13611(d)(2) of Pub. L. 103–66 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not final regulations to carry out the amendments by section 13611 of Pub. L. 103–66 have been promulgated by such date, see section 13611(e) of Pub. L. 103–66, set out as a note under section 1396p of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4714(d) of Pub. L. 101–508 provided that: ''The amendments made [by] this section [amending this section] shall take effect as if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable as if included in the enactment of section 303 of Pub. L. 100–360, see section 6411(e)(4)(B) of Pub. L. 101–239, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Cov-

erage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

EFFECTIVE DATE

Section 303(g) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(16)(D), Oct. 13, 1988, 102 Stat. 2418, provided that:

''(1)(A) The amendments made by this section [enacting this section and amending sections 1382, 1382b, 1396a, 1396p, 1396r, and 1396s of this title] apply (except as provided in this subsection) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after September 30, 1989, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) Section 1924 of the Social Security Act [this section] (as inserted by subsection (a)) shall only apply to institutionalized individuals who begin continuous periods of institutionalization on or after September 30, 1989, except that subsections (b) and (d) of such section (and so much of subsection (e) of such section as relates to such other subsections) shall apply as of such date to individuals institutionalized on or after such date.

''(2)(A) The amendment made by subsection (b) [amending section 1396p of this title] and section 1902(a)(51)(B) of the Social Security Act [section 1396a(a)(51)(B) of this title], apply (except as provided in paragraph (5)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1988, or the date of the enactment of this Act [July 1, 1988], without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) Section 1917(c) of the Social Security Act [section 1396p(c) of this title], as amended by subsection (b) of this section, shall apply to resources disposed of on or after July 1, 1988, except that such section shall not apply with respect to inter-spousal transfers occurring before October 1, 1989.

''(C) Notwithstanding subparagraphs (A) and (B), a State may continue to apply the policies contained in the State plan as of June 30, 1988, with respect to resources disposed of before July 1, 1988, and the laws and policies established by the State as of June 30, 1988, or provided for before July 1, 1988, shall continue to apply through September 30, 1989, (and may, at a State's option continue after such date) to inter-spousal transfers occurring before October 1, 1989.

''(3) The amendments made by subsection (c) [amending sections 1382 and 1382b of this title] shall apply to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(4) The amendment made by subsection (d) [amending section 1396a of this title] is effective on and after April 8, 1988. The final rule of the Health Care Financing Administration published on February 8, 1988 (53 Federal Register 3586) is superseded to the extent inconsistent with the amendment made by subsection (d).

''(5) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section (other than paragraphs (1) and (5) of subsection (e) [amending section 1396a of this title]), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

''(6) The amendments made by paragraphs (1) and (5) of subsection (e) [amending section 1396a of this title] shall apply to medical assistance furnished on or after October 1, 1982.''

§ 1396r–6. Extension of eligibility for medical assistance

(a) Initial 6-month extension

(1) Requirement

Notwithstanding any other provision of this subchapter, each State plan approved under this subchapter must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of subchapter IV of this chapter in at least 3 of the 6 months immediately preceding the month in which such family becomes ineligible for such aid, because of hours of, or income from, employment of the caretaker relative (as defined in subsection (e) of this section) or because of section 602(a)(8)(B)(ii)(II)[1] of this title (providing for a time-limited earned income disregard), shall, subject to paragraph (3) and without any reapplication for benefits under the plan, remain eligible for assistance under the plan approved under this subchapter during the immediately succeeding 6-month period in accordance with this subsection.

(2) Notice of benefits

Each State, in the notice of termination of aid under part A of subchapter IV of this chapter sent to a family meeting the requirements of paragraph (1)—

(A) shall notify the family of its right to extended medical assistance under this subsection and include in the notice a description of the reporting requirement of subsection (b)(2)(B)(i) of this section and of the circumstances (described in paragraph (3)) under which such extension may be terminated; and

(B) shall include a card or other evidence of the family's entitlement to assistance under this subchapter for the period provided in this subsection.

(3) Termination of extension

(A) No dependent child

Subject to subparagraphs (B) and (C), extension of assistance during the 6-month period described in paragraph (1) to a family shall terminate (during such period) at the close of the first month in which the family ceases to include a child, whether or not the child is (or would if needy be) a dependent child under part A of subchapter IV of this chapter.

(B) Notice before termination

No termination of assistance shall become effective under subparagraph (A) until the State has provided the family with notice of the grounds for the termination.

(C) Continuation in certain cases until redetermination

With respect to a child who would cease to receive medical assistance because of sub-

[1] See References in Text note below.

paragraph (A) but who may be eligible for assistance under the State plan because the child is described in clause (i) of section 1396d(a) of this title or clause (i)(IV), (i)(VI), (i)(VII), or (ii)(IX) of section 1396a(a)(10)(A) of this title, the State may not discontinue such assistance under such subparagraph until the State has determined that the child is not eligible for assistance under the plan.

(4) Scope of coverage

(A) In general

Subject to subparagraph (B), during the 6-month extension period under this subsection, the amount, duration, and scope of medical assistance made available with respect to a family shall be the same as if the family were still receiving aid under the plan approved under part A of subchapter IV of this chapter.

(B) State medicaid "wrap-around" option

A State, at its option, may pay a family's expenses for premiums, deductibles, coinsurance, and similar costs for health insurance or other health coverage offered by an employer of the caretaker relative or by an employer of the absent parent of a dependent child. In the case of such coverage offered by an employer of the caretaker relative—

(i) the State may require the caretaker relative, as a condition of extension of coverage under this subsection for the caretaker and the caretaker's family, to make application for such employer coverage, but only if—

(I) the caretaker relative is not required to make financial contributions for such coverage (whether through payroll deduction, payment of deductibles, coinsurance, or similar costs, or otherwise), and

(II) the State provides, directly or otherwise, for payment of any of the premium amount, deductible, coinsurance, or similar expense that the employee is otherwise required to pay; and

(ii) the State shall treat the coverage under such an employer plan as a third party liability (under section 1396a(a)(25) of this title).

Payments for premiums, deductibles, coinsurance, and similar expenses under this subparagraph shall be considered, for purposes of section 1396b(a) of this title, to be payments for medical assistance.

(b) Additional 6-month extension

(1) Requirement

Notwithstanding any other provision of this subchapter, each State plan approved under this subchapter shall provide that the State shall offer to each family, which has received assistance during the entire 6-month period under subsection (a) of this section and which meets the requirement of paragraph (2)(B)(i), in the last month of the period the option of extending coverage under this subsection for the succeeding 6-month period, subject to paragraph (3).

(2) Notice and reporting requirements

(A) Notices

(i) Notice during initial extension period of option and requirements

Each State, during the 3rd and 6th month of any extended assistance furnished to a family under subsection (a) of this section, shall notify the family of the family's option for additional extended assistance under this subsection. Each such notice shall include (I) in the 3rd month notice, a statement of the reporting requirement under subparagraph (B)(i), and, in the 6th month notice, a statement of the reporting requirement under subparagraph (B)(ii), (II) a statement as to whether any premiums are required for such additional extended assistance, and (III) a description of other out-of-pocket expenses, benefits, reporting and payment procedures, and any pre-existing condition limitations, waiting periods, or other coverage limitations imposed under any alternative coverage options offered under paragraph (4)(D). The 6th month notice under this subparagraph shall describe the amount of any premium required of a particular family for each of the first 3 months of additional extended assistance under this subsection.

(ii) Notice during additional extension period of reporting requirements and premiums

Each State, during the 3rd month of any additional extended assistance furnished to a family under this subsection, shall notify the family of the reporting requirement under subparagraph (B)(ii) and a statement of the amount of any premium required for such extended assistance for the succeeding 3 months.

(B) Reporting requirements

(i) During initial extension period

Each State shall require (as a condition for additional extended assistance under this subsection) that a family receiving extended assistance under subsection (a) of this section report to the State, not later than the 21st day of the 4th month in the period of extended assistance under subsection (a) of this section, on the family's gross monthly earnings and on the family's costs for such child care as is necessary for the employment of the caretaker relative in each of the first 3 months of that period. A State may permit such additional extended assistance under this subsection notwithstanding a failure to report under this clause if the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis.

(ii) During additional extension period

Each State shall require that a family receiving extended assistance under this subsection report to the State, not later than the 21st day of the 1st month and of the 4th month in the period of additional

extended assistance under this subsection, on the family's gross monthly earnings and on the family's costs for such child care as is necessary for the employment of the caretaker relative in each of the 3 preceding months.

(iii) Clarification on frequency of reporting

A State may not require that a family receiving extended assistance under this subsection or subsection (a) of this section report more frequently than as required under clause (i) or (ii).

(3) Termination of extension

(A) In general

Subject to subparagraphs (B) and (C), extension of assistance during the 6-month period described in paragraph (1) to a family shall terminate (during the period) as follows:

(i) No dependent child

The extension shall terminate at the close of the first month in which the family ceases to include a child, whether or not the child is (or would if needy be) a dependent child under part A of subchapter IV of this chapter.

(ii) Failure to pay any premium

If the family fails to pay any premium for a month under paragraph (5) by the 21st day of the following month, the extension shall terminate at the close of that following month, unless the family has established, to the satisfaction of the State, good cause for the failure to pay such premium on a timely basis.

(iii) Quarterly income reporting and test

The extension under this subsection shall terminate at the close of the 1st or 4th month of the 6-month period if—

(I) the family fails to report to the State, by the 21st day of such month, the information required under paragraph (2)(B)(ii), unless the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis;

(II) the caretaker relative had no earnings in one or more of the previous 3 months, unless such lack of any earnings was due to an involuntary loss of employment, illness, or other good cause, established to the satisfaction of the State; or

(III) the State determines that the family's average gross monthly earnings (less such costs for such child care as is necessary for the employment of the caretaker relative) during the immediately preceding 3-month period exceed 185 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

Information described in clause (iii)(I) shall be subject to the restrictions on use and disclosure of information provided under section 602(a)(9)[2] of this title. Instead of terminating a family's extension under clause (iii)(I), a State, at its option, may provide for suspension of the extension until the month after the month in which the family reports information required under paragraph (2)(B)(ii), but only if the family's extension has not otherwise been terminated under subclause (II) or (III) of clause (iii). The State shall make determinations under clause (iii)(III) for a family each time a report under paragraph (2)(B)(ii) for the family is received.

(B) Notice before termination

No termination of assistance shall become effective under subparagraph (A) until the State has provided the family with notice of the grounds for the termination, which notice shall include (in the case of termination under subparagraph (A)(iii)(II), relating to no continued earnings) a description of how the family may reestablish eligibility for medical assistance under the State plan. No such termination shall be effective earlier than 10 days after the date of mailing of such notice.

(C) Continuation in certain cases until redetermination

(i) Dependent children

With respect to a child who would cease to receive medical assistance because of subparagraph (A)(i) but who may be eligible for assistance under the State plan because the child is described in clause (i) of section 1396d(a) of this title or clause (i)(IV), (i)(VI), (i)(VII), or (ii)(IX) of section 1396a(a)(10)(A) of this title, the State may not discontinue such assistance under such subparagraph until the State has determined that the child is not eligible for assistance under the plan.

(ii) Medically needy

With respect to an individual who would cease to receive medical assistance because of clause (ii) or (iii) of subparagraph (A) but who may be eligible for assistance under the State plan because the individual is within a category of person for which medical assistance under the State plan is available under section 1396a(a)(10)(C) of this title (relating to medically needy individuals), the State may not discontinue such assistance under such subparagraph until the State has determined that the individual is not eligible for assistance under the plan.

(4) Coverage

(A) In general

During the extension period under this subsection—

(i) the State plan shall offer to each family medical assistance which (subject to subparagraphs (B) and (C)) is the same amount, duration, and scope as would be made available to the family if it were

[2] See References in Text note below.

still receiving aid under the plan approved under part A of subchapter IV of this chapter; and

(ii) the State plan may offer alternative coverage described in subparagraph (D).

(B) Elimination of most non-acute care benefits

At a State's option and notwithstanding any other provision of this subchapter, a State may choose not to provide medical assistance under this subsection with respect to any (or all) of the items and services described in paragraphs (4)(A), (6), (7), (8), (11), (13), (14), (15), (16), (18), (20), and (21)[2] of section 1396d(a) of this title.

(C) State medicaid "wrap-around" option

At a State's option, the State may elect to apply the option described in subsection (a)(4)(B) of this section (relating to ''wrap-around'' coverage) for families electing medical assistance under this subsection in the same manner as such option applies to families provided extended eligibility for medical assistance under subsection (a) of this section.

(D) Alternative assistance

At a State's option, the State may offer families a choice of health care coverage under one or more of the following, instead of the medical assistance otherwise made available under this subsection:

(i) Enrollment in family option of employer plan

Enrollment of the caretaker relative and dependent children in a family option of the group health plan offered to the caretaker relative.

(ii) Enrollment in family option of State employee plan

Enrollment of the caretaker relative and dependent children in a family option within the options of the group health plan or plans offered by the State to State employees.

(iii) Enrollment in State uninsured plan

Enrollment of the caretaker relative and dependent children in a basic State health plan offered by the State to individuals in the State (or areas of the State) otherwise unable to obtain health insurance coverage.

(iv) Enrollment in medicaid managed care organization

Enrollment of the caretaker relative and dependent children in a medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title).

If a State elects to offer an option to enroll a family under this subparagraph, the State shall pay any premiums and other costs for such enrollment imposed on the family and may pay deductibles and coinsurance imposed on the family. A State's payment of premiums for the enrollment of families under this subparagraph (not including any premiums otherwise payable by an employer and less the amount of premiums collected from such families under paragraph (5)) and payment of any deductibles and coinsurance shall be considered, for purposes of section 1396b(a)(1) of this title, to be payments for medical assistance.

(E) Prohibition on cost-sharing for maternity and preventive pediatric care

(i) In general

If a State offers any alternative option under subparagraph (D) for families, under each such option the State must assure that care described in clause (ii) is available without charge to the families through—

(I) payment of any deductibles, coinsurance, and other cost-sharing respecting such care, or

(II) providing coverage under the State plan for such care without any cost-sharing,

or any combination of such mechanisms.

(ii) Care described

The care described in this clause consists of—

(I) services related to pregnancy (including prenatal, delivery, and post partum services), and

(II) ambulatory preventive pediatric care (including ambulatory early and periodic screening, diagnosis, and treatment services under section 1396d(a)(4)(B) of this title) for each child who meets the age and date of birth requirements to be a qualified child under section 1396d(n)(2) of this title.

(5) Premium

(A) Permitted

Notwithstanding any other provision of this subchapter (including section 1396*o* of this title), a State may impose a premium for a family for additional extended coverage under this subsection for a premium payment period (as defined in subparagraph (D)(i)), but only if the family's average gross monthly earnings (less the average monthly costs for such child care as is necessary for the employment of the caretaker relative) for the premium base period exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(B) Level may vary by option offered

The level of such premium may vary, for the same family, for each option offered by a State under paragraph (4)(D).

(C) Limit on premium

In no case may the amount of any premium under this paragraph for a family for a month in either of the premium payment periods described in subparagraph (D)(i) exceed 3 percent of the family's average gross monthly earnings (less the average monthly costs for such child care as is necessary for the employment of the caretaker relative)

during the premium base period (as defined in subparagraph (D)(ii)).

(D) Definitions

In this paragraph:

(i) A ''premium payment period'' described in this clause is a 3-month period beginning with the 1st or 4th month of the 6-month additional extension period provided under this subsection.

(ii) The term ''premium base period'' means, with respect to a particular premium payment period, the period of 3 consecutive months the last of which is 4 months before the beginning of that premium payment period.

(c) Applicability in States and territories

(1) States operating under demonstration projects

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315(a) of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(2) Inapplicability in commonwealths and territories

The provisions of this section shall only apply to the 50 States and the District of Columbia.

(d) General disqualification for fraud

(1) Ineligibility for aid

This section shall not apply to an individual who is a member of a family which has received aid under part A of subchapter IV of this chapter if the State makes a finding that, at any time during the last 6 months in which the family was receiving such aid before otherwise being provided extended eligibility under this section, the individual was ineligible for such aid because of fraud.

(2) General disqualifications

For additional provisions relating to fraud and program abuse, see sections 1320a–7, 1320a–7a, and 1320a–7b of this title.

(e) "Caretaker relative" defined

In this section, the term ''caretaker relative'' has the meaning of such term as used in part A of subchapter IV of this chapter.

(f) Sunset

This section shall not apply with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter after September 30, 2003.

(Aug. 14, 1935, ch. 531, title XIX, §1925, as added Pub. L. 100–485, title III, §303(a)(1), Oct. 13, 1988, 102 Stat. 2385; amended Pub. L. 100–647, title VIII, §8436(a), Nov. 10, 1988, 102 Stat. 3805; Pub. L. 101–239, title VI, §6411(i)(1), (3), Dec. 19, 1989, 103 Stat. 2273; Pub. L. 101–508, title IV, §§4601(a)(3)(B), 4716(a), Nov. 5, 1990, 104 Stat. 1388–167, 1388–192; Pub. L. 104–193, title I, §114(c), Aug. 22, 1996, 110 Stat. 2180; Pub. L. 105–33, title IV, §§4701(b)(2)(A)(ix), (D), 4703(b)(2), Aug. 5, 1997, 111 Stat. 493, 495; Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §608(t)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398; Pub. L. 106–554, §1(a)(6) [title VII, §707(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–577; Pub. L. 108–40, §7(a), June 30, 2003, 117 Stat. 837.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in text, is classified to section 601 et seq. of this title.

Section 602 of this title, referred to in subsecs. (a)(1) and (b)(3)(A), was repealed and a new section 602 enacted by Pub. L. 104–193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (a)(8)(B)(ii)(II) or (a)(9).

Paragraph (21) of section 1396d(a) of this title, referred to in subsec. (b)(4)(B), was redesignated paragraph (22) by Pub. L. 101–239, title VI, §6405(a)(2), Dec. 19, 1989, 103 Stat. 2265.

PRIOR PROVISIONS

A prior section 1925 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

2003—Subsec. (f). Pub. L. 108–40 substituted ''2003'' for ''2002''.

2000—Subsec. (f). Pub. L. 106–554 substituted ''2002'' for ''2001''.

1999—Subsec. (a)(3)(C). Pub. L. 106–113, §1000(a)(6) [title VI, §608(t)(1)], substituted ''(i)(VI), (i)(VII),'' for ''(i)(VI)(i)(VII),,''.

Subsec. (b)(3)(C)(i). Pub. L. 106–113, §1000(a)(6) [title VI, §608(t)(2)], which directed substitution of ''(i)(IV), (i)(VI), (i)(VII),'' for ''(i)(IV) (i)(VI) (i)(VII),,'', was executed by making the substitution for ''(i)(IV), (i)(VI) (i)(VII),,'' to reflect the probable intent of Congress.

1997—Subsec. (b)(4)(D)(iv). Pub. L. 105–33, §4703(b)(2), struck out ''less than 50 percent of the membership (enrolled on a prepaid basis) of which consists of individuals who are eligible to receive benefits under this subchapter (other than because of the option offered under this clause). The option of enrollment under this clause is in addition to, and not in lieu of, any enrollment option that the State might offer under subparagraph (A)(i) with respect to receiving services through a medicaid managed care organization in accordance with section 1396b(m) of this title and the applicable requirements of section 1396u–2 of this title'' after ''(as defined in section 1396b(m)(1)(A) of this title)''.

Pub. L. 105–33, §4701(b)(2)(A)(ix), substituted ''medicaid managed care organization'' for ''health maintenance organization'' in two places.

Pub. L. 105–33, §4701(b)(2)(D), substituted ''medicaid managed care organization'' for ''HMO'' in heading and inserted ''and the applicable requirements of section 1396u–2 of this title'' before period at end of text.

1996—Subsec. (f). Pub. L. 104–193 substituted ''2001'' for ''1998''.

1990—Subsec. (a)(3)(C). Pub. L. 101–508, §4601(a)(3)(B), inserted ''(i)(VII),'' after ''(i)(VI)''.

Subsec. (b)(2)(B)(i). Pub. L. 101–508, §4716(a)(1), which directed amendment of subsection (f) of this section in subsection (b)(2)(B)(i) by inserting at the end ''A State may permit such additional extended assistance under this subsection notwithstanding a failure to report under this clause if the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis.'', was executed by making the insertion at the end of subsec. (b)(2)(B)(i) to reflect the probable intent of Congress.

Subsec. (b)(2)(B)(iii). Pub. L. 101–508, §4716(a)(2), which directed amendment of subsection (f) of this section in subsection (b)(2)(B) by adding cl. (iii) at the end, was executed by adding cl. (iii) at the end of subsec. (b)(2)(B) to reflect the probable intent of Congress.

Subsec. (b)(3)(B). Pub. L. 101–508, §4716(a)(3), which directed amendment of subsection (f) of this section in

subsection (b)(3)(B) by inserting at the end ''No such termination shall be effective earlier than 10 days after the date of mailing of such notice.'', was executed by making the insertion at the end of subsec. (b)(3)(B) to reflect the probable intent of Congress.

Subsec. (b)(3)(C)(i). Pub. L. 101–508, § 4601(a)(3)(B), inserted ''(i)(VII),'' after ''(i)(VI)''.

1989—Subsec. (a)(3)(A). Pub. L. 101–239, § 6411(i)(1), substituted ''a child, whether or not the child is'' for ''a child who is''.

Subsec. (a)(3)(C). Pub. L. 101–239, § 6411(i)(3), substituted ''of section 1396d(a) of this title or clause (i)(IV), (i)(VI), or (ii)(IX) of section 1396a(a)(10)(A) of this title'' for ''or (v) of section 1396d(a) of this title''.

Subsec. (b)(3)(A)(i). Pub. L. 101–239, § 6411(i)(1), substituted ''a child, whether or not the child is'' for ''a child who is''.

Subsec. (b)(3)(C)(i). Pub. L. 101–239, § 6411(i)(3), substituted ''of section 1396d(a) of this title or clause (i)(IV), (i)(VI), or (ii)(IX) of section 1396a(a)(10)(A) of this title'' for ''or (v) of section 1396d(a) of this title''.

1988—Subsec. (b)(5)(C). Pub. L. 100–647, which directed the amendment of subsec. (d)(5)(C) by inserting ''(less the average monthly costs for such child care as is necessary for the employment of the caretaker relative)'' after ''gross monthly earnings'', was executed to subsec. (b)(5)(C) to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4701(b)(2)(A)(ix), (D) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710(a) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Amendment by section 4703(b)(2) of Pub. L. 105–33 applicable to contracts under section 1396b(m) of this title on and after June 20, 1997, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, see section 4710(b)(2) of Pub. L. 105–33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4601(a)(3)(B) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4601 of Pub. L. 101–508 have been promulgated by such date, see section 4601(b) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4716(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as if included in the enactment of the Family Support Act of 1988 [Pub. L. 100–485].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6411(i)(4) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note under section 602 of this title] shall be effective as if included in the enactment of the Family Support Act of 1988 [Pub. L. 100–485].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8436(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of the Family Support Act of 1988 [Pub. L. 100–485].''

EFFECTIVE DATE

Section applicable to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990 (or, in the case of the Commonwealth of Kentucky, Oct. 1, 1990) (without regard to whether implementing regulations are promulgated by that date), with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter on or after that date, see section 303(f)(1) of Pub. L. 100–485, set out as an Effective Date of 1988 Amendment note under section 1396a of this title.

REFERENCES TO PROVISIONS OF PART A OF SUBCHAPTER IV CONSIDERED REFERENCES TO SUCH PROVISIONS AS IN EFFECT JULY 16, 1996

For provisions that certain references to provisions of part A (§ 601 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 16, 1996, see section 1396u–1(a) of this title.

STUDY AND REPORT TO CONGRESS ON IMPACT OF MEDICAID EXTENSION PROVISIONS

Section 303(c) of Pub. L. 100–485 directed Secretary of Health and Human Services to conduct a study of impact of medicaid extension provisions under this section, with particular focus on costs of such provisions and impact on welfare dependency, and report to Congress on results of such study not later than Apr. 1, 1993.

§ 1396r–7. Repealed. Pub. L. 105–33, title IV, § 4713(a), Aug. 5, 1997, 111 Stat. 509

Section, act Aug. 14, 1935, ch. 531, title XIX, § 1926, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6402(b), 103 Stat. 2260, related to adequate payment levels for obstetrical and pediatric services.

EFFECTIVE DATE OF REPEAL

Section 4713(b) of Pub. L. 105–33 provided that: ''The repeal made by subsection (a) [repealing this section] shall apply to services furnished on or after October 1, 1997.''

§ 1396r–8. Payment for covered outpatient drugs

(a) Requirement for rebate agreement

(1) In general

In order for payment to be available under section 1396b(a) of this title or under part B of subchapter XVIII of this chapter for covered outpatient drugs of a manufacturer, the manufacturer must have entered into and have in effect a rebate agreement described in subsection (b) of this section with the Secretary, on behalf of States (except that, the Secretary may authorize a State to enter directly into agreements with a manufacturer), and must meet the requirements of paragraph (5) (with respect to drugs purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992) and paragraph (6). Any agreement between a State and a manufacturer prior to April 1, 1991, shall be deemed to have been entered into on January

1, 1991, and payment to such manufacturer shall be retroactively calculated as if the agreement between the manufacturer and the State had been entered into on January 1, 1991. If a manufacturer has not entered into such an agreement before March 1, 1991, such an agreement, subsequently entered into, shall become effective as of the date on which the agreement is entered into or, at State option, on any date thereafter on or before the first day of the calendar quarter that begins more than 60 days after the date the agreement is entered into.

(2) Effective date

Paragraph (1) shall first apply to drugs dispensed under this subchapter on or after January 1, 1991.

(3) Authorizing payment for drugs not covered under rebate agreements

Paragraph (1), and section 1396b(i)(10)(A) of this title, shall not apply to the dispensing of a single source drug or innovator multiple source drug if (A)(i) the State has made a determination that the availability of the drug is essential to the health of beneficiaries under the State plan for medical assistance; (ii) such drug has been given a rating of 1–A by the Food and Drug Administration; and (iii)(I) the physician has obtained approval for use of the drug in advance of its dispensing in accordance with a prior authorization program described in subsection (d) of this section, or (II) the Secretary has reviewed and approved the State's determination under subparagraph (A); or (B) the Secretary determines that in the first calendar quarter of 1991, there were extenuating circumstances.

(4) Effect on existing agreements

In the case of a rebate agreement in effect between a State and a manufacturer on November 5, 1990, such agreement, for the initial agreement period specified therein, shall be considered to be a rebate agreement in compliance with this section with respect to that State, if the State agrees to report to the Secretary any rebates paid pursuant to the agreement and such agreement provides for a minimum aggregate rebate of 10 percent of the State's total expenditures under the State plan for coverage of the manufacturer's drugs under this subchapter. If, after the initial agreement period, the State establishes to the satisfaction of the Secretary that an agreement in effect on November 5, 1990, provides for rebates that are at least as large as the rebates otherwise required under this section, and the State agrees to report any rebates under the agreement to the Secretary, the agreement shall be considered to be a rebate agreement in compliance with the section for the renewal periods of such agreement.

(5) Limitation on prices of drugs purchased by covered entities

(A) Agreement with Secretary

A manufacturer meets the requirements of this paragraph if the manufacturer has entered into an agreement with the Secretary that meets the requirements of section 256b of this title with respect to covered outpatient drugs purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992.

(B) "Covered entity" defined

In this subsection, the term ''covered entity'' means an entity described in section 256b(a)(4) of this title.

(C) Establishment of alternative mechanism to ensure against duplicate discounts or rebates

If the Secretary does not establish a mechanism under section 256b(a)(5)(A) of this title within 12 months of November 4, 1992, the following requirements shall apply:

(i) Entities

Each covered entity shall inform the single State agency under section 1396a(a)(5) of this title when it is seeking reimbursement from the State plan for medical assistance described in section 1396d(a)(12) of this title with respect to a unit of any covered outpatient drug which is subject to an agreement under section 256b(a) of this title.

(ii) State agency

Each such single State agency shall provide a means by which a covered entity shall indicate on any drug reimbursement claims form (or format, where electronic claims management is used) that a unit of the drug that is the subject of the form is subject to an agreement under section 256b of this title, and not submit to any manufacturer a claim for a rebate payment under subsection (b) of this section with respect to such a drug.

(D) Effect of subsequent amendments

In determining whether an agreement under subparagraph (A) meets the requirements of section 256b of this title, the Secretary shall not take into account any amendments to such section that are enacted after November 4, 1992.

(E) Determination of compliance

A manufacturer is deemed to meet the requirements of this paragraph if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 256b of this title (as in effect immediately after November 4, 1992) and would have entered into an agreement under such section (as such section was in effect at such time), but for a legislative change in such section after November 4, 1992.

(6) Requirements relating to master agreements for drugs procured by Department of Veterans Affairs and certain other Federal agencies

(A) In general

A manufacturer meets the requirements of this paragraph if the manufacturer complies with the provisions of section 8126 of title 38, including the requirement of entering into a master agreement with the Secretary of Veterans Affairs under such section.

(B) Effect of subsequent amendments

In determining whether a master agreement described in subparagraph (A) meets the requirements of section 8126 of title 38, the Secretary shall not take into account any amendments to such section that are enacted after November 4, 1992.

(C) Determination of compliance

A manufacturer is deemed to meet the requirements of this paragraph if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 8126 of title 38, (as in effect immediately after November 4, 1992) and would have entered into an agreement under such section (as such section was in effect at such time), but for a legislative change in such section after November 4, 1992.

(b) Terms of rebate agreement

(1) Periodic rebates

(A) In general

A rebate agreement under this subsection shall require the manufacturer to provide, to each State plan approved under this subchapter, a rebate for a rebate period in an amount specified in subsection (c) of this section for covered outpatient drugs of the manufacturer dispensed after December 31, 1990, for which payment was made under the State plan for such period. Such rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for the period involved.

(B) Offset against medical assistance

Amounts received by a State under this section (or under an agreement authorized by the Secretary under subsection (a)(1) of this section or an agreement described in subsection (a)(4) of this section) in any quarter shall be considered to be a reduction in the amount expended under the State plan in the quarter for medical assistance for purposes of section 1396b(a)(1) of this title.

(2) State provision of information

(A) State responsibility

Each State agency under this subchapter shall report to each manufacturer not later than 60 days after the end of each rebate period and in a form consistent with a standard reporting format established by the Secretary, information on the total number of units of each dosage form and strength and package size of each covered outpatient drug dispensed after December 31, 1990, for which payment was made under the plan during the period, and shall promptly transmit a copy of such report to the Secretary.

(B) Audits

A manufacturer may audit the information provided (or required to be provided) under subparagraph (A). Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

(3) Manufacturer provision of price information

(A) In general

Each manufacturer with an agreement in effect under this section shall report to the Secretary—

(i) not later than 30 days after the last day of each rebate period under the agreement (beginning on or after January 1, 1991), on the average manufacturer price (as defined in subsection (k)(1) of this section) and, (for single source drugs and innovator multiple source drugs), the manufacturer's best price (as defined in subsection (c)(2)(B) of this section) for covered outpatient drugs for the rebate period under the agreement,;[1]

(ii) not later than 30 days after the date of entering into an agreement under this section on the average manufacturer price (as defined in subsection (k)(1) of this section) as of October 1, 1990[2] for each of the manufacturer's covered outpatient drugs; and

(iii) for calendar quarters beginning on or after January 1, 2004, in conjunction with reporting required under clause (i) and by National Drug Code (including package size)—

(I) the manufacturer's average sales price (as defined in section 1395w–3a(c) of this title) and the total number of units specified under section 1395w–3a(b)(2)(A) of this title;

(II) if required to make payment under section 1395w–3a of this title, the manufacturer's wholesale acquisition cost, as defined in subsection (c)(6) of such section; and

(III) information on those sales that were made at a nominal price or otherwise described in section 1395w–3a(c)(2)(B) of this title;

for a drug or biological described in subparagraph (C), (D), (E), or (G) of section 1395u(*o*)(1) of this title or section 1395rr(b)(13)(A)(ii) of this title.

Information reported under this subparagraph is subject to audit by the Inspector General of the Department of Health and Human Services.

(B) Verification surveys of average manufacturer price and manufacturer's average sales price

The Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs, when necessary, to verify manufacturer prices and manufacturer's average sales prices (including wholesale acquisition cost) if required to make payment reported under subparagraph (A). The Secretary may impose a civil monetary penalty in an amount not to exceed $100,000 on a wholesaler, manufacturer, or direct seller, if the wholesaler, manufacturer, or direct seller of a covered outpatient drug refuses a

[1] So in original.

[2] So in original. Probably should be followed by a comma.

request for information about charges or prices by the Secretary in connection with a survey under this subparagraph or knowingly provides false information. The provisions of section 1320a–7a of this title (other than subsections (a) (with respect to amounts of penalties or additional assessments) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(C) Penalties

(i) Failure to provide timely information

In the case of a manufacturer with an agreement under this section that fails to provide information required under subparagraph (A) on a timely basis, the amount of the penalty shall be increased by $10,000 for each day in which such information has not been provided and such amount shall be paid to the Treasury, and, if such information is not reported within 90 days of the deadline imposed, the agreement shall be suspended for services furnished after the end of such 90-day period and until the date such information is reported (but in no case shall such suspension be for a period of less than 30 days).

(ii) False information

Any manufacturer with an agreement under this section that knowingly provides false information is subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. Such civil money penalties are in addition to other penalties as may be prescribed by law. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(D) Confidentiality of information

Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph or under an agreement with the Secretary of Veterans Affairs described in subsection (a)(6)(A)(ii) of this section (other than the wholesale acquisition cost for purposes of carrying out section 1395w–3a of this title) is confidential and shall not be disclosed by the Secretary or the Secretary of Veterans Affairs or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer or wholesaler, prices charged for drugs by such manufacturer or wholesaler, except—

(i) as the Secretary determines to be necessary to carry out this section, to carry out section 1395w–3a of this title (including the determination and implementation of the payment amount), or to carry out section 1395w–3b of this title,

(ii) to permit the Comptroller General to review the information provided, and

(iii) to permit the Director of the Congressional Budget Office to review the information provided.

The previous sentence shall also apply to information disclosed under section 1395w–102(d)(2) or 1395w–104(c)(2)(E) of this title and drug pricing data reported under the first sentence of section 1395w–141(i)(1) of this title.

(4) Length of agreement

(A) In general

A rebate agreement shall be effective for an initial period of not less than 1 year and shall be automatically renewed for a period of not less than one year unless terminated under subparagraph (B).

(B) Termination

(i) By the Secretary

The Secretary may provide for termination of a rebate agreement for violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination.

(ii) By a manufacturer

A manufacturer may terminate a rebate agreement under this section for any reason. Any such termination shall not be effective until the calendar quarter beginning at least 60 days after the date the manufacturer provides notice to the Secretary.

(iii) Effectiveness of termination

Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

(iv) Notice to States

In the case of a termination under this subparagraph, the Secretary shall provide notice of such termination to the States within not less than 30 days before the effective date of such termination.

(v) Application to terminations of other agreements

The provisions of this subparagraph shall apply to the terminations of agreements described in section 256b(a)(1) of this title and master agreements described in section 8126(a) of title 38.

(C) Delay before reentry

In the case of any rebate agreement with a manufacturer under this section which is terminated, another such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed since the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

(c) Determination of amount of rebate

(1) Basic rebate for single source drugs and innovator multiple source drugs

(A) In general

Except as provided in paragraph (2), the amount of the rebate specified in this subsection for a rebate period (as defined in subsection (k)(8) of this section) with respect to each dosage form and strength of a single source drug or an innovator multiple source drug shall be equal to the product of—

(i) the total number of units of each dosage form and strength paid for under the State plan in the rebate period (as reported by the State); and

(ii) subject to subparagraph (B)(ii), the greater of—

(I) the difference between the average manufacturer price and the best price (as defined in subparagraph (C)) for the dosage form and strength of the drug, or

(II) the minimum rebate percentage (specified in subparagraph (B)(i)) of such average manufacturer price,

for the rebate period.

(B) Range of rebates required

(i) Minimum rebate percentage

For purposes of subparagraph (A)(ii)(II), the ''minimum rebate percentage'' for rebate periods beginning—

(I) after December 31, 1990, and before October 1, 1992, is 12.5 percent;

(II) after September 30, 1992, and before January 1, 1994, is 15.7 percent;

(III) after December 31, 1993, and before January 1, 1995, is 15.4 percent;

(IV) after December 31, 1994, and before January 1, 1996, is 15.2 percent; and

(V) after December 31, 1995, is 15.1 percent.

(ii) Temporary limitation on maximum rebate amount

In no case shall the amount applied under subparagraph (A)(ii) for a rebate period beginning—

(I) before January 1, 1992, exceed 25 percent of the average manufacturer price; or

(II) after December 31, 1991, and before January 1, 1993, exceed 50 percent of the average manufacturer price.

(C) "Best price" defined

For purposes of this section—

(i) In general

The term ''best price'' means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding—

(I) any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, the Department of Defense, the Public Health Service, or a covered entity described in subsection (a)(5)(B) of this section (including inpatient prices charged to hospitals described in section 256b(a)(4)(L) of this title);

(II) any prices charged under the Federal Supply Schedule of the General Services Administration;

(III) any prices used under a State pharmaceutical assistance program;

(IV) any depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government;

(V) the prices negotiated from drug manufacturers for covered discount card drugs under an endorsed discount card program under section 1395w–141 of this title; and

(VI) any prices charged which are negotiated by a prescription drug plan under part D of subchapter XVIII of this chapter, by an MA–PD plan under part C of such subchapter with respect to covered part D drugs or by a qualified retiree prescription drug plan (as defined in section 1395w–132(a)(2) of this title) with respect to such drugs on behalf of individuals entitled to benefits under part A or enrolled under part B of such subchapter.

(ii) Special rules

The term ''best price''—

(I) shall be inclusive of cash discounts, free goods that are contingent on any purchase requirement, volume discounts, and rebates (other than rebates under this section);

(II) shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package; and

(III) shall not take into account prices that are merely nominal in amount.

(iii) Application of auditing and recordkeeping requirements

With respect to a covered entity described in section 256b(a)(4)(L) of this title, any drug purchased for inpatient use shall be subject to the auditing and recordkeeping requirements described in section 256b(a)(5)(C) of this title.

(2) Additional rebate for single source and innovator multiple source drugs

(A) In general

The amount of the rebate specified in this subsection for a rebate period, with respect to each dosage form and strength of a single source drug or an innovator multiple source drug, shall be increased by an amount equal to the product of—

(i) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the rebate period; and

(ii) the amount (if any) by which—

(I) the average manufacturer price for the dosage form and strength of the drug for the period, exceeds

(II) the average manufacturer price for such dosage form and strength for the calendar quarter beginning July 1, 1990 (without regard to whether or not the drug has been sold or transferred to an entity, including a division or subsidiary of the manufacturer, after the first day of such quarter), increased by the percentage by which the consumer price index for all urban consumers (United States city average) for the month before the month in which the rebate period begins exceeds such index for September 1990.

(B) Treatment of subsequently approved drugs

In the case of a covered outpatient drug approved by the Food and Drug Administration after October 1, 1990, clause (ii)(II) of subparagraph (A) shall be applied by substituting ''the first full calendar quarter after the day on which the drug was first marketed'' for ''the calendar quarter beginning July 1, 1990'' and ''the month prior to the first month of the first full calendar quarter after the day on which the drug was first marketed'' for ''September 1990''.

(3) Rebate for other drugs

(A) In general

The amount of the rebate paid to a State for a rebate period with respect to each dosage form and strength of covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of—

(i) the applicable percentage (as described in subparagraph (B)) of the average manufacturer price for the dosage form and strength for the rebate period, and

(ii) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the rebate period.

(B) "Applicable percentage" defined

For purposes of subparagraph (A)(i), the ''applicable percentage'' for rebate periods beginning—

(i) before January 1, 1994, is 10 percent, and

(ii) after December 31, 1993, is 11 percent.

(d) Limitations on coverage of drugs

(1) Permissible restrictions

(A) A State may subject to prior authorization any covered outpatient drug. Any such prior authorization program shall comply with the requirements of paragraph (5).

(B) A State may exclude or otherwise restrict coverage of a covered outpatient drug if—

(i) the prescribed use is not for a medically accepted indication (as defined in subsection (k)(6) of this section);

(ii) the drug is contained in the list referred to in paragraph (2);

(iii) the drug is subject to such restrictions pursuant to an agreement between a manufacturer and a State authorized by the Secretary under subsection (a)(1) of this section or in effect pursuant to subsection (a)(4) of this section; or

(iv) the State has excluded coverage of the drug from its formulary established in accordance with paragraph (4).

(2) List of drugs subject to restriction

The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:

(A) Agents when used for anorexia, weight loss, or weight gain.

(B) Agents when used to promote fertility.

(C) Agents when used for cosmetic purposes or hair growth.

(D) Agents when used for the symptomatic relief of cough and colds.

(E) Agents when used to promote smoking cessation.

(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

(G) Nonprescription drugs.

(H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

(I) Barbiturates.

(J) Benzodiazepines.

(K) Agents when used for the treatment of sexual or erectile dysfunction, unless such agents are used to treat a condition, other than sexual or erectile dysfunction, for which the agents have been approved by the Food and Drug Administration.

(3) Update of drug listings

The Secretary shall, by regulation, periodically update the list of drugs or classes of drugs described in paragraph (2) or their medical uses, which the Secretary has determined, based on data collected by surveillance and utilization review programs of State medical assistance programs, to be subject to clinical abuse or inappropriate use.

(4) Requirements for formularies

A State may establish a formulary if the formulary meets the following requirements:

(A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State (or, at the option of the State, the State's drug use review board established under subsection (g)(3) of this section).

(B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer which has entered into and complies with an agreement under subsection (a) of this section (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).

(C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the

drug's labeling (or, in the case of a drug the prescribed use of which is not approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] but is a medically accepted indication, based on information from the appropriate compendia described in subsection (k)(6) of this section), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.

(D) The State plan permits coverage of a drug excluded from the formulary (other than any drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a prior authorization program that is consistent with paragraph (5).

(E) The formulary meets such other requirements as the Secretary may impose in order to achieve program savings consistent with protecting the health of program beneficiaries.

A prior authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.

(5) Requirements of prior authorization programs

A State plan under this subchapter may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, with respect to drugs dispensed on or after July 1, 1991, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6) of this section) only if the system providing for such approval—

(A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and

(B) except with respect to the drugs on the list referred to in paragraph (2), provides for the dispensing of at least 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

(6) Other permissible restrictions

A State may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, if such limitations are necessary to discourage waste, and may address instances of fraud or abuse by individuals in any manner authorized under this chapter.

(e) Treatment of pharmacy reimbursement limits

(1) In general

During the period beginning on January 1, 1991, and ending on December 31, 1994—

(A) a State may not reduce the payment limits established by regulation under this subchapter or any limitation described in paragraph (3) with respect to the ingredient cost of a covered outpatient drug or the dispensing fee for such a drug below the limits in effect as of January 1, 1991, and

(B) except as provided in paragraph (2), the Secretary may not modify by regulation the formula established under sections 447.331 through 447.334 of title 42, Code of Federal Regulations, in effect on November 5, 1990, to reduce the limits described in subparagraph (A).

(2) Special rule

If a State is not in compliance with the regulations described in paragraph (1)(B), paragraph (1)(A) shall not apply to such State until such State is in compliance with such regulations.

(3) Effect on State maximum allowable cost limitations

This section shall not supersede or affect provisions in effect prior to January 1, 1991, or after December 31, 1994, relating to any maximum allowable cost limitation established by a State for payment by the State for covered outpatient drugs, and rebates shall be made under this section without regard to whether or not payment by the State for such drugs is subject to such a limitation or the amount of such a limitation.

[(4)][3] Establishment of upper payment limits

The Secretary shall establish a Federal upper reimbursement limit for each multiple source drug for which the FDA has rated three or more products therapeutically and pharmaceutically equivalent, regardless of whether all such additional formulations are rated as such and shall use only such formulations when determining any such upper limit.

(f) Repealed and redesignated

(1) Repealed. Pub. L. 103–66, title XIII, § 13602(a)(1), Aug. 10, 1993, 107 Stat. 613

(2) Redesignated (e)[(4)]

(g) Drug use review

(1) In general

(A) In order to meet the requirement of section 1396b(i)(10)(B) of this title, a State shall provide, by not later than January 1, 1993, for a drug use review program described in paragraph (2) for covered outpatient drugs in order to assure that prescriptions (i) are appropriate, (ii) are medically necessary, and (iii) are not likely to result in adverse medical results. The program shall be designed to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs including education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, in-

[3] See 1993 Amendment note below.

correct drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse.

(B) The program shall assess data on drug use against predetermined standards, consistent with the following:

(i) compendia which shall consist of the following:

(I) American Hospital Formulary Service Drug Information;

(II) United States Pharmacopeia-Drug Information; and

(III) the DRUGDEX Information System; and

(ii) the peer-reviewed medical literature.

(C) The Secretary, under the procedures established in section 1396b of this title, shall pay to each State an amount equal to 75 per centum of so much of the sums expended by the State plan during calendar years 1991 through 1993 as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of this subsection.

(D) States shall not be required to perform additional drug use reviews with respect to drugs dispensed to residents of nursing facilities which are in compliance with the drug regimen review procedures prescribed by the Secretary for such facilities in regulations implementing section 1396r of this title, currently at section 483.60 of title 42, Code of Federal Regulations.

(2) Description of program

Each drug use review program shall meet the following requirements for covered outpatient drugs:

(A) Prospective drug review

(i) The State plan shall provide for a review of drug therapy before each prescription is filled or delivered to an individual receiving benefits under this subchapter, typically at the point-of-sale or point of distribution. The review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs), incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse. Each State shall use the compendia and literature referred to in paragraph (1)(B) as its source of standards for such review.

(ii) As part of the State's prospective drug use review program under this subparagraph applicable State law shall establish standards for counseling of individuals receiving benefits under this subchapter by pharmacists which includes at least the following:

(I) The pharmacist must offer to discuss with each individual receiving benefits under this subchapter or caregiver of such individual (in person, whenever practicable, or through access to a telephone service which is toll-free for long-distance calls) who presents a prescription, matters which in the exercise of the pharmacist's professional judgment (consistent with State law respecting the provision of such information), the pharmacist deems significant including the following:

(aa) The name and description of the medication.

(bb) The route, dosage form, dosage, route of administration, and duration of drug therapy.

(cc) Special directions and precautions for preparation, administration and use by the patient.

(dd) Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur.

(ee) Techniques for self-monitoring drug therapy.

(ff) Proper storage.

(gg) Prescription refill information.

(hh) Action to be taken in the event of a missed dose.

(II) A reasonable effort must be made by the pharmacist to obtain, record, and maintain at least the following information regarding individuals receiving benefits under this subchapter:

(aa) Name, address, telephone number, date of birth (or age) and gender.

(bb) Individual history where significant, including disease state or states, known allergies and drug reactions, and a comprehensive list of medications and relevant devices.

(cc) Pharmacist comments relevant to the individual's drug therapy.

Nothing in this clause shall be construed as requiring a pharmacist to provide consultation when an individual receiving benefits under this subchapter or caregiver of such individual refuses such consultation.

(B) Retrospective drug use review

The program shall provide, through its mechanized drug claims processing and information retrieval systems (approved by the Secretary under section 1396b(r) of this title) or otherwise, for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving benefits under this subchapter, or associated with specific drugs or groups of drugs.

(C) Application of standards

The program shall, on an ongoing basis, assess data on drug use against explicit predetermined standards (using the compendia and literature referred to in subsection[4] (1)(B) as the source of standards for such assessment) including but not limited to monitoring for therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-

[4] So in original. Probably should be ''paragraph''.

drug interactions, incorrect drug dosage or duration of drug treatment, and clinical abuse/misuse and, as necessary, introduce remedial strategies, in order to improve the quality of care and to conserve program funds or personal expenditures.

(D) Educational program

The program shall, through its State drug use review board established under paragraph (3), either directly or through contracts with accredited health care educational institutions, State medical societies or State pharmacists associations/societies or other organizations as specified by the State, and using data provided by the State drug use review board on common drug therapy problems, provide for active and ongoing educational outreach programs (including the activities described in paragraph (3)(C)(iii) of this subsection) to educate practitioners on common drug therapy problems with the aim of improving prescribing or dispensing practices.

(3) State drug use review board

(A) Establishment

Each State shall provide for the establishment of a drug use review board (hereinafter referred to as the ''DUR Board'') either directly or through a contract with a private organization.

(B) Membership

The membership of the DUR Board shall include health care professionals who have recognized knowledge and expertise in one or more of the following:

(i) The clinically appropriate prescribing of covered outpatient drugs.

(ii) The clinically appropriate dispensing and monitoring of covered outpatient drugs.

(iii) Drug use review, evaluation, and intervention.

(iv) Medical quality assurance.

The membership of the DUR Board shall be made up at least ⅓ but no more than 51 percent licensed and actively practicing physicians and at least ⅓ * * *[5] licensed and actively practicing pharmacists.

(C) Activities

The activities of the DUR Board shall include but not be limited to the following:

(i) Retrospective DUR as defined in section[6] (2)(B).

(ii) Application of standards as defined in section[6] (2)(C).

(iii) Ongoing interventions for physicians and pharmacists, targeted toward therapy problems or individuals identified in the course of retrospective drug use reviews performed under this subsection. Intervention programs shall include, in appropriate instances, at least:

(I) information dissemination sufficient to ensure the ready availability to physicians and pharmacists in the State of information concerning its duties, powers, and basis for its standards;

(II) written, oral, or electronic reminders containing patient-specific or drug-specific (or both) information and suggested changes in prescribing or dispensing practices, communicated in a manner designed to ensure the privacy of patient-related information;

(III) use of face-to-face discussions between health care professionals who are experts in rational drug therapy and selected prescribers and pharmacists who have been targeted for educational intervention, including discussion of optimal prescribing, dispensing, or pharmacy care practices, and follow-up face-to-face discussions; and

(IV) intensified review or monitoring of selected prescribers or dispensers.

The Board shall re-evaluate interventions after an appropriate period of time to determine if the intervention improved the quality of drug therapy, to evaluate the success of the interventions and make modifications as necessary.

(D) Annual report

Each State shall require the DUR Board to prepare a report on an annual basis. The State shall submit a report on an annual basis to the Secretary which shall include a description of the activities of the Board, including the nature and scope of the prospective and retrospective drug use review programs, a summary of the interventions used, an assessment of the impact of these educational interventions on quality of care, and an estimate of the cost savings generated as a result of such program. The Secretary shall utilize such report in evaluating the effectiveness of each State's drug use review program.

(h) Electronic claims management

(1) In general

In accordance with chapter 35 of title 44 (relating to coordination of Federal information policy), the Secretary shall encourage each State agency to establish, as its principal means of processing claims for covered outpatient drugs under this subchapter, a point-of-sale electronic claims management system, for the purpose of performing on-line, real time eligibility verifications, claims data capture, adjudication of claims, and assisting pharmacists (and other authorized persons) in applying for and receiving payment.

(2) Encouragement

In order to carry out paragraph (1)—

(A) for calendar quarters during fiscal years 1991 and 1992, expenditures under the State plan attributable to development of a system described in paragraph (1) shall receive Federal financial participation under section 1396b(a)(3)(A)(i) of this title (at a matching rate of 90 percent) if the State acquires, through applicable competitive procurement process in the State, the most cost-effective telecommunications network

[5] So in original.

[6] So in original. Probably should be ''paragraph''.

and automatic data processing services and equipment; and

(B) the Secretary may permit, in the procurement described in subparagraph (A) in the application of part 433 of title 42, Code of Federal Regulations, and parts 95, 205, and 307 of title 45, Code of Federal Regulations, the substitution of the State's request for proposal in competitive procurement for advance planning and implementation documents otherwise required.

(i) Omitted

(j) Exemption of organized health care settings

(1) Covered outpatient drugs dispensed by health maintenance organizations, including medicaid managed care organizations that contract under section 1396b(m) of this title, are not subject to the requirements of this section.

(2) The State plan shall provide that a hospital (providing medical assistance under such plan) that dispenses covered outpatient drugs using drug formulary systems, and bills the plan no more than the hospital's purchasing costs for covered outpatient drugs (as determined under the State plan) shall not be subject to the requirements of this section.

(3) Nothing in this subsection shall be construed as providing that amounts for covered outpatient drugs paid by the institutions described in this subsection should not be taken into account for purposes of determining the best price as described in subsection (c) of this section.

(k) Definitions

In this section—

(1) Average manufacturer price

The term ''average manufacturer price'' means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade, after deducting customary prompt pay discounts.

(2) Covered outpatient drug

Subject to the exceptions in paragraph (3), the term ''covered outpatient drug'' means—

(A) of those drugs which are treated as prescribed drugs for purposes of section 1396d(a)(12) of this title, a drug which may be dispensed only upon prescription (except as provided in paragraph (5)), and—

(i) which is approved for safety and effectiveness as a prescription drug under section 505 [21 U.S.C. 355] or 507[7] of the Federal Food, Drug, and Cosmetic Act or which is approved under section 505(j) of such Act [21 U.S.C. 355(j)];

(ii)(I) which was commercially used or sold in the United States before October 10, 1962, or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) which has not been the subject of a final determination by the Secretary that it is a ''new drug'' (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(p)]) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act [21 U.S.C. 331, 332(a), 334(a)] to enforce section 502(f) or 505(a) of such Act [21 U.S.C. 352(f), 355(a)]; or

(iii)(I) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(e)] on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling; and

(B) a biological product, other than a vaccine which—

(i) may only be dispensed upon prescription,

(ii) is licensed under section 262 of this title, and

(iii) is produced at an establishment licensed under such section to produce such product; and

(C) insulin certified under section 506[6] of the Federal Food, Drug, and Cosmetic Act.

(3) Limiting definition

The term ''covered outpatient drug'' does not include any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as, any of the following (and for which payment may be made under this subchapter as part of payment for the following and not as direct reimbursement for the drug):

(A) Inpatient hospital services.

(B) Hospice services.

(C) Dental services, except that drugs for which the State plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs.

(D) Physicians' services.

(E) Outpatient hospital services.

(F) Nursing facility services and services provided by an intermediate care facility for the mentally retarded.

(G) Other laboratory and x-ray services.

(H) Renal dialysis.

Such term also does not include any such drug or product for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological[8] used for a medical indication which is not a medically accepted indication. Any drug, biological

[7] See References in Text note below.

[8] So in original. Probably should be ''biological product''.

product, or insulin excluded from the definition of such term as a result of this paragraph shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C) of this section) for such drug, biological product, or insulin.

(4) Nonprescription drugs

If a State plan for medical assistance under this subchapter includes coverage of prescribed drugs as described in section 1396d(a)(12) of this title and permits coverage of drugs which may be sold without a prescription (commonly referred to as ''over-the-counter'' drugs), if they are prescribed by a physician (or other person authorized to prescribe under State law), such a drug shall be regarded as a covered outpatient drug.

(5) Manufacturer

The term ''manufacturer'' means any entity which is engaged in—

(A) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

(B) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

(6) Medically accepted indication

The term ''medically accepted indication'' means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] or the use of which is supported by one or more citations included or approved for inclusion in any of the compendia described in subsection (g)(1)(B)(i) of this section.

(7) Multiple source drug; innovator multiple source drug; noninnovator multiple source drug; single source drug

(A) Defined

(i) Multiple source drug

The term ''multiple source drug'' means, with respect to a rebate period, a covered outpatient drug (not including any drug described in paragraph (5)) for which there are 2 or more drug products which—

(I) are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of ''Approved Drug Products with Therapeutic Equivalence Evaluations''),

(II) except as provided in subparagraph (B), are pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C) and as determined by the Food and Drug Administration, and

(III) are sold or marketed in the State during the period.

(ii) Innovator multiple source drug

The term ''innovator multiple source drug'' means a multiple source drug that was originally marketed under an original new drug application approved by the Food and Drug Administration.

(iii) Noninnovator multiple source drug

The term ''noninnovator multiple source drug'' means a multiple source drug that is not an innovator multiple source drug.

(iv) Single source drug

The term ''single source drug'' means a covered outpatient drug which is produced or distributed under an original new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributors operating under the new drug application.

(B) Exception

Subparagraph (A)(i)(II) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph (A)(i)(I), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C).

(C) Definitions

For purposes of this paragraph—

(i) drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity;

(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence; and

(iii) a drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, provided that the listed product is generally available to the public through retail pharmacies in that State.

(8) Rebate period

The term ''rebate period'' means, with respect to an agreement under subsection (a) of this section, a calendar quarter or other period specified by the Secretary with respect to the payment of rebates under such agreement.

(9) State agency

The term ''State agency'' means the agency designated under section 1396a(a)(5) of this title to administer or supervise the administration of the State plan for medical assistance.

(Aug. 14, 1935, ch. 531, title XIX, § 1927, as added Pub. L. 101–508, title IV, § 4401(a)(3), Nov. 5, 1990, 104 Stat. 1388–143; amended Pub. L. 102–585, title VI, § 601(a)–(c), Nov. 4, 1992, 106 Stat. 4962–4964; Pub. L. 103–18, § 2(a), Apr. 12, 1993, 107 Stat. 54; Pub. L. 103–66, title XIII, § 13602(a), Aug. 10, 1993, 107 Stat. 613; Pub. L. 105–33, title IV, §§ 4701(b)(2)(A)(x), 4756, Aug. 5, 1997, 111 Stat. 493,

527; Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §§606(a), 608(u)], Nov. 29, 1999, 113 Stat. 1536, 1501A–396, 1501A–398; Pub. L. 108–173, title I, §§101(e)(4), (9), 103(e)(1), 105(b), title III, §303(i)(4), title IX, §900(e)(1)(K), (L), title X, §1002, Dec. 8, 2003, 117 Stat. 2151, 2152, 2159, 2166, 2254, 2372, 2431; Pub. L. 109–91, title I, §104(a), Oct. 20, 2005, 119 Stat. 2092.)

REFERENCES IN TEXT

Parts A, B, C, and D of subchapter XVIII of this chapter, referred to in subsecs. (a)(1) and (c)(1)(C)(i)(VI), are classified to sections 1395c et seq., 1395j et seq., 1395w–21 et seq., and 1395w–101 et seq., respectively, of this title.

Section 107(c)(3) of the Drug Amendments of 1962, referred to in subsec. (k)(2)(A)(iii)(I), is section 107(c)(3) of Pub. L. 87–781 which is set out in an Effective Date of 1962 Amendment note under section 321 of Title 21, Food and Drugs.

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (d)(4)(C) and (k)(6), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Section 507 of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (k)(2)(A)(i), was repealed by Pub. L. 105–115, title I, §125(b)(1), Nov. 21, 1997, 111 Stat. 2325.

Section 506 of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (k)(2)(C), was repealed and a new section 506 enacted by Pub. L. 105–115, title I, §§112(a), 125(a)(1), Nov. 21, 1997, 111 Stat. 2309, 2325, which no longer relates to insulin.

CODIFICATION

Subsec. (i) of this section, which required the Secretary to transmit to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives an annual report on the operation of this section in the preceding fiscal year, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 9 on page 93 of House Document No. 103–7.

PRIOR PROVISIONS

A prior section 1927 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

2005—Subsec. (d)(2)(K). Pub. L. 109–91 added subpar. (K).

2003—Subsec. (a)(1). Pub. L. 108–173, §303(i)(4)(A), inserted ''or under part B of subchapter XVIII of this chapter'' after ''section 1396b(a) of this title''.

Subsec. (b)(3)(A). Pub. L. 108–173, §303(i)(4)(B), added cl. (iii) and concluding provisions.

Subsec. (b)(3)(B). Pub. L. 108–173, §303(i)(4)(C), inserted ''and manufacturer's average sales price'' after ''average manufacturer price'' in heading and ''and manufacturer's average sales prices (including wholesale acquisition cost) if required to make payment'' after ''manufacturer prices'' in text.

Subsec. (b)(3)(D). Pub. L. 108–173, §303(i)(4)(D)(i), inserted ''(other than the wholesale acquisition cost for purposes of carrying out section 1395w–3a of this title)'' after ''subsection (a)(6)(A)(ii) of this section'' in introductory provisions.

Pub. L. 108–173, §105(b), which directed insertion of ''and drug pricing data reported under the first sentence of section 1395w–141(i)(1) of this title'' after ''section 1395w–104(c)(2)(E) of this title'' in last sentence, was executed by making the insertion after ''or 1395w–104(c)(2)(E) of this title'' in concluding provisions to reflect the probable intent of Congress.

Pub. L. 108–173, §101(e)(4), inserted concluding provisions.

Subsec. (b)(3)(D)(i). Pub. L. 108–173, §303(i)(4)(D)(ii), inserted '', to carry out section 1395w–3a of this title (including the determination and implementation of the payment amount), or to carry out section 1395w–3b of this title'' after ''this section''.

Subsec. (c)(1)(C)(i)(I). Pub. L. 108–173, §1002(a), inserted ''(including inpatient prices charged to hospitals described in section 256b(a)(4)(L) of this title)'' before semicolon at end.

Subsec. (c)(1)(C)(i)(V), (VI). Pub. L. 108–173, §103(e)(1), added subcls. (V) and (VI).

Subsec. (c)(1)(C)(iii). Pub. L. 108–173, §1002(b), added cl. (iii).

Subsec. (e)[(4)]. Pub. L. 108–173, §900(e)(1)(K), (L), which directed substitution of ''The Secretary'' for ''HCFA'' in subsecs. (e)(4) and (f)(2), was executed to the last par. of subsec. (e) to reflect the probable intent of Congress. See 1993 Amendment note below.

Subsec. (g)(1)(B)(i)(II). Pub. L. 108–173, §101(e)(9)(A), inserted ''and'' at end.

Subsec. (g)(1)(B)(i)(IV). Pub. L. 108–173, §101(e)(9)(B), struck out subcl. (IV) which read as follows: ''American Medical Association Drug Evaluations; and''.

1999—Subsec. (a)(1). Pub. L. 106–113, §1000(a)(6) [title VI, §606(a)], substituted ''shall become effective as of the date on which the agreement is entered into or, at State option, on any date thereafter on or before'' for ''shall not be effective until''.

Subsec. (g)(2)(A)(ii)(II)(cc). Pub. L. 106–113, §1000(a)(6) [title VI, §608(u)(1)], substituted ''individual's'' for ''individuals''.

Subsec. (i)(1). Pub. L. 106–113, §1000(a)(6) [title VI, §608(u)(2)], substituted ''the operation of this section'' for ''the the operation of this section''.

Subsec. (k)(7)(A)(iv). Pub. L. 106–113, §1000(a)(6) [title VI, §608(u)(3)(A)], substituted ''distributors'' for ''distributers''.

Subsec. (k)(7)(C)(i). Pub. L. 106–113, §1000(a)(6) [title VI, §608(u)(3)(B)], substituted ''pharmaceutically'' for ''pharmaceuutically''.

1997—Subsec. (g)(1)(B)(i)(III), (IV). Pub. L. 105–33, §4756, added subcl. (III) and redesignated former subcl. (III) as (IV).

Subsec. (j)(1). Pub. L. 105–33, §4701(b)(2)(A)(x), substituted ''health maintenance organizations, including medicaid managed care organizations'' for ''* * * Health Maintenance Organizations, including those organizations''.

1993—Subsec. (b)(1)(A). Pub. L. 103–66, §13602(a)(2)(A)(i)(II), which directed amendment of subpar. (A) by substituting ''dispensed after December 31, 1990, for which payment was made under the State plan for such period'' for ''dispensed under the plan during the quarter (or other period as the Secretary may specify)'', was executed by making the substitution for ''dispensed under the plan during the quarter (or such other period as the Secretary may specify)'' to reflect the probable intent of Congress.

Pub. L. 103–66, §13602(a)(2)(A)(i)(I), substituted ''for a rebate period'' for ''each calendar quarter (or periodically in accordance with a schedule specified by the Secretary)''.

Subsec. (b)(2)(A). Pub. L. 103–66, §13602(a)(2)(A)(ii), substituted ''each rebate period'' for ''each calendar quarter'' and ''units of each dosage form and strength and package size'' for ''dosage units'', inserted ''after December 31, 1990, for which payment was made'' after ''dispensed'', and substituted ''during the period'' for ''during the quarter''.

Subsec. (b)(3)(A)(i). Pub. L. 103–66, §13602(a)(2)(A)(iii), substituted ''rebate period under the agreement'' for ''quarter'' in two places.

Subsec. (c). Pub. L. 103–66, §13602(a)(1), added subsec. (c) and struck out former subsec. (c) which related to determination of amount of rebate for certain drugs.

Pub. L. 103–18 substituted ''such drug, except that for the calendar quarter beginning after September 30, 1992, and before January 1, 1993, the amount of the re-

bate may not exceed 50 percent of such average manufacturer price;'' for ''such drug;'' in par. (1)(B)(ii)(II).

Subsecs. (d) to (f). Pub. L. 103–66, §13602(a)(1), added subsecs. (d) and (e), struck out former subsecs. (d) consisting of pars. (1) to (8) relating to limitations on coverage of drugs, (e) relating to denial of Federal financial participation in certain cases, and (f)(1) relating to reductions in pharmacy reimbursement limits, and struck out par. designation for former par. (2) of subsec. (f) without supplying a new designation. The text of former subsec. (f)(2) is now the last par. of subsec. (e).

Subsec. (k)(1). Pub. L. 103–66, §13602(a)(2)(B)(i), substituted ''rebate period'' for ''calendar quarter'' and inserted before period at end '', after deducting customary prompt pay discounts''.

Subsec. (k)(3). Pub. L. 103–66, §13602(a)(2)(B)(ii)(III), in concluding provisions, substituted ''for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological used'' for ''which is used'' and inserted at end ''Any drug, biological product, or insulin excluded from the definition of such term as a result of this paragraph shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C) of this section) for such drug, biological product, or insulin.''

Subsec. (k)(3)(E). Pub. L. 103–66, §13602(a)(2)(B)(ii)(I), struck out ''* * * *emergency room visits'' after ''services''.

Subsec. (k)(3)(F). Pub. L. 103–66, §13602(a)(2)(B)(ii)(II), which directed amendment of subpar. (F) by substituting ''services and services provided by an intermediate care facility for the mentally retarded'' for ''services'', was executed by making the substitution for ''sevices'' to reflect the probable intent of Congress because the word ''services'' did not appear.

Subsec. (k)(6). Pub. L. 103–66, §13602(a)(2)(B)(iii), substituted ''or the use of which is supported by one or more citations included or approved for inclusion in any of the compendia described in subsection (g)(1)(B)(i) of this section.'' for '', which appears in peer-reviewed medical literature or which is accepted by one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, and the United States Pharmacopeia-Drug Information.''

Subsec. (k)(7)(A)(i). Pub. L. 103–66, §13602(a)(2)(B)(iv), substituted ''rebate period'' for ''calendar quarter'' in introductory provisions.

Subsec. (k)(8), (9). Pub. L. 103–66, §13602(a)(2)(B)(v), added par. (8) and redesignated former par. (8) as (9).

1992—Subsec. (a)(1). Pub. L. 102–585, §601(b)(1), substituted ''manufacturer), and must meet the requirements of paragraph (5) (with respect to drugs purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992) and paragraph (6)'' for ''manufacturer)''.

Subsec. (a)(5), (6). Pub. L. 102–585, §601(b)(2), added pars. (5) and (6).

Subsec. (b)(3)(D). Pub. L. 102–585, §601(b)(3), substituted ''this paragraph or under an agreement with the Secretary of Veterans Affairs described in subsection (a)(6)(A)(ii) of this section'' for ''this paragraph'', ''Secretary or the Secretary of Veterans Affairs'' for ''Secretary'', and ''except—'' and cls. (i) to (iii) for ''except as the Secretary determines to be necessary to carry out this section and to permit the Comptroller General to review the information provided.''

Subsec. (b)(4)(B)(ii). Pub. L. 102–585, §601(b)(4)(i), (ii), substituted ''the calendar quarter beginning at least 60 days'' for ''such period'' and ''the manufacturer provides notice to the Secretary.'' for ''of the notice as the Secretary may provide (but not beyond the term of the agreement).''

Subsec. (b)(4)(B)(iv), (v). Pub. L. 102–585, §601(b)(4)(iii), added cls. (iv) and (v).

Subsec. (c)(1)(B)(i). Pub. L. 102–585, §601(c)(1), which directed the substitution of ''October 1, 1992,'' for ''January 1, 1993,'', was executed by making the substitution in introductory provisions and in subcl. (II), to reflect the probable intent of Congress.

Subsec. (c)(1)(B)(ii) to (v). Pub. L. 102–585, §601(c)(2), (3), added cls. (ii) to (v) and struck out former cl. (ii) which read as follows: ''for quarters (or other periods) beginning after December 31, 1992, the greater of—

''(I) the difference between the average manufacturer price for a drug and 85 percent of such price, or

''(II) the difference between the average manufacturer price for a drug and the best price (as defined in paragraph (2)(B)) for such quarter (or period) for such drug.''

Subsec. (c)(1)(C). Pub. L. 102–585, §601(a), substituted ''(excluding any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, the Department of Defense, the Public Health Service, or a covered entity described in subsection (a)(5)(B) of this section, any prices charged under the Federal Supply Schedule of the General Services Administration, or any prices used under a State pharmaceutical assistance program, and excluding'' for ''(excluding''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–91 applicable to drugs dispensed on or after Jan. 1, 2006, see section 104(d) of Pub. L. 109–91, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title I, §103(e)(2), Dec. 8, 2003, 117 Stat. 2160, provided that: ''Section 1927(c)(1)(C)(i)(VI) of the Social Security Act [subsec. (c)(1)(C)(i)(VI) of this section], as added by paragraph (1), shall apply to prices charged for drugs dispensed on or after January 1, 2006.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §606(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–396, provided that: ''The amendment made by subsection (a) [amending this section] applies to agreements entered into on or after the date of enactment of this Act [Nov. 29, 1999].''

Amendment by section 1000(a)(6) [title VI, §608(u)] of Pub. L. 106–113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, §608(bb)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105–33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1993 AMENDMENTS

Section 13602(d) of Pub. L. 103–66 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1396a and 1396b of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].

''(2) The amendment made by subsection (a)(1) [amending this section] (insofar as such subsection amends section 1927(d) of the Social Security Act [subsec. (d) of this section]) and the amendment made by subsection (c) [amending section 1396a of this title] shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not regulations to carry out such amendments have been promulgated by such date.''

Section 2(b) of Pub. L. 103–18 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 601(c) of the Veterans Health Care Act of 1992 [Pub. L. 102–585].''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 601(e) of Pub. L. 102–585 provided that: ''The amendments made by this section [amending this sec-

tion] shall apply with respect to payments to State plans under title XIX of the Social Security Act [this subchapter] for calendar quarters (or periods) beginning on or after January 1, 1993 (without regard to whether or not regulations to carry out such amendments have been promulgated by such date).''

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under subchapter XVIII of this chapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

REPORTS ON BEST PRICE CHANGES AND PAYMENT OF REBATES

Section 601(d) of Pub. L. 102–585 provided that not later than 90 days after the expiration of each calendar quarter beginning on or after Oct. 1, 1992, and ending on or before Dec. 31, 1995, Secretary of Health and Human Services was to submit to Congress a report containing information as to percentage of single source drugs whose best price either increased, decreased, or stayed the same in comparison to best price during previous calendar quarter, median and mean percentage increase or decrease of such price, and, with respect to drugs for which manufacturers were required to pay rebates under subsec. (c) of this section, Secretary's best estimate, on State-by-State and national aggregate basis, of total amount of rebates paid under subsec. (c) of this section and percentages of such total amounts attributable to rebates paid under pars. (1) to (3) of subsec. (c) of this section, limited consideration to drugs which are considered significant expenditures under medicaid program, and contained requirements for initial report.

DEMONSTRATION PROJECTS TO EVALUATE EFFICIENCY AND COST-EFFECTIVENESS OF PROSPECTIVE DRUG UTILIZATION REVIEW

Section 4401(c) of title IV of Pub. L. 101–508 directed Secretary of Health and Human Services to establish statewide demonstration projects to evaluate efficiency and cost-effectiveness of prospective drug utilization review and to evaluate impact on quality of care and cost-effectiveness of paying pharmacists under this subchapter whether or not drugs were dispensed for drug use review services, with two reports to be submitted to Congress, the first not later than Jan. 1, 1994, and the second not later than Jan. 1, 1995.

STUDY OF DRUG PURCHASING AND BILLING PRACTICES IN HEALTH CARE INDUSTRY; REPORT

Section 4401(d) of title IV of Pub. L. 101–508, as amended by Pub. L. 104–316, title I, § 122(i), Oct. 19, 1996, 110 Stat. 3837, provided for various studies and reports as follows: (1) directed Comptroller General to conduct study of drug purchasing and billing activities of various health care systems, and to submit report to Secretary of Health and Human Services and to Congress by not later than May 1, 1991; (2) directed Comptroller General to submit to Secretary and Congress report on changes in prices charged by manufacturers for prescription drugs to Department of Veterans Affairs, other Federal programs, hospital pharmacies, and other purchasing groups and managed care plans; (3) directed Secretary, acting in consultation with Comptroller General, to study prior approval procedures utilized by State medical assistance programs conducted under this subchapter, and to submit report to Congress by not later than Dec. 31, 1991; (4) directed Secretary to conduct study on adequacy of current reimbursement rates to pharmacists under each State medical assistance program conducted under this subchapter, and to submit report to Congress by not later than Dec. 31, 1991; and (5) directed Secretary to undertake study of relationship between State medical assistance plans and Federal and State acquisition and reimbursement policies for vaccines and accessibility of vaccinations and immunization to children, and to report to Congress not later than one year after Nov. 5, 1990.

§ 1396s. Program for distribution of pediatric vaccines

(a) Establishment of program

(1) In general

In order to meet the requirement of section 1396a(a)(62) of this title, each State shall establish a pediatric vaccine distribution program (which may be administered by the State department of health), consistent with the requirements of this section, under which—

(A) each vaccine-eligible child (as defined in subsection (b) of this section), in receiving an immunization with a qualified pediatric vaccine (as defined in subsection (h)(8) of this section) from a program-registered provider (as defined in subsection (c) of this section) on or after October 1, 1994, is entitled to receive the immunization without charge for the cost of such vaccine; and

(B)(i) each program-registered provider who administers such a pediatric vaccine to a vaccine-eligible child on or after such date is entitled to receive such vaccine under the program without charge either for the vaccine or its delivery to the provider, and (ii) no vaccine is distributed under the program to a provider unless the provider is a program-registered provider.

(2) Delivery of sufficient quantities of pediatric vaccines to immunize federally vaccine-eligible children

(A) In general

The Secretary shall provide under subsection (d) of this section for the purchase and delivery on behalf of each State meeting the requirement of section 1396a(a)(62) of this title (or, with respect to vaccines administered by an Indian tribe or tribal organization to Indian children, directly to the tribe or organization), without charge to the State, of such quantities of qualified pediatric vaccines as may be necessary for the administration of such vaccines to all federally vaccine-eligible children in the State on or after October 1, 1994. This paragraph constitutes budget authority in advance of appropriations Acts, and represents the obligation of the Federal Government to provide for the purchase and delivery to States of the vaccines (or payment under subparagraph (C)) in accordance with this paragraph.

(B) Special rules where vaccine is unavailable

To the extent that a sufficient quantity of a vaccine is not available for purchase or de-

livery under subsection (d) of this section, the Secretary shall provide for the purchase and delivery of the available vaccine in accordance with priorities established by the Secretary, with priority given to federally vaccine-eligible children unless the Secretary finds there are other public health considerations.

(C) Special rules where State is a manufacturer

(i) Payments in lieu of vaccines

In the case of a State that manufactures a pediatric vaccine the Secretary, instead of providing the vaccine on behalf of a State under subparagraph (A), shall provide to the State an amount equal to the value of the quantity of such vaccine that otherwise would have been delivered on behalf of the State under such subparagraph, but only if the State agrees that such payments will only be used for purposes relating to pediatric immunizations.

(ii) Determination of value

In determining the amount to pay a State under clause (i) with respect to a pediatric vaccine, the value of the quantity of vaccine shall be determined on the basis of the price in effect for the qualified pediatric vaccine under contracts under subsection (d) of this section. If more than 1 such contract is in effect, the Secretary shall determine such value on the basis of the average of the prices under the contracts, after weighting each such price in relation to the quantity of vaccine under the contract involved.

(b) Vaccine-eligible children

For purposes of this section:

(1) In general

The term ''vaccine-eligible child'' means a child who is a federally vaccine-eligible child (as defined in paragraph (2)) or a State vaccine-eligible child (as defined in paragraph (3)).

(2) Federally vaccine-eligible child

(A) In general

The term ''federally vaccine-eligible child'' means any of the following children:

(i) A medicaid-eligible child.

(ii) A child who is not insured.

(iii) A child who (I) is administered a qualified pediatric vaccine by a federally-qualified health center (as defined in section 1396d(*l*)(2)(B) of this title) or a rural health clinic (as defined in section 1396d(*l*)(1) of this title), and (II) is not insured with respect to the vaccine.

(iv) A child who is an Indian (as defined in subsection (h)(3) of this section).

(B) Definitions

In subparagraph (A):

(i) The term ''medicaid-eligible'' means, with respect to a child, a child who is entitled to medical assistance under a state[1] plan approved under this subchapter.

(ii) The term ''insured'' means, with respect to a child—

(I) for purposes of subparagraph (A)(ii), that the child is enrolled under, and entitled to benefits under, a health insurance policy or plan, including a group health plan, a prepaid health plan, or an employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.]; and

(II) for purposes of subparagraph (A)(iii)(II) with respect to a pediatric vaccine, that the child is entitled to benefits under such a health insurance policy or plan, but such benefits are not available with respect to the cost of the pediatric vaccine.

(3) State vaccine-eligible child

The term ''State vaccine-eligible child'' means, with respect to a State and a qualified pediatric vaccine, a child who is within a class of children for which the State is purchasing the vaccine pursuant to subsection (d)(4)(B) of this section.

(c) Program-registered providers

(1) Defined

In this section, except as otherwise provided, the term ''program-registered provider'' means, with respect to a State, any health care provider that—

(A) is licensed or otherwise authorized for administration of pediatric vaccines under the law of the State in which the administration occurs (subject to section 254f(e) of this title), without regard to whether or not the provider participates in the plan under this subchapter;

(B) submits to the State an executed provider agreement described in paragraph (2); and

(C) has not been found, by the Secretary or the State, to have violated such agreement or other applicable requirements established by the Secretary or the State consistent with this section.

(2) Provider agreement

A provider agreement for a provider under this paragraph is an agreement (in such form and manner as the Secretary may require) that the provider agrees as follows:

(A)(i) Before administering a qualified pediatric vaccine to a child, the provider will ask a parent of the child such questions as are necessary to determine whether the child is a vaccine-eligible child, but the provider need not independently verify the answers to such questions.

(ii) The provider will, for a period of time specified by the Secretary, maintain records of responses made to the questions.

(iii) The provider will, upon request, make such records available to the State and to the Secretary, subject to section 1396a(a)(7) of this title.

(B)(i) Subject to clause (ii), the provider will comply with the schedule, regarding the appropriate periodicity, dosage, and contraindications applicable to pediatric vaccines, that is established and periodically reviewed

[1] So in original. Probably should be capitalized.

and, as appropriate, revised by the advisory committee referred to in subsection (e) of this section, except in such cases as, in the provider's medical judgment subject to accepted medical practice, such compliance is medically inappropriate.

(ii) The provider will provide pediatric vaccines in compliance with applicable State law, including any such law relating to any religious or other exemption.

(C)(i) In administering a qualified pediatric vaccine to a vaccine-eligible child, the provider will not impose a charge for the cost of the vaccine. A program-registered provider is not required under this section to administer such a vaccine to each child for whom an immunization with the vaccine is sought from the provider.

(ii) The provider may impose a fee for the administration of a qualified pediatric vaccine so long as the fee in the case of a federally vaccine-eligible child does not exceed the costs of such administration (as determined by the Secretary based on actual regional costs for such administration).

(iii) The provider will not deny administration of a qualified pediatric vaccine to a vaccine-eligible child due to the inability of the child's parent to pay an administration fee.

(3) Encouraging involvement of providers

Each program under this section shall provide, in accordance with criteria established by the Secretary—

(A) for encouraging the following to become program-registered providers: private health care providers, the Indian Health Service, health care providers that receive funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.], and health programs or facilities operated by Indian tribes or tribal organizations; and

(B) for identifying, with respect to any population of vaccine-eligible children a substantial portion of whose parents have a limited ability to speak the English language, those program-registered providers who are able to communicate with the population involved in the language and cultural context that is most appropriate.

(4) State requirements

Except as the Secretary may permit in order to prevent fraud and abuse and for related purposes, a State may not impose additional qualifications or conditions, in addition to the requirements of paragraph (1), in order that a provider qualify as a program-registered provider under this section. This subsection does not limit the exercise of State authority under section 1396n(b) of this title.

(d) Negotiation of contracts with manufacturers

(1) In general

For the purpose of meeting obligations under this section, the Secretary shall negotiate and enter into contracts with manufacturers of pediatric vaccines consistent with the requirements of this subsection and, to the maximum extent practicable, consolidate such contracting with any other contracting activities conducted by the Secretary to purchase vaccines. The Secretary may enter into such contracts under which the Federal Government is obligated to make outlays, the budget authority for which is not provided for in advance in appropriations Acts, for the purchase and delivery of pediatric vaccines under subsection (a)(2)(A) of this section.

(2) Authority to decline contracts

The Secretary may decline to enter into such contracts and may modify or extend such contracts.

(3) Contract price

(A) In general

The Secretary, in negotiating the prices at which pediatric vaccines will be purchased and delivered from a manufacturer under this subsection, shall take into account quantities of vaccines to be purchased by States under the option under paragraph (4)(B).

(B) Negotiation of discounted price for current vaccines

With respect to contracts entered into under this subsection for a pediatric vaccine for which the Centers for Disease Control and Prevention has a contract in effect under section 247b(j)(1) of this title as of May 1, 1993, no price for the purchase of such vaccine for vaccine-eligible children shall be agreed to by the Secretary under this subsection if the price per dose of such vaccine (including delivery costs and any applicable excise tax established under section 4131 of the Internal Revenue Code of 1986) exceeds the price per dose for the vaccine in effect under such a contract as of such date increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) from May 1993 to the month before the month in which such contract is entered into.

(C) Negotiation of discounted price for new vaccines

With respect to contracts entered into for a pediatric vaccine not described in subparagraph (B), the price for the purchase of such vaccine shall be a discounted price negotiated by the Secretary that may be established without regard to such subparagraph.

(4) Quantities and terms of delivery

Under such contracts—

(A) the Secretary shall provide, consistent with paragraph (6), for the purchase and delivery on behalf of States (and tribes and tribal organizations) of quantities of pediatric vaccines for federally vaccine-eligible children; and

(B) each State, at the option of the State, shall be permitted to obtain additional quantities of pediatric vaccines (subject to amounts specified to the Secretary by the State in advance of negotiations) through purchasing the vaccines from the manufacturers at the applicable price negotiated by the Secretary consistent with paragraph (3),

if (i) the State agrees that the vaccines will be used to provide immunizations only for children who are not federally vaccine-eligible children and (ii) the State provides to the Secretary such information (at a time and manner specified by the Secretary, including in advance of negotiations under paragraph (1)) as the Secretary determines to be necessary, to provide for quantities of pediatric vaccines for the State to purchase pursuant to this subsection and to determine annually the percentage of the vaccine market that is purchased pursuant to this section and this subparagraph.

The Secretary shall enter into the initial negotiations under the preceding sentence not later than 180 days after August 10, 1993.

(5) Charges for shipping and handling

The Secretary may enter into a contract referred to in paragraph (1) only if the manufacturer involved agrees to submit to the Secretary such reports as the Secretary determines to be appropriate to assure compliance with the contract and if, with respect to a State program under this section that does not provide for the direct delivery of qualified pediatric vaccines, the manufacturer involved agrees that the manufacturer will provide for the delivery of the vaccines on behalf of the State in accordance with such program and will not impose any charges for the costs of such delivery (except to the extent such costs are provided for in the price established under paragraph (3)).

(6) Assuring adequate supply of vaccines

The Secretary, in negotiations under paragraph (1), shall negotiate for quantities of pediatric vaccines such that an adequate supply of such vaccines will be maintained to meet unanticipated needs for the vaccines. For purposes of the preceding sentence, the Secretary shall negotiate for a 6-month supply of vaccines in addition to the quantity that the Secretary otherwise would provide for in such negotiations. In carrying out this paragraph, the Secretary shall consider the potential for outbreaks of the diseases with respect to which the vaccines have been developed.

(7) Multiple suppliers

In the case of the pediatric vaccine involved, the Secretary shall, as appropriate, enter into a contract referred to in paragraph (1) with each manufacturer of the vaccine that meets the terms and conditions of the Secretary for an award of such a contract (including terms and conditions regarding safety and quality). With respect to multiple contracts entered into pursuant to this paragraph, the Secretary may have in effect different prices under each of such contracts and, with respect to a purchase by States pursuant to paragraph (4)(B), the Secretary shall determine which of such contracts will be applicable to the purchase.

(e) Use of pediatric vaccines list

The Secretary shall use, for the purpose of the purchase, delivery, and administration of pediatric vaccines under this section, the list established (and periodically reviewed and as appropriate revised) by the Advisory Committee on Immunization Practices (an advisory committee established by the Secretary, acting through the Director of the Centers for Disease Control and Prevention).

(f) Requirement of State maintenance of immunization laws

In the case of a State that had in effect as of May 1, 1993, a law that requires some or all health insurance policies or plans to provide some coverage with respect to a pediatric vaccine, a State program under this section does not comply with the requirements of this section unless the State certifies to the Secretary that the State has not modified or repealed such law in a manner that reduces the amount of coverage so required.

(g) Termination

This section, and the requirement of section 1396a(a)(62) of this title, shall cease to be in effect beginning on such date as may be prescribed in Federal law providing for immunization services for all children as part of a broad-based reform of the national health care system.

(h) Definitions

For purposes of this section:

(1) The term ''child'' means an individual 18 years of age or younger.

(2) The term ''immunization'' means an immunization against a vaccine-preventable disease.

(3) The terms ''Indian'', ''Indian tribe'' and ''tribal organization'' have the meanings given such terms in section 4 of the Indian Health Care Improvement Act [25 U.S.C. 1603].

(4) The term ''manufacturer'' means any corporation, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities), which manufactures, imports, processes, or distributes under its label any pediatric vaccine. The term ''manufacture'' means to manufacture, import, process, or distribute a vaccine.

(5) The term ''parent'' includes, with respect to a child, an individual who qualifies as a legal guardian under State law.

(6) The term ''pediatric vaccine'' means a vaccine included on the list under subsection (e) of this section.

(7) The term ''program-registered provider'' has the meaning given such term in subsection (c) of this section.

(8) The term ''qualified pediatric vaccine'' means a pediatric vaccine with respect to which a contract is in effect under subsection (d) of this section.

(9) The terms ''vaccine-eligible child'', ''federally vaccine-eligible child'', and ''State vaccine-eligible child'' have the meaning given such terms in subsection (b) of this section.

(Aug. 14, 1935, ch. 531, title XIX, § 1928, as added Pub. L. 103–66, title XIII, § 13631(b)(2), Aug. 10, 1993, 107 Stat. 637.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(2)(B)(ii)(I), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is

classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (c)(3)(A), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (d)(3)(B), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 1396s, act Aug. 14, 1935, ch. 531, title XIX, § 1928, formerly § 1920, as added Apr. 7, 1986, Pub. L. 99–272, title IX, § 9526, 100 Stat. 218, and renumbered and amended, which related to references to laws directly affecting medicaid program, was renumbered section 1931 of act Aug. 14, 1935, by Pub. L. 103–66, title XIII, § 13631(b)(1), Aug. 10, 1993, 107 Stat. 637, and transferred to section 1396v of this title.

EFFECTIVE DATE

Section applicable to payments under State plans approved under this subchapter for calendar quarters beginning on or after Oct. 1, 1994, see section 13631(i) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 1396a of this title.

§ 1396t. Home and community care for functionally disabled elderly individuals

(a) "Home and community care" defined

In this subchapter, the term ''home and community care'' means one or more of the following services furnished to an individual who has been determined, after an assessment under subsection (c) of this section, to be a functionally disabled elderly individual, furnished in accordance with an individual community care plan (established and periodically reviewed and revised by a qualified community care case manager under subsection (d) of this section):

(1) Homemaker/home health aide services.

(2) Chore services.

(3) Personal care services.

(4) Nursing care services provided by, or under the supervision of, a registered nurse.

(5) Respite care.

(6) Training for family members in managing the individual.

(7) Adult day care.

(8) In the case of an individual with chronic mental illness, day treatment or other partial hospitalization, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility).

(9) Such other home and community-based services (other than room and board) as the Secretary may approve.

(b) "Functionally disabled elderly individual" defined

(1) In general

In this subchapter, the term ''functionally disabled elderly individual'' means an individual who—

(A) is 65 years of age or older,

(B) is determined to be a functionally disabled individual under subsection (c) of this section, and

(C) subject to section 1396a(f) of this title (as applied consistent with section 1396a(r)(2) of this title), is receiving supplemental security income benefits under subchapter XVI of this chapter (or under a State plan approved under subchapter XVI of this chapter) or, at the option of the State, is described in section 1396a(a)(10)(C) of this title.

(2) Treatment of certain individuals previously covered under a waiver

(A) In the case of a State which—

(i) at the time of its election to provide coverage for home and community care under this section has a waiver approved under section 1396n(c) or 1396n(d) of this title with respect to individuals 65 years of age or older, and

(ii) subsequently discontinues such waiver, individuals who were eligible for benefits under the waiver as of the date of its discontinuance and who would, but for income or resources, be eligible for medical assistance for home and community care under the plan shall, notwithstanding any other provision of this subchapter, be deemed a functionally disabled elderly individual for so long as the individual would have remained eligible for medical assistance under such waiver.

(B) In the case of a State which used a health insuring organization before January 1, 1986, and which, as of December 31, 1990, had in effect a waiver under section 1315 of this title that provides under the State plan under this subchapter for personal care services for functionally disabled individuals, the term ''functionally disabled elderly individual'' may include, at the option of the State, an individual who—

(i) is 65 years of age or older or is disabled (as determined under the supplemental security income program under subchapter XVI of this chapter);

(ii) is determined to meet the test of functional disability applied under the waiver as of such date; and

(iii) meets the resource requirement and income standard that apply in the State to individuals described in section 1396a(a)(10)(A)(ii)(V) of this title.

(3) Use of projected income

In applying section 1396b(f)(1) of this title in determining the eligibility of an individual (described in section 1396a(a)(10)(C) of this title) for medical assistance for home and community care, a State may, at its option, provide for the determination of the individual's anticipated medical expenses (to be deducted from income) over a period of up to 6 months.

(c) Determinations of functional disability

(1) In general

In this section, an individual is ''functionally disabled'' if the individual—

(A) is unable to perform without substantial assistance from another individual at least 2 of the following 3 activities of daily living: toileting, transferring, and eating; or

(B) has a primary or secondary diagnosis of Alzheimer's disease and is (i) unable to perform without substantial human assistance (including verbal reminding or physical cueing) or supervision at least 2 of the following 5 activities of daily living: bathing, dressing, toileting, transferring, and eating; or (ii) cognitively impaired so as to require substantial supervision from another individual because he or she engages in inappropriate behaviors that pose serious health or safety hazards to himself or herself or others.

(2) Assessments of functional disability

(A) Requests for assessments

If a State has elected to provide home and community care under this section, upon the request of an individual who is 65 years of age or older and who meets the requirements of subsection (b)(1)(C) of this section (or another person on such individual's behalf), the State shall provide for a comprehensive functional assessment under this subparagraph which—

(i) is used to determine whether or not the individual is functionally disabled,

(ii) is based on a uniform minimum data set specified by the Secretary under subparagraph (C)(i), and

(iii) uses an instrument which has been specified by the State under subparagraph (B).

No fee may be charged for such an assessment.

(B) Specification of assessment instrument

The State shall specify the instrument to be used in the State in complying with the requirement of subparagraph (A)(iii) which instrument shall be—

(i) one of the instruments designated under subparagraph (C)(ii); or

(ii) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary in subparagraph (C)(i).

(C) Specification of assessment data set and instruments

The Secretary shall—

(i) not later than July 1, 1991—

(I) specify a minimum data set of core elements and common definitions for use in conducting the assessments required under subparagraph (A); and

(II) establish guidelines for use of the data set; and

(ii) by not later than July 1, 1991, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subparagraph (B) for use in complying with the requirements of subparagraph (A).

(D) Periodic review

Each individual who qualifies as a functionally disabled elderly individual shall have the individual's assessment periodically reviewed and revised not less often than once every 12 months.

(E) Conduct of assessment by interdisciplinary teams

An assessment under subparagraph (A) and a review under subparagraph (D) must be conducted by an interdisciplinary team designated by the State. The Secretary shall permit a State to provide for assessments and reviews through teams under contracts—

(i) with public organizations; or

(ii) with nonpublic organizations which do not provide home and community care or nursing facility services and do not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, community care or nursing facility services.

(F) Contents of assessment

The interdisciplinary team must—

(i) identify in each such assessment or review each individual's functional disabilities and need for home and community care, including information about the individual's health status, home and community environment, and informal support system; and

(ii) based on such assessment or review, determine whether the individual is (or continues to be) functionally disabled.

The results of such an assessment or review shall be used in establishing, reviewing, and revising the individual's ICCP under subsection (d)(1) of this section.

(G) Appeal procedures

Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (F).

(d) Individual community care plan (ICCP)

(1) "Individual community care plan" defined

In this section, the terms ''individual community care plan'' and ''ICCP'' mean, with respect to a functionally disabled elderly individual, a written plan which—

(A) is established, and is periodically reviewed and revised, by a qualified case manager after a face-to-face interview with the individual or primary caregiver and based upon the most recent comprehensive functional assessment of such individual conducted under subsection (c)(2) of this section;

(B) specifies, within any amount, duration, and scope limitations imposed on home and community care provided under the State plan, the home and community care to be provided to such individual under the plan, and indicates the individual's preferences for the types and providers of services; and

(C) may specify other services required by such individual.

An ICCP may also designate the specific providers (qualified to provide home and commu-

nity care under the State plan) which will provide the home and community care described in subparagraph (B). Nothing in this section shall be construed as authorizing an ICCP or the State to restrict the specific persons or individuals (who are competent to provide home and community care under the State plan) who will provide the home and community care described in subparagraph (B).

(2) "Qualified community care case manager" defined

In this section, the term ''qualified community care case manager'' means a nonprofit or public agency or organization which—

(A) has experience or has been trained in establishing, and in periodically reviewing and revising, individual community care plans and in the provision of case management services to the elderly;

(B) is responsible for (i) assuring that home and community care covered under the State plan and specified in the ICCP is being provided, (ii) visiting each individual's home or community setting where care is being provided not less often than once every 90 days, and (iii) informing the elderly individual or primary caregiver on how to contact the case manager if service providers fail to properly provide services or other similar problems occur;

(C) in the case of a nonpublic agency, does not provide home and community care or nursing facility services and does not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, home and community care or nursing facility services;

(D) has procedures for assuring the quality of case management services that includes a peer review process;

(E) completes the ICCP in a timely manner and reviews and discusses new and revised ICCPs with elderly individuals or primary caregivers; and

(F) meets such other standards, established by the Secretary, as to assure that—

(i) such a manager is competent to perform case management functions;

(ii) individuals whose home and community care they manage are not at risk of financial exploitation due to such a manager; and

(iii) meets such other standards as the State may establish.

The Secretary may waive the requirement of subparagraph (C) in the case of a nonprofit agency located in a rural area.

(3) Appeals process

Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals who disagree with the ICCP established.

(e) Ceiling on payment amounts and maintenance of effort

(1) Ceiling on payment amounts

Payments may not be made under section 1396b(a) of this title to a State for home and community care provided under this section in a quarter to the extent that the medical assistance for such care in the quarter exceeds 50 percent of the product of—

(A) the average number of individuals in the quarter receiving such care under this section;

(B) the average per diem rate of payment which the Secretary has determined (before the beginning of the quarter) will be payable under subchapter XVIII of this chapter (without regard to coinsurance) for extended care services to be provided in the State during such quarter; and

(C) the number of days in such quarter.

(2) Maintenance of effort

(A) Annual reports

As a condition for the receipt of payment under section 1396b(a) of this title with respect to medical assistance provided by a State for home and community care (other than a waiver under section 1396n(c) of this title and other than home health care services described in section 1396d(a)(7) of this title and personal care services specified under regulations under section 1396d(a)(23) of this title), the State shall report to the Secretary, with respect to each Federal fiscal year (beginning with fiscal year 1990) and in a format developed or approved by the Secretary, the amount of funds obligated by the State with respect to the provision of home and community care to the functionally disabled elderly in that fiscal year.

(B) Reduction in payment if failure to maintain effort

If the amount reported under subparagraph (A) by a State with respect to a fiscal year is less than the amount reported under subparagraph (A) with respect to fiscal year 1989, the Secretary shall provide for a reduction in payments to the State under section 1396b(a) of this title in an amount equal to the difference between the amounts so reported.

(f) Minimum requirements for home and community care

(1) Requirements

Home and Community[1] care provided under this section must meet such requirements for individuals' rights and quality as are published or developed by the Secretary under subsection (k) of this section. Such requirements shall include—

(A) the requirement that individuals providing care are competent to provide such care; and

(B) the rights specified in paragraph (2).

(2) Specified rights

The rights specified in this paragraph are as follows:

(A) The right to be fully informed in advance, orally and in writing, of the care to be provided, to be fully informed in advance of any changes in care to be provided, and (except with respect to an individual deter-

[1] So in original. Probably should not be capitalized.

mined incompetent) to participate in planning care or changes in care.

(B) The right to voice grievances with respect to services that are (or fail to be) furnished without discrimination or reprisal for voicing grievances, and to be told how to complain to State and local authorities.

(C) The right to confidentiality of personal and clinical records.

(D) The right to privacy and to have one's property treated with respect.

(E) The right to refuse all or part of any care and to be informed of the likely consequences of such refusal.

(F) The right to education or training for oneself and for members of one's family or household on the management of care.

(G) The right to be free from physical or mental abuse, corporal punishment, and any physical or chemical restraints imposed for purposes of discipline or convenience and not included in an individual's ICCP.

(H) The right to be fully informed orally and in writing of the individual's rights.

(I) Guidelines for such minimum compensation for individuals providing such care as will assure the availability and continuity of competent individuals to provide such care for functionally disabled individuals who have functional disabilities of varying levels of severity.

(J) Any other rights established by the Secretary.

(g) Minimum requirements for small community care settings

(1) "Small community care setting" defined

In this section, the term ''small community care setting'' means—

(A) a nonresidential setting that serves more than 2 and less than 8 individuals; or

(B) a residential setting in which more than 2 and less than 8 unrelated adults reside and in which personal services (other than merely board) are provided in conjunction with residing in the setting.

(2) Minimum requirements

A small community care setting in which community care is provided under this section must—

(A) meet such requirements as are published or developed by the Secretary under subsection (k) of this section;

(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1396r(c) of this title, to the extent applicable to such a setting;

(C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting;

(D) meet any applicable State or local requirements regarding certification or licensure;

(E) meet any applicable State and local zoning, building, and housing codes, and State and local fire and safety regulations; and

(F) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents.

(h) Minimum requirements for large community care settings

(1) "Large community care setting" defined

In this section, the term ''large community care setting'' means—

(A) a nonresidential setting in which more than 8 individuals are served; or

(B) a residential setting in which more than 8 unrelated adults reside and in which personal services are provided in conjunction with residing in the setting in which home and community care under this section is provided.

(2) Minimum requirements

A large community care setting in which community care is provided under this section must—

(A) meet such requirements as are published or developed by the Secretary under subsection (k) of this section;

(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1396r(c) of this title, to the extent applicable to such a setting;

(C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives home and community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting; and

(D) meet the requirements of paragraphs (2) and (3) of section 1396r(d) of this title (relating to administration and other matters) in the same manner as such requirements apply to nursing facilities under such section; except that, in applying the requirement of section 1396r(d)(2) of this title (relating to life safety code), the Secretary shall provide for the application of such life safety requirements (if any) that are appropriate to the setting.

(3) Disclosure of ownership and control interests and exclusion of repeated violators

A community care setting—

(A) must disclose persons with an ownership or control interest (including such persons as defined in section 1320a–3(a)(3) of this title) in the setting; and

(B) may not have, as a person with an ownership or control interest in the setting, any individual or person who has been excluded from participation in the program under this subchapter or who has had such an ownership or control interest in one or more community care settings which have been found repeatedly to be substandard or to have failed to meet the requirements of paragraph (2).

(i) Survey and certification process

(1) Certifications

(A) Responsibilities of the State

Under each State plan under this subchapter, the State shall be responsible for

certifying the compliance of providers of home and community care and community care settings with the applicable requirements of subsections (f), (g) and (h) of this section. The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(B) Responsibilities of the Secretary

The Secretary shall be responsible for certifying the compliance of State providers of home and community care, and of State community care settings in which such care is provided, with the requirements of subsections (f), (g) and (h) of this section.

(C) Frequency of certifications

Certification of providers and settings under this subsection shall occur no less frequently than once every 12 months.

(2) Reviews of providers

(A) In general

The certification under this subsection with respect to a provider of home or community care must be based on a periodic review of the provider's performance in providing the care required under ICCP's in accordance with the requirements of subsection (f) of this section.

(B) Special reviews of compliance

Where the Secretary has reason to question the compliance of a provider of home or community care with any of the requirements of subsection (f) of this section, the Secretary may conduct a review of the provider and, on the basis of that review, make independent and binding determinations concerning the extent to which the provider meets such requirements.

(3) Surveys of community care settings

(A) In general

The certification under this subsection with respect to community care settings must be based on a survey. Such survey for such a setting must be conducted without prior notice to the setting. Any individual who notifies (or causes to be notified) a community care setting of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall review each State's procedures for scheduling and conducting such surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(B) Survey protocol

Surveys under this paragraph shall be conducted based upon a protocol which the Secretary has provided for under subsection (k) of this section.

(C) Prohibition of conflict of interest in survey team membership

A State and the Secretary may not use as a member of a survey team under this paragraph an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the community care setting being surveyed (or the person responsible for such setting) respecting compliance with the requirements of subsection (g) or (h) of this section or who has a personal or familial financial interest in the setting being surveyed.

(D) Validation surveys of community care settings

The Secretary shall conduct onsite surveys of a representative sample of community care settings in each State, within 2 months of the date of surveys conducted under subparagraph (A) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under subparagraph (A). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under subparagraph (B). If the State has determined that an individual setting meets the requirements of subsection (g) of this section, but the Secretary determines that the setting does not meet such requirements, the Secretary's determination as to the setting's noncompliance with such requirements is binding and supersedes that of the State survey.

(E) Special surveys of compliance

Where the Secretary has reason to question the compliance of a community care setting with any of the requirements of subsection (g) or (h) of this section, the Secretary may conduct a survey of the setting and, on the basis of that survey, make independent and binding determinations concerning the extent to which the setting meets such requirements.

(4) Investigation of complaints and monitoring of providers and settings

Each State and the Secretary shall maintain procedures and adequate staff to investigate complaints of violations of applicable requirements imposed on providers of community care or on community care settings under subsections (f), (g) and (h) of this section.

(5) Investigation of allegations of individual neglect and abuse and misappropriation of individual property

The State shall provide, through the agency responsible for surveys and certification of providers of home or community care and community care settings under this subsection, for a process for the receipt, review, and investigation of allegations of individual neglect and abuse (including injuries of unknown source) by individuals providing such care or in such setting and of misappropriation of individual property by such individuals. The State shall, after notice to the individual involved and a reasonable opportunity for hearing for the individual to rebut allega-

tions, make a finding as to the accuracy of the allegations. If the State finds that an individual has neglected or abused an individual receiving community care or misappropriated such individual's property, the State shall notify the individual against whom the finding is made. A State shall not make a finding that a person has neglected an individual receiving community care if the person demonstrates that such neglect was caused by factors beyond the control of the person. The State shall provide for public disclosure of findings under this paragraph upon request and for inclusion, in any such disclosure of such findings, of any brief statement (or of a clear and accurate summary thereof) of the individual disputing such findings.

(6) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public—

(i) information respecting all surveys, reviews, and certifications made under this subsection respecting providers of home or community care and community care settings, including statements of deficiencies,

(ii) copies of cost reports (if any) of such providers and settings filed under this subchapter,

(iii) copies of statements of ownership under section 1320a–3 of this title, and

(iv) information disclosed under section 1320a–5 of this title.

(B) Notices of substandard care

If a State finds that—

(i) a provider of home or community care has provided care of substandard quality with respect to an individual, the State shall make a reasonable effort to notify promptly (I) an immediate family member of each such individual and (II) individuals receiving home or community care from that provider under this subchapter, or

(ii) a community care setting is substandard, the State shall make a reasonable effort to notify promptly (I) individuals receiving community care in that setting, and (II) immediate family members of such individuals.

(C) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys, reviews, and certifications under this subsection.

(j) Enforcement process for providers of community care

(1) State authority

(A) In general

If a State finds, on the basis of a review under subsection (i)(2) of this section or otherwise, that a provider of home or community care no longer meets the requirements of this section, the State may terminate the provider's participation under the State plan and may provide in addition for a civil money penalty. Nothing in this subparagraph shall be construed as restricting the remedies available to a State to remedy a provider's deficiencies. If the State finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A) for the period during which it finds that the provider was not in compliance with such requirements.

(B) Civil money penalty

(i) In general

Each State shall establish by law (whether statute or regulation) at least the following remedy: A civil money penalty assessed and collected, with interest, for each day in which the provider is or was out of compliance with a requirement of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty under subsection (i)(3)(A) of this section) may be applied to reimbursement of individuals for personal funds lost due to a failure of home or community care providers to meet the requirements of this section. The State also shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

(ii) Deadline and guidance

Each State which elects to provide home and community care under this section must establish the civil money penalty remedy described in clause (i) applicable to all providers of community care covered under this section. The Secretary shall provide, through regulations or otherwise by not later than July 1, 1990, guidance to States in establishing such remedy; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedy.

(2) Secretarial authority

(A) For State providers

With respect to a State provider of home or community care, the Secretary shall have the authority and duties of a State under this subsection, except that the civil money penalty remedy described in subparagraph (C) shall be substituted for the civil money remedy described in paragraph (1)(B)(i).

(B) Other providers

With respect to any other provider of home or community care in a State, if the Secretary finds that a provider no longer meets a requirement of this section, the Secretary

may terminate the provider's participation under the State plan and may provide, in addition, for a civil money penalty under subparagraph (C). If the Secretary finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C) for the period during which the Secretary finds that the provider was not in compliance with such requirements.

(C) Civil money penalty

If the Secretary finds on the basis of a review under subsection (i)(2) of this section or otherwise that a home or community care provider no longer meets the requirements of this section, the Secretary shall impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

(k) Secretarial responsibilities

(1) Publication of interim requirements

(A) In general

The Secretary shall publish, by December 1, 1991, a proposed regulation that sets forth interim requirements, consistent with subparagraph (B), for the provision of home and community care and for community care settings, including—

(i) the requirements of subsection (c)(2) of this section (relating to comprehensive functional assessments, including the use of assessment instruments), of subsection (d)(2)(E) of this section (relating to qualifications for qualified case managers), of subsection (f) of this section (relating to minimum requirements for home and community care), of subsection (g) of this section (relating to minimum requirements for small community care settings), and of subsection (h) of this section (relating to minimum requirements for large community care settings), and

(ii) survey protocols (for use under subsection (i)(3)(A) of this section) which relate to such requirements.

(B) Minimum protections

Interim requirements under subparagraph (A) and final requirements under paragraph (2) shall assure, through methods other than reliance on State licensure processes, that individuals receiving home and community care are protected from neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, and the provision of health care services by unqualified personnel in community care settings.

(2) Development of final requirements

The Secretary shall develop, by not later than October 1, 1992—

(A) final requirements, consistent with paragraph (1)(B), respecting the provision of appropriate, quality home and community care and respecting community care settings under this section, and including at least the requirements referred to in paragraph (1)(A)(i), and

(B) survey protocols and methods for evaluating and assuring the quality of community care settings.

The Secretary may, from time to time, revise such requirements, protocols, and methods.

(3) No delegation to States

The Secretary's authority under this subsection shall not be delegated to States.

(4) No prevention of more stringent requirements by States

Nothing in this section shall be construed as preventing States from imposing requirements that are more stringent than the requirements published or developed by the Secretary under this subsection.

***(l)* Waiver of Statewideness**

States may waive the requirement of section 1396a(a)(1) of this title (related to Statewideness) for a program of home and community care under this section.

(m) Limitation on amount of expenditures as medical assistance

(1) Limitation on amount

The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $40,000,000, for fiscal year 1992, $70,000,000, for fiscal year 1993, $130,000,000, for fiscal year 1994, $160,000,000, and for fiscal year 1995, $180,000,000.

(2) Assurance of entitlement to service

A State which receives Federal medical assistance for expenditures for home and community care under this section must provide home and community care specified under the Individual Community Care Plan under subsection (d) of this section to individuals described in subsection (b) of this section for the duration of the election period, without regard to the amount of funds available to the State under paragraph (1). For purposes of this paragraph, an election period is the period of 4 or more calendar quarters elected by the State, and approved by the Secretary, for the provision of home and community care under this section.

(3) Limitation on eligibility

The State may limit eligibility for home and community care under this section during an election period under paragraph (2) to reasonable classifications (based on age, degree of functional disability, and need for services).

(4) Allocation of medical assistance

The Secretary shall establish a limitation on the amount of Federal medical assistance

available to any State during the State's election period under paragraph (2). The limitation under this paragraph shall take into account the limitation under paragraph (1) and the number of elderly individuals age 65 or over residing in such State in relation to the number of such elderly individuals in the United States during 1990. For purposes of the previous sentence, elderly individuals shall, to the maximum extent practicable, be low-income elderly individuals.

(Aug. 14, 1935, ch. 531, title XIX, § 1929, as added Pub. L. 101–508, title IV, § 4711(b), Nov. 5, 1990, 104 Stat. 1388–174; amended Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(v)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398.)

CODIFICATION

Pub. L. 101–508, title IV, § 4711(b)(1), Nov. 5, 1990, 104 Stat. 1388–174, which directed renumbering of section 1929 of the Social Security Act, act Aug. 14, 1935, as section 1930, could not be executed because there was no section 1929.

AMENDMENTS

1999—Subsec. (c)(2)(E)(i), (ii). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(v)(1)], realigned margins.

Subsec. (k)(1)(A)(i). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(v)(2)], substituted ''large community care settings),'' for ''large community care settings,''.

Subsec. (*l*). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(v)(3)], substituted ''Statewideness'' for ''State wideness''.

EFFECTIVE DATE

Section applicable to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments made by section 4711 of Pub. L. 101–508 have been promulgated by such date, see section 4711(e) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 1396a of this title.

§ 1396u. Community supported living arrangements services

(a) Community supported living arrangements services

In this subchapter, the term ''community supported living arrangements services'' means one or more of the following services meeting the requirements of subsection (h) of this section provided in a State eligible to provide services under this section (as defined in subsection (d) of this section) to assist a developmentally disabled individual (as defined in subsection (b) of this section) in activities of daily living necessary to permit such individual to live in the individual's own home, apartment, family home, or rental unit furnished in a community supported living arrangement setting:

(1) Personal assistance.

(2) Training and habilitation services (necessary to assist the individual in achieving increased integration, independence and productivity).

(3) 24-hour emergency assistance (as defined by the Secretary).

(4) Assistive technology.

(5) Adaptive equipment.

(6) Other services (as approved by the Secretary, except those services described in subsection (g) of this section).

(7) Support services necessary to aid an individual to participate in community activities.

(b) "Developmentally disabled individual" defined

In this subchapter the term,[1] ''developmentally disabled individual'' means an individual who as defined by the Secretary is described within the term ''mental retardation and related conditions'' as defined in regulations as in effect on July 1, 1990, and who is residing with the individual's family or legal guardian in such individual's own home in which no more than 3 other recipients of services under this section are residing and without regard to whether or not such individual is at risk of institutionalization (as defined by the Secretary).

(c) Criteria for selection of participating States

The Secretary shall develop criteria to review the applications of States submitted under this section to provide community supported living arrangement services. The Secretary shall provide in such criteria that during the first 5 years of the provision of services under this section that no less than 2 and no more than 8 States shall be allowed to receive Federal financial participation for providing the services described in this section.

(d) Quality assurance

A State selected by the Secretary to provide services under this section shall in order to continue to receive Federal financial participation for providing services under this section be required to establish and maintain a quality assurance program, that provides that—

(1) the State will certify and survey providers of services under this section (such surveys to be unannounced and average at least 1 a year);

(2) the State will adopt standards for survey and certification that include—

(A) minimum qualifications and training requirements for provider staff;

(B) financial operating standards; and

(C) a consumer grievance process;

(3) the State will provide a system that allows for monitoring boards consisting of providers, family members, consumers, and neighbors;

(4) the State will establish reporting procedures to make available information to the public;

(5) the State will provide ongoing monitoring of the health and well-being of each recipient;

(6) the State will provide the services defined in subsection (a) of this section in accordance with an individual support plan (as defined by the Secretary in regulations); and

(7) the State plan amendment under this section shall be reviewed by the State Council on Developmental Disabilities established under section 125 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. § 15025] and the protection and advocacy system established under subtitle C of that Act [42 U.S.C. 15041 et seq.].

[1] So in original. The comma probably should precede ''the term''.

The Secretary shall not approve a quality assurance plan under this subsection and allow a State to continue to receive Federal financial participation under this section unless the State provides for public hearings on the plan prior to adoption and implementation of its plan under this subsection.

(e) Maintenance of effort

States selected by the Secretary to receive Federal financial participation to provide services under this section shall maintain current levels of spending for such services in order to be eligible to continue to receive Federal financial participation for the provision of such services under this section.

(f) Excluded services

No Federal financial participation shall be allowed for the provision of the following services under this section:

(1) Room and board.

(2) Cost of prevocational, vocational and supported employment.

(g) Waiver of requirements

The Secretary may waive such provisions of this subchapter as necessary to carry out the provisions of this section including the following requirements of this subchapter—

(1) comparability of amount, duration, and scope of services; and

(2) statewideness.

(h) Minimum protections

(1) Publication of interim and final requirements

(A) In general

The Secretary shall publish, by July 1, 1991, a regulation (that shall be effective on an interim basis pending the promulgation of final regulations), and by October 1, 1992, a final regulation, that sets forth interim and final requirements, respectively, consistent with subparagraph (B), to protect the health, safety, and welfare of individuals receiving community supported living arrangements services.

(B) Minimum protections

Interim and final requirements under subparagraph (A) shall assure, through methods other than reliance on State licensure processes or the State quality assurance programs under subsection (d) of this section, that—

(i) individuals receiving community supported living arrangements services are protected from neglect, physical and sexual abuse, and financial exploitation;

(ii) a provider of community supported living arrangements services may not use individuals who have been convicted of child or client abuse, neglect, or mistreatment or of a felony involving physical harm to an individual and shall take all reasonable steps to determine whether applicants for employment by the provider have histories indicating involvement in child or client abuse, neglect, or mistreatment or a criminal record involving physical harm to an individual;

(iii) individuals or entities delivering such services are not unjustly enriched as a result of abusive financial arrangements (such as owner lease-backs); and

(iv) individuals or entities delivering such services to clients, or relatives of such individuals, are prohibited from being named beneficiaries of life insurance policies purchased by (or on behalf of) such clients.

(2) Specified remedies

If the Secretary finds that a provider has not met an applicable requirement under subsection (h) of this section, the Secretary shall impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(i) Treatment of funds

Any funds expended under this section for medical assistance shall be in addition to funds expended for any existing services covered under the State plan, including any waiver services for which an individual receiving services under this program is already eligible.

(j) Limitation on amounts of expenditures as medical assistance

The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $5,000,000, for fiscal year 1992, $10,000,000, for fiscal year 1993, $20,000,000, for fiscal year 1994, $30,000,000, for fiscal year 1995, $35,000,000, and for fiscal years thereafter such sums as provided by Congress.

(Aug. 14, 1935, ch. 531, title XIX, § 1930, as added Pub. L. 101–508, title IV, § 4712(b), Nov. 5, 1990, 104 Stat. 1388–187; amended Pub. L. 106–402, title IV, § 401(b)(6)(B), Oct. 30, 2000, 114 Stat. 1738.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act of 2000, referred to in subsec. (d)(7), is Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitle C of title I of the Act, which is classified generally to part C (§ 15041 et seq.) of subchapter I of chapter 144 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15001 of this title and Tables.

CODIFICATION

Pub. L. 101–508, title IV, § 4712(b)(1), Nov. 5, 1990, 104 Stat. 1388–187, which directed renumbering of section 1930 of the Social Security Act, act Aug. 14, 1935, as section 1931, could not be executed because there was no section 1930.

AMENDMENTS

2000—Subsec. (d)(7). Pub. L. 106–402 substituted ''State Council on Developmental Disabilities established under section 125 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the protection and advocacy system established under subtitle C of that Act'' for ''State Planning Council established under section 6024 of this title, and the Protection and Advocacy System established under section 6042 of this title''.

EFFECTIVE DATE

Section 4712(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 1396d of this title] shall apply to community supported living arrangements services furnished on or after the later of July 1, 1991, or 30 days after the publication of regulations setting forth interim requirements under subsection (h) [probably means subsec. (h) of this section] without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) APPLICATION PROCESS.—The Secretary of Health and Human Services shall provide that the applications required to be submitted by States under this section shall be received and approved prior to the effective date specified in paragraph (1).''

§ 1396u–1. Assuring coverage for certain low-income families

(a) References to subchapter IV–A are references to pre-welfare-reform provisions

Subject to the succeeding provisions of this section, with respect to a State any reference in this subchapter (or any other provision of law in relation to the operation of this subchapter) to a provision of part A of subchapter IV of this chapter, or a State plan under such part (or a provision of such a plan), including income and resource standards and income and resource methodologies under such part or plan, shall be considered a reference to such a provision or plan as in effect as of July 16, 1996, with respect to the State.

(b) Application of pre-welfare-reform eligibility criteria

(1) In general

For purposes of this subchapter, subject to paragraphs (2) and (3), in determining eligibility for medical assistance—

(A) an individual shall be treated as receiving aid or assistance under a State plan approved under part A of subchapter IV of this chapter only if the individual meets—

(i) the income and resource standards for determining eligibility under such plan, and

(ii) the eligibility requirements of such plan under subsections (a) through (c) of section 606 of this title and section 607(a) of this title,

as in effect as of July 16, 1996; and

(B) the income and resource methodologies under such plan as of such date shall be used in the determination of whether any individual meets income and resource standards under such plan.

(2) State option

For purposes of applying this section, a State—

(A) may lower its income standards applicable with respect to part A of subchapter IV of this chapter, but not below the income standards applicable under its State plan under such part on May 1, 1988;

(B) may increase income or resource standards under the State plan referred to in paragraph (1) over a period (beginning after July 16, 1996) by a percentage that does not exceed the percentage increase in the Consumer Price Index for all urban consumers (all items; United States city average) over such period; and

(C) may use income and resource methodologies that are less restrictive than the methodologies used under the State plan under such part as of July 16, 1996.

(3) Option to terminate medical assistance for failure to meet work requirement

(A) Individuals receiving cash assistance under TANF

In the case of an individual who—

(i) is receiving cash assistance under a State program funded under part A of subchapter IV of this chapter,

(ii) is eligible for medical assistance under this subchapter on a basis not related to section 1396a(*l*) of this title, and

(iii) has the cash assistance under such program terminated pursuant to section 607(e)(1)(B) of this title (as in effect on or after the welfare reform effective date) because of refusing to work,

the State may terminate such individual's eligibility for medical assistance under this subchapter until such time as there no longer is a basis for the termination of such cash assistance because of such refusal.

(B) Exception for children

Subparagraph (A) shall not be construed as permitting a State to terminate medical assistance for a minor child who is not the head of a household receiving assistance under a State program funded under part A of subchapter IV of this chapter.

(c) Treatment for purposes of transitional coverage provisions

(1) Transition in the case of child support collections

The provisions of section 606(h) of this title (as in effect on July 16, 1996) shall apply, in relation to this subchapter, with respect to individuals (and families composed of individuals) who are described in subsection (b)(1)(A) of this section, in the same manner as they applied before such date with respect to individuals who became ineligible for aid to families with dependent children as a result (wholly or partly) of the collection of child or spousal support under part D of subchapter IV of this chapter.

(2) Transition in the case of earnings from employment

For continued medical assistance in the case of individuals (and families composed of individuals) described in subsection (b)(1)(A) of this section who would otherwise become ineligible because of hours or income from employment, see sections 1396r–6 and 1396a(e)(1) of this title.

(d) Waivers

In the case of a waiver of a provision of part A of subchapter IV of this chapter in effect with respect to a State as of July 16, 1996, or which is submitted to the Secretary before August 22, 1996, and approved by the Secretary on or before July 1, 1997, if the waiver affects eligibility of

individuals for medical assistance under this subchapter, such waiver may (but need not) continue to be applied, at the option of the State, in relation to this subchapter after the date the waiver would otherwise expire.

(e) State option to use 1 application form

Nothing in this section, or part A of subchapter IV of this chapter, shall be construed as preventing a State from providing for the same application form for assistance under a State program funded under part A of subchapter IV of this chapter (on or after the welfare reform effective date) and for medical assistance under this subchapter.

(f) Additional rules of construction

(1) With respect to the reference in section 1396a(a)(5) of this title to a State plan approved under part A of subchapter IV of this chapter, a State may treat such reference as a reference either to a State program funded under such part (as in effect on and after the welfare reform effective date) or to the State plan under this subchapter.

(2) Any reference in section 1396a(a)(55) of this title to a State plan approved under part A of subchapter IV of this chapter shall be deemed a reference to a State program funded under such part.

(3) In applying section 1396b(f) of this title, the applicable income limitation otherwise determined shall be subject to increase in the same manner as income or resource standards of a State may be increased under subsection (b)(2)(B) of this section.

(g) Relation to other provisions

The provisions of this section shall apply notwithstanding any other provision of this chapter.

(h) Transitional increased Federal matching rate for increased administrative costs

(1) In general

Subject to the succeeding provisions of this subsection, the Secretary shall provide that with respect to administrative expenditures described in paragraph (2) the per centum specified in section 1396b(a)(7) of this title shall be increased to such percentage as the Secretary specifies.

(2) Administrative expenditures described

The administrative expenditures described in this paragraph are expenditures described in section 1396b(a)(7) of this title that a State demonstrates to the satisfaction of the Secretary are attributable to administrative costs of eligibility determinations that (but for the enactment of this section) would not be incurred.

(3) Limitation

The total amount of additional Federal funds that are expended as a result of the application of this subsection for the period beginning with fiscal year 1997 shall not exceed $500,000,000. In applying this paragraph, the Secretary shall ensure the equitable distribution of additional funds among the States.

(i) Welfare reform effective date

In this section, the term ''welfare reform effective date'' means the effective date, with respect to a State, of title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (as specified in section 116 of such Act).

(Aug. 14, 1935, ch. 531, title XIX, §1931, as added Pub. L. 104–193, title I, §114(a)(2), Aug. 22, 1996, 110 Stat. 2177; amended Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §602(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394.)

REFERENCES IN TEXT

Parts A and D of subchapter IV of this chapter, referred to in text, are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

For effective date, with respect to a State, of title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (as specified in section 116 of such Act), referred to in subsec. (i), see section 116 of Pub. L. 104–193, set out as an Effective Date note under section 601 of this title.

PRIOR PROVISIONS

A prior section 1931 of act Aug. 14, 1935, was renumbered section 1936, and is classified to section 1396v of this title.

AMENDMENTS

1999—Subsec. (h)(3). Pub. L. 106–113, §1000(a)(6) [title VI, §602(a)(1)], struck out ''and ending with fiscal year 2000'' after ''fiscal year 1997''.

Subsec. (h)(4). Pub. L. 106–113, §1000(a)(6) [title VI, §602(a)(2)], struck out heading and text of par. (4). Prior to amendment, text read as follows: ''This subsection shall only apply with respect to a State for expenditures incurred during the first 12 calendar quarters in which the State program funded under part A of subchapter IV of this chapter (as in effect on and after the welfare reform effective date) is in effect.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §602(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–394, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the enactment of section 114 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2177).''

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 1396u–2. Provisions relating to managed care

(a) State option to use managed care

(1) Use of medicaid managed care organizations and primary care case managers

(A) In general

Subject to the succeeding provisions of this section, and notwithstanding paragraph (1), (10)(B), or (23)(A) of section 1396a(a) of this title, a State—

(i) may require an individual who is eligible for medical assistance under the State plan under this subchapter to enroll with a managed care entity as a condition of receiving such assistance (and, with re-

spect to assistance furnished by or under arrangements with such entity, to receive such assistance through the entity), if—

(I) the entity and the contract with the State meet the applicable requirements of this section and section 1396b(m) of this title or section 1396d(t) of this title, and

(II) the requirements described in the succeeding paragraphs of this subsection are met; and

(ii) may restrict the number of provider agreements with managed care entities under the State plan if such restriction does not substantially impair access to services.

(B) "Managed care entity" defined

In this section, the term ''managed care entity'' means—

(i) a medicaid managed care organization, as defined in section 1396b(m)(1)(A) of this title, that provides or arranges for services for enrollees under a contract pursuant to section 1396b(m) of this title; and

(ii) a primary care case manager, as defined in section 1396d(t)(2) of this title.

(2) Special rules

(A) Exemption of certain children with special needs

A State may not require under paragraph (1) the enrollment in a managed care entity of an individual under 19 years of age who—

(i) is eligible for supplemental security income under subchapter XVI of this chapter;

(ii) is described in section 701(a)(1)(D) of this title;

(iii) is described in section 1396a(e)(3) of this title;

(iv) is receiving foster care or adoption assistance under part E of subchapter IV of this chapter; or

(v) is in foster care or otherwise in an out-of-home placement.

(B) Exemption of medicare beneficiaries

A State may not require under paragraph (1) the enrollment in a managed care entity of an individual who is a qualified medicare beneficiary (as defined in section 1396d(p)(1) of this title) or an individual otherwise eligible for benefits under subchapter XVIII of this chapter.

(C) Indian enrollment

A State may not require under paragraph (1) the enrollment in a managed care entity of an individual who is an Indian (as defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1603(c)) unless the entity is one of the following (and only if such entity is participating under the plan):

(i) The Indian Health Service.

(ii) An Indian health program operated by an Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement, or compact with the Indian Health Service pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(iii) An urban Indian health program operated by an urban Indian organization pursuant to a grant or contract with the Indian Health Service pursuant to title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

(3) Choice of coverage

(A) In general

A State must permit an individual to choose a managed care entity from not less than two such entities that meet the applicable requirements of this section, and of section 1396b(m) of this title or section 1396d(t) of this title.

(B) State option

At the option of the State, a State shall be considered to meet the requirements of subparagraph (A) in the case of an individual residing in a rural area, if the State requires the individual to enroll with a managed care entity if such entity—

(i) permits the individual to receive such assistance through not less than two physicians or case managers (to the extent that at least two physicians or case managers are available to provide such assistance in the area), and

(ii) permits the individual to obtain such assistance from any other provider in appropriate circumstances (as established by the State under regulations of the Secretary).

(C) Treatment of certain county-operated health insuring organizations

A State shall be considered to meet the requirement of subparagraph (A) if—

(i) the managed care entity in which the individual is enrolled is a health-insuring organization which—

(I) first became operational prior to January 1, 1986, or

(II) is described in section 9517(c)(3) of the Omnibus Budget Reconciliation Act of 1985 (as added by section 4734(2) of the Omnibus Budget Reconciliation Act of 1990), and

(ii) the individual is given a choice between at least two providers within such entity.

(4) Process for enrollment and termination and change of enrollment

As conditions under paragraph (1)(A)—

(A) In general

The State, enrollment broker (if any), and managed care entity shall permit an individual eligible for medical assistance under the State plan under this subchapter who is enrolled with the entity under this subchapter to terminate (or change) such enrollment—

(i) for cause at any time (consistent with section 1396b(m)(2)(A)(vi) of this title), and

(ii) without cause—

(I) during the 90-day period beginning on the date the individual receives notice of such enrollment, and

(II) at least every 12 months thereafter.

(B) Notice of termination rights

The State shall provide for notice to each such individual of the opportunity to terminate (or change) enrollment under such conditions. Such notice shall be provided at least 60 days before each annual enrollment opportunity described in subparagraph (A)(ii)(II).

(C) Enrollment priorities

In carrying out paragraph (1)(A), the State shall establish a method for establishing enrollment priorities in the case of a managed care entity that does not have sufficient capacity to enroll all such individuals seeking enrollment under which individuals already enrolled with the entity are given priority in continuing enrollment with the entity.

(D) Default enrollment process

In carrying out paragraph (1)(A), the State shall establish a default enrollment process—

(i) under which any such individual who does not enroll with a managed care entity during the enrollment period specified by the State shall be enrolled by the State with such an entity which has not been found to be out of substantial compliance with the applicable requirements of this section and of section 1396b(m) of this title or section 1396d(t) of this title; and

(ii) that takes into consideration—

(I) maintaining existing provider-individual relationships or relationships with providers that have traditionally served beneficiaries under this subchapter; and

(II) if maintaining such provider relationships is not possible, the equitable distribution of such individuals among qualified managed care entities available to enroll such individuals, consistent with the enrollment capacities of the entities.

(5) Provision of information

(A) Information in easily understood form

Each State, enrollment broker, or managed care entity shall provide all enrollment notices and informational and instructional materials relating to such an entity under this subchapter in a manner and form which may be easily understood by enrollees and potential enrollees of the entity who are eligible for medical assistance under the State plan under this subchapter.

(B) Information to enrollees and potential enrollees

Each managed care entity that is a medicaid managed care organization shall, upon request, make available to enrollees and potential enrollees in the organization's service area information concerning the following:

(i) Providers

The identity, locations, qualifications, and availability of health care providers that participate with the organization.

(ii) Enrollee rights and responsibilities

The rights and responsibilities of enrollees.

(iii) Grievance and appeal procedures

The procedures available to an enrollee and a health care provider to challenge or appeal the failure of the organization to cover a service.

(iv) Information on covered items and services

All items and services that are available to enrollees under the contract between the State and the organization that are covered either directly or through a method of referral and prior authorization. Each managed care entity that is a primary care case manager shall, upon request, make available to enrollees and potential enrollees in the organization's service area the information described in clause (iii).

(C) Comparative information

A State that requires individuals to enroll with managed care entities under paragraph (1)(A) shall annually (and upon request) provide, directly or through the managed care entity, to such individuals a list identifying the managed care entities that are (or will be) available and information (presented in a comparative, chart-like form) relating to the following for each such entity offered:

(i) Benefits and cost-sharing

The benefits covered and cost-sharing imposed by the entity.

(ii) Service area

The service area of the entity.

(iii) Quality and performance

To the extent available, quality and performance indicators for the benefits under the entity.

(D) Information on benefits not covered under managed care arrangement

A State, directly or through managed care entities, shall, on or before an individual enrolls with such an entity under this subchapter, inform the enrollee in a written and prominent manner of any benefits to which the enrollee may be entitled to under this subchapter but which are not made available to the enrollee through the entity. Such information shall include information on where and how such enrollees may access benefits not made available to the enrollee through the entity.

(b) Beneficiary protections

(1) Specification of benefits

Each contract with a managed care entity under section 1396b(m) of this title or under section 1396d(t)(3) of this title shall specify the benefits the provision (or arrangement) for which the entity is responsible.

(2) Assuring coverage to emergency services

(A) In general

Each contract with a medicaid managed care organization under section 1396b(m) of this title and each contract with a primary care case manager under section 1396d(t)(3) of this title shall require the organization or manager—

(i) to provide coverage for emergency services (as defined in subparagraph (B)) without regard to prior authorization or the emergency care provider's contractual relationship with the organization or manager, and

(ii) to comply with guidelines established under section 1395w–22(d)(2) of this title (respecting coordination of post-stabilization care) in the same manner as such guidelines apply to Medicare+Choice plans offered under part C of subchapter XVIII of this chapter.

The requirement under clause (ii) shall first apply 30 days after the date of promulgation of the guidelines referred to in such clause.

(B) "Emergency services" defined

In subparagraph (A)(i), the term ''emergency services'' means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that—

(i) are furnished by a provider that is qualified to furnish such services under this subchapter, and

(ii) are needed to evaluate or stabilize an emergency medical condition (as defined in subparagraph (C)).

(C) "Emergency medical condition" defined

In subparagraph (B)(ii), the term ''emergency medical condition'' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

(ii) serious impairment to bodily functions, or

(iii) serious dysfunction of any bodily organ or part.

(3) Protection of enrollee-provider communications

(A) In general

Subject to subparagraphs (B) and (C), under a contract under section 1396b(m) of this title a medicaid managed care organization (in relation to an individual enrolled under the contract) shall not prohibit or otherwise restrict a covered health care professional (as defined in subparagraph (D)) from advising such an individual who is a patient of the professional about the health status of the individual or medical care or treatment for the individual's condition or disease, regardless of whether benefits for such care or treatment are provided under the contract, if the professional is acting within the lawful scope of practice.

(B) Construction

Subparagraph (A) shall not be construed as requiring a medicaid managed care organization to provide, reimburse for, or provide coverage of, a counseling or referral service if the organization—

(i) objects to the provision of such service on moral or religious grounds; and

(ii) in the manner and through the written instrumentalities such organization deems appropriate, makes available information on its policies regarding such service to prospective enrollees before or during enrollment and to enrollees within 90 days after the date that the organization adopts a change in policy regarding such a counseling or referral service.

Nothing in this subparagraph shall be construed to affect disclosure requirements under State law or under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.].

(C) "Health care professional" defined

For purposes of this paragraph, the term ''health care professional'' means a physician (as defined in section 1395x(r) of this title) or other health care professional if coverage for the professional's services is provided under the contract referred to in subparagraph (A) for the services of the professional. Such term includes a podiatrist, optometrist, chiropractor, psychologist, dentist, physician assistant, physical or occupational therapist and therapy assistant, speech-language pathologist, audiologist, registered or licensed practical nurse (including nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, and certified nurse-midwife), licensed certified social worker, registered respiratory therapist, and certified respiratory therapy technician.

(4) Grievance procedures

Each medicaid managed care organization shall establish an internal grievance procedure under which an enrollee who is eligible for medical assistance under the State plan under this subchapter, or a provider on behalf of such an enrollee, may challenge the denial of coverage of or payment for such assistance.

(5) Demonstration of adequate capacity and services

Each medicaid managed care organization shall provide the State and the Secretary with adequate assurances (in a time and manner determined by the Secretary) that the organization, with respect to a service area, has the capacity to serve the expected enrollment in such service area, including assurances that the organization—

(A) offers an appropriate range of services and access to preventive and primary care services for the population expected to be enrolled in such service area, and

(B) maintains a sufficient number, mix, and geographic distribution of providers of services.

(6) Protecting enrollees against liability for payment

Each medicaid managed care organization shall provide that an individual eligible for medical assistance under the State plan under

this subchapter who is enrolled with the organization may not be held liable—

(A) for the debts of the organization, in the event of the organization's insolvency,

(B) for services provided to the individual—

(i) in the event of the organization failing to receive payment from the State for such services; or

(ii) in the event of a health care provider with a contractual, referral, or other arrangement with the organization failing to receive payment from the State or the organization for such services, or

(C) for payments to a provider that furnishes covered services under a contractual, referral, or other arrangement with the organization in excess of the amount that would be owed by the individual if the organization had directly provided the services.

(7) Antidiscrimination

A medicaid managed care organization shall not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of such license or certification. This paragraph shall not be construed to prohibit an organization from including providers only to the extent necessary to meet the needs of the organization's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the organization.

(8) Compliance with certain maternity and mental health requirements

Each medicaid managed care organization shall comply with the requirements of subpart 2 of part A of title XXVII of the Public Health Service Act [42 U.S.C. 300gg–4 et seq.] insofar as such requirements apply and are effective with respect to a health insurance issuer that offers group health insurance coverage.

(c) Quality assurance standards

(1) Quality assessment and improvement strategy

(A) In general

If a State provides for contracts with medicaid managed care organizations under section 1396b(m) of this title, the State shall develop and implement a quality assessment and improvement strategy consistent with this paragraph. Such strategy shall include the following:

(i) Access standards

Standards for access to care so that covered services are available within reasonable timeframes and in a manner that ensures continuity of care and adequate primary care and specialized services capacity.

(ii) Other measures

Examination of other aspects of care and service directly related to the improvement of quality of care (including grievance procedures and marketing and information standards).

(iii) Monitoring procedures

Procedures for monitoring and evaluating the quality and appropriateness of care and services to enrollees that reflect the full spectrum of populations enrolled under the contract and that includes requirements for provision of quality assurance data to the State using the data and information set that the Secretary has specified for use under part C of subchapter XVIII of this chapter or such alternative data as the Secretary approves, in consultation with the State.

(iv) Periodic review

Regular, periodic examinations of the scope and content of the strategy.

(B) Standards

The strategy developed under subparagraph (A) shall be consistent with standards that the Secretary first establishes within 1 year after August 5, 1997. Such standards shall not preempt any State standards that are more stringent than such standards. Guidelines relating to quality assurance that are applied under section 1396n(b)(1) of this title shall apply under this subsection until the effective date of standards for quality assurance established under this subparagraph.

(C) Monitoring

The Secretary shall monitor the development and implementation of strategies under subparagraph (A).

(D) Consultation

The Secretary shall conduct activities under subparagraphs (B) and (C) in consultation with the States.

(2) External independent review of managed care activities

(A) Review of contracts

(i) In general

Each contract under section 1396b(m) of this title with a medicaid managed care organization shall provide for an annual (as appropriate) external independent review conducted by a qualified independent entity of the quality outcomes and timeliness of, and access to, the items and services for which the organization is responsible under the contract. The requirement for such a review shall not apply until after the date that the Secretary establishes the identification method described in clause (ii).

(ii) Qualifications of reviewer

The Secretary, in consultation with the States, shall establish a method for the identification of entities that are qualified to conduct reviews under clause (i).

(iii) Use of protocols

The Secretary, in coordination with the National Governors' Association, shall contract with an independent quality review organization (such as the National Committee for Quality Assurance) to de-

velop the protocols to be used in external independent reviews conducted under this paragraph on and after January 1, 1999.

(iv) Availability of results

The results of each external independent review conducted under this subparagraph shall be available to participating health care providers, enrollees, and potential enrollees of the organization, except that the results may not be made available in a manner that discloses the identity of any individual patient.

(B) Nonduplication of accreditation

A State may provide that, in the case of a medicaid managed care organization that is accredited by a private independent entity (such as those described in section 1395w–22(e)(4) of this title) or that has an external review conducted under section 1395w–22(e)(3) of this title, the external review activities conducted under subparagraph (A) with respect to the organization shall not be duplicative of review activities conducted as part of the accreditation process or the external review conducted under such section.

(C) Deemed compliance for medicare managed care organizations

At the option of a State, the requirements of subparagraph (A) shall not apply with respect to a medicaid managed care organization if the organization is an eligible organization with a contract in effect under section 1395mm of this title or a Medicare+Choice organization with a contract in effect under part C of subchapter XVIII of this chapter and the organization has had a contract in effect under section 1396b(m) of this title at least during the previous 2-year period.

(d) Protections against fraud and abuse

(1) Prohibiting affiliations with individuals debarred by Federal agencies

(A) In general

A managed care entity may not knowingly—

(i) have a person described in subparagraph (C) as a director, officer, partner, or person with beneficial ownership of more than 5 percent of the entity's equity, or

(ii) have an employment, consulting, or other agreement with a person described in such subparagraph for the provision of items and services that are significant and material to the entity's obligations under its contract with the State.

(B) Effect of noncompliance

If a State finds that a managed care entity is not in compliance with clause (i) or (ii) of subparagraph (A), the State—

(i) shall notify the Secretary of such noncompliance;

(ii) may continue an existing agreement with the entity unless the Secretary (in consultation with the Inspector General of the Department of Health and Human Services) directs otherwise; and

(iii) may not renew or otherwise extend the duration of an existing agreement with the entity unless the Secretary (in consultation with the Inspector General of the Department of Health and Human Services) provides to the State and to Congress a written statement describing compelling reasons that exist for renewing or extending the agreement.

(C) Persons described

A person is described in this subparagraph if such person—

(i) is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued pursuant to Executive Order No. 12549 or under guidelines implementing such order; or

(ii) is an affiliate (as defined in such Regulation) of a person described in clause (i).

(2) Restrictions on marketing

(A) Distribution of materials

(i) In general

A managed care entity, with respect to activities under this subchapter, may not distribute directly or through any agent or independent contractor marketing materials within any State—

(I) without the prior approval of the State, and

(II) that contain false or materially misleading information.

The requirement of subclause (I) shall not apply with respect to a State until such date as the Secretary specifies in consultation with such State.

(ii) Consultation in review of market materials

In the process of reviewing and approving such materials, the State shall provide for consultation with a medical care advisory committee.

(B) Service market

A managed care entity shall distribute marketing materials to the entire service area of such entity covered under the contract under section 1396b(m) of this title or section 1396d(t)(3) of this title.

(C) Prohibition of tie-ins

A managed care entity, or any agency of such entity, may not seek to influence an individual's enrollment with the entity in conjunction with the sale of any other insurance.

(D) Prohibiting marketing fraud

Each managed care entity shall comply with such procedures and conditions as the Secretary prescribes in order to ensure that, before an individual is enrolled with the entity, the individual is provided accurate oral and written information sufficient to make an informed decision whether or not to enroll.

(E) Prohibition of "cold-call" marketing

Each managed care entity shall not, directly or indirectly, conduct door-to-door,

telephonic, or other ''cold-call'' marketing of enrollment under this subchapter.

(3) State conflict-of-interest safeguards in medicaid risk contracting

A medicaid managed care organization may not enter into a contract with any State under section 1396b(m) of this title unless the State has in effect conflict-of-interest safeguards with respect to officers and employees of the State with responsibilities relating to contracts with such organizations or to the default enrollment process described in subsection (a)(4)(C)(ii) of this section that are at least as effective as the Federal safeguards provided under section 423 of title 41, against conflicts of interest that apply with respect to Federal procurement officials with comparable responsibilities with respect to such contracts.

(4) Use of unique physician identifier for participating physicians

Each medicaid managed care organization shall require each physician providing services to enrollees eligible for medical assistance under the State plan under this subchapter to have a unique identifier in accordance with the system established under section 1320d–2(b) of this title.

(e) Sanctions for noncompliance

(1) Use of intermediate sanctions by the State to enforce requirements

(A) In general

A State may not enter into or renew a contract under section 1396b(m) of this title unless the State has established intermediate sanctions, which may include any of the types described in paragraph (2), other than the termination of a contract with a medicaid managed care organization, which the State may impose against a medicaid managed care organization with such a contract, if the organization—

(i) fails substantially to provide medically necessary items and services that are required (under law or under such organization's contract with the State) to be provided to an enrollee covered under the contract;

(ii) imposes premiums or charges on enrollees in excess of the premiums or charges permitted under this subchapter;

(iii) acts to discriminate among enrollees on the basis of their health status or requirements for health care services, including expulsion or refusal to reenroll an individual, except as permitted by this subchapter, or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment with the organization by eligible individuals whose medical condition or history indicates a need for substantial future medical services;

(iv) misrepresents or falsifies information that is furnished—

(I) to the Secretary or the State under this subchapter; or

(II) to an enrollee, potential enrollee, or a health care provider under such subchapter; or

(v) fails to comply with the applicable requirements of section 1396b(m)(2)(A)(x) of this title.

The State may also impose such intermediate sanction against a managed care entity if the State determines that the entity distributed directly or through any agent or independent contractor marketing materials in violation of subsection (d)(2)(A)(i)(II) of this section.

(B) Rule of construction

Clause (i) of subparagraph (A) shall not apply to the provision of abortion services, except that a State may impose a sanction on any medicaid managed care organization that has a contract to provide abortion services if the organization does not provide such services as provided for under the contract.

(2) Intermediate sanctions

The sanctions described in this paragraph are as follows:

(A) Civil money penalties as follows:

(i) Except as provided in clause (ii), (iii), or (iv), not more than $25,000 for each determination under paragraph (1)(A).

(ii) With respect to a determination under clause (iii) or (iv)(I) of paragraph (1)(A), not more than $100,000 for each such determination.

(iii) With respect to a determination under paragraph (1)(A)(ii), double the excess amount charged in violation of such subsection (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned).

(iv) Subject to clause (ii), with respect to a determination under paragraph (1)(A)(iii), $15,000 for each individual not enrolled as a result of a practice described in such subsection.

(B) The appointment of temporary management—

(i) to oversee the operation of the medicaid managed care organization upon a finding by the State that there is continued egregious behavior by the organization or there is a substantial risk to the health of enrollees; or

(ii) to assure the health of the organization's enrollees, if there is a need for temporary management while—

(I) there is an orderly termination or reorganization of the organization; or

(II) improvements are made to remedy the violations found under paragraph (1),

except that temporary management under this subparagraph may not be terminated until the State has determined that the medicaid managed care organization has the capability to ensure that the violations shall not recur.

(C) Permitting individuals enrolled with the managed care entity to terminate enrollment without cause, and notifying such individuals of such right to terminate enrollment.

(D) Suspension or default of all enrollment of individuals under this subchapter after

the date the Secretary or the State notifies the entity of a determination of a violation of any requirement of section 1396b(m) of this title or this section.

(E) Suspension of payment to the entity under this subchapter for individuals enrolled after the date the Secretary or State notifies the entity of such a determination and until the Secretary or State is satisfied that the basis for such determination has been corrected and is not likely to recur.

(3) Treatment of chronic substandard entities

In the case of a medicaid managed care organization which has repeatedly failed to meet the requirements of section 1396b(m) of this title and this section, the State shall (regardless of what other sanctions are provided) impose the sanctions described in subparagraphs (B) and (C) of paragraph (2).

(4) Authority to terminate contract

(A) In general

In the case of a managed care entity which has failed to meet the requirements of this part or a contract under section 1396b(m) or 1396d(t)(3) of this title, the State shall have the authority to terminate such contract with the entity and to enroll such entity's enrollees with other managed care entities (or to permit such enrollees to receive medical assistance under the State plan under this subchapter other than through a managed care entity).

(B) Availability of hearing prior to termination of contract

A State may not terminate a contract with a managed care entity under subparagraph (A) unless the entity is provided with a hearing prior to the termination.

(C) Notice and right to disenroll in cases of termination hearing

A State may—

(i) notify individuals enrolled with a managed care entity which is the subject of a hearing to terminate the entity's contract with the State of the hearing, and

(ii) in the case of such an entity, permit such enrollees to disenroll immediately with the entity without cause.

(5) Other protections for managed care entities against sanctions imposed by State

Before imposing any sanction against a managed care entity other than termination of the entity's contract, the State shall provide the entity with notice and such other due process protections as the State may provide, except that a State may not provide a managed care entity with a pre-termination hearing before imposing the sanction described in paragraph (2)(B).

(f) Timeliness of payment

A contract under section 1396b(m) of this title with a medicaid managed care organization shall provide that the organization shall make payment to health care providers for items and services which are subject to the contract and that are furnished to individuals eligible for medical assistance under the State plan under this subchapter who are enrolled with the organization on a timely basis consistent with the claims payment procedures described in section 1396a(a)(37)(A) of this title, unless the health care provider and the organization agree to an alternate payment schedule.

(g) Identification of patients for purposes of making DSH payments

Each contract with a managed care entity under section 1396b(m) of this title or under section 1396d(t)(3) of this title shall require the entity either—

(1) to report to the State information necessary to determine the hospital services provided under the contract (and the identity of hospitals providing such services) for purposes of applying sections 1395ww(d)(5)(F) and 1396r–4 of this title; or

(2) to include a sponsorship code in the identification card issued to individuals covered under this subchapter in order that a hospital may identify a patient as being entitled to benefits under this subchapter.

(Aug. 14, 1935, ch. 531, title XIX, § 1932, as added and amended Pub. L. 105–33, title IV, §§ 4701(a), 4704(a), 4705(a), 4707(a), 4708(c), Aug. 5, 1997, 111 Stat. 489, 495, 498, 501, 506; Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(w)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398; Pub. L. 106–554, § 1(a)(6) [title VII, § 701(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–570.)

REFERENCES IN TEXT

Part E of subchapter IV of this chapter, referred to in subsec. (a)(2)(A)(iv), is classified to section 670 et seq. of this title.

The Indian Self-Determination Act, referred to in subsec. (a)(2)(C)(ii), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (a)(2)(C)(iii), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

Section 9517(c)(3) of the Omnibus Budget Reconciliation Act of 1985, referred to in subsec. (a)(3)(C)(i)(II), is section 9517(c)(3) of Pub. L. 99–272, which is set out as a note under section 1396b of this title.

Part C of subchapter XVIII of this chapter, referred to in subsecs. (b)(2)(A)(ii) and (c)(1)(A)(iii), (2)(C), is classified to section 1395w–21 et seq. of this title.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(3)(B), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, as amended, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (b)(8), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart 2 of part A of title XXVII of the Act is classified generally to subpart 2 (§ 300gg–4 et seq.) of part A of subchapter XXV of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Executive Order No. 12549, referred to in subsec. (d)(1)(C)(i), is set out as a note under section 6101 of Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 1932 of act Aug. 14, 1935, was renumbered section 1936 and is classified to section 1396v of this title.

AMENDMENTS

2000—Subsec. (g). Pub. L. 106–554 added subsec. (g).

1999—Subsec. (c)(2)(C). Pub. L. 106–113, §1000(a)(6) [title VI, §608(w)(1)], inserted ''part'' before ''C of subchapter XVIII''.

Subsec. (d)(1)(C)(ii). Pub. L. 106–113, §1000(a)(6) [title VI, §608(w)(2)(A)], substituted ''Regulation'' for ''Act''.

Subsec. (d)(2)(B). Pub. L. 106–113, §1000(a)(6) [title VI, §608(w)(2)(B)], substituted ''1396d(t)(3) of this title'' for ''1396b(t)(3) of this title''.

1997—Subsec. (b). Pub. L. 105–33, §4704(a), added subsec. (b).

Subsec. (c). Pub. L. 105–33, §4705(a), added subsec. (c).

Subsecs. (d), (e). Pub. L. 105–33, §4707(a), added subsecs. (d) and (e).

Subsec. (f). Pub. L. 105–33, §4708(c), added subsec. (f).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title VII, §701(b)(3)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A–570, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts as of January 1, 2001.''

EFFECTIVE DATE

Section effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, except that, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, subsec. (c)(1) effective Jan. 1, 1999, and subsec. (e) applicable to contracts entered into or renewed on or after Apr. 1, 1998, see section 4710(a), (b)(3), (5) of Pub. L. 105–33, set out as an Effective Date of 1997 Amendment note under section 1396b of this title.

STUDIES AND REPORTS

Section 4705(c) of Pub. L. 105–33 provided that:

''(1) GAO STUDY AND REPORT ON QUALITY ASSURANCE AND ACCREDITATION STANDARDS.—

''(A) STUDY.—The Comptroller General of the United States shall conduct a study and analysis of the quality assurance programs and accreditation standards applicable to managed care entities operating in the private sector, or to such entities that operate under contracts under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.). Such study shall determine—

''(i) if such programs and standards include consideration of the accessibility and quality of the health care items and services delivered under such contracts to low-income individuals; and

''(ii) the appropriateness of applying such programs and standards to medicaid managed care organizations under section 1932(c) of such Act [subsec. (c) of this section].

''(B) REPORT.—The Comptroller General shall submit a report to the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate on the study conducted under subparagraph (A).

''(2) STUDY AND REPORT ON SERVICES PROVIDED TO INDIVIDUALS WITH SPECIAL HEALTH CARE NEEDS.—

''(A) STUDY.—The Secretary of Health and Human Services, in consultation with States, managed care organizations, the National Academy of State Health Policy, representatives of beneficiaries with special health care needs, experts in specialized health care, and others, shall conduct a study concerning safeguards (if any) that may be needed to ensure that the health care needs of individuals with special health care needs and chronic conditions who are enrolled with medicaid managed care organizations are adequately met.

''(B) REPORT.—Not later than 2 years after the date of the enactment of this Act [Aug. 5, 1997], the Secretary shall submit to Committees described in paragraph (1)(B) a report on such study.''

§ 1396u–3. State coverage of medicare cost-sharing for additional low-income medicare beneficiaries

(a) In general

A State plan under this subchapter shall provide, under section 1396a(a)(10)(E)(iv) of this title and subject to the succeeding provisions of this section and through a plan amendment, for medical assistance for payment of the cost of medicare cost-sharing described in such section on behalf of all individuals described in such section (in this section referred to as ''qualifying individuals'') who are selected to receive such assistance under subsection (b) of this section.

(b) Selection of qualifying individuals

A State shall select qualifying individuals, and provide such individuals with assistance, under this section consistent with the following:

(1) All qualifying individuals may apply

The State shall permit all qualifying individuals to apply for assistance during a calendar year.

(2) Selection on first-come, first-served basis

(A) In general

For each calendar year (beginning with 1998), from (and to the extent of) the amount of the allocation under subsection (c) of this section for the State for the fiscal year ending in such calendar year, the State shall select qualifying individuals who apply for the assistance in the order in which they apply.

(B) Carryover

For calendar years after 1998, the State shall give preference to individuals who were provided such assistance (or other assistance described in section 1396a(a)(10)(E) of this title) in the last month of the previous year and who continue to be (or become) qualifying individuals.

(3) Limit on number of individuals based on allocation

The State shall limit the number of qualifying individuals selected with respect to assistance in a calendar year so that the aggregate amount of such assistance provided to such individuals in such year is estimated to be equal to (but not exceed) the State's allocation under subsection (c) of this section for the fiscal year ending in such calendar year.

(4) Receipt of assistance during duration of year

If a qualifying individual is selected to receive assistance under this section for a

month in a year, the individual is entitled to receive such assistance for the remainder of the year if the individual continues to be a qualifying individual. The fact that an individual is selected to receive assistance under this section at any time during a year does not entitle the individual to continued assistance for any succeeding year.

(c) Allocation

(1) Total allocation

The total amount available for allocation under this section for—

(A) fiscal year 1998 is $200,000,000;

(B) fiscal year 1999 is $250,000,000;

(C) fiscal year 2000 is $300,000,000;

(D) fiscal year 2001 is $350,000,000; and

(E) each of fiscal years 2002 and 2003 is $400,000,000.

(2) Allocation to States

The Secretary shall provide for the allocation of the total amount described in paragraph (1) for a fiscal year, among the States that executed a plan amendment in accordance with subsection (a) of this section, based upon the Secretary's estimate of the ratio of—

(A) an amount equal to the total number of individuals described in section 1396a(a)(10)(E)(iv) of this title in the State; to

(B) the sum of the amounts computed under subparagraph (A) for all eligible States.

(d) Applicable FMAP

With respect to assistance described in section 1396a(a)(10)(E)(iv) of this title furnished in a State for calendar quarters in a calendar year—

(1) to the extent that such assistance does not exceed the State's allocation under subsection (c) of this section for the fiscal year ending in the calendar year, the Federal medical assistance percentage shall be equal to 100 percent; and

(2) to the extent that such assistance exceeds such allocation, the Federal medical assistance percentage is 0 percent.

(e) Limitation on entitlement

Except as specifically provided under this section, nothing in this subchapter shall be construed as establishing any entitlement of individuals described in section 1396a(a)(10)(E)(iv) of this title to assistance described in such section.

(f) Coverage of costs through part B of medicare program

For each fiscal year, the Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title to the appropriate account in the Treasury that provides for payments under section 1396b(a) of this title with respect to medical assistance provided under this section, of an amount equivalent to the total of the amount of payments made under such section that is attributable to this section and such transfer shall be treated as an expenditure from such Trust Fund for purposes of section 1395r of this title.

(g) Special rules

(1) In general

With respect to each period described in paragraph (2), a State shall select qualifying individuals, subject to paragraph (3), and provide such individuals with assistance, in accordance with the provisions of this section as in effect with respect to calendar year 2003, except that for such purpose—

(A) references in the preceding subsections of this section to a year, whether fiscal or calendar, shall be deemed to be references to such period; and

(B) the total allocation amount under subsection (c) of this section for such period shall be the amount described in paragraph (2) for that period.

(2) Periods and total allocation amounts described

For purposes of this subsection—

(A) for the period that begins on January 1, 2004, and ends on September 30, 2004, the total allocation amount is $300,000,000;

(B) for the period that begins on October 1, 2004, and ends on December 31, 2004, the total allocation amount is $100,000,000;

(C) for the period that begins on January 1, 2005, and ends on September 30, 2005, the total allocation amount is $300,000,000;

(D) for the period that begins on October 1, 2005, and ends on December 31, 2005, the total allocation amount is $100,000,000;

(E) for the period that begins on January 1, 2006, and ends on September 30, 2006, the total allocation amount is $300,000,000;

(F) for the period that begins on October 1, 2006, and ends on December 31, 2006, the total allocation amount is $100,000,000; and

(G) for the period that begins on January 1, 2007, and ends on September 30, 2007, the total allocation amount is $300,000,000.

(3) Rules for periods that begin after January 1

For any specific period described in subparagraph (B), (D), or (F) of paragraph (2), the following applies:

(A) The specific period shall be treated as a continuation of the immediately preceding period in that calendar year for purposes of applying subsection (b)(2) of this section and qualifying individuals who received assistance in the last month of such immediately preceding period shall be deemed to be selected for the specific period (without the need to complete an application for assistance for such period).

(B) The limit to be applied under subsection (b)(3) of this section for the specific period shall be the same as the limit applied under such subsection for the immediately preceding period.

(C) The ratio to be applied under subsection (c)(2) of this section for the specific period shall be the same as the ratio applied under such subsection for the immediately preceding period.

(Aug. 14, 1935, ch. 531, title XIX, § 1933, as added Pub. L. 105–33, title IV, § 4732(c), Aug. 5, 1997, 111 Stat. 520; amended Pub. L. 106–113, div. B,

§ 1000(a)(6) [title VI, § 608(x)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398; Pub. L. 108–89, title IV, § 401(b), (c), Oct. 1, 2003, 117 Stat. 1134; Pub. L. 108–173, title I, § 103(f)(2), Dec. 8, 2003, 117 Stat. 2160; Pub. L. 108–448, § 1(b), Dec. 8, 2004, 118 Stat. 3467; Pub. L. 109–91, title I, § 101(b), Oct. 20, 2005, 119 Stat. 2091.)

PRIOR PROVISIONS

A prior section 1933 of act Aug. 14, 1935, was renumbered section 1936 and is classified to section 1396v of this title.

AMENDMENTS

2005—Subsec. (g)(2)(D) to (G). Pub. L. 109–91, § 101(b)(1), added subpars. (D) to (G).

Subsec. (g)(3). Pub. L. 109–91, § 101(b)(2), inserted '', (D), or (F)'' after ''subparagraph (B)'' in introductory provisions.

2004—Subsec. (g). Pub. L. 108–448 amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows: ''With respect to the period that begins on January 1, 2004, and ends on September 30, 2004, a State shall select qualifying individuals, and provide such individuals with assistance, in accordance with the provisions of this section as in effect with respect to calendar year 2003, except that for such purpose—

''(1) references in the preceding subsections of this section to 'fiscal year' and 'calendar year' shall be deemed to be references to such period; and

''(2) the total allocation amount under subsection (c) of this section for such period shall be $300,000,000.''

2003—Subsec. (c)(1)(E). Pub. L. 108–89, § 401(b)(1), substituted ''each of fiscal years 2002 and 2003'' for ''fiscal year 2002''.

Subsec. (c)(2)(A). Pub. L. 108–89, § 401(b)(2), substituted ''the total number of individuals described in section 1396a(a)(10)(E)(iv) of this title in the State; to'' for ''the sum of—

''(i) twice the total number of individuals described in section 1396a(a)(10)(E)(iv)(I) of this title in the State, and

''(ii) the total number of individuals described in section 1396a(a)(10)(E)(iv)(II) of this title in the State; to''.

Subsec. (g). Pub. L. 108–173, § 103(f)(2)(A), substituted ''September 30, 2004'' for ''March 31, 2004'' in introductory provisions.

Pub. L. 108–89, § 401(c), added subsec. (g).

Subsec. (g)(2). Pub. L. 108–173, § 103(f)(2)(B), substituted ''$300,000,000'' for ''$100,000,000''.

1999—Subsec. (b)(4). Pub. L. 106–113 inserted ''a'' after ''for a month in''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–91 effective Sept. 30, 2005, see section 101(c) of Pub. L. 109–91, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to calendar quarters beginning on or after Apr. 1, 2004, see section 103(f)(3) of Pub. L. 108–173, set out as a note under section 1396a of this title.

§ 1396u–4. Program of all-inclusive care for elderly (PACE)

(a) State option

(1) In general

A State may elect to provide medical assistance under this section with respect to PACE program services to PACE program eligible individuals who are eligible for medical assistance under the State plan and who are enrolled in a PACE program under a PACE program agreement. Such individuals need not be eligible for benefits under part A, or enrolled under part B, of subchapter XVIII of this chapter to be eligible to enroll under this section. In the case of an individual enrolled with a PACE program pursuant to such an election—

(A) the individual shall receive benefits under the plan solely through such program, and

(B) the PACE provider shall receive payment in accordance with the PACE program agreement for provision of such benefits.

A State may establish a numerical limit on the number of individuals who may be enrolled in a PACE program under a PACE program agreement.

(2) "PACE program" defined

For purposes of this section, the term ''PACE program'' means a program of all-inclusive care for the elderly that meets the following requirements:

(A) Operation

The entity operating the program is a PACE provider (as defined in paragraph (3)).

(B) Comprehensive benefits

The program provides comprehensive health care services to PACE program eligible individuals in accordance with the PACE program agreement and regulations under this section.

(C) Transition

In the case of an individual who is enrolled under the program under this section and whose enrollment ceases for any reason (including that the individual no longer qualifies as a PACE program eligible individual, the termination of a PACE program agreement, or otherwise), the program provides assistance to the individual in obtaining necessary transitional care through appropriate referrals and making the individual's medical records available to new providers.

(3) "PACE provider" defined

(A) In general

For purposes of this section, the term ''PACE provider'' means an entity that—

(i) subject to subparagraph (B), is (or is a distinct part of) a public entity or a private, nonprofit entity organized for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986, and

(ii) has entered into a PACE program agreement with respect to its operation of a PACE program.

(B) Treatment of private, for-profit providers

Clause (i) of subparagraph (A) shall not apply—

(i) to entities subject to a demonstration project waiver under subsection (h) of this section; and

(ii) after the date the report under section 4804(b) of the Balanced Budget Act of 1997 is submitted, unless the Secretary determines that any of the findings described in subparagraph (A), (B), (C), or (D) of paragraph (2) of such section are true.

(4) "PACE program agreement" defined

For purposes of this section, the term ''PACE program agreement'' means, with respect to a PACE provider, an agreement, consistent with this section, section 1395eee of this title (if applicable), and regulations promulgated to carry out such sections, among the PACE provider, the Secretary, and a State administering agency for the operation of a PACE program by the provider under such sections.

(5) "PACE program eligible individual" defined

For purposes of this section, the term ''PACE program eligible individual'' means, with respect to a PACE program, an individual who—

(A) is 55 years of age or older;

(B) subject to subsection (c)(4) of this section, is determined under subsection (c) of this section to require the level of care required under the State medicaid plan for coverage of nursing facility services;

(C) resides in the service area of the PACE program; and

(D) meets such other eligibility conditions as may be imposed under the PACE program agreement for the program under subsection (e)(2)(A)(ii) of this section.

(6) "PACE protocol" defined

For purposes of this section, the term ''PACE protocol'' means the Protocol for the Program of All-inclusive Care for the Elderly (PACE), as published by On Lok, Inc., as of April 14, 1995, or any successor protocol that may be agreed upon between the Secretary and On Lok, Inc.

(7) "PACE demonstration waiver program" defined

For purposes of this section, the term ''PACE demonstration waiver program'' means a demonstration program under either of the following sections (as in effect before the date of their repeal):

(A) Section 603(c) of the Social Security Amendments of 1983 (Public Law 98–21), as extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).

(B) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509).

(8) "State administering agency" defined

For purposes of this section, the term ''State administering agency'' means, with respect to the operation of a PACE program in a State, the agency of that State (which may be the single agency responsible for administration of the State plan under this subchapter in the State) responsible for administering PACE program agreements under this section and section 1395eee of this title in the State.

(9) "Trial period" defined

(A) In general

For purposes of this section, the term ''trial period'' means, with respect to a PACE program operated by a PACE provider under a PACE program agreement, the first 3 contract years under such agreement with respect to such program.

(B) Treatment of entities previously operating PACE demonstration waiver programs

Each contract year (including a year occurring before the effective date of this section) during which an entity has operated a PACE demonstration waiver program shall be counted under subparagraph (A) as a contract year during which the entity operated a PACE program as a PACE provider under a PACE program agreement.

(10) "Regulations" defined

For purposes of this section, the term ''regulations'' refers to interim final or final regulations promulgated under subsection (f) of this section to carry out this section and section 1395eee of this title.

(b) Scope of benefits; beneficiary safeguards

(1) In general

Under a PACE program agreement, a PACE provider shall—

(A) provide to PACE program eligible individuals, regardless of source of payment and directly or under contracts with other entities, at a minimum—

(i) all items and services covered under subchapter XVIII of this chapter (for individuals enrolled under section 1395eee of this title) and all items and services covered under this subchapter, but without any limitation or condition as to amount, duration, or scope and without application of deductibles, copayments, coinsurance, or other cost-sharing that would otherwise apply under such subchapter or this subchapter, respectively; and

(ii) all additional items and services specified in regulations, based upon those required under the PACE protocol;

(B) provide such enrollees access to necessary covered items and services 24 hours per day, every day of the year;

(C) provide services to such enrollees through a comprehensive, multidisciplinary health and social services delivery system which integrates acute and long-term care services pursuant to regulations; and

(D) specify the covered items and services that will not be provided directly by the entity, and to arrange for delivery of those items and services through contracts meeting the requirements of regulations.

(2) Quality assurance; patient safeguards

The PACE program agreement shall require the PACE provider to have in effect at a minimum—

(A) a written plan of quality assurance and improvement, and procedures implementing such plan, in accordance with regulations, and

(B) written safeguards of the rights of enrolled participants (including a patient bill of rights and procedures for grievances and appeals) in accordance with regulations and with other requirements of this subchapter and Federal and State law designed for the protection of patients.

(3) Treatment of medicare services furnished by noncontract physicians and other entities

(A) Application of medicare advantage requirement with respect to medicare services furnished by noncontract physicians and other entities

Section 1395w–22(k)(1) of this title (relating to limitations on balance billing against MA organizations for noncontract physicians and other entities with respect to services covered under subchapter XVIII of this chapter) shall apply to PACE providers, PACE program eligible individuals enrolled with such PACE providers, and physicians and other entities that do not have a contract or other agreement establishing payment amounts for services furnished to such an individual in the same manner as such section applies to MA organizations, individuals enrolled with such organizations, and physicians and other entities referred to in such section.

(B) Reference to related provision for noncontract providers of services

For the provision relating to limitations on balance billing against PACE providers for services covered under subchapter XVIII of this chapter furnished by noncontract providers of services, see section 1395cc(a)(1)(O) of this title.

(4) Reference to related provision for services covered under this subchapter but not under subchapter XVIII

For provisions relating to limitations on payments to providers participating under the State plan under this subchapter that do not have a contract or other agreement with a PACE provider establishing payment amounts for services covered under such plan (but not under subchapter XVIII of this chapter) when such services are furnished to enrollees of that PACE provider, see section 1396a(a)(67) of this title.

(c) Eligibility determinations

(1) In general

The determination of—

(A) whether an individual is a PACE program eligible individual shall be made under and in accordance with the PACE program agreement, and

(B) who is entitled to medical assistance under this subchapter shall be made (or who is not so entitled, may be made) by the State administering agency.

(2) Condition

An individual is not a PACE program eligible individual (with respect to payment under this section) unless the individual's health status has been determined by the Secretary or the State administering agency, in accordance with regulations, to be comparable to the health status of individuals who have participated in the PACE demonstration waiver programs. Such determination shall be based upon information on health status and related indicators (such as medical diagnoses and measures of activities of daily living, instrumental activities of daily living, and cognitive impairment) that are part of a uniform minimum data set collected by PACE providers on potential eligible individuals.

(3) Annual eligibility recertifications

(A) In general

Subject to subparagraph (B), the determination described in subsection (a)(5)(B) of this section for an individual shall be reevaluated at least annually.

(B) Exception

The requirement of annual reevaluation under subparagraph (A) may be waived during a period in accordance with regulations in those cases in which the State administering agency determines that there is no reasonable expectation of improvement or significant change in an individual's condition during the period because of the severity of chronic condition, or degree of impairment of functional capacity of the individual involved.

(4) Continuation of eligibility

An individual who is a PACE program eligible individual may be deemed to continue to be such an individual notwithstanding a determination that the individual no longer meets the requirement of subsection (a)(5)(B) of this section if, in accordance with regulations, in the absence of continued coverage under a PACE program the individual reasonably would be expected to meet such requirement within the succeeding 6-month period.

(5) Enrollment; disenrollment

(A) Voluntary disenrollment at any time

The enrollment and disenrollment of PACE program eligible individuals in a PACE program shall be pursuant to regulations and the PACE program agreement and shall permit enrollees to voluntarily disenroll without cause at any time.

(B) Limitations on disenrollment

(i) In general

Regulations promulgated by the Secretary under this section and section 1395eee of this title, and the PACE program agreement, shall provide that the PACE program may not disenroll a PACE program eligible individual except—

(I) for nonpayment of premiums (if applicable) on a timely basis; or

(II) for engaging in disruptive or threatening behavior, as defined in such regulations (developed in close consultation with State administering agencies).

(ii) No disenrollment for noncompliant behavior

Except as allowed under regulations promulgated to carry out clause (i)(II), a PACE program may not disenroll a PACE program eligible individual on the ground that the individual has engaged in noncompliant behavior if such behavior is related to a mental or physical condition of the individual. For purposes of the pre-

ceding sentence, the term ''noncompliant behavior'' includes repeated noncompliance with medical advice and repeated failure to appear for appointments.

(iii) Timely review of proposed nonvoluntary disenrollment

A proposed disenrollment, other than a voluntary disenrollment, shall be subject to timely review and final determination by the Secretary or by the State administering agency (as applicable), prior to the proposed disenrollment becoming effective.

(d) Payments to PACE providers on a capitated basis

(1) In general

In the case of a PACE provider with a PACE program agreement under this section, except as provided in this subsection or by regulations, the State shall make prospective monthly payments of a capitation amount for each PACE program eligible individual enrolled under the agreement under this section.

(2) Capitation amount

The capitation amount to be applied under this subsection for a provider for a contract year shall be an amount specified in the PACE program agreement for the year. Such amount shall be an amount, specified under the PACE agreement, which is less than the amount that would otherwise have been made under the State plan if the individuals were not so enrolled and shall be adjusted to take into account the comparative frailty of PACE enrollees and such other factors as the Secretary determines to be appropriate. The payment under this section shall be in addition to any payment made under section 1395eee of this title for individuals who are enrolled in a PACE program under such section.

(e) PACE program agreement

(1) Requirement

(A) In general

The Secretary, in close cooperation with the State administering agency, shall establish procedures for entering into, extending, and terminating PACE program agreements for the operation of PACE programs by entities that meet the requirements for a PACE provider under this section, section 1395eee of this title, and regulations.

(B) Numerical limitation

(i) In general

The Secretary shall not permit the number of PACE providers with which agreements are in effect under this section or under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 to exceed—

(I) 40 as of August 5, 1997, or

(II) as of each succeeding anniversary of August 5, 1997, the numerical limitation under this subparagraph for the preceding year plus 20.

Subclause (II) shall apply without regard to the actual number of agreements in effect as of a previous anniversary date.

(ii) Treatment of certain private, for-profit providers

The numerical limitation in clause (i) shall not apply to a PACE provider that—

(I) is operating under a demonstration project waiver under subsection (h) of this section, or

(II) was operating under such a waiver and subsequently qualifies for PACE provider status pursuant to subsection (a)(3)(B)(ii) of this section.

(2) Service area and eligibility

(A) In general

A PACE program agreement for a PACE program—

(i) shall designate the service area of the program;

(ii) may provide additional requirements for individuals to qualify as PACE program eligible individuals with respect to the program;

(iii) shall be effective for a contract year, but may be extended for additional contract years in the absence of a notice by a party to terminate, and is subject to termination by the Secretary and the State administering agency at any time for cause (as provided under the agreement);

(iv) shall require a PACE provider to meet all applicable State and local laws and requirements; and

(v) shall contain such additional terms and conditions as the parties may agree to, so long as such terms and conditions are consistent with this section and regulations.

(B) Service area overlap

In designating a service area under a PACE program agreement under subparagraph (A)(i), the Secretary (in consultation with the State administering agency) may exclude from designation an area that is already covered under another PACE program agreement, in order to avoid unnecessary duplication of services and avoid impairing the financial and service viability of an existing program.

(3) Data collection; development of outcome measures

(A) Data collection

(i) In general

Under a PACE program agreement, the PACE provider shall—

(I) collect data;

(II) maintain, and afford the Secretary and the State administering agency access to, the records relating to the program, including pertinent financial, medical, and personnel records; and

(III) submit to the Secretary and the State administering agency such reports as the Secretary finds (in consultation with State administering agencies) necessary to monitor the operation, cost, and effectiveness of the PACE program.

(ii) Requirements during trial period

During the first 3 years of operation of a PACE program (either under this section

or under a PACE demonstration waiver program), the PACE provider shall provide such additional data as the Secretary specifies in regulations in order to perform the oversight required under paragraph (4)(A).

(B) Development of outcome measures

Under a PACE program agreement, the PACE provider, the Secretary, and the State administering agency shall jointly cooperate in the development and implementation of health status and quality of life outcome measures with respect to PACE program eligible individuals.

(4) Oversight

(A) Annual, close oversight during trial period

During the trial period (as defined in subsection (a)(9) of this section) with respect to a PACE program operated by a PACE provider, the Secretary (in cooperation with the State administering agency) shall conduct a comprehensive annual review of the operation of the PACE program by the provider in order to assure compliance with the requirements of this section and regulations. Such a review shall include—

(i) an onsite visit to the program site;

(ii) comprehensive assessment of a provider's fiscal soundness;

(iii) comprehensive assessment of the provider's capacity to provide all PACE services to all enrolled participants;

(iv) detailed analysis of the entity's substantial compliance with all significant requirements of this section and regulations; and

(v) any other elements the Secretary or the State administering agency considers necessary or appropriate.

(B) Continuing oversight

After the trial period, the Secretary (in cooperation with the State administering agency) shall continue to conduct such review of the operation of PACE providers and PACE programs as may be appropriate, taking into account the performance level of a provider and compliance of a provider with all significant requirements of this section and regulations.

(C) Disclosure

The results of reviews under this paragraph shall be reported promptly to the PACE provider, along with any recommendations for changes to the provider's program, and shall be made available to the public upon request.

(5) Termination of PACE provider agreements

(A) In general

Under regulations—

(i) the Secretary or a State administering agency may terminate a PACE program agreement for cause, and

(ii) a PACE provider may terminate such an agreement after appropriate notice to the Secretary, the State administering agency, and enrollees.

(B) Causes for termination

In accordance with regulations establishing procedures for termination of PACE program agreements, the Secretary or a State administering agency may terminate a PACE program agreement with a PACE provider for, among other reasons, the fact that—

(i) the Secretary or State administering agency determines that—

(I) there are significant deficiencies in the quality of care provided to enrolled participants; or

(II) the provider has failed to comply substantially with conditions for a program or provider under this section or section 1395eee of this title; and

(ii) the entity has failed to develop and successfully initiate, within 30 days of the date of the receipt of written notice of such a determination, a plan to correct the deficiencies, or has failed to continue implementation of such a plan.

(C) Termination and transition procedures

An entity whose PACE provider agreement is terminated under this paragraph shall implement the transition procedures required under subsection (a)(2)(C) of this section.

(6) Secretary's oversight; enforcement authority

(A) In general

Under regulations, if the Secretary determines (after consultation with the State administering agency) that a PACE provider is failing substantially to comply with the requirements of this section and regulations, the Secretary (and the State administering agency) may take any or all of the following actions:

(i) Condition the continuation of the PACE program agreement upon timely execution of a corrective action plan.

(ii) Withhold some or all further payments under the PACE program agreement under this section or section 1395eee of this title with respect to PACE program services furnished by such provider until the deficiencies have been corrected.

(iii) Terminate such agreement.

(B) Application of intermediate sanctions

Under regulations, the Secretary may provide for the application against a PACE provider of remedies described in section 1395w–27(g)(2) (or, for periods before January 1, 1999, section 1395mm(i)(6)(B) of this title) or 1396b(m)(5)(B) of this title in the case of violations by the provider of the type described in section 1395w–27(g)(1) (or 1395mm(i)(6)(A) of this title for such periods) or 1396b(m)(5)(A) of this title, respectively (in relation to agreements, enrollees, and requirements under section 1395eee of this title or this section, respectively).

(7) Procedures for termination or imposition of sanctions

Under regulations, the provisions of section 1395w–27(h) of this title (or for periods before

January 1, 1999, section 1395mm(i)(9) of this title) shall apply to termination and sanctions respecting a PACE program agreement and PACE provider under this subsection in the same manner as they apply to a termination and sanctions with respect to a contract and a Medicare+Choice organization under part C of subchapter XVIII of this chapter (or for such periods an eligible organization under section 1395mm of this title).

(8) Timely consideration of applications for PACE program provider status

In considering an application for PACE provider program status, the application shall be deemed approved unless the Secretary, within 90 days after the date of the submission of the application to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information that is needed in order to make a final determination with respect to the application. After the date the Secretary receives such additional information, the application shall be deemed approved unless the Secretary, within 90 days of such date, denies such request.

(f) Regulations

(1) In general

The Secretary shall issue interim final or final regulations to carry out this section and section 1395eee of this title.

(2) Use of PACE protocol

(A) In general

In issuing such regulations, the Secretary shall, to the extent consistent with the provisions of this section, incorporate the requirements applied to PACE demonstration waiver programs under the PACE protocol.

(B) Flexibility

In order to provide for reasonable flexibility in adapting the PACE service delivery model to the needs of particular organizations (such as those in rural areas or those that may determine it appropriate to use nonstaff physicians according to State licensing law requirements) under this section and section 1395eee of this title, the Secretary (in close consultation with State administering agencies) may modify or waive provisions of the PACE protocol so long as any such modification or waiver is not inconsistent with and would not impair the essential elements, objectives, and requirements of this section, but may not modify or waive any of the following provisions:

(i) The focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.

(ii) The delivery of comprehensive, integrated acute and long-term care services.

(iii) The interdisciplinary team approach to care management and service delivery.

(iv) Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals.

(v) The assumption by the provider of full financial risk.

(C) Continuation of modifications or waivers of operational requirements under demonstration status

If a PACE program operating under demonstration authority has contractual or other operating arrangements which are not otherwise recognized in regulation and which were in effect on July 1[1] 2000, the Secretary (in close consultation with, and with the concurrence of, the State administering agency) shall permit any such program to continue such arrangements so long as such arrangements are found by the Secretary and the State to be reasonably consistent with the objectives of the PACE program.

(3) Application of certain additional beneficiary and program protections

(A) In general

In issuing such regulations and subject to subparagraph (B), the Secretary may apply with respect to PACE programs, providers, and agreements such requirements of part C of subchapter XVIII of this chapter (or, for periods before January 1, 1999, section 1395mm of this title) and sections 1396b(m) and 1396u–2 of this title relating to protection of beneficiaries and program integrity as would apply to Medicare+Choice organizations under such part C (or for such periods eligible organizations under risk-sharing contracts under section 1395mm of this title) and to medicaid managed care organizations under prepaid capitation agreements under section 1396b(m) of this title.

(B) Considerations

In issuing such regulations, the Secretary shall—

(i) take into account the differences between populations served and benefits provided under this section and under part C of subchapter XVIII of this chapter (or, for periods before January 1, 1999, section 1395mm of this title) and section 1396b(m) of this title;

(ii) not include any requirement that conflicts with carrying out PACE programs under this section; and

(iii) not include any requirement restricting the proportion of enrollees who are eligible for benefits under this subchapter or subchapter XVIII of this chapter.

(4) Construction

Nothing in this subsection shall be construed as preventing the Secretary from including in regulations provisions to ensure the health and safety of individuals enrolled in a PACE program under this section that are in addition to those otherwise provided under paragraphs (2) and (3).

(g) Waivers of requirements

With respect to carrying out a PACE program under this section, the following requirements of this subchapter (and regulations relating to such requirements) shall not apply:

(1) Section 1396a(a)(1) of this title, relating to any requirement that PACE programs or

[1] So in original. Probably should be followed by a comma.

PACE program services be provided in all areas of a State.

(2) Section 1396a(a)(10) of this title, insofar as such section relates to comparability of services among different population groups.

(3) Sections 1396a(a)(23) and 1396n(b)(4) of this title, relating to freedom of choice of providers under a PACE program.

(4) Section 1396b(m)(2)(A) of this title, insofar as it restricts a PACE provider from receiving prepaid capitation payments.

(5) Such other provisions of this subchapter that, as added or amended by the Balanced Budget Act of 1997, the Secretary determines are inapplicable to carrying out a PACE program under this section.

(h) Demonstration project for for-profit entities

(1) In general

In order to demonstrate the operation of a PACE program by a private, for-profit entity, the Secretary (in close consultation with State administering agencies) shall grant waivers from the requirement under subsection (a)(3) of this section that a PACE provider may not be a for-profit, private entity.

(2) Similar terms and conditions

(A) In general

Except as provided under subparagraph (B), and paragraph (1), the terms and conditions for operation of a PACE program by a provider under this subsection shall be the same as those for PACE providers that are nonprofit, private organizations.

(B) Numerical limitation

The number of programs for which waivers are granted under this subsection shall not exceed 10. Programs with waivers granted under this subsection shall not be counted against the numerical limitation specified in subsection (e)(1)(B) of this section.

(i) Post-eligibility treatment of income

A State may provide for post-eligibility treatment of income for individuals enrolled in PACE programs under this section in the same manner as a State treats post-eligibility income for individuals receiving services under a waiver under section 1396n(c) of this title.

(j) Miscellaneous provisions

Nothing in this section or section 1395eee of this title shall be construed as preventing a PACE provider from entering into contracts with other governmental or nongovernmental payers for the care of PACE program eligible individuals who are not eligible for benefits under part A, or enrolled under part B, of subchapter XVIII of this chapter or eligible for medical assistance under this subchapter.

(Aug. 14, 1935, ch. 531, title XIX, §1934, as added Pub. L. 105–33, title IV, §4802(a)(3), Aug. 5, 1997, 111 Stat. 539; amended Pub. L. 106–554, §1(a)(6) [title IX, §902(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–583; Pub. L. 108–173, title II, §236(b)(2), Dec. 8, 2003, 117 Stat. 2211.)

REFERENCES IN TEXT

Parts A, B, and C of subchapter XVIII of this chapter, referred to in subsecs. (a)(1), (e)(7), (f)(3), and (j), are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsec. (a)(3)(A)(i), is classified generally to Title 26, Internal Revenue Code.

The Balanced Budget Act of 1997, referred to in subsecs. (a)(3)(B)(ii) and (g)(5), is Pub. L. 105–33, Aug. 5, 1997, 111 Stat. 251. Section 4804(b) of the Act is set out as a note under section 1395eee of this title. For complete classification of this Act to the Code, see Tables.

Section 603(c) of the Social Security Amendments of 1983, referred to in subsec. (a)(7)(A), is section 603(c) of Pub. L. 98–21, title VI, Apr. 20, 1983, 97 Stat. 168, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, §4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

Section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985, referred to in subsec. (a)(7)(A), is section 9220 of Pub. L. 99–272, title IX, Apr. 7, 1986, 100 Stat. 183, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, §4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, referred to in subsecs. (a)(7)(B) and (e)(1)(B)(i), is section 9412(b) of Pub. L. 99–509, title IX, Oct. 21, 1986, 100 Stat. 2062, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, §4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

For the effective date of this section, referred to in subsec. (a)(9)(B), see section 4803 of Pub. L. 105–33, set out as a Transition; Regulations note under section 1395eee of this title.

PRIOR PROVISIONS

A prior section 1934 of act Aug. 14, 1935, was renumbered section 1936 and is classified to section 1396v of this title.

AMENDMENTS

2003—Subsec. (b)(3), (4). Pub. L. 108–173 added pars. (3) and (4).

2000—Subsec. (f)(2)(C). Pub. L. 106–554 added subpar. (C).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2004, see section 236(c) of Pub. L. 108–173, set out as a note under section 1395cc of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the enactment of Pub. L. 105–33, see section 1(a)(6) [title IX, §902(c)] of Pub. L. 106–554, set out as a note under section 1395eee of this title.

§ 1396u–5. Special provisions relating to medicare prescription drug benefit

(a) Requirements relating to medicare prescription drug low-income subsidies and medicare transitional prescription drug assistance

As a condition of its State plan under this subchapter under section 1396a(a)(66) of this title and receipt of any Federal financial assistance under section 1396b(a) of this title subject to subsection (e) of this section, a State shall do the following:

(1) Information for transitional prescription drug assistance verification

The State shall provide the Secretary with information to carry out section 1395w–141(f)(3)(B)(i) of this title.

(2) Eligibility determinations for low-income subsidies

The State shall—

(A) make determinations of eligibility for premium and cost-sharing subsidies under and in accordance with section 1395w–114 of this title;

(B) inform the Secretary of such determinations in cases in which such eligibility is established; and

(C) otherwise provide the Secretary with such information as may be required to carry out part D, other than subpart 4, of subchapter XVIII of this chapter (including section 1395w–114 of this title).

(3) Screening for eligibility, and enrollment of, beneficiaries for medicare cost-sharing

As part of making an eligibility determination required under paragraph (2) for an individual, the State shall make a determination of the individual's eligibility for medical assistance for any medicare cost-sharing described in section 1396d(p)(3) of this title and, if the individual is eligible for any such medicare cost-sharing, offer enrollment to the individual under the State plan (or under a waiver of such plan).

(b) Regular Federal subsidy of administrative costs

The amounts expended by a State in carrying out subsection (a) of this section are expenditures reimbursable under the appropriate paragraph of section 1396b(a) of this title.

(c) Federal assumption of medicaid prescription drug costs for dually eligible individuals

(1) Phased-down State contribution

(A) In general

Each of the 50 States and the District of Columbia for each month beginning with January 2006 shall provide for payment under this subsection to the Secretary of the product of—

(i) the amount computed under paragraph (2)(A) for the State and month;

(ii) the total number of full-benefit dual eligible individuals (as defined in paragraph (6)) for such State and month; and

(iii) the factor for the month specified in paragraph (5).

(B) Form and manner of payment

Payment under subparagraph (A) shall be made in a manner specified by the Secretary that is similar to the manner in which State payments are made under an agreement entered into under section 1395v of this title, except that all such payments shall be deposited into the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.

(C) Compliance

If a State fails to pay to the Secretary an amount required under subparagraph (A), interest shall accrue on such amount at the rate provided under section 1396b(d)(5) of this title. The amount so owed and applicable interest shall be immediately offset against amounts otherwise payable to the State under section 1396b(a) of this title subject to subsection (e) of this section, in accordance with the Federal Claims Collection Act of 1996[1] and applicable regulations.

(D) Data match

The Secretary shall perform such periodic data matches as may be necessary to identify and compute the number of full-benefit dual eligible individuals for purposes of computing the amount under subparagraph (A).

(2) Amount

(A) In general

The amount computed under this paragraph for a State described in paragraph (1) and for a month in a year is equal to—

(i) 1/12 of the product of—

(I) the base year State medicaid per capita expenditures for covered part D drugs for full-benefit dual eligible individuals (as computed under paragraph (3)); and

(II) a proportion equal to 100 percent minus the Federal medical assistance percentage (as defined in section 1396d(b) of this title) applicable to the State for the fiscal year in which the month occurs; and

(ii) increased for each year (beginning with 2004 up to and including the year involved) by the applicable growth factor specified in paragraph (4) for that year.

(B) Notice

The Secretary shall notify each State described in paragraph (1) not later than October 15 before the beginning of each year (beginning with 2006) of the amount computed under subparagraph (A) for the State for that year.

(3) Base year state medicaid per capita expenditures for covered part D drugs for full-benefit dual eligible individuals

(A) In general

For purposes of paragraph (2)(A), the ''base year State medicaid per capita expenditures for covered part D drugs for full-benefit dual eligible individuals'' for a State is equal to the weighted average (as weighted under subparagraph (C)) of—

(i) the gross per capita medicaid expenditures for prescription drugs for 2003, determined under subparagraph (B); and

(ii) the estimated actuarial value of prescription drug benefits provided under a capitated managed care plan per full-benefit dual eligible individual for 2003, as determined using such data as the Secretary determines appropriate.

(B) Gross per capita medicaid expenditures for prescription drugs

(i) In general

The gross per capita medicaid expenditures for prescription drugs for 2003 under

[1] See References in Text note below.

this subparagraph is equal to the expenditures, including dispensing fees, for the State under this subchapter during 2003 for covered outpatient drugs, determined per full-benefit-dual-eligible-individual for such individuals not receiving medical assistance for such drugs through a medicaid managed care plan.

(ii) Determination

In determining the amount under clause (i), the Secretary shall—

(I) use data from the Medicaid Statistical Information System (MSIS) and other available data;

(II) exclude expenditures attributable to covered outpatient prescription drugs that are not covered part D drugs (as defined in section 1395w–102(e) of this title, including drugs described in subparagraph (K) of section 1396r–8(d)(2) of this title); and

(III) reduce such expenditures by the product of such portion and the adjustment factor (described in clause (iii)).

(iii) Adjustment factor

The adjustment factor described in this clause for a State is equal to the ratio for the State for 2003 of—

(I) aggregate payments under agreements under section 1396r–8 of this title; to

(II) the gross expenditures under this subchapter for covered outpatient drugs referred to in clause (i).

Such factor shall be determined based on information reported by the State in the medicaid financial management reports (form CMS–64) for the 4 quarters of calendar year 2003 and such other data as the Secretary may require.

(C) Weighted average

The weighted average under subparagraph (A) shall be determined taking into account—

(i) with respect to subparagraph (A)(i), the average number of full-benefit dual eligible individuals in 2003 who are not described in clause (ii); and

(ii) with respect to subparagraph (A)(ii), the average number of full-benefit dual eligible individuals in such year who received in 2003 medical assistance for covered outpatient drugs through a medicaid managed care plan.

(4) Applicable growth factor

The applicable growth factor under this paragraph for—

(A) each of 2004, 2005, and 2006, is the average annual percent change (to that year from the previous year) of the per capita amount of prescription drug expenditures (as determined based on the most recent National Health Expenditure projections for the years involved); and

(B) a succeeding year, is the annual percentage increase specified in section 1395w–102(b)(6) of this title for the year.

(5) Factor

The factor under this paragraph for a month—

(A) in 2006 is 90 percent;
(B) in 2007 is 88⅓ percent;
(C) in 2008 is 86⅔ percent;
(D) in 2009 is 85 percent;
(E) in 2010 is 83⅓ percent;
(F) in 2011 is 81⅔ percent;
(G) in 2012 is 80 percent;
(H) in 2013 is 78⅓ percent;
(I) in 2014 is 76⅔ percent; or
(J) after December 2014, is 75 percent.

(6) Full-benefit dual eligible individual defined

(A) In general

For purposes of this section, the term ''full-benefit dual eligible individual'' means for a State for a month an individual who—

(i) has coverage for the month for covered part D drugs under a prescription drug plan under part D of subchapter XVIII of this chapter, or under an MA–PD plan under part C of such subchapter; and

(ii) is determined eligible by the State for medical assistance for full benefits under this subchapter for such month under section 1396a(a)(10)(A) or 1396a(a)(10)(C) of this title, by reason of section 1396a(f) of this title, or under any other category of eligibility for medical assistance for full benefits under this subchapter, as determined by the Secretary.

(B) Treatment of medically needy and other individuals required to spend down

In applying subparagraph (A) in the case of an individual determined to be eligible by the State for medical assistance under section 1396a(a)(10)(C) of this title or by reason of section 1396a(f) of this title, the individual shall be treated as meeting the requirement of subparagraph (A)(ii) for any month if such medical assistance is provided for in any part of the month.

(d) Coordination of prescription drug benefits

(1) Medicare as primary payor

In the case of a part D eligible individual (as defined in section 1395w–101(a)(3)(A) of this title) who is described in subsection (c)(6)(A)(ii) of this section, notwithstanding any other provision of this subchapter, medical assistance is not available under this subchapter for such drugs (or for any cost-sharing respecting such drugs), and the rules under this subchapter relating to the provision of medical assistance for such drugs shall not apply. The provision of benefits with respect to such drugs shall not be considered as the provision of care or services under the plan under this subchapter. No payment may be made under section 1396b(a) of this title for prescribed drugs for which medical assistance is not available pursuant to this paragraph.

(2) Coverage of certain excludable drugs

In the case of medical assistance under this subchapter with respect to a covered outpatient drug (other than a covered part D drug) furnished to an individual who is enrolled in a prescription drug plan under part D of subchapter XVIII of this chapter or an MA–PD plan under part C of such subchapter, the State may elect to provide such medical

assistance in the manner otherwise provided in the case of individuals who are not full-benefit dual eligible individuals or through an arrangement with such plan.

(e) Treatment of territories

(1) In general

In the case of a State, other than the 50 States and the District of Columbia—

(A) the previous provisions of this section shall not apply to residents of such State; and

(B) if the State establishes and submits to the Secretary a plan described in paragraph (2) (for providing medical assistance with respect to the provision of prescription drugs to part D eligible individuals), the amount otherwise determined under section 1308(f) of this title (as increased under section 1308(g) of this title) for the State shall be increased by the amount for the fiscal period specified in paragraph (3).

(2) Plan

The Secretary shall determine that a plan is described in this paragraph if the plan—

(A) provides medical assistance with respect to the provision of covered part D drugs (as defined in section 1395w–102(e) of this title) to low-income part D eligible individuals;

(B) provides assurances that additional amounts received by the State that are attributable to the operation of this subsection shall be used only for such assistance and related administrative expenses and that no more than 10 percent of the amount specified in paragraph (3)(A) for the State for any fiscal period shall be used for such administrative expenses; and

(C) meets such other criteria as the Secretary may establish.

(3) Increased amount

(A) In general

The amount specified in this paragraph for a State for a year is equal to the product of—

(i) the aggregate amount specified in subparagraph (B); and

(ii) the ratio (as estimated by the Secretary) of—

(I) the number of individuals who are entitled to benefits under part A [2] or enrolled under part B [2] and who reside in the State (as determined by the Secretary based on the most recent available data before the beginning of the year); to

(II) the sum of such numbers for all States that submit a plan described in paragraph (2).

(B) Aggregate amount

The aggregate amount specified in this subparagraph for—

(i) the last 3 quarters of fiscal year 2006, is equal to $28,125,000;

(ii) fiscal year 2007, is equal to $37,500,000; or

(iii) a subsequent year, is equal to the aggregate amount specified in this subparagraph for the previous year increased by annual percentage increase specified in section 1395w–102(b)(6) of this title for the year involved.

(4) Report

The Secretary shall submit to Congress a report on the application of this subsection and may include in the report such recommendations as the Secretary deems appropriate.

(Aug. 14, 1935, ch. 531, title XIX, § 1935, as added and amended Pub. L. 108–173, title I, § 103(a)(2)(B), (b)–(d)(1), Dec. 8, 2003, 117 Stat. 2154–2158; Pub. L. 109–91, title I, § 104(c), Oct. 20, 2005, 119 Stat. 2093.)

REFERENCES IN TEXT

Part D of subchapter XVIII of this chapter, referred to in subsecs. (a)(2)(C), (c)(6)(A)(i), and (d)(2), is classified to section 1395w–101 et seq. of this title.

No act with the title Federal Claims Collection Act of 1996, referred to in subsec. (c)(1)(C), has been enacted. However, Pub. L. 89–508, July 19, 1966, 80 Stat. 308, as amended, was known as the Federal Claims Collection Act of 1966. Sections 2, 3, and 5 of Pub. L. 89–508, which enacted sections 951, 952, and 954, respectively, of former Title 31, Money and Finance, were repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 877, the first section of which enacted Title 31, Money and Finance. For disposition of sections of former Title 31 into revised Title 31, see Table preceding section 101 of Title 31. For complete classification of Pub. L. 89–508 to the Code, see Tables.

Part C of subchapter XVIII of this chapter, referred to in subsecs. (c)(6)(A)(i) and (d)(2), is classified to section 1395w–21 et seq. of this title.

Parts A and B, referred to in subsec. (e)(3)(A)(ii)(I), probably means parts A and B of subchapter XVIII of this chapter. This subchapter does not contain parts.

PRIOR PROVISIONS

A prior section 1935 of act Aug. 14, 1935, was renumbered section 1936 and is classified to section 1396v of this title.

AMENDMENTS

2005—Subsec. (c)(3)(B)(ii)(II). Pub. L. 109–91 inserted ", including drugs described in subparagraph (K) of section 1396r–8(d)(2) of this title" after "section 1395w–102(e) of this title".

2003—Subsec. (a). Pub. L. 108–173, § 103(d)(1)(A), inserted "subject to subsection (e) of this section" after "section 1396b(a) of this title" in introductory provisions.

Subsec. (c). Pub. L. 108–173, § 103(b), added subsec. (c).

Subsec. (c)(1)(C). Pub. L. 108–173, § 103(d)(1)(B), which directed the amendment of subsec. (c)(1) by inserting "subject to subsection (e) of this section" after "section 1396b(a)(1) of this title", was executed by making the insertion after "section 1396b(a) of this title" in subpar. (C) to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 108–173, § 103(c), added subsec. (d).

Subsec. (e). Pub. L. 108–173, § 103(d)(1)(C), added subsec. (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–91 applicable to drugs dispensed on or after Jan. 1, 2006, see section 104(d) of Pub. L. 109–91, set out as a note under section 1396b of this title.

[2] See References in Text note below.

§ 1396v. References to laws directly affecting medicaid program

(a) Authority or requirements to cover additional individuals

For provisions of law which make additional individuals eligible for medical assistance under this subchapter, see the following:

(1) AFDC

(A) Section 602(a)(32)[1] of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made).

(B) Section 602(a)(37)[1] of this title (relating to individuals who lose AFDC eligibility due to increased earnings).

(C) Section 606(h)[1] of this title (relating to individuals who lose AFDC eligibility due to increased collection of child or spousal support).

(D) Section 682(e)(6)[1] of this title (relating to certain individuals participating in work supplementation programs).

(2) SSI

(A) Section 1382(e) of this title (relating to treatment of couples sharing an accommodation in a facility).

(B) Section 1382h of this title (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

(C) Section 1383c(b) of this title (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).

(D) Section 1383c(c) of this title (relating to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits under section 402(d) of this title).

(E) Section 1383c(d) of this title (relating to individuals who lose eligibility for SSI benefits due to entitlement to early widow's or widower's insurance benefits under section 602(e) or (f)[1] of this title).

(3) Foster care and adoption assistance

Sections 672(h) and 673(b) of this title (relating to medical assistance for children in foster care and for adopted children).

(4) Refugee assistance

Section 1522(e)(5) of title 8 (relating to medical assistance for certain refugees).

(5) Miscellaneous

(A) Section 230 of Public Law 93–66 (relating to deeming eligible for medical assistance certain essential persons).

(B) Section 231 of Public Law 93–66 (relating to deeming eligible for medical assistance certain persons in medical institutions).

(C) Section 232 of Public Law 93–66 (relating to deeming eligible for medical assistance certain blind and disabled medically indigent persons).

(D) Section 13(c) of Public Law 93–233 (relating to deeming eligible for medical assistance certain individuals receiving mandatory State supplementary payments).

(E) Section 503 of Public Law 94–566 (relating to deeming eligible for medical assistance certain individuals who would be eligible for supplemental security income benefits but for cost-of-living increases in social security benefits).

(F) Section 310(b)(1) of Public Law 96–272 (relating to continuing medicaid eligibility for certain recipients of Department of Veterans Affairs pensions).

(b) Additional State plan requirements

For other provisions of law that establish additional requirements for State plans to be approved under this subchapter, see the following:

(1) Section 1382g of this title (relating to requirement for operation of certain State supplementation programs).

(2) Section 212(a) of Public Law 93–66 (relating to requiring mandatory minimum State supplementation of SSI benefits program).

(Aug. 14, 1935, ch. 531, title XIX, § 1936, formerly § 1920, as added Pub. L. 99–272, title IX, § 9526, Apr. 7, 1986, 100 Stat. 218; renumbered § 1921, Pub. L. 99–509, title IX, § 9407(b), Oct. 21, 1986, 100 Stat. 2058; amended Pub. L. 99–514, title XVIII, § 1895(c)(5), Oct. 22, 1986, 100 Stat. 2936; Pub. L. 99–643, § 6(c), Nov. 10, 1986, 100 Stat. 3578; renumbered § 1922, Pub. L. 100–93, § 5(b), Aug. 18, 1987, 101 Stat. 690; renumbered § 1923 and § 1924 and amended Pub. L. 100–203, title IV, §§ 4112(a)(1), 4118(p)(9), 4211(a)(1), title IX, § 9116(d), Dec. 22, 1987, 101 Stat. 1330–148, 1330–159, 1330–182, 1330–306, as amended Pub. L. 100–360, title IV, § 411(k)(6)(B)(i), (10)(L), (n)(3), July 1, 1988, 102 Stat. 793, 797, as amended Pub. L. 100–485, title VI, § 608(d)(28), Oct. 13, 1988, 102 Stat. 2423; renumbered § 1925, Pub. L. 100–360, title III, § 303(a)(1)(A), July 1, 1988, 102 Stat. 754; renumbered § 1926 and amended Pub. L. 100–485, title II, § 202(c)(5), title III, § 303(a)(1), Oct. 13, 1988, 102 Stat. 2378, 2385; renumbered § 1927, Pub. L. 101–239, title VI, § 6402(b), Dec. 19, 1989, 103 Stat. 2260; renumbered § 1928, Pub. L. 101–508, title IV, § 4401(a)(3), Nov. 5, 1990, 104 Stat. 1388–143; Pub. L. 102–54, § 13(q)(3)(A)(v), June 13, 1991, 105 Stat. 279; renumbered § 1931, Pub. L. 103–66, title XIII, § 13631(b)(1), Aug. 10, 1993, 107 Stat. 637; renumbered § 1932, Pub. L. 104–193, title I, § 114(a)(1), Aug. 22, 1996, 110 Stat. 2177; renumbered §§ 1933, 1934, and 1935, Pub. L. 105–33, title IV, §§ 4701(a), 4732(c), 4802(a)(2), Aug. 5, 1997, 111 Stat. 489, 520, 538; renumbered § 1936, Pub. L. 108–173, title I, § 103(a)(2)(A), Dec. 8, 2003, 117 Stat. 2154.)

REFERENCES IN TEXT

Section 602 of this title, referred to in subsec. (a)(1)(A), (B), (2)(E), was repealed and a new section 602 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains subsecs. (a)(32), (37), (e), or (f).

Section 606 of this title, referred to in subsec. (a)(1)(C), was repealed and a new section 606 enacted by Pub. L. 104–193, title I, § 103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (h).

Section 682 of this title, referred to in subsec. (a)(1)(D), was repealed by Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167.

Sections 230, 231, and 232 of Public Law 93–66, referred to in subsec. (a)(5)(A) to (C), are sections 230, 231, and 232 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 159, 160, as amended, which are set out as notes under section 1396a of this title.

[1] See References in Text note below.

Section 13(c) of Public Law 93–233, referred to in subsec. (a)(5)(D), is section 13(c) of Pub. L. 93–233, Dec. 31, 1973, 87 Stat. 965, which is set out as a note under section 1396a of this title.

Section 503 of Public Law 94–566, referred to in subsec. (a)(5)(E), is section 503 of Pub. L. 94–566, title V, Oct. 20, 1976, 90 Stat. 2685, which is set out as a note under section 1396a of this title.

Section 310(b)(1) of Public Law 96–272, referred to in subsec. (a)(5)(F), is section 310(b)(1) of Pub. L. 96–272, title III, June 17, 1980, 94 Stat. 533, which is set out as a note under section 1396a of this title.

Section 212(a) of Public Law 93–66, referred to in subsec. (b)(2), is section 212(a) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

CODIFICATION

Section was formerly classified to section 1396s of this title prior to renumbering by Pub. L. 103–66.

AMENDMENTS

1991—Subsec. (a)(5)(F). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1988—Subsec. (a)(1). Pub. L. 100–360, § 411(k)(10)(L), made technical correction to directory language of Pub. L. 100–203, § 4118(p)(9), see 1987 Amendment note below.

Subsec. (a)(1)(D). Pub. L. 100–485, § 202(c)(5), substituted ''section 682(e)(6) of this title'' for ''section 614(g) of this title''.

Subsec. (a)(2). Pub. L. 100–360, § 411(k)(10)(L), made technical correction to directory language of Pub. L. 100–203, § 4118(p)(9), see 1987 Amendment note below.

Subsec. (a)(2)(E). Pub. L. 100–360, § 411(n)(3), as added by Pub. L. 100–485, § 608(d)(28), amended Pub. L. 100–203, § 9116(d), see 1987 Amendment note below.

1987—Subsec. (a)(1). Pub. L. 100–203, § 4118(p)(9), as amended by Pub. L. 100–360, § 411(k)(10)(L), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1) AFDC.—(A) Section 602(a)(32) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made). Section 602(a)(37) of this title (relating to individuals who lose AFDC eligibility due to increased earnings).

''(C) Section 606(h) of this title (relating to individuals who lose AFDC eligibility due to increased collection of child or spousal support).

''(D) Section 614(g) of this title (relating to certain individuals participating in work supplementation programs).''

Subsec. (a)(2). Pub. L. 100–203, § 4118(p)(9), as amended by Pub. L. 100–360, § 411(k)(10)(L), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2) SSI.—(A) Section 1382h of this title (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

''(B) Section 1383c(b) of this title (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).

''(B)[(C)] Section 1383c of this title (relating to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits under section 402(d) of this title).''

Subsec. (a)(2)(E). Pub. L. 100–203, § 9116(d), as amended generally by Pub. L. 100–360, § 411(n)(3), as added by Pub. L. 100–485, § 608(d)(28), added subpar. (E).

1986—Subsec. (a)(1). Pub. L. 99–514, § 1895(c)(5)(A), redesignated subpars. (B) and (C) as (C) and (D), respectively, and inserted at beginning of subpar. (A) ''Section 602(a)(32) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made).''

Subsec. (a)(2). Pub. L. 99–643, which directed amendment of section 1920(a)(2) of the Social Security Act by designating existing provisions as subpar. (A) and adding subpar. (B) relating to section 1383c of this title as it relates to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits, was executed to this section, section 1921 of the Social Security Act, to reflect the probable intent of Congress and the redesignation of section 1920 of the Social Security Act as section 1921 by Pub. L. 99–509.

Pub. L. 99–514, § 1895(c)(5)(B), designated existing provisions as subpar. (A) and added subpar. (B) relating to section 1383c(b) of this title as it relates to preservation of benefit status for certain disabled widows and widowers.

Subsec. (a)(3). Pub. L. 99–514, § 1895(c)(5)(C), substituted ''Sections 672(h) and 673(b) of this title'' for ''Section 673(b) of this title''.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 202(c)(5) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204 of Pub. L. 100–485, set out as a note under section 671 of this title.

Amendment by section 608(d)(28) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(6)(B)(i), (10)(L), (n)(3) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

REFERENCES TO PROVISIONS OF PART A OF SUBCHAPTER IV CONSIDERED REFERENCES TO SUCH PROVISIONS AS IN EFFECT JULY 16, 1996

For provisions that certain references to provisions of part A (§ 601 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 16, 1996, see section 1396u–1(a) of this title.

SUBCHAPTER XX—BLOCK GRANTS TO STATES FOR SOCIAL SERVICES

§ 1397. Purposes; authorization of appropriations

For the purposes of consolidating Federal assistance to States for social services into a single grant, increasing State flexibility in using social service grants, and encouraging each State, as far as practicable under the conditions in that State, to furnish services directed at the goals of—

(1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

(3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families;

(4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and

(5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions,

there are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of this subchapter.

(Aug. 14, 1935, ch. 531, title XX, § 2001, as added Pub. L. 97–35, title XXIII, § 2352(a), Aug. 13, 1981, 95 Stat. 867.)

PRIOR PROVISIONS

A prior section 1397, act Aug. 14, 1935, ch. 531, title XX, § 2001, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2337; amended June 17, 1980, Pub. L. 96–272, title II, § 207(b), 94 Stat. 526, authorized appropriations to carry out former provisions of this subchapter, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

EFFECTIVE DATE

Section 2354 of Pub. L. 97–35 provided that: ''Except as otherwise explicitly provided, the provisions of this subtitle [subtitle C (§§ 2351–2355) of title XXIII of Pub. L. 97–35, see Short Title of 1981 Amendment note set out under section 1305 of this title] and the repeals and amendments made by this subtitle, shall become effective on October 1, 1981.''

STUDY OF STATE SOCIAL SERVICE PROGRAMS; REPORT TO CONGRESS

Section 2355 of Pub. L. 97–35 required Secretary of Health and Human Services to conduct a study to identify criteria and mechanisms which may be useful for States in assessing effectiveness and efficiency of State social service programs carried out with funds made available under this subchapter, such study to include consideration of Federal incentive payments as an option in rewarding States having high performance social service programs, and to report results of such study to Congress within one year after Aug. 13, 1981.

§ 1397a. Payments to States

(a) Amount; covered services

(1) Each State shall be entitled to payment under this subchapter for each fiscal year in an amount equal to its allotment for such fiscal year, to be used by such State for services directed at the goals set forth in section 1397 of this title, subject to the requirements of this subchapter.

(2) For purposes of paragraph (1)—

(A) services which are directed at the goals set forth in section 1397 of this title include, but are not limited to, child care services, protective services for children and adults, services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, family planning services, training and related services, employment services, information, referral, and counseling services, the preparation and delivery of meals, health support services and appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, and alcoholics and drug addicts; and

(B) expenditures for such services may include expenditures for—

(i) administration (including planning and evaluation);

(ii) personnel training and retraining directly related to the provision of those services (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions); and

(iii) conferences or workshops, and training or retraining through grants to nonprofit organizations within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 or to individuals with social services expertise, or through financial assistance to individuals participating in such conferences, workshops, and training or retraining (and this clause shall apply with respect to all persons involved in the delivery of such services).

(b) Funding requirements

The Secretary shall make payments in accordance with section 6503 of title 31 to each State from its allotment for use under this subchapter.

(c) Expenditure of funds

Payments to a State from its allotment for any fiscal year must be expended by the State in such fiscal year or in the succeeding fiscal year.

(d) Transfers of funds

A State may transfer up to 10 percent of its allotment under section 1397b of this title for any fiscal year for its use for that year under other provisions of Federal law providing block grants for support of health services, health promotion and disease prevention activities, or low-income home energy assistance (or any combination of those activities). Amounts allotted to a State under any provisions of Federal law referred to in the preceding sentence and transferred by a State for use in carrying out the purposes of this subchapter shall be treated as if they were paid to the State under this subchapter but shall not affect the computation of the State's allotment under this subchapter. The State shall inform the Secretary of any such transfer of funds.

(e) Use of portion of funds

A State may use a portion of the amounts described in subsection (a) of this section for the purpose of purchasing technical assistance from public or private entities if the State determines that such assistance is required in developing, implementing, or administering programs funded under this subchapter.

(f) Authority to use vouchers

A State may use funds provided under this subchapter to provide vouchers, for services directed at the goals set forth in section 1397 of this title, to families, including—

(1) families who have become ineligible for assistance under a State program funded

under part A of subchapter IV of this chapter by reason of a durational limit on the provision of such assistance; and

(2) families denied cash assistance under the State program funded under part A of subchapter IV of this chapter for a child who is born to a member of the family who is—

(A) a recipient of assistance under the program; or

(B) a person who received such assistance at any time during the 10-month period ending with the birth of the child.

(Aug. 14, 1935, ch. 531, title XX, § 2002, as added Pub. L. 97–35, title XXIII, § 2352(a), Aug. 13, 1981, 95 Stat. 867; amended Pub. L. 98–369, div. B, title VI, § 2663(h)(1), July 18, 1984, 98 Stat. 1169; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–193, title IX, § 908(b), Aug. 22, 1996, 110 Stat. 2351.)

REFERENCES IN TEXT

Section 501 of the Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B)(iii), is classified to section 501 of Title 26, Internal Revenue Code.

Part A of subchapter IV of this chapter, referred to in subsec. (f), is classified to section 601 et seq. of this title.

PRIOR PROVISIONS

A prior section 1397a, acts Aug. 14, 1935, ch. 531, title XX, § 2002, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2337; amended Oct. 21, 1975, Pub. L. 94–120, § 4(b), 89 Stat. 609; Sept. 7, 1976, Pub. L. 94–401, §§ 1(a)–(c), 5(a), 90 Stat. 1215, 1218; June 30, 1977, Pub. L. 95–59, § 5, 91 Stat. 255; Oct. 25, 1977, Pub. L. 95–142, §§ 3(d)(2), 8(d), 91 Stat. 1179, 1195; Nov. 6, 1978, Pub. L. 95–600, title VIII, § 801(a), 92 Stat. 2944; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Jan. 2, 1980, Pub. L. 96–178, § 4(a), (c), 93 Stat. 1296, 1297; June 17, 1980, Pub. L. 96–272, title I, § 103(e), title II, §§ 201–204(a), 205(a), 206(e), 207(a), 94 Stat. 521–525; Dec. 5, 1980, Pub. L. 96–499, title X, § 1001(a), 94 Stat. 2655, related to payments to States and computation of amounts, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–193 added subsec. (f).

1986—Subsec. (a)(2)(B)(iii). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (b). Pub. L. 98–369 substituted ''section 6503 of title 31'' for ''section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

TEMPORARY SUSPENSION OF CHILD DAY CARE SERVICES REQUIREMENTS

Pub. L. 96–499, title X, § 1001(b), Dec. 5, 1980, 94 Stat. 2655, provided that the provisions of Pub. L. 93–647, § 3(f), Jan. 4, 1975, 88 Stat. 2349, set out as a note below, not apply with respect to child day care services provided after June 30, 1980, and prior to July 1, 1981, which met applicable standards of State and local law.

REIMBURSEMENT OF EXPENDITURES FOR SOCIAL SERVICES PROVIDED BY STATES PRIOR TO OCTOBER 1, 1975; AUTHORIZATION OF APPROPRIATIONS; PROCEDURES APPLICABLE TO PAYMENT OF UNPAID CLAIMS OF STATES

Pub. L. 95–291, June 12, 1978, 92 Stat. 304, authorized appropriations for payments to States in settlement of unpaid claims of States against the United States for reimbursement of expenditures made by States prior to Oct. 1, 1975, for services and administrative costs under a State plan pursuant to specific subchapters of this chapter, provided schedules for payment of a claim asserted prior to the ninety-first day after June 12, 1978, depending on when the claim was asserted, barred other claims and certain claims of the United States for recovery, provided for review of determinations, barred judicial review, and provided for allotment of appropriations for claims.

PAYMENTS TO STATES FOR FISCAL PERIOD BEGINNING JULY 1, 1976, AND ENDING SEPTEMBER 30, 1976, AND FISCAL YEARS ENDING SEPTEMBER 30, 1977, 1978, AND 1979, COMPUTATION AMOUNTS, LIMITATIONS, ETC.

Pub. L. 94–401, § 3, Sept. 7, 1976, 90 Stat. 1215, as amended by Pub. L. 95–171, § 1(a), Nov. 12, 1977, 91 Stat. 1353; Pub. L. 95–600, title VIII, § 801(b), Nov. 6, 1978, 92 Stat. 2944; Pub. L. 96–178, § 3(b)–(f), Jan. 2, 1980, 93 Stat. 1296, provided for computation of amounts of payments to States under this subchapter for the fiscal period beginning July 1, 1976, and ending Sept. 30, 1976, and fiscal years ending Sept. 30, 1977, 1978, and 1979, limitations on such amounts, and a limit on the total amount of Federal payments made to States in any such fiscal year under this subchapter.

REQUIREMENTS OF CHILD DAY CARE SERVICES

Pub. L. 93–647, § 3(f), Jan. 4, 1975, 88 Stat. 2349, which provided for requirements of child day care services, was repealed by Pub. L. 97–35, title XXIII, § 2353(s), Aug. 13, 1981, 97 Stat. 874.

§ 1397b. Allotments

(a) Computation of amounts for jurisdictions of Puerto Rico, Guam, etc.

The allotment for any fiscal year to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands shall be an amount which bears the same ratio to the amount specified in subsection (c) of this section as the amount which was specified for allocation to the particular jurisdiction involved for the fiscal year 1981 under section 1397a(a)(2)(C) of this title (as in effect prior to Aug. 13, 1981) bore to $2,900,000,000. The allotment for fiscal year 1989 and each succeeding fiscal year to American Samoa shall be an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands for that fiscal year as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(b) Computation of amounts for each State other than jurisdictions of Puerto Rico, Guam, etc.

The allotment for any fiscal year for each State other than the jurisdictions of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands shall be an amount which bears the same ratio to—

(1) the amount specified in subsection (c) of this section, reduced by

(2) the total amount allotted to those jurisdictions for that fiscal year under subsection (a) of this section,

as the population of that State bears to the population of all the States (other than Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands) as

determined by the Secretary (on the basis of the most recent data available from the Department of Commerce) and promulgated prior to the first day of the third month of the preceding fiscal year.

(c) Appropriations

The amount specified for purposes of subsections (a) and (b) of this section shall be—

(1) $2,400,000,000 for the fiscal year 1982;

(2) $2,450,000,000 for the fiscal year 1983;

(3) $2,700,000,000 for the fiscal years 1984, 1985, 1986, 1987, and 1989;

(4) $2,750,000,000 for the fiscal year 1988;

(5) $2,800,000,000 for each of the fiscal years 1990 through 1995;

(6) $2,381,000,000 for the fiscal year 1996;

(7) $2,380,000,000 for the fiscal year 1997;

(8) $2,299,000,000 for the fiscal year 1998;

(9) $2,380,000,000 for the fiscal year 1999;

(10) $2,380,000,000 for the fiscal year 2000; and

(11) $1,700,000,000 for the fiscal year 2001 and each fiscal year thereafter.

(Aug. 14, 1935, ch. 531, title XX, §2003, as added Pub. L. 97–35, title XXIII, §2352(a), Aug. 13, 1981, 95 Stat. 868; amended Pub. L. 97–248, title I, §160(b), Sept. 3, 1982, 96 Stat. 400; Pub. L. 98–135, title II, §204, Oct. 24, 1983, 97 Stat. 861; Pub. L. 99–514, title XVIII, §1883(e)(1), Oct. 22, 1986, 100 Stat. 2919; Pub. L. 100–203, title IX, §§9134(a), 9135(a)(2), Dec. 22, 1987, 101 Stat. 1330–315; Pub. L. 101–239, title VIII, §8016, Dec. 19, 1989, 103 Stat. 2470; Pub. L. 104–193, title IX, §908(a), Aug. 22, 1996, 110 Stat. 2350; Pub. L. 105–178, title VIII, §8401(a), June 9, 1998, 112 Stat. 498; Pub. L. 105–277, div. A, §101(f) [title II, §214(a)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–361.)

PRIOR PROVISIONS

A prior section 1397b, act Aug. 14, 1935, ch. 531, title XX, §2003, as added Jan. 4, 1975, Pub. L. 93–647, §2, 88 Stat. 2343; amended Oct. 21, 1975, Pub. L. 94–120, §4(a), 89 Stat. 609; Oct. 25, 1977, Pub. L. 95–142, §3(d)(1), 91 Stat. 1179; June 9, 1980, Pub. L. 96–265, title IV, §403(b), 94 Stat. 462; June 17, 1980, Pub. L. 96–272, title II, §206(c), (d), 94 Stat. 525; Oct. 19, 1980, Pub. L. 96–473, §6(*l*), 94 Stat. 2266; Dec. 5, 1980, Pub. L. 96–499, title IX, §913(e), 94 Stat. 2620, related to State programs for social services assistance, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

AMENDMENTS

1998—Subsec. (c)(7). Pub. L. 105–178 added par. (7) and struck out former par. (7) which read as follows: ''$2,380,000,000 for each of the fiscal years 1997 through 2002; and''.

Subsec. (c)(8). Pub. L. 105–277 added par. (8) and struck out former par. (8) which read as follows: ''$2,380,000,000 for the fiscal year 1998;''.

Pub. L. 105–178 added par. (8) and struck out former par. (8) which read as follows: ''$2,800,000,000 for the fiscal year 2003 and each succeeding fiscal year.''

Subsec. (c)(9) to (11). Pub. L. 105–178 added pars. (9) to (11).

1996—Subsec. (c)(5) to (8). Pub. L. 104–193 added pars. (5) to (8) and struck out former par. (5) which read as follows: ''$2,800,000,000 for each fiscal year after fiscal year 1989.''

1989—Subsec. (c)(3). Pub. L. 101–239, §8016(1), substituted ''1987, and 1989;'' for ''and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and''.

Subsec. (c)(5). Pub. L. 101–239, §8016(2), (3), added par. (5).

1987—Subsec. (a). Pub. L. 100–203, §9135(a)(2)(A), inserted at end ''The allotment for fiscal year 1989 and each succeeding fiscal year to American Samoa shall be an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands for that fiscal year as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.''

Subsec. (b). Pub. L. 100–203, §9135(a)(2)(B), inserted ''American Samoa,'' after ''the Virgin Islands,'' in two places.

Subsec. (c)(2). Pub. L. 100–203, §9134(a)(A), struck out ''and'' after ''1983;''.

Subsec. (c)(3). Pub. L. 100–203, §9134(a)(B), substituted ''years 1984, 1985, 1986, and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and'' for ''year 1984 and each succeeding fiscal year.''

Subsec. (c)(4). Pub. L. 100–203, §9134(a)(C), added par. (4).

1986—Subsec. (b). Pub. L. 99–514, §1883(e)(1)(B), struck out ''(subject to subsection (d) of this section)'' after ''promulgated''.

Subsec. (d). Pub. L. 99–514, §1883(e)(1)(A), struck out subsec. (d) which read as follows: ''The determination and promulgation required by subsection (b) of this section with respect to the fiscal year 1982 shall be made as soon as possible after August 13, 1981.''

1983—Subsec. (c)(3). Pub. L. 98–135 substituted ''$2,700,000,000 for the fiscal year 1984 and each succeeding fiscal year.'' for ''$2,500,000,000 for the fiscal year 1984;''.

Subsec. (c)(4), (5). Pub. L. 98–135 struck out pars. (4) and (5) which provided, respectively, for an amount of $2,600,000,000 for fiscal year 1985 and $2,700,000,000 for fiscal year 1986 and succeeding fiscal years.

1982—Subsec. (b). Pub. L. 97–248 inserted ''(other than Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands)'' in provisions following cl. (2).

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. A, §101(f) [title II, §214(b)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–361, provided that: ''The amendment made by this section [amending this section] takes effect immediately after the amendments made by section 8401 of the Transportation Equity Act for the 21st Century take effect [Pub. L. 105–178].''

Amendment by Pub. L. 105–178 effective Oct. 1, 1998, see section 8401(c) of Pub. L. 105–178, set out as a note under section 604 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9135(a)(2) of Pub. L. 100–203 applicable with respect to fiscal years beginning on or after Oct. 1, 1988, see section 9135(c) of Pub. L. 100–203, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Oct. 1, 1981, see section 160(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

REQUIREMENT THAT ADDITIONAL FUNDS SUPPLEMENT AND NOT SUPPLANT FUNDS AVAILABLE FROM OTHER SOURCES

Section 9134(b) of Pub. L. 100–203 provided that: ''The additional $50,000,000 made available to the States for the fiscal year 1988 pursuant to the amendments made by subsection (a) [amending this section] shall—

''(A) be used only for the purpose of providing additional services under title XX of the Social Security Act [this subchapter]; and

''(B) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated pursuant to such amendments, be available from other sources (including any amounts available under title XX of the Social Security Act without regard to such amendments) for services in accordance with such title, and shall in no case supplant such funds from other sources or reduce the level thereof.''

APPROPRIATIONS

Pub. L. 98–473, title IV, § 401, Oct. 12, 1984, 98 Stat. 2195, provided that:

''(a)(1) Notwithstanding any provision of title XX of the Social Security Act [this subchapter], the amount applicable under section 2003(c)(3) of such Act [subsec. (c)(3) of this section] shall be $2,725,000,000 for fiscal year 1985. Of such amount, $25,000,000 shall be allotted and used in accordance with this section.

''(2) In addition to any other amounts appropriated under this resolution [Pub. L. 98–473] or any Act, there are hereby appropriated $25,000,000 for fiscal year 1985, for carrying out title XX of the Social Security Act, to be used in accordance with the provisions of this section.

''(3) Amounts appropriated under this section shall remain available until September 30, 1985, without regard to section 102 of this resolution.

''(4) Except as otherwise provided in this section, each State's allotment of the additional amounts authorized and appropriated under this section shall be the same proportion of $25,000,000 as such State's proportional allotment of other title XX funds for fiscal year 1985, as determined under section 2003 of the Social Security Act [this section].

''(b) The additional $25,000,000 made available to the States for fiscal year 1985 pursuant to subsection (a) shall—

''(1) be used only for the purpose of providing training and retraining (including training in the prevention of child abuse in child care settings) to providers of licensed or registered child care services, operators and staffs (including those receiving in-service training) of facilities where licensed or registered child care services are provided, State licensing and enforcement officials, and parents;

''(2) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated under this section, be available from other sources (including any amounts available under title XX of the Social Security Act [this subchapter] without regard to this section) for the purpose specified in paragraph (1), and shall in no case supplant such funds from other sources or reduce the level thereof; and

''(3) be separately accounted for in the reports and audits provided for in section 2006 of the Social Security Act [section 1397e of this title].

''(c)(1) In order to provide guidance and assistance to the States in utilizing funds allocated pursuant to title XX of the Social Security Act [this subchapter], not later than 3 months after the date of enactment of this section [Oct. 12, 1984], the Secretary shall draft and distribute to the States for their consideration, a Model Child Care Standards Act containing—

''(A) minimum licensing or registration standards for day care centers, group homes, and family day care homes regarding matters including—

''(i) the training, development, supervision, and evaluation of staff;

''(ii) staff qualification requirements, by job classification;

''(iii) staff-child ratios;

''(iv) probation periods for new staff;

''(v) employment history checks for staff; and

''(vi) parent visitation; and

''(2)(A) Any State receiving an allotment under such title from the funds made available as a result of subsection (a) shall have in effect, not later than September 30, 1985—

''(i) procedures, established by State law or regulation, to provide for employment history and background checks; and

''(ii) provisions of State law, enacted in accordance with the provisions of Public Law 92–544 (86 Stat. 115) [86 Stat. 1115, 28 U.S.C. 534 note] requiring nationwide criminal record checks

for all operators, staff or employees, or prospective operators, staff or employees of child care facilities (including any facility or program having primary custody of children for 20 hours or more per week), juvenile detention, correction or treatment facilities, with the objective of protecting the children involved and promoting such children's safety and welfare while receiving service through such facilities or programs.

''(B) In the case of any State not meeting the requirements of subparagraph (A) by September 30, 1985, such State's allotment for fiscal year 1986 or 1987 shall be reduced in the aggregate by an amount equal to one-half of the amount by which such State's allotment under such title was increased for fiscal year 1985 as a result of subsection (a).

''(d) The determination and promulgation required by section 2003(b) of the Social Security Act [subsec. (b) of this section] with respect to the fiscal year 1985 (to take into account the preceding provisions of this section) shall be made as soon as possible after the date of the enactment of this Act [Oct. 12, 1984].''

§ 1397c. State reporting requirements

Prior to expenditure by a State of payments made to it under section 1397a of this title for any fiscal year, the State shall report on the intended use of the payments the State is to receive under this subchapter, including information on the types of activities to be supported and the categories or characteristics of individuals to be served. The report shall be transmitted to the Secretary and made public within the State in such manner as to facilitate comment by any person (including any Federal or other public agency) during development of the report and after its completion. The report shall be revised throughout the year as may be necessary to reflect substantial changes in the activities assisted under this subchapter, and any revision shall be subject to the requirements of the previous sentence.

(Aug. 14, 1935, ch. 531, title XX, § 2004, as added Pub. L. 97–35, title XXIII, § 2352(a), Aug. 13, 1981, 95 Stat. 869.)

PRIOR PROVISIONS

A prior section 1397c, act Aug. 14, 1935, ch. 531, title XX, § 2004, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2346; amended June 17, 1980, Pub. L. 96–272, title II, § 206(a), (b), 94 Stat. 525, related to services program planning, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

§ 1397d. Limitation on use of grants; waiver

(a) Except as provided in subsection (b) of this section, grants made under this subchapter may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this subchapter—

(1) for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility;

(2) for the provision of cash payments for costs of subsistence or for the provision of room and board (other than costs of subsistence during rehabilitation, room and board provided for a short term as an integral but subordinate part of a social service, or temporary emergency shelter provided as a protective service);

(3) for payment of the wages of any individual as a social service (other than payment of the wages of welfare recipients employed in the provision of child day care services);

(4) for the provision of medical care (other than family planning services, rehabilitation services, or initial detoxification of an alcoholic or drug dependent individual) unless it is an integral but subordinate part of a social service for which grants may be used under this subchapter;

(5) for social services (except services to an alcoholic or drug dependent individual or rehabilitation services) provided in and by employees of any hospital, skilled nursing facility, intermediate care facility, or prison, to any individual living in such institution;

(6) for the provision of any educational service which the State makes generally available to its residents without cost and without regard to their income;

(7) for any child day care services unless such services meet applicable standards of State and local law;

(8) for the provision of cash payments as a service (except as otherwise provided in this section);

(9) for payment for any item or service (other than an emergency item or service) furnished—

(A) by an individual or entity during the period when such individual or entity is excluded under this subchapter or subchapter V, XVIII, or XIX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title, or

(B) at the medical direction or on the prescription of a physician during the period when the physician is excluded under this subchapter or subchapter V, XVIII, or XIX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person); or

(10) in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.].

(b) The Secretary may waive the limitation contained in subsection (a)(1) and (4) of this section upon the State's request for such a waiver if he finds that the request describes extraordinary circumstances to justify the waiver and that permitting the waiver will contribute to the State's ability to carry out the purposes of this subchapter.

(Aug. 14, 1935, ch. 531, title XX, §2005, as added Pub. L. 97–35, title XXIII, §2352(a), Aug. 13, 1981, 95 Stat. 869; amended Pub. L. 100–93, §8(i), Aug. 18, 1987, 101 Stat. 695; Pub. L. 100–203, title IV, §4118(e)(13), Dec. 22, 1987, as added Pub. L. 100–360, title IV, §411(k)(10)(D), July 1, 1988, 102 Stat. 796; Pub. L. 100–485, title VI, §608(d)(26)(K)(ii), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 105–12, §9(c), Apr. 30, 1997, 111 Stat. 27.)

REFERENCES IN TEXT

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (a)(10), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

PRIOR PROVISIONS

A prior section 1397d, act Aug. 14, 1935, ch. 531, title XX, §2005, as added Jan. 4, 1975, Pub. L. 93–647, §2, 88 Stat. 2347; amended June 17, 1980, Pub. L. 96–272, title II, §206(d), 94 Stat. 525, related to effective date of implementing regulations, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

AMENDMENTS

1997—Subsec. (a)(10). Pub. L. 105–12 added par. (10).

1988—Subsec. (a)(9)(A), (B). Pub. L. 100–360, §411(k)(10)(D), as amended by Pub. L. 100–485, §608(d)(26)(K)(ii), added Pub. L. 100–203, §4118(e)(13), see 1987 Amendment note below.

1987—Subsec. (a)(9). Pub. L. 100–93 added par. (9).

Subsec. (a)(9)(A), (B). Pub. L. 100–203, §4118(e)(13), as added by Pub. L. 100–360, §411(k)(10)(D), as amended by Pub. L. 100–485, §608(d)(26)(K)(ii), substituted ''under this subchapter or subchapter V, XVIII, or XIX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title'' for ''pursuant to section 1320a–7 of this title or section 1320a–7a of this title from participation in the program under this subchapter''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

§1397e. Administrative and fiscal accountability

(a) Reporting requirements; form, contents, etc.

Each State shall prepare reports on its activities carried out with funds made available (or transferred for use) under this subchapter. Reports shall be prepared annually, covering the most recently completed fiscal year, and shall be in such form and contain such information (including but not limited to the information specified in subsection (c) of this section) as the State finds necessary to provide an accurate description of such activities, to secure a complete record of the purposes for which funds were spent, and to determine the extent to which funds were spent in a manner consistent with the reports required by section 1397c of this title. The State shall make copies of the reports

required by this section available for public inspection within the State and shall transmit a copy to the Secretary. Copies shall also be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(b) Audits; implementation, etc.

Each State shall, not less often than every two years, audit its expenditures from amounts received (or transferred for use) under this subchapter. Such State audits shall be conducted by an entity independent of any agency administering activities funded under this subchapter, in accordance with generally accepted auditing principles. Within 30 days following the completion of each audit, the State shall submit a copy of that audit to the legislature of the State and to the Secretary. Each State shall repay to the United States amounts ultimately found not to have been expended in accordance with this subchapter, or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this subchapter.

(c) State reports on expenditure and use of social services funds

Each report prepared and transmitted by a State under subsection (a) of this section shall set forth (with respect to the fiscal year covered by the report)—

(1) the number of individuals who received services paid for in whole or in part with funds made available under this subchapter, showing separately the number of children and the number of adults who received such services, and broken down in each case to reflect the types of services and circumstances involved;

(2) the amount spent in providing each such type of service, showing separately for each type of service the amount spent per child recipient and the amount spent per adult recipient;

(3) the criteria applied in determining eligibility for services (such as income eligibility guidelines, sliding fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs); and

(4) the methods by which services were provided, showing separately the services provided by public agencies and those provided by private agencies, and broken down in each case to reflect the types of services and circumstances involved.

The Secretary shall establish uniform definitions of services for use by the States in preparing the information required by this subsection, and make such other provision as may be necessary or appropriate to assure that compliance with the requirements of this subsection will not be unduly burdensome on the States.

(d) Additional accounting requirements

For other provisions requiring States to account for Federal grants, see section 6503 of title 31.

(Aug. 14, 1935, ch. 531, title XX, § 2006, as added Pub. L. 97–35, title XXIII, § 2352(a), Aug. 13, 1981, 95 Stat. 870; amended Pub. L. 98–369, div. B, title VI, § 2663(h)(2), July 18, 1984, 98 Stat. 1169; Pub. L. 100–485, title VI, § 607, Oct. 13, 1988, 102 Stat. 2410.)

PRIOR PROVISIONS

A prior section 1397e, act Aug. 14, 1935, ch. 531, title XX, § 2006, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2347, related to program evaluation and assistance, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

A prior section 1397e–1, act Aug. 14, 1935, ch. 531, title XX, § 2007, as added Jan. 2, 1980, Pub. L. 96–178, § 4(b), 93 Stat. 1296, related to child day care services, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35. See section 1397f of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–485, § 607(1), substituted ''Reports shall be prepared annually, covering the most recently completed fiscal year, and shall be in such form and contain such information (including but not limited to the information specified in subsection (c) of this section)'' for ''Reports shall be in such form, contain such information, and be of such frequency (but not less often than every two years)'' in second sentence.

Subsecs. (c), (d). Pub. L. 100–485, § 607(3), added subsec. (c) and redesignated former subsec. (c) as (d).

1984—Subsec. (c). Pub. L. 98–369 substituted ''section 6503 of title 31'' for ''section 202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212)''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 1397f. Additional grants

(a) Entitlement

(1) In general

In addition to any payment under section 1397a of this title, each State shall be entitled to—

(A) 2 grants under this section for each qualified empowerment zone in the State; and

(B) 1 grant under this section for each qualified enterprise community in the State.

(2) Amount of grants

(A) Empowerment grants

The amount of each grant to a State under this section for a qualified empowerment zone shall be—

(i) if the zone is designated in an urban area, $50,000,000, multiplied by that proportion of the population of the zone that resides in the State; or

(ii) if the zone is designated in a rural area, $20,000,000, multiplied by such proportion.

(B) Enterprise grants

The amount of the grant to a State under this section for a qualified enterprise community shall be 1/95 of $280,000,000, multiplied by that proportion of the population of the community that resides in the State.

(C) Population determinations

The Secretary shall make population determinations for purposes of this paragraph

based on the most recent decennial census data available.

(3) Timing of grants

(A) Qualified empowerment zones

With respect to each qualified empowerment zone, the Secretary shall make—

(i) 1 grant under this section to each State in which the zone lies, on the date of the designation of the zone under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986; and

(ii) 1 grant under this section to each such State, on the 1st day of the 1st fiscal year that begins after the date of the designation.

(B) Qualified enterprise communities

With respect to each qualified enterprise community, the Secretary shall make 1 grant under this section to each State in which the community lies, on the date of the designation of the community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986.

(4) Funding

$1,000,000,000 shall be made available to the Secretary for grants under this section.

(b) Program options

Notwithstanding section 1397d(a) of this title:

(1) In order to prevent and remedy the neglect and abuse of children, a State may use amounts paid under this section to make grants to, or enter into contracts with, entities to provide residential or nonresidential drug and alcohol prevention and treatment programs that offer comprehensive services for pregnant women and mothers, and their children.

(2) In order to assist disadvantaged adults and youths in achieving and maintaining self-sufficiency, a State may use amounts paid under this section to make grants to, or enter into contracts with—

(A) organizations operated for profit or not for profit, for the purpose of training and employing disadvantaged adults and youths in construction, rehabilitation, or improvement of affordable housing, public infrastructure, and community facilities; and

(B) nonprofit organizations and community or junior colleges, for the purpose of enabling such entities to provide short-term training courses in entrepreneurism and self-employment, and other training that will promote individual self-sufficiency and the interests of the community.

(3) A State may use amounts paid under this section to make grants to, or enter into contracts with, nonprofit community-based organizations to enable such organizations to provide activities designed to promote and protect the interests of children and families, outside of school hours, including keeping schools open during evenings and weekends for mentoring and study.

(4) In order to assist disadvantaged adults and youths in achieving and maintaining economic self-support, a State may use amounts paid under this section to—

(A) fund services designed to promote community and economic development in qualified empowerment zones and qualified enterprise communities, such as skills training, job counseling, transportation services, housing counseling, financial management, and business counseling;

(B) assist in emergency and transitional shelter for disadvantaged families and individuals; or

(C) support programs that promote home ownership, education, or other routes to economic independence for low-income families and individuals.

(c) Use of grants

(1) In general

Subject to subsection (d) of this section, each State that receives a grant under this section with respect to an area shall use the grant—

(A) for services directed only at the goals set forth in paragraphs (1), (2), and (3) of section 1397 of this title;

(B) in accordance with the strategic plan for the area; and

(C) for activities that benefit residents of the area for which the grant is made.

(2) Technical assistance

A State may use a portion of any grant made under this section in the manner described in section 1397a(e) of this title.

(d) Remittance of certain amounts

(1) Portion of grant upon termination of designation

Each State to which an amount is paid under this subsection during a fiscal year with respect to an area the designation of which under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986 ends before the end of the fiscal year shall remit to the Secretary an amount equal to the total of the amounts so paid with respect to the area, multiplied by that proportion of the fiscal year remaining after the designation ends.

(2) Amounts paid to the States and not obligated within 2 years

Each State shall remit to the Secretary any amount paid to the State under this section that is not obligated by the end of the 2-year period that begins with the date of the payment.

(e) Reallocation of remaining funds

(1) Remitted amounts

The amount specified in section 1397b(c) of this title for any fiscal year is hereby increased by the total of the amounts remitted during the fiscal year pursuant to subsection (d) of this section.

(2) Amounts not paid to the States

The amount specified in section 1397b(c) of this title for fiscal year 1998 is hereby increased by the amount made available for grants under this section that has not been paid to any State by the end of fiscal year 1997.

(f) Definitions

As used in this section:

(1) Qualified empowerment zone

The term ''qualified empowerment zone'' means, with respect to a State, an area—

(A) which has been designated (other than by the Secretary of the Interior) as an empowerment zone under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986;

(B) with respect to which the designation is in effect;

(C) the strategic plan for which is a qualified plan; and

(D) part or all of which is in the State.

(2) Qualified enterprise community

The term ''qualified enterprise community'' means, with respect to a State, an area—

(A) which has been designated (other than by the Secretary of the Interior) as an enterprise community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986;

(B) with respect to which the designation is in effect;

(C) the strategic plan for which is a qualified plan; and

(D) part or all of which is in the State.

(3) Strategic plan

The term ''strategic plan'' means, with respect to an area, the plan contained in the application for designation of the area under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986.

(4) Qualified plan

The term ''qualified plan'' means, with respect to an area, a plan that—

(A) includes a detailed description of the activities proposed for the area that are to be funded with amounts provided under this section;

(B) contains a commitment that the amounts provided under this section to any State for the area will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of this section;

(C) was developed in cooperation with the local government or governments with jurisdiction over the area; and

(D) to the extent that any State will not use the amounts provided under this section for the area in the manner described in subsection (b) of this section, explains the reasons why not.

(5) Rural area

The term ''rural area'' has the meaning given such term in section 1393(a)(2) of the Internal Revenue Code of 1986.

(6) Urban area

The term ''urban area'' has the meaning given such term in section 1393(a)(3) of the Internal Revenue Code of 1986.

(Aug. 14, 1935, ch. 531, title XX, § 2007, as added Pub. L. 103–66, title XIII, § 13761, Aug. 10, 1993, 107 Stat. 664; amended Pub. L. 103–432, title II, § 263, Oct. 31, 1994, 108 Stat. 4467.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(3), (d)(1), and (f), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 1397f, act Aug. 14, 1935, ch. 531, title XX, § 2007, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2352(a), 95 Stat. 871, related to child day care services, prior to repeal by Pub. L. 99–514, title XVIII, § 1883(e)(2), Oct. 22, 1986, 100 Stat. 2919.

Another prior section 1397f, act Aug. 14, 1935, ch. 531, title XX, § 2008, formerly § 2007, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2348; renumbered § 2008, Jan. 2, 1980, Pub. L. 96–178, § 4(b), 93 Stat. 1296, defined ''State supplementary payment'' and ''State'', prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

AMENDMENTS

1994—Subsecs. (e), (f). Pub. L. 103–432 added subsec. (e) and redesignated former subsec. (e) as (f).

SUBCHAPTER XXI—STATE CHILDREN'S HEALTH INSURANCE PROGRAM

§ 1397aa. Purpose; State child health plans

(a) Purpose

The purpose of this subchapter is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Such assistance shall be provided primarily for obtaining health benefits coverage through—

(1) obtaining coverage that meets the requirements of section 1397cc of this title, or

(2) providing benefits under the State's medicaid plan under subchapter XIX of this chapter,

or a combination of both.

(b) State child health plan required

A State is not eligible for payment under section 1397ee of this title unless the State has submitted to the Secretary under section 1397ff of this title a plan that—

(1) sets forth how the State intends to use the funds provided under this subchapter to provide child health assistance to needy children consistent with the provisions of this subchapter, and

(2) has been approved under section 1397ff of this title.

(c) State entitlement

This subchapter constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under section 1397dd of this title.

(d) Effective date

No State is eligible for payments under section 1397ee of this title for child health assistance for coverage provided for periods beginning before October 1, 1997.

(Aug. 14, 1935, ch. 531, title XXI, § 2101, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 552.)

REFERENCES TO SCHIP AND STATE CHILDREN'S HEALTH INSURANCE PROGRAM

Pub. L. 106–113, div. B, § 1000(a)(6) [title VII, § 704], Nov. 29, 1999, 113 Stat. 1536, 1501A–402, provided that:

''The Secretary of Health and Human Services or any other Federal officer or employee, with respect to any reference to the program under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) in any publication or other official communication, shall use—

''(1) the term 'SCHIP' instead of the term 'CHIP'; and

''(2) the term 'State children's health insurance program' instead of the term 'children's health insurance program'.''

§ 1397bb. General contents of State child health plan; eligibility; outreach

(a) General background and description

A State child health plan shall include a description, consistent with the requirements of this subchapter, of—

(1) the extent to which, and manner in which, children in the State, including targeted low-income children and other classes of children classified by income and other relevant factors, currently have creditable health coverage (as defined in section 1397jj(c)(2) of this title);

(2) current State efforts to provide or obtain creditable health coverage for uncovered children, including the steps the State is taking to identify and enroll all uncovered children who are eligible to participate in public health insurance programs and health insurance programs that involve public-private partnerships;

(3) how the plan is designed to be coordinated with such efforts to increase coverage of children under creditable health coverage;

(4) the child health assistance provided under the plan for targeted low-income children, including the proposed methods of delivery, and utilization control systems;

(5) eligibility standards consistent with subsection (b) of this section;

(6) outreach activities consistent with subsection (c) of this section; and

(7) methods (including monitoring) used—

(A) to assure the quality and appropriateness of care, particularly with respect to well-baby care, well-child care, and immunizations provided under the plan, and

(B) to assure access to covered services, including emergency services.

(b) General description of eligibility standards and methodology

(1) Eligibility standards

(A) In general

The plan shall include a description of the standards used to determine the eligibility of targeted low-income children for child health assistance under the plan. Such standards may include (to the extent consistent with this subchapter) those relating to the geographic areas to be served by the plan, age, income and resources (including any standards relating to spenddowns and disposition of resources), residency, disability status (so long as any standard relating to such status does not restrict eligibility), access to or coverage under other health coverage, and duration of eligibility. Such standards may not discriminate on the basis of diagnosis.

(B) Limitations on eligibility standards

Such eligibility standards—

(i) shall, within any defined group of covered targeted low-income children, not cover such children with higher family income without covering children with a lower family income, and

(ii) may not deny eligibility based on a child having a preexisting medical condition.

(2) Methodology

The plan shall include a description of methods of establishing and continuing eligibility and enrollment.

(3) Eligibility screening; coordination with other health coverage programs

The plan shall include a description of procedures to be used to ensure—

(A) through both intake and followup screening, that only targeted low-income children are furnished child health assistance under the State child health plan;

(B) that children found through the screening to be eligible for medical assistance under the State medicaid plan under subchapter XIX of this chapter are enrolled for such assistance under such plan;

(C) that the insurance provided under the State child health plan does not substitute for coverage under group health plans;

(D) the provision of child health assistance to targeted low-income children in the State who are Indians (as defined in section 1603(c) of title 25); and

(E) coordination with other public and private programs providing creditable coverage for low-income children.

(4) Nonentitlement

Nothing in this subchapter shall be construed as providing an individual with an entitlement to child health assistance under a State child health plan.

(c) Outreach and coordination

A State child health plan shall include a description of the procedures to be used by the State to accomplish the following:

(1) Outreach

Outreach to families of children likely to be eligible for child health assistance under the plan or under other public or private health coverage programs to inform these families of the availability of, and to assist them in enrolling their children in, such a program.

(2) Coordination with other health insurance programs

Coordination of the administration of the State program under this subchapter with other public and private health insurance programs.

(Aug. 14, 1935, ch. 531, title XXI, § 2102, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 552.)

§ 1397cc. Coverage requirements for children's health insurance

(a) Required scope of health insurance coverage

The child health assistance provided to a targeted low-income child under the plan in the

form described in paragraph (1) of section 1397aa(a) of this title shall consist, consistent with subsection (c)(5) of this section, of any of the following:

(1) Benchmark coverage

Health benefits coverage that is equivalent to the benefits coverage in a benchmark benefit package described in subsection (b) of this section.

(2) Benchmark-equivalent coverage

Health benefits coverage that meets the following requirements:

(A) Inclusion of basic services

The coverage includes benefits for items and services within each of the categories of basic services described in subsection (c)(1) of this section.

(B) Aggregate actuarial value equivalent to benchmark package

The coverage has an aggregate actuarial value that is at least actuarially equivalent to one of the benchmark benefit packages.

(C) Substantial actuarial value for additional services included in benchmark package

With respect to each of the categories of additional services described in subsection (c)(2) of this section for which coverage is provided under the benchmark benefit package used under subparagraph (B), the coverage has an actuarial value that is equal to at least 75 percent of the actuarial value of the coverage of that category of services in such package.

(3) Existing comprehensive State-based coverage

Health benefits coverage under an existing comprehensive State-based program, described in subsection (d)(1) of this section.

(4) Secretary-approved coverage

Any other health benefits coverage that the Secretary determines, upon application by a State, provides appropriate coverage for the population of targeted low-income children proposed to be provided such coverage.

(b) Benchmark benefit packages

The benchmark benefit packages are as follows:

(1) FEHBP-equivalent children's health insurance coverage

The standard Blue Cross/Blue Shield preferred provider option service benefit plan, described in and offered under section 8903(1) of title 5.

(2) State employee coverage

A health benefits coverage plan that is offered and generally available to State employees in the State involved.

(3) Coverage offered through HMO

The health insurance coverage plan that—

(A) is offered by a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act [42 U.S.C. 300gg–91(b)(3)]), and

(B) has the largest insured commercial, non-medicaid enrollment of covered lives of such coverage plans offered by such a health maintenance organization in the State involved.

(c) Categories of services; determination of actuarial value of coverage

(1) Categories of basic services

For purposes of this section, the categories of basic services described in this paragraph are as follows:

(A) Inpatient and outpatient hospital services.

(B) Physicians' surgical and medical services.

(C) Laboratory and x-ray services.

(D) Well-baby and well-child care, including age-appropriate immunizations.

(2) Categories of additional services

For purposes of this section, the categories of additional services described in this paragraph are as follows:

(A) Coverage of prescription drugs.

(B) Mental health services.

(C) Vision services.

(D) Hearing services.

(3) Treatment of other categories

Nothing in this subsection shall be construed as preventing a State child health plan from providing coverage of benefits that are not within a category of services described in paragraph (1) or (2).

(4) Determination of actuarial value

The actuarial value of coverage of benchmark benefit packages, coverage offered under the State child health plan, and coverage of any categories of additional services under benchmark benefit packages and under coverage offered by such a plan, shall be set forth in an actuarial opinion in an actuarial report that has been prepared—

(A) by an individual who is a member of the American Academy of Actuaries;

(B) using generally accepted actuarial principles and methodologies;

(C) using a standardized set of utilization and price factors;

(D) using a standardized population that is representative of privately insured children of the age of children who are expected to be covered under the State child health plan;

(E) applying the same principles and factors in comparing the value of different coverage (or categories of services);

(F) without taking into account any differences in coverage based on the method of delivery or means of cost control or utilization used; and

(G) taking into account the ability of a State to reduce benefits by taking into account the increase in actuarial value of benefits coverage offered under the State child health plan that results from the limitations on cost sharing under such coverage.

The actuary preparing the opinion shall select and specify in the memorandum the standardized set and population to be used under subparagraphs (C) and (D).

(5) Construction on prohibited coverage

Nothing in this section shall be construed as requiring any health benefits coverage offered

under the plan to provide coverage for items or services for which payment is prohibited under this subchapter, notwithstanding that any benchmark benefit package includes coverage for such an item or service.

(d) Description of existing comprehensive State-based coverage

(1) In general

A program described in this paragraph is a child health coverage program that—

(A) includes coverage of a range of benefits;

(B) is administered or overseen by the State and receives funds from the State;

(C) is offered in New York, Florida, or Pennsylvania; and

(D) was offered as of August 5, 1997.

(2) Modifications

A State may modify a program described in paragraph (1) from time to time so long as it continues to meet the requirement of subparagraph (A) and does not reduce the actuarial value of the coverage under the program below the lower of—

(A) the actuarial value of the coverage under the program as of August 5, 1997, or

(B) the actuarial value described in subsection (a)(2)(B) of this section,

evaluated as of the time of the modification.

(e) Cost-sharing

(1) Description; general conditions

(A) Description

A State child health plan shall include a description, consistent with this subsection, of the amount (if any) of premiums, deductibles, coinsurance, and other cost sharing imposed. Any such charges shall be imposed pursuant to a public schedule.

(B) Protection for lower income children

The State child health plan may only vary premiums, deductibles, coinsurance, and other cost sharing based on the family income of targeted low-income children in a manner that does not favor children from families with higher income over children from families with lower income.

(2) No cost sharing on benefits for preventive services

The State child health plan may not impose deductibles, coinsurance, or other cost sharing with respect to benefits for services within the category of services described in subsection (c)(1)(D) of this section.

(3) Limitations on premiums and cost-sharing

(A) Children in families with income below 150 percent of poverty line

In the case of a targeted low-income child whose family income is at or below 150 percent of the poverty line, the State child health plan may not impose—

(i) an enrollment fee, premium, or similar charge that exceeds the maximum monthly charge permitted consistent with standards established to carry out section 1396*o*(b)(1) of this title (with respect to individuals described in such section); and

(ii) a deductible, cost sharing, or similar charge that exceeds an amount that is nominal (as determined consistent with regulations referred to in section 1396*o*(a)(3) of this title, with such appropriate adjustment for inflation or other reasons as the Secretary determines to be reasonable).

(B) Other children

For children not described in subparagraph (A), subject to paragraphs (1)(B) and (2), any premiums, deductibles, cost sharing or similar charges imposed under the State child health plan may be imposed on a sliding scale related to income, except that the total annual aggregate cost-sharing with respect to all targeted low-income children in a family under this subchapter may not exceed 5 percent of such family's income for the year involved.

(4) Relation to medicaid requirements

Nothing in this subsection shall be construed as affecting the rules relating to the use of enrollment fees, premiums, deductions, cost sharing, and similar charges in the case of targeted low-income children who are provided child health assistance in the form of coverage under a medicaid program under section 1397aa(a)(2) of this title.

(f) Application of certain requirements

(1) Restriction on application of preexisting condition exclusions

(A) In general

Subject to subparagraph (B), the State child health plan shall not permit the imposition of any preexisting condition exclusion for covered benefits under the plan.

(B) Group health plans and group health insurance coverage

If the State child health plan provides for benefits through payment for, or a contract with, a group health plan or group health insurance coverage, the plan may permit the imposition of a preexisting condition exclusion but only insofar as it is permitted under the applicable provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1181 et seq.] and title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.].

(2) Compliance with other requirements

Coverage offered under this section shall comply with the requirements of subpart 2 of part A of title XXVII of the Public Health Service Act [42 U.S.C. 300gg–4 et seq.] insofar as such requirements apply with respect to a health insurance issuer that offers group health insurance coverage.

(Aug. 14, 1935, ch. 531, title XXI, § 2103, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 554.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(1)(B), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, as amended. Part 7 of subtitle B of title I of the Act is classified generally to part 7

(§ 1181 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (f), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XXVII of the Act is classified generally to subchapter XXV (§ 300gg et seq.) of chapter 6A of this title. Subpart 2 of part A of title XXVII of the Act is classified generally to subpart 2 (§ 300gg–4 et seq.) of part A of subchapter XXV of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

§ 1397dd. Allotments

(a) Appropriation; total allotment

For the purpose of providing allotments to States under this section, there is appropriated, out of any money in the Treasury not otherwise appropriated—

(1) for fiscal year 1998, $4,295,000,000;
(2) for fiscal year 1999, $4,275,000,000;
(3) for fiscal year 2000, $4,275,000,000;
(4) for fiscal year 2001, $4,275,000,000;
(5) for fiscal year 2002, $3,150,000,000;
(6) for fiscal year 2003, $3,150,000,000;
(7) for fiscal year 2004, $3,150,000,000;
(8) for fiscal year 2005, $4,050,000,000;
(9) for fiscal year 2006, $4,050,000,000; and
(10) for fiscal year 2007, $5,000,000,000.

(b) Allotments to 50 States and District of Columbia

(1) In general

Subject to paragraph (4), of the amount available for allotment under subsection (a) of this section for a fiscal year, reduced by the amount of allotments made under subsection (c) of this section (determined without regard to paragraph (4) thereof) for the fiscal year, the Secretary shall allot to each State (other than a State described in such subsection) with a State child health plan approved under this subchapter the same proportion as the ratio of—

(A) the product of (i) the number of children described in paragraph (2) for the State for the fiscal year and (ii) the State cost factor for that State (established under paragraph (3)); to

(B) the sum of the products computed under subparagraph (A).

(2) Number of children

(A) In general

The number of children described in this paragraph for a State for—

(i) each of fiscal years 1998 and 1999 is equal to the number of low-income children in the State with no health insurance coverage for the fiscal year;

(ii) fiscal year 2000 is equal to—

(I) 75 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage, plus

(II) 25 percent of the number of low-income children in the State for the fiscal year; and

(iii) each succeeding fiscal year is equal to—

(I) 50 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage, plus

(II) 50 percent of the number of low-income children in the State for the fiscal year.

(B) Determination of number of children

For purposes of subparagraph (A), a determination of the number of low-income children (and of such children who have no health insurance coverage) for a State for a fiscal year shall be made on the basis of the arithmetic average of the number of such children, as reported and defined in the 3 most recent March supplements to the Current Population Survey of the Bureau of the Census before the beginning of the calendar year in which such fiscal year begins.

(3) Adjustment for geographic variations in health costs

(A) In general

For purposes of paragraph (1)(A)(ii), the ''State cost factor'' for a State for a fiscal year equal to the sum of—

(i) 0.15, and

(ii) 0.85 multiplied by the ratio of—

(I) the annual average wages per employee for the State for such year (as determined under subparagraph (B)), to

(II) the annual average wages per employee for the 50 States and the District of Columbia.

(B) Annual average wages per employee

For purposes of subparagraph (A), the ''annual average wages per employee'' for a State, or for all the States, for a fiscal year is equal to the average of the annual wages per employee for the State or for the 50 States and the District of Columbia for employees in the health services industry (SIC code 8000), as reported by the Bureau of Labor Statistics of the Department of Labor for each of the most recent 3 years before the beginning of the calendar year in which such fiscal year begins.

(4) Floors and ceilings in State allotments

(A) In general

The proportion of the allotment under this subsection for a subsection (b) State (as defined in subparagraph (D)) for fiscal year 2000 and each fiscal year thereafter shall be subject to the following floors and ceilings:

(i) Floor of $2,000,000

A floor equal to $2,000,000 divided by the total of the amount available under this subsection for all such allotments for the fiscal year.

(ii) Annual floor of 10 percent below preceding fiscal year's proportion

A floor of 90 percent of the proportion for the State for the preceding fiscal year.

(iii) Cumulative floor of 30 percent below the FY 1999 proportion

A floor of 70 percent of the proportion for the State for fiscal year 1999.

(iv) Cumulative ceiling of 45 percent above FY 1999 proportion

A ceiling of 145 percent of the proportion for the State for fiscal year 1999.

(B) Reconciliation

(i) Elimination of any deficit by establishing a percentage increase ceiling for States with highest annual percentage increases

To the extent that the application of subparagraph (A) would result in the sum of the proportions of the allotments for all subsection (b) States exceeding 1.0, the Secretary shall establish a maximum percentage increase in such proportions for all subsection (b) States for the fiscal year in a manner so that such sum equals 1.0.

(ii) Allocation of surplus through pro rata increase

To the extent that the application of subparagraph (A) would result in the sum of the proportions of the allotments for all subsection (b) States being less than 1.0, the proportions of such allotments (as computed before the application of floors under clauses (i), (ii), and (iii) of subparagraph (A)) for all subsection (b) States shall be increased in a pro rata manner (but not to exceed the ceiling established under subparagraph (A)(iv)) so that (after the application of such floors and ceiling) such sum equals 1.0.

(C) Construction

This paragraph shall not be construed as applying to (or taking into account) amounts of allotments redistributed under subsection (f) of this section.

(D) Definitions

In this paragraph:

(i) Proportion of allotment

The term ''proportion'' means, with respect to the allotment of a subsection (b) State for a fiscal year, the amount of the allotment of such State under this subsection for the fiscal year divided by the total of the amount available under this subsection for all such allotments for the fiscal year.

(ii) Subsection (b) State

The term ''subsection (b) State'' means one of the 50 States or the District of Columbia.

(c) Allotments to territories

(1) In general

Of the amount available for allotment under subsection (a) of this section for a fiscal year, the Secretary shall allot 0.25 percent among each of the commonwealths and territories described in paragraph (3) in the same proportion as the percentage specified in paragraph (2) for such commonwealth or territory bears to the sum of such percentages for all such commonwealths or territories so described.

(2) Percentage

The percentage specified in this paragraph for—

(A) Puerto Rico is 91.6 percent,
(B) Guam is 3.5 percent,
(C) the Virgin Islands is 2.6 percent,
(D) American Samoa is 1.2 percent, and
(E) the Northern Mariana Islands is 1.1 percent.

(3) Commonwealths and territories

A commonwealth or territory described in this paragraph is any of the following if it has a State child health plan approved under this subchapter:

(A) Puerto Rico.
(B) Guam.
(C) The Virgin Islands.
(D) American Samoa.
(E) The Northern Mariana Islands.

(4) Additional allotment

(A) In general

In addition to the allotment under paragraph (1), the Secretary shall allot each commonwealth and territory described in paragraph (3) the applicable percentage specified in paragraph (2) of the amount appropriated under subparagraph (B).

(B) Appropriations

For purposes of providing allotments pursuant to subparagraph (A), there is appropriated, out of any money in the Treasury not otherwise appropriated $32,000,000 for fiscal year 1999, $34,200,000 for each of fiscal years 2000 and 2001, $25,200,000 for each of fiscal years 2002 through 2004, $32,400,000 for each of fiscal years 2005 and 2006, and $40,000,000 for fiscal year 2007.

(d) Repealed. Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–581

(e) 3-year availability of amounts allotted

Amounts allotted to a State pursuant to this section for a fiscal year shall remain available for expenditure by the State through the end of the second succeeding fiscal year; except that amounts reallotted to a State under subsection (f) of this section shall be available for expenditure by the State through the end of the fiscal year in which they are reallotted.

(f) Procedure for redistribution of unused allotments

The Secretary shall determine an appropriate procedure for redistribution of allotments from States that were provided allotments under this section for a fiscal year but that do not expend all of the amount of such allotments during the period in which such allotments are available for expenditure under subsection (e) of this section, to States that have fully expended the amount of their allotments under this section.

(g) Rule for redistribution and extended availability of fiscal years 1998, 1999, 2000, and 2001 allotments

(1) Amount redistributed

(A) In general

In the case of a State that expends all of its allotment under subsection (b) or (c) of this section for fiscal year 1998 by the end of

fiscal year 2000, or for fiscal year 1999 by the end of fiscal year 2001, or for fiscal year 2000 by the end of fiscal year 2002, or for fiscal year 2001 by the end of fiscal year 2003, the Secretary shall redistribute to the State under subsection (f) of this section (from the fiscal year 1998, 1999, 2000, or 2001 allotments of other States, respectively, as determined by the application of paragraphs (2) and (3) with respect to the respective fiscal year) the following amount:

(i) State

In the case of one of the 50 States or the District of Columbia, with respect to—

(I) the fiscal year 1998 allotment, the amount by which the State's expenditures under this subchapter in fiscal years 1998, 1999, and 2000 exceed the State's allotment for fiscal year 1998 under subsection (b) of this section;

(II) the fiscal year 1999 allotment, the amount by which the State's expenditures under this subchapter in fiscal years 1999, 2000, and 2001 exceed the State's allotment for fiscal year 1999 under subsection (b) of this section;

(III) the fiscal year 2000 allotment, the amount specified in subparagraph (C)(i) (less the total of the amounts under clause (ii) for such fiscal year), multiplied by the ratio of the amount specified in subparagraph (C)(ii) for the State to the amount specified in subparagraph (C)(iii); or

(IV) the fiscal year 2001 allotment, the amount specified in subparagraph (D)(i) (less the total of the amounts under clause (ii) for such fiscal year), multiplied by the ratio of the amount specified in subparagraph (D)(ii) for the State to the amount specified in subparagraph (D)(iii).

(ii) Territory

In the case of a commonwealth or territory described in subsection (c)(3) of this section, an amount that bears the same ratio to 1.05 percent of the total amount described in paragraph (2)(B)(i)(I) as the ratio of the commonwealth's or territory's fiscal year 1998, 1999, 2000, or 2001 allotment under subsection (c) of this section (as the case may be) bears to the total of all such allotments for such fiscal year under such subsection.

(B) Expenditure rules

An amount redistributed to a State under this paragraph—

(i) shall not be included in the determination of the State's allotment for any fiscal year under this section;

(ii) notwithstanding subsection (e) of this section, with respect to fiscal year 1998, 1999, or 2000, shall remain available for expenditure by the State through the end of fiscal year 2004;

(iii) notwithstanding subsection (e) of this section, with respect to fiscal year 2001, shall remain available for expenditure by the State through the end of fiscal year 2005; and

(iv) shall be counted as being expended with respect to a fiscal year allotment in accordance with applicable regulations of the Secretary.

(C) Amounts used in computing redistributions for fiscal year 2000

For purposes of subparagraph (A)(i)(III)—

(i) the amount specified in this clause is the amount specified in paragraph (2)(B)(i)(I) for fiscal year 2000, less the total amount remaining available pursuant to paragraph (2)(A)(iii);

(ii) the amount specified in this clause for a State is the amount by which the State's expenditures under this subchapter in fiscal years 2000, 2001, and 2002 exceed the State's allotment for fiscal year 2000 under subsection (b) of this section; and

(iii) the amount specified in this clause is the sum, for all States entitled to a redistribution under subparagraph (A) from the allotments for fiscal year 2000, of the amounts specified in clause (ii).

(D) Amounts used in computing redistributions for fiscal year 2001

For purposes of subparagraph (A)(i)(IV)—

(i) the amount specified in this clause is the amount specified in paragraph (2)(B)(i)(I) for fiscal year 2001, less the total amount remaining available pursuant to paragraph (2)(A)(iv);

(ii) the amount specified in this clause for a State is the amount by which the State's expenditures under this subchapter in fiscal years 2001, 2002, and 2003 exceed the State's allotment for fiscal year 2001 under subsection (b) of this section; and

(iii) the amount specified in this clause is the sum, for all States entitled to a redistribution under subparagraph (A) from the allotments for fiscal year 2001, of the amounts specified in clause (ii).

(2) Extension of availability of portion of unexpended fiscal years 1998 through 2001 allotments

(A) In general

Notwithstanding subsection (e) of this section:

(i) Fiscal year 1998 allotment

Of the amounts allotted to a State pursuant to this section for fiscal year 1998 that were not expended by the State by the end of fiscal year 2000, the amount specified in subparagraph (B) for fiscal year 1998 for such State shall remain available for expenditure by the State through the end of fiscal year 2004.

(ii) Fiscal year 1999 allotment

Of the amounts allotted to a State pursuant to this subsection for fiscal year 1999 that were not expended by the State by the end of fiscal year 2001, the amount specified in subparagraph (B) for fiscal year 1999 for such State shall remain available for expenditure by the State through the end of fiscal year 2004.

(iii) Fiscal year 2000 allotment

Of the amounts allotted to a State pursuant to this section for fiscal year 2000

that were not expended by the State by the end of fiscal year 2002, 50 percent of that amount shall remain available for expenditure by the State through the end of fiscal year 2004.

(iv) Fiscal year 2001 allotment

Of the amounts allotted to a State pursuant to this section for fiscal year 2001 that were not expended by the State by the end of fiscal year 2003, 50 percent of that amount shall remain available for expenditure by the State through the end of fiscal year 2005.

(B) Amount remaining available for expenditure

The amount specified in this subparagraph for a State for a fiscal year is equal to—

(i) the amount by which (I) the total amount available for redistribution under subsection (f) of this section from the allotments for that fiscal year, exceeds (II) the total amounts redistributed under paragraph (1) for that fiscal year; multiplied by

(ii) the ratio of the amount of such State's unexpended allotment for that fiscal year to the total amount described in clause (i)(I) for that fiscal year.

(C) Use of up to 10 percent of retained 1998 allotments for outreach activities

Notwithstanding section 1397ee(c)(2)(A) of this title, with respect to any State described in subparagraph (A)(i), the State may use up to 10 percent of the amount specified in subparagraph (B) for fiscal year 1998 for expenditures for outreach activities approved by the Secretary.

(3) Determination of amounts

For purposes of calculating the amounts described in paragraphs (1) and (2) relating to the allotment for fiscal year 1998, fiscal year 1999, fiscal year 2000, or fiscal year 2001, the Secretary shall use the amounts reported by the States not later than December 15, 2000, November 30, 2001, November 30, 2002, or November 30, 2003, respectively, on HCFA Form 64 or HCFA Form 21 or CMS Form 64 or CMS Form 21, as the case may be,,[1] as approved by the Secretary.

(Aug. 14, 1935, ch. 531, title XXI, §2104, as added Pub. L. 105–33, title IV, §4901(a), Aug. 5, 1997, 111 Stat. 558; amended Pub. L. 105–100, title I, §162(6), (8), Nov. 19, 1997, 111 Stat. 2189, 2190; Pub. L. 105–277, div. A, §101(f) [title VII, §706], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389; Pub. L. 106–113, div. B, §1000(a)(6) [title VII, §§701(a), 702, 705(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–399, 1501A–400, 1501A–402; Pub. L. 106–554, §1(a)(6) [title VIII, §§801(a), 802(b), (d)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–578, 2763A–581; Pub. L. 108–74, §1(a)(1)–(3), Aug. 15, 2003, 117 Stat. 892, 893; Pub. L. 108–173, title IX, §900(e)(1)(M), Dec. 8, 2003, 117 Stat. 2372.)

AMENDMENTS

2003—Subsec. (g). Pub. L. 108–74, §1(a)(2)(C)(i), (3)(C)(i), substituted '', 1999, 2000, and 2001'' for ''and 1999'' in heading.

Subsec. (g)(1)(A). Pub. L. 108–74, §1(a)(3)(B)(i), (ii), inserted ''or for fiscal year 2001 by the end of fiscal year 2003,'' after ''fiscal year 2002,'' and substituted ''1999, 2000, or 2001'' for ''1999, or 2000''.

Pub. L. 108–74, §1(a)(2)(B)(i), (ii), inserted ''or for fiscal year 2000 by the end of fiscal year 2002,'' after ''fiscal year 2001,'' and substituted ''1998, 1999, or 2000'' for ''1998 or 1999''.

Subsec. (g)(1)(A)(i)(III). Pub. L. 108–74, §1(a)(2)(B)(iii), added subclause (III).

Subsec. (g)(1)(A)(i)(IV). Pub. L. 108–74, §1(a)(3)(B)(iii), added subcl. (IV).

Subsec. (g)(1)(A)(ii). Pub. L. 108–74, §1(a)(3)(B)(iv), substituted ''2000, or 2001'' for ''or 2000''.

Pub. L. 108–74, §1(a)(2)(B)(iv), substituted '', 1999, or 2000'' for ''or 1999''.

Subsec. (g)(1)(B). Pub. L. 108–74, §1(a)(2)(B)(v), struck out ''with respect to fiscal year 1998 or 1999'' after ''paragraph'' in introductory provisions.

Subsec. (g)(1)(B)(ii). Pub. L. 108–74, §1(a)(2)(B)(vi), inserted ''with respect to fiscal year 1998, 1999, or 2000'' after ''subsection (e) of this section,'' and substituted ''2004'' for ''2002''.

Subsec. (g)(1)(B)(iii), (iv). Pub. L. 108–74, §1(a)(3)(B)(v), added clause (iii) and redesignated former cl. (iii) as (iv).

Subsec. (g)(1)(C). Pub. L. 108–74, §1(a)(2)(B)(vii), added subpar. (C).

Subsec. (g)(1)(D). Pub. L. 108–74, §1(a)(3)(B)(vi), added subpar. (D).

Subsec. (g)(2). Pub. L. 108–74, §1(a)(2)(A)(i), (3)(A)(i), substituted ''through 2001'' for ''and 1999'' in heading.

Subsec. (g)(2)(A)(i), (ii). Pub. L. 108–74, §1(a)(1), substituted ''fiscal year 2004'' for ''fiscal year 2002''.

Subsec. (g)(2)(A)(iii). Pub. L. 108–74, §1(a)(2)(A)(ii), added cl. (iii).

Subsec. (g)(2)(A)(iv). Pub. L. 108–74, §1(a)(3)(A)(ii), added cl. (iv).

Subsec. (g)(3). Pub. L. 108–173 inserted ''or CMS Form 64 or CMS Form 21, as the case may be,'' after ''HCFA Form 64 or HCFA Form 21''.

Pub. L. 108–74, §1(a)(3)(C)(ii), substituted ''fiscal year 2000, or fiscal year 2001'' for ''or fiscal year 2000'' and ''November 30, 2002, or November 30, 2003,'' for ''or November 30, 2002,''.

Pub. L. 108–74, §1(a)(2)(C)(ii), substituted '', fiscal year 1999, or fiscal year 2000'' for ''or fiscal year 1999'' and ''November 30, 2001, or November 30, 2002'' for ''or November 30, 2001''.

2000—Subsec. (b)(1). Pub. L. 106–554, §1(a)(6) [title VIII, §802(d)(3)(A)], in introductory provisions, struck out ''and subsection (d) of this section'' after ''Subject to paragraph (4)''.

Subsec. (c)(1). Pub. L. 106–554, §1(a)(6) [title VIII, §802(d)(3)(B)], struck out ''subject to subsection (d) of this section,'' after ''for a fiscal year,''.

Subsec. (d). Pub. L. 106–554, §1(a)(6) [title VIII, §802(b)], struck out heading and text of subsec. (d). Text read as follows: ''The amount of the allotment otherwise provided to a State under subsection (b) or (c) of this section for a fiscal year shall be reduced by the sum of—

''(1) the amount (if any) of the payments made to that State under section 1396b(a) of this title for expenditures claimed by the State during such fiscal year that is attributable to the provision of medical assistance to a child during a presumptive eligibility period under section 1396r–1a of this title, and

''(2) the amount (if any) of the payments made to that State under section 1396b(a) of this title for expenditures claimed by the State during such fiscal year that is attributable to the provision of medical assistance to a child for which payment is made under section 1396b(a)(1) of this title on the basis of an enhanced FMAP under the fourth sentence of section 1396d(b) of this title.''

Subsec. (g). Pub. L. 106–554, §1(a)(6) [title VIII, §801(a)], added subsec. (g).

1999—Subsec. (b)(2)(A)(i). Pub. L. 106–113, §1000(a)(6) [title VII, §701(a)(1)(A)], substituted ''and 1999'' for ''through 2000''.

[1] So in original.

Subsec. (b)(2)(A)(ii). Pub. L. 106–113, §1000(a)(6) [title VII, §701(a)(1)(B)], substituted ''2000'' for ''2001'' in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 106–113, §1000(a)(6) [title VII, §701(a)(3)], substituted ''the calendar year in which such fiscal year begins'' for ''the fiscal year''.

Subsec. (b)(3)(B). Pub. L. 106–113, §1000(a)(6) [title VII, §705(a)], substituted ''all the States,'' for ''all the States.''

Pub. L. 106–113, §1000(a)(6) [title VII, §701(a)(4)], substituted ''the calendar year in which such fiscal year begins'' for ''the fiscal year involved''.

Subsec. (b)(4). Pub. L. 106–113, §1000(a)(6) [title VII, §701(a)(2)], amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''In no case shall the amount of the allotment under this subsection for one of the 50 States or the District of Columbia for a year be less than $2,000,000. To the extent that the application of the previous sentence results in an increase in the allotment to a State above the amount otherwise provided, the allotments for the other States and the District of Columbia under this subsection shall be reduced in a pro rata manner (but not below $2,000,000) so that the total of such allotments in a fiscal year does not exceed the amount otherwise provided for allotment under paragraph (1) for that fiscal year.''

Subsec. (c)(4)(B). Pub. L. 106–113, §1000(a)(6) [title VII, §702], inserted before period at end '', $34,200,000 for each of fiscal years 2000 and 2001, $25,200,000 for each of fiscal years 2002 through 2004, $32,400,000 for each of fiscal years 2005 and 2006, and $40,000,000 for fiscal year 2007''.

1998—Subsec. (b)(1). Pub. L. 105–277, §101(f) [title VII, §706(b)], inserted ''(determined without regard to paragraph (4) thereof)'' after ''subsection (c) of this section''.

Subsec. (c)(4). Pub. L. 105–277, §101(f) [title VII, §706(a)], added par. (4).

1997—Subsec. (a)(1). Pub. L. 105–100, §162(8)(A), substituted ''$4,295,000,000'' for ''$4,275,000,000''.

Subsec. (b)(4). Pub. L. 105–100, §162(8)(B), substituted ''In'' for ''Subject to paragraph (5), in''.

Subsec. (c)(2)(C). Pub. L. 105–100, §162(8)(C), inserted ''the'' before ''Virgin Islands''.

Subsec. (c)(3)(C), (E). Pub. L. 105–100, §162(8)(C), substituted ''The'' for ''the''.

Subsec. (d)(1). Pub. L. 105–100, §162(6)(A), substituted ''for expenditures claimed by the State'' for ''for calendar quarters''.

Subsec. (d)(2). Pub. L. 105–100, §162(6)(B), added par. (2) and struck out former par. (2) which read as follows: ''the amount of payments under such section during such period that is attributable to the provision of medical assistance to a child for which payment is made under section 1396b(a)(1) of this title on the basis of an enhanced FMAP under section 1396d(b) of this title.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–74, §1(a)(4), Aug. 15, 2003, 117 Stat. 895, provided that: ''This subsection [amending this section], and the amendments made by this subsection, shall be effective as if this subsection had been enacted on September 30, 2002, and amounts under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) from allotments for fiscal years 1998 through 2000 are available for expenditure on and after October 1, 2002, under the amendments made by this subsection as if this subsection had been enacted on September 30, 2002.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title VIII, §801(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–580, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the enactment of section 4901 of BBA [Pub. L. 105–33] (111 Stat. 552).''

Amendment by section 802(b), (d)(3) of Pub. L. 106–554 effective as if included in the enactment of section 4901 of Pub. L. 105–33, see section 1(a)(6) [title VIII, §802(f)] of Pub. L. 106–554, set out as a note under section 1396d of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(6) [title VII, §701(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–400, provided that: ''The amendments made by this section [amending this section] apply to allotments determined under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) for fiscal year 2000 and each fiscal year thereafter.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 162 of Pub. L. 105–100 provided that the amendment made by that section is effective as if included in the enactment of subtitle J (§§4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

AUTHORITY TO TRANSFER SUBCHAPTER XXI APPROPRIATIONS TO SUBCHAPTER XIX APPROPRIATION ACCOUNT AS REIMBURSEMENT FOR MEDICAID EXPENDITURES FOR MEDICAID EXPANSION SCHIP SERVICES

Pub. L. 106–554, §1(a)(6) [title VIII, §802(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–581, provided that: ''Notwithstanding any other provision of law, all amounts appropriated under title XXI [of the Social Security Act, this subchapter] and allotted to a State pursuant to subsection (b) or (c) of section 2104 of the Social Security Act (42 U.S.C. 1397dd) for fiscal years 1998 through 2000 (including any amounts that, but for this provision, would be considered to have expired) and not expended in providing child health assistance or related services for which payment may be made pursuant to subparagraph (C) or (D) of section 2105(a)(1) of such Act (42 U.S.C. 1397ee(a)(1)) (as amended by subsection (a)), shall be available to reimburse the Grants to States for Medicaid account in an amount equal to the total payments made to such State under section 1903(a) of such Act (42 U.S.C. 1396b(a)) for expenditures in such years for medical assistance described in subparagraphs (A) and (B) of section 2105(a)(1) of such Act (42 U.S.C. 1397ee(a)(1)) (as so amended).''

DETERMINATION OF NUMBER OF CHILDREN AND STATE COST FACTORS FOR FISCAL YEARS 1998 AND 1999

Pub. L. 105–277, div. A, §101(f) [title VII, §707], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389, provided that: ''Notwithstanding any other provision of law, for purposes of determining the product under section 2104(b)(1)(A) of the Social Security Act (42 U.S.C. 1397dd(b)(1)(A)) for a State for each of fiscal years 1998 and 1999—

''(1) the number of children under clause (i) of such section shall be the number of low-income children specified for the State in Column B of the table on pages 48101–48102 of the Federal Register published on September 12, 1997, adjusted by the Census Bureau as necessary to treat children as being without health insurance if they have access to health care funded by the Indian Health Service but do not have health insurance; and

''(2) the State cost factor under clause (ii) of such section shall be the State cost factor specified for the State in Column C of such table.''

§ 1397ee. Payments to States

(a) Payments

(1) In general

Subject to the succeeding provisions of this section, the Secretary shall pay to each State with a plan approved under this subchapter, from its allotment under section 1397dd of this title, an amount for each quarter equal to the enhanced FMAP (or, in the case of expenditures described in subparagraph (B), the Federal medical assistance percentage (as defined

in the first sentence of section 1396d(b) of this title)) of expenditures in the quarter—

(A) for child health assistance under the plan for targeted low-income children in the form of providing medical assistance for which payment is made on the basis of an enhanced FMAP under the fourth sentence of section 1396d(b) of this title;

(B) for the provision of medical assistance on behalf of a child during a presumptive eligibility period under section 1396r–1a of this title;

(C) for child health assistance under the plan for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 1397cc of this title; and

(D) only to the extent permitted consistent with subsection (c) of this section—

(i) for payment for other child health assistance for targeted low-income children;

(ii) for expenditures for health services initiatives under the plan for improving the health of children (including targeted low-income children and other low-income children);

(iii) for expenditures for outreach activities as provided in section 1397bb(c)(1) of this title under the plan; and

(iv) for other reasonable costs incurred by the State to administer the plan.

(2) Order of payments

Payments under paragraph (1) from a State's allotment shall be made in the following order:

(A) First, for expenditures for items described in paragraph (1)(A).

(B) Second, for expenditures for items described in paragraph (1)(B).

(C) Third, for expenditures for items described in paragraph (1)(C).

(D) Fourth, for expenditures for items described in paragraph (1)(D).

(b) Enhanced FMAP

For purposes of subsection (a) of this section, the ''enhanced FMAP'', for a State for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1396d(b) of this title) for the State increased by a number of percentage points equal to 30 percent of the number of percentage points by which (1) such Federal medical assistance percentage for the State, is less than (2) 100 percent; but in no case shall the enhanced FMAP for a State exceed 85 percent.

(c) Limitation on certain payments for certain expenditures

(1) General limitations

Funds provided to a State under this subchapter shall only be used to carry out the purposes of this subchapter (as described in section 1397aa of this title), and any health insurance coverage provided with such funds may include coverage of abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest.

(2) Limitation on expenditures not used for medicaid or health insurance assistance

(A) In general

Except as provided in this paragraph, the amount of payment that may be made under subsection (a) of this section for a fiscal year for expenditures for items described in paragraph (1)(D) of such subsection shall not exceed 10 percent of the total amount of expenditures for which payment is made under subparagraphs (A), (C), and (D) of paragraph (1) of such subsection.

(B) Waiver authorized for cost-effective alternative

The limitation under subparagraph (A) on expenditures for items described in subsection (a)(1)(D) of this section shall not apply to the extent that a State establishes to the satisfaction of the Secretary that—

(i) coverage provided to targeted low-income children through such expenditures meets the requirements of section 1397cc of this title;

(ii) the cost of such coverage is not greater, on an average per child basis, than the cost of coverage that would otherwise be provided under section 1397cc of this title; and

(iii) such coverage is provided through the use of a community-based health delivery system, such as through contracts with health centers receiving funds under section 254b of this title or with hospitals such as those that receive disproportionate share payment adjustments under section 1395ww(d)(5)(F) or 1396r–4 of this title.

(3) Waiver for purchase of family coverage

Payment may be made to a State under subsection (a)(1) of this section for the purchase of family coverage under a group health plan or health insurance coverage that includes coverage of targeted low-income children only if the State establishes to the satisfaction of the Secretary that—

(A) purchase of such coverage is cost-effective relative to the amounts that the State would have paid to obtain comparable coverage only of the targeted low-income children involved, and

(B) such coverage shall not be provided if it would otherwise substitute for health insurance coverage that would be provided to such children but for the purchase of family coverage.

(4) Use of non-Federal funds for State matching requirement

Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of non-Federal contributions required under subsection (a) of this section.

(5) Offset of receipts attributable to premiums and other cost-sharing

For purposes of subsection (a) of this section, the amount of the expenditures under the plan shall be reduced by the amount of any premiums and other cost-sharing received by the State.

(6) Prevention of duplicative payments

(A) Other health plans

No payment shall be made to a State under this section for expenditures for child health assistance provided for a targeted low-income child under its plan to the extent that a private insurer (as defined by the Secretary by regulation and including a group health plan (as defined in section 1167(1) of title 29), a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided child health assistance under the plan.

(B) Other Federal governmental programs

Except as provided in subparagraph (A) or (B) of subsection (a)(1) of this section or any other provision of law, no payment shall be made to a State under this section for expenditures for child health assistance provided for a targeted low-income child under its plan to the extent that payment has been made or can reasonably be expected to be made promptly (as determined in accordance with regulations) under any other federally operated or financed health care insurance program, other than an insurance program operated or financed by the Indian Health Service, as identified by the Secretary. For purposes of this paragraph, rules similar to the rules for overpayments under section 1396b(d)(2) of this title shall apply.

(7) Limitation on payment for abortions

(A) In general

Payment shall not be made to a State under this section for any amount expended under the State plan to pay for any abortion or to assist in the purchase, in whole or in part, of health benefit coverage that includes coverage of abortion.

(B) Exception

Subparagraph (A) shall not apply to an abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest.

(C) Rule of construction

Nothing in this section shall be construed as affecting the expenditure by a State, locality, or private person or entity of State, local, or private funds (other than funds expended under the State plan) for any abortion or for health benefits coverage that includes coverage of abortion.

(d) Maintenance of effort

(1) In medicaid eligibility standards

No payment may be made under subsection (a) of this section with respect to child health assistance provided under a State child health plan if the State adopts income and resource standards and methodologies for purposes of determining a child's eligibility for medical assistance under the State plan under subchapter XIX of this chapter that are more restrictive than those applied as of June 1, 1997.

(2) In amounts of payment expended for certain State-funded health insurance programs for children

(A) In general

The amount of the allotment for a State in a fiscal year (beginning with fiscal year 1999) shall be reduced by the amount by which—

(i) the total of the State children's health insurance expenditures in the preceding fiscal year, is less than

(ii) the total of such expenditures in fiscal year 1996.

(B) State children's health insurance expenditures

The term ''State children's health insurance expenditures'' means the following:

(i) The State share of expenditures under this subchapter.

(ii) The State share of expenditures under subchapter XIX of this chapter that are attributable to an enhanced FMAP under the fourth sentence of section 1396d(b) of this title.

(iii) State expenditures under health benefits coverage under an existing comprehensive State-based program, described in section 1397cc(d) of this title.

(e) Advance payment; retrospective adjustment

The Secretary may make payments under this section for each quarter on the basis of advance estimates of expenditures submitted by the State and such other investigation as the Secretary may find necessary, and may reduce or increase the payments as necessary to adjust for any overpayment or underpayment for prior quarters.

(f) Flexibility in submittal of claims

Nothing in this section or subsections (e) and (f) of section 1397dd of this title shall be construed as preventing a State from claiming as expenditures in the quarter expenditures that were incurred in a previous quarter.

(g) Authority for qualifying States to use certain funds for medicaid expenditures

(1) State option

(A) In general

Notwithstanding any other provision of law, a qualifying State (as defined in paragraph (2)) may elect to use not more than 20 percent of any allotment under section 1397dd of this title for fiscal year 1998, 1999, 2000, or 2001 (insofar as it is available under subsections (e) and (g) of such section) for payments under subchapter XIX of this chapter in accordance with subparagraph (B), instead of for expenditures under this subchapter.

(B) Payments to States

(i) In general

In the case of a qualifying State that has elected the option described in subparagraph (A), subject to the availability of funds under such subparagraph with respect to the State, the Secretary shall pay the State an amount each quarter equal to the additional amount that would have

been paid to the State under subchapter XIX of this chapter with respect to expenditures described in clause (ii) if the enhanced FMAP (as determined under subsection (b) of this section) had been substituted for the Federal medical assistance percentage (as defined in section 1396d(b) of this title).

(ii) Expenditures described

For purposes of this subparagraph, the expenditures described in this clause are expenditures, made after August 15, 2003, and during the period in which funds are available to the qualifying State for use under subparagraph (A), for medical assistance under subchapter XIX of this chapter to individuals who have not attained age 19 and whose family income exceeds 150 percent of the poverty line.

(iii) No impact on determination of budget neutrality for waivers

In the case of a qualifying State that uses amounts paid under this subsection for expenditures described in clause (ii) that are incurred under a waiver approved for the State, any budget neutrality determinations with respect to such waiver shall be determined without regard to such amounts paid.

(2) Qualifying State

In this subsection, the term ''qualifying State'' means a State that, on and after April 15, 1997, has an income eligibility standard that is at least 184 percent of the poverty line with respect to any 1 or more categories of children (other than infants) who are eligible for medical assistance under section 1396a(a)(10)(A) of this title or, in the case of a State that has a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on August 1, 1994, or July 1, 1995, has an income eligibility standard under such waiver for children that is at least 185 percent of the poverty line, or, in the case of a State that has a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on January 1, 1994, has an income eligibility standard under such waiver for children who lack health insurance that is at least 185 percent of the poverty line, or, in the case of a State that had a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on October 1, 1993, had an income eligibility standard under such waiver for children that was at least 185 percent of the poverty line and on and after July 1, 1998, has an income eligibility standard for children under section 1396a(a)(10)(A) of this title or a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that is at least 185 percent of the poverty line.

(3) Construction

Nothing in paragraphs (1) and (2) shall be construed as modifying the requirements applicable to States implementing State child health plans under this subchapter.

(Aug. 14, 1935, ch. 531, title XXI, §2105, as added Pub. L. 105–33, title IV, §4901(a), Aug. 5, 1997, 111 Stat. 560; amended Pub. L. 105–100, title I, §162(5), (7), Nov. 19, 1997, 111 Stat. 2189, 2190; Pub. L. 106–113, div. B, §1000(a)(6) [title VII, §705(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–402; Pub. L. 106–554, §1(a)(6) [title VIII, §802(a), (d)(4), (e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–580 to 2763A–582; Pub. L. 108–74, §1(b), Aug. 15, 2003, 117 Stat. 895; Pub. L. 108–127, §1, Nov. 17, 2003, 117 Stat. 1354.)

AMENDMENTS

2003—Subsec. (g). Pub. L. 108–74 added subsec. (g).

Subsec. (g)(2). Pub. L. 108–127 substituted ''184'' for ''185'' the first place appearing, inserted ''August 1, 1994, or'' before ''July 1, 1995'', and inserted before period at end '', or, in the case of a State that had a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on October 1, 1993, had an income eligibility standard under such waiver for children that was at least 185 percent of the poverty line and on and after July 1, 1998, has an income eligibility standard for children under section 1396a(a)(10)(A) of this title or a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that is at least 185 percent of the poverty line''.

2000—Subsec. (a). Pub. L. 106–554, §1(a)(6) [title VIII, §802(a)], added subsec. heading, par. (1) heading, introductory provisions, and subpars. (A) and (B), struck out former subsec. heading and introductory provisions, redesignated former pars. (1) and (2) as subpars. (C) and (D), respectively, of par. (1) and realigned margins, redesignated subpars. (A) to (D) of former par. (2) as cls. (i) to (iv), respectively, of subpar. (D) of par. (1) and realigned margins, and added par. (2). Prior to amendment, introductory provisions read as follows: ''Subject to the succeeding provisions of this section, the Secretary shall pay to each State with a plan approved under this subchapter, from its allotment under section 1397dd of this title (taking into account any adjustment under section 1397dd(d) of this title), an amount for each quarter equal to the enhanced FMAP of expenditures in the quarter—''.

Subsec. (c)(2)(A). Pub. L. 106–554, §1(a)(6) [title VIII, §802(d)(4)(A)], substituted ''the amount of payment that may be made under subsection (a) of this section for a fiscal year for expenditures for items described in paragraph (1)(D) of such subsection shall not exceed 10 percent of the total amount of expenditures for which payment is made under subparagraphs (A), (C), and (D) of paragraph (1) of such subsection.'' for ''payment shall not be made under subsection (a) of this section for expenditures for items described in subsection (a) of this section (other than paragraph (1)) for a fiscal year to the extent the total of such expenditures (for which payment is made under such subsection) exceeds 10 percent of the sum of—

''(i) the total of such expenditures for such fiscal year, and

''(ii) the total expenditures for medical assistance by the State under subchapter XIX of this chapter for which Federal payments made under section 1396b(a)(1) of this title are based on an enhanced FMAP described in subsection (b) of this section for such fiscal year.''

Subsec. (c)(2)(B). Pub. L. 106–554, §1(a)(6) [title VIII, §802(d)(4)(B)], substituted ''described in subsection (a)(1)(D)'' for ''described in subsection (a)(2)'' in introductory provisions.

Subsec. (c)(6)(B). Pub. L. 106–554, §1(a)(6) [title VIII, §802(d)(4)(C)], substituted ''Except as provided in subparagraph (A) or (B) of subsection (a)(1) of this section or any other provision of law,'' for ''Except as otherwise provided by law,''.

Subsec. (d)(2)(B)(ii). Pub. L. 106–554, §1(a)(6) [title VIII, §802(e)], substituted ''enhanced FMAP under the fourth sentence of section 1396d(b) of this title'' for ''enhanced FMAP under section 1396d(u) of this title''.

1999—Subsec. (d)(2)(B)(iii). Pub. L. 106–113 inserted ''in'' after ''described''.

1997—Subsec. (c)(2)(A). Pub. L. 105–100, §162(5), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Except as provided in this paragraph, payment shall not be made under subsection (a) of this section for expenditures for items described in subsection (a) of this section (other than paragraph (1)) for a quarter in a fiscal year to the extent the total of such expenditures exceeds 10 percent of the sum of—

''(i) the total Federal payments made under subsection (a) of this section for such quarter in the fiscal year, and

''(ii) the total Federal payments made under section 1396b(a)(1) of this title based on an enhanced FMAP described in section 1396d(u)(2) of this title for such quarter.''

Subsec. (f). Pub. L. 105–100, §162(7), added subsec. (f).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–127, §1, Nov. 17, 2003, 117 Stat. 1354, provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 108–74.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the enactment of section 4901 of Pub. L. 105–33, see section 1(a)(6) [title VIII, §802(f)] of Pub. L. 106–554, set out as a note under section 1396d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 162 of Pub. L. 105–100 provided in part that the amendment made by that section is effective as if included in the enactment of subtitle J (§§4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

§ 1397ff. Process for submission, approval, and amendment of State child health plans

(a) Initial plan

(1) In general

As a condition of receiving payment under section 1397ee of this title, a State shall submit to the Secretary a State child health plan that meets the applicable requirements of this subchapter.

(2) Approval

Except as the Secretary may provide under subsection (e) of this section, a State plan submitted under paragraph (1)—

(A) shall be approved for purposes of this subchapter, and

(B) shall be effective beginning with a calendar quarter that is specified in the plan, but in no case earlier than October 1, 1997.

(b) Plan amendments

(1) In general

A State may amend, in whole or in part, its State child health plan at any time through transmittal of a plan amendment.

(2) Approval

Except as the Secretary may provide under subsection (e) of this section, an amendment to a State plan submitted under paragraph (1)—

(A) shall be approved for purposes of this subchapter, and

(B) shall be effective as provided in paragraph (3).

(3) Effective dates for amendments

(A) In general

Subject to the succeeding provisions of this paragraph, an amendment to a State plan shall take effect on one or more effective dates specified in the amendment.

(B) Amendments relating to eligibility or benefits

(i) Notice requirement

Any plan amendment that eliminates or restricts eligibility or benefits under the plan may not take effect unless the State certifies that it has provided prior public notice of the change, in a form and manner provided under applicable State law.

(ii) Timely transmittal

Any plan amendment that eliminates or restricts eligibility or benefits under the plan shall not be effective for longer than a 60-day period unless the amendment has been transmitted to the Secretary before the end of such period.

(C) Other amendments

Any plan amendment that is not described in subparagraph (B) and that becomes effective in a State fiscal year may not remain in effect after the end of such fiscal year (or, if later, the end of the 90-day period on which it becomes effective) unless the amendment has been transmitted to the Secretary.

(c) Disapproval of plans and plan amendments

(1) Prompt review of plan submittals

The Secretary shall promptly review State plans and plan amendments submitted under this section to determine if they substantially comply with the requirements of this subchapter.

(2) 90-day approval deadlines

A State plan or plan amendment is considered approved unless the Secretary notifies the State in writing, within 90 days after receipt of the plan or amendment, that the plan or amendment is disapproved (and the reasons for disapproval) or that specified additional information is needed.

(3) Correction

In the case of a disapproval of a plan or plan amendment, the Secretary shall provide a State with a reasonable opportunity for correction before taking financial sanctions against the State on the basis of such disapproval.

(d) Program operation

(1) In general

The State shall conduct the program in accordance with the plan (and any amendments) approved under subsection (c) of this section and with the requirements of this subchapter.

(2) Violations

The Secretary shall establish a process for enforcing requirements under this subchapter. Such process shall provide for the withholding

of funds in the case of substantial noncompliance with such requirements. In the case of an enforcement action against a State under this paragraph, the Secretary shall provide a State with a reasonable opportunity for correction before taking financial sanctions against the State on the basis of such an action.

(e) Continued approval

An approved State child health plan shall continue in effect unless and until the State amends the plan under subsection (b) of this section or the Secretary finds, under subsection (d) of this section, substantial noncompliance of the plan with the requirements of this subchapter.

(Aug. 14, 1935, ch. 531, title XXI, § 2106, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 563.)

§ 1397gg. Strategic objectives and performance goals; plan administration

(a) Strategic objectives and performance goals

(1) Description

A State child health plan shall include a description of—

(A) the strategic objectives,

(B) the performance goals, and

(C) the performance measures,

the State has established for providing child health assistance to targeted low-income children under the plan and otherwise for maximizing health benefits coverage for other low-income children and children generally in the State.

(2) Strategic objectives

Such plan shall identify specific strategic objectives relating to increasing the extent of creditable health coverage among targeted low-income children and other low-income children.

(3) Performance goals

Such plan shall specify one or more performance goals for each such strategic objective so identified.

(4) Performance measures

Such plan shall describe how performance under the plan will be—

(A) measured through objective, independently verifiable means, and

(B) compared against performance goals, in order to determine the State's performance under this subchapter.

(b) Records, reports, audits, and evaluation

(1) Data collection, records, and reports

A State child health plan shall include an assurance that the State will collect the data, maintain the records, and furnish the reports to the Secretary, at the times and in the standardized format the Secretary may require in order to enable the Secretary to monitor State program administration and compliance and to evaluate and compare the effectiveness of State plans under this subchapter.

(2) State assessment and study

A State child health plan shall include a description of the State's plan for the annual assessments and reports under section 1397hh(a) of this title and the evaluation required by section 1397hh(b) of this title.

(3) Audits

A State child health plan shall include an assurance that the State will afford the Secretary access to any records or information relating to the plan for the purposes of review or audit.

(c) Program development process

A State child health plan shall include a description of the process used to involve the public in the design and implementation of the plan and the method for ensuring ongoing public involvement.

(d) Program budget

A State child health plan shall include a description of the budget for the plan. The description shall be updated periodically as necessary and shall include details on the planned use of funds and the sources of the non-Federal share of plan expenditures, including any requirements for cost-sharing by beneficiaries.

(e) Application of certain general provisions

The following sections of this chapter shall apply to States under this subchapter in the same manner as they apply to a State under subchapter XIX of this chapter:

(1) Subchapter XIX provisions

(A) Section 1396a(a)(4)(C) of this title (relating to conflict of interest standards).

(B) Paragraphs (2), (16), and (17) of section 1396b(i) of this title (relating to limitations on payment).

(C) Section 1396b(w) of this title (relating to limitations on provider taxes and donations).

(D) Section 1396r–1a of this title (relating to presumptive eligibility for children).

(2) Subchapter XI provisions

(A) Section 1315 of this title (relating to waiver authority).

(B) Section 1316 of this title (relating to administrative and judicial review), but only insofar as consistent with this subchapter.

(C) Section 1320a–3 of this title (relating to disclosure of ownership and related information).

(D) Section 1320a–5 of this title (relating to disclosure of information about certain convicted individuals).

(E) Section 1320a–7a of this title (relating to civil monetary penalties).

(F) Section 1320a–7b(d) of this title (relating to criminal penalties for certain additional charges).

(G) Section 1320b–2 of this title (relating to periods within which claims must be filed).

(Aug. 14, 1935, ch. 531, title XXI, § 2107, as added Pub. L. 105–33, title IV, § 4901(a), Aug. 5, 1997, 111 Stat. 565; amended Pub. L. 106–554, § 1(a)(6) [title VIII, § 803], Dec. 21, 2000, 114 Stat. 2763, 2763A–582.)

AMENDMENTS

2000—Subsec. (e)(1)(D). Pub. L. 106–554 added subpar. (D).

§ 1397hh. Annual reports; evaluations

(a) Annual report

The State shall—

(1) assess the operation of the State plan under this subchapter in each fiscal year, including the progress made in reducing the number of uncovered low-income children; and

(2) report to the Secretary, by January 1 following the end of the fiscal year, on the result of the assessment.

(b) State evaluations

(1) In general

By March 31, 2000, each State that has a State child health plan shall submit to the Secretary an evaluation that includes each of the following:

(A) An assessment of the effectiveness of the State plan in increasing the number of children with creditable health coverage.

(B) A description and analysis of the effectiveness of elements of the State plan, including—

(i) the characteristics of the children and families assisted under the State plan including age of the children, family income, and the assisted child's access to or coverage by other health insurance prior to the State plan and after eligibility for the State plan ends,

(ii) the quality of health coverage provided including the types of benefits provided,

(iii) the amount and level (including payment of part or all of any premium) of assistance provided by the State,

(iv) the service area of the State plan,

(v) the time limits for coverage of a child under the State plan,

(vi) the State's choice of health benefits coverage and other methods used for providing child health assistance, and

(vii) the sources of non-Federal funding used in the State plan.

(C) An assessment of the effectiveness of other public and private programs in the State in increasing the availability of affordable quality individual and family health insurance for children.

(D) A review and assessment of State activities to coordinate the plan under this subchapter with other public and private programs providing health care and health care financing, including medicaid and maternal and child health services.

(E) An analysis of changes and trends in the State that affect the provision of accessible, affordable, quality health insurance and health care to children.

(F) A description of any plans the State has for improving the availability of health insurance and health care for children.

(G) Recommendations for improving the program under this subchapter.

(H) Any other matters the State and the Secretary consider appropriate.

(2) Report of the Secretary

The Secretary shall submit to Congress and make available to the public by December 31, 2001, a report based on the evaluations submitted by States under paragraph (1), containing any conclusions and recommendations the Secretary considers appropriate.

(c) Federal evaluation

(1) In general

The Secretary, directly or through contracts or interagency agreements, shall conduct an independent evaluation of 10 States with approved child health plans.

(2) Selection of States

In selecting States for the evaluation conducted under this subsection, the Secretary shall choose 10 States that utilize diverse approaches to providing child health assistance, represent various geographic areas (including a mix of rural and urban areas), and contain a significant portion of uncovered children.

(3) Matters included

In addition to the elements described in subsection (b)(1) of this section, the evaluation conducted under this subsection shall include each of the following:

(A) Surveys of the target population (enrollees, disenrollees, and individuals eligible for but not enrolled in the program under this subchapter).

(B) Evaluation of effective and ineffective outreach and enrollment practices with respect to children (for both the program under this subchapter and the medicaid program under subchapter XIX of this chapter), and identification of enrollment barriers and key elements of effective outreach and enrollment practices, including practices that have successfully enrolled hard-to-reach populations such as children who are eligible for medical assistance under subchapter XIX of this chapter but have not been enrolled previously in the medicaid program under that subchapter.

(C) Evaluation of the extent to which State medicaid eligibility practices and procedures under the medicaid program under subchapter XIX of this chapter are a barrier to the enrollment of children under that program, and the extent to which coordination (or lack of coordination) between that program and the program under this subchapter affects the enrollment of children under both programs.

(D) An assessment of the effect of cost-sharing on utilization, enrollment, and coverage retention.

(E) Evaluation of disenrollment or other retention issues, such as switching to private coverage, failure to pay premiums, or barriers in the recertification process.

(4) Submission to Congress

Not later than December 31, 2001, the Secretary shall submit to Congress the results of the evaluation conducted under this subsection.

(5) Funding

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for fiscal

year 2000 for the purpose of conducting the evaluation authorized under this subsection. Amounts appropriated under this paragraph shall remain available for expenditure through fiscal year 2002.

(d) Inspector General audit and GAO report

(1) Audit

Beginning with fiscal year 2000, and every third fiscal year thereafter, the Secretary, through the Inspector General of the Department of Health and Human Services, shall audit a sample from among the States described in paragraph (2) in order to—

(A) determine the number, if any, of enrollees under the plan under this subchapter who are eligible for medical assistance under subchapter XIX of this chapter (other than as optional targeted low-income children under section 1396a(a)(10)(A)(ii)(XIV) of this title); and

(B) assess the progress made in reducing the number of uncovered low-income children, including the progress made to achieve the strategic objectives and performance goals included in the State child health plan under section 1397gg(a) of this title.

(2) State described

A State described in this paragraph is a State with an approved State child health plan under this subchapter that does not, as part of such plan, provide health benefits coverage under the State's medicaid program under subchapter XIX of this chapter.

(3) Monitoring and report from GAO

The Comptroller General of the United States shall monitor the audits conducted under this subsection and, not later than March 1 of each fiscal year after a fiscal year in which an audit is conducted under this subsection, shall submit a report to Congress on the results of the audit conducted during the prior fiscal year.

(Aug. 14, 1935, ch. 531, title XXI, §2108, as added Pub. L. 105–33, title IV, §4901(a), Aug. 5, 1997, 111 Stat. 566; amended Pub. L. 106–113, div. B, §1000(a)(6) [title VII, §703(b), (c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–401.)

AMENDMENTS

1999—Subsecs. (c), (d). Pub. L. 106–113 added subsecs. (c) and (d).

§ 1397ii. Miscellaneous provisions

(a) Relation to other laws

(1) HIPAA

Health benefits coverage provided under section 1397aa(a)(1) of this title (and coverage provided under a waiver under section 1397ee(c)(2)(B) of this title) shall be treated as creditable coverage for purposes of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1181 et seq.], title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.], and subtitle K of the Internal Revenue Code of 1986.

(2) ERISA

Nothing in this subchapter shall be construed as affecting or modifying section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144) with respect to a group health plan (as defined in section 2791(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(1))).

(b) Adjustment to Current Population Survey to include State-by-State data relating to children without health insurance coverage

(1) In general

The Secretary of Commerce shall make appropriate adjustments to the annual Current Population Survey conducted by the Bureau of the Census in order to produce statistically reliable annual State data on the number of low-income children who do not have health insurance coverage, so that real changes in the uninsurance rates of children can reasonably be detected. The Current Population Survey should produce data under this subsection that categorizes such children by family income, age, and race or ethnicity. The adjustments made to produce such data shall include, where appropriate, expanding the sample size used in the State sampling units, expanding the number of sampling units in a State, and an appropriate verification element.

(2) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for fiscal year 2000 and each fiscal year thereafter for the purpose of carrying out this subsection.

(Aug. 14, 1935, ch. 531, title XXI, §2109, as added Pub. L. 105–33, title IV, §4901(a), Aug. 5, 1997, 111 Stat. 567; amended Pub. L. 106–113, div. B, §1000(a)(6) [title VII, §§703(a), 705(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–400, 1501A–403.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(1), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, as amended. Part 7 of subtitle B of title I of the Act is classified generally to part 7 (§1181 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (a)(1), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XXVII of the Act is classified generally to subchapter XXV (§300gg et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (a)(1), is classified generally to Title 26, Internal Revenue Code. Subtitle K of such Code appears at section 9801 et seq. of Title 26.

AMENDMENTS

1999—Subsec. (a)(1). Pub. L. 106–113, §1000(a)(6) [title VII, §705(c)(1)], substituted ''title I'' for ''title II'' before ''of the Employee Retirement Income Security Act of 1974,''.

Subsec. (a)(2). Pub. L. 106–113, §1000(a)(6) [title VII, §705(c)(2)], inserted closing parenthesis before period at end.

Subsec. (b). Pub. L. 106–113, §1000(a)(6) [title VII, §703(a)], added subsec. (b).

§ 1397jj. Definitions

(a) Child health assistance

For purposes of this subchapter, the term ''child health assistance'' means payment for

part or all of the cost of health benefits coverage for targeted low-income children that includes any of the following (and includes, in the case described in section 1397ee(a)(1)(D)(i) of this title, payment for part or all of the cost of providing any of the following), as specified under the State plan:

(1) Inpatient hospital services.

(2) Outpatient hospital services.

(3) Physician services.

(4) Surgical services.

(5) Clinic services (including health center services) and other ambulatory health care services.

(6) Prescription drugs and biologicals and the administration of such drugs and biologicals, only if such drugs and biologicals are not furnished for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.

(7) Over-the-counter medications.

(8) Laboratory and radiological services.

(9) Prenatal care and prepregnancy family planning services and supplies.

(10) Inpatient mental health services, other than services described in paragraph (18) but including services furnished in a State-operated mental hospital and including residential or other 24-hour therapeutically planned structured services.

(11) Outpatient mental health services, other than services described in paragraph (19) but including services furnished in a State-operated mental hospital and including community-based services.

(12) Durable medical equipment and other medically-related or remedial devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices, and adaptive devices).

(13) Disposable medical supplies.

(14) Home and community-based health care services and related supportive services (such as home health nursing services, home health aide services, personal care, assistance with activities of daily living, chore services, day care services, respite care services, training for family members, and minor modifications to the home).

(15) Nursing care services (such as nurse practitioner services, nurse midwife services, advanced practice nurse services, private duty nursing care, pediatric nurse services, and respiratory care services) in a home, school, or other setting.

(16) Abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest.

(17) Dental services.

(18) Inpatient substance abuse treatment services and residential substance abuse treatment services.

(19) Outpatient substance abuse treatment services.

(20) Case management services.

(21) Care coordination services.

(22) Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

(23) Hospice care.

(24) Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services (whether in a facility, home, school, or other setting) if recognized by State law and only if the service is—

(A) prescribed by or furnished by a physician or other licensed or registered practitioner within the scope of practice as defined by State law,

(B) performed under the general supervision or at the direction of a physician, or

(C) furnished by a health care facility that is operated by a State or local government or is licensed under State law and operating within the scope of the license.

(25) Premiums for private health care insurance coverage.

(26) Medical transportation.

(27) Enabling services (such as transportation, translation, and outreach services) only if designed to increase the accessibility of primary and preventive health care services for eligible low-income individuals.

(28) Any other health care services or items specified by the Secretary and not excluded under this section.

(b) "Targeted low-income child" defined

For purposes of this subchapter—

(1) In general

Subject to paragraph (2), the term ''targeted low-income child'' means a child—

(A) who has been determined eligible by the State for child health assistance under the State plan;

(B)(i) who is a low-income child, or

(ii) is a child—

(I) whose family income (as determined under the State child health plan) exceeds the medicaid applicable income level (as defined in paragraph (4)), but does not exceed 50 percentage points above the medicaid applicable income level;

(II) whose family income (as so determined) does not exceed the medicaid applicable income level (as defined in paragraph (4) but determined as if ''June 1, 1997'' were substituted for ''March 31, 1997''); or

(III) who resides in a State that does not have a medicaid applicable income level (as defined in paragraph (4)); and

(C) who is not found to be eligible for medical assistance under subchapter XIX of this chapter or covered under a group health plan or under health insurance coverage (as such terms are defined in section 300gg–91 of this title).

(2) Children excluded

Such term does not include—

(A) a child who is an inmate of a public institution or a patient in an institution for mental diseases; or

(B) a child who is a member of a family that is eligible for health benefits coverage under a State health benefits plan on the basis of a family member's employment with a public agency in the State.

(3) Special rule

A child shall not be considered to be described in paragraph (1)(C) notwithstanding

that the child is covered under a health insurance coverage program that has been in operation since before July 1, 1997, and that is offered by a State which receives no Federal funds for the program's operation.

(4) Medicaid applicable income level

The term ''medicaid applicable income level'' means, with respect to a child, the effective income level (expressed as a percent of the poverty line) that has been specified under the State plan under subchapter XIX of this chapter (including under a waiver authorized by the Secretary or under section 1396a(r)(2) of this title), as of March 31, 1997, for the child to be eligible for medical assistance under section 1396a(*l*)(2) or 1396d(n)(2) of this title (as selected by a State) for the age of such child.

(c) Additional definitions

For purposes of this subchapter:

(1) Child

The term ''child'' means an individual under 19 years of age.

(2) Creditable health coverage

The term ''creditable health coverage'' has the meaning given the term ''creditable coverage'' under section 300gg(c) of this title and includes coverage that meets the requirements of section 1397cc of this title provided to a targeted low-income child under this subchapter or under a waiver approved under section 1397ee(c)(2)(B) of this title (relating to a direct service waiver).

(3) Group health plan; health insurance coverage; etc.

The terms ''group health plan'', ''group health insurance coverage'', and ''health insurance coverage'' have the meanings given such terms in section 300gg–91 of this title.

(4) Low-income child

The term ''low-income child'' means a child whose family income is at or below 200 percent of the poverty line for a family of the size involved.

(5) Poverty line defined

The term ''poverty line'' has the meaning given such term in section 9902(2) of this title, including any revision required by such section.

(6) Preexisting condition exclusion

The term ''preexisting condition exclusion'' has the meaning given such term in section 300gg(b)(1)(A) of this title.

(7) State child health plan; plan

Unless the context otherwise requires, the terms ''State child health plan'' and ''plan'' mean a State child health plan approved under section 1397ff of this title.

(8) Uncovered child

The term ''uncovered child'' means a child that does not have creditable health coverage.

(Aug. 14, 1935, ch. 531, title XXI, §2110, as added Pub. L. 105–33, title IV, §4901(a), Aug. 5, 1997, 111 Stat. 567; amended Pub. L. 105–100, title I, §162(3), (9), Nov. 19, 1997, 111 Stat. 2189, 2190; Pub. L. 106–554, §1(a)(6) [title VIII, §802(d)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–582.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–554 substituted ''section 1397ee(a)(1)(D)(i)'' for ''section 1397ee(a)(2)(A)'' in introductory provisions.

1997—Subsec. (b)(1)(B)(ii). Pub. L. 105–100, §162(3)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''is a child whose family income (as determined under the State child health plan) exceeds the medicaid applicable income level (as defined in paragraph (4)), but does not exceed 50 percentage points above the medicaid applicable income level; and''.

Subsec. (b)(4). Pub. L. 105–100, §162(3)(B), substituted ''March 31, 1997'' for ''June 1, 1997'' and ''1396a(*l*)(2) or 1396d(n)(2) of this title (as selected by a State)'' for ''1396a(*l*)(2) of this title''.

Subsec. (c)(3). Pub. L. 105–100, §162(9), made technical amendment to reference in original act which appears in text as reference to section 300gg–91 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the enactment of section 4901 of Pub. L. 105–33, see section 1(a)(6) [title VIII, §802(f)] of Pub. L. 106–554, set out as a note under section 1396d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 162 of Pub. L. 105–100 provided in part that the amendment made by that section is effective as if included in the enactment of subtitle J (§§4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

CHAPTER 7A—TEMPORARY UNEMPLOYMENT COMPENSATION PROGRAM

§§ 1400 to 1400v. Omitted

Section 1400, Pub. L. 85–441, title I, §101, June 4, 1958, 72 Stat. 171; Pub. L. 86–7, Mar. 31, 1959, 73 Stat. 14, authorized payment of temporary unemployment compensation under sections 1400 to 1400k of this title to persons who exhausted their rights under other unemployment compensation laws.

Section 1400a, Pub. L. 85–441, title I, §102, June 4, 1958, 72 Stat. 172, authorized Secretary to enter into agreements with States for payment of temporary unemployment compensation provided for in sections 1400 to 1400k of this title.

Section 1400b, Pub. L. 85–441, title I, §103, June 4, 1958, 72 Stat. 173, made special provision for veterans and Federal employees and for fair hearing and review in denial of such benefits.

Section 1400c, Pub. L. 85–441, title I, §104, June 4, 1958, 72 Stat. 173; Pub. L. 86–778, title V, §524(b), Sept. 13, 1960, 74 Stat. 982; Pub. L. 88–173, §2, Nov. 7, 1963, 77 Stat. 306, provided for repayment of amounts of any temporary unemployment compensation benefits, except benefits paid to veterans and Federal employees, paid under sections 1400 to 1400k of this title through device of reduction of credits allowed under section 3302 of Title 26, Internal Revenue Code.

Section 1400d, Pub. L. 85–441, title II, §201, June 4, 1958, 72 Stat. 174, defined ''Secretary'', ''State'', and ''first claim'' as used in sections 1400 to 1400k of this title.

Section 1400e, Pub. L. 85–441, title II, §202, June 4, 1958, 72 Stat. 174, provided for review by appropriate State agency with respect to determinations of entitlement to temporary unemployment compensation under sections 1400 to 1400k of this title.

Section 1400f, Pub. L. 85–441, title II, §203, June 4, 1958, 72 Stat. 174, set out penalties for false statements or representations in connection with payments under sections 1400 to 1400k of this title and provided for recovery of overpayments.

Section 1400g, Pub. L. 85–441, title II, §204, June 4, 1958, 72 Stat. 175, required each State to provide Sec-

retary with whatever information he might require in administering sections 1400 to 1400k of this title.

Section 1400h, Pub. L. 85–441, title II, §205, June 4, 1958, 72 Stat. 175, provided for payments to States of funds for benefits under sections 1400 to 1400k of this title, posting of requisite bonds in connection therewith, and liability of certifying and disbursing officers.

Section 1400i, Pub. L. 85–441, title II, §206, June 4, 1958, 72 Stat. 176, provided for denial of benefits under sections 1400 to 1400k of this title to aliens employed by Communist governments or organizations.

Section 1400j, Pub. L. 85–441, title II, §207, June 4, 1958, 72 Stat. 176, authorized promulgation of rules and regulations by Secretary to carry out provisions of sections 1400 to 1400k of this title.

Section 1400k, Pub. L. 85–441, title II, §208, June 4, 1958, 72 Stat. 176, authorized appropriation of funds necessary to carry out sections 1400 to 1400k of this title.

Section 1400*l*, Pub. L. 87–6, §2, Mar. 24, 1961, 75 Stat. 8, defined ''compensation period'', ''first claim'', ''State unemployment compensation'', ''Secretary'', ''State'', ''State agency'', ''State law'', ''temporary extended unemployment compensation'', ''title XV'', and ''week'' as used in sections 1400*l* to 1400v of this title.

Section 1400m, Pub. L. 87–6, §3, Mar. 24, 1961, 75 Stat. 8, provided for payment of temporary extended unemployment compensation benefits under sections 1400*l* to 1400v of this title for any period of unemployment between March 24, 1961, and June 30, 1962.

Section 1400n, Pub. L. 87–6, §4, Mar. 24, 1961, 75 Stat. 9, provided for reimbursement by the Federal government of any State unemployment compensation paid under sections 1400*l* to 1400v of this title in excess of formula amount.

Section 1400*o*, Pub. L. 87–6, §5, Mar. 24, 1961, 75 Stat. 9, placed limitations on total payments and reimbursements under sections 1400*l* to 1400v of this title.

Section 1400p, Pub. L. 87–6, §6, Mar. 24, 1961, 75 Stat. 10, set out the covered period for benefits under sections 1400*l* to 1400v of this title as Mar. 24, 1961, to June 30, 1962.

Section 1400q, Pub. L. 87–6, §7, Mar. 24, 1961, 75 Stat. 10, covered agreements with States for payment and reimbursement of temporary unemployment compensation under sections 1400*l* to 1400v of this title, amendment, suspension, or termination of such an agreement, denial of benefits, review of determinations by State agencies, and reduction of benefits in certain cases.

Section 1400r, Pub. L. 87–6, §8, Mar. 24, 1961, 75 Stat. 12, provided for payment of benefits under sections 1400*l* to 1400v of this title to veterans and Federal employees.

Section 1400s, Pub. L. 87–6, §9, Mar. 24, 1961, 75 Stat. 12, set out penalties for making false statements or representations in connection with benefits under sections 1400*l* to 1400v of this title and provided for recovery of overpayments.

Section 1400t, Pub. L. 87–6, §10, Mar. 24, 1961, 75 Stat. 13, required each State to furnish Secretary with information required to administer program under sections 1400*l* to 1400v of this title.

Section 1400u, Pub. L. 87–6, §11, Mar. 24, 1961, 75 Stat. 13, made provision for payments to States under sections 1400*l* to 1400v of this title, certification by Secretary to Secretary of the Treasury for payment of sums to each State, surety bonds, liability of certifying and disbursing officers, and costs of administration.

Section 1400v, Pub. L. 87–6, §12, Mar. 24, 1961, 75 Stat. 14, authorized promulgation by Secretary of rules and regulations necessary to carry out sections 1400*l* to 1400v of this title.

CHAPTER 8—LOW-INCOME HOUSING

Sec.

(e) Revolving fund for payment of liabilities incurred pursuant to guarantees and payment of obligations issued to Secretary of the Treasury; composition; availability, issuance of obligations to Secretary of the Treasury for implementation of guarantees; amount, maturity, rate of interest, and purchase by Secretary of the Treasury of obligations; payment of expenses and charges.

(f) Technical assistance to agencies for planning and execution of development activities.

(g) Labor standards.

(h) Protection of guarantees issued by United States; inclusion by purchaser in gross income of interest paid on obligations issued by agencies.

§§ 1401 to 1404. Omitted

CODIFICATION

Sections 1401 to 1404 were omitted in the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1401, acts Sept. 1, 1937, ch. 896, §1, 50 Stat. 888; July 15, 1949, 338, title III, §307(a), 63 Stat. 429; Sept. 23, 1959, Pub. L. 86–372, title V, §501, 73 Stat. 679; Aug. 1, 1968, Pub. L. 90–448, title II, §206(a), 82 Stat. 504; Dec. 31, 1970, Pub. L. 91–609, title II, §211, 84 Stat. 1779, set out declaration of policy. See section 1437 of this title.

Section 1402, acts, Sept. 1, 1937, ch. 896, §2, 50 Stat. 888; July 15, 1949, ch. 338, title III, §§302(b), 304(c), (i), 306, 307(b), 63 Stat. 424, 425, 429; Oct. 26, 1951, ch. 577, §1, 65 Stat. 647; June 30, 1953, 170, §24(c), 67 Stat. 128; Aug. 7, 1956, ch. 1029, title IV, §404(a), 70 Stat. 1104; July 12, 1957, Pub. L. 85–104, title III, §307, title IV, §401(a), 71 Stat. 301; Sept. 23, 1959, Pub. L. 86–372, title V, §§502, 503(a), 504, 73 Stat. 680; June 30, 1961, Pub. L. 87–70, title II, §202, 75 Stat. 163; Sept. 2, 1964, Pub. L. 88–560, title II, §203(d), title IV, §401(a), 78 Stat. 784, 794; Aug. 10, 1965, Pub. L. 89–117, title I, §§103(b), 104, 79 Stat. 457; Aug. 1, 1968, Pub. L. 90–448, title II, §209(a), 82 Stat. 505; Dec. 24, 1969, Pub. L. 91–152, title II, §213(a), title IV, §403(a), 83 Stat. 389, 395; Dec. 31, 1970, Pub. L. 91–609, title II, §208(a), title IX, §903(c), 84 Stat. 1778, 1808; Dec. 22, 1971, Pub. L. 92–213, §9, 85 Stat. 776, defined applicable terms. See section 1437a of this title.

Section 1403, acts Sept. 1, 1937, ch. 896, §3, 50 Stat. 889; May 25, 1967, Pub. L. 90–19, §2(b), 81 Stat. 20; Aug. 1, 1968, Pub. L. 90–448, title XVII, §1719(a), 82 Stat. 610, created the United States Housing Authority in the Department of Housing and Urban Development.

Section 1404, acts Sept. 1, 1937, ch. 896, §4, 50 Stat. 889; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; May 25, 1967, Pub. L. 90–19, §2(a), (c), 81 Stat. 19, 20, provided for assistance of officers, etc., of other agencies and transfer of property to the Authority.

EFFECTIVE DATE OF 1969 AMENDMENT; APPLICABILITY

Section 213(b) of Pub. L. 91–152 provided that the rents fixed by public housing agencies not exceed one-fourth of a low-rent housing tenant's income be effective not later than ninety days after Dec. 24, 1969, and that the requirements not apply in any case in which the Secretary of Housing and Urban Development determined that limiting the rent of any tenant or class of tenants would have resulted in a deduction in the amount of welfare assistance which would otherwise have been provided to the tenant or class of tenants by a public agency.

§1404a. Secretary of Housing and Urban Development; right to sue; expenses

The Secretary of Housing and Urban Development may sue and be sued only with respect to its functions under the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.], and title II of Public Law 671, Seventy-sixth Congress, approved June 28, 1940, as amended [42 U.S.C. 1501 et seq.]. Funds made available for carrying out the functions, powers, and duties of the Secretary of Housing and Urban Development (including appropriations therefor, which are authorized) shall be available, in such amounts as may from year to year be authorized by the Congress, for the administrative expenses of the Secretary of Housing and Urban Development. Notwithstanding any other provisions of law except provisions of law enacted after August 10, 1948 expressly in limitation hereof, the Secretary of Housing and Urban Development, or any State or local public agency administering a low-rent housing project assisted pursuant to the United States Housing Act of 1937 or title II of Public Law 671, Seventy-sixth Congress, approved June 38, 1940, shall continue to have the right to maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action is authorized by the statute or regulations under which such housing accommodations are administered, and, in determining net income for the purposes of tenant eligibility with respect to low-rent housing projects assisted pursuant to said Acts, the Secretary of Housing and Urban Development is authorized, where it finds such action equitable and in the public interest, to exclude amounts or portions thereof paid by the United States Government for disability or death occurring in connection with military service.

(Aug. 10, 1948, ch. 832, title V, §502(b), 62 Stat. 1284; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 90–19, §5(d)(4)–(7), May 25, 1967, 81 Stat. 21; Pub. L. 100–242, title V, §570(a)(2), Feb. 5, 1988, 101 Stat. 1949.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to this chapter (§1437 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

Public Law 671, Seventy-sixth Congress, approved June 28, 1940, referred to in text, is act June 28, 1940, ch. 440, 54 Stat. 676, as amended. Title II of that Act is classified generally to subchapter I (§1501 et seq.) of chapter 9 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Housing Act of 1948, and not as part of the United States Housing Act of 1937 which comprises this chapter.

Section 502 of act Aug. 10, 1948, is classified generally to section 1701c of Title 12, Banks and Banking.

AMENDMENTS

1988—Pub. L. 100–242 substituted ''Secretary of Housing and Urban Development'' for ''United States Housing Authority'' in three places and for ''Authority'' in two places.

1967—Pub. L. 90–19 substituted ''United States Housing Authority'' for ''Public Housing Administration'' wherever appearing in first and fourth sentences, ''Authority'' for ''Administration'' wherever appearing in third sentence, and ''may sue'' for ''shall sue'' in first sentence, and struck out former second sentence authorizing the Public Housing Commissioner to appoint necessary officers and employees subject to the civil-service and classification laws, to delegate his functions and powers, and to make rules and regulations, respectively.

1949—Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923''.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

§§ 1405, 1406. Omitted

Section 1405, acts Sept. 1, 1937, ch. 896, § 5, 50 Stat. 890; May 25, 1967, Pub. L. 90–19, § 2(d), (e), 81 Stat. 20, which enumerated miscellaneous powers and functions of the Authority, was omitted in the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1406, acts Sept. 1, 1937, ch. 896, § 6, 50 Stat. 890; July 15, 1949, ch. 338, title III, § 307(c), 63 Stat. 429; Oct. 31, 1951, ch. 654, § 1(112), 65 Stat. 705; May 25, 1967, Pub. L. 90–19, § 2(a), 81 Stat. 19, which enumerated financial provisions applicable to the Authority, was omitted in the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653. Subsec. (b) of this section, which provided that section 5 of title 41 not apply to contracts for services or to purchases of supplies except when the aggregate amount involved was less than $300, was repealed by act Oct. 31, 1951, ch. 654, § 1(112), 65 Stat. 705.

§ 1406a. Expenses of management and operation of transferred projects as nonadministrative; payment

On and after May 10, 1939 all necessary expenses in connection with the management and operation of projects transferred to the Authority by Executive Order Numbered 7732 of October 27, 1937, as modified by Executive Order Numbered 7839 of March 12, 1938, may be considered as nonadministrative expenses, notwithstanding the provisions of section 712a of title 15, and be paid from the rents received from each transferred project.

(May 10, 1939, ch. 119, § 1, 53 Stat. 690.)

CODIFICATION

Section was not enacted as part of the United States Housing Act of 1937 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act June 25, 1938, ch. 681, title I, 52 Stat. 1129.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Housing Authority to Secretary of Housing and Urban Development, see note set out under section 1404a of this title.

Executive Order No. 7732, Oct. 27, 1937, 2 FR 2324, 44 CFR 201.11, effective Nov. 1, 1937, transferred to the United States Housing Authority all right, interest, and title held by the Federal Emergency Administration of Public Works in any housing or slum-clearance projects constructed or in the process of construction on Sept. 1, 1937.

§ 1406b. Expenses of uncompensated advisers serving United States Housing Authority away from home

On and after May 10, 1939, the funds made available for administrative expenses of the United States Housing Authority shall be available for the payment, when specifically authorized by the Administrator, of actual transportation expenses and not to exceed $10 per diem in lieu of subsistence and other expenses to persons serving, while away from their homes, without other compensation from the United States, in an advisory capacity to the Authority.

(May 10, 1939, ch. 119, § 1, 53 Stat. 690.)

CODIFICATION

Section was not enacted as part of the United States Housing Act of 1937 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act June 25, 1938, ch. 681, title I, 52 Stat. 1128.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Housing Authority and Administrator to Secretary of Housing and Urban Development, see note set out under section 1404a of this title.

§§ 1406c to 1411a. Omitted

CODIFICATION

Section 1406c, act June 27, 1942, ch. 450, § 1, 56 Stat. 410, which related to expenses for construction advisers on non-Federal projects, was from the Independent Offices Appropriation Act, 1943, and was not repeated in subsequent appropriation acts. Prior similar provisions were contained in acts Apr. 5, 1941, ch. 40, § 1, 55 Stat. 111; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 130.

Section 1407, acts Sept. 1, 1937, ch. 896, § 7, 50 Stat. 891; Aug. 2, 1954, ch. 649, title VIII, § 802(d), 68 Stat. 643; May 25, 1967, Pub. L. 90–19, § 2(f), 81 Stat. 20, provided for publication of information and submission of annual report by the Authority, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1408, act Sept. 1, 1937, ch. 896, § 8, 50 Stat. 891, authorized promulgation of rules and regulations by the Authority, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1409, acts Sept. 1, 1937, ch. 896, § 9, 50 Stat. 891; July 15, 1949, ch. 338, title III, § 304(c), (d), 63 Stat. 425; Dec. 24, 1969, Pub. L. 91–152, title II, § 211, 83 Stat. 388, authorized loans for low-rent-housing and slum clearance projects, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653. See section 1437b of this title.

Section 1410, acts Sept. 1, 1937, ch. 896, § 10, 50 Stat. 891; June 21, 1938, ch. 554, title VI, § 601, 52 Stat. 820; July 15, 1949, ch. 338, title III, §§ 302(a), 304(a), (c), (e), (f), 305, 307(d), 63 Stat. 423 to 427, 430; Aug. 2, 1954, ch. 649, title IV, §§ 401(1), (2), 402, 403, 405, 406, 68 Stat. 630; June 30, 1955, ch. 251, § 3, 69 Stat. 225; Aug. 11, 1955, ch. 783, title I, § 108(b), 69 Stat. 638; Aug. 7, 1956, ch. 1029, title IV, §§ 401(a), 404(b), 70 Stat. 1103, 1104; Sept. 23, 1959, Pub. L. 86–372, title V, §§ 505(a), 507, 73 Stat. 680, 681; June 30, 1961, Pub. L. 87–70, title II, §§ 203, 204(a), (b), 205, 206(b), (c), 75 Stat. 163 to 165; Sept. 2, 1964, Pub. L. 88–560, title IV, §§ 401(b), 402 to 404, 78 Stat. 794, 795; Aug. 10, 1965, Pub. L. 89–117, title V, §§ 501 to 504, 507(b)(1), (2); 79 Stat. 486 to 488; May 25, 1967, Pub. L. 90–19, § 2(a), 81 Stat. 19; Aug. 1, 1968, Pub. L. 90–448, title II, §§ 203(a), 206(b), 209(b), 82 Stat. 503, 505; Dec. 24, 1969, Pub. L.

91–152, title II, §§212, 214, 217(b), 83 Stat. 388–390; Dec. 31, 1970, Pub. L. 91–609, title II, §§202, 203, 204(a)(2), 210, 84 Stat. 1776 to 1778; Oct. 18, 1972, Pub. L. 92–503, §3 (1) to (3), 86 Stat. 906; Oct. 2, 1973, Pub. L. 93–117, §2, 87 Stat. 422, authorized annual contributions in assistance of low rentals for housing projects, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653. See section 1437c of this title. Subsec. (j) of this section, which related to self-liquidation of projects, was repealed by Pub. L. 87–70, title II, §206(c), June 30, 1961, 75 Stat. 164.

Section 1411, acts Sept. 1, 1937, ch. 896, §11, 50 Stat. 893; July 15, 1949, ch. 338, title III, §307(d), 63 Stat. 430, authorized capital grants to public housing agencies in assistance of low rentals, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1411a, act July 31, 1953, ch. 302, title I, §101, 67 Stat. 306, which related to prohibition of projects in localities where rejected by public vote or governing body, was from the Independent Offices Appropriation Act, 1954, and was not repeated in subsequent appropriation acts.

RETROACTIVE EFFECT OF REPEAL OF RIGHTS OF UNITED STATES RELATING TO SELF-LIQUIDATION OF PROJECTS

Section 206(c) of Pub. L. 87–70, as amended by Pub. L. 93–383, title II, §205, Aug. 22, 1974, 88 Stat. 668, provided in part that: ''The Secretary of Housing and Urban Development is authorized to agree with a public housing agency to the amendment of any annual contributions contract containing the provision prescribed in section 10(j) of the United States Housing Act of 1937 [subsec. (j) of section 1410 of this title] (as in effect prior to the enactment of the Housing and Community Development Act of 1974) so as to delete such provision and waive any rights of the United States that are accrued or may accrue under such provision.''

§ 1411b. Repealed. Aug. 7, 1956, ch. 1029, title IV, § 401(b), 70 Stat. 1103

Section, acts July 5, 1952, ch. 578, title I, §101, 66 Stat. 403; July 31, 1953 ch. 302 title I, §101, 67 Stat. 307, limited number of housing units to be constructed during fiscal year.

§ 1411c. Omitted

CODIFICATION

Section, act July 31, 1953, ch. 302, title I, §101, 67 Stat. 307, which barred subversives from occupancy of housing units and which provided for enforcement of such prohibition and affect of such prohibition on loans and contributions by the Public Housing Administration, was from the Independent Offices Appropriation Act, 1954, and was not repeated in subsequent appropriation acts.

§ 1411d. Repealed. Pub. L. 93–383, title II, § 204, Aug. 22, 1974, 88 Stat. 668

Section, act Aug. 2, 1954, ch. 649, title VIII, §815, 68 Stat. 647, required submission of specifications by applicants prior to award of any contract for construction of a project and submission of data with respect to acquisition of land prior to authorization to purchase such land.

§§ 1412 to 1416. Omitted

Section 1412, acts Sept. 1, 1937, ch. 896, §12, 50 Stat. 894; Apr. 20, 1950, ch. 94, title II, §205(b), 64 Stat. 73; Aug. 7, 1956, ch. 1029, title IV, §405, 70 Stat. 1104; Aug. 10, 1965, Pub. L. 89–117, title V, §505, 79 Stat. 487, authorized disposal of low-rent-housing projects transferred to or acquired by the Authority, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1413, acts Sept. 1, 1937, ch. 896, §13, 50 Stat. 894; July 15, 1949, ch. 338, title III, §307(e), 63 Stat. 430; May 25, 1967, Pub. L. 90–19, §2(g), 81 Stat. 20, enumerated powers of the Authority, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1413a, acts July 31, 1947, ch. 418, §2, 61 Stat. 705; Feb. 27, 1948, ch. 77, §3, 62 Stat. 37; Mar. 30, 1948, ch. 161, title III, §304, 62 Stat. 100, postponed until April 1, 1949, the institution of any eviction actions or proceedings in connection with publicly operated housing accommodations.

Section 1414, acts Sept. 1, 1937, ch. 896, §14, 50 Stat. 895; July 15, 1949, 338, title III, §304(g), 63 Stat. 426; Dec. 24, 1969, Pub. L. 91–152, title II, §213(c), 83 Stat. 389, authorized modification, amendment, or supersedure of contracts by the Authority, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653. See section 1437c of this title.

Section 1415, acts Sept. 1, 1937, ch. 896, §15, 50 Stat. 895; July 31, 1947, ch. 418, §1, 61 Stat. 704; July 15, 1949, ch. 338, title III, §§301, 303, 304(j), 63 Stat. 422, 424, 427; Aug. 2, 1954, ch. 649, title IV, §401(3), (4), 68 Stat. 631; Aug. 7, 1956, ch. 1029, title IV, §404(c), 70 Stat. 1104; July 12, 1957, Pub. L. 85–104, title IV, §401(b), (c), 71 Stat. 302; Sept. 23, 1959. Pub. L. 86–372, title V, §§503(b), 506, 507, 73 Stat. 680, 681; June 30, 1961, Pub. L. 87–70, title II, §§204(b), 205(b), 206(a), 75 Stat. 164; Sept. 2, 1964, Pub. L. 88–560, title IV, §§401(c), 405(a), 406, 78 Stat. 794, 795; Aug. 10, 1965, Pub. L. 89–117, title IV, §404(c)(2), title V, §§506, 507(a), (b)(3), 79 Stat. 486–488; May 25, 1967, Pub. L. 90–19, §2(a), 81 Stat. 19; Aug. 1, 1968, Pub. L. 90–448, title II, §§204, 205, 207, 82 Stat. 503, 504; Dec. 24, 1969, Pub. L. 91–152, title II, §§215, 216, 83 Stat. 389, 390; Dec. 31, 1970, Pub. L. 91–609, title II, §§207, 209(a), title IX, §903(d), 84 Stat. 1777, 1778, 1809; Jan. 2, 1971, Pub. L. 91–646, title II, §220(a)(6), 84 Stat. 1903, set forth provisions relating to preservation of low rents in housing projects, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653. See sections 1437c, 1437d, and 1437f of this title.

Section 1416, acts Sept. 1, 1937, ch. 896, §16, 50 Stat. 896; July 15, 1949, 338, title III, §307(f) 63 Stat. 430; Aug. 2, 1954, ch. 649, title IV, §404, 68 Stat. 633; Nov. 3, 1966, Pub. L. 89–754, title X, §1003, 80 Stat. 1284; May 25, 1967, Pub. L. 90–19, §2(h), (i), 81 Stat. 20, provided for application of labor standards to contracts, etc., involving Federal projects, prior to the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653. See section 1437 of this title.

APPLICATION FOR PRELIMINARY LOANS APPROVED PRIOR TO SEPTEMBER 2, 1964

Pub. L. 88–560, title IV, §405(b), Sept. 2, 1964, 78 Stat. 795, provided that the amendments made by subsection (a) to subsec. (b)(7) of section 1415 of this title were not to be applicable to any project for which an application for a preliminary loan had been approved by the local governing body prior to Sept. 2, 1964.

TRANSFERRED FUNDS; AVAILABILITY FOR EXPENDITURE

Act Apr. 20, 1950, ch. 94, title II, §205(c), 64 Stat. 73, provided that all unexpended receipts, notwithstanding any limitations contained in the second proviso of act May 26, 1947, ch. 82, title I, 61 Stat. 109, derived from the sale of labor supply centers, labor homes, labor camps, and facilities, and all other unexpended balances of funds available for the maintenance, operation, and liquidation of the properties transferred and for the administrative expenses of transfer were transferred to the Public Housing Administration, to be available until expended, in accordance with the provisions of this chapter.

§ 1417. Repealed. Pub. L. 90–448, title XVII, § 1719(b), Aug. 1, 1968, 82 Stat. 610

Section, act Sept. 1, 1937, ch. 896, § 17, 50 Stat. 897, related to capital stock of the Authority.

RETIREMENT OF CAPITAL STOCK

Section 1719(b) of Pub. L. 90–448 provided in part that the capital stock referred to in this section be retired and the sum of $1,000,000 represented by such stock returned to the Treasury of the United States.

§§ 1417a to 1422. Omitted

CODIFICATION

Sections 1417a to 1422 were omitted in the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1417a, act Sept. 1, 1937, ch. 896, § 17, as added Aug. 1, 1968, Pub. L. 90–448, title XVII, § 1719(c), 82 Stat. 610, set forth additional functions, powers, and duties of the Secretary. See section 1437h of this title.

Section 1418, act Sept. 1, 1937, ch. 896, § 18, 50 Stat. 897, authorized all assets and receipts of the Authority to remain available until expended. See section 1437h of this title.

Section 1419, act Sept. 1, 1937, ch. 896, § 19, 50 Stat. 897, authorized the allocation of funds available for similar purposes to the Authority.

Section 1420, acts Sept. 1, 1937, ch. 896, § 20, 50 Stat. 898; June 21, 1938, ch. 554, title VI, § 602, 52 Stat. 820; Oct. 30, 1941, ch. 467, 55 Stat. 759; July 15, 1949, ch. 338, title III, § 304(h), 63 Stat. 427; Aug. 1, 1968, Pub. L. 90–448, title II, § 203(b), 82 Stat. 503, authorized the Authority to issue obligations for purchase and sale by the Secretary of the Treasury. See section 1437b of this title.

Section 1421, acts Sept. 1, 1937, ch. 896, § 21, 50 Stat. 898; July 15, 1949, ch. 338, title III, § 307(g), 63 Stat. 431; Aug. 7, 1956, ch. 1029, title IV, § 403, 70 Stat. 1103; June 30, 1961, Pub. L. 87–70, title II, § 204(c), 75 Stat. 164, set forth depository and other banking requirements applicable to the Authority. See section 1437h of this title.

Section 1421a, act Sept. 1, 1937, ch. 896, § 22, as added July 15, 1949, ch. 338, title III, § 304(b), 63 Stat. 424; amended June 30, 1961, Pub. L. 87–70, title III, § 302(b), 75 Stat. 166; Aug. 10, 1965, Pub. L. 89–117, title V, § 507(b)(4), 79 Stat. 489; May 25, 1967, Pub. L. 90–19, § 2(j), 81 Stat. 20, set forth provisions for private financing of low-rent-housing projects. See sections 1437d and 1437i of this title.

Section 1421b, act Sept. 1, 1937, ch. 896, § 23, as added Aug. 10, 1965, Pub. L. 89–117, title I, § 103(a), 79 Stat. 455; amended Nov. 3, 1966, Pub. L. 89–754, title X, § 1002, 80 Stat. 1284; Aug. 1, 1968, Pub. L. 90–448, title II, §§ 208, 210, 82 Stat. 504, 505; Dec. 24, 1969, Pub. L. 91–152, title II, § 217(c), 83 Stat. 390; Dec. 31, 1970, Pub. L. 91–609, title II, § 204(a)(1), (b), 84 Stat. 1777, set forth provisions authorizing low-rent housing in private accommodations. See section 1437f of this title.

Section 1422, acts Sept. 1, 1937, ch. 896, § 24, formerly § 22, 50 Stat. 899; renumbered, § 23, July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431; renumbered § 24, Aug. 10, 1965, Pub. L. 87–117, title I, § 103(a), 79 Stat. 455, provided for applicability of all general penal statutes relating to larceny etc., of moneys and properties of the Authority.

RETROACTIVE APPLICATION OF POLICIES OR PROCEDURES ESTABLISHED BY SECRETARY OF HOUSING AND URBAN DEVELOPMENT TO RIGHTS OF OWNERS OF LEASED HOUSING, INCLUDING RIGHT OF RENEWAL

Pub. L. 93–383, title II, § 208, Aug. 22, 1974, 88 Stat. 669, as amended by Pub. L. 95–128, title II, § 201(h), Oct. 12, 1977, 91 Stat. 1129, provided that: ''Nothing in this title [see Tables for classification] or any other provision of law authorizes the Secretary of Housing and Urban Development to apply any policy or procedure established by him with respect to the rights of an owner under a lease entered into under section 23 of the United States Housing Act of 1937 [section 1421b of this title], including the right to renewal of such lease to the maximum term permitted by law, if such lease was entered into prior to the effective date of such policy or procedure.''

§§ 1423 to 1426. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section 1423, act Sept. 1, 1937, ch. 896, § 24, formerly § 23, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, related to penalties for false entries and reports.

Section 1424, act Sept. 1, 1937, ch. 896, § 25, formerly § 24, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, related to penalties for defrauding or hindering the Authority.

Section 1425, act Sept. 1, 1937, ch. 896, § 26, formerly § 25, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, related to penalties for concealment of interest in property.

Section 1426, act Sept. 1, 1937, ch. 896, § 27, formerly § 26, 50 Stat. 899, renumbered July 15, 1949, ch. 388, title III, § 307(h), 63 Stat. 431, related to penalties for unlawful use of the name ''United States Housing Authority''.

Sections 1423 to 1426 of this title are covered by section 1012 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 1, 1948, see section 20 of act June 25, 1948, set out as an Effective Date note preceding section 1 of Title 18, Crimes and Criminal Procedure.

§§ 1427 to 1431. Omitted

CODIFICATION

Sections 1427 to 1431 were omitted in the general revision of the United States Housing Act of 1937 by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

Section 1427, act Sept. 1, 1937, ch. 896, § 28, formerly § 27, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, provided for application of provisions when conflicting with other laws relating to housing or slum clearance.

Section 1428, act Sept. 1, 1937, ch. 896, § 29, formerly § 28, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, made available funds for the District of Columbia.

Section 1429, act Sept. 1, 1937, ch. 896, § 30, formerly § 29, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, provided for separability of provisions.

Section 1430, act Sept. 1, 1937, ch. 896, § 31, formerly § 30, 50 Stat. 899, renumbered July 15, 1949, ch. 338, title III, § 307(h), 63 Stat. 431, set forth short title of provisions as ''United States Housing Act of 1937''. See section 1 of act Sept. 1, 1937, as added by section 201(a) of Pub. L. 93–383, set out as a Short Title note under section 1437 of this title.

Section 1431, Pub. L. 91–556, title IV, Dec. 17, 1970, 84 Stat. 1463, which provided that the necessary expenses of providing representatives at sites of non-Federal projects in connection with construction of these projects by public housing agencies with aid under this chapter, be compensated by these agencies by payments of fixed fees, was from the Independent Offices and Department of Housing and Urban Development Appropriations Act, 1971, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation acts:

Nov. 26, 1969, Pub. L. 91–126, title III, 83 Stat. 242.
Oct. 4, 1968, Pub. L. 90–550, title III, 82 Stat. 956.
Nov. 3, 1967, Pub. L. 90–121, title II, 81 Stat. 360.
Sept. 6, 1966, Pub. L. 89–555, title II, 80 Stat. 688.
Aug. 16, 1965, Pub. L. 89–128, title II, 79 Stat. 542.
Aug. 30, 1964, Pub. L. 88–507, title II, 78 Stat. 665.
Dec. 19, 1963, Pub. L. 88–215, title II, 77 Stat. 447.
Oct. 3, 1962, Pub. L. 87–741, title II, 76 Stat. 739.

Aug. 17, 1961, Pub. L. 87–141, title II, 75 Stat. 363.
July 12, 1960, Pub. L. 86–626, title II, 74 Stat. 444.
Sept. 14, 1959, Pub. L. 86–255, title II, 73 Stat. 517.
Aug. 28, 1958, Pub. L. 85–844, title II, 72 Stat. 1081.
June 29, 1957, Pub. L. 85–69, title II, 71 Stat. 241.
June 27, 1956, ch. 452, title II, 70 Stat. 355.
June 30, 1955, ch. 244, title II, 69 Stat. 215.
June 24, 1954, ch. 359, title II, 68 Stat. 297.
July 31, 1953, ch. 302, title II, 67 Stat. 315.
July 5, 1952, ch. 578, title III, 66 Stat. 417.
Aug. 31, 1951, ch. 376, title IV, 65 Stat. 299.
Sept. 6, 1950, ch. 896, Ch. VIII, title II, 64 Stat. 723.
Aug. 24, 1949, ch. 506, title II, 63 Stat. 659.
June 30, 1948, ch. 773, title II, 62 Stat. 1190.
July 30, 1947, ch. 358, title II, 61 Stat. 579.
July 20, 1946, ch. 589, title II, 60 Stat. 592.
May 3, 1945, ch. 106, title I, 59 Stat. 124.

§ 1432. Repealed. July 15, 1949, ch. 338, title VI, § 606, 63 Stat. 441

Section, act Aug. 10, 1948, ch. 832, title V, § 503, 62 Stat. 1285, related to State low-rent or veterans' housing projects.

§ 1433. Omitted

CODIFICATION

Section, act July 15, 1949, ch. 338, title VI, § 606, 63 Stat. 440, provided for conversion of State and local low-rent or veterans' housing projects to Federal projects if the contract for State financial assistance for such project was entered into on or after Jan. 1, 1948, and prior to Jan. 1, 1950.

§ 1434. Records; contents; examination and audit

Every contract between the Department of Housing and Urban Development and any person or local body (including any corporation or public or private agency or body) for a loan, advance, grant, or contribution under the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.], the Housing Act of 1949, as amended [42 U.S.C. 1441 et seq.], or any other Act shall provide that such person or local body shall keep such records as the Department of Housing and Urban Development shall from time to time prescribe, including records which permit a speedy and effective audit and will fully disclose the amount and the disposition by such person or local body of the proceeds of the loan, advance, grant, or contribution, or any supplement thereto, the capital cost of any construction project for which any such loan, advance, grant, or contribution is made, and the amount of any private or other non-Federal funds used or grants-in-aid made for or in connection with any such project. No mortgage covering new or rehabilitated multifamily housing (as defined in section 1715r of title 12) shall be insured unless the mortgagor certifies that he will keep such records as are prescribed by the Secretary of Housing and Urban Development at the time of the certification and that they will be kept in such form as to permit a speedy and effective audit. The Department of Housing and Urban Development and the Comptroller General of the United States shall have access to and the right to examine and audit such records. This section shall become effective on the first day after the first full calendar month following the date of approval of the Housing Act of 1961.

(Aug. 2, 1954, ch. 649, title VIII, § 814, 68 Stat. 647; Pub. L. 87–70, title IX, § 908, June 30, 1961, 75 Stat. 191; Pub. L. 90–19, § 10(h), May 25, 1967, 81 Stat. 23.)

REFERENCES IN TEXT

The United States Housing Act of 1937, as amended, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to this chapter (§ 1437 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Housing Act of 1949, as amended, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to chapter 8A (§ 1441 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The first day after the first full calendar month following the date of approval of the Housing Act of 1961, referred to in text, probably means Aug. 1, 1961, which is the first day after the first full calendar month following approval of Pub. L. 87–70, which was approved on June 30, 1961.

CODIFICATION

Section was not enacted as part of the United States Housing Act of 1937 which comprises this chapter.

Section was formerly classified to sections 1446 of this title and 1715s of Title 12, Banks and Banking.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner'' in second sentence and ''Department of Housing and Urban Development'' for ''Housing and Home Finance Agency (or any official or constituent thereof)'' and ''Housing and Home Finance Agency (or such official or constituent thereof)'' in first sentence and for ''Housing and Home Finance Agency or any official or constituent agency thereof'' in third sentence, respectively.

1961—Pub. L. 87–70 required record keeping provisions in contracts under the Housing Act of 1949 and in contracts under any other act, prohibited insurance of mortgages covering new or rehabilitated multifamily housing unless the mortgagor certifies that he will keep records, and empowered the Comptroller General to examine and audit records, and substituted ''Housing Act of 1961'' for ''Housing Act of 1954''.

EFFECTIVE DATE

The fourth sentence of section 814 of act Aug. 2, 1954 (prior to the amendment by section 908 of act June 30, 1961) provided that this section is effective on first day after first calendar month following the date of approval of the act (Aug. 2, 1954).

§ 1435. Access to books, documents, etc., for purpose of audit

Every contract for loans or annual contributions under this chapter shall provide that the Secretary of Housing and Urban Development and the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination, have access to any books, documents, papers, and records of the public housing agency entering into such contract that are pertinent to its operations with respect to financial assistance under this chapter.

(Aug. 2, 1954, ch. 649, title VIII, § 816, 68 Stat. 647; Pub. L. 90–19, § 10(i), May 25, 1967, 81 Stat. 23.)

CODIFICATION

Section was not enacted as part of the United States Housing Act of 1937 which comprises this chapter.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' for ''Public Housing Commissioner''.

§ 1436. Repealed. Pub. L. 91–609, title V, § 503(4), Dec. 31, 1970, 84 Stat. 1786

Section, Pub. L. 87–70, title II, § 207, June 30, 1961, 75 Stat. 165; Pub. L. 88–560, title II, § 203(e), title IV, § 407, Sept. 2, 1964, 78 Stat. 784, 796; Pub. L. 89–117, title XI, § 1105, Aug. 10, 1965, 79 Stat. 503; Pub. L. 90–19, § 18(a), May 25, 1967, 81 Stat. 25; Pub. L. 90–448, title XVII, § 1714(a), Aug. 1, 1968, 82 Stat. 607, provided for low-rent housing demonstration programs and development grants. See section 1701z–1 et seq. of Title 12, Banks and Banking.

EFFECTIVE DATE OF REPEAL: SAVINGS PROVISION

Section 503 of Pub. L. 91–609 provided in part for repeal of sections 1701d–3, 1701e, 1701e note, and 1701f of Title 12, Banks and Banking, this section, note below, section 1452a, section 1456 note, and sections 3372, 3373 of this title, effective July 1, 1971, except that the repeal shall not affect contracts, commitments, reservations, or other obligations entered pursuant to such provisions prior to July 1, 1971.

REPORT OF SELF-HELP STUDIES AND DEMONSTRATIONS

Pub. L. 90–448, title XVII, § 1714(b), Aug. 1, 1968, 82 Stat. 607, providing for report to Congress within one year after Aug. 1, 1968, respecting self-help studies and demonstrations, was repealed by section 503(7) of Pub. L. 91–609.

§ 1436a. Restriction on use of assisted housing by non-resident aliens

(a) Conditions for assistance

Notwithstanding any other provision of law, the applicable Secretary may not make financial assistance available for the benefit of any alien unless that alien is a resident of the United States and is—

(1) an alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(15) and (20) of title 8, excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country;

(2) an alien who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 1259 of title 8;

(3) an alien who is lawfully present in the United States pursuant to an admission under section 1157 of title 8 or pursuant to the granting of asylum (which has not been terminated) under section 1158 of title 8;

(4) an alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 1182(d)(5) of title 8;

(5) an alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation pursuant to section 1231(b)(3) of title 8;

(6) an alien lawfully admitted for temporary or permanent residence under section 1255a of title 8; or

(7) an alien who is lawfully resident in the United States and its territories and possessions under section 141 of the Compacts of Free Association between the Government of the United States and the Governments of the Marshall Islands, the Federated States of Micronesia (48 U.S.C. 1901 note) and Palau (48 U.S.C. 1931 note) while the applicable section is in effect: *Provided*, That, within Guam any such alien shall not be entitled to a preference in receiving assistance under this Act over any United States citizen or national resident therein who is otherwise eligible for such assistance.

(b) "Financial assistance" defined

(1) For purposes of this section the term ''financial assistance'' means financial assistance made available pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], section 1715z or 1715z–1 of title 12, the direct loan program under section 1472 of this title or section 1472(c)(5)(D), 1474, 1490a(a)(2)(A), or 1490r of this title, subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12851 et seq.], or section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s].

(2) If the eligibility for financial assistance of at least one member of a family has been affirmatively established under the program of financial assistance and under this section, and the ineligibility of one or more family members has not been affirmatively established under this section, any financial assistance made available to that family by the applicable Secretary shall be prorated, based on the number of individuals in the family for whom eligibility has been affirmatively established under the program of financial assistance and under this section, as compared with the total number of individuals who are members of the family.

(c) Preservation of families; students

(1) If, following completion of the applicable hearing process, financial assistance for any individual receiving such assistance on February 5, 1988, is to be terminated, the public housing agency or other local governmental entity involved (in the case of public housing or assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f]) or the applicable Secretary (in the case of any other financial assistance) shall take one of the following actions:

(A) Permit the continued provision of financial assistance, if necessary to avoid the division of a family in which the head of household or spouse is a citizen of the United States, a national of the United States, or an alien resident of the United States described in any of paragraphs (1) through (6) of subsection (a) of this section. For purposes of this paragraph, the term ''family'' means a head of household, any spouse, any parents of the head of household, any parents of the spouse, and any children of the head of household or spouse. Financial assistance continued under this subparagraph for a family may be provided only on a prorated basis, under which

the amount of financial assistance is based on the percentage of the total number of members of the family that are eligible for that assistance under the program of financial assistance and under this section.

(B)(i) Defer the termination of financial assistance, if necessary to permit the orderly transition of the individual and any family members involved to other affordable housing.

(ii) Except as provided in clause (iii), any deferral under this subparagraph shall be for a 6-month period and may be renewed by the public housing agency or other entity involved for an aggregate period of 18-months. At the beginning of each deferral period, the public housing agency or other entity involved shall inform the individual and family members of their ineligibility for financial assistance and offer them other assistance in finding other affordable housing.

(iii) The time period described in clause (ii) shall not apply in the case of a refugee under section 1157 of title 8 or an individual seeking asylum under section 1158 of title 8.

(2) Notwithstanding any other provision of law, the applicable Secretary may not make financial assistance available for the benefit of—

(A) any alien who—

(i) has a residence in a foreign country that such alien has no intention of abandoning;

(ii) is a bona fide student qualified to pursue a full course of study; and

(iii) is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn); and

(B) the alien spouse and minor children of any alien described in subparagraph (A), if accompanying such alien or following to join such alien.

(d) Conditions for provision of financial assistance for individuals

The following conditions apply with respect to financial assistance being or to be provided for the benefit of an individual:

(1)(A) There must be a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status. If the declaration states that the individual is not a citizen or national of the United States and that the individual is younger than 62 years of age, the declaration shall be verified by the Immigration and Naturalization Service. If the declaration states that the individual is a citizen or national of the United States, the applicable Secretary, or the agency administering assistance covered by this section, may request verification of the declaration by requiring presentation of documentation that the applicable Secretary considers appropriate, including a United States passport, resident alien card, alien registration card, social security card, or other documentation.

(B) In this subsection, the term ''satisfactory immigration status'' means an immigration status which does not make the individual ineligible for financial assistance.

(2) If such an individual is not a citizen or national of the United States, is not 62 years of age or older, and is receiving financial assistance on September 30, 1996, or applying for financial assistance on or after September 30, 1996, there must be presented either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

(B) such other documents as the applicable Secretary determines constitutes reasonable evidence indicating a satisfactory immigration status.

In the case of an individual applying for financial assistance on or after September 30, 1996, the applicable Secretary may not provide any such assistance for the benefit of that individual before documentation is presented and verified under paragraph (3) or (4).

(3) If the documentation described in paragraph (2)(A) is presented, the applicable Secretary shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, is not 62 years of age or older, and is receiving financial assistance on September 30, 1996, or applying for financial assistance on or after September 30, 1996, if, at the time of application or recertification for financial assistance, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the applicable Secretary—

(i) shall provide a reasonable opportunity, not to exceed 30 days, to submit to the applicable Secretary evidence indicating a satisfactory immigration status,

or to appeal to the Immigration and Naturalization Service the verification determination of the Immigration and Naturalization Service under paragraph (3),

(ii) in the case of any individual receiving assistance on September 30, 1996, may not delay, deny, reduce, or terminate the eligibility of that individual for financial assistance on the basis of the immigration status of that individual until the expiration of that 30-day period; and

(iii) in the case of any individual applying for financial assistance on or after September 30, 1996, may not deny the application for such assistance on the basis of the immigration status of that individual until the expiration of that 30-day period; and

(B) if any documents or additional information are submitted as evidence under subparagraph (A), or if appeal is made to the Immigration and Naturalization Service with respect to the verification determination of the Service under paragraph (3)—

(i) the applicable Secretary shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents or additional information for official verification,

(ii) pending such verification or appeal, the applicable Secretary may not—

(I) in the case of any individual receiving assistance on September 30, 1996, delay, deny, reduce, or terminate the eligibility of that individual for financial assistance on the basis of the immigration status of that individual; and

(II) in the case of any individual applying for financial assistance on or after September 30, 1996, deny the application for such assistance on the basis of the immigration status of that individual; and

(iii) the applicable Secretary shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the applicable Secretary determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status, the applicable Secretary shall—

(A) deny the application of that individual for financial assistance or terminate the eligibility of that individual for financial assistance, as applicable;

(B) provide that the individual may request a fair hearing during the 30-day period beginning upon receipt of the notice under subparagraph (C); and

(C) provide to the individual written notice of the determination under this paragraph, the right to a fair hearing process, and the time limitation for requesting a hearing under subparagraph (C).

(6) The applicable Secretary shall terminate the eligibility for financial assistance of an individual and the members of the household of the individual, for a period of not less than 24 months, upon determining that such individual has knowingly permitted another individual who is not eligible for such assistance to reside in the public or assisted housing unit of the individual. This provision shall not apply to a family if the ineligibility of the ineligible individual at issue was considered in calculating any proration of assistance provided for the family.

For purposes of this subsection, the term ''applicable Secretary'' means the applicable Secretary, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance.

(e) Regulatory actions against entities for erroneous determinations regarding eligibility based upon citizenship or immigration status

The applicable Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an entity with respect to any error in the entity's determination to make an individual eligible for financial assistance based on citizenship or immigration status—

(1) if the entity has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the entity, under subsection (d)(4)(A)(ii) of this section (or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603)), was required to provide a reasonable opportunity to submit documentation, or

(3) because the entity, under subsection (d)(4)(B)(ii) of this section (or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603)), was required to wait for the response of the Immigration and Naturalization Service to the entity's request for official verification of the immigration status of the individual, or the response from the Immigration and Naturalization Service to the appeal of that individual.

(f) Verification system; liability of State or local government agencies or officials; prior consent agreements, court decrees or court orders unaffected

(1) Notwithstanding any other provision of law, no agency or official of a State or local government shall have any liability for the design or implementation of the Federal verification system described in subsection (d) of this section if the implementation by the State or local agency or official is in accordance with Federal rules and regulations.

(2) The verification system of the Department of Housing and Urban Development shall not supersede or affect any consent agreement entered into or court decree or court order entered prior to February 5, 1988.

(g) Reimbursement for costs of implementation

The applicable Secretary is authorized to pay to each public housing agency or other entity an amount equal to 100 percent of the costs in-

curred by the public housing agency or other entity in implementing and operating an immigration status verification system under subsection (d) of this section (or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603)).

(h) "Applicable Secretary" defined

For purposes of this section, the term ''applicable Secretary'' means—

(1) the Secretary of Housing and Urban Development, with respect to financial assistance administered by such Secretary and financial assistance under subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12851 et seq.]; and

(2) the Secretary of Agriculture, with respect to financial assistance administered by such Secretary.

(i) Verification of eligibility

(1) In general

No individual or family applying for financial assistance may receive such financial assistance prior to the affirmative establishment and verification of eligibility of at least the individual or one family member under subsection (d) of this section by the applicable Secretary or other appropriate entity.

(2) Rules applicable to public housing agencies

A public housing agency (as that term is defined in section 3 of the United States Housing Act of 1937 [42 U.S.C. 1437a])—

(A) may, notwithstanding paragraph (1) of this subsection, elect not to affirmatively establish and verify eligibility before providing financial assistance[1]

(B) in carrying out subsection (d) of this section—

(i) may initiate procedures to affirmatively establish or verify the eligibility of an individual or family under this section at any time at which the public housing agency determines that such eligibility is in question, regardless of whether or not that individual or family is at or near the top of the waiting list of the public housing agency;

(ii) may affirmatively establish or verify the eligibility of an individual or family under this section in accordance with the procedures set forth in section 1324a(b)(1) of title 8; and

(iii) shall have access to any relevant information contained in the SAVE system (or any successor thereto) that relates to any individual or family applying for financial assistance.

(3) Eligibility of families

For purposes of this subsection, with respect to a family, the term ''eligibility'' means the eligibility of each family member.

(Pub. L. 96–399, title II, §214, Oct. 8, 1980, 94 Stat. 1637; Pub. L. 97–35, title III, §329(a), Aug. 13, 1981, 95 Stat. 408; Pub. L. 99–603, title I, §121(a)(2), Nov. 6, 1986, 100 Stat. 3386; Pub. L. 100–242, title I, §164(a)–(f)(1), Feb. 5, 1988, 101 Stat. 1860–1863; Pub. L. 104–193, title IV, §441(a), Aug. 22, 1996, 110 Stat. 2276; Pub. L. 104–208, div. C, title III, §308(g)(7)(D)(ii), title V, §§572–576, Sept. 30, 1996, 110 Stat. 3009–624, 3009–684, 3009–685, 3009–687; Pub. L. 105–276, title V, §592(a), Oct. 21, 1998, 112 Stat. 2653; Pub. L. 106–504, §3(b), Nov. 13, 2000, 114 Stat. 2312.)

[1] So in original. Probably should be followed by ''; and''.

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(7), is Pub. L. 96–399, Oct. 8, 1980, 94 Stat. 1614, as amended, known as the Housing and Community Development Act of 1980. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 5301 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to this chapter (§1437 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsecs. (b)(1) and (h)(1), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079, as amended. Subtitle A of title III of the Act, known as the National Homeownership Trust Act, is classified generally to subchapter III (§12851 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (b), is section 101 of Pub. L. 89–117, title I, Aug. 10, 1965, 79 Stat. 451, which enacted section 1701s of Title 12, Banks and Banking, and amended sections 1451 and 1465 of this title.

The Immigration Reform and Control Act of 1986, referred to in subsecs. (e)(2), (3) and (g), is Pub. L. 99–603, Nov. 6, 1986, 100 Stat. 3359. For complete classification of this Act to the Code, see Short Title of 1986 Amendments note set out under section 1101 of Title 8, Aliens and Nationality, and Tables.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1980, and not as part of the United States Housing Act of 1937 which comprises this chapter.

AMENDMENTS

2000—Subsec. (a)(7). Pub. L. 106–504 added par. (7).

1998—Subsec. (b)(2). Pub. L. 105–276, §592(a)(1), substituted ''applicable Secretary'' for ''Secretary of Housing and Urban Development''.

Subsec. (c)(1)(B). Pub. L. 105–276, §592(a)(2), aligned cls. (ii) and (iii) with cl. (i).

Subsec. (d)(1)(A). Pub. L. 105–276, §592(a)(3)(A), in last sentence, substituted ''applicable Secretary, or'' for ''Secretary of Housing and Urban Development, or'' and ''applicable Secretary considers'' for ''Secretary considers''.

Subsec. (d)(2). Pub. L. 105–276, §592(a)(3)(B), aligned concluding provisions with par. (2) and inserted ''applicable'' before ''Secretary'' in concluding provisions.

Subsec. (d)(4)(B)(ii). Pub. L. 105–276, §592(a)(3)(C), inserted ''applicable'' before ''Secretary'' in introductory provisions.

Subsec. (d)(5). Pub. L. 105–276, §592(a)(3)(D), substituted ''the applicable Secretary shall'' for ''the Secretary shall'' in introductory provisions.

Subsec. (d)(6). Pub. L. 105–276, §592(a)(3)(E), inserted ''applicable'' before ''Secretary''.

Subsec. (h). Pub. L. 105–276, §592(a)(5), redesignated subsec. (h), relating to verification of eligibility, as (i).

Subsec. (h)(1). Pub. L. 105–276, §592(a)(4)(A), substituted ''No'' for ''Except in the case of an election

under paragraph (2)(A), no'' and ''subsection (d) of this section'' for ''this section'' and inserted ''applicable'' before ''Secretary''.

Subsec. (h)(2)(A). Pub. L. 105–276, § 592(a)(4)(B)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: ''may elect not to comply with this section; and''.

Subsec. (h)(2)(B). Pub. L. 105–276, § 592(a)(4)(B)(ii), substituted ''in carrying out subsection (d) of this section'' for ''in complying with this section'' in introductory provisions.

Subsec. (i). Pub. L. 105–276, § 592(a)(5), redesignated subsec. (h), relating to verification of eligibility, as (i).

1996—Subsec. (a). Pub. L. 104–193, § 441(a)(1), substituted ''applicable Secretary'' for ''Secretary of Housing and Urban Development'' in introductory provisions.

Subsec. (a)(5). Pub. L. 104–208, § 308(g)(7)(D)(ii), substituted ''section 1231(b)(3)'' for ''section 1253(h)''.

Subsec. (b). Pub. L. 104–208, § 572, designated existing provisions as par. (1) and added par. (2).

Pub. L. 104–193, § 441(a)(2), inserted ''the direct loan program under section 1472 of this title or section 1472(c)(5)(D), 1474, 1490a(a)(2)(A), or 1490r of this title, subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act,'' after ''1715z–1 of title 12,''.

Subsec. (c). Pub. L. 104–193, § 441(a)(1), substituted ''applicable Secretary'' for ''Secretary of Housing and Urban Development'' in two places.

Subsec. (c)(1). Pub. L. 104–208, § 573(1), substituted ''shall'' for ''may, in its discretion,'' in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 104–208, § 573(2), inserted at end ''Financial assistance continued under this subparagraph for a family may be provided only on a prorated basis, under which the amount of financial assistance is based on the percentage of the total number of members of the family that are eligible for that assistance under the program of financial assistance and under this section.''

Subsec. (c)(1)(B). Pub. L. 104–208, § 573(3), designated first sentence of existing provisions as cl. (i), designated second and third sentences of existing provisions as cl. (ii) and substituted ''Except as provided in clause (iii), any deferral'' for ''Any deferral'' and ''18-months'' for ''3 years'', and added cl. (iii).

Subsec. (d). Pub. L. 104–208, § 574(1), inserted ''or to be'' after ''being'' in introductory provisions.

Pub. L. 104–193, § 441(a)(3), substituted ''applicable Secretary'' for ''Secretary'' wherever appearing in pars. (2) to (6).

Pub. L. 104–193, § 441(a)(1), (4), substituted ''the term 'applicable Secretary' '' for ''the term 'Secretary' '' and ''applicable Secretary'' for ''Secretary of Housing and Urban Development'' in closing provisions.

Subsec. (d)(1)(A). Pub. L. 104–208, § 574(2), inserted at end ''If the declaration states that the individual is not a citizen or national of the United States and that the individual is younger than 62 years of age, the declaration shall be verified by the Immigration and Naturalization Service. If the declaration states that the individual is a citizen or national of the United States, the Secretary of Housing and Urban Development, or the agency administering assistance covered by this section, may request verification of the declaration by requiring presentation of documentation that the Secretary considers appropriate, including a United States passport, resident alien card, alien registration card, social security card, or other documentation.''

Subsec. (d)(2). Pub. L. 104–208, § 574(3), substituted ''on September 30, 1996, or applying for financial assistance on or after September 30, 1996'' for ''on February 5, 1988'' in introductory provisions and added concluding provisions.

Subsec. (d)(4). Pub. L. 104–208, § 574(4)(A), substituted ''on September 30, 1996, or applying for financial assistance on or after September 30, 1996'' for ''on February 5, 1988'' in introductory provisions.

Subsec. (d)(4)(A)(i). Pub. L. 104–208, § 574(4)(B)(i)(I), inserted '', not to exceed 30 days,'' after ''reasonable opportunity''.

Subsec. (d)(4)(A)(ii), (iii). Pub. L. 104–208, § 574(4)(B)(i)(II), (ii), added cls. (ii) and (iii) and struck out former cl. (ii) which read as follows: ''may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and''.

Subsec. (d)(4)(B)(ii). Pub. L. 104–208, § 574(4)(C), added cl. (ii) and struck out former cl. (ii) which read as follows: ''pending such verification or appeal, the applicable Secretary may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status, and''.

Subsec. (d)(5). Pub. L. 104–208, § 574(5), inserted '', the Secretary shall'' after ''status'' in introductory provisions, added subpars. (A) to (C), and struck out former subpars. (A) and (B) which read as follows:

''(A) the applicable Secretary shall deny or terminate the individual's eligibility for financial assistance, and

''(B) the applicable fair hearing process shall be made available with respect to the individual.''

Subsec. (d)(6). Pub. L. 104–208, § 574(6), added par. (6) and struck out former par. (6) which read as follows: ''For purposes of paragraph (5)(B), the applicable fair hearing process made available with respect to any individual shall include not less than the following procedural protections:

''(A) The applicable Secretary shall provide the individual with written notice of the determination described in paragraph (5) and of the opportunity for a hearing with respect to the determination.

''(B) Upon timely request by the individual, the applicable Secretary shall provide a hearing before an impartial hearing officer designated by the applicable Secretary, at which hearing the individual may produce evidence of a satisfactory immigration status.

''(C) The applicable Secretary shall notify the individual in writing of the decision of the hearing officer on the appeal of the determination in a timely manner.

''(D) Financial assistance may not be denied or terminated until the completion of the hearing process.''

Subsec. (e). Pub. L. 104–193, § 441(a)(1), substituted ''applicable Secretary'' for ''Secretary of Housing and Urban Development'' in introductory provisions.

Subsec. (e)(3). Pub. L. 104–208, § 575(2), inserted at end ''the response from the Immigration and Naturalization Service to the appeal of that individual.''

Subsec. (e)(4). Pub. L. 104–208, § 575(1), (3), struck out par. (4) which read as follows: ''because of a fair hearing process described in subsection (d)(5)(B) of this section (or provided for under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603)).''

Subsec. (g). Pub. L. 104–193, § 441(a)(1), substituted ''applicable Secretary'' for ''Secretary of Housing and Urban Development''.

Subsec. (h). Pub. L. 104–208, § 576, added subsec. (h) relating to verification of eligibility.

Pub. L. 104–193, § 441(a)(5), added subsec. (h) defining ''applicable Secretary''.

1988—Subsec. (a)(6). Pub. L. 100–242, § 164(a), added par. (6).

Subsec. (c). Pub. L. 100–242, § 164(b), added subsec. (c).

Subsec. (d). Pub. L. 100–242, § 164(c)(8), amended last sentence generally. Prior to amendment, last sentence read as follows: ''In this subsection and subsection (e) of this section, the term 'Secretary' refers to the Secretary and to a public housing authority or other entity which makes financial assistance available.''

Subsec. (d)(2). Pub. L. 100–242, § 164(c)(1), inserted '', is not 62 years of age or older, and is receiving financial assistance on February 5, 1988'' after ''States''.

Subsec. (d)(4). Pub. L. 100–242, § 164(c)(2), in introductory provisions, inserted '', is not 62 years of age or

older, and is receiving financial assistance on February 5, 1988'' after ''States'', and ''or recertification'' after ''application''.

Subsec. (d)(4)(A)(i). Pub. L. 100–242, §164(c)(3), inserted after comma ''or to appeal to the Immigration and Naturalization Service the verification determination of the Immigration and Naturalization Service under paragraph (3),''.

Subsec. (d)(4)(B). Pub. L. 100–242, §164(c)(4), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''if there are submitted documents which the Secretary determines constitutes reasonable evidence indicating such status—''.

Subsec. (d)(4)(B)(i), (ii). Pub. L. 100–242, §164(c)(5), (6), inserted ''or additional information'' after ''documents'' in cl. (i), and ''or appeal'' after ''verification'' in cl. (ii).

Subsec. (d)(6). Pub. L. 100–242, §164(c)(7), added par. (6).

Subsec. (e). Pub. L. 100–242, §164(d)(1), in introductory provisions, inserted ''of Housing and Urban Development'' after ''Secretary''.

Subsec. (e)(2), (3). Pub. L. 100–242, §164(d)(2), (3), inserted ''(or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603))''.

Subsec. (e)(4). Pub. L. 100–242, §164(d)(4), inserted ''(or provided for under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603))''.

Subsec. (f). Pub. L. 100–242, §164(e), added subsec. (f).

Subsec. (g). Pub. L. 100–242, §164(f)(1), added subsec. (g).

1986—Subsecs. (d), (e). Pub. L. 99–603 added subsecs. (d) and (e).

1981—Subsec. (a). Pub. L. 97–35 substituted provisions relating to restrictions on use of assisted housing by resident aliens meeting further conditions for provisions relating to prohibition on financial assistance to nonimmigrant student-aliens.

Subsec. (b). Pub. L. 97–35 struck out ''(1)'' after ''(b)'' and par. (2) which defined ''nonimmigrant student-alien''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, §592(b), Oct. 21, 1998, 112 Stat. 2654, provided that: ''The amendments made by this section [amending this section] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(7)(D)(ii) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Amendment by sections 572–576 of Pub. L. 104–208 effective Sept. 30, 1996, see section 591 of Pub. L. 104–208, set out as a note under section 1101 of Title 8.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 164(h) of Pub. L. 100–242 provided that:

''(1) The provisions of, and amendments made by, subsections (a), (b), (e), (f), and (g) [amending this section, repealing section 1437r of this title, and enacting provisions set out below] shall take effect on the date of the enactment of this Act [Feb. 5, 1988].

''(2) The amendments made by subsections (c) and (d) [amending this section] shall take effect on October 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective on Oct. 1, 1988, with certain exceptions and qualifications, see section 121(c)(3), (4) of Pub. L. 99–603, set out as a note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

SHORT TITLE OF 1996 AMENDMENT

Section 571 of div. C of Pub. L. 104–208 provided that: ''This subtitle [subtitle E (§§571–577) of title V of div. C of Pub. L. 104–208, amending this section and enacting provisions set out as a note below] may be cited as the 'Use of Assisted Housing by Aliens Act of 1996'.''

REGULATIONS

Section 577 of div. C of Pub. L. 104–208 provided that:

''(a) ISSUANCE.—Not later than the 60 days after the date of enactment of this Act [Sept. 30, 1996], the Secretary of Housing and Urban Development shall issue any regulations necessary to implement the amendments made by this part [probably means this subtitle, subtitle E (§§571–577) of title V of div. C of Pub. L. 104–208, see Short Title of 1996 Amendment note above]. Such regulations shall be issued in the form of an interim final rule, which shall take effect upon issuance and shall not be subject to the provisions of section 533 of title 5, United States Code, regarding notice or opportunity for comment.

''(b) FAILURE TO ISSUE.—If the Secretary fails to issue the regulations required under subsection (a) before the date specified in that subsection, the regulations relating to restrictions on assistance to noncitizens, contained in the final rule issued by the Secretary of Housing and Urban Development in RIN–2501–AA63 (Docket No. R–95–1409; FR–2383–F–050), published in the Federal Register on March 20, 1995 (Vol. 60, No. 53; pp. 14824–14861), shall not apply after that date.''

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

TRANSITIONAL CERTIFICATION AND DOCUMENTATION PROVISIONS

Section 164(g) of Pub. L. 100–242 provided that: ''In carrying out section 214 of the Housing and Community Development Act of 1980 [this section] during fiscal year 1988, the Secretary of Housing and Urban Development shall require, as a condition of providing financial assistance for the benefit of any individual, that such individual—

''(1) declare in writing, under penalty of perjury, whether or not such individual is a citizen or national of the United States; and

''(2) if not a citizen or national—

''(A) declare in writing, under penalty of perjury, the immigration status of such individual, if such individual is not less than 62 years of age 'and is receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987' [Feb. 5, 1988]; or

''(B) provide such documentation regarding the immigration status of such individual as the Secretary may require by regulation.''

DELAYED IMPLEMENTATION OF 1981 AMENDMENT

Pub. L. 98–181, title IV, §474(e), Nov. 30, 1983, 97 Stat. 1239, provided in part that: ''The Secretary may not implement the amendment to section 214 of the Housing and Community Development Act of 1980 [this section], made by section 329(a) of the Housing and Community Development Amendments of 1981 [Pub. L. 97–35], before the expiration of the one-year period following the date of the enactment of this Act [Nov. 30, 1983].''

ALIENS GRANTED CONDITIONAL ENTRY ELIGIBLE FOR ASSISTED HOUSING

Section 329(b) of Pub. L. 97–35 provided that: ''An alien who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity shall be deemed, for purposes of section 214 of the Housing and Community Development Act of 1980 [this section], to be an alien described in section 214(a)(3) of such Act [subsec. (a)(3) of this section].''

§ 1436b. Financial assistance in impacted areas

The Secretary of Housing and Urban Development shall not exclude from consideration for financial assistance under federally assisted housing programs proposals for housing projects solely because the site proposed is located within an impacted area. For the purposes of this section, the term ''federally assisted housing programs'' means any program authorized by the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], sections 1715z and 1715z–1 of title 12, section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], or section 1701q of title 12.

(Pub. L. 96–399, title II, § 216, Oct. 8, 1980, 94 Stat. 1638.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to this chapter (§ 1437 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in text, is section 101 of Pub. L. 89–117, title I, Aug. 10, 1965, 79 Stat. 451, as amended, which enacted section 1701s of Title 12, Banks and Banking, and amended sections 1451 and 1465 of this title.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1980, and not as part of the United States Housing Act of 1937 which comprises this chapter.

§ 1436c. Insurance for public housing agencies and Indian housing authorities

On and after October 28, 1991, notwithstanding any other provision of State or Federal law, regulation or other requirement, any public housing agency or Indian housing authority that purchases any line of insurance from a nonprofit insurance entity, owned and controlled by public housing agencies or Indian housing authorities, and approved by the Secretary, may purchase such insurance without regard to competitive procurement.

On and after October 28, 1991, the Secretary shall establish standards as set forth herein, by regulation, adopted after notice and comment rulemaking pursuant to subchapter II of chapter 5 of title 5, which will become effective not later than one year from October 28, 1991.

On and after October 28, 1991, in establishing standards for approval of such nonprofit insurance entities, the Secretary shall be assured that such entities have sufficient surplus capital to meet reasonably expected losses, reliable accounting systems, sound actuarial projections, and employees experienced in the insurance industry. The Secretary shall not place restrictions on the investment of funds of any such entity that is regulated by the insurance department of any State that describes the types of investments insurance companies licensed in such State may make. With regard to such entities that are not so regulated, the Secretary shall establish investment guidelines that are comparable to State law regulating the investments of insurance companies.

On and after October 28, 1991, the Secretary shall not approve additional nonprofit insurance entities until such standards have become final, nor shall the Secretary revoke the approval of any nonprofit insurance entity previously approved by the Department unless for cause and after a due process hearing.

On and after October 28, 1991, until the Department of Housing and Urban Development has adopted regulations specifying the nature and quality of insurance covering the potential personal injury liability exposure of public housing authorities and Indian housing authorities (and their contractors, including architectural and engineering services) as a result of testing and abatement of lead-based paint in federally subsidized public and Indian housing units, said authorities shall be permitted to purchase insurance for such risk, as an allowable expense against amounts available for capital improvements (modernization): *Provided*, That such insurance is competitively selected and that coverage provided under such policies, as certified by the authority, provides reasonable coverage for the risk of liability exposure, taking into consideration the potential liability concerns inherent in the testing and abatement of lead-based paint, and the managerial and quality assurance responsibilities associated with the conduct of such activities.

(Pub. L. 102–139, title II, Oct. 28, 1991, 105 Stat. 758.)

REFERENCES IN TEXT

Herein, referred to in text, probably means Pub. L. 102–139, Oct. 28, 1991, 105 Stat. 736, known as the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In the second undesignated par., ''subchapter II of chapter 5 of title 5'' was substituted for ''the Administrative Procedures Act'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, and not as part of the United States Housing Act of 1937 which comprises this chapter.

§ 1436d. Consultation with affected areas in settlement of litigation

In negotiating any settlement of, or consent decree for, significant litigation regarding pub-

lic housing or section 8 [42 U.S.C. 1437f] tenant-based assistance that involves the Secretary and any public housing agency or any unit of general local government, the Secretary shall seek the views of any units of general local government and public housing agencies having jurisdictions that are adjacent to the jurisdiction of the public housing agency involved, if the resolution of such litigation would involve the acquisition or development of public housing dwelling units or the use of vouchers under section 1437f of this title in jurisdictions that are adjacent to the jurisdiction of the public housing agency involved in the litigation.

(Pub. L. 105–276, title V, § 599H(b), Oct. 21, 1998, 112 Stat. 2668.)

REFERENCES IN TEXT

Secretary, referred to in text, means the Secretary of Housing and Urban Development.

CODIFICATION

Section was enacted as part of the Quality Housing and Work Responsibility Act of 1998, and not as part of the United States Housing Act of 1937 which comprises this chapter.

EFFECTIVE DATE

Pub. L. 105–276, title V, § 599H(m), Oct. 21, 1998, 112 Stat. 2670, provided that: ''This section [enacting this section and amending section 1490 of this title] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

SUBCHAPTER I—GENERAL PROGRAM OF ASSISTED HOUSING

AMENDMENTS

1988—Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681, added subchapter heading.

§ 1437. Declaration of policy and public housing agency organization

(a) Declaration of policy

It is the policy of the United States—

(1) to promote the general welfare of the Nation by employing the funds and credit of the Nation, as provided in this chapter—

(A) to assist States and political subdivisions of States to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families;

(B) to assist States and political subdivisions of States to address the shortage of housing affordable to low-income families; and

(C) consistent with the objectives of this subchapter, to vest in public housing agencies that perform well, the maximum amount of responsibility and flexibility in program administration, with appropriate accountability to public housing residents, localities, and the general public;

(2) that the Federal Government cannot through its direct action alone provide for the housing of every American citizen, or even a majority of its citizens, but it is the responsibility of the Government to promote and protect the independent and collective actions of private citizens to develop housing and strengthen their own neighborhoods;

(3) that the Federal Government should act where there is a serious need that private citizens or groups cannot or are not addressing responsibly; and

(4) that our Nation should promote the goal of providing decent and affordable housing for all citizens through the efforts and encouragement of Federal, State, and local governments, and by the independent and collective actions of private citizens, organizations, and the private sector.

(b) Public housing agency organization

(1) Required membership

Except as provided in paragraph (2), the membership of the board of directors or similar governing body of each public housing agency shall contain not less than 1 member—

(A) who is directly assisted by the public housing agency; and

(B) who may, if provided for in the public housing agency plan, be elected by the residents directly assisted by the public housing agency.

(2) Exception

Paragraph (1) shall not apply to any public housing agency—

(A) that is located in a State that requires the members of the board of directors or similar governing body of a public housing agency to be salaried and to serve on a full-time basis; or

(B) with less than 300 public housing units, if—

(i) the agency has provided reasonable notice to the resident advisory board of the opportunity of not less than 1 resident described in paragraph (1) to serve on the board of directors or similar governing body of the public housing agency pursuant to such paragraph; and

(ii) within a reasonable time after receipt by the resident advisory board established by the agency pursuant to section 1437c–1(e) of this title of notice under clause (i), the public housing agency has not been notified of the intention of any resident to participate on the board of directors.

(3) Nondiscrimination

No person shall be prohibited from serving on the board of directors or similar governing body of a public housing agency because of the residence of that person in a public housing project or status as assisted under section 1437f of this title.

(Sept. 1, 1937, ch. 896, title I, § 2, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653; amended Pub. L. 97–35, title III, § 322(c), Aug. 13, 1981, 95 Stat. 402; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title V, § 572(2), Nov. 28, 1990, 104 Stat. 4236; Pub. L. 105–276, title V, § 505, Oct. 21, 1998, 112 Stat. 2522.)

PRIOR PROVISIONS

A prior section 2 of act Sept. 1, 1937, ch. 896, 50 Stat. 888, related to definitions and was classified to section 1402 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

Prior similar provisions were contained in section 1 of act Sept. 1, 1937, ch. 896, 50 Stat. 888, which was classified to section 1401 of this title prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

1998—Pub. L. 105–276 amended section catchline and text generally. Prior to amendment, text read as follows: ''It is the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income and, consistent with the objectives of this chapter, to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs. No person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-income housing project.''

1990—Pub. L. 101–625 substituted ''low-income housing'' for ''lower income housing''.

1981—Pub. L. 97–35 substituted reference to lower income for reference to low income in two places.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 503, Oct. 21, 1998, 112 Stat. 2521, provided that:

''(a) IN GENERAL.—The amendments under this title [see Tables for classification] are made on the date of the enactment of this Act [Oct. 21, 1998], but this title shall take effect, and the amendments made by this title shall apply beginning upon, October 1, 1999, except—

''(1) as otherwise specifically provided in this title; or

''(2) as otherwise specifically provided in any amendment made by this title.

The Secretary may, by notice, implement any provision of this title or any amendment made by this title before such date, except to the extent that such provision or amendment specifically provides otherwise.

''(b) SAVINGS PROVISION.—Notwithstanding any amendment under this title that is made (in accordance with subsection (a)) on the date of the enactment of this Act [Oct. 21, 1998] but applies beginning on October 1, 1999, the provisions of law amended by such amendment, as such provisions were in effect immediately before the making of such amendment, shall continue to apply during the period beginning on the date of the enactment of this Act and ending upon October 1, 1999, unless otherwise specifically provided by this title.

''(c) TECHNICAL RECOMMENDATIONS.—Not later than 9 months after the date of the enactment of this Act [Oct. 21, 1998], the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking and Financial Services [now Committee on Financial Services] of the House of Representatives, recommended technical and conforming legislative changes necessary to carry out this title and the amendments made by this title.

''(d) LIST OF OBSOLETE DOCUMENTS.—Not later than October 1, 1999, the Secretary of Housing and Urban Development shall cause to be published in the Federal Register a list of all rules, regulations, and orders (including all handbooks, notices, and related requirements) pertaining to public housing or section 8 [42 U.S.C. 1437f] tenant-based programs issued or promulgated under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] before the date of the enactment of this Act [Oct. 21, 1998] that are or will be obsolete because of the enactment of this Act or are otherwise obsolete.

''(e) PROTECTION OF CERTAIN REGULATIONS.—No provision of this title may be construed to repeal the regulations of the Secretary regarding tenant participation and tenant opportunities in public housing (24 C.F.R. 964).

''(g)[(f)] EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE

Section 201(b) of Pub. L. 93–383 provided that: ''The provisions of subsection (a) of this section [enacting sections 1437 to 1437j of this title] shall be effective on such date or dates as the Secretary of Housing and Urban Development shall prescribe, but not later than eighteen months after the date of the enactment of this Act [Aug. 22, 1974]; except that (1) all of the provisions of section 3(1) of the United States Housing Act of 1937, as amended by subsection (a) of this section [section 1437a(1) of this title], shall become effective on the same date, (2) all of the provisions of sections 5 and 9(c) of such Act as so amended [sections 1437c and 1437g(c) of this title] shall become effective on the same date, and (3) section 8 of such Act [section 1437f of this title] as so amended shall be effective not later than January 1, 1975.''

Section 3(1) of the United States Housing Act of 1937, as amended, effective Sept. 26, 1975, see Effective Date note set out under section 1437a of this title.

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–186, title IV, § 401, Dec. 16, 2003, 117 Stat. 2693, provided that: ''This title [amending section 1437v of this title and enacting provisions set out as a note under section 1437v of this title] may be cited as the 'HOPE VI Program Reauthorization and Small Community Mainstreet Rejuvenation and Housing Act of 2003'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–116, title VI, § 601(a), Jan. 10, 2002, 115 Stat. 2220, provided that: ''This title [amending sections 1437f and 5305 of this title and section 1715n of Title 12, Banks and Banking, enacting provisions set out as notes under sections 1437f and 11301 of this title and sections 1701q and 1715n of Title 12, and amending provisions set out as notes under sections 1437f and 11301 of this title and section 1701q of Title 12] may be cited as the 'Mark-to-Market Extension Act of 2001'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 501(a), Oct. 21, 1998, 112 Stat. 2518, provided that: ''This title [see Tables for classification] may be cited as the 'Quality Housing and Work Responsibility Act of 1998'.''

SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100–358 provided that: ''This Act [enacting sections 1437aa to 1437ee of this title, amending sections 1437a and 1437c of this title, and enacting provisions set out as a note under section 1437a of this title] may be cited as the 'Indian Housing Act of 1988'.''

SHORT TITLE

Section 1 of title I of act Sept. 1, 1937, ch. 896, as added by section 201(a) of Pub. L. 93–383; renumbered title I, June 29, 1988, Pub. L. 100–358, § 5, 102 Stat. 681, provided that: ''This Act [enacting this chapter] may be cited as the 'United States Housing Act of 1937'.''

APPLICABILITY OF 1996 AMENDMENTS; INDIAN HOUSING

Pub. L. 104–204, title II, § 201(d), Sept. 26, 1996, 110 Stat. 2893, provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 [former 42 U.S.C. 1437aa(b)(2)], the amendments made by subsections (a), (b), and (c) [amending provisions set

out as notes under sections 1437a, 1437c, and 1437*l* of this title] shall apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

Pub. L. 104–134, title I, §101(e) [title II, §201(a)(3)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–278; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 [former 42 U.S.C. 1437aa(b)(2)], the amendment made by this subsection [amending section 1437*l* of this title] shall apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

Pub. L. 104–134, title I, §101(e) [title II, §201(b)(3)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–278; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 [former 42 U.S.C. 1437aa(b)(2)], the amendments made by this subsection [amending section 1437p of this title and provisions set out as a note under section 1437c of this title] and by sections 1002(a), (b), and (c) of Public Law 104–19 [amending sections 1437c, 1437p, and 1437aaa–3 of this title] shall apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

Pub. L. 104–99, title IV, §402(e), Jan. 26, 1996, 110 Stat. 43, which provided that amendments made by section 402(a) to (d) and (f) of Pub. L. 104–99 were also to apply to public housing developed or operated pursuant to contract between Secretary of Housing and Urban Development and an Indian housing authority, was repealed by Pub. L. 105–276, title V, §595(e)(16), Oct. 21, 1998, 112 Stat. 2659.

APPLICABILITY OF 1990 AMENDMENTS; INDIAN HOUSING

Section 103(b) of Pub. L. 102–550 provided that:

''(1) IN GENERAL.—In accordance with section 201(b)(2) of the United States Housing Act of 1937 ([former] 42 U.S.C. 1437aa(b)(2)), the provisions of sections 572, 573, and 574 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, amending this section and sections 1437a, 1437b to 1437d, 1437f, 1437g, 1437i, 1437j, 1437*l*, 1437n, 1437p, 1437r, 1437s, and 1437aa to 1437dd of this title, repealing section 1437*o* of this title, and enacting provisions set out as notes under section 1437a of this title] shall apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian Housing Authority.

''(2) EFFECTIVE DATE.—Paragraph (1) shall take effect as if such provision were enacted upon the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990].''

Section 419 of title IV of Pub. L. 101–625 provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 [former 42 U.S.C. 1437aa(b)(2)], the amendments made by this subtitle [subtitle A (§§411–419) of title IV of Pub. L. 101–625, enacting subchapter II–A of this chapter and amending sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of this title] shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority, except that nothing in this title [see Short Title note set out under section 1437aaa of this title] affects the program under section 202 of such Act [former 42 U.S.C. 1437bb].''

Section 527 of Pub. L. 101–625 provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 ([former] 42 U.S.C. 1437aa(b)(2)), the provisions of this subtitle [subtitle A (§§501–527) of title V of Pub. L. 101–625, see Tables for classification] that modify the public housing program under title I of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority, except that sections 502 and 510 [amending sections 1437d and 1437*l* of this title and enacting provisions set out as notes under section 1437d of this title] shall not apply.''

APPLICABILITY OF 1989 AMENDMENTS; INDIAN HOUSING

Pub. L. 101–235, title I, §101(d), Dec. 15, 1989, 103 Stat. 1990, provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 [former 42 U.S.C. 1437aa(b)(2)], the amendments made by subsections (a), (b), and (c) of this section [amending section 1439 of this title] shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

Pub. L. 101–235, title I, §104(c), Dec. 15, 1989, 103 Stat. 1998, provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 [former 42 U.S.C. 1437aa(b)(2)], the amendment made by subsection (a) [amending section 1439 of this title] and the provisions of subsection (b) of this section [set out as an Effective Date of 1989 Amendment note under section 1439 of this title] shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

REPORTS ON NUMBER AND COST OF FEDERALLY ASSISTED UNITS

Pub. L. 109–115, div. A, title III, §314, Nov. 30, 2005, 119 Stat. 2463, provided that: ''The Secretary of Housing and Urban Development shall submit an annual report no later than August 30, 2006 and annually thereafter to the House and Senate Committees on Appropriations regarding the number of Federally assisted units under lease and the per unit cost of these units to the Department of Housing and Urban Development.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. I, title II, §214, Dec. 8, 2004, 118 Stat. 3318.

Pub. L. 108–199, div. G, title II, §213, Jan. 23, 2004, 118 Stat. 393.

Pub. L. 108–7, div. K, title II, §217, Feb. 20, 2003, 117 Stat. 504.

FUNDING OF CERTAIN PUBLIC HOUSING

Pub. L. 105–276, title II, §226, Oct. 21, 1998, 112 Stat. 2490, which provided that no funds in this Act or any other Act may hereafter be used by the Secretary of Housing and Urban Development to determine allocations or provide assistance for operating subsidies or modernization for certain State and city funded and locally developed public housing units unless such unit was so assisted before Oct. 1, 1998, was repealed by Pub. L. 108–7, div. K, title II, §212(b), Feb. 20, 2003, 117 Stat. 504.

[Pub. L. 108–7, div. K, title II, §212(d), Feb. 20, 2003, 117 Stat. 504, provided that: ''The amendment made by subsection (b) [repealing section 226 of Pub. L. 105–276, set out above] shall be deemed to have taken effect on October 21, 1998.'']

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSES

Pub. L. 105–276, title V, §502, Oct. 21, 1998, 112 Stat. 2520, provided that:

''(a) FINDINGS.—Congress finds that—

''(1) there exists throughout the Nation a need for decent, safe, and affordable housing;

''(2) the inventory of public housing units owned, assisted, or operated by public housing agencies, an asset in which the Federal Government has invested over $90,000,000,000, has traditionally provided rental housing that is affordable to low-income persons;

''(3) despite serving this critical function, the public housing system is plagued by a series of problems, including the concentration of very poor people in

very poor neighborhoods and disincentives for economic self-sufficiency;

''(4) the Federal method of overseeing every aspect of public housing by detailed and complex statutes and regulations has aggravated the problem and has placed excessive administrative burdens on public housing agencies; and

''(5) the interests of low-income persons, and the public interest, will best be served by a reformed public housing program that—

''(A) consolidates many public housing programs into programs for the operation and capital needs of public housing;

''(B) streamlines program requirements;

''(C) vests in public housing agencies that perform well the maximum feasible authority, discretion, and control with appropriate accountability to public housing residents, localities, and the general public; and

''(D) rewards employment and economic self-sufficiency of public housing residents.

''(b) PURPOSES.—The purpose of this title [see Tables for classification] is to promote homes that are affordable to low-income families in safe and healthy environments, and thereby contribute to the supply of affordable housing, by—

''(1) deregulating and decontrolling public housing agencies, thereby enabling them to perform as property and asset managers;

''(2) providing for more flexible use of Federal assistance to public housing agencies, allowing the authorities to leverage and combine assistance amounts with amounts obtained from other sources;

''(3) facilitating mixed income communities and decreasing concentrations of poverty in public housing;

''(4) increasing accountability and rewarding effective management of public housing agencies;

''(5) creating incentives and economic opportunities for residents of dwelling units assisted by public housing agencies to work, become self-sufficient, and transition out of public housing and federally assisted dwelling units;

''(6) consolidating the voucher and certificate programs for rental assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] into a single market-driven program that will assist in making tenant-based rental assistance under such section more successful at helping low-income families obtain affordable housing and will increase housing choice for low-income families; and

''(7) remedying the problems of troubled public housing agencies and replacing or revitalizing severely distressed public housing projects.''

MENTAL HEALTH ACTION PLAN

Pub. L. 105–276, title V, § 517, Oct. 21, 1998, 112 Stat. 2550, provided that: ''The Secretary of Housing and Urban Development, in consultation with the Secretary of Health and Human Services, the Secretary of Labor, and appropriate State and local officials and representatives, shall—

''(1) develop an action plan and list of recommendations for the improvement of means of providing severe mental illness treatment to families and individuals receiving housing assistance under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], including public housing residents, residents of multifamily housing assisted with project-based assistance under section 8 of such Act [42 U.S.C. 1437f], and recipients of tenant-based assistance under such section; and

''(2) develop and disseminate a list of current practices among public housing agencies and owners of assisted housing that serve to benefit persons in need of mental health care.''

ANNUAL REPORT

Pub. L. 105–276, title V, § 581, Oct. 21, 1998, 112 Stat. 2643, provided that:

''(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Oct. 21, 1998], and annually thereafter, the Secretary shall submit a report to the Congress on—

''(1) the impact of the amendments made by this Act [Pub. L. 105–276, see Tables for classification] on—

''(A) the demographics of public housing residents and families receiving tenant-based assistance under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]; and

''(B) the economic viability of public housing agencies; and

''(2) the effectiveness of the rent policies established by this Act and the amendments made by this Act on the employment status and earned income of public housing residents.

''(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

USE OF AMERICAN PRODUCTS

Pub. L. 105–276, title V, § 584, Oct. 21, 1998, 112 Stat. 2645, provided that:

''(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act [Pub. L. 105–276, see Tables for classification] should be American made.

''(b) NOTICE REQUIREMENT.—In providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

''(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

GAO STUDY ON HOUSING ASSISTANCE PROGRAM COSTS

Pub. L. 105–276, title V, § 585, Oct. 21, 1998, 112 Stat. 2645, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study that provides an objective and independent accounting and analysis of the full cost to the Federal Government, public housing agencies, State and local governments, and other entities, per assisted household, of the Federal assisted housing programs, taking into account the qualitative differences among Federal assisted housing programs in accordance with applicable standards of the Department of Housing and Urban Development.

''(b) CONTENTS.—The study under this section shall—

''(1) analyze the full cost to the Federal Government, public housing agencies, State and local governments, and other parties, per assisted household, of the Federal assisted housing programs, in accordance with generally accepted accounting principles, and shall conduct the analysis on a nationwide and regional basis and in a manner such that accurate per unit cost comparisons may be made between Federal assisted housing programs, including grants, direct subsidies, tax concessions, Federal mortgage insurance liability, periodic renovation and rehabilitation, and modernization costs, demolition costs, and other ancillary costs such as security; and

''(2) measure and evaluate qualitative differences among Federal assisted housing programs in accordance with applicable standards of the Department of Housing and Urban Development.

''(c) PROHIBITION OF RECOMMENDATIONS.—In conducting the study under this section and reporting under subsection (e), the Comptroller General may not make any recommendations regarding Federal housing policy.

''(d) FEDERAL ASSISTED HOUSING PROGRAMS.—For purposes of this section, the term 'Federal assisted housing programs' means—

''(1) the public housing program under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], ex-

cept that the study under this section shall differentiate between and compare the development and construction of new public housing and the assistance of existing public housing structures;

''(2) the certificate program for rental assistance under section 8(b)(1) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(1)];

''(3) the voucher program for rental assistance under section 8(*o*) of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)];

''(4) the programs for project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

''(5) the rental assistance payments program under section 521(a)(2)(A) of the Housing Act of 1949 [42 U.S.C. 1490a(a)(2)(A)];

''(6) the program for housing for the elderly under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q];

''(7) the program for housing for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 8013];

''(8) the program for financing housing by a loan or mortgage insured under section 221(d)(3) of the National Housing Act [12 U.S.C. 1715*l*(d)(3)] that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act [12 U.S.C. 1715*l*(d)(5)];

''(9) the program under section 236 of the National Housing Act [12 U.S.C. 1715z–1];

''(10) the program for construction or substantial rehabilitation under section 8(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(2)], as in effect before October 1, 1983; and

''(11) any other program for housing assistance administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture, under which occupancy in the housing assisted or housing assistance provided is based on income, as the Comptroller General may determine.

''(e) REPORT.—Not later than 12 months after the date of the enactment of this Act [Oct. 21, 1998], the Comptroller General shall submit to the Congress a final report which shall contain the results of the study under this section, including the analysis and estimates required under subsection (b).

''(f) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

LIMITATION ON WITHHOLDING OR CONDITIONING OF ASSISTANCE

Assistance provided for in Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.], National Housing Act [12 U.S.C. 1701 et seq.], United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], Housing Act of 1949 [see Short Title note set out under section 1441 of this title], Demonstration Cities and Metropolitan Development Act of 1966 [see Short Title note set out under section 3331 of this title], and Housing and Urban Development Acts of 1965, 1968, 1969, and 1970 not to be withheld or made subject to conditions by reason of tax-exempt status of obligations issued or to be issued for financing of assistance, except as otherwise provided by law, see section 817 of Pub. L. 93–383, set out as a note under section 5301 of this title.

§ 1437a. Rental payments

(a) Families included; rent options; minimum amount; occupancy by police officers and over-income families

(1) Dwelling units assisted under this chapter shall be rented only to families who are low-income families at the time of their initial occupancy of such units. Reviews of family income shall be made at least annually. Except as provided in paragraph (2) and subject to the requirement under paragraph (3), a family shall pay as rent for a dwelling unit assisted under this chapter (other than a family assisted under section 1437f(*o*) or (y) of this title or paying rent under section 1437f(c)(3)(B)[1] of this title) the highest of the following amounts, rounded to the nearest dollar:

(A) 30 per centum of the family's monthly adjusted income;

(B) 10 per centum of the family's monthly income; or

(C) if the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.

(2) RENTAL PAYMENTS FOR PUBLIC HOUSING FAMILIES.—

(A) AUTHORITY FOR FAMILY TO SELECT.—

(i) IN GENERAL.—A family residing in a public housing dwelling shall pay as monthly rent for the unit the amount determined under clause (i) or (ii) of subparagraph (B), subject to the requirement under paragraph (3) (relating to minimum rents). Each public housing agency shall provide for each family residing in a public housing dwelling unit owned, assisted, or operated by the agency to elect annually whether the rent paid by such family shall be determined under clause (i) or (ii) of subparagraph (B). A public housing agency may not at any time fail to provide both such rent options for any public housing dwelling unit owned, assisted, or operated by the agency.

(ii) AUTHORITY TO RETAIN FLAT AND CEILING RENTS.—Notwithstanding clause (i) or any other provision of law, any public housing agency that is administering flat rents or ceiling rents pursuant to any authority referred to in section 519(d) of the Quality Housing and Work Responsibility Act of 1998 before the effective day of such Act may continue to charge rent in accordance with such rent provisions after such effective date, except that the agency shall provide for families residing in public housing dwelling units owned or operated by the agency to elect annually whether to pay rent under such provisions or in accordance with one of the rent options referred to in subparagraph (A).

(B) ALLOWABLE RENT STRUCTURES.—

(i) FLAT RENTS.—Except as otherwise provided under this clause, each public housing agency shall establish, for each dwelling unit in public housing owned or operated by the agency, a flat rental amount for the dwelling unit, which shall—

(I) be based on the rental value of the unit, as determined by the public housing agency; and

(II) be designed in accordance with subparagraph (D) so that the rent structures do not create a disincentive for continued residency in public housing by families who are attempting to become economically self-sufficient through employment or who have attained a level of self-sufficiency through their own efforts.

[1] See References in Text note below.

The rental amount for a dwelling unit shall be considered to comply with the requirements of this clause if such amount does not exceed the actual monthly costs to the public housing agency attributable to providing and operating the dwelling unit. The preceding sentence may not be construed to require establishment of rental amounts equal to or based on operating costs or to prevent public housing agencies from developing flat rents required under this clause in any other manner that may comply with this clause.

(ii) INCOME-BASED RENTS.—

(I) IN GENERAL.—The monthly rental amount determined under this clause for a family shall be an amount, determined by the public housing agency, that does not exceed the greatest of the amounts (rounded to the nearest dollar) determined under subparagraphs (A), (B), and (C) of paragraph (1). This clause may not be construed to require a public housing agency to charge a monthly rent in the maximum amount permitted under this clause.

(II) DISCRETION.—Subject to the limitation on monthly rental amount under subclause (I), a public housing agency may, in its discretion, implement a rent structure under this clause requiring that a portion of the rent be deposited to an escrow or savings account, imposing ceiling rents, or adopting income exclusions (such as those set forth in subsection (b)(5)(B) of this section), or may establish another reasonable rent structure or amount.

(C) SWITCHING RENT DETERMINATION METHODS BECAUSE OF HARDSHIP CIRCUMSTANCES.—Notwithstanding subparagraph (A), in the case of a family that has elected to pay rent in the amount determined under subparagraph (B)(i), a public housing agency shall immediately provide for the family to pay rent in the amount determined under subparagraph (B)(ii) during the period for which such election was made upon a determination that the family is unable to pay the amount determined under subparagraph (B)(i) because of financial hardship, including—

(i) situations in which the income of the family has decreased because of changed circumstances, loss of[2] reduction of employment, death in the family, and reduction in or loss of income or other assistance;

(ii) an increase, because of changed circumstances, in the family's expenses for medical costs, child care, transportation, education, or similar items; and

(iii) such other situations as may be determined by the agency.

(D) ENCOURAGEMENT OF SELF-SUFFICIENCY.—The rental policy developed by each public housing agency shall encourage and reward employment and economic self-sufficiency.

(E) INCOME REVIEWS.—Notwithstanding the second sentence of paragraph (1), in the case of families that are paying rent in the amount determined under subparagraph (B)(i), the agency shall review the income of such family not less than once every 3 years.

[2] So in original. Probably should be ''or''.

(3) MINIMUM RENTAL AMOUNT.—

(A) REQUIREMENT.—Notwithstanding paragraph (1) of this subsection, the method for rent determination elected pursuant to paragraph (2)(A) of this subsection by a family residing in public housing, section 1437f(*o*)(2) of this title, or section 206(d) of the Housing and Urban-Rural Recovery Act of 1983 (including paragraph (5) of such section), the following entities shall require the following families to pay a minimum monthly rental amount (which amount shall include any amount allowed for utilities) of not more than $50 per month, as follows:

(i) Each public housing agency shall require the payment of such minimum monthly rental amount, which amount shall be determined by the agency, by—

(I) each family residing in a dwelling unit in public housing by the agency;

(II) each family who is assisted under the certificate or moderate rehabilitation program under section 1437f of this title; and

(III) each family who is assisted under the voucher program under section 1437f of this title, and the agency shall reduce the monthly assistance payment on behalf of such family as may be necessary to ensure payment of such minimum monthly rental amount.

(ii) The Secretary shall require each family who is assisted under any other program for rental assistance under section 1437f of this title to pay such minimum monthly rental amount, which amount shall be determined by the Secretary.

(B) EXCEPTION FOR HARDSHIP CIRCUMSTANCES.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), a public housing agency (or the Secretary, in the case of a family described in subparagraph (A)(ii)) shall immediately grant an exemption from application of the minimum monthly rental under such subparagraph to any family unable to pay such amount because of financial hardship, which shall include situations in which (I) the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; (II) the family would be evicted as a result of the imposition of the minimum rent requirement under subparagraph (A); (III) the income of the family has decreased because of changed circumstance, including loss of employment; (IV) a death in the family has occurred; and (V) other situations as may be determined by the agency (or the Secretary, in the case of a family described in subparagraph (A)(ii)).

(ii) WAITING PERIOD.—If a resident requests a hardship exemption under this subparagraph and the public housing agency (or the

Secretary, in the case of a family described in subparagraph (A)(ii)) reasonably determines the hardship to be of a temporary nature, an exemption shall not be granted during the 90-day period beginning upon the making of a request for the exemption. A resident may not be evicted during such 90-day period for nonpayment of rent. In such a case, if the resident thereafter demonstrates that the financial hardship is of a long-term basis, the agency (or the Secretary) shall retroactively exempt the resident from the applicability of the minimum rent requirement for such 90-day period.

(4) OCCUPANCY BY POLICE OFFICERS.—

(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding any other provision of law, a public housing agency may, in accordance with the public housing agency plan for the agency, allow a police officer who is not otherwise eligible for residence in public housing to reside in a public housing dwelling unit. The number and location of units occupied by police officers under this paragraph and the terms and conditions of their tenancies shall be determined by the public housing agency.

(B) INCREASED SECURITY.—A public housing agency may take the actions authorized in subparagraph (A) only for the purpose of increasing security for the residents of a public housing project.

(C) DEFINITION.—In this paragraph, the term ''police officer'' means any person determined by a public housing agency to be, during the period of residence of that person in public housing, employed on a full-time basis as a duly licensed professional police officer by a Federal, State, or local government or by any agency thereof (including a public housing agency having an accredited police force).

(5) OCCUPANCY BY OVER-INCOME FAMILIES IN CERTAIN PUBLIC HOUSING.—

(A) AUTHORITY.—Notwithstanding any other provision of law, a public housing agency that owns or operates less than 250 units may, on a month-to-month basis, lease a dwelling unit in a public housing project to an over-income family in accordance with this paragraph, but only if there are no eligible families applying for housing assistance from the public housing agency for that month and the agency provides not less than 30-day public notice of the availability of such assistance.

(B) TERMS AND CONDITIONS.—The number and location of dwelling units of a public housing agency occupied under this paragraph by over-income families, and the terms and conditions of those tenancies, shall be determined by the public housing agency, except that—

(i) notwithstanding paragraph (2), rent for a unit shall be in an amount that is not less than the costs to operate the unit;

(ii) if an eligible family applies for residence after an over-income family moves in to the last available unit, the over-income family shall vacate the unit in accordance with notice of termination of tenancy provided by the agency, which shall be provided not less than 30 days before such termination; and

(iii) if a unit is vacant and there is no one on the waiting list, the public housing agency may allow an over-income family to gain immediate occupancy in the unit, while simultaneously providing reasonable public notice and outreach with regard to availability of the unit.

(C) DEFINITION.—For purposes of this paragraph, the term ''over-income family'' means an individual or family that is not a low-income family at the time of initial occupancy.

(b) Definition of terms under this chapter

When used in this chapter:

(1) The term ''low-income housing'' means decent, safe, and sanitary dwellings assisted under this chapter. The term ''public housing'' means low-income housing, and all necessary appurtenances thereto, assisted under this chapter other than under section 1437f of this title. The term ''public housing'' includes dwelling units in a mixed finance project that are assisted by a public housing agency with capital or operating assistance. When used in reference to public housing, the term ''low-income housing project'' or ''project'' means (A) housing developed, acquired, or assisted by a public housing agency under this chapter, and (B) the improvement of any such housing.

(2) The term ''low-income families'' means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes. The term ''very low-income families'' means low-income families whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes. Such ceilings shall be established in consultation with the Secretary of Agriculture for any rural area, as defined in section 1490 of this title, taking into account the subsidy characteristics and types of programs to which such ceilings apply. In determining median incomes (of persons, families, or households) for an area or establishing any ceilings or limits based on income under this chapter, the Secretary shall determine or establish area median incomes and income ceilings and limits for Westchester and Rockland Counties, in the State of New York, as if each such county were an area not contained within the metropolitan statistical area in which it is located. In determining such area median incomes or establishing such income ceilings or limits for the portion of such metropolitan statistical area that does not include Westchester or Rockland Counties, the Secretary shall determine or establish area median incomes and income ceil-

ings and limits as if such portion included Westchester and Rockland Counties. In determining areas that are designated as difficult development areas for purposes of the low-income housing tax credit, the Secretary shall include Westchester and Rockland Counties, New York, in the New York City metropolitan area.

(3) PERSONS AND FAMILIES.—

(A) SINGLE PERSONS.—The term ''families'' includes families consisting of a single person in the case of (i) an elderly person, (ii) a disabled person, (iii) a displaced person, (iv) the remaining member of a tenant family, and (v) any other single persons. In no event may any single person under clause (v) of the first sentence be provided a housing unit assisted under this chapter of 2 or more bedrooms.

(B) FAMILIES.—The term ''families'' includes families with children and, in the cases of elderly families, near-elderly families, and disabled families, means families whose heads (or their spouses), or whose sole members, are elderly, near-elderly, or persons with disabilities, respectively. The term includes, in the cases of elderly families, near-elderly families, and disabled families, 2 or more elderly persons, near-elderly persons, or persons with disabilities living together, and 1 or more such persons living with 1 or more persons determined under the public housing agency plan to be essential to their care or well-being.

(C) ABSENCE OF CHILDREN.—The temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size.

(D) ELDERLY PERSON.—The term ''elderly person'' means a person who is at least 62 years of age.

(E) PERSON WITH DISABILITIES.—The term ''person with disabilities'' means a person who—

(i) has a disability as defined in section 423 of this title,

(ii) is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which (I) is expected to be of long-continued and indefinite duration, (II) substantially impedes his or her ability to live independently, and (III) is of such a nature that such ability could be improved by more suitable housing conditions, or

(iii) has a developmental disability as defined in section 15002 of this title.

Such term shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing under this subchapter, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with other appropriate Federal agencies to implement the preceding sentence.

(F) DISPLACED PERSON.—The term ''displaced person'' means a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

(G) NEAR-ELDERLY PERSON.—The term ''near-elderly person'' means a person who is at least 50 years of age but below the age of 62.

(4) The term ''income'' means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, in consultation with the Secretary of Agriculture, except that any amounts not actually received by the family and any amounts which would be eligible for exclusion under section 1382b(a)(7) of this title may not be considered as income under this paragraph.

(5) ADJUSTED INCOME.—The term ''adjusted income'' means, with respect to a family, the amount (as determined by the public housing agency) of the income of the members of the family residing in a dwelling unit or the persons on a lease, after any income exclusions as follows:

(A) MANDATORY EXCLUSIONS.—In determining adjusted income, a public housing agency shall exclude from the annual income of a family the following amounts:

(i) ELDERLY AND DISABLED FAMILIES.—$400 for any elderly or disabled family.

(ii) MEDICAL EXPENSES.—The amount by which 3 percent of the annual family income is exceeded by the sum of—

(I) unreimbursed medical expenses of any elderly family or disabled family;

(II) unreimbursed medical expenses of any family that is not covered under subclause (I), except that this subclause shall apply only to the extent approved in appropriation Acts; and

(III) unreimbursed reasonable attendant care and auxiliary apparatus expenses for each handicapped member of the family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed.

(iii) CHILD CARE EXPENSES.—Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(iv) MINORS, STUDENTS, AND PERSONS WITH DISABILITIES.—$480 for each member of the family residing in the household (other than the head of the household or his or her spouse) who is less than 18 years of age or is attending school or vocational training on a full-time basis, or who is 18 years of age or older and is a person with disabilities.

(v) CHILD SUPPORT PAYMENTS.—Any payment made by a member of the family for the support and maintenance of any child who does not reside in the household, except that the amount excluded under this clause may not exceed $480 for each child for whom such payment is made; except that this clause shall apply only to the extent approved in appropriations Acts.

(vi) SPOUSAL SUPPORT EXPENSES.—Any payment made by a member of the family for the support and maintenance of any spouse or former spouse who does not reside in the household, except that the amount excluded

under this clause shall not exceed the lesser of (I) the amount that such family member has a legal obligation to pay, or (II) $550 for each individual for whom such payment is made; except that this clause shall apply only to the extent approved in appropriations Acts.

(vii) EARNED INCOME OF MINORS.—The amount of any earned income of a member of the family who is not—

(I) 18 years of age or older; and

(II) the head of the household (or the spouse of the head of the household).

(B) PERMISSIVE EXCLUSIONS FOR PUBLIC HOUSING.—In determining adjusted income, a public housing agency may, in the discretion of the agency, establish exclusions from the annual income of a family residing in a public housing dwelling unit. Such exclusions may include the following amounts:

(i) EXCESSIVE TRAVEL EXPENSES.—Excessive travel expenses in an amount not to exceed $25 per family per week, for employment- or education-related travel.

(ii) EARNED INCOME.—An amount of any earned income of the family, established at the discretion of the public housing agency, which may be based on—

(I) all earned income of the family,[3]

(II) the amount earned by particular members of the family;

(III) the amount earned by families having certain characteristics; or

(IV) the amount earned by families or members during certain periods or from certain sources.

(iii) OTHERS.—Such other amounts for other purposes, as the public housing agency may establish.

(6) PUBLIC HOUSING AGENCY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''public housing agency'' means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of public housing.

(B) SECTION 1437f PROGRAM.—For purposes of the program for tenant-based assistance under section 1437f of this title, such term includes—

(i) a consortia of public housing agencies that the Secretary determines has the capacity and capability to administer a program for assistance under such section in an efficient manner;

(ii) any other public or private nonprofit entity that, upon the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, was administering any program for tenant-based assistance under section 1437f of this title (as in effect before the effective date of such Act), pursuant to a contract with the Secretary or a public housing agency; and

(iii) with respect to any area in which no public housing agency has been organized or where the Secretary determines that a public housing agency is unwilling or unable to implement a program for tenant-based assistance[4] section 1437f of this title, or is not performing effectively—

(I) the Secretary or another public or private nonprofit entity that by contract agrees to receive assistance amounts under section 1437f of this title and enter into housing assistance payments contracts with owners and perform the other functions of public housing agency under section 1437f of this title; or

(II) notwithstanding any provision of State or local law, a public housing agency for another area that contracts with the Secretary to administer a program for housing assistance under section 1437f of this title, without regard to any otherwise applicable limitations on its area of operation.

(7) The term ''State'' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(8) The term ''Secretary'' means the Secretary of Housing and Urban Development.

(9) DRUG-RELATED CRIMINAL ACTIVITY.—The term ''drug-related criminal activity'' means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as such term is defined in section 802 of title 21).

(10) MIXED-FINANCE PROJECT.—The term ''mixed-finance project'' means a public housing project that meets the requirements of section 1437z–7 of this title.

(11) PUBLIC HOUSING AGENCY PLAN.—The term ''public housing agency plan'' means the plan of a public housing agency prepared in accordance with section 1437c–1 of this title.

(12) CAPITAL FUND.—The term ''Capital Fund'' means the fund established under section 1437g(d) of this title.

(13) OPERATING FUND.—The term ''Operating Fund'' means the fund established under section 1437g(e) of this title.

(c) Definition of terms used in reference to public housing

When used in reference to public housing:

(1) The term ''development'' means any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-income housing project. The term ''development cost'' comprises the costs incurred by a public housing agency in such undertakings and their necessary financing (including the payment of carrying charges), and in otherwise carrying out the development of such project, but does not include the costs associated with the demolition of or remediation of environmental hazards associated with public housing units that will not be replaced on the project site, or other extraordinary site costs as determined by the Secretary. Construction activity in connection with a low-income housing project may be confined to the reconstruction, remodeling, or repair of existing buildings.

[3] So in original. The comma probably should be a semicolon.

[4] So in original. Probably should be ''assistance under''.

(2) The term ''operation'' means any or all undertakings appropriate for management, operation, services, maintenance, security (including the cost of security personnel), or financing in connection with a low-income housing project. The term also means the financing of tenant programs and services for families residing in low-income housing projects, particularly where there is maximum feasible participation of the tenants in the development and operation of such tenant programs and services. As used in this paragraph, the term ''tenant programs and services'' includes the development and maintenance of tenant organizations which participate in the management of low-income housing projects; the training of tenants to manage and operate such projects and the utilization of their services in project management and operation; counseling on household management, housekeeping, budgeting, money management, child care, and similar matters; advice as to resources for job training and placement, education, welfare, health, and other community services; services which are directly related to meeting tenant needs and providing a wholesome living environment; and referral to appropriate agencies in the community when necessary for the provision of such services. To the maximum extent available and appropriate, existing public and private agencies in the community shall be used for the provision of such services.

(3) The term ''acquisition cost'' means the amount prudently required to be expended by a public housing agency in acquiring property for a low-income housing project.

(4) The term ''congregate housing'' means low-rent housing with which there is connected a central dining facility where wholesome and economical meals can be served to occupants. Expenditures incurred by a public housing agency in the operation of a central dining facility in connection with congregate housing (other than the cost of providing food and service) shall be considered a cost of operation of the project.

(5) The terms ''group home'' and ''independent living facility'' have the meanings given such terms in section 8013(k) of this title.

(d) Disallowance of earned income from rent determinations

(1) In general

Notwithstanding any other provision of law, the rent payable under subsection (a) of this section by a family described in paragraph (3) of this subsection may not be increased as a result of the increased income due to such employment during the 12-month period beginning on the date on which the employment is commenced.

(2) Phase-in of rent increases

Upon the expiration of the 12-month period referred to in paragraph (1), the rent payable by a family described in paragraph (3) may be increased due to the continued employment of the family member described in paragraph (3)(B), except that during the 12-month period beginning upon such expiration the amount of the increase may not be greater than 50 percent of the amount of the total rent increase that would be applicable but for this paragraph.

(3) Eligible families

A family described in this paragraph is a family—

(A) that—

(i) occupies a dwelling unit in a public housing project; or

(ii) receives assistance under section 1437f of this title; and

(B)(i) whose income increases as a result of employment of a member of the family who was previously unemployed for 1 or more years;

(ii) whose earned income increases during the participation of a family member in any family self-sufficiency or other job training program; or

(iii) who is or was, within 6 months, assisted under any State program for temporary assistance for needy families funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] and whose earned income increases.

(4) Applicability

This subsection and subsection (e) of this section shall apply beginning upon October 1, 1999, except that this subsection and subsection (e) of this section shall apply with respect to any family described in paragraph 3(A)(ii)[5] only to the extent provided in advance in appropriations Acts.

(e) Individual savings accounts

(1) In general

In lieu of a disallowance of earned income under subsection (d) of this section, upon the request of a family that qualifies under subsection (d) of this section, a public housing agency may establish an individual savings account in accordance with this subsection for that family.

(2) Deposits to account

The public housing agency shall deposit in any savings account established under this subsection an amount equal to the total amount that otherwise would be applied to the family's rent payment under subsection (a) of this section as a result of employment.

(3) Withdrawal from account

Amounts deposited in a savings account established under this subsection may only be withdrawn by the family for the purpose of—

(A) purchasing a home;

(B) paying education costs of family members;

(C) moving out of public or assisted housing; or

(D) paying any other expense authorized by the public housing agency for the purpose of promoting the economic self-sufficiency of residents of public and assisted housing.

(f) Availability of income matching information

(1) Disclosure to PHA

A public housing agency, or the owner responsible for determining the participant's eligibility or level of benefits, shall require any

[5] So in original. Probably should be paragraph ''(3)(A)(ii)''.

family described in paragraph (2) who receives information regarding income, earnings, wages, or unemployment compensation from the Department of Housing and Urban Development pursuant to income verification procedures of the Department to disclose such information, upon receipt of the information, to the public housing agency that owns or operates the public housing dwelling unit in which such family resides or that provides the housing assistance under this chapter on behalf of such family, as applicable, or to the owner responsible for determining the participant's eligibility or level of benefits.

(2) Families covered

A family described in this paragraph is a family that resides in a dwelling unit—

(A) that is a public housing dwelling unit;

(B) for which tenant-based assistance is provided under section 1437f of this title,[6] or

(C) for which project-based assistance is provided under section 1437f of this title, section 1437bb[7] of this title, or section 811.[7]

(Sept. 1, 1937, ch. 896, title I, §3, as added Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 654; amended Pub. L. 94–375, §2(f), Aug. 3, 1976, 90 Stat. 1068; Pub. L. 95–557, title II, §206(c), Oct. 31, 1978, 92 Stat. 2091; Pub. L. 96–153, title II, §202(a), Dec. 21, 1979, 93 Stat. 1106; Pub. L. 97–35, title III, §322(a), Aug. 13, 1981, 95 Stat. 400; Pub. L. 98–181, title II, §§202, 206(a)–(c), Nov. 30, 1983, 97 Stat. 1178, 1179; Pub. L. 98–479, title I, §102(b)(1)–(3), Oct. 17, 1984, 98 Stat. 2221; Pub. L. 100–242, title I, §§102(a), 111, 170(c), Feb. 5, 1988, 101 Stat. 1821, 1823, 1867; renumbered title I and amended Pub. L. 100–358, §§4, 5, June 29, 1988, 102 Stat. 680, 681; Pub. L. 101–235, title III, §302, Dec. 15, 1989, 103 Stat. 2043; Pub. L. 101–625, title V, §§515(b), 572, 573(a)–(d), 574, Nov. 28, 1990, 104 Stat. 4199, 4236–4238; Pub. L. 102–550, title I, §§102–103(a)(2), 185(c)(4), title VI, §§621, 622(c), 625(a)(1), Oct. 28, 1992, 106 Stat. 3683, 3748, 3812, 3817, 3820; Pub. L. 103–233, title III, §301, Apr. 11, 1994, 108 Stat. 369; Pub. L. 104–99, title IV, §402(b)(1), (c), Jan. 26, 1996, 110 Stat. 40, 41; Pub. L. 104–330, title V, §501(b)(1), Oct. 26, 1996, 110 Stat. 4041; Pub. L. 105–276, title V, §§506, 507(a), (c), 508(a), (b)(1), (c)(1), (d)(1), 520(a), 523, 524(a), 546, Oct. 21, 1998, 112 Stat. 2523–2529, 2562, 2565–2567, 2604; Pub. L. 106–74, title II, §214(a), Oct. 20, 1999, 113 Stat. 1074; Pub. L. 106–402, title IV, §401(b)(7), Oct. 30, 2000, 114 Stat. 1738.)

REFERENCES IN TEXT

Section 1437f(c)(3)(B) of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 105–276, title V, §550(a)(3)(A)(ii), Oct. 21, 1998, 112 Stat. 2609.

Section 519(d) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (a)(2)(A)(ii), is section 519(d) of Pub. L. 105–276 which is set out as a note below.

The effective day of such Act and the effective date of such Act, referred to in subsecs. (a)(2)(A)(ii) and (b)(6)(B)(ii), probably means the general effective date for the Quality Housing and Work Responsibility Act of 1998, Pub. L. 105–276, title V, included in section 503 of the Act which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

Section 206(d) of the Housing and Urban-Rural Recovery Act of 1983, referred to in subsec. (a)(3)(A), is section 206(d) of Pub. L. 98–181, which is set out as a note below.

The Immigration and Nationality Act, referred to in subsec. (a)(3)(B)(i)(I), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(3)(B)(i)(I), is title IV (§400 et seq.) of Pub. L. 104–193, Aug. 22, 1996, 110 Stat. 2260, as amended. For complete classification of title IV to the Code, see Tables.

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (b)(6)(B)(ii), is section 503(a) of Pub. L. 105–276 which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

The Social Security Act, referred to in subsec. (d)(3)(B)(iii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 1437bb of this title, referred to in subsec. (f)(2)(C), was repealed by Pub. L. 104–330, title V, §501(a), Oct. 26, 1996, 110 Stat. 4041.

Section 811, referred to in subsec. (f)(2)(C), means section 811 of the United States Housing Act of 1937, but that Act does not contain a section 811.

PRIOR PROVISIONS

A prior section 3 of act Sept. 1, 1937, ch. 896, 50 Stat. 889, as amended, established the United States Housing Authority and was classified to section 1403 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

Prior similar provisions were contained in section 2 of act Sept. 1, 1937, ch. 896, 50 Stat. 888, which was classified to section 1402 of this title prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

2000—Subsec. (b)(3)(E)(iii). Pub. L. 106–402 substituted ''section 15002 of this title'' for ''section 6001 of this title''.

1999—Subsec. (f)(1). Pub. L. 106–74, §214(a)(1), inserted '', or the owner responsible for determining the participant's eligibility or level of benefits,'' after ''A public housing agency'' and '', or to the owner responsible for determining the participant's eligibility or level of benefits'' before period at end.

Subsec. (f)(2)(C). Pub. L. 106–74, §214(a)(2), added subpar. (C).

1998—Subsec. (a)(1). Pub. L. 105–276, §507(c), inserted ''and subject to the requirement under paragraph (3)'' after ''paragraph (2)'' in third sentence.

Subsec. (a)(2). Pub. L. 105–276, §523, amended par. (2) generally. For prior text, see 1996 Amendment note below.

Subsec. (a)(3). Pub. L. 105–276, §507(a), added par. (3).

Subsec. (a)(4), (5). Pub. L. 105–276, §524(a), added pars. (4) and (5).

Subsec. (b)(1). Pub. L. 105–276, §506(1), inserted after second sentence ''The term 'public housing' includes dwelling units in a mixed finance project that are assisted by a public housing agency with capital or operating assistance.''

Subsec. (b)(2). Pub. L. 105–276, §508(c)(1), substituted ''limits for Westchester and Rockland Counties'' for ''limits for Westchester County'', inserted ''each'' before ''such county'', substituted ''include Westchester or Rockland Counties'' for ''include Westchester County'' and ''included Westchester and Rockland Counties''

[6] So in original. The comma probably should be a semicolon.

[7] See References in Text notes below.

for ''included Westchester County'', and inserted at end ''In determining areas that are designated as difficult development areas for purposes of the low-income housing tax credit, the Secretary shall include Westchester and Rockland Counties, New York, in the New York City metropolitan area.''

Subsec. (b)(3)(A). Pub. L. 105–276, § 506(2)(A), struck out at end ''In determining priority for admission to housing under this chapter, the Secretary shall give preference to single persons who are elderly, disabled, or displaced persons before single persons who are eligible under clause (v) of the first sentence.''

Subsec. (b)(3)(B). Pub. L. 105–276, § 506(2)(B), substituted ''public housing agency plan'' for ''regulations of the Secretary'' in second sentence.

Subsec. (b)(3)(E). Pub. L. 105–276, § 506(3), inserted at end ''Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing under this subchapter, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with other appropriate Federal agencies to implement the preceding sentence.''

Subsec. (b)(5). Pub. L. 105–276, § 508(a), amended par. (5) generally, substituting present provisions for provisions which had defined ''adjusted income'' as income which remained after excluding $550 for each member of family in household under 18 years of age, disabled, or a student, $400 for any elderly or disabled family, the amount by which medical and related expenses exceeded 3 percent of income, child care expenses, 10 percent of earned income, and any payment made for support and maintenance of nonresident child, spouse, or former spouse.

Subsec. (b)(6). Pub. L. 105–276, § 546, amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''The term 'public housing agency' means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.''

Subsec. (b)(9) to (13). Pub. L. 105–276, § 506(4), added pars. (9) to (13).

Subsec. (c). Pub. L. 105–276, § 508(b)(1)(A), which directed the amendment of subsec. (c) by striking out the undesignated par. after par. (3), was executed by striking out concluding provisions after par. (5), to reflect the probable intent of Congress. Concluding provisions read as follows: ''The earnings of and benefits to any public housing resident resulting from participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 1437t of this title, or any comparable Federal, State, or local law shall not be considered as income for the purposes of determining a limitation on the amount of rent paid by the resident during—

''(1) the period that the resident participates in such program; and

''(2) the period that—

''(A) begins with the commencement of employment of the resident in the first job acquired by the person after completion of such program that is not funded by assistance under this chapter; and

''(B) ends on the earlier of—

''(i) the date the resident ceases to continue employment without good cause as the Secretary shall determine; or

''(ii) the expiration of the 18-month period beginning on the date referred to in subparagraph (A).''

Subsec. (c)(1). Pub. L. 105–276, § 520(a), inserted before period at end of second sentence '', but does not include the costs associated with the demolition of or remediation of environmental hazards associated with public housing units that will not be replaced on the project site, or other extraordinary site costs as determined by the Secretary''.

Subsecs. (d), (e). Pub. L. 105–276, § 508(b)(1)(B), added subsecs. (d) and (e).

Subsec. (f). Pub. L. 105–276, § 508(d)(1), added subsec. (f).

1996—Subsec. (a)(2). Pub. L. 104–99, § 402(b)(1), (f), temporarily amended par. (2) generally, substituting

''(2) Notwithstanding paragraph (1), a public housing agency may—

''(A) adopt ceiling rents that reflect the reasonable market value of the housing, but that are not less than the monthly costs—

''(i) to operate the housing of the agency; and

''(ii) to make a deposit to a replacement reserve (in the sole discretion of the public housing agency); and

''(B) allow families to pay ceiling rents referred to in subparagraph (A), unless, with respect to any family, the ceiling rent established under this paragraph would exceed the amount payable as rent by that family under paragraph (1).'' for

''(2)(A) Any public housing agency may provide that each family residing in a public housing project owned and operated by such agency (or in low-income housing assisted under section 1437f of this title that contains more than 2,000 dwelling units) shall pay as monthly rent an amount determined by such agency to be appropriate that does not exceed a maximum amount that—

''(i) is established by such agency and approved by the Secretary;

''(ii) is not more than the amount payable as rent by such family under paragraph (1); and

''(iii) is not less than the average monthly amount of debt service and operating expenses attributable to dwelling units of similar size in public housing projects owned and operated by such agency.

''(B) The terms of all ceiling rents established prior to December 15, 1989, shall be extended without time limitation.'' See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (b)(5)(F). Pub. L. 104–330, § 501(b)(1)(A)(i), inserted ''and'' after semicolon.

Subsec. (b)(5)(G). Pub. L. 104–330, § 501(b)(1)(A)(ii), (iii), redesignated subpar. (H) as (G) and struck out former subpar. (G) which read as follows: ''excessive travel expenses, not to exceed $25 per family per week, for employment- or education-related travel, except that this subparagraph shall apply only to families assisted by Indian housing authorities; and''.

Subsec. (b)(5)(H). Pub. L. 104–330, § 501(b)(1)(A)(iii), redesignated subpar. (H) as (G).

Pub. L. 104–99, § 402(c), (f), temporarily added subpar. (H) which read ''for public housing, any other adjustments to earned income established by the public housing agency. If a public housing agency adopts other adjustments to income pursuant to subparagraph (H), the Secretary shall not take into account any reduction of or increase in the public housing agency's per unit dwelling rental income resulting from those adjustments when calculating the contributions under section 1437g of this title for the public housing agency for the operation of the public housing.'' See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (b)(6). Pub. L. 104–330, § 501(b)(1)(B), struck out at end ''The term includes any Indian housing authority.''

Subsec. (b)(7). Pub. L. 104–330, § 501(b)(1)(C), inserted ''and'' before ''the Trust'' and struck out '', and Indian tribes'' after ''Pacific Islands''.

Subsec. (b)(9) to (12). Pub. L. 104–330, § 501(b)(1)(D), struck out pars. (9) to (12) which read as follows:

''(9) The term 'Indian' means any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

''(10) The term 'Indian area' means the area within which an Indian housing authority is authorized to provide low-income housing.

''(11) The term 'Indian housing authority' means any entity that—

''(A) is authorized to engage in or assist in the development or operation of low-income housing for Indians; and

''(B) is established—

''(i) by exercise of the power of self-government of an Indian tribe independent of State law; or

''(ii) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

''(12) The term 'Indian tribe' means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.''

1994—Subsec. (b)(3)(B). Pub. L. 103–233 substituted ''includes families with children and'' for ''means families with children''.

1992—Subsec. (a)(1). Pub. L. 102–550, §185(c)(4), substituted ''section 1437f(*o*) or (y) of this title or paying rent under section 1437f(c)(3)(B) of this title'' for ''section 1437f(*o*) of this title''.

Subsec. (a)(2)(A). Pub. L. 102–550, §102(a), struck out ''for not more than a 5-year period'' after ''monthly rent''.

Subsec. (a)(2)(B). Pub. L. 102–550, §102(b), struck out first sentence which read as follows: ''The 5-year limitation established in subparagraph (A) shall not apply to any family residing in a public housing project administered by an Indian public housing agency.'' and substituted ''without time limitation'' for ''for the 5-year period beginning on December 15, 1989''.

Subsec. (b)(3). Pub. L. 102–550, §621, amended par. (3) generally, substituting present provisions for provisions relating to families consisting of single persons, elderly families, handicapped persons, displaced persons, and families with household heads 50 years old or older and the priorities for admission of such families and persons to housing under this chapter.

Subsec. (b)(4). Pub. L. 102–550, §103(a)(1), inserted ''and any amounts which would be eligible for exclusion under section 1382b(a)(7) of this title'' after ''family''.

Subsec. (b)(5)(B). Pub. L. 102–550, §625(a)(1), inserted ''or disabled'' after ''elderly''.

Subsec. (b)(5)(D). Pub. L. 102–550, §103(a)(2)(A), added subpar. (D) and struck out former subpar. (D) which read as follows: ''(i) child care expenses to the extent necessary to enable another member of the family to be employed or to further his or her education; or (ii) excessive travel expenses, not to exceed $25 per family per week, for employment or education related travel, except that this clause shall apply only to families assisted by Indian housing authorities;''.

Subsec. (b)(5)(G). Pub. L. 102–550, §103(a)(2)(B)–(D), added subpar. (G).

Subsec. (c)(4), (5). Pub. L. 102–550, §622(c), which directed the amendment of subsec. (c) by inserting pars. (4) and (5) after ''project.'', was executed by making the insertion after ''project.'' at the end of par. (3), to reflect the probable intent of Congress.

1990—Pub. L. 101–625, §515(b), added concluding undesignated par. directing that earnings and benefits to public housing residents resulting from participation in programs providing employment training and supportive services not be considered as income.

Subsec. (a)(1). Pub. L. 101–625, §572(1), substituted ''low-income families'' for ''lower income families'' in introductory provisions.

Subsecs. (a)(2)(A), (b)(1). Pub. L. 101–625, §572(2), substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

Subsec. (b)(2). Pub. L. 101–625, §573(d), inserted sentences at end relating to determination or establishment of median incomes and income ceilings and limits for Westchester County and for metropolitan statistical areas outside Westchester County.

Pub. L. 101–625, §572(1), substituted ''low-income families'' for ''lower income families'' wherever appearing.

Subsec. (b)(3). Pub. L. 101–625, §574, inserted sentence at end relating to effect of temporary absence of child from the home due to placement in foster care on considerations of family composition and size.

Pub. L. 101–625, §573(a), substituted ''(D) and any other single persons. In no event may any single person under clause (D) be provided a housing unit assisted under this chapter of 2 bedrooms or more.'' for ''(D) other single persons in circumstances described in regulations of the Secretary.'' in first sentence, struck out after first sentence ''In no event shall more than 15 per centum of the units under the jurisdiction of any public housing agency be occupied by single persons under clause (D).'', and struck out third from last sentence which was executed (to reflect the probable intent of Congress) by striking out third sentence from end which read as follows: ''The Secretary may increase the limitation described in the second sentence of this paragraph to not more than 30 per centum if, following consultation with the public housing agency involved, the Secretary determines that the dwelling units involved are neither being occupied, nor are likely to be occupied within the next 12 months, by families or persons described in clauses (A), (B), and (C), due to the condition or location of such dwelling units, and that such dwelling units may be occupied if made available to single persons described in clause (D).''

Subsec. (b)(4). Pub. L. 101–625, §573(b), inserted before period at end '', except that any amounts not actually received by the family may not be considered as income under this paragraph''.

Subsec. (b)(5)(A). Pub. L. 101–625, §573(c)(1), substituted ''$550'' for ''$480''.

Subsec. (b)(5)(C). Pub. L. 101–625, §573(c)(2), struck out ''elderly'' before ''family'' in cl. (i) and struck out ''and'' at end.

Subsec. (b)(5)(E), (F). Pub. L. 101–625, §573(c)(3), added subpars. (E) and (F).

Subsecs. (b)(6), (10), (11)(A), (c). Pub. L. 101–625, §572(2), substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

1989—Subsec. (a)(2)(A). Pub. L. 101–235, §302(1), substituted ''5-year period'' for ''3-year period''.

Subsec. (a)(2)(B). Pub. L. 101–235, §302(2), substituted ''5-year limitation'' for ''3-year limitation'' and inserted at end ''The terms of all ceiling rents established prior to December 15, 1989, shall be extended for the 5-year period beginning on December 15, 1989.''

1988—Subsec. (a). Pub. L. 100–242, §102(a), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), a'' for ''A'', redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added par. (2).

Subsec. (b)(3). Pub. L. 100–242, §170(c), in cl. (A), substituted ''sixty-two years of age,'' for ''sixty-two years of age or'', and '', has a developmental disability as defined in section 6001(7) of this title'' for ''or in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970''.

Pub. L. 100–242, §111, inserted provisions relating to determination of priority admission to public housing projects designed for elderly families.

Subsec. (b)(5)(D). Pub. L. 100–358, §4(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(6). Pub. L. 100–358, §4(b), inserted at end ''The term includes any Indian housing authority.''

Subsec. (b)(7). Pub. L. 100–358, §4(c), struck out '', bands, groups, and Nations, including Alaska Indians, Aleuts, and Eskimos, of the United States'' after ''and Indian tribes''.

Subsec. (b)(9) to (12). Pub. L. 100–358, §4(d)–(g), added pars. (9) to (12).

1984—Subsec. (b)(2). Pub. L. 98–479, §102(b)(1), inserted provision at end that such ceilings shall be established in consultation with the Secretary of Agriculture for any rural area, as defined in section 1490 of this title, taking into account the subsidy characteristics and types of programs to which such ceilings apply.

Subsec. (b)(4). Pub. L. 98–479, §102(b)(2), inserted '', in consultation with the Secretary of Agriculture'' at end.

Subsec. (b)(5)(C). Pub. L. 98–479, §102(b)(3), designated existing provision as cl. (i), added cl. (ii), and inserted ''the amount by which the aggregate of the following expenses of the family'' in provisions preceding cl. (i).

1983—Subsec. (a). Pub. L. 98–181, §206(a), in provisions preceding par. (1), inserted provision requiring annual review of family income, and inserted ''(other than a family assisted under section 1437f(*o*) of this title)''.

Subsec. (b)(2). Pub. L. 98–181, §206(b), qualified the term ''very low-income families'' in authorizing the

Secretary to establish, where necessary, variations in income ceilings higher or lower than 50 per centum of the median for the area.

Subsec. (b)(3). Pub. L. 98–181, § 202, inserted provision at end of par. (3) authorizing increase from 15 to 30 per centum in the single person occupancy limitation for nonoccupancy of the involved dwelling units.

Subsec. (b)(5). Pub. L. 98–181, § 206(c), amended par. (5) generally, substituting provisions designating cls. (A) to (D) for prior exclusion from ''adjusted income'' of such amounts or types of income as the Secretary might prescribe, taking into account the number of minor children and other appropriate factors.

1981—Pub. L. 97–35 added subsecs. (a) and (c) and designated provisions constituting former section as subsec. (b), and in subsec. (b) as so designated, substituted provisions defining ''lower income housing'', ''lower income families'', ''families'', ''income'', ''adjusted income'', ''public housing agency'', ''State'', and ''Secretary'' for provisions defining ''low-income housing'', ''low-income families'', ''development'', ''operation'', ''acquisition cost'', ''public housing agency'', ''State'', ''Secretary'', and ''low-income housing project''.

1979—Par. (1). Pub. L. 96–153 substituted provisions that the rental for a dwelling shall not exceed certain portion of the resident family's income to be established by the Secretary, and that in the case of a very low income family 25 per centum and in other cases 30 per centum of family income for provisions that such rental shall not exceed one-fourth of the family's income as defined by the Secretary.

1978—Par. (2)(D). Pub. L. 95–557 substituted ''15 per cent'' for ''10 per cent''.

1976—Par. (2). Pub. L. 94–375 struck out ''and'' before cl. (C), added cl. (D), and two provisos relating to the percentage of units to be occupied by single persons and the priority to be given to single persons who are elderly, handicapped, or displaced, following cl. (D).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

Pub. L. 105–276, title V, § 507(d), Oct. 21, 1998, 112 Stat. 2526, provided that: ''The amendments under this section [amending this section] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

Pub. L. 105–276, title V, § 508(c)(2), Oct. 21, 1998, 112 Stat. 2529, provided that: ''The amendments made by this paragraph [probably means this subsection, amending this section] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

Pub. L. 105–276, title V, § 524(b), Oct. 21, 1998, 112 Stat. 2568, provided that: ''The amendment made by this paragraph [probably means this section, amending this section] is made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENTS

Pub. L. 105–276, title V, § 514(f), Oct. 21, 1998, 112 Stat. 2548, provided that: ''Section 402 of The Balanced Budget Downpayment Act, I [Pub. L. 104–99, see note below], and the amendments made by such section shall cease to be effective on the date of the enactment of this Act [Oct. 21, 1998]. Notwithstanding the inclusion in this Act [see Tables for classification] of any provision extending the effectiveness of such section or such amendments, such provision included in this Act shall not take effect.''

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Section 402(f) of Pub. L. 104–99, as amended by Pub. L. 104–204, title II, § 201(c)(2), Sept. 26, 1996, 110 Stat. 2893; Pub. L. 105–65, title II, § 201(d)(2), Oct. 27, 1997, 111 Stat. 1364, provided that: ''This section [amending this section, sections 1437d to 1437f, 1437n, 1437v, and 13615 of this title, and section 1701s of Title 12, Banks and Banking, enacting provisions set out as notes under this section and sections 1437 and 1437d of this title, and amending provisions set out as a note under section 1437f of this title] shall be effective upon the enactment of this Act [Jan. 26, 1996] and only for fiscal years 1996, 1997, and 1998.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 103(a)(3) of title I of Pub. L. 102–550 provided that: ''To the extent that the amendments made by paragraphs (1) and (2) [amending this section] result in additional costs under this title [see Tables for classification], such amendments shall be effective only to the extent that amounts to cover such additional costs are provided in advance in appropriation Acts.''

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 573(f) of Pub. L. 101–625 provided that: ''The Secretary shall issue regulations implementing subsections (a) and (d) [sic] the amendments made by this section [amending this section] not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Nov. 28, 1990]. The regulations may not take effect until after September 30, 1991.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6 of Pub. L. 100–358 provided that: ''The Secretary of Housing and Urban Development may carry out programs to provide lower income housing on Indian reservations and other Indian areas only in accordance with the amendments made by this Act [enacting sections 1437aa to 1437ee of this title, amending this section and section 1437c of this title, and enacting provisions set out as a note under section 1437 of this title], commencing on whichever of the following occurs earlier:

''(1) EFFECTIVE DATE OF REGULATIONS.—The effective date of regulations issued under section 205 of the United States Housing Act of 1937 [former section 1437ee of this title].

''(2) 90 DAYS.—The expiration of the 90-day period beginning on the date of the enactment of this Act [June 29, 1988].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 202(c) of Pub. L. 96–153, which provided that amendment by section 202(a) of Pub. L. 96–153 (amending this section and section 1437f of this title) shall become effective on Jan. 1, 1980, except that the amount of the tenant contribution required of families whose occupancy of housing units assisted under this chapter commenced prior to that date shall be determined in accordance with the provisions of this chapter in effect on Dec. 31, 1979, so long as such occupancy was continuous thereafter, was repealed by Pub. L. 97–35, title III, § 322(h)(1), Aug. 13, 1981, 95 Stat. 404.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–557 effective Oct. 1, 1978, see section 206(h) of Pub. L. 95–557, set out as a note under section 1437c of this title.

EFFECTIVE DATE

Section effective on such date or dates as the Secretary of Housing and Urban Development shall pre-

scribe, but not later than eighteen months after Aug. 22, 1974, except that all of the provisions of par. (1) shall become effective on the same date, see section 201(b) of Pub. L. 93–383, set out as a note under section 1437 of this title.

The Department of Housing and Urban Development adopted an interim rule, 24 CFR 860.409, Sept. 26, 1975, 40 F.R. 44326, which provided: ''The effective date of section 3(1) of the United States Housing Act of 1937, as amended [par. (1) of this section], shall be the date that these regulations [sections 860.401 to 860.409 of Title 24, CFR] are published in the Federal Register (September 26, 1975).''

REGULATIONS

Section 402(b)(2) of Pub. L. 104–99 provided that:

''(A) IN GENERAL.—The Secretary shall, by regulation, after notice and an opportunity for public comment, establish such requirements as may be necessary to carry out section 3(a)(2)(A) of the United States Housing Act of 1937 [42 U.S.C. 1437a(a)(2)(A)], as amended by paragraph (1).

''(B) TRANSITION RULE.—Prior to the issuance of final regulations under paragraph (1), a public housing agency may implement ceiling rents, which shall be not less than the monthly costs to operate the housing of the agency and—

''(i) determined in accordance with section 3(a)(2)(A) of the United States Housing Act of 1937, as that section existed on the day before enactment of this Act [Jan. 26, 1996];

''(ii) equal to the 95th percentile of the rent paid for a unit of comparable size by tenants in the same public housing project or a group of comparable projects totaling 50 units or more; or

''(iii) equal to the fair market rent for the area in which the unit is located.''

[Section 402(b)(2) of Pub. L. 104–99, set out above, effective Jan. 26, 1996, and only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see Effective and Termination Dates of 1996 Amendments notes above.]

Section 191 of title I of Pub. L. 102–550 provided that: ''The Secretary of Housing and Urban Development shall issue any final regulations necessary to implement the provisions of this title [see Tables for classification] and the amendments made by this title not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], except as expressly provided otherwise in this title and the amendments made by this title. Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).''

SAVINGS PROVISION

Pub. L. 105–276, title V, §508(b)(2), Oct. 21, 1998, 112 Stat. 2528, provided that: ''Notwithstanding the amendment made by paragraph (1) [amending this section], the provisions of the undesignated paragraph at the end of section 3(c)(3) of the United States Housing Act of 1937 [see 1998 and 1992 Amendment notes above], as such section was in effect immediately before the enactment of this Act [Oct. 21, 1998], shall continue to apply until the effective date under section 503 of this Act [set out as a note under section 1437 of this title]. Notwithstanding the amendment made by subsection (a) of this section [amending this section], nor the applicability under section 402(f) of The Balanced Budget Downpayment Act, I [Pub. L. 104–99] (42 U.S.C. 1437a note) of the amendments made by such section 402 [see Effective and Termination Dates of 1996 Amendments note set out above], nor any repeal of such section 402(f), the provisions of section 3(b)(5)(G) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(5)(G)), as such section was in effect immediately before the date of the enactment of this Act, shall continue to apply until the effective date under section 503 of this Act.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TRANSITIONAL CEILING RENTS

Pub. L. 105–276, title V, §519(d), Oct. 21, 1998, 112 Stat. 2561, provided that: ''Notwithstanding section 3(a)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437a[(a)](1)), during the period ending upon the later of the implementation of the formulas established pursuant to subsections (d)(2) and (e)(2) of [section 9 of] such Act [42 U.S.C. 1437g(d)(2), (e)(2)] (as amended by this section) and October 1, 1999, a public housing agency may take any of the following actions with respect to public housing:

''(1) NEW PROVISIONS.—An agency may—

''(A) adopt and apply ceiling rents that reflect the reasonable market value of the housing, but that are not less than—

''(i) for housing other than housing predominantly for elderly or disabled families (or both), 75 percent of the monthly cost to operate the housing of the agency;

''(ii) for housing predominantly for elderly or disabled families (or both), 100 percent of the monthly cost to operate the housing of the agency; and

''(iii) the monthly cost to make a deposit to a replacement reserve (in the sole discretion of the public housing agency); and

''(B) allow families to pay ceiling rents referred to in subparagraph (A), unless, with respect to any family, the ceiling rent established under this paragraph would exceed the amount payable as rent by that family under paragraph (1).

''(2) CEILING RENTS FROM BALANCED BUDGET ACT, I.—An agency may utilize the authority under section 3(a)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a(a)(2)), as in effect immediately before the enactment of this Act [Oct. 21, 1998], notwithstanding any amendment to such section made by this Act.

''(3) TRANSITIONAL CEILING RENTS FOR BALANCED BUDGET ACT, I.—An agency may utilize the authority with respect to ceiling rents under section 402(b)(2) of The Balanced Budget Downpayment Act, I [Pub. L. 104–99] (42 U.S.C. 1437a note), notwithstanding any other provision of law (including the expiration of the applicability of such section or the repeal of such section).''

CERTAIN PAYMENTS MADE TO VICTIMS OF NAZI PERSECUTION DISREGARDED IN DETERMINING ELIGIBILITY FOR AND AMOUNT OF NEED-BASED BENEFITS AND SERVICES

Pub. L. 103–286, §1, Aug. 1, 1994, 108 Stat. 1450, provided that:

''(a) IN GENERAL.—Payments made to individuals because of their status as victims of Nazi persecution shall be disregarded in determining eligibility for and the amount of benefits or services to be provided under any Federal or federally assisted program which provides benefits or services based, in whole or in part, on need.

''(b) APPLICABILITY.—Subsection (a) shall apply to determinations made on or after the date of the enactment of this Act [Aug. 1, 1994] with respect to payments referred to in subsection (a) made before, on, or after such date.

''(c) PROHIBITION AGAINST RECOVERY OF VALUE OF EXCESSIVE BENEFITS OR SERVICES PROVIDED DUE TO FAILURE TO TAKE ACCOUNT OF CERTAIN PAYMENTS MADE TO VICTIMS OF NAZI PERSECUTION.—No officer, agency, or instrumentality of any government may attempt to recover the value of excessive benefits or services provided before the date of the enactment of this Act [Aug. 1, 1994] under any program referred to in subsection (a) by reason of any failure to take account of payments referred to in subsection (a).

''(d) NOTICE TO INDIVIDUALS WHO MAY HAVE BEEN DENIED ELIGIBILITY FOR BENEFITS OR SERVICES DUE TO THE FAILURE TO DISREGARD CERTAIN PAYMENTS MADE TO VICTIMS OF NAZI PERSECUTION.—Any agency of government that has not disregarded payments referred to in subsection (a) in determining eligibility for a program referred to in subsection (a) shall make a good faith effort to notify any individual who may have been denied eligibility for benefits or services under the program of the potential eligibility of the individual for such benefits or services.

''(e) REPAYMENT OF ADDITIONAL RENT PAID UNDER HUD HOUSING PROGRAMS BECAUSE OF FAILURE TO DISREGARD REPARATION PAYMENTS.—

''(1) AUTHORITY.—To the extent that amounts are provided in appropriation Acts for payments under this subsection, the Secretary of Housing and Urban Development shall make payments to qualified individuals in the amount determined under paragraph (3).

''(2) QUALIFIED INDIVIDUALS.—For purposes of this subsection, the term 'qualified individual' means an individual who—

''(A) has received any payment because of the individual's status as a victim of Nazi persecution;

''(B) at any time during the period beginning on February 1, 1993 and ending on April 30, 1993, resided in a dwelling unit in housing assisted under any program for housing assistance of the Department of Housing and Urban Development under which rent payments for the unit were determined based on or taking into consideration the income of the occupant of the unit;

''(C) paid rent for such dwelling unit for any portion of the period referred to in subparagraph (B) in an amount determined in a manner that did not disregard the payment referred to in subparagraph (A); and

''(D) has submitted a claim for payment under this subsection as required under paragraph (4).

The term does not include the successors, heirs, or estate of an individual meeting the requirements of the preceding sentence.

''(3) AMOUNT OF PAYMENT.—The amount of a payment under this subsection for a qualified individual shall be equal to the difference between—

''(A) the sum of the amount of rent paid by the individual for rental of the dwelling unit of the individual assisted under a program for housing assistance of the Department of Housing and Urban Development, for the period referred to in paragraph (2)(B), and

''(B) the sum of the amount of rent that would have been payable by the individual for rental of such dwelling unit for such period if the payments referred to in paragraph (2)(A) were disregarded in determining the amount of rent payable by the individual for such period.

''(4) SUBMISSION OF CLAIMS.—A payment under this subsection for an individual may be made only pursuant to a written claim for such payment by such individual submitted to the Secretary of Housing and Urban Development in the form and manner required by the Secretary before—

''(A) in the case of any individual notified by the Department of Housing and Urban Development orally or in writing that such specific individual is eligible for a payment under this subsection, the expiration of the 6-month period beginning on the date of receipt of such notice; and

''(B) in the case of any other individual, the expiration of the 12-month period beginning on the date of the enactment of this Act [Aug. 1, 1994].''

INAPPLICABILITY OF CERTAIN 1992 AMENDMENTS TO INDIAN PUBLIC HOUSING

Section 626 of Pub. L. 102–550 provided that: ''The amendments made by this subtitle [subtitle B (§§ 621–626) of title VI of Pub. L. 102–550, amending this section and sections 1437c to 1437f, 1437*l*, 1437*o*, 1438, and 8013 of this title] shall not apply with respect to lower income housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

BUDGET COMPLIANCE

Section 573(e) of Pub. L. 101–625 provided that: ''The amendments made by subsections (b) and (c) [amending this section] shall apply only to the extent approved in appropriations Acts.''

MEDIAN AREA INCOME

Section 567 of Pub. L. 100–242 provided that: ''For purposes of calculating the median income for any area that is not within a metropolitan statistical area (as established by the Office of Management and Budget) for programs under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.], the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], the Secretary of Housing and Urban Development or the Secretary of Agriculture (as appropriate) shall use whichever of the following is higher:

''(1) the median income of the county in which the area is located; or

''(2) the median income of the entire nonmetropolitan area of the State.''

DETERMINATION OF RENT PAYABLE BY TENANTS OCCUPYING ASSISTED HOUSING; DELAYED APPLICATION OR STAGED IMPLEMENTATION OF AMENDED PROVISIONS

Section 206(d) of Pub. L. 98–181 provided that:

''(1) The following provisions of this paragraph apply to determinations of the rent to be paid by or the contribution required of a tenant occupying housing assisted under the authorities amended by this section [amending this section] or subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981 [amending sections 1437 to 1437d, 1437f, 1437*g*, 1437i, 1437j, and 1437*l* of this title and sections 1701s and 1715z–1 of Title 12, Banks and Banking, and repealing provisions set out as notes under this section and section 1701s of Title 12] (hereinafter referred to as 'assisted housing') on or before the effective date of regulations implementing this section:

''(A) Notwithstanding any other provision of this section or subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981, the Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary') may provide for delayed applicability, or for staged implementation, of the procedures for determining rents or contributions, as appropriate, required by such provisions if the Secretary determines that immediate application of such procedures would be impracticable, would violate the terms of existing leases, or would result in extraordinary hardship for any class of tenants.

''(B) The Secretary shall provide that the rent or contribution, as appropriate, required to be paid by a tenant shall not increase as a result of the amendments made by this section and subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981, and as a result of any other provision of Federal law or regulation, by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to such amendments, law, or regulation.

''(2) Tenants of assisted housing other than those referred to in paragraph (1) shall be subject to immediate rent payment or contribution determinations in accordance with applicable law and without regard to the provisions of paragraph (1), but the Secretary shall provide that the rent or contribution payable by any such tenant who is occupying assisted housing on the effective date of any provision of Federal law or regulation shall not increase, as a result of any such provision of

Federal law or regulation, by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to such law or regulation.

''(3) In the case of tenants receiving rental assistance under section 521(a)(1) of the Housing Act of 1949 [section 1490a(a)(1) of this title] on the effective date of this section [Nov. 30, 1983] whose assistance is converted to assistance under section 8 of the United States Housing Act of 1937 [section 1437f of this title] on or after such date, the Secretary shall provide that the rent or contribution payable by any such tenant shall not increase, as a result of such conversion, by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to such conversion or to any provision of Federal law or regulation.

''(4)(A) Notwithstanding any other provision of law, in the case of the conversion of any assistance under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], section 236(f)(2) of the National Housing Act [12 U.S.C. 1715z–1(f)(2)], or section 23 of the United States Housing Act of 1937 [section 1421b of this title] (as in effect before the date of the enactment of the Housing and Community Development Act of 1974 [Aug. 22, 1974]) to assistance under section 8 of the United States Housing Act of 1937, any increase in rent payments or contributions resulting from such conversion, and from the amendments made by this section of any tenant benefiting from such assistance who is sixty-two years of age or older may not exceed 10 per centum per annum.

''(B) In the case of any such conversion of assistance occurring on or after October 1, 1981, and before the date of the enactment of this section [Nov. 30, 1983], the rental payments due after such date of enactment by any tenant benefiting from such assistance who was sixty-two years of age or older on the date of such conversion shall be computed as if the tenant's rental payment or contribution had, on the date of conversion, been the lesser of the actual rental payment or contribution required, or 25 per centum of the tenant's income.

''(5) The limitations on increases in rent contained in paragraphs (1)(B), (2), (3), and (4) shall remain in effect and may not be changed or superseded except by another provision of law which amends this subsection.

''(6) As used in this subsection, the term 'contribution' means an amount representing 30 per centum of a tenant's monthly adjusted income, 10 per centum of the tenant's monthly income, or the designated amount of welfare assistance, whichever amount is used to determine the monthly assistance payment for the tenant under section 3(a) of the United States Housing Act of 1937 [subsec. (a) of this section].

''(7) The provisions of subsections (a) through (h) of section 322 of the Housing and Community Development Amendments of 1981 shall be implemented and fully applicable to all affected tenants no later than five years following the date of enactment of such amendments [Aug. 13, 1981], except that the Secretary may extend the time for implementation if the Secretary determines that full implementation would result in extraordinary hardship for any class of tenants.''

Prior provisions for determining rent payable by tenants occupying assisted housing under and authorizing delayed application or staged implementation of provisions amended by section 322 of Pub. L. 97–35 were contained in Pub. L. 97–35, title III, § 322(i), Aug. 13, 1981, 95 Stat. 404, which was repealed by Pub. L. 98–181, title II, § 206(e), Nov. 30, 1983, 97 Stat. 1181.

ESTABLISHMENT OF INCREASED MONTHLY RENTAL CHARGE FOR FAMILY OCCUPYING LOW-INCOME HOUSING UNIT; ADJUSTMENT FACTORS

Section 202 of Pub. L. 93–383 provided that: ''To the extent that section 3(1) of the United States Housing Act of 1937, as amended by section 201(a) of this Act [par. (1) of this section], would require the establishment of an increased monthly rental charge for any family which occupies a low-income housing unit as of the effective date of such section 3(1) (other than by reason of the provisions relating to welfare assistance payments) [see Effective Date note set out above], the required adjustment shall be made, in accordance with regulations of the Secretary, as follows: (A) the first adjustment shall not exceed $5 and shall become effective as of the month following the month of the first review of the family's income pursuant to section 6(c)(2) of such Act [section 1437d(c)(2) of this title] which occurs at least six months after the effective date of such section 3(1), and (B) subsequent adjustments, each of which shall not exceed $5, shall be made at six-month intervals over whatever period is necessary to effect the full required increase in the family's rental charge.''

§ 1437a–1. Repealed. Pub. L. 105–276, title V, § 582(a)(1), Oct. 21, 1998, 112 Stat. 2643

Section, Pub. L. 101–625, title V, § 519, Nov. 28, 1990, 104 Stat. 4202, authorized public housing rent waiver for police officers. See section 1437a(a)(4) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, and with savings provision, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1437b. Loans and commitments to make loans for low-income housing projects

(a) Authority of Secretary; interest rates; repayment date; use as security for obligations of public housing agency

The Secretary may make loans or commitments to make loans to public housing agencies to help finance or refinance the development, acquisition, or operation of low-income housing projects by such agencies. Any contract for such loans and any amendment to a contract for such loans shall provide that such loans shall bear interest at a rate specified by the Secretary which shall not be less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, plus one-eighth of 1 per centum. Such loans shall be secured in such manner and shall be repaid within such period not exceeding forty years, or not exceeding forty years from the date of the bonds evidencing the loan, as the Secretary may determine. The Secretary may require loans or commitments to make loans under this section to be pledged as security for obligations issued by a public housing agency in connection with a low-income housing project.

(b) Issuance of obligations by Secretary; limitation on amounts; forms and denominations; terms and conditions; purchase, establishment of maturities and rates of interest, and sale by Secretary of the Treasury

The Secretary may issue and have outstanding at any one time notes and other obligations for purchase by the Secretary of the Treasury in an amount which will not, unless authorized by the President, exceed $1,500,000,000. For the purpose of determining obligations incurred to make

loans pursuant to this chapter against any limitation otherwise applicable with respect to such loans, the Secretary shall estimate the maximum amount to be loaned at any one time pursuant to loan agreements then outstanding with public housing agencies. Such notes or other obligations shall be in such forms and denominations and shall be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. The notes or other obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations of the Secretary issued hereunder and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include any purchases of such obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(c) Public and Indian housing financing reforms

(1) At such times as the Secretary may determine, and in accordance with such accounting and other procedures as the Secretary may prescribe, each loan made by the Secretary under subsection (a) of this section that has any principal amount outstanding or any interest amount outstanding or accrued shall be forgiven; and the terms and conditions of any contract, or any amendment to a contract, for such loan with respect to any promise to repay such principal and interest shall be canceled. Such cancellation shall not affect any other terms and conditions of such contract, which shall remain in effect as if the cancellation had not occurred. This paragraph shall not apply to any loan the repayment of which was not to be made using annual contributions, or to any loan all or part of the proceeds of which are due a public housing agency from contractors or others.

(2)(A) On April 7, 1986, each note or other obligation issued by the Secretary to the Secretary of the Treasury pursuant to subsection (b) of this section, together with any promise to repay the principal and unpaid interest that has accrued on each note or obligation, shall be forgiven; and any other term or condition specified by each such obligation shall be canceled.

(B) On September 30, 1986, and on any subsequent September 30, each such note or other obligation issued by the Secretary to the Secretary of the Treasury pursuant to subsection (b) of this section during the fiscal year ending on such date, together with any promise to repay the principal and unpaid interest that has accrued on each note or obligation, shall be forgiven; and any other term or condition specified by each such obligation shall be canceled.

(3) Any amount of budget authority (and contract authority) that becomes available during any fiscal year as a result of the forgiveness of any loan, note, or obligation under this subsection shall be rescinded.

(Sept. 1, 1937, ch. 896, title I, § 4, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 656; amended Pub. L. 97–35, title III, § 322(c), Aug. 13, 1981, 95 Stat. 402; Pub. L. 98–479, title II, § 203(b)(1), Oct. 17, 1984, 98 Stat. 2229; Pub. L. 99–272, title III, § 3004, Apr. 7, 1986, 100 Stat. 102; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title V, § 572(2), Nov. 28, 1990, 104 Stat. 4236.)

PRIOR PROVISIONS

A prior section 4 of act Sept. 1, 1937, ch. 896, 50 Stat. 889, as amended, provided for assistance of officers, etc., of other agencies and transfer of property to the Authority and was classified to section 1404 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–625 substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

1986—Subsec. (c). Pub. L. 99–272 added subsec. (c).

1984—Subsec. (b). Pub. L. 98–479 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended'' and ''such chapter'' for ''such Act''.

1981—Subsec. (a). Pub. L. 97–35 substituted reference to lower income for reference to low-income in two places.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

CARRYOVER OF AMOUNTS OF BUDGET AUTHORITY; AVAILABILITY AS APPROPRIATION OF FUNDS FOR GRANTS

Pub. L. 99–500, § 101(g) [H.R. 5313, title I], Oct. 18, 1986, 100 Stat. 1783–242, and Pub. L. 99–591, § 101(g) [H.R. 5313, title I], Oct. 30, 1986, 100 Stat. 3341–242; Pub. L. 100–202, § 106, Dec. 22, 1987, 101 Stat. 1329–433, provided in part: ''That the budget authority obligated under contracts for annual contributions shall be increased above amounts heretofore provided in appropriations Acts by $7,805,668,000: *Provided further*, That any part of the amount of the increase in budget authority provided for in the immediately foregoing proviso that is available under this Act for public housing development and acquisition costs or which is to be used for amendments for such costs, shall be available as an appropriation of funds, to remain available until expended, for grants, which are hereby authorized in lieu of loans under section 4(a) of the United States Housing Act of 1937 (42 U.S.C. 1437b), and which the Secretary may make on substantially the same terms (except for repayment unless repayment is a properly imposed sanction) as those heretofore set forth in annual contributions contracts for loans and annual contributions: *Provided further*, That during 1987 and thereafter, any amounts of budget authority which are carried over from a prior year, or which are otherwise available for obligation, and which are available for public housing development and acquisition costs, together with any amounts of budget authority which are to be used for amendments for such costs, in accordance with any Act, shall also be made available as an appropriation of funds for grants, under the same terms as those applying under the immediately preceding proviso''.

§ 1437c. Contributions for low-income housing projects

(a) Contract authorization; amounts; use as security for obligations of public housing agency; use of existing structures

(1) The Secretary may make annual contributions to public housing agencies to assist in achieving and maintaining the lower income character of their projects. The Secretary shall embody the provisions for such annual contributions in a contract guaranteeing their payment. The contribution payable annually under this section shall in no case exceed a sum equal to the annual amount of principal and interest payable on obligations issued by the public housing agency to finance the development or acquisition cost of the lower income project involved. Annual contributions payable under this section shall be pledged, if the Secretary so requires, as security for obligations issued by a public housing agency to assist the development or acquisition of the project to which annual contributions relate and shall be paid over a period not to exceed 40 years.

(2) The Secretary may make contributions (in the form of grants) to public housing agencies to cover the development cost of public housing projects. The contract under which such contributions shall be made shall specify the amount of capital contributions required for each project to which the contract pertains, and that the terms and conditions of such contract shall remain in effect for a 40-year period.

(3) The amount of contributions that would be established for a newly constructed project by a public housing agency designed to accommodate a number of families of a given size and kind may be established under this section for a project by such public housing agency that would provide housing for the comparable number, sizes, and kinds of families through the acquisition and rehabilitation, or use under lease, of structures that are suitable for low-income housing use and obtained in the local market.

(b) Maximum amount of contributions; regulations; criteria for rates of contribution

The Secretary may prescribe regulations fixing the maximum contributions available under different circumstances, giving consideration to cost, location, size, rent-paying ability of prospective tenants, or other factors bearing upon the amounts and periods of assistance needed to achieve and maintain low rentals. Such regulations may provide for rates of contribution based upon development, acquisition, or operation costs, number of dwelling units, number of persons housed, interest charges, or other appropriate factors.

(c) Limitation on aggregate contractual contributions; contracts for preliminary loans; payments of annual contributions; limitations on specific authorities

(1) The Secretary may enter into contracts for annual contributions aggregating not more than $7,875,049,000 per annum, which amount shall be increased by $1,494,400,000 on October 1, 1980, and by $906,985,000 on October 1, 1981. The additional authority to enter into such contracts provided on or after October 1, 1980, shall be effective only in such amounts as may be approved in appropriation Acts. In addition, the aggregate amount which may be obligated over the duration of the contracts may not exceed $31,200,000,000 with respect to the additional authority provided on October 1, 1980, and $18,087,370,000 with respect to the additional authority provided on October 1, 1981.

(2) The Secretary shall enter into only such new contracts for preliminary loans as are consistent with the number of dwelling units for which contracts for annual contributions may be entered into.

(3) The full faith and credit of the United States is solemnly pledged to the payment of all annual contributions contracted for pursuant to this section, and there are hereby authorized to be appropriated in each fiscal year, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such payments.

(4) All payments of annual contributions pursuant to this section shall be made out of any funds available for purposes of this chapter when such payments are due, except that funds obtained through the issuance of obligations pursuant to section 1437b(b) of this title (including repayments or other realizations of the principal of loans made out of such funds) shall not be available for the payment of such annual contributions.

(5) During such period as the Secretary may prescribe for starting construction, the Secretary may approve the conversion of public housing development authority for use under section 1437g of this title or for use for the acquisition and rehabilitation of property to be used in public housing, if the public housing agency, after consultation with the unit of local government, certifies that such assistance would be more effectively used for such purpose, and if the total number of units assisted will not be less than 90 per centum of the units covered by the original reservation.

(6) The aggregate amount of budget authority which may be obligated for contracts for annual contributions and for grants under section 1437*o* of this title is increased by $9,912,928,000 on October 1, 1983, and by such sums as may be approved in appropriation Acts on October 1, 1984. The aggregate amount of budget authority that may be obligated for contracts for annual contributions for assistance under section 1437f of this title, for contracts referred to in paragraphs (7)(A)(iv) and (7)(B)(iv), for grants for public housing, for comprehensive improvement assistance, and for amendments to existing contracts, is increased (to the extent approved in appropriation Acts) by $7,167,000,000 on October 1, 1987, and by $7,300,945,000 on October 1, 1988. The aggregate amount of budget authority that may be obligated for assistance referred to in paragraph (7) is increased (to the extent approved in appropriation Acts) by $16,194,000,000 on October 1, 1990, and by $14,709,400,000 on October 1, 1991. The aggregate amount of budget authority that may be obligated for assistance referred to in paragraph (7) is increased (to the extent approved in appropriation Acts) by $14,710,990,520 on October 1, 1992, and by $15,328,852,122 on October 1993.

(7)(A) Using the additional budget authority provided under paragraph (6) and the balances of

budget authority that become available during fiscal year 1993, the Secretary shall, to the extent approved in appropriation Acts, reserve authority to enter into obligations aggregating—

(i) for public housing grants under subsection (a)(2) of this section, not more than $830,900,800, of which amount not more than $257,320,000 shall be available for Indian housing;

(ii) for assistance under section 1437f of this title, not more than $1,977,662,720, of which $20,000,000 shall be available for 15-year contracts for project-based assistance to be used for a multicultural tenant empowerment and homeownership project located in the District of Columbia, except that assistance provided for such project shall not be considered for purposes of the percentage limitations under section 1437f(i)(2) of this title; except that not more than 49 percent of any amounts appropriated under this clause may be used for vouchers under section 1437f(*o*) of this title;

(iii) for comprehensive improvement assistance grants under section 1437*l*(k) of this title, not more than $3,100,000,000;

(iv) for assistance under section 1437f of this title for property disposition, not more than $93,032,000;

(v) for assistance under section 1437f of this title for loan management, not more than $202,000,000;

(vi) for extensions of contracts expiring under section 1437f of this title, not more than $6,746,135,000, which shall be for 5-year contracts for assistance under section 1437f of this title and for loan management assistance under such section;

(vii) for amendments to contracts under section 1437f of this title, not more than $1,350,000,000;

(viii) for public housing lease adjustments and amendments, not more than $83,055,000;

(ix) for conversions from leased housing contracts under section 1421b of this title (as in effect immediately before August 22, 1974) to assistance under section 1437f of this title, not more than $12,767,000; and

(x) for grants under section 1437v of this title for revitalization of severely distressed public housing, not more than $300,000,000.

(B) Using the additional budget authority provided under paragraph (6) and the balances of budget authority that become available during fiscal year 1994, the Secretary shall, to the extent approved in appropriation Acts, reserve authority to enter into obligations aggregating—

(i) for public housing grants under subsection (a)(2) of this section, not more than $865,798,634, of which amount not more than $268,127,440 shall be available for Indian housing;

(ii) for assistance under section 1437f of this title, not more than $2,060,724,554, of which $20,000,000 shall be available for 15-year contracts for project-based assistance to be used for a multicultural tenant empowerment and homeownership project located in the District of Columbia, except that assistance provided for such project shall not be considered for purposes of the percentage limitations under section 1437f(i)(2) of this title; except that not more than 49 percent of any amounts appropriated under this clause may be used for vouchers under section 1437f(*o*) of this title;

(iii) for comprehensive improvement assistance grants under section 1437*l*(k) of this title, not more than $3,230,200,000;

(iv) for assistance under section 1437f of this title for property disposition, not more than $96,939,344;

(v) for assistance under section 1437f of this title for loan management, not more than $210,484,000;

(vi) for extensions of contracts expiring under section 1437f of this title, not more than $7,029,472,670, which shall be for 5-year contracts for assistance under section 1437f of this title and for loan management assistance under such section;

(vii) for amendments to contracts under section 1437f of this title, not more than $1,406,700,000;

(viii) for public housing lease adjustments and amendments, not more than $86,543,310;

(ix) for conversions from leased housing contracts under section 1421b of this title (as in effect immediately before August 22, 1974) to assistance under section 1437f of this title, not more than $13,303,214; and

(x) for grants under section 1437v of this title for revitalization of severely distressed public housing, not more than $312,600,000.

(C)(i) Any amount available for the conversion of a project to assistance under section 1437f(b)(1) of this title, if not required for such purpose, shall be used for assistance under section 1437f(b)(1) of this title.

(ii) Any amount available for assistance under section 1437f of this title for property disposition, if not required for such purpose, shall be used for assistance under section 1437f(b)(1) of this title.

(8) Any amount available for Indian housing under subsection (a) of this section that is recaptured shall be used only for such housing.

(d) Scope of contracts for loans or annual contributions

Any contract for loans or annual contributions, or both, entered into by the Secretary with a public housing agency, may cover one or more than one low-income housing project owned by such public housing agency; in the event the contract covers two or more projects, such projects may, for any of the purposes of this chapter and of such contract (including, but not limited to, the determination of the amount of the loan, annual contributions, or payments in lieu of taxes, specified in such contract), be treated collectively as one project.

(e) Local determination of need as prerequisite for contracts for preliminary loans, and contracts for loans or annual contributions; notice

In recognition that there should be local determination of the need for low-income housing to meet needs not being adequately met by private enterprise—

(1) the Secretary shall not make any contract with a public housing agency for preliminary loans (all of which shall be repaid out of

any moneys which become available to such agency for the development of the projects involved) for surveys and planning in respect to any low-income housing projects (i) unless the governing body of the locality involved has by resolution approved the application of the public housing agency for such preliminary loan; and (ii) unless the public housing agency has demonstrated to the satisfaction of the Secretary that there is need for such low-income housing which is not being met by private enterprise; and

(2) the Secretary shall not make any contract for loans (other than preliminary loans) or for contributions pursuant to this chapter unless the governing body of the locality involved has entered into an agreement with the public housing agency providing for the local cooperation required by the Secretary pursuant to this chapter; the Secretary shall require that each such agreement shall provide that, notwithstanding any order, judgment, or decree of any court (including any settlement order), before making any amounts that are provided pursuant to any contract for contributions under this subchapter available for use for the development of any housing or other property not previously used as public housing, the public housing agency shall (A) notify the chief executive officer (or other appropriate official) of the unit of general local government in which the public housing for which such amounts are to be so used is located (or to be located) of such use, and (B) pursuant to the request of such unit of general local government, provide such information as may reasonably be requested by such unit of general local government regarding the public housing to be so assisted (except to the extent otherwise prohibited by law).

(f) Modification by Secretary of terms of contracts, etc.; limitations; amendment or supersedure of contracts for annual contributions or loans

Subject to the specific limitations or standards in this chapter governing the terms of sales, rentals, leases, loans, contracts for annual contributions, or other agreements, the Secretary may, whenever he deems it necessary or desirable in the fulfillment of the purposes of this chapter, consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, security, amount of annual contribution, or any other term, of any contract or agreement of any kind to which the Secretary is a party. When the Secretary finds that it would promote economy or be in the financial interest of the Federal Government or is necessary to assure or maintain the lower income character of the project or projects involved, any contract heretofore or hereafter made for annual contributions, loans, or both, may be amended or superseded by a contract entered into by mutual agreement between the public housing agency and the Secretary. Contracts may not be amended or superseded in a manner which would impair the rights of the holders of any outstanding obligations of the public housing agency involved for which annual contributions have been pledged. Any rule of law contrary to this provision shall be deemed inapplicable.

(g) Pledge of annual contributions as guarantee of payment of obligations issued by public housing agency; exception

In addition to the authority of the Secretary under subsection (a) of this section to pledge annual contributions as security for obligations issued by a public housing agency, the Secretary is authorized to pledge annual contributions as a guarantee of payment by a public housing agency of all principal and interest on obligations issued by it to assist the development or acquisition of the project to which the annual contributions relate, except that no obligation shall be guaranteed under this subsection if the income thereon is exempt from Federal taxation.

(h) Audits

(1) By Secretary and Comptroller General

Each contract for contributions for any assistance under this chapter to a public housing agency shall provide that the Secretary, the Inspector General of the Department of Housing and Urban Development, and the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination, have access to any books, documents, papers, and records of the public housing agency that are pertinent to this chapter and to its operations with respect to financial assistance under the this[1] chapter.

(2) Withholding of amounts for audits under Single Audit Act

The Secretary may, in the sole discretion of the Secretary, arrange for and pay the costs of an audit required under chapter 75 of title 31. In such circumstances, the Secretary may withhold, from assistance otherwise payable to the agency under this chapter, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the agency's books and records in auditable condition. As agreed to by the Secretary and the Inspector General, the Inspector General may arrange for an audit under this paragraph.

(i) Prohibition on use of funds

None of the funds made available to the Department of Housing and Urban Development to carry out this chapter, which are obligated to State or local governments, public housing agencies, housing finance agencies, or other public or quasi-public housing agencies, shall be used to indemnify contractors or subcontractors of the government or agency against costs associated with judgments of infringement of intellectual property rights.

(Sept. 1, 1937, ch. 896, title I, §5, as added Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 656; amended Pub. L. 94–375, §2(a), (b), Aug. 3, 1976, 90 Stat. 1067; Pub. L. 95–24, title I, §101(a), Apr. 30, 1977, 91 Stat. 55; Pub. L. 95–128, title II, §201(a),

[1] So in original.

(b), Oct. 12, 1977, 91 Stat. 1128; Pub. L. 95–557, title II, § 206(a), (b), Oct. 31, 1978, 92 Stat. 2091; Pub. L. 95–619, title II, § 251(a), Nov. 9, 1978, 92 Stat. 3235; Pub. L. 96–153, title II, § 201(a), (b), Dec. 21, 1979, 93 Stat. 1105; Pub. L. 96–399, title II, §§ 201(a), 210, Oct. 8, 1980, 94 Stat. 1624, 1636; Pub. L. 97–35, title III, §§ 321(a)–(c), 322(c), Aug. 13, 1981, 95 Stat. 398, 402; Pub. L. 98–181, title II, § 201(b), Nov. 30, 1983, 97 Stat. 1176; Pub. L. 100–242, title I, §§ 101, 112(a), (b)(1), 113–115, Feb. 5, 1988, 101 Stat. 1820, 1823–1825; renumbered title I and amended Pub. L. 100–358, §§ 3, 5, June 29, 1988, 102 Stat. 680, 681; Pub. L. 101–625, title IV, § 417(a), title V, §§ 571, 572(2), Nov. 28, 1990, 104 Stat. 4161, 4235, 4236; Pub. L. 102–550, title I, §§ 101, 111(a), title VI, § 624, Oct. 28, 1992, 106 Stat. 3681, 3687, 3819; Pub. L. 104–19, title I, § 1002(c), July 27, 1995, 109 Stat. 236; Pub. L. 104–330, title V, § 501(b)(2), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title V, §§ 510, 518(a)(1), (b), 522(b)(1), 566, Oct. 21, 1998, 112 Stat. 2531, 2551, 2564, 2632.)

References in Text

Section 1437*o* of this title, referred to in subsec. (c)(6), was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

Section 1437*l* of this title, referred to in subsec. (c)(7)(A)(iii), (B)(iii), was repealed by Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564.

Section 1421b of this title, referred to in subsec. (c)(7)(A)(ix), (B)(ix), was omitted in the general revision of this chapter by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653.

The Single Audit Act, referred to in subsec. (h)(2) heading, probably means the Single Audit Act of 1984, Pub. L. 98–502, Oct. 19, 1984, 98 Stat. 2327, which is classified generally to chapter 75 (§ 7501 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 31 and Tables.

Prior Provisions

A prior section 5 of act Sept. 1, 1937, ch. 896, 50 Stat. 890, as amended, enumerated miscellaneous powers and functions of the Authority and was classified to section 1405 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

Amendments

1998—Subsec. (c)(5). Pub. L. 105–276, § 522(b)(1), substituted ''for use under section 1437g of this title'' for ''for use under section 1437*l* of this title''.

Subsec. (e)(2). Pub. L. 105–276, § 518(b), inserted before period at end ''; the Secretary shall require that each such agreement shall provide that, notwithstanding any order, judgment, or decree of any court (including any settlement order), before making any amounts that are provided pursuant to any contract for contributions under this subchapter available for use for the development of any housing or other property not previously used as public housing, the public housing agency shall (A) notify the chief executive officer (or other appropriate official) of the unit of general local government in which the public housing for which such amounts are to be so used is located (or to be located) of such use, and (B) pursuant to the request of such unit of general local government, provide such information as may reasonably be requested by such unit of general local government regarding the public housing to be so assisted (except to the extent otherwise prohibited by law)''.

Subsec. (h). Pub. L. 105–276, § 566, added subsec. (h).

Pub. L. 105–276, § 518(a)(1)(A), struck out subsec. (h) which read as follows: ''Notwithstanding any other provision of law, a public housing agency may sell a low-income housing project to its lower income tenants, on such terms and conditions as the agency may determine, without affecting the Secretary's commitment to pay annual contributions with respect to that project, but such contributions shall not exceed the maximum contributions authorized under subsection (a) of this section.''

Subsec. (i). Pub. L. 105–276, § 518(a)(1), redesignated subsec. (*l*) as (i) and struck out former subsec. (i) which read as follows: ''In entering into contracts for assistance with respect to newly constructed or substantially rehabilitated projects under this section (other than for projects assisted pursuant to section 1437f of this title), the Secretary shall require the installation of a passive or active solar energy system in any such project where the Secretary determines that such installation would be cost effective over the estimated life of the system.''

Subsecs. (j), (k). Pub. L. 105–276, § 518(a)(1)(A), struck out subsecs. (j) and (k), which had: in subsec. (j), placed conditions upon reservation of funds for development of public housing after Sept. 30, 1987, and placed limitations on amounts used for redesign, reconstruction, redevelopment, or operational improvement of existing projects, but directed that not less than 5 percent of certain amounts appropriated in fiscal years 1993 and 1994 be reserved for public housing projects designated for elderly or disabled families; and in subsec. (k), prohibited recapture of amounts of public housing development funds reserved to a public housing agency for failure to begin construction or rehabilitation, or to complete acquisition, during 30-month period following date of reservation.

Subsec. (*l*). Pub. L. 105–276, § 518(a)(1)(B), redesignated subsec. (*l*) as (i).

Pub. L. 105–276, § 510, added subsec. (*l*).

1996—Subsec. (j)(1). Pub. L. 104–330, § 501(b)(2)(A), struck out ''(other than for Indian families)'' after ''for public housing'' in introductory provisions.

Subsec. (*l*). Pub. L. 104–330, § 501(b)(2)(B), struck out subsec. (*l*) which read as follows: ''The Secretary may not use as a criterion for distributing assistance under this section the progress made by an Indian public housing agency in collecting rents owed by tenants unless—

''(1) such criterion is used as 1 of several criteria that are weighted proportionally and is established by regulations issued after public notice and opportunity to comment in accordance with section 553 of title 5; or

''(2) the Secretary determines that the Indian public housing agency has demonstrated a pattern of substantial noncompliance with requirements governing the collection of rents.''

1995—Subsec. (h). Pub. L. 104–19 struck out at end ''Any such sale shall be subject to the restrictions contained in section 1437aaa–3(g) of this title.''

1992—Subsec. (c)(6). Pub. L. 102–550, § 101(a), inserted at end ''The aggregate amount of budget authority that may be obligated for assistance referred to in paragraph (7) is increased (to the extent approved in appropriation Acts) by $14,710,990,520 on October 1, 1992, and by $15,328,852,122 on October 1993.''

Subsec. (c)(7)(A), (B). Pub. L. 102–550, § 101(b), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which directed Secretary to reserve authority to enter into certain obligations aggregating specified amounts using par. (6) budget authority and balances of such authority available in fiscal years 1991 and 1992.

Subsec. (j)(1)(D). Pub. L. 102–550, § 624(c)(1), which directed the striking of ''and'' at end, was executed by striking ''or'' at end to reflect the probable intent of Congress.

Subsec. (j)(1)(E). Pub. L. 102–550, § 624(c)(3), which directed amendment of subsec. (j)(1) by adding at the end a new subpar. (E), was executed by adding subsec. (E) after subpar. (D) to reflect the probable intent of Congress. Former subpar. (E) redesignated (F).

Subsec. (j)(1)(F). Pub. L. 102–550, § 624(c)(2), redesignated subpar. (E) as (F).

Subsec. (j)(2). Pub. L. 102–550, § 624(a), added subpar. (G).

Pub. L. 102–550, § 111(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Notwithstanding any other provision of law, not more than 20 percent of the funds appropriated for development of public housing also may be committed by the Secretary for the substantial redesign, reconstruction, or redevelopment of existing public housing projects or units, which work shall be carried out pursuant to the rules and regulations applicable to the development of public housing.''

Subsec. (j)(3). Pub. L. 102–550, § 624(b), added par. (3).

1990—Subsec. (a)(3). Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing''.

Subsec. (c)(6). Pub. L. 101–625, § 571(a), inserted at end ''The aggregate amount of budget authority that may be obligated for assistance referred to in paragraph (7) is increased (to the extent approved in appropriation Acts) by $16,194,000,000 on October 1, 1990, and by $14,709,400,000 on October 1, 1991.''

Subsec. (c)(7)(A), (B). Pub. L. 101–625, § 571(b), amended subpars. (A) and (B) generally, substituting present provisions for provisions directing Secretary to reserve authority to enter into certain obligations aggregating specified amounts using par. (6) budget authority and balances of such authority available in fiscal years 1988 and 1989.

Subsecs. (d), (e). Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

Subsec. (h). Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing''.

Pub. L. 101–625, § 417(a), inserted at end ''Any such sale shall be subject to the restrictions contained in section 1437aaa–3(g) of this title.''

1988—Pub. L. 100–242, § 112(b)(1)(A), substituted ''Contributions'' for ''Annual contributions'' in section catchline.

Subsec. (a). Pub. L. 100–242, § 112(a), amended subsec. (a) generally, revising and restating as pars. (1) to (3) provisions formerly contained in a single unnumbered par.

Subsec. (c)(6). Pub. L. 100–242, § 101(a), inserted sentence at end providing for increases on Oct. 1, 1987, and Oct. 1, 1988, of aggregate amount of budget authority that may be obligated for specified purposes.

Subsec. (c)(7). Pub. L. 100–242, § 101(b), amended par. (7) generally, substituting provisions relating to Secretary's authority to enter into obligations under this section for fiscal years 1988 and 1989, for provisions relating to Secretary's authority for fiscal years 1984 and 1985 and substituting provisions whereby amounts available for conversion of project to assistance under section 1437f(b)(1) of this title and amounts available for assistance under section 1437f for property disposition, if not required for such purpose, shall be used for assistance under section 1437f(b)(1) of this title, for provisions wherein specific authorities under this paragraph would be subject to adjustments under par. (5) of this subsection.

Subsec. (c)(8). Pub. L. 100–358, § 3, added par. (8).

Subsec. (e)(2). Pub. L. 100–242, § 112(b)(1)(B), struck out ''annual'' before ''contributions''.

Subsecs. (j) to (*l*). Pub. L. 100–242, §§ 113–115, added subsecs. (j) to (*l*).

1983—Subsec. (c)(1). Pub. L. 98–181, § 201(b)(1), struck out concluding provision requiring the Secretary, in utilizing the additional authority to enter into contracts on and after Oct. 1, 1980, to administer the authorized programs to provide assistance, to the maximum extent practicable, consistent with section 1439(d) of this title.

Subsec. (c)(2). Pub. L. 98–181, § 201(b)(2), redesignated par. (4) as (2), and struck out former par. (2) which from funds made available on Oct. 1, 1980, had required at least $100,000,000 be available for section 1437*l* projects, and from remaining difference limited use of funds to 37.5 and 62.5 per centum for existing section 1437f projects and for newly constructed and substantially rehabilitated units.

Subsec. (c)(3). Pub. L. 98–181, § 201(b)(2), redesignated par. (5) as (3), and struck out former par. (3) which from funds made available on Oct. 1, 1981, had required at least $75,000,000 be available for section 1437*l* projects, from remaining difference allocated sums as provided in section 1439(d) for different community and area uses, and from remaining difference required the accommodation of preferences of units of local government based on stated factors.

Subsec. (c)(4). Pub. L. 98–181, § 201(b)(2), redesignated par. (6) as (4). Former par. (4) redesignated (2).

Subsec. (c)(5) to (7). Pub. L. 98–181, § 201(b)(3), added pars. (5) to (7). Former pars. (5) and (6) redesignated (3) and (4), respectively.

1981—Subsec. (a). Pub. L. 97–35, § 322(c), substituted references to lower income for references to low-income wherever appearing.

Subsec. (c). Pub. L. 97–35, § 321(a)–(c), in par. (1) inserted provisions relating to increases on Oct. 1, 1981, and amount respecting additional authority as of Oct. 1, 1981, added par. (3), and redesignated former pars. (3) to (5) as (4) to (6), respectively.

Subsecs. (d) to (f), (h). Pub. L. 97–35, § 322(c), substituted references to lower income for references to low-income wherever appearing.

1980—Subsec. (c). Pub. L. 96–399, § 201(a), redesignated existing provisions as par. (1), among other changes, substituted provisions relating to the discretionary power of the Secretary to enter into contracts for annual contributions for provisions authorizing the Secretary to enter into such contracts, deleted references to contributions for assistance to Indian tribes, and added pars. (2) to (5).

Subsec. (i). Pub. L. 96–399, § 210, added subsec. (i).

1979—Subsec. (c). Pub. L. 96–153 authorized increase in aggregate contractual contributions by $1,140,661,000 on Oct. 1, 1979, and inserted requirements that out of such additional authority not more than $195,053,000 be authorized to be approved in appropriation acts for units assisted under this chapter other than under section 1437f of this title and that not less than $50,000,000 of the later amount be authorized to be approved for modernization of the units.

1978—Subsec. (c). Pub. L. 95–619 authorized the Secretary to enter into annual contribution contracts aggregating not more than $10,000,000 per annum for financing the purchase and installation of energy conserving improvement in existing low-income housing projects which the Secretary determined had the greatest need for such improvements.

Pub. L. 95–557 inserted ''and by $1,195,043,000 on October 1, 1978'' after ''October 1, 1977'', ''and on and after October 1, 1978'' after ''October 1, 1976'' and ''Of the additional authority to enter into contracts for annual contributions provided on October 1, 1978, and approved in appropriation Acts, the Secretary shall make available not less than $50,000,000 for modernization of low-income housing projects'' after ''pursuant to section 5304(a)(4) of this title'', and struck out provisions after ''only such amounts as may be approved in appropriations Acts'' mandating that of the additional authority to enter into contracts provided on October 1, 1976, at least $60,000,000 be made available for modernization of low-income housing projects and at least $140,000,000 to assist in financing low-income housing projects for ownership by public housing agencies other than under section 1437f, of which not less than $100,000,000 shall be available only for the purpose of financing the construction or rehabilitation of low-income housing projects, and provision after ''plans prepared pursuant to section 5304(a)(4) of this title'' mandating that of the additional authority to enter into contracts for annual contributions provided on Oct. 1, 1977, not less than $42,500,000 shall be made available for low-income housing projects, not less than $197,139,200 for low-income housing projects permanently financed by loans from State housing finance or State development agencies, and not less than $120,000,000 for low-income housing projects permanently financed by loans pursuant to section 1701q of title 12.

1977—Subsec. (c). Pub. L. 95–128 authorized increase in aggregate contractual contributions by $1,159,995,000 on Oct. 1, 1977, and required the Secretary to make available therefrom minimum amounts of $42,500,000 for modernization of low-income housing projects, $197,139,200 for such projects financed by loans from State housing finance or State development agencies, and $120,000,000 for such projects financed by loans pursuant to section 1701q of title 12.

Pub. L. 95–24 substituted ''and by $1,228,050,000 on October 1, 1976'' for ''and by $850,000,000 on October 1, 1976''.

1976—Subsec. (c). Pub. L. 94–375 substituted ''$1,524,000,000 per annum, which limit shall be increased by $965,000,000 on July 1, 1974, by $662,300,000 on July 1, 1975, and by $850,000,000 on October 1, 1976, except that the additional authority to enter into contracts for annual contributions provided on or after July 1, 1975, shall be effective only in such amounts as may be approved in appropriation Acts'' for ''$1,199,250,000 per annum, which limit shall be increased by $225,000,000 on July 1, 1971, by $150,000,000 on July 1, 1972, by $400,000,000 on July 1, 1973, and by $965,000,000 on July 1, 1974'', provision requiring the Secretary make available a total of at least $200,000,000 for modernization and financing of low-income housing projects under the additional authority to enter into contracts for annual contributions provided on Oct. 1, 1976, for provision which required the Secretary to enter into contracts for annual contributions of at least $150,000,000 to assist in financing the development or acquisition cost of low-income housing projects, inserted ''and by not less than $17,000,000 per annum on October 1, 1976,'' after ''not less than $15,000,000 per annum, on July 1, 1975'', and struck out ''to the amounts of contracts for annual contributions required to be entered into by the Secretary under the second sentence of this subsection'' after ''In addition''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

EFFECTIVE DATE OF 1995 AMENDMENT

Section 1002(d) of Pub. L. 104–19, as amended by Pub. L. 104–134, title I, § 101(e) [title II, § 201(b)(1)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–278; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–204, title II, § 201(b), Sept. 26, 1996, 110 Stat. 2892; Pub. L. 105–65, title II, § 201(a), Oct. 27, 1997, 111 Stat. 1364, provided that: Subsections (a), (b), and (c) [amending this section and sections 1437p and 1437aaa–3 of this title] shall be effective for applications for the demolition, disposition, or conversion to homeownership of public housing approved by the Secretary, and other consolidation and relocation activities of public housing agencies undertaken, on, before, or after September 30, 1995 and on or before September 30, 1998.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 417(b) of Pub. L. 101–625 provided that: ''The amendment made by subsection (a) [amending this section] shall not apply to applications submitted under section 5(h) of the United States Housing Act of 1937 [subsec. (h) of this section] prior to October 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

For date on which Secretary of Housing and Urban Development may carry out programs to provide lower income housing on Indian reservations and other Indian areas only in accordance with amendment by Pub. L. 100–358, see section 6 of Pub. L. 100–358, set out as a note under section 1437a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 206(h) of Pub. L. 95–557 provided that: ''The amendments made by this section [amending this section and sections 1437a, 1437f, and 1437g of this title], except the amendment made by subsection (d) [amending section 1437f of this title], shall become effective on October 1, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(b)(1), (2) of Pub. L. 94–375 provided that the amendment of subsec. (c), which required the Secretary to make available a total of $200,000,000 for modernization and financing of low-income housing and which struck out reference to the amount of contracts the Secretary was required to enter into under the second sentence of this subsection, is effective Oct. 1, 1976.

EFFECTIVE DATE

Section effective on such date or dates as the Secretary of Housing and Urban Development shall prescribe, but not later than eighteen months after Aug. 22, 1974, except that all of the provisions of this section shall become effective on the same date, see section 201(b) of Pub. L. 93–383, set out as a note under section 1437 of this title.

REGULATIONS

Section 111(c) of Pub. L. 102–550 provided that: ''The Secretary shall issue regulations necessary to carry out the amendments made by this section [amending this section and sections 1437*l* and 1437p of this title] as provided under section 191 of this Act [42 U.S.C. 1437a note].''

INAPPLICABILITY OF CERTAIN 1992 AMENDMENTS TO INDIAN PUBLIC HOUSING

Amendment by section 624 of Pub. L. 102–550 not applicable with respect to lower income housing developed or operated pursuant to contract between Secretary of Housing and Urban Development and Indian housing authority, see section 626 of Pub. L. 102–550, set out as a note under section 1437a of this title.

INCREASE IN BUDGET AUTHORITY FOR CERTIFICATE AND VOUCHER PROGRAMS FOR DISASTER RELIEF

Section 931 of Pub. L. 101–625, as amended by Pub. L. 105–276, title V, § 550(c), Oct. 21, 1998, 112 Stat. 2609, provided that: ''The budget authority available under section 5(c) of the United States Housing Act of 1937 (42 U.S.C. 1437c(c)) for tenant-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] is authorized to be increased in any fiscal year in which a major disaster is declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] in such amounts as may be necessary to provide assistance under such programs for individuals and families whose housing has been damaged or destroyed as a result of such disaster, except that in implementing this section, the Secretary shall evaluate the natural hazards to which any permanent replacement housing is

exposed and shall take appropriate action to mitigate such hazards.''

INCREASE IN BUDGET AUTHORITY FOR MODERATE REHABILITATION PROGRAM FOR DISASTER RELIEF

Section 932 of Pub. L. 101–625 provided that: ''The budget authority available under section 5(c) of the United States Housing Act of 1937 (42 U.S.C. 1437c(c)) for assistance under the moderate rehabilitation program under section 8(e)(2) of such Act [42 U.S.C. 1437f(e)(2)] is authorized to be increased in any fiscal year in which a major disaster is declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] in such amount as may be necessary to provide assistance under such program for individuals and families whose housing has been damaged or destroyed as a result of such disaster, except that in implementing this section, the Secretary shall evaluate the natural hazards to which any permanent replacement housing is exposed and shall take appropriate action to mitigate such hazards.''

§ 1437c–1. Public housing agency plans

(a) 5-year plan

(1) In general

Subject to paragraph (3), not less than once every 5 fiscal years, each public housing agency shall submit to the Secretary a plan that includes, with respect to the 5 fiscal years immediately following the date on which the plan is submitted—

(A) a statement of the mission of the public housing agency for serving the needs of low-income and very low-income families in the jurisdiction of the public housing agency during such fiscal years; and

(B) a statement of the goals and objectives of the public housing agency that will enable the public housing agency to serve the needs identified pursuant to subparagraph (A) during those fiscal years.

(2) Statement of goals

The 5-year plan shall include a statement by any public housing agency of the goals, objectives, policies, or programs that will enable the housing authority to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.

(3) Initial plan

The initial 5-year plan submitted by a public housing agency under this subsection shall be submitted for the 5-year period beginning on October 1, 1999, or the first fiscal year thereafter for which the public housing agency initially receives assistance under this chapter.

(b) Annual plan

(1) In general

Effective beginning upon October 1, 1999, each public housing agency shall submit to the Secretary an annual public housing agency plan under this subsection for each fiscal year for which the public housing agency receives assistance under section 1437f(*o*) or 1437g of this title.

(2) Updates

For each fiscal year after the initial submission of an annual plan under this subsection by a public housing agency, the public housing agency may comply with requirements for submission of a plan under this subsection by submitting an update of the plan for the fiscal year.

(c) Procedures

(1) In general

The Secretary shall establish requirements and procedures for submission and review of plans, including requirements for timing and form of submission, and for the contents of such plans.

(2) Contents

The procedures established under paragraph (1) shall provide that a public housing agency shall—

(A) in developing the plan consult with the resident advisory board established under subsection (e) of this section; and

(B) ensure that the plan under this section is consistent with the applicable comprehensive housing affordability strategy (or any consolidated plan incorporating such strategy) for the jurisdiction in which the public housing agency is located, in accordance with title I of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12701 et seq.], and contains a certification by the appropriate State or local official that the plan meets the requirements of this paragraph and a description of the manner in which the applicable contents of the public housing agency plan are consistent with the comprehensive housing affordability strategy.

(d) Contents

An annual public housing agency plan under subsection (b) of this section for a public housing agency shall contain the following information relating to the upcoming fiscal year for which the assistance under this chapter is to be made available:

(1) Needs

A statement of the housing needs of low-income and very low-income families residing in the jurisdiction served by the public housing agency, and of other low-income and very low-income families on the waiting list of the agency (including housing needs of elderly families and disabled families), and the means by which the public housing agency intends, to the maximum extent practicable, to address those needs.

(2) Financial resources

A statement of financial resources available to the agency and the planned uses of those resources.

(3) Eligibility, selection, and admissions policies

A statement of the policies governing eligibility, selection, admissions (including any preferences), assignment, and occupancy of families with respect to public housing dwelling units and housing assistance under section 1437f(*o*) of this title, including—

(A) the procedures for maintaining waiting lists for admissions to public housing projects of the agency, which may include a

system of site-based waiting lists under section 1437d(r) of this title; and

(B) the admissions policy under section 1437n(a)(3)(B) of this title for deconcentration of lower-income families.

(4) Rent determination

A statement of the policies of the public housing agency governing rents charged for public housing dwelling units and rental contributions of families assisted under section 1437f(*o*) of this title.

(5) Operation and management

A statement of the rules, standards, and policies of the public housing agency governing maintenance and management of housing owned, assisted, or operated by the public housing agency (which shall include measures necessary for the prevention or eradication of pest infestation, including by cockroaches), and management of the public housing agency and programs of the public housing agency.

(6) Grievance procedure

A statement of the grievance procedures of the public housing agency.

(7) Capital improvements

With respect to public housing projects owned, assisted, or operated by the public housing agency, a plan describing the capital improvements necessary to ensure long-term physical and social viability of the projects.

(8) Demolition and disposition

With respect to public housing projects owned by the public housing agency—

(A) a description of any housing for which the PHA will apply for demolition or disposition under section 1437p of this title; and

(B) a timetable for the demolition or disposition.

(9) Designation of housing for elderly and disabled families

With respect to public housing projects owned, assisted, or operated by the public housing agency, a description of any projects (or portions thereof) that the public housing agency has designated or will apply for designation for occupancy by elderly and disabled families in accordance with section 1437e of this title.

(10) Conversion of public housing

With respect to public housing owned by a public housing agency—

(A) a description of any building or buildings that the public housing agency is required to convert to tenant-based assistance under section 1437z–5 of this title or that the public housing agency plans to voluntarily convert under section 1437t of this title;

(B) an analysis of the projects or buildings required to be converted under section 1437z–5 of this title; and

(C) a statement of the amount of assistance received under this chapter to be used for rental assistance or other housing assistance in connection with such conversion.

(11) Homeownership

A description of any homeownership programs of the agency under section 1437f(y) of this title or for which the public housing agency has applied or will apply for approval under section 1437z–4 of this title.

(12) Community service and self-sufficiency

A description of—

(A) any programs relating to services and amenities provided or offered to assisted families;

(B) any policies or programs of the public housing agency for the enhancement of the economic and social self-sufficiency of assisted families;

(C) how the public housing agency will comply with the requirements of subsections (c) and (d) of section 1437j of this title (relating to community service and treatment of income changes resulting from welfare program requirements).

(13) Domestic violence, dating violence, sexual assault, or stalking programs

A description of—

(A) any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking;

(B) any activities, services, or programs provided or offered by a public housing agency that helps child and adult victims of domestic violence, dating violence, sexual assault, or stalking, to obtain or maintain housing; and

(C) any activities, services, or programs provided or offered by a public housing agency to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families.

(14) Safety and crime prevention

A plan established by the public housing agency, which shall be subject to the following requirements:

(A) Safety measures

The plan shall provide, on a project-by-project or jurisdiction-wide basis, for measures to ensure the safety of public housing residents.

(B) Establishment

The plan shall be established in consultation with the police officer or officers in command for the appropriate precinct or police department.

(C) Content

The plan shall describe the need for measures to ensure the safety of public housing residents and for crime prevention measures, describe any such activities conducted or to be conducted by the agency, and provide for coordination between the agency and the appropriate police precincts for carrying out such measures and activities.

(D) Secretarial action

If the Secretary determines, at any time, that the security needs of a project are not being adequately addressed by the plan, or that the local police precinct is not com-

plying with the plan, the Secretary may mediate between the public housing agency and the local precinct to resolve any issues of conflict.

(15) Pets

The requirements of the agency, pursuant to section 1437z–3 of this title, relating to pet ownership in public housing.

(16) Civil rights certification

A certification by the public housing agency that the public housing agency will carry out the public housing agency plan in conformity with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], and title II of the Americans with Disabilities Act of 1990 [42 U.S.C. 12131 et seq.], and will affirmatively further fair housing.

(17) Annual audit

The results of the most recent fiscal year audit of the public housing agency under section 1437c(h)(2) of this title.

(18) Asset management

A statement of how the agency will carry out its asset management functions with respect to the public housing inventory of the agency, including how the agency will plan for the long-term operating, capital investment, rehabilitation, modernization, disposition, and other needs for such inventory.

(19) Other

Any other information required by law to be included in a public housing agency plan.

(e) Resident advisory board

(1) In general

Except as provided in paragraph (3), each public housing agency shall establish 1 or more resident advisory boards in accordance with this subsection, the membership of which shall adequately reflect and represent the residents assisted by the public housing agency.

(2) Functions

Each resident advisory board established under this subsection by a public housing agency shall assist and make recommendations regarding the development of the public housing agency plan for the agency. The agency shall consider the recommendations of the resident advisory boards in preparing the final public housing agency plan, and shall include, in the public housing agency plan submitted to the Secretary under this section, a copy of the recommendations and a description of the manner in which the recommendations were addressed.

(3) Waiver

The Secretary may waive the requirements of this subsection with respect to the establishment of resident advisory boards for a public housing agency if the agency demonstrates to the satisfaction of the Secretary that there exist resident councils or other resident organizations of the public housing agency that—

(A) adequately represent the interests of the residents of the public housing agency; and

(B) have the ability to perform the functions described in paragraph (2).

(f)[1] Notice and hearing

(1) In general

In developing a public housing agency plan under this section, the board of directors or similar governing body of a public housing agency shall conduct a public hearing to discuss the public housing agency plan and to invite public comment regarding that plan. The hearing shall be conducted at a location that is convenient to residents.

(2) Availability of information and notice

Not later than 45 days before the date of a hearing conducted under paragraph (1), the public housing agency shall—

(A) make the proposed public housing agency plan and all information relevant to the hearing and proposed plan available for inspection by the public at the principal office of the public housing agency during normal business hours; and

(B) publish a notice informing the public that—

(i) that the information is available as required under subparagraph (A); and

(ii) that a public hearing under paragraph (1) will be conducted.

(3) Adoption of plan

A public housing agency may adopt a public housing agency plan and submit the plan to the Secretary in accordance with this section only after—

(A) conducting a public hearing under paragraph (1);

(B) considering all public comments received; and

(C) making any appropriate changes in the public housing agency plan, in consultation with the resident advisory board.

(4) Advisory board consultation enforcement

Pursuant to a written request made by the resident advisory board for a public housing agency that documents a failure on the part of the agency to provide adequate notice and opportunity for comment under this subsection and a finding by the Secretary of good cause within the time period provided for in subsection (i)(4) of this section, the Secretary may require the public housing agency to adequately remedy such failure before final approval of the public housing agency plan under this section.

(g) Amendments and modifications to plans

(1) In general

Except as provided in paragraph (2), nothing in this section shall preclude a public housing agency, after submitting a plan to the Secretary in accordance with this section, from amending or modifying any policy, rule, regulation, or plan of the public housing agency, except that a significant amendment or modification may not—

(A) be adopted, other than at a duly called meeting of board of directors (or similar

[1] Subsection designation editorially supplied.

governing body) of the public housing agency that is open to the public; and

(B) be implemented, until notification of the amendment or modification is provided to the Secretary and approved in accordance with subsection (i) of this section.

(2) Consistency and notice

Each significant amendment or modification to a public housing agency plan submitted to the Secretary under this section shall—

(A) meet the requirements under subsection (c)(2) of this section (relating to consultation with resident advisory board and consistency with comprehensive housing affordability strategies); and

(B) be subject to the notice and public hearing requirements of subsection (f) of this section.

(h) Submission of plans

(1) Initial submission

Each public housing agency shall submit the initial plan required by this section, and any amendment or modification to the initial plan, to the Secretary at such time and in such form as the Secretary shall require.

(2) Annual submission

Not later than 75 days before the start of the fiscal year of the public housing agency, after submission of the initial plan required by this section in accordance with subparagraph (A), each public housing agency shall annually submit to the Secretary a plan update, including any amendments or modifications to the public housing agency plan.

(i) Review and determination of compliance

(1) Review

Subject to paragraph (2), after submission of the public housing agency plan or any amendment or modification to the plan to the Secretary, to the extent that the Secretary considers such action to be necessary to make determinations under this paragraph, the Secretary shall review the public housing agency plan (including any amendments or modifications thereto) and determine whether the contents of the plan—

(A) set forth the information required by this section and this chapter to be contained in a public housing agency plan;

(B) are consistent with information and data available to the Secretary, including the approved comprehensive housing affordability strategy under title I of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12701 et seq.] for the jurisdiction in which the public housing agency is located; and

(C) are not prohibited by or inconsistent with any provision of this subchapter or other applicable law.

(2) Elements exempted from review

The Secretary may, by regulation, provide that one or more elements of a public housing agency plan shall be reviewed only if the element is challenged, except that the Secretary shall review the information submitted in each plan pursuant to paragraphs (3)(B), (8), and (15) of subsection (d) of this section.

(3) Disapproval

The Secretary may disapprove a public housing agency plan (or any amendment or modification thereto) only if Secretary determines that the contents of the plan (or amendment or modification) do not comply with the requirements under subparagraph (A) through (C) of paragraph (1).

(4) Determination of compliance

(A) In general

Except as provided in subsection (j)(2) of this section, not later than 75 days after the date on which a public housing agency plan is submitted in accordance with this section, the Secretary shall make the determination under paragraph (1) and provide written notice to the public housing agency if the plan has been disapproved. If the Secretary disapproves the plan, the notice shall state with specificity the reasons for the disapproval.

(B) Failure to provide notice of disapproval

In the case of a plan disapproved, if the Secretary does not provide notice of disapproval under subparagraph (A) before the expiration of the period described in subparagraph (A), the Secretary shall be considered, for purposes of this chapter, to have made a determination that the plan complies with the requirements under this section and the agency shall be considered to have been notified of compliance upon the expiration of such period. The preceding sentence shall not preclude judicial review regarding such compliance pursuant to chapter 7 of title 5 or an action regarding such compliance under section 1983 of this title.

(5) Public availability

A public housing agency shall make the approved plan of the agency available to the general public.

(j) Troubled and at-risk PHAs

(1) In general

The Secretary may require, for each public housing agency that is at risk of being designated as troubled under section 1437d(j)(2) of this title or is designated as troubled under section 1437d(j)(2) of this title, that the public housing agency plan for such agency include such additional information as the Secretary determines to be appropriate, in accordance with such standards as the Secretary may establish or in accordance with such determinations as the Secretary may make on an agency-by-agency basis.

(2) Troubled agencies

The Secretary shall provide explicit written approval or disapproval, in a timely manner, for a public housing agency plan submitted by any public housing agency designated by the Secretary as a troubled public housing agency under section 1437d(j)(2) of this title.

(k) Streamlined plan

In carrying out this section, the Secretary may establish a streamlined public housing agency plan for—

(A) public housing agencies that are determined by the Secretary to be high performing public housing agencies;

(B) public housing agencies with less than 250 public housing units that have not been designated as troubled under section 1437d(j)(2) of this title; and

(C) public housing agencies that only administer tenant-based assistance and that do not own or operate public housing.

(*l*) Compliance with plan

(1) In general

In providing assistance under this subchapter, a public housing agency shall comply with the rules, standards, and policies established in the public housing agency plan of the public housing agency approved under this section.

(2) Investigation and enforcement

In carrying out this subchapter, the Secretary shall—

(A) provide an appropriate response to any complaint concerning noncompliance by a public housing agency with the applicable public housing agency plan; and

(B) if the Secretary determines, based on a finding of the Secretary or other information available to the Secretary, that a public housing agency is not complying with the applicable public housing agency plan, take such actions as the Secretary determines to be appropriate to ensure such compliance.

(Sept. 1, 1937, ch. 896, title I, §5A, as added Pub. L. 105–276, title V, §511(a), Oct. 21, 1998, 112 Stat. 2531; amended Pub. L. 109–162, title VI, §603, Jan. 5, 2006, 119 Stat. 3040.)

REFERENCES IN TEXT

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsecs. (c)(2)(B) and (i)(1)(B), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title I of the Act is classified generally to subchapter I (§12701 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (d)(16), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (d)(16), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (d)(16), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended. Title II of the Act is classified generally to subchapter II (§12131 et seq.) of chapter 126 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–162, §603(1)(A), substituted ''paragraph (3)'' for ''paragraph (2)''.

Subsec. (a)(2), (3). Pub. L. 109–162, §603(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(13) to (19). Pub. L. 109–162, §603(2), (3), added par. (13) and redesignated former pars. (13) to (18) as (14) to (19), respectively.

EFFECTIVE DATE

Pub. L. 105–276, title V, §511(e), Oct. 21, 1998, 112 Stat. 2539, provided that: ''This section [enacting this section, amending section 1437d of this title, and enacting provisions set out as notes under this section] shall take effect, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

REGULATIONS

Pub. L. 105–276, title V, §511(b), Oct. 21, 1998, 112 Stat. 2538, provided that:

''(1) INTERIM RULE.—Not later than 120 days after the date of the enactment of this Act [Oct. 21, 1998], the Secretary shall issue an interim rule to require the submission of an interim public housing agency plan by each public housing agency, as required by section 5A of the United States Housing Act of 1937 [42 U.S.C. 1437c–1] (as added by subsection (a) of this section). The interim rule shall provide for a public comment period of not less than 60 days.

''(2) FINAL REGULATIONS.—Not later than 1 year after the date of the enactment of this Act [Oct. 21, 1998], the Secretary shall issue final regulations implementing section 5A of the United States Housing Act of 1937 [42 U.S.C. 1437c–1] (as added by subsection (a) of this section).

''(3) FACTORS FOR CONSIDERATION.—Before the publication of the final regulations under paragraph (2), in addition to public comments invited in connection with the publication of the interim rule, the Secretary shall—

''(A) seek recommendations on the implementation of section 5A of the United States Housing Act of 1937 [42 U.S.C. 1437c–1] (as added by this [sic] subsection (a) of this section) from organizations representing—

''(i) State or local public housing agencies;

''(ii) residents, including resident management corporations; and

''(iii) other appropriate parties; and

''(B) convene not less than 2 public forums at which the persons or organizations making recommendations under subparagraph (A) may express views concerning the proposed disposition of the recommendations.

The Secretary shall publish in the final rule a summary of the recommendations made and public comments received and the Department of Housing and Urban Development's response to such recommendations and comments.''

AUDIT AND REVIEW; REPORT

Pub. L. 105–276, title V, §511(c), Oct. 21, 1998, 112 Stat. 2538, provided that:

''(1) AUDIT AND REVIEW.—Not later than 1 year after the effective date of final regulations issued under subsection (b)(2) [set out as a note above], in order to determine the degree of compliance, by public housing agencies, with public housing agency plans approved under section 5A of the United States Housing Act of 1937 [42 U.S.C. 1437c–1] (as added by subsection (a) of this section), the Comptroller General of the United States shall conduct—

''(A) a review of a representative sample of the public housing agency plans approved under such section 5A before such date; and

''(B) an audit and review of the public housing agencies submitting such plans.

''(2) REPORT.—Not later than 2 years after the date on which public housing agency plans are initially required to be submitted under section 5A of the United States Housing Act of 1937 [42 U.S.C. 1437c–1] (as added by subsection (a) of this section) the Comptroller General of the United States shall submit to the Congress a report, which shall include—

''(A) a description of the results of each audit and review under paragraph (1); and

''(B) any recommendations for increasing compliance by public housing agencies with their public

housing agency plans approved under section 5A of the United States Housing Act of 1937 (as added by subsection (a) of this section).''

§ 1437d. Contract provisions and requirements; loans and annual contributions

(a) Conditions; elevators

The Secretary may include in any contract for loans, contributions, sale, lease, mortgage, or any other agreement or instrument made pursuant to this chapter, such covenants, conditions, or provisions as he may deem necessary in order to insure the lower income character of the project involved, in a manner consistent with the public housing agency plan. Any such contract shall require that, except in the case of housing predominantly for elderly or disabled families, high-rise elevator projects shall not be provided for families with children unless the Secretary makes a determination that there is no practical alternative.

(b) Limitation on development costs

(1) Each contract for loans (other than preliminary loans) or contributions for the development, acquisition, or operation of public housing shall provide that the total development cost of the project on which the computation of any annual contributions under this chapter may be based may not exceed the amount determined under paragraph (2) (for the appropriate structure type) unless the Secretary provides otherwise, and in any case may not exceed 110 per centum of such amount unless the Secretary for good cause determines otherwise.

(2) For purposes of paragraph (1), the Secretary shall determine the total development cost by multiplying the construction cost guideline for the project (which shall be determined by averaging the current construction costs, as listed by not less than 2 nationally recognized residential construction cost indices, for publicly bid construction of a good and sound quality) by—

(A) in the case of elevator type structures, 1.6; and

(B) in the case of nonelevator type structures, 1.75.

(3) In calculating the total development cost of a project under paragraph (2), the Secretary shall consider only capital assistance provided by the Secretary to a public housing agency that are[1] authorized for use in connection with the development of public housing, and shall exclude all other amounts, including amounts provided under—

(A) the HOME investment partnerships program authorized under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.]; or

(B) the community development block grants program under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(4) The Secretary may restrict the amount of capital funds that a public housing agency may use to pay for housing construction costs. For purposes of this paragraph, housing construction costs include the actual hard costs for the construction of units, builders' overhead and profit, utilities from the street, and finish landscaping.

(c) Revision of maximum income limits; certification of compliance with requirements; notification of eligibility; informal hearing; compliance with procedures for sound management

Every contract for contributions shall provide that—

(1) the Secretary may require the public housing agency to review and revise its maximum income limits if the Secretary determines that changed conditions in the locality make such revision necessary in achieving the purposes of this chapter;

(2) the public housing agency shall determine, and so certify to the Secretary, that each family in the project was admitted in accordance with duly adopted regulations and approved income limits; and the public housing agency shall review the incomes of families living in the project no less frequently than annually;

(3) the public housing agency shall not deny admission to the project to any applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking if the applicant otherwise qualifies for assistance or admission, and that nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking[2]

(4) the public housing agency shall promptly notify (i) any applicant determined to be ineligible for admission to the project of the basis for such determination and provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination, and (ii) any applicant determined to be eligible for admission to the project of the approximate date of occupancy insofar as such date can be reasonably determined; and

(5) the public housing agency shall comply with such procedures and requirements as the Secretary may prescribe to assure that sound management practices will be followed in the operation of the project, including requirements pertaining to—

(A) making dwelling units in public housing available for occupancy, which shall provide that the public housing agency may establish a system for making dwelling units available that provides preference for such occupancy to families having certain characteristics; each system of preferences established pursuant to this subparagraph shall be based upon local housing needs and priorities, as determined by the public housing agency using generally accepted data sources, including any information obtained pursuant to an opportunity for public comment as provided under section 1437c–1(f) of this title and under the requirements applicable to the comprehensive housing afford-

[1] So in original. Probably should be ''is''.

[2] So in original. Probably should be followed by a semicolon.

ability strategy for the relevant jurisdiction;

(B) the establishment of satisfactory procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the case of nonpayment of rent;

(C) the establishment of effective tenant-management relationships designed to assure that satisfactory standards of tenant security and project maintenance are formulated and that the public housing agency (together with tenant councils where they exist) enforces those standards fully and effectively;

(D) the development by local housing authority managements of viable homeownership opportunity programs for low-income families capable of assuming the responsibilities of homeownership;

(E) for each agency that receives assistance under this subchapter, the establishment and maintenance of a system of accounting for rental collections and costs (including administrative, utility, maintenance, repair and other operating costs) for each project or operating cost center (as determined by the Secretary), which collections and costs shall be made available to the general public and submitted to the appropriate local public official (as determined by the Secretary); except that the Secretary may permit agencies owning or operating less than 500 units to comply with the requirements of this subparagraph by accounting on an agency-wide basis; and

(F) requiring the public housing agency to ensure and maintain compliance with subtitle C of title VI of the Housing and Community Development Act of 1992 [42 U.S.C. 13601 et seq.] and any regulations issued under such subtitle.

(d) Exemption from personal and real property taxes; payments in lieu of taxes; cash contribution or tax remission

Every contract for contributions with respect to a low-income housing project shall provide that no contributions by the Secretary shall be made available for such project unless such project (exclusive of any portion thereof which is not assisted by contributions under this chapter) is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision; and such contract shall require the public housing agency to make payments in lieu of taxes equal to 10 per centum of the sum of the shelter rents charged in such project, or such lesser amount as (i) is prescribed by State law, or (ii) is agreed to by the local governing body in its agreement for local cooperation with the public housing agency required under section 1437c(e)(2) of this title, or (iii) is due to failure of a local public body or bodies other than the public housing agency to perform any obligation under such agreement. If any such project is not exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivision, such contract shall provide, in lieu of the requirement for tax exemption and payments in lieu of taxes, that no contributions by the Secretary shall be made available for such project unless and until the State, city, county, or other political subdivision in which such project is situated shall contribute, in the form of cash or tax remission, the amount by which the taxes paid with respect to the project exceed 10 per centum of the shelter rents charged in such project.

(e) Repealed. Pub. L. 105–276, title V, § 529(2), Oct. 21, 1998, 112 Stat. 2569

(f) Housing quality requirements

(1) In general

Each contract for contributions for a public housing agency shall require that the agency maintain its public housing in a condition that complies with standards which meet or exceed the housing quality standards established under paragraph (2).

(2) Federal standards

The Secretary shall establish housing quality standards under this paragraph that ensure that public housing dwelling units are safe and habitable. Such standards shall include requirements relating to habitability, including maintenance, health and sanitation factors, condition, and construction of dwellings, and shall, to the greatest extent practicable, be consistent with the standards established under section 1437f(*o*)(8)(B)(i) of this title. The Secretary may determine whether the laws, regulations, standards, or codes of any State or local jurisdiction meet or exceed these standards, for purposes of this subsection.

(3) Annual inspections

Each public housing agency that owns or operates public housing shall make an annual inspection of each public housing project to determine whether units in the project are maintained in accordance with the requirements under paragraph (1). The agency shall retain the results of such inspections and, upon the request of the Secretary, the Inspector General for the Department of Housing and Urban Development, or any auditor conducting an audit under section 1437c(h) of this title, shall make such results available.

(g) Substantial default; conveyance of title and delivery of possession; reconveyance and redelivery; payments for outstanding obligations

Every contract for contributions (including contracts which amend or supersede contracts previously made) may provide that—

(1) upon the occurrence of a substantial default in respect to the covenants or conditions to which the public housing agency is subject (as such substantial default shall be defined in such contract), the public housing agency shall be obligated at the option of the Secretary either to convey title in any case where, in the determination of the Secretary (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of this chapter, or to deliver to the Secretary possession of the project, as then constituted, to which such contract relates; and

(2) the Secretary shall be obligated to reconvey or redeliver possession of the project as constituted at the time of reconveyance or redelivery, to such public housing agency or to its successor (if such public housing agency or a successor exists) upon such terms as shall be prescribed in such contract, and as soon as practicable (i) after the Secretary is satisfied that all defaults with respect to the project have been cured, and that the project will, in order to fulfill the purposes of this chapter, thereafter be operated in accordance with the terms of such contract; or (ii) after the termination of the obligation to make annual contributions available unless there are any obligations or covenants of the public housing agency to the Secretary which are then in default. Any prior conveyances and reconveyances or deliveries and redeliveries of possession shall not exhaust the right to require a conveyance or delivery of possession of the project to the Secretary pursuant to subparagraph (1) upon the subsequent occurrence of a substantial default.

Whenever such a contract for annual contributions includes provisions which the Secretary in such contract determines are in accordance with this subsection, and the portion of the annual contribution payable for debt service requirements pursuant to such contract has been pledged by the public housing agency as security for the payment of the principal and interest on any of its obligations, the Secretary (notwithstanding any other provisions of this chapter) shall continue to make such annual contributions available for the project so long as any of such obligations remain outstanding, and may covenant in such contract that in any event such annual contributions shall in each year be at least equal to an amount which, together with such income or other funds as are actually available from the project for the purpose at the time such annual contribution is made, will suffice for the payment of all installments, falling due within the next succeeding twelve months, of principal and interest on the obligations for which the annual contributions provided for in the contract shall have been pledged as security. In no case shall such annual contributions be in excess of the maximum sum specified in the contract involved, nor for longer than the remainder of the maximum period fixed by the contract.

(h) New construction contracts

On or after October 1, 1983, the Secretary may enter into a contract involving new construction only if the public housing agency demonstrates to the satisfaction of the Secretary that the cost of new construction in the neighborhood where the public housing agency determines the housing is needed is less than the cost of acquisition or acquisition and rehabilitation in such neighborhood, including any reserve fund under subsection (i) of this section, would be.

(i) Reserve fund; major repairs

The Secretary may, upon application by a public housing agency in connection with the acquisition of housing for use as public housing, establish and set aside a reserve fund in an amount not to exceed 30 per centum of the acquisition cost which shall be available for use for major repairs to such housing.

(j) Performance indicators for public housing agencies

(1) The Secretary shall develop and publish in the Federal Register indicators to assess the management performance of public housing agencies and resident management corporations. The indicators shall be established by rule under section 553 of title 5. Such indicators shall enable the Secretary to evaluate the performance of public housing agencies and resident management corporations in all major areas of management operations. The Secretary shall, in particular, use the following indicators for public housing agencies, to the extent practicable:

(A) The number and percentage of vacancies within an agency's inventory, including the progress that an agency has made within the previous 3 years to reduce such vacancies.

(B) The amount and percentage of funds provided to the public housing agency from the Capital Fund under section 1437g(d) of this title which remain unobligated by the public housing agency after 3 years.

(C) The percentage of rents uncollected.

(D) The utility consumption (with appropriate adjustments to reflect different regions and unit sizes).

(E) The average period of time that an agency requires to repair and turn-around vacant units.

(F) The proportion of maintenance work orders outstanding, including any progress that an agency has made during the preceding 3 years to reduce the period of time required to complete maintenance work orders.

(G) The percentage of units that an agency fails to inspect to ascertain maintenance or modernization needs within such period of time as the Secretary deems appropriate (with appropriate adjustments, if any, for large and small agencies).

(H) The extent to which the public housing agency—

(i) coordinates, promotes, or provides effective programs and activities to promote the economic self-sufficiency of public housing residents; and

(ii) provides public housing residents with opportunities for involvement in the administration of the public housing.

(I)[3] The extent to which the public housing agency—

(i) implements effective screening and eviction policies and other anticrime strategies; and

(ii) coordinates with local government officials and residents in the project and implementation of such strategies.

(J) The extent to which the public housing agency is providing acceptable basic housing conditions.

(K) Any other factors as the Secretary deems appropriate which shall not exceed the

[3] Another subpar. (I) is set out after subpar. (K).

seven factors in the statute, plus an additional five.

(I)[4] The Secretary shall:

(1) administer the system of evaluating public housing agencies flexibly to ensure that such agencies are not penalized as result of circumstances beyond their control;

(2) reflect in the weights assigned to the various indicators the differences in the difficulty of managing individual projects that result from their physical condition and their neighborhood environment; and

(3) determine a public housing agency's status as ''troubled with respect to the program under section 1437*l*[5] of this title'' based upon factors solely related to its ability to carry out that program.

(2)(A)(i) The Secretary shall, under the rulemaking procedures under section 553 of title 5, establish procedures for designating troubled public housing agencies, which procedures shall include identification of serious and substantial failure to perform as measured by the performance indicators specified under paragraph (1) and such other factors as the Secretary may deem to be appropriate. Such procedures shall provide that an agency that fails on a widespread basis to provide acceptable basic housing conditions for its residents shall be designated as a troubled public housing agency. The Secretary may use a simplified set of indicators for public housing agencies with less than 250 public housing units. The Secretary shall also designate, by rule under section 553 of title 5, agencies that are troubled with respect to the program for assistance from the Capital Fund under section 1437g(d) of this title.

(ii) The Secretary may also, in consultation with national organizations representing public housing agencies and public officials (as the Secretary determines appropriate), identify and commend public housing agencies that meet the performance standards established under paragraph (1) in an exemplary manner.

(iii) The Secretary shall establish procedures for public housing agencies to appeal designation as a troubled agency (including designation as a troubled agency for purposes of the program for assistance from the Capital Fund under section 1437g(d) of this title), to petition for removal of such designation, and to appeal any refusal to remove such designation.

(B)(i) Upon designating a public housing agency with more than 250 units as troubled pursuant to subparagraph (A) and determining that an assessment under this subparagraph will not duplicate any comparable and recent review, the Secretary shall provide for an on-site, independent assessment of the management of the agency.

(ii) To the extent the Secretary deems appropriate (taking into account an agency's performance under the indicators specified under paragraph (1)), the assessment team shall also consider issues relating to the agency's resident population and physical inventory, including the extent to which (I) the agency's comprehensive plan prepared pursuant to section 1437*l*[5] of this title adequately and appropriately addresses the rehabilitation needs of the agency's inventory, (II) residents of the agency are involved in and informed of significant management decisions, and (III) any projects in the agency's inventory are severely distressed and eligible for assistance pursuant to section 1437v of this title.

(iii) An independent assessment under this subparagraph shall be carried out by a team of knowledgeable individuals selected by the Secretary (referred to in this section as the ''assessment team'') with expertise in public housing and real estate management. In conducting an assessment, the assessment team shall consult with the residents and with public and private entities in the jurisdiction in which the public housing is located. The assessment team shall provide to the Secretary and the public housing agency a written report, which shall contain, at a minimum, recommendations for such management improvements as are necessary to eliminate or substantially remedy existing deficiencies.

(C) The Secretary shall seek to enter into an agreement with each troubled public housing agency, after reviewing the report submitted pursuant to subparagraph (B) (if applicable) and consulting with the agency's assessment team. Such agreement shall set forth—

(i) targets for improving performance as measured by the performance indicators specified under paragraph (1) and other requirements within a specified period of time;

(ii) strategies for meeting such targets, including a description of the technical assistance that the Secretary will make available to the agency; and

(iii) incentives or sanctions for effective implementation of such strategies, which may include any constraints on the use of funds that the Secretary determines are appropriate.

To the extent the Secretary deems appropriate (taking into account an agency's performance under the indicators specified under paragraph (1)), such agreement shall also set forth a plan for enhancing resident involvement in the management of the public housing agency. The Secretary and the public housing agency shall, to the maximum extent practicable, seek the assistance of local public and private entities in carrying out the agreement.

(D) The Secretary shall apply the provisions of this paragraph to resident management corporations as well as public housing agencies.

(3)(A) Notwithstanding any other provision of law or of any contract for contributions, upon the occurrence of events or conditions that constitute a substantial default by a public housing agency with respect to the covenants or conditions to which the public housing agency is subject or an agreement entered into under paragraph (2), the Secretary may—

(i) solicit competitive proposals from other public housing agencies and private housing management agents which (I) in the discretion of the Secretary, may be selected by existing public housing residents through administrative procedures established by the Secretary, and (II) if appropriate, shall provide for such agents to manage all, or part, of the housing

[4] Another subpar. (I) is set out before subpar. (J).

[5] See References in Text note below.

administered by the public housing agency or all or part of the other programs of the agency;

(ii) petition for the appointment of a receiver (which may be another public housing agency or a private management corporation) of the public housing agency to any district court of the United States or to any court of the State in which the real property of the public housing agency is situated, that is authorized to appoint a receiver for the purposes and having the powers prescribed in this subsection;

(iii) solicit competitive proposals from other public housing agencies and private entities with experience in construction management in the eventuality that such agencies or firms may be needed to oversee implementation of assistance made available from the Capital Fund under section 1437g(d) of this title for the housing; and[6]

(iv) take possession of all or part of the public housing agency, including all or part of any project or program of the agency, including any project or program under any other provision of this subchapter; and

(v) require the agency to make other arrangements acceptable to the Secretary and in the best interests of the public housing residents and families assisted under section 1437f of this title for managing all, or part, of the public housing administered by the agency or of the programs of the agency.

Residents of a public housing agency designated as troubled pursuant to paragraph (2)(A) may petition the Secretary in writing to take 1 or more of the actions referred to in this subparagraph. The Secretary shall respond to such petitions in a timely manner with a written description of the actions, if any, the Secretary plans to take and, where applicable, the reasons why such actions differ from the course proposed by the residents.

(B)(i) If a public housing agency is identified as troubled under this subsection, the Secretary shall notify the agency of the troubled status of the agency.

(ii)(I) Upon the expiration of the 1-year period beginning on the later of the date on which the agency receives initial notice from the Secretary of the troubled status of the agency under clause (i) and October 21, 1998, the agency shall improve its performance, as measured by the performance indicators established pursuant to paragraph (1), by at least 50 percent of the difference between the most recent performance measurement and the measurement necessary to remove that agency's designation as troubled.

(II) Upon the expiration of the 2-year period beginning on the later of the date on which the agency receives initial notice from the Secretary of the troubled status of the agency under clause (i) and October 21, 1998, the agency shall improve its performance, as measured by the performance indicators established pursuant to paragraph (1), such that the agency is no longer designated as troubled.

(III) In the event that a public housing agency designated as troubled under this subsection fails to comply with the requirements set forth in subclause (I) or (II), the Secretary shall—

(aa) in the case of a troubled public housing agency with 1,250 or more units, petition for the appointment of a receiver pursuant to subparagraph (A)(ii); or

(bb) in the case of a troubled public housing agency with fewer than 1,250 units, either petition for the appointment of a receiver pursuant to subparagraph (A)(ii), or take possession of the public housing agency (including all or part of any project or program of the agency) pursuant to subparagraph (A)(iv) and appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of the Secretary for the administration of all or part of the public housing agency (including all or part of any project or program of the agency).

This subparagraph shall not be construed to limit the courses of action available to the Secretary under subparagraph (A).

(IV) During the period between the date on which a petition is filed under subclause (III)(aa) and the date on which a receiver assumes responsibility for the management of the public housing agency under such subclause, the Secretary may take possession of the public housing agency (including all or part of any project or program of the agency) pursuant to subparagraph (A)(iv) and may appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of the Secretary for the administration of all or part of the public housing agency (including all or part of any project or program of the agency).

(C) If a receiver is appointed pursuant to subparagraph (A)(ii), in addition to the powers accorded by the court appointing the receiver, the receiver—

(i) may abrogate any contract to which the United States or an agency of the United States is not a party that, in the receiver's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default, but only after the receiver determines that reasonable efforts to renegotiate such contract have failed;

(ii) may demolish and dispose of all or part of the assets of the public housing agency (including all or part of any project of the agency) in accordance with section 1437p of this title, including disposition by transfer of properties to resident-supported nonprofit entities;

(iii) if determined to be appropriate by the Secretary, may seek the establishment, as permitted by applicable State and local law, of 1 or more new public housing agencies;

(iv) if determined to be appropriate by the Secretary, may seek consolidation of all or part of the agency (including all or part of any project or program of the agency), as permitted by applicable State and local laws, into other well-managed public housing agencies with the consent of such well-managed agencies; and

(v) shall not be required to comply with any State or local law relating to civil service requirements, employee rights (except civil

[6] So in original. The word ''and'' probably should not appear.

rights), procurement, or financial or administrative controls that, in the receiver's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default.

(D)(i) If, pursuant to subparagraph (A)(iv), the Secretary takes possession of all or part of the public housing agency, including all or part of any project or program of the agency, the Secretary—

(I) may abrogate any contract to which the United States or an agency of the United States is not a party that, in the written determination of the Secretary (which shall include the basis for such determination), substantially impedes correction of the substantial default, but only after the Secretary determines that reasonable efforts to renegotiate such contract have failed;

(II) may demolish and dispose of all or part of the assets of the public housing agency (including all or part of any project of the agency) in accordance with section 1437p of this title, including disposition by transfer of properties to resident-supported nonprofit entities;

(III) may seek the establishment, as permitted by applicable State and local law, of 1 or more new public housing agencies;

(IV) may seek consolidation of all or part of the agency (including all or part of any project or program of the agency), as permitted by applicable State and local laws, into other well-managed public housing agencies with the consent of such well-managed agencies;

(V) shall not be required to comply with any State or local law relating to civil service requirements, employee rights (except civil rights), procurement, or financial or administrative controls that, in the Secretary's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default; and

(VI) shall, without any action by a district court of the United States, have such additional authority as a district court of the United States would have the authority to confer upon a receiver to achieve the purposes of the receivership.

(ii) If, pursuant to subparagraph (B)(ii)(III)(bb), the Secretary appoints an administrative receiver to assume the responsibilities of the Secretary for the administration of all or part of the public housing agency (including all or part of any project or program of the agency), the Secretary may delegate to the administrative receiver any or all of the powers given the Secretary by this subparagraph, as the Secretary determines to be appropriate and subject to clause (iii).

(iii) An administrative receiver may not take an action described in subclause (III) or (IV) of clause (i) unless the Secretary first approves an application by the administrative receiver to authorize such action.

(E) The Secretary may make available to receivers and other entities selected or appointed pursuant to this paragraph such assistance as the Secretary determines in the discretion of the Secretary is necessary and available to remedy the substantial deterioration of living conditions in individual public housing projects or other related emergencies that endanger the health, safety, and welfare of public housing residents or families assisted under section 1437f of this title. A decision made by the Secretary under this paragraph shall not be subject to review in any court of the United States, or in any court of any State, territory, or possession of the United States.

(F) In any proceeding under subparagraph (A)(ii), upon a determination that a substantial default has occurred and without regard to the availability of alternative remedies, the court shall appoint a receiver to conduct the affairs of all or part of the public housing agency in a manner consistent with this chapter and in accordance with such further terms and conditions as the court may provide. The receiver appointed may be another public housing agency, a private management corporation, or any other person or appropriate entity. The court shall have power to grant appropriate temporary or preliminary relief pending final disposition of the petition by the Secretary.

(G) The appointment of a receiver pursuant to this paragraph may be terminated, upon the petition of any party, when the court determines that all defaults have been cured or the public housing agency is capable again of discharging its duties.

(H) If the Secretary (or an administrative receiver appointed by the Secretary) takes possession of a public housing agency (including all or part of any project or program of the agency), or if a receiver is appointed by a court, the Secretary or receiver shall be deemed to be acting not in the official capacity of that person or entity, but rather in the capacity of the public housing agency, and any liability incurred, regardless of whether the incident giving rise to that liability occurred while the Secretary or receiver was in possession of all or part of the public housing agency (including all or part of any project or program of the agency), shall be the liability of the public housing agency.

(4) SANCTIONS FOR IMPROPER USE OF AMOUNTS.—

(A) IN GENERAL.—In addition to any other actions authorized under this chapter, if the Secretary finds that a public housing agency receiving assistance amounts under section 1437g of this title for public housing has failed to comply substantially with any provision of this chapter relating to the public housing program, the Secretary may—

(i) terminate assistance payments under this[7] section 1437g of this title to the agency;

(ii) withhold from the agency amounts from the total allocations for the agency pursuant to section 1437g of this title;

(iii) reduce the amount of future assistance payments under section 1437g of this title to the agency by an amount equal to the amount of such payments that were not expended in accordance with this chapter;

(iv) limit the availability of assistance amounts provided to the agency under sec-

[7] So in original. The word ''this'' probably should not appear.

tion 1437g of this title to programs, projects, or activities not affected by such failure to comply;

(v) withhold from the agency amounts allocated for the agency under section 1437f of this title; or

(vi) order other corrective action with respect to the agency.

(B) TERMINATION OF COMPLIANCE ACTION.—If the Secretary takes action under subparagraph (A) with respect to a public housing agency, the Secretary shall—

(i) in the case of action under subparagraph (A)(i), resume payments of assistance amounts under section 1437g of this title to the agency in the full amount of the total allocations under section 1437g of this title for the agency at the time that the Secretary first determines that the agency will comply with the provisions of this chapter relating to the public housing program;

(ii) in the case of action under clause (ii) or (v) of subparagraph (A), make withheld amounts available as the Secretary considers appropriate to ensure that the agency complies with the provisions of this chapter relating to such program;

(iii) in the case of action under subparagraph (A)(iv), release such restrictions at the time that the Secretary first determines that the agency will comply with the provisions of this chapter relating to such program; or

(iv) in the case of action under subparagraph (vi), cease such action at the time that the Secretary first determines that the agency will comply with the provisions of this chapter relating to such program.

(5) The Secretary shall submit to the Congress annually, as a part of the report of the Secretary under section 3536 of this title, a report that—

(A) identifies the public housing agencies that have been designated as troubled under paragraph (2);

(B) describes the grounds on which such public housing agencies were designated as troubled and continue to be so designated;

(C) describes the agreements that have been entered into with such agencies under such paragraph;

(D) describes the status of progress under such agreements;

(E) describes any action that has been taken in accordance with paragraph (3), including an accounting of the authorized funds that have been expended to support such actions; and

(F) describes the status of any public housing agency designated as troubled with respect to the program for assistance from the Capital Fund under section 1437g(d) of this title and specifies the amount of assistance the agency received under such program.

(6)(A) To the extent that the Secretary determines such action to be necessary in order to ensure the accuracy of any certification made under this section, the Secretary shall require an independent auditor to review documentation or other information maintained by a public housing agency pursuant to this section to substantiate each certification submitted by the agency or corporation relating to the performance of that agency or corporation.

(B) The Secretary may withhold, from assistance otherwise payable to the agency or corporation under section 1437g of this title, amounts sufficient to pay for the reasonable costs of any review under this paragraph.

(7) The Secretary shall apply the provisions of this subsection to resident management corporations in the same manner as applied to public housing agencies.

(k) Administrative grievance procedure regulations: grounds of adverse action, hearing, examination of documents, representation, evidence, decision; judicial hearing; eviction and termination procedures

The Secretary shall by regulation require each public housing agency receiving assistance under this chapter to establish and implement an administrative grievance procedure under which tenants will—

(1) be advised of the specific grounds of any proposed adverse public housing agency action;

(2) have an opportunity for a hearing before an impartial party upon timely request within any period applicable under subsection (*l*) of this section;

(3) have an opportunity to examine any documents or records or regulations related to the proposed action;

(4) be entitled to be represented by another person of their choice at any hearing;

(5) be entitled to ask questions of witnesses and have others make statements on their behalf; and

(6) be entitled to receive a written decision by the public housing agency on the proposed action.

For any grievance concerning an eviction or termination of tenancy that involves any activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the public housing agency or any violent or drug-related criminal activity on or off such premises, or any activity resulting in a felony conviction, the agency may (A) establish an expedited grievance procedure as the Secretary shall provide by rule under section 553 of title 5, or (B) exclude from its grievance procedure any such grievance, in any jurisdiction which requires that prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process (which the Secretary shall establish by rule under section 553 of title 5). Such elements of due process shall not include a requirement that the tenant be provided an opportunity to examine relevant documents within the possession of the public housing agency. The agency shall provide to the tenant a reasonable opportunity, prior to hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination.

***(l)* Leases; terms and conditions; maintenance; termination**

Each public housing agency shall utilize leases which—

(1) have a term of 12 months and shall be automatically renewed for all purposes except for noncompliance with the requirements under section 1437j(c) of this title (relating to community service requirements); except that nothing in this subchapter shall prevent a resident from seeking timely redress in court for failure to renew based on such noncompliance;

(2) do not contain unreasonable terms and conditions;

(3) obligate the public housing agency to maintain the project in a decent, safe, and sanitary condition;

(4) require the public housing agency to give adequate written notice of termination of the lease which shall not be less than—

(A) a reasonable period of time, but not to exceed 30 days—

(i) if the health or safety of other tenants, public housing agency employees, or persons residing in the immediate vicinity of the premises is threatened; or

(ii) in the event of any drug-related or violent criminal activity or any felony conviction;

(B) 14 days in the case of nonpayment of rent; and

(C) 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply;

(5) require that the public housing agency may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence;

(6) provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy; except that: (A) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (B) notwithstanding subparagraph (A), a public housing agency under this section may bifurcate a lease under this section, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant; (C) nothing in subparagraph (A) may be construed to limit the authority of a public housing agency, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (D) nothing in subparagraph (A) limits any otherwise available authority of a public housing agency to evict a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (E) nothing in subparagraph (A) may be construed to limit the authority of a public housing agency to terminate the tenancy of any tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated; and (F) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.;[8]

(7) specify that with respect to any notice of eviction or termination, notwithstanding any State law, a public housing tenant shall be informed of the opportunity, prior to any hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination;

(7)[9] provide that any occupancy in violation of section 13661(b) of this title (relating to ineligibility of illegal drug users and alcohol abusers) or the furnishing of any false or misleading information pursuant to section 13662 of this title (relating to termination of tenancy and assistance for illegal drug users and alcohol abusers) shall be cause for termination of tenancy;[10]

(9) provide that it shall be cause for immediate termination of the tenancy of a public housing tenant if such tenant—

(A) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

(2)[11] is violating a condition of probation or parole imposed under Federal or State law.

[8] So in original. The period probably should not appear.

[9] So in original. Probably should be ''(8)''.

[10] So in original. Probably should be followed by ''and''.

[11] So in original. Probably should be ''(B)''.

For purposes of paragraph (5),[12] the term ''drug-related criminal activity'' means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 802 of title 21).

(m) Reporting requirements; limitation

The Secretary shall not impose any unnecessarily duplicative or burdensome reporting requirements on tenants or public housing agencies assisted under this chapter.

(n) Notice to post office regarding eviction for criminal activity

When a public housing agency evicts an individual or family from a dwelling unit for engaging in criminal activity, including drug-related criminal activity, the public housing agency shall notify the local post office serving that dwelling unit that such individual or family is no longer residing in the dwelling unit.

(*o*) Public housing assistance for foster care children

In providing housing in low-income housing projects, each public housing agency may coordinate with any local public agencies involved in providing for the welfare of children to make available dwelling units to—

(1) families identified by the agencies as having a lack of adequate housing that is a primary factor—

(A) in the imminent placement of a child in foster care; or

(B) in preventing the discharge of a child from foster care and reunification with his or her family; and

(2) youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available.

(p) Repealed. Pub. L. 105–276, title V, § 519(b), Oct. 21, 1998, 112 Stat. 2561

(q) Availability of records

(1) In general

(A) Provision of information

Notwithstanding any other provision of law, except as provided in subparagraph (C), the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction.

(B) Requests by owners of project-based section 8 [42 U.S.C. 1437f] housing

A public housing agency may make a request under subparagraph (A) for information regarding applicants for, or tenants of, housing that is provided project-based assistance under section 1437f of this title only if the housing is located within the jurisdiction of the agency and the owner of such housing has requested that the agency obtain such information on behalf of the owner. Upon such a request by the owner, the agency shall make a request under subparagraph (A) for the information. The agency may not make such information available to the owner but shall perform determinations for the owner regarding screening, lease enforcement, and eviction based on criteria supplied by the owner.

(C) Exception

A law enforcement agency described in subparagraph (A) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.

(2) Opportunity to dispute

Before an adverse action is taken with regard to assistance under this subchapter on the basis of a criminal record, the public housing agency shall provide the tenant or applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record.

(3) Fees

A public housing agency may be charged a reasonable fee for information provided under paragraph (1). In the case of a public housing agency obtaining information pursuant to paragraph (1)(B) for another owner of housing, the agency may pass such fee on to the owner initiating the request and may charge additional reasonable fees for making the request on behalf of the owner and taking other actions for owners under this subsection.

(4) Records management

Each public housing agency shall establish and implement a system of records management that ensures that any criminal record received by the public housing agency is—

(A) maintained confidentially;

(B) not misused or improperly disseminated; and

(C) destroyed, once the purpose for which the record was requested has been accomplished.

(5) Confidentiality

A public housing agency receiving information under this subsection may use such information only for the purposes provided in this subsection and such information may not be disclosed to any person who is not an officer, employee, or authorized representative of the agency and who has a job-related need to have access to the information in connection with admission of applicants, eviction of tenants, or termination of assistance. For judicial eviction proceedings, disclosures may be made to the extent necessary. The Secretary shall, by regulation, establish procedures necessary to ensure that information provided under this subsection to a public housing agency is used, and confidentiality of such information is maintained, as required under this subsection. The Secretary shall establish standards for confidentiality of information obtained under this subsection by public housing agencies on behalf of owners.

[12] See References in Text note below.

(6) Penalty

Any person who knowingly and willfully requests or obtains any information concerning an applicant for, or tenant of, covered housing assistance pursuant to the authority under this subsection under false pretenses, or any person who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive it, shall be guilty of a misdemeanor and fined not more than $5,000. The term ''person'' as used in this paragraph include[13] an officer, employee, or authorized representative of any public housing agency.

(7) Civil action

Any applicant for, or tenant of, covered housing assistance affected by (A) a negligent or knowing disclosure of information referred to in this subsection about such person by an officer, employee, or authorized representative of any public housing agency, which disclosure is not authorized by this subsection, or (B) any other negligent or knowing action that is inconsistent with this subsection, may bring a civil action for damages and such other relief as may be appropriate against any public housing agency responsible for such unauthorized action. The district court of the United States in the district in which the affected applicant or tenant resides, in which such unauthorized action occurred, or in which the officer, employee, or representative alleged to be responsible for any such unauthorized action resides, shall have jurisdiction in such matters. Appropriate relief that may be ordered by such district courts shall include reasonable attorney's fees and other litigation costs.

(8) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Adult

The term ''adult'' means a person who is 18 years of age or older, or who has been convicted of a crime as an adult under any Federal, State, or tribal law.

(B) Covered housing assistance

The term ''covered housing assistance'' means—

(i) a dwelling unit in public housing;

(ii) a dwelling unit in housing that is provided project-based assistance under section 1437f of this title, including new construction and substantial rehabilitation projects; and

(iii) tenant-based assistance under section 1437f of this title.

(C) Owner

The term ''owner'' means, with respect to covered housing assistance described in subparagraph (B)(ii), the entity or private person (including a cooperative or public housing agency) that has the legal right to lease or sublease dwelling units in the housing assisted.

[13] So in original. Probably should be ''includes''.

(r) Site-based waiting lists

(1) Authority

A public housing agency may establish procedures for maintaining waiting lists for admissions to public housing projects of the agency, which may include (notwithstanding any other law, regulation, handbook, or notice to the contrary) a system of site-based waiting lists under which applicants may apply directly at or otherwise designate the project or projects in which they seek to reside. All such procedures shall comply with all provisions of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Fair Housing Act [42 U.S.C. 3601 et seq.], and other applicable civil rights laws.

(2) Notice

Any system described in paragraph (1) shall provide for the full disclosure by the public housing agency to each applicant of any option available to the applicant in the selection of the project in which to reside.

(s) Authority to require access to criminal records

A public housing agency may require, as a condition of providing admission to the public housing program or assisted housing program under the jurisdiction of the public housing agency, that each adult member of the household provide a signed, written authorization for the public housing agency to obtain records described in subsection (q)(1) of this section regarding such member of the household from the National Crime Information Center, police departments, and other law enforcement agencies.

(t) Obtaining information from drug abuse treatment facilities

(1) Authority

Notwithstanding any other provision of law other than the Public Health Service Act (42 U.S.C. 201 et seq.), a public housing agency may require each person who applies for admission to public housing to sign one or more forms of written consent authorizing the agency to receive information from a drug abuse treatment facility that is solely related to whether the applicant is currently engaging in the illegal use of a controlled substance.

(2) Confidentiality of applicant's records

(A) Limitation on information requested

In a form of written consent, a public housing agency may request only whether the drug abuse treatment facility has reasonable cause to believe that the applicant is currently engaging in the illegal use of a controlled substance.

(B) Records management

Each public housing agency that receives information under this subsection from a drug abuse treatment facility shall establish and implement a system of records management that ensures that any information received by the public housing agency under this subsection—

(i) is maintained confidentially in accordance with section 543 of the Public Health Service Act [42 U.S.C. 290dd–2];

(ii) is not misused or improperly disseminated; and

(iii) is destroyed, as applicable—

(I) not later than 5 business days after the date on which the public housing agency gives final approval for an application for admission; or

(II) if the public housing agency denies the application for admission, in a timely manner after the date on which the statute of limitations for the commencement of a civil action from the applicant based upon that denial of admission has expired.

(C) Expiration of written consent

In addition to the requirements of subparagraph (B), an applicant's signed written consent shall expire automatically after the public housing agency has made a final decision to either approve or deny the applicant's application for admittance to public housing.

(3) Prohibition of discriminatory treatment of applicants

(A) Forms signed

A public housing agency may only require an applicant for admission to public housing to sign one or more forms of written consent under this subsection if the public housing agency requires all such applicants to sign the same form or forms of written consent.

(B) Circumstances of inquiry

A public housing agency may only make an inquiry to a drug abuse treatment facility under this subsection if—

(i) the public housing agency makes the same inquiry with respect to all applicants; or

(ii) the public housing agency only makes the same inquiry with respect to each and every applicant with respect to whom—

(I) the public housing agency receives information from the criminal record of the applicant that indicates evidence of a prior arrest or conviction; or

(II) the public housing agency receives information from the records of prior tenancy of the applicant that demonstrates that the applicant—

(aa) engaged in the destruction of property;

(bb) engaged in violent activity against another person; or

(cc) interfered with the right of peaceful enjoyment of the premises of another tenant.

(4) Fee permitted

A drug abuse treatment facility may charge a public housing agency a reasonable fee for information provided under this subsection.

(5) Disclosure permitted by treatment facilities

A drug abuse treatment facility shall not be liable for damages based on any information required to be disclosed pursuant to this subsection if such disclosure is consistent with section 543 of the Public Health Service Act (42 U.S.C. 290dd–2).

(6) Option to not request information

A public housing agency shall not be liable for damages based on its decision not to require each person who applies for admission to public housing to sign one or more forms of written consent authorizing the public housing agency to receive information from a drug abuse treatment facility under this subsection.

(7) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Drug abuse treatment facility

The term ''drug abuse treatment facility'' means an entity that—

(i) is—

(I) an identified unit within a general medical care facility; or

(II) an entity other than a general medical care facility; and

(ii) holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal use of a controlled substance.

(B) Controlled substance

The term ''controlled substance'' has the meaning given the term in section 802 of title 21.

(C) Currently engaging in the illegal use of a controlled substance

The term ''currently engaging in the illegal use of a controlled substance'' means the illegal use of a controlled substance that occurred recently enough to justify a reasonable belief that an applicant's illegal use of a controlled substance is current or that continuing illegal use of a controlled substance by the applicant is a real and ongoing problem.

(8) Effective date

This subsection shall take effect on October 21, 1998, and without the necessity of guidance from, or any regulation issued by, the Secretary.

(u) Certification and confidentiality

(1) Certification

(A) In general

A public housing agency responding to subsection (*l*)(5) and (6) of this section may request that an individual certify via a HUD approved certification form that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in the aforementioned paragraphs. Such certification shall include the name of the perpetrator. The individual shall provide such certification within 14 business days after the public housing agency requests such certification.

(B) Failure to provide certification

If the individual does not provide the certification within 14 business days after the

public housing agency has requested such certification in writing, nothing in this subsection, or in paragraph (5) or (6) of subsection (*l*) of this section, may be construed to limit the authority of the public housing agency to evict any tenant or lawful occupant that commits violations of a lease. The public housing agency may extend the 14-day deadline at its discretion.

(C) Contents

An individual may satisfy the certification requirement of subparagraph (A) by—

(i) providing the requesting public housing agency with documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of the abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or

(ii) producing a Federal, State, tribal, territorial, or local police or court record.

(D) Limitation

Nothing in this subsection shall be construed to require any public housing agency to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, or stalking in order to receive any of the benefits provided in this section. At the public housing agency's discretion, a public housing agency may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.

(E) Preemption

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

(F) Compliance not sufficient to constitute evidence of unreasonable act

Compliance with this statute by a public housing agency, or assisted housing provider based on the certification specified in subparagraphs (A) and (B) of this subsection[14] or based solely on the victim's statement or other corroborating evidence, as permitted by subparagraph (D) of this subsection,[14] shall not alone be sufficient to constitute evidence of an unreasonable act or omission by a public housing agency or employee thereof. Nothing in this subparagraph shall be construed to limit liability for failure to comply with the requirements of subsection (*l*)(5) and (6) of this section.

[14] So in original. Probably should be ''of this paragraph''.

(2) Confidentiality

(A) In general

All information provided to any public housing agency pursuant to paragraph (1), including the fact that an individual is a victim of domestic violence, dating violence, or stalking, shall be retained in confidence by such public housing agency, and shall neither be entered into any shared database nor provided to any related entity, except to the extent that disclosure is—

(i) requested or consented to by the individual in writing;

(ii) required for use in an eviction proceeding under subsection (*l*)(5) or (6) of this section; or

(iii) otherwise required by applicable law.

(B) Notification

Public housing agencies must provide notice to tenants assisted under this section of their rights under this subsection and subsection (*l*)(5) and (6) of this section, including their right to confidentiality and the limits thereof.

(3) Definitions

For purposes of this subsection, subsection (c)(3) of this section, and subsection (*l*)(5) and (6) of this section—

(A) the term ''domestic violence'' has the same meaning given the term in section 13925 of this title;

(B) the term ''dating violence'' has the same meaning given the term in section 13925 of this title;

(C) the term ''stalking'' means—

(i)(I) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or

(II) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and

(ii) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to—

(I) that person;

(II) a member of the immediate family of that person; or

(III) the spouse or intimate partner of that person; and

(D) the term ''immediate family member'' means, with respect to a person—

(i) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or

(ii) any other person living in the household of that person and related to that person by blood and marriage.

(Sept. 1, 1937, ch. 896, title I, §6, as added Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 659; amended Pub. L. 96–153, title II, §206(a), Dec. 21, 1979, 93 Stat. 1108; Pub. L. 96–399, title II, §§201(c), (e), 202(c), Oct. 8, 1980, 94 Stat. 1625, 1629; Pub. L. 97–35, title III, §322(c), (d), Aug. 13, 1981,

95 Stat. 402; Pub. L. 98–181, title II, §§ 201(c), 203(a), 204, 205, 214(b), Nov. 30, 1983, 97 Stat. 1177–1179, 1185; Pub. L. 98–479, title I, § 102(b)(4), (5), title II, § 204(b)(1), Oct. 17, 1984, 98 Stat. 2221, 2233; Pub. L. 99–160, title I, § 101, Nov. 25, 1985, 99 Stat. 910; Pub. L. 100–242, title I, §§ 112(b)(2), 116, 170(d), Feb. 5, 1988, 101 Stat. 1824, 1826, 1867; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 100–628, title X, §§ 1001(b), 1014(a)(1), Nov. 7, 1988, 102 Stat. 3263, 3269; Pub. L. 100–690, title V, § 5101, Nov. 18, 1988, 102 Stat. 4300; Pub. L. 101–144, title II, Nov. 9, 1989, 103 Stat. 846; Pub. L. 101–625, title V, §§ 501, 502(a), (c)(1), 503(a), (b), 504–506, 572, Nov. 28, 1990, 104 Stat. 4180, 4181, 4183–4185, 4236; Pub. L. 102–139, title II, Oct. 28, 1991, 105 Stat. 756, 757; Pub. L. 102–550, title I, §§ 112, 113, title VI, §§ 622(b), 625(a)(2), 682(a), Oct. 28, 1992, 106 Stat. 3689, 3817, 3820, 3830; Pub. L. 103–233, title I, § 101(c)(1), title III, § 303, Apr. 11, 1994, 108 Stat. 357, 370; Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2315; Pub. L. 104–99, title IV, § 402(d)(1), (6)(A)(i), Jan. 26, 1996, 110 Stat. 41, 42; Pub. L. 104–120, § 9(a)–(c), Mar. 28, 1996, 110 Stat. 836, 837; Pub. L. 104–193, title IX, § 903(a)(1), Aug. 22, 1996, 110 Stat. 2348; Pub. L. 104–330, title V, § 501(b)(3), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title V, §§ 511(d), 512(b), 514(a)(1), (2)(A), 519(b), 520(b), 521, 525, 529, 530, 564, 565(a), 575, 576(d)(1), Oct. 21, 1998, 112 Stat. 2539, 2543, 2547, 2561, 2563, 2568, 2569, 2627, 2628, 2634, 2640; Pub. L. 109–162, title VI, § 607, Jan. 5, 2006, 119 Stat. 3048.)

REFERENCES IN TEXT

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (b)(3)(A), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the ''HOME Investments Partnership Act'', is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (b)(3)(B), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Act is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Housing and Community Development Act of 1992, referred to in subsec. (c)(5)(F), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672. Subtitle C of title VI of the Act is classified generally to subchapter I (§ 13601 et seq.) of chapter 135 of this title. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of this title and Tables.

Section 1437*l* of this title, referred to in subsec. (j)(1)(I)(3), (2)(B)(ii), was repealed by Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564.

Paragraph (5), referred to in the concluding provisions of subsec. (*l*), was redesignated as par. (6) by Pub. L. 105–276, title V, § 512(b)(1), Oct. 21, 1998, 112 Stat. 2543.

The Civil Rights Act of 1964, referred to in subsec. (r)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Fair Housing Act, referred to in subsec. (r)(1), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The civil rights laws, referred to in subsec. (r)(1), are classified generally to chapter 21 (§ 1981 et seq.) of this title.

The Public Health Service Act, referred to in subsec. (t)(1), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

PRIOR PROVISIONS

A prior section 6 of act Sept. 1, 1937, ch. 896, 50 Stat. 890, as amended, enumerated financial provisions applicable to the Authority and was classified to section 1406 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

2006—Subsec. (c)(3) to (5). Pub. L. 109–162, § 607(1), (2), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (*l*)(5). Pub. L. 109–162, § 607(3), inserted '', and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence'' before semicolon at end.

Subsec. (*l*)(6). Pub. L. 109–162, § 607(4), inserted before semicolon at end ''; except that: (A) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (B) notwithstanding subparagraph (A), a public housing agency under this section may bifurcate a lease under this section, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant; (C) nothing in subparagraph (A) may be construed to limit the authority of a public housing agency, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (D) nothing in subparagraph (A) limits any otherwise available authority of a public housing agency to evict a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (E) nothing in subparagraph (A) may be construed to limit the authority of a public housing agency to terminate the tenancy of any tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated; and (F) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.''

Subsec. (u). Pub. L. 109–162, § 607(5), added subsec. (u).

1998—Subsec. (a). Pub. L. 105–276, § 511(d), in first sentence, inserted '', in a manner consistent with the public housing agency plan'' before the period at end and struck out after first sentence ''Any such contract may

contain a condition requiring the maintenance of an open space or playground in connection with the housing project involved if deemed necessary by the Secretary for the safety or health of children.''

Subsec. (b)(3), (4). Pub. L. 105–276, § 520(b), added pars. (3) and (4).

Subsec. (c)(4)(A). Pub. L. 105–276, § 514(a)(1), amended subpar. (A) generally. For former text of subpar. (A), see 1996 Amendment note below.

Subsec. (c)(4)(E). Pub. L. 105–276, § 529(1), substituted ''for each agency that receives assistance under this subchapter'' for ''except in the case of agencies not receiving operating assistance under section 1437g of this title''.

Subsec. (e). Pub. L. 105–276, § 529(2), struck out subsec. (e) which read as follows: ''Every contract for annual contributions shall provide that whenever in any year the receipts of a public housing agency in connection with a low-income housing project exceed its expenditures (including debt service, operation, maintenance, establishment of reserves, and other costs and charges), an amount equal to such excess shall be applied, or set aside for application, to purposes, which, in the determination of the Secretary, will effect a reduction in the amount of subsequent annual contributions.''

Subsec. (f). Pub. L. 105–276, § 530, added subsec. (f).

Subsec. (j)(1)(B). Pub. L. 105–276, § 564(1)(A), added subpar. (B) and struck out former subpar. (B) which read as follows: ''The amount and percentage of funds obligated to the public housing agency under section 1437*l* of this title which remain unexpended after 3 years.''

Subsec. (j)(1)(D). Pub. L. 105–276, § 564(1)(B), substituted ''utility'' for ''energy''.

Subsec. (j)(1)(E). Pub. L. 105–276, § 564(1)(C), which directed the transfer and insertion of subpar. (E) after subpar. (D), required no change in text.

Subsec. (j)(1)(H) to (K). Pub. L. 105–276, § 564(1)(D), (E), added subpars. (H), (I), relating to extent to which agency implements and coordinates strategies, and (J), and redesignated former subpar. (H) as (K).

Subsec. (j)(2)(A)(i). Pub. L. 105–276, § 564(2)(A), inserted after first sentence ''Such procedures shall provide that an agency that fails on a widespread basis to provide acceptable basic housing conditions for its residents shall be designated as a troubled public housing agency. The Secretary may use a simplified set of indicators for public housing agencies with less than 250 public housing units.'' and, in last sentence, substituted ''for assistance from the Capital Fund under section 1437g(d) of this title'' for ''under section 1437*l* of this title''.

Subsec. (j)(2)(A)(iii). Pub. L. 105–276, § 564(2)(B), substituted ''for assistance from the Capital Fund under section 1437g(d) of this title'' for ''under section 1437*l* of this title''.

Subsec. (j)(2)(B)(i). Pub. L. 105–276, § 564(2)(C), inserted ''with more than 250 units'' after ''public housing agency'' and substituted ''comparable and recent review'' for ''review conducted under section 1437*l*(p) of this title''.

Subsec. (j)(2)(C). Pub. L. 105–276, § 564(2)(D), inserted ''(if applicable)'' after ''subparagraph (B)'' in first sentence.

Subsec. (j)(3)(A)(i). Pub. L. 105–276, § 565(a)(1)(A), added cl. (i) and struck out former cl. (i) which read as follows: ''solicit competitive proposals from other public housing agencies and private housing management agents (which may be selected by existing tenants through administrative procedures established by the Secretary) in the eventuality that these agents may be needed for managing all, or part, of the housing administered by a public housing agency;''.

Subsec. (j)(3)(A)(iii). Pub. L. 105–276, § 565(a)(1)(B), substituted ''from the Capital Fund under section 1437g(d) of this title'' for ''under section 1437*l* of this title''.

Subsec. (j)(3)(A)(iv), (v). Pub. L. 105–276, § 565(a)(1)(C), added cls. (iv) and (v) and struck out former cl. (iv) which read as follows: ''require the agency to make other arrangements acceptable to the Secretary and in the best interests of the public housing residents for managing all, or part of, such housing.''

Subsec. (j)(3)(B) to (H). Pub. L. 105–276, § 565(a)(2), added subpars. (B) to (H) and struck out former subpars. (B) to (D) which read as follows:

''(B) The Secretary may make available to receivers and other entities selected or appointed pursuant to this paragraph such assistance as is necessary to remedy the substantial deterioration of living conditions in individual public housing developments or other related emergencies that endanger the health, safety and welfare of the residents.

''(C) In any proceeding under subparagraph (A)(ii), upon a determination that a substantial default has occurred, and without regard to the availability of alternative remedies, the court shall appoint a receiver to conduct the affairs of the public housing agency in a manner consistent with this chapter and in accordance with such further terms and conditions as the court may provide. The court shall have power to grant appropriate temporary or preliminary relief pending final disposition of the petition by the Secretary.

''(D) The appointment of a receiver pursuant to this subsection may be terminated, upon the petition of any party, when the court determines that all defaults have been cured and the housing operated by the public housing agency will thereafter be operated in accordance with the covenants and conditions to which the public housing agency is subject.''

Subsec. (j)(4), (5). Pub. L. 105–276, § 521, added par. (4) and redesignated former par. (4) as (5).

Subsec. (j)(5)(F). Pub. L. 105–276, § 564(3), substituted ''program for assistance from the Capital Fund under section 1437g(d) of this title and specifies the amount of assistance the agency received under such program.'' for ''program under section 1437*l* of this title and specifies the amount of assistance the agency received under section 1437*l* of this title and any credits accumulated by the agency under section 1437*l*(k)(5)(D) of this title.''

Subsec. (j)(6), (7). Pub. L. 105–276, § 564(4), added pars. (6) and (7).

Subsec. (k). Pub. L. 105–276, § 575(a), in first sentence of concluding provisions, inserted ''violent or'' before ''drug-related'' and ''or any activity resulting in a felony conviction,'' after ''on or off such premises,''.

Subsec. (*l*)(1) to (3). Pub. L. 105–276, § 512(b)(1), (3), added par. (1) and redesignated former pars. (1) to (3) as (2) to (4), respectively.

Subsec. (*l*)(4). Pub. L. 105–276, § 512(b)(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (*l*)(4)(A). Pub. L. 105–276, § 575(b)(1)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''a reasonable time, but not to exceed 30 days, when the health or safety of other tenants or public housing agency employees is threatened;''.

Subsec. (*l*)(4)(C). Pub. L. 105–276, § 575(b)(1)(B), inserted '', except that if a State or local law provides for a shorter period of time, such shorter period shall apply'' before semicolon at end.

Subsec. (*l*)(5), (6). Pub. L. 105–276, § 512(b)(1), redesignated pars. (4) and (5) as (5) and (6), respectively. Former par. (6) redesignated (7), relating to specification that tenant be informed of opportunity to examine documents.

Subsec. (*l*)(7). Pub. L. 105–276, § 575(b)(4), added par. (7) relating to termination for illegal drug use and alcohol abuse.

Pub. L. 105–276, § 575(b)(2), struck out ''and'' at end.

Pub. L. 105–276, § 512(b)(2), which directed the redesignation of par. (7) as (9), was executed by redesignating the par. (7), relating to termination of tenancy if tenant is fleeing prosecution or in violation of parole, as (9), to reflect the probable intent of Congress.

Pub. L. 105–276, § 512(b)(1), redesignated par. (6) as (7), relating to specification that tenant be informed of opportunity to examine documents.

Subsec. (*l*)(9). Pub. L. 105–276, § 512(b)(2), which directed the redesignation of par. (7) as (9), was executed by redesignating the par. (7), relating to termination of tenancy if tenant is fleeing prosecution or in violation

of parole, as (9), to reflect the probable intent of Congress.

Subsec. (*o*). Pub. L. 105–276, § 514(a)(2)(A), substituted ''In'' for ''Subject'' and all that follows through '', in'' in introductory provisions.

Subsec. (p). Pub. L. 105–276, § 519(b), struck out subsec. (p) which read as follows: ''With respect to amounts available for obligation on or after October 1, 1991, the criteria established under section 1439(d)(5)(B) of this title for any competition for assistance for new construction, acquisition, or acquisition and rehabilitation of public housing shall give preference to applications for housing to be located in a local market area that has an inadequate supply of housing available for use by very low-income families. The Secretary shall establish criteria for determining that the housing supply of a local market area is inadequate, which shall require—

''(1)(A) information regarding housing market conditions showing that the supply of rental housing affordable by very low-income families is inadequate, taking into account vacancy rates in such housing and other market indicators; and

''(B) evidence that significant numbers of families in the local market area holding certificates and vouchers under section 1437f of this title are experiencing significant difficulty in leasing housing meeting program and family-size requirements; or

''(2) evidence that the proposed development would provide increased housing opportunities for minorities or address special housing needs.''

Subsec. (q)(1)(A). Pub. L. 105–276, § 575(c)(1)(A)(ii), which directed the substitution of ''covered housing assistance'' for ''public housing'', was executed by making the substitution in the second place that ''public housing'' appeared, to reflect the probable intent of Congress.

Pub. L. 105–276, § 575(c)(1)(A)(i), substituted ''subparagraph (C)'' for ''subparagraph (B)''.

Subsec. (q)(1)(B), (C). Pub. L. 105–276, § 575(c)(1)(B), (C), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (q)(3). Pub. L. 105–276, § 575(c)(2), substituted ''Fees'' for ''Fee'' in heading and inserted at end ''In the case of a public housing agency obtaining information pursuant to paragraph (1)(B) for another owner of housing, the agency may pass such fee on to the owner initiating the request and may charge additional reasonable fees for making the request on behalf of the owner and taking other actions for owners under this subsection.''

Subsec. (q)(5) to (8). Pub. L. 105–276, § 575(c)(3), (4), added pars. (5) to (8) and struck out heading and text of former par. (5). Text read as follows: ''For purposes of this subsection, the term 'adult' means a person who is 18 years of age or older, or who has been convicted of a crime as an adult under any Federal, State, or tribal law.''

Subsec. (r). Pub. L. 105–276, § 576(d)(1), redesignated subsec. (s) as (r) and struck out heading and text of former subsec. (r). Text read as follows: ''Any tenant evicted from housing assisted under this subchapter by reason of drug-related criminal activity (as that term is defined in section 1437f(f) of this title) shall not be eligible for housing assistance under this subchapter during the 3-year period beginning on the date of such eviction, unless the evicted tenant successfully completes a rehabilitation program approved by the public housing agency (which shall include a waiver of this subsection if the circumstances leading to eviction no longer exist).''

Subsec. (s). Pub. L. 105–276, § 576(d)(1)(B), redesignated subsec. (t) as (s). Former subsec. (s) redesignated (r).

Pub. L. 105–276, § 525, added subsec. (s).

Subsec. (t). Pub. L. 105–276, § 576(d)(1)(B), redesignated subsec. (u) as (t). Former subsec. (t) redesignated (s).

Pub. L. 105–276, § 575(d), added subsec. (t).

Subsec. (u). Pub. L. 105–276, § 576(d)(1)(B), redesignated subsec. (u) as (t).

Pub. L. 105–276, § 575(e), added subsec. (u).

1996—Subsec. (b)(1). Pub. L. 104–330 struck out ''and public housing for Indians and Alaska Natives in accordance with the Indian Housing Act of 1988'' after ''operation of public housing''.

Subsec. (c)(4)(A). Pub. L. 104–99, § 402(d)(1), (f), temporarily amended subpar. (A) generally, substituting

''(A) the establishment, after public notice and an opportunity for public comment, of a written system of preferences for admission to public housing, if any, that is not inconsistent with the comprehensive housing affordability strategy under title I of the Cranston-Gonzalez National Affordable Housing Act;'' for

''(A) except for projects or portions of projects designated for occupancy pursuant to section 1437e(a) of this title with respect to which the Secretary has determined that application of this subparagraph would result in excessive delays in meeting the housing need of such families, the establishment of tenant selection criteria which—

''(i) for not less than 50 percent of the units that are made available for occupancy in a given fiscal year, give preference to families that occupy substandard housing (including families that are homeless or living in a shelter for homeless families), are paying more than 50 percent of family income for rent, or are involuntarily displaced (including displacement because of disposition of a multifamily housing project under section 1701z–11 of title 12) at the time they are seeking assistance under this chapter;

''(ii) for any remaining units to be made available for occupancy, give preference in accordance with a system of preferences established by the public housing agency in writing and after public hearing to respond to local housing needs and priorities, which may include (I) assisting very low-income families who either reside in transitional housing assisted under title IV of the Stewart B. McKinney Homeless Assistance Act, or participate in a program designed to provide public assistance recipients with greater access to employment and educational opportunities; (II) assisting families in accordance with subsection (u)(2); (III) assisting families identified by local public agencies involved in providing for the welfare of children as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care, or in preventing the discharge of a child from foster care and reunification with his or her family; (IV) assisting youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available; (V) assisting families that include one or more adult members who are employed; and (VI) achieving other objectives of national housing policy as affirmed by Congress; subclause (V) shall be effective only during fiscal year 1995;

''(iii) prohibit any individual or family evicted from housing assisted under the chapter by reason of drug-related criminal activity from having a preference under any provision of this subparagraph for 3 years unless the evicted tenant successfully completes a rehabilitation program approved by the agency, except that the agency may waive the application of this clause under standards established by the Secretary (which shall include waiver for any member of a family of an individual prohibited from tenancy under this clause who the agency determines clearly did not participate in and had no knowledge of such criminal activity or when circumstances leading to eviction no longer exist); and

''(iv) are designed to ensure that, to the maximum extent feasible, the projects of an agency will include families with a broad range of incomes and will avoid concentrations of low-income and deprived families with serious social problems.''

See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (k). Pub. L. 104–120, § 9(a)(1), in concluding provisions, substituted ''involves any activity'' for ''involves any criminal activity'' and ''on or off such premises'' for ''on or near such premises''.

Subsec. (*l*)(5). Pub. L. 104–120, § 9(a)(2), substituted ''on or off such premises'' for ''on or near such premises''.

Subsec. (*l*)(7). Pub. L. 104–193 added par. (7).

Subsec. (*o*). Pub. L. 104–99, § 402(d)(6)(A)(i), (f), in introductory provisions, temporarily substituted ''written system of preferences for selection established pursuant to'' for ''preference rules specified in''. See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (q). Pub. L. 104–120, § 9(b), added subsec. (q).

Subsec. (r). Pub. L. 104–120, § 9(c), added subsec. (r).

1994—Subsec. (c)(4)(A)(i). Pub. L. 103–233, § 101(c)(1), inserted ''(including displacement because of disposition of a multifamily housing project under section 1701z–11 of title 12)'' after ''displaced''.

Subsec. (c)(4)(A)(ii). Pub. L. 103–327 added subcl. (V), redesignated former subcl. (V) as (VI), and inserted ''subclause (V) shall be effective only during fiscal year 1995;'' after semicolon at end.

Subsec. (c)(4)(E). Pub. L. 103–233, § 303, substituted ''500 units'' for ''250 units''.

1992—Subsec. (a). Pub. L. 102–550, § 625(a)(2), substituted ''elderly or disabled families'' for ''the elderly'' in last sentence.

Subsec. (c)(4)(A). Pub. L. 102–550, § 622(b), substituted ''designated for occupancy pursuant to section 1437e(a) of this title'' for ''specifically designated for elderly families'' in introductory provisions.

Subsec. (c)(4)(A)(i). Pub. L. 102–550, § 112, substituted ''50 percent'' for ''70 percent'' after ''not less than''.

Subsec. (c)(4)(F). Pub. L. 102–550, § 682(a), added subpar. (F).

Subsec. (j)(1). Pub. L. 102–550, § 113(e)(1)(C), which directed the substitution of ''indicators for public housing agencies, to the extent practicable:'' for ''indicators.'' in fourth sentence, was executed by making the substitution for ''indicators:'' to reflect the probable intent of Congress.

Pub. L. 102–550, § 113(e)(1)(A), (B), in introductory provisions, inserted ''and resident management corporations'' before period in first sentence and after ''agencies'' in third sentence.

Subsec. (j)(2)(B). Pub. L. 102–550, § 113(a)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (j)(2)(C). Pub. L. 102–550, § 113(a)(1), (3), redesignated subpar. (B) as (C), substituted ''agency, after reviewing the report submitted pursuant to subparagraph (B) and consulting with the agency's assessment team. Such agreement shall set forth'' for ''agency setting forth'' in introductory provisions, and inserted ''To the extent the Secretary deems appropriate (taking into account an agency's performance under the indicators specified under paragraph (1)), such agreement shall also set forth a plan for enhancing resident involvement in the management of the public housing agency.'' before ''The Secretary and the public'' in concluding provisions.

Subsec. (j)(2)(D). Pub. L. 102–550, § 113(e)(2), added subpar. (D).

Subsec. (j)(3)(A). Pub. L. 102–550, § 113(b)(5), inserted concluding provisions.

Subsec. (j)(3)(A)(i). Pub. L. 102–550, § 113(b)(1), inserted ''(which may be selected by existing tenants through administrative procedures established by the Secretary)'' after ''management agents''.

Subsec. (j)(3)(A)(iii), (iv). Pub. L. 102–550, § 113(b)(2)–(4), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (j)(3)(B) to (D). Pub. L. 102–550, § 113(c), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (j)(4)(E). Pub. L. 102–550, § 113(d), which directed the insertion of '', including an accounting of the authorized funds that have been expended to support such actions'' before semicolon in par. (5)(E) of subsec. (j), was executed by making the insertion in par. (4)(E) to reflect the probable intent of Congress, because subsec. (j) does not contain a par. (5).

1991—Subsec. (j)(1)(H), (I). Pub. L. 102–139, which directed amendment of ''Section 6(j)(1) of the Housing Act of 1937, 42 U.S.C. 1437d(j)(1) section 502(a) of the National Affordable Housing Act,'' by adding ''which shall not exceed the seven factors in the statute, plus an additional five'' at the end of subpar. (H) and by adding subpar. (I), requiring Secretary to administer evaluation system, reflect in weights assigned indicators, and determine status, was executed to subsec. (j)(1) of this section, which is section 6 of the United States Housing Act of 1937, to reflect the probable intent of Congress.

Subsec. (p). Pub. L. 102–139 added subsec. (p).

1990—Subsec. (c)(4)(A). Pub. L. 101–625, § 501, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''except for projects or portions of projects specifically designated for elderly families with respect to which the Secretary has determined that application of this clause would result in excessive delays in meeting the housing needs of such families, the establishment of tenant selection criteria which gives preference to families which occupy substandard housing, are paying more than 50 percent of family income for rent, or are involuntarily displaced at the time they are seeking assistance under this chapter and which is designed to assure that, within a reasonable period of time, the project will include families with a broad range of incomes and will avoid concentrations of lower income and deprived families with serious social problems, but (i) this shall not permit maintenance of vacancies to await higher income tenants where lower income tenants are available and shall not permit public housing agencies to select families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence; and (ii) the public housing agency may provide for circumstances in which families who do not qualify for any preference established in this subparagraph are provided assistance before families who do qualify for such preference, except that not more than 10 percent of the families who initially receive assistance in any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this clause) may be families who do not qualify for such preference;''.

Subsec. (c)(4)(D). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families''.

Subsec. (c)(4)(E). Pub. L. 101–625, § 502(c)(1), added subpar. (E).

Subsecs. (d), (e). Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

Subsec. (j). Pub. L. 101–625, § 502(a), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: ''On or after October 1, 1983, in entering into commitments for the development of public housing, the Secretary shall give a priority to projects for the construction, acquisition, or acquisition and rehabilitation of housing suitable for occupancy by families requiring three or more bedrooms.''

Subsec. (k). Pub. L. 101–625, § 503(a), added concluding provisions and struck out former concluding provisions which read as follows: ''An agency may exclude from its procedure any grievance concerning an eviction or termination of tenancy in any jurisdiction which requires that, prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process.''

Subsec. (*l*)(5). Pub. L. 101–625, § 504, amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''provide that a public housing tenant, any member of the tenant's household, or a guest or other person under the tenant's control shall not engage in criminal activity, including drug-related criminal activity, on or near public housing premises, while the tenant is a tenant in public housing, and such criminal activity shall be cause for termination of tenancy.''

Subsec. (*l*)(6). Pub. L. 101–625, § 503(b), added par. (6).

Subsecs. (n), (*o*). Pub. L. 101–625, §§ 505, 506, added subsecs. (n) and (*o*).

1989—Subsec. (b). Pub. L. 101–144 added subsec. (b).

1988—Subsec. (a). Pub. L. 100–242, § 170(d)(1), substituted ''The Secretary'' for ''Secretary'' at beginning.

Pub. L. 100–242, § 112(b)(2), struck out ''annual'' before ''contributions''.

Subsec. (c). Pub. L. 100–242, § 112(b)(2), struck out ''annual'' before ''contributions'' in introductory provisions.

Subsec. (c)(4)(A). Pub. L. 100–628, § 1014(a)(1), inserted cl. (i) designation after '', but'' and added cl. (ii) before semicolon at end.

Pub. L. 100–628, § 1001(b), inserted before semicolon at end ''and shall not permit public housing agencies to select families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence''.

Pub. L. 100–242, § 170(d)(2), inserted '', are paying more than 50 percent of family income for rent,'' after ''substandard housing'', and struck out ''or are paying more than 50 per centum of family income for rent'' after ''under this chapter''.

Subsec. (d). Pub. L. 100–242, § 112(b)(2), struck out ''annual'' before ''contributions'' in four places and before ''shelter'' in two places.

Subsec. (g). Pub. L. 100–242, § 112(b)(2), struck out ''annual'' before ''contributions'' in introductory provisions.

Subsec. (h). Pub. L. 100–242, § 116, inserted ''in the neighborhood where the public housing agency determines the housing is needed'' after ''is'' and ''in such neighborhood'' after ''rehabilitation''.

Subsec. (k)(4), (5). Pub. L. 100–242, § 170(d)(3), substituted ''their'' for ''his''.

Subsec. (*l*). Pub. L. 100–690 added par. (5) and concluding provisions defining term ''drug-related criminal activity'' for purposes of par. (5).

1985—Subsec. (b). Pub. L. 99–160 struck out subsec. (b) which related to cost of construction and equipment of a project, and prototype costs.

1984—Subsec. (a). Pub. L. 98–479, § 204(b)(1), substituted ''covenants'' for ''convenants''.

Subsec. (j). Pub. L. 98–479, § 102(b)(4), inserted '', acquisition, or acquisition and rehabilitation'' and substituted ''families requiring three or more bedrooms'' for ''large families''.

Subsec. (m). Pub. L. 98–479, § 102(b)(5), substituted ''housing'' for ''hearing''.

1983—Subsec. (c)(4)(A). Pub. L. 98–181, § 203(a), inserted ''or are paying more than 50 per centum of family income for rent''.

Subsec. (f). Pub. L. 98–181, § 214(b), repealed subsec. (f) which provided for modification or closeout of housing project.

Subsecs. (h) to (j). Pub. L. 98–181, § 201(c), added subsecs. (h) to (j).

Subsecs. (k), (*l*). Pub. L. 98–181, § 204, added subsecs. (k) and (*l*).

Subsec. (m). Pub. L. 98–181, § 205, added subsec. (m).

1981—Subsec. (a). Pub. L. 97–35, § 322(c), substituted reference to lower income for reference to low-income.

Subsec. (c). Pub. L. 97–35, § 322(c), (d), substituted provision in par. (2) requiring review at least annually for provision requiring review at least within two year intervals, or shorter where deemed desirable, in par. (4)(A) ''lower income and'' for ''low-income and'', and in par. (4)(D) reference to lower income for reference to low-income.

Subsecs. (d), (e). Pub. L. 97–35, § 322(c), substituted references to lower income for references to low-income wherever appearing.

1980—Subsec. (b). Pub. L. 96–399, § 201(c), inserted exception relating to availability of prototype costs for projects to be located on Indian reservations or in Alaskan Native villages, and added cl. (8).

Subsec. (c)(4)(A). Pub. L. 96–399, § 201(e), inserted exception relating to application of this clause to projects specifically designated for elderly families.

Subsec. (f). Pub. L. 96–399, § 202(c), inserted ''pursuant to section 1437*l* of this title'' wherever appearing.

1979—Subsec. (c)(4)(A). Pub. L. 96–153 substituted ''tenant selection criteria which gives preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance under this chapter and which is designed'' for ''tenant selection criteria designed''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

Amendment by section 511 of Pub. L. 105–276 effective and applicable beginning upon Oct. 21, 1998, see section 511(e) of Pub. L. 105–276, set out as a note under section 1437c–1 of this title.

Amendment by section 514(a)(1), (2)(A) of Pub. L. 105–276 effective and applicable beginning upon Oct. 21, 1998, see section 514(g) of Pub. L. 105–276, set out as a note under section 1701s of Title 12, Banks and Banking.

Pub. L. 105–276, title V, § 565(b), Oct. 21, 1998, 112 Stat. 2631, provided that: ''The provisions of, and duties and authorities conferred or confirmed by, the amendments made by subsection (a) [amending this section] shall apply with respect to any action taken before, on, or after the effective date of this Act [probably means the general effective date for title V of Pub. L. 105–276 included in section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title] and shall apply to any receiver appointed for a public housing agency before the date of the enactment of this Act [Oct. 21, 1998].''

Pub. L. 105–276, title V, § 565(e), Oct. 21, 1998, 112 Stat. 2632, provided that: ''This section [amending this section and section 1437*f* of this title and enacting provisions set out as notes under this section] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENTS

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Pub. L. 104–120, § 13, Mar. 28, 1996, 110 Stat. 845, provided that:

''(a) APPLICABILITY.—This Act [enacting section 1490p–2 of this title, amending this section, sections 1437e, 1437n, 1479, 1485, 1490p–2, and 5308 of this title, and sections 1715z–20, 1715z–22, and 1721 of Title 12, Banks and Banking, and enacting provisions set out as notes under sections 1437f, 5305, and 12805 of this title and sections 1701 and 4101 of Title 12] and the amendments made by this Act shall be construed to have become effective on October 1, 1995.

''(b) IMPLEMENTATION.—The amendments made by sections 9 and 10 [amending this section and sections 1437e and 1437n of this title] shall apply as provided in subsection (a) of this section, notwithstanding the effective date of any regulations issued by the Secretary of Housing and Urban Development to implement such amendments or any failure by the Secretary to issue any such regulations.''

Amendment by Pub. L. 104–99 effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as notes under section 1437a of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

IMPLEMENTATION

Pub. L. 105–276, title V, § 565(d), Oct. 21, 1998, 112 Stat. 2632, provided that: ''The Secretary may administer the amendments made by subsection (a) [amending this section] as necessary to ensure the efficient and effective initial implementation of this section [amending this section and section 1437f of this title and enacting provisions set out as notes under this section].''

Section 502(c)(2) of Pub. L. 101–625, as amended by Pub. L. 102–550, title I, § 130, Oct. 28, 1992, 106 Stat. 3712, provided that: ''The Secretary of Housing and Urban Development shall, under the rulemaking procedures under section 553 of title 5, United States Code, establish guidelines and timetables appropriate to implement the amendment made by paragraph (1)(C) [amending this section], taking into account the requirements of public housing agencies of different sizes and characteristics, to achieve compliance with requirements established by such amendment not later than January 1, 1993 for public housing agencies with 500 or more units and not later than January 1, 1994 for public housing agencies with less than 500 units.''

REGULATIONS

For provisions requiring Secretary of Housing and Urban Development to issue regulations necessary to implement amendment to this section by section 101(c) of Pub. L. 103–233, see section 101(f) of Pub. L. 103–233, set out as a note under section 1701z–11 of Title 12, Banks and Banking.

Section 104 of Pub. L. 102–550 provided that: ''Not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], the Secretary of Housing and Urban Development shall issue regulations implementing the amendments made by sections 501 and 545 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, amending this section and section 1437f of this title]. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section) and shall take effect upon issuance.''

Section 503(c) of Pub. L. 101–625 provided that: ''The Secretary of Housing and Urban Development shall issue, and publish in the Federal Register for comment, proposed rules implementing the amendments made by this section [amending this section] not later than the expiration of the 60-day period beginning on the date of the enactment of this Act [Nov. 28, 1990] and shall issue final rules implementing the amendments not later than the expiration of the 180-day period beginning on the date of the enactment of this Act.''

STUDY OF ALTERNATIVE METHODS FOR EVALUATING PUBLIC HOUSING AGENCIES

Pub. L. 105–276, title V, § 563, Oct. 21, 1998, 112 Stat. 2624, provided that:

''(a) IN GENERAL.—The Secretary of Housing and Urban Development shall provide under subsection (e) for a study to be conducted to determine the effectiveness of various alternative methods of evaluating the performance of public housing agencies and other providers of federally assisted housing.

''(b) PURPOSES.—The purposes of the study under this section shall be—

''(1) to identify and examine various methods of evaluating and improving the performance of public housing agencies in administering public housing and tenant-based rental assistance programs and of other providers of federally assisted housing, which are alternatives to oversight by the Department of Housing and Urban Development; and

''(2) to identify specific monitoring and oversight activities currently conducted by the Department of Housing and Urban Development and to evaluate whether such activities should be eliminated, expanded, modified, or transferred to other entities (including governmental and private entities) to increase accuracy and effectiveness and improve monitoring.

''(c) EVALUATION OF VARIOUS PERFORMANCE EVALUATION SYSTEMS.—To carry out the purposes under subsection (b), the study under this section shall identify, and analyze the advantages and disadvantages of various methods of regulating and evaluating the performance of public housing agencies and other providers of federally assisted housing, including the following methods:

''(1) CURRENT SYSTEM.—The system pursuant to the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], including the methods and requirements under such system for reporting, auditing, reviewing, sanctioning, and monitoring of such agencies and housing providers and the public housing management assessment program pursuant to section 6(j) of the United States Housing Act of 1937 [42 U.S.C. 1437d(j)].

''(2) ACCREDITATION MODELS.—Various models that are based upon accreditation of such agencies and housing providers, subject to the following requirements:

''(A) The study shall identify and analyze various models used in other industries and professions for accreditation and determine the extent of their applicability to the programs for public housing and federally assisted housing.

''(B) If any accreditation models are determined to be applicable to the public and federally assisted housing programs, the study shall identify appropriate goals, objectives, and procedures for an accreditation program for such agencies and housing providers.

''(C) The study shall evaluate the feasibility and merit of establishing an independent accreditation and evaluation entity to assist, supplement, or replace the role of the Department of Housing and Urban Development in assessing and monitoring the performance of such agencies and housing providers.

''(D) The study shall identify the necessary and appropriate roles and responsibilities of various entities that would be involved in an accreditation program, including the Department of Housing and Urban Development, the Inspector General of the Department, an accreditation entity, independent auditors and examiners, local entities, and public housing agencies.

''(E) The study shall estimate the costs involved in developing and maintaining such an independent accreditation program.

''(3) PERFORMANCE BASED MODELS.—Various performance-based models, including systems that establish performance goals or targets, assess the compliance with such goals or targets, and provide for incentives or sanctions based on performance relative to such goals or targets.

''(4) LOCAL REVIEW AND MONITORING MODELS.—Various models providing for local, resident, and community review and monitoring of such agencies and housing providers, including systems for review and monitoring by local and State governmental bodies and agencies.

''(5) PRIVATE MODELS.—Various models using private contractors for review and monitoring of such agencies and housing providers.

''(6) OTHER MODELS.—Various models of any other systems that may be more effective and efficient in regulating and evaluating such agencies and housing providers.

''(d) CONSULTATION.—The entity that, pursuant to subsection (e), carries out the study under this section shall, in carrying out the study, consult with individuals and organizations experienced in managing public housing, private real estate managers, representatives from State and local governments, residents of public housing, families and individuals receiving tenant-based assistance, the Secretary of Housing and Urban Development, the Inspector General of the Department of Housing and Urban Development, and the Comptroller General of the United States.

''(e) CONTRACT TO CONDUCT STUDY.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall enter into a contract, within 90 days of the enactment of this Act [Oct. 21, 1998], with a public or nonprofit private entity to conduct the study under this section, using amounts made available pursuant to subsection (g).

''(2) NATIONAL ACADEMY OF PUBLIC ADMINISTRATION.—The Secretary shall request the National Academy of Public Administration to enter into the contract under paragraph (1) to conduct the study under this section. If such Academy declines to conduct the study, the Secretary shall carry out such paragraph through other public or nonprofit private entities, selected through a competitive process.

''(f) REPORT.—

''(1) INTERIM REPORT.—The Secretary shall ensure that, not later than the expiration of the 6-month period beginning on the date of the execution of the contract under subsection (e)(1), the entity conducting the study under this section submits to the Congress an interim report describing the actions taken to carry out the study, the actions to be taken to complete the study, and any findings and recommendations available at the time.

''(2) FINAL REPORT.—The Secretary shall ensure that—

''(A) not later than the expiration of the 12-month period beginning on the date of the execution of the contract under subsection (e)(1), the study required under this section is completed and a report describing the findings and recommendations as a result of the study is submitted to the Congress; and

''(B) before submitting the report under this paragraph to the Congress, the report is submitted to the Secretary, national organizations for public housing agencies, and other appropriate national organizations at such time to provide the Secretary and such agencies an opportunity to review the report and provide written comments on the report, which shall be included together with the report upon submission to the Congress under subparagraph (A).

''(g) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

REFERENCES IN OTHER LAWS TO PREFERENCES FOR ASSISTANCE

Section 402(d)(6)(D) of Pub. L. 104–99, which provided that certain references to preferences for assistance under sections 1437d(c)(4)(A)(i) and 1437f(d)(1)(A)(i), (*o*)(3)(B) of this title, as such sections existed on the day before Jan. 26, 1996, were to be considered to refer to the written system of preferences for selection established pursuant to sections 1437d(c)(4)(A) and 1437f(d)(1)(A), (*o*)(3)(B) of this title, respectively, as amended by section 402 of Pub. L. 104–99, was repealed by Pub. L. 105–276, title V, § 514(b)(2)(D), Oct. 21, 1998, 112 Stat. 2548.

INAPPLICABILITY OF CERTAIN 1992 AMENDMENTS TO INDIAN PUBLIC HOUSING

Amendment by sections 622(b) and 625(a)(2) of Pub. L. 102–550 not applicable with respect to lower income housing developed or operated pursuant to contract between Secretary of Housing and Urban Development and Indian housing authority, see section 626 of Pub. L. 102–550, set out as a note under section 1437a of this title.

REPORT ON TRAINING AND CERTIFICATION STANDARDS

Section 502(b) of Pub. L. 101–625 directed Secretary to submit to Congress, not later than 12 months after Nov. 28, 1990, a report regarding the feasibility and effectiveness of establishing uniform standards for training and certification of executive directors and other officers and members of local, regional, and State public housing agencies.

APPLICABILITY

Section 503(d) of Pub. L. 101–625 provided that: ''Any exclusion of grievances by a public housing agency pursuant to a determination or waiver by the Secretary (under section 6(k) of the United States Housing Act of 1937 [42 U.S.C. 1437d(k)], as such section existed before the date of the enactment of this Act [Nov. 28, 1990]) that a jurisdiction requires a hearing in court providing the basic elements of due process shall be effective after the date of the enactment of this Act only to the extent that the exclusion complies with the amendments made by this section, except that any such waiver provided before the date of the enactment of this Act shall remain in effect until the earlier of the effective date of the final rules implementing the amendments made by this section or 180 days after the date of the enactment.''

REPORT ON IMPACT OF PUBLIC HOUSING LEASE AND GRIEVANCE REGULATION ON ABILITY OF PUBLIC HOUSING AGENCIES TO TAKE ACTION AGAINST TENANTS ENGAGING IN DRUG CRIMES

Section 5103 of Pub. L. 100–690 provided that: ''The Secretary of Housing and Urban Development shall submit to the Congress a report on the impact of the implementation of the public housing tenancy and administrative grievance procedure regulations issued under section 6(k) of the United States Housing Act of 1937 (42 U.S.C. 1437d(k)) on the ability of public housing agencies to evict or take other appropriate action against tenants engaging in criminal activity, especially with respect to the manufacture, sale, distribution, use, or possession of controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). The report shall be submitted not later than 12 months after the date of the enactment of this Act [Nov. 18, 1988].''

INDIAN HOUSING

Section 1014(a)(2) of Pub. L. 100–628 provided that: ''In accordance with section 201(b)(2) of the United States Housing Act of 1937 [former section 1437aa(b)(2) of this title], the amendments made by paragraph (1) [amending this section] shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.''

STUDY OF PAYMENTS IN LIEU OF TAXES; REPORT TO CONGRESS

Pub. L. 95–128, title II, § 201(g), Oct. 12, 1977, 91 Stat. 1129, provided that the Secretary of Housing and Urban Development conduct a study of payment in lieu of taxes made under subsec. (d) of this section and report to the Congress on the status and adequacy of such payments not later than 12 months after Oct. 12, 1977.

§ 1437e. Designated housing for elderly and disabled families

(a) Authority to provide designated housing

(1) In general

Subject only to provisions of this section and notwithstanding any other provision of law, a public housing agency for which a plan under subsection (d) of this section is in effect may provide public housing projects (or portions of projects) designated for occupancy by (A) only elderly families, (B) only disabled families, or (C) elderly and disabled families.

(2) Priority for occupancy

In determining priority for admission to public housing projects (or portions of projects) that are designated for occupancy as provided in paragraph (1), the public housing

agency may make units in such projects (or portions) available only to the types of families for whom the project is designated.

(3) Eligibility of near-elderly families

If a public housing agency determines that there are insufficient numbers of elderly families to fill all the units in a project (or portion of a project) designated under paragraph (1) for occupancy by only elderly families, the agency may provide that near-elderly families may occupy dwelling units in the project (or portion).

(b) Standards regarding evictions

Except as provided in section 1437n(e)(1)(B)[1] of this title, any tenant who is lawfully residing in a dwelling unit in a public housing project may not be evicted or otherwise required to vacate such unit because of the designation of the project (or portion of a project) pursuant to this section or because of any action taken by the Secretary or any public housing agency pursuant to this section.

(c) Relocation assistance

A public housing agency that designates any existing project or building, or portion thereof, for occupancy as provided under subsection (a)(1) of this section shall provide, to each person and family who agrees to be relocated in connection with such designation—

(1) notice of the designation and an explanation of available relocation benefits, as soon as is practicable for the agency and the person or family;

(2) access to comparable housing (including appropriate services and design features), which may include tenant-based rental assistance under section 1437f of this title, at a rental rate paid by the tenant that is comparable to that applicable to the unit from which the person or family has vacated; and

(3) payment of actual, reasonable moving expenses.

(d) Required plan

A plan under this subsection for designating a project (or portion of a project) for occupancy under subsection (a)(1) of this section is a plan, prepared by the public housing agency for the project and submitted to the Secretary, that—

(1) establishes that the designation of the project is necessary—

(A) to achieve the housing goals for the jurisdiction under the comprehensive housing affordability strategy under section 12705 of this title; and

(B) to meet the housing needs of the low-income population of the jurisdiction; and

(2) includes a description of—

(A) the project (or portion of a project) to be designated;

(B) the types of tenants for which the project is to be designated;

(C) any supportive services to be provided to tenants of the designated project (or portion);

(D) how the design and related facilities (as such term is defined in section 1701q(d)(8)[1] of title 12) of the project accommodate the special environmental needs of the intended occupants; and

(E) any plans to secure additional resources or housing assistance to provide assistance to families that may have been housed if occupancy in the project were not restricted pursuant to this section.

For purposes of this subsection, the term ''supportive services'' means services designed to meet the special needs of residents.

(e) Review of plans

(1) Review and notification

The Secretary shall conduct a limited review of each plan under subsection (d) of this section that is submitted to the Secretary to ensure that the plan is complete and complies with the requirements of subsection (d) of this section. The Secretary shall notify each public housing agency submitting a plan whether the plan complies with such requirements not later than 60 days after receiving the plan. If the Secretary does not notify the public housing agency, as required under this paragraph or paragraph (2), the plan shall be considered, for purposes of this section, to comply with the requirements under subsection (d) of this section and the Secretary shall be considered to have notified the agency of such compliance upon the expiration of such 60-day period.

(2) Notice of reasons for determination of noncompliance

If the Secretary determines that a plan, as submitted, does not comply with the requirements under subsection (d) of this section, the Secretary shall specify in the notice under paragraph (1) the reasons for the noncompliance and any modifications necessary for the plan to meet such requirements.

(3) Standards for determination of noncompliance

The Secretary may determine that a plan does not comply with the requirements under subsection (d) of this section only if—

(A) the plan is incomplete in significant matters required under such subsection; or

(B) there is evidence available to the Secretary that challenges, in a substantial manner, any information provided in the plan.

(4) Treatment of existing plans

Notwithstanding any other provision of this section, a public housing agency shall be considered to have submitted a plan under this subsection if the agency has submitted to the Secretary an application and allocation plan under this section (as in effect before March 28, 1996) that have not been approved or disapproved before March 28, 1996.

(f) Effectiveness

(1) 5-year effectiveness of original plan

A plan under subsection (d) of this section shall be in effect for purposes of this section during the 5-year period that begins upon notification under subsection (e)(1) of this section of the public housing agency that the plan complies with the requirements under subsection (d) of this section.

[1] See References in Text note below.

(2) Renewal of plan

Upon the expiration of the 5-year period under paragraph (1) or any 2-year period under this paragraph, an agency may extend the effectiveness of the designation and plan for an additional 2-year period (that begins upon such expiration) by submitting to the Secretary any information needed to update the plan. The Secretary may not limit the number of times a public housing agency extends the effectiveness of a designation and plan under this paragraph.

(3) Transition provision

Any application and allocation plan approved under this section (as in effect before March 28, 1996) before March 28, 1996, shall be considered to be a plan under subsection (d) of this section that is in effect for purposes of this section for the 5-year period beginning upon such approval.

(g) Inapplicability of Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970

No tenant of a public housing project shall be considered to be displaced for purposes of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970 [42 U.S.C. 4601 et seq.] because of the designation of any existing project or building, or portion thereof, for occupancy as provided under subsection (a) of this section.

(Sept. 1, 1937, ch. 896, title I, § 7, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 662; amended Pub. L. 95–557, title IV, § 412, Oct. 31, 1978, 92 Stat. 2110; Pub. L. 100–242, title I, § 112(b)(3), Feb. 5, 1988, 101 Stat. 1824; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; amended Pub. L. 102–550, title VI, § 622(a), Oct. 28, 1992, 106 Stat. 3813; Pub. L. 104–99, title IV, § 402(d)(6)(A)(ii), Jan. 26, 1996, 110 Stat. 42; Pub. L. 104–120, § 10(a), Mar. 28, 1996, 110 Stat. 838; Pub. L. 104–330, title V, § 501(b)(4), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title V, § 595(d), Oct. 21, 1998, 112 Stat. 2656.)

REFERENCES IN TEXT

Section 1437n(e)(1)(B) of this title, referred to in subsec. (b), was repealed by Pub. L. 105–276, title V, § 576(d)(2), Oct. 21, 1998, 112 Stat. 2640.

Section 1701q of title 12, referred to in subsec. (d)(2)(D), was amended generally by Pub. L. 101–625, title VIII, § 801(a), Nov. 28, 1990, 104 Stat. 4297, and, as so amended, does not contain a subsec. (d)(8) or a definition of the term ''related facilities''.

The Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, referred to in subsec. (g), probably means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified principally to chapter 61 (§ 4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

PRIOR PROVISIONS

A prior section 7 of act Sept. 1, 1937, ch. 896, 50 Stat. 891, as amended, required publication of information and submission of annual report by the Authority and was classified to section 1407 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

1998—Subsec. (h). Pub. L. 105–276 struck out heading and text of subsec. (h). Text read as follows: ''The provisions of this section shall not apply with respect to low-income housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority.''

1996—Pub. L. 104–330, § 501(b)(4), which directed amendment of ''subsection 7'' of the United States Housing Act of 1937, probably meaning this section, by striking subsec. (*l*), could not be executed because this section does not contain a subsec. (*l*).

Pub. L. 104–120 amended section generally, restating former subsecs. (a) to (g) relating to designated housing as subsecs. (a) to (h) relating to designated housing for elderly and disabled families.

Subsec. (a)(2). Pub. L. 104–99, which directed the temporary amendment of par. (2) by substituting ''in accordance with the written system of preferences for selection established pursuant to'' for ''according to the preferences for occupancy under'', could not be executed because of the amendment by Pub. L. 104–120 which amended section generally retroactive to Oct. 1, 1995. See Effective and Termination Dates of 1996 Amendments note below.

1992—Pub. L. 102–550 amended section generally, substituting present provisions for provisions relating to and defining ''congregate housing'' and providing for design, development, and acquisition of congregate housing for displaced or elderly families, limitation on amounts for contracts for congregate housing, and costs for central dining facilities.

1988—Pub. L. 100–242 struck out ''annual'' before ''contributions'' in proviso.

1978—Pub. L. 95–557 substituted ''(1) low-rent housing which, as of January 1, 1979, was built or under construction, with which there is connected a central dining facility where wholesome and economical meals can be served to such occupants; or (2) low-rent housing constructed after, but not under construction prior to, January 1, 1979, connected with which there is a central dining facility to provide wholesome and economical meals for such occupants. Such occupants of congregate housing may also be provided with other supportive services appropriate to their needs under title IV of the Housing and Community Development Amendments of 1978'' for ''low-income housing (A) in which some or all of the dwelling units do not have kitchen facilities, and (B) connected with which there is a central dining facility to provide wholesome and economical meals for elderly and displaced families under terms and conditions prescribed by the public housing agency to permit a generally self-supporting operation''.

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENTS

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, notwithstanding the effective date of any regulations issued by Secretary of Housing and Urban Development to implement amendments by sections 9 and 10 of Pub. L. 104–120 or any failure by Secretary to issue any such regulations, see section 13 of Pub. L. 104–120, set out as a note under section 1437d of this title.

Amendment by Pub. L. 104–99 effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as notes under section 1437a of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

INAPPLICABILITY OF CERTAIN 1992 AMENDMENTS TO INDIAN PUBLIC HOUSING

Amendment by Pub. L. 102–550 not applicable with respect to lower income housing developed or operated pursuant to contract between Secretary of Housing and Urban Development and Indian housing authority, see section 626 of Pub. L. 102–550, set out as a note under section 1437a of this title.

§ 1437f. Low-income housing assistance

(a) Authorization for assistance payments

For the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing housing in accordance with the provisions of this section.

(b) Other existing housing programs

(1) IN GENERAL.—The Secretary is authorized to enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make assistance payments to owners of existing dwelling units in accordance with this section. In areas where no public housing agency has been organized or where the Secretary determines that a public housing agency is unable to implement the provisions of this section, the Secretary is authorized to enter into such contracts and to perform the other functions assigned to a public housing agency by this section.

(2) The Secretary is authorized to enter into annual contributions contracts with public housing agencies for the purpose of replacing public housing transferred in accordance with subchapter II–A of this chapter. Each contract entered into under this subsection shall be for a term of not more than 60 months.

(c) Contents and purposes of contracts for assistance payments; amount and scope of monthly assistance payments

(1) An assistance contract entered into pursuant to this section shall establish the maximum monthly rent (including utilities and all maintenance and management charges) which the owner is entitled to receive for each dwelling unit with respect to which such assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically but not less than annually for existing or newly constructed rental dwelling units of various sizes and types in the market area suitable for occupancy by persons assisted under this section, except that the maximum monthly rent may exceed the fair market rental (A) by more than 10 but not more than 20 per centum where the Secretary determines that special circumstances warrant such higher maximum rent or that such higher rent is necessary to the implementation of a housing strategy as defined in section 12705 of this title, or (B) by such higher amount as may be requested by a tenant and approved by the public housing agency in accordance with paragraph (3)(B). In the case of newly constructed and substantially rehabilitated units, the exception in the preceding sentence shall not apply to more than 20 per centum of the total amount of authority to enter into annual contributions contracts for such units which is allocated to an area and obligated with respect to any fiscal year beginning on or after October 1, 1980. Proposed fair market rentals for an area shall be published in the Federal Register with reasonable time for public comment, and shall become effective upon the date of publication in final form in the Federal Register. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section. Notwithstanding any other provision of this section, after October 12, 1977, the Secretary shall prohibit high-rise elevator projects for families with children unless there is no practical alternative. The Secretary shall establish separate fair market rentals under this paragraph for Westchester County in the State of New York. The Secretary shall also establish separate fair market rentals under this paragraph for Monroe County in the Commonwealth of Pennsylvania. In establishing fair market rentals for the remaining portion of the market area in which Monroe County is located, the Secretary shall establish the fair market rentals as if such portion included Monroe County. If units assisted under this section are exempt from local rent control while they are so assisted or otherwise, the maximum monthly rent for such units shall be reasonable in comparison with other units in the market area that are exempt from local rent control.

(2)(A) The assistance contract shall provide for adjustment annually or more frequently in the maximum monthly rents for units covered by the contract to reflect changes in the fair market rentals established in the housing area for similar types and sizes of dwelling units or, if the Secretary determines, on the basis of a reasonable formula. However, where the maximum monthly rent, for a unit in a new construction, substantial rehabilitation, or moderate rehabilitation project, to be adjusted using an annual adjustment factor exceeds the fair market rental for an existing dwelling unit in the market area, the Secretary shall adjust the rent only to the extent that the owner demonstrates that the adjusted rent would not exceed the rent for an unassisted unit of similar quality, type, and age in the same market area, as determined by the Secretary. The immediately foregoing sentence shall be effective only during fiscal year 1995, fiscal year 1996 prior to April 26, 1996, and fiscal years 1997 and 1998, and during fiscal year 1999 and thereafter. Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than

1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. The immediately foregoing two sentences shall be effective only during fiscal year 1995, fiscal year 1996 prior to April 26, 1996, and fiscal years 1997 and 1998, and during fiscal year 1999 and thereafter. In establishing annual adjustment factors for units in new construction and substantial rehabilitation projects, the Secretary shall take into account the fact that debt service is a fixed expense. The immediately foregoing sentence shall be effective only during fiscal year 1998.

(B) The contract shall further provide for the Secretary to make additional adjustments in the maximum monthly rent for units under contract to the extent he determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs which are not adequately compensated for by the adjustment in the maximum monthly rent authorized by subparagraph (A). The Secretary shall make additional adjustments in the maximum monthly rent for units under contract (subject to the availability of appropriations for contract amendments) to the extent the Secretary determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the units that have resulted from the expiration of a real property tax exemption. Where the Secretary determines that a project assisted under this section is located in a community where drug-related criminal activity is generally prevalent and the project's operating, maintenance, and capital repair expenses have been substantially increased primarily as a result of the prevalence of such drug-related activity, the Secretary may (at the discretion of the Secretary and subject to the availability of appropriations for contract amendments for this purpose), on a project by project basis, provide adjustments to the maximum monthly rents, to a level no greater than 120 percent of the project rents, to cover the costs of maintenance, security, capital repairs, and reserves required for the owner to carry out a strategy acceptable to the Secretary for addressing the problem of drug-related criminal activity. Any rent comparability standard required under this paragraph may be waived by the Secretary to so implement the preceding sentence. The Secretary may (at the discretion of the Secretary and subject to the availability of appropriations for contract amendments), on a project by project basis for projects receiving project-based assistance, provide adjustments to the maximum monthly rents to cover the costs of evaluating and reducing lead-based paint hazards, as defined in section 4851b of this title.

(C) Adjustments in the maximum rents under subparagraphs (A) and (B) shall not result in material differences between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area, as determined by the Secretary. In implementing the limitation established under the preceding sentence, the Secretary shall establish regulations for conducting comparability studies for projects where the Secretary has reason to believe that the application of the formula adjustments under subparagraph (A) would result in such material differences. The Secretary shall conduct such studies upon the request of any owner of any project, or as the Secretary determines to be appropriate by establishing, to the extent practicable, a modified annual adjustment factor for such market area, as the Secretary shall designate, that is geographically smaller than the applicable housing area used for the establishment of the annual adjustment factor under subparagraph (A). The Secretary shall establish such modified annual adjustment factor on the basis of the results of a study conducted by the Secretary of the rents charged, and any change in such rents over the previous year, for assisted units and unassisted units of similar quality, type, and age in the smaller market area. Where the Secretary determines that such modified annual adjustment factor cannot be established or that such factor when applied to a particular project would result in material differences between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area, the Secretary may apply an alternative methodology for conducting comparability studies in order to establish rents that are not materially different from rents charged for comparable unassisted units. If the Secretary or appropriate State agency does not complete and submit to the project owner a comparability study not later than 60 days before the anniversary date of the assistance contract under this section, the automatic annual adjustment factor shall be applied. The Secretary may not reduce the contract rents in effect on or after April 15, 1987, for newly constructed, substantially rehabilitated, or moderately rehabilitated projects assisted under this section (including projects assisted under this section as in effect prior to November 30, 1983), unless the project has been refinanced in a manner that reduces the periodic payments of the owner. Any maximum monthly rent that has been reduced by the Secretary after April 14, 1987, and prior to November 7, 1988, shall be restored to the maximum monthly rent in effect on April 15, 1987. For any project which has had its maximum monthly rents reduced after April 14, 1987, the Secretary shall make assistance payments (from amounts reserved for the original contract) to the owner of such project in an amount equal to the difference between the maximum monthly rents in effect on April 15, 1987, and the reduced maximum monthly rents, multiplied by the number of months that the reduced maximum monthly rents were in effect.

(3) The amount of the monthly assistance payment with respect to any dwelling unit shall be the difference between the maximum monthly rent which the contract provides that the owner is to receive for the unit and the rent the family is required to pay under section 1437a(a) of this title. Reviews of family income shall be made no less frequently than annually.

(4) The assistance contract shall provide that assistance payments may be made only with respect to a dwelling unit under lease for occupancy by a family determined to be a lower income family at the time it initially occupied such dwelling unit, except that such payments may be made with respect to unoccupied units for a period not exceeding sixty days (A) in the event that a family vacates a dwelling unit before the expiration date of the lease for occupancy or (B) where a good faith effort is being made to fill an unoccupied unit, and, subject to the provisions of the following sentence, such payments may be made, in the case of a newly constructed or substantially rehabilitated project, after such sixty-day period in an amount equal to the debt service attributable to such an unoccupied dwelling unit for a period not to exceed one year, if a good faith effort is being made to fill the unit and the unit provides decent, safe, and sanitary housing. No such payment may be made after such sixty-day period if the Secretary determines that the dwelling unit is in a project which provides the owner with revenues exceeding the costs incurred by such owner with respect to such project.

(5) The Secretary shall take such steps as may be necessary, including the making of contracts for assistance payments in amounts in excess of the amounts required at the time of the initial renting of dwelling units, the reservation of annual contributions authority for the purpose of amending housing assistance contracts, or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts, to assure that assistance payments are increased on a timely basis to cover increases in maximum monthly rents or decreases in family incomes.

(6) Redesignated (5).

(7) Repealed. Pub. L. 105–276, title V, § 550(a)(3)(C), Oct. 21, 1998, 112 Stat. 2609.

(8)(A) Not less than one year before termination of any contract under which assistance payments are received under this section, other than a contract for tenant-based assistance under this section, an owner shall provide written notice to the Secretary and the tenants involved of the proposed termination. The notice shall also include a statement that, if the Congress makes funds available, the owner and the Secretary may agree to a renewal of the contract, thus avoiding termination, and that in the event of termination the Department of Housing and Urban Development will provide tenant-based rental assistance to all eligible residents, enabling them to choose the place they wish to rent, which is likely to include the dwelling unit in which they currently reside. Any contract covered by this paragraph that is renewed may be renewed for a period of up to 1 year or any number or years, with payments subject to the availability of appropriations for any year.

(B) In the event the owner does not provide the notice required, the owner may not evict the tenants or increase the tenants' rent payment until such time as the owner has provided the notice and 1 year has elapsed. The Secretary may allow the owner to renew the terminating contract for a period of time sufficient to give tenants 1 year of advance notice under such terms and conditions as the Secretary may require.

(C) Any notice under this paragraph shall also comply with any additional requirements established by the Secretary.

(D) For purposes of this paragraph, the term ''termination'' means the expiration of the assistance contract or an owner's refusal to renew the assistance contract, and such term shall include termination of the contract for business reasons.

(9)(A) That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission.

(B) An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.

(C)(i) Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking.

(ii) Notwithstanding clause (i), an owner or manager may bifurcate a lease under this section, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant.

(iii) Nothing in clause (i) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.

(iv) Nothing in clause (i) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate.

(v) Nothing in clause (i) may be construed to limit the authority of an owner, manager, or public housing agency to evict or terminate from assistance any tenant or lawful occupant if the owner, manager or public housing agency

can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance.

(vi) Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

(d) Required provisions and duration of contracts for assistance payments; waiver of limitation

(1) Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide (with respect to any unit) that—

(A) the selection of tenants shall be the function of the owner, subject to the annual contributions contract between the Secretary and the agency, except that with respect to the certificate and moderate rehabilitation programs only, for the purpose of selecting families to be assisted, the public housing agency may establish local preferences, consistent with the public housing agency plan submitted under section 1437c–1 of this title by the public housing agency and that an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission;

(B)(i) the lease between the tenant and the owner shall be for at least one year or the term of such contract, whichever is shorter, and shall contain other terms and conditions specified by the Secretary;

(ii) during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence;

(iii) during the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy, except that: (I) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights or program assistance, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (II) notwithstanding subclause (I), a public housing agency may terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, or an owner or manager under this section may bifurcate a lease, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant; (III) nothing in subclause (I) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (IV) nothing in subclause (I) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (V) nothing in subclause (I) may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance,[1] to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance; and (VI) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.;[2]

(iv) any termination of tenancy shall be preceded by the owner's provision of written notice to the tenant specifying the grounds for such action; and

(v) it shall be cause for termination of the tenancy of a tenant if such tenant—

(I) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

[1] So in original. The comma probably should follow ''to''.

[2] So in original. The period probably should not appear.

(II) is violating a condition of probation or parole imposed under Federal or State law;

(C) maintenance and replacement (including redecoration) shall be in accordance with the standard practice for the building concerned as established by the owner and agreed to by the agency; and

(D) the agency and the owner shall carry out such other appropriate terms and conditions as may be mutually agreed to by them.

(2)(A) Each contract for an existing structure entered into under this section shall be for a term of not less than one month nor more than one hundred and eighty months. The Secretary shall permit public housing agencies to enter into contracts for assistance payments of less than 12 months duration in order to avoid disruption in assistance to eligible families if the annual contributions contract is within 1 year of its expiration date.

(B)(i) In determining the amount of assistance provided under an assistance contract for project-based assistance under this paragraph or a contract for assistance for housing constructed or substantially rehabilitated pursuant to assistance provided under subsection (b)(2) of this section (as such subsection existed immediately before October 1, 1983), the Secretary may consider and annually adjust, with respect to such project, for the cost of employing or otherwise retaining the services of one or more service coordinators under section 661[3] of the Housing and Community Development Act of 1992 [42 U.S.C. 13631] to coordinate the provision of any services within the project for residents of the project who are elderly or disabled families.

(ii) The budget authority available under section 1437c(c) of this title for assistance under this section is authorized to be increased by $15,000,000 on or after October 1, 1992, and by $15,000,000 on or after October 1, 1993. Amounts made available under this subparagraph shall be used to provide additional amounts under annual contributions contracts for assistance under this section which shall be made available through assistance contracts only for the purpose of providing service coordinators under clause (i) for projects receiving project-based assistance under this paragraph and to provide additional amounts under contracts for assistance for projects constructed or substantially rehabilitated pursuant to assistance provided under subsection (b)(2) of this section (as such subsection existed immediately before October 1, 1983) only for such purpose.

(C) An assistance contract for project-based assistance under this paragraph shall provide that the owner shall ensure and maintain compliance with subtitle C of title VI of the Housing and Community Development Act of 1992 [42 U.S.C. 13601 et seq.] and any regulations issued under such subtitle.

(D) An owner of a covered section 8 housing project (as such term is defined in section 659 of the Housing and Community Development Act of 1992 [42 U.S.C. 13619]) may give preference for occupancy of dwelling units in the project, and reserve units for occupancy, in accordance with subtitle D of title VI of the Housing and Community Development Act of 1992 [42 U.S.C. 13611 et seq.].

(3) Notwithstanding any other provision of law, with the approval of the Secretary the public housing agency administering a contract under this section with respect to existing housing units may exercise all management and maintenance responsibilities with respect to those units pursuant to a contract between such agency and the owner of such units.

(4) A public housing agency that serves more than one unit of general local government may, at the discretion of the agency, in allocating assistance under this section, give priority to disabled families that are not elderly families.

(5) CALCULATION OF LIMIT.—Any contract entered into under section 514 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 shall be excluded in computing the limit on project-based assistance under this subsection.

(6) TREATMENT OF COMMON AREAS.—The Secretary may not provide any assistance amounts pursuant to an existing contract for project-based assistance under this section for a housing project and may not enter into a new or renewal contract for such assistance for a project unless the owner of the project provides consent, to such local law enforcement agencies as the Secretary determines appropriate, for law enforcement officers of such agencies to enter common areas of the project at any time and without advance notice upon a determination of probable cause by such officers that criminal activity is taking place in such areas.

(e) Restrictions on contracts for assistance payments

(1) Nothing in this chapter shall be deemed to prohibit an owner from pledging, or offering as security for any loan or obligation, a contract for assistance payments entered into pursuant to this section: *Provided*, That such security is in connection with a project constructed or rehabilitated pursuant to authority granted in this section, and the terms of the financing or any refinancing have been approved by the Secretary.

(2) Repealed. Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

(f) Definitions

As used in this section—

(1) the term ''owner'' means any private person or entity, including a cooperative, an agency of the Federal Government, or a public housing agency, having the legal right to lease or sublease dwelling units;

(2) the terms ''rent'' or ''rental'' mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative;

(3) the term ''debt service'' means the required payments for principal and interest made with respect to a mortgage secured by housing assisted under this chapter;

(4) the term ''participating jurisdiction'' means a State or unit of general local government designated by the Secretary to be a participating jurisdiction under title II of the

[3] So in original. Probably should be section ''671''.

Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.];

(5) the term ''drug-related criminal activity'' means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 802 of title 21);

(6) the term ''project-based assistance'' means rental assistance under subsection (b) of this section that is attached to the structure pursuant to subsection (d)(2) or (*o*)(13) of this section;

(7) the term ''tenant-based assistance'' means rental assistance under subsection (*o*) of this section that is not project-based assistance and that provides for the eligible family to select suitable housing and to move to other suitable housing;

(8) the term ''domestic violence'' has the same meaning given the term in section 13925 of this title;

(9) the term ''dating violence'' has the same meaning given the term in section 13925 of this title; and [4]

(10) the term ''stalking'' means—

(A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; and

(ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and

(B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to—

(i) that person;

(ii) a member of the immediate family of that person; or

(iii) the spouse or intimate partner of that person; and

(11) the term ''immediate family member'' means, with respect to a person—

(A) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or

(B) any other person living in the household of that person and related to that person by blood and marriage.

(g) Regulations applicable for implementation of assistance payments

Notwithstanding any other provision of this chapter, assistance payments under this section may be provided, in accordance with regulations prescribed by the Secretary, with respect to some or all of the units in any project approved pursuant to section 1701q of title 12.

(h) Nonapplicability of inconsistent provisions to contracts for assistance payments

Sections 1437c(e) and 1437d of this title (except as provided in section 1437d(j)(3) of this title), and any other provisions of this chapter which are inconsistent with the provisions of this section shall not apply to contracts for assistance entered into under this section.

[4] So in original. The word ''and'' probably should not appear.

(i) Receipt of assistance by public housing agency under other law not to be considered

The Secretary may not consider the receipt by a public housing agency of assistance under section 811(b)(1) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 8013(b)(1)], or the amount received, in approving assistance for the agency under this section or determining the amount of such assistance to be provided.

(j) Repealed. Pub. L. 105–276, title V, § 550(a)(6), Oct. 21, 1998, 112 Stat. 2609

(k) Verification of income

The Secretary shall establish procedures which are appropriate and necessary to assure that income data provided to public housing agencies and owners by families applying for or receiving assistance under this section is complete and accurate. In establishing such procedures, the Secretary shall randomly, regularly, and periodically select a sample of families to authorize the Secretary to obtain information on these families for the purpose of income verification, or to allow those families to provide such information themselves. Such information may include, but is not limited to, data concerning unemployment compensation and Federal income taxation and data relating to benefits made available under the Social Security Act [42 U.S.C. 301 et seq.], the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.], or title 38. Any such information received pursuant to this subsection shall remain confidential and shall be used only for the purpose of verifying incomes in order to determine eligibility of families for benefits (and the amount of such benefits, if any) under this section.

(*l*), (m) Repealed. Pub. L. 98–181, title II, § 209(a)(5), Nov. 30, 1983, 97 Stat. 1183

(n) Repealed. Pub. L. 105–276, title V, § 550(a)(7), Oct. 21, 1998, 112 Stat. 2609

(*o*) Voucher program

(1) Authority

(A) In general

The Secretary may provide assistance to public housing agencies for tenant-based assistance using a payment standard established in accordance with subparagraph (B). The payment standard shall be used to determine the monthly assistance that may be paid for any family, as provided in paragraph (2).

(B) Establishment of payment standard

Except as provided under subparagraph (D), the payment standard for each size of dwelling unit in a market area shall not exceed 110 percent of the fair market rental established under subsection (c) of this section for the same size of dwelling unit in the same market area and shall be not less than 90 percent of that fair market rental.

(C) Set-aside

The Secretary may set aside not more than 5 percent of the budget authority made available for assistance under this subsection as an adjustment pool. The Sec-

retary shall use amounts in the adjustment pool to make adjusted payments to public housing agencies under subparagraph (A), to ensure continued affordability, if the Secretary determines that additional assistance for such purpose is necessary, based on documentation submitted by a public housing agency.

(D) Approval

The Secretary may require a public housing agency to submit the payment standard of the public housing agency to the Secretary for approval, if the payment standard is less than 90 percent of the fair market rental or exceeds 110 percent of the fair market rental.

(E) Review

The Secretary—

(i) shall monitor rent burdens and review any payment standard that results in a significant percentage of the families occupying units of any size paying more than 30 percent of adjusted income for rent; and

(ii) may require a public housing agency to modify the payment standard of the public housing agency based on the results of that review.

(2) Amount of monthly assistance payment

Subject to the requirement under section 1437a(a)(3) of this title (relating to minimum rental amount), the monthly assistance payment for a family receiving assistance under this subsection shall be determined as follows:

(A) Tenant-based assistance; rent not exceeding payment standard

For a family receiving tenant-based assistance, if the rent for the family (including the amount allowed for tenant-paid utilities) does not exceed the applicable payment standard established under paragraph (1), the monthly assistance payment for the family shall be equal to the amount by which the rent (including the amount allowed for tenant-paid utilities) exceeds the greatest of the following amounts, rounded to the nearest dollar:

(i) 30 percent of the monthly adjusted income of the family.

(ii) 10 percent of the monthly income of the family.

(iii) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the actual housing costs of the family, is specifically designated by that agency to meet the housing costs of the family, the portion of those payments that is so designated.

(B) Tenant-based assistance; rent exceeding payment standard

For a family receiving tenant-based assistance, if the rent for the family (including the amount allowed for tenant-paid utilities) exceeds the applicable payment standard established under paragraph (1), the monthly assistance payment for the family shall be equal to the amount by which the applicable payment standard exceeds the greatest of amounts under clauses (i), (ii), and (iii) of subparagraph (A).

(C) Families receiving project-based assistance

For a family receiving project-based assistance, the rent that the family is required to pay shall be determined in accordance with section 1437a(a)(1) of this title, and the amount of the housing assistance payment shall be determined in accordance with subsection (c)(3) of this section.

(3) 40 percent limit

At the time a family initially receives tenant-based assistance under this section with respect to any dwelling unit, the total amount that a family may be required to pay for rent may not exceed 40 percent of the monthly adjusted income of the family.

(4) Eligible families

To be eligible to receive assistance under this subsection, a family shall, at the time a family initially receives assistance under this subsection, be a low-income family that is—

(A) a very low-income family;

(B) a family previously assisted under this subchapter;

(C) a low-income family that meets eligibility criteria specified by the public housing agency;

(D) a family that qualifies to receive a voucher in connection with a homeownership program approved under title IV of the Cranston-Gonzalez National Affordable Housing Act; or

(E) a family that qualifies to receive a voucher under section 223 or 226 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4113, 4116].

(5) Annual review of family income

(A) In general

Reviews of family incomes for purposes of this section shall be subject to the provisions of section 3544 of this title and shall be conducted upon the initial provision of housing assistance for the family and thereafter not less than annually.

(B) Procedures

Each public housing agency administering assistance under this subsection shall establish procedures that are appropriate and necessary to ensure that income data provided to the agency and owners by families applying for or receiving assistance from the agency is complete and accurate. Each public housing agency shall, not less frequently than annually, conduct a review of the family income of each family receiving assistance under this subsection.

(6) Selection of families and disapproval of owners

(A) Preferences

(i) Authority to establish

Each public housing agency may establish a system for making tenant-based assistance under this subsection available on

behalf of eligible families that provides preference for such assistance to eligible families having certain characteristics, which may include a preference for families residing in public housing who are victims of a crime of violence (as such term is defined in section 16 of title 18) that has been reported to an appropriate law enforcement agency.

(ii) Content

Each system of preferences established pursuant to this subparagraph shall be based upon local housing needs and priorities, as determined by the public housing agency using generally accepted data sources, including any information obtained pursuant to an opportunity for public comment as provided under section 1437c–1(f) of this title and under the requirements applicable to the comprehensive housing affordability strategy for the relevant jurisdiction.

(B) Selection of tenants

Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit)[5] shall provide that the screening and selection of families for those units shall be the function of the owner. In addition, the public housing agency may elect to screen applicants for the program in accordance with such requirements as the Secretary may establish. That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance by[6] or for denial of admission if the applicant otherwise qualifies for assistance for[7] admission, and that[8] nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

(C) PHA disapproval of owners

In addition to other grounds authorized by the Secretary, a public housing agency may elect not to enter into a housing assistance payments contract under this subsection with an owner who refuses, or has a history of refusing, to take action to terminate tenancy for activity engaged in by the tenant, any member of the tenant's household, any guest, or any other person under the control of any member of the household that—

(i) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other tenants or employees of the public housing agency, owner, or other manager of the housing;

(ii) threatens the health or safety of, or right to peaceful enjoyment of the residences by, persons residing in the immediate vicinity of the premises; or

(iii) is drug-related or violent criminal activity.

(7) Leases and tenancy

Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit—

(A) shall provide that the lease between the tenant and the owner shall be for a term of not less than 1 year, except that the public housing agency may approve a shorter term for an initial lease between the tenant and the dwelling unit owner if the public housing agency determines that such shorter term would improve housing opportunities for the tenant and if such shorter term is considered to be a prevailing local market practice;

(B) shall provide that the dwelling unit owner shall offer leases to tenants assisted under this subsection that—

(i) are in a standard form used in the locality by the dwelling unit owner; and

(ii) contain terms and conditions that—

(I) are consistent with State and local law; and

(II) apply generally to tenants in the property who are not assisted under this section;

(C) shall provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the tenancy or occupancy rights of the victim of such violence;

(D) shall provide that during the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any violent or drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy; except that (i) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (ii) notwithstanding clause (i), a public housing agency may terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or

[5] So in original. No opening parenthesis was enacted.
[6] So in original. The word ''by'' probably should not appear.
[7] So in original. Probably should be ''or''.
[8] So in original. The word ''that'' probably should not appear.

others, or an owner or manager may bifurcate a lease under this section, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant; (iii) nothing in clause (i) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (iv) nothing in clause (i) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (v) nothing in clause (i) may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate,[9] assistance to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance; and (vi) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.;[10]

(E) shall provide that any termination of tenancy under this subsection shall be preceded by the provision of written notice by the owner to the tenant specifying the grounds for that action, and any relief shall be consistent with applicable State and local law; and

(F) may include any addenda required by the Secretary to set forth the provisions of this subsection.

(8) Inspection of units by PHAs

(A) In general

Except as provided in paragraph (11), for each dwelling unit for which a housing assistance payment contract is established under this subsection, the public housing agency shall inspect the unit before any assistance payment is made to determine whether the dwelling unit meets the housing quality standards under subparagraph (B).

(B) Housing quality standards

The housing quality standards under this subparagraph are standards for safe and habitable housing established—

(i) by the Secretary for purposes of this subsection; or

(ii) by local housing codes or by codes adopted by public housing agencies that—

(I) meet or exceed housing quality standards, except that the Secretary may waive the requirement under this subclause to significantly increase access to affordable housing and to expand housing opportunities for families assisted under this subsection, except where such waiver could adversely affect the health or safety of families assisted under this subsection; and

(II) do not severely restrict housing choice[11]

(C) Inspection

The determination required under subparagraph (A) shall be made by the public housing agency (or other entity, as provided in paragraph (11)) pursuant to an inspection of the dwelling unit conducted before any assistance payment is made for the unit. Inspections of dwelling units under this subparagraph shall be made before the expiration of the 15-day period beginning upon a request by the resident or landlord to the public housing agency or, in the case of any public housing agency that provides assistance under this subsection on behalf of more than 1250 families, before the expiration of a reasonable period beginning upon such request. The performance of the agency in meeting the 15-day inspection deadline shall be taken into consideration in assessing the performance of the agency.

(D) Annual inspections

Each public housing agency providing assistance under this subsection (or other entity, as provided in paragraph (11)) shall make an annual inspection of each assisted dwelling unit during the term of the housing assistance payments contract for the unit to determine whether the unit is maintained in accordance with the requirements under subparagraph (A). The agency (or other entity) shall retain the records of the inspection for a reasonable time and shall make the records available upon request to the Secretary, the Inspector General for the Department of Housing and Urban Development, and any auditor conducting an audit under section 1437c(h) of this title.

(E) Inspection guidelines

The Secretary shall establish procedural guidelines and performance standards to facilitate inspections of dwelling units and conform such inspections with practices utilized in the private housing market. Such guidelines and standards shall take into consideration variations in local laws and practices of public housing agencies and shall provide flexibility to authorities appropriate

[9] So in original. The comma probably should follow ''assistance to''.

[10] So in original. The period probably should not appear.

[11] So in original. Probably should be followed by a period.

to facilitate efficient provision of assistance under this subsection.

(9) Vacated units

If an assisted family vacates a dwelling unit for which rental assistance is provided under a housing assistance payment contract before the expiration of the term of the lease for the unit, rental assistance pursuant to such contract may not be provided for the unit after the month during which the unit was vacated.

(10) Rent

(A) Reasonableness

The rent for dwelling units for which a housing assistance payment contract is established under this subsection shall be reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted local market.

(B) Negotiations

A public housing agency (or other entity, as provided in paragraph (11)) shall, at the request of a family receiving tenant-based assistance under this subsection, assist that family in negotiating a reasonable rent with a dwelling unit owner. A public housing agency (or such other entity) shall review the rent for a unit under consideration by the family (and all rent increases for units under lease by the family) to determine whether the rent (or rent increase) requested by the owner is reasonable. If a public housing agency (or other such entity) determines that the rent (or rent increase) for a dwelling unit is not reasonable, the public housing agency (or other such entity) shall not make housing assistance payments to the owner under this subsection with respect to that unit.

(C) Units exempt from local rent control

If a dwelling unit for which a housing assistance payment contract is established under this subsection is exempt from local rent control provisions during the term of that contract, the rent for that unit shall be reasonable in comparison with other units in the market area that are exempt from local rent control provisions.

(D) Timely payments

Each public housing agency shall make timely payment of any amounts due to a dwelling unit owner under this subsection. The housing assistance payment contract between the owner and the public housing agency may provide for penalties for the late payment of amounts due under the contract, which shall be imposed on the public housing agency in accordance with generally accepted practices in the local housing market.

(E) Penalties

Unless otherwise authorized by the Secretary, each public housing agency shall pay any penalties from administrative fees collected by the public housing agency, except that no penalty shall be imposed if the late payment is due to factors that the Secretary determines are beyond the control of the public housing agency.

(11) Leasing of units owned by PHA

If an eligible family assisted under this subsection leases a dwelling unit (other than a public housing dwelling unit) that is owned by a public housing agency administering assistance under this subsection, the Secretary shall require the unit of general local government or another entity approved by the Secretary, to make inspections required under paragraph (8) and rent determinations required under paragraph (10). The agency shall be responsible for any expenses of such inspections and determinations.

(12) Assistance for rental of manufactured housing

(A) In general

A public housing agency may make assistance payments in accordance with this subsection on behalf of a family that utilizes a manufactured home as a principal place of residence. Such payments may be made only for the rental of the real property on which the manufactured home owned by any such family is located.

(B) Rent calculation

(i) Charges included

For assistance pursuant to this paragraph, the rent for the space on which a manufactured home is located and with respect to which assistance payments are to be made shall include maintenance and management charges and tenant-paid utilities.

(ii) Payment standard

The public housing agency shall establish a payment standard for the purpose of determining the monthly assistance that may be paid for any family under this paragraph. The payment standard may not exceed an amount approved or established by the Secretary.

(iii) Monthly assistance payment

The monthly assistance payment for a family assisted under this paragraph shall be determined in accordance with paragraph (2).

(13) PHA project-based assistance

(A) In general

A public housing agency may use amounts provided under an annual contributions contract under this subsection to enter into a housing assistance payment contract with respect to an existing, newly constructed, or rehabilitated structure, that is attached to the structure, subject to the limitations and requirements of this paragraph.

(B) Percentage limitation

Not more than 20 percent of the funding available for tenant-based assistance under this section that is administered by the agency may be attached to structures pursuant to this paragraph.

(C) Consistency with PHA plan and other goals

A public housing agency may approve a housing assistance payment contract pursu-

ant to this paragraph only if the contract is consistent with—

(i) the public housing agency plan for the agency approved under section 1437c–1 of this title; and

(ii) the goal of deconcentrating poverty and expanding housing and economic opportunities.

(D) Income mixing requirement

(i) In general

Not more than 25 percent of the dwelling units in any building may be assisted under a housing assistance payment contract for project-based assistance pursuant to this paragraph.

(ii) Exceptions

The limitation under clause (i) shall not apply in the case of assistance under a contract for housing consisting of single family properties or for dwelling units that are specifically made available for households comprised of elderly families, disabled families, and families receiving supportive services.

(E) Resident choice requirement

A housing assistance payment contract pursuant to this paragraph shall provide as follows:

(i) Mobility

Each low-income family occupying a dwelling unit assisted under the contract may move from the housing at any time after the family has occupied the dwelling unit for 12 months.

(ii) Continued assistance

Upon such a move, the public housing agency shall provide the low-income family with tenant-based rental assistance under this section or such other tenant-based rental assistance that is subject to comparable income, assistance, rent contribution, affordability, and other requirements, as the Secretary shall provide by regulation. If such rental assistance is not immediately available to fulfill the requirement under the preceding sentence with respect to a low-income family, such requirement may be met by providing the family priority to receive the next voucher or other tenant-based rental assistance amounts that become available under the program used to fulfill such requirement.

(F) Contract term

A housing assistance payment contract pursuant to this paragraph between a public housing agency and the owner of a structure may have a term of up to 10 years, subject to the availability of sufficient appropriated funds for the purpose of renewing expiring contracts for assistance payments, as provided in appropriations Acts and in the agency's annual contributions contract with the Secretary, and to annual compliance with the inspection requirements under paragraph (8), except that the agency shall not be required to make annual inspections of each assisted unit in the development. The contract may specify additional conditions for its continuation. If the units covered by the contract are owned by the agency, the term of the contract shall be agreed upon by the agency and the unit of general local government or other entity approved by the Secretary in the manner provided under paragraph (11).

(G) Extension of contract term

A public housing agency may enter into a contract with the owner of a structure assisted under a housing assistance payment contract pursuant to this paragraph to extend the term of the underlying housing assistance payment contract for such period as the agency determines to be appropriate to achieve long-term affordability of the housing or to expand housing opportunities. Such a contract shall provide that the extension of such term shall be contingent upon the future availability of appropriated funds for the purpose of renewing expiring contracts for assistance payments, as provided in appropriations Acts, and may obligate the owner to have such extensions of the underlying housing assistance payment contract accepted by the owner and the successors in interest of the owner.

(H) Rent calculation

A housing assistance payment contract pursuant to this paragraph shall establish rents for each unit assisted in an amount that does not exceed 110 percent of the applicable fair market rental (or any exception payment standard approved by the Secretary pursuant to paragraph (1)(D)), except that if a contract covers a dwelling unit that has been allocated low-income housing tax credits pursuant to section 42 of title 26 and is not located in a qualified census tract (as such term is defined in subsection (d) of such section 42), the rent for such unit may be established at any level that does not exceed the rent charged for comparable units in the building that also receive the low-income housing tax credit but do not have additional rental assistance. The rents established by housing assistance payment contracts pursuant to this paragraph may vary from the payment standards established by the public housing agency pursuant to paragraph (1)(B), but shall be subject to paragraph (10)(A).

(I) Rent adjustments

A housing assistance payments contract pursuant to this paragraph shall provide for rent adjustments, except that—

(i) the adjusted rent for any unit assisted shall be reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted, local market and may not exceed the maximum rent permitted under subparagraph (H); and

(ii) the provisions of subsection (c)(2)(C) of this section shall not apply.

(J) Tenant selection

A public housing agency shall select families to receive project-based assistance pur-

suant to this paragraph from its waiting list for assistance under this subsection. Eligibility for such project-based assistance shall be subject to the provisions of section 1437n(b) of this title that apply to tenant-based assistance. The agency may establish preferences or criteria for selection for a unit assisted under this paragraph that are consistent with the public housing agency plan for the agency approved under section 1437c–1 of this title. Any family that rejects an offer of project-based assistance under this paragraph or that is rejected for admission to a structure by the owner or manager of a structure assisted under this paragraph shall retain its place on the waiting list as if the offer had not been made. The owner or manager of a structure assisted under this paragraph shall not admit any family to a dwelling unit assisted under a contract pursuant to this paragraph other than a family referred by the public housing agency from its waiting list. Subject to its waiting list policies and selection preferences, a public housing agency may place on its waiting list a family referred by the owner or manager of a structure and may maintain a separate waiting list for assistance under this paragraph, but only if all families on the agency's waiting list for assistance under this subsection are permitted to place their names on the separate list.

(K) Vacated units

Notwithstanding paragraph (9), a housing assistance payment contract pursuant to this paragraph may provide as follows:

(i) Payment for vacant units

That the public housing agency may, in its discretion, continue to provide assistance under the contract, for a reasonable period not exceeding 60 days, for a dwelling unit that becomes vacant, but only: (I) if the vacancy was not the fault of the owner of the dwelling unit; and (II) the agency and the owner take every reasonable action to minimize the likelihood and extent of any such vacancy. Rental assistance may not be provided for a vacant unit after the expiration of such period.

(ii) Reduction of contract

That, if despite reasonable efforts of the agency and the owner to fill a vacant unit, no eligible family has agreed to rent the unit within 120 days after the owner has notified the agency of the vacancy, the agency may reduce its housing assistance payments contract with the owner by the amount equivalent to the remaining months of subsidy attributable to the vacant unit. Amounts deobligated pursuant to such a contract provision shall be available to the agency to provide assistance under this subsection.

Eligible applicants for assistance under this subsection may enforce provisions authorized by this subparagraph.

(14) Inapplicability to tenant-based assistance

Subsection (c) of this section shall not apply to tenant-based assistance under this subsection.

(15) Homeownership option

(A) In general

A public housing agency providing assistance under this subsection may, at the option of the agency, provide assistance for homeownership under subsection (y) of this section.

(B) Alternative administration

A public housing agency may contract with a nonprofit organization to administer a homeownership program under subsection (y) of this section.

(16) Rental vouchers for relocation of witnesses and victims of crime

(A) Witnesses

Of amounts made available for assistance under this subsection in each fiscal year, the Secretary, in consultation with the Inspector General, shall make available such sums as may be necessary for the relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to requests from law enforcement or prosecution agencies.

(B) Victims of crime

(i) In general

Of amounts made available for assistance under this section in each fiscal year, the Secretary shall make available such sums as may be necessary for the relocation of families residing in public housing who are victims of a crime of violence (as that term is defined in section 16 of title 18) that has been reported to an appropriate law enforcement agency.

(ii) Notice

A public housing agency that receives amounts under this subparagraph shall establish procedures for providing notice of the availability of that assistance to families that may be eligible for that assistance.

(17) Deed restrictions

Assistance under this subsection may not be used in any manner that abrogates any local deed restriction that applies to any housing consisting of 1 to 4 dwelling units. This paragraph may not be construed to affect the provisions or applicability of the Fair Housing Act [42 U.S.C. 3601 et seq.].

(18) Rental assistance for assisted living facilities

(A) In general

A public housing agency may make assistance payments on behalf of a family that uses an assisted living facility as a principal place of residence and that uses such supportive services made available in the facility as the agency may require. Such payments may be made only for covering costs of rental of the dwelling unit in the assisted

living facility and not for covering any portion of the cost of residing in such facility that is attributable to service relating to assisted living.

(B) Rent calculation

(i) Charges included

For assistance pursuant to this paragraph, the rent of the dwelling unit that is an assisted living facility with respect to which assistance payments are made shall include maintenance and management charges related to the dwelling unit and tenant-paid utilities. Such rent shall not include any charges attributable to services relating to assisted living.

(ii) Payment standard

In determining the monthly assistance that may be paid under this paragraph on behalf of any family residing in an assisted living facility, the public housing agency shall utilize the payment standard established under paragraph (1), for the market area in which the assisted living facility is located, for the applicable size dwelling unit.

(iii) Monthly assistance payment

The monthly assistance payment for a family assisted under this paragraph shall be determined in accordance with paragraph (2) (using the rent and payment standard for the dwelling unit as determined in accordance with this subsection).

(C) Definition

For the purposes of this paragraph, the term ''assisted living facility'' has the meaning given that term in section 232(b) of the National Housing Act (12 U.S.C. 1715w(b)), except that such a facility may be contained within a portion of a larger multifamily housing project.

(19) Rental vouchers for Veterans Affairs supported housing program

(A) Set aside

Subject to subparagraph (C), the Secretary shall set aside, from amounts made available for rental assistance under this subsection, the amounts specified in subparagraph (B) for use only for providing such assistance through a supported housing program administered in conjunction with the Department of Veterans Affairs. Such program shall provide rental assistance on behalf of homeless veterans who have chronic mental illnesses or chronic substance use disorders, shall require agreement of the veteran to continued treatment for such mental illness or substance use disorder as a condition of receipt of such rental assistance, and shall ensure such treatment and appropriate case management for each veteran receiving such rental assistance.

(B) Amount

The amount specified in this subparagraph is—

(i) for fiscal year 2003, the amount necessary to provide 500 vouchers for rental assistance under this subsection;

(ii) for fiscal year 2004, the amount necessary to provide 1,000 vouchers for rental assistance under this subsection;

(iii) for fiscal year 2005, the amount necessary to provide 1,500 vouchers for rental assistance under this subsection; and

(iv) for fiscal year 2006, the amount necessary to provide 2,000 vouchers for rental assistance under this subsection.

(C) Funding through incremental assistance

In any fiscal year, to the extent that this paragraph requires the Secretary to set aside rental assistance amounts for use under this paragraph in an amount that exceeds the amount set aside in the preceding fiscal year, such requirement shall be effective only to such extent or in such amounts as are or have been provided in appropriation Acts for such fiscal year for incremental rental assistance under this subsection.

(20) Prohibited basis for termination of assistance

(A) In general

A public housing agency may not terminate assistance to a participant in the voucher program on the basis of an incident or incidents of actual or threatened domestic violence, dating violence, or stalking against that participant.

(B) Construal of lease provisions

Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered a serious or repeated violation of the lease by the victim or threatened victim of that criminal activity justifying termination of assistance to the victim or threatened victim.

(C) Termination on the basis of criminal activity

Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered cause for termination of assistance for any participant or immediate member of a participant's family who is a victim of the domestic violence, dating violence, or stalking.

(D) Exceptions

(i) Public housing authority right to terminate for criminal acts

Nothing in subparagraph (A), (B), or (C) may be construed to limit the authority of the public housing agency to terminate voucher assistance to individuals who engage in criminal acts of physical violence against family members or others.

(ii) Compliance with court orders

Nothing in subparagraph (A), (B), or (C) may be construed to limit the authority of a public housing agency, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution possession of property among the household members in cases where a family breaks up.

(iii) Public housing authority right to terminate voucher assistance for lease violations

Nothing in subparagraph (A), (B), or (C) limit[12] any otherwise available authority of the public housing agency to terminate voucher assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to terminate.

(iv) Public housing authority right to terminate voucher assistance for imminent threat

Nothing in subparagraph (A), (B), or (C) may be construed to limit the authority of the public housing agency to terminate voucher assistance to a tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property or public housing agency if that tenant is not evicted or terminated from assistance.

(v) Preemption

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

(p) Shared housing for elderly and handicapped

In order to assist elderly families (as defined in section 1437a(b)(3) of this title who elect to live in a shared housing arrangement in which they benefit as a result of sharing the facilities of a dwelling with others in a manner that effectively and efficiently meets their housing needs and thereby reduces their cost of housing, the Secretary shall permit assistance provided under the existing housing and moderate rehabilitation programs to be used by such families in such arrangements. In carrying out this subsection, the Secretary shall issue minimum habitability standards for the purpose of assuring decent, safe, and sanitary housing for such families while taking into account the special circumstances of shared housing.

(q) Administrative fees

(1) Fee for ongoing costs of administration

(A) In general

The Secretary shall establish fees for the costs of administering the tenant-based assistance, certificate, voucher, and moderate rehabilitation programs under this section.

(B) Fiscal year 1999

(i) Calculation

For fiscal year 1999, the fee for each month for which a dwelling unit is covered by an assistance contract shall be—

(I) in the case of a public housing agency that, on an annual basis, is administering a program for not more than 600 dwelling units, 7.65 percent of the base amount; and

(II) in the case of an agency that, on an annual basis, is administering a program for more than 600 dwelling units (aa) for the first 600 units, 7.65 percent of the base amount, and (bb) for any additional dwelling units under the program, 7.0 percent of the base amount.

(ii) Base amount

For purposes of this subparagraph, the base amount shall be the higher of—

(I) the fair market rental established under subsection (c) of this section (as in effect immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998) for fiscal year 1993 for a 2-bedroom existing rental dwelling unit in the market area of the agency, and

(II) the amount that is the lesser of (aa) such fair market rental for fiscal year 1994, or (bb) 103.5 percent of the amount determined under clause (i),

adjusted based on changes in wage data or other objectively measurable data that reflect the costs of administering the program, as determined by the Secretary. The Secretary may require that the base amount be not less than a minimum amount and not more than a maximum amount.

(C) Subsequent fiscal years

For subsequent fiscal years, the Secretary shall publish a notice in the Federal Register, for each geographic area, establishing the amount of the fee that would apply for public housing agencies administering the program, based on changes in wage data or other objectively measurable data that reflect the costs of administering the program, as determined by the Secretary.

(D) Increase

The Secretary may increase the fee if necessary to reflect the higher costs of administering small programs and programs operating over large geographic areas.

(E) Decrease

The Secretary may decrease the fee for units owned by a public housing agency to reflect reasonable costs of administration.

(2) Fee for preliminary expenses

The Secretary shall also establish reasonable fees (as determined by the Secretary) for—

(A) the costs of preliminary expenses, in the amount of $500, for a public housing agency, except that such fee shall apply to an agency only in the first year that the agency administers a tenant-based assistance program under this section, and only if, immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, the agency

[12] So in original. Probably should be ''limits''.

was not administering a tenant-based assistance program under this chapter (as in effect immediately before such effective date), in connection with its initial increment of assistance received;

(B) the costs incurred in assisting families who experience difficulty (as determined by the Secretary) in obtaining appropriate housing under the programs; and

(C) extraordinary costs approved by the Secretary.

(3) Transfer of fees in cases of concurrent geographical jurisdiction

In each fiscal year, if any public housing agency provides tenant-based assistance under this section on behalf of a family who uses such assistance for a dwelling unit that is located within the jurisdiction of such agency but is also within the jurisdiction of another public housing agency, the Secretary shall take such steps as may be necessary to ensure that the public housing agency that provides the services for a family receives all or part of the administrative fee under this section (as appropriate).

(4) Applicability

This subsection shall apply to fiscal year 1999 and fiscal years thereafter.

(r) Portability

(1) IN GENERAL.—(A) Any family receiving tenant-based assistance under subsection (*o*) of this section may receive such assistance to rent an eligible dwelling unit if the dwelling unit to which the family moves is within any area in which a program is being administered under this section.

(B)(i) Notwithstanding subparagraph (A) and subject to any exceptions established under clause (ii) of this subparagraph, a public housing agency may require that any family not living within the jurisdiction of the public housing agency at the time the family applies for assistance from the agency shall, during the 12-month period beginning on the date of initial receipt of housing assistance made available on behalf of the family from such agency, lease and occupy an eligible dwelling unit located within the jurisdiction served by the agency.

(ii) The Secretary may establish such exceptions to the authority of public housing agencies established under clause (i).

(2) The public housing agency having authority with respect to the dwelling unit to which a family moves under this subsection shall have the responsibility of carrying out the provisions of this subsection with respect to the family.

(3) In providing assistance under subsection (*o*) of this section for any fiscal year, the Secretary shall give consideration to any reduction in the number of resident families incurred by a public housing agency in the preceding fiscal year as a result of the provisions of this subsection. The Secretary shall establish procedures for the compensation of public housing agencies that issue vouchers to families that move into or out of the jurisdiction of the public housing agency under portability procedures. The Secretary may reserve amounts available for assistance under subsection (*o*) of this section to compensate those public housing agencies.

(4) The provisions of this subsection may not be construed to restrict any authority of the Secretary under any other provision of law to provide for the portability of assistance under this section.

(5) LEASE VIOLATIONS.—A family may not receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has moved out of the assisted dwelling unit of the family in violation of a lease, except that a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 [42 U.S.C. 1437f] program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit.

(s) Prohibition of denial of certificates and vouchers to residents of public housing

In selecting families for the provision of assistance under this section (including subsection (*o*) of this section), a public housing agency may not exclude or penalize a family solely because the family resides in a public housing project.

(t) Enhanced vouchers

(1) In general

Enhanced voucher assistance under this subsection for a family shall be voucher assistance under subsection (*o*) of this section, except that under such enhanced voucher assistance—

(A) subject only to subparagraph (D), the assisted family shall pay as rent no less than the amount the family was paying on the date of the eligibility event for the project in which the family was residing on such date;

(B) the assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project, and if, during any period the family makes such an election and continues to so reside, the rent for the dwelling unit of the family in such project exceeds the applicable payment standard established pursuant to subsection (*o*) of this section for the unit, the amount of rental assistance provided on behalf of the family shall be determined using a payment standard that is equal to the rent for the dwelling unit (as such rent may be increased from time-to-time), subject to paragraph (10)(A) of subsection (*o*) of this section and any other reasonable limit prescribed by the Secretary, except that a limit shall not be considered reasonable for purposes of this subparagraph if it adversely affects such assisted families;

(C) subparagraph (B) of this paragraph shall not apply and the payment standard for the dwelling unit occupied by the family shall be determined in accordance with subsection (*o*) of this section if—

(i) the assisted family moves, at any time, from such project; or

(ii) the voucher is made available for use by any family other than the original family on behalf of whom the voucher was provided; and

(D) if the income of the assisted family declines to a significant extent, the percentage of income paid by the family for rent shall not exceed the greater of 30 percent or the percentage of income paid at the time of the eligibility event for the project.

(2) Eligibility event

For purposes of this subsection, the term ''eligibility event'' means, with respect to a multifamily housing project, the prepayment of the mortgage on such housing project, the voluntary termination of the insurance contract for the mortgage for such housing project (including any such mortgage prepayment during fiscal year 1996 or a fiscal year thereafter or any insurance contract voluntary termination during fiscal year 1996 or a fiscal year thereafter), the termination or expiration of the contract for rental assistance under this section for such housing project (including any such termination or expiration during fiscal years after fiscal year 1994 prior to the effective date of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001), or the transaction under which the project is preserved as affordable housing, that, under paragraphs (3) and (4) of section 515(c), section 524(d) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), section 4113(f) of title 12, or section 1715z–1a(p) of title 12, results in tenants in such housing project being eligible for enhanced voucher assistance under this subsection.

(3) Treatment of enhanced vouchers provided under other authority

(A) In general

Notwithstanding any other provision of law, any enhanced voucher assistance provided under any authority specified in subparagraph (B) shall (regardless of the date that the amounts for providing such assistance were made available) be treated, and subject to the same requirements, as enhanced voucher assistance under this subsection.

(B) Identification of other authority

The authority specified in this subparagraph is the authority under—

(i) the 10th, 11th, and 12th provisos under the ''Preserving Existing Housing Investment'' account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104–204; 110 Stat. 2884), pursuant to such provisos, the first proviso under the ''Housing Certificate Fund'' account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Public Law 105–65; 111 Stat. 1351), or the first proviso under the ''Housing Certificate Fund'' account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105–276; 112 Stat. 2469); and

(ii) paragraphs (3) and (4) of section 515(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), as in effect before October 20, 1999.

(4) Authorization of appropriations

There are authorized to be appropriated for each of fiscal years 2000, 2001, 2002, 2003, and 2004 such sums as may be necessary for enhanced voucher assistance under this subsection.

(u) Assistance for residents of rental rehabilitation projects

In the case of low-income families living in rental projects rehabilitated under section 1437*o*[13] of this title or section 1490m of this title before rehabilitation—

(1) vouchers under this section shall be made for families who are required to move out of their units because of the physical rehabilitation activities or because of overcrowding;

(2) at the discretion of each public housing agency or other agency administering the allocation of assistance or vouchers under this section may be made for families who would have to pay more than 30 percent of their adjusted income for rent after rehabilitation whether they choose to remain in, or to move from, the project; and

(3) the Secretary shall allocate assistance for vouchers under this section to ensure that sufficient resources are available to address the physical or economic displacement, or potential economic displacement, of existing tenants pursuant to paragraphs (1) and (2).

(v) Extension of expiring contracts

The Secretary may extend expiring contracts entered into under this section for project-based loan management assistance to the extent necessary to prevent displacement of low-income families receiving such assistance as of September 30, 1996.

(w) Repealed. Pub. L. 106–74, title V, § 531(d)(2), Oct. 20, 1999, 113 Stat. 1116

(x) Family unification

(1) Increase in budget authority

The budget authority available under section 1437c(c) of this title for assistance under subsection (b) of this section is authorized to be increased by $100,000,000 on or after October 1, 1992, and by $104,200,000 on or after October 1, 1993.

(2) Use of funds

The amounts made available under this subsection shall be used only in connection with tenant-based assistance under this section on behalf of (A) any family (i) who is otherwise

[13] See References in Text note below.

eligible for such assistance, and (ii) who the public child welfare agency for the jurisdiction has certified is a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child or children in out-of-home care or the delayed discharge of a child or children to the family from out-of-home care and (B) for a period not to exceed 18 months, otherwise eligible youths who have attained at least 18 years of age and not more than 21 years of age and who have left foster care at age 16 or older.

(3) Allocation

The amounts made available under this subsection shall be allocated by the Secretary through a national competition among applicants based on demonstrated need for the assistance under this subsection. To be considered for assistance, an applicant shall submit to the Secretary a written proposal containing a report from the public child welfare agency serving the jurisdiction of the applicant that describes how a lack of adequate housing in the jurisdiction is resulting in the initial or prolonged separation of children from their families, and how the applicant will coordinate with the public child welfare agency to identify eligible families and provide the families with assistance under this subsection.

(4) Definitions

For purposes of this subsection:

(A) Applicant

The term ''applicant'' means a public housing agency or any other agency responsible for administering assistance under this section.

(B) Public child welfare agency

The term ''public child welfare agency'' means the public agency responsible under applicable State law for determining that a child is at imminent risk of placement in out-of-home care or that a child in out-of-home care under the supervision of the public agency may be returned to his or her family.

(y) Homeownership option

(1) Use of assistance for homeownership

A public housing agency providing tenant-based assistance on behalf of an eligible family under this section may provide assistance for an eligible family that purchases a dwelling unit (including a unit under a lease-purchase agreement) that will be owned by 1 or more members of the family, and will be occupied by the family, if the family—

(A) is a first-time homeowner, or owns or is acquiring shares in a cooperative;

(B) demonstrates that the family has income from employment or other sources (other than public assistance, except that the Secretary may provide for the consideration of public assistance in the case of an elderly family or a disabled family), as determined in accordance with requirements of the Secretary, that is not less than twice the payment standard established by the public housing agency (or such other amount as may be established by the Secretary);

(C) except as provided by the Secretary, demonstrates at the time the family initially receives tenant-based assistance under this subsection that one or more adult members of the family have achieved employment for the period as the Secretary shall require;

(D) participates in a homeownership and housing counseling program provided by the agency; and

(E) meets any other initial or continuing requirements established by the public housing agency in accordance with requirements established by the Secretary.

(2) Determination of amount of assistance

(A) Monthly expenses not exceeding payment standard

If the monthly homeownership expenses, as determined in accordance with requirements established by the Secretary, do not exceed the payment standard, the monthly assistance payment shall be the amount by which the homeownership expenses exceed the highest of the following amounts, rounded to the nearest dollar:

(i) 30 percent of the monthly adjusted income of the family.

(ii) 10 percent of the monthly income of the family.

(iii) If the family is receiving payments for welfare assistance from a public agency, and a portion of those payments, adjusted in accordance with the actual housing costs of the family, is specifically designated by that agency to meet the housing costs of the family, the portion of those payments that is so designated.

(B) Monthly expenses exceed payment standard

If the monthly homeownership expenses, as determined in accordance with requirements established by the Secretary, exceed the payment standard, the monthly assistance payment shall be the amount by which the applicable payment standard exceeds the highest of the amounts under clauses (i), (ii), and (iii) of subparagraph (A).

(3) Inspections and contract conditions

(A) In general

Each contract for the purchase of a unit to be assisted under this section shall—

(i) provide for pre-purchase inspection of the unit by an independent professional; and

(ii) require that any cost of necessary repairs be paid by the seller.

(B) Annual inspections not required

The requirement under subsection (*o*)(8)(A)(ii)[14] of this section for annual inspections shall not apply to units assisted under this section.

(4) Other authority of the Secretary

The Secretary may—

(A) limit the term of assistance for a family assisted under this subsection; and

[14] See References in Text note below.

(B) modify the requirements of this subsection as the Secretary determines to be necessary to make appropriate adaptations for lease-purchase agreements.

(5) Inapplicability of certain provisions

Assistance under this subsection shall not be subject to the requirements of the following provisions:

(A) Subsection (c)(3)(B)[14] of this section.

(B) Subsection (d)(1)(B)(i) of this section.

(C) Any other provisions of this section governing maximum amounts payable to owners and amounts payable by assisted families.

(D) Any other provisions of this section concerning contracts between public housing agencies and owners.

(E) Any other provisions of this chapter that are inconsistent with the provisions of this subsection.

(6) Reversion to rental status

(A) FHA-insured mortgages

If a family receiving assistance under this subsection for occupancy of a dwelling defaults under a mortgage for the dwelling insured by the Secretary under the National Housing Act [12 U.S.C. 1701 et seq.], the family may not continue to receive rental assistance under this section unless the family (i) transfers to the Secretary marketable title to the dwelling, (ii) moves from the dwelling within the period established or approved by the Secretary, and (iii) agrees that any amounts the family is required to pay to reimburse the escrow account under section 1437u(d)(3)[14] of this title may be deducted by the public housing agency from the assistance payment otherwise payable on behalf of the family.

(B) Other mortgages

If a family receiving assistance under this subsection defaults under a mortgage not insured under the National Housing Act [12 U.S.C. 1701 et seq.], the family may not continue to receive rental assistance under this section unless it complies with requirements established by the Secretary.

(C) All mortgages

A family receiving assistance under this subsection that defaults under a mortgage may not receive assistance under this subsection for occupancy of another dwelling owned by one or more members of the family.

(7) Downpayment assistance

(A) Authority

A public housing agency may, in lieu of providing monthly assistance payments under this subsection on behalf of a family eligible for such assistance and at the discretion of the public housing agency, provide assistance for the family in the form of a single grant to be used only as a contribution toward the downpayment required in connection with the purchase of a dwelling for fiscal year 2000 and each fiscal year thereafter to the extent provided in advance in appropriations Acts.

(B) Amount

The amount of a downpayment grant on behalf of an assisted family may not exceed the amount that is equal to the sum of the assistance payments that would be made during the first year of assistance on behalf of the family, based upon the income of the family at the time the grant is to be made.

(8) "First-time homeowner" defined

For purposes of this subsection, the term ''first-time homeowner'' means—

(A) a family, no member of which has had a present ownership interest in a principal residence during the 3 years preceding the date on which the family initially receives assistance for homeownership under this subsection; and

(B) any other family, as the Secretary may prescribe.

(z) Termination of section 1437f contracts and reuse of recaptured budget authority

(1) General authority

The Secretary may reuse any budget authority, in whole or part, that is recaptured on account of expiration or termination of a housing assistance payments contract only for one or more of the following:

(A) Tenant-based assistance

Pursuant to a contract with a public housing agency, to provide tenant-based assistance under this section to families occupying units formerly assisted under the terminated contract.

(B) Project-based assistance

Pursuant to a contract with an owner, to attach assistance to one or more structures under this section, for relocation of families occupying units formerly assisted under the terminated contract.

(2) Families occupying units formerly assisted under terminated contract

Pursuant to paragraph (1), the Secretary shall first make available tenant- or project-based assistance to families occupying units formerly assisted under the terminated contract. The Secretary shall provide project-based assistance in instances only where the use of tenant-based assistance is determined to be infeasible by the Secretary.

(aa) Omitted

(bb) Transfer, reuse, and rescission of budget authority

(1) Transfer of budget authority

If an assistance contract under this section, other than a contract for tenant-based assistance, is terminated or is not renewed, or if the contract expires, the Secretary shall, in order to provide continued assistance to eligible families, including eligible families receiving the benefit of the project-based assistance at the time of the termination, transfer any budget authority remaining in the contract to another contract. The transfer shall be under such terms as the Secretary may prescribe.

(2) Reuse and rescission of certain recaptured budget authority

Notwithstanding paragraph (1), if a project-based assistance contract for an eligible multifamily housing project subject to actions authorized under this subchapter is terminated or amended as part of restructuring under section 517 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, the Secretary shall recapture the budget authority not required for the terminated or amended contract and use such amounts as are necessary to provide housing assistance for the same number of families covered by such contract for the remaining term of such contract, under a contract providing for project-based or tenant-based assistance. The amount of budget authority saved as a result of the shift to project-based or tenant-based assistance shall be rescinded.

(cc) Law enforcement and security personnel

(1) In general

Notwithstanding any other provision of this chapter, in the case of assistance attached to a structure, for the purpose of increasing security for the residents of a project, an owner may admit, and assistance under this section may be provided to, police officers and other security personnel who are not otherwise eligible for assistance under the chapter.

(2) Rent requirements

With respect to any assistance provided by an owner under this subsection, the Secretary may—

(A) permit the owner to establish such rent requirements and other terms and conditions of occupancy that the Secretary considers to be appropriate; and

(B) require the owner to submit an application for those rent requirements, which application shall include such information as the Secretary, in the discretion of the Secretary, determines to be necessary.

(3) Applicability

This subsection shall apply to fiscal year 1999 and fiscal years thereafter.

(dd) Tenant-based contract renewals

Subject to amounts provided in appropriation Acts, starting in fiscal year 1999, the Secretary shall renew all expiring tenant-based annual contribution contracts under this section by applying an inflation factor based on local or regional factors to an allocation baseline. The allocation baseline shall be calculated by including, at a minimum, amounts sufficient to ensure continued assistance for the actual number of families assisted as of October 1, 1997, with appropriate upward adjustments for incremental assistance and additional families authorized subsequent to that date.

(ee) Certification and confidentiality

(1) Certification

(A) In general

An owner, manager, or public housing agency responding to subsections (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (*o*)(7)(C), (*o*)(7)(D), (*o*)(20), and (r)(5) of this section may request that an individual certify via a HUD approved certification form that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in the aforementioned paragraphs. Such certification shall include the name of the perpetrator. The individual shall provide such certification within 14 business days after the owner, manager, or public housing agency requests such certification.

(B) Failure to provide certification

If the individual does not provide the certification within 14 business days after the owner, manager, public housing agency, or assisted housing provider has requested such certification in writing, nothing in this subsection or in subsection (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (*o*)(7)(C), (*o*)(7)(D), (*o*)(20), or (r)(5) of this section may be construed to limit the authority of an owner or manager to evict, or the public housing agency or assisted housing provider to terminate voucher assistance for, any tenant or lawful occupant that commits violations of a lease. The owner, manager, public housing agency, or assisted housing provider may extend the 14-day deadline at their discretion.

(C) Contents

An individual may satisfy the certification requirement of subparagraph (A) by—

(i) providing the requesting owner, manager, or public housing agency with documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of the abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or

(ii) producing a Federal, State, tribal, territorial, or local police or court record.

(D) Limitation

Nothing in this subsection shall be construed to require an owner, manager, or public housing agency to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, sexual assault, or stalking in order to receive any of the benefits provided in this section. At their discretion, the owner, manager, or public housing agency may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.

(E) Compliance not sufficient to constitute evidence of unreasonable act

Compliance with this statute by an owner, manager, public housing agency, or assisted

housing provider based on the certification specified in paragraphs (1)(A) and (B) of this subsection or based solely on the victim's statement or other corroborating evidence, as permitted by paragraph (1)(C) of this subsection, shall not alone be sufficient to constitute evidence of an unreasonable act or omission by an owner, manger, public housing agency, or assisted housing provider, or employee thereof. Nothing in this subparagraph shall be construed to limit liability for failure to comply with the requirements of subsection (c)(9), (d)(1)(B)(ii), (d)(1)(B)(iii), (*o*)(7)(C), (*o*)(7)(D), (*o*)(20), or (r)(5) of this section.

(F) Preemption

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

(2) Confidentiality

(A) In general

All information provided to an owner, manager, or public housing agency pursuant to paragraph (1), including the fact that an individual is a victim of domestic violence, dating violence, or stalking, shall be retained in confidence by an owner, manager, or public housing agency, and shall neither be entered into any shared database nor provided to any related entity, except to the extent that disclosure is—

(i) requested or consented to by the individual in writing;

(ii) required for use in an eviction proceeding under subsection (c)(9), (d)(1)(B(ii), (d)(1)(B)(iii), (*o*)(7)(C), (*o*)(7)(D), or (*o*)(20) of this section,;[15] or

(iii) otherwise required by applicable law.

(B) Notification

Public housing agencies must provide notice to tenants assisted under this section of their rights under this subsection and subsections (c)(9), (d)(1)(B(ii), (d)(1)(B)(iii), (*o*)(7)(C), (*o*)(7)(D), (*o*)(20), and (r)(5) of this section, including their right to confidentiality and the limits thereof, and to owners and managers of their rights and obligations under this subsection and subsections (c)(9), (d)(1)(B(ii), (d)(1)(B)(iii), (*o*)(7)(C), (*o*)(7)(D), (*o*)(20), and (r)(5) of this section.

(Sept. 1, 1937, ch. 896, title I, §8, as added Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 662; amended Pub. L. 94–375, §2(d), (e), (g), Aug. 3, 1976, 90 Stat. 1068; Pub. L. 95–24, title I, §101(c), Apr. 30, 1977, 91 Stat. 55; Pub. L. 95–128, title II, §201(c)–(e), Oct. 12, 1977, 91 Stat. 1128; Pub. L. 95–557, title II, §206(d)(1), (e), (f), Oct. 31, 1978, 92 Stat. 2091, 2092; Pub. L. 96–153, title II, §§202(b), 206(b), 210, 211(b), Dec. 21, 1979, 93 Stat. 1106, 1108–1110; Pub. L. 96–399, title II, §203, title III, §308(c)(3), Oct. 8, 1980, 94 Stat. 1629, 1641; Pub. L. 97–35, title III, §§322(e), 324–326(a), (e)(1), 329H(a), Aug. 13, 1981, 95 Stat. 402, 405–407, 410; Pub. L. 98–181, title II, §§203(b)(1), (2), 207–209(a), 210, 211, Nov. 30, 1983, 97 Stat. 1178, 1181–1183; Pub. L. 98–479, title I, §102(b)(6)–(10), Oct. 17, 1984, 98 Stat. 2221, 2222; Pub. L. 100–242, title I, §§141–149, title II, §262, Feb. 5, 1988, 101 Stat. 1849–1853, 1890; renumbered title I, Pub. L. 100–358, §5, June 29, 1988, 102 Stat. 681; Pub. L. 100–628, title X, §§1004(a), 1005(b)(1), (c), 1006, 1014(b), (c), 1029, Nov. 7, 1988, 102 Stat. 3264, 3265, 3269, 3272; Pub. L. 101–235, title I, §127, title VIII, §801(c), (g), Dec. 15, 1989, 103 Stat. 2025, 2058, 2059; Pub. L. 101–625, title II, §289(b), title IV, §413, title V, §§541–545(a), 545(2)[(b)], 546–549, 550(a), (c), 551–553, 572, title VI, §§603, 613(a), Nov. 28, 1990, 104 Stat. 4128, 4160, 4216–4224, 4236, 4277, 4280; Pub. L. 102–139, title II, Oct. 28, 1991, 105 Stat. 756; Pub. L. 102–550, title I, §§141–148, 185(a), title VI, §§623(b), 660, 674, 675, 682(b), title X, §1012(g), Oct. 28, 1992, 106 Stat. 3713–3715, 3745, 3819, 3825, 3827, 3828, 3830, 3905; Pub. L. 103–233, title I, §101(c)(2), (3), (d), Apr. 11, 1994, 108 Stat. 357; Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2315; Pub. L. 104–19, title I, §1003, July 27, 1995, 109 Stat. 236; Pub. L. 104–99, title IV, §§402(d)(2), (3), (6)(A)(iii), (iv), 405(c), Jan. 26, 1996, 110 Stat. 41, 42, 44; Pub. L. 104–134, title I, §101(e) [title II, §§203(a)–(c), 208], Apr. 26, 1996, 110 Stat. 1321–257, 1321–281, 1321–284; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–193, title IX, §903(a)(2), Aug. 22, 1996, 110 Stat. 2348; Pub. L. 104–204, title II, §201(g), Sept. 26, 1996, 110 Stat. 2893; Pub. L. 105–18, title II, §10002, June 12, 1997, 111 Stat. 201; Pub. L. 105–33, title II, §§2003, 2004, Aug. 5, 1997, 111 Stat. 257; Pub. L. 105–65, title II, §§201(c), 205, title V, §523(a), (c), Oct. 27, 1997, 111 Stat. 1364, 1365, 1406, 1407; Pub. L. 105–276, title II, §209(a), title V, §§514(b)(1), 545(a), (b), 547–549(a)(2), (b), 550(a), 552–555(a), 556(a), 565(c), Oct. 21, 1998, 112 Stat. 2485, 2547, 2596–2607, 2609–2611, 2613, 2631; Pub. L. 106–74, title II, §223, title V, §§523(a), 531(d), 535, 538(a), Oct. 20, 1999, 113 Stat. 1076, 1104, 1116, 1121, 1122; Pub. L. 106–246, div. B, title II, §2801, July 13, 2000, 114 Stat. 569; Pub. L. 106–377, §1(a)(1) [title II, §§205, 228, 232(a), 234], Oct. 27, 2000, 114 Stat. 1441, 1441A–24, 1441A–30, 1441A–31, 1441A–35; Pub. L. 106–569, title III, §301(a), title IX, §§902(a), 903(a), Dec. 27, 2000, 114 Stat. 2952, 3026; Pub. L. 107–95, §12, Dec. 21, 2001, 115 Stat. 921; Pub. L. 107–116, title VI, §632, Jan. 10, 2002, 115 Stat. 2227; Pub. L. 109–162, title VI, §606, Jan. 5, 2006, 119 Stat. 3041.)

REFERENCES IN TEXT

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsecs. (f)(4) and (*o*)(4)(D), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, also known as the ''HOME Investment Partnerships Act'', is classified principally to subchapter II (§12721 et seq.) of chapter 130 of this title. Title IV of the Act, also known as the ''Homeownership and Opportunity Through HOPE Act'', enacted subchapter II–A (§1437aaa et seq.) of this chapter and subchapter IV (§12871 et seq.) of chapter 130 of this title, amended sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, Banks and Banking, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Housing and Community Development Act of 1992, referred to in subsec. (d)(2)(C), (D), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672. Subtitle C of title VI of the Act is classified generally to subchapter I (§13601

[15] So in original. The comma probably should not appear.

et seq.) of chapter 135 of this title. Subtitle D of title VI of the Act is classified principally to subchapter II (§ 13611 et seq.) of chapter 135 of this title. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of this title and Tables.

Sections 514 and 517 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, referred to in subsecs. (d)(5) and (bb)(2), are sections 514 and 517 of Pub. L. 105–65, and are set out as a note under this section.

The Social Security Act, referred to in subsec. (k), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Food Stamp Act of 1977, referred to in subsec. (k), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under 2011 of Title 7 and Tables.

The Fair Housing Act, referred to in subsec. (*o*)(17), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (q)(1)(B)(ii)(I), (2)(A), is section 503(a) of Pub. L. 105–276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

The effective date of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, referred to in subsec. (t)(2), means the effective date of H.R. 5482, as enacted by section 1(a)(1) of Pub. L. 106–377, which was approved Oct. 27, 2000.

Section 1437*o* of this title, referred to in subsec. (u), was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128.

Subsection (*o*)(8)(A) of this section, referred to in subsec. (y)(3)(B), does not contain a cl. (ii) and does not relate to annual inspections. For provisions of subsec. (*o*)(8) which relate to annual inspections, see subpar. (D).

Subsection (c)(3)(B) of this section, referred to in subsec. (y)(5), was repealed by Pub. L. 105–276, title V, § 550(a)(3)(A)(ii), Oct. 21, 1998, 112 Stat. 2609.

The National Housing Act, referred to in subsec. (y)(6), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 1437u(d)(3) of this title, relating to reimbursement of escrow accounts, referred to in subsec. (y)(6)(A), was repealed by Pub. L. 105–276, title V, § 509(a)(2), Oct. 21, 1998, 112 Stat. 2531.

CODIFICATION

October 20, 1999, referred to in subsec. (t)(3)(B)(ii), was in the original ''the enactment of this Act'', which was translated as meaning the enactment of Pub. L. 106–74, which enacted subsec. (t) of this section, to reflect the probable intent of Congress.

Section 203(a) of Pub. L. 100–242, as amended, which was formerly set out in a note under section 1715*l* of Title 12, Banks and Banking, and which provided that on Nov. 28, 1990, the amendment made by section 262 of Pub. L. 100–242 is repealed and section is to read as it would without such amendment, was omitted in the general amendment of subtitle A of title II of Pub. L. 100–242 by Pub. L. 101–625.

PRIOR PROVISIONS

A prior section 8 of act Sept. 1, 1937, ch. 896, 50 Stat. 891, as amended, authorized promulgation of rules and regulations by the Authority and was classified to section 1408 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

2006—Subsec. (c)(9). Pub. L. 109–162, § 606(1), added par. (9).

Subsec. (d)(1)(A). Pub. L. 109–162, § 606(2)(A), which directed insertion of ''and that an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission'' after ''public housing agency'', was executed by making the insertion after ''public housing agency'' the last place appearing to reflect the probable intent of Congress.

Subsec. (d)(1)(B)(ii). Pub. L. 109–162, § 606(2)(B), inserted '', and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence'' before semicolon at end.

Subsec. (d)(1)(B)(iii). Pub. L. 109–162, § 606(2)(C), inserted before semicolon at end '', except that: (I) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights or program assistance, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (II) notwithstanding subclause (I), a public housing agency may terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, or an owner or manager under this section may bifurcate a lease, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant; (III) nothing in subclause (I) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (IV) nothing in subclause (I) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (V) nothing in subclause (I) may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance, to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance; and (VI) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.''

Subsec. (f)(8) to (11). Pub. L. 109–162, § 606(3), added pars. (8) to (11).

Subsec. (*o*)(6)(B). Pub. L. 109–162, § 606(4)(A), inserted ''That an applicant or participant is or has been a vic-

tim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance by or for denial of admission if the applicant otherwise qualifies for assistance for admission, and that nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.'' at end.

Subsec. (*o*)(7)(C). Pub. L. 109–162, § 606(4)(B), inserted '', and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the tenancy or occupancy rights of the victim of such violence'' before semicolon at end.

Subsec. (*o*)(7)(D). Pub. L. 109–162, § 606(4)(C), inserted at end ''; except that (i) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (ii) notwithstanding clause (i), a public housing agency may terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, or an owner or manager may bifurcate a lease under this section, in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant; (iii) nothing in clause (i) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (iv) nothing in clause (i) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (v) nothing in clause (i) may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate, assistance to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance; and (vi) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.''

Subsec. (*o*)(20). Pub. L. 109–162, § 606(4)(D), added par. (20).

Subsec. (r)(5). Pub. L. 109–162, § 606(5), inserted '', except that a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit'' before period at end.

Subsec. (ee). Pub. L. 109–162, § 606(6), added subsec. (ee).

2002—Subsec. (t)(2). Pub. L. 107–116 inserted ''(including any such mortgage prepayment during fiscal year 1996 or a fiscal year thereafter or any insurance contract voluntary termination during fiscal year 1996 or a fiscal year thereafter)'' after ''insurance contract for the mortgage for such housing project''.

2001—Subsec. (*o*)(19). Pub. L. 107–95 added par. (19).

2000—Subsec. (*o*)(13). Pub. L. 106–377, § 1(a)(1) [title II, § 232(a)], reenacted heading without change and amended text generally, substituting subpars. (A) to (K) providing for funding percentage limitation, consistency of contracts with public housing agency plan and goals, income mixing requirement, resident choice requirement, contract term and its extension, rent calculation and adjustments, tenant selection, and vacated units for former subpars. (A) to (D) providing for extension of contract term, rent calculation, and adjusted rents.

Subsec. (t)(1)(B). Pub. L. 106–569, § 903(a), inserted before semicolon at end '', except that a limit shall not be considered reasonable for purposes of this subparagraph if it adversely affects such assisted families''.

Pub. L. 106–377, § 1(a)(1) [title II, § 205], inserted ''and any other reasonable limit prescribed by the Secretary'' before semicolon at end.

Pub. L. 106–246, which directed the substitution of ''the assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project, and if, during any period the family makes such an election and continues to so reside,'' for ''during any period that the assisted family continues residing in the same project in which the family was residing on the date of the eligibility event for the project, if'' in section 538 of Pub. L. 106–74, was executed by making the substitution in subsec. (t)(1)(B) of this section, which was enacted by section 538 of Pub. L. 106–74, to reflect the probable intent of Congress.

Subsec. (t)(2). Pub. L. 106–569, § 902(a), substituted ''fiscal year 1994'' for ''fiscal year 1996''.

Pub. L. 106–377, § 1(a)(1) [title II, § 228], inserted ''(including any such termination or expiration during fiscal years after fiscal year 1996 prior to the effective date of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001)'' after ''contract for rental assistance under this section for such housing project''.

Subsec. (x)(2). Pub. L. 106–377, § 1(a)(1) [title II, § 234], substituted ''(A) any family (i) who is otherwise eligible for such assistance, and (ii)'' for ''any family (A) who is otherwise eligible for such assistance, and (B)'' and inserted before period at end ''and (B) for a period not to exceed 18 months, otherwise eligible youths who have attained at least 18 years of age and not more than 21 years of age and who have left foster care at age 16 or older''.

Subsec. (y)(7), (8). Pub. L. 106–569, § 301(a), added par. (7) and redesignated former par. (7) as (8).

1999—Subsec. (c)(8)(A). Pub. L. 106–74, § 535(1), substituted ''termination of'' for ''terminating'' after ''Not less than one year before'' and ''. The notice shall also include a statement that, if the Congress makes funds available, the owner and the Secretary may agree to a renewal of the contract, thus avoiding termination, and that in the event of termination the Department of Housing and Urban Development will provide tenant-based rental assistance to all eligible residents, enabling them to choose the place they wish to rent, which is likely to include the dwelling unit in which they currently reside. Any contract covered by this paragraph that is renewed may be renewed for a period of up to 1 year or any number or years, with payments subject to the availability of appropriations for any year.'' for '', specifying the reasons for the termination with sufficient detail to enable the Secretary to evaluate whether the termination is lawful and whether there are additional actions that can be taken by the Secretary to avoid the termination. The owner's notice shall include a statement that the owner and the Sec-

retary may agree to a renewal of the contract, thus avoiding the termination.''

Subsec. (c)(8)(B). Pub. L. 106–74, § 535(2), (4), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''In the case of owner who has requested that the Secretary renew the contract, the owner's notice under subparagraph (A) to the tenants shall include statements that—

''(i) the owner currently has a contract with the Department of Housing and Urban Development that pays the Government's share of the tenant's rent and the date on which the contract will expire;

''(ii) the owner intends to renew the contract for another year;

''(iii) renewal of the contract may depend upon the Congress making funds available for such renewal;

''(iv) the owner is required by law to notify tenants of the possibility that the contract may not be renewed if Congress does not provide funding for such renewals;

''(v) in the event of nonrenewal, the Department of Housing and Urban Development will provide tenant-based rental assistance to all eligible residents, enabling them to choose the place they wish to rent; and

''(vi) the notice itself does not indicate an intent to terminate the contract by either the owner or the Department of Housing and Urban Development, provided there is Congressional approval of funding availability.''

Subsec. (c)(8)(C). Pub. L. 106–74, § 535(4), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Pub. L. 106–74, § 535(3), struck out ''Notwithstanding the preceding provisions of this paragraph, if the owner agrees to a 5-year contract renewal offered by the Secretary, payments under which shall be subject to the availability of appropriations for any year, the owner shall provide a written notice to the Secretary and the tenants not less than 180 days before the termination of such contract.'' after ''(C)'' and ''in the immediately preceding sentence'' before '', the owner may not evict the tenants'', struck out ''180-day'' before ''notice'' in two places, and substituted ''1 year has elapsed'' for ''such period has elapsed'' and ''1 year of advance notice'' for ''180 days of advance notice''.

Subsec. (c)(8)(D), (E). Pub. L. 106–74, § 535(4), redesignated subpars. (D) and (E) as (C) and (D), respectively.

Subsec. (*o*)(18). Pub. L. 106–74, § 523(a), added par. (18).

Subsec. (t). Pub. L. 106–74, § 538(a), added subsec. (t).

Subsec. (v). Pub. L. 106–74, § 531(d)(1), designated sentence enacted by Pub. L. 104–99, § 405(c), as subsec. (v).

Subsec. (w). Pub. L. 106–74, § 531(d)(2), struck out heading and text of subsec. (w). Text read as follows: ''Not later than 30 days after the beginning of each fiscal year, the Secretary shall publish in the Federal Register a plan for reducing, to the extent feasible, year-to-year fluctuations in the levels of budget authority that will be required over the succeeding 5-year period to renew expiring rental assistance contracts entered into under this section since August 22, 1974. To the extent necessary to carry out such plan and to the extent approved in appropriations Acts, the Secretary is authorized to enter into annual contributions contracts with terms of less than 60 months.''

Subsec. (z)(1). Pub. L. 106–74, § 223(1), in introductory provisions, inserted ''expiration or'' after ''on account of'' and struck out ''(other than a contract for tenant-based assistance)'' after ''payments contract''.

Subsec. (z)(3). Pub. L. 106–74, § 223(2), struck out heading and text of par. (3). Text read as follows: ''This subsection shall be effective for actions initiated by the Secretary on or before September 30, 1995.''

1998—Subsec. (a). Pub. L. 105–276, § 550(a)(1), struck out at end ''A public housing agency may contract to make assistance payments to itself (or any agency or instrumentality thereof) as the owner of dwelling units if such agency is subject to the same program requirements as are applied to other owners. In such cases, the Secretary may establish initial rents within applicable limits.''

Subsec. (b). Pub. L. 105–276, § 550(a)(2), substituted ''Other'' for ''Rental certificates and other'' in subsec. heading, inserted par. (1) designation and heading, and struck out after first sentence ''The Secretary shall enter into a separate annual contributions contract with each public housing agency to obligate the authority approved each year, beginning with the authority approved in appropriations Acts for fiscal year 1988 (other than amendment authority to increase assistance payments being made using authority approved prior to the appropriations Acts for fiscal year 1988), and such annual contributions contract (other than for annual contributions under subsection (*o*) of this section) shall bind the Secretary to make such authority, and any amendments increasing such authority, available to the public housing agency for a specified period.''

Subsec. (c)(3). Pub. L. 105–276, § 550(a)(3)(A), struck out ''(A)'' after par. designation, and struck out subpar. (B), which authorized payment of higher percentage of income as rent than that specified under section 1437a(a) of this title if family receiving tenant-based rental assistance notified public housing agency of its interest in a unit renting for an excess rent and agency determined that the rent was reasonable, and set forth provisions which limited agency approval of such excess rentals to 10 percent of annual allocation, required report to Secretary where such rentals exceeded 5 percent of allocation, and required Secretary to report to Congress annually on agencies which had submitted such reports and include recommendations deemed appropriate to correct problems identified in reports.

Subsec. (c)(4). Pub. L. 105–276, § 550(a)(3)(B), struck out ''or by a family that qualifies to receive assistance under subsection (b) of this section pursuant to section 223 or 226 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990'' after ''such dwelling unit'' in first sentence.

Subsec. (c)(5), (6). Pub. L. 105–276, § 550(a)(3)(C), (D), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''Assistance payments may be made with respect to up to 100 per centum of the dwelling units in any structure upon the application of the owner or prospective owner. Within the category of projects containing more than fifty units and designed for use primarily by nonelderly and nonhandicapped persons which are not subject to mortgages purchased under section 305 of the National Housing Act, the Secretary may give preference to applications for assistance involving not more than 20 per centum of the dwelling units in a project. In according any such preference, the Secretary shall compare applications received during distinct time periods not exceeding sixty days in duration.''

Subsec. (c)(7). Pub. L. 105–276, § 550(a)(3)(C), struck out par. (7) which read as follows: ''To the extent authorized in contracts entered into by the Secretary with a public housing agency, such agency may purchase any structure containing one or more dwelling units assisted under this section for the purpose of reselling the structure to the tenant or tenants occupying units aggregating in value at least 80 per centum of the structure's total value. Any such resale may be made on the terms and conditions prescribed under section 1437c(h) of this title and subject to the limitation contained in such section.''

Subsec. (c)(8). Pub. L. 105–276, § 549(b), redesignated par. (9) as (8)(A) and substituted subpars. (B) to (E) for ''The Secretary shall review the owner's notice, shall consider whether there are additional actions that can be taken by the Secretary to avoid the termination, and shall ensure a proper adjustment of the contract rents for the project in conformity with the requirements of paragraph (2). The Secretary shall issue a written finding of the legality of the termination and the reasons for the termination, including the actions considered or taken to avoid the termination. Within 30 days of the Secretary's finding, the owner shall provide written notice to each tenant of the Secretary's decision. For purposes of this paragraph, the term 'termination' means the expiration of the assistance contract or an owner's refusal to renew the assistance contract,

and such term shall include termination of the contract for business reasons.''

Pub. L. 105–276, § 549(a)(1)(A), struck out par. (8) which read as follows: ''Each contract under this section shall provide that the owner will notify tenants at least 90 days prior to the expiration of the contract of any rent increase which may occur as a result of the expiration of such contract.''

Subsec. (c)(9). Pub. L. 105–276, § 549(b)(1), redesignated par. (9) as (8)(A).

Pub. L. 105–276, § 549(a)(1)(B), substituted ''Not less than one year before terminating any contract under which assistance payments are received under this section, other than a contract for tenant-based assistance under this section, an owner shall provide written notice to the Secretary and the tenants involved of the proposed termination, specifying the reasons for the termination with sufficient detail to enable the Secretary to evaluate whether the termination is lawful and whether there are additional actions that can be taken by the Secretary to avoid the termination.'' for ''Not less than 180 days prior to terminating any contract under which assistance payments are received under this section (but not less than 90 days in the case of housing certificates or vouchers under subsection (b) or (*o*) of this section), an owner shall provide written notice to the Secretary and the tenants involved of the proposed termination, specifying the reasons for the termination with sufficient detail to enable the Secretary to evaluate whether the termination is lawful and whether there are additional actions that can be taken by the Secretary to avoid the termination.''

Subsec. (c)(10). Pub. L. 105–276, § 549(a)(1)(A), struck out par. (10) which read as follows: ''If an owner provides notice of proposed termination under paragraph (9) and the contract rent is lower than the maximum monthly rent for units assisted under subsection (b)(1) of this section, the Secretary shall adjust the contract rent based on the maximum monthly rent for units assisted under subsection (b)(1) of this section and the value of the low-income housing after rehabilitation.''

Subsec. (d)(1)(A). Pub. L. 105–276, § 514(b)(1), amended subpar. (A) generally. For former text of subpar. (A), see 1996 Amendment note below.

Subsec. (d)(1)(B)(ii). Pub. L. 105–276, § 549(a)(2)(A), substituted ''during the term of the lease, the owner'' for ''the owner''.

Subsec. (d)(1)(B)(iii). Pub. L. 105–276, § 549(a)(2)(B), substituted ''during the term of the lease, any criminal activity'' for ''provide that any criminal activity''.

Subsec. (d)(2)(A). Pub. L. 105–276, § 550(a)(4)(A), struck out at end ''Where the Secretary enters into an annual contributions contract with a public housing agency pursuant to which the agency will enter into a contract for assistance payments with respect to an existing structure, the contract for assistance payments may not be attached to the structure unless (i) the Secretary and the public housing agency approve such action, and (ii) the owner agrees to rehabilitate the structure other than with assistance under this chapter and otherwise complies with the requirements of this section, except that the Secretary shall permit the public housing agency to approve such attachment with respect to not more than 15 percent of the assistance provided by the public housing agency if the requirements of clause (ii) are met. Notwithstanding any other provision of this section, a public housing agency and an applicable State agency may, on a priority basis, attach to structures not more than an additional 15 percent of the assistance provided by the public housing agency or the applicable State agency only with respect to projects assisted under a State program that permits the owner of the projects to prepay a State assisted or subsidized mortgage on the structure, except that attachment of assistance under this sentence shall be for the purpose of (i) providing incentives to owners to preserve such projects for occupancy by lower and moderate income families (for the period that assistance under this sentence is available), and (ii) to assist lower income tenants to afford any increases in rent that may be required to induce the owner to maintain occupancy in the project by lower and moderate income tenants. Any assistance provided to lower income tenants under the preceding sentence shall not be considered for purposes of the limitation under paragraph (1)(A) regarding the percentage of families that may receive assistance under this section who do not qualify for preferences under such paragraph.''

Subsec. (d)(2)(B) to (G). Pub. L. 105–276, § 550(a)(4)(C), redesignated subpars. (F) to (H) as (B) to (D), respectively, and struck out former subpars. (B) to (E). Prior to repeal, former subpar. (B) required the Secretary to permit a public housing agency to approve attachment of assistance with respect to any newly constructed structure if certain conditions were met, former subpar. (C) required a public housing agency to enter into a contract with an owner of a structure to which a contract for assistance was attached under this par. to provide for renewal of expiring assistance payment contracts, former subpar. (D) required owners of structures to which a contract for assistance was attached to adopt certain tenant selection procedures, and former subpar. (E) required the Secretary to annually survey public housing agencies to determine which have reached certain limitations in providing assistance and to report the survey results to Congress.

Subsec. (d)(2)(H). Pub. L. 105–276, § 550(a)(4)(C), redesignated subpar. (H) as (D).

Pub. L. 105–276, § 550(a)(4)(B), substituted ''An owner'' for ''Notwithstanding subsection (d)(1)(A)(i) of this section, an owner''.

Subsec. (d)(6). Pub. L. 105–276, § 552, added par. (6).

Subsec. (f)(6). Pub. L. 105–276, § 545(b), inserted ''or (*o*)(13)'' after ''(d)(2)''.

Subsec. (f)(7). Pub. L. 105–276, § 550(a)(5), struck out ''(b) or'' after ''under subsection'' and inserted before period at end ''and that provides for the eligible family to select suitable housing and to move to other suitable housing''.

Subsec. (h). Pub. L. 105–276, § 565(c), which directed insertion of ''(except as provided in section 1437d(j)(3) of this title)'' after ''section 1437d of this title'', was executed by making the insertion after ''Sections 1437c(e) and 1437d of this title'', to reflect the probable intent of Congress.

Subsec. (j). Pub. L. 105–276, § 550(a)(6), struck out subsec. (j), which authorized contracts for making rental assistance payments on behalf of low-income families utilizing manufactured homes as principal places of residence, directed that contract establish maximum monthly rent permitted with respect to home and real property on which it was located and provided formula for calculating amount of monthly assistance, provided for adjustments, set forth minimum and maximum terms, in the case of substantially rehabilitated or newly constructed park, provided limit on principal amount of mortgage attributable to rental spaces within park, and authorized Secretary to prescribe other terms and conditions necessary for purpose of carrying out subsection.

Subsec. (n). Pub. L. 105–276, § 550(a)(7), struck out subsec. (n) which read as follows: ''In making assistance available under subsections (b)(1) and (e)(2) of this section, the Secretary may provide assistance with respect to residential properties in which some or all of the dwelling units do not contain bathroom or kitchen facilities, if—

''(1) the property is located in an area in which there is a significant demand for such units, as determined by the Secretary;

''(2) the unit of general local government in which the property is located and the local public housing agency approve of such units being utilized for such purpose; and

''(3) in the case of assistance under subsection (b)(1) of this section, the unit of general local government in which the property is located and the local public housing agency certify to the Secretary that the property complies with local health and safety standards.

The Secretary may waive, in appropriate cases, the limitation and preference described in the second and third sentences of section 1437a(b)(3) of this title with respect to the assistance made available under this subsection.''

Subsec. (*o*). Pub. L. 105–276, § 545(a), amended subsec. (*o*) generally. Prior to amendment, subsec. (*o*) contained provisions relating to assistance using a payment standard based upon fair market rental, categories of families eligible for assistance and preferences, contracts with public housing agencies for annual contributions, annual adjustments of assistance payment amounts, assistance with respect to certain cooperative and mutual housing, contracts to provide rental vouchers, set asides of budget authority for an adjustment pool, reasonable rent requirements and disapproval of leases with unreasonable rents, and assistance on behalf of families utilizing manufactured homes as principal places of residence.

Subsec. (*o*)(2). Pub. L. 105–276, § 209(a), inserted at end ''Notwithstanding the preceding sentence, for families being admitted to the voucher program who remain in the same unit or complex, where the rent (including the amount allowed for utilities) does not exceed the payment standard, the monthly assistance payment for any family shall be the amount by which such rent exceeds the greater of 30 percent of the family's monthly adjusted income or 10 percent of the family's monthly income.'' Notwithstanding sections 209(b) and 503 of Pub. L. 105–276, set out as Effective Date of 1998 Amendment notes below and under section 1437 of this title, this amendment was executed before the amendment by section 545(a) of Pub. L. 105–276 to reflect the probable intent of Congress and the provisions of section 545(c) of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note below, and section 559 of Pub. L. 105–276, set out as a Regulations note below.

Subsec. (q). Pub. L. 105–276, § 547, amended subsec. (q) generally, substituting present provisions for provisions which authorized establishment of fee for costs incurred in administering certificate and housing voucher programs under subsecs. (b) and (*o*) of this section, costs of preliminary expenses in connection with new allocations of assistance, costs incurred in assisting families who experienced difficulty in obtaining appropriate housing under the programs, and extraordinary costs; provisions which set forth use of fees for employing one or more service coordinators to coordinate provision of supportive services for elderly or disabled families on whose behalf assistance was provided; and provision which limited establishment or increase of fees to amounts provided in appropriation Acts.

Subsec. (r). Pub. L. 105–276, § 553(3), inserted heading, added par. (1), and struck out former par. (1) which read as follows: ''Any family assisted under subsection (b) or (*o*) of this section may receive such assistance to rent an eligible dwelling unit if the dwelling unit to which the family moves is within the same State, or the same or a contiguous metropolitan statistical area as the metropolitan statistical area within which is located the area of jurisdiction of the public housing agency approving such assistance; except that any family not living within the jurisdiction of a public housing agency at the time that such family applies for assistance from such agency shall, during the 12-month period beginning upon the receipt of any tenant-based rental assistance made available on behalf of the family, use such assistance to rent an eligible dwelling unit located within the jurisdiction served by such public housing agency.''

Subsec. (r)(2). Pub. L. 105–276, § 553(1), struck out at end ''If no public housing agency has authority with respect to the dwelling unit to which a family moves under this subsection, the public housing agency approving the assistance shall have such responsibility.''

Subsec. (r)(3). Pub. L. 105–276, § 553(2), struck out ''(b) or'' before ''(*o*) of this section for'' and inserted at end ''The Secretary shall establish procedures for the compensation of public housing agencies that issue vouchers to families that move into or out of the jurisdiction of the public housing agency under portability procedures. The Secretary may reserve amounts available for assistance under subsection (*o*) of this section to compensate those public housing agencies.''

Subsec. (r)(5). Pub. L. 105–276, § 553(5), added par. (5).

Subsec. (t). Pub. L. 105–276, § 554, struck out subsec. (t). For text, see 1996 Amendment note below.

Subsec. (u). Pub. L. 105–276, § 550(a)(8), in pars. (1) and (3), struck out ''certificates or'' before ''vouchers'' and, in par. (2), struck out '', certificates'' before ''or vouchers''.

Subsec. (x)(2). Pub. L. 105–276, § 550(a)(9), substituted ''tenant-based assistance'' for ''housing certificate assistance''.

Subsec. (y)(1). Pub. L. 105–276, § 555(a)(1)(A), in introductory provisions, substituted ''A public housing agency providing tenant-based assistance on behalf of an eligible family under this section may provide assistance for an eligible family that purchases a dwelling unit (including a unit under a lease-purchase agreement) that will be owned by 1 or more members of the family, and will be occupied by the family, if the family'' for ''A family receiving tenant-based assistance under this section may receive assistance for occupancy of a dwelling owned by one or more members of the family if the family''.

Subsec. (y)(1)(A). Pub. L. 105–276, § 555(a)(1)(B), inserted '', or owns or is acquiring shares in a cooperative'' before semicolon at end.

Subsec. (y)(1)(B). Pub. L. 105–276, § 555(a)(1)(C), struck out cl. (i), redesignated cl. (ii) as entire subpar., and inserted '', except that the Secretary may provide for the consideration of public assistance in the case of an elderly family or a disabled family'' after ''public assistance''. Prior to amendment, cl. (i) read as follows: ''participates in the family self-sufficiency program under section 1437u of this title of the public housing agency providing the assistance; or''.

Subsec. (y)(2). Pub. L. 105–276, § 555(a)(2), added par. (2) and struck out heading and text of former par. (2). Text read as follows:

''(A) IN GENERAL.—Notwithstanding any other provisions of this section governing determination of the amount of assistance payments under this section on behalf of a family, the monthly assistance payment for any family assisted under this subsection shall be the amount by which the fair market rental for the area established under subsection (c)(1) of this section exceeds 30 percent of the family's monthly adjusted income; except that the monthly assistance payment shall not exceed the amount by which the monthly homeownership expenses, as determined in accordance with requirements established by the Secretary, exceeds 10 percent of the family's monthly income.

''(B) EXCLUSION OF EQUITY FROM INCOME.—For purposes of determining the monthly assistance payment for a family, the Secretary shall not include in family income an amount imputed from the equity of the family in a dwelling occupied by the family with assistance under this subsection.''

Subsec. (y)(3), (4). Pub. L. 105–276, § 555(a)(3), added pars. (3) and (4) and struck out former pars. (3) and (4) which read as follows:

''(3) RECAPTURE OF CERTAIN AMOUNTS.—Upon sale of the dwelling by the family, the Secretary shall recapture from any net proceeds the amount of additional assistance (as determined in accordance with requirements established by the Secretary) paid to or on behalf of the eligible family as a result of paragraph (2)(B).

''(4) DOWNPAYMENT REQUIREMENT.—Each public housing agency providing assistance under this subsection shall ensure that each family assisted shall provide from its own resources not less than 80 percent of any downpayment in connection with a loan made for the purchase of a dwelling. Such resources may include amounts from any escrow account for the family established under section 1437u(d) of this title. Not more than 20 percent of the downpayment may be provided from other sources, such as from nonprofit entities and

programs of States and units of general local government.''

Subsec. (y)(5). Pub. L. 105–276, § 555(a)(3), (4), redesignated par. (6) as (5) and struck out heading and text of former par. (5). Text read as follows: ''A family may not receive assistance under this subsection during any period when assistance is being provided for the family under other Federal homeownership assistance programs, as determined by the Secretary, including assistance under the HOME Investment Partnerships Act, the Homeownership and Opportunity Through HOPE Act, title II of the Housing and Community Development Act of 1987, and section 1472 of this title.''

Subsec. (y)(6) to (8). Pub. L. 105–276, § 555(a)(4), redesignated pars. (7) and (8) as (6) and (7), respectively. Former par. (6) redesignated (5).

Subsec. (z). Pub. L. 105–276, § 548(1), made technical amendment relating to placement of subsection.

Subsec. (cc). Pub. L. 105–276, § 548(2), added subsec. (cc).

Subsec. (dd). Pub. L. 105–276, § 556(a), added subsec. (dd).

1997—Subsec. (c)(2)(A). Pub. L. 105–65, §§ 201(c), 205, substituted ''fiscal years 1997 and 1998'' for ''fiscal year 1997'' in third and sixth sentences and inserted at end ''In establishing annual adjustment factors for units in new construction and substantial rehabilitation projects, the Secretary shall take into account the fact that debt service is a fixed expense. The immediately foregoing sentence shall be effective only during fiscal year 1998.''

Pub. L. 105–33, §§ 2003, 2004, inserted '', and during fiscal year 1999 and thereafter'' before period at end of third and sixth sentences.

Subsec. (c)(9). Pub. L. 105–18, which directed substitution of ''Not less than 180 days prior to terminating any contract'' for ''Not less than one year prior to terminating any contract'', was executed by making the substitution for ''Not less than 1 year prior to terminating any contract'' to reflect the probable intent of Congress.

Subsec. (d)(5). Pub. L. 105–65, § 523(a), added par. (5).

Subsec. (bb). Pub. L. 105–65, § 523(c), inserted heading, designated existing provisions as par. (1) and former subsec. heading as par. (1) heading, and added par. (2).

1996—Subsec. (c)(2)(A). Pub. L. 104–204 inserted '', fiscal year 1996 prior to April 26, 1996, and fiscal year 1997'' after ''fiscal year 1995'' in two places, substituted ''Except for assistance under the certificate program, for'' for ''For'', inserted after fourth sentence ''In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area.'', and substituted ''The immediately foregoing two sentences'' for ''The immediately foregoing sentence''.

Subsec. (c)(8). Pub. L. 104–134, § 101(e) [title II, § 203(b)(1), (d)], temporarily inserted ''(other than a contract for assistance under the certificate or voucher program)'' after ''section''. See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (c)(9). Pub. L. 104–134, § 101(e) [title II, § 203(b)(2), (d)], temporarily substituted '', other than a contract under the certificate or voucher program'' for ''(but not less than 90 days in the case of housing certificates or vouchers under subsection (b) or (*o*) of this section)''. See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (d)(1)(A). Pub. L. 104–99, § 402(d)(2), (f), temporarily amended subpar. (A) generally, substituting ''the selection of tenants shall be the function of the owner, subject to the provisions of the annual contributions contract between the Secretary and the agency, except that for the certificate and moderate rehabilitation programs only, for the purpose of selecting families to be assisted, the public housing agency may establish, after public notice and an opportunity for public comment, a written system of preferences for selection that is not inconsistent with the comprehensive housing affordability strategy under title I of the Cranston-Gonzalez National Affordable Housing Act;'' for ''the selection of tenants for such units shall be the function of the owner, subject to the provisions of the annual contributions contract between the Secretary and the agency, except that the tenant selection criteria used by the owner shall—

''(i) for not less than (I) 70 percent of the families who initially receive assistance in any 1-year period in the case of assistance attached to a structure and (II) 90 percent of such families in the case of assistance not attached to a structure, give preference to families that occupy substandard housing (including families that are homeless or living in a shelter for homeless families), are paying more than 50 percent of family income for rent, or are involuntarily displaced (including displacement because of disposition of a multifamily housing project under section 1701z–11 of title 12) at the time they are seeking assistance under this section; except that any family otherwise eligible for assistance under this section may not be denied preference for assistance not attached to a structure (or delayed or otherwise adversely affected in the provision of such assistance) solely because the family resides in public housing;

''(ii) for any remaining assistance in any 1-year period, give preference to families who qualify under a system of local preferences established by the public housing agency in writing and after public hearing to respond to local housing needs and priorities, which may include (I) assisting very low-income families who either reside in transitional housing assisted under title IV of the Stewart B. McKinney Homeless Assistance Act, or participate in a program designed to provide public assistance recipients with greater access to employment and educational opportunities; (II) assisting families in accordance with subsection (u)(2) of this section; (III) assisting families identified by local public agencies involved in providing for the welfare of children as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care, or in preventing the discharge of a child from foster care and reunification with his or her family; (IV) assisting youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available; (V) assisting veterans who are eligible and have applied for assistance, will use the assistance for a dwelling unit designed for the handicapped, and, upon discharge or eligibility for discharge from a hospital or nursing home, have physical disability which, because of the configuration of their homes, prevents them from access to or use of their homes; and (VI) achieving other objectives of national housing policy as affirmed by Congress; and

''(iii) prohibit any individual or family evicted from housing assisted under the chapter by reason of drug-related criminal activity from having a preference under any provision of this subparagraph for 3 years unless the evicted tenant successfully completes a rehabilitation program approved by the agency, except that the agency may waive the application of this clause under standards established by the Secretary (which shall include waiver for any member of a family of an individual prohibited from tenancy under this clause who the agency determines clearly did not participate in and had no knowledge of such criminal activity or when circumstances leading to eviction no longer exist);''.

See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (d)(1)(B)(ii), (iii). Pub. L. 104–134, § 101(e) [title II, § 203(c), (d)], in cl. (ii) temporarily inserted ''during the term of the lease,'' after ''(ii)'' and in cl. (iii) temporarily substituted ''during the term of the lease,'' for ''provide that''. See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (d)(1)(B)(v). Pub. L. 104–193, § 903(a)(2), added cl. (v).

Subsec. (d)(2)(A). Pub. L. 104–99, § 402(d)(6)(A)(iii), (f), temporarily struck out at end ''Any assistance provided to lower income tenants under the preceding sentence shall not be considered for purposes of the limitation under paragraph (1)(A) regarding the percentage of families that may receive assistance under this section who do not qualify for preferences under such paragraph.'' See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (d)(2)(H). Pub. L. 104–99, § 402(d)(6)(A)(iv), (f), temporarily substituted ''An owner'' for ''Notwithstanding subsection (d)(1)(A)(i) of this section, an owner''. See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (*o*)(3)(B). Pub. L. 104–99, § 402(d)(3), (f), temporarily amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''In selecting families to be assisted, preference shall be given to families which, at the time they are seeking assistance, occupy substandard housing (including families that are homeless or living in a shelter for homeless families), are involuntarily displaced (including displacement because of disposition of a multifamily housing project under section 1701z–11 of title 12), or are paying more than 50 per centum of family income for rent. A public housing agency may provide for circumstances in which families who do not qualify for any preference established in the preceding sentence are provided assistance under this subsection before families who do qualify for such preference, except that not more than 10 percent (or such higher percentage determined by the Secretary to be necessary to ensure that public housing agencies can assist families in accordance with subsection (u)(2) of this section or determined by the Secretary to be appropriate for other good cause) of the families who initially receive assistance in any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this sentence) may be families who do not qualify for such preference. The public housing agency shall in implementing the preceding sentence establish a system of preferences in writing and after public hearing to respond to local housing needs and priorities which may include (i) assisting very low-income families who either reside in transitional housing assisted under title IV of the Stewart B. McKinney Homeless Assistance Act, or participate in a program designed to provide public assistance recipients with greater access to employment and educational opportunities, (ii) assisting families in accordance with subsection (u)(2) of this section; (iii) assisting families identified by local public agencies involved in providing for the welfare of children as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care, or in preventing the discharge of a child from foster care and reunification and his or her family; (iv) assisting youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available; (v) assisting veterans who are eligible and have applied for assistance, will use the assistance for a dwelling unit designed for the handicapped, and, upon discharge or eligibility for discharge from a hospital or nursing home, have physical disability which, because of the configuration of their homes, prevents them from access to or use of their homes; and (vi) achieving other objectives of national housing policy as affirmed by Congress. Any individual or family evicted from housing assisted under the chapter by reason of drug-related criminal activity (as defined in subsection (f)(5) of this section) shall not be eligible for a preference under any provision of this subparagraph for 3 years unless the evicted tenant successfully completes a rehabilitation program approved by the Secretary (which shall include waiver for any member of a family of an individual prohibited from tenancy under this clause who the agency determines clearly did not participate in and had no knowledge of such criminal activity or when circumstances leading to eviction no longer exist).'' See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (t). Pub. L. 104–134, § 101(e) [title II, § 203(a), (d)], temporarily repealed subsec. (t) which read as follows:

''(1) No owner who has entered into a contract for housing assistance payments under this section on behalf of any tenant in a multifamily housing project shall refuse—

''(A) to lease any available dwelling unit in any multifamily housing project of such owner that rents for an amount not greater than the fair market rent for a comparable unit, as determined by the Secretary under this section, to a holder of a certificate of eligibility under this section a proximate cause of which is the status of such prospective tenant as a holder of such certificate, and to enter into a housing assistance payments contract respecting such unit; or

''(B) to lease any available dwelling unit in any multifamily housing project of such owner to a holder of a voucher under subsection (*o*) of this section, and to enter into a voucher contract respecting such unit, a proximate cause of which is the status of such prospective tenant as holder of such voucher.

''(2) For purposes of this subsection, the term 'multifamily housing project' means a residential building containing more than 4 dwelling units.'' See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (v). Pub. L. 104–99, § 405(c), amended subsec. (v) generally. Prior to amendment, subsec. (v) read as follows:

''(1) The Secretary shall extend any expiring contract entered into under this section for loan management assistance or execute a new contract for project-based loan management assistance, if the owner agrees to continue providing housing for low-income families during the term of the contract.

''(2)(A) The eligiblity of a multifamily residential project for loan management assistance under this section shall be determined without regard to whether the project is subsidized or unsubsidized.

''(B) In allocating loan management assistance under this section, the Secretary may give a priority to any project only on the basis that the project has serious financial problems that are likely to result in a claim on the insurance fund in the near future or the project is eligible to receive incentives under subtitle B of the Low-Income Housing Preservation and Resident Homeownership Act of 1990.''

Subsec. (bb). Pub. L. 104–134, § 101[(e)] [title II, § 208], added subsec. (bb).

1995—Subsec. (z). Pub. L. 104–19 added subsec. (z).

1994—Subsec. (c)(2)(A). Pub. L. 103–327 inserted at end: ''However, where the maximum monthly rent, for a unit in a new construction, substantial rehabilitation, or moderate rehabilitation project, to be adjusted using an annual adjustment factor exceeds the fair market rental for an existing dwelling unit in the market area, the Secretary shall adjust the rent only to the extent that the owner demonstrates that the adjusted rent would not exceed the rent for an unassisted unit of similar quality, type, and age in the same market area, as determined by the Secretary. The immediately foregoing sentence shall be effective only during fiscal year 1995. For any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. The immediately foregoing sentence shall be effective only during fiscal year 1995.''

Subsec. (d)(1)(A)(i). Pub. L. 103–233, § 101(c)(2), inserted ''(including displacement because of disposition of a multifamily housing project under section 1701z–11 of title 12)'' after ''displaced''.

Subsec. (d)(1)(A)(ii). Pub. L. 103–327 which directed the amendment of cl. (ii) by striking ''and (V)'' and inserting in lieu thereof ''(V) assisting families that in-

clude one or more adult members who are employed; and (VI)'', and inserting after the final semicolon ''subclause (V) shall be effective only during fiscal year 1995;'', was not executed because the words ''and (V)'' did not appear and cl. (ii) already contains subcls. (V) and (VI). See 1992 Amendment note below.

Subsec. (f)(1). Pub. L. 103–233, § 101(d), inserted ''an agency of the Federal Government,'' after ''cooperative,''.

Subsec. (*o*)(3)(B). Pub. L. 103–233, § 101(c)(3), inserted ''(including displacement because of disposition of a multifamily housing project under section 1701z–11 of title 12)'' after ''displaced''.

Subsec. (aa). Pub. L. 103–327 temporarily added subsec. (aa), ''Refinancing incentive'', which read as follows:

''(1) IN GENERAL.—The Secretary may pay all or a part of the up front costs of refinancing for each project that—

''(A) is constructed, substantially rehabilitated, or moderately rehabilitated under this section;

''(B) is subject to an assistance contract under this section; and

''(C) was subject to a mortgage that has been refinanced under section 223(a)(7) or section 223(f) of the National Housing Act to lower the periodic debt service payments of the owner.

''(2) SHARE FROM REDUCED ASSISTANCE PAYMENTS.—The Secretary may pay the up front cost of refinancing only—

''(A) to the extent that funds accrue to the Secretary from the reduced assistance payments that results from the refinancing; and

''(B) after the application of amounts in accordance with section 1012 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.''

See Effective and Termination Dates of 1994 Amendment note below.

1992—Subsec. (c)(2)(B). Pub. L. 102–550, § 1012(g), inserted at end ''The Secretary may (at the discretion of the Secretary and subject to the availability of appropriations for contract amendments), on a project by project basis for projects receiving project-based assistance, provide adjustments to the maximum monthly rents to cover the costs of evaluating and reducing lead-based paint hazards, as defined in section 4851b of this title.''

Pub. L. 102–550, § 142, inserted after first sentence ''The Secretary shall make additional adjustments in the maximum monthly rent for units under contract (subject to the availability of appropriations for contract amendments) to the extent the Secretary determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the units that have resulted from the expiration of a real property tax exemption.''

Subsec. (c)(4). Pub. L. 102–550, § 141(a), inserted ''or by a family that qualifies to receive assistance under subsection (b) of this section pursuant to section 223 or 226 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990'' after first comma in first sentence.

Subsec. (c)(9). Pub. L. 102–550, § 143, inserted before period at end '', and such term shall include termination of the contract for business reasons''.

Subsec. (d)(1)(A)(ii)(V), (VI). Pub. L. 102–550, § 144(a), added subcl. (V) and redesignated former subcl. (V) as (VI).

Subsec. (d)(1)(B)(iii). Pub. L. 102–550, § 145, inserted '', any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises,'' before ''or any drug-related'' and substituted ''tenant of any unit'' for ''public housing tenant''.

Subsec. (d)(2)(F). Pub. L. 102–550, § 674, added subpar. (F).

Subsec. (d)(2)(G), (H). Pub. L. 102–550, § 682(b), added subpars. (G) and (H).

Subsec. (d)(4). Pub. L. 102–550, § 660, added par. (4).

Subsec. (f)(6), (7). Pub. L. 102–550, § 146, added pars. (6) and (7).

Subsec. (i). Pub. L. 102–550, § 623(b), added subsec. (i).

Subsec. (*o*)(3)(A). Pub. L. 102–550, § 141(b), struck out ''or'' before ''(iv)'' and inserted before period at end '', or'' and cl. (v).

Subsec. (*o*)(3)(B)(v), (vi). Pub. L. 102–550, § 144(b), in third sentence, added cl. (v) and redesignated former cl. (v) as (vi).

Subsec. (q)(3), (4). Pub. L. 102–550, § 675, added par. (3) and redesignated former par. (3) as (4).

Subsec. (r)(1). Pub. L. 102–550, § 147, inserted before period at end ''; except that any family not living within the jurisdiction of a public housing agency at the time that such family applies for assistance from such agency shall, during the 12-month period beginning upon the receipt of any tenant-based rental assistance made available on behalf of the family, use such assistance to rent an eligible dwelling unit located within the jurisdiction served by such public housing agency''.

Subsec. (x)(1). Pub. L. 102–550, § 148, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The budget authority available under section 1437c(c) of this title for assistance under subsection (b) of this section is authorized to be increased by $35,000,000 on or after October 1, 1990, by $35,000,000 on or after October 1, 1991.''

Subsec. (y). Pub. L. 102–550, § 185(a), added subsec. (y).

1991—Subsec. (c)(1). Pub. L. 102–139 inserted provisions relating to separate fair market rentals for Monroe County, Pennsylvania.

1990—Subsec. (a). Pub. L. 101–625, § 572(1), which directed the substitution of ''low-income families'' for ''lower income families'', was executed by making the substitution for ''lower-income families'' to reflect the probable intent of Congress.

Pub. L. 101–625, § 548(b), inserted at end ''A public housing agency may contract to make assistance payments to itself (or any agency or instrumentality thereof) as the owner of dwelling units if such agency is subject to the same program requirements as are applied to other owners. In such cases, the Secretary may establish initial rents within applicable limits.''

Subsec. (b). Pub. L. 101–625, § 541(a), inserted heading and struck out par. (1) designation preceding text.

Subsec. (b)(2). Pub. L. 101–625, § 413(b)(1), added par. (2).

Subsec. (c)(1). Pub. L. 101–625, § 543(b), inserted ''(A)'' after second reference to ''fair market rental'' and substituted ''a housing strategy as defined in section 12705 of this title, or (B) by such higher amount as may be requested by a tenant and approved by the public housing agency in accordance with paragraph (3)(B).'' for ''a local housing assistance plan as defined in section 1439(a)(5) of this title.''

Subsec. (c)(2)(B). Pub. L. 101–625, § 542, inserted at end ''Where the Secretary determines that a project assisted under this section is located in a community where drug-related criminal activity is generally prevalent and the project's operating, maintenance, and capital repair expenses have been substantially increased primarily as a result of the prevalence of such drug-related activity, the Secretary may (at the discretion of the Secretary and subject to the availability of appropriations for contract amendments for this purpose), on a project by project basis, provide adjustments to the maximum monthly rents, to a level no greater than 120 percent of the project rents, to cover the costs of maintenance, security, capital repairs, and reserves required for the owner to carry out a strategy acceptable to the Secretary for addressing the problem of drug-related criminal activity. Any rent comparability standard required under this paragraph may be waived by the Secretary to so implement the preceding sentence.''

Subsec. (c)(3). Pub. L. 101–625, § 543(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(9). Pub. L. 101–625, § 544, inserted after first sentence ''The owner's notice shall include a statement that the owner and the Secretary may agree to a re-

newal of the contract, thus avoiding the termination.'' and inserted at end ''Within 30 days of the Secretary's finding, the owner shall provide written notice to each tenant of the Secretary's decision.''

Subsec. (c)(10). Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing''.

Subsec. (d)(1)(A). Pub. L. 101–625, § 545(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the selection of tenants for such unit shall be the function of the owner, subject to the provisions of the annual contributions contract between the Secretary and the agency, except that (i) the tenant selection criteria used by the owner shall give preference to families which occupy substandard housing, are paying more than 50 per centum of family income for rent, or are involuntarily displaced at the time they are seeking assistance under this section; and (ii) the public housing agency may provide for circumstances in which families who do not qualify for any preference established in clause (i) are provided assistance before families who do qualify for such preference, except that not more than 10 percent (or such higher percentage determined by the Secretary to be necessary to ensure that public housing agencies can assist families in accordance with subsection (u)(2) of this section or determined by the Secretary to be appropriate for other good cause) of the families who initially receive assistance in any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this clause) may be families who do not qualify for such preference;''.

Subsec. (d)(1)(B)(iii), (iv). Pub. L. 101–625, § 546, added cls. (iii) and (iv).

Subsec. (d)(2)(A). Pub. L. 101–625, § 552(b), inserted after first sentence ''The Secretary shall permit public housing agencies to enter into contracts for assistance payments of less than 12 months duration in order to avoid disruption in assistance to eligible families if the annual contributions contract is within 1 year of its expiration date.''

Pub. L. 101–625, § 613(a)(1), inserted at end ''Notwithstanding any other provision of this section, a public housing agency and an applicable State agency may, on a priority basis, attach to structures not more than an additional 15 percent of the assistance provided by the public housing agency or the applicable State agency only with respect to projects assisted under a State program that permits the owner of the projects to prepay a State assisted or subsidized mortgage on the structure, except that attachment of assistance under this sentence shall be for the purpose of (i) providing incentives to owners to preserve such projects for occupancy by lower and moderate income families (for the period that assistance under this sentence is available), and (ii) to assist lower income tenants to afford any increases in rent that may be required to induce the owner to maintain occupancy in the project by lower and moderate income tenants. Any assistance provided to lower income tenants under the preceding sentence shall not be considered for purposes of the limitation under paragraph (1)(A) regarding the percentage of families that may receive assistance under this section who do not qualify for preferences under such paragraph.''

Subsec. (d)(2)(C). Pub. L. 101–625, § 613(a)(2), inserted at end ''To the extent assistance is used as provided in the penultimate sentence of subparagraph (A), the contract for assistance may, at the option of the public housing agency, have an initial term not exceeding 15 years.''

Pub. L. 101–625, § 547(c), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Any contract for assistance payments that is attached to a structure under this paragraph shall (at the option of the public housing agency but subject to available funds) be renewable for 2 additional 5-year terms, except that the aggregate term of the initial contract and renewals shall not exceed 15 years.''

Subsec. (d)(2)(D), (E). Pub. L. 101–625, § 547(a), (b), added subpars. (D) and (E).

Subsec. (e)(2). Pub. L. 101–625, § 289(b), struck out par. (2) which read as follows: ''For the purpose of upgrading and thereby preserving the Nation's housing stock, the Secretary is authorized to make assistance payments under this section directly or through public housing agencies pursuant to contracts with owners or prospective owners who agree to upgrade housing so as to make and keep such housing decent, safe, and sanitary through upgrading which involves less than substantial rehabilitation, as such upgrading and rehabilitation are defined by the Secretary, and which shall involve a minimum expenditure of $3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems. The Secretary is authorized to prescribe such terms and conditions for contracts entered into under this section pursuant to this paragraph as the Secretary determines to be necessary and appropriate, except that such terms and conditions, to the maximum extent feasible, shall be consistent with terms and conditions otherwise applicable with respect to other dwelling units assisted under this section. Notwithstanding subsection (c)(1) of this section, the Secretary may, in carrying out the preceding sentence, establish a maximum monthly rent (for units upgraded pursuant to this paragraph) which exceeds the fair market rental by not more than 20 per centum if such units are located in an area where the Secretary finds cost levels so require, except that the Secretary may approve maximum monthly rents which exceed the fair market rentals by more than 20 but not more than 30 per centum where the Secretary determines that special circumstances warrant such higher rent or where necessary to the implementation of a local housing assistance plan. The Secretary is also authorized to make assistance available under this section pursuant to this paragraph to any unit in a housing project which, on an overall basis, reflects the need for such upgrading. The Secretary shall increase the amount of assistance provided under this paragraph above the amount of assistance otherwise permitted by this paragraph and subsection (c)(1) of this section, if the Secretary determines such increase necessary to assist in the sale of multifamily housing projects owned by the Department of Housing and Urban Development. In order to maximize the availability of low-income housing, in providing assistance under this paragraph, the Secretary shall include in any calculation or determination regarding the amount of the assistance to be made available the extent to which any proceeds are available from any tax credits provided under section 42 of title 26 (or from any syndication of such credits) with respect to the housing. For each fiscal year, the Secretary may not provide assistance pursuant to this paragraph to any project for rehabilitation of more than 100 units. Assistance pursuant to this paragraph shall be allocated according to the formula established pursuant to section 1439(d) of this title, and awarded pursuant to a competition under such section. The Secretary shall maintain a single listing of any assistance provided pursuant to this paragraph, which shall include a statement identifying the owner and location of the project to which assistance was made, the amount of the assistance, and the number of units assisted.''

Subsec. (f)(1). Pub. L. 101–625, § 548(a), substituted ''dwelling units'' for ''newly constructed or substantially rehabilitated dwelling units as described in this section''.

Subsec. (f)(4), (5). Pub. L. 101–625, § 549, added pars. (4) and (5).

Subsec. (j)(1). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families'' in introductory provisions.

Subsec. (*o*). Pub. L. 101–625, § 541(b), inserted heading.

Subsec. (*o*)(3). Pub. L. 101–625, § 545(2)[(b)], inserted ''(A)'' after ''(3)'', redesignated former cls. (A) to (D) as cls. (i) to (iv), respectively, inserted ''(B)'' before ''In selecting families'', ''(including families that are homeless or living in a shelter for homeless families)'' after ''substandard housing'', and inserted at end ''The public housing agency shall in implementing the preceding

sentence establish a system of preferences in writing and after public hearing to respond to local housing needs and priorities which may include (i) assisting very low-income families who either reside in transitional housing assisted under title IV of the Stewart B. McKinney Homeless Assistance Act, or participate in a program designed to provide public assistance recipients with greater access to employment and educational opportunities, (ii) assisting families in accordance with subsection (u)(2) of this section; (iii) assisting families identified by local public agencies involved in providing for the welfare of children as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care, or in preventing the discharge of a child from foster care and reunification and his or her family; (iv) assisting youth, upon discharge from foster care, in cases in which return to the family or extended family or adoption is not available; and (v) achieving other objectives of national housing policy as affirmed by Congress. Any individual or family evicted from housing assisted under the chapter by reason of drug-related criminal activity (as defined in subsection (f)(5) of this section) shall not be eligible for a preference under any provision of this subparagraph for 3 years unless the evicted tenant successfully completes a rehabilitation program approved by the Secretary (which shall include waiver for any member of a family of an individual prohibited from tenancy under this clause who the agency determines clearly did not participate in and had no knowledge of such criminal activity or when circumstances leading to eviction no longer exist).''

Pub. L. 101–625, §413(a), added cl. (D).

Subsec. (*o*)(7). Pub. L. 101–625, §572(1), substituted ''low-income families'' for ''lower income families''.

Subsec. (*o*)(9). Pub. L. 101–625, §413(b)(2), added par. (9).

Subsec. (*o*)(10), (11). Pub. L. 101–625, §550(a), (c), added pars. (10) and (11).

Subsec. (r)(1). Pub. L. 101–625, §551, substituted ''the same State, or the same or a contiguous'' for ''the same, or a contiguous,''.

Subsec. (u). Pub. L. 101–625, §572(1), substituted ''low-income families'' for ''lower income families'' in introductory provisions.

Subsec. (v)(1). Pub. L. 101–625, §572(1), substituted ''low-income families'' for ''lower income families''.

Subsec. (v)(2)(B). Pub. L. 101–625, §603, which directed the substitution of ''Low-Income Housing Preservation and Resident Homeownership Act of 1990'' for ''Emergency Low Income Housing Preservation Act of 1987'' in section ''89(v)(2) of the United States Housing Act of 1937'', was executed to subsec. (v)(2)(B) of this section (section 8 of the United States Housing Act of 1937) to reflect the probable intent of Congress.

Subsecs. (w), (x). Pub. L. 101–625, §§552(a), 553, added subsecs. (w) and (x).

1989—Subsec. (c)(2)(C). Pub. L. 101–235, §702(g), substituted ''quality, type, and age'' for ''quality and age''.

Pub. L. 101–235, §702(c), inserted after first sentence ''In implementing the limitation established under the preceding sentence, the Secretary shall establish regulations for conducting comparability studies for projects where the Secretary has reason to believe that the application of the formula adjustments under subparagraph (A) would result in such material differences. The Secretary shall conduct such studies upon the request of any owner of any project, or as the Secretary determines to be appropriate by establishing, to the extent practicable, a modified annual adjustment factor for such market area, as the Secretary shall designate, that is geographically smaller than the applicable housing area used for the establishment of the annual adjustment factor under subparagraph (A). The Secretary shall establish such modified annual adjustment factor on the basis of the results of a study conducted by the Secretary of the rents charged, and any change in such rents over the previous year, for assisted units and unassisted units of similar quality, type, and age in the smaller market area. Where the Secretary determines that such modified annual adjustment factor cannot be established or that such factor when applied to a particular project would result in material differences between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area, the Secretary may apply an alternative methodology for conducting comparability studies in order to establish rents that are not materially different from rents charged for comparable unassisted units.''

Subsec. (e)(2). Pub. L. 101–235, §127(1), inserted before period at end of first sentence '', and which shall involve a minimum expenditure of $3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems''.

Pub. L. 101–235, §127(2), (3), inserted at end ''In order to maximize the availability of low-income housing, in providing assistance under this paragraph, the Secretary shall include in any calculation or determination regarding the amount of the assistance to be made available the extent to which any proceeds are available from any tax credits provided under section 42 of title 26 (or from any syndication of such credits) with respect to the housing. For each fiscal year, the Secretary may not provide assistance pursuant to this paragraph to any project for rehabilitation of more than 100 units. Assistance pursuant to this paragraph shall be allocated according to the formula established pursuant to section 1439(d) of this title, and awarded pursuant to a competition under such section. The Secretary shall maintain a single listing of any assistance provided pursuant to this paragraph, which shall include a statement identifying the owner and location of the project to which assistance was made, the amount of the assistance, and the number of units assisted.''

1988—Subsec. (b)(1). Pub. L. 100–242, §141, inserted provisions at end authorizing Secretary to enter into separate contributions contracts with each public housing agency to obligate authority approved each year, beginning with fiscal year 1988.

Subsec. (c)(1). Pub. L. 100–242, §142(a), inserted before last sentence ''Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section.''

Pub. L. 100–242, §142(b), inserted at end ''The Secretary shall establish separate fair market rentals under this paragraph for Westchester County in the State of New York.''

Pub. L. 100–242, §142(c)(1), inserted at end ''If units assisted under this section are exempt from local rent control while they are so assisted or otherwise, the maximum monthly rent for such units shall be reasonable in comparison with other units in the market area that are exempt from local rent control.''

Subsec. (c)(2)(C). Pub. L. 100–628, §1004(a)(1), substituted ''under subparagraphs (A) and (B)'' for ''as hereinbefore provided''.

Pub. L. 100–628, §1004(a)(2), inserted at end ''Any maximum monthly rent that has been reduced by the Secretary after April 14, 1987, and prior to November 7, 1988, shall be restored to the maximum monthly rent in effect on April 15, 1987. For any project which has had its maximum monthly rents reduced after April 14, 1987, the Secretary shall make assistance payments (from amounts reserved for the original contract) to the owner of such project in an amount equal to the difference between the maximum monthly rents in effect on April 15, 1987, and the reduced maximum monthly rents, multiplied by the number of months that the reduced maximum monthly rents were in effect.''

Pub. L. 100–242, §142(c)(2), substituted ''assisted units and unassisted units of similar quality and age in the same market area'' for ''assisted and comparable unassisted units'' and inserted at end ''If the Secretary or

appropriate State agency does not complete and submit to the project owner a comparability study not later than 60 days before the anniversary date of the assistance contract under this section, the automatic annual adjustment factor shall be applied.''

Pub. L. 100–242, §142(d), inserted at end ''The Secretary may not reduce the contract rents in effect on or after April 15, 1987, for newly constructed, substantially rehabilitated, or moderately rehabilitated projects assisted under this section (including projects assisted under this section as in effect prior to November 30, 1983), unless the project has been refinanced in a manner that reduces the periodic payments of the owner.''

Subsec. (c)(2)(D). Pub. L. 100–242, §142(e), struck out subpar. (D) which read as follows: ''Notwithstanding the foregoing, the Secretary shall limit increases in contract rents for newly constructed or substantially rehabilitated projects assisted under this section to the amount of operating cost increases incurred with respect to comparable rental dwelling units of various sizes and types in the same market area which are suitable for occupancy by families assisted under this section. Where no comparable dwelling units exist in the same market area, the Secretary shall have authority to approve such increases in accordance with the best available data regarding operating cost increases in rental dwelling units.''

Subsec. (c)(9), (10). Pub. L. 100–242, §262(a), (b), added pars. (9) and (10).

Subsec. (d)(1)(A). Pub. L. 100–628, §1014(b), inserted cl. (i) designation after ''except that'' and added cl. (ii) before semicolon at end.

Subsec. (d)(2). Pub. L. 100–628, §1005(b)(1), designated existing provisions as subpar. (A), substituted ''(i)'' and ''(ii)'' for ''(A)'' and ''(B)'' wherever appearing, and added subpar. (B).

Pub. L. 100–628, §1005(c), added subpar. (C).

Pub. L. 100–242, §148, inserted exception authorizing Secretary to permit public housing authority to approve attachment with respect to not more than 15 percent of assistance provided by public housing agency if requirements of cl. (B) are met.

Subsec. (*o*)(1). Pub. L. 100–242, §143(a)(1), substituted ''The Secretary may provide assistance'' for ''In connection with the rental rehabilitation and development program under section 1437*o* of this title or the rural housing preservation grant program under section 1490m of this title, or for other purposes, the Secretary is authorized to conduct a demonstration program''.

Subsec. (*o*)(3). Pub. L. 100–628, §1014(c), inserted sentence at end authorizing public housing agencies to provide for circumstances in which families who do not qualify for any preference are provided assistance under this subsection before families who do qualify for such preference.

Subsec. (*o*)(4). Pub. L. 100–242, §143(a)(2), (3), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''The Secretary shall use substantially all of the authority to enter into contracts under this subsection to make assistance payments for families residing in dwellings to be rehabilitated with assistance under section 1437*o* of this title and for families displaced as a result of rental housing development assisted under such section or as a result of activities assisted under section 1490m of this title.''

Subsec. (*o*)(5). Pub. L. 100–242, §143(a)(3), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (*o*)(6). Pub. L. 100–242, §143(a)(3), (b), redesignated par. (7) as (6), substituted ''annually'' for ''as frequently as twice during any five-year period'' in subpar. (A), and struck out subpar. (D) which directed that public housing agency consult with public and units of local government regarding impact of adjustments made under this section on the number of families that can be assisted. Former par. (6) redesignated (5).

Subsec. (*o*)(7). Pub. L. 100–242, §143(a)(3), (c), redesignated par. (8) as (7), and struck out ''not to exceed 5 per centum of the amount of'' after ''utilize''. Former par. (7) redesignated (6).

Subsec. (*o*)(8). Pub. L. 100–242, §143(a)(3), (d), added par. (8). Former par. (8) redesignated (7).

Subsecs. (q) to (u). Pub. L. 100–242, §§144–149, added subsecs. (q) to (u).

Subsec. (u)(3). Pub. L. 100–628, §1006, added par. (3).

Subsec. (v). Pub. L. 100–628, §1029, redesignated par. (2) as (1) and inserted ''for project-based loan management assistance'', added par. (2), and struck out former par. (1) which required that each contract entered into by Secretary for loan management assistance be for a term of 180 months.

Pub. L. 100–242, §262(c), added subsec. (v).

1984—Subsec. (d)(2). Pub. L. 98–479, §102(b)(6), substituted ''Where the Secretary enters into an annual contributions contract with a public housing agency pursuant to which the agency will enter into a contract for assistance payments with respect to an existing structure, the contract for assistance payments may not be attached to the structure unless (A) the Secretary and the public housing agency approve such action, and (B) the owner agrees to rehabilitate the structure other than with assistance under this chapter and otherwise complies with the requirements of this section.'' for ''A contract under this section may not be attached to the structure except where the Secretary specifically waives the foregoing limitation and the public housing agency approves such action, and the owner agrees to rehabilitate the structure other than with assistance under this chapter and otherwise complies with the requirements of this section. The aggregate term of such contract and any contract extension may not be more than 180 months.''

Subsec. (e)(2). Pub. L. 98–479, §102(b)(7), inserted at end ''The Secretary shall increase the amount of assistance provided under this paragraph above the amount of assistance otherwise permitted by this paragraph and subsection (c)(1) of this section, if the Secretary determines such increase necessary to assist in the sale of multifamily housing projects owned by the Department of Housing and Urban Development.''

Subsec. (n). Pub. L. 98–479, §102(b)(8), substituted ''subsections (b)(1) and (e)(2) of this section'' for ''subsection (b)(1), subsection (e)(2) of this section''.

Subsec. (*o*)(3)(C). Pub. L. 98–479, §102(b)(9), added cl. (C).

Subsec. (*o*)(7)(D). Pub. L. 98–479, §102(b)(10), inserted ''unit of'' before ''general''.

1983—Subsec. (a). Pub. L. 98–181, §209(a)(1), substituted ''existing housing'' for ''existing, newly constructed, and substantially rehabilitated housing''.

Subsec. (b)(2). Pub. L. 98–181, §209(a)(2), repealed par. (2) which related to authorization of assistance payments by the Secretary and contractually obligated public housing agencies for construction or substantial rehabilitation of housing, modest in design, with units for occupancy by low-income families and requirement that contracts providing housing assistance and entered into after Aug. 13, 1981, specify the number of units available for occupancy by eligible families.

Subsec. (d)(1)(A). Pub. L. 98–181, §203(b)(1), inserted '', are paying more than 50 per centum of family income for rent,''.

Subsec. (d)(2). Pub. L. 98–181, §208, inserted second and third sentences respecting waiver of limitation and limitation of contract and any extension to prescribed period.

Subsec. (e)(1). Pub. L. 98–181, §209(a)(3), redesignated par. (4) as (1) and struck out former par. (1) which prescribed terms of 20 to 30 years for newly constructed or substantially rehabilitated dwelling units.

Subsec. (e)(2). Pub. L. 98–181, §209(a)(3), redesignated par. (5) as (2) and struck out former par. (2) which required owners to assume ownership, management, and maintenance responsibilities, including selection of tenants and termination of tenancy for newly constructed or substantially rehabilitated dwelling units.

Pub. L. 98–181, §203(b)(2), inserted '', are paying more than 50 per centum of family income for rent,'' after ''substandard housing''.

Subsec. (e)(3). Pub. L. 98–181, §209(a)(3), struck out par. (3) which required that construction or substantial

rehabilitation of dwelling units be eligible for mortgages insured under the National Housing Act and that assistance not be withheld by reason of availability of mortgage insurance under section 1715z–9 of title 12 or tax-exempt status obligations used to finance the construction or rehabilitation.

Subsec. (e)(4), (5). Pub. L. 98–181, §209(a)(3), redesignated pars. (4) and (5) as (1) and (2), respectively.

Subsec. (i). Pub. L. 98–181, §209(a)(4), repealed subsec. (i) which related to contracts with respect to substantially rehabilitated dwelling units.

Subsecs. (*l*), (m). Pub. L. 98–181, §209(a)(5), repealed subsec. (*l*) relating to limitation of cost and rent increases, and subsec. (m) relating to preference for projects on suitable State and local government tracts.

Subsec. (n). Pub. L. 98–181, §209(a)(6), substituted ''subsection (e)(2) of this section'' for ''subsection (e)(5) and subsection (i) of this section''.

Pub. L. 98–181, §210(1), (2), inserted ''subsection (b)(1) of this section,'' before ''subsection (e)(5)'' and a comma after ''subsection (e)(5) of this section''.

Subsec. (n)(3). Pub. L. 98–181, §210(3)–(5), added par. (3).

Subsec. (*o*). Pub. L. 98–181, §207, added subsec. (*o*).

Subsec. (p). Pub. L. 98–181, §211, added subsec. (p).

1981—Subsec. (b)(2). Pub. L. 97–35, §§324(1), 325(1), inserted provisions relating to increasing housing opportunities for very low-income families and provisions relating to availability for occupancy the number of units for which assistance is committed.

Subsec. (c)(2)(D). Pub. L. 97–35, §324(2), added par. (D).

Subsec. (c)(3). Pub. L. 97–35, §322(e)(1), revised formula for computation of amount of monthly assistance and struck out authority to make reviews at least every two years in cases of elderly families.

Subsec. (c)(5). Pub. L. 97–35, §325(2), inserted reference to mortgages under section 1720 of title 12.

Subsec. (c)(7). Pub. L. 97–35, §322(e)(2), struck out par. (7) relating to percentage requirement for families with very low income and redesignated former par. (8) as (7).

Subsec. (c)(8). Pub. L. 97–35, §326(a), added par. (8). Former par. (8) redesignated (7).

Subsec. (d)(1)(B). Pub. L. 97–35, §326(e)(1), substituted provisions relating to terms and conditions, and termination of the lease by the owner for provisions relating to right of the agency to give notice to terminate and owner the right to make representation to agency for termination of the tenancy.

Subsec. (f). Pub. L. 97–35, §322(e)(3), struck out pars. (1) to (3) which defined ''lower income families'', ''very low-income families'' and ''income'', respectively, and redesignated pars. (4) to (6) as (1) to (3), respectively.

Subsec. (h). Pub. L. 97–35, §322(e)(4), (5), struck out reference to section 1437a(1) of this title.

Subsec. (j). Pub. L. 97–35, §329H(a), generally revised and reorganized provisions and, as so revised and reorganized, substituted provisions relating to contracts to make assistance payments to assist lower income families by making rental assistance payments on behalf of such family, for provisions relating to annual contributions contracts to assist lower income families by making rental assistance payments.

Subsec. (j)(3). Pub. L. 97–35, §322(e)(6), substituted in par. (3) ''the rent the family is required to pay under section 1437a(a) of this title'' for ''25 per centum of one-twelfth of the annual income of such family''.

Subsecs. (*l*) to (n). Pub. L. 97–35, §324(3), added subsecs. (*l*) to (n).

1980—Subsec. (c)(1). Pub. L. 96–399, §203(a), inserted provision that in the case of newly constructed and substantially rehabilitated units, the exception in the preceding sentence shall not apply to more than 20 per centum of the total amount of authority to enter into annual contributions contracts for such units which is allocated to an area and obligated with respect to any fiscal year beginning on or after Oct. 1, 1980.

Subsec. (e)(5). Pub. L. 96–399, §203(b), inserted provision relating to the authority of the Secretary, notwithstanding subsec. (c)(1) of this section, to establish monthly rent exceeding fair market rental where cost levels so require or where necessary to the implementation of a local housing assistance plan.

Subsec. (j). Pub. L. 96–399, §308(c)(3), substituted ''manufactured home'' for ''mobile home'' wherever appearing.

1979—Subsec. (c)(3). Pub. L. 96–153, §202(b), substituted new provisions for computation of the amount of monthly assistance payments with respect to dwelling units and laid down criteria to be followed by the Secretary in regard to payments to families with different income levels.

Subsec. (d)(1)(A). Pub. L. 96–153, §206(b)(1), substituted ''Secretary and the agency, except that the tenant selection criteria used by the owner shall give preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance under this section.'' for ''Secretary and the agency;''.

Subsec. (e)(1). Pub. L. 96–153, §211(b), substituted ''term of less than two hundred and forty months'' for ''term of less than one month''.

Subsec. (e)(2). Pub. L. 96–153, §206(b)(2), substituted ''performance of such responsibilities), except that the tenant selection criteria shall give preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking housing assistance under this section'' for ''performance of such responsibilities)''.

Subsec. (k). Pub. L. 96–153, §210, added subsec. (k).

1978—Subsec. (e)(5). Pub. L. 95–557, §206(e), added par. (5).

Subsec. (i). Pub. L. 95–557, §206(d)(1), added subsec. (i).

Subsec. (j). Pub. L. 95–557, §206(f), added subsec. (j).

1977—Subsec. (c), Pub. L. 95–128, §201(c), (d), inserted in par. (1) prohibition against high-rise elevator projects for families with children after Oct. 12, 1977, and struck out from par. (4) provision which prohibited payment after the sixty-day period if the unoccupied unit was in a project insured under the National Housing Act, except pursuant to section 1715z–9 of title 12.

Subsec. (d)(3). Pub. L. 95–128, §201(e)(1), added par. (3).

Subsec. (e)(1). Pub. L. 95–24 substituted ''three hundred and sixty months, except that such term may not exceed two hundred and forty months in the case of a project financed with assistance of a loan made by, or insured, guaranteed or intended for purchase by, the Federal Government, other than pursuant to section 1715z–9 of title 12'' for ''two hundred and forty months'' and ''Notwithstanding the preceding sentence, in the case of'' for ''In the case of''.

Subsec. (e)(2). Pub. L. 95–128, §201(e)(2), inserted provision respecting the Secretary's approval of any public housing agency for assumption of management and maintenance responsibilities of dwelling units under the preceding sentence.

1976—Subsec. (c)(4). Pub. L. 94–375, §2(d), inserted provision extending payments to newly constructed or substantially rehabilitated unoccupied units in an amount equal to the debt service of such unit for a period not to exceed one year, provided that a good faith effort is being made to fill the unit, the unit provides decent and safe housing, the unit is not insured under the National Housing Act, except pursuant to section 1715z–9 of title 12, and the revenues from the project do not exceed the cost.

Subsec. (e)(1). Pub. L. 94–375, §2(g), inserted ''or the Farmers' Home Administration'' after ''State or local agency''.

Subsec. (f)(6). Pub. L. 94–375, §2(e), added par. (6).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–116 effective Sept. 30, 2001, see section 603 of Pub. L. 107–116, set out as a note under section 1715n of Title 12, Banks and Banking.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–569, title III, §301(b), Dec. 27, 2000, 114 Stat. 2952, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect

immediately after the amendments made by section 555(c) of the Quality Housing and Work Responsibility Act of 1998 [Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note below] take effect pursuant to such section.''

Pub. L. 106–569, title IX, § 902(b), Dec. 27, 2000, 114 Stat. 3026, provided that: ''The amendment under subsection (a) [amending this section] shall be made and shall apply—

''(1) upon the enactment of this Act, if the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001 [H.R. 5482, as enacted by section 1(a)(1) of Pub. L. 106–377], is enacted before the enactment of this Act; and

''(2) immediately after the enactment of such appropriations Act, if such appropriations Act is enacted after the enactment of this Act.''

Pub. L. 106–569, title IX, § 903(b), Dec. 27, 2000, 114 Stat. 3026, provided that: ''The amendment under subsection (a) [amending this section] shall be made and shall apply—

''(1) upon the enactment of this Act, if the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001 [H.R. 5482, as enacted by section 1(a)(1) of Pub. L. 106–377], is enacted before the enactment of this Act; and

''(2) immediately after the enactment of such appropriations Act, if such appropriations Act is enacted after the enactment of this Act.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title II, § 209(b), Oct. 21, 1998, 112 Stat. 2485, provided that: ''This section [amending this section] shall take effect 60 days after the later of October 1, 1998 or the date of the enactment of this Act [Oct. 21, 1998].''

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

Amendment by section 514(b)(1) of Pub. L. 105–276 effective and applicable beginning upon Oct. 21, 1998, see section 514(g) of Pub. L. 105–276, set out as a note under section 1701s of Title 12, Banks and Banking.

Pub. L. 105–276, title V, § 545(c), Oct. 21, 1998, 112 Stat. 2604, provided that: ''Notwithstanding the amendment made by subsection (a) of this section [amending this section], any amendments to section 8(*o*) of the United States Housing Act of 1937 (42 U.S.C. 1437f(*o*)) that are contained in title II of this Act [see Tables for classification] shall apply with respect to the provision of assistance under such section during the period before implementation (pursuant to section 559 of this title [set out as a Regulations and Transition Provisions note below]) of such section 8(*o*) as amended by subsection (a) of this section.''

Pub. L. 105–276, title V, § 549(a)(3), Oct. 21, 1998, 112 Stat. 2607, provided that: ''The amendments under this subsection [amending this section] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998], and shall apply thereafter, notwithstanding section 203 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 [section 101(e) [title II, § 203] of Pub. L. 104–134, amending this section and enacting provisions set out as an Effective and Termination Dates of 1996 Amendments note below] (42 U.S.C. 1437f note) or any other provision of law (including the expiration of the applicability of such section 203 or any repeal of such section 203).''

Pub. L. 105–276, title V, § 554, Oct. 21, 1998, 112 Stat. 2611, provided that: ''Notwithstanding section 203(d) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (as contained in section 101(e) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134; 42 U.S.C. 1437f note) [see Effective and Termination Dates of 1996 Amendments note below]), section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) is amended by striking subsection (t). This section shall apply beginning upon, and the amendment made by this section is made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

Pub. L. 105–276, title V, § 555(c), Oct. 21, 1998, 112 Stat. 2613, provided that: ''This section [amending this section and enacting provisions set out as a note below] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

Amendment by section 565(c) of Pub. L. 105–276 effective and applicable beginning upon Oct. 21, 1998, see section 565(e) of Pub. L. 105–276, set out as a note under section 1437d of this title.

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENTS

Section 101(e) [title II, § 203(d)] of Pub. L. 104–134, as amended by Pub. L. 104–204, title II, § 201(e), Sept. 26, 1996, 110 Stat. 2893; Pub. L. 105–65, title II, § 201(b), Oct. 27, 1997, 111 Stat. 1364, provided that: ''The provisions of this section [amending this section] shall be effective for fiscal years 1996, 1997, and 1998 only.''

Amendment by section 402(d)(2), (3), (6)(A)(iii), (iv) of Pub. L. 104–99 effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as notes under section 1437a of this title.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Amendment by Pub. L. 103–327 enacting subsec. (aa), effective only during fiscal year 1995, see title II in part of Pub. L. 103–327, set out as a note under section 1715n of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 289(b)(1) of Pub. L. 101–625, repealing subsec. (e)(2) of this section, effective Oct. 1, 1991; however, provisions of subsec. (e)(2) to remain in effect with respect to single room occupancy dwellings as authorized by subchapter IV (§ 11361 et seq.) of chapter 119 of this title, see section 12839(a)(4), (b) of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; SAVINGS PROVISION

Section 209(b) Pub. L. 98–181 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1983, except that the provisions repealed shall remain in effect—

''(1) with respect to any funds obligated for a viable project under section 8 of the United States Housing Act of 1937 [this section] prior to January 1, 1984; and

''(2) with respect to any project financed under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendments by sections 322(e) and 329H(a) of Pub. L. 97–35 effective Oct. 1, 1981, and amendments by sections 324, 325, and 326(a) of Pub. L. 97–35 applicable with respect to contracts entered into on or after Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

Section 326(e)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this sec-

tion] shall apply with respect to leases entered into on or after October 1, 1981.''

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by section 202(b) of Pub. L. 96–153 effective Jan. 1, 1980, except with respect to amount of tenant contribution required of families whose occupancy commenced prior to such date, see section 202(c) of Pub. L. 96–153, set out as a note under section 1437a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 206(d)(2) of Pub. L. 95–557 provided that: ''The amendment made by this subsection [amending this section] shall become effective with respect to contracts entered into on or after 270 days following the date of enactment of this Act [Oct. 31, 1978].''

Amendment by section 206(e), (f) of Pub. L. 95–557 effective Oct. 1, 1978, see section 206(h) of Pub. L. 95–557, set out as a note under section 1437c of this title.

EFFECTIVE DATE

Section effective not later than Jan. 1, 1975, see section 201(b) of Pub. L. 93–383, set out as a note under section 1437 of this title.

APPLICABILITY OF 1994 AMENDMENTS

Title II of Pub. L. 103–327, 108 Stat. 2315, third par., provided that: ''The immediately foregoing amendment [amending subsec. (c)(2)(A) of this section by authorizing modification of rent adjustment where adjusted rent exceeds fair market rental] shall apply to all contracts for new construction, substantial rehabilitation, and moderate rehabilitation projects under which rents are adjusted under section 8(c)(2)(A) of such Act [subsec. (c)(2)(A) of this section] by applying an annual adjustment factor.''

Title II of Pub. L. 103–327, 108 Stat. 2315, fifth par., provided that: ''The immediately foregoing [amending subsec. (c)(2)(A) of this section by inserting two sentences at end authorizing reduction of annual adjustment factor in certain circumstances] shall hereafter apply to all contracts that are subject to section 8(c)(2)(A) of such Act [subsec. (c)(2)(A) of this section] and that provide for rent adjustments using an annual adjustment factor.''

REGULATIONS AND TRANSITION PROVISIONS

Pub. L. 105–276, title V, § 559, Oct. 21, 1998, 112 Stat. 2615, provided that:

''(a) INTERIM REGULATIONS.—The Secretary of Housing and Urban Development shall issue such interim regulations as may be necessary to implement the amendments made by this subtitle [subtitle C (§§ 545–559) of title V of Pub. L. 105–276, see Tables for classification] and other provisions in this title [see Tables for classification] which relate to section 8(*o*) of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)].

''(b) FINAL REGULATIONS.—The Secretary shall issue final regulations necessary to implement the amendments made by this subtitle and other provisions in this title which relate to section 8(*o*) of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)] not later then 1 year after the date of the enactment of this Act [Oct. 21, 1998].

''(c) FACTORS FOR CONSIDERATION.—Before the publication of the final regulations under subsection (b), in addition to public comments invited in connection with the publication of the interim rule, the Secretary shall—

''(1) seek recommendations on the implementation of sections 8(*o*)(6)(B), 8(*o*)(7)(B), and 8(*o*)(10)(D) of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)(6)(B), (7)(B), (10)(D)] and of renewals of expiring tenant-based assistance from organizations representing—

''(A) State or local public housing agencies;

''(B) owners and managers of tenant-based housing assisted under section 8 of the United States Housing Act of 1937;

''(C) families receiving tenant-based assistance under section 8 of the United States Housing Act of 1937; and

''(D) legal service organizations; and

''(2) convene not less than 2 public forums at which the persons or organizations making recommendations under paragraph (1) may express views concerning the proposed disposition of the recommendations.

''(d) CONVERSION ASSISTANCE.—

''(1) IN GENERAL.—The Secretary may provide for the conversion of assistance under the certificate and voucher programs under subsections (b) and (*o*) of section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f(b), (*o*)], as in effect before the applicability of the amendments made by this subtitle, to the voucher program established by the amendments made by this subtitle.

''(2) CONTINUED APPLICABILITY.—The Secretary may apply the provisions of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], or any other provision of law amended by this subtitle, as those provisions were in effect immediately before the date of the enactment of this Act [Oct. 21, 1998] (except that such provisions shall be subject to any amendments to such provisions that may be contained in title II of this Act [see Tables for classification]), to assistance obligated by the Secretary before October 1, 1999, for the certificate or voucher program under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], if the Secretary determines that such action is necessary for simplification of program administration, avoidance of hardship, or other good cause.

''(e) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

REGULATIONS

Pub. L. 105–276, title V, § 556(b), Oct. 21, 1998, 112 Stat. 2613, provided that: ''The Secretary of Housing and Urban Development shall implement the provision added by the amendment made by subsection (a) [amending this section] through notice, not later than December 31, 1998, and shall issue final regulations which shall be developed pursuant to the procedures for issuance of regulations under the negotiated rulemaking procedure under subchapter III of chapter 5 of title 5, United States Code, not later than one year after the date of the enactment of this Act [Oct. 21, 1998].''

For provisions requiring Secretary of Housing and Urban Development to issue regulations necessary to implement amendment to this section by Pub. L. 103–233, see section 101(f) of Pub. L. 103–233, set out as a note under section 1701z–11 of Title 12, Banks and Banking.

For provision requiring that not later than expiration of the 180-day period beginning Oct. 28, 1992, the Secretary of Housing and Urban Development shall issue regulations implementing amendments to this section by section 545 of Pub. L. 101–625, see section 104 of Pub. L. 102–550, set out as a note under section 1437d of this title.

Section 149 of Pub. L. 102–550 provided that: ''The Secretary of Housing and Urban Development shall issue any final regulations necessary to carry out the amendments made by section 547 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, amending this section] not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section) and shall take effect upon the expiration of the 30-day period beginning upon issuance.''

Section 151 of Pub. L. 102–550 provided that: ''The Secretary of Housing and Urban Development shall issue any final regulations necessary to carry out the

provisions of section 555 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625] (42 U.S.C. 1437f note) not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section) and shall take effect upon the expiration of the 30-day period beginning upon issuance.''

SAVINGS PROVISION

Pub. L. 106–377, §1(a)(1) [title II, §232(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A–34, provided that: ''In the case of any dwelling unit that, upon the date of the enactment of this Act [Oct. 27, 2000], is assisted under a housing assistance payment contract under section 8(*o*)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f(*o*)(13)) as in effect before such enactment, such assistance may be extended or renewed notwithstanding the requirements under subparagraphs (C), (D), and (E) of such section 8(*o*)(13), as amended by subsection (a).''

PURPOSES OF MARK-TO-MARKET EXTENSION ACT OF 2001

Pub. L. 107–116, title VI, §602, Jan. 10, 2002, 115 Stat. 2221, provided that: ''The purposes of this title [see Short Title of 2002 Amendment note set out under section 1437 of this title] are—

''(1) to continue the progress of the Multifamily Assisted Housing Reform and Affordability Act of 1997 [title V of Pub. L. 105–65, see Short Title of 1997 Amendment note set out under section 1701 of Title 12, Banks and Banking] (referred to in this section as 'that Act');

''(2) to ensure that properties that undergo mortgage restructurings pursuant to that Act are rehabilitated to a standard that allows the properties to meet their long-term affordability requirements;

''(3) to ensure that, for properties that undergo mortgage restructurings pursuant to that Act, reserves are set at adequate levels to allow the properties to meet their long-term affordability requirements;

''(4) to ensure that properties that undergo mortgage restructurings pursuant to that Act are operated efficiently, and that operating expenses are sufficient to ensure the long-term financial and physical integrity of the properties;

''(5) to ensure that properties that undergo rent restructurings have adequate resources to maintain the properties in good condition;

''(6) to ensure that the Office of Multifamily Housing Assistance Restructuring of the Department of Housing and Urban Development continues to focus on the portfolio of properties eligible for restructuring under that Act;

''(7) to ensure that the Department of Housing and Urban Development carefully tracks the condition of those properties on an ongoing basis;

''(8) to ensure that tenant groups, nonprofit organizations, and public entities continue to have the resources for building the capacity of tenant organizations in furtherance of the purposes of subtitle A of that Act [subtitle A of title V of Pub. L. 105–65, set out in a note below]; and

''(9) to encourage the Office of Multifamily Housing Assistance Restructuring to continue to provide participating administrative entities, including public participating administrative entities, with the flexibility to respond to specific problems that individual cases may present, while ensuring consistent outcomes around the country.''

PILOT PROGRAM FOR HOMEOWNERSHIP ASSISTANCE FOR DISABLED FAMILIES

Pub. L. 106–569, title III, §302, Dec. 27, 2000, 114 Stat. 2953, provided that:

''(a) IN GENERAL.—A public housing agency providing tenant-based assistance on behalf of an eligible family under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) may provide assistance for a disabled family that purchases a dwelling unit (including a dwelling unit under a lease-purchase agreement) that will be owned by one or more members of the disabled family and will be occupied by the disabled family, if the disabled family—

''(1) purchases the dwelling unit before the expiration of the 3-year period beginning on the date that the Secretary first implements the pilot program under this section;

''(2) demonstrates that the disabled family has income from employment or other sources (including public assistance), as determined in accordance with requirements of the Secretary, that is not less than twice the payment standard established by the public housing agency (or such other amount as may be established by the Secretary);

''(3) except as provided by the Secretary, demonstrates at the time the disabled family initially receives tenant-based assistance under this section that one or more adult members of the disabled family have achieved employment for the period as the Secretary shall require;

''(4) participates in a homeownership and housing counseling program provided by the agency; and

''(5) meets any other initial or continuing requirements established by the public housing agency in accordance with requirements established by the Secretary.

''(b) DETERMINATION OF AMOUNT OF ASSISTANCE.—

''(1) IN GENERAL.—

''(A) MONTHLY EXPENSES NOT EXCEEDING PAYMENT STANDARD.—If the monthly homeownership expenses, as determined in accordance with requirements established by the Secretary, do not exceed the payment standard, the monthly assistance payment shall be the amount by which the homeownership expenses exceed the highest of the following amounts, rounded to the nearest dollar:

''(i) Thirty percent of the monthly adjusted income of the disabled family.

''(ii) Ten percent of the monthly income of the disabled family.

''(iii) If the disabled family is receiving payments for welfare assistance from a public agency, and a portion of those payments, adjusted in accordance with the actual housing costs of the disabled family, is specifically designated by that agency to meet the housing costs of the disabled family, the portion of those payments that is so designated.

''(B) MONTHLY EXPENSES EXCEED PAYMENT STANDARD.—If the monthly homeownership expenses, as determined in accordance with requirements established by the Secretary, exceed the payment standard, the monthly assistance payment shall be the amount by which the applicable payment standard exceeds the highest of the amounts under clauses (i), (ii), and (iii) of subparagraph (A).

''(2) CALCULATION OF AMOUNT.—

''(A) LOW-INCOME FAMILIES.—A disabled family that is a low-income family shall be eligible to receive 100 percent of the amount calculated under paragraph (1).

''(B) INCOME BETWEEN 81 AND 89 PERCENT OF MEDIAN.—A disabled family whose income is between 81 and 89 percent of the median for the area shall be eligible to receive 66 percent of the amount calculated under paragraph (1).

''(C) INCOME BETWEEN 90 AND 99 PERCENT OF MEDIAN.—A disabled family whose income is between 90 and 99 percent of the median for the area shall be eligible to receive 33 percent of the amount calculated under paragraph (1).

''(D) INCOME MORE THAN 99 PERCENT OF MEDIAN.—A disabled family whose income is more than 99 percent of the median for the area shall not be eligible to receive assistance under this section.

''(c) INSPECTIONS AND CONTRACT CONDITIONS.—

''(1) IN GENERAL.—Each contract for the purchase of a dwelling unit to be assisted under this section shall—

''(A) provide for pre-purchase inspection of the dwelling unit by an independent professional; and

''(B) require that any cost of necessary repairs be paid by the seller.

''(2) ANNUAL INSPECTIONS NOT REQUIRED.—The requirement under subsection (*o*)(8)(A)(ii) of section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)(8)(A)(ii)] for annual inspections shall not apply to dwelling units assisted under this section.

''(d) OTHER AUTHORITY OF THE SECRETARY.—The Secretary may—

''(1) limit the term of assistance for a disabled family assisted under this section;

''(2) provide assistance for a disabled family for the entire term of a mortgage for a dwelling unit if the disabled family remains eligible for such assistance for such term; and

''(3) modify the requirements of this section as the Secretary determines to be necessary to make appropriate adaptations for lease-purchase agreements.

''(e) ASSISTANCE PAYMENTS SENT TO LENDER.—The Secretary shall remit assistance payments under this section directly to the mortgagee of the dwelling unit purchased by the disabled family receiving such assistance payments.

''(f) INAPPLICABILITY OF CERTAIN PROVISIONS.—Assistance under this section shall not be subject to the requirements of the following provisions:

''(1) Subsection (c)(3)(B) of section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f(c)(3)(B)].

''(2) Subsection (d)(1)(B)(i) of section 8 of the United States Housing Act of 1937.

''(3) Any other provisions of section 8 of the United States Housing Act of 1937 governing maximum amounts payable to owners and amounts payable by assisted families.

''(4) Any other provisions of section 8 of the United States Housing Act of 1937 concerning contracts between public housing agencies and owners.

''(5) Any other provisions of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] that are inconsistent with the provisions of this section.

''(g) REVERSION TO RENTAL STATUS.—

''(1) NON-FHA MORTGAGES.—If a disabled family receiving assistance under this section defaults under a mortgage not insured under the National Housing Act [12 U.S.C. 1701 et seq.], the disabled family may not continue to receive rental assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] unless it complies with requirements established by the Secretary.

''(2) ALL MORTGAGES.—A disabled family receiving assistance under this section that defaults under a mortgage may not receive assistance under this section for occupancy of another dwelling unit owned by one or more members of the disabled family.

''(3) EXCEPTION.—This subsection shall not apply if the Secretary determines that the disabled family receiving assistance under this section defaulted under a mortgage due to catastrophic medical reasons or due to the impact of a federally declared major disaster or emergency.

''(h) REGULATIONS.—Not later than 90 days after the date of the enactment of this Act [Dec. 27, 2000], the Secretary shall issue regulations to implement this section. Such regulations may not prohibit any public housing agency providing tenant-based assistance on behalf of an eligible family under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] from participating in the pilot program under this section.

''(i) DEFINITION OF DISABLED FAMILY.—For the purposes of this section, the term 'disabled family' has the meaning given the term 'person with disabilities' in section 811(k)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013(k)(2)).''

DETERMINATION OF ADMINISTRATIVE FEES

Pub. L. 108–7, div. K, title II, [(5)], Feb. 20, 2003, 117 Stat. 485, which provided that the fee otherwise authorized under subsec. (q) of this section was to be determined in accordance with subsec. (q) as in effect immediately before Oct. 21, 1998, was from the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2003 and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–73, title II, Nov. 26, 2001, 115 Stat. 660.

Pub. L. 106–377, § 1(a)(1) [title II], Oct. 27, 2000, 114 Stat. 1441, 1441A–12.

Pub. L. 106–74, title II, Oct. 20, 1999, 113 Stat. 1056.

HOMEOWNERSHIP OPPORTUNITIES DEMONSTRATION PROGRAM

Pub. L. 105–276, title V, § 555(b), Oct. 21, 1998, 112 Stat. 2613, provided that:

''(1) IN GENERAL.—With the consent of the affected public housing agencies, the Secretary may carry out (or contract with 1 or more entities to carry out) a demonstration program under section 8(y) of the United States Housing Act of 1937 (42 U.S.C. 1437f(y)) to expand homeownership opportunities for low-income families.

''(2) REPORT.—The Secretary shall report annually to Congress on activities conducted under this subsection.''

MULTIFAMILY HOUSING ASSISTANCE

Subtitles A (§§ 511–524) and D (§§ 571–579) of title V of Pub. L. 105–65, as amended by Pub. L. 105–276, title V, §§ 549(c), 597(b), Oct. 21, 1998, 112 Stat. 2608, 2659; Pub. L. 106–74, title II, §§ 213(b), 219, title V, §§ 531(a)–(c), 534, 538(b), Oct. 20, 1999, 113 Stat. 1074, 1075, 1109–1116, 1120, 1123; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 107–116, title VI, §§ 611–614, 616(a)(1), (b), 621, 622(a), 623(a), 624, 625, Jan. 10, 2002, 115 Stat. 2222–2227, provided that:

''SUBTITLE A—FHA-INSURED MULTIFAMILY HOUSING MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING

''SEC. 511. FINDINGS AND PURPOSES.

''(a) FINDINGS.—Congress finds that—

''(1) there exists throughout the Nation a need for decent, safe, and affordable housing;

''(2) as of the date of enactment of this Act [Oct. 27, 1997], it is estimated that—

''(A) the insured multifamily housing portfolio of the Federal Housing Administration consists of 14,000 rental properties, with an aggregate unpaid principal mortgage balance of $38,000,000,000; and

''(B) approximately 10,000 of these properties contain housing units that are assisted with project-based rental assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

''(3) FHA-insured multifamily rental properties are a major Federal investment, providing affordable rental housing to an estimated 2,000,000 low- and very low-income families;

''(4) approximately 1,600,000 of these families live in dwelling units that are assisted with project-based rental assistance under section 8 of the United States Housing Act of 1937;

''(5) a substantial number of housing units receiving project-based assistance have rents that are higher than the rents of comparable, unassisted rental units in the same housing rental market;

''(6) many of the contracts for project-based assistance will expire during the several years following the date of enactment of this Act;

''(7) it is estimated that—

''(A) if no changes in the terms and conditions of the contracts for project-based assistance are made before fiscal year 2000, the cost of renewing all expiring rental assistance contracts under section 8 of the United States Housing Act of 1937 for both project-based and tenant-based rental assistance will increase from approximately $3,600,000,000 in fiscal year 1997 to over $14,300,000,000 by fiscal year 2000 and some $22,400,000,000 in fiscal year 2006;

''(B) of those renewal amounts, the cost of renewing project-based assistance will increase from $1,200,000,000 in fiscal year 1997 to almost $7,400,000,000 by fiscal year 2006; and

''(C) without changes in the manner in which project-based rental assistance is provided, renewals of expiring contracts for project-based rental assistance will require an increasingly larger portion of the discretionary budget authority of the Department of Housing and Urban Development in each subsequent fiscal year for the foreseeable future;

''(8) absent new budget authority for the renewal of expiring rental contracts for project-based assistance, many of the FHA-insured multifamily housing projects that are assisted with project-based assistance are likely to default on their FHA-insured mortgage payments, resulting in substantial claims to the FHA General Insurance Fund and Special Risk Insurance Fund;

''(9) more than 15 percent of federally assisted multifamily housing projects are physically or financially distressed, including a number which suffer from mismanagement;

''(10) due to Federal budget constraints, the downsizing of the Department of Housing and Urban Development, and diminished administrative capacity, the Department lacks the ability to ensure the continued economic and physical well-being of the stock of federally insured and assisted multifamily housing projects;

''(11) the economic, physical, and management problems facing the stock of federally insured and assisted multifamily housing projects will be best served by reforms that—

''(A) reduce the cost of Federal rental assistance, including project-based assistance, to these projects by reducing the debt service and operating costs of these projects while retaining the low-income affordability and availability of this housing;

''(B) address physical and economic distress of this housing and the failure of some project managers and owners of projects to comply with management and ownership rules and requirements; and

''(C) transfer and share many of the loan and contract administration functions and responsibilities of the Secretary to and with capable State, local, and other entities; and

''(12) the authority and duties of the Secretary, not including the control by the Secretary of applicable accounts in the Treasury of the United States, may be delegated to State, local or other entities at the discretion of the Secretary, to the extent the Secretary determines, and for the purpose of carrying out this title [see Short Title of 1997 Amendment note set out under section 1701 of Title 12, Banks and Banking], so that the Secretary has the discretion to be relieved of processing and approving any document or action required by these reforms.

''(b) PURPOSES.—Consistent with the purposes and requirements of the Government Performance and Results Act of 1993 [Pub. L. 103–62, see Short Title of 1993 Amendment note set out under section 1101 of Title 31, Money and Finance], the purposes of this subtitle are—

''(1) to preserve low-income rental housing affordability and availability while reducing the long-term costs of project-based assistance;

''(2) to reform the design and operation of Federal rental housing assistance programs, administered by the Secretary, to promote greater multifamily housing project operating and cost efficiencies;

''(3) to encourage owners of eligible multifamily housing projects to restructure their FHA-insured mortgages and project-based assistance contracts in a manner that is consistent with this subtitle before the year in which the contract expires;

''(4) to reduce the cost of insurance claims under the National Housing Act [12 U.S.C. 1701 et seq.] related to mortgages insured by the Secretary and used to finance eligible multifamily housing projects;

''(5) to streamline and improve federally insured and assisted multifamily housing project oversight and administration;

''(6) to resolve the problems affecting financially and physically troubled federally insured and assisted multifamily housing projects through cooperation with residents, owners, State and local governments, and other interested entities and individuals;

''(7) to protect the interest of project owners and managers, because they are partners of the Federal Government in meeting the affordable housing needs of the Nation through the section 8 rental housing assistance program;

''(8) to protect the interest of tenants residing in the multifamily housing projects at the time of the restructuring for the housing; and

''(9) to grant additional enforcement tools to use against those who violate agreements and program requirements, in order to ensure that the public interest is safeguarded and that Federal multifamily housing programs serve their intended purposes.

''SEC. 512. DEFINITIONS.

''In this subtitle:

''(1) COMPARABLE PROPERTIES.—The term 'comparable properties' means properties in the same market areas, where practicable, that—

''(A) are similar to the eligible multifamily housing project as to neighborhood (including risk of crime), type of location, access, street appeal, age, property size, apartment mix, physical configuration, property and unit amenities, utilities, and other relevant characteristics; and

''(B) are not receiving project-based assistance.

''(2) ELIGIBLE MULTIFAMILY HOUSING PROJECT.—The term 'eligible multifamily housing project' means a property consisting of more than 4 dwelling units—

''(A) with rents that, on an average per unit or per room basis, exceed the rent of comparable properties in the same market area, determined in accordance with guidelines established by the Secretary;

''(B) that is covered in whole or in part by a contract for project-based assistance under—

''(i) the new construction or substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(2)] (as in effect before October 1, 1983);

''(ii) the property disposition program under section 8(b) of the United States Housing Act of 1937;

''(iii) the moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937;

''(iv) the loan management assistance program under section 8 of the United States Housing Act of 1937;

''(v) section 23 of the United States Housing Act of 1937 [42 U.S.C. 1437u] (as in effect before January 1, 1975);

''(vi) the rent supplement program under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s]; or

''(vii) section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965; and

''(C) financed by a mortgage insured or held by the Secretary under the National Housing Act [12 U.S.C. 1701 et seq.].

Such term does not include any project with an expiring contract described in paragraph (1) or (2) of section 524(e), but does include a project described in section 524(e)(3). Notwithstanding any other provision of this title, the Secretary may treat a project as an eligible multifamily housing project for purposes of this title if (I) the project is assisted pursuant to a contract for project-based assistance under section 8 of the United States Housing Act of 1937 renewed under section 524 of this Act, (II) the owner consents

to such treatment, and (III) the project met the requirements of the first sentence of this paragraph for eligibility as an eligible multifamily housing project before the initial renewal of the contract under section 524.

''(3) EXPIRING CONTRACT.—The term 'expiring contract' means a project-based assistance contract attached to an eligible multifamily housing project which, under the terms of the contract, will expire.

''(4) EXPIRATION DATE.—The term 'expiration date' means the date on which an expiring contract expires.

''(5) FAIR MARKET RENT.—The term 'fair market rent' means the fair market rental established under section 8(c) of the United States Housing Act of 1937.

''(6) LOW-INCOME FAMILIES.—The term 'low-income families' has the same meaning as provided under section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(2)].

''(7) MORTGAGE RESTRUCTURING AND RENTAL ASSISTANCE SUFFICIENCY PLAN.—The term 'mortgage restructuring and rental assistance sufficiency plan' means the plan as provided under section 514.

''(8) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' means any private nonprofit organization that—

''(A) is organized under State or local laws;

''(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

''(C) has a long-term record of service in providing or financing quality affordable housing for low-income families through relationships with public entities.

''(9) PORTFOLIO RESTRUCTURING AGREEMENT.—The term 'portfolio restructuring agreement' means the agreement entered into between the Secretary and a participating administrative entity, as provided under section 513.

''(10) PARTICIPATING ADMINISTRATIVE ENTITY.—The term 'participating administrative entity' means a public agency (including a State housing finance agency or a local housing agency), a nonprofit organization, or any other entity (including a law firm or an accounting firm) or a combination of such entities, that meets the requirements under section 513(b).

''(11) PROJECT-BASED ASSISTANCE.—The term 'project-based assistance' means rental assistance described in paragraph (2)(B) of this section that is attached to a multifamily housing project.

''(12) RENEWAL.—The term 'renewal' means the replacement of an expiring Federal rental contract with a new contract under section 8 of the United States Housing Act of 1937, consistent with the requirements of this subtitle.

''(13) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

''(14) STATE.—The term 'State' has the same meaning as in section 104 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12704].

''(15) TENANT-BASED ASSISTANCE.—The term 'tenant-based assistance' has the same meaning as in section 8(f) of the United States Housing Act of 1937.

''(16) UNIT OF GENERAL LOCAL GOVERNMENT.—The term 'unit of general local government' has the same meaning as in section 104 of the Cranston-Gonzalez National Affordable Housing Act.

''(17) VERY LOW-INCOME FAMILY.—The term 'very low-income family' has the same meaning as in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)].

''(18) QUALIFIED MORTGAGEE.—The term 'qualified mortgagee' means an entity approved by the Secretary that is capable of servicing, as well as originating, FHA-insured mortgages, and that—

''(A) is not suspended or debarred by the Secretary;

''(B) is not suspended or on probation imposed by the Mortgagee Review Board; and

''(C) is not in default under any Government National Mortgage Association obligation.

''(19) OFFICE.—The term 'Office' means the Office of Multifamily Housing Assistance Restructuring established under section 571.

''SEC. 513. AUTHORITY OF PARTICIPATING ADMINISTRATIVE ENTITIES.

''(a) PARTICIPATING ADMINISTRATIVE ENTITIES.—

''(1) IN GENERAL.—Subject to subsection (b)(3), the Secretary shall enter into portfolio restructuring agreements with participating administrative entities for the implementation of mortgage restructuring and rental assistance sufficiency plans to restructure multifamily housing mortgages insured or held by the Secretary under the National Housing Act [12 U.S.C. 1701 et seq.], in order to—

''(A) reduce the costs of expiring contracts for assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

''(B) address financially and physically troubled projects; and

''(C) correct management and ownership deficiencies.

''(2) PORTFOLIO RESTRUCTURING AGREEMENTS.—Each portfolio restructuring agreement entered into under this subsection shall—

''(A) be a cooperative agreement to establish the obligations and requirements between the Secretary and the participating administrative entity;

''(B) identify the eligible multifamily housing projects or groups of projects for which the participating administrative entity is responsible for assisting in developing and implementing approved mortgage restructuring and rental assistance sufficiency plans under section 514;

''(C) require the participating administrative entity to review and certify to the accuracy and completeness of the evaluation of rehabilitation needs required under section 514(e)(3) for each eligible multifamily housing project included in the portfolio restructuring agreement, in accordance with regulations promulgated by the Secretary;

''(D) identify the responsibilities of both the participating administrative entity and the Secretary in implementing a mortgage restructuring and rental assistance sufficiency plan, including any actions proposed to be taken under section 516 or 517;

''(E) require each mortgage restructuring and rental assistance sufficiency plan to be prepared in accordance with the requirements of section 514 for each eligible multifamily housing project;

''(F) include other requirements established by the Secretary, including a right of the Secretary to terminate the contract immediately for failure of the participating administrative entity to comply with any applicable requirement;

''(G) if the participating administrative entity is a State housing finance agency or a local housing agency, indemnify the participating administrative entity against lawsuits and penalties for actions taken pursuant to the agreement, excluding actions involving willful misconduct or negligence;

''(H) include compensation for all reasonable expenses incurred by the participating administrative entity necessary to perform its duties under this subtitle; and

''(I) include, where appropriate, incentive agreements with the participating administrative entity to reward superior performance in meeting the purposes of this title.

''(b) SELECTION OF PARTICIPATING ADMINISTRATIVE ENTITY.—

''(1) SELECTION CRITERIA.—The Secretary shall select a participating administrative entity based on whether, in the determination of the Secretary, the participating administrative entity—

''(A) has demonstrated experience in working directly with residents of low-income housing projects and with tenants and other community-based organizations;

''(B) has demonstrated experience with and capacity for multifamily restructuring and multifamily financing (which may include risk-sharing arrangements and restructuring eligible multifamily housing properties under the fiscal year 1997 Federal Housing Administration multifamily housing demonstration program);

''(C) has a history of stable, financially sound, and responsible administrative performance (which may include the management of affordable low-income rental housing);

''(D) has demonstrated financial strength in terms of asset quality, capital adequacy, and liquidity;

''(E) has demonstrated that it will carry out the specific transactions and other responsibilities under this subtitle in a timely, efficient, and cost-effective manner; and

''(F) meets other criteria, as determined by the Secretary.

''(2) SELECTION.—If more than 1 interested entity meets the qualifications and selection criteria for a participating administrative entity, the Secretary may select the entity that demonstrates, as determined by the Secretary, that it will—

''(A) provide the most timely, efficient, and cost-effective—

''(i) restructuring of the mortgages covered by the portfolio restructuring agreement; and

''(ii) administration of the section 8 project-based assistance contract, if applicable; and

''(B) protect the public interest (including the long-term provision of decent low-income affordable rental housing and protection of residents, communities, and the American taxpayer).

''(3) PARTNERSHIPS.—For the purposes of any participating administrative entity applying under this subsection, participating administrative entities are encouraged to develop partnerships with each other and with nonprofit organizations, if such partnerships will further the participating administrative entity's ability to meet the purposes of this title.

''(4) ALTERNATIVE ADMINISTRATORS.—With respect to any eligible multifamily housing project for which a participating administrative entity is unavailable, or should not be selected to carry out the requirements of this subtitle with respect to that multifamily housing project for reasons relating to the selection criteria under paragraph (1), the Secretary shall—

''(A) carry out the requirements of this subtitle with respect to that eligible multifamily housing project; or

''(B) contract with other qualified entities that meet the requirements of paragraph (1) to provide the authority to carry out all or a portion of the requirements of this subtitle with respect to that eligible multifamily housing project.

''(5) PRIORITY FOR PUBLIC AGENCIES AS PARTICIPATING ADMINISTRATIVE ENTITIES.—The Secretary shall provide a reasonable period during which the Secretary will consider proposals only from State housing finance agencies or local housing agencies, and the Secretary shall select such an agency without considering other applicants if the Secretary determines that the agency is qualified. The period shall be of sufficient duration for the Secretary to determine whether any State housing finance agencies or local housing agencies are interested and qualified. Not later than the end of the period, the Secretary shall notify the State housing finance agency or the local housing agency regarding the status of the proposal and, if the proposal is rejected, the reasons for the rejection and an opportunity for the applicant to respond.

''(6) STATE AND LOCAL PORTFOLIO REQUIREMENTS.—

''(A) IN GENERAL.—If the housing finance agency of a State is selected as the participating administrative entity, that agency shall be responsible for such eligible multifamily housing projects in that State as may be agreed upon by the participating administrative entity and the Secretary. If a local housing agency is selected as the participating administrative entity, that agency shall be responsible for such eligible multifamily housing projects in the jurisdiction of the agency as may be agreed upon by the participating administrative entity and the Secretary.

''(B) NONDELEGATION.—Except with the prior approval of the Secretary, a participating administrative entity may not delegate or transfer responsibilities and functions under this subtitle to 1 or more entities.

''(7) PRIVATE ENTITY REQUIREMENTS.—

''(A) IN GENERAL.—If a for-profit entity is selected as the participating administrative entity, that entity shall be required to enter into a partnership with a public purpose entity (including the Department).

''(B) PROHIBITION.—No private entity shall share, participate in, or otherwise benefit from any equity created, received, or restructured as a result of the portfolio restructuring agreement.

''SEC. 514. MORTGAGE RESTRUCTURING AND RENTAL ASSISTANCE SUFFICIENCY PLAN.

''(a) IN GENERAL.—

''(1) DEVELOPMENT OF PROCEDURES AND REQUIREMENTS.—The Secretary shall develop procedures and requirements for the submission of a mortgage restructuring and rental assistance sufficiency plan for each eligible multifamily housing project with an expiring contract.

''(2) TERMS AND CONDITIONS.—Each mortgage restructuring and rental assistance sufficiency plan submitted under this subsection shall be developed by the participating administrative entity, in cooperation with an owner of an eligible multifamily housing project and any servicer for the mortgage that is a qualified mortgagee, under such terms and conditions as the Secretary shall require.

''(3) CONSOLIDATION.—Mortgage restructuring and rental assistance sufficiency plans submitted under this subsection may be consolidated as part of an overall strategy for more than 1 property.

''(b) NOTICE REQUIREMENTS.—The Secretary shall establish notice procedures and hearing requirements for tenants and owners concerning the dates for the expiration of project-based assistance contracts for any eligible multifamily housing project.

''(c) EXTENSION OF CONTRACT TERM.—Subject to agreement by a project owner, the Secretary may extend the term of any expiring contract or provide a section 8 contract with rent levels set in accordance with subsection (g) for a period sufficient to facilitate the implementation of a mortgage restructuring and rental assistance sufficiency plan, as determined by the Secretary.

''(d) TENANT RENT PROTECTION.—If the owner of a project with an expiring Federal rental assistance contract does not agree to extend the contract, not less than 12 months prior to terminating the contract, the project owner shall provide written notice to the Secretary and the tenants and the Secretary shall make tenant-based assistance available to tenants residing in units assisted under the expiring contract at the time of expiration. In addition, if after giving the notice required in the first sentence, an owner determines to terminate a contract, an owner shall provide an additional written notice with respect to the termination, in a form prescribed by the Secretary, not less than 120 days prior to the termination. In the event the owner does not provide the 120-day notice required in the preceding sentence, the owner may not evict the tenants or increase the tenants' rent payment until such time as the owner has provided the 120-day notice and such period has elapsed. The Secretary may allow the owner to renew the terminating contract for a period of time sufficient to give tenants 120 days of advance notice in accordance with section 524 of this Act.

''(e) MORTGAGE RESTRUCTURING AND RENTAL ASSISTANCE SUFFICIENCY PLAN.—Each mortgage restructuring and rental assistance sufficiency plan shall—

''(1) except as otherwise provided, restructure the project-based assistance rents for the eligible multifamily housing project in a manner consistent with subsection (g), or provide for tenant-based assistance in accordance with section 515;

''(2) allow for rent adjustments by applying an operating cost adjustment factor established under guidelines established by the Secretary;

''(3) require the owner or purchaser of an eligible multifamily housing project to evaluate the rehabilitation needs of the project, in accordance with regulations of the Secretary, and notify the participating administrative entity of the rehabilitation needs;

''(4) require the owner or purchaser of the project to provide or contract for competent management of the project;

''(5) require the owner or purchaser of the project to take such actions as may be necessary to rehabilitate, maintain adequate reserves, and to maintain the project in decent and safe condition, based on housing quality standards established by—

''(A) the Secretary; or

''(B) local housing codes or codes adopted by public housing agencies that—

''(i) meet or exceed housing quality standards established by the Secretary; and

''(ii) do not severely restrict housing choice;

''(6) require the owner or purchaser of the project to maintain affordability and use restrictions in accordance with regulations promulgated by the Secretary, for a term of not less than 30 years which restrictions shall be—

''(A) contained in a legally enforceable document recorded in the appropriate records; and

''(B) consistent with the long-term physical and financial viability and character of the project as affordable housing;

''(7) include a certification by the participating administrative entity that the restructuring meets subsidy layering requirements established by the Secretary by regulation for purposes of this subtitle;

''(8) require the owner or purchaser of the project to meet such other requirements as the Secretary determines to be appropriate; and

''(9) prohibit the owner from refusing to lease a reasonable number of units to holders of certificates and vouchers under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] because of the status of the prospective tenants as certificate and voucher holders.

''(f) TENANT AND OTHER PARTICIPATION AND CAPACITY BUILDING.—

''(1) PROCEDURES.—

''(A) IN GENERAL.—The Secretary shall establish procedures to provide an opportunity for tenants of the project, residents of the neighborhood, the local government, and other affected parties to participate effectively and on a timely basis in the restructuring process established by this subtitle.

''(B) COVERAGE.—These procedures shall take into account the need to provide tenants of the project, residents of the neighborhood, the local government, and other affected parties timely notice of proposed restructuring actions and appropriate access to relevant information about restructuring activities. To the extent practicable and consistent with the need to accomplish project restructuring in an efficient manner, the procedures shall give all such parties an opportunity to provide comments to the participating administrative entity in writing, in meetings, or in another appropriate manner (which comments shall be taken into consideration by the participating administrative entity).

''(2) REQUIRED CONSULTATION.—The procedures developed pursuant to paragraph (1) shall require consultation with tenants of the project, residents of the neighborhood, the local government, and other affected parties, in connection with at least the following:

''(A) the mortgage restructuring and rental assistance sufficiency plan;

''(B) any proposed transfer of the project; and

''(C) the rental assistance assessment plan pursuant to section 515(c).

''(3) FUNDING.—

''(A) IN GENERAL.—The Secretary shall make available not more than $10,000,000 annually in funding, which amount shall be in addition to any amounts made available under this subparagraph and carried over from previous years, from which the Secretary may make obligations to tenant groups, nonprofit organizations, and public entities for building the capacity of tenant organizations, for technical assistance in furthering any of the purposes of this subtitle (including transfer of developments to new owners), for technical assistance for preservation of low-income housing for which project-based rental assistance is provided at below market rent levels and may not be renewed (including transfer of developments to tenant groups, nonprofit organizations, and public entities), for tenant services, and for tenant groups, nonprofit organizations, and public entities described in section 517(a)(5), from those amounts made available under appropriations Acts for implementing this subtitle or previously made available for technical assistance in connection with the preservation of affordable rental housing for low-income persons.

''(B) MANNER OF PROVIDING.—Notwithstanding any other provision of law restricting the use of preservation technical assistance funds, the Secretary may provide any funds made available under subparagraph (A) through existing technical assistance programs pursuant to any other Federal law, including the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.] and the Multifamily Housing Property Disposition Reform Act of 1994 [Pub. L. 103–233, see Short Title of 1994 Amendment note set out under section 1701 of Title 12, Banks and Banking], or through any other means that the Secretary considers consistent with the purposes of this subtitle, without regard to any set-aside requirement otherwise applicable to those funds.

''(C) PROHIBITION.—None of the funds made available under subparagraph (A) may be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation.

''(g) RENT LEVELS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), each mortgage restructuring and rental assistance sufficiency plan pursuant to the terms, conditions, and requirements of this subtitle shall establish for units assisted with project-based assistance in eligible multifamily housing projects adjusted rent levels that—

''(A) are equivalent to rents derived from comparable properties, if—

''(i) the participating administrative entity makes the rent determination within a reasonable period of time; and

''(ii) the market rent determination is based on not less than 2 comparable properties; or

''(B) if those rents cannot be determined, are equal to 90 percent of the fair market rents for the relevant market area.

''(2) EXCEPTIONS.—

''(A) IN GENERAL.—A contract under this section may include rent levels that exceed the rent level described in paragraph (1) at rent levels that do not

exceed 120 percent of the fair market rent for the market area (except that the Secretary may waive this limit for not more than five percent of all units subject to portfolio restructuring agreements, based on a finding of special need), if the participating administrative entity—

''(i) determines that the housing needs of the tenants and the community cannot be adequately addressed through implementation of the rent limitation required to be established through a mortgage restructuring and rental assistance sufficiency plan under paragraph (1); and

''(ii) follows the procedures under paragraph (3).

''(B) EXCEPTION RENTS.—In any fiscal year, a participating administrative entity may approve exception rents on not more than 20 percent of all units covered by the portfolio restructuring agreement with expiring contracts in that fiscal year, except that the Secretary may waive this ceiling upon a finding of special need.

''(3) RENT LEVELS FOR EXCEPTION PROJECTS.—For purposes of this section, a project eligible for an exception rent shall receive a rent calculated on the actual and projected costs of operating the project, at a level that provides income sufficient to support a budget-based rent that consists of—

''(A) the debt service of the project;

''(B) the operating expenses of the project, as determined by the participating administrative entity, including—

''(i) contributions to adequate reserves;

''(ii) the costs of maintenance and necessary rehabilitation; and

''(iii) other eligible costs permitted under section 8 of the United States Housing Act of 1937;

''(C) an adequate allowance for potential operating losses due to vacancies and failure to collect rents, as determined by the participating administrative entity;

''(D) an allowance for a reasonable rate of return to the owner or purchaser of the project, as determined by the participating administrative entity, which may be established to provide incentives for owners or purchasers to meet benchmarks of quality for management and housing quality; and

''(E) other expenses determined by the participating administrative entity to be necessary for the operation of the project.

''(h) EXEMPTIONS FROM RESTRUCTURING.—The following categories of projects shall not be covered by a mortgage restructuring and rental assistance sufficiency plan if—

''(1) the primary financing or mortgage insurance for the multifamily housing project that is covered by that expiring contract was provided by a unit of State government or a unit of general local government (or an agency or instrumentality of a unit of a State government or unit of general local government) and the financing involves mortgage insurance under the National Housing Act [42 U.S.C. 1701 et seq.], such that the implementation of a mortgage restructuring and rental assistance sufficiency plan under this subtitle is in conflict with applicable law or agreements governing such financing;

''(2) the project is a project financed under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q] or section 515 of the Housing Act of 1949 [42 U.S.C. 1485], or refinanced pursuant to section 811 of the American Homeownership and Economic Opportunity Act of 2000 (12 U.S.C. 1701q note); or

''(3) the project has an expiring contract under section 8 of the United States Housing Act of 1937 entered into pursuant to section 441 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11401].

''SEC. 515. SECTION 8 RENEWALS AND LONG-TERM AFFORDABILITY COMMITMENT BY OWNER OF PROJECT.

''(a) SECTION 8 RENEWALS OF RESTRUCTURED PROJECTS.—

''(1) PROJECT-BASED ASSISTANCE.—Subject to the availability of amounts provided in advance in appropriations Acts, and to the control of the Secretary of applicable accounts in the Treasury of the United States, with respect to an expiring section 8 contract on an eligible multifamily housing project to be renewed with project-based assistance (based on a determination under subsection (c)), the Secretary shall enter into contracts with participating administrative entities pursuant to which the participating administrative entity shall offer to renew or extend the contract, or the Secretary shall offer to renew such contract, and the owner of the project shall accept the offer, if the initial renewal is in accordance with the terms and conditions specified in the mortgage restructuring and rental assistance sufficiency plan and the rental assistance assessment plan.

''(2) TENANT-BASED ASSISTANCE.—Subject to the availability of amounts provided in advance in appropriations Acts and to the control of the Secretary of applicable accounts in the Treasury of the United States, with respect to an expiring section 8 contract on an eligible multifamily housing project to be renewed with tenant-based assistance (based on a determination under subsection (c)), the Secretary shall enter into contracts with participating administrative entities pursuant to which the participating administrative entity shall provide for the renewal of section 8 assistance on an eligible multifamily housing project with tenant-based assistance, or the Secretary shall provide for such renewal, in accordance with the terms and conditions specified in the mortgage restructuring and rental assistance sufficiency plan and the rental assistance assessment plan.

''(b) REQUIRED COMMITMENT.—After the initial renewal of a section 8 contract pursuant to this section, the owner shall accept each offer made pursuant to subsection (a) to renew the contract, for the term of the affordability and use restrictions required by section 514(e)(6), if the offer to renew is on terms and conditions specified in the mortgage restructuring and rental assistance sufficiency plan.

''(c) DETERMINATION OF WHETHER TO RENEW WITH PROJECT-BASED OR TENANT-BASED ASSISTANCE.—

''(1) MANDATORY RENEWAL OF PROJECT-BASED ASSISTANCE.—Section 8 assistance shall be renewed with project-based assistance, if—

''(A) the project is located in an area in which the participating administrative entity determines, based on housing market indicators, such as low vacancy rates or high absorption rates, that there is not adequate available and affordable housing or that the tenants of the project would not be able to locate suitable units or use the tenant-based assistance successfully;

''(B) a predominant number of the units in the project are occupied by elderly families, disabled families, or elderly and disabled families; or

''(C) the project is held by a nonprofit cooperative ownership housing corporation or nonprofit cooperative housing trust.

''(2) RENTAL ASSISTANCE ASSESSMENT PLAN.—

''(A) IN GENERAL.—With respect to any project that is not described in paragraph (1), the participating administrative entity shall, after consultation with the owner of the project, develop a rental assistance assessment plan to determine whether to renew assistance for the project with tenant-based assistance or project-based assistance.

''(B) RENTAL ASSISTANCE ASSESSMENT PLAN REQUIREMENTS.—Each rental assistance assessment plan developed under this paragraph shall include an assessment of the impact of converting to tenant-based assistance and the impact of extending project-based assistance on—

''(i) the ability of the tenants to find adequate, available, decent, comparable, and affordable housing in the local market;

''(ii) the types of tenants residing in the project (such as elderly families, disabled families, large families, and cooperative homeowners);

''(iii) the local housing needs identified in the comprehensive housing affordability strategy, and local market vacancy trends;

''(iv) the cost of providing assistance, comparing the applicable payment standard to the project's adjusted rent levels determined under section 514(g);

''(v) the long-term financial stability of the project;

''(vi) the ability of residents to make reasonable choices about their individual living situations;

''(vii) the quality of the neighborhood in which the tenants would reside; and

''(viii) the project's ability to compete in the marketplace.

''(C) REPORTS TO DIRECTOR.—Each participating administrative entity shall report regularly to the Director as defined in subtitle D, as the Director shall require, identifying—

''(i) each eligible multifamily housing project for which the entity has developed a rental assistance assessment plan under this paragraph that determined that the tenants of the project generally supported renewal of assistance with tenant-based assistance, but under which assistance for the project was renewed with project-based assistance; and

''(ii) each project for which the entity has developed such a plan under which the assistance is renewed using tenant-based assistance.

''(3) ELIGIBILITY FOR TENANT-BASED ASSISTANCE.—Subject to paragraph (4), with respect to any project that is not described in paragraph (1), if a participating administrative entity approves the use of tenant-based assistance based on a rental assistance assessment plan developed under paragraph (2), tenant-based assistance shall be provided to each assisted family (other than a family already receiving tenant-based assistance) residing in the project at the time the assistance described in section 512(2)(B) terminates.

''(4) ASSISTANCE THROUGH ENHANCED VOUCHERS.—In the case of any family described in paragraph (3) that resides in a project described in section 512(2)(B), the tenant-based assistance provided shall be enhanced voucher assistance under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)).

''(5) INAPPLICABILITY OF CERTAIN PROVISION.—If a participating administrative entity approves renewal with project-based assistance under this subsection, section 8(d)(2) of the United States Housing Act of 1937 shall not apply.

''SEC. 516. PROHIBITION ON RESTRUCTURING.

''(a) PROHIBITION ON RESTRUCTURING.—The Secretary may elect not to consider any mortgage restructuring and rental assistance sufficiency plan or request for contract renewal if the Secretary or the participating administrative entity determines that—

''(1)(A) the owner or purchaser of the project has engaged in material adverse financial or managerial actions or omissions with regard to such project; or

''(B) the owner or purchaser of the project has engaged in material adverse financial or managerial actions or omissions with regard to other projects of such owner or purchaser that are federally assisted or financed with a loan from, or mortgage insured or guaranteed by, an agency of the Federal Government;

''(2) material adverse financial or managerial actions or omissions include—

''(A) materially violating any Federal, State, or local law or regulation with regard to this project or any other federally assisted project, after receipt of notice and an opportunity to cure;

''(B) materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], after receipt of notice and an opportunity to cure;

''(C) materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity, after receipt of notice and an opportunity to cure;

''(D) repeatedly and materially violating any Federal, State, or local law or regulation with regard to the project or any other federally assisted project;

''(E) repeatedly and materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937;

''(F) repeatedly and materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity;

''(G) repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the property;

''(H) materially failing to maintain the property according to housing quality standards after receipt of notice and a reasonable opportunity to cure; or

''(I) committing any actions or omissions that would warrant suspension or debarment by the Secretary;

''(3) the owner or purchaser of the property materially failed to follow the procedures and requirements of this subtitle, after receipt of notice and an opportunity to cure; or

''(4) the poor condition of the project cannot be remedied in a cost effective manner, as determined by the participating administrative entity.

The term 'owner' as used in this subsection, in addition to it having the same meaning as in section 8(f) of the United States Housing Act of 1937, also means an affiliate of the owner. The term 'purchaser' as used in this subsection means any private person or entity, including a cooperative, an agency of the Federal Government, or a public housing agency, that, upon purchase of the project, would have the legal right to lease or sublease dwelling units in the project, and also means an affiliate of the purchaser. The terms 'affiliate of the owner' and 'affiliate of the purchaser' means any person or entity (including, but not limited to, a general partner or managing member, or an officer of either) that controls an owner or purchaser, is controlled by an owner or purchaser, or is under common control with the owner or purchaser. The term 'control' means the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of the owner or purchaser.

''(b) OPPORTUNITY TO DISPUTE FINDINGS.—

''(1) IN GENERAL.—During the 30-day period beginning on the date on which the owner or purchaser of an eligible multifamily housing project receives notice of a rejection under subsection (a) or of a mortgage restructuring and rental assistance sufficiency plan under section 514, the Secretary or participating administrative entity shall provide that owner or purchaser with an opportunity to dispute the basis for the rejection and an opportunity to cure.

''(2) AFFIRMATION, MODIFICATION, OR REVERSAL.—

''(A) IN GENERAL.—After providing an opportunity to dispute under paragraph (1), the Secretary or the participating administrative entity may affirm, modify, or reverse any rejection under subsection (a) or rejection of a mortgage restructuring and rental assistance sufficiency plan under section 514.

''(B) REASONS FOR DECISION.—The Secretary or the participating administrative entity, as applicable, shall identify the reasons for any final decision under this paragraph.

''(C) REVIEW PROCESS.—The Secretary shall establish an administrative review process to appeal any final decision under this paragraph.

''(c) FINAL DETERMINATION.—Any final determination under this section shall not be subject to judicial review.

''(d) DISPLACED TENANTS.—

''(1) NOTICE TO CERTAIN RESIDENTS.—The Office shall notify any tenant that is residing in a project or receiving assistance under section 8 of the United

States Housing Act of 1937 (42 U.S.C. 1437f) at the time of rejection under this section, of such rejection, except that the Office may delegate the responsibility to provide notice under this paragraph to the participating administrative entity.

''(2) ASSISTANCE AND MOVING EXPENSES.—Subject to the availability of amounts provided in advance in appropriations Acts, for any low-income tenant that is residing in a project or receiving assistance under section 8 of the United States Housing Act of 1937 at the time of rejection under this section, that tenant shall be provided with tenant-based assistance and reasonable moving expenses, as determined by the Secretary.

''(e) TRANSFER OF PROPERTY.—For properties disqualified from the consideration of a mortgage restructuring and rental assistance sufficiency plan under this section in accordance with paragraph (1) or (2) of subsection (a) because of actions by an owner or purchaser, the Secretary shall establish procedures to facilitate the voluntary sale or transfer of a property as part of a mortgage restructuring and rental assistance sufficiency plan, with a preference for tenant organizations and tenant-endorsed community-based nonprofit and public agency purchasers meeting such reasonable qualifications as may be established by the Secretary.

''SEC. 517. RESTRUCTURING TOOLS.

''(a) MORTGAGE RESTRUCTURING.—

''(1) In this subtitle, an approved mortgage restructuring and rental assistance sufficiency plan shall include restructuring mortgages in accordance with this subsection to provide—

''(A) a restructured or new first mortgage that is sustainable at rents at levels that are established in section 514(g); and

''(B) a second mortgage that is in an amount equal to not more than the greater of—

''(i) the full or partial payment of claim made under this subtitle; or

''(ii) the difference between the restructured or new first mortgage and the indebtedness under the existing insured mortgage immediately before it is restructured or refinanced, provided that the amount of the second mortgage shall be in an amount that the Secretary or participating administrative entity determines can reasonably be expected to be repaid.

''(2) The second mortgage shall bear interest at a rate not to exceed the applicable Federal rate as defined in section 1274(d) of the Internal Revenue Code of 1986 [26 U.S.C. 1274(d)]. The term of the second mortgage shall be equal to the term of the restructured or new first mortgage.

''(3) Payments on the second mortgage shall be deferred when the first mortgage remains outstanding, except to the extent there is excess project income remaining after payment of all reasonable and necessary operating expenses (including deposits in a reserve for replacement), debt service on the first mortgage, and any other expenditures approved by the Secretary. At least 75 percent of any excess project income shall be applied to payments on the second mortgage, and the Secretary or the participating administrative entity may permit up to 25 percent to be paid to the project owner if the Secretary or participating administrative entity determines that the project owner meets benchmarks for management and housing quality.

''(4) The full amount of the second mortgage shall be immediately due and payable if—

''(A) the first mortgage is terminated or paid in full, except as otherwise provided by the holder of the second mortgage;

''(B) the project is purchased and the second mortgage is assumed by any subsequent purchaser in violation of guidelines established by the Secretary; or

''(C) the Secretary provides notice to the project owner that such owner has failed to materially comply with any requirements of this section or the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] as those requirements apply to the project, with a reasonable opportunity for such owner to cure such failure.

''(5) The Secretary may modify the terms of the second mortgage, assign the second mortgage to the acquiring organization or agency, or forgive all or part of the second mortgage if the Secretary holds the second mortgage and if the project is acquired by a tenant organization or tenant-endorsed community-based nonprofit or public agency, pursuant to guidelines established by the Secretary.

''(6) The second mortgage under this section may be a first mortgage if no restructured or new first mortgage will meet the requirement of paragraph (1)(A).

''(b) RESTRUCTURING TOOLS.—In addition to the requirements of subsection (a) and to the extent these actions are consistent with this section and with the control of the Secretary of applicable accounts in the Treasury of the United States, an approved mortgage restructuring and rental assistance sufficiency plan under this subtitle may include one or more of the following actions:

''(1) FULL OR PARTIAL PAYMENT OF CLAIM.—Making a full payment of claim or partial payment of claim under section 541(b) of the National Housing Act [12 U.S.C. 1735f–19(b)], as amended by section 523(b) of this Act. Any payment under this paragraph shall not require the approval of a mortgagee.

''(2) REFINANCING OF DEBT.—Refinancing of all or part of the debt on a project. If the refinancing involves a mortgage that will continue to be insured under the National Housing Act [12 U.S.C. 1701 et seq.], the refinancing shall be documented through amendment of the existing insurance contract and not through a new insurance contract.

''(3) MORTGAGE INSURANCE.—Providing FHA multifamily mortgage insurance, reinsurance or other credit enhancement alternatives, including multifamily risk-sharing mortgage programs, as provided under section 542 of the Housing and Community Development Act of 1992 [Pub. L. 102–550, 12 U.S.C. 1707 note]. The Secretary shall use risk-shared financing under section 542(c) of the Housing and Community Development Act of 1992 for any mortgage restructuring, rehabilitation financing, or debt refinancing included as part of a mortgage restructuring and rental assistance sufficiency plan if the terms and conditions are considered to be the best available financing in terms of financial savings to the FHA insurance funds and will result in reduced risk of loss to the Federal Government. Any limitations on the number of units available for mortgage insurance under section 542 shall not apply to eligible multifamily housing projects. Any credit subsidy costs of providing mortgage insurance shall be paid from the Liquidating Accounts of the General Insurance Fund or the Special Risk Insurance Fund and shall not be subject to any limitation on appropriations.

''(4) CREDIT ENHANCEMENT.—Providing any additional State or local mortgage credit enhancements and risk-sharing arrangements that may be established with State or local housing finance agencies, the Federal Housing Finance Board, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, to a modified or refinanced first mortgage.

''(5) COMPENSATION OF THIRD PARTIES.—Consistent with the portfolio restructuring agreement, entering into agreements, incurring costs, or making payments, including incentive agreements designed to reward superior performance in meeting the purposes of this Act, as may be reasonably necessary, to compensate the participation of participating administrative entities and other parties in undertaking actions authorized by this subtitle. Upon request to the Secretary, participating administrative entities that are qualified under the United States Housing Act of 1937 to serve as contract administrators shall be the

contract administrators under section 8 of the United States Housing Act of 1937 [12 U.S.C. 1437f] for purposes of any contracts entered into as part of an approved mortgage restructuring and rental assistance sufficiency plan. Subject to the availability of amounts provided in advance in appropriations Acts for administrative fees under section 8 of the United States Housing Act of 1937, such amounts may be used to compensate participating administrative entities for compliance monitoring costs incurred under section 519.

''(6) USE OF PROJECT ACCOUNTS.—Applying any residual receipts, replacement reserves, and any other project accounts not required for project operations, to maintain the long-term affordability and physical condition of the property or of other eligible multifamily housing projects. The participating administrative entity may expedite the acquisition of residual receipts, replacement reserves, or other such accounts, by entering into agreements with owners of housing covered by an expiring contract to provide an owner with a share of the receipts, not to exceed 10 percent, in accordance with guidelines established by the Secretary.

''(c) REHABILITATION NEEDS AND ADDITION OF SIGNIFICANT FEATURES.—

''(1) REHABILITATION NEEDS.—

''(A) IN GENERAL.—Rehabilitation may be paid from the residual receipts, replacement reserves, or any other project accounts not required for project operations, or, as provided in appropriations Acts and subject to the control of the Secretary of applicable accounts in the Treasury of the United States, from budget authority provided for increases in the budget authority for assistance contracts under section 8 of the United States Housing Act of 1937, the rehabilitation grant program established under section 236 of the National Housing Act [12 U.S.C. 1715z–1], as amended by section 531 of subtitle B of this Act, or through the debt restructuring transaction. Rehabilitation under this paragraph shall only be for the purpose of restoring the project to a non-luxury standard adequate for the rental market intended at the original approval of the project-based assistance.

''(B) CONTRIBUTION.—Each owner or purchaser of a project to be rehabilitated under an approved mortgage restructuring and rental assistance sufficiency plan shall contribute, from non-project resources, not less than 25 percent of the amount of rehabilitation assistance received, except that the participating administrative entity may provide an exception from the requirement of this subparagraph for housing cooperatives.

''(2) ADDITION OF SIGNIFICANT FEATURES.—

''(A) AUTHORITY.—An approved mortgage restructuring and rental assistance sufficiency plan may require the improvement of the project by the addition of significant features that are not necessary for rehabilitation to the standard provided under paragraph (1), such as air conditioning, an elevator, and additional community space. The Secretary shall establish guidelines regarding the inclusion of requirements regarding such additional significant features under such plans.

''(B) FUNDING.—Significant features added pursuant to an approved mortgage restructuring and rental assistance sufficiency plan may be paid from the funding sources specified in the first sentence of paragraph (1)(A).

''(C) LIMITATION ON OWNER CONTRIBUTION.—An owner of a project may not be required to contribute from non-project resources, toward the cost of any additional significant features required pursuant to this paragraph, more than 25 percent of the amount of any assistance received for the inclusion of such features.

''(D) APPLICABILITY.—This paragraph shall apply to all eligible multifamily housing projects, except projects for which the Secretary and the project owner executed a mortgage restructuring and rental assistance sufficiency plan on or before the date of the enactment of the Mark-to-Market Extension Act of 2001 [Jan. 10, 2002].

''(d) PROHIBITION ON EQUITY SHARING BY THE SECRETARY.—The Secretary is prohibited from participating in any equity agreement or profit-sharing agreement in conjunction with any eligible multifamily housing project.

''(e) CONFLICT OF INTEREST GUIDELINES.—The Secretary may establish guidelines to prevent conflicts of interest by a participating administrative entity that provides, directly or through risk-sharing arrangements, any form of credit enhancement or financing pursuant to subsections [sic] (b)(3) or (b)(4) or to prevent conflicts of interest by any other person or entity under this subtitle.

''SEC. 518. MANAGEMENT STANDARDS.

''Each participating administrative entity shall establish management standards, including requirements governing conflicts of interest between owners, managers, contractors with an identity of interest, pursuant to guidelines established by the Secretary and consistent with industry standards.

''SEC. 519. MONITORING OF COMPLIANCE.

''(a) COMPLIANCE AGREEMENTS.—(1) Pursuant to regulations issued by the Secretary under section 522(a), each participating administrative entity, through binding contractual agreements with owners and otherwise, shall ensure long-term compliance with the provisions of this subtitle. Each agreement shall, at a minimum, provide for—

''(A) enforcement of the provisions of this subtitle; and

''(B) remedies for the breach of those provisions.

''(2) If the participating administrative entity is not qualified under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] to be a section 8 contract administrator or fails to perform its duties under the portfolio restructuring agreement, the Secretary shall have the right to enforce the agreement.

''(b) PERIODIC MONITORING.—

''(1) IN GENERAL.—Not less than annually, each participating administrative entity that is qualified to be the section 8 contract administrator shall review the status of all multifamily housing projects for which a mortgage restructuring and rental assistance sufficiency plan has been implemented.

''(2) INSPECTIONS.—Each review under this subsection shall include onsite inspection to determine compliance with housing codes and other requirements as provided in this subtitle and the portfolio restructuring agreements.

''(3) ADMINISTRATION.—If the participating administrative entity is not qualified under the United States Housing Act of 1937 to be a section 8 contract administrator, either the Secretary or a qualified State or local housing agency shall be responsible for the review required by this subsection.

''(c) AUDIT BY THE SECRETARY.—The Comptroller General of the United States, the Secretary, and the Inspector General of the Department of Housing and Urban Development may conduct an audit at any time of any multifamily housing project for which a mortgage restructuring and rental assistance sufficiency plan has been implemented.

''SEC. 520. REPORTS TO CONGRESS.

''(a) ANNUAL REVIEW.—In order to ensure compliance with this subtitle, the Secretary shall conduct an annual review and report to the Congress on actions taken under this subtitle and the status of eligible multifamily housing projects.

''(b) SEMIANNUAL REVIEW.—Not less than semiannually during the 2-year period beginning on the date of the enactment of this Act [Oct. 27, 1997] and not less than annually thereafter, the Secretary shall submit reports to the Committee on Financial Services of the House of Representatives and the Committee on Bank-

ing, Housing, and Urban Affairs of the Senate stating, for such periods, the total number of projects identified by participating administrative entities under each of clauses (i) and (ii) of section 515(c)(2)(C).

''SEC. 521. GAO AUDIT AND REVIEW.

''(a) INITIAL AUDIT.—Not later than 18 months after the effective date of final regulations promulgated under this subtitle, the Comptroller General of the United States shall conduct an audit to evaluate eligible multifamily housing projects and the implementation of mortgage restructuring and rental assistance sufficiency plans.

''(b) REPORT.—

''(1) IN GENERAL.—Not later than 18 months after the audit conducted under subsection (a), the Comptroller General of the United States shall submit to Congress a report on the status of eligible multifamily housing projects and the implementation of mortgage restructuring and rental assistance sufficiency plans.

''(2) CONTENTS.—The report submitted under paragraph (1) shall include—

''(A) a description of the initial audit conducted under subsection (a); and

''(B) recommendations for any legislative action to increase the financial savings to the Federal Government of the restructuring of eligible multifamily housing projects balanced with the continued availability of the maximum number of affordable low-income housing units.

''SEC. 522. REGULATIONS.

''(a) RULEMAKING AND IMPLEMENTATION.—

''(1) INTERIM REGULATIONS.—The Director shall issue such interim regulations as may be necessary to implement this subtitle and the amendments made by this subtitle with respect to eligible multifamily housing projects covered by contracts described in section 512(2)(B) that expire in fiscal year 1999 or thereafter. If, before the expiration of such period, the Director has not been appointed, the Secretary shall issue such interim regulations.

''(2) FINAL REGULATIONS.—The Director shall issue final regulations necessary to implement this subtitle and the amendments made by this subtitle with respect to eligible multifamily housing projects covered by contracts described in section 512(2)(B) that expire in fiscal year 1999 or thereafter before the later of: (A) the expiration of the 12-month period beginning upon the date of the enactment of this Act [Oct. 27, 1997]; and (B) the 3-month period beginning upon the appointment of the Director under subtitle D.

''(3) FACTORS FOR CONSIDERATION.—Before the publication of the final regulations under paragraph (2), in addition to public comments invited in connection with publication of the interim rule, the Secretary shall—

''(A) seek recommendations on the implementation of sections 513(b) and 515(c)(1) from organizations representing—

''(i) State housing finance agencies and local housing agencies;

''(ii) other potential participating administering entities;

''(iii) tenants;

''(iv) owners and managers of eligible multifamily housing projects;

''(v) States and units of general local government; and

''(vi) qualified mortgagees; and

''(B) convene not less than 3 public forums at which the organizations making recommendations under subparagraph (A) may express views concerning the proposed disposition of the recommendations.

''(b) TRANSITION PROVISION FOR CONTRACTS EXPIRING IN FISCAL YEAR 1998.—Notwithstanding any other provision of law, the Secretary shall apply all the terms of section 211 and section 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 [Pub. L. 104–204, set out below] (except for section 212(h)(1)(G) and the limitation in section 212(k)) contracts for project-based assistance that expire during fiscal year 1998 (in the same manner that such provisions apply to expiring contracts defined in section 212(a)(3) of such Act), except that section 517(a) of the Act shall apply to mortgages on projects subject to such contracts.

''SEC. 523. TECHNICAL AND CONFORMING AMENDMENTS.

''(a) CALCULATION OF LIMIT ON PROJECT-BASED ASSISTANCE.—[Amended this section.]

''(b) PARTIAL PAYMENT OF CLAIMS ON MULTIFAMILY HOUSING PROJECTS.—[Amended section 1735f–19 of Title 12, Banks and Banking.]

''(c) REUSE AND RESCISSION OF CERTAIN RECAPTURED BUDGET AUTHORITY.—[Amended this section.]

''(d) SECTION 8 CONTRACT RENEWALS.—[Amended section 405(a) of Pub. L. 104–99, set out below.]

''(e) RENEWAL UPON REQUEST OF OWNER.—[Amended section 211 of Pub. L. 104–204, set out below.]

''(f) EXTENSION OF DEMONSTRATION CONTRACT PERIOD.—[Amended section 212 of Pub. L. 104–204, set out below.]

''SEC. 524. RENEWAL OF EXPIRING PROJECT-BASED SECTION 8 CONTRACTS.

''(a) IN GENERAL.—

''(1) RENEWAL.—Subject to paragraph (2), upon termination or expiration of a contract for project-based assistance under section 8 for a multifamily housing project (and notwithstanding section 8(v) of the United States Housing Act of 1937 [42 U.S.C. 1437f] for loan management assistance), the Secretary shall, at the request of the owner of the project and to the extent sufficient amounts are made available in appropriation Acts, use amounts available for the renewal of assistance under section 8 of such Act to provide such assistance for the project. The assistance shall be provided under a contract having such terms and conditions as the Secretary considers appropriate, subject to the requirements of this section. This section shall not require contract renewal for a project that is eligible under this subtitle for a mortgage restructuring and rental assistance sufficiency plan, if there is no approved plan for the project and the Secretary determines that such an approved plan is necessary.

''(2) PROHIBITION ON RENEWAL.—Notwithstanding part 24 of title 24 of the Code of Federal Regulations, the Secretary may elect not to renew assistance for a project otherwise required to be renewed under paragraph (1) or provide comparable benefits under paragraph (1) or (2) of subsection (e) for a project described in either such paragraph, if the Secretary determines that a violation under paragraphs (1) through (4) of section 516(a) has occurred with respect to the project. For purposes of such a determination, the provisions of section 516 shall apply to a project under this section in the same manner and to the same extent that the provisions of such section apply to eligible multifamily housing projects, except that the Secretary shall make the determination under section 516(a)(4).

''(3) CONTRACT TERM FOR MARK-UP-TO-MARKET CONTRACTS.—In the case of an expiring or terminating contract that has rent levels less than comparable market rents for the market area, if the rent levels under the renewal contract under this section are equal to comparable market rents for the market area, the contract shall have a term of not less than 5 years, subject to the availability of sufficient amounts in appropriation Acts.

''(4) RENEWAL RENTS.—Except as provided in subsection (b), the contract for assistance shall provide assistance at the following rent levels:

''(A) MARKET RENTS.—At the request of the owner of the project, at rent levels equal to the lesser of comparable market rents for the market area or 150 percent of the fair market rents, in the case only of a project that—

''(i) has rent levels under the expiring or terminating contract that do not exceed such comparable market rents;

''(ii) does not have a low- and moderate-income use restriction that can not be eliminated by unilateral action by the owner;

''(iii) is decent, safe, and sanitary housing, as determined by the Secretary;

''(iv) is not—

''(I) owned by a nonprofit entity;

''(II) subject to a contract for moderate rehabilitation assistance under section 8(e)(2) of the United States Housing Act of 1937, as in effect before October 1, 1991; or

''(III) a project for which the public housing agency provided voucher assistance to one or more of the tenants after the owner has provided notice of termination of the contract covering the tenant's unit; and

''(v) has units assisted under the contract for which the comparable market rent exceeds 110 percent of the fair market rent.

The Secretary may adjust the percentages of fair market rent (as specified in the matter preceding clause (i) and in clause (v)), but only upon a determination and written notification to the Congress within 10 days of making such determination, that such adjustment is necessary to ensure that this subparagraph covers projects with a high risk of nonrenewal of expiring contracts for project-based assistance.

''(B) REDUCTION TO MARKET RENTS.—In the case of a project that has rent levels under the expiring or terminating contract that exceed comparable market rents for the market area, at rent levels equal to such comparable market rents.

''(C) RENTS NOT EXCEEDING MARKET RENTS.—In the case of a project that is not subject to subparagraph (A) or (B), at rent levels that—

''(i) are not less than the existing rents under the terminated or expiring contract, as adjusted by an operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment), if such adjusted rents do not exceed comparable market rents for the market area; and

''(ii) do not exceed comparable market rents for the market area.

In determining the rent level for a contract under this subparagraph, the Secretary shall approve rents sufficient to cover budget-based cost increases and shall give greater consideration to providing rent at a level up to comparable market rents for the market area based on the number of the criteria under clauses (i) through (iii) of subparagraph (D) that the project meets. Notwithstanding any other provision of law, the Secretary shall include in such budget-based cost increases costs relating to the project as a whole (including costs incurred with respect to units not covered by the contract for assistance), but only (I) if inclusion of such costs is requested by the owner or purchaser of the project, (II) if inclusion of such costs will permit capital repairs to the project or acquisition of the project by a nonprofit organization, and (III) to the extent that inclusion of such costs (or a portion thereof) complies with the requirement under clause (ii).

''(D) WAIVER OF 150 PERCENT LIMITATION.—Notwithstanding subparagraph (A), at rent levels up to comparable market rents for the market area, in the case of a project that meets the requirements under clauses (i) through (v) of subparagraph (A) and—

''(i) has residents who are a particularly vulnerable population, as demonstrated by a high percentage of units being rented to elderly families, disabled families, or large families;

''(ii) is located in an area in which tenant-based assistance would be difficult to use, as demonstrated by a low vacancy rate for affordable housing, a high turnback rate for vouchers, or a lack of comparable rental housing; or

''(iii) is a high priority for the local community, as demonstrated by a contribution of State or local funds to the property.

In determining the rent level for a contract under this subparagraph, the Secretary shall approve rents sufficient to cover budget-based cost increases and shall give greater consideration to providing rent at a level up to comparable market rents for the market area based on the number of the criteria under clauses (i) through (iv) that the project meets.

''(5) COMPARABLE MARKET RENTS AND COMPARISON WITH FAIR MARKET RENTS.—The Secretary shall prescribe the method for determining comparable market rent by comparison with rents charged for comparable properties (as such term is defined in section 512), which may include appropriate adjustments for utility allowances and adjustments to reflect the value of any subsidy (other than section 8 assistance) provided by the Department of Housing and Urban Development.

''(b) EXCEPTION RENTS.—

''(1) RENEWAL.—In the case of a multifamily housing project described in paragraph (2), pursuant to the request of the owner of the project, the contract for assistance for the project pursuant to subsection (a) shall provide assistance at the lesser of the following rent levels:

''(A) ADJUSTED EXISTING RENTS.—The existing rents under the expiring contract, as adjusted by an operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment).

''(B) BUDGET-BASED RENTS.—Subject to a determination by the Secretary that a rent level under this subparagraph is appropriate for a project, a rent level that provides income sufficient to support a budget-based rent (including a budget-based rent adjustment if justified by reasonable and expected operating expenses).

''(2) PROJECTS COVERED.—A multifamily housing project described in this paragraph is a multifamily housing project that—

''(A) is not an eligible multifamily housing project under section 512(2); or

''(B) is exempt from mortgage restructuring under this subtitle pursuant to section 514(h).

''(3) MODERATE REHABILITATION PROJECTS.—In the case of a project with a contract under the moderate rehabilitation program, other than a moderate rehabilitation contract under section 441 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11401], pursuant to the request of the owner of the project, the contract for assistance for the project pursuant to subsection (a) shall provide assistance at the lesser of the following rent levels:

''(A) ADJUSTED EXISTING RENTS.—The existing rents under the expiring contract, as adjusted by an operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment).

''(B) FAIR MARKET RENTS.—Fair market rents (less any amounts allowed for tenant-purchased utilities).

''(C) MARKET RENTS.—Comparable market rents for the market area.

''(c) RENT ADJUSTMENTS AFTER RENEWAL OF CONTRACT.—

''(1) REQUIRED.—After the initial renewal of a contract for assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] pursuant to subsection (a), (b)(1), or (e)(2), the Secretary shall annually adjust the rents using an operating cost adjustment factor established by the Secretary (which shall not result in a negative adjustment) or, upon the request of the owner and subject to approval of the Secretary, on a budget basis. In the case of

projects with contracts renewed pursuant to subsection (a) or pursuant to subsection (e)(2) at rent levels equal to comparable market rents for the market area, at the expiration of each 5-year period, the Secretary shall compare existing rents with comparable market rents for the market area and may make any adjustments in the rent necessary to maintain the contract rents at a level not greater than comparable market rents or to increase rents to comparable market rents.

''(2) DISCRETIONARY.—In addition to review and adjustment required under paragraph (1), in the case of projects with contracts renewed pursuant to subsection (a) or pursuant to subsection (e)(2) at rent levels equal to comparable market rents for the market area, the Secretary may, at the discretion of the Secretary but only once within each 5-year period referred to in paragraph (1), conduct a comparison of rents for a project and adjust the rents accordingly to maintain the contract rents at a level not greater than comparable market rents or to increase rents to comparable market rents.

''(d) ENHANCED VOUCHERS UPON CONTRACT EXPIRATION.—

''(1) IN GENERAL.—In the case of a contract for project-based assistance under section 8 for a covered project that is not renewed under subsection (a) or (b) of this section (or any other authority), to the extent that amounts for assistance under this subsection are provided in advance in appropriation Acts, upon the date of the expiration of such contract the Secretary shall make enhanced voucher assistance under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)) available on behalf of each low-income family who, upon the date of such expiration, is residing in an assisted dwelling unit in the covered project.

''(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

''(A) ASSISTED DWELLING UNIT.—The term 'assisted dwelling unit' means a dwelling unit that—

''(i) is in a covered project; and

''(ii) is covered by rental assistance provided under the contract for project-based assistance for the covered project.

''(B) COVERED PROJECT.—The term 'covered project' means any housing that—

''(i) consists of more than four dwelling units;

''(ii) is covered in whole or in part by a contract for project-based assistance under—

''(I) the new construction or substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1983);

''(II) the property disposition program under section 8(b) of the United States Housing Act of 1937;

''(III) the moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1991);

''(IV) the loan management assistance program under section 8 of the United States Housing Act of 1937;

''(V) section 23 of the United States Housing Act of 1937 [42 U.S.C. 1437u] (as in effect before January 1, 1975);

''(VI) the rent supplement program under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s]; or

''(VII) section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965,

which contract will (under its own terms) expire during the period consisting of fiscal years 2000 through 2004; and

''(iii) is not housing for which residents are eligible for enhanced voucher assistance as provided, pursuant to the 'Preserving Existing Housing Investment' account in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104–204; 110 Stat. 2884) or any other subsequently enacted provision of law, in lieu of any benefits under section 223 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4113).

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of fiscal years 2000, 2001, 2002, 2003, and 2004 such sums as may be necessary for enhanced voucher assistance under this subsection.

''(e) CONTRACTUAL COMMITMENTS UNDER PRESERVATION LAWS.—Except as provided in subsection (a)(2) and notwithstanding any other provision of this subtitle, the following shall apply:

''(1) PRESERVATION PROJECTS.—Upon expiration of a contract for assistance under section 8 [42 U.S.C. 1437f] for a project that is subject to an approved plan of action under the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 1715*l* note) or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4101 et seq.), to the extent amounts are specifically made available in appropriation Acts, the Secretary shall provide to the owner benefits comparable to those provided under such plan of action, including distributions, rent increase procedures, and duration of low-income affordability restrictions. This paragraph shall apply to projects with contracts expiring before, on, or after the date of the enactment of this section [Oct. 27, 1997].

''(2) DEMONSTRATION PROJECTS.—

''(A) IN GENERAL.—Upon expiration of a contract for assistance under section 8 for a project entered into pursuant to any authority specified in subparagraph (B) for which the Secretary determines that debt restructuring is inappropriate, the Secretary shall, at the request of the owner of the project and to the extent sufficient amounts are made available in appropriation Acts, provide benefits to the owner comparable to those provided under such contract, including annual distributions, rent increase procedures, and duration of low-income affordability restrictions. This paragraph shall apply to projects with contracts expiring before, on, or after the date of the enactment of this section [Oct. 27, 1997].

''(B) DEMONSTRATION PROGRAMS.—The authority specified in this subparagraph is the authority under—

''(i) section 210 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (Public Law 104–134; 110 Stat. 1321–285; 42 U.S.C. 1437f note);

''(ii) section 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104–204; 110 Stat. 2897; 42 U.S.C. 1437f note); and

''(iii) either of such sections, pursuant to any provision of this title [see Short Title of 1997 Amendment note set out under section 1701 of title 12].

''(3) MORTGAGE RESTRUCTURING AND RENTAL ASSISTANCE SUFFICIENCY PLANS.—Notwithstanding paragraph (1), the owner of the project may request, and the Secretary may consider, mortgage restructuring and rental assistance sufficiency plans to facilitate sales or transfers of properties under this subtitle, subject to an approved plan of action under the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 1715*l* note) [see Codification note preceding section 4101 of Title 12, Banks and Banking] or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4101 et seq.), which plans shall result in a sale or transfer of those properties.

''(f) PREEMPTION OF CONFLICTING STATE LAWS LIMITING DISTRIBUTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no State or political subdivision of a State may establish, continue in effect, or enforce any law or regulation that limits or restricts, to an amount that is less than the amount provided for under the regulations of the Secretary establishing allowable project distributions to provide a return on investment, the amount of surplus funds accruing after the date of the enactment of this section [Oct. 27, 1997] that may be distributed from any multifamily housing project assisted under a contract for rental assistance renewed under any provision of this section (except subsection (b)) to the owner of the project.

''(2) EXCEPTION AND WAIVER.—Paragraph (1) shall not apply to any law or regulation to the extent such law or regulation applies to—

''(A) a State-financed multifamily housing project; or

''(B) a multifamily housing project for which the owner has elected to waive the applicability of paragraph (1).

''(3) TREATMENT OF LOW-INCOME USE RESTRICTIONS.—This subsection may not be construed to provide for, allow, or result in the release or termination, for any project, of any low- or moderate-income use restrictions that can not be eliminated by unilateral action of the owner of the project.

''(g) APPLICABILITY.—Except to the extent otherwise specifically provided in this section, this section shall apply with respect to any multifamily housing project having a contract for project-based assistance under section 8 [42 U.S.C. 1437f] that terminates or expires during fiscal year 2000 or thereafter.

''SEC. 525. CONSISTENCY OF RENT LEVELS UNDER ENHANCED VOUCHER ASSISTANCE AND RENT RESTRUCTURINGS.

''(a) IN GENERAL.—The Secretary shall examine the standards and procedures for determining and establishing the rent standards described under subsection (b). Pursuant to such examination, the Secretary shall establish procedures and guidelines that are designed to ensure that the amounts determined by the various rent standards for the same dwelling units are reasonably consistent and reflect rents for comparable unassisted units in the same area as such dwelling units.

''(b) RENT STANDARDS.—The rent standards described in this subsection are as follows:

''(1) ENHANCED VOUCHERS.—The payment standard for enhanced voucher assistance under section 8(t) of the United States Housing Act of 1937 (42 U.S.C. 1437f(t)).

''(2) MARK-TO-MARKET.—The rents derived from comparable properties, for purposes of section 514(g) of this Act.

''(3) CONTRACT RENEWAL.—The comparable market rents for the market area, for purposes of section 524(a)(4) of this Act.

''SUBTITLE D—OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING

''SEC. 571. ESTABLISHMENT OF OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING.

''There is hereby established an office within the Department of Housing and Urban Development, which shall be known as the Office of Multifamily Housing Assistance Restructuring.

''SEC. 572. DIRECTOR.

''(a) APPOINTMENT.—The Office shall be under the management of a Director, who shall be appointed by the President from among individuals who are citizens of the United States and have a demonstrated understanding of financing and mortgage restructuring for affordable multifamily housing.

''(b) VACANCY.—A vacancy in the position of Director shall be filled by appointment in the manner provided under subsection (a). The President shall make such an appointment not later than 60 days after such position first becomes vacant.

''(c) DEPUTY DIRECTOR.—

''(1) IN GENERAL.—The Office shall have a Deputy Director who shall be appointed by the Director from among individuals who are citizens of the United States and have a demonstrated understanding of financing and mortgage restructuring for affordable multifamily housing.

''(2) FUNCTIONS.—The Deputy Director shall have such functions, powers, and duties as the Director shall prescribe. In the event of the death, resignation, sickness, or absence of the Director, the Deputy Director shall serve as acting Director until the return of the Director or the appointment of a successor pursuant to subsection (b).

''SEC. 573. DUTY AND AUTHORITY OF DIRECTOR.

''(a) DUTY.—The Secretary shall, acting through the Director, administer the program of mortgage and rental assistance restructuring for eligible multifamily housing projects under subtitle A. During the period before the Director is appointed, the Secretary may carry out such program.

''(b) AUTHORITY.—The Director is authorized to make such determinations, take such actions, issue such regulations, and perform such functions assigned to the Director under law as the Director determines necessary to carry out such functions, subject to the review and approval of the Secretary. The Director shall semiannually submit a report to the Assistant Secretary of the Department of Housing and Urban Development who is the Federal Housing Commissioner regarding the activities, determinations, and actions of the Director.

''(c) DELEGATION OF AUTHORITY.—The Director may delegate to officers and employees of the Office (but not to contractors, subcontractors, or consultants) any of the functions, powers, and duties of the Director, as the Director considers appropriate.

''(d) INDEPENDENCE IN PROVIDING INFORMATION TO CONGRESS.—

''(1) IN GENERAL.—Notwithstanding subsection (a) or (b), the Director shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States before submitting to the Congress, or any committee or subcommittee thereof, any reports, recommendations, testimony, or comments if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the Secretary or the President.

''(2) REQUIREMENT.—If the Director determines at any time that the Secretary is taking or has taken any action that interferes with the ability of the Director to carry out the duties of the Director under this Act [probably means title V of Pub. L. 105–65, see Short Title of 1997 Amendment note set out under section 1701 of Title 12, Banks and Banking] or that affects the administration of the program under subtitle A of this Act in a manner that is inconsistent with the purposes of this Act, including any proposed action by the Director, in the discretion of the Director, that is overruled by the Secretary, the Director shall immediately report directly to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding such action. Notwithstanding subsection (a) or (b), any determination or report under this paragraph by the Director shall not be subject to prior review or approval of the Secretary.

''SEC. 574. PERSONNEL.

''(a) OFFICE PERSONNEL.—The Director may appoint and fix the compensation of such officers and employees of the Office as the Director considers necessary to carry out the functions of the Director and the Office. Officers and employees may be paid without regard to the provisions of chapter 51 and subchapter III of chap-

ter 53 of title 5, United States Code, relating to classification and General Schedule pay rates.

''(b) COMPARABILITY OF COMPENSATION WITH FEDERAL BANKING AGENCIES.—In fixing and directing compensation under subsection (a), the Director shall consult with, and maintain comparability with compensation of officers and employees of the Federal Deposit Insurance Corporation.

''(c) PERSONNEL OF OTHER FEDERAL AGENCIES.—In carrying out the duties of the Office, the Director may use information, services, staff, and facilities of any executive agency, independent agency, or department on a reimbursable basis, with the consent of such agency or department.

''(d) OUTSIDE EXPERTS AND CONSULTANTS.—The Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

''SEC. 575. BUDGET AND FINANCIAL REPORTS.

''(a) FINANCIAL OPERATING PLANS AND FORECASTS.—Before the beginning of each fiscal year, the Secretary shall submit a copy of the financial operating plans and forecasts for the Office to the Director of the Office of Management and Budget.

''(b) REPORTS OF OPERATIONS.—As soon as practicable after the end of each fiscal year and each quarter thereof, the Secretary shall submit a copy of the report of the results of the operations of the Office during such period to the Director of the Office of Management and Budget.

''(c) INCLUSION IN PRESIDENT'S BUDGET.—The annual plans, forecasts, and reports required under this section shall be included: (1) in the Budget of the United States in the appropriate form; and (2) in the congressional justifications of the Department of Housing and Urban Development for each fiscal year in a form determined by the Secretary.

''SEC. 576. LIMITATION ON SUBSEQUENT EMPLOYMENT.

''Neither the Director nor any former officer or employee of the Office who, while employed by the Office, was compensated at a rate in excess of the lowest rate for a position classified higher than GS–15 of the General Schedule under section 5107 of title 5, United States Code, may, during the 1-year period beginning on the date of separation from employment by the Office, accept compensation from any party (other than a Federal agency) having any financial interest in any mortgage restructuring and rental assistance sufficiency plan under subtitle A or comparable matter in which the Director or such officer or employee had direct participation or supervision.

''SEC. 577. AUDITS BY GAO.

''The Comptroller General shall audit the operations of the Office in accordance with generally accepted Government auditing standards. All books, records, accounts, reports, files, and property belonging to, or used by, the Office shall be made available to the Comptroller General. Audits under this section shall be conducted annually for the first 2 fiscal years following the date of the enactment of this Act [Oct. 27, 1997] and as appropriate thereafter.

''SEC. 578. OVERSIGHT BY FEDERAL HOUSING COMMISSIONER.

''All authority and responsibilities assigned under this subtitle to the Secretary shall be carried out through the Assistant Secretary of the Department of Housing and Urban Development who is the Federal Housing Commissioner.

''SEC. 579. TERMINATION.

''(a) REPEALS.—

''(1) MARK-TO-MARKET PROGRAM.—Subtitle A (except for section 524) is repealed effective October 1, 2006.

''(2) OMHAR.—Subtitle D (except for this section) is repealed effective October 1, 2004.

''(b) EXCEPTION.—Notwithstanding the repeal under subsection (a), the provisions of subtitle A (as in effect immediately before such repeal) shall apply with respect to projects and programs for which binding commitments have been entered into under this Act before October 1, 2006.

''(c) TERMINATION OF DIRECTOR AND OFFICE.—The Office of Multifamily Housing Assistance Restructuring and the position of Director of such Office shall terminate at the end of September 30, 2004.

''(d) TRANSFER OF AUTHORITY.—Effective upon the repeal of subtitle D under subsection (a)(2) of this section, all authority and responsibilities to administer the program under subtitle A are transferred to the Secretary.''

[Pub. L. 107–116, title VI, §616(a)(2), Jan. 10, 2002, 115 Stat. 2225, provided that: ''The amendment made by paragraph (1) of this subsection [amending section 514 of Pub. L. 105–65, set out above] is deemed to have taken effect on the date of the enactment of Public Law 106–74 [Oct. 20, 1999] (113 Stat. 1109).'']

[Pub. L. 107–116, title VI, §622(b), Jan. 10, 2002, 115 Stat. 2227, provided that: ''The amendment made by subsection (a) [amending section 572(a) of Pub. L. 105–65, set out above] shall apply to the first Director of the Office of Multifamily Housing Assistance Restructuring of the Department of Housing and Urban Development appointed after the date of the enactment of this Act [Jan. 10, 2002], and any such Director appointed thereafter.'']

[Pub. L. 107–116, title VI, §623(b), Jan. 10, 2002, 115 Stat. 2227, provided that: ''The amendment made by subsection (a) [amending section 572(b) of Pub. L. 105–65, set out above] shall apply to any vacancy in the position of Director of the Office of Multifamily Housing Assistance Restructuring of the Department of Housing and Urban Development which occurs or exists after the date of the enactment of this Act [Jan. 10, 2002].'']

[Pub. L. 105–276, title V, §597(c), Oct. 21, 1998, 112 Stat. 2659, provided that: ''This section [amending section 524(a)(2) of Pub. L. 105–65, set out above] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].'']

GAO REPORT ON SECTION 8 RENTAL ASSISTANCE FOR MULTIFAMILY HOUSING PROJECTS

Section 532 of Pub. L. 105–65 provided that: ''Not later than the expiration of the 18-month period beginning on the date of the enactment of this Act [Oct. 27, 1997], the Comptroller General of the United States shall submit a report to the Congress analyzing—

''(1) the housing projects for which project-based assistance is provided under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], but which are not subject to a mortgage insured or held by the Secretary under the National Housing Act [12 U.S.C. 1701 et seq.];

''(2) how State and local housing finance agencies have benefited financially from the rental assistance program under section 8 of the United States Housing Act of 1937, including any benefits from fees, bond financings, and mortgage refinancings; and

''(3) the extent and effectiveness of State and local housing finance agencies oversight of the physical and financial management and condition of multifamily housing projects for which project-based assistance is provided under section 8 of the United States Housing Act of 1937.''

ADMINISTRATIVE FEES FOR CERTIFICATE AND HOUSING VOUCHER PROGRAMS

Section 202 of Pub. L. 104–204 provided that: ''Notwithstanding section 8(q) of the United States Housing Act of 1937 [42 U.S.C. 1437f(q)], as amended—

''(a) The Secretary shall establish fees for the cost of administering the certificate, voucher and moderate rehabilitation programs.

''(1)(A) For fiscal year 1997, the fee for each month for which a dwelling unit is covered by an assistance contract shall be 7.5 percent of the base amount, ad-

justed as provided herein, in the case of an agency that, on an annual basis, is administering a program of no more than 600 units, and 7 percent of the base amount, adjusted as provided herein, for each additional unit above 600.

''(B) The base amount shall be the higher of—

''(i) the fair market rental for fiscal year 1993 for a 2-bedroom existing rental dwelling unit in the market area of the agency; and

''(ii) such fair market rental for fiscal year 1994, but not more than 103.5 percent of the amount determined under clause (i).

''(C) The base amount shall be adjusted to reflect changes in the wage data or other objectively measurable data that reflect the costs of administering the program during fiscal year 1996; except that the Secretary may require that the base amount be not less than a minimum amount and not more than a maximum amount.

''(2) For subsequent fiscal years, the Secretary shall publish a notice in the Federal Register, for each geographic area, establishing the amount of the fee that would apply for the agencies administering the program, based on changes in wage data or other objectively measurable data that reflect the cost of administering the program, as determined by the Secretary.

''(3) The Secretary may increase the fee if necessary to reflect higher costs of administering small programs and programs operating over large geographic areas.

''(4) The Secretary may decrease the fee for PHA-owned units.

''(b) Beginning in fiscal year 1997 and thereafter, the Secretary shall also establish reasonable fees (as determined by the Secretary) for—

''(1) the costs of preliminary expenses, in the amount of $500, for a public housing agency, but only in the first year it administers a tenant-based assistance program under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] and only if, immediately before the effective date of this Act [Sept. 26, 1996], it was not administering a tenant-based assistance program under the 1937 Act (as in effect immediately before the effective date of this Act), in connection with its initial increment of assistance received;

''(2) the costs incurred in assisting families who experience difficulty (as determined by the Secretary) in obtaining appropriate housing under the program; and

''(3) extraordinary costs approved by the Secretary.''

Similar provisions were contained in the following prior appropriations Acts:

Pub. L. 104–99, title IV, § 403(b), Jan. 26, 1996, 110 Stat. 43.

Pub. L. 103–120, § 11(a), Oct. 27, 1993, 107 Stat. 1151.

CONTRACT RENEWALS

Section 211 of Pub. L. 104–204, as amended by Pub. L. 105–18, title II, § 10006, June 12, 1997, 111 Stat. 201; Pub. L. 105–65, title V, § 523(e), Oct. 27, 1997, 111 Stat. 1407; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that:

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'expiring contract' means a contract for project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] that expires during fiscal year 1997;

''(2) the term 'family' has the same meaning as in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)];

''(3) the term 'multifamily housing project' means a property consisting of more than 4 dwelling units that is covered in whole or in part by a contract for project-based assistance under section 8 of the United States Housing Act of 1937;

''(4) the term 'owner' has the same meaning as in section 8(f) of the United States Housing Act of 1937;

''(5) the term 'project-based assistance' means rental assistance under section 8 of the United States Housing Act of 1937 that is attached to a multifamily housing project;

''(6) the term 'public agency' means a State housing finance agency, a local housing agency, or other agency with a public purpose and status;

''(7) the term 'Secretary' means the Secretary of Housing and Urban Development; and

''(8) the term 'tenant-based assistance' has the same meaning as in section 8(f) of the United States Housing Act of 1937.

''(b) SECTION 8 CONTRACT RENEWAL AUTHORITY.—

''(1) IN GENERAL.—Notwithstanding section 405(a) of the Balanced Budget Downpayment Act, I [Pub. L. 104–99, set out below], upon the request of the owner of a multifamily housing project that is covered by an expiring contract, the Secretary shall use amounts made available for the renewal of assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] to renew the expiring contract as project-based assistance for a period of not more than one year, at rent levels that are equal to those under the expiring contract as of the date on which the contract expires: *Provided*, That those rent levels do not exceed 120 percent of the fair market rent for the market area in which the project is located. For an FHA-insured multifamily housing project with an expiring contract at rent levels that exceed 120 percent of the fair market rent for the market area, the Secretary shall provide, at the request of the owner, section 8 project-based assistance, for a period of not more than one year, at rent levels that do not exceed 120 percent of the fair market rent.

''(2) EXEMPTION FOR STATE AND LOCAL HOUSING AGENCY PROJECTS.—Notwithstanding paragraph (1), upon the expiration of a contract with rent levels that exceed the percentage described in that paragraph, if the Secretary determines that the primary financing or mortgage insurance for the multifamily housing project that is covered by that expiring contract was provided by a public agency, the Secretary shall, at the request of the owner and the public agency, renew the expiring contract—

''(A) for a period of not more than one year; and

''(B) at rent levels that are equal to those under the expiring contract as of the date on which the contract expires.

''(3) EXEMPTION OF CERTAIN OTHER PROJECTS.—Notwithstanding paragraph (1), for section 202 projects, section 515 projects, projects with contracts entered into pursuant to section 441 of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11401], and projects with rents that exceed 100 percent of fair market rent for the market area, but that are less than rents for comparable projects, upon the expiration of a section 8 contract, the Secretary shall, at the request of the owner, renew the expiring contract—

''(A) for a period of not more than one year; and

''(B) at rent levels that are equal to those under the expiring contract as of the date on which the contract expires.

''(4) OTHER CONTRACTS.—

''(A) PARTICIPATION IN DEMONSTRATION.—For a contract covering an FHA-insured multifamily housing project that expires during fiscal year 1997 with rent levels that exceed the percentage described in paragraph (1) and after notice to the tenants, the Secretary shall, at the request of the owner of the project and after notice to the tenants, include that multifamily housing project in the demonstration program under section 212 of this Act [set out below]. The Secretary shall ensure that a multifamily housing project with an expiring contract in fiscal year 1997 shall be allowed to be included in the demonstration.

''(B) EFFECT OF MATERIAL ADVERSE ACTIONS AND OMISSIONS.—Notwithstanding paragraph (1) or any other provision of law, the Secretary shall not renew an expiring contract if the Secretary determines that the owner of the multifamily housing

project has engaged in material adverse financial or managerial actions or omissions with regard to the project (or with regard to other similar projects if the Secretary determines that such actions or omissions constitute a pattern of mismanagement that would warrant suspension or debarment by the Secretary). The term 'owner', as used in this subparagraph, in addition to it having the same meaning as in section 8(f) of the United States Housing Act of 1937 [42 U.S.C. 1437f(f)], also means an affiliate of the owner. The term 'affiliate of the owner' means any person or entity (including, but not limited to, a general partner or managing member, or an officer of either) that controls an owner, is controlled by an owner, or is under common control with the owner. The term 'control' means the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial, or other interests of the owner.

''(C) TRANSFER OF PROPERTY.—For properties disqualified from the demonstration program because of actions by an owner or purchaser in accordance with subparagraph (B), the Secretary shall establish procedures to facilitate the voluntary sale or transfer of the property, with a preference for tenant organizations and tenant-endorsed community-based nonprofit and public agency purchasers meeting such reasonable qualifications as may be established by the Secretary. The Secretary may include the transfer of section 8 project-based assistance.

''(5) TENANT PROTECTIONS.—Any family residing in an assisted unit in a multifamily housing project that is covered by an expiring contract that is not renewed, shall be offered tenant-based assistance before the date on which the contract expires or is not renewed.''

Pub. L. 104–120, §2(a), Mar. 28, 1996, 110 Stat. 834, provided that: ''Notwithstanding section 405(b) of the Balanced Budget Downpayment Act, I (Public Law 104–99; 110 Stat. 44) [set out below], at the request of the owner of any project assisted under section 8(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(e)(2)] (as such section existed immediately before October 1, 1991), the Secretary of Housing and Urban Development may renew, for a period of 1 year, the contract for assistance under such section for such project that expires or terminates during fiscal year 1996 at current rent levels.''

Section 405(a), (b) of Pub. L. 104–99, as amended by Pub. L. 105–65, title V, §523(d), Oct. 27, 1997, 111 Stat. 1407, provided that:

''(a) Notwithstanding part 24 of title 24 of the Code of Federal Regulations, for fiscal year 1996 and henceforth, the Secretary of Housing and Urban Development may use amounts available for the renewal of assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], upon termination or expiration of a contract for assistance under section 8 of such Act of 1937 (other than a contract for tenant-based assistance and notwithstanding section 8(v) of such Act for loan management assistance), to provide assistance under section 8 of such Act, subject to the Section 8 Existing Fair Market Rents, for the eligible families assisted under the contracts at expiration or termination, which assistance shall be in accordance with terms and conditions prescribed by the Secretary.

''(b) Notwithstanding subsection (a) and except for projects assisted under section 8(e)(2) of the United States Housing Act of 1937 (as it existed immediately prior to October 1, 1991), at the request of the owner, the Secretary shall renew for a period of one year contracts for assistance under section 8 that expire or terminate during fiscal year 1996 at the current rent levels.''

FHA MULTIFAMILY DEMONSTRATION AUTHORITY

Section 212 of title II of Pub. L. 104–204, as amended by Pub. L. 105–65, title V, §523(f), Oct. 27, 1997, 111 Stat. 1407, provided that:

''(a) IN GENERAL.—

''(1) REPEAL.—

''(A) IN GENERAL.—Section 210 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (110 Stat. 1321) [section 101(e) [title II, §210] of Pub. L. 104–134, formerly set out as a note below] is repealed.

''(B) EXCEPTION.—Notwithstanding the repeal under subparagraph (A), amounts made available under section 210(f) [of] the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 shall remain available for the demonstration program under this section through the end of fiscal year 1997.

''(2) SAVINGS PROVISIONS.—Nothing in this section shall be construed to affect any commitment entered into before the date of enactment of this Act [Sept. 26, 1996] under the demonstration program under section 210 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996.

''(3) DEFINITIONS.—For purposes of this section—

''(A) the term 'demonstration program' means the program established under subsection (b);

''(B) the term 'expiring contract' means a contract for project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] that expires during fiscal year 1997;

''(C) the term 'family' has the same meaning as in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)];

''(D) the term 'multifamily housing project' means a property consisting of more than 4 dwelling units that is covered in whole or in part by a contract for project-based assistance;

''(E) the term 'owner' has the same meaning as in section 8(f) of the United States Housing Act of 1937;

''(F) the term 'project-based assistance' means rental assistance under section 8 of the United States Housing Act of 1937 that is attached to a multifamily housing project;

''(G) the term 'Secretary' means the Secretary of Housing and Urban Development; and

''(H) the term 'tenant-based assistance' has the same meaning as in section 8(f) of the United States Housing Act of 1937.

''(b) DEMONSTRATION AUTHORITY.—

''(1) IN GENERAL.—Subject to the funding limitation in subsection (*l*), the Secretary shall administer a demonstration program with respect to multifamily projects—

''(A) whose owners agree to participate;

''(B) with rents on units assisted under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] that are, in the aggregate, in excess of 120 percent of the fair market rent of the market area in which the project is located; and

''(C) the mortgages of which are insured under the National Housing Act [12 U.S.C. 1701 et seq.].

''(2) PURPOSE.—The demonstration program shall be designed to obtain as much information as is feasible on the economic viability and rehabilitation needs of the multifamily housing projects in the demonstration, to test various approaches for restructuring mortgages to reduce the financial risk to the FHA Insurance Fund while reducing the cost of section 8 subsidies, and to test the feasibility and desirability of—

''(A) ensuring, to the maximum extent practicable, that the debt service and operating expenses, including adequate reserves, attributable to such multifamily projects can be supported at the comparable market rent with or without mortgage insurance under the National Housing Act and with or without additional section 8 rental subsidies;

''(B) utilizing section 8 rental assistance, while taking into account the capital needs of the

projects and the need for adequate rental assistance to support the low- and very low-income families residing in such projects; and

''(C) preserving low-income rental housing affordability and availability while reducing the long-term cost of section 8 rental assistance.

''(c) GOALS.—

''(1) IN GENERAL.—The Secretary shall carry out the demonstration program in a manner that will protect the financial interests of the Federal Government through debt restructuring and subsidy reduction and, in the least costly fashion, address the goals of—

''(A) maintaining existing affordable housing stock in a decent, safe, and sanitary condition;

''(B) minimizing the involuntary displacement of tenants;

''(C) taking into account housing market conditions;

''(D) encouraging responsible ownership and management of property;

''(E) minimizing any adverse income tax impact on property owners; and

''(F) minimizing any adverse impacts on residential neighborhoods and local communities.

''(2) BALANCE OF COMPETING GOALS.—In determining the manner in which a mortgage is to be restructured or a subsidy reduced under this subsection, the Secretary may balance competing goals relating to individual projects in a manner that will further the purposes of this section.

''(d) PARTICIPATION ARRANGEMENTS.—

''(1) IN GENERAL.—In carrying out the demonstration program, the Secretary may enter into participation arrangements with designees, under which the Secretary may provide for the assumption by designees (by delegation, by contract, or otherwise) of some or all of the functions, obligations, responsibilities and benefits of the Secretary.

''(2) DESIGNEES.—In entering into any arrangement under this subsection, the Secretary shall select state housing finance agencies, housing agencies or nonprofits (separately or in conjunction with each other) to act as designees to the extent such agencies are determined to be qualified by the Secretary. In locations where there is no qualified State housing finance agency, housing agency or nonprofit to act as a designee, the Secretary may act as a designee. Each participation arrangement entered into under this subsection shall include a designee as the primary partner. Any organization selected by the Secretary under this section shall have a long-term record of service in providing low-income housing and meet standards of fiscal responsibility, as determined by the Secretary.

''(3) DESIGNEE PARTNERSHIPS.—For purposes of any participation arrangement under this subsection, designees are encouraged to develop partnerships with each other, and to contract or subcontract with other entities, including—

''(A) public housing agencies;

''(B) financial institutions;

''(C) mortgage servicers;

''(D) nonprofit and for-profit housing organizations;

''(E) the Federal National Mortgage Association;

''(F) the Federal Home Loan Mortgage Corporation;

''(G) Federal Home Loan Banks; and

''(H) other State or local mortgage insurance companies or bank lending consortia.

''(e) LONG-TERM AFFORDABILITY.—

''(1) IN GENERAL.—After the renewal of a section 8 contract pursuant to a restructuring under this section, the owner shall accept each offer to renew the section 8 contract, for a period of 20 years from the date of the renewal under the demonstration, if the offer to renew is on terms and conditions, as agreed to by the Secretary or designee and the owner under a restructuring.

''(2) AFFORDABILITY REQUIREMENTS.—Except as otherwise provided by the Secretary, in exchange for any mortgage restructuring under this section, a project shall remain affordable for a period of not less than 20 years. Affordability requirements shall be determined in accordance with guidelines established by the Secretary or designee. The Secretary or designee may waive these requirements for good cause.

''(f) PROCEDURES.—

''(1) NOTICE OF PARTICIPATION IN DEMONSTRATION.—Not later than 45 days before the date of expiration of an expiring contract (or such later date, as determined by the Secretary, for good cause), the owner of the multifamily housing project covered by that expiring contract shall notify the Secretary or designee and the residents of the owner's intent to participate in the demonstration program.

''(2) DEMONSTRATION CONTRACT.—Upon receipt of a notice under paragraph (1), the owner and the Secretary or designee shall enter into a demonstration contract, which shall provide for initial section 8 project-based rents at the same rent levels as those under the expiring contract or, if practical, the budget-based rent to cover debt service, reasonable operating expenses (including reasonable and appropriate services), and a reasonable return to the owner, as determined solely by the Secretary. The demonstration contract shall be for the minimum term necessary for the rents and mortgages of the multifamily housing project to be restructured under the demonstration program, but shall not be for a period of time to exceed 180 days, unless extended for good cause by the Secretary.

''(g)(1) PROJECT-BASED SECTION 8.—The Secretary shall renew all expiring contracts under the demonstration as section 8 project-based contracts, for a period of time not to exceed one year, unless otherwise provided under subsection (h) or in paragraph (2).

''(2) The Secretary may renew a demonstration contract for an additional period of not to exceed 120 days, if—

''(A) the contract was originally executed before February 1, 1997, and the Secretary determines, in the sole discretion of the Secretary, that the renewal period for the contract needs to exceed 1 year, due to delay of publication of the Secretary's demonstration program guidelines until January 23, 1997 (not to exceed 21 projects); or

''(B) the contract was originally executed before October 1, 1997, in connection with a project that has been identified for restructuring under the joint venture approach described in section VII.B.2. of the Secretary's demonstration program guidelines, and the Secretary determines, in the sole discretion of the Secretary, that the renewal period for the contract needs to exceed 1 year, due to delay in implementation of the joint venture agreement required by the guidelines (not to exceed 25 projects).

''(h) DEMONSTRATION ACTIONS.—

''(1) DEMONSTRATION ACTIONS.—For purposes of carrying out the demonstration program, and in order to ensure that contract rights are not abrogated, subject to such third party consents as are necessary (if any), including consent by the Government National Mortgage Association if it owns a mortgage insured by the Secretary, consent by an issuer under the mortgage-backed securities program of the Association, subject to the responsibilities of the issuer to its security holders and the Association under such program, and consent by parties to any contractual agreement which the Secretary proposes to modify or discontinue, the Secretary or, except with respect to subparagraph (B), designee, subject to the funding limitation in subsection (*l*), shall take not less than one of the actions specified in subparagraphs (G), (H), and (I) and may take any of the following actions:

''(A) REMOVAL OF RESTRICTIONS.—

''(i) IN GENERAL.—Consistent with the purposes of this section, subject to the agreement of the owner of the project and after consultation with the tenants of the project, the Secretary or designee may remove, relinquish, extinguish, mod-

ify, or agree to the removal of any mortgage, regulatory agreement, project-based assistance contract, use agreement, or restriction that had been imposed or required by the Secretary, including restrictions on distributions of income which the Secretary or designee determines would interfere with the ability of the project to operate without above-market rents.

''(ii) ACCUMULATED RESIDUAL RECEIPTS.—The Secretary or designee may require an owner of a property assisted under the section 8 new construction/substantial rehabilitation program under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] to apply any accumulated residual receipts toward effecting the purposes of this section.

''(B) REINSURANCE.—With respect to not more than 5,000 units within the demonstration during fiscal year 1997, the Secretary may enter into contracts to purchase reinsurance, or enter into participations or otherwise transfer economic interest in contracts of insurance or in the premiums paid, or due to be paid, on such insurance, on such terms and conditions as the Secretary may determine. Any contract entered into under this paragraph shall require that any associated units be maintained as low-income units for the life of the mortgage, unless waived by the Secretary for good cause.

''(C) PARTICIPATION BY THIRD PARTIES.—The Secretary or designee may enter into such agreements, provide such concessions, incur such costs, make such grants (including grants to cover all or a portion of the rehabilitation costs for a project) and other payments, and provide other valuable consideration as may reasonably be necessary for owners, lenders, servicers, third parties, and other entities to participate in the demonstration program. The Secretary may establish performance incentives for designees.

''(D) SECTION 8 ADMINISTRATIVE FEES.—Notwithstanding any other provision of law, the Secretary may make fees available from the section 8 contract renewal appropriation to a designee for contract administration under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] for purposes of any contract restructured or renewed under the demonstration program.

''(E) FULL OR PARTIAL PAYMENT OF CLAIM.—Notwithstanding any other provision of law, the Secretary may make a full payment of claim or partial payment of claim prior to default.

''(F) CREDIT ENHANCEMENT.—

''(i) IN GENERAL.—The Secretary or designee may provide FHA multifamily mortgage insurance, reinsurance, or other credit enhancement alternatives, including retaining the existing FHA mortgage insurance on a restructured first mortgage at market value or using the multifamily risk-sharing mortgage programs, as provided under section 542 of the Housing and Community Development Act of 1992 [12 U.S.C. 1707 note]. Any limitations on the number of units available for mortgage insurance under section 542 shall not apply to insurance issued for purposes of the demonstration program.

''(ii) MAXIMUM PERCENTAGE.—During fiscal year 1997, not more than 25 percent of the units in multifamily housing projects with expiring contracts in the demonstration, in the aggregate, may be restructured without FHA insurance, unless otherwise agreed to by the owner of a project.

''(iii) CREDIT SUBSIDY.—Any credit subsidy costs of providing mortgage insurance shall be paid from amounts made available under subsection (*l*).

''(G) MORTGAGE RESTRUCTURING.—

''(i) IN GENERAL.—The Secretary or designee may restructure mortgages to provide a restructured first mortgage to cover debt service and operating expenses (including a reasonable rate of return to the owner) at the market rent, and a second mortgage equal to the difference between the restructured first mortgage and the mortgage balance of the eligible multifamily housing project at the time of restructuring.

''(ii) CREDIT SUBSIDY.—Any credit subsidy costs of providing a second mortgage shall be paid from amounts made available under subsection (*l*).

''(H) DEBT FORGIVENESS.—The Secretary or designee, for good cause and at the request of the owner of a multifamily housing project, may forgive at the time of the restructuring of a mortgage any portion of a debt on the project that exceeds the market value of the project.

''(I) BUDGET-BASED RENTS.—The Secretary or designee may renew an expiring contract, including a contract for a project in which operating costs exceed comparable market rents, for a period of not more than one year, at a budget-based rent that covers debt service, reasonable operating expenses (including all reasonable and appropriate services), and a reasonable rate of return to the owner, as determined solely by the Secretary, provided that the contract does not exceed the rent levels under the expiring contract. The Secretary may establish a preference under the demonstration program for budget-based rents for unique housing projects, such as projects designated for occupancy by elderly families and projects in rural areas.

''(J) SECTION 8 TENANT-BASED ASSISTANCE.—For not more than 10 percent of units in multifamily housing projects that have had their mortgages restructured in any fiscal year under the demonstration, the Secretary or designee may provide, with the agreement of an owner and in consultation with the tenants of the housing, section 8 tenant-based assistance for some or all of the assisted units in a multifamily housing project in lieu of section 8 project-based assistance. Section 8 tenant-based assistance may only be provided where the Secretary determines and certifies that there is adequate available and affordable housing within the local area and that tenants will be able to use the section 8 tenant-based assistance successfully.

''(2) OFFER AND ACCEPTANCE.—Notwithstanding any other provision of law, an owner of a project in the demonstration must accept any reasonable offer made by the Secretary or a designee under this subsection. An owner may appeal the reasonableness of any offer to the Secretary and the Secretary shall respond within 30 days of the date of appeal with a final offer. If the final offer is not acceptable, the owner may opt out of the program.

''(i) COMMUNITY AND TENANT INPUT.—In carrying out this section, the Secretary shall develop procedures to provide appropriate and timely notice, including an opportunity for comment and timely access to all relevant information, to officials of the unit of general local government affected, the community in which the project is situated, and the tenants of the project.

''(j) TRANSFER OF PROPERTY.—The Secretary shall establish procedures to facilitate the voluntary sale or transfer of multifamily housing projects under the demonstration to tenant organizations and tenant-endorsed community-based nonprofit and public agency purchasers meeting such reasonable qualifications as may be established by the Secretary.

''(k) LIMITATION ON DEMONSTRATION AUTHORITY.—The Secretary shall carry out the demonstration program with respect to mortgages not to exceed 50,000 units.

''(*l*) FUNDING.—In addition to the $30,000,000 made available under section 210 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (110 Stat. 1321) [section 101(e) [title II, §210] of Pub. L. 104–134, formerly set out as a note below], for the costs (including any credit subsidy costs associated with providing direct loans or mortgage insurance) of modifying and restructuring loans held or guaranteed by the

Federal Housing Administration, as authorized under this section, $10,000,000 is hereby appropriated, to remain available until September 30, 1998.

''(m) REPORT TO CONGRESS.—

''(1) IN GENERAL.—

''(A) QUARTERLY REPORTS.—Not less than every 3 months, the Secretary shall submit to the Congress a report describing and assessing the status of the projects in the demonstration program.

''(B) FINAL REPORT.—Not later than 6 months after the end of the demonstration program, the Secretary shall submit to the Congress a final report on the demonstration program.

''(2) CONTENTS.—Each report submitted under paragraph (1)(A) shall include a description of—

''(A) each restructuring proposal submitted by an owner of a multifamily housing project, including a description of the physical, financial, tenancy, and market characteristics of the project;

''(B) the Secretary's evaluation and reasons for each multifamily housing project selected or rejected for participation in the demonstration program;

''(C) the costs to the FHA General Insurance and Special Risk Insurance funds;

''(D) the subsidy costs provided before and after restructuring;

''(E) the actions undertaken in the demonstration program, including the third-party arrangements made; and

''(F) the demonstration program's impact on the owners of the projects, including any tax consequences.

''(3) CONTENTS OF FINAL REPORT.—The report submitted under paragraph (1)(B) shall include—

''(A) the required contents under paragraph (2); and

''(B) any findings and recommendations for legislative action.''

Section 101(e) [title II, § 210] of title I of Pub. L. 104–134, Apr. 26, 1996, 110 Stat. 1321–257, 1321–285; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, which authorized the Secretary of Housing and Urban Development on and after Oct. 1, 1995, and before Oct. 1, 1997, to initiate a FHA multifamily demonstration program, was repealed by Pub. L. 104–204, title II, § 212(a)(1)(A), Sept. 26, 1996, 110 Stat. 2897.

PUBLIC HOUSING MOVING TO WORK DEMONSTRATION

Section 101(e) [title II, § 204] of Pub. L. 104–134, as amended by Pub. L. 105–276, title V, § 522(b)(3), Oct. 21, 1998, 112 Stat. 2564, provided that:

''(a) PURPOSE.—The purpose of this demonstration is to give public housing agencies and the Secretary of Housing and Urban Development the flexibility to design and test various approaches for providing and administering housing assistance that: reduce cost and achieve greater cost effectiveness in Federal expenditures; give incentives to families with children where the head of household is working, seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient; and increase housing choices for low-income families.

''(b) PROGRAM AUTHORITY.—The Secretary of Housing and Urban Development shall conduct a demonstration program under this section beginning in fiscal year 1996 under which up to 30 public housing agencies (including Indian housing authorities) administering the public or Indian housing program and the section 8 [42 U.S.C. 1437f] housing assistance payments program may be selected by the Secretary to participate. The Secretary shall provide training and technical assistance during the demonstration and conduct detailed evaluations of up to 15 such agencies in an effort to identify replicable program models promoting the purpose of the demonstration. Under the demonstration, notwithstanding any provision of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] except as provided in subsection (e), an agency may combine operating assistance provided under section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g], modernization assistance provided under section 14 of such Act [42 U.S.C. 1437*l*], and assistance provided under section 8 of such Act for the certificate and voucher programs, to provide housing assistance for low-income families, as defined in section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(2)], and services to facilitate the transition to work on such terms and conditions as the agency may propose and the Secretary may approve.

''(c) APPLICATION.—An application to participate in the demonstration—

''(1) shall request authority to combine assistance under sections 8, 9, and 14 of the United States Housing Act of 1937 [42 U.S.C. 1437f, 1437g, 1437*l*];

''(2) shall be submitted only after the public housing agency provides for citizen participation through a public hearing and, if appropriate, other means;

''(3) shall include a plan developed by the agency that takes into account comments from the public hearing and any other public comments on the proposed program, and comments from current and prospective residents who would be affected, and that includes criteria for—

''(A) families to be assisted, which shall require that at least 75 percent of the families assisted by participating demonstration public housing authorities shall be very low-income families, as defined in section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(2)];

''(B) establishing a reasonable rent policy, which shall be designed to encourage employment and self-sufficiency by participating families, consistent with the purpose of this demonstration, such as by excluding some or all of a family's earned income for purposes of determining rent;

''(C) continuing to assist substantially the same total number of eligible low-income families as would have been served had the amounts not been combined;

''(D) maintaining a comparable mix of families (by family size) as would have been provided had the amounts not been used under the demonstration; and

''(E) assuring that housing assisted under the demonstration program meets housing quality standards established or approved by the Secretary; and

''(4) may request assistance for training and technical assistance to assist with design of the demonstration and to participate in a detailed evaluation.

''(d) SELECTION.—In selecting among applications, the Secretary shall take into account the potential of each agency to plan and carry out a program under the demonstration, the relative performance by an agency under the public housing management assessment program under section 6(j) of the United States Housing Act of 1937 [42 U.S.C. 1437d(j)], and other appropriate factors as determined by the Secretary.

''(e) APPLICABILITY OF 1937 ACT PROVISIONS.—

''(1) Section 18 of the United States Housing Act of 1937 [42 U.S.C. 1437p] shall continue to apply to public housing notwithstanding any use of the housing under this demonstration.

''(2) Section 12 of such Act [42 U.S.C. 1437j] shall apply to housing assisted under the demonstration, other than housing assisted solely due to occupancy by families receiving tenant-based assistance.

''(f) EFFECT ON SECTION 8, OPERATING SUBSIDIES, AND COMPREHENSIVE GRANT PROGRAM ALLOCATIONS.—The amount of assistance received under section 8, section 9, or pursuant to section 14 [42 U.S.C. 1437f, 1437g, 1437*l*] by a public housing agency participating in the demonstration under this part [section] shall not be diminished by its participation.

''(g) RECORDS, REPORTS, AND AUDITS.—

''(1) KEEPING OF RECORDS.—Each agency shall keep such records as the Secretary may prescribe as rea-

sonably necessary to disclose the amounts and the disposition of amounts under this demonstration, to ensure compliance with the requirements of this section, and to measure performance.

''(2) REPORTS.—Each agency shall submit to the Secretary a report, or series of reports, in a form and at a time specified by the Secretary. Each report shall—

''(A) document the use of funds made available under this section;

''(B) provide such data as the Secretary may request to assist the Secretary in assessing the demonstration; and

''(C) describe and analyze the effect of assisted activities in addressing the objectives of this part [section].

''(3) ACCESS TO DOCUMENTS BY THE SECRETARY.—The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to assistance in connection with, and the requirements of, this section.

''(4) ACCESS TO DOCUMENTS BY THE COMPTROLLER GENERAL.—The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to assistance in connection with, and the requirements of, this section.

''(h) EVALUATION AND REPORT.—

''(1) CONSULTATION WITH PHA AND FAMILY REPRESENTATIVES.—In making assessments throughout the demonstration, the Secretary shall consult with representatives of public housing agencies and residents.

''(2) REPORT TO CONGRESS.—Not later than 180 days after the end of the third year of the demonstration, the Secretary shall submit to the Congress a report evaluating the programs carried out under the demonstration. The report shall also include findings and recommendations for any appropriate legislative action.

''(i) FUNDING FOR TECHNICAL ASSISTANCE AND EVALUATION.—From amounts appropriated for assistance under section 14 of the United States Housing Act of 1937 [42 U.S.C. 1437*l*] for fiscal years 1996, 1997, and 1998, the Secretary may use up to a total of $5,000,000—

''(1) to provide, directly or by contract, training and technical assistance—

''(A) to public housing agencies that express an interest to apply for training and technical assistance pursuant to subsection (c)(4), to assist them in designing programs to be proposed for the demonstration; and

''(B) to up to 10 agencies selected to receive training and technical assistance pursuant to subsection (c)(4), to assist them in implementing the approved program; and

''(2) to conduct detailed evaluations of the activities of the public housing agencies under paragraph (1)(B), directly or by contract.

''(j) CAPITAL AND OPERATING FUND ASSISTANCE.—With respect to any public housing agency participating in the demonstration under this section that receives assistance from the Capital or Operating Fund under section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g] (as amended by the Quality Housing and Work Responsibility Act of 1998), for purposes of this section—

''(1) any reference to assistance under section 9 of the United States Housing Act of 1937 shall be considered to refer also to assistance provided from the Operating Fund under section 9(e) of such Act (as so amended); and

''(2) any reference to assistance under section 14 of the United States Housing Act of 1937 [former 42 U.S.C. 1437*l*] shall be considered to refer also to assistance provided from the Capital Fund under section 9(d) of such Act (as so amended).''

PROHIBITION AGAINST PREFERENCES WITH RESPECT TO CERTAIN PROJECTS

Pub. L. 104–99, title IV, § 402(d)(4)(B), Jan. 26, 1996, 110 Stat. 42, provided that: ''Notwithstanding any other provision of law, no Federal tenant selection preferences under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] shall apply with respect to—

''(i) housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(2)] (as such section existed on the day before October 1, 1983); or

''(ii) projects financed under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q] (as such section existed on the day before the date of enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990]).''

[Pub. L. 105–276, title V, § 514(c)(2), Oct. 21, 1998, 112 Stat. 2548, provided that: ''Notwithstanding any other provision of law (including subsection (f) of this section [set out as an Effective and Termination Dates of 1996 Amendments note under section 1437a of this title]), section 402(d)(4)(B) of The Balanced Budget Downpayment Act, I [Pub. L. 104–99, set out above] (42 U.S.C. 1437a note) shall apply to fiscal year 1999 and thereafter.'']

[Section 402(d)(4)(B) of Pub. L. 104–99, set out above, effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as Effective and Termination Dates of 1996 Amendments notes under section 1437a of this title.]

COMMUNITY INVESTMENT DEMONSTRATION PROGRAM

Pub. L. 103–120, § 6, Oct. 27, 1993, 107 Stat. 1148, as amended by Pub. L. 104–316, title I, § 122(j), Oct. 19, 1996, 110 Stat. 3837, provided that:

''(a) DEMONSTRATION PROGRAM.—The Secretary shall carry out a demonstration program to attract pension fund investment in affordable housing through the use of project-based rental assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f].

''(b) FUNDING REQUIREMENTS.—In carrying out this section, the Secretary shall ensure that not less than 50 percent of the funds appropriated for the demonstration program each year are used in conjunction with the disposition of either—

''(1) multifamily properties owned by the Department; or

''(2) multifamily properties securing mortgages held by the Department.

''(c) CONTRACT TERMS.—

''(1) IN GENERAL.—Project-based assistance under this section shall be provided pursuant to a contract entered into by the Secretary and the owner of the eligible housing that—

''(A) provides assistance for a term of not less than 60 months and not greater than 180 months; and

''(B) provides for contract rents, to be determined by the Secretary, which shall not exceed contract rents permitted under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], taking into consideration any costs for the construction, rehabilitation, or acquisition of the housing.

''(2) AMENDMENT TO SECTION 203.—[Amended section 1701z–11 of Title 12, Banks and Banking.]

''(d) LIMITATION.—(1) The Secretary may not provide (or make a commitment to provide) more than 50 percent of the funding for housing financed by any single pension fund, except that this limitation shall not apply if the Secretary, after the end of the 6-month period beginning on the date notice is issued under subsection (e)—

''(A) determines that—

''(i) there are no expressions of interest that are likely to result in approvable applications in the reasonably foreseeable future; or

''(ii) any such expressions of interest are not likely to use all funding under this section; and

''(B) so informs the Committee on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

''(2) If the Secretary determines that there are expressions of interest referred to in paragraph (1)(A)(ii), the Secretary may reserve funding sufficient in the Secretary's determination to fund such applications and may use any remaining funding for other pension funds in accordance with this section.

''(e) IMPLEMENTATION.—The Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this section. The notice shall take effect upon issuance.

''(f) APPLICABILITY OF ERISA.—Notwithstanding section 514(d) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1144(d)], nothing in this section shall be construed to authorize any action or failure to act that would constitute a violation of such Act [29 U.S.C. 1001 et seq.].

''(g) REPORT.—Not later than 3 months after the last day of each fiscal year, the Secretary shall submit to the Committee on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report summarizing the activities carried out under this section during that fiscal year.

''(h) ESTABLISHMENT OF STANDARDS.—Mortgages secured by housing assisted under this demonstration shall meet such standards regarding financing and securitization as the Secretary may establish.

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $100,000,000 for fiscal year 1994 to carry out this section.

''[(j) Redesignated (i).]

''(k) TERMINATION DATE.—The Secretary shall not enter into any new commitment to provide assistance under this section after September 30, 1998.''

ADMINISTRATIVE FEES FOR CERTIFICATE AND HOUSING VOUCHER PROGRAMS DURING FISCAL YEAR 1994

Pub. L. 103–120, § 11(a), Oct. 27, 1993, 107 Stat. 1151, provided that: ''Notwithstanding the second sentence of section 8(q)(1) of the United States Housing Act of 1937 [42 U.S.C. 1437f(q)(1)], other applicable law, or any implementing regulations and related requirements, the fee for the ongoing costs of administering the certificate and housing voucher programs under subsections (b) and (*o*) of section 8 of such Act during fiscal year 1994 shall be—

''(1) not less than a fee calculated in accordance with the fair market rents for Federal fiscal year 1993; or

''(2) not more than—

''(A) a fee calculated in accordance with section 8(q) of such Act, except that such fee shall not be in excess of 3.5 percent above the fee calculated in accordance with paragraph (1); or

''(B) to the extent approved in an appropriation Act, a fee calculated in accordance with such section 8(q).''

EFFECTIVENESS OF ASSISTANCE FOR PHA-OWNED UNITS

Section 150 of Pub. L. 102–550 provided that: ''The amendments made by section 548 of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, amending this section] shall be effective notwithstanding the absence of any regulations issued by the Secretary of Housing and Urban Development.''

MOVING TO OPPORTUNITY FOR FAIR HOUSING

Section 152 of Pub. L. 102–550, as amended by Pub. L. 103–120, § 3, Oct. 27, 1993, 107 Stat. 1148, which directed Secretary of Housing and Urban Development to carry out demonstration program in eligible cities to provide tenant-based assistance to very low-income families with children to move out of areas of high concentrations of persons living in poverty to areas with low concentrations of such persons, required biennial report to Congress evaluating effectiveness and final report not later than Sept. 30, 2004, provided for increased funding under section 1437c(c) of this title to carry out demonstration, and authorized implementation by notice of requirements necessary to carry out program, was repealed by Pub. L. 105–276, title V, § 550(f), Oct. 21, 1998, 112 Stat. 2610.

DIRECTIVE TO FURTHER FAIR HOUSING OBJECTIVES UNDER CERTIFICATE AND VOUCHER PROGRAMS

Section 153 of Pub. L. 102–550, which directed Secretary of Housing and Urban Development, not later than 2 years after Oct. 28, 1992, to review and comment upon study prepared pursuant to section 558(3) of Pub. L. 101–625, formerly set out as a note below, to evaluate implementation and effects of existing demonstration and judicially mandated programs, to assess factors that might impede geographic dispersion of families receiving section 8 certificates and vouchers, to identify and implement administrative revisions that would enhance dispersion and tenant choice, and to submit report to Congress describing findings, actions taken, and recommendations, was repealed by Pub. L. 105–276, title V, § 582(a)(3), Oct. 21, 1998, 112 Stat. 2643.

INAPPLICABILITY OF CERTAIN 1992 AMENDMENTS TO INDIAN PUBLIC HOUSING

Amendment by section 623(b) of Pub. L. 102–550 not applicable with respect to lower income housing developed or operated pursuant to contract between Secretary of Housing and Urban Development and Indian housing authority, see section 626 of Pub. L. 102–550, set out as a note under section 1437a of this title.

TERMINATION OF EXISTING HOUSING PROGRAMS

Except with respect to projects and programs for which binding commitments have been entered into prior to Oct. 1, 1991, no new grants or loans to be made after Oct. 1, 1991, under subsec. (e)(2) of this section except for funds allocated under such section for single room occupancy dwellings as authorized by subchapter IV (§ 11361 et seq.) of chapter 119 of this title, see section 12839(a)(4) of this title.

PUBLIC HOUSING MIXED INCOME NEW COMMUNITIES STRATEGY DEMONSTRATION

Section 522 of Pub. L. 101–625, as amended by Pub. L. 104–66, title I, § 1071(b), Dec. 21, 1995, 109 Stat. 720; Pub. L. 104–99, title IV, § 402(d)(6)(B), Jan. 26, 1996, 110 Stat. 43, which directed Secretary of Housing and Urban Development to carry out program to demonstrate effectiveness of promoting revitalization of troubled urban communities through provision of public housing in socioeconomically mixed settings, directed appointment of coordinating committees to develop implementation plans, set forth scope of program including provision of supportive services, required report to Congress evaluating program's effectiveness and including findings and recommendations, and provided for termination of the program 10 years after Nov. 28, 1990, was repealed by Pub. L. 105–276, title V, § 582(a)(10), Oct. 21, 1998, 112 Stat. 2644.

STUDY OF PUBLIC HOUSING FUNDING SYSTEM

Section 524 of Pub. L. 101–625 directed Secretary of Housing and Urban Development to conduct a study assessing one or more revised methods of providing sufficient Federal funds to public housing agencies for operation, maintenance and modernization of public housing, which study was to include a comparison of existing methods of funding in public housing with those used by Department of Housing and Urban Development in housing assisted under this section and a review of results of study entitled ''Alternative Operating Subsidies Systems for the Public Housing Program'',

with an update of such study as necessary, and to submit a report to Congress not later than 12 months after Nov. 28, 1990, detailing the findings of this study.

STUDY OF PROSPECTIVE PAYMENT SYSTEM FOR PUBLIC HOUSING

Section 525 of Pub. L. 101–625 directed Secretary of Housing and Urban Development to conduct a study assessing one or more revised methods of providing Federal housing assistance through local public housing agencies, examining methods of prospective payment, including the conversion of PHA operating assistance, modernization, and other Federal housing assistance to a schedule of steady and predictable capitated Federal payments on behalf of low income public housing tenants, and making specific assessments and to submit a report to Congress not later than 12 months after Nov. 28, 1990.

GAO STUDY OF ALTERNATIVES IN PUBLIC HOUSING DEVELOPMENT

Section 526 of Pub. L. 101–625 directed Comptroller General to conduct a study assessing alternative methods of developing public housing dwelling units, other than under the existing public housing development program under this chapter, and submit a report to Congress regarding the findings and conclusions of the study not later than 12 months after Nov. 28, 1990.

PREFERENCE FOR NEW CONSTRUCTION UNDER THIS SECTION

Section 545(c) of Pub. L. 101–625, as amended by Pub. L. 104–99, title IV, § 402(d)(4)(A), Jan. 26, 1996, 110 Stat. 42, which provided that, with respect to housing constructed or substantially rehabilitated pursuant to assistance provided under subsec. (b)(2) of this section, as such provisions existed before Oct. 1, 1983, and projects financed under section 1701q of Title 12, Banks and Banking, notwithstanding tenant selection criteria under contract between Secretary and owner pursuant to first sentence of such section, for at least 70 percent of units becoming available, tenant selection criteria for such housing was to give preference to families occupying substandard housing (including homeless families and those living in shelters), paying more than 50 percent of family income for rent, or involuntarily displaced, and system of local preferences established under subsec. (d)(1)(A)(ii) of this section by public housing agency was to apply to remaining units that became available, to extent that such preferences were applicable with respect to tenant eligibility limitations, was repealed by Pub. L. 105–276, title V, § 514(c)(1), Oct. 21, 1998, 112 Stat. 2548.

DOCUMENTATION OF EXCESSIVE RENT BURDENS

Section 550(b) of Pub. L. 101–625 provided that:

''(1) DATA.—The Secretary of Housing and Urban Development shall collect and maintain, in an automated system, data describing the characteristics of families assisted under the certificate and voucher programs established under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], which data shall include the share of family income paid toward rent.

''(2) REPORT.—Not less than annually, the Secretary shall submit a report to the Congress setting forth, for each of the certificate program and the voucher program, the percentage of families participating in the program who are paying for rent more than the amount determined under section 3(a)(1) of such Act [42 U.S.C. 1437a(a)(1)]. The report shall set forth data in appropriate categories, such as various areas of the country, types and sizes of public housing agencies, types of families, and types or markets. The data shall identify the jurisdictions in which more than 10 percent of the families assisted under section 8 of such Act pay for rent more than the amount determined under section 3(a)(1) of such Act and the report shall include an examination of whether the fair market rent for such areas is appropriate. The report shall also include any recommendations of the Secretary for legislative and administrative actions appropriate as a result of analysis of the data.

''(3) AVAILABILITY OF DATA.—The Secretary shall make available to each public housing agency administering assistance under the certificate or voucher program any data maintained under this subsection that relates to the public housing agency.''

[For termination, effective May 15, 2000, of reporting provisions in section 550(b)(2) of Pub. L. 101–625, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 16 on page 103 of House Document No. 103–7.]

INCOME ELIGIBILITY FOR TENANCY IN NEW CONSTRUCTION UNITS

Section 555 of Pub. L. 101–625 provided that: ''Any dwelling units in any housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(2)], as such section existed before October 1, 1983, and with a contract for assistance under such section, shall be reserved for occupancy by low-income families and very low-income families.''

GAO STUDY REGARDING FAIR MARKET RENT CALCULATION

Section 558 of Pub. L. 101–625 directed Comptroller General to conduct a study to examine fair market rentals under subsec. (c)(1) of this section which are wholly contained within such market areas and submit a report to Congress not later than 18 months after Nov. 28, 1990, regarding findings and conclusions.

STUDY OF UTILIZATION RATES

Section 559 of Pub. L. 101–625 directed Secretary of Housing and Urban Development to conduct a study of reasons for success or failure, within appropriate cities and localities, in utilizing assistance made available for such areas under this section and submit a report to Congress concerning this study not later than the expiration of the 1-year period beginning on Nov. 28, 1990.

FEASIBILITY STUDY REGARDING INDIAN TRIBE ELIGIBILITY FOR VOUCHER PROGRAM

Section 561 of Pub. L. 101–625 directed Secretary of Housing and Urban Development to conduct a study to determine feasibility and effectiveness of entering into contracts with Indian housing authorities to provide voucher assistance under subsec. (*o*) of this section and submit a report to Congress regarding findings and conclusions not later than the expiration of the 1-year period beginning on Nov. 28, 1990.

STUDY OF PRIVATE NONPROFIT INITIATIVES

Section 582 of Pub. L. 101–625 directed Secretary of Housing and Urban Development to conduct a study to examine how private nonprofit initiatives to provide low-income housing development in local communities across the country have succeeded, with particular emphasis on how Federal housing policy and tax structures can best promote local private nonprofit organizations involvement in low-income housing development, and submit a report to Congress regarding findings not later than 1-year after Nov. 28, 1990.

PREFERENCES FOR NATIVE HAWAIIANS ON HAWAIIAN HOMELANDS UNDER HUD PROGRAMS

Section 958 of Pub. L. 101–625, which directed Secretary of Housing and Urban Development to provide preferences for housing assistance programs to native Hawaiians in subsec. (a), described assistance programs available in subsec. (b), authorized Secretary to provide mortgage insurance in certain situations in subsec. (c),

and defined pertinent terms in subsec. (d), was repealed by Pub. L. 102–238, § 5(b), Dec. 17, 1991, 105 Stat. 1910.

AUTHORIZATION FOR PROVISION OF ASSISTANCE TO PROGRAMS ADMINISTERED BY STATE OF HAWAII UNDER ACT OF JULY 9, 1921

Section 962 of Pub. L. 101–625, as added by Pub. L. 102–238, § 5(a), Dec. 17, 1991, 105 Stat. 1909, provided that:

''(a) ASSISTANCE AUTHORIZED.—The Secretary of Housing and Urban Development is authorized to provide assistance, under any housing assistance program administered by the Secretary, to the State of Hawaii, for use by the State in meeting the responsibilities with which it has been charged under the provisions of the Act of July 9, 1921 (42 Stat. 108) [formerly 48 U.S.C. 691–718].

''(b) MORTGAGE INSURANCE.—

''(1) IN GENERAL.—Notwithstanding any other provision or limitation of this Act [see Short Title note set out under section 12701 of this title], or the National Housing Act [12 U.S.C. 1701 et seq.], including those relating to marketability of title, the Secretary of Housing and Urban Development may provide mortgage insurance covering any property on lands set aside under the provisions of the Act of July 9, 1921 (42 Stat. 108), upon which there is or will be located a multifamily residence, for which the Department of the Hawaiian Home Lands of the State of Hawaii—

''(A) is the mortgagor or co-mortgagor;

''(B) guarantees in writing to reimburse the Secretary for any mortgage insurance claim paid in connection with such property; or

''(C) offers other security that is acceptable to the Secretary, subject to appropriate conditions prescribed by the Secretary.

''(2) SALE ON DEFAULT.—In the event of a default on a mortgage insured pursuant to paragraph (1), the Department of Hawaiian Home Lands of the State of Hawaii may sell the insured property or housing unit to an eligible beneficiary as defined in the Act of July 9, 1921 (42 Stat. 108).''

ANNUAL ADJUSTMENT FACTORS FOR RENTS UNDER LOWER-INCOME HOUSING ASSISTANCE PROGRAM

Section 801(a), (b), (d), (e) of Pub. L. 101–235 provided that:

''(a) EFFECT OF PRIOR COMPARABILITY STUDIES.—

''(1) IN GENERAL.—In any case in which, in implementing section 8(c)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(c)(2)]—

''(A) the use of comparability studies by the Secretary of Housing and Urban Development or the appropriate State agency as an independent limitation on the amount of rental adjustments resulting from the application of an annual adjustment factor under such section has resulted in the reduction of the maximum monthly rent for units covered by the contract or the failure to increase such contract rent to the full amount otherwise permitted under the annual adjustment factor, or

''(B) an assistance contract requires a project owner to make a request before becoming eligible for a rent adjustment under the annual adjustment factor and the project owner certifies that such a request was not made because of anticipated negative adjustment to the project rents,

for fiscal year 1980, and annually thereafter until regulations implementing this section take effect, rental adjustments shall be calculated as an amount equal to the annual adjustment factor multiplied by a figure equal to the contract rent minus the amount of contract rent attributable to debt service. Upon the request of the project owner, the Secretary shall pay to the project owner the amount, if any, by which the total rental adjustment calculated under the preceding sentence exceeds the total adjustments the Secretary or appropriate State agency actually approved, except that solely for purposes of calculating retroactive payments under this subsection, in no event shall any project owner be paid an amount less than 30 percent of a figure equal to the aggregate of the annual adjustment factor multiplied by the full contract rent for each year on or after fiscal year 1980, minus the sum of the rental payments the Secretary or appropriate State agency actually approved for those years. The method provided by this subsection shall be the exclusive method by which retroactive payments, whether or not requested, may be made for projects subject to this subsection for the period from fiscal year 1980 until the regulations issued under subsection (e) take effect. For purposes of this paragraph, 'debt service' shall include interest, principal, and mortgage insurance premium if any.

''(2) APPLICABILITY.—

''(A) IN GENERAL.—Subsection (a) shall apply with respect to any use of comparability studies referred to in such subsection occurring before the effective date of the regulations issued under subsection (e).

''(B) FINAL LITIGATION.—Subsection (a) shall not apply to any project with respect to which litigation regarding the authority of the Secretary to use comparability studies to limit rental adjustments under section 8(c)(2) of the United States Housing Act of 1937 has resulted in a judgment before the effective date of this Act [Dec. 15, 1989] that is final and not appealable (including any settlement agreement).

''(b) 3-YEAR PAYMENTS.—The Secretary shall provide the amounts under subsection (a) over the 3-year period beginning on the effective date of the regulations issued under subsection (e). The Secretary shall provide the payments authorized under subsection (a) only to the extent approved in subsequent appropriations Acts. There are authorized to be appropriated such sums as may be necessary for this purpose.

''(d) DETERMINATION OF CONTRACT RENT.—(1) The Secretary shall upon the request of the project owner, make a one-time determination of the contract rent for each project owner referred to in subsection (a). The contract rent shall be the greater of the contract rent—

''(A) currently approved by the Secretary under section 8(c)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437f(c)(2)], or

''(B) calculated in accordance with the first sentence of subsection (a)(1).

''(2) All adjustments in contract rents under section 8(c)(2) of the United States Housing Act of 1937, including adjustments involving projects referred to in subsection (a), that occur beginning with the first anniversary date of the contract after the regulations issued under subsection (e) take effect shall be made in accordance with the annual adjustment and comparability provisions of sections 8(c)(2)(A) and 8(c)(2)(C) of such Act, respectively, using the one-time contract rent determination under paragraph (1).

''(e) REGULATIONS.—The Secretary shall issue regulations to carry out this section and the amendments made by this section [amending this section], including the amendments made by subsection (c) with regard to annual adjustment factors and comparability studies. The Secretary shall issue such regulations not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Dec. 15, 1989].''

PROHIBITION OF REDUCTION OF CONTRACT RENTS; BUDGET COMPLIANCE

Section 1004(b) of Pub. L. 100–628 provided that: ''During fiscal year 1989, the amendment made by subsection (a)(2) [amending this section] shall be effective only to such extent or in such amounts as are provided in appropriation Acts. For purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119) [2 U.S.C. 909], to the extent that this section has the effect of transferring an outlay of the United States from one fiscal year to an adjacent fiscal year, the transfer is a necessary (but secondary) result of a significant policy change.''

PROJECT-BASED LOWER-INCOME HOUSING ASSISTANCE; IMPLEMENTATION OF PROGRAM

Section 1005(a) of Pub. L. 100–628 provided that: ''To implement the amendment made by section 148 of the Housing and Community Development Act of 1987 [Pub. L. 100–242, see 1988 Amendment note above], the Secretary of Housing and Urban Development shall issue regulations that take effect not later than 30 days after the date of the enactment of this Act [Nov. 7, 1988]. Until the effective date of the regulations, the Secretary of Housing and Urban Development shall consider each application from a public housing agency to attach a contract for assistance payments to a structure, in accordance with the amendment made by such section 148 to section 8(d)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(2)), and shall promptly approve such application if it meets the requirements of such section 8(d)(2).''

PROJECT-BASED LOWER-INCOME HOUSING ASSISTANCE IN NEW CONSTRUCTION; REGULATIONS IMPLEMENTING PROGRAM

Section 1005(b)(2) of Pub. L. 100–628 provided that: ''To implement the amendments made by this subsection [amending this section], the Secretary of Housing and Urban Development shall issue regulations that take effect not later than 90 days after the date of the enactment of this Act [Nov. 7, 1988].''

USE OF FUNDS RECAPTURED FROM REFINANCING STATE AND LOCAL FINANCE PROJECTS

Section 1012 of Pub. L. 100–628, as amended by Pub. L. 102–273, §2(a), (c)(1), Apr. 21, 1992, 106 Stat. 113; Pub. L. 102–550, title I, §163, Oct. 28, 1992, 106 Stat. 3722, provided that:

''(a) DEFINITION OF QUALIFIED PROJECT.—For purposes of this section, the term 'qualified project' means any State financed project or local government or local housing agency financed project, that—

''(1) was—

''(A) provided a financial adjustment factor under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f]; or

''(B) constructed or substantially rehabilitated pursuant to assistance provided under a contract under section 8(b)(2) of the United States Housing Act of 1937 (as in effect on September 30, 1983) entered into during any of calendar years 1979 through 1984; and

''(2) is being refinanced.

''(b) AVAILABILITY OF FUNDS.—The Secretary shall make available to the State housing finance agency in the State in which a qualified project is located, or the local government or local housing agency initiating the refinancing of the qualified project, as applicable, an amount equal to 50 percent of the amounts recaptured from the project (as determined by the Secretary on a project-by-project basis). Notwithstanding any other provision of law, such amounts shall be used only for providing decent, safe, and sanitary housing affordable for very low-income families and persons.

''(c) APPLICABILITY AND BUDGET COMPLIANCE.—

''(1) RETROACTIVITY.—This section shall apply to refinancings of projects for which settlement occurred or occurs before, on, or after the date of the enactment of the Housing and Community Development Act of 1992 [Oct. 28, 1992], subject to the provisions of paragraph (2).

''(2) BUDGET COMPLIANCE.—This section shall apply only to the extent or in such amounts as are provided in appropriation Acts.''

[Section 2(b) of Pub. L. 102–273 provided that: ''The amendments made by subsection (a) [amending section 1012 of Pub. L. 100–628, set out above] shall apply to any refinancing of a local government or local housing agency financed project approved by the Secretary of Housing and Urban Development for which settlement occurred after January 1, 1992.'']

PUBLIC HOUSING COMPREHENSIVE TRANSITION DEMONSTRATION

Section 126 of Pub. L. 100–242, which directed Secretary of Housing and Urban Development to carry out program in 11 public housing agencies to demonstrate effectiveness of providing services to ensure transition of public housing residents to private housing, set forth requirements of program, and required interim report to Congress not later than 2 years after Feb. 5, 1988, and final report not later than 60 days after termination of program 7 years after such date, was repealed by Pub. L. 105–276, title V, §582(a)(8), Oct. 21, 1998, 112 Stat. 2644.

NONDISCRIMINATION AGAINST SECTION 8 CERTIFICATE HOLDERS AND VOUCHER HOLDERS

Section 183(c) of Pub. L. 100–242, which prohibited owner of subsidized project to refuse to lease dwelling unit to holder of certificate of eligibility or voucher under this section, where proximate cause of refusal was status of prospective tenant as holder of such certificate or voucher, was repealed by Pub. L. 105–276, title V, §582(a)(2), Oct. 21, 1998, 112 Stat. 2643.

WITHDRAWAL BY OWNERS, DEVELOPERS, AND SPONSORS FROM PROGRAMS UNDER THIS SECTION; SURVEY AND DETERMINATION OF NUMBER; NOTIFICATION OF RENT INCREASES; REPORT TO CONGRESS; REGULATIONS TO PREVENT CONFLICT OF INTEREST ON THE PART OF FEDERAL, STATE, AND LOCAL OFFICIALS; RECOVERY OF LEGAL EXPENSES; CONTENTS OF ANNUAL REPORT

Section 326(b)–(d) of Pub. L. 97–35, as amended by Pub. L. 102–550, title I, §129(a), Oct. 28, 1992, 106 Stat. 3711; Pub. L. 105–276, title V, §582(a)(4), Oct. 21, 1998, 112 Stat. 2643, provided that:

''(b)[(1) Repealed. Pub. L. 105–276, title V, §582(a)(4), Oct. 21, 1998, 112 Stat. 2643.]

''(2) Not later than one year after the date of the enactment of this Act [Aug. 13, 1981], the Secretary shall transmit to the Congress a report indicating alternative methods which may be utilized for recapturing the cost to the Federal Government of front-end investment in those units which are removed from the section 8 program.

''[(c) Repealed. Pub. L. 105–276, title V, §582(a)(4), Oct. 21, 1998, 112 Stat. 2643.]

''(d) RENTAL ASSISTANCE FRAUD RECOVERIES.—

''(1) AUTHORITY TO RETAIN RECOVERED AMOUNTS.—The Secretary of Housing and Urban Development shall permit public housing agencies administering the housing assistance payments program under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] to retain, out of amounts obtained by the agencies from tenants that are due as a result of fraud and abuse, an amount (determined in accordance with regulations issued by the Secretary) equal to the greater of—

''(A) 50 percent of the amount actually collected, or

''(B) the actual, reasonable, and necessary expenses related to the collection, including costs of investigation, legal fees, and collection agency fees.

''(2) USE.—Amounts retained by an agency shall be made available for use in support of the affected program or project, in accordance with regulations issued by the Secretary. Where the Secretary is the principal party initiating or sustaining an action to recover amounts from families or owners, the provisions of this section shall not apply.

''(3) RECOVERY.—Amounts may be recovered under this paragraph—

''(A) by an agency through a lawsuit (including settlement of the lawsuit) brought by the agency or through court-ordered restitution pursuant to a criminal proceeding resulting from an agency's investigation where the agency seeks prosecution of a family or where an agency seeks prosecution of an owner; or

''(B) through administrative repayment agreements with a family or owner entered into as a re-

sult of an administrative grievance procedure conducted by an impartial decisionmaker in accordance with section 6(k) of the United States Housing Act of 1937 [42 U.S.C. 1437d(k)].''

[Section 129(b) of Pub. L. 102–550, provided that: ''Subsection (a) [amending section 326(d) of Pub. L. 97–35, set out above] shall apply with respect to actions by public housing agencies initiated on or after the date of the enactment of this Act [Oct. 28, 1992].''

STUDY BY SECRETARY CONCERNING FEASIBILITY OF MINIMUM RENT PAYMENT REQUIREMENTS

Section 212 of Pub. L. 96–153 directed the Secretary of Housing and Urban Development to conduct a study of the feasibility and financial desirability of requiring minimum rent payments from tenants in low-income housing assisted under this chapter, and to submit a report to the Congress containing the findings and conclusions of such study not later than ten days after the Budget for fiscal year 1981 is transmitted pursuant to section 11 of former Title 31, Money and Finance, and directed the Secretary of Housing and Urban Development to conduct a study to provide detailed comparisons between the rents paid by tenants occupying low-income housing assisted under this chapter and the rents paid by tenants at the same income level who are not in assisted housing and to transmit a report on such study to the Congress not later than Mar. 1, 1980.

STUDY OF ALTERNATIVE MEANS OF ENCOURAGING THE DEVELOPMENT OF HOUSING

Section 208 of Pub. L. 95–557 directed that Secretary of Housing and Urban Development conduct a study for purpose of examining alternative means of encouraging development of housing to be assisted under this section for occupancy by large families which reside in areas with a low-vacancy rate in rental housing and report to Congress no later than one year after Oct. 31, 1978, for purpose of providing legislative recommendations with respect to this study.

TAXATION OF INTEREST PAID ON OBLIGATIONS SECURED BY INSURED MORTGAGE AND ISSUED BY PUBLIC AGENCY

Section 319(b) of Pub. L. 93–383, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''With respect to any obligation secured by a mortgage which is insured under section 221(d)(3) of the National Housing Act [section 1715*l*(d)(3) of Title 12, Banks and Banking] and issued by a public agency as mortgagor in connection with the financing of a project assisted under section 8 of the United States Housing Act of 1937 [this section], the interest paid on such obligation shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [chapter 1 of Title 26, Internal Revenue Code].''

RENTAL OR INCOME CONTRIBUTIONS; USE OF SPECIAL SCHEDULES OF REQUIRED PAYMENTS FOR PARTICIPANTS IN MUTUAL HELP PROJECTS CONTRIBUTING LABOR, ETC.

Section 203 of Pub. L. 93–383 provided that: ''The rental or income contribution provisions of the United States Housing Act of 1937 [sections 1437 to 1437j of this title], as amended by section 201 of this Act, shall not preclude the use of special schedules of required payments as approved by the Secretary for participants in mutual help housing projects who contribute labor, land, or materials to the development of such projects.''

§ 1437g. Public housing Capital and Operating Funds

(a) Merger into Capital Fund

Except as otherwise provided in the Quality Housing and Work Responsibility Act of 1998, any assistance made available for public housing under section 1437*l* of this title before October 1, 1999, shall be merged into the Capital Fund established under subsection (d) of this section.

(b) Merger into Operating Fund

Except as otherwise provided in the Quality Housing and Work Responsibility Act of 1998, any assistance made available for public housing under this section before October 1, 1999, shall be merged into the Operating Fund established under subsection (e) of this section.

(c) Allocation amount

(1) In general

For fiscal year 2000 and each fiscal year thereafter, the Secretary shall allocate amounts in the Capital Fund and Operating Funds[1] for assistance for public housing agencies eligible for such assistance. The Secretary shall determine the amount of the allocation for each eligible agency, which shall be, for any fiscal year beginning after the effective date of the formulas described in subsections (d)(2) and (e)(2) of this section—

(A) for assistance from the Capital Fund, the amount determined for the agency under the formula under subsection (d)(2) of this section; and

(B) for assistance from the Operating Fund, the amount determined for the agency under the formula under subsection (e)(2) of this section.

(2) Funding

There are authorized to be appropriated for assistance for public housing agencies under this section the following amounts:

(A) Capital Fund

For allocations of assistance from the Capital Fund, $3,000,000,000 for fiscal year 1999, and such sums as may be necessary for fiscal years 2000, 2001, 2002, and 2003.

(B) Operating Fund

For allocations of assistance from the Operating Fund, $2,900,000,000 for fiscal year 1999, and such sums as may be necessary for each of fiscal years 2000, 2001, 2002, and 2003.

(d) Capital Fund

(1) In general

The Secretary shall establish a Capital Fund for the purpose of making assistance available to public housing agencies to carry out capital and management activities, including—

(A) the development, financing, and modernization of public housing projects, including the redesign, reconstruction, and reconfiguration of public housing sites and buildings (including accessibility improvements) and the development of mixed-finance projects;

(B) vacancy reduction;

(C) addressing deferred maintenance needs and the replacement of obsolete utility systems and dwelling equipment;

(D) planned code compliance;

(E) management improvements, including the establishment and initial operation of computer centers in and around public hous-

[1] So in original. Probably should be ''Fund''.

ing through a Neighborhood Networks initiative, for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources;

(F) demolition and replacement;

(G) resident relocation;

(H) capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents and to improve resident participation;

(I) capital expenditures to improve the security and safety of residents;

(J) homeownership activities, including programs under section 1437z–4 of this title;

(K) improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other means as the Secretary determines are appropriate; and

(L) integrated utility management and capital planning to maximize energy conservation and efficiency measures.

(2) Formula

The Secretary shall develop a formula for determining the amount of assistance provided to public housing agencies from the Capital Fund for a fiscal year, which shall include a mechanism to reward performance. The formula may take into account such factors as—

(A) the number of public housing dwelling units owned, assisted, or operated by the public housing agency, the characteristics and locations of the projects, and the characteristics of the families served and to be served (including the incomes of the families);

(B) the need of the public housing agency to carry out rehabilitation and modernization activities, replacement housing, and reconstruction, construction, and demolition activities related to public housing dwelling units owned, assisted, or operated by the public housing agency, including backlog and projected future needs of the agency;

(C) the cost of constructing and rehabilitating property in the area;

(D) the need of the public housing agency to carry out activities that provide a safe and secure environment in public housing units owned, assisted, or operated by the public housing agency;

(E) any record by the public housing agency of exemplary performance in the operation of public housing, as indicated by the system of performance indicators established pursuant to section 1437d(j) of this title; and

(F) any other factors that the Secretary determines to be appropriate.

(3) Conditions on use for development and modernization

(A) Development

Except as otherwise provided in this chapter, any public housing developed using amounts provided under this subsection, or under section 1437*l* of this title as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, shall be operated under the terms and conditions applicable to public housing during the 40-year period that begins on the date on which the project (or stage of the project) becomes available for occupancy.

(B) Modernization

Except as otherwise provided in this chapter, any public housing or portion thereof that is modernized using amounts provided under this subsection or under section 1437*l* of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998) shall be maintained and operated under the terms and conditions applicable to public housing during the 20-year period that begins on the latest date on which modernization is completed.

(C) Applicability of latest expiration date

Public housing subject to this paragraph or to any other provision of law mandating the operation of the housing as public housing or under the terms and conditions applicable to public housing for a specified length of time, shall be maintained and operated as required until the latest such expiration date.

(e) Operating Fund

(1) In general

The Secretary shall establish an Operating Fund for the purpose of making assistance available to public housing agencies for the operation and management of public housing, including—

(A) procedures and systems to maintain and ensure the efficient management and operation of public housing units (including amounts sufficient to pay for the reasonable costs of review by an independent auditor of the documentation or other information maintained pursuant to section 1437d(j)(6) of this title by a public housing agency or resident management corporation to substantiate the performance of that agency or corporation);

(B) activities to ensure a program of routine preventative maintenance;

(C) anticrime and antidrug activities, including the costs of providing adequate security for public housing residents, including above-baseline police service agreements;

(D) activities related to the provision of services, including service coordinators for elderly persons or persons with disabilities;

(E) activities to provide for management and participation in the management and policymaking of public housing by public housing residents;

(F) the costs of insurance;

(G) the energy costs associated with public housing units, with an emphasis on energy conservation;

(H) the costs of administering a public housing work program under section 1437j of

this title, including the costs of any related insurance needs;

(I) the costs of repaying, together with rent contributions, debt incurred to finance the rehabilitation and development of public housing units, which shall be subject to such reasonable requirements as the Secretary may establish;

(J) the costs associated with the operation and management of mixed finance projects, to the extent appropriate; and

(K) the costs of operating computer centers in public housing through a Neighborhood Networks initiative described in subsection (d)(1)(E) of this section, and of activities related to that initiative.

(2) Formula

(A) In general

The Secretary shall establish a formula for determining the amount of assistance provided to public housing agencies from the Operating Fund for a fiscal year. The formula may take into account—

(i) standards for the costs of operating and reasonable projections of income, taking into account the characteristics and locations of the public housing projects and characteristics of the families served and to be served (including the incomes of the families), or the costs of providing comparable services as determined in accordance with criteria or a formula representing the operations of a prototype well-managed public housing project;

(ii) the number of public housing dwelling units owned, assisted, or operated by the public housing agency;

(iii) the number of public housing dwelling units owned, assisted, or operated by the public housing agency that are chronically vacant and the amount of assistance appropriate for those units;

(iv) to the extent quantifiable, the extent to which the public housing agency provides programs and activities designed to promote the economic self-sufficiency and management skills of public housing residents;

(v) the need of the public housing agency to carry out anti-crime and anti-drug activities, including providing adequate security for public housing residents;

(vi) the amount of public housing rental income foregone by the public housing agency as a result of escrow savings accounts under section 1437u(d)(2) of this title for families participating in a family self-sufficiency program of the agency under such section 1437u of this title; and

(vii) any other factors that the Secretary determines to be appropriate.

(B) Incentive to increase certain rental income

The formula shall provide an incentive to encourage public housing agencies to facilitate increases in earned income by families in occupancy. Any such incentive shall provide that the agency shall benefit from increases in such rental income and that such amounts accruing to the agency pursuant to such benefit may be used only for low-income housing or to benefit the residents of the public housing agency.

(C) Treatment of savings

(i) In general

The treatment of utility and waste management costs under the formula shall provide that a public housing agency shall receive the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to undertake energy conservation improvements in one or more of its public housing projects.

(ii) Third party contracts

Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident-paid utilities, and adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.

(iii) Term of contract

The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.

(3) Condition on use

No portion of any public housing project operated using amounts provided under this subsection, or under this section as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, may be disposed of before the expiration of the 10-year period beginning upon the conclusion of the fiscal year for which such amounts were provided, except as otherwise provided in this chapter.

(f) Negotiated rulemaking procedure

The formulas under subsections (d)(2) and (e)(2) of this section shall be developed according to procedures for issuance of regulations under the negotiated rulemaking procedure under subchapter III of chapter 5 of title 5.

(g) Limitations on use of funds

(1) Flexibility for Capital Fund amounts

Of any amounts appropriated for fiscal year 2000 or any fiscal year thereafter that are allocated for fiscal year 2000 or any fiscal year thereafter from the Capital Fund for any public housing agency, the agency may use not more than 20 percent for activities that are eligible under subsection (e) of this section for assistance with amounts from the Operating Fund, but only if the public housing agency plan for the agency provides for such use.

(2) Full flexibility for small PHAs

Of any amounts allocated for any fiscal year for any public housing agency that owns or op-

erates less than 250 public housing dwelling units, is not designated pursuant to section 1437d(j)(2) of this title as a troubled public housing agency, and (in the determination of the Secretary) is operating and maintaining its public housing in a safe, clean, and healthy condition, the agency may use any such amounts for any eligible activities under subsections (d)(1) and (e)(1) of this section, regardless of the fund from which the amounts were allocated and provided. This subsection shall take effect on October 21, 1998.

(3) Limitation on new construction

(A) In general

Except as provided in subparagraphs (B) and (C), a public housing agency may not use any of the amounts allocated for the agency from the Capital Fund or Operating Fund for the purpose of constructing any public housing unit, if such construction would result in a net increase from the number of public housing units owned, assisted, or operated by the public housing agency on October 1, 1999, including any public housing units demolished as part of any revitalization effort.

(B) Exception regarding use of assistance

A public housing agency may use amounts allocated for the agency from the Capital Fund or Operating Fund for the construction and operation of housing units that are available and affordable to low-income families in excess of the limitations on new construction set forth in subparagraph (A), but the formulas established under subsections (d)(2) and (e)(2) of this section shall not provide additional funding for the specific purpose of allowing construction and operation of housing in excess of those limitations (except to the extent provided in subparagraph (C)).

(C) Exception regarding formulas

Subject to reasonable limitations set by the Secretary, the formulas established under subsections (d)(2) and (e)(2) of this section may provide additional funding for the operation and modernization costs (but not the initial development costs) of housing in excess of amounts otherwise permitted under this paragraph, and such amounts may be so used, if—

(i) such units are part of a mixed-finance project or otherwise leverage significant additional private or public investment; and

(ii) the estimated cost of the useful life of the project is less than the estimated cost of providing tenant-based assistance under section 1437f(*o*) of this title for the same period of time.

(h) Technical assistance

To the extent amounts are provided in advance in appropriations Acts, the Secretary may make grants or enter into contracts or cooperative agreements in accordance with this subsection for purposes of providing, either directly or indirectly—

(1) technical assistance to public housing agencies, resident councils, resident organizations, and resident management corporations, including assistance relating to monitoring and inspections;

(2) training for public housing agency employees and residents;

(3) data collection and analysis;

(4) training, technical assistance, and education to public housing agencies that are—

(A) at risk of being designated as troubled under section 1437d(j) of this title, to assist such agencies from being so designated; and

(B) designated as troubled under section 1437d(j) of this title, to assist such agencies in achieving the removal of that designation;

(5) contract expertise;

(6) training and technical assistance to assist in the oversight and management of public housing or tenant-based assistance;

(7) clearinghouse services in furtherance of the goals and activities of this subsection; and

(8) assistance in connection with the establishment and operation of computer centers in public housing through a Neighborhood Networks initiative described in subsection (d)(1)(E) of this section.

As used in this subsection, the terms ''training'' and ''technical assistance'' shall include training or technical assistance and the cost of necessary travel for participants in such training or technical assistance, by or to officials and employees of the Department and of public housing agencies, and to residents and to other eligible grantees.

(i) Eligibility of units acquired from proceeds of sales under demolition or disposition plan

If a public housing agency uses proceeds from the sale of units under a homeownership program in accordance with section 1437z–4 of this title to acquire additional units to be sold to low-income families, the additional units shall be counted as public housing for purposes of determining the amount of the allocation to the agency under this section until sale by the agency, but in no case longer than 5 years.

(j) Penalty for slow expenditure of capital funds

(1) Obligation of amounts

Except as provided in paragraph (4) and subject to paragraph (2), a public housing agency shall obligate any assistance received under this section not later than 24 months after, as applicable—

(A) the date on which the funds become available to the agency for obligation in the case of modernization; or

(B) the date on which the agency accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units.

(2) Extension of time period for obligation

The Secretary—

(A) may, extend the time period under paragraph (1) for a public housing agency, for such period as the Secretary determines to be necessary, if the Secretary determines that the failure of the agency to obligate assistance in a timely manner is attributable to—

(i) litigation;

(ii) obtaining approvals of the Federal Government or a State or local government;

(iii) complying with environmental assessment and abatement requirements;

(iv) relocating residents;

(v) an event beyond the control of the public housing agency; or

(vi) any other reason established by the Secretary by notice published in the Federal Register;

(B) shall disregard the requirements of paragraph (1) with respect to any unobligated amounts made available to a public housing agency, to the extent that the total of such amounts does not exceed 10 percent of the original amount made available to the public housing agency; and

(C) may, with the prior approval of the Secretary, extend the time period under paragraph (1), for an additional period not to exceed 12 months, based on—

(i) the size of the public housing agency;

(ii) the complexity of capital program of the public housing agency;

(iii) any limitation on the ability of the public housing agency to obligate the amounts allocated for the agency from the Capital Fund in a timely manner as a result of State or local law; or

(iv) such other factors as the Secretary determines to be relevant.

(3) Effect of failure to comply

(A) Prohibition of new assistance

A public housing agency shall not be awarded assistance under this section for any month during any fiscal year in which the public housing agency has funds unobligated in violation of paragraph (1) or (2).

(B) Withholding of assistance

During any fiscal year described in subparagraph (A), the Secretary shall withhold all assistance that would otherwise be provided to the public housing agency. If the public housing agency cures its failure to comply during the year, it shall be provided with the share attributable to the months remaining in the year.

(C) Redistribution

The total amount of any funds not provided public housing agencies by operation of this paragraph shall be allocated for agencies determined under section 1437d(j) of this title to be high-performing.

(4) Exception to obligation requirements

(A) In general

Subject to subparagraph (B), if the Secretary has consented, before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, to an obligation period for any agency longer than provided under paragraph (1), a public housing agency that obligates its funds before the expiration of that period shall not be considered to be in violation of paragraph (1).

(B) Prior fiscal years

Notwithstanding subparagraph (A), any funds appropriated to a public housing agency for fiscal year 1997 or prior fiscal years shall be fully obligated by the public housing agency not later than September 30, 1999.

(5) Expenditure of amounts

(A) In general

A public housing agency shall spend any assistance received under this section not later than 4 years (plus the period of any extension approved by the Secretary under paragraph (2)) after the date on which funds become available to the agency for obligation.

(B) Enforcement

The Secretary shall enforce the requirement of subparagraph (A) through default remedies up to and including withdrawal of the funding.

(6) Right of recapture

Any obligation entered into by a public housing agency shall be subject to the right of the Secretary to recapture the obligated amounts for violation by the public housing agency of the requirements of this subsection.

(k) Emergency reserve and use of amounts

(1) Set-asides

In each fiscal year after fiscal year 1999, the Secretary shall set aside, for use in accordance with this subsection, not more than 2 percent of the total amount made available to carry out this section for such fiscal year. In addition to amounts set aside under the preceding sentence, in each fiscal year the Secretary may set from the total amount made available to carry out this section for such fiscal year not more than $20,000,000 for the Operation Safe Home program administered by the Office of the Inspector General of the Department of Housing and Urban Development, for law enforcement efforts to combat violent crime on or near the premises of public and federally assisted housing.

(2) Use of funds

Amounts set aside under paragraph (1) shall be available to the Secretary for use for assistance, as provided in paragraph (3), in connection with—

(A) emergencies and other disasters; and

(C)[2] housing needs resulting from any settlement of litigation; and

(3) Eligible uses

In carrying out this subsection, the Secretary may use amounts set aside under this subsection to provide—

(A) assistance for any eligible use under the Operating Fund or the Capital Fund established by this section; or

(B) tenant-based assistance in accordance with section 1437f of this title.

(4) Limitation

With respect to any fiscal year, the Secretary may carry over not more than a total

[2] So in original. No subpar. (B) has been enacted.

of $25,000,000 in unobligated amounts set aside under this subsection for use in connection with the activities described in paragraph (2) during the succeeding fiscal year.

(5) Publication

The Secretary shall publish the use of any amounts allocated under this subsection relating to emergencies (other than disasters and housing needs resulting from any settlement of litigation) in the Federal Register.

(*l*) Treatment of nonrental income

A public housing agency that receives income from nonrental sources (as determined by the Secretary) may retain and use such amounts without any decrease in the amounts received under this section from the Capital or Operating Fund. Any such nonrental amounts retained shall be used only for low-income housing or to benefit the residents assisted by the public housing agency.

(m) Provision of only capital or operating assistance

(1) Authority

In appropriate circumstances, as determined by the Secretary, a public housing agency may commit capital assistance only, or operating assistance only, for public housing units, which assistance shall be subject to all of the requirements applicable to public housing except as otherwise provided in this subsection.

(2) Exemptions

In the case of any public housing unit assisted pursuant to the authority under paragraph (1), the Secretary may, by regulation, reduce the period under subsection (d)(3) or (e)(3) of this section, as applicable, during which such units must be operated under requirements applicable to public housing. In cases in which there is commitment of operating assistance but no commitment of capital assistance, the Secretary may make section 8 [42 U.S.C. 1437f] requirements applicable, as appropriate, by regulation.

(n) Treatment of public housing

(1) Repealed. Pub. L. 108–7, div. K, title II, § 212(a), Feb. 20, 2003, 117 Stat. 503

(2) Reduction of asthma incidence

Notwithstanding any other provision of this section, the New York City Housing Authority may, in its sole discretion, from amounts provided from the Operating and Capital Funds, or from amounts provided for public housing before amounts are made available from such Funds, use not more than exceeding[3] $500,000 per year for the purpose of initiating, expanding or continuing a program for the reduction of the incidence of asthma among residents. The Secretary shall consult with the Administrator of the Environmental Protection Agency and the Secretary of Health and Human Services to identify and consider sources of funding for the reduction of the incidence of asthma among recipients of assistance under this subchapter.

(3) Services for elderly residents

Notwithstanding any other provision of this section, the New York City Housing Authority may, in its sole discretion, from amounts provided from the Operating and Capital Funds, or from amounts provided for public housing before the amounts are made available from such Funds, use not more than $600,000 per year for the purpose of developing a comprehensive plan to address the need for services for elderly residents. Such plan may be developed by a partnership created by such Housing Authority and may include the creation of a model project for assisted living at one or more developments. The model project may provide for contracting with private parties for the delivery of services.

(4) Effective date

This subsection shall apply to fiscal year 1999 and each fiscal year thereafter.

(Sept. 1, 1937, ch. 896, title I, § 9, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 666; amended Pub. L. 94–375, § 2(c), Aug. 3, 1976, 90 Stat. 1068; Pub. L. 95–24, title I, § 101(b), Apr. 30, 1977, 91 Stat. 55; Pub. L. 95–128, title II, § 201(f), Oct. 12, 1977, 91 Stat. 1129; Pub. L. 95–557, title II, § 206(g), Oct. 31, 1978, 92 Stat. 2093; Pub. L. 96–153, title II, §§ 201(c), 207, 211(a), Dec. 21, 1979, 93 Stat. 1106, 1109, 1110; Pub. L. 96–399, title II, § 201(b), (d), Oct. 8, 1980, 94 Stat. 1625; Pub. L. 97–35, title III, §§ 321(d), 322(c), Aug. 13, 1981, 95 Stat. 399, 402; Pub. L. 98–181, title II, § 212, Nov. 30, 1983, 97 Stat. 1184; Pub. L. 99–272, title III, § 3003, Apr. 7, 1986, 100 Stat. 102; Pub. L. 100–242, title I, §§ 112(b)(4), 118, Feb. 5, 1988, 101 Stat. 1824, 1828; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title V, §§ 507, 572(2), title VIII, § 802(p), Nov. 28, 1990, 104 Stat. 4186, 4236, 4317; Pub. L. 102–550, title I, § 114, title VI, § 673, Oct. 28, 1992, 106 Stat. 3691, 3827; Pub. L. 103–233, title III, § 304, Apr. 11, 1994, 108 Stat. 370; Pub. L. 104–134, title I, § 101(e) [title II, § 218], Apr. 26, 1996, 110 Stat. 1321–257, 1321–290; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–330, title V, § 501(b)(5), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title II, § 210, title V, § 519(a), Oct. 21, 1998, 112 Stat. 2485, 2551; Pub. L. 106–377, § 1(a)(1) [title II, § 214(a)], Oct. 27, 2000, 114 Stat. 1441, 1441A–27; Pub. L. 108–7, div. K, title II, § 212(a), Feb. 20, 2003, 117 Stat. 503; Pub. L. 109–58, title I, § 151, Aug. 8, 2005, 119 Stat. 648.)

REFERENCES IN TEXT

The Quality Housing and Work Responsibility Act of 1998, referred to in subsecs. (a) and (b), is title V of Pub. L. 105–276, Oct. 21, 1998, 112 Stat. 2518. Section 503(a) of the Act is set out as an Effective Date of 1998 Amendment note under section 1437 of this title. Section 519(e) of the Act is set out as a note below. For complete classification of this Act to the Code, see Short Title of 1998 Amendment note set out under section 1437 of this title and Tables.

Section 1437*l* of this title, referred to in subsecs. (a) and (d)(3)(A), (B), was repealed by Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564.

PRIOR PROVISIONS

A prior section 9 of act Sept. 1, 1937, ch. 896, 50 Stat. 891, as amended, authorized loans for low-rent housing

[3] So in original.

and slum clearance projects and was classified to section 1409 of this title, prior to the general revision of this chapter by Pub. L. 93–383. Similar provisions are contained in section 1437b of this title.

AMENDMENTS

2005—Subsec. (d)(1)(K), (L). Pub. L. 109–58, §151(1), added subpars. (K) and (L).

Subsec. (e)(2)(C). Pub. L. 109–58, §151(2), designated existing provisions as cl. (i), inserted heading, and added cls. (ii) and (iii).

2003—Subsec. (n)(1). Pub. L. 108–7 struck out par. (1) which related to treatment of certain covered locally developed public housing units as eligible public housing units.

2000—Subsec. (d)(1)(E). Pub. L. 106–377, §1(a)(1) [title II, §214(a)(1)], inserted before semicolon '', including the establishment and initial operation of computer centers in and around public housing through a Neighborhood Networks initiative, for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources''.

Subsec. (e)(1)(K). Pub. L. 106–377, §1(a)(1) [title II, §214(a)(2)], added subpar. (K).

Subsec. (h)(8). Pub. L. 106–377, §1(a)(1) [title II, §214(a)(3)], added par. (8).

1998—Pub. L. 105–276, §519(a), amended section generally, substituting present provisions for provisions which had: in subsec. (a), authorized annual contributions for operation of low-income housing, and provided for determination of the amounts and use of those contributions, contract authorization, standards for payments, necessity of contribution contracts, performance funding system, and audits; in subsec. (b), set forth limitation on amount of aggregate rentals paid by families residing in dwelling units receiving annual contributions; in subsec. (c), authorized appropriations for fiscal years 1993 and 1994; in subsec. (d), required distribution of remaining appropriated funds to projects incurring excessive costs; and in subsec. (e), set forth time of payment of assistance to public housing agency.

Subsec. (a)(3)(A). Pub. L. 105–276, §210, inserted after third sentence ''Notwithstanding the preceding sentences, the Secretary may revise the performance funding system in a manner that takes into account equity among public housing agencies and that includes appropriate incentives for sound management.'' and, in last sentence, inserted '', or any substantial change under the preceding sentence,'' after ''vacant public housing units''.

1996—Subsec. (a)(1)(A). Pub. L. 104–330, in second sentence, inserted ''and'' after comma at end of cl. (i), struck out '', and'' after ''reserve funds'' in cl. (ii), and struck out cl. (iii) which read as follows: ''with respect to housing projects developed under the Indian and Alaskan Native housing program assisted under this chapter, to provide funds (in addition to any other operating costs contributions approved by the Secretary under this section) as determined by the Secretary to be required to cover the administrative costs to an Indian housing authority during the development period of a project approved pursuant to section 1437c of this title and until such time as the project is occupied''.

Subsec. (a)(3)(B)(i). Pub. L. 104–134 struck out ''for a period not to exceed 6 years'' after ''with the public housing agency''.

1994—Subsec. (a)(4). Pub. L. 103–233 added par. (4).

1992—Subsec. (a)(1)(B). Pub. L. 102–550, §673, designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, substituted ''this clause'' for ''this subparagraph'', inserted reference to section 8011 of this title and a period after ''section 8013 of this title'', and added cl. (ii).

Subsec. (a)(3)(A). Pub. L. 102–550, §114(b), inserted at end ''Notwithstanding sections 583(a) and 585(a) of title 5 (as added by section 3(a) of the Negotiated Rulemaking Act of 1990), any proposed regulation providing for amendment, alteration, adjustment, or other change to the performance funding system relating to vacant public housing units shall be issued pursuant to a negotiated rulemaking procedure under subchapter IV of chapter 5 of such title (as added by section 3(a) of the Negotiated Rulemaking Act of 1990), and the Secretary shall establish a negotiated rulemaking committee for development of any such proposed regulations.''

Subsec. (a)(3)(B)(i). Pub. L. 102–550, §114(c), inserted before semicolon at end '', and in subsequent years, if the energy savings are cost-effective, the Secretary may continue the sharing arrangement with the public housing agency for a period not to exceed 6 years''.

Subsec. (c). Pub. L. 102–550, §114(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''There are authorized to be appropriated for purposes of providing annual contributions under this section $2,000,000,000 for fiscal year 1991 and $2,086,000,000 in fiscal year 1992.''

1990—Subsec. (a)(1). Pub. L. 101–625, §572(2), substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

Pub. L. 101–625, §507(b)(1), designated existing provisions as subpar. (A), redesignated former cls. (A) to (C) as cls. (i) to (iii), respectively, and added subpar. (B).

Subsec. (a)(2). Pub. L. 101–625, §572(2), substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

Subsec. (a)(3)(A). Pub. L. 101–625, §507(b)(2), inserted after first comma ''(except for payments under paragraph (1)(B))''.

Subsec. (a)(3)(B)(v). Pub. L. 101–625, §802(p), added cl. (v).

Subsec. (c). Pub. L. 101–625, §507(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''There are authorized to be appropriated for purposes of providing annual contributions under this section $1,500,000,000 for fiscal year 1988 and $1,530,000,000 for fiscal year 1989.''

Subsec. (d). Pub. L. 101–625, §572(2), substituted ''low-income housing'' for ''lower income housing''.

1988—Subsec. (a)(1). Pub. L. 100–242, §118(a)(1), struck out last sentence directing Secretary to establish standards for costs of operation and reasonable projections of income, for purposes of making payments under this section.

Pub. L. 100–242, §118(d), inserted at end ''If the Secretary determines that a public housing agency has failed to take the actions required to submit an acceptable audit on a timely basis in accordance with chapter 75 of title 31, the Secretary may arrange for, and pay the costs of, the audit. In such circumstances, the Secretary may withhold, from assistance otherwise payable to the agency under this section, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the agency's books and records in auditable condition.''

Subsec. (a)(2). Pub. L. 100–242, §112(b)(4), substituted ''one developed pursuant to a contributions contract authorized by section 1437c'' for ''being assisted by an annual contributions contract authorized by section 1437c(c)'' and ''any such'' for ''any such annual''.

Subsec. (a)(3). Pub. L. 100–242, §118(a)(2), added par. (3).

Subsec. (c). Pub. L. 100–242, §118(b), amended subsec. (c) generally, substituting provisions authorizing appropriations under this section for fiscal years 1988 and 1989 for provisions authorizing appropriations for the period beginning on or after July 1, 1975, through the period beginning on or after Oct. 1, 1985.

Subsec. (e). Pub. L. 100–242, §118(c), added subsec. (e).

1986—Subsec. (c). Pub. L. 99–272 struck out ''and by'' after ''1983,'' and inserted '', and not to exceed $1,279,000,000 on or after October 1, 1985'' after ''1984''.

1983—Subsec. (c). Pub. L. 98–181 substituted ''October 1, 1980, and'' for ''October 1, 1980,'' and authorized appropriations of not to exceed $1,500,000,000 on or after

Oct. 1, 1983, and of such sums as may be necessary on or after Oct. 1, 1984.

1981—Subsec. (a). Pub. L. 97–35, § 322(c), substituted reference to lower income for reference to low-income wherever appearing.

Subsec. (c). Pub. L. 97–35, § 321(d), inserted provisions respecting authorization on or after Oct. 1, 1981.

Subsec. (d). Pub. L. 97–35, § 322(c), substituted reference to lower income for reference to low-income.

1980—Subsec. (a)(1)(C). Pub. L. 96–399, § 201(d), added cl. (C).

Subsec. (c). Pub. L. 96–399, § 201(b), authorized appropriation of not to exceed $826,000,000 on or after Oct. 1, 1980.

1979—Subsec. (a). Pub. L. 96–153, § 211(a), designated existing provisions as par. (1) and cls. (1) and (2) thereof as (A) and (B), inserted provisions that such contract shall provide that no disposition of low-income housing project, with respect to which the contract is entered into, shall occur during and for ten years after the period when contributions were made pursuant to such contract unless approved by the Secretary, and added par. (2).

Subsec. (c). Pub. L. 96–153, § 201(c), authorized appropriation for annual contributions of $741,500,000 on or after Oct. 1, 1979.

Subsec. (d). Pub. L. 96–153, § 207, added subsec. (d).

1978—Subsec. (c). Pub. L. 95–557 inserted ''and not to exceed $729,000,000 on or after October 1, 1978''.

1977—Subsec. (c). Pub. L. 95–128 authorized appropriation for annual contributions of $685,000,000 on or after Oct. 1, 1977.

Pub. L. 95–24 substituted ''and not to exceed $595,600,000 on or after October 1, 1976'' for ''and not to exceed $576,000,000 on or after October 1, 1976''.

1976—Subsec. (c). Pub. L. 94–375 substituted provision authorizing appropriations for annual contributions not to exceed $535,000,000 on or after July 1, 1975, not to exceed $80,000,000 on or after July 1, 1976, and not to exceed $576,000,000 on or after October 1, 1976 for provision which authorized annual contributions for contracts entered into on or after July 1, 1974 of not more than $500,000,000 per annum, which amount was to be increased by $60,000,000 on July 1, 1975.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–7, div. K, title II, § 212(c), Feb. 20, 2003, 117 Stat. 504, provided that: ''The amendment made by subsection (a) [amending this section] shall be deemed to have taken effect on October 1, 1998.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

Pub. L. 105–276, title V, § 519(e)–(g), Oct. 21, 1998, 112 Stat. 2561, 2562, provided that:

''(e) TRANSITIONAL PROVISION OF ASSISTANCE.—

''(1) IN GENERAL.—Subject to paragraph (2), before the implementation of formulas pursuant to sections 9(d)(2) and 9(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437g(d)(2), (e)(2)] (as amended by subsection (a) of this section), the Secretary shall provide that each public housing agency shall receive funding under sections 9 and 14 of the United States Housing Act of 1937 [42 U.S.C. 1437g, 1437*l*], as those sections existed immediately before the enactment of this Act [Oct. 21, 1998] (except that such sections shall be subject to any amendments to such sections that may be contained in title II of this Act [see Tables for classification]).

''(2) QUALIFICATIONS.—Before the implementation of formulas pursuant to sections 9(d)(2) and 9(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437g(d)(2), (e)(2)] (as amended by subsection (a) of this section)—

''(A) if a public housing agency establishes a rental amount that is based on a ceiling rent established pursuant to subsection (d)(1) of this section [42 U.S.C. 1437a note], the Secretary shall take into account any reduction of the per unit dwelling rental income of the public housing agency resulting from the use of that rental amount in calculating the contributions for the public housing agency for the operation of the public housing under section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g];

''(B) if a public housing agency establishes a rental amount that is based on an adjustment to income under section 3(b)(5)(G) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(5)(G)] (as in effect immediately before the enactment of this Act [Oct. 21, 1998]), the Secretary shall not take into account any reduction of or any increase in the per unit dwelling rental income of the public housing agency resulting from the use of that rental amount in calculating the contributions for the public housing agency for the operation of the public housing under section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g]; and

''(C) if a public housing agency establishes a rental amount other than as provided under subparagraph (A) or (B) that is less than the greatest of the amounts determined under subparagraphs (A), (B), and (C) of section 3(a)(1) of the United States Housing Act of 1937 [42 U.S.C. 1437a(a)(1)(A), (B), (C)], the Secretary shall not take into account any reduction of the per unit dwelling rental income of the public housing agency resulting from the use of that rental amount in calculating the contributions for the public housing agency for the operation of the public housing under section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g].

''(f) EFFECTIVE DATE OF OPERATING FORMULA.—Notwithstanding the effective date under section 503(a) [42 U.S.C. 1437 note], the Secretary may extend the effective date of the formula under section 9(e)(2) of the United States Housing Act of 1937 [42 U.S.C. 1437g(e)(2)] (as amended by subsection (a) of this section) for up to 6 months if such additional time is necessary to implement such formula.

''(g) EFFECTIVE DATE.—Subsections (d) [42 U.S.C. 1437a note], (e), and (f) shall take effect upon the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by subtitles B through F of title VI [§§ 621–685] of Pub. L. 102–550 applicable upon expiration of 6-month period beginning Oct. 28, 1992, except as otherwise provided, see section 13642 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 802(p) of Pub. L. 101–625 deemed enacted Nov. 5, 1990, see title II of Pub. L. 101–507, set out as a note under section 1701q of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–557 effective Oct. 1, 1978, see section 206(h) of Pub. L. 95–557, set out as a note under section 1437c of this title.

EFFECTIVE DATE

Section effective on such date or dates as the Secretary of Housing and Urban Development shall pre-

scribe, but not later than eighteen months after Aug. 22, 1974, except that all of the provisions of subsec. (c) shall become effective on the same date, see section 201(b) of Pub. L. 93–383, set out as a note under section 1437 of this title.

REGULATIONS

Pub. L. 108–199, div. G, title II, § 222, Jan. 23, 2004, 118 Stat. 398, provided that: ''The Secretary of Housing and Urban Development shall conduct negotiated rulemaking with representatives from interested parties for purposes of any changes to the formula governing the Public Housing Operating Fund. A final rule shall be issued no later than July 1, 2004.''

Pub. L. 108–7, div. K, title II, Feb. 20, 2003, 117 Stat. 487, provided in part: ''That the Secretary shall issue final regulations to carry out section 9(j) of the United States Housing Act of 1937 (42 U.S.C. 1437g(j)), not later than August 1, 2003''.

PAYMENTS FOR COSTS OF OPERATION AND MANAGEMENT OF PUBLIC HOUSING PROHIBITED

Pub. L. 108–447, div. I, title II, Dec. 8, 2004, 118 Stat. 3298, provided in part: ''That for fiscal year 2006 and all fiscal years thereafter, the Secretary shall provide assistance under this heading [PUBLIC HOUSING OPERATING FUND] to public housing agencies on a calendar year basis: *Provided further*, That, in fiscal year 2005 and all fiscal years hereafter, no amounts under this heading in any appropriations Act may be used for payments to public housing agencies for the costs of operation and management of public housing for any year prior to the current year of such Act''.

Similar provisions were contained in the following appropriation acts:

Pub. L. 109–115, div. A, title III, Nov. 30, 2005, 119 Stat. 2444.

Pub. L. 108–199, div. G, title II, Jan. 23, 2004, 118 Stat. 375.

Pub. L. 108–7, div. K, title II, Feb. 20, 2003, 117 Stat. 488.

FUNDING OF COVERED LOCALLY DEVELOPED PUBLIC HOUSING UNITS PROHIBITED

Pub. L. 108–7, div. K, title II, § 207, Feb. 20, 2003, 117 Stat. 502, provided that: ''Notwithstanding any other provision of law, no funds in this Act or in any other Act in any fiscal year, including all future and prior fiscal years, may be used hereafter by the Secretary of Housing and Urban Development to provide any assistance or other funds for housing units defined in section 9(n) of the United States Housing Act of 1937 [42 U.S.C. 1437g(n)] (as in effect immediately before the enactment of this Act [Feb. 20, 2003]) as 'covered locally developed public housing units'. The States of New York and Massachusetts shall reimburse any funds already made available under any appropriations Act for these units to the Secretary of Housing and Urban Development for reallocation to public housing agencies: *Provided*, That, if either State fails to make such reimbursement within 12 months, the Secretary shall recapture such funds through reductions from the amounts allocated to each State under section 106 of the Housing and Community Development Act of 1974 [42 U.S.C. 5306].''

APPLICABILITY OF PENALTIES FOR SLOW EXPENDITURE OF CAPITAL FUNDS

Pub. L. 107–73, title II, Nov. 26, 2001, 115 Stat. 660, provided in part: ''That, hereafter, notwithstanding any other provision of law or any failure of the Secretary of Housing and Urban Development to issue regulations to carry out section 9(j) of the United States Housing Act of 1937 (42 U.S.C. 1437g(j)), such section is deemed to have taken effect on October 1, 1998, and, except as otherwise provided in this heading [''PUBLIC HOUSING CAPITAL FUND (INCLUDING TRANSFER OF FUNDS)''], shall apply to all assistance made available under this same heading on or after such date''.

COOLING DEGREE DAY ADJUSTMENT UNDER PERFORMANCE FUNDING SYSTEM

Section 508 of Pub. L. 101–625 provided that: ''In determining the Performance Funding System utility subsidy for public housing agencies pursuant to section 9 of the United States Housing Act of 1937 [42 U.S.C. 1437g], the Secretary of Housing and Urban Development shall include a cooling degree day adjustment factor. The method by which a cooling degree day adjustment factor is included shall be identical to the method by which the heating degree day adjustment factor is included.''

ENERGY EFFICIENCY DEMONSTRATION

Section 523 of Pub. L. 101–625, which directed Secretary of Housing and Urban Development to carry out demonstration program to encourage use of private energy service companies and demonstrate opportunities for energy cost reduction through energy services contracts, and to report findings and recommendations to Congress as soon as practicable after expiration of 1-year period beginning on Nov. 28, 1990, was repealed by Pub. L. 105–276, title V, § 582(a)(11), Oct. 21, 1998, 112 Stat. 2644.

§ 1437h. Implementation of provisions by Secretary

(a) Preparation and submission of annual budget program; maintenance of accounts; audit by Government Accountability Office

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter, the Secretary, notwithstanding the provisions of any other law, shall—

(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31; and

(2) maintain an integral set of accounts which may be audited by the Government Accountability Office as provided by chapter 91 of title 31.

(b) Availability of receipts and assets

All receipts and assets of the Secretary under this chapter shall be available for the purposes of this chapter until expended.

(c) Federal Reserve banks to act as depositories, custodians and fiscal agents; reimbursement for services

The Federal Reserve banks are authorized and directed to act as depositories, custodians, and fiscal agents for the Secretary in the general exercise of his powers under this chapter, and the Secretary may reimburse any such bank for its services in such manner as may be agreed upon.

(Sept. 1, 1937, ch. 896, title I, § 10, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 666; amended Pub. L. 98–479, title II, § 203(b)(2), Oct. 17, 1984, 98 Stat. 2229; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 104–316, title I, § 122(k), Oct. 19, 1996, 110 Stat. 3837; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 10 of act Sept. 1, 1937, ch. 896, 50 Stat. 891, as amended, authorized annual contributions in assistance of low rentals for housing projects and was classified to section 1410 of this title, prior to the general revision of this chapter by Pub. L. 93–383. Similar provisions are contained in section 1437c of this title.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1996—Subsec. (a)(2). Pub. L. 104–316 substituted ''maintain an integral set of accounts which may be audited by the General Accounting Office as provided by chapter 91 of title 31.'' for ''maintain an integral set of accounts which shall be audited annually by the General Accounting Office in accordance with the principles and procedures applicable to commercial transactions as provided by chapter 91 of title 31, and no other audit shall be required.''

1984—Subsec. (a)(1), (2). Pub. L. 98–479 substituted ''chapter 91 of title 31'' for ''the Government Corporations Control Act, as amended''.

§ 1437i. Obligations of public housing agencies; contestability; full faith and credit of United States pledged as security; tax exemption

(a) Obligations issued by a public housing agency in connection with low-income housing projects which (1) are secured (A) by a pledge of a loan under any agreement between such public housing agency and the Secretary, or (B) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary, or (C) by a pledge of both annual contributions under an annual contributions contract and a loan under an agreement between such public housing agency and the Secretary, and (2) bear, or are accompanied by, a certificate of the Secretary that such obligations are so secured, shall be incontestable in the hands of a bearer and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Secretary as security for such obligations.

(b) Except as provided in section 1437c(g) of this title, obligations, including interest thereon, issued by public housing agencies in connection with low-income housing projects shall be exempt from all taxation now or hereafter imposed by the United States whether paid by such agencies or by the Secretary. The income derived by such agencies from such projects shall be exempt from all taxation now or hereafter imposed by the United States.

(Sept. 1, 1937, ch. 896, title I, § 11, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 667; amended Pub. L. 97–35, title III, § 322(c), Aug. 13, 1981, 95 Stat. 402; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title V, § 572(2), Nov. 28, 1990, 104 Stat. 4236.)

PRIOR PROVISIONS

A prior section 11 of act Sept. 1, 1937, ch. 896, 50 Stat. 893, as amended, authorized capital grants to public housing agencies in assistance of low rentals and was classified to section 1411 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

1990—Pub. L. 101–625 substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

1981—Pub. L. 97–35 substituted reference to lower income for reference to low-income wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 1437j. Labor standards and community service requirement

(a) Payment of wages prevailing in locality

Any contract for loans, contributions, sale, or lease pursuant to this chapter shall contain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the low-income housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to sections 3141–3144, 3146, and 3147 of title 40, shall be paid to all laborers and mechanics employed in the development of the project involved (including a project with nine or more units assisted under section 1437f of this title, where the public housing agency or the Secretary and the builder or sponsor enter into agreement for such use before construction or rehabilitation is commenced), and the Secretary shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.

(b) Exception for volunteers

Subsection (a) of this section and the provisions relating to wages (pursuant to subsection (a) of this section) in any contract for loans, annual contributions, sale, or lease pursuant to this chapter, shall not apply to any individual that—

(1) performs services for which the individual volunteered;

(2)(A) does not receive compensation for such services; or

(B) is paid expenses, reasonable benefits, or a nominal fee for such services; and

(3) is not otherwise employed at any time in the construction work.

(c) Community service requirement

(1) In general

Except as provided in paragraph (2) and notwithstanding any other provision of law, each adult resident of a public housing project shall—

(A) contribute 8 hours per month of community service (not including political activities) within the community in which that adult resides; or

(B) participate in an economic self-sufficiency program (as that term is defined in subsection (g) of this section) for 8 hours per month.

(2) Exemptions

The Secretary shall provide an exemption from the applicability of paragraph (1) for any individual who—

(A) is 62 years of age or older;

(B) is a blind or disabled individual, as defined under section 216(i)(1) or 1614 of the Social Security Act (42 U.S.C. 416(i)(1); 1382c), and who is unable to comply with this section, or is a primary caretaker of such individual;

(C) is engaged in a work activity (as such term is defined in section 407(d) of the Social Security Act (42 U.S.C. 607(d)), as in effect on and after July 1, 1997));[1]

(D) meets the requirements for being exempted from having to engage in a work activity under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) or under any other welfare program of the State in which the public housing agency is located, including a State-administered welfare-to-work program; or

(E) is in a family receiving assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) or under any other welfare program of the State in which the public housing agency is located, including a State-administered welfare-to-work program, and has not been found by the State or other administering entity to be in noncompliance with such program.

(3) Annual determinations

(A) Requirement

For each public housing resident subject to the requirement under paragraph (1), the public housing agency shall, 30 days before the expiration of each lease term of the resident under section 1437d(*l*)(1) of this title, review and determine the compliance of the resident with the requirement under paragraph (1) of this subsection.

(B) Due process

Such determinations shall be made in accordance with the principles of due process and on a nondiscriminatory basis.

(C) Noncompliance

If an agency determines that a resident subject to the requirement under paragraph (1) has not complied with the requirement, the agency—

(i) shall notify the resident—

(I) of such noncompliance;

(II) that the determination of noncompliance is subject to the administrative grievance procedure under subsection (k);[2] and

(III) that, unless the resident enters into an agreement under clause (ii) of this subparagraph, the resident's lease will not be renewed; and

(ii) may not renew or extend the resident's lease upon expiration of the lease term and shall take such action as is necessary to terminate the tenancy of the household, unless the agency enters into an agreement, before the expiration of the lease term, with the resident providing for the resident to cure any noncompliance with the requirement under paragraph (1), by participating in an economic self-sufficiency program for or contributing to community service as many additional hours as the resident needs to comply in the aggregate with such requirement over the 12-month term of the lease.

(4) Ineligibility for occupancy for noncompliance

A public housing agency may not renew or extend any lease, or provide any new lease, for a dwelling unit in public housing for any household that includes an adult member who was subject to the requirement under paragraph (1) and failed to comply with the requirement.

(5) Inclusion in plan

Each public housing agency shall include in its public housing agency plan a detailed description of the manner in which the agency intends to implement and administer this subsection.

(6) Geographic location

The requirement under paragraph (1) may include community service or participation in an economic self-sufficiency program performed at a location not owned by the public housing agency.

(7) Prohibition against replacement of employees

In carrying out this subsection, a public housing agency may not—

(A) substitute community service or participation in an economic self-sufficiency program, as described in paragraph (1), for work performed by a public housing employee; or

(B) supplant a job at any location at which community work requirements are fulfilled.

(8) Third-party coordinating

A public housing agency may administer the community service requirement under this subsection directly, through a resident organization, or through a contractor having experience in administering volunteer-based community service programs within the service area of the public housing agency. The Secretary may establish qualifications for such organizations and contractors.

(d) Treatment of income changes resulting from welfare program requirements

(1) Covered family

For purposes of this subsection, the term ''covered family'' means a family that (A) receives benefits for welfare or public assistance from a State or other public agency under a program for which the Federal, State, or local law relating to the program requires, as a condition of eligibility for assistance under the program, participation of a member of the family in an economic self-sufficiency program, and (B) resides in a public housing dwelling unit or is provided tenant-based assistance under section 1437f of this title.

(2) Decreases in income for failure to comply

(A) In general

Notwithstanding the provisions of section 1437a(a) of this title (relating to family rental contributions) or paragraph (4) or (5) of section 1437a(b) of this title (relating to defi-

[1] So in original. Probably should be only one closing parenthesis.

[2] See References in Text note below.

nition of income and adjusted income), if the welfare or public assistance benefits of a covered family are reduced under a Federal, State, or local law regarding such an assistance program because of any failure of any member of the family to comply with the conditions under the assistance program requiring participation in an economic self-sufficiency program or imposing a work activities requirement, the amount required to be paid by the family as a monthly contribution toward rent may not be decreased, during the period of the reduction, as a result of any decrease in the income of the family (to the extent that the decrease in income is a result of the benefits reduction).

(B) No reduction based on time limit for assistance

For purposes of this paragraph, a reduction in benefits as a result of the expiration of a lifetime time limit for a family receiving welfare or public assistance benefits shall not be considered to be a failure to comply with the conditions under the assistance program requiring participation in an economic self-sufficiency program or imposing a work activities requirement. This paragraph shall apply beginning on October 21, 1998.

(3) Effect of fraud

Notwithstanding the provisions of section 1437a(a) of this title (relating to family rental contributions) or paragraph (4) or (5) of section 1437a(b) of this title (relating to definition of income and adjusted income), if the welfare or public assistance benefits of a covered family are reduced because of an act of fraud by a member of the family under the law or program, the amount required to be paid by the covered family as a monthly contribution toward rent may not be decreased, during the period of the reduction, as a result of any decrease in the income of the family (to the extent that the decrease in income is a result of the benefits reduction). This paragraph shall apply beginning on October 21, 1998.

(4) Notice

Paragraphs (2) and (3) shall not apply to any covered family before the public housing agency providing assistance under this chapter on behalf of the family obtains written notification from the relevant welfare or public assistance agency specifying that the family's benefits have been reduced because of noncompliance with economic self-sufficiency program or work activities requirements or fraud, and the level of such reduction.

(5) Occupancy rights

This subsection may not be construed to authorize any public housing agency to establish any time limit on tenancy in a public housing dwelling unit or on receipt of tenant-based assistance under section 1437f of this title.

(6) Review

Any covered family residing in public housing that is affected by the operation of this subsection shall have the right to review the determination under this subsection through the administrative grievance procedure established pursuant to section 1437d(k) of this title for the public housing agency.

(7) Cooperation agreements for economic self-sufficiency activities

(A) Requirement

A public housing agency providing public housing dwelling units or tenant-based assistance under section 1437f of this title for covered families shall make its best efforts to enter into such cooperation agreements, with State, local, and other agencies providing assistance to covered families under welfare or public assistance programs, as may be necessary, to provide for such agencies to transfer information to facilitate administration of subsection (c) of this section and paragraphs (2), (3), and (4) of this subsection and other information regarding rents, income, and assistance that may assist a public housing agency or welfare or public assistance agency in carrying out its functions.

(B) Contents

A public housing agency shall seek to include in a cooperation agreement under this paragraph requirements and provisions designed to target assistance under welfare and public assistance programs to families residing in public housing projects and families receiving tenant-based assistance under section 1437f of this title, which may include providing for economic self-sufficiency services within such housing, providing for services designed to meet the unique employment-related needs of residents of such housing and recipients of such assistance, providing for placement of workfare positions on-site in such housing, and such other elements as may be appropriate.

(C) Confidentiality

This paragraph may not be construed to authorize any release of information prohibited by, or in contravention of, any other provision of Federal, State, or local law.

(e) Lease provisions

A public housing agency shall incorporate into leases under section 1437d(*l*) of this title and into agreements for the provision of tenant-based assistance under section 1437f of this title, provisions incorporating the conditions under subsection (d) of this section.

(f) Treatment of income

Notwithstanding any other provision of this section, in determining the income of a family who resides in public housing or receives tenant-based assistance under section 1437f of this title, a public housing agency shall consider any decrease in the income of a family that results from the reduction of any welfare or public assistance benefits received by the family under any Federal, State, or local law regarding a program for such assistance if the family (or a member thereof, as applicable) has complied with the conditions for receiving such assistance and is unable to obtain employment notwithstanding such compliance.

(g) Definition

For purposes of this section, the term ''economic self-sufficiency program'' means any program designed to encourage, assist, train, or facilitate the economic independence of participants and their families or to provide work for participants, including programs for job training, employment counseling, work placement, basic skills training, education, workfare, financial or household management, apprenticeship, or other activities as the Secretary may provide.

(Sept. 1, 1937, ch. 896, title I, § 12, as added Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 667; amended Pub. L. 97–35, title III, § 322(c), Aug. 13, 1981, 95 Stat. 402; Pub. L. 100–242, title I, § 112(b)(5), Feb. 5, 1988, 101 Stat. 1824; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title V, § 572(2), title IX, § 955(b), Nov. 28, 1990, 104 Stat. 4236, 4421; Pub. L. 105–276, title V, § 512(a), Oct. 21, 1998, 112 Stat. 2539.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2)(D), (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Subsection (k), referred to in subsec. (c)(3)(C)(i)(II), probably means section 1437d(k) of this title, which relates to administrative grievance procedures. This section does not contain a subsec. (k).

CODIFICATION

In subsec. (a), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act (49 Stat. 1011)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 12 of act Sept. 1, 1937, ch. 896, 50 Stat. 894, as amended, authorized the disposal of low-rent housing projects transferred to or acquired by the Authority and was classified to section 1412 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

1998—Pub. L. 105–276, § 512(a)(1), inserted ''and community service requirement'' after ''Labor standards'' in section catchline.

Subsecs. (c) to (g). Pub. L. 105–276, § 512(a)(2), added subsecs. (c) to (g).

1990—Pub. L. 101–625, § 955(b), designated existing provisions as subsec. (a) and added subsec. (b).

Pub. L. 101–625, § 572(2), substituted ''low-income housing'' for ''lower income housing''.

1988—Pub. L. 100–242 struck out ''annual'' before ''contributions''.

1981—Pub. L. 97–35 substituted reference to lower income for reference to low-income.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 955(d) of Pub. L. 101–625 provided that: ''The amendments made by this section [amending this section, section 5310 of this title, and section 1701q of Title 12, Banks and Banking] shall apply to any volunteer services provided before, on, or after the date of the enactment of this Act [Nov. 28, 1990], except that such amendments may not be construed to require the repayment of any wages paid before the date of the enactment of this Act for services provided before such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 1437j–1. Repealed. Pub. L. 105–276, title V, § 582(a)(5), Oct. 21, 1998, 112 Stat. 2643

Section, Pub. L. 97–35, title III, § 329A, Aug. 13, 1981, 95 Stat. 409, related to payment for development managers of projects assisted under this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, and with savings provision, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1437k. Consortia, joint ventures, affiliates, and subsidiaries of public housing agencies

(a) Consortia

(1) In general

Any 2 or more public housing agencies may participate in a consortium for the purpose of administering any or all of the housing programs of those public housing agencies in accordance with this section.

(2) Effect

With respect to any consortium described in paragraph (1)—

(A) any assistance made available under this subchapter to each of the public housing agencies participating in the consortium shall be paid to the consortium; and

(B) all planning and reporting requirements imposed upon each public housing agency participating in the consortium with respect to the programs operated by the consortium shall be consolidated.

(3) Restrictions

(A) Agreement

Each consortium described in paragraph (1) shall be formed and operated in accordance with a consortium agreement, and shall be subject to the requirements of a joint public housing agency plan, which shall be submitted by the consortium in accordance with section 1437c–1 of this title.

(B) Minimum requirements

The Secretary shall specify minimum requirements relating to the formation and operation of consortia and the minimum contents of consortium agreements under this paragraph.

(b) Joint ventures

(1) In general

Notwithstanding any other provision of law, a public housing agency, in accordance with the public housing agency plan, may—

(A) form and operate wholly owned or controlled subsidiaries (which may be nonprofit corporations) and other affiliates, any of which may be directed, managed, or controlled by the same persons who constitute the board of directors or similar governing body of the public housing agency, or who serve as employees or staff of the public housing agency; or

(B) enter into joint ventures, partnerships, or other business arrangements with, or contract with, any person, organization, entity, or governmental unit—

(i) with respect to the administration of the programs of the public housing agency, including any program that is subject to this subchapter; or

(ii) for the purpose of providing or arranging for the provision of supportive or social services.

(2) Use and treatment of income

Any income generated under paragraph (1)—

(A) shall be used for low-income housing or to benefit the residents assisted by the public housing agency; and

(B) shall not result in any decrease in any amount provided to the public housing agency under this subchapter, except as otherwise provided under the formulas established under section 1437g(d)(2) and 1437g(e)(2) of this title.

(3) Audits

The Comptroller General of the United States, the Secretary, or the Inspector General of the Department of Housing and Urban Development may conduct an audit of any activity undertaken under paragraph (1) at any time.

(Sept. 1, 1937, ch. 896, title I, §13, as added Pub. L. 96–153, title II, §209, Dec. 21, 1979, 93 Stat. 1109; amended Pub. L. 96–399, title II, §202(b), Oct. 8, 1980, 94 Stat. 1629; renumbered title I, Pub. L. 100–358, §5, June 29, 1988, 102 Stat. 681; Pub. L. 105–276, title V, §515, Oct. 21, 1998, 112 Stat. 2549.)

PRIOR PROVISIONS

A prior section 13 of act Sept. 1, 1937, ch. 896, 50 Stat. 894, as amended, enumerated powers of the Authority and was classified to section 1413 of this title, prior to the general revision of this chapter by Pub. L. 93–383.

AMENDMENTS

1998—Pub. L. 105–276 amended section catchline and text of section generally. Prior to amendment, text read as follows: ''The Secretary shall, to the maximum extent practicable, require that newly constructed and substantially rehabilitated projects assisted under this chapter with authority provided on or after October 1, 1979, shall be equipped with heating and cooling systems selected on the basis of criteria which include a life-cycle cost analysis of such systems.''

1980—Pub. L. 96–399 struck out subsec. (a) which related to consideration by the Secretary, in utilizing contract authority, of projects which will be modernized to a substantial extent with weatherization materials as defined in section 6862(9) of this title, and redesignated former subsec. (b) as entire section.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

ENERGY EFFICIENT PUBLIC HOUSING DEMONSTRATION

Pub. L. 100–242, title I, §125, Feb. 5, 1988, 101 Stat. 1847, provided that:

''(a) ESTABLISHMENT.—The Secretary of Housing and Urban Development shall establish a demonstration program through the assistance of an appropriate technology transfer organization that specializes in producing detailed energy-efficient designs and in conducting local and statewide, public participation tests for energy efficient, needs-oriented housing. The appropriate technology organization shall carry out the demonstration working through and with public housing agencies to build and test a variety of energy-efficient housing designs in 100 separate housing units in 4 different States that meet local lower income housing needs (including single parent, disabled, and elderly concerns) through a composite ranging from single to 12-plex units in the cluster approach on vacant lots and open areas.

''(b) REPORT.—As soon as practicable following September 30, 1988, the Secretary of Housing and Urban Development shall submit to the Congress a report setting forth the findings and recommendations of the Secretary as a result of the demonstration under this section.

''(c) FUNDING.—Of the budget authority authorized to be provided for the development of public housing, there is authorized to be appropriated to carry out this section $4,700,000 for fiscal year 1988.''

§1437*l*. Repealed. Pub. L. 105–276, title V, §522(a), Oct. 21, 1998, 112 Stat. 2564

Section, act Sept. 1, 1937, ch. 896, title I, §14, as added Pub. L. 96–399, title II, §202(a), Oct. 8, 1980, 94 Stat. 1625; amended Pub. L. 97–35, title III, §§322(c), 329G, Aug. 13, 1981, 95 Stat. 402, 410; Pub. L. 98–181, title II, §214(b), Nov. 30, 1983, 97 Stat. 1185; Pub. L. 98–479, title II, §204(b)(2), Oct. 17, 1984, 98 Stat. 2233; Pub. L. 100–242, title I, §§112(b)(6), 119(b)–(i), 120, Feb. 5, 1988, 101 Stat. 1824, 1830–1837; renumbered title I, Pub. L. 100–358, §5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title IV, §414, title V, §§509(a)–(g), 510, 572, Nov. 28, 1990, 104 Stat. 4160, 4187, 4191–4193, 4236; Pub. L. 102–139, title II, Oct. 28, 1991, 105 Stat. 757, 759; Pub. L. 102–550, title I, §§111(b)(1), 115, title VI, §625(a)(3), Oct. 28, 1992, 106 Stat. 3688, 3692, 3820; Pub. L. 103–233, title III, §302, Apr. 11, 1994, 108 Stat. 369; Pub. L. 104–19, title I, §§1001(a), 1003A, July 27, 1995, 109 Stat. 235, 236; Pub. L. 104–134, title I, §101(e) [title II, §201(a)(1)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–277; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–330, title V, §501(b)(6), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title II, §208, Oct. 21, 1998, 112 Stat. 2485, related to assistance for public housing modernization. See section 1437g(a) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement the repeal before such date, and with savings provision, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

SAVINGS PROVISION

Pub. L. 105–276, title V, §522(c), Oct. 21, 1998, 112 Stat. 2565, provided that:

''(1) IN GENERAL.—Section 14 of the United States Housing Act of 1937 [42 U.S.C. 1437*l*] shall apply as provided in section 519(e) of this Act [42 U.S.C. 1437g note].

''(2) EXPANSION OF USE OF MODERNIZATION FUNDING.—Before the implementation of formulas pursuant to sections 9(d)(2) and 9(e)(2) of the United States Housing

Act of 1937 [42 U.S.C. 1437g(d)(2), (e)(2)] (as amended by section 519(a) of this Act) an agency may utilize any authority provided under or pursuant to section 14(q) of such Act [42 U.S.C. 1437*l*(q)] (including the authority under section 201(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 [see Tables for classification] (Public Law 104–134; 110 Stat. 1321–277)), as such provisions (including such section 201(a)) may be amended thereafter, including any amendment made by title II of this Act [see Tables for classification]), notwithstanding any other provision of law (including the repeal made under this section, the expiration of the applicability of such section 201 [see Tables for classification], or any repeal of such section 201).

''(3) EFFECTIVE DATE.—This subsection shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

CONVERSION OF CERTAIN PUBLIC HOUSING TO VOUCHERS

Pub. L. 104–134, title I, § 101(e) [title II, § 202], Apr. 26, 1996, 110 Stat. 1321–257, 1321–279; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327, which required identification for removal from the inventory of a public housing agency of developments on same or contiguous sites which had more than 300 units and vacancy rate of at least 10 percent, were identified as distressed, and for which estimated cost of continued operation exceeded cost of providing tenant-based assistance under section 1437f of this title, provided for implementation and enforcement of provisions requiring identification, required each agency to develop and carry out plan for removal over 5-year period, and required provision of tenant-based assistance to families residing in any removed development, was repealed by Pub. L. 105–276, title V, § 537(b), Oct. 21, 1998, 112 Stat. 2592. Amounts made available to carry out section 101(e) [title II, § 202] of Pub. L. 104–134 authorized to be used, to extent provided in advance in appropriations Acts, to carry out section 1437z–5 of this title, and section 101(e) [title II, § 202] of Pub. L. 104–134 as in effect immediately before Oct. 21, 1998, to continue to apply to public housing developments identified for conversion, or assessment of whether conversion is required, prior to such date, see section 537(c) of Pub. L. 105–276, set out as a Transition note under section 1437z–5 of this title.

§ 1437m. Payment of non-Federal share

Any of the following may be used as the non-Federal share required in connection with activities undertaken under Federal grant-in-aid programs which provide social, educational, employment, and other services to the tenants in a project assisted under this chapter, other than under section 1437f of this title;

(1) annual contributions under this chapter for operation of the project; or

(2) rental or use-value of buildings or facilities paid for, in whole or in part, from development, modernization, or operation cost financed under this chapter.

(Sept. 1, 1937, ch. 896, title I, § 15, as added Pub. L. 96–399, title II, § 212, Oct. 8, 1980, 94 Stat. 1636; amended Pub. L. 100–242, title I, § 112(b)(7), Feb. 5, 1988, 101 Stat. 1824; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681.)

AMENDMENTS

1988—Cl. (2). Pub. L. 100–242 struck out ''with loans or debt service annual contributions'' after ''cost financed''.

§ 1437n. Eligibility for assisted housing

(a) Income eligibility for public housing

(1) Income mix within projects

A public housing agency may establish and utilize income-mix criteria for the selection of residents for dwelling units in public housing projects, subject to the requirements of this section.

(2) PHA income mix

(A)[1] TARGETING.—Except as provided in paragraph (4), of the public housing dwelling units of a public housing agency made available for occupancy in any fiscal year by eligible families, not less than 40 percent shall be occupied by families whose incomes at the time of commencement of occupancy do not exceed 30 percent of the area median income, as determined by the Secretary with adjustments for smaller and larger families; except that the Secretary may establish income ceilings higher or lower than 30 percent of the area median income on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(3) Prohibition of concentration of low-income families

(A) Prohibition

A public housing agency may not, in complying with the requirements under paragraph (2), concentrate very low-income families (or other families with relatively low incomes) in public housing dwelling units in certain public housing projects or certain buildings within projects. The Secretary shall review the income and occupancy characteristics of the public housing projects and the buildings of such projects of such agencies to ensure compliance with the provisions of this paragraph and paragraph (2).

(B) Deconcentration

(i) In general

A public housing agency shall submit with its annual public housing agency plan under section 1437c–1 of this title an admissions policy designed to provide for deconcentration of poverty and income-mixing by bringing higher income tenants into lower income projects and lower income tenants into higher income projects. This clause may not be construed to impose or require any specific income or racial quotas for any project or projects.

(ii) Incentives

In implementing the policy under clause (i), a public housing agency may offer incentives for eligible families having higher incomes to occupy dwelling unit in projects predominantly occupied by eligible families having lower incomes, and provide for occupancy of eligible families having lower incomes in projects predominantly occupied by eligible families having higher incomes.

[1] So in original. No subpar. (B) has been enacted.

(iii) Family choice

Incentives referred to in clause (ii) may be made available by a public housing agency only in a manner that allows for the eligible family to have the sole discretion in determining whether to accept the incentive and an agency may not take any adverse action toward any eligible family for choosing not to accept an incentive and occupancy of a project described in clause (i)(II),[2] *Provided*, That the skipping of a family on a waiting list to reach another family to implement the policy under clause (i) shall not be considered an adverse action. An agency implementing an admissions policy under this subparagraph shall implement the policy in a manner that does not prevent or interfere with the use of site-based waiting lists authorized under section 1437d(s)[3] of this title.

(4) Fungibility with tenant-based assistance

(A) Authority

Except as provided under subparagraph (D), the number of public housing dwelling units that a public housing agency shall otherwise make available in accordance with paragraph (2)(A) to comply with the percentage requirement under such paragraph for a fiscal year shall be reduced by the credit number for the agency under subparagraph (B).

(B) Credit for exceeding tenant-based assistance targeting requirement

Subject to subparagraph (C), the credit number under this subparagraph for a public housing agency for a fiscal year shall be the number by which—

(i) the aggregate number of qualified families who, in such fiscal year, are initially provided tenant-based assistance under section 1437f of this title by the agency; exceeds

(ii) the number of qualified families that is required for the agency to comply with the percentage requirement under subsection (b)(1) of this section for such fiscal year.

(C) Limitations on credit number

The credit number under subparagraph (B) for a public housing agency for a fiscal year may not in any case exceed the lesser of—

(i) the number of dwelling units that is equivalent to 10 percent of the aggregate number of families initially provided tenant-based assistance under section 1437f of this title by the agency in such fiscal year; or

(ii) the number of public housing dwelling units of the agency that—

(I) are in projects that are located in census tracts having a poverty rate of 30 percent or more; and

(II) are made available for occupancy during such fiscal year and are actually filled only by families whose incomes at the time of commencement of such occupancy exceed 30 percent of the area median income, as determined by the Secretary with adjustments for smaller and larger families.

(D) Fungibility floor

Notwithstanding any authority under subparagraph (A), of the public housing dwelling units of a public housing agency made available for occupancy in any fiscal year by eligible families, not less than 30 percent shall be occupied by families whose incomes at the time of commencement of occupancy do not exceed 30 percent of the area median income, as determined by the Secretary with adjustments for smaller and larger families.

(E) Qualified family

For purposes of this paragraph, the term ''qualified family'' means a family having an income described in subsection (b)(1) of this section.

(b) Income eligibility for tenant-based section 1437f assistance

(1) In general

Of the families initially provided tenant-based assistance under section 1437f of this title by a public housing agency in any fiscal year, not less than 75 percent shall be families whose incomes do not exceed 30 percent of the area median income, as determined by the Secretary with adjustments for smaller and larger families; except that the Secretary may establish income ceilings higher or lower than 30 percent of the area median income on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(2) Jurisdictions served by multiple PHAs

In the case of any 2 or more public housing agencies that administer tenant-based assistance under section 1437f of this title with respect solely to identical geographical areas, such agencies shall be treated as a single public housing agency for purposes of paragraph (1).

(c) Income eligibility for project-based section 1437f assistance

(1) Pre-1981 act projects

Not more than 25 percent of the dwelling units that were available for occupancy under section 8 [42 U.S.C. 1437f] housing assistance payments contracts under this chapter before October 1, 1981, and which will be leased on or after October 1, 1981, shall be available for leasing by low-income families other than very low-income families.

(2) Post-1981 act projects

Not more than 15 percent of the dwelling units which become available for occupancy under section 8 [42 U.S.C. 1437f] housing assistance payments contracts under this chapter on or after October 1, 1981, shall be available for leasing by low-income families other than very low-income families.

(3) Targeting

For each project assisted under a contract for project-based assistance, of the dwelling

[2] So in original. Cl. (i) does not contain subclauses.

[3] See References in Text note below.

units that become available for occupancy in any fiscal year that are assisted under the contract, not less than 40 percent shall be available for leasing only by families whose incomes at the time of commencement of occupancy do not exceed 30 percent of the area median income, as determined by the Secretary with adjustments for smaller and larger families; except that the Secretary may establish income ceilings higher or lower than 30 percent of the area median income on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(4) Prohibition of skipping

In developing admission procedures implementing paragraphs (1), (2), and (3), the Secretary shall prohibit project owners from selecting families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence. Nothing in this paragraph or this subsection may be construed to prevent an owner of housing assisted under a contract for project-based assistance from establishing a preference for occupancy in such housing for families containing a member who is employed.

(5) Exception

The limitations established in paragraphs (1), (2), and (3) shall not apply to dwelling units made available under project-based contracts under section 1437f of this title for the purpose of preventing displacement, or ameliorating the effects of displacement.

(6) Definition

For purposes of this subsection, the term ''project-based assistance'' means assistance under any of the following programs:

(A) The new construction or substantial rehabilitation program under section 1437f(b)(2) of this title (as in effect before October 1, 1983).

(B) The property disposition program under section 1437f(b) of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998).

(C) The loan management set-aside program under subsections (b) and (v) of section 1437f of this title.

(D) The project-based certificate program under section 1437f(d)(2) of this title.

(E) The moderate rehabilitation program under section 1437f(e)(2) of this title (as in effect before October 1, 1991).

(F) The low-income housing preservation program under Low-Income Housing Preservation and Resident Homeownership Act of 1990 [12 U.S.C. 4101 et seq.] or the provisions of the Emergency Low Income Housing Preservation Act of 1987 (as in effect before November 28, 1990).

(G) Section 1437f of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998), following conversion from assistance under section 1701s of title 12 or section 1715z–1(f)(2) of title 12.

(d) Establishment of different standards

Notwithstanding subsection (a)(2) or (b)(1) of this section, if approved by the Secretary, a public housing agency may for good cause establish and implement, in accordance with the public housing agency plan, an admission standard other than the standard under such subsection.

(e) Repealed. Pub. L. 105–276, title V, § 576(d)(2), Oct. 21, 1998, 112 Stat. 2640

(f) Ineligibility of individuals convicted of manufacturing or producing methamphetamine on the premises

Notwithstanding any other provision of law, a public housing agency shall establish standards for occupancy in public housing dwelling units and assistance under section 1437f of this title that—

(1) permanently prohibit occupancy in any public housing dwelling unit by, and assistance under section 1437f of this title for, any person who has been convicted of manufacturing or otherwise producing methamphetamine on the premises in violation of any Federal or State law; and

(2) immediately and permanently terminate the tenancy in any public housing unit of, and the assistance under section 1437f of this title for, any person who is convicted of manufacturing or otherwise producing methamphetamine on the premises in violation of any Federal or State law.

(Sept. 1, 1937, ch. 896, title I, § 16, as added Pub. L. 97–35, title III, § 323, Aug. 13, 1981, 95 Stat. 404; amended Pub. L. 98–181, title II, § 213, Nov. 30, 1983, 97 Stat. 1184; Pub. L. 100–242, title I, §§ 103, 112(b)(8), Feb. 5, 1988, 101 Stat. 1822, 1824; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; Pub. L. 100–628, title X, § 1001(a), Nov. 7, 1988, 102 Stat. 3263; Pub. L. 101–625, title V, §§ 511, 572(1), Nov. 28, 1990, 104 Stat. 4194, 4236; Pub. L. 102–550, title I, § 105, Oct. 28, 1992, 106 Stat. 3684; Pub. L. 104–99, title IV, § 402(d)(6)(A)(v), Jan. 26, 1996, 110 Stat. 42; Pub. L. 104–120, § 9(d), Mar. 28, 1996, 110 Stat. 837; Pub. L. 104–330, title V, § 501(b)(7), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title IV, § 428, title V, §§ 513(a), 576(d)(2), Oct. 21, 1998, 112 Stat. 2511, 2543, 2640; Pub. L. 105–277, div. A, § 123, Oct. 21, 1998, 112 Stat. 2681–546; Pub. L. 106–74, title II, § 205, Oct. 20, 1999, 113 Stat. 1069.)

REFERENCES IN TEXT

Section 1437d(s) of this title, referred to in subsec. (a)(3)(B)(iii), probably should be a reference to section 1437d(r) of this title. Pub. L. 105–276, title V, §§ 525, 575(d), 576(d)(1)(B), Oct. 21, 1998, 112 Stat. 2568, 2637, 2640, amended section 1437d by adding a subsec. (s) relating to site-based waiting lists and a subsec. (t) relating to authority to require access to criminal records and then redesignated those subsecs. (s) and (t) as (r) and (s), respectively.

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (c)(6)(B), (G), is section 503(a) of Pub. L. 105–276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

The Low-Income Housing Preservation and Resident Homeownership Act of 1990, referred to in subsec. (c)(6)(F), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, as amended, which is classified principally to chapter 42 (§ 4101 et seq.) of Title 12, Banks and

Banking. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (c)(6)(F), is title II of Pub. L. 100–242, Feb. 5, 1988, 101 Stat. 1877, which, as amended by Pub. L. 101–625, is known as the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Subtitles A and B of title II, which were formerly set out as a note under section 1715*l* of Title 12, Banks and Banking, and which amended section 1715z–6 of Title 12, were amended generally by Pub. L. 101–625 and are classified to subchapter I (§ 4101 et seq.) of chapter 42 of Title 12. Subtitles C and D of title II amended section 1715z–15 of Title 12 and sections 1437f, 1472, 1485, and 1487 of this title. Another subtitle C of title II of Pub. L. 100–242, as added by Pub. L. 102–550, is classified generally to subchapter II (§ 4141 et seq.) of chapter 42 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

CODIFICATION

October 1, 1981, referred to in subsec. (c)(1), (2), was in the original ''the effective date of the Housing and Community Development Amendments of 1981'' and ''such effective date'', meaning the effective date of subtitle A of title III of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 384, which was generally effective Oct. 1, 1981. See Effective Date note below.

AMENDMENTS

1999—Subsecs. (a)(2)(A), (c)(3). Pub. L. 106–74, § 205(1), inserted before the period at end ''; except that the Secretary may establish income ceilings higher or lower than 30 percent of the area median income on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes''.

1998—Subsecs. (a) to (d). Pub. L. 105–276, § 513(a), as amended by Pub. L. 105–277, § 123, added subsecs. (a) to (d) and struck out former subsecs. (a) to (d). Prior to amendment, subsec. (a) related to percentage availability under contracts prior to Oct. 1, 1981, subsec. (b) related to percentage availability under contracts on or after Oct. 1, 1981, subsec. (c) related to admission procedures implementing subsec. (b), and subsec. (d) related to applicability of admission procedures limitations.

Subsec. (e). Pub. L. 105–276, § 576(d)(2), struck out heading and text of subsec. (e), which directed public housing agency to establish standards to prohibit occupancy by and terminate tenancy of any person illegally using controlled substance or whose use of controlled substance or abuse of alcohol might interfere with peaceful enjoyment of premises by other residents, and authorized agency to consider rehabilitation of person in making determination to deny occupancy.

Subsec. (f). Pub. L. 105–276, § 428, added subsec. (f).

1996—Pub. L. 104–120, § 9(d)(1), substituted ''Eligibility'' for ''Income eligibility'' in section catchline.

Subsec. (c). Pub. L. 104–99 temporarily substituted ''the written system of preferences for selection established by the public housing agency pursuant to section 1437d(c)(4)(A)'' for ''the system of preferences established by the agency pursuant to section 1437d(c)(4)(A)(ii)''. See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (d). Pub. L. 104–330, § 501(b)(7)(A), redesignated par. (1) as entire subsec. and struck out par. (2) which read as follows: ''The limitations established in subsections (a) and (b) of this section shall not apply to dwelling units assisted by Indian public housing agencies, to scattered site public housing dwelling units sold or intended to be sold to public housing tenants under section 1437c(h) of this title..''

Subsec. (e). Pub. L. 104–120, § 9(d)(2), added subsec. (e).

Subsec. (e)(3). Pub. L. 104–330, § 501(b)(7)(B), struck out heading and text of par. (3). Text read as follows: ''This subsection does not apply to any dwelling unit assisted by an Indian housing authority.''

1992—Subsec. (c). Pub. L. 102–550, § 105(a), substituted ''very low-income families and shall'' for ''very low-income families, shall'' and ''. In developing such admission procedures, the Secretary shall'' for '', and shall'' and inserted ''; except that such prohibition shall not apply with respect to families selected for occupancy in public housing under the system of preferences established by the agency pursuant to section 1437d(c)(4)(A)(ii) of this title'' after ''higher income families for residence''.

Subsec. (d)(2). Pub. L. 102–550, § 105(b), inserted before period at end '', to scattered site public housing dwelling units sold or intended to be sold to public housing tenants under section 1437c(h) of this title.''

1990—Subsec. (a). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families''.

Subsec. (b). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families'' in par. (1).

Pub. L. 101–625, § 511, designated existing provisions as par. (1), substituted ''15 percent'' for ''5 per centum'', and added par. (2).

Subsecs. (c), (d)(1). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families'' wherever appearing.

1988—Subsec. (b). Pub. L. 100–242, § 112(b)(8), struck out ''annual'' before ''contributions''.

Subsec. (c). Pub. L. 100–628 substituted ''shall establish an appropriate specific percentage of lower income families other than very-low income families that may be assisted in each assisted housing program'' for ''and shall establish, as appropriate, differing percentage limitations on admission of lower income families in separate assisted housing programs'' and inserted before period at end of first sentence '', and shall prohibit project owners from selecting families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence''.

Pub. L. 100–242, § 103, added subsec. (c).

Subsec. (d). Pub. L. 100–242, § 103, added subsec. (d).

1983—Subsec. (a). Pub. L. 98–181 increased to 25 from 10 the percentage of dwelling units available for leasing.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. A, § 123, Oct. 21, 1998, 112 Stat. 2681–546, provided that the amendment made by section 123 of Pub. L. 105–277 is effective upon enactment of Pub. L. 105–276.

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

Pub. L. 105–276, title V, § 513(b), Oct. 21, 1998, 112 Stat. 2547, provided that: ''This section [amending this section] shall take effect on, and the amendments under this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENTS

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, notwithstanding the effective date of any regulations issued by Secretary of Housing and Urban Development to implement amendments by sections 9 and 10 of Pub. L. 104–120 or any failure by Secretary to issue any such regulations, see section 13 of Pub. L. 104–120, set out as a note under section 1437d of this title.

Amendment by Pub. L. 104–99 effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as notes under section 1437a of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as a note under section 3701 of Title 12, Banks and Banking.

§ 1437*o*. Repealed. Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128

Section, act Sept. 1, 1937, ch. 896, title I, § 17, as added Nov. 30, 1983, Pub. L. 98–181, title III, § 301, 97 Stat. 1196; amended Oct. 17, 1984, Pub. L. 98–479, title I, § 103, 98 Stat. 2223; Oct. 18, 1986, Pub. L. 99–500, § 101(g), 100 Stat. 1783–242, and Oct. 30, 1986, Pub. L. 99–591, § 101(g), 100 Stat. 3341–242; Dec. 22, 1987, Pub. L. 100–202, §§ 101(f) [title I, § 101], 106, 101 Stat. 1329–187, 1329–189, 1329–433; Feb. 5, 1988, Pub. L. 100–242, title I, §§ 150, 151, 170(e), 101 Stat. 1853, 1854, 1867; renumbered title I, June 29, 1988, Pub. L. 100–358, § 5, 102 Stat. 681; Nov. 7, 1988, Pub. L. 100–628, title X, § 1007, 102 Stat. 3266; June 30, 1989, Pub. L. 101–45, title I, 103 Stat. 112; Dec. 15, 1989, Pub. L. 101–235, title III, § 304, 103 Stat. 2044; May 25, 1990, Pub. L. 101–302, title II, 104 Stat. 238; Nov. 5, 1990, Pub. L. 101–507, title II, 104 Stat. 1369; Nov. 28, 1990, Pub. L. 101–625, title V, § 572(1), 104 Stat. 4236; Apr. 10, 1991, Pub. L. 102–27, title II, 105 Stat. 150; Oct. 28, 1992, Pub. L. 102–550, title VI, § 625(a)(4), 106 Stat. 3820, authorized Secretary to make rental rehabilitation and development grants.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1991, and except with respect to projects and programs for which binding commitments have been entered into prior to Oct. 1, 1991, no new grants or loans to be made after Oct. 1, 1991, under this section, see section 12839(a)(1), (b)(1) of this title.

§ 1437p. Demolition and disposition of public housing

(a) Applications for demolition and disposition

Except as provided in subsection (b) of this section, upon receiving an application by a public housing agency for authorization, with or without financial assistance under this subchapter, to demolish or dispose of a public housing project or a portion of a public housing project (including any transfer to a resident-supported nonprofit entity), the Secretary shall approve the application, if the public housing agency certifies—

(1) in the case of—

(A) an application proposing demolition of a public housing project or a portion of a public housing project, that—

(i) the project or portion of the public housing project is obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes; and

(ii) no reasonable program of modifications is cost-effective to return the public housing project or portion of the project to useful life; and

(B) an application proposing the demolition of only a portion of a public housing project, that the demolition will help to ensure the viability of the remaining portion of the project;

(2) in the case of an application proposing disposition by sale or other transfer of a public housing project or other real property subject to this subchapter—

(A) the retention of the property is not in the best interests of the residents or the public housing agency because—

(i) conditions in the area surrounding the public housing project adversely affect the health or safety of the residents or the feasible operation of the project by the public housing agency; or

(ii) disposition allows the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as low-income housing;

(B) the public housing agency has otherwise determined the disposition to be appropriate for reasons that are—

(i) in the best interests of the residents and the public housing agency;

(ii) consistent with the goals of the public housing agency and the public housing agency plan; and

(iii) otherwise consistent with this subchapter; or

(C) for property other than dwelling units, the property is excess to the needs of a public housing project or the disposition is incidental to, or does not interfere with, continued operation of a public housing project;

(3) that the public housing agency has specifically authorized the demolition or disposition in the public housing agency plan, and has certified that the actions contemplated in the public housing agency plan comply with this section;

(4) that the public housing agency—

(A) will notify each family residing in a project subject to demolition or disposition 90 days prior to the displacement date, except in cases of imminent threat to health or safety, consistent with any guidelines issued by the Secretary governing such notifications, that—

(i) the public housing project will be demolished or disposed of;

(ii) the demolition of the building in which the family resides will not commence until each resident of the building is relocated; and

(iii) each family displaced by such action will be offered comparable housing—

(I) that meets housing quality standards;

(II) that is located in an area that is generally not less desirable than the location of the displaced person's housing; and

(III) which may include—

(aa) tenant-based assistance, except that the requirement under this clause regarding offering of comparable housing shall be fulfilled by use of tenant-based assistance only upon the relocation of such family into such housing;

(bb) project-based assistance; or

(cc) occupancy in a unit operated or assisted by the public housing agency at a rental rate paid by the family that is comparable to the rental rate appli-

cable to the unit from which the family is vacated;

(B) will provide for the payment of the actual and reasonable relocation expenses of each resident to be displaced;

(C) will ensure that each displaced resident is offered comparable housing in accordance with the notice under subparagraph (A); and[1]

(D) will provide any necessary counseling for residents who are displaced; and

(E) will not commence demolition or complete disposition until all residents residing in the building are relocated;

(5) that the net proceeds of any disposition will be used—

(A) unless waived by the Secretary, for the retirement of outstanding obligations issued to finance the original public housing project or modernization of the project; and

(B) to the extent that any proceeds remain after the application of proceeds in accordance with subparagraph (A), for—

(i) the provision of low-income housing or to benefit the residents of the public housing agency; or

(ii) leveraging amounts for securing commercial enterprises, on-site in public housing projects of the public housing agency, appropriate to serve the needs of the residents; and

(6) that the public housing agency has complied with subsection (c) of this section.

(b) Disapproval of applications

The Secretary shall disapprove an application submitted under subsection (a) of this section if the Secretary determines that—

(1) any certification made by the public housing agency under that subsection is clearly inconsistent with information and data available to the Secretary or information or data requested by the Secretary; or

(2) the application was not developed in consultation with—

(A) residents who will be affected by the proposed demolition or disposition;

(B) each resident advisory board and resident council, if any, of the project (or portion thereof) that will be affected by the proposed demolition or disposition; and

(C) appropriate government officials.

(c) Resident opportunity to purchase in case of proposed disposition

(1) In general

In the case of a proposed disposition of a public housing project or portion of a project, the public housing agency shall, in appropriate circumstances, as determined by the Secretary, initially offer the property to any eligible resident organization, eligible resident management corporation, or nonprofit organization acting on behalf of the residents, if that entity has expressed an interest, in writing, to the public housing agency in a timely manner, in purchasing the property for continued use as low-income housing.

(2) Timing

(A) Expression of interest

A resident organization, resident management corporation, or other resident-supported nonprofit entity referred to in paragraph (1) may express interest in purchasing property that is the subject of a disposition, as described in paragraph (1), during the 30-day period beginning on the date of notification of a proposed sale of the property.

(B) Opportunity to arrange purchase

If an entity expresses written interest in purchasing a property, as provided in subparagraph (A), no disposition of the property shall occur during the 60-day period beginning on the date of receipt of that written notice (other than to the entity providing the notice), during which time that entity shall be given the opportunity to obtain a firm commitment for financing the purchase of the property.

(d) Replacement units

Notwithstanding any other provision of law, replacement public housing units for public housing units demolished in accordance with this section may be built on the original public housing location or in the same neighborhood as the original public housing location if the number of the replacement public housing units is significantly fewer than the number of units demolished.

(e) Consolidation of occupancy within or among buildings

Nothing in this section may be construed to prevent a public housing agency from consolidating occupancy within or among buildings of a public housing project, or among projects, or with other housing for the purpose of improving living conditions of, or providing more efficient services to, residents.

(f) De minimis exception to demolition requirements

Notwithstanding any other provision of this section, in any 5-year period a public housing agency may demolish not more than the lesser of 5 dwelling units or 5 percent of the total dwelling units owned by the public housing agency, but only if the space occupied by the demolished unit is used for meeting the service or other needs of public housing residents or the demolished unit was beyond repair.

(g) Uniform Relocation and Real Property Acquisition Act

The Uniform Relocation and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.] shall not apply to activities under this section.

(h) Relocation and replacement

Of the amounts appropriated for tenant-based assistance under section 1437f of this title in any fiscal year, the Secretary may use such sums as are necessary for relocation and replacement housing for dwelling units that are demolished and disposed of from the public housing inventory (in addition to other amounts that may be available for such purposes).

[1] So in original. The word ''and'' probably should not appear.

(Sept. 1, 1937, ch. 896, title I, §18, as added Pub. L. 98–181, title II, §214(a), Nov. 30, 1983, 97 Stat. 1184; amended Pub. L. 100–242, title I, §§112(b)(9), 121, 170(f), Feb. 5, 1988, 101 Stat. 1824, 1837, 1867; renumbered title I, Pub. L. 100–358, §5, June 29, 1988, 102 Stat. 681; Pub. L. 101–625, title IV, §412, title V, §§512(a), 513(b), (c), 572, Nov. 28, 1990, 104 Stat. 4159, 4194–4196, 4236; Pub. L. 102–550, title I, §§111(b)(2), 116(a)–(c), Oct. 28, 1992, 106 Stat. 3688, 3693, 3694; Pub. L. 104–19, title I, §1002(a), July 27, 1995, 109 Stat. 235; Pub. L. 104–134, title I, §101(e) [title II, §201(b)(2)], Apr. 26, 1996, 110 Stat. 1321–257, 1321–278; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 105–276, title V, §531(a), Oct. 21, 1998, 112 Stat. 2570.)

REFERENCES IN TEXT

The Uniform Relocation and Real Property Acquisition Policies Act of 1970, referred to in subsec. (g), probably means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended, and which is classified principally to chapter 61 (§4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

AMENDMENTS

1998—Pub. L. 105–276 amended section generally. Prior to amendment, subsec. (a) required the Secretary to make certain determinations before approving the demolition or disposition of all or part of a public housing project; subsec. (b) required public housing agency consultation with tenants and provision of relocation assistance; subsec. (c) authorized financial assistance using section 1437c contributions; subsec. (d) provided that agency would not be prevented from consolidating occupancy within or among buildings or projects; subsec. (e) provided set-asides for replacement housing in fiscal years 1993 and 1994; subsec. (f) authorized construction on original site if number of new units would be less than number of demolished units; and subsec. (g) declared that this section did not apply to dispositions in accordance with approved homeownership program under subchapter II–A of this chapter.

1996—Subsec. (f). Pub. L. 104–134 inserted at end ''No one may rely on the preceding sentence as the basis for reconsidering a final order of a court issued, or a settlement approved, by a court.''

1995—Subsec. (b)(1). Pub. L. 104–19, §1002(a)(1), inserted ''and'' after ''housing assistance plan;''.

Subsec. (b)(2). Pub. L. 104–19, §1002(a)(2), substituted '', and the public housing agency provides for the payment of the relocation expenses of each tenant to be displaced, ensures that the rent paid by the tenant following relocation will not exceed the amount permitted under this chapter and shall not commence demolition or disposition of any unit until the tenant of the unit is relocated.'' for ''; and''.

Subsec. (b)(3). Pub. L. 104–19, §1002(a)(3), struck out par. (3) which made approval conditional upon development of plan for provision of additional unit for each unit to be demolished or disposed of.

Subsec. (c). Pub. L. 104–19, §1002(a)(4), (5), struck out par. (1) designation and text of par. (2), which read as follows: ''The Secretary shall, upon approving a plan under subsection (b)(3) of this section, agree to commit (subject to the availability of future appropriations) the funds necessary to carry out the plan over the approved schedule of the plan. As part of each annual budget request for the Department of Housing and Urban Development, the Secretary shall submit to the Congress a report—

''(A) outlining the commitments the Secretary entered into during the preceding year to fund plans approved under subsection (b)(3) of this section; and

''(B) specifying, by fiscal year, the budget authority required to carry out the commitments specified in subparagraph (A).''

Subsec. (d). Pub. L. 104–19, §1002(a)(6), inserted before period at end '': *Provided*, That nothing in this section shall prevent a public housing agency from consolidating occupancy within or among buildings of a public housing project, or among projects, or with other housing for the purpose of improving the living conditions of or providing more efficient services to its tenants''.

Subsec. (e). Pub. L. 104–19, §1002(a)(7), which directed the striking of ''under section (b)(3)(A) of this section'' each place it occurred, was executed by striking out ''under subsection (b)(3)(A) of this section'' before ''for units demolished or disposed of'' in two places, to reflect the probable intent of Congress.

Subsecs. (f), (g). Pub. L. 104–19, §1002(a)(8), (9), added subsec. (f) and redesignated former subsec. (f) as (g).

1992—Subsec. (a)(3). Pub. L. 102–550, §111(b)(2), added par. (3).

Subsec. (b)(1). Pub. L. 102–550, §116(a), inserted ''of the project or portion of the project covered by the application'' after ''tenant cooperative''.

Subsec. (b)(3). Pub. L. 102–550, §116(b)(5), inserted at end ''except that, in any 5-year period, a public housing agency may demolish not more than the lesser of 5 dwelling units or 5 percent of the total dwelling units owned and operated by the public housing agency, without providing an additional dwelling unit for each such public housing dwelling unit to be demolished, but only if the space occupied by the demolished unit is used for meeting the service or other needs of public housing residents.''

Subsec. (b)(3)(A)(ii). Pub. L. 102–550, §116(b)(1)(A), inserted before semicolon at end ''to the extent available; or if such assistance is not available, in the case of an application proposing demolition or disposition of 200 or more units, the use of available project-based assistance under section 1437f of this title having a term of not less than 5 years''.

Subsec. (b)(3)(A)(iii). Pub. L. 102–550, §116(b)(1)(B), inserted before semicolon at end ''to the extent available; or if such assistance is not available, in the case of an application proposing demolition or disposition of 200 or more units, the use of available project-based assistance under other Federal programs having a term of not less than 5 years''.

Subsec. (b)(3)(A)(v). Pub. L. 102–550, §116(b)(1)(C), inserted before semicolon ''to the extent available; or if such assistance is not available, in the case of an application proposing demolition or disposition of 200 or more units, the use of tenant-based assistance under section 1437f of this title (excluding vouchers under section 1437f(*o*) of this title) having a term of not less than 5 years''.

Subsec. (b)(3)(B). Pub. L. 102–550, §116(b)(4), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (b)(3)(C) to (F). Pub. L. 102–550, §116(b)(3), redesignated subpars. (B) to (E) as (C) to (F), respectively. Former subpar. (F) redesignated (G).

Subsec. (b)(3)(G). Pub. L. 102–550, §116(b)(3), redesignated subpar. (F) as (G). Former subpar. (G) redesignated (H).

Pub. L. 102–550, §116(b)(2), substituted ''tenant's choice;'' for ''tenant's choice.''

Subsec. (b)(3)(H). Pub. L. 102–550, §116(b)(3), redesignated subpar. (G) as (H).

Subsecs. (e), (f). Pub. L. 102–550, §116(c), added subsec. (e) and redesignated former subsec. (e) as (f).

1990—Subsec. (a)(2)(A)(i). Pub. L. 101–625, §572(2), substituted ''low-income housing'' for ''lower income housing'' wherever appearing.

Subsec. (a)(2)(B). Pub. L. 101–625, §572, substituted ''low-income families'' for ''lower income families'' and ''low-income housing'' for ''lower income housing'' wherever appearing.

Pub. L. 101–625, §512(a), inserted before first comma '', which, in the case of scattered-site housing of a public housing agency, shall be in an amount that bears the same ratio to the total of such costs and obliga-

tions as the number of units disposed of bears to the total number of units of the project at the time of disposition''.

Subsec. (b)(1). Pub. L. 101–625, § 412(a), substituted ''disposition, and the tenant councils, resident management corporation, and tenant cooperative, if any, have been given appropriate opportunities to purchase the project or portion of the project covered by the application,'' for ''disposition''.

Subsec. (c)(2). Pub. L. 101–625, § 513(b), inserted at end ''As part of each annual budget request for the Department of Housing and Urban Development, the Secretary shall submit to the Congress a report—'', and added subpars. (A) and (B).

Subsec. (c)(3). Pub. L. 101–625, § 513(c), struck out par. (3) which read as follows: ''The Secretary shall, in allocating assistance for the acquisition or development of public housing or for moderate rehabilitation under section 1437f(e)(2) of this title, give consideration to housing that replaces demolished public housing units in accordance with a plan under subsection (b)(3) of this section.''

Subsec. (e). Pub. L. 101–625, § 412(b), added subsec. (e).

1988—Subsec. (a)(1). Pub. L. 100–242, § 121(a), substituted ''and'' for ''or'' after ''purposes,''.

Subsec. (b). Pub. L. 100–242, § 170(f), inserted ''or'' after ''under this section''.

Subsec. (b)(3). Pub. L. 100–242, § 121(b), added par. (3).

Subsec. (c). Pub. L. 100–242, § 121(c), designated existing provisions as par. (1) and added pars. (2) and (3).

Pub. L. 100–242, § 112(b)(9), substituted ''contributions authorized under section 1437c'' for ''annual contributions authorized under section 1437c(c)''.

Subsec. (d). Pub. L. 100–242, § 121(d), added subsec. (d) and struck out former subsec. (d) which read as follows: ''The provisions of this section shall not apply to the conveyance of units in a public housing project for the purpose of providing homeownership opportunities for lower income families capable of assuming the responsibilities of homeownership.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 531(c), Oct. 21, 1998, 112 Stat. 2574, provided that: ''This section [amending this section and section 1437aaa–3 of this title and enacting provisions set out as a note under section 1437aaa–3 of this title] shall take effect on, and the amendments made by this section are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–19 effective for applications for demolition, disposition, or conversion to homeownership of public housing approved by the Secretary, and other consolidation and relocation activities of public housing agencies undertaken on, before, or after Sept. 30, 1995 and on or before Sept. 30, 1998, see section 1002(d) of Pub. L. 104–19, as amended, set out as a note under section 1437c of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 512(b) of Pub. L. 101–625 provided that: ''The amendment made by this section [amending this section] shall apply to any scattered-site public housing project or portion of such project disposed of after the date of the enactment of this Act [Nov. 28, 1990].''

REPLACEMENT HOUSING DEMONSTRATION PROGRAM

Section 513(a) of Pub. L. 101–625 directed Secretary of Housing and Urban Development to carry out a program to demonstrate the effectiveness of replacing public housing dwelling units eligible for demolition or disposition with 5-year certificate assistance provided under 42 U.S.C. 1437f, with Secretary to carry out the demonstration only with respect to public housing dwelling units owned or operated by the public housing authority for Saint Louis, Missouri, that before the termination of the demonstration program under this subsection are approved for demolition or disposition, and with the demonstration program to terminate at end of Sept. 30, 1992.

§ 1437q. Financing limitations

On and after October 1, 1983, the Secretary—

(1) may only enter into contracts for annual contributions regarding obligations financing public housing projects authorized by section 1437c(c) of this title if such obligations are exempt from taxation under section 1437i(b) of this title, or if such obligations are issued under section 1437b of this title and such obligations are exempt from taxation; and

(2) may not enter into contracts for periodic payments to the Federal Financing Bank to offset the costs to the Bank of purchasing obligations (as described in the first sentence of section 2294(b) of title 12) issued by local public housing agencies for purposes of financing public housing projects authorized by section 1437c(c) of this title.

(Sept. 1, 1937, ch. 896, title I, § 19, as added Pub. L. 98–181, title II, § 215, Nov. 30, 1983, 97 Stat. 1185; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681.)

§ 1437r. Public housing resident management

(a) Purpose

The purpose of this section is to encourage increased resident management of public housing projects, as a means of improving existing living conditions in public housing projects, by providing increased flexibility for public housing projects that are managed by residents by—

(1) permitting the retention, and use for certain purposes, of any revenues exceeding operating and project costs; and

(2) providing funding, from amounts otherwise available, for technical assistance to promote formation and development of resident management entities.

For purposes of this section, the term ''public housing project'' includes one or more contiguous buildings or an area of contiguous row houses the elected resident councils of which approve the establishment of a resident management corporation and otherwise meet the requirements of this section.

(b) Program requirements

(1) Resident council

As a condition of entering into a resident management program, the elected resident council of a public housing project shall approve the establishment of a resident management corporation. When such approval is made by the elected resident council of a building or row house area, the resident management program shall not interfere with the rights of other families residing in the project or harm the efficient operation of the project. The resident management corporation and the resident council may be the same organization, if the organization complies with the requirements applicable to both the corporation and council. The corporation shall be a nonprofit corporation organized under the laws of the State in which the project is located, and the

tenants of the project shall be the sole voting members of the corporation. If there is no elected resident council, a majority of the households of the public housing project shall approve the establishment of a resident council to determine the feasibility of establishing a resident management corporation to manage the project.

(2) Public housing management specialist

The resident council of a public housing project, in cooperation with the public housing agency, shall select a qualified public housing management specialist to assist in determining the feasibility of, and to help establish, a resident management corporation and to provide training and other duties agreed to in the daily operations of the project.

(3) Bonding and insurance

Before assuming any management responsibility for a public housing project, the resident management corporation shall provide fidelity bonding and insurance, or equivalent protection, in accordance with regulations and requirements of the Secretary and the public housing agency. Such bonding and insurance, or its equivalent, shall be adequate to protect the Secretary and the public housing agency against loss, theft, embezzlement, or fraudulent acts on the part of the resident management corporation or its employees.

(4) Management responsibilities

A resident management corporation that qualifies under this section, and that supplies insurance and bonding or equivalent protection sufficient to the Secretary and the public housing agency, shall enter into a contract with the public housing agency establishing the respective management rights and responsibilities of the corporation and the public housing agency. Such contract shall be consistent with the requirements of this chapter applicable to public housing projects and may include specific terms governing management personnel and compensation, access to public housing project records, submission of and adherence to budgets, rent collection procedures, tenant income verification, tenant eligibility determinations, tenant eviction, the acquisition of supplies and materials, rent determination, community service requirements,,[1] and such other matters as may be appropriate. The contract shall be treated as a contracting out of services and shall be subject to any provision of a collective bargaining agreement regarding contracting out to which the public housing agency is subject.

(5) Annual audit

The books and records of a resident management corporation operating a public housing project shall be audited annually by a certified public accountant. A written report of each audit shall be forwarded to the public housing agency and the Secretary.

(c) Assistance amounts

A contract under this section for management of a public housing project by a resident management corporation shall provide for—

(1) the public housing agency to provide a portion of the assistance to agency from the Capital and Operating Funds to the resident management corporation in accordance with subsection (e) of this section for purposes of operating the public housing project covered by the contract and performing such other eligible activities with respect to the project as may be provided under the contract;

(2) the amount of income expected to be derived from the project itself (from sources such as rents and charges);

(3) the amount of income to be provided to the project from the other sources of income of the public housing agency (such as interest income, administrative fees, and rents); and

(4) any income generated by a resident management corporation of a public housing project that exceeds the income estimated under the contract shall be used for eligible activities under subsections (d)(1) and (e)(1) of section 1437g of this title.

(d) Waiver of Federal requirements

(1) Waiver of regulatory requirements

Upon the request of any resident management corporation and public housing agency, and after notice and an opportunity to comment is afforded to the affected tenants, the Secretary may waive (for both the resident management corporation and the public housing agency) any requirement established by the Secretary (and not specified in any statute) that the Secretary determines to unnecessarily increase the costs or restrict the income of a public housing project.

(2) Waiver to permit employment

Upon the request of any resident management corporation, the Secretary may, subject to applicable collective bargaining agreements, permit residents of such project to volunteer a portion of their labor.

(3) Exceptions

The Secretary may not waive under this subsection any requirement with respect to income eligibility for purposes of section 1437n of this title, rental payments under section 1437a(a) of this title, tenant or applicant protections, employee organizing rights, or rights of employees under collective bargaining agreements.

(e) Direct provision of operating and capital assistance

(1) In general

The Secretary shall directly provide assistance from the Operating and Capital Funds to a resident management corporation managing a public housing development pursuant to a contract under this section, but only if—

(A) the resident management corporation petitions the Secretary for the release of the funds;

(B) the contract provides for the resident management corporation to assume the primary management responsibilities of the public housing agency; and

(C) the Secretary determines that the corporation has the capability to effectively discharge such responsibilities.

[1] So in original.

(2) Use of assistance

Any assistance from the Operating and Capital Funds provided to a resident management corporation pursuant to this subsection shall be used for purposes of operating the public housing developments of the agency and performing such other eligible activities with respect to public housing as may be provided under the contract.

(3) Responsibility of public housing agency

If the Secretary provides direct funding to a resident management corporation under this subsection, the public housing agency shall not be responsible for the actions of the resident management corporation.

(4) Calculation of Operating Fund allocation

Notwithstanding any provision of section 1437g of this title or any regulation under such section, and subject to the exception provided in paragraph (3), the portion of the amount received by a public housing agency under section 1437g of this title that is due to an allocation from the Operating Fund and that is allocated to a public housing project managed by a resident management corporation shall not be less than the public housing agency per unit monthly amount provided in the previous year as determined on an individual project basis.

(5) Calculation of total income

(A) Subject to subparagraph (B), the amount of funds provided by a public housing agency to a public housing project managed by a resident management corporation may not be reduced during the 3-year period beginning on February 5, 1988, or on any later date on which a resident management corporation is first established for the project.

(B) If the total income of a public housing agency (including any amounts from the Capital or Operating Funds provided to the public housing agency under section 1437g of this title) is reduced or increased, the income provided by the public housing agency to a public housing project managed by a resident management corporation shall be reduced or increased in proportion to the reduction or increase in the total income of the public housing agency, except that any reduction in amounts from the Operating Fund that occurs as a result of fraud, waste, or mismanagement by the public housing agency shall not affect the funds provided to the resident management corporation.

(6) Retention of excess revenues

(A) Any income generated by a resident management corporation of a public housing project that exceeds the income estimated for purposes of this subsection shall be excluded in subsequent years in calculating (i) the allocations from the Operating Fund for the public housing agency under section 1437g of this title; and (ii) the funds provided by the public housing agency to the resident management corporation.

(B) Any revenues retained by a resident management corporation under subparagraph (A) shall be used for purposes of improving the maintenance and operation of the public housing project, for establishing business enterprises that employ residents of public housing, or for acquiring additional dwelling units for low-income families.

(f), (g) Repealed. Pub. L. 105–276, title V, § 532(a)(5), Oct. 21, 1998, 112 Stat. 2575

(h) Applicability

Any management contract between a public housing agency and a resident management corporation that is entered into after November 7, 1988, shall be subject to this section and the regulations issued to carry out this section.

(Sept. 1, 1937, ch. 896, title I, § 20, as added Pub. L. 100–242, title I, § 122, Feb. 5, 1988, 101 Stat. 1839; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; amended Pub. L. 100–628, title X, § 1003, Nov. 7, 1988, 102 Stat. 3263; Pub. L. 101–625, title IV, § 415, title V, §§ 514, 572(1), Nov. 28, 1990, 104 Stat. 4160, 4196, 4236; Pub. L. 102–550, title I, § 117, Oct. 28, 1992, 106 Stat. 3695; Pub. L. 105–276, title V, § 532(a), Oct. 21, 1998, 112 Stat. 2574.)

PRIOR PROVISIONS

A prior section 1437r, act Sept. 1, 1937, ch. 896, § 20, as added Nov. 6, 1986, Pub. L. 99–603, title I, § 121(b)(6), 100 Stat. 3391, related to payment for implementation of immigration status verification system, prior to repeal by Pub. L. 100–242, § 164(f)(2).

AMENDMENTS

1998—Subsec. (b)(4). Pub. L. 105–276, § 532(a)(1), inserted '', rent determination, community service requirements,'' after ''materials''.

Subsec. (c). Pub. L. 105–276, § 532(a)(2), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: ''Public housing projects managed by resident management corporations may be provided with comprehensive improvement assistance under section 1437*l* of this title for purposes of renovating such projects in accordance with such section. If such renovation activities (including the planning and architectural design of the rehabilitation) are administered by a resident management corporation, the public housing agency involved may not retain, for any administrative or other reason, any portion of the assistance provided pursuant to this subsection unless otherwise provided by contract.''

Subsec. (d)(3), (4). Pub. L. 105–276, § 532(a)(3), redesignated par. (4) as (3) and struck out heading and text of former par. (3). Text read as follows: ''Not later than 6 months after February 5, 1988, the Secretary shall submit to the Congress a report setting forth any additional waivers of Federal law that the Secretary determines are necessary or appropriate to carry out the provisions of this section. In preparing the report, the Secretary shall consult with resident management corporations and public housing agencies.''

Subsec. (e)(1) to (3). Pub. L. 105–276, § 532(a)(4)(B), added subsec. heading and pars. (1) to (3) and struck out former subsec. heading and former pars. (1) to (3), which in par. (1), specified amount of operating subsidy to be allocated to a public housing project managed by a resident management corporation; in par. (2), set forth requirements for any contract for management of a project entered into by a public housing agency and a resident management corporation; and in par. (3), prohibited reduction of funds provided by an agency to a project during 3-year period beginning on date on which resident management corporation is first established for the project, and provided for proportional reduction or increase if total income of agency is reduced or increased.

Subsec. (e)(4), (5). Pub. L. 105–276, § 532(a)(4)(B), added pars. (4) and (5). Former par. (4) redesignated (6).

Subsec. (e)(6). Pub. L. 105–276, § 532(a)(4)(A), redesignated par. (4) as (6).

Subsec. (e)(6)(A)(i). Pub. L. 105–276, § 532(a)(4)(C), substituted ''the allocations from the Operating Fund for'' for ''the operating subsidies provided to''.

Subsec. (f). Pub. L. 105–276, § 532(a)(5), struck out heading and text of subsec. (f) which required Secretary to provide financial assistance to resident management corporations or resident councils that obtain technical assistance for the development of resident management entities, limited assistance to $100,000 with respect to any public housing project, authorized appropriations for fiscal years 1993 and 1994, and limited assistance to corporations or councils where assistance was provided under subchapter II–A of this chapter.

Subsec. (g). Pub. L. 105–276, § 532(a)(5), struck out heading and text of subsec. (g). Text read as follows: ''Not later than 3 years after February 5, 1988, the Secretary shall—

''(1) conduct an evaluation and assessment of resident management, and particularly of the effect of resident management on living conditions in public housing; and

''(2) submit to the Congress a report setting forth the findings of the Secretary as a result of the evaluation and assessment and including any recommendations the Secretary determines to be appropriate.''

1992—Subsec. (f)(3). Pub. L. 102–550 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''(3) FUNDING.—Of amounts made available for financial assistance under section 1437*l* of this title, the Secretary may use to carry out this subsection not more than $5,000,000 for each of fiscal years 1991 and 1992.''

1990—Subsec. (e)(4)(B). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families''.

Subsec. (f)(3). Pub. L. 101–625, § 514, amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Of the amounts available for financial assistance under section 1437*l* of this title, the Secretary may use to carry out this subsection not more than $2,500,000 for fiscal year 1988 and not more than $2,500,000 for fiscal year 1989.''

Subsec. (f)(4). Pub. L. 101–625, § 415, added par. (4).

1988—Subsec. (h). Pub. L. 100–628 added subsec. (h).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

§ 1437s. Public housing homeownership and management opportunities

(a) Homeownership opportunities in general

Low-income families residing in a public housing project shall be provided with the opportunity to purchase the dwelling units in the project through a qualifying resident management corporation as follows:

(1) Formation of resident management corporation

As a condition for public housing homeownership—

(A) the adult residents of a public housing project shall have formed a resident management corporation in accordance with regulations and requirements of the Secretary prescribed under this section and section 1437r of this title;

(B) the resident management corporation shall have entered into a contract with the public housing agency establishing the respective management rights and responsibilities of the resident management corporation and the public housing agency; and

(C) the resident management corporation shall have demonstrated its ability to manage public housing effectively and efficiently for a period of not less than 3 years.

(2) Homeownership assistance

(A) The Secretary may provide assistance from the Capital Fund to a public housing project in which homeownership activities under this section are conducted.

(B) The Secretary may provide financial assistance to public housing agencies, resident management corporations, or resident councils that obtain, by contract or otherwise, training, technical assistance, and educational assistance as the Secretary determines to be necessary to promote homeownership opportunities under this section.

(C) This paragraph shall not have effect after February 4, 1991. The Secretary may not provide financial assistance under subparagraph (B), after such date, unless the Secretary determines that such assistance is necessary for the development of a homeownership program that was initiated, as determined by the Secretary, before November 28, 1990.

(3) Conditions of purchase by a resident management corporation

(A) A resident management corporation may purchase from a public housing agency one or more multifamily buildings in a public housing project following a determination by the Secretary that—

(i) the resident management corporation has met the conditions of paragraph (1);

(ii) the resident management corporation has applied for and is prepared to undertake the ownership, management, and maintenance of the building or buildings with continued assistance from the Secretary;

(iii) the public housing agency has held one or more public hearings to obtain the views of citizens regarding the proposed purchase and, in consultation with the Secretary, has certified that the purchase will not interfere with the rights of other families residing in public housing, will not harm the efficient operation of other public housing, and is in the interest of the community;

(iv) the public housing agency has certified that it has and will implement a plan to replace public housing units sold under this section within 30 months of the sale, which plan shall provide for replacement of 100 percent of the units sold under this section by—

(I) production, acquisition, or rehabilitation of vacant public housing units by the public housing agency; and

(II) acquisition by the resident management corporation of nonpublicly owned, decent, and affordable housing units, which the resident management corporation shall operate as rental housing subject to tenant income and rent limitations

comparable to the limitations applicable to public housing; and

(v) the building or buildings meet the housing quality standards applicable under section 1437d(f) of this title, and the physical condition, management, and operation of the building or buildings are sufficient to permit affordable homeownership by the families residing in the project.

(B) The price of a building purchased under the preceding sentence shall be approved by the Secretary, in consultation with the public housing agency and resident management corporation, taking into account the fair market value of the property, the ability of resident families to afford and maintain the property, and such other factors as the Secretary determines to be consistent with increasing the supply of dwelling units affordable to very low income families.

(C) This paragraph shall not have effect after February 4, 1991. The authority for a resident management corporation to purchase 1 or more multifamily buildings in a public housing project from a public housing agency shall terminate after such date, unless the Secretary determines that such purchase is necessary for the development of a homeownership program that was initiated, as determined by the Secretary, before November 28, 1990.

(4) Conditions of resale

(A)(i) A resident management corporation may sell a dwelling unit or ownership rights in a dwelling unit only to a lower income family residing in, or eligible to reside in, public housing and only if the Secretary determines that the purchase will not interfere with the rights of other families residing in the housing project or harm the efficient operation of the project, and the family will be able to purchase and maintain the property.

(ii) The sale of dwelling units or ownership rights in dwelling units under clause (i) shall be made to families in the following order of priority:

(I) a lower income family residing in the public housing project in which the dwelling unit is located;

(II) a lower income family residing in any public housing project within the jurisdiction of the public housing agency having jurisdiction with respect to the project in which the dwelling unit is located;

(III) a lower income family receiving Federal housing assistance and residing in the jurisdiction of such public housing agency; and

(IV) a lower income family on the waiting list of such public housing agency for public housing or assistance under section 1437f of this title, with priority given in the order in which the family appears on the waiting list.

(iii) Each resident management corporation shall provide each family described in clause (ii) with a notice of the eligibility of the family to purchase a dwelling unit under this paragraph.

(B) A purchase under subparagraph (A) may be made under any of the following arrangements:

(i) Limited dividend cooperative ownership.

(ii) Condominium ownership.

(iii) Fee simple ownership.

(iv) Shared appreciation with a public housing agency providing financing under paragraph (6).

(v) Any other arrangement determined by the Secretary to be appropriate.

(C) Property purchased under this section shall be resold only to the resident management corporation, a lower income family residing in or eligible to reside in public housing or housing assisted under section 1437f of this title, or to the public housing agency.

(D) In no case may the owner receive consideration for his or her interest in the property that exceeds the total of—

(i) the contribution to equity paid by the owner;

(ii) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the owner during the owner's tenure as owner; and

(iii) the appreciated value determined by an inflation allowance at a rate which may be based on a cost of living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the resident management corporation or the public housing agency, whichever is appropriate, at the time of initial sale, and applied against the contribution to equity; the resident management corporation or the public housing agency may, at the time of initial sale, enter into an agreement with the owner to set a maximum amount which this appreciation may not exceed.

(E) Upon sale, the resident management corporation or the public housing agency, whichever is appropriate, shall ensure that subsequent owners are bound by the same limitations on resale and further restrictions on equity appreciation.

(5) Use of proceeds

Notwithstanding any other provision of this chapter or other law to the contrary, proceeds from the sale of a building or buildings under paragraph (3) and amounts recaptured under paragraph (4) shall be paid to the public housing agency and shall be retained and used by the public housing agency only to increase the number of public housing units available for occupancy. The resident management corporation shall keep and make available to the public housing agency and the Secretary all records necessary to calculate accurately payments due the local housing agency under this section. The Secretary shall not reduce or delay payments under other provisions of law as a result of amounts made available to the local housing agency under this section.

(6) Financing

When financing for the purchase of the property is not otherwise available for purposes of assisting any purchase by a family or resident management corporation under this section,

the public housing agency involved may make a loan on the security of the property involved to the family or resident management corporation at a rate of interest that shall not be lower than 70 percent of the market interest rate for conventional mortgages on the date on which the loan is made.

(7) Capital and operating assistance

Notwithstanding the purchase of a building in a public housing project under this section, the Secretary shall continue to provide assistance under section 1437g of this title with respect to the project. Such assistance may not exceed the allocation for the project under section 1437g of this title.

(8) Operating Fund allocation

Amounts from the Operating Fund shall not be available with respect to a building after the date of its sale by the public housing agency.

(b) Protection of nonpurchasing families

(1) Eviction prohibition

No family residing in a dwelling unit in a public housing project may be evicted by reason of the sale of the project to a resident management corporation under this section.

(2) Tenants rights

Families renting a dwelling unit purchased by a resident management corporation shall have all rights provided to tenants of public housing under this chapter.

(3) Rental assistance

If any family resides in a dwelling unit in a building purchased by a resident management corporation, and the family decides not to purchase the dwelling unit, the Secretary shall offer to provide to the family (at the option of the family) tenant-based assistance under section 1437f(*o*) of this title for as long as the family continues to reside in the building. The Secretary may adjust the payment standard for such assistance to take into account conditions under which the building was purchased.

(4) Rental and relocation assistance

If any family resides in a dwelling unit in a public housing project in which other dwelling units are purchased under this section, and the family decides not to purchase the dwelling unit, the Secretary shall offer (to be selected by the family, at its option)—

(A) to assist the family in relocating to a comparable appropriate sized dwelling unit in another public housing project, and to reimburse the family for their cost of relocation; and

(B) to provide to the family the financial assistance necessary to permit the family to stay in the dwelling unit or to move to another comparable dwelling unit and to pay no more for rent than required under subparagraph (A), (B), or (C) of section 1437a(a)(1) of this title.

(c) Financial assistance for public housing agencies

The Secretary shall provide to public housing agencies such financial assistance as is necessary to permit such agencies to carry out the provisions of this section.

(d) Additional homeownership and management opportunities

This section shall not apply to the turnkey III, the mutual help, or any other homeownership program established under section 1437d(c)(4)(D) of this title, as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, and in existence before February 5, 1988.

(e) Regulations

The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section. Such regulations may establish any additional terms and conditions for homeownership or resident management under this section that are determined by the Secretary to be appropriate.

(f) Repealed. Pub. L. 104–66, title I, § 1071(a), Dec. 21, 1995, 109 Stat. 720

(g) Limitation

Any authority of the Secretary under this section to provide financial assistance, or to enter into contracts to provide financial assistance, shall be effective only to such extent or in such amounts as are or have been provided in advance in an appropriation Act.

(Sept. 1, 1937, ch. 896, title I, § 21, as added Pub. L. 100–242, title I, § 123, Feb. 5, 1988, 101 Stat. 1842; renumbered title I, Pub. L. 100–358, § 5, June 29, 1988, 102 Stat. 681; amended Pub. L. 101–625, title IV, § 416, title V, § 572(1), Nov. 28, 1990, 104 Stat. 4161, 4236; Pub. L. 102–550, title I, § 118, Oct. 28, 1992, 106 Stat. 3695; Pub. L. 104–66, title I, § 1071(a), Dec. 21, 1995, 109 Stat. 720; Pub. L. 105–276, title V, §§ 518(a)(2)(A), 532(b), Oct. 21, 1998, 112 Stat. 2551, 2575.)

REFERENCES IN TEXT

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (d), is section 503(a) of Pub. L. 105–276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

AMENDMENTS

1998—Subsec. (a)(2)(A). Pub. L. 105–276, § 532(b)(1)(A), substituted ''assistance from the Capital Fund'' for ''comprehensive improvement assistance under section 1437*l* of this title''.

Subsec. (a)(3)(A)(v). Pub. L. 105–276, § 532(b)(1)(B), substituted ''housing quality standards applicable under section 1437d(f) of this title'' for ''minimum safety and livability standards applicable under section 1437*l* of this title''.

Subsec. (a)(7). Pub. L. 105–276, § 532(b)(1)(C), in heading, substituted ''Capital and operating assistance'' for ''Annual contributions'', in first sentence, substituted ''provide assistance under section 1437g of this title'' for ''pay annual contributions'', and at end, substituted ''Such assistance may not exceed the allocation for the project under section 1437g of this title'' for ''Such contributions may not exceed the maximum contributions authorized in section 1437c(a) of this title.''

Subsec. (a)(8). Pub. L. 105–276, § 532(b)(1)(D), in heading substituted ''fund allocation'' for ''subsidies'' and in text substituted ''Amounts from the Operating Fund'' for ''Operating subsidies''.

Subsec. (b)(3). Pub. L. 105–276, § 532(b)(2), in first sentence, substituted ''tenant-based assistance'' for ''a cer-

tificate under section 1437f(b)(1) of this title or a housing voucher'' and, in second sentence, substituted ''payment standard for such assistance'' for ''fair market rent for such certificate''.

Subsec. (d). Pub. L. 105–276, § 532(b)(3), inserted '', as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998,'' after ''section 1437d(c)(4)(D) of this title''.

Pub. L. 105–276, § 518(a)(2)(A), struck out ''section 1437c(h) of this title or'' after ''program established under''.

1995—Subsec. (f). Pub. L. 104–66 struck out heading and text of subsec. (f). Text read as follows: ''The Secretary shall annually submit to the Congress a report setting forth—

''(1) the number, type, and cost of units sold;

''(2) the income, race, gender, children, and other characteristics of families purchasing or moving and not purchasing;

''(3) the amount and type of financial assistance provided;

''(4) the need for subsidy to ensure continued affordability and meet future maintenance and repair costs;

''(5) any need for the development of additional public housing dwelling units as a result of the sale of public housing dwelling units under this section;

''(6) recommendations of the Secretary for additional budget authority to carry out such development;

''(7) recommendations of the Secretary to ensure decent homes and decent neighborhoods for low-income families; and

''(8) the recommendations of the Secretary for statutory and regulatory improvements to the program.''

1992—Subsec. (a)(2)(C), (3)(C). Pub. L. 102–550 substituted ''February 4, 1991'' for ''the effective date of the regulations implementing subchapter II–A of this chapter'' and ''after such date'' for ''after such effective date'' and made technical amendment to reference to November 28, 1990, to reflect correction of corresponding provisions of original act.

1990—Subsec. (a). Pub. L. 101–625, § 572(1), which directed substitution of ''low-income families'' for ''lower income families'', was executed by substituting ''Low-income families'' for ''Lower income families'' in introductory provisions to reflect the probable intent of Congress.

Subsec. (a)(2)(B). Pub. L. 101–625, § 416(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The Secretary, and the public housing agency owning and operating a public housing project, shall provide such training, technical assistance, and educational assistance as the Secretary determines to be necessary to prepare the families residing in the project, and any resident management corporation established under paragraph (1), for homeownership.''

Subsec. (a)(2)(C). Pub. L. 101–625, § 416(2), substituted ''the effective date of the regulations implementing subchapter II–A of this chapter. The Secretary may not provide financial assistance under subparagraph (B), after such effective date, unless the Secretary determines that such assistance is necessary for the development of a homeownership program that was initiated, as determined by the Secretary, before November 28, 1990'' for ''September 30, 1990''.

Subsec. (a)(3)(C). Pub. L. 101–625, § 416(3), substituted ''the effective date of the regulations implementing subchapter II–A of this chapter. The authority for a resident management corporation to purchase 1 or more multifamily buildings in a public housing project from a public housing agency shall terminate after such effective date, unless the Secretary determines that such purchase is necessary for the development of a homeownership program that was initiated, as determined by the Secretary, before November 28, 1990'' for ''September 30, 1990''.

Subsec. (f)(7). Pub. L. 101–625, § 572(1), substituted ''low-income families'' for ''lower income families''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

§ 1437t. Authority to convert public housing to vouchers

(a) Authority

A public housing agency may convert any public housing project (or portion thereof) owned by the public housing agency to tenant-based assistance, but only in accordance with the requirements of this section.

(b) Conversion assessment

(1) In general

To convert public housing under this section, a public housing agency shall conduct an assessment of the public housing that includes—

(A) a cost analysis that demonstrates whether or not the cost (both on a net present value basis and in terms of new budget authority requirements) of providing tenant-based assistance under section 1437f of this title for the same families in substantially similar dwellings over the same period of time is less expensive than continuing public housing assistance in the public housing project for the remaining useful life of the project;

(B) an analysis of the market value of the public housing project both before and after rehabilitation, and before and after conversion;

(C) an analysis of the rental market conditions with respect to the likely success of the use of tenant-based assistance under section 1437f of this title in that market for the specific residents of the public housing project, including an assessment of the availability of decent and safe dwellings renting at or below the payment standard established for tenant-based assistance under section 1437f of this title by the agency;

(D) the impact of the conversion to tenant-based assistance under this section on the neighborhood in which the public housing project is located; and

(E) a plan that identifies actions, if any, that the public housing agency would take with regard to converting any public housing project or projects (or portions thereof) of the public housing agency to tenant-based assistance.

(2) Timing

Not later than 2 years after the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, each public housing agency shall conduct an assessment under paragraph (1) or (3) of the status of each public housing project owned by such agency and shall submit to the Secretary such assessment. A public housing agency may otherwise undertake an assessment under this

subsection at any time and for any public housing project (or portion thereof) owned by the agency. A public housing agency may update a previously conducted assessment for a project (or portion thereof) for purposes of compliance with the one-year limitation under subsection (c) of this section.

(3) Streamlined assessment

At the discretion of the Secretary or at the request of a public housing agency, the Secretary may waive any or all of the requirements of paragraph (1) or (3) or otherwise require a streamlined assessment with respect to any public housing project or class of public housing projects.

(c) Criteria for implementation of conversion plan

A public housing agency may convert a public housing project (or portion thereof) owned by the agency to tenant-based assistance only pursuant to a conversion assessment under subsection (b) of this section that one year[1] and that demonstrates that the conversion—

(1) will not be more expensive than continuing to operate the public housing project (or portion thereof) as public housing;

(2) will principally benefit the residents of the public housing project (or portion thereof) to be converted, the public housing agency, and the community; and

(3) will not adversely affect the availability of affordable housing in such community.

(d) Conversion plan requirement

A public housing project may be converted under this section to tenant-based assistance only as provided in a conversion plan under this subsection, which has not been disapproved by the Secretary pursuant to subsection (e) of this section. Each conversion plan shall—

(1) be developed by the public housing agency, in consultation with the appropriate public officials, with significant participation by the residents of the project (or portion thereof) to be converted;

(2) be consistent with and part of the public housing agency plan;

(3) describe the conversion and future use or disposition of the project (or portion thereof) and include an impact analysis on the affected community;

(4) provide that the public housing agency shall—

(A) notify each family residing in a public housing project (or portion) to be converted under the plan 90 days prior to the displacement date except in cases of imminent threat to health or safety, consistent with any guidelines issued by the Secretary governing such notifications, that—

(i) the public housing project (or portion) will be removed from the inventory of the public housing agency; and

(ii) each family displaced by such action will be offered comparable housing—

(I) that meets housing quality standards;

(II) that is located in an area that is generally not less desirable than the location of the displaced person's housing; and

(III) which may include—

(aa) tenant-based assistance, except that the requirement under this clause regarding offering of comparable housing shall be fulfilled by use of tenant-based assistance only upon the relocation of such family into such housing;

(bb) project-based assistance; or

(cc) occupancy in a unit operated or assisted by the public housing agency at a rental rate paid by the family that is comparable to the rental rate applicable to the unit from which the family is vacated;

(B) provide any necessary counseling for families displaced by such action;

(C) ensure that, if the project (or portion) converted is used as housing after such conversion, each resident may choose to remain in their dwelling unit in the project and use the tenant-based assistance toward rent for that unit; and

(D) provide any actual and reasonable relocation expenses for families displaced by the conversion; and

(5) provide that any proceeds to the agency from the conversion will be used subject to the limitations that are applicable under section 1437p(a)(5) of this title to proceeds resulting from the disposition or demolition of public housing.

(e) Review and approval of conversion plans

The Secretary shall disapprove a conversion plan only if—

(1) the plan is plainly inconsistent with the conversion assessment for the agency developed under subsection (b) of this section;

(2) there is reliable information and data available to the Secretary that contradicts that conversion assessment; or

(3) the plan otherwise fails to meet the requirements of this section.

(f) Tenant-based assistance

To the extent approved by the Secretary, the funds used by the public housing agency to provide tenant-based assistance under section 1437f of this title shall be added to the annual contribution contract administered by the public housing agency.

(Sept. 1, 1937, ch. 896, title I, § 22, as added Pub. L. 101–625, title V, § 515(a), Nov. 28, 1990, 104 Stat. 4196; amended Pub. L. 102–550, title I, § 119, Oct. 28, 1992, 106 Stat. 3695; Pub. L. 105–276, title V, § 533(a), Oct. 21, 1998, 112 Stat. 2576.)

REFERENCES IN TEXT

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (b)(2), is section 503(a) of Pub. L. 105–276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

AMENDMENTS

1998—Pub. L. 105–276 amended section generally. Prior to amendment, section related to award of grants to public housing agencies to adapt public housing to help families gain better access to educational and job op-

[1] So in original.

portunities, use of funds for supportive services, development of facilities to accommodate them, and employment of service coordinators, applications, selection for grants, reports to Secretary and Congress, and appropriations for fiscal years 1993 and 1994.

1992—Subsec. (k). Pub. L. 102–550 amended subsec. (k) generally, substituting present provisions for provisions authorizing $25,000,000 in fiscal year 1991 and $26,100,000 in fiscal year 1992.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

SAVINGS PROVISION

Pub. L. 105–276, title V, § 533(b), Oct. 21, 1998, 112 Stat. 2578, provided that: ''The amendment made by subsection (a) [amending this section] shall not affect any contract or other agreement entered into under section 22 of the United States Housing Act of 1937 [42 U.S.C. 1437t], as such section existed immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998 [Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title].''

PUBLIC HOUSING ONE-STOP PERINATAL SERVICES DEMONSTRATION

Section 521 of Pub. L. 101–625, as amended by Pub. L. 102–550, title I, § 125, Oct. 28, 1992, 106 Stat. 3710, which directed Secretary of Housing and Urban Development to carry out program to demonstrate effectiveness of providing grants to public housing agencies to assist such agencies in providing facilities for making one-stop perinatal services programs available for pregnant women residing in public housing, set forth preferences, limitation on grant amount, and program requirements, and required report to Congress not later than 1 year after amounts were first made available setting forth findings and conclusions and including recommendations with respect to establishment of permanent program, was repealed by Pub. L. 105–276, title V, § 582(a)(9), Oct. 21, 1998, 112 Stat. 2644.

§ 1437u. Family Self-Sufficiency program

(a) Purpose

The purpose of the Family Self-Sufficiency program established under this section is to promote the development of local strategies to coordinate use of public housing and assistance under the certificate and voucher programs under section 1437f of this title with public and private resources, to enable eligible families to achieve economic independence and self-sufficiency.

(b) Establishment of program

(1) Required programs

Except as provided in paragraph (2), the Secretary shall carry out a program under which each public housing agency that administers assistance under subsection (b) or (*o*) of section 1437f of this title or makes available new public housing dwelling units—

(A) may, during fiscal years 1991 and 1992, carry out a local Family Self-Sufficiency program under this section;

(B) effective on October 1, 1992, the Secretary shall require each such agency to carry out a local Family Self-Sufficiency program under this section, subject to the limitations in paragraph (4); and

(C) effective on October 21, 1998, to the extent an agency is not required to carry out a program pursuant to subparagraph (B) of this paragraph and paragraph (4), may carry out a local Family Self-Sufficiency program under this section.

Each local program shall, subject to availability of supportive services, include an action plan under subsection (g) of this section and shall provide comprehensive supportive services for families electing to participate in the program. In carrying out the self-sufficiency program under this section, the Secretary shall consult with the heads of other appropriate Federal agencies and provide for cooperative actions and funding agreements with such agencies. Each public housing agency administering an approved local program may employ a service coordinator to administer the local program.

(2) Exception

The Secretary shall not require a public housing agency to carry out a local program under subsection (a) of this section if the public housing agency provides certification (as such term is defined under title I of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12701 et seq.]) to the Secretary, that the establishment and operation of the program is not feasible because of local circumstances, which may include—

(A) lack of supportive services accessible to eligible families, which shall include insufficient availability of resources for programs under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or the Job Opportunities and Basic Skills Training Program under part F[1] of title IV of the Social Security Act;

(B) lack of funding for reasonable administrative costs;

(C) lack of cooperation by other units of State or local government; or

(D) any other circumstances that the Secretary may consider appropriate.

In allocating assistance available for reservation under this chapter, the Secretary may not refuse to provide assistance or decrease the amount of assistance that would otherwise be provided to any public housing agency because the agency has provided a certification under this paragraph or because, pursuant to a certification, the agency has failed to carry out a self-sufficiency program.

(3) Scope

Subject to paragraph (4), each public housing agency required to carry out a local program under this section shall make the following housing assistance available under the program in each fiscal year:

(A) Certificate and voucher assistance under section 1437f(b) and (*o*) of this title, in an amount equivalent to the increase for such year in the number of families so assisted by the agency (as compared to the preceding year).

[1] See References in Text note below.

(B) Public housing dwelling units, in the number equal to the increase for such year in units made available by the agency (as compared to the preceding year).

Each such public housing agency shall continue to operate a local program for the number of families determined under this paragraph subject only to the availability under appropriations Acts of sufficient amounts for assistance.

(4) Termination of requirement to expand program

(A) In general

Notwithstanding any other provision of law, a public housing agency that receives incremental assistance under subsection (b) or (*o*) of section 1437f of this title or that makes available new public housing dwelling units shall not be required, after October 21, 1998, to provide assistance under a local Family Self-Sufficiency program under this section to any families not required to be assisted under subparagraph (B) of this paragraph.

(B) Continuation of existing obligations

(i) In general

Each public housing agency that, before October 21, 1998, was required under this section to carry out a local Family Self-Sufficiency program shall continue to operate such local program for the number of families determined under paragraph (3), subject only to the availability under appropriations Acts of sufficient amounts for housing assistance.

(ii) Reduction

The number of families for which an agency is required under clause (i) to operate such local program shall be decreased by one for each family that, after October 21, 1998, fulfills its obligations under the contract of participation.

(5) Nonparticipation

Assistance under the certificate or voucher programs under section 1437f of this title for a family that elects not to participate in a local program shall not be delayed by reason of such election.

(c) Contract of participation

(1) In general

Each public housing agency carrying out a local program under this section shall enter into a contract with each leaseholder receiving assistance under the certificate and voucher programs of the public housing agency under section 1437f of this title or residing in public housing administered by the agency, that elects to participate in the self-sufficiency program under this section. The contract shall set forth the provisions of the local program, shall establish specific interim and final goals by which compliance with and performance of the contract may be measured, and shall specify the resources and supportive services to be made available to the participating family pursuant to paragraph (2) and the responsibilities of the participating family. The contract shall provide that the public housing agency may terminate or withhold assistance under section 1437f of this title and services under paragraph (2) of this subsection if the public housing agency determines, through an administrative grievance procedure in accordance with the requirements of section 1437d(k) of this title, that the family has failed to comply with the requirements of the contract without good cause (which may include a loss or reduction in access to supportive services, or a change in circumstances that makes the family or individual unsuitable for participation).

(2) Supportive services

A local program under this section shall provide appropriate supportive services under this paragraph to each participating family entering into a contract of participation under paragraph (1). The supportive services shall be provided during the period the family is receiving assistance under section 1437f of this title or residing in public housing, and may include—

(A) child care;

(B) transportation necessary to receive services;

(C) remedial education;

(D) education for completion of high school;

(E) job training and preparation;

(F) substance abuse treatment and counseling;

(G) training in homemaking and parenting skills;

(H) training in money management;

(I) training in household management; and

(J) any other services and resources appropriate to assist eligible families to achieve economic independence and self-sufficiency.

(3) Term and extension

Each family participating in a local program shall be required to fulfill its obligations under the contract of participation not later than 5 years after entering into the contract. The public housing agency shall extend the term of the contract for any family that requests an extension, upon a finding of the agency of good cause.

(4) Employment and counseling

The contract of participation shall require the head of the participating family to seek suitable employment during the term of the contract. The public housing agency may, during such period, provide counseling for the family with respect to affordable rental and homeownership opportunities in the private housing market and money management counseling.

(d) Incentives for participation

(1) Maximum rents

During the term of the contract of participation, the amount of rent paid by any participating family whose monthly adjusted income does not exceed 50 percent of the area median income for occupancy in the public housing unit or dwelling unit assisted under section

1437f of this title may not be increased on the basis of any increase in the earned income of the family, unless the increase results in an income exceeding 50 percent of the area median income. The Secretary shall provide for increased rents for participating families whose incomes are between 50 and 80 percent of the area median income, so that any family whose income increases to 80 percent or more of the area median income pays 30 percent of the family's monthly adjusted income for rent. Upon completion of the contract of participation, if the participating family continues to qualify for and reside in a dwelling unit in public housing or housing assisted under section 1437f of this title, the rent charged the participating family shall be increased (if applicable) to 30 percent of the monthly adjusted income of the family.

(2) Escrow savings accounts

For each participating family whose monthly adjusted income is less than 50 percent of the area median income, the difference between 30 percent of the adjusted income of the participating family and the amount of rent paid by a participating family shall be placed in an interest-bearing escrow account established by the public housing agency on behalf of the participating family. For families with incomes between 50 and 80 percent of the area median income, the Secretary shall provide for escrow of the difference between 30 percent of the family income and the amount paid by the family for rent as determined by the Secretary under paragraph (1). The Secretary shall not escrow any amounts for any family whose adjusted income exceeds 80 percent of the area median income. Amounts in the escrow account may be withdrawn by the participating family after the family ceases to receive income assistance under Federal or State welfare programs, upon successful performance of the obligations of the family under the contract of participation entered into by the family under subsection (c) of this section, as determined according to the specific goals and terms included in the contract, and under other circumstances in which the Secretary determines an exception for good cause is warranted. A public housing agency establishing such escrow accounts may make certain amounts in the accounts available to the participating families before full performance of the contract obligations based on compliance with, and completion of, specific interim goals included in the contract; except that any such amounts shall be used by the participating families for purposes consistent with the contracts of participation, as determined by the public housing agency.

(3) Plan

Each public housing agency carrying out a local program under this section shall establish a plan to offer incentives to families to encourage families to participate in the program. The plan shall require the establishment of escrow savings accounts under paragraph (2) and may include any other incentives designed by the public housing agency.

(e) Effect of increases in family income

Any increase in the earned income of a family during the participation of the family in a local program established under this section may not be considered as income or a resource for purposes of eligibility of the family for other benefits, or amount of benefits payable to the family, under any program administered by the Secretary, unless the income of the family equals or exceeds 80 percent of the median income of the area (as determined by the Secretary with adjustments for smaller and larger families).

(f) Program coordinating committee

(1) Functions

Each public housing agency carrying out a local program under this section shall, in consultation with the chief executive officer of the unit of general local government, develop an action plan under subsection (g) of this section, carry out activities under the local program, and secure commitments of public and private resources through a program coordinating committee established by the public housing agency under this subsection.

(2) Membership

The program coordinating committee may consist of representatives of the public housing agency, the unit of general local government, the local agencies (if any) responsible for carrying out programs under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or the Job Opportunities and Basic Skills Training Program under part F[2] of title IV of the Social Security Act, and other organizations, such as other State and local welfare and employment agencies, public and private education or training institutions, nonprofit service providers, and private businesses. The public housing agency may, in consultation with the chief executive officer of the unit of general local government, utilize an existing entity as the program coordinating committee if it meets the requirements of this subsection.

(g) Action plan

(1) Required submission

The Secretary shall require each public housing agency participating in the self-sufficiency program under this section to submit to the Secretary, for approval by the Secretary, an action plan under this subsection in such form and in accordance with such procedures as the Secretary shall require.

(2) Development of plan

In developing the plan, the public housing agency shall consult with the chief executive officer of the applicable unit of general local government, the program coordinating committee established under subsection (f) of this section, representatives of residents of the public housing, any local agencies responsible for programs under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or the Job Opportunities and Basic Skills Training Program under part F[2] of title IV of the

[2] See References in Text note below.

Social Security Act, other appropriate organizations (such as other State and local welfare and employment or training institutions, child care providers, nonprofit service providers, and private businesses), and any other public and private service providers affected by the operation of the local program.

(3) Contents of plan

The Secretary shall require that the action plan contain at a minimum—

(A) a description of the size, characteristics, and needs of the population of the families expected to participate in the local self-sufficiency program;

(B) a description of the number of eligible participating families who can reasonably be expected to receive supportive services under the program, based on available and anticipated Federal, State, local, and private resources;

(C) a description of the services and activities under subsection (c)(2) of this section to be provided to families receiving assistance under this section through the section 8 [42 U.S.C. 1437f] and public housing programs, which shall be provided by both public and private resources;

(D) a description of the incentives pursuant to subsection (d) of this section offered by the public housing agency to families to encourage participation in the program;

(E) a description of how the local program will deliver services and activities according to the needs of the families participating in the program;

(F) a description of both the public and private resources that are expected to be made available to provide the activities and services under the local program;

(G) a timetable for implementation of the local program;

(H) assurances satisfactory to the Secretary that development of the services and activities under the local program has been coordinated with the Job Opportunities and Basic Skills Training Program under part F[2] of title IV of the Social Security Act and programs under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] and any other relevant employment, child care, transportation, training, and education programs in the applicable area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities; and

(I) assurances satisfactory to the Secretary that nonparticipating families will retain their rights to public housing or section 8 [42 U.S.C. 1437f] assistance notwithstanding the provisions of this section.

(h) Allowable public housing agency administrative fees and costs

(1) Fees under section 1437f

The Secretary shall establish a fee under section 1437f(q) of this title for the costs incurred in administering the provision of certificate and voucher assistance under section 1437f of this title through the self-sufficiency program under this section. The fee shall be the fee in effect under such section on June 1, 1990, except that for purposes of the fee under this paragraph the applicable dollar amount for preliminary expenses under section 1437f(q)(2)(A)(i)[2] of this title shall, subject to approval in appropriations Acts, be $300. Upon the submission by the Comptroller General of the United States of the report required under section 554(b) of the Cranston-Gonzalez National Affordable Housing Act, the Secretary shall revise the fee under this paragraph, taking into consideration the report of the Comptroller General.

(2) Performance funding system

Notwithstanding any provision of section 1437g of this title, the Secretary shall provide for inclusion under the performance funding system under section 1437g of this title of reasonable and eligible administrative costs (including the costs of employing a full-time service coordinator) incurred by public housing agencies carrying out local programs under this section. The Secretary shall include an estimate of the administrative costs likely to be incurred by participating public housing agencies in the annual budget request for the Department of Housing and Urban Development for public housing operating assistance under section 1437g of this title and shall include a request for such amounts in the budget request. Of any amounts appropriated under section 1437g(c) of this title for fiscal year 1993, $25,000,000 is authorized to be used for costs under this paragraph, and of any amounts appropriated under such section for fiscal year 1994, $25,900,000 is authorized to be used for costs under this paragraph.

(i) Public housing agency incentive award allocation

(1) In general

The Secretary shall carry out a competition for budget authority for certificate and voucher assistance under section 1437f of this title and public housing development assistance under section 1437c(a)(2) of this title reserved under paragraph (4) and shall allocate such budget authority to public housing agencies pursuant to the competition.

(2) Criteria

The competition shall be based on successful and outstanding implementation by public housing agencies of a local self-sufficiency program under this section. The Secretary shall establish perfomance[3] criteria for public housing agencies carrying out such local programs and the Secretary shall cause such criteria to be published in the Federal Register.

(3) Use

Each public housing agency that receives an allocation of budget authority under this subsection shall use such authority to provide assistance under the local self-sufficiency program established by the public housing agency under this section.

(4) Reservation of budget authority

Notwithstanding section 1439(d) of this title, the Secretary shall reserve for allocation

[3] So in original. Probably should be ''performance''.

under this subsection not less than 10 percent of the portion of budget authority appropriated in each of fiscal years 1991 and 1992 for section 1437f of this title that is available for purposes of providing assistance under the existing housing certificate and housing voucher programs for families not currently receiving assistance, and not less than 10 percent of the public housing development assistance available in such fiscal years for the purpose under section 1437c(a)(2) of this title (excluding amounts for major reconstruction of obsolete projects).

(j) On-site facilities

Each public housing agency carrying out a local program may, subject to the approval of the Secretary, make available and utilize common areas or unoccupied public housing units in public housing projects administered by the agency for the provision of supportive services under the local program. The use of the facilities of a public housing agency under this subsection shall not affect the amount of assistance provided to the agency under section 1437g of this title.

(k) Flexibility

In establishing and carrying out the self-sufficiency program under this section, the Secretary shall allow public housing agencies, units of general local government, and other organizations discretion and flexibility, to the extent practicable, in developing and carrying out local programs.

(*l*) Reports

(1) To Secretary

Each public housing agency that carries out a local self-sufficiency program approved by the Secretary under this section shall submit to the Secretary, not less than annually a report regarding the program. The report shall include—

(A) a description of the activities carried out under the program;

(B) a description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;

(C) a description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and

(D) any recommendations of the public housing agency or the appropriate local program coordinating committee for legislative or administrative action that would improve the self-sufficiency program carried out by the Secretary and ensure the effectiveness of the program.

(2) HUD annual report

The Secretary shall submit to the Congress annually, as a part of the report of the Secretary under section 3536 of this title, a report summarizing the information submitted by public housing agencies under paragraph (1). The report under this paragraph shall also include any recommendations of the Secretary for improving the effectiveness of the self-sufficiency program under this section.

(m) GAO report

The Comptroller General of the United States may submit to the Congress reports under this subsection evaluating and describing the Family Self-Sufficiency program carried out by the Secretary under this section.

(n) Definitions

As used in this section:

(1) The term ''contract of participation'' means a contract under subsection (c) of this section entered into by a public housing agency carrying out a local program under this section and a participating family.

(2) The term ''earned income'' means income from wages, tips, salaries, and other employee compensation, and any earnings from self-employment. The term does not include any pension or annuity, transfer payments, or any cash or in-kind benefits.

(3) The term ''eligible family'' means a family whose head of household is not elderly, disabled, pregnant, a primary caregiver for children under the age of 3, or for whom the family self-sufficiency program would otherwise be unsuitable. Notwithstanding the preceding sentence, a public housing agency may enroll such families if they choose to participate in the program.

(4) The term ''local program'' means a program for providing supportive services to participating families carried out by a public housing agency within the jurisdiction of the public housing agency.

(5) The term ''participating family'' means a family that resides in public housing or housing assisted under section 1437f of this title and elects to participate in a local self-sufficiency program under this section.

(6) The term ''vacant unit'' means a dwelling unit that has been vacant for not less than 9 consecutive months.

(*o*) Effective date and regulations

(1) Regulations

Not later than the expiration of the 180-day period beginning on November 28, 1990, the Secretary shall by notice establish any requirements necessary to carry out this section. Such requirements shall be subject to section 553 of title 5. The Secretary shall issue final regulations based on the notice not later than the expiration of the 8-month period beginning on the date of the notice. Such regulations shall become effective upon the expiration of the 1-year period beginning on the date of the publication of the final regulations.

(2) Repealed. Pub. L. 104–330, title V, § 501(b)(8), Oct. 26, 1996, 110 Stat. 4042

(Sept. 1, 1937, ch. 896, title I, § 23, as added Pub. L. 101–625, title V, § 554(a), Nov. 28, 1990, 104 Stat. 4225; amended Pub. L. 102–550, title I, §§ 106, 185(b), Oct. 28, 1992, 106 Stat. 3684, 3747; Pub. L. 104–316, title I, § 122(*l*), Oct. 19, 1996, 110 Stat. 3837; Pub. L. 104–330, title V, § 501(b)(8), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title V, § 509(a), Oct. 21, 1998, 112 Stat. 2530; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(31), (f)(23)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–425, 2681–433.)

REFERENCES IN TEXT

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (b)(2), is Pub. L. 101–625, Nov.

28, 1990, 104 Stat. 4079. Title I of the Act is classified generally to subchapter I (§ 12701 et seq.) of chapter 130 of this title. Section 554(b) of the Act is set out below. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

The Workforce Investment Act of 1998, referred to in subsecs. (b)(2)(A), (f)(2), and (g)(2), (3)(H), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Social Security Act, referred to in subsecs. (b)(2)(A), (f)(2), and (g)(2), (3)(H), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part F of title IV of the Act was classified generally to part F (§ 681 et seq.) of subchapter IV of chapter 7 of this title, prior to repeal by Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Section 1437f(q)(2)(A) of this title, referred to in subsec. (h)(1), was amended generally by Pub. L. 105–276, title V, § 547, Oct. 21, 1998, 112 Stat. 2605, and, as so amended, does not contain a cl. (i).

Section 1437g(c) of this title, referred to in subsec. (h)(2), was amended generally by Pub. L. 105–276, title V, § 519(a), Oct. 21, 1998, 112 Stat. 2551, and, as so amended, does not relate to appropriations for fiscal years 1993 and 1994.

AMENDMENTS

1998—Subsec. (b)(1)(A). Pub. L. 105–276, § 509(a)(1)(A)(i), struck out ''and'' at end.

Subsec. (b)(1)(B). Pub. L. 105–276, § 509(a)(1)(A)(ii), substituted '', subject to the limitations in paragraph (4); and'' for period at end.

Subsec. (b)(1)(C). Pub. L. 105–276, § 509(a)(1)(A)(iii), added subpar. (C).

Subsec. (b)(2)(A). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(23)(A)], struck out ''the Job Training Partnership Act or'' after ''programs under''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(31)(A)], substituted ''the Job Training Partnership Act or title I of the Workforce Investment Act of 1998 or the'' for ''the Job Training Partnerships Act or the''.

Subsec. (b)(3). Pub. L. 105–276, § 509(a)(1)(B), substituted ''Subject to paragraph (4), each'' for ''Each'' in introductory provisions.

Subsec. (b)(4), (5). Pub. L. 105–276, § 509(a)(1)(C), (D), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d)(3). Pub. L. 105–276, § 509(a)(2), struck out heading and text of par. (3) relating to use of escrow savings accounts. Text read as follows: ''Notwithstanding paragraph (3), a family that uses assistance under section 1437f(y) of this title to purchase a dwelling may use up to 50 percent of the amount in its escrow account established under paragraph (3) for a downpayment on the dwelling. In addition, after the family purchases the dwelling, the family may use any amounts remaining in the escrow account to cover the costs of major repair and replacement needs of the dwelling. If a family defaults in connection with the loan to purchase a dwelling and the mortgage is foreclosed, the remaining amounts in the escrow account shall be recaptured by the Secretary.''

Subsec. (f)(1). Pub. L. 105–276, § 509(a)(3), inserted ''carrying out a local program under this section'' after ''Each public housing agency''.

Subsec. (f)(2). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(23)(B)], struck out ''the Job Training Partnership Act or'' after ''programs under''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(31)(B)], substituted ''programs under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998 or the'' for ''programs under the Job Training Partnership Act and the''.

Subsec. (g)(2). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(23)(C)(i)], struck out ''the Job Training Partnership Act or'' after ''programs under''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(31)(C)(i)], substituted ''programs under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998 or the'' for ''for programs under the Job Training Partnership Act and the''.

Subsec. (g)(3)(H). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(23)(C)(ii)], struck out ''the Job Training Partnership Act or'' after ''programs under''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(31)(C)(ii)], substituted ''programs under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998 and any other'' for ''program under the Job Training Partnership Act and any other''.

1996—Subsec. (m). Pub. L. 104–316 substituted ''may'' for ''shall'' after ''United States'', struck out ''(1) IN GENERAL.—'' before ''The Comptroller General'', and struck out par. (2) which read as follows:

''(2) TIMING.—The Comptroller General shall submit the following reports under this subsection:

''(A) An interim report, not later than the expiration of the 2-year period beginning on November 28, 1990.

''(B) A final report, not later than the expiration of the 5-year period beginning on November 28, 1990.''

Subsec. (*o*)(2). Pub. L. 104–330 struck out heading and text of par. (2). Text read as follows: ''Notwithstanding any other provision of law, the provisions of this section shall be optional for Indian housing authorities.''

1992—Subsec. (b)(2). Pub. L. 102–550, § 106(b), added subpars. (A) to (D) and concluding provisions and struck out former subpars. (A) to (D) which read as follows:

''(A) lack of supportive services funding;

''(B) lack of funding for reasonable administrative costs;

''(C) lack of cooperation by other units of State or local government; or

''(D) any other circumstances that the Secretary may consider appropriate.''

Subsec. (b)(4). Pub. L. 102–550, § 106(c), added par. (4).

Subsec. (c)(1). Pub. L. 102–550, § 106(d), in second sentence, inserted '', shall establish specific interim and final goals by which compliance with and performance of the contract may be measured,'' after ''program'' and substituted last sentence for former last sentence which read as follows: ''The contract shall provide that the public housing agency may terminate or withhold assistance under section 1437f of this title and services under paragraph (2) of this section if the family fails to comply with the requirements under the contract.''

Subsec. (c)(2). Pub. L. 102–550, § 106(e), struck out ''to each participating family'' after ''paragraph (1)'' in introductory provisions.

Subsec. (d). Pub. L. 102–550, § 106(g)(1), substituted ''Incentives for participation'' for ''Maximum rents and escrow savings accounts'' in heading.

Subsec. (d)(2). Pub. L. 102–550, § 106(f), substituted ''after the family ceases to receive income assistance under Federal or State welfare programs, upon successful performance of the obligations of the family under the contract of participation entered into by the family under subsection (c) of this section, as determined according to the specific goals and terms included in the contract, and under other circumstances in which the Secretary determines an exception for good cause is warranted. A public housing agency establishing such escrow accounts may make certain amounts in the accounts available to the participating families before full performance of the contract obligations based on compliance with, and completion of, specific interim goals included in the contract; except that any such amounts shall be used by the participating families for purposes consistent with the contracts of participation, as determined by the public housing agency.'' for ''only after the family is no longer a recipient of any Federal, State, or other public assistance for housing.''

Subsec. (d)(3). Pub. L. 102–550, § 185(b), added par. (3) relating to use of escrow savings accounts.

Pub. L. 102–550, § 106(g)(2), added par. (3) relating to a plan to offer incentives.

Subsec. (g)(3)(D) to (I). Pub. L. 102–550, § 106(h), added subpars. (D) and (I) and redesignated former subpars (D) to (G) as (E) to (H), respectively.

Subsec. (h)(2). Pub. L. 102–550, § 106(a), amended last sentence generally. Prior to amendment, last sentence read as follows: ''Of any amounts appropriated under section 1437g(c) of this title for each of fiscal years 1991 and 1992, $25,000,000 is authorized to be used for costs under this paragraph.''

Subsec. (n)(3) to (6). Pub. L. 102–550, § 106(i), added par. (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and added par. (6).

Subsec. (*o*)(2). Pub. L. 102–550, § 106(j), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''(2) APPLICABILITY TO INDIAN PUBLIC HOUSING.—In accordance with section 1437aa(b)(2) of this title, the provisions of this section shall also apply to public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority.''

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by section 101(f) [title VIII, § 405(d)(31)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(23)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

Pub. L. 105–276, title V, § 509(b), Oct. 21, 1998, 112 Stat. 2531, provided that: ''The amendments made by this subsection [probably means subsec. (a), amending this section] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

GAO STUDY ON LINKING FEDERAL HOUSING ASSISTANCE TO ECONOMIC SELF-SUFFICIENCY PROGRAMS

Section 554(b) of Pub. L. 101–625 directed Comptroller General to submit to Congress, not later than 18 months after Nov. 28, 1990, a report (1) evaluating the policy and administrative implications of requiring State and local governments to require participation in an economic self-sufficiency program as a condition of the receipt of rental assistance under 42 U.S.C. 1437f and public housing assistance, (2) determining the additional costs to public housing agencies under such programs and recommending a change in the amount of the administrative fee under 42 U.S.C. 1437f(q) to cover the additional costs of carrying out the Family Self-Sufficiency Program under this section, and (3) examining how housing and social service policies affect beneficiaries, particularly persons receiving public assistance, when such beneficiaries gain employment and experience a rise in income.

§ 1437v. Demolition, site revitalization, replacement housing, and tenant-based assistance grants for projects

(a) Purposes

The purpose of this section is to provide assistance to public housing agencies for the purposes of—

(1) improving the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof);

(2) revitalizing sites (including remaining public housing dwelling units) on which such public housing projects are located and contributing to the improvement of the surrounding neighborhood;

(3) providing housing that will avoid or decrease the concentration of very low-income families; and

(4) building sustainable communities.

It is also the purpose of this section to provide assistance to smaller communities for the purpose of facilitating the development of affordable housing for low-income families that is undertaken in connection with a main street revitalization or redevelopment project in such communities.

(b) Grant authority

The Secretary may make grants as provided in this section to applicants whose applications for such grants are approved by the Secretary under this section.

(c) Contribution requirement

(1) In general

The Secretary may not make any grant under this section to any applicant unless the applicant certifies to the Secretary that the applicant will—

(A) supplement the aggregate amount of assistance provided under this section with an amount of funds from sources other than this section equal to not less than 5 percent of the amount provided under this section; and

(B) in addition to supplemental amounts provided in accordance with subparagraph (A), if the applicant uses more than 5 percent of the amount of assistance provided under this section for services under subsection (d)(1)(L) of this section, provide supplemental funds from sources other than this section in an amount equal to the amount so used in excess of 5 percent.

(2) Supplemental funds

In calculating the amount of supplemental funds provided by a grantee for purposes of paragraph (1), the grantee may include amounts from other Federal sources, any State or local government sources, any private contributions, the value of any donated material or building, the value of any lease on a building, the value of the time and services contributed by volunteers, and the value of any other in-kind services or administrative costs provided.

(3) Exemption

If assistance provided under this subchapter will be used only for providing tenant-based assistance under section 1437f of this title or demolition of public housing (without replacement), the Secretary may exempt the applicant from the requirements under paragraph (1)(A).

(d) Eligible activities

(1) In general

Grants under this section may be used for activities to carry out revitalization programs for severely distressed public housing, including—

(A) architectural and engineering work;

(B) redesign, rehabilitation, or reconfiguration of a severely distressed public hous-

ing project, including the site on which the project is located;

(C) the demolition, sale, or lease of the site, in whole or in part;

(D) covering the administrative costs of the applicant, which may not exceed such portion of the assistance provided under this section as the Secretary may prescribe;

(E) payment of reasonable legal fees;

(F) providing reasonable moving expenses for residents displaced as a result of the revitalization of the project;

(G) economic development activities that promote the economic self-sufficiency of residents under the revitalization program, including a Neighborhood Networks initiative for the establishment and operation of computer centers in public housing for the purpose of enhancing the self-sufficiency, employability, an[1] economic self-reliance of public housing residents by providing them with onsite computer access and training resources;

(H) necessary management improvements;

(I) leveraging other resources, including additional housing resources, retail supportive services, jobs, and other economic development uses on or near the project that will benefit future residents of the site;

(J) replacement housing (including appropriate homeownership downpayment assistance for displaced residents or other appropriate replacement homeownership activities) and rental assistance under section 1437f of this title;

(K) transitional security activities; and

(L) necessary supportive services, except that not more than 15 percent of the amount of any grant may be used for activities under this paragraph.

(2) Endowment trust for supportive services

In using grant amounts under this section made available in fiscal year 2000 or thereafter for supportive services under paragraph (1)(L), a public housing agency may deposit such amounts in an endowment trust to provide supportive services over such period of time as the agency determines. Such amounts shall be provided to the agency by the Secretary in a lump sum when requested by the agency, shall be invested in a wise and prudent manner, and shall be used (together with any interest thereon earned) only for eligible uses pursuant to paragraph (1)(L). A public housing agency may use amounts in an endowment trust under this paragraph in conjunction with other amounts donated or otherwise made available to the trust for similar purposes.

(e) Application and selection

(1) Application

An application for a grant under this section shall demonstrate the appropriateness of the proposal in the context of the local housing market relative to other alternatives, and shall include such other information and be submitted at such time and in accordance with such procedures, as the Secretary shall prescribe.

[1] So in original. Probably should be ''and''.

(2) Selection criteria

The Secretary shall establish criteria for the award of grants under this section and shall include among the factors—

(A) the relationship of the grant to the public housing agency plan for the applicant and how the grant will result in a revitalized site that will enhance the neighborhood in which the project is located and enhance economic opportunities for residents;

(B) the capability and record of the applicant public housing agency, or any alternative management entity for the agency, for managing redevelopment or modernization projects, meeting construction timetables, and obligating amounts in a timely manner;

(C) the extent to which the applicant could undertake such activities without a grant under this section;

(D) the extent of involvement of residents, State and local governments, private service providers, financing entities, and developers, in the development and ongoing implementation of a revitalization program for the project, except that the Secretary may not award a grant under this section unless the applicant has involved affected public housing residents at the beginning and during the planning process for the revitalization program, prior to submission of an application;

(E) the need for affordable housing in the community;

(F) the supply of other housing available and affordable to families receiving tenant-based assistance under section 1437f of this title;

(G) the amount of funds and other resources to be leveraged by the grant;

(H) the extent of the need for, and the potential impact of, the revitalization program;

(I) the extent to which the plan minimizes permanent displacement of current residents of the public housing site who wish to remain in or return to the revitalized community and provides for community and supportive services to residents prior to any relocation;

(J) the extent to which the plan sustains or creates more project-based housing units available to persons eligible for public housing in markets where the plan shows there is demand for the maintenance or creation of such units;

(K) the extent to which the plan gives to existing residents priority for occupancy in dwelling units which are public housing dwelling units, or for residents who can afford to live in other units, priority for those units in the revitalized community; and

(L) such other factors as the Secretary considers appropriate.

(3) Applicability of selection criteria

The Secretary may determine not to apply certain of the selection criteria established pursuant to paragraph (2) when awarding grants for demolition only, tenant-based assistance only, or other specific categories of

revitalization activities. This section may not be construed to require any application for a grant under this section to include demolition of public housing or to preclude use of grant amounts for rehabilitation or rebuilding of any housing on an existing site.

(f) Cost limits

Subject to the provisions of this section, the Secretary—

(1) shall establish cost limits on eligible activities under this section sufficient to provide for effective revitalization programs; and

(2) may establish other cost limits on eligible activities under this section.

(g) Disposition and replacement

Any severely distressed public housing disposed of pursuant to a revitalization plan and any public housing developed in lieu of such severely distressed housing, shall be subject to the provisions of section 1437p of this title. Severely distressed public housing demolished pursuant to a revitalization plan shall not be subject to the provisions of section 1437p of this title.

(h) Administration by other entities

The Secretary may require a grantee under this section to make arrangements satisfactory to the Secretary for use of an entity other than the public housing agency to carry out activities assisted under the revitalization plan, if the Secretary determines that such action will help to effectuate the purposes of this section.

(i) Withdrawal of funding

If a grantee under this section does not proceed within a reasonable timeframe, in the determination of the Secretary, the Secretary shall withdraw any grant amounts under this section that have not been obligated by the public housing agency. The Secretary shall redistribute any withdrawn amounts to one or more other applicants eligible for assistance under this section or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the revitalization plan of the original grantee.

(j) Definitions

For purposes of this section, the following definitions shall apply:

(1) Applicant

The term ''applicant'' means—

(A) any public housing agency that is not designated as troubled pursuant to section 1437d(j)(2) of this title;

(B) any public housing agency for which a private housing management agent has been selected, or a receiver has been appointed, pursuant to section 1437d(j)(3) of this title; and

(C) any public housing agency that is designated as troubled pursuant to section 1437d(j)(2) of this title and that—

(i) is so designated principally for reasons that will not affect the capacity of the agency to carry out a revitalization program;

(ii) is making substantial progress toward eliminating the deficiencies of the agency; or

(iii) is otherwise determined by the Secretary to be capable of carrying out a revitalization program.

(2) Severely distressed public housing

The term ''severely distressed public housing'' means a public housing project (or building in a project)—

(A) that—

(i) requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems and other deficiencies in the physical plant of the project;

(ii) is a significant contributing factor to the physical decline of and disinvestment by public and private entities in the surrounding neighborhood;

(iii)(I) is occupied predominantly by families who are very low-income families with children, are unemployed, and dependent on various forms of public assistance;

(II) has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area; or

(III) is lacking in sufficient appropriate transportation, supportive services, economic opportunity, schools, civic and religious institutions, and public services, resulting in severe social distress in the project;

(iv) cannot be revitalized through assistance under other programs, such as the program for capital and operating assistance for public housing under this chapter, or the programs under sections 1437g and 1437*l* of this title (as in effect before the effective date under under[2] section 503(a)[2] the Quality Housing and Work Responsibility Act of 1998), because of cost constraints and inadequacy of available amounts; and

(v) in the case of individual buildings, is, in the Secretary's determination, sufficiently separable from the remainder of the project of which the building is part to make use of the building feasible for purposes of this section; or

(B) that was a project described in subparagraph (A) that has been legally vacated or demolished, but for which the Secretary has not yet provided replacement housing assistance (other than tenant-based assistance).

(3) Supportive services

The term ''supportive services'' includes all activities that will promote upward mobility, self-sufficiency, and improved quality of life for the residents of the public housing project involved, including literacy training, job training, day care, transportation, and economic development activities.

[2] So in original.

(k) Grantee reporting

The Secretary shall require grantees of assistance under this section to report the sources and uses of all amounts expended for revitalization plans.

***(l)* Annual report**

The Secretary shall submit to the Congress an annual report setting forth—

(1) the number, type, and cost of public housing units revitalized pursuant to this section;

(2) the status of projects identified as severely distressed public housing;

(3) the amount and type of financial assistance provided under and in conjunction with this section, including a specification of the amount and type of assistance provided under subsection (n) of this section;

(4) the types of projects funded, and number of affordable housing dwelling units developed with, grants under subsection (n) of this section; and

(5) the recommendations of the Secretary for statutory and regulatory improvements to the program established by this section.

(m) Funding

(1) Authorization of appropriations

There are authorized to be appropriated for grants under this section $574,000,000 for fiscal year 2003.

(2) Technical assistance and program oversight

Of the amount appropriated pursuant to paragraph (1) for any fiscal year, the Secretary may use up to 2 percent for technical assistance or contract expertise, including assistance in connection with the establishment and operation of computer centers in public housing through the Neighborhoods[3] Networks initiative described in subsection (d)(1)(G) of this section. Such assistance or contract expertise may be provided directly or indirectly by grants, contracts, or cooperative agreements, and shall include training, and the cost of necessary travel for participants in such training, by or to officials of the Department of Housing and Urban Development, of public housing agencies, and of residents.

(3) Set-aside for main street housing grants

Of the amount appropriated pursuant to paragraph (1) for any fiscal year, the Secretary shall provide up to 5 percent for use only for grants under subsection (n) of this section.

(n) Grants for assisting affordable housing developed through main street projects in smaller communities

(1) Authority and use of grant amounts

The Secretary may make grants under this subsection to smaller communities. Such grant amounts shall be used by smaller communities only to provide assistance to carry out eligible affordable housing activities under paragraph (4) in connection with an eligible project under paragraph (2).

(2) Eligible project

For purposes of this subsection, the term ''eligible project'' means a project that—

(A) the Secretary determines, under the criteria established pursuant to paragraph (3), is a main street project;

(B) is carried out within the jurisdiction of a smaller community receiving the grant; and

(C) involves the development of affordable housing that is located in the commercial area that is the subject of the project.

(3) Main street projects

The Secretary shall establish requirements for a project to be considered a main street project for purposes of this section, which shall require that the project—

(A) has as its purpose the revitalization or redevelopment of a historic or traditional commercial area;

(B) involves investment, or other participation, by the government for, and private entities in, the community in which the project is carried out; and

(C) complies with such historic preservation guidelines or principles as the Secretary shall identify to preserve significant historic or traditional architectural and design features in the structures or area involved in the project.

(4) Eligible affordable housing activities

For purposes of this subsection, the activities described in subsection (d)(1) of this section shall be considered eligible affordable housing activities, except that—

(A) such activities shall be conducted with respect to affordable housing rather than with respect to severely distressed public housing projects; and

(B) eligible affordable housing activities under this subsection shall not include the activities described in subparagraphs (B) through (E), (J), or (K) of subsection (d)(1) of this section.

(5) Maximum grant amount

A grant under this subsection for a fiscal year for a single smaller community may not exceed $1,000,000.

(6) Contribution requirement

A smaller community applying for a grant under this subsection shall be considered an applicant for purposes of subsection (c) of this section (relating to contributions by applicants), except that—

(A) such supplemental amounts shall be used only for carrying out eligible affordable housing activities; and

(B) paragraphs (1)(B) and (3) shall not apply to grants under this subsection.

(7) Applications and selection

(A) Application

Pursuant to subsection (e)(1) of this section, the Secretary shall provide for smaller communities to apply for grants under this subsection, except that the Secretary may establish such separate or additional criteria for applications for such grants as may be appropriate to carry out this subsection.

(B) Selection criteria

The Secretary shall establish selection criteria for the award of grants under this sub-

[3] So in original. Probably should be ''Neighborhood''.

section, which shall be based on the selection criteria established pursuant to subsection (e)(2) of this section, with such changes as may be appropriate to carry out the purposes of this subsection.

(8) Cost limits

The cost limits established pursuant to subsection (f) of this section shall apply to eligible affordable housing activities assisted with grant amounts under this subsection.

(9) Inapplicability of other provisions

The provisions of subsections (g) (relating to disposition and replacement of severely distressed public housing), and (h) (relating to administration of grants by other entities) of this section, shall not apply to grants under this subsection.

(10) Reporting

The Secretary shall require each smaller community receiving a grant under this subsection to submit a report regarding the use of all amounts provided under the grant.

(11) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Affordable housing

The term ''affordable housing'' means rental or homeownership dwelling units that—

(i) are made available for initial occupancy to low-income families, with a subset of units made available to very- and extremely-low income families; and

(ii) are subject to the same rules regarding occupant contribution toward rent or purchase and terms of rental or purchase as dwelling units in public housing projects assisted with a grant under this section.

(B) Smaller community

The term ''smaller community'' means a unit of general local government (as such term is defined in section 5302 of this title) that—

(i) has a population of 50,000 or fewer; and

(ii)(I) is not served by a public housing agency; or

(II) is served by a single public housing agency, which agency administers 100 or fewer public housing dwelling units.

(*o*) Sunset

No assistance may be provided under this section after September 30, 2006.

(Sept. 1, 1937, ch. 896, title I, §24, as added Pub. L. 102–550, title I, §120, Oct. 28, 1992, 106 Stat. 3695; amended Pub. L. 104–99, title IV, §402(d)(6)(A)(vi), Jan. 26, 1996, 110 Stat. 43; Pub. L. 104–330, title V, §501(b)(9), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title V, §535(a), Oct. 21, 1998, 112 Stat. 2581; Pub. L. 106–377, §1(a)(1) [title II, §214(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A–27; Pub. L. 108–7, div. K, title II, §215, Feb. 20, 2003, 117 Stat. 504; Pub. L. 108–186, title IV, §§402(a), (b), (d), (e), 403, Dec. 16, 2003, 117 Stat. 2693, 2694.)

REFERENCES IN TEXT

Section 1437*l* of this title, referred to in subsec. (j)(2)(A)(iv), was repealed by Pub. L. 105–276, title V, §522(a), Oct. 21, 1998, 112 Stat. 2564.

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (j)(2)(A)(iv), is section 503(a) of Pub. L. 105–276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–186, §403(a), inserted concluding provisions.

Subsec. (e)(2). Pub. L. 108–186, §402(a)(1), substituted ''The Secretary shall establish criteria for the award of grants under this section and shall include among the factors—'' for ''The Secretary shall establish selection criteria for the award of grants under this section and shall include such factors as—'' in introductory provisions.

Subsec. (e)(2)(B). Pub. L. 108–186, §402(a)(2), struck out ''large-scale'' after ''for managing''.

Subsec. (e)(2)(D). Pub. L. 108–186, §402(a)(3), inserted ''and ongoing implementation'' after ''development'' and '', except that the Secretary may not award a grant under this section unless the applicant has involved affected public housing residents at the beginning and during the planning process for the revitalization program, prior to submission of an application'' before semicolon at end.

Subsec. (e)(2)(I) to (L). Pub. L. 108–186, §402(a)(4)–(6), added subpars. (I) to (K) and redesignated former subpar. (I) as (L).

Subsec. (j)(2)(A)(iii)(III). Pub. L. 108–186, §402(b), added subcl. (III).

Subsec. (*l*)(3). Pub. L. 108–186, §403(c)(1), substituted '', including a specification of the amount and type of assistance provided under subsection (n) of this section;'' for ''; and''.

Subsec. (*l*)(4), (5). Pub. L. 108–186, §403(c)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (m)(1). Pub. L. 108–186, §402(d), which directed substitution of ''through 2006'' for '', 2001, and 2002'' could not be executed because the words '', 2001, and 2002'' did not appear subsequent to amendment by Pub. L. 108–7, §215(a). See below.

Pub. L. 108–7, §215(a), substituted ''$574,000,000 for fiscal year 2003'' for ''$600,000,000 for fiscal year 1999 and such sums as may be necessary for each of fiscal years 2000, 2001, and 2002''.

Subsec. (m)(3). Pub. L. 108–186, §403(d), added par. (3).

Subsec. (n). Pub. L. 108–186, §403(b)(2), added subsec. (n). Former subsec. (n) redesignated (*o*).

Pub. L. 108–186, §402(e), substituted ''September 30, 2006'' for ''September 30, 2004''.

Pub. L. 108–7, §215(b), substituted ''September 30, 2004'' for ''September 30, 2002''.

Subsec. (*o*) Pub. L. 108–186, §403(b)(1), redesignated subsec. (n) as (*o*).

2000—Subsec. (d)(1)(G). Pub. L. 106–377, §1(a)(1) [title II, §214(b)(1)], inserted before semicolon '', including a Neighborhood Networks initiative for the establishment and operation of computer centers in public housing for the purpose of enhancing the self-sufficiency, employability, an economic self-reliance of public housing residents by providing them with onsite computer access and training resources''.

Subsec. (m)(2). Pub. L. 106–377, §1(a)(1) [title II, §214(b)(2)], inserted before period at end of first sentence '', including assistance in connection with the establishment and operation of computer centers in public housing through the Neighborhoods Networks initiative described in subsection (d)(1)(G) of this section''.

1998—Pub. L. 105–276 amended section generally. Prior to amendment, section authorized planning grants for development of revitalization programs for severely distressed public housing and implementation grants to carry out revitalization programs for such housing, au-

thorized exceptions to general program rules, established Office of Severely Distressed Public Housing Revitalization, and required annual report to Congress.

1996—Subsec. (e). Pub. L. 104–99 temporarily substituted ''Exception'' for ''Exceptions'' in subsec. heading and struck out ''(1) LONG-TERM VIABILITY.—'' before ''The Secretary may waive'' and par. (2) which read as follows:

''(2) SELECTION OF TENANTS.—For projects revitalized under this section, a public housing agency may select tenants pursuant to a local system of preferences, in lieu of selecting tenants pursuant to the preferences specified under section 1437d(c)(4)(A)(i) of this title. Such local system shall be established in writing and shall respond to local housing needs and priorities as determined by the public housing agency. The public housing agency shall hold 1 or more public hearings to obtain the views of low-income tenants and other interested parties on the housing needs and priorities of the agency's jurisdiction.'' See Effective and Termination Dates of 1996 Amendments note below.

Subsec. (h)(3). Pub. L. 104–330 struck out '', except that it does not include any Indian housing authority'' after ''section 1437a(b) of this title''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–276, title V, § 535(b), Oct. 21, 1998, 112 Stat. 2586, provided that: ''The amendment made by this section [amending this section] is made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENTS

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

Amendment by Pub. L. 104–99 effective Jan. 26, 1996, only for fiscal years 1996, 1997, and 1998, and to cease to be effective Oct. 21, 1998, see section 402(f) of Pub. L. 104–99, as amended, and section 514(f) of Pub. L. 105–276, set out as notes under section 1437a of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 11 on page 104 identifies a reporting provision which, as subsequently amended, is contained in subsec. (*l*) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

STUDY OF ELDERLY AND DISABLED PUBLIC HOUSING NEEDS

Pub. L. 108–186, title IV, § 402(c), Dec. 16, 2003, 117 Stat. 2694, provided that: ''Not later than 18 months after the date of enactment of this Act [Dec. 16, 2003], the Comptroller General of the United States shall submit a report to Congress regarding the extent of severely distressed elderly and non-elderly disabled public housing, and recommendations for improving that housing through the HOPE VI program or other means, taking into account the special needs of the residents.''

§ 1437w. Transfer of management of certain housing to independent manager at request of residents

(a) Authority

The Secretary may transfer the responsibility and authority for management of specified housing (as such term is defined in subsection (h) of this section) from a public housing agency to an eligible management entity, in accordance with the requirements of this section, if—

(1) a request for transfer of management of such housing is made and approved in accordance with subsection (b) of this section; and

(2) the Secretary or the public housing agency, as appropriate pursuant to subsection (b) of this section, determines that—

(A) due to the mismanagement of the agency, such housing has deferred maintenance, physical deterioration, or obsolescence of major systems and other deficiencies in the physical plant of the project;

(B) such housing is located in an area such that the housing is subject to recurrent vandalism and criminal activity (including drug-related criminal activity); and

(C) the residents can demonstrate that the elements of distress for such housing specified in subparagraphs (A) and (B) can be remedied by an entity or entities, identified by the residents, that has or have a demonstrated capacity to manage, with reasonable expenses for modernization.

(b) Request for transfer

The responsibility and authority for managing specified housing may be transferred only pursuant to a request made by a majority vote of the residents for the specified housing that—

(1) in the case of specified housing that is owned by a public housing agency that is designated as a troubled agency under section 1437d(j)(2) of this title—

(A) is made to the public housing agency or the Secretary; and

(B) is approved by the agency or the Secretary; or

(2) in the case of specified housing that is owned by a public housing agency that is not designated as a troubled agency under section 1437d(j)(2) of this title—

(A) is made to and approved by the public housing agency; or

(B) if a request is made to the agency pursuant to subparagraph (A) and is not approved, is subsequently made to and approved by the Secretary.

(c) Capital and operating assistance

Pursuant to a contract under subsection (d) of this section, the Secretary shall require the public housing agency for specified housing to provide to the manager for the housing, from any assistance from the Capital and Operating Funds under section 1437g of this title for the agency, fair and reasonable amounts for the housing for eligible capital and operating activities under subsection (d)(1) and (e)(1) of section 1437g of this title. The amount made available under this subsection to a manager shall be determined by the Secretary based on the share for the specified housing of the aggregate amount of assistance from such Funds for the public housing agency transferring the housing, taking into consideration the operating and capital improvement needs of the specified housing, the operating and capital improvement needs of the remaining public housing units managed by the public housing agency, and the public housing agency plan of such agency.

(d) Contract between Secretary and manager

(1) Requirements

Pursuant to the approval of a request under this section for transfer of the management of

specified housing, the Secretary shall enter into a contract with the eligible management entity.

(2) Terms

A contract under this subsection shall contain provisions establishing the rights and responsibilities of the manager with respect to the specified housing and the Secretary and shall be consistent with the requirements of this chapter applicable to public housing projects.

(e) Compliance with public housing agency plan

A manager of specified housing under this section shall comply with the approved public housing agency plan applicable to the housing and shall submit such information to the public housing agency from which management was transferred as may be necessary for such agency to prepare and update its public housing agency plan.

(f) Demolition and disposition by manager

A manager under this section may demolish or dispose of specified housing only if, and in the manner, provided for in the public housing agency plan for the agency transferring management of the housing.

(g) Limitation on PHA liability

A public housing agency that is not a manager for specified housing shall not be liable for any act or failure to act by a manager or resident council for the specified housing.

(h) Definitions

For purposes of this section, the following definitions shall apply:

(1) Eligible management entity

The term ''eligible management entity'' means, with respect to any public housing project, any of the following entities:

(A) Nonprofit organization

A public or private nonprofit organization, which may—

(i) include a resident management corporation; and

(ii) not include the public housing agency that owns or operates the project.

(B) For-profit entity

A for-profit entity that has demonstrated experience in providing low-income housing.

(C) State or local government

A State or local government, including an agency or instrumentality thereof.

(D) Public housing agency

A public housing agency (other than the public housing agency that owns or operates the project).

The term does not include a resident council.

(2) Manager

The term ''manager'' means any eligible management entity that has entered into a contract under this section with the Secretary for the management of specified housing.

(3) Nonprofit

The term ''nonprofit'' means, with respect to an organization, association, corporation, or other entity, that no part of the net earnings of the entity inures to the benefit of any member, founder, contributor, or individual.

(4) Private nonprofit organization

The term ''private nonprofit organization'' means any private organization (including a State or locally chartered organization) that—

(A) is incorporated under State or local law;

(B) is nonprofit in character;

(C) complies with standards of financial accountability acceptable to the Secretary; and

(D) has among its purposes significant activities related to the provision of decent housing that is affordable to low-income families.

(5) Public nonprofit organization

The term ''public nonprofit organization'' means any public entity that is nonprofit in character.

(6) Specified housing

The term ''specified housing'' means a public housing project or projects, or a portion of a project or projects, for which the transfer of management is requested under this section. The term includes one or more contiguous buildings and an area of contiguous row houses, but in the case of a single building, the building shall be sufficiently separable from the remainder of the project of which it is part to make transfer of the management of the building feasible for purposes of this section.

(Sept. 1, 1937, ch. 896, title I, § 25, as added Pub. L. 105–276, title V, § 534, Oct. 21, 1998, 112 Stat. 2579.)

PRIOR PROVISIONS

A prior section 1437w, act Sept. 1, 1937, ch. 896, title I, § 25, as added Pub. L. 102–550, title I, § 121(b), Oct. 28, 1992, 106 Stat. 3701; amended Pub. L. 104–330, title V, § 501(b)(10), Oct. 26, 1996, 110 Stat. 4042, known as the Choice in Public Housing Management Act of 1992, related to choice in public housing management, prior to repeal by Pub. L. 105–276, title V, §§ 503, 534, Oct. 21, 1998, 112 Stat. 2521, 2579, effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement repeal before such date, and with savings provision.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1437x. Environmental reviews

(a) In general

(1) Release of funds

In order to assure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds under this subchapter, and to assure to the

public undiminished protection of the environment, the Secretary may, under such regulations, in lieu of the environmental protection procedures otherwise applicable, provide for the release of funds for projects or activities under this subchapter, as specified by the Secretary upon the request of a public housing agency under this section, if the State or unit of general local government, as designated by the Secretary in accordance with regulations, assumes all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary may specify, which would otherwise apply to the Secretary with respect to the release of funds.

(2) Implementation

The Secretary, after consultation with the Council on Environmental Quality, shall issue such regulations as may be necessary to carry out this section. Such regulations shall specify the programs to be covered.

(b) Procedure

The Secretary shall approve the release of funds subject to the procedures authorized by this section only if, not less than 15 days prior to such approval and prior to any commitment of funds to such projects or activities, the public housing agency has submitted to the Secretary a request for such release accompanied by a certification of the State or unit of general local government which meets the requirements of subsection (c) of this section. The Secretary's approval of any such certification shall be deemed to satisfy the Secretary's responsibilities under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify insofar as those responsibilities relate to the release of funds which are covered by such certification.

(c) Certification

A certification under the procedures authorized by this section shall—

(1) be in a form acceptable to the Secretary;

(2) be executed by the chief executive officer or other officer of the State or unit of general local government who qualifies under regulations of the Secretary;

(3) specify that the State or unit of general local government under this section has fully carried out its responsibilities as described under subsection (a) of this section; and

(4) specify that the certifying officer—

(A) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to subsection (a) of this section; and

(B) is authorized and consents on behalf of the State or unit of general local government and himself or herself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his or her responsibilities as such an official.

(d) Approval by States

In cases in which a unit of general local government carries out the responsibilities described in subsection (c) of this section, the Secretary may permit the State to perform those actions of the Secretary described in subsection (b) of this section and the performance of such actions by the State, where permitted by the Secretary, shall be deemed to satisfy the Secretary's responsibilities referred to in the second sentence of subsection (b) of this section.

(Sept. 1, 1937, ch. 896, title I, § 26, as added Pub. L. 103–233, title III, § 305(b), Apr. 11, 1994, 108 Stat. 371; amended Pub. L. 104–330, title V, § 501(b)(11), Oct. 26, 1996, 110 Stat. 4042.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a)(1), (b), and (c)(4)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

AMENDMENTS

1996—Subsecs. (a)(1), (b). Pub. L. 104–330 struck out ''(including an Indian housing authority)'' after ''public housing agency''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 1437y. Provision of information to law enforcement and other agencies

Notwithstanding any other provision of law, the Secretary shall, at least 4 times annually and upon request of the Immigration and Naturalization Service (hereafter in this section referred to as the ''Service''), furnish the Service with the name and address of, and other identifying information on, any individual who the Secretary knows is not lawfully present in the United States, and shall ensure that each contract for assistance entered into under section 1437d or 1437f of this title with a public housing agency provides that the public housing agency shall furnish such information at such times with respect to any individual who the public housing agency knows is not lawfully present in the United States.

(Sept. 1, 1937, ch. 896, title I, § 27, as added Pub. L. 104–193, title IV, § 404(d), Aug. 22, 1996, 110 Stat. 2267; amended Pub. L. 105–33, title V, § 5564, Aug. 5, 1997, 111 Stat. 639.)

CODIFICATION

Another section 27 of act Sept. 1, 1937, was renumbered section 28, and is classified to section 1437z of this title.

AMENDMENTS

1997—Pub. L. 105–33 substituted ''not lawfully present in the United States'' for ''unlawfully in the United States'' in two places.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title IV of the Personal Responsi-

bility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5582 of Pub. L. 105–33, set out as a note under section 1367 of Title 8, Aliens and Nationality.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 1437z. Exchange of information with law enforcement agencies

Notwithstanding any other provision of law, each public housing agency that enters into a contract for assistance under section 1437d or 1437f of this title with the Secretary shall furnish any Federal, State, or local law enforcement officer, upon the request of the officer, with the current address, Social Security number, and photograph (if applicable) of any recipient of assistance under this chapter, if the officer—

(1) furnishes the public housing agency with the name of the recipient; and

(2) notifies the agency that—

(A) such recipient—

(i) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

(ii) is violating a condition of probation or parole imposed under Federal or State law; or

(iii) has information that is necessary for the officer to conduct the officer's official duties;

(B) the location or apprehension of the recipient is within such officer's official duties; and

(C) the request is made in the proper exercise of the officer's official duties.

(Sept. 1, 1937, ch. 896, title I, § 28, formerly § 27, as added Pub. L. 104–193, title IX, § 903(b), Aug. 22, 1996, 110 Stat. 2348; renumbered § 28, Pub. L. 105–65, title V, § 562(a)(1), Oct. 27, 1997, 111 Stat. 1416.)

§ 1437z–1. Civil money penalties against section 1437f owners

(a) In general

(1) Effect on other remedies

The penalties set forth in this section shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed regardless of whether the Secretary imposes other administrative sanctions.

(2) Failure of Secretary

The Secretary may not impose penalties under this section for a violation, if a material cause of the violation is the failure of the Secretary, an agent of the Secretary, or a public housing agency to comply with an existing agreement.

(b) Violations of housing assistance payment contracts for which penalty may be imposed

(1) Liable parties

The Secretary may impose a civil money penalty under this section on—

(A) any owner of a property receiving project-based assistance under section 8 [42 U.S.C. 1437f];

(B) any general partner of a partnership owner of that property; and

(C) any agent employed to manage the property that has an identity of interest with the owner or the general partner of a partnership owner of the property.

(2) Violations

A penalty may be imposed under this section for a knowing and material breach of a housing assistance payments contract, including the following—

(A) failure to provide decent, safe, and sanitary housing pursuant to section 8 [42 U.S.C. 1437f]; or

(B) knowing or willful submission of false, fictitious, or fraudulent statements or requests for housing assistance payments to the Secretary or to any department or agency of the United States.

(3) Amount of penalty

The amount of a penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed $25,000 per violation.

(c) Agency procedures

(1) Establishment

The Secretary shall issue regulations establishing standards and procedures governing the imposition of civil money penalties under subsection (b) of this section. These standards and procedures—

(A) shall provide for the Secretary or other department official to make the determination to impose the penalty;

(B) shall provide for the imposition of a penalty only after the liable party has received notice and the opportunity for a hearing on the record; and

(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing and judicial review, as provided under subsection (d) of this section.

(2) Final orders

(A) In general

If a hearing is not requested before the expiration of the 15-day period beginning on the date on which the notice of opportunity for hearing is received, the imposition of a penalty under subsection (b) of this section shall constitute a final and unappealable determination.

(B) Effect of review

If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order.

(C) Failure to review

If the Secretary does not review that determination or order before the expiration of the 90-day period beginning on the date on which the determination or order is issued, the determination or order shall be final.

(3) Factors in determining amount of penalty

In determining the amount of a penalty under subsection (b) of this section, the Secretary shall take into consideration—

(A) the gravity of the offense;

(B) any history of prior offenses by the violator (including offenses occurring before the enactment of this section);

(C) the ability of the violator to pay the penalty;

(D) any injury to tenants;

(E) any injury to the public;

(F) any benefits received by the violator as a result of the violation;

(G) deterrence of future violations; and

(H) such other factors as the Secretary may establish by regulation.

(4) Payment of penalty

No payment of a civil money penalty levied under this section shall be payable out of project income.

(d) Judicial review of agency determination

Judicial review of determinations made under this section shall be carried out in accordance with section 1735f–15(e) of title 12.

(e) Remedies for noncompliance

(1) Judicial intervention

(A) In general

If a person or entity fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (b) of this section, after the determination or order is no longer subject to review as provided by subsections (c) and (d) of this section, the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against that person or entity and such other relief as may be available.

(B) Fees and expenses

Any monetary judgment awarded in an action brought under this paragraph may, in the discretion of the court, include the attorney's fees and other expenses incurred by the United States in connection with the action.

(2) Nonreviewability of determination or order

In an action under this subsection, the validity and appropriateness of the determination or order of the Secretary imposing the penalty shall not be subject to review.

(f) Settlement by Secretary

The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(g) Deposit of penalties

(1) In general

Notwithstanding any other provision of law, if the mortgage covering the property receiving assistance under section 8 [42 U.S.C. 1437f] is insured or was formerly insured by the Secretary, the Secretary shall apply all civil money penalties collected under this section to the appropriate insurance fund or funds established under this chapter, as determined by the Secretary.

(2) Exception

Notwithstanding any other provision of law, if the mortgage covering the property receiving assistance under section 8 [42 U.S.C. 1437f] is neither insured nor formerly insured by the Secretary, the Secretary shall make all civil money penalties collected under this section available for use by the appropriate office within the Department for administrative costs related to enforcement of the requirements of the various programs administered by the Secretary.

(h) Definitions

In this section—

(1) the term ''agent employed to manage the property that has an identity of interest'' means an entity—

(A) that has management responsibility for a project;

(B) in which the ownership entity, including its general partner or partners (if applicable), has an ownership interest; and

(C) over which such ownership entity exerts effective control; and

(2) the term ''knowing'' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.

(Sept. 1, 1937, ch. 896, title I, § 29, as added Pub. L. 105–65, title V, § 562(a)(2), Oct. 27, 1997, 111 Stat. 1416.)

EFFECTIVE DATE

Section 562(b) of Pub. L. 105–65 provided that: ''The amendments made by subsection (a) [enacting this section and amending section 1437z of this title] shall apply only with respect to—

''(1) violations that occur on or after the effective date of final regulations implementing the amendments made by this section; and

''(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation that occurs on or after such date.''

REGULATIONS

Section 562(c) of Pub. L. 105–65 provided that:

''(1) REGULATIONS.—

''(A) IN GENERAL.—The Secretary shall implement the amendments made by this section [enacting this section and amending section 1437z of this title] by regulation issued after notice and opportunity for public comment.

''(B) COMMENTS SOUGHT.—The notice under subparagraph (A) shall seek comments as to the definitions of the terms 'ownership interest in' and 'effective control', as such terms are used in the definition of the term 'agent employed to manage such property that has an identity of interest'.

''(2) TIMING.—A proposed rule implementing the amendments made by this section shall be published not later than 1 year after the date of enactment of this Act [Oct. 27, 1997].''

§ 1437z–2. Public housing mortgages and security interests

(a) General authorization

The Secretary may, upon such terms and conditions as the Secretary may prescribe, authorize a public housing agency to mortgage or otherwise grant a security interest in any public housing project or other property of the public housing agency.

(b) Terms and conditions

In making any authorization under subsection (a) of this section, the Secretary may consider—

(1) the ability of the public housing agency to use the proceeds of the mortgage or security interest for low-income housing uses;

(2) the ability of the public housing agency to make payments on the mortgage or security interest; and

(3) such other criteria as the Secretary may specify.

(c) No Federal liability

No action taken under this section shall result in any liability to the Federal Government.

(Sept. 1, 1937, ch. 896, title I, § 30, as added Pub. L. 105–276, title V, § 516, Oct. 21, 1998, 112 Stat. 2550.)

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1437z–3. Pet ownership in public housing

(a) Ownership conditions

A resident of a dwelling unit in public housing (as such term is defined in subsection (c) of this section) may own 1 or more common household pets or have 1 or more common household pets present in the dwelling unit of such resident, subject to the reasonable requirements of the public housing agency, if the resident maintains each pet responsibly and in accordance with applicable State and local public health, animal control, and animal anti-cruelty laws and regulations and with the policies established in the public housing agency plan for the agency.

(b) Reasonable requirements

The reasonable requirements referred to in subsection (a) of this section may include—

(1) requiring payment of a nominal fee, a pet deposit, or both, by residents owning or having pets present, to cover the reasonable operating costs to the project relating to the presence of pets and to establish an escrow account for additional costs not otherwise covered, respectively;

(2) limitations on the number of animals in a unit, based on unit size;

(3) prohibitions on—

(A) types of animals that are classified as dangerous; and

(B) individual animals, based on certain factors, including the size and weight of the animal; and

(4) restrictions or prohibitions based on size and type of building or project, or other relevant conditions.

(c) Pet ownership in public housing designated for occupancy by elderly or handicapped families

For purposes of this section, the term ''public housing'' has the meaning given the term in section 1437a(b) of this title, except that such term does not include any public housing that is federally assisted rental housing for the elderly or handicapped, as such term is defined in section 1701r–1(d) of title 12.

(d) Regulations

This section shall take effect upon the date of the effectiveness of regulations issued by the Secretary to carry out this section. Such regulations shall be issued after notice and opportunity for public comment in accordance with the procedure under section 553 of title 5 applicable to substantive rules (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section).

(Sept. 1, 1937, ch. 896, title I, § 31, as added Pub. L. 105–276, title V, § 526, Oct. 21, 1998, 112 Stat. 2568.)

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1437z–4. Resident homeownership programs

(a) In general

A public housing agency may carry out a homeownership program in accordance with this section and the public housing agency plan of the agency to make public housing dwelling units, public housing projects, and other housing projects available for purchase by low-income families for use only as principal residences for such families. An agency may transfer a unit pursuant to a homeownership program only if the program is authorized under this section and approved by the Secretary.

(b) Participating units

A program under this section may cover any existing public housing dwelling units or projects, and may include other dwelling units and housing owned, assisted, or operated, or otherwise acquired for use under such program, by the public housing agency.

(c) Eligible purchasers

(1) Low-income requirement

Only low-income families assisted by a public housing agency, other low-income families, and entities formed to facilitate such sales by purchasing units for resale to low-income families shall be eligible to purchase housing under a homeownership program under this section.

(2) Other requirements

A public housing agency may establish other requirements or limitations for families to purchase housing under a homeownership program under this section, including requirements or limitations regarding employment or participation in employment counseling or

training activities, criminal activity, participation in homeownership counseling programs, evidence of regular income, and other requirements. In the case of purchase by an entity for resale to low-income families, the entity shall sell the units to low-income families within 5 years from the date of its acquisition of the units. The entity shall use any net proceeds from the resale and from managing the units, as determined in accordance with guidelines of the Secretary, for housing purposes, such as funding resident organizations and reserves for capital replacements.

(d) Right of first refusal

In making any sale under this section, the public housing agency shall initially offer the public housing unit at issue to the resident or residents occupying that unit, if any, or to an organization serving as a conduit for sales to any such resident.

(e) Protection of nonpurchasing residents

If a public housing resident does not exercise the right of first refusal under subsection (d) of this section with respect to the public housing unit in which the resident resides, the public housing agency—

(1) shall notify the resident residing in the unit 90 days prior to the displacement date except in cases of imminent threat to health or safety, consistent with any guidelines issued by the Secretary governing such notifications, that—

(A) the public housing unit will be sold;

(B) the transfer of possession of the unit will occur until the resident is relocated; and

(C) each resident displaced by such action will be offered comparable housing—

(i) that meets housing quality standards;

(ii) that is located in an area that is generally not less desirable than the location of the displaced resident's housing; and

(iii) which may include—

(I) tenant-based assistance, except that the requirement under this subclause regarding offering of comparable housing shall be fulfilled by use of tenant-based assistance only upon the relocation of such resident into such housing;

(II) project-based assistance; or

(III) occupancy in a unit owned, operated, or assisted by the public housing agency at a rental rate paid by the resident that is comparable to the rental rate applicable to the unit from which the resident is vacated;

(2) shall provide for the payment of the actual and reasonable relocation expenses of the resident to be displaced;

(3) shall ensure that the displaced resident is offered comparable housing in accordance with the notice under paragraph (1);

(4) shall provide any necessary counseling for the displaced resident; and

(5) shall not transfer possession of the unit until the resident is relocated.

(f) Financing and assistance

A homeownership program under this section may provide financing for acquisition of housing by families purchasing under the program, or for acquisition of housing by the public housing agency for sale under the program, in any manner considered appropriate by the agency (including sale to a resident management corporation).

(g) Downpayment requirement

(1) In general

Each family purchasing housing under a homeownership program under this section shall be required to provide from its own resources a downpayment in connection with any loan for acquisition of the housing, in an amount determined by the public housing agency. Except as provided in paragraph (2), the agency shall permit the family to use grant amounts, gifts from relatives, contributions from private sources, and similar amounts as downpayment amounts in such purchase.

(2) Direct family contribution

In purchasing housing pursuant to this section, each family shall contribute an amount of the downpayment, from resources of the family other than grants, gifts, contributions, or other similar amounts referred to in paragraph (1), that is not less than 1 percent of the purchase price.

(h) Ownership interests

A homeownership program under this section may provide for sale to the purchasing family of any ownership interest that the public housing agency considers appropriate under the program, including ownership in fee simple, a condominium interest, an interest in a limited dividend cooperative, a shared appreciation interest with a public housing agency providing financing.

(i) Resale

(1) Authority and limitation

A homeownership program under this section shall permit the resale of a dwelling unit purchased under the program by an eligible family, but shall provide such limitations on resale as the agency considers appropriate (whether the family purchases directly from the agency or from another entity) for the agency to recapture—

(A) some or all of the economic gain derived from any such resale occurring during the 5-year period beginning upon purchase of the dwelling unit by the eligible family; and

(B) after the expiration of such 5-year period, only such amounts as are equivalent to the assistance provided under this section by the agency to the purchaser.

(2) Considerations

The limitations referred to in paragraph (1)(A) may provide for consideration of the aggregate amount of assistance provided under the program to the family, the contribution to equity provided by the purchasing eligible family, the period of time elapsed between purchase under the homeownership program and resale, the reason for resale, any improvements to the property made by the eligible family, any appreciation in the value of the

property, and any other factors that the agency considers appropriate.

(j) Net proceeds

The net proceeds of any sales under a homeownership program under this section remaining after payment of all costs of the sale shall be used for purposes relating to low-income housing and in accordance with the public housing agency plan of the agency carrying out the program.

(k) Homeownership assistance

From amounts distributed to a public housing agency under the Capital Fund under section 1437g(d) of this title, or from other income earned by the public housing agency, the public housing agency may provide assistance to public housing residents to facilitate the ability of those residents to purchase a principal residence, including a residence other than a residence located in a public housing project.

(*l*) Inapplicability of disposition requirements

The provisions of section 1437p of this title shall not apply to disposition of public housing dwelling units under a homeownership program under this section.

(Sept. 1, 1937, ch. 896, title I, §32, as added Pub. L. 105–276, title V, §536, Oct. 21, 1998, 112 Stat. 2586.)

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1437z–5. Required conversion of distressed public housing to tenant-based assistance

(a) Identification of units

Each public housing agency shall identify all public housing projects of the public housing agency that meet all of the following requirements:

(1) The project is on the same or contiguous sites.

(2) The project is determined by the public housing agency to be distressed, which determination shall be made in accordance with guidelines established by the Secretary, which guidelines shall take into account the criteria established in the Final Report of the National Commission on Severely Distressed Public Housing (August 1992).

(3) The project—

(A) is identified as distressed housing under paragraph (2) for which the public housing agency cannot assure the long-term viability as public housing through reasonable modernization expenses, density reduction, achievement of a broader range of family income, or other measures; or

(B) has an estimated cost, during the remaining useful life of the project, of continued operation and modernization as public housing that exceeds the estimated cost, during the remaining useful life of the project, of providing tenant-based assistance under section 1437f of this title for all families in occupancy, based on appropriate indicators of cost (such as the percentage of total development costs required for modernization).

(b) Consultation

Each public housing agency shall consult with the appropriate public housing residents and the appropriate unit of general local government in identifying any public housing projects under subsection (a) of this section.

(c) Plan for removal of units from inventories of PHAs

(1) Development

Each public housing agency shall develop and carry out a 5-year plan in conjunction with the Secretary for the removal of public housing units identified under subsection (a) of this section from the inventory of the public housing agency and the annual contributions contract.

(2) Approval

Each plan required under paragraph (1) shall—

(A) be included as part of the public housing agency plan;

(B) be certified by the relevant local official to be in accordance with the comprehensive housing affordability strategy under title I of the Housing and Community Development Act of 1992; and

(C) include a description of any disposition and demolition plan for the public housing units.

(3) Extensions

The Secretary may extend the 5-year deadline described in paragraph (1) by not more than an additional 5 years if the Secretary makes a determination that the deadline is impracticable.

(4) Review by Secretary

(A) Failure to identify projects

If the Secretary determines, based on a plan submitted under this subsection, that a public housing agency has failed to identify 1 or more public housing projects that the Secretary determines should have been identified under subsection (a) of this section, the Secretary may designate the public housing projects to be removed from the inventory of the public housing agency pursuant to this section.

(B) Erroneous identification of projects

If the Secretary determines, based on a plan submitted under this subsection, that a public housing agency has identified 1 or more public housing projects that should not have been identified pursuant to subsection (a) of this section, the Secretary shall—

(i) require the public housing agency to revise the plan of the public housing agency under this subsection; and

(ii) prohibit the removal of any such public housing project from the inventory of the public housing agency under this section.

(d) Conversion to tenant-based assistance

(1) In general

To the extent approved in advance in appropriations Acts, the Secretary shall make budget authority available to a public housing agency to provide assistance under this chapter to families residing in any public housing project that, pursuant to this section, is removed from the inventory of the agency and the annual contributions contract of the agency.

(2) Conversion requirements

Each agency carrying out a plan under subsection (c) of this section for removal of public housing dwelling units from the inventory of the agency shall—

(A) notify each family residing in a public housing project to be converted under the plan 90 days prior to the displacement date, except in cases of imminent threat to health or safety, consistent with any guidelines issued by the Secretary governing such notifications, that—

(i) the public housing project will be removed from the inventory of the public housing agency; and

(ii) each family displaced by such action will be offered comparable housing—

(I) that meets housing quality standards; and

(II) which may include—

(aa) tenant-based assistance, except that the requirement under this clause regarding offering of comparable housing shall be fulfilled by use of tenant-based assistance only upon the relocation of such family into such housing;

(bb) project-based assistance; or

(cc) occupancy in a unit operated or assisted by the public housing agency at a rental rate paid by the family that is comparable to the rental rate applicable to the unit from which the family is vacated.

(B) provide any necessary counseling for families displaced by such action;

(C) ensure that, if the project (or portion) converted is used as housing after such conversion, each resident may choose to remain in their dwelling unit in the project and use the tenant-based assistance toward rent for that unit;

(D) ensure that each displaced resident is offered comparable housing in accordance with the notice under subparagraph (A); and

(E) provide any actual and reasonable relocation expenses for families displaced by such action.

(e) Cessation of unnecessary spending

Notwithstanding any other provision of law, if, in the determination of the Secretary, a project or projects of a public housing agency meet or are likely to meet the criteria set forth in subsection (a) of this section, the Secretary may direct the agency to cease additional spending in connection with such project or projects until the Secretary determines or approves an appropriate course of action with respect to such project or projects under this section, except to the extent that failure to expend such amounts would endanger the health or safety of residents in the project or projects.

(f) Use of budget authority

Notwithstanding any other provision of law, if a project or projects are identified pursuant to subsection (a) of this section, the Secretary may authorize or direct the transfer, to the tenant-based assistance program of such agency or to appropriate site revitalization or other capital improvements approved by the Secretary, of—

(1) in the case of an agency receiving assistance under the comprehensive improvement assistance program, any amounts obligated by the Secretary for the modernization of such project or projects pursuant to section 1437*l* of this title (as in effect immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998);

(2) in the case of an agency receiving public housing modernization assistance by formula pursuant to such section 1437*l* of this title, any amounts provided to the agency which are attributable pursuant to the formula for allocating such assistance to such project or projects;

(3) in the case of an agency receiving assistance for the major reconstruction of obsolete projects, any amounts obligated by the Secretary for the major reconstruction of such project or projects pursuant to section 1437c(j)(2) of this title, as in effect immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998; and

(4) in the case of an agency receiving assistance pursuant to the formulas under section 1437g of this title, any amounts provided to the agency which are attributable pursuant to the formulas for allocating such assistance to such project or projects.

(g) Removal by Secretary

The Secretary shall take appropriate actions to ensure removal of any public housing project identified under subsection (a) of this section from the inventory of a public housing agency, if the public housing agency fails to adequately develop a plan under subsection (c) of this section with respect to that project, or fails to adequately implement such plan in accordance with the terms of the plan.

(h) Administration

(1) In general

The Secretary may require a public housing agency to provide to the Secretary or to public housing residents such information as the Secretary considers to be necessary for the administration of this section.

(2) Applicability of section 1437p

Section 1437p of this title shall not apply to the demolition of public housing projects removed from the inventory of the public housing agency under this section.

(Sept. 1, 1937, ch. 896, title I, § 33, as added Pub. L. 105–276, title V, § 537(a), Oct. 21, 1998, 112 Stat. 2588.)

REFERENCES IN TEXT

Title I of the Housing and Community Development Act of 1992, referred to in subsec. (c)(2)(B), is title I of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3681. For complete classification of title I to the Code, see Tables.

Section 1437*l* of this title, referred to in subsec. (f)(1), (2), was repealed by Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564.

Section 503(a) of the Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (f)(1), (3), is section 503(a) of Pub. L. 105–276, which is set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

TRANSITION

Pub. L. 105–276, title V, § 537(c), Oct. 21, 1998, 112 Stat. 2592, provided that:

''(1) USE OF AMOUNTS.—Any amounts made available to a public housing agency to carry out section 202 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (enacted as section 101(e) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134; 110 Stat. 1321–279)) [former 42 U.S.C. 1437*l* note] may be used, to the extent or in such amounts as are or have been provided in advance in appropriation Acts, to carry out section 33 of the United States Housing Act of 1937 [42 U.S.C. 1437z–5] (as added by subsection (a) of this section).

''(2) SAVINGS PROVISION.—Notwithstanding the amendments made by this section [enacting this section and repealing provisions set out as a note under section 1437*l* of this title], section 202 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (42 U.S.C. 14371 [1437*l*] note) and any regulations implementing such section, as in effect immediately before the enactment of this Act [Oct. 21, 1998], shall continue to apply to public housing developments identified by the Secretary or a public housing agency for conversion pursuant to that section or for assessment of whether such conversion is required prior to enactment of this Act.''

§ 1437z–6. Services for public and Indian housing residents

(a) In general

To the extent that amounts are provided in advance in appropriations Acts, the Secretary may make grants to public housing agencies on behalf of public housing residents, recipients under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.] (notwithstanding section 502 of such Act [25 U.S.C. 4181]) on behalf of residents of housing assisted under such Act, or directly to resident management corporations, resident councils, or resident organizations (including nonprofit entities supported by residents), for the purposes of providing a program of supportive services and resident empowerment activities to provide supportive services to public housing residents and residents of housing assisted under such Act or assist such residents in becoming economically self-sufficient.

(b) Eligible activities

Grantees under this section may use such amounts only for activities on or near the property of the public housing agency or public housing project or the property of a recipient under such Act or housing assisted under such Act that are designed to promote the self-sufficiency of public housing residents or residents of housing assisted under such Act or provide supportive services for such residents, including activities relating to—

(1) physical improvements to a public housing project or residents of housing assisted under such Act in order to provide space for supportive services for residents;

(2) the provision of service coordinators or a congregate housing services program for elderly individuals, elderly disabled individuals, nonelderly disabled individuals, or temporarily disabled individuals;

(3) the provision of services related to work readiness, including education, job training and counseling, job search skills, business development training and planning, tutoring, mentoring, adult literacy, computer access, personal and family counseling, health screening, work readiness health services, transportation, and child care;

(4) economic and job development, including employer linkages and job placement, and the start-up of resident microenterprises, community credit unions, and revolving loan funds, including the licensing, bonding, and insurance needed to operate such enterprises;

(5) resident management activities and resident participation activities; and

(6) other activities designed to improve the economic self-sufficiency of residents.

(c) Funding distribution

(1) In general

Except for amounts provided under subsection (d) of this section, the Secretary may distribute amounts made available under this section on the basis of a competition or a formula, as appropriate.

(2) Factors for distribution

Factors for distribution under paragraph (1) shall include—

(A) the demonstrated capacity of the applicant to carry out a program of supportive services or resident empowerment activities;

(B) the ability of the applicant to leverage additional resources for the provision of services; and

(C) the extent to which the grant will result in a high quality program of supportive services or resident empowerment activities.

(d) Matching requirement

The Secretary may not make any grant under this section to any applicant unless the applicant supplements amounts made available under this section with funds from sources other than this section in an amount equal to not less than 25 percent of the grant amount. Such supplemental amounts may include—

(1) funds from other Federal sources;

(2) funds from any State, local, or tribal government sources;

(3) funds from private contributions; and

(4) the value of any in-kind services or administrative costs provided to the applicant.

(e) Funding for resident organizations

To the extent that there are a sufficient number of qualified applications for assistance under

this section, not less than 25 percent of any amounts appropriated to carry out this section shall be provided directly to resident councils, resident organizations, and resident management corporations. In any case in which a resident council, resident organization, or resident management corporation lacks adequate expertise, the Secretary may require the council, organization, or corporation to utilize other qualified organizations as contract administrators with respect to financial assistance provided under this section.

(Sept. 1, 1937, ch. 896, title I, § 34, as added Pub. L. 105–276, title V, § 538(a), Oct. 21, 1998, 112 Stat. 2592; amended Pub. L. 106–377, § 1(a)(1) [title II, § 221(a)], Oct. 27, 2000, 114 Stat. 1441, 1441A–29.)

REFERENCES IN TEXT

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsecs. (a) and (b), is Pub. L. 104–330, Oct. 26, 1996, 110 Stat. 4016, as amended, which is classified principally to chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

AMENDMENTS

2000—Pub. L. 106–377, § 1(a)(1) [title II, § 221(a)(1)], substituted ''public and Indian housing'' for ''public housing'' in section catchline.

Subsec. (a). Pub. L. 106–377, § 1(a)(1) [title II, § 221(a)(2)], inserted ''recipients under the Native American Housing Assistance and Self-Determination Act of 1996 (notwithstanding section 502 of such Act) on behalf of residents of housing assisted under such Act,'' after ''on behalf of public housing residents,'' and inserted ''and residents of housing assisted under such Act'' after ''supportive services to public housing residents''.

Subsec. (b). Pub. L. 106–377, § 1(a)(1) [title II, § 221(a)(3)(A), (B)], in introductory provisions, inserted ''or the property of a recipient under such Act or housing assisted under such Act'' after ''public housing project'' and ''or residents of housing assisted under such Act'' after ''public housing residents''.

Subsec. (b)(1). Pub. L. 106–377, § 1(a)(1) [title II, § 221(a)(3)(C)], inserted ''or residents of housing assisted under such Act'' after ''public housing project''.

Subsec. (d)(2). Pub. L. 106–377, § 1(a)(1) [title II, § 221(a)(4)], substituted ''State, local, or tribal government'' for ''State or local government''.

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

ASSESSMENT AND REPORT BY SECRETARY

Pub. L. 105–276, title V, § 538(b), Oct. 21, 1998, 112 Stat. 2594, as amended by Pub. L. 106–377, § 1(a)(1) [title II, § 221(b)], Oct. 27, 2000, 114 Stat. 1441, 1441A–29, provided that: ''Not later than 3 years after the date of the enactment of the Quality Housing and Work Responsibility Act of 1998 [Oct. 21, 1998], the Secretary of Housing and Urban Development shall—

''(1) conduct an evaluation and assessment of grants carried out by resident organizations, and particularly of the effect of the grants on living conditions in public housing and housing assisted under the Native American Housing Assistance and Self-Determination Act of 1996 [25 U.S.C. 4101 et seq.]; and

''(2) submit to the Congress a report setting forth the findings of the Secretary as a result of the evaluation and assessment and including any recommendations the Secretary determines to be appropriate.

''This subsection shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

§ 1437z–7. Mixed-finance public housing

(a) Authority

A public housing agency may own, operate, assist, or otherwise participate in 1 or more mixed-finance projects in accordance with this section.

(b) Assistance

(1) Forms

A public housing agency may provide to a mixed-finance project assistance from the Operating Fund under section 1437g of this title, assistance from the Capital Fund under such section, or both forms of assistance. A public housing agency may, in accordance with regulations established by the Secretary, provide capital assistance to a mixed-finance project in the form of a grant, loan, guarantee, or other form of investment in the project, which may involve drawdown of funds on a schedule commensurate with construction draws for deposit into an interest-bearing escrow account to serve as collateral or credit enhancement for bonds issued by a public agency, or for other forms of public or private borrowings, for the construction or rehabilitation of the development.

(2) Use

To the extent deemed appropriate by the Secretary, assistance used in connection with the costs associated with the operation and management of mixed-finance projects may be used for funding of an operating reserve to ensure affordability for low-income and very low-income families in lieu of the availability of operating funds for public housing units in a mixed-finance project.

(c) Compliance with public housing requirements

The units assisted with capital or operating assistance in a mixed-finance project shall be developed, operated, and maintained in accordance with the requirements of this chapter relating to public housing during the period required by under[1] this chapter, unless otherwise specified in this section. For purposes of this chapter, any reference to public housing owned or operated by a public housing agency shall include dwelling units in a mixed finance project that are assisted by the agency with capital or operating assistance.

(d) Mixed-finance projects

(1) In general

For purposes of this section, the term ''mixed-finance project'' means a project that meets the requirements of paragraph (2) and is financially assisted by private resources, which may include low-income housing tax credits, in addition to amounts provided under this chapter.

(2) Types of projects

The term includes a project that is developed—

[1] So in original.

(A) by a public housing agency or by an entity affiliated with a public housing agency;

(B) by a partnership, a limited liability company, or other entity in which the public housing agency (or an entity affiliated with a public housing agency) is a general partner, managing member, or otherwise participates in the activities of that entity;

(C) by any entity that grants to the public housing agency the right of first refusal and first option to purchase, after the close of the compliance period, of the qualified low-income building in which the public housing units exist in accordance with section 42(i)(7) of title 26; or

(D) in accordance with such other terms and conditions as the Secretary may prescribe by regulation.

(e) Structure of projects

Each mixed-finance project shall be developed—

(1) in a manner that ensures that public housing units are made available in the project, by regulatory and operating agreement, master contract, individual lease, condominium or cooperative agreement, or equity interest;

(2) in a manner that ensures that the number of public housing units bears approximately the same proportion to the total number of units in the mixed-finance project as the value of the total financial commitment provided by the public housing agency bears to the value of the total financial commitment in the project, or shall not be less than the number of units that could have been developed under the conventional public housing program with the assistance, or as may otherwise be approved by the Secretary; and

(3) in accordance with such other requirements as the Secretary may prescribe by regulation.

(f) Taxation

(1) In general

A public housing agency may elect to exempt all public housing units in a mixed-finance project—

(A) from the provisions of section 1437d(d) of this title, and instead subject such units to local real estate taxes; and

(B) from the finding of need and cooperative agreement provisions under section 1437c(e)(1)(ii) and 1437c(e)(2) of this title, but only if the development of the units is not inconsistent with the jurisdiction's comprehensive housing affordability strategy.

(2) Low-income housing tax credit

With respect to any unit in a mixed-finance project that is assisted pursuant to the low-income housing tax credit under section 42 of title 26, the rents charged to the residents may be set at levels not to exceed the amounts allowable under that section, provided that such levels for public housing residents do not exceed the amounts allowable under section 1437a of this title.

(g) Use of savings

Notwithstanding any other provision of this chapter, to the extent deemed appropriate by the Secretary, to facilitate the establishment of socioeconomically mixed communities, a public housing agency that uses assistance from the Capital Fund for a mixed-finance project, to the extent that income from such a project reduces the amount of assistance used for operating or other costs relating to public housing, may use such resulting savings to rent privately developed dwelling units in the neighborhood of the mixed-finance project. Such units shall be made available for occupancy only by low-income families eligible for residency in public housing.

(h) Effect of certain contract terms

If an entity that owns or operates a mixed-finance project, that includes a significant number of units other than public housing units enters into a contract with a public housing agency, the terms of which obligate the entity to operate and maintain a specified number of units in the project as public housing units in accordance with the requirements of this chapter for the period required by law, such contractual terms may provide that, if, as a result of a reduction in appropriations under section 1437g of this title or any other change in applicable law, the public housing agency is unable to fulfill its contractual obligations with respect to those public housing units, that entity may deviate, under procedures and requirements developed through regulations by the Secretary, from otherwise applicable restrictions under this chapter regarding rents, income eligibility, and other areas of public housing management with respect to a portion or all of those public housing units, to the extent necessary to preserve the viability of those units while maintaining the low-income character of the units to the maximum extent practicable.

(Sept. 1, 1937, ch. 896, title I, §35, as added Pub. L. 105–276, title V, §539[(a)], Oct. 21, 1998, 112 Stat. 2594.)

EFFECTIVE DATE

Section effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement section before such date except to extent otherwise provided, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

REGULATIONS

Pub. L. 105–276, title V, §539(b), Oct. 21, 1998, 112 Stat. 2596, provided that: ''The Secretary shall issue such regulations as may be necessary to promote the development of mixed-finance projects, as that term is defined in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)] (as amended by this Act).''

SUBCHAPTER II—ASSISTED HOUSING FOR INDIANS AND ALASKA NATIVES

§§ 1437aa to 1437ee. Repealed. Pub. L. 104–330, title V, § 501(a), Oct. 26, 1996, 110 Stat. 4041

Section 1437aa, act Sept. 1, 1937, ch. 896, title II, §201, as added June 29, 1988, Pub. L. 100–358, §2, 102 Stat. 676; amended Nov. 28, 1990, Pub. L. 101–625, title V, §572(2), 104 Stat. 4236; Oct. 28, 1992, Pub. L. 102–550, title I, §122(a), 106 Stat. 3708, related to establishment of separate program of assisted housing for Indians and Alaska Natives.

Section 1437bb, act Sept. 1, 1937, ch. 896, title II, §202, as added June 29, 1988, Pub. L. 100–358, §2, 102 Stat. 676;

amended Nov. 28, 1990, Pub. L. 101–625, title V, §§516, 572(1), 104 Stat. 4199, 4236; Oct. 28, 1992, Pub. L. 102–550, title I, §122(b), 106 Stat. 3709, related to mutual help homeownership opportunity program.

Section 1437cc, act Sept. 1, 1937, ch. 896, title II, §203, as added June 29, 1988, Pub. L. 100–358, §2, 102 Stat. 679; amended Nov. 28, 1990, Pub. L. 101–625, title V, §572(2), 104 Stat. 4236; Oct. 28, 1992, Pub. L. 102–550, title I, §122(c), 106 Stat. 3709, related to public housing maximum contributions, provision of related facilities and services, and accessibility to physically handicapped persons.

Section 1437dd, act Sept. 1, 1937, ch. 896, title II, §204, as added June 29, 1988, Pub. L. 100–358, §2, 102 Stat. 679; amended Nov. 28, 1990, Pub. L. 101–625, title V, §572(1), 104 Stat. 4236, related to annual report under section 3536 of this title.

Section 1437ee, act Sept. 1, 1937, ch. 896, title II, §205, as added June 29, 1988, Pub. L. 100–358, §2, 102 Stat. 680, related to issuance of regulations to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 1437ff. Transferred

CODIFICATION

Section, Pub. L. 101–625, title IX, §959, Nov. 28, 1990, 104 Stat. 4423, which related to waiver of matching funds requirements in Indian housing programs, was transferred to section 4104 of Title 25, Indians.

SUBCHAPTER II–A—HOPE FOR PUBLIC HOUSING HOMEOWNERSHIP

AMENDMENTS

1996—Pub. L. 104–330, title V, §501(c)(1), Oct. 26, 1996, 110 Stat. 4042, added subchapter heading and struck out former subchapter heading which read as follows: ''HOPE FOR PUBLIC AND INDIAN HOUSING HOMEOWNERSHIP''.

§ 1437aaa. Program authority

(a) In general

The Secretary is authorized to make—

(1) planning grants to help applicants to develop homeownership programs in accordance with this subchapter; and

(2) implementation grants to carry out homeownership programs in accordance with this subchapter.

(b) Authority to reserve housing assistance

In connection with a grant under this subchapter, the Secretary may reserve authority to provide assistance under section 1437f of this title to the extent necessary to provide replacement housing and rental assistance for a nonpurchasing tenant who resides in the project on the date the Secretary approves the application for an implementation grant, for use by the tenant in another project.

(Sept. 1, 1937, ch. 896, title III, §301, as added Pub. L. 101–625, title IV, §411, Nov. 28, 1990, 104 Stat. 4148; amended Pub. L. 102–550, title I, §181(a)(2)(A), Oct. 28, 1992, 106 Stat. 3735.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–550 struck out subsec. (c) which read as follows: ''There are authorized to be appropriated for grants under this subchapter $68,000,000 for fiscal year 1991 and $380,000,000 for fiscal year 1992. Any amount appropriated pursuant to this subsection shall remain available until expended.''

SHORT TITLE

Section 401 of title IV of Pub. L. 101–625 provided that: ''This title [enacting this subchapter and subchapter IV (§12871 et seq.) of chapter 130 of this title, amending sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of this title and section 1709 of Title 12, Banks and Banking, and enacting provisions set out as notes under this section and sections 1437c and 1437aa of this title] may be cited as the 'Homeownership and Opportunity Through HOPE Act'.''

ESTABLISHMENT AND IMPLEMENTATION OF REQUIREMENTS BY SECRETARY

Section 418 of Pub. L. 101–625 provided that: ''Not later than the expiration of the 180-day period beginning on the date that funds authorized under title III of the United States Housing Act of 1937 [this subchapter] first become available for obligation, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this subtitle [subtitle A (§§411–419) of title IV of Pub. L. 101–625, enacting this subchapter, amending sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of this title, and enacting provisions set out as notes under sections 1437c and 1437aa of this title]. Such requirements shall be subject to section 553 of title 5, United States Code. The Secretary shall issue regulations based on the initial notice before the expiration of the 8-month period beginning on the date of the notice.''

§ 1437aaa–1. Planning grants

(a) Grants

The Secretary is authorized to make planning grants to applicants for the purpose of developing homeownership programs under this subchapter. The amount of a planning grant under this section may not exceed $200,000, except that the Secretary may for good cause approve a grant in a higher amount.

(b) Eligible activities

Planning grants may be used for activities to develop homeownership programs (which may include programs for cooperative ownership), including—

(1) development of resident management corporations and resident councils;

(2) training and technical assistance for applicants related to development of a specific homeownership program;

(3) studies of the feasibility of a homeownership program;

(4) inspection for lead-based paint hazards, as required by section 4822(a) of this title;

(5) preliminary architectural and engineering work;

(6) tenant and homebuyer counseling and training;

(7) planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency of homebuyers and homeowners under the homeownership program;

(8) development of security plans; and

(9) preparation of an application for an implementation grant under this subchapter.

(c) Application

(1) Form and procedures

An application for a planning grant shall be submitted by an applicant in such form and in

accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for a planning grant, specifying the activities proposed to be carried out, the schedule for completing the activities, the personnel necessary to complete the activities, and the amount of the grant requested;

(B) a description of the applicant and a statement of its qualifications;

(C) identification and description of the public housing project or projects involved, and a description of the composition of the tenants, including family size and income;

(D) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 12705 of this title that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(E) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 794 of title 29, and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(d) Selection criteria

The Secretary shall, by regulation, establish selection criteria for a national competition for assistance under this section, which shall include—

(1) the qualifications or potential capabilities of the applicant;

(2) the extent of tenant interest in the development of a homeownership program for the project;

(3) the potential of the applicant for developing a successful and affordable homeownership program and the suitability of the project for homeownership;

(4) national geographic diversity among projects for which applicants are selected to receive assistance; and

(5) such other factors that the Secretary shall require that (in the determination of the Secretary) are appropriate for purposes of carrying out the program established by this subchapter in an effective and efficient manner.

(Sept. 1, 1937, ch. 896, title III, § 302, as added Pub. L. 101–625, title IV, § 411, Nov. 28, 1990, 104 Stat. 4149; amended Pub. L. 102–550, title X, § 1012(h)(1), Oct. 28, 1992, 106 Stat. 3906.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in subsec. (c)(2)(E), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(2)(E), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (c)(2)(E), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(4) to (9). Pub. L. 102–550 added par. (4) and redesignated former pars. (4) to (8) as (5) to (9), respectively.

§ 1437aaa–2. Implementation grants

(a) Grants

The Secretary is authorized to make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this subchapter.

(b) Eligible activities

Implementation grants may be used for activities to carry out homeownership programs (including programs for cooperative ownership) that meet the requirements under this subchapter, including the following activities:

(1) Architectural and engineering work.

(2) Implementation of the homeownership program, including acquisition of the public housing project from a public housing agency for the purpose of transferring ownership to eligible families in accordance with a homeownership program that meets the requirements under this subchapter.

(3) Rehabilitation of any public housing project covered by the homeownership program, in accordance with standards established by the Secretary.

(4) Abatement of lead-based paint hazards, as required by section 4822(a) of this title.

(5) Administrative costs of the applicant, which may not exceed 15 percent of the amount of assistance provided under this section.

(6) Development of resident management corporations and resident management councils, but only if the applicant has not received assistance under section 1437aaa–1 of this title for such activities.

(7) Counseling and training of homebuyers and homeowners under the homeownership program.

(8) Relocation of tenants who elect to move.

(9) Any necessary temporary relocation of tenants during rehabilitation.

(10) Funding of operating expenses and replacement reserves of the project covered by the homeownership program, except that the amount of assistance for operating expenses shall not exceed the amount the project would have received if it had continued to receive such assistance from the Operating Fund, with adjustments comparable to those that would

have been made under section 1437g of this title, and except that implementation grants may not be used under this paragraph to fund operating expenses for scattered site public housing acquired under a homeownership program.

(11) Implementation of a replacement housing plan.

(12) Legal fees.

(13) Defraying costs for the ongoing training needs of the recipient that are related to developing and carrying out the homeownership program.

(14) Economic development activities that promote economic self-sufficiency of homebuyers, residents, and homeowners under the homeownership program.

(c) Matching funding

(1) In general

Each recipient shall assure that contributions equal to not less than 25 percent of the grant amount made available under this section, excluding any amounts provided for post-sale operating expenses and replacement housing, shall be provided from non-Federal sources to carry out the homeownership program.

(2) Form

Such contributions may be in the form of—

(A) cash contributions from non-Federal resources, which may not include Federal tax expenditures or funds from a grant made under section 5306(b) of this title or section 5306(d) of this title;

(B) payment of administrative expenses, as defined by the Secretary, from non-Federal resources, including funds from a grant made under section 5306(b) of this title or section 5306(d) of this title;

(C) the value of taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this subchapter;

(D) the value of land or other real property as appraised according to procedures acceptable to the Secretary;

(E) the value of investment in on-site and off-site infrastructure required for a homeownership program assisted under this subchapter; or

(F) such other in-kind contributions as the Secretary may approve.

Contributions for administrative expenses shall be recognized only up to an amount equal to 7 percent of the total amount of grants made available under this section.

(3) Reduction of requirement

The Secretary shall reduce the matching requirement for homeownership programs carried out under this section in accordance with the formula established under section 220(d) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12750(d)].

(d) Application

(1) Form and procedure

An application for an implementation grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(2) Minimum requirements

The Secretary shall require that an application contain at a minimum—

(A) a request for an implementation grant, specifying the amount of the grant requested and its proposed uses;

(B) if applicable, an application for assistance under section 1437f of this title, which shall specify the proposed uses of such assistance and the period during which the assistance will be needed;

(C) a description of the qualifications and experience of the applicant in providing housing for low-income families;

(D) a description of the proposed homeownership program, consistent with section 1437aaa–3 of this title and the other requirements of this subchapter, which shall specify the activities proposed to be carried out and their estimated costs, identifying reasonable schedules for carrying it out, and demonstrating that the program will comply with the affordability requirements under section 1437aaa–3(b) of this title;

(E) identification and description of the public housing project or projects involved, and a description of the composition of the tenants, including family size and income;

(F) a description of and commitment for the resources that are expected to be made available to provide the matching funding required under subsection (c) of this section and of other resources that are expected to be made available in support of the homeownership program;

(G) identification and description of the financing proposed for any (i) rehabilitation and (ii) acquisition (I) of the property, where applicable, by a resident council or other entity for transfer to eligible families, and (II) by eligible families of ownership interests in, or shares representing, units in the project;

(H) if the applicant is not a public housing agency, the proposed sales price, if any, the basis for such price determination, and terms to the applicant;

(I) the estimated sales prices, if any, and terms to eligible families;

(J) any proposed restrictions on the resale of units under a homeownership program;

(K) identification and description of the entity that will operate and manage the property;

(L) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 105 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12705] that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located (or, during the first 12 months after November 28, 1990, that the application is consistent with such other existing State or local housing plan or strategy that the Secretary shall determine to be appropriate); and

(M) a certification that the applicant will comply with the requirements of the Fair Housing Act [42 U.S.C. 3601 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], section 794 of title 29, and the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], and will affirmatively further fair housing.

(e) Selection criteria

The Secretary shall establish selection criteria for a national competition for assistance under this section, which shall include—

(1) the ability of the applicant to develop and carry out the proposed homeownership program, taking into account the quality of any related ongoing program of the applicant, and the extent of tenant interest in the development of a homeownership program and community support;

(2) the feasibility of the homeownership program;

(3) the extent to which current tenants and other eligible families will be able to afford the purchase;

(4) the quality and viability of the proposed homeownership program, including the viability of the economic self-sufficiency plan;

(5) the extent to which funds for activities that do not qualify as eligible activities will be provided in support of the homeownership program;

(6) whether the approved comprehensive housing affordability strategy for the jurisdiction within which the public housing project is located includes the proposed homeownership program as one of the general priorities identified pursuant to section 105(b)(7) of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12705(b)(7)];

(7) national geographic diversity among housing for which applicants are selected to receive assistance; and

(8) the extent to which a sufficient supply of affordable rental housing exists in the locality, so that the implementation of the homeownership program will not reduce the number of such rental units available to residents currently residing in such units or eligible for residency in such units.

(f) Location within participating jurisdictions

The Secretary may approve applications for grants under this subchapter only for public housing projects located within the boundaries of jurisdictions—

(1) which are participating jurisdictions under title III of the Cranston-Gonzalez National Affordable Housing Act; or

(2) on behalf of which the agency responsible for affordable housing has submitted a housing strategy or plan.

(g) Approval

The Secretary shall notify each applicant, not later than 6 months after the date of the submission of the application, whether the application is approved or not approved. The Secretary may approve the application for an implementation grant with a statement that the application for the section 8 [42 U.S.C. 1437f] assistance for replacement housing and for residents of the project not purchasing units is conditionally approved, subject to the availability of appropriations in subsequent fiscal years.

(Sept. 1, 1937, ch. 896, title III, §303, as added Pub. L. 101–625, title IV, §411, Nov. 28, 1990, 104 Stat. 4150; amended Pub. L. 102–550, title I, §181(b), (c), (g)(1), title X, §1012(h)(2), Oct. 28, 1992, 106 Stat. 3735, 3736, 3906; Pub. L. 105–276, title V, §519(c)(1), Oct. 21, 1998, 112 Stat. 2561.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (b) (introductory provisions) and (c)(2)(C), (E), was in the original ''this subtitle'', and was translated as reading ''this title'', meaning title III of act Sept. 1, 1937, ch. 896, as added by Pub. L. 101–625, to reflect the probable intent of Congress, because title III of act Sept. 1, 1937, does not contain subtitles.

The Fair Housing Act, referred to in subsec. (d)(2)(M), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I of chapter 45 (§3601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (d)(2)(M), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (d)(2)(M), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (f)(1), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title III of the Act enacted subchapter III (§12851 et seq.) of chapter 130 of this title and sections 1735f–17 and 1735f–18 of Title 12, Banks and Banking, amended sections 1703, 1708, 1709, 1715d, 1715z–20, 1721, and 1735f–9 of Title 12, and enacted provisions set out as notes under sections 1703, 1709, 1713, and 1735f–18 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(10). Pub. L. 105–276 substituted ''such assistance from the Operating Fund'' for ''such assistance under section 1437g of this title''.

1992—Subsec. (b)(2). Pub. L. 102–550, §181(g)(1)(A), struck out ''(not including scattered site single family housing of a public housing agency)'' after ''public housing project''.

Subsec. (b)(4) to (8). Pub. L. 102–550, §1012(h)(2), added par. (4) and redesignated former pars. (4) to (7) as (5) to (8), respectively. Former par. (8) redesignated (9).

Subsec. (b)(9). Pub. L. 102–550, §1012(h)(2)(A), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Pub. L. 102–550, §181(g)(1)(B), which directed insertion of '', and except that implementation grants may not be used under this paragraph to fund operating expenses for scattered site public housing acquired under a homeownership program'' before period at end of section ''303(b)(9) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437aaa–2(b)(9))'', was executed by making the insertion before period at end of subsec. (b)(9) of this section, which is section 303 of the United States Housing Act of 1937, to reflect the probable intent of Congress.

Subsec. (b)(10) to (14). Pub. L. 102–550, §1012(h)(2)(A), redesignated pars. (9) to (13) as (10) to (14), respectively.

Subsec. (c)(1). Pub. L. 102–550, §181(b)(1), inserted ''and replacement housing'' after ''expenses''.

Subsec. (c)(3). Pub. L. 102–550, §181(b)(2), added par. (3).

Subsec. (e)(8). Pub. L. 102–550, §181(c), struck out ''of the type assisted under this subchapter'' after ''rental housing'' and ''appreciably'' before ''reduce''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

§ 1437aaa–3. Homeownership program requirements

(a) In general

A homeownership program under this subchapter shall provide for acquisition by eligible families of ownership interests in, or shares representing, at least one-half of the units in a public housing project under any arrangement determined by the Secretary to be appropriate, such as cooperative ownership (including limited equity cooperative ownership) and fee simple ownership (including condominium ownership), for occupancy by the eligible families.

(b) Affordability

A homeownership program under this subchapter shall provide for the establishment of sales prices (including principal, insurance, taxes, and interest and closing costs) for initial acquisition of the property from the public housing agency if the applicant is not a public housing agency, and for sales to eligible families, such that an eligible family shall not be required to expend more than 30 percent of the adjusted income of the family per month to complete a sale under the homeownership program.

(c) Plan

A homeownership program under this subchapter shall provide, and include a plan, for—

(1) identifying and selecting eligible families to participate in the homeownership program;

(2) providing relocation assistance to families who elect to move;

(3) ensuring continued affordability by tenants, homebuyers, and homeowners in the project;

(4) providing ongoing training and counseling for homebuyers and homeowners; and

(5) replacing units in eligible projects covered by a homeownership program.

(d) Acquisition and rehabilitation limitations

Acquisition or rehabilitation of public housing projects under a homeownership program under this subchapter may not consist of acquisition or rehabilitation of less than the whole public housing project in a project consisting of more than 1 building. The provisions of this subsection may be waived upon a finding by the Secretary that the sale of less than all the buildings in a project is feasible and will not result in a hardship to any tenants of the project who are not included in the homeownership program.

(e) Financing

(1) In general

The application shall identify and describe the proposed financing for (A) any rehabilitation, and (B) acquisition (i) of the project, where applicable, by an entity other than the public housing agency for transfer to eligible families, and (ii) by eligible families of ownership interests in, or shares representing, units in the project. Financing may include use of the implementation grant, sale for cash, or other sources of financing (subject to applicable requirements), including conventional mortgage loans and mortgage loans insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

(2) Prohibition against pledges

Property transferred under this subchapter shall not be pledged as collateral for debt or otherwise encumbered except when the Secretary determines that—

(A) such encumbrance will not threaten the long-term availability of the property for occupancy by low-income families;

(B) neither the Federal Government nor the public housing agency will be exposed to undue risks related to action that may have to be taken pursuant to paragraph (3);

(C) any debt obligation can be serviced from project income, including operating assistance; and

(D) the proceeds of such encumbrance will be used only to meet housing standards in accordance with subsection (f) of this section or to make such additional capital improvements as the Secretary determines to be consistent with the purposes of this subchapter.

(3) Opportunity to cure

Any lender that provides financing in connection with a homeownership program under this subchapter shall give the public housing agency, resident management corporation, individual owner, or other appropriate entity a reasonable opportunity to cure a financial default before foreclosing on the property, or taking other action as a result of the default.

(f) Housing quality standards

The application shall include a plan ensuring that the unit—

(1) will be free from any defects that pose a danger to health or safety before transfer of an ownership interest in, or shares representing, a unit to an eligible family; and

(2) will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards established by the Secretary for the purposes of this subchapter.

(g) Repealed. Pub. L. 105–276, title V, § 531(b)(1), Oct. 21, 1998, 112 Stat. 2573

(h) Protection of non-purchasing families

(1) In general

No tenant residing in a dwelling unit in a public housing project on the date the Secretary approves an application for an implementation grant may be evicted by reason of a homeownership program approved under this subchapter.

(2) Replacement assistance

If the tenant decides not to purchase a unit, or is not qualified to do so, the recipient shall,

during the term of any operating assistance under the implementation grant, permit each otherwise qualified tenant to continue to reside in the project at rents that do not exceed levels consistent with section 1437a(a) of this title or, if an otherwise qualified tenant chooses to move (at any time during the term of such operating assistance contract), the public housing agency shall, to the extent approved in appropriations Acts, offer such tenant (A) a unit in another public housing project, or (B) section 8 [42 U.S.C. 1437f] assistance for use in other housing.

(3) Relocation assistance

The recipient shall also inform each such tenant that if the tenant chooses to move, the recipient will pay relocation assistance in accordance with the approved homeownership program.

(4) Other rights

Tenants renting a unit in a project transferred under this subchapter shall have all rights provided to tenants of public housing under this chapter.

(Sept. 1, 1937, ch. 896, title III, §304, as added Pub. L. 101–625, title IV, §411, Nov. 28, 1990, 104 Stat. 4153; amended Pub. L. 102–550, title I, §181(g)(1)(A), Oct. 28, 1992, 106 Stat. 3736; Pub. L. 104–19, title I, §1002(b), July 27, 1995, 109 Stat. 236; Pub. L. 105–276, title V, §531(b)(1), Oct. 21, 1998, 112 Stat. 2573.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (e)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified principally to subchapter II (§1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

This subchapter, referred to in subsec. (e)(3), was in the original ''this subtitle'', and was translated as reading ''this title'', meaning title III of act Sept. 1, 1937, ch. 896, as added by Pub. L. 101–625, to reflect the probable intent of Congress, because title III of act Sept. 1, 1937, does not contain subtitles.

AMENDMENTS

1998—Subsec. (g). Pub. L. 105–276 struck out subsec. (g) which prohibited transfer of projects without plan for replacement housing. See 1995 Amendment note below.

1995—Subsec. (g). Pub. L. 104–19 struck out subsec. (g) which prohibited transfer of projects without plan for replacement housing.

1992—Subsec. (d). Pub. L. 102–550 struck out ''(not including scattered site single family housing of a public housing agency)'' after ''housing project''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 531(b)(1) of Pub. L. 105–276 effective with respect to any plan for the demolition, disposition, or conversion to homeownership of public housing that is approved by Secretary after Sept. 30, 1995, see section 531(b)(2) of Pub. L. 105–276, set out as a note below.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–19 effective for applications for demolition, disposition, or conversion to homeownership of public housing approved by the Secretary, and other consolidation and relocation activities of public housing agencies undertaken on, before, or after Sept. 30, 1995, and on or before Sept. 30, 1998, see section 1002(d) of Pub. L. 104–19, as amended, set out as a note under section 1437c of this title.

HOMEOWNERSHIP REPLACEMENT PLAN

Pub. L. 105–276, title V, §531(b), Oct. 21, 1998, 112 Stat. 2573, provided that:

''(1) IN GENERAL.—Notwithstanding subsections (b) and (c) of section 1002 of the Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred At Oklahoma City, and Rescissions Act, 1995 [amending this section and enacting provision set out as a note under section 1437c of this title] (Public Law 104–19; 109 Stat. 236), subsection (g) of section 304 of the United States Housing Act of 1937 (42 U.S.C. 1437aaa–3(g)) is repealed.

''(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall be effective with respect to any plan for the demolition, disposition, or conversion to homeownership of public housing that is approved by the Secretary after September 30, 1995.''

§1437aaa–4. Other program requirements

(a) Sale by public housing agency to applicant or other entity required

Where the Secretary approves an application providing for the transfer of the eligible project from the public housing agency to another applicant, the public housing agency shall transfer the project to such other applicant, in accordance with the approved homeownership program.

(b) Preferences

In selecting eligible families for homeownership, the recipient shall give a first preference to otherwise qualified current tenants and a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program specified by the Secretary.

(c) Cost limitations

The Secretary may establish cost limitations on eligible activities under this subchapter, subject to the provisions of this subchapter.

(d) Annual contributions

Notwithstanding the purchase of a public housing project under this section, or the purchase of a unit in a public housing project by an eligible family, the Secretary shall continue to pay annual contributions with respect to the project. Such contributions may not exceed the maximum contributions authorized in section 1437c(a) of this title.

(e) Amounts from Operating Fund allocation

Amounts from an allocation from the Operating Fund under section 1437g of this title shall not be available with respect to a public housing project after the date of its sale by the public housing agency.

(f) Use of proceeds from sales to eligible families

The entity that transfers ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional

homeownership opportunities, and other activities approved by the Secretary.

(g) Restrictions on resale by homeowners

(1) In general

(A) Transfer permitted

A homeowner under a homeownership program may transfer the homeowner's ownership interest in, or shares representing, the unit, except that a homeownership program may establish restrictions on the resale of units under the program.

(B) Right to purchase

Where a resident management corporation, resident council, or cooperative has jurisdiction over the unit, the corporation, council, or cooperative shall have the right to purchase the ownership interest in, or shares representing, the unit from the homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. If such an entity does not have jurisdiction over the unit or elects not to purchase and if the prospective buyer is not a low-income family, the public housing agency or the implementation grant recipient shall have the right to purchase the ownership interest in, or shares representing, the unit for the same amount.

(C) Promissory note required

The homeowner shall execute a promissory note equal to the difference between the market value and the purchase price, payable to the public housing agency or other entity designated in the homeownership plan, together with a mortgage securing the obligation of the note.

(2) 6 years or less

In the case of a transfer within 6 years of the acquisition under the program, the homeownership program shall provide for appropriate restrictions to assure that an eligible family may not receive any undue profit. The plan shall provide for limiting the family's consideration for its interest in the property to the total of—

(A) the contribution to equity paid by the family;

(B) the value, as determined by such means as the Secretary shall determine through regulation, of any improvements installed at the expense of the family during the family's tenure as owner; and

(C) the appreciated value determined by an inflation allowance at a rate which may be based on a cost-of-living index, an income index, or market index as determined by the Secretary through regulation and agreed to by the purchaser and the entity that transfers ownership interests in, or shares representing, units to eligible families (or another entity specified in the approved application), at the time of initial sale, and applied against the contribution to equity.

Such an entity may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) 6–20 years

In the case of a transfer during the period beginning 6 years after the acquisition and ending 20 years after the acquisition, the homeownership program shall provide for the recapture by the Secretary or the program of an amount equal to the amount of the declining balance on the note described in paragraph (1)(C).

(4) Use of recaptured funds

Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under the plan approved pursuant to this subsection shall be paid to the entity that transferred ownership interests in, or shares representing, units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by the Secretary. The remaining 50 percent shall be returned to the Secretary for use under this subchapter, subject to limitations contained in appropriations Acts. Such entity shall keep and make available to the Secretary all records necessary to calculate accurately payments due the Secretary under this subsection.

(h) Third party rights

The requirements under this subchapter regarding quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the grant recipient with respect to actions involving rehabilitation, and against purchasers of property under this subsection or their successors in interest with respect to other actions by affected low-income families, resident management corporations, resident councils, public housing agencies, and any agency, corporation, or authority of the United States Government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(i) Dollar limitation on economic development activities

Not more than an aggregate of $250,000 from amounts made available under sections 1437aaa–1 and 1437aaa–2 of this title may be used for economic development activities under sections 1437aaa–1(b)(6)[1] and 1437aaa–2(b)(9)[1] of this title for any project.

(j) Timely homeownership

Recipients shall transfer ownership of the property to tenants within a specified period of time that the Secretary determines to be reasonable. During the interim period when the property continues to be operated and managed as rental housing, the recipient shall utilize written tenant selection policies and criteria that are consistent with the public housing program and that are approved by the Secretary as consistent with the purpose of improving housing opportunities for low-income families. The

[1] See References in Text note below.

recipient shall promptly notify in writing any rejected applicant of the grounds for any rejection.

(k) Capability of resident management corporations and resident councils

To be eligible to receive a grant under section 1437aaa–2 of this title, a resident management corporation or resident council shall demonstrate to the Secretary its ability to manage public housing by having done so effectively and efficiently for a period of not less than 3 years or by arranging for management by a qualified management entity.

***(l)* Records and audit of recipients of assistance**

(1) In general

Each recipient shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of assistance received under this subchapter (and any proceeds from financing obtained in accordance with subsection (b) of this section or sales under subsections (f) and (g)(4) of this section), the total cost of the homeownership program in connection with which such assistance is given or used, and the amount and nature of that portion of the program supplied by other sources, and such other sources as will facilitate an effective audit.

(2) Access by the Secretary

The Secretary shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subchapter.

(3) Access by the Comptroller General

The Comptroller General of the United States, or any of the duly authorized representatives of the Comptroller General, shall also have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subchapter.

(Sept. 1, 1937, ch. 896, title III, §305, as added Pub. L. 101–625, title IV, §411, Nov. 28, 1990, 104 Stat. 4155; amended Pub. L. 105–276, title V, §519(c)(2), Oct. 21, 1998, 112 Stat. 2561.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (g)(4), was in the original ''this subtitle'', and was translated as reading ''this title'', meaning title III of act Sept. 1, 1937, ch. 896, as added by Pub. L. 101–625, to reflect the probable intent of Congress, because title III of act Sept. 1, 1937, does not contain subtitles.

Section 1437aaa–1(b)(6) of this title, referred to in subsec. (i), was redesignated section 1437aaa–1(b)(7) of this title by Pub. L. 102–550, title X, §1012(h)(1)(A), Oct. 28, 1992, 106 Stat. 3906.

Section 1437aaa–2(b)(9) of this title, referred to in subsec. (i), was redesignated section 1437aaa–2(b)(10) of this title by Pub. L. 102–550, title X, §1012(h)(2)(A), Oct. 28, 1992, 106 Stat. 3906.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–276 substituted ''Amounts from an allocation from the Operating Fund'' for ''Operating subsidies''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

§ 1437aaa–5. Definitions

For purposes of this subchapter:

(1) The term ''applicant'' means the following entities that may represent the tenants of the project:

(A) A public housing agency.

(B) A resident management corporation, established in accordance with requirements of the Secretary under section 1437r of this title.

(C) A resident council.

(D) A cooperative association.

(E) A public or private nonprofit organization.

(F) A public body, including an agency or instrumentality thereof.

(2) The term ''eligible family'' means—

(A) a family or individual who is a tenant in the public housing project on the date the Secretary approves an implementation grant;

(B) a low-income family; or

(C) a family or individual who is assisted under a housing program administered by the Secretary or the Secretary of Agriculture (not including any non-low income families assisted under any mortgage insurance program administered by either Secretary).

(3) The term ''homeownership program'' means a program for homeownership meeting the requirements under this subchapter.

(4) The term ''recipient'' means an applicant approved to receive a grant under this subchapter or such other entity specified in the approved application that will assume the obligations of the recipient under this subchapter.

(5) The term ''resident council'' means any incorporated nonprofit organization or association that—

(A) is representative of the tenants of the housing;

(B) adopts written procedures providing for the election of officers on a regular basis; and

(C) has a democratically elected governing board, elected by the tenants of the housing.

(Sept. 1, 1937, ch. 896, title III, §306, as added Pub. L. 101–625, title IV, §411, Nov. 28, 1990, 104 Stat. 4158; amended Pub. L. 104–330, title V, §501(c)(2), Oct. 26, 1996, 110 Stat. 4042.)

AMENDMENTS

1996—Par. (1)(A). Pub. L. 104–330, §501(c)(2)(A), struck out ''(including an Indian housing authority)'' after ''agency''.

Par. (2)(A). Pub. L. 104–330, §501(c)(2)(B), struck out ''or Indian'' after ''public''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 1437aaa–6. Relationship to other homeownership opportunities

The program authorized under this subchapter shall be in addition to any other public housing homeownership and management opportunities, including opportunities under section 1437c(h)[1] of this title.

(Sept. 1, 1937, ch. 896, title III, § 307, as added Pub. L. 101–625, title IV, § 411, Nov. 28, 1990, 104 Stat. 4159; amended Pub. L. 104–330, title V, § 501(c)(3), Oct. 26, 1996, 110 Stat. 4042; Pub. L. 105–276, title V, § 518(a)(2)(C), Oct. 21, 1998, 112 Stat. 2551.)

REFERENCES IN TEXT

Section 1437c(h) of this title, referred to in text, was repealed and a new section 1437c(h), relating to audits, was added by Pub. L. 105–276, title V, §§ 518(a)(1)(A), 566, Oct. 21, 1998, 112 Stat. 2551, 2632. See 1998 Amendment note below.

AMENDMENTS

1998—Pub. L. 105–276, which directed amendment of text by striking out ''section 5(h) and'' in original (a reference to section 1437c(h) of this title), could not be executed because the word ''and'' does not appear.

1996—Pub. L. 104–330 struck out ''and subchapter II of this chapter'' after ''section 1437c(h) of this title''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

§ 1437aaa–7. Limitation on selection criteria

In establishing criteria for selecting applicants to receive assistance under this subchapter, the Secretary may not establish any selection criterion or criteria that grant or deny such assistance to an applicant (or have the effect of granting or denying assistance) based on the implementation, continuation, or discontinuation of any public policy, regulation, or law of any jurisdiction in which the applicant or project is located.

(Sept. 1, 1937, ch. 896, title III, § 308, as added Pub. L. 101–625, title IV, § 411, Nov. 28, 1990, 104 Stat. 4159.)

§ 1437aaa–8. Annual report

The Secretary shall annually submit to the Congress a report setting forth—

(1) the number, type, and cost of public housing units sold pursuant to this subchapter;

(2) the income, race, gender, children, and other characteristics of families participating (or not participating) in homeownership programs funded under this subchapter;

(3) the amount and type of financial assistance provided under and in conjunction with this subchapter;

(4) the amount of financial assistance provided under this subchapter that was needed to ensure continued affordability and meet future maintenance and repair costs; and

(5) the recommendations of the Secretary for statutory and regulatory improvements to the program.

(Sept. 1, 1937, ch. 896, title III, § 309, as added Pub. L. 101–625, title IV, § 411, Nov. 28, 1990, 104 Stat. 4159.)

SUBCHAPTER II–B—HOME RULE FLEXIBLE GRANT DEMONSTRATION

§ 1437bbb. Purpose

The purpose of this subchapter is to demonstrate the effectiveness of authorizing local governments and municipalities, in coordination with the public housing agencies for such jurisdictions—

(1) to receive and combine program allocations of covered housing assistance; and

(2) to design creative approaches for providing and administering Federal housing assistance based on the particular needs of the jurisdictions that—

(A) provide incentives to low-income families with children whose head of the household is employed, seeking employment, or preparing for employment by participating in a job training or educational program, or any program that otherwise assists individuals in obtaining employment and attaining economic self-sufficiency;

(B) reduce costs of Federal housing assistance and achieve greater cost-effectiveness in Federal housing assistance expenditures;

(C) increase the stock of affordable housing and housing choices for low-income families;

(D) increase homeownership among low-income families;

(E) reduce geographic concentration of assisted families;

(F) reduce homelessness through providing permanent housing solutions;

(G) improve program management; and

(H) achieve such other purposes with respect to low-income families, as determined by the participating local governments and municipalities in coordination with the public housing agencies;[1]

(Sept. 1, 1937, ch. 896, title IV, § 401, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2616.)

EFFECTIVE DATE

Act Sept. 1, 1937, ch. 896, title IV, § 411, as added by Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2624, provided that: ''This title [enacting this subchapter] shall take effect on the date of the enactment of the Quality Housing and Work Responsibility Act of 1998 [Oct. 21, 1998].''

§ 1437bbb–1. Flexible grant program

(a) Authority and use

The Secretary shall carry out a demonstration program in accordance with the purposes under

[1] See References in Text note below.

[1] So in original. The semicolon probably should be a period.

section 1437bbb of this title and the provisions of this subchapter. A jurisdiction approved by the Secretary for participation in the program may receive and combine and enter into performance-based contracts for the use of amounts of covered housing assistance, in the manner determined appropriate by the participating jurisdiction, during the period of the jurisdiction's participation—

(1) to provide housing assistance and services for low-income families in a manner that facilitates the transition of such families to work;

(2) to reduce homelessness through providing permanent housing solutions;

(3) to increase homeownership among low-income families; or

(4) for other housing purposes for low-income families determined by the participating jurisdiction.

(b) Period of participation

A jurisdiction may participate in the demonstration program under this subchapter for a period consisting of not less than 1 nor more than 5 fiscal years.

(c) Participating jurisdictions

(1) In general

Subject to paragraph (2), during the 4-year period consisting of fiscal years 1999 through 2002, the Secretary may approve for participation in the program under this subchapter not more than an aggregate of 100 jurisdictions over the entire term of the demonstration program. A jurisdiction that was approved for participation in the demonstration program under this subchapter in a fiscal year and that is continuing such participation in any subsequent fiscal year shall count as a single jurisdiction for purposes of the numerical limitation under this paragraph.

(2) Exclusion of high performing agencies

Notwithstanding any other provision of this subchapter other than paragraph (4) of this subsection, the Secretary may approve for participation in the demonstration program under this subchapter only jurisdictions served by public housing agencies that—

(A) are not designated as high-performing agencies, pursuant to their most recent scores under the public housing management assessment program under section 1437d(j)(2) of this title (or any successor assessment program for public housing agencies), as of the time of approval; and

(B) have a most recent score under the public housing management assessment program under section 1437d(j)(2) of this title (or any successor assessment program for public housing agencies), as of the time of approval, that is among the lowest 40 percent of the scores of all agencies.

(3) Limitation on troubled and non-troubled PHAs

Of the jurisdictions approved by the Secretary for participation in the demonstration program under this subchapter—

(A) not more than 55 may be jurisdictions served by a public housing agency that, at the time of approval, is designated as a troubled agency under the public housing management assessment program under section 1437d(j)(2) of this title (or any successor assessment program for public housing agencies); and

(B) not more than 45 may be jurisdictions served by a public housing agency that, at the time of approval, is not designated as a troubled agency under the public housing management assessment program under section 1437d(j)(2) of this title (or any successor assessment program for public housing agencies).

(4) Exception

If the City of Indianapolis, Indiana submits an application for participation in the program under this subchapter and, upon review of the application under section 1437bbb–5(b) of this title, the Secretary determines that such application is approvable under this subchapter, the Secretary shall approve such application, notwithstanding the second sentence of section 1437bbb–5(b)(2) of this title. Such City shall count for purposes of the numerical limitations on jurisdictions under paragraphs (1) and (3) of this subsection, but the provisions of paragraph (2) of this subsection (relating to exclusion of high-performing agencies) shall not apply to such City.

(Sept. 1, 1937, ch. 896, title IV, § 402, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2617.)

§ 1437bbb–2. Program allocation and covered housing assistance

(a) Program allocation

In each fiscal year, the amount made available to each participating jurisdiction under the demonstration program under this subchapter shall be equal to the sum of the amounts of covered housing assistance that would otherwise be made available under the provisions of this chapter to the public housing agency for the jurisdiction.

(b) Covered housing assistance

For purposes of this subchapter, the term ''covered housing assistance'' means—

(1) operating assistance under section 1437g of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998);

(2) modernization assistance under section 1437*l* of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998);

(3) assistance for the certificate and voucher programs under section 1437f of this title (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998);

(4) assistance from the Operating Fund under section 1437g(e) of this title;

(5) assistance from the Capital Fund under section 1437g(d) of this title; and

(6) tenant-based assistance under section 1437f of this title (as amended by the Quality Housing and Work Responsibility Act of 1998).

(Sept. 1, 1937, ch. 896, title IV, § 403, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2618.)

REFERENCES IN TEXT

The Quality Housing and Work Responsibility Act of 1998, referred to in subsec. (b), is title V of Pub. L. 105–276, Oct. 21, 1998, 112 Stat. 2518. Section 503(a) of the Act is set out as an Effective Date of 1998 Amendment note under section 1437 of this title. For complete classification of this Act to the Code, see Tables.

Section 1437*l* of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 105–276, title V, § 522(a), Oct. 21, 1998, 112 Stat. 2564.

§ 1437bbb–3. Applicability of requirements under programs for covered housing assistance

(a) In general

In each fiscal year of the demonstration program under this subchapter, amounts made available to a participating jurisdiction under the demonstration program shall be subject to the same terms and conditions as such amounts would be subject to if made available under the provisions of this chapter pursuant to which covered housing assistance is otherwise made available under this chapter to the public housing agency for the jurisdiction, except that—

(1) the Secretary may waive any such term or condition identified by the jurisdiction to the extent that the Secretary determines such action to be appropriate to carry out the purposes of the demonstration program under this subchapter; and

(2) the participating jurisdiction may combine the amounts made available and use the amounts for any activity eligible under the programs under sections 1437f and 1437g of this title.

(b) Number of families assisted

In carrying out the demonstration program under this subchapter, each participating jurisdiction shall assist substantially the same total number of eligible low-income families as would have otherwise been served by the public housing agency for the jurisdiction had the jurisdiction not participated in the demonstration program under this subchapter.

(c) Protection of recipients

This subchapter may not be construed to authorize the termination of assistance to any recipient receiving assistance under this chapter before October 21, 1998, as a result of the implementation of the demonstration program under this subchapter.

(d) Effect on ability to compete for other programs

This subchapter may not be construed to affect the ability of any applying or participating jurisdiction (or a public housing agency for any such jurisdiction) to compete or otherwise apply for or receive assistance under any other housing assistance program administered by the Secretary.

(Sept. 1, 1937, ch. 896, title IV, § 404, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2619.)

§ 1437bbb–4. Program requirements

(a) Applicability of certain provisions

Notwithstanding section 1437bbb–3(a)(1) of this title, the Secretary may not waive, with respect to any participating jurisdiction, any of the following provisions:

(1) The first sentence of paragraph (1) of section 1437a(a) of this title (relating to eligibility of low-income families).

(2) Section 1437n of this title (relating to income eligibility and targeting of assistance).

(3) Paragraph (2) of section 1437a(a) of this title (relating to rental payments for public housing families).

(4) Paragraphs (2) and (3) of section 1437f(*o*) of this title (to the extent such paragraphs limit the amount of rent paid by families assisted with tenant-based assistance).

(5) Section 1437p of this title (relating to demolition or disposition of public housing).

(b) Compliance with assistance plan

A participating jurisdiction shall provide assistance using amounts received pursuant to this subchapter in the manner set forth in the plan of the jurisdiction approved by the Secretary under section 1437bbb–5(a)(2) of this title.

(Sept. 1, 1937, ch. 896, title IV, § 405, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2619.)

§ 1437bbb–5. Application

(a) In general

The Secretary shall provide for jurisdictions to submit applications for approval to participate in the demonstration program under this subchapter. An application—

(1) shall be submitted only after the jurisdiction provides for citizen participation through a public hearing and, if appropriate, other means;

(2) shall include a plan for the provision of housing assistance with amounts received pursuant to this subchapter that—

(A) is developed by the jurisdiction;

(B) takes into consideration comments from the public hearing, any other public comments on the proposed program, and comments from current and prospective residents who would be affected; and

(C) identifies each term or condition for which the jurisdiction is requesting waiver under section 1437bbb–3(a)(1) of this title;

(3) shall describe how the plan for use of amounts will assist in meeting the purposes of, and be used in accordance with, sections 1437bbb and 1437bbb–1(a) of this title, respectively;

(4) shall propose standards for measuring performance in using assistance provided pursuant to this subchapter based on the performance standards under subsection (b)(4) of this section;

(5) shall propose the length of the period for participation of the jurisdiction is[1] in the demonstration program under this subchapter;

(6) shall—

[1] So in original.

(A) in the case of the application of any jurisdiction within whose boundaries are areas subject to any other unit of general local government, include the signed consent of the appropriate executive official of such unit to the application; and

(B) in the case of the application of a consortia of units of general local government (as provided under section 1437bbb–8(1)(B) of this title), include the signed consent of the appropriate executive officials of each unit included in the consortia;

(7) shall include information sufficient, in the determination of the Secretary—

(A) to demonstrate that the jurisdiction has or will have management and administrative capacity sufficient to carry out the plan under paragraph (2), including a demonstration that the applicant has a history of effectively administering amounts provided under other programs of the Department of Housing and Urban Development, such as the community development block grant program, the HOME investment partnerships program, and the programs for assistance for the homeless under the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11301 et seq.];

(B) to demonstrate that carrying out the plan will not result in excessive duplication of administrative efforts and costs, particularly with respect to activities performed by public housing agencies operating within the boundaries of the jurisdiction;

(C) to describe the function and activities to be carried out by such public housing agencies affected by the plan; and

(D) to demonstrate that the amounts received by the jurisdiction will be maintained separate from other funds available to the jurisdiction and will be used only to carry out the plan;

(8) shall include information describing how the jurisdiction will make decisions regarding asset management of housing for low-income families under programs for covered housing assistance or assisted with grant amounts under this subchapter;

(9) shall—

(A) clearly identify any State or local laws that will affect implementation of the plan under paragraph (2) and any contractual rights and property interests that may be affected by the plan;

(B) describe how the plan will be carried out with respect to such laws, rights, and interests; and

(C) contain a legal memorandum sufficient to describe how the plan will comply with such laws and how the plan will be carried out without violating or impairing such rights and interests; and

(10) shall identify procedures for how the jurisdiction shall return to providing covered assistance for the jurisdiction under the provisions of subchapter I of this chapter, in the case of determination under subsection (b)(4)(B) of this section.

A plan required under paragraph (2) to be included in the application may be contained in a memorandum of agreement or other document executed by a jurisdiction and public housing agency, if such document is submitted together with the application.

(b) Review, approval, and performance standards

(1) Review

The Secretary shall review each application for participation in the demonstration program under this subchapter and shall determine and notify the jurisdiction submitting the application, not later than 90 days after its submission, of whether the application is approvable under this subchapter. If the Secretary determines that the application of a jurisdiction is approvable under this subchapter, the Secretary shall provide affected public housing agencies an opportunity to review and to provide written comments on the application for a period of not less than 30 days after notification under the preceding sentence. If the Secretary determines that an application is not approvable under this subchapter, the Secretary shall notify the jurisdiction submitting the application of the reasons for such determination. Upon making a determination of whether an application is approvable or nonapprovable under this subchapter, the Secretary shall make such determination publicly available in writing together with a written statement of the reasons for such determination.

(2) Approval

The Secretary may approve jurisdictions for participation in the demonstration program under this subchapter, but only from among applications that the Secretary has determined under paragraph[2] are approvable under this subchapter and only in accordance with section 1437bbb–1(c) of this title. The Secretary shall base the selection of jurisdictions to approve on the potential success, as evidenced by the application, in—

(A) achieving the goals set forth in the performance standards under paragraph (4)(A); and

(B) increasing housing choices for low-income families.

(3) Agreement

The Secretary shall offer to enter into an agreement with each jurisdiction approved for participation in the program under this subchapter providing for assistance pursuant to this subchapter for a period in accordance with section 1437bbb–1(b) of this title and incorporating a requirement that the jurisdiction achieve a particular level of performance in each of the areas for which performance standards are established under paragraph (4)(A) of this subsection. If the Secretary and the jurisdiction enter into an agreement, the Secretary shall provide any covered housing assistance for the jurisdiction in the manner authorized under this subchapter. The Secretary may not provide covered housing assistance for a jurisdiction in the manner authorized under this subchapter unless the Sec-

[2] So in original. Probably should be preceded by ''this''.

retary and jurisdiction enter into an agreement under this paragraph.

(4) Performance standards

(A) Establishment

The Secretary and each participating jurisdiction may collectively establish standards for evaluating the performance of the participating jurisdiction in meeting the purposes under section 1437bbb of this title, which may include standards for—

(i) moving dependent low-income families to economic self-sufficiency;

(ii) reducing the per-family cost of providing housing assistance;

(iii) expanding the stock of affordable housing and housing choices for low-income families;

(iv) improving program management;

(v) increasing the number of homeownership opportunities for low-income families;

(vi) reducing homelessness through providing permanent housing resources;

(vii) reducing geographic concentration of assisted families; and

(viii) any other performance goals that the Secretary and the participating jurisdiction may establish.

(B) Failure to comply

If, at any time during the participation of a jurisdiction in the program under this subchapter, the Secretary determines that the jurisdiction is not sufficiently meeting, or making progress toward meeting, the levels of performance incorporated into the agreement of the jurisdiction pursuant to subparagraph (A), the Secretary shall terminate the participation of the jurisdiction in the program under this subchapter and require the implementation of the procedures included in the application of the jurisdiction pursuant to subsection (a)(10) of this section.

(5) Troubled agencies

The Secretary may establish requirements for the approval of applications under this section submitted by public housing agencies designated under section 1437d(j)(2) of this title as troubled, which may include additional or different criteria determined by the Secretary to be more appropriate for such agencies.

(c) Status of PHAs

This subchapter may not be construed to require any change in the legal status of any public housing agency or in any legal relationship between a jurisdiction and a public housing agency as a condition of participation in the program under this subchapter.

(d) PHA plans

In carrying out this subchapter, the Secretary may provide for a streamlined public housing agency plan and planning process under section 1437c–1 of this title for participating jurisdictions.

(Sept. 1, 1937, ch. 896, title IV, § 406, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2620; amended Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (a)(7)(A), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§ 11301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(7)(A). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

§ 1437bbb–6. Training

The Secretary, in consultation with representatives of public and assisted housing interests, may provide training and technical assistance relating to providing assistance under this subchapter and may conduct detailed evaluations of up to 30 jurisdictions for the purpose of identifying replicable program models that are successful at carrying out the purposes of this subchapter.

(Sept. 1, 1937, ch. 896, title IV, § 407, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2623.)

§ 1437bbb–7. Accountability

(a) Maintenance of records

Each participating jurisdiction shall maintain such records as the Secretary may require to—

(1) document the amounts received by the jurisdiction under this chapter and the disposition of such amounts under the demonstration program under this subchapter;

(2) ensure compliance by the jurisdiction with this subchapter; and

(3) evaluate the performance of the jurisdiction under the demonstration program under this subchapter.

(b) Reports

Each participating jurisdiction shall annually submit to the Secretary a report in a form and at a time specified by the Secretary, which shall include—

(1) documentation of the use of amounts made available to the jurisdiction under this subchapter;

(2) any information as the Secretary may request to assist the Secretary in evaluating the demonstration program under this subchapter; and

(3) a description and analysis of the effect of assisted activities in addressing the objectives of the demonstration program under this subchapter.

(c) Access to documents by Secretary and Comptroller General

The Secretary and the Comptroller General of the United States, or any duly authorized representative of the Secretary or the Comptroller General, shall have access for the purpose of audit and examination to any books, documents, papers, and records maintained by a participating jurisdiction that relate to the demonstration program under this subchapter.

(d) Performance review and evaluation

(1) Performance review

Based on the performance standards established under section 1437bbb–5(b)(4) of this

title, the Secretary shall monitor the performance of participating jurisdictions in providing assistance under this subchapter.

(2) Status report

Not later than 60 days after the conclusion of the second year of the demonstration program under this subchapter, the Secretary shall submit to Congress an interim report on the status of the demonstration program and the progress each participating jurisdiction in achieving the purposes of the demonstration program under section 1437bbb of this title.

(Sept. 1, 1937, ch. 896, title IV, § 408, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2623.)

§ 1437bbb–8. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Jurisdiction

The term ''jurisdiction'' means—

(A) a unit of general local government (as such term is defined in section 12704 of this title) that has boundaries, for purposes of carrying out this subchapter, that—

(i) wholly contain the area within which a public housing agency is authorized to operate; and

(ii) do not contain any areas contained within the boundaries of any other participating jurisdiction; and

(B) a consortia of such units of general local government, organized for purposes of this subchapter.

(2) Participating jurisdiction

The term ''participating jurisdiction'' means, with respect to a period for which such an agreement is made, a jurisdiction that has entered into an agreement under section 1437bbb–5(b)(3) of this title to receive assistance pursuant to this subchapter for such fiscal year.

(Sept. 1, 1937, ch. 896, title IV, § 409, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2624.)

§ 1437bbb–9. Termination and evaluation

(a) Termination

The demonstration program under this subchapter shall terminate not less than 2 and not more than 5 years after the date on which the demonstration program is commenced.

(b) Evaluation

Not later than 6 months after the termination of the demonstration program under this subchapter, the Secretary shall submit to the Congress a final report, which shall include—

(1) an evaluation[1] the effectiveness of the activities carried out under the demonstration program; and

(2) any findings and recommendations of the Secretary for any appropriate legislative action.

(Sept. 1, 1937, ch. 896, title IV, § 410, as added Pub. L. 105–276, title V, § 561, Oct. 21, 1998, 112 Stat. 2624.)

[1] So in original. Probably should be followed by ''of''.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 1438. Repealed. Pub. L. 105–276, title V, § 582(a)(15), Oct. 21, 1998, 112 Stat. 2644

Section, Pub. L. 93–383, title II, § 209, Aug. 22, 1974, 88 Stat. 669; Pub. L. 98–479, title II, § 201(g), Oct. 17, 1984, 98 Stat. 2228; Pub. L. 102–550, title VI, § 625(b), Oct. 28, 1992, 106 Stat. 3820, related to special low-income housing projects for elderly or disabled families.

EFFECTIVE DATE OF REPEAL

Repeal effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement repeal before such date, and with savings provision, see section 503 of Pub. L. 105–276, set out as an Effective Date of 1998 Amendment note under section 1437 of this title.

§ 1439. Local housing assistance plan

(a) Applicability of approved plan to housing assistance application; procedure upon receipt of application by Secretary of Housing and Urban Development; definitions

(1) The Secretary of Housing and Urban Development, upon receiving an application for housing assistance under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.],[1] section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], or,[2] if the unit of general local government in which the proposed assistance is to be provided has an approved housing assistance plan, shall—

(A) not later than ten days after receipt of the application, notify the chief executive officer of such unit of general local government that such application is under consideration; and

(B) afford such unit of general local government the opportunity, during the thirty-day period beginning on the date of such notification, to object to the approval of the application on the grounds that the application is inconsistent with its housing assistance plan.

Upon receiving an application for such housing assistance, the Secretary shall assure that funds made available under this section shall be utilized to the maximum extent practicable to meet the needs and goals identified in the unit of local government's housing assistance plan.

(2) If the unit of general local government objects to the application on the grounds that it is inconsistent with its housing assistance plan, the Secretary may not approve the application unless he determines that the application is consistent with such housing assistance plan. If the Secretary determines, that such application is consistent with the housing assistance plan, he shall notify the chief executive officer of the unit of general local government of his determination and the reasons therefor in writing. If the Secretary concurs with the objection of the unit of local government, he shall notify the applicant stating the reasons therefor in writing.

(3) If the Secretary does not receive an objection by the close of the period referred to in paragraph (1)(B), he may approve the applica-

[1] So in original. The comma probably should be ''or''.

[2] So in original. The word ''or'' and the comma probably should not appear.

tion unless he finds it inconsistent with the housing assistance plan. If the Secretary determines that an application is inconsistent with a housing assistance plan, he shall notify the applicant stating the reasons therefor in writing.

(4) The Secretary shall make the determinations referred to in paragraphs (2) and (3) within thirty days after he receives an objection pursuant to paragraph (1)(B) or within thirty days after the close of the period referred to in paragraph (1)(B), whichever is earlier.

(5) As used in this section, the term ''housing assistance plan'' means a housing assistance plan submitted and approved under section 5304 of this title or, in the case of a unit of general local government not participating under title I of this Act [42 U.S.C. 5301 et seq.], a housing plan approved by the Secretary as meeting the requirements of this section. In developing a housing assistance plan under this paragraph a unit of general local government shall consult with local public agencies involved in providing for the welfare of children to determine the housing needs of (A) families identified by the agencies as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care or in preventing the discharge of a child from foster care and reunification with his or her family; and (B) children who, upon discharge of the child from foster care, cannot return to their family or extended family and for which adoption is not available. The unit of general local government shall include in the housing assistance plan needs and goals with respect to such families and children.

(b) Housing assistance applications subject to procedures

The provisions of subsection (a) of this section shall not apply to—

(1) applications for assistance involving 12 or fewer units in a single project or development;

(2) applications for assistance with respect to housing in new community developments approved under title IV of the Housing and Urban Development Act of 1968 [42 U.S.C. 3901 et seq.] or title VII of the Housing and Urban Development Act of 1970 [42 U.S.C. 4501 et seq.] which the Secretary determines are necessary to meet the housing requirements under such title; or

(3) applications for assistance with respect to housing financed by loans or loan guarantees from a State or agency thereof, except that the provisions of subsection (a) of this section shall apply where the unit of general local government in which the assistance is to be provided objects in its housing assistance plan to the exemption provided by this paragraph.

(c) Repealed. Pub. L. 105–276, title V, § 551(1), Oct. 21, 1998, 112 Stat. 2610

(d) Allocation and reservation of housing assistance funds; purposes; prohibited reallocation of unutilized funds; enumerated uses for retained funds; competition for reservation and obligation of funds

(1)(A)(i) Except as provided by subparagraph (B), the Secretary shall allocate assistance referred to in subsection (a)(1) of this section the first time it is available for reservation on the basis of a formula that is contained in a regulation prescribed by the Secretary, and that is based on the relative needs of different States, areas, and communities, as reflected in data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other objectively measurable conditions specified in the regulation. The Secretary may allocate assistance under the preceding sentence in such a manner that each State shall receive not less than one-half of one percent of the amount of funds available for each program referred to in subsection (a)(1) of this section in each fiscal year. In allocating assistance under this paragraph for each program of housing assistance under subsection (a)(1) of this section, the Secretary shall apply the formula, to the extent practicable, in a manner so that the assistance under the program is allocated according to the particular relative needs under the preceding sentence that are characteristic of and related to the particular type of assistance provided under the program. Assistance under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q] shall be allocated in a manner that ensures that awards of the assistance under such section are made for projects of sufficient size to accommodate facilities for supportive services appropriate to the needs of frail elderly residents. The preceding sentence shall not apply to projects acquired from the Resolution Trust Corporation under section 1441a(c) of title 12. Amounts for tenant-based assistance under section 8(*o*) of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)] may not be provided to any public housing agency that has been disqualified from providing such assistance.

(ii) Assistance under section 8(*o*) of the United States Housing Act of 1937 [42 U.S.C. 1437f(*o*)] shall be allocated in a manner that enables participating jurisdictions to carry out, to the maximum extent practicable, comprehensive housing affordability strategies approved in accordance with section 105 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12705]. Such jurisdictions shall submit recommendations for allocating assistance under such section 8(*o*) to the Secretary in accordance with procedures that the Secretary determines to be appropriate to permit allocations of such assistance to be made on the basis of timely and complete information. This clause may not be construed to prevent, alter, or otherwise affect the application of the formula established pursuant to clause (i) for purposes of allocating such assistance. For purposes of this clause, the term ''participating jurisdiction'' means a State or unit of general local government designated by the Secretary to be a participating jurisdiction under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.].

(B) The formula allocation requirements of subparagraph (A) shall not apply to—

(i) assistance that is approved in appropriation Acts for use under sections[3] 9 [42 U.S.C. 1437g], or the rental rehabilitation grant program under section 17,[4] of the United States

[3] So in original. Probably should be ''section''.

[4] See References in Text note below.

Housing Act of 1937, except that the Secretary shall comply with section 102 of the Department of Housing and Urban Development Reform Act of 1989 [42 U.S.C. 3545] with respect to such assistance; or

(ii) other assistance referred to in subsection (a) of this section that is approved in appropriation Acts for uses that the Secretary determines are incapable of geographic allocation, including amendments of existing contracts, renewal of assistance contracts, assistance to families that would otherwise lose assistance due to the decision of the project owner to prepay the project mortgage or not to renew the assistance contract, assistance to prevent displacement or to provide replacement housing in connection with the demolition or disposition of public housing, and assistance in support of the property disposition and loan management functions of the Secretary.

(C) Any allocation of assistance under subparagraph (A) shall, as determined by the Secretary, be made to the smallest practicable area, consistent with the delivery of assistance through a meaningful competitive process designed to serve areas with greater needs.

(D) Any amounts allocated to a State or areas or communities within a State that are not likely to be used within a fiscal year shall not be reallocated for use in another State, unless the Secretary determines that other areas or communities (that are eligible for assistance under the program) within the same State cannot use the amounts within that same fiscal year.

(2) The Secretary may reserve such housing assistance funds as he deems appropriate for use by a State or agency thereof.

(3)(A) Notwithstanding any other provision of law, with respect to fiscal years beginning after September 30, 1990, the Secretary may retain not more than 5 percent of the financial assistance that becomes available under programs described in subsection (a)(1) of this section during any fiscal year. Any such financial assistance that is retained shall be available for subsequent allocation to specific areas and communities, and may only be used for—

(i) unforeseen housing needs resulting from natural and other disasters;

(ii) housing needs resulting from emergencies, as certified by the Secretary, other than such disasters;

(iii) housing needs resulting from the settlement of litigation; and

(iv) housing in support of desegregation efforts.

(B) Any amounts retained in any fiscal year under subparagraph (A) that are unexpended at the end of such fiscal year shall remain available for the following fiscal year under the program under subsection (a)(1) of this section from which the amount was retained. Such amounts shall be allocated on the basis of the formula under subsection (d)(1) of this section.

(4)(A) The Secretary shall not reserve or obligate assistance subject to allocation under paragraph (1)(A) to specific recipients, unless the assistance is first allocated on the basis of the formula contained in that paragraph and then is reserved and obligated pursuant to a competition.

(B) Any competition referred to in subparagraph (A) shall be conducted pursuant to specific criteria for the selection of recipients of assistance. The criteria shall be contained in—

(i) a regulation promulgated by the Secretary after notice and public comment; or

(ii) to the extent authorized by law, a notice published in the Federal Register.

(C) Subject to the times at which appropriations for assistance subject to paragraph (1)(A) may become available for reservation in any fiscal year, the Secretary shall take such steps as the Secretary deems appropriate to ensure that, to the maximum extent practicable, the process referred to in subparagraph (A) is carried out with similar frequency and at similar times for each fiscal year.

(D) This paragraph shall not apply to assistance referred to in paragraph (4).[4]

(e) Assistance payments for properties in Jefferson County, Texas

From budget authority made available in appropriation Acts for fiscal year 1988, the Secretary shall enter into an annual contributions contract for a term of 180 months to obligate sufficient funds to provide assistance payments pursuant to section 8(b)(1) of the United States Housing Act of 1937 [42 U.S.C. 1437f(b)(1)] on behalf of 500 lower income families from budget authority made available for fiscal year 1988, so long as such families occupy properties in Jefferson County, Texas. If a lower income family receiving assistance payments pursuant to this subsection ceases to qualify for assistance payments pursuant to the provisions of section 8 of such Act [42 U.S.C. 1437f] or of this subsection during the 180-month term of the annual contributions contract, assistance payments shall be made on behalf of another lower income family who occupies a unit identified in the previous sentence.

(Pub. L. 93–383, title II, §213, Aug. 22, 1974, 88 Stat. 674; Pub. L. 95–128, title II, §207, Oct. 12, 1977, 91 Stat. 1130; Pub. L. 96–153, title II, §204, Dec. 21, 1979, 93 Stat. 1108; Pub. L. 96–399, title II, §202(d), Oct. 8, 1980, 94 Stat. 1629; Pub. L. 97–35, title III, §321(e), Aug. 13, 1981, 95 Stat. 399; Pub. L. 98–181, title II, §201(a)(1), (2), Nov. 30, 1983, 97 Stat. 1175; Pub. L. 98–479, title I, §102(e), Oct. 17, 1984, 98 Stat. 2222; Pub. L. 100–242, title V, §522(a), Feb. 5, 1988, 101 Stat. 1938; Pub. L. 101–235, title I, §§101(a)–(c), (e), 104(a), Dec. 15, 1989, 103 Stat. 1988–1990, 1998; Pub. L. 101–494, §5, Oct. 31, 1990, 104 Stat. 1186; Pub. L. 101–625, title V, §§556, 576, title VIII, §§801(b), 804(e), Nov. 28, 1990, 104 Stat. 4233, 4238, 4303, 4323; Pub. L. 102–389, title II, Oct. 6, 1992, 106 Stat. 1591; Pub. L. 102–550, title I, §154, Oct. 28, 1992, 106 Stat. 3718; Pub. L. 104–330, title V, §501(d)(3), Oct. 26, 1996, 110 Stat. 4043; Pub. L. 105–276, title V, §§522(b)(2), 551, Oct. 21, 1998, 112 Stat. 2564, 2610.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to this chapter (§1437 et seq.). Section 17 of the United States Housing Act of 1937, referred to in subsec. (d)(1)(B)(i), which was classified to section 1437*o* of this

title, was repealed by Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128. For complete classification of this Act to the Code, see Short Title note under section 1437 of this title and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (a)(1), is section 101 of Pub. L. 89–117, Aug. 10, 1965, 79 Stat. 451, as amended, which enacted section 1701s of Title 12, Banks and Banking, and amended sections 1451 and 1465 of this title.

This Act, referred to in subsec. (a)(5), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended, known as the Housing and Community Development Act of 1974. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Housing and Urban Development Act of 1968, referred to in subsec. (b)(2), is Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IV of the Housing and Urban Development Act of 1968 which was classified principally to chapter 48 (§ 3901 et seq.) of this title, was omitted from the Code pursuant to section 4528 of this title, which terminated the authority to guarantee bonds, debentures, notes, or other obligations under such title IV, after Dec. 31, 1970. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 12, Banks and Banking, and Tables.

The Housing and Urban Development Act of 1970, referred to in subsec. (b)(2), is Pub. L. 91–609, Dec. 31, 1970, 84 Stat. 1770, as amended. Title VII of the Housing and Urban Development Act of 1970, known as the Urban Growth and New Community Development Act of 1970, is classified principally to chapter 59 (§ 4501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 1701 of Title 12.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (d)(1)(A)(ii), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the ''HOME Investments Partnership Act'', is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

Paragraph (4), referred to in subsec. (d)(4)(D), was redesignated paragraph (3) of subsec. (d) by Pub. L. 105–276, title V, § 551(2)(C), Oct. 21, 1998, 112 Stat. 2610.

CODIFICATION

Section was enacted as part of the Housing and Community Development Act of 1974, and not as part of the United States Housing Act of 1937 which comprises this chapter.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–276, § 551(1), struck out subsec. (c) which read as follows: ''For areas in which an approved local housing assistance plan is not applicable the Secretary shall not approve an application for housing assistance unless he determines that there is a need for such assistance, taking into consideration any applicable State housing plans, and that there is or will be available in the area public facilities and services adequate to serve the housing proposed to be assisted. The Secretary shall afford the unit of general local government in which the assistance is to be provided an opportunity, during a 30-day period following receipt of an application by him, to provide comments or information relevant to the determination required to be made by the Secretary under this subsection.''

Subsec. (d)(1)(A)(i). Pub. L. 105–276, § 551(2)(A)(i), inserted at end ''Amounts for tenant-based assistance under section 8(*o*) of the United States Housing Act of 1937 may not be provided to any public housing agency that has been disqualified from providing such assistance.''

Subsec. (d)(1)(A)(ii). Pub. L. 105–276, § 551(2)(A)(ii), substituted ''8(*o*)'' for ''8(b)(1)'' in two places.

Subsec. (d)(1)(B)(i). Pub. L. 105–276, § 522(b)(2), which directed the amendment of subsec. (d)(1)(B)(ii), by striking out ''or 14'', was executed by striking out ''or 14'' after ''9'' in subsec. (d)(1)(B)(i) to reflect the probable intent of Congress.

Subsec. (d)(2) to (5). Pub. L. 105–276, § 551(2)(B), (C), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''Not later than sixty days after approval in an appropriation Act, the Secretary shall allocate from the amounts available for use in nonmetropolitan areas an amount of authority for assistance under section 8(d) of the United States Housing Act of 1937 determined in consultation with the Secretary of Agriculture for use in connection with section 1490m of this title during the fiscal year for which such authority is approved. The amount of assistance allocated to nonmetropolitan areas pursuant to this section in any fiscal year shall not be less than 20 nor more than 25 per centum of the total amount of the assistance that is subject to allocation under paragraph (1)(A).''

1996—Subsec. (d)(1)(B)(ii). Pub. L. 104–330 substituted ''public housing'' for ''public and Indian housing''.

1992—Subsec. (e). Pub. L. 102–389 and Pub. L. 102–550 amended subsec. (e) identically, substituting ''Jefferson County, Texas'' for ''the Park Central New Community Project or in adjacent areas that are recognized by the unit of general local government in which such Project is located as being included within the Park Central New Town In Town Project''.

1990—Subsec. (a)(1). Pub. L. 101–625, § 801(b), struck out ''section 202 of the Housing Act of 1959'' before '', if the unit''.

Subsec. (a)(5). Pub. L. 101–625, § 576, inserted at end ''In developing a housing assistance plan under this paragraph a unit of general local government shall consult with local public agencies involved in providing for the welfare of children to determine the housing needs of (A) families identified by the agencies as having a lack of adequate housing that is a primary factor in the imminent placement of a child in foster care or in preventing the discharge of a child from foster care and reunification with his or her family; and (B) children who, upon discharge of the child from foster care, cannot return to their family or extended family and for which adoption is not available. The unit of general local government shall include in the housing assistance plan needs and goals with respect to such families and children.''

Subsec. (d)(1)(A). Pub. L. 101–625, § 556, designated existing provisions as cl. (i) and added cl. (ii).

Pub. L. 101–494 inserted after first sentence ''The Secretary may allocate assistance under the preceding sentence in such a manner that each State shall receive not less than one-half of one percent of the amount of funds available for each program referred to in subsection (a)(1) of this section in each fiscal year.''

Subsec. (d)(1)(A)(i). Pub. L. 101–625, § 804(e), which directed amendment of subpar. (A) by inserting after the period at end ''The preceding sentence shall not apply to projects acquired from the Resolution Trust Corporation under section 1441a(c) of title 12.'', was executed by making the insertion after the period at end of cl. (i), to reflect the probable intent of Congress and the intervening amendment by Pub. L. 101–625, § 556. See above.

1989—Subsec. (a)(1). Pub. L. 101–235, § 101(e), struck out ''section 235 or 236 of the National Housing Act,'' before ''section 101 of the Housing and Urban Development Act of 1965''.

Subsec. (d)(1). Pub. L. 101–235, § 101(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary shall allocate assistance referred to in subsection (a) of this section (other than assistance approved in appropriation Acts for use under sections 9, 14, and 17 of the United States Housing Act of 1937) the first time it is available for reservation on the basis of a formula which is contained in a regulation

prescribed by the Secretary, and which is based on the relative needs of different States, areas, and communities as reflected in data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other objectively measurable conditions specified in such regulation. Any amounts allocated to a State or areas or communities within a State which are not likely to be utilized within a fiscal year shall not be reallocated for use in another State unless the Secretary determines that other areas or communities within the same State cannot utilize the amounts within that same fiscal year.''

Subsec. (d)(2). Pub. L. 101–235, § 101(b), substituted ''of the assistance that is subject to allocation under paragraph (1)(A)'' for ''of such assistance''.

Subsec. (d)(4). Pub. L. 101–235, § 104(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Notwithstanding any other provision of law, with respect to fiscal years beginning after September 30, 1981, the Secretary of Housing and Urban Development may not retain more than 15 per centum of the financial assistance which becomes available under programs described in subsection (a)(1) of this section during any fiscal year. Any such financial assistance which is retained shall be available for subsequent allocation to specific areas and communities, and may only be used for—

''(A) unforeseeable housing needs, especially those brought on by natural disasters or special relocation requirements;

''(B) support for the needs of the handicapped or for minority enterprise;

''(C) providing for assisted housing as a result of the settlement of litigation;

''(D) small research and demonstration projects;

''(E) lower-income housing needs described in housing assistance plans, including activities carried out under areawide housing opportunity plans; and

''(F) innovative housing programs or alternative methods for meeting lower-income housing needs approved by the Secretary, including assistance for infrastructure in connection with the Indian Housing Program.''

Subsec. (d)(5). Pub. L. 101–235, § 101(c), added par. (5).

1988—Subsec. (e). Pub. L. 100–242 added subsec. (e).

1984—Subsec. (d)(2). Pub. L. 98–479 substituted ''section 1490m of this title'' for ''section 1490*l* of this title''.

1983—Subsec. (a)(1). Pub. L. 98–181, § 201(a)(1), inserted provision following subpar. (B) requiring that funds be utilized to meet the needs and goals identified in the unit of local government's housing assistance plan.

Subsec. (d)(1). Pub. L. 98–181, § 201(a)(2), amended par. (1) generally, inserting provision respecting assistance approved in appropriation Acts for sections 9 and 17 of the United States Housing Act of 1937 uses, requiring allocation of assistance to be based on a formula contained in a regulation, making the relative needs provision applicable to different States, striking out requirement that Secretary assure, in carrying out national housing and community development objectives, that funds available for housing assistance programs be allocated or reserved in accordance with goals described in approved housing assistance plans, and striking out provision respecting allocation of funds for nonmetropolitan areas, which was reenacted as last sentence of par. (2).

Subsec. (d)(2). Pub. L. 98–181, § 201(a)(2), amended par. (2) generally, inserting provision respecting allocation of nonmetropolitan area funds for use in connection with section 1490*l* of this title; reenacting as second sentence provision respecting amount of funds allocated for nonmetropolitan areas, which formerly constituted last sentence of par. (1); and striking out former provision respecting reservation of housing assistance funds for new community developments approved under title IV of the Housing and Urban Development Act of 1968 and title VII of the Housing and Urban Development Act of 1970 for persons of low- and moderate-income.

1981—Subsec. (d)(4). Pub. L. 97–35 added par. (4).

1980—Subsec. (d)(1). Pub. L. 96–399 substituted ''carrying out section 14 of such Act'' for ''modernization of low-income housing projects''.

1979—Subsec. (d)(1). Pub. L. 96–153 inserted provisions limiting allocation of assistance other than that approved in appropriation acts for use on and after Oct. 1, 1979 for modernization of low-income housing projects and inserted provision that any amounts allocated to a State or to areas or communities within a State which are not likely to be utilized within a fiscal year shall not be reallocated for use in another State unless the Secretary determines that other areas or communities within the same State cannot utilize the amounts in accordance with the appropriate housing assistance plans within that fiscal year.

1977—Subsec. (d)(1). Pub. L. 95–128 inserted provision requiring the Secretary to assure that funds available for subsec. (a) housing assistance programs shall be allocated or reserved in accordance with goals described in local, State, or other housing assistance plans approved by the Secretary pursuant to section 5304 of this title and shall be utilized to meet needs reflected in data referred to in the preceding sentence.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–330 effective Oct. 1, 1997, except as otherwise expressly provided, see section 107 of Pub. L. 104–330, set out as an Effective Date note under section 4101 of Title 25, Indians.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 801(b) of Pub. L. 101–625 effective Oct. 1, 1991, with respect to projects approved on or after such date, and subject to issuance of regulations, see section 801(c) of Pub. L. 101–625, set out as a note under section 1701q of Title 12, Banks and Banking.

Amendment by section 801(b) of Pub. L. 101–625 deemed enacted Nov. 5, 1990, see title II of Pub. L. 101–507, set out as a note under section 1701q of Title 12.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 104(b) of Pub. L. 101–235 provided that: ''Any assistance made available under section 213(d)(4) of the Housing and Community Development Act of 1974 [42 U.S.C. 1439(d)(4)] before October 1, 1990, or pursuant to a commitment for such assistance entered into before such date, shall be governed by the provisions of section 213(d)(4) as such section existed before the date of the enactment of this Act [Dec. 15, 1989].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 1440. State housing finance and development agencies

(a) Statement of purpose; participation by private and nonprofit developers in activities assisted

It is the purpose of this section to encourage the formation and effective operation of State housing finance agencies and State development agencies which have authority to finance, to assist in carrying out, or to carry out activities designed to (1) provide housing and related facilities through land acquisition, construction,

or rehabilitation, for persons and families of low, moderate, and middle income, (2) promote the sound growth and development of neighborhoods through the revitalization of slum and blighted areas, (3) increase and improve employment opportunities for the unemployed and underemployed through the development and redevelopment of industrial, manufacturing, and commercial facilities, or (4) implement the development aspects of State land use and preservation policies, including the advance acquisition of land where it is consistent with such policies. The Secretary of Housing and Urban Development shall encourage maximum participation by private and nonprofit developers in activities assisted under this section.

(b) Determination of eligibility for assistance; definitions

(1) A State housing finance or State development agency is eligible for assistance under this section only if the Secretary determines that it is fully empowered and has adequate authority to at least carry out or assist in carrying out the purposes specified in clause (1) of subsection (a) of this section.

(2) For the purpose of this section—

(A) the term ''State housing finance or State development agency'' means any public body or agency, publicly sponsored corporation, or instrumentality of one or more States which is designated by the Governor (or Governors in the case of an interstate development agency) for purposes of this section;

(B) the term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and

(C) the term ''Secretary'' means the Secretary of Housing and Urban Development.

(c) Guarantee of obligations issued by agencies; grants to agencies for interest payments on obligations; maximum amount of grants; prerequisites for guarantee; full faith and credit pledged for payment of guarantee; effect and validity of guarantee; fees and charges for guarantee; authorization of appropriations for grants; maximum amount of obligations guaranteed

(1) The Secretary is authorized to guarantee, and enter into commitments to guarantee, the bonds, debentures, notes, and other obligations issued by State housing finance or State development agencies to finance development activities as determined by him to be in furtherance of the purpose of clause (1) or (2) of subsection (a) of this section, except that obligations issued to finance activities solely in furtherance of the purpose of clause (1) of subsection (a) of this section may be guaranteed only if the activities are in connection with the revitalization of slum or blighted areas under title I of this Act [42 U.S.C. 5301 et seq.] or under any other program determined to be acceptable by the Secretary for this purpose.

(2) The Secretary is authorized to make, and to contract to make, grants to or on behalf of a State housing finance or State development agency to cover not to exceed 33⅓ per centum of the interest payable on bonds, debentures, notes, and other obligations issued by such agency to finance development activities in furtherance of the purposes of this section.

(3) No obligation shall be guaranteed or otherwise assisted under this section unless the interest income thereon is subject to Federal taxation as provided in subsection (h)(2) of this section, except that use of guarantees provided for in this subsection shall not be made a condition to nor preclude receipt of any other Federal assistance.

(4) The full faith and credit of the United States is pledged to the payment of all guarantees made under this section with respect to principal, interest, and any redemption premiums. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligation involved for such guarantee, and the validity of any guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligation.

(5) The Secretary is authorized to establish and collect such fees and charges for and in connection with guarantees made under this section as he considers reasonable.

(6) There are authorized to be appropriated such sums as may be necessary to make payments as provided for in contracts entered into by the Secretary under paragraph (2) of this subsection, and payments pursuant to such contracts shall not exceed $50,000,000 per annum prior to July 1, 1975, which maximum dollar amount shall be increased by $60,000,000 on July 1, 1975. The aggregate principal amount of the obligations which may be guaranteed under this section and outstanding at any one time shall not exceed $500,000,000.

(d) Requirements for guaranteed obligations

The Secretary shall take such steps as he considers reasonable to assure that bonds, debentures, notes, and other obligations which are guaranteed under subsection (c) of this section will—

(1) be issued only to investors approved by, or meeting requirements prescribed by, the Secretary, or, if an offering to the public is contemplated, be underwritten upon terms and conditions approved by the Secretary;

(2) bear interest at a rate satisfactory to the Secretary;

(3) contain or be subject to repayment, maturity, and other provisions satisfactory to the Secretary; and

(4) contain or be subject to provisions with respect to the protection of the security interests of the United States, including any provisions deemed appropriate by the Secretary relating to subrogation, liens, and releases of liens, payment of taxes, cost certification procedures, escrow or trusteeship requirements, or other matters.

(e) Revolving fund for payment of liabilities incurred pursuant to guarantees and payment of obligations issued to Secretary of the Treasury; composition; availability, issuance of obligations to Secretary of the Treasury for implementation of guarantees; amount, maturity, rate of interest, and purchase by Secretary of the Treasury of obligations; payment of expenses and charges

(1) The Secretary is authorized to establish a revolving fund to provide for the timely pay-

ment of any liabilities incurred as a result of guarantees under subsection (c) of this section and for the payment of obligations issued to the Secretary of the Treasury under paragraph (2) of this subsection. Such revolving fund shall be comprised of (A) receipts from fees and charges; (B) recoveries under security, subrogation, and other rights; (C) repayments, interest income, and any other receipts obtained in connection with guarantees made under subsection (c) of this section; (D) proceeds of the obligations issued to the Secretary of the Treasury pursuant to paragraph (2) of this subsection; and (E) such sums, which are hereby authorized to be appropriated, as may be required for such purposes. Money in the revolving fund not currently needed for the purpose of this section shall be kept on hand or on deposit, or invested in obligations of the United States or guaranteed thereby, or in obligations, participations, or other instruments which are lawful investments for fiduciary, trust, or public funds.

(2) The Secretary may issue obligations to the Secretary of the Treasury in an amount sufficient to enable the Secretary to carry out his functions with respect to the guarantees authorized by subsection (c) of this section. The obligations issued under this paragraph shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations so issued, and for that purpose he is authorized to use a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include purchases of the obligations hereunder.

(3) Notwithstanding any other provision of law relating to the acquisition, handling, improvement, or disposal of real and other property by the United States, the Secretary shall have power, for the protection of the interests of the fund authorized under this subsection, to pay out of such fund all expenses or charges in connection with the acquisition, handling, improvement, or disposal of any property, real or personal, acquired by him as a result of recoveries under security, subrogation, or other rights.

(f) Technical assistance to agencies for planning and execution of development activities

The Secretary is authorized to provide, either directly or by contract or other arrangements, technical assistance to State housing finance or State development agencies to assist them in connection with planning and carrying out development activities in furtherance of the purpose of this section.

(g) Labor standards

All laborers and mechanics employed by contractors or subcontractors in housing or development activities assisted under this section shall be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40: *Provided*, That this section shall apply to the construction of residential property only if such property is designed for residential use for eight or more families. No assistance shall be extended under this section with respect to any development activities without first obtaining adequate assurance that these labor standards will be maintained upon the work involved in such activities. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267), and section 3145 of title 40.

(h) Protection of guarantees issued by United States; inclusion by purchaser in gross income of interest paid on obligations issued by agencies

(1) In the performance of, and with respect to, the functions, powers, and duties vested in him by this section, the Secretary, in addition to any authority otherwise vested to him, shall—

(A) have the power, notwithstanding any other provision of law, in connection with any guarantee under this section, whether before or after default, to provide by contract for the extinguishment upon default of any redemption, equitable, legal, or other right, title, or interest of a State housing finance or State development agency in any mortgage, deed, trust, or other instrument held by or on behalf of the Secretary for the protection of the security interests of the United States; and

(B) have the power to foreclose on any property or commence any action to protect or enforce any right conferred upon him by law, contract, or other agreement, and bid for and purchase at any foreclosure or other sale any property in connection with which he has provided a guarantee pursuant to this section. In the event of any such acquisition, the Secretary may, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, remodel and convert, dispose of, lease, and otherwise deal with, such property. Notwithstanding any other provision of law, the Secretary shall also have power to pursue to final collection by way of compromise or otherwise all claims acquired by him in connection with any security, subrogation, or other rights obtained by him in administering this section.

(2) With respect to any obligation issued by a State housing finance or State development agency for which the issuer has elected to receive the benefits of the assistance provided under this section, the interest paid on such obligation and received by the purchaser thereof (or his successor in interest) shall be included in gross income for the purposes of chapter 1 of title 26.

(Pub. L. 93–383, title VIII, § 802(a)–(h), Aug. 22, 1974, 88 Stat. 722–724; Pub. L. 98–479, title II, § 203(*l*)(4), Oct. 17, 1984, 98 Stat. 2231.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(1), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended, known as the Housing and Community Development Act of 1974. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this

Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (g), is Reorg. Plan No. 14 of 1950, eff. May 24, 1950, 15 F.R. 3176, 64 Stat. 1267, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (g), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934 (40 U.S.C. 276c)'' on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Section was enacted as part of the Housing and Community Development Act of 1974, and not as part of the United States Housing Act of 1937 which comprises this chapter.

AMENDMENTS

1984—Subsec. (e)(2). Pub. L. 98–479 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act'' and ''such chapter'' for ''that Act''.

CHAPTER 8A—SLUM CLEARANCE, URBAN RENEWAL, AND FARM HOUSING

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—SLUM CLEARANCE AND URBAN RENEWAL

PART A—URBAN RENEWAL PROJECTS, DEMOLITION PROGRAMS, AND CODE ENFORCEMENT PROGRAMS

PART B—NEIGHBORHOOD DEVELOPMENT PROGRAMS

SUBCHAPTER III—FARM HOUSING

SUBCHAPTER I—GENERAL PROVISIONS

§ 1441. Congressional declaration of national housing policy

The Congress declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation. The Congress further declares that such production is necessary to enable the housing industry to make its full contribution toward an economy of maximum employment, production, and purchasing power. The policy to be followed in attaining the national housing objective established shall be: (1) private enterprise shall be encouraged to serve as large a part of the total need as it can; (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need; (3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life; (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural nonfarm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid; and (5) governmental assistance for decent, safe, and sanitary farm dwellings and related facilities shall be extended where the farm owner demonstrates that he lacks sufficient resources to provide such housing on his own account and is unable to secure necessary credit for such housing from other sources on terms and conditions which he could reasonably be expected to fulfill. The Department of Housing and Urban Development, and any other departments or agencies of the Federal Government having powers, functions, or duties with respect to housing, shall exercise their powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective hereby established, and in such manner as will encourage and assist (1) the production of housing of sound standards of design, construction, livability, and size for adequate family life; (2) the reduction of the costs of housing without sacrifice of such sound standards; (3) the use of new designs, materials, techniques, and methods in residential construction, the use of standardized dimensions and methods of assembly of homebuilding materials and equipment, and the increase of efficiency in residential construction

and maintenance; (4) the development of well-planned, integrated, residential neighborhoods and the development and redevelopment of communities; and (5) the stabilization of the housing industry at a high annual volume of residential construction.

(July 15, 1949, ch. 338, § 2, 63 Stat. 413; Pub. L. 90–19, § 6(a), May 25, 1967, 81 Stat. 21.)

REFERENCES IN TEXT

This Act, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, known as the Housing Act of 1949, which is classified principally to this chapter (§ 1441 et seq.). For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''The Department of Housing and Urban Development'' for ''The Housing and Home Finance Agency and its constituent agencies''.

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–285, § 1, Aug. 2, 2004, 118 Stat. 917, provided that: ''This Act [amending section 1472 of this title, enacting provisions set out as a note under section 1472 of this title, and amending provisions set out as a note under section 12805 of this title] may be cited as the 'Helping Hands for Homeownership Act of 2004'.''

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98–181, title V, § 501, Nov. 30, 1983, 97 Stat. 1240, provided that: ''This title [enacting sections 1490k to 1490*o* of this title, amending sections 1471, 1472, 1474, 1476, 1479 to 1481, 1483 to 1487, 1490, 1490a, 1490c, 1490e, 1490f, and 1490j of this title, repealing sections 1482, 1490g, and 1490i of this title, and enacting provisions set out as notes under sections 1472 and 1490a of this title] may be cited as the 'Rural Housing Amendments of 1983'.''

SHORT TITLE

Section 1 of act July 15, 1949, provided: ''That this Act [enacting this chapter, sections 1421a and 1433 of this title, and sections 1701d–1, 1701f–1, 1701h, and 1701i of Title 12, Banks and Banking, amending sections 1401, 1402, 1406, 1409 to 1411, 1413 to 1416, and 1422 to 1430 of this title and sections 1701e, 1701f, 1703, 1709, and 1738 of Title 12, and amending provisions set out as a note under section 1701e of Title 12] may be cited as the 'Housing Act of 1949'.''

NATIONAL COMMISSION ON NEIGHBORHOODS

Pub. L. 95–24, title II, §§ 201–208, Apr. 30, 1977, 91 Stat. 56–59, as amended by Pub. L. 95–557, title III, § 315, Oct. 31, 1978, 92 Stat. 2099, known as the ''National Neighborhood Policy Act'', established the National Commission on Neighborhoods, which was to undertake a comprehensive study and investigation of the factors contributing to the decline of city neighborhoods and of the factors necessary to neighborhood survival and revitalization, and to make recommendations for modifications in Federal, State, and local laws, policies and programs necessary to facilitate neighborhood preservation and revitalization. The Commission was to submit to the Congress and the President a comprehensive report on its study and investigation not later than fifteen months after the date on which funds first became available to carry out the Act, and was to cease to exist thirty days after the submission of that report.

LIMITATION ON WITHHOLDING OR CONDITIONING OF ASSISTANCE

Assistance provided for in Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.], National Housing Act [12 U.S.C. 1701 et seq.], United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], Housing Act of 1949 [see Short Title note set out above], Demonstration Cities and Metropolitan Development Act of 1966 [see Short Title note set out under section 3331 of this title], and Housing and Urban Development Acts of 1965, 1968, 1969, and 1970 not to be withheld or made subject to conditions by reason of tax-exempt status of obligations issued or to be issued for financing of assistance, except as otherwise provided by law, see section 817 of Pub. L. 93–383, set out as a note under section 5301 of this title.

EQUAL OPPORTUNITY IN HOUSING

Executive order relating to equal opportunity in housing, see Ex. Ord. No. 11063, Nov. 20, 1962, 27 F.R. 11527, as amended, set out as a note under section 1982 of this title.

§ 1441a. National housing goals

(a) Congressional findings and reaffirmation of goals

The Congress finds that the supply of the Nation's housing is not increasing rapidly enough to meet the national housing goal, established in the Housing Act of 1949 [42 U.S.C. 1441 et seq.], of the ''realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family''. The Congress reaffirms this national housing goal and determines that it can be substantially achieved within the next decade by the construction or rehabilitation of twenty-six million housing units, six million of these for low and moderate income families.

(b) Additional Congressional findings

The Congress further finds that policies designed to contribute to the achievement of the national housing goal have not directed sufficient attention and resources to the preservation of existing housing and neighborhoods, that the deterioration and abandonment of housing for the Nation's lower income families has accelerated over the last decade, and that this acceleration has contributed to neighborhood disintegration and has partially negated the progress toward achieving the national housing goal which has been made primarily through new housing construction.

(c) Congressional declaration of purposes

The Congress declares that if the national housing goal is to be achieved, a greater effort must be made to encourage the preservation of existing housing and neighborhoods through such measures as housing preservation, moderate rehabilitation, and improvements in housing management and maintenance, in conjunction with the provision of adequate municipal services. Such an effort should concentrate, to a greater extent than it has in the past, on housing and neighborhoods where deterioration is evident but has not yet become acute.

(Pub. L. 90–448, title XVI, § 1601, Aug. 1, 1968, 82 Stat. 601; Pub. L. 93–383, title VIII, § 801(1), (2), Aug. 22, 1974, 88 Stat. 721.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsec. (a), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to this chapter (§ 1441 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Housing Act of 1949 which comprises this chapter.

AMENDMENTS

1974—Pub. L. 93–383 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

§ 1441b. Plan for elimination of all substandard housing and realization of national housing goal; report by President to Congress

Not later than January 15, 1969, the President shall make a report to the Congress setting forth a plan, to be carried out over a period of ten years (June 30, 1968, to June 30, 1978), for the elimination of all substandard housing and the realization of the goal referred to in section 1441a of this title. Such plan shall—

(1) indicate the number of new or rehabilitated housing units which it is anticipated will have to be provided, with or without Government assistance, during each fiscal year of the ten-year period, in order to achieve the objectives of the plan, showing the number of such units which it is anticipated will have to be provided under each of the various Federal programs designed to assist in the provision of housing;

(2) indicate the reduction in the number of occupied substandard housing units which it is anticipated will have to occur during each fiscal year of the ten-year period in order to achieve the objectives of the plan;

(3) provide an estimate of the cost of carrying out the plan for each of the various Federal programs and for each fiscal year during the ten-year period to the extent that such costs will be reflected in the Federal budget;

(4) make recommendations with respect to the legislative and administrative actions necessary or desirable to achieve the objectives of the plan; and

(5) provide such other pertinent data, estimates, and recommendations as the President deems advisable.

Such report shall, in addition, contain a projection of the residential mortgage market needs and prospects during the coming year, including an estimate of the requirements with respect to the availability, need, and flow of mortgage funds (particularly in declining urban and rural areas) during such year, together with such recommendations as may be deemed appropriate for encouraging the availability of such funds.

(Pub. L. 90–448, title XVI, § 1602, Aug. 1, 1968, 82 Stat. 601.)

CODIFICATION

Section was not enacted as part of the Housing Act of 1949 which comprises this chapter.

§ 1441c. Omitted

CODIFICATION

Section, Pub. L. 90–448, title XVI, § 1603, Aug. 1, 1968, 82 Stat. 602; Pub. L. 91–152, title IV, § 412(a), Dec. 24, 1969, 83 Stat. 398; Pub. L. 93–383, title VIII, § 801(3), Aug. 22, 1974, 88 Stat. 722; Pub. L. 95–557, title IX, § 906, Oct. 31, 1978, 92 Stat. 2127; Pub. L. 96–399, title III, § 312, Oct. 8, 1980, 94 Stat. 1644, which required the President to transmit to Congress an annual report on housing needs, conservation, production, and rehabilitation, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 13 on page 31 of House Document No. 103–7.

§ 1442. Repealed. Aug. 31, 1954, ch. 1158, § 7, 68 Stat. 1026

Section, act July 15, 1949, ch. 338, title VI, § 607, 63 Stat. 441, related to housing census. See section 141 of Title 13, Census.

§ 1443. Provisions as controlling over other laws

Insofar as the provisions of any other law are inconsistent with the provisions of this Act, the provisions of this Act shall be controlling.

(July 15, 1949, ch. 338, title VI, § 610, 63 Stat. 443.)

REFERENCES IN TEXT

This Act, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, known as the Housing Act of 1949, which is classified principally to this chapter (§ 1441 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

§ 1444. Separability

Except as may be otherwise expressly provided in this Act, all powers and authorities conferred by this Act shall be cumulative and additional to and not in derogation of any powers and authorities otherwise existing. Notwithstanding any other evidences of the intention of Congress, it is declared to be the controlling intent of Congress that if any provisions of this Act, or the application thereof to any persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its applications to other persons and circumstances, but shall be confined in its operation to the provision of this Act, or the application thereof to the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered.

(July 15, 1949, ch. 338, title VI, § 611, 63 Stat. 443.)

REFERENCES IN TEXT

This Act, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, known as the Housing Act of 1949, which is classified principally to this chapter (§ 1441 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

§ 1445. Repealed. Aug. 9, 1955, ch. 690, § 4(1), 69 Stat. 625

Section, act July 15, 1949, ch. 338, title VI, § 612, 63 Stat. 444, related to striking or subversive employees of the Housing and Home Finance Agency and the Department of Agriculture, withholding of their wages, and penalties. See sections 3333 and 7311 of Title 5, Government Organization and Employees, and section 1918 of Title 18, Crimes and Criminal Procedure.

§ 1446. Transferred

CODIFICATION

Section, act Aug. 2, 1954, ch. 649, title VIII, § 814, 68 Stat. 647, as amended, which related to keeping of records, provided for their contents, and authorized ex-

amination and audit thereof, was transferred to section 1434 of this title.

SUBCHAPTER II—SLUM CLEARANCE AND URBAN RENEWAL

PART A—URBAN RENEWAL PROJECTS, DEMOLITION PROGRAMS, AND CODE ENFORCEMENT PROGRAMS

§§ 1450, 1451. Omitted

CODIFICATION

Section 1450, act July 15, 1949, ch. 338, title I, § 100, as added Aug. 2, 1954, ch. 649, title III, § 302, 68 Stat. 622; amended Sept. 23, 1959, Pub. L. 86–372, title IV, § 417(1), 73 Stat. 676, which related to the Urban Renewal Fund, was omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1451, acts July 15, 1949, ch. 338, title I, § 101, 63 Stat. 414; Aug. 2, 1954, ch. 649, title III, § 303, 68 Stat. 623; Aug. 11, 1955, ch. 783, title I, § 108(a), 69 Stat. 638; Aug. 7, 1956, ch. 1029, title IV, § 402, 70 Stat. 1103; Sept. 23, 1959, Pub. L. 86–372, title I, § 110(a)(3), (4), title IV, §§ 401, 417(2), 73 Stat. 659, 670, 677; June 30, 1961, Pub. L. 87–70, title I, § 101(b), title III, § 314(a), 75 Stat. 153, 172; Sept. 2, 1964, Pub. L. 88–560, title III, §§ 301(a), 302, 78 Stat. 785; Aug. 10, 1965, Pub. L. 89–117, title I, § 101(f), title III, §§ 302(a)(1), (b), 305(b), 79 Stat. 453, 474, 476; Sept. 9, 1965, Pub. L. 89–174, § 7(d), 79 Stat. 670; May 25, 1967, Pub. L. 90–19, § 6(b), (c), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 513, 82 Stat. 525; Dec. 24, 1969, Pub. L. 91–152, title II, § 217(a), 83 Stat. 390; Apr. 30, 1977, Pub. L. 95–24, title I, § 105(a), 91 Stat. 56, which related to local programs under this subchapter, was omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this subchapter after Jan. 1, 1975.

AMENDMENT OF CONTRACTS FOR INCORPORATION OF CERTAIN COST PROVISIONS

Pub. L. 88–560, title III, § 301(d), Sept. 2, 1964, 78 Stat. 785, provided that any contract for a capital grant under this subchapter executed prior to Sept. 2, 1964, could be amended to incorporate the provisions of section 1460(c) of this title for costs incurred on or after such date.

COMPLETION OF PROJECTS ENTERED INTO PRIOR TO AUGUST 2, 1954

Act Aug. 2, 1954, ch. 649, title III, § 312, 68 Stat. 629, as amended by Pub. L. 90–19, § 10(a), May 25, 1967, 81 Stat. 22, provided that notwithstanding the amendments by title III of the 1954 Act to this subchapter, the Secretary of Housing and Urban Development was required to continue to extend financial assistance for the completion of any project covered by any Federal aid contract executed, or prior approval granted, by him under this subchapter before Aug. 2, 1954, in accordance with the provisions of this subchapter in force immediately prior to Aug. 2, 1954.

EXECUTIVE ORDER NO. 12075

Ex. Ord. No. 12075, Aug. 16, 1978, 43 F.R. 36877, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which established the Interagency Coordinating Council and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, § 14, Aug. 17, 1982, 47 F.R. 36099, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 1451a. Repealed. Aug. 2, 1954, ch. 649, title III, § 313, 68 Stat. 629

Section, acts July 31, 1953, ch. 302, title I, § 101, 67 Stat. 305; June 24, 1954, ch. 359, title I, § 101, 68 Stat. 283, provided that the authority under this subchapter should be used to the utmost in connection with slum rehabilitation needs.

§ 1452. Omitted

CODIFICATION

Section, acts July 15, 1949, ch. 338, title I, § 102, 63 Stat. 414; Aug. 2, 1954, ch. 649, title III, § 304, 68 Stat. 624; Aug. 7, 1956, ch. 1029, title III, §§ 301, 303, 70 Stat. 1097, 1099; Sept. 23, 1959, Pub. L. 86–372, title IV, §§ 402–404, 73 Stat. 671; June 30, 1961, Pub. L. 87–70, title III, §§ 302(a), 314(b), 75 Stat. 166, 172; Sept. 2, 1964, Pub. L. 88–560, title III, § 303(a), 78 Stat. 785; Aug. 10, 1965, Pub. L. 89–117, title III, § 303, 79 Stat. 475; May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 507(a), 82 Stat. 522; Dec. 24, 1969, Pub. L. 91–152, title II, § 208, 83 Stat. 387; Oct. 17, 1984, Pub. L. 98–479, title II, § 203(d)(1), 98 Stat. 2229, which provided for temporary and definitive loans and advances for surveys and plans to local public agencies under this subchapter, as well as establishing requirements for advances for General Neighborhood Renewal Plans and the issuance and sale of notes and obligations under this subchapter, was omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this subchapter after Jan. 1, 1975.

AMENDMENT OF LOAN CONTRACTS OUTSTANDING ON AUGUST 1, 1968

Pub. L. 90–448, title V, § 507(b), Aug. 1, 1968, 82 Stat. 522, provided that loan contracts under this subchapter outstanding on Aug. 1, 1968, could be amended to incorporate the amendment to this section by section 507(a) of Pub. L. 90–448, without regard to the provision in section 1460(g) of this title.

TEMPORARY RELIEF FROM INTEREST RATE CONFLICT BETWEEN FEDERAL AND STATE LAW

Pub. L. 91–351, title VII, § 702, July 24, 1970, 84 Stat. 462, provided that notwithstanding any other law, from July 24, 1970, until July 1, 1972, loans to local public agencies under this subchapter and to local public housing agencies under the United States Housing Act of 1937, section 1401 et seq. of this title, may, when determined by the Secretary of Housing and Urban Development to be necessary because of interest rate limitations of State laws, bear interest at a rate less than the applicable going Federal rate but not less than 6 percent per year.

§ 1452a. Repealed. Pub. L. 91–609, title V, § 503(2), Dec. 31, 1970, 84 Stat. 1785

Section, acts Aug. 2, 1954, ch. 649, title III, § 314, 68 Stat. 629; Sept. 2, 1964, Pub. L. 88–560, title III, § 313, 78 Stat. 792; May 25, 1967, Pub. L. 90–19, § 10(a), (c), 81 Stat. 22; Aug. 1, 1968, Pub. L. 90–448, title XVII, § 1702, 82 Stat. 603, provided for grants for preventing and eliminating slums and urban blight; preferences; reports, summaries, and information material; aggregate amount; and advance or progress payments. See sections 1701z–1 to 1701z–4 of Title 12, Banks and Banking.

EFFECTIVE DATE OF REPEAL

Section 503 of Pub. L. 91–609 provided that the repeal of this section is effective July 1, 1971, except that such repeal shall not affect contracts, commitments, reservations, or other obligations entered into pursuant to this section prior to that date.

§ 1452b. Repealed. Pub. L. 101–625, title II, § 289(b), Nov. 28, 1990, 104 Stat. 4128

Section, Pub. L. 88–560, title III, § 312, Sept. 2, 1964, 78 Stat. 790; Pub. L. 89–117, title III, §§ 311(e), 312, Aug. 10, 1965, 79 Stat. 479; Pub. L. 90–19, § 21(b), May 25, 1967, 81 Stat. 25; Pub. L. 90–448, title V, § 509, title VIII, § 807(b), Aug. 1, 1968, 82 Stat. 523, 544; Pub. L. 91–152, title II, § 207, Dec. 24, 1969, 83 Stat. 387; Pub. L. 93–85, § 4, Aug.

10, 1973, 87 Stat. 221; Pub. L. 93–117, §10, Oct. 2, 1973, 87 Stat. 423; Pub. L. 93–383, title I, §116(e), Aug. 22, 1974, 88 Stat. 652; Pub. L. 94–50, title III, §301, July 2, 1975, 89 Stat. 256; Pub. L. 94–375, §12, Aug. 3, 1976, 90 Stat. 1074; Pub. L. 95–128, title I, §111, Oct. 12, 1977, 91 Stat. 1127; Pub. L. 95–557, title I, §101(a), (b), Oct. 31, 1978, 92 Stat. 2080, 2081; Pub. L. 96–71, §4, Sept. 28, 1979, 93 Stat. 502; Pub. L. 96–105, §4, Nov. 8, 1979, 93 Stat. 795; Pub. L. 96–153, title I, §101, Dec. 21, 1979, 93 Stat. 1101; Pub. L. 96–372, §5, Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title I, §114, Oct. 8, 1980, 94 Stat. 1622; Pub. L. 97–35, title III, §311, Aug. 13, 1981, 95 Stat. 397; Pub. L. 98–109, §3, Oct. 1, 1983, 97 Stat. 746; Pub. L. 98–181, title I, §124, Nov. 30, 1983, 97 Stat. 1174; Pub. L. 99–120, §2, Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, §2, Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, §2, Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, §2, Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, §3008, Apr. 7, 1986, 100 Stat. 105; Pub. L. 99–289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title V, §518, Feb. 5, 1988, 101 Stat. 1937, authorized Secretary to make loans to owners and tenants of property to finance rehabilitation of such property.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1991, and except with respect to projects and programs for which binding commitments have been entered into prior to Oct. 1, 1991, no new grants or loans to be made after Oct. 1, 1991, under this section, see section 12839(a)(2), (b)(1) of this title.

§ 1452c. Nullification of right of redemption of single family mortgagors under rehabilitation loan program

(a) In general

Whenever with respect to a single family mortgage securing a loan under section 1452b[1] of this title, the Secretary of Housing and Urban Development or its foreclosure agent forecloses in any Federal or State court or pursuant to a power of sale in a mortgage, the purchaser at the foreclosure sale shall be entitled to receive a conveyance of title to, and possession of, the property, subject to any interests senior to the interests of the Secretary. With respect to properties that are vacant and abandoned, notwithstanding any State law to the contrary, there shall be no right of redemption (including all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale in connection with such single family mortgage. The appropriate State official or the trustee, as the case may be, shall execute and deliver a deed or other appropriate instrument conveying title to the purchaser at the foreclosure sale, consistent with applicable procedures in the jurisdiction and without regard to any such right of redemption.

(b) Foreclosure by others

Whenever with respect to a single family mortgage on a property that also has a single family mortgage securing a loan under section 1452b[1] of this title, a mortgagee forecloses in any Federal or State court or pursuant to a power of sale in a mortgage, the Secretary of Housing and Urban Development, if the Secretary is purchaser at the foreclosure sale, shall be entitled to receive a conveyance of title to, and possession of, the property, subject to the interests senior to the interests of the mortgagee. Notwithstanding any State law to the contrary, there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) if the mortgagor or any other person subsequent to the foreclosure sale to the Secretary in connection with a property that secured a single family mortgage for a loan under section 1452b[1] of this title. The appropriate State official or the trustee, as the case may be, shall execute and deliver a deed or other appropriate instrument conveying title to the Secretary, who is the purchaser at the foreclosure sale, consistent with applicable procedures in the jurisdiction and without regard to any such right of redemption.

(c) Verification of title

The following actions shall be taken in order to verify title in the purchaser at the foreclosure sale:

(1) In the case of a judicial foreclosure in any Federal or State court, there shall be included in the petition and in the judgment of foreclosure a statement that the foreclosure is in accordance with this subsection and that there is no right of redemption in the mortgagor or any other person.

(2) In the case of a foreclosure pursuant to a power of sale provision in the mortgage, the statement required in paragraph (1) shall be included in the advertisement of the sale and either in the recitals of the deed or other appropriate instrument conveying title to the purchaser at the foreclosure sale or in an affidavit or addendum to the deed.

(d) Definitions

For purposes of this section:

(1) The term ''mortgage'' means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any interest in property, real, personal, or mixed, or any interest in property, including leaseholds, life estates, reversionary interests, and any other estates under applicable State law, is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien, for the purpose of securing the payment of money or the performance of an obligation.

(2) The term ''single family mortgage'' means a mortgage that covers property that includes a 1- to 4-family residence.

(Pub. L. 101–235, title VII, §701, Dec. 15, 1989, 103 Stat. 2055.)

REFERENCES IN TEXT

Section 1452b of this title, referred to in subsecs. (a) and (b), was repealed by Pub. L. 101–625, title II, §289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

CODIFICATION

Section was enacted as part of the Department of Housing and Urban Development Reform Act of 1989, and not as part of the Housing Act of 1949 which comprises this chapter.

[1] See References in Text note below.

§ 1453. Omitted

CODIFICATION

Section, acts July 15, 1949, ch. 338, title I, § 103, 63 Stat. 416; Aug. 2, 1954, ch. 649, title III, § 305, 68 Stat. 625; Aug. 11, 1955, ch. 783, title I, § 106(a), 69 Stat. 637; July 12, 1957, Pub. L. 85–104, title III, §§ 301, 302(1), 71 Stat. 299; Sept. 23, 1959, Pub. L. 86–372, title IV, §§ 405, 417(1), 73 Stat. 672, 676; June 30, 1961, Pub. L. 87–70, title III, §§ 301(a), 303, 75 Stat. 165, 166; Sept. 2, 1964, Pub. L. 88–560, title III, § 304, 78 Stat. 785; Aug. 10, 1965, Pub. L. 89–117, title III, §§ 304, 313(a), 79 Stat. 475, 479; Nov. 3, 1966, Pub. L. 89–754, title I, § 113, title VII, § 704, 80 Stat. 1260, 1281; May 25, 1967, Pub. L. 90–19, § 6(b), (d), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, §§ 502, 506, 82 Stat. 521, 522; Dec. 24, 1969, Pub. L. 91–152, title II, § 201, 83 Stat. 385; Dec. 31, 1970, Pub. L. 91–609, title II, § 201, title VII, § 741(a), 84 Stat. 1776, 1805; Oct. 18, 1972, Pub. L. 92–503, § 4, 86 Stat. 906; Oct. 2, 1973, Pub. L. 93–117, § 5, 87 Stat. 422; Aug. 22, 1974, Pub. L. 93–383, title I, § 116(c), 88 Stat. 652, which related to grants for urban renewal projects, was omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

§ 1453a. Administrative priority for applications relating to activities in areas affected by base closings

The Secretary of Housing and Urban Development, in processing applications for assistance under section 103 of the Housing Act of 1949 [42 U.S.C. 1453], section 111 of the Demonstration Cities and Metropolitan Development Act of 1966 [42 U.S.C. 3311], section 708(a)(1) and (2) of the Housing and Urban Development Act of 1965 [42 U.S.C. 3108(a)(1), (2)] (for grants authorized under sections 702 and 703 of such Act) [42 U.S.C. 3102, 3103], section 312 of the Housing Act of 1964 [42 U.S.C. 1452b], section 701(b) of the Housing Act of 1954,[1] and section 708 of the Housing Act of 1961 [42 U.S.C. 1500d], shall give a priority to any State or unit of local government or agency thereof which is severely and adversely affected by a reduction in the level of expenditure or employment at any Department of Defense installation located in or near such State or unit of local government.

(Pub. L. 93–117, § 14, Oct. 2, 1973, 87 Stat. 423.)

REFERENCES IN TEXT

Section 103 of the Housing Act of 1949 [42 U.S.C. 1453], section 111 of the Demonstration Cities and Metropolitan Development Act of 1966 [42 U.S.C. 3311], sections 702 and 703 of the Housing and Urban Development Act of 1965 [42 U.S.C. 3102, 3103], and section 708 of the Housing Act of 1961 [42 U.S.C. 1500d], referred to in text, were omitted from the Code pursuant to section 5316 of this title which terminated the authority to make grants or loans under those sections after Jan. 1, 1975.

Section 701 of the Housing Act of 1954, referred to in text, is section 701 of act Aug. 2, 1954, ch. 649, 68 Stat. 640, as amended, which was classified to section 461 of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 97–35, title III, § 313(b), Aug. 13, 1981, 95 Stat. 398.

CODIFICATION

Section was not enacted as part of title I of the Housing Act of 1949 which comprises this subchapter.

§§ 1454, 1455. Omitted

CODIFICATION

Section 1454, acts July 15, 1949, ch. 338, title I, § 104, 63 Stat. 416; Aug. 2, 1954, ch. 649, title III, § 306, 68 Stat. 625; Aug. 7, 1956, ch. 1029, title III, § 306, 70 Stat. 1101; July 12, 1957, Pub. L. 85–104, title III, § 302(2), 71 Stat. 300; June 30, 1961, Pub. L. 87–70, title III, § 301(b), 75 Stat. 166, which related to requirements for local grants-in-aid, was omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1455, acts July 15, 1949, ch. 338, title I, § 105, 63 Stat. 416; Aug. 2, 1954, ch. 649, title III, § 307, 68 Stat. 625; Aug. 7, 1956, ch. 1029, title III, § 302(a)(1), 70 Stat. 1097; Sept. 23, 1959, Pub. L. 86–372, title IV, §§ 406, 407, 73 Stat. 673; June 30, 1961, Pub. L. 87–70, title III, § 315, 75 Stat. 172; Sept. 2, 1964, Pub. L. 88–560, title III, § 305(a)(1), (b), 78 Stat. 786; Aug. 10, 1965, Pub. L. 89–117, title III, § 305(a), 79 Stat. 475; Nov. 3, 1966, Pub. L. 89–754, title VII, §§ 703(a), 706, 80 Stat. 1281; May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 512, 82 Stat. 524; Dec. 24, 1969, Pub. L. 91–152, title II, §§ 209, 210, 83 Stat. 388; Oct. 17, 1984, Pub. L. 98–479, title II, § 204(c)(1), 98 Stat. 2233, which related to requirements for loan or capital grant contracts, was omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

§ 1455a. Repealed. Pub. L. 93–383, title II, § 204, Aug. 22, 1974, 88 Stat. 668

Section, act Aug. 2, 1954, ch. 649, title VIII, § 815, 68 Stat. 647, required submission of specifications by applicants prior to award of any contract for construction of a project and submission of data with respect to acquisition of land prior to authorization to purchase such land.

§§ 1456 to 1460. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1456, acts July 15, 1949, ch. 338, title I, § 106, 63 Stat. 417; June 3, 1952, ch. 362, 66 Stat. 98; June 30, 1953, ch. 170, § 22, 67 Stat. 127; Aug. 2, 1954, ch. 649, title III, § 308, title VIII, § 802(e), 68 Stat. 625, 643; Aug. 11, 1955, ch. 783, title I, § 106(b), 69 Stat. 637; Aug. 7, 1956, ch. 1029, title III, §§ 304, 305, 70 Stat. 1100; July 12, 1957, Pub. L. 85–104, title III, §§ 303, 304, 71 Stat. 300; Sept. 23, 1959, Pub. L. 86–372, title IV, §§ 408, 409(a)(1), (b), 410, 417(1), 73 Stat. 673, 674, 676; June 30, 1961, Pub. L. 87–70, title III, § 304, 75 Stat. 167; Sept. 2, 1964, Pub. L. 88–560, title III, § 310(c), 78 Stat. 790; Aug. 10, 1965, Pub. L. 89–117, title III, § 306, 79 Stat. 476; Nov. 3, 1966, Pub. L. 89–754, title X, § 1020(a), 80 Stat. 1295; May 25, 1967, Pub. L. 90–19, § 6(b), (e), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 508(a), 82 Stat. 522; Dec. 31, 1970, Pub. L. 91–609, title II, § 213(a), 84 Stat. 1779; Nov. 30, 1983, Pub. L. 98–181, title I, § 126(b)(1), 97 Stat. 1175; Oct. 17, 1984, Pub. L. 98–479, title II, § 203(d)(2), 98 Stat. 2229, related to duties of Secretary of Housing and Urban Development under this subchapter.

Section 1457, acts July 15, 1949, ch. 338, title I, § 107, 63 Stat. 419; Aug. 2, 1954, ch. 649, title III, § 309, 68 Stat. 626; Sept. 23, 1959, Pub. L. 86–372, title IV, § 411, 73 Stat. 674; June 30, 1961, Pub. L. 87–70, title III, § 306(a), 75 Stat. 168; Sept. 2, 1964, Pub. L. 88–560, title III, § 306, 78 Stat. 786; May 25, 1967, Pub. L. 90–19, § 6(b), (f), 81 Stat. 21, 22; Aug. 1, 1968, Pub. L. 90–448, title V, § 505, 82 Stat. 522, related to property to be used for public housing or housing for low or moderate income families or individuals.

Section 1458, acts July 15, 1949, ch. 338, title I, § 108, 63 Stat. 419; May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Dec. 31, 1970, Pub. L. 91–609, title II, § 206, 84 Stat. 1777, related to disposition of surplus Federal real property, sale at fair market value, and disposition of net proceeds thereof.

Section 1459, acts July 15, 1949, ch. 338, title I, § 109, 63 Stat. 419; Aug. 2, 1954, ch. 649, title III, § 310, 68 Stat. 626; May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21, related to protection of labor standards.

[1] See References in Text note below.

Section 1460, acts July 15, 1949, ch. 338, title I, §110, 63 Stat. 420; June 30, 1953, ch. 170, §24(a), 67 Stat. 127; Aug. 2, 1954, ch. 649, title III, §311, 68 Stat. 626; Aug. 11, 1955, ch. 783, title I, §166(c), 69 Stat. 637; Aug. 7, 1956, ch. 1029, title III, 302(a)(2), (b)–(d), 70 Stat. 1097; July 12, 1957, Pub. L. 85–104, title III, §§302(3)–(5), 305, 306, 71 Stat. 300, 301; Sept. 23, 1959, Pub. L. 86–372, title IV, §§412–414(a), 415, 416, 417(3), 73 Stat. 675, 677; June 30, 1961, Pub. L. 87–70, title III, §§301(c), 306(b), 307, 308, 314(c), 75 Stat. 166, 168, 172; Sept. 2, 1964, Pub. L. 88–560, title III, §§301(b), (c), 303(b), 307–309, 311(a), 78 Stat. 785, 787, 788, 790; Aug. 10, 1965, Pub. L. 89–117, title III, §§307–309, 310(a), 311(b), 314(a), 79 Stat. 476–479; Nov. 3, 1966, Pub. L. 89–754, title VI, §§601, 602, title VII, §§701, 702, 80 Stat. 1278, 1280, 1281; May 25, 1967, Pub. L. 90–19, §6(b), (g), 81 Stat. 21, 22; Aug. 1, 1968, Pub. L. 90–448, title V, §§504, 508(b), 511, title XVII, §1722(a)–(c), 82 Stat. 521, 523, 524, 610; Dec. 24, 1969, Pub. L. 91–152, title II, §§202(a), 203(a), 204, 206, 83 Stat. 385–387; Dec. 31, 1970, Pub. L. 91–609, title II, §213(b), title VII, §741(c), title VIII, §801(b), 84 Stat. 1779, 1805, defined terms as used in this subchapter.

STUDY OF HOUSING AND BUILDING CODES, ZONING, TAX POLICIES, AND DEVELOPMENT STANDARDS

Pub. L. 89–117, title III, §301, Aug. 10, 1965, 79 Stat. 474, as amended by Pub. L. 90–19, §22(a), (d), May 25, 1967, 81 Stat. 26, 27; Pub. L. 90–118, Oct. 31, 1967, 81 Stat. 338, which provided for study of housing and building codes, zoning, tax policies, and development standards, was repealed effective July 1, 1971, by Pub. L. 91–609, title V, §503(5), Dec. 31, 1970, 84 Stat. 1786.

AMENDMENT OF CONTRACTS

Pub. L. 89–117, title III, §310(b), Aug. 10, 1965, 79 Stat. 477, provided that any contract for a capital grant under this subchapter, executed prior to Aug. 10, 1965, could be amended to incorporate amendment to section 1460(e) of this title by section 310(a) of Pub. L. 89–117 as to costs incurred on or after Aug. 10, 1965.

Pub. L. 89–117, title III, §314(b), Aug. 10, 1965, 79 Stat. 480, provided that any contract under this subchapter executed prior to Aug. 10, 1965, would, at request of municipality involved, be amended to reflect amendment to section 1460(d) of this title by section 314(a) of Pub. L. 89–117.

Pub. L. 88–560, title III, §311(b), Sept. 2, 1964, 78 Stat. 790, provided that any contract under this subchapter executed prior to Sept. 2, 1964, could be amended to provide for payment of increased amounts authorized by section 311(a) of Pub. L. 88–560, which amended section 1460(e) of this title, with respect to any uncompleted project, including acquisitions involving expenditures by local public agencies that could not otherwise be included in costs of such project.

RELOCATION PAYMENTS FOR EXPENSES OR LOSSES INCURRED PRIOR TO SEPTEMBER 23, 1959

Pub. L. 86–372, title IV, §409(a)(2), Sept. 23, 1959, 73 Stat. 674, prohibited relocation payments under section 1456(f) of this title for expenses or losses incurred prior to Sept. 23, 1959, except to the extent that such payments were authorized by such section as it existed prior to such date.

WAIVER OF REQUIREMENTS OF SECTION 1460(d) FOR CERTAIN ASSISTANCE PROVIDED DURING THE PERIOD FROM JULY 1, 1957, THROUGH DECEMBER 31, 1957

Pub. L. 86–372, title IV, §414(b), Sept. 23, 1959, 73 Stat. 675, provided that the requirement of section 1460(d) of this title that the assistance provided by a State, municipality, or other public body under that subsection, in order to qualify as a local grant-in-aid, had to be in connection with a project on which a contract for capital grant had been made under this subchapter, did not apply to assistance provided from July 1, 1957, through Dec. 31, 1957, in connection with urban renewal activities which were extended Federal recognition within 60 days after the provision of such assistance was initiated.

§1461. Repealed. Aug. 2, 1954, ch. 649, title III, §313, 68 Stat. 629

Section, acts July 31, 1953, ch. 302, title I, §101, 67 Stat. 305; June 24, 1954, ch. 359, title I, §101, 68 Stat. 283, related to conditions precedent to approval of local slum clearance programs.

§§1462 to 1464. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1462, act July 15, 1949, ch. 338, title I, §111, as added Aug. 7, 1956, ch. 1029, title III, §307(a), 70 Stat. 1101; amended May 25, 1967, Pub. L. 90–19, §6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title XI, §1106(c), 82 Stat. 567, related to disaster areas, urban renewal assistance, and nonapplicability of certain requirements under this subchapter.

Section 1463, act July 15, 1949, ch. 338, title I, §112, as added Sept. 23, 1959, Pub. L. 86–372, title IV, §418, 73 Stat. 677; amended June 30, 1961, Pub. L. 87–70, title III, §309, 75 Stat. 169; Nov. 3, 1966, Pub. L. 89–754, title VII, §705, 80 Stat. 1281; May 25, 1967, Pub. L. 90–19, §6(b), 81 Stat. 21; Dec. 24, 1969, Pub. L. 91–152, title II, §203(b), 83 Stat. 386, related to financial assistance for urban renewal projects in areas involving colleges, universities, or hospitals.

Section 1464, act July 15, 1949, ch. 338, title I, §113, as added May 1, 1961, Pub. L. 87–27, §14, 75 Stat. 57; amended May 25, 1967, Pub. L. 90–19, §6(b), 81 Stat. 21, related to redevelopment areas.

§1465. Repealed. Pub. L. 91–646, title II, §220(a)(5), Jan. 2, 1971, 84 Stat. 1903

Section, act July 15, 1949, ch. 338, title I, §114, as added Sept. 2, 1964, Pub. L. 88–560, title III, §310(a), 78 Stat. 788; amended Aug. 10, 1965, Pub. L. 89–117, title I, §101(i), title IV, §404(b), (c)(1), 79 Stat. 453, 486; May 25, 1967, Pub. L. 90–19, §6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, §516, 82 Stat. 526; Dec. 31, 1970, Pub. L. 91–609, title II, §212, 84 Stat. 1779, related to relocation assistance, providing as follows: subsec. (a), financial assistance to displaced individuals, families, businesses, and nonprofit organizations; subsec. (b), payments to business concerns or nonprofit organizations, considerations, and maximum amounts; subsec. (c), payments to individuals and families, considerations, computation of amount, maximum amounts, and restrictions; subsec. (d), payments to individuals, families, business concerns, and nonprofit organizations for recording fees, transfer taxes, incidental expenses, penalty costs, and pro rata taxes; and subsec. (e), rules and regulations, finality of administrative decisions, and promptness of payments. See chapter 61 (section 4601 et seq.) of this title.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to any State so long as sections 4630 and 4655 of this title are not applicable in such State; but such sections completely applicable to all States after July 1, 1972, but until such date applicable to a State to extent the State is able under its laws to comply with such sections, see section 221 of Pub. L. 91–646, set out as an Effective Date note under section 4601 of this title.

SAVINGS PROVISION

Any rights or liabilities existing under provisions repealed by section 220(a) of Pub. L. 91–646 as not affected by such repeal, see section 220(b) of Pub. L. 91–646, set out as a note under section 4621 of this title.

§1466. Omitted

CODIFICATION

Section, act July 15, 1949, ch. 338, title I, §115, as added Aug. 10, 1965, Pub. L. 89–117, title I, §106(a), 79

Stat. 457; amended May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 503, 82 Stat. 521; Dec. 24, 1969, Pub. L. 91–152, title II, § 205, 83 Stat. 387, which related to rehabilitation grants, was omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

AMENDMENT OF CONTRACTS EXECUTED PRIOR TO ENACTMENT OF SECTION

Pub. L. 89–117, title I, § 106(b), Aug. 10, 1965, 79 Stat. 458, provided that any contract with a local public agency executed under this subchapter before Aug. 10, 1965, could be amended to provide for grants authorized by this section.

§§ 1467 to 1468a. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1467, act July 15, 1949, ch. 388, title I, § 116, as added Aug. 10, 1965, Pub. L. 89–117, title III, § 311(a), 79 Stat. 477; amended May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 510, 82 Stat. 524; Dec. 24, 1969, Pub. L. 91–152, title II, § 202(b), 83 Stat. 386, related to grants to cities, other municipalities, counties, and Indian tribes, etc., for demolition of unsafe structures.

Section 1468, act July 15, 1949, ch. 338, title I, § 117, as added Aug. 10, 1965, Pub. L. 89–117, title III, § 311(a), 79 Stat. 478; amended May 25, 1967, Pub. L. 90–19, § 6(b), 81 Stat. 21; Aug. 1, 1968, Pub. L. 90–448, title V, § 515, 82 Stat. 525; Dec. 24, 1969, Pub. L. 91–152, title II, § 202(c), 83 Stat. 386, related to grants to cities, other municipalities, counties, and Indian tribes, etc., for code enforcement.

Section 1468a, act July 15, 1949, ch. 338, title I, § 118, as added Aug. 1, 1968, Pub. L. 90–448, title V, § 514, 82 Stat. 525; amended Dec. 24, 1969, Pub. L. 91–152, title II, § 202(d), 83 Stat. 386, related to interim assistance for blighted areas, grants to cities, other municipalities, counties, and Indian tribes, etc., and encouragement of employment of unemployed and underemployed residents.

PART B—NEIGHBORHOOD DEVELOPMENT PROGRAMS

§§ 1469 to 1469c. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated authority to make grants or loans under this subchapter after Jan. 1, 1975.

Section 1469, act July 15, 1949, ch. 338, title I, § 131, as added Aug. 1, 1968, Pub. L. 90–448, title V, § 501(b), 82 Stat. 518, set forth the declaration of this part.

Section 1469a, act July 15, 1949, ch. 338, title I, § 132, as added Aug. 1, 1968, Pub. L. 90–448, title V, § 501(b), 82 Stat. 519, related to financing of undertakings and activities and the payment of excess of sale price and imputed capital value of land or other property leased or retained over the gross project cost.

Section 1469b, acts July 15, 1949, ch. 338, title I, § 133, as added Aug. 1, 1968, Pub. L. 90–448, title V, § 501(b), 82 Stat. 519; amended Dec. 24, 1969, Pub. L. 91–152, title II, § 203(c), 83 Stat. 386, related to local grants-in-aid.

Section 1469c, act July 15, 1949, ch. 338, title I, § 134, as added Aug. 1, 1968, Pub. L. 90–448, title V, § 501(b), 82 Stat. 520, contained general provisions relating to workable program requirements, transient housing, removal of buildings, financial assistance for subsequent annual increments, and modification of urban renewal plans.

NEIGHBORHOOD DEVELOPMENT PROGRAMS BY DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

Pub. L. 90–448, title V, § 501(c), Aug. 1, 1968, 82 Stat. 520, provided that notwithstanding any requirement or condition to the contrary in section 6 or 20(i) of the District of Columbia Redevelopment Act of 1945 (act Aug. 2, 1946, ch. 736, 60 Stat. 790, as amended), or any other law, the District of Columbia Redevelopment Land Agency was authorized to plan and undertake neighborhood development programs under this part, which programs would be regarded as complying with sections 6 and 20(i) of that Act and any other provision of law, if those programs were in compliance with this part.

SUBCHAPTER III—FARM HOUSING

§ 1471. Financial assistance by Secretary of Agriculture

(a) Authorization and purposes of assistance

The Secretary of Agriculture (hereinafter referred to as the ''Secretary'') is authorized, subject to the terms and conditions of this subchapter, to extend financial assistance, through the Farmers Home Administration, (1) to owners of farms in the United States and in the Territories of Alaska and Hawaii and in the Commonwealth of Puerto Rico, the Virgin Islands, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands, to enable them to construct, improve, alter, repair, or replace dwellings and other farm buildings on their farms, and to purchase buildings and land constituting a minimum adequate site, in order to provide them, their tenants, lessees, sharecroppers, and laborers with decent, safe, and sanitary living conditions and adequate farm buildings as specified in this subchapter, and (2) to owners of other real estate in rural areas for the construction, improvement, alteration, or repair of dwellings, related facilities, and farm buildings and to rural residents, including persons who reside in reservations or villages of Indian tribes, for such purposes and for the purchase of buildings and the purchase of land constituting a minimum adequate site, in order to enable them to provide dwellings and related facilities for their own use and buildings adequate for their farming operations, and (3) to elderly or handicapped persons or families who are or will be the owners of land in rural areas for the construction, improvement, alteration, or repair of dwellings and related facilities, the purchase of dwellings and related facilities and the purchase of land constituting a minimum adequate site, in order to provide them with adequate dwellings and related facilities for their own use, and (4) to an owner described in clause (1), (2), or (3) for refinancing indebtedness which—

(A) was incurred for an eligible purpose described in such clause, and

(B)(i) if not refinanced, is likely to result (because of circumstances beyond the control of the applicant) at an early date in the loss of the applicant's necessary dwelling or essential farm service buildings, or

(ii) if combined (in the case of a dwelling that the Secretary finds not to be decent, safe, and sanitary) with a loan for improvement, rehabilitation, or repairs and not refinanced, is likely to result in the applicant's continuing to be deprived of a decent, safe, and sanitary dwelling.

(5)[1] DEFINITIONS.—For purposes of this subchapter, the terms ''repair'', ''repairs'', ''reha-

[1] So in original.

bilitate'', and ''rehabilitation'' include measures to evaluate and reduce lead-based paint hazards, as such terms are defined in section 4851b of this title.

(b) Definitions

(1) For the purpose of this subchapter, the term ''farm'' shall mean a parcel or parcels of land operated as a single unit which is used for the production of one or more agricultural commodities and which customarily produces or is capable of producing such commodities for sale and for home use of a gross annual value of not less than the equivalent of a gross annual value of $400 in 1944, as determined by the Secretary. The Secretary shall promptly determine whether any parcel or parcels of land constitute a farm for the purposes of this subchapter whenever requested to do so by any interested Federal, State, or local public agency, and his determination shall be conclusive.

(2) For the purposes of this subchapter, the terms ''owner'' and ''mortgage'' shall be deemed to include, respectively, the lessee of, and other security interest in, any leasehold interest which the Secretary determines has an unexpired term (A) in the case of a loan, for a period sufficiently beyond the repayment period of the loan to provide adequate security and a reasonable probability of accomplishing the objectives for which the loan is made, and (B) in the case of a grant for a period sufficient to accomplish the objectives for which the grant is made.

(3) For the purposes of this subchapter, the term ''elderly or handicapped persons or families'' means families which consist of two or more persons, the head of which (or his or her spouse) is at least sixty-two years of age or is handicapped. Such term also means a single person who is at least sixty-two years of age or is handicapped. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions, or if such person has a developmental disability as defined in section 15002 of this title. The Secretary shall prescribe such regulations as may be necessary to prevent abuses in determining, under the definitions contained in this paragraph, eligibility of families and persons for admission to and occupancy of housing constructed with assistance under this subchapter. Notwithstanding the preceding provisions of this paragraph, such term also includes two or more elderly (sixty-two years of age or over) or handicapped persons living together, one or more such persons living with another person who is determined (under regulations prescribed by the Secretary) to be essential to the care or well-being of such persons, and the surviving member or members of any family described in the first sentence of this paragraph who were living, in a unit assisted under this subchapter, with the deceased member of the family at the time of his or her death.

(4) For the purpose of this subchapter, the terms ''low income families or persons'' and ''very low-income families or persons'' means those families and persons whose incomes do not exceed the respective levels established for lower income families and very low-income families under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]. Notwithstanding the preceding sentence, the maximum income levels established for purposes of this subchapter for such families and persons in the Virgin Islands shall not be less than the highest such levels established for purposes of this subchapter for such families and persons in American Samoa, Guam, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. The temporary absence of a child from the home due to placement in foster care should not be considered in considering family composition and family size.

(5)(A) For the purpose of this subchapter, the terms ''income'' and ''adjusted income'' have the meanings given by sections 3(b)(4) and 3(b)(5), respectively, of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)(4), (5)].

(B) For purposes of this subchapter, the term ''income'' does not include dividends received from the Alaska Permanent Fund by a person who was under the age of 18 years when that person qualified for the dividend.

(6) For the purposes of this subchapter, the term ''Indian tribe'' means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93–638) [25 U.S.C. 450 et seq.] or was considered an eligible recipient under chapter 67 of title 31 prior to the repeal of such chapter.

(7) For the purposes of this subchapter, the term ''rural resident'' shall include a family or a person who is a renter of a dwelling unit in a rural area.

(8) For the purposes of this subchapter, the term ''adequate dwelling'' means a decent, safe, and sanitary dwelling unit.

(c) Conditions of eligibility

In order to be eligible for the assistance authorized by subsection (a) of this section, the applicant must show (1) that he is the owner of a farm which is without a decent, safe, and sanitary dwelling for himself and his family and necessary resident farm labor, or for the family of the operating tenant, lessee, or sharecropper, or without other farm buildings adequate for the type of farming in which he engages or desires to engage, or that he is the owner of other real estate in a rural area or a rural resident without an adequate dwelling or related facilities for his own use or buildings adequate for his farming operations, or that the applicant is an elderly or handicapped person or family in a rural area without an adequate dwelling or related facility for its own use, or that he is the owner of a farm or other real estate in a rural area who needs refinancing of indebtedness described in clause (4) of subsection (a) of this section; (2) that he is without sufficient resources to provide the necessary housing and buildings on his own account; and (3) that he is unable to secure the

credit necessary for such housing and buildings from other sources upon terms and conditions which he could reasonably be expected to fulfill. If an applicant is a State or local public agency or Indian tribe—

(A) the provisions of clause (3) shall not apply to its application; and

(B) the applicant shall be eligible to participate in any program under this subchapter if the persons or families to be served by the applicant with the assistance being sought would be eligible to participate in such program.

(d) Additional definitions

As used in this subchapter (except in sections 1473 and 1474(b) of this title) the terms ''farm'', ''farm dwelling'', and ''farm housing'' shall include dwellings or other essential buildings of eligible applicants.

(e) Prepayment of taxes, insurance, and other expenses; advances to account of borrower: interest, time for repayment

The Secretary shall establish procedures under which borrowers under this subchapter are required to make periodic payments for the purpose of taxes, insurance, and other necessary expenses as the Secretary may deem appropriate. Notwithstanding any other provision of law, such payments shall not be considered public funds. The Secretary shall direct the disbursement of the funds at the appropriate time or times for the purposes for which the funds were escrowed. The Secretary shall pay the same rate of interest on escrowed funds as is required to be paid on escrowed funds held by other lenders in any State where State law requires payment of interest on escrowed funds, subject to appropriations to the extent that additional budget authority is necessary to carry out this sentence. If the prepayments made by the borrower are not sufficient to pay the amount due, advances may be made by the Secretary to pay the costs in full, which advances shall be charged to the account of the borrower, bear interest, and be payable in a timely fashion as determined by the Secretary. The Secretary shall notify a borrower in writing when loan payments are delinquent.

(f) Increase in loan limits

With respect to any limitation on the amount of any loan which may be made, insured, or guaranteed under this subchapter for the purchase of a dwelling unit, the Secretary may increase such amount by up to 20 percent if such increase is necessary to account for the increased cost of the dwelling unit due to the installation of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of title 12) therein.

(g) Avoidance of involuntary displacement of families and businesses

The programs authorized by this subchapter shall be carried out, consistent with program goals and objectives, so that the involuntary displacement of families and businesses is avoided.

(h) Eligibility of resident aliens

The Secretary may not restrict the availability of assistance under this subchapter for any alien for whom assistance may not be restricted under section 1436a of this title.

(i) Loan packaging by nonprofit organizations as a "development cost"

For the purposes of this subchapter, the term ''development cost'' shall include the packaging of loan and grant applications and actions related thereto by public and private nonprofit organizations tax exempt under title 26.

(j) Program transfers

Notwithstanding any other provision of law, the Secretary shall not transfer any program authorized by this subchapter to the Rural Development Administration.

(July 15, 1949, ch. 338, title V, § 501, 63 Stat. 432; Pub. L. 87–70, title VIII, §§ 801(a), 803, June 30, 1961, 75 Stat. 186; Pub. L. 87–723, § 4(a)(1), Sept. 28, 1962, 76 Stat. 670; Pub. L. 89–117, title X, § 1001, Aug. 10, 1965, 79 Stat. 497; Pub. L. 89–754, title VIII, §§ 801, 807, Nov. 3, 1966, 80 Stat. 1282; Pub. L. 91–609, title VIII, § 802, Dec. 31, 1970, 84 Stat. 1806; Pub. L. 93–383, title V, §§ 501–503, 505(a), 520, Aug. 22, 1974, 88 Stat. 692, 693, 699; Pub. L. 95–128, title V, §§ 503, 507(a)(1), (2), (b), Oct. 12, 1977, 91 Stat. 1139–1141; Pub. L. 95–619, title II, § 248(c), Nov. 9, 1978, 92 Stat. 3235; Pub. L. 96–153, title V, §§ 502(b), 506, Dec. 21, 1979, 93 Stat. 1134, 1136; Pub. L. 96–399, title V, §§ 506, 507(a), (h), 512, Oct. 8, 1980, 94 Stat. 1669–1671; Pub. L. 98–181, title V, § 502, Nov. 30, 1983, 97 Stat. 1240; Pub. L. 98–479, title I, § 105(a), title II, § 203(d)(3), Oct. 17, 1984, 98 Stat. 2226, 2229; Pub. L. 99–272, title XIV, § 14001(b)(3), Apr. 7, 1986, 100 Stat. 328; Pub. L. 100–242, title III, §§ 302(a), (b)(1), 303, 315, 316(a), Feb. 5, 1988, 101 Stat. 1893, 1894, 1897; Pub. L. 101–625, title VII, §§ 702, 703, Nov. 28, 1990, 104 Stat. 4282, 4283; Pub. L. 102–550, title VII, § 714, title X, § 1012(m), Oct. 28, 1992, 106 Stat. 3842, 3907; Pub. L. 104–193, title IV, § 441(b), Aug. 22, 1996, 110 Stat. 2276; Pub. L. 106–402, title IV, § 401(b)(8), Oct. 30, 2000, 114 Stat. 1738; Pub. L. 107–76, title VII, § 752, Nov. 28, 2001, 115 Stat. 740; Pub. L. 108–199, div. A, title VII, § 768, Jan. 23, 2004, 118 Stat. 40.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (a)(4), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (b)(6), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

Chapter 67 of title 31, referred to in subsec. (b)(6), was repealed by Pub. L. 99–272, title XIV, § 14001(a)(1), Apr. 7, 1986, 100 Stat. 327, effective Oct. 18, 1986.

AMENDMENTS

2004—Subsec. (b)(5)(B). Pub. L. 108–199 struck out ''for fiscal years 2002 and 2003,'' after ''this subchapter,''.

2001—Subsec. (b)(5). Pub. L. 107–76 designated existing provisions as subpar. (A) and added subpar. (B).

2000—Subsec. (b)(3). Pub. L. 106–402 substituted ''developmental disability as defined in section 15002 of this title'' for ''developmental disability as defined in section 6001(7) of this title''.

1996—Subsec. (h). Pub. L. 104–193 struck out par. (1) designation, struck out ''by the Secretary of Housing and Urban Development'' before ''under section 1436a of this title'', and struck out par. (2) which read as follows: ''In carrying out any restriction established by the Secretary on the availability of assistance under this subchapter for any alien, the Secretary shall follow procedures comparable to the procedures established in section 1436a of this title.''

1992—Subsec. (a). Pub. L. 102–550, §1012(m), added par. (5).

Subsec. (j). Pub. L. 102–550, §714, added subsec. (j).

1990—Subsec. (b)(4). Pub. L. 101–625, §702, inserted at end ''The temporary absence of a child from the home due to placement in foster care should not be considered in considering family composition and family size.''

Subsec. (e). Pub. L. 101–625, §703, inserted after third sentence ''The Secretary shall pay the same rate of interest on escrowed funds as is required to be paid on escrowed funds held by other lenders in any State where State law requires payment of interest on escrowed funds, subject to appropriations to the extent that additional budget authority is necessary to carry out this sentence.''

1988—Subsec. (b)(3). Pub. L. 100–242, §316(a), substituted ''has a developmental disability as defined in section 6001(7) of this title'' for ''is a developmentally disabled individual as defined in section 6001(7) of this title''.

Subsec. (b)(4). Pub. L. 100–242, §302(b)(1), inserted provisions at end relating to maximum income levels established for families and persons in the Virgin Islands to be not less than the highest such levels established for families and persons in American Samoa, Guam, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Subsec. (e). Pub. L. 100–242, §303, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The Secretary may establish procedures whereby borrowers under this subchapter may make periodic payments for the purpose of taxes, insurance, and such other necessary expenses as the Secretary may deem appropriate. Such payments shall be disbursed by the Secretary at the appropriate time or times for the purposes for which such payments are made, and after October 1, 1977, if the prepayments made by the borrower are not sufficient to pay the amount due, advances may be made by the Secretary to pay these costs in full, which advances shall be charged to the account of the borrower and bear interest and be payable in a timely fashion not to exceed two years, as determined by the Secretary. The Secretary shall notify a borrower in writing when his loan payments are delinquent.''

Subsec. (h). Pub. L. 100–242, §302(a), added subsec. (h).

Subsec. (i). Pub. L. 100–242, §315, added subsec. (i).

1986—Subsec. (b)(6). Pub. L. 99–272 substituted ''or was considered an eligible recipient under chapter 67 of title 31 prior to the repeal of such chapter'' for ''or under chapter 67 of title 31''.

1984—Subsec. (b)(4). Pub. L. 98–479, §105(a), struck out ''by the Secretary of Housing and Urban Development'' before ''under the United States Housing Act of 1937.''

Subsec. (b)(6). Pub. L. 98–479, §203(d)(3), substituted ''chapter 67 of title 31'' for ''the State and Local Fiscal Assistance Act of 1972 (Public Law 92–512)''.

1983—Subsec. (b)(4). Pub. L. 98–181, §502(a), amended par. (4) generally, substituting definition of low and very low-income families or persons as those whose incomes do not exceed levels established by the Secretary under the United States Housing Act of 1937 for definition of persons of low income as those whose incomes do not exceed 80 per centum of the area median income, except when it is impracticable to use such median income or variations are necessary because of other factors.

Subsec. (b)(5). Pub. L. 98–181, §502(b), amended par. (5) generally, substituting definition of income and adjusted income as having the meanings given by sections 3(b)(4) and 3(b)(5) of the United States Housing Act of 1937 for definition of income as income from all sources of each household member, as determined in accordance with criteria prescribed by the Secretary.

1980—Subsec. (a)(2). Pub. L. 96–399, §507(a), inserted reference to persons residing in reservations or villages of Indian tribes.

Subsec. (b)(6) to (8). Pub. L. 96–399, §506, added pars. (6) to (8).

Subsec. (c). Pub. L. 96–399, §507(h), inserted ''or Indian tribe'' after ''local public agency'' in second sentence.

Subsec. (g). Pub. L. 96–399, §512, added subsec. (g).

1979—Subsec. (a)(4). Pub. L. 96–153, §506, redesignated former subpar. (B) as (B)(i) and (ii), and in subpar. (B)(i) as so redesignated, inserted reference to circumstances beyond the applicant's control, and in subpar. (B)(ii) as so redesignated, substituted reference to deprivation of decent, safe, and sanitary dwelling for reference to continuing hardship, and struck out subpar. (C) which authorized refinancing indebtedness provided the indebtedness was incurred at least 5 years prior to the application for assistance.

Subsec. (b)(4), (5). Pub. L. 96–153, §502(b), added pars. (4) and (5).

1978—Subsec. (f). Pub. L. 95–619 added subsec. (f).

1977—Subsec. (a)(3). Pub. L. 95–128, §507(a)(1), substituted ''elderly or handicapped persons or families'' for ''elderly persons''.

Subsec. (b)(3). Pub. L. 95–128, §507(b), substituted definition of ''elderly or handicapped persons or families'' for prior definition of ''elderly persons'' as persons who are 62 years of age or over.

Subsec. (c)(1). Pub. L. 95–128, §507(a)(2), substituted ''the applicant is an elderly or handicapped person or family in a rural area without an adequate dwelling or related facility for its own use'' for ''he is an elderly person in a rural area without an adequate dwelling or related facilities for his own use''.

Subsec. (e). Pub. L. 95–128, §503, substituted as a second sentence ''Such payments shall be disbursed by the Secretary at the appropriate time or times for the purposes for which such payments are made, and after October 1, 1977, if the prepayments made by the borrower are not sufficient to pay the amount due, advances may be made by the Secretary to pay these costs in full, which advances shall be charged to the account of the borrower and bear interest and be payable in a timely fashion not to exceed two years, as determined by the Secretary'' for ''Such payments shall be held in escrow by the Secretary and paid out by him at the appropriate time or times for the purposes for which such payments are made''.

1974—Subsec. (a)(1). Pub. L. 93–383, §501, inserted references to the territories and possessions of the United States and the Trust Territory of the Pacific Islands.

Subsec. (a)(4)(B). Pub. L. 93–383, §502(1), inserted provisions relating to combining of indebtedness with a loan for improvement, rehabilitation, or repairs.

Subsec. (a)(4)(C). Pub. L. 93–383, §502(2), substituted provisions relating to incursion of indebtedness by the applicant at least five years prior to his applying under this clause for provisions relating to indebtedness not held or insured by the United States or any agency.

Subsec. (a)(4)(D). Pub. L. 93–383, §502(2), struck out subpar. (D) which related to indebtedness incurred prior to enactment of clause.

Subsec. (b)(2). Pub. L. 93–383, §503, substituted ''this subchapter'' for ''sections 1472 and 1474 of this title''.

Subsec. (c). Pub. L. 93–383, §520, inserted provisions relating to applications of a State or local public agency.

Subsec. (e). Pub. L. 93–383, §505(a), added subsec. (e).

1970—Subsec. (b)(2). Pub. L. 91–609 substituted ''sections 1472 and 1473 of this title, the terms 'owner' and 'mortgage' shall be deemed to include, respectively, the lessee of'' for ''this subchapter, the terms 'owner', 'farm', and 'mortgage' shall be deemed to include, respectively, the lessee of, the land included in''. The words '', the land included in'' were improvidently omitted.

1966—Subsec. (a)(1) to (3). Pub. L. 89–754, §801, struck out ''previously occupied'' before ''buildings and land''

in cl. (1), ''buildings and the purchase of land'' in cl. (2), and ''dwellings and related facilities'' in cl. (3).

Subsec. (a)(4). Pub. L. 89–754, § 807(a), added cl. (4).

Subsec. (c)(1). Pub. L. 89–754, § 807(b), inserted as a condition of eligibility that the applicant be the owner of a farm or other real estate in a rural area who needs refinancing of indebtedness described in subsec. (a)(4) of this section.

1965—Subsec. (a). Pub. L. 89–117, § 1001(a), authorized the extension of formal assistance to owners of farms to purchase previously occupied buildings and land constituting a minimum adequate site, to owners of other real estate in rural areas for the construction, improvement, alteration, or repair of dwellings, related facilities, and farm buildings, and to rural residents for such purposes and for the purchase of previously occupied buildings and the purchase of land constituting a minimum adequate site.

Subsec. (c). Pub. L. 89–117, § 1001(b), inserted ''or a rural resident'' in cl. (1) after ''or that he is the owner of other real estate in a rural area''.

1962—Subsec. (a)(3). Pub. L. 87–723, § 4(a)(1)(A), added cl. (3).

Subsec. (b)(3). Pub. L. 87–723, § 4(a)(1)(B), added par. (3).

Subsec. (c)(1). Pub. L. 87–723, § 4(a)(1)(C), inserted provisions requiring the applicant for assistance to show in the alternative that he is an elderly person in a rural area without an adequate dwelling or related facilities for his own use.

1961—Subsec. (a). Pub. L. 87–70, § 803(a), authorized assistance to owners of other real estate in rural areas to enable them to provide dwellings and related facilities for their own use and buildings adequate for their farming operations.

Subsec. (b). Pub. L. 87–70, § 801(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 87–70, § 803(b), permitted the applicant to show that he is the owner of other real estate in a rural area without an adequate dwelling or related facilities for his own use or buildings adequate for his farming operations.

Subsec. (d). Pub. L. 87–70, § 803(c), added subsec. (d).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 302(b)(2) of Pub. L. 100–242 provided that: ''The amendment made by paragraph (1) [amending this section] shall be applicable to any determination of eligibility for assistance under title V of the Housing Act of 1949 [this subchapter] made on or after the date of the enactment of this Act [Feb. 5, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99–272.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PERFORMANCE GOALS FOR FARMERS HOME ADMINISTRATION

Section 925(b) of Pub. L. 102–550 provided that:

''(1) IN GENERAL.—The Secretary of Agriculture may establish performance goals for the major housing programs of the Farmers Home Administration in order to measure progress towards meeting the objectives of national housing policy.

''(2) FORM OF GOALS.—The performance goals referred to in paragraph (1) shall be expressed in terms sufficient to measure progress.

''(3) REPORT.—The Secretary of Agriculture shall prepare a report to the Congress on the progress made in attaining the performance goals for each program, citing the actual results achieved in such program for the previous year.

''(4) FAILURE TO MEET GOALS.—If a performance standard or goal has not been met, the report under paragraph (3) shall include an explanation of why the goal was not met, propose plans for achieving the performance goal, and recommend any legislative or regulatory changes necessary for achievement of the goal.''

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under section 925(b)(3) of Pub. L. 102–550, set out above, is listed in item 12 on page 47), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

§ 1472. Loans for housing and buildings on adequate farms

(a) Terms of loan

(1) If the Secretary determines that an applicant is eligible for assistance as provided in section 1471 of this title and that the applicant has the ability to repay in full the sum to be loaned, with interest, giving due consideration to the income and earning capacity of the applicant and his family from the farm and other sources, and the maintenance of a reasonable standard of living for the owner and the occupants of said farm, a loan may be made by the Secretary to said applicant for a period of not to exceed thirty-three years from the making of the loan with interest. The Secretary may accept the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability. At the borrower's option, the borrower may prepay to the Secretary as escrow agent, on terms and conditions prescribed by him, such taxes, insurance, and other expenses as the Secretary may require in accordance with section 1471(e) of this title.

(2) The Secretary may extend the period of any loan made under this section if the Secretary determines that such extension is necessary to permit the making of such loan to any person whose income does not exceed 60 per centum of the median income for the area and who would otherwise be denied such loan because the payments required under a shorter period would exceed the financial capacity of such person. The aggregate period for which any loan may be extended under this paragraph may not exceed 5 years.

(3)(A) Notwithstanding any other provision of this subchapter, a loan may be made under this section for the purchase of a dwelling located on land owned by a community land trust, if the borrower and the loan otherwise meet the requirements applicable to loans under this section.

(B) For purposes of this paragraph, the term ''community land trust'' means a community housing development organization as such term is defined in section 12704 of this title (except

that the requirements under section 12704(6)(C) of this title and section 12704(6)(D) of this title shall not apply for purposes of this paragraph)—

(i) that is not sponsored by a for-profit organization;

(ii) that is established to carry out the activities under clause (iii);

(iii) that—

(I) acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

(II) transfers ownership of any structural improvements located on such leased parcels to the lessees; and

(III) retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity; and

(iv) that has its corporate membership open to any adult resident of a particular geographic area specified in the bylaws of the organization.

(b) Provisions of loan instrument

The instruments under which the loan is made and the security given shall—

(1) provide for security upon the applicant's equity in the farm or such other security or collateral, if any, as may be found necessary by the Secretary reasonably to assure repayment of the indebtedness;

(2) provide for the repayment of principal and interest in accordance with schedules and repayment plans prescribed by the Secretary, except that any prepayment of a loan made or insured under section 1484 or 1485 of this title shall be subject to the provisions of subsection (c) of this section;

(3) except for guaranteed loans, contain the agreement of the borrower that he will, at the request of the Secretary, proceed with diligence to refinance the balance of the indebtedness through cooperative or other responsible private credit sources whenever the Secretary determines, in the light of the borrower's circumstances, including his earning capacity and the income from the farm, that he is able to do so upon reasonable terms and conditions;

(4) be in such form and contain such covenants as the Secretary shall prescribe to secure the payment of the loan with interest, protect the security, and assure that the farm will be maintained in repair and that waste and exhaustion of the farm will be prevented.

(c) Prepayment and refinancing provisions

(1)(A) The Secretary may not accept an offer to prepay, or request refinancing in accordance with subsection (b)(3) of this section of, any loan made or insured under section 1484 or 1485 of this title pursuant to a contract entered into after December 21, 1979, but before December 15, 1989, unless the Secretary takes appropriate action which will obligate the borrower (and successors in interest thereof) to utilize the assisted housing and related facilities for the purposes specified in section 1484 or 1485 of this title, as the case may be, for a period of—

(i) fifteen years from the date on which the loan was made in the case of a loan made or insured pursuant to a contract entered into after December 21, 1979, but before December 15, 1989, and utilized for housing and related facilities which have not received assistance under section 1490a(a)(1)(B), (a)(2), or (5) of this title or section 1437f of this title; or

(ii) twenty years from the date on which the loan was made in the case of any other such loan;

or until the Secretary determines (prior to the end of such period) that there is no longer a need for such housing and related facilities to be so utilized or that Federal or other financial assistance provided to the residents of such housing will no longer be provided.

(B) The Secretary may not accept an offer to prepay, or request refinancing in accordance with subsection (b)(3) of this section of, any initial loan made or insured under section 1485 of this title pursuant to a contract entered into on or after December 15, 1989.

(2) If any loan which was made or insured under section 1484 or 1485 of this title pursuant to a contract entered into prior to December 15, 1989, is prepaid or refinanced on or after October 8, 1980, and tenants of the housing and related facilities financed with such loan are displaced due to a change in the use of the housing, or to an increase in rental or other charges, as a result of such prepayment or refinancing, the Secretary shall provide such tenants a priority for relocation in alternative housing assisted pursuant to this subchapter.

(3) NOTICE OF OFFER TO PREPAY.—Not less than 30 days after receiving an offer to prepay any loan made or insured under section 1484 or 1485 of this title, the Secretary shall provide written notice of the offer or request to the tenants of the housing and related facilities involved, to interested nonprofit organizations, and to any appropriate State and local agencies.

(4)(A) AGREEMENT BY BORROWER TO EXTEND LOW INCOME USE.—Before accepting any offer to prepay, or requesting refinancing in accordance with subsection (b)(3) of this section of, any loan made or insured under section 1484 or 1485 of this title pursuant to a contract entered into prior to December 15, 1989, the Secretary shall make reasonable efforts to enter into an agreement with the borrower under which the borrower will make a binding commitment to extend the low income use of the assisted housing and related facilities involved for not less than the 20-year period beginning on the date on which the agreement is executed.

(B) ASSISTANCE AVAILABLE TO BORROWER TO EXTEND LOW INCOME USE.—To the extent of amounts provided in appropriation Acts, the agreement under subparagraph (A) may provide for 1 or more of the following forms of assistance that the Secretary, after taking into account local market conditions, determines to be necessary to extend the low income use of the housing and related facilities involved:

(i) Increase in the rate of return on investment.

(ii) Reduction of the interest rate on the loan through the provision of interest credits under section 1490a(a)(1)(B) of this title, or additional assistance or an increase in assistance provided under section 1490a(a)(5) of this title.

(iii) Additional rental assistance, or an increase in assistance provided under existing contracts, under section 1490a(a)(2) or 1490a(a)(5) of this title or under section 1437f of this title.

(iv) An equity loan to the borrower under paragraphs (1) and (2) of section 1485(c) of this title or under paragraphs (1) and (2) of section 1484(j)[1] of this title, except that an equity loan referred to in this clause may not be made available after August 6, 1996, unless the Secretary determines that the other incentives available under this subparagraph are not adequate to provide a fair return on the investment of the borrower, to prevent prepayment of the loan insured under section 1484 or 1485 of this title, or to prevent the displacement of tenants of the housing for which the loan was made.

(v) Incremental rental assistance in connection with loans under clauses (ii) and (iv) to the extent necessary to avoid increases in the rental payments of current tenants not receiving rental assistance under section 1490a(a)(2) of this title or under section 1437f of this title, or current tenants of projects not assisted under section 1490a(a)(5) of this title.

(vi) In the case of a project that has received rental assistance under section 1437f of this title, permitting the owner to receive rent in excess of the amount determined necessary by the Secretary to defray the cost of long-term repair or maintenance of such a project.

(C) APPROVAL OF ASSISTANCE.—The Secretary may approve assistance under subparagraph (B) for assisted housing only if the restrictive period has expired for any loan for the housing made or insured under section 1484 or 1485 of this title pursuant to a contract entered into after December 21, 1979, but before December 15, 1989, and the Secretary determines that the combination of assistance provided—

(i) is necessary to provide a fair return on the investment of the borrower; and

(ii) is the least costly alternative for the Federal Government that is consistent with carrying out the purposes of this subsection.

(5)(A) OFFER TO SELL TO NONPROFIT ORGANIZATIONS AND PUBLIC AGENCIES.—

(i) IN GENERAL.—If the Secretary determines after a reasonable period that an agreement will not be entered into with a borrower under paragraph (4), the Secretary shall require the borrower (except as provided in subparagraph (G)) to offer to sell the assisted housing and related facilities involved to any qualified nonprofit organization or public agency at a fair market value determined by 2 independent appraisers, one of whom shall be selected by the Secretary and one of whom shall be selected by the borrower. If the 2 appraisers fail to agree on the fair market value, the Secretary and the borrower shall jointly select a third appraiser, whose appraisal shall be binding on the Secretary and the borrower.

(ii) PERIOD FOR WHICH REQUIREMENT APPLICABLE.—If, upon the expiration of 180 days after an offer is made to sell housing and related facilities under clause (i), no qualified nonprofit organization or public agency has made a bona fide offer to purchase, the Secretary may accept the offer to prepay, or may request refinancing in accordance with subsection (b)(3) of this section of, the loan. This clause shall apply only when funds are available for purposes of carrying out a transfer under this paragraph.

(B) QUALIFIED NONPROFIT ORGANIZATIONS AND PUBLIC AGENCIES.—

(i) LOCAL NONPROFIT ORGANIZATION OR PUBLIC AGENCY.—A local nonprofit organization or public agency may purchase housing and related facilities under this paragraph only if—

(I) the organization or agency is determined by the Secretary to be capable of managing the housing and related facilities (either directly or through a contract) for the remaining useful life of the housing and related facilities; and

(II) the organization or agency has entered into an agreement that obligates it (and successors in interest thereof) to maintain the housing and related facilities as affordable for very low-income families or persons and low income families or persons for the remaining useful life of the housing and related facilities.

(ii) NATIONAL OR REGIONAL NONPROFIT ORGANIZATION.—If the Secretary determines that there is no local nonprofit organization or public agency qualified to purchase the housing and related facilities involved, the Secretary shall require the borrower to offer to sell the assisted housing and related facilities to an existing qualified national or regional nonprofit organization.

(iii) SELECTION OF QUALIFIED PURCHASER.—The Secretary shall promulgate regulations that establish criteria for selecting a qualified nonprofit organization or public agency to purchase housing and related facilities when more than 1 such organization or agency has made a bona fide offer. Such regulations shall give a priority to those organizations or agencies with the greatest experience in developing or managing low income housing or community development projects and with the longest record of service to the community.

(C) FINANCING OF SALE.—To facilitate the sale described in subparagraph (A), the Secretary shall—

(i) to the extent provided in appropriation Acts, make an advance to the nonprofit organization or public agency whose offer to purchase is accepted under this paragraph to cover any direct costs (other than the purchase price) incurred by the organization or agency in purchasing and assuming responsibility for the housing and related facilities involved;

(ii) approve the assumption, by the nonprofit organization or public agency involved, of the loan made or insured under section 1484 or 1485 of this title;

(iii) to the extent provided in appropriation Acts, transfer any rental assistance payments that are received under section 1490a(a)(2)(A) of this title or under section 1437f of this title,

[1] See References in Text note below.

or any assistance payments received under section 1490a(a)(5) of this title, with respect to the housing and related facilities involved; and

(iv) to the extent provided in appropriation Acts, provide a loan under section 1485(c)(3) of this title to the nonprofit organization or public agency whose offer to purchase is accepted under this paragraph to enable the organization or agency to purchase the housing and related facilities involved.

(D) RENT LIMITATION AND ASSISTANCE.—The Secretary shall, to the extent provided in appropriation Acts, provide to each nonprofit organization or public agency purchasing housing and related facilities under this paragraph financial assistance (in the form of monthly payments or forgiveness of debt) in an amount necessary to ensure that the monthly rent payment made by each low income family or person residing in the housing does not exceed the maximum rent permitted under section 1490a(a)(2)(A) of this title or, in the case of housing assisted under section 1490a(a)(5) of this title, does not exceed the rents established for the project under such section.

(E) RESTRICTION ON SUBSEQUENT TRANSFERS.—Except as provided in subparagraph (B)(ii), the Secretary may not approve the transfer of any housing and related facilities purchased under this paragraph during the remaining useful life of the housing and related facilities, unless the Secretary determines that—

(i) the transfer will further the provision of housing and related facilities for low income families or persons; or

(ii) there is no longer a need for such housing and related facilities by low income families or persons.

(F) GENERAL RESTRICTION ON PREPAYMENTS AND REFINANCINGS.—Following the transfer of the maximum number of dwelling units set forth in subparagraph (H)(i) in any fiscal year or the maximum number of dwelling units for which budget authority is available in any fiscal year, the Secretary may not accept in such fiscal year any offer to prepay, or request refinancing in accordance with subsection (b)(3) of this section of, any loan made or insured under section 1484 or 1485 of this title pursuant to a contract entered into prior to December 15, 1989, except in accordance with subparagraph (G). The limitation established in this subparagraph shall not apply to an offer to prepay, or request to refinance, if, following the date on which such offer or request is made (or following February 5, 1988, whichever occurs later) a 15-month period expires during which no budget authority is available to carry out this paragraph. For purposes of this subparagraph, the Secretary shall allocate budget authority under this paragraph in the order in which offers to prepay, or request to refinance, are made.

(G) EXCEPTION.—This paragraph shall not apply to any offer to prepay, or any request to refinance in accordance with subsection (b)(3) of this section, any loan made or insured under section 1484 or 1485 of this title pursuant to a contract entered into prior to December 15, 1989, if—

(i) the borrower enters into an agreement with the Secretary that obligates the borrower (and successors in interest thereof)—

(I) to utilize the assisted housing and related facilities for the purposes specified in section 1484 or 1485 of this title, as the case may be, for a period determined by the Secretary (but not less than the period described in paragraph (1)(B) calculated from the date on which the loan is made or insured); and

(II) upon termination of the period described in paragraph (1)(B), to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public agency in accordance with this paragraph; or

(ii) the Secretary determines that housing opportunities of minorities will not be materially affected as a result of the prepayment or refinancing, and that—

(I) the borrower (and any successor in interest thereof) are obligated to ensure that tenants of the housing and related facilities financed with the loan will not be displaced due to a change in the use of the housing, or to an increase in rental or other charges, as a result of the prepayment or refinancing; or

(II) there is an adequate supply of safe, decent, and affordable rental housing within the market area of the housing and related facilities and sufficient actions have been taken to ensure that the rental housing will be made available to each tenant upon displacement.

(H) FUNDING.—

(i) BUDGET LIMITATION.—Not more than 5,000 dwelling units may be transferred under this paragraph in any fiscal year, and the budget authority that may be provided under this paragraph for any fiscal year may not exceed the amounts required to carry out this paragraph with respect to such number.

(ii) REIMBURSEMENT OF RURAL HOUSING INSURANCE FUND.—There are authorized to be appropriated to the Rural Housing Insurance Fund such sums as may be necessary to reimburse the Fund for financial assistance provided under this paragraph, paragraph (4), and section 1487(j)(7) of this title.

(I) DEFINITIONS.—For purposes of this paragraph:

(i) LOCAL NONPROFIT ORGANIZATION.—The term ''local nonprofit organization'' means a nonprofit organization that—

(I) has a broad based board reflecting various interests in the community or trade area; and

(II) is a not-for-profit charitable organization whose principal purposes include developing or managing low income housing or community development projects.

(ii) NONPROFIT ORGANIZATION.—The term ''nonprofit organization'' means any private organization—

(I) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(II) that is approved by the Secretary as to financial responsibility; and

(III) that does not have among its officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such an interest) in loans financed under section 1485 of this title that have been prepaid.

(J) REGULATIONS.—Notwithstanding section 1490n of this title, the Secretary shall issue final regulations to carry out this paragraph not later than 60 days after February 5, 1988. The Secretary shall provide for the regulations to take effect not later than 45 days after the date on which the regulations are issued.

(d) Dwelling units available to very low-income families or persons

On and after November 30, 1983—

(1) not less than 40 percent of the funds approved in appropriation Acts for use under this section shall be set aside and made available only for very low-income families or persons; and

(2) not less than 30 percent of the funds allocated to each State under this section shall be available only for very low-income families or persons.

(e) Manufactured homes; qualifications for loans made or insured; energy conservation requirements

(1) A loan which may be made or insured under this section with respect to housing shall be made or insured with respect to a manufactured home or with respect to a manufactured home and lot, whether such home or such home and lot is real property, personal property, or mixed real and personal property, if—

(A) the manufactured home meets the standards prescribed pursuant to title VI of the Housing and Community Development Act of 1974 [42 U.S.C. 5401 et seq.];

(B) the manufactured home, or the manufactured home and lot, meets the installation, structural, and site requirements which would apply under title II of the National Housing Act [12 U.S.C. 1707 et seq.]; and

(C) the manufactured home meets the energy conserving requirements established under paragraph (2), or until the energy conserving requirements are established under paragraph (2), the manufactured home meets the energy conserving requirements applicable to housing other than manufactured housing financed under this subchapter.

(2) Energy conserving requirements established by the Secretary for the purpose of paragraph (1)(C) shall—

(A) reduce the operating costs for a borrower by maximizing the energy savings and be cost-effective over the life of the manufactured home or the term of the loan, whichever is shorter, taking into account variations in climate, types of energy used, the cost to modify the home to meet such requirements, and the estimated value of the energy saved over the term of the mortgage; and

(B) be established so that the increase in the annual loan payment resulting from the added energy conserving requirements in excess of those required by the standards prescribed under title VI of the Housing and Community Development Act of 1974 [42 U.S.C. 5401 et seq.] shall not exceed the projected savings in annual energy costs.

(3) A loan that may be made or insured under this section with respect to a manufactured home on a permanent foundation, or a manufactured home on a permanent foundation and a lot, shall be repayable over the same period as would be applicable under section 203(b) of the National Housing Act [12 U.S.C. 1709(b)].

(f) Remote rural areas

(1) Loan supplements

The Secretary may supplement any loan under this section to finance housing located in a remote rural area or on tribal allotted or Indian trust land with a grant in an amount not greater than the amount by which the reasonable land acquisition and construction costs of the security property exceeds the appraised value of such property.

(2) Prohibition

The Secretary may not refuse to make, insure, or guarantee a loan that otherwise meets the requirements under this section solely on the basis that the housing involved is located in an area that is excessively rural in character or excessively remote or on tribal allotted or Indian trust land.

(g) Deferred mortgage demonstration

(1) Authority

With respect to families or persons otherwise eligible for assistance under subsection (d) of this section but having incomes below the amount determined to qualify for a loan under this section, the Secretary may defer mortgage payments beyond the amount affordable at 1 percent interest, taking into consideration income, taxes and insurance. Deferred mortgage payments shall be converted to payment status when the ability of the borrower to repay improves. Deferred amounts shall not exceed 25 percent of the amount of the payment due at 1 percent interest and shall be subject to recapture.

(2) Interest

Interest on principal deferred shall be set at 1 percent and any interest payments deferred under this subsection shall not be treated as principal in calculating indebtedness.

(3) Funding

Subject to approval in appropriations Acts, not more than 10 percent of the amount approved for each of fiscal years 1993 and 1994 for loans under this section may be used to carry out this subsection.

(h) Doug Bereuter section 502 single family housing loan guarantee program

(1) Short title

This subsection may be cited as the ''Doug Bereuter Section 502 Single Family Housing Loan Guarantee Act''.

(2) Authority

The Secretary shall, to the extent provided in appropriation Acts, provide guaranteed loans in accordance with this section, section

1487(d) of this title, and the last sentence of section 1490a(a)(1)(A) of this title, except as modified by the provisions of this subsection. Loans shall be guaranteed under this subsection in an amount equal to 90 percent of the loan.

(3) Eligible borrowers

Loans guaranteed pursuant to this subsection shall be made only to borrowers who are low or moderate income families or persons, whose incomes do not exceed 115 percent of the median income of the area, as determined by the Secretary.

(4) Eligible housing

Loans may be guaranteed pursuant to this subsection only if the loan is used to acquire or construct a single-family residence that is—

(A) to be used as the principal residence of the borrower;

(B) eligible for assistance under this section, section 203(b) of the National Housing Act [12 U.S.C. 1709(b)], or chapter 37 of title 38; and

(C) located in a rural area.

(5) Priority and counseling for first-time homebuyers

(A) In providing guaranteed loans under this subsection, the Secretary shall give priority to first-time homebuyers (as defined in paragraph (13)).

(B) The Secretary may require that, as a condition of receiving a guaranteed loan pursuant to this subsection, a borrower who is a first-time homebuyer successfully complete a program of homeownership counseling under section 1701x(a)(1)(iii) of title 12 and obtain certification from the provider of the program that the borrower is adequately prepared for the obligations of homeownership.

(6) Eligible lenders

Guaranteed loans pursuant to this subsection may be made only by lenders approved by and meeting qualifications established by the Secretary.

(7) Loan terms

Loans guaranteed pursuant to this subsection shall—

(A) be made for a term not to exceed 30 years;

(B) involve a rate of interest that is fixed over the term of the loan and does not exceed the rate for loans guaranteed under chapter 37 of title 38 or comparable loans in the area that are not guaranteed; and

(C) involve a principal obligation (including initial service charges, appraisal, inspection, and other fees as the Secretary may approve)—

(i) for a first-time homebuyer, in any amount not in excess of 100 percent of the appraised value of the property as of the date the loan is accepted or the acquisition cost of the property, whichever is less, plus the guarantee fee as authorized by subsection (h)(7)[2] of this section; and

(ii) for any borrower other than a first-time homebuyer, in an amount not in excess of the percentage of the property or the acquisition cost of the property that the Secretary shall determine, such percentage or cost in any event not to exceed 100 percent of the appraised value of the property as of the date the loan is accepted or the acquisition cost of the property, whichever is less, plus the guarantee fee as authorized by subsection (h)(7)[2] of this section.

(8) Guarantee fee

With respect to a guaranteed loan under this subsection, the Secretary may collect from the lender at the time of issuance of the guarantee a fee equal to not more than 1 percent of the principal obligation of the loan.

(9) Refinancing

Any guaranteed loan under this subsection may be refinanced and extended in accordance with terms and conditions that the Secretary shall prescribe, but in no event for an additional amount or term which exceeds the limitations under this subsection.

(10) Nonassumption

Notwithstanding the transfer of property for which a guaranteed loan under this subsection was made, the borrower of a guaranteed loan under this subsection may not be relieved of liability with respect to the loan.

(11) Geographical targeting

In providing guaranteed loans under this subsection, the Secretary shall establish standards to target and give priority to areas that have a demonstrated need for additional sources of mortgage financing for low and moderate income families.

(12) Allocation

The Secretary shall provide that, in each fiscal year, guaranteed loans under this subsection shall be allocated among the States on the basis of the need of eligible borrowers in each State for such loans in comparison with the need of eligible borrowers for such loans among all States.

(13) Definitions

For purposes of this subsection:

(A) The term ''displaced homemaker'' means an individual who—

(i) is an adult;

(ii) has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and

(iii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(B) The term ''first-time homebuyer'' means any individual who (and whose spouse) has had no present ownership in a principal residence during the 3-year period ending on the date of purchase of the property acquired with a guaranteed loan under this subsection except that—

(i) any individual who is a displaced homemaker may not be excluded from con-

[2] So in original. Probably should be subsection ''(h)(8)''.

sideration as a first-time homebuyer under this subparagraph on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse; and

(ii) any individual who is a single parent may not be excluded from consideration as a first-time homebuyer under this subparagraph on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

(C) The term ''single parent'' means an individual who—

(i) is unmarried or legally separated from a spouse; and

(ii)(I) has 1 or more minor children for whom the individual has custody or joint custody; or

(II) is pregnant.

(D) The term ''State'' means the States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific, and any other possession of the United States.

(14) Guarantees for refinancing loans

(A) In general

Upon the request of the borrower, the Secretary shall, to the extent provided in appropriation Acts and subject to subparagraph (F), guarantee a loan that is made to refinance an existing loan that is made under this section or guaranteed under this subsection, and that the Secretary determines complies with the requirements of this paragraph.

(B) Interest rate

To be eligible for a guarantee under this paragraph, the refinancing loan shall have a rate of interest that is fixed over the term of the loan and does not exceed the interest rate of the loan being refinanced.

(C) Security

To be eligible for a guarantee under this paragraph, the refinancing loan shall be secured by the same single-family residence as was the loan being refinanced, which shall be owned by the borrower and occupied by the borrower as the principal residence of the borrower.

(D) Amount

To be eligible for a guarantee under this paragraph, the principal obligation under the refinancing loan shall not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs as may be authorized by the Secretary, which shall include a discount not exceeding 200 basis points and an origination fee not exceeding such amount as the Secretary shall prescribe.

(E) Other requirements

The provisions of the last sentence of paragraph (2) and paragraphs (3), (6), (7)(A), (8), and (10) shall apply to loans guaranteed under this paragraph, and no other provisions of paragraphs (2) through (13) shall apply to such loans.

(F) Authority to establish limitation

The Secretary may establish limitations on the number of loans guaranteed under this paragraph, which shall be based on market conditions and other factors as the Secretary considers appropriate.

(July 15, 1949, ch. 338, title V, § 502, 63 Stat. 433; Pub. L. 87–70, title VIII, § 801(b), June 30, 1961, 75 Stat. 186; Pub. L. 87–723, § 4(a)(2), Sept. 28, 1962, 76 Stat. 671; Pub. L. 89–117, title X, § 1002, Aug. 10, 1965, 79 Stat. 497; Pub. L. 89–754, title VIII, § 802, Nov. 3, 1966, 80 Stat. 1282; Pub. L. 93–383, title V, § 505(b), Aug. 22, 1974, 88 Stat. 693; Pub. L. 95–128, title V, § 502(a), Oct. 12, 1977, 91 Stat. 1139; Pub. L. 96–153, title V, § 503, Dec. 21, 1979, 93 Stat. 1134; Pub. L. 96–399, title V, § 514(a), Oct. 8, 1980, 94 Stat. 1671; Pub. L. 98–181, title V, § 503(a), (d), Nov. 30, 1983, 97 Stat. 1240, 1241; Pub. L. 98–479, title I, § 105(b)(1), Oct. 17, 1984, 98 Stat. 2226; Pub. L. 100–242, title II, § 241, title III, § 314, Feb. 5, 1988, 101 Stat. 1886, 1897; Pub. L. 100–628, title X, § 1028, Nov. 7, 1988, 102 Stat. 3271; Pub. L. 101–235, title II, § 206, Dec. 15, 1989, 103 Stat. 2041; Pub. L. 101–625, title VII, §§ 704(a), 705(a), 706(b), 719(b), Nov. 28, 1990, 104 Stat. 4283, 4284, 4297; Pub. L. 102–142, title VII, § 743(b), Oct. 28, 1991, 105 Stat. 915; Pub. L. 102–550, title VII, §§ 701(g), 702(a), 703, 704, 712(a), (b), Oct. 28, 1992, 106 Stat. 3834, 3835, 3841; Pub. L. 104–180, title VII, § 734(c)(3)(A), (B), Aug. 6, 1996, 110 Stat. 1602; Pub. L. 105–276, title V, § 599C(e)(2)(A), (f), Oct. 21, 1998, 112 Stat. 2662, 2663; Pub. L. 106–569, title VII, § 701, Dec. 27, 2000, 114 Stat. 3013; Pub. L. 108–285, § 3(b), (c), Aug. 2, 2004, 118 Stat. 917, 918; Pub. L. 108–447, div. A, title VII, § 726(b), Dec. 8, 2004, 118 Stat. 2842.)

REFERENCES IN TEXT

Section 1484(j) of this title, referred to in subsec. (c)(4)(B)(iv), was repealed by Pub. L. 106–569, title VII, § 708(b), Dec. 27, 2000, 114 Stat. 3018.

The Housing and Community Development Act of 1974, referred to in subsec. (e)(1)(A), (2)(B), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title VI of the Housing and Community Development Act of 1974 is known as the National Manufactured Housing Construction and Safety Standards Act of 1974 and is classified generally to chapter 70 (§ 5401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The National Housing Act, referred to in subsec. (e)(1)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the National Housing Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 502, referred to in subsec. (h), means section 502 of act July 15, 1949, ch. 338, which is classifed to this section.

AMENDMENTS

2004—Subsec. (h). Pub. L. 108–285, § 3(b)(3), substituted ''Doug Bereuter section 502 single family housing loan guarantee program'' for ''Guaranteed loans'' in heading.

Subsec. (h)(1) to (4). Pub. L. 108–285, § 3(b)(1), (2), added par. (1) and redesignated former pars. (1) to (3) as (2) to (4), respectively. Former par. (4) redesignated (5).

Subsec. (h)(5). Pub. L. 108–285, §3(b)(1), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (h)(5)(A). Pub. L. 108–285, §3(c)(1), substituted ''paragraph (13)'' for ''paragraph (12)(A)''.

Subsec. (h)(6). Pub. L. 108–285, §3(b)(1), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (h)(7). Pub. L. 108–285, §3(b)(1), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (h)(7)(C). Pub. L. 108–447, which directed insertion of '', plus the guarantee fee as authorized by subsection (h)(7) of this section'' after ''whichever is less'' in pars. (i) and (ii) of subsec. (h)(6)(C), was executed by making the insertion in cls. (i) and (ii) of par. (7)(C), to reflect the probable intent of Congress and the amendment by Pub. L. 108–285, §3(b)(1). See above.

Subsec. (h)(8) to (13). Pub. L. 108–285, §3(b)(1), redesignated pars. (7) to (12) as (8) to (13), respectively. Former par. (13) redesignated (14).

Subsec. (h)(14). Pub. L. 108–285, §3(b)(1), redesignated par. (13) as (14).

Subsec. (h)(14)(A). Pub. L. 108–285, §3(c)(2)(A), made technical amendment to heading in original Act.

Subsec. (h)(14)(E). Pub. L. 108–285, §3(c)(2)(B), substituted ''paragraph (2) and paragraphs (3), (6), (7)(A), (8), and (10)'' for ''paragraph (1) and paragraphs (2), (5), (6)(A), (7), and (9)'' and ''paragraphs (2) through (13)'' for ''paragraphs (1) through (12)''.

2000—Subsec. (h)(13). Pub. L. 106–569 added par. (13).

1998—Subsec. (c)(1)(A)(i). Pub. L. 105–276, §599C(e)(2)(A)(i), substituted '', (a)(2), or (5)'' for ''or (a)(2)''.

Subsec. (c)(4)(B)(ii). Pub. L. 105–276, §599C(e)(2)(A)(ii), inserted before period at end '', or additional assistance or an increase in assistance provided under section 1490a(a)(5) of this title''.

Subsec. (c)(4)(B)(iii). Pub. L. 105–276, §599C(e)(2)(A)(iii), was executed by inserting ''or 1490a(a)(5)'' after ''section 1490a(a)(2)'' to reflect the probable intent of Congress, notwithstanding the fact that the verb ''inserting'' was missing from the directory language.

Subsec. (c)(4)(B)(v). Pub. L. 105–276, §599C(e)(2)(A)(iv), inserted before period at end '', or current tenants of projects not assisted under section 1490a(a)(5) of this title''.

Subsec. (c)(5)(C)(iii). Pub. L. 105–276, §599C(e)(2)(A)(v), struck out comma after ''1490a(a)(2)(A) of this title'' and inserted ''or any assistance payments received under section 1490a(a)(5) of this title,'' before ''with respect''.

Subsec. (c)(5)(D). Pub. L. 105–276, §599C(e)(2)(A)(vi), inserted before period at end ''or, in the case of housing assisted under section 1490a(a)(5) of this title, does not exceed the rents established for the project under such section''.

Subsec. (h)(6)(C). Pub. L. 105–276, §599C(f), which directed the striking out of '', subject to the maximum dollar amount limitation of section 203(b)(2) of the National Housing Act'' each place it appeared, was executed by striking out '', subject to the maximum dollar limitation of section 203(b)(2) of the National Housing Act'' after ''whichever is less'' in cl. (i) and after ''Secretary shall determine'' in cl. (ii), to reflect the probable intent of Congress.

1996—Subsec. (c)(4)(B)(iv). Pub. L. 104–180, §734(c)(3)(A), inserted before period at end ''or under paragraphs (1) and (2) of section 1484(j) of this title, except that an equity loan referred to in this clause may not be made available after August 6, 1996, unless the Secretary determines that the other incentives available under this subparagraph are not adequate to provide a fair return on the investment of the borrower, to prevent prepayment of the loan insured under section 1484 or 1485 of this title, or to prevent the displacement of tenants of the housing for which the loan was made''.

Subsec. (c)(4)(C). Pub. L. 104–180, §734(c)(3)(B), in introductory provisions substituted ''The Secretary may approve assistance under subparagraph (B) for assisted housing only if the restrictive period has expired for any loan for the housing made or insured under section 1484 or 1485 of this title pursuant to a contract entered into after December 21, 1979, but before December 15, 1989, and the Secretary determines that the combination of assistance provided—'' for ''The Secretary may approve assistance under subparagraph (B) only if the Secretary determines that the combination of assistance provided—''.

1992—Subsec. (a)(3). Pub. L. 102–550, §702(a), added par. (3).

Subsec. (c)(2), (4)(A). Pub. L. 102–550, §712(a)(1), (2), substituted ''prior to December 15, 1989'' for ''before December 21, 1979''.

Subsec. (e)(4)(B)(vi). Pub. L. 102–550, §712(b), added cl. (vi).

Subsec. (e)(5)(F), (G). Pub. L. 102–550, §712(a)(3), (4), substituted ''prior to December 15, 1989'' for ''before December 21, 1979''.

Subsec. (f). Pub. L. 102–550, §704, inserted ''or on tribal allotted or Indian trust land'' in pars. (1) and (2).

Subsec. (g)(3). Pub. L. 102–550, §701(g), substituted ''1993 and 1994'' for ''1991 and 1992''.

Subsec. (h)(2). Pub. L. 102–550, §703, inserted ''115 percent of'' after ''exceed''.

1991—Subsec. (h)(3)(C). Pub. L. 102–142 struck out before period at end ''that is more than 25 miles from an urban area or densely populated area''.

1990—Subsec. (c)(1)(B). Pub. L. 101–625, §719(b), inserted ''initial'' after ''any''.

Subsec. (f). Pub. L. 101–625, §704(a), added subsec. (f).

Subsec. (g). Pub. L. 101–625, §705(a), added subsec. (g).

Subsec. (h). Pub. L. 101–625, §706(b), added subsec. (h).

1989—Subsec. (c)(1). Pub. L. 101–235, §206, designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, inserted ''but before December 15, 1989,'' after ''December 21, 1979,'' in introductory provisions and cl. (i), and added subpar. (B).

1988—Subsec. (c)(3). Pub. L. 100–242, §241, added par. (3).

Subsec. (c)(4). Pub. L. 100–242, §241, added par. (4).

Subsec. (c)(4)(B)(iv). Pub. L. 100–628, §1028(a), substituted ''paragraphs (1) and (2) of section 1485(c)'' for ''paragraphs (7) and (8) of section 1485(b)''.

Subsec. (c)(5). Pub. L. 100–242, §241, added par. (5).

Subsec. (c)(5)(B)(iii). Pub. L. 100–628, §1028(b), added cl. (iii).

Subsec. (c)(5)(I). Pub. L. 100–628, §1028(c), substituted ''Definitions'' for ''Definition'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the term 'nonprofit organization' means any private organization—

''(i) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; and

''(ii) that is approved by the Secretary as to financial responsibility.''

Subsec. (e)(3). Pub. L. 100–242, §314, added par. (3).

1984—Subsec. (d)(1). Pub. L. 98–479 substituted ''percent of the funds approved in appropriation Acts for use under this section shall be set aside and made available only for very low-income families or persons'' for ''per centum of the dwelling units financed under this section shall be available only for occupancy by very low-income families or persons''.

Subsec. (d)(2). Pub. L. 98–479 substituted ''percent of the funds allocated to each State under this section shall be available only for very low-income families or persons'' for ''per centum of the dwelling units in each State financed under this section shall be available only for occupancy by very low-income families or persons''.

1983—Subsec. (a)(1). Pub. L. 98–181, §503(d)(1), (2), designated existing provisions as par. (1) and substituted ''The Secretary may accept the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability. At the borrower's option, the borrower may prepay to the Secretary as escrow agent, on terms and conditions prescribed by him, such taxes, insurance, and other ex-

penses as the Secretary may require in accordance with section 1471(e) of this title'' for ''in the case of applicants described in clauses (1) and (2) of section 1471(a) of this title, at a rate not to exceed 5 per centum per annum on the unpaid balance of principal, and, in the case of applicants described in clause (3) of section 1471(a) of this title and applicants under sections 1473 and 1474 of this title, at a rate not to exceed 4 per centum per annum on such unpaid balance. Loans made or insured under this subchapter shall be conditioned on the borrower paying such fees and other charges as the Secretary may require and on the borrower prepaying to the Secretary as escrow agent, on terms and conditions prescribed by him, such taxes, insurance, and other expenses as the Secretary may require in accordance with section 1471(e) of this title. The Secretary may accept the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability''.

Subsec. (a)(2). Pub. L. 98–181, § 503(d)(3), added par. (2).

Subsecs. (d), (e). Pub. L. 98–181, § 503(a), added subsecs. (d) and (e).

1980—Subsec. (c). Pub. L. 96–399, in par. (1), substituted ''The Secretary may not accept'' for ''Except as provided in paragraph (2), the Secretary may not accept'', and ''entered into after'' for ''entered into before or after'' in two places, and in par. (2) substituted provisions granting priority for relocation to tenants displaced by virtue of prepayment or refinancing of loans on or after Oct. 8, 1980, for provisions relating to acceptance of an offer to prepay unless, after examination of the consequences of such offer, the Secretary determines that prepayment will result in displacement of tenants, and in the case of facilities containing more than ten units, will have an adverse effect on the supply of affordable and decent housing for low and moderate income and elderly persons.

1979—Subsec. (b)(2). Pub. L. 96–153, § 503(a), inserted provisions that prepayment of loans made or insured under section 1484 or 1485 of this title shall be subject to the provisions of subsec. (c) of this section.

Subsec. (c). Pub. L. 96–153, § 503(b), added subsec. (c).

1977—Subsec. (b)(3). Pub. L. 95–128 inserted introductory phrase ''except for guaranteed loans,''.

1974—Subsec. (a). Pub. L. 93–383 inserted provisions relating to the borrower prepaying to the Secretary as escrow agent taxes, insurance, and other expenses required by the Secretary in accordance with section 1471(e) of this title.

1966—Subsec. (a). Pub. L. 89–754 substituted ''The'' for ''In cases of applicants who are elderly persons, the'' in third sentence.

1965—Subsec. (a). Pub. L. 89–117 increased to 5 per centum the interest rate in the case of applicants described in clauses (1) and (2) of section 1471(a) of this title and also authorized the Secretary to charge fees on loans made or insured under this subchapter.

1962—Subsec. (a). Pub. L. 87–723 authorized the Secretary to accept, in the case of applicant's who are elderly persons, the personal liability of any person with adequate repayment ability who will cosign the applicant's note to compensate for any deficiency in the applicant's repayment ability.

1961—Subsec. (b)(1). Pub. L. 87–70 substituted ''or such other security'' for ''and such additional security''.

Effective Date of 1998 Amendment

Pub. L. 105–276, title V, § 599C(g), Oct. 21, 1998, 112 Stat. 2663, provided that: ''The amendments made by this section [amending this section and sections 1479, 1483 to 1485, 1490a, 1490j, and 1490p–2 of this title] are made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].''

Effective Date of 1984 Amendment

Section 105(b)(2) of Pub. L. 98–479 provided that: ''Notwithstanding any other provision of law, the provisions of section 502(d) of the Housing Act of 1949 [subsec. (d) of this section], as amended by paragraph (1), shall apply with respect to fiscal year 1985 and thereafter, and the provisions of such section, as so amended, may not be changed or superseded except by another provision of law which amends such section.''

Regulations

Section 704(b) of Pub. L. 101–625 provided that: ''Not later than the expiration of the 120-day period beginning on the date of enactment of this Act [Nov. 28, 1990], the Secretary of Agriculture shall issue any regulations necessary to carry out the amendment made by subsection (a) [amending this section].''

Section 705(b) of Pub. L. 101–625 provided that: ''Not later than the expiration of the 120-day period beginning on the date of enactment of this Act [Nov. 28, 1990], the Secretary of Agriculture shall issue any regulations necessary to carry out the amendment made by subsection (a) [amending this section].''

Section 706(d) of Pub. L. 101–625 provided that:

''(1) Proposed regulations and comment period.—Not later than 120 days after the date of the enactment of this Act [Nov. 28, 1990], the Secretary of Agriculture shall publish in the Federal Register proposed regulations to implement the amendments made by this section [amending this section and section 1701x of Title 12, Banks and Banking]. The Secretary shall receive comments regarding the regulations during the 30-day period beginning on the date of the publication of the proposed regulations.

''(2) Implementation.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Agriculture shall issue final regulations to implement the amendments made by this section. The Secretary shall provide for the regulations to take effect not later than 30 days after the date on which the regulations are issued.

''(3) Applicability.—The amendments made by this section shall not apply to guaranteed loans under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) made before the date on which the final regulations issued by the Secretary under paragraph (2) take effect.

''(4) Consultation.—In developing and promulgating the regulations under paragraphs (1) and (2), the Secretary of Agriculture shall consult with the chairperson of the Federal Agricultural Mortgage Corporation and shall solicit the views of borrowers, lenders, realtors, and homebuilders experienced and knowledgeable regarding housing in rural areas to provide that the regulations promulgated ensure that guaranteed loans pursuant to the amendments made by this section—

''(A) are made in a manner that is cost-effective; and

''(B) are made in a manner that reduces, to the extent practicable, the burden of administration and paperwork for borrowers and lenders.''

Termination of Trust Territory of the Pacific Islands

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

Congressional Findings for 2004 Amendment

Pub. L. 108–285, § 3(a), Aug. 2, 2004, 118 Stat. 917, provided that: ''The Congress finds that—

''(1) the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, see Tables for classification], enacted November 28, 1990, established the section 502 single family housing loan guarantee program of the Rural Housing Service of the United States Department of Agriculture;

''(2) Congressman Doug Bereuter of Nebraska was the legislative author of the single family housing loan guarantee program;

''(3) 316,625 single family loans have been guaranteed under the program since its implementation in 1991;

''(4) the program facilitates home ownership for low- to moderate-income borrowers in rural areas and nonmetropolitan communities who are unable to obtain conventional home mortgage financing; and

''(5) in 2003, the average income of a borrower with a loan guaranteed under the section 502 guarantee program was $34,124.''

MAXIMUM LEVEL FOR RURAL SINGLE FAMILY HOUSING ASSISTANCE

Pub. L. 108–447, div. A, title VII, §765, Dec. 8, 2004, 118 Stat. 2847, provided that: ''Notwithstanding any other provision of law, for any fiscal year and hereafter, in the case of a high cost isolated rural area in Alaska that is not connected to a road system, the maximum level for the single family housing assistance shall be 150 percent of the average income level in the metropolitan areas of the State and 115 percent of all other eligible areas of the State.''

Similar provisions were contained in the following appropriation acts:

Pub. L. 109–97, title VII, §754(3), Nov. 10, 2005, 119 Stat. 2157.

Pub. L. 108–199, div. A, title VII, §763, Jan. 23, 2004, 118 Stat. 39.

FEE FOR GUARANTEED LOANS

Pub. L. 106–387, §1(a) [title VII, §739], Oct. 28, 2000, 114 Stat. 1549, 1549A–34, provided that: ''Hereafter, notwithstanding section 502(h)(7) of the Housing Act of 1949 (42 U.S.C. 1472(h)(7)), the fee collected by the Secretary of Agriculture with respect to a guaranteed loan under such section 502(h) at the time of the issuance of such guarantee may be in an amount equal to not more than 2 percent of the principal obligation of the loan.''

INCOME LIMIT FOR BORROWERS

Pub. L. 106–387, §1(a) [title VII, §751], Oct. 28, 2000, 114 Stat. 1549, 1549A–41, provided that: ''Hereafter, the Secretary of Agriculture shall consider any borrower whose income does not exceed 115 percent of the median family income of the United States as meeting the eligibility requirements for a borrower contained in section 502(h)(2) of the Housing Act of 1949 (42 U.S.C. 1472(h)(2)).''

RURAL HOUSING LOAN GUARANTEES; FINDINGS AND PURPOSE

Section 706(a) of Pub. L. 101–625 provided that:

''(1) FINDINGS.—The Congress finds that—

''(A) the Federal Government should encourage support for homeownership through nonsubsidized mortgage loans guaranteed by the Secretary of Agriculture for the purchase of modest homes located in rural areas and small communities of the country that are not adequately served by private conventional, federally insured, or guaranteed mortgage credit providers; and

''(B) many rural areas contain disproportionate amounts of substandard housing in need of repair, but lack the necessary funding and support to modernize such housing through preservation.

''(2) PURPOSE.—The purpose of this section [amending this section and section 1701x of Title 12, Banks and Banking, and enacting provisions set out above] is to expand homeownership opportunities to low- and moderate-income residents of rural areas of the country through the establishment of guaranteed rural housing loans to be made available in rural locations where there is an insufficient availability of mortgage financing from other sources.''

RURAL HOUSING GUARANTEED LOAN DEMONSTRATION

Section 304 of Pub. L. 100–242, as amended by Pub. L. 100–628, title X, §1041(a), (b), Nov. 7, 1988, 102 Stat. 3272, provided for establishment by Secretary of Agriculture of a rural housing guaranteed loan demonstration to provide guaranteed loans in accordance with section 1487(d) of this title and last sentence of section 1490(a)(1)(A) of this title, authorized amount available for such loans, established loan criteria, directed Secretary to submit to Congress, as soon as practicable after Sept. 30, 1989, an interim report setting forth findings and recommendations as a result of the demonstration and a final report on such findings and recommendations as soon as practicable after Sept. 30, 1991, prohibited Secretary from providing any guaranteed loans after Sept. 30, 1991, except pursuant to a commitment entered into on or before such date, and excluded applicability of subsec. (d) of this section and second sentence of section 1487(e) of this title to loan demonstration.

PROHIBITION ON ACCEPTANCE OF PREPAYMENT OF CERTAIN LOANS

Pub. L. 100–71, title I, July 11, 1987, 101 Stat. 428, as amended by Pub. L. 100–122, §2(d), Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327, provided that: ''The limitations on loan prepayments contained in section 634 of the Agriculture, Rural Development, and Related Agencies Appropriations Act, 1987 [section 101(a) [title VI, §634] of Pub. L. 99–500 and 99–591, set out below] shall remain in effect through March 15, 1988.''

Pub. L. 99–500, §101(a) [title VI, §634], Oct. 18, 1986, 100 Stat. 1783, 1783–34, and Pub. L. 99–591, §101(a) [title VI, §634], Oct. 30, 1986, 100 Stat. 3341, 3341–34, provided that: ''Notwithstanding any other provision of law, including section 502(c)(2) of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) [subsec. (c)(2) of this section], none of the funds appropriated under this or any other Act shall be used prior to June 30, 1987 to accept prepayment of any loan made under section 515 of the Housing Act of 1949 [section 1485 of this title], unless such loan was made at least twenty years prior to the date of prepayment or, for loans made before December 21, 1979, the Secretary makes a determination that a supply of adequate, comparable housing is available in the community, or that prepayment of such loans will not result in a substantial increase in rents to tenants in residence upon date of prepayment or displacement of such tenants.''

STUDY AND REPORT OF COMPARISON OF CONSTRUCTION COSTS AND ENERGY SAVINGS BETWEEN MANUFACTURED HOMES BUILT UNDER NATIONAL MANUFACTURED HOUSING SAFETY STANDARDS AND OTHER HOMES

Section 503(b) of Pub. L. 98–181 provided that: ''Within 18 months from the issuance by the Secretary of Agriculture of regulations under section 502(e)(2) of the Housing Act of 1949 [subsec. (e)(2) of this section], the Secretary of Energy, in consultation with the Secretary of Housing and Urban Development and the Secretary of Agriculture, shall conduct a study and transmit to the Congress a report that compares the increased construction costs, actual annual energy use, and the projected value of energy saved over the expected life of the home or the mortgage term, whichever is shorter, of manufactured homes which are financed under titles I and II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.], or under title V of the Housing Act of 1949 [this subchapter] and which are built according to national manufactured housing safety standards with other homes insured under either such Act.''

STUDY AND REPORT TO CONGRESS OF ADVERSE EFFECTS ON HOUSING OF PREPAYMENT OF LOANS

Section 514(b) of Pub. L. 96–399 required Secretary of Agriculture to conduct a study of, and report to Congress not later than 6 months after Oct. 8, 1980, on any adverse effects the amendments made by subsection (a) [amending this section] may have on housing, particularly for the elderly and persons of low income.

§ 1473. Loans for housing and buildings on potentially adequate farms; conditions and terms

If the Secretary determines (a) that, because of the inadequacy of the income of an eligible applicant from the farm to be improved and from other sources, said applicant may not reasonably be expected to make annual repayments of principal and interest in an amount sufficient to repay the loan in full within the period of time prescribed by the Secretary as authorized in this subchapter; (b) that the income of the applicant may be sufficiently increased within a period of not to exceed five years by improvement or enlargement of the farm or an adjustment of the farm practices or methods; and (c) that the applicant has adopted and may reasonably be expected to put into effect a plan of farm improvement, enlargement, or adjusted practices or production which, in the opinion of the Secretary, will increase the applicant's income from said farm within a period of not to exceed five years to the extent that the applicant may be expected thereafter to make annual repayments of principal and interest sufficient to repay the balance of the indebtedness less payments in cash and credits for the contributions to be made by the Secretary as hereinafter provided, the Secretary may make a loan in an amount necessary to provide adequate farm dwellings and buildings on said farm under the terms and conditions prescribed in section 1472 of this title. In addition, the Secretary may agree with the borrower to make annual contributions during the said five-year period in the form of credits on the borrower's indebtedness in an amount not to exceed the annual installment of interest and 50 per centum of the principal payments accruing during any installment year up to and including the fifth installment year, subject to the conditions that the borrower's income is, in fact, insufficient to enable the borrower to make payments in accordance with the plan or schedule prescribed by the Secretary and that the borrower pursues his plan of farm reorganization and improvements or enlargement with due diligence.

Except as provided in title 11, this agreement with respect to credits or principal and interest upon the borrower's indebtedness shall not be assignable nor accrue to the benefit of any third party without the written consent of the Secretary and the Secretary shall have the right, at his option, to cancel the agreement upon the sale of the farm or the execution or creation of any lien thereon subsequent to the lien given to the Secretary, or to refuse to release the lien given to the Secretary except upon payment in cash of the entire original principal plus accrued interest thereon less actual cash payments of principal and interest when the Secretary determines that the release of the lien would permit the benefits of this section to accrue to a person not eligible to receive such benefits.

(July 15, 1949, ch. 338, title V, § 503, 63 Stat. 434; Pub. L. 95–598, title III, § 329, Nov. 6, 1978, 92 Stat. 2679.)

AMENDMENTS

1978—Pub. L. 95–598 inserted introductory phrase ''Except as provided in title 11''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1474. Loans and grants for repairs or improvements of rural dwellings

(a) Prerequisites; purposes; amounts; terms

The Secretary may make a loan, grant, or combined loan and grant to an eligible very low-income applicant in order to improve or modernize a rural dwelling, to make the dwelling safer or more sanitary, or to remove hazards. The Secretary may make a loan or grant under this subsection to the applicant to cover the cost of any or all repairs, improvements, or additions such as repairing roofs, providing sanitary waste facilities, providing a convenient and sanitary water supply, repairing or providing structural supports, or making similar repairs, additions, improvements, including all preliminary and installation costs in obtaining central water and sewer service. The maximum amount of a grant, a loan, or a loan and grant shall not exceed such limitations as the Secretary determines to be appropriate. Any portion of the sums advanced to the borrower treated as a loan shall be secured and be repayable within twenty years in accordance with the principles and conditions set forth in this subchapter, except that a loan for less than $7,500 need be evidenced only by a promissory note. Sums made available by grant may be made subject to the conditions set forth in this subchapter for the protection of the Government with respect to contributions made on loans made by the Secretary.

(b) Additional purposes

In order to encourage adequate family-size farms the Secretary may make loans under this section and section 1473 of this title to any applicant whose farm needs enlargement or development in order to provide income sufficient to support decent, safe, and sanitary housing and other farm buildings, and may use the funds made available under clause (b) of section 1483 of this title for such purposes.

(c) Weatherization program; development, etc.

(1) In addition to other duties specified in this section, the Secretary shall develop and conduct a weatherization program for the purpose of making grants to finance the purchase or installation, or both, of weatherization materials in dwelling units occupied by low-income families. Such grants shall be made to low-income families who own dwelling units or, subject to the provisions of paragraph (2), to owners of such units for the benefit of the low-income tenants residing therein. In making grants under this subsection, the Secretary shall give priority to the weatherization of dwelling units occupied by low-income elderly or handicapped persons. The Secretary shall, in carrying out this section, consult with the Director of the Community Services Administration and the Secretary of Energy for the purpose of coordinating the weatherization program under this subsection, section 2809(a)(12) of this title, and part A of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6861 et seq.].

(2) In the case of any grant made under this subsection to an owner of a rental dwelling unit the Secretary shall provide that (A) the benefits of weatherization assistance in connection with such unit will accrue primarily to the low-income family residing therein, (B) the rents on such dwelling unit will not be raised because of any increase in value thereof due solely to weatherization assistance provided under this subsection, and (C) no undue or excessive enhancement will occur to the value of such unit.

(3) In carrying out this subsection, the Secretary shall (A) implement the weatherization standards described in paragraphs (2)(A) and (3) of section 413(b) of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6863(b)], and (B) provide that, with respect to any dwelling unit, not more than $800 of any grant made under this section be expended on weatherization materials and related matters described in section 415(c) of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6865(c)], except that the Secretary shall increase such amount to not more than $1,500 to cover labor costs in areas where the Secretary, in consultation with the Secretary of Labor, determines there is an insufficient number of volunteers and training participants and public service employment workers, assisted pursuant to title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or the Older American Community Service Employment Act [42 U.S.C. 3056 et seq.], available to work on weatherization projects under the supervision of qualified supervisors.

(4) For purposes of this subsection, the terms ''elderly,'' ''handicapped person,'' ''low income,'' and ''weatherization materials'' shall have the same meanings given such terms in paragraphs (3), (5), (7), and (9), respectively, of section 412 of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6862].

(July 15, 1949, ch. 338, title V, § 504, 63 Stat. 434; Pub. L. 87–723, § 4(c)(3), Sept. 28, 1962, 76 Stat. 672; Pub. L. 89–754, title VIII, § 803, Nov. 3, 1966, 80 Stat. 1282; Pub. L. 91–609, title VIII, § 803(a), Dec. 31, 1970, 84 Stat. 1806; Pub. L. 93–383, title V, § 504, Aug. 22, 1974, 88 Stat. 693; Pub. L. 95–619, title II, § 232(a), Nov. 9, 1978, 92 Stat. 3226; Pub. L. 96–153, title V, § 510, Dec. 21, 1979, 93 Stat. 1137; Pub. L. 98–181, title V, § 504, Nov. 30, 1983, 97 Stat. 1242; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(32), (f)(24)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–425, 2681–433; Pub. L. 106–569, title VII, § 702, Dec. 27, 2000, 114 Stat. 3013.)

REFERENCES IN TEXT

Section 2809 of this title, referred to in subsec. (c)(1), was repealed by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519.

The Energy Conservation in Existing Buildings Act of 1976, referred to in subsec. (c)(1), is title IV of Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1150, as amended. Part A of the Energy Conservation in Existing Buildings Act of 1976 is classified generally to Part A (§ 6861 et seq.) of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

The Workforce Investment Act of 1998, referred to in subsec. (c)(3), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Older American Community Service Employment Act, referred to in subsec. (c)(3), is title V of Pub. L. 89–73, as added Pub. L. 94–135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 720, and amended. Title V of Pub. L. 89–73 was amended generally by Pub. L. 106–501, title V, § 501, Nov. 13, 2000, 114 Stat. 2267, and is classified generally to subchapter IX (§ 3056 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–569 substituted ''$7,500'' for ''$2,500'' in fourth sentence.

1998—Subsec. (c)(3). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(24)], struck out ''the Job Training Partnership Act or'' after ''pursuant to''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(32)], substituted ''pursuant to the Job Training Partnership Act or title I of the Workforce Investment Act of 1998 or the'' for ''pursuant to the Comprehensive Employment and Training Act of 1973 or the''.

1983—Subsec. (a). Pub. L. 98–181 substituted ''The Secretary may make a loan, grant, or combined loan and grant to an eligible very low-income applicant in order to improve or modernize a rural dwelling, to make the dwelling safer or more sanitary, or to remove hazards. The Secretary may make a loan or grant under this subsection to the applicant to cover the cost of any or all repairs, improvements, or additions such as repairing roofs, providing sanitary waste facilities, providing a convenient and sanitary water supply, repairing or providing structural supports, or making similar repairs, additions, improvements, including all preliminary and installation costs in obtaining central water and sewer service. The maximum amount of a grant, a loan, or a loan and grant shall not exceed such limitations as the Secretary determines to be appropriate.'' for ''In the event the Secretary determines that an eligible applicant cannot qualify for a loan under the provisions of sections 1472 and 1473 of this title and that repairs or improvements should be made to a rural dwelling occupied by him in order to make such dwelling safe and sanitary and remove hazards to the health of the occupant, his family, or the community, and that repairs should be made to farm buildings in order to remove hazards and make such buildings safe, the Secretary may make a grant or a combined loan and grant to the applicant to cover the cost of improvements or additions, such as repairing roofs, providing toilet facilities, providing a convenient and sanitary water supply, supplying screens, repairing or providing structural supports, or making similar repairs, additions, or improvements, including all preliminary and installation costs in obtaining central water and sewer service. No assistance shall be extended to any individual or family under this subsection in the form of a grant in excess of $5,000, and no assistance shall be extended to any individual or family under this subsection in the form of a loan or a combined loan and grant in excess of $7,500.''

1979—Subsec. (a). Pub. L. 96–153 substituted provisions limiting the assistance in the form of grants to any individual or family to $5,000 and in the form of loans or combined loans and grants to $7,500 for provisions limiting loans, grants, or combined loans and grants to $5,000 in the case of assistance to individuals.

1978—Subsec. (c). Pub. L. 95–619 added subsec. (c).

1974—Subsec. (a). Pub. L. 93–383 substituted provisions relating to repairs or improvements of a rural dwelling, scope of such repairs or improvements, limitation of $5,000 as maximum amount of grant or loan, and requirement of a promissory note for loan less than $2,500, for provisions relating to repairs or improvements of a farm dwelling, scope of such repairs or improvements, and limitations of $2,500, or $3,500 in cases involving water or plumbing facilities, as maximum amount of grant or loan.

1970—Subsec. (a). Pub. L. 91–609 increased limitation on amount of assistance from ''$1,500'' to ''$2,500'' and provided for an alternative larger amount not exceeding $3,500 as Secretary determines to be necessary in case of repairs or improvements involving water supply, septic tank, or bathroom or kitchen plumbing facilities.

1966—Subsec. (a). Pub. L. 89–754 increased limitation on assistance from $1,000 to $1,500.

1962—Subsec. (a). Pub. L. 87–723 substituted ''in the form of a loan, grant, or combined loan and grant in excess of $1,000'' for ''(1) in the form of a loan, or combined loan and grant, in excess of $1,000, or (2) in the form of a grant (whether or not combined with a loan) in excess of $500.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(32)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(24)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

COMMUNITY SERVICES ADMINISTRATION

Community Services Administration, established by section 601 of Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), terminated when Economic Opportunity Act of 1964, Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97–35, title VI, Aug. 13, 1981, 95 Stat. 519 (42 U.S.C. 9912(a)). An Office of Community Services, headed by a Director, was established in Department of Health and Human Services by section 676 of Pub. L. 97–35 (42 U.S.C. 9905).

§ 1474a. Security for direct or insured rural housing loans to farmer applicants

On and after August 8, 1968, farmer applicants for direct or insured rural housing loans shall be required to provide only such collateral security as is required of owners of nonfarm tracts.

(Pub. L. 90–463, title II, § 201, Aug. 8, 1968, 82 Stat. 651.)

CODIFICATION

Section was enacted as part of the Department of Agriculture and Related Agencies Appropriation Act, 1969, and not as part of the Housing Act of 1949 which comprises this chapter.

§ 1475. Loan payment moratorium and foreclosure procedures

(a) Moratorium

During any time that any such loan is outstanding, the Secretary is authorized under regulations to be prescribed by him to grant a moratorium upon the payment of interest and principal on such loan for so long a period as he deems necessary, upon a showing by the borrower that due to circumstances beyond his control, he is unable to continue making payments of such principal and interest when due without unduly impairing his standard of living. In cases of extreme hardship under the foregoing circumstances, the Secretary is further authorized to cancel interest due and payable on such loans during the moratorium. Should any foreclosure of such a mortgage securing such a loan upon which a moratorium has been granted occur, no deficiency judgment shall be taken against the mortgagor if he shall have faithfully tried to meet his obligation.

(b) Foreclosure procedures

In foreclosing on any mortgage held by the Secretary under this subchapter, the Secretary shall follow the foreclosure procedures of the State in which the property involved is located to the extent such procedures are more favorable to the borrower than the foreclosure procedures that would otherwise be followed by the Secretary. This subsection shall be subject to the availability of amounts approved in appropriations Acts, to the extent additional budget authority is necessary to carry out this subsection.

(July 15, 1949, ch. 338, title V, § 505, 63 Stat. 434; Pub. L. 101–625, title VII, § 707, Nov. 28, 1990, 104 Stat. 4287.)

AMENDMENTS

1990—Pub. L. 101–625 amended section catchline generally, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

§ 1476. Buildings and repairs

(a) Construction in accordance with plans and specifications; supervision and inspection; technical services and research

In connection with financial assistance authorized in this subchapter, the Secretary shall require that all new buildings and repairs financed under this subchapter shall be substantially constructed and in accordance with such building plans and specifications as may be required by the Secretary. Buildings and repairs constructed with funds advanced pursuant to this subchapter shall be supervised and inspected as required by the Secretary. In addition to the financial assistance authorized in this subchapter, the Secretary is authorized to furnish, through such agencies as he may determine, to any person, including a person eligible for financial assistance under this subchapter, without charge or at such charges as the Secretary may determine, technical services such as building plans, specifications, construction supervision and inspection, and advice and information regarding farm dwellings and other buildings.

(b) Research and technical studies for reduction of costs and adaptation and development of fixtures and appurtenances

The Secretary is further authorized and directed to conduct research, technical studies, and demonstrations relating to the mission and programs of the Farmers Home Administration and the national housing goals defined in section 1441 of this title. In connection with such activities, the Secretary shall seek to promote the construction of adequate farm and other rural housing, with particular attention to the housing needs of the elderly, handicapped, migrant and seasonal farmworkers, Indians and other identifiable groups with special needs. The Secretary shall conduct such activities for the purposes of stimulating construction and improving the architectural design and utility of dwellings and buildings. In carrying out this subsection, the Secretary may permit demonstrations involving innovative housing units and systems which do not meet existing pub-

lished standards, rules, regulations, or policies if the Secretary finds that in so doing, the health and safety of the population of the area in which the demonstration is carried out will not be adversely affected, except that the aggregate expenditures for such demonstrations may not exceed $10,000,000 in any fiscal year.

(c) Research, study, and analysis of farm housing

The Secretary is further authorized to carry out a program of research, study, and analysis of farm housing in the United States to develop data and information on—

(1) the adequacy of existing farm housing;

(2) the nature and extent of current and prospective needs for farm housing, including needs for financing and for improved design, utility, and comfort, and the best methods of satisfying such needs;

(3) problems faced by farmers and other persons eligible under section 1471 of this title in purchasing, constructing, improving, altering, repairing, and replacing farm housing;

(4) the interrelation of farm housing problems and the problems of housing in urban and suburban areas; and

(5) any other matters bearing upon the provision of adequate farm housing.

(d) Research capacity within Farmers Home Administration; establishment; authority

In order to carry out this section, the Secretary shall establish a research capacity within the Farmers Home Administration which shall have authority to undertake, or to contract with any public or private body to undertake, research authorized by this section.

(e) Preparation and submission of estimates of housing needs

The Secretary of Agriculture shall prepare and submit to the President and to the Congress estimates of national rural housing needs and reports with respect to the progress being made toward meeting such needs and correlate and recommend proposals for such executive action or legislation necessary or desirable for the furtherance of the national housing objective and policy established by this Act with respect to rural housing, together with such other reports or information as may be required of the Secretary by the President or the Congress.

(f) Study of housing available for migrant and settled farmworkers

(1) The Secretary shall conduct a study of housing which is available for migrant and settled farmworkers. In conducting such study, the Secretary shall—

(A) determine the location, number, quality, and condition of housing units which are available to such farmworkers and the cost assessed such farmworkers for occupying such units;

(B) recommend legislative, administrative, and other action (including the need for new authority for such action) which may be taken for the purpose of improving both the availability and the condition of such housing units; and

(C) determine the possible roles which individual farmworkers, farmworker associations, individual farmers, farmer associations, and public and private nonprofit agencies can perform in improving the housing conditions of farmworkers.

(2) The Secretary shall transmit the results of the study described in paragraph (1) to each House of the Congress within one year after October 31, 1978.

(July 15, 1949, ch. 338, title V, §506, 63 Stat. 435; Pub. L. 87–70, title VIII, §§804(b)(1), 805(a), June 30, 1961, 75 Stat. 188; Pub. L. 87–723, §4(c)(2), Sept. 28, 1962, 76 Stat. 672; Pub. L. 88–560, title V, §503(c), Sept. 2, 1964, 78 Stat. 798; Pub. L. 89–117, title X, §1005(d), Aug. 10, 1965, 79 Stat. 501; Pub. L. 89–348, §1(5), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 93–383, title V, §§506, 519(a), Aug. 22, 1974, 88 Stat. 694, 699; Pub. L. 95–128, title V, §510, Oct. 12, 1977, 91 Stat. 1142; Pub. L. 95–557, title V, §502, Oct. 31, 1978, 92 Stat. 2111; Pub. L. 98–181, title V, §505, Nov. 30, 1983, 97 Stat. 1242; Pub. L. 104–66, title I, §1011(m), Dec. 21, 1995, 109 Stat. 710.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, known as the Housing Act of 1949, which is classified principally to this chapter (§1441 et seq.). For complete classification of that Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

AMENDMENTS

1995—Subsec. (b). Pub. L. 104–66 struck out at end ''The Secretary shall report to the Congress at the close of each fiscal year on the results of such demonstrations.''

1983—Subsec. (b). Pub. L. 98–181 inserted provision relating to demonstrations involving innovative housing units and systems not meeting existing standards with expenditures not to exceed $10,000,000 in any fiscal year and a report to be made to Congress at the close of each fiscal year.

1978—Subsec. (b). Pub. L. 95–557, §502(a), revised the provisions of this subsection to bring particular attention to the housing needs of the elderly, handicapped, migrant and seasonal farmworkers, Indians and other identifiable groups.

Subsec. (f). Pub. L. 95–557, §502(b), added subsec. (f).

1977—Subsec. (d). Pub. L. 95–128 substituted provision respecting establishment and authority of a research capacity within the Farmers Home Administration for provision to carry out subsec. (b) and (c) research and study programs through grants by the Secretary to land-grant colleges on such terms, conditions, and standards as he may prescribe or through such other agencies as he may elect.

1974—Subsec. (a). Pub. L. 93–383, §519(a), substituted ''as required by the Secretary'' for ''as may be required by the Secretary, by competent employees of the Secretary''.

Subsec. (d). Pub. L. 93–383, §506(a), substituted provisions authorizing grants to such other private or public organizations as selected by the Secretary upon finding that required research and study could not be performed by personnel and facilities of Department of Agriculture or land-grant colleges, for provisions authorizing grants to such other agencies as selected by the Secretary.

Subsec. (e). Pub. L. 93–383, §506(b), substituted ''rural housing'' for ''farm housing'' wherever appearing.

1965—Subsec. (a). Pub. L. 89–117 substituted ''this subchapter'' for ''sections 1471 to 1474 and sections 1484 to 1486 of this title'' wherever appearing.

Subsec. (e). Pub. L. 89–348, which directed the repeal in subsec. (b) of the requirement of the report of estimates of national farm housing needs and of progress made toward meeting such needs, probably was in-

tended to repeal such reporting requirement in subsec. (e) in view of the redesignation of subsec. (b) as (e) by Pub. L. 87–70.

1964—Subsec. (a). Pub. L. 88–560 inserted reference to section 1486 of this title wherever appearing.

1962—Subsec. (a). Pub. L. 87–723 substituted ''sections 1484 and 1485'' for ''section 1484'' wherever appearing.

1961—Subsec. (a). Pub. L. 87–70, §§804(b)(1), 805(a)(1), inserted a reference to section 1484 of this title in two places, and struck out provisions which authorized the conduct of research and technical studies including the development, demonstration, and promotion of construction of adequate farm dwellings and other buildings for the purposes of stimulating construction, improving architectural design and utility, utilizing new and native materials, economies in materials and construction methods, and new methods of production, distribution, assembly, and construction, which provisions are now contained in subsec. (b) of this section.

Subsecs. (b) to (e). Pub. L. 87–70, §805(a)(2), (3), added subsecs. (b) to (d) and redesignated former subsec. (b) as (e). Provisions of subsec. (b) were formerly contained in subsec. (a).

STUDY OF EMERGENCY POTABLE WATER AND SEWAGE PROGRAM

Section 508 of Pub. L. 95–557 required Secretary of Agriculture to determine the approximate number of rural housing units without access to sanitary toilet facilities or potable water, prepare a projection of the cost providing such facilities and supplies, and report to Congress not later than six months after Oct. 31, 1978.

REPORT OF ESTIMATES OF NATIONAL FARM HOUSING NEEDS

Pub. L. 89–348, §1(5), Nov. 8, 1965, 79 Stat. 1310, repealed provisions of subsec. (e) of this section which related to reports of the estimates of national farm housing needs and of progress toward meeting such needs.

§ 1477. Preferences for veterans and families of deceased servicemen

As between eligible applicants seeking assistance under sections 1471 to 1474, inclusive, of this title, the Secretary shall give preference to veterans and the families of deceased servicemen. As used herein, a ''veteran'' shall mean a person who served in the military forces of the United States during any war between the United States and any other nation or during the period beginning June 27, 1950, and ending on such date as shall be determined by Presidential proclamation or concurrent resolution of Congress, or during the period beginning after January 31, 1955, and ending on August 4, 1964, or during the Vietnam era (as defined in section 101(29) of title 38), and who was discharged or released therefrom on conditions other than dishonorable. ''Deceased servicemen'' shall mean persons who served in the military forces of the United States during any war between the United States and any other nation or during the period beginning June 27, 1950, and ending on such date as shall be determined by Presidential proclamation or concurrent resolution of Congress, or during the period beginning after January 31, 1955, and ending on August 4, 1964, or during the Vietnam era (as defined in section 101(29) of title 38), and who died in service before the termination of such war or such period or era.

(July 15, 1949, ch. 338, title V, §507, 63 Stat. 435; June 30, 1953, ch. 174, §3, 67 Stat. 132; Pub. L. 87–70, title VIII, §804(b)(2), June 30, 1961, 75 Stat. 188; Pub. L. 93–383, title V, §507, Aug. 22, 1974, 88 Stat. 694.)

AMENDMENTS

1974—Pub. L. 93–383 inserted references to the period beginning after Jan. 31, 1955 and ending on Aug. 4, 1964, or during the Vietnam era wherever appearing therein.

1961—Pub. L. 87–70 substituted ''under sections 1471 to 1474, inclusive, of this title'' for ''under this subchapter.''

1953—Act June 30, 1953, enlarged the definition of ''veteran'' and ''deceased servicemen'' to include members of the armed forces who have served during the Korean conflict.

PERIOD OF SERVICE IN MILITARY FORCES

Proc. No. 3080, Jan. 5, 1955, 20 F.R. 173, fixed Jan. 31, 1955, as the date ending the period during which persons must have served in the military forces in order that such persons come within the meaning of the terms ''veteran'' and ''deceased servicemen'', contained in this section, by reason of service during the period beginning June 27, 1950.

CONTINUATION OF PROVISIONS

Joint Res. July 3, 1952, ch. 570, §1(a)(20), 66 Stat. 332, as amended by Joint Res. Mar. 31, 1953, ch. 13, §1, 67 Stat. 18, provided that qualification period should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by 1950 Proc. No. 2914, 15 F.R. 9029, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond July 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

REPEAL OF PRIOR ACTS CONTINUING SECTION

Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal took effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

§ 1478. Local committees to assist Secretary

(a) Composition, appointment, and compensation; chairman; promulgation of procedural rules; forms and equipment

For the purposes of this subsection and subsection (b) of this section, the Secretary may use the services of any existing committee of farmers operating (pursuant to laws or regulations carried out by the Department of Agriculture) in any county or parish in which activities are carried on under this subchapter. In any county or parish in which activities are carried on under this subchapter and in which no existing satisfactory committee is available, the Secretary is authorized to appoint a committee composed of three persons residing in the county or parish. Each member of such existing or newly appointed committee shall be allowed compensation at the rate determined by the Secretary while engaged in the performance of duties under this subchapter and, in addition, shall be allowed such amounts as the Secretary may prescribe for necessary traveling and subsistence expenses. One member of the committee shall be designated by the Secretary as chairman. The Secretary shall prescribe rules governing the procedures of the committees, furnish forms and equipment necessary for the

performance of their duties, and authorize and provide for the compensation of such clerical assistance as he deems may be required by any committee.

(b) Duties

The committees utilized or appointed pursuant to this section may examine applications of persons desiring to obtain the benefits of section 1471(a)(1) and (2) of this title as they relate to the successful operation of a farm, and may submit recommendations to the Secretary with respect to each applicant as to whether the applicant is eligible to receive such benefits, whether by reason of his character, ability, and experience he is likely successfully to carry out undertakings required of him under a loan under such section, and whether the farm with respect to which the application is made is of such character that there is a reasonable likelihood that the making of the loan requested will carry out the purposes of this subchapter. The committees may also certify to the Secretary with respect to the amount of any loan.

(July 15, 1949, ch. 338, title V, § 508, 63 Stat. 436; Pub. L. 87–70, title VIII, § 806, June 30, 1961, 75 Stat. 188; Pub. L. 91–609, title VIII, § 803(b), Dec. 31, 1970, 84 Stat. 1807; Pub. L. 93–383, title V, § 508, Aug. 22, 1974, 88 Stat. 694.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–383 substituted provisions relating to examination of applications under section 1471(a)(1) and (2) of this title, and certification to the Secretary with respect to amount of any loan, for provisions relating to examination of applications under provisions of this subchapter, certification to the Secretary with respect to the amount of the loan or grant, and requiring performance of such other duties as the Secretary requests.

1970—Subsec. (b). Pub. L. 91–609 substituted ''may'' for ''shall'' in first and second sentences where reading ''shall examine'', ''shall submit'', and ''shall also certify''.

1961—Subsec. (a). Pub. L. 87–70, § 806(a), substituted ''at the rate determined by the Secretary'' for ''at the rate of $5 per day''.

Subsec. (b). Pub. L. 87–70, § 806(b), substituted ''certify to the Secretary as to the amount of the loan or grant'' for ''certify to the Secretary their opinions of the reasonable values of the farms''.

§ 1479. General powers of Secretary

(a) Standards of adequate farm housing and other buildings; criteria

The Secretary, for the purposes of this subchapter, shall have the power to determine and prescribe the standards of adequate farm housing and other buildings, by farms or localities, taking into consideration, among other factors, the type of housing which will provide decent, safe, and sanitary dwelling for the needs of the family using the housing, the type and character of the farming operations to be conducted, and the size and earning capacity of the land. The Secretary shall approve a residential building as meeting such standards if the building is constructed in accordance with (1) the minimum standards prescribed by the Secretary, (2) the minimum property standards prescribed by the Secretary of Housing and Urban Development for mortgages insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.], (3) the standards contained in any of the voluntary national model building codes, or (4) in the case of manufactured housing, the standards referred to in section 1472(e) of this title. To the maximum extent feasible, the Secretary shall promote the use of energy saving techniques through standards established by such Secretary for newly constructed residential housing assisted under this subchapter. Such standards shall, insofar as is practicable, be consistent with the standards established pursuant to section 526 of the National Housing Act [12 U.S.C. 1735f–4] and shall incorporate the energy performance requirements developed pursuant to such section.

(b) Terms or conditions of leases or occupancy agreements subject to change with approval of Secretary

The Secretary may require any recipient of a loan or grant to agree that the availability of improvements constructed or repaired with the proceeds of the loan or grant under this subchapter shall not be a justification for directly or indirectly changing the terms or conditions of the lease or occupancy agreement with the occupants of such farms to the latter's disadvantage without the approval of the Secretary.

(c) Rural Housing Insurance Fund for payment of expenditures respecting construction defects; judicial review prohibition

The Secretary is authorized, after October 1, 1977, with respect to any unit or dwelling newly constructed during the period beginning eighteen months prior to October 12, 1977, and purchased with financial assistance authorized by this subchapter which he finds to have structural defects to make expenditures for (1) correcting such defects, (2) paying the claims of the owner of the property arising from such defects, or (3) acquiring title to the property, if such assistance is requested by the owner of the property within thirty-six months after financial assistance under this subchapter is rendered to the owner of the property or, in the case of property with respect to which assistance was made available within eighteen months prior to October 12, 1977, within thirty-six months after October 12, 1977. Expenditures pursuant to this subsection may be paid from the Rural Housing Insurance Fund. Decisions by the Secretary regarding such expenditures or payments under this subsection, and the terms and conditions under which the same are approved or disapproved, shall not be subject to judicial review.

(d) Defaults involving security interest in tribal lands

In the event of default involving a security interest in tribal allotted or trust land, the Secretary shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe or tribes. If the Secretary subsequently proceeds to liquidate the account, the Secretary shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

(e) Terms and conditions; regulations

The Secretary shall, by regulation, prescribe the terms and conditions under which expendi-

tures and payments may be made under the provisions of this section.

(f) Housing in underserved areas

(1) Designation of underserved area

The Secretary shall designate as targeted underserved areas 100 counties and communities in each fiscal year that have severe, unmet housing needs as determined by the Secretary. A county or community shall be eligible for designation if, during the 5-year period preceding the year in which the designation is made, it has received an average annual amount of assistance under this subchapter that is substantially lower than the average annual amount of such assistance received during that 5-year period by other counties and communities in the State that are eligible for such assistance calculated on a per capita basis, and has—

(A) 20 percent or more of its population at or below the poverty level; and

(B) 10 percent or more of its population residing in substandard housing.

As used in this paragraph, the term ''poverty level'' has the meaning given the term in section 5302(a)(9) of this title.

(2) Preferences

In selecting projects to receive assistance with amounts set aside under paragraph (4), the Secretary shall give preference to any project located in a county or community that has, at the time of designation and as determined by the Secretary—

(A) 28 percent or more of its population at or below poverty level; and

(B) 13 percent or more of its population residing in substandard housing.

In designating underserved areas under paragraph (1), in each fiscal year the Secretary shall designate not less than 5 counties or communities that contain tribal allotted or Indian trust land.

(3) Outreach program and review

(A) Outreach

The Secretary shall publicize the availability to targeted underserved areas of grants and loans under this subchapter and promote, to the maximum extent feasible, efforts to apply for those grants and loans for housing in targeted underserved areas.

(B) Review

Upon the receipt of data from the 1990 decennial census, the Secretary shall conduct a review of any designations made under paragraph (1) and preferences given under paragraph (2) and the eligibility of communities and counties for such designation and preference, examining the effects of such data on such eligibility. The Secretary shall submit to the Congress, not later than 9 months after the availability of the data, a report regarding the review, which shall include any recommendations of the Secretary for modifications in the standards for designation and preference.

(4) Set-aside for targeted underserved areas and colonias

(A) In general

The Secretary shall set aside and reserve for assistance in targeted underserved areas an amount equal to 5.0 percent in each fiscal year of the aggregate amount of lending authority under sections 1472, 1474, 1484, 1485, and 1490d of this title. During each fiscal year, the Secretary shall set aside from amounts available for assistance under paragraphs (2) and (5) of section 1490a(a) of this title, an amount that is appropriate to provide assistance with respect to the lending authority under sections 1484 and 1485 of this title that is set aside for such fiscal year. The Secretary shall establish a procedure to reallocate any assistance set aside in any fiscal year for targeted underserved areas that has not been expended during a reasonable period in such year for use in (i) colonias that have applied for and are eligible for assistance under subparagraph (B) or paragraph (7) and did not receive assistance, and (ii) counties and communities eligible for designation as targeted underserved areas but which were not so designated. The procedure shall also provide that any assistance reallocated under the preceding sentence that has not been expended by a reasonable date established by the Secretary (which shall be after the expiration of the period referred to in the preceding sentence) shall be made available and allocated under the laws and regulations relating to such assistance, notwithstanding this subsection.

(B) Priority for colonias

(i) Notwithstanding the designation of counties and communities as targeted underserved areas under paragraph (1) and the provisions of section 1490 of this title, colonias shall be eligible for assistance with amounts reserved under subparagraph (A), as provided in this subparagraph.

(ii) In providing assistance from amounts reserved under this paragraph in each fiscal year, the Secretary shall give priority to any application for assistance to be used in, or in close proximity to, and serving the residents of, a colonia located in a State described under clause (iii). After the Secretary has provided assistance under the priority for colonias located in a State in an amount equal to 5 percent of the total amount of assistance allocated under this subchapter to such State in the fiscal year, the priority shall not apply to any applications for colonias in such State.

(iii) This paragraph shall apply to any State for any fiscal year following 2 fiscal years in which the State obligated the total amount of assistance allocated to it under this subchapter during each of such 2 fiscal years.

(5) List of underserved areas

The Secretary shall publish annually the current list of targeted underserved areas in the Federal Register.

(6) Project preparation assistance

(A) In general

The Secretary may make grants to eligible applicants under subparagraph (D) to promote the development of affordable housing in targeted underserved areas and colonias.

(B) Use

A grant under this paragraph shall not exceed an amount that the Secretary determines to equal the customary and reasonable costs incurred in preparing an application for a loan under section 1472, 1474, 1484, 1485, or 1490d of this title, or a grant under section 1490m of this title (including preapplication planning, site analysis, market analysis, and other necessary technical assistance). The Secretary shall adjust the loan or grant amount under such sections to take account of project preparation costs that have been paid from grant proceeds under this paragraph and that normally would be reimbursed with proceeds of the loan or grant.

(C) Approval

The Secretary shall approve a properly submitted application or issue a written statement indicating the reasons for disapproval not later than 60 days after the receipt of the application.

(D) Eligibility

For purposes of this paragraph, an eligible applicant may be a nonprofit organization or corporation, a community housing development organization, State, unit of general local government, or agency of a State or unit of general local government.

(E) Availability of funding

Any amounts appropriated to carry out this paragraph shall remain available until expended.

(7) Priority for colonias

(A) In general

In providing assistance under this subchapter in any fiscal year described under subparagraph (B), each State in which colonias are located shall give priority to any application for assistance to be used in a colonia. The priority under this subparagraph shall not apply in such State after 5 percent of the assistance available in such fiscal year has been allocated for colonias qualifying for the priority.

(B) Covered years

This paragraph shall apply to any fiscal year following 2 fiscal years in which the State did not obligate the total amount of assistance allocated it under this subchapter during each of such 2 fiscal years.

(8) "Colonia" defined

For purposes of this subsection, the term ''colonia'' means any identifiable community that—

(A) is in the State of Arizona, California, New Mexico, or Texas;

(B) is in the area of the United States within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1,000,000;

(C) is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and

(D) was in existence as a colonia before November 28, 1990.

(July 15, 1949, ch. 338, title V, §509, 63 Stat. 436; Pub. L. 95–128, title V, §504, Oct. 12, 1977, 91 Stat. 1139; Pub. L. 96–153, title V, §508, Dec. 21, 1979, 93 Stat. 1136; Pub. L. 98–181, title V, §506(a), Nov. 30, 1983, 97 Stat. 1242; Pub. L. 101–625, title VII, §§708, 709(b), Nov. 28, 1990, 104 Stat. 4287, 4288; Pub. L. 102–550, title VII, §705, Oct. 28, 1992, 106 Stat. 3835; Pub. L. 104–120, §4(a), Mar. 28, 1996, 110 Stat. 835; Pub. L. 104–180, title VII, §734(b), Aug. 6, 1996, 110 Stat. 1602; Pub. L. 105–86, title VII, §735(a), Nov. 18, 1997, 111 Stat. 2110; Pub. L. 105–276, title V, §599C(a), (e)(2)(B), Oct. 21, 1998, 112 Stat. 2661, 2662.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the National Housing Act is classified principally to subchapter II (§1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1998—Subsec. (f)(4)(A). Pub. L. 105–276, in first sentence, substituted ''each fiscal year'' for ''fiscal year 1998'' and, in second sentence, substituted ''During each fiscal year'' for ''During such fiscal year'' and substituted ''from amounts available for assistance under paragraphs (2) and (5) of section 1490a(a) of this title, an amount'' for ''an amount of section 521 rental assistance''.

1997—Subsec. (f)(4)(A). Pub. L. 105–86 substituted ''fiscal year 1998'' for ''fiscal year 1997''.

1996—Subsec. (f)(4)(A). Pub. L. 104–180 substituted ''fiscal year 1997'' for ''fiscal year 1996''.

Pub. L. 104–120 substituted ''fiscal year 1996'' for ''fiscal years 1993 and 1994'' and ''During such fiscal year'' for ''During each such fiscal year''.

1992—Subsec. (f)(1). Pub. L. 102–550, §705(a)(1), substituted ''in each fiscal year'' for ''in each of fiscal years 1991 and 1992'' in introductory provisions.

Subsec. (f)(2). Pub. L. 102–550, §705(a)(2), inserted concluding provisions.

Subsec. (f)(4)(A). Pub. L. 102–550, §705(a)(3), substituted ''an amount equal to 5.0 percent in fiscal years 1993 and 1994'' for ''an amount equal to 3.5 percent in fiscal year 1991 and 5.0 percent in fiscal year 1992''.

Subsec. (f)(4)(B)(ii). Pub. L. 102–550, §705(c), inserted '', or in close proximity to, and serving the residents of,'' before ''a colonia''.

Subsec. (f)(8)(C) to (E). Pub. L. 102–550, §705(b), redesignated subpar. (D) as (C), struck out former subpar. (C) which read as follows: ''is designated by the State or county in which it is located as a colonia;'', added subpar. (D), and struck out subpar. (E) which read as follows: ''was in existence and generally recognized as a colonia before November 28, 1990.''

1990—Subsecs. (d), (e). Pub. L. 101–625, §708, added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (f). Pub. L. 101–625, §709(b), added subsec. (f).

1983—Subsec. (a). Pub. L. 98–181 inserted provisions relating to standards, designated cls. (1) to (4), the compliance with which will result in approval by the Secretary, and inserted provision relating to the promotion of the use of energy saving techniques.

1979—Subsec. (c). Pub. L. 96–153 substituted ''within thirty-six months after October 12, 1977'' for ''within eighteen months after October 12, 1977''.

1977—Subsecs. (c), (d). Pub. L. 95–128 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104–120, set out as an Effective and Termination Dates of 1996 Amendments note under section 1437d of this title.

REGULATIONS

Section 709(c) of Pub. L. 101–625 provided that: ''Not later than the expiration of the 120-day period beginning on the date of enactment of the Cranston-Gonzalez National Affordable Housing Act [Nov. 28, 1990], the Secretary of Agriculture shall issue any regulations necessary to carry out the amendment made by this section [amending this section].''

HOUSING IN UNDERSERVED AREAS

Section 709(a) of Pub. L. 101–625 provided that: ''The purpose of this section [amending this section and enacting provisions set out above] is to improve the quality of affordable housing in communities that have extremely high concentrations of poverty and substandard housing and that have been underserved by rural housing programs, including extremely distressed areas in the Lower Mississippi Delta and other regions of the Nation, by directing Farmers Home Administration assistance toward designated underserved areas.''

EXEMPTIONS OF EXISTING DWELLINGS FROM LIVING AREA LIMITATIONS; AUTHORITY OF DISTRICT OFFICES OF FARMERS' HOME ADMINISTRATION

Pub. L. 100–202, § 101(k) [title VI, § 632], Dec. 22, 1987, 101 Stat. 1329–322, 1329–356, provided that: ''During fiscal year 1988 and each succeeding fiscal year, the Secretary of Agriculture shall permit each district office of the Farmers Home Administration to exempt any existing dwelling from any limitation established by the Secretary on the number of square feet of living area that may be contained in a dwelling to be eligible for a loan under section 502 of the Housing Act of 1949 [section 1472 of this title], if the dwelling is modest in design, size, and cost for the area in which it is located.''

§ 1480. Administrative powers of Secretary

In carrying out the provisions of this subchapter, the Secretary shall have the power to—

(a) Service and supply contracts

make contracts for services and supplies without regard to the provisions of section 5 of title 41, when the aggregate amount involved is less than $300;

(b) Subordination, subrogation, and other agreements

enter into subordination, subrogation, or other agreements satisfactory to the Secretary;

(c) Compromise of claims and obligations

compromise, adjust, reduce, or charge-off claims, and adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Secretary under this subchapter, as circumstances may require, including the release of borrowers or others obligated on a debt from personal liability with or without payment of any consideration at the time of the compromise, adjustment, reduction, or charge-off of any claim;

(d) Collection of claims and obligations

collect all claims and obligations arising out of or under any mortgage, lease, contract, or agreement entered into pursuant to this subchapter and, if in his judgment necessary and advisable, to pursue the same to final collection in any court having jurisdiction: *Provided*, That the prosecution and defense of all litigation under this subchapter shall be conducted under the supervision of the Attorney General and the legal representation shall be by the United States attorneys for the districts, respectively, in which such litigation may arise and by such other attorney or attorneys as may, under law, be designated by the Attorney General; except that—

(1) prosecution and defense of any litigation under section 1472 of this title shall be conducted, at the discretion of the Secretary, by—

(A) the United States attorneys for the districts in which the litigation arises and any other attorney that the Attorney General may designate under law, under the supervision of the Attorney General;

(B) the General Counsel of the Department of Agriculture; or

(C) any other attorney with whom the Secretary enters into a contract after a determination by the Secretary that—

(i) the attorney will provide competent and cost-effective representation for the Farmers Home Administration; and

(ii) representation by the attorney will either (I) accelerate the process by which a family or person eligible for assistance under section 1472 of this title will be able to purchase and occupy the housing involved; or (II) preserve the quality of the housing involved; and

(2) the Secretary shall annually submit to the Congress a report describing activities carried out under paragraph (1)(C), including the cost of entering into contracts with such attorneys and the savings resulting from expedited foreclosure proceedings;

(e) Purchase of pledged or mortgaged property at foreclosure or other sales; operation, sale or disposition of said property

bid for and purchase at any foreclosure or other sale or otherwise to acquire the property pledged or mortgaged to secure a loan or other indebtedness owing under this subchapter, to accept title to any property so purchased or acquired, to operate or lease such property for such period as may be necessary or advisable, to protect the interest of the United States therein, to repair and rehabilitate such property, and to sell or otherwise dispose of the property so purchased or acquired by such terms and for such considerations as the Secretary shall determine to be reasonable and to make loans as provided herein to provide adequate farm dwellings and buildings for the purchasers of such property; except that the Secretary may not sell or otherwise dispose of such property unless (1) the Secretary assures that such property will meet decent, safe, and sanitary standards, including cost-effective energy conservation standards prescribed

under section 1479(a) of this title, (2) the recipient of the property is obligated, as a condition of the sale or other disposition of the property, to meet such standards with respect to the property before such property is occupied, or (3) such recipient is precluded, as a condition of the sale or other disposition of the property, from using the property for residential purposes and the authority of the Secretary under this paragraph includes the authority to transfer section 1472 inventory properties for use as rental or cooperative units under section 1485 of this title with mortgages containing repayment terms with up to fifty years, or for use as rental units under section 1484 of this title with mortgages containing repayment terms with up to 33 years, to private nonprofit organizations, public bodies, or for-profit entities, which have good records of providing low income housing under section 1485 of this title; such a transfer may be made even where rental assistance may be required so long as the authority to provide such assistance is available after taking into account the requirements of section 1490a(d)(1) of this title; where the Secretary determines the transfer will contribute to the provision of housing for very low-income persons and families, the transfer may be made at the lesser of the appraised value or the Farmers Home Administration's investment;

(f) Processing of applications received prior to determination of nonrural status; assistance

continue processing as expeditiously as possible applications on hand received prior to the time an area has been determined by the Secretary not to be ''rural'' or a ''rural area'', as those terms are defined in section 1490 of this title, and make loans or grants to such applicants who are found to be eligible on the same basis as though the area were still rural;

(g) Rules and regulations for written notice of denial or reduction of assistance

issue rules and regulations which assure that applicants denied assistance under this subchapter or persons or organizations whose assistance under this subchapter is being substantially reduced or terminated are given written notice of the reasons for denial, reduction or termination and are provided at least an opportunity to appeal an adverse decision and to present additional information relevant to that decision to a person, other than the person making the original determination, who has authority to reverse the decision, except that rules issued under this subsection may not exclude from their coverage decisions made by the Secretary that are not based on objective standards contained in published regulations;

(h) Assistance in connection with transfers and assumptions of property for nonrural areas

notwithstanding that an area ceases, or has ceased, to be ''rural'', in a ''rural area'', or an eligible area, make assistance under this subchapter available for subsequent loans to permit necessary dwelling repairs and rehabilitation and in connection with transfers and assumptions of property securing any loan made, insured, or held by the Secretary or in connection with any property held by the Secretary under this subchapter on the same basis as though the area were still rural;

(i) Utilization of indebtedness

utilize with respect to the indebtedness arising from loans and payments made under this subchapter, all the powers and authorities given to him under sections 1150 to 1150b of title 12;

(j) Fee inspectors and appraisers

utilize the services of fee inspectors and fee appraisers to expedite the processing of applications for loans and grants under this subchapter, which services shall be utilized in any case in which a county or district office is unable to expeditiously process such loan and grant applications, and to include the cost of such services in the amount of such loans and grants; and

(k) Rules and regulations

make such rules and regulations as he deems necessary to carry out the purposes of this subchapter.

(July 15, 1949, ch. 338, title V, § 510, 63 Stat. 437; Pub. L. 94–375, § 25(c), Aug. 3, 1976, 90 Stat. 1078; Pub. L. 95–557, title V, § 503, Oct. 31, 1978, 92 Stat. 2112; Pub. L. 96–153, title V, § 507, Dec. 21, 1979, 93 Stat. 1136; Pub. L. 96–399, title V, §§ 508, 510, Oct. 8, 1980, 94 Stat. 1670, 1671; Pub. L. 98–181, title V, § 507, Nov. 30, 1983, 97 Stat. 1243; Pub. L. 98–479, title I, § 105(c), Oct. 17, 1984, 98 Stat. 2227; Pub. L. 100–242, title III, § 313, Feb. 5, 1988, 101 Stat. 1897; Pub. L. 100–628, title X, § 1045, Nov. 7, 1988, 102 Stat. 3273; Pub. L. 101–625, title VII, §§ 710, 711, Nov. 28, 1990, 104 Stat. 4291.)

AMENDMENTS

1990—Subsec. (e)(3). Pub. L. 101–625, § 710, inserted '', or for use as rental units under section 1484 of this title with mortgages containing repayment terms with up to 33 years,'' after ''fifty years'' and substituted '', public bodies, or for-profit entities, which have good records of providing low income housing under section 1485 of this title'' for ''or public bodies''.

Subsec. (g). Pub. L. 101–625, § 711, inserted before semicolon at end '', except that rules issued under this subsection may not exclude from their coverage decisions made by the Secretary that are not based on objective standards contained in published regulations''.

1988—Subsec. (c). Pub. L. 100–242 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''compromise claims and obligations arising out of sections 1472 to 1475 of this title and adjust and modify the terms of mortgages, leases, contracts, and agreements entered into as circumstances may require, including the release from personal liability, without payments of further consideration, of—

''(1) borrowers who have transferred their farms to other approved applicants for loans who have agreed to assume the outstanding indebtedness to the Secretary under this subchapter; and

''(2) borrowers who have transferred their farms to other approved applicants for loans who have agreed to assume that portion of the outstanding indebtedness to the Secretary under this subchapter which is equal to the earning capacity value of the farm at the time of the transfer, and borrowers whose farms have been acquired by the Secretary, in cases where the Secretary determines that the original borrowers have cooperated in good faith with the Secretary,

have farmed in a workmanlike manner, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to their loans, to the best of their abilities;''.

Subsec. (d). Pub. L. 100–628 inserted before semicolon at end ''; except that—'' and added pars. (1) and (2).

1984—Subsec. (e). Pub. L. 98–479 substituted ''; such'' and ''; where'' for ''. Such'' and ''. Where'', respectively.

1983—Subsec. (e). Pub. L. 98–181, § 507(a), inserted provisions relating to the authority of the Secretary to transfer section 1472 inventory property to private nonprofit organizations or public bodies.

Subsecs. (j), (k). Pub. L. 98–181, § 507(b), added subsec. (j) and redesignated former subsec. (j) as (k).

1980—Subsec. (e)(1). Pub. L. 96–399, § 508, inserted provisions respecting cost-effective energy conservation standards prescribed under section 1479(a) of this title.

Subsec. (h). Pub. L. 96–399, § 510, inserted provisions respecting subsequent loans to permit necessary dwelling repairs and rehabilitation.

1979—Subsec. (e). Pub. L. 96–153 substituted ''United States therein, to repair and rehabilitate such property, and to sell'' for ''United States therein and to sell'', and inserted provision that the Secretary may not sell or otherwise dispose of such property unless the conditions in cls. (1) to (3) are satisfied.

1978—Subsecs. (g) to (j). Pub. L. 95–557 added subsec. (g) and redesignated former subsecs. (g), (h), and (i) as (h), (i), and (j), respectively.

1976—Subsecs. (f) to (i). Pub. L. 94–375 added subsecs. (f) and (g) and redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (d)(2) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the last item on page 47 of House Document No. 103–7.

STUDY OF PROBLEMS CAUSED BY REMOTE CLAIMS

Section 509 of Pub. L. 95–557 directed Secretary of Agriculture to make a detailed study of problems associated with obtaining title insurance by persons in rural areas with respect to real property encumbered by remote claims and make a final report to Congress with respect to such study not later than one year after Oct. 31, 1978.

§ 1481. Issuance of notes and obligations for loan funds; amount; limitation; security; form and denomination; interest; purchase and sale by Treasury; public debt transaction

The Secretary may issue notes and other obligations for purchase by the Secretary of the Treasury for the purpose of making direct loans under this subchapter. The notes and obligations issued by the Secretary shall be secured by the obligations of borrowers and the Secretary's commitments to make contributions under this subchapter and shall be repaid from the payment of principal and interest on the obligations of the borrowers and from funds appropriated hereunder. The notes and other obligations issued by the Secretary shall be in such forms and denominations, shall have such maturities, and shall be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Each such note or other obligation shall bear interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which such note or other obligation is issued, which are neither due nor callable for redemption for 15 years from their date of issue. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Secretary issued hereunder and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include any purchases of such obligations. The Secretary of the Treasury may at any time sell any of the notes or obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or obligations shall be treated as public debt transactions of the United States.

(July 15, 1949, ch. 338, title V, § 511, 63 Stat. 438; July 14, 1952, ch. 723, § 11(a), 66 Stat. 604; June 29, 1954, ch. 410, § 5(a), 68 Stat. 320; Aug. 2, 1954, ch. 649, title VIII, § 812(a), 68 Stat. 647; Aug. 11, 1955, ch. 783, title V, § 501(1), 69 Stat. 654; Aug. 7, 1956, ch. 1029, title VI, § 606(a), 70 Stat. 1114; Pub. L. 87–70, title VIII, §§ 801(c), 802, June 30, 1961, 75 Stat. 186; Pub. L. 87–723, § 4(c)(1), Sept. 28, 1962, 76 Stat. 672; Pub. L. 88–560, title V, § 501(a), Sept. 2, 1964, 78 Stat. 796; Pub. L. 89–117, title X, § 1003(b), Aug. 10, 1965, 79 Stat. 500; Pub. L. 98–181, title V, § 508, Nov. 30, 1983, 97 Stat. 1243; Pub. L. 98–479, title II, § 203(d)(4), Oct. 17, 1984, 98 Stat. 2229.)

AMENDMENTS

1984—Pub. L. 98–479 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended'' and ''such chapter'' for ''such Act''.

1983—Pub. L. 98–181 struck out second sentence providing that total principal amount of such notes and obligations issued pursuant to this section during the period beginning July 1, 1956, and ending October 1, 1969, shall not exceed $850,000,000.

1965—Pub. L. 89–117 changed the purpose for which the Secretary may issue notes and other obligations for purchase by the Secretary of the Treasury from that of making loans under this subchapter (other than loans under section 1474(b) or 1485 of this title) to that of making direct loans under the entire subchapter, substituted ''October 1969'' for ''September 30, 1965'', eliminated reservation that, of the allowable $850,000,000 principal amount of notes and obligations, $50,000,000 be available exclusively for assistance to elderly persons under clause (3) of section 1471(a) of this title, and changed the method for setting the interest on notes and obligations from that of having the Secretary set a rate taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of the notes or obligations to that of the Secretary setting a rate equal to the average rate payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which such note or other obligation is issued, which are neither due nor callable for redemption for 15 years from their date of issuance.

1964—Pub. L. 88–560 substituted ''September 30, 1965'' for ''June 30, 1965'', and ''$850,000,000'' for ''$700,000,000''.

1962—Pub. L. 87–723 substituted ''1474(b) or 1485'' for ''1474(b)'' and ''$700,000,000, of which $50,000,000 shall be available exclusively for assistance to elderly persons as provided in clause (3) of section 1471(a) of this title'' for ''$650,000,000''.

1961—Pub. L. 87–70 substituted ''June 30, 1965'' for ''June 30, 1961'', and ''$650,000,000'' for ''$450,000,000''.

1956—Act Aug. 7, 1956, authorized $450,000,000 for loans for the period beginning July 1, 1956, and ending June 30, 1961.

1955—Act Aug. 11, 1955, authorized an additional $100,000,000 on and after July 1, 1955.

1954—Act Aug. 2, 1954, substituted ''$100,000,000'' for the authorization of $8,500,000 (on and after July 1, 1954) which had been inserted by Act June 29, 1954.

Act June 29, 1954, authorized an additional $8,500,000 on and after July 1, 1954.

1952—Act July 14, 1952, authorized an additional $100,000,000 for fiscal year 1954.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 606(d) of act Aug. 7, 1956, provided that: ''This section [amending this section and sections 1482 and 1483 of this title] shall take effect as of July 1, 1956.''

§ 1482. Repealed. Pub. L. 98–181, title V, § 509, Nov. 30, 1983, 97 Stat. 1243

Section, acts July 15, 1949, ch. 338, title V, § 512, 63 Stat. 438; July 14, 1952, ch. 723, § 11(b), 66 Stat. 604; June 29, 1954, ch. 410, § 5(b), 68 Stat. 320; Aug. 2, 1954, ch. 649, title VIII, § 812(b), 68 Stat. 647; Aug. 11, 1955, ch. 783, title V, § 501(2), 69 Stat. 654; Aug. 7, 1956, ch. 1029, title VI, § 606(b), 70 Stat. 1114; June 30, 1961, Pub. L. 87–70, title VIII, § 801(c), 75 Stat. 186; Sept. 4, 1964, Pub. L. 88–560, title V, § 501(b), 78 Stat. 796; Aug. 10, 1965, Pub. L. 89–117, title X, § 1005(a), 79 Stat. 501, related to authorization to make commitments for contributions aggregating not to exceed $10,000,000 during period beginning July 1, 1956, and ending Oct. 1, 1969, in connection with loans made pursuant to section 1473 of this title.

§ 1483. Program levels and authorizations

(a) In general

(1) The Secretary may, to the extent approved in appropriation Acts, insure and guarantee loans under this subchapter during fiscal years 1993 and 1994, in aggregate amounts not to exceed $2,446,855,600 and $2,549,623,535, respectively, as follows:

(A) For insured or guaranteed loans under section 1472 of this title on behalf of low-income borrowers receiving assistance under section 1490a(a)(1) of this title, $1,676,484,000 for fiscal year 1993 and $1,746,896,328 for fiscal year 1994.

(B) For guaranteed loans under section 1472(h) of this title on behalf of low- and moderate-income borrowers, such sums as may be appropriated for fiscal years 1993 and 1994.

(C) For loans under section 1474 of this title, $12,400,000 for fiscal year 1993 and $12,920,800 for fiscal year 1994.

(D) For insured loans under section 1484 of this title, $16,821,600 for fiscal year 1993 and $17,528,107 for fiscal year 1994.

(E) For insured loans under section 1485 of this title, $739,500,000 for fiscal year 1993 and $770,559,000 for fiscal year 1994.

(F) For loans under section 1490c(b)(1)(B) of this title, $800,000 for fiscal year 1993 and $833,600 for fiscal year 1994.

(G) For site loans under section 1490d of this title, $850,000 for fiscal year 1993 and $885,700 for fiscal year 1994.

(2) Notwithstanding any other provision of law, insured and guaranteed loan authority authorized in this subchapter for any fiscal year beginning after September 30, 1984, shall not be transferred or used for any purpose not specified in this subchapter.

(b) Authorization of appropriations

There are authorized to be appropriated for fiscal years 1993 and 1994, and to remain available until expended, the following amounts:

(1) For grants under section 1472(f)(1) of this title, $1,100,000 for fiscal year 1993 and $1,146,200 for fiscal year 1994.

(2) For grants under section 1474 of this title, $21,100,000 for fiscal year 1993 and $21,986,200 for fiscal year 1994.

(3) For purposes of section 1479(c) of this title, $600,000 for fiscal year 1993 and $625,200 for fiscal year 1994.

(4) For project preparation grants under section 1479(f)(6) of this title, $5,300,000 in fiscal year 1993 and $5,522,600 in fiscal year 1994.

(5) In fiscal years 1993 and 1994, such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 1481 of this title equal to—

(A) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 1473 of this title; and

(B) the interest due on a similar sum represented by notes or other obligations issued by the Secretary.

(6) For grants for service coordinators under section 1485(y) of this title, $1,000,000 in fiscal year 1993 and $1,042,000 in fiscal year 1994.

(7) For financial assistance under section 1486 of this title—

(A) for low-rent housing and related facilities for domestic farm labor under subsections (a) through (j) of such section, $21,700,000 for fiscal year 1993 and $22,611,400 for fiscal year 1994; and

(B) for housing for rural homeless and migrant farmworkers under subsection (k) of such section, $10,500,000 for fiscal year 1993 and $10,941,000 for fiscal year 1994.

(8) For grants under section 1490c(f)[1] of this title, $13,900,000 for fiscal year 1993 and $14,483,800 for fiscal year 1994.

(9) For grants under section 1490m of this title, $30,800,000 for fiscal year 1993 and $32,093,600 for fiscal year 1994.

(c) Rental assistance

(1) The Secretary, to the extent approved in appropriations Acts for fiscal years 1993 and 1994, may enter into rental assistance payment contracts under section 1490a(a)(2)(A) of this title aggregating $414,100,000 for fiscal year 1993 and $431,492,200 for fiscal year 1994.

(2) Any authority approved in appropriation Acts for fiscal year 1988 or any succeeding fiscal year for rental assistance payment contracts under section 1490a(a)(2)(A) of this title or contracts for operating assistance under section 1490a(a)(5) of this title shall be used by the Secretary—

(A) to renew rental assistance payment contracts or operating assistance contracts that expire during such fiscal year;

(B) to provide amounts required to continue assistance payments for the remaining period of an existing contract, in any case in which

[1] See References in Text note below.

the original amount of assistance is used prior to the end of the term of the contract; and

(C) to make additional rental assistance payment contracts or operating assistance contracts for existing or newly constructed dwelling units.

(d) Supplemental rental assistance contracts

The Secretary, to the extent approved in appropriations Acts for fiscal years 1993 and 1994, may enter into 5-year supplemental rental assistance contracts under section 1472(c)(5)(D) of this title aggregating $12,178,000 for fiscal year 1993 and $12,689,476 for fiscal year 1994.

(e) Authorization of appropriations

There are authorized to be appropriated for rural housing vouchers under section 1490r of this title, $130,000,000 for fiscal year 1993 and $140,000,000 for fiscal year 1994.

(July 15, 1949, ch. 338, title V, § 513, 63 Stat. 438; July 14, 1952, ch. 723, § 11(c), 66 Stat. 604; June 29, 1954, ch. 410, § 5(c), 68 Stat. 320; Aug. 2, 1954, ch. 649, title VIII, § 812(c), 68 Stat. 647; Aug. 11, 1955, ch. 783, title V, § 501(3), 69 Stat. 654; Aug. 7, 1956, ch. 1029, title VI, § 606(c), 70 Stat. 1115; Pub. L. 87–70, title VIII, §§ 801(c), 805(b), June 30, 1961, 75 Stat. 186, 188; Pub. L. 88–560, title V, §§ 501(c), 503(b), Sept. 2, 1964, 78 Stat. 796, 798; Pub. L. 89–117, title X, § 1005(b), Aug. 10, 1965, 79 Stat. 501; Pub. L. 90–448, title X, § 1003, Aug. 1, 1968, 82 Stat. 553; Pub. L. 91–78, § 1, Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title IV, § 413(a), Dec. 24, 1969, 83 Stat. 398; Pub. L. 93–117, § 13(a), Oct. 2, 1973, 87 Stat. 423; Pub. L. 93–383, title V, § 509(a), Aug. 22, 1974, 88 Stat. 694; Pub. L. 95–60, § 4(a), June 30, 1977, 91 Stat. 258; Pub. L. 95–80, § 4(a), July 31, 1977, 91 Stat. 340; Pub. L. 95–128, title V, § 501(a), Oct. 12, 1977, 91 Stat. 1138; Pub. L. 95–406, § 7(a), Sept. 30, 1978, 92 Stat. 880; Pub. L. 95–557, title V, § 501(a)–(c), Oct. 31, 1978, 92 Stat. 2110, 2111; Pub. L. 95–619, title II, § 232(b), Nov. 9, 1978, 92 Stat. 3227; Pub. L. 96–71, § 5(a), Sept. 28, 1979, 93 Stat. 502; Pub. L. 96–105, § 5(a), Nov. 8, 1979, 93 Stat. 795; Pub. L. 96–153, title V, § 501(a), Dec. 21, 1979, 93 Stat. 1132; Pub. L. 96–372, § 6(a), Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title V, § 501(a), Oct. 8, 1980, 94 Stat. 1667; Pub. L. 97–35, title III, § 351(a), Aug. 13, 1981, 95 Stat. 420; Pub. L. 98–181, title V, § 511(a), Nov. 30, 1983, 97 Stat. 1243; Pub. L. 98–479, title I, § 105(d), Oct. 17, 1984, 98 Stat. 2227; Pub. L. 99–272, title III, § 3005, Apr. 7, 1986, 100 Stat. 103; Pub. L. 100–242, title III, § 301(a)–(d), (g), Feb. 5, 1988, 101 Stat. 1891–1893; Pub. L. 101–625, title VII, § 701(a)–(d), Nov. 28, 1990, 104 Stat. 4281, 4282; Pub. L. 102–550, title VII, § 701(a)–(d), (f), Oct. 28, 1992, 106 Stat. 3832–3834; Pub. L. 105–276, title V, § 599C(e)(2)(C), Oct. 21, 1998, 112 Stat. 2662.)

REFERENCES IN TEXT

Section 1490c(f) of this title, referred to in subsec. (b)(8), was repealed by Pub. L. 102–550, title VII, § 710(2), Oct. 28, 1992, 106 Stat. 3840.

AMENDMENTS

1998—Subsec. (c)(2). Pub. L. 105–276, § 599C(e)(2)(C)(i), inserted ''or contracts for operating assistance under section 1490a(a)(5) of this title'' after ''section 1490a(a)(2)(A) of this title'' in introductory provisions.

Subsec. (c)(2)(A). Pub. L. 105–276, § 599C(e)(2)(C)(ii), inserted ''or operating assistance contracts'' after ''contracts''.

Subsec. (c)(2)(B). Pub. L. 105–276, § 599C(e)(2)(C)(iii), struck out ''rental'' before ''assistance'' in two places.

Subsec. (c)(2)(C). Pub. L. 105–276, § 599C(e)(2)(C)(iv), inserted ''or operating assistance contracts'' after ''contracts''.

1992—Subsec. (a). Pub. L. 102–550, § 701(a), inserted heading and amended par. (1) generally, substituting provisions relating to aggregate amounts for which Secretary may insure and guarantee loans for fiscal years 1993 and 1994 for provisions authorizing aggregate amounts for fiscal years 1991 and 1992.

Subsec. (b). Pub. L. 102–550, § 701(b), amended subsec. (b) generally, inserting heading and substituting provisions authorizing appropriations for fiscal years 1993 and 1994 for provisions authorizing appropriations for fiscal years 1991 and 1992.

Subsec. (c). Pub. L. 102–550, § 701(c), inserted heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary, to the extent approved in appropriation Acts for fiscal years 1991 and 1992, may enter into rental assistance payment contracts under section 1490a(a)(2)(A) of this title aggregating $397,000,000 for fiscal year 1991 and $414,100,000 for fiscal year 1992.''

Subsec. (d). Pub. L. 102–550, § 701(d), inserted heading and amended text generally. Prior to amendment, text read as follows: ''The Secretary, to the extent approved in appropriation Acts for fiscal years 1991 and 1992, may enter into 5-year supplemental rental assistance contracts under section 1472(c)(5)(D) of this title aggregating $5,200,000 for fiscal year 1991 and $5,500,000 for fiscal year 1992.''

Subsec. (e). Pub. L. 102–550, § 701(f), amended subsec. (e) generally, substituting present provisions for provisions authorizing a demonstration rural housing voucher program during fiscal years 1988 and 1989. See section 1490r of this title.

1990—Subsec. (a)(1). Pub. L. 101–625, § 701(a), amended par. (1) generally, substituting provisions relating to aggregate amounts for which Secretary may insure and guarantee loans for fiscal years 1991 and 1992 for provisions authorizing aggregate amounts for fiscal years 1988 and 1989.

Subsec. (b). Pub. L. 101–625, § 701(b), amended subsec. (b) generally, substituting provisions authorizing appropriations for fiscal years 1991 and 1992 for provisions authorizing appropriations for fiscal years 1988 and 1989.

Subsec. (c)(1). Pub. L. 101–625, § 701(c), amended par. (1) generally, substituting provisions authorizing appropriations for rental assistance payment contracts for fiscal years 1991 and 1992 for provisions authorizing appropriations for such contracts for fiscal years 1988 and 1989.

Subsec. (d). Pub. L. 101–625, § 701(d), amended subsec. (d) generally, substituting provisions authorizing supplemental rental assistance contracts aggregating $5,200,000 for fiscal year 1991 and $5,500,000 for fiscal year 1992 for provisions authorizing contracts aggregating $26,000,000 for fiscal year 1988 and $27,534,000 for fiscal year 1989.

1988—Subsec. (a)(1). Pub. L. 100–242, § 301(a), amended par. (1) generally, substituting provisions relating to the aggregate amounts for which the Secretary may insure and guarantee loans for fiscal years 1988 and 1989, for provisions authorizing aggregate amounts the Secretary may insure and guarantee for fiscal year 1986.

Subsec. (b). Pub. L. 100–242, § 301(b), amended subsec. (b) generally, substituting provisions authorizing appropriated funds for fiscal years 1988 and 1989, for provisions authorizing appropriated funds for fiscal years 1984 and 1985.

Subsec. (c). Pub. L. 100–242, § 301(c), amended subsec. (c) generally, substituting provisions authorizing appropriations to enter into rental assistance payment contracts for fiscal years 1988 and 1989, for provisions authorizing appropriations for such contracts for fiscal years 1984 and 1985.

Subsecs. (d), (e). Pub. L. 100–242, § 301(d), (g), added subsecs. (d) and (e).

1986—Subsec. (a)(1). Pub. L. 99–272 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary may insure and guarantee loans under this subchapter during fiscal years 1984 and 1985 in an aggregate amount not to exceed such sums as may be approved in an appropriation Act.''

1984—Subsec. (a). Pub. L. 98–479, § 105(d)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(7). Pub. L. 98–479, § 105(d)(2), substituted ''1490m of this title'' for ''1490k of this title''.

1983—Subsec. (a). Pub. L. 98–181 amended subsec. (a) generally, substituting ''The Secretary may insure and guarantee loans under this subchapter during fiscal years 1984 and 1985 in an aggregate amount not to exceed such sums as may be approved in an appropriation Act'' for ''The Secretary may, as approved in appropriation Acts, insure and guarantee loans under the authorities provided in this subchapter in an aggregate principal amount not to exceed $3,700,600,000 with respect to the fiscal year ending September 30, 1982; except that—

''(1) not less than $3,170,000,000 of any amount so approved in appropriation Acts for such year shall be made available for loans insured or guaranteed on behalf of borrowers receiving assistance pursuant to subparagraph (B) or (C) of section 1490a(a)(1) of this title;

''(2) not more than $25,600,000 of such amount so approved for such fiscal year may be made available for loans insured under section 1484 of this title;

''(3) not more than $5,000,000 of such amount so approved shall be available for making advances under section 1471(e) of this title for such fiscal year; and

''(4) none of such amount shall be available for loans guaranteed pursuant to this title on behalf of borrowers who do not receive assistance pursuant to subparagraph (B) or (C) of section 1490a(a)(1) of this title.

Subsec. (b). Pub. L. 98–181 amended subsec. (b) generally, substituting ''There are authorized to be appropriated for fiscal years 1984 and 1985—

''(1) such sums as may be necessary for grants pursuant to section 1474 of this title;

''(2) such sums as may be necessary for the purposes of section 1479(c) of this title;

''(3) such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 1481 of this title equal to (A) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 1473 of this title, and (B) the interest due on a similar sum represented by notes or other obligations issued by the Secretary;

''(4) such sums as may be necessary for financial assistance pursuant to section 1486 of this title;

''(5) such sums as may be necessary for the purposes of section 1490c of this title;

''(6) such sums as may be necessary for purposes of section 1490e(a) of this title;

''(7) not to exceed $100,000,000 for each such year for grants under section 1490k of this title; of which 5 per centum shall be available for technical assistance; and

''(8) such sums as may be required by the Secretary to administer the provisions of sections 1715z and 1715z–1 of title 12 and section 1437f of this title''

for ''There are authorized to be appropriated—

''(1) such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 1481 of this title equal to (A) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 1473 of this title, and (B) the interest due on a similar sum represented by notes or other obligations issued by the Secretary;

''(2) not to exceed $50,000,000 for loans and grants pursuant to section 1474 of this title for the fiscal year ending September 30, 1982, of which not more than $25,000,000 shall be available for grants;

''(3) not to exceed $25,000,000 for financial assistance pursuant to section 1486 of this title for the fiscal year ending September 30, 1982;

''(4) not to exceed $2,000,000 for the purposes of section 1490e(a) of this title, of which not less than $1,000,000 shall be used for counseling purchasers and delinquent borrowers, for the fiscal year ending September 30, 1982;

''(5) such sums as may be required by the Secretary to administer the provisions of sections 1752 and 1752–1 of title 12 and section 1437f of this title; and

''(6) not to exceed $2,000,000 for the purposes of section 1479(c) of this title for the fiscal year ending September 30, 1982.''

Subsec. (c). Pub. L. 98–181 added subsec. (c).

1981—Subsec. (a). Pub. L. 97–35, § 351(a)(1)–(3), in introductory text substituted provisions authorizing appropriations for the fiscal year ending Sept. 30, 1982, for provisions authorizing appropriations for the fiscal year ending Sept. 30, 1981, in par. (1) substituted ''$3,170,000,000'' for ''$3,120,000,000'', and in par. (3) substituted ''none'' for ''not more than $100,000,000''.

Subsec. (b). Pub. L. 97–35, § 351(a)(4)–(7), in par. (2) substituted ''$50,000,000'' for ''$49,000,000'' and ''1982'' for ''1981'', in par. (3) substituted ''1982'' for ''1981'', in par. (4) substituted ''1982'' for ''1981'', and added par. (6).

1980—Subsec. (a). Pub. L. 96–399, § 501(a)(1)–(4), substituted in introductory clause, provision for $3,797,600,000 for fiscal year ending Sept. 30, 1981, for provision for $4,484,000,000 for fiscal year ending Oct. 15, 1980, in par. (1) substituted ''$3,120,000,000'' for ''$3,070,000,000'', in par. (2) substituted ''$25,600,000'' for ''$38,000,000'', and added par. (4).

Pub. L. 96–372, § 6(a)(1), substituted ''October 15, 1980'' for ''September 30, 1980''.

Subsec. (b). Pub. L. 96–399, § 501(a)(5)–(7), in par. (2) substituted provision for $49,000,000 for fiscal year ending Sept. 30, 1981, for provision for $48,000,000 for fiscal year ending Sept. 30, 1980, and inserted limitation of $25,000,000 available for grants, in par. (3) substituted provision for $25,000,000 for fiscal year ending Sept. 30, 1981, for provision for $30,000,000 for fiscal year ending Oct. 15, 1980, and in par. (4) substituted ''$2,000,000'' for ''$1,500,000'', ''$1,000,000'' for ''$750,000'', ''1981'' for ''1980'', and struck out ''and not to exceed $1,000,000 for the purposes of section 1490e(b) of this title'' after ''borrowers''.

Pub. L. 96–372, § 6(a)(2), substituted ''October 15, 1980'' for ''September 30, 1980'' in pars. (2) to (4).

1979—Pub. L. 96–153 amended section generally, inserted authorization of appropriations for fiscal year ending Sept. 30, 1980 for guaranteeing loans under this subchapter and laid down maximum limits for certain programs, authorized appropriation of $48,000,000 for fiscal year ending Sept. 30, 1980 for purposes of section 1481 of this title, of $30,000,000 for fiscal year ending Sept. 30, 1980 for purposes of section 1486 of this title, of $1,500,000 for fiscal year ending Sept. 30, 1980 for purposes of section 1490e(a) of this title, of $1,000,000 for purposes of section 1490e(b) of this title, inserted reference to section 1437f of this title, and struck out authorization of appropriations for research and study programs.

Pub. L. 96–105 substituted ''November 30, 1979'' for ''October 31, 1979'' wherever appearing in cls. (b) to (d).

Pub. L. 96–71 substituted ''October 31, 1979'' for ''September 30, 1979'' wherever appearing in cls. (b) to (d).

1978—Pub. L. 95–619 in cl. (b) inserted requirement that not less than $25,000,000 of any amount authorized to be appropriated for the fiscal year ending Sept. 30, 1979, was to be appropriated for the purpose of making grants pursuant to section 1474(c) of this title.

Pub. L. 95–557, inserted in cl. (b) ''and not to exceed $48,000,000 for the fiscal year ending September 30, 1979'', and in cl. (c) ''and not to exceed $38,000,000 for the fiscal year ending September 30, 1979'', and substituted in cl. (d) ''not to exceed $10,000,000 for research and study programs pursuant to subsections (b), (c), and (d) of section 1476 of this title for the fiscal year ending September 30, 1979'' for ''not to exceed $250,000 per year for research and study programs pursuant to subsection (b), (c), and (d) of section 1476 of this title during the period beginning July 1, 1961, and ending June 30, 1974,

and not to exceed $1,000,000 per year for such programs during the period beginning October 1, 1974, and ending October 31, 1978''.

Pub. L. 95–406 substituted in cls. (b) to (d) ''October 31, 1978'' for ''September 30, 1978''.

1977—Pub. L. 95–128 substituted in cls. (b) to (d) ''September 30, 1978'' for ''September 30, 1977'' and in cls. (b) and (c) ''$105,000,000'' for ''$80,000,000''.

Pub. L. 95–80 substituted ''September 30, 1977'' for ''July 31, 1977'' wherever appearing.

Pub. L. 95–60 substituted ''July 31, 1977'' for ''June 30, 1977'' wherever appearing.

1974—Pub. L. 93–383 in cls. (b) and (c) increased amount from $50,000,000 to $80,000,000 and substituted ''June 30, 1977'' for ''October 1, 1974'', and in cl. (d) substituted ''June 30, 1974'' for ''October 1, 1974'' and inserted provisions authorizing not to exceed $1,000,000 per year during the period beginning October 1, 1974, and ending June 30, 1977.

1973—Pub. L. 93–117 substituted ''October 1, 1974'' for ''October 1, 1973'' wherever appearing.

1969—Pub. L. 91–152 substituted ''October 1, 1973'' for ''January 1, 1970'' wherever appearing.

Pub. L. 91–78 substituted ''January 1, 1970'' for ''October 1, 1969'' wherever appearing.

1968—Pub. L. 90–448 authorized appropriations of such sums as may be required to administer the provisions of sections 1715z and 1715z–1 of title 12.

1965—Pub. L. 89–117 substituted ''October 1, 1969'' for ''September 30, 1965'' wherever appearing and ''$50,000,000'' for ''$10,000,000'' in cl. (c) as the maximum allowable appropriation for financial assistance pursuant to section 1486 of this title.

1964—Pub. L. 88–560 substituted ''September 30, 1965'' for ''June 30, 1965'' wherever appearing, redesignated cls. (c) and (d) as (d) and (e), and added cl. (c).

1961—Pub. L. 87–70 extended the period for grants and loans pursuant to section 1474 (a), (b) of this title from June 30, 1961, to June 30, 1965, and authorized appropriations of not more than $250,000 per year for research and study programs pursuant to subsections (b), (c), and (d) of section 1476 of this title for the period beginning July 1, 1961, and ending June 30, 1965.

1956—Act Aug. 7, 1956, authorized $50,000,000 for grants and loans from July 1, 1956, to June 30, 1961.

1955—Act Aug. 11, 1955, authorized an additional $10,000,000 on July 1, 1955.

1954—Act Aug. 2, 1954, substituted $10,000,000 for the authorization of $850,000 (available July 1, 1954) which had been authorized by act June 29, 1954.

Act June 29, 1954, authorized an appropriation of $850,000 to be available on July 1, 1954.

1952—Act July 14, 1952, authorized an appropriation of $10,000,000 to be available on July 1, 1953.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 7, 1956, effective July 1, 1956, see section 606(d) of act Aug. 7, 1956, set out as a note under section 1481 of this title.

§ 1484. Insurance of loans for housing and related facilities for domestic farm labor

(a) Authorization; terms and conditions

The Secretary is authorized to insure and make commitments to insure loans made by lenders other than the United States to the owner of any farm or any association of farmers for the purpose of providing housing and related facilities for domestic farm labor, or to any Indian tribe for such purpose, or to any State (or political subdivision thereof), or any broad-based public or private nonprofit organization, or any limited partnership in which the general partner is a nonprofit entity, or any nonprofit organization of farmworkers incorporated within the State for the purpose of providing housing and related facilities for domestic farm labor any place within the State where a need exists. All such loans shall be made in accordance with terms and conditions substantially identical with those specified in section 1472 of this title, except that—

(1) no such loan shall be insured in an amount in excess of the value of the farm involved less any prior liens in the case of a loan to an individual owner of a farm, or the total estimated value of the structures and facilities with respect to which the loan is made in the case of any other loan;

(2) no such loan shall be insured if it bears interest at a rate in excess of 1 per centum per annum;

(3) out of interest payments by the borrower the Secretary shall retain a charge in an amount not less than one-half of 1 per centum per annum of the unpaid principal balance of the loan;

(4) the insurance contracts and agreements with respect to any loan may contain provisions for servicing the loan by the Secretary or by the lender, and for the purchase by the Secretary of the loan if it is not in default, on such terms and conditions as the Secretary may prescribe; and

(5) the Secretary may take mortgages creating a lien running to the United States for the benefit of the insurance fund referred to in subsection (b) of this section notwithstanding the fact that the note may be held by the lender or his assignee.

(b) Utilization of farm tenant mortgage insurance fund; additions to and deposits in fund; deposits in Treasury

The Secretary shall utilize the insurance fund created by section 1005a of title 7[1] and the provisions of section 1005c(a), (b), and (c) of title 7[1] to discharge obligations under insurance contracts made pursuant to this section, and

(1) the Secretary may utilize the insurance fund to pay taxes, insurance, prior liens, and other expenses to protect the security for loans which have been insured hereunder and to acquire such security property at foreclosure sale or otherwise;

(2) the notes and security therefor acquired by the Secretary under insurance contracts made pursuant to this section shall become a part of the insurance fund. Loans insured under this section may be held in the fund and collected in accordance with their terms or may be sold and reinsured. All proceeds from such collections, including the liquidation of security and the proceeds of sales, shall become a part of the insurance fund; and

(3) of the charges retained by the Secretary out of interest payments by the borrower, amounts not less than one-half of 1 per centum per annum of the unpaid principal balance of the loan shall be deposited in and become a part of the insurance fund. The remainder of

[1] See References in Text note below.

such charges shall be deposited in the Treasury of the United States and shall be available for administrative expenses of the Farmers Home Administration, to be transferred annually to and become merged with any appropriation for such expenses.

(c) Insurance contract; obligation of United States; incontestability

Any contract of insurance executed by the Secretary under this section shall be an obligation of the United States and incontestable except for fraud or misrepresentation of which the holder of the contract has actual knowledge.

(d) Repealed. Pub. L. 96–153, title V, § 501(b), Dec. 21, 1979, 93 Stat. 1133

(e) Administrative expenses

Amounts made available pursuant to section 1483 of this title shall be available for administrative expenses incurred under this section.

(f) Definitions

As used in this section—

(1) the term ''housing'' means (A) new structures (including household furnishings) suitable for dwelling use by domestic farm labor, and (B) existing structures (including household furnishings) which can be made suitable for dwelling use by domestic farm labor by rehabilitation, alteration, conversion, or improvement;

(2) the term ''related facilities'' means (A) new structures (including household furnishings) suitable for use as dining halls, community rooms or buildings, or infirmaries, or for other essential services facilities, and (B) existing structures (including household furnishings) which can be made suitable for the above uses by rehabilitation, alteration, conversion, or improvement and (C) land necessary for an adequate site; and

(3) the term ''domestic farm labor'' means any person (and the family of such person) who receives a substantial portion of his or her income from primary production of agricultural or aquacultural commodities or the handling of such commodities in the unprocessed stage, without respect to the source of employment, except that—

(A) such person shall be a citizen of the United States or a person legally admitted for permanent residence;

(B) such term includes any person (and the family of such person) who is retired or disabled, but who was domestic farm labor at the time of retirement or becoming disabled; and

(C) in applying this paragraph with respect to vacant units in farm labor housing, the Secretary shall make units available for occupancy in the following order of priority:

(i) to active farm laborers (and their families);

(ii) to retired or disabled farm laborers (and their families) who were active in the local farm labor market at the time of retiring or becoming disabled; and

(iii) to other retired or disabled farm laborers (and their families).

(g) Waiver of interest rate limitations

The Secretary may waive the interest rate limitation contained in subsection (a)(2) of this section and the requirement of section 1471(c)(3) of this title in any case in which the Secretary determines that qualified public or private nonprofit sponsors are not currently available and are not likely to become available within a reasonable period of time and such waiver is necessary to permit farmers to provide housing and related facilities for migrant domestic farm laborers, except that the benefits resulting from such waiver shall accrue to the tenants, and the interest rate on a loan insured under this section and for which the Secretary permits such waiver shall be no less than one-eighth of 1 per centum above the average interest rate on notes or other obligations which are issued under section 1481 of this title and have maturities comparable to such a loan.

(h) Determination of need for assistance

In making available assistance in any area under this section or section 1486 of this title, the Secretary shall—

(1) in determining the need for the assistance, take into consideration the housing needs only of domestic farm labor, including migrant farmworkers, in the area; and

(2) in determining whether to provide such assistance, make such determination without regard to the extent or nature of other housing needs in the area.

(i) Domestic farm labor housing available for other families

Housing and related facilities constructed with loans under this section may be used for tenants eligible for occupancy under section 1485 of this title if the Secretary determines that—

(1) there is no longer a need in the area for farm labor housing; or

(2) the need for such housing in the area has diminished to the extent that the purpose of the loan, providing housing for domestic farm labor, can no longer be met.

(July 15, 1949, ch. 338, title V, § 514, as added Pub. L. 87–70, title VIII, § 804(a), June 30, 1961, 75 Stat. 186; amended Pub. L. 88–560, title V, § 502, Sept. 2, 1964, 78 Stat. 796; Pub. L. 90–448, title X, § 1004, Aug. 1, 1968, 82 Stat. 553; Pub. L. 91–609, title VIII, § 801(a)–(c), Dec. 31, 1970, 84 Stat. 1805, 1806; Pub. L. 95–128, title V, § 505, Oct. 12, 1977, 91 Stat. 1140; Pub. L. 95–557, title V, §§ 501(d), 504, Oct. 31, 1978, 92 Stat. 2111, 2112; Pub. L. 96–153, title V, § 501(b), Dec. 21, 1979, 93 Stat. 1133; Pub. L. 96–399, title V, § 507(b), Oct. 8, 1980, 94 Stat. 1670; Pub. L. 98–181, title V, § 510, Nov. 30, 1983, 97 Stat. 1243; Pub. L. 100–242, title III, §§ 305(a), 316(b), Feb. 5, 1988, 101 Stat. 1895, 1897; Pub. L. 100–628, title X, § 1043(a), Nov. 7, 1988, 102 Stat. 3273; Pub. L. 104–180, title VII, § 734(e)(1), Aug. 6, 1996, 110 Stat. 1603; Pub. L. 105–276, title V, § 599C(d), Oct. 21, 1998, 112 Stat. 2661; Pub. L. 106–569, title VII, §§ 703, 708(b), Dec. 27, 2000, 114 Stat. 3013, 3018.)

REFERENCES IN TEXT

Sections 1005a and 1005c(a), (b), and (c) of title 7, referred to in subsec. (b), were repealed by section 341(a) of Pub. L. 87–128, title III, Aug. 8, 1961, 75 Stat. 318 (set out as a note under section 1921 of Title 7, Agriculture), which also provided that references in other laws to the Bankhead-Jones Farm Tenant Act shall be construed as referring to appropriate provisions of section 1921 et seq. of Title 7. The fund established pursuant to section

1005a of Title 7 was renamed the Agricultural Credit Insurance Fund. See section 1929 of Title 7.

CODIFICATION

Another section 801(b) of Pub. L. 91–609 amended section 1460(c)(1) of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–569, § 703, substituted ''limited partnership'' for ''nonprofit limited partnership'' in first sentence of introductory provisions.

Subsec. (j). Pub. L. 106–569, § 708(b), struck out heading and text of subsec. (j). Text read as follows: ''Whoever, as an owner, agent, or manger, or who is otherwise in custody, control, or possession of property that is security for a loan made or insured under this section willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other funds derived from such property, for any purpose other than to meet actual or necessary expenses of the property, or for any other purpose not authorized by this subchapter or the regulations adopted pursuant to this subchapter, shall be fined not more than $250,000 or imprisoned not more than 5 years, or both.''

1998—Subsec. (a). Pub. L. 105–276 inserted '', or any nonprofit limited partnership in which the general partner is a nonprofit entity,'' after ''private nonprofit organization'' in first sentence.

1996—Subsec. (j). Pub. L. 104–180 added subsec. (j).

1988—Subsec. (f)(1). Pub. L. 100–242, § 316(b), struck out ''and'' at end.

Subsec. (f)(3). Pub. L. 100–242, § 305(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''the term 'domestic farm labor' means persons who receive a substantial portion (as determined by the Secretary) of their income as laborers on farms situated in the United States, Puerto Rico, or the Virgin Islands and either (A) are citizens of the United States, or (B) reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence therein.''

Subsec. (i). Pub. L. 100–628 added subsec. (i).

1983—Subsec. (h). Pub. L. 98–181 added subsec. (h).

1980—Subsec. (a). Pub. L. 96–399 inserted reference to Indian tribe.

1979—Subsec. (d). Pub. L. 96–153 repealed subsec. (d) which provided for a maximum of $38,000,000 for the aggregate amount of principal obligations of loans insured under this section.

1978—Subsec. (d). Pub. L. 95–557, § 501(d), substituted ''$38,000,000 (subject to approval in an appropriation Act)'' for ''$25,000,000''.

Subsec. (g). Pub. L. 95–557, § 504, added subsec. (g).

1977—Subsec. (f)(3). Pub. L. 95–128 extended definition of ''domestic farm labor'' to include laborers on farms situated in Puerto Rico and the Virgin Islands and the residents of the islands after being legally admitted for permanent residence.

1970—Subsec. (a). Pub. L. 91–609, § 801(a), authorized insurance of loans to broad-based nonprofit organizations and nonprofit organizations of farmworkers incorporated within the State and provided for housing and related facilities for domestic farm labor any place within the State where need exists.

Subsec. (a)(2). Pub. L. 91–609, § 801(b), substituted ''1'' for ''5'' per centum.

Subsec. (f)(1), (2). Pub. L. 91–609, § 801(c), substituted ''structures (including household furnishings)'' for ''structures'' in cls. (A) and (B).

1968—Subsec. (f)(2). Pub. L. 90–448 included land necessary for an adequate site within the definition of ''related facilities''.

1964—Subsec. (f)(3). Pub. L. 88–560 included residents of the United States after being legally admitted for permanent residence.

§ 1485. Housing and related facilities for elderly persons and families or other persons and families of low income

(a) Direct loans; authorization; terms and conditions; revolving fund; appropriation

The Secretary is authorized to make loans to private nonprofit corporations and consumer cooperatives and Indian tribes to provide rental or cooperative housing and related facilities for elderly or handicapped persons or families of low or moderate income or other persons and families of low income in rural areas, in accordance with terms and conditions substantially identical with those specified in section 1472 of this title; except that—

(1) no such loan shall exceed the development cost or the value of the security, whichever is less;

(2) such a loan may be made for a period of up to 30 years from the making of the loan; and

(3) such a loan, when made to a consumer cooperative for cooperative housing purposes, may, notwithstanding any other provision of law, be made upon the condition that any person who is admitted as an eligible member and tenant of the cooperative may not subsequently be deprived of his membership or tenancy by reason of his no longer meeting the income eligibility requirements established by the Secretary.

There is authorized to be appropriated not to exceed $50,000,000, which shall constitute a revolving fund to be used by the Secretary in carrying out this subsection.

(b) Insurance of loans; authorization; terms and conditions; utilization of Agricultural Credit Insurance Fund

The Secretary is authorized to insure and make commitments to insure loans made to any individual, corporation, association, trust, Indian tribe, or partnership to provide rental or cooperative housing and related facilities for elderly or handicapped persons or families or other persons and families of moderate income in rural areas, in accordance with terms and conditions substantially identical with those specified in section 1472 of this title; except that—

(1) no such loan shall exceed the development cost or the value of the security, whichever is less;

(2) such a loan may be made for a period of up to 30 years from the making of the loan, but the Secretary may provide for periodic payments based on an amortization schedule of 50 years with a final payment of the balance due at the end of the term of the loan;

(3) for insuring such loans, the Secretary shall utilize the Agricultural Credit Insurance Fund subject to all the provisions of section 1929 of title 7 and the second and third sentences of section 1928[1] of title 7, including the authority in section 1929(f)(1)[1] of title 7 to utilize the insurance fund to make, sell, and insure loans which could be insured under this subsection; but the aggregate of the principal

[1] See References in Text note below.

amounts of such loans made by the Secretary and not disposed of shall not exceed $10,000,000 outstanding at any one time; and the Secretary may take liens running to the United States though the notes may be held by other lenders;

(4) such a loan, when made to a consumer cooperative for cooperative housing purposes, may, notwithstanding any other provision of law, be made upon the condition that any person who is admitted as an eligible member and tenant of the cooperative may not subsequently be deprived of his membership or tenancy by reason of his no longer meeting the income eligibility requirements established by the Secretary;

(5) loans may be made to owners who are otherwise eligible under this section to purchase and convert single-family residences to rental units of two or more dwellings; and

(6) the Secretary may make a new loan to the current borrower to finance the final payment of the original loan for an additional period not to exceed twenty years, if—

(A) the Secretary determines—

(i) it is more cost-efficient and serves the tenant base more effectively to maintain the current property than to build a new property in the same location; or

(ii) the property has been maintained to such an extent that it warrants retention in the current portfolio because it can be expected to continue providing decent, safe, and affordable rental units for the balance of the loan; and

(B) the Secretary determines—

(i) current market studies show that a need for low-income rural rental housing still exists for that area; and

(ii) any other criteria established by the Secretary has been met.

(c) Equity recapture loans and loans to nonprofit organizations and public agencies

With respect to a loan made or insured under subsection (a) or (b) of this section, the Secretary is authorized to—

(1) make or insure an equity loan in the form of a supplemental loan for the purpose of equity takeout to the owner of housing financed with a loan made or insured under this section pursuant to a contract entered into before December 15, 1989, for the purpose of extending the affordability of the housing for low income families or persons and very low-income families or persons for not less than 20 years, except that such loan may not exceed 90 percent of the value of the equity in the project as determined by the Secretary;

(2) transfer and reamortize an existing loan in connection with assistance provided under paragraph (1); and

(3) make or insure a loan to enable a nonprofit organization or public agency to make a purchase described in section 1472(c)(5) of this title.

(d) Construction requirements; detached units for cooperative housing

No loan shall be made or insured under subsection (a) or (b) of this section unless the Secretary finds that the construction involved will be undertaken in an economical manner and will not be of elaborate or extravagant design or materials. However, specifically designed equipment required by elderly or handicapped persons or families shall not be considered elaborate or extravagant. A loan may be made or insured under subsection (a) or (b) of this section with respect to detached units, including those on scattered sites, for cooperative housing.

(e) Definitions

As used in this section—

(1) the term ''housing'' means new or existing housing suitable for dwelling use by occupants eligible under this section, and such term also means manufactured home rental parks where either the lots or both the lots and the homes are available for use by occupants eligible under this section; and such term also means congregate housing facilities for elderly or handicapped persons or families who require some supervision and central services but are otherwise able to care for themselves; such housing for the handicapped may be utilized in conjunction with educational and training facilities;

(2) the term ''related facilities'' includes cafeterias or dining halls, community rooms or buildings, appropriate recreation facilities, and other essential service facilities;

(3) the term ''congregate housing'' means housing in which (A) some of the units may not have kitchen facilities, and (B) there is a central dining facility to provide wholesome and economic meals for elderly or handicapped persons or families.

(4) the term ''development cost'' means the costs of constructing, purchasing, improving, altering, or repairing new or existing housing and related facilities and purchasing and improving the necessary land, including necessary and appropriate fees and charges, initial operating expenses up to 2 per centum of the aforementioned costs, approved by the Secretary, impact fees, local charges for installation, provision, or use of infrastructure, and local assessments for public improvements and services imposed by State and local governments. Such fees and charges may include payments of qualified consulting organizations or foundations which operate on a nonprofit basis and which render services or assistance to nonprofit corporations or consumer cooperatives who provide housing and related facilities for low or moderate income families. Notwithstanding the first sentence of this paragraph, the term ''development cost'' shall not include any initial operating expenses in the case of any nonprofit corporation or consumer cooperative that is financing housing under this section and has been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26.

(f) Administrative expenses

Amounts made available pursuant to section 1483 of this title shall be available for administrative expenses incurred under this section.

(g) Loans for financing transfers of memberships in cooperatives

Notwithstanding the provisions of subsections (a) and (b) of this section, the Secretary may make and insure loans to consumer cooperatives to enable such cooperatives to finance the transfers of memberships in the cooperatives upon such terms and conditions as low- and moderate-income persons can reasonably afford, except that such loans shall not be made upon terms more favorable than are authorized under section 1490a(a) of this title, and that the total loan to a cooperative under this section shall not exceed the value of the property.

(h) Project transfers

After August 6, 1996, the ownership or control of a project for which a loan is made or insured under this section may be transferred only if the Secretary determines that such transfer would further the provision of housing and related facilities for low-income families or persons and would be in the best interests of residents and the Federal Government.

(i) Limitations on cost increases after approval for project involving newly constructed or substantially rehabilitated units; applicable factors

After approving a project involving newly constructed or substantially rehabilitated units under this section, the Secretary shall limit cost increases to those approved by the Secretary. The Secretary may approve those increases only for unforeseen factors beyond the owner's control, design changes required by the Secretary or the local government, or changes in financing approved by the Secretary.

(j) Contract preferences for providing units in newly constructed projects

For the purpose of achieving the lowest cost in providing units in newly constructed projects assisted under this section, the Secretary shall give a preference in entering into contracts under this section for projects which are to be located on specific tracts of land provided by States, units of local government, or others if the Secretary determines that the tract of land is suitable for such housing, and that affording such preference will be cost effective.

(k) Management fees

The Secretary shall assure that management fees are not excessive when a project developed under this section is managed by the developer or an affiliate of the developer.

(*l*) Determination of market feasibility of project

For purposes of determining the market feasibility of any project to be assisted under this section—

(1) in the case of any applicant who applies for rental assistance payments under section 1490a of this title in connection with such project, the Secretary shall consider the availability of such rental assistance payments with respect to the project and shall require such applicant to demonstrate that a market exists for persons and families eligible for such rental assistance payments; and

(2) in the case of any applicant whose project is expected to utilize any assistance under a program of a State, or political subdivision thereof, that is similar to such assistance payments under section 1490a of this title, the Secretary shall only require such applicant to demonstrate that—

(A) a market exists for persons and families eligible for such program of assistance;

(B) such program of assistance will provide rental assistance for a period of not less than five years, and, at the option of the applicant, either that there is a reasonable assurance that the contract for assistance will be extended or renewed, or for the term of the loan remaining after the period of such assistance, that an adequate rental market exists for the project without such assistance; and

(C) during the term of such rental assistance contracts, such State or political subdivision shall make available the amounts required for such rental assistance not less than annually.

(m) Standards for housing and related facilities rehabilitated or repaired; establishment, criteria, etc.

The Secretary shall establish standards for housing and related facilities rehabilitated or repaired with amounts received under a loan made or insured under this section. Standards established by the Secretary under this subsection shall provide that except for substantial rehabilitation the particular items or systems repaired or rehabilitated must meet appropriate levels of quality or performance comparable to those levels prescribed by the Secretary of Housing and Urban Development for rehabilitation, but shall not require that such items or systems or the remainder of the property meet the standards which are applicable to new construction. The Secretary shall ensure that standards prescribed under this subsection provide decent, safe, and sanitary housing and related facilities.

(n) Assistance to projects located on more than one site

The Secretary may not deny assistance under this section or section 1490a of this title on the basis that the project involved is to be located on more than one site.

(*o*) Rental assistance payments as affecting assistance to projects or occupancy by eligible persons

The Secretary may not (1) deny assistance under this section on the basis that rental assistance payments under section 1490a of this title may be required unless the authority to provide such assistance is not available; or (2) promulgate any regulation that would have the effect of denying occupancy to eligible persons on the basis that such persons require rental assistance payments under section 1490a of this title.

(p) Occupancy by low income persons and families other than very low-income persons and families

(1) To the extent assistance is available under section 1490a(a)(2) of this title, not more than 25 per centum of the dwelling units which were available for occupancy under this section prior

to November 30, 1983, and which will be leased on or after November 30, 1983, shall be available for leasing by low income persons and families other than very low-income persons and families.

(2) To the extent assistance is available under section 1490a(a)(2) of this title, not more than 5 per centum of the dwelling units which become available for occupancy under this section on or after November 30, 1983, shall be available for leasing by low income persons and families other than very low-income persons and families.

(3) Units in projects financed under this section which become available for occupancy after November 30, 1983, shall not be available for occupancy by persons and families other than very low-income persons and families if the authority to provide assistance for such persons is available.

(4) In projects financed under this section, units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26 shall not be available for occupancy by persons or families other than persons or families with incomes not in excess of the qualifying income applicable to such units pursuant to subparagraph (A) or (B) of section 42(g)(1) of title 26.

(5) The Secretary shall coordinate the processing of any application for a loan under this section for a project and the processing of any application for assistance under section 1490a(a)(2) of this title with respect to housing units in the same project in an economical and efficient manner. At the time the Secretary enters into a commitment to make or insure a loan under this section the Secretary shall obligate amounts for assistance payments under section 1490a(a)(2) of this title for the project, to the extent that such amounts are available and the Secretary determines such assistance is necessary for the market feasibility of the project.

(q) Determination of income of person or family occupying financed housing

In determining the income of a person or family occupying housing financed under this section, the Secretary shall consider the value of that person's or family's assets in the same manner as the Secretary of Housing and Urban Development considers such value for the purpose of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.].

(r) Operating reserve and equity contribution requirements; regulations to implement adjustment by negotiated rulemaking procedure

(1) the[2] Secretary—

(A) may require that the initial operating reserve under this section may be in the form of an irrevocable letter of credit; and

(B) except as provided in paragraph (2), may require not more than a 3 percent contribution to equity, except that the Secretary shall require a 5 percent contribution in the case of a project that is allocated a low-income housing tax credit pursuant to section 42 of title 26.

(2) The Secretary may adjust the amount of equity contribution to ensure that assistance provided is not more than is necessary to provide affordable housing after taking account of assistance from all Federal, State, and local sources.

(3) Not later than 60 days after August 6, 1996, the Secretary shall issue regulations to implement subsection (r)(2) of this section in accordance with the negotiated rulemaking procedures set forth in subchapter III of chapter 5 of title 5: *Provided*, That if the negotiated rulemaking is not completed within the designated time, the Secretary shall proceed to promulgate regulations under the rulemaking authority contained in section 557 of title 5.

(s) Limitation of fees on loans

No fee other than a late fee may be imposed by or for the Secretary or any other Federal agency on or with respect to a loan made or insured under this section.

(t) Equity takeout loans

(1) Authority

The Secretary is authorized to guarantee an equity loan (in the form of a supplemental loan) to an owner of housing financed with a loan made or insured under subsection (b) of this section, only if the Secretary determines, after taking into account local market conditions, that there is reasonable likelihood that the housing will continue as decent, safe, and sanitary housing for the remaining life of the original loan on the project made or insured under subsection (b) of this section and that such an equity loan is—

(A) necessary to provide a fair return on the owner's investment in the housing;

(B) the least costly alternative for the Federal Government that is consistent with carrying out the purposes of this subsection; and

(C) would not impose an undue hardship on tenants or an unreasonable cost to the Federal Government.

The amount of loans guaranteed under this subsection shall be subject to limits provided in appropriations Acts.

(2) Timing

The Secretary is authorized to guarantee an equity loan under this subsection after the expiration of the 20-year period beginning on the date that an existing loan under subsection (b) of this section was made or insured. Not more than one equity loan under this subsection may be provided for any project.

(3) Amount of the takeout

The amount of an equity loan under this subsection shall not exceed the difference between the outstanding principal on debt secured by the project and 90 percent of the appraised value of the project. The appraised value of the project shall be determined by 2 independent appraisers, 1 of whom shall be selected by the Secretary and 1 of whom shall be selected by the owner. If the 2 appraisers fail to agree on the value of the project, the Secretary and the owner shall jointly select a third appraiser whose appraisal shall be binding on the Secretary and the owner. The amount of the equity loan shall not exceed 30

[2] So in original. Probably should be capitalized.

percent of the amount of the original appraised value of the project made or insured under subsection (b) of this section.

(4) Submission of plan

An owner requesting an equity loan under this subsection shall submit a plan acceptable to the Secretary to ensure that the cost of amortizing an equity loan under paragraph (1) does not result in the displacement of very-low-income tenants or substantially alter the income mix of the tenants in the project.

(5) Regulations

The Secretary shall issue final regulations within 180 days from December 15, 1989.

(6) Effective date

The requirements of this subsection shall apply to any loan obligated under this section on or after December 15, 1989. This subsection shall not require retroactive reserve account payments with respect to any loan that was obligated on or after December 15, 1989, and on or before June 16, 1990, but reserve account payments shall be required for such loans beginning on November 28, 1990.

(u) Reuse of loan authority

Loan authority that is obligated under this section but that is not expended due to any action that removes the original borrower, may be reallocated to a different borrower during the same fiscal year in which the loan authority was obligated. Any loan authority under this section appropriated or made available within limits established in appropriations Acts shall remain available until expended.

(v) Assumption of loans

The Secretary may provide for the assumption or transfer of a loan or loan obligation under this section to any person or entity qualified to receive a loan or loan obligation under this section in any case of default or foreclosure with respect to the original borrower. The Secretary shall provide in each assumption or transfer under this subsection for the assumption of the obligations, rights, and interests under the terms of the loan or loan obligation or such other terms as the Secretary determines appropriate.

(w) Set-aside of rural rental housing funds

(1) Authority

Except as provided in paragraph (2), the Secretary shall set aside from amounts made available for each State for loans under this section, not less than 9 percent of the amounts available in each fiscal year. Amounts set aside shall be available only for nonprofit entities in the State, which may not be wholly or partially owned or controlled by a for-profit entity. A partnership, that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary, is eligible to receive funds set aside under this subsection to sponsor a project which is receiving low-income housing tax credits authorized under section 42 of title 26. For the purposes of this subsection, a nonprofit entity is an organization that—

(A) will own an interest in a project to be financed under this section and will materially participate in the development and the operation of the project;

(B) is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of title 26;

(C) has among its purposes the planning, development, or management of low-income housing or community development projects; and

(D) is not affiliated with or controlled by a for-profit organization.

(2) Minimum State set-aside

If the amount set aside under paragraph (1) for any State is less than $750,000 in any fiscal year, the Secretary shall pool such amount together with set-aside amounts from other States whose set-aside is less than $750,000, and shall make such amounts available for such eligible entities under paragraph (1) in any such State. The Secretary shall establish a procedure to provide that any amounts pooled under this paragraph from the allocation for any State in any fiscal year that are not obligated during a reasonable period in such year shall be made available for any such eligible entities under paragraph (1) in such State. The Secretary may provide amounts available for reallocation under this subsection in excess of $750,000 in a given State, if such amounts are necessary to finance a project under this section.

(3) Unused amounts

(A) Equitable distribution

Any amounts set aside under this subsection from the allocation for any State that are not obligated by 9 months after the allocation, shall first be pooled and made available to any other eligible nonprofit entity in any State as defined in this subsection. The Secretary shall make reasonable efforts to ensure that pooled funds are distributed under this subparagraph in an equitable manner.

(B) Return to the States

After funds have been pooled and obligated for 30 days, the Secretary shall return any remaining funds to the States on a proportional basis for use by any other eligible entity as defined in this section.

(x) Uniform project costs; coordination of housing resources and tax benefits

The Secretary shall—

(1) establish standard guidelines for State offices that describe allowable development costs which are required for development of all projects under this section, without regard to whether the project was allocated a low-income housing tax credit;

(2) require each State to establish a process for coordinating the selection of projects under this section with the housing needs and priorities as established in a State comprehensive housing affordability strategy under section 12705 of this title and a low-income housing tax credit allocation plan under section 42 of title 26; and

(3) develop, in consultation with housing credit agencies (as that term is defined under

section 42 of title 26), uniform procedures for identifying and sharing information on project costs, builder profit, identity of interests relationships, and other factors, as appropriate, with the relevant housing credit agency for projects that are allocated a low-income housing tax credit pursuant to section 42(h) of title 26 for the purpose of achieving compliance with section 3545(d) of this title.

(y) Service coordinators

(1) Grants

The Secretary may make grants under this subsection, with respect to any project that the Secretary determines has a sufficient number of frail elderly residents, for the cost of employing or otherwise retaining the services of one or more individuals to coordinate services provided to frail elderly residents of the project (in this subsection referred to as a ''service coordinator''), who shall be responsible for—

(A) assessing the supportive service needs of frail elderly residents of the project, based on objective criteria and interviews with such residents;

(B) working with service providers to design the provision of services to meet the needs of frail elderly residents of the project, taking into consideration the needs and desires of such residents and their ability and willingness to pay for such services, as expressed by the residents;

(C) mobilizing public and private resources to obtain funding for such services for such residents;

(D) monitoring and evaluating the impact and effectiveness of any supportive services provided for such residents;

(E) consulting and coordinating with any appropriate public and private agencies regarding the provision of supportive services; and

(F) performing such other duties that the Secretary deems appropriate to enable frail elderly persons residing in federally assisted housing to live with dignity and independence.

(2) Qualifications

Individuals employed as service coordinators pursuant to this subsection shall meet the minimum qualifications and standards established under section 8011(d)(4) of this title for service coordinators under a congregate housing services program.

(3) Application and selection

The Secretary shall provide for the form and manner of applications for grants under this subsection and for the selection of applicants to receive the grants.

(4) "Frail elderly" defined

For purposes of this subsection, the term ''frail elderly'' has the meaning given the term in section 8011(k) of this title.

(z) Accounting and recordkeeping requirements

(1) Accounting standards

The Secretary shall require that borrowers in programs authorized by this section maintain accounting records in accordance with generally accepted accounting principles for all projects that receive funds from loans made or guaranteed by the Secretary under this section.

(2) Record retention requirements

The Secretary shall require that borrowers in programs authorized by this section retain for a period of not less than 6 years and make available to the Secretary in a manner determined by the Secretary, all records required to be maintained under this subsection and other records identified by the Secretary in applicable regulations.

(aa) Double damages for unauthorized use of housing projects assets and income

(1) Action to recover assets or income

(A) In general

The Secretary may request the Attorney General to bring an action in a United States district court to recover any assets or income used by any person in violation of the provisions of a loan made or guaranteed by the Secretary under this section or in violation of any applicable statute or regulation.

(B) Improper documentation

For purposes of this subsection, a use of assets or income in violation of the applicable loan, loan guarantee, statute, or regulation shall include any use for which the documentation in the books and accounts does not establish that the use was made for a reasonable operating expense or necessary repair of the project or for which the documentation has not been maintained in accordance with the requirements of the Secretary and in reasonable condition for proper audit.

(C) Definition

For the purposes of this subsection, the term ''person'' means—

(i) any individual or entity that borrows funds in accordance with programs authorized by this section;

(ii) any individual or entity holding 25 percent or more interest of any entity that borrows funds in accordance with programs authorized by this section; and

(iii) any officer, director, or partner of an entity that borrows funds in accordance with programs authorized by this section.

(2) Amount recoverable

(A) In general

In any judgment favorable to the United States entered under this subsection, the Attorney General may recover double the value of the assets and income of the project that the court determines to have been used in violation of the provisions of a loan made or guaranteed by the Secretary under this section or any applicable statute or regulation, plus all costs related to the action, including reasonable attorney and auditing fees.

(B) Application of recovered funds

Notwithstanding any other provision of law, the Secretary may use amounts recov-

ered under this subsection for activities authorized under this section and such funds shall remain available for such use until expended.

(3) Time limitation

Notwithstanding any other provision of law, an action under this subsection may be commenced at any time during the 6-year period beginning on the date that the Secretary discovered or should have discovered the violation of the provisions of this section or any related statutes or regulations.

(4) Continued availability of other remedies

The remedy provided in this subsection is in addition to and not in substitution of any other remedies available to the Secretary or the United States.

(July 15, 1949, ch. 338, title V, § 515, as added Pub. L. 87–723, § 4(b), Sept. 28, 1962, 76 Stat. 671; amended Pub. L. 88–340, June 30, 1964, 78 Stat. 233; Pub. L. 88–560, title V, § 501(d) Sept. 2, 1964, 78 Stat. 796; Pub. L. 89–117, title X, § 1005(c), Aug. 10, 1965, 79 Stat. 501; Pub. L. 89–754, title VIII, §§ 804, 805, Nov. 3, 1966, 80 Stat. 1282; Pub. L. 91–78, § 1, Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title IV, § 413(a), Dec. 24, 1969, 83 Stat. 398; Pub. L. 91–609, title VIII, § 803(c), Dec. 31, 1970, 84 Stat. 1807; Pub. L. 93–117, § 13(b), Oct. 2, 1973, 87 Stat. 423; Pub. L. 93–383, title V, §§ 509(b), 510, Aug. 22, 1974, 88 Stat. 695; Pub. L. 95–60, § 4(b), June 30, 1977, 91 Stat. 258; Pub. L. 95–80, § 4(b), July 31, 1977, 91 Stat. 340; Pub. L. 95–128, title V, §§ 501(b), 507(a)(3), 508, Oct. 12, 1977, 91 Stat. 1138, 1140, 1141; Pub. L. 95–406, § 7(b), Sept. 30, 1978, 92 Stat. 881; Pub. L. 95–557, title V, § 501(e), Oct. 31, 1978, 92 Stat. 2111; Pub. L. 96–71, § 5(b), Sept. 28, 1979, 93 Stat. 502; Pub. L. 96–105, § 5(b), Nov. 8, 1979, 93 Stat. 795; Pub. L. 96–153, title V, § 501(f), Dec. 21, 1979, 93 Stat. 1134; Pub. L. 96–372, § 6(b), Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title V, §§ 501(b), 502, 503, 507(c), Oct. 8, 1980, 94 Stat. 1668, 1670; Pub. L. 97–35, title III, § 351(b), Aug. 13, 1981, 95 Stat. 420; Pub. L. 97–289, § 3(a), Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98–35, § 3(a), May 26, 1983, 97 Stat. 198; Pub. L. 98–109, § 4(a), Oct. 1, 1983, 97 Stat. 746; Pub. L. 98–181, title V, §§ 511(b), 512, Nov. 30, 1983, 97 Stat. 1244; Pub. L. 98–479, title I, § 105(e), Oct. 17, 1984, 98 Stat. 2227; Pub. L. 99–120, § 3(a), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, § 3(a), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, § 3(a), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, § 3(a), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, § 3009(a), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title II, §§ 242, 263, title III, §§ 301(e), 306, 307, 316(c), Feb. 5, 1988, 101 Stat. 1890, 1891, 1893, 1895, 1896, 1898; Pub. L. 100–628, title X, § 1042, Nov. 7, 1988, 102 Stat. 3273; Pub. L. 101–137, § 7(a), Nov. 3, 1989, 103 Stat. 825; Pub. L. 101–235, title II, § 207, title IV, § 402, Dec. 15, 1989, 103 Stat. 2042, 2048; Pub. L. 101–625, title VII, §§ 701(e), 712, 713, Nov. 28, 1990, 104 Stat. 4282, 4291, 4292; Pub. L. 102–142, title VII, § 743(a), Oct. 28, 1991, 105 Stat. 915; Pub. L. 102–230, § 4, Dec. 12, 1991, 105 Stat. 1721; Pub. L. 102–550, title VII, §§ 701(e), 707(a)–(f)(1), 708(a), Oct. 28, 1992, 106 Stat. 3834, 3836–3839; Pub. L. 104–120, § 4(b), (c), Mar. 28, 1996, 110 Stat. 835; Pub. L. 104–180, title VII, § 734(a), (c)(1), (2), (3)(C), (d), (e)(2), Aug. 6, 1996, 110 Stat. 1601–1603; Pub. L. 105–86, title VII, § 735(b), Nov. 18, 1997, 111 Stat. 2110; Pub. L. 105–276, title V, § 599C(b), Oct. 21, 1998, 112 Stat. 2661; Pub. L. 106–569, title VII, § 704, Dec. 27, 2000, 114 Stat. 3014.)

REFERENCES IN TEXT

Section 1928 of title 7, referred to in subsec. (b)(3), was amended generally by Pub. L. 104–127, title VI, § 605, Apr. 4, 1996, 110 Stat. 1086, and, as so amended, consists of subsecs. (a) and (b) which are substantially similar to provisions formerly contained in the third sentence of such section.

Section 1929(f)(1) of title 7, referred to in subsec. (b)(3), was repealed and section 1929(f)(2) was redesignated section 1929(f)(1) by Pub. L. 104–127, title VII, § 744, Apr. 4, 1996, 110 Stat. 1125.

The United States Housing Act of 1937, referred to in subsec. (q), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

CODIFICATION

Section 203(a) of Pub. L. 100–242, as amended, which was formerly set out in a note under section 1715*l* of Title 12, Banks and Banking, and which provided that on Nov. 28, 1990, the amendment made by section 263 of Pub. L. 100–242 is repealed and section is to read as it would without such amendment, was omitted in the general amendment of subtitle A of title II of Pub. L. 100–242 by Pub. L. 101–625.

AMENDMENTS

2000—Subsec. (z). Pub. L. 106–569 added subsec. (z) and struck out heading and text of former subsec. (z). Text read as follows: ''Whoever, as an owner, agent, or manager, or who is otherwise in custody, control, or possession of property that is security for a loan made or insured under this section willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other fund derived from such property, for any purpose other than to meet actual or necessary expenses of the property, or for any other purpose not authorized by this subchapter or the regulations adopted pursuant to this subchapter, shall be fined not more than $250,000 or imprisoned not more than 5 years, or both.''

Subsec. (aa). Pub. L. 106–569 added subsec. (aa).

1998—Subsec. (b)(4) to (7). Pub. L. 105–276, § 599C(b)(1), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4) which read as follows: ''no loan shall be insured under this subsection after September 30, 1998;''.

Subsec. (w)(1). Pub. L. 105–276, § 599C(b)(2), substituted ''each fiscal year'' for ''fiscal year 1998'' in first sentence.

1997—Subsec. (a)(2). Pub. L. 105–86, § 735(b)(3)(A), substituted ''up to 30 years'' for ''up to fifty years''.

Subsec. (b)(2). Pub. L. 105–86, § 735(b)(3)(B)(i), added par. (2) and struck out former par. (2) which read as follows: ''provide for complete amortization by periodic payments within such term as the Secretary may prescribe;''.

Subsec. (b)(4). Pub. L. 105–86, § 735(b)(1), substituted ''September 30, 1998'' for ''September 30, 1997''.

Subsec. (b)(7). Pub. L. 105–86, § 735(b)(3)(B)(ii)–(iv), added par. (7).

Subsec. (w)(1). Pub. L. 105–86, § 735(b)(2), substituted ''fiscal year 1998'' for ''fiscal year 1997''.

1996—Subsec. (b)(4). Pub. L. 104–180, §734(a)(1), substituted ''September 30, 1997'' for ''September 30, 1996''.

Pub. L. 104–120, §4(b), substituted ''September 30, 1996'' for ''September 30, 1994''.

Subsec. (c)(1). Pub. L. 104–180, §734(c)(3)(C), substituted ''December 15, 1989'' for ''December 21, 1979''.

Subsec. (h). Pub. L. 104–180, §734(c)(1), added subsec. (h).

Subsec. (r). Pub. L. 104–180, §734(d)(1), added subsec. (r) and struck out former subsec. (r) which read as follows: ''The Secretary—

''(1) may require that the initial operating reserve under this section may be in the form of an irrevocable letter of credit; and

''(2) may not require more than a 3 percent contribution to equity, except that the Secretary shall require a 5 percent contribution in the case of a project that is allocated a low-income housing tax credit pursuant to section 42 of title 26.''

Subsec. (t)(4). Pub. L. 104–180, §734(c)(2), redesignated par. (6) as (4) and struck out heading and text of former par. (4). Text read as follows: ''For each initial loan made or insured under subsection (b) of this section pursuant to a contract entered into after the date this subsection takes effect, the owner shall make monthly payments from project income to the Secretary for deposit in a reserve account for the project. Such monthly payments shall, in the first year after the loan is made or insured, equal $2 for each unit in the project, and shall increase by $2 annually until the expiration of the 20-year period beginning on the date that the loan was made or insured, except that such initial payments, any accrued payments, and annual increases shall not be required for a unit occupied by a low-income family or individual who is paying more than 30 percent of the family's or individual's adjusted income in rent. The rent on a unit for which payment is made under this paragraph shall be increased by the amount of such payment.''

Subsec. (t)(5). Pub. L. 104–180, §734(c)(2), redesignated par. (7) as (5) and struck out former par. (5) which read as follows:

''(5) RESERVE ACCOUNT.—

''(A) Payments under paragraph (4) shall be deposited in an interest bearing account that the Secretary shall establish for the project.

''(B) The Secretary shall make available amounts in the reserve account only for payments of principal and interest on an equity loan under this subsection. Such payments shall be in amounts necessary to ensure that rent payments made by low-income families residing in the housing do not exceed the maximum rent under section 1490a(a)(2)(A) of this title;

''(C) Any payments to the account, and interest on such payments, not expended in the project from which such payments were made, shall be used in other projects to make payments of principal and interest on an equity loan under this subsection. Such payments shall be in amounts necessary to ensure that rent payments made by low-income families residing in the housing do not exceed the maximum rent under section 1490a(a)(2)(A) of this title.

''(D) The Secretary shall make payments from accounts under this paragraph only to the extent provided in appropriations Acts.''

Subsec. (t)(6) to (8). Pub. L. 104–180, §734(c)(2)(B), redesignated pars. (6) to (8) as (4) to (6), respectively.

Subsec. (w)(1). Pub. L. 104–180, §734(a)(2), substituted ''fiscal year 1997'' for ''fiscal year 1996''.

Pub. L. 104–120, §4(c), substituted ''fiscal year 1996'' for ''fiscal years 1993 and 1994''.

Subsec. (z). Pub. L. 104–180, §734(d)(2), (e)(2), added subsec. (z) and struck out heading and text of former subsec. (z). Text consisted of 3 pars. which denied Secretary authority to refuse to make complying loan solely because facilities were in rural or remote area or to provide preference for project based on availability of particular essential service and required Secretary to give preference to proposed projects serving rural communities 20 or more miles from an urban area.

1992—Subsec. (b)(4). Pub. L. 102–550, §701(e), substituted ''1994'' for ''1992''.

Subsec. (e)(4). Pub. L. 102–550, §707(a), struck out ''and'' before ''initial operating expenses up to'', inserted '', impact fees, local charges for installation, provision, or use of infrastructure, and local assessments for public improvements and services imposed by State and local governments'' after ''approved by the Secretary'', and inserted at end ''Notwithstanding the first sentence of this paragraph, the term 'development cost' shall not include any initial operating expenses in the case of any nonprofit corporation or consumer cooperative that is financing housing under this section and has been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of title 26.''

Subsec. (*l*)(1). Pub. L. 102–550, §707(b)(1), added par. (1) and struck out former par. (1) which read as follows: ''in the case of any applicant whose project is expected to utilize rental assistance payments under section 1490a of this title, the Secretary shall only require such applicant to demonstrate that a market exists for persons and families eligible for such rental assistance payments; and''.

Subsec. (p)(4). Pub. L. 102–550, §707(b)(2)(1), substituted period at end for '', except when the Secretary determines that the continued vacancy of units that have been unoccupied for at least 6 months threatens the financial viability of the project. The preceding sentence shall not be interpreted as authorizing the Secretary to—

''(A) limit the ability of a housing credit agency to require an owner of housing, in order to receive a low-income housing tax credit, to enter into a restrictive covenant, in such form and for such period as the housing credit agency deems appropriate, to maintain the occupancy characteristics of the project as prescribed in section 42(h)(6) of title 26; or

''(B) deny or delay closing of financing under this section by reason of the existence, or occupancy terms, of any such restrictive covenant.''

Subsec. (p)(5). Pub. L. 102–550, §707(b)(2)(2), added par. (5).

Subsec. (r)(2). Pub. L. 102–550, §707(c), inserted before period at end '', except that the Secretary shall require a 5 percent contribution in the case of a project that is allocated a low-income housing tax credit pursuant to section 42 of title 26''.

Subsec. (w)(1). Pub. L. 102–550, §708(a)(1)–(3), substituted ''not less than 9 percent of the amounts available in fiscal years 1993 and 1994'' for ''not less than 7 percent of the amounts available in fiscal year 1991 and not less than 9 percent of the amounts available in fiscal year 1992'' in first sentence, struck out ''or under whole or partial control with a for-profit entity'' after ''by a for-profit entity'' in second sentence, and inserted at end ''A partnership, that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary, is eligible to receive funds set aside under this subsection to sponsor a project which is receiving low-income housing tax credits authorized under section 42 of title 26. For the purposes of this subsection, a nonprofit entity is an organization that—'' and subpars. (A) to (D).

Subsec. (w)(2). Pub. L. 102–550, §708(a)(4), inserted at end ''The Secretary may provide amounts available for reallocation under this subsection in excess of $750,000 in a given State, if such amounts are necessary to finance a project under this section.''

Subsec. (w)(3). Pub. L. 102–550, §708(a)(5), added par. (3) and struck out heading and text of former par. (3). Text read as follows: ''Any amounts set aside or pooled under this subsection from the allocation for any State in any fiscal year that are not obligated by a reasonable date established by the Secretary (which shall be after the expiration of the period under paragraph (2)) shall be made available to any entity eligible under this section in such State.''

Subsec. (x). Pub. L. 102–550, §707(d), added subsec. (x).

Subsec. (y). Pub. L. 102–550, §707(e), added subsec. (y).

Subsec. (z). Pub. L. 102–550, § 707(f)(1), added subsec. (z).

1991—Subsec. (b)(4). Pub. L. 102–142 substituted ''1992'' for ''1991''.

Subsec. (p)(4). Pub. L. 102–230 inserted at end ''The preceding sentence shall not be interpreted as authorizing the Secretary to—'' and subpars. (A) and (B).

1990—Subsec. (b)(4). Pub. L. 101–625, § 701(e), substituted ''1991'' for ''1990''.

Subsec. (t)(3). Pub. L. 101–625, § 712(a)(1), substituted ''original appraised value of the project'' for ''original loan on the project''.

Subsec. (t)(4). Pub. L. 101–625, § 712(a)(2), inserted ''initial'' before ''loan'' in first sentence and inserted ''initial payments, any accrued payments, and'' after ''except that such'' in second sentence.

Subsec. (t)(8). Pub. L. 101–625, § 712(a)(3), added par. (8) and struck out former par. (8) which read as follows: ''The requirements of this subsection shall apply to any applications for assistance under this section on or after the expiration of 180 days from December 15, 1989.''

Subsec. (u). Pub. L. 101–625, § 712(b), inserted at end ''Any loan authority under this section appropriated or made available within limits established in appropriations Acts shall remain available until expended.''

Subsec. (v). Pub. L. 101–625, § 712(c), added subsec. (v).

Subsec. (w). Pub. L. 101–625, § 713, added subsec. (w).

1989—Subsec. (b)(4). Pub. L. 101–137 substituted ''September 30, 1990'' for ''September 30, 1989''.

Subsec. (t). Pub. L. 101–235, § 207, added subsec. (t).

Subsec. (u). Pub. L. 101–235, § 402, added subsec. (u).

1988—Subsec. (b)(4). Pub. L. 100–242, § 301(e), substituted ''September 30, 1989'' for ''March 15, 1988''.

Subsec. (c). Pub. L. 100–242, § 242, added subsec. (c). Former subsec. (c) redesignated (d).

Subsecs. (d) to (g). Pub. L. 100–242, § 242(1), redesignated former subsecs. (c) to (f) as (d) to (g), respectively.

Subsec. (h). Pub. L. 100–628 struck out subsec. (h) which read as follows: ''The Secretary shall limit increases in rents on or after November 30, 1983, for newly constructed or substantially rehabilitated projects assisted under this section to the lesser of the actual operating cost increases incurred or the amount of operating cost increases incurred with respect to comparable rental dwelling units of various sizes and types in the same market area which are suitable for occupancy by families and persons assisted under this section. Where no comparable dwelling units exist in the same market area, the Secretary shall have authority to approve such increases in accordance with the best available data regarding operating cost increases in rental dwelling units.''

Pub. L. 100–242, § 242(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsecs. (i) to (p). Pub. L. 100–242, § 242(1), redesignated subsecs. (h) to (*o*) as (i) to (p), respectively.

Subsec. (p)(1). Pub. L. 100–242, § 316(c), substituted ''on or after such date'' for ''on or after such effective date'', which for purposes of codification was translated as ''on or after November 30, 1983'', thus requiring no change in text.

Subsec. (p)(4). Pub. L. 100–242, § 306, added par. (4).

Subsec. (q). Pub. L. 100–242, § 242(1), redesignated former subsec. (p) as (q).

Subsec. (r). Pub. L. 100–242, § 263, added subsec. (r).

Subsec. (s). Pub. L. 100–242, § 307, added subsec. (s).

1987—Subsec. (b)(4). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

1986—Subsec. (b)(4). Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 directed amendment identical to Pub. L. 99–219, substituting ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Subsec. (b)(4). Pub. L. 99–219 substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156 substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120 substituted ''November 14, 1985'' for ''September 30, 1985''.

1984—Subsec. (k)(2)(B). Pub. L. 98–479 inserted '', at the option of the applicant, either that there is a reasonable assurance that the contract for assistance will be extended or renewed, or''.

1983—Subsec. (a)(2) to (4). Pub. L. 98–181, § 512(c)(1), (2), struck out par. (2) which related to rates of interest on loans, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (b)(2) to (4). Pub. L. 98–181, § 512(c)(3), (4), struck out par. (2) which related to rates of interest on loans and redesignated pars. (3) to (5) as (2) to (4), respectively.

Subsec. (b)(5). Pub. L. 98–181, § 512(c)(4), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 98–181, § 511(b), substituted ''September 30, 1985'' for ''November 30, 1983''.

Pub. L. 98–109 substituted ''November 30, 1983'' for ''September 30, 1983''.

Pub. L. 98–35 substituted ''September 30, 1983'' for ''May 20, 1983''.

Subsec. (b)(6), (7). Pub. L. 98–181, § 512(c)(4), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Pub. L. 98–181, § 512(b), added par. (7).

Subsec. (c). Pub. L. 98–181, § 512(d), inserted provisions relating to detached units, on scattered sites, for cooperative housing.

Subsec. (d)(1). Pub. L. 98–181, § 512(e), inserted provisions relating to applicability to manufactured home rental parks.

Subsecs. (g) to (p). Pub. L. 98–181, § 512(a), added subsecs. (g) to (p).

1982—Subsec. (b)(5). Pub. L. 97–289 substituted ''May 20, 1983'' for ''September 30, 1982''.

1981—Subsec. (b)(5). Pub. L. 97–35 substituted ''1982'' for ''1981''.

1980—Subsec. (a). Pub. L. 96–399, §§ 503(a), 507(c)(1), inserted reference to Indian tribes in provisions preceding par. (1), and added par. (4).

Subsec. (b). Pub. L. 96–399, §§ 501(b), 503(b), 507(c)(2), inserted reference to Indian tribe in provisions preceding par. (1), in par. (5) substituted ''September 30, 1981'' for ''October 15, 1980'', and added par. (6).

Pub. L. 96–372 substituted ''October 15, 1980'' for ''September 30, 1980'' in par. (5).

Subsec. (f). Pub. L. 96–399, § 502, added subsec. (f).

1979—Subsec. (b)(5). Pub. L. 96–153 substituted ''September 30, 1980'' for ''November 30, 1979''.

Pub. L. 96–105 substituted ''November 30, 1979'' for ''October 31, 1979''.

Pub. L. 96–71 substituted ''October 31, 1979'' for ''September 30, 1979''.

1978—Subsec. (b)(5). Pub. L. 95–557 substituted ''September 30, 1979'' for ''October 31, 1978''.

Pub. L. 95–406 substituted ''October 31, 1978'' for ''September 30, 1978''.

1977—Subsec. (a). Pub. L. 95–128, § 507(a)(3), authorized loans for housing of handicapped persons or families.

Subsec. (b). Pub. L. 95–128, §§ 501(b), 507(a)(3), substituted ''elderly or handicapped persons or families'' for ''elderly persons and elderly families'' in provision preceding par. (1) and ''September 30, 1978'' for ''September 30, 1977'' in par. (5).

Pub. L. 95–80 substituted ''September 30, 1977'' for ''July 31, 1977'' in par. (5).

Pub. L. 95–60 substituted ''July 31, 1977'' for ''June 30, 1977'' in par. (5).

Subsec. (c). Pub. L. 95–128, § 508(a), provided that specifically designed equipment required by elderly or handicapped persons or families shall not be considered elaborate or extravagant.

Subsec. (d)(1). Pub. L. 95–128, § 508(b), defined ''housing'' to also mean congregate housing facilities for elderly or handicapped persons or families who require some supervision and central services but are otherwise able to care for themselves and authorized such housing for the handicapped to be utilized in conjunction with educational and training facilities.

Subsec. (d)(3). Pub. L. 95–128, § 508(c), substituted definition of ''congregate housing'' for prior definition of ''elderly persons'' as persons 62 years of age or over and ''elderly families'' as families the head of which (or his spouse) is 62 years of age or over.

1974—Subsec. (b)(1). Pub. L. 93–383, § 510(a), struck out ''$750,000 or'' after ''exceed'' and substituted ''less'' for ''least''.

Subsec. (b)(5). Pub. L. 93–383, § 509(b), substituted ''June 30, 1977'' for ''October 1, 1974''.

Subsec. (d)(4). Pub. L. 93–383, § 510(b), inserted provisions including initial operating expenses up to 2 per centum of enumerated costs and requiring payments to be made to consultants rendering services to nonprofit corporations or consumer cooperatives providing housing and related facilities to low or moderate income families.

1973—Subsec. (b)(5). Pub. L. 93–117 substituted ''October 1, 1974'' for ''October 1, 1973''.

1970—Subsec. (b)(1). Pub. L. 91–609 substituted ''$750,000'' for ''$300,000''.

1969—Subsec. (b)(5). Pub. L. 91–152 substituted ''October 1, 1973'' for ''January 1, 1970''.

Pub. L. 91–78 substituted ''January 1, 1970'' for ''October 1, 1969''.

1966—Subsec. (a). Pub. L. 89–754, §§ 804(a), 805(a), inserted ''or other persons and families of low income'' after ''income'' and substituted ''rental or cooperative housing'' for ''rental housing'', respectively.

Subsec. (b). Pub. L. 89–754, § 805(a), (b), substituted ''rental or cooperative housing'' for ''rental housing'' and inserted ''or other persons and families of moderate income'' after ''families'', respectively.

Subsec. (d)(1). Pub. L. 89–754, § 804(b), substituted in the definition of ''housing'' the words ''occupants eligible under this section,'' for ''elderly persons or elderly families''.

Subsec. (d)(4). Pub. L. 89–754, § 805(c), defined fees and charges as used for purposes of ''development cost'' to include payments to qualified consulting organizations or foundations which operate on a nonprofit basis and which render services or assistance to nonprofit corporations or consumer cooperatives who provide housing and related facilities.

1965—Subsec. (b)(5). Pub. L. 89–117 substituted ''October 1, 1969'' for ''September 30, 1965''.

1964—Subsec. (b). Pub. L. 88–560 substituted ''$300,000'' for ''$100,000'' in cl. (1), and ''1965'' for ''1964'' in cl. (5).

Pub. L. 88–340 substituted ''September 30, 1964'' for ''June 30, 1964'' in cl. (5).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–120 to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104–120, set out as an Effective and Termination Dates of 1996 Amendments note under section 1437d of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 708(b) of Pub. L. 102–550 provided that: ''The amendment made by subsection (a)(5) [amending this section] shall take effect on October 1, 1993, and shall apply to fiscal year 1994 and each fiscal year thereafter.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

REGULATIONS

Section 707(f)(2) of Pub. L. 102–550 provided that: ''The Secretary of Agriculture shall issue any regulations necessary to carry out the amendment made by paragraph (1) [amending this section] not later than the expiration of the 45-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act, the Secretary shall submit a copy of any regulations to be issued under this subsection to the Congress. The requirements of section 534(d) of the Housing Act of 1949 [42 U.S.C. 1490n(d)] and subsections (b) and (c) of section 553 of title 5, United States Code, shall apply to any such regulations.''

§ 1486. Financial assistance to provide low-rent housing for domestic farm labor

(a) Application; considerations

Upon the application of any State or political subdivision thereof, or any Indian tribe, or any broad-based public or private nonprofit organization incorporated within the State, or any nonprofit organization of farmworkers incorporated within the State, the Secretary is authorized to provide financial assistance for the provision of low-rent housing and related facilities (which may be located any place within the State) for domestic farm labor, if he finds that—

(1) the housing and related facilities for which financial assistance is requested will fulfill a pressing need in the area in which such housing and facilities will be located, and there is reasonable doubt that the same can be provided without financial assistance under this section;

(2) the applicant will contribute, from its own resources or from funds borrowed under section 1484 of this title or elsewhere, at least 10 per centum of the total development cost;

(3) the types of housing and related facilities to be provided are most practicable, giving due consideration to the purposes to be served thereby and the needs of the occupants thereof, and such housing and facilities shall be durable and suitable for year-around occupancy or use, unless the Secretary finds that there is no need for such year-around occupancy or use in that area; and

(4) the construction will be undertaken in an economical manner, and the housing and related facilities will not be of elaborate or extravagant design or material.

(b) Maximum amount of assistance

The amount of any financial assistance provided under this section for low-rent housing and related facilities shall not exceed 90 per centum of the total development cost thereof, as determined by the Secretary, less such amount as the Secretary determines can be practicably obtained from other sources (including a loan under section 1484 of this title).

(c) Prerequisite agreements; rentals; safety and sanitation standards; priority of domestic farm labor

No financial assistance for low-rent housing and related facilities shall be made available under this section unless, to any extent and for any periods required by the Secretary, the applicant agrees—

(1) that the rentals charged domestic farm labor shall not exceed such amounts as may be approved by the Secretary, giving due consideration to the income and earning capacity of the tenants, and the necessary costs of operating and maintaining such housing;

(2) that such housing shall be maintained at all times in a safe and sanitary condition in accordance with such standards as may be prescribed by State or local law, or, in the absence of such standards, in accordance with such minimum requirements as the Secretary shall prescribe; and

(3) an absolute priority will be given at all times in granting occupancy of such housing and facilities to domestic farm labor.

(d) Payments; contracts to specify uses of housing

The Secretary may make payments pursuant to any contract for financial assistance under this section at such times and in such manner, as may be specified in the contract. In each contract, the Secretary shall include such covenants, conditions, or provisions as he deems necessary to insure that the housing and related facilities, for which financial assistance is made available, be used only in conformity with the provisions of this section.

(e) Regulations for prevention of waste

The Secretary shall prescribe regulations to insure that Federal funds expended under this section are not wasted or dissipated. The Secretary shall not give priority for funding under this section to any one of the groups listed in subsection (a) of this section over any of the others so listed.

(f) Wages; labor standards; waiver; authority and functions of Secretary

All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary which are undertaken by approved applicants under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary shall not extend any financial assistance under this section for any project without first obtaining adequate assurance that these labor standards will be maintained on the construction work; except that compliance with such standards may be waived by the Secretary in cases or classes of cases where laborers or mechanics, not otherwise employed at any time on the project, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts thereby saved are fully credited to the person, corporation, association, organization, or other entity, undertaking the project. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 3145 of title 40.

(g) Definitions

As used in this section—

(1) the term ''low-rent housing'' means rental housing within the financial reach of families of low income consisting of (A) new structures (including household furnishings) suitable for dwelling use by domestic farm labor, and (B) existing structures (including household furnishings) which can be made suitable for dwelling use by domestic farm labor by rehabilitation, alteration, conversion, or improvement;

(2) the terms ''related facilities'' and ''domestic farm labor'' shall have the meaning assigned to them in section 1484(f) of this title;

(3) the term ''development cost'' shall have the meaning assigned to it in section 1485(d)(4)[1] of this title; and

(4) the term ''domestic farm labor'' has the meaning given such term in section 1484(f)(3) of this title.

(h) Migrant farmworker housing

Notwithstanding the provisions of subsection (a)(3) of this section, the Secretary may, upon a finding of persistent need for migrant farmworker housing in any area, provide assistance to eligible applicants for 90 per centum of the development costs of such housing in such area to be used solely by migrant farmworkers while they are away from their residence. Such housing shall be constructed in such a manner as to be safe and weatherproof for the time it is to be occupied, be equipped with potable water and modern sanitation facilities (including a kitchen sink, toilet, and bathing facilities), and meet such other requirements as the Secretary may prescribe.

(i) Farm labor housing

The Secretary shall utilize not more than 10 per centum of the amounts available for any fiscal year for purposes of this section for financial assistance to eligible private and public nonprofit agencies to encourage the development of domestic and migrant farm labor housing projects under this subchapter.

(j) Domestic farm labor housing available for other families

Housing and related facilities constructed with grants under this section may be used for tenants eligible for occupancy under section 1485 of this title if the Secretary determines that—

(1) there is no longer a need in the area for farm labor housing; or

(2) the need for such housing in the area has diminished to the extent that the purpose of the grant, providing housing for domestic farm labor, can no longer be met.

(k) Housing for rural homeless and migrant farmworkers

(1) In general

The Secretary may provide financial assistance for providing affordable rental housing and related facilities for migrant farmworkers and homeless individuals (and the families of such individuals) to applicants as provided in this subsection.

[1] See References in Text note below.

(2) Types of assistance

(A) In general

The Secretary may provide the following assistance for housing under this subsection:

(i) An advance, in an amount not to exceed $400,000, of the cost of acquisition, substantial rehabilitation, or acquisition and rehabilitation of an existing structure or construction of a new structure for use in the provision of housing under this subsection. The repayment of any outstanding debt owed on a loan made to purchase an existing structure shall be considered to be a cost of acquisition eligible for an advance under this subparagraph if the structure was not used for the purposes under this subsection prior to the receipt of assistance.

(ii) A grant, in an amount not to exceed $400,000, for moderate rehabilitation of an existing structure for use in the provision of housing under this subsection.

(iii) Annual payments for operating costs of such housing (without regard to whether the housing is an existing structure), not to exceed 75 percent of the annual operating costs of such housing.

(B) Available assistance

A recipient may receive assistance under both clauses (i) and (ii) of subparagraph (A). The Secretary may increase the limit contained in such clauses to $800,000 in areas which the Secretary finds have high acquisition and rehabilitation costs.

(C) Repayment of advance

Any advance provided under subparagraph (A)(i) shall be repaid on such terms as may be prescribed by the Secretary when the project ceases to be used as housing in accordance with the provisions of this subsection. Recipients shall be required to repay 100 percent of the advance if the housing is used for purposes under this subsection for fewer than 10 years following initial occupancy. If the housing is used for such purposes for more than 10 years, the percentage of the amount that shall be required to be repaid shall be reduced by 10 percentage points for each year in excess of 10 that the property is so used.

(D) Prevention of undue benefits

Upon any sale or other disposition of housing acquired or rehabilitated with assistance under this subsection prior to the close of 20 years after the housing is placed in service, other than a sale or other disposition resulting in the use of the project for the direct benefit of low income persons or where all of the proceeds are used to provide housing for migrant farmworkers and homeless individuals (and the families of such individuals), the recipient shall comply with such terms and conditions as the Secretary may prescribe to prevent the recipient from unduly benefiting from the sale or other disposition of the project.

(3) Program requirements

(A) Applications

(i) Applications for assistance under this subsection shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

(ii) The Secretary shall require that applications contain at a minimum (I) a description of the proposed housing, (II) a description of the size and characteristics of the population that would occupy the housing, (III) a description of any public and private resources that are expected to be made available in connection with the housing, (IV) a description of the housing needs for migrant farmworkers and homeless individuals (and the families of such individuals) in the area to be served by the housing, and (V) assurances satisfactory to the Secretary that the housing assisted will be operated for not less than 10 years for the purpose specified in the application.

(iii) The Secretary shall require that an application furnish reasonable assurances that the housing will be available for occupancy by homeless individuals (and the families of such individuals) only on an emergency and temporary basis during the offseason and shall be otherwise available for occupancy by migrant farmworkers (and their families).

(iv) The Secretary shall require that an application furnish reasonable assurances that the applicant will own or have control of a site for the proposed housing not later than 6 months after notification of an award for grant assistance. An applicant may obtain ownership or control of a suitable site different from the site specified in the application. If an applicant fails to obtain ownership or control of the site within 1 year after notification of an award for grant assistance, the grant shall be recaptured and reallocated.

(B) Selection criteria

The Secretary shall establish selection criteria for a national competition for assistance under this subsection, which shall include—

(i) the ability of the applicant to develop and operate the housing;

(ii) the feasibility of the proposal in providing the housing;

(iii) the need for such housing in the area to be served;

(iv) the cost effectiveness of the proposed housing;

(v) the extent to which the project would meet the needs of migrant farmworkers and homeless individuals (and the families of such individuals) in the State;

(vi) the extent to which the applicant has control of the site of the proposed housing; and

(vii) such other factors as the Secretary determines to be appropriate for purposes of this subsection.

(C) Required agreements

The Secretary may not approve assistance for any housing under this subsection unless the applicant agrees—

(i) to operate the proposed project as housing for migrant farmworkers and homeless individuals (and the families of such individuals) in compliance with the provisions of this subsection and the application approved by the Secretary;

(ii) to monitor and report to the Secretary on the progress of the housing; and

(iii) to comply with such other terms and conditions as the Secretary may establish for purposes of this subsection.

(D) Occupant rent

Each migrant farmworker and homeless individual residing in a facility assisted under this subsection shall pay as rent an amount determined in accordance with the provisions of section 1437a(a) of this title.

(4) Guidelines

(A) Regulations

Not later than 120 days after November 28, 1990, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this subsection.

(B) Limitation on use of funds

No assistance received under this subsection (or any State or local government funds used to supplement such assistance) may be used to replace other public funds previously used, or designated for use, to assist homeless individuals (and the families of such individuals) or migrant farmworkers.

(5) Limitation on administrative expenses

No recipient may use more than 5 percent of an advance or grant received under this subsection for administrative purposes.

(6) Omitted

(7) Definitions

For purposes of this subsection:

(A) The term ''applicant'' means a State, political subdivision thereof, Indian tribe, any private nonprofit organization incorporated within the State that has applied for a grant under this subsection.

(B) The term ''homeless individual'' has the same meaning given the term under section 11302 of this title.

(C) The term ''migrant farmworker''—

(i) means any person (and the family of such person) who (I) receives a substantial portion of his or her income from primary production of agricultural or aquacultural commodities, the handling of such commodities in the unprocessed stage, or the processing of such commodities, without respect to the source of employment, and (II) establishes residence in a location on a seasonal or temporary basis, in an attempt to receive an income as described in subclause (I); and

(ii) includes any person (and the family of such person) who is retired or disabled, but who met the requirements of clause (i) at the time of retirement or becoming disabled.

(D) The term ''operating costs'' means expenses incurred by a recipient providing housing under this subsection with respect to the administration, maintenance, repair, and security of such housing and utilities, fuel, furnishings, and equipment for such housing.

(July 15, 1949, ch. 338, title V, § 516, as added Pub. L. 88–560, title V, § 503(a), Sept. 2, 1964, 78 Stat. 796; amended Pub. L. 91–609, title VIII, § 801(c), (d), Dec. 31, 1970, 84 Stat. 1806; Pub. L. 95–557, title V, § 505, Oct. 31, 1978, 92 Stat. 2112; Pub. L. 96–153, title V, § 509, Dec. 21, 1979, 93 Stat. 1136; Pub. L. 96–399, title V, § 507(d), Oct. 8, 1980, 94 Stat. 1670; Pub. L. 98–181, title V, § 513, Nov. 30, 1983, 97 Stat. 1247; Pub. L. 100–242, title III, § 305(b), Feb. 5, 1988, 101 Stat. 1895; Pub. L. 100–628, title X, § 1043(b), Nov. 7, 1988, 102 Stat. 3273; Pub. L. 101–625, title VII, § 714(a), Nov. 28, 1990, 104 Stat. 4292; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (f), is set out in the Appendix to Title 5, Government Organization and Employees.

Section 1485(d)(4) of this title, referred to in subsec. (g)(3), was redesignated section 1485(e)(4) of this title by Pub. L. 100–242, title II, § 242(1), Feb. 5, 1988, 101 Stat. 1890.

CODIFICATION

In subsec. (f), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Subsec. (k)(6) of this section, which required the Secretary to submit an annual report to Congress summarizing the activities carried out under subsec. (k) and setting forth the findings, conclusions, and recommendations of the Secretary as a result of the activities, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 18 on page 103 of House Document No. 103–7.

AMENDMENTS

2000—Subsec. (k)(7)(B). Pub. L. 106–400 made technical amendment to reference in original act which appears in text as reference to section 11302 of this title.

1990—Subsec. (k). Pub. L. 101–625 added subsec. (k).

1988—Subsec. (g)(4). Pub. L. 100–242 added par. (4).

Subsec. (j). Pub. L. 100–628 added subsec. (j).

1983—Subsec. (i). Pub. L. 98–181 added subsec. (i).

1980—Subsec. (a). Pub. L. 96–399 inserted reference to Indian tribe in provisions preceding par. (1).

1979—Subsec. (h). Pub. L. 96–153 added subsec. (h).

1978—Subsec. (e). Pub. L. 95–557 inserted ''The Secretary shall not give priority for funding under this section to any one of the groups listed in subsection (a) of this section over any of the others so listed''.

1970—Subsec. (a). Pub. L. 91–609, § 801(d)(1), authorized financial assistance for broad-based nonprofit organizations incorporated within the State and nonprofit organizations of farmworkers incorporated within the State and provided for low-rent housing and related facilities ''(which may be located within the State)''.

Subsec. (a)(2). Pub. L. 91–609, § 801(d)(2), substituted ''10 per centum'' for ''one-third''.

Subsec. (a)(3). Pub. L. 91–609, §801(d)(3), inserted '', and such housing and facilities shall be durable and suitable for year-around occupancy or use, unless the Secretary finds that there is no need for such year-around occupancy or use in that area;''.

Subsec. (b). Pub. L. 91–609, §801(d)(4), substituted ''90 per centum'' for ''two-thirds''.

Subsec. (g)(1). Pub. L. 91–609, §801(c), substituted ''structures (including household furnishings)'' for ''structures'' in cls. (A) and (B).

§ 1487. Rural Housing Insurance Fund

(a) Authority to make and insure loans for housing and buildings on adequate farms; amounts

The Secretary may insure loans meeting the requirements of section 1472 of this title, and may make loans in accordance with the requirements of such section to be sold and insured. The amount of such a loan to a low income person or family shall not exceed the amount necessary to provide adequate housing which is modest in size, design, and cost (as determined by the Secretary).

(b) Authority to make and insure loans for housing and related facilities for domestic farm labor and elderly persons; transfer of notes, contracts, and mortgages from Agricultural Credit Insurance Fund; compensation

The Secretary may insure loans in accordance with the requirements of section 1484 of this title (exclusive of subsections (a)(3), (a)(5), and (b) thereof), 1485 of this title (exclusive of subsections (a) and (b)(3) thereof), 1490d, and 1490f of this title, and may make loans meeting such requirements to be sold and insured. Upon the expiration of ninety days after the original capitalization of the Rural Housing Insurance Fund, created by subsection (e) of this section, no new loans shall be made or insured under section 1484 or 1485(b) of this title, except in conformity with this section. The notes held in the Agricultural Credit Insurance Fund (section 1929 of title 7) which evidence loans made or insured by the Secretary under section 1484 or 1485(b) of this title, the rights and liabilities of that Fund under insurance contracts relating to such loans held by insured investors, the mortgages securing the obligations of the borrowers under such loans held in the Fund or by insured investors, and all rights to subsequent collections on and proceeds of such notes, contracts, and mortgages, are hereby transferred to the Rural Housing Insurance Fund and for the purposes of this subchapter and any other Act shall be subject to the provisions of this section as if created pursuant thereto. The Rural Housing Insurance Fund shall compensate the Agricultural Credit Insurance Fund for the aggregate unpaid principal balance plus accrued interest of the notes so transferred.

(c) Use of funds from Rural Housing Insurance Fund for loans; sale of insured and guaranteed loans to public

The Secretary may use the Rural Housing Insurance Fund for the purpose of making loans to be sold and insured under this section. Any loan made and sold by the Secretary under this section after April 7, 1986 (and any loan made by other lenders under this subchapter that is insured or guaranteed in accordance with this section, is purchased by the Secretary, and is sold by the Secretary under this section after such date) shall be sold to the public and may not be sold to the Federal Financing Bank, unless such sale to the Federal Financing Bank is required to service transactions under this subchapter between the Secretary and the Federal Financing Bank occurring on or before such date.

(d) Authority to insure payment of interest and principal; liens; assignability of notes evidencing loans; interest subsidy on insured and guaranteed loans offered for sale to public; protection of borrowers under loans sold to public

(1) The Secretary may, in conformity with subsections (a), (b), and (m) of this section, insure the payment of principal and interest on loans made by lenders other than the United States, and on loans made from or otherwise acquired by the Rural Housing Insurance Fund which are sold by the Secretary. Any contract of insurance executed by the Secretary hereunder shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or material misrepresentation of which the holder has actual knowledge. In connection with loans insured under this section, the Secretary may take liens running to the United States notwithstanding the fact that the notes evidencing such loans may be held by lenders other than the United States. Notes evidencing such loans shall be freely assignable, but the Secretary shall not be bound by any such assignment until notice thereof is given to and acknowledged by him.

(2) Each loan made by the Secretary or other lenders under this subchapter that is insured or guaranteed in accordance with this subsection shall, when offered for sale to the public, be accompanied by an agreement by the Secretary to pay to the holder of such loan (through an agreement to purchase such loan or through such other means as the Secretary determines to be appropriate) the difference between the rate of interest paid by the borrower of such loan and the market rate of interest (as determined by the Secretary) on obligations having comparable periods to maturity on the date of such sale.

(3) Each loan made by the Secretary or other lenders under this subchapter that is insured or guaranteed in accordance with this subsection shall, when offered for sale to the public, be accompanied by agreements for the benefit of the borrower under the loan that provide that—

(A) the purchaser or any assignee of the loan shall not diminish any substantive or procedural right of the borrower arising under this subchapter;

(B) upon any substantial default of the borrower, but prior to foreclosure, the loan shall be assigned to the Secretary for the purpose of avoiding foreclosure; and

(C) following any assignment under subparagraph (B) and before commencing any action to foreclose or otherwise dispossess the borrower, the Secretary shall afford the borrower all substantive and procedural rights arising under this subchapter, including consideration

for interest subsidy, moratorium, reamortization, refinancing, and appeal of any adverse decision to an impartial officer.

(4) From the proceeds of loan sales under paragraph (2), the Secretary shall set aside as a reserve against future losses not less than 5 percent of the outstanding face amount of the loans held by the public at any time.

(e) Rural Housing Insurance Fund; creation; authorization of appropriations; separate operation of guaranteed and insured loan programs: transfer of funds

There is hereby created the Rural Housing Insurance Fund (hereinafter referred to as the ''Fund'') which shall be used by the Secretary as a revolving fund for carrying out the provisions of this section. There are authorized to be appropriated to the Secretary such sums as may be necessary for the purposes of the Fund. The guaranteed loan program under this subchapter shall be operated separately from the insured loan program operated under this subchapter and no funds designated for one program may be transferred to another program.

(f) Investment of excess Fund moneys

Money in the Fund not needed for current operations shall be invested in direct obligations of the United States or obligations guaranteed by the United States.

(g) Fund assets and liabilities; sale of loans; agreements for servicing and purchasing loans

All funds, claims, notes, mortgages, contracts, and property acquired by the Secretary under this section, and all collections and proceeds therefrom, shall constitute assets of the Fund; and all liabilities and obligations of such assets shall be liabilities and obligations of the Fund. Loans may be held in the Fund and collected in accordance with their terms or may be sold by the Secretary with or without agreements for insurance thereof. The Secretary is authorized to make agreements with respect to servicing loans held or insured by him under this section and purchasing such insured loans on such terms and conditions as he may prescribe.

(h) Issuance of notes; form and denominations; interest rate; purchase by Secretary of the Treasury; debt transactions

The Secretary is authorized to issue notes to the Secretary of the Treasury to obtain funds necessary for discharging obligations under this section and for authorized expenditures out of the Fund, but, except as may be authorized in appropriation Acts, not for the original or any additional capital of the Fund. Such notes shall be in such form and denominations and have such maturities and be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Each note shall bear interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which such note is issued, which are neither due nor callable for redemption for fifteen years from their date of issue. The Secretary of the Treasury is authorized and directed to purchase any notes of the Secretary issued hereunder, and for that purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which such securities may be issued under such chapter are extended to include purchases of notes issued by the Secretary. All redemption, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States. The notes issued by the Secretary to the Secretary of the Treasury shall constitute obligations of the Fund.

(i) Retention of annual charge; administrative expenses; merger of funds

The Secretary may retain out of interest payments by the borrower an annual charge in an amount specified in the insurance or sale agreement applicable to the loan. Of the charges retained by the Secretary, if any, not to exceed 1 per centum per annum of the unpaid balance of the loan shall be deposited in the Fund. Any retained charges not deposited in the Fund shall be available for administrative expenses in carrying out the provisions of this subchapter, to be transferred annually, and become merged with any appropriation for administrative expenses of the Farmers Home Administration, when and in such amounts as may be authorized in appropriation Acts.

(j) Additional uses of Fund moneys

The Secretary may also utilize the Fund—

(1) to pay amounts to which the holder of the note is entitled in accordance with an insurance or sale agreement under this section accruing between the date of any payment by the borrower to the Secretary and the date of transmittal of any such payments to the holder of the note; and in the discretion of the Secretary, payments other than final payments need not be remitted to the holder until due or until the next agreed annual or semiannual remittance date;

(2) to pay the holder of any note insured under this section any defaulted installment or, upon assignment of the note to the Secretary at the Secretary's request, or pursuant to a purchase agreement, the entire balance outstanding on the note;

(3) to pay taxes, insurance, prior liens, expenses necessary to make fiscal adjustments in connection with the application and transmittal of collections or necessary to obtain credit reports on applicants or borrowers, and other services customary in the industry, independent audits of project expenses, construction inspections, commercial appraisals, servicing of loans, and other related program services and expenses, and other expenses and advances to protect the security for loans which are insured under this section or held in the Fund, and to acquire such security property at foreclosure sale or otherwise;

(4) to make assistance payments authorized by section 1490a(a) of this title;

(5) after October 1, 1977, and as approved in appropriations Acts, to make advances authorized by section 1471(e) of this title;

(6) to make payments and take other actions in accordance with agreements entered into under paragraphs (2) and (3) of subsection (d) of this section; and

(7) to provide advances and assistance required to carry out paragraphs (4) and (5) of section 1472(c) of this title.

(k) Sale of loans as sale of assets

Any sale by the Secretary of loans individually or in blocks, pursuant to subsections (c) and (g) of this section, shall be treated as a sale of assets for the purposes of chapter 11 of title 31, notwithstanding the fact that the Secretary, under an agreement with the purchaser, holds the debt instruments evidencing the loans and holds or reinvests payments thereon as trustee and custodian for the purchaser.

(*l*) Commitments to make or insure loans to lenders, builders, or sellers; terms and conditions

The Secretary may also, upon the application of lenders, builders, or sellers and upon compliance with requirements specified by him, make commitments upon such terms and conditions as he shall prescribe to make or insure loans under this section to eligible applicants.

(m) Transfer of assets, liabilities, and authorizations of Rural Housing Direct Loan Account to Fund; abolition of Account; applicability of provisions

The assets and liabilities of, and authorizations applicable to, the Rural Housing Direct Loan Account are hereby transferred to the Fund, and such Account is hereby abolished. Such assets and their proceeds, including loans made out of the Fund pursuant to this section, shall be subject to all of the provisions of this section.

(n) Purchase of eligible residential properties

The Secretary may guarantee and service loans made for the purchase of eligible residential properties under section 1441a(c) of title 12 in accordance with subsection (d) of this section and the last sentence of section 1490a(a)(1)(A) of this title.

(*o*) Rules to encourage rehabilitation or purchase of existing buildings; regulations to facilitate marketability of insured or guaranteed loans in secondary mortgage market

(1) The Secretary shall promulgate rules which encourage the rehabilitation or purchase of existing buildings for the purpose of providing housing which is economical in cost and operation.

(2) Not later than the expiration of the 90-day period following April 7, 1986, the Secretary shall issue regulations to facilitate the marketability in the secondary mortgage market of loans insured or guaranteed under this section. Such regulations shall ensure that such loans are competitive with other loans and mortgages insured or guaranteed by the Federal Government.

(July 15, 1949, ch. 338, title V, §517, as added Pub. L. 89–117, title X, §1003(a), Aug. 10, 1965, 79 Stat. 498; amended Pub. L. 89–754, title VIII, §806, Nov. 3, 1966, 80 Stat. 1282; Pub. L. 91–78, §1, Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title IV, §413(a)–(e)(2), (f)(2), Dec. 24, 1969, 83 Stat. 398–400; Pub. L. 91–609, title VIII, §803(d), Dec. 31, 1970, 84 Stat. 1807; Pub. L. 93–117, §13(c), Oct. 2, 1973, 87 Stat. 423; Pub. L. 93–383, title V, §§505(c), 509(b), 514(c), 516(b), 517, 519(b), Aug. 22, 1974, 88 Stat. 694–696, 698, 699; Pub. L. 95–60, §4(c), June 30, 1977, 91 Stat. 258; Pub. L. 95–80, §4(c), July 31, 1977, 91 Stat. 340; Pub. L. 95–128, title V, §§501(c), 502(b), (c), 506, 509, Oct. 12, 1977, 91 Stat. 1139–1141; Pub. L. 95–406, §7(c), Sept. 30, 1978, 92 Stat. 881; Pub. L. 95–557, title V, §§501(f), 506(b), Oct. 31, 1978, 92 Stat. 2111, 2113; Pub. L. 96–71, §5(c), Sept. 28, 1979, 93 Stat. 502; Pub. L. 96–105, §5(c), Nov. 8, 1979, 93 Stat. 795; Pub. L. 96–153, title V, §§501(g), 511, Dec. 21, 1979, 93 Stat. 1134, 1137; Pub. L. 96–372, §6(c), Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title V, §§501(c), 511, Oct. 8, 1980, 94 Stat. 1668, 1671; Pub. L. 97–35, title III, §351(c), Aug. 13, 1981, 95 Stat. 421; Pub. L. 97–289, §3(b), Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98–35, §3(b), May 26, 1983, 97 Stat. 198; Pub. L. 98–109, §4(b), Oct. 1, 1983, 97 Stat. 746; Pub. L. 98–181, title V, §§511(c), 514, Nov. 30, 1983, 97 Stat. 1244, 1247; Pub. L. 98–479, title I, §105(f), title II, §203(d)(5), (6), Oct. 17, 1984, 98 Stat. 2227, 2230; Pub. L. 99–272, title III, §3006, Apr. 7, 1986, 100 Stat. 103; Pub. L. 100–242, title II, §243, Feb. 5, 1988, 101 Stat. 1890; Pub. L. 101–73, title V, §501(e)(2), Aug. 9, 1989, 103 Stat. 394; Pub. L. 102–550, title VII, §707(g), Oct. 28, 1992, 106 Stat. 3839.)

AMENDMENTS

1992—Subsec. (j)(3). Pub. L. 102–550 inserted ''independent audits of project expenses,'' after ''customary in the industry,''.

1989—Subsec. (n). Pub. L. 101–73 added subsec. (n).

1988—Subsec. (j)(7). Pub. L. 100–242 added par. (7).

1986—Subsec. (c). Pub. L. 99–272, §3006(a), inserted provision requiring any loan made and sold after Apr. 7, 1986, to be sold to the public and not to Federal Financing Bank unless required to service transactions between Secretary and Bank occurring on or before such date.

Subsec. (d). Pub. L. 99–272, §3006(b), (c), designated existing provisions as par. (1), and added pars. (2) to (4).

Subsec. (j)(6). Pub. L. 99–272, §3006(d), added par. (6).

Subsec. (n). Pub. L. 99–272, §3006(e), struck out subsec. (n) which restricted loans guaranteed under this section to borrowers with moderate or above-moderate incomes.

Subsec. (*o*). Pub. L. 99–272, §3006(f), designated existing provisions as par. (1), and added par. (2).

1984—Subsec. (h). Pub. L. 98–479, §203(d)(5), substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended'' and ''such chapter'' for ''such Act''.

Subsec. (j)(4). Pub. L. 98–479, §105(f), inserted ''and'' after the semicolon at the end.

Subsec. (k). Pub. L. 98–479, §203(d)(6), substituted ''chapter 11 of title 31'' for ''the Budget and Accounting Act, 1921''.

1983—Subsec. (a). Pub. L. 98–181, §514(a)(1), substituted provisions relating to amount of loan to low income person or family, for provisions designated as pars. (1) and (2) relating to restrictions on loans with respect to amounts, interest, etc., where the borrowers are persons of low or moderate income, and similar restrictions where the borrowers are other persons.

Subsec. (a)(1). Pub. L. 98–181, §511(c), substituted ''September 30, 1985'' for ''November 30, 1983''.

Pub. L. 98–109 substituted ''November 30, 1983'' for ''September 30, 1983''.

Pub. L. 98–35 substituted ''September 30, 1983'' for ''May 20, 1983''.

Subsec. (b). Pub. L. 98–181, §514(a)(2), substituted ''(b)(3)'' for ''(b)(4)''.

Subsec. (j)(6). Pub. L. 98–181, § 514(b), struck out par. (6) which related to making expenditures under section 1479(c) of this title after Oct. 1, 1977.

Subsec. (*o*). Pub. L. 98–181, § 514(c), (d), added subsec. (*o*), and struck out former subsec. (*o*) which related to loans to persons of low income and to the minimum amounts available to such persons.

1982—Subsec. (a)(1). Pub. L. 97–289 substituted ''May 20, 1983'' for ''September 30, 1982''.

1981—Subsec. (a)(1). Pub. L. 97–35 substituted ''1982'' for ''1981''.

1980—Subsec. (a)(1). Pub. L. 96–399, § 501(c), substituted ''September 30, 1981'' for ''October 15, 1980''.

Pub. L. 96–372 substituted ''October 15, 1980'' for ''September 30, 1980''.

Subsec. (n). Pub. L. 96–399, § 511, inserted reference to moderate income borrowers.

1979—Subsec. (a)(1). Pub. L. 96–153, § 501(g), substituted ''September 30, 1980'' for ''November 30, 1979''.

Pub. L. 96–105 substituted ''November 30, 1979'' for ''October 31, 1979''.

Pub. L. 96–71 substituted ''October 31, 1979'' for ''September 30, 1979''.

Subsec. (*o*). Pub. L. 96–153, § 511, redesignated existing provisions as par. (1) and added par. (2).

1978—Subsec. (a)(1). Pub. L. 95–557, § 501(f), substituted ''September 30, 1979'' for ''October 31, 1978''.

Pub. L. 95–406 substituted ''October 31, 1978'' for ''September 30, 1978''.

Subsec. (j)(4). Pub. L. 95–557, § 506(b), substituted ''1490a(a)'' for ''1490a(a)(2)''.

1977—Subsec. (a)(1). Pub. L. 95–128, § 501(c), substituted ''September 30, 1978'' for ''September 30, 1977''.

Pub. L. 95–80 substituted ''September 30, 1977'' for ''July 31, 1977''.

Pub. L. 95–60 substituted ''July 31, 1977'' for ''June 30, 1977''.

Subsec. (e). Pub. L. 95–128, § 502(b), required separate operation of guaranteed loan program and insured loan program and prohibited transfer of funds from one program to the other.

Subsec. (j)(5), (6). Pub. L. 95–128, § 506, added pars. (5) and (6).

Subsec. (n). Pub. L. 95–128, § 502(c), added subsec. (n).

Subsec. (*o*). Pub. L. 95–128, § 509, added subsec. (*o*).

1974—Subsec. (a)(1). Pub. L. 93–383, § 509(b), substituted ''June 30, 1977'' for ''October 1, 1974''.

Subsec. (b). Pub. L. 93–383, §§ 516(b), 517, inserted reference to section 1490f of this title and provisions relating to transfer of notes from and compensation for the Agricultural Credit Insurance Fund.

Subsec. (d). Pub. L. 93–383, § 505(c)(1), struck out ''as it becomes due'' after ''principal and interest''.

Subsec. (j). Pub. L. 93–383, §§ 505(c)(2), (3), 514(c), 519(b), in cl. (1) substituted ''any payment'' for ''any prepayment'' and ''such payments'' for ''such prepayments'' and inserted provision relating to next agreed annual or semiannual remittance date, in cl. (3) inserted provisions authorizing other services customary in the industry, etc., and added cl. (4).

1973—Subsec. (a)(1). Pub. L. 93–117 substituted ''October 1, 1974'' for ''October 1, 1973''.

1970—Subsec. (j)(3). Pub. L. 91–609 authorized use of Fund moneys for expenses necessary to obtain credit reports on applicants or borrowers.

1969—Subsec. (a)(1). Pub. L. 91–152, § 413(a), substituted ''October 1, 1973'' for ''January 1, 1970''.

Pub. L. 91–78 substituted ''January 1, 1970'' for ''October 1, 1969''.

Subsec. (b). Pub. L. 91–152, § 413(f)(2), inserted reference to section 1490d of this title.

Subsec. (c). Pub. L. 91–152, § 413(b), struck out provision which imposed a limit of not to exceed $100,000,000 on the aggregate amount of loans held by the Secretary at any one time.

Subsec. (d). Pub. L. 91–152, § 413(e)(2), inserted reference to subsec. (m) of this section and inserted ''or otherwise acquired by'' after ''loans made from''.

Subsecs. (k) to (m). Pub. L. 91–152, § 413(c)–(e)(1), added subsecs. (k) to (m).

1966—Subsec. (a)(1). Pub. L. 89–754 substituted restriction against insurance or making of a loan under this par. after Oct. 1, 1969, except pursuant to a commitment entered into before that date for former clause (C) which provided that such loans shall not exceed in the aggregate of $300,000,000 of new loans made or insured in any one fiscal year.

SALE OF RURAL HOUSING LOANS

Pub. L. 99–509, title II, § 2001, Oct. 21, 1986, 100 Stat. 1879, directed Secretary of Agriculture to take such actions as necessary to ensure that loans made under this subchapter are sold to public in amounts sufficient to provide a net reduction in outlays of not less than $1,715,000,000 in fiscal year 1987 from proceeds of such sales, specified procedures and terms of sales, required Secretary to report to specified Congressional committees not later than 20 days before initial sale estimating amount of discount at which loans will be sold at such initial sale and estimating such amount at each subsequent sale during fiscal year 1987 and periodic reports to such committees, the first not later than 60 days after Oct. 21, 1986, and subsequent reports each 60 days thereafter, on Secretary's activities regarding such sales, authorized audits and evaluations of Secretary's activities by Comptroller General and reports on such audits and evaluations to Congressional committees, and excluded applicability of subsec. (d)(2) and (3) of this section to sale of loans.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 1488. Repealed. Pub. L. 91–152, title IV, § 413(e)(3), Dec. 24, 1969, 83 Stat. 399

Section, act July 15, 1949, ch. 338, title V, § 518, as added Aug. 10, 1965, Pub. L. 89–117, title X, § 1003(a), 79 Stat. 500, created the Rural Housing Direct Loan Account, set forth the composition of such Account, and authorized the issuance of notes to the Secretary of the Treasury.

§ 1489. Transfer of excess funds out of Rural Housing Insurance Fund

Any sums in the Rural Housing Insurance Fund which the Secretary determines are in excess of amounts needed to meet the obligations and carry out the purposes of such Fund shall be returned to miscellaneous receipts of the Treasury.

(July 15, 1949, ch. 338, title V, § 519, as added Pub. L. 89–117, title X, § 1006, Aug. 10, 1965, 79 Stat. 501; amended Pub. L. 91–152, title IV, § 413(e)(4), Dec. 24, 1969, 83 Stat. 399.)

AMENDMENTS

1969—Pub. L. 91–152 struck out applicability of provisions to Rural Housing Direct Loan Account.

§ 1490. "Rural" and "rural area" defined

As used in this subchapter, the terms ''rural'' and ''rural area'' mean any open country, or any place, town, village, or city which is not (except in the cases of Pajaro, in the State of California, and Guadalupe, in the State of Arizona) part of or associated with an urban area and which (1) has a population not in excess of 2,500 inhabitants, or (2) has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or (3) has a population in excess of 10,000 but not in excess of 20,000, and (A) is not contained within a standard metropolitan statis-

tical area, and (B) has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretary and the Secretary of Housing and Urban Development. For purposes of this subchapter, any area classified as ''rural'' or a ''rural area'' prior to October 1, 1990, and determined not to be ''rural'' or a ''rural area'' as a result of data received from or after the 1990 or 2000 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2010, if such area has a population in excess of 10,000 but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families. Notwithstanding any other provision of this section, the city of Plainview, Texas, shall be considered a rural area for purposes of this subchapter, and the city of Altus, Oklahoma, shall be considered a rural area for purposes of this subchapter until the receipt of data from the decennial census in the year 2000.

(July 15, 1949, ch. 338, title V, § 520, as added Pub. L. 89–117, title X, § 1007, Aug. 10, 1965, 79 Stat. 502; amended Pub. L. 91–609, title VIII, § 803(e), Dec. 31, 1970, 84 Stat. 1807; Pub. L. 93–383, title V, § 511, Aug. 22, 1974, 88 Stat. 695; Pub. L. 94–375, § 25(b), Aug. 3, 1976, 90 Stat. 1078; Pub. L. 98–181, title V, § 515, Nov. 30, 1983, 97 Stat. 1247; Pub. L. 98–479, title I, § 105(g), Oct. 17, 1984, 98 Stat. 2227; Pub. L. 99–120, § 3(b), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, § 3(b), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, § 3(b), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, § 3(b), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, § 3009(b), Apr. 7, 1986, 100 Stat. 105; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title III, § 308, Feb. 5, 1988, 101 Stat. 1896; Pub. L. 101–137, § 7(b), Nov. 3, 1989, 103 Stat. 826; Pub. L. 101–625, title VII, § 715(a), Nov. 28, 1990, 104 Stat. 4296; Pub. L. 102–550, title VII, § 709, Oct. 28, 1992, 106 Stat. 3840; Pub. L. 105–276, title V, § 599H(g), Oct. 21, 1998, 112 Stat. 2669; Pub. L. 106–554, § 1(a)(4) [div. A, § 102], Dec. 21, 2000, 114 Stat. 2763, 2763A–172; Pub. L. 106–569, title VII, § 705, Dec. 27, 2000, 114 Stat. 3015.)

AMENDMENTS

2000—Pub. L. 106–554 and Pub. L. 106–569 amended second sentence identically, substituting ''1990 or 2000 decennial census'' for ''1990 decennial census'' and ''year 2010'' for ''year 2000''.

1998—Pub. L. 105–276 inserted before period at end '', and the city of Altus, Oklahoma, shall be considered a rural area for purposes of this subchapter until the receipt of data from the decennial census in the year 2000''.

1992—Pub. L. 102–550 inserted at end ''Notwithstanding any other provision of this section, the city of Plainview, Texas, shall be considered a rural area for purposes of this subchapter.''

1990—Pub. L. 101–625 substituted ''cases'' for ''case'' in first sentence, inserted '', and Guadalupe, in the State of Arizona'' after ''California'', and substituted last sentence for ''For purposes of this subchapter, any area classified as 'rural' or a 'rural area' prior to the receipt of data from or after the 1980 decennial census and determined not to be 'rural' or a 'rural area' as a result of such data shall continue to be so classified through September 30, 1990, if such area has a population in excess of 10,000 but not in excess of 20,000.''

1989—Pub. L. 101–137 substituted ''September 30, 1990'' for ''September 30, 1989''.

1988—Pub. L. 100–242 added parenthetical exception for Pajaro, in the State of California, and substituted ''September 30, 1989'' for ''March 15, 1988''.

1987—Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

1986—Pub. L. 99–430 substituted ''September 30, 1987'' for ''September 30, 1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 directed amendment identical to Pub. L. 99–219, substituting ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Pub. L. 99–219 substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156 substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120 substituted ''November 14, 1985'' for ''the end of fiscal year 1985''.

1984—Pub. L. 98–479 substituted ''1985'' for ''1984''.

1983—Pub. L. 98–181 inserted provisions relating to applicability of this subchapter through fiscal year 1984 to areas classified pursuant to 1980 decennial census.

1976—Cl. (3)(B). Pub. L. 94–375 inserted ''for lower and moderate-income families'' after ''has a serious lack of mortgage credit''.

1974—Cl. (3). Pub. L. 93–383 added cl. (3).

1970—Pub. L. 91–609 substituted as upper population limit ''10,000'' for ''5,500''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 715(b) of Pub. L. 101–625 provided that: ''The amendment made by this section [amending this section] shall apply with respect to classification of rural areas for fiscal year 1991 and any fiscal year thereafter.''

§ 1490a. Loans to provide occupant owned, rental, and cooperative housing for low and moderate income, elderly or handicapped persons or families

(a) Interest rates; additional assistance; payments to owners; rent limitations

(1)(A) Notwithstanding the provisions of sections 1472, 1487(a) and 1485 of this title, loans to persons of low or moderate income under section 1472 or 1487(a)(1)[1] of this title, loans under section 1485 of this title to provide rental or cooperative housing and related facilities for persons and families of low or moderate income or elderly or handicapped persons or families and loans under section 1490f of this title to provide condominium housing for persons and families of low or moderate income, shall bear interest at a rate prescribed by the Secretary at not less than a rate determined by the Secretary of the Treasury upon the request of the Secretary taking

[1] See References in Text note below.

into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum. Any loan guaranteed under this subchapter shall bear interest at such rate as may be agreed upon by the borrower and the lender.

(B) From the interest rate so determined, the Secretary may provide the borrower with assistance in the form of credits so as to reduce the effective interest rate to a rate not less than 1 per centum per annum for such periods of time as the Secretary may determine for applicants described in subparagraph (A) if without such assistance such applicants could not afford the dwelling or make payments on the indebtedness of the rental or cooperative housing. In the case of assistance provided under this subparagraph with respect to a loan under section 1472 of this title, the Secretary may not reduce, cancel, or refuse to renew the assistance due to an increase in the adjusted income of the borrower if the reduction, cancellation, or nonrenewal will cause the borrower to be unable to reasonably afford the resulting payments required under the loan.

(C) For persons of low income under section 1472 or 1487(a) of this title who the Secretary determines are unable to afford a dwelling with the assistance provided under subparagraph (B) and when the Secretary determines that assisted rental housing programs (as authorized under this subchapter, the National Housing Act [12 U.S.C. 1701 et seq.], and the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]) would be unsuitable in the area in which such persons reside, the Secretary may provide additional assistance, pursuant to amounts approved in appropriation Acts and for such periods of time as the Secretary may determine, which may be in an amount not to exceed the difference between (i) the amount determined by the Secretary to be necessary to pay the principal indebtedness, interest, taxes, insurance, utilities, and maintenance, and (ii) 25 per centum of the income of such applicant. The amount of such additional assistance which may be approved in appropriation Acts may not exceed an aggregate amount of $100,000,000. Such additional assistance may not be so approved with respect to any fiscal year beginning on or after October 1, 1981.

(D)(i) With respect to borrowers under section 1472 or 1487(a) of this title who have received assistance under subparagraph (B) or (C), the Secretary shall provide for the recapture of all or a portion of such assistance rendered upon the disposition or nonoccupancy of the property by the borrower. In providing for such recapture, the Secretary shall make provisions to provide incentives for the borrower to maintain the property in a marketable condition. Notwithstanding any other provision of law, any such assistance whenever rendered shall constitute a debt secured by the security instruments given by the borrower to the Secretary to the extent that the Secretary may provide for recapture of such assistance.

(ii) In determining the amount recaptured under this subparagraph with respect to any loan made pursuant to section 1472(a)(3) of this title for the purchase of a dwelling located on land owned by a community land trust, the Secretary shall determine any appreciation of the dwelling based on any agreement between the borrower and the community land trust that limits the sale price or appreciation of the dwelling.

(E) Except for Federal or State laws relating to taxation, the assistance rendered to any borrower under subparagraphs (B) and (C) shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to welfare and public assistance programs.

(F) Loans subject to the interest rates and assistance provided under this paragraph (1) may be made only when the Secretary determines the needs of the applicant for necessary housing cannot be met with financial assistance from other sources including assistance under the National Housing Act [12 U.S.C. 1701 et seq.] and the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.].

(G) Interest on loans under section 1472 or 1487(a) of this title to victims of a natural disaster shall not exceed the rate which would be applicable to such loans under section 1472 of this title without regard to this section.

(2)(A) The Secretary shall make and insure loans under this section and sections 1484, 1485, and 1487 of this title to provide rental or cooperative housing and related facilities for persons and families of low income in multifamily housing projects, and shall make, and contract to make, assistance payments to the owners of such rental, congregate, or cooperative housing in order to make available to low-income occupants of such housing rentals at rates commensurate to income and not exceeding the highest of (i) 30 per centum of monthly adjusted income, (ii) 10 per centum of monthly income, or (iii) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs. Any rent or contribution of any recipient shall not increase as a result of this section or any other provision of Federal law or regulation by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to this subsection or other law or regulation.

(B) The owner of any project assisted under this paragraph or paragraph (5) shall be required to provide at least annually a budget of operating expenses and record of tenants' income. The budget (and the income, in the case of a project assisted under this paragraph) shall be used to determine the amount of the assistance for each project.

(C) The project owner shall accumulate, safeguard, and periodically pay to the Secretary any rental charges collected in excess of basic rental charges as established by the Secretary in conformity with subparagraph (A). These funds may be credited to the appropriation and used by the Secretary for making such assistance payments through the end of the next fiscal year. Notwithstanding the preceding sentence, excess funds received from tenants in projects financed under

section 1485 of this title during a fiscal year shall be available during the next succeeding fiscal year, together with funds provided under subparagraph (D), to the extent approved in appropriations Acts, to make assistance payments to reduce rent overburden on behalf of tenants of any such project whose rents exceed the levels referred to in subparagraph (A). In providing assistance to relieve rent overburden, the Secretary shall provide assistance with respect to very low-income and low-income families to reduce housing rentals to the levels specified in subparagraph (A).

(D) The Secretary, to the extent approved in appropriation Acts, may enter into rental assistance contracts aggregating not more than $398,000,000 in carrying out subparagraph (A) with respect to the fiscal year ending on September 30, 1982.

(E) In order to assist elderly or handicapped persons or families who elect to live in a shared housing arrangement in which they benefit as a result of sharing the facilities of a dwelling with others in a manner that effectively and efficiently meets their housing needs and thereby reduces their cost of housing, the Secretary shall permit rental assistance to be used by such persons or families if the shared housing arrangement is in a single-family dwelling. For the purpose of this subparagraph, the Secretary shall prescribe minimum habitability standards to assure decent, safe, and sanitary housing for such families while taking into account the special circumstances of shared housing.

(3)(A) In the case of loans under sections 1484 and 1485 of this title approved prior to the effective date of this paragraph with respect to which rental assistance is provided, the rent for tenants receiving such assistance shall not exceed the highest of (i) 30 per centum of monthly adjusted income, (ii) 10 per centum of monthly income, or (iii) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs.

(B) In the case of a section 1485 loan approved prior to the effective date of this paragraph with respect to which interest credits are provided, the tenant's rent shall not exceed the highest of (i) 30 per centum of monthly adjusted income, (ii) 10 per centum of monthly income, or (iii) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs, or, where no rental assistance authority is available, the rent level established on a basis of a 1 per centum interest rate on debt service.

(C) No rent for a unit financed under section 1484 or 1485 of this title shall be increased as a result of this subsection or other provision of Federal law or Federal regulation by more than 10 per centum in any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to this subsection or other law, or regulation.

(4) In the case of a loan with respect to the purchase of a manufactured home with respect to which rental assistance is provided, the monthly payment for principal and interest on the manufactured home and for lot rental and utilities shall not exceed the highest of (A) 30 per centum of monthly adjusted income, (B) 10 per centum of monthly income, or (C) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs.

(5) OPERATING ASSISTANCE FOR MIGRANT FARMWORKER PROJECTS.—

(A) AUTHORITY.—In the case of housing (and related facilities) for migrant farmworkers provided or assisted with a loan under section 1484 of this title or a grant under section 1486 of this title, the Secretary may, at the request of the owner of the project, use amounts provided for rental assistance payments under paragraph (2) to provide assistance for the costs of operating the project. Any tenant or unit assisted under this paragraph may not receive rental assistance under paragraph (2).

(B) AMOUNT.—In any fiscal year, the assistance provided under this paragraph for any project shall not exceed an amount equal to 90 percent of the operating costs for the project for the year, as determined by the Secretary. The amount of assistance to be provided for a project under this paragraph shall be an amount that makes units in the project available to migrant farmworkers in the area of the project at rates not exceeding 30 percent of the monthly adjusted incomes of such farmworkers, based on the prevailing incomes of such farmworkers in the area.

(C) SUBMISSION OF INFORMATION.—The owner of a project assisted under this paragraph shall be required to provide to the Secretary, at least annually, a budget of operating expenses and estimated rental income, which the Secretary may use to determine the amount of assistance for the project.

(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) The term ''migrant farmworker'' has the same meaning given such term in section 1486(k)(7) of this title.

(ii) The term ''operating cost'' means expenses incurred in operating a project, including expenses for—

(I) administration, maintenance, repair, and security of the project;

(II) utilities, fuel, furnishings, and equipment for the project; and

(III) maintaining adequate reserve funds for the project.

(b) Location in rural areas; inclusion of qualified nonrural residents who will become rural residents

Housing and related facilities provided with loans described in subsection (a) of this section shall be located in rural areas; and applicants eligible for such loans under section 1472, 1487(a)(1),[2] or 1490f(a) of this title, or for occupancy of housing provided with such loans under section 1485 or 1490f(c) of this title, shall include

[2] See References in Text note below.

otherwise qualified nonrural residents who will become rural residents.

(c) Reimbursement of Rural Housing Insurance Fund

There shall be reimbursed to the Rural Housing Insurance Fund by annual appropriations (1) the amounts by which nonprincipal payments made from the fund during each fiscal year to the holders of insured loans described in subsection (a)(1) of this section exceed interest due from the borrowers during each year, and (2) the amount of assistance payments described in subsections (a)(2) and (a)(5) of this section. There are authorized to be appropriated to the Rural Housing Insurance Fund such sums as may be necessary to reimburse such fund for the amount of assistance payments described in subsection (a)(1)(C) of this section. The Secretary may from time to time issue notes to the Secretary of the Treasury under section 1487(h) and of this title and section 1490f of this title to obtain amounts equal to such unreimbursed payments, pending the annual reimbursement by appropriation.

(d) Rental assistance contract authority; preconditions, limitations, etc.

(1) In utilizing the rental assistance payments authority pursuant to subsection (a)(2) of this section—

(A) the Secretary shall make such assistance available in existing projects for units occupied by low income families or persons to extend expiring contracts or to provide additional assistance when necessary to provide the full amount authorized pursuant to existing contracts;

(B) any such authority remaining after carrying out subparagraph (A) shall be used in projects receiving commitments under section 1484, 1485, or 1486 of this title after fiscal year 1983 for contracts to assist very low-income families or persons to occupy the units in such projects, except that not more than 5 percent of the units assisted may be occupied by low income families or persons who are not very low-income families or persons; and

(C) any such authority remaining after carrying out subparagraphs (A) and (B) may be used to provide further assistance to existing projects under section 1484, 1485, or 1486 of this title.

(2) The Secretary shall transfer rental assistance contract authority under this section from projects where such authority is unused after initial rentup and not needed because of a lack of eligible tenants in the area to projects where such authority is needed.

(e) Increases in rent or contribution of any recipient

Any rent or contribution of any recipient or any tenant in a project assisted under subsection (a)(5) of this section shall not increase as a result of this section, any amendment thereto, or any other provision of Federal law or regulation by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to this subsection or other law or regulation.

(July 15, 1949, ch. 338, title V, § 521, as added Pub. L. 90–448, title X, § 1001, Aug. 1, 1968, 82 Stat. 551; amended Pub. L. 93–383, title V, §§ 514(a), (b), 516(c), Aug. 22, 1974, 88 Stat. 696, 698; Pub. L. 94–375, § 25(a), Aug. 3, 1976, 90 Stat. 1078; Pub. L. 95–128, title V, §§ 502(d), 507(a)(4), (5), 511, Oct. 12, 1977, 91 Stat. 1139, 1140, 1142; Pub. L. 95–557, title V, §§ 506(a), 507, Oct. 31, 1978, 92 Stat. 2112, 2113; Pub. L. 96–153, title V, §§ 501(c), 502(a), 504, Dec. 21, 1979, 93 Stat. 1133–1135; Pub. L. 96–372, § 6(d), Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title V, §§ 501(e), (f), 505, Oct. 8, 1980, 94 Stat. 1668, 1669; Pub. L. 97–35, title III, §§ 351(d), 352, Aug. 13, 1981, 95 Stat. 421; Pub. L. 98–181, title V, §§ 516, 517(a)–(c), (e), Nov. 30, 1983, 97 Stat. 1247–1249; Pub. L. 98–479, title I, § 105(h), Oct. 17, 1984, 98 Stat. 2227; Pub. L. 100–242, title III, §§ 309, 316(d), Feb. 5, 1988, 101 Stat. 1896, 1898; Pub. L. 101–625, title VII, § 716, Nov. 28, 1990, 104 Stat. 4296; Pub. L. 102–550, title VII, § 702(b), Oct. 28, 1992, 106 Stat. 3834; Pub. L. 105–276, title V, § 599C(e)(1), (e)(2)(D)–(F), Oct. 21, 1998, 112 Stat. 2661, 2663; Pub. L. 106–569, title VII, § 706, Dec. 27, 2000, 114 Stat. 3015.)

REFERENCES IN TEXT

Section 1487(a) of this title, referred to in subsecs. (a)(1)(A) and (b), was amended by Pub. L. 98–181, title V, § 514(a)(1), Nov. 30, 1983, 98 Stat. 1247, and, as so amended, does not contain a par. (1).

The National Housing Act, referred to in subsec. (a)(1)(C) and (F), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The United States Housing Act of 1937, referred to in subsec. (a)(1)(C) and (F), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The effective date of this paragraph, referred to in subsec. (a)(3)(A) and (B), is six months after Nov. 30, 1983, or upon the earlier promulgation of implementing regulations by the Secretary. See section 517(f) of Pub. L. 98–181, set out as an Effective Date of 1983 Amendment note below.

AMENDMENTS

2000—Subsec. (a)(5)(A). Pub. L. 106–569 substituted ''Any tenant or unit assisted'' for ''Any project assisted'' in last sentence.

1998—Subsec. (a)(2)(B). Pub. L. 105–276, § 599C(e)(2)(D), inserted ''or paragraph (5)'' after ''this paragraph'' and substituted ''. The budget (and the income, in the case of a project assisted under this paragraph) shall be used to determine the amount of the assistance for each project.'' for ''which shall be used to determine the amount of assistance for each project.''

Subsec. (a)(5). Pub. L. 105–276, § 599C(e)(1), added par. (5).

Subsec. (c)(2). Pub. L. 105–276, § 599C(e)(2)(E), substituted ''subsections (a)(2) and (a)(5)'' for ''subsection (a)(2)''.

Subsec. (e). Pub. L. 105–276, § 599C(e)(2)(F), inserted ''or any tenant in a project assisted under subsection (a)(5) of this section'' after ''recipient''.

1992—Subsec. (a)(1)(D). Pub. L. 102–550 designated existing provisions as cl. (i) and added cl. (ii).

1990—Subsec. (a)(2)(C). Pub. L. 101–625 inserted at end ''Notwithstanding the preceding sentence, excess funds received from tenants in projects financed under section 1485 of this title during a fiscal year shall be avail-

able during the next succeeding fiscal year, together with funds provided under subparagraph (D), to the extent approved in appropriations Acts, to make assistance payments to reduce rent overburden on behalf of tenants of any such project whose rents exceed the levels referred to in subparagraph (A). In providing assistance to relieve rent overburden, the Secretary shall provide assistance with respect to very low-income and low-income families to reduce housing rentals to the levels specified in subparagraph (A).''

1988—Subsec. (a)(1)(A). Pub. L. 100–242, §316(d)(1), struck out before period at end '', except that such loans to provide housing and related facilities for persons or families of moderate income shall bear interest at the rate established by the Secretary of Housing and Urban Development under section 1709–1 of title 12 with respect to maximum interest rates established for mortgages insured under section 1709(b) of title 12 if the Secretary determines that the borrower can afford such higher interest charges.''

Subsec. (a)(1)(B). Pub. L. 100–242, §309, inserted at end ''In the case of assistance provided under this subparagraph with respect to a loan under section 1472 of this title, the Secretary may not reduce, cancel, or refuse to renew the assistance due to an increase in the adjusted income of the borrower if the reduction, cancellation, or nonrenewal will cause the borrower to be unable to reasonably afford the resulting payments required under the loan.''

Subsec. (a)(2)(A). Pub. L. 100–242, §316(d)(2), substituted comma for semicolon at end of cl. (ii).

1984—Subsec. (d)(1). Pub. L. 98–479 in amending par. (1) generally, inserted provisions preceding subpar. (A), in subpar. (A) substituted provisions authorizing Secretary to make assistance available in existing projects for former provisions which required Secretary to first assure that expiring contracts are extended for those units occupied by persons or families of low income and that additional assistance is used when necessary to provide the full amount authorized pursuant to existing contracts, in subpar. (B) substituted ''any such authority remaining after carrying out subparagraph (A)'' for ''Remaining funds'' and inserted provisions relating to persons who are not very low-income families or persons, and in subpar. (C) substituted provisions that remaining authority may be used to provide assistance under sections 1484 to 1486 of this title for former provisions which authorized the Secretary to use remaining funds for existing projects for very low-income families except that 5 per centum of the units assisted may be occupied by families and persons of low income.

1983—Subsec. (a)(2)(A). Pub. L. 98–181, §517(c), substituted provisions setting forth factors applicable to determination of maximum amount, for provisions setting forth maximum amount as 25 per centum of income, and inserted provisions relating to limitations on increases of any rent or contribution of recipient.

Pub. L. 98–181, §517(a), struck out provisions requiring assistance payments to be made on a unit basis and maximum amount of such payments, and provisions respecting priority for approval of projects under this paragraph.

Subsec. (a)(2)(E). Pub. L. 98–181, §516, added subpar. (E).

Subsec. (a)(3), (4). Pub. L. 98–181, §517(b), added pars. (3) and (4).

Subsecs. (d), (e). Pub. L. 98–181, §517(e), added subsecs. (d) and (e).

1981—Subsec. (a)(1)(B). Pub. L. 97–35, §352, substituted ''may provide'' for ''shall provide''.

Subsec. (a)(2)(D). Pub. L. 97–35, §351(d), substituted ''$398,000,000'' for ''$493,000,000'', and substituted provisions relating to fiscal year ending Sept. 30, 1982, for provisions relating to fiscal year ending Sept. 30, 1981.

1980—Subsec. (a)(1)(B). Pub. L. 96–399, §505, substituted ''the Secretary shall provide'' for ''the Secretary may provide''.

Subsec. (a)(1)(C). Pub. L. 96–399, §501(f), substituted provisions limiting the amount of additional assistance which may be approved to $100,000,000, for provisions limiting such amounts to $985,000,000 for contracts entered into with respect to fiscal year 1979 and $500,000,000 for contracts entered into through Oct. 15, 1980, and substituted ''with respect to any fiscal year beginning on or after October 1, 1981'' for ''after October 15, 1980''.

Pub. L. 96–372 substituted ''through October 15, 1980'' for ''with respect to fiscal year 1980'' and in last sentence ''after October 15, 1980'' for ''with respect to any fiscal year after fiscal year 1980''.

Subsec. (a)(2)(D). Pub. L. 96–399, §501(e), added subpar. (D).

1979—Subsec. (a)(1)(A). Pub. L. 96–153, §502(a), inserted exception that loans to provide housing and related facilities for persons or families of moderate income shall bear interest at the rate established by the Secretary under certain provisions of title 12.

Subsec. (a)(1)(C). Pub. L. 96–153, §501(c)(1), inserted provisions that the amount of such additional assistance which may be approved in appropriation acts may not exceed an aggregate amount of $985,000,000 for contracts entered into with respect to fiscal year 1979 and an aggregate amount of $500,000,000 for contracts entered into with respect to fiscal year 1980 and that such additional assistance may not be so approved with respect to any fiscal year after fiscal year 1980.

Subsec. (a)(1)(H). Pub. L. 96–153, §501(c)(3), repealed subpar. (H) which provided that the aggregate principal amount of loans made to borrowers receiving assistance pursuant to subpar. (C) shall not exceed $440,000,000.

Subsec. (a)(2)(A). Pub. L. 96–153, §504, substituted ''assistance payments to the owners of'' for ''assistance payments to public and private nonprofit owners of'', ''70 per centum'' for ''20 per centum'' in two places, ''by a loan under section 1484 of this title to a public or private nonprofit owner'' for ''by a loan under section 1484 of this title'', the first time section 1484 of this title appeared in cl. (i), and inserted provisions that in approving projects for assistance under this paragraph, the Secretary shall give priority to projects in which assistance is provided to 40 per centum or fewer of the units contained in the project.

Subsec. (c). Pub. L. 96–153, §501(c)(2), inserted authorization of appropriation to Rural Housing Insurance Fund of such sums as may be necessary to reimburse fund for amount of assistance payments under subsec. (a)(1)(C) of this section.

1978—Subsec. (a)(1)(A) to (H). Pub. L. 95–557, §506(a), designated existing provisions as par. (1)(A), and in par. (1)(A) as so designated, struck out ''less not to exceed the difference between the adjusted rate determined by the Secretary of the Treasury and 1 per cent per annum: *Provided*, That such a loan may be made only when the Secretary determines that the needs of the applicant for necessary housing cannot be met with financial assistance from other sources including assistance under section 1715z or 1715z–1 of title 12: *Provided further*, That interest on loans under section 1472 or 1487(a) of this title to victims of natural disaster shall not exceed the rate which would be applicable to such loans under section 1472 of this title without regard to this section'', after ''one-eighth of 1 per centum,'' and added pars. (B) to (H).

Subsec. (a)(2)(A). Pub. L. 95–557, §507, substituted ''public and private nonprofit owners'' for ''the owners'', inserted ''congregate, or cooperative'' after ''rental'' and inserted ''by a loan under section 1484 of this title'' after ''section 1485 of this title for elderly or handicapped housing''.

1977—Subsec. (a)(1). Pub. L. 95–128, §§502(d), 507(a)(4), provided that any loan guaranteed under this subchapter shall bear interest at the rate as may be agreed upon by the borrower and the lender and provided loans for housing of handicapped persons or families.

Subsec. (a)(2)(A). Pub. L. 95–128, §§507(a)(5), 511, included handicapped housing in cl. (i) and substituted ''shall'' for ''may'' wherever appearing, except in cl. (i).

1976—Subsec. (a)(1). Pub. L. 94–375 substituted ''rate determined by the Secretary of the Treasury upon the

request of the Secretary'' for ''rate determined annually by the Secretary of the Treasury''.

1974—Subsec. (a)(1). Pub. L. 93–383, §§514(a), 516(c)(1), redesignated existing subsec. (a) as (a)(1) and, as so redesignated, substituted ''loans under section 1485 of this title'' for ''and loans under section 1485 of this title'' and inserted provisions relating to loans under section 1490f of this title to provide condominium housing for persons and families of low or moderate income.

Subsec. (a)(2). Pub. L. 93–383, §514(a), added par. (2).

Subsec. (b). Pub. L. 93–383, §516(c)(2), inserted references to sections 1490f(a) and 1490f(c) of this title.

Subsec. (c). Pub. L. 93–383, §§514(b), 516(c)(3), reorganized structure of subsec. (c) by designating existing provisions as cl. (1) and, as so designated, substituted reference to subsec. (a)(1) of this section for reference to subsec. (a) of this section, added cl. (2), and made former second clause into second sentence, and, as so amended, inserted reference to section 1490f of this title and struck out ''excess'' after ''unreimbursed''.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 517(f) of Pub. L. 98–181 provided that: ''The amendments made by this section [amending this section and section 1490j of this title] shall take effect six months after the date of enactment of this Act [Nov. 30, 1983], or upon the earlier promulgation of regulations implementing this section by the Secretary.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 1490b. Housing for rural trainees

(a) Authorization; financial and technical assistance; selection of training sites and location of housing

Upon the application of any State or political subdivision thereof, or any public or private nonprofit organization, the Secretary is authorized, after consultation with the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, and the Director of the Office of Economic Opportunity, and after the Secretary determines that the housing and related facilities cannot reasonably be provided in any other way, to provide financial and technical assistance for the establishment, in rural areas, of housing and related facilities for trainees and their families who are residents of a rural area and have a rural background, while such trainees are enrolled and participating in training courses designed to improve their employment capability. The selection of training sites and location of housing shall be made with due regard to the economic viability of the area, and only after consideration of a labor area survey and full coordination among all Government agencies having primary responsibility for administering related programs.

(b) Quality of housing and related facilities; design and location

Housing and related facilities assisted under this section shall be safe and sanitary, constructed in the most economical manner, and of modest design, giving due consideration to the purposes to be served and the needs of the occupants, and may, in the discretion of the Secretary, include mobile family quarters. Design and location shall be such as to facilitate, as feasible, the use of such housing and related facilities for other purposes when no longer needed for the primary purpose.

(c) Contribution of land by applicant

The applicant shall contribute the necessary land, or funds to acquire such land, from its own resources, including land acquired by donation or from funds repayable under subsection (e) of this section or borrowed from other sources.

(d) Conditions precedent to grant of financial assistance

No financial assistance shall be made available under this section unless, to the extent and for the periods required by the Secretary, the applicant agrees that—

(1) such housing will be maintained at all times in a safe and sanitary condition in accordance with standards prescribed by State or local law, or, in the absence of such standards, with requirements prescribed by the Secretary;

(2) priority shall be given at all times, in granting occupancy of such housing and facilities, to the trainees and their families described in subsection (a) of this section; and

(3) rentals charged them shall not exceed amounts approved by the Secretary after considering the portion of the actual total family income which the family can afford to pay for rent while meeting its other immediate needs during occupancy.

(e) Advances; repayment; limitation on amount

The Secretary may make advances pursuant to any contract for financial assistance under this section at such times and in such manner as may be specified in the contract. Such advances for the purchase of land shall be repayable with interest and within a period not to exceed thirty-three years and may be made upon such security, if any, as the Secretary requires. Advances for other purposes may be made repayable with or without interest or nonrepayable, as determined by the Secretary on the basis of the anticipated income, and cost of operation of the housing and related facilities and the ability of each applicant to finance such facilities. Any advances shall be limited to cover the capital costs of constructing such facilities, plus interest on borrowings to cover such costs.

(f) Sale of housing and related facilities to ineligible transferee or diversion to use other than primary purpose; repayment of advances; return of property to original condition

Should housing and related facilities assisted pursuant to a contract under this section be sold to an ineligible transferee or diverted to a use other than its primary purpose within a period specified in the contract, all advances made under such contract shall be repaid to the Secretary, up to the amount of the sales price or the fair value of the property as determined by the Secretary, whichever is higher, with interest from the date of the sale or diversion. If no suitable alternate use of the property is available, as determined by the Secretary, after the purpose of this section can no longer be served, the property shall be returned to its original condition by the recipient of the assistance.

(g) Interest on advances

Interest charged on advances made under this section shall be at a rate, prescribed by the Secretary, which shall be not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, less not to exceed the difference between the adjusted rate determined by the Secretary of the Treasury and 1 per centum per annum, as determined by the Secretary.

(h) Regulations

The Secretary shall prescribe regulations to insure that Federal funds expended under this section are not wasted or dissipated.

(i) "Related facilities" and "trainee" defined

As used in this section (1) the term ''related facilities'' shall include any necessary community rooms or buildings, infirmaries, utilities, access roads, water and sewer services, and the minimum fixed or movable equipment determined by the Secretary to be necessary to make the housing reasonably habitable by trainees and their families; and (2) the term ''trainee'' means any person receiving training under any federally assisted training program.

(j) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(July 15, 1949, ch. 338, title V, § 522, as added Pub. L. 90–448, title X, § 1002, Aug. 1, 1968, 82 Stat. 551; amended Pub. L. 98–479, title II, § 201(c), Oct. 17, 1984, 98 Stat. 2228; Pub. L. 100–242, title III, § 316(e), Feb. 5, 1988, 101 Stat. 1898.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–242 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, and Human Services''.

1984—Subsec. (a). Pub. L. 98–479 substituted ''Health, and Human Services'' for ''Health, Education, and Welfare''.

OFFICE OF ECONOMIC OPPORTUNITY

Pub. L. 93–644, § 9(a), Jan. 4, 1975, 88 Stat. 2310 [42 U.S.C. 2941], amended the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] to create the Community Services Administration, an independent agency in the executive branch, as the successor authority to the Office of Economic Opportunity, and provided that references to the Office of Economic Opportunity or to its Director were deemed to refer to the Community Services Administration or to its Director. The Community Services Administration was terminated when the Economic Opportunity Act of 1964, except for titles VIII and X, was repealed, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97–35, title VI, Aug. 13, 1981, 95 Stat. 519 (42 U.S.C. 9912(a)). An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub. L. 97–35 (42 U.S.C. 9905).

§ 1490c. Mutual and self-help housing

(a) Purpose

The purposes of this section are (1) to make financial assistance available on reasonable terms and conditions in rural areas and small towns to needy low-income individuals and their families who, with the benefit of technical assistance and overall guidance and supervision, participate in approved programs of mutual or self-help housing by acquiring and developing necessary land, acquiring building materials, providing their own labor, and working cooperatively with others for the provision of decent, safe, and sanitary dwellings for themselves, their families, and others in the area or town involved, and (2) to facilitate the efforts of both public and private nonprofit organizations providing assistance to such individuals to contribute their technical and supervisory skills toward more effective and comprehensive programs of mutual or self-help housing in rural areas and small towns wherever necessary.

(b) Contract authority; establishment of Self-Help Housing Land Development Fund; authorization to make loans; conditions of loan

In order to carry out the purposes of this section, the Secretary of Agriculture (in this section referred to as the ''Secretary'') is authorized—

(1)(A) to make grants to, or contract with, public or private nonprofit corporations, agencies, institutions, organizations, Indian tribes, and other associations approved by him, to pay part or all of the costs of developing, conducting, administering, or coordinating effective and comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and their families in carrying out mutual or self-help housing efforts, including the repair of units financed under section 1472 of this title that are being held in inventory; and

(B) to establish the Self-Help Housing Land Development Fund, referred to herein as the Self-Help Fund, to be used by the Secretary as a revolving fund for making loans, on such terms and conditions and in such amounts as he deems necessary, to public or private nonprofit organizations and to Indian tribes for the acquisition and development of land as building sites to be subdivided and sold to families, nonprofit organizations, and cooperatives eligible for assistance under section 1715z or 1715z–1 of title 12 or section 1490a of this title. Such a loan, with interest at a rate not to exceed 3 percent per annum, shall be repaid within a period not to exceed two years from the making of the loan, or within such additional period as may be authorized by the Secretary in any case as being necessary to carry out the purposes hereof: *Provided*, That the Secretary may advance funds under this paragraph to organizations receiving assistance under clause (A) to enable them to establish revolving accounts for the purchase of land options and any such advances may bear interest at a rate determined by the Secretary and shall be repaid to the Secretary at the expiration of the period for which the grant to the organization involved was made;

(2) to make grants to, or contract with, national or regional private nonprofit corporations to provide training and technical assistance to public or private nonprofit corpora-

tions, agencies, institutions, organizations, and other associations, including Indian tribes, eligible to receive assistance under this section in order to expand the use of authorities contained in this section and to improve performance; and

(3) to make loans, on such terms and conditions and in such amounts as he deems necessary, to needy low-income individuals participating in programs of mutual or self-help housing approved by him, for the acquisition and development of land and for the purchase of such other building materials as may be necessary in order to enable them, by providing substantially all of their own labor, and by cooperating with others participating in such programs, to carry out to completion the construction of decent, safe, and sanitary dwellings for such individuals and their families, subject to the following limitations:

(A) there is reasonable assurance of repayment of the loan;

(B) the amount of the loan, together with other funds which may be available, is adequate to achieve the purpose for which the loan is made;

(C) the credit assistance is not otherwise available on like terms or conditions from private sources or through other Federal, State, or local programs;

(D) the loan bears interest at a rate not to exceed 3 per centum per annum on the unpaid balance of principal, plus such additional charge, if any, toward covering other costs of the loan program as the Secretary may determine to be consistent with its purposes; and

(E) the loan is repayable within not more than thirty-three years.

(c) Considerations for financial assistance

In determining whether to extend financial assistance under paragraph (1) or (2) of subsection (b) of this section, the Secretary shall take into consideration, among other factors, the suitability of the area within which construction will be carried out to the type of dwelling which can be provided under mutual or self-help housing programs, the extent to which the assistance will facilitate the provision of more decent, safe, and sanitary housing conditions than presently exist in the area, the extent to which the assistance will be utilized efficiently and expeditiously, the extent to which the assistance will effect an increase in the standard of living of low-income individuals participating in the mutual or self-help housing program, and whether the assistance will fulfill a need in the area which is not otherwise being met through other programs, including those carried out by other Federal, State, or local agencies.

(d) "Construction" defined

As used in this section, the term ''construction'' includes the erection of new dwellings, and the rehabilitation, alteration, conversion, or improvement of existing structures.

(e) Establishment of appropriate criteria and procedures for determining eligibility of applicants

The Secretary is authorized to establish appropriate criteria and procedures in order to determine the eligibility of applicants for the financial assistance provided under this section, including criteria and procedures with respect to the periodic review of any construction carried out with such financial assistance.

(f) Repealed. Pub. L. 102–550, title VII, § 710(2), Oct. 28, 1992, 106 Stat. 3840

(g) Deposit in Self-Help Fund; availability of amounts; assets

Amounts appropriated under this subsection, together with principal collections from loans made under appropriations in any previous fiscal years, shall be deposited in the Self-Help Housing Land Development Fund, which shall be available, to the extent approved in appropriation Acts, as a revolving fund for making loans under subsection (b)(1)(B) of this section; except that not more than $5,000,000 may be made available during fiscal year 1985. Instruments and property acquired by the Secretary in or as a result of making such loans shall be assets of the Self-Help Housing Land Development Fund.

(h) Rules and regulations

The Secretary shall issue rules and regulations for the orderly processing and review of applications under this section and rules and regulations protecting the rights of grantees under this section in the event he determines to end grant assistance prior to the termination date of any grant agreement.

(July 15, 1949, ch. 338, title V, § 523, as added Pub. L. 90–448, title X, § 1005, Aug. 1, 1968, 82 Stat. 553; amended Pub. L. 93–117, § 13(d), Oct. 2, 1973, 87 Stat. 423; Pub. L. 93–383, title V, § 512, Aug. 22, 1974, 88 Stat. 695; Pub. L. 95–60, § 4(d), June 30, 1977, 91 Stat. 258; Pub. L. 95–80, § 4(d), July 31, 1977, 91 Stat. 340; Pub. L. 95–128, title V, § 501(d), Oct. 12, 1977, 91 Stat. 1139; Pub. L. 95–406, § 7(d), Sept. 30, 1978, 92 Stat. 881; Pub. L. 95–557, title V, § 501(g), (h), Oct. 31, 1978, 92 Stat. 2111; Pub. L. 96–71, § 5(d), Sept. 28, 1979, 93 Stat. 502; Pub. L. 96–105, § 5(d), Nov. 8, 1979, 93 Stat. 795; Pub. L. 96–153, title V, §§ 501(d), (e), 505, Dec. 21, 1979, 93 Stat. 1133, 1135; Pub. L. 96–372, § 6(e), Oct. 3, 1980, 94 Stat. 1365; Pub. L. 96–399, title V, §§ 501(d), 507(e), Oct. 8, 1980, 94 Stat. 1668, 1670; Pub. L. 97–35, title III, § 351(e), Aug. 13, 1981, 95 Stat. 421; Pub. L. 97–289, § 3(c), Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98–35, § 3(c), May 26, 1983, 97 Stat. 198; Pub. L. 98–109, § 4(c), Oct. 1, 1983, 97 Stat. 746; Pub. L. 98–181, title V, § 511(d), (e), Nov. 30, 1983, 97 Stat. 1244; Pub. L. 98–479, title II, § 204(c)(2), Oct. 17, 1984, 98 Stat. 2233; Pub. L. 99–120, § 3(c), Oct. 8, 1985, 99 Stat. 503; Pub. L. 99–156, § 3(c), Nov. 15, 1985, 99 Stat. 816; Pub. L. 99–219, § 3(c), Dec. 26, 1985, 99 Stat. 1731; Pub. L. 99–267, § 3(c), Mar. 27, 1986, 100 Stat. 74; Pub. L. 99–272, title III, § 3009(c), Apr. 7, 1986, 100 Stat. 106; Pub. L. 99–289, § 1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, § 1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, § 1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327; Pub. L. 100–242, title III, § 301(f), Feb. 5, 1988, 101 Stat. 1893; Pub. L. 101–137, § 7(c), Nov. 3, 1989, 103 Stat. 826; Pub. L. 101–625, title VII, § 701(f),

Nov. 28, 1990, 104 Stat. 4282; Pub. L. 102–142, title VII, § 743(b), Oct. 28, 1991, 105 Stat. 915; Pub. L. 102–550, title VII, § 710, Oct. 28, 1992, 106 Stat. 3840.)

AMENDMENTS

1992—Subsec. (b)(1)(A). Pub. L. 102–550, § 710(1), inserted '', including the repair of units financed under section 1472 of this title that are being held in inventory'' after ''efforts''.

Subsec. (f). Pub. L. 102–550, § 710(2), struck out subsec. (f) which read as follows: ''No grant or loan may be made or contract entered into under the authority of this section after September 30, 1992, except pursuant to a commitment or other obligation entered into pursuant to this section before that date.''

1991—Subsec. (f). Pub. L. 102–142 substituted ''1992'' for ''1991''.

1990—Subsec. (f). Pub. L. 101–625 substituted ''1991'' for ''1990''.

1989—Subsec. (f). Pub. L. 101–137 substituted ''1990'' for ''1989''.

1988—Subsec. (f). Pub. L. 100–242 substituted ''September 30, 1989'' for ''March 15, 1988''.

1987—Subsec. (f). Pub. L. 100–200 substituted ''March 15, 1988'' for ''December 16, 1987''.

Pub. L. 100–179 substituted ''December 16, 1987'' for ''December 2, 1987''.

Pub. L. 100–170 substituted ''December 2, 1987'' for ''November 15, 1987''.

Pub. L. 100–154 substituted ''November 15, 1987'' for ''October 31, 1987''.

Pub. L. 100–122 substituted ''October 31, 1987'' for ''September 30, 1987''.

1986—Subsec. (f). Pub. L. 99–430 substituted ''1987'' for ''1986''.

Pub. L. 99–345 substituted ''September 30, 1986'' for ''June 6, 1986''.

Pub. L. 99–289 substituted ''June 6, 1986'' for ''April 30, 1986''.

Pub. L. 99–272 directed amendment identical to Pub. L. 99–219, substituting ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–267 substituted ''April 30, 1986'' for ''March 17, 1986''.

1985—Subsec. (f). Pub. L. 99–219 substituted ''March 17, 1986'' for ''December 15, 1985''.

Pub. L. 99–156 substituted ''December 15, 1985'' for ''November 14, 1985''.

Pub. L. 99–120 substituted ''November 14, 1985'' for ''September 30, 1985''.

1984—Subsec. (g). Pub. L. 98–479 inserted ''Housing'' before ''Land'' after ''Self-Help'' in last sentence.

1983—Subsec. (f). Pub. L. 98–181, § 511(d), substituted ''September 30, 1985'' for ''November 30, 1983'', and struck out first sentence which authorized not to exceed $5,000,000 to carry out this section for fiscal year 1983.

Pub. L. 98–109 substituted ''November 30, 1983'' for ''September 30, 1983'' the second time it appeared.

Pub. L. 98–35 substituted ''September 30, 1983'' for ''May 20, 1983'' in two places.

Subsec. (g). Pub. L. 98–181, § 511(e), substituted ''1985'' for ''1982'' and struck out first sentence which authorized not to exceed $3,000,000 to carry out subsec. (b)(1)(B) for fiscal year 1982.

1982—Subsec. (f). Pub. L. 97–289 substituted ''May 20, 1983'' for ''September 30, 1982'' wherever appearing.

1981—Subsec. (f). Pub. L. 97–35, § 351(e)(1), substituted ''1982'' for ''1981'' in two places.

Subsec. (g). Pub. L. 97–35, § 351(e)(2)–(4), inserted provisions relating to availability in appropriation Acts, and substituted provisions relating to authorization of appropriations for fiscal year ending Sept. 30, 1982, for provisions authorizing appropriations for fiscal year ending Sept. 30, 1981.

1980—Subsec. (b). Pub. L. 96–399, § 507(e), inserted reference to Indian tribes in subpars. (1)(A) and (B), and in par. (2).

Subsec. (f). Pub. L. 96–399, § 501(d)(1), substituted ''September 30, 1981'' for ''October 15, 1980'' wherever appearing.

Pub. L. 96–372 substituted ''October 15, 1980'' for ''September 30, 1980'' wherever appearing.

Subsec. (g). Pub. L. 96–399, § 501(d)(2), substituted provisions authorizing appropriations not to exceed $2,500,000 for fiscal 1981, such amount together with principal collections from loans under appropriations in prior years to be deposited in the Self-Help Housing Land Development Fund, to be available as a revolving fund for loans under subsec. (b)(1)(B) of this section for provisions authorizing appropriations not to exceed $1,000,000, $2,000,000, $3,000,000 and $1,000,000 for fiscal years ending June 30, 1969, June 30, 1970, Sept. 30, 1979, and Sept. 30, 1980, respectively, provisions allowing appropriation of authorized funds in succeeding years, to be deposited in the Self-Help Fund to be available without fiscal year limitation, and provision for deposit in such Fund of sums received from repayment of such loans.

1979—Subsec. (b). Pub. L. 96–153, § 505, redesignated existing par. (2) as (3) and added par. (2).

Subsec. (f). Pub. L. 96–153, § 501(d), substituted authorization of appropriation of $5,000,000 for fiscal year ending Sept. 30, 1980, for provisions containing authorization of appropriation for fiscal years commencing June 30, 1968 to Oct. 1, 1978, and substituted ''September 30, 1980'' for ''November 30, 1979''.

Pub. L. 96–105 substituted ''December 1, 1979'' and ''November 30, 1979'' for ''November 1, 1979'' and ''October 31, 1979'', respectively.

Pub. L. 96–71 substituted ''November 1, 1979'' and ''October 31, 1979'' for ''October 1, 1979'' and ''September 30, 1979'', respectively.

Subsec. (g). Pub. L. 96–153, § 501(e), inserted authorization of appropriation of $1,000,000 for fiscal year ending September 30, 1980.

1978—Subsec. (f). Pub. L. 95–557, § 501(g), substituted ''October 1, 1979'' for ''November 1, 1978'', ''September 30, 1979'' for ''October 31, 1978'', and ''$16,500,000'' for ''$10,000,000''.

Pub. L. 95–406 substituted ''November 1, 1978'' for ''October 1, 1978'' and ''October 31, 1978'' for ''September 30, 1978''.

Subsec. (g). Pub. L. 95–557, § 501(h), inserted ''and not to exceed $3,000,000 for the fiscal year ending September 30, 1979'', after ''June 30, 1970''.

1977—Subsec. (f). Pub. L. 95–128 substituted ''1978'' for ''1977'' wherever appearing.

Pub. L. 95–80 substituted ''October 1, 1977'' for ''August 1, 1977'' and ''September 30, 1977'' for ''July 31, 1977''.

Pub. L. 95–60 substituted ''August 1, 1977'' for ''July 1, 1977'' and ''July 31, 1977'' for ''June 30, 1977''.

1974—Subsec. (b)(1). Pub. L. 93–383, § 512(a), inserted proviso relating to advance of funds by Secretary at end of cl. (B).

Subsec. (f). Pub. L. 93–383, § 512(b), substituted ''1977'' for ''1974'' wherever appearing and ''$10,000,000'' for ''$5,000,000''.

Subsec. (h). Pub. L. 93–383, § 512(c), added subsec. (h).

1973—Subsec. (f). Pub. L. 93–117 substituted ''1974'' for ''1973'' wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

§ 1490d. Loans to nonprofit organizations to provide building sites for eligible families, nonprofit organizations, public agencies, and cooperatives; interest rates; factors determinative in making loan

(a)(1) IN GENERAL.—The Secretary may make loans, on such terms and conditions and in such amounts he deems necessary, to public or pri-

vate nonprofit organizations and to Indian tribes for the acquisition and development of land as building sites to be subdivided and sold to families, nonprofit organizations, public agencies, and cooperatives eligible for assistance under any section of this subchapter or under any other law which provides financial assistance for housing low- and moderate-income families. Such a loan shall bear interest at a rate prescribed by the Secretary taking into consideration a rate determined annually by the Secretary of the Treasury as the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, and shall be repaid within a period not to exceed two years from the making of the loan or within such additional period as may be authorized by the Secretary in any case as being necessary to carry out the purposes of this section.

(2) REVOLVING FUNDS.—The Secretary may make grants to nonprofit housing agencies to establish revolving loan funds for the acquisition and preparation of building sites for low-income housing. Any proceeds and repayments from such loans shall be returned to the revolving loan fund to be used for purposes related to this section. Loan funds and interest payments shall be used solely for the acquisition of land; the preparation of land for building sites; the payment of reimbursable legal and technical costs; and technical assistance and administrative costs, not to exceed 10 percent of the fund.

(b) In determining whether to extend financial assistance under this section, the Secretary shall take into consideration, among other factors, (1) the suitability of the area to the types of dwellings which can feasibly be provided, and (2) the extent to which the assistance will (i) facilitate providing needed decent, safe, and sanitary housing, (ii) be utilized efficiently and expeditiously, and (iii) fulfill a need in the area which is not otherwise being met through other programs, including those being carried out by other Federal, State, or local agencies.

(July 15, 1949, ch. 338, title V, § 524, as added Pub. L. 91–152, title IV, § 413(f)(1), Dec. 24, 1969, 83 Stat. 399; amended Pub. L. 93–383, title V, § 513, Aug. 22, 1974, 88 Stat. 696; Pub. L. 96–399, title V, § 507(f), Oct. 8, 1980, 94 Stat. 1670; Pub. L. 102–550, title VII, § 715, Oct. 28, 1992, 106 Stat. 3842.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550 designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1980—Subsec. (a). Pub. L. 96–399 inserted reference to Indian tribes.

1974—Subsec. (a). Pub. L. 93–383 provided for applicability to public agencies and substituted ''any section of this subchapter or under any other law which provides financial assistance for housing low- and moderate-income families'' for ''section 1715z or 1715z–1 of title 12 or section 1490a of this title''.

§ 1490e. Programs of technical and supervisory assistance for low-income individuals and families in rural areas

(a) Grants or contracts with public or private nonprofit corporations, etc., for assistance; preferential treatment of applications sponsored by governmental entity or public body

The Secretary may make grants to or enter into contracts with public or private nonprofit corporations, agencies, institutions, organizations, Indian tribes, and other associations approved by him, to pay part or all of the cost of developing, conducting, administering or coordinating effective and comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and families in benefiting from Federal, State, and local housing programs in rural areas. In processing applications for such grants or contracts made by private nonprofit corporations, agencies, institutions, organizations, and other associations, the Secretary shall give preference to those which are sponsored (including assistance to the applicant in processing the application, implementing the technical assistance program, and carrying out the obligations of the grant or contract) by a State, county, municipality, or other governmental entity or public body.

(b) Loans to public or private nonprofit corporations, etc., for necessary planning and financing expenses; interest rates; factors determinative of amount; terms and conditions of repayment

The Secretary is authorized to make loans to public or private nonprofit corporations, agencies, institutions, organizations, Indian tribes, and other associations approved by him for the necessary expenses, prior to construction, of planning, and obtaining financing for, the rehabilitation or construction of housing for low-income individuals or families under any Federal, State, or local housing program which is or could be used in rural areas. Such loans shall be made without interest and shall be for the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing prior to the availability of financing, including but not limited to preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, and construction loan fees and discounts. The Secretary shall require repayment of loans made under this subsection, under such terms and conditions as he may require, upon completion of the housing or sooner.

(c) Repealed. Pub. L. 98–181, title V, § 518(b), Nov. 30, 1983, 97 Stat. 1249

(d) Deposit of appropriated funds into low-income sponsor fund; availability; administration of fund as revolving fund; deposit of repayments

All funds appropriated for the purpose of subsection (b) of this section shall be deposited in a fund which shall be known as the low-income sponsor fund, and which shall be available without fiscal year limitation and be administered by the Secretary as a revolving fund for carrying out the purposes of that subsection. Sums

received in repayment of loans made under subsection (b) of this section shall be deposited in such fund.

(July 15, 1949, ch. 338, title V, § 525, as added Pub. L. 93–383, title V, § 515, Aug. 22, 1974, 88 Stat. 697; amended Pub. L. 95–557, title V, § 501(i), Oct. 31, 1978, 92 Stat. 2111; Pub. L. 96–399, title V, § 507(g), Oct. 8, 1980, 94 Stat. 1670; Pub. L. 98–181, title V, § 518, Nov. 30, 1983, 97 Stat. 1249.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98–181, § 518(a), struck out provisions setting forth conditions under which any part or all of the loan is subject to cancellation.

Subsec. (c). Pub. L. 98–181, § 518(b), struck out subsec. (c), which related to authorization of appropriations for fiscal years ending June 30, 1975, June 30, 1976, and Sept. 30, 1979, and availability of amounts.

1980—Subsecs. (a), (b). Pub. L. 96–399 inserted references to Indian tribes.

1978—Subsec. (c). Pub. L. 95–557 inserted ''There are also authorized to be appropriated for the fiscal year ending September 30, 1979, not to exceed $5,000,000 for the purposes of subsection (a) of this section and not to exceed $5,000,000 for the purposes of subsection (b) of this section.''

§ 1490f. Loans and insurance of loans for condominium housing in rural areas

(a) Individual loans and insurance of loans to low or moderate income persons or families for purchase of units; terms and conditions

The Secretary is authorized, upon such terms and conditions (substantially identical insofar as may be feasible with those specified in section 1472 of this title) as he may prescribe, to make loans to persons and families of low or moderate income, and to insure and make commitments to insure loans made to persons and families of low or moderate income, to assist them in purchasing dwelling units in condominiums located in rural areas.

(b) Scope of individual loans and insurance of loans; condominium requirements

Any loan made or insured under subsection (a) of this section shall cover a one-family dwelling unit in a condominium, and shall be subject to such provisions as the Secretary determines to be necessary for the maintenance of the common areas and facilities of the condominium project and to such additional requirements as the Secretary deems appropriate for the protection of the consumer.

(c) Blanket loans and insurance of loans; terms and conditions; certification by borrower of future ownership of multifamily project; maximum amount of principal obligation

In addition to individual loans made or insured under subsection (a) of this section the Secretary is authorized, upon such terms and conditions (substantially identical insofar as may be feasible with those specified in section 1485 of this title) as he may prescribe, to make or insure blanket loans to a borrower who shall certify to the Secretary, as a condition of obtaining such loan or insurance, that upon completion of the multifamily project the ownership of the project will be committed to a plan of family unit ownership under which (1) each family unit will be eligible for a loan or insurance under subsection (a) of this section, and (2) the individual dwelling units in the project will be sold only on a condominium basis and only to purchasers eligible for a loan or insurance under subsection (a) of this section. The principal obligation of any blanket loan made or insured under this subsection shall in no case exceed the sum of the individual amounts of the loans which could be made or insured with respect to the individual dwelling units in the project under subsection (a) of this section.

(d) "Condominium" defined

As used in this section, the term ''condominium'' means a multi-unit housing project which is subject to a plan of family unit ownership acceptable to the Secretary under which each dwelling unit is individually owned and each such owner holds an undivided interest in the common areas and facilities which serve the project.

(July 15, 1949, ch. 338, title V, § 526, as added Pub. L. 93–383, title V, § 516(a), Aug. 22, 1974, 88 Stat. 698; amended Pub. L. 98–181, title V, § 519(a), Nov. 30, 1983, 97 Stat. 1249; Pub. L. 100–242, title III, § 316(f), Feb. 5, 1988, 101 Stat. 1898.)

AMENDMENTS

1988—Subsecs. (a), (c). Pub. L. 100–242 struck out ''and'' after ''is authorized,''.

1983—Subsecs. (a), (c). Pub. L. 98–181 struck out ''in his discretion'' after ''Secretary is authorized,''.

§ 1490g. Repealed. Pub. L. 98–181, title V, § 503(c), Nov. 30, 1983, 97 Stat. 1241

Section, act July 15, 1949, ch. 338, title V, § 527, as added Aug. 22, 1974, Pub. L. 93–383, title V, § 518, 88 Stat. 699, defined ''housing'' as including mobile homes and mobile home sites, and authorized the Secretary to prescribe property standards for mobile homes financed under this subchapter.

§ 1490h. Taxation of property held by Secretary

All property subject to a lien held by the United States or the title to which is acquired or held by the Secretary under this subchapter other than property used for administrative purposes shall be subject to taxation by a State, Commonwealth, territory, possession, district, and local political subdivisions in the same manner and to the same extent as other property is taxed: *Provided*, That no tax shall be imposed or collected on or with respect to any instrument if the tax is based on—

(1) the value of any notes or mortgages or other lien instruments held by or transferred to the Secretary;

(2) any notes or lien instruments administered under this subchapter which are made, assigned, or held by a person otherwise liable for such tax; or

(3) the value of any property conveyed or transferred to the Secretary, whether as a tax on the instrument, the privilege of conveying or transferring, or the recordation thereof; nor shall the failure to pay or collect any such tax be a ground for refusal to record or file such instruments, or for failure to impart notice, or prevent the enforcement of its provisions in any State or Federal court.

(July 15, 1949, ch. 338, title V, § 528, as added Pub. L. 95–128, title V, § 512(a), Oct. 12, 1977, 91 Stat.

1142; amended Pub. L. 98–479, title II, § 204(c)(3), Oct. 17, 1984, 98 Stat. 2233.)

AMENDMENTS

1984—Pub. L. 98–479 substituted ''property held by Secretary'' for ''Farmers Home Administration-held property'' in section catchline.

EFFECTIVE DATE

Section 512(c) of Pub. L. 95–128 provided that: ''The amendment made by subsection (a) [enacting this section] shall become effective as of January 1, 1977.''

REFUND OF TAX PAYMENTS PRIOR TO OCTOBER 12, 1977, BARRED; FEDERAL OFFICERS OR EMPLOYEES NOT LIABLE FOR SUCH PAYMENTS

Section 512(b) of Pub. L. 95–128 provided that: ''Notwithstanding any other provision of law, no State, Commonwealth, territory, possession, district, or local political subdivision which has received, prior to the date of enactment of this Act [Oct. 12, 1977], tax payments from the Department of Agriculture based on property held by the Farmers Home Administration shall be liable for, or be obligated to refund, the amount of any such payment, which, if it had been made after the date of enactment of this Act, would have been authorized by the provisions of section 528 of the Housing Act of 1949 [this section], and no officer or employee of the United States shall incur or be under any liability by reason of having made or authorized any such payments.''

§ 1490i. Repealed. Pub. L. 98–181, title V, § 506(b), Nov. 30, 1983, 97 Stat. 1242

Section, act July 15, 1949, ch. 338, title V, § 529, as added Nov. 9, 1978, Pub. L. 95–619, title II, § 252(b), 92 Stat. 3236, required the Secretary of Agriculture to promote the use of energy saving techniques through the establishment of minimum property standards for newly constructed residential housing.

§ 1490j. Conditions on rent increases in projects receiving assistance under other provisions of law

The Secretary may not approve any increase in rental payments, with respect to units in which the tenants are paying rentals in excess of 30 per centum of their incomes, in any project which is assisted under section 1484, 1485, or 1487 of this title and under section 1490a(a)(1)(B) of this title unless the project owner is receiving, or has applied for (within the most recent period of 180 days prior to the effective date of such increase), assistance payments with respect to such project under section 1490a(a)(2)(A) or 1490a(a)(5) of this title or section 1437f of this title.

(July 15, 1949, ch. 338, title V, § 530, as added Pub. L. 96–399, title V, § 509, Oct. 8, 1980, 94 Stat. 1670; amended Pub. L. 98–181, title V, § 517(d), Nov. 30, 1983, 97 Stat. 1248; Pub. L. 105–276, title V, § 599C(e)(2)(G), Oct. 21, 1998, 112 Stat. 2663.)

AMENDMENTS

1998—Pub. L. 105–276 substituted ''assistance payments with respect to such project under section 1490a(a)(2)(A) or 1490a(a)(5) of this title'' for ''rental assistance payments with respect to such project under section 1490a(a)(2)(A) of this title''.

1983—Pub. L. 98–181 substituted ''30 per centum'' for ''25 per centum''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 effective six months after Nov. 30, 1983, or upon the earlier promulgation of implementing regulations, see section 517(f) of Pub. L. 98–181, set out as a note under section 1490a of this title.

§ 1490k. FHA insurance

The Secretary is authorized to act as an agent of the Secretary of Housing and Urban Development to recommend insurance of any mortgage meeting the requirements of section 1709 of title 12.

(July 15, 1949, ch. 338, title V, § 531, as added Pub. L. 98–181, title V, § 520, Nov. 30, 1983, 97 Stat. 1249.)

§ 1490*l*. Processing of applications

(a) Priority

Except as otherwise provided in subsection (c) of this section, the Secretary shall, in making assistance available under this subchapter, give a priority to applications submitted by—

(1) persons and families that have the greatest housing assistance needs because of their low income and their residing in inadequate dwellings;

(2) applicants applying for assistance for projects that will serve such persons and families; and

(3) applicants residing in areas which are the most rural in character.

(b) Preliminary reservation of assistance at time of initial approval of project

In making available the assistance authorized by section 1483 of this title and section 1490a(a) of this title with respect to projects involving insured and guaranteed loans and interest credits and rental assistance payments, the Secretary shall process and approve requests for such assistance in a manner that provides for a preliminary reservation of assistance at the time of initial approval of the project.

(c) Prioritization of section 1485 housing assistance

(1) In general

The Secretary shall make assistance under section 1485 of this title available pursuant to an objective procedure established by the Secretary, under which the Secretary shall identify counties and communities having the greatest need for such assistance and designate such counties and communities to receive such assistance.

(2) Objective measures

The Secretary shall use the following objective measures to determine the need for rental housing assistance under paragraph (1):

(A) The incidence of poverty.

(B) The lack of affordable housing and the existence of substandard housing.

(C) The lack of mortgage credit.

(D) The rural characteristics of the location.

(E) Other factors as determined by the Secretary, demonstrating the need for affordable housing.

(3) Information

In administering this subsection, the Secretary shall use information from the most recent decennial census of the United States,

relevant comprehensive affordable housing strategies under section 12705 of this title, and other reliable sources obtained by the Secretary which demonstrate the need for affordable housing in rural areas.

(4) Designation

A designation under this subsection shall not be effective for a period of more than 3 years, but may be renewed by the Secretary in accordance with the procedure set forth in this subsection. The Secretary shall take such other reasonable actions as the Secretary considers to be appropriate to notify the public of such designations.

(July 15, 1949, ch. 338, title V, § 532, as added Pub. L. 98–181, title V, § 521, Nov. 30, 1983, 97 Stat. 1250; amended Pub. L. 104–180, title VII, § 734(f), Aug. 6, 1996, 110 Stat. 1604.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–180, § 734(f)(1), substituted ''Except as otherwise provided in subsection (c) of this section, the Secretary'' for ''The Secretary'' in introductory provisions.

Subsec. (c). Pub. L. 104–180, § 734(f)(2), added subsec. (c).

§ 1490m. Housing preservation grants

(a) Statement of purposes

The purpose of this section is to authorize the Secretary to make grants to eligible grantees including private nonprofit organizations, Indian tribes, general units of local government, counties, States, and consortia of other eligible grantees, in order to—

(1) rehabilitate or replace single family housing in rural areas which is owned by low- and very low-income persons and families, and

(2) rehabilitate or replace rental properties or cooperative housing which has a membership resale structure that enables the cooperative to maintain affordability for persons of low income in rural areas serving low- and very low-income occupants.

The Secretary may also provide tenant-based assistance as provided under section 1437f of this title or section 1490r of this title upon the request of grantees in order to minimize the displacement of very low-income tenants residing in units rehabilitated or replaced with assistance under this section.

(b) Mandatory program requirements

Preservation programs assisted under this section shall—

(1) be used to provide loans or grants to owners of single family housing in order to cover the cost of repairs and improvements;

(2) be used to provide loans or grants, not to exceed $15,000 per unit, to owners of single family housing to replace existing housing if repair or rehabilitation of the housing is determined by the Secretary not to be practicable and the owner of the housing is unable to afford a loan under section 1472 of this title for replacement housing;

(3) be used to provide interest reduction payment;

(4) be used to provide loans or grants to owners of rental housing, except that rental rehabilitation or replacement assistance provided under this subsection for any structure shall not exceed 75 per centum of the total costs associated with the rehabilitation or replacement of that structure;

(5) be used to provide other comparable assistance that the Secretary deems appropriate to carry out the purpose of this section, designed to reduce the costs of such repair, rehabilitation, and replacement in order to make such housing affordable by persons of low income and, to the extent feasible, by persons and families whose incomes do not exceed 50 per centum of the area median income;

(6) benefit low- and very low-income persons and families in rural areas, without causing the displacement of current residents; and

(7) raise health and safety conditions to meet those specified in section 1479(a) of this title.

(c) Allocation formula; transfer of funds; maximum amounts

(1) The Secretary shall allocate grant funds under this section for use in each State on the basis of a formula contained in a regulation prescribed by the Secretary using the average of the ratios between—

(A) the population of the rural areas in that State and the population of the rural areas of all States;

(B) the extent of poverty in the rural areas in that State and the extent of poverty in the rural areas of all States; and

(C) the extent of substandard housing in the rural areas of that State and the extent of substandard housing in the rural areas of all States.

Any funds which are allocated to a State but uncommitted to grantees will be transferred to the State office of the Farmers Home Administration in a timely manner and be used for authorized rehabilitation activities under section 1474 of this title. Funds obligated, but subsequently unspent and deobligated, may remain available, to the extent provided in appropriations Acts, for use as housing preservation grants in ensuing fiscal years.

(2) Unless there is only one eligible grantee in a State, a single grantee may not receive more than 50 per centum of a State's allocation.

(d) Statement of activity by grantee; submission; contents; availability; consultations; evaluation by Secretary; criteria applicable; maximum amounts

(1) Eligible grantees may submit a statement of activity to the Secretary at the time specified by the program administrator, containing a description of its proposed preservation program. The statement shall consist of the activities each entity proposes to undertake for the fiscal year, and the projected progress in carrying out those activities. The statement of activities shall be made available to the public for comment.

(2) In preparing such statement, the grantee shall consult with and consider the views of appropriate local officials.

(3) The Secretary shall evaluate the merits of each statement on the basis of such criteria as

the Secretary shall prescribe, including the extent—

(A) to which the repair, rehabilitation, and replacement activities will assist persons of low income who lack adequate shelter, with priority given to applications assisting the maximum number of persons and families whose incomes do not exceed 50 per centum of the area median income;

(B) to which the repair, rehabilitation, and replacement activities include the participation of other public or private organizations in providing assistance, in addition to the assistance provided under this section, in order to lower the costs of such activities or provide for the leveraging of available funds to supplement the rural housing preservation grant program;

(C) to which such activities will be undertaken in rural areas having populations below 10,000 or in remote parts of other rural areas;

(D) to which the repair, rehabilitation, and replacement activities may be expected to result in achieving the greatest degree of repair or improvement for the least cost per unit or dwelling;

(E) to which the program would minimize displacement;

(F) to which the program would alleviate overcrowding in rural residences inhabited by low- and very low-income persons and families;

(G) to which the program would minimize the use of grant funds for administrative purposes; and

(H) to which the owner agrees to meet the requirement of subsection (e)(1)(B)(iv) of this section for a period longer than 5 years;

and shall assess the demonstrated capacity of the grantee to carry out the program as well as the financial feasibility of the program.

(4) The amount of assistance provided under this section with respect to any housing shall be the least amount that the Secretary determines is necessary to provide, through the repair and rehabilitation, or replacement, of such housing, decent housing of modest design that is affordable for persons of low income.

(5) A grantee may use housing preservation grant funds under this section for replacement housing only after providing documentation to the Secretary that—

(A) the existing housing is in such poor condition that rehabilitation is not economically feasible;

(B) the owner of the housing lacks the income or repayment ability necessary to qualify for a loan under section 1472 of this title; and

(C) the grantee will extend assistance to the owner of the housing under terms that the owner can afford.

(e) Limitations on assistance; failure to implement required agreement

(1) Assistance under this section may be provided with respect to rental or cooperative housing only if—

(A) the owner has entered into such agreements with the Secretary as may be necessary to assure compliance with the requirements of this section, to assure the financial feasibility of such housing, and to carry out the other provisions of this section;

(B) the owner agrees—

(i) to pass on to the tenants any reduction in the debt service payments resulting from the assistance provided under this section;

(ii) not to convert the units to condominium ownership (or in the case of a cooperative, to condominium ownership or any form of cooperative ownership not eligible for assistance under this section);

(iii) not to refuse to rent a dwelling unit in the structure to a family solely because the family is receiving or is eligible to receive assistance under any Federal, State, or local housing assistance program; and

(iv) that the units repaired and rehabilitated with such assistance will be occupied, or available for occupancy, by persons of low income;

during the 5-year period beginning on the date on which the units in the housing are available for occupancy;

(C) the unit of general local government or nonprofit organization that receives the assistance certifies to the satisfaction of the Secretary that the assistance will be made available in conformity with Public Law 88–352 [42 U.S.C. 2000a et seq.] and Public Law 90–284;

(D) the owner agrees to enter into and abide by written leases with the tenants, which leases shall provide that tenants may be evicted only for good cause; and

(E) the unit of general local government or nonprofit organization will agree to supervise repairs and rehabilitation and will agree to have a disinterested party inspect such repairs and rehabilitation.

(2) Assistance under this section provided with respect to any housing other than rental or cooperative housing may be provided only if the owner complies with the requirements set forth in subparagraph (E) of paragraph (1) and any other requirements established by the Secretary to carry out the purpose of this section.

(3)(A) The Secretary shall provide that if the owner or his or her successors in interest fail to carry out the agreements described in subparagraphs (A) and (B) of paragraph (1) during the applicable period, the owner or his or her successors in interest shall make a payment to the Secretary of an amount that equals the total amount of assistance provided under this section with respect to such housing, plus interest thereon (without compounding), for each year and any fraction thereof that the assistance was outstanding, at a rate determined by the Secretary taking into account the average yield on outstanding marketable long-term obligations of the United States during the month preceding the date on which the assistance was made available.

(B) Notwithstanding any other provision of law, any assistance provided under this section shall constitute a debt, which is payable in the case of any failure to carry out the agreements described in subparagraphs (A), (B), and (C) of paragraph (1), and shall be secured by the security instruments provided by the owner to the Secretary.

(f) Advance payments of assistance

The Secretary shall provide for such advance payments of assistance under this section as the Secretary determines is necessary to effectively carry out the provisions of this section.

(g) Annual review and audit by Secretary of activities; adjustment, etc., of resources; reallocation of amounts

The Secretary shall, at least on an annual basis, make such review and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner and in accordance with the requirements of this section, the degree to which the activities assisted benefitted low income families or persons and very low-income families or persons who lacked adequate housing, and whether the grantee has a continuing capacity to carry out the activities in a timely manner. The Secretary may adjust, reduce, or withdraw resources made available to grantees receiving assistance under this section, or take other action as appropriate in accordance with the findings of these reviews and audits. Any amounts which become available as a result of actions under this subsection shall be reallocated as housing preservation grants to such grantee or grantees as the Secretary may determine.

(h) Rules and regulations; delegation of authority

(1) The Secretary is authorized to prescribe such rules and regulations and make such delegations of authority as he deems necessary to carry out this section within 90 days after November 30, 1983.

(2) The Secretary shall, not later than the expiration of the 30-day period following February 5, 1988, issue regulations to carry out the program of grants under subsection (a)(2) of this section.

(i) National historic preservation objectives affected by rehabilitation activities; establishment of procedures for determining consonant purposes and measures

The Secretary shall establish procedures which support national historic preservation objectives and which assure that, if any rehabilitation proposed to be assisted under this section would affect property that is included or is eligible for inclusion on the National Register of Historic Places, such activity shall not be undertaken unless (1) it will reasonably meet the standards for rehabilitation issued by the Secretary of the Interior and the appropriate State historic preservation officer is afforded the opportunity to comment on the specific rehabilitation plan, or (2) the Advisory Council on Historic Preservation is afforded an opportunity to comment on cases for which the recipient of assistance, in consultation with the State historic preservation officer, determines that the proposed rehabilitation activity cannot reasonably meet such standards or would adversely affect historic property as defined therein.

(July 15, 1949, ch. 338, title V, §533, as added Pub. L. 98–181, title V, §522, Nov. 30, 1983, 97 Stat. 1250; amended Pub. L. 100–242, title III, §§310, 316(g), Feb. 5, 1988, 101 Stat. 1896, 1898; Pub. L. 101–625, title VII, §717, Nov. 28, 1990, 104 Stat. 4296; Pub. L. 102–550, title VII, §§706(1), 711, Oct. 28, 1992, 106 Stat. 3835, 3840; Pub. L. 105–276, title V, §550(e), Oct. 21, 1998, 112 Stat. 2610; Pub. L. 105–362, title I, §101(h), Nov. 10, 1998, 112 Stat. 3281.)

REFERENCES IN TEXT

Public Law 88–352, referred to in subsec. (e)(1)(C), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX (§2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Public Law 90–284, referred to in subsec. (e)(1)(C), is Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 73, as amended, known as the Civil Rights Act of 1968. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–276 substituted ''tenant-based assistance as provided under section 1437f of this title'' for ''assistance payments as provided by section 1437f(*o*) of this title'' in concluding provisions.

Subsec. (j). Pub. L. 105–362 struck out subsec. (j) which read as follows: ''Not later than 180 days after the close of each fiscal year in which assistance under this section is furnished, the Secretary shall submit to the Congress a report which shall contain—

''(1) a description of the progress made in accomplishing the objectives of this section; and

''(2) a summary of the use of such funds during the preceding year.

The Secretary shall require grantees under this section to submit to him such reports, and other information as may be necessary in order for the Secretary to make the report required by this subsection.''

1992—Subsec. (a). Pub. L. 102–550, §§706(1), 711(1)(B), in concluding provisions, inserted reference to section 1490r of this title and ''or replaced'' after ''rehabilitated''.

Subsec. (a)(1), (2). Pub. L. 102–550, §711(1)(A), inserted ''or replace'' after ''rehabilitate''.

Subsec. (b). Pub. L. 102–550, §711(2)(A), substituted ''Preservation programs'' for ''Rehabilitation programs'' in introductory provisions.

Subsec. (b)(2). Pub. L. 102–550, §711(2)(E), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 102–550, §711(2)(D), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Pub. L. 102–550, §711(2)(B), inserted ''or replacement'' after ''rehabilitation'' in two places.

Subsec. (b)(4). Pub. L. 102–550, §711(2)(D), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Pub. L. 102–550, §711(2)(C), substituted ''repair, rehabilitation, and replacement'' for ''repair and rehabilitation''.

Subsec. (b)(5) to (7). Pub. L. 102–550, §711(2)(D), redesignated pars. (4) to (6) as (5) to (7), respectively.

Subsec. (c)(1). Pub. L. 102–550, §711(3), substituted ''grant funds under this section'' for ''rehabilitation grant funds'' in introductory provisions.

Subsec. (d)(1). Pub. L. 102–550, §711(4)(A), substituted ''preservation program'' for ''rehabilitation program''.

Subsec. (d)(3)(A), (B), (D). Pub. L. 102–550, §711(4)(B), substituted ''repair, rehabilitation, and replacement'' for ''repair and rehabilitation''.

Subsec. (d)(4). Pub. L. 102–550, §711(4)(C), inserted '', or replacement,'' after ''rehabilitation''.

Subsec. (d)(5). Pub. L. 102–550, §711(4)(D), added par. (5).

1990—Subsec. (c)(1). Pub. L. 101–625, §717(a), inserted at end ''Funds obligated, but subsequently unspent and deobligated, may remain available, to the extent provided in appropriations Acts, for use as housing preservation grants in ensuing fiscal years.''

Subsec. (g). Pub. L. 101–625, §717(b), substituted last sentence for ''Any amounts which became available as

a result of actions under this subsection shall be reallocated in the year in which they become available to such grantee or grantees as the Secretary may determine.''

1988—Subsec. (e)(1)(B)(iii). Pub. L. 100–242, § 316(g)(1), inserted ''to'' before ''refuse''.

Subsec. (g). Pub. L. 100–242, § 316(g)(2), substituted ''low income families or persons and very low-income families or persons'' for ''persons of low income and very low-income''.

Subsec. (h). Pub. L. 100–242, § 310, designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

RURAL RENTAL REHABILITATION DEMONSTRATION

Pub. L. 100–242, title III, § 311, Feb. 5, 1988, 101 Stat. 1896, as amended by Pub. L. 100–628, title X, § 1044, Nov. 7, 1988, 102 Stat. 3273; Pub. L. 101–137, § 7(d), Nov. 3, 1989, 103 Stat. 826; Pub. L. 101–144, title II, Nov. 9, 1989, 103 Stat. 846; Pub. L. 105–362, title VII, § 701(f), Nov. 10, 1998, 112 Stat. 3287, directed Secretary of Housing and Urban Development to carry out a rural rental rehabilitation demonstration program, provided funding for program, and terminated authority for such program after Sept. 30, 1991.

§ 1490n. Review of rules and regulations

(a) Publication for public comment in Federal Register

Notwithstanding any other provision of law, no rule or regulation pursuant to this subchapter may become effective unless it has first been published for public comment in the Federal Register for at least 60 days, and published in final form for at least 30 days.

(b) Transmittal to Congressional committee members prior to publication in Federal Register

The Secretary shall transmit to the chairman and ranking Member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House, all rules and regulations at least 15 days before they are sent to the Federal Register for purposes of subsection (a) of this section.

(c) Rules and regulations issued on emergency basis

The provisions of this section shall not apply to a rule or regulation which the Secretary certifies is issued on an emergency basis.

(d) Regulatory authority

The Secretary shall include with each rule or regulation required to be transmitted to the Committees under this section a detailed summary of all changes required by the Office of Management and Budget that prohibit, modify, postpone, or disapprove such rule or regulation in whole or part.

(July 15, 1949, ch. 338, title V, § 534, as added Pub. L. 98–181, title V, § 523, Nov. 30, 1983, 97 Stat. 1254; amended Pub. L. 100–242, title V, § 563(b), Feb. 5, 1988, 101 Stat. 1944.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–242 added subsec. (d).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 1490o. Reciprocity in approval of housing subdivisions among Federal agencies

(a) Administrative approval of housing subdivisions

The Secretary of Agriculture, the Secretary of Housing and Urban Development, and the Secretary of Veterans Affairs shall each accept an administrative approval of any housing subdivision made by any of the others so that not later than January 1, 1984, there is total reciprocity for housing subdivision approvals among the agencies which they head.

(b) Certificates of reasonable value for one or more properties as constituting administrative approval of subdivision

For purposes of complying with subsection (a) of this section, the Secretary of Housing and Urban Development shall consider the issuance by the Secretary of Veterans Affairs of a certificate of reasonable value for 1 or more properties in a subdivision to be an administrative approval for the entire subdivision. This subsection shall not apply after September 30, 1994.

(c) Report to Congress

Before the expiration of the period referred to in subsection (b) of this section, the Secretary of Housing and Urban Development shall report to the Congress on housing subdivision approval policies and practices, if any, of the Departments of Housing and Urban Development and Agriculture and the Department of Veterans Affairs. The report shall focus on the administration of environmental laws in connection with any such policies and practices, and shall recommend any statutory, regulatory, and administrative changes needed to achieve total reciprocity for such housing subdivision approvals. The Secretary of Housing and Urban Development shall consult with the foregoing agencies, and such other agencies as the Secretary selects, in preparing the report.

(d) Approval by local, county, or State agencies

For loans made under this subchapter, the Secretary may accept subdivisions that have been approved by local, county, or State agencies.

(July 15, 1949, ch. 338, title V, § 535, as added Pub. L. 98–181, title V, § 523, Nov. 30, 1983, 97 Stat. 1254; amended Pub. L. 100–628, title X, § 1067, Nov. 7, 1988, 102 Stat. 3276; Pub. L. 101–235, title III, § 303, Dec. 15, 1989, 103 Stat. 2044; Pub. L. 101–625, title

VII, § 718(a), Nov. 28, 1990, 104 Stat. 4297; Pub. L. 102–54, § 13(q)(5), June 13, 1991, 105 Stat. 280; Pub. L. 102–550, title VII, § 716(a), (c), Oct. 28, 1992, 106 Stat. 3842; Pub. L. 103–120, § 8(a), Oct. 27, 1993, 107 Stat. 1151.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–120 substituted ''September 30, 1994'' for ''June 15, 1993''.

1992—Subsec. (b). Pub. L. 102–550, § 716(a), inserted last sentence and struck out former last sentence which read as follows: ''This subsection shall not apply after the expiration of the 18-month period beginning on December 15, 1989.''

Subsec. (d). Pub. L. 102–550, § 716(c), added subsec. (d).

1991—Subsecs. (a), (b). Pub. L. 102–54, § 13(q)(5)(A), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (c). Pub. L. 102–54, § 13(q)(5)(B), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (b). Pub. L. 101–625 substituted ''18-month period'' for ''6-month period''.

1989—Subsec. (b). Pub. L. 101–235 substituted ''6-month period beginning on December 15, 1989'' for ''1-year period beginning on November 7, 1988''.

1988—Pub. L. 100–628 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

RETROACTIVITY OF APPROVAL OF HOUSING SUBDIVISIONS AMONG FEDERAL AGENCIES

Section 8(b) of Pub. L. 103–120 provided that: ''An administrative approval of a housing subdivision made after June 15, 1993, and before the date of the enactment of this Act [Oct. 27, 1993] is approved and shall be considered to have been lawfully made, but only if otherwise made in accordance with the provisions of section 535(b) of the Housing Act of 1949 [42 U.S.C. 1490*o*(b)].''

Section 716(b) of Pub. L. 102–550 provided that: ''Any administrative approval of any housing subdivision made after the expiration of the 18-month period beginning on the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989 [Dec. 15, 1989] and before the date of the enactment of this Act [Oct. 28, 1992] is approved and shall be considered to have been lawfully made, but only if otherwise made in accordance with the provisions of section 535(b) of the Housing Act of 1949 [42 U.S.C. 1490*o*(b)].''

Section 718(b) of Pub. L. 101–625 provided that: ''Any administrative approval of any housing subdivision made after the expiration of the 6-month period beginning on the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989 [Dec. 15, 1989] and before the date of the enactment of this Act [Nov. 28, 1990] is hereby approved and shall be considered to have been lawfully made, but only if otherwise made in accordance with the provisions of section 535(b) of the Housing Act of 1949 [42 U.S.C. 1490*o*(b)].''

§ 1490p. Accountability

(a) Notice regarding assistance

(1) Publication of notice of availability

The Secretary shall publish in the Federal Register notice of the availability of any assistance under any program or discretionary fund administered by the Secretary under this subchapter.

(2) Publication of application procedures

The Secretary shall publish in the Federal Register a description of the form and procedures by which application for the assistance may be made, and any deadlines relating to the award or allocation of the assistance. Such description shall be sufficient to enable any eligible applicant to apply for such assistance.

(3) Publication of selection criteria

Not less than 30 days before any deadline by which applications or requests for assistance under any program or discretionary fund administered by the Secretary must be submitted, the Secretary shall publish in the Federal Register the criteria by which selection for the assistance will be made. Such criteria shall include any objective measures of housing need, project merit, or efficient use of resources that the Secretary determines are appropriate and consistent with the statute under which the assistance is made available.

(4) Documentation of decisions

(A) The Secretary shall award or allocate assistance only in response to a written application in a form approved in advance by the Secretary, except where other award or allocation procedures are specified in statute.

(B) The Secretary shall ensure that documentation and other information regarding each application for assistance is sufficient to indicate the basis on which any award or allocation was made or denied. The preceding sentence shall apply to—

(i) any application for an award or allocation of assistance made by the Secretary to a State, unit of general local government, or other recipient of assistance, and

(ii) any application for a subsequent award or allocation of such assistance by such State, unit of general local government or other recipient.

(C) The Secretary shall ensure that each application and all related documentation and other information referred to in subparagraph (B) is readily available for public inspection for a period of not less than 10 years, beginning not less than 30 days following the date on which the award or allocation is made.

(5) Emergency exception

The Secretary may waive the requirements of paragraphs (1), (2), and (3) if the Secretary determines that the waiver is required for adequate response to an emergency. Not less than 30 days after providing a waiver under the preceding sentence, the Secretary shall publish in the Federal Register the Secretary's reasons for so doing.

(b) Disclosures by applicants

The Secretary shall require the disclosure of information with respect to any application for assistance under this subchapter submitted by any applicant who has received or, in the determination of the Secretary, can reasonably be expected to receive assistance under this subchapter in excess of $200,000 in the aggregate during any fiscal year. Such information shall include the following:

(1) Other government assistance

Information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is expected to be made available with respect to

the project or activities for which the applicant is seeking assistance under this subchapter. Such related assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

(2) Interested parties

The name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, and consultants involved in the application for assistance under this subchapter or the planning, development, or implementation of the project or activity. For purposes of this paragraph, residency of an individual in housing for which assistance is being sought shall not, by itself, be considered a pecuniary interest.

(3) Expected sources and uses

A report satisfactory to the Secretary of the expected sources and uses of funds that are to be made available for the project or activity.

(c) Updating of disclosure

During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required under the previous subsection within 30 days of any substantial change.

(d) Repealed. Pub. L. 104–65, § 11(b)(2), Dec. 19, 1995, 109 Stat. 701

(e) Remedies and penalties

(1) Administrative remedies

If the Secretary receives or obtains information providing a reasonable basis to believe that a violation of subsection (b), (c), or (d) this[1] section has occurred, the Secretary shall—

(A) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate actions; and

(B) in the case of a selection that has been made, determine whether to—

(i) void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

(ii) impose sanctions upon the violator, including debarment, subject to review and determination on the record after opportunity for a hearing;

(iii) recapture any funds that have been disbursed;

(iv) permit the violating applicant selected to continue to participate in the program; or

(v) take any other actions that the Secretary considers appropriate.

The Secretary shall publish in the Federal Register a descriptive statement of each determination made and action taken under this paragraph.

(2) Civil penalties

Whoever violates any section[2] of this section shall be subject to the imposition of a civil penalty in a civil action brought by the United States in an appropriate district court of the United States. A civil penalty under this paragraph may not exceed—

(A) $100,000 in the case of an individual; or

(B) $1,000,000 in the case of an applicant other than an individual.

(3) Deposit of penalties in insurance funds

Notwithstanding any other provision of law, all civil money penalties collected under this section shall be deposited in the Rural Housing Insurance Fund.

(4) Nonexclusiveness of remedies

This subsection may not be construed to limit the applicability of any requirements, sanctions, penalties, or remedies established under any other law. The Secretary shall not be relieved of any obligation to carry out the requirements of this section because such other requirements, sanctions, penalties, or remedies apply.

(f) Limitation of assistance

The Secretary shall certify that assistance provided by the Secretary to any housing project shall not be more than is necessary to provide affordable housing after taking account of assistance from all Federal, State, and local sources. The Secretary shall adjust the amount of assistance provided to an applicant to compensate for any changes reported under subsection (c) of this section.

(g) Regulations

Not less than 180 days following December 15, 1989, the Secretary shall promulgate regulations to implement this section.

(h) "Assistance" defined

For purposes of this section, the term ''assistance'' means any housing grant, loan, guarantee, insurance, rebate, subsidy, tax credit benefit, or other form of direct or indirect assistance, for the original construction or development of the project.

(i) Report by Secretary

The Secretary shall submit to the Congress, not later than 180 days following December 15, 1989, a report describing actions taken to carry out this section, including actions to inform and educate officers and employees of the Department of Agriculture regarding the provisions of this section.

(July 15, 1949, ch. 338, title V, § 536, as added Pub. L. 101–235, title IV, § 401(a), Dec. 15, 1989, 103 Stat. 2045; amended Pub. L. 101–625, title VII, § 719(a), Nov. 28, 1990, 104 Stat. 4297; Pub. L. 104–65, § 11(b)(2), Dec. 19, 1995, 109 Stat. 701.)

CODIFICATION

December 15, 1989, referred to in subsec. (g), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 101–235, which enacted this section, to reflect the probable intent of Congress.

[1] So in original. Probably should be ''of this''.

[2] So in original. Probably should be ''subsection''.

AMENDMENTS

1995—Subsec. (d). Pub. L. 104–65 struck out subsec. (d) which related to regulation of lobbyists and consultants.

1990—Subsec. (h). Pub. L. 101–625 inserted before period at end ", for the original construction or development of the project".

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 104–65 effective Jan. 1, 1996, except as otherwise provided, see section 24 of Pub. L. 104–65, set out as an Effective Date note under section 1601 of Title 2, The Congress.

EFFECTIVE DATE

Section 401(b) of Pub. L. 101–235 provided that: "Section 536 of the Housing Act of 1949 [this section], as added by subsection (a), shall take effect on the effective date of regulations implementing such section."

§ 1490p–1. Office of Rural Housing Preservation

(a) Establishment

There is established within the Farmers Home Administration an Office of Rental Housing Preservation (hereafter in this section referred to as the "Office"). The Office shall be headed by a Director designated by the Secretary of Agriculture.

(b) Purposes

The purposes of the Office are:

(1) to review and process applications under section 1472(c) of this title and section 1485(t) of this title related to the preservation of rural rental housing;

(2) to provide technical or financial assistance to any other projects needing such assistance;

(3) to coordinate and direct all other activities related to the preservation of rural housing; and

(4) to monitor compliance of projects prepaid or receiving incentives under the Housing Act of 1949.

(July 15, 1949, ch. 338, title V, § 537, as added Pub. L. 102–550, title VII, § 712(c), Oct. 28, 1992, 106 Stat. 3841.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsec. (b)(4), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to this chapter (§ 1441 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

§ 1490p–2. Loan guarantees for multifamily rental housing in rural areas

(a) Authority

The Secretary may make commitments to guarantee eligible loans for the development costs of eligible housing and related facilities, and may guarantee such eligible loans, in accordance with this section.

(b) Extent of guarantee

A guarantee made under this section shall guarantee repayment of an amount not exceeding the total of the amount of the unpaid principal and interest of the loan for which the guarantee is made. The liability of the United States under any guarantee under this section shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation.

(c) Eligible borrowers

A loan guaranteed under this section may be made to a nonprofit organization, an agency or body of any State government or political subdivision thereof, an Indian tribe, or a private entity.

(d) Eligible housing

A loan may be guaranteed under this section only if the loan is used for the development costs of housing and related facilities (as such terms are defined in section 1485(e) of this title) that—

(1) consists of 5 or more adequate dwellings;

(2) is available for occupancy only by low or moderate income[1] families or persons, whose incomes at the time of initial occupancy do not exceed 115 percent of the median income of the area, as determined by the Secretary;

(3) will remain available as provided in paragraph (2), according to such binding commitments as the Secretary may require, for the period of the original term of the loan guaranteed, unless the housing is acquired by foreclosure (or instrument in lieu of foreclosure) or the Secretary waives the applicability of such requirement for the loan only after determining, based on objective information, that—

(A) there is no longer a need for low- and moderate-income housing in the market area in which the housing is located;

(B) housing opportunities for low-income households and minorities will not be reduced as a result of the waiver; and

(C) additional Federal assistance will not be necessary as a result of the waiver; and

(4) is located in a rural area.

(e) Eligible lenders

(1) Requirement

A loan may be guaranteed under this section only if the loan is made by a lender that the Secretary determines—

(A) meets the qualifications, and has been approved by the Secretary of Housing and Urban Development, to make loans for multifamily housing that are to be insured under the National Housing Act [12 U.S.C. 1701 et seq.];

(B) meets the qualifications, and has been approved by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, to make loans for multifamily housing that are to be sold to such corporations; or

(C) meets any qualifications that the Secretary may, by regulation, establish for participation of lenders in the loan guarantee program under this section.

(2) Eligibility list and annual audit

The Secretary shall establish a list of eligible lenders and shall annually conduct an audit of each lender included in the list for purposes of determining whether such lender continues to be an eligible lender.

[1] So in original. Probably should be "low- or moderate-income".

(f) Loan terms

Each loan guaranteed pursuant to this section shall—

(1) be made for a period of not less than 25 nor greater than 40 years from the date the loan was made and may provide for amortization of the loan over a period of not to exceed 40 years with a final payment of the balance due at the end of the loan term;

(2) involve a rate of interest agreed upon by the borrower and the lender that does not exceed the maximum allowable rate established by the Secretary for purposes of this section and is fixed over the term of the loan;

(3) involve a principal obligation (including initial service charges, appraisal, inspection, and other fees as the Secretary may approve) not to exceed—

(A) in the case of a borrower that is a nonprofit organization or an agency or body of any State or local government, 97 percent of the development costs of the housing and related facilities or the value of the housing and facilities, whichever is less;

(B) in the case of a borrower that is a forprofit entity not referred to in subparagraph (A), 90 percent of the development costs of the housing and related facilities or the value of the housing and facilities, whichever is less; and

(C) in the case of any borrower, for such part of the property as may be attributable to dwelling use, the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act [12 U.S.C. 1713(c)];

(4) be secured by a first mortgage on the housing and related facilities for which the loan is made, or otherwise, as the Secretary may determine necessary to ensure repayment of the obligation; and

(5) for at least 20 percent of the loans made under this section, the Secretary shall provide the borrower with assistance in the form of credits pursuant to section 1490a(a)(1)(B) of this title to the extent necessary to reduce the rate of interest under paragraph (2) to the applicable Federal rate, as such term is used in section 42(i)(2)(D) of title 26.

(g) Guarantee fee

At the time of issuance of a loan guaranteed under this section, the Secretary may collect from the lender a fee equal to not more than 1 percent of the principal obligation of the loan.

(h) Authority for lenders to issue certificates of guarantee

The Secretary may authorize certain eligible lenders to determine whether a loan meets the requirements for guarantee under this section and, subject to the availability of authority to enter into guarantees under this section, execute a firm commitment for a guarantee binding upon the Secretary and issue a certificate of guarantee evidencing a guarantee, without review and approval by the Secretary of the specific loan. The Secretary may establish standards for approving eligible lenders for a delegation of authority under this subsection.

(i) Payment under guarantee

(1) Notice of default

In the event of default by the borrower on a loan guaranteed under this section, the holder of the guarantee certificate for the loan shall provide written notice of the default to the Secretary.

(2) Foreclosure

After receiving notice under paragraph (1) and providing written notice of action under this paragraph to the Secretary, the holder of the guarantee certificate for the loan may initiate foreclosure proceedings for the loan in a court of competent jurisdiction, in accordance with regulations issued by the Secretary, to obtain possession of the security property. After the court issues a final order authorizing foreclosure on the property, the holder of the certificate shall be entitled to payment by the Secretary under the guarantee (in the amount provided under subsection (b) of this section) upon (A) submission to the Secretary of a claim for payment under the guarantee, and (B) assignment to the Secretary of all the claims of the holder of the guarantee against the borrower or others arising out of the loan transaction or foreclosure proceedings, except claims released with the consent of the Secretary.

(3) Assignment by Secretary

After receiving notice under paragraph (1), the Secretary may accept assignment of the loan if the Secretary determines that the assignment is in the best interests of the United States. Assignment of a loan under this paragraph shall include conveyance to the Secretary of title to the security property, assignment to the Secretary of all rights and interests arising under the loan, and assignment to the Secretary of all claims against the borrower or others arising out of the loan transaction. Upon assignment of a loan under this paragraph, the holder of a guarantee certificate for the loan shall be entitled to payment by the Secretary under the guarantee (in the amount provided under subsection (b) of this section).

(4) Requirements

Before any payment under a guarantee is made under paragraph (2) or (3), the holder of the guarantee certificate shall exhaust all reasonable possibilities of collection on the loan guaranteed. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. The Secretary shall then take such action to collect as the Secretary determines appropriate.

(j) Violation of guarantee requirements by lenders issuing guarantees

(1) Indemnification

If the Secretary determines that a loan guaranteed by an eligible lender pursuant to delegation of authority under subsection (h) of this section was not originated in accordance

with the requirements under this section and the Secretary pays a claim under the guarantee for the loan, the Secretary may require the eligible lender authorized under subsection (h) of this section to issue the guarantee certificate for the loan—

(A) to indemnify the Secretary for the loss, if the payment under the guarantee was made within a reasonable period specified by the Secretary; or

(B) to indemnify the Secretary for the loss regardless of when payment under the guarantee was made, if the Secretary determines that fraud or misrepresentation was involved in connection with the origination of the loan.

(2) Termination of authority to issue guarantees

The Secretary may cancel a delegation of authority under subsection (h) of this section to an eligible lender if the Secretary determines that the lender has violated the requirements and procedures for guaranteed loans under this section or for other good cause. Any such cancellation shall be made by giving notice to the eligible lender and shall take effect upon receipt of the notice by the mortgagee or at a later date, as the Secretary may provide. A decision by the Secretary to cancel a delegation shall be final and conclusive and shall not be subject to judicial review.

(k) Refinancing

Any loan guaranteed under this section may be refinanced and extended in accordance with terms and conditions that the Secretary shall prescribe, but in no event for an additional amount or term that exceeds the limitations under subsection (f) of this section.

(*l*) Geographical targeting

(1) Study

The Secretary shall provide for an independent entity to conduct a study to determine the extent to which borrowers in the United States will utilize loan guarantees under this section, the rural areas in the United States in which borrowers can best utilize and most need loans guaranteed under this section, and the rural areas in the United States in which housing of the type eligible for a loan guarantee under this section is most needed by low- and moderate-income families. The Secretary shall require the independent entity conducting the study to submit a report to the Secretary and to the Congress describing the results of the study not later than the expiration of the 90-day period beginning on March 28, 1996.

(2) Targeting

In providing loan guarantees under this section, the Secretary shall establish standards to target and give priority to rural areas in which borrowers can best utilize and most need loans guaranteed under this section, as determined by the Secretary based on the results of the study under paragraph (1) and any other information the Secretary considers appropriate.

(m) Inapplicability of credit-elsewhere test

Section 1471(c) of this title shall not apply to guarantees, or loans guaranteed, under this section.

(n) Tenant protections

The Secretary shall establish standards for the treatment of tenants of housing developed using amounts from a loan guaranteed under this section, which shall incorporate, to the extent applicable, existing standards applicable to tenants of housing developed with loans made under section 1485 of this title. Such standards shall include standards for fair housing and equal opportunity, lease and grievance procedures, and tenant appeals of adverse actions.

(*o*) Housing standards

The standards established under section 1485(m) of this title for housing and related facilities assisted under section 1485 of this title shall apply to housing and related facilities the development costs of which are financed in whole or in part with a loan guaranteed under this section.

(p) Limitation on commitments to guarantee loans

(1) Requirement of appropriations for cost subsidy

The authority of the Secretary to enter into commitments to guarantee loans under this section, and to guarantee loans, shall be effective for each fiscal year only to the extent that appropriations of budget authority to cover the costs (as such term is defined in section 661a of title 2) of the guarantees are made in advance for such fiscal year.

(2) Annual limitation on amount of loan guarantee

In each fiscal year, the Secretary may enter into commitments to guarantee loans under this section only to the extent that the costs of the guarantees entered into in such fiscal year do not exceed such amount as may be provided in appropriation Acts for such fiscal year.

(q) Report

(1) In general

The Secretary shall submit a report to the Congress, not later than the expiration of the 2-year period beginning on March 28, 1996, describing the program under this section for guaranteeing loans.

(2) Contents

The report shall—

(A) describe the types of borrowers providing housing with loans guaranteed under this section, the areas served by the housing provided and the geographical distribution of the housing, the levels of income of the residents of the housing, the number of dwelling units provided, the extent to which borrowers under such loans have obtained other financial assistance for development costs of housing provided with the loans, and the extent to which borrowers under such loans have used low-income housing tax credits provided under section 42 of title 26

in connection with the housing provided with the loans;

(B) analyze the financial viability of the housing provided with loans guaranteed under this section and the need for project-based rental assistance for such housing;

(C) include any recommendations of the Secretary for expanding or improving the program under this section for guaranteeing loans; and

(D) include any other information regarding the program for guaranteeing loans under this section that the Secretary considers appropriate.

(r) Definitions

For purposes of this section, the following definitions shall apply:

(1) The term ''development cost'' has the meaning given the term in section 1485(e) of this title.

(2) The term ''eligible lender'' means a lender determined by the Secretary to meet the requirements of subparagraph (A), (B), (C), or (D) of subsection (e)(1) of this section.

(3) The terms ''housing'' and ''related facilities'' have the meanings given such terms in section 1485(e) of this title.

(4) INDIAN TRIBE.—The term ''Indian tribe'' means—

(A) any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation, as defined by or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450 et seq.); or

(B) any entity established by the governing body of an Indian tribe described in subparagraph (A) for the purpose of financing economic development.

(s) Authorization of appropriations

There are authorized to be appropriated for each fiscal year for costs (as such term is defined in section 661a of title 2) of loan guarantees made under this section such sums as may be necessary for such fiscal year to provide guarantees under this section for eligible loans having an aggregate principal amount of $500,000,000.

(t) Tax-exempt financing

The Secretary may not deny a guarantee under this section on the basis that the interest on the loan or on an obligation supporting the loan for which a guarantee is sought is exempt from inclusion in gross income for purposes of chapter I[2] of title 26.

(u) Fee authority

Any amounts collected by the Secretary pursuant to the fees charged to lenders for loan guarantees issued under this section shall be used to offset costs (as defined by section 661a of title 2) of loan guarantees made under this section.

(v) Defaults of loans secured by reservation lands

In the event of a default involving a loan to an Indian tribe or tribal corporation made under this section which is secured by an interest in land within such tribe's reservation (as determined by the Secretary of the Interior), including a community in Alaska incorporated by the Secretary of the Interior pursuant to the Indian Reorganization Act (25 U.S.C. 461 et seq.), the lender shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe. If the lender subsequently proceeds to liquidate the account, the lender shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

(July 15, 1949, ch. 338, title V, § 538, as added and amended Pub. L. 104–120, § 5, Mar. 28, 1996, 110 Stat. 835; Pub. L. 105–86, title VII, § 735(c), Nov. 18, 1997, 111 Stat. 2111; Pub. L. 105–276, title V, § 599C(c), Oct. 21, 1998, 112 Stat. 2661; Pub. L. 106–569, title VII, § 707, Dec. 27, 2000, 114 Stat. 3015.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (e)(1)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (r)(4)(A), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Indian Self-Determination and Education Assistance Act of 1975, referred to in subsec. (r)(4)(A), probably means the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Reorganization Act, referred to in subsec. (v), is act June 18, 1934, ch. 576, 48 Stat. 984, as amended, which is classified generally to subchapter V (§ 461 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 461 of Title 25 and Tables.

CODIFICATION

Section is based on section 5(a) of H.R. 1691, One Hundred Fourth Congress, as passed by the House of Representatives on Oct. 30, 1995, which was enacted into law by Pub. L. 104–120.

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–569, § 707(1), inserted ''an Indian tribe,'' after ''political subdivision thereof,''.

Subsec. (f)(1). Pub. L. 106–569, § 707(2), added par. (1) and struck out former par. (1) which read as follows: ''provide for complete amortization by periodic payments to be made for a term not to exceed 40 years;''.

Subsec. (i)(2). Pub. L. 106–569, § 707(3), substituted ''(A) submission to the Secretary of a claim for payment under the guarantee, and (B) assignment'' for ''(A) con-

[2] So in original. Probably should be chapter ''1''.

veyance to the Secretary of title to the security property, (B) submission to the Secretary of a claim for payment under the guarantee, and (C) assignment''.

Subsec. (*l*). Pub. L. 106–569, § 707(6), (7), redesignated subsec. (m) as (*l*) and struck out heading and text of former subsec. (*l*). Text read as follows: ''The borrower under a loan that is guaranteed under this section and under which any portion of the principal obligation or interest remains outstanding may not be relieved of liability with respect to the loan, notwithstanding the transfer of property for which the loan was made.''

Subsecs. (m) to (r). Pub. L. 106–569, § 707(7), redesignated subsecs. (n) to (s) as (m) to (r), respectively. Former subsec. (m) redesignated (*l*).

Subsec. (s). Pub. L. 106–569, § 707(7), redesignated subsec. (t) as (s). Former subsec. (s) redesignated (r).

Subsec. (s)(4). Pub. L. 106–569, § 707(4), added par. (4).

Subsec. (t). Pub. L. 106–569, § 707(7), redesignated subsec. (u) as (t). Former subsec. (t) redesignated (s).

Pub. L. 106–569, § 707(5), inserted before period at end ''to provide guarantees under this section for eligible loans having an aggregate principal amount of $500,000,000''.

Subsec. (u). Pub. L. 106–569, § 707(8), added subsec. (u). Former subsec. (u) redesignated (t).

Subsec. (v). Pub. L. 106–569, § 707(8), added subsec. (v).

1998—Subsec. (t). Pub. L. 105–276, § 599C(c)(1), substituted ''each fiscal year'' for ''fiscal year 1998''.

Subsec. (u). Pub. L. 105–276, § 599C(c)(2), added subsec. (u) and struck out heading and text of former subsec. (u). Text read as follows: ''A loan may not be guaranteed under this section after September 30, 1998.''

1997—Subsec. (q)(2). Pub. L. 105–86, § 735(c)(1), added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''In fiscal year 1996, the Secretary may enter into commitments to guarantee loans under this section only to the extent that the costs of the guarantees entered into in such fiscal year do not exceed $1,000,000.''

Subsec. (t). Pub. L. 105–86, § 735(c)(2), added subsec. (t) and struck out text of former subsec. (t). Text read as follows: ''There is authorized to be appropriated for fiscal year 1996 $1,000,000 for costs (as such term is defined in section 661a of title 2) of loan guarantees made under this section.''

Subsec. (u). Pub. L. 105–86, § 735(c)(3), substituted ''1998'' for ''1996''.

1996—Subsecs. (m)(1), (r)(1). Pub. L. 104–120, § 5(b), made technical amendment to reference in original act which appears in text as reference to March 28, 1996.

EFFECTIVE DATE

Section to be construed to have become effective Oct. 1, 1995, see section 13(a) of Pub. L. 104–120, set out as an Effective and Termination Dates of 1996 Amendments note under section 1437d of this title.

§ 1490q. Disaster assistance

(a) Authority

(1) In general

Notwithstanding any other provision of this subchapter, in the event of a natural disaster, so declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.], the Secretary shall allocate, for assistance under this section to the States affected for use in the counties designated as disaster areas and the counties contiguous to such counties, amounts made available to the Secretary by an appropriations Act for such purpose. Allocations under this section may be made for each of the fiscal years ending during the 3-year period beginning on the declaration of the disaster by the President.

(2) Amount

Subject to the availability of amounts pursuant to appropriations Acts, assistance under paragraph (1) shall be made in an amount equal to the product of—

(A) the sum of the official State estimate of the number of dwelling units in the counties described in paragraph (1) within the eligible service area of the Farmers Home Administration (or otherwise if the Secretary provides for a waiver under subsection (d) of this section) that are destroyed or seriously damaged; and

(B) 20 percent of the average cost of all dwelling units assisted by the Secretary in the State during the previous 3 years.

(b) Use

The assistance made available under this section may be used for the housing purposes authorized under this subchapter, and the Secretary shall issue such regulations as may be necessary to carry out this section to assure the prompt and expeditious use of such funds for the restoration of decent, safe, and sanitary housing within the areas described in subsection (a)(1) of this section. In implementing this section, the Secretary shall evaluate the natural hazards to which any permanent replacement housing is exposed and shall take appropriate action to mitigate such hazards.

(c) Eligibility

Notwithstanding any other provision of this subchapter, assistance allocated under this section shall be available to units of general local government and their agencies and to local nonprofit organizations, agencies, and corporations for the construction or rehabilitation of housing for agricultural employees and their families.

(d) Waiver of rural area requirements

The Secretary may waive the application of the provisions of section 1490 of this title with respect to assistance under this section, as the Secretary considers appropriate.

(e) Rural Housing Insurance Fund

The Secretary is authorized to advance from the Rural Housing Insurance Fund such sums as may be necessary to meet the requirements of subsection (a)(1) of this section, subject to limits previously approved in appropriations Acts.

(July 15, 1949, ch. 338, title V, § 541, as added Pub. L. 101–625, title IX, § 934, Nov. 28, 1990, 104 Stat. 4404; amended Pub. L. 102–550, title VII, § 713, Oct. 28, 1992, 106 Stat. 3842.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a)(1), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–550 substituted ''amounts made available to the Secretary by an appropriations Act for such purpose'' for ''amounts available under this subchapter''.

§ 1490r. Rural housing voucher program

(a) In general

To such extent or in such amounts as are approved in appropriation Acts, the Secretary

shall carry out a rural housing voucher program to assist very low-income families and persons to reside in rental housing in rural areas. For such purposes, the Secretary may provide assistance using a payment standard based on the fair market rental rate established by the Secretary for the area. The monthly assistance payment for any family shall be the amount by which the payment standard for the area exceeds 30 per centum of the family's monthly adjusted income, except that such monthly assistance payment shall not exceed the amount which the rent for the dwelling unit (including the amount allowed for utilities in the case of a unit with separate utility metering) exceeds 10 per centum of the family's monthly gross income.

(b) Coordination and limitation

In carrying out the rural housing voucher program under this section, the Secretary shall—

(1) coordinate activities under this section with activities assisted under sections 1485 and 1490m of this title; and

(2) enter into contracts for assistance for not more than 5000 units in any fiscal year.

(July 15, 1949, ch. 338, title V, § 542, as added Pub. L. 102–550, title VII, § 706(2), Oct. 28, 1992, 106 Stat. 3835.)

§ 1490s. Enforcement provisions

(a) Equity skimming

(1) Criminal penalty

Whoever, as an owner, agent, employee, or manager, or is otherwise in custody, control, or possession of property that is security for a loan made or guaranteed under this subchapter, willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other funds derived from such property, for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by this subchapter or the regulations adopted pursuant to this subchapter, shall be fined under title 18 or imprisoned not more than 5 years, or both.

(2) Civil sanctions

An entity or individual who as an owner, operator, employee, or manager, or who acts as an agent for a property that is security for a loan made or guaranteed under this subchapter where any part of the rents, assets, proceeds, income, or other funds derived from such property are used for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by this subchapter or the regulations adopted pursuant to this subchapter, shall be subject to a fine of not more than $25,000 per violation. The sanctions provided in this paragraph may be imposed in addition to any other civil sanctions or civil monetary penalties authorized by law.

(b) Civil monetary penalties

(1) In general

The Secretary may, after notice and opportunity for a hearing, impose a civil monetary penalty in accordance with this subsection against any individual or entity, including its owners, officers, directors, general partners, limited partners, or employees, who knowingly and materially violate, or participate in the violation of, the provisions of this subchapter, the regulations issued by the Secretary pursuant to this subchapter, or agreements made in accordance with this subchapter, by—

(A) submitting information to the Secretary that is false;

(B) providing the Secretary with false certifications;

(C) failing to submit information requested by the Secretary in a timely manner;

(D) failing to maintain the property subject to loans made or guaranteed under this subchapter in good repair and condition, as determined by the Secretary;

(E) failing to provide management for a project which received a loan made or guaranteed under this subchapter that is acceptable to the Secretary; or

(F) failing to comply with the provisions of applicable civil rights statutes and regulations.

(2) Conditions for renewal or extension

The Secretary may require that expiring loan or assistance agreements entered into under this subchapter shall not be renewed or extended unless the owner executes an agreement to comply with additional conditions prescribed by the Secretary, or executes a new loan or assistance agreement in the form prescribed by the Secretary.

(3) Amount

(A) In general

The amount of a civil monetary penalty imposed under this subsection shall not exceed the greater of—

(i) twice the damages the Department of Agriculture, the guaranteed lender, or the project that is secured for a loan under this section suffered or would have suffered as a result of the violation; or

(ii) $50,000 per violation.

(B) Determination

In determining the amount of a civil monetary penalty under this subsection, the Secretary shall take into consideration—

(i) the gravity of the offense;

(ii) any history of prior offenses by the violator (including offenses occurring prior to the enactment of this section);

(iii) the ability of the violator to pay the penalty;

(iv) any injury to tenants;

(v) any injury to the public;

(vi) any benefits received by the violator as a result of the violation;

(vii) deterrence of future violations; and

(viii) such other factors as the Secretary may establish by regulation.

(4) Payment of penalties

No payment of a penalty assessed under this section may be made from funds provided under this subchapter or from funds of a

project which serve as security for a loan made or guaranteed under this subchapter.

(5) Remedies for noncompliance

(A) Judicial intervention

If a person or entity fails to comply with a final determination by the Secretary imposing a civil monetary penalty under this subsection, the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against such individual or entity and such other relief as may be available. The monetary judgment may, in the court's discretion, include the attorney's fees and other expenses incurred by the United States in connection with the action.

(B) Reviewability of determination

In an action under this paragraph, the validity and appropriateness of a determination by the Secretary imposing the penalty shall not be subject to review.

(July 15, 1949, ch. 338, title V, § 543, as added Pub. L. 106–569, title VII, § 708(a), Dec. 27, 2000, 114 Stat. 3016.)

REFERENCES IN TEXT

Enactment of this section, referred to in subsec. (b)(3)(B)(ii), means enactment of Pub. L. 106–569, which enacted this section and was approved Dec. 27, 2000.

§ 1490t. Indian tribes

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) shall not apply to actions by federally recognized Indian tribes (including instrumentalities of such Indian tribes) under this Act.

(July 15, 1949, ch. 338, title V, § 544, as added Pub. L. 109–136, § 4, Dec. 22, 2005, 119 Stat. 2644.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Civil Rights Act of 1968, referred to in text, is Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 73, as amended. Title VIII of the Act, known as the Fair Housing Act, is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

This Act, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, known as the Housing Act of 1949, which is classified principally to this chapter (§ 1441 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

CHAPTER 8B—PUBLIC WORKS OR FACILITIES

§§ 1491 to 1497. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this chapter after Jan. 1, 1975.

Section 1491, acts Aug. 11, 1955, ch. 783, title II, § 201, 69 Stat. 642; June 30, 1961, Pub. L. 87–70, title V, § 501(a), 75 Stat. 173; Oct. 15, 1962, Pub. L. 87–808, § 1, 76 Stat. 920, set forth Congressional declaration of policy for public works or facilities provisions.

Section 1492, acts Aug. 11, 1955, ch. 783, title II, § 202, 69 Stat. 643; June 30, 1961, Pub. L. 87–70, title V, § 501(b)–(d)(1), (e)–(g), 75 Stat. 173, 174; Sept. 5, 1962, Pub. L. 87–634, 76 Stat. 435; Sept. 14, 1962, Pub. L. 87–658, § 5, 76 Stat. 543; Oct. 15, 1962, Pub. L. 87–808, § 2, 76 Stat. 920; Oct. 15, 1962, Pub. L. 87–809, 76 Stat. 920; Sept. 2, 1964, Pub. L. 88–560, title VI, § 601, 78 Stat. 798; Aug. 10, 1965, Pub. L. 89–117, title XI, § 1107, 79 Stat. 503; Nov. 3, 1966, Pub. L. 89–754, title IV, § 407, title X, § 1009, 80 Stat. 1273, 1286; May 25, 1967, Pub. L. 90–19, § 12(b), (c), 81 Stat. 23; Aug. 1, 1968, Pub. L. 90–448, title IV, § 416(a), 82 Stat. 518; Dec. 31, 1970, Pub. L. 91–609, title VII, § 727(b), 84 Stat. 1802, related to purchase of securities or obligations and loans, restrictions and limitations upon such powers, priority for applications, etc.

Section 1493, acts Aug. 11, 1955, ch. 783, title II, § 203, 69 Stat. 643; Sept. 14, 1960, Pub. L. 86–788, § 2(c), 74 Stat. 1028; June 30, 1961, Pub. L. 87–70, title V, § 501(d)(2), (h), (j), 75 Stat. 174, 175; May 25, 1967, Pub. L. 90–19, § 12(b), 81 Stat. 23; Oct. 17, 1984, Pub. L. 98–479, title II, § 203(f), 98 Stat. 2230, related to forms and denominations, maturities, terms and conditions, etc., respecting notes and obligations.

Section 1494, acts Aug. 11, 1955, ch. 783, title II, § 204, 69 Stat. 644; May 25, 1967, Pub. L. 90–19, § 12(b), 81 Stat. 23, related to functions, powers, and duties of the Secretary, and administrative expenses.

Section 1495, act Aug. 11, 1955, ch. 783, title II, § 205, 69 Stat. 644, prohibited making of loans under section 459 of former Title 40, Public Buildings, Property, and Works, after Aug. 11, 1955, except pursuant to an application for such loan filed prior to such date.

Section 1496, act Aug. 11, 1955, ch. 783, title II, § 206, as added Aug. 7, 1956, ch. 1029, title VI, § 603, 70 Stat. 1114; amended Dec. 24, 1969, Pub. L. 91–152, title IV, § 403(b), 83 Stat. 395, defined ''States'' for purposes of this chapter.

Section 1497, act Aug. 11, 1955, ch. 783, title II, § 207, as added June 30, 1961, Pub. L. 87–70, title V, § 501(i), 75 Stat. 175; amended Oct. 15, 1962, Pub. L. 87–808, § 3, 76 Stat. 920; May 25, 1967, Pub. L. 90–19, § 12(b), 81 Stat. 23, related to technical advisory services in budgeting, financing, planning, and construction of community facilities, and appropriations.

CHAPTER 8C—OPEN-SPACE LAND

§§ 1500 to 1500b. Omitted

CODIFICATION

Sections were omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this chapter after Jan. 1, 1975.

Section 1500, Pub. L. 87–70, title VII, § 701, June 30, 1961, 75 Stat. 183; Pub. L. 89–177, title IX, § 901(b), (c), Aug. 10, 1965, 79 Stat. 494; Pub. L. 89–754, title VI, § 605(b), (c), Nov. 3, 1966, 80 Stat. 1279; Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1781, set forth Congressional declaration of findings and purpose for open-space land provisions.

Section 1500a, Pub. L. 87–70, title VII, § 702, June 30, 1961, 75 Stat. 184; Pub. L. 88–560, title X, § 1001, Sept. 2, 1964, 78 Stat. 806; Pub. L. 89–117, title IX, §§ 902(a), (b), 903, 904, 909(b), (c), Aug. 10, 1965, 79 Stat. 495, 497; Pub. L. 89–754, title VI, § 605(d), Nov. 3, 1966, 80 Stat. 1279; Pub. L. 90–19, § 18(c), (d), May 25, 1967, 81 Stat. 25; Pub. L. 90–448, title VI, § 606(a), Aug. 1, 1968, 82 Stat. 534; Pub. L. 91–152, title III, § 303, Dec. 24, 1969, 83 Stat. 391; Pub. L. 91–609, title IV, § 401, Dec. 31, 1970, 84 Stat. 1781, related to authorizations, limitations and restrictions, etc., respecting grants to States and local public bodies for acquisition and development of open-space land.

Section 1500b, Pub. L. 87–70, title VII, § 703, June 30, 1961, 75 Stat. 184; Pub. L. 89–117, title IX, § 905, Aug. 10, 1965, 79 Stat. 495; Pub. L. 90–19, § 18(c), May 25, 1967, 81

Stat. 25; Pub. L. 91–609, title IV, §401, Dec. 31, 1970, 84 Stat. 1782, related to planning requirements.

§ 1500c. Repealed. Pub. L. 98–181, title I, § 126(b)(3), Nov. 30, 1983, 97 Stat. 1175

Section, Pub. L. 87–70, title VII, §704, June 30, 1961, 75 Stat. 185; Pub. L. 89–117, title IX, §909(d), Aug. 10, 1965, 79 Stat. 497; Pub. L. 90–19, §18(c), May 25, 1967, 81 Stat 25; Pub. L. 91–609, title IV, §401, Dec. 31, 1970, 84 Stat. 1782, related to conversion to other uses.

§§ 1500c–1 to 1500e. Omitted

CODIFICATION

Sections 1500c–1 to 1500d–1 were omitted pursuant to section 5316 of this title which terminated the authority to make grants or loans under this chapter after Jan. 1, 1975.

Section 1500c–1, Pub. L. 87–70, title VII, §705, as added Pub. L. 89–117, title IX, §906, Aug. 10, 1965, 79 Stat. 496; amended Pub. L. 90–19, §18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91–609, title IV, §401, Dec. 31, 1970, 84 Stat. 1782, related to conversions of land involving historic or architectural purposes.

Section 1500c–2, Pub. L. 87–70, title VII, §706, as added Pub. L. 89–117, title IX, §906, Aug. 10, 1965, 79 Stat. 496; amended Pub. L. 89–754, title VI, §605(e), Nov. 3, 1966, 80 Stat. 1280; Pub. L. 90–19, §18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91–609, title IV, §401, Dec. 31, 1970, 84 Stat. 1783; Pub. L. 98–181, title I, §126(b)(3), Nov. 30, 1983, 97 Stat. 1175, related to acquisition of interests to guide urban development.

Section 1500c–3, Pub. L. 87–70, title VII, §707, as added Pub. L. 89–117, title IX, §907, Aug. 10, 1965, 79 Stat. 496; amended Pub. L. 90–19, §18(c), May 25, 1967, 81 Stat. 25; Pub. L. 91–609, title IV, §401, Dec. 31, 1970, 84 Stat. 1783, related to labor standards.

Section 1500d, Pub. L. 87–70, title VII, §708, formerly §705, June 30, 1961, 75 Stat. 185, renumbered §708 and amended Pub. L. 89–117, title IX, §§906, 908, Aug. 10, 1965, 79 Stat. 495, 497; Pub. L. 89–754, title VI, §605(f), Nov. 3, 1966, 80 Stat. 1280; Pub. L. 90–19, §18(c), May 25, 1967, 81 Stat, 25; Pub. L. 90–448, title VI, §606(b), Aug. 1, 1968, 82 Stat. 534; Pub. L. 91–609, title IV, §401, Dec. 31, 1970, 84 Stat. 1783; Pub. L. 92–213, §8(b), Dec. 22, 1971, 85 Stat. 776; Pub. L. 92–335, §5, July 1, 1972, 86 Stat. 405; Pub. L. 93–117, §7, Oct. 2, 1973, 87 Stat. 422, authorized appropriations for purpose of making grants under this chapter.

Section 1500d–1, Pub. L. 87–70, title VII, §709, as added Pub. L. 89–754, title VI, §605(g), Nov. 3, 1966, 80 Stat. 1280; amended Pub. L. 91–609, title IV, §401, Dec. 31, 1970, 84 Stat. 1783, defined the terms ''open-space land'', ''urban area'', ''State'', ''local public body'', and ''open-space uses'' for purposes of this chapter.

Section 1500e, Pub. L. 87–70, title VII, §710, formerly §706, June 30, 1961, 75 Stat. 185; renumbered §709 and amended Pub. L. 89–117, title IX, §§902(c), 906, Aug. 10, 1965, 79 Stat. 495; renumbered §710, Pub. L. 89–754, title VI, §605(g), Nov. 3, 1966, 80 Stat. 1280; amended Pub. L. 90–19, §18(c), May 25, 1967, 81 Stat. 25, which defined ''open-space land'', ''urban area'', ''State'', and ''open space uses'', was omitted in the general amendment of this chapter by Pub. L. 91–609, title IV, §401, Dec. 31, 1970, 84 Stat. 1781.

CRITERIA FOR GRANTS FOR HISTORIC PRESERVATION

Pub. L. 89–754, title VI, §605(h), Nov. 3, 1966, 80 Stat. 1280, provided that beginning three years after Nov. 3, 1966, no grant shall be made (except pursuant to a contract or commitment entered into less than three years after such date) under provisions of sections 1453 or 1500d–1 of this title or section 461(h) of former Title 40, Public Buildings, Property, and Works, to the extent that it was to be used for historic or architectural preservation, except with respect to districts, sites, buildings, structures, and objects which the Secretary of Housing and Urban Development found met criteria comparable to those used in establishing the National Register maintained by the Secretary of the Interior pursuant to other provisions of law.

CHAPTER 9—HOUSING OF PERSONS ENGAGED IN NATIONAL DEFENSE

SUBCHAPTER I—PROJECTS GENERALLY

SUBCHAPTER II—DEFENSE HOUSING

SUBCHAPTER III—DEFENSE PUBLIC WORKS

SUBCHAPTER IV—GENERAL PROVISIONS AFFECTING SUBCHAPTERS II TO VII

SUBCHAPTER V—DEFENSE HOUSING AND PUBLIC WORKS FOR DISTRICT OF COLUMBIA

SUBCHAPTER VI—HOUSING FOR DISTRESSED FAMILIES OF SERVICEMEN AND VETERANS

SUBCHAPTER VII—DISPOSAL OF WAR AND VETERANS' HOUSING

SUBCHAPTER I—PROJECTS GENERALLY

§ 1501. Cooperation between departments; definitions; limitation of projects

In connection with the national defense program, the Departments of the Navy, Army, and Air Force and the Secretary of Housing and Urban Development are authorized to cooperate in making necessary housing available for persons engaged in national defense activities, as provided in this subchapter. ''Persons engaged in national defense activities'' (as that term is used in this subchapter) shall include (i) enlisted men with families, who are in the naval and military service and officers of the Army, Air Force, and Marine Corps not above the grade of captain, and officers of the Navy and Coast Guard, not above the grade of lieutenant and employees of the Departments of the Navy, Army, and Air Force who are assigned to duty at naval or military reservations, posts, or bases, and (ii) workers with families, who are engaged or to be engaged in industries connected with and essential to the national defense program. No project shall be developed or assisted for the purposes of this subchapter except with the approval of the President and upon a determination by him that there is an acute shortage of housing in the locality involved which impedes the national defense program.

(June 28, 1940, ch. 440, title II, § 201, 54 Stat. 681; Oct. 26, 1942, ch. 626, § 1(a), 56 Stat. 988; July 26, 1947, ch. 343, title II, §§ 205(a), 207(a), (f), 61 Stat. 501–503; 1947 Reorg. Plan No. 3, § 4(a), eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 955; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

AMENDMENTS

1942—Act Oct. 26, 1942, substituted ''and officers of the Army and Marine Corps not above the grade of captain, and officers of the Navy and Coast Guard, not above the grade of lieutenant'' for ''(excluding officers)''.

CHANGE OF NAME

Department of the Air Force inserted to conform to section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, 502, and Secretary of Defense Transfer Orders No. 14, eff. July 1, 1948, and No. 40 [App. B (123)], July 22, 1949. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 and 8010 to 8013 continued Departments of Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

SHORT TITLE OF 1951 AMENDMENT

Act Sept. 1, 1951, ch. 378, § 1, 65 Stat. 293, provided: ''That this Act [enacting sections 1507, 1589a, 1589b, and 1591 to 1593e of this title, sections 1701g–1 to 1701g–3, 1701i–1, 1715g, 1715h, 1716a, 1748g–1, 1750, 1750a, and 1750b to 1750g of Title 12, Banks and Banking, section 2136 of the Appendix to Title 50, War and National Defense, amended sections 1584 and 1585 of this title, sections 371, 1430, 1701g, 1701j, 1702, 1706, 1710, 1713, 1715c, 1715d, 1715f, 1716, 1743, 1747a, 1747f, and 1747*l*, 1748b of Title 12, section 2135 of Title 50, App., and enacted provisions set out as notes under section 1591 of this title and section 1748b of Title 12] may be cited as the 'Defense Housing and Community Facilities and Services Act'.''

SHORT TITLE

Act Oct. 14, 1940, ch. 862, 54 Stat. 1125, which is classified to subchapters II to VII of this chapter, is popularly known as the ''Lanham Public War Housing Act''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Public Housing Administration and Housing and Home Finance Agency (of which Public Housing Administration was a constituent agency) and of heads thereof transferred to Secretary of Housing and Urban Development by Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669, which is classified to section 3534(a) of this title. Section 9(c) of such act, set out as a note under section 3531 of this title, provided that references to Housing and Home Finance Agency or to any agency or officer therein are to be deemed to mean Secretary of Housing and Urban Development and that Housing and Home Finance Agency and Public Housing Administration have lapsed.

United States Housing Authority consolidated into Housing and Home Finance Agency by Reorg. Plan No. 3 of 1947, § 1, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954, set out in the Appendix to Title 5, Government Organization and Employees, and name of Authority changed to Public Housing Administration by section 4(a) of such Plan. Section 9 of Reorg. Plan No. 3 of 1947 abolished office of Administrator of United States Housing Authority, whose functions were transferred by section 4 of such Plan to Public Housing Commissioner.

§ 1502. Initiation and development of projects; jurisdiction; acquisition of property; fees of architects, engineers, etc.

(a) Projects may be initiated under this subchapter by the Department of the Navy or Army or the Air Force to provide dwellings on or near naval or military reservations, posts or bases for rental to the officers, enlisted men and employees of the Departments of the Navy, Army, and Air Force described in section 1501 of this title. Such projects shall be developed by the Department of the Navy or Army or the Air Force or by the Secretary of Housing and Urban Development, whichever the President determines is better suited to the fulfillment of the purposes of this subchapter with respect to any particular project. If the development of such project is to be undertaken by the Department of the Navy or Army or Air Force, the Secretary of Housing and Urban Development is authorized to aid the development of the project by furnishing technical assistance and by transferring to such De-

partment the funds necessary for the development of the project. Any project developed for the purpose of this section shall be leased to the Department of the Navy or Army or Air Force by the Secretary of Housing and Urban Development (who shall have title to such project until repayment of the cost thereof to the Secretary of Housing and Urban Development as prescribed in such lease) upon such terms as shall be prescribed in the lease, which may be the same terms as are authorized by the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], with respect to leases to public housing agencies. All the provisions of said Act which apply to the development of projects by the Secretary of Housing and Urban Development shall (insofar as applicable and not inconsistent herewith) apply to the development of projects by the Department of the Navy or Army or Air Force. Notwithstanding other provisions of this or any other law, the Department leasing a project shall have the same jurisdiction over such project as it has over the reservation, post or base in connection with which the project is developed.

(b) The Department of the Navy or Army or Air Force, in connection with any project developed or leased by it, and the Secretary of Housing and Urban Development, in connection with any project developed or assisted by him, for the purposes of this subchapter, may acquire real or personal property or any interest therein by purchase, eminent domain, gift, lease or otherwise. The provisions of sections 3111 and 3112 of title 40 shall not apply to the acquisition of any real property by the Department of the Navy or Army or Air Force or by the Secretary of Housing and Urban Development for the purposes of this subchapter or to the project developed thereon, and the provisions of section 1302 of title 40, shall not apply to any lease of any project developed for the purposes of this subchapter or of any dwelling therein. Condemnation proceedings instituted by the Secretary of Housing and Urban Development shall be in the Secretary's own name and the practice and procedure governing such proceedings by the United States shall be followed, and the Secretary of Housing and Urban Development shall likewise be entitled to proceed in accordance with the provisions of sections 3114 to 3116 and 3118 of title 40 and an Act of Congress approved March 1, 1929 (45 Stat. 1415).[1] If the Secretary of Housing and Urban Development acquires land in connection with a project to be assisted for the purposes of this subchapter, the Secretary may convey such land to the public housing agency involved for a consideration equal to the cost of the land to the Secretary of Housing and Urban Development. The Departments of the Navy, Army, and Air Force and the Secretary of Housing and Urban Development may negotiate, contract and fix such fees as they determine are reasonable for the services of architects, engineers, surveyors, appraisers, title examiners and real estate negotiators in connection with specific projects developed by them under this subchapter. The Secretaries of Navy, Army, and Air Force are authorized to make available to the Secretary of Housing and Urban Development any land that is needed for a project to be developed by the Secretary of Housing and Urban Development and leased to the Department of the Navy or Army or Air Force and to execute such leases, agreements and other instruments with the Secretary of Housing and Urban Development as may be necessary to carry out the purposes of this subchapter.

(June 28, 1940, ch. 440, title II, § 202, 54 Stat. 682; Oct. 26, 1942, ch. 626, § 1(b), 56 Stat. 988; July 26, 1947, ch. 343, title II, §§ 205(a), 207(a), (f), 61 Stat. 501–503; 1947 Reorg. Plan No. 3, § 4(a), eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 955; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The United States Housing Act of 1937 and said Act, referred to in subsec. (a), are act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Act of Congress approved March 1, 1929, referred to in subsec. (b), is act Mar. 1, 1929, ch. 416, 45 Stat. 1415, which was classified to chapter 7 (§ 361 et seq.) of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 88–241, § 21(b), Dec. 23, 1963, 77 Stat. 627.

CODIFICATION

In subsec. (b), ''sections 3111 and 3112 of title 40'' substituted for ''section 355 of the Revised Statutes'', ''section 1302 of title 40'' substituted for ''section 321 of the Act of June 30, 1932 (U.S.C. 1934 edition, title 40, sec. 303b)'', and ''sections 3114 to 3116 and 3118 of title 40'' substituted for ''the Act of Congress approved February 26, 1931 (46 Stat. 1421)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

CHANGE OF NAME

Department of the Air Force inserted to conform to section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, 502, and Secretary of Defense Transfer Order No. 40 [App. A(75)], July 22, 1949. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 and 8010 to 8013 continued Departments of the Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

AMENDMENTS

1942—Subsec. (a). Act Oct. 26, 1942, inserted ''officers,'' after ''rental to the'' in first sentence.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1501 of this title.

§ 1502a. Repealed. Pub. L. 85–861, § 36A, Sept. 2, 1958, 72 Stat. 1569

Section, act July 15, 1955, ch. 368, title V, § 509, 69 Stat. 351, related to acquisition of housing units for military personnel and dependents. See section 2678 of Title 10, Armed Forces.

[1] See References in Text note below.

§ 1503. Development of projects by Secretary; financial assistance to public housing agencies

In any localities where the President determines that there is an acute shortage of housing which impedes the national defense program and that the necessary housing would not otherwise be provided when needed for persons engaged in national defense activities, the Secretary of Housing and Urban Development may undertake the development and administration of projects to assure the availability of dwellings in such localities for such persons and their families, or the Secretary of Housing and Urban Development may extend financial assistance of public housing agencies for the development and administration of such projects. Such financial assistance to public housing agencies shall be extended (except as otherwise provided herein and not inconsistent herewith) under the provisions of, and in the same manner and forms as provided in, title I[1] of the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.], with respect to other housing projects.

(June 28, 1940, ch. 440, title II, § 203, 54 Stat. 683; 1947 Reorg. Plan No. 3, § 4(a), eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 955; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1501 of this title.

§ 1504. Rental rates; exemption from limitations of United States Housing Act of 1937

Any contract made for financial assistance under the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.], may be revised so as to provide that the project involved will be assisted for any of the purposes of this subchapter. The Department of the Navy or Army or the Air Force or the Secretary of Housing and Urban Development, in the administration of any project developed for the purposes of this subchapter, shall fix rentals for persons engaged in national defense activities and their families which will be within their financial reach, and the Secretary of Housing and Urban Development, in any contract for financial assistance or any lease of such a project, shall require the fixing of such rentals. Projects developed by the Department of the Navy or Army or Air Force, or developed or assisted by the Secretary of Housing and Urban Development, for the purposes of this subchapter shall not be subject to the elimination requirements of sections 10(a) and 11(a) of said Act [42 U.S.C. 1410(a), 1411(a)], or to any provisions of section 9 of said Act [42 U.S.C. 1409] which would require any part of the development cost thereof to be met in any manner other than from funds loaned or furnished by the Secretary of Housing and Urban Development. Funds expended for the purposes of this subchapter shall be excluded in determining, for the purposes of section 21(d)[1] of said Act [42 U.S.C. 1421(d)], the amounts expended within each State. Except as otherwise provided in this subchapter or as may be inconsistent with this subchapter, all the provisions of title I[2] of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] shall apply to this subchapter. During the period when the President determines that in any locality there is an acute need for housing to assure the availability of dwellings for persons engaged in national defense activities, dwellings in a project developed or assisted in said locality which are devoted to the purposes of providing housing for persons engaged in national defense activities shall not be subject to sections 2(1) and 2(2) of the United States Housing Act of 1937, as amended [42 U.S.C. 1402(1), (2)], and during such period such projects shall be deemed projects of a low-rent character for the purposes of any of the applicable provisions in title I[2] of the United States Housing Act of 1937.

(June 28, 1940, ch. 440, title II, § 204, 54 Stat. 683; July 26, 1947, ch. 343, title II, §§ 205(a), 207(a), (f), 61 Stat. 501–503; 1947 Reorg. Plan No. 3, § 4(a), eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 955; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

Sections 2, 9, 10(a), and 11(a) of the United States Housing Act of 1937, referred to in text, is a reference to sections of the Act prior to the general revision of the Act by Pub. L. 93–383. The Act as so revised is classified to section 1437 et seq. of this title. Provisions of former sections 2, 9, and 10(a) are covered by sections 3, 4, and 5(a) of the Act which are classified to sections 1437a, 1437b, and 1437c(a) of this title.

Section 21(d) of said Act, referred to in text, was repealed by Pub. L. 87–70, title II, § 204(c), June 30, 1961, 75 Stat. 164.

CHANGE OF NAME

Department of the Air Force inserted to conform to section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, 502, and Secretary of Defense Transfer Orders No. 14, eff. July 1, 1948, and No. 40 [App. B(124)], July 22, 1949. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 and 8010 to 8013 continued Departments of the Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

[1] So in original. Reference should probably be to entire ''United States Housing Act of 1937'' because such Act is not divided into titles. See section 1437 et seq. of this title.

[1] See References in Text note below.

[2] So in original. Reference should probably be to entire ''United States Housing Act of 1937'' because such Act is not divided into titles. See section 1437 et seq. of this title.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1501 of this title.

§ 1505. Funds of Secretary of Housing and Urban Development

The Secretary of Housing and Urban Development may use for the purposes of this subchapter any of the funds or authorizations heretofore or hereafter made available to it.

(June 28, 1940, ch. 440, title II, § 205, 54 Stat. 683; 1947 Reorg. Plan No. 3, § 4(a), eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 955; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1501 of this title.

PROVISIONS INAPPLICABLE TO THIS SUBCHAPTER

Section 205 of act June 28, 1940, contained the following sentence: ''The provisions of title I of this Act shall not apply to this title [this subchapter].'' The provisions of title I of act June 28, 1940 were classified to the Code as section 40 of Title 41, Public Contracts, and sections 1151 to 1162 of Appendix to Title 50, War and National Defense.

§ 1506. Administration of utilities and utility services; granting of easements

(a) Any Federal agency (including any wholly owned Government corporation) administering utility installations connected to a utility system for housing under the jurisdiction of the Secretary of Housing and Urban Development is authorized—

(1) to continue to provide utilities and utility services to such housing as long as it is under the jurisdiction of the Secretary;

(2) to contract with the purchasers or transferees of such housing to continue the utility connection with such installations and furnish such utilities and services as may be available and needed in connection with such housing, for such period of time (not exceeding the period of Federal administration of such installations) and subject to such terms (including the payment of the pro rata cost to the Government or the market value of the utilities and services furnished, whichever is greater) as may be determined by the head of the agency;

(3) to dispose of such installations, when excess to the needs of the agency, and where not excess to grant an option to purchase, to the purchasers or transferees of such housing, for an amount not less than the appraised value of the installations and upon such terms and conditions as the head of the agency shall establish.

(b) Any Federal agency (including any wholly owned Government corporation) having under its jurisdiction lands across which run any part of a utility system for housing under the jurisdiction of the Secretary is authorized to grant to the Secretary, or to the purchasers or transferees of such housing, easements (which may be perpetual) on such land for utility purposes.

(June 28, 1948, ch. 688, § 2, 62 Stat. 1063; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

CODIFICATION

Section was not enacted as part of title II of act June 28, 1948, ch. 440, 54 Stat. 681, known as title II of the National Defense Expediting Act which comprises this subchapter.

TRANSFER OF FUNCTIONS

Functions of Public Housing Administration and Housing and Home Finance Agency (of which Public Housing Administration was a constituent agency) and of heads thereof transferred to Secretary of Housing and Urban Development by Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669, which is classified to section 3534(a) of this title. Section 9(c) of such act, set out as a note under section 3531 of this title, provided that references to Housing and Home Finance Agency or to any agency or officer therein are to be deemed to mean Secretary of Housing and Urban Development and that Housing and Home Finance Agency and Public Housing Administration have lapsed.

§ 1507. Omitted

CODIFICATION

Section, act Sept. 1, 1951, ch. 378, title VI, § 616, 65 Stat. 317, prohibited from Sept. 1, 1951 to June 30, 1953, initiation of projects, and waiver or suspension of income limitations contained in United States Housing Act of 1937, pursuant to authorization contained in sections 1501 and 1505 of this title.

SUBCHAPTER II—DEFENSE HOUSING

REVOLVING FUND

Establishment of revolving fund under which to account for assets and liabilities in connection with public war housing under sections 1521 to 1524 of this title, see section 1701g–5 of Title 12, Banks and Banking.

§ 1521. Omitted

CODIFICATION

Section, acts Oct. 14, 1940, ch. 862, title I, § 1, 54 Stat. 1125; Apr. 29, 1941, ch. 80, § 1, 55 Stat. 147; June 28, 1941, ch. 260, § 2, 55 Stat. 361; Jan. 21, 1942, ch. 14, §§ 1, 11, 56 Stat. 11, 13; Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73, which related to the powers of the Housing and Home Administrator respecting defense housing, was omitted pursuant to section 1(a)(12) of act July 3, 1952, ch. 570, 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, which provided that this section continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by Proc. No. 2914, 15 F.R. 9029, 64 Stat. A. 454, set out as a note preceding section 1 of the Appendix to Title 50, War and National Defense, or on such earlier date or dates as provided by Congress, but in no event beyond July 1, 1953.

§ 1522. Definitions; actions to recover developed property

As used in subchapters II to VII of this chapter, (a) the term ''persons engaged in national-defense activities'' shall include (1) enlisted men in the naval or military services of the United States; (2) employees of the United States in the Departments of the Navy, Army, and Air Force assigned to duty at naval or military reservations, posts, or bases; (3) workers engaged or to be engaged in industries connected with and essential to the national defense; (4) officers of the Army, Air Force, and Marine Corps not above the grade of captain, and officers of the Navy and Coast Guard, not above the grade of lieutenant, senior grade, assigned to duty at naval or

military reservations, posts, or bases, or to duty at defense industries: *Provided*, That any proceedings for the recovery of possession of any property or project developed or constructed under this subchapter shall be brought by the Secretary of Housing and Urban Development in the courts of the States having jurisdiction of such causes and the laws of the States shall be applicable thereto; (b) the term ''Federal agency'' means any executive department or office (including the President), independent establishment, commission, board, bureau, division, or office in the executive branch of the United States Government, or other agency of the United States, including corporations in which the United States owns all or a majority of the stock, directly or indirectly.

(Oct. 14, 1940, ch. 862, title I, §2, 54 Stat. 1126; Jan. 21, 1942, ch. 14, §2, 56 Stat. 11; Ex. Ord. No. 9070, §1, eff. Feb. 24, 1942, 7 F.R. 1529; July 26, 1947, ch. 343, title II, §§205(a), 207(a), (f), 61 Stat. 501–503; Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73; Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapter III of this chapter, referred to in text, was comprised of sections 1531 to 1536 of this title. Section 1532 was omitted from the Code pursuant to the time limitation set out in act July 3, 1952, ch. 570, §1(a)(12), 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, §1, 67 Stat. 18. Sections 1531, 1533, and 1534 were omitted from the Code upon the termination of section 1532. Section 1535 was omitted from the Code as executed. Section 1536 was omitted from the Code as not having been repeated in subsequent appropriation acts.

Subchapter VI of this chapter, referred to in text, was comprised of sections 1571 to 1576 of this title. Sections 1571 and 1573 have been omitted from the Code pursuant to the time limitation set out in act July 3, 1952, ch. 570, §1(a)(12), (21), 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, §1, 67 Stat. 18. Sections 1572 and 1575 were omitted upon the termination of sections 1571 and 1573. Section 1574 was repealed by act Oct. 31, 1951, ch. 654, §1(113), 65 Stat. 706. Section 1576 was omitted from the Code as not having been repeated in subsequent appropriation acts.

CHANGE OF NAME

Department of the Air Force inserted on authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, 502. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 and 8010 to 8013 continued Departments of the Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' for ''National Housing Administrator''.

1942—Act Jan. 21, 1942, inserted cl. (a)(4) and proviso.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Housing and Home Finance Agency transferred to Secretary of Housing and Urban Development by Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669, which is classified to section 3534(a) of this title. Section 9(c) of such act, set out as a note under section 3531 of this title, provided that references to Housing and Home Finance Agency or to any agency or officer therein are to be deemed to mean Secretary of Housing and Urban Development and that Housing and Home Finance Agency has lapsed.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§ 1523. Omitted

CODIFICATION

Section, acts Oct. 14, 1940, ch. 862, title I, §3, 54 Stat. 1126; Apr. 29, 1941, ch. 80, §2, 55 Stat. 147; June 28, 1941, ch. 260, §2, 55 Stat. 361; Jan. 21, 1942, ch. 14, §3, 56 Stat. 12; Ex. Ord. No. 9070, §1, eff. Feb 24, 1942, 7 F.R. 1529; Oct. 1, 1942, ch. 572, 56 Stat. 763; July 7, 1943, ch. 196, §§1, 2, 57 Stat. 387; July 1, 1944, ch. 374, 58 Stat. 720; Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73, which related to authorization of appropriations for the purpose of this subchapter, was omitted in view of the omission of section 1521 of this title.

PRIOR ADDITIONAL APPROPRIATIONS

Joint Res. Oct. 14, 1940, ch. 857, 54 Stat. 1115, $75,000,000.
Acts Mar. 1, 1941, ch. 9, 55 Stat. 14, $5,000,000.
May 24, 1941, ch. 132, 55 Stat. 199, $150,000,000.
Dec. 17, 1941, ch. 591, title III, 55 Stat. 818, $300,000,000.
Dec. 23, 1941, ch. 621, 55 Stat. 855, $300,000,000.
July 12, 1943, ch. 229, title I, 57 Stat. 540, $50,000,000.
Dec. 23, 1943, ch. 380, title I, 57 Stat. 618, $50,000,000.
Apr. 1, 1944, ch. 152, title I, 58 Stat. 153, $115,000,000.
June 28, 1944, ch. 304, title I, 58 Stat. 604.
Apr. 25, 1945, ch. 95 title I, 59 Stat. 82; July 5, 1945, ch. 271, title I, 59 Stat. 420, $84,373,000.

§ 1524. Declaration of policy; disposal of housing

It is declared to be the policy of this subchapter to further the national defense by providing housing in those areas where it cannot otherwise be provided by private enterprise when needed, and that such housing may be sold and disposed of as expeditiously as possible: *Provided*, That in disposing of said housing consideration shall be given to its full market value and said housing or any part thereof shall not, unless specifically authorized by Congress, be conveyed to any public or private agency organized for slum clearance or to provide subsidized housing for persons of low income: *Provided further*, That the Secretary of Housing and Urban Development may, in his discretion, upon the request of the Secretaries of the Army, Air Force or Navy transfer to the jurisdiction of the Army, Air Force or Navy Departments such housing constructed under the provisions of subchapters II to VII of this chapter as may be considered to be permanently useful to the Army, Air Force or Navy: *Provided further*, That whenever the Secretary of Housing and Urban Development disposes of any permanent house or structure containing not more than four family dwelling units under authority of this subchapter by offering such house or structure for

sale on an individual basis, he shall, when the purchaser is a veteran buying for his own occupancy, sell any such house or structure (1) at a purchase price not in excess of the apportioned cost of such house or structure and of the land and appurtenances allocated thereto, together with the apportioned share of the cost of all utilities and other facilities provided for and common to the project of which such house or structure is a part, or (2) at a purchase price not in excess of such considered full market value of such house or structure and the land, appurtenances, utilities and facilities allocated thereto, whichever purchase price is the less: *Provided further*, That, for the purposes of this section, housing constructed or acquired under the provisions of Public Law 781, Seventy-sixth Congress, approved September 9, 1940, or Public Law 9, 73, or 353, Seventy-seventh Congress, approved, respectively, March 1, 1941, May 24, 1941, and December 17, 1941, shall be deemed to be housing constructed or acquired under subchapters II to VII of this chapter.

(Oct. 14, 1940, ch. 862, title I, §4, as added Jan. 21, 1942, ch. 14, §4, 56 Stat. 12; amended Ex. Ord. No. 9070, §1, eff. Feb. 24, 1942, 7 F.R. 1259; July 26, 1947, ch. 343, title II, §§205(a), 207(a), (f), 61 Stat. 501–503; June 19, 1948, ch. 520, 62 Stat. 492; June 28, 1948, ch. 688, §3, 62 Stat. 1064; Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73; Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 of this title, and sections 1571 to 1576 of this title, respectively, and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

Public Law 781, Seventy-sixth Congress, approved September 9, 1940, referred to in text, is the Second Supplemental National Defense Appropriation Act, 1941, act Sept. 9, 1940, ch. 717, 54 Stat. 872. Section 201 thereof appropriated $100,000,000 to the President for allocation to the former ''War'' Department, and to the Navy Department, for the construction of housing necessary to the national defense program. This provision is not classified to the Code.

Public Laws 9, 73, or 353, Seventy-seventh Congress, referred to in text, refer to the following acts, respectively: Public Law 9, Urgent Deficiency Appropriation Act, 1941, act Mar. 1, 1941, ch. 9, 55 Stat. 14; Public Law 73, Additional Urgent Deficiency Appropriation Act, 1941, act May 24, 1941, ch. 132, 55 Stat. 197; and Public Law 353, Third Supplemental National Defense Appropriation Act, 1942, act Dec. 17, 1941, ch. 591, 55 Stat. 810. These three acts appropriated a total of $320,000,000 to the President for the purpose of providing housing necessary because of national defense activities and conditions arising out of World War II. These provisions are not classified to the Code, although all three acts are cited in a ''Prior Additional Appropriations'' note under section 1523 of this title.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' for ''National Housing Administrator'' wherever appearing.

1948—Act June 19, 1948, inserted proviso to permit sale of certain permanent war housing to veterans at a purchase price not in excess of cost of construction.

Act June 28, 1948, inserted last proviso.

CHANGE OF NAME

Department of the Air Force inserted to conform to section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, 502, and Secretary of Defense Transfer Orders No. 14, eff. July 1, 1948, and No. 40 [App. B(126)], July 29, 1949. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 and 8010 to 8013 continued Departments of the Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

SUBCHAPTER III—DEFENSE PUBLIC WORKS

§§ 1531 to 1536. Omitted

CODIFICATION

Section 1531, act Oct. 14, 1940, ch. 862, title II, §201, as added June 28, 1941, ch. 260, §3, 55 Stat. 361, which declared the policy of this subchapter was to provide means by which public works were to be acquired, operated, and maintained in the areas described in section 1532 of this title, and defined public works, was omitted in view of the omission of section 1532 of this title.

Section 1532, act Oct. 14, 1940, ch. 862, title II, §202, as added June 28, 1941, ch. 260, §3, 55 Stat. 362; amended Ex. Ord. No. 9070, §1, eff. Feb. 24, 1942, 7 F.R. 1529; June 30, 1949, ch. 288, title I, §103, 63 Stat. 380; Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73; 1950 Reorg. Plan No. 17, §1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269, which related to the powers of the Housing and Home Administrator respecting defense public works and defined private agency, was omitted pursuant to section 1(a)(12) of act July 3, 1952, ch. 570, 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, §1, 67 Stat. 18, which provided that this section continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by Proc. No. 2914, 15 F.R. 9029 64 Stat. A 454, set out as a note preceding section 1 of the Appendix to Title 50, War and National Defense, or on such earlier date or dates as provided by Congress, but in no event beyond July 1, 1953.

Section 1533, act Oct. 14, 1940, ch. 862, title II, §203, as added June 28, 1941, ch. 260, §3, 55 Stat. 362; amended Ex. Ord. No. 9070, §1, eff. Feb. 24, 1942, 7 F.R. 1259; June 30, 1949, ch. 288, title I, §103, 63 Stat. 380; Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73; 1950 Reorg. Plan No. 17, §1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269, which related to the terms to be observed in the application of this subchapter and restricted governmental supervision over schools and hospitals, was omitted in view of the omission of section 1532 of this title.

Section 1534, act Oct. 14, 1940, ch. 862, title II, §204, as added June 28, 1941, ch. 260, §3, 55 Stat. 363; amended Jan. 21, 1942, ch. 14, §5, 56 Stat. 12; July 15, 1943, ch. 240, 57 Stat. 565; July 3, 1945, ch. 264, §1, 59 Stat. 383, which authorized appropriations to carry out the purposes of this subchapter, was omitted in view of the omission of section 1532 of this title.

Section 1535, act Oct. 14, 1940, ch. 862, title II, §205, as added June 26, 1946, ch. 498, 60 Stat. 314, which authorized, for the fiscal year ending June 30, 1947, contributions for the operation and maintenance of school facilities in order to enable school authorities that were still over-burdened with war-incurred school enrollments to meet their needs during transition from war to peacetime conditions.

Section 1536, act July 31, 1953, ch. 302, title I, §101, 67 Stat. 305, which authorized the Administrator to trans-

fer projects or facilities to other departments or agencies which request a transfer, was enacted as a part of the First Independent Offices Appropriation Act, 1954, and not as a part of title II of the Lanham Public War Housing Act which comprised this subchapter, and was not repeated in subsequent appropriation acts.

LIMITATION ON USE OF FUNDS

Act July 15, 1943, as amended by act July 3, 1945, provided in part that no funds be used for loans, grants, or contributions for the operation day care or extended school services for children of mothers employed in war areas if and when the War-Area-Child-Care Act of 1943 (S. 1130, Seventy-eighth Congress, first session), becomes law, no grant, loan, or contribution for the maintenance or operation of public schools in any State be made without prior consultation with the State department of education and the United States Office of Education, and that none of the funds authorized herein be used to acquire public works already operated by public or private agencies, except where funds were allotted for substantial additions or improvements to such works with the consent of the owner, and that the total amount for contributions to public and private agencies for the maintenance and operation of public works after July 1, 1943, not exceed $120,000,000.

ADDITIONAL APPROPRIATIONS

Acts Apr. 25, 1945, ch. 95, title I, 59 Stat. 80; July 3, 1945, ch. 264, §§2, 3, 59 Stat. 383, provided in part for an additional $20,000,000 to enable the Federal Works Administrator to carry out the functions vested in him by sections 1531 to 1534 and 1541 of this title, which amount was to remain available during the continuance of the unlimited national emergency declared by the President on May 27, 1941 but which was not to be available for new projects after June 30, 1946 and of which amount $800,000 was to be available for administrative expenses, and the limitation of $80,000,000 in the First Supplemental Appropriation Act, 1945, act Mar. 31, 1945, ch. 47, 95 Stat. 46, on the total amount to be allocated for contributions to public and private agencies for the maintenance and operation of public works after July 1, 1943 be increased to $85,000,000, and that in making allocations from the funds herein appropriated for construction projects, priority be given to emergency projects involving an estimated cost to the Federal Government of less than $250,000.

SUBCHAPTER IV—GENERAL PROVISIONS AFFECTING SUBCHAPTERS II TO VII

§ 1541. Omitted

Section, acts Oct. 14, 1940, ch. 862, title III, §301, formerly §4, 54 Stat. 1127; renumbered title III, §301, and amended June 28, 1941, ch. 260, §4(a), 55 Stat. 363; Apr. 10, 1942, ch. 239, §1, 56 Stat. 212, which provided that when President declared that emergency declared by him on Sept. 8, 1939, ceased to exist, the authority contained in sections 1521, 1532, 1561, and 1562 of this title terminate and that property acquired or constructed under subchapters II to VII of this subchapter be disposed of as promptly as advantageous under circumstances and in public interest, was omitted pursuant to section 1(a)(12) of act July 3, 1952, ch. 570, 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, §1, 67 Stat. 18, which provided that this section continue in force until six months after the national emergency proclaimed by the President on Dec. 16, 1950 by Proc. No. 2914, 15 F.R. 9029, 64 Stat. A. 454, set out as a note preceding section 1 of the Appendix to Title 50, War and National Defense, or on such earlier date or dates as approved by Congress, but in no event beyond July 1, 1953.

§ 1542. Transfer of funds from other Federal agencies to Secretary of Housing and Urban Development

Where any Federal agency has funds for the provision of housing in connection with national-defense activities it may, in its discretion, make transfers of those funds, in whole or in part, to the Secretary of Housing and Urban Development, and the funds so transferred shall be available for, but only for, any or all of the objects and purposes of and in accordance with all the authority and limitations contained in subchapters II to VII of this chapter, and for administrative expenses in connection therewith.

(Oct. 14, 1940, ch. 862, title III, §302, formerly §5, 54 Stat. 1127; renumbered title III, §302, June 28, 1941, ch. 260, §4(b), 55 Stat. 363; amended Ex. Ord. No. 9070, §1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73; Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' for ''National Housing Administrator''.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§ 1543. Omitted

CODIFICATION

Section, acts Oct. 14, 1940, ch. 862, title III, §303, formerly §6, 54 Stat. 1127; renumbered title III, §303, June 28, 1941, ch. 260, §4(b), 55 Stat. 363; amended Ex. Ord. No. 9070, §1, eff. Feb. 24, 1942, 7 F.R. 1529; July 7, 1943, ch. 196, §3, 57 Stat. 388; Feb. 18, 1946, ch. 30, title I, §101, 60 Stat. 9; June 11, 1948, ch. 448, 62 Stat. 356; Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73, which related to disposition of moneys derived from rentals or operations of acquired or constructed property and to establishment, limitations on, and termination of reserves, was omitted in view of the omission of section 1541 of this title.

§ 1544. Power of Secretary of Housing and Urban Development to manage, convey, etc., housing properties

Notwithstanding any other provisions of law, whether relating to the acquisition, handling, or disposal of real or other property by the United States or to other matters, the Secretary of Housing and Urban Development, with respect to any property acquired or constructed under the provisions of subchapters II to VII of this chapter, is authorized by means of Government personnel, selected qualified private agencies, or public agencies (a) to deal with, maintain, operate, administer, and insure; (b) to pursue to final collection by way of compromise or otherwise, all claims arising therefrom; (c) to rent,

lease, exchange, sell for cash or credit, and convey the whole or any part of such property and to convey without cost portions thereof to local municipalities for street or other public use: *Provided*, That any such transaction shall be upon such terms, including the period of any lease, as may be deemed by the Secretary of Housing and Urban Development to be in the public interest: *Provided further*, That the Secretary of Housing and Urban Development shall fix fair rentals, on projects developed pursuant to subchapters II to VII of this chapter, which shall be based on the value thereof as determined by him, with power during the emergency, in exceptional cases, to adjust the rent to the income of the persons to be housed, and that rentals to be charged for Army, Air Force, and Navy personnel shall be fixed by the Departments of the Army, Air Force, and Navy: *Provided further*, That any lease authorized hereunder shall not be subject to the provisions of section 1302 of title 40. As used in this section the term ''local municipalities'' shall include the District of Columbia.

(Oct. 14, 1940, ch. 862, title III, §304, formerly §7, 54 Stat. 1127; renumbered title III, §304, June 28, 1941, ch. 260, §4(b), 55 Stat. 363; amended Jan. 21, 1942, ch. 14, §6, 56 Stat. 12; Ex. Ord. No. 9070, §1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 10, 1942, ch. 239, §2, 56 Stat. 212; July 26, 1947, ch. 343, title II, §§205(a), 207(a), (f), 61 Stat. 501–503; Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73; Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

CODIFICATION

In text, ''section 1302 of title 40'' substituted for ''section 321 of the Act of June 30, 1932 (47 Stat. 412)'' on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' for ''National Housing Administrator'' wherever appearing.

1942—Act Apr. 10, 1942, inserted last sentence.

Act Jan. 21, 1942, amended second proviso.

CHANGE OF NAME

Department of the Air Force inserted to conform to section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, and Secretary of Defense Transfer Orders No. 14, eff. July 1, 1948, and No. 40 [App. B(129)], July 29, 1949. Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by sections 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 and 8010 to 8013 continued Departments of the Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§1545. Omitted

CODIFICATION

Section, acts Oct. 14, 1940, ch. 862, title III, §305, formerly §8, 54 Stat. 1127; renumbered title III, §305, June 28, 1941, ch. 260, §4(b), 55 Stat. 363; amended Jan. 21, 1942, ch. 14, §7, 56 Stat. 12; Ex. Ord. No. 9070, §1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73, which related to utilization of Federal and local agencies and private services, was omitted in view of the omission of section 1541 of this title.

§1546. Payment of annual sums to local authorities in lieu of taxes

The Secretary of Housing and Urban Development shall pay from rentals annual sums in lieu of taxes to any State and/or political subdivision thereof, with respect to any real property acquired and held by him under subchapters II to VII of this chapter, including improvements thereon. The amount so paid for any year upon such property shall approximate the taxes which would be paid to the State and/or subdivision, as the case may be, upon such property if it were not exempt from taxation, with such allowance as may be considered by him to be appropriate for expenditure by the Government for streets, utilities, or other public services to serve such property. As used in this section the term ''State'' shall include the District of Columbia.

(Oct. 14, 1940, ch. 862, title III, §306, formerly §9, 54 Stat. 1127; renumbered title III, §306, and amended June 28, 1941, ch. 260, §4(b), 55 Stat. 363; Jan. 21, 1942, ch. 14, §8, 56 Stat. 12; Ex. Ord. No. 9070, §1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 10, 1942, ch. 239, §3(a), 56 Stat. 212; Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73; Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

CODIFICATION

Words ''including any Territory or possession of the United States'' appearing in text prior to amendment by act Jan. 21, 1942, inserted on authority of section 4(b) of act June 28, 1941, which provided that when used in this section the term '' 'State' includes any Territory or possession of the United States''.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' for ''National Housing Administrator''.

1942—Act Apr. 10, 1942, inserted last sentence.

Act Jan. 21, 1942, amended section generally.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§ 1547. Preservation of local civil and criminal jurisdiction and civil rights

Notwithstanding any other provision of law, the acquisition by the Secretary of Housing and Urban Development of any real property pursuant to subchapters II to VII of this chapter shall not deprive any State or political subdivision thereof, including any Territory or possession of the United States, of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property. As used in this section the term ''State'' shall include the District of Columbia.

(Oct. 14, 1940, ch. 862, title III, § 307, formerly § 10, 54 Stat. 1128; renumbered title III, § 307, and amended June 28, 1941, ch. 260, § 4(b), 55 Stat. 363; Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 10, 1942, ch. 239, § 3(b), 56 Stat. 212; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

CODIFICATION

Words ''including any Territory or possession of the United States'' were inserted upon authority of section 4(b) of act June 28, 1941, which provided that when used in this section the term '' 'State' includes any Territory or possession of the United States''.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' for ''National Housing Administrator''.

1942—Act Apr. 10, 1942, inserted last sentence.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§ 1548. Rules and regulations; standards of safety, convenience, and health

The Secretary of Housing and Urban Development is authorized to make such rules and regulations as may be necessary to carry out the provisions of subchapters II to VII of this chapter, and shall establish reasonable standards of safety, convenience, and health.

(Oct. 14, 1940, ch. 862, title III, § 308, formerly § 11, 54 Stat. 1128; renumbered title III, § 308, June 28, 1941, ch. 260, § 4(b), 55 Stat. 363; amended Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' and ''Housing and Home Finance Agency'' for ''National Housing Administrator'' and ''National Housing Agency'', respectively, wherever appearing.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§ 1549. Laborers and mechanics; wages; preference in employment

Notwithstanding any other provision of law, the wages of every laborer and mechanic employed on any construction, repair or demolition work authorized by subchapters II to VII of this chapter shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. Not less than the prevailing wages shall be paid in the construction of defense housing authorized herein. Preference in such employment shall be given to qualified local residents.

(Oct. 14, 1940, ch. 862, title III, § 309, formerly § 12, 54 Stat. 1128; renumbered title III, § 309, June 28, 1941, ch. 260, § 4(b), 55 Stat. 363; amended Jan. 21, 1942, ch. 14, § 9, 56 Stat. 12.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

AMENDMENTS

1942—Act Jan. 21, 1942, inserted last sentence.

§ 1550. Separability

If any provision of subchapters II to VII of this chapter, or the application thereof to any persons or circumstances, is held invalid, the remainder of said subchapters, or application of such provision to other persons or circumstances shall not be affected thereby.

(Oct. 14, 1940, ch. 862, title III, § 310, formerly § 13, 54 Stat. 1128; renumbered title III, § 310, June 28, 1941, ch. 260, § 4(b), 55 Stat. 363.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

§ 1551. Repealed. Aug. 2, 1954, ch. 649, title VIII, § 802(b), 68 Stat. 642

Section, act Oct. 14, 1940, ch. 862, title III, § 311, formerly § 14, 54 Stat. 1128; renumbered title III, § 311, June 28, 1941, ch. 260, § 4(b), 55 Stat. 363, related to reports to Congress. See section 1701*o* of Title 12, Banks and Banking.

§ 1552. Powers of certain agencies designated to provide temporary shelter

Any agency designated by the President to provide temporary shelter under the provisions of Public Law Numbered 9, Seventy-seventh Congress, Public Law Numbered 73, Seventy-seventh Congress, or the Third Supplemental National Defense Appropriations Act, 1942, shall have the same powers with respect to the management, maintenance, operation, and administration of such temporary shelter as are granted to the Secretary of Housing and Urban Development under section 1544 and section 1546 of this title with respect to projects constructed hereunder, and the provisions of section 1547 of this title shall apply to such temporary shelter projects and the occupants thereof.

(Oct. 14, 1940, ch. 862, title III, § 312, as added Jan. 21, 1942, ch. 14, § 10, 56 Stat. 13; amended Ex. Ord. No. 9070, § 1, eff. Feb. 24, 1942, 7 F.R. 1529; Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The provisions of Public Laws 9 and 73, referred to in text, are not classified to the Code. The Third Supplemental National Defense Appropriation Act, 1942, referred to in text, is Public Law 353, the relevant provisions of which are not classified to the Code. For further details, see note set out under section 1524 of this title.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' for ''National Housing Administrator''.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

§ 1553. Removal by Secretary of certain housing of temporary character; exceptions for local communities; report to Congress

Except as otherwise provided in subchapters II to VII of this chapter, the Secretary of Housing and Urban Development shall, as promptly as may be practicable and in the public interest, remove (by demolition or otherwise) all housing under his jurisdiction which is of a temporary character, as determined by him, and constructed under the provisions of this subchapter, Public Law 781, Seventy-sixth Congress, and Public Laws 9, 73, 353, Seventy-seventh Congress. Such removal shall, in any event, be accomplished not later than July 1, 1954 or by such later date as may be required because of extensions of time in accordance with section 1584 of this title, with the exception only of such housing as the Secretary of Housing and Urban Development, after consultation with local communities, finds is still urgently needed because of a particularly acute housing shortage in the area: *Provided*, That all such exceptions shall be reexamined annually by the Secretary of Housing and Urban Development and that all such exceptions and reexaminations shall be reported to the Congress. Notwithstanding any other provisions of law except provisions of law hereafter enacted expressly in limitation hereof, no Federal statute, or regulation thereunder, shall prohibit or restrict any action or proceeding to recover possession of any housing accommodations for the purpose of carrying out the provisions of this section or section 1584 of this title.

(Oct. 14, 1940, ch. 862, title III, § 313, as added July 7, 1943, ch. 196, § 4, 57 Stat. 388; amended June 28, 1948, ch. 688, § 4, 62 Stat. 1064; Oct. 25, 1949, ch. 729, § 5, 63 Stat. 906; Apr. 20, 1950, ch. 94, title II, §§ 202, 204, 64 Stat. 72, 73; Ex. Ord. No. 10385, Aug. 18, 1952, 17 F.R. 7525; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

The provisions of Public Law 781, and Public Laws 9, 73, 353, referred to in text, are not classified to the Code. For further details, see note set out under section 1524 of this title.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''December 31, 1952 or by such later date as may be required because of extensions of time in accordance with section 1584 of this title, with the exception only of such housing as the Administrator, after consultation with local communities, finds is still urgently needed because of a particularly acute housing shortage in the area'' for ''January 1, 1951, with the exception only of such housing as the Administrator, after consultation with local communities finds is still needed in the interest of orderly demobilization of the war effort,'' and inserted last sentence.

1949—Act Oct. 25, 1949, inserted ''January 1, 1951'' for ''January 1, 1950''.

1948—Act June 28, 1948, substituted ''January 1, 1950'' for ''two years after the President declares that the emergency declared by him on September 8, 1939, has ceased to exist''.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1522 of this title.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in interpretation of this section, the date July 25, 1947, shall be deemed to be date of termination of any state of war theretofore declared by Congress and of national emergencies proclaimed by President on Sept. 8, 1939, and May 27, 1941.

EX. ORD. NO. 10385. EXTENSION OF TIME

Ex. Ord. No. 10385, Aug. 18, 1952, affected section by extending time for the removal of temporary housing from Dec. 31, 1952, to July 1, 1954.

SUBCHAPTER V—DEFENSE HOUSING AND PUBLIC WORKS FOR DISTRICT OF COLUMBIA

§§ 1561 to 1563. Omitted

CODIFICATION

Section 1561, act Oct. 14, 1940, ch. 862, title IV, § 401, as added Apr. 10, 1942, ch. 239, § 4, 56 Stat. 212; amended Apr. 20, 1950, ch. 94, title II, § 204, 64 Stat. 73, which authorized appropriations for housing of United States

employees, was omitted pursuant to section 1(a)(12) of act July 3, 1952, ch. 570, 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, §1, 67 Stat. 18, which provided that this section and section 1562 of this title continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950 by Proc. No. 2914, 15 F.R. 9029, 64 Stat. A 454, set out as a note preceding section 1 of the Appendix to Title 50, War and National Defense, or on such earlier date or dates as provided by Congress, but in no event beyond July 1, 1953.

Section 1562, act Oct. 14, 1940, ch. 862, title IV, §402, as added Apr. 10, 1942, ch. 239, §4, 56 Stat. 213; amended June 30, 1949, ch. 288, title I, §103, 63 Stat. 380, authorized appropriations for public works projects. See par. set out above.

Section 1563, act Oct. 14, 1940, ch. 862, title IV, §403, as added Apr. 10, 1942, ch. 239, §4, 56 Stat. 213; amended June 30, 1949, ch. 288, title I, §103, 63 Stat. 380, which related to advancements to District of Columbia Commissioner for public works and reports to Congress, was omitted in view of the omission of sections 1561 and 1562 of this title.

§ 1564. Definitions

As used in subchapters II to VII of this chapter the term ''Federal Works Administrator'' or ''Administrator'', or ''Federal Works Agency'' shall, with respect to housing, be deemed to refer to the Housing and Home Finance Administrator or the Housing and Home Finance Agency, as the case may be. Such terms shall, with respect to public works and equipment therefor, be deemed to refer to the Federal Works Administrator or the Federal Works Agency, as the case may be.

(Oct. 14, 1940, ch. 862, title IV, §404, as added Apr. 10, 1942, ch. 239, §4, 56 Stat. 213; amended Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

AMENDMENTS

1950—Act Apr. 20, 1950, substituted ''Housing and Home Finance Administrator'' and ''Housing and Home Finance Agency'' for ''National Housing Administrator'' and ''National Housing Agency'', respectively.

TRANSFER OF FUNCTIONS

Functions of Housing and Home Finance Agency transferred to Secretary of Housing and Urban Development by Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669, which is classified to section 3534(a) of this title. Section 9(c) of such act, set out as a note under section 3531 of this title, provided that references to Housing and Home Finance Agency or to any agency or officer therein are to be deemed to mean Secretary of Housing and Urban Development and that Housing and Home Finance Agency has lapsed.

Functions under sections 1531 to 1534 of this title transferred from Federal Works Administrator to Administrator of General Services by act June 30, 1949, ch. 288, title I, §103(a), 63 Stat. 380, which was classified to section 753(a) of former Title 40, Public Buildings, Property, and Works, and subsequently transferred to Housing and Home Finance Administrator by Reorg. Plan No. 17 of 1950, §1, eff. May 24, 1950, 15 F.R. 3177, 64 Stat. 1269, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Federal Works Administrator relating to defense housing consolidated with other agencies into National Housing Agency during World War II by Ex. Ord. No. 9070.

SUBCHAPTER VI—HOUSING FOR DISTRESSED FAMILIES OF SERVICEMEN AND VETERANS

§§ 1571 to 1573. Omitted

CODIFICATION

Section 1571, acts Oct. 14, 1940, ch. 862, title V, §501, as added June 23, 1945, ch. 192, 59 Stat. 260; amended Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73, related to the construction of temporary housing facilities, and was omitted pursuant to section 1(a)(12) of act July 3, 1952, ch. 570, 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, §1, 67 Stat. 18, which provided that this section and sections 1572, 1573, 1575, and 1576 of this title continue in force until six months after the termination of the National emergency proclaimed by the President on Dec. 16, 1950 by Proc. No. 2914, 15 F.R. 9029, 64 Stat. A 454, set out as a note preceding section 1 of the Appendix to Title 50, War and National Defense, or on such earlier date or dates as provided by Congress, but in no event beyond July 1, 1953.

Section 1572, acts Oct. 14, 1940, ch. 862, title V, §502, as added June 23, 1945, ch. 192, 59 Stat. 260; amended Dec. 31, 1945, ch. 657, 59 Stat. 674; Mar. 28, 1946, ch. 118, §§1, 2, 60 Stat. 85; Aug. 8, 1946, ch. 917, §1, 60 Stat. 958; May 31, 1947, ch. 91, §1, 61 Stat. 128; Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73, related to the availability of funds for purposes of this subchapter, and was omitted in view of the termination of sections 1571 and 1573 of this title.

Section 1573, acts Oct. 14, 1940, ch. 862, title V, §503, as added June 23, 1945, ch. 192, 59 Stat. 260; amended June 30, 1953, ch. 174, §1, 67 Stat. 132, related to definitions for purposes of this subchapter, and was omitted pursuant to the time limitation set out in act July 3, 1952, ch. 570, §1(a)(21), 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, §1, 67 Stat. 18. See section 1571 of this title.

AVAILABILITY OF FUNDS

Act May 31, 1947, ch. 91, §2, 61 Stat. 128, provided that there were to be additional funds available under sections 1571, 1572, and 1573 of this title for necessary expenses incurred in completing the provision of temporary housing pursuant to a contract in writing executed prior to May 31, 1947, for reimbursement of certain eligible organizations for particular expenditures, and for payments to meet certain actual expenses prior to Apr. 1, 1947.

§ 1574. Repealed. Oct. 31, 1951, ch. 654, § 1(113), 65 Stat. 706

Section, act Oct. 14, 1940, ch. 862, title V, §504, as added Aug. 8, 1946, ch. 912, §2, 60 Stat. 958, related to the use or reuse of structures or facilities of Federal agencies as educational facilities for persons receiving training courses or education under title II of the Servicemen's Readjustment Act of 1944, as amended (act June 22, 1944, ch. 268, title II, 58 Stat. 284).

§§ 1575, 1576. Omitted

CODIFICATION

Section 1575, acts Oct. 14, 1940, ch. 862, title V, §505, as added June 28, 1948, ch. 688, §1, 62 Stat. 1062; amended Apr. 20, 1950, ch. 94, title II, §204, 64 Stat. 73; Oct. 26, 1951, ch. 577, §2, 65 Stat. 648, related to relinquishment of Government's rights in temporary housing on campuses or other educational lands.

Section 1576, acts Aug. 24, 1949, ch. 506, title II, §201, 63 Stat. 659; Sept. 6, 1950, ch. 896, ch. VIII, title II, §201, 64 Stat. 723, which was not repeated in the Independent Offices Appropriation Act, 1952, act Aug. 31, 1951, ch. 376, 65 Stat. 268, provided that application for relin-

quishment had to be filed by Dec. 30, 1950. Section was enacted as a part of act Aug. 24, 1949, popularly known as the Independent Offices Appropriation Act, 1951, and not as a part of title V of the Lanham Public War Housing Act, act Oct. 14, 1940, ch. 862, as added June 23, 1945, ch. 192, 59 Stat. 260, which comprises this subchapter.

SUBCHAPTER VII—DISPOSAL OF WAR AND VETERANS' HOUSING

§ 1581. Housing disposition

(a) Mandatory transfers

Upon the filing of a request therefor as herein prescribed, the Secretary of Housing and Urban Development shall (subject to the provisions of this section) relinquish and transfer, without monetary consideration, to any State or political subdivision thereof, local housing authority, local public agency, nonprofit organization, or educational institution, all contractual rights (including the right to revenues and other proceeds) and all property right, title, and interest of the United States in and with respect to (1) any temporary housing located on land owned or controlled by such transferee and in which the United States has no leasehold or other property interest, and (2) housing materials which have been made available to the transferee by the Secretary of Housing and Urban Development pursuant to section 1572 of this title.

(b) Transfer to provide housing for parents of deceased World War II servicemen

Upon the filing of a request therefor as herein prescribed, the Secretary of Housing and Urban Development may (subject to the provisions of this section) relinquish and transfer, without monetary consideration other than that specifically required by this subsection, to any State, county, municipality, or local housing authority, or to any educational institution where the housing involved is being operated for its student veterans or where the land underlying the housing is in the ownership of two or more educational institutions, or to any other local public agency or nonprofit organization where the housing involved has been made available by the United States to such agency or organization pursuant to section 1572 of this title or where the Secretary of Housing and Urban Development determines that the housing involved is urgently needed by parents of persons who served in the Armed forces at any time on or after September 16, 1940, and prior to July 26, 1947, or on or after June 27, 1950, and prior to such date thereafter as shall be determined by the President and died of service-connected illness or injury (in which case the preferences in subsection (d)(1) of this section shall not apply), all right, title, and interest of the United States in and with respect to any temporary housing (excluding commercial facilities which the Secretary of Housing and Urban Development determines are suitable for separate disposal and community facilities which the Secretary of Housing and Urban Development determines should be disposed of separately) located on land in which the United States has a property interest through ownership, lease, or otherwise, under the following conditions:

(1) If the land is owned by the United States and under the jurisdiction of the Secretary of Housing and Urban Development, the transferee shall have purchased such land from the Secretary of Housing and Urban Development at a price substantially equal to the cost to the United States of the land (including survey, title examination, and other similar expenses incident to acquisition but excluding the cost or value of all improvements thereto by the United States other than extraordinary fill), or, if the Secretary of Housing and Urban Development determines the amount of such cost to be nominal or not readily ascertainable, at a price which the Secretary of Housing and Urban Development determines to be fair and reasonable. Payment for such land shall be made in full at the time of sale or in not more than ten equal annual installments (the first of which shall be paid within one year from the date of conveyance) all of which shall be secured as determined by the Secretary of Housing and Urban Development with interest from the date of conveyance at the going Federal rate of interest at the time of conveyance.

(2) If the land is owned by the United States and not under the jurisdiction of the Secretary of Housing and Urban Development, the transferee shall have purchased such land from the Federal agency having jurisdiction thereof. The Federal agency having jurisdiction of any such land is authorized to sell and convey the same to any such transferee on the terms authorized herein except that the determinations required to be made by the Secretary of Housing and Urban Development shall be made by the agency having jurisdiction of such land.

(3) If the United States does not own the land but has an interest therein through lease or otherwise, the transferee shall (i) where it is not the landowner, obtain the right to possession of such land for a term satisfactory to the Secretary of Housing and Urban Development, (ii) obtain from the landowner a release (or, if the transferee is the landowner, furnish a release) of the United States from all liability in connection therewith, including any liability for removal of structures or restoration of the land, except for any rental or use payment due at the time of transfer, and (iii) reimburse the United States for the proportionate amount of any payments made by the United States for the right to use the land and for taxes or payments in lieu of taxes for any period extending beyond the time of the transfer, and (iv) if the interest of the United States is not under the jurisdiction of the Secretary of Housing and Urban Development, the transferee shall obtain a transfer or release of the interest of the United States from the Federal agency having jurisdiction, which transfers and releases by such Federal agencies are authorized on such terms as the head of the respective agency determines to be in the public interest.

(c) Requests for relinquishment and transfer

The filing of a request under subsections (a), (b), (g), or (h) of this section must be made on or before June 30, 1953, unless the Secretary of Housing and Urban Development shall, in any

specific case, authorize the filing of a request subsequent to such date but on or before June 30, 1951, and, in any such case, the Secretary of Housing and Urban Development may extend, for a specified period not beyond December 31, 1951, the time hereinafter prescribed for complying with all conditions to the relinquishment or transfer. Such request shall be in the form of a resolution adopted by the governing body of the applicant, except that, in the case of a State, such request may be in the form of a written request from the governor, and, in the case of a local housing authority (other than the Alaska Housing Authority), or a local public agency organized specifically and solely for the purpose of slum clearance and community redevelopment, shall be accompanied by a resolution of the governing body of the municipality or county approving the request for transfer. Such request shall be accompanied by either (1) a final opinion of the chief law officer or legal counsel of the applicant to the effect that it has legal authority to make the request, to accept the transfer of and operate any property involved, and to perform its obligations under this subchapter, or (2) a preliminary opinion of such officer or counsel concerning the legal authority of the applicant with respect to the proposed relinquishment or transfer including a statement of the reasons for not furnishing the final opinion with the request and the time required to furnish such opinion. If a request has been submitted as herein provided, the applicant shall comply with all conditions to the relinquishment or transfer (including the furnishing of the final legal opinion) on or before June 30, 1953: *Provided*, That, in any case where the applicant is unable to comply with all conditions to the relinquishment or transfer because of the need for the enactment of State legislation or charter amendment, such date shall be June 30, 1952, and may be extended by the Secretary of Housing and Urban Development, upon request in a particular case, to December 31, 1952. The Secretary of Housing and Urban Development shall act as promptly as practicable on any request which complies with the provisions of this section and is supported as herein required, and shall as promptly as practicable arrange for the making of any survey or the performance of other work necessary to the transfer: *Provided*, That, notwithstanding the provisions of this section, the Secretary of Housing and Urban Development may at any time, except with respect to housing for which a request has been or may be submitted under subsection (a) of this section, remove, dispose of, or retain any temporary housing, or part thereof, in accordance with any provision of subchapters II to VII of this chapter.

(d) Representations by transferee as to use of property; preferences

No relinquishment or transfer with respect to temporary housing shall be made under this section unless the transferee represents in its request therefor that it proposes, to the extent permitted by law:

(1) As among eligible applicants for occupancy in dwellings of given sizes and at specified rents, to extend the following preferences in the selection of tenants:

First, to families which are to be displaced by any low-rent housing project or by any public slum-clearance or redevelopment project initiated after January 1, 1947, or which were so displaced within three years prior to making application for admission to such housing; and as among such families first preference shall be given to families of disabled veterans whose disability has been determined by the Secretary of Veterans Affairs to be service-connected, and second preference shall be given to families of deceased veterans and servicemen whose death has been determined by the Secretary of Veterans Affairs to be service-connected, and third preference shall be given to families of other veterans and servicemen;

Second, to families of other veterans and servicemen; and as among such families first preference shall be given to families of disabled veterans whose disability has been determined by the Secretary of Veterans Affairs to be service-connected, and second preference shall be given to families of deceased veterans and servicemen whose death has been determined by the Secretary of Veterans Affairs to be service-connected: *Provided*, That if the transferee is an educational institution it may limit such preferences to student veterans and servicemen, and their families, and may, in lieu of such preferences, make available to veterans or servicemen and their families accommodations in any housing of the institution equal in number to the accommodations relinquished or transferred to it: *And provided further*, That, notwithstanding such preferences, if the transferee is a State, political subdivision, local housing authority, or local public agency, it will, in filling vacancies in housing transferred under subsection (b) of this section, give such preferences to military personnel and persons engaged in national defense or mobilization activities as the Secretary of Defense or his designee prescribes to such transferee.

(2) Not to dispose of any right, title, or interest in the property (by sale, transfer, grant, exchange, mortgage, lease, release, termination of the leasehold, or any other relinquishment of interest) either (i) for housing use on the present site or on any other site except to a State or political subdivision thereof, local housing authority, a local public agency, or an educational or eleemosynary institution, or (ii) for any other use unless the governing body of the municipality or county shall have adopted a resolution determining that, on the basis of local need and acceptability, the structures involved are satisfactory for such use and need not be removed: *Provided*, That this representation will not apply to any disposal through demolition for salvage, lease to tenants for residential occupancy, or lease of nondwelling facilities for the continuance of a use existing on the date of transfer, or where such disposal is the result of a bona fide foreclosure or other proceeding to enforce rights given as security for a loan to pay for land under this section: *And provided further*, That nothing contained in this

paragraph shall be construed as applicable to the disposition of any land or interest therein after the removal of the structures therefrom.

(3) To manage and operate the property involved in accordance with sound business practices, including the establishment of adequate reserves.

(4) Whenever the structures involved, or a substantial portion thereof, are terminated for housing use and are not to be used for a specific nonhousing use, to promptly demolish such structures terminated for housing use and clear the site thereof.

(e) Waiver of removal requirements

Any relinquishment or transfer by the Secretary of Housing and Urban Development under this section shall constitute a waiver of the requirements of section 1553 of this title (and any contractual obligations pursuant thereto) for removing the housing involved if the request for such relinquishment or transfer was made, as authorized herein, by the governing body of the municipality or county, or by the local housing authority, or, in other cases, if, prior to or within six months after the date of the relinquishment or transfer, there is filed with the Secretary of Housing and Urban Development a resolution of such governing body specifically approving (1) the unconditional waiver of such requirements or (2) the waiver of such requirements subject to conditions specified in the resolution. Any such conditions shall not affect the waiver of removal requirements hereunder, and the United States shall assume no responsibility for compliance therewith.

(f) Disposition of net revenue and proceeds; transfer charges

In any relinquishment or transfer under this section, the net revenues and other proceeds from such housing to which the United States is entitled on the basis of periodic settlements shall continue to accrue to the United States until the end of the month in which the relinquishment or transfer is made, and the obligation of the transferee to pay such accrued amounts shall not be affected by this section. The Secretary of Housing and Urban Development may charge to the transferee the cost to the United States of any survey, title information, or other item incidental to the transfer.

(g) Transfers for slum clearance and community redevelopment projects

Upon the filing of a request therefor as herein prescribed, the Secretary of Housing and Urban Development may (subject to the provisions of this section) relinquish and transfer, without monetary consideration other than payment for land involved as specifically required by subsection (b) of this section, to any local public agency organized specifically and solely for the purpose of slum clearance and community redevelopment in a municipality in which the total number of persons, who on December 31, 1948, were living in temporary family accommodations provided by the United States or any agency thereof since September 8, 1939, exceeded the total population of such municipality as shown by the 1940 census, all right, title, and interest of the United States in and with respect to any temporary housing located in such municipality under the conditions set forth in subsection (b) of this section. Notwithstanding the provisions of subsection (b) of this section, the Secretary of Housing and Urban Development shall not relinquish or transfer any right, title, or interest of the United States in and with respect to any temporary housing situated in such a municipality except as set forth in this subsection if at the time of the relinquishment or transfer there is in existence in such a municipality a local public agency organized specifically and solely for the purpose of slum clearance and community redevelopment.

(h) Transfers of temporary housing of masonry construction

Upon the filing of a request therefor as herein prescribed, the Secretary of Housing and Urban Development may (subject to the provisions of this section except the provisions of subsection (d) of this section) relinquish and transfer to any municipality, without monetary consideration other than payment for the land involved as specifically required by subsection (b) of this section, all right, title, and interest of the United States in and with respect to unoccupied temporary housing of masonry construction located in such municipality: *Provided*, That such housing has been wholly or partially stripped of trim and fixtures prior to April 20, 1950 and the municipality adopts a resolution determining that the structures, with proposed improvements, will be suitable for long-term housing use.

(Oct. 14, 1940, ch. 862, title VI, §601, as added June 28, 1948, ch. 688, §7, as added Apr. 20, 1950, ch. 94, title II, §201, 64 Stat. 59; amended Ex. Ord. No. 10284, §§1, 2, eff. Sept. 4, 1951, 16 F.R. 8971; Oct. 26, 1951, ch. 577, §2, 65 Stat. 648; Ex. Ord. No. 10339, eff. Apr. 7, 1952, 17 F.R. 3012; Ex. Ord. No. 10395, eff. Sept. 19, 1952, 17 F.R. 8449; Ex. Ord. No. 10425, eff. Jan. 16, 1953, 18 F.R. 405; Feb. 15, 1956, ch. 35, 70 Stat. 15; Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 102–54, §13(q)(6)(A), June 13, 1991, 105 Stat. 280.)

REFERENCES IN TEXT

Section 1572 of this title, referred to in subsecs. (a) and (b), has been omitted from the Code.

Subchapters III and VI of this chapter, referred to in subsec. (c), were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

CODIFICATION

In subsec. (c), ''June 30, 1953'' substituted for ''December 31, 1950'' the first time it appears and ''June 30, 1951'' the second time it appears pursuant to the executive orders cited as credits to this section. See notes set out below.

AMENDMENTS

1991—Subsec. (d)(1). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration'' wherever appearing.

1956—Subsec. (g). Act Feb. 15, 1956, limited restriction on transfer or relinquishment of temporary housing to a local public slum clearance agency to municipalities having such an agency at time of transfer or relinquishment.

1951—Subsec. (b). Act Oct. 26, 1951, substituted ''at any time on or after September 16, 1940, and prior to

July 26, 1947, or on or after June 27, 1950, and prior to such date thereafter as shall be determined by the President'' for ''during World War II''.

TRANSFER OF FUNCTIONS

Functions of Housing and Home Finance Agency and head thereof transferred to Secretary of Housing and Urban Development by Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669, which is classified to section 3534(a) of this title. Section 9(c) of such act, set out as a note under section 3531 of this title, provided that references to Housing and Home Finance Agency or to any agency or officer therein are to be deemed to mean Secretary of Housing and Urban Development and that Housing and Home Finance Agency and Public Housing Administration have lapsed.

EXECUTIVE ORDER NO. 10284

Ex. Ord. 10284, Sept. 4, 1951, which extended time for filing requests from Dec. 31, 1950, to Dec. 31, 1951, also extended time for compliance with all conditions to relinquishments or transfers from June 30, 1951, to June 30, 1952. See note set out under section 1589a of this title.

EXECUTIVE ORDER NO. 10339

Ex. Ord. No. 10339, Apr. 7, 1952, set out as a note under section 1589a of this title, extended time for filing requests under subsecs. (a), (b), and (g) from Dec. 31, 1951, to Dec. 31, 1952, and extended time for compliance with all conditions to relinquishments or transfers under subsecs. (a), (b), and (g) from June 30, 1952, to June 30, 1953.

EXECUTIVE ORDER NO. 10395

Ex. Ord. No. 10395, Sept. 19, 1952, set out as a note under section 1589a of this title, extended time for filing requests under subsec. (h) from Dec. 31, 1951, to Dec. 31, 1952, and extended time for compliance with all conditions to relinquishments or transfers under subsec. (h) from June 30, 1952, to June 30, 1953.

EXECUTIVE ORDER NO. 10425

Ex. Ord. No. 10425, Jan. 16, 1953, set out as a note under section 1589a of this title, extended time for filing requests under subsecs. (a), (b), (g), and (h) from Dec. 31, 1952, to June 30, 1953.

§ 1582. Temporary housing exempted from provisions of section 1553 of this title

The requirements of section 1553 of this title shall not apply to any temporary housing—

(a) for which such requirements have been waived pursuant to section 1575[1] or section 1581 of this title;

(b) transferred by the Secretary of Housing and Urban Development to the jurisdiction of the Department of the Army, the Navy, or the Air Force pursuant to section 1524 of this title;

(c) disposed of by the Secretary of Housing and Urban Development under subchapter II or IV of this chapter for long-term housing or nonhousing use without any requirement for removal where the governing body of the municipality or county has adopted a resolution determining that, on the basis of local need and acceptability, the structures involved are (1) satisfactory for such long-term use or (2) satisfactory for such long-term use if conditions prescribed in such resolution, affecting the physical characteristics of the project, are met: *Provided*, That any such conditions shall not affect the disposal of any temporary housing hereunder, and the United States shall assume no responsibility for compliance with such conditions: *And provided further*, That any housing disposed of for housing use in accordance with this subsection shall thereafter be deemed to be housing accommodations, the construction of which was completed after June 30, 1947, within the meaning of section 1884 of Appendix to title 50, relating to preference or priority to veterans or their families; or

(d) disposed of or relinquished by the Secretary of Housing and Urban Development prior to April 20, 1950, subject to such requirements or contractual obligations pursuant thereto, where the governing body of the municipality or county on or before December 31, 1950, adopts a resolution as provided in subsection (c) of this section; and any contract obligations to the Federal Government for the removal of such housing shall be relinquished upon the filing of such a resolution with the Secretary of Housing and Urban Development.

(Oct. 14, 1940, ch. 862, title VI, § 602, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Oct. 26, 1951, ch. 577, § 2, 65 Stat. 648; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Section 1575 of this title, referred to in subsec. (a), has been omitted from the Code.

AMENDMENTS

1951—Subsec. (c). Act Oct. 26, 1951, struck ''of World War II'' thus making section applicable to veterans of Korean war.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1583. Redetermination of demountable housing as temporary or permanent

With respect to any housing classified, prior to April 20, 1950, by the Secretary of Housing and Urban Development as demountable, the Secretary of Housing and Urban Development shall, as soon as practicable but not later in any event than December 31, 1950, and after consultation with the communities affected, redetermine (taking into consideration local standards and conditions) whether such housing is of a temporary or permanent character, and after such redetermination shall dispose of such housing in accordance with the provisions of this subchapter.

(Oct. 14, 1940, ch. 862, title VI, § 603, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

[1] See References in Text note below.

§ 1584. Removal of all dwelling structures on land under Secretary's control; temporary housing exempted; preference in fulfilling vacancies

With respect to temporary housing remaining under the jurisdiction of the Secretary of Housing and Urban Development on land under his control, the Secretary of Housing and Urban Development shall (1) permit vacancies, occurring or continuing after July 1, 1953, to be filled only by transfer of tenants of other accommodations in the same locality being removed as required by subchapters II to VII of this chapter; (2) notify, on or before March 31, 1954, all tenants to vacate the premises prior to July 1, 1954; (3) promptly after July 1, 1954, cause actions to be instituted to evict any tenants still remaining; and (4) remove (by demolition or otherwise) all dwelling structures as soon as practicable after they become vacant: *Provided*, That in any case where a request for relinquishment or transfer has been filed pursuant to section 1581 of this title and where under the provisions of section 1581(c) of this title the date for compliance with all conditions to the relinquishment or transfer shall have been extended, each of the foregoing dates shall be extended for a period of time equal to the period of the extension under section 1581(c) of this title: *And provided further*, That nothing heretofore in this section shall apply (1) to any temporary housing in any municipality in which the total number of persons, who on December 31, 1948, were living in temporary family accommodations provided by the United States or any agency thereof since September 8, 1939, exceeds 30 per centum of the total population of such municipality as shown by the 1940 census, nor (2) to any temporary housing as to which the local governing body has adopted a resolution as provided in section 1582(c) of this title, nor (3) to any temporary housing for which a request has been submitted in accordance with section 1581(b) of this title, but which has not been relinquished or transferred solely because the applicant has been unable to obtain from the landowner the right to possession of the land on reasonable terms as determined by the Secretary of Housing and Urban Development: *Provided*, That, in filling vacancies in such housing, the preferences set forth in section 1581(d)(1) of this title shall be applicable and that families within such preference classes shall be eligible for admission to such housing, nor (4) to any temporary housing in which accommodations have been reserved, prior to the enactment of this section, for veterans attending an educational institution if (i) such institution certifies that the accommodations are urgently needed for such veterans and submits facts showing, to the satisfaction of the Secretary of Housing and Urban Development, that all reasonable efforts have been made by the institution to find other accommodations for them and (ii) such institution agrees to reimburse the Secretary of Housing and Urban Development for any financial loss to the Secretary of Housing and Urban Development in the operation of the accommodations after June 30, 1951.

(Oct. 14, 1940, ch. 862, title VI, § 604, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended June 30, 1951, ch. 197, 65 Stat. 110; Sept. 1, 1951, ch. 378, title VI, § 603(a), 65 Stat. 314; Ex. Ord. No. 10284, §§ 3–5, eff. Sept. 4, 1951, 16 F.R. 8971; Ex. Ord. No. 10339, eff. Apr. 7, 1952, 17 F.R. 3012; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

AMENDMENTS

1951—Act Sept. 1, 1951, repealed former fourth and fifth provisos which related to adjustments in rentals that might be set for Government-owned temporary housing.

Act June 30, 1951, substituted ''August 15, 1951'' for ''July 1, 1951''.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

EXECUTIVE ORDER NO. 10284

Ex. Ord. No. 10284, Sept. 4, 1951, extended time for filling vacancies from Aug. 15, 1951, to July 1, 1952, for notices to vacate premises from Mar. 31, 1952, to Mar. 31, 1953, for time of vacating from July 1, 1952, to July 1, 1953, and for eviction from July 1, 1952, to July 1, 1953. See note set out under section 1589a of this title.

EXECUTIVE ORDER NO. 10339

Ex. Ord. No. 10339, Apr. 7, 1952, set out as a note under section 1589a of this title, extended time for filling vacancies from July 1, 1952, to July 1, 1953, for notices to vacate premises from Mar. 31, 1953, to Mar. 31, 1954, for time of vacating from July 1, 1953, to July 1, 1954, and for eviction from July 1, 1953, to July 1, 1954.

§ 1585. Acquisition of housing sites

(a) Lease, condemnation or purchase; temporary housing

The Secretary of Housing and Urban Development may continue by lease or condemnation any interest less than a fee simple in lands heretofore acquired by the Secretary of Housing and Urban Development for national defense or war housing or for veterans' housing (whether of permanent or temporary character), or held by any Federal agency in connection therewith, and may acquire, by purchase or condemnation, a fee simple title to or lesser interest in any such lands if the Secretary of Housing and Urban Development determines that the acquisition of such fee simple or lesser interest is necessary to protect the Government's investment or to maintain the improvements constructed thereon, or that the cost of fulfilling the Government's obligation to restore the property to its original condition would equal or exceed the cost of acquiring the title thereto.

In any city in which, on March 1, 1953, there were more than ten thousand temporary housing units held by the United States of America, or any two contiguous cities in one of which there were on such date more than ten thousand temporary housing units so held, the Secretary of Housing and Urban Development may acquire, by purchase or condemnation, a fee simple title

to any or all lands in which the Secretary holds a leasehold interest, or other interest less than a fee simple, acquired by the Federal Government for national defense or war housing or for veteran's housing where (1) the Secretary of Housing and Urban Development finds that the acquisition by the Secretary of a fee simple title in the land will tend to expedite the orderly disposal or removal of temporary housing under the Secretary's jurisdiction by facilitating the availability of improved sites for privately owned housing needed to replace such temporary housing, and will tend to expedite the transition of the city from a war-affected community containing, as of said date, a large number of temporary houses to a community having additional permanent, well-planned, residential neighborhoods, (2) the local governing body of the city makes a like finding and requests the Secretary of Housing and Urban Development to acquire such title to the land, and (3) the city has furnished assurances satisfactory to the Secretary of Housing and Urban Development that no individual who is employed by, or is an official of, the government of the city in which the land is located, or any agency thereof, shall be permitted, directly or indirectly, to have any financial interest in the purchase or redevelopment of such land: *Provided*, That such acquisitions by the Secretary of Housing and Urban Development pursuant to this sentence shall be limited to not exceeding four hundred and twenty-five acres of land in the general area in which approximately one thousand five hundred units of temporary housing held by the United States of America were unoccupied on said date: *And provided further*, That funds for such acquisition by the Secretary of Housing and Urban Development, which are authorized, pursuant to subsection (c) of this section and title II of the Independent Offices Appropriation Act, 1955, to be expended from the revolving fund established by section 1701g–5 of title 12, shall be taken into consideration, to the extent that they are needed, in making any determination pursuant to the second proviso under that section. All or any part of any land so acquired by the Secretary of Housing and Urban Development may, during the five year period following the date of its acquisition, be sold by the Secretary, through negotiated sale, to such city or any local public agency where (1) the city or local public agency has represented to the Secretary of Housing and Urban Development that it is duly authorized under State law to purchase and resell such land, that such land will be made available to private enterprise for development in accordance with local zoning and other laws, and that the aggregate of such land and any other land in the same city previously sold under the authority of this paragraph to the city or a local public agency will be developed for predominantly residential use, and (2) the city or local public agency has agreed to pay the fair market value of the land as determined by the Secretary of Housing and Urban Development, after giving consideration, among other relevant information, to the cost to the Federal Government of acquiring the fee simple title and of holding the land pending sale (including estimated amounts to cover legal and overhead expenses of such acquisition and to cover interest costs to the Federal Government of monies invested in the land pending sale). Any such negotiated sale of land to the city or a local public agency shall be made upon terms which require (1) that the city or public agency shall pay in cash at least one third of the price of the land upon its conveyance and the entire price within one year after its conveyance and (2) that any portion of the entire price not paid upon such conveyance shall be represented by an indebtedness which shall bear interest on outstanding balances at a rate of 4 per centum per annum and which shall be secured by a first mortgage lien upon the land or such portion of the land as the Secretary of Housing and Urban Development deems adequate to protect the financial interest of the Federal Government. The Secretary of Housing and Urban Development may, at any time that the Secretary deems it to be in the public interest to do so, dispose, under authority of other provisions of subchapters II to VII of this chapter, of any land acquired by the Secretary pursuant to this paragraph. Any land acquired by the Secretary of Housing and Urban Development pursuant to this paragraph which has not been disposed of within five years after its acquisition shall be disposed of by the Secretary as expeditiously as possible in the public interest in accordance with other authority contained in subchapters II to VII of this chapter. Notwithstanding the provisions of section 1546 of this title or any other provisions of law, no payments in lieu of taxes shall be made for any tax year beginning subsequent to the date of the acquisition of title to the property by the Secretary of Housing and Urban Development.

(b) Land rentals

In any case in which the Secretary of Housing and Urban Development holds, on or after April 1, 1950, an interest in land acquired by the Federal Government for national defense, war housing, or veterans' housing and where (1) the term of such interest (as prescribed in the taking or in the lease or other instruments) is for the ''duration of the emergency'' or ''duration of the war'', or ''duration of the emergency'' or ''duration of the war'' plus a specific period thereafter, or for some similarly prescribed term, and (2) the rental, award, or other consideration which the Federal Government is obligated to pay or furnish for such interest gives the owner of the land less than an annual return, after payment of real estate taxes, of 6 per centum of the lowest value placed on such land by an independent appraiser, hired by the Government to make such appraisal based on the value of the land before the acquisition of the Government's interest therein, plus 100 per centum of such value, the Secretary of Housing and Urban Development shall, upon request of the owner of the land and, notwithstanding any existing contractual or other rights or obligations, increase the amount of future payments for such interest in order to give the owner of the land a return for the Government's use thereof not exceeding the 6 per centum annual return described in (2) of this subsection: *Provided*, That this subsection shall not affect any payment heretofore made or any future payment accepted by an ob-

ligee, nor shall this subsection limit the consideration which may be paid for the use of any land beyond the existing term of the Government's interest therein.

(c) Reserve account; availability of moneys

Notwithstanding any other provisions of law unless hereafter enacted expressly in limitation hereof, moneys shall be deposited in the reserve account established pursuant to subsections (a) and (b) of section 1543 of this title (which account is continued subject to the limitation as to amount specified in subsection (c) of section 1543 of this title) and all moneys deposited in such reserve account shall be and remain available for any or all of the purposes specified in said subsections (a) or (b) of section 1543 of this title or in this section without regard to the time prescribed in subsection (c) of section 1543 of this title with respect to covering moneys in such account into miscellaneous receipts. Moneys in such reserve accounts shall also be available for the payment of necessary expenses (which shall be considered nonadministrative expenses) in connection with administering (1) transfers pursuant to section 1581 of this title, (2) redeterminations of the temporary or permanent character of demountable housing pursuant to section 1583 of this title, (3) changes in land tenure and revisions in the consideration payable to landowners pursuant to subsections (a) and (b) of this section, and (4) transfers of permanent war housing for low-rent use pursuant to section 1586 of this title. Moneys in such reserve account shall also be available for the purpose of making improvements to, or alterations of, any permanent housing or part thereof if (1) the dwelling structures therein are designed for occupancy by not more than four families and are to be sold separately and (2) such improvement or alteration is requested by the local governing body as a condition to the acceptance of the dedication of streets or utilities or is necessary for compliance with local law or regulation relating to the continued operation or occupancy of the housing by a purchaser.

(Oct. 14, 1940, ch. 862, title VI, §605, as added June 28, 1948, ch. 688, §7, as added Apr. 20, 1950, ch. 94, title II, §201, 64 Stat. 59; amended Sept. 1, 1951, ch. 378, title VI, §603(b), (c), 65 Stat. 314; Aug. 2, 1954, ch. 649, title VIII, §805(1), 68 Stat. 644; Aug. 11, 1955, ch. 783, title I, §108(d), 69 Stat. 638; Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Title II of the Independent Offices Appropriation Act, 1955, referred to in subsec. (a), is title II of act June 24, 1954, ch. 359, 68 Stat. 294. Provisions of title II that authorized funds for acquisition of housing sites are not classified to the Code.

Subchapters III and VI of this chapter, referred to in subsec. (a), were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

Section 1543 of this title, referred to in subsec. (c), was omitted from the Code.

AMENDMENTS

1955—Subsec. (a). Act Aug. 11, 1955, authorized Administrator to acquire a fee simple title to lands where he finds that such acquisition will tend to expedite the transition of the city from a war-affected community containing a large number of temporary houses to a community having additional permanent, well-planned, residential neighborhoods.

1954—Subsec. (a). Act Aug. 2, 1954, added second par.

1951—Subsec. (b). Act Sept. 1, 1951, in cl. (2), inserted ''plus 100 per centum of such value'', substituted ''shall'' for ''is authorized'' and ''increase'' for ''to increase''.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1586. Sale of specific housing projects

(a) Conditions precedent

The Secretary of Housing and Urban Development is specifically authorized to convey the following housing projects to the following local public housing agencies respectively, if—

(1) on or before January 30, 1953, (i) the conveyance is requested by the governing body of the municipality or county and (ii) the public housing agency has demonstrated to the satisfaction of the Secretary of Housing and Urban Development that there is a need for low-rent housing (as such term is defined in the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]) within the area of operation of such public housing agency which is not being met by private enterprise;

(2) the Secretary of Housing and Urban Development determines that the project requested will meet such need in whole or in part, and is suitable for low-rent housing use; and

(3) on or before June 30, 1953, the governing body of the municipality or county enters into an agreement with the public housing agency (satisfactory to the Secretary of Housing and Urban Development) providing for local cooperation and payments in lieu of taxes not in excess of the amount permitted by subsection (c)(5) of this section, and the public housing agency enters into an agreement with the Secretary of Housing and Urban Development (in accordance with subsection (c) of this section) or for the administration of the project:

State	*Project number*	*Local public housing agency*
Alabama	1041	Housing Authority of District of Birmingham.
	1061	Housing Authority of Greater Gadsden.
	1062	Housing Authority of Greater Gadsden.
	1031	Housing Board of Mobile.
	1033	Housing Board of Mobile.
	1034	Housing Board of Mobile.
	1035	Housing Board of Mobile.
	1036	Housing Board of Mobile.
	1101	Housing Board of Mobile.
	1102	Housing Board of Mobile.
	1072	Housing Authority of Sylacauga.
	1076	Housing Authority of Sylacauga.
	1073	Housing Authority of City of Talladega.
Arkansas	3023	Housing Authority of City of Conway.
California	4031	Housing Authority of City of Fresno.
	4161	Housing Authority of County of Kern.
	4141	Housing Authority of County of Kern.
	4103	Housing Authority of City of Los Angeles.
	4104	Housing Authority of City of Los Angeles.

State	Project number	Local public housing agency
	4108	Housing Authority of City of Los Angeles.
	4121	Housing Authority of City of Paso Robles.
	4171	Housing Authority of City of Richmond.
	4174	Housing Authority of City of Richmond.
Connecticut	6091	Housing Authority of City of Bristol.
	6024	Housing Authority of Town of East Hartford.
	6031	Housing Authority of City of New Britain.
	6032	Housing Authority of City of New Britain.
	6101	Housing Authority of City of New Haven.
	6041	Housing Authority of City of Waterbury.
	6213	Housing Authority of City of Waterbury.
District of Columbia.	49012	National Capital Housing Authority.
	49017	National Capital Housing Authority.
	49044	National Capital Housing Authority.
Florida	8052	Housing Authority of City of Jacksonville.
	8121	Housing Authority of City of Lakeland.
	8062	Housing Authority of City of Miami.
	8011	Housing Authority of City of Orlando.
	8082	Housing Authority of City of Pensacola.
	8084	Housing Authority of City of Pensacola.
	8085	Housing Authority of City of Pensacola.
	8131	Housing Authority of City of Sebring.
	8041	Housing Authority of City of West Palm Beach.
Georgia	9071	Housing Authority of City of Albany.
	9061	Housing Authority of Macon.
	9063	Housing Authority of Macon.
	9041	Housing Authority of Savannah.
	9042	Housing Authority of Savannah.
	9043	Housing Authority of Savannah.
Illinois	11081	Madison County Housing Authority.
	11082	Madison County Housing Authority.
	11111	Winnebago County Housing Authority.
	11112	Winnebago County Housing Authority.
Indiana	12071	Housing Authority of City of Fort Wayne.
	12021	Housing Authority of City of South Bend.
Louisiana	16051	Housing Authority of Parish of East Baton Rouge.
Maryland	18095	Housing Authority of Baltimore City.
	18096	Housing Authority of Baltimore City.
	18097	Housing Authority of Baltimore City.
	18098	Housing Authority of Baltimore City.
Massachusetts	19051	Boston Housing Authority.
	19021	Chicopee Housing Authority.
	19022	Chicopee Housing Authority.
	19061	Pittsfield Housing Authority.
	19023	Springfield Housing Authority.
Michigan	20042	Housing Commission of Detroit.
Nevada	26021	Housing Authority of City of Las Vegas.
New Hampshire	27021	Housing Authority of City of Manchester.
New Jersey	28044	Housing Authority of City of Camden.
	28021	Housing Authority of City of Long Branch.
	28072	Housing Authority of City of Newark.
	28111	Housing Authority of Town of Phillipsburg.
New York	30031	Buffalo Municipal Housing Authority.
	30032	Buffalo Municipal Housing Authority.
	30042	Elmira Housing Authority.
	30033	Lackawanna Municipal Housing Authority.
	30039	Lackawanna Municipal Housing Authority.
	30034	Niagara Falls Housing Authority.
	30071	Niagara Falls Housing Authority.
	30082	Massena Housing Authority.
North Carolina	31023	Housing Authority of City of Wilmington.
	31024	Housing Authority of City of Wilmington.
Ohio	33031	Canton Metropolitan Housing Authority.
	33033	Canton Metropolitan Housing Authority.
	33021	Cincinnati Metropolitan Housing Authority.
	33071	Cleveland Metropolitan Housing Authority.
	33074	Cleveland Metropolitan Housing Authority.
	33075	Cleveland Metropolitan Housing Authority.
	33112	Lorain Metropolitan Housing Authority.
	33261	Lorain Metropolitan Housing Authority.
	33262	Lorain Metropolitan Housing Authority.
	33041	Warren Metropolitan Housing Authority.
	33043	Warren Metropolitan Housing Authority.
Oregon	35021	Housing Authority of Portland.
Pennsylvania	36051	Housing Authority of County of Beaver.
	36058	Housing Authority of County of Beaver.
	36041	Housing Authority of Bethlehem.
	36042	Housing Authority of Bethlehem.
	36044	Housing Authority of Bethlehem.
	36151	Allegheny County Housing Authority.
	36152	Allegheny County Housing Authority.
	36061	Housing Authority of County of Lawrence.
	36021	Housing Authority of City of Erie.
	36031	Housing Authority of County of Lycoming.
	36011	Housing Authority of Philadelphia.
	36012	Housing Authority of Philadelphia.
	36014	Housing Authority of Philadelphia.
	36015	Housing Authority of Philadelphia.
	36016	Housing Authority of Philadelphia.
	36101	Housing Authority of City of Pittsburgh.
	36212	Allegheny County Housing Authority.
	36295	Housing Authority of City of York.
Rhode Island	37013	Housing Authority of City of Newport.
South Carolina	38023	Housing Authority of City of Charleston.
	38061	Housing Authority of City of Charleston.
	38041	Housing Authority of City of Spartanburg.
	38042	Housing Authority of City of Spartanburg.
Tennessee	40022	Jackson Housing Authority.
	40023	Milan Housing Authority.
	40011	Nashville Housing Authority.
	40025	Trenton Housing Authority.
Texas	41064	Housing Authority of City of Corpus Christi.
	41065	Housing Authority of City of Corpus Christi.
	41133	Housing Authority of City of Freeport.
	41031	Housing Authority of City of Houston.
	41131	Housing Authority of City of Lake Jackson.
	41101	Housing Authority of City of Mineral Wells.
	41103	Housing Authority of City of Mineral Wells.
	41072	Housing Authority of City of Orange.
	41032	Housing Authority of City of Pasadena.
	41141	Housing Authority of City of Texarkana.
	41121	Housing Authority of City of Wichita Falls.
Virginia	44131	Alexandria Redevelopment and Housing Authority.
	44132	Alexandria Redevelopment and Housing Authority.
	44133	Alexandria Redevelopment and Housing Authority.
	44135	Alexandria Redevelopment and Housing Authority.
	44136	Alexandria Redevelopment and Housing Authority.

State	Project number	Local public housing agency
	44065	Newport News Redevelopment and Housing Authority.
	44074	Norfolk Redevelopment and Housing Authority.
	44086	Portsmouth Redevelopment and Housing Authority.
Washington	45043	Housing Authority of City of Bremerton.
	45277N	Housing Authority of County of Clallam.
	45315N	Housing Authority of County of Clallam.
	45133	Housing Authority of County of King.
	45052	Housing Authority of City of Seattle.
	45053	Housing Authority of City of Seattle.
	45054	Housing Authority of City of Seattle.
	45055	Housing Authority of City of Seattle.
	45056	Housing Authority of City of Seattle.
	45122	Housing Authority of City of Vancouver.

In addition to the authority of the Secretary of Housing and Urban Development under the first sentence of this subsection, the Secretary is specifically authorized to convey any permanent war housing project to a local public housing agency if requested in writing, within sixty days after April 20, 1950, by such agency or the executive head of the municipality (or of the county or parish if such project is not in a municipality) within which the project is located, or by the Governor of the State where an agency of the State has authority to operate the project: *Provided*, That any conveyance by the Secretary of Housing and Urban Development pursuant to this sentence shall be subject to the same conditions and requirements as provided in this section with respect to a project specifically designated herein.

(b) Projects as "low-rent housing"

Upon the conveyance by the Secretary of Housing and Urban Development of any such project pursuant to the provisions of this section, such project shall constitute and be deemed to be ''low-rent housing'' as that term is used and defined in the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] (and to be a low-rent housing project assisted pursuant to that Act, within the meaning of section 1404a(b) of this title). Any instrument of conveyance by the Administrator stating that it is executed under subchapters II to VII of this chapter shall be conclusive evidence of compliance therewith insofar as any title or other interest in the property is concerned.

(c) Conditions and requirements of agreements

The agreement between the public housing agency and the Secretary of Housing and Urban Development required by subsection (a) of this section shall contain the following conditions and requirements, and may contain such further conditions, requirements, and provisions as the Secretary determines—

(1) during a period of forty years following the conveyance the project shall be administered as low-rent housing in accordance with subsections 2(1) and 2(2) of the United States Housing Act of 1937 [42 U.S.C. 1402(1) and (2)]: *Provided*, That if at any time during such period the public housing agency and the Secretary of Housing and Urban Development agree that the project, or any part thereof, is no longer suitable for use as low-rent housing, the project, or part thereof, shall with the approval of the Secretary of Housing and Urban Development be sold by the public housing agency after which the agreement shall be deemed to have terminated with respect to such project or part thereof except that the proceeds from such sale, after payment of the reasonable expense thereof, shall be paid to the Secretary of Housing and Urban Development, or, with the Secretary's approval, used to finance the repair or rehabilitation of a project or part thereof conveyed to the public housing agency under this section;

(2) the public housing agency shall, within six months following the conveyance, initiate a program for the removal of all families residing in the project on the date of conveyance who are ineligible under the provisions of the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] for continued occupancy therein, and shall have required such ineligible tenants to vacate their dwellings within eighteen months after the initiation of such program: *Provided*, That military personnel as designated by the Secretary of Defense or his designee shall not be subject to such removal until eighteen months after the date of conveyance;

(3) annually during the term of such agreement, the public housing agency shall pay to the Secretary of Housing and Urban Development all income from the project remaining after deducting the amounts necessary (as determined pursuant to regulations of the Secretary of Housing and Urban Development) for (i) the payment of reasonable and proper costs of operating, maintaining, and approving such project, (ii) the payments in lieu of taxes authorized hereunder, (iii) the establishment and maintenance of reasonable and proper reserves as approved by the Secretary of Housing and Urban Development, and (iv) the payment of currently maturing installments of principal of and interest on any indebtedness incurred by such public housing agency with the approval of the Secretary of Housing and Urban Development: *Provided*, That the provisions of this paragraph shall not be applicable to any project which is consolidated under a single contract with one or more low-rent projects being assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], and all income from any such project conveyed under this section may be commingled with funds of the project or projects with which it is consolidated and applied in accordance with the requirements of the consolidated contract and the provisions of section 10(c) of the said Act [42 U.S.C. 1410(c)];

(4) during the term of such agreement, the project shall be exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political subdivisions;

(5) for the tax year in which the conveyance is made and the next succeeding tax year annual payments in lieu of taxes may be made to the State, city, county, or other political sub-

divisions in amounts not in excess of the real property taxes which would be paid to such State, city, county, or other political subdivisions if the project were not exempt from taxation; and thereafter, during the term of such agreement, payments in lieu of taxes with respect to the project may be made in annual amounts which do not exceed 10 per centum of the annual shelter rents charged in such project;

(6) in selecting tenants for such project, the public housing agency shall give such preferences as are prescribed by subsection 10(g) of the United States Housing Act of 1937 [42 U.S.C. 1410g], except that for one year after the date of conveyance of a project, the public housing agency shall, to the extent permitted by law, give such preferences, by allocation or otherwise, to military personnel as the Secretary of Defense or his designee prescribes to the public housing agency; and

(7) upon the occurrence of a substantial default in respect to the requirements and conditions to which the public housing agency is subject (as such substantial default shall be defined in such agreement), the public housing agency shall be obligated at the option of the Secretary of Housing and Urban Development, either to convey title in any case where, in the determination of the Secretary of Housing and Urban Development, (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of this subchapter and the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], or to deliver possession to the Secretary of Housing and Urban Development of the project, as then constituted, to which such agreement relates: *Provided*, That in the event of such conveyance of title or delivery of possession, the Secretary of Housing and Urban Development may improve and administer such project as low-rent housing, and otherwise deal with such housing or parts thereof, subject, however, to the limitations contained in the applicable provisions of the United States Housing Act of 1937. The Secretary of Housing and Urban Development shall be obligated to reconvey or to redeliver possession of the project, as constituted at the time of reconveyance or redelivery, to such public housing agency or to its successor (if such public housing agency or a successor exists) upon such terms as shall be prescribed in such agreement and as soon as practicable after the Secretary of Housing and Urban Development shall be satisfied that all defaults with respect to the project have been cured, and that the project will, in order to fulfill the purposes of this subchapter and the United States Housing Act of 1937, thereafter be operated in accordance with the terms of such agreement. Any prior conveyances and reconveyances, deliveries and redeliveries of possession shall not exhaust the right to require a conveyance or delivery of possession of the project to the Secretary of Housing and Urban Development pursuant to this paragraph upon the subsequent occurrence of a substantial default.

(d) Disposition of payments

At the end of each fiscal year, the total amount of payments during such year to the Secretary of Housing and Urban Development in accordance with subsection (c) of this section shall be covered into the Treasury as miscellaneous receipts.

(Oct. 14, 1940, ch. 862, title VI, § 606, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended by Ex. Ord. No. 10284, §§ 6, 7, eff. Sept. 4, 1951, 16 F.R. 8971; Ex. Ord. No. 10339, eff. Apr. 7, 1952, 17 F.R. 3012; Ex. Ord. No. 10425, eff. Jan. 16, 1953, 18 F.R. 405; Pub. L. 86–372, title VIII, § 807, Sept. 23, 1959, 73 Stat. 687; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 93–383, title II, § 207, Aug. 22, 1974, 88 Stat. 669.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsecs. (a)(1), (b), and (c)(2), (3), (7), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note under section 1437 of this title and Tables.

Subchapters III and VI of this chapter, referred to in subsec. (b), were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

Subsections 2(1) and 2(2) and section 10 of the United States Housing Act of 1937, referred to in subsec. (c)(1), (3), and (6), are references to sections 2 and 10 of the Act prior to the general revision of the Act by Pub. L. 93–383. The Act as so revised is classified to section 1437 et seq. of this title. Provisions of former sections 2 and 10 are covered by sections 3 and 5 of the Act which are classified to sections 1437a and 1437d of this title.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–383, § 207(a), struck out provisions relating to payment of capital grants or annual contributions to low-rent housing projects.

Subsec. (c)(1). Pub. L. 93–383, § 207(b), inserted provision relating to financing repair or rehabilitation of a project or part of project conveyed to public housing agency under this section.

1959—Subsec. (b). Pub. L. 86–372, § 807(1), provided that if any such project is consolidated under a single annual contributions contract with any low-rent project being assisted with annual contributions under United States Housing Act of 1937, payment of any annual contribution on account of any project so assisted shall not be deemed to be a capital grant or annual contribution with respect to any project conveyed hereunder.

Subsec. (c)(3). Pub. L. 86–372, § 807(2), inserted proviso making provisions of subsec. (c)(3) inapplicable to any project which is consolidated under a single contract with one or more low-rent projects being assisted under United States Housing Act of 1937, and permitting commingling of income from such project with funds of project or projects with which it is consolidated.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

EXECUTIVE ORDER NO. 10284

Ex. Ord. No. 10284, Sept. 4, 1951, extended time for request for conveyance of housing projects from Dec. 31, 1950, to Dec. 31, 1951, and extended time for entering agreements with Public Housing Administration from June 30, 1951, to June 30, 1952. See note set out under section 1589a of this title.

EXECUTIVE ORDER NO. 10339

Ex. Ord. No. 10339, Apr. 7, 1952, set out as a note under section 1589a of this title, extended time for request for conveyance of housing projects from Dec. 31, 1951, to Dec. 31, 1952, and extended time for entering agreements with Public Housing Administration from June 30, 1952, to June 30, 1953.

EXECUTIVE ORDER NO. 10425

Ex. Ord. No. 10425, Jan. 16, 1953, set out as a note under section 1589a of this title, extended time for request for conveyance of housing projects from Dec. 31, 1952, to June 30, 1953.

§ 1587. Disposition of other permanent war housing

(a) Public interest

The Secretary of Housing and Urban Development shall, subject to the provisions of this section, dispose of permanent war housing, other than housing conveyed pursuant to section 1586 of this title, as promptly as practicable and in the public interest.

(b) Preference in sales to individuals

Preference in the purchase of any dwelling structure designed for occupancy by not more than four families and offered for separate sale shall be granted to occupants and to veterans over other prospective purchasers for such period as the Secretary of Housing and Urban Development may determine and in the following order:

(1) a veteran who occupies a unit in the dwelling structure to be sold and who intends to continue to occupy such unit;

(2) a nonveteran who occupies a unit in the dwelling structure to be sold and who intends to continue to occupy such unit;

(3) a veteran who intends to occupy a unit in the dwelling structure to be sold.

Subject to the above order of preference, the Secretary of Housing and Urban Development may establish subordinate preferences for any such dwelling structure. In the disposition of any dwellings under this section which were acquired by the United States from persons occupying the dwellings at the time of such acquisition, the Secretary of Housing and Urban Development may, notwithstanding the order of preference provided in this section, grant a first preference to such persons in the purchase of any of these dwellings for such period and under such conditions as the Secretary may determine to be appropriate and in the public interest. As used in this subsection, the term ''veteran'' shall include a veteran, a serviceman, or the family of a veteran or a serviceman, or the family of a deceased veteran or serviceman whose death has been determined by the Secretary of Veterans Affairs to be service-connected.

(c) Preference in sales of projects

In the case of any housing project required by this section to be disposed of, which is not offered for separate sale of separate dwelling structures designed for occupancy by not more than four families, such project may be sold as a whole or in such portions as the Secretary of Housing and Urban Development may determine. On such sales of an entire project or portions thereof consisting of more than one dwelling structure or of an individual dwelling structure designed for occupancy by more than four families, first preference shall be given for such period not less than ninety days nor more than six months from the date of the initial offering of such project or portions thereof as the Secretary of Housing and Urban Development may determine, to groups of veterans organized on a mutual ownership or cooperative basis (provided that any such group shall accept as a member of its organization, on the same terms, subject to the same conditions, and with the same privileges and responsibilities, required of, and extended to other members of the group any tenant occupying a dwelling unit in such project, portion thereof or building, at any time during such period as the Secretary of Housing and Urban Development shall deem appropriate, starting on the date of the announcement by the Secretary of Housing and Urban Development of the availability of such project, portion thereof or building for sale), except that a first preference for said period of not less than ninety days nor more than six months shall be given to any group organized on a mutual or cooperative basis, which, with respect to its proposed purchase of a specific housing project or portions thereof, has, prior to August 1, 1949, been granted an exception by the Secretary of Housing and Urban Development from the sales preference provisions of Public Regulation 1 of the Housing and Home Finance Agency and has been designated as a preferred purchaser.

(d) Equitable selection method for each preference class

The Secretary of Housing and Urban Development shall provide an equitable method of selecting the purchasers to apply when preferred purchasers (or groups of preferred purchasers) in the same preference class or containing members in the same preference class compete with each other.

(e) Veterans' preference

Any housing disposed of in accordance with this section shall after such disposal be deemed to be housing accommodations the construction of which was completed after June 30, 1947, within the meaning of section 1884 of Appendix to title 50, relating to preference or priority to veterans of World War II or their families.

(f) Terms of sales

Sales pursuant to this section shall be upon such terms as the Secretary of Housing and Urban Development shall determine: *Provided*, That full payment to the Government for the property sold shall be required within a period not exceeding twenty-five years with interest on unpaid balances at not less than 4 per centum per annum, except that in the case of projects initially programmed as mutual housing communities under the defense housing program, the terms of sale shall not require a down payment and shall provide for full payment to the United States over a period of forty-five years with interest on unpaid balances at not more than 3 per centum per annum.

(g) Disregard of preferences in certain cases

The Secretary of Housing and Urban Development may dispose of any permanent war housing

without regard to the preferences in subsections (b) and (c) of this section when the Secretary determines that (1) such housing, because of design or lack of amenities, is unsuitable for family dwelling use, or (2) it is being used at the time of disposition for other than dwelling purposes, or (3) it was offered, with preferences substantially similar to those provided in the Housing Act of 1950, to veterans and occupants prior to April 20, 1950.

(Oct. 14, 1940, ch. 862, title VI, § 607, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Mar. 10, 1954, ch. 61, 68 Stat. 26; Aug. 2, 1954, ch. 649, title VIII, § 805(2), 68 Stat. 644; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 102–54, § 13(q)(6)(B), June 13, 1991, 105 Stat. 281.)

REFERENCES IN TEXT

The Housing Act of 1950, referred to in subsec. (g), is act Apr. 20, 1950, ch. 94, 64 Stat. 48, as amended. For complete classification of this Act to the Code, see Short Title of 1950 Amendment note set out under section 1701 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration'' in last sentence.

1954—Subsec. (b). Act Mar. 10, 1954, in last paragraph, inserted sentence permitting Administrator to give, in the disposition of dwellings under this section which were acquired by the United States from persons occupying the dwellings at the time of such acquisition, a first preference to such persons in the purchase thereof.

Subsec. (g). Act Aug. 2, 1954, added subsec. (g).

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1588. Sale of vacant land to local housing authorities; sale of personal property

(a) Notwithstanding any other provision of law, any land acquired under subchapters II to VII of this chapter or any other Act in connection with war or veterans' housing, but upon which no dwellings are located at the time of sale, may be sold at fair value, as determined by the Secretary of Housing and Urban Development to any agency organized for slum clearance or to provide subsidized housing for persons of low income.

(b) Notwithstanding any other provision of law, any personal property held under subchapters II to VII of this chapter, and not sold with a project or building, may be sold at fair value, as determined by the Secretary of Housing and Urban Development to any agency organized for slum clearance or to provide subsidized housing for persons of low income. Any sale of personal property under this subsection shall be made on a cash basis, payable at the time of settlement.

(Oct. 14, 1940, ch. 862, title VI, § 608, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Aug. 11, 1955, ch. 787, 69 Stat. 668; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

AMENDMENTS

1955—Act Aug. 11, 1955, designated existing provisions as subsec. (a) and added subsec. (b).

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1589. Conveyance of land and nondwelling structures thereon to States for National Guard purposes

Notwithstanding any other provision of law, the Secretary of Housing and Urban Development is authorized to convey by quit claim deed, without consideration, to any State for National Guard purposes any land, together with any nondwelling structures thereon, held under subchapters II to VII of this chapter or any other Act in connection with war or veterans' housing: *Provided*, That the United States shall be saved harmless from or reimbursed for such costs incidental to the conveyance as the Secretary of Housing and Urban Development may deem proper: *Provided further*, That the conveyance of such land shall contain the express condition that if the grantee shall fail or cease to use such land for such purposes, or shall alienate (or attempt to alienate) such land, title thereto shall, at the option of the United States, revert to the United States.

(Oct. 14, 1940, ch. 862, title VI, § 609, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1589a. Extension by President of dates for disposal and other actions relating to housing under this subchapter

Notwithstanding any other provision of law, the President is authorized to extend, for such period or periods as he shall specify, the time within which any action is required or permitted to be taken by the Secretary of Housing and Urban Development or others under the provisions of this subchapter or section 1553 of this title (or any contract entered into pursuant thereto), upon a determination by him, after considering the needs of national defense and the effect of such extension upon the general housing situation and the national economy, that such extension is in the public interest.

(Oct. 14, 1940, ch. 862, title VI, § 611, as added Sept. 1, 1951, ch. 378, title VI, § 603(d), 65 Stat. 314; amended July 14, 1952, ch. 723, § 6, 66 Stat.

603; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

AMENDMENTS

1952—Act July 14, 1952, inserted ''or section 1553 of this title'' immediately before parenthetical clause, and substituted ''thereto'' for ''of this subchapter'' in parenthetical clause.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

EXECUTIVE ORDER NO. 10284

Ex. Ord. No. 10284, Sept. 1, 1951, 16 F.R. 8971, was superseded by Ex. Ord. No. 10339, Apr. 5, 1952, 17 F.R. 3012.

EX. ORD. NO. 10339. EXTENSIONS OF TIME

Ex. Ord. No. 10339, Apr. 7, 1952, 17 F.R. 3012, as amended by Ex. Ord. No. 10425, Jan. 16, 1953, 18 F.R. 405, provided:

1. [Superseded. Ex. Ord. No. 10425, Jan. 16, 1953, 18 F.R. 405.]

2. The time stipulated in subsection (c) of section 601 of the Act [section 1581(c) of this title] on or before which all conditions to relinquishments or transfers pursuant to requests made under subsections (a), (b) and (g) of that section must be complied with is extended to June 30, 1953.

3. The time stipulated in section 604 of the Act [section 1584 of this title] after which vacancies occurring or continuing in temporary housing remaining under the jurisdiction of the Housing and Home Finance Administrator on land under his control may be filled only by transfer of tenants of other accommodations in the same locality being removed as required by the Act is extended to July 1, 1953.

4. The time stipulated in section 604 of the Act [section 1584 of this title] on or before which all tenants must be notified to vacate the premises is extended to March 31, 1954; and the time required to be stipulated in such notices prior to which the premises must be vacated is extended to July 1, 1954.

5. The time stipulated in section 604 of the Act [section 1584 of this title] promptly after which actions must be instituted to evict any tenants still remaining is extended to July 1, 1954.

6. [Superseded. Ex. Ord. No. 10425, Jan. 16, 1953, 18 F.R. 405.]

7. The time stipulated in section 606(a)(3) of the Act [section 1586(a)(3) of this title] on or before which the governing body of the municipality or county must enter into an agreement with the public housing agency satisfactory to the Public Housing Administration providing for local cooperation and payments in lieu of taxes and on or before which the public housing agency must enter into an agreement with the Public Housing Administration for the administration of any project requested under section 606(a) of the Act [section 1586(a) of this title] is extended to June 30, 1953.

This order supersedes Executive Order 10284, dated September 1, 1951.

EX. ORD. NO. 10385. EXTENSION OF TIME RELATING TO THE REMOVAL OF CERTAIN TEMPORARY HOUSING

Ex. Ord. No. 10385, Aug. 16, 1952, 17 F.R. 7525, provided: The time stipulated in section 313 of the said act approved October 14, 1940, as amended [section 1553 of this title], within which, subject to the qualifications stated in the said section 313 [section 1553 of this title], housing of a temporary character under the jurisdiction of the Housing and Home Finance Administrator and constructed under certain laws must be removed is hereby extended from December 31, 1952, to July 1, 1954.

EX. ORD. NO. 10395. EXTENSION OF TIME

Ex. Ord. No. 10395, Sept. 18, 1952, 17 F.R. 8449, as amended by Ex. Ord. No. 10425, Jan. 16, 1953, 18 F.R. 405, provided:

1. [Superseded. Ex. Ord. No. 10425, Jan. 16, 1953, 18 F.R. 405.]

2. The time stipulated in subsection (c) of section 601 of the Act [section 1581(c) of this title] on or before which all conditions to relinquishments or transfers pursuant to requests made under subsection (h) of that section must be complied with is extended to June 30, 1953.

EX. ORD. NO. 10425. EXTENSIONS OF TIME

Ex. Ord. No. 10425, Jan. 16, 1953, 18 F.R. 405, provided:

1. The time stipulated in subsection (c) of section 601 of the act [section 1581(c) of this title] on or before which requests must be filed under subsections (a), (b), (g), and (h) of that section is extended to June 30, 1953.

2. The time stipulated in section 606(a)(1) of the action or before which conveyance of the housing projects listed in section 606(a)(3) of the act [section 1586(2)(1) of this title] must be requested by the governing body of the municipality or county and on or before which the need for low-rent housing must be demonstrated to the satisfaction of the Administrator is extended to June 30, 1953.

This order supersedes paragraphs 1 and 6 of Executive Order No. 10339 of April 5, 1952 [set out above], and paragraph 1 of Executive Order No. 10395 of September 18, 1952 [set out above].

EX. ORD. NO. 10462. DELEGATION OF FUNCTIONS TO THE HOUSING AND HOME FINANCE ADMINISTRATOR

Ex. Ord. No. 10462, June 19, 1953, 18 F.R. 3613, provided:

1. The Housing and Home Finance Administrator is hereby designated and empowered to perform, without the approval, ratification, or other action by the President, the functions vested in the President by section 611 of the act entitled ''An Act to expedite the provision of housing in connection with national defense, and for other purposes,'' approved October 14, 1940, as amended (42 U.S.C. 1589a).

2. The meaning of the terms ''perform'' and ''functions'' as used in this order shall be the same as the meaning of those terms as used in chapter 4 of title 3 of the United States Code.

§ 1589b. Establishment of income limitations for occupancy of housing; effect on prior tenants

The Secretary of Housing and Urban Development notwithstanding any other provisions of subchapters II to VII of this chapter or any other law except provisions hereafter enacted expressly in amendment hereof, is authorized to establish income limitations for occupancy of any housing held by him under subchapters II to VII of this chapter and, giving consideration to the ability of such tenants to obtain other housing accommodations, to require tenants, admitted to occupancy prior to the establishment of such income limitations and who have incomes in excess of limitations established by him, to vacate such housing.

(Oct. 14, 1940, ch. 862, title VI, § 612, as added Sept. 1, 1951, ch. 378, title VI, § 603(d), 65 Stat. 314; amended Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in text, were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1589c. Transfer of certain housing to Indians

Upon a certification by the Secretary of the Interior that any surplus housing, classified by the Secretary of Housing and Urban Development as demountable, in the area of San Diego, California, is needed to provide dwelling accommodations for members of a tribe of Indians in Riverside County or San Diego County or Imperial County, California, the Secretary of Housing and Urban Development is authorized, notwithstanding any other provision of law, to transfer and convey such housing without consideration to such tribe, the members thereof, or the Secretary of the Interior in trust therefor, as the Secretary may prescribe: *Provided*, That the term housing as used in this section shall not include land.

(Oct. 14, 1940, ch. 862, title VI, § 613, as added Aug. 2, 1954, ch. 649, title VIII, § 805(3), 68 Stat. 645; amended Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1589d. Undisposed housing

(a) Disposal to highest bidder; rejection of bids; disposal by negotiation

Notwithstanding the provisions of this or any other law, (1) any housing to be sold on-site determined by the Secretary of Housing and Urban Development to be permanent, located on lands owned by the United States and under the jurisdiction of the Secretary, which is not relinquished, transferred, under contract of sale, sold, or otherwise disposed of by the Secretary under other provisions of this subchapter or under the provisions of other law by January 1, 1957, except housing which is determined by the Secretary by that date to be suitable for sale in accordance with section 1587(b) of this title; and (2) any permanent housing to be sold off-site which is not relinquished, transferred, under contract of sale, sold, or otherwise disposed of prior to August 7, 1956, shall be disposed of, as expeditiously as possible, on a competitive basis to the highest responsible bidder upon such terms and after such public advertisement as the Secretary of Housing and Urban Development may deem in the public interest; except that the Secretary of Housing and Urban Development may reject any bid which the Secretary deems less than the fair market value of the property and may thereafter dispose of the property by negotiation.

(b) Contracts; time for passage of title; termination of purchaser's rights

Notwithstanding the provisions of this or any other law, all contracts entered into after August 7, 1956, for the sale, transfer, or other disposal of housing (other than housing subject to the provisions of section 1587(b) of this title) determined by the Secretary of Housing and Urban Development to be permanent, except contracts entered into pursuant to subsection (a) of this section, shall require that if title does not pass to the purchaser by April 1, 1957 (or within sixty days thereafter if such time is necessary to cure defects in title in accordance with the provisions of the contract), the rights of the purchaser shall terminate and thereafter the housing shall be sold under the provisions of subsection (a) of this section. For the purposes of this subsection, title shall be considered to have passed upon the execution of a conditional sales contract.

(c) Dates

The dates set forth in subsections (a) and (b) of this section shall not be subject to change by virtue of the provisions of section 1589a of this title.

(Oct. 14, 1940, ch. 862, title VI, § 614, as added Aug. 7, 1956, ch. 1029, title IV, § 407(a), 70 Stat. 1106; amended Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1590. Definitions

As used in this subchapter, the following terms shall have the meanings ascribed to them below, unless the context clearly indicates otherwise:

(a) The term ''governing body of the municipality or county'' means the governing body of the city, village, or other municipality having general governmental authority over the area in which the housing involved is located or, if the housing is not located in such a municipality, the term means the governing body of the county or parish in which the housing is located, or if the housing is located in the District of Columbia the term means the Council of the District of Columbia.

(b) The term ''housing'' means any housing under the jurisdiction of the Secretary of Housing and Urban Development (including trailers and other mobile or portable housing) constructed, acquired, or made available under subchapters II to VII of this chapter or Public Law 781, Seventy-sixth Congress, approved September 9, 1940, or Public Laws 9, 73, or 353, Seventy-seventh Congress, approved, respectively, March 1, 1941, May 24, 1941, and December 17, 1941, or any other law, and includes in addition to dwellings any structures, appurtenances, and other property, real or personal, acquired for or held in connection therewith.

(c) The term ''temporary housing'' means any housing (as defined in (b)) which the Secretary of Housing and Urban Development has determined to be ''of a temporary character'' pursuant to subchapters II to VII of this chapter and shall also include any such housing after rights thereto have been relinquished or transferred under this subchapter or section 1575 of this title.

(d) The terms ''veteran'' and ''serviceman'' mean ''veteran'' and ''serviceman'' as those terms are defined in the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.].

(e) The term ''State'' means any State, Territory, dependency, or possession of the United States, or the District of Columbia.

(f) The term ''going Federal rate of interest'' means ''going Federal rate'' as that term is defined in the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.].

(g) The term ''United States Housing Act of 1937'' [42 U.S.C. 1437 et seq.] means the provisions of that Act, including all amendments thereto, now or hereafter adopted, except provisions relating to the initial construction of a project or dwelling units.

(Oct. 14, 1940, ch. 862, title VI, § 610, as added June 28, 1948, ch. 688, § 7, as added Apr. 20, 1950, ch. 94, title II, § 201, 64 Stat. 59; amended Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; 1967 Reorg. Plan No. 3, § 402(432), eff. Nov. 3, 1967, 32 F.R. 11669, 81 Stat. 948; Pub. L. 93–198, title IV, § 401, Dec. 24, 1973, 87 Stat. 785.)

REFERENCES IN TEXT

Subchapters III and VI of this chapter, referred to in subsecs. (b) and (c), were comprised of sections 1531 to 1536 and 1571 to 1576, respectively, of this title and have been omitted from the Code. For further details, see note set out under section 1522 of this title.

The provisions of Public Law 781, and Public Laws 9, 73, or 353, referred to in subsec. (b), are not classified to the Code. For further details, see note set out under section 1524 of this title.

The United States Housing Act of 1937, referred to in subsecs. (d), (f), and (g), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

TRANSFER OF FUNCTIONS

In subsec. (a), ''Council of the District of Columbia'' substituted for ''District of Columbia Council'' pursuant to section 401 of Pub. L. 93–198. District of Columbia Council, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by Council of District of Columbia, as provided by section 401 of Pub. L. 93–198.

Previously, reference to Board of Commissioners of District of Columbia had been changed to District of Columbia Council pursuant to section 402(432) of Reorganization Plan No. 3 of 1967, 32 F.R. 11669, eff. Nov. 3, 1967, set out in the Appendix to Title 5, Government Organization and Employees, which transferred the regulatory and other functions of Board of Commissioners relating to functions under this subchapter previously vested in Board of Commissioners pursuant to this section to District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing District of Columbia Council, see section 201 of the Reorg. Plan No. 3 of 1967.

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

SUBCHAPTER VIII—CRITICAL DEFENSE HOUSING AREAS

§ 1591. Determination of critical areas by President; requisite conditions

(a) Notwithstanding any other provisions of this Act, the authority contained in titles II or III of this Act shall not be exercised in any area unless the President shall have determined that such area is a critical defense housing area.

(b) No area shall be determined to be a critical defense housing area pursuant to this section unless the President finds that in such area all the following conditions exist:

(1) a new defense plant or installation has been or is to be provided, or an existing defense plant or installation has been or is to be reactivated or its operation substantially expanded;

(2) substantial in-migration of defense workers or military personnel is required to carry out activities at such plant or installation; and

(3) a substantial shortage of housing required for such defense workers or military personnel exists or impends which impedes or threatens to impede activities at such defense plant or installation, or that community facilities or services required for such defense workers or military personnel are not available or are insufficient, or both, as the case may be.

(Sept. 1, 1951, ch. 378, title I, § 101, 65 Stat. 293; June 30, 1953, ch. 170, § 15, 67 Stat. 125.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (c), and (d), means act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as the Defense Housing and Community Facilities and Services Act of 1951. Title II of this Act enacted subchapter X (§ 1750 et seq.) of chapter 13 of Title 12, Banks and Banking, and amended sections 371, 1430, 1702, 1706, 1715c, 1715f, 1716, and 1743 of Title 12. Title III of this Act is classified generally to subchapter IX (§ 1592 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1501 of this title and Tables.

AMENDMENTS

1953—Subsec. (a). Act June 30, 1953, substituted ''titles II or III'' for ''titles II, III, or IV''.

INCONSISTENT LAWS

Section 617 of act Sept. 1, 1951, provided that: ''Insofar as the provisions of any other law are inconsistent with the provisions of this Act [see Short Title of 1951 Amendment note set out under section 1501 of this title], the provisions of this Act shall be controlling.''

SEPARABILITY

Second sentence of section 618 of act Sept. 1, 1951, provided that: ''Notwithstanding any other evidence of the intention of Congress, it is hereby declared to be the controlling intent of Congress that if any provisions of this Act [see Short Title of 1951 Amendment note set out under section 1501 of this title], or the application thereof to any persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its application to other persons and circumstances, but shall be confined in its operation to the provisions of this Act or the application thereof to the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered.''

§ 1591a. Construction by private enterprise

In order to assure that private enterprise shall be afforded full opportunity to provide the defense housing needed wherever possible, in any area which the President, pursuant to the authority contained in section 1591 of this title, has declared to be a critical defense housing area—

(a) Publication of number of units needed

first, the number of permanent dwelling units (including information as to types, rent-

als, and general locations) needed for defense workers and military personnel in such critical defense housing area shall be publicly announced and printed in the Federal Register by the Secretary of Housing and Urban Development;

(b) Suspension of credit restrictions

second, residential credit restrictions under the Defense Production Act of 1950, as amended [50 App. U.S.C. 2061 et seq.], (1) as to housing to be sold at $12,000 or less per unit or to be rented at $85 or less per unit per month, shall be suspended with respect to the number and types of housing units at the sales prices or rentals which the President determines to be needed in such area for defense workers or military personnel, and (2) as to all other housing, shall be relaxed in such manner and to such extent as the President determines to be necessary and appropriate to obtain the production of such housing needed in such area for defense workers or military personnel;

(c) Mortgage insurance

third, the mortgage insurance aids provided under title II of this Act shall be made available to obtain the production of housing needed in such area for defense workers or military personnel; and

(d) Construction by Government as conditional

fourth, no permanent housing shall be constructed by the Federal Government under the provisions of subchapter IX of this chapter except to the extent that private builders or eligible mortgagees have not, within a period of not less than ninety days (as the Secretary of Housing and Urban Development shall specify) following public announcement of the availability of such mortgage insurance aids under title II of this Act, indicated through bona fide applications (which meet the requirements as to types, rentals, or sales prices, and general locations) for exceptions from such residential credit restrictions or for mortgage insurance or guaranty that they will provide the housing determined to be needed in such area for defense workers and military personnel and publicly announced as provided by subsection (a) of this section.

(Sept. 1, 1951, ch. 378, title I, § 102, 65 Stat. 294; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The Defense Production Act of 1950, referred to in subsec. (b), is act Sept. 8, 1950, ch. 932, 64 Stat. 798, as amended, which is classified to section 2061 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 2061 of Title 50, Appendix, and Tables.

This Act, referred to in subsecs. (c) and (d), means act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as the Defense Housing and Community Facilities and Services Act of 1951. Title II of this Act enacted subchapter X (§ 1750 et seq.) of chapter 13 of Title 12, Banks and Banking, and amended sections 371, 1430, 1702, 1706, 1715c, 1715f, 1716, and 1743 of Title 12. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1501 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1591b. Community facilities or services by local agencies

In order to assure that community facilities or services required in connection with national defense activities shall, wherever possible, be provided by the appropriate local agencies with local funds, in any area which the President, pursuant to the authority contained in section 1591 of this title, has declared to be a critical defense housing area—

(a) Certification of necessity for loan

no loan shall be made pursuant to subchapter IX of this chapter for the provision of community facilities or equipment therefor required in connection with national defense activities in such area unless the chief executive officer of the appropriate political subdivision certifies, and the Secretary of Housing and Urban Development finds, that such facilities or equipment could not otherwise be provided when needed;

(b) Certification of necessity for grants or other payments

no grant or other payment shall be made pursuant to subchapter IX of this chapter for the provision, or for the operation and maintenance, of community facilities or equipment therefor, or for the provision of community services, required in connection with national defense activities in such area unless the chief executive officer of the appropriate political subdivision certifies, and the Secretary of Housing and Urban Development finds, that such community facilities or services cannot otherwise be provided when needed, or operated and maintained, as the case may be, without the imposition of an increased excessive tax burden or an unusual or excessive increase in the debt limit of the appropriate local agency; and

(c) Maintenance and operation of facilities

no community facilities or services shall be provided, and no community facilities shall be maintained and operated, by the United States directly except where the appropriate local agency is demonstrably unable to provide such facilities and services, or to maintain or operate such community facilities and services adequately with its own personnel, with loans, grants, or payments authorized to be made pursuant to subchapter IX of this chapter.

For the purposes of this section, the term ''chief executive officer of the appropriate political subdivision'' shall mean appropriate principal executive officer or governing body having primary responsibility with respect to the community facility or service involved, but shall not, in any case, mean any public housing authority, or its governing body, or any of its officers, acting in such capacity.

(Sept. 1, 1951, ch. 378, title I, § 103, 65 Stat. 294; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1591c. Expiration date; exception

After June 30, 1953, no construction of permanent housing may be begun under subchapter IX of this chapter. After July 31, 1954, (a) no mortgage may be insured under title IX of the National Housing Act, as amended [12 U.S.C. 1750 et seq.] (except (i) pursuant to a commitment to insure issued on or before such date or (ii) after July 31, 1954, and until August 1, 1955, during such period, or for such project or projects, as the President may designate hereunder or (iii) pursuant to a commitment to insure issued pursuant to the preceding clause (ii)), (b) no agreement may be made to extend assistance for the provision of community facilities or services under subchapter IX of this chapter, and no construction of temporary housing or community facilities by the United States may be begun under such subchapter, except after July 31, 1954, and until August 1, 1955, during such period, or for such project or projects, as the President may designate hereunder: *Provided*, That to the extent necessary to assure the adequate completion of any facilities for which prior agreements have been made under subchapter IX of this chapter, the Secretary of Housing and Urban Development may, at any time after July 31, 1954, enter into amendatory agreements under such subchapter involving the expenditure of additional Federal funds within the balance available therefor on or before such date, (c) no loan may be made or obligations purchased by the Secretary of Housing and Urban Development under section 1701g–1 of title 12 (except pursuant to a commitment issued on or before June 30, 1953, or to refinance an existing loan or existing obligations held under such section by said Secretary on June 30, 1953).

(Sept. 1, 1951, ch. 378, title I, § 104, 65 Stat. 295; June 30, 1953, ch. 170, § 16, 67 Stat. 125; June 29, 1954, ch. 410, § 3, 68 Stat. 320; Aug. 2, 1954, ch. 649, title I, § 129, 68 Stat. 609; June 30, 1955, ch. 251, § 2, 69 Stat. 225; Aug. 11, 1955, ch. 783, title I, § 105, 69 Stat. 637; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The National Housing Act, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title IX of the National Housing Act is title IX of act June 27, 1934, ch. 847, as added by act Sept. 1, 1951, ch. 378, title II, § 201, 65 Stat. 295, which is classified generally to subchapter X (§ 1750 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 1701g–1 of title 12, referred to in text, has been omitted from the Code.

AMENDMENTS

1955—Act Aug. 11, 1955, inserted item (iii) in cl. (a).

Act June 30, 1955, substituted ''August 1, 1955'' for ''July 1, 1955'' in two places in second sentence.

1954—Act Aug. 2, 1954, gave President standby authority to use mortgage insurance authority under title IX of the National Housing Act and the provisions in subchapter IX of this chapter for Federal aid in providing defense housing and community facilities and services in critical defense areas, in substitution for provisions under which authority for new projects under these two programs would have expired on June 30, 1954, and authorized the Housing and Home Finance Administrator to enter into amendatory agreements after June 30, 1954, to provide additional Federal assistance with respect to defense community facilities undertaken on or before such date where he finds it necessary to do so to assure the adequate completion of such facilities.

Act June 29, 1954, substituted ''July 31, 1954'' for ''June 30, 1954'' at beginning of second sentence.

1953—Act June 30, 1953, inserted sentence prohibiting the beginning of permanent housing construction under subchapter IX of this chapter, after June 30, 1953; substituted ''June 30, 1954'' for ''June 30, 1953'' at beginning of present second sentence and ''temporary housing'' for ''housing'' in cl. (b) of present second sentence; struck a former cl. (c) out of existing second sentence which provided that (after June 30, 1953) no land might be acquired by the Housing and Home Finance Administrator under subchapter X of this chapter; and redesignated cl. (d) as (c).

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1591d. Powers as cumulative and additional

Except as may be otherwise expressly provided in this Act, all powers and authorities conferred by this Act shall be cumulative and additional to and not in derogation of any powers and authorities otherwise existing.

(Sept. 1, 1951, ch. 378, title VI, § 618, 65 Stat. 317.)

REFERENCES IN TEXT

This Act, referred to in text, means act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as the Defense Housing and Community Facilities and Services Act of 1951. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1501 of this title and Tables.

CODIFICATION

Section constitutes the first sentence of section 618 of act Sept. 1, 1951. Remainder of section 618 is set out in Separability note under section 1591 of this title.

SUBCHAPTER IX—DEFENSE HOUSING AND COMMUNITY FACILITIES AND SERVICES

REVOLVING FUND

Establishment of revolving fund under which to account for assets and liabilities in connection with community facilities or defense housing under sections 1592 to 1592*o* of this title, see section 1701g–5 of Title 12, Banks and Banking.

EXPIRATION DATE

For prohibition of construction of housing or community facilities by United States under this subchapter, see section 1591c of this title.

§ 1592. Authority of Secretary

Subject to the provisions and limitations of this subchapter and subchapter VIII of this chapter, the Secretary of Housing and Urban Development (hereinafter referred to as the ''Secretary'') is authorized to provide housing in any areas (subject to the provisions of section 1591 of this title) needed for defense workers or military personnel or to extend assistance for the provision of, or to provide, community facilities

or services required in connection with national defense activities in any area which the President, pursuant to the authority contained in said section, has determined to be a critical defense housing area.

(Sept. 1, 1951, ch. 378, title III, § 301, 65 Stat. 303; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592a. Construction of housing

(a) Types, sales, preferences in purchases, and payment

Consistent with other requirements of national defense, any permanent housing constructed pursuant to the authority of this subchapter shall consist of one- to four-family dwelling structures (including row houses) so arranged that they may be offered for separate sale. All housing of permanent construction which is constructed or acquired under the authority of this subchapter shall be sold as expeditiously as possible and in the public interest taking into consideration the continuation of the need for such housing by persons engaged in national defense activities. All dwelling structures of permanent construction designed for occupancy by not more than four families (including row houses) shall be offered for sale, and preference in the purchase of any such dwelling structure shall be granted to occupants and to veterans over other prospective purchasers. As among veterans, preference in the purchase of any such dwelling structure shall be given to disabled veterans whose disability has been determined by the Secretary of Veterans Affairs to be service-connected. All dwelling structures of permanent construction in any housing project which are designed for occupancy by more than four families (and other structures in such project which are not sold separately) shall be sold as an entity. On such sales first preference shall be given for such period not less than ninety days nor more than six months from the date of the initial offering of such project as the Secretary of Housing and Urban Development may determine, to groups of veterans organized on a mutual ownership or cooperative basis (provided that any such group shall accept as a member of its organization, on the same terms, subject to the same conditions, and with the same privileges and responsibilities, required of, and extended to, other members of the group any tenant occupying a dwelling unit in such project, at any time during such period as the Secretary of Housing and Urban Development shall deem appropriate, starting on the date of the announcement by the Secretary of Housing and Urban Development of the availability of such project). The Secretary of Housing and Urban Development shall provide an equitable method of selecting the purchasers when preferred purchasers (or groups of preferred purchasers) in the same preference class or containing members in the same preference class compete with each other. Sales pursuant to this section shall be for cash or credit, upon such terms as the Secretary of Housing and Urban Development shall determine, and at the fair value of the property as determined by the Secretary: *Provided*, That full payment to the Government for the property sold shall be required within a period of not exceeding twenty-five years with interest on unpaid balances at not less than 4 per centum per annum.

(b) Temporary housing

Where it is necessary to provide housing under this subchapter in locations where, in the determination of the Secretary of Housing and Urban Development, there appears to be no need for such housing beyond the period during which it is needed for housing persons engaged in national defense activities, the provisions of section 1591a of this title shall not be applicable and temporary housing which is of a mobile or portable character or which is otherwise constructed so as to be available for reuse at other locations or existing housing built or acquired by the United States under authority of any other law shall be provided. Any temporary housing constructed or acquired under this subchapter which the Secretary of Housing and Urban Development determines to be no longer needed for use under this subchapter shall, unless transferred to the Department of Defense pursuant to section 1592e of this title, or reported as excess to the Administrator of the General Services Administration pursuant to the Federal Property and Administrative Services Act of 1949, as amended,[1] be sold as soon as practicable to the highest responsible bidder after public advertising, except that if one or more of such bidders is a veteran purchasing a dwelling unit for his own occupancy the sale of such unit shall be made to the highest responsible bidder who is a veteran so purchasing: *Provided*, That the Secretary of Housing and Urban Development may reject any bid for less than two-thirds of the appraised value as determined by him: *Provided further*, That the housing may be sold at fair value (as determined by the Secretary of Housing and Urban Development) to a public body for public use: *And provided further*, That the housing structures shall be sold for removal from the site, except that they may be sold for use on the site if the governing body of the locality has adopted a resolution approving use of such structures on the site.

(c) Preference in admission to occupancy pending ultimate disposition

When the Secretary of Housing and Urban Development determines that any housing provided under this subchapter is no longer required for persons engaged in national defense activities, preference in admission to occupancy thereof shall be given to veterans pending its ultimate sale or disposition in accordance with the provisions of this subchapter. As among veterans, preference in admission to occupancy shall be given to disabled veterans whose disability has been determined by the Secretary of Veterans Affairs to be service-connected.

(Sept. 1, 1951, ch. 378, title III, § 302, 65 Stat. 303; July 14, 1952, ch. 723, § 5, 66 Stat. 602; Aug. 2, 1954,

[1] See References in Text note below.

ch. 649, title VIII, § 806, 68 Stat. 645; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 102–54, § 13(q)(7)(A), June 13, 1991, 105 Stat. 281.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (b), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1991—Subsecs. (a), (c). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

1954—Subsec. (b). Act Aug. 2, 1954, in second sentence, substituted provisions prescribing the disposition procedure, for former provisions that the housing should ''be disposed of by the Administrator not later than the date, and subject to the conditions and requirements, hereafter prescribed by the Congress: *Provided*, That nothing in this sentence shall be construed as prohibiting the Administrator from removing any such housing by demolition or otherwise prior to the enactment of such legislation''.

1952—Subsec. (b). Act July 14, 1952, inserted ''or existing housing built or acquired by the United States under authority of any other law'' after ''for reuse at other locations''.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592b. Maximum construction costs; determinations by Secretary in certain condemnation proceedings

The cost per family dwelling unit for any housing project constructed under the authority of this subchapter shall not exceed an average of $9,000 for two-bedroom units in such project, $10,000 for three-bedroom units in such project, and $11,000 for four-bedroom units in such project: *Provided*, That the Secretary of Housing and Urban Development may increase any such dollar limitation by not exceeding $1,000 in any geographical area where he finds that cost levels so require: *Provided further*, That in the Territories and possessions of the United States the Secretary of Housing and Urban Development may increase any such dollar limitation by 50 per centum: *And provided further*, That for the purposes of this section the cost of any land acquired by the Secretary of Housing and Urban Development upon the filing of a declaration of taking in proceedings for the condemnation of fee title shall be considered to be the amount determined by the Secretary of Housing and Urban Development upon the basis of competent appraisal, to be the value thereof.

(Sept. 1, 1951, ch. 378, title III, § 303, 65 Stat. 305; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592c. Loans or grants for community facilities or services; conditions; maximum amounts; annual adjustments

In furtherance of the purposes of this subchapter and subject to the provisions hereof, the Secretary of Housing and Urban Development may make loans or grants, or other payments, to public and nonprofit agencies for the provision, or for the operation and maintenance, of community facilities and equipment therefor, or for the provision of community services, upon such terms and in such amounts as the Secretary of Housing and Urban Development may consider to be in the public interest: *Provided*, That grants under this subchapter to any local agency for hospital construction may be made only after such action by the local agency to secure assistance under Public Law 725, Seventy-ninth Congress, approved August 13, 1946, as amended, or Public Law 380, Eighty-first Congress, approved October 25, 1949, as is determined to be reasonable under the circumstances, and only to the extent that the required assistance is not available to such local agency under said Public Law 725, or said Public Law 380, as the case may be: *Provided further*, That grants or payments for the provision, or for the maintenance and operation, of community facilities or services under this section shall not exceed the portion of the cost of the provision, or the maintenance and operation, of such facilities or services which the Secretary of Housing and Urban Development estimates to be attributable to the national defense activities in the area and not to be recovered by the public or nonprofit agency from other sources, including payments by the United States under any other provisions of this Act or any other law: *And provided further*, That any such continuing grant or payment shall be reexamined and adjusted annually upon the basis of the ability of the agency to bear a greater portion of the cost of such maintenance, operation, or services as a result of increased revenues made possible by such facility or by such defense activities.

(Sept. 1, 1951, ch. 378, title III, § 304, 65 Stat. 305; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

Public Law 725, Seventy-ninth Congress, approved Aug. 13, 1946, as amended, referred to in text, means act Aug. 13, 1946, ch. 958, 60 Stat. 1041, as amended, known as the Hospital Survey and Construction Act. For complete classification of this Act to the Code, see Tables.

Public Law 380, Eighty-first Congress, approved Oct. 25, 1949, referred to in text, means act Oct. 25, 1949, ch. 722, 63 Stat. 898, known as the Hospital Survey and Construction Amendments of 1949, which amended sections 291, 291d, 291f, 291g, 291h, 291i, 291j, 291n, and enacted provisions set out as notes under section 291 of this title. For complete classification of this Act to the Code, see Tables.

This Act, referred to in text, means act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as the Defense Housing and Community Facilities and Services Act of 1951. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1501 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

HOSPITAL CONSTRUCTION; REVIVAL AND EXTENSION OF LOAN AND GRANT AUTHORITY; EXPIRATION DATE; APPROPRIATION

Act Aug. 7, 1956, ch. 1029, § 605, 70 Stat. 1114, as amended by Pub. L. 86–372, title VIII, § 804, Sept. 23, 1959, 73 Stat. 687; Pub. L. 87–70, title IX, § 906, June 30, 1961, 75 Stat. 191, provided that notwithstanding section 1591c of this title, the authority under this section to make loans or grants, or other payments to public and nonprofit agencies for the construction of hospitals was revived and extended with respect to public and nonprofit agencies which had, prior to June 30, 1953, applied under this section, for such loans or grants, or other payments for the construction of hospitals, and had been denied such loans or grants, or other payments solely because of the unavailability of funds for such purpose, provided that the authority granted by this section was to expire June 30, 1962, and authorized appropriations for fiscal years ending June 30, 1962.

§ 1592d. Secretary's powers with respect to housing, facilities, and services

(a) Planning, acquisition, construction, etc.

With respect to any housing or community facilities or services which the Secretary of Housing and Urban Development is authorized to provide, or any property which he is authorized to acquire, under this Act, the Secretary of Housing and Urban Development is authorized by contract or otherwise (without regard to section 5 of title 41, section 322 of the Act of June 30, 1932 (47 Stat. 412), as amended,[1] the Federal Property and Administrative Services Act of 1949, as amended,[1] and prior to the approval of the Attorney General) to make plans, surveys, and investigations; to acquire (by purchase, donation, condemnation or otherwise), construct, erect, extend, remodel, operate, rent, lease, exchange, repair, deal with, insure, maintain, convey, sell for cash or credit, demolish, or otherwise dispose of any property, land, improvement, or interest therein; to provide approaches, utilities, and transportation facilities; to procure necessary materials, supplies, articles, equipment, and machinery; to make advance payments for leased property; to pursue to final disposition by way of compromise or otherwise, claims both for and against the United States (exclusive of claims in excess of $5,000 arising out of contracts for construction, repairs, and the purchase of supplies and materials, and claims involving administrative expenses) which are not in litigation and which have not been referred to the Department of Justice; and to convey without cost to States and political subdivisions and instrumentalities thereof property for streets and other public thoroughfares and easements for public purposes: *Provided*, That any instrument executed by the Secretary of Housing and Urban Development and purporting to convey any right, title or interest in any property acquired pursuant to this subchapter or subchapter X of this chapter shall be conclusive evidence of compliance with the provisions thereof insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned. Notwithstanding any provisions of this Act, housing or community facilities constructed by the United States pursuant to the authority contained herein shall conform to the requirements of State and local laws, ordinances, rules, or regulations relating to health and sanitation, and, to the maximum extent practicable, taking into consideration the availability of materials and the requirements of national defense, any housing or community facilities, except housing or community facilities of a temporary character, constructed by the United States pursuant to the authority contained herein shall conform to the requirements of State or local laws, ordinances, rules, or regulations relating to building codes.

(b) Condemnation

Before condemnation proceedings are instituted pursuant to this subchapter or subchapter X of this chapter an effort shall be made to acquire the property involved by negotiation unless, because of reasonable doubt as to the identity of the owner or owners, because of the large number of persons with whom it would be necessary to negotiate, or for other reasons, the effort to acquire by negotiation would involve, in the judgment of the Secretary of Housing and Urban Development, such delay in acquiring the property as to be contrary to the interest of national defense. In any condemnation proceeding instituted pursuant to this subchapter or subchapter X of this chapter, the court shall not order the party in possession to surrender possession in advance of final judgment unless a declaration of taking has been filed, and a deposit of the amount estimated to be just compensation has been made, under section 3114(a) to (d) of title 40, providing for such declarations. Unless title is in dispute, the court, upon application, shall promptly pay to the owner at least 75 per centum of the amount so deposited, but such payment shall be made without prejudice to any party to the proceeding.

(c) Return to original owner in certain cases

If any real property acquired under this subchapter or subchapter X of this chapter is retained after June 30, 1954, without having been used for the purposes of this Act, the Secretary of Housing and Urban Development shall, if the original owner desires the property and pays the fair value thereof, return such property to the owner. In the event the Secretary of Housing and Urban Development and the original owner do not agree as to the fair value of the property, the fair value shall be determined by three appraisers, one of whom shall be chosen by the Secretary of Housing and Urban Development, one by the original owner, and the third by the first two appraisers; the expenses of such determination shall be paid in equal shares by the Government and the original owner.

(Sept. 1, 1951, ch. 378, title III, § 305, 65 Stat. 305; June 30, 1953, ch. 170, § 17, 67 Stat. 125; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; Pub. L. 97–214, § 10(b)(1), July 12, 1982, 96 Stat. 175.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (c), means act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as

[1] See References in Text note below.

the Defense Housing and Community Facilities and Services Act of 1951. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1501 of this title and Tables.

Section 322 of the Act of June 30, 1932, referred to in subsec. (a), is section 322 of act June 30, 1932, ch. 314, 47 Stat. 412, which was classified to section 278a of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 100–678, §7, Nov. 17, 1988, 102 Stat. 4052.

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

Subchapter X of this chapter, referred to in subsecs. (a), (b), and (c), was in the original, title IV of this Act, meaning title IV of act Sept. 1, 1951, ch. 378, 65 Stat. 310, as amended, which enacted sections 1593 to 1593d of this title and was repealed by act June 30, 1953, ch. 170, §19, 67 Stat. 126.

CODIFICATION

In subsec. (b), ''section 3114(a) to (d) of title 40'' substituted for ''the first section of the Act of February 26, 1931 (46 Stat. 1421)'' on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–214 struck out reference to section 1136 of the Revised Statutes, which had been enacted as sections 4774 and 9774 of title 10 by act Aug. 10, 1956, ch. 1041, as amended by Pub. L. 93–166, §509(c), (e), Nov. 29, 1973, 87 Stat. 677, 678.

1953—Subsec. (c). Act June 30, 1953, substituted ''June 30, 1954'' for ''June 30, 1953''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of Title 10, Armed Forces.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592e. Interagency transfers of property; application of rules and regulations

Any Federal agency may, upon request of the Secretary of Housing and Urban Development, transfer to his jurisdiction without reimbursement any lands, improved or unimproved, or other property real or personal, considered by the Secretary of Housing and Urban Development to be needed or useful for housing or community facilities, or both, to be provided under this subchapter, and the Secretary of Housing and Urban Development is authorized to accept any such transfers. The Secretary of Housing and Urban Development may also utilize any other real or personal property under his jurisdiction for the purpose of this subchapter without adjustment of the appropriations or funds involved. Any property so transferred or utilized, and any funds in connection therewith, shall be subject only to the authorizations and limitations of this subchapter. The Secretary of Housing and Urban Development may, in his discretion, upon request of the Secretary of Defense or his designee, transfer to the jurisdiction of the Department of Defense without reimbursement any land, improvements, housing, or community facilities constructed or acquired under the provisions of this subchapter and considered by the Department of Defense to be required for the purposes of the said Department. Upon the transfer of any such property to the jurisdiction of the Department of Defense, the laws, rules, and regulations relating to property of the Department of Defense shall be applicable to the property so transferred, and the provisions of this subchapter and the rules and regulations issued thereunder shall no longer apply.

(Sept. 1, 1951, ch. 378, title III, §306, 65 Stat. 306; Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592f. Preservation of local civil and criminal jurisdiction, and civil rights; jurisdiction of State courts

Notwithstanding any other provisions of law, the acquisition by the United States of any real property pursuant to this subchapter or subchapter X of this chapter shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property, or impair the civil or other rights under the State or local law of the inhabitants of such property. Any proceedings by the United States for the recovery of possession of any property or project acquired, developed, or constructed under this subchapter or subchapter X of this chapter may be brought in the courts of the States having jurisdiction of such causes.

(Sept. 1, 1951, ch. 378, title III, §307, 65 Stat. 307.)

REFERENCES IN TEXT

Subchapter X of this chapter, referred to in text, was in the original ''title IV of this Act'', meaning title IV of act Sept. 1, 1951, ch. 378, 65 Stat. 310, as amended, which enacted sections 1593 to 1593d of this title and was repealed by act June 30, 1953, ch. 170, §19, 67 Stat. 126.

§ 1592g. Payment of annual sums to local authorities in lieu of taxes

The Secretary of Housing and Urban Development shall pay from rentals annual sums in lieu of taxes and special assessments to any State and/or political subdivision thereof, with respect to any real property, including improvements thereon, acquired and held by the Secretary under this subchapter for residential purposes (or for commercial purposes incidental thereto), whether or not such property is or has been held in the exclusive jurisdiction of the United States. The amount so paid for any year upon such property shall approximate the taxes and special assessments which would be paid to the State and/or subdivision, as the case may be, upon such property if it were not exempt from taxation and special assessments, with such al-

lowance as may be considered by the Secretary to be appropriate for expenditures by the Federal Government for the provision or maintenance of streets, utilities, or other public services to serve such property.

(Sept. 1, 1951, ch. 378, title III, § 308, 65 Stat. 307; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592h. Conditions and requirements as to contracts; utilization of existing facilities; disposition of facilities constructed by United States

In carrying out this subchapter—

(a) notwithstanding any other provisions of this subchapter, so far as is consistent with emergency needs, contracts shall be subject to section 5 of title 41;

(b) the cost-plus-a-percentage-of-cost system of contracting shall not be used, but contracts may be made on a cost-plus-a-fixed-fee basis: *Provided*, That the fixed fee shall not exceed 6 per centum of the estimated cost;

(c) wherever practicable, existing private and public community facilities shall be utilized or such facilities shall be extended, enlarged, or equipped in lieu of constructing new facilities; and

(d) all right, title, and interest of the United States in and to any community facilities constructed by the United States pursuant to the authority contained in this subchapter shall (if such agency is willing to accept such facility and operate the same for the purpose for which it was constructed) be disposed of to the appropriate State, city, or other local agency having responsibility for such type of facility in the area not later than one year after June 30, 1953, and subject to the conditions and requirements hereafter prescribed by the Congress.

(Sept. 1, 1951, ch. 378, title III, § 309, 65 Stat. 307.)

§ 1592i. Laborers and mechanics

(a) Wages; overtime

Notwithstanding any other provision of law, the wages of every laborer and mechanic employed on any construction, maintenance, repair, or demolition work authorized by this subchapter shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

(b) Applicability of other laws

The provisions of sections 3141–3144, 3146, and 3147 of title 40; of section 874 of title 18; and of section 3145 of title 40, shall apply in accordance with their terms to work pursuant to this subchapter.

(c) Stipulations in loan contracts as to wages; certification

Any contract for loan or grant, or both, pursuant to this subchapter shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to sections 3141–3144, 3146, and 3147 of title 40, shall be paid to all laborers and mechanics employed in the construction of the project at the site thereof; and the Secretary of Housing and Urban Development shall require certification as to compliance with the provisions of this subsection prior to making any payment under such contract.

(d) Reports by contractors and subcontractors to Secretary of Labor

Any contractor engaged in the development of any project financed in whole or in part with funds made available pursuant to this subchapter shall report monthly to the Secretary of Labor, and shall cause all subcontractors to report in like manner, within five days after the close of each month and on forms to be furnished by the United States Department of Labor, as to the number of persons on their respective payrolls on the particular project, the aggregate amount of such payrolls, the total man-hours worked, and itemized expenditures for materials. Any such contractor shall furnish to the Department of Labor the names and addresses of all subcontractors on the work at the earliest date practicable.

(e) Prescription of standards, regulations, and procedures by Secretary of Labor

The Secretary of Labor shall prescribe appropriate standards, regulations, and procedures, which shall be observed by the Secretary of Housing and Urban Development in carrying out the provisions of this subchapter (and cause to be made by the Department of Labor such investigations) with respect to compliance with and enforcement of the labor standards provisions of this section, as the Secretary deems desirable.

(Sept. 1, 1951, ch. 378, title III, § 310, 65 Stat. 307; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

CODIFICATION

In subsec. (b), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act (49 Stat. 1011), as amended'' and ''section 3145 of title 40'' substituted for ''title 40, United States Code, section 276c'', and, in subsec. (c), ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Davis-Bacon Act, as amended'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592j. Disposition of moneys derived from rentals, operation, and disposition of property

Moneys derived from rentals, operation, or disposition of property acquired or constructed under the provisions of this subchapter shall be available for expenses of operation, maintenance, improvement, and disposition of any such property, including the establishment of necessary reserves therefor and administrative expenses in connection therewith: *Provided*, That such moneys derived from rentals, operation, or disposition may be deposited in a common fund

account or accounts in the Treasury: *And provided further*, That the moneys in such common fund account or accounts shall not exceed $5,000,000 at any time, and all moneys in excess of such amount shall be covered into miscellaneous receipts.

(Sept. 1, 1951, ch. 378, title III, § 311, 65 Stat. 308.)

§ 1592k. Determination of fair rentals and classes of occupants by Secretary

The Secretary of Housing and Urban Development shall fix fair rentals based on the value thereof as determined by the Secretary which shall be charged for housing accommodations operated under this subchapter and may prescribe the class or classes of persons who may occupy such accommodations, preferences, or priorities in the rental thereof, and the terms, conditions, and period of such occupancy.

(Sept. 1, 1951, ch. 378, title III, § 312, 65 Stat. 308; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

§ 1592*l*. Authorization of appropriations

There are authorized to be appropriated—

(a) such sums, not exceeding $100,000,000, as may be necessary for carrying out the provisions and purposes of this subchapter relating to community facilities and services in critical defense housing areas; and

(b) such sums, not exceeding $100,000,000, as may be necessary for carrying out the provisions and purposes of this subchapter relating to housing in critical defense housing areas.

(Sept. 1, 1951, ch. 378, title III, § 313, 65 Stat. 308; July 14, 1952, ch. 723, § 4, 66 Stat. 602.)

AMENDMENTS

1952—Act July 14, 1952, increased appropriation authorization in subsec. (a) from $60,000,000 to $100,000,000 and in subsec. (b) from $50,000,000 to $100,000,000.

§ 1592m. Transfer of functions and funds in certain cases

Subject to all of the limitations and restrictions of this Act, including, specifically, the requirements of subsection (c) of section 1591b of this title and of subsections (c) and (d) of section 1592h of this title, where any other officer, department, or agency is performing, or, in the determination of the President, has facilities adapted to the performance of, functions, powers and duties similar, or directly related, to any of the functions, powers and duties which the Secretary of Housing and Urban Development is authorized by this subchapter to perform with respect to the construction, maintenance or operation of community facilities for recreation, and daycare centers, or the provision of community services, the President may transfer to such other officer, department, or agency any of the functions, powers, and duties authorized by this subchapter to be performed with respect thereto if he finds that such transfer will assist the furtherance of national defense activities, and upon any such transfer, funds in such amount as the Director of the Office of Management and Budget shall determine, but in no event in excess of the balance of any moneys appropriated to the Secretary of Housing and Urban Development pursuant to the authorization therefor contained in this subchapter for the performance of the transferred functions, powers, and duties, may also be transferred by the President to such other officer, department, or agency: *Provided*, That the President, by Executive Order or otherwise, may prescribe or direct the manner in which any functions, powers, and duties, which the Secretary of Housing and Urban Development is authorized by this subchapter to perform with respect to assistance for the construction, or the construction of, any community facilities, shall be administered in coordination with other officers, departments, or agencies having functions or activities related thereto.

(Sept. 1, 1951, ch. 378, title III, § 314, 65 Stat. 308; Pub. L. 89–174, § 5(a), Sept. 9, 1965, 79 Stat. 669; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

REFERENCES IN TEXT

This Act, referred to in text, means act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as the Defense Housing and Community Facilities and Services Act of 1951. For complete classification of this Act to the Code, see Short Title of 1951 Amendment set out as a note under section 1501 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President of United States by section 101 of Reorg. Plan. No. 2, of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2, of 1970, redesignated Bureau of the Budget as Office of Management and Budget.

EX. ORD. NO. 10296. PERFORMANCE OF DEFENSE HOUSING FUNCTIONS

Ex. Ord. No. 10296, Oct. 2, 1951, 16 F.R. 10103, as amended by Ex. Ord. No. 10461, June 17, 1953, 18 F.R. 3513; Ex. Ord. No. 10593, Jan. 27, 1955, 20 F.R. 599; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

1. [Revoked by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239.]

2. [Revoked by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239.]

3. The Housing and Home Finance Administrator is hereby designated and empowered to perform, without the approval, ratification, or other action of the President, the function vested in the President by section 102(b) of the Act [section 1591a(b) of this title], relative to the suspension and relaxation of residential credit restrictions under the Defense Production Act of 1950, as amended [50 App. §§ 2061 to 2166].

4. Except, as provided in paragraph 5 hereof, the functions authorized by Title III of the Act [sections 1592 to 1592*o* of this title] to be performed with respect to or in furtherance of the provision, maintenance, or operation of community facilities for, and with respect to or in furtherance of the provision of community services for, recreation and child day-care centers are hereby transferred to the Federal Security Administrator and shall

be performed by him or by such officers and units of the Federal Security Agency as he may determine.

5. There are hereby excluded from the transfers effected by paragraph 4 hereof (a) functions with respect to site selection and land acquisition for, and the construction (including the letting of construction contracts, the preparation and approval of plans and specifications, and the supervision of construction work and of expenditures therefor) of, projects approved by the Federal Security Administrator, whether such construction is performed on behalf of, or is aided by, the Federal Government, (b) the servicing of loans for the construction of projects so approved, and (c) the functions under the second and third provisos of section 304 of the Act [section 1592c of this title] and those under sections 103(a) and 103(b) of the Act [sections 1591b(a) and (b) of this title]: *Provided*, that (1), the Federal Security Administrator or his delegate shall determine the general layout, size, and special design features appropriate to the particular type of facility, and (2) that final plans and specifications shall conform to such determinations.

6. In the performance of functions with respect to roads and highways under the Act, the Housing and Home Finance Administrator shall from time to time consult with the Secretary of Commerce or his representative as to the relationship of road and highway projects under the said Act to road and highway programs under the jurisdiction of the said Secretary.

7. In the performance of functions under Title III of the Act [sections 1592 to 1592*o* of this title] in Territories there shall be consultation with the Secretary of the Interior or his representative as to the relationship of proposed facilities and services in Territories to Territorial programs of the Department of the Interior.

8. The Housing and Home Finance Administrator, in connection with the performance of the pertinent functions vested in him by Title III of the Act [sections 1592 to 1592*o* of this title], shall obtain the approval of the Surgeon General of the Public Health Service or his representative with respect to the public health aspects of sources of water supply developed, utilized, or aided by the said Administrator, and shall consult with the Surgeon General or his representative with respect to the public health aspects of water distribution systems and sewerage systems constructed or aided by the Administrator.

9. Subject to the consent of the Housing and Home Finance Administrator, the Surgeon General of the Public Health Service shall utilize the facilities and services of the Housing and Home Finance Agency for the performance of the following aspects of the functions conferred upon him by section 316 of the Act [section 1592*o* of this title]: (a) the construction by the Federal Government of projects approved by the Surgeon General (including the letting of construction contracts, the preparation or review of plans and specifications, and the supervision of construction work and expenditures therefor), (b) land acquisition for projects to be so constructed, and (c) the obtaining of information required for the purpose of, and the furnishing of recommendations with respect to, (i) the findings provided for in sections 103(a) and 103(b) of the Act [sections 1591b(a) and (b) of this title], and (ii) the actions provided for in the second and third provisos of section 304 of the Act [section 1592c of this title]. The Surgeon General shall pay the Housing and Home Finance Agency for such utilization, either in advance or otherwise, out of funds available to him for the performance of such functions.

10. Subject to the consent of the Federal Security Administrator, the Housing and Home Finance Administrator shall utilize the facilities and services of the Federal Security Agency in connection with the providing of library facilities under Title III of the Act [sections 1592 to 1592*o* of this title] in such manner that the division of work with respect to library facilities as between the Housing and Home Finance Administrator and the Federal Security Administrator will be the same as that with respect to recreation and child day-care center facilities as indicated in paragraphs 4 and 5 of this order. The Housing and Home Finance Administrator shall pay the Federal Security Administrator for such utilization, either in advance or otherwise, out of funds available to the Housing and Home Finance Administrator for the performance of the functions involved.

11. Paragraphs 9 and 10 shall not be construed as a limitation upon the Surgeon General or the Housing and Home Finance Administrator, as the case may be, with respect to utilization or delegation other than that referred to in such paragraphs and not inconsistent with the provisions of such paragraphs, respectively, or as divesting either the Surgeon General or the Administrator of any function conferred upon him by the Act.

12. As used in this order the term ''functions'' embraces duties, powers, responsibilities, authority, or discretion, and the term ''perform'' may be construed to mean ''exercise''.

§ 1592n. Definitions

As used in this subchapter, the following terms shall have the meanings respectively ascribed to them below, and, unless the context clearly indicates otherwise, shall include the plural as well as the singular number:

(a) ''State'' shall mean the several States, the District of Columbia, and Territories, and possessions of the United States.

(b) ''Federal agency'' shall mean any executive department or officer (including the President), independent establishment, commission, board, bureau, division, or office in the executive branch of the United States Government, or other agency of the United States, including corporations in which the United States owns all or a majority of the stock, directly or indirectly.

(c) ''Community facility'' shall mean waterworks, sewers, sewage, garbage and refuse disposal facilities, police and fire protection facilities, public sanitary facilities, works for treatment and purification of water, libraries, hospitals and other places for the care of the sick, recreational facilities, streets and roads, and day-care centers.

(d) ''Community service'' shall mean the maintenance and operation of facilities for health, refuse disposal, sewage treatment, recreation, water purification, and day-care centers, and the provision of fire-protection.

(e) ''National defense'' shall mean (1) the operations and activities of the armed forces, the Atomic Energy Commission, or any other Government department or agency directly or indirectly and substantially concerned with the national defense, (2) other operations and activities directly or indirectly and substantially concerned with the operations and activities of the armed forces and the Atomic Energy Commission, (3) activities in connection with the Mutual Defense Assistance Act of 1949, as amended, or (4) the provision of community facilities or services necessary to the health, safety, or public welfare of the inhabitants of a town or community which has been relocated as a result of the acquisition (through eminent domain or purchase in lieu thereof) of its former site by or on behalf of the Atomic Energy Commission for national-defense activities.

(f) ''Nonprofit agency'' shall mean any agency no part of the net earnings of which inures to

the benefit of any private stockholder or individual.

(g) ''Project'' shall mean housing or community facilities acquired, developed, or constructed with financial assistance pursuant to this subchapter.

(h) ''Veteran'' shall mean a person, or the family of a person, who has served in the active military or naval service of the United States at any time (i) on or after September 16, 1940, and prior to July 26, 1947, (ii) on or after April 6, 1917, and prior to November 11, 1918, or (iii) on or after June 27, 1950, and prior to such date thereafter as shall be determined by the President, and who shall have been discharged or released therefrom under conditions other than dishonorable or who shall be still serving therein. The term shall also include the family of a person who served in the active military or naval service of the United States within any such period and who shall have died of causes determined by the Secretary of Veterans Affairs to have been service-connected.

(Sept. 1, 1951, ch. 378, title III, §315, 65 Stat. 309; June 30, 1953, ch. 170, §18, 67 Stat. 126; Pub. L. 102–54, §13(q)(7)(B), June 13, 1991, 105 Stat. 281.)

REFERENCES IN TEXT

The Mutual Defense Assistance Act of 1949, referred to in subsec. (e), is act Oct. 6, 1949, ch. 626, 63 Stat. 714, as amended, which was classified generally to chapter 20 (§1571 et seq.) of Title 22, Foreign Relations and Intercourse, prior to its repeal by act Aug. 26, 1954, ch. 937, title V, §542(a)(5), (9) to (11), 68 Stat. 861. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1991—Subsec. (h). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

1953—Subsec. (e)(4). Act June 30, 1953, added cl. (4).

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of this title. See, also, Transfer of Functions notes set out under those sections.

§ 1592*o*. Powers of Surgeon General of Public Health Service

Notwithstanding any other provision of this subchapter, all functions, powers, and duties under this subchapter and section 1591b of this title with respect to health, refuse disposal, sewage treatment, and water purification shall be exercised by and vested in the Surgeon General of the Public Health Service: *Provided*, That the Surgeon General shall have power to delegate to any other Federal agency functions, powers, and duties with respect to construction.

(Sept. 1, 1951, ch. 378, title III, §316, 65 Stat. 310.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of 1966 Reorg. Plan No. 3 eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of 1966 Reorg. Plan. No. 3, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SUBCHAPTER X—DEVELOPMENT SITES FOR ISOLATED DEFENSE INSTALLATIONS

EXPIRATION DATE

For expiration of authority of Housing and Home Administrator to act under this subchapter, see section 1591c of this title.

§§ 1593 to 1593d. Repealed. June 30, 1953, ch. 170, § 19, 67 Stat. 126

Section 1593, acts Sept. 1, 1951, ch. 378, title IV, §401, 65 Stat. 310; July 14, 1952, ch. 723, §10(d), 66 Stat. 604, related to acquisition of land for housing and community facilities.

Section 1593a, act Sept. 1, 1951, ch. 378, title IV, §402, 65 Stat. 310, related to acquisition of land for defense installations.

Section 1593b, act Sept. 1, 1951, ch. 378, title IV, §403, 65 Stat. 311, related to payment of annual sums to local authorities in lieu of taxes.

Section 1593c, act Sept. 1, 1951, ch. 378, title IV, §404, 65 Stat. 311, related to use of Treasury moneys.

Section 1593d, act Sept. 1, 1951, ch. 378, title IV, §405, 65 Stat. 311, related to acquisition of land for privately financed defense housing.

§ 1593e. Housing of persons displaced by acquisition of property for defense installations or industries

Upon a finding by the Secretary of Housing and Urban Development that the acquisition of any real property for a defense installation or industry has resulted, or will result, in the displacement of persons from their homes on such property, he may (notwithstanding any other provision of this or any other law) issue regulations pursuant to which such persons may be permitted to occupy or purchase housing for which credit restrictions established pursuant to the Defense Production Act of 1950 [50 App. U.S.C. 2061 et seq.] have been relaxed or housing which has been provided or assisted under the provisions of this Act (including amendments to other Acts provided herein), subject to any conditions or requirements that he determines necessary for purposes of national defense.

(Sept. 1, 1951, ch. 378, title VI, §611, 65 Stat. 316; Pub. L. 89–174, §5(a), Sept. 9, 1965, 79 Stat. 669.)

REFERENCES IN TEXT

The Defense Production Act of 1950, referred to in text, is act Sept. 8, 1950, ch. 932, 64 Stat. 798, as amended, which is classified to section 2061 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 2061 of Title 50, Appendix, and Tables.

This Act and herein, referred to in text, mean act Sept. 1, 1951, ch. 378, 65 Stat. 293, as amended, known as the Defense Housing and Community Facilities and Services Act of 1951. For complete classification of this Act to the Code, see Short Title of 1951 Amendment note set out under section 1501 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Housing and Urban Development, see note set out under section 1581 of this title.

SUBCHAPTER XI—HOUSING FOR MILITARY PERSONNEL

§ 1594. Contracts for construction

(a) Contract provisions; competitive bids

The Secretary of Defense or his designee is authorized to enter into contracts with any eligi-

ble bidder to provide for the construction of urgently needed housing on lands owned or leased by the United States and situated on or near a military reservation or installation for the purpose of providing suitable living accommodations for military personnel of the armed services assigned to duty at the military installation at or in the area where the housing is situated. Any such contract shall provide that each housing unit in the project shall be placed under the control of the Secretary of Defense, or his designee, as soon as the unit is available for occupancy as determined by the Secretary of Housing and Urban Development. Any such contract shall also provide that, except for stock held by the Secretary of Housing and Urban Development, the capital stock of the mortgagor (where the mortgagor is a corporation) be transferred to the Secretary of Defense, or his designee, when the housing has been completed as determined by the Secretary of Housing and Urban Development. Any such contract shall contain such terms and conditions as the Secretary of Defense may determine to be necessary to protect the interests of the United States. Any such contract shall provide for the furnishing by the contractor of a performance bond and a payment bond with a surety or sureties satisfactory to the Secretary of Defense, or his designee, and the furnishing of such bonds shall be deemed a sufficient compliance with the provisions of section 3131 of title 40, and no additional bonds shall be required under such section. Before the Secretary of Defense shall enter into any contract as authorized by this section for the construction of housing, he shall invite the submission of competitive bids after advertising in the manner prescribed in section 2305 of title 10.

(b) "Eligible bidder" defined

For the purposes of this subchapter, the term ''eligible bidder'' means a person, partnership, firm, or corporation determined by the Secretary of Defense after consultation with the Secretary of Housing and Urban Development (1) to be qualified by experience and financial responsibility to construct housing of the type described in subsection (a) of this section, and (2) to have submitted the lowest acceptable bid.

(c) Acquisition of capital stock of property covered by mortgage

Notwithstanding any other provision of law, the Secretary of Defense or his designee is authorized to acquire the capital stock of mortgagors holding property covered by a mortgage insured under title VIII of the National Housing Act as amended by the Housing Amendments of 1955 [12 U.S.C. 1748 et seq.], and to exercise the rights as holder of such capital stock during the life of such mortgage and, upon the termination of the mortgage, to dissolve the corporation; to guarantee the payment of notes or other legal instruments required by the Secretary of Housing and Urban Development of such mortgagors; to make payments thereon; and to guarantee and indemnify the Armed Services Housing Mortgage Insurance Fund against loss in cases where so required. All housing facilities placed under the control of the Secretary of Defense pursuant to the provisions of this subchapter shall be deemed to be housing facilities under the jurisdiction of the military department to which they are assigned.

(d) Opinion as to title to property; guarantee; title search and title insurance

On request by the Secretary of Defense, the Attorney General shall furnish to the Secretary of Defense, or his designee, an opinion as to the sufficiency of title to any property on which it is proposed to construct housing, or on which housing has been constructed, under this section. If the opinion of the Attorney General is that the title to any such property is good and sufficient, the Secretary of Defense is authorized to guarantee, or enter into a commitment to guarantee, the mortgagee, under a mortgage on such property which is insured under title VIII of the National Housing Act [12 U.S.C. 1748 et seq.], against any losses that may thereafter arise from adverse claims to title. None of the proceeds of any mortgage loan hereafter insured under such title VIII shall be used for title search and title insurance costs: *Provided*, That if the Secretary of Defense, or his designee, determines in the case of any housing project, that the financing of the construction of such project is impossible unless title insurance is provided, the Secretary of Defense may provide for the payment of the reasonable costs necessary for obtaining title search and title insurance. Any payments by the Secretary of Defense hereunder shall be made from the revolving fund established under section 1594a(g)[1] of this title. Any determination by the Secretary of Defense under the foregoing proviso shall be set forth in writing, together with the reasons therefor. The Committees on Armed Services of the Senate and House of Representatives shall be promptly notified of each such determination, and of the amount of any payment made by the Secretary of Defense for title search and title insurance costs.

(Aug. 11, 1955, ch. 783, title IV, § 403, 69 Stat. 651; Aug. 7, 1956, ch. 1029, title V, §§ 506(b)–(d), 507, 70 Stat. 1110; Pub. L. 86–149, title IV, § 415, Aug. 10, 1959, 73 Stat. 323; Pub. L. 90–19, § 12(d), (h)(1)–(3), May 25, 1967, 81 Stat. 23, 24.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (c) and (d), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title VIII of the National Housing Act is classified generally to subchapter VIII (§ 1748 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 1594a(g) of this title, referred to in subsec. (d), was repealed by Pub. L. 87–554, title V, § 501(d), July 27, 1962, 76 Stat. 237.

CODIFICATION

In subsec. (a), ''section 3131 of title 40'' substituted for ''section 1 of the Act of August 24, 1935 (49 Stat. 793)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

In subsec. (a), ''section 2305 of title 10'' substituted for ''section 3 of the Armed Forces Procurement Act of 1947'' on authority of act Aug. 10, 1956, ch. 1041, § 49(b), 70A Stat. 640, the first section of which enacted Title

[1] See References in Text note below.

10, Armed Forces. Prior to enactment of Title 10, section 3 of the Armed Forces Procurement Act of 1947 was classified to section 152 of Title 41, Public Contracts.

AMENDMENTS

1967—Subsecs. (a) to (c). Pub. L. 90–19, §12(d), substituted ''Secretary of Housing and Urban Development'' for ''Commissioner'' wherever appearing.

Subsec. (a). Pub. L. 90–19, §12(h)(1), substituted ''Secretary of Defense'' for ''Secretary'' in fourth and sixth sentences.

Subsec. (b). Pub. L. 90–19, §12(h)(2), substituted ''Secretary of Defense'' for ''Secretary''.

Subsec. (d). Pub. L. 90–19, §12(h)(3), substituted ''Secretary of Defense'' for ''Secretary'' in last three sentences.

1959—Subsec. (d). Pub. L. 86–149 added subsec. (d).

1956—Subsec. (a). Act Aug. 7, 1956, §§506(b), (c), (d), 507, substituted ''eligible bidder'' for ''eligible builder'' in first sentence; substituted ''the mortgagor'' for ''the builder'' in two places in third sentence; inserted provision before last sentence, relating to furnishing by contractor of a performance bond and a payment bond with surety satisfactory to Secretary; and struck out from last sentence ''with any builder'' after ''Before the Secretary shall enter into any contract''.

Subsec. (b). Act Aug. 7, 1956, §506(b), substituted ''eligible bidder'' for ''eligible builder''.

§ 1594a. Acquisition of military housing financed under Armed Services Housing Mortgage Insurance Fund and rental housing at military bases

(a) Purchase price

Whenever the Secretary of Defense or his designee deems it necessary for the purpose of this subchapter, he may acquire, by purchase, donation, condemnation, or other means of transfer, any land or (with the approval of the Secretary of Housing and Urban Development) (1) any housing financed with mortgages insured under title VIII of the National Housing Act [12 U.S.C. 1748 et seq.] as in effect prior to August 11, 1955, or (2) any housing situated adjacent to a military installation which was (A) completed prior to July 1, 1952, (B) certified by the Department of Defense, prior to construction, as being necessary to meet an existing military family housing need and considered as military housing by the Secretary of Housing and Urban Development, and (C) financed with mortgages insured under section 207 of the National Housing Act [12 U.S.C. 1713], or (3) any housing situated on or adjacent to a military installation which was (A) completed prior to July 1, 1952, (B) considered by the Department of Defense, prior to construction, as being necessary to meet an existing military family housing need and considered as military housing by the Secretary of Housing and Urban Development, and (C) financed with mortgages insured under section 608 of the National Housing Act [12 U.S.C. 1743], including adjacent property constructed primarily to provide commercial facilities for the occupants of such housing. The purchase price of any such housing shall not exceed the Secretary of Housing and Urban Development's estimate of the replacement cost of such housing and related property (not including the value of any improvements installed or constructed with appropriated funds) as of the date of final endorsement for mortgage insurance reduced by an appropriate allowance representing the estimated cost of repairs and replacements necessary to restore the property to sound physical condition, as determined by the Secretary of Defense or his designee upon the advice of the Secretary of Housing and Urban Development: *Provided*, That in any case where the Secretary of Defense or his designee acquires a project held by the Secretary of Housing and Urban Development, the price paid shall not exceed the face value of the debentures (plus accrued interest thereon) which the Secretary of Housing and Urban Development issued in acquiring such project.

(b) Housing at or near a military installation

Notwithstanding any provision of subsection (a) of this section to the contrary, the Secretary of Defense or his designee shall, in the manner provided in subsection (a) of this section, acquire by purchase, donation, or other means of transfer or, if the parties cannot agree upon terms for acquisition by such means, by condemnation, any housing described in clause (1) or (2) of subsection (a) of this section which is located at or near a military installation where the construction of housing under the Armed Services Housing Mortgage Insurance Program has been approved by the Secretary.

(c) Condemnation; procedures; deposit; payment; interest

(1) Condemnation proceedings instituted pursuant to this section shall be conducted in accordance with the provisions of section 3113 of title 40, or any other applicable Federal statute. Before any such condemnation proceedings are instituted, an effort shall be made to acquire the property involved by negotiation. In any such condemnation proceedings, and in the interests of expedition, the issue of just compensation may be determined by a commission of three qualified, disinterested persons to be appointed by the court. Any commission appointed hereunder shall give full consideration to all elements of value in accordance with existing law, and shall have the powers of a master provided in subdivision (c) of rule 53 of the Federal Rules of Civil Procedure and proceedings before it shall be governed by the provisions of paragraphs (1) and (2) of subdivision (d) of such rule. Its action and report shall be determined by a majority and its findings and report shall have the effect, and be dealt with by the court in accordance with the practice prescribed in paragraph (2) of subdivision (e) of such rule. Trial of all issues, other than just compensation, shall be by the court.

(2) In any condemnation proceedings instituted to acquire any such housing, or interest therein, the court shall not order the party in possession to surrender possession in advance of final judgment unless a declaration of taking has been filed, and a deposit of the amount estimated to be just compensation has been made, under section 3114(a) to (d) of title 40. The amount of such deposit for the purpose of this section shall not in any case be less than an amount equal to the actual cost of the housing (not including the value of any improvements installed or constructed with appropriated funds) as certified by the sponsor or owner of the project to the Secretary of Housing and Urban Development pursuant to any statute or any

regulations issued by the Secretary of Housing and Urban Development, reduced by the amount of the principal obligation of the mortgage outstanding at the time possession is surrendered, but any such deposit shall not include any excess mortgage proceeds or ''windfalls,'' kickbacks and rebates received in connection with the construction of said housing as determined by the Department of Defense, or any other Federal agency. The amount of such deposit in any case where the sponsor or owner has not certified the cost of the project to the Secretary of Housing and Urban Development at August 10, 1959, shall be determined by the Secretary of Defense, or his designee, in accordance with sections 3114 to 3116 and 3118 of title 40, with a view toward accurately estimating the equity of the sponsor or owner: *Provided*, That in the event there is withdrawn from the registry of the court by the owner or sponsor a sum of money in excess of the final award of just compensation, this excess shall be repaid to the United States plus a sum equal to 4 per centum per annum on such excess from the time such sum is deposited in the registry of the court: *Provided further*, That any court in which money is deposited as provided in this section shall require the furnishing of security by the owner to protect the United States from any loss by reason of a final award of just compensation of less than the amount deposited: *And provided further*, That the deposit required to be made by this section shall be without prejudice to any party in the determination of just compensation. Unless title is in dispute, the court, upon application and subject to the foregoing provisions of this subsection, shall promptly pay to the owner at least 75 per centum of the amount so deposited, but such payment shall be made without prejudice to any party to the proceeding. In the event that condemnation proceedings are instituted in accordance with procedures under sections 3114 to 3116 and 3118 of title 40, the court shall order that the amount deposited shall be paid in a lump sum or over a period not exceeding five years in accordance with stipulations executed by the parties in the proceedings. In connection with condemnation proceedings which do not utilize the procedures under such sections, the Secretary of Defense or his designee, after final judgment of the court, may pay or agree to pay in a lump sum or, in accordance with stipulations executed by the parties to the proceedings, over a period not exceeding five years the difference between the outstanding principal obligation, plus accrued interest, and the price for the property fixed by the court. Unless such payment is made in a lump sum, the unpaid balance thereof shall bear interest at the rate of 4 per centum per annum.

(d) Occupancy; use, or improvement of property before approval of title

Property acquired under this section may be occupied, used, and improved for the purposes of this section prior to the approval of title by the Attorney General as required by sections 3111 and 3112 of title 40.

(e) Release of accrual requirements for replacement, taxes, and hazard insurance reserves

The Secretary of Defense or his designee may, in the case of any housing acquired or to be acquired under this section, make arrangements with the mortgage whereby such mortgage will agree to release and waive all requirements of accruals for reserves for replacement, taxes, and hazard insurance provided for under the corporate charter and indenture agreement with respect to such housing, upon the execution of a written agreement by the Secretary or his designee that the purposes for which such reserves and other funds were accrued will be carried out.

(f) Use as public quarters or lease of housing

Any housing acquired under this section may be (1) assigned as public quarters to military personnel and their dependents; or (2) leased to military and civilian personnel for occupancy by them and their dependents, upon such terms and conditions as will in the judgment of the Secretary of Defense or his designee be in the best interest of the United States, without loss to military personnel of their basic allowance for quarters or appropriate allotments.

(Aug. 11, 1955, ch. 783, title IV, § 404, 69 Stat. 652; Aug. 3, 1956, ch. 939, title IV, § 420, 70 Stat. 1019; Aug. 7, 1956, ch. 1029, title V, § 512, 70 Stat. 1111; Pub. L. 85–104, title V, § 504, July 12, 1957, 71 Stat. 303; Pub. L. 85–685, title V, § 513(d), Aug. 20, 1958, 72 Stat. 663; Pub. L. 86–149, title IV, § 418, Aug. 10, 1959, 73 Stat. 323; Pub. L. 86–372, title VII, §§ 702(a), (b), 703, Sept. 23, 1959, 73 Stat. 683; Pub. L. 87–554, title V, § 501(d), July 27, 1962, 76 Stat. 237; Pub. L. 88–560, title X, § 1003, Sept. 2, 1964, 78 Stat. 806; Pub. L. 90–19, § 12(e), (h)(4)–(6), May 25, 1967, 81 Stat. 23, 24.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title VIII of the National Housing Act is classified generally to subchapter VIII (§ 1748 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

CODIFICATION

In subsec. (c)(1), ''section 3113 of title 40'' substituted for ''the Act of August 1, 1888 (25 Stat. 357; 40 U.S.C. 257), as amended'', in subsec. (c)(2), ''section 3114(a) to (d) of title 40'' substituted for ''the first section of the Act of February 26, 1931 (46 Stat. 1421)'', ''sections 3114 to 3116 and 3118 of title 40'' substituted for ''the Act of February 26, 1931 (46 Stat. 1421)'' and for ''such Act of February 26, 1931'', and, in subsec. (d), ''sections 3111 and 3112 of title 40'' substituted for ''section 355 of the Revised Statutes, as amended'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–19, § 12(e)(1)–(3), (h)(4), substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner'' wherever appearing in first sentence, ''Secretary of Housing and Urban Development's'' for ''Federal Housing Commissioner's'', ''Secretary of Housing and Urban Development'' for ''Commissioner'' wherever appearing in second sentence, and ''Secretary of Defense'' for ''Secretary'' in proviso, respectively.

Subsec. (c)(2). Pub. L. 90–19, § 12(e)(1), (h)(5), substituted ''Secretary of Housing and Urban Development'' for ''Federal Housing Commissioner'' wherever appearing and ''Secretary of Defense'' for ''Secretary'' in penultimate sentence, respectively.

Subsec. (e). Pub. L. 90–19, § 12(h)(6), substituted ''Secretary of Defense'' for ''Secretary''.

1964—Subsec. (a). Pub. L. 88–560 authorized acquisition of housing on or adjacent to a military installation completed prior to July 1, 1952, considered necessary to meet existing military family need, considered military housing by the Federal Housing Commissioner, and financed with mortgages insured under section 608 of the National Housing Act, including adjacent property constructed primarily to provide commercial facilities for the occupants of such housing.

1962—Subsec. (f). Pub. L. 87–554 struck out provision for deposit in the revolving fund of amounts equal to the quarters allowances or appropriate allotments of military personnel to whom housing is assigned as public quarters and rental charges for leasing of housing to military and civilian personnel.

Subsec. (g). Pub. L. 87–554 repealed subsec. (g) creating the revolving fund, enumerating uses of the fund and requiring the deposit in the fund of specified quarters allowances or allotments, rental charges and savings realized in operation of housing.

Subsec. (h). Pub. L. 87–554 repealed subsec. (h) requiring the establishment of the revolving fund on the books of the Treasury Department, limiting appropriation authorization for revolving fund capital to $50,000,000 and permitting the transfer of certain funds to provide adequate capital for the fund.

1959—Subsec. (a). Pub. L. 86–372, §702(a), authorized acquisition of any housing situated adjacent to a military installation which was completed prior to July 1, 1952, certified by the Department of Defense, prior to construction, as being necessary to meet an existing military family housing need and considered as military housing by the Federal Housing Commissioner, and financed with mortgages insured under section 207 of the National Housing Act.

Subsec. (b). Pub. L. 86–372, §702(b), substituted ''any housing described in clause (1) or (2) of subsection (a) of this section'' for ''any housing constructed under the mortgage insurance provisions of sections 1748 to 1748h of title 12 (as in effect prior to Aug. 11, 1955)''.

Subsec. (c)(2). Pub. L. 86–372, §703, required the amount of the deposit in any case where the sponsor or owner has not certified the cost of the project to be determined with a view toward accurately estimating the equity of the sponsor or owner.

Pub. L. 86–149 required the amount of the deposit to be not less than an amount equal to the actual cost of the housing as certified reduced by the amount of the principal obligation of the mortgage outstanding at the time possession is surrendered, provided for determination of amount of deposit in cases where cost has not been certified, and required payment of 4 percent interest where money has been withdrawn in excess of final award of just compensation.

1958—Subsec. (c). Pub. L. 85–685 inserted provisions authorizing issue of just compensation to be determined by a commission of three qualified, disinterested persons to be appointed by the court, prescribing its powers, relating to its action and report, and requiring trial of all issues, other than just compensation, to be by the court.

1957—Subsec. (a). Pub. L. 85–104 substituted ''representing the estimated cost of repairs and replacements necessary to restore the property to sound physical condition'' for ''for physical depreciation''.

1956—Act Aug. 7, 1956, designated existing provisions as subsecs. (a), (c), and (d), and added subsecs. (b) and (e) to (h).

Act Aug. 3, 1956, limited purchase price of housing to Commissioner's estimate of replacement cost of such housing and related property as of date of final endorsement for mortgage insurance reduced by an appropriate allowance for depreciation, and limited price of any project held by Commissioner to face value of debentures, plus accrued interest, which the Commissioner issued in acquiring the project.

REPEALS

Pub. L. 87–554, title V, §501(d), July 27, 1962, 76 Stat. 237, cited as a credit to this section, was repealed by Pub. L. 97–214, §7(5), July 12, 1982, 96 Stat. 173.

§§ 1594a–1, 1594a–2. Repealed. Pub. L. 97–214, §7(5), July 12, 1982, 96 Stat. 173

Section 1594a–1, Pub. L. 87–554, title V, §501(a)–(c), July 27, 1962, 76 Stat. 236; Pub. L. 90–110, title VI, §606, Oct. 21, 1967, 81 Stat. 304; Pub. L. 91–142, title V, §511, Dec. 5, 1969, 83 Stat. 312; Pub. L. 96–418, title V, §511, Oct. 10, 1980, 94 Stat. 1767, related to Department of Defense family housing management account. See section 2831 of Title 10, Armed Forces.

Section 1594a–2, Pub. L. 87–554, title V, §507, July 27, 1962, 76 Stat. 240, related to prior legislative approval for appropriations for family housing. See section 2821(a) of Title 10.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of Title 10, Armed Forces.

§1594b. Maintenance and operation of housing; use of quarters; payment of principal, interest, and other obligations

The Secretary of Defense or his designee is authorized to maintain and operate any housing acquired under this title and assign quarters therein to military and civilian personnel and their dependents. Appropriations for quarters allowances or appropriate allotments, and rental charges to civilian personnel, may be utilized by the military department concerned for the payment of principal, interest, and other obligations, except those of maintenance and operation, of the mortgagor corporation with respect to such housing projects. Such payments shall not exceed an average of $90 a month per housing unit and total payments for all housing so acquired shall not exceed $21,000,000 per month: *Provided*, That, in case of the United States Coast Guard, total payments for all housing so acquired shall not exceed $90,000 per month.

(Aug. 11, 1955, ch. 783, title IV, §405, 69 Stat. 652; Aug. 7, 1956, ch. 1029, title V, §508, 70 Stat. 1110.)

REFERENCES IN TEXT

This title, referred to in text, means title IV of act Aug. 11, 1955, ch. 783, 69 Stat. 646, as amended, which enacted sections 1594 and 1594a, 1594b to 1594f of this title, amended sections 1720, 1748, and 1748a to 1748g of Title 12, Banks and Banking, and enacted provisions set out as a note under section 1748 of Title 12. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1956—Act Aug. 7, 1956, substituted ''$21,000,000'' for ''$9,000,000''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§1594c. Services of architects and engineers; use of appropriations; acquisition of sites

Whenever the Secretary of Defense or his designee determines that it is desirable in order to

effectuate the purposes of this title, the Secretary is authorized, without regard to the civil service and classification laws, to procure, by negotiation or otherwise, the services of architects and engineers, or organizations thereof, under such arrangements as he deems desirable, but at an expense not in excess of that permissible under the schedule of fees allowed from time to time by the Secretary of Housing and Urban Development in connection with projects assisted under the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.]. Such services may include the development of plans, drawings and specifications for family housing under this title and other services in connection therewith: *Provided*, That such plans, drawings, and specifications may include the use of any project to be constructed under this subchapter of alternate materials or alternate types of construction, including prefabrication, that provide substantially equal value and conform to standards established by the Secretary of Housing and Urban Development: *Provided further*, That such plans, drawings, and specifications, when developed pursuant to arrangements made under this section after August 7, 1956, shall follow the principle of modular measure, in order that the housing may be built by conventional construction, on-site fabrication, factory precutting, factory fabrication, or any combination of these construction methods: *Provided further*, That the Secretary of Defense may designate certain sites or parts thereof for family housing to be furnished from prefabricated houses or housing components. Such arrangements may include provision for advance or progress payments, for payment by third parties, for payment by the Government of any such compensation as it not paid for by third parties, and shall include provision for reimbursement by third parties to the Government of any compensation or other expenses paid by the Government pursuant to this section, and may include other provisions for compensation. Any public works appropriations now or hereafter available to the Departments of the Army, Navy, or Air Force or the Coast Guard may be obligated by the respective departments or the Coast Guard for these purposes. Reimbursements to the Government on account of payments made pursuant to this section shall be made to appropriations against which such payments were charged. The Secretary of Defense is further authorized to advance or pay to the Department of Housing and Urban Development its ''Appraisal and Eligibility Statement'' fees in connection with such family housing. The Secretary of Defense is further authorized to enter into arrangements by contract or otherwise for eventual acquisition by the Government, without cost to the Government of all right, title, and interest in sites on which housing is constructed pursuant to this title and improvements thereon.

(Aug. 11, 1955, ch. 783, title IV, § 406, 69 Stat. 653; Aug. 7, 1956, ch. 1029, title V, § 509, 70 Stat. 1110; Pub. L. 90–19, § 12(f), (h)(7), (8), May 25, 1967, 81 Stat. 24.)

REFERENCES IN TEXT

This title, referred to in text, means title IV of act Aug. 11, 1955, ch. 783, 69 Stat. 646, as amended, which enacted sections 1594 and 1594a, 1594b to 1594f of this title, amended sections 1720, 1748, and 1748a to 1748g of Title 12, Banks and Banking, and enacted provisions set out as a note under section 1748 of Title 12. For complete classification of this Act to the Code, see Tables.

The civil service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in text, are classified generally to chapter 51 (§ 5101 et seq.) and subchapter III (§ 5331 et seq.) of chapter 53 of Title 5.

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

AMENDMENTS

1967—Pub. L. 90–19 substituted ''Secretary of Housing and Urban Development'' and ''Department of Housing and Urban Development'' for ''Public Housing Administration'' and ''Federal Housing Administration'' in first sentence and first proviso and for ''Federal Housing Administration'' in penultimate sentence and ''Secretary of Defense'' for ''Secretary'' in third proviso and last two sentences, respectively.

1956—Act Aug. 7, 1956, inserted second proviso requiring plans, drawings, and specifications to follow the principle of modular measure, so the housing may be built by conventional construction, on-site fabrication, factory precutting, factory fabrication, or any combination of these construction methods.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1594d. Appropriations; use of quarters allowances

(a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 1594, 1594a, 1594b, and 1594c of this title.

(b) Any funds heretofore or hereafter authorized to be expended by any of the military departments or the Coast Guard for the payment of allowances for quarters for military personnel may be used for the purposes specified in subsection (a) of this section.

(Aug. 11, 1955, ch. 783, title IV, § 407, 69 Stat. 653.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1594e. Definitions

(a) Wherever the terms ''Secretary of Defense'' or ''Secretary of the Army, Navy, or Air Force'' appear in this title or in title VIII of the Na-

tional Housing Act, as amended by the Housing Amendments of 1955 [12 U.S.C. 1748 et seq.], they shall be deemed to mean the Secretary of Transportation in the case of the application of the provisions of this subchapter or of title VIII of the National Housing Act, as amended by the Housing Amendments of 1955, for the benefit of the United States Coast Guard.

(b) Wherever the term ''armed services'' appears in this subchapter it shall be deemed to include the United States Coast Guard.

(Aug. 11, 1955, ch. 783, title IV, § 409, 69 Stat. 654; Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938; Pub. L. 90–19, § 12(g), May 25, 1967, 81 Stat. 24.)

REFERENCES IN TEXT

This title, referred to in subsec. (a), means title IV of act Aug. 11, 1955, ch. 783, 69 Stat. 646, as amended, which enacted sections 1594 and 1594a, 1594b to 1594f of this title, amended sections 1720, 1748, and 1748a to 1748g of Title 12, Banks and Banking, and enacted provisions set out as a note under section 1748 of Title 12. For complete classification of this Act to the Code, see Tables.

The National Housing Act, referred to in subsec. (a), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title VIII of the National Housing Act is classified generally to subchapter VIII (§ 1748 et seq.) of chapter 13, Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90–19 struck out ''or Secretary'' after ''Secretary of Defense''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and all functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

§ 1594f. Net floor area limitations

In the construction of housing under the authority of this title and title VIII of the National Housing Act, as amended [12 U.S.C. 1748 et seq.], the maximum limitations on net floor area for each unit shall be the same as the net floor area limitations prescribed by law (at the time plans and specifications for such construction are begun) for public quarters built with appropriated funds under military construction authority.

(Aug. 11, 1955, ch. 783, title IV, § 410, as added Aug. 7, 1956, ch. 1029, title V, § 510, 70 Stat. 1110; amended Pub. L. 85–104, title V, § 503, July 12, 1957, 71 Stat. 303.)

REFERENCES IN TEXT

This title, referred to in text, means title IV of act Aug. 11, 1955, ch. 783, 69 Stat. 646, as amended, which enacted sections 1594 and 1594a, 1594b to 1594f of this title, amended sections 1720, 1748, and 1748a to 1748g of Title 12, Banks and Banking, and enacted provisions set out as a note under section 1748 of Title 12.

The National Housing Act, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title VIII of the National Housing Act is classified generally to subchapter VIII (§ 1748 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1957—Pub. L. 85–104 substituted ''limitations prescribed by law (at the time plans and specifications for such construction are begun) for public quarters built with appropriated funds under military construction authority'' for ''permanent limitations prescribed in the second, third, and fourth provisos of section 3 of the act of June 12, 1948 (62 Stat. 375), or section 3 of the act of June 16, 1948 (62 Stat. 459), other than the first, second, and third provisos thereof''.

§ 1594g. Repealed. Pub. L. 85–241, title IV, § 406(b), Aug. 30, 1957, 71 Stat. 556

Section, act Aug. 3, 1956, ch. 939, title IV, § 419, 70 Stat. 1018, related to conditions precedent to entering into contracts for construction or acquisition of family housing units by or for the use of military or civilian personnel of any of the military services.

EFFECTIVE DATE OF REPEAL

Section 406(b) of Pub. L. 85–241 provided that the repeal of this section is effective July 1, 1958.

§§ 1594h to 1594i. Repealed. Pub. L. 97–214, § 7(3), (5), (9), (17), July 12, 1982, 96 Stat. 173, 174

Section 1594h, Pub. L. 85–241, title I, § 103, Aug. 30, 1957, 71 Stat. 534, related to purchase of family housing for assignment as public quarters, and space and cost limitations.

Section 1594h–1, Pub. L. 87–554, title V, § 503, July 27, 1962, 76 Stat. 239, related to improvement of family housing units, public quarters designation, and cost limitations.

Section 1594h–2, Pub. L. 90–110, title VI, § 610(a), Oct. 21, 1967, 81 Stat. 305; Pub. L. 93–166, title V, § 506(a), Nov. 29, 1973, 87 Stat. 675; Pub. L. 95–356, title V, § 502(b), Sept. 8, 1978, 92 Stat. 578; Pub. L. 96–418, title V, § 502(b), Oct. 10, 1980, 94 Stat. 1764, related to improvement of single family housing units and cost limitations of such improvements. See section 2825(b) of Title 10, Armed Forces.

Section 1594h–3, Pub. L. 96–418, title V, § 505, Oct. 10, 1980, 94 Stat. 1765, related to settlement of contractor claims on military family housing.

Section 1594i, Pub. L. 85–241, title IV, § 406(a) Aug. 30, 1957, 71 Stat. 556; Pub. L. 85–685, title V, § 512, Aug. 20, 1958, 72 Stat. 662; Pub. L. 86–149, title IV, § 408, Aug. 10, 1959, 73 Stat. 321; Pub. L. 86–500, title V, § 507(b), June 8, 1960, 74 Stat. 185; Pub. L. 87–70, title VI, § 611(b), June 30, 1961, 75 Stat. 180; Pub. L. 88–174, title V, § 510, Nov. 7, 1963, 77 Stat. 327, related to authorization of number of family housing units. See section 2822 of Title 10.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of Title 10, Armed Forces.

§ 1594j. Repealed. Pub. L. 92–545, title V, § 508(c), Oct. 25, 1972, 86 Stat. 1150

Section, Pub. L. 85–241, title IV, § 407, Aug. 30, 1957, 71 Stat. 556; Pub. L. 85–685, title V, § 516, Aug. 20, 1958, 72

Stat. 664; Pub. L. 86–372, title VII, §702(c), Sept. 23, 1959, 73 Stat. 683; Pub. L. 86–500, title V, §508, June 8, 1960, 74 Stat. 186; Pub. L. 87–57, title VI, §610, June 27, 1961, 75 Stat. 111; Pub. L. 88–174, title V, §506, Nov. 7, 1963, 77 Stat. 326; Pub. L. 89–568, title V, §502, Sept. 12, 1966; 80 Stat. 753; Pub. L. 90–110, title VI, §608, Oct. 21, 1967, 81 Stat. 305, provided for occupancy on a rental basis of inadequate quarters without loss of basic allowance for quarters. See section 2830 of Title 10, Armed Forces.

§§ 1594j–1, 1594k. Repealed. Pub. L. 97–214, § 7(6), (13), July 12, 1982, 96 Stat. 173, 174

Section 1594j–1, Pub. L. 92–545, title V, §508(a), (b), Oct. 25, 1972, 86 Stat. 1149, related to inadequate quarters. See section 2830 of Title 10, Armed Forces.

Section 1594k, Pub. L. 88–174, title V, §507, Nov. 7, 1963, 77 Stat. 326; Pub. L. 89–188, title V, §505, Sept. 16, 1965, 79 Stat. 814; Pub. L. 90–110, title VI, §605, Oct. 21, 1967, 81 Stat. 304; Pub. L. 90–408, title VI, §607, July 21, 1968, 82 Stat. 388; Pub. L. 91–142, title V, §508, Dec. 5, 1969, 83 Stat. 312; Pub. L. 91–511, title V, §507, Oct. 26, 1970, 84 Stat. 1220; Pub. L. 92–145, title V, §507, Oct. 27, 1971, 85 Stat. 407; Pub. L. 92–545, title V, §507, Oct. 25, 1972, 86 Stat. 1149; Pub. L. 93–166, title V, §508, Nov. 29, 1973, 87 Stat. 676, related to guarantee of rental return to builders or other sponsors in foreign countries, and limitation on amount, period, and unit limitation of such guarantee.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of Title 10, Armed Forces.

SAVINGS PROVISION

Section 9(b) of Pub. L. 97–214 provided that: ''The Secretary of Defense may continue in effect any agreement guaranteeing rental returns to builders or other sponsors of family housing in foreign countries that was made under section 507 of the Military Construction Authorization Act, 1964 (42 U.S.C. 1594k), before the effective date of this Act [Oct. 1, 1982] and may exercise any option of the United States in any such agreement that has not been exercised before such date.''

CHAPTER 10—FEDERAL SECURITY AGENCY

§§ 1601, 1602. Transferred

CODIFICATION

Section 1601, act May 9, 1941, ch. 97, 55 Stat. 184; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, related to adoption of a seal by Secretary of Department of Health, Education, and Welfare, and was transferred to section 3505 of this title.

Section 1602, act July 12, 1943, ch. 221, title II, §201, 57 Stat. 513; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, related to delegation of authority of Secretary of Health, Education, and Welfare with respect to his authority to transfer personnel and household goods from one station to another, and was transferred to section 3507 of this title.

§ 1603. Omitted

CODIFICATION

Section, acts July 13, 1943, ch. 221, title II, §1, 57 Stat. 513; June 28, 1944, ch. 302, title II, §1, 58 Stat. 566; July 3, 1945, ch. 263, title II, 59 Stat. 376; July 26, 1946, ch. 672, title II, §201, 60 Stat. 697; July 8, 1947, ch. 210, title II, §201, 61 Stat. 276, which authorized the Secretary of the Treasury to transfer to constituent organizations of the Federal Security Agency requested amounts from appropriations for traveling expenses and printing and binding, Federal Security Agency, and to retransfer to such appropriations, was not repeated in subsequent appropriation acts.

CHAPTER 11—COMPENSATION FOR DISABILITY OR DEATH TO PERSONS EMPLOYED AT MILITARY, AIR, AND NAVAL BASES OUTSIDE UNITED STATES

Sec.

§ 1651. Compensation authorized

(a) Places of employment

Except as herein modified, the provisions of the Longshore and Harbor Workers' Compensation Act, approved March 4, 1927 (44 Stat. 1424), as amended [33 U.S.C. 901 et seq.], shall apply in respect to the injury or death of any employee engaged in any employment—

(1) at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government; or

(2) upon any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone); or

(3) upon any public work in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone), if such employee is engaged in employment at such place under the contract of a contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) with the United States; but nothing in this paragraph shall be construed to apply to any employee of such a contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(4) under a contract entered into with the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract, or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States and at places not within the areas described in subparagraphs (1)–(3) of this subdivision, for the purpose of engaging in public work, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (1) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in such public work under such contract the pay-

ment of compensation and other benefits under the provisions of this chapter, and (2) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(5) under a contract approved and financed by the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States, under the Mutual Security Act of 1954, as amended (other than title II of chapter II thereof unless the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States, determines a contract financed under a successor provision of any successor Act should be covered by this section), and not otherwise within the coverage of this section, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (A) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in work under such contract the payment of compensation and other benefits under the provisions of this chapter, and (B) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract;

(6) outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces pursuant to appropriate authorization by the Secretary of Defense,

irrespective of the place where the injury or death occurs, and shall include any injury or death occurring to any such employee during transportation to or from his place of employment, where the employer or the United States provides the transportation or the cost thereof.

(b) Definitions

As used in this section—

(1) the term ''public work'' means any fixed improvement or any project, whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies, including but not limited to projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project;

(2) the term ''allies'' means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance;

(3) the term ''war activities'' includes activities directly relating to military operations.

(4) the term ''continental United States'' means the States and the District of Columbia.

(c) Liability as exclusive

The liability of an employer, contractor (or any subcontractor or subordinate subcontractor with respect to the contract of such contractor) under this chapter shall be exclusive and in place of all other liability of such employer, contractor, subcontractor, or subordinate contractor to his employees (and their dependents) coming within the purview of this chapter, under the workmen's compensation law of any State, Territory, or other jurisdiction, irrespective of the place where the contract of hire of any such employee may have been made or entered into.

(d) "Contractor" defined

As used in this section, the term ''contractor'' means any individual, partnership, corporation, or association, and includes any trustee, receiver, assignee, successor, or personal representative thereof, and the rights, obligations, liability, and duties of the employer under such Longshore and Harbor Workers' Compensation Act [33 U.S.C. 901 et seq.] shall be applicable to such contractor.

(e) Contracts within section; waiver of application of section

The liability under this chapter of a contractor, subcontractor, or subordinate contractor engaged in public work under subparagraphs (3) and (4), subdivision (a) of this section, and the conditions set forth therein, shall become applicable to contracts and subcontracts heretofore entered into but not completed at August 16, 1941, and the liability under this chapter of a contractor, subcontractor, or subordinate contractor engaged in performance of contracts, subcontracts, or subordinate contracts specified in subparagraph (5), subdivision (a) of this section, and the conditions set forth therein, shall hereafter be applicable to the remaining terms of such contracts, subcontracts, and subordinate contracts entered into prior to but not completed on the date of enactment of any successor Act to the Mutual Security Act of 1954, as amended, and contracting officers of the United States are authorized to make such modifications and amendments of existing contracts as may be necessary to bring such contracts into conformity with the provisions of this chapter. No right shall arise in any employee or his dependent under subparagraphs (3) and (4) of subdivision (a) of this section, prior to two months after the approval of this chapter. Upon the recommendation of the head of any department or other agency of the United States, the Secretary of Labor, in the exercise of his

discretion, may waive the application of this section with respect to any contract, subcontract, contract, or subordinate contract, work location under such contracts, or classification of employees. Upon recommendation of any employer referred to in paragraph (6) of subsection (a) of this section, the Secretary of Labor may waive the application of this section to any employee or class of employees of such employer, or to any place of employment of such an employee or class of employees.

(f) Liability to prisoners of war and protected persons

The liability under this chapter of a contractor, subcontractor, or subordinate contractor engaged in public work under paragraphs (1), (2), (3), and (4) of subsection (a) of this section or in any work under paragraph (5) of subsection (a) of this section does not apply with respect to any person who is a prisoner of war or a protected person under the Geneva Conventions of 1949 and who is detained or utilized by the United States.

(Aug. 16, 1941, ch. 357, § 1, 55 Stat. 622; Dec. 2, 1942, ch. 668, title III, § 301, 56 Stat. 1035; 1946 Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7871, 60 Stat. 1352; June 30, 1953, ch. 176, § 4, 67 Stat. 135; Pub. L. 85–477, ch. V, § 502(a), June 30, 1958, 72 Stat. 272; Pub. L. 85–608, title II, § 201, Aug. 8, 1958, 72 Stat. 537; Pub. L. 86–70, § 40, June 25, 1959, 73 Stat. 150; Pub. L. 86–108, ch. VII, § 701(a), July 24, 1959, 73 Stat. 257; Pub. L. 87–195, pt. IV, § 701, Sept. 4, 1961, 75 Stat. 463; Pub. L. 98–426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

REFERENCES IN TEXT

The Longshore and Harbor Workers' Compensation Act, referred to in subsecs. (a) and (d), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

For definition of Canal Zone, referred to in subsec. (a)(2), (3), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Mutual Security Act of 1954, referred to in subsecs. (a)(5) and (e), is act Aug. 26, 1954, ch. 937, 68 Stat. 832, as amended by acts July 8, 1955, ch. 301, 69 Stat. 283; July 18, 1956, ch. 627, §§ 2–11, 70 Stat. 555; Aug. 14, 1957, Pub. L. 85–141, 71 Stat. 355; June 30, 1958, Pub. L. 85–477, ch. 1, §§ 101–103, ch. II, §§ 201–205, ch. III, § 301, ch. IV, § 401, ch. V, § 501, 72 Stat. 261; July 24, 1959, Pub. L. 86–108, § 2, ch. 1, § 101, ch. II, §§ 201 to 205(a)–(i), (k)–(n), ch. III, § 301, ch. IV, § 401(a)–(k), (m), 73 Stat. 246; May 14, 1960, Pub. L. 86–472, chs. I to V, 74 Stat. 134, which was principally classified to chapter 24 (§ 1750 et seq.) of Title 22, and which was repealed by acts July 18, 1956, ch. 627, § 8(m), 70 Stat. 559; Aug. 14, 1957, Pub. L. 85–141, §§ 2(e), 3, 4(b), 11(d), 71 Stat. 356; July 24, 1959, Pub. L. 86–108, ch. II, § 205(j), ch. IV, § 401(1), 73 Stat. 250; May 14, 1960, Pub. L. 86–472, ch. II, §§ 203(d), 204(k), 74 Stat. 138; Sept. 4, 1961, Pub. L. 87–195, pt. III, § 642(a)(2), 75 Stat. 460; June 30, 1976, Pub. L. 94–329, title II, § 212(b)(1), 90 Stat. 745; Apr. 4, 1996, Pub. L. 104–127, title II, § 228, 110 Stat. 963, except for sections 1754, 1783, 1796, 1853, 1928, and 1937 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 1754 of Title 22 and Tables.

Title II of Chapter II of the Mutual Security Act of 1954, referred to in subsec. (a)(5), which was classified generally to sections 1870 to 1876 of Title 22, was repealed by Pub. L. 87–195, Pt. III, § 642(a)(2), Sept. 4, 1961, 75 Stat. 460.

CODIFICATION

Reference to Philippine Islands in paragraphs (2) and (3) of subsec. (a) of this section was omitted as obsolete in view of Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7871, 60 Stat. 1352, recognizing the independence of the Philippines and withdrawing and surrendering all rights of possession, supervision, jurisdiction, control, or sovereignty now existing and exercised by the United States in and over the territory and people of the Philippines. See note set out under section 1394 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1984—Subsecs. (a), (d). Pub. L. 98–426 substituted ''Longshore and Harbor Workers' Compensation Act'' for ''Longshoremen's and Harbor Workers' Compensation Act''.

1961—Subsec. (a)(5). Pub. L. 87–195, § 701(1), extended coverage in those cases where the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States, determines a contract financed under a successor provision of any successor act to the Mutual Security Act of 1954 should be covered by this section.

Subsec. (e). Pub. L. 87–195, § 701(2), substituted ''but not completed on the date of enactment of any successor act to the Mutual Security Act of 1954, as amended'' for ''June 30, 1958, but not completed on July 24, 1959''.

1959—Subsec. (a)(2), (3). Pub. L. 86–70, § 40(a), struck out ''Alaska;'' before ''the United States Naval Operating Base''.

Subsec. (a)(6). Pub. L. 86–70, § 40(b), struck out ''or in Alaska or the Canal Zone'' after ''continental United States''.

Subsec. (b)(4). Pub. L. 86–70, § 40(c), added par. (4).

Subsec. (e). Pub. L. 86–108 provided that the liability under this chapter of a contractor, subcontractor, or subordinate contractor engaged in performance of contracts, subcontracts, or subordinate contracts specified in subsec. (a)(5) of this section, and the conditions set forth therein, shall be applicable to the remaining terms of such contracts, subcontracts, and subordinate contracts entered into prior to June 30, 1958, but not completed on July 24, 1959.

1958—Subsec. (a)(5). Pub. L. 85–477, § 502(a)(1), added par. (5).

Subsec. (a)(6). Pub. L. 85–608, § 201(a), added par. (6).

Subsec. (b). Pub. L. 85–608, § 201(b), inserted ''whether or not fixed,'' after ''any project'' and substituted ''projects or operations under service contracts and projects in connection with the national defense or with war activities'' for ''projects in connection with the war effort'' in definition of ''public work'', and inserted definitions of ''allies'' and ''war activities''.

Subsec. (e). Pub. L. 85–608, § 201(c), substituted ''may waive the application of this section with respect to any contract'' for ''may waive the application of the provisions of subparagraphs (3), (4), or (5) of subdivision (a) of this section, with respect to any contract'', and inserted provisions authorizing the Secretary to waive the application of this section to any employee or class of employees of an employer referred to in paragraph (6) of subsection (a) of this section upon recommendation of the employer.

Pub. L. 85–477, § 502(a)(2), substituted ''provisions of subparagraphs (3), (4), or (5)'' for ''provisions of subparagraphs (3) or (4)''.

Subsec. (f). Pub. L. 85–602, § 201(d), substituted provisions making liability of a contractor, subcontractor, or subordinate contractor inapplicable with respect to persons who are prisoners of war or protected persons and who are detained or utilized by the United States for provisions which made liability inapplicable with respect to employees not citizens of the United States who incurred an injury or death resulting in death subsequent to June 30, 1953.

Pub. L. 85–477, § 502(a)(3), inserted ''or any work under subparagraph (5) of subsection (a) of this section'' before ''shall not apply''.

1953—Subsec. (f). Act June 30, 1953, added subsec. (f).

1942—Act Dec. 2, 1942, amended section generally. Prior to amendment section read as follows: ''Except as herein modified, the provisions of sections 901–921, 922–950 of title 33, as amended, and as the same may be amended hereafter, shall apply in respect to the injury or death of any employee engaged in any employment at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government or any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States, including Alaska, Guantanamo, and the Philippine Islands, but excluding the Canal Zone, irrespective of the place where the injury or death occurs.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 47(g) of Pub. L. 86–70 provided that: ''The amendments in sections 40 and 42 [amending this section and sections 1701, 1704, and 1711 of this title] shall take effect when enacted [June 25, 1959]: *Provided, however*, That with respect to injuries or deaths occurring on or after January 3, 1959, and prior to the effective date of these amendments, claims filed by employees engaged in the State of Alaska in any of the employments covered by the Defense Base Act [this chapter] (and their dependents) may be adjudicated under the Workmen's Compensation Act of Alaska instead of the Defense Base Act.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 402 of Pub. L. 85–608 provided that: ''The effective date of this Act [amending this section, sections 1701, 1702, 1704, 1711, and 1716 of this title, and sections 751 and 790 of former Title 5, Executive Departments and Government Officers and Employees, repealing section 801 of former Title 5, and enacting provisions set out as notes under this section and section 1701 of this title] is June 30, 1958. Persons are entitled to the benefits of this Act notwithstanding the fact that an injury, disability, or death occurred after June 30, 1958, and before the date of enactment of this Act [Aug. 8, 1958].''

SHORT TITLE

Section 5 of act Aug. 16, 1941, as added by Pub. L. 85–608, title II, § 202, Aug. 8, 1958, 72 Stat. 538, provided that: ''This Act [enacting this chapter] may be cited as the 'Defense Base Act'.''

REPEALS

Section 701 of Pub. L. 87–195, cited as a credit to this section, was repealed by section 401 of Pub. L. 87–565, pt. IV, Aug. 1, 1962, 76 Stat. 263, except insofar as section 701 affected this section.

TRANSFER OF FUNCTIONS

For transfer of certain functions insofar as they pertain to Air Force, and to extent that they were not previously transferred to Secretary of the Air Force and Department of the Air Force from Secretary of the Army and Department of the Army, see Secretary of Defense Transfer Order No. 40 [App. A(74)], July 22, 1949.

§ 1652. Computation of benefits; application to aliens and nonnationals

(a) The minimum limit on weekly compensation for disability, established by section 906(b) of title 33, and the minimum limit on the average weekly wages on which death benefits are to be computed, established by section 909(e) of title 33, shall not apply in computing compensation and death benefits under this chapter.

(b) Compensation for permanent total or permanent partial disability under section 908(c)(21) of title 33, or for death under this chapter to aliens and nonnationals of the United States not residents of the United States or Canada shall be in the same amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year immediately prior to the date of the injury, and except that the Secretary of Labor may, at his option or upon the application of the insurance carrier shall, commute all future installments of compensation to be paid to such aliens or nonnationals of the United States by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the Secretary.

(Aug. 16, 1941, ch. 357, § 2, 55 Stat. 623; 1946 Reorg. Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg. Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; Pub. L. 98–426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98–426 substituted references to sections of the Longshore and Harbor Workers' Compensation Act for sections of the Longshoremen's and Harbor Workers' Compensation Act, which references have been translated to sections of title 33, thus requiring no change in text.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

''Secretary of Labor'' and ''Secretary'' substituted for ''Federal Security Administrator'' and ''Administrator'', respectively, in subsec. (b), pursuant to Reorg. Plan No. 19 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271, which transferred functions of Federal Security Administrator to Secretary of Labor.

Previously, ''Federal Security Administrator'' and ''Administrator'' substituted for ''United States Employees' Compensation Commission'' and ''Commission'' pursuant to Reorg. Plan No. 2 of 1946, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which abolished United States Employees' Compensation Commission and transferred its functions to Federal Security Administrator.

§ 1653. Compensation districts; judicial proceedings

(a) The Secretary of Labor is authorized to extend compensation districts established under the Longshore and Harbor Workers' Compensation Act, approved March 4, 1927 (44 Stat. 1424) [33 U.S.C. 901 et seq.], or to establish new compensation districts, to include any area to which this chapter applies; and to assign to each such district one or more deputy commissioners, as the Secretary may deem necessary.

(b) Judicial proceedings provided under sections 18 and 21 of the Longshore and Harbor Workers' Compensation Act [33 U.S.C. 918, 921] in respect to a compensation order made pursuant to this chapter shall be instituted in the

United States district court of the judicial district wherein is located the office of the deputy commissioner whose compensation order is involved if his office is located in a judicial district, and if not so located, such judicial proceedings shall be instituted in the judicial district nearest the base at which the injury or death occurs.

(Aug. 16, 1941, ch. 357, § 3, 55 Stat. 623; 1946 Reorg. Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg. Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; Pub. L. 98–426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

REFERENCES IN TEXT

The Longshore and Harbor Workers' Compensation Act, referred to in text, is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98–426 substituted ''Longshore and Harbor Workers' Compensation Act'' for ''Longshoremen's and Harbor Workers' Compensation Act''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

''Secretary of Labor'' and ''Secretary'' substituted for ''Federal Security Administrator'' and ''Administrator'', respectively, in subsec. (a), pursuant to Reorg. Plan No. 19 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271, which transferred functions of Federal Security Administrator to Secretary of Labor.

Previously, ''Federal Security Administrator'' and ''Administrator'' substituted for ''United States Employees' Compensation Commission'' and ''Commission'' pursuant to Reorg. Plan No. 2 of 1946, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which abolished United States Employees' Compensation Commission and transferred its functions to Federal Security Administrator.

§ 1654. Persons excluded from benefits

This chapter shall not apply in respect to the injury or death of (1) an employee subject to the provisions of subchapter I of chapter 81 of title 5; (2) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, or profession of the employer; and (3) a master or member of a crew of any vessel.

(Aug. 16, 1941, ch. 357, § 4, 55 Stat. 623.)

CODIFICATION

''Subchapter I of chapter 81 of title 5'' substituted for reference to act Sept. 7, 1916 (39 Stat. 742), known as the Federal Employees' Compensation Act, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

CHAPTER 12—COMPENSATION FOR INJURY, DEATH, OR DETENTION OF EMPLOYEES OF CONTRACTORS WITH UNITED STATES OUTSIDE UNITED STATES

SUBCHAPTER I—COMPENSATION, REIMBURSEMENT, ETC., BY SECRETARY OF LABOR

SUBCHAPTER II—MISCELLANEOUS PROVISIONS

REPEALS

Section 6 of act June 30, 1953, ch. 176, 67 Stat. 135, repealed section 1(a)(13) of Joint Res. July 3, 1952, ch. 570, 66 Stat. 332, which, as amended by Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, provided for the continuation of this chapter until July 1, 1953.

Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54 as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

SUBCHAPTER I—COMPENSATION, REIMBURSEMENT, ETC., BY SECRETARY OF LABOR

§ 1701. Compensation for injury or death resulting from war-risk hazard

(a) Persons covered

In case of injury or death resulting from injury—

(1) to any person employed by a contractor with the United States, if such person in an employee specified in chapter 11 of this title, and no compensation is payable with respect to such injury or death under such chapter; or

(2) to any person engaged by the United States under a contract for his personal services outside the continental United States; or

(3) to any person employed outside the continental United States as a civilian employee paid from nonappropriated funds administered by the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Store Ashore, Navy exchanges, Marine Corps exchanges, officers' and noncommissioned officers' open messes, enlisted men's clubs, service clubs, special service activities, or any other instrumentality of the United States under the jurisdiction of the Department of Defense and conducted for the mental, physical, and morale improvement of personnel of the Department of Defense and their dependents; or

(4) to any person who is an employee specified in section 1651(a)(5) of this title, if no compensation is payable with respect to such injury or death under chapter 11 of this title or to any person engaged under a contract for his personal services outside the United States approved and financed by the United States under the Mutual Security Act of 1954, as amended (other than title II of chapter II thereof unless the Secretary of Labor, upon the recommendation of the head of any department or other agency of the United States Government, determines a contract financed under a successor provision of any successor Act should be covered by this section): *Provided*, That in cases where the United States is not a formal party to contracts approved and financed under the Mutual Security Act of 1954, as amended, the Secretary, upon the recommendation of the head of any department or agency of the United States, may, in the exercise of his discretion, waive the application of the provisions of this subparagraph with respect to any such contracts, subcontracts, or subordinate contracts, work location under such contracts, subcontracts, or subordinate contracts, or classification of employees; or

(5) to any person employed or otherwise engaged for personal services outside the continental United States by an American employer providing welfare or similar services for the benefit of the Armed Forces pursuant to appropriate authorization by the Secretary of Defense,

and such injury proximately results from a war-risk hazard, whether or not such person then actually was engaged in the course of his employment, the provisions of subchapter I of chapter 81 of title 5, as amended, and as modified by this chapter, shall apply with respect thereto in the same manner and to the same extent as if the person so employed were a civil employee of the United States and were injured while in the performance of his duty, and any compensation found to be due shall be paid from the compensation fund established pursuant to section 8147 of title 5. This subsection shall not be construed to include any person who would otherwise come within the purview of subchapter I of chapter 81 of title 5.

(b) Missing persons considered as totally disabled

(1) Any person specified in subsection (a) of this section who—

(A) is found to be missing from his place of employment, whether or not such person then actually was engaged in the course of his employment, under circumstances supporting an inference that his absence is due to the belligerent action of a hostile force or person, or

(B) is known to have been taken by a hostile force or person as a prisoner, hostage, or otherwise, or

(C) is not returned to his home or to the place where he was employed by reason of the failure of the United States or its contractor to furnish transportation,

until such time as he is returned to his home, to the place of his employment, or is able to be returned to the jurisdiction of the United States, shall, under such regulations as the Secretary may prescribe, be regarded solely for the purposes of this subsection as totally disabled, and the same benefits as are provided for such disability under this subchapter shall be credited to his account and be payable to him for the period of such absence or until his death is in fact established or can be legally presumed to have occurred: *Provided*, That if such person has dependents residing in the United States or its Territories or possessions (including the United States Naval Operating Base, Guantanamo Bay, Cuba, and the Canal Zone), the Secretary during the period of such absence may disburse a part of such compensation, accruing for such total disability, to such dependents, which shall be equal to the monthly benefits otherwise payable for death under this subchapter, and the balance of such compensation for total disability shall accrue and be payable to such person upon his return from such absence. Any payment made pursuant to this subsection shall not in any case be included in computing the maximum aggregate or total compensation payable for disability or death, as provided in section 1702(a) of this title: *Provided further*, That no such payment to such person or his dependent, on account of such absence, shall be made during any period such person or dependent, respectively, has received, or may be entitled to receive, any other payment from the United States, either directly or indirectly, because of such absence, unless such person or dependent refunds or renounces such other benefit or payment for the period claimed.

Benefits found to be due under this subsection shall be paid from the compensation fund established pursuant to section 8147 of title 5: *Pro-*

vided, That the determination of dependents, dependency, and amounts of payments to dependents shall be made in the manner specified in subchapter I of chapter 81 of title 5: *Provided further*, That claim for such detention benefits shall be filed in accordance with and subject to the limitation provisions of subchapter I of chapter 81 of title 5, as modified by section 1706(c) of this title: *And provided further*, That except in cases of fraud or willful misrepresentation, the Secretary may waive recovery of money erroneously paid under this subdivision whenever he finds that such recovery would be impracticable or would cause hardship to the beneficiary affected: *And provided further*, That where such a person is found to be missing from his place of employment whether or not such person then actually was engaged in the course of his employment, under circumstances supporting an inference that his absence is due to the belligerent action of a hostile force or person or is known to have been taken by a hostile force or person as a prisoner, hostage, or otherwise, the amount of benefits to be credited to the account of such person under this subsection, and for the purposes of this subsection only, shall be 100 per centum of the average weekly wages of such person, except that in computing such benefits such average weekly wages (a) shall not exceed the average weekly wages paid to civilian employees of the United States in the same or most similar occupation in the area nearest to the place of employment where such person was last employed, and (b) shall not exceed the average weekly wages of such absent person at the time such absence began; and 70 per centum of such average weekly wage so determined shall be disbursed to the dependent or dependents of such person, irrespective of the limitations of section 909 of title 33, but should there be more than one such dependent, the distribution of such 70 per centum shall be proportionate to the percentages allowed for dependents by section 909 of title 33, and if such manner of disbursement in any case would result in injustice or excessive allowance for a dependent, the Secretary may, in his discretion, modify such percentage or apportionment to meet the requirements of the case; and in such cases benefits for detention shall accrue from January 1, 1942, unless the beginning of absence occurred upon a later date in which event benefits shall accrue from such later date, and for the period of such absence shall be 100 per centum of the average weekly wages, determined as herein provided: *And provided further*, That compensation for disability under this subchapter (except under allowance for scheduled losses of members or functions of the body, within the purview of section 1702(a) of this title) shall not be paid in any case in respect to any period of time during which benefits for detention may accrue under this subchapter in the same case, and should a person entitled to benefits for detention also be entitled to workmen's compensation or similar benefits under any other law, agreement, or plan (except allowances for scheduled losses of members or functions of the body), where such other benefits are paid or to be paid directly or indirectly by the United States, the amount thereof accruing as to the period of absence shall be taken into account and the benefits credited to the account of the detained person reduced accordingly: *And provided further*, That where through mistake of fact, absence of proof of death, or error through lack of adequate information or otherwise, payments as for detention have in any case been erroneously made or credited, any resulting overpayment of detention benefits (the recovery of which is not waived as otherwise provided for in this section) shall be recouped by the Secretary in such manner as he shall determine from any unpaid accruals to the account of the detained person, and if such accruals are insufficient for such purpose, then from any allowance of compensation for injury or death in the same case (whether under this subchapter or under any other law, agreement, or plan, if the United States pays, or is obligated to pay, such benefits, directly or indirectly), but only to the extent of the amount of such compensation benefits payable for the particular period of such overpayment, and in cases of erroneous payments of compensation for injury or death, made through mistake of fact, whether under this subchapter or under any other law, agreement, or plan (if the United States is obligated to pay such compensation, directly or indirectly), the Secretary is authorized to recoup from any unpaid benefits for detention, the amount of any overpayment thus arising; and any amounts recovered under this section shall be covered into such compensation fund, and for the foregoing purposes the Secretary shall have a right of lien, intervention, and recovery in any claim or proceeding for compensation.

(2) Upon application by such person, or someone on his behalf, the Secretary may, under such regulations as he may prescribe, furnish transportation or the cost thereof (including reimbursement) to any such person from the point where his release from custody by a hostile force or person is effected, to his some, the place of his employment, or other place within the jurisdiction of the United States; but no transportation, or the cost thereof, shall be furnished under this paragraph where such person is furnished such transportation, or the cost thereof, under any agreement with his employer or under any other provision of law.

(3) In the case of death of any such person, if his death occurred away from his home, the body of such person shall, in the discretion of the Secretary, and if so desired by his next of kin, near relative, or legal representative, be embalmed and transported in a hermetically sealed casket or other appropriate container to the home of such person or to such other place as may be designated by such next of kin, near relative, or legal representative. No expense shall be incurred under this paragraph by the Secretary in any case where death takes place after repatriation, unless such death proximately results from a war-risk hazard.

(4) Such benefits for detention, transportation expenses of repatriated persons, and expenses of embalming, providing sealed or other appropriate container, and transportation of the body, and attendants (if required), as approved by the Secretary, shall be paid out of the compensation fund established under section 8147 of title 5.

(c) Persons not citizens or residents of United States

Compensation for permanent total or permanent partial disability or for death payable under this section to persons who are not citizens of the United States and who are not residents of the United States or Canada, shall be in the same amount as provided for residents; except that dependents in any foreign country shall be limited to surviving wife or husband and child or children, or if there be no surviving wife or husband or child or children, to surviving father or mother whom such person has supported, either wholly or in part, for the period of one year immediately prior to the date of the injury; and except that the Secretary, at his option, may commute all future installments of compensation to be paid to such persons by paying to them one-half of the commuted amount of such future installments of compensation as determined by the Secretary.

(d) Persons excepted from coverage

The provisions of this section shall not apply in the case of any person (1) whose residence is at or in the vicinity of the place of his employment, and (2) who is not living there solely by virtue of the exigencies of his employment, unless his injury or death resulting from injury occurs or his detention begins while in the course of his employment, or (3) who is a prisoner of war or a protected person under the Geneva Conventions of 1949 and who is detained or utilized by the United States.

(Dec. 2, 1942, ch. 668, title I, §101, 56 Stat. 1028; Dec. 23, 1943, ch. 380, title I, 57 Stat. 626; Aug. 7, 1946, ch. 805, §1, 60 Stat. 899; June 30, 1953, ch. 176, §§2, 3, 67 Stat. 135; Pub. L. 85–477, ch. V, §502(g), June 30, 1958, 72 Stat. 273; Pub. L. 85–608, title I, §§101, 104, title IV, §401, Aug. 8, 1958, 72 Stat. 536, 537, 539; Pub. L. 86–70, §42(a), June 25, 1959, 73 Stat. 151; Pub. L. 87–195, pt. IV, §702, Sept. 4, 1961, 75 Stat. 463; Pub. L. 98–426, §27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

REFERENCES IN TEXT

The Mutual Security Act of 1954, referred to in subsec. (a)(4), is act Aug. 26, 1954, ch. 937, 68 Stat. 832, as amended by acts July 8, 1955, ch. 301, 69 Stat. 283; July 18, 1956, ch. 627, §§2–11, 70 Stat. 555; Aug. 14, 1957, Pub. L. 85–141, 71 Stat. 355; June 30, 1958, Pub. L. 85–477, ch. 1, §§101–103, ch. II, §§201–205, ch. III, §301, ch. IV, §401, ch. V, §501, 72 Stat. 261; July 24, 1959, Pub. L. 86–108, §2, ch. 1, §101, ch. II, §§201–205(a)–(i), (k)–(n), ch. III, §301, ch. IV, §401(a)–(k), (m), 73 Stat. 246; May 14, 1960, Pub. L. 86–472, chs. I–V, 74 Stat. 134, which was principally classified to chapter 24 (§1750 et seq.) of Title 22, Foreign Relations and Intercourse, and which was repealed by acts July 18, 1956, ch. 627, §8(m), 70 Stat. 559; Aug. 14, 1957, Pub. L. 85–141, §§2(e), 3, 4(b), 11(d), 71 Stat. 356; July 24, 1959, Pub. L. 86–108, ch. II, §205(j), ch. IV, §401(1), 73 Stat. 250; May 14, 1960, Pub. L. 86–472, ch. II, §§203(d), 204(k), 74 Stat. 138; Sept. 4, 1961, Pub. L. 87–195, pt. III, §642(a)(2), 75 Stat. 460; June 30, 1976, Pub. L. 94–329, title II, §212(b)(1), 90 Stat. 745; Apr. 4, 1996, Pub. L. 104–127, title II, §228, 110 Stat. 963, except for sections 1754, 1783, 1796, 1853, 1928, and 1937 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 1754 of Title 22 and Tables.

Title II of chapter II of the Mutual Security Act of 1954, referred to in subsec. (a)(4), which was classified generally to sections 1870 to 1876 of Title 22, was repealed by Pub. L. 87–195, Pt. III, §642(a)(2), Sept. 4, 1961, 75 Stat. 460.

For definition of Canal Zone, referred to in subsec. (b), see section 3602(b) of Title 22.

CODIFICATION

In subsecs. (a) and (b), ''subchapter I of chapter 81 of title 5'' and ''section 8147 of title 5'' substituted for references to act September 7, 1916, as amended, and section 35 of that Act, respectively, on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, the act of September 7, 1916, known as the Federal Employees' Compensation Act, was classified to chapter 15 of Title 5.

Reference to Philippine Islands in subsec. (b)(1) omitted as obsolete in view of Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7871, 60 Stat. 1352, recognizing independence of Philippines and withdrawing and surrendering all rights of possession, supervision, jurisdiction, control, or sovereignty now existing and exercised by United States in and over territory and people of Philippines. See note set out under section 1394 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–426 substituted references to sections of the Longshore and Harbor Workers' Compensation Act for sections of the Longshoremen's and Harbor Workers' Compensation Act, which references have been translated to sections of title 33, thus requiring no change in text.

1961—Subsec. (a)(4). Pub. L. 87–195 extended coverage in those cases where the Secretary of Labor, upon the recommendation of the head of any department or other agency of the U.S. Government, determines a contract financed under a successor provision of any successor act to the Mutual Security Act of 1954 should be covered by this section.

1959—Subsec. (a). Pub. L. 86–70 struck out ''or in Alaska or the Canal Zone'' after ''continental United States'' in pars. (2), (3) and (5).

1958—Subsec. (a)(2). Pub. L. 85–608, §101(a), substituted ''outside the continental United States or in Alaska or the Canal Zone'' for ''outside the United States or in Hawaii, Alaska, Puerto Rico, or the Virgin Islands''.

Subsec. (a)(3). Pub. L. 85–608, §101(b), substituted provisions relating to injuries to civilian employees outside the continental United States or in Alaska or the Canal Zone paid from nonappropriated funds and who are employed in connection with activities conducted for the mental, physical, and morale improvement of personnel of the Department of Defense and their dependents for provisions which related to injuries to persons employed as civilian employees of post exchanges or ship-service stores outside the United States or in Hawaii, Alaska, Puerto Rico, or the Virgin Islands.

Subsec. (a)(4). Pub. L. 85–477 added par. (4).

Subsec. (a)(5). Pub. L. 85–608, §101(c), added par. (5).

Subsec. (b). Pub. L. 85–608, §104, substituted ''a hostile force or person'' for ''an enemy'' in four places and for ''the enemy''.

Subsec. (c). Pub. L. 85–608, §401, reenacted subsec. (c) and also repealed section 2 of act June 30, 1953, which had previously repealed subsec. (c).

Subsec. (d). Pub. L. 85–608, §101(d), substituted provisions making section inapplicable to persons who are prisoners of war or protected persons and who are detained or utilized by the United States for provisions which made section inapplicable to persons who are not citizens of the United States and who suffered an injury, disability, death, or detention by the enemy subsequent to June 30, 1953.

1953—Subsec. (c). Act June 30, 1953, §2, repealed subsec. (c) which provided for amount of compensation payable to noncitizens and nonresidents for permanent total or permanent partial disability or death, limited eligible dependents and permitted Secretary to commute future installments of compensation.

Subsec. (d). Act June 30, 1953, § 3, added cl. (3).

1946—Act Aug. 7, 1946, made benefits payable for detention uniform from date of capture rather than at a reduced rate for 2 years as was the case formerly, prevented dual payments without impairing compensation rights for disability which continues after repatriation, and provided for adjustments of overpayments made under a mistake of facts.

1943—Subsec. (b)(1). Act Dec. 23, 1943, inserted fourth proviso in second paragraph.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective June 25, 1959, see section 47(g) of Pub. L. 86–70, set out as a note under section 1651 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–608 effective June 30, 1958, see section 402 of Pub. L. 85–608, set out as a note under section 1651 of this title.

EFFECTIVE DATE OF 1943 AMENDMENT

Act Dec. 23, 1943, provided that: ''The amendment in paragraph (a) [amending this section] shall become effective the first day of the month next following the approval of this Act [Dec. 23, 1943].''

EFFECTIVE DATE

Section 107 of title I of act Dec. 2, 1942, provided: ''This title [enacting this subchapter] shall take effect as of December 7, 1941.''

RETROACTIVE EFFECT OF 1946 AMENDMENT; REVIEW OF CASES

Section 2 of act Aug. 7, 1946, provided for application of section 1 of act Aug. 7, 1946, amending this section, in all cases coming within the purview of subsec. (b) of this section, retrospectively to Jan. 1, 1942; and for review by the United States Employes' Compensation Commission of any case affected by such provisions, to make the adjustment of benefits which they require, and to make payments where the detained person has died since adjudication, to his legal representative.

SHORT TITLE

Section 208 of act Dec. 2, 1942, as added by Pub. L. 85–608, § 105, provided that: ''Titles I and II of this Act [enacting subchapters I and II of this chapter] may be cited as the 'War Hazards Compensation Act'.''

REPEALS

Section 702 of Pub. L. 87–195, cited as a credit to this section, was repealed by section 401 of Pub. L. 87–565, pt. IV, Aug. 1, 1962, 76 Stat. 263, except in so far as section 702 affected this section.

Section 6 of act June 30, 1953, repealed section 1(a)(13) of act July 3, 1952, ch. 570, 66 Stat. 331, which defined terms ''enemy'', ''allies'', ''national war effort'', and ''war effort''.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Labor, see note set out under section 1711 of this title.

INCREASE IN COMPENSATION FOR INJURIES AND DEATH FROM INJURIES SUSTAINED BEFORE JULY 1, 1946

Pub. L. 87–380, Oct. 4, 1961, 75 Stat. 809, increased the monthly disability and death compensation payable pursuant to subsec. (a) of this section with respect to injuries or deaths resulting from injury sustained prior to July 1, 1946, by 15 per centum, effective only with respect to disability and death compensation payable for periods commencing on and after Oct. 4, 1961.

§ 1702. Application of Longshore and Harbor Workers' Compensation Act

(a) In the administration of the provisions of subchapter I of chapter 81 of title 5 with respect to cases coming within the purview of section 1701 of this title, the scale of compensation benefits and the provisions for determining the amount of compensation and the payment thereof as provided in sections 908 and 909 of title 33, so far as the provisions of said sections can be applied under the terms and conditions set forth therein shall be payable in lieu of the benefits, except medical benefits, provided under subchapter I of chapter 81 of title 5: *Provided*, That the total compensation payable under this subchapter for injury or death shall in no event exceed the limitations upon compensation as fixed in section 914(m)[1] of title 33 as such section may from time to time be amended except that the total compensation shall not be less than that provided for in the original enactment of this chapter.

(b) For the purpose of computing compensation with respect to cases coming within the purview of section 1701 of this title, the provisions of sections 906 and 910 of title 33 shall be applicable: *Provided*, That the minimum limit on weekly compensation for disability, established by section 906(b) of title 33, and the minimum limit on the average weekly wages on which death benefits are to be computed, established by section 909(e) of title 33, shall not apply in computing compensation under this subchapter.

(Dec. 2, 1942, ch. 668, title I, § 102, 56 Stat. 1031; July 3, 1948, ch. 826, § 4(c), 62 Stat. 1242; Pub. L. 85–608, title I, § 102, Aug. 8, 1958, 72 Stat. 536; Pub. L. 98–426, § 27(d)(2), Sept. 28, 1984, 98 Stat. 1654.)

REFERENCES IN TEXT

The Longshore and Harbor Workers' Compensation Act, referred to in section catchline, is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

Subsection (m) of section 914 of title 33, referred to in subsec. (a), was repealed by Pub. L. 92–576, § 5(e), Oct. 27, 1972, 86 Stat. 1254.

CODIFICATION

''Subchapter I of chapter 81 of title 5'' substituted for references to Act of September 7, 1916, as amended, known as the Federal Employees' Compensation Act, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1984—Pub. L. 98–426 substituted ''Longshore and Harbor Workers' Compensation Act'' for ''Longshoremen's and Harbor Workers' Compensation Act'' wherever appearing.

1958—Subsec. (a). Pub. L. 85–608 struck out proviso that required any amendment to the Longshoremen's and Harbor Workers' Compensation Act which increased the amount of benefits payable for injury or death to be applied in the administration of this sec-

[1] See References in Text note below.

tion as if the amendment had been in effect at the time of the particular injury or death.

1948—Subsec. (a). Act July 3, 1948, inserted all text in proviso beginning ''as fixed in section 914(m) of title 33''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–608 effective June 30, 1958, see section 402 of Pub. L. 85–608, set out as a note under section 1651 of this title.

BENEFITS ADJUDICATED PRIOR TO AUGUST 8, 1958

Section 102 of Pub. L. 85–608 provided that the amendment made by that section shall not affect benefits adjudicated thereunder prior to Aug. 8, 1958.

§ 1703. "Contractor with the United States" defined

As used in this subchapter, the term ''contractor with the United States'' includes any subcontractor or subordinate subcontractor with respect to the contract of such contractor.

(Dec. 2, 1942, ch. 668, title I, § 103, 56 Stat. 1031.)

§ 1704. Reimbursement

(a) Payments reimbursable; filing claim for reimbursement; regulations for payment of direct benefits

Where any employer or his insurance carrier or compensation fund pays or is required to pay benefits—

(1) to any person or fund on account of injury or death of any person coming within the purview of this subchapter or chapter 11 of this title, if such injury or death arose from a war-risk hazard, which are payable under any workmen's compensation law of the United States or of any State, Territory, or possession of the United States, or other jurisdiction; or

(2) to any person by reason of any agreement outstanding on December 2, 1942 made in accordance with a contract between the United States and any contractor therewith to pay benefits with respect to the death of any employee of such contractor occurring under circumstances not entitling such person to benefits under any workmen's compensation law or to pay benefits with respect to the failure of the United States or its contractor to furnish transportation upon the completion of the employment of any employee of such contractor to his home or to the place where he was employed; or

(3) to any person by reason of an agreement approved or authorized by the United States under which a contractor with the United States has agreed to pay workmen's compensation benefits or benefits in the nature of workmen's compensation benefits to an injured employee or his dependents on account of detention by a hostile force or person or on account of injury or death arising from a war-risk hazard;

such employer, carrier, or fund shall be entitled to be reimbursed for all benefits so paid or payable, including funeral and burial expenses, medical, hospital, or other similar costs for treatment and care; and reasonable and necessary claims expense in connection therewith. Claim for such reimbursement shall be filed with the Secretary under regulations promulgated by him, and such claims, or such part thereof as may be allowed by the Secretary, shall be paid from the compensation fund established under section 8147 of title 5. The Secretary may, under such regulations as he shall prescribe, pay such benefits, as they accrue and in lieu of reimbursement, directly to any person entitled thereto, and the insolvency of such employer, insurance carrier, or compensation fund shall not affect the right of the beneficiaries of such benefits to receive the compensation directly from the said compensation fund established under section 8147 of title 5. The Secretary may also, under such regulations as he shall prescribe, use any private facilities, or such Government facilities as may be available, for the treatment or care of any person entitled thereto.

(b) Charging of premiums as prohibiting reimbursement

No reimbursement shall be made under this subchapter in any case in which the Secretary finds that the benefits paid or payable were on account of injury, detention, or death which arose from a war-risk hazard for which a premium (which included an additional charge or loading for such hazard) was charged.

(c) Injury or death occurring within any State

The provisions of this section shall not apply with respect to benefits on account of any injury or death occurring within any State.

(Dec. 2, 1942, ch. 668, title I, § 104, 56 Stat. 1031; Pub. L. 85–608, title I, § 104, Aug. 8, 1958, 72 Stat. 537; Pub. L. 86–70, § 42(b), June 25, 1959, 73 Stat. 151.)

CODIFICATION

In subsec. (a), ''section 8147 of title 5'' substituted for ''section 35 of such Act of September 7, 1916, as amended'', on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1959—Subsec. (c). Pub. L. 86–70 added subsec. (c).

1958–Subsec. (a)(3). Pub. L. 85–608 substituted ''a hostile force or person'' for ''the enemy''.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective June 25, 1959, see section 47(g) of Pub. L. 86–70, set out as a note under section 1651 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–608 effective June 30, 1958, see section 402 of Pub. L. 85–608, set out as a note under section 1651 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Labor, see note set out under section 1711 of this title.

§ 1705. Receipt of workmen's compensation benefits

(a) Receipt of benefits under other provisions

No benefits shall be paid or furnished under the provisions of this subchapter for injury or

death to any person who recovers or receives workmen's compensation benefits for the same injury or death under any other law of the United States, or under the law of any State, Territory, possession, foreign country, or other jurisdiction, or benefits in the nature of workmen's compensation benefits payable under an agreement approved or authorized by the United States pursuant to which a contractor with the United States has undertaken to provide such benefits.

(b) Lien and right of recovery against compensation payable under other provisions

The Secretary shall have a lien and a right of recovery, to the extent of any payments made under this subchapter on account of injury or death, against any compensation payable under any other workmen's compensation law on account of the same injury or death; and any amounts recovered under this subsection shall be covered into the fund established under section 8147 of title 5.

(c) Receipt of wages as credit against payment under this subchapter; intervention by Secretary in proceeding to recover wages, etc.

Where any person specified in section 1701(a) of this title, or the dependent, beneficiary, or allottee of such person, receives or claims wages, payments in lieu of wages, insurance benefits for disability or loss of life (other than workmen's compensation benefits), and the cost of such wages, payments, or benefits is provided in whole or in part by the United States, the amount of such wages, payments, or benefits shall be credited, in such manner as the Secretary shall determine, against any payments to which any such person is entitled under this subchapter.

Where any person specified in section 1701(a) of this title, or any dependent, beneficiary, or allottee of such person, or the legal representative or estate of any such entities, after having obtained benefits under this subchapter, seeks through any proceeding, claim, or otherwise, brought or maintained against the employer, the United States, or other person, to recover wages, payments in lieu of wages, or any sum claimed as for services rendered, or for failure to furnish transportation, or for liquidated or unliquidated damages under the employment contract, or any other benefit, and the right in respect thereto is alleged to have accrued during or as to any period of time in respect of which payments under this subchapter in such case have been made, and in like cases where a recovery is made or allowed, the Secretary shall have the right of intervention and a lien and right of recovery to the extent of any payments paid and payable under this subchapter in such case, provided the cost of such wages, payments in lieu of wages, or other such right, may be directly or indirectly paid by the United States; and any amounts recovered under this subsection shall be covered into the fund established under section 8147 of title 5.

(d) Entitlement to benefits by national of a foreign government under foreign laws

Where a national of a foreign government is entitled to benefits on account of injury or death resulting from a war-risk hazard, under the laws of his native country or any other foreign country, the benefits of this subchapter shall not apply.

(e) Receipt of benefits for prior accident or disease

If at the time a person sustains an injury coming within the purview of this subchapter said person is receiving workmen's compensation benefits on account of a prior accident or disease, said person shall not be entitled to any benefits under this subchapter during the period covered by such workmen's compensation benefits unless the injury from a war-risk hazard increases his disability, and then only to the extent such disability has been so increased.

(Dec. 2, 1942, ch. 668, title I, § 105, 56 Stat. 1032; Dec. 23, 1943, ch. 380, title I, 57 Stat. 627.)

CODIFICATION

In subsecs. (b) and (c), ''section 8147 of title 5'' was substituted for ''section 35 of such Act of September 7, 1916, as amended,'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1943—Subsec. (c). Act Dec. 23, 1943, added second par.

EFFECTIVE DATE OF 1943 AMENDMENT

Act Dec. 23, 1943, provided that: ''The amendment in paragraph (a) [amending this section] shall become effective as of the effective date of title I of such Act of December 2, 1942 [sections 1701 to 1706 of this title].''

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Labor, see note set out under section 1711 of this title.

§ 1706. Administration

(a) Rules and regulations

The provisions of this subchapter shall be administered by the Secretary of Labor, and the Secretary is authorized to make rules and regulations for the administration thereof and to contract with insurance carriers for the use of the service facilities of such carriers for the purpose of facilitating administration.

(b) Agreements and working arrangements with other agencies, etc.

In administering the provisions of this subchapter the Secretary may enter into agreements or cooperative working arrangements with other agencies of the United States or of any State (including the District of Columbia, Hawaii, Alaska, Puerto Rico, and the Virgin Islands) or political subdivision thereof, and with other public agencies and private persons, agencies, or institutions, within and outside the United States, to utilize their services and facilities and to compensate them for such use. The Secretary may delegate to any officer or employee, or to any agency, of the United States or of any State, or of any political subdivision thereof, or Territory or possession of the United States, such of his powers and duties as he finds necessary for carrying out the purposes of this subchapter.

(c) Waiver of notice of injury and filing of claims

The Secretary, in his discretion, may waive the limitation provisions of subchapter I of

chapter 81 of title 5 with respect to notice of injury and filing of claims under this subchapter, whenever the Secretary shall find that, because of circumstances beyond the control of an injured person or his beneficiary, compliance with such provisions could not have been accomplished within the time therein specified.

(Dec. 2, 1942, ch. 668, title I, § 106, 56 Stat. 1033.)

CODIFICATION

In subsec. (c), ''subchapter I of chapter I of title 5'' substituted for reference to Act of September 7, 1916, as amended, known as the Federal Employees' Compensation Act, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

''Secretary of Labor'' and ''Secretary'' substituted for ''Federal Security Administrator'' and ''Administrator'', respectively, in text, pursuant to Reorg. Plan No. 19 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271, which transferred functions of Federal Security Administrator to Secretary of Labor.

Previously, ''Federal Security Administrator'' and ''Administrator'' substituted for ''United States Employees' Compensation Commission'' and ''Commission'' pursuant to Reorg. Plan No. 2 of 1946, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which abolished United States Employees' Compensation Commission and transferred its functions to Federal Security Administrator.

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

SUBCHAPTER II—MISCELLANEOUS PROVISIONS

§ 1711. Definitions

When used in this chapter—

(a) The term ''Secretary'' means the Secretary of Labor.

(b) The term ''war-risk hazard'' means any hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring within any country in which a person covered by this chapter is serving; from—

(1) the discharge of any missile (including liquids and gas) or the use of any weapon, explosive, or other noxious thing by a hostile force or person or in combating an attack or an imagined attack by a hostile force or person; or

(2) action of a hostile force or person, including rebellion or insurrection against the United States or any of its Allies; or

(3) the discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or person as defined herein (except with respect to employees of a manufacturer, processor, or transporter of munitions during the manufacture, processing, or transporting thereof, or while stored on the premises of the manufacturer, processor, or transporter); or

(4) the collision of vessels in convoy or the operation of vessels or aircraft without running lights or without other customary peacetime aids to navigation; or

(5) the operation of vessels or aircraft in a zone of hostilities or engaged in war activities.

(c) The term ''hostile force or person'' means any nation, any subject of a foreign nation, or any other person serving a foreign nation (1) engaged in a war against the United States or any of its allies, (2) engaged in armed conflict, whether or not war has been declared, against the United States or any of its allies, or (3) engaged in a war or armed conflict between military forces of any origin in any country in which a person covered by this chapter is serving.

(d) The term ''allies'' means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance.

(e) The term ''war activities'' includes activities directly relating to military operations.

(f) the[1] term ''continental United States'' means the States and the District of Columbia.

(Dec. 2, 1942, ch. 668, title II, § 201, 56 Stat. 1033; 1946 Reorg. Plan No. 2, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg. Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; June 30, 1953, ch. 176 § 1, 67 Stat. 134; June 30, 1954, ch. 431, § 1, 68 Stat. 336; June 30, 1955, ch. 257, § 1, 69 Stat. 241; July 9, 1956, ch. 537, § 1, 70 Stat. 519; Pub. L. 85–70, June 29, 1957, 71 Stat. 242; Pub. L. 85–608, title I, §§ 103, 104, Aug. 8, 1958, 72 Stat. 537; Pub. L. 86–70, § 42(c), June 25, 1959, 73 Stat. 151.)

CODIFICATION

In the original of act Dec. 2, 1942, § 201, the opening clause read ''When used in this Act (except when used in title III)—''. Title III of such Act amended section 1651 of this title which is not in this chapter. Therefore, because of the use of the restrictive term ''this chapter'', in this section, the words in parenthesis ''except when used in title III'' were omitted as unnecessary. This chapter comprises the remainder of such Act.

AMENDMENTS

1959—Subsec. (f). Pub. L. 86–70 added subsec. (f).

1958—Subsec. (b). Pub. L. 85–608, § 103(a), struck out provisions which defined ''war-risk hazard'' to mean hazards arising after Dec. 6, 1941, and prior to July 1, 1958, and inserted provisions redefining term to include hazards arising during a war or an armed conflict in which the United States is engaged, and hazards arising during a war or armed conflict between military forces of any origin, occurring within any country in which a person covered by this chapter is serving.

Subsec. (b)(1). Pub. L. 85–608, § 104, substituted ''a hostile force or person'' for ''an enemy'' in two places.

Subsec. (b)(2). Pub. L. 85–608, § 104, substituted ''a hostile force or person'' for ''the enemy''.

Subsec. (b)(3). Pub. L. 85–608, § 103(b), substituted ''a war or armed conflict with a hostile force or person as defined herein'' for ''the national war effort'', and excepted employees of transporters of munitions during

[1] So in original. Probably should be capitalized.

the transportation thereof or while the munitions are stored on the premises of the transporter.

Subsec. (c). Pub. L. 85–608, § 103(c), substituted provisions defining ''hostile force or person'' for provisions which defined ''enemy'' to mean any nation, government, or force engaged in armed conflict with the Armed Forces of the United States or of any of its allies.

Subsec. (d). Pub. L. 85–608, § 103(d), substituted provisions redefining ''allies'' to mean any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance for provisions which defined the term as meaning any nation, government, or force participating with the United States in any armed conflict.

Subsec. (e). Pub. L. 85–608, § 103(e), substituted definition of ''war activities'' for provisions defining ''national war effort'' and ''war effort''.

Subsec. (f). Pub. L. 85–608, § 103(f), repealed subsec. (f) which defined ''war activities'', now covered by subsec. (e) of this section.

1957—Subsec. (b). Pub. L. 85–70 substituted ''July 1, 1958'' for ''July 1, 1957''.

1956—Subsec. (b). Act July 9, 1956, substituted ''July 1, 1957'' for ''July 1, 1956''.

1955—Subsec. (b). Act June 30, 1955, substituted ''July 1, 1956'' for ''July 1, 1955''.

1954—Subsec. (b). Act June 30, 1954, substituted ''July 1, 1955'' for ''July 1, 1954''.

1953—Subsec. (b). Act June 30, 1953, § 1(a), substituted ''July 1, 1954'' for ''the end of the present war''.

Subsecs. (c) to (f). Act June 30, 1953, § 1(b), added subsecs. (c) to (f).

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective June 25, 1959, see section 47(g) of Pub. L. 86–70, set out as a note under section 1651 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–608 effective June 30, 1958, see section 402 of Pub. L. 85–608, set out as a note under section 1651 of this title.

TRANSFER OF FUNCTIONS

'''Secretary' means the Secretary of Labor'' substituted for '''Administrator' means the Federal Security Administrator'' in subsec. (a), pursuant to Reorg. Plan No. 19 of 1950, § 1, eff. May 24, 1950, 15 F.R. 2178, 64 Stat. 1271, which transferred functions of Federal Security Administrator to Secretary of Labor.

Previously, '''Administrator' means the Federal Security Administrator'' substituted for '''Commission' means the United States Employees' Compensation Commission'' pursuant to Reorg. Plan No. 2 of 1946, § 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which abolished United States Employees' Compensation Commission and transferred its functions to Federal Security Administrator.

§ 1712. Disqualification from benefits

No person convicted in a court of competent jurisdiction of any subversive act against the United States or any of its Allies, committed after the declaration by the President on May 27, 1941, of the national emergency, shall be entitled to compensation or other benefits under subchapter I of this chapter, nor shall any compensation be payable with respect to his death or detention under said subchapter, and upon indictment or the filing of an information charging the commission of any such subversive act, all such compensation or other benefits shall be suspended and remain suspended until acquittal or withdrawal of such charge, but upon conviction thereof or upon death occurring prior to a final disposition thereof, all such payments and all benefits under said subchapter shall be forfeited and terminated. If the charge is withdrawn, or there is an acquittal, all such compensation withheld shall be paid to the person or persons entitled thereto.

(Dec. 2, 1942, ch. 668, title II, § 202, 56 Stat. 1034.)

NATIONAL EMERGENCY DECLARED ON MAY 27, 1941

The national emergency declared by the President on May 27, 1941, by Proc. No. 2487, 6 F.R. 2617, 55 Stat. 1647, was terminated April 28, 1952 by Proc. No. 2974, Apr. 30, 1952, 17 F.R. 3813, 66 Stat. c31, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

§ 1713. Fraud; penalties

Whoever, for the purpose of causing an increase in any payment authorized to be made under this chapter, or for the purpose of causing any payment to be made where no payment is authorized hereunder, shall knowingly make or cause to be made, or aid or abet in the making of any false statement or representation of a material fact in any application for any payment under subchapter I of this chapter, or knowingly make or cause to be made, or aid or abet in the making of any false statement, representation, affidavit, or document in connection with such an application, or claim, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(Dec. 2, 1942, ch. 668, title II, § 203, 56 Stat. 1034.)

§ 1714. Legal services

No claim for legal services or for any other services rendered in respect of a claim or award for compensation under subchapter I of this chapter to or on account of any person shall be valid unless approved by the Secretary; and any claim so approved shall, in the manner and to the extent fixed by the said Secretary, be paid out of the compensation payable to the claimant; and any person who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is so approved, or who solicits employment for another person or for himself in respect of any claim or award for compensation under said subchapter shall be guilty of a misdemeanor and upon conviction thereof shall, for each offense, be fined not more than $1,000 or imprisoned not more than one year, or both.

(Dec. 2, 1942, ch. 668, title II, § 204, 56 Stat. 1034.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Labor, see note set out under section 1711 of this title.

§ 1715. Finality of Secretary's decisions

The action of the Secretary in allowing or denying any payment under subchapter I of this chapter shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General is authorized and directed to allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.

(Dec. 2, 1942, ch. 668, title II, § 205, 56 Stat. 1034.)

TRANSFER OF FUNCTIONS

For transfer of functions to Secretary of Labor, see note set out under section 1711 of this title.

§ 1716. Presumption of death or detention

A determination that an individual is dead or a determination that he has been detained by a hostile force or person may be made on the basis of evidence that he has disappeared under circumstances such as to make such death or detention appear probable.

(Dec. 2, 1942, ch. 668, title II, § 206, 56 Stat. 1034; Pub. L. 85–608, title I, § 104, Aug. 8, 1958, 72 Stat. 537.)

AMENDMENTS

1958—Pub. L. 85–608 substituted ''a hostile force or person'' for ''the enemy''.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–608 effective June 30, 1958, see section 402 of Pub. L. 85–608, set out as a note under section 1651 of this title.

§ 1717. Assignment of benefits; execution, levy, etc., against benefits

The right of any person to any benefit under subchapter I of this chapter shall not be transferable or assignable at law or in equity except to the United States, and none of the moneys paid or payable (except money paid hereunder as reimbursement for funeral expenses or as reimbursement with respect to payments of workmen's compensation or in the nature of workmen's compensation benefits), or rights existing under said subchapter, shall be subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

(Dec. 2, 1942, ch. 668, title II, § 207, 56 Stat. 1035.)

CHAPTER 13—SCHOOL LUNCH PROGRAMS

Sec.

§ 1751. Congressional declaration of policy

It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs.

(June 4, 1946, ch. 281, §2, 60 Stat. 230; Pub. L. 101–147, title III, §312(1), Nov. 10, 1989, 103 Stat. 916.)

AMENDMENTS

1989—Pub. L. 101–147 substituted ''school lunch'' for ''school-lunch''.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 2 of Pub. L. 101–147 provided that: ''Except as otherwise provided in this Act, the amendments made by this Act [see Short Title of 1989 Amendment note below] shall take effect on the date of the enactment of this Act [Nov. 10, 1989].''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–265, §1(a), June 30, 2004, 118 Stat. 729, provided that: ''This Act [enacting sections 1754 and 1769i of this title, amending sections 1396a, 1758, 1759a, 1760, 1761, 1762a, 1766, 1769, 1769b–1, 1769c, 1769g, 1773, 1776, 1786, and 1788 of this title and section 2020 of Title 7, Agriculture, enacting provisions set out as notes under this section and sections 1754, 1758, 1766, 1769c, 1773, and 1786 of this title, and amending provisions set out as a note under section 612c of Title 7] may be cited as the 'Child Nutrition and WIC Reauthorization Act of 2004'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–336, §1(a), Oct. 31, 1998, 112 Stat. 3143, provided that: ''This Act [amending sections 1755, 1758, 1759a to 1761, 1762a, 1765 to 1766a, 1769, 1769b–1, 1769c, 1769f to 1769h, 1773, 1776, 1784, 1786, and 1788 of this title, repealing section 1766b of this title, enacting provisions set out as notes under sections 1755, 1761, and 1786 of this title, and amending provisions set out as notes under section 1769 of this title and section 612c of Title 7, Agriculture] may be cited as the 'William F. Goodling Child Nutrition Reauthorization Act of 1998'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–149, §1, May 29, 1996, 110 Stat. 1379, provided that: ''This Act [amending section 1758 of this title] may be cited as the 'Healthy Meals for Children Act'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–448, §1(a), Nov. 2, 1994, 108 Stat. 4699, provided that: ''This Act [enacting sections 1766b and 1769f to 1769h of this title, amending sections 280c–6, 1396a, 1755, 1756, 1758, 1759a, 1760, 1761, 1762a, 1766, 1769, 1769a, 1769b–1, 1769c, 1773, 1776, 1779, 1786, and 1788 of this title, section 2018 of Title 7, Agriculture, section 1484a of Title 20, Education, and section 3803 of Title 31, Money and Finance, enacting provisions set out as notes under this section and sections 1755, 1758, 1760, 1761, 1762a, 1769f, and 1786 of this title, amending provisions set out as notes under section 1786 of this title and section 612c of Title 7, and repealing provisions set out as a note under section 1786 of this title] may be cited as the 'Healthy Meals for Healthy Americans Act of 1994'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–342, §1, Aug. 14, 1992, 106 Stat. 911, provided that: ''This Act [enacting section 1790 of this title, amending sections 1766, 1769, and 1786 of this title, enacting provisions set out as a note under section 1769 of this title, and amending provisions set out as a note under section 612c of Title 7, Agriculture] may be cited as the 'Child Nutrition Amendments of 1992'.''

SHORT TITLE OF 1989 AMENDMENT

Section 1(a) of Pub. L. 101–147 provided that: ''This Act [enacting sections 1766a, 1769b–1, 1769c, 1769d, and 1769e of this title, amending this section and sections 1753, 1755–1758, 1759a, 1760, 1761, 1762a, 1765, 1766, 1769–1769b, 1772, 1773, 1776, 1779, 1783, 1784, 1786, and 1788 of this title, repealing sections 1762 and 1763 of this title, enacting provisions set out as notes under this section and sections 1755, 1758, 1761, 1762a, 1766, 1766a, 1769, 1769c, 1773, 1776, and 1786 of this title, and amending provisions set out as a note under section 1766 of this title] may be cited as the 'Child Nutrition and WIC Reauthorization Act of 1989'.''

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–661, §4001(a), Nov. 14, 1986, 100 Stat. 4070, provided that: ''This division [div. D (§§4001–4503) of Pub. L. 99–661, amending sections 1752, 1755, 1758, 1760, 1761, 1762a, 1766, 1769 to 1769b, 1772, 1773, 1776, 1784, 1786,

1788, and 1789 of this title, repealing sections 1767, 1768, and 1769c of this title, and enacting provisions set out as notes under sections 1758, 1760, 1766, 1772, 1773, and 1786 of this title and section 1431e of Title 7, Agriculture] may be cited as the 'Child Nutrition Amendments of 1986'.''

Pub. L. 99–500, title III, § 301(a), Oct. 18, 1986, 100 Stat. 1783–359, and Pub. L. 99–591, title III, § 301(a), Oct. 30, 1986, 100 Stat. 3341–362, provided that: ''This title [amending sections 1752, 1755, 1758, 1760, 1761, 1762a, 1766, 1769 to 1769b, 1772, 1773, 1776, 1784, 1786, 1788, and 1789 of this title and section 1929a of Title 7, Agriculture, repealing sections 1767, 1768, and 1769c of this title, and enacting provisions set out as notes under sections 1758, 1760, 1766, 1772, 1773, and 1786 of this title and sections 1431e and 1929a of Title 7] may be cited as the 'School Lunch and Child Nutrition Amendments of 1986'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–627, § 1, Nov. 10, 1978, 92 Stat. 3603, provided: ''That this Act [enacting section 1769c of this title, amending sections 1755, 1757, 1758, 1759a to 1761, 1762a, 1766, 1769, 1772 to 1774, 1776, 1784, and 1786 of this title, and enacting provisions set out as notes under sections 1755, 1773 and 1786 of this title] may be cited as the 'Child Nutrition Amendments of 1978'.''

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–166, § 1, Nov. 10, 1977, 91 Stat. 1325, provided: ''That this Act [enacting sections 1769, 1769a, and 1788 of this title, amending sections 1754 to 1758, 1759a, 1760, 1761, 1762a, 1763, 1766, 1772 to 1774, 1776, 1779, 1784, and 1786 of this title, and enacting provisions set out as notes under sections 1755 and 1772 of this title] may be cited as the 'National School Lunch Act and Child Nutrition Amendments of 1977'.''

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94–105, § 1, Oct. 7, 1975, 89 Stat. 511, provided: ''That this Act [enacting sections 1765, 1766, 1767, 1768, and 1787 of this title, amending sections 1752, 1755, 1756, 1758, 1759, 1759a, 1760, 1761, 1762a, 1772, 1773, 1774, 1784, and 1786 of this title, repealing section 1764 of this title, and enacting provisions set out as notes under sections 1758, 1760, 1761, and 1786 of this title] may be cited as the 'National School Lunch Act and Child Nutrition Act of 1966 Amendments of 1975'.''

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–326, § 1, June 30, 1974, 88 Stat. 286, provided: ''That this Act [enacting section 1762a of this title and amending sections 1752, 1755, 1758, 1763, 1774, and 1786 of this title] may be cited as the 'National School Lunch and Child Nutrition Act Amendments of 1974'.''

SHORT TITLE OF 1973 AMENDMENT

Pub. L. 93–150, § 1, Nov. 7, 1973, 87 Stat. 560, provided: ''That this Act [amending sections 1753, 1755, 1757, 1758, 1759, 1759a, 1763, 1772, 1773, and 1786 of this title, and enacting provisions set out as notes under this section and section 240 of Title 20, Education] may be cited as the 'National School Lunch and Child Nutrition Act Amendments of 1973'.''

SHORT TITLE

Section 1 of act June 4, 1946, as amended by Pub. L. 106–78, title VII, § 752(a), Oct. 22, 1999, 113 Stat. 1169, provided: ''That this Act [enacting this chapter] may be cited as the 'Richard B. Russell National School Lunch Act'.''

LOCAL WELLNESS POLICY

Pub. L. 108–265, title II, § 204, June 30, 2004, 118 Stat. 780, as amended by Pub. L. 109–97, title VII, § 776, Nov. 10, 2005, 119 Stat. 2161, provided that:

''(a) IN GENERAL.—Not later than the first day of the school year beginning after June 30, 2006, each local educational agency participating in a program authorized by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall establish a local school wellness policy for schools under the local educational agency that, at a minimum—

''(1) includes goals for nutrition education, physical activity, and other school-based activities that are designed to promote student wellness in a manner that the local educational agency determines is appropriate;

''(2) includes nutrition guidelines selected by the local educational agency for all foods available on each school campus under the local educational agency during the school day with the objectives of promoting student health and reducing childhood obesity;

''(3) provides an assurance that guidelines for reimbursable school meals shall not be less restrictive than regulations and guidance issued by the Secretary of Agriculture pursuant to subsections (a) and (b) of section 10 of the Child Nutrition Act (42 U.S.C. 1779) and sections 9(f)(1) and 17(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(1), 1766(a)), as those regulations and guidance apply to schools;

''(4) establishes a plan for measuring implementation of the local wellness policy, including designation of 1 or more persons within the local educational agency or at each school, as appropriate, charged with operational responsibility for ensuring that the school meets the local wellness policy; and

''(5) involves parents, students, representatives of the school food authority, the school board, school administrators, and the public in the development of the school wellness policy.

''(b) TECHNICAL ASSISTANCE AND BEST PRACTICES.—

''(1) IN GENERAL.—The Secretary, in coordination with the Secretary of Education and in consultation with the Secretary of Health and Human Services, acting through the Centers for Disease Control and Prevention, shall make available to local educational agencies, school food authorities, and State educational agencies, on request, information and technical assistance for use in—

''(A) establishing healthy school nutrition environments;

''(B) reducing childhood obesity; and

''(C) preventing diet-related chronic diseases.

''(2) CONTENT.—Technical assistance provided by the Secretary under this subsection shall—

''(A) include relevant and applicable examples of schools and local educational agencies that have taken steps to offer healthy options for foods sold or served in schools;

''(B) include such other technical assistance as is required to carry out the goals of promoting sound nutrition and establishing healthy school nutrition environments that are consistent with this section;

''(C) be provided in such a manner as to be consistent with the specific needs and requirements of local educational agencies; and

''(D) be for guidance purposes only and not be construed as binding or as a mandate to schools, local educational agencies, school food authorities, or State educational agencies.

''(3) FUNDING.—

''(A) IN GENERAL.—On October 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection $4,000,000, to remain available until September 30, 2009.

''(B) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds transferred under subparagraph (A), without further appropriation.''

COORDINATION OF SCHOOL LUNCH, SCHOOL BREAKFAST, AND SUMMER FOOD SERVICE PROGRAMS

Pub. L. 104–193, title VII, §741, Aug. 22, 1996, 110 Stat. 2307, as amended by Pub. L. 106–78, title VII, §752(b)(6), Oct. 22, 1999, 113 Stat. 1169, provided that:

''(a) COORDINATION.—

''(1) IN GENERAL.—The Secretary of Agriculture shall develop proposed changes to the regulations under the school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), the summer food service program under section 13 of that Act (42 U.S.C. 1761), and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), for the purpose of simplifying and coordinating those programs into a comprehensive meal program.

''(2) CONSULTATION.—In developing proposed changes to the regulations under paragraph (1), the Secretary of Agriculture shall consult with local, State, and regional administrators of the programs described in such paragraph.

''(b) REPORT.—Not later than November 1, 1997, the Secretary of Agriculture shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Economic and Educational Opportunities of the House of Representatives a report containing the proposed changes developed under subsection (a).''

SUPPLEMENTAL NUTRITION PROGRAMS; CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 103–448, §2, Nov. 2, 1994, 108 Stat. 4700, as amended by Pub. L. 106–78, title VII, §752(b)(15), Oct. 22, 1999, 113 Stat. 1170, provided that: ''Congress finds that—

''(1) undernutrition can permanently retard physical growth, brain development, and cognitive functioning of children;

''(2) the longer a child's nutritional, emotional, and educational needs go unmet, the greater the likelihood of cognitive impairment;

''(3) low-income children who attend school hungry score significantly lower on standardized tests than non-hungry low-income children; and

''(4) supplemental nutrition programs under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) can help to offset threats posed to a child's capacity to learn and perform in school that result from inadequate nutrient intake.''

STUDY OF ADULTERATION OF JUICE PRODUCTS SOLD TO SCHOOL MEAL PROGRAMS

Pub. L. 103–448, title I, §125, Nov. 2, 1994, 108 Stat. 4734, directed Comptroller General of the United States, not later than 1 year after Nov. 2, 1994, to conduct study and to submit a report to Congress on costs and problems associated with sale of adulterated fruit juice and juice products to the school lunch program under this chapter and school breakfast program under section 1773 of this title.

CONSOLIDATION OF SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM INTO COMPREHENSIVE MEAL PROGRAM

Pub. L. 103–448, title III, §301, Nov. 2, 1994, 108 Stat. 4749, as amended by Pub. L. 106–78, title VII, §752(b)(15), Oct. 22, 1999, 113 Stat. 1170, provided that:

''(a) IN GENERAL.—Notwithstanding any provision of [the] Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except as otherwise provided in this section, the Secretary of Agriculture shall, not later than 18 months after the date of enactment of this Act [Nov. 2, 1994], develop and implement regulations to consolidate the school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) into a comprehensive meal program.

''(b) REQUIREMENTS.—In establishing the comprehensive meal program under subsection (a), the Secretary shall meet the following requirements:

''(1) The Secretary shall ensure that the program continues to serve children who are eligible for free and reduced price meals. The meals shall meet the nutritional requirements of section 9(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(a)(1)) and section 4(e)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)).

''(2) The Secretary shall continue to make breakfast assistance payments in accordance with section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and food assistance payments in accordance with the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

''(3) The Secretary may not consolidate any aspect of the school lunch program or the school breakfast program with respect to any matter described in any of subparagraphs (A) through (N) of section 12(*l*)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(*l*)(4)).

''(c) PLAN AND RECOMMENDATIONS.—

''(1) PLAN FOR CONSOLIDATION AND SIMPLIFICATION.—Not later than 180 days prior to implementing the regulations described in subsection (a), the Secretary shall prepare and submit to the Committee on Education and Labor [now Committee on Education and the Workforce] of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a plan for the consolidation and simplification of the school lunch program and the school breakfast program.

''(2) RECOMMENDATIONS WITH RESPECT TO CHANGE IN PAYMENT AMOUNTS.—If the Secretary proposes to change the amount of the breakfast assistance payment or the food assistance payment under the comprehensive meal program, the Secretary shall not include the change in the consolidation and shall prepare and submit to the Committee on Education and Labor [now Committee on Education and the Workforce], and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate recommendations for legislation to effect the change.''

STUDY AND REPORT RELATING TO USE OF PRIVATE FOOD ESTABLISHMENTS AND CATERERS UNDER SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM

Pub. L. 103–448, title III, §302, Nov. 2, 1994, 108 Stat. 4750, directed Comptroller General of the United States, in conjunction with the Director of the Office of Technology Assessment, to conduct a study and submit a report to Congress, not later than Sept. 1, 1996, on the use of private food establishments and caterers by schools that participate in the school lunch program under this chapter or the school breakfast program under section 1773 of this title.

SCHOOL LUNCH STUDIES

Pub. L. 101–624, title XVII, §1779, Nov. 28, 1990, 104 Stat. 3816, directed Secretary of Agriculture to determine the quantity of bonus commodities lost, by State, since the 1987–88 school year, the amount that school food service authorities charged students for non-free or reduced price meals, and the trends in school participation and student participation, by State and for the United States, and directed Secretary also to determine the cost to produce school lunches and breakfasts, including indirect and local administrative costs, the reasons why schools choose not to participate in the National school lunch program, the State costs incurred to administer the school programs, and the reasons why children eligible for free or reduced price meals do not apply for benefits or participate, with Secretary to submit to Congress a final report on results of the studies not later than Oct. 1, 1993.

COMPREHENSIVE STUDY OF BENEFITS OF PROGRAMS; REPORT TO CONGRESS

Pub. L. 93–150, § 10, Nov. 7, 1973, 87 Stat. 564, directed Secretary of Agriculture to carry out a comprehensive study to determine if the benefits of the National School Lunch Act and the Child Nutrition Act are accruing to the maximum extent possible to all of the nation's school children, and to determine if regional cost differentials exist in Alaska and other States so as to require additional reimbursement, such report with recommendations to be submitted to Congress no later than June 30, 1974.

§ 1752. Authorization of appropriations; "Secretary" defined

For each fiscal year, there is authorized to be appropriated, out of money in the Treasury not otherwise appropriated, such sums as may be necessary to enable the Secretary of Agriculture (hereinafter referred to as ''the Secretary'') to carry out the provisions of this chapter, other than sections 1761 and 1766 of this title. Appropriations to carry out the provisions of this chapter and of the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] for any fiscal year are authorized to be made a year in advance of the beginning of the fiscal year in which the funds will become available for disbursement to the States. Notwithstanding any other provision of law, any funds appropriated to carry out the provisions of this chapter and the Child Nutrition Act of 1966 shall remain available for the purposes of the Act for which appropriated until expended.

(June 4, 1946, ch. 281, § 3, 60 Stat. 230; Pub. L. 87–823, § 1, Oct. 15, 1962, 76 Stat. 944; Pub. L. 90–302, § 1, May 8, 1968, 82 Stat. 117; Pub. L. 91–248, § 1(a), May 14, 1970, 84 Stat. 208; Pub. L. 93–326, § 7, June 30, 1974, 88 Stat. 287; Pub. L. 94–105, § 24, Oct. 7, 1975, 89 Stat. 529; Pub. L. 99–500, title III, § 371(a)(2), Oct. 18, 1986, 100 Stat. 1783–368, and Pub. L. 99–591, title III, § 371(a)(2), Oct. 30, 1986, 100 Stat. 3341–371; Pub. L. 99–661, div. D, title V, § 4501(a)(2), Nov. 14, 1986, 100 Stat. 4080.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in text, is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1986—Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, which identically directed amendment of section by substituting ''sections 1761 and 1766'' for ''sections 1761, 1766, and 1768'' were executed making the substitution for ''sections 1761, 1766 and 1768'' as the probable intent of Congress.

1975—Pub. L. 94–105 substituted ''sections 1761, 1766 and 1768'' for ''section 1761''.

1974—Pub. L. 93–326 substituted ''other than section 1761 of this title'' for ''other than sections 1759a and 1761 of this title''.

1970—Pub. L. 91–248 provided that appropriations for child food service programs may be made a year in advance of the beginning of the fiscal year in which the funds become available and that funds appropriated for such programs remain available until expended.

1968—Pub. L. 90–302 inserted section 1761 to enumeration of sections excepted from application of this section.

1962—Pub. L. 87–823 struck out '', beginning with the fiscal year ending June 30, 1947,'' after ''fiscal year'' and inserted '', other than section 1759a of this title.''

APPROPRIATIONS AS FUNCTIONS OF HEALTH AND HUMAN SERVICES

Section 1 of Pub. L. 90–302, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided in part that: ''Appropriations shall be considered Health and Human Services functions for budget purposes rather than functions of Agriculture.''

§ 1753. Apportionments to States

(a) The sums appropriated for any fiscal year pursuant to the authorizations contained in section 1752 of this title shall be available to the Secretary for supplying agricultural commodities and other food for the program in accordance with the provisions of this chapter.

(b)(1) The Secretary shall make food assistance payments to each State educational agency each fiscal year, at such times as the Secretary may determine, from the sums appropriated for such purpose, in a total amount equal to the product obtained by multiplying—

(A) the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under section 1758(a) of this title) served during such fiscal year in schools in such State which participate in the school lunch program under this chapter under agreements with such State educational agency; by

(B) the national average lunch payment prescribed in paragraph (2) of this subsection.

(2) The national average lunch payment for each lunch served shall be 10.5 cents (as adjusted pursuant to section 1759a(a) of this title) except that for each lunch served in school food authorities in which 60 percent or more of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price, the national average lunch payment shall be 2 cents more.

(June 4, 1946, ch. 281, § 4, 60 Stat. 230; July 12, 1952, ch. 699, § 1(a), 66 Stat. 591; Pub. L. 87–688, § 3(a), Sept. 25, 1962, 76 Stat. 587; Pub. L. 87–823, § 2, Oct. 15, 1962, 76 Stat. 944; Pub. L. 92–433, § 4(c), Sept. 26, 1972, 86 Stat. 726; Pub. L. 93–150, § 2(a), Nov. 7, 1973, 87 Stat. 560; Pub. L. 97–35, title VIII, §§ 801(a), 819(g), Aug. 13, 1981, 95 Stat. 521, 533; Pub. L. 101–147, title III, §§ 301, 312(2), Nov. 10, 1989, 103 Stat. 913, 916.)

AMENDMENTS

1989—Pub. L. 101–147, § 301, inserted ''Apportionments to States'' as section catchline.

Subsec. (b)(2). Pub. L. 101–147, § 312(2), substituted ''reduced price'' for ''reduced-price''.

1981—Subsec. (a). Pub. L. 97–35, §§ 801(a)(1), (2), 819(g), designated existing provisions as subsec. (a), struck out exclusion of sum specified in section 1754 of this title, and struck out provisions relating to food assistance payments.

Subsec. (b). Pub. L. 97–35, § 801(a)(3), added subsec. (b).

1973—Pub. L. 93–150 increased national average food assistance payments from 8 to 10 cents per lunch.

1972—Pub. L. 92–433 substituted new formula for food assistance payments to State educational agencies by taking into account the number of lunches served dur-

ing the year, the children in the schools in such State participating in the school lunch program, and the national average payment per lunch set up by the Secretary, with certain limitations, for apportionment formula limiting the apportionable funds to 75 per cent of the available funds for such year, and taking into account the participation rate for the State, the need rate for the State, and providing for a method of apportionment, special provisions for disposal of excess or unused funds and for fiscal years beginning July 1, 1962, July 1, 1963, July 1, 1964 and fixing the funds for American Samoa at $25,000 for each year for the five fiscal years beginning July 1, 1962.

1962—Pub. L. 87–823 amended section generally, and, among other changes, substituted as factors for apportionment of funds among the States ''(1) the participation rate for the State, and (2) the assistance need rate for the State'' for ''(1) the number of school children in the State and (2) the need for assistance in the State as indicated by the relation of the per capita income of the United States to the per capita income in the State''; inserted, in provision for determination of amount of apportionment in clause designated ''second'', ''(exclusive of American Samoa for periods ending before July 1, 1967)''; inserted provisions for use of transitional formulas in apportionment of funds for fiscal years beginning in 1962, 1963, and 1964 and apportioning to American Samoa $25,000 annually for five fiscal years in period beginning July 1, 1962 and ending June 30, 1967; and struck out apportionment formula for Puerto Rico, Guam, American Samoa, and the Virgin Islands, which limited apportionments to 3 per centum of the total fund to be apportioned but required the apportionment to each to be not less than an amount which would result in an allotment per child of school age equal to that for the State with the lowest per capita income, definition of school (incorporated in section 1760(d)(7) of this title), provision for use of latest per capita income figures certified by the Department of Commerce (incorporated in section 1760(d)(6)(ii) of this title), and definition of school children which provided that the number of school children should be the number between ages of five and seventeen.

Pub. L. 87–688 inserted ''American Samoa,'' after ''Guam,'' in two places and ''the apportionment for American Samoa,'' after ''the apportionment for Guam,''.

1952—Act July 12, 1952, removed Alaska and Hawaii from 3 percent limitation imposed on Puerto Rico and Virgin Islands, made limitation applicable to Guam, and modified effects of 3 percent limitation.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 820(a) of title VIII of Pub. L. 97–35 provided that: ''The provisions of this title shall take effect as follows:

''(1) The amendments made by the following sections shall take effect on the first day of the month following the date of the enactment of this Act [Aug. 13, 1981] or on September 1, 1981, whichever is earlier:

''(A) section 801 [amending this section and sections 1759a and 1773 of this title];

''(B) that portion of the amendment made by section 810(c) [amending section 1766 of this title] pertaining to the reimbursement rate for supplements;

''(C) that portion of the amendment made by section 810(d)(1) [amending section 1766 of this title] pertaining to the limitation on the number of meals for which reimbursement may be made under the child care food program;

''(D) that portion of the amendment made by section 810(d)(3) [amending section 1766 of this title] which reduces the meal reimbursement factor by 10 percent; and

''(E) section 811 [amending section 1758 of this title].

''(2) The amendments made by sections 802 and 804 [amending sections 1755 and 1756 of this title] shall take effect on July 1, 1981.

''(3) The amendments made by sections 807 [amending section 1772 of this title], 808 [amending sections 1760 and 1784 of this title], and 810(a)(2) [amending section 1766 of this title] shall take effect on the first day of the second month following the date of the enactment of this Act [Aug. 13, 1981].

''(4) The amendments made by the following sections shall take effect October 1, 1981: sections 805 [repealing sections 1754 and 1774 of this title], 806 [amending section 1788 of this title], 809 [amending section 1761 of this title], 810(a)(1) [amending section 1766 of this title], 810(f) [amending section 1766 of this title], 810(g) [amending section 1766 of this title], 812 [amending section 1759a of this title], 814 [amending section 1776 of this title], 817 [enacting section 1774 of this title and amending sections 1759, 1761, 1766, 1773, and 1788 of this title], and 819 [amending this section and sections 1755, 1757, 1759a, 1760, 1762a, 1763, 1766, 1773, 1776, and 1780 of this title].

''(5) The amendments made by section 813 [amending sections 1759a, 1760, 1762a, and 1772 of this title] shall take effect 90 days after the date of the enactment of this Act [Aug. 13, 1981].

''(6) The amendments made by the following provisions shall take effect January 1, 1982: subsections (b), (c), (d), and (e) of section 810 [amending section 1766 of this title], except that—

''(A) the amendment made by section 810(c) pertaining to the reimbursement rate for supplements shall take effect as provided under paragraph (1) of this subsection;

''(B) the amendment made by section 810(d)(1) pertaining to the limitation on the number of meals for which reimbursement may be made shall take effect as provided under paragraph (1) of this subsection; and

''(C) the amendment made by section 810(d)(3) which reduces the meal reimbursement factor by 10 percent shall take effect as provided under paragraph (1) of this subsection.

''(7) The following provisions shall take effect on the date of the enactment of this Act [Aug. 13, 1981]:

''(A) the amendments made by subsections (a) and (b) [amending section 1758 of this title] of section 803 and the provisions of subsections (c) and (d) [amending provisions set out as notes under section 1758 of this title] of section 803;

''(B) the amendment made by section 815 [amending section 1786 of this title];

''(C) the amendment made by section 816 [amending section 1785 of this title]; and

''(D) the provisions of section 818.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 4(c) of Pub. L. 92–433 provided that the amendment made by that section is effective after the fiscal year ending June 30, 1973.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3(b) of Pub. L. 87–688 provided that: ''The amendments made by this section [amending this section and sections 1754 and 1760 of this title] shall be applicable only with respect to funds appropriated after the date of enactment of this Act [Sept. 25, 1962].''

EFFECTIVE DATE OF 1952 AMENDMENT

Section 1(d) of act July 12, 1952, provided that: ''The amendments made by this Act [amending this section and sections 1754 and 1760 of this title] shall be effective only with respect to funds appropriated after the date on which this Act is enacted [July 12, 1952].''

PROMULGATION OF REGULATIONS

Section 820(c) of title VIII of Pub. L. 97–35 provided that: ''Not later than 60 days after the date of the enactment of this Act [Aug. 13, 1981], the Secretary of Agriculture shall promulgate regulations to implement the amendments made by this title [see Tables for classification].''

REDUCTION IN GENERAL REIMBURSEMENT FOR FISCAL YEAR ENDING SEPTEMBER 30, 1981

Pub. L. 96–499, title II, § 201(a), Dec. 5, 1980, 94 Stat. 2599, provided that the national average payment per

lunch under this chapter shall be reduced by 2½ cents for certain school food authorities for fiscal year ending Sept. 30, 1981, and that the amount of reimbursements under section 1776 of this title for fiscal year ending Sept. 30, 1983, and the amount of State revenues appropriated or used for meeting the requirements under section 1756 of this title for the school year ending June 30, 1982, shall not be reduced because of a reduction in the amount of Federal funds expended, prior to repeal by Pub. L. 97–35, title VIII, § 820(b)(1), Aug. 13, 1981, 95 Stat. 535, effective Sept. 1, 1981, or the first day of the first month following Aug. 1981, whichever is earlier.

USE OF FUNDS APPROPRIATED UNDER SECTION 612c OF TITLE 7 FOR IMPLEMENTING THIS SECTION AND REIMBURSEMENT OF SUCH FUNDS

Section 4(a) of Pub. L. 92–433 authorized Secretary of Agriculture to use so much of the funds appropriated by section 612(c) of title 7, as may be necessary, to carry out the purposes of this section and provide an average rate of reimbursement of not less than 8 cents per meal within each State during the fiscal year 1973 and provided for reimbursement of funds so used.

ADDITIONAL FUNDS FOR APPORTIONMENT TO STATES AND FOR SPECIAL ASSISTANCE; CONSULTATION WITH CHILD NUTRITION COUNCIL; REIMBURSEMENT OF SEPARATE FUND FROM SUPPLEMENTAL APPROPRIATION

Pub. L. 92–153, § 1, Nov. 5, 1971, 85 Stat. 419, provided: ''That, notwithstanding any other provision of law, the Secretary of Agriculture shall until such time as a supplemental appropriation may provide additional funds for such purpose use so much of the funds appropriated by section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as may be necessary, in addition to the funds now available therefor, to carry out the purposes of section 11 of the [Richard B. Russell] National School Lunch Act [section 1759a of this title] and provide a rate of reimbursement which will assure every needy child of free or reduced price lunches during the fiscal year ending June 30, 1972, and to carry out the purposes of section 4 of the [Richard B. Russell] National School Lunch Act [this section] and provide an average rate of reimbursement of 6 cents per meal within each State. In determining the amount of funds needed and the requirements of the various States therefor, the Secretary shall consult with the National Advisory Council on Child Nutrition and interested parties. Funds expended under the foregoing provisions of this resolution shall be reimbursed out of any supplemental appropriation hereafter enacted [on and after Nov. 5, 1971] for the purpose of carrying out section 4 [this section] and section 11 of the [Richard B. Russell] National School Lunch Act [section 1759a of this title], and such reimbursements shall be deposited into the fund established pursuant to section 32 of the Act of August 24, 1935 [section 612c of Title 7, Agriculture], to be available for the purposes of said section 32 [section 612c of Title 7].''

APPORTIONMENT OF ADDITIONAL FUNDS TO STATES

Section 4(b) of Pub. L. 92–433 provided that: ''Funds made available pursuant to this section shall be apportioned to the States in such manner as will best enable schools to meet their obligations with respect to the service of free and reduced-price lunches and to meet the objective of this section with respect to providing a minimum rate of reimbursement under section 4 of the [Richard B. Russell] National School Lunch Act [this section], and such funds shall be apportioned and paid as expeditiously as may be practicable.''

Pub. L. 92–153, § 2, Nov. 5, 1971, 85 Stat. 420, provided that: ''Funds made available by this joint resolution [amending sections 1758 and 1759a of this title and enacting provisions set out as notes under this section and sections 1758 and 1773 of this title] shall be apportioned to the States in such manner as will best enable schools to meet their obligations with respect to the service of free and reduced price lunches and to meet the objective of this joint resolution [amending sections 1758 and 1759a of this title and enacting provisions set out as notes under this section and sections 1758 and 1773 of this title] with respect to providing a minimum rate of reimbursement under section 4 of the [Richard B. Russell] National School Lunch Act [this section], and such funds shall be apportioned and paid as expeditiously as may be practicable.''

§ 1754. Nutrition promotion

(a) In general

Subject to the availability of funds made available under subsection (g) of this section, the Secretary shall make payments to State agencies for each fiscal year, in accordance with this section, to promote nutrition in food service programs under this chapter and the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(b) Total amount for each fiscal year

The total amount of funds available for a fiscal year for payments under this section shall equal not more than the product obtained by multiplying—

(1) ½ cent; by

(2) the number of lunches reimbursed through food service programs under this chapter during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs.

(c) Payments to States

(1) Allocation

Subject to paragraph (2), from the amount of funds available under subsection (g) of this section for a fiscal year, the Secretary shall allocate to each State agency an amount equal to the greater of—

(A) a uniform base amount established by the Secretary; or

(B) an amount determined by the Secretary, based on the ratio that—

(i) the number of lunches reimbursed through food service programs under this chapter in schools, institutions, and service institutions in the State that participate in the food service programs; bears to

(ii) the number of lunches reimbursed through the food service programs in schools, institutions, and service institutions in all States that participate in the food service programs.

(2) Reductions

The Secretary shall reduce allocations to State agencies qualifying for an allocation under paragraph (1)(B), in a manner determined by the Secretary, to the extent necessary to ensure that the total amount of funds allocated under paragraph (1) is not greater than the amount appropriated under subsection (g) of this section.

(d) Use of payments

(1) Use by State agencies

A State agency may reserve, to support dissemination and use of nutrition messages and material developed by the Secretary, up to—

(A) 5 percent of the payment received by the State for a fiscal year under subsection (c) of this section; or

(B) in the case of a small State (as determined by the Secretary), a higher percentage (as determined by the Secretary) of the payment.

(2) Disbursement to schools and institutions

Subject to paragraph (3), the State agency shall disburse any remaining amount of the payment to school food authorities and institutions participating in food service programs described in subsection (a) of this section to disseminate and use nutrition messages and material developed by the Secretary.

(3) Summer food service program for children

In addition to any amounts reserved under paragraph (1), in the case of the summer food service program for children established under section 1761 of this title, the State agency may—

(A) retain a portion of the funds made available under subsection (c) of this section (as determined by the Secretary); and

(B) use the funds, in connection with the program, to disseminate and use nutrition messages and material developed by the Secretary.

(e) Documentation

A State agency, school food authority, and institution receiving funds under this section shall maintain documentation of nutrition promotion activities conducted under this section.

(f) Reallocation

The Secretary may reallocate, to carry out this section, any amounts made available to carry out this section that are not obligated or expended, as determined by the Secretary.

(g) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.

(June 4, 1946, ch. 281, § 5, as added Pub. L. 108–265, title I, § 101, June 30, 2004, 118 Stat. 730.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

PRIOR PROVISIONS

A prior section 1754, acts June 4, 1946, ch. 281, § 5, 60 Stat. 231; July 12, 1952, ch. 699, § 1(b), 66 Stat. 591; Sept. 25, 1962, Pub. L. 87–688, § 3(a), 76 Stat. 587; Oct. 15, 1962, Pub. L. 87–823, § 3(a), 76 Stat. 945; Nov. 10, 1977, Pub. L. 95–166, § 3, 91 Stat. 1332, related to amount, apportionment, etc., for food service equipment assistance, prior to repeal by Pub. L. 97–35, title VIII, §§ 805(a), 820(a)(4), Aug. 13, 1981, 95 Stat. 527, 534, effective Oct. 1, 1981.

EFFECTIVE DATE

Pub. L. 108–265, title V, § 502, June 30, 2004, 118 Stat. 789, as amended by Pub. L. 108–447, div. A, title VII, § 788(f), Dec. 8, 2004, 118 Stat. 2851, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this Act [see Short Title of 2004 Amendment note set out under section 1751 of this title], this Act and the amendments made by this Act take effect on the date of enactment of this Act [June 30, 2004].

''(b) SPECIAL EFFECTIVE DATES.—

''(1) JULY 1, 2004.—The amendments made by sections 106, 107, 126(c), and 201 [amending sections 1758, 1773, and 1776 of this title] take effect on July 1, 2004.

''(2) OCTOBER 1, 2004.—The amendments made by sections 119(c), 119(g), 202(a), 203(a), 203(b), 203(c)(1), 203(c)(5), 203(e)(8), 203(e)(10), 203(e)(13), 203(f), 203(h)(1), and 203(h)(2) [amending sections 1766, 1776, and 1786 of this title] take effect on October 1, 2004.

''(3) JANUARY 1, 2005.—The amendments made by sections 116(f)(1) and 116(f)(3) [amending section 1769 of this title] take effect on January 1, 2005.

''(4) JULY 1, 2005.—The amendments made by sections 102, 104 (other than section 104(a)(1)), 105, 111, and 126(b) [amending sections 1396a, 1758, 1759a, and 1769c of this title and section 2020 of Title 7, Agriculture] take effect on July 1, 2005.

''(5) OCTOBER 1, 2005.—The amendments made by sections 116(d) and 203(e)(9) [amending sections 1761 and 1786 of this title] take effect on October 1, 2005.''

§ 1755. Direct expenditures for agricultural commodities and other foods

(a) Administrative expenses; nutritional education; pilot projects; cash-in-lieu of commodities study; refusal of commodities and receipt of other commodities available to the State in lieu of the refused commodities

The funds provided by appropriation or transfer from other accounts for any fiscal year for carrying out the provisions of this chapter, and for carrying out the provisions of the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], other than section 3 thereof [42 U.S.C. 1772] less

(1) not to exceed 3½ per centum thereof which per centum is hereby made available to the Secretary for the Secretary's administrative expenses under this chapter and under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.];

(2) the amount apportioned by the Secretary pursuant to section 1753 of this title and the amount appropriated pursuant to sections 1759a and 1761 of this title and sections 4 and 7 of the Child Nutrition Act of 1966 [42 U.S.C. 1773 and 1776]; and

(3) not to exceed 1 per centum of the funds provided for carrying out the programs under this chapter and the programs under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], other than section 3 [42 U.S.C. 1772], which per centum is hereby made available to the Secretary to supplement the nutritional benefits of these programs through grants to States and other means for nutritional training and education for workers, cooperators, and participants in these programs, for pilot projects and the cash-in-lieu of commodities study required to be carried out under section 1769 of this title, and for necessary surveys and studies of requirements for food service programs in furtherance of the purposes expressed in section 1751 of this title, and section 2 of the Child Nutrition Act of 1966 [42 U.S.C. 1771],

shall be available to the Secretary during such year for direct expenditure by the Secretary for agricultural commodities and other foods to be distributed among the States and schools and service institutions participating in the food service programs under this chapter and under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] in accordance with the needs as determined by the local school and service institution au-

thorities. Except as provided in the next 2 sentences, any school participating in food service programs under this chapter may refuse to accept delivery of not more than 20 percent of the total value of agricultural commodities and other foods tendered to it in any school year; and if a school so refuses, that school may receive, in lieu of the refused commodities, other commodities to the extent that other commodities are available to the State during that year. Any school food authority may refuse some or all of the fresh fruits and vegetables offered to the school food authority in any school year and shall receive, in lieu of the offered fruits and vegetables, other more desirable fresh fruits and vegetables that are at least equal in value to the fresh fruits and vegetables refused by the school food authority. The value of any fresh fruits and vegetables refused by a school under the preceding sentence for a school year shall not be used to determine the 20 percent of the total value of agricultural commodities and other foods tendered to the school food authority in the school year under the second sentence. The provisions of law contained in the proviso of section 713c of title 15, facilitating operations with respect to the purchase and disposition of surplus agricultural commodities under section 612c of title 7, shall, to the extent not inconsistent with the provision of this chapter, also be applicable to expenditures of funds by the Secretary under this chapter. In making purchases of such agricultural commodities and other foods, the Secretary shall not issue specifications which restrict participation of local producers unless such specifications will result in significant advantages to the food service programs authorized by this chapter and the Child Nutrition Act of 1966.

(b) Delivery of commodities

The Secretary shall deliver, to each State participating in the school lunch program under this chapter, commodities valued at the total level of assistance authorized under subsection (c)[1] of this section for each school year for the school lunch program in the State, not later than September 30 of the following school year.

(c) Level of commodity assistance; computation of index; calculation of total assistance to each State; emphasis on high protein foods; per meal value of donated foods

(1)(A) The national average value of donated foods, or cash payments in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. The Index shall be computed using 5 major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products, meats, poultry and fish, dairy products, processed fruits and vegetables, and fats and oils). Each component shall be weighed using the same relative weight as determined by the Bureau of Labor Statistics.

(B) The value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a 3-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year. Such adjustment shall be computed to the nearest ¼ cent.

(C) For each school year, the total commodity assistance or cash in lieu thereof available to a State for the school lunch program shall be calculated by multiplying the number of lunches served in the preceding school year by the rate established by subparagraph (B). After the end of each school year, the Secretary shall reconcile the number of lunches served by schools in each State with the number of lunches served by schools in each State during the preceding school year and increase or reduce subsequent commodity assistance or cash in lieu thereof provided to each State based on such reconciliation.

(D) Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates (which may include domestic seafood commodities and their products).

(E) Notwithstanding any other provision of this section, not less than 75 percent of the assistance provided under this subsection shall be in the form of donated foods for the school lunch program.

(2) To the maximum extent feasible, each State agency shall offer to each school food authority under its jurisdiction that participates in the school lunch program and receives commodities, agricultural commodities and their products, the per meal value of which is not less than the national average value of donated foods established under paragraph (1). Each such offer shall include the full range of such commodities and products that are available from the Secretary to the extent that quantities requested are sufficient to allow efficient delivery to and within the State.

(d) Termination of commodity assistance based upon school breakfast program

Beginning with the school year ending June 30, 1981, the Secretary shall not offer commodity assistance based upon the number of breakfasts served to children under section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773].

(e) Minimum percentage of commodity assistance

(1) Subject to paragraph (2), in each school year the Secretary shall ensure that not less than 12 percent of the assistance provided under section 1753 of this title, this section, and section 1759a of this title shall be in the form of—

(A) commodity assistance provided under this section, including cash in lieu of commodities and administrative costs for procurement of commodities under this section; or

(B) during the period beginning October 1, 2003, and ending September 30, 2009, commodities provided by the Secretary under any provision of law.

(2) If amounts available to carry out the requirements of the sections described in paragraph (1) are insufficient to meet the requirement contained in paragraph (1) for a school year, the Secretary shall, to the extent necessary, use the authority provided under section 1762a(a) of this title to meet the requirement for the school year.

[1] See References in Text note below.

(June 4, 1946, ch. 281, § 6, 60 Stat. 231; Pub. L. 87–823, § 3(b), Oct. 15, 1962, 76 Stat. 945; Pub. L. 90–302, § 2(a), May 8, 1968, 82 Stat. 117; Pub. L. 91–248, § 3, May 14, 1970, 84 Stat. 209; Pub. L. 93–13, § 2, Mar. 30, 1973, 87 Stat. 10; Pub. L. 93–150, § 5, Nov. 7, 1973, 87 Stat. 562; Pub. L. 93–326, § 3, June 30, 1974, 88 Stat. 286; Pub. L. 94–105, §§ 4, 11, Oct. 7, 1975, 89 Stat. 511, 515; Pub. L. 95–166, §§ 5, 7, 10(1), 19(a), Nov. 10, 1977, 91 Stat. 1334–1336, 1345; Pub. L. 95–627, §§ 5(b), 12(a), Nov. 10, 1978, 92 Stat. 3619, 3625; Pub. L. 96–499, title II, § 202(b), Dec. 5, 1980, 94 Stat. 2600; Pub. L. 97–35, title VIII, §§ 802, 819(h), Aug. 13, 1981, 95 Stat. 524, 533; Pub. L. 99–500, title III, §§ 321, 371(c)(2), Oct. 18, 1986, 100 Stat. 1783–360, 1783–369, and Pub. L. 99–591, title III, §§ 321, 371(c)(2), Oct. 30, 1986, 100 Stat. 3341–364, 3341–372; Pub. L. 99–661, div. D, title II, § 4201, title V, § 4501(c)(2), Nov. 14, 1986, 100 Stat. 4071, 4080; Pub. L. 100–237, § 3(j), Jan. 8, 1988, 101 Stat. 1738; Pub. L. 101–147, title I, § 131(a), title III, § 302, Nov. 10, 1989, 103 Stat. 906, 913; Pub. L. 103–448, title I, §§ 101–103, Nov. 2, 1994, 108 Stat. 4700, 4701; Pub. L. 105–336, title I, § 101(a), Oct. 31, 1998, 112 Stat. 3144; Pub. L. 106–170, title IV, § 411, Dec. 17, 1999, 113 Stat. 1917; Pub. L. 106–224, title II, § 241(b), June 20, 2000, 114 Stat. 410; Pub. L. 107–171, title IV, § 4301(a), May 13, 2002, 116 Stat. 330.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

Subsection (c) of this section, referred to in subsec. (b), was repealed and subsec. (e) was redesignated (c) by Pub. L. 105–336, title I, § 101(a), Oct. 31, 1998, 112 Stat. 3144.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2002—Subsec. (e)(1)(B). Pub. L. 107–171 substituted ''2003'' for ''2001''.

2000—Subsec. (e)(1)(B). Pub. L. 106–224 substituted ''2001'' for ''2000''.

1999—Subsec. (e)(1). Pub. L. 106–170 designated existing provisions as introductory provisions and subpar. (A) and added subpar. (B).

1998—Subsecs. (c) to (g). Pub. L. 105–336 redesignated subsecs. (e) to (g) as (c) to (e), respectively, and struck out former subsecs. (c) and (d) which read as follows:

''(c) Notwithstanding any other provision of law, the Secretary, until such time as a supplemental appropriation may provide additional funds for the purpose of subsection (b) of this section, shall use funds appropriated by section 612c of title 7 to make any payments to States authorized under such subsection. Any section 612c of title 7 funds utilized to make such payments shall be reimbursed out of any supplemental appropriation hereafter enacted for the purpose of carrying out subsection (b) of this section and such reimbursement shall be deposited into the fund established pursuant to section 612c of title 7 to be available for the purpose of said section 612c of title 7.

''(d) Any funds made available under subsection (b) or (c) of this section shall not be subject to the State matching provisions of section 1756 of this title.''

1994—Subsec. (a). Pub. L. 103–448, § 101, substituted in second sentence ''Except as provided in the next 2 sentences, any school'' for ''Any school'' and inserted after second sentence ''Any school food authority may refuse some or all of the fresh fruits and vegetables offered to the school food authority in any school year and shall receive, in lieu of the offered fruits and vegetables, other more desirable fresh fruits and vegetables that are at least equal in value to the fresh fruits and vegetables refused by the school food authority. The value of any fresh fruits and vegetables refused by a school under the preceding sentence for a school year shall not be used to determine the 20 percent of the total value of agricultural commodities and other foods tendered to the school food authority in the school year under the second sentence.''

Subsec. (b). Pub. L. 103–448, § 102, amended subsec. (b) generally. Prior to amendment, subsec. (b) related to cash donations in lieu of commodity donations during school year for school food service programs and withholding of funds for States administered by Secretary for disbursement to participating schools to be used to purchase commodities and other food for their food service programs.

Subsec. (g). Pub. L. 103–448, § 103, added subsec. (g).

1989—Subsec. (a). Pub. L. 101–147, § 302, substituted ''the Secretary's'' for ''his'' in par. (1), substituted ''the Secretary'' for ''him'' in par. (2), and, in concluding provisions, substituted ''expenditure by the Secretary'' for ''expenditure by him'' and made technical amendments to the references to section 713c of title 15 and section 612c of title 7 involving underlying provisions of original act and requiring no change in text.

Subsec. (e)(1). Pub. L. 101–147, § 131(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The national average value of donated foods, or cash payments in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. The Index shall be computed using five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products, meats, poultry and fish, dairy products, processed fruits and vegetables, and fats and oils). Each component shall be weighted using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a three-month simple average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year. Such adjustment shall be computed to the nearest one-fourth cent. Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates (which may include domestic seafood commodities and their products). Notwithstanding any other provision of this section, not less than 75 per centum of the assistance provided under this subsection (e) shall be in the form of donated foods for the school lunch program.''

Subsec. (e)(2). Pub. L. 101–147, § 131(a)(2), substituted ''To the maximum extent feasible, each State agency'' for ''Each State agency''.

1988—Subsec. (e). Pub. L. 100–237 designated existing provisions as par. (1) and added par. (2).

1986—Subsecs. (a)(3), (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, amended section identically, in subsec. (a)(3), making technical amendment to reference to section 1769 of this title to reflect renumbering of corresponding section of original act and, in subsec. (b), substituting ''June 1'' for ''May 15'' and ''July 1'' for ''June 15''.

1981—Subsec. (a)(2). Pub. L. 97–35, § 819(h), struck out references to section 1754 of this title, and section 5 of the Child Nutrition Act of 1966.

Subsec. (e). Pub. L. 97–35, § 802, substituted provisions requiring value to be set at 11 cents, as adjusted on July 1, 1982, and each July 1, thereafter, for provisions requiring value to be set at not less than 10 cents, as adjusted on an annual basis each school year after June 30, 1975.

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

1978—Subsec. (e). Pub. L. 95–627, § 5(b), substituted provision relating to Price Index for Food Used in Schools and Institutions for provision relating to Consumer Price Index.

Pub. L. 95–627, § 12(a), which provided for inserting ''(which may include domestic seafood commodities and their products)'' after ''alternatives'' was executed by inserting that parenthetical after ''alternates'' as the probable intent of Congress.

1977—Subsec. (a). Pub. L. 95–166, §§ 7, 10(1), inserted provision which authorized refusal of commodities and receipt of other commodities available to State, in lieu of refused commodities, and in cl. (3) authorized grants for pilot projects and cash-in-lieu of commodities study required to be carried out under section 1769 of this title.

Subsec. (b). Pub. L. 95–166, § 5, in revising subsec. (b), changed commodity distribution program to a school year from a fiscal year basis, and among other changes, extended deadline for estimated valuation and payment to May 15 and June 15 from February 15 and March 15, and struck out provision respecting apportionment among State educational agencies on basis of meals served in all the States during the fiscal year and specific reference to regulations of the Department of Agriculture under title 7, subtitle (b), chapter II, subchapter (a), parts 210 and 220.

Subsec. (e). Pub. L. 95–166, § 19(a), substituted ''school years'' and ''school year after June 30, 1975'' for ''fiscal years'' and ''fiscal year after June 30, 1975'', respectively.

1975—Subsec. (a). Pub. L. 94–105, § 11(a), inserted provision prohibiting issuance of specifications in purchase of agricultural commodities and other foods unless such specifications result in significant advantages to the authorized food service programs.

Subsec. (b). Pub. L. 94–105, § 4, substituted references to all schools of States for references to only nonprofit private schools of States in provisions covering Secretary's direct administration of school food service programs.

Subsec. (e). Pub. L. 94–105, § 11(b), inserted provision mandating that not less than 75 per centum of assistance under this subsection shall be in form of donated foods for the school lunch program.

1974—Subsec. (e). Pub. L. 93–326 added subsec. (e).

1973—Subsec. (a). Pub. L. 93–13 designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 93–150, in revising text to make provisions applicable each fiscal year rather than only for fiscal year ending June 30, 1973, substituted in: first sentence, ''As of February 15 of each fiscal year'' and ''during that fiscal year'' for ''As of March 15, 1973'' and ''during the fiscal year ending June 30, 1973''; second sentence, ''for that fiscal year'', ''March 15 of that fiscal year'', and ''as of February 15 of such fiscal year'' for ''for the fiscal year ending June 30, 1973'', ''April 15, 1973'', and ''as of March 15, 1973''; third sentence, ''during the preceding fiscal year'' for ''during the fiscal year ending June 30, 1972''; and proviso of third sentence, ''during that fiscal year'' for ''during the fiscal year ending June 30, 1972,''.

Pub. L. 93–13 added subsec. (b).

Subsec. (c). Pub. L. 93–150 reenacted provisions without change.

Pub. L. 93–13 added subsec. (c).

Subsec. (d). Pub. L. 93–150 reenacted provisions without change.

Pub. L. 93–13 added subsec. (d).

1970—Pub. L. 91–248 increased amount authorized for administrative expenses by 3½ percent of the amount appropriated to carry out this chapter and the Child Nutrition Act of 1966, other than section 1772 of this title, made such amount available for the Secretary's administrative expenses, authorized use of up to 1 percent of the funds appropriated for this chapter and the Child Nutrition Act of 1966, other than section 1772 of this title, for nutritional training and education and studies of food service requirements in connection with those programs, reduced, to the extent funds were used for administrative expenses other than for this chapter or nutritional training or education or studies, the share of this chapter's appropriations which may be used for direct expenditure by the Secretary for agricultural commodities and other foods, and authorized distribution of such foods to schools and service institutions participating in food service programs under this chapter and the Child Nutrition Act of 1966.

1968—Pub. L. 90–302 inserted ''except section 1761 of this title'' after ''The funds appropriated for any fiscal year for carrying out the provisions of this chapter,''.

1962—Pub. L. 87–823 substituted '', less the amount apportioned by him pursuant to sections 1753, 1754, and 1759 of this title, and less the amount appropriated pursuant to section 1759a of this title'' for ''and less the amount apportioned to him pursuant to sections 1753, 1754, and 1759 of this title''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–171, title IV, § 4301(b), May 13, 2002, 116 Stat. 330, provided that: ''The amendment made by this section [amending this section] takes effect on the date of enactment of this Act [May 13, 2002].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–336, title IV, § 401, Oct. 31, 1998, 112 Stat. 3170, provided that: ''Except as otherwise provided in this Act [see Short Title of 1998 Amendment note set out under section 1751 of this title], this Act and the amendments made by this Act shall take effect on October 1, 1998.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 401 of Pub. L. 103–448 provided that: ''Except as otherwise provided in this Act [see Short Title of 1994 Amendment note set out under section 1751 of this title], this Act and the amendments made by this Act shall become effective on October 1, 1994.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 131(c) of Pub. L. 101–147 provided that: ''The amendments made by this section [amending this section and section 1766 of this title] shall become effective on July 1, 1989.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 802 and 819(h) of Pub. L. 97–35 effective July 1, 1981, and Oct. 1, 1981, respectively, see section 820(a)(2), (4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 14 of Pub. L. 95–627 provided that: ''The provisions of this Act [enacting section 1769c of this title, amending this section and sections 1757, 1760, 1761, 1762a, 1766, 1769, 1773, 1774, 1776, 1784, and 1786 of this title and enacting provisions set out as notes under this section, sections 1751, 1773, and 1786 of this title], except sections 4, 5, and 8, shall become effective October 1, 1978. The provisions of section 4 of this Act [amending section 1759a of this title] shall become effective Jan[u]ary 1, 1979. The provisions of sections 5 [amending this section and sections 1759a, 1761, and 1772 of this title] and 8 [amending section 1758 of this title] of this Act shall become effective July 1, 1979, except that the Secretary may make the necessary changes in the income poverty guidelines for the special supplemental food program under section 17 of the Child Nutrition Act of 1966 [section 1786 of this title] not earlier than October 1, 1978, and not later than July 1, 1979.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 19 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

REDUCTION IN COMMODITY ASSISTANCE FOR FISCAL YEAR ENDING SEPTEMBER 30, 1981

Section 202(a) of Pub. L. 96–499 provided that for the fiscal year ending Sept. 30, 1981, the national average value of donated foods or cash payments in lieu thereof, as determined under subsec. (e) of this section, shall be reduced by 2 cents, prior to repeal by Pub. L. 97–35, title

VIII, § 820(b)(2), Aug. 13, 1981, 95 Stat. 535, effective July 1, 1981.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 1 of Pub. L. 93–13 provided that: ''The Congress finds that the volume and variety of Federal food donations to the school lunch and child nutrition programs are significantly below the amounts programed and budgeted for the fiscal year ending June 30, 1973, and that schools participating in these programs are confronted with serious financial problems in obtaining sufficient supplies of the foods required to meet the nutritional standards established by law for these programs. It is, therefore, the purpose of this Act [amending this section] to provide an effective and immediate solution to this nutritional crisis.''

§ 1756. Payments to States

(a) State revenue matching requirements; special provisions for lower than average income per capita States

(1) Funds appropriated to carry out section 1753 of this title during any fiscal year shall be available for payment to the States for disbursement by State educational agencies in accordance with such agreements, not inconsistent with the provisions of this chapter, as may be entered into by the Secretary and such State educational agencies for the purpose of assisting schools within the States in obtaining agricultural commodities and other foods for consumption by children in furtherance of the school lunch program authorized under this chapter. For any school year, such payments shall be made to a State only if, during such school year, the amount of the State revenues (excluding State revenues derived from the operation of the program) appropriated or used specifically for program purposes (other than any State revenues expended for salaries and administrative expenses of the program at the State level) is not less than 30 percent of the funds made available to such State under section 1753 of this title for the school year beginning July 1, 1980.

(2) If, for any school year, the per capita income of a State is less than the average per capita income of all the States, the amount required to be expended by a State under paragraph (1) for such year shall be an amount bearing the same ratio to the amount equal to 30 percent of the funds made available to such State under section 1753 of this title for the school year beginning July 1, 1980, as the per capita income of such State bears to the average per capita income of all the States.

(b) Disbursements; private schools

The State revenues provided by any State to meet the requirement of subsection (a) of this section shall, to the extent the State deems practicable, be disbursed to schools participating in the school lunch program under this chapter. No State in which the State educational agency is prohibited by law from disbursing State appropriated funds to private schools shall be required to match Federal funds made available for meals served in such schools, or to disburse, to such schools, any of the State revenues required to meet the requirements of subsection (a) of this section.

(c) Certification of payments by Secretary

The Secretary shall certify to the Secretary of the Treasury, from time to time, the amounts to be paid to any State under this section and shall specify when such payments are to be made. The Secretary of the Treasury shall pay to the State, at the time or times fixed by the Secretary, the amounts so certified.

(d) Combined Federal and State commodity purchases

Notwithstanding any other provision of law, the Secretary may enter into an agreement with a State agency, acting on the request of a school food service authority, under which funds payable to the State under section 1753 or 1759a of this title may be used by the Secretary for the purpose of purchasing commodities for use by the school food service authority in meals served under the school lunch program under this chapter.

(June 4, 1946, ch. 281, § 7, 60 Stat. 232; Pub. L. 91–248, § 4, May 14, 1970, 84 Stat. 209; Pub. L. 92–433, § 10, Sept. 26, 1972, 86 Stat. 731; Pub. L. 94–105, § 5, Oct. 7, 1975, 89 Stat. 511; Pub. L. 95–166, § 19(b), Nov. 10, 1977, 91 Stat. 1345; Pub. L. 97–35, title VIII, § 804, Aug. 13, 1981, 95 Stat. 526; Pub. L. 101–147, title III, § 303, Nov. 10, 1989, 103 Stat. 913; Pub. L. 103–448, title I, § 104, Nov. 2, 1994, 108 Stat. 4701.)

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–448 added subsec. (d).

1989—Pub. L. 101–147, § 303(a), inserted ''Payments to States'' as section catchline.

Subsec. (a)(2). Pub. L. 101–147, § 303(b), substituted ''the'' for ''the the'' before ''school year beginning''.

1981—Subsec. (a). Pub. L. 97–35 designated existing provisions as subsec. (a) and substituted provisions relating to funds appropriated to carry out section 1753 of this title during any fiscal year, for provisions relating to funds appropriated to carry out sections 1753 and 1754 of this title during any fiscal year.

Subsecs. (b), (c). Pub. L. 97–35 added subsecs. (b) and (c).

1977—Pub. L. 95–166, among other changes, substituted in first sentence ''Funds appropriated to carry out'' and ''food service equipment assistance'' for ''Funds apportioned to any State pursuant to'' and ''nonfood assistance''; substituted in third sentence ''fiscal or school year thereafter'' for ''fiscal year thereafter''; substituted in fourth sentence ''fiscal or school year'' for ''fiscal year''; and substituted sixth sentence ''For the school year beginning in 1976, State revenue (other than revenues derived from the program) appropriated or used specifically for program purposes (other than salaries and administrative expenses at the State, as distinguished from local, level) shall constitute at least 8 percent of the matching requirement for the preceding school year, or, at the discretion of the Secretary, fiscal year, and for each school year thereafter, at least 10 percent of the matching requirement for the preceding school year'' for ''For the fiscal year beginning July 1, 1971, and the fiscal year beginning July 1, 1972, State revenue (other than revenues derived from the program) appropriated or utilized specifically for program purposes (other than salaries and administrative expenses at the State, as distinguished from local, level) shall constitute at least 4 per centum of the matching requirement for the preceding fiscal year; for each of the two succeeding fiscal years, at least 6 per centum of the matching requirement for the preceding fiscal year; for each of the subsequent two fiscal years, at least 8 per centum of the matching requirement for the preceding fiscal year;

and for each fiscal year thereafter at least 10 per centum of the matching requirement for the preceding fiscal year''.

1975—Pub. L. 94–105 made requirements of section that each dollar of Federal assistance be matched by $3 from sources within the State inapplicable with respect to the payments made to participating schools under section 1753 of this title, with the proviso that such inapplicability not affect the level of State matching required by the sixth sentence of the section.

1972—Pub. L. 92–433 substituted ''per centum of the matching requirement for the preceding fiscal year'' for ''per centum of the matching requirement'' in four places.

1970—Pub. L. 91–248 inserted provision requiring that State revenues represent a prescribed minimum of the local funds required to match Federal funds apportioned under this chapter, required that amounts derived by the State from the program, or expended by it for salaries or administrative expenses at the State level, would not count toward meeting the State revenue share of the matching requirement, and required State funds disbursed to each school, to the extent practicable, on the basis of its share of the funds apportioned for the regular school lunch program, the special assistance program to schools to assure lunches for low-income children, the school breakfast program for needy children, and the nonfood assistance program for schools drawing from poor economic areas.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective July 1, 1981, see section 820(a)(2) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 19 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

§ 1757. State disbursement to schools

(a) Disbursement by State educational agency

Funds paid to any State during any fiscal year pursuant to section 1753 of this title shall be disbursed by the State educational agency, in accordance with such agreements approved by the Secretary, as may be entered into by such State agency and the schools in the State, to those schools in the State which the State educational agency, taking into account need and attendance, determines are eligible to participate in the school lunch program.

(b) Permanent, amendable agreements

The agreements described in subsection (a) of this section shall be permanent agreements that may be amended as necessary.

(c) Suspension or termination of agreements

The State educational agency may suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

(d) Use of funds

Use of funds paid to States may include, in addition to the purchase price of agricultural commodities and other foods, the cost of processing, distributing, transporting, storing or handling thereof.

(e) Limitation

In no event shall such disbursement for food to any school for any fiscal year exceed an amount determined by multiplying the number of lunches served in the school in the school lunch program under this chapter during such year by the maximum per meal reimbursement rate for the State, for the type of lunch served, as prescribed by the Secretary.

(f) Increase in meal reimbursement

In any fiscal year in which the national average payment per lunch determined under section 1753 of this title is increased above the amount prescribed in the previous fiscal year, the maximum per meal reimbursement rate, for the type of lunch served, shall be increased by a like amount.

(g) In advance or as reimbursement

Lunch assistance disbursements to schools under this section and under section 1759a of this title may be made in advance or by way of reimbursement in accordance with procedures prescribed by the Secretary.

(June 4, 1946, ch. 281, § 8, 60 Stat. 232; Pub. L. 92–433, § 8, Sept. 26, 1972, 86 Stat. 729; Pub. L. 93–150, § 2(b), Nov. 7, 1973, 87 Stat. 560; Pub. L. 95–166, § 3, Nov. 10, 1977, 91 Stat. 1332; Pub. L. 95–627, § 10(d)(1), Nov. 10, 1978, 92 Stat. 3624; Pub. L. 97–35, title VIII, § 819(d), Aug. 13, 1981, 95 Stat. 533; Pub. L. 101–147, title II, § 201, title III, §§ 304, 312(1), Nov. 10, 1989, 103 Stat. 908, 914, 916; Pub. L. 104–193, title VII, § 701(a), Aug. 22, 1996, 110 Stat. 2287.)

AMENDMENTS

1996—Pub. L. 104–193 designated first and second sentences as subsecs. (a) and (b), respectively, substituted ''in subsection (a) of this section'' for ''in the preceding sentence'' in subsec. (b), designated third sentence as subsec. (c) and substituted ''The State educational agency may'' for ''Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to'', struck out fourth and fifth sentences, designated sixth sentence as subsec. (d) and substituted ''Use of funds paid to States'' for ''Such food costs'', and designated seventh to ninth sentences as subsecs. (e) to (g), respectively. Prior to amendment, fourth and fifth sentences read as follows: ''Such disbursement to any school shall be made only for the purpose of assisting it to obtain agricultural commodities and other foods for consumption by children in the school lunch program. The terms 'child' and 'children' as used in this chapter shall be deemed to include individuals regardless of age who are determined by the State educational agency, in accordance with regulations prescribed by the Secretary, to have 1 or more mental or physical handicaps and who are attending any child care institution as defined in section 1766 of this title or any nonresidential public or nonprofit private school of high school grade or under for the purpose of participating in a school program established for individuals with mental or physical handicaps: *Provided*, That no institution that is not otherwise eligible to participate in the program under section 1766 of this title shall be deemed so eligible because of this sentence.''

1989—Pub. L. 101–147, § 312(1), substituted ''school lunch'' for ''school-lunch'' in three places.

Pub. L. 101–147, § 304, which directed the amendment of subsec. (d) by substituting ''individuals'' for ''persons'', ''to have 1 or more mental or physical handicaps'' for ''to be mentally or physically handicapped'', and ''for individuals with mental or physical handicaps'' for ''for mentally or physically handicapped'', was executed by making the substitutions in the undesignated text before the proviso as the probable intent of Congress because the section contains no subsection designations.

Pub. L. 101–147, § 201, inserted after first sentence ''The agreements described in the preceding sentence shall be permanent agreements that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.''

1981—Pub. L. 97–35 substituted references to per meal reimbursement rate, for references to Federal food-cost contribution rate wherever appearing, and struck out reference to section 1754 of this title, and food service equipment assistance.

1978—Pub. L. 95–627 inserted provision relating to definition of ''child'' and ''children''.

1977—Pub. L. 95–166 substituted ''food service equipment assistance'' for ''nonfood assistance''.

1973—Pub. L. 93–150 provided that in any fiscal year in which the national average payment per lunch determined under section 1753 of this title is increased above the amount prescribed in the previous fiscal year, the maximum Federal food-cost contribution rate, for the type of lunch served, shall be increased by a like amount.

1972—Pub. L. 92–433 substituted provision that disbursement to schools be made for the purpose of assisting them to finance the costs of agricultural commodities, for provision that such disbursement be made for the purpose of reimbursing them for such costs and inserted provision that lunch assistance disbursements to schools under this section and section 1759a of this title may be made in advance or by way of reimbursement according to procedure prescribed by the Secretary.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

§ 1758. Program requirements

(a) Nutritional requirements

(1)(A) Lunches served by schools participating in the school lunch program under this chapter shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research, except that the minimum nutritional requirements—

(i) shall not be construed to prohibit the substitution of foods to accommodate the medical or other special dietary needs of individual students; and

(ii) shall, at a minimum, be based on the weekly average of the nutrient content of school lunches.

(B) The Secretary shall provide technical assistance and training, including technical assistance and training in the preparation of lower-fat versions of foods commonly used in the school lunch program under this chapter, to schools participating in the school lunch program to assist the schools in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A) and in providing appropriate meals to children with medically certified special dietary needs. The Secretary shall provide additional technical assistance to schools that are having difficulty maintaining compliance with the requirements.

(2) FLUID MILK.—

(A) IN GENERAL.—Lunches served by schools participating in the school lunch program under this chapter—

(i) shall offer students fluid milk in a variety of fat contents;

(ii) may offer students flavored and unflavored fluid milk and lactose-free fluid milk; and

(iii) shall provide a substitute for fluid milk for students whose disability restricts their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student's diet and that specifies the substitute for fluid milk.

(B) SUBSTITUTES.—

(i) STANDARDS FOR SUBSTITUTION.—A school may substitute for the fluid milk provided under subparagraph (A), a nondairy beverage that is nutritionally equivalent to fluid milk and meets nutritional standards established by the Secretary (which shall, among other requirements to be determined by the Secretary, include fortification of calcium, protein, vitamin A, and vitamin D to levels found in cow's milk) for students who cannot consume fluid milk because of a medical or other special dietary need other than a disability described in subparagraph (A)(iii).

(ii) NOTICE.—The substitutions may be made if the school notifies the State agency that the school is implementing a variation allowed under this subparagraph, and if the substitution is requested by written statement of a medical authority or by a student's parent or legal guardian that identifies the medical or other special dietary need that restricts the student's diet, except that the school shall not be required to provide beverages other than beverages the school has identified as acceptable substitutes.

(iii) EXCESS EXPENSES BORNE BY SCHOOL FOOD AUTHORITY.—Expenses incurred in providing substitutions under this subparagraph that are in excess of expenses covered by reimbursements under this chapter shall be paid by the school food authority.

(C) RESTRICTIONS ON SALE OF MILK PROHIBITED.—A school that participates in the school lunch program under this chapter shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any time or any place—

(i) on the school premises; or

(ii) at any school-sponsored event.

(3) Students in senior high schools that participate in the school lunch program under this chapter (and, when approved by the local school district or nonprofit private schools, students in any other grade level) shall not be required to accept offered foods they do not intend to consume, and any such failure to accept offered foods shall not affect the full charge to the student for a lunch meeting the requirements of this subsection or the amount of payments made under this chapter to any such school for such lunch.

(4) PROVISION OF INFORMATION.—

(A) GUIDANCE.—Prior to the beginning of the school year beginning July 2004, the Secretary shall issue guidance to States and school food authorities to increase the consumption of foods and food ingredients that are recommended for increased serving consumption in the most recent Dietary Guidelines for Americans published under section 5341 of title 7.

(B) RULES.—Not later than 2 years after June 30, 2004, the Secretary shall promulgate rules, based on the most recent Dietary Guidelines for Americans, that reflect specific recommendations, expressed in serving recommendations, for increased consumption of foods and food ingredients offered in school nutrition programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(b) Eligibility

(1)(A) Not later than June 1 of each fiscal year, the Secretary shall prescribe income guidelines for determining eligibility for free and reduced price lunches during the 12-month period beginning July 1 of such fiscal year and ending June 30 of the following fiscal year. The income guidelines for determining eligibility for free lunches shall be 130 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with subparagraph (B). The income guidelines for determining eligibility for reduced price lunches for any school year shall be 185 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with subparagraph (B). The Office of Management and Budget guidelines shall be revised at annual intervals, or at any shorter interval deemed feasible and desirable.

(B) The revision required by subparagraph (A) of this paragraph shall be made by multiplying—

(i) the official poverty line (as defined by the Office of Management and Budget); by

(ii) the percentage change in the Consumer Price Index during the annual or other interval immediately preceding the time at which the adjustment is made.

Revisions under this subparagraph shall be made not more than 30 days after the date on which the consumer price index data required to compute the adjustment becomes available.

(2)(A) Following the determination by the Secretary under paragraph (1) of this subsection of the income eligibility guidelines for each school year, each State educational agency shall announce the income eligibility guidelines, by family size, to be used by schools in the State in making determinations of eligibility for free and reduced price lunches. Local school authorities shall, each year, publicly announce the income eligibility guidelines for free and reduced price lunches on or before the opening of school.

(B) APPLICATIONS AND DESCRIPTIVE MATERIAL.—

(i) IN GENERAL.—Applications for free and reduced price lunches, in such form as the Secretary may prescribe or approve, and any descriptive material, shall be distributed to the parents or guardians of children in attendance at the school, and shall contain only the family size income levels for reduced price meal eligibility with the explanation that households with incomes less than or equal to these values would be eligible for free or reduced price lunches.

(ii) INCOME ELIGIBILITY GUIDELINES.—Forms and descriptive material distributed in accordance with clause (i) may not contain the income eligibility guidelines for free lunches.

(iii) CONTENTS OF DESCRIPTIVE MATERIAL.—

(I) IN GENERAL.—Descriptive material distributed in accordance with clause (i) shall contain a notification that—

(aa) participants in the programs listed in subclause (II) may be eligible for free or reduced price meals; and

(bb) documentation may be requested for verification of eligibility for free or reduced price meals.

(II) PROGRAMS.—The programs referred to in subclause (I)(aa) are—

(aa) the special supplemental nutrition program for women, infants, and children established by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

(bb) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(cc) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

(dd) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(3) HOUSEHOLD APPLICATIONS.—

(A) DEFINITION OF HOUSEHOLD APPLICATION.—In this paragraph, the term ''household application'' means an application for a child of a household to receive free or reduced price school lunches under this chapter, or free or reduced price school breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), for which an eligibility determination is made other than under paragraph (4) or (5).

(B) ELIGIBILITY DETERMINATION.—

(i) IN GENERAL.—An eligibility determination shall be made on the basis of a complete household application executed by an adult member of the household or in accordance with guidance issued by the Secretary.

(ii) ELECTRONIC SIGNATURES AND APPLICATIONS.—A household application may be executed using an electronic signature if—

(I) the application is submitted electronically; and

(II) the electronic application filing system meets confidentiality standards established by the Secretary.

(C) CHILDREN IN HOUSEHOLD.—

(i) IN GENERAL.—The household application shall identify the names of each child in the household for whom meal benefits are requested.

(ii) SEPARATE APPLICATIONS.—A State educational agency or local educational agency may not request a separate application for each child in the household that attends schools under the same local educational agency.

(D) VERIFICATION OF SAMPLE.—

(i) DEFINITIONS.—In this subparagraph:

(I) ERROR PRONE APPLICATION.—The term ''error prone application'' means an approved household application that—

(aa) indicates monthly income that is within $100, or an annual income that is within $1,200, of the income eligibility limitation for free or reduced price meals; or

(bb) in lieu of the criteria established under item (aa), meets criteria established by the Secretary.

(II) NON-RESPONSE RATE.—The term ''non-response rate'' means (in accordance with guidelines established by the Secretary) the percentage of approved household applications for which verification information has not been obtained by a local educational agency after attempted verification under subparagraphs (F) and (G).

(ii) VERIFICATION OF SAMPLE.—Each school year, a local educational agency shall verify eligibility of the children in a sample of household applications approved for the school year by the local educational agency, as determined by the Secretary in accordance with this subsection.

(iii) SAMPLE SIZE.—Except as otherwise provided in this paragraph, the sample for a local educational agency for a school year shall equal the lesser of—

(I) 3 percent of all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; or

(II) 3,000 error prone applications approved by the local educational agency for the school year, as of October 1 of the school year.

(iv) ALTERNATIVE SAMPLE SIZE.—

(I) IN GENERAL.—If the conditions described in subclause (IV) are met, the verification sample size for a local educational agency shall be the sample size described in subclause (II) or (III), as determined by the local educational agency.

(II) 3,000/3 PERCENT OPTION.—The sample size described in this subclause shall be the lesser of 3,000, or 3 percent of, applications selected at random from applications approved by the local educational agency for the school year, as of October 1 of the school year.

(III) 1,000/1 PERCENT PLUS OPTION.—

(aa) IN GENERAL.—The sample size described in this subclause shall be the sum of—

(AA) the lesser of 1,000, or 1 percent of, all applications approved by the local educational agency for the school year, as of October 1 of the school year, selected from error prone applications; and

(BB) the lesser of 500, or ½ of 1 percent of, applications approved by the local educational agency for the school year, as of October 1 of the school year, that provide a case number (in lieu of income information) showing participation in a program described in item (bb) selected from those approved applications that provide a case number (in lieu of income information) verifying the participation.

(bb) PROGRAMS.—The programs described in this item are—

(AA) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(BB) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

(CC) a State program funded under the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995.

(IV) CONDITIONS.—The conditions referred to in subclause (I) shall be met for a local educational agency for a school year if—

(aa) the nonresponse rate for the local educational agency for the preceding school year is less than 20 percent; or

(bb) the local educational agency has more than 20,000 children approved by application by the local educational agency as eligible for free or reduced price meals for the school year, as of October 1 of the school year, and—

(AA) the nonresponse rate for the preceding school year is at least 10 percent below the nonresponse rate for the second preceding school year; or

(BB) in the case of the school year beginning July 2005, the local educational agency attempts to verify all approved household applications selected for verification through use of public agency records from at least 2 of the programs or sources of information described in subparagraph (F)(i).

(v) ADDITIONAL SELECTED APPLICATIONS.—A sample for a local educational agency for a school year under clauses (iii) and (iv)(III)(AA) shall include the number of additional randomly selected approved household applications that are required to comply with the sample size requirements in those clauses.

(E) PRELIMINARY REVIEW.—

(i) REVIEW FOR ACCURACY.—

(I) IN GENERAL.—Prior to conducting any other verification activity for approved household applications selected for verification, the local educational agency shall ensure that the initial eligibility determination for each approved household application is reviewed for accuracy by an individual other than the individual making the initial eligibility determination, unless otherwise determined by the Secretary.

(II) WAIVER.—The requirements of subclause (I) shall be waived for a local educational agency if the local educational agency is using a technology-based solution that demonstrates a high level of accuracy, to the satisfaction of the Secretary, in processing an initial eligibility determination in accordance with the income eligibility guidelines of the school lunch program.

(ii) CORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is correct, the local educational agency shall verify the approved household application.

(iii) INCORRECT ELIGIBILITY DETERMINATION.—If the review indicates that the initial eligibility determination is incorrect, the local educational agency shall (as determined by the Secretary)—

(I) correct the eligibility status of the household;

(II) notify the household of the change;

(III) in any case in which the review indicates that the household is not eligible for free or reduced-price meals, notify the household of the reason for the ineligibility and that the household may reapply with income documentation for free or reduced-price meals; and

(IV) in any case in which the review indicates that the household is eligible for free or reduced-price meals, verify the approved household application.

(F) DIRECT VERIFICATION.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), to verify eligibility for free or reduced price meals for approved household applications selected for verification, the local educational agency may (in accordance with criteria established by the Secretary) first obtain and use income and program participation information from a public agency administering—

(I) the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(II) the food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b));

(III) the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(IV) the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); or

(V) a similar income-tested program or other source of information, as determined by the Secretary.

(ii) FREE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility for free meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for free meals) that is relied on to administer—

(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

(aa) a State in which the income eligibility limit applied under section 1902(*l*)(2)(C) of that Act (42 U.S.C. 1396a(*l*)(2)(C)) is not more than 133 percent of the official poverty line described in section 1902(*l*)(2)(A) of that Act (42 U.S.C. 1396a(*l*)(2)(A)); or

(bb) a State that otherwise identifies households that have income that is not more than 133 percent of the official poverty line described in section 1902(*l*)(2)(A) of that Act (42 U.S.C. 1396a(*l*)(2)(A)).

(iii) REDUCED PRICE MEALS.—Public agency records that may be obtained and used under clause (i) to verify eligibility for reduced price meals for approved household applications selected for verification shall include the most recent available information (other than information reflecting program participation or income before the 180-day period ending on the date of application for reduced price meals) that is relied on to administer—

(I) a program or source of information described in clause (i) (other than clause (i)(IV)); or

(II) the State plan for medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in—

(aa) a State in which the income eligibility limit applied under section 1902(*l*)(2)(C) of that Act (42 U.S.C. 1396a(*l*)(2)(C)) is not more than 185 percent of the official poverty line described in section 1902(*l*)(2)(A) of that Act (42 U.S.C. 1396a(*l*)(2)(A)); or

(bb) a State that otherwise identifies households that have income that is not more than 185 percent of the official poverty line described in section 1902(*l*)(2)(A) of that Act (42 U.S.C. 1396a(*l*)(2)(A)).

(iv) EVALUATION.—Not later than 3 years after June 30, 2004, the Secretary shall complete an evaluation of—

(I) the effectiveness of direct verification carried out under this subparagraph in decreasing the portion of the verification sample that must be verified under subparagraph (G) while ensuring that adequate verification information is obtained; and

(II) the feasibility of direct verification by State agencies and local educational agencies.

(v) EXPANDED USE OF DIRECT VERIFICATION.—If the Secretary determines that direct verification significantly decreases the portion of the verification sample that must be verified under subparagraph (G), while ensuring that adequate verification information is obtained, and can be conducted by most State agencies and local educational agencies, the Secretary may require a State agency or local educational agency to implement direct verification through 1 or more of the programs described in clause (i), as determined by the Secretary, unless the State agency or local educational agency demonstrates (under criteria established by the Secretary) that the State agency or local educational agency lacks the capacity to conduct, or is unable to implement, direct verification.

(G) HOUSEHOLD VERIFICATION.—

(i) IN GENERAL.—If an approved household application is not verified through the use of public agency records, a local educational agency shall provide to the household written notice that—

(I) the approved household application has been selected for verification; and

(II) the household is required to submit verification information to confirm eligibility for free or reduced price meals.

(ii) PHONE NUMBER.—The written notice in clause (i) shall include a toll-free phone number that parents and legal guardians in households selected for verification can call for assistance with the verification process.

(iii) FOLLOWUP ACTIVITIES.—If a household does not respond to a verification request, a local educational agency shall make at least 1 attempt to obtain the necessary verification from the household in accordance with guidelines and regulations promulgated by the Secretary.

(iv) CONTRACT AUTHORITY FOR SCHOOL FOOD AUTHORITIES.—A local educational agency may contract (under standards established by the Secretary) with a third party to assist the local educational agency in carrying out clause (iii).

(H) VERIFICATION DEADLINE.—

(i) GENERAL DEADLINE.—

(I) IN GENERAL.—Subject to subclause (II), not later than November 15 of each school year, a local educational agency shall complete the verification activities required for the school year (including followup activities).

(II) EXTENSION.—Under criteria established by the Secretary, a State may extend the deadline established under subclause (I) for a school year for a local educational agency to December 15 of the school year.

(ii) ELIGIBILITY CHANGES.—Based on the verification activities, the local educational agency shall make appropriate modifications to the eligibility determinations made for household applications in accordance with criteria established by the Secretary.

(I) LOCAL CONDITIONS.—In the case of a natural disaster, civil disorder, strike, or other local condition (as determined by the Secretary), the Secretary may substitute alternatives for—

(i) the sample size and sample selection criteria established under subparagraph (D); and

(ii) the verification deadline established under subparagraph (H).

(J) INDIVIDUAL REVIEW.—In accordance with criteria established by the Secretary, the local educational agency may, on individual review—

(i) decline to verify no more than 5 percent of approved household applications selected under subparagraph (D); and

(ii) replace the approved household applications with other approved household applications to be verified.

(K) FEASIBILITY STUDY.—

(i) IN GENERAL.—The Secretary shall conduct a study of the feasibility of using computer technology (including data mining) to reduce—

(I) overcertification errors in the school lunch program under this chapter;

(II) waste, fraud, and abuse in connection with this paragraph; and

(III) errors, waste, fraud, and abuse in other nutrition programs, as determined to be appropriate by the Secretary.

(ii) REPORT.—Not later than 180 days after June 30, 2004, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

(I) the results of the feasibility study conducted under this subsection;

(II) how a computer system using technology described in clause (i) could be implemented;

(III) a plan for implementation; and

(IV) proposed legislation, if necessary, to implement the system.

(4) DIRECT CERTIFICATION FOR CHILDREN IN FOOD STAMP HOUSEHOLDS.—

(A) IN GENERAL.—Subject to subparagraph (D), each State agency shall enter into an agreement with the State agency conducting eligibility determinations for the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(B) PROCEDURES.—Subject to paragraph (6), the agreement shall establish procedures under which a child who is a member of a household receiving assistance under the food stamp program shall be certified as eligible for free lunches under this chapter and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

(C) CERTIFICATION.—Subject to paragraph (6), under the agreement, the local educational agency conducting eligibility determinations

for a school lunch program under this chapter and a school breakfast program under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) shall certify a child who is a member of a household receiving assistance under the food stamp program as eligible for free lunches under this chapter and free breakfasts under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), without further application.

(D) APPLICABILITY.—This paragraph applies to—

(i) in the case of the school year beginning July 2006, a school district that had an enrollment of 25,000 students or more in the preceding school year;

(ii) in the case of the school year beginning July 2007, a school district that had an enrollment of 10,000 students or more in the preceding school year; and

(iii) in the case of the school year beginning July 2008 and each subsequent school year, each local educational agency.

(5) DISCRETIONARY CERTIFICATION.—

(A) IN GENERAL.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as—

(i) a member of a family that is receiving assistance under the temporary assistance for needy families program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(ii) a homeless child or youth (defined as 1 of the individuals described in section 11434a(2) of this title;[1]

(iii) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); or

(iv) a migratory child (as defined in section 6399 of title 20).

(B) CHILDREN OF HOUSEHOLDS RECEIVING FOOD STAMPS.—Subject to paragraph (6), any local educational agency may certify any child as eligible for free lunches or breakfasts, without further application, by directly communicating with the appropriate State or local agency to obtain documentation of the status of the child as a member of a household that is receiving food stamps under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(6) USE OR DISCLOSURE OF INFORMATION.—

(A) IN GENERAL.—The use or disclosure of any information obtained from an application for free or reduced price meals, or from a State or local agency referred to in paragraph (3)(F), (4), or (5), shall be limited to—

(i) a person directly connected with the administration or enforcement of this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (including a regulation promulgated under either this chapter or that Act);

(ii) a person directly connected with the administration or enforcement of—

(I) a Federal education program;

(II) a State health or education program administered by the State or local educational agency (other than a program carried out under title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq.; 42 U.S.C. 1397aa et seq.)); or

(III) a Federal, State, or local means-tested nutrition program with eligibility standards comparable to the school lunch program under this chapter;

(iii)(I) the Comptroller General of the United States for audit and examination authorized by any other provision of law; and

(II) notwithstanding any other provision of law, a Federal, State, or local law enforcement official for the purpose of investigating an alleged violation of any program covered by this paragraph or paragraph (3)(F), (4), or (5);

(iv) a person directly connected with the administration of the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or the State children's health insurance program under title XXI of that Act (42 U.S.C. 1397aa et seq.) solely for the purposes of—

(I) identifying children eligible for benefits under, and enrolling children in, those programs, except that this subclause shall apply only to the extent that the State and the local educational agency or school food authority so elect; and

(II) verifying the eligibility of children for programs under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); and

(v) a third party contractor described in paragraph (3)(G)(iv).

(B) LIMITATION ON INFORMATION PROVIDED.—Information provided under clause (ii) or (v) of subparagraph (A) shall be limited to the income eligibility status of the child for whom application for free or reduced price meal benefits is made or for whom eligibility information is provided under paragraph (3)(F), (4), or (5), unless the consent of the parent or guardian of the child for whom application for benefits was made is obtained.

(C) CRIMINAL PENALTY.—A person described in subparagraph (A) who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (including a regulation), any information obtained under this subsection shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

(D) REQUIREMENTS FOR WAIVER OF CONFIDENTIALITY.—A State that elects to exercise the option described in subparagraph (A)(iv)(I) shall ensure that any local educational agency or school food authority acting in accordance with that option—

(i) has a written agreement with 1 or more State or local agencies administering health

[1] So in original. Probably should be preceded by a closing parenthesis.

programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq. and 1397aa et seq.) that requires the health agencies to use the information obtained under subparagraph (A) to seek to enroll children in those health programs; and

(ii)(I) notifies each household, the information of which shall be disclosed under subparagraph (A), that the information disclosed will be used only to enroll children in health programs referred to in subparagraph (A)(iv); and

(II) provides each parent or guardian of a child in the household with an opportunity to elect not to have the information disclosed.

(E) USE OF DISCLOSED INFORMATION.—A person to which information is disclosed under subparagraph (A)(iv)(I) shall use or disclose the information only as necessary for the purpose of enrolling children in health programs referred to in subparagraph (A)(iv).

(7) FREE AND REDUCED PRICE POLICY STATEMENT.—

(A) IN GENERAL.—After the initial submission, a local educational agency shall not be required to submit a free and reduced price policy statement to a State educational agency under this chapter unless there is a substantive change in the free and reduced price policy of the local educational agency.

(B) ROUTINE CHANGE.—A routine change in the policy of a local educational agency (such as an annual adjustment of the income eligibility guidelines for free and reduced price meals) shall not be sufficient cause for requiring the local educational agency to submit a policy statement.

(8) COMMUNICATIONS.—

(A) IN GENERAL.—Any communication with a household under this subsection or subsection (d) of this section shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

(B) ELECTRONIC AVAILABILITY.—In addition to the distribution of applications and descriptive material in paper form as provided for in this paragraph, the applications and material may be made available electronically via the Internet.

(9) ELIGIBILITY FOR FREE AND REDUCED PRICE LUNCHES.—

(A) FREE LUNCHES.—Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate which does not exceed the applicable family size income level of the income eligibility guidelines for free lunches, as determined under paragraph (1), shall be served a free lunch.

(B) REDUCED PRICE LUNCHES.—

(i) IN GENERAL.—Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate greater than the applicable family size income level of the income eligibility guidelines for free lunches, as determined under paragraph (1), but less than or equal to the applicable family size income level of the income eligibility guidelines for reduced price lunches, as determined under paragraph (1), shall be served a reduced price lunch.

(ii) MAXIMUM PRICE.—The price charged for a reduced price lunch shall not exceed 40 cents.

(C) DURATION.—Except as otherwise specified in paragraph (3)(E), (3)(H)(ii), and section 1759a(a) of this title, eligibility for free or reduced price meals for any school year shall remain in effect—

(i) beginning on the date of eligibility approval for the current school year; and

(ii) ending on a date during the subsequent school year determined by the Secretary.

(10) No physical segregation of or other discrimination against any child eligible for a free lunch or a reduced price lunch under this subsection shall be made by the school nor shall there by[2] any overt identification of any child by special tokens or tickets, announced or published lists of names, or by other means.

(11) Any child who has a parent or guardian who (A) is responsible for the principal support of such child and (B) is unemployed shall be served a free or reduced price lunch, respectively, during any period (i) in which such child's parent or guardian continues to be unemployed and (ii) the income of the child's parents or guardians during such period of unemployment falls within the income eligibility criteria for free lunches or reduced price lunches, respectively, based on the current rate of income of such parents or guardians. Local educational agencies shall publicly announce that such children are eligible for a free or reduced price lunch, and shall make determinations with respect to the status of any parent or guardian of any child under clauses (A) and (B) of the preceding sentence on the basis of a statement executed in such form as the Secretary may prescribe by such parent or guardian. No physical segregation of, or other discrimination against, any child eligible for a free or reduced price lunch under this paragraph shall be made by the school nor shall there be any overt identification of any such child by special tokens or tickets, announced or published lists of names, or by any other means.

(12)(A) A child shall be considered automatically eligible for a free lunch and breakfast under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively, without further application or eligibility determination, if the child is—

(i) a member of a household receiving assistance under the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(ii) a member of a family (under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program

[2] So in original. Probably should be ''be''.

are comparable to or more restrictive than those in effect on June 1, 1995;

(iii) enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child is a member of a family that meets the low-income criteria prescribed under section 645(a)(1)(A) of the Head Start Act (42 U.S.C. 9840(a)(1)(A));

(iv) a homeless child or youth (defined as 1 of the individuals described in section 11434a(2) of this title;[3]

(v) served by the runaway and homeless youth grant program established under the Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.); or

(vi) a migratory child (as defined in section 6399 of title 20).

(B) Proof of receipt of food stamps or assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995, or of enrollment or participation in a Head Start program on the basis described in subparagraph (A)(iii), shall be sufficient to satisfy any verification requirement imposed under this subsection.

(13) EXCLUSION OF CERTAIN MILITARY HOUSING ALLOWANCES.—The amount of a basic allowance provided under section 403 of title 37 on behalf of a member of a uniformed service for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10, or any related provision of law, shall not be considered to be income for the purpose of determining the eligibility of a child who is a member of the household of the member of a uniformed service for free or reduced price lunches under this chapter.

(c) Operation on nonprofit basis; donation of agricultural commodities

School lunch programs under this chapter shall be operated on a nonprofit basis. Commodities purchased under the authority of section 612c of title 7, may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in the school lunch program under this chapter as well as to other schools carrying out nonprofit school lunch programs and institutions authorized to receive such commodities. The requirements of this section relating to the service of meals without cost or at a reduced cost shall apply to the lunch program of any school utilizing commodities donated under any provision of law.

(d) Social Security numbers and other documentation required as condition of eligibility

(1) The Secretary shall require as a condition of eligibility for receipt of free or reduced price lunches that the member of the household who executes the application furnish the social security account number of the parent or guardian who is the primary wage earner responsible for the care of the child for whom the application is made, or that of another appropriate adult member of the child's household, as determined by the Secretary. The Secretary shall require that social security account numbers of all adult members of the household be provided if verification of the data contained in the application is sought under subsection (b)(3)(G) of this section.

(2) No member of a household may be provided a free or reduced price lunch under this chapter unless—

(A) appropriate documentation relating to the income of such household (as prescribed by the Secretary) has been provided to the appropriate local educational agency so that the local educational agency may calculate the total income of such household;

(B) documentation showing that the household is participating in the food stamp program under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.] has been provided to the appropriate local educational agency;

(C) documentation has been provided to the appropriate local educational agency showing that the family is receiving assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995;

(D) documentation has been provided to the appropriate local educational agency showing that the child meets the criteria specified in clauses (iv) or (v) of subsection (b)(12)(A) of this section; or

(E) documentation has been provided to the appropriate local educational agency showing the status of the child as a migratory child (as defined in section 6399 of title 20).

(e) Limitation on meal contracting

A school or school food authority participating in a program under this chapter may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced price, and full-price reimbursable meals to all eligible children.

(f) Adherence to Dietary Guidelines

(1) NUTRITIONAL REQUIREMENTS.—Except as provided in paragraph (2), not later than the first day of the 1996–1997 school year, schools that are participating in the school lunch or school breakfast program shall serve lunches and breakfasts under the program that—

(A) are consistent with the goals of the most recent Dietary Guidelines for Americans published under section 5341 of title 7; and

(B) provide, on the average over each week, at least—

(i) with respect to school lunches, ⅓ of the daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; and

(ii) with respect to school breakfasts, ¼ of the daily recommended dietary allowance established by the Food and Nutrition Board

[3] So in original. Probably should be preceded by a closing parenthesis.

of the National Research Council of the National Academy of Sciences.

(2) State educational agencies may grant waivers from the requirements of paragraph (1) subject to criteria established by the appropriate State educational agency. The waivers shall not permit schools to implement the requirements later than July 1, 1998, or a later date determined by the Secretary.

(3) To assist schools in meeting the requirements of this subsection, the Secretary—

(A) shall—

(i) develop, and provide to schools, standardized recipes, menu cycles, and food product specification and preparation techniques; and

(ii) provide to schools information regarding nutrient standard menu planning, assisted nutrient standard menu planning, and food-based menu systems; and

(B) may provide to schools information regarding other approaches, as determined by the Secretary.

(4) USE OF ANY REASONABLE APPROACH.—

(A) IN GENERAL.—A school food service authority may use any reasonable approach, within guidelines established by the Secretary in a timely manner, to meet the requirements of this subsection, including—

(i) using the school nutrition meal pattern in effect for the 1994–1995 school year; and

(ii) using any of the approaches described in paragraph (3).

(B) NUTRIENT ANALYSIS.—The Secretary may not require a school to conduct or use a nutrient analysis to meet the requirements of this subsection.

(5) WAIVER OF REQUIREMENT FOR WEIGHTED AVERAGES FOR NUTRIENT ANALYSIS.—During the period ending on September 30, 2009, the Secretary shall not require the use of weighted averages for nutrient analysis of menu items and foods offered or served as part of a meal offered or served under the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(g) Justification of production records; paperwork reduction

Not later than 1 year after November 2, 1994, the Secretary shall provide a notification to Congress that justifies the need for production records required under section 210.10(b) of title 7, Code of Federal Regulations, and describes how the Secretary has reduced paperwork relating to the school lunch and school breakfast programs.

(h) Food safety

(1) In general

A school participating in the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) shall—

(A) at least twice during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections;

(B) post in a publicly visible location a report on the most recent inspection conducted under subparagraph (A); and

(C) on request, provide a copy of the report to a member of the public.

(2) State and local government inspections

Nothing in paragraph (1) prevents any State or local government from adopting or enforcing any requirement for more frequent food safety inspections of schools.

(3) Audits and reports by States

For each of fiscal years 2006 through 2009, each State shall annually—

(A) audit food safety inspections of schools conducted under paragraphs (1) and (2); and

(B) submit to the Secretary a report of the results of the audit.

(4) Audit by the Secretary

For each of fiscal years 2006 through 2009, the Secretary shall annually audit State reports of food safety inspections of schools submitted under paragraph (3).

(5) School food safety program

Each school food authority shall implement a school food safety program, in the preparation and service of each meal served to children, that complies with any hazard analysis and critical control point system established by the Secretary.

(i) Single permanent agreement between State agency and school food authority; common claims form

(1) In general

If a single State agency administers any combination of the school lunch program under this chapter, the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the summer food service program for children under section 1761 of this title, or the child and adult care food program under section 1766 of this title, the agency shall—

(A) require each school food authority to submit to the State agency a single agreement with respect to the operation by the authority of the programs administered by the State agency; and

(B) use a common claims form with respect to meals and supplements served under the programs administered by the State agency.

(2) Additional requirement

The agreement described in paragraph (1)(A) shall be a permanent agreement that may be amended as necessary.

(j) Purchases of locally produced foods

(1) In general

The Secretary shall—

(A) encourage institutions participating in the school lunch program under this chapter and the school breakfast program established by section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) to purchase, in addition to other food purchases, locally produced foods for school meal programs, to the maximum extent practicable and appropriate;

(B) advise institutions participating in a program described in subparagraph (A) of

the policy described in that subparagraph and post information concerning the policy on the website maintained by the Secretary; and

(C) in accordance with requirements established by the Secretary, provide startup grants to not more than 200 institutions to defray the initial costs of equipment, materials, and storage facilities, and similar costs, incurred in carrying out the policy described in subparagraph (A).

(2) Authorization of appropriations

(A) In general

There is authorized to be appropriated to carry out this subsection $400,000 for each of fiscal years 2003 through 2009, to remain available until expended.

(B) Limitation

No amounts may be made available to carry out this subsection unless specifically provided by an appropriation Act.

(June 4, 1946, ch. 281, § 9, 60 Stat. 233; Pub. L. 90–302, § 2(b), May 8, 1968, 82 Stat. 117; Pub. L. 91–248, § 6(a), (b), (d), (e), May 14, 1970, 84 Stat. 210; Pub. L. 92–153, § 5, Nov. 5, 1971, 85 Stat. 420; Pub. L. 92–433, § 5, Sept. 26, 1972, 86 Stat. 726; Pub. L. 93–150, § 9, Nov. 7, 1973, 87 Stat. 564; Pub. L. 93–326, § 4, June 30, 1974, 88 Stat. 286; Pub. L. 94–105, § 6, Oct. 7, 1975, 89 Stat. 512; Pub. L. 95–166, § 8, Nov. 10, 1977, 91 Stat. 1335; Pub. L. 95–627, § 8, Nov. 10, 1978, 92 Stat. 3622; Pub. L. 97–35, title VIII, §§ 803(a), (b), 811, Aug. 13, 1981, 95 Stat. 524, 525, 529; Pub. L. 99–500, title III, §§ 322–324, Oct. 18, 1986, 100 Stat. 1783–361, and Pub. L. 99–591, title III, §§ 322–324, Oct. 30, 1986, 100 Stat. 3341–364; Pub. L. 99–661, div. D, title II, §§ 4202–4204, Nov. 14, 1986, 100 Stat. 4072; Pub. L. 100–356, § 1, June 28, 1988, 102 Stat. 669; Pub. L. 101–147, title I, § 101, title II, § 202(a)(1), (2)(A), (b), title III, §§ 305, 312(1), (2), Nov. 10, 1989, 103 Stat. 878, 908, 914, 916; Pub. L. 103–448, title I, §§ 105(a), 106–109(a), 110, Nov. 2, 1994, 108 Stat. 4701–4705; Pub. L. 104–149, § 2, May 29, 1996, 110 Stat. 1379; Pub. L. 104–193, title I, § 109(g), title VII, §§ 702, 703, Aug. 22, 1996, 110 Stat. 2170, 2288, 2289; Pub. L. 105–336, title I, § 102, Oct. 31, 1998, 112 Stat. 3144; Pub. L. 106–224, title II, § 242(a), June 20, 2000, 114 Stat. 411; Pub. L. 107–171, title IV, §§ 4302(a), 4303, May 13, 2002, 116 Stat. 330, 331; Pub. L. 108–134, § 1, Nov. 22, 2003, 117 Stat. 1389; Pub. L. 108–211, § 1, Mar. 31, 2004, 118 Stat. 566; Pub. L. 108–265, title I, §§ 102–104(b)(1), (d)(1), (2), 105(a), 106–108(a), 109–112, June 30, 2004, 118 Stat. 731–734, 737, 738, 745–747; Pub. L. 108–447, div. A, title VII, § 788(a), Dec. 8, 2004, 118 Stat. 2851.)

AMENDMENT OF SUBSECTION (b)(5)

Pub. L. 108–265, title I, § 104(d)(1), June 30, 2004, 118 Stat. 737, provided that, effective July 1, 2008, subsection (b)(5) of this section is amended as follows:

(1) by striking subparagraph (B);

(2) by striking ''CERTIFICATION.—'' *and all that follows through* ''IN GENERAL.—'' *and inserting* ''CERTIFICATION.—''*; and*

(3) by redesignating clauses (i) through (iv) as subparagraphs (A) through (D), respectively, and indenting appropriately.

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in text, is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Food Stamp Act of 1977, referred to in text, is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV, title XIX, and title XXI of the Act are classified generally to part A (§ 601 et seq.) of subchapter IV, subchapter XIX (§ 1396 et seq.), and subchapter XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Runaway and Homeless Youth Act, referred to in subsec. (b)(5)(A)(iii), (12)(A)(v), is title III of Pub. L. 93–415, Sept. 7, 1974, 88 Stat. 1129, as amended, which is classified generally to subchapter III (§ 5701 et seq.) of chapter 72 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

The Head Start Act, referred to in subsec. (b)(12)(A)(iii), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–265, § 102, added par. (2) and struck out former par. (2) which read as follows: ''Lunches served by schools participating in the school lunch program under this chapter—

''(A) shall offer students fluid milk; and

''(B) shall offer students a variety of fluid milk consistent with prior year preferences unless the prior year preference for any such variety of fluid milk is less than 1 percent of the total milk consumed at the school.''

Subsec. (a)(4). Pub. L. 108–265, § 103, added par. (4).

Subsec. (b)(2)(B). Pub. L. 108–265, § 104(a)(2)(A), inserted subpar. heading, designated first and second sentences as cls. (i) and (ii), respectively, and inserted headings, in cl. (ii) substituted ''Forms and descriptive material distributed in accordance with clause (i)'' for ''Such forms and descriptive material'', and added cl. (iii).

Subsec. (b)(2)(C)(i). Pub. L. 108–265, § 104(a)(2)(B), redesignated par. (2)(C)(i) as par. (3).

Subsec. (b)(2)(C)(ii) to (vii), (D). Pub. L. 108–265, § 104(a)(2)(C), struck out subpars. (C)(ii) to (vii) and (D), which related to direct certification of children in households receiving other assistance, disclosure of eligibility information, limitations, sanction for wrongful disclosure, waiver of confidentiality, use of disclosed information, and submission of price policy statement by school food authority.

Subsec. (b)(3). Pub. L. 108–265, § 105(a), added par. (3) and struck out former par. (3) which read as follows: ''Except as provided in clause (ii), each eligibility determination shall be made on the basis of a complete application executed by an adult member of the household. The Secretary, State, or local food authority may verify any data contained in such application. A local school food authority shall undertake such verification of information contained in any such application as the Secretary may by regulation prescribe and, in accord-

ance with such regulations, shall make appropriate changes in the eligibility determination with respect to such application on the basis of such verification.''

Pub. L. 108–265, §104(a)(2)(B), redesignated par. (2)(C)(i) as par. (3).

Pub. L. 108–265, §104(a)(1), redesignated par. (3) as (9).

Subsec. (b)(4). Pub. L. 108–265, §104(a)(2)(C), added par. (4).

Pub. L. 108–265, §104(a)(1), redesignated par. (4) as (10).

Subsec. (b)(5). Pub. L. 108–265, §104(b)(1), as amended by Pub. L. 108–447, added par. (5).

Pub. L. 108–265, §104(a)(1), redesignated par. (5) as (11).

Subsec. (b)(6). Pub. L. 108–265, §104(b)(1), added par. (6).

Pub. L. 108–265, §104(a)(1), redesignated par. (6) as (12).

Subsec. (b)(7). Pub. L. 108–265, §104(b)(1), added par. (7).

Pub. L. 108–265, §104(a)(1), redesignated par. (7) as (13).

Pub. L. 108–211 substituted ''June 30, 2004'' for ''March 31, 2004''.

Subsec. (b)(8). Pub. L. 108–265, §104(b)(1), added par. (8).

Subsec. (b)(9). Pub. L. 108–265, §106, inserted par. heading, designated existing provisions as subpars. (A) and (B), inserted subpar. headings, in subpar. (B) designated existing provisions as cls. (i) and (ii) and inserted cl. headings, and added subpar. (C).

Pub. L. 108–265, §104(a)(1), redesignated par. (3) as (9).

Subsec. (b)(10). Pub. L. 108–265, §104(a)(1), redesignated par. (4) as (10).

Subsec. (b)(11). Pub. L. 108–265, §108(a)(1), substituted ''Local educational agencies'' for ''Local school authorities'' in second sentence.

Pub. L. 108–265, §104(a)(1), redesignated par. (5) as (11).

Subsec. (b)(12). Pub. L. 108–265, §104(a)(1), redesignated par. (6) as (12).

Subsec. (b)(12)(A)(iv) to (vi). Pub. L. 108–265, §107(a), added cls. (iv) to (vi).

Subsec. (b)(12)(B). Pub. L. 108–265, §104(d)(2)(A), substituted ''this subsection'' for ''paragraph (2)(C)''.

Subsec. (b)(13). Pub. L. 108–265, §109, substituted ''The'' for ''For each of fiscal years 2002 and 2003 and through June 30, 2004, the''.

Pub. L. 108–265, §104(a)(1), redesignated par. (7) as (13).

Subsec. (d)(1). Pub. L. 108–265, §104(d)(2)(B), substituted ''subsection (b)(3)(G)'' for ''subsection (b)(2)(C)'' in second sentence.

Subsec. (d)(2)(A). Pub. L. 108–265, §108(a)(2), substituted ''appropriate local educational agency'' for ''appropriate local school food authority'' and ''the local educational agency'' for ''such authority''.

Subsec. (d)(2)(B), (C). Pub. L. 108–265, §108(a)(2)(A), substituted ''local educational agency'' for ''local school food authority''.

Subsec. (d)(2)(D), (E). Pub. L. 108–265, §107(b), added subpars. (D) and (E).

Subsec. (f)(5). Pub. L. 108–265, §110, substituted ''September 30, 2009'' for ''September 30, 2003''.

Subsec. (h). Pub. L. 108–265, §111(1), struck out ''inspections'' after ''safety'' in heading.

Subsec. (h)(1). Pub. L. 108–265, §111(2), substituted ''A school'' for ''Except as provided in paragraph (2), a school'', inserted subpar. (A) designation, substituted ''at least twice'' for ''at least once'', and added subpars. (B) and (C).

Subsec. (h)(2) to (5). Pub. L. 108–265, §111(3), added pars. (2) to (5) and struck out heading and text of former par. (2). Text read as follows: ''Paragraph (1) shall not apply to a school if a food safety inspection of the school is required by a State or local governmental agency responsible for food safety inspections.''

Subsec. (j)(2)(A). Pub. L. 108–265, §112, substituted ''2009'' for ''2007''.

2003—Subsec. (b)(7). Pub. L. 108–134 inserted ''and through March 31, 2004'' after ''and 2003''.

2002—Subsec. (b)(7). Pub. L. 107–171, §4302(a), added par. (7).

Subsec. (j). Pub. L. 107–171, §4303, added subsec. (j).

2000—Subsec. (b)(2)(C)(iii)(IV). Pub. L. 106–224, §242(a)(1), added subcl. (IV).

Subsec. (b)(2)(C)(vi), (vii). Pub. L. 106–224, §242(a)(2), added cls. (vi) and (vii).

1998—Subsec. (f)(2). Pub. L. 105–336, §102(a)(1), substituted ''paragraph (1)'' for ''subparagraph (A)''.

Subsec. (f)(3), (4). Pub. L. 105–336, §102(a)(2), substituted ''this subsection'' for ''this paragraph'' wherever appearing.

Subsec. (f)(5). Pub. L. 105–336, §102(b), added par. (5).

Subsec. (h). Pub. L. 105–336, §102(c), added subsec. (h).

Subsec. (i). Pub. L. 105–336, §102(d), added subsec. (i).

1996—Subsec. (a)(2). Pub. L. 104–193, §702(a)(1), redesignated par. (2)(A) as (2) and cls. (i) and (ii) of former subpar. (A) as subpars. (A) and (B), respectively, and struck out former subpar. (B) which read as follows:

''(B)(i) The Secretary shall purchase in each calendar year to carry out the school lunch program under this chapter, and the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), lowfat cheese on a bid basis in a quantity that is the milkfat equivalent of the quantity of milkfat the Secretary estimates the Commodity Credit Corporation will purchase each calendar year as a result of the elimination of the requirement that schools offer students fluid whole milk and fluid unflavored lowfat milk, based on data provided by the Director of Office of Management and Budget.

''(ii) Not later than 30 days after the Secretary provides an estimate required under clause (i), the Director of the Congressional Budget Office shall provide to the appropriate committees of Congress a report on whether the Director concurs with the estimate of the Secretary.

''(iii) The quantity of lowfat cheese that is purchased under this subparagraph shall be in addition to the quantity of cheese that is historically purchased by the Secretary to carry out school feeding programs. The Secretary shall take such actions as are necessary to ensure that purchases under this subparagraph shall not displace commercial purchases of cheese by schools.''

Subsec. (a)(3), (4). Pub. L. 104–193, §702(a)(2), (3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''The Secretary shall establish, in cooperation with State educational agencies, administrative procedures, which shall include local educational agency and student participation, designed to diminish waste of foods which are served by schools participating in the school lunch program under this chapter without endangering the nutritional integrity of the lunches served by such schools.''

Subsec. (b)(2)(C)(ii)(II). Pub. L. 104–193, §109(g)(1)(A), substituted ''State program funded'' for ''program for aid to families with dependent children'' and inserted before period at end ''that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995''.

Subsec. (b)(2)(D). Pub. L. 104–193, §703, added subpar. (D).

Subsec. (b)(6)(A)(ii). Pub. L. 104–193, §109(g)(1)(B)(i), substituted ''a family (under the State program funded'' for ''an AFDC assistance unit (under the aid to families with dependent children program authorized'' and ''that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995'' for '', in a State where the standard of eligibility for the assistance does not exceed 130 percent of the poverty line (as defined in section 9902(2) of this title)''.

Subsec. (b)(6)(B). Pub. L. 104–193, §109(g)(1)(B)(ii), substituted ''assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995'' for ''aid to families with dependent children''.

Subsec. (c). Pub. L. 104–193, § 702(b)(2), struck out ''Each school shall, insofar as practicable, utilize in its lunch program commodities designated from time to time by the Secretary as being in abundance, either nationally or in the school area or commodities donated by the Secretary.'' after ''operated on a nonprofit basis.'', ''The Secretary is authorized to prescribe terms and conditions respecting the use of commodities donated under such section 612c of title 7, under section 1431 of title 7 and under section 1446a–1 of title 7, as will maximize the nutritional and financial contributions of such donated commodities in such schools and institutions.'' after ''authorized to receive such commodities.'', and ''None of the requirements of this section in respect to the amount for 'reduced cost' meals and to eligibility for meals without cost shall apply to schools (as defined in section 1760(d)(6) of this title which are private and nonprofit as defined in the last sentence of section 1760(d)(6) of this title) which participate in the school lunch program under this chapter until such time as the State educational agency, or in the case of such schools which participate under the provisions of section 1759 of this title the Secretary certifies that sufficient funds from sources other than children's payments are available to enable such schools to meet these requirements.'' at end.

Pub. L. 104–193, § 702(b)(1), substituted ''provision of law'' for ''of the provisions of law referred to in the preceding sentence'' in fifth sentence.

Subsec. (d)(2)(C). Pub. L. 104–193, § 109(g)(2), substituted ''State program funded'' for ''program for aid to families with dependent children'' and inserted before period at end ''that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995''.

Subsec. (f). Pub. L. 104–193, § 702(c)(1)–(3), struck out ''(2)'' designation before ''(A) Except as provided'', redesignated subpars. (A) to (D) as pars. (1) to (4), respectively, and struck out former par. (1) which read as follows: ''Not later than the first day of the 1996–97 school year, the Secretary, State educational agencies, schools, and school food service authorities shall, to the maximum extent practicable, inform students who participate in the school lunch and school breakfast programs, and parents and guardians of the students, of—

''(A) the nutritional content of the lunches and breakfasts that are served under the programs; and

''(B) the consistency of the lunches and breakfasts with the guidelines contained in the most recent 'Dietary Guidelines for Americans' that is published under section 5341 of title 7 (referred to in this subsection as the 'Guidelines'), including the consistency of the lunches and breakfasts with the guideline for fat content.''

Subsec. (f)(1). Pub. L. 104–193, § 702(c)(4), added par. (1) and struck out former par. (1), as redesignated by Pub. L. 104–193, § 702(c)(3), which read as follows: ''Except as provided in subparagraph (B), not later than the first day of the 1996–97 school year, schools that are participating in the school lunch or school breakfast program shall serve lunches and breakfasts under the programs that are consistent with the Guidelines (as measured in accordance with subsection (a)(1)(A)(ii) of this section and section 4(e)(1)).''

Subsec. (f)(2)(D). Pub. L. 104–149 added subpar. (D) and struck out former subpar. (D) which read as follows: ''Schools may use any of the approaches described in subparagraph (C) to meet the requirements of this paragraph. In the case of schools that elect to use food-based menu systems to meet the requirements of this paragraph, the Secretary may not require the schools to conduct or use nutrient analysis.''

Subsec. (f)(3). Pub. L. 104–193, § 702(c)(5), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and subcls. (I) and (II) of subpar. (A) as cls. (i) and (ii), respectively.

Subsec. (f)(4). Pub. L. 104–193, § 702(c)(6), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, in subpar. (A), redesignated subcls. (I) and (II) as cls. (i) and (ii), respectively, and in subpar. (A)(ii), substituted ''paragraph (3)'' for ''subparagraph (C)''.

Subsec. (h). Pub. L. 104–193, § 702(d), struck out subsec. (h) which read as follows: ''In carrying out this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), a State educational agency may use resources provided through the nutrition education and training program authorized under section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) for training aimed at improving the quality and acceptance of school meals.''

1994—Subsec. (a)(1). Pub. L. 103–448, §§ 105(a), 106(a), designated existing provisions as subpar. (A) and cl. (i) of subpar. (A) and added cl. (ii) of subpar. (A) and subpar. (B).

Subsec. (a)(2). Pub. L. 103–448, § 107, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Lunches served by schools participating in the school lunch program under this chapter shall offer students fluid whole milk and fluid unflavored lowfat milk.''

Subsec. (b)(2)(C)(iii) to (v). Pub. L. 103–448, § 108, added cls. (iii) to (v) and struck out former cl. (iii), which read as follows: ''School food service authorities shall only use information obtained under clause (ii) for the purpose of determining eligibility for participation in programs under this chapter and the Child Nutrition Act of 1966.''

Subsec. (b)(6)(A). Pub. L. 103–448, § 109(a)(1), struck out ''a member of'' after ''if the child is'' in introductory provisions, inserted ''a member of'' after ''(i)'' and ''(ii)'', and added cl. (iii).

Subsec. (b)(6)(B). Pub. L. 103–448, § 109(a)(2), inserted '', or of enrollment or participation in a Head Start program on the basis described in subparagraph (A)(iii),'' after ''aid to families with dependent children''.

Subsecs. (f) to (h). Pub. L. 103–448, §§ 106(b), (c), 110, added subsecs. (f) to (h).

1989—Subsec. (a). Pub. L. 101–147, § 101(a), amended subsec. (a), as amended identically by Pub. L. 99–500 and 99–591, § 322, and Pub. L. 99–661, § 4202, to read as if only the amendment by Pub. L. 99–661 was enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (a)(1). Pub. L. 101–147, § 312(1), substituted ''school lunch'' for ''school-lunch''.

Subsec. (a)(2). Pub. L. 101–147, § 101(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In addition to such other forms of milk as the Secretary may determine, the lunches shall offer whole milk as a beverage.''

Subsec. (b). Pub. L. 101–147, §§ 305(b)(1), 312(2), substituted ''reduced price'' for ''reduced-price'' and ''family size'' for ''family-size'' wherever appearing.

Pub. L. 101–147, § 202(a)(1), (2)(A), amended subsec. (b), as amended identically by Pub. L. 99–500 and Pub. L. 99–591, § 323, and Pub. L. 99–661, § 4203, and as amended by Pub. L. 100–356, § 1, to read as if only the amendment by Pub. L. 99–661 was enacted, and further amended subsec. (b) identically to the amendments that were made by Pub. L. 100–356, § 1, resulting in no change in text, see 1986 and 1988 Amendment notes below.

Subsec. (b)(2)(C). Pub. L. 101–147, § 202(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Eligibility determinations shall be made on the basis of a complete application executed by an adult member of the household. The Secretary, States, and local school food authorities may seek verification of the data contained in the application. Local school food authorities shall undertake such verification of the information contained in these applications as the Secretary may by regulation prescribe and, in accordance with such regulations, make appropriate changes in the eligibility determinations on the basis of such verification.''

Subsec. (c). Pub. L. 101–147, §§ 305(b)(2), 312(1), substituted ''School lunch'' for ''School-lunch'', substituted ''school lunch'' for ''school-lunch'' wherever appearing, and made technical amendments to the references to sections 612c, 1431, and 1446a–1 of title 7 in-

volving underlying provisions of original act and requiring no change in text.

Subsec. (d)(1). Pub. L. 101–147, §§202(b)(2)(A), 312(2), substituted ''reduced price'' for ''reduced-price'' and ''number of the parent or guardian who is the primary wage earner responsible for the care of the child for whom the application is made, or that of another appropriate adult member of the child's household, as determined by the Secretary. The Secretary shall require that social security account numbers of all adult members of the household be provided if verification of the data contained in the application is sought under subsection (b)(2)(C) of this section.'' for ''numbers of all adult members of the household of which such person is a member.''

Subsec. (d)(2). Pub. L. 101–147, §312(2), substituted ''reduced price'' for ''reduced-price''.

Subsec. (d)(2)(A). Pub. L. 101–147, §202(b)(2)(B)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''appropriate documentation, as prescribed by the Secretary, of the income of such household has been provided to the appropriate local school food authority; or''.

Subsec. (d)(2)(C). Pub. L. 101–147, §202(b)(2)(B)(ii), (iii), added subpar. (C).

Subsec. (e). Pub. L. 101–147, §312(2), substituted ''reduced price'' for ''reduced-price''.

Pub. L. 101–147, §305(a), amended subsec. (e), as amended identically by Pub. L. 99–500 and Pub. L. 99–591, §324, and Pub. L. 99–661, §4204, to read as if only the amendment by Pub. L. 99–661 was enacted, resulting in no change in text, see 1986 Amendment note below.

1988—Subsec. (b)(1)(A). Pub. L. 100–356 substituted ''The'' for ''For the school years ending June 30, 1982, and June 30, 1983, the'' in second sentence and struck out provisions which equated income guidelines for determining eligibility for free lunches with gross income eligibility standards for participation in food stamp program.

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591, §322, and Pub. L. 99–661, §4202, amended subsec. (a) identically, designating existing provisions as pars. (1), (3), and (4) and adding par. (2).

Subsec. (b)(6). Pub. L. 99–500 and Pub. L. 99–591, §323, and Pub. L. 99–661, §4203, amended subsec. (b) identically, adding par. (6).

Subsec. (e). Pub. L. 99–500 and Pub. L. 99–591, §324, and Pub. L. 99–661, §4204, amended section identically, adding subsec. (e).

1981—Subsec. (a). Pub. L. 97–35, §811, struck out ''in any junior high school or middle school'' after ''grade level''.

Subsec. (b). Pub. L. 97–35, §803(a), in par. (1) substituted provisions relating to income eligibility guidelines, for provisions relating to income poverty guidelines, redesignated former par. (2) as (5) and, as so redesignated, struck out ''solely'' after ''sentence'', and added pars. (2) to (4).

Subsec. (d). Pub. L. 97–35, §803(b), added subsec. (d).

1978—Subsec. (b)(1). Pub. L. 95–627 substituted guidelines prescribed by the Office of Management and Budget for the Consumer Price Index for purposes of determining the income poverty guidelines.

1977—Subsec. (a). Pub. L. 95–166 inserted parenthetical text authorizing students in any grade level in any junior high school or middle school, when approved by local school district or nonprofit private school, to refuse to accept offered foods they do not intend to consume.

1975—Subsec. (a). Pub. L. 94–105, §6(a), directed Secretary to establish administrative procedures designed to diminish food waste in school lunch programs and made provision for senior high school students to refuse food which they do not intend to consume without affecting lunch charges or payments to schools for lunches served.

Subsec. (b)(1). Pub. L. 94–105, §6(b), designated existing provisions as subsec. (b)(1), struck out ''if a school elects to serve reduced-price lunches'' after ''reduced price not to exceed 20 cents'', inserted provision for a reduced price lunch for any child eligible under reduced price lunch income guidelines, established income guidelines for reduced price lunches, beginning with fiscal year ending June 30, 1976, at 95 per centum above applicable family size income levels in income poverty guidelines, and provided for a reduced price lunch not to exceed 20 cents to any child belonging to a household whose income falls between guidelines for a free lunch and 95 per centum above income levels in the income poverty guidelines.

Pub. L. 94–105, §6(c), substituted provision adjusting income poverty guidelines that take effect July 1 of each year according to percentage change in Consumer Price Index for 12-month period ending in April of that year, except that the first adjustment, effective July 1, 1976, shall be made according to percentage change between average Consumer Price Index for 1974, on which the 1975–1976 guidelines are based, and Consumer Price Index for April 1976 for provision basing the guidelines on average Consumer Price Index for previous calendar year.

Subsec. (b)(2). Pub. L. 94–105, §6(d), added par. (2).

Subsec. (c). Pub. L. 94–105, §6(e), substituted ''schools (as defined in section 1760(d)(6) of this title which are private and nonprofit as defined in the last sentence of section 1760(d)(6) of this title)'' for ''nonprofit private schools''.

1974—Subsec. (b). Pub. L. 93–326 substituted ''beginning with the fiscal year ending June 30, 1974'' for ''for the fiscal year ending June 30, 1974'' in provision authorizing State educational agencies to establish income guidelines for reduced price lunches at not more than 75 per centum above applicable family size income levels in income poverty guidelines as prescribed by Secretary.

1973—Subsec. (b). Pub. L. 93–150 inserted proviso relating to income guidelines for reduced price lunches.

1972—Subsec. (a). Pub. L. 92–433, §5(a), designated first sentence as subsec. (a).

Subsec. (b). Pub. L. 92–433, §5(b), designated second through seventh sentences of existing provisions as subsec. (b), separated provisions relating to free and reduced price lunches, substituted May 15 of each year for July 1 of each year as the date by which the Secretary is required to prescribe an income poverty guideline, prescribed free lunch for children of households below the guideline instead of prior provision requiring free lunch or lunch at reduced price, authorized State educational agencies to set up family-size income levels for free and reduced price lunches to be within certain percentage limitations of the guideline prescribed by the Secretary, and provided for continuation until July 1, 1973 of higher guidelines established prior to July 1, 1972.

Subsec. (c). Pub. L. 92–433, §5(c), designated eighth through thirteenth sentences as subsec. (c) and in last sentence inserted provision that requirements of this section are not applicable to nonprofit private schools which participate in the school lunch program under this chapter until the State educational agency certifies about the funds.

1971—Pub. L. 92–153 inserted provisions for consideration of income poverty guidelines during fiscal year 1972 as a national minimum standard of eligibility and for reimbursement of State agencies during such fiscal year pursuant to eligibility standards established by State agencies prior to Oct. 1, 1971.

1970—Pub. L. 91–248 placed a ceiling of 20 cents on any reduced price meal offered under the school lunch program, provided for determination of ability to pay the full cost of lunch based on a publicly announced policy the minimum criteria of which includes family income and the number of school children in the family unit as well as the size of the family unit in general, but, under which, by Jan. 1, 1971, such determination shall be based on the income poverty guidelines with first priority given to providing free meals to the neediest children, provided that there be no overt identification of those children who receive free and reduced price meals, authorized the Secretary to prescribe such

terms and conditions for food service in the non-national School Lunch Act schools as well as schools under this Act which are receiving Federal assistance in the form of commodities, and excepted from requirements of this section with respect to amount for reduced cost meals and eligibility for meals without cost nonprofit private schools which participate in the school lunch program under the provisions of section 1759 of this title until the Secretary certifies that sufficient funds are available to enable such schools to meet the requirements of this section.

1968—Pub. L. 90–302 provided that minimum nutritional requirements prescribed by the Secretary on basis of tested nutritional research which lunches served by participating schools must meet could not be construed to prohibit substitution of foods to accommodate medical or other special dietary needs of individual students.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by sections 102, 104(a)(2), (b)(1), (d)(1), (2), 105(a), and 111 of Pub. L. 108–265 effective July 1, 2005, see section 502(b)(4) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

Amendment by sections 103, 104(a)(1), 108(a), 109, 110, and 112 of Pub. L. 108–265 effective June 30, 2004, except as otherwise provided, see section 502(a) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

Pub. L. 108–265, title I, § 104(d)(1), June 30, 2004, 118 Stat. 737, provided that the amendment made by section 104(d)(1) is effective July 1, 2008.

Amendment by sections 106 and 107 of Pub. L. 108–265 effective July 1, 2004, see section 502(b)(1) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–171, title IV, § 4302(b), May 13, 2002, 116 Stat. 331, provided that: ''The amendment made by this section [amending this section] takes effect on the date of enactment of this Act [May 13, 2002].''

Amendment by section 4303 of Pub. L. 107–171 effective Oct. 1, 2002, except as otherwise provided, see section 4405 of Pub. L. 107–171, set out as an Effective Date note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–224, title II, § 242(c), June 20, 2000, 114 Stat. 413, provided that: ''The amendments made by this section [amending this section and sections 1760 and 1786 of this title] take effect on October 1, 2000.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 109(g) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 105(a) and 106 to 108 of Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

Section 109(c) of Pub. L. 103–448 provided that: ''The amendments made by this section [amending this section and section 1766 of this title] shall become effective on September 25, 1995.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 202(a)(2)(B) of Pub. L. 101–147 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if such amendments had been effective on June 28, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Sections 322 to 324 of Pub. L. 99–500 and Pub. L. 99–591 and sections 4202 to 4204 of Pub. L. 99–661 provided that the amendments made by those sections are effective July 1, 1986.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 803(a), (b) and 811 of Pub. L. 97–35 effective Aug. 13, 1981, and Sept. 1, 1981, respectively, see section 820(a)(1)(E), (7)(A) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective July 1, 1979, except as specifically provided, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 6(c) of Pub. L. 94–105 provided that the amendment made by that section is effective Jan. 1, 1976.

REGULATIONS

Pub. L. 108–265, title V, § 501, June 30, 2004, 118 Stat. 789, provided that:

''(a) GUIDANCE.—As soon as practicable after the date of enactment of this Act [June 30, 2004], the Secretary of Agriculture shall issue guidance to implement the amendments made by sections 102, 103, 104, 105, 106, 107, 111, 116, 119(c), 119(g), 120, 126(b), 126(c), 201, 203(a)(3), 203(b), 203(c)(5), 203(e)(3), 203(e)(4), 203(e)(5), 203(e)(6), 203(e)(7), 203(e)(10), and 203(h)(1) [amending this section, sections 1396a, 1759a, 1761, 1766, 1769, 1769c, 1773, 1776, and 1786 of this title, and section 2020 of Title 7, Agriculture].

''(b) INTERIM FINAL REGULATIONS.—The Secretary may promulgate interim final regulations to implement the amendments described in subsection (a).

''(c) REGULATIONS.—Not later than 2 years after the date of enactment of this Act [June 30, 2004], the Secretary shall promulgate final regulations to implement the amendments described in subsection (a).''

Section 202(c) of Pub. L. 101–147 provided that: ''Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement the amendments made by subsection (b) [amending this section].''

INCOME ELIGIBILITY GUIDELINES

Pub. L. 96–499, title II, § 203(a)–(c), Dec. 5, 1980, 94 Stat. 2600, as amended by Pub. L. 97–35, title VIII, § 820(b)(3), Aug. 13, 1981, 95 Stat. 535, provided that:

''(a), (b) [Repealed].

''(c) For the school year ending June 30, 1981, the Secretary may prescribe procedures for implementing the revisions in the income poverty guidelines for free and reduced price lunches contained in this section that may allow school food authorities to (1) use applications distributed at the beginning of the school year when making eligibility determinations based on the revised income poverty guidelines or (2) distribute new applications containing the revised income poverty guidelines and make eligibility determinations using the new applications.''

VERIFICATION OF ELIGIBILITY DATA SUBMITTED ON A SAMPLE OF APPLICATIONS FOR FREE AND REDUCED-PRICE MEALS

Section 803(c) of Pub. L. 97–35 provided that: ''Notwithstanding any other provision of law, the Secretary

of Agriculture shall conduct a pilot study to verify the data submitted on a sample of applications for free and reduced-price meals. In conducting the pilot study, the Secretary may require households included in the study to furnish social security numbers of all household members and such other information as the Secretary may require, including, but not limited to, pay stubs, documentation of the current status of household members who are recipients of public assistance, unemployment insurance documents, and written statements from employers, as a condition for receipt of free or reduced-price meals.''

PROCEDURES FOR IMPLEMENTING NEW INCOME ELIGIBILITY GUIDELINES FOR FREE AND REDUCED-PRICE LUNCHES

Section 803(d) of Pub. L. 97–35 provided that for school year ending June 30, 1982, Secretary could prescribe procedures for implementing the revisions made by section 803 of Pub. L. 97–35, amending this section, to the income eligibility guidelines for free and reduced-price lunches under this section, and that such procedures could allow school food authorities to use applications distributed at beginning of school year when making eligibility determinations or to distribute new applications.

LOWERING MINIMUM STANDARD OF ELIGIBILITY AND REDUCTION IN NUMBER OF CHILDREN SERVED, FISCAL YEAR 1972

Section 6 of Pub. L. 92–153 provided that: ''The Secretary shall not lower minimum standards of eligibility for free and reduced price meals nor require a reduction in the number of children served in any school district during a fiscal year to be effective for that fiscal year. This section shall apply to fiscal year 1972.''

§ 1759. Direct disbursement to schools by Secretary

(a) The Secretary shall withhold funds payable to a State under this chapter and disburse the funds directly to schools, institutions, or service institutions within the State for the purposes authorized by this chapter to the extent that the Secretary has so withheld and disbursed such funds continuously since October 1, 1980, but only to such extent (except as otherwise required by subsection (b) of this section). Any funds so withheld and disbursed by the Secretary shall be used for the same purposes, and shall be subject to the same conditions, as applicable to a State disbursing funds made available under this chapter. If the Secretary is administering (in whole or in part) any program authorized under this chapter, the State in which the Secretary is administering the program may, upon request to the Secretary, assume administration of that program.

(b) If a State educational agency is not permitted by law to disburse the funds paid to it under this chapter to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as are authorized or required with respect to the disbursements to public schools within the State by the State educational agency.

(June 4, 1946, ch. 281, §10, 60 Stat. 233; Pub. L. 87–823, §4, Oct. 15, 1962, 76 Stat. 945; Pub. L. 91–248, §1(b), May 14, 1970, 84 Stat. 208; Pub. L. 93–433, §4(d), Sept. 26, 1972, 86 Stat. 726; Pub. L. 93–150, §3(b), Nov. 7, 1973, 87 Stat. 562; Pub. L. 94–105, §7, Oct. 7, 1975, 89 Stat. 514; Pub. L. 97–35, title VIII, §817(a), Aug. 13, 1981, 95 Stat. 531.)

AMENDMENTS

1981—Pub. L. 97–35 designated existing provisions as subsec. (a), substituted provisions relating to disbursement of funds directly to schools, institutions, or service institutions for the purposes authorized by this chapter, for provisions relating to disbursement of funds directly to schools for the purposes and subject to conditions authorized or required for disbursements to schools within the State by the State educational agency, and added subsec. (b).

1975—Pub. L. 94–105 altered provisions of section to accommodate authorization of direct payments to private nonprofit schools and institutions in conformity with revised allocation method for school lunch funds and expanded definition of ''school'' to include any public or licensed nonprofit residential child care institution, including but not limited to, orphanages and homes for the mentally retarded.

1973—Pub. L. 93–150 inserted in proviso reference to section 1759a of this title.

1972—Pub. L. 92–433 inserted proviso that beginning with the fiscal year ending June 30, 1974, the Secretary shall make payments directly to the nonprofit private schools for the purpose of section 1753 of this title under the same conditions as are prescribed for State educational agencies.

1970—Pub. L. 91–248 provided that data upon which State apportionments are calculated is the program year completed two years immediately prior to the fiscal year for which the appropriation is requested.

1962—Pub. L. 87–823 substituted ''an amount which bears the same ratio to such funds as the number of lunches, consisting of a combination of foods and meeting the minimum requirements prescribed by the Secretary pursuant to section 1758 of this title, served in the preceding fiscal year by all nonprofit private schools participating in the program under this chapter within the State, as determined by the Secretary, bears to the participation rate for the State'' for ''the same proportion of the funds as the number of children between the ages of 5 and 17, inclusive, attending nonprofit private schools within the State, is of the total number of persons of those ages within the State attending school''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

§ 1759a. Special assistance funds

(a) Formula for computation of payments; computation for lunches to eligible children in schools funding service to ineligible children from non-Federal sources; special assistance factors; annual adjustments

(1)(A) Except as provided in section 1759 of this title, in each fiscal year each State educational agency shall receive special assistance payments in an amount equal to the sum of the product obtained by multiplying the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary pursuant to section 1758(a) of this title) served free to children eligible for such lunches in schools within that State during such fiscal year by the special assistance factor for free lunches prescribed by the Secretary for such fiscal year and the product obtained by multiplying the number of lunches served at a reduced price to children eligible for such reduced price lunches in schools within that State during such fiscal year by the special assistance factor for reduced price lunches prescribed by the Secretary for such fiscal year.

(B) Except as provided in subparagraph (C), (D), or (E), in the case of any school which determines that at least 80 percent of the children in attendance during a school year (hereinafter in this sentence referred to as the ''first school year'') are eligible for free lunches or reduced price lunches, special assistance payments shall be paid to the State educational agency with respect to that school, if that school so requests for the school year following the first school year, on the basis of the number of free lunches or reduced price lunches, as the case may be, that are served by that school during the school year for which the request is made, to those children who were determined to be so eligible in the first school year and the number of free lunches and reduced price lunches served during that year to other children determined for that year to be eligible for such lunches.

(C)(i) Except as provided in subparagraph (D), in the case of any school or school district that—

(I) elects to serve all children in the school or school district free lunches under the school lunch program during any period of 4 successive school years, or in the case of a school or school district that serves both lunches and breakfasts, elects to serve all children in the school or school district free lunches and free breakfasts under the school lunch program and the school breakfast program established under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) during any period of 4 successive school years; and

(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period;

special assistance payments shall be paid to the State educational agency with respect to the school or school district during the period on the basis of the number of lunches or breakfasts determined under clause (ii) or (iii).

(ii) For purposes of making special assistance payments under clause (i), except as provided in clause (iii), the number of lunches or breakfasts served by a school or school district to children who are eligible for free lunches or breakfasts or reduced price lunches or breakfasts during each school year of the 4-school-year period shall be considered to be equal to the number of lunches or breakfasts served by the school or school district to children eligible for free lunches or breakfasts or reduced price lunches or breakfasts during the first school year of the period.

(iii) For purposes of computing the amount of the payments, a school or school district may elect to determine on a more frequent basis the number of children who are eligible for free or reduced price lunches or breakfasts who are served lunches or breakfasts during the 4-school-year period.

(D)(i) In the case of any school or school district that is receiving special assistance payments under this paragraph for a 4-school-year period described in subparagraph (C), the State may grant, at the end of the 4-school-year period, an extension of the period for an additional 4 school years, if the State determines, through available socioeconomic data approved by the Secretary, that the income level of the population of the school or school district has remained stable.

(ii) A school or school district described in clause (i) may reapply to the State at the end of the 4-school-year period, and at the end of each 4-school-year period thereafter for which the school or school district receives special assistance payments under this paragraph, for the purpose of continuing to receive the payments for a subsequent 4-school-year period.

(iii) If the Secretary determines after considering the best available socioeconomic data that the income level of families of children enrolled in a school or school district has not remained stable, the Secretary may require the submission of applications for free and reduced price lunches, or for free and reduced price lunches and breakfasts, in the first school year of any 4-school-year period for which the school or school district receives special assistance payments under this paragraph, for the purpose of calculating the special assistance payments.

(iv) For the purpose of updating information and reimbursement levels, a school or school district described in clause (i) that carries out a school lunch or school breakfast program may at any time require submission of applications for free and reduced price lunches or for free and reduced price lunches and breakfasts.

(E)(i) In the case of any school or school district that—

(I) elects to serve all children in the school or school district free lunches under the school lunch program during any period of 4 successive school years, or in the case of a school or school district that serves both lunches and breakfasts, elects to serve all children in the school or school district free lunches and free breakfasts under the school lunch program and the school breakfast program during any period of 4 successive school years; and

(II) pays, from sources other than Federal funds, for the costs of serving the lunches or breakfasts that are in excess of the value of assistance received under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) with respect to the number of lunches or breakfasts served during the period;

total Federal cash reimbursements and total commodity assistance shall be provided to the State educational agency with respect to the school or school district at a level that is equal to the total Federal cash reimbursements and total commodity assistance received by the school or school district in the last school year for which the school or school district accepted applications under the school lunch or school breakfast program, adjusted annually for inflation in accordance with paragraph (3)(B) and for changes in enrollment, to carry out the school lunch or school breakfast program.

(ii) A school or school district described in clause (i) may reapply to the State at the end of the 4-school-year period described in clause (i), and at the end of each 4-school-year period thereafter for which the school or school district receives reimbursements and assistance under

this subparagraph, for the purpose of continuing to receive the reimbursements and assistance for a subsequent 4-school-year period. The State may approve an application under this clause if the State determines, through available socio-economic data approved by the Secretary, that the income level of the population of the school or school district has remained consistent with the income level of the population of the school or school district in the last school year for which the school or school district accepted the applications described in clause (i).

(2) The special assistance factor prescribed by the Secretary for free lunches shall be 98.75 cents and the special assistance factor for reduced price lunches shall be 40 cents less than the special assistance factor for free lunches.

(3)(A) The Secretary shall prescribe on July 1, 1982, and on each subsequent July 1, an annual adjustment in the following:

(i) The national average payment rates for lunches (as established under section 1753 of this title).

(ii) The special assistance factor for lunches (as established under paragraph (2) of this subsection).

(iii) The national average payment rates for breakfasts (as established under section 4(b) of the Child Nutrition Act of 1966 [42 U.S.C. 1773 (b)]).

(iv) The national average payment rates for supplements (as established under section 1766(c) of this title).

(B) COMPUTATION OF ADJUSTMENT.—

(i) IN GENERAL.—The annual adjustment under this paragraph shall reflect changes in the cost of operating meal programs under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], as indicated by the change in the series for food away from home of the Consumer Price Index for all Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(ii) BASIS.—Each annual adjustment shall reflect the changes in the series for food away from home for the most recent 12-month period for which such data are available.

(iii) ROUNDING.—

(I) THROUGH JUNE 30, 1999.—For the period ending June 30, 1999, the adjustments made under this paragraph shall be computed to the nearest one-fourth cent, except that adjustments to payment rates for meals and supplements served to individuals not determined to be eligible for free or reduced price meals and supplements shall be computed to the nearest lower cent increment and based on the unrounded amount for the preceding 12-month period.

(II) JULY 1, 1999, AND THEREAFTER.—On July 1, 1999, and on each subsequent July 1, the national average payment rates for meals and supplements shall be adjusted to the nearest lower cent increment and shall be based on the unrounded amounts for the preceding 12-month period.

(b) Financing cost of free and reduced price lunches on basis of need of school for special assistance; maximum per lunch amount

Except as provided in section 10 of the Child Nutrition Act of 1966 [42 U.S.C. 1779], the special assistance payments made to each State agency during each fiscal year under the provisions of this section shall be used by such State agency to assist schools of that State in providing free and reduced price lunches served to children pursuant to section 1758(b) of this title. The amount of such special assistance funds that a school shall from time to time receive, within a maximum per lunch amount established by the Secretary for all States, shall be based on the need of the school for such special assistance. Such maximum per lunch amount established by the Secretary shall not be less than 60 cents.

(c) Payments to States

Special assistance payments to any State under this section shall be made as provided in the last sentence of section 1756 of this title.

(d) Report of school to State educational agency, contents; report of State educational agency to Secretary, contents

(1) The Secretary, when appropriate, may request each school participating in the school lunch program under this chapter to report monthly to the State educational agency the average number of children in the school who received free lunches and the average number of children who received reduced price lunches during the immediately preceding month.

(2) On request of the Secretary, the State educational agency of each State shall report to the Secretary the average number of children in the State who received free lunches and the average number of children in the State who received reduced price lunches during the immediately preceding month.

(e) Eligibility of commodity only schools for special assistance payments; free and reduced price meals; discrimination and identification prohibited

Commodity only schools shall also be eligible for special assistance payments under this section. Such schools shall serve meals free to children who meet the eligibility requirements for free meals under section 1758(b) of this title, and shall serve meals at a reduced price, not exceeding the price specified in section 1758(b)(9) of this title, to children meeting the eligibility requirements for reduced price meals under such section. No physical segregation of, or other discrimination against, any child eligible for a free or reduced-priced[1] lunch shall be made by the school, nor shall there be any overt identification of any such child by any means.

(f) Information and assistance concerning reimbursement options

(1) In general

From funds made available under paragraph (3), the Secretary shall provide grants to not more than 10 State agencies in each of fiscal years 2000 and 2001 to enable the agencies, in accordance with criteria established by the Secretary, to—

(A) identify separately in a list—

(i) schools that are most likely to benefit from electing to receive special assistance under subparagraph (C) or (E) of subsection (a)(1) of this section; and

[1] So in original. Probably should be ''reduced price''.

(ii) schools that may benefit from electing to receive special assistance under subparagraph (C) or (E) of subsection (a)(1) of this section;

(B) make the list of schools identified under this subsection available to each school district within the State and to the public;

(C) provide technical assistance to schools, or school districts containing the schools, to enable the schools to evaluate and receive special assistance under subparagraph (C) or (E) of subsection (a)(1) of this section;

(D) take any other actions the Secretary determines are consistent with receiving special assistance under subparagraph (C) or (E) of subsection (a)(1) of this section and receiving a grant under this subsection; and

(E) as soon as practicable after receipt of the grant, but not later than September 30, 2003, take the actions described in subparagraphs (A) through (D).

(2) Report

(A) In general

The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate—

(i) not later than January 1, 2003, an interim report on the activities of the State agencies receiving grants under this subsection; and

(ii) not later than January 1, 2004, a final report on the activities of the State agencies receiving grants under this subsection.

(B) Contents

In the reports, the Secretary shall specify—

(i) the number of schools identified as likely to benefit from electing to receive special assistance under subparagraph (C) or (E) of subsection (a)(1) of this section;

(ii) the number of schools identified under this subsection that have elected to receive special assistance under subparagraph (C) or (E) of subsection (a)(1) of this section; and

(iii) a description of how the funds and technical assistance made available under this subsection have been used.

(3) Funding

Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary $2,250,000 for each of fiscal years 2000 and 2001 to carry out this subsection. The Secretary shall be entitled to receive the funds and shall accept the funds, without further appropriation.

(June 4, 1946, ch. 281, § 11, as added Pub. L. 87–823, § 6, Oct. 15, 1962, 76 Stat. 946; amended Pub. L. 91–248, § 7, May 14, 1970, 84 Stat. 211; Pub. L. 92–153, § 4, Nov. 5, 1971, 85 Stat. 420; Pub. L. 93–150, § 3(a), Nov. 7, 1973, 87 Stat. 561; Pub. L. 94–105, § 8, Oct. 7, 1975, 89 Stat. 514; Pub. L. 95–166, § 9, Nov. 10, 1977, 91 Stat. 1336; Pub. L. 95–627, §§ 4, 5(c), Nov. 10, 1978, 92 Stat. 3619, 3620; Pub. L. 96–499, title II, § 204(a), Dec. 5, 1980, 94 Stat. 2601; Pub. L. 97–35, title VIII, §§ 801(b), 812, 813(b), 819(a), Aug. 13, 1981, 95 Stat. 522, 530, 533; Pub. L. 101–147, title II, § 203, title III, § 312(2), (3), Nov. 10, 1989, 103 Stat. 909, 916; Pub. L. 103–448, title I, § 111, Nov. 2, 1994, 108 Stat. 4706; Pub. L. 104–193, title VII, § 704(a), (b)(1), (c), Aug. 22, 1996, 110 Stat. 2289, 2290; Pub. L. 105–336, title I, § 103(a), (b)(1), (c)(1), Oct. 31, 1998, 112 Stat. 3145, 3146; Pub. L. 107–76, title VII, § 766, Nov. 28, 2001, 115 Stat. 744; Pub. L. 108–265, title I, §§ 104(d)(3), 113, June 30, 2004, 118 Stat. 738, 747.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a)(1)(C)(i)(II), (E)(i)(II), (3)(B)(i), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of that Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

AMENDMENTS

2004—Subsec. (a)(1)(C) to (E). Pub. L. 108–265, § 113, inserted ''or school district'' after ''school'' wherever appearing other than as part of ''school year'', ''school years'', ''school lunch'', ''school breakfast'', and ''4-school-year period''.

Subsec. (e). Pub. L. 108–265, § 104(d)(3), substituted ''section 1758(b)(9)'' for ''section 1758(b)(3)''.

2001—Subsec. (f)(1)(E). Pub. L. 107–76, § 766(1), substituted ''2003'' for ''2001''.

Subsec. (f)(2)(A). Pub. L. 107–76, § 766(2)(A), added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: ''Not later than January 1, 2002, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate a report on the activities of the State agencies receiving grants under this subsection.''

Subsec. (f)(2)(B). Pub. L. 107–76, § 766(2)(B), substituted ''reports'' for ''report'' in introductory provisions.

1998—Subsec. (a)(1)(C)(i)(I). Pub. L. 105–336, § 103(a)(1)(A), substituted ''4'' for ''3'' before ''successive school years'' in two places.

Subsec. (a)(1)(C)(ii), (iii). Pub. L. 105–336, § 103(a)(1)(B), substituted ''4-'' for ''3-'' before ''school-year period''.

Subsec. (a)(1)(D)(i). Pub. L. 105–336, § 103(a)(2)(A), substituted ''4-'' for ''3-'' before ''school-year period'' in two places and ''4'' for ''2'' before ''school years''.

Subsec. (a)(1)(D)(ii). Pub. L. 105–336, § 103(a)(2)(B), struck out first sentence which read ''A school described in clause (i) may reapply to the State at the end of the 2-school-year period described in clause (i) for the purpose of continuing to receive special assistance payments, as determined in accordance with this paragraph, for a subsequent 5-school-year period.'', substituted ''A school described in clause (i)'' for ''The school'', and substituted ''4-'' for ''5-'' before ''school-year period'' wherever appearing.

Subsec. (a)(1)(D)(iii). Pub. L. 105–336, § 103(a)(2)(C), substituted ''4-'' for ''5-'' before ''school-year period''.

Subsec. (a)(1)(E)(iii). Pub. L. 105–336, § 103(a)(3), struck out cl. (iii) which read as follows: ''Not later than 1 year after November 2, 1994, the Secretary shall evaluate the effects of this subparagraph and notify the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the results of the evaluation.''

Subsec. (a)(3)(B). Pub. L. 105–336, § 103(b)(1), inserted subpar. heading, designated first two sentences as cls. (i) and (ii), respectively, and inserted headings, and designated last sentence as subcl. (I) of cl. (iii), inserted headings, substituted ''For the period ending June 30, 1999, the adjustments'' for ''The adjustments'', and added subcl. (II).

Subsec. (f). Pub. L. 105–336, §103(c)(1), added subsec. (f).

1996—Subsec. (a)(1)(D)(i). Pub. L. 104–193, §704(a), struck out '', on November 2, 1994,'' after ''any school that''.

Subsec. (a)(3)(B). Pub. L. 104–193, §704(b)(1), inserted before period at end '', except that adjustments to payment rates for meals and supplements served to individuals not determined to be eligible for free or reduced price meals and supplements shall be computed to the nearest lower cent increment and based on the unrounded amount for the preceding 12-month period''.

Subsec. (d). Pub. L. 104–193, §704(c)(1), (3) redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''In carrying out this section, the terms and conditions governing the operation of the school lunch program set forth in other sections of this chapter, including those applicable to funds apportioned or paid pursuant to section 1753 of this title but excluding the provisions of section 1756 of this title relating to matching, shall be applicable to the extent they are not inconsistent with the express requirements of this section.''

Subsec. (e). Pub. L. 104–193, §704(c)(3), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(2). Pub. L. 104–193, §704(c)(2), substituted ''On request of the Secretary, the State educational agency'' for ''The State educational agency'' and struck out ''each month'' after ''report to the Secretary''.

Subsec. (f). Pub. L. 104–193, §704(c)(3), redesignated subsec. (f) as (e).

1994—Subsec. (a)(1). Pub. L. 103–448 designated first sentence as subpar. (A) and second sentence as subpar. (B), substituted ''Except as provided in subparagraph (C), (D), or (E), in the case of'' for ''In the case of'' in subpar. (B), added subpars. (C) to (E), and struck out at end ''In the case of any school that (A) elects to serve all children in that school free lunches under the school lunch program during any period of three successive school years and (B) pays, from sources other than Federal funds, for the costs of serving such lunches which are in excess of the value of assistance received under this chapter with respect to the number of lunches served during that period, special assistance payments shall be paid to the State educational agency with respect to that school during that period on the basis of the number of lunches determined under the succeeding sentence. For purposes of making special assistance payments in accordance with the preceding sentence, the number of lunches served by a school to children eligible for free lunches and reduced price lunches during each school year of the three-school-year period shall be deemed to be the number of lunches served by that school to children eligible for free lunches and reduced price lunches during the first school year of such period, unless that school elects, for purposes of computing the amount of such payments, to determine on a more frequent basis the number of children eligible for free and reduced price lunches who are served lunches during such period.''

1989—Subsecs. (a), (b). Pub. L. 101–147, §312(2), (3), substituted ''reduced price'' for ''reduced-price'' and ''special assistance'' for ''special-assistance'' wherever appearing in pars. (1) and (2) of subsec. (a) and first sentence of subsec. (b).

Subsec. (e)(1). Pub. L. 101–147, §203, substituted ''The Secretary, when appropriate, may request each school participating in the school lunch program under this chapter to report monthly to the State educational agency'' for ''Each school participating in the school lunch program under this chapter shall report each month to its State educational agency''.

Subsec. (f). Pub. L. 101–147, §312(2), (3), substituted ''reduced price'' for ''reduced-price'' and ''special assistance'' for ''special-assistance''.

1981—Subsec. (a). Pub. L. 97–35, §801(b), redesignated existing provisions as par. (1), substituted ''(A)'' for ''(1)'' and ''(B)'' for ''(2)'', and struck out provisions relating to special assistance factors, adjustments, etc., for funds for the fiscal year beginning July 1, 1973, and after, and added pars. (2) and (3).

Subsec. (b). Pub. L. 97–35, §819(a)(1), struck out ''financing the cost of'' before ''providing free''.

Subsec. (d). Pub. L. 97–35, §819(a)(2), struck out reference to section 1754 of this title.

Subsec. (e). Pub. L. 97–35, §812, struck out par. (1) which related to submission of State plan for child nutrition operations. Former pars. (2) and (3) were redesignated as (1) and (2), respectively, and in such pars. as so redesignated, struck out requirement respecting estimation of eligible children by participating State.

Subsec. (f). Pub. L. 97–35, §813(b), added subsec. (f).

1980—Subsec. (a). Pub. L. 96–499 struck out provision that if in any State all schools charged students a uniform price for reduced-price lunches, and such price was less than twenty cents, the special assistance factor prescribed for reduced-price lunches in such State was to be equal to the special assistance factor for free lunches reduced by either ten cents or the price charged for reduced-price lunches in such State, whichever was greater.

1978—Subsec. (a). Pub. L. 95–627 substituted ''20 cents'' for ''10 cents'' after ''which shall be'', inserted ''for All Urban Consumers'' after ''Consumer Price Index'', and inserted provision relating to the special assistance factor prescribed for reduced-price lunches in any State in which all schools charge students a uniform price for lunches.

1977—Subsec. (a). Pub. L. 95–166 provided for special-assistance payments to the State educational agency where 80 percent of children in attendance during the school year are eligible for free lunches or reduced-price lunches and for determination of number of lunches served to children eligible for free lunches and reduced-price lunches where the school serves all students, eligible and noneligible, and funds for noneligible students are from other than Federal funds.

1975—Subsec. (e)(1). Pub. L. 94–105 substituted ''Each year by not later than a date specified by the Secretary'' for ''Not later than January 1 of each year'', and ''following school year'' for ''following fiscal year''.

1973—Subsec. (a). Pub. L. 93–150 added subsec. (a) and struck out former subsec. (a) provisions relating to appropriations authorization for fiscal year ending June 30, 1971, and succeeding fiscal years of such sums as may be necessary to provide special assistance to assure access to the school lunch program under this chapter by children of low-income families.

Subsec. (b). Pub. L. 93–150 added subsec. (b) and struck out former subsec. (b) provisions relating to formula for apportionment of funds and need for additional funds.

Subsec. (c). Pub. L. 93–150 redesignated subsec. (d) as (c), substituted ''Special assistance payments to any State'' for ''Payment of the funds apportioned to any State'', and struck out former subsec. (c) provisions relating to basis for apportionment among States and need for additional funds.

Subsec. (d). Pub. L. 93–150 redesignated subsec. (g) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 93–150 redesignated subsec. (h) as (e) struck out former subsec. (e) provisions relating to State disbursement to schools for financing operating costs of the school lunch program and basis for determination of amount of funds. Subject matter was covered by subsecs. (a) and (b) of this section.

Subsec. (f). Pub. L. 93–150 struck out subsec. (f) provisions relating to withholding of funds from State educational agencies not permitted to disburse funds to nonprofit private schools and direct disbursement to nonprofit private schools, and conditions thereof.

Subsecs. (g), (h). Pub. L. 93–150 redesignated subsecs. (g) and (h) as (d) and (e), respectively.

1971—Subsec. (e). Pub. L. 92–153 established a reimbursement rate as amount of funds to be disbursed to schools in a State, provided for receipt of a greater amount or reimbursement per meal if the school established financial inability to support service of meals, and prescribed maximum per meal amount and higher

maximum per meal amount for especially needy schools.

1970—Subsec. (a). Pub. L. 91–248 authorized for fiscal year ending June 30, 1971, and for each succeeding fiscal year such sums as may be necessary to provide assistance to assure access to school lunch program by children of low-income families.

Subsec. (b). Pub. L. 91–248 substituted formula for apportionment of funds among Puerto Rico, the Virgin Islands, Guam, and American Samoa based on the ratio of the number of children aged three to seventeen, inclusive, in such State as compared to the total number of such children in all such States, for a ratio based on the number of free or reduced price lunches served in the preceding fiscal year in such State as compared to the number of such lunches served in all such States in the preceding fiscal year.

Subsec. (c). Pub. L. 91–248 struck out provision requiring that not less than 50 percent of the remaining sums appropriated be apportioned among the States other than Puerto Rico, the Virgin Islands, Guam, and American Samoa, substituted formula for apportionment of special assistance funds among the States based on the total number of children aged three to seventeen, inclusive, in households with incomes of less than $4,000 per annum, for a formula based on the number of free or reduced price lunches served in the preceding fiscal year and the assistance need rate, and provided that further apportionment be made on the same basis as the initial apportionment to any State which justifies the need for additional funds.

Subsec. (e). Pub. L. 91–248 substituted provision requiring that funds disbursed by the State be used to assist schools in financing all or part of the operating costs of the school lunch program, for requirement that disbursed funds be used to assist schools in the purchase of agricultural commodities and other foods, struck out provision relating to the selection of schools to receive funds, and substituted as a basis for determination of the amount of funds to go to each school the need of that school for assistance in meeting the requirements of section 1758 of this title, for such factors as economic condition of area from which school draws attendance, the percentages of free and reduced price lunches being served in such schools, the price of lunches in such schools compared with the average prevailing price of lunches served in the State under this chapter and the need of such schools for assistance as reflected by the financial position of the school's lunch programs.

Subsec. (f). Pub. L. 91–248 substituted ''in the fiscal year beginning two years immediately prior to the fiscal year for which the funds are appropriated'' for ''in the preceding fiscal year''.

Subsec. (h). Pub. L. 91–248 added subsec. (h).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 104(d)(3) of Pub. L. 108–265 effective July 1, 2005, and amendment by section 113 of Pub. L. 108–265 effective June 30, 2004, see section 502(a), (b)(4) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 704(b)(2) of Pub. L. 104–193 provided that: ''The amendment made by paragraph (1) [amending this section] shall become effective on July 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 801 of Pub. L. 97–35 effective Sept. 1, 1981, amendment by sections 812 and 819 of Pub. L. 97–35 effective Oct. 1, 1981, and amendment by section 813 of Pub. L. 97–35 effective 90 days after Aug. 13, 1981, see section 820(a)(1)(A), (4), (5) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by sections 4 and 5(c) of Pub. L. 95–627 effective Jan. 1, 1979, and July 1, 1979, respectively, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

SEMIANNUAL ADJUSTMENTS REFLECTING THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS DURING FISCAL YEAR ENDING SEPTEMBER 30, 1981

Section 204(b) of Pub. L. 96–499 related to annual and semiannual adjustments required under the former sixth sentence of subsec. (a) of this section during the fiscal year ending Sept. 30, 1981.

ADDITIONAL FUNDS FOR FOOD SERVICE PROGRAMS FOR CHILDREN; APPORTIONMENT TO STATES SPECIAL ASSISTANCE; CONSULTATION WITH CHILD NUTRITION COUNCIL; REIMBURSEMENT FROM SUPPLEMENTAL APPROPRIATION

Additional funds for food service programs for children from appropriations under section 612(c) of Title 7, Agriculture, apportionment to States, special assistance programs, consultation with National Advisory Council on Child Nutrition, and reimbursement from supplemental appropriation, see section 1 of Pub. L. 92–153, set out as a note under section 1753 of this title.

§ 1760. Miscellaneous provisions

(a) Accounts and records

States, State educational agencies, and schools participating in the school lunch program under this chapter shall keep such accounts and records as may be necessary to enable the Secretary to determine whether the provisions of this chapter are being complied with. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines is necessary.

(b) Agreements with State educational agencies

The Secretary shall incorporate, in the Secretary's agreements with the State educational agencies, the express requirements under this chapter with respect to the operation of the school lunch program under this chapter insofar as they may be applicable and such other provisions as in the Secretary's opinion are reasonably necessary or appropriate to effectuate the purposes of this chapter.

(c) Requirements with respect to teaching personnel, curriculum, instruction, etc.

In carrying out the provisions of this chapter, the Secretary shall not impose any requirement with respect to teaching personnel, curriculum, instruction, methods of instruction, and materials of instruction in any school.

(d) Definitions

For the purposes of this chapter—

(1) CHILD.—

(A) IN GENERAL.—The term ''child'' includes an individual, regardless of age, who—

(i) is determined by a State educational agency, in accordance with regulations

prescribed by the Secretary, to have one or more disabilities; and

(ii) is attending any institution, as defined in section 1766(a) of this title, or any nonresidential public or nonprofit private school of high school grade or under, for the purpose of participating in a school program established for individuals with disabilities.

(B) RELATIONSHIP TO CHILD AND ADULT CARE FOOD PROGRAM.—No institution that is not otherwise eligible to participate in the program under section 1766 of this title shall be considered eligible because of this paragraph.

(2) ''Commodity only schools'' means schools that do not participate in the school lunch program under this chapter, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.

(3) DISABILITY.—The term ''disability'' has the meaning given the term in the Rehabilitation Act of 1973 for purposes of title II of that Act (29 U.S.C 760 et seq.).

(4) LOCAL EDUCATIONAL AGENCY.—

(A) IN GENERAL.—The term ''local educational agency'' has the meaning given the term in section 7801 of title 20.

(B) INCLUSION.—The term ''local educational agency'' includes, in the case of a private nonprofit school, an appropriate entity determined by the Secretary.

(5) ''School'' means (A) any public or nonprofit private school of high school grade or under, and (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded, but excluding Job Corps Centers funded by the Department of Labor). For purposes of this paragraph, the term ''nonprofit'', when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of title 26.

(6) ''School year'' means the annual period from July 1 through June 30.

(7) ''Secretary'' means the Secretary of Agriculture.

(8) ''State'' means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(9) ''State educational agency'' means, as the State legislature may determine, (A) the chief State school officer (such as the State superintendent of public instruction, commissioner of education, or similar officer), or (B) a board of education controlling the State department of education.

(e) Value of assistance as income or resources under Federal or State laws

The value of assistance to children under this chapter shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.

(f) Adjustment of national average payment rate for Alaska, Hawaii, territories and possessions, etc.

In providing assistance for breakfasts, lunches, suppers, and supplements served in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands, the Secretary may establish appropriate adjustments for each such State to the national average payment rates prescribed under sections 1753, 1759a, 1761, and 1766 of this title and section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773], to reflect the differences between the costs of providing meals and supplements in those States and the costs of providing meals and supplements in all other States.

(g) Criminal penalties

Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this chapter or the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to personal use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $25,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(h) Combined allocation for breakfast and lunch

No provision of this chapter or of the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] shall require any school receiving funds under this chapter and the Child Nutrition Act of 1966 to account separately for the cost incurred in the school lunch and school breakfast programs.

(i) Use of school lunch facilities for elderly programs

Facilities, equipment, and personnel provided to a school food authority for a program authorized under this chapter or the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] may be used, as determined by a local educational agency, to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.].

(j) Reimbursement for final claims

(1) Except as provided in paragraph (2), the Secretary may provide reimbursements for final claims for service of meals, supplements, and milk submitted to State agencies by eligible schools, summer camps, family day care homes, institutions, and service institutions only if—

(A) the claims have been submitted to the State agencies not later than 60 days after the last day of the month for which the reimbursement is claimed; and

(B) the final program operations report for the month is submitted to the Secretary not

later than 90 days after the last day of the month.

(2) The Secretary may waive the requirements of paragraph (1) at the discretion of the Secretary.

(k) Expedited rulemaking

(1) Not later than June 1, 1995, the Secretary shall issue final regulations to conform the nutritional requirements of the school lunch and breakfast programs with the guidelines contained in the most recent ''Dietary Guidelines for Americans'' that is published under section 5341 of title 7. The final regulations shall include—

(A) rules permitting the use of food-based menu systems; and

(B) adjustments to the rule on nutrition objectives for school meals published in the Federal Register on June 10, 1994 (59 Fed. Reg. 30218).

(2) No school food service authority shall be required to implement final regulations issued pursuant to this subsection until the regulations have been final for at least 1 year.

(*l*) Waiver of statutory and regulatory requirements

(1)(A) Except as provided in paragraph (4), the Secretary may waive any requirement under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or any regulation issued under either this chapter or such Act, for a State or eligible service provider that requests a waiver if—

(i) the Secretary determines that the waiver of the requirement would facilitate the ability of the State or eligible service provider to carry out the purpose of the program;

(ii) the State or eligible service provider has provided notice and information to the public regarding the proposed waiver; and

(iii) the State or eligible service provider demonstrates to the satisfaction of the Secretary that the waiver will not increase the overall cost of the program to the Federal Government, and, if the waiver does increase the overall cost to the Federal Government, the cost will be paid from non-Federal funds.

(B) The notice and information referred to in subparagraph (A)(ii) shall be provided in the same manner in which the State or eligible service provider customarily provides similar notices and information to the public.

(2)(A) To request a waiver under paragraph (1), a State or eligible service provider (through the appropriate administering State agency) shall submit an application to the Secretary that—

(i) identifies the statutory or regulatory requirements that are requested to be waived;

(ii) in the case of a State requesting a waiver, describes actions, if any, that the State has undertaken to remove State statutory or regulatory barriers;

(iii) describes the goal of the waiver to improve services under the program and the expected outcomes if the waiver is granted; and

(iv) includes a description of the impediments to the efficient operation and administration of the program.

(B) An application described in subparagraph (A) shall be developed by the State or eligible service provider and shall be submitted to the Secretary by the State.

(3) The Secretary shall act promptly on a waiver request contained in an application submitted under paragraph (2) and shall either grant or deny the request. The Secretary shall state in writing the reasons for granting or denying the request.

(4) The Secretary may not grant a waiver under this subsection that increases Federal costs or that relates to—

(A) the nutritional content of meals served;

(B) Federal reimbursement rates;

(C) the provision of free and reduced price meals;

(D) limits on the price charged for a reduced price meal;

(E) maintenance of effort;

(F) equitable participation of children in private schools;

(G) distribution of funds to State and local school food service authorities and service institutions participating in a program under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(H) the disclosure of information relating to students receiving free or reduced price meals and other recipients of benefits;

(I) prohibiting the operation of a profit producing program;

(J) the sale of competitive foods;

(K) the commodity distribution program under section 1762a of this title;

(L) the special supplemental nutrition program authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786); or

(M) enforcement of any constitutional or statutory right of an individual, including any right under—

(i) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

(ii) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(iii) title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);

(iv) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);

(v) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); and

(vi) the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(5) The Secretary shall periodically review the performance of any State or eligible service provider for which the Secretary has granted a waiver under this subsection and shall terminate the waiver if the performance of the State or service provider has been inadequate to justify a continuation of the waiver. The Secretary shall terminate the waiver if, after periodic review, the Secretary determines that the waiver has resulted in an increase in the overall cost of the program to the Federal Government and the increase has not been paid for in accordance with paragraph (1)(A)(iii).

(6) The Secretary shall annually submit to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report—

(A) summarizing the use of waivers by the State and eligible service providers;

(B) describing whether the waivers resulted in improved services to children;

(C) describing the impact of the waivers on providing nutritional meals to participants; and

(D) describing how the waivers reduced the quantity of paperwork necessary to administer the program.

(7) As used in this subsection, the term ''eligible service provider'' means—

(A) a local school food service authority;

(B) a service institution or private nonprofit organization described in section 1761 of this title; or

(C) a family or group day care home sponsoring organization described in section 1766 of this title.

(m) Procurement training

(1) In general

Subject to the availability of funds made available under paragraph (4), the Secretary shall provide technical assistance and training to States, State agencies, schools, and school food authorities in the procurement of goods and services for programs under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)).

(2) Buy American training

Activities carried out under paragraph (1) shall include technical assistance and training to ensure compliance with subsection (n) of this section.

(3) Procuring safe foods

Activities carried out under paragraph (1) shall include technical assistance and training on procuring safe foods, including the use of model specifications for procuring safe foods.

(4) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection $1,000,000 for each of fiscal years 2005 through 2009, to remain available until expended.

(n) Buy American

(1) Definition of domestic commodity or product

In this subsection, the term ''domestic commodity or product'' means—

(A) an agricultural commodity that is produced in the United States; and

(B) a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(2) Requirement

(A) In general

Subject to subparagraph (B), the Secretary shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

(B) Limitations

Subparagraph (A) shall apply only to—

(i) a school food authority located in the contiguous United States; and

(ii) a purchase of a domestic commodity or product for the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(3) Applicability to Hawaii

Paragraph (2)(A) shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(4) Applicability to Puerto Rico

Paragraph (2)(A) shall apply to a school food authority in the Commonwealth of Puerto Rico with respect to domestic commodities or products that are produced in the Commonwealth of Puerto Rico in sufficient quantities to meet the needs of meals provided under the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

***(o)* Procurement contracts**

In acquiring a good or service for programs under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (other than section 17 of that Act (42 U.S.C. 1786)), a State, State agency, school, or school food authority may enter into a contract with a person that has provided specification information to the State, State agency, school, or school food authority for use in developing contract specifications for acquiring such good or service.

(June 4, 1946, ch. 281, §12, formerly §11, 60 Stat. 233; July 12, 1952, ch. 699, §1(c), 66 Stat. 591; Pub. L. 87–688, §3(a), Sept. 25, 1962, 76 Stat. 587; renumbered §12 and amended Pub. L. 87–823, §5, Oct. 15, 1962, 76 Stat. 945; Pub. L. 91–248, §1(b), May 14, 1970, 84 Stat. 208; Pub. L. 94–105, §9, Oct. 7, 1975, 89 Stat. 514; Pub. L. 95–166, §§3, 19(c), Nov. 10, 1977, 91 Stat. 1332, 1345; Pub. L. 95–627, §§6(a), 10(a), (b), Nov. 10, 1978, 92 Stat. 3620, 3623; Pub. L. 96–499, title II, §205, Dec. 5, 1980, 94 Stat. 2601; Pub. L. 97–35, title VIII, §§808(a), 813(d), 819(c), Aug. 13, 1981, 95 Stat. 527, 530, 533; Pub. L. 99–500, title III, §§325(a), 326, 373(a), Oct. 18, 1986, 100 Stat. 1783–361, 1783–369, and Pub. L. 99–591, title III, §§325(a), 326, 373(a), Oct. 30, 1986, 100 Stat. 3341–364, 3341–365, 3341–372; Pub. L. 99–661, div. D, title II, §§4205(a), 4206, title V, §4503(a), Nov. 14, 1986, 100 Stat. 4072, 4073, 4081; Pub. L. 100–71, title I, §101(a), July 11, 1987, 101 Stat. 429; Pub. L. 101–147, title III, §§306, 312(1), Nov. 10, 1989, 103 Stat. 914, 916; Pub. L. 103–448, title I, §§112(a)(1), (b)–(d), 113, Nov. 2, 1994, 108 Stat. 4708–4712; Pub. L. 104–193, title VII, §§701(b), 705, Aug. 22, 1996, 110 Stat. 2288, 2290; Pub. L. 105–336, title I, §§104, 107(j)(3)(A), Oct. 31, 1998, 112 Stat. 3147, 3153; Pub. L. 106–224, title II, §242(b)(3), June 20, 2000, 114 Stat. 412; Pub. L. 107–171, title IV, §4304, May 13, 2002, 116 Stat. 331; Pub. L. 108–265, title I, §§108(b), 114, 115, title II, §203(i)(2), June 30, 2004, 118 Stat. 746, 748, 780.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (d)(3), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as

amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. Title II of the Act is classified generally to subchapter II (§ 760 et seq.) of chapter 16 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Child Nutrition Act of 1966, referred to in subsecs. (g) to (i), (*l*)(1)(A), (4)(G), (m)(1), and (*o*), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Older Americans Act of 1965, referred to in subsec. (i), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (*l*)(4)(M)(i), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (*l*)(4)(M)(iii), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (*l*)(4)(M)(iv), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (*l*)(4)(M)(v), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to chapter 126 (§ 12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (*l*)(4)(M)(vi), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (d)(3) to (9). Pub. L. 108–265, § 108(b), redesignated par. (8) as (3), added par. (4), and redesignated former pars. (3) to (7) as (5) to (9), respectively.

Subsec. (m). Pub. L. 108–265, § 115, added subsec. (m).

Pub. L. 108–265, § 114, struck out subsec. (m), which related to grants for food and nutrition projects for each of fiscal years 1995 through 2003.

Subsec. (p). Pub. L. 108–265, § 203(i)(2), struck out subsec. (p), which authorized grants for carrying out the demonstration project under section 1786(r) of this title and directed the Secretary to conduct an evaluation of such project and grant program.

2002—Subsec. (n)(4). Pub. L. 107–171 added par. (4).

2000—Subsec. (p). Pub. L. 106–224 added subsec. (p).

1998—Subsec. (d)(1)(A)(i), (ii). Pub. L. 105–336, § 107(j)(3)(A)(i), struck out ''mental or physical'' before ''disabilities''.

Subsec. (d)(8). Pub. L. 105–336, § 107(j)(3)(A)(ii), added par. (8).

Subsec. (f). Pub. L. 105–336, § 104(a), substituted ''breakfasts, lunches, suppers, and supplements'' for ''school breakfasts and lunches'', substituted ''sections 1753, 1759a, 1761, and 1766'' for ''sections 1753 and 1759a'', and substituted ''meals and supplements'' for ''lunches and breakfasts'' in two places.

Subsec. (g). Pub. L. 105–336, § 104(b), substituted ''$25,000'' for ''$10,000''.

Subsec. (m)(3), (5). Pub. L. 105–336, § 104(c), substituted ''2003'' for ''1998''.

Subsec. (n). Pub. L. 105–336, § 104(d), added subsec. (n).

Subsec. (*o*). Pub. L. 105–336, § 104(e), added subsec. (*o*).

1996—Subsec. (a). Pub. L. 104–193, § 705(a), substituted ''be available at any reasonable time'' for ''at all times be available''.

Subsec. (c). Pub. L. 104–193, § 705(b), substituted ''the Secretary shall not'' for ''neither the Secretary nor the State shall''.

Subsec. (d)(1). Pub. L. 104–193, § 705(c)(3), redesignated par. (9) as (1). Former par. (1) redesignated (6).

Pub. L. 104–193, § 705(c)(1), substituted ''the Commonwealth of the Northern Mariana Islands'' for ''the Trust Territory of the Pacific Islands''.

Subsec. (d)(2). Pub. L. 104–193, § 705(c)(3), redesignated par. (7) as (2). Former par. (2) redesignated (7).

Subsec. (d)(3). Pub. L. 104–193, § 705(c)(2), (3), redesignated par. (5) as (3) and struck out former par. (3) which read as follows: '' 'Participation rate' for a State means a number equal to the number of lunches, consisting of a combination of foods and meeting the minimum requirements prescribed by the Secretary pursuant to section 1758 of this title, served in the fiscal year beginning two years immediately prior to the fiscal year for which the Federal funds are appropriated by schools participating in the program under this chapter in the State, as determined by the Secretary.''

Subsec. (d)(4). Pub. L. 104–193, § 705(c)(2), (3), redesignated par. (6) as (4) and struck out former par. (4) which read as follows: '' 'Assistance need rate' (A) in the case of any State having an average annual per capita income equal to or greater than the average annual per capita income for all the States, shall be 5; and (B) in the case of any State having an average annual per capita income less than the average annual per capita income for all the States, shall be the product of 5 and the quotient obtained by dividing the average annual per capita income for all the States by the average annual per capita income for such State, except that such product may not exceed 9 for any such State. For the purposes of this paragraph (i) the average annual per capita income for any State and for all the States shall be determined by the Secretary on the basis of the average annual per capita income for each State and for all the States for the three most recent years for which such data are available and certified to the Secretary by the Department of Commerce; and (ii) the average annual per capita income for American Samoa shall be disregarded in determining the average annual per capita income for all the States for periods ending before July 1, 1967.''

Subsec. (d)(5). Pub. L. 104–193, § 705(c)(3), redesignated par. (8) as (5). Former par. (5) redesignated (3).

Subsec. (d)(6), (7). Pub. L. 104–193, § 705(c)(3), redesignated pars. (1) and (2) as (6) and (7), respectively. Former pars. (6) and (7) redesignated (4) and (2), respectively.

Subsec. (d)(8). Pub. L. 104–193, § 705(c)(3), redesignated par. (8) as (5).

Subsec. (d)(9). Pub. L. 104–193, § 705(c)(3), redesignated par. (9) as (1).

Pub. L. 104–193, § 701(b), added par. (9).

Subsec. (f). Pub. L. 104–193, § 705(d), struck out ''the Trust Territory of the Pacific Islands,'' after ''the Virgin Islands of the United States,''.

Subsec. (k)(1). Pub. L. 104–193, § 705(e)(3), substituted ''with the guidelines contained in the most recent 'Dietary Guidelines for Americans' that is published under section 5341 of title 7'' for ''with the Guidelines'' in introductory provisions.

Pub. L. 104–193, § 705(e)(1), (2), redesignated par. (3) as (1) and struck out former par. (1) which read as follows: ''Prior to the publication of final regulations that im-

plement changes that are intended to bring the meal pattern requirements of the school lunch and breakfast programs into conformance with the guidelines contained in the most recent 'Dietary Guidelines for Americans' that is published under section 5341 of title 7 (referred to in this subsection as the 'Guidelines'), the Secretary shall issue proposed regulations permitting the use of food-based menu systems.''

Subsec. (k)(2). Pub. L. 104–193, § 705(e)(1), (2), redesignated par. (4) as (2) and struck out former par. (2) which read as follows: ''Notwithstanding chapter 5 of title 5, not later than 45 days after the publication of the proposed regulations permitting the use of food-based menu systems, the Secretary shall publish notice in the Federal Register of, and hold, a public meeting with—

''(A) representatives of affected parties, such as Federal, State, and local administrators, school food service administrators, other school food service personnel, parents, and teachers; and

''(B) organizations representing affected parties, such as public interest antihunger organizations, doctors specializing in pediatric nutrition, health and consumer groups, commodity groups, food manufacturers and vendors, and nutritionists involved with the implementation and operation of programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

to discuss and obtain public comments on the proposed rule.''

Subsec. (k)(3), (4). Pub. L. 104–193, § 705(e)(2), redesignated pars. (3) and (4) as (1) and (2), respectively.

Subsec. (k)(5). Pub. L. 104–193, § 705(e)(1), struck out par. (5) which read as follows: ''The final regulations shall reflect comments made at each phase of the proposed rulemaking process, including the public meeting required under paragraph (2).''

Subsec. (*l*)(2)(A)(iii) to (vii). Pub. L. 104–193, § 705(f)(1), struck out ''and'' at end of cl. (iii), substituted period for semicolon at end of cl. (iv), and struck out cls. (v) to (vii) which read as follows:

''(v) describes the management goals to be achieved, such as fewer hours devoted to, or fewer number of personnel involved in, the administration of the program;

''(vi) provides a timetable for implementing the waiver; and

''(vii) describes the process the State or eligible service provider will use to monitor the progress in implementing the waiver, including the process for monitoring the cost implications of the waiver to the Federal Government.''

Subsec. (*l*)(3). Pub. L. 104–193, § 705(f)(2), designated subpar. (A) as par. (3) and struck out subpars. (B) to (D) which read as follows:

''(B) If the Secretary grants a waiver request, the Secretary shall state in writing the expected outcome of granting the waiver.

''(C) The result of the decision of the Secretary shall be disseminated by the State or eligible service provider through normal means of communication.

''(D)(i) Except as provided in clause (ii), a waiver granted by the Secretary under this subsection shall be for a period not to exceed 3 years.

''(ii) The Secretary may extend the period if the Secretary determines that the waiver has been effective in enabling the State or eligible service provider to carry out the purposes of the program.''

Subsec. (*l*)(4). Pub. L. 104–193, § 705(f)(3)(A), substituted ''that increases Federal costs or that relates to'' for ''of any requirement relating to'' in introductory provisions.

Subsec. (*l*)(4)(D) to (K). Pub. L. 104–193, § 705(f)(3)(B), (C), redesignated subpars. (E) to (L) as (D) to (K), respectively, and struck out former subpar. (D) which read as follows: ''offer versus serve provisions;''.

Subsec. (*l*)(4)(L). Pub. L. 104–193, § 705(f)(3)(D), substituted ''or'' for ''and'' at end.

Pub. L. 104–193, § 705(f)(3)(C), redesignated subpar. (M) as (L). Former subpar. (L) redesignated (K).

Subsec. (*l*)(4)(M), (N). Pub. L. 104–193, § 705(f)(3)(C), redesignated subpar. (N) as (M). Former subpar. (M) redesignated (L).

Subsec. (*l*)(6). Pub. L. 104–193, § 705(f)(4), struck out subpar. (A) and designation of subpar. (B) and redesignated cls. (i) to (iv) of former subpar. (B) as subpars. (A) to (D). Prior to amendment, subpar. (A) read as follows:

''(A)(i) An eligible service provider that receives a waiver under this subsection shall annually submit to the State a report that—

''(I) describes the use of the waiver by the eligible service provider; and

''(II) evaluates how the waiver contributed to improved services to children served by the program for which the waiver was requested.

''(ii) The State shall annually submit to the Secretary a report that summarizes all reports received by the State from eligible service providers.''

1994—Subsec. (d)(5). Pub. L. 103–448, § 112(a)(1), in first sentence struck out cl. (C) which read as follows: ''with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico'' and in second sentence struck out ''of clauses (A) and (B)'' after ''For purposes''.

Subsecs. (j) to (m). Pub. L. 103–448, §§ 112(b)–(d), 113, added subsecs. (j) to (m).

1989—Subsec. (a). Pub. L. 101–147, § 312(1), substituted ''school lunch'' for ''school-lunch''.

Subsec. (b). Pub. L. 101–147, §§ 306(b)(1), 312(1), substituted ''the Secretary's'' for ''his'' in two places and ''school lunch'' for ''school-lunch''.

Subsec. (d)(5). Pub. L. 101–147, § 306(b)(2), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (d)(8). Pub. L. 101–147, § 306(a)(1), amended par. (8), as amended identically by Pub. L. 99–500 and 99–591, § 373(a), and Pub. L. 99–661, § 4503(a), to read as if only the amendment by Pub. L. 99–661 was enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (g). Pub. L. 101–147, § 306(b)(3), substituted ''personal'' for ''his'' before ''use''.

Subsec. (i). Pub. L. 101–147, § 306(b)(4), struck out ''(42 U.S.C. 1771 et seq.)'' after ''Child Nutrition Act of 1966'' and ''(42 U.S.C. 3001 et seq.)'' after ''Older Americans Act of 1965''.

Pub. L. 101–147, § 306(a)(2), amended subsec. (i), as amended identically by Pub. L. 99–500 and 99–591, § 326, and Pub. L. 99–661, § 4206, to read as if only the amendment by Pub. L. 99–661 was enacted, resulting in no change in text, see 1986 Amendment note below.

1987—Subsec. (d)(5). Pub. L. 100–71 amended par. (5) generally. Prior to amendment, par. (5) read as follows: '' 'School' means (A) any public or nonprofit private school of high school grade or under, (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded, but excluding Job Corps Centers funded by the Department of Labor), and (C) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico. For purposes of clauses (A) and (B) of this paragraph, the term 'nonprofit', when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of title 26. On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.''

1986—Subsec. (d)(5). Pub. L. 99–661, § 4205(a)(2), inserted ''On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.''

Subsec. (d)(5)(A). Pub. L. 99–500 and Pub. L. 99–591, § 325(a), which directed the amendment of subpar. (A) by striking out ''except private schools whose average

yearly tuition exceeds $1,500 per child,'' after ''grade or under,'' was executed by striking out ''except private schools whose average yearly tuition exceeds $2,000 per child,'' after ''grade or under,'' to reflect the probable intent of Congress and the intervening amendment of subpar. (A) by Pub. L. 99–661, § 4205(a)(1). See below.

Pub. L. 99–661, § 4205(a)(1), substituted ''$2,000'' for ''$1,500''.

Subsec. (d)(8). Pub. L. 99–500 and Pub. L. 99–591, § 373(a), and Pub. L. 99–661, § 4503(a), amended subsec. (d) identically, adding par. (8).

Subsec. (i). Pub. L. 99–500 and Pub. L. 99–591, § 326, and Pub. L. 99–661, § 4206, amended section identically, adding subsec. (i).

1981—Subsec. (d). Pub. L. 97–35, § 819(c)(1), struck out par. (3) which defined ''food service equipment assistance'', and redesignated pars. (4) to (8) as (3) to (7), respectively.

Pub. L. 97–35, § 808(a), inserted reference to private schools in par. (6).

Pub. L. 97–35, § 813(d), added par. (8).

Subsec. (h). Pub. L. 97–35, § 819(c)(2), struck out provisions relating to net cost of operating limitation.

1980—Subsec. (d)(6). Pub. L. 96–499 inserted '', but excluding Job Corps Centers funded by the Department of Labor''.

1978—Subsec. (d)(7). Pub. L. 95–627, § 10(b), substituted ''from July 1 through June 30'' for ''determined in accordance with regulations issued by the Secretary''.

Subsecs. (f), (g). Pub. L. 95–627, § 10(a), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 95–627, § 6(a), added subsec. (h).

1977—Subsec. (d)(3). Pub. L. 95–166, § 3, substituted ''food service equipment assistance'' for ''nonfood assistance''.

Subsec. (d)(7). Pub. L. 95–166, § 19(c), added par. (7).

1975—Subsec. (d)(1). Pub. L. 94–105, § 9(b), inserted reference to Trust Territory of the Pacific Islands.

Subsec. (d)(3) to (7). Pub. L. 94–105, § 9(a), (c), struck out par. (3) defining ''Nonprofit private schools'', redesignated pars. (4) to (7) as (3) to (6), respectively, and in par. (6), as so redesignated, expanded definition of ''school'' to include any public or licensed nonprofit private residential child care institution, including, but not limited to, orphanages and homes for the mentally retarded, and inserted provision defining ''nonprofit'' as any school or institution exempt under section 501(c)(3) of title 26.

Subsec. (e). Pub. L. 94–105, § 9(d), added subsec. (e).

1970—Subsec. (d)(5). Pub. L. 91–248 provided that data upon which State apportionments are calculated is program year completed two years immediately prior to fiscal year for which appropriation is requested.

1962—Subsec. (c). Pub. L. 87–823 struck out requirement of just and equitable distribution of funds in States maintaining separate schools for minority and majority races.

Subsec. (d). Pub. L. 87–823 redefined ''State'' in par. (1) to recognize Hawaiian and Alaskan statehood and to include American Samoa; ''State educational agency'' in par. (2) to exclude an exception applicable to the District of Columbia and language which was effective by its terms only through June 30, 1948; ''nonprofit private school'' in par. (3), substituting ''section 501(c)(3) of title 26'' for ''section 101(6) of title 26''; and ''nonfood assistance'' in par. (4), substituting ''used by schools'' for ''used on school premises''; and added pars. (5) to (7).

Pub. L. 87–688 inserted ''American Samoa,'' after ''Guam''.

1952—Subsec. (d)(1). Act July 12, 1952, included Guam within definition of State.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–171 effective Oct. 1, 2002, except as otherwise provided, see section 4405 of Pub. L. 107–171, set out as an Effective Date note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–224 effective Oct. 1, 2000, see section 242(c) of Pub. L. 106–224, set out as a note under section 1758 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 112(a)(2) of Pub. L. 103–448 provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on October 1, 1995.''

Amendment by sections 112(b)–(d) and 113 of Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 101(c) of Pub. L. 100–71 provided that: ''The amendments made by subsections (a) and (b) [amending sections 1760 and 1784 of this title] shall take effect on July 1, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 4205(c) of Pub. L. 99–661 provided that:

''(1) The amendments made by subsections (a)(1) and (b)(1) [amending sections 1760 and 1784 of this title] shall apply for the fiscal year beginning on October 1, 1986, and each school year thereafter.

''(2) The amendments made by subsections (a)(2) and (b)(2) [amending sections 1760 and 1784 of this title] shall apply for the school year beginning on July 1, 1988, and each school year thereafter.''

Section 325(c) of Pub. L. 99–500 and Pub. L. 99–591 provided that: ''The amendments made by this section [amending sections 1760 and 1784 of this title] shall take effect July 1, 1987.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 808 and 819 of Pub. L. 97–35 effective Oct. 1, 1981, and amendment by section 813 of Pub. L. 97–35 effective 90 days after Aug. 13, 1981, see section 820(a)(3)–(5) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 19 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–688 applicable only with respect to funds appropriated after Sept. 25, 1962, see section 3(b) of Pub. L. 87–688, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 12, 1952, effective only with respect to funds appropriated after July 12, 1952, see section 1(d) of act July 12, 1952, set out as a note under section 1753 of this title.

STUDY OF COST ACCOUNTING REQUIREMENTS

Section 21 of Pub. L. 94–105 prohibited Secretary from delaying or withholding or causing any State to delay or withhold payments for reimbursement of per-meal costs on basis of noncompliance with cost accounting procedures until requirements of subsec. (b) of this section have been met, and called for a study by Secretary of additional personnel and training needs of States, school districts, and schools resulting from requirement of full cost accounting procedures, such report with recommendations to be submitted to appropriate committees of Congress within one year after Oct. 7, 1975.

§ 1761. Summer food service programs for children in service institutions

(a) Assistance to States; definitions; eligible service institutions; priorities in participation; limitations on reimbursement; nonprofit organizations; rural areas

(1) The Secretary is authorized to carry out a program to assist States, through grants-in-aid and other means, to initiate and maintain nonprofit food service programs for children in service institutions. For purposes of this section, (A) ''program'' means the summer food service program for children authorized by this section; (B) ''service institutions'' means public or private nonprofit school food authorities, local, municipal, or county governments, public or private nonprofit higher education institutions participating in the National Youth Sports Program,,[1] and residential public or private nonprofit summer camps, that develop special summer or school vacation programs providing food service similar to that made available to children during the school year under the school lunch program under this chapter or the school breakfast program under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.]; (C) ''areas in which poor economic conditions exist'' means areas in which at least 50 percent of the children are eligible for free or reduced price school meals under this chapter and the Child Nutrition Act of 1966, as determined by information provided from departments of welfare, zoning commissions, census tracts, by the number of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the area of program food service sites, or from other appropriate sources, including statements of eligibility based upon income for children enrolled in the program; (D) ''children'' means individuals who are eighteen years of age and under, and individuals who are older than eighteen who are (i) determined by a State educational agency or a local public educational agency of a State, in accordance with regulations prescribed by the Secretary, to have a disability, and (ii) participating in a public or nonprofit private school program established for individuals who have a disability; and (E) ''State'' means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Northern Mariana Islands.

(2) To the maximum extent feasible, consistent with the purposes of this section, any food service under the program shall use meals prepared at the facilities of the service institution or at the food service facilities of public and nonprofit private schools. The Secretary shall assist States in the development of information and technical assistance to encourage increased service of meals prepared at the facilities of service institutions and at public and nonprofit private schools.

(3) Eligible service institutions entitled to participate in the program shall be limited to those that—

(A) demonstrate adequate administrative and financial responsibility to manage an effective food service;

(B) have not been seriously deficient in operating under the program;

(C)(i) conduct a regularly scheduled food service for children from areas in which poor economic conditions exist; or

(ii) qualify as camps; and

(D) provide an ongoing year-round service to the community to be served under the program (except that an otherwise eligible service institution shall not be disqualified for failure to meet this requirement for ongoing year-round service if the State determines that its disqualification would result in an area in which poor economic conditions exist not being served or in a significant number of needy children not having reasonable access to a summer food service program).

(4) The following order of priority shall be used by the State in determining participation where more than one eligible service institution proposes to serve the same area:

(A) Local schools.

(B) All other service institutions and private nonprofit organizations eligible under paragraph (7) that have demonstrated successful program performance in a prior year.

(C) New public institutions.

(D) New private nonprofit organizations eligible under paragraph (7).

The Secretary and the States, in carrying out their respective functions under this section, shall actively seek eligible service institutions located in rural areas, for the purpose of assisting such service institutions in applying to participate in the program.

(5) Camps that satisfy all other eligibility requirements of this section shall receive reimbursement only for meals served to children who meet the eligibility requirements for free or reduced price meals, as determined under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

(6) Service institutions that are local, municipal, or county governments shall be eligible for reimbursement for meals served in programs under this section only if such programs are operated directly by such governments.

(7)(A) Private nonprofit organizations, as defined in subparagraph (B) (other than organizations eligible under paragraph (1)), shall be eligible for the program under the same terms and conditions as other service institutions.

(B) As used in this paragraph, the term ''private nonprofit organizations'' means those organizations that—

[1] So in original.

(i) operate—

(I) not more than 25 sites, with not more than 300 children being served at any one site; or

(II) with a waiver granted by the State agency under standards developed by the Secretary, with not more than 500 children being served at any one site;

(ii) exercise full control and authority over the operation of the program at all sites under their sponsorship;

(iii) provide ongoing year-around activities for children or families;

(iv) demonstrate that such organizations have adequate management and the fiscal capacity to operate a program under this section; and

(v) meet applicable State and local health, safety, and sanitation standards.

(8) SEAMLESS SUMMER OPTION.—Except as otherwise determined by the Secretary, a service institution that is a public or private nonprofit school food authority may provide summer or school vacation food service in accordance with applicable provisions of law governing the school lunch program established under this chapter or the school breakfast program established under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(9) EXEMPTION.—

(A) IN GENERAL.—For each of calendar years 2005 and 2006 in rural areas of the State of Pennsylvania (as determined by the Secretary), the threshold for determining ''areas in which poor economic conditions exist'' under paragraph (1)(C) shall be 40 percent.

(B) EVALUATION.—

(i) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall evaluate the impact of the eligibility criteria described in subparagraph (A) as compared to the eligibility criteria described in paragraph (1)(C).

(ii) IMPACT.—The evaluation shall assess the impact of the threshold in subparagraph (A) on—

(I) the number of sponsors offering meals through the summer food service program;

(II) the number of sites offering meals through the summer food service program;

(III) the geographic location of the sites;

(IV) services provided to eligible children; and

(V) other factors determined by the Secretary.

(iii) REPORT.—Not later than January 1, 2008, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this subparagraph.

(iv) FUNDING.—

(I) IN GENERAL.—On January 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subparagraph $400,000, to remain available until expended.

(II) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subparagraph the funds transferred under subclause (I), without further appropriation.

(10) SUMMER FOOD SERVICE RURAL TRANSPORTATION.—

(A) IN GENERAL.—The Secretary shall provide grants, through not more than 5 eligible State agencies selected by the Secretary, to not more than 60 eligible service institutions selected by the Secretary to increase participation at congregate feeding sites in the summer food service program for children authorized by this section through innovative approaches to limited transportation in rural areas.

(B) ELIGIBILITY.—To be eligible to receive a grant under this paragraph—

(i) a State agency shall submit an application to the Secretary, in such manner as the Secretary shall establish, and meet criteria established by the Secretary; and

(ii) a service institution shall agree to the terms and conditions of the grant, as established by the Secretary.

(C) DURATION.—A service institution that receives a grant under this paragraph may use the grant funds during the 3-fiscal year period beginning in fiscal year 2006.

(D) REPORTS.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate—

(i) not later than January 1, 2008, an interim report that describes—

(I) the use of funds made available under this paragraph; and

(II) any progress made by using funds from each grant provided under this paragraph; and

(ii) not later than January 1, 2009, a final report that describes—

(I) the use of funds made available under this paragraph;

(II) any progress made by using funds from each grant provided under this paragraph;

(III) the impact of this paragraph on participation in the summer food service program for children authorized by this section; and

(IV) any recommendations by the Secretary concerning the activities of the service institutions receiving grants under this paragraph.

(E) FUNDING.—

(i) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this paragraph—

(I) on October 1, 2005, $2,000,000; and

(II) on October 1, 2006, and October 1, 2007, $1,000,000.

(ii) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this para-

graph the funds transferred under clause (i), without further appropriation.

(iii) AVAILABILITY OF FUNDS.—Funds transferred under clause (i) shall remain available until expended.

(iv) REALLOCATION.—The Secretary may reallocate any amounts made available to carry out this paragraph that are not obligated or expended, as determined by the Secretary.

(b) Service institutions

(1) PAYMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, payments to service institutions shall equal the full cost of food service operations (which cost shall include the costs of obtaining, preparing, and serving food, but shall not include administrative costs).

(B) MAXIMUM AMOUNTS.—Subject to subparagraph (C), payments to any institution under subparagraph (A) shall not exceed—

(i) $1.97 for each lunch and supper served;

(ii) $1.13 for each breakfast served; and

(iii) 46 cents for each meal supplement served.

(C) ADJUSTMENTS.—Amounts specified in subparagraph (B) shall be adjusted on January 1, 1997, and each January 1 thereafter, to the nearest lower cent increment to reflect changes for the 12-month period ending the preceding November 30 in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. Each adjustment shall be based on the unrounded adjustment for the prior 12-month period.

(D) SEAMLESS SUMMER REIMBURSEMENTS.—A service institution described in subsection (a)(8) of this section shall be reimbursed for meals and meal supplements in accordance with the applicable provisions under this chapter (other than subparagraphs (A), (B), and (C) of this paragraph and paragraph (4)) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), as determined by the Secretary.

(2) Any service institution may only serve lunch and either breakfast or a meal supplement during each day of operation, except that any service institution that is a camp or that serves meals primarily to migrant children may serve up to 3 meals, or 2 meals and 1 supplement, during each day of operation, if (A) the service institution has the administrative capability and the food preparation and food holding capabilities (where applicable) to serve more than one meal per day, and (B) the service period of different meals does not coincide or overlap.

(3) Every service institution, when applying for participation in the program, shall submit a complete budget for administrative costs related to the program, which shall be subject to approval by the State. Payment to service institutions for administrative costs shall equal the full amount of State approved administrative costs incurred, except that such payment to service institutions may not exceed the maximum allowable levels determined by the Secretary pursuant to the study prescribed in paragraph (4) of this subsection.

(4)(A) The Secretary shall conduct a study of the food service operations carried out under the program. Such study shall include, but shall not be limited to—

(i) an evaluation of meal quality as related to costs; and

(ii) a determination whether adjustments in the maximum reimbursement levels for food service operation costs prescribed in paragraph (1) of this subsection should be made, including whether different reimbursement levels should be established for self-prepared meals and vendored meals and which site-related costs, if any, should be considered as part of administrative costs.

(B) The Secretary shall also study the administrative costs of service institutions participating in the program and shall thereafter prescribe maximum allowable levels for administrative payments that reflect the costs of such service institutions, taking into account the number of sites and children served, and such other factors as the Secretary determines appropriate to further the goals of efficient and effective administration of the program.

(C) The Secretary shall report the results of such studies to Congress not later than December 1, 1977.

(c) Payments for meals served during May through September; exceptions for continuous school calendars or non-school sites; National Youth Sports Program

(1) Payments shall be made to service institutions only for meals served during the months of May through September, except in the case of service institutions that operate food service programs for children on school vacation at any time under a continuous school calendar or that provide meal service at non-school sites to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order, or similar cause.

(2) Children participating in National Youth Sports Programs operated by higher education institutions shall be eligible to participate in the program under this paragraph on showing residence in areas in which poor economic conditions exist or on the basis of income eligibility statements for children enrolled in the program.

(d) Advance program payments to States for monthly meal service; letters of credit, forwarding to States; determination of amount; valid claims, receipt

Not later than April 15, May 15, and July 1 of each year, the Secretary shall forward to each State a letter of credit (advance program payment) that shall be available to each State for the payment of meals to be served in the month for which the letter of credit is issued. The amount of the advance program payment shall be an amount which the State demonstrates, to the satisfaction of the Secretary, to be necessary for advance program payments to service institutions in accordance with subsection (e) of this section. The Secretary shall also forward such advance program payments, by the first

day of the month prior to the month in which the program will be conducted, to States that operate the program in months other than May through September. The Secretary shall forward any remaining payments due pursuant to subsection (b) of this section not later than sixty days following receipt of valid claims therefor.

(e) Advance program payments to service institutions for monthly meal service; certification of personnel training sessions; minimum days per month operations requirement; payments: computation, limitation; valid claims, receipt; withholding; demand for repayment; subtraction of disputed payments

(1) Not later than June 1, July 15, and August 15 of each year, or, in the case of service institutions that operate under a continuous school calendar, the first day of each month of operation, the State shall forward advance program payments to each service institution. The State shall not release the second month's advance program payment to any service institution (excluding a school) that has not certified that it has held training sessions for its own personnel and the site personnel with regard to program duties and responsibilities. No advance program payment may be made for any month in which the service institution will operate under the program for less than ten days.

(2) The amount of the advance program payment for any month in the case of any service institution shall be an amount equal to (A) the total program payment for meals served by such service institution in the same calendar month of the preceding calendar year, (B) 50 percent of the amount established by the State to be needed by such service institution for meals if such service institution contracts with a food service management company, or (C) 65 percent of the amount established by the State to be needed by such service institution for meals if such service institution prepares its own meals, whichever amount is greatest: *Provided*, That the advance program payment may not exceed the total amount estimated by the State to be needed by such service institution for meals to be served in the month for which such advance program payment is made or $40,000, whichever is less, except that a State may make a larger advance program payment to such service institution where the State determines that such larger payment is necessary for the operation of the program by such service institution and sufficient administrative and management capability to justify a larger payment is demonstrated. The State shall forward any remaining payment due a service institution not later than seventy-five days following receipt of valid claims. If the State has reason to believe that a service institution will not be able to submit a valid claim for reimbursement covering the period for which an advance program payment has been made, the subsequent month's advance program payment shall be withheld until such time as the State has received a valid claim. Program payments advanced to service institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance program payment.

(f) Nutritional standards

(1) Service institutions receiving funds under this section shall serve meals consisting of a combination of foods and meeting minimum nutritional standards prescribed by the Secretary on the basis of tested nutritional research.

(2) The Secretary shall provide technical assistance to service institutions and private nonprofit organizations participating in the program to assist the institutions and organizations in complying with the nutritional requirements prescribed by the Secretary pursuant to this subsection.

(3) Meals described in paragraph (1) shall be served without cost to children attending service institutions approved for operation under this section, except that, in the case of camps, charges may be made for meals served to children other than those who meet the eligibility requirements for free or reduced price meals in accordance with subsection (a)(5) of this section.

(4) To assure meal quality, States shall, with the assistance of the Secretary, prescribe model meal specifications and model food quality standards, and ensure that all service institutions contracting for the preparation of meals with food service management companies include in their contracts menu cycles, local food safety standards, and food quality standards approved by the State.

(5) Such contracts shall require (A) periodic inspections, by an independent agency or the local health department for the locality in which the meals are served, of meals prepared in accordance with the contract in order to determine bacteria levels present in such meals, and (B) conformance with standards set by local health authorities.

(6) Such inspections and any testing resulting therefrom shall be in accordance with the practices employed by such local health authority.

(7) OFFER VERSUS SERVE.—A school food authority participating as a service institution may permit a child to refuse one or more items of a meal that the child does not intend to consume, under rules that the school uses for school meals programs. A refusal of an offered food item shall not affect the amount of payments made under this section to a school for the meal.

(g) Regulations, guidelines, applications, and handbooks; publication; startup costs

The Secretary shall publish proposed regulations relating to the implementation of the program by November 1 of each fiscal year, final regulations by January 1 of each fiscal year, and guidelines, applications, and handbooks by February 1 of each fiscal year. In order to improve program planning, the Secretary may provide that service institutions be paid as startup costs not to exceed 20 percent of the administrative funds provided for in the administrative budget approved by the State under subsection (b)(3) of this section. Any payments made for startup costs shall be subtracted from amounts otherwise payable for administrative costs subsequently made to service institutions under subsection (b)(3) of this section.

(h) Direct disbursement to service institutions by Secretary

Each service institution shall, insofar as practicable, use in its food service under the program foods designated from time to time by the Secretary as being in abundance. The Secretary is authorized to donate to States, for distribution to service institutions, food available under section 1431 of title 7, or purchased under section 612c of title 7 or section 1446a–1 of title 7. Donated foods may be distributed only to service institutions that can use commodities efficiently and effectively, as determined by the Secretary.

(i) Repealed. Pub. L. 97–35, title VIII, § 817(b), Aug. 13, 1981, 95 Stat. 532

(j) Administrative expenses of Secretary; authorization of appropriations

Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

(k) Administrative costs of State; payment; adjustment; standards and effective dates, establishment; funds: withholding, inspection

(1) The Secretary shall pay to each State for its administrative costs incurred under this section in any fiscal year an amount equal to (A) 20 percent of the first $50,000 in funds distributed to that State for the program in the preceding fiscal year; (B) 10 percent of the next $100,000 distributed to that State for the program in the preceding fiscal year; (C) 5 percent of the next $250,000 in funds distributed to that State for the program in the preceding fiscal year; and (D) 2½ percent of any remaining funds distributed to that State for the program in the preceding fiscal year: *Provided*, That such amounts may be adjusted by the Secretary to reflect changes in the size of that State's program since the preceding fiscal year.

(2) The Secretary shall establish standards and effective dates for the proper, efficient, and effective administration of the program by the State. If the Secretary finds that the State has failed without good cause to meet any of the Secretary's standards or has failed without good cause to carry out the approved State management and administration plan under subsection (n) of this section, the Secretary may withhold from the State such funds authorized under this subsection as the Secretary determines to be appropriate.

(3) To provide for adequate nutritional and food quality monitoring, and to further the implementation of the program, an additional amount, not to exceed the lesser of actual costs or 1 percent of program funds, shall be made available by the Secretary to States to pay for State or local health department inspections, and to reinspect facilities and deliveries to test meal quality.

(*l*) Food service management companies; subcontracts; assignments, conditions and limitations; meal capacity information in bids subject to review; registration; record, availability to States; small and minority-owned businesses for supplies and services; contracts: standard form, bid and contract procedures, bonding requirements and exemption, review by States, collusive bidding safeguards

(1) Service institutions may contract on a competitive basis with food service management companies for the furnishing of meals or management of the entire food service under the program, except that a food service management company entering into a contract with a service institution under this section may not subcontract with a single company for the total meal, with or without milk, or for the assembly of the meal. The Secretary shall prescribe additional conditions and limitations governing assignment of all or any part of a contract entered into by a food service management company under this section. Any food service management company shall, in its bid, provide the service institution information as to its meal capacity.

(2) Each State may provide for the registration of food service management companies.

(3) In accordance with regulations issued by the Secretary, positive efforts shall be made by service institutions to use small businesses and minority-owned businesses as sources of supplies and services. Such efforts shall afford those sources the maximum feasible opportunity to compete for contracts using program funds.

(4) Each State, with the assistance of the Secretary, shall establish a standard form of contract for use by service institutions and food service management companies. The Secretary shall prescribe requirements governing bid and contract procedures for acquisition of the services of food service management companies, including, but not limited to, bonding requirements (which may provide exemptions applicable to contracts of $100,000 or less), procedures for review of contracts by States, and safeguards to prevent collusive bidding activities between service institutions and food service management companies.

(m) Accounts and records

States and service institutions participating in programs under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations issued hereunder. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(n) Management and administration plan; notification and submittal to Secretary; specific provisions

Each State desiring to participate in the program shall notify the Secretary by January 1 of each year of its intent to administer the program and shall submit for approval by February

15 a management and administration plan for the program for the fiscal year, which shall include, but not be limited to, (1) the State's administrative budget for the fiscal year, and the State's plans to comply with any standards prescribed by the Secretary under subsection (k) of this section; (2) the State's plans for use of program funds and funds from within the State to the maximum extent practicable to reach needy children; (3) the State's plans for providing technical assistance and training eligible service institutions; (4) the State's plans for monitoring and inspecting service institutions, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently; (5) the State's plan for timely and effective action against program violators; and (6) the State's plan for ensuring fiscal integrity by auditing service institutions not subject to auditing requirements prescribed by the Secretary.

(*o*) Violations and penalties

(1) Whoever, in connection with any application, procurement, recordkeeping entry, claim for reimbursement, or other document or statement made in connection with the program, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or whoever, in connection with the program, knowingly makes an opportunity for any person to defraud the United States, or does or omits to do any act with intent to enable any person to defraud the United States, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) Whoever being a partner, officer, director, or managing agent connected in any capacity with any partnership, association, corporation, business, or organization, either public or private, that receives benefits under the program, knowingly or willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any benefits provided by this section or any money, funds, assets, or property derived from benefits provided by this section, shall be fined not more than $10,000 or imprisoned for not more than five years, or both (but, if the benefits, money, funds, assets, or property involved is not over $200, then the penalty shall be a fine of not more than $1,000 or imprisonment for not more than one year, or both).

(3) If two or more persons conspire or collude to accomplish any act made unlawful under this subsection, and one or more of such persons do any act to effect the object of the conspiracy or collusion, each shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(p) Monitoring of participating private nonprofit organizations

(1) In addition to the normal monitoring of organizations receiving assistance under this section, the Secretary shall establish a system under which the Secretary and the States shall monitor the compliance of private nonprofit organizations with the requirements of this section and with regulations issued to implement this section.

(2) In the fiscal year 1990 and each succeeding fiscal year, the Secretary may reserve for purposes of carrying out paragraph (1) not more than ½ of 1 percent of amounts appropriated for purposes of carrying out this section.

(q) Authorization of appropriations

For the period beginning October 1, 1977, and ending September 30, 2009, there are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(June 4, 1946, ch. 281, § 13, as added Pub. L. 90–302, § 3, May 8, 1968, 82 Stat. 117; amended Pub. L. 91–248, § 6(c), (d), May 14, 1970, 84 Stat. 210; Pub. L. 92–32, § 7, June 30, 1971, 85 Stat. 86; Pub. L. 92–433, §§ 1, 2, Sept. 26, 1972, 86 Stat. 724; Pub. L. 94–20, May 2, 1975, 89 Stat. 82; Pub. L. 94–105, § 13, Oct. 7, 1975, 89 Stat. 515; Pub. L. 95–166, § 2, Nov. 10, 1977, 91 Stat. 1325; Pub. L. 95–627, §§ 5(d), 7(b), 10(d)(2), Nov. 10, 1978, 92 Stat. 3620, 3622, 3624; Pub. L. 96–499, title II, § 206, Dec. 5, 1980, 94 Stat. 2601; Pub. L. 97–35, title VIII, §§ 809, 817(b), Aug. 13, 1981, 95 Stat. 527, 532; Pub. L. 99–500, title III, § 311, Oct. 18, 1986, 100 Stat. 1783–360, and Pub. L. 99–591, title III, § 311, Oct. 30, 1986, 100 Stat. 3341–363; Pub. L. 99–661, div. D, title I, § 4101, Nov. 14, 1986, 100 Stat. 4071; Pub. L. 100–435, title II, § 213, Sept. 19, 1988, 102 Stat. 1658; Pub. L. 101–147, title I, § 102(a), title III, § 307, Nov. 10, 1989, 103 Stat. 879, 915; Pub. L. 103–448, title I, §§ 105(b), 114(a)–(g), Nov. 2, 1994, 108 Stat. 4702, 4712, 4713; Pub. L. 104–193, title VII, § 706(a)–(*l*), Aug. 22, 1996, 110 Stat. 2291–2293; Pub. L. 105–336, title I, §§ 105(a)–(e)(1), 107(j)(2)(A), (3)(B), Oct. 31, 1998, 112 Stat. 3148, 3149, 3152, 3153; Pub. L. 108–134, § 5(1), Nov. 22, 2003, 117 Stat. 1389; Pub. L. 108–211, § 5(a), Mar. 31, 2004, 118 Stat. 566; Pub. L. 108–265, title I, § 116(a)–(e), June 30, 2004, 118 Stat. 748–750; Pub. L. 108–447, div. A, title VII, § 788(b), Dec. 8, 2004, 118 Stat. 2851.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a)(1), (5), (8) and (b)(1)(D), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (a)(8), (9). Pub. L. 108–265, § 116(a), (c), added pars. (8) and (9).

Subsec. (a)(10). Pub. L. 108–265, § 116(d), added par. (10).

Subsec. (a)(10)(C). Pub. L. 108–447, § 788(b)(1), substituted ''2006'' for ''2005''.

Subsec. (a)(10)(D)(i). Pub. L. 108–447, § 788(b)(2)(A), substituted ''2008'' for ''2007''.

Subsec. (a)(10)(D)(ii). Pub. L. 108–447, § 788(b)(2)(B), substituted ''2009'' for ''2008''.

Subsec. (b)(1)(D). Pub. L. 108–265, § 116(b), added subpar. (D).

Subsec. (q). Pub. L. 108–265, § 116(e), substituted ''September 30, 2009'' for ''June 30, 2004''.

Pub. L. 108–211 substituted ''June 30, 2004'' for ''March 31, 2004''.

2003—Subsec. (q). Pub. L. 108–134 substituted ''the period beginning October 1, 1977, and ending March 31, 2004'' for ''the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 2003''.

1998—Subsec. (a)(1)(D)(i). Pub. L. 105–336, §107(j)(3)(B)(i), substituted ''to have a disability'' for ''to be mentally or physically handicapped''.

Subsec. (a)(1)(D)(ii). Pub. L. 105–336, §107(j)(3)(B)(ii), substituted ''individuals who have a disability'' for ''the mentally or physically handicapped''.

Subsec. (a)(3)(C). Pub. L. 105–336, §107(j)(2)(A), inserted ''or'' at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''conduct a regularly scheduled food service primarily for homeless children; or''.

Subsec. (a)(7)(B)(i). Pub. L. 105–336, §105(a), added cl. (i) and struck out former cl. (i) which read as follows: ''(i)(I) serve a total of not more than 2,500 children per day at not more than 5 sites in any urban area, with not more than 300 children being served at any 1 site (or, with a waiver granted by the State under standards developed by the Secretary, not more than 500 children being served at any 1 site); or

''(II) serve a total of not more than 2,500 children per day at not more than 20 sites in any rural area, with not more than 300 children being served at any 1 site (or, with a waiver granted by the State under standards developed by the Secretary, not more than 500 children being served at any 1 site);''.

Subsec. (a)(7)(B)(ii) to (vii). Pub. L. 105–336, §105(b)(1), redesignated cls. (iv) to (vii) as (ii) to (v), respectively, and struck out former cls. (ii) and (iii) which read as follows:

''(ii) use self-preparation facilities to prepare meals, or obtain meals from a public facility (such as a school district, public hospital, or State university) or a school participating in the school lunch program under this chapter;

''(iii) operate in areas where a school food authority or the local, municipal, or county government has not indicated by March 1 of any year that such authority or unit of local government will operate a program under this section in such year;''.

Subsec. (f)(7). Pub. L. 105–336, §105(c), in first sentence, struck out ''attending a site on school premises operated directly by the authority'' after ''permit a child''.

Subsec. (*l*)(1). Pub. L. 105–336, §105(b)(2)(A), in first sentence, struck out ''(other than private nonprofit organizations eligible under subsection (a)(7) of this section)'' after ''Service institutions'' and substituted ''with food service management companies'' for ''only with food service management companies registered with the State in which they operate'' and struck out at end ''The State shall, upon award of any bid, review the company's registration to calculate how many remaining meals the food service management company is equipped to prepare.''

Subsec. (*l*)(2). Pub. L. 105–336, §105(b)(2)(B), substituted ''may'' for ''shall'' after ''Each State'' and struck out at end ''For the purposes of this section, registration shall include, at a minimum—

''(A) certification that the company meets applicable State and local health, safety, and sanitation standards;

''(B) disclosure of past and present company owners, officers, and directors, and their relationship, if any, to any service institution or food service management company that received program funds in any prior fiscal year;

''(C) records of contract terminations or disallowances, and health, safety, and sanitary code violations, in regard to program operations in prior fiscal years; and

''(D) the addresses of the company's food preparation and distribution sites.

No food service management company may be registered if the State determines that such company (i) lacks the administrative and financial capability to perform under the program, or (ii) has been seriously deficient in its participation in the program in prior fiscal years.''

Subsec. (*l*)(3) to (5). Pub. L. 105–336, §105(b)(2)(C), (D), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: ''In order to ensure that only qualified food service management companies contract for services in all States, the Secretary shall maintain a record of all registered food service management companies that have been seriously deficient in their participation in the program and may maintain a record of other registered food service management companies, for the purpose of making such information available to the States.''

Subsec. (n)(2). Pub. L. 105–336, §105(e)(1), amended Pub. L. 104–193, §706(j)(1). See 1996 Amendment note below.

Subsec. (q). Pub. L. 105–336, §105(d), substituted ''2003'' for ''1998''.

1996—Subsec. (a)(1). Pub. L. 104–193, §706(a)(1)(A), substituted ''initiate and maintain nonprofit food service programs'' for ''initiate, maintain, and expand nonprofit food service programs'' in first sentence.

Subsec. (a)(1)(E). Pub. L. 104–193, §706(a)(1)(B), struck out ''the Trust Territory of the Pacific Islands,'' before ''and the Northern Mariana Islands''.

Subsec. (a)(7)(A). Pub. L. 104–193, §706(a)(2), substituted ''Private nonprofit organizations'' for ''Except as provided in subparagraph (C), private nonprofit organizations''.

Subsec. (b). Pub. L. 104–193, §706(b), inserted heading.

Subsec. (b)(1). Pub. L. 104–193, §706(b), added par. (1) and struck out former par. (1) which read as follows: ''Payments to service institutions shall equal the full cost of food service operations (which cost shall include the cost of obtaining, preparing, and serving food, but shall not include administrative costs), except that such payments to any institution shall not exceed (1) 85.75 cents for each lunch and supper served; (2) 47.75 cents for each breakfast served; or (3) 22.50 cents for each meal supplement served: *Provided*, That such amounts shall be adjusted each January 1 to the nearest one-fourth cent in accordance with the changes for the twelve-month period ending the preceding November 30 in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor: *Provided further*, That the Secretary may make such adjustments in the maximum reimbursement levels as the Secretary determines appropriate after making the study prescribed in paragraph (4) of this subsection.''

Subsec. (b)(2). Pub. L. 104–193, §706(c), substituted ''3 meals, or 2 meals and 1 supplement,'' for ''four meals'' in first sentence and struck out at end ''The meals that camps and migrant programs may serve shall include a breakfast, a lunch, a supper, and meal supplements.''

Subsec. (c)(2). Pub. L. 104–193, §706(d)(3), (4), struck out '', and such higher education institutions,'' before ''shall be eligible to participate'' and substituted ''on showing residence in areas in which poor economic conditions exist or on the basis of income eligibility statements for children enrolled in the program'' for ''without application''.

Pub. L. 104–193, §706(d)(1), (2), designated subpar. (B) as par. (2) and struck out subpars. (A), relating to eligibility of institutions operating National Youth Sports Program for meal and supplement reimbursements, and (C) to (E), relating to reimbursement rates, nutritional requirements and meal patterns, and issuance of regulations, respectively.

Subsec. (e)(1). Pub. L. 104–193, §706(e), substituted ''each service institution. The State'' for ''each service institution: *Provided*, That (A) the State'', inserted ''(excluding a school)'' after ''program payment to any service institution'', and substituted ''responsibilities. No advance program payment'' for ''responsibilities, and (B) no advance program payment''.

Subsec. (f). Pub. L. 104–193, §706(f)(5), redesignated pars. (4) to (7) as (3) to (6), respectively.

Pub. L. 104–193, § 706(f)(1)–(4), redesignated first to seventh sentences as pars. (1) to (7), respectively, struck out par. (3), substituted ''paragraph (1)'' for ''the first sentence'' in par. (4), and substituted ''conformance with standards set by local health authorities'' for ''that bacteria levels conform to the standards which are applied by the local health authority for that locality with respect to the levels of bacteria that may be present in meals served by other establishments in that locality'' in par. (6)(B). Prior to repeal, par. (3) read as follows: ''The Secretary shall provide additional technical assistance to those service institutions and private nonprofit organizations that are having difficulty maintaining compliance with the requirements.''

Subsec. (f)(7). Pub. L. 104–193, § 706(g), added par. (7).

Subsec. (m). Pub. L. 104–193, § 706(h), substituted ''be available at any reasonable time for inspection and audit'' for ''at all times be available for inspection and audit'' in second sentence.

Subsec. (n)(2). Pub. L. 104–193, § 706(j)(1), as amended by Pub. L. 105–336, § 105(e)(1), struck out '', including the State's methods for assessing need'' after ''needy children''.

Pub. L. 104–193, § 706(i), struck out '', and its plans and schedule for informing service institutions of the availability of the program'' before semicolon.

Subsec. (n)(3). Pub. L. 104–193, § 706(j)(2), (4), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''the State's best estimate of the number and character of service institutions and sites to be approved, and of meals to be served and children to participate for the fiscal year, and a description of the estimating methods used;''.

Subsec. (n)(4). Pub. L. 104–193, § 706(j)(4), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Pub. L. 104–193, § 706(j)(3), struck out ''and schedule'' after ''State's plans''.

Subsec. (n)(5) to (7). Pub. L. 104–193, § 706(j)(4), redesignated pars. (6) and (7) as (5) and (6), respectively. Former par. (5) redesignated (4).

Subsec. (p). Pub. L. 104–193, § 706(*l*), redesignated subsec. (q) as (p) and struck out former subsec. (p) which read as follows: ''During the fiscal years 1990 and 1991, the Secretary and the States shall carry out a program to disseminate to potentially eligible private nonprofit organizations information concerning the amendments made by the Child Nutrition and WIC Reauthorization Act of 1989 regarding the eligibility under subsection (a)(7) of this section of private nonprofit organizations for the program established under this section.''

Subsec. (q). Pub. L. 104–193, § 706(*l*)(2), redesignated subsec. (r) as (q). Former subsec. (q) redesignated (p).

Subsec. (q)(2). Pub. L. 104–193, § 706(k)(1), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''The Secretary shall require each State to establish and implement an ongoing training and technical assistance program for private nonprofit organizations that provides information on program requirements, procedures, and accountability. The Secretary shall provide assistance to State agencies regarding the development of such training and technical assistance programs.''

Subsec. (q)(3). Pub. L. 104–193, § 706(k)(3), redesignated par. (3) as (2).

Pub. L. 104–193, § 706(k)(2), substituted ''paragraph (1)'' for ''paragraphs (1) and (2) of this subsection''.

Subsec. (q)(4). Pub. L. 104–193, § 706(k)(1), struck out par. (4) which read as follows: ''For the purposes of this subsection, the term 'private nonprofit organization' has the meaning given such term in subsection (a)(7)(B) of this section.''

Subsec. (r). Pub. L. 104–193, § 706(*l*)(2), redesignated subsec. (r) as (q).

1994—Subsec. (a)(4)(A) to (F). Pub. L. 103–448, § 114(a), added subpars. (A) to (D) and struck out former subpars. (A) to (F) which read as follows:

''(A) local schools or service institutions that have demonstrated successful program performance in a prior year;

''(B) service institutions that prepare meals at their own facilities or operate only one site;

''(C) service institutions that use local school food facilities for the preparation of meals;

''(D) other service institutions that have demonstrated ability for successful program operation;

''(E) service institutions that plan to integrate the program with Federal, State, or local employment programs; and

''(F) private nonprofit organizations eligible under paragraph (7).''

Subsec. (a)(7)(C). Pub. L. 103–448, § 114(b), struck out subpar. (C) which read as follows:

''(C)(i) Except as provided in clause (ii), no private nonprofit organization (other than organizations eligible under paragraph (1)) may participate in the program in an area where a school food authority or a local, municipal, or county government participated in the program before such organization applied to participate until the expiration of the 1-year period beginning on the date that such school food authority or local, municipal, or county government terminated its participation in the program.

''(ii) Clause (i) shall not apply if the appropriate State agency or regional office of the Department of Agriculture (whichever administers the program in the area concerned), after consultation with the school food authority or local, municipal, or county government concerned, determines that such school food authority or local, municipal, or county government would have discontinued its participation in the program regardless of whether a private nonprofit organization was available to participate in the program in such area.''

Subsec. (c)(1). Pub. L. 103–448, § 114(c), inserted before period at end ''or that provide meal service at nonschool sites to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order, or similar cause''.

Subsec. (f). Pub. L. 103–448, § 105(b), inserted after first sentence ''The Secretary shall provide technical assistance to service institutions and private nonprofit organizations participating in the program to assist the institutions and organizations in complying with the nutritional requirements prescribed by the Secretary pursuant to this subsection. The Secretary shall provide additional technical assistance to those service institutions and private nonprofit organizations that are having difficulty maintaining compliance with the requirements.'' and substituted ''Meals described in the first sentence shall be served'' for ''Such meals shall be served''.

Subsec. (*l*)(3). Pub. L. 103–448, § 114(d), substituted ''that have been seriously deficient in their participation in the program and may maintain a record of other registered food service management companies,'' for ''and their program record''.

Subsec. (n)(5). Pub. L. 103–448, § 114(e)(1), (2), redesignated cl. (7) as (5) and struck out former cl. (5) which read as follows: ''the State's schedule for application by service institutions;''.

Subsec. (n)(6). Pub. L. 103–448, § 114(e)(1)–(3), redesignated cl. (9) as (6), inserted ''and'' at end, and struck out former cl. (6) which read as follows: ''the actions to be taken to maximize the use of meals prepared by service institutions and the use of school food service facilities;''.

Subsec. (n)(7). Pub. L. 103–448, § 114(e)(2), redesignated cl. (11) as (7). Former cl. (7) redesignated (5).

Subsec. (n)(8). Pub. L. 103–448, § 114(e)(1), struck out cl. (8) which read as follows: ''the State's plan and schedule for registering food service management companies;''.

Subsec. (n)(9). Pub. L. 103–448, § 114(e)(2), redesignated cl. (9) as (6).

Subsec. (n)(10). Pub. L. 103–448, § 114(e)(1), struck out cl. (10) which read as follows: ''the State's plan for determining the amounts of program payments to service institutions and for disbursing such payments;''.

Subsec. (n)(11). Pub. L. 103–448, § 114(e)(2), redesignated cl. (11) as (7).

Subsec. (n)(12). Pub. L. 103–448, §114(e)(4), struck out cl. (12) which read as follows: ''the State's procedure for granting a hearing and prompt determination to any service institution wishing to appeal a State ruling denying the service institution's application for program participation or for program reimbursement.''

Subsec. (q)(2). Pub. L. 103–448, §114(f)(1), (2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Application forms or other printed materials provided by the Secretary or the States to persons who intend to apply to participate as private nonprofit organizations shall contain a warning in bold lettering explaining, at a minimum—

''(A) the criminal provisions and penalties established by subsection (*o*) of this section; and

''(B) the procedures for termination of participation in the program as established by regulations.''

Subsec. (q)(3). Pub. L. 103–448, §114(f)(2), (3), redesignated par. (4) as (3) and substituted ''paragraphs (1) and (2)'' for ''paragraphs (1) and (3)''. Former par. (3) redesignated (2).

Subsec. (q)(4), (5). Pub. L. 103–448, §114(f)(2), redesignated pars. (4) and (5) as (3) and (4), respectively.

Subsec. (r). Pub. L. 103–448, §114(g), substituted ''1998'' for ''1994''.

1989—Subsec. (a)(3)(C). Pub. L. 101–147, §102(a)(1)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''either conduct a regularly scheduled food service for children from areas in which poor economic conditions exist or qualify as camps; and''.

Subsec. (a)(4)(F). Pub. L. 101–147, §102(a)(1)(B), added subpar. (F).

Subsec. (a)(7)(A). Pub. L. 101–147, §102(a)(1)(C)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Not later than May 1, 1989, the Secretary shall institute Statewide demonstration projects in five States in which private nonprofit organizations, as defined in subparagraph (B) (other than organizations already eligible under subsection (a)(1) of this section), shall be eligible for the program under the same terms and conditions as other service institutions.''

Subsec. (a)(7)(B)(i). Pub. L. 101–147, §102(a)(1)(C)(ii)(I), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''serve no more than 2,500 children per day and operate at not more than 5 sites;''.

Subsec. (a)(7)(B)(ii). Pub. L. 101–147, §102(a)(1)(C)(ii)(II), inserted ''or a school participating in the school lunch program under this chapter'' after ''university)''.

Subsec. (a)(7)(B)(v). Pub. L. 101–147, §102(a)(1)(C)(ii)(III), inserted ''or families'' after ''children''.

Subsec. (a)(7)(C). Pub. L. 101–147, §102(a)(1)(C)(iii), added subpar. (C).

Subsec. (c). Pub. L. 101–147, §102(a)(2), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 101–147, §307(1), substituted ''July 1 of each year'' for ''July 1, of each year''.

Subsec. (f). Pub. L. 101–147, §307(2), substituted ''prescribe'' for ''prescribed'' before ''model meal specifications''.

Subsec. (g). Pub. L. 101–147, §307(3), struck out '': *Provided*, That for fiscal year 1978, those portions of the regulations relating to payment rates for both food service operations and administrative costs need not be published until December 1 and February 1, respectively'' after ''February 1 of each fiscal year''.

Subsec. (h). Pub. L. 101–147, §307(4), made technical amendments to references to sections 612c, 1431, and 1446a–1 of title 7 involving underlying provisions of original act and requiring no change in text.

Subsec. (*l*)(1). Pub. L. 101–147, §102(a)(3), inserted ''(other than private nonprofit organizations eligible under subsection (a)(7) of this section)'' after ''Service institutions''.

Subsec. (p). Pub. L. 101–147, §102(a)(4), (5), added subsec. (p) and redesignated former subsec. (p) as (r).

Subsec. (q). Pub. L. 101–147, §102(a)(5), added subsec. (q).

Subsec. (r). Pub. L. 101–147, §102(a)(6), substituted ''For the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 1994,'' for ''For the fiscal years beginning October 1, 1979, and ending September 30, 1989,''.

Pub. L. 101–147, §102(a)(4), redesignated former subsec. (p) as (r).

1988—Subsec. (a)(1)(B). Pub. L. 100–435, §213(a), inserted reference to public or private nonprofit higher education institutions participating in National Youth Sports Program.

Subsec. (a)(7). Pub. L. 100–435, §213(b), added par. (7).

1986—Subsec. (p). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, amended subsec. (p) identically, substituting ''1989'' for ''1984''.

1981—Subsec. (a). Pub. L. 97–35, §809, in par. (1)(B) substituted ''public or private nonprofit school food authorities, local, municipal, or county governments,'' for ''nonresidential public or private nonprofit institutions'' and in par. (1)(C) substituted ''50'' for ''33⅓'', and added par. (6).

Subsec. (i). Pub. L. 97–35, §817(b), struck out subsec. (i) which related to administration of program by Secretary in event of nonadministration by State.

1980—Subsec. (b)(2). Pub. L. 96–499, §206(1), restricted service institutions to serving only two meals per day unless such institutions were a camp or an institution serving meals primarily to migrant children.

Subsec. (p). Pub. L. 96–499, §206(2), substituted ''September 30, 1984'' for ''September 30, 1980''.

1978—Subsec. (a)(1)(D)(ii). Pub. L. 95–627, §10(d)(2), inserted ''or nonprofit private'' after ''in a public''.

Subsec. (b)(1). Pub. L. 95–627, §5(d), inserted ''for All Urban Consumers'' after ''Consumer Price Index''.

Subsec. (k)(1). Pub. L. 95–627, §7(b), substituted ''$100,000'' for ''$50,000'' in cl. (B), ''$250,000'' for ''$100,000'' in cl. (C), and ''2½ percent'' for ''2 percent'' in cl. (D).

1977—Subsec. (a). Pub. L. 95–166, in revising subsec. (a), among other changes: reenacted par. (1); inserted cl. (A) definition of ''program''; reenacted as cl. (B) definition of ''service institutions'', inserting development of ''school vacation'' programs; reenacted as cl. (C) definition of ''areas in which poor economic conditions exist'' definition of ''poor economic conditions'' of former par. (3), substituting ''as determined by information'' for ''as shown by information'' and ''served to children attending public and nonprofit private schools located in the area of program food service sites, or from other appropriate sources, including statements of eligibility based upon income for children enrolled in the program'' for ''served to children attending schools located in the area of summer food sites, or from other applicable sources'' and striking out reference to information provided from model city target areas; inserted cl. (D) definition of ''children''; reenacted as cl. (E) definition of ''State'' last sentence of former par. (3), extending term to include the Northern Mariana Islands; enacted par. (2), which incorporated part of former par. (1) which had read ''To the maximum extent feasible, consistent with the purposes of this section, special summer programs shall utilize the existing food service facilities of public and nonprofit private schools.''; enacted par. (3), which incorporated part of former par. (2) which had read ''Service institutions eligible to participate under the program authorized under this section shall be limited to those which conduct a regularly scheduled program for children from areas in which poor economic conditions exist, for any period during the months of May through September, at site locations where organized recreation activities or food services are provided for children in attendance.''; and added pars. (4) and (5).

Subsec. (b)(1). Pub. L. 95–166 incorporated existing provisions in part in text designated par. (1); substituted ''Payments'' for ''Disbursements'' increased payments for cost of lunch and supper, breakfast, and each meal supplement to 85.75 from 75.5, to 47.75 from 42, and to 22.50 from 19.75 cents respectively; substituted provision for adjustment of rates each January

1 based on the Consumer Price Index for twelve-month period ending November 30 for prior such provision for adjustment each March 1 based on the Index for year ending January 31; exclude from cost of food service operations administrative costs; and authorized adjustments, as appropriate, in the maximum reimbursement levels.

Subsec. (b)(2). Pub. L. 95–166 added par. (2) which incorporated in part existing provision which formerly stated that no institution shall be prohibited from serving breakfasts, suppers, and meal supplements as well as lunches unless the service period of different meals coincides or overlaps.

Subsec. (b)(3). Pub. L. 95–166 added par. (3) which supersedes part of existing provisions prescribing administrative costs of lunch and supper, breakfast, and meal supplement not to exceed 6, 3, and 1.5 cents respectively.

Subsec. (b)(4). Pub. L. 95–166 added par. (4).

Subsec. (c). Pub. L. 95–166 substituted ''Payments'' for ''Disbursements'' and ''except in the case of service institutions that operate food service programs for children on school vacation at any time under a continuous school calendar'' for ''except that the foregoing provision shall not apply to institutions which develop food service programs for children on school vacation at any time under a continuous school calendar or prevent such institutions, if otherwise eligible, from participating in the program authorized by this section''.

Subsec. (d). Pub. L. 95–166, in revising text, substituted provision for advance program payment to States through letters of credit forwarded no later than April 15, May 15, and July 1, of each year for prior provision for forwarding advance payments no later than June 1, July 1, and August 1 of each year; inserted computation of payment amount provision; struck out prior provision for an amount no less than (1) the total payment made to the State for meals served for the calendar month of the preceding calendar year or (2) 65 per centum of the amount estimated by the State, on the basis of approved applications, to be needed to reimburse service institutions for meals to be served in the month, whichever is the greater, now covered in subsec. (e)(2) of this section; substituted provision for forwarding payments to States operating a program in months other than May through September by the first day of the month prior to the month in which the program is conducted for prior provision for receipt of advance payments not later than the first day of each month involved where institutions operate programs during nonsummer vacations during a continuous school year calendar; reenacted provision for payments within sixty days of receipt of valid claims; and struck out provision declaring that any funds advanced to a State for which valid claims have not been established within 180 days shall be deducted from the next appropriate monthly advance payment unless the claimant requests a hearing with the Secretary prior to the 180th day, covered in subsec. (e)(2) of this section.

Subsec. (e). Pub. L. 95–166 added subsec. (e) which in incorporating in part provisions of former subsec. (d), substituted in par. (1) July 15 and August 15 for July 1 and August 1 and reenacted provision for payment not later than the first day of each month of operation where service institutions operate under a continuous school calendar, and in par. (2) substituted provision for computation of amount which is the greatest of the amount described in cls. (A), (B), and (C) for prior provision for such computation which is the greater of (1) the total payment made to the State for meals served for the calendar month of the preceding calendar year (covered in cl. (A)) or (2) 65 per centum of the amount estimated by the State, on the basis of approved applications, to be needed to reimburse service institutions for meals to be served in the month (covered in cl. (C)). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 95–166 redesignated former subsec. (e) as (f), substituted in first sentence ''receiving funds'' for ''to which funds are disbursed'', and inserted provisions respecting: charging ineligible children for meals served in camps, model specifications and standards for quality assurance, meal preparation contract requirements, and inspection and testing. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 95–166 redesignated former subsec. (f) as (g), required publication of proposed regulations by November 1, instead of January 1, final regulations by January 1, instead of March 1, and guidelines, applications, and handbooks by February 1, instead of March 1, of each fiscal year, inserted proviso, substituted provision for payment of startup costs limited to 20 percent of administrative funds provided for in the administrative budget for prior limitation to 10 per centum of Federal funds provided the service institutions for meals served under this section during the preceding summer, and substituted provision for subtraction of startup costs from amounts otherwise payable for administrative costs made to the service institutions for prior provision for such reduction from payments made for meals served under subsec. (b) of this section. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 95–166 redesignated former subsec. (g) as (h), struck out ''participating'' before ''service institution'' and '', either nationally or in the institution area, or foods donated by the Secretary'' after ''abundance'', and substituted provision for donation of available or purchased food to States, for distribution to service institutions that can use commodities efficiently and effectively, as determined by the Secretary for prior provision for donation by the Secretary of available or purchased foods, irrespective of amount of appropriated funds, to service institutions in accordance with the needs as determined by authorities of these institutions for utilization in their feeding program. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95–166 redesignated former subsec. (h) as (i), authorized Secretary's administration of the program when the State is unable for any reason to disburse the funds otherwise payable or does not operate the program as required by this section, prior provision only requiring direct disbursements when the State educational agency was not permitted by law or was otherwise unable to disburse the funds, and required State notification of the Secretary of its intention not to administer the program. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 95–166 redesignated former subsec. (i) as (j). Former subsec. (j) redesignated (p).

Subsec. (k). Pub. L. 95–166 added subsec. (k) and struck out former subsec. (k) which required Secretary to pay administrative costs of each State in an amount equal to 2 per centum of funds distributed to the State and prescribing minimum sum of $10,000 each fiscal year, except where distribution of funds to the State totals less than $50,000 for the fiscal year.

Subsec. (*l*). Pub. L. 95–166 added subsec. (*l*) and struck out former subsec. (*l*) which provided that nothing in this section should be construed to preclude a service institution from contracting on a competitive basis for the furnishing of meals or administration of the program, or both.

Subsec. (m). Pub. L. 95–166 struck out '', State educational agencies,'' after ''States''.

Subsecs. (n), (*o*). Pub. L. 95–166 added subsecs. (n) and (*o*).

Subsec. (p). Pub. L. 95–166 redesignated former subsec. (j) as (p) and made authorization applicable to fiscal years beginning Oct. 1, 1977, and ending Sept. 30, 1980.

1975—Subsec. (a). Pub. L. 94–105 substituted provisions authorizing to be appropriated sums for a summer food services program through Sept. 30, 1977, for provisions authorizing to be appropriated sums for a summer food services program through Sept. 30, 1975.

Subsec. (a)(1). Pub. L. 94–20, § 1(a), inserted ''and for the period July 1, 1975, through September 30, 1975,'' before ''to enable''.

Subsec. (b). Pub. L. 94–105 substituted provisions for payment to service institutions of the full cost of obtaining, preparing and serving food and administrative costs, with maximum rates for each kind of meal and

its related administrative cost and adjustment of the rates each March 1 on the basis of changes in the series for food away from home of the Consumer Price Index for provisions apportioning among the states the appropriated sums, with a maximum basic grant of $50,000, and reserving 2 per centum of the appropriated sums for apportionment to Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

Subsec. (c). Pub. L. 94–105 substituted provisions for disbursement to service institutions only for meals served during May through Sept. except for institutions with programs for children on school vacation at any time under a continuous school calendar for provisions for the disbursement of funds by the State educational agency to service institutions on a nondiscriminatory basis for the cost of obtaining agricultural commodities and other foods, purchase and rental of equipment and authorizing financial assistance not to exceed 3 per centum of the operating costs in cases of severe need.

Subsec. (d). Pub. L. 94–105 substituted provisions relating to the advance payment to States for meals served in that month and deductions in the next month for advances for which valid claims have not been established within 180 days for provisions for the disbursement of funds directly to service institutions in states where the State educational agency is forbidden by law to disburse funds to such institutions.

Subsec. (e). Pub. L. 94–105 substituted provisions for free meals consisting of a combination of foods and meeting minimum nutritional standards for provisions making available for the first three months of the next fiscal year any funds unobligated at the end of the prior fiscal year.

Subsec. (f). Pub. L. 94–105 substituted provisions directing the Secretary to publish proposed and final regulations, guidelines, and handbooks and authorizing startup costs for meals served during the preceding summer for provisions for free or reduced cost meals with minimum nutritional standards and prohibiting segregation, discrimination or overt identification practices with regard to any child because of his inability to pay.

Subsec. (g). Pub. L. 94–105 substituted provisions directing the utilization of foods donated or designated as in abundance by the Secretary and directing the donation of food available under section 1431, 612c and 1446a–1 of title 7 irrespective of the amount of funds appropriated under this section for provisions directing further apportionment among the States if any State cannot utilize all funds apportioned to it or additional funds are made available.

Subsec. (h). Pub. L. 94–105 substituted provisions authorizing the Secretary to disburse funds directly to service institutions in States where the educational agency is not permitted by law or is otherwise unable to disburse the funds for provisions requiring certification by the Secretary to the Secretary of the Treasury of amounts to be paid, directing the utilization of donated foods or foods designated as abundant, permitting donation of food available under sections 1431, 612c or 1446a–1 of title 7 irrespective of funds appropriated, mandating that value of assistance to children under this section not be considered income, that expenditures of State and local funds not be diminished as a result of federal funding, authorizing appropriations for administrative expenses and requiring States and State educational agencies and service institutions to keep and make available for inspection such accounts and records as may be necessary.

Subsec. (i). Pub. L. 94–105 substituted provision that the amount of State and local funds spent for food programs not be diminished as a result of funds received under this program for provisions authorizing the Secretary of Agriculture to utilize during May 15 to Sept. 15, 1972 not to exceed $25,000 of funds available under section 612c of Title 7 to carry out the purposes of this chapter, such funds to be reimbursed out of any supplemental appropriation.

Subsec. (j). Pub. L. 94–105 substituted provision authorizing to be appropriated such sums as may be necessary for the Secretary's administrative expenses, for provisions adjusting the reimbursement rate for meals served during May through Sept. 1975 to the nearest quarter cent to reflect changes since the period of May through Sept. 1974 in the cost of operating special summer food programs.

Pub. L. 94–20, §1(b), added subsec. (j).

Subsec. (k). Pub. L. 94–105 substituted provisions directing the Secretary to pay each State for administrative costs an amount equal to 2 per centum of funds distributed under subsec. (b), with no State to receive less than $10,000 unless funds distributed to such State total less than $50,000 for provisions directing the Secretary to issue regulations no later than ten days following May 2, 1975 pertaining to operations of the program during the months of May through Sept. 1975, with proviso that such regulations shall in no way differ from current regulations except for changes necessary to implement this chapter.

Pub. L. 94–20, §1(b), added subsec. (k).

Subsecs. (*l*), (m). Pub. L. 94–105 added subsecs. (*l*) and (m).

1972—Subsec. (a)(1). Pub. L. 92–433, §2(a), substituted authorization of appropriation of such sums as are necessary for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for provisions authorizing appropriation of $32,000,000 for each of the fiscal years ending June 30, 1972 and June 30, 1973.

Subsec. (a)(2). Pub. L. 92–433, §2(b), inserted provisions authorizing special summer programs to utilize existing food service facilities of public and nonprofit private schools to the maximum extent feasible.

Subsec. (i). Pub. L. 92–433, §1, added subsec. (i).

1971—Subsec. (a)(1). Pub. L. 92–32, §7(a), authorized appropriations of $32,000,000 for fiscal years ending June 30, 1972, and 1973, as were authorized for fiscal years ending June 30, 1969, 1970, and 1971, and substituted in first sentence ''program'' for ''pilot program''.

Subsec. (c)(2). Pub. L. 92–32, §7(b), provided that non-Federal contributions may be in cash or kind, fairly evaluated, including but not limited to equipment and services.

1970—Subsec. (f). Pub. L. 91–248 provided for determination of ability to pay the full cost of lunch based on a publicly announced policy the minimum criteria of which includes family income and the number of school children in the family unit as well as the size of the family unit in general and provided that there be no overt identification of those children who receive free and reduced price meals.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 116(a)–(c), (e) of Pub. L. 108–265 effective June 30, 2004, and amendment by section 116(d) of Pub. L. 108–265 effective Oct. 1, 2005, see section 502(a), (b)(5) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–336, title I, §105(e)(2), Oct. 31, 1998, 112 Stat. 3149, provided that: ''The amendment made by paragraph (1) [amending this section] takes effect on January 1, 1997.''

Pub. L. 105–336, title I, §107(j)(4), Oct. 31, 1998, 112 Stat. 3153, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and sections 1766 and 1769f of this title and repealing section 1766b of this title] take effect on July 1, 1999.''

Amendment by sections 105(a)–(d) and 107(j)(3)(B) of Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 706(m) of Pub. L. 104–193 provided that: ''The amendments made by subsection (b) [amending this section] shall become effective on January 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 102(b)(2)(A) of Pub. L. 101–147 provided that: ''Subparagraphs (A), (B), (C), and (D)(i) of section 13(c)(2) of the [Richard B. Russell] National School Lunch Act [subpars. (A), (B), (C), (D)(i) of subsec. (c)(2) of this section] (as added by subsection (a)(2)(B) of this section) shall be effective as of October 1, 1989.''

Section 102(b)(3) of Pub. L. 101–147 provided that: ''The amendments made by subsection (a)(6) [amending this section] shall be effective as of October 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–435 to be effective and implemented on Oct. 1, 1988, see section 701(a) of Pub. L. 100–435, set out as a note under section 2012 of Title 7, Agriculture.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 5(d) of Pub. L. 95–627 effective July 1, 1979, and amendment by sections 7(b) and 10(d)(2) of Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 13 of Pub. L. 94–105 provided that the amendment made by that section is effective Oct. 1, 1975.

REGULATIONS

Section 102(b)(1) of Pub. L. 101–147 provided that: ''Not later than February 1, 1990, the Secretary of Agriculture shall issue regulations to implement the amendments made by paragraphs (1), (3), (4), and (5) of subsection (a) [amending this section]. Notwithstanding the provisions of section 553 of title 5, United States Code, the Secretary of Agriculture may issue such regulations without providing notice or an opportunity for public comment.''

Section 102(b)(2)(B) of Pub. L. 101–147 provided that: ''Not later than February 1, 1990, the Secretary of Agriculture shall—

''(i) issue final regulations to implement subparagraph (D)(ii) of section 13(c)(2) of the [Richard B. Russell] National School Lunch Act [subpar. (D)(ii) of subsec. (c)(2) of this section] (as added by subsection (a)(2)(B) of this section); and

''(ii) issue final regulations under subparagraph (E) of such section.''

ALL-DAY EDUCATIONAL AND RECREATIONAL ACTIVITIES; SOURCES OF FUNDS

Section 114(h) of Pub. L. 103–448 directed Secretary of Agriculture, not later than 180 days after Nov. 2, 1994, in consultation with heads of other Federal agencies, to identify sources of Federal funds that might be available from other Federal agencies for service institutions under the summer food service program for children established under this section to carry out all-day educational and recreational activities for children at feeding sites under the program, and notify the service institutions of the sources.

§ 1762. Repealed. Pub. L. 101–147, title III, § 308, Nov. 10, 1989, 103 Stat. 915

Section, act June 4, 1946, ch. 281, § 13A, as added Mar. 12, 1970, Pub. L. 91–207, 84 Stat. 51, related to emergency assistance to provide nutritious meals to needy children in schools.

§ 1762a. Commodity distribution program

(a) Use of funds for purchase of agricultural commodities and products for donation

Notwithstanding any other provision of law, the Secretary shall—

(1) use funds available to carry out the provisions of section 612c of title 7 which are not expended or needed to carry out such provisions, to purchase (without regard to the provisions of existing law governing the expenditure of public funds) agricultural commodities and their products of the types customarily purchased under such section (which may include domestic seafood commodities and their products), for donation to maintain the annually programmed level of assistance for programs carried on under this chapter, the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], and title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.]; and

(2) if stocks of the Commodity Credit Corporation are not available, use the funds of such Corporation to purchase agricultural commodities and their products of the types customarily available under section 1431 of title 7, for such donation.

(b) Nutrition quality and content information

(1) The Secretary shall maintain and continue to improve the overall nutritional quality of entitlement commodities provided to schools to assist the schools in improving the nutritional content of meals.

(2) The Secretary shall—

(A) require that nutritional content information labels be placed on packages or shipments of entitlement commodities provided to the schools; or

(B) otherwise provide nutritional content information regarding the commodities provided to the schools.

(c) Authorization of appropriations for purchase of products or for cash payments in lieu of donations

The Secretary may use funds appropriated from the general fund of the Treasury to purchase agricultural commodities and their products of the types customarily purchased for donation under section 311(a)(4)[1] of the Older Americans Act of 1965 or for cash payments in lieu of such donations under section 311(b)(1)[1] of such Act. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subsection.

(d) Assistance procedures; cost and benefits, review; technical assistance; report to Congress; food quality standards contracting procedures

In providing assistance under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] for school lunch and breakfast programs, the Secretary shall establish procedures which will—

(1) ensure that the views of local school districts and private nonprofit schools with respect to the type of commodity assistance needed in schools are fully and accurately re-

[1] See References in Text note below.

flected in reports to the Secretary by the State with respect to State commodity preferences and that such views are considered by the Secretary in the purchase and distribution of commodities and by the States in the allocation of such commodities among schools within the States;

(2) solicit the views of States with respect to the acceptability of commodities;

(3) ensure that the timing of commodity deliveries to States is consistent with State school year calendars and that such deliveries occur with sufficient advance notice;

(4) provide for systematic review of the costs and benefits of providing commodities of the kind and quantity that are suitable to the needs of local school districts and private nonprofit schools; and

(5) make available technical assistance on the use of commodities available under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

Within eighteen months after November 10, 1977, the Secretary shall report to Congress on the impact of procedures established under this subsection, including the nutritional, economic, and administrative benefits of such procedures. In purchasing commodities for programs carried out under this chapter and the Child Nutrition Act of 1966, the Secretary shall establish procedures to ensure that contracts for the purchase of such commodities shall not be entered into unless the previous history and current patterns of the contracting party with respect to compliance with applicable meat inspection laws and with other appropriate standards relating to the wholesomeness of food for human consumption are taken into account.

(e) Consultation with school representatives

Each State agency that receives food assistance payments under this section for any school year shall consult with representatives of schools in the State that participate in the school lunch program with respect to the needs of such schools relating to the manner of selection and distribution of commodity assistance for such program.

(f) Commodity only schools

Commodity only schools shall be eligible to receive donated commodities equal in value to the sum of the national average value of donated foods established under section 1755(c) of this title and the national average payment established under section 1753 of this title. Such schools shall be eligible to receive up to 5 cents per meal of such value in cash for processing and handling expenses related to the use of such commodities. Lunches served in such schools shall consist of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under section 1758(a) of this title, and shall represent the four basic food groups, including a serving of fluid milk.

(g) Extension of alternative means of assistance

(1) As used in this subsection, the term ''eligible school district'' has the same meaning given such term in section 1581(a) of the Food Security Act of 1985.

(2) In accordance with the terms and conditions of section 1581 of such Act, the Secretary shall permit an eligible school district to continue to receive assistance in the form of cash or commodity letters of credit assistance, in lieu of commodities, to carry out the school lunch program operated in the district.

(h) Notice of irradiated food products

(1) In general

The Secretary shall develop a policy and establish procedures for the purchase and distribution of irradiated food products in school meals programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(2) Minimum requirements

The policy and procedures shall ensure, at a minimum, that—

(A) irradiated food products are made available only at the request of States and school food authorities;

(B) reimbursements to schools for irradiated food products are equal to reimbursements to schools for food products that are not irradiated;

(C) States and school food authorities are provided factual information on the science and evidence regarding irradiation technology, including—

(i) notice that irradiation is not a substitute for safe food handling techniques; and

(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals programs;

(D) States and school food authorities are provided model procedures for providing to school food authorities, parents, and students—

(i) factual information on the science and evidence regarding irradiation technology; and

(ii) any other similar information determined by the Secretary to be necessary to promote food safety in school meals;

(E) irradiated food products distributed to the Federal school meals program under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) are labeled with a symbol or other printed notice that—

(i) indicates that the product was irradiated; and

(ii) is prominently displayed in a clear and understandable format on the container;

(F) irradiated food products are not commingled in containers with food products that are not irradiated; and

(G) schools that offer irradiated food products are encouraged to offer alternatives to irradiated food products as part of the meal plan used by the schools.

(June 4, 1946, ch. 281, §14, as added Pub. L. 93–326, §2, June 30, 1974, 88 Stat. 286; amended Pub. L. 94–105, §10, Oct. 7, 1975, 89 Stat. 515; Pub. L. 95–166, §6, Nov. 10, 1977, 91 Stat. 1334; Pub. L. 95–627, §12(b), Nov. 10, 1978, 92 Stat. 3625; Pub. L. 96–499, title II, §202(c), Dec. 5, 1980, 94 Stat. 2600; Pub. L. 97–35, title VIII, §§813(a), 819(j), Aug. 13,

1981, 95 Stat. 530, 533; Pub. L. 98–459, title VIII, § 801(a), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99–500, title III, §§ 312, 363, Oct. 18, 1986, 100 Stat. 1783–360, 1783–368, and Pub. L. 99–591, title III, §§ 312, 363, Oct. 30, 1986, 100 Stat. 3341–363, 3341–371; Pub. L. 99–661, div. D, title I, § 4102, title IV, § 4403, Nov. 14, 1986, 100 Stat. 4071, 4079; Pub. L. 100–356, § 2, June 28, 1988, 102 Stat. 669; Pub. L. 101–147, title I, § 103(a)–(b)(2)(A), (c), Nov. 10, 1989, 103 Stat. 882; Pub. L. 103–448, title I, § 115, Nov. 2, 1994, 108 Stat. 4713; Pub. L. 104–193, title VII, § 707, Aug. 22, 1996, 110 Stat. 2293; Pub. L. 105–336, title I, §§ 101(b), 106, Oct. 31, 1998, 112 Stat. 3144, 3149; Pub. L. 108–134, § 4, Nov. 22, 2003, 117 Stat. 1389; Pub. L. 108–211, § 4, Mar. 31, 2004, 118 Stat. 566; Pub. L. 108–265, title I, §§ 117, 118, June 30, 2004, 118 Stat. 752.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a)(1), (d), and (h)(1), (2)(E), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Older Americans Act of 1965, referred to in subsecs. (a)(1) and (c), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Title III of the Older Americans Act of 1965 is classified generally to subchapter III (§ 3021 et seq.) of chapter 35 of this title. Section 311 of the Act, which is classified to section 3030a of this title, was amended by Pub. L. 106–501, title III, § 309, Nov. 13, 2000, 114 Stat. 2246, and, as so amended, new subsecs. (a) and (b) were added, former subsec. (a)(4) was redesignated (c)(4) and repealed, and former subsec. (b)(1) was redesignated (d)(1). For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Section 1581 of the Food Security Act, referred to in subsec. (g), is section 1581 of Pub. L. 99–198, title XV, Dec. 23, 1985, 99 Stat. 1594, which is not classified to the Code.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–265, § 117, struck out '', during the period beginning July 1, 1974, and ending June 30, 2004,'' before ''shall—'' in introductory provisions.

Pub. L. 108–211 substituted ''June 30, 2004'' for ''March 31, 2004'' in introductory provisions.

Subsec. (h). Pub. L. 108–265, § 118, added subsec. (h).

2003—Subsec. (a). Pub. L. 108–134 substituted ''March 31, 2004'' for ''September 30, 2003'' in introductory provisions.

1998—Subsec. (a). Pub. L. 105–336, § 106, substituted ''2003'' for ''1998'' in introductory provisions.

Subsec. (f). Pub. L. 105–336, § 101(b), substituted ''1755(c)'' for ''1755(e)''.

1996—Subsec. (b). Pub. L. 104–193, § 707(a), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: ''Among the products to be included in the food donations to the school lunch program shall be cereal and shortening and oil products.''

Subsec. (e). Pub. L. 104–193, § 707(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Each State educational agency that receives food assistance payments under this section for any school year shall establish for such year an advisory council, which shall be composed of representatives of schools in the State that participate in the school lunch program. The council shall advise such State agency with respect to the needs of such schools relating to the manner of selection and distribution of commodity assistance for such program.''

Subsec. (g)(3). Pub. L. 104–193, § 707(c), struck out par. (3) relating to cash compensation for losses due to changed methodology of study during 1982–1983 school year.

1994—Subsec. (a). Pub. L. 103–448, § 115(1), substituted ''1998'' for ''1994'' in introductory provisions.

Subsec. (b). Pub. L. 103–448, § 115(2), designated existing provisions as par. (1) and added pars. (2) and (3).

1989—Subsec. (a). Pub. L. 101–147, § 103(a), substituted ''1994'' for ''1989''.

Subsec. (g). Pub. L. 101–147, § 103(b)(1), (2)(A), amended subsec. (g), as amended identically by Pub. L. 99–500 and 99–591, § 363, and Pub. L. 99–661, § 4403, and as further amended by Pub. L. 100–356, § 2, to read as if only the amendment by Pub. L. 99–661 was enacted, and further amended subsec. (g) identically to the amendments that were made by section 2(a) and (b) of Pub. L. 100–356, resulting in changing text by striking out only the language that was inserted by section 2(c) of Pub. L. 100–356 at the end of par. (3)(A), ''The Secretary shall complete action on any claim submitted under this subparagraph not later than 45 days after June 28, 1988.'', see 1986 and 1988 Amendment notes below.

Subsec. (g)(3)(A). Pub. L. 101–147, § 103(c), substituted last four sentences for former last two sentences which read as follows: ''The Secretary, in computing losses sustained by any school district under the preceding sentence, shall base such computation on the actual amount of assistance received by such school district under this chapter for the school year ending June 30, 1982, including—

''(i) the value of assistance in the form of commodities provided in addition to those provided pursuant to section 1755(e) of this title; and

''(ii) the value of assistance provided in the form of either cash or commodity letters of credit.

The Secretary may provide cash compensation under this subparagraph only to eligible school districts that submit applications for such compensation not later than May 1, 1988.''

1988—Subsec. (g)(3)(A). Pub. L. 100–356, § 2(c), inserted at end ''The Secretary shall complete action on any claim submitted under this subparagraph not later than 45 days after June 28, 1988.''

Pub. L. 100–356, § 2(a), inserted at end ''The Secretary, in computing losses sustained by any school district under the preceding sentence, shall base such computation on the actual amount of assistance received by such school district under this chapter for the school year ending June 30, 1982, including—

''(i) the value of assistance in the form of commodities provided in addition to those provided pursuant to section 1755(e) of this title; and

''(ii) the value of assistance provided in the form of either cash or commodity letters of credit.

The Secretary may provide cash compensation under this subparagraph only to eligible school districts that submit applications for such compensation not later than May 1, 1988.''

Subsec. (g)(3)(B). Pub. L. 100–356, § 2(b), substituted ''such sums as may be necessary'' for ''$50,000''.

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591, § 312, and Pub. L. 99–661, § 4102, amended subsec. (a) identically, substituting ''1989'' for ''1984''.

Subsec. (g). Pub. L. 99–500 and Pub. L. 99–591, § 363, and Pub. L. 99–661, § 4403, amended section identically, adding subsec. (g).

1984—Subsec. (c). Pub. L. 98–459 substituted ''(b)(1)'' for ''(c)(1)''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 819(j)(1), substituted ''III'' for ''VII''.

Subsec. (c). Pub. L. 97–35, § 819(j)(2), substituted references to section 311(a)(4) and (c)(1) of the Older Americans Act of 1965, for references to section 3045f(a)(4) and (d)(4) of this title.

Subsec. (f). Pub. L. 97–35, § 813(a), added subsec. (f).

1980—Subsec. (a). Pub. L. 96–499 substituted ''September 30, 1984'' for ''September 30, 1982''.

1978—Subsec. (a)(1). Pub. L. 95–627 inserted ''(which may include domestic seafood commodities and their products)'' after ''under such section''.

1977—Subsec. (a). Pub. L. 95–166, § 6(1), extended termination date for termination of commodity distribution program to Sept. 30, 1982, from Sept. 30, 1977.

Subsecs. (c) to (e). Pub. L. 95–166, § 6(2), added subsecs. (c) to (e).

1975—Pub. L. 94–105 designated existing provisions as subsec. (a), substituted ''September 30, 1977'' for ''June 30, 1975'', and added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 103(b)(2)(B) of Pub. L. 101–147 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if such amendments had been effective on June 28, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 813(a) of Pub. L. 97–35 effective 90 days after Aug. 13, 1981, and amendment by section 819(j) of Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4), (5) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

STUDY OF EFFECT OF COMBINING FEDERALLY DONATED AND FEDERALLY INSPECTED MEAT OR POULTRY

Section 304 of Pub. L. 103–448 directed Comptroller General of the United States to conduct study on incidence and effect of States restricting or prohibiting legally contracted commercial entity from physically combining federally donated and inspected meat or poultry from another State and to submit report to Congress not later than Sept. 1, 1996.

§ 1763. Repealed. Pub. L. 101–147, title I, § 104, Nov. 10, 1989, 103 Stat. 883

Section, act June 4, 1946, ch. 281, § 15, formerly § 14, as added May 14, 1970, Pub. L. 91–248, § 9, 84 Stat. 213; amended Nov. 7, 1973, Pub. L. 93–150, § 8, 87 Stat. 564; renumbered § 15, June 30, 1974, Pub. L. 93–326, § 2, 88 Stat. 286; Nov. 10, 1977, Pub. L. 95–166, § 16, 91 Stat. 1344; Aug. 13, 1981, Pub. L. 97–35, title VIII, § 819(i), 95 Stat. 533, established National Advisory Council on Child Nutrition.

§ 1764. Repealed. Pub. L. 94–105, § 22, Oct. 7, 1975, 89 Stat. 528

Section, act June 4, 1946, ch. 281, § 15, as added June 30, 1971, Pub. L. 92–32, § 1, 85 Stat. 85, authorized use, during fiscal 1971, of not to exceed $35,000,000 from section 612c of Title 7, and not to exceed $100,000,000 during fiscal 1972 to carry out provisions of this chapter, with unexpended funds to remain available in accordance with last sentence of section 1752 of this title.

§ 1765. Election to receive cash payments

(a) Notwithstanding any other provision of law, where a State phased out its commodity distribution facilities prior to June 30, 1974, such State may, for purposes of the programs authorized by this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], elect to receive cash payments in lieu of donated foods. Where such an election is made, the Secretary shall make cash payments to such State in an amount equivalent in value to the donated foods that the State would otherwise have received if it had retained its commodity distribution facilities. The amount of cash payments in the case of lunches shall be governed by section 1755(c) of this title.

(b) When such payments are made, the State educational agency shall promptly and equitably disburse any cash it receives in lieu of commodities to eligible schools and institutions, and such disbursements shall be used by such schools and institutions to purchase United States agricultural commodities and other foods for their food service programs.

(June 4, 1946, ch. 281, § 16, as added Pub. L. 94–105, § 12, Oct. 7, 1975, 89 Stat. 515; amended Pub. L. 101–147, title III, § 309, Nov. 10, 1989, 103 Stat. 915; Pub. L. 105–336, title I, § 101(b), Oct. 31, 1998, 112 Stat. 3144.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–336 substituted ''1755(c)'' for ''1755(e)''.

1989—Pub. L. 101–147 inserted ''Election to receive cash payments'' as section catchline.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

§ 1766. Child and adult care food program

(a) Grant authority and institution eligibility

(1) Grant authority

The Secretary may carry out a program to assist States through grants-in-aid and other means to initiate and maintain nonprofit food service programs for children in institutions providing child care.

(2) Definition of institution

In this section, the term ''institution'' means—

(A) any public or private nonprofit organization providing nonresidential child care or day care outside school hours for school children, including any child care center, settlement house, recreational center, Head Start center, and institution providing child care facilities for children with disabilities;

(B) any other private organization providing nonresidential child care or day care outside school hours for school children, if—

(i) at least 25 percent of the children served by the organization meet the income eligibility criteria established under

section 1758(b) of this title for free or reduced price meals; or

(ii) the organization receives compensation from amounts granted to the States under title XX of the Social Security Act (42 U.S.C. 1397 et seq.) (but only if the organization receives compensation under that title for at least 25 percent of its enrolled children or 25 percent of its licensed capacity, whichever is less);

(C) any public or private nonprofit organization acting as a sponsoring organization for one or more of the organizations described in subparagraph (A) or (B) or for an adult day care center (as defined in subsection (*o*)(2) of this section);

(D) any other private organization acting as a sponsoring organization for, and that is part of the same legal entity as, one or more organizations that are—

(i) described in subparagraph (B); or

(ii) proprietary title XIX or title XX centers (as defined in subsection (*o*)(2) of this section);

(E) any public or private nonprofit organization acting as a sponsoring organization for one or more family or group day care homes; and

(F) any emergency shelter (as defined in subsection (t) of this section).

(3) Age limit

Except as provided in subsection (r) of this section, reimbursement may be provided under this section only for meals or supplements served to children not over 12 years of age (except that such age limitation shall not be applicable for children of migrant workers if 15 years of age or less or for children with disabilities).

(4) Additional guidelines

The Secretary may establish separate guidelines for institutions that provide care to school children outside of school hours.

(5) Licensing

In order to be eligible, an institution (except a school or family or group day care home sponsoring organization) or family or group day care home shall—

(A)(i) be licensed, or otherwise have approval, by the appropriate Federal, State, or local licensing authority; or

(ii) be in compliance with appropriate procedures for renewing participation in the program, as prescribed by the Secretary, and not be the subject of information possessed by the State indicating that the license of the institution or home will not be renewed;

(B) if Federal, State, or local licensing or approval is not available—

(i) meet any alternate approval standards established by the appropriate State or local governmental agency; or

(ii) meet any alternate approval standards established by the Secretary after consultation with the Secretary of Health and Human Services; or

(C) if the institution provides care to school children outside of school hours and Federal, State, or local licensing or approval is not required for the institution, meet State or local health and safety standards.

(6) Eligibility criteria

No institution shall be eligible to participate in the program unless it satisfies the following criteria:

(A) accepts final administrative and financial responsibility for management of an effective food service;

(B) has not been seriously deficient in its operation of the child and adult care food program, or any other program under this chapter or the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], or has not been determined to be ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program, for a period of time specified by the Secretary;

(C)(i) will provide adequate supervisory and operational personnel for overall monitoring and management of the child care food program; and

(ii) in the case of a sponsoring organization, the organization shall employ an appropriate number of monitoring personnel based on the number and characteristics of child care centers and family or group day care homes sponsored by the organization, as approved by the State (in accordance with regulations promulgated by the Secretary), to ensure effective oversight of the operations of the child care centers and family or group day care homes;

(D) in the case of a family or group day care home sponsoring organization that employs more than one employee, the organization does not base payments to an employee of the organization on the number of family or group day care homes recruited;

(E) in the case of a sponsoring organization, the organization has in effect a policy that restricts other employment by employees that interferes with the responsibilities and duties of the employees of the organization with respect to the program; and

(F) in the case of a sponsoring organization that applies for initial participation in the program on or after June 20, 2000, and that operates in a State that requires such institutions to be bonded under State law, regulation, or policy, the institution is bonded in accordance with such law, regulation, or policy.

(b) Limitations on cash assistance

For the fiscal year ending September 30, 1979, and for each subsequent fiscal year, the Secretary shall provide cash assistance to States for meals as provided in subsection (f) of this section, except that, in any fiscal year, the aggregate amount of assistance provided to a State by the Secretary under this section shall not exceed the sum of (1) the Federal funds provided by the State to participating institutions within the State for that fiscal year and (2) any funds used by the State under section 10 of the Child Nutrition Act of 1966 [42 U.S.C. 1779].

(c) Formula for computation of payments; national average payment rate

(1) For purposes of this section, except as provided in subsection (f)(3) of this section, the national average payment rate for free lunches and suppers, the national average payment rate for reduced price lunches and suppers, and the national average payment rate for paid lunches and suppers shall be the same as the national average payment rates for free lunches, reduced price lunches, and paid lunches, respectively, under sections 1753 and 1759a of this title as appropriate (as adjusted pursuant to section 1759a(a) of this title).

(2) For purposes of this section, except as provided in subsection (f)(3) of this section, the national average payment rate for free breakfasts, the national average payment rate for reduced price breakfasts, and the national average payment rate for paid breakfasts shall be the same as the national average payment rates for free breakfasts, reduced price breakfasts, and paid breakfasts, respectively, under section 4(b) of the Child Nutrition Act of 1966 [42 U.S.C. 1773(b)] (as adjusted pursuant to section 1759a(a) of this title).

(3) For purposes of this section, except as provided in subsection (f)(3) of this section, the national average payment rate for free supplements shall be 30 cents, the national average payment rate for reduced price supplements shall be one-half the rate for free supplements, and the national average payment rate for paid supplements shall be 2.75 cents (as adjusted pursuant to section 1759a(a) of this title).

(4) Determinations with regard to eligibility for free and reduced price meals and supplements shall be made in accordance with the income eligibility guidelines for free lunches and reduced price lunches, respectively, under section 1758 of this title.

(5) A child shall be considered automatically eligible for benefits under this section without further application or eligibility determination, if the child is enrolled as a participant in a Head Start program authorized under the Head Start Act (42 U.S.C. 9831 et seq.), on the basis of a determination that the child is a member of a family that meets the low-income criteria prescribed under section 645(a)(1)(A) of the Head Start Act (42 U.S.C. 9840(a)(1)(A)).

(6) A child who has not yet entered kindergarten shall be considered automatically eligible for benefits under this section without further application or eligibility determination if the child is enrolled as a participant in the Even Start program under part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2741 et seq.).[1]

(d) Institution approval and applications

(1) INSTITUTION APPROVAL.—

(A) ADMINISTRATIVE CAPABILITY.—Subject to subparagraph (B) and except as provided in subparagraph (C), the State agency shall approve an institution that meets the requirements of this section for participation in the child and adult care food program if the State agency determines that the institution—

(i) is financially viable;

(ii) is administratively capable of operating the program (including whether the sponsoring organization has business experience and management plans appropriate to operate the program) described in the application of the institution; and

(iii) has internal controls in effect to ensure program accountability.

(B) APPROVAL OF PRIVATE INSTITUTIONS.—

(i) IN GENERAL.—In addition to the requirements established by subparagraph (A) and subject to clause (ii), the State agency shall approve a private institution that meets the requirements of this section for participation in the child and adult care food program only if—

(I) the State agency conducts a satisfactory visit to the institution before approving the participation of the institution in the program; and

(II) the institution—

(aa) has tax exempt status under title 26;

(bb) is operating a Federal program requiring nonprofit status to participate in the program; or

(cc) is described in subsection (a)(2)(B) of this section.

(ii) EXCEPTION FOR FAMILY OR GROUP DAY CARE HOMES.—Clause (i) shall not apply to a family or group day care home.

(C) EXCEPTION FOR CERTAIN SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—The State agency may approve an eligible institution acting as a sponsoring organization for one or more family or group day care homes or centers that, at the time of application, is not participating in the child and adult care food program only if the State agency determines that—

(I) the institution meets the requirements established by subparagraphs (A) and (B); and

(II) the participation of the institution will help to ensure the delivery of benefits to otherwise unserved family or group day care homes or centers or to unserved children in an area.

(ii) CRITERIA FOR SELECTION.—The State agency shall establish criteria for approving an eligible institution acting as a sponsoring organization for one or more family or group day care homes or centers that, at the time of application, is not participating in the child and adult care food program for the purpose of determining if the participation of the institution will help ensure the delivery of benefits to otherwise unserved family or group day care homes or centers or to unserved children in an area.

(D) NOTIFICATION TO APPLICANTS.—Not later than 30 days after the date on which an applicant institution files a completed application with the State agency, the State agency shall notify the applicant institution whether the institution has been approved or disapproved to participate in the child and adult care food program.

[1] See References in Text note below.

(2)(A) The Secretary shall develop a policy that—

(i) allows institutions providing child care that participate in the program under this section, at the option of the State agency, to reapply for assistance under this section at 3-year intervals;

(ii)(I) requires periodic unannounced site visits at not less than 3-year intervals to sponsored child care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program;

(II) requires at least one scheduled site visit each year to sponsored child care centers and family or group day care homes to identify and prevent management deficiencies and fraud and abuse under the program and to improve program operations; and

(III) requires at least one scheduled site visit at not less than 3-year intervals to sponsoring organizations and nonsponsored child care centers to identify and prevent management deficiencies and fraud and abuse under the program and to improve program operations; and

(iii) requires periodic site visits to private institutions that the State agency determines have a high probability of program abuse.

(B) Each State agency that exercises the option authorized by subparagraph (A) shall confirm on an annual basis that each such institution is in compliance with the licensing or approval provisions of subsection (a)(5) of this section.

(3) PROGRAM INFORMATION.—

(A) IN GENERAL.—On enrollment of a child in a sponsored child care center or family or group day care home participating in the program, the center or home (or its sponsoring organization) shall provide to the child's parents or guardians—

(i) information that describes the program and its benefits; and

(ii) the name and telephone number of the sponsoring organization of the center or home and the State agency involved in the operation of the program.

(B) FORM.—The information described in subparagraph (A) shall be in a form and, to the maximum extent practicable, language easily understandable by the child's parents or guardians.

(4) ALLOWABLE ADMINISTRATIVE EXPENSES FOR SPONSORING ORGANIZATIONS.—In consultation with State agencies and sponsoring organizations, the Secretary shall develop, and provide for the dissemination to State agencies and sponsoring organizations of, a list of allowable reimbursable administrative expenses for sponsoring organizations under the program.

(5) TERMINATION OR SUSPENSION OF PARTICIPATING ORGANIZATIONS.—

(A) IN GENERAL.—The Secretary shall establish procedures for the termination of participation by institutions and family or group day care homes under the program.

(B) STANDARDS.—Procedures established pursuant to subparagraph (A) shall include standards for terminating the participation of an institution or family or group day care home that—

(i) engages in unlawful practices, falsifies information provided to the State agency, or conceals a criminal background; or

(ii) substantially fails to fulfill the terms of its agreement with the State agency.

(C) CORRECTIVE ACTION.—Procedures established pursuant to subparagraph (A)—

(i) shall require an entity described in subparagraph (B) to undertake corrective action; and

(ii) may require the immediate suspension of operation of the program by an entity described in subparagraph (B), without the opportunity for corrective action, if the State agency determines that there is imminent threat to the health or safety of a participant at the entity or the entity engages in any activity that poses a threat to public health or safety.

(D) HEARING.—

(i) IN GENERAL.—Except as provided in clause (ii), an institution or family or group day care home shall be provided a fair hearing in accordance with subsection (e)(1) of this section prior to any determination to terminate participation by the institution or family or group day care home under the program.

(ii) EXCEPTION FOR FALSE OR FRAUDULENT CLAIMS.—

(I) IN GENERAL.—If a State agency determines that an institution has knowingly submitted a false or fraudulent claim for reimbursement, the State agency may suspend the participation of the institution in the program in accordance with this clause.

(II) REQUIREMENT FOR REVIEW.—Prior to any determination to suspend participation of an institution under subclause (I), the State agency shall provide for an independent review of the proposed suspension in accordance with subclause (III).

(III) REVIEW PROCEDURE.—The review shall—

(aa) be conducted by an independent and impartial official other than, and not accountable to, any person involved in the determination to suspend the institution;

(bb) provide the State agency and the institution the right to submit written documentation relating to the suspension, including State agency documentation of the alleged false or fraudulent claim for reimbursement and the response of the institution to the documentation;

(cc) require the reviewing official to determine, based on the review, whether the State agency has established, based on a preponderance of the evidence, that the institution has knowingly submitted a false or fraudulent claim for reimbursement;

(dd) require the suspension to be in effect for not more than 120 calendar days after the institution has received notifi-

cation of a determination of suspension in accordance with this clause; and

(ee) require the State agency during the suspension to ensure that payments continue to be made to sponsored centers and family and group day care homes meeting the requirements of the program.

(IV) HEARING.—A State agency shall provide an institution that has been suspended from participation in the program under this clause an opportunity for a fair hearing on the suspension conducted in accordance with subsection (e)(1) of this section.

(E) LIST OF DISQUALIFIED INSTITUTIONS AND INDIVIDUALS.—

(i) IN GENERAL.—The Secretary shall maintain a list of institutions, sponsored family or group day care homes, and individuals that have been terminated or otherwise disqualified from participation in the program.

(ii) AVAILABILITY.—The Secretary shall make the list available to State agencies for use in approving or renewing applications by institutions, sponsored family or group day care homes, and individuals for participation in the program.

(e) Hearing

(1) Except as provided in paragraph (2), the State shall provide, in accordance with regulations issued by the Secretary, a fair hearing and a prompt determination to any institution aggrieved by the action of the State as it affects the participation of such institution in the program authorized by this section, or its claim for reimbursement under this section.

(2) A State is not required to provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination.

(3) If a State does not provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination, the Secretary, on request, shall afford a hearing to the institution concerning the action.

(f) State disbursements to institutions

(1) IN GENERAL.—

(A) REQUIREMENT.—Funds paid to any State under this section shall be disbursed to eligible institutions by the State under agreements approved by the Secretary. Disbursements to any institution shall be made only for the purpose of assisting in providing meals to children attending institutions, or in family or group day care homes. Disbursement to any institution shall not be dependent upon the collection of moneys from participating children. All valid claims from such institutions shall be paid within forty-five days of receipt by the State. The State shall notify the institution within fifteen days of receipt of a claim if the claim as submitted is not valid because it is incomplete or incorrect.

(B) FRAUD OR ABUSE.—

(i) IN GENERAL.—The State may recover funds disbursed under subparagraph (A) to an institution if the State determines that the institution has engaged in fraud or abuse with respect to the program or has submitted an invalid claim for reimbursement.

(ii) PAYMENT.—Amounts recovered under clause (i)—

(I) may be paid by the institution to the State over a period of one or more years; and

(II) shall not be paid from funds used to provide meals and supplements.

(iii) HEARING.—An institution shall be provided a fair hearing in accordance with subsection (e)(1) of this section prior to any determination to recover funds under this subparagraph.

(2)(A) Subject to subparagraph (B) of this paragraph, the disbursement for any fiscal year to any State for disbursement to institutions, other than family or group day care home sponsoring organizations, for meals provided under this section shall be equal to the sum of the products obtained by multiplying the total number of each type of meal (breakfast, lunch or supper, or supplement) served in such institution in that fiscal year by the applicable national average payment rate for each such type of meal, as determined under subsection (c) of this section.

(B) No reimbursement may be made to any institution under this paragraph, or to family or group day care home sponsoring organizations under paragraph (3) of this subsection, for more than two meals and one supplement per day per child, or in the case of an institution (but not in the case of a family or group day care home sponsoring organization), 2 meals and 1 supplement per day per child, for children that are maintained in a child care setting for eight or more hours per day.

(C) LIMITATION ON ADMINISTRATIVE EXPENSES FOR CERTAIN SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—Except as provided in clause (ii), a sponsoring organization of a day care center may reserve not more than 15 percent of the funds provided under paragraph (1) for the administrative expenses of the organization.

(ii) WAIVER.—A State may waive the requirement in clause (i) with respect to a sponsoring organization if the organization provides justification to the State that the organization requires funds in excess of 15 percent of the funds provided under paragraph (1) to pay the administrative expenses of the organization.

(3) REIMBURSEMENT OF FAMILY OR GROUP DAY CARE HOME SPONSORING ORGANIZATIONS.—

(A) REIMBURSEMENT FACTOR.—

(i) IN GENERAL.—An institution that participates in the program under this section as a family or group day care home sponsoring organization shall be provided, for payment to a home sponsored by the organization, reimbursement factors in accordance with this subparagraph for the cost of obtaining and preparing food and prescribed labor costs involved in providing meals under this section.

(ii) TIER I FAMILY OR GROUP DAY CARE HOMES.—

(I) DEFINITION OF TIER I FAMILY OR GROUP DAY CARE HOME.—In this paragraph, the

term ''tier I family or group day care home'' means—

(aa) a family or group day care home that is located in a geographic area, as defined by the Secretary based on census data, in which at least 50 percent of the children residing in the area are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 1758 of this title;

(bb) a family or group day care home that is located in an area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price school meals under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or

(cc) a family or group day care home that is operated by a provider whose household meets the income eligibility guidelines for free or reduced price meals under section 1758 of this title and whose income is verified by the sponsoring organization of the home under regulations established by the Secretary.

(II) REIMBURSEMENT.—Except as provided in subclause (III), a tier I family or group day care home shall be provided reimbursement factors under this clause without a requirement for documentation of the costs described in clause (i), except that reimbursement shall not be provided under this subclause for meals or supplements served to the children of a person acting as a family or group day care home provider unless the children meet the income eligibility guidelines for free or reduced price meals under section 1758 of this title.

(III) FACTORS.—Except as provided in subclause (IV), the reimbursement factors applied to a home referred to in subclause (II) shall be the factors in effect on July 1, 1996.

(IV) ADJUSTMENTS.—The reimbursement factors under this subparagraph shall be adjusted on July 1, 1997, and each July 1 thereafter, to reflect changes in the Consumer Price Index for food at home for the most recent 12-month period for which the data are available. The reimbursement factors under this subparagraph shall be rounded to the nearest lower cent increment and based on the unrounded adjustment in effect on June 30 of the preceding school year.

(iii) TIER II FAMILY OR GROUP DAY CARE HOMES.—

(I) IN GENERAL.—

(aa) FACTORS.—Except as provided in subclause (II), with respect to meals or supplements served under this clause by a family or group day care home that does not meet the criteria set forth in clause (ii)(I), the reimbursement factors shall be 95 cents for lunches and suppers, 27 cents for breakfasts, and 13 cents for supplements.

(bb) ADJUSTMENTS.—The factors shall be adjusted on July 1, 1997, and each July 1 thereafter, to reflect changes in the Consumer Price Index for food at home for the most recent 12-month period for which the data are available. The reimbursement factors under this item shall be rounded down to the nearest lower cent increment and based on the unrounded adjustment for the preceding 12-month period.

(cc) REIMBURSEMENT.—A family or group day care home shall be provided reimbursement factors under this subclause without a requirement for documentation of the costs described in clause (i), except that reimbursement shall not be provided under this subclause for meals or supplements served to the children of a person acting as a family or group day care home provider unless the children meet the income eligibility guidelines for free or reduced price meals under section 1758 of this title.

(II) OTHER FACTORS.—A family or group day care home that does not meet the criteria set forth in clause (ii)(I) may elect to be provided reimbursement factors determined in accordance with the following requirements:

(aa) CHILDREN ELIGIBLE FOR FREE OR REDUCED PRICE MEALS.—In the case of meals or supplements served under this subsection to children who are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 1758 of this title, the family or group day care home shall be provided reimbursement factors set by the Secretary in accordance with clause (ii)(III).

(bb) INELIGIBLE CHILDREN.—In the case of meals or supplements served under this subsection to children who are members of households whose incomes do not meet the income eligibility guidelines, the family or group day care home shall be provided reimbursement factors in accordance with subclause (I).

(III) INFORMATION AND DETERMINATIONS.—

(aa) IN GENERAL.—If a family or group day care home elects to claim the factors described in subclause (II), the family or group day care home sponsoring organization serving the home shall collect the necessary income information, as determined by the Secretary, from any parent or other caretaker to make the determinations specified in subclause (II) and shall make the determinations in accordance with rules prescribed by the Secretary.

(bb) CATEGORICAL ELIGIBILITY.—In making a determination under item (aa), a family or group day care home sponsoring organization may consider a child participating in or subsidized under, or a child with a parent participating in or subsidized under, a federally or State

supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free or reduced price meals under section 1758 of this title to be a child who is a member of a household whose income meets the income eligibility guidelines under section 1758 of this title.

(cc) FACTORS FOR CHILDREN ONLY.—A family or group day care home may elect to receive the reimbursement factors prescribed under clause (ii)(III) solely for the children participating in a program referred to in item (bb) if the home elects not to have income statements collected from parents or other caretakers.

(IV) SIMPLIFIED MEAL COUNTING AND REPORTING PROCEDURES.—The Secretary shall prescribe simplified meal counting and reporting procedures for use by a family or group day care home that elects to claim the factors under subclause (II) and by a family or group day care home sponsoring organization that sponsors the home. The procedures the Secretary prescribes may include 1 or more of the following:

(aa) Setting an annual percentage for each home of the number of meals served that are to be reimbursed in accordance with the reimbursement factors prescribed under clause (ii)(III) and an annual percentage of the number of meals served that are to be reimbursed in accordance with the reimbursement factors prescribed under subclause (I), based on the family income of children enrolled in the home in a specified month or other period.

(bb) Placing a home into 1 of 2 or more reimbursement categories annually based on the percentage of children in the home whose households have incomes that meet the income eligibility guidelines under section 1758 of this title, with each such reimbursement category carrying a set of reimbursement factors such as the factors prescribed under clause (ii)(III) or subclause (I) or factors established within the range of factors prescribed under clause (ii)(III) and subclause (I).

(cc) Such other simplified procedures as the Secretary may prescribe.

(V) MINIMUM VERIFICATION REQUIREMENTS.—The Secretary may establish any minimum verification requirements that are necessary to carry out this clause.

(B) Family or group day care home sponsoring organizations shall also receive reimbursement for their administrative expenses in amounts not exceeding the maximum allowable levels prescribed by the Secretary. Such levels shall be adjusted July 1 of each year to reflect changes in the Consumer Price Index for all items for the most recent 12-month period for which such data are available.

(C)(i) Reimbursement for administrative expenses shall also include start-up funds to finance the administrative expenses for such institutions to initiate successful operation under the program and expansion funds to finance the administrative expenses for such institutions to expand into low-income or rural areas. Institutions that have received start-up funds may also apply at a later date for expansion funds. Such start-up funds and expansion funds shall be in addition to other reimbursement to such institutions for administrative expenses. Start-up funds and expansion funds shall be payable to enable institutions satisfying the criteria of subsection (d) of this section, and any other standards prescribed by the Secretary, to develop an application for participation in the program as a family or group day care home sponsoring organization or to implement the program upon approval of the application. Such start-up funds and expansion funds shall be payable in accordance with the procedures prescribed by the Secretary. The amount of start-up funds and expansion funds payable to an institution shall be not less than the institution's anticipated reimbursement for administrative expenses under the program for one month and not more than the institution's anticipated reimbursement for administrative expenses under the program for two months.

(ii) Funds for administrative expenses may be used by family or group day care home sponsoring organizations to assist unlicensed family or group day care homes in becoming licensed.

(D) LIMITATIONS ON ABILITY OF FAMILY OR GROUP DAY CARE HOMES TO TRANSFER SPONSORING ORGANIZATIONS.—

(i) IN GENERAL.—Subject to clause (ii), a State agency shall limit the ability of a family or group day care home to transfer from a sponsoring organization to another sponsoring organization more frequently than once a year.

(ii) GOOD CAUSE.—The State agency may permit or require a family or group day care home to transfer from a sponsoring organization to another sponsoring organization more frequently than once a year for good cause (as determined by the State agency), including circumstances in which the sponsoring organization of the family or group day care home ceases to participate in the child and adult care food program.

(E) PROVISION OF DATA TO FAMILY OR GROUP DAY CARE HOME SPONSORING ORGANIZATIONS.—

(i) CENSUS DATA.—The Secretary shall provide to each State agency administering a child and adult care food program under this section data from the most recent decennial census survey or other appropriate census survey for which the data are available showing which areas in the State meet the requirements of subparagraph (A)(ii)(I)(aa). The State agency shall provide the data to family or group day care home sponsoring organizations located in the State.

(ii) SCHOOL DATA.—

(I) IN GENERAL.—A State agency administering the school lunch program under this chapter or the school breakfast program under the Child Nutrition Act of 1966

(42 U.S.C. 1771 et seq.) shall provide to approved family or group day care home sponsoring organizations a list of schools serving elementary school children in the State in which not less than ½ of the children enrolled are certified to receive free or reduced price meals. The State agency shall collect the data necessary to create the list annually and provide the list on a timely basis to any approved family or group day care home sponsoring organization that requests the list.

(II) USE OF DATA FROM PRECEDING SCHOOL YEAR.—In determining for a fiscal year or other annual period whether a home qualifies as a tier I family or group day care home under subparagraph (A)(ii)(I), the State agency administering the program under this section, and a family or group day care home sponsoring organization, shall use the most current available data at the time of the determination.

(iii) DURATION OF DETERMINATION.—For purposes of this section, a determination that a family or group day care home is located in an area that qualifies the home as a tier I family or group day care home (as the term is defined in subparagraph (A)(ii)(I)), shall be in effect for 5 years (unless the determination is made on the basis of census data, in which case the determination shall remain in effect until more recent census data are available) unless the State agency determines that the area in which the home is located no longer qualifies the home as a tier I family or group day care home.

(4) By the first day of each month of operation, the State may provide advance payments for the month to each approved institution in an amount that reflects the full level of valid claims customarily received from such institution for one month's operation. In the case of a newly participating institution, the amount of the advance shall reflect the State's best estimate of the level of valid claims such institutions will submit. If the State has reason to believe that an institution will not be able to submit a valid claim covering the period for which such an advance has been made, the subsequent month's advance payment shall be withheld until the State receives a valid claim. Payments advanced to institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance payment.

(g) Meals served by participating institutions; compliance assistance

(1)(A) Meals served by institutions participating in the program under this section shall consist of a combination of foods that meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research.

(B) The Secretary shall provide technical assistance to those institutions participating in the program under this section to assist the institutions and family or group day care home sponsoring organizations in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A).

(2) No physical segregation or other discrimination against any child shall be made because of his or her inability to pay, nor shall there be any overt identification of any such child by special tokens or tickets, different meals or meal service, announced or published lists of names, or other means.

(3) Each institution shall, insofar as practicable, use in its food service foods designated from time to time by the Secretary as being in abundance, either nationally or in the food service area, or foods donated by the Secretary.

(h) Donation of agricultural commodities by Secretary; measurement of value; annual readjustment of assistance; cash in lieu of commodities; Department of Defense child care feeding program

(1)(A) The Secretary shall donate agricultural commodities produced in the United States for use in institutions participating in the child care food program under this section.

(B) The value of the commodities donated under subparagraph (A) (or cash in lieu of commodities) to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions in that State during the preceding school year by the rate for commodities or cash in lieu of commodities established under section 1755(c) of this title for the school year concerned.

(C) After the end of each school year, the Secretary shall—

(i) reconcile the number of lunches and suppers served in participating institutions in each State during such school year with the number of lunches and suppers served by participating institutions in each State during the preceding school year; and

(ii) based on such reconciliation, increase or reduce subsequent commodity assistance or cash in lieu of commodities provided to each State.

(D) Any State receiving assistance under this section for institutions participating in the child care food program may, upon application to the Secretary, receive cash in lieu of some or all of the commodities to which it would otherwise be entitled under this subsection. In determining whether to request cash in lieu of commodities, the State shall base its decision on the preferences of individual participating institutions within the State, unless this proves impracticable due to the small number of institutions preferring donated commodities.

(2) The Secretary is authorized to provide agricultural commodities obtained by the Secretary under the provisions of the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) and donated under the provisions of section 416 of such Act [7 U.S.C. 1431], to the Department of Defense for use by its institutions providing child care services, when such commodities are in excess of the quantities needed to meet the needs of all other child nutrition programs, domestic and foreign food assistance and export enhancement programs. The Secretary shall require reimburse-

ment from the Department of Defense for the costs, or some portion thereof, of delivering such commodities to overseas locations, unless the Secretary determines that it is in the best interest of the program that the Department of Agriculture shall assume such costs.

(i) Audits

(1) Disregards

(A) In general

Subject to subparagraph (B), in conducting management evaluations, reviews, or audits under this section, the Secretary or a State agency may disregard any overpayment to an institution for a fiscal year if the total overpayment to the institution for the fiscal year does not exceed an amount that is consistent with the disregards allowed in other programs under this chapter and recognizes the cost of collecting small claims, as determined by the Secretary.

(B) Criminal or fraud violations

In carrying out this paragraph, the Secretary and a State agency shall not disregard any overpayment for which there is evidence of a violation of a criminal law or civil fraud law.

(2) Funding

The Secretary shall make available for each fiscal year to States administering the child care food program, for the purpose of conducting audits of participating institutions, an amount up to 1.5 percent (except, in the case of each of fiscal years 2005 through 2007, 1 percent) of the funds used by each State in the program under this section, during the second preceding fiscal year.

(j) Agreements

(1) In general

The Secretary may issue regulations directing States to develop and provide for the use of a standard form of agreement between each family or group day care sponsoring organization and the family or group day care homes participating in the program under such organization, for the purpose of specifying the rights and responsibilities of each party.

(2) Duration

An agreement under paragraph (1) shall remain in effect until terminated by either party to the agreement.

(k) Training and technical assistance

A State participating in the program established under this section shall provide sufficient training, technical assistance, and monitoring to facilitate effective operation of the program. The Secretary shall assist the State in developing plans to fulfill the requirements of this subsection.

(*l*) Non-diminishment of State and local funds

Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

(m) Accounts and records

States and institutions participating in the program under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with the requirements of this section. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and appropriate State representatives and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(n) Authorization of appropriations

There are hereby authorized to be appropriated for each fiscal year such funds as are necessary to carry out the purposes of this section.

(*o*) Participation of older persons and chronically impaired disabled persons

(1) For purposes of this section, adult day care centers shall be considered eligible institutions for reimbursement for meals or supplements served to persons 60 years of age or older or to chronically impaired disabled persons, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction. Reimbursement provided to such institutions for such purposes shall improve the quality of meals or level of services provided or increase participation in the program. Lunches served by each such institution for which reimbursement is claimed under this section shall provide, on the average, approximately ⅓ of the daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. Such institutions shall make reasonable efforts to serve meals that meet the special dietary requirements of participants, including efforts to serve foods in forms palatable to participants.

(2) For purposes of this subsection—

(A) the term ''adult day care center'' means any public agency or private nonprofit organization, or any proprietary title XIX or title XX center, which—

(i) is licensed or approved by Federal, State, or local authorities to provide adult day care services to chronically impaired disabled adults or persons 60 years of age or older in a group setting outside their homes, or a group living arrangement, on a less than 24-hour basis; and

(ii) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services; and

(B) the term ''proprietary title XIX or title XX center'' means any private, for-profit center providing adult day care services for which it receives compensation from amounts granted to the States under title XIX or XX of the Social Security Act [42 U.S.C. 1396 et seq., 1397 et seq.] and which title XIX or title XX beneficiaries were not less than 25 percent of enrolled eligible participants in a calendar month preceding initial application or annual reapplication for program participation.

(3)(A) The Secretary, in consulation [2] with the Assistant Secretary for Aging, shall establish, within 6 months of October 1, 1988, separate guidelines for reimbursement of institutions described in this subsection. Such reimbursement shall take into account the nutritional requirements of eligible persons, as determined by the Secretary on the basis of tested nutritional research, except that such reimbursement shall not be less than would otherwise be required under this section.

(B) The guidelines shall contain provisions designed to assure that reimbursement under this subsection shall not duplicate reimbursement under part C of title III of the Older Americans Act of 1965 [42 U.S.C. 3030e et seq.], for the same meal served.

(4) For the purpose of establishing eligibility for free or reduced price meals or supplements under this subsection, income shall include only the income of an eligible person and, if any, the spouse and dependents with whom the eligible person resides.

(5) A person described in paragraph (1) shall be considered automatically eligible for free meals or supplements under this subsection, without further application or eligibility determination, if the person is—

(A) a member of a household receiving assistance under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

(B) a recipient of assistance under title XVI or XIX of the Social Security Act [42 U.S.C. 1381 et seq., 1396 et seq.].

(6) The Governor of any State may designate to administer the program under this subsection a State agency other than the agency that administers the child care food program under this section.

(p) Rural area eligibility determination for day care homes

(1) Definition of selected tier I family or group day care home

In this subsection, the term ''selected tier I family or group day care home'' means a family or group day home that meets the definition of tier I family or group day care home under subclause (I) of subsection (f)(3)(A)(ii) of this section except that items (aa) and (bb) of that subclause shall be applied by substituting ''40 percent'' for ''50 percent''.

(2) Eligibility

For each of fiscal years 2006 and 2007, in rural areas of the State of Nebraska (as determined by the Secretary), the Secretary shall provide reimbursement to selected tier I family or group day care homes (as defined in paragraph (1)) under subsection (f)(3) of this section in the same manner as tier I family or group day care homes (as defined in subsection (f)(3)(A)(ii)(I) of this section).

(3) Evaluation

(A) In general

The Secretary, acting through the Administrator of the Food and Nutrition Service, shall evaluate the impact of the eligibility criteria described in paragraph (2) as compared to the eligibility criteria described in subsection (f)(3)(A)(ii)(I) of this section.

(B) Impact

The evaluation shall assess the impact of the change in eligibility requirements on—

(i) the number of family or group day care homes offering meals under this section;

(ii) the number of family or group day care homes offering meals under this section that are defined as tier I family or group day care homes as a result of paragraph (1) that otherwise would be defined as tier II family or group day care homes under subsection (f)(3)(A)(iii) of this section;

(iii) the geographic location of the family or group day care homes;

(iv) services provided to eligible children; and

(v) other factors determined by the Secretary.

(C) Report

Not later than March 31, 2008, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this subsection.

(D) Funding

(i) In general

On October 1, 2005, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this paragraph $400,000, to remain available until expended.

(ii) Receipt and acceptance

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this paragraph the funds transferred under clause (i), without further appropriation.

(q) Management support

(1) Technical and training assistance

In addition to the training and technical assistance that is provided to State agencies under other provisions of this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), the Secretary shall provide training and technical assistance in order to assist the State agencies in improving their program management and oversight under this section.

(2) Technical and training assistance for identification and prevention of fraud and abuse

As part of training and technical assistance provided under paragraph (1), the Secretary shall provide training on a continuous basis to State agencies, and shall ensure that such training is provided to sponsoring organizations, for the identification and prevention of fraud and abuse under the program and to improve management of the program.

[2] So in original. Probably should be ''consultation''.

(3) Funding

For each of fiscal years 2005 and 2006, the Secretary shall reserve to carry out paragraph (1) $1,000,000 of the amounts made available to carry out this section.

(r) Program for at-risk school children

(1) Definition of at-risk school child

In this subsection, the term ''at-risk school child'' means a school child who—

(A) is not more than 18 years of age, except that the age limitation provided by this subparagraph shall not apply to a child described in section 1760(d)(1)(A) of this title; and

(B) participates in a program authorized under this section operated at a site located in a geographical area served by a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price school meals under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(2) Participation in child and adult care food program

An institution may participate in the program authorized under this section only if the institution provides meals or supplements under a program—

(A) organized primarily to provide care to at-risk school children during after-school hours, weekends, or holidays during the regular school year; and

(B) with an educational or enrichment purpose.

(3) Administration

Except as otherwise provided in this subsection, the other provisions of this section apply to an institution described in paragraph (2).

(4) Meal and supplement reimbursement

(A) Limitations

An institution may claim reimbursement under this subsection only for one meal per child per day and one supplement per child per day served under a program organized primarily to provide care to at-risk school children during after-school hours, weekends, or holidays during the regular school year.

(B) Rates

(i) Meals

A meal shall be reimbursed under this subsection at the rate established for free meals under subsection (c) of this section.

(ii) Supplements

A supplement shall be reimbursed under this subsection at the rate established for a free supplement under subsection (c)(3) of this section.

(C) No charge

A meal or supplement claimed for reimbursement under this subsection shall be served without charge.

(5) Limitation

The Secretary shall limit reimbursement under this subsection for meals served under a program to institutions located in seven States, of which five States shall be Illinois, Pennsylvania, Missouri, Delaware, and Michigan and two States shall be approved by the Secretary through a competitive application process.

(s) Information concerning the special supplemental nutrition program for women, infants, and children

(1) In general

The Secretary shall provide each State agency administering a child and adult care food program under this section with information concerning the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

(2) Requirements for State agencies

Each State agency shall ensure that each participating family and group day care home and child care center (other than an institution providing care to school children outside school hours)—

(A) receives materials that include—

(i) a basic explanation of the importance and benefits of the special supplemental nutrition program for women, infants, and children;

(ii) the maximum State income eligibility standards, according to family size, for the program; and

(iii) information concerning how benefits under the program may be obtained;

(B) receives periodic updates of the information described in subparagraph (A); and

(C) provides the information described in subparagraph (A) to parents of enrolled children at enrollment.

(t) Participation by emergency shelters

(1) Definition of emergency shelter

In this subsection, the term ''emergency shelter'' means—

(A) an emergency shelter (as defined in section 11351 of this title); or

(B) a site operated by the shelter.

(2) Administration

Except as otherwise provided in this subsection, an emergency shelter shall be eligible to participate in the program authorized under this section in accordance with the terms and conditions applicable to eligible institutions described in subsection (a) of this section.

(3) Licensing requirements

The licensing requirements contained in subsection (a)(5) of this section shall not apply to an emergency shelter.

(4) Health and safety standards

To be eligible to participate in the program authorized under this section, an emergency shelter shall comply with applicable State or local health and safety standards.

(5) Meal or supplement reimbursement

(A) Limitations

An emergency shelter may claim reimbursement under this subsection—

(i) only for a meal or supplement served to children residing at an emergency shelter, if the children are—

(I) not more than 18 years of age; or

(II) children with disabilities; and

(ii) for not more than 3 meals, or 2 meals and a supplement, per child per day.

(B) Rate

A meal or supplement eligible for reimbursement shall be reimbursed at the rate at which free meals and supplements are reimbursed under subsection (c) of this section.

(C) No charge

A meal or supplement claimed for reimbursement shall be served without charge.

(June 4, 1946, ch. 281, § 17, as added Pub. L. 94–105, § 16, Oct. 7, 1975, 89 Stat. 522; amended Pub. L. 95–166, §§ 3, 19(d), Nov. 10, 1977, 91 Stat. 1332, 1345; Pub. L. 95–627, § 2, Nov. 10, 1978, 92 Stat. 3603; Pub. L. 96–499, title II, §§ 207(a), 208(b), (c), Dec. 5, 1980, 94 Stat. 2602; Pub. L. 97–35, title VIII, §§ 810, 817(c), 819(k), Aug. 13, 1981, 95 Stat. 528, 532, 534; Pub. L. 99–500, title III, §§ 361, 372(a), Oct. 18, 1986, 100 Stat. 1783–367, 1783–369, and Pub. L. 99–591, title III, §§ 361, 372(a), Oct. 30, 1986, 100 Stat. 3341–370, 3341–372; Pub. L. 99–661, div. D, title IV, § 4401, title V, § 4502(a), Nov. 14, 1986, 100 Stat. 4079, 4080; Pub. L. 100–175, title IV, § 401, Nov. 29, 1987, 101 Stat. 972; Pub. L. 100–435, title II, §§ 211, 214, Sept. 19, 1988, 102 Stat. 1657, 1659; Pub. L. 100–460, title VI, § 641, Oct. 1, 1988, 102 Stat. 2265; Pub. L. 101–147, title I, §§ 105(a), (b), 131(b), title II, § 204(a), title III, §§ 310, 312(2), Nov. 10, 1989, 103 Stat. 883, 907, 909, 915, 916; Pub. L. 102–342, title II, §§ 202, 203, Aug. 14, 1992, 106 Stat. 913; Pub. L. 102–375, title VIII, § 811(a), Sept. 30, 1992, 106 Stat. 1295; Pub. L. 103–171, § 3(b)(4), Dec. 2, 1993, 107 Stat. 1991; Pub. L. 103–448, title I, §§ 105(c), 109(b), 116, Nov. 2, 1994, 108 Stat. 4702, 4705, 4714; Pub. L. 104–193, title VII, § 708(a)–(j), Aug. 22, 1996, 110 Stat. 2293–2299; Pub. L. 105–336, title I, §§ 101(b), 107(a)–(j)(1), (2)(B), (3)(C), Oct. 31, 1998, 112 Stat. 3144, 3149–3153; Pub. L. 106–224, title II, § 243(a), (b)(1)–(4)(A), (5), (c)–(g)(1), (h), (i), June 20, 2000, 114 Stat. 413–420; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 106–472, title III, § 307(c), Nov. 9, 2000, 114 Stat. 2073; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–214; Pub. L. 107–76, title VII, §§ 743, 771, Nov. 28, 2001, 115 Stat. 738, 745; Pub. L. 108–7, div. A, title VII, § 735, Feb. 20, 2003, 117 Stat. 43; Pub. L. 108–134, § 2, Nov. 22, 2003, 117 Stat. 1389; Pub. L. 108–211, § 2, Mar. 31, 2004, 118 Stat. 566; Pub. L. 108–265, title I, § 119(a)–(h), June 30, 2004, 118 Stat. 753–755.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(2)(B)(ii) and (*o*)(2)(B), (5)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI, XIX, and XX of the Act are classified generally to subchapters XVI (§ 1381 et seq.), XIX (§ 1396 et seq.), and XX (§ 1397 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Child Nutrition Act of 1966, referred to in subsecs. (a)(6)(B), (f)(3)(A)(ii)(I)(bb), (E)(ii)(I), (q)(1), and (r)(1)(B), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Head Start Act, referred to in subsec. (c)(5), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

Part B of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(6), means part B of chapter 1 of title I of Pub. L. 89–10 which was classified generally to part B (§ 2741 et seq.) of division 1 of subchapter I of chapter 47 of Title 20, Education, prior to being omitted in the general amendment of Pub. L. 89–10 by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519.

The Agricultural Act of 1949, referred to in subsec. (h)(2), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§ 1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

The Older Americans Act of 1965, referred to in subsec. (*o*)(3)(B), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Part C of title III of the Older Americans Act of 1965 is classified generally to part C (§ 3030e et seq.) of subchapter III of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Food Stamp Act of 1977, referred to in subsec. (*o*)(5)(A), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

October 1, 1988, referred to in subsec. (*o*)(3)(A) [formerly (p)(3)(A)], was in the original ''enactment'', which was translated as meaning the date of enactment of Pub. L. 100–460, which amended subsec. (p)(3)(A) generally, to reflect the probable intent of Congress.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (a)(2)(B)(i). Pub. L. 108–265, § 119(a)(1), struck out ''during the period beginning on December 21, 2000, and ending on June 30, 2004,'' before ''at least''.

Pub. L. 108–211 substituted ''June 30, 2004'' for ''March 31, 2004''.

Subsec. (a)(6)(B). Pub. L. 108–265, § 119(h)(1), inserted ''and adult'' after ''child''.

Subsec. (f)(3)(E)(iii). Pub. L. 108–265, § 119(b), substituted ''5 years'' for ''3 years''.

Subsec. (i). Pub. L. 108–265, § 119(c), inserted subsec. heading, designated existing provisions as par. (2), inserted par. heading, and added par. (1).

Subsec. (j). Pub. L. 108–265, § 119(d), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

Subsec. (p). Pub. L. 108–265, § 119(e), added subsec. (p).

Pub. L. 108–265, § 119(a)(2), struck out subsec. (p), which related to demonstration projects for qualification under this section of private for-profit organizations providing nonresidential day care services.

Subsec. (q)(3). Pub. L. 108–265, § 119(f), substituted ''2005 and 2006'' for ''1999 through 2003''.

Subsec. (t)(3). Pub. L. 108–265, § 119(h)(2), substituted ''subsection (a)(5)'' for ''subsection (a)(1)''.

Subsec. (t)(5)(A)(i). Pub. L. 108–265, § 119(g), in subcl. (I), substituted ''18'' for ''12'' and inserted ''or'' at end, redesignated subcl. (III) as (II), and struck out former subcl. (II) which read as follows: ''children of migrant workers, if the children are not more than 15 years of age; or''.

2003—Subsec. (a)(2)(B)(i). Pub. L. 108–134 substituted ''March 31, 2004'' for ''September 30, 2003''.

Pub. L. 108–7 substituted ''2003'' for ''2002''.

2001—Subsec. (a)(2)(B)(i). Pub. L. 107–76, § 743, substituted ''2002'' for ''2001''.

Subsec. (r)(5). Pub. L. 107–76, § 771, substituted ''located in seven'' for ''located in six'' and ''of which five'' for ''of which four'' and inserted ''Illinois,'' before ''Pennsylvania''.

2000—Pub. L. 106–472, § 307(c)(1)(A), made technical amendment to section catchline.

Subsec. (a). Pub. L. 106–224, § 243(a)(1)–(7), inserted subsec. (a) heading, inserted par. (1) designation and heading before ''The Secretary may carry'', substituted par. (2) for ''For purposes of this section, the term 'institution' means any public or private nonprofit organization providing nonresidential child care, including, but not limited to, child care centers, settlement houses, recreational centers, Head Start centers, and institutions providing child care facilities for children with disabilities; and such term shall also mean any other private organization providing nonresidential day care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act (but only if such organization receives compensation under such title for at least 25 percent of its enrolled children or 25 percent of its licensed capacity, whichever is less). In addition, the term 'institution' shall include programs developed to provide day care outside school hours for schoolchildren, public or nonprofit private organizations that sponsor family or group day care homes, and emergency shelters (as provided in subsection (t) of this section).'', inserted par. (3) designation and heading before ''Except as provided in subsection (r)'', inserted par. (4) designation and heading before ''The Secretary may establish separate guidelines'', inserted par. (5) designation and heading after ''school children outside of school hours.'', substituted ''In order to be eligible,'' for ''For purposes of determining eligibility—'', struck out former par. (1) designation before ''an institution (except a school or family'', substituted ''standards.'' for ''standards; and'', and substituted par. (6) designation and heading for former par. (2) designation and ''No institution'' for ''no institution''.

Subsec. (a)(2)(B). Pub. L. 106–554 substituted ''children, if—'' for ''children for which'', added cl. (i), and designated remaining provisions as cl. (ii).

Subsec. (a)(6)(B). Pub. L. 106–224, § 243(a)(8)(A), inserted '', or has not been determined to be ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program'' before '', for a period''.

Subsec. (a)(6)(C). Pub. L. 106–224, § 243(a)(8)(B), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(6)(C)(ii). Pub. L. 106–472, § 307(c)(1)(B), struck out ''and'' at end.

Subsec. (a)(6)(D). Pub. L. 106–224, § 243(a)(8)(C), substituted a semicolon for the period at end.

Subsec. (a)(6)(E), (F). Pub. L. 106–224, § 243(a)(8)(D), added subpars. (E) and (F).

Subsec. (d). Pub. L. 106–224, § 243(b)(1), inserted subsec. heading.

Subsec. (d)(1). Pub. L. 106–224, § 243(b)(1), added par. (1) and struck out former par. (1), which had provided that any eligible public institution would be approved upon its request, that any eligible private institution would be approved if it had been visited by a State agency and had either tax exempt status or had been operating a Federal program requiring nonprofit status, and set forth provisions relating to tax exempt certification of family or group day care homes, authorizing temporary participation for an institution moving toward compliance, and requiring notice of approval or disapproval of application within 30 days after filing.

Subsec. (d)(2)(A)(ii), (iii). Pub. L. 106–224, § 243(b)(2), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (d)(2)(B). Pub. L. 106–224, § 243(b)(3), substituted ''subsection (a)(5)'' for ''subsection (a)(1)''.

Subsec. (d)(3). Pub. L. 106–224, § 243(b)(4)(A), added par. (3).

Subsec. (d)(4). Pub. L. 106–224, § 243(b)(5), added par. (4).

Subsec. (d)(5). Pub. L. 106–224, § 243(c), added par. (5).

Subsec. (d)(5)(D). Pub. L. 106–472, § 307(c)(2), designated existing provisions as cl. (i), inserted cl. (i) heading, substituted ''Except as provided in cl. (ii), an institution'' for ''An institution'', and added cl. (ii).

Subsec. (f). Pub. L. 106–224, § 243(d)(1), inserted heading.

Subsec. (f)(1). Pub. L. 106–224, § 243(d), inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. heading, and added subpar. (B).

Subsec. (f)(2)(C). Pub. L. 106–224, § 243(e), added subpar. (C).

Subsec. (f)(3)(D). Pub. L. 106–224, § 243(f), added subpar. (D) and struck out former subpar. (D), which required the Secretary to reserve $5,000,000 of the amount made available for fiscal year 1997 for grants to States to provide assistance to family or group day care homes and set forth provisions relating to allocation and retention of funds and additional payments.

Subsec. (p)(1). Pub. L. 106–224, § 243(g)(1)(A), substituted ''State-wide demonstration projects in three States'' for ''2 statewide demonstration projects'' in first sentence of introductory provisions.

Subsec. (p)(3). Pub. L. 106–224, § 243(g)(1)(B)(i), inserted ''in'' after ''subsection'' in introductory provisions.

Subsec. (p)(3)(C). Pub. L. 106–224, § 243(g)(1)(B)(ii)–(iv), added subpar. (C).

Subsec. (p)(3)(C)(iii). Pub. L. 106–472, § 307(c)(3)(A), substituted ''all low-income families'' for ''all families''.

Subsec. (p)(3)(C)(iv). Pub. L. 106–472, § 307(c)(3)(B), substituted ''reported for fiscal year 1998'' for ''made''.

Subsec. (q)(2), (3). Pub. L. 106–224, § 243(h), added par. (2) and redesignated former par. (2) as (3).

Subsec. (r)(2). Pub. L. 106–224, § 243(i)(1), inserted ''meals or'' before ''supplements'' in introductory provisions.

Subsec. (r)(4). Pub. L. 106–224, § 243(i)(2)(A), substituted ''Meal and supplement'' for ''Supplement'' in par. heading.

Subsec. (r)(4)(A). Pub. L. 106–224, § 243(i)(2)(B), substituted ''only for one meal per child per day and one supplement per child per day'' for ''only for—'', struck out ''(i) a supplement'' before ''served under'', substituted a period for ''; and'', and struck out cl. (ii) which read as follows: ''one supplement per child per day.''

Subsec. (r)(4)(B). Pub. L. 106–224, § 243(i)(2)(C), in par. heading, substituted ''Rates'' for ''Rate'', added cl. (i), designated existing provisions as cl. (ii), and inserted cl. (ii) heading.

Subsec. (r)(4)(C). Pub. L. 106–224, § 243(i)(2)(D), inserted ''meal or'' before ''supplement''.

Subsec. (r)(5). Pub. L. 106–224, § 243(i)(3), added par. (5).

Subsec. (t)(1)(A). Pub. L. 106–400 made technical amendment to reference in original act which appears in text as reference to section 11351 of this title.

1998—Subsec. (a). Pub. L. 105–336, § 107(j)(3)(C), substituted ''children with disabilities'' for ''children with handicaps'' in two places in introductory provisions.

Pub. L. 105–336, § 107(j)(2)(B), in third sentence of introductory provisions, substituted ''public'' for ''and public'' and inserted, '', and emergency shelters (as provided in subsection (t) of this section)'' before period at end.

Pub. L. 105–336, § 107(a)(1), in fourth sentence of introductory provisions, substituted ''Except as provided in subsection (r) of this section, reimbursement'' for ''Reimbursement''.

Subsec. (a)(1). Pub. L. 105–336, § 107(a)(2), added par. (1) and struck out former par. (1) which read as follows: ''no institution, other than a family or group day care home sponsoring organization, or family or group day care home shall be eligible to participate in the program unless it has Federal, State, or local licensing or approval, or is complying with appropriate renewal procedures as prescribed by the Secretary and the State has no information indicating that the institution's license will not be renewed; or where Federal, State, or local licensing or approval is not available, it receives

funds under title XX of the Social Security Act or otherwise demonstrates that it meets either any applicable State or local government licensing or approval standards or approval standards established by the Secretary after consultation with the Secretary of Health and Human Services; and''.

Subsec. (c)(6). Pub. L. 105–336, §107(b), struck out ''(A)'' before ''A child'' and struck out subpar. (B) which read as follows: ''Subparagraph (A) shall apply only with respect to the provision of benefits under this section for the period beginning September 1, 1995, and ending September 30, 1997.''

Subsec. (d)(1). Pub. L. 105–336, §107(c)(1), (d), inserted ''has been visited by a State agency prior to approval and it'' after ''if it'' in second sentence, inserted ''An institution moving toward compliance with the requirement for tax exempt status shall be allowed to participate in the child and adult care food program for a period of not more than 180 days, except that a State agency may grant a single extension of not to exceed an additional 90 days if the institution demonstrates, to the satisfaction of the State agency, that the inability of the institution to obtain tax exempt status within the 180-day period is due to circumstances beyond the control of the institution.'' after third sentence, and struck out at end ''If an institution submits an incomplete application to the State, the State shall so notify the institution within fifteen days of receipt of the application.''

Subsec. (d)(2)(A). Pub. L. 105–336, §107(c)(2), substituted ''policy that—'' for ''policy that'', inserted ''(i)'' before ''allows institutions'', substituted ''; and'' for period at end, and added cl. (ii).

Subsec. (h)(1)(B). Pub. L. 105–336, §101(b), substituted ''1755(c)'' for ''1755(e)''.

Subsec. (i). Pub. L. 105–336, §107(e), substituted ''1.5 percent (except, in the case of each of fiscal years 2005 through 2007, 1 percent)'' for ''2 percent''.

Subsec. (p)(4), (5). Pub. L. 105–336, §107(f), struck out pars. (4) and (5) which read as follows:

''(4) Such project shall—

''(A) commence not earlier than May 1, 1990, and not later than June 30, 1990; and

''(B) terminate on September 30, 1998.

''(5) Notwithstanding paragraph (4)(B), the Secretary shall continue until September 30, 1998, the two pilot projects established under this subsection to the extent, and in such amounts, as are provided for in advance in appropriations Acts.''

Subsec. (q). Pub. L. 105–336, §107(g), added subsec. (q).

Subsec. (r). Pub. L. 105–336, §107(h), added subsec. (r).

Subsec. (s). Pub. L. 105–336, §107(i), added subsec. (s).

Subsec. (t). Pub. L. 105–336, §107(j)(1), added subsec. (t).

1996—Subsec. (a). Pub. L. 104–193, §708(a), substituted ''initiate and maintain nonprofit food service programs'' for ''initiate, maintain, and expand nonprofit food service programs'' in first sentence.

Subsec. (a)(2)(D). Pub. L. 104–193, §708(b), added subpar. (D).

Subsec. (c)(1) to (3). Pub. L. 104–193, §708(e)(4), inserted ''except as provided in subsection (f)(3) of this section,'' after ''For purposes of this section,''.

Subsec. (d)(1). Pub. L. 104–193, §708(c), struck out '', and shall provide technical assistance, if necessary, to the institution for the purpose of completing its application'' before period at end.

Subsec. (f)(2)(B). Pub. L. 104–193, §708(d), substituted ''2 meals and 1 supplement'' for ''two meals and two supplements or three meals and one supplement''.

Subsec. (f)(3). Pub. L. 104–193, §708(e)(1), inserted heading.

Subsec. (f)(3)(A). Pub. L. 104–193, §708(e)(1), added heading and text of subpar. (A) and struck out former subpar. (A) which read as follows: ''Institutions that participate in the program under this section as family or group day care home sponsoring organizations shall be provided, for payment to such homes, a reimbursement factor set by the Secretary for the cost of obtaining and preparing food and prescribed labor costs, involved in providing meals under this section, without a requirement for documentation of such costs, except that reimbursement shall not be provided under this subparagraph for meals or supplements served to the children of a person acting as a family or group day care home provider unless such children meet the eligibility standards for free or reduced price meals under section 1758 of this title. The reimbursement factor in effect as of August 13, 1981, shall be reduced by 10 percent. The reimbursement factor under this subparagraph shall be adjusted on July 1 of each year to reflect changes in the Consumer Price Index for food away from home for the most recent 12-month period for which such data are available. The reimbursement factor under this subparagraph shall be rounded to the nearest one-fourth cent.''

Subsec. (f)(3)(B). Pub. L. 104–193, §708(f)(1)(A), struck out at end ''The maximum allowable levels for administrative expense payments, as in effect as of August 13, 1981, shall be adjusted by the Secretary so as to achieve a 10 percent reduction in the total amount of reimbursement provided to institutions for such administrative expenses. In making the reduction required by the preceding sentence, the Secretary shall increase the economy of scale factors used to distinguish institutions that sponsor a greater number of family or group day care homes from those that sponsor a lesser number of such homes.''

Subsec. (f)(3)(C)(ii). Pub. L. 104–193, §708(f)(1)(B), substituted ''assist unlicensed family or group day care homes in becoming'' for ''conduct outreach and recruitment to unlicensed family or group day care homes so that the day care homes may become''.

Subsec. (f)(3)(D). Pub. L. 104–193, §708(e)(2), added subpar. (D).

Subsec. (f)(3)(E). Pub. L. 104–193, §708(e)(3), added subpar. (E).

Subsec. (f)(4). Pub. L. 104–193, §708(f)(2), substituted ''State may provide'' for ''State shall provide'' in first sentence.

Subsec. (g)(1)(A). Pub. L. 104–193, §708(g)(1), struck out at end ''Such meals shall be served free to needy children.''

Subsec. (g)(1)(B). Pub. L. 104–193, §708(g)(2), struck out at end ''The Secretary shall provide additional technical assistance to those institutions and family or group day care home sponsoring organizations that are having difficulty maintaining compliance with the requirements.''

Subsec. (k). Pub. L. 104–193, §708(h), added heading and text of subsec. (k) and struck out former subsec. (k) consisting of pars. (1) to (3) which related to training and technical assistance, monitoring, research, and demonstration projects.

Subsec. (m). Pub. L. 104–193, §708(i), substituted ''available at any reasonable time'' for ''available at all times''.

Subsec. (q). Pub. L. 104–193, §708(j), struck out subsec. (q) which related to provision of information concerning special supplemental nutrition program for women, infants, and children.

1994—Subsec. (c)(5). Pub. L. 103–448, §109(b), added par. (5).

Subsec. (c)(6). Pub. L. 103–448, §116(a), added par. (6).

Subsec. (d)(2)(A). Pub. L. 103–448, §116(b), substituted ''3-year intervals'' for ''2-year intervals''.

Subsec. (f)(3)(C). Pub. L. 103–448, §116(c), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (g)(1). Pub. L. 103–448, §105(c), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (k)(4). Pub. L. 103–448, §116(d), added par. (4).

Subsec. (p). Pub. L. 103–448, §116(e), substituted ''25 percent of the children enrolled in the organization or 25 percent of the licensed capacity of the organization for children, whichever is less,'' for ''25 percent of the children served by such organization'' in par. (1)(A), ''1998'' for ''1992'' in par. (4)(B), and ''1998'' for ''1994'' in par. (5).

Subsec. (q). Pub. L. 103–448, §116(f), added subsec. (q).

1993—Subsec. (*o*)(3)(A). Pub. L. 103–171 substituted ''Assistant Secretary for Aging'' for ''Commissioner of Aging''.

1992—Subsec. (a). Pub. L. 102–342, § 202, substituted ''of its enrolled children or 25 percent of its licensed capacity, whichever is less'' for ''of the children for which the organization provides such nonresidential day care services''.

Subsec. (*o*)(2)(A)(i). Pub. L. 102–375 inserted '', or a group living arrangement,'' after ''homes''.

Subsec. (p)(5). Pub. L. 102–342, § 203, added par. (5).

1989—Pub. L. 101–147, § 105(a), substituted ''Child and adult care food program'' for ''Child care food program'' in section catchline.

Subsec. (a). Pub. L. 101–147, § 310(a)(1), substituted ''children with handicaps'' for ''handicapped children'' wherever appearing.

Subsec. (c). Pub. L. 101–147, § 312(2), substituted ''reduced price'' for ''reduced-price'' wherever appearing.

Subsec. (d). Pub. L. 101–147, § 204(a), designated existing provisions as par. (1), redesignated cls. (1) and (2) as (A) and (B), respectively, and added par. (2).

Subsec. (d)(1). Pub. L. 101–147, § 310(a)(2), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (e). Pub. L. 101–147, § 310(b), amended subsec. (e), as identically amended by Pub. L. 99–500 and 99–591, § 361, and Pub. L. 99–661, § 4401, to read as if only the amendment by Pub. L. 99–661 was enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (f)(1). Pub. L. 101–147, § 310(a)(3)(A), substituted ''day care'' for ''day-care''.

Subsec. (f)(2)(B). Pub. L. 101–147, § 310(a)(3)(B), struck out second period at end.

Subsec. (f)(3)(A). Pub. L. 101–147, § 312(2), substituted ''reduced price'' for ''reduced-price''.

Subsec. (f)(3)(C). Pub. L. 101–147, § 105(b)(1), inserted before period at end of first sentence ''and expansion funds to finance the administrative expenses for such institutions to expand into low-income or rural areas'', inserted ''and expansion funds'' after ''start-up funds'' in second, fourth, and fifth sentences and after ''Start-up funds'' in third sentence, and inserted after first sentence ''Institutions that have received start-up funds may also apply at a later date for expansion funds.''

Subsec. (h)(1). Pub. L. 101–147, § 131(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary shall donate agricultural commodities produced in the United States for use in institutions participating in the child care food program under this section. The value of such commodities (or cash in lieu of commodities) donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions in that State during that school year by the rate for commodities or cash in lieu thereof established for that school year under section 1755(e) of this title. Any State receiving assistance under this section for institutions participating in the child care food program may, upon application to the Secretary, receive cash in lieu of some or all of the commodities to which it would otherwise be entitled under this subsection. In determining whether to request cash in lieu of commodities, the State shall base its decision on the preferences of individual participating institutions within the State, unless this proves impracticable due to the small number of institutions preferring donated commodities.''

Subsec. (k). Pub. L. 101–147, § 310(a)(4), redesignated subsec. (*l*) as (k) and struck out former subsec. (k) which related to study and report on maximum administrative payments reflecting costs of institutions.

Subsec. (*l*). Pub. L. 101–147, § 310(a)(4), redesignated subsec. (m) as (*l*). Former subsec. (*l*) redesignated (k).

Pub. L. 101–147, § 105(b)(2), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsecs. (m), (n). Pub. L. 101–147, § 310(a)(4), redesignated subsecs. (n) and (*o*) as (m) and (n), respectively. Former subsec. (m) redesignated (*l*).

Subsec. (*o*). Pub. L. 101–147, § 312(2), substituted ''reduced price'' for ''reduced-price'' in par. (4).

Pub. L. 101–147, § 310(a)(4), redesignated subsec. (p) as (*o*). Former subsec. (*o*) redesignated (n).

Subsec. (p). Pub. L. 101–147, § 310(a)(4), redesignated subsec. (q) as (p). Former subsec. (p) redesignated (*o*).

Pub. L. 101–147, § 105(b)(3)(A), inserted at end of par. (1) ''Lunches served by each such institution for which reimbursement is claimed under this section shall provide, on the average, approximately ⅓ of the daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. Such institutions shall make reasonable efforts to serve meals that meet the special dietary requirements of participants, including efforts to serve foods in forms palatable to participants.''

Pub. L. 101–147, § 105(b)(3)(B), added par. (6).

Subsec. (q). Pub. L. 101–147, § 310(a)(4), redesignated subsec. (q) as (p).

Pub. L. 101–147, § 105(b)(4), added subsec. (q).

1988—Subsec. (f)(2)(B). Pub. L. 100–435, § 211, inserted provisions relating to reimbursement to institutions maintaining a child care setting for eight or more hours per day.

Subsec. (h). Pub. L. 100–435, § 214, designated existing provisions as par. (1) and added par. (2).

Subsec. (p)(3)(A). Pub. L. 100–460, § 641(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The Secretary of Agriculture, in consultation with the Commissioner on Aging, may establish separate guidelines for reimbursement of institutions described in this subsection.''

Subsec. (p)(4). Pub. L. 100–460, § 641(a), added par. (4).

Subsec. (p)(5). Pub. L. 100–460, § 641(b), added par. (5).

1987—Subsec. (p). Pub. L. 100–175 added subsec. (p).

1986—Subsec. (a)(1). Pub. L. 99–500 and Pub. L. 99–591, § 372(a), and Pub. L. 99–661, § 4502(a), amended par. (1) identically, substituting ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (e). Pub. L. 99–500 and Pub. L. 99–591, § 361, and Pub. L. 99–661, § 4401, amended subsec. (e) identically, designating existing provisions as par. (1), substituting ''Except as provided in paragraph (2), the'' for ''The'', and adding pars. (2) and (3).

1981—Subsec. (a). Pub. L. 97–35, § 810(a), inserted provisions respecting 25 percent requirement for children receiving nonresidential day care services, and reimbursement for meals and supplements.

Subsec. (b). Pub. L. 97–35, § 810(b), substituted provisions respecting applicability of subsec. (f), for provisions respecting applicability of subsec. (c).

Subsec. (c). Pub. L. 97–35, § 810(c), substituted provisions respecting applicability, determinations, etc., for national average payment rates for free lunches and suppers, etc., for provisions respecting formula for computation of payments, and applicability of national average payment rates.

Subsec. (f)(1). Pub. L. 97–35, § 819(k), struck out authorization respecting financing the cost of meals.

Subsec. (f)(2) to (5). Pub. L. 97–35, § 810(d), in par. (2) substituted provisions setting forth formula for disbursements for meals for provisions setting forth maximum per meal rates of reimbursements, struck out par. (3) which related to election rights of institutions other than family or group day care home sponsoring organizations, redesignated par. (4) as (3) and, as so redesignated, substantially revised and restructured provisions, and redesignated par. (5) as (4).

Subsec. (g). Pub. L. 97–35, § 810(e), struck out par. (2) which related to prohibitions respecting meals served by institutions, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (i). Pub. L. 97–35, §§ 810(f), 817(c)(2), struck out subsec. (i) which related to information required from State plans. Former subsec. (j) redesignated (i).

Subsecs. (j) to (*l*). Pub. L. 97–35, §§ 810(g), 817(c)(2), redesignated subsecs. (k), (*l*), and (*o*) as (j), (k), and (*l*), respectively, and in subsec. (*l*), as so redesignated, struck out provision respecting availability of funds from food service equipment program. Former subsecs. (j) to (*l*) redesignated (i) to (k), respectively.

Subsec. (m). Pub. L. 97–35, § 817(c), struck out subsec. (m) which related to withholding of funds. Subsec. (p) redesignated (m).

Subsec. (n). Pub. L. 97–35, §§ 810(f), 817(c)(2), struck out subsec. (n) which related to appropriations, etc., for equipment assistance. Subsec. (q) redesignated (n).

Subsecs. (*o*) to (r). Pub. L. 97–35, § 817(c)(2), redesignated subsecs. (*o*) to (r) as (*l*) to (*o*), respectively.

1980—Subsec. (a). Pub. L. 96–499, § 207(a), included in definition of ''institution'' any private organization providing nonresidential day care services for which compensation was received from amounts granted to the States under title XX of the Social Security Act.

Subsec. (c). Pub. L. 96–499, § 208(b), inserted provision in pars. (1), (2), and (3) that the average payment rates for supplements served in such institutions was to be three cents lower than the adjusted rates prescribed by the Secretary in accordance with the adjustment formulas contained in such pars. (1), (2), and (3).

Subsec. (n)(1). Pub. L. 96–499, § 208(c), substituted ''$4,000,000'' for ''$6,000,000''.

1978—Subsec. (a). Pub. L. 95–627 excepted family or group day care homes from licensing requirements, set out guidelines for institutions providing care for children outside of school hours, and set out criteria for determining eligibility under this section.

Subsec. (b). Pub. L. 95–627 substituted provisions limiting the aggregate amount of cash assistance to a State under this section for provisions setting out a formula for computation of payments under this section and adjustments to such payments. See subsec. (c) of this section.

Subsec. (c). Pub. L. 95–627 substituted provisions relating to the formula for the computation of payments under this section and the prescription of a national average payment rate for provisions relating to the maintenance of national nutritional standards and the prohibition of discrimination and identification of children unable to pay under the program.

Subsec. (d). Pub. L. 95–627 substituted provisions stating requirements for approval for participation in the program and requiring written notification of such approval or disapproval for provisions relating to State disbursements to participating institutions.

Subsec. (e). Pub. L. 95–627 substituted provisions relating to fair hearings for provisions relating to donations of agricultural commodities and cash in lieu of commodities. See subsec. (h) of this section.

Subsec. (f). Pub. L. 95–627 substituted provisions relating to disbursements to participating institutions by the State for provisions calling for direct disbursements to participating institutions by the Secretary and prescribing conditions therefor.

Subsec. (g). Pub. L. 95–627 substituted provisions relating to meals served at participating institutions and the necessary nutritional content thereof for provisions prohibiting the diminution of expenditures by State and local sources by reason of the availability of Federal funds.

Subsec. (h). Pub. L. 95–627 substituted provisions relating to donations of agricultural land commodities and cash in lieu of commodities for provisions authorizing appropriations to meet the administrative expenditures of the Secretary.

Subsec. (i). Pub. L. 95–627 substituted provisions relating to information required from State plans for provisions requiring adequate accounts and general record-keeping by States, State educational agencies, and participating institutions.

Subsec. (j). Pub. L. 95–627 substituted provisions relating to the availability of Federal funds to the States for audits of participating institutions for provisions relating to food service equipment assistance and the apportionment of unused funds.

Subsec. (k). Pub. L. 95–627 substituted provisions relating to the use of a standard form of agreement and the issuance of regulations pertaining to such use for provisions relating to the issuance of rules and regulations to carry out this section by the Secretary.

Subsecs. (*l*) to (r). Pub. L. 95–627 added subsecs. (*l*) to (r).

1977—Subsec. (e). Pub. L. 95–166, § 19(d), substituted in last sentence ''school year'' for ''fiscal year'' in three instances.

Subsec. (j)(1). Pub. L. 95–166, § 3, substituted ''food service equipment assistance'' for ''nonfood assistance''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 119(a), (b), (d)–(f), (h) of Pub. L. 108–265 effective June 30, 2004, and amendment by section 119(c), (g) of Pub. L. 108–265 effective Oct. 1, 2004, see section 502(a), (b)(2) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–224, title II, § 243(b)(4)(B), June 20, 2000, 114 Stat. 417, provided that: ''In the case of a child that is enrolled in a sponsored child care center or family or group day care home participating in the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) before the date of the enactment of this Act [June 20, 2000], the center or home shall provide information to the child's parents or guardians pursuant to section 17(d)(3) of that Act [42 U.S.C. 1766(d)(3)], as added by subparagraph (A), not later than 90 days after the date of the enactment of this Act.''

Pub. L. 106–224, title II, § 243(g)(2), June 20, 2000, 114 Stat. 419, provided that: ''The Secretary may carry out demonstration projects in the State described in section 17(p)(3)(C) of the Richard B. Russell National School Lunch Act [42 U.S.C. 1766(p)(3)(C)], as added by paragraph (1)(B)(iv), beginning not earlier than October 1, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 107(j)(1), (2)(B) of Pub. L. 105–336 effective July 1, 1999, see section 107(j)(4) of Pub. L. 105–336, set out as a note under section 1761 of this title.

Amendment by sections 101(b) and 107(a)–(i), (j)(3)(C) of Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 708(k)(1), (2) of Pub. L. 104–193 provided that: ''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall become effective on the date of enactment of this Act [Aug. 22, 1996].

''(2) IMPROVED TARGETING OF DAY CARE HOME REIMBURSEMENTS.—The amendments made by paragraphs (1) and (4) of subsection (e) [amending this section] shall become effective on July 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 105(c) and 116 of Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

Amendment by section 109(b) of Pub. L. 103–448 effective Sept. 25, 1995, see section 109(c) of Pub. L. 103–448, set out as a note under section 1758 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 811(b) of Pub. L. 102–375 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if the amendment had been included in the Older Americans Act Amendments of 1987 [Pub. L. 100–375].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 131(b) of Pub. L. 101–147 effective July 1, 1989, see section 131(c) of Pub. L. 101–147, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 211 of Pub. L. 100–435 to be effective and implemented on July 1, 1989, and amend-

ment by section 214 of Pub. L. 100–435 to be effective and implemented on Oct. 1, 1988, see section 701(a), (b)(4) of Pub. L. 100–435, set out as a note under section 2012 of Title 7, Agriculture.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–175 effective Oct. 1, 1987, see section 701(a) of Pub. L. 100–175, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 810(a), (f), (g), 817(c), and 819(k) of Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(3), (4) of Pub. L. 97–35, set out as a note under section 1753 of this title. For effective dates of amendments by section 810(b)–(e) of Pub. L. 97–35, see section 820(a)(1)(B)–(D), (3), (4), (6) of Pub. L. 97–35.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 207(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall apply with respect to all fiscal years beginning on or after October 1, 1980.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 19 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

IMPLEMENTATION OF 1989 AMENDMENTS

Section 105(d) of Pub. L. 101–147 provided that:

''(1) EXPANSION; DEMONSTRATION PROJECT.—The Secretary of Agriculture shall implement the amendments made by subsections (b)(1) and (b)(2) [amending this section] not later than July 1, 1990.

''(2) DIETARY REQUIREMENTS FOR ADULT DAY CARE FOOD PROGRAM.—Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement the amendments made by subsection (b)(3) [amending this section].''

REGULATIONS

Section 708(k)(3) of Pub. L. 104–193 provided that:

''(A) INTERIM REGULATIONS.—Not later than January 1, 1997, the Secretary of Agriculture shall issue interim regulations to implement—

''(i) the amendments made by paragraphs (1), (3), and (4) of subsection (e) [amending this section]; and

''(ii) section 17(f)(3)(C) of the [Richard B. Russell] National School Lunch Act (42 U.S.C. 1766(f)(3)(C)).

''(B) FINAL REGULATIONS.—Not later than July 1, 1997, the Secretary of Agriculture shall issue final regulations to implement the provisions of law referred to in subparagraph (A).''

Section 204(b) of Pub. L. 101–147 provided that: ''Not later than July 1, 1990, the Secretary shall issue final regulations to implement the amendments made by subsection (a) [amending this section].''

RECOVERY AND REALLOCATION OF AUDIT FUNDS

Pub. L. 109–97, title VII, §769, Nov. 10, 2005, 119 Stat. 2159, provided that: ''Hereafter, notwithstanding any other provision of law, funds made available to States administering the Child and Adult Care Food Program, for the purpose of conducting audits of participating institutions, funds identified by the Secretary as having been unused during the initial fiscal year of availability may be recovered and reallocated by the Secretary: *Provided*, That States may use the reallocated funds until expended for the purpose of conducting audits of participating institutions.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 108–447, div. A, title VII, §796, Dec. 8, 2004, 118 Stat. 2852.

PAPERWORK REDUCTION

Pub. L. 108–265, title I, §119(i), June 30, 2004, 118 Stat. 755, provided that: ''The Secretary of Agriculture, in conjunction with States and participating institutions, shall examine the feasibility of reducing paperwork resulting from regulations and recordkeeping requirements for State agencies, family child care homes, child care centers, and sponsoring organizations participating in the child and adult care food program established under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766).''

EARLY CHILD NUTRITION EDUCATION

Pub. L. 108–265, title I, §119(j), June 30, 2004, 118 Stat. 755, provided that:

''(1) IN GENERAL.—Subject to the availability of funds made available under paragraph (6), for a period of 4 successive years, the Secretary of Agriculture shall award to 1 or more entities with expertise in designing and implementing health education programs for limited-English-proficient individuals 1 or more grants to enhance obesity prevention activities for child care centers and sponsoring organizations providing services to limited-English-proficient individuals through the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) in each of 4 States selected by the Secretary in accordance with paragraph (2).

''(2) STATES.—The Secretary shall provide grants under this subsection in States that have experienced a growth in the limited-English-proficient population of the States of at least 100 percent between the years 1990 and 2000, as measured by the census.

''(3) REQUIRED ACTIVITIES.—Activities carried out under paragraph (1) shall include—

''(A) developing an interactive and comprehensive tool kit for use by lay health educators and training activities;

''(B) conducting training and providing ongoing technical assistance for lay health educators; and

''(C) establishing collaborations with child care centers and sponsoring organizations participating in the child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) to—

''(i) identify limited-English-proficient children and families; and

''(ii) enhance the capacity of the child care centers and sponsoring organizations to use appropriate obesity prevention strategies.

''(4) EVALUATION.—Each grant recipient shall identify an institution of higher education to conduct an independent evaluation of the effectiveness of the grant.

''(5) REPORT.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry and the Committee on Health, Education, Labor, and Pensions, of the Senate a report that includes—

''(A) the evaluation completed by the institution of higher education under paragraph (4);

''(B) the effectiveness of lay health educators in reducing childhood obesity; and

''(C) any recommendations of the Secretary concerning the grants.

''(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $250,000 for each of fiscal years 2005 through 2009.''

STUDY OF IMPACT OF AMENDMENTS BY PUB. L. 104–193 ON PROGRAM PARTICIPATION AND FAMILY DAY CARE LICENSING

Section 708(*l*) of Pub. L. 104–193 directed Secretary of Agriculture, in conjunction with Secretary of Health and Human Services, to conduct study and report to Congress not later than 2 years after Aug. 22, 1996, on impact of the amendments made by section 708 of Pub. L. 104–193, amending this section, on the number of

family day care homes and day care home sponsoring organizations participating in the child and adult care food program established under this section, the number of day care homes that are licensed, certified, registered, or approved by each State in accordance with regulations issued by the Secretary, the rate of growth of such numbers, the nutritional adequacy and quality of meals served in family day care homes, and the proportion of low-income children participating in the program prior to such amendments to this section and the proportion of low-income children participating in the program after such amendments to this section, and further required each State agency participating in the child and adult care food program under this section to submit to the Secretary of Agriculture data necessary to carry out this study.

FAMILY OR GROUP DAY CARE HOME DEMONSTRATION PROJECT

Section 503 of Pub. L. 100–435, as amended by Pub. L. 101–147, title I, §105(c)(1), Nov. 10, 1989, 103 Stat. 885, directed Secretary of Agriculture to conduct a demonstration project to begin 30 days after Sept. 19, 1988, but in no event earlier than Oct. 1, 1988, in one State (selected by the Secretary) regarding the Child Care Food Program authorized under 42 U.S.C. 1766 in which day care institutions and family or group day care sponsoring organizations shall receive a reimbursement (in addition to that received under 42 U.S.C. 1766(d) and (f)) for providing one additional meal or supplement for children that are maintained in a day care institution or in a family or group day care home setting for eight or more hours per day, directed Secretary to submit a preliminary report to Congress not later than Aug. 1, 1989, and a final report after the conclusion of such project, with project to terminate Sept. 30, 1990.

REVIEW AND REVISION OF NUTRITION REQUIREMENTS FOR MEALS SERVED UNDER BREAKFAST PROGRAM; PROMULGATION OF REGULATIONS

Section 330(b) of title III of Pub. L. 99–500 and Pub. L. 99–591 and section 4210(b) of Pub. L. 99–661 directed Secretary of Agriculture to review and revise nutrition requirements for meals served under the breakfast program authorized under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and this section to improve nutritional quality of meals, taking into consideration both findings of National Evaluation of School Nutrition Programs and need to provide increased flexibility in meal planning to local food authorities, and to promulgate regulations to implement revisions not later than 180 days after Oct. 18, 1986.

ADJUSTMENTS IN NATIONAL AVERAGE PAYMENT RATE FOR SUPPLEMENTS DURING FISCAL YEAR ENDING SEPTEMBER 30, 1981

Section 208(a) of Pub. L. 96–499 related to adjustments required under the former pars. (1) through (3) of subsec. (c) of this section applicable in determining the national average payment rate for supplements during the fiscal year ending Sept. 30, 1981.

§ 1766a. Meal supplements for children in afterschool care

(a) General authority

(1) Grants to States

The Secretary shall carry out a program to assist States through grants-in-aid and other means to provide meal supplements under a program organized primarily to provide care for children in afterschool care in eligible elementary and secondary schools.

(2) Eligible schools

For the purposes of this section, the term ''eligible elementary and secondary schools'' means schools that—

(A) operate school lunch programs under this chapter;

(B) sponsor afterschool care programs; and

(C) operate afterschool programs with an educational or enrichment purpose.

(b) Eligible children

Reimbursement may be provided under this section only for supplements served to school children who are not more than 18 years of age, except that the age limitation provided by this subsection shall not apply to a child described in section 1760(d)(1)(A) of this title.

(c) Reimbursement

(1) At-risk school children

In the case of an eligible child who is participating in a program authorized under this section operated at a site located in a geographical area served by a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price school meals under this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), a supplement provided under this section to the child shall be—

(A) reimbursed at the rate at which free supplements are reimbursed under section 1766(c)(3) of this title; and

(B) served without charge.

(2) Other school children

In the case of an eligible child who is participating in a program authorized under this section at a site that is not described in paragraph (1), for the purposes of this section, the national average payment rate for supplements shall be equal to those established under section 1766(c)(3) of this title (as adjusted pursuant to section 1759a(a)(3) of this title).

(d) Contents of supplements

The requirements that apply to the content of meal supplements served under child care food programs operated with assistance under this chapter shall apply to the content of meal supplements served under programs operated with assistance under this section.

(June 4, 1946, ch. 281, §17A, as added Pub. L. 101–147, title I, §106(a), Nov. 10, 1989, 103 Stat. 885; amended Pub. L. 105–336, title I, §108, Oct. 31, 1998, 112 Stat. 3153.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (c)(1), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–336, §108(a)(1), substituted ''supplements under a program organized primarily to provide care for'' for ''supplements to''.

Subsec. (a)(2)(C). Pub. L. 105–336, §108(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''are participating in the child care food program under section 1766 of this title on May 15, 1989.''

Subsec. (b). Pub. L. 105–336, §108(b), substituted ''served to school children who are not more than 18 years of age, except that the age limitation provided by

this subsection shall not apply to a child described in section 1760(d)(1)(A) of this title.'' for ''served to children—

''(1) who are not more than 12 years of age; or

''(2) in the case of children of migrant workers or children with handicaps, who are not more than 15 years of age.''

Subsec. (c). Pub. L. 105–336, § 108(c), added par. (1), designated existing provisions as par. (2), inserted heading, and substituted ''In the case of an eligible child who is participating in a program authorized under this section at a site that is not described in paragraph (1), for the purposes'' for ''For the purposes''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

REGULATIONS

Section 106(b) of Pub. L. 101–147 provided that: ''Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement section 17A of the [Richard B. Russell] National School Lunch Act [this section] (as added by subsection (a) of this section).''

§ 1766b. Repealed. Pub. L. 105–336, title I, § 107(j)(2)(C)(i), Oct. 31, 1998, 112 Stat. 3153

Section, act June 4, 1946, ch. 281, § 17B, as added Pub. L. 103–448, title I, § 117(a)(1), Nov. 2, 1994, 108 Stat. 4715, related to homeless children nutrition program.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1999, see section 107(j)(4) of Pub. L. 105–336, set out as an Effective Date of 1998 Amendment note under section 1761 of this title.

§§ 1767, 1768. Repealed. Pub. L. 99–500, title III, § 371(a)(1), Oct. 18, 1986, 100 Stat. 1783–368, and Pub. L. 99–591, title III, § 371(a)(1), Oct. 30, 1986, 100 Stat. 3341–371; Pub. L. 99–661, div. D, title V, § 4501(a)(1), Nov. 14, 1986, 100 Stat. 4080

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Section 1767, act June 4, 1946, ch. 281, § 18, as added Oct. 7, 1975, Pub. L. 94–105, § 19, 89 Stat. 526, authorized nutrition program staff study.

Section 1768, act June 4, 1946, ch. 281, § 19, as added Oct. 7, 1975, Pub. L. 94–105, § 20, 89 Stat. 527, authorized appropriations to assist Trust Territory of Pacific Islands.

§ 1769. Pilot projects

(a) Pilot projects for administration of child nutrition programs by contract or direct disbursement

The Secretary may conduct pilot projects in not more than three States in which the Secretary is currently administering programs to evaluate the effects of the Secretary contracting with private profit and nonprofit organizations to act as a State agency under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] for schools, institutions, or service institutions referred to in section 1759 of this title and section 5 of the Child Nutrition Act of 1966 [42 U.S.C. 1774].

(b) Extension of eligibility of certain school districts to receive cash or commodity letters of credit assistance for school lunch programs

(1) Upon request to the Secretary, any school district that on January 1, 1987, was receiving all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program shall receive all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program beginning July 1, 1987. The Secretary, directly or through contract, shall administer the project under this subsection.

(2) Any school district that elects under paragraph (1) to receive all cash payments or all commodity letters of credit in lieu of entitlement commodities for its school lunch program shall receive bonus commodities in the same manner as if such school district was receiving all entitlement commodities for its school lunch program.

(c) Alternative counting and claiming procedures

(1)(A) The Secretary shall carry out a pilot program for purposes of identifying alternatives to—

(i) daily counting by category of meals provided by school lunch programs under this chapter; and

(ii) annual applications for eligibility to receive free meals or reduced price meals.

(B) For the purposes of carrying out the pilot program under this paragraph, the Secretary may waive requirements of this chapter relating to counting of meals provided by school lunch programs and applications for eligibility.

(C) For the purposes of carrying out the pilot program under this paragraph, the Secretary shall solicit proposals from State educational agencies and local educational agencies for the alternatives described in subparagraph (A).

(2)(A) The Secretary shall carry out a pilot program under which a limited number of schools participating in the special assistance program under section 1759a(a)(1) of this title that have in attendance children at least 80 percent of whom are eligible for free lunches or reduced price lunches shall submit applications for a 3-year period.

(B) Each school participating in the pilot program under this paragraph shall have the option of determining the number of free meals, reduced price meals, and paid meals provided daily under the school lunch program operated by such school by applying percentages determined under subparagraph (C) to the daily total student meal count.

(C) The percentages determined under this subparagraph shall be established on the basis of the master roster of students enrolled in the school concerned, which—

(i) shall include a notation as to the eligibility status of each student with respect to the school lunch program; and

(ii) shall be updated not later than September 30 of each year.

(3) In addition to the pilot projects described in this subsection, the Secretary may conduct other pilot projects to test alternative counting and claiming procedures.

(4) Each pilot program carried out under this subsection shall be evaluated by the Secretary after it has been in operation for 3 years.

(d) Fortified fluid milk

(1) Subject to the availability of appropriations to carry out this subsection, the Secretary

shall establish pilot projects in at least 25 school districts under which the milk offered by schools meets the fortification requirements of paragraph (3) for lowfat, skim, and other forms of fluid milk.

(2) The Secretary shall make available to school districts information that compares the nutritional benefits of fluid milk that meets the fortification requirements of paragraph (3) and the nutritional benefits of other milk that is made available through the school lunch program established under this chapter.

(3) The fortification requirements for fluid milk for the pilot project referred to in paragraph (1) shall provide that—

(A) all whole milk in final package form for beverage use shall contain not less than—

(i) 3.25 percent milk fat; and

(ii) 8.7 percent milk solids not fat;

(B) all lowfat milk in final package form for beverage use shall contain not less than 10 percent milk solids not fat; and

(C) all skim milk in final package form for beverage use shall contain not less than 9 percent milk solids not fat.

(4)(A) In selecting where to establish pilot projects under this subsection, the Secretary shall take into account, among other factors, the availability of fortified milk and the interest of the school district in being included in the pilot project.

(B) The Secretary shall establish the pilot projects in as many geographic areas as practicable, except that none of the projects shall be established in school districts that use milk described in paragraph (3) or similar milk.

(5) Not later than 2 years after the establishment of the first pilot project under this subsection, the Secretary shall report to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on—

(A) the acceptability of fortified whole, lowfat, and skim milk products to participating children;

(B) the impact of offering the milk on milk consumption;

(C) the views of the school food service authorities on the pilot projects; and

(D) any increases or reductions in costs attributed to the pilot projects.

(6) The Secretary shall—

(A) obtain copies of any research studies or papers that discuss the impact of the fortification of milk pursuant to standards established by the States; and

(B) on request, make available to State agencies and the public—

(i) the information obtained under subparagraph (A); and

(ii) information about where to obtain milk described in paragraph (3).

(7)(A) Each pilot project established under this subsection shall terminate on the last day of the third year after the establishment of the pilot project.

(B) The Secretary shall advise representatives of each district participating in a pilot project that the district may continue to offer the fortified forms of milk described in paragraph (3) after the project terminates.

(e) Breakfast pilot projects

(1) In general

Subject to the availability of funds made available under paragraph (10), for a period of 3 successive school years, the Secretary shall make grants to State agencies to conduct pilot projects in elementary schools under the jurisdiction of not more than 6 school food authorities approved by the Secretary to—

(A) reduce paperwork, simplify meal counting requirements, and make changes that will increase participation in the school breakfast program; and

(B) evaluate the effect of providing free breakfasts to elementary school children, without regard to family income, on participation, academic achievement, attendance and tardiness, and dietary intake over the course of a day.

(2) Nominations

A State agency that seeks a grant under this subsection shall submit to the Secretary nominations of school food authorities to participate in a pilot project under this subsection [1]

(3) Approval

The Secretary shall approve for participation in pilot projects under this subsection elementary schools under the jurisdiction of not more than 6 nominated school food authorities selected so as to—

(A) provide for an equitable distribution of pilot projects among urban and rural elementary schools;

(B) provide for an equitable distribution of pilot projects among elementary schools of varying family income levels; and

(C) permit the evaluation of pilot projects to distinguish the effects of the pilot projects from other factors, such as changes or differences in educational policies or programs.

(4) Grants to school food authorities

A State agency receiving a grant under paragraph (1) shall make grants to school food authorities to conduct the pilot projects described in paragraph (1).

(5) Duration of pilot projects

Subject to the availability of funds made available to carry out this subsection, a school food authority receiving amounts under a grant to conduct a pilot project described in paragraph (1) shall conduct the project during a period of 3 successive school years.

(6) Waiver authority

(A) In general

Except as provided in subparagraph (B), the Secretary may waive the requirements of this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) relating to counting of meals, applications for eligi-

[1] So in original. Probably should be followed by a period.

bility, and related requirements that would preclude the Secretary from making a grant to conduct a pilot project under paragraph (1).

(B) Nonwaivable requirements

The Secretary may not waive a requirement under subparagraph (A) if the waiver would prevent a program participant, a potential program participant, or a school from receiving all of the benefits and protections of this chapter, the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or a Federal law (including a regulation) that protects an individual constitutional right or a statutory civil right.

(7) Requirements for participation in pilot project

To be eligible to participate in a pilot project under this subsection—

(A) a State agency—

(i) shall submit an application to the Secretary at such time and in such manner as the Secretary shall establish to meet criteria the Secretary has established to enable a valid evaluation to be conducted; and

(ii) shall provide such information relating to the operation and results of the pilot project as the Secretary may reasonably require; and

(B) a school food authority—

(i) shall agree to serve all breakfasts at no charge to all children enrolled in participating elementary schools;

(ii) shall not have a history of violations of this chapter or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(iii) shall have, under the jurisdiction of the school food authority, a sufficient number of elementary schools that are not participating in the pilot projects to permit a valid evaluation of the effects of the pilot projects; and

(iv) shall meet all other requirements that the Secretary may reasonably require.

(8) Evaluation of pilot projects

(A) In general

The Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct an evaluation of the pilot projects conducted by the school food authorities selected for participation.

(B) Content

The evaluation shall include—

(i) a determination of the effect of participation in the pilot project on the academic achievement, attendance and tardiness, and dietary intake over the course of a day of participating children that is not attributable to changes in educational policies and practices; and

(ii) a determination of the effect that participation by elementary schools in the pilot project has on the proportion of students who eat breakfast and on the paperwork required to be completed by the schools.

(C) Report

On completion of the pilot projects and the evaluation, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation of the pilot projects required under subparagraph (A).

(9) Reimbursement

(A) In general

Except as provided in subparagraph (B), a school conducting a pilot project under this subsection shall receive a total Federal reimbursement under the school breakfast program in an amount that is equal to the total Federal reimbursement for the school for the prior year under the program (adjusted to reflect changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor and adjusted for fluctuations in enrollment).

(B) Excess needs

Funds required for the pilot project in excess of the level of reimbursement received by the school for the prior year (adjusted to reflect changes described in subparagraph (A) and adjusted for fluctuations in enrollment) may be taken from any non-Federal source or from amounts provided under this subsection.

(10) Authorization of appropriations

(A) In general

There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(B) Requirement

No amounts may be provided under this subsection unless specifically provided in appropriations Acts.

(f) Simplified summer food programs

(1) Definition of eligible State

In this subsection, the term ''eligible State'' means—

(A) a State participating in the program under this subsection as of May 1, 2004; and

(B) a State in which (based on data available in June 2005)—

(i) the percentage obtained by dividing—

(I) the sum of—

(aa) the average daily number of children attending the summer food service program in the State in July 2003; and

(bb) the average daily number of children receiving free or reduced price meals under the school lunch program in the State in July 2003; by

(II) the average daily number of children receiving free or reduced price meals under the school lunch program in the State in March 2003; is less than

(ii) 75 percent of the percentage obtained by dividing—

(I) the sum of—

(aa) the average daily number of children attending the summer food service program in all States in July 2003; and

(bb) the average daily number of children receiving free or reduced price meals under the school lunch program in all States in July 2003; by

(II) the average daily number of children receiving free or reduced price meals under the school lunch program in all States in March 2003.

(2) Programs

The Secretary shall carry out a summer food program in each eligible State to increase the number of children participating in the summer food service program in the State.

(3) Support levels for service institutions

(A) Food service

Under the program, a service institution in an eligible State shall receive the maximum amounts for food service under section 1761(b)(1) of this title without regard to the requirement under section 1761(b)(1)(A) of this title that payments shall equal the full cost of food service operations.

(B) Administrative costs

Under the program, a service institution in an eligible State shall receive the maximum amounts for administrative costs determined by the Secretary under section 1761(b)(4) of this title without regard to the requirement under section 1761(b)(3) of this title that payments to service institutions shall equal the full amount of State-approved administrative costs incurred.

(C) Compliance

A service institution that receives assistance under this subsection shall comply with all provisions of section 1761 of this title other than subsections (b)(1)(A) and (b)(3) of section 1761 of this title.

(4) Maintenance of effort

Expenditures of funds from State and local sources for maintenance of a summer food service program shall not be diminished as a result of assistance from the Secretary received under this subsection.

(5) Evaluation of programs

(A) In general

The Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct an evaluation of the program.

(B) Content

An evaluation under this paragraph shall describe—

(i) any effect on participation by children and service institutions in the summer food service program in the eligible State in which the program is carried out;

(ii) any effect of the program on the quality of the meals and supplements served in the eligible State in which the program is carried out; and

(iii) any effect of the program on program integrity.

(6) Report

Not later than April 30, 2007, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes—

(A) the evaluations completed by the Secretary under paragraph (5); and

(B) any recommendations of the Secretary concerning the programs.

(g) Fresh fruit and vegetable program

(1) In general

For the school year beginning July 2004 and each subsequent school year, the Secretary shall carry out a program to make free fresh fruits and vegetables available, to the maximum extent practicable, to—

(A) 25 elementary or secondary schools in each of the 4 States authorized to participate in the program under this subsection on May 1, 2004;

(B) 25 elementary or secondary schools (as selected by the Secretary in accordance with paragraph (3)) in each of 4 States (including a State for which funds were allocated under the program described in paragraph (3)(B)(ii)) that are not participating in the program under this subsection on May 1, 2004; and

(C) 25 elementary or secondary schools operated on 3 Indian reservations (including the reservation authorized to participate in the program under this subsection on May 1, 2004), as selected by the Secretary.

(2) Program

A school participating in the program shall make free fresh fruits and vegetables available to students throughout the school day in 1 or more areas designated by the school.

(3) Selection of schools

(A) In general

Except as provided in subparagraph (B), in selecting additional schools to participate in the program under paragraph (1)(B), the Secretary shall—

(i) to the maximum extent practicable, ensure that the majority of schools selected are those in which not less than 50 percent of students are eligible for free or reduced price meals under this chapter;

(ii) solicit applications from interested schools that include—

(I) information pertaining to the percentage of students enrolled in the school submitting the application who are eligible for free or reduced price school lunches under this chapter;

(II) a certification of support for participation in the program signed by the school food manager, the school principal, and the district superintendent (or equivalent positions, as determined by the school); and

(III) such other information as may be requested by the Secretary;

(iii) for each application received, determine whether the application is from a school in which not less than 50 percent of students are eligible for free or reduced price meals under this chapter; and

(iv) give priority to schools that submit a plan for implementation of the program that includes a partnership with 1 or more entities that provide non-Federal resources (including entities representing the fruit and vegetable industry) for—

(I) the acquisition, handling, promotion, or distribution of fresh and dried fruits and fresh vegetables; or

(II) other support that contributes to the purposes of the program.

(B) Nonapplicability to existing participants

Subparagraph (A) shall not apply to a school, State, or Indian reservation authorized—

(i) to participate in the program on May 1, 2004; or

(ii) to receive funding for free fruits and vegetables under funds provided for public health improvement under the heading ''DISEASE CONTROL, RESEARCH, AND TRAINING'' under the heading ''CENTERS FOR DISEASE CONTROL AND PREVENTION'' in title II of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004 (Division E of Public Law 108–199; 118 Stat. 238).

(4) Notice of availability

To be eligible to participate in the program under this subsection, a school shall widely publicize within the school the availability of free fresh fruits and vegetables under the program.

(5) Reports

(A) Interim reports

Not later than September 30 of each of fiscal years 2005 through 2008, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an interim report that describes the activities carried out under this subsection during the fiscal year covered by the report.

(B) Final report

Not later than December 31, 2008, the Secretary, acting through the Administrator of the Food and Nutrition Service, shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a final report that describes the results of the program under this subsection.

(6) Funding

(A) Existing funds

The Secretary shall use to carry out this subsection any funds that remain under this subsection on the day before June 30, 2004.

(B) Mandatory funds

(i) In general

On October 1, 2004, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection $9,000,000, to remain available until expended.

(ii) Receipt and acceptance

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this subsection the funds made available under this subparagraph, without further appropriation.

(C) Authorization of appropriations

In addition to any amounts made available under subparagraphs (A) and (B), there are authorized to be appropriated such sums as are necessary to expand the program carried out under this subsection.

(D) Reallocation

The Secretary may reallocate any amounts made available to carry out this subsection that are not obligated or expended, as determined by the Secretary.

(h) Summer food service residential camp eligibility

(1) In general

During the month after June 30, 2004, through September, 2004, and the months of May through September, 2005, the Secretary shall modify eligibility criteria, at not more than 1 private nonprofit residential camp in each of not more than 2 States, as determined by the Secretary, for the purpose of identifying and evaluating alternative methods of determining the eligibility of residential private nonprofit camps to participate in the summer food service program for children established under section 1761 of this title.

(2) Eligibility

To be eligible for the criteria modified under paragraph (1), a residential camp—

(A) shall be a service institution (as defined in section 1761(a)(1) of this title);

(B) may not charge a fee to any child in residence at the camp; and

(C) shall serve children who reside in an area in which poor economic conditions exist (as defined in section 1761(a)(1) of this title).

(3) Payments

(A) In general

Under this subsection, the Secretary shall provide reimbursement for meals served to all children at a residential camp at the payment rates specified in section 1761(b)(1) of this title.

(B) Reimbursable meals

A residential camp selected by the Secretary may receive reimbursement for not more than 3 meals, or 2 meals and 1 supplement, during each day of operation.

(4) Evaluation

(A) Information from residential camps

Not later than December 31, 2005, a residential camp selected under paragraph (1) shall report to the Secretary such information as is required by the Secretary concerning the requirements of this subsection.

(B) Report to Congress

Not later than March 31, 2006, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that evaluates the effect of this subsection on program participation and other factors, as determined by the Secretary.

(i) Access to local foods and school gardens

(1) In general

The Secretary may provide assistance, through competitive matching grants and technical assistance, to schools and nonprofit entities for projects that—

(A) improve access to local foods in schools and institutions participating in programs under this chapter and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) through farm-to-cafeteria activities, including school gardens, that may include the acquisition of food and appropriate equipment and the provision of training and education;

(B) are, at a minimum, designed to—

(i) procure local foods from small- and medium-sized farms for school meals; and

(ii) support school garden programs;

(C) support nutrition education activities or curriculum planning that incorporates the participation of school children in farm-based agricultural education activities, that may include school gardens;

(D) develop a sustained commitment to farm-to-cafeteria projects in the community by linking schools, State departments of agriculture, agricultural producers, parents, and other community stakeholders;

(E) require $100,000 or less in Federal contributions;

(F) require a Federal share of costs not to exceed 75 percent;

(G) provide matching support in the form of cash or in-kind contributions (including facilities, equipment, or services provided by State and local governments and private sources); and

(H) cooperate in an evaluation carried out by the Secretary.

(2) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subsection for each of fiscal years 2004 through 2009.

(j) Year-round services for eligible entities

(1) In general

A service institution that is described in section 1761(a)(6) of this title (excluding a public school), or a private nonprofit organization described in section 1761(a)(7) of this title, and that is located in the State of California may be reimbursed—

(A) for up to 2 meals during each day of operation served—

(i) during the months of May through September;

(ii) in the case of a service institution that operates a food service program for children on school vacation, at anytime under a continuous school calendar; and

(iii) in the case of a service institution that provides meal service at a nonschool site to children who are not in school for a period during the school year due to a natural disaster, building repair, court order, or similar case, at anytime during such a period; and

(B) for a snack served during each day of operation after school hours, weekends, and school holidays during the regular school calendar.

(2) Payments

The service institution shall be reimbursed consistent with section 1761(b)(1) of this title.

(3) Administration

To receive reimbursement under this subsection, a service institution shall comply with section 1761 of this title, other than subsections (b)(2) and (c)(1) of that section.

(4) Evaluation

Not later than September 30, 2007, the State agency shall submit to the Secretary a report on the effect of this subsection on participation in the summer food service program for children established under section 1761 of this title.

(5) Funding

The Secretary shall provide to the State of California such sums as are necessary to carry out this subsection for each of fiscal years 2005 through 2009.

(k) Free lunch and breakfast eligibility

(1) In general

Subject to the availability of funds under paragraph (4), the Secretary shall expand the service of free lunches and breakfasts provided at schools participating in the school lunch program under this chapter or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) in all or part of 5 States selected by the Secretary (of which at least 1 shall be a largely rural State with a significant Native American population).

(2) Income eligibility

The income guidelines for determining eligibility for free lunches or breakfasts under this subsection shall be 185 percent of the applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 1758(b)(1)(B) of this title.

(3) Evaluation

(A) In general

Not later than 3 years after the implementation of this subsection, the Secretary shall

conduct an evaluation to assess the impact of the changed income eligibility guidelines by comparing the school food authorities operating under this subsection to school food authorities not operating under this subsection.

(B) Impact assessment

(i) Children

The evaluation shall assess the impact of this subsection separately on—

(I) children in households with incomes less than 130 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 1758(b)(1)(B) of this title; and

(II) children in households with incomes greater than 130 percent and not greater than 185 percent of the applicable family income levels contained in the nonfarm poverty income guidelines prescribed by the Office of Management and Budget, as adjusted annually in accordance with section 1758(b)(1)(B) of this title.

(ii) Factors

The evaluation shall assess the impact of this subsection on—

(I) certification and participation rates in the school lunch and breakfast programs;

(II) rates of lunch- and breakfast-skipping;

(III) academic achievement;

(IV) the allocation of funds authorized in title I of the Elementary and Secondary Education Act [20 U.S.C. 6301 et seq.] to local educational agencies and public schools; and

(V) other factors determined by the Secretary.

(C) Cost assessment

The evaluation shall assess the increased costs associated with providing additional free, reduced price, or paid meals in the school food authorities operating under this subsection.

(D) Report

On completion of the evaluation, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the evaluation under this paragraph.

(4) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subsection, to remain available until expended.

(June 4, 1946, ch. 281, § 18, formerly § 20, as added Pub. L. 95–166, § 10(2), Nov. 10, 1977, 91 Stat. 1336; amended Pub. L. 95–627, § 11, Nov. 10, 1978, 92 Stat. 3624; renumbered § 18 and amended Pub. L. 99–500, title III, §§ 327, 371(c)(1), Oct. 18, 1986, 100 Stat. 1783–362, 1783–368, and Pub. L. 99–591, title III, §§ 327, 371(c)(1), Oct. 30, 1986, 100 Stat. 3341–365, 3341–372; renumbered § 18 and amended Pub. L. 99–661, div. D, title II, § 4207, title V, § 4501(c)(1), Nov. 14, 1986, 100 Stat. 4073, 4080; Pub. L. 100–237, § 5, Jan. 8, 1988, 101 Stat. 1739; Pub. L. 101–147, title I, § 107, title II, § 205(a), title III, § 311, Nov. 10, 1989, 103 Stat. 886, 910, 916; Pub. L. 102–342, title I, § 101(a), title III, § 301, Aug. 14, 1992, 106 Stat. 911, 913; Pub. L. 102–512, title I, § 102, Oct. 24, 1992, 106 Stat. 3363; Pub. L. 103–448, title I, §§ 117(a)(2)(A), (b), 118, Nov. 2, 1994, 108 Stat. 4717, 4719; Pub. L. 104–193, title VII, § 709, Aug. 22, 1996, 110 Stat. 2301; Pub. L. 105–336, title I, § 109(a)–(c)(1), Oct. 31, 1998, 112 Stat. 3154–3156; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 102(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–215; Pub. L. 107–171, title IV, § 4305(a), May 13, 2002, 116 Stat. 332; Pub. L. 108–30, § 1, May 29, 2003, 117 Stat. 774; Pub. L. 108–134, § 5(2), Nov. 22, 2003, 117 Stat. 1390; Pub. L. 108–211, § 5(b), Mar. 31, 2004, 118 Stat. 567; Pub. L. 108–265, title I, §§ 116(f), 120–124, June 30, 2004, 118 Stat. 750, 756–760; Pub. L. 109–97, title VII, § 777(a), Nov. 10, 2005, 119 Stat. 2161.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a) and (e)(6), (7)(B)(ii), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004, referred to in subsec. (g)(3)(B)(ii), is Pub. L. 108–199, div. E, Jan. 23, 2004, 118 Stat. 226. Provisions under the headings ''CENTERS FOR DISEASE CONTROL AND PREVENTION'' and ''DISEASE CONTROL, RESEARCH, AND TRAINING'' in title II of the Act appear at 118 Stat. 238 and are not classified to the Code.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (k)(3)(B)(ii)(IV), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 18 of act June 4, 1946, which was classified to section 1767 of this title, was repealed.

AMENDMENTS

2005—Subsec. (f)(1)(B). Pub. L. 109–97, § 777(a)(1), substituted ''June 2005'' for ''April 2004'' in introductory provisions.

Subsec. (f)(1)(B)(ii). Pub. L. 109–97, § 777(a)(2), substituted ''75'' for ''66.67'' in introductory provisions.

2004—Subsec. (f). Pub. L. 108–265, § 116(f)(5)(A), substituted ''Simplified summer food programs'' for ''Summer food pilot projects'' in heading.

Subsec. (f)(1). Pub. L. 108–265, § 116(f)(1), added par. (1) and struck out heading and text of former par. (1), which defined ''eligible State'' using formula based on data available in July 2000.

Subsec. (f)(2). Pub. L. 108–265, § 116(f)(5)(B), substituted ''Programs'' for ''Pilot projects'' in heading and ''food program'' for ''food pilot project'' in text.

Pub. L. 108–265, § 116(f)(2), substituted ''The'' for ''During the period beginning October 1, 2000, and ending June 30, 2004, the''.

Pub. L. 108–211 substituted ''June 30, 2004'' for ''March 31, 2004''.

Subsec. (f)(3)(A), (B). Pub. L. 108–265, § 116(f)(5)(C), substituted ''program'' for ''pilot project''.

Pub. L. 108–265, § 116(f)(3), struck out ''(other than a service institution described in section 1761(a)(7) of this title)'' after ''service institution''.

Subsec. (f)(5). Pub. L. 108–265, § 116(f)(5)(D), substituted ''programs'' for ''pilot projects'' in heading and ''the program'' for ''the pilot project'' in text wherever appearing.

Subsec. (f)(6). Pub. L. 108–265, § 116(f)(4), added par. (6) and struck out heading and text of former par. (6), which related to interim and final reports on pilot projects carried out under this subsec.

Subsec. (g). Pub. L. 108–265, § 120, added subsec. (g) and struck out heading and text of former subsec. (g), which related to fruit and vegetable pilot program.

Subsecs. (h) to (k). Pub. L. 108–265, §§ 121–124, added subsecs. (h) to (k).

2003—Subsec. (f)(2). Pub. L. 108–134 substituted ''beginning October 1, 2000, and ending March 31, 2004'' for ''of fiscal years 2001 through 2003''.

Subsec. (g)(4). Pub. L. 108–30 inserted before period at end '', to remain available until the close of the school year beginning July 2003''.

2002—Subsec. (g). Pub. L. 107–171 added subsec (g).

2000—Subsec. (f). Pub. L. 106–554 added subsec. (f).

1998—Subsec. (c). Pub. L. 105–336, § 109(a), (c)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to demonstration program for prevention of boarder babies.

Subsec. (d). Pub. L. 105–336, § 109(c)(1), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 105–336, § 109(a), (c)(1), redesignated subsec. (i) as (e) and struck out former subsec. (e) which related to demonstration program to provide meals and supplements outside of school hours.

Subsec. (f). Pub. L. 105–336, § 109(c)(1), redesignated subsec. (f) as (d).

Subsec. (g). Pub. L. 105–336, § 109(a), struck out subsec. (g) which related to increased choices of fruits, vegetables, legumes, cereals, and grain-based products.

Subsec. (h). Pub. L. 105–336, § 109(a), struck out subsec. (h) which related to increased choices of lowfat dairy products and lean meat and poultry products.

Subsec. (i). Pub. L. 105–336, § 109(b), (c)(1), amended subsec. (i) generally and redesignated it as subsec. (e). Prior to amendment, subsec. (i) related to reduced paperwork and application requirements and increased participation pilots.

1996—Subsec. (d)(3) to (5). Pub. L. 104–193, § 709(a), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which related to pilot program for schools with universal free lunch programs to use certain methods to determine number of free, reduced price, and paid meals to be provided.

Subsec. (e)(1). Pub. L. 104–193, § 709(b)(1), designated subpar. (A) as par. (1), substituted ''Secretary may establish'' for ''Secretary shall establish'', and struck out subpar. (B) which read as follows: ''The amount of a grant under subparagraph (A) shall be equal to the amount necessary to provide meals or supplements described in such subparagraph and shall be determined in accordance with reimbursement payment rates for meals and supplements under the child and adult care food program under section 1766 of this title.''

Subsec. (e)(5). Pub. L. 104–193, § 709(b)(2), added heading and text of par. (5) and struck out former par. (5) which read as follows:

''(5)(A) Except as provided in subparagraph (B), the Secretary shall expend to carry out this subsection, from amounts appropriated for purposes of carrying out section 1766 of this title, $325,000 for fiscal year 1995, $475,000 for each of fiscal years 1996 and 1997, and $525,000 for fiscal year 1998. In addition to amounts described in the preceding sentence, the Secretary shall expend any additional amounts in any fiscal year as may be provided in advance in appropriations Acts.

''(B) The Secretary may expend less than the amount required under subparagraph (A) if there is an insufficient number of suitable applicants.''

1994—Subsec. (b)(1). Pub. L. 103–448, § 118(a), struck out '', and ending September 30, 1994'' after ''beginning July 1, 1987''.

Subsec. (c). Pub. L. 103–448, § 117(a)(2)(A), (b), added subsec. (c) and struck out former subsec. (c), which related to provision of food service to homeless children under age 6 in emergency shelters.

Subsecs. (e) to (i). Pub. L. 103–448, § 118(b)–(f), added subsecs. (e) to (i).

1992—Subsec. (b)(1). Pub. L. 102–342, § 301, substituted ''September 30, 1994'' for ''September 30, 1992''.

Subsec. (c)(2). Pub. L. 102–342, § 101(a)(1), inserted ''State, city, local, or county governments, other public entities, or'' before ''private nonprofit''.

Subsec. (c)(2)(B)(i). Pub. L. 102–512 substituted ''Each private nonprofit organization'' for ''Each such organization''.

Subsec. (c)(3)(A). Pub. L. 102–342, § 101(a)(2), inserted at end ''The projects shall receive reimbursement payments for meals and supplements served on Saturdays, Sundays, and holidays, at the request of the sponsor of any such project. The meal pattern requirements of this subparagraph may be modified as necessary by the Secretary to take into account the needs of infants.''

Subsec. (c)(5)(A). Pub. L. 102–342, § 101(a)(1), (3), substituted ''not less than $350,000 in each of fiscal years 1991 and 1992, not less than $650,000 in fiscal year 1993, and not less than $800,000 in fiscal year 1994,'' for ''and not less than $350,000 in each of the fiscal years 1991, 1992, 1993, and 1994,'' and inserted ''State, city, local, or county governments, other public entities, or'' before ''private nonprofit''.

Subsec. (c)(7). Pub. L. 102–342, § 101(a)(4), added par. (7).

1989—Subsec. (a). Pub. L. 101–147, § 311(2), struck out ''(42 U.S.C. 1771 et seq.)'' after ''Child Nutrition Act of 1966'' and ''(42 U.S.C. 1774)'' after ''section 5 of the Child Nutrition Act of 1966''.

Pub. L. 101–147, § 311(1), redesignated subsec. (d) as (a) and struck out former subsec. (a) which set forth statement of purpose of section and requirements for types of projects.

Subsec. (b). Pub. L. 101–147, § 311(1), redesignated subsec. (e) as (b) and struck out former subsec. (b) which provided for a study on effect of cash payments in lieu of commodities.

Subsec. (c). Pub. L. 101–147, § 311(1), redesignated subsec. (f) as (c) and struck out former subsec. (c) which related to report due not later than 18 months after Nov. 10, 1977.

Subsec. (d). Pub. L. 101–147, § 311(1), redesignated subsec. (g) as (d). Former subsec. (d) redesignated (a).

Subsec. (e). Pub. L. 101–147, § 311(1), redesignated subsec. (e) as (b).

Subsec. (e)(1). Pub. L. 101–147, § 107(1)(A), substituted ''beginning July 1, 1987, and ending September 30, 1992'' for ''for the duration beginning July 1, 1987, and ending December 31, 1990'' and inserted at end ''The Secretary, directly or through contract, shall administer the project under this subsection.''

Subsec. (f). Pub. L. 101–147, § 311(1), redesignated subsec. (f) as (c).

Pub. L. 101–147, § 107(2), added subsec. (f).

Subsec. (g). Pub. L. 101–147, § 311(1), redesignated subsec. (g) as (d).

Pub. L. 101–147, § 205(a), added subsec. (g).

1988—Subsec. (e). Pub. L. 100–237 added subsec. (e).

1986—Subsec. (c). Pub. L. 99–500 and Pub. L. 99–591, § 327(b), and Pub. L. 99–661, § 4207(b), which directed the identical amendment of subsec. (c) by striking out ''except for the pilot projects conducted under subsection (d) of this section,'' were executed by striking out '', except for the pilot projects conducted under subsection (d) of this section'' after ''under this section'' in introductory provisions, as the probable intent of Congress.

Subsec. (d). Pub. L. 99–500 and Pub. L. 99–591, § 327(a), and Pub. L. 99–661, § 4207(a), amended section identically, adding subsec. (d) and striking out former subsec. (d) which related to free lunches without regard to fam-

ily income and to reimbursement of school food authorities.

1978—Subsec. (c). Pub. L. 95–627, § 11(1), inserted provision excluding pilot projects conducted under subsec. (d) of this section.

Subsec. (d). Pub. L. 95–627, § 11(2), added subsec. (d).

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–97, title VII, § 777(b), Nov. 10, 2005, 119 Stat. 2161, provided that: ''The amendments made by subsection (a) [amending this section] take effect on January 1, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 116(f)(1), (3) of Pub. L. 108–265 effective Jan. 1, 2005, and amendment by sections 116(f)(2), (4), (5) and 120 to 124 of Pub. L. 108–265 effective June 30, 2004, see section 502(a), (b)(3) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–171, title IV, § 4305(b), May 13, 2002, 116 Stat. 332, provided that: ''The amendment made by this section [amending this section] takes effect on the date of enactment of this Act [May 13, 2002].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 104 of title I of Pub. L. 102–512 provided that: ''This title [amending this section and section 1776 of this title and enacting provisions set out as a note under section 1771 of this title] and the amendments made by this title shall become effective on September 30, 1992.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

OTHER DEMONSTRATION PROJECTS FOR FEEDING HOMELESS CHILDREN

Pub. L. 102–342, title I, § 101(b), Aug. 14, 1992, 106 Stat. 911, as amended by Pub. L. 105–336, title I, § 109(c)(2), Oct. 31, 1998, 112 Stat. 3157, provided that: ''The Secretary of Agriculture may conduct demonstration projects to identify effective means of providing food assistance to homeless children residing in temporary shelters.''

ALTERNATIVE COUNTING AND CLAIMING PROCEDURES; PROMULGATION OF REGULATIONS

Section 205(b) of Pub. L. 101–147 provided that not later than July 1, 1990, Secretary of Agriculture was to issue final regulations to implement subsec. (g) of this section.

§ 1769a. Repealed. Pub. L. 104–193, title VII, § 710, Aug. 22, 1996, 110 Stat. 2301

Section, act June 4, 1946, ch. 281, § 19, formerly § 21, as added Nov. 10, 1977, Pub. L. 95–166, § 13, 91 Stat. 1338; renumbered § 19, Oct. 18, 1986, Pub. L. 99–500, title III, § 371(c)(1), 100 Stat. 1783–368, and Oct. 30, 1986, Pub. L. 99–591, title III, § 371(c)(1), 100 Stat. 3341–372; renumbered § 19, Nov. 14, 1986, Pub. L. 99–661, div. D, title V, § 4501(c)(1), 100 Stat. 4080; Nov. 10, 1989, Pub. L. 101–147, title I, § 108, 103 Stat. 887; Nov. 2, 1994, Pub. L. 103–448, title I, § 119, 108 Stat. 4726, directed Secretary to reduce paperwork required in carrying out functions under this chapter and under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

§ 1769b. Department of Defense overseas dependents' schools

(a) Purpose of program; availability of payments and commodities

For the purpose of obtaining Federal payments and commodities in conjunction with the provision of lunches to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the National School Lunch Program in the United States.

(b) Administration of program; eligibility determinations and regulations

The Secretary of Defense shall administer lunch programs authorized by this section and shall determine eligibility for free and reduced price lunches under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the National School Lunch Program under this section.

(c) Nutritional standards for meals; noncompliance with standards

The Secretary of Defense shall be required to offer meals meeting nutritional standards prescribed by the Secretary of Agriculture; however, the Secretary of Defense may authorize deviations from Department of Agriculture prescribed meal patterns and fluid milk requirements when local conditions preclude strict compliance or when such compliance is impracticable.

(d) Authorization of appropriations

Funds are hereby authorized to be appropriated for any fiscal year in such amounts as may be necessary for the administrative expenses of the Department of Defense under this section.

(e) Technical assistance for administration of program

The Secretary of Agriculture shall provide the Secretary of Defense with the technical assistance in the administration of the school lunch programs authorized by this section.

(June 4, 1946, ch. 281, § 20, formerly § 22, as added Pub. L. 95–561, title XIV, § 1408(a), Nov. 1, 1978, 92

Stat. 2368; renumbered § 20 and amended Pub. L. 99–500, title III, §§ 328(a), 371(c)(1), Oct. 18, 1986, 100 Stat. 1783–362, 1783–368, and Pub. L. 99–591, title III, §§ 328(a), 371(c)(1), Oct. 30, 1986, 100 Stat. 3341–365, 3341–372; renumbered § 20 and amended Pub. L. 99–661, div. D, title II, § 4208(a), title V, § 4501(c)(1), Nov. 14, 1986, 100 Stat. 4073, 4080; Pub. L. 101–147, title III, § 312(2), Nov. 10, 1989, 103 Stat. 916.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 20 of act June 4, 1946, was renumbered section 18 of act June 4, 1946, and is classified to section 1769 of this title.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–147 substituted ''reduced price'' for ''reduced-price''.

1986—Subsec. (d). Pub. L. 99–500 and Pub. L. 99–591, § 328(a), and Pub. L. 99–661, § 4208(a), amended subsec. (d) identically, striking out ''and for payment of the difference between the value of commodities and payments received from the Secretary of Agriculture and (1) the full cost of each lunch for each student eligible for a free lunch, and (2) the full cost of each lunch, less any amounts required by law or regulation to be paid by each student eligible for a reduced-price lunch'' after ''this section''.

EFFECTIVE DATE

Section effective Oct. 1, 1978 and no provision herein to be construed as impairing or preventing the taking effect of any other Act providing for the transfer of functions described herein to an executive department having responsibility for education, see section 1415 of Pub. L. 95–561, set out as a note under section 921 of Title 20, Education.

TRANSFER OF FUNCTIONS

For transfer to Secretary of Education of functions of Secretary of Defense and Department of Defense relating to operation of overseas schools for dependents of Department of Defense and under Defense Dependents' Education Act of 1978, 20 U.S.C. 921 et seq., see section 3442(a) of Title 20, Education.

§ 1769b–1. Training, technical assistance, and food service management institute

(a) General authority

The Secretary—

(1) subject to the availability of, and from, amounts appropriated pursuant to subsection (e)(1) of this section, shall conduct training activities and provide—

(A) training and technical assistance to improve the skills of individuals employed in—

(i) food service programs carried out with assistance under this chapter and, to the maximum extent practicable, using individuals who administer exemplary local food service programs in the State;

(ii) school breakfast programs carried out with assistance under section 1773 of this title; and

(iii) as appropriate, other federally assisted feeding programs; and

(B) assistance, on a competitive basis, to State agencies for the purpose of aiding schools and school food authorities with at least 50 percent of enrolled children certified to receive free or reduced price meals (and, if there are any remaining funds, other schools and school food authorities) in meeting the cost of acquiring or upgrading technology and information management systems for use in food service programs carried out under this chapter and section 1773 of this title, if the school or school food authority submits to the State agency an infrastructure development plan that—

(i) addresses the cost savings and improvements in program integrity and operations that would result from the use of new or upgraded technology;

(ii) ensures that there is not any overt identification of any child by special tokens or tickets, announced or published list of names, or by any other means;

(iii) provides for processing and verifying applications for free and reduced price school meals;

(iv) integrates menu planning, production, and serving data to monitor compliance with section 1758(f)(1) of this title; and

(v) establishes compatibility with statewide reporting systems;

(C) assistance, on a competitive basis, to State agencies with low proportions of schools or students that—

(i) participate in the school breakfast program under section 1773 of this title; and

(ii) demonstrate the greatest need, for the purpose of aiding schools in meeting costs associated with initiating or expanding a school breakfast program under section 1773 of this title, including outreach and informational activities; and

(2) from amounts appropriated pursuant to subsection (e)(2) of this section, is authorized to provide financial and other assistance to the University of Mississippi, in cooperation with the University of Southern Mississippi, to establish and maintain a food service management institute.

(b) Minimum requirements

The activities conducted and assistance provided as required by subsection (a)(1) of this section shall at least include activities and assistance with respect to—

(1) menu planning;

(2) implementation of regulations and appropriate guidelines; and

(3) compliance with program requirements and accountability for program operations.

(c) Duties of food service management institute

(1) In general

Any food service management institute established as authorized by subsection (a)(2) of this section shall carry out activities to improve the general operation and quality of—

(A) food service programs assisted under this chapter;

(B) school breakfast programs assisted under section 1773 of this title; and

(C) as appropriate, other federally assisted feeding programs.

(2) Required activities

Activities carried out under paragraph (1) shall include—

(A) conducting research necessary to assist schools and other organizations that participate in such programs in providing high quality, nutritious, cost-effective meal service to the children served;

(B) providing training and technical assistance with respect to—

(i) efficient use of physical resources;

(ii) financial management;

(iii) efficient use of computers;

(iv) procurement;

(v) sanitation;

(vi) safety, including food handling, hazard analysis and critical control point plan implementation, emergency readiness, responding to a food recall, and food biosecurity training;

(vii) meal planning and related nutrition activities;

(viii) culinary skills; and

(ix) other appropriate activities;

(C) establishing a national network of trained professionals to present training programs and workshops for food service personnel;

(D) developing training materials for use in the programs and workshops described in subparagraph (C);

(E) acting as a clearinghouse for research, studies, and findings concerning all aspects of the operation of food service programs;

(F) training food service personnel to comply with the nutrition guidance and objectives established by the Secretary through a national network of instructors or other means;

(G) preparing informational materials, such as video instruction tapes and menu planners, to promote healthier food preparation; and

(H) assisting State educational agencies in providing additional nutrition and health instructions and instructors, including training personnel to comply with the nutrition guidance and objectives established by the Secretary.

(d) Coordination

(1) In general

The Secretary shall coordinate activities carried out and assistance provided as required by subsection (b) of this section with activities carried out by any food service management institute established as authorized by subsection (a)(2) of this section.

(2) Use of institute for dietary and nutrition activities

The Secretary shall use any food service management institute established under subsection (a)(2) of this section to assist in carrying out dietary and nutrition activities of the Secretary.

(e) Authorization of appropriations

(1) Training activities and technical assistance

There are authorized to be appropriated to carry out subsection (a)(1) of this section $3,000,000 for fiscal year 1990, $2,000,000 for fiscal year 1991, and $1,000,000 for each of fiscal years 1992 through 2009.

(2) Food service management institute

(A) Funding

In addition to any amounts otherwise made available for fiscal year 1995, out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary $3,000,000 for fiscal year 2004 and $4,000,000 for fiscal year 2005 and each subsequent fiscal year, to carry out subsection (a)(2) of this section. The Secretary shall be entitled to receive the funds and shall accept the funds, without further appropriation.

(B) Additional funding

In addition to amounts made available under subparagraph (A), there are authorized to be appropriated to carry out subsection (a)(2) of this section such sums as are necessary for fiscal year 1995 and each subsequent fiscal year. The Secretary shall carry out activities under subsection (a)(2) of this section, in addition to the activities funded under subparagraph (A), to the extent provided for, and in such amounts as are provided for, in advance in appropriations Acts.

(C) Funding for education, training, or applied research or studies

In addition to amounts made available under subparagraphs (A) and (B), from amounts otherwise appropriated to the Secretary in discretionary appropriations, the Secretary may provide funds to any food service management institute established under subsection (a)(2) of this section for projects specified by the Secretary that will contribute to implementing dietary or nutrition initiatives. Any additional funding under this subparagraph shall be provided noncompetitively in a separate cooperative agreement.

(f) Administrative training and technical assistance material

In collaboration with State educational agencies, local educational agencies, and school food authorities of varying sizes, the Secretary shall develop and distribute training and technical assistance material relating to the administration of school meals programs that are representative of the best management and administrative practices.

(g) Federal administrative support

(1) Funding

(A) In general

Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection—

(i) on October 1, 2004, and October 1, 2005, $3,000,000; and

(ii) on October 1, 2006, October 1, 2007, and October 1, 2008, $2,000,000.

(B) Receipt and acceptance

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this

subsection the funds transferred under subparagraph (A), without further appropriation.

(C) Availability of funds

Funds transferred under subparagraph (A) shall remain available until expended.

(2) Use of funds

The Secretary may use funds provided under this subsection—

(A) to provide training and technical assistance and material related to improving program integrity and administrative accuracy in school meals programs; and

(B) to assist State educational agencies in reviewing the administrative practices of local educational agencies, to the extent determined by the Secretary.

(June 4, 1946, ch. 281, § 21, as added Pub. L. 101–147, title I, § 109, Nov. 10, 1989, 103 Stat. 887; amended Pub. L. 102–337, § 1, Aug. 7, 1992, 106 Stat. 865; Pub. L. 103–448, title I, § 120, Nov. 2, 1994, 108 Stat. 4726; Pub. L. 105–336, title I, §§ 103(c)(2), 110, Oct. 31, 1998, 112 Stat. 3147, 3157; Pub. L. 108–265, title I, §§ 125, 126(a), title II, § 205(b), June 30, 2004, 118 Stat. 761, 763, 787; Pub. L. 108–447, div. A, title VII, § 788(c), Dec. 8, 2004, 118 Stat. 2851.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–265, § 125(a), substituted provisions relating to training and technical assistance under this chapter, section 1773 of this title, and other federally assisted programs, including assistance on a competitive basis to State agencies for the purpose of aiding schools with at least 50 percent of enrolled children certified to receive free or reduced price meals, and to State agencies with low proportions of students that participate in the school breakfast program and demonstrate the greatest need, for provisions relating to training activities and technical assistance under this chapter, section 1773 of this title, and other federally assisted programs.

Subsec. (c)(2)(B)(vi) to (x). Pub. L. 108–265, § 125(b), added cl. (vi), struck out former cls. (vi) and (vii), which related to safety and food handling, respectively, and redesignated former cls. (viii) to (x) as (vii) to (ix), respectively.

Subsec. (c)(2)(E). Pub. L. 108–265, § 205(b), struck out '', including activities carried out with assistance provided under section 1788 of this title'' before semicolon at end.

Subsec. (e)(1). Pub. L. 108–265, § 125(c)(1), substituted ''2009'' for ''2003''.

Subsec. (e)(2)(A). Pub. L. 108–447 inserted ''and'' after ''2005''.

Pub. L. 108–265, § 125(c)(2), substituted ''provide to the Secretary'' for ''provide to the Secretary $147,000 for fiscal year 1995, $2,000,000 for each of fiscal years 1996 through 1998, and'' and ''2004 and $4,000,000 for fiscal year 2005'' for ''1999 and''.

Subsecs. (f), (g). Pub. L. 108–265, § 126(a), added subsecs. (f) and (g).

1998—Subsec. (c)(2)(F), (H). Pub. L. 105–336, § 110(a), substituted ''established by the Secretary'' for ''of section 1769e of this title''.

Subsec. (e)(1). Pub. L. 105–336, § 110(b), substituted ''2003'' for ''1998''.

Subsec. (e)(2)(A). Pub. L. 105–336, § 110(c), substituted ''$2,000,000 for each of fiscal years 1996 through 1998, and $3,000,000 for fiscal year 1999 and each subsequent fiscal year,'' for ''and $2,000,000 for fiscal year 1996 and each subsequent fiscal year,'' in first sentence.

Pub. L. 105–336, § 103(c)(2), inserted '', without further appropriation'' before period at end of second sentence.

1994—Subsec. (a)(1). Pub. L. 103–448, § 120(c)(1), substituted ''subject to the availability of, and from, amounts'' for ''from amounts'' in introductory provisions.

Subsec. (c)(2)(B)(ix), (x). Pub. L. 103–448, § 120(a)(1), added cl. (ix) and redesignated former cl. (ix) as (x).

Subsec. (c)(2)(F) to (H). Pub. L. 103–448, § 120(a)(2)–(4), added subpars. (F) to (H).

Subsec. (d). Pub. L. 103–448, § 120(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (e). Pub. L. 103–448, § 120(c)(2), added subsec. (e) and struck out former subsec. (e) which read as follows: ''There are authorized to be appropriated—

''(1) $3,000,000 for the fiscal year 1990, $2,000,000 for the fiscal year 1991, and $1,000,000 for each of the fiscal years 1992, 1993, and 1994 for purposes of carrying out subsection (a)(1) of this section; and

''(2) $1,000,000 for the fiscal year 1990 and $4,000,000 for each of the fiscal years 1991, 1992, 1993, and 1994 for purposes of carrying out subsection (a)(2) of this section.''

1992—Subsec. (a)(2). Pub. L. 102–337 inserted ''to provide financial and other assistance to the University of Mississippi, in cooperation with the University of Southern Mississippi,'' after ''is authorized''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

§ 1769c. Compliance and accountability

(a) Unified accountability system

There shall be a unified system prescribed and administered by the Secretary for ensuring that local food service authorities that participate in the school lunch program under this chapter comply with the provisions of this chapter. Such system shall be established through the publication of regulations and the provision of an opportunity for public comment, consistent with the provisions of section 553 of title 5.

(b) Functions of system

(1) In general

Under the system described in subsection (a) of this section, each State educational agency shall—

(A) require that local food service authorities comply with the provisions of this chapter; and

(B) ensure such compliance through reasonable audits and supervisory assistance reviews.

(2) Minimization of additional duties

Each State educational agency shall coordinate the compliance and accountability activities described in paragraph (1) in a manner that minimizes the imposition of additional duties on local food service authorities.

(3) Additional review requirement for selected local educational agencies

(A) Definition of selected local educational agencies

In this paragraph, the term ''selected local educational agency'' means a local edu-

cational agency that has a demonstrated high level of, or a high risk for, administrative error, as determined by the Secretary.

(B) Additional administrative review

In addition to any review required by subsection (a) of this section or paragraph (1), each State educational agency shall conduct an administrative review of each selected local educational agency during the review cycle established under subsection (a) of this section.

(C) Scope of review

In carrying out a review under subparagraph (B), a State educational agency shall only review the administrative processes of a selected local educational agency, including application, certification, verification, meal counting, and meal claiming procedures.

(D) Results of review

If the State educational agency determines (on the basis of a review conducted under subparagraph (B)) that a selected local educational agency fails to meet performance criteria established by the Secretary, the State educational agency shall—

(i) require the selected local educational agency to develop and carry out an approved plan of corrective action;

(ii) except to the extent technical assistance is provided directly by the Secretary, provide technical assistance to assist the selected local educational agency in carrying out the corrective action plan; and

(iii) conduct a followup review of the selected local educational agency under standards established by the Secretary.

(4) Retaining funds after administrative reviews

(A) In general

Subject to subparagraphs (B) and (C), if the local educational agency fails to meet administrative performance criteria established by the Secretary in both an initial review and a followup review under paragraph (1) or (3) or subsection (a) of this section, the Secretary may require the State educational agency to retain funds that would otherwise be paid to the local educational agency for school meals programs under procedures prescribed by the Secretary.

(B) Amount

The amount of funds retained under subparagraph (A) shall equal the value of any overpayment made to the local educational agency or school food authority as a result of an erroneous claim during the time period described in subparagraph (C).

(C) Time period

The period for determining the value of any overpayment under subparagraph (B) shall be the period—

(i) beginning on the date the erroneous claim was made; and

(ii) ending on the earlier of the date the erroneous claim is corrected or—

(I) in the case of the first followup review conducted by the State educational agency of the local educational agency under this section after July 1, 2005, the date that is 60 days after the beginning of the period under clause (i); or

(II) in the case of any subsequent followup review conducted by the State educational agency of the local educational agency under this section, the date that is 90 days after the beginning of the period under clause (i).

(5) Use of retained funds

(A) In general

Subject to subparagraph (B), funds retained under paragraph (4) shall—

(i) be returned to the Secretary, and may be used—

(I) to provide training and technical assistance related to administrative practices designed to improve program integrity and administrative accuracy in school meals programs to State educational agencies and, to the extent determined by the Secretary, to local educational agencies and school food authorities;

(II) to assist State educational agencies in reviewing the administrative practices of local educational agencies in carrying out school meals programs; and

(III) to carry out section 1769b–1(f) of this title; or

(ii) be credited to the child nutrition programs appropriation account.

(B) State share

A State educational agency may retain not more than 25 percent of an amount recovered under paragraph (4), to carry out school meals program integrity initiatives to assist local educational agencies and school food authorities that have repeatedly failed, as determined by the Secretary, to meet administrative performance criteria.

(C) Requirement

To be eligible to retain funds under subparagraph (B), a State educational agency shall—

(i) submit to the Secretary a plan describing how the State educational agency will use the funds to improve school meals program integrity, including measures to give priority to local educational agencies from which funds were retained under paragraph (4);

(ii) consider using individuals who administer exemplary local food service programs in the provision of training and technical assistance; and

(iii) obtain the approval of the Secretary for the plan.

(c) Role of Secretary

In carrying out this section, the Secretary shall—

(1) assist the State educational agency in the monitoring of programs conducted by local food service authorities; and

(2) through management evaluations, review the compliance of the State educational agency and the local school food service authori-

ties with regulations issued under this chapter.

(d) Authorization of appropriations

There is authorized to be appropriated for purposes of carrying out the compliance and accountability activities referred to in subsection (c) of this section $6,000,000 for each of fiscal years 2004 through 2009.

(June 4, 1946, ch. 281, § 22, as added Pub. L. 101–147, title I, § 110(a), Nov. 10, 1989, 103 Stat. 889; amended Pub. L. 103–448, title I, § 121, Nov. 2, 1994, 108 Stat. 4727; Pub. L. 105–336, title I, § 111, Oct. 31, 1998, 112 Stat. 3157; Pub. L. 108–265, title I, §§ 126(b)(1), 127, June 30, 2004, 118 Stat. 763, 767.)

PRIOR PROVISIONS

A prior section 1769c, act June 4, 1946, ch. 281, § 22, as added Nov. 10, 1978, Pub. L. 95–627, § 9, 92 Stat. 3623, directed a study of menu choice, prior to repeal by Pub. L. 99–500, title III, § 371(b), Oct. 18, 1986, 100 Stat. 1783–368, and Pub. L. 99–591, title III, § 371(b), Oct. 30, 1986, 100 Stat. 3341–372; Pub. L. 99–661, div. D, title V, § 4501(b), Nov. 14, 1986, 100 Stat. 4080.

AMENDMENTS

2004—Subsec. (b)(3) to (5). Pub. L. 108–265, § 126(b)(1), added pars. (3) to (5).

Subsec. (d). Pub. L. 108–265, § 127, substituted ''$6,000,000 for each of fiscal years 2004 through 2009'' for ''$3,000,000 for each of the fiscal years 1994 through 2003''.

1998—Subsec. (d). Pub. L. 105–336 substituted ''2003'' for ''1996''.

1994—Subsec. (d). Pub. L. 103–448 substituted ''fiscal years 1994 through 1996'' for ''fiscal years 1990, 1991, 1992, 1993, and 1994''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 126(b)(1) of Pub. L. 108–265 effective July 1, 2005, and amendment by section 127 of Pub. L. 108–265 effective June 30, 2004, see section 502(a), (b)(4) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

REGULATIONS

Section 110(b) of Pub. L. 101–147 provided that: ''Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement section 22 of the [Richard B. Russell] National School Lunch Act [this section] (as added by subsection (a) of this section).''

INTERPRETATION

Pub. L. 108–265, title I, § 126(b)(2), June 30, 2004, 118 Stat. 765, provided that: ''Nothing in the amendment made by paragraph (1) [amending this section] affects the requirements for fiscal actions as described in the regulations issued pursuant to section 22(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(a)).''

§§ 1769d, 1769e. Repealed. Pub. L. 104–193, title VII, §§ 711, 712, Aug. 22, 1996, 110 Stat. 2301

Section 1769d, act June 4, 1946, ch. 281, § 23, as added Nov. 10, 1989, Pub. L. 101–147, title I, § 111, 103 Stat. 890, directed Secretary to provide each appropriate State agency with information on income eligibility for free or reduced price meals under each program established under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

Section 1769e, act June 4, 1946, ch. 281, § 24, as added Nov. 10, 1989, Pub. L. 101–147, title I, § 112, 103 Stat. 890, related to nutrition guidance for child nutrition programs.

§ 1769f. Duties of Secretary relating to nonprocurement debarment

(a) Purposes

The purposes of this section are to promote the prevention and deterrence of instances of fraud, bid rigging, and other anticompetitive activities encountered in the procurement of products for child nutrition programs by—

(1) establishing guidelines and a timetable for the Secretary to initiate debarment proceedings, as well as establishing mandatory debarment periods; and

(2) providing training, technical advice, and guidance in identifying and preventing the activities.

(b) Definitions

As used in this section:

(1) Child nutrition program

The term ''child nutrition program'' means—

(A) the school lunch program established under this chapter;

(B) the summer food service program for children established under section 1761 of this title;

(C) the child and adult care food program established under section 1766 of this title;

(D) the special milk program established under section 1772 of this title;

(E) the school breakfast program established under section 1773 of this title; and

(F) the special supplemental nutrition program for women, infants, and children authorized under section 1786 of this title.

(2) Contractor

The term ''contractor'' means a person that contracts with a State, an agency of a State, or a local agency to provide goods or services in relation to the participation of a local agency in a child nutrition program.

(3) Local agency

The term ''local agency'' means a school, school food authority, child care center, sponsoring organization, or other entity authorized to operate a child nutrition program at the local level.

(4) Nonprocurement debarment

The term ''nonprocurement debarment'' means an action to bar a person from programs and activities involving Federal financial and nonfinancial assistance, but not including Federal procurement programs and activities.

(5) Person

The term ''person'' means any individual, corporation, partnership, association, cooperative, or other legal entity, however organized.

(c) Assistance to identify and prevent fraud and anticompetitive activities

The Secretary shall—

(1) in cooperation with any other appropriate individual, organization, or agency, provide advice, training, technical assistance, and guidance (which may include awareness training, training films, and troubleshooting advice) to representatives of States and local agencies regarding means of identifying and preventing fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program; and

(2) provide information to, and fully cooperate with, the Attorney General and State attorneys general regarding investigations of fraud and anticompetitive activities relating to the provision of goods or services in conjunction with the participation of a local agency in a child nutrition program.

(d) Nonprocurement debarment

(1) In general

Except as provided in paragraph (3) and subsection (e) of this section, not later than 180 days after notification of the occurrence of a cause for debarment described in paragraph (2), the Secretary shall initiate nonprocurement debarment proceedings against the contractor who has committed the cause for debarment.

(2) Causes for debarment

Actions requiring initiation of nonprocurement debarment pursuant to paragraph (1) shall include a situation in which a contractor is found guilty in any criminal proceeding, or found liable in any civil or administrative proceeding, in connection with the supplying, providing, or selling of goods or services to any local agency in connection with a child nutrition program, of—

(A) an anticompetitive activity, including bid-rigging, price-fixing, the allocation of customers between competitors, or other violation of Federal or State antitrust laws;

(B) fraud, bribery, theft, forgery, or embezzlement;

(C) knowingly receiving stolen property;

(D) making a false claim or statement; or

(E) any other obstruction of justice.

(3) Exception

If the Secretary determines that a decision on initiating nonprocurement debarment proceedings cannot be made within 180 days after notification of the occurrence of a cause for debarment described in paragraph (2) because of the need to further investigate matters relating to the possible debarment, the Secretary may have such additional time as the Secretary considers necessary to make a decision, but not to exceed an additional 180 days.

(4) Mandatory child nutrition program debarment periods

(A) In general

Subject to the other provisions of this paragraph and notwithstanding any other provision of law except subsection (e) of this section, if, after deciding to initiate nonprocurement debarment proceedings pursuant to paragraph (1), the Secretary decides to debar a contractor, the debarment shall be for a period of not less than 3 years.

(B) Previous debarment

If the contractor has been previously debarred pursuant to nonprocurement debarment proceedings initiated pursuant to paragraph (1), and the cause for debarment is described in paragraph (2) based on activities that occurred subsequent to the initial debarment, the debarment shall be for a period of not less than 5 years.

(C) Scope

At a minimum, a debarment under this subsection shall serve to bar the contractor for the specified period from contracting to provide goods or services in conjunction with the participation of a local agency in a child nutrition program.

(D) Reversal, reduction, or exception

Nothing in this section shall restrict the ability of the Secretary to—

(i) reverse a debarment decision;

(ii) reduce the period or scope of a debarment;

(iii) grant an exception permitting a debarred contractor to participate in a particular contract to provide goods or services; or

(iv) otherwise settle a debarment action at any time;

in conjunction with the participation of a local agency in a child nutrition program, if the Secretary determines there is good cause for the action, after taking into account factors set forth in paragraphs (1) through (6) of subsection (e) of this section.

(5) Information

On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information regarding the decisions required by this subsection.

(6) Relationship to other authorities

A debarment imposed under this section shall not reduce or diminish the authority of a Federal, State, or local government agency or court to penalize, imprison, fine, suspend, debar, or take other adverse action against a person in a civil, criminal, or administrative proceeding.

(7) Regulations

The Secretary shall issue such regulations as are necessary to carry out this subsection.

(e) Mandatory debarment

Notwithstanding any other provision of this section, the Secretary shall initiate nonprocurement debarment proceedings against the contractor (including any cooperative) who has committed the cause for debarment (as determined under subsection (d)(2) of this section), unless the action—

(1) is likely to have a significant adverse effect on competition or prices in the relevant market or nationally;

(2) will interfere with the ability of a local agency to procure a needed product for a child nutrition program;

(3) is unfair to a person, subsidiary corporation, affiliate, parent company, or local division of a corporation that is not involved in the improper activity that would otherwise result in the debarment;

(4) is likely to have significant adverse economic impacts on the local economy in a manner that is unfair to innocent parties;

(5) is not justified in light of the penalties already imposed on the contractor for violations relevant to the proposed debarment, including any suspension or debarment arising out of the same matter that is imposed by any Federal or State agency; or

(6) is not in the public interest, or otherwise is not in the interests of justice, as determined by the Secretary.

(f) Exhaustion of administrative remedies

Prior to seeking judicial review in a court of competent jurisdiction, a contractor against whom a nonprocurement debarment proceeding has been initiated shall—

(1) exhaust all administrative procedures prescribed by the Secretary; and

(2) receive notice of the final determination of the Secretary.

(g) Information relating to prevention and control of anticompetitive activities

On request, the Secretary shall present to the Committee on Education and Labor, and the Committee on Agriculture, of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate information regarding the activities of the Secretary relating to anticompetitive activities, fraud, nonprocurement debarment, and any waiver granted by the Secretary under this section.

(June 4, 1946, ch. 281, § 25, as added Pub. L. 103–448, title I, § 122(a), Nov. 2, 1994, 108 Stat. 4727; amended Pub. L. 105–336, title I, § 107(j)(2)(C)(ii), Oct. 31, 1998, 112 Stat. 3153.)

AMENDMENTS

1998—Subsec. (b)(1)(D) to (G). Pub. L. 105–336 redesignated subpars. (E) to (G) as (D) to (F), respectively, and struck out former subpar. (D) which read as follows: ''the homeless children nutrition program established under section 1766b of this title;''.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective July 1, 1999, see section 107(j)(4) of Pub. L. 105–336, set out as a note under section 1761 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as an Effective Date of 1994 Amendment note under section 1755 of this title.

Section 122(b) of Pub. L. 103–448 provided that: ''Section 25 of the [Richard B. Russell] National School Lunch Act [42 U.S.C. 1769f] (as added by subsection (a)) shall not apply to a cause for debarment as described in section 25(d)(2) of such Act that is based on an activity that took place prior to the effective date of section 25 of such Act [Oct. 1, 1994].''

NO REDUCTION IN AUTHORITY OF SECRETARY OF AGRICULTURE TO DEBAR OR SUSPEND A PERSON FROM FEDERAL FINANCIAL AND NONFINANCIAL ASSISTANCE AND BENEFITS

Section 122(c) of Pub. L. 103–448 provided that: ''The authority of the Secretary of Agriculture that exists on the day before the date of enactment of this Act [Nov. 2, 1994] to debar or suspend a person from Federal financial and nonfinancial assistance and benefits under Federal programs and activities shall not be diminished or reduced by subsection (a) [enacting this section] or the amendment made by subsection (a).''

§ 1769g. Information clearinghouse

(a) In general

The Secretary shall enter into a contract with a nongovernmental organization described in subsection (b) of this section to establish and maintain a clearinghouse to provide information to nongovernmental groups located throughout the United States that assist low-income individuals or communities regarding food assistance, self-help activities to aid individuals in becoming self-reliant, and other activities that empower low-income individuals or communities to improve the lives of low-income individuals and reduce reliance on Federal, State, or local governmental agencies for food or other assistance.

(b) Nongovernmental organization

The nongovernmental organization referred to in subsection (a) of this section shall be selected on a competitive basis and shall—

(1) be experienced in the gathering of firsthand information in all the States through onsite visits to grassroots organizations in each State that fight hunger and poverty or that assist individuals in becoming self-reliant;

(2) be experienced in the establishment of a clearinghouse similar to the clearinghouse described in subsection (a) of this section;

(3) agree to contribute in-kind resources towards the establishment and maintenance of the clearinghouse and agree to provide clearinghouse information, free of charge, to the Secretary, States, counties, cities, antihunger groups, and grassroots organizations that assist individuals in becoming self-sufficient and self-reliant;

(4) be sponsored by an organization, or be an organization, that—

(A) has helped combat hunger for at least 10 years;

(B) is committed to reinvesting in the United States; and

(C) is knowledgeable regarding Federal nutrition programs;

(5) be experienced in communicating the purpose of the clearinghouse through the

media, including the radio and print media, and be able to provide access to the clearinghouse information through computer or telecommunications technology, as well as through the mails; and

(6) be able to provide examples, advice, and guidance to States, counties, cities, communities, antihunger groups, and local organizations regarding means of assisting individuals and communities to reduce reliance on government programs, reduce hunger, improve nutrition, and otherwise assist low-income individuals and communities become more self-sufficient.

(c) Audits

The Secretary shall establish fair and reasonable auditing procedures regarding the expenditures of funds to carry out this section.

(d) Funding

Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall pay to the Secretary to provide to the organization selected under this section, to establish and maintain the information clearinghouse, $200,000 for each of fiscal years 1995 and 1996, $150,000 for fiscal year 1997, $100,000 for fiscal year 1998, $166,000 for each of fiscal years 1999 through 2004, and $250,000 for each of fiscal years 2005 through 2009. The Secretary shall be entitled to receive the funds and shall accept the funds, without further appropriation.

(June 4, 1946, ch. 281, §26, as added Pub. L. 103–448, title I, §123, Nov. 2, 1994, 108 Stat. 4731; amended Pub. L. 105–336, title I, §§103(c)(2), 112, Oct. 31, 1998, 112 Stat. 3147, 3157; Pub. L. 108–265, title I, §128, June 30, 2004, 118 Stat. 767.)

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–265, in first sentence, substituted ''1998,'' for ''1998, and'' and ''through 2004, and $250,000 for each of fiscal years 2005 through 2009'' for ''through 2003''.

1998—Subsec. (d). Pub. L. 105–336 substituted ''$100,000 for fiscal year 1998, and $166,000 for each of fiscal years 1999 through 2003'' for ''and $100,000 for fiscal year 1998'' in first sentence and inserted '', without further appropriation'' before period at end of second sentence.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as an Effective Date of 1994 Amendment note under section 1755 of this title.

§ 1769h. Accommodation of the special dietary needs of individuals with disabilities

(a) Definitions

In this section:

(1) Covered program

The term ''covered program'' means—

(A) the school lunch program authorized under this chapter;

(B) the school breakfast program authorized under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

(C) any other program authorized under this chapter or the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] (except for section 17 [42 U.S.C. 1786]) that the Secretary determines is appropriate.

(2) Eligible entity

The term ''eligible entity'' means a school food authority, institution, or service institution that participates in a covered program.

(b) Activities

The Secretary may carry out activities to help accommodate the special dietary needs of individuals with disabilities who are participating in a covered program. The activities may include—

(1) developing and disseminating to State agencies guidance and technical assistance materials;

(2) conducting training of State agencies and eligible entities; and

(3) providing grants to State agencies and eligible entities.

(c) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 1999 through 2003.

(June 4, 1946, ch. 281, §27, as added Pub. L. 103–448, title I, §124, Nov. 2, 1994, 108 Stat. 4732; amended Pub. L. 105–220, title IV, §414(d), Aug. 7, 1998, 112 Stat. 1242; Pub. L. 105–336, title I, §113, Oct. 31, 1998, 112 Stat. 3157.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a)(1)(C), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

AMENDMENTS

1998—Pub. L. 105–336 amended section generally, substituting present provisions for former provisions relating to guidance and grants for accommodating special dietary needs of children with disabilities.

Subsec. (a)(1)(B). Pub. L. 105–220 substituted ''section 705 of title 29'' for ''section 706(8) of title 29''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as an Effective Date of 1994 Amendment note under section 1755 of this title.

§ 1769i. Program evaluation

(a) Performance assessments

(1) In general

Subject to the availability of funds made available under paragraph (3), the Secretary, acting through the Administrator of the Food and Nutrition Service, may conduct annual national performance assessments of the meal programs under this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(2) Components

In conducting an assessment, the Secretary may assess—

(A) the cost of producing meals and meal supplements under the programs described in paragraph (1); and

(B) the nutrient profile of meals, and status of menu planning practices, under the programs.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection $5,000,000 for fiscal year 2004 and each subsequent fiscal year.

(b) Certification improvements

(1) In general

Subject to the availability of funds made available under paragraph (5), the Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct a study of the feasibility of improving the certification process used for the school lunch program established under this chapter.

(2) Pilot projects

In carrying out this subsection, the Secretary may conduct pilot projects to improve the certification process used for the school lunch program.

(3) Components

In carrying out this subsection, the Secretary shall examine the use of—

(A) other income reporting systems;

(B) an integrated benefit eligibility determination process managed by a single agency;

(C) income or program participation data gathered by State or local agencies; and

(D) other options determined by the Secretary.

(4) Waivers

(A) In general

Subject to subparagraph (B), the Secretary may waive such provisions of this chapter and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) as are necessary to carry out this subsection.

(B) Provisions

The protections of section 1758(b)(6) of this title shall apply to any study or pilot project carried out under this subsection.

(5) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection such sums as are necessary.

(June 4, 1946, ch. 281, § 28, as added Pub. L. 108–265, title I, § 129, June 30, 2004, 118 Stat. 767.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a)(1) and (b)(4)(A), is Pub. L. 89–642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

CHAPTER 13A—CHILD NUTRITION

Sec.

§ 1771. Congressional declaration of purpose

In recognition of the demonstrated relationship between food and good nutrition and the capacity of children to develop and learn, based on the years of cumulative successful experience under the national school lunch program with its significant contributions in the field of applied nutrition research, it is hereby declared to be the policy of Congress that these efforts shall be extended, expanded, and strengthened under the authority of the Secretary of Agriculture as a measure to safeguard the health and well-being of the Nation's children, and to encourage the domestic consumption of agricultural and other foods, by assisting States, through grants-in-aid and other means, to meet more effectively the nutritional needs of our children.

(Pub. L. 89–642, § 2, Oct. 11, 1966, 80 Stat. 885.)

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102–512, § 1, Oct. 24, 1992, 106 Stat. 3363, provided that: ''This Act [amending sections 1769, 1776, and 1786 of this title and enacting provisions set out as notes under this section and sections 1769 and 1786 of this title] may be cited as the 'Children's Nutrition Assistance Act of 1992'.''

Pub. L. 102–512, title I, § 101, Oct. 24, 1992, 106 Stat. 3363, provided that: ''This title [amending sections 1769 and 1776 of this title and enacting provisions set out as a note under section 1769 of this title] may be cited as the 'Homeless Children's Assistance Act of 1992'.''

Pub. L. 102–512, title II, § 201, Oct. 24, 1992, 106 Stat. 3364, provided that: ''This title [amending section 1786 of this title and enacting provisions set out as notes under section 1786 of this title] may be cited as the 'WIC Infant Formula Procurement Act of 1992'.''

Pub. L. 102–314, § 1, July 2, 1992, 106 Stat. 280, provided that: ''This Act [amending section 1786 of this title and enacting provisions set out as notes under section 1786 of this title] may be cited as the 'WIC Farmers' Market Nutrition Act of 1992'.''

SHORT TITLE

Section 1 of Pub. L. 89–642 provided: ''That this Act [enacting this chapter] may be cited as the 'Child Nutrition Act of 1966'.''

§ 1772. Special program to encourage the consumption of fluid milk by children; authorization of appropriations; eligibility for special milk program; minimum rate of reimbursement; ineligibility of commodity only schools

(a)(1) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each succeeding fiscal year, such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as the Secretary may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (A) nonprofit schools of high school grade and under, except as provided in paragraph (2), which do not participate in a meal service program authorized under this chapter or the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], and (B) nonprofit nursery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the

care and training of children, which do not participate in a meal service program authorized under this chapter or the Richard B. Russell National School Lunch Act.

(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under this chapter or the Richard B. Russell National School Lunch Act.

(3) For the purposes of this section ''United States'' means the fifty States, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the District of Columbia.

(4) The Secretary shall administer the special milk program provided for by this section to the maximum extent practicable in the same manner as the Secretary administered the special milk program provided for by this chapter during the fiscal year ending June 30, 1969.

(5) Any school or nonprofit child care institution which does not participate in a meal service program authorized under this chapter or the Richard B. Russell National School Lunch Act shall receive the special milk program upon its request.

(6) Children who qualify for free lunches under guidelines set forth by the Secretary shall, at the option of the school involved (or of the local educational agency involved in the case of a public school) be eligible for free milk upon their request.

(7) For the fiscal year ending June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions shall not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor.

(8) Such adjustment shall be computed to the nearest one-fourth cent.

(9) Notwithstanding any other provision of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children.

(10) The State educational agency shall disburse funds paid to the State during any fiscal year for purposes of carrying out the program under this section in accordance with such agreements approved by the Secretary as may be entered into by such State agency and the schools in the State. The agreements described in the preceding sentence shall be permanent agreements that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

(b) Commodity only schools shall not be eligible to participate in the special milk program under this section. For the purposes of the preceding sentence, the term ''commodity only schools'' means schools that do not participate in the school lunch program under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.

(Pub. L. 89–642, § 3, Oct. 11, 1966, 80 Stat. 885; Pub. L. 91–295, June 30, 1970, 84 Stat. 336; Pub. L. 93–150, § 7, Nov. 7, 1973, 87 Stat. 563; Pub. L. 93–347, § 3, July 12, 1974, 88 Stat. 341; Pub. L. 94–105, § 15(a), Oct. 7, 1975, 89 Stat. 522; Pub. L. 95–166, §§ 11, 20(1), (2), Nov. 10, 1977, 91 Stat. 1337, 1346; Pub. L. 95–627, § 5(a), Nov. 10, 1978, 92 Stat. 3619; Pub. L. 96–499, title II, § 209, Dec. 5, 1980, 94 Stat. 2602; Pub. L. 97–35, title VIII, §§ 807, 813(c), Aug. 13, 1981, 95 Stat. 527, 530; Pub. L. 99–500, title III, § 329, Oct. 18, 1986, 100 Stat. 1783–362, and Pub. L. 99–591, title III, § 329, Oct. 30, 1986, 100 Stat. 3341–365; Pub. L. 99–661, div. D, title II, § 4209, Nov. 14, 1986, 100 Stat. 4073; Pub. L. 101–147, title II, § 211, title III, § 321, Nov. 10, 1989, 103 Stat. 911, 916; Pub. L. 104–193, title VII, § 721, Aug. 22, 1996, 110 Stat. 2301; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsecs. (a)(1), (2), (5), (b), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1999—Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act'' wherever appearing.

1996—Subsec. (a)(3). Pub. L. 104–193 substituted ''the Commonwealth of the Northern Mariana Islands'' for ''the Trust Territory of the Pacific Islands''.

1989—Subsec. (a). Pub. L. 101–147, § 211(a), amended subsec. (a) as identically amended by Pub. L. 99–591, § 329, and Pub. L. 99–661, § 4209, to read as if only the amendment by Pub. L. 99–661 was enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (a)(1). Pub. L. 101–147, § 321(1), substituted ''the Secretary'' for ''he'' before ''may deem''.

Subsec. (a)(2). Pub. L. 101–147, § 321(2), struck out ''(42 U.S.C. 1751 et seq.)'' after ''National School Lunch Act''.

Subsec. (a)(4). Pub. L. 101–147, § 321(3), substituted ''the Secretary'' for ''he''.

Subsec. (a)(5). Pub. L. 101–147, § 321(4), substituted ''its'' for ''their'' before ''request''.

Subsec. (a)(10). Pub. L. 101–147, § 211(b), added par. (10).

1986—Subsec. (a). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended subsec. (a) identically, designating existing provisions as pars. (1) and (3) to (9), in par. (1), redesignating former cls. (1) and (2) as subpars. (A) and (B) and inserting ''except as provided in paragraph (2),'' in subpar. (A), and adding par. (2).

1981—Subsec. (a). Pub. L. 97–35, § 813(c)(1), designated existing provisions as subsec. (a).

Pub. L. 97–35, § 807, inserted provisions respecting nonparticipation in a meal service program, and struck out provisions relating to rate of reimbursement per half-pint of milk served to children not eligible for free milk in schools, child care institutions, and summer camps participating in meal service programs under the National School Lunch Act.

Subsec. (b). Pub. L. 97–35, § 813(c)(2), added subsec. (b).

1980—Pub. L. 96–499 provided that rate of reimbursement per half-pint of milk, served to children not eligible for free milk in schools, child care institutions, and summer camps participating in meal service programs under the National School Lunch Act and this chapter was to be five cents.

1978—Pub. L. 95–627 substituted ''Producer Price Index for Fresh Processed Milk'' for ''series of food away from home of the Consumer Price Index'', and inserted provision relating to eligibility for free milk.

1977—Pub. L. 95–166 provided free milk for children when milk is made available at times other than the periods of meal service in outlets that operate a food service program under sections 1753, 1766, and 1773 of this title, and substituted ''school years'' and ''annual basis each school year'' for ''fiscal years'' and ''annual basis each fiscal year'' and deleted ''thereafter, beginning with the fiscal year ending June 30, 1976,'' before ''to reflect changes''.

1975—Pub. L. 94–105 added the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands to definition of ''United States'', and inserted provision relating to minimum rate of reimbursement to schools and institutions of the cost of milk served to children.

1974—Pub. L. 93–347 substituted ''such sums as may be necessary'' for '', not to exceed $120,000,000,'' in provision limiting the size of appropriations authorized and inserted provisions setting a minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions and allowing for an annual adjustment of the minimum rate.

1973—Pub. L. 93–150 inserted provisions making any school or nonprofit child care institution eligible to receive the special milk program upon their request and any children that qualify for free lunches under guidelines set forth by the Secretary also eligible for free milk.

1970—Pub. L. 91–295 substituted provisions authorizing appropriations of not to exceed $120,000,000 for fiscal year ending June 30, 1970, and for each succeeding fiscal year, for provisions authorizing appropriations of not to exceed $110,000,000 for fiscal year ending June 30, 1967, not to exceed $115,000,000 for fiscal year ending June 30, 1968, and not to exceed $120,000,000 for each of two succeeding fiscal years, and provisions requiring Secretary to administer the special milk program provided for by this section in same manner as he administered the special milk program provided for by this chapter during fiscal year ending June 30, 1969, for provisions requiring the Secretary to administer such program in the same manner as he administered the special milk program provided for by Pub. L. 85–478, as amended, during fiscal year ending June 30, 1966, and provided that Guam be subject to provisions of this section.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 4209 of Pub. L. 99–661 provided that the amendment made by that section is effective Oct. 1, 1986.

Section 329 of Pub. L. 99–500 and Pub. L. 99–591 provided that the amendment made by that section is effective July 1, 1987.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 807 of Pub. L. 97–35 effective Oct. 1, 1981, and amendment by section 813 of Pub. L. 97–35 effective 90 days after Aug. 13, 1981, see section 820(a)(3), (5) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective July 1, 1979, except as specifically provided, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 20 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

§ 1773. School breakfast program

(a) Establishment; authorization of appropriations

There is hereby authorized to be appropriated such sums as are necessary to enable the Secretary to carry out a program to assist the States and the Department of Defense through grants-in-aid and other means to initiate, maintain, or expand nonprofit breakfast programs in all schools which make application for assistance and agree to carry out a nonprofit breakfast program in accordance with this chapter. Appropriations and expenditures for this chapter shall be considered Health and Human Services functions for budget purposes rather than functions of Agriculture.

(b) Breakfast assistance payments to State educational agencies; calculation; national average payments for breakfasts, free breakfasts and reduced price breakfasts; maximum price for reduced cost breakfasts; minimum daily nutrition requirements criteria; additional payments for severe need schools; maximum severe need payments

(1)(A)(i) The Secretary shall make breakfast assistance payments to each State educational agency each fiscal year, at such times as the Secretary may determine, from the sums appropriated for such purpose, in an amount equal to the product obtained by multiplying—

(I) the number of breakfasts served during such fiscal year to children in schools in such States which participate in the school breakfast program under agreements with such State educational agency; by

(II) the national average breakfast payment for free breakfasts, for reduced price breakfasts, or for breakfasts served to children not eligible for free or reduced price meals, as appropriate, as prescribed in clause (B) of this paragraph.

(ii) The agreements described in clause (i)(I) shall be permanent agreements that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State educational agency to suspend or terminate any such agreement in accordance with regulations prescribed by the Secretary.

(B) The national average payment for each free breakfast shall be 57 cents (as adjusted pursuant to section 1759a(a) of this title). The national average payment for each reduced price breakfast shall be one-half of the national average payment for each free breakfast, except that in no case shall the difference between the amount of the national average payment for a free breakfast and the national average payment for a reduced price breakfast exceed 30 cents. The national average payment for each breakfast served to a child not eligible for free or reduced price meals shall be 8.25 cents (as adjusted pursuant to section 1759a(a) of this title).

(C) No school which receives breakfast assistance payments under this section may charge a price of more than 30 cents for a reduced price breakfast.

(D) No breakfast assistance payment may be made under this subsection for any breakfast served by a school unless such breakfast consists

of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under subsection (e) of this section.

(E) FREE AND REDUCED PRICE POLICY STATEMENT.—After the initial submission, a local educational agency shall not be required to submit a free and reduced price policy statement to a State educational agency under this chapter unless there is a substantive change in the free and reduced price policy of the local educational agency. A routine change in the policy of a local educational agency, such as an annual adjustment of the income eligibility guidelines for free and reduced price meals, shall not be sufficient cause for requiring the local educational agency to submit a policy statement.

(2)(A) The Secretary shall make additional payments for breakfasts served to children qualifying for a free or reduced price meal at schools that are in severe need.

(B) The maximum payment for each such free breakfast shall be the higher of—

(i) the national average payment established by the Secretary for free breakfasts plus 10 cents, or

(ii) 45 cents (as adjusted pursuant to section 1759a(a)(3)(B) of this title).

(C) The maximum payment for each such reduced price breakfast shall be thirty cents less than the maximum payment for each free breakfast as determined under clause (B) of this paragraph.

(3) The Secretary shall increase by 6 cents the annually adjusted payment for each breakfast served under this chapter and section 1766 of this title. These funds shall be used to assist States, to the extent feasible, in improving the nutritional quality of the breakfasts.

(4) Notwithstanding any other provision of law, whenever stocks of agricultural commodities are acquired by the Secretary or the Commodity Credit Corporation and are not likely to be sold by the Secretary or the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, the Secretary shall make such commodities available to school food authorities and eligible institutions serving breakfasts under this chapter in a quantity equal in value to not less than 3 cents for each breakfast served under this chapter and section 1766 of this title.

(5) Expenditures of funds from State and local sources for the maintenance of the breakfast program shall not be diminished as a result of funds or commodities received under paragraph (3) or (4).

(c) Disbursement of apportioned funds by State; preference for schools in poor economic areas, for students traveling long distances daily, and for schools for improvement of nutrition and dietary practices of children of working mothers and from low-income families

Funds apportioned and paid to any State for the purpose of this section shall be disbursed by the State educational agency to schools selected by the State educational agency to assist such schools in operating a breakfast program and for the purpose of subsection (d) of this section. Disbursement to schools shall be made at such rates per meal or on such other basis as the Secretary shall prescribe. In selecting schools for participation, the State educational agency shall, to the extent practicable, give first consideration to those schools drawing attendance from areas in which poor economic conditions exist, to those schools in which a substantial proportion of the children enrolled must travel long distances daily, and to those schools in which there is a special need for improving the nutrition and dietary practices of children of working mothers and children from low-income families. Breakfast assistance disbursements to schools under this section may be made in advance or by way of reimbursement in accordance with procedures prescribed by the Secretary.

(d) Severe need assistance

(1) In general

Each State educational agency shall provide additional assistance to schools in severe need, which shall include only those schools (having a breakfast program or desiring to initiate a breakfast program) in which—

(A) during the most recent second preceding school year for which lunches were served, 40 percent or more of the lunches served to students at the school were served free or at a reduced price; or

(B) in the case of a school in which lunches were not served during the most recent second preceding school year, the Secretary otherwise determines that the requirements of subparagraph (A) would have been met.

(2) Additional assistance

A school, on the submission of appropriate documentation about the need circumstances in that school and the eligibility of the school for additional assistance, shall be entitled to receive the meal reimbursement rate specified in subsection (b)(2) of this section.

(e) Nutritional requirements; service free or at reduced price; compliance assistance

(1)(A) Breakfasts served by schools participating in the school breakfast program under this section shall consist of a combination of foods and shall meet the minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research, except that the minimum nutritional requirements shall be measured by not less than the weekly average of the nutrient content of school breakfasts. Such breakfasts shall be served free or at a reduced price to children in school under the same terms and conditions as are set forth with respect to the service of lunches free or at a reduced price in section 1758 of this title.

(B) The Secretary shall provide through State educational agencies technical assistance and training, including technical assistance and training in the preparation of foods high in complex carbohydrates and lower-fat versions of foods commonly used in the school breakfast program established under this section, to schools participating in the school breakfast program to assist the schools in complying with the nutritional requirements prescribed by the Secretary pursuant to subparagraph (A) and in providing appropriate meals to children with medically certified special dietary needs.

(2) At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this chapter may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume. A refusal of an offered food item shall not affect the full charge to the student for a breakfast meeting the requirements of this section or the amount of payments made under this chapter to a school for the breakfast.

(Pub. L. 89–642, § 4, Oct. 11, 1966, 80 Stat. 886; Pub. L. 90–302, § 5, May 8, 1968, 82 Stat. 119; Pub. L. 91–248, §§ 6(d), 10, May 14, 1970, 84 Stat. 210, 214; Pub. L. 92–32, §§ 2–5, June 30, 1971, 85 Stat. 85; Pub. L. 92–433, § 3, Sept. 26, 1972, 86 Stat. 724; Pub. L. 93–150, § 4, Nov. 7, 1973, 87 Stat. 562; Pub. L. 94–105, §§ 2, 3, 15(b), 17(a), Oct. 7, 1975, 89 Stat. 511, 522, 525; Pub. L. 95–166, § 12, Nov. 10, 1977, 91 Stat. 1337; Pub. L. 95–561, title XIV, § 1408(b)(1), Nov. 1, 1978, 92 Stat. 2368; Pub. L. 95–627, § 6(c), Nov. 10, 1978, 92 Stat. 3620; Pub. L. 97–35, title VIII, §§ 801(c), 817(d), 819(b), Aug. 13, 1981, 95 Stat. 522, 532, 533; Pub. L. 99–500, title III, §§ 330(a), 331, 372(b)(1), Oct. 18, 1986, 100 Stat. 1783–363, 1783–369, and Pub. L. 99–591, title III, §§ 330(a), 331, 372(b)(1), Oct. 30, 1986, 100 Stat. 3341–366, 3341–372; Pub. L. 99–661, div. D, title II, §§ 4210(a), 4211, title V, § 4502(b)(1), Nov. 14, 1986, 100 Stat. 4074, 4080; Pub. L. 100–435, title II, § 210, Sept. 19, 1988, 102 Stat. 1657; Pub. L. 101–147, title I, § 121, title II, § 212(a)(1), (2)(A), (b), title III, § 322, Nov. 10, 1989, 103 Stat. 891, 912, 916; Pub. L. 103–448, title II, § 201, Nov. 2, 1994, 108 Stat. 4734; Pub. L. 104–193, title VII, §§ 722–723(b)(1), Aug. 22, 1996, 110 Stat. 2301, 2302; Pub. L. 105–336, title I, § 103(b)(2), title II, § 201, Oct. 31, 1998, 112 Stat. 3146, 3158; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170; Pub. L. 108–265, title I, § 108(c), title II, § 201, June 30, 2004, 118 Stat. 746, 768.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (b)(1)(E). Pub. L. 108–265, § 108(c), substituted ''local educational agency'' for ''school food authority'' wherever appearing.

Subsec. (d). Pub. L. 108–265, § 201, added subsec. (d) and struck out former subsec. (d), which authorized severe need assistance to schools in which the service of breakfasts is required by State law and to schools in which 40 percent or more of lunches were served free or at a reduced price during the most recent second preceding school year, and entitled such schools to receive the lesser of 100 percent of the operating costs of the breakfast program or the meal reimbursement rate specified in subsec. (b)(2).

1999—Subsecs. (b), (e)(1)(A). Pub. L. 106–78 made technical amendment to references in original act which appear in text as references to sections 1758, 1759a, and 1766 of this title.

1998—Subsec. (a). Pub. L. 105–336, § 201, struck out ''and to carry out the provisions of subsection (g) of this section'' before period at end of first sentence.

Subsec. (b)(1)(B). Pub. L. 105–336, § 103(b)(2)(A), struck out ''adjusted to the nearest one-fourth cent,'' after ''payment for each free breakfast,'' in second sentence.

Subsec. (b)(2)(B)(ii). Pub. L. 105–336, § 103(b)(2)(B), substituted ''(as adjusted pursuant to section 1759a(a)(3)(B) of this title).'' for '', which shall be adjusted on an annual basis each July 1 to the nearest one-fourth cent in accordance with changes in the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor for the most recent twelve-month period for which such data are available, except that the initial such adjustment shall be made on January 1, 1978, and shall reflect the change in the series of food away from home during the period November 1, 1976, to October 31, 1977.''

1996—Subsec. (b)(1)(E). Pub. L. 104–193, § 722, added subpar. (E).

Subsec. (e)(1)(B). Pub. L. 104–193, § 723(a), struck out at end ''The Secretary shall provide through State educational agencies additional technical assistance to schools that are having difficulty maintaining compliance with the requirements.''

Subsecs. (f), (g). Pub. L. 104–193, § 723(b)(1), struck out subsec. (f) relating to expansion of program and subsec. (g) relating to startup and expansion costs.

1994—Subsec. (e)(1). Pub. L. 103–448, § 201(a), (b), designated existing provisions as subpar. (A), inserted '', except that the minimum nutritional requirements shall be measured by not less than the weekly average of the nutrient content of school breakfasts'' before period at end, and added subpar. (B).

Subsec. (f)(1). Pub. L. 103–448, § 201(c), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (g). Pub. L. 103–448, § 201(d), amended heading and text of subsec. (g) generally. Prior to amendment, text required the Secretary to pay State educational agencies to assist eligible schools in initiating a school breakfast program, set forth a plan by which certain State educational agencies competing for startup cost payments were to be given preference, provided that breakfast program maintenance funds were not to be diminished by these payments, defined ''eligible school'', and directed Secretary to report to Congress.

1989—Subsec. (a). Pub. L. 101–147, § 121(1), inserted before period at end of first sentence ''and to carry out the provisions of subsection (g) of this section''.

Subsec. (b). Pub. L. 101–147, § 322(1), substituted ''reduced price'' for ''reduced-price'' wherever appearing.

Subsec. (b)(1)(A). Pub. L. 101–147, § 212(b), designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i), and added cl. (ii).

Subsec. (b)(3). Pub. L. 101–147, § 322(2), made technical amendment to reference to section 1766 of this title involving underlying provisions of original act and requiring no change in text.

Subsec. (b)(3) to (5). Pub. L. 101–147, § 212(a)(1), (2)(A), amended subsec. (b)(3) to (5), as amended identically by Pub. L. 99–591, § 330(a), and Pub. L. 99–661, § 4210(a), and as further amended by Pub. L. 100–435, § 210, to read as if only the amendment by Pub. L. 99–661 was enacted, and further amended subsec. (b)(3) identically to the amendment that was made by Pub. L. 100–435, resulting in no change in text, see 1986 and 1988 Amendment notes below.

Subsec. (d)(1)(B). Pub. L. 101–147, § 322(1), substituted ''reduced price'' for ''reduced-price''.

Subsec. (f). Pub. L. 101–147, § 121(2), inserted ''Expansion of program'' as heading, designated existing provisions as par. (1), struck out at end ''Within 4 months after October 7, 1975, the Secretary shall report to the committees of jurisdiction in the Congress his plans and those of the cooperating State agencies to bring about the needed expansion in the school breakfast program.'', and added par. (2).

Subsec. (g). Pub. L. 101–147, § 121(3), added subsec. (g).

1988—Subsec. (b)(3). Pub. L. 100–435 substituted ''6'' for ''3''.

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591, § 372(b)(1), and Pub. L. 99–661, § 4502(b)(1), amended subsec. (a) identically, substituting ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (b)(3) to (5). Pub. L. 99–500 and Pub. L. 99–591, § 330(a), and Pub. L. 99–661, § 4210(a), amended subsec. (b) identically, adding pars. (3) to (5).

Subsec. (e). Pub. L. 99–500 and Pub. L. 99–591, § 331, and Pub. L. 99–661, § 4211, amended subsec. (e) identically,

designating existing provisions as par. (1) and adding par. (2).

1981—Subsec. (b). Pub. L. 97–35, § 801(c)(1), (2), in par. (1) substituted provisions respecting calculation, amount, limitations, etc., for breakfast assistance payments to State educational agencies for provisions respecting apportionment, calculation, etc., for payments beginning with fiscal year ending June 30, 1973, and in par. (2) substituted provisions respecting annual adjustments, for provisions respecting semiannual adjustments and substituted ''thirty'' for ''five''.

Subsec. (c). Pub. L. 97–35, § 819(b), struck out ''financing the costs of'' after ''such schools in''.

Subsec. (d). Pub. L. 97–35, § 801(c)(3)(A), substituted provisions limiting additional assistance requirements to schools in severe need for provisions setting forth requirements for eligibility standards for providing additional assistance to schools in severe need.

Subsec. (f). Pub. L. 97–35, § 817(d), redesignated former subsec. (g) as (f). Former subsec. (f), which related to nonprofit private schools, was struck out.

Subsec. (g). Pub. L. 97–35, § 817(d), redesignated former subsec. (g) as (f).

1978—Subsec. (a). Pub. L. 95–561 inserted provision relating to applicability to programs of the Department of Defense.

Subsec. (d). Pub. L. 95–627 specified which schools could be considered to be in severe need.

1977—Subsec. (b)(1). Pub. L. 95–166, § 12(1), (2), designated existing provisions as par. (1) and struck out provision for payment of up to 45 cents for breakfasts served to children qualifying for a free breakfast in cases of severe need, which is now covered in par. (2).

Subsec. (b)(2). Pub. L. 95–166, § 12(3), added par. (2).

Subsec. (d). Pub. L. 95–166, § 12(4), substituted requirement that the Secretary establish eligibility standards for providing additional assistance to schools in severe need for prior requirement that the State educational agency require applicant schools to provide justification of the need for such assistance; required the eligibility standards to be submitted to the Secretary for approval and to be included in the State plan of child nutrition operations and submission of appropriate documentation about the need circumstances in the school and the school's eligibility for additional assistance; and authorized payment of the lesser of 100 percent of the operating costs or the meal reimbursement rate, previously limited to the 100 percent payment.

1975—Subsec. (a). Pub. L. 94–105, § 2, struck out ''for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975,'' after ''such sums as are necessary''.

Subsec. (b). Pub. L. 94–105, § 15(b), substituted ''American Samoa, and the Trust Territory of the Pacific Islands'' for ''and American Samoa'' wherever appearing in cl. (1) of first sentence.

Subsec. (f). Pub. L. 94–105, § 17(a), substituted ''directly to the schools (as defined in section 1784(c) of this title which are private and nonprofit as defined in the last sentence of section 1784(c) of this title)'' for ''directly to the nonprofit private schools''.

Subsec. (g). Pub. L. 94–105, § 3, added subsec. (g).

1973—Subsec. (b). Pub. L. 93–150, § 4(c), prescribed a minimum payment of 8 cents as the national average payment for all breakfasts served to eligible children, inserted provision for minimum payment of 15 cents for each reduced-price breakfast and for minimum payment of 20 cents for each free breakfast, and authorized, in cases of severe need, a payment of up to 45 cents for each breakfast served to children qualifying for a free breakfast.

Subsec. (c). Pub. L. 93–150, § 4(a), (b), substituted in first sentence ''State educational agency to assist such schools in financing the costs of operating a breakfast program'' for ''State educational agency, to assist such schools in financing the cost of obtaining agricultural and other foods for consumption by needy children in a breakfast program'' and struck out second sentence which provided that ''Such food costs may include, in addition to the purchase price, the cost of processing, distributing, transporting, storing, and handling.'', respectively.

1972—Subsec. (a). Pub. L. 92–433, § 3(a), substituted authorization of appropriation of such sums as are necessary for fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for provisions authorizing appropriation of amounts not exceeding $25,000,000 for fiscal years 1972 and 1973 and made amounts available to schools making applications for assistance and agreeing to carry out a nonprofit breakfast program in accordance with this chapter.

Subsec. (b). Pub. L. 92–433, § 3(b), made existing apportionment formula applicable to fiscal year ending June 30, 1973 and added new formula for fiscal years beginning with fiscal year ending June 30, 1974.

Subsec. (c). Pub. L. 92–433, § 3(c), inserted provision that breakfast assistance disbursements to schools may be made in advance or by way of reimbursement in accordance with procedure prescribed by the Secretary.

Subsec. (e). Pub. L. 92–433, § 3(d), substituted provisions that breakfasts be served free or at reduced cost under same terms and conditions as set forth in section 1758 of this title for provisions relating to determination by local school authorities of the inability of children to pay full cost, criteria for such determination, income poverty guidelines, affidavit of household's annual income, eligibility of nonprofit private schools for funds, and prohibition of discrimination on account of inability to pay.

Subsec. (f). Pub. L. 92–433, § 3(e), substituted provisions that for fiscal year ending June 30, 1973, withholding and disbursement to nonprofit private schools will be effected as before and that commencing with the next fiscal year, the Secretary would directly make payments to the nonprofit private schools participating in the breakfast program under agreement with the Secretary for provisions that such withholding and disbursement be effected in accordance with section 1759 of this title with some exceptions.

1971—Subsec. (a). Pub. L. 92–32, § 2, authorized appropriations of 25 million dollars for fiscal years 1972, and 1973, and struck out provision for appropriation of 6.5, 10, and 25 million dollars for fiscal years, 1969, 1970, and 1971, respectively.

Subsec. (c). Pub. L. 92–32, § 3, substituted ''assist such schools in financing the cost'' for ''reimburse such schools for the cost'' and provided for preference of schools for improvement of nutrition and dietary practices of children of working mothers and from low-income families.

Subsec. (d). Pub. L. 92–32, § 4, increased financial assistance from ''80'' to ''100'' per centum.

Subsec. (e). Pub. L. 92–32, § 5, substituted provisions relating to criteria for determination of eligible children, income poverty guidelines, priority of neediest children, affidavit of household's annual income, and certification of availability of funds for nonprofit private schools, for former provision for determination of eligible children on basis of consultations of local school authorities with public welfare and health agencies.

1970—Subsec. (a). Pub. L. 91–248, § 10, substituted ''$25,000,000'' for ''$12,000,000''.

Subsec. (e). Pub. L. 91–248, § 6(d), provided that there be no overt identification of those children who receive free and reduced price meals.

1968—Subsec. (a). Pub. L. 90–302 provided authorization to appropriate $6,500,000 for fiscal year 1969, not to exceed $10,000,000 for fiscal year 1970, and not to exceed $12,000,000 for fiscal year 1971, struck out references to authorization for fiscal years 1967 and 1968 and to pilot programs conducted on a nonpartisan basis, and added provision that appropriations and expenditures for this chapter be considered Health, Education, and Welfare functions for budget purposes rather than functions of Agriculture.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 108(c) of Pub. L. 108–265 effective June 30, 2004, and amendment by section 201 of Pub. L. 108–265 effective July 1, 2004, see section 502(a), (b)(1) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 723(b)(2) of Pub. L. 104–193 provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on October 1, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 212(a)(2)(B) of Pub. L. 101–147 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if such amendments had been effective on July 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–435 to be effective and implemented on July 1, 1989, see section 701(b)(4) of Pub. L. 100–435, set out as a note under section 2012 of Title 7, Agriculture.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 4210(a) of Pub. L. 99–661 provided that the amendment made by that section is effective Oct. 1, 1986.

Section 330(a) of Pub. L. 99–500 and Pub. L. 99–591 provided that the amendment made by that section is effective July 1, 1987.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 801(c) of Pub. L. 97–35 effective Sept. 1, 1981, and amendment by sections 817 and 819 of Pub. L. 97–35 effective Oct. 1, 1981, see section 820(1)(A), (4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

Amendment by Pub. L. 95–561 effective Oct. 1, 1978, and no provision therein to be construed as impairing or preventing the taking effect of any other Act providing for the transfer of functions described therein to an executive department having responsibility for education, see section 1415 of Pub. L. 95–561, set out as an Effective Date note under section 921 of Title 20, Education.

TRANSFER OF FUNCTIONS

For transfer to Secretary of Education of functions of Secretary of Defense and Department of Defense relating to operation of overseas schools for dependents of Department of Defense and under Defense Dependents' Education Act of 1978, 20 U.S.C. 921 et seq., see section 3442(a) of Title 20, Education.

REVIEW OF BEST PRACTICES IN THE BREAKFAST PROGRAM

Pub. L. 108–265, title II, §206, June 30, 2004, 118 Stat. 787, provided that:

''(a) REVIEW.—

''(1) IN GENERAL.—Subject to the availability of funds under subsection (c), the Secretary of Agriculture shall enter into an agreement with a research organization to collect and disseminate a review of best practices to assist school food authorities in addressing existing impediments at the State and local level that hinder the growth of the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

''(2) RECOMMENDATIONS.—The review shall describe model breakfast programs and offer recommendations for schools to overcome obstacles, including—

''(A) the length of the school day;

''(B) bus schedules; and

''(C) potential increases in costs at the State and local level.

''(b) DISSEMINATION.—Not later than 1 year after the date of enactment of this Act [June 30, 2004], the Secretary shall—

''(1) make the review required under subsection (a) available to school food authorities via the Internet, including recommendations to improve participation in the school breakfast program; and

''(2) transmit to [the] Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a copy of the review.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.''

CONSOLIDATION OF SCHOOL LUNCH PROGRAM AND SCHOOL BREAKFAST PROGRAM INTO COMPREHENSIVE MEAL PROGRAM

For provisions directing Secretary of Agriculture to consolidate school breakfast program under this section and school lunch program under chapter 13 (§1751 et seq.) of this title into comprehensive meal program, see section 301 of Pub. L. 103–448, set out as a note under section 1751 of this title.

ADJUSTMENTS IN MAXIMUM BREAKFAST PAYMENTS FOR FISCAL YEAR ENDING SEPTEMBER 30, 1981

Pub. L. 96–499, title II, §210, Dec. 5, 1980, 94 Stat. 2602, provided that: ''Notwithstanding section 4(b)(2)(B)(ii) of the Child Nutrition Act of 1966 [subsec. (b)(2)(B)(ii) of this section], in determining the maximum payment for free breakfasts under such section for the fiscal year ending September 30, 1981—

''(1) no adjustment under such section shall be made on January 1 of such fiscal year; and

''(2) the adjustment under such section required to be made on July 1 of such fiscal year shall be computed to the nearest one-fourth cent based on changes, measured over the preceding twelve-month period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, Department of Labor.''

ALTERNATE FOODS

Pub. L. 95–627, §6(d), Nov. 10, 1998, 93 Stat. 3621, provided that: ''The Secretary shall not limit or prohibit, during the school year 1978–79, the use of formulated grain-fruit products currently approved for use in the school breakfast program. The Secretary shall consult experts in child nutrition, industry representatives, and school food service personnel and school administrators (including personnel and administrators in school systems using such products) with respect to the continued use of formulated grain-fruit products in the school breakfast program, and shall also take into account the findings and recommendations in the report on this subject of the General Accounting Office [now Government Accountability Office]. The Secretary shall not promulgate a final rule disapproving the use of such products in the school breakfast program beyond the 1978–79 school year until the Secretary has notified the appropriate committees of Congress, and such rule shall not take effect until sixty days after such notification.''

REPORT TO CONGRESS OF NEEDS FOR ADDITIONAL FUNDS FOR SCHOOL BREAKFAST AND NONFOOD ASSISTANCE PROGRAMS, FISCAL YEAR ENDING JUNE 30, 1972

Pub. L. 92–153, §3, Nov. 5, 1971, 85 Stat. 420, provided that the Secretary of Agriculture determine imme-

diately upon enactment of this resolution (Nov. 5, 1971) and report to Congress the needs for additional funds to carry out the school breakfast and nonfood assistance programs during the fiscal year ending June 30, 1972, at levels permitting expansion of the school breakfast and school lunch programs to all schools desiring such programs as rapidly as practicable.

TRANSFER OF FUNDS TO SCHOOLS IN NEED OF ADDITIONAL ASSISTANCE IN SCHOOL BREAKFAST PROGRAM

Pub. L. 92–153, § 7, Nov. 5, 1971, 85 Stat. 420, provided that: ''In addition to any other authority given to the Secretary he is hereby authorized to transfer funds from section 32 of the Act of August 24, 1935 [section 612c of Title 7, Agriculture], for the purpose of assisting schools which demonstrate a need for additional funds in the school breakfast program.''

DIRECT DISTRIBUTION PROGRAMS FOR DIET OF NEEDY CHILDREN SUFFERING FROM GENERAL AND CONTINUED HUNGER; ADDITIONAL FUNDS

Additional funds for direct distribution programs for diet of needy children suffering from general and continued hunger and payment of administrative costs of State or local welfare agency carrying out such programs, see section 6 of Pub. L. 92–32, set out as a note under section 612c of Title 7, Agriculture.

§ 1774. Disbursement directly to schools or institutions

(a) The Secretary shall withhold funds payable to a State under this chapter and disburse the funds directly to schools or institutions within the State for the purposes authorized by this chapter to the extent that the Secretary has so withheld and disbursed such funds continuously since October 1, 1980, but only to such extent (except as otherwise required by subsection (b) of this section). Any funds so withheld and disbursed by the Secretary shall be used for the same purposes, and shall be subject to the same conditions, as applicable to a State disbursing funds made available under this chapter. If the Secretary is administering (in whole or in part) any program authorized under this chapter, the State in which the Secretary is administering the program may, upon request to the Secretary, assume administration of that program.

(b) If a State educational agency is not permitted by law to disburse the funds paid to it under this chapter to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as are authorized or required with respect to the disbursements to public schools within the State by the State educational agency.

(Pub. L. 89–642, § 5, as added Pub. L. 97–35, title VIII, § 817(e), Aug. 13, 1981, 95 Stat. 532.)

PRIOR PROVISIONS

A prior section 1774, Pub. L. 89–642, § 5, Oct. 11, 1966, 80 Stat. 887; Pub. L. 91–248, § 2, May 14, 1970, 84 Stat. 208; Pub. L. 92–433, § 6(a)–(d), Sept. 26, 1972, 86 Stat. 727; Pub. L. 93–326, § 5, June 30, 1974, 88 Stat. 287; Pub. L. 94–105, § 18, Oct. 7, 1975, 89 Stat. 525; Pub. L. 95–166, §§ 4, 20(3), (4), Nov. 10, 1977, 91 Stat. 1332, 1346; Pub. L. 95–627, § 6(b), Nov. 10, 1978, 92 Stat. 3620; Pub. L. 96–499, title II, § 211, Dec. 5, 1980, 94 Stat. 2603, made provision for food service equipment assistance program, prior to repeal by Pub. L. 97–35, § 805(b).

EFFECTIVE DATE

Section effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 1753 of this title.

REPORT TO CONGRESS OF NEEDS FOR EQUIPMENT TO BE SUBMITTED BY JUNE 30, 1973

Pub. L. 92–433, § 6(e), Sept. 26, 1972, 86 Stat. 729, directed Secretary, to assist Congress in determining amounts needed annually, to conduct a survey among States and school districts on unmet needs for equipment in schools eligible for assistance under former section 1774 of this title, results of such survey to be reported to Congress by June 30, 1973.

§ 1775. Certification to Secretary of the Treasury of amounts to be paid to States

The Secretary shall certify to the Secretary of the Treasury from time to time the amounts to be paid to any State under sections 1772 through 1776 of this title and the time or times such amounts are to be paid; and the Secretary of the Treasury shall pay to the State at the time or times fixed by the Secretary the amounts so certified.

(Pub. L. 89–642, § 6, Oct. 11, 1966, 80 Stat. 888.)

§ 1776. State administrative expenses

(a) Amount and allocation of funds

(1) Amount available

(A) In general

Except as provided in subparagraph (B), each fiscal year, the Secretary shall make available to the States for their administrative costs an amount equal to not less than 1½ percent of the Federal funds expended under sections 4, 11, and 17 of the Richard B. Russell National School Lunch Act [42 U.S.C. 1753, 1759a, 1766] and 1772 and 1773 of this title during the second preceding fiscal year.

(B) Minimum amount

In the case of each of fiscal years 2005 through 2007, the Secretary shall make available to each State for administrative costs not less than the initial allocation made to the State under this subsection for fiscal year 2004.

(C) Allocation

The Secretary shall allocate the funds so provided in accordance with paragraphs (2), (3), and (4) of this subsection.

(2) Expense grants

(A) In general

Subject to subparagraph (B), the Secretary shall allocate to each State for administrative costs incurred in any fiscal year in connection with the programs authorized under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] or under this chapter, except for the programs authorized under section 13 or 17 of the Richard B. Russell National School Lunch Act [42 U.S.C. 1761, 1766] or under section 1786 of this title, an amount equal to not less than 1 percent and not more than 1½ percent of the funds expended by each State under sections

4 and 11 of the Richard B. Russell National School Lunch Act [42 U.S.C. 1753, 1759a] and sections 1772 and 1773 of this title during the second preceding fiscal year.

(B) Minimum amount

(i) In general

In no case shall the grant available to any State under this paragraph be less than the amount such State was allocated in the fiscal year ending September 30, 1981, or $200,000 (as adjusted under clause (ii),[1] whichever is larger.

(ii) Adjustment

On October 1, 2008, and each October 1 thereafter, the minimum dollar amount for a fiscal year specified in clause (i) shall be adjusted to reflect the percentage change between—

(I) the value of the index for State and local government purchases, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(II) the value of that index for the 12-month period ending June 30 of the preceding fiscal year.

(3) The Secretary shall allocate to each State for its administrative costs incurred under the program authorized by section 17 of the Richard B. Russell National School Lunch Act [42 U.S.C. 1766] in any fiscal year an amount, based upon funds expended under that program in the second preceding fiscal year, equal to (A) 20 percent of the first $50,000, (B) 10 percent of the next $100,000, (C) 5 percent of the next $250,000, and (D) 2½ percent of any remaining funds. If an agency in the State other than the State educational agency administers such program, the State shall ensure that an amount equal to no less than the funds due the State under this paragraph is provided to such agency for costs incurred by such agency in administering the program, except as provided in paragraph (5). The Secretary may adjust any State's allocation to reflect changes in the size of its program.

(4) The remaining funds appropriated under this section shall be allocated among the States by the Secretary in amounts the Secretary determines necessary for the improvement in the States of the administration of the programs authorized under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] and this chapter, except for section 1786 of this title, including, but not limited to, improved program integrity and the quality of meals served to children.

(5)(A) Not more than 25 percent of the amounts made available to each State under this section for the fiscal year 1991 and 20 percent of the amounts made available to each State under this section for the fiscal year 1992 and for each succeeding fiscal year may remain available for obligation or expenditure in the fiscal year succeeding the fiscal year for which such amounts were appropriated.

(B) REALLOCATION OF FUNDS.—

(i) RETURN TO SECRETARY.—For each fiscal year, any amounts appropriated that are not obligated or expended during the fiscal year and are not carried over for the succeeding fiscal year under subparagraph (A) shall be returned to the Secretary.

(ii) REALLOCATION BY SECRETARY.—The Secretary shall allocate, for purposes of administrative costs, any remaining amounts among States that demonstrate a need for the amounts.

(6) USE OF ADMINISTRATIVE FUNDS.—Funds available to a State under this subsection and under section 13(k)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(k)(1)) may be used by the State for the costs of administration of the programs authorized under this chapter (except for the programs authorized under sections 1786 and 1790 of this title) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) without regard to the basis on which the funds were earned and allocated.

(7) Where the Secretary is responsible for the administration of programs under this chapter or the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], the amount of funds that would be allocated to the State agency under this section and under section 13(k)(1) of the Richard B. Russell National School Lunch Act [42 U.S.C. 1761(k)(1)] shall be retained by the Secretary for the Secretary's use in the administration of such programs.

(8) In the fiscal year 1991 and each succeeding fiscal year, in accordance with regulations issued by the Secretary, each State shall ensure that the State agency administering the distribution of commodities under programs authorized under this chapter and under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] is provided, from funds made available to the State under this subsection, an appropriate amount of funds for administrative costs incurred in distributing such commodities. In developing such regulations, the Secretary may consider the value of commodities provided to the State under this chapter and under the Richard B. Russell National School Lunch Act.

(9)(A) If the Secretary determines that the administration of any program by a State under this chapter (other than section 1786 of this title) or under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.)(including any requirement to provide sufficient training, technical assistance, and monitoring of the child and adult care food program under section 17 of that Act (42 U.S.C. 1766)), or compliance with a regulation issued pursuant to either this chapter or such Act, is seriously deficient, and the State fails to correct the deficiency within a specified period of time, the Secretary may withhold from the State some or all of the funds allocated to the State under this section or under section 13(k)(1) or 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761(k)(1) or 1766).

(B) On a subsequent determination by the Secretary that the administration of any program referred to in subparagraph (A), or compliance with the regulations issued to carry out the pro-

[1] So in original. Probably should be preceded by an additional closing parenthesis.

gram, is no longer seriously deficient and is operated in an acceptable manner, the Secretary may allocate some or all of the funds withheld under such subparagraph.

(b) Funds, usage: compensation, benefits, and travel expenses of personnel; support services; office equipment; staff development

Funds paid to a State under subsection (a) of this section may be used to pay salaries, including employee benefits and travel expenses, for administrative and supervisory personnel; for support services; for office equipment; and for staff development.

(c) Fund adjustment; State administered programs

If any State agency agrees to assume responsibility for the administration of food service programs in nonprofit private schools or child care institutions that were previously administered by the Secretary, an appropriate adjustment shall be made in the administrative funds paid under this section to the State not later than the succeeding fiscal year.

(d) Unused funds; availability for obligation and expenditure, and reallocation to other States

Notwithstanding any other provision of law, funds made available to each State under this section shall remain available for obligation and expenditure by that State during the fiscal year immediately following the fiscal year for which such funds were made available. For each fiscal year the Secretary shall establish a date by which each State shall submit to the Secretary a plan for the disbursement of funds provided under this section for each such year, and the Secretary shall reallocate any unused funds, as evidenced by such plans, to other States as the Secretary considers appropriate.

(e) Plans for use of administrative expense funds

(1) In general

Each State shall submit to the Secretary for approval by October 1 of the initial fiscal year a plan for the use of State administrative expense funds, including a staff formula for State personnel, system level supervisory and operating personnel, and school level personnel.

(2) Updates and information management systems

(A) In general

After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.

(B) Plan contents

Each State plan shall, at a minimum, include a description of how technology and information management systems will be used to improve program integrity by—

(i) monitoring the nutrient content of meals served;

(ii) training local educational agencies, school food authorities, and schools in how to use technology and information management systems (including verifying eligibility for free or reduced price meals using program participation or income data gathered by State or local agencies); and

(iii) using electronic data to establish benchmarks to compare and monitor program integrity, program participation, and financial data.

(3) Training and technical assistance

Each State shall submit to the Secretary for approval a plan describing the manner in which the State intends to implement subsection (g) of this section and section 22(b)(3) of the Richard B. Russell National School Lunch Act [42 U.S.C. 1769c(b)(3)].

(f) State funding requirement

Payments of funds under this section shall be made only to States that agree to maintain a level of funding out of State revenues, for administrative costs in connection with programs under this chapter (except section 1786 of this title) and the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] (except section 13 of that Act [42 U.S.C. 1761]), not less than the amount expended or obligated in fiscal year 1977, and that agree to participate fully in any studies authorized by the Secretary.

(g) State training

(1) In general

At least annually, each State shall provide training in administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures) to local educational agency and school food authority administrative personnel and other appropriate personnel, with emphasis on the requirements established by the Child Nutrition and WIC Reauthorization Act of 2004 and the amendments made by that Act.

(2) Federal role

The Secretary shall—

(A) provide training and technical assistance to a State; or

(B) at the option of the Secretary, directly provide training and technical assistance described in paragraph (1).

(3) Required participation

In accordance with procedures established by the Secretary, each local educational agency or school food authority shall ensure that an individual conducting or overseeing administrative procedures described in paragraph (1) receives training at least annually, unless determined otherwise by the Secretary.

(h) Funding for training and administrative reviews

(1) Funding

(A) In general

On October 1, 2004, and on each October 1 thereafter, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary of Agriculture to carry out this subsection $4,000,000, to remain available until expended.

(B) Receipt and acceptance

The Secretary shall be entitled to receive, shall accept, and shall use to carry out this

subsection the funds transferred under subparagraph (A), without further appropriation.

(2) Use of funds

(A) In general

Except as provided in subparagraph (B), the Secretary shall use funds provided under this subsection to assist States in carrying out subsection (g) of this section and administrative reviews of selected local educational agencies carried out under section 22 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c).

(B) Exception

The Secretary may retain a portion of the amount provided to cover costs of activities carried out by the Secretary in lieu of the State.

(3) Allocation

The Secretary shall allocate funds provided under this subsection to States based on the number of local educational agencies that have demonstrated a high level of, or a high risk for, administrative error, as determined by the Secretary, taking into account the requirements established by the Child Nutrition and WIC Reauthorization Act of 2004 and the amendments made by that Act.

(4) Reallocation

The Secretary may reallocate, to carry out this section, any amounts made available to carry out this subsection that are not obligated or expended, as determined by the Secretary.

(i) Technology infrastructure improvement

(1) In general

Each State shall submit to the Secretary, for approval by the Secretary, an amendment to the plan required by subsection (e) of this section that describes the manner in which funds provided under this section will be used for technology and information management systems.

(2) Requirements

The amendment shall, at a minimum, describe the manner in which the State will improve program integrity by—

(A) monitoring the nutrient content of meals served;

(B) providing training to local educational agencies, school food authorities, and schools on the use of technology and information management systems for activities including—

(i) menu planning;

(ii) collection of point-of-sale data; and

(iii) the processing of applications for free and reduced price meals; and

(C) using electronic data to establish benchmarks to compare and monitor program integrity, program participation, and financial data across schools and school food authorities.

(3) Technology infrastructure grants

(A) In general

Subject to the availability of funds made available under paragraph (4) to carry out this paragraph, the Secretary shall, on a competitive basis, provide funds to States to be used to provide grants to local educational agencies, school food authorities, and schools to defray the cost of purchasing or upgrading technology and information management systems for use in programs authorized by this chapter (other than section 1786 of this title) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(B) Infrastructure development plan

To be eligible to receive a grant under this paragraph, a school or school food authority shall submit to the State a plan to purchase or upgrade technology and information management systems that addresses potential cost savings and methods to improve program integrity, including—

(i) processing and verification of applications for free and reduced price meals;

(ii) integration of menu planning, production, and serving data to monitor compliance with section 9(f)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(f)(1)); and

(iii) compatibility with statewide reporting systems.

(4) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2005 through 2009, to remain available until expended.

(j) Authorization of appropriations

For the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 2009, there are hereby authorized to be appropriated such sums as may be necessary for the purposes of this section.

(Pub. L. 89–642, § 7, Oct. 11, 1966, 80 Stat. 888; Pub. L. 90–302, § 4, May 8, 1968, 82 Stat. 119; Pub. L. 91–248, § 5, May 14, 1970, 84 Stat. 210; Pub. L. 95–166, § 14, Nov. 10, 1977, 91 Stat. 1338; Pub. L. 95–627, § 7(a), Nov. 10, 1978, 92 Stat. 3621; Pub. L. 96–499, title II, § 201(b), Dec. 5, 1980, 94 Stat. 2600; Pub. L. 97–35, title VIII, §§ 814, 819(e), Aug. 13, 1981, 95 Stat. 531, 533; Pub. L. 99–500, title III, §§ 313, 332, Oct. 18, 1986, 100 Stat. 1783–360, 1783–363, and Pub. L. 99–591, title III, §§ 313, 332, Oct. 30, 1986, 100 Stat. 3341–363, 3341–367; Pub. L. 99–661, div. D, title I, § 4103, title II, § 4212, Nov. 14, 1986, 100 Stat. 4071, 4075; Pub. L. 101–147, title I, § 122(a), Nov. 10, 1989, 103 Stat. 893; Pub. L. 102–512, title I, § 103, Oct. 24, 1992, 106 Stat. 3363; Pub. L. 103–448, title I, § 117(a)(2)(B), title II, § 202, Nov. 2, 1994, 108 Stat. 4717, 4737; Pub. L. 104–193, title VII, § 724, Aug. 22, 1996, 110 Stat. 2302; Pub. L. 105–336, title II, § 202, Oct. 31, 1998, 112 Stat. 3158; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170; Pub. L. 106–224, title II, § 243(j), June 20, 2000, 114 Stat. 420; Pub. L. 108–265, title I, § 126(c), title II, § 202, June 30, 2004, 118 Stat. 765, 769.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsecs. (a), (f) and (i)(3)(A), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title.

For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

The Child Nutrition and WIC Reauthorization Act of 2004, referred to in subsecs. (g)(1) and (h)(3), is Pub. L. 108–265, June 30, 2004, 118 Stat. 729, as amended. For complete classification of this Act to the Code, see Short Title of 2004 Amendment note set out under section 1751 of this title and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–265, § 202(a)(1), inserted heading.

Subsec. (a)(1). Pub. L. 108–265, § 202(a)(1), (2)(A), inserted par. heading, designated first and second sentences as subpars. (A) and (C), respectively, inserted subpar. (A) and (C) headings, in subpar. (A) substituted ''Except as provided in subparagraph (B), each'' for ''Each'', added subpar. (B), and struck out at end ''There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.''

Subsec. (a)(2). Pub. L. 108–265, § 202(a)(2)(B), inserted par. heading, designated existing provisions as subpars. (A) and (B)(i), inserted headings, in subpar. (A) substituted ''Subject to subparagraph (B), the'' for ''The'', in subpar. (B)(i) substituted ''this paragraph'' for ''this subsection'' and ''$200,000 (as adjusted under clause (ii)'' for ''$100,000'', and added subpar. (B)(ii).

Subsec. (e). Pub. L. 108–265, § 126(c)(1), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, struck out last sentence requiring a State, after submitting the initial plan, to submit to the Secretary for approval only a substantive change in the plan, and added pars. (2) and (3).

Subsecs. (g), (h). Pub. L. 108–265, § 126(c)(3), added subsecs. (g) and (h). Former subsec. (g) redesignated (j).

Subsec. (i). Pub. L. 108–265, § 202(b), added subsec. (i).

Subsec. (j). Pub. L. 108–265, § 202(c), substituted ''2009'' for ''2003''.

Pub. L. 108–265, § 126(c)(2), redesignated subsec. (g) as (j).

2000—Subsec. (a)(9)(A). Pub. L. 106–224 inserted ''(including any requirement to provide sufficient training, technical assistance, and monitoring of the child and adult care food program under section 17 of that Act (42 U.S.C. 1766))'' after ''(42 U.S.C. 1751 et seq.)''.

1999—Subsecs. (a), (f). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act'' wherever appearing.

1998—Subsec. (a)(5)(B). Pub. L. 105–336, § 202(a), amended subpar. (B) generally, substituting present provisions for provisions which related to return of unexpended funds to Secretary and reallocation of such funds to provide annual grants to public entities and private nonprofit organizations participating in projects under former section 1766b of this title.

Subsec. (a)(6). Pub. L. 105–336, § 202(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''Funds available to States under this subsection and under section 13(k)(1) of the National School Lunch Act shall be used for the costs of administration of the programs for which the allocations are made, except that States may transfer up to 10 percent of any of the amounts allocated among such programs.''

Subsec. (g). Pub. L. 105–336, § 202(c), substituted ''2003'' for ''1998''.

1996—Subsec. (e). Pub. L. 104–193, § 724(b), substituted ''the initial fiscal year a plan'' for ''each year an annual plan'' and inserted at end ''After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.''

Pub. L. 104–193, § 724(a), redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: ''The State may use a portion of the funds available under this section to assist in the administration of the commodity distribution program.''

Subsecs. (f), (g). Pub. L. 104–193, § 724(a)(2), redesignated subsecs. (g) and (i) as (f) and (g), respectively. Former subsec. (f) redesignated (e).

Subsec. (h). Pub. L. 104–193, § 724(a)(1), struck out subsec. (h) which read as follows: ''The Secretary may not provide amounts under this section to a State for administrative costs incurred in any fiscal year unless the State agrees to participate in any study or survey of programs authorized under this chapter or the National School Lunch Act (42 U.S.C. 1751 et seq.) and conducted by the Secretary.''

Subsec. (i). Pub. L. 104–193, § 724(a)(2), redesignated subsec. (i) as (g).

1994—Subsec. (a)(5)(B)(i)(I). Pub. L. 103–448, § 117(a)(2)(B), substituted ''projects under section 17B of the National School Lunch Act'' for ''projects under section 18(c) of the National School Lunch Act (42 U.S.C. 1769(c))'' and substituted ''fiscal year 1995 and each subsequent fiscal year'' for ''each of fiscal years 1993 and 1994'' in two places.

Subsec. (a)(9). Pub. L. 103–448, § 202(a), added par. (9).

Subsec. (h). Pub. L. 103–448, § 202(c)(2), added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 103–448, § 202(b), substituted ''1998'' for ''1994''.

Subsec. (i). Pub. L. 103–448, § 202(c)(1), redesignated subsec. (h) as (i).

1992—Subsec. (a)(5)(B)(i). Pub. L. 102–512, § 103(1), substituted a colon for '', the Secretary shall—'' in introductory provisions.

Subsec. (a)(5)(B)(i)(I). Pub. L. 102–512, § 103(2), added subcl. (I) and struck out former subcl. (I) which read as follows: ''first allocate, for the purpose of providing grants on an annual basis to private nonprofit organizations participating in projects under section 18(f) of the National School Lunch Act, not less than $3,000,000 in the fiscal year 1992 and not less than $4,000,000 in each of the fiscal years 1993 and 1994; and''.

Subsec. (a)(5)(B)(i)(II). Pub. L. 102–512, § 103(3), substituted ''After making the allocations under subclause (I), the Secretary shall allocate,'' for ''then allocate,''.

1989—Subsec. (a)(3). Pub. L. 101–147, § 122(a)(1)(A), inserted after first sentence ''If an agency in the State other than the State educational agency administers such program, the State shall ensure that an amount equal to no less than the funds due the State under this paragraph is provided to such agency for costs incurred by such agency in administering the program, except as provided in paragraph (5).''

Subsec. (a)(5) to (8). Pub. L. 101–147, § 122(a)(1)(B)–(D), added pars. (5) and (8) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (g). Pub. L. 101–147, § 122(a)(2), inserted before period at end '', and that agree to participate fully in any studies authorized by the Secretary''.

Subsec. (h). Pub. L. 101–147, § 122(a)(3), substituted ''For the fiscal year beginning October 1, 1977, and each succeeding fiscal year ending before October 1, 1994,'' for ''For the fiscal years beginning October 1, 1977, and ending September 30, 1989,''.

1986—Subsecs. (b) to (g). Pub. L. 99–500 and Pub. L. 99–591, § 332, and Pub. L. 99–661, § 4212, amended section identically, redesignating subsecs. (c) to (h) as (b) to (g), respectively, and striking out former subsec. (b) which read as follows: ''The Secretary, in cooperation with the several States, shall develop State staffing standards for the administration by each State of sections 4, 11, and 17 of the National School Lunch Act [42 U.S.C. 1753, 1759a, 1766], and sections 1772 and 1773 of this title, that will ensure sufficient staff for the planning and administration of programs covered by State administrative expenses.''

Subsecs. (h), (i). Pub. L. 99–500 and Pub. L. 99–591, §§ 313, 332(2), and Pub. L. 99–661, §§ 4103, 4212(2), amended section identically, redesignating subsec. (i) as (h) and substituting ''1989'' for ''1984''. Former subsec. (h) redesignated (g).

1981—Subsec. (a). Pub. L. 97–35, §§ 814(a), 819(e), in par. (1) struck out reference to section 1774 of this title, and

in par. (2) substituted ''1981'' for ''1978'' and struck out reference to section 1774 of this title.

Subsec. (b). Pub. L. 97–35, §819(e), struck out reference to section 1774 of this title.

Subsec. (e). Pub. L. 97–35, §814(b), substituted provisions relating to general availability of unobligated funds during fiscal years following the fiscal years for which such funds were made available for provisions relating to availability of unobligated funds for fiscal year 1979 and for the five succeeding fiscal years.

1980—Subsec. (e). Pub. L. 96–499, §201(b)(1), substituted ''and for the five succeeding fiscal years'' for ''and the succeeding fiscal year''.

Subsec. (i). Pub. L. 96–499, §201(b)(2), substituted ''September 30, 1984'' for ''September 30, 1980''.

1978—Subsec. (a). Pub. L. 95–627 generally revised and restructured subsection and, among other changes, inserted formula for determining State allocations for administrative costs incurred under the program authorized by section 17 of the National School Lunch Act, authorized the State to transfer up to ten percent of any amounts allocated for administrative costs of the programs for which such funds were allocated, and authorized retention by the Secretary for the Secretary's use in administering certain programs, allocations for such programs, under this section and section 13(k)(1) of the National School Lunch Act.

1977—Subsecs. (a) to (i). Pub. L. 95–166 added subsecs. (a) to (i) and struck out prior provisions authorizing the Secretary to utilize appropriated funds for advances to State educational agencies for use for administrative expenses, advancing the fund only in necessary amounts and for administration of certain activities, and authorizing appropriation of necessary sums, now incorporated in subsec. (i) of this section.

1970—Pub. L. 91–248 inserted provisions authorizing Secretary to utilize funds appropriated under this section for advances for administrative expenses of any other designated State agency as well as for those of the State educational agency and in the case of either State agency, for its administrative expenses in supervising and giving technical assistance to service institutions as well as to local school districts.

1968—Pub. L. 90–302 inserted the programs under sections 1759a and 1761 of this title to the enumeration of programs in which appropriated funds could be used for administrative expenses of local school districts in supervising and giving technical assistance and added section 1761 to the enumeration of sections covering programs of additional activities under which funds could be advanced only in amounts and to the extent determined necessary by the Secretary.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 126(c) of Pub. L. 108–265 effective July 1, 2004, amendment by section 202(a) of Pub. L. 108–265 effective Oct. 1, 2004, and amendment by section 202(b), (c) of Pub. L. 108–265 effective June 30, 2004, see section 502(a), (b)(1), (2) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–512 effective Sept. 30, 1992, see section 104 of Pub. L. 102–512, set out as a note under section 1769 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 122(b) of Pub. L. 101–147 provided that: ''The amendment made by subsection (a)(1)(A) [amending this section] shall be effective as of October 1, 1989.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

§§ 1776a, 1776b. Omitted

CODIFICATION

Section 1776a, Pub. L. 103–111, title IV, Oct. 21, 1993, 107 Stat. 1071, conditioned the distribution of funds under section 1776 of this title upon agreement by a State to participate in studies and surveys of programs authorized under this chapter or the preceding chapter, when such studies or surveys were directed by Congress and requested by the Secretary of Agriculture, and was not repeated in the Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1995. See section 1776(h) of this title.

Section 1776b, Pub. L. 103–111, title IV, Oct. 21, 1993, 107 Stat. 1071, authorized the withholding, by the Secretary of Agriculture, of funds allocated to a State under sections 1761(k)(1) and 1776 of this title if the Secretary determined that the State was seriously deficient in administering any program under this chapter or the preceding chapter, and the State failed to correct such deficiencies within a specified period of time, and was not repeated in the Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1995. See section 1776(a)(9)(A) of this title.

Provisions similar to sections 1776a and 1776b were contained in the following prior appropriation acts:

Pub. L. 102–341, title IV, Aug. 14, 1992, 106 Stat. 900.

Pub. L. 102–142, title IV, Oct. 28, 1991, 105 Stat. 904.

Pub. L. 101–506, title III, Nov. 5, 1990, 104 Stat. 1340.

Pub. L. 101–161, title III, Nov. 21, 1989, 103 Stat. 976.

Pub. L. 100–460, title III, Oct. 1, 1988, 102 Stat. 2254.

Pub. L. 100–202, §101(k) [title III], Dec. 22, 1987, 101 Stat. 1329–322, 1329–348.

Pub. L. 99–500, §101(a) [title III], Oct. 18, 1986, 100 Stat. 1783, 1783–22, and Pub. L. 99–591, §101(a) [title III], Oct. 30, 1986, 100 Stat. 3341, 3341–22.

Pub. L. 99–190, §101(a) [H.R. 3037, title III], Dec. 19, 1985, 99 Stat. 1185; Pub. L. 100–202, §106, Dec. 22, 1987, 101 Stat. 1329–433.

Pub. L. 98–473, title I, §101(a) [H.R. 5743, title III], Oct. 12, 1984, 98 Stat. 1837.

Pub. L. 98–151, §101(d) [H.R. 3223, title III], Nov. 14, 1983, 97 Stat. 972.

Pub. L. 97–370, title III, Dec. 18, 1982, 96 Stat. 1805.

Pub. L. 97–103, title III, Dec. 23, 1981, 95 Stat. 1484.

Pub. L. 96–528, title III, Dec. 15, 1980, 94 Stat. 3112.

Pub. L. 96–108, title III, Nov. 9, 1979, 93 Stat. 837.

Pub. L. 96–38, title I, July 25, 1979, 93 Stat. 98.

§ 1777. Use in school breakfast program of food designated as being in abundance or food donated by the Secretary of Agriculture

Each school participating under section 1773 of this title shall, insofar as practicable, utilize in its program foods designated from time to time by the Secretary as being in abundance, either nationally or in the school area, or foods donated by the Secretary. Foods available under section 1431 of title 7 or purchased under section 612c or 1446a–1 of title 7, may be donated by the Secretary to schools, in accordance with the needs as determined by local school authorities, for utilization in their feeding programs under this chapter.

(Pub. L. 89–642, § 8, Oct. 11, 1966, 80 Stat. 888.)

§ 1778. Nonprofit programs

The food and milk service programs in schools and nonprofit institutions receiving assistance under this chapter shall be conducted on a nonprofit basis.

(Pub. L. 89–642, § 9, Oct. 11, 1966, 80 Stat. 888.)

§ 1779. Rules and regulations

(a) Authority of Secretary

The Secretary shall prescribe such regulations as the Secretary may deem necessary to carry out this chapter and the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], including regulations relating to the service of food in participating schools and service institutions in competition with the programs authorized under this chapter and the Richard B. Russell National School Lunch Act.

(b) Sale of competitive foods

The regulations shall not prohibit the sale of competitive foods approved by the Secretary in food service facilities or areas during the time of service of food under this chapter or the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] if the proceeds from the sales of such foods will inure to the benefit of the schools or of organizations of students approved by the schools.

(c) Transfer of funds; reserve for special projects

In such regulations the Secretary may provide for the transfer of funds by any State between the programs authorized under this chapter and the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] on the basis of an approved State plan of operation for the use of the funds and may provide for the reserve of up to 1 per centum of the funds available for apportionment to any State to carry out special developmental projects.

(Pub. L. 89–642, § 10, Oct. 11, 1966, 80 Stat. 889; Pub. L. 91–248, § 8, May 14, 1970, 84 Stat. 212; Pub. L. 92–433, § 7, Sept. 26, 1972, 86 Stat. 729; Pub. L. 95–166, § 17, Nov. 10, 1977, 91 Stat. 1345; Pub. L. 101–147, title III, § 323, Nov. 10, 1989, 103 Stat. 916; Pub. L. 103–448, title II, § 203, Nov. 2, 1994, 108 Stat. 4738; Pub. L. 104–193, title VII, § 725, Aug. 22, 1996, 110 Stat. 2302; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in text, is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

AMENDMENTS

1999—Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act'' wherever appearing.

1996—Subsec. (b). Pub. L. 104–193 redesignated par. (1) as subsec. (b) and struck out pars. (2) to (4) which read as follows:

''(2) The Secretary shall develop and provide to State agencies, for distribution to private elementary schools and to public elementary schools through local educational agencies, model language that bans the sale of competitive foods of minimal nutritional value anywhere on elementary school grounds before the end of the last lunch period.

''(3) The Secretary shall provide to State agencies, for distribution to private secondary schools and to public secondary schools through local educational agencies, a copy of regulations (in existence on the effective date of this paragraph) concerning the sale of competitive foods of minimal nutritional value.

''(4) Paragraphs (2) and (3) shall not apply to a State that has in effect a ban on the sale of competitive foods of minimal nutritional value in schools in the State.''

1994—Pub. L. 103–448 designated existing provisions as subsecs. (a) to (c), realigned margins, and in subsec. (b) designated existing provisions as par. (1), substituted ''The regulations'' for ''Such regulations'', and added pars. (2) to (4).

1989—Pub. L. 101–147 substituted ''the Secretary'' for ''he'' before ''may deem'' in first sentence.

1977—Pub. L. 95–166 inserted ''approved by the Secretary'' after ''competitive foods''.

1972—Pub. L. 92–433 inserted provision that regulations issued under the section shall not prohibit the sale of competitive foods in food service facilities or areas during the time of service of food if the proceeds from the sales of such foods inures to the benefit of the schools or organizations of students approved by the school.

1970—Pub. L. 91–248 provided that regulations under this chapter and under the National School Lunch Act may include provisions relating to the service of food in participating schools and service institutions in competition with programs under this chapter and the National School Lunch Act, provided for transfer of funds by any State between programs authorized under this chapter and under the National School Lunch Act, and provided for a reserve of up to one percent of the funds available for apportionment to any State to carry out special development projects.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

§ 1780. Prohibition against interference with school personnel, curriculum, or instruction; prohibition against inclusion of assistance in determining income or resources for purposes of taxation, welfare, or public assistance programs

(a) In carrying out the provisions of sections 1772 and 1773 of this title, the Secretary shall not impose any requirements with respect to teaching personnel, curriculum, instruction, methods of instruction, and materials of instruction.

(b) The value of assistance to children under this chapter shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this chapter.

(Pub. L. 89–642, § 11, Oct. 11, 1966, 80 Stat. 889; Pub. L. 97–35, title VIII, § 819(f), Aug. 13, 1981, 95 Stat. 533; Pub. L. 104–193, title VII, § 726, Aug. 22, 1996, 110 Stat. 2302.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–193 substituted ''the Secretary shall not'' for ''neither the Secretary nor the State shall''.

1981—Subsec. (a). Pub. L. 97–35 struck out reference to section 1774 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

§ 1781. Preschool programs

The Secretary may extend the benefits of all school feeding programs conducted and supervised by the Department of Agriculture to include preschool programs operated as part of the school system.

(Pub. L. 89–642, § 12, Oct 11, 1966, 80 Stat. 889.)

§ 1782. Centralization in Department of Agriculture of administration of food service programs for children

Authority for the conduct and supervision of Federal programs to assist schools in providing food service programs for children is assigned to the Department of Agriculture. To the extent practicable, other Federal agencies administering programs under which funds are to be provided to schools for such assistance shall transfer such funds to the Department of Agriculture for distribution through the administrative channels and in accordance with the standards established under this chapter and the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.].

(Pub. L. 89–642, § 13, Oct. 11, 1966, 80 Stat. 889; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in text, is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

AMENDMENTS

1999—Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act''.

§ 1783. Appropriations for administrative expense

There are hereby authorized to be appropriated for any fiscal year such sums as may be necessary to the Secretary for the Secretary's administrative expense under this chapter.

(Pub. L. 89–642, § 14, Oct. 11, 1966, 80 Stat. 889; Pub. L. 101–147, title III, § 324, Nov. 10, 1989, 103 Stat. 917.)

AMENDMENTS

1989—Pub. L. 101–147 inserted ''Appropriations for administrative expense'' as section catchline and substituted ''are hereby'' for ''is hereby'' and ''the Secretary's'' for ''his''.

§ 1784. Definitions

For the purposes of this chapter—

(1) ''State'' means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(2) ''State educational agency'' means, as the State legislature may determine, (A) the chief State school officer (such as the State superintendent of public instruction, commissioner of education, or similar officer), or (B) a board of education controlling the State department of education.

(3) ''School'' means (A) any public or nonprofit private school of high school grade or under, including kindergarten and preschool programs operated by such school, and (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded, but excluding Job Corps Centers funded by the Department of Labor). For purposes of clauses (A) and (B) of this paragraph, the term ''nonprofit'', when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of title 26.

(4) ''Secretary'' means the Secretary of Agriculture.

(5) ''School year'' means the annual period from July 1 through June 30.

(6) Except as used in section 1786 of this title, the terms ''child'' and ''children'' as used in this chapter, shall be deemed to include persons regardless of age who are determined by the State educational agency, in accordance with regulations prescribed by the Secretary, to have 1 or more disabilities and who are attending any nonresidential public or nonprofit private school of high school grade or under for the purpose of participating in a school program established for individuals with disabilities.

(7) DISABILITY.—The term ''disability'' has the meaning given the term in the Rehabilitation Act of 1973 for purposes of title II of that Act (29 U.S.C 760 et seq.).

(Pub. L. 89–642, § 15, Oct. 11, 1966, 80 Stat. 889; Pub. L. 94–105, §§ 15(c), 17(b), Oct. 7, 1975, 89 Stat. 522, 525; Pub. L. 95–166, § 20(5), Nov. 10, 1977, 91 Stat. 1346; Pub. L. 95–627, § 10(c), (d)(3), Nov. 10, 1978, 92 Stat. 3624; Pub. L. 96–499, title II, § 212, Dec. 5, 1980, 94 Stat. 2603; Pub. L. 97–35, title VIII, § 808(b), Aug. 13, 1981, 95 Stat. 527; Pub. L. 99–500, title III, § 325(b), Oct. 18, 1986, 100 Stat. 1783–361, and Pub. L. 99–591, title III, § 325(b), Oct. 30, 1986, 100 Stat. 3341–365; Pub. L. 99–661, div. D, title II, § 4205(b), Nov. 14, 1986, 100 Stat. 4072; Pub. L. 100–71, title I, § 101(b), July 11, 1987, 101 Stat. 430; Pub. L. 101–147, title III, § 325, Nov. 10, 1989, 103 Stat. 917; Pub. L. 104–193, title VII, § 727, Aug. 22, 1996, 110 Stat. 2302; Pub. L. 105–336, title I, § 107(j)(3)(D), Oct. 31, 1998, 112 Stat. 3153.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in par. (7), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. Title II of the Act is classified generally to subchapter II (§ 760 et seq.) of chapter 16 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1998—Par. (6). Pub. L. 105–336, §107(j)(3)(D)(i), substituted ''disabilities'' for ''mental or physical handicaps'' in two places.

Par. (7). Pub. L. 105–336, §107(j)(3)(D)(ii), added par. (7).

1996—Par. (1). Pub. L. 104–193, §727(1), substituted ''the Commonwealth of the Northern Mariana Islands'' for ''Trust Territory of the Pacific Islands''.

Par. (3). Pub. L. 104–193, §727(2), inserted ''and'' before ''(B)'' and struck out '', and (C) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico'' before ''. For purposes of clauses (A) and (B)''.

1989—Pub. L. 101–147 redesignated subsecs. (a) through (f) as pars. (1) through (6), respectively, in par. (2) redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, in par. (3) substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text, and in par. (6) substituted ''to have 1 or more mental or physical handicaps'' for ''to be mentally or physically handicapped'' and ''for individuals with mental or physical handicaps'' for ''for mentally or physically handicapped''.

1987—Subsec. (c). Pub. L. 100–71 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: '' 'School' means (A) any public or nonprofit private school of high school grade or under, including kindergarten and preschool programs operated by such school, (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded, but excluding Job Corps Centers funded by the Department of Labor), and (C) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico. For purposes of clauses (A) and (B) of this subsection, the term 'nonprofit', when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of title 26. On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.''

1986—Subsec. (c). Pub. L. 99–661, §4205(b)(2), inserted ''On July 1, 1988, and on each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect the changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.''

Subsec. (c)(A). Pub. L. 99–500 and Pub. L. 99–591, which directed the amendment of subpar. (A) by striking out ''except private schools whose average yearly tuition exceeds $1,500 per child,'' after ''such school'' was executed by striking out ''except private schools whose average yearly tuition exceeds $2,000 per child,'' after ''such school'' to reflect the probable intent of Congress and the intervening amendment of subpar. (A) by Pub. L. 99–661, §4205(b)(2). See below.

Pub. L. 99–661, §4205(b)(1), substituted ''$2,000'' for ''$1,500''.

1981—Subsec. (c). Pub. L. 97–35 inserted exception for private schools whose average yearly tuition exceeds $1,500.

1980—Subsec. (c). Pub. L. 96–499 inserted '', but excluding Job Corps Centers funded by the Department of Labor'' after ''mentally retarded''.

1978—Subsec. (e). Pub. L. 95–627, §10(c), substituted ''from July 1 through June 30'' for ''determined in accordance with regulations issued by the Secretary''.

Subsec. (f). Pub. L. 95–627, §10(d)(3), added subsec. (f).

1977—Subsec. (e). Pub. L. 95–166 added subsec. (e).

1975—Subsec. (a). Pub. L. 94–105, §15(c), included Trust Territory of Pacific Islands in definition of ''State''.

Subsecs. (c) to (e). Pub. L. 94–105, §17(b), struck out subsec. (c) which defined ''Nonprofit private school'' as any private school exempt from income tax under section 501(c)(3) of title 26, redesignated subsecs. (d) and (e) as (c) and (d) respectively, and in subsec. (c) as so redesignated, inserted definition of ''School'' any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded), and provision defining ''nonprofit'' as an exemption under section 501(c)(3) of title 26.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–71 effective July 1, 1987, see section 101(c) of Pub. L. 100–71, set out as a note under section 1760 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 4205(b)(1) of Pub. L. 99–661 applicable for fiscal year beginning Oct. 1, 1986, and each school year thereafter, and amendment by section 4205(b)(2) of Pub. L. 99–661 applicable for school year beginning July 1, 1988, and each school year thereafter, see section 4205(c) of Pub. L. 99–661, set out as a note under section 1760 of this title.

Amendment by Pub. L. 99–500 and Pub. L. 99–591 effective July 1, 1987, see section 325(c) of Pub. L. 99–500 and Pub. L. 99–591, set out as a note under section 1760 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(3) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 20 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

§ 1785. Accounts and records; availability for inspection; authority to settle, adjust, or waive claims

(a) States, State educational agencies, schools, and nonprofit institutions participating in programs under this chapter shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this chapter and the regulations hereunder. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of three years, as the Secretary determines is necessary.

(b) With regard to any claim arising under this chapter or under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], the Secretary shall have the authority to determine the amount of, to settle and to adjust any such claim, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of either this chapter or the Richard B. Russell National School Lunch Act.

Nothing contained in this subsection shall be construed to diminish the authority of the Attorney General of the United States under section 516 of title 28 to conduct litigation on behalf of the United States.

(Pub. L. 89–642, § 16, Oct. 11, 1966, 80 Stat. 890; Pub. L. 97–35, title VIII, § 816, Aug. 13, 1981, 95 Stat. 531; Pub. L. 104–193, title VII, § 728, Aug. 22, 1996, 110 Stat. 2302; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (b), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act'' in two places.

1996—Subsec. (a). Pub. L. 104–193 substituted ''be available at any reasonable time'' for ''at all times be available''.

1981—Pub. L. 97–35 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 820(a)(7)(C), of Pub. L. 97–35, set out as a note under section 1753 of this title.

STUDY OF COST ACCOUNTING REQUIREMENTS

Secretary prohibited from delaying or withholding or causing any State to delay or withhold payments for reimbursement of per meal costs on the basis of noncompliance with full cost accounting procedure unless and until the Secretary has studied additional personnel and training needs of States, local school districts and schools resulting from imposition of requirement to implement full cost accounting procedures, see section 21 of Pub. L. 94–105, set out as a note under section 1760 of this title.

§ 1786. Special supplemental nutrition program for women, infants, and children

(a) Congressional findings and declaration of purpose

Congress finds that substantial numbers of pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. It is, therefore, the purpose of the program authorized by this section to provide, up to the authorization levels set forth in subsection (g) of this section, supplemental foods and nutrition education through any eligible local agency that applies for participation in the program. The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the occurrence of health problems, including drug abuse, and improve the health status of these persons.

(b) Definitions

As used in this section—

(1) ''Breastfeeding women'' means women up to one year postpartum who are breastfeeding their infants.

(2) ''Children'' means persons who have had their first birthday but have not yet attained their fifth birthday.

(3) ''Competent professional authority'' means physicians, nutritionists, registered nurses, dietitians, or State or local medically trained health officials, or persons designated by physicians or State or local medically trained health officials, in accordance with standards prescribed by the Secretary, as being competent professionally to evaluate nutritional risk.

(4) ''Costs of nutrition services and administration'' or ''nutrition services and administration'' means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.

(5) ''Infants'' means persons under one year of age.

(6) ''Local agency'' means a public health or welfare agency or a private nonprofit health or welfare agency, which, directly or through an agency or physician with which it has contracted, provides health services. The term shall include an Indian tribe, band, or group recognized by the Department of the Interior, the Indian Health Service of the Department of Health and Human Services, or an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior.

(7) NUTRITION EDUCATION.—The term ''nutrition education'' means individual and group sessions and the provision of material that are designed to improve health status and achieve positive change in dietary and physical activity habits, and that emphasize the relationship between nutrition, physical activity, and health, all in keeping with the personal and cultural preferences of the individual.

(8) ''Nutritional risk'' means (A) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements, (B) other documented nutritionally related medical conditions, (C) dietary deficiencies that impair or endanger health, (D) conditions that directly affect the nutritional health of a person, such as alcoholism or drug abuse, or (E) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, homelessness and migrancy.

(9) ''Plan of operation and administration'' means a document that describes the manner in which the State agency intends to implement and operate the program.

(10) ''Postpartum women'' means women up to six months after termination of pregnancy.

(11) ''Pregnant women'' means women determined to have one or more fetuses in utero.

(12) ''Secretary'' means the Secretary of Agriculture.

(13) ''State agency'' means the health department or comparable agency of each State; an Indian tribe, band, or group recognized by the Department of the Interior; an intertribal council or group that is the authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior; or the Indian Health Service of the Department of Health and Human Services.

(14) ''Supplemental foods'' means those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children and foods that promote the health of the population served by the program authorized by this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns, as prescribed by the Secretary. State agencies may, with the approval of the Secretary, substitute different foods providing the nutritional equivalent of foods prescribed by the Secretary, to allow for different cultural eating patterns.

(15) ''Homeless individual'' means—

(A) an individual who lacks a fixed and regular nighttime residence; or

(B) an individual whose primary nighttime residence is—

(i) a supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations;

(ii) an institution that provides a temporary residence for individuals intended to be institutionalized;

(iii) a temporary accommodation of not more than 365 days in the residence of another individual; or

(iv) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(16) ''Drug abuse education'' means—

(A) the provision of information concerning the dangers of drug abuse; and

(B) the referral of participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors, or other drug abuse professionals.

(17) ''Competitive bidding'' means a procurement process under which the Secretary or a State agency selects a single source (a single infant formula manufacturer) offering the lowest price, as determined by the submission of sealed bids, for a product for which bids are sought for use in the program authorized by this section.

(18) ''Rebate'' means the amount of money refunded under cost containment procedures to any State agency from the manufacturer or other supplier of the particular food product as the result of the purchase of the supplemental food with a voucher or other purchase instrument by a participant in each such agency's program established under this section.

(19) ''Discount'' means, with respect to a State agency that provides program foods to participants without the use of retail grocery stores (such as a State that provides for the home delivery or direct distribution of supplemental food), the amount of the price reduction or other price concession provided to any State agency by the manufacturer or other supplier of the particular food product as the result of the purchase of program food by each such State agency, or its representative, from the supplier.

(20) ''Net price'' means the difference between the manufacturer's wholesale price for infant formula and the rebate level or the discount offered or provided by the manufacturer under a cost containment contract entered into with the pertinent State agency.

(21) REMOTE INDIAN OR NATIVE VILLAGE.—The term ''remote Indian or Native village'' means an Indian or Native village that—

(A) is located in a rural area;

(B) has a population of less than 5,000 inhabitants; and

(C) is not accessible year-around by means of a public road (as defined in section 101 of title 23).

(22) PRIMARY CONTRACT INFANT FORMULA.—The term ''primary contract infant formula'' means the specific infant formula for which manufacturers submit a bid to a State agency in response to a rebate solicitation under this section and for which a contract is awarded by the State agency as a result of that bid.

(23) STATE ALLIANCE.—The term ''State alliance'' means 2 or more State agencies that join together for the purpose of procuring infant formula under the program by soliciting competitive bids for infant formula.

(c) Grants-in-aid; cash grants; ratable reduction of amount an agency may distribute; affirmative action; regulations relating to dual receipt of benefits under commodity supplemental food program

(1) The Secretary may carry out a special supplemental nutrition program to assist State agencies through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods and nutrition education to low-income pregnant, postpartum, and breastfeeding women, infants, and children who satisfy the eligibility requirements specified in subsection (d) of this section. The program shall be supplementary to—

(A) the food stamp program;

(B) any program under which foods are distributed to needy families in lieu of food stamps; and

(C) receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance.

(2) Subject to amounts appropriated to carry out this section under subsection (g) of this section—

(A) the Secretary shall make cash grants to State agencies for the purpose of administering the program, and

(B) any State agency approved eligible local agency that applies to participate in or expand the program under this section shall immediately be provided with the necessary funds to carry out the program.

(3) Nothing in this subsection shall be construed to permit the Secretary to reduce ratably the amount of foods that an eligible local agency shall distribute under the program to participants. The Secretary shall take affirmative action to ensure that the program is instituted in areas most in need of supplemental foods. The existence of a commodity supplemental food program under section 4 of the Agriculture and Consumer Protection Act of 1973 shall not preclude the approval of an application from an eligible local agency to participate in the program under this section nor the operation of such program within the same geographic area as that of the commodity supplemental food program, but the Secretary shall issue such regulations as are necessary to prevent dual receipt of benefits under the commodity supplemental food program and the program under this section.

(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.

(d) Eligible participants

(1) Participation in the program under this section shall be limited to pregnant, postpartum, and breastfeeding women, infants, and children from low-income families who are determined by a competent professional authority to be at nutritional risk.

(2)(A) The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of individuals for participation in the program. Any individual at nutritional risk shall be eligible for the program under this section only if such individual—

(i) is a member of a family with an income that is less than the maximum income limit prescribed under section 1758(b) of this title for free and reduced price meals;

(ii)(I) receives food stamps under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; or

(II) is a member of a family that receives assistance under the State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995; or

(iii)(I) receives medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]; or

(II) is a member of a family in which a pregnant woman or an infant receives such assistance.

(B) For the purpose of determining income eligibility under this section, any State agency may choose to exclude from income—

(i) any basic allowance—

(I) for housing received by military service personnel residing off military installations; or

(II) provided under section 403 of title 37 for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10 or any related provision of law; and

(ii) any cost-of-living allowance provided under section 405 of title 37 to a member of a uniformed service who is on duty outside the contiguous States of the United States.

(C) In the case of a pregnant woman who is otherwise ineligible for participation in the program because the family of the woman is of insufficient size to meet the income eligibility standards of the program, the pregnant woman shall be considered to have satisfied the income eligibility standards if, by increasing the number of individuals in the family of the woman by 1 individual, the income eligibility standards would be met.

(3) CERTIFICATION.—

(A) PROCEDURES.—

(i) IN GENERAL.—Subject to clause (ii), a person shall be certified for participation in accordance with general procedures prescribed by the Secretary.

(ii) BREASTFEEDING WOMEN.—A State may elect to certify a breastfeeding woman for a period of 1 year postpartum or until a woman discontinues breastfeeding, whichever is earlier.

(B) A State may consider pregnant women who meet the income eligibility standards to be presumptively eligible to participate in the program and may certify the women for participation immediately, without delaying certification until an evaluation is made concerning nutritional risk. A nutritional risk evaluation of such a woman shall be completed not later than 60 days after the woman is certified for participation. If it is subsequently determined that the woman does not meet nutritional risk criteria, the certification of the woman shall terminate on the date of the determination.

(C) PHYSICAL PRESENCE.—

(i) IN GENERAL.—Except as provided in clause (ii) and subject to the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and section 794 of title 29, each individual seeking certification or recertification for participation in the program shall be physically present at each certification or recertification determination in order to determine eligibility under the program.

(ii) WAIVERS.—If the agency determines that the requirement of clause (i) would present an unreasonable barrier to participation, a local agency may waive the requirement of clause (i) with respect to—

(I) an infant or child who—

(aa) was present at the initial certification visit; and

(bb) is receiving ongoing health care;

(II) an infant or child who—

(aa) was present at the initial certification visit;

(bb) was present at a certification or recertification determination within the 1-year period ending on the date of the certification or recertification determination described in clause (i); and

(cc) has one or more parents who work; and

(III) an infant under 8 weeks of age—

(aa) who cannot be present at certification for a reason determined appropriate by the local agency; and

(bb) for whom all necessary certification information is provided.

(D) INCOME DOCUMENTATION.—

(i) IN GENERAL.—Except as provided in clause (ii), in order to participate in the program pursuant to clause (i) of paragraph (2)(A), an individual seeking certification or recertification for participation in the program shall provide documentation of family income.

(ii) WAIVERS.—A State agency may waive the documentation requirement of clause (i), in accordance with criteria established by the Secretary, with respect to—

(I) an individual for whom the necessary documentation is not available; or

(II) an individual, such as a homeless woman or child, for whom the agency determines the requirement of clause (i) would present an unreasonable barrier to participation.

(E) ADJUNCT DOCUMENTATION.—In order to participate in the program pursuant to clause (ii) or (iii) of paragraph (2)(A), an individual seeking certification or recertification for participation in the program shall provide documentation of receipt of assistance described in that clause.

(F) PROOF OF RESIDENCY.—An individual residing in a remote Indian or Native village or an individual served by an Indian tribal organization and residing on a reservation or pueblo may, under standards established by the Secretary, establish proof of residency under this section by providing to the State agency the mailing address of the individual and the name of the remote Indian or Native village.

(e) Nutrition education and drug abuse education

(1) The State agency shall ensure that nutrition education and drug abuse education is provided to all pregnant, postpartum, and breastfeeding participants in the program and to parents or caretakers of infant and child participants in the program. The State agency may also provide nutrition education and drug abuse education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children enrolled at local agencies operating the program under this section who do not participate in the program. A local agency participating in the program shall provide education or educational materials relating to the effects of drug and alcohol use by a pregnant, postpartum, or breastfeeding woman on the developing child of the woman.

(2) The Secretary shall prescribe standards to ensure that adequate nutrition education services and breastfeeding promotion and support are provided. The State agency shall provide training to persons providing nutrition education under this section.

(3) NUTRITION EDUCATION MATERIALS.—

(A) IN GENERAL.—The Secretary shall, after submitting proposed nutrition education materials to the Secretary of Health and Human Services for comment, issue such materials for use in the program under this section.

(B) SHARING OF MATERIALS.—The Secretary may provide, in bulk quantity, nutrition education materials (including materials promoting breastfeeding) developed with funds made available for the program authorized under this section to State agencies administering the commodity supplemental food program authorized under sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note; Public Law 93–86) at no cost to that program.

(4) The State agency—

(A) shall provide each local agency with materials showing the maximum income limits, according to family size, applicable to pregnant women, infants, and children up to age 5 under the medical assistance program established under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (in this section referred to as the ''medicaid program'');

(B) shall provide to individuals applying for the program under this section, or reapplying at the end of their certification period, written information about the medicaid program and referral to such program or to agencies authorized to determine presumptive eligibility for such program, if such individuals are not participating in such program and appear to have family income below the applicable maximum income limits for such program; and

(C) may provide a local agency with materials describing other programs for which a participant in the program may be eligible.

(5) Each local agency shall maintain and make available for distribution a list of local resources for substance abuse counseling and treatment.

(f) Plan of operation and administration by State agency

(1)(A) Each State agency shall submit to the Secretary, by a date specified by the Secretary, an initial plan of operation and administration for a fiscal year. After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.

(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

(C) The plan shall include—

(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program at any of the authorized retail stores under the program, to be administered in accordance with standards developed by the Secretary, including a description of the State agency's vendor peer group system, competitive price criteria, and allowable reimbursement levels that demonstrate that the State is in compliance with the cost-containment provisions in subsection (h)(11) of this section;

(ii) procedures for accepting and processing vendor applications outside of the established timeframes if the State agency determines there will be inadequate access to the pro-

gram, including in a case in which a previously authorized vendor sells a store under circumstances that do not permit timely notification to the State agency of the change in ownership;

(iii) a description of the financial management system of the State agency;

(iv) a plan to coordinate operations under the program with other services or programs that may benefit participants in, and applicants for, the program;

(v) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants, homeless individuals, and Indians;

(vi) a plan to expend funds to carry out the program during the relevant fiscal year;

(vii) a plan to provide program benefits under this section to unserved and underserved areas in the State (including a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas), if sufficient funds are available to carry out this clause;

(viii) a plan for reaching and enrolling eligible women in the early months of pregnancy, including provisions to reach and enroll eligible migrants;

(ix) a plan to provide program benefits under this section to unserved infants and children under the care of foster parents, protective services, or child welfare authorities, including infants exposed to drugs perinatally;

(x) a plan to provide nutrition education and promote breastfeeding; and

(xi) such other information as the Secretary may reasonably require.

(D) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).

(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.

(3) The Secretary shall establish procedures under which eligible migrants may, to the maximum extent feasible, continue to participate in the program under this section when they are present in States other than the State in which they were originally certified for participation in the program and shall ensure that local programs provide priority consideration to serving migrant participants who are residing in the State for a limited period of time. Each State agency shall be responsible for administering the program for migrant populations within its jurisdiction.

(4) State agencies shall submit monthly financial reports and participation data to the Secretary.

(5) State and local agencies operating under the program shall keep such accounts and records, including medical records, as may be necessary to enable the Secretary to determine whether there has been compliance with this section and to determine and evaluate the benefits of the nutritional assistance provided under this section. Such accounts and records shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(6)(A) Local agencies participating in the program under this section shall notify persons of their eligibility or ineligibility for the program within twenty days of the date that the household, during office hours of a local agency, personally makes an oral or written request to participate in the program. The Secretary shall establish a shorter notification period for categories of persons who, due to special nutritional risk conditions, must receive benefits more expeditiously.

(B) State agencies may provide for the delivery of vouchers to any participant who is not scheduled for nutrition education counseling or a recertification interview through means, such as mailing, that do not require the participant to travel to the local agency to obtain vouchers. The State agency shall describe any plans for issuance of vouchers by mail in its plan submitted under paragraph (1). The Secretary may disapprove a State plan with respect to the issuance of vouchers by mail in any specified jurisdiction or part of a jurisdiction within a State only if the Secretary finds that such issuance would pose a significant threat to the integrity of the program under this section in such jurisdiction or part of a jurisdiction.

(7)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible individuals (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, organizations and agencies serving homeless individuals and shelters for victims of domestic violence, and religious and community organizations in low income areas).

(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible individuals who are most in need of the benefits, including pregnant women in the early months of pregnancy.

(D) Each local agency operating the program within a hospital and each local agency operating the program that has a cooperative arrangement with a hospital shall—

(i) advise potentially eligible individuals that receive inpatient or outpatient prenatal, maternity, or postpartum services, or accompany a child under the age of 5 who receives well-child services, of the availability of program benefits; and

(ii) to the extent feasible, provide an opportunity for individuals who may be eligible to

be certified within the hospital for participation in such program.

(8)(A) The State agency shall grant a fair hearing, and a prompt determination thereafter, in accordance with regulations issued by the Secretary, to any applicant, participant, or local agency aggrieved by the action of a State or local agency as it affects participation.

(B) Any State agency that must suspend or terminate benefits to any participant during the participant's certification period due to a shortage of funds for the program shall first issue a notice to such participant.

(9) If an individual certified as eligible for participation in the program under this section in one area moves to another area in which the program is operating, that individual's certification of eligibility shall remain valid for the period for which the individual was originally certified.

(10) The Secretary shall establish standards for the proper, efficient, and effective administration of the program. If the Secretary determines that a State agency has failed without good cause to administer the program in a manner consistent with this section or to implement the approved plan of operation and administration under this subsection, the Secretary may withhold such amounts of the State agency's funds for nutrition services and administration as the Secretary deems appropriate. Upon correction of such failure during a fiscal year by a State agency, any funds so withheld for such fiscal year shall be provided the State agency.

(11) SUPPLEMENTAL FOODS.—

(A) IN GENERAL.—The Secretary shall prescribe by regulation the supplemental foods to be made available in the program under this section.

(B) APPROPRIATE CONTENT.—To the degree possible, the Secretary shall assure that the fat, sugar, and salt content of the prescribed foods is appropriate.

(C) ALLOWABLE USE OF FUNDS.—Subject to the availability of funds, the Secretary shall award grants to not more than 10 local sites determined by the Secretary to be geographically and culturally representative of State, local, and Indian agencies, to evaluate the feasibility of including fresh, frozen, or canned fruits and vegetables (to be made available through private funds) as an addition to the supplemental foods prescribed under this section.

(D) REVIEW OF AVAILABLE SUPPLEMENTAL FOODS.—As frequently as determined by the Secretary to be necessary to reflect the most recent scientific knowledge, the Secretary shall—

(i) conduct a scientific review of the supplemental foods available under the program; and

(ii) amend the supplemental foods available, as necessary, to reflect nutrition science, public health concerns, and cultural eating patterns.

(12) A competent professional authority shall be responsible for prescribing the appropriate supplemental foods, taking into account medical and nutritional conditions and cultural eating patterns, and, in the case of homeless individuals, the special needs and problems of such individuals.

(13) The State agency may (A) provide nutrition education, breastfeeding promotion, and drug abuse education materials and instruction in languages other than English and (B) use appropriate foreign language materials in the administration of the program, in areas in which a substantial number of low-income households speak a language other than English.

(14) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.

(15) To be eligible to participate in the program authorized by this section, a manufacturer of infant formula that supplies formula for the program shall—

(A) register with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]; and

(B) before bidding for a State contract to supply infant formula for the program, certify with the State health department that the formula complies with such Act and regulations issued pursuant to such Act.

(16) The State agency may adopt methods of delivering benefits to accommodate the special needs and problems of homeless individuals.

(17) Notwithstanding subsection (d)(2)(A)(i) of this section, not later than July 1 of each year, a State agency may implement income eligibility guidelines under this section concurrently with the implementation of income eligibility guidelines under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(18) Each local agency participating in the program under this section may provide information about other potential sources of food assistance in the local area to individuals who apply in person to participate in the program under this section, but who cannot be served because the program is operating at capacity in the local area.

(19) The State agency shall adopt policies that—

(A) require each local agency to attempt to contact each pregnant woman who misses an appointment to apply for participation in the program under this section, in order to reschedule the appointment, unless the phone number and the address of the woman are unavailable to such local agency; and

(B) in the case of local agencies that do not routinely schedule appointments for individuals seeking to apply or be recertified for participation in the program under this section, require each such local agency to schedule appointments for each employed individual seeking to apply or be recertified for participation in such program so as to minimize the time

each such individual is absent from the workplace due to such application or request for recertification.

(20) Each State agency shall conduct monitoring reviews of each local agency at least biennially.

(21) USE OF CLAIMS FROM LOCAL AGENCIES, VENDORS, AND PARTICIPANTS.—A State agency may use funds recovered from local agencies, vendors, and participants, as a result of a claim arising under the program, to carry out the program during—

(A) the fiscal year in which the claim arises;

(B) the fiscal year in which the funds are collected; and

(C) the fiscal year following the fiscal year in which the funds are collected.

(22) The Secretary and the Secretary of Health and Human Services shall carry out an initiative to assure that, in a case in which a State medicaid program uses coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C. 1396b(m) or 1396n(b)), coordination between the program authorized by this section and the medicaid program is continued, including—

(A) the referral of potentially eligible women, infants, and children between the 2 programs; and

(B) the timely provision of medical information related to the program authorized by this section to agencies carrying out the program.

(23) INDIVIDUALS PARTICIPATING AT MORE THAN ONE SITE.—Each State agency shall implement a system designed by the State agency to identify individuals who are participating at more than one site under the program.

(24) HIGH RISK VENDORS.—Each State agency shall—

(A) identify vendors that have a high probability of program abuse; and

(B) conduct compliance investigations of the vendors.

(25) INFANT FORMULA BENEFITS.—A State agency may round up to the next whole can of infant formula to allow all participants under the program to receive the full-authorized nutritional benefit specified by regulation.

(26) NOTIFICATION OF VIOLATIONS.—If a State agency finds that a vendor has committed a violation that requires a pattern of occurrences in order to impose a penalty or sanction, the State agency shall notify the vendor of the initial violation in writing prior to documentation of another violation, unless the State agency determines that notifying the vendor would compromise an investigation.

(g) Authorization of appropriations

(1) IN GENERAL.—

(A) AUTHORIZATION.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2004 through 2009.

(B) ADVANCE APPROPRIATIONS; AVAILABILITY.—As authorized by section 1752 of this title, appropriations to carry out the provisions of this section may be made not more than 1 year in advance of the beginning of the fiscal year in which the funds will become available for disbursement to the States, and shall remain available for the purposes for which appropriated until expended.

(2)(A) Notwithstanding any other provision of law, unless enacted in express limitation of this subparagraph, the Secretary—

(i) in the case of legislation providing funds through the end of a fiscal year, shall issue—

(I) an initial allocation of funds provided by the enactment of such legislation not later than the expiration of the 15-day period beginning on the date of the enactment of such legislation; and

(II) subsequent allocations of funds provided by the enactment of such legislation not later than the beginning of each of the second, third, and fourth quarters of the fiscal year; and

(ii) in the case of legislation providing funds for a period that ends prior to the end of a fiscal year, shall issue an initial allocation of funds provided by the enactment of such legislation not later than the expiration of the 10-day period beginning on the date of the enactment of such legislation.

(B) In any fiscal year—

(i) unused amounts from a prior fiscal year that are identified by the end of the first quarter of the fiscal year shall be recovered and reallocated not later than the beginning of the second quarter of the fiscal year; and

(ii) unused amounts from a prior fiscal year that are identified after the end of the first quarter of the fiscal year shall be recovered and reallocated on a timely basis.

(3) Notwithstanding any other provision of law, unless enacted in express limitation of this paragraph—

(A) the allocation of funds required by paragraph (2)(A)(i)(I) shall include not less than ⅓ of the amounts appropriated by the legislation described in such paragraph;

(B) the allocations of funds required by paragraph (2)(A)(i)(II) to be made not later than the beginning of the second and third quarters of the fiscal year shall each include not less than ¼ of the amounts appropriated by the legislation described in such paragraph; and

(C) in the case of the enactment of legislation providing appropriations for a period of not more than 4 months, the allocation of funds required by paragraph (2)(A)(ii) shall include all amounts appropriated by such legislation except amounts reserved by the Secretary for purposes of carrying out paragraph (5).

(4) Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.

(5) Of the sums appropriated for any fiscal year for the program under this section, one-half of 1 percent, not to exceed $5,000,000, shall be available to the Secretary for the purpose of

evaluating program performance, evaluating health benefits, preparing reports on program participant characteristics, providing technical assistance to improve State agency administrative systems, administration of pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations, and carrying out technical assistance and research evaluation projects of the programs under this section.

(h) Funds for nutrition services and administration

(1)(A) Each fiscal year, the Secretary shall make available, from amounts appropriated for such fiscal year under subsection (g)(1) of this section and amounts remaining from amounts appropriated under such subsection for the preceding fiscal year, an amount sufficient to guarantee a national average per participant grant to be allocated among State agencies for costs of nutrition services and administration incurred by State and local agencies for such year.

(B)(i) The amount of the national average per participant grant for nutrition services and administration for any fiscal year shall be an amount equal to the amount of the national average per participant grant for nutrition services and administration issued for the preceding fiscal year, as adjusted.

(ii) Such adjustment, for any fiscal year, shall be made by revising the national average per participant grant for nutrition services and administration for the preceding fiscal year to reflect the percentage change between—

(I) the value of the index for State and local government purchases, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(II) the best estimate that is available as of the start of the fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year.

(C) REMAINING AMOUNTS.—

(i) IN GENERAL.—Except as provided in clause (ii), in any fiscal year, amounts remaining from amounts appropriated for such fiscal year under subsection (g)(1) of this section and from amounts appropriated under such section for the preceding fiscal year, after carrying out subparagraph (A), shall be made available for food benefits under this section, except to the extent that such amounts are needed to carry out the purposes of subsections (g)(4) and (g)(5) of this section.

(ii) BREAST PUMPS.—A State agency may use amounts made available under clause (i) for the purchase of breast pumps.

(2)(A) The Secretary shall allocate to each State agency from the amount described in paragraph (1)(A) an amount for costs of nutrition services and administration on the basis of a formula prescribed by the Secretary. Such formula—

(i) shall be designed to take into account—

(I) the varying needs of each State;

(II) the number of individuals participating in each State; and

(III) other factors which serve to promote the proper, efficient, and effective administration of the program under this section;

(ii) shall provide for each State agency—

(I) an estimate of the number of participants for the fiscal year involved; and

(II) a per participant grant for nutrition services and administration for such year;

(iii) shall provide for a minimum grant amount for State agencies; and

(iv) may provide funds to help defray reasonable anticipated expenses associated with innovations in cost containment or associated with procedures that tend to enhance competition.

(B)(i) Except as provided in clause (ii) and subparagraph (C), in any fiscal year, the total amount allocated to a State agency for costs of nutrition services and administration under the formula prescribed by the Secretary under subparagraph (A) shall constitute the State agency's operational level for such costs for such year even if the number of participants in the program at such agency is lower than the estimate provided under subparagraph (A)(ii)(I).

(ii) If a State agency's per participant expenditure for nutrition services and administration is more than 10 percent (except that the Secretary may establish a higher percentage for State agencies that are small) higher than its per participant grant for nutrition services and administration without good cause, the Secretary may reduce such State agency's operational level for costs of nutrition services and administration.

(C) In any fiscal year, the Secretary may reallocate amounts provided to State agencies under subparagraph (A) for such fiscal year. When reallocating amounts under the preceding sentence, the Secretary may provide additional amounts to, or recover amounts from, any State agency.

(3)(A) Except as provided in subparagraphs (B) and (C), in each fiscal year, each State agency shall expend—

(i) for nutrition education activities and breastfeeding promotion and support activities, an aggregate amount that is not less than the sum of—

(I) ⅙ of the amounts expended by the State for costs of nutrition services and administration; and

(II) except as otherwise provided in subparagraphs (F) and (G), an amount equal to a proportionate share of the national minimum breastfeeding promotion expenditure, as described in subparagraph (E), with each State's share determined on the basis of the number of pregnant women and breastfeeding women in the program in the State as a percentage of the number of pregnant women and breastfeeding women in the program in all States; and

(ii) for breastfeeding promotion and support activities an amount that is not less than the amount determined for such State under clause (i)(II).

(B) The Secretary may authorize a State agency to expend an amount less than the amount described in subparagraph (A)(ii) for purposes of

breastfeeding promotion and support activities if—

(i) the State agency so requests; and

(ii) the request is accompanied by documentation that other funds will be used to conduct nutrition education activities at a level commensurate with the level at which such activities would be conducted if the amount described in subparagraph (A)(ii) were expended for such activities.

(C) The Secretary may authorize a State agency to expend for purposes of nutrition education an amount that is less than the difference between the aggregate amount described in subparagraph (A) and the amount expended by the State for breastfeeding promotion and support programs if—

(i) the State agency so requests; and

(ii) the request is accompanied by documentation that other funds will be used to conduct such activities.

(D) The Secretary shall limit to a minimal level any documentation required under this paragraph.

(E) For each fiscal year, the national minimum breastfeeding promotion expenditure means an amount that is—

(i) equal to $21 multiplied by the number of pregnant women and breastfeeding women participating in the program nationwide, based on the average number of pregnant women and breastfeeding women so participating during the last 3 months for which the Secretary has final data; and

(ii) adjusted for inflation on October 1, 1996, and each October 1 thereafter, in accordance with paragraph (1)(B)(ii).

(4) The Secretary shall—

(A) in consultation with the Secretary of Health and Human Services, develop a definition of breastfeeding for the purposes of the program under this section;

(B) authorize the purchase of breastfeeding aids by State and local agencies as an allowable expense under nutrition services and administration;

(C) require each State agency to designate an agency staff member to coordinate breastfeeding promotion efforts identified in the State plan of operation and administration;

(D) require the State agency to provide training on the promotion and management of breastfeeding to staff members of local agencies who are responsible for counseling participants in the program under this section concerning breastfeeding;

(E) not later than 1 year after November 2, 1994, develop uniform requirements for the collection of data regarding the incidence and duration of breastfeeding among participants in the program; and

(F) partner with communities, State and local agencies, employers, health care professionals, and other entities in the private sector to build a supportive breastfeeding environment for women participating in the program under this section to support the breastfeeding goals of the Healthy People 2010 initiative.

(5)(A) Subject to subparagraph (B), in any fiscal year that a State agency submits a plan to reduce average food costs per participant and to increase participation above the level estimated for the State agency, the State agency may, with the approval of the Secretary, convert amounts allocated for food benefits for such fiscal year for costs of nutrition services and administration to the extent that such conversion is necessary—

(i) to cover allowable expenditures in such fiscal year; and

(ii) to ensure that the State agency maintains the level established for the per participant grant for nutrition services and administration for such fiscal year.

(B) If a State agency increases its participation level through measures that are not in the nutritional interests of participants or not otherwise allowable (such as reducing the quantities of foods provided for reasons not related to nutritional need), the Secretary may refuse to allow the State agency to convert amounts allocated for food benefits to defray costs of nutrition services and administration.

(C) For the purposes of this paragraph, the term ''acceptable measures'' includes use of cost containment measures, curtailment of vendor abuse, and breastfeeding promotion activities.

(D) REMOTE INDIAN OR NATIVE VILLAGES.—For noncontiguous States containing a significant number of remote Indian or Native villages, a State agency may convert amounts allocated for food benefits for a fiscal year to the costs of nutrition services and administration to the extent that the conversion is necessary to cover expenditures incurred in providing services (including the full cost of air transportation and other transportation) to remote Indian or Native villages and to provide breastfeeding support in remote Indian or Native villages.

(6) In each fiscal year, each State agency shall provide, from the amounts allocated to such agency for such year for costs of nutrition services and administration, an amount to each local agency for its costs of nutrition services and administration. The amount to be provided to each local agency under the preceding sentence shall be determined under allocation standards developed by the State agency in cooperation with the several local agencies, taking into account factors deemed appropriate to further proper, efficient, and effective administration of the program, such as—

(A) local agency staffing needs;

(B) density of population;

(C) number of individuals served; and

(D) availability of administrative support from other sources.

(7) The State agency may provide in advance to any local agency any amounts for nutrition services and administration deemed necessary for successful commencement or significant expansion of program operations during a reasonable period following approval of—

(A) a new local agency;

(B) a new cost containment measure; or

(C) a significant change in an existing cost containment measure.

(8)(A)(i) Except as provided in subparagraphs (B) and (C)(iii), any State that provides for the

purchase of foods under the program at retail grocery stores shall, with respect to the procurement of infant formula, use—

(I) a competitive bidding system; or

(II) any other cost containment measure that yields savings equal to or greater than savings generated by a competitive bidding system when such savings are determined by comparing the amounts of savings that would be provided over the full term of contracts offered in response to a single invitation to submit both competitive bids and bids for other cost containment systems for the sale of infant formula.

(ii) In determining whether a cost containment measure other than competitive bidding yields equal or greater savings, the State, in accordance with regulations issued by the Secretary, may take into account other cost factors (in addition to rebate levels and procedures for adjusting rebate levels when wholesale price levels change), such as—

(I) the number of infants who would not be expected to receive the primary contract infant formula under a competitive bidding system;

(II) the number of cans of infant formula for which no rebate would be provided under another rebate system; and

(III) differences in administrative costs relating to the implementation of the various cost containment systems (such as costs of converting a computer system for the purpose of operating a cost containment system and costs of preparing participants for conversion to a new or alternate cost containment system).

(iii) COMPETITIVE BIDDING SYSTEM.—A State agency using a competitive bidding system for infant formula shall award contracts to bidders offering the lowest net price for a specific infant formula for which manufacturers submit a bid unless the State agency demonstrates to the satisfaction of the Secretary that the weighted average retail price for different brands of infant formula in the State does not vary by more than 5 percent.

(iv) SIZE OF STATE ALLIANCES.—

(I) IN GENERAL.—Except as provided in subclauses (II) through (IV), no State alliance may exist among States if the total number of infants served by States participating in the alliance as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, would exceed 100,000.

(II) ADDITION OF INFANT PARTICIPANTS.—In the case of a State alliance that exists on June 30, 2004, the alliance may continue and may expand to serve more than 100,000 infants but, except as provided in subclause (III), may not expand to include any additional State agency.

(III) ADDITION OF SMALL STATE AGENCIES AND INDIAN STATE AGENCIES.—Any State alliance may expand to include any State agency that served less than 5,000 infant participants as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, or any Indian State agency, if the State agency or Indian State agency requests to join the State alliance.

(IV) SECRETARIAL WAIVER.—The Secretary may waive the requirements of this clause not earlier than 30 days after submitting to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a written report that describes the cost-containment and competitive benefits of the proposed waiver.

(v) FIRST CHOICE OF ISSUANCE.—The State agency shall use the primary contract infant formula as the first choice of issuance (by formula type), with all other infant formulas issued as an alternative to the primary contract infant formula.

(vi) REBATE INVOICES.—Effective beginning October 1, 2004, each State agency shall have a system to ensure that infant formula rebate invoices, under competitive bidding, provide a reasonable estimate or an actual count of the number of units sold to participants in the program under this section.

(vii) SEPARATE SOLICITATIONS.—In soliciting bids for infant formula under a competitive bidding system, any State agency, or State alliance, that served under the program a monthly average of more than 100,000 infants during the preceding 12-month period shall solicit bids from infant formula manufacturers under procedures that require that bids for rebates or discounts are solicited for milk-based and soy-based infant formula separately.

(viii) CENT-FOR-CENT ADJUSTMENTS.—A bid solicitation for infant formula under the program shall require the manufacturer to adjust for price changes subsequent to the opening of the bidding process in a manner that requires—

(I) a cent-for-cent increase in the rebate amounts if there is an increase in the lowest national wholesale price for a full truckload of the particular infant formula; and

(II) a cent-for-cent decrease in the rebate amounts if there is a decrease in the lowest national wholesale price for a full truckload of the particular infant formula.

(ix) LIST OF INFANT FORMULA WHOLESALERS, DISTRIBUTORS, RETAILERS, AND MANUFACTURERS.—The State agency shall maintain a list of—

(I) infant formula wholesalers, distributors, and retailers licensed in the State in accordance with State law (including regulations); and

(II) infant formula manufacturers registered with the Food and Drug Administration that provide infant formula.

(x) PURCHASE REQUIREMENT.—A vendor authorized to participate in the program under this section shall only purchase infant formula from the list described in clause (ix).

(B)(i) The Secretary shall waive the requirement of subparagraph (A) in the case of any State that demonstrates to the Secretary that—

(I) compliance with subparagraph (A) would be inconsistent with efficient or effective operation of the program operated by such State under this section; or

(II) the amount by which the savings yielded by an alternative cost containment system would be less than the savings yielded by a

competitive bidding system is sufficiently minimal that the difference is not significant.

(ii) The Secretary shall prescribe criteria under which a waiver may be granted pursuant to clause (i).

(iii) The Secretary shall provide information on a timely basis to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on waivers that have been granted under clause (i).

(C)(i) The Secretary shall provide technical assistance to small Indian State agencies carrying out this paragraph in order to assist such agencies to achieve the maximum cost containment savings feasible.

(ii) The Secretary shall also provide technical assistance, on request, to State agencies that desire to consider a cost containment system that covers more than 1 State agency.

(iii) The Secretary may waive the requirement of subparagraph (A) in the case of any Indian State agency that has not more than 1,000 participants.

(D) No State may enter into a cost containment contract (in this subparagraph referred to as the ''original contract'') that prescribes conditions that would void, reduce the savings under, or otherwise limit the original contract if the State solicited or secured bids for, or entered into, a subsequent cost containment contract to take effect after the expiration of the original contract.

(E) The Secretary shall offer to solicit bids on behalf of State agencies regarding cost-containment contracts to be entered into by infant formula manufacturers and State agencies. The Secretary shall make the offer to State agencies once every 12 months. Each such bid solicitation shall only take place if two or more State agencies request the Secretary to perform the solicitation. For such State agencies, the Secretary shall solicit bids and select the winning bidder for a cost containment contract to be entered into by State agencies and infant formula manufacturers or suppliers.

(F) In soliciting bids for contracts for infant formula for the program authorized by this section, the Secretary shall solicit bids from infant formula manufacturers under procedures in which bids for rebates or discounts are solicited for milk-based and soy-based infant formula, separately, except where the Secretary determines that such solicitation procedures are not in the best interest of the program.

(G) To reduce the costs of any supplemental foods, the Secretary may make available additional funds to State agencies out of the funds otherwise available under paragraph (1)(A) for nutrition services and administration in an amount not exceeding one half of 1 percent of the amounts to help defray reasonable anticipated expenses associated with innovations in cost containment or associated with procedures that tend to enhance competition.

(H)(i) Any person, company, corporation, or other legal entity that submits a bid to supply infant formula to carry out the program authorized by this section and announces or otherwise discloses the amount of the bid, or the rebate or discount practices of such entities, in advance of the time the bids are opened by the Secretary or the State agency, or any person, company, corporation, or other legal entity that makes a statement (prior to the opening of bids) relating to levels of rebates or discounts, for the purpose of influencing a bid submitted by any other person, shall be ineligible to submit bids to supply infant formula to the program for the bidding in progress for up to 2 years from the date the bids are opened and shall be subject to a civil penalty of up to $100,000,000, as determined by the Secretary to provide restitution to the program for harm done to the program. The Secretary shall issue regulations providing such person, company, corporation, or other legal entity appropriate notice, and an opportunity to be heard and to respond to charges.

(ii) The Secretary shall determine the length of the disqualification, and the amount of the civil penalty referred to in clause (i) based on such factors as the Secretary by regulation determines appropriate.

(iii) Any person, company, corporation, or other legal entity disqualified under clause (i) shall remain obligated to perform any requirements under any contract to supply infant formula existing at the time of the disqualification and until each such contract expires by its terms.

(I) Not later than the expiration of the 180-day period beginning on October 24, 1992, the Secretary shall prescribe regulations to carry out this paragraph.

(J) A State shall not incur any interest liability to the Federal Government on rebate funds for infant formula and other foods if all interest earned by the State on the funds is used for program purposes.

(9) For purposes of this subsection, the term ''cost containment measure'' means a competitive bidding, rebate, direct distribution, or home delivery system implemented by a State agency as described in its approved plan of operation and administration.

(10) FUNDS FOR INFRASTRUCTURE, MANAGEMENT INFORMATION SYSTEMS, AND SPECIAL NUTRITION EDUCATION.—

(A) IN GENERAL.—For each of fiscal years 2006 through 2009, the Secretary shall use for the purposes specified in subparagraph (B), $64,000,000 or the amount of nutrition services and administration funds and supplemental food funds for the prior fiscal year that have not been obligated, whichever is less.

(B) PURPOSES.—Of the amount made available under subparagraph (A) for a fiscal year, not more than—

(i) $14,000,000 shall be used for—

(I) infrastructure for the program under this section;

(II) special projects to promote breastfeeding, including projects to assess the effectiveness of particular breastfeeding promotion strategies; and

(III) special State projects of regional or national significance to improve the services of the program;

(ii) $30,000,000 shall be used to establish, improve, or administer management information systems for the program, including changes necessary to meet new legislative or regulatory requirements of the program; and

(iii) $20,000,000 shall be used for special nutrition education such as breast feeding peer counselors and other related activities.

(C) PROPORTIONAL DISTRIBUTION.—In a case in which less than $64,000,000 is available to carry out this paragraph, the Secretary shall make a proportional distribution of funds allocated under subparagraph (B).

(11) VENDOR COST CONTAINMENT.—

(A) PEER GROUPS.—

(i) IN GENERAL.—The State agency shall—

(I) establish a vendor peer group system;

(II) in accordance with subparagraphs (B) and (C), establish competitive price criteria and allowable reimbursement levels for each vendor peer group; and

(III) if the State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I)—

(aa) distinguish between vendors described in subparagraph (D)(ii)(I) and other vendors by establishing—

(AA) separate peer groups for vendors described in subparagraph (D)(ii)(I);or

(BB) distinct competitive price criteria and allowable reimbursement levels for vendors described in subparagraph (D)(ii)(I) within a peer group that contains both vendors described in subparagraph (D)(ii)(I) and other vendors; and

(bb) establish competitive price criteria and allowable reimbursement levels that comply with subparagraphs (B) and (C), respectively, and that do not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

Nothing in this paragraph shall be construed to compel a State agency to achieve lower food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

(ii) EXEMPTIONS.—The Secretary may exempt from the requirements of clause (i)—

(I) a State agency that elects not to authorize any types of vendors described in subparagraph (D)(ii)(I) and that demonstrates to the Secretary that—

(aa) compliance with clause (i) would be inconsistent with efficient and effective operation of the program administered by the State under this section; or

(bb) an alternative cost-containment system would be as effective as a vendor peer group system; or

(II) a State agency—

(aa) in which the sale of supplemental foods that are obtained with food instruments from vendors described in subparagraph (D)(ii)(I) constituted less than 5 percent of total sales of supplemental foods that were obtained with food instruments in the State in the year preceding a year in which the exemption is effective; and

(bb) that demonstrates to the Secretary that an alternative cost-containment system would be as effective as the vendor peer group system and would not result in higher food costs if program participants redeem supplemental food vouchers at vendors described in subparagraph (D)(ii)(I) rather than at vendors other than vendors described in subparagraph (D)(ii)(I).

(B) COMPETITIVE PRICING.—

(i) IN GENERAL.—The State agency shall establish competitive price criteria for each peer group for the selection of vendors for participation in the program that—

(I) ensure that the retail prices charged by vendor applicants for the program are competitive with the prices charged by other vendors; and

(II) consider—

(aa) the shelf prices of the vendor for all buyers; or

(bb) the prices that the vendor bid for supplemental foods, which shall not exceed the shelf prices of the vendor for all buyers.

(ii) PARTICIPANT ACCESS.—In establishing competitive price criteria, the State agency shall consider participant access by geographic area.

(iii) SUBSEQUENT PRICE INCREASES.—The State agency shall establish procedures to ensure that a retail store selected for participation in the program does not, subsequent to selection, increase prices to levels that would make the store ineligible for selection to participate in the program.

(C) ALLOWABLE REIMBURSEMENT LEVELS.—

(i) IN GENERAL.—The State agency shall establish allowable reimbursement levels for supplemental foods for each vendor peer group that ensure—

(I) that payments to vendors in the vendor peer group reflect competitive retail prices; and

(II) that the State agency does not reimburse a vendor for supplemental foods at a level that would make the vendor ineligible for authorization under the criteria established under subparagraph (B).

(ii) PRICE FLUCTUATIONS.—The allowable reimbursement levels may include a factor to reflect fluctuations in wholesale prices.

(iii) PARTICIPANT ACCESS.—In establishing allowable reimbursement levels, the State agency shall consider participant access in a geographic area.

(D) EXEMPTIONS.—The State agency may exempt from competitive price criteria and allowable reimbursement levels established under this paragraph—

(i) pharmacy vendors that supply only exempt infant formula or medical foods that are eligible under the program; and

(ii) vendors—

(I)(aa) for which more than 50 percent of the annual revenue of the vendor from the

sale of food items consists of revenue from the sale of supplemental foods that are obtained with food instruments; or

(bb) who are new applicants likely to meet the criteria of item (aa) under criteria approved by the Secretary; and

(II) that are nonprofit.

(E) COST CONTAINMENT.—If a State agency elects to authorize any types of vendors described in subparagraph (D)(ii)(I), the State agency shall demonstrate to the Secretary, and the Secretary shall certify, that the competitive price criteria and allowable reimbursement levels established under this paragraph for vendors described in subparagraph (D)(ii)(I) do not result in average payments per voucher to vendors described in subparagraph (D)(ii)(I) that are higher than average payments per voucher to comparable vendors other than vendors described in subparagraph (D)(ii)(I).

(F) LIMITATION ON PRIVATE RIGHTS OF ACTION.—Nothing in this paragraph may be construed as creating a private right of action.

(G) IMPLEMENTATION.—A State agency shall comply with this paragraph not later than 18 months after June 30, 2004.

(12) IMPOSITION OF COSTS ON RETAIL STORES.—The Secretary may not impose, or allow a State agency to impose, the costs of any equipment, system, or processing required for electronic benefit transfers on any retail store authorized to transact food instruments, as a condition for authorization or participation in the program.

(13) UNIVERSAL PRODUCT CODES DATABASE.—The Secretary shall—

(A) establish a national universal product code database for use by all State agencies in carrying out the program; and

(B) make available from appropriated funds such sums as are required for hosting, hardware and software configuration, and support of the database.

(14) INCENTIVE ITEMS.—A State agency shall not authorize or make payments to a vendor described in paragraph (11)(D)(ii)(I) that provides incentive items or other free merchandise, except food or merchandise of nominal value (as determined by the Secretary), to program participants unless the vendor provides to the State agency proof that the vendor obtained the incentive items or merchandise at no cost.

(i) Division of funds formula; reallocation of unspent funds; use of State allocation to buy supplemental foods; use of amounts available for succeeding fiscal year

(1) By the beginning of each fiscal year, the Secretary shall divide, among the State agencies, the amounts made available for food benefits under subsection (h)(1)(C) of this section on the basis of a formula determined by the Secretary.

(2) Each State agency's allocation, as so determined, shall constitute the State agency's authorized operational level for that year, except that the Secretary shall reallocate funds periodically if the Secretary determines that a State agency is unable to spend its allocation.

(3)(A) Notwithstanding paragraph (2) and subject to subparagraph (B)—

(i)(I) not more than 1 percent (except as provided in subparagraph (C)) of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for allowable expenses incurred under this section for supplemental foods during the preceding fiscal year; and

(II) not more than 1 percent of the amount of funds allocated to a State agency under this section for nutrition services and administration for a fiscal year may be expended by the State agency for allowable expenses incurred under this section for supplemental foods and nutrition services and administration during the preceding fiscal year; and

(ii)(I) for each fiscal year, of the amounts allocated to a State agency for nutrition services and administration, an amount equal to not more than 3 percent of the amount allocated to the State agency under this section for the fiscal year may be expended by the State agency for allowable expenses incurred under this section for nutrition services and administration during the subsequent fiscal year; and

(II) for each fiscal year, of the amounts allocated to a State agency for nutrition services and administration, an amount equal to not more than ½ of 1 percent of the amount allocated to the State agency under this section for the fiscal year may be expended by the State agency, with the prior approval of the Secretary, for the development of a management information system, including an electronic benefit transfer system, during the subsequent fiscal year.

(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.

(C) The Secretary may authorize a State agency to expend not more than 3 percent of the amount of funds allocated to a State under this section for supplemental foods for a fiscal year for expenses incurred under this section for supplemental foods during the preceding fiscal year, if the Secretary determines that there has been a significant reduction in infant formula cost containment savings provided to the State agency that would affect the ability of the State agency to at least maintain the level of participation by eligible participants served by the State agency.

(4) For purposes of the formula, if Indians are served by the health department of a State, the formula shall be based on the State population inclusive of the Indians within the State boundaries.

(5) If Indians residing in the State are served by a State agency other than the health department of the State, the population of the tribes within the jurisdiction of the State being so served shall not be included in the formula for such State, and shall instead be included in the formula for the State agency serving the Indians.

(6) Notwithstanding any other provision of this section, the Secretary may use a portion of a State agency's allocation to purchase supplemental foods for donation to the State agency under this section.

(7) In addition to any amounts expended under paragraph (3)(A)(i), any State agency using cost containment measures as defined in subsection (h)(9) of this section may temporarily use amounts made available to such agency for the first quarter of a fiscal year to defray expenses for costs incurred during the final quarter of the preceding fiscal year. In any fiscal year, any State agency that uses amounts made available for a succeeding fiscal year under the authority of the preceding sentence shall restore or reimburse such amounts when such agency receives payment as a result of its cost containment measures for such expenses.

(j) Initiative to provide program services at community and migrant health centers

(1) The Secretary and the Secretary of Health and Human Services (referred to in this subsection as the ''Secretaries'') shall jointly establish and carry out an initiative for the purpose of providing both supplemental foods and nutrition education under the special supplemental nutrition program and health care services to low-income pregnant, postpartum, and breastfeeding women, infants, and children at substantially more community health centers and migrant health centers.

(2) The initiative shall also include—

(A) activities to improve the coordination of the provision of supplemental foods and nutrition education under the special supplemental nutrition program and health care services at facilities funded by the Indian Health Service; and

(B) the development and implementation of strategies to ensure that, to the maximum extent feasible, new community health centers, migrant health centers, and other federally supported health care facilities established in medically underserved areas provide supplemental foods and nutrition education under the special supplemental nutrition program.

(3) The initiative may include—

(A) outreach and technical assistance for State and local agencies and the facilities described in paragraph (2)(A) and the health centers and facilities described in paragraph (2)(B);

(B) demonstration projects in selected State or local areas; and

(C) such other activities as the Secretaries find are appropriate.

(4) As used in this subsection:

(A) The term ''community health center'' has the meaning given the term in section 254c(a)[1] of this title.

(B) The term ''migrant health center'' has the meaning given the term in section 254b(a)(1)[1] of this title.

(k) National Advisory Council on Maternal, Infant, and Fetal Nutrition; establishment; membership; term; officers; meetings; quorum; technical assistance by Secretary

(1) There is hereby established a National Advisory Council on Maternal, Infant, and Fetal Nutrition (referred to in this subsection as the ''Council'') composed of 24 members appointed by the Secretary. One member shall be a State director of a program under this section; one member shall be a State official responsible for a commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977; one member shall be a State fiscal officer of a program under this section (or the equivalent thereof); one member shall be a State health officer (or the equivalent thereof); one member shall be a local agency director of a program under this section in an urban area; one member shall be a local agency director of a program under this section in a rural area; one member shall be a project director of a commodity supplemental food program; one member shall be a State public health nutrition director (or the equivalent thereof); one member shall be a representative of an organization serving migrants; one member shall be an official from a State agency predominantly serving Indians; three members shall be parent participants of a program under this section or of a commodity supplemental food program; one member shall be a pediatrician; one member shall be an obstetrician; one member shall be a representative of a nonprofit public interest organization that has experience with and knowledge of the special supplemental nutrition program; one member shall be a person involved at the retail sales level of food in the special supplemental nutrition program; two members shall be officials of the Department of Health and Human Services appointed by the Secretary of Health and Human Services; two members shall be officials of the Department of Agriculture appointed by the Secretary; 1 member shall be an expert in the promotion of breast feeding; one member shall be an expert in drug abuse education and prevention; and one member shall be an expert in alcohol abuse education and prevention.

(2) Members of the Council appointed from outside the Department of Agriculture and the Department of Health and Human Services shall be appointed for terms not exceeding three years. State and local officials shall serve only during their official tenure, and the tenure of parent participants shall not exceed two years. Persons appointed to complete an unexpired term shall serve only for the remainder of such term.

(3) The Council shall elect a Chairman and a Vice Chairman. The Council shall meet at the call of the Chairman, but shall meet at least once a year. Eleven members shall constitute a quorum.

(4) The Secretary shall provide the Council with such technical and other assistance, including secretarial and clerical assistance, as may be required to carry out its functions.

(5) Members of the Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses incurred by them in the performance of the duties of the Council. Parent participant members of the Council, in addition to reimbursement for necessary travel and subsistence, shall, at the discretion of the Secretary, be compensated in advance for other personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings.

[1] See References in Text note below.

(*l*) Donation of foods by Secretary

Foods available under section 1431 of title 7, including, but not limited to, dry milk, or purchased under section 612c of title 7, may be donated by the Secretary, at the request of a State agency, for distribution to programs conducted under this section. The Secretary may purchase and distribute, at the request of a State agency, supplemental foods for donation to programs conducted under this section, with appropriated funds, including funds appropriated under this section.

(m) Women, infants, and children farmers' market nutrition program; establishment, grants, etc.

(1) Subject to the availability of funds appropriated for the purposes of this subsection, and as specified in this subsection, the Secretary shall award grants to States that submit State plans that are approved for the establishment or maintenance of programs designed to provide recipients of assistance under subsection (c) of this section, or those who are on the waiting list to receive the assistance, with coupons that may be exchanged for fresh, nutritious, unprepared foods at farmers' markets and (at the option of a State) roadside stands, as defined in the State plans submitted under this subsection.

(2) A grant provided to any State under this subsection shall be provided to the chief executive officer of the State, who shall—

(A) designate the appropriate State agency or agencies to administer the program in conjunction with the appropriate nonprofit organizations; and

(B) ensure coordination of the program among the appropriate agencies and organizations.

(3) The Secretary shall not make a grant to any State under this subsection unless the State agrees to provide State, local, or private funds for the program in an amount that is equal to not less than 30 percent of the administrative cost of the program, which may be satisfied from program income or State contributions that are made for similar programs. The Secretary may negotiate with an Indian State agency a lower percentage of matching funds than is required under the preceding sentence, but not lower than 10 percent of the administrative cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council.

(4) Subject to paragraph (6), the Secretary shall establish a formula for determining the amount of the grant to be awarded under this subsection to each State for which a State plan is approved under paragraph (6), according to the number of recipients proposed to participate as specified in the State plan. In determining the amount to be awarded to new States, the Secretary shall rank order the State plans according to the criteria of operation set forth in this subsection, and award grants accordingly. The Secretary shall take into consideration the minimum amount needed to fund each approved State plan, and need not award grants to each State that submits a State plan.

(5) Each State that receives a grant under this subsection shall ensure that the program for which the grant is received complies with the following requirements:

(A) Individuals who are eligible to receive Federal benefits under the program shall only be individuals who are receiving assistance under subsection (c) of this section, or who are on the waiting list to receive the assistance.

(B) Construction or operation of a farmers' market may not be carried out using funds—

(i) provided under the grant; or

(ii) required to be provided by the State under paragraph (3).

(C) The value of the Federal share of the benefits received by any recipient under the program may not be—

(i) less than $10 per year; or

(ii) more than $30 per year.

(D) The coupon issuance process under the program shall be designed to ensure that coupons are targeted to areas with—

(i) the highest concentration of eligible individuals;

(ii) the greatest access to farmers' markets; and

(iii) certain characteristics, in addition to those described in clauses (i) and (ii), that are determined to be relevant by the Secretary and that maximize the availability of benefits to eligible individuals.

(E) The coupon redemption process under the program shall be designed to ensure that the coupons may be—

(i) redeemed only by producers authorized by the State to participate in the program; and

(ii) redeemed only to purchase fresh nutritious unprepared food for human consumption.

(F)(i) Except as provided in clauses (ii) and (iii), the State may use for administration of the program in any fiscal year not more than 17 percent of the total amount of program funds.

(ii) During any fiscal year for which a State receives assistance under this subsection, the Secretary shall permit the State to use not more than 2 percent of total program funds for market development or technical assistance to farmers' markets if the Secretary determines that the State intends to promote the development of farmers' markets in socially or economically disadvantaged areas, or remote rural areas, where individuals eligible for participation in the program have limited access to locally grown fruits and vegetables.

(iii) The provisions of clauses (i) and (ii) with respect to the use of program funds shall not apply to any funds that a State may contribute in excess of the funds used by the State to meet the requirements of paragraph (3).

(G) The State shall ensure that no State or local taxes are collected within the State on purchases of food with coupons distributed under the program.

(6)(A) The Secretary shall give the same preference for funding under this subsection to eligible States that participated in the program under this subsection in a prior fiscal year as to

States that participated in the program in the most recent fiscal year. The Secretary shall inform each State of the award of funds as prescribed by subparagraph (G) by February 15 of each year.

(B)(i) Subject to the availability of appropriations, if a State provides the amount of matching funds required under paragraph (3), the State shall receive assistance under this subsection in an amount that is not less than the amount of such assistance that the State received in the most recent fiscal year in which it received such assistance.

(ii) If amounts appropriated for any fiscal year pursuant to the authorization contained in paragraph (10) for grants under this subsection are not sufficient to pay to each State for which a State plan is approved under paragraph (6) the amount that the Secretary determines each such State is entitled to under this subsection, each State's grant shall be ratably reduced, except that (if sufficient funds are available) each State shall receive at least $75,000 or the amount that the State received for the prior fiscal year if that amount is less than $75,000.

(C) In providing funds to a State that received assistance under this subsection in the previous fiscal year, the Secretary shall consider—

(i) the availability of any such assistance not spent by the State during the program year for which the assistance was received;

(ii) documentation that demonstrates that—

(I) there is a need for an increase in funds; and

(II) the use of the increased funding will be consistent with serving nutritionally at-risk persons and expanding the awareness and use of farmers' markets;

(iii) demonstrated ability to satisfactorily operate the existing program; and

(iv) whether, in the case of a State that intends to use any funding provided under subparagraph (G)(i)[2] to increase the value of the Federal share of the benefits received by a recipient, the funding provided under subparagraph (G)(i)[2] will increase the rate of coupon redemption.

(D)(i) A State that desires to receive a grant under this subsection shall submit, for each fiscal year, a State plan to the Secretary by November 15 of each year.

(ii) Each State plan submitted under this paragraph shall contain—

(I) the estimated cost of the program and the estimated number of individuals to be served by the program;

(II) a description of the State plan for complying with the requirements established in paragraph (5); and

(III) criteria developed by the State with respect to authorization of producers to participate in the program.

(iii) The criteria developed by the State as required by clause (ii)(III) shall require any authorized producer to sell fresh nutritious unprepared foods (such as fruits and vegetables) to recipients, in exchange for coupons distributed under the program.

(E) The Secretary shall establish objective criteria for the approval and ranking of State plans submitted under this paragraph.

(F)(i) An amount equal to 75 percent of the funds available after satisfying the requirements of subparagraph (B) shall be made available to States participating in the program whose State plan is approved by the Secretary. If this amount is greater than that necessary to satisfy the approved State plans, the unallocated amount shall be applied toward satisfying any unmet need of States that have not participated in the program in the prior fiscal year, and whose State plans have been approved.

(ii) An amount equal to 25 percent of the funds available after satisfying the requirements of subparagraph (B) shall be made available to States that have not participated in the program in the prior fiscal year, and whose State plans have been approved by the Secretary. If this amount is greater than that necessary to satisfy the approved State plans for new States, the unallocated amount shall be applied toward satisfying any unmet need of States whose State plans have been approved.

(iii) In any fiscal year, any funds that remain unallocated after satisfying the requirements of clauses (i) and (ii) shall be reallocated in the following fiscal year according to procedures established pursuant to paragraph (10)(B)(ii).

(7)(A) The value of the benefit received by any recipient under any program for which a grant is received under this subsection may not affect the eligibility or benefit levels for assistance under other Federal or State programs.

(B) Any programs for which a grant is received under this subsection shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

(8) For each fiscal year, the Secretary shall collect from each State that receives a grant under this subsection information relating to—

(A) the number and type of recipients served by both Federal and non-Federal benefits under the program for which the grant is received;

(B) the rate of redemption of coupons distributed under the program;

(C) the average amount distributed in coupons to each recipient;

(D) the change in consumption of fresh fruits and vegetables by recipients, if the information is available;

(E) the effects of the program on farmers' markets, if the information is available; and

(F) any other information determined to be necessary by the Secretary.

(9) FUNDING.—

(A) IN GENERAL.—

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2004 through 2009.

(ii) MANDATORY FUNDING.—Not later than 30 days after May 13, 2002, of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this

[2] See References in Text note below.

subsection $15,000,000, to remain available until expended.

(B)(i)(I) Each State shall return to the Secretary any funds made available to the State that are unobligated at the end of the fiscal year for which the funds were originally allocated. The unexpended funds shall be returned to the Secretary by February 1st of the following fiscal year.

(II) Notwithstanding any other provision of this subsection, a total of not more than 5 percent of funds made available to a State for any fiscal year may be expended by the State to reimburse expenses incurred for a program assisted under this subsection during the preceding fiscal year.

(ii) The Secretary shall establish procedures to reallocate funds that are returned under clause (i).

(10) For purposes of this subsection:

(A) The term ''coupon'' means a coupon, voucher, or other negotiable financial instrument by which benefits under this section are transferred.

(B) The term ''program'' means—

(i) the State farmers' market coupon nutrition program authorized by this subsection (as it existed on September 30, 1991); or

(ii) the farmers' market nutrition program authorized by this subsection.

(C) The term ''recipient'' means a person or household, as determined by the State, who is chosen by a State to receive benefits under this subsection, or who is on a waiting list to receive such benefits.

(D) The term ''State agency'' has the meaning provided in subsection (b)(13) of this section, except that the term also includes the agriculture department of each State and any other agency approved by the chief executive officer of the State.

(n) Disqualification of vendors who are disqualified under food stamp program

(1) In general

The Secretary shall issue regulations providing criteria for the disqualification under this section of an approved vendor that is disqualified from accepting benefits under the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(2) Terms

A disqualification under paragraph (1)—

(A) shall be for the same period as the disqualification from the program referred to in paragraph (1);

(B) may begin at a later date than the disqualification from the program referred to in paragraph (1); and

(C) shall not be subject to judicial or administrative review.

(*o*) Disqualification of vendors convicted of trafficking or illegal sales

(1) In general

Except as provided in paragraph (4), a State agency shall permanently disqualify from participation in the program authorized under this section a vendor convicted of—

(A) trafficking in food instruments (including any voucher, draft, check, or access device (including an electronic benefit transfer card or personal identification number) issued in lieu of a food instrument under this section); or

(B) selling firearms, ammunition, explosives, or controlled substances (as defined in section 802 of title 21) in exchange for food instruments (including any item described in subparagraph (A) issued in lieu of a food instrument under this section).

(2) Notice of disqualification

The State agency shall—

(A) provide the vendor with notification of the disqualification; and

(B) make the disqualification effective on the date of receipt of the notice of disqualification.

(3) Prohibition of receipt of lost revenues

A vendor shall not be entitled to receive any compensation for revenues lost as a result of disqualification under this subsection.

(4) Exceptions in lieu of disqualification

(A) In general

A State agency may permit a vendor that, but for this paragraph, would be disqualified under paragraph (1), to continue to participate in the program if the State agency determines, in its sole discretion according to criteria established by the Secretary, that—

(i) disqualification of the vendor would cause hardship to participants in the program authorized under this section; or

(ii)(I) the vendor had, at the time of the violation under paragraph (1), an effective policy and program in effect to prevent violations described in paragraph (1); and

(II) the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

(B) Civil penalty

If a State agency under subparagraph (A) permits a vendor to continue to participate in the program in lieu of disqualification, the State agency shall assess the vendor a civil penalty in an amount determined by the State agency, in accordance with criteria established by the Secretary, except that—

(i) the amount of the civil penalty shall not exceed $10,000 for each violation; and

(ii) the amount of civil penalties imposed for violations investigated as part of a single investigation may not exceed $40,000.

(p) Criminal forfeiture

(1) In general

Notwithstanding any provision of State law and in addition to any other penalty authorized by law, a court may order a person that is convicted of a violation of a provision of law described in paragraph (2), with respect to food instruments (including any item described in subsection (*o*)(1)(A) of this section issued in lieu of a food instrument under this section), funds, assets, or property that have a value of $100 or more and that are the subject of a

grant or other form of assistance under this section, to forfeit to the United States all property described in paragraph (3).

(2) Applicable laws

A provision of law described in this paragraph is—

(A) section 1760(g) of this title; and

(B) any other Federal law imposing a penalty for embezzlement, willful misapplication, stealing, obtaining by fraud, or trafficking in food instruments (including any item described in subsection (*o*)(1)(A) of this section issued in lieu of a food instrument under this section), funds, assets, or property.

(3) Property subject to forfeiture

The following property shall be subject to forfeiture under paragraph (1):

(A) All property, real and personal, used in a transaction or attempted transaction, to commit, or to facilitate the commission of, a violation described in paragraph (1).

(B) All property, real and personal, constituting, derived from, or traceable to any proceeds a person obtained directly or indirectly as a result of a violation described in paragraph (1).

(4) Procedures; interest of owner

Except as provided in paragraph (5), all property subject to forfeiture under this subsection, any seizure or disposition of the property, and any proceeding relating to the forfeiture, seizure, or disposition shall be subject to section 853 of title 21, other than subsection (d) of that section.

(5) Proceeds

The proceeds from any sale of forfeited property and any amounts forfeited under this subsection shall be used—

(A) first, to reimburse the Department of Justice, the Department of the Treasury, and the United States Postal Service for the costs incurred by the Departments or Service to initiate and complete the forfeiture proceeding;

(B) second, to reimburse the Office of Inspector General of the Department of Agriculture for any costs incurred by the Office in the law enforcement effort resulting in the forfeiture;

(C) third, to reimburse any Federal, State, or local law enforcement agency for any costs incurred in the law enforcement effort resulting in the forfeiture; and

(D) fourth, by the State agency to carry out approval, reauthorization, and compliance investigations of vendors.

(q) Provision of technical assistance to Secretary of Defense

The Secretary of Agriculture shall provide technical assistance to the Secretary of Defense, if so requested by the Secretary of Defense, for the purpose of carrying out the overseas special supplemental food program established under section 1060a(a) of title 10.

(Pub. L. 89–642, § 17, as added Pub. L. 92–433, § 9, Sept. 26, 1972, 86 Stat. 729; amended Pub. L. 93–150, § 6, Nov. 7, 1973, 87 Stat. 563; Pub. L. 93–326, § 6, June 30, 1974, 88 Stat. 287; Pub. L. 94–28, May 28, 1975, 89 Stat. 96; Pub. L. 94–105, § 14, Oct. 7, 1975, 89 Stat. 518; Pub. L. 95–166, §§ 18, 20(6), Nov. 10, 1977, 91 Stat. 1345, 1346; Pub. L. 95–627, § 3, Nov. 10, 1978, 92 Stat. 3611; Pub. L. 96–108, title III, § 301, Nov. 9, 1979, 93 Stat. 838; Pub. L. 96–499, title II, § 203(d), Dec. 5, 1980, 94 Stat. 2601; Pub. L. 97–35, title VIII, § 815, Aug. 13, 1981, 95 Stat. 531; Pub. L. 99–500, title III, §§ 314, 341, 342(a), 343, 344(a), 345–348(a), 349–353(a), 372(b)(1), Oct. 18, 1986, 100 Stat. 1783–360, 1783–364 to 1783–367, 1783–369, and Pub. L. 99–591, title III, §§ 314, 341, 342(a), 343, 344(a), 345–348(a), 349–353(a), 372(b)(1), Oct. 30, 1986, 100 Stat. 3341–363, 3341–367 to 3341–370, 3341–372; Pub. L. 99–661, div. D, title I, § 4104, title III, §§ 4301, 4302(a), 4303, 4304(a), 4305–4308(a), 4309–4313(a), title V, § 4502(b)(1), Nov. 14, 1986, 100 Stat. 4071, 4075–4078, 4080; Pub. L. 100–71, title I, July 11, 1987, 101 Stat. 425; Pub. L. 100–237, §§ 8(a), (b), 9, 11, 12, Jan. 8, 1988, 101 Stat. 1740, 1741; Pub. L. 100–356, § 3, June 28, 1988, 102 Stat. 669; Pub. L. 100–435, title II, § 212, title V, § 501(b), Sept. 19, 1988, 102 Stat. 1657, 1668; Pub. L. 100–690, title III, § 3201, Nov. 18, 1988, 102 Stat. 4246; Pub. L. 101–147, title I, § 123(a), title II, § 213(a), title III, § 326, Nov. 10, 1989, 103 Stat. 894, 912, 917; Pub. L. 101–330, July 12, 1990, 104 Stat. 311; Pub. L. 102–314, § 3, July 2, 1992, 106 Stat. 280; Pub. L. 102–342, title II, § 204, Aug. 14, 1992, 106 Stat. 913; Pub. L. 102–512, title II, §§ 203–207, Oct. 24, 1992, 106 Stat. 3364–3368; Pub. L. 103–448, title II, § 204(a)–(*o*)(1), (p)–(v)(11), (w)(1), Nov. 2, 1994, 108 Stat. 4738–4745; Pub. L. 104–66, title I, § 1011(*l*), Dec. 21, 1995, 109 Stat. 710; Pub. L. 104–193, title I, § 109(h), title VII, § 729(a)–(g)(1), (h)–(j), Aug. 22, 1996, 110 Stat. 2171, 2303–2305; Pub. L. 105–336, title II, § 203(a)–(f)(1), (g)–(*l*), (m)–(p)(1), (q), Oct. 31, 1998, 112 Stat. 3158–3165; Pub. L. 105–362, title I, § 101(i), Nov. 10, 1998, 112 Stat. 3281; Pub. L. 106–65, div. A, title VI, § 674(e), Oct. 5, 1999, 113 Stat. 675; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170; Pub. L. 106–224, title II, §§ 242(b)(1), (2), 244(a)–(e), June 20, 2000, 114 Stat. 411, 412, 421; Pub. L. 106–472, title III, § 307(b), Nov. 9, 2000, 114 Stat. 2073; Pub. L. 107–171, title IV, §§ 4306(a), 4307(a), May 13, 2002, 116 Stat. 332; Pub. L. 108–265, title II, § 203(a)–(c)(2)(A), (3), (4)(A), (5), (d), (e)(1)–(4)(A), (5), (6)(A), (7)(A), (B), (8)–(13), (f)–(i)(1), June 30, 2004, 118 Stat. 771–780; Pub. L. 108–447, div. A, title VII, § 788(d), (e), Dec. 8, 2004, 118 Stat. 2851.)

REFERENCES IN TEXT

Sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973, referred to in subsecs. (c)(3), (e)(3)(B), and (f)(1)(D), are sections 4 and 5 of Pub. L. 93–86, which are set out as notes under section 612c of Title 7, Agriculture.

The Food Stamp Act of 1977, referred to in subsecs. (d)(2)(A)(ii)(I), (m)(7)(B), and (n)(1), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended by Pub. L. 95–113, title XIII, Sept. 29, 1977, 91 Stat. 958, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7. For complete classification of the Food Stamp Act of 1977 to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Social Security Act, referred to in subsecs. (d)(2)(A)(ii)(II), (iii)(I), (e)(4)(A), and (f)(17), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV, title XIX, and title XXI of the Act are classified generally to part A (§ 601 et seq.) of subchapter IV, subchapter XIX (§ 1396 et seq.), and subchapter XXI

(§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (d)(3)(C)(i), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§ 12101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (f)(15), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Sections 254b and 254c of this title, referred to in subsec. (j)(4), were in the original references to sections 329 and 330 of the Public Health Service Act, act July 1, 1944, which were omitted in the general amendment of subpart I (§ 254b et seq.) of part D of subchapter II of chapter 6A of this title by Pub. L. 104–299, § 2, Oct. 11, 1996, 110 Stat. 3626. Sections 2 and 3(a) of Pub. L. 104–299 enacted new sections 330 and 330A of act July 1, 1944, which are classified, respectively, to sections 254b and 254c of this title.

Section 1304 of the Food and Agriculture Act of 1977, referred to in subsec. (k)(1), is section 1304 of Pub. L. 95–113, title XIII, Sept. 29, 1977, 91 Stat. 980, which amended provisions set out as notes under sections 612c and 1281 of Title 7, Agriculture.

Subparagraph (G)(i), referred to in subsec. (m)(6)(C)(iv), meaning subpar. (G)(i) of subsec. (m)(6), was redesignated subpar. (F)(i) of subsec. (m)(6) by Pub. L. 105–336, title II, § 203(*o*)(3)(B), Oct. 31, 1998, 112 Stat. 3164.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Subsec. (b)(7). Pub. L. 108–265, § 203(a)(1), added par. (7) and struck out former par. (7) which read as follows: '' 'Nutrition education' means individual or group sessions and the provision of materials designed to improve health status that achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.''

Subsec. (b)(14). Pub. L. 108–265, § 203(a)(2), inserted ''and foods that promote the health of the population served by the program authorized by this section, as indicated by relevant nutrition science, public health concerns, and cultural eating patterns'' after ''children''.

Subsec. (b)(22), (23). Pub. L. 108–265, § 203(a)(3), added pars. (22) and (23).

Subsec. (d)(3)(A). Pub. L. 108–265, § 203(b)(1), inserted par. and subpar. headings, designated existing provisions as cl. (i), inserted heading, substituted ''Subject to clause (ii), a person'' for ''Persons'', and added cl. (ii).

Subsec. (d)(3)(C)(ii)(I)(bb). Pub. L. 108–265, § 203(b)(2)(A), substituted semicolon for ''from a provider other than the local agency; or''.

Subsec. (d)(3)(C)(ii)(II)(cc). Pub. L. 108–265, § 203(b)(2)(B), substituted ''; and'' for period at end.

Subsec. (d)(3)(C)(ii)(III). Pub. L. 108–265, § 203(b)(2)(C), added subcl. (III).

Subsec. (f)(1)(C)(i). Pub. L. 108–447, § 788(d), struck out period after ''subsection (h)(11) of this section''.

Pub. L. 108–265, § 203(e)(10)(B), inserted before semicolon at end '', including a description of the State agency's vendor peer group system, competitive price criteria, and allowable reimbursement levels that demonstrate that the State is in compliance with the cost-containment provisions in subsection (h)(11) of this section.''

Pub. L. 108–265, § 203(c)(1)(A), inserted ''at any of the authorized retail stores under the program'' after ''foods under the program''.

Subsec. (f)(1)(C)(ii) to (xi). Pub. L. 108–265, § 203(c)(1)(B), (C), added cl. (ii) and redesignated former cls. (ii) to (x) as (iii) to (xi), respectively.

Subsec. (f)(11). Pub. L. 108–265, § 203(c)(2)(A), inserted par. heading, designated existing provisions as subpars. (A) and (B), inserted headings, and added subpars. (C) and (D).

Subsec. (f)(21). Pub. L. 108–265, § 203(c)(3), substituted ''local agencies, vendors,'' for ''vendors'' in heading and introductory provisions.

Subsec. (f)(25). Pub. L. 108–265, § 203(c)(4)(A), added par. (25).

Subsec. (f)(26). Pub. L. 108–265, § 203(c)(5), added par. (26).

Subsec. (g). Pub. L. 108–265, § 203(d), inserted heading.

Subsec. (g)(1). Pub. L. 108–265, § 203(d), inserted par. heading, added subpar. (A), designated second sentence as subpar. (B), inserted heading, and struck out first sentence relating to appropriations for fiscal year 1990 and fiscal years 1995 through 2003.

Subsec. (h)(2)(A). Pub. L. 108–265, § 203(e)(1), substituted ''The'' for ''For each of the fiscal years 1995 through 2003, the'' in introductory provisions.

Subsec. (h)(4)(F). Pub. L. 108–265, § 203(e)(2), added subpar. (F).

Subsec. (h)(8)(A)(ii). Pub. L. 108–265, § 203(e)(7)(B), substituted ''change'' for ''rise'' in introductory provisions.

Subsec. (h)(8)(A)(ii)(I). Pub. L. 108–265, § 203(e)(4)(A)(i), substituted ''primary contract'' for ''contract brand of''.

Subsec. (h)(8)(A)(iii). Pub. L. 108–265, § 203(e)(4)(A)(ii), inserted ''for a specific infant formula for which manufacturers submit a bid'' after ''lowest net price''.

Subsec. (h)(8)(A)(iv). Pub. L. 108–265, § 203(e)(3), added cl. (iv).

Subsec. (h)(8)(A)(v). Pub. L. 108–265, § 203(e)(4)(A)(iii), added cl. (v).

Subsec. (h)(8)(A)(vi). Pub. L. 108–447, § 788(e), substituted ''Effective beginning October 1, 2004, each State'' for ''Each State''.

Pub. L. 108–265, § 203(e)(5), added cl. (vi).

Subsec. (h)(8)(A)(vii). Pub. L. 108–265, § 203(e)(6)(A), added cl. (vii).

Subsec. (h)(8)(A)(viii). Pub. L. 108–265, § 203(e)(7)(A), added cl. (viii).

Subsec. (h)(8)(A)(ix), (x). Pub. L. 108–265, § 203(e)(8), added cls. (ix) and (x).

Subsec. (h)(10). Pub. L. 108–265, § 203(e)(9), added par. (10) and struck out former par. (10), which related to use of certain funds for each of fiscal years 1995 through 2003 for development of infrastructure for the program, special State projects to improve services, and special breastfeeding support and promotion projects.

Subsec. (h)(11). Pub. L. 108–265, § 203(e)(10)(A), added par. (11) and struck out former par. (11), which required a State agency to consider price levels of retail stores for participation in the program and to establish procedures to ensure that selected stores would not subsequently raise prices to levels that would have made them ineligible for participation.

Subsec. (h)(12). Pub. L. 108–265, § 203(e)(11), added par. (12) and struck out former par. (12), which directed the Secretary to establish a long-range plan for the development and implementation of management information systems to be used in carrying out the program, and to submit a report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate not later than 2 years after Oct. 31, 1998.

Subsec. (h)(13), (14). Pub. L. 108–265, § 203(e)(12), (13), added pars. (13) and (14).

Subsec. (i)(3)(A)(ii)(I). Pub. L. 108–265, § 203(f), substituted ''3 percent'' for ''1 percent''.

Subsec. (j)(4), (5). Pub. L. 108–265, § 203(g), redesignated par. (5) as (4) and struck out former par. (4), which directed the Secretaries to provide notifications to Congress concerning actions to carry out the initiative and, upon completion of such initiative, an evaluation and a plan to further its goals.

Subsec. (m)(1). Pub. L. 108–265, § 203(h)(1), inserted ''and (at the option of a State) roadside stands'' after ''farmers' markets''.

Subsec. (m)(3). Pub. L. 108–265, § 203(h)(2), substituted ''administrative'' for ''total'' in two places.

Subsec. (m)(5)(C)(ii). Pub. L. 108–265, § 203(h)(3), substituted ''$30'' for ''$20''.

Subsec. (m)(9)(A)(i). Pub. L. 108–265, § 203(h)(4), added cl. (i) and struck out former cl. (i), which authorized to be appropriated to carry out this subsection $8,000,000 for fiscal year 1994, $10,500,000 for fiscal year 1995, and such sums as might be necessary for each of fiscal years 1996 through 2003.

Subsec. (r). Pub. L. 108–265, § 203(i)(1), struck out subsec. (r), which provided for demonstration projects relating to use of the WIC program for identification and enrollment of children in certain health programs.

2002—Subsec. (d)(2)(B)(i). Pub. L. 107–171, § 4306(a), inserted hyphen after ''basic allowance'' and designated remainder of cl. (i) as subcl. (I), substituted ''or'' for ''and'' after semicolon, and added subcl. (II).

Subsec. (m)(9). Pub. L. 107–171, § 4307(a), inserted par. heading, subpar. (A) heading, and cl. (i) designation and heading and added cl. (ii).

2000—Subsec. (b)(4). Pub. L. 106–224, § 242(b)(2)(A), substituted ''(4) 'Costs of nutrition services and administration' or 'nutrition services and administration' means'' for ''(4) 'Costs for nutrition services and administration' means''.

Subsec. (b)(21). Pub. L. 106–224, § 244(a), added par. (21).

Subsec. (d)(2)(B). Pub. L. 106–224, § 244(b), designated part of existing provisions as cl. (i), substituted ''housing'' for ''quarters'', and added cl. (ii).

Subsec. (d)(2)(B)(ii). Pub. L. 106–472, § 307(b)(1), substituted ''contiguous States of the'' for ''continental''.

Subsec. (d)(3)(F). Pub. L. 106–224, § 244(c), added subpar. (F).

Subsec. (h)(1)(A). Pub. L. 106–224, § 242(b)(2)(B), substituted ''costs of nutrition services and administration incurred by State and local agencies'' for ''costs incurred by State and local agencies for nutrition services and administration''.

Subsec. (h)(1)(B)(i). Pub. L. 106–224, § 244(d)(1), substituted ''the preceding fiscal year'' for ''the fiscal year 1987''.

Subsec. (h)(1)(B)(ii). Pub. L. 106–224, § 244(d)(2)(A), substituted ''the preceding fiscal year'' for ''the fiscal year 1987'' in introductory provisions.

Subsec. (h)(1)(B)(ii)(I). Pub. L. 106–224, § 244(d)(2)(B), added subcl. (I) and struck out former subcl. (I) which read as follows: ''the value of the index for State and local government purchases, using the implicit price deflator, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 1986; and''.

Subsec. (h)(5)(D). Pub. L. 106–224, § 244(e), added subpar. (D).

Subsec. (r). Pub. L. 106–224, § 242(b)(1), added subsec. (r).

Subsec. (r)(1). Pub. L. 106–472, § 307(b)(2), substituted ''not more than 20 local agencies'' for ''at least 20 local agencies'' in introductory provisions.

1999—Subsecs. (d)(2)(A)(i), (g)(1), (p)(2)(A). Pub. L. 106–78 made technical amendment to references in original act which appear in text as references to sections 1752, 1758, and 1760 of this title.

Subsec. (q). Pub. L. 106–65 added subsec. (q).

1998—Subsec. (d)(3)(C) to (E). Pub. L. 105–336, § 203(a), added subpars. (C) to (E).

Subsec. (e)(1). Pub. L. 105–336, § 203(b), inserted at end ''A local agency participating in the program shall provide education or educational materials relating to the effects of drug and alcohol use by a pregnant, postpartum, or breastfeeding woman on the developing child of the woman.''

Subsec. (e)(3). Pub. L. 105–336, § 203(c), inserted par. heading, designated existing provisions as subpar. (A) and inserted heading, and added subpar. (B).

Subsec. (f)(21). Pub. L. 105–336, § 203(d), amended par. (21) generally. Prior to amendment, par. (21) read as follows: ''A State agency may use funds recovered as a result of violations in the food delivery system of the program in the year in which the funds are collected for the purpose of carrying out the program.''

Subsec. (f)(23). Pub. L. 105–336, § 203(e), added par. (23).

Subsec. (f)(24). Pub. L. 105–336, § 203(f)(1), added par. (24).

Subsec. (g)(1). Pub. L. 105–336, § 203(g), substituted ''2003'' for ''1998''.

Subsec. (h)(1)(C). Pub. L. 105–336, § 203(h), inserted subpar. heading, designated existing provisions as cl. (i), inserted heading, substituted ''Except as provided in clause (ii), in'' for ''In'', and added cl. (ii).

Subsec. (h)(2)(A). Pub. L. 105–336, § 203(i)(1), substituted ''2003'' for ''1998'' in introductory provisions.

Subsec. (h)(2)(A)(iv). Pub. L. 105–336, § 203(i)(2), struck out '', to the extent funds are not already provided under subparagraph (I)(v) for the same purpose,'' after ''may provide funds''.

Subsec. (h)(2)(B)(ii). Pub. L. 105–336, § 203(i)(3), substituted ''10 percent (except that the Secretary may establish a higher percentage for State agencies that are small)'' for ''15 percent''.

Subsec. (h)(3)(E). Pub. L. 105–336, § 203(i)(4)(A), in introductory provisions, substituted ''For each fiscal year,'' for ''In the case of fiscal year 1996 (except as provided in subparagraph (G)) and each subsequent fiscal year,''.

Subsec. (h)(3)(F), (G). Pub. L. 105–336, § 203(i)(4)(B), struck out subpar. (F) which provided for adjusted payments in lieu of required payments for fiscal year 1995 and subpar. (G) which provided for delay of required payments for fiscal year 1996 and for adjusted payments in lieu of required payments for fiscal year 1996.

Subsec. (h)(5)(A). Pub. L. 105–336, § 203(i)(5), in introductory provisions, substituted ''submits a plan to reduce average food costs per participant and to increase participation above the level estimated for the State agency, the State agency may, with the approval of the Secretary,'' for ''achieves, through use of acceptable measures, participation that exceeds the participation level estimated for such State agency under paragraph (2)(A)(ii)(I), such State agency may''.

Subsec. (h)(8)(A)(iii). Pub. L. 105–336, § 203(j), added cl. (iii).

Subsec. (h)(10)(A). Pub. L. 105–336, § 203(k), (n)(2)(A), substituted ''2003'' for ''1998'' and inserted ''and supplemental foods funds'' after ''nutrition services and administration funds''.

Subsec. (h)(11). Pub. L. 105–336, § 203(*l*), added par. (11).

Subsec. (h)(12). Pub. L. 105–336, § 203(m), added par. (12).

Subsec. (i)(3)(A). Pub. L. 105–336, § 203(n)(1)(A), substituted ''subparagraph (B)'' for ''subparagraphs (B) and (C)'' in introductory provisions.

Subsec. (i)(3)(A)(i), (ii). Pub. L. 105–336, § 203(n)(1)(B), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) not more than 1 percent (except as provided in subparagraph (H)) of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year; and

''(ii) not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year.''

Subsec. (i)(3)(C) to (H). Pub. L. 105–336, § 203(n)(2)(B), redesignated subpar. (H) as (C) and struck out former subpars. (C) to (G) which read as follows:

''(C) The total amount of funds transferred from any fiscal year under clauses (i) and (ii) of subparagraph (A) shall not exceed 1 percent of the amount of the funds allocated to a State agency for such fiscal year.

''(D) For State agencies implementing cost containment measures as defined in subsection (h)(9) of this section, not more than 5 percent of the amount of funds allocated under this section to such a State agency for supplemental foods for the fiscal year in which the sys-

tem is implemented, and not more than 3 percent of the amount of funds allocated to such a State agency for the fiscal year following the fiscal year in which the system is implemented, may be expended by the State agency for expenses incurred under this section for supplemental foods during the succeeding fiscal year.

''(E) Notwithstanding any other provision in this paragraph and paragraph (2) a State agency may, subject to the approval of the Secretary under subparagraph (F), expend not more than 3 percent of the amount of funds allocated to such agency for supplemental foods for the fiscal year 1991 for expenses incurred under this section for supplemental foods during the fiscal year 1990.

''(F) Each State agency which intends to use the authority provided in subparagraph (E) shall request approval from the Secretary in advance and shall submit a plan showing how the State's caseload will be managed to meet funding limitations. The Secretary shall review and make determinations on such plans on an expedited basis.

''(G) No State can use the authority provided under subparagraph (E) to increase the caseload level above the highest level to date in fiscal year 1990.''

Subsec. (k)(4) to (6). Pub. L. 105–362 redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which read as follows: ''The Council shall make a continuing study of the operation of the program under this section and related programs to determine how the program may be improved. The Council shall submit once every two years to the President and Congress, beginning with the fiscal year ending September 30, 1980, a written report, together with its recommendations on such program operations.''

Subsec. (m)(3). Pub. L. 105–336, §203(*o*)(1), inserted ''program income or'' after ''satisfied from'' in first sentence.

Subsec. (m)(6)(C). Pub. L. 105–336, §203(*o*)(2)(A), struck out ''serve additional recipients in'' after ''In providing funds to'' in introductory provisions.

Subsec. (m)(6)(C)(ii). Pub. L. 105–336, §203(*o*)(2)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: ''documentation that justifies the need for an increase in participation; and''.

Subsec. (m)(6)(C)(iii), (iv). Pub. L. 105–336, §203(*o*)(2)(C), (D), substituted ''; and'' for period at end of cl. (iii) and added cl. (iv).

Subsec. (m)(6)(F). Pub. L. 105–336, §203(*o*)(3), redesignated subpar. (G) as (F) and struck out former subpar. (F) which listed criteria for Secretary to apply in approving and ranking State plans.

Subsec. (m)(6)(F)(i). Pub. L. 105–336, §203(*o*)(4)(A), in first sentence, substituted ''whose State plan'' for ''that wish to serve additional recipients, and whose State plan to do so'' and, in second sentence, struck out ''for additional recipients'' after ''approved State plans''.

Subsec. (m)(6)(F)(ii). Pub. L. 105–336, §203(*o*)(4)(B), struck out ''that desire to serve additional recipients, and'' after ''need of States'' in second sentence.

Subsec. (m)(6)(G). Pub. L. 105–336, §203(*o*)(3)(B), redesignated subpar. (G) as (F).

Subsec. (m)(9)(A). Pub. L. 105–336, §203(*o*)(5), substituted ''2003'' for ''1998''.

Subsec. (*o*). Pub. L. 105–336, §203(p)(1), added subsec. (*o*).

Subsec. (p). Pub. L. 105–336, §203(q), added subsec. (p).

1996—Subsec. (b)(15)(B)(iii). Pub. L. 104–193, §729(a)(1), inserted ''of not more than 365 days'' after ''temporary accommodation''.

Subsec. (b)(16). Pub. L. 104–193, §729(a)(2), inserted ''and'' at end of subpar. (A), substituted a period for ''; and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''the provision of materials developed by the Secretary under subsection (n) of this section.''

Subsec. (c)(5). Pub. L. 104–193, §729(b), struck out par. (5) which read as follows: ''The Secretary shall promote the special supplemental nutrition program by producing and distributing materials, including television and radio public service announcements in English and other appropriate languages, that inform potentially eligible individuals of the benefits and services under the program.''

Subsec. (d)(2)(A)(ii)(II). Pub. L. 104–193, §109(h), substituted ''State program funded'' for ''program for aid to families with dependent children established'' and inserted before semicolon ''that the Secretary determines complies with standards established by the Secretary that ensure that the standards under the State program are comparable to or more restrictive than those in effect on June 1, 1995''.

Subsec. (d)(4). Pub. L. 104–193, §729(c), struck out par. (4) which read as follows: ''The Secretary shall report biennially to Congress and the National Advisory Council on Maternal, Infant, and Fetal Nutrition established under subsection (k) of this section on—

''(A) the income and nutritional risk characteristics of participants in the program;

''(B) participation in the program by members of families of migrant farmworkers; and

''(C) such other matters relating to participation in the program as the Secretary considers appropriate.''

Subsec. (e)(2). Pub. L. 104–193, §729(d)(1), struck out at end ''Nutrition education and breastfeeding promotion and support shall be evaluated annually by each State agency, and such evaluation shall include the views of participants concerning the effectiveness of the nutrition education and breastfeeding promotion and support they have received.''

Subsec. (e)(4). Pub. L. 104–193, §729(d)(2), struck out ''shall'' after ''State agency'' in introductory provisions, struck out subpar. (A), redesignated subpars. (B) and (C) as (A) and (B), respectively, inserted ''shall'' before ''provide'' in subpars. (A) and (B), and added subpar. (C). Prior to amendment, subpar. (A) read as follows: ''ensure that written information concerning food stamps, the program for aid to families with dependent children under part A of title IV of the Social Security Act, and the child support enforcement program under part D of title IV of the Social Security Act is provided on at least 1 occasion to each adult participant in and each applicant for the program;''.

Subsec. (e)(5). Pub. L. 104–193, §729(d)(3), substituted ''Each local agency'' for ''The State agency shall ensure that each local agency''.

Subsec. (e)(6). Pub. L. 104–193, §729(d)(4), struck out par. (6) which read as follows: ''Each local agency may use a master file to document and monitor the provision of nutrition education services (other than the initial provision of such services) to individuals that are required, under standards prescribed by the Secretary, to be included by the agency in group nutrition education classes.''

Subsec. (f)(1)(A). Pub. L. 104–193, §729(e)(1)(A), substituted ''to the Secretary, by a date specified by the Secretary, an initial'' for ''annually to the Secretary, by a date specified by the Secretary, a'' and inserted at end ''After submitting the initial plan, a State shall be required to submit to the Secretary for approval only a substantive change in the plan.''

Subsec. (f)(1)(C)(iii). Pub. L. 104–193, §729(e)(1)(B)(i), added cl. (iii) and struck out former cl. (iii) which read as follows: ''a plan to coordinate operations under the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, local programs for breastfeeding promotion, prenatal care, well-child care, family planning, drug abuse education, alcohol and drug abuse counseling and treatment, child abuse counseling, and with the aid to families with dependent children, food stamp, maternal and child health care, and medicaid programs, including medicaid programs that use coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C. 1396b(m) or 1396n(b)) (including coordination through the referral of potentially eligible women, infants, and children between the program authorized under this section and the medicaid program);''.

Subsec. (f)(1)(C)(vi). Pub. L. 104–193, §729(e)(1)(B)(ii), inserted ''(including a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas)'' after ''in the State''.

Subsec. (f)(1)(C)(vii). Pub. L. 104–193, §729(e)(1)(B)(iii), substituted ''for reaching and enrolling'' for ''to provide program benefits under this section to eligible individuals most in need of the benefits and to provide eligible individuals not participating in the program with information on the program, the eligibility criteria for the program, and how to apply for the program, with emphasis on reaching and enrolling''.

Subsec. (f)(1)(C)(ix). Pub. L. 104–193, §729(e)(1)(B)(vii), inserted ''and'' at end.

Pub. L. 104–193, §729(e)(1)(B)(iv), (vi), redesignated cl. (xi) as (ix) and struck out former cl. (ix) which read as follows: ''if the State agency chooses to provide program benefits under this section to some or all eligible individuals who are incarcerated in prisons or juvenile detention facilities that do not receive Federal assistance under any program specifically established to assist pregnant women regarding their nutrition and health needs, a plan for the provision of such benefits to, and to meet the special nutrition education needs of, such individuals, which may include—

''(I) providing supplemental foods to such individuals that are different from those provided to other participants in the program under this section;

''(II) providing such foods to such individuals in a different manner than to other participants in the program under this section in order to meet the special needs of such individuals; and

''(III) the development of nutrition education materials appropriate for the special needs of such individuals;''.

Subsec. (f)(1)(C)(x). Pub. L. 104–193, §729(e)(1)(B)(iv), (vi), redesignated cl. (xiii) as (x) and struck out former cl. (x) which read as follows: ''a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas, by addressing their special needs through the adoption or revision of procedures and practices to minimize the time participants and applicants must spend away from work and the distances that participants and applicants must travel, including appointment scheduling, adjustment of clinic hours, clinic locations, or mailing of multiple vouchers;''.

Subsec. (f)(1)(C)(xi). Pub. L. 104–193, §729(e)(1)(B)(vi), redesignated cl. (xi) as (ix).

Subsec. (f)(1)(C)(xii). Pub. L. 104–193, §729(e)(1)(B)(iv), struck out cl. (xii) which read as follows: ''if the State agency chooses to request the funds conversion authority established in clause (h)(5) of this section, an estimate of the increased participation which will result from its cost-saving initiative, including an explanation of how the estimate was developed; and''.

Subsec. (f)(1)(C)(xiii). Pub. L. 104–193, §729(e)(1)(B)(vi), redesignated cl. (xiii) as (x).

Pub. L. 104–193, §729(e)(1)(B)(v), substituted ''may reasonably require'' for ''may require''.

Subsec. (f)(1)(D), (E). Pub. L. 104–193, §729(e)(1)(C), (D), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: ''The Secretary may permit a State agency to submit only those parts of a plan that differ from plans submitted for previous fiscal years.''

Subsec. (f)(5). Pub. L. 104–193, §729(e)(3), substituted ''be available at any reasonable time'' for ''at all times be available'' in second sentence.

Subsec. (f)(6). Pub. L. 104–193, §729(e)(2), (10), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''The State agency, upon receipt of a completed application from a local agency for participation in the program (and the Secretary, upon receipt of a completed application from a State agency), shall notify the applicant agency in writing within thirty days of the approval or disapproval of the application, and any disapproval shall be accompanied with a statement of the reasons for such disapproval. Within fifteen days after receipt of an incomplete application, the State agency (or the Secretary) shall notify the applicant agency of the additional information needed to complete the application.''

Subsec. (f)(7), (8). Pub. L. 104–193, §729(e)(10), redesignated pars. (8) and (9) as (7) and (8), respectively. Former par. (7) redesignated (6).

Subsec. (f)(9). Pub. L. 104–193, §729(e)(10), redesignated par. (10) as (9). Former par. (9) redesignated (8).

Subsec. (f)(9)(B). Pub. L. 104–193, §729(e)(4), struck out at end ''Such notice shall include, in addition to other information required by the Secretary, the categories of participants whose benefits are being suspended or terminated due to such shortage.''

Subsec. (f)(10). Pub. L. 104–193, §729(e)(10), redesignated par. (11) as (10). Former par. (10) redesignated (9).

Subsec. (f)(11). Pub. L. 104–193, §729(e)(10), redesignated par. (12) as (11). Former par. (11) redesignated (10).

Pub. L. 104–193, §729(e)(5), struck out '', including standards that will ensure sufficient State agency staff'' after ''program'' in first sentence.

Subsec. (f)(12). Pub. L. 104–193, §729(e)(10), redesignated par. (13) as (12). Former par. (12) redesignated (11).

Pub. L. 104–193, §729(e)(6), struck out at end ''Products specifically designed for pregnant, postpartum, and breastfeeding women, or infants shall be available at the discretion of the Secretary if the products are commercially available or are justified to and approved by the Secretary based on clinical tests performed in accordance with standards prescribed by the Secretary.''

Subsec. (f)(13). Pub. L. 104–193, §729(e)(10), redesignated par. (14) as (13). Former par. (13) redesignated (12).

Subsec. (f)(14). Pub. L. 104–193, §729(e)(10), redesignated par. (15) as (14). Former par. (14) redesignated (13).

Pub. L. 104–193, §729(e)(7), substituted ''State agency may'' for ''State agency shall''.

Subsec. (f)(15), (16). Pub. L. 104–193, §729(e)(10), redesignated pars. (16) and (17) as (15) and (16), respectively. Former par. (15) redesignated (14).

Subsec. (f)(17). Pub. L. 104–193, §729(e)(10), redesignated par. (18) as (17). Former par. (17) redesignated (16).

Pub. L. 104–193, §729(e)(8), struck out ''and to accommodate the special needs and problems of individuals who are incarcerated in prisons or juvenile detention facilities'' before period at end.

Subsec. (f)(18). Pub. L. 104–193, §729(e)(10), redesignated par. (19) as (18). Former par. (18) redesignated (17).

Subsec. (f)(19). Pub. L. 104–193, §729(e)(10), redesignated par. (20) as (19). Former par. (19) redesignated (18).

Pub. L. 104–193, §729(e)(9), substituted ''may provide information'' for ''shall provide information''.

Subsec. (f)(20), (21). Pub. L. 104–193, §729(e)(10), redesignated pars. (23) and (21) as (21) and (20), respectively. Former par. (20) redesignated (19).

Subsec. (f)(22). Pub. L. 104–193, §729(e)(10), redesignated par. (24) as (22).

Pub. L. 104–193, §729(e)(2), struck out par. (22) which read as follows: ''In the State plan submitted to the Secretary for fiscal year 1994, each State agency shall advise the Secretary regarding the procedures to be used by the State agency to reduce the purchase of low-iron infant formula for infants on the program for whom such formula has not been prescribed by a physician or other appropriate health professional, as determined by regulations issued by the Secretary.''

Subsec. (f)(23), (24). Pub. L. 104–193, §729(e)(10), redesignated pars. (23) and (24) as (21) and (22), respectively.

Subsec. (g)(5). Pub. L. 104–193, §729(f)(1), substituted ''reports on program participant characteristics'' for ''the report required under subsection (d)(4) of this section''.

Subsec. (g)(6). Pub. L. 104–193, §729(f)(2), struck out par. (6) which read as follows: ''Upon the completion of

the 1990 decennial census, the Secretary, in coordination with the Secretary of Commerce, shall make available an estimate, by State and county (or equivalent political subdivision) of the number of women, infants, and children who are members of families that have incomes below the maximum income limit for participation in the program under this section.''

Subsec. (h)(4)(E). Pub. L. 104–193, § 729(g)(1)(A), struck out ''and, on development of the uniform requirements, require each State agency to report the data for inclusion in the report to Congress described in subsection (d)(4) of this section'' before period at end.

Subsec. (h)(8)(A). Pub. L. 104–193, § 729(g)(1)(B)(i), (iv), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''No State may receive its allocation under this subsection unless on or before August 30, 1989 (or a subsequent date established by the Secretary for any State) such State has—

''(i) examined the feasibility of implementing cost containment measures with respect to procurement of infant formula, and, where practicable, other foods necessary to carry out the program under this section; and

''(ii) initiated action to implement such measures unless the State demonstrates, to the satisfaction of the Secretary, that such measures would not lower costs or would interfere with the delivery of formula or foods to participants in the program.''

Subsec. (h)(8)(A)(i). Pub. L. 104–193, § 729(g)(1)(B)(v), in introductory provisions substituted ''subparagraphs (B) and (C)(iii),'' for ''subparagraphs (C), (D), and (E)(iii), in carrying out subparagraph (A),''.

Subsec. (h)(8)(B). Pub. L. 104–193, § 729(g)(1)(B)(iv), redesignated subpar. (D) as (B). Former subpar. (B) redesignated (A).

Subsec. (h)(8)(B)(i). Pub. L. 104–193, § 729(g)(1)(B)(vi), substituted ''subparagraph (A)'' for ''subparagraph (B)'' in two places.

Subsec. (h)(8)(C). Pub. L. 104–193, § 729(g)(1)(B)(i), (iv), redesignated subpar. (E) as (C) and struck out former subpar. (C) which read as follows: ''In the case of any State that has a contract in effect on November 10, 1989, subparagraph (B) shall not apply to the program operated by such State under this section until the term of such contract, as such term is specified by the contract as in effect on November 10, 1989, expires. In the case of any State that has more than 1 such contract in effect on November 10, 1989, subparagraph (B) shall not apply until the term of the contract with the latest expiration date, as such term is specified by such contract as in effect on November 10, 1989, expires.''

Subsec. (h)(8)(C)(iii). Pub. L. 104–193, § 729(g)(1)(B)(vii), substituted ''subparagraph (A)'' for ''subparagraph (B)''.

Subsec. (h)(8)(D) to (F). Pub. L. 104–193, § 729(g)(1)(B)(iv), redesignated subpars. (F) to (H) as (D) to (F). Former subpars. (D) and (E) redesignated (B) and (C), respectively.

Subsec. (h)(8)(G). Pub. L. 104–193, § 729(g)(1)(B)(iv), redesignated subpar. (I) as (G). Former subpar. (G) redesignated (E).

Pub. L. 104–193, § 729(g)(1)(B)(ii), designated cl. (i) as subpar. (G) and struck out cls. (ii) to (ix) which related to procedures for soliciting bids on behalf of State agencies regarding cost-containment contracts to be entered into by infant formula and cereal manufacturers and State agencies.

Subsec. (h)(8)(H). Pub. L. 104–193, § 729(g)(1)(B)(iv), redesignated subpar. (J) as (H). Former subpar. (H) redesignated (F).

Subsec. (h)(8)(I). Pub. L. 104–193, § 729(g)(1)(B)(iv), redesignated subpar. (K) as (I). Former subpar. (I) redesignated (G).

Pub. L. 104–193, § 729(g)(1)(B)(iii), substituted ''Secretary may'' for ''Secretary—

''(i) shall promote, but not require, the joint purchase of infant formula among State agencies electing not to participate under the procedures set forth in subparagraph (G);

''(ii) shall encourage and promote (but not require) the purchase of supplemental foods other than infant formula under cost containment procedures;

''(iii) shall inform State agencies of the benefits of cost containment and provide assistance and technical advice at State agency request regarding the State agency's use of cost containment procedures;

''(iv) shall encourage (but not require) the joint purchase of supplemental foods other than infant formula under procedures specified in subparagraph (B), if the Secretary determines that—

''(I) the anticipated savings are expected to be significant;

''(II) the administrative expenses involved in purchasing the food item through competitive bidding procedures, whether under a rebate or discount system, will not exceed the savings anticipated to be generated by the procedures; and

''(III) the procedures would be consistent with the purposes of the program; and

''(v) may''.

Subsec. (h)(8)(J) to (L). Pub. L. 104–193, § 729(g)(1)(B)(iv), redesignated subpars. (J) to (L) as (H) to (J), respectively.

Subsec. (h)(8)(M). Pub. L. 104–193, § 729(g)(1)(B)(i), struck out subpar. (M) which read as follows:

''(M)(i) The Secretary shall establish pilot projects in at least 1 State, with the consent of the State, to determine the feasibility and cost of requiring States to carry out a system for using universal product codes to assist retail food stores that are vendors under the program in providing the type of infant formula that the participants in the program are authorized to obtain. In carrying out the projects, the Secretary shall determine whether the system reduces the incidence of incorrect redemptions of low-iron formula or brands of infant formula not authorized to be redeemed through the program, or both.

''(ii) The Secretary shall provide a notification to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate regarding whether the system is feasible, is cost-effective, reduces the incidence of incorrect redemptions described in clause (i), and results in any additional costs to States.

''(iii) The system shall not require a vendor under the program to obtain special equipment and shall not be applicable to a vendor that does not have equipment that can use universal product codes.''

Subsec. (k)(3). Pub. L. 104–193, § 729(h), substituted ''Council shall elect'' for ''Secretary shall designate''.

Subsec. (n). Pub. L. 104–193, § 729(i), (j), added heading and text of subsec. (n) and struck out former subsec. (n) which related to study of methods of drug abuse education instruction.

Subsecs. (*o*), (p). Pub. L. 104–193, § 729(i), struck out subsecs. (*o*) and (p) which related, respectively, to demonstration program for establishment of clinics at community colleges offering nursing education programs and grants for improvement and updating of information and data systems.

1995—Subsec. (m)(9) to (11). Pub. L. 104–66 redesignated pars. (10) and (11) as (9) and (10), respectively, and struck out former par. (9) which read as follows:

''(9)(A) The Secretary shall submit to the Committee on Education and Labor and the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a compilation of the information collected under paragraph (8).

''(B) The compilation required by subparagraph (A) shall be submitted on or before April 1, 1994.''

1994—Pub. L. 103–448, § 204(w)(1)(A), substituted ''Special supplemental nutrition program for women, infants, and children'' for ''Special supplemental food program'' in section catchline.

Subsec. (b)(8)(D). Pub. L. 103–448, § 204(a)(2), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (b)(8)(E). Pub. L. 103–448, § 204(a)(1), (3), redesignated subpar. (D) as (E) and substituted ''homelessness and migrancy'' for ''alcoholism and drug addiction, homelessness, and migrancy''.

Subsec. (c)(1). Pub. L. 103–448, § 204(w)(1)(B), substituted ''special supplemental nutrition program'' for ''special supplemental food program'' in first sentence.

Subsec. (c)(5). Pub. L. 103–448, § 204(b), added par. (5).

Subsec. (d)(2)(C). Pub. L. 103–448, § 204(c)(1), added subpar. (C).

Subsec. (d)(3). Pub. L. 103–448, § 204(c)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(4). Pub. L. 103–448, § 204(t)(1), inserted ''and the National Advisory Council on Maternal, Infant, and Fetal Nutrition established under subsection (k) of this section'' after ''Congress'' in introductory provisions.

Subsec. (e)(3) to (6). Pub. L. 103–448, § 204(d), redesignated par. (3) relating to State agency providing information and materials as par. (4) and former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (f)(1)(C)(iii). Pub. L. 103–448, § 204(e), inserted before semicolon at end '', including medicaid programs that use coordinated care providers under a contract entered into under section 1903(m), or a waiver granted under section 1915(b), of the Social Security Act (42 U.S.C. 1396b(m) or 1396n(b)) (including coordination through the referral of potentially eligible women, infants, and children between the program authorized under this section and the medicaid program)''.

Subsec. (f)(3). Pub. L. 103–448, § 204(f), inserted before period at end ''and shall ensure that local programs provide priority consideration to serving migrant participants who are residing in the State for a limited period of time''.

Subsec. (f)(18). Pub. L. 103–448, § 204(g), amended par. (18) generally. Prior to amendment, par. (18) read as follows:

''(18)(A) Except as provided in subparagraph (B), a State agency may implement income eligibility guidelines under this section at the time the State implements income eligibility guidelines under the medicaid program.

''(B) Income eligibility guidelines under this section shall be implemented not later than July 1 of each year.''

Subsec. (f)(23), (24). Pub. L. 103–448, § 204(h), (i), added pars. (23) and (24).

Subsec. (g). Pub. L. 103–448, § 204(j)(1), (k), in par. (1) substituted ''fiscal years 1995 through 1998'' for ''fiscal years 1991, 1992, 1993, and 1994'' and in par. (5) struck out ''and'' before ''administration'' and inserted before period at end '', and carrying out technical assistance and research evaluation projects of the programs under this section''.

Subsec. (h)(2)(A). Pub. L. 103–448, § 204(j)(2), substituted ''fiscal years 1995 through 1998'' for ''fiscal years 1990, 1991, 1992, 1993 and 1994''.

Subsec. (h)(3). Pub. L. 103–448, § 204(*l*), substituted ''except as otherwise provided in subparagraphs (F) and (G), an amount'' for ''an amount'' and ''the national minimum breastfeeding promotion expenditure, as described in subparagraph (E)'' for ''$8,000,000'' in subpar. (A)(i)(II) and added subpars. (E) to (G).

Subsec. (h)(4)(E). Pub. L. 103–448, § 204(m), added subpar. (E).

Subsec. (h)(8). Pub. L. 103–448, § 204(n), (*o*)(1), (p), (q), substituted ''on a timely basis'' for ''at 6-month intervals'' in subpar. (D)(iii) and added subpars. (G)(ix), (L), and (M).

Subsec. (h)(10). Pub. L. 103–448, § 204(r), added par. (10).

Subsec. (i)(3). Pub. L. 103–448, § 204(s), inserted ''(except as provided in subparagraph (H))'' after ''1 percent'' in subpar. (A)(i) and added subpar. (H).

Subsec. (j). Pub. L. 103–448, § 204(t)(2), (u), added subsec. (j) and struck out former subsec. (j) which read as follows: ''By October 1 of every other year, the Secretary shall prepare a report describing plans to ensure that, to the maximum extent feasible, eligible members of migrant populations continue to participate in the program as such persons move among States. The report shall be made available to the National Advisory Council on Maternal, Infant, and Fetal Nutrition.''

Subsec. (k)(1). Pub. L. 103–448, § 204(w)(1)(C), substituted ''special supplemental nutrition program'' for ''special supplemental food program'' in two places.

Subsec. (m)(3). Pub. L. 103–448, § 204(v)(1), inserted at end ''The Secretary may negotiate with an Indian State agency a lower percentage of matching funds than is required under the preceding sentence, but not lower than 10 percent of the total cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council.''

Subsec. (m)(5)(F)(i). Pub. L. 103–448, § 204(v)(2)(A), substituted ''17 percent'' for ''15 percent''.

Subsec. (m)(5)(F)(ii). Pub. L. 103–448, § 204(v)(2)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: ''During the first fiscal year for which a State receives assistance under this subsection, the Secretary shall permit the State to use 2 percent of the total program funds for administration of the program in addition to the amount the State is permitted to use under clause (i). During any fiscal year other than the first fiscal year for which a State receives assistance under this subsection, upon the showing by the State of financial need, the Secretary may permit the State to use not more than 2 percent of the total program funds for administration of the program in addition to the amount the State is permitted to use under clause (i).''

Subsec. (m)(5)(F)(iii). Pub. L. 103–448, § 204(v)(2)(C), struck out ''for the administration of the program'' after ''use of program funds''.

Subsec. (m)(6)(A). Pub. L. 103–448, § 204(v)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Each State that received assistance under the demonstration program authorized by this subsection in a fiscal year ending before October 1, 1991, shall receive assistance under this subsection if the State complies with the requirements established by this subsection, as determined by the Secretary.''

Subsec. (m)(6)(B)(ii). Pub. L. 103–448, § 204(v)(4), substituted ''$75,000'' for ''$50,000'' in two places.

Subsec. (m)(6)(D)(i). Pub. L. 103–448, § 204(v)(5), substituted ''by November 15 of each year'' for ''at such time and in such manner as the Secretary may reasonably require''.

Subsec. (m)(6)(G). Pub. L. 103–448, § 204(v)(6), substituted ''75 percent'' for ''45 to 55 percent'' in cl. (i) and ''25 percent'' for ''45 to 55 percent'' in cl. (ii).

Subsec. (m)(8)(D), (E). Pub. L. 103–448, § 204(v)(7), added subpars. (D) and (E) and struck out former subpars. (D) and (E) which read as follows:

''(D) when practicable, the impact on the nutritional status of recipients by determining the change in consumption of fresh fruits and vegetables by recipients;

''(E) the effects of the program on the use of farmers' markets and the marketing of agricultural products at such markets and when practicable, the effects of the program on recipients' awareness regarding farmers' markets; and''.

Subsec. (m)(10)(A). Pub. L. 103–448, § 204(v)(8), struck out ''$3,000,000 for fiscal year 1992, $6,500,000 for fiscal year 1993, and'' after ''to carry out this subsection'' and inserted before period at end '', $10,500,000 for fiscal year 1995, and such sums as may be necessary for each of fiscal years 1996 through 1998''.

Subsec. (m)(10)(B). Pub. L. 103–448, § 204(v)(9), (10), substituted ''Each'' for ''Except as provided in subclause (II), each'' in cl. (i)(I), struck out ''or may be retained by the State to reimburse expenses expected to be incurred for such a program during the succeeding fiscal year'' before period at end of cl. (i)(II), and struck out ''Funds that remain unexpended at the end of any demonstration project authorized by this subsection (as it existed on September 30, 1991) shall be reallocated in a similar manner.'' at end of cl. (ii).

Subsec. (m)(11)(D). Pub. L. 103–448, § 204(v)(11), inserted before period at end ''and any other agency approved by the chief executive officer of the State''.

Subsec. (*o*)(1)(B). Pub. L. 103–448, § 204(w)(1)(D), substituted ''special supplemental nutrition program'' for ''special supplemental food program''.

1992—Subsec. (b)(8)(D). Pub. L. 102–342 inserted before period at end '', homelessness, and migrancy''.

Subsec. (b)(17) to (20). Pub. L. 102–512, § 203, added pars. (17) to (20) and struck out former par. (17) which read as follows: '' 'Competitive bidding' means a pro-

curement process under which the State agency selects the single source offering the lowest price, as determined by the submission of sealed bids, for the product for which bids are sought.''

Subsec. (f)(22). Pub. L. 102–512, §205, added par. (22).

Subsec. (h)(2)(A). Pub. L. 102–512, §206, struck out ''shall'' after ''Such formula'', inserted ''shall'' after cl. designation in cls. (i) to (iii), and added cl. (iv).

Subsec. (h)(8)(E)(ii). Pub. L. 102–512, §207, struck out ''that do not have large caseloads and'' after ''State agencies''.

Subsec. (h)(8)(G) to (K). Pub. L. 102–512, §204, added subpars. (G) to (K) and struck out former subpar. (G) which read as follows: ''Not later than the expiration of the 120-day period beginning on November 10, 1989, the Secretary shall prescribe regulations to carry out this paragraph. Such regulations shall address issues involved in comparing savings from different cost containment measures, as provided under subparagraph (B).''

Subsec. (m). Pub. L. 102–314 amended subsec. (m) generally, substituting provisions relating to farmers' market nutrition program to benefit women, infants, and children nutritionally at risk for provisions relating to farmers' market food coupons demonstration project.

1990—Subsec. (i)(3)(E) to (G). Pub. L. 101–330 added subpars. (E) to (G).

1989—Subsec. (b)(17). Pub. L. 101–147, §123(a)(1), added par. (17).

Subsec. (c)(3). Pub. L. 101–147, §326(b)(1), substituted ''section 4 of the Agriculture and Consumer Protection Act of 1973'' for ''section 1304 of the Food and Agriculture Act of 1977''.

Subsec. (c)(4). Pub. L. 101–147, §326(a)(1), amended par. (4), as added by Pub. L. 99–591, §342(a), and Pub. L. 99–661, §4302(a), to read as if the addition by Pub. L. 99–661 had not been enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (d)(2). Pub. L. 101–147, §123(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of persons for participation in the program. Persons at nutritional risk shall be eligible for the program only if they are members of families that satisfy the income standards prescribed for free and reduced-price school meals under section 1758 of this title.''

Subsec. (d)(4). Pub. L. 101–147, §326(b)(2), realigned margins of par. (4) and subpars. (A) to (C).

Pub. L. 101–147, §326(a)(2), amended par. (4), as added by Pub. L. 99–591, §343(a), and Pub. L. 99–661, §4303(a), to read as if the addition by Pub. L. 99–661 had not been enacted, resulting in no change in text, see 1986 Amendment note below.

Subsec. (e)(1). Pub. L. 101–147, §123(a)(3)(A), struck out at end ''The Secretary shall prescribe standards to ensure that adequate nutrition education services are provided. The State agency shall provide training to persons providing nutrition education under this section. Nutrition education shall be evaluated annually by each State agency, and such evaluation shall include the views of participants concerning the effectiveness of the nutrition education they have received.''

Subsec. (e)(2). Pub. L. 101–147, §123(a)(3)(B), (C), added par. (2). Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 101–147, §123(a)(3)(D), added par. (3) relating to State agency providing information and materials.

Pub. L. 101–147, §123(a)(3)(B), redesignated former par. (2), relating to Secretary issuing materials, as (3).

Subsec. (e)(4). Pub. L. 101–147, §123(a)(3)(D), added par. (4).

Subsec. (e)(5). Pub. L. 101–147, §213(a)(1), added par. (5).

Subsec. (f)(1)(C)(iii). Pub. L. 101–147, §123(a)(4)(A)(i), inserted ''local programs for breastfeeding promotion,'' after ''immunization programs,'' and ''and treatment'' after ''alcohol and drug abuse counseling''.

Subsec. (f)(1)(C)(vii). Pub. L. 101–147, §123(a)(4)(A)(ii), amended cl. (vii) generally. Prior to amendment, cl. (vii) read as follows: ''a plan to provide program benefits under this section to eligible persons most in need of the benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable;''.

Subsec. (f)(1)(C)(viii) to (xiii). Pub. L. 101–147, §123(a)(4)(A)(iii), (iv), added cls. (viii) to (xi) and redesignated former cls. (viii) and (ix) as (xii) and (xiii), respectively.

Subsec. (f)(7). Pub. L. 101–147, §213(a)(2)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(8)(A), (C). Pub. L. 101–147, §326(b)(3)(A), substituted ''individuals'' for ''persons''.

Subsec. (f)(8)(D). Pub. L. 101–147, §123(a)(4)(B), added subpar. (D).

Subsec. (f)(9). Pub. L. 101–147, §123(a)(4)(C), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(10). Pub. L. 101–147, §326(b)(3)(B), substituted ''an individual'' for ''a person'', ''individual's'' for ''person's'', and ''the individual'' for ''the person''.

Subsec. (f)(14)(A). Pub. L. 101–147, §123(a)(4)(D), inserted '', breastfeeding promotion,'' after ''nutrition education''.

Subsec. (f)(17). Pub. L. 101–147, §§123(a)(4)(E), 326(b)(3)(C), realigned margin of par. (17) and inserted before period at end ''and to accommodate the special needs and problems of individuals who are incarcerated in prisons or juvenile detention facilities''.

Subsec. (f)(18) to (20). Pub. L. 101–147, §123(a)(4)(F), added pars. (18) to (20).

Subsec. (f)(21). Pub. L. 101–147, §213(a)(2)(B), added par. (21).

Subsec. (g)(1). Pub. L. 101–147, §123(a)(5)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''There are authorized to be appropriated to carry out this section $1,570,000,000 for the fiscal year ending September 30, 1986, and such sums as may be necessary for each of the fiscal years ending September 30, 1987, September 30, 1988, and September 30, 1989.''

Subsec. (g)(2), (3). Pub. L. 101–147, §123(a)(5)(B), (C), added pars. (2) and (3). Former pars. (2) and (3) redesignated (4) and (5), respectively.

Subsec. (g)(4). Pub. L. 101–147, §123(a)(5)(B), redesignated former par. (2) as (4).

Subsec. (g)(5). Pub. L. 101–147, §123(a)(5)(D), substituted ''$5,000,000'' for ''$3,000,000''.

Pub. L. 101–147, §123(a)(5)(B), redesignated former par. (3) as (5).

Subsec. (g)(6). Pub. L. 101–147, §123(a)(5)(E), added par. (6).

Subsec. (h). Pub. L. 101–147, §123(a)(6), amended subsec. (h) generally, substituting provisions regarding the establishment and administration of national average participant grants for purposes of funding nutrition services and administration and provisions on breastfeeding promotion and procurement of infant formula, for provisions limiting funding for nutrition services and administration to 20% of the total funding for the section, providing a formula for distributing funds to States and setting forth various administrative duties.

Subsec. (i)(1). Pub. L. 101–147, §123(a)(7)(A), substituted ''amounts made available for food benefits under subsection (h)(1)(C) of this section'' for ''funds provided in accordance with this section''.

Subsec. (i)(3)(D). Pub. L. 101–147, §123(a)(7)(B), substituted ''cost containment measures as defined in subsection (h)(9)'' for ''approved cost-savings strategies as identified in subsection (h)(5)(A)'' and ''not more than 3 percent'' for ''at the discretion of the Secretary, up to 5 percent''.

Subsec. (i)(7). Pub. L. 101–147, §123(a)(7)(C), added par. (7).

Subsec. (j). Pub. L. 101–147, §123(a)(8), substituted ''every other year'' for ''each year''.

Subsec. (k)(1). Pub. L. 101–147, §123(a)(9), substituted ''24'' for ''twenty-three'' and inserted ''1 member shall be an expert in the promotion of breast feeding;'' after ''the Secretary;''.

Subsec. (m)(7)(B). Pub. L. 101–147, § 326(b)(4)(A), struck out ''(7 U.S.C. 2011 et seq.)'' after ''Food Stamp Act of 1977''.

Subsec. (m)(11)(A). Pub. L. 101–147, § 326(b)(4)(B), substituted ''individual'' for ''person''.

Subsec. (n)(1). Pub. L. 101–147, § 326(b)(5), substituted ''the date of enactment of the Anti-Drug Abuse Act of 1988'' for ''the date of enactment of this Act'' in the original, which for purposes of codification was translated as ''November 18, 1988'', resulting in no change in text.

Subsecs. (*o*), (p). Pub. L. 101–147, § 123(a)(10), added subsecs. (*o*) and (p).

1988—Subsec. (a). Pub. L. 100–690, § 3201(1), substituted ''health problems, including drug abuse,'' for ''health problems''.

Subsec. (b)(15). Pub. L. 100–435, § 212(a), added par. (15).

Subsec. (b)(16). Pub. L. 100–690, § 3201(2), added par. (16).

Subsec. (c)(1). Pub. L. 100–435, § 212(b), amended last sentence generally, designating existing provisions as cls. (A) and (B) and adding cl. (C).

Subsec. (e)(1). Pub. L. 100–690, § 3201(3), substituted ''nutrition education and drug abuse education'' for ''nutrition education'' in first and second sentences.

Subsec. (f)(1)(C)(iii). Pub. L. 100–690, § 3201(4)(A), inserted ''drug abuse education,'' after ''family planning,''.

Pub. L. 100–237, § 9, substituted ''maternal and child health care, and medicaid programs'' for ''and maternal and child health care programs''.

Subsec. (f)(1)(C)(iv). Pub. L. 100–435, § 212(c)(1), substituted ''migrants, homeless individuals,'' for ''migrants''.

Subsec. (f)(1)(C)(vii) to (ix). Pub. L. 100–237, § 8(b), struck out ''and'' at end of cl. (vii), added cl. (viii), and redesignated former cl. (viii) as (ix).

Subsec. (f)(8)(A). Pub. L. 100–435, § 212(c)(2), inserted ''organizations and agencies serving homeless individuals and shelters for victims of domestic violence,'' after ''Indian tribal organizations,''.

Subsec. (f)(13). Pub. L. 100–435, § 212(c)(3), inserted '', and, in the case of homeless individuals, the special needs and problems of such individuals'' before period at end.

Subsec. (f)(14)(A). Pub. L. 100–690, § 3201(4)(B), inserted ''and drug abuse education'' after ''education''.

Subsec. (f)(16). Pub. L. 100–237, § 11, added par. (16).

Subsec. (f)(17). Pub. L. 100–435, § 212(c)(4), added par. (17).

Subsec. (h)(5). Pub. L. 100–237, § 8(a), added par. (5).

Subsec. (h)(5)(D), (E). Pub. L. 100–356, § 3(a), added subpars. (D) and (E).

Subsec. (i)(3)(A). Pub. L. 100–237, § 12(1), inserted ''and subject to subparagraphs (B) and (C)'' after ''paragraph (2)'', and substituted ''and'' for ''or'' at end of cl. (i).

Subsec. (i)(3)(C). Pub. L. 100–237, § 12(2), added subpar. (C).

Subsec. (i)(3)(D). Pub. L. 100–356, § 3(b), added subpar. (D).

Subsec. (k)(1). Pub. L. 100–690, § 3201(5)(A), (B), increased membership of Council to twenty-three from twenty-one members and included experts in drug abuse education and prevention and alcohol abuse education and prevention.

Subsec. (m). Pub. L. 100–435, § 501(b), added subsec. (m).

Subsec. (n). Pub. L. 100–690, § 3201(6), added subsec. (n).

1987—Subsec. (g)(1). Pub. L. 100–71 inserted ''and'' after ''September 30, 1986,'' and substituted ''September 30, 1988, and September 30, 1989'' for ''and September 30, 1988, and $1,782,000,000 for the fiscal year ending September 30, 1989''.

1986—Subsec. (b)(1) to (4). Pub. L. 99–500 and Pub. L. 99–591, § 341(a), and Pub. L. 99–661, § 4301(a), amended subsec. (b) identically, redesignating pars. (2) to (4) as (1) to (3), respectively, adding par. (4), and striking out former par. (1) which defined ''Administrative costs''.

Subsec. (b)(6), (13). Pub. L. 99–500 and Pub. L. 99–591, § 372(b)(1), and Pub. L. 99–661, § 4502(b)(1), amended pars. (6) and (13) identically, substituting ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (c)(2). Pub. L. 99–500 and Pub. L. 99–591, § 314(1), and Pub. L. 99–661, § 4104(1), amended par. (2) identically, substituting ''Subject to amounts appropriated to carry out this section under subsection (g) of this section'' for ''Subject to the authorization levels specified in subsection (g) of this section for the fiscal years ending September 30, 1979, and September 30, 1980, and subject to amounts appropriated for this program for the fiscal year ending September 30, 1981, and for each succeeding fiscal year ending on or before September 30, 1984''.

Subsec. (c)(4). Pub. L. 99–500 and Pub. L. 99–591, § 342(a), and Pub. L. 99–661, § 4302(a), amended subsec. (c) identically, adding par. (4).

Subsec. (d)(4). Pub. L. 99–500 and Pub. L. 99–591, § 343(a), and Pub. L. 99–661, § 4303(a), amended subsec. (d) identically, adding par. (4).

Subsec. (e)(2). Pub. L. 99–500 and Pub. L. 99–591, § 372(b)(1), and Pub. L. 99–661, § 4502(b)(1), amended par. (2) identically, substituting ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (f)(1). Pub. L. 99–500 and Pub. L. 99–591, § 344(a), and Pub. L. 99–661, § 4304(a), generally amended par. (1) identically, substituting subpars. (A) to (E) for former subpars. (A) to (L) and concluding provisions.

Subsec. (f)(2). Pub. L. 99–500 and Pub. L. 99–591, § 345, and Pub. L. 99–661, § 4305, generally amended par. (2) identically. Prior to amendment, par. (2) read as follows: ''Not less than one month prior to the submission to the Governor of the plan of operation and administration required by this subsection, the State agency shall conduct hearings to enable the general public to participate in the development of the State agency plan.''

Subsec. (f)(8). Pub. L. 99–500 and Pub. L. 99–591, § 346, and Pub. L. 99–661, § 4306, generally amended par. (8) identically. Prior to amendment, par. (8) read as follows: ''The State agency shall, in cooperation with participating local agencies, publicize the availability of program benefits, including the eligibility criteria for participation and the location of local agencies operating the program. Such information shall be publicly announced by the State agency and by local agencies at least annually. Such information shall also be distributed to offices and organizations that deal with significant numbers of potentially eligible persons, including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas.''

Subsec. (f)(11). Pub. L. 99–500 and Pub. L. 99–591, § 341(b)(1), and Pub. L. 99–661, § 4301(b)(1), amended par. (11) identically, substituting ''funds for nutrition services and administration'' for ''administrative funds''.

Subsec. (f)(15). Pub. L. 99–500 and Pub. L. 99–591, § 347, and Pub. L. 99–661, § 4307, amended subsec. (f) identically, adding par. (15).

Subsec. (g)(1). Pub. L. 99–661, § 4104(2), designated existing provision authorizing appropriations of $550,000,000 for fiscal year ending Sept. 30, 1979, $750,000,000 for fiscal year ending Sept. 30, 1980, $900,000,000 for fiscal year ending Sept. 30, 1981, $1,017,000,000 for fiscal year ending Sept. 30, 1982, $1,060,000,000 for fiscal year ending Sept. 30, 1983, and $1,126,000,000 for fiscal year ending Sept. 30, 1984 as par. (1), and substituted provision authorizing appropriations of $1,570,000,000 for fiscal year ending Sept. 30, 1986, such sums as may be necessary for each of fiscal years ending Sept. 30, 1987, and Sept. 30, 1988, and $1,782,000,000 for fiscal year ending Sept. 30, 1989.

Pub. L. 99–500 and Pub. L. 99–591, § 314(2), designated existing provision authorizing appropriations of $550,000,000 for fiscal year ending Sept. 30, 1979, $750,000,000 for fiscal year ending Sept. 30, 1980, $900,000,000 for fiscal year ending Sept. 30, 1981, $1,017,000,000 for fiscal year ending Sept. 30, 1982,

$1,060,000,000 for fiscal year ending Sept. 30, 1983, and $1,126,000,000 for fiscal year ending Sept. 30, 1984, as par. (1), and in par. (1) as so designated, substituted provision authorizing appropriations of $1,580,494,000 for fiscal year ending Sept. 30, 1986, such sums as may be necessary for each of fiscal years ending Sept. 30, 1987, and Sept. 30, 1988, and $1,782,000,000 for fiscal year ending Sept. 30, 1989.

Subsec. (g)(2). Pub. L. 99–500 and Pub. L. 99–591, § 348(a), and Pub. L. 99–661, § 4308(a), amended subsec. (g) identically, adding par. (2).

Subsec. (g)(3). Pub. L. 99–500 and Pub. L. 99–591, §§ 314(2)(A), 343(b), 349, and Pub. L. 99–661, §§ 4104(2)(A), 4303(b), 4309, amended subsec. (g) identically, designating provisions as par. (3) and inserting ''preparing the report required under subsection (d)(4) of this section, providing technical assistance to improve State agency administrative systems,''.

Subsec. (h)(1). Pub. L. 99–500 and Pub. L. 99–591, §§ 341(b)(2), 350, and Pub. L. 99–661, §§ 4301(b)(2), 4310, amended par. (1) identically, substituting ''costs for nutrition services and administration'' for ''administrative costs'' in three places and inserting at end ''The Secretary shall limit to a minimal level any documentation required under the preceding sentence.''

Subsec. (h)(2). Pub. L. 99–500 and Pub. L. 99–591, §§ 314(3), 341(b)(1), and Pub. L. 99–661, §§ 4104(3), 4301(b)(1), amended par. (2) identically, substituting ''1989'' for ''1984'' and ''funds for nutrition services and administration'' for ''administrative funds''.

Subsec. (h)(3). Pub. L. 99–500 and Pub. L. 99–591, §§ 341(b), 351, and Pub. L. 99–661, §§ 4301(b), 4311, amended par. (3) identically, substituting ''funds for nutrition services and administration'' for ''administrative funds'' in two places and ''costs for nutrition services and administration'' for ''administrative costs'' and striking out '', which satisfy allocation guidelines established by the Secretary'' after ''several local agencies'' and last sentence which read as follows: ''These allocation standards shall be included in the plan of operation and administration required by subsection (f) of this section.''

Subsec. (h)(4). Pub. L. 99–500 and Pub. L. 99–591, § 352, and Pub. L. 99–661, § 4312, amended par. (4) identically, substituting ''may'' for ''shall''.

Pub. L. 99–500 and Pub. L. 99–591, § 341(b)(1), and Pub. L. 99–661, § 4301(b)(1), amended par. (4) identically, substituting ''funds for nutrition services and administration'' for ''administrative funds''.

Subsec. (i). Pub. L. 99–500 and Pub. L. 99–591, § 353(a), and Pub. L. 99–661, § 4313, amended subsec. (i) identically, designating existing provisions as pars. (1), (2), and (4) to (6) and adding par. (3).

Subsec. (k)(1), (2). Pub. L. 99–500 and Pub. L. 99–591, § 372(b)(1), and Pub. L. 99–661, § 4502(b)(1), amended pars. (1) and (2) identically, substituting ''Health and Human Services'' for ''Health, Education, and Welfare'' in two places in par. (1) and in one place in par. (2).

1981—Subsec. (g). Pub. L. 97–35 inserted provisions setting forth specific appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1980—Subsec. (c)(2). Pub. L. 96–499, § 203(d)(1), substituted ''for the fiscal year ending September 30, 1981, and for each succeeding fiscal year ending on or before September 30, 1984'' for ''for the fiscal years ending September 30, 1981, and September 30, 1982''.

Subsec. (g). Pub. L. 96–499, § 203(d)(2), substituted ''such sums as may be necessary for the three subsequent fiscal years'' for ''$950,000,000 for the fiscal year ending September 30, 1982''.

Subsec. (h)(2). Pub. L. 96–499, § 203(d)(3), substituted ''1984'' for ''1982''.

1979—Subsec. (g). Pub. L. 96–108 substituted ''$750,000,000'' for ''$800,000,000''.

1978—Subsec. (a). Pub. L. 95–627 expanded provisions of this section to include postpartum and breastfeeding women.

Subsec. (b). Pub. L. 95–627 substituted provisions defining terms for purposes of this section for provisions relating to cash grants to State health departments, Indians, and other agencies for supplemental food to pregnant and lactating women and infants.

Subsec. (c). Pub. L. 95–627 substituted provisions authorizing grants-in-aid by the Secretary, prohibiting ratable reductions of amounts of food an agency may distribute, authorizing affirmative actions to institute the program where needed, and authorizing the issuance of regulations relating to dual receipt of benefits under a commodity supplemental food program for provisions authorizing appropriations to carry out the food program for each fiscal year during the period ending Sept. 30, 1978.

Subsec. (d). Pub. L. 95–627 substituted provisions specifying persons eligible to participate in the food program for provisions prescribing administrative cost limitations and calling for approval by the Secretary of the manner of expenditure by the recipient agencies.

Subsec. (e). Pub. L. 95–627 substituted provisions relating to nutrition education for program participants for provisions relating to persons eligible to participate in the program. See subsec. (d) of this section.

Subsec. (f). Pub. L. 95–627 substituted provisions relating to submittal of State operational and administrative plans, participation in the program by eligible migrants, recordkeeping, certain types of notification, hearings, certification of eligibility, withholding of funds, issuance of regulations, and use of foreign languages for provisions relating to the maintenance of adequate medical records, the establishment of an advisory committee to study methods of evaluating the health benefits of the program, and the submittal of a report to Congress based upon such study no later than June 1, 1976.

Subsec. (g). Pub. L. 95–627 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, 1981, and 1982 for provisions defining terms for purposes of this section. See subsec. (b) of this section.

Subsec. (h). Pub. L. 95–627 substituted provisions relating to allocation of funds for administrative costs for provisions relating to establishment of the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

Subsecs. (i) to (*l*). Pub. L. 95–627 added subsecs. (i) to (*l*).

1977—Subsec. (d). Pub. L. 95–166, § 20(6), substituted ''each year by not later than a date specified by the Secretary'' for ''by January 1 of each year (by December 1 in the case of fiscal year 1976)''.

Subsec. (h)(8). Pub. L. 95–166, § 18, inserted proviso respecting compensation of parent recipient members of the Council.

1975—Subsec. (a). Pub. L. 94–105 added subsec. (a). Former subsec. (a) redesignated (b).

Pub. L. 94–28, § 1(a), inserted ''and for the period July 1, 1975, through September 30, 1975,'' after ''1975,''.

Subsec. (b)(1), (2). Pub. L. 94–105 redesignated former subsec. (a) as (b)(1), added (b)(2), and in (b)(1) as so redesignated, extended the program from Sept. 30, 1975 through the fiscal year ending Sept. 30, 1978 and made minor changes in phraseology. Former subsec. (b) redesignated (c).

Pub. L. 94–28, § 1(b), inserted ''and for the period July 1, 1975, through September 30, 1975,'' after ''1975,''.

Subsec. (c). Pub. L. 94–105 redesignated former subsec. (b) as (c), and in subsec. (c) as so redesignated, authorized the appropriation of $250,000,000 during each fiscal year during the period ending Sept. 30, 1977, authorized the amount of $250,000,000 which the Secretary can use out of the funds appropriated by section 612c of Title 7 in the event that less than $250,000,000 has been appropriated by the beginning of each fiscal year and authorized the appropriation of not to exceed $250,000,000 during the fiscal year ending Sept. 30, 1978. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 94–105 redesignated former subsec. (c) as (d), and in subsec. (d) as so redesignated, increased from 10 to 20 per centum the amount of administrative costs the Secretary is authorized to pay except that in the first 3 months or until the projected

caseload level has been reached the Secretary shall pay those administrative costs necessary to commence the program successfully, inserted provision relating to submission for approval of a description of the manner in which administrative funds shall be spent, and directed the Secretary to take affirmative action to insure that programs begin in the most needy areas. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 94–105 redesignated former subsec. (d) as (e) and in subsec. (e) as so redesignated, substituted ''under this section'' for ''under subsection (a) of this section'' and inserted ''or members of populations'' after ''residents of areas''. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 94–105 redesignated former subsec. (e) as (f), and in subsec. (f) as so redesignated, substituted provisions relating to the convention of an advisory committee to study methods available to evaluate the health benefits of the program with a report to the Secretary who shall report to Congress no later than June 1, 1976, for provision that the Secretary and Comptroller General of the United States submit preliminary reports to Congress no later than Oct. 1, 1974 and submit no later than March 30, 1975 evaluations of the program and recommendations with regard to its continuation. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 94–105 redesignated former subsec. (f) as (g), and in subsec. (g) as so redesignated, substituted ''includes women from'' for ''includes mothers from'', and expanded definition of lactating women who are breast feeding an infant up to one year of age and all women for a period of six months post partum, in par. (1); substituted ''5 years'' for ''four years'' wherever appearing and inserted ''(at the discretion of the Secretary)'' after ''may also include'', in par. (2); struck out ''food product'' before ''commercially formulated'', inserted ''women or'' before ''infants'' and inserted provision relating to the availability of the contents of the food package, in par. (3).

Subsec. (h). Pub. L. 94–105 added subsec. (h).

1974—Subsec. (b). Pub. L. 93–326 increased from $40,000,000 to $100,000,000 appropriation authorization for fiscal year ending June 30, 1975, and increased from $40,000,000 to $100,000,000 amount which Secretary can use out of funds appropriated by section 612c of Title 7 in event that less than $100,000,000 has been appropriated by Aug. 1, 1974, for carrying out special supplemental food program for fiscal year ending June 30, 1975.

1973—Subsec. (a). Pub. L. 93–150, § 6(a), provided for cash grants during fiscal year ending June 30, 1975, substituted in first sentence in two places ''State; Indian tribe, band, or group recognized by the Department of the Interior; or the Indian Health Service of the Department of Health, Education, and Welfare'' for ''State'', and substituted in second sentence provision for operation of the program for a ''three-year'' rather than a ''two-year'' period.

Subsec. (b). Pub. L. 93–150, § 6(b), authorized appropriation of $40,000,000 for fiscal year ending June 30, 1975, and provided that in the event such sum was not appropriated by August 1, 1974, the Secretary was to use $40,000,000, or, if any amount had been appropriated, the difference, if any, between the amount directly appropriated and $40,000,000, out of funds appropriated by section 612c of title 7.

Subsec. (e). Pub. L. 93–150, § 6(c), extended dates for submission of preliminary and final evaluation reports from Oct. 1, 1973, to Oct. 1, 1974, and from Mar. 30, 1974, to Mar. 30, 1975, respectively.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Economic and Educational Opportunities of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Fifth Congress, Jan. 7, 1997.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 203 of Pub. L. 108–265 effective June 30, 2004, except as otherwise provided, see section 502(a) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

Amendment by sections 203(a)–(c)(1), (5), (e)(8), (10), (13), (f) of Pub. L. 108–265 effective Oct. 1, 2004, see section 502(b)(2) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

Pub. L. 108–265, title II, § 203(c)(4)(B), June 30, 2004, 118 Stat. 773, provided that: ''The amendment made by subparagraph (A) [amending this section] applies to infant formula provided under a contract resulting from a bid solicitation issued on or after October 1, 2004.''

Pub. L. 108–265, title II, § 203(e)(4)(B), June 30, 2004, 118 Stat. 774, provided that: ''The amendments made by subparagraph (A) [amending this section] apply to a contract resulting from a bid solicitation issued on or after October 1, 2004.''

Pub. L. 108–265, title II, § 203(e)(6)(B), June 30, 2004, 118 Stat. 775, provided that: ''The amendment made by this paragraph [amending this section] applies to a bid solicitation issued on or after October 1, 2004.''

Pub. L. 108–265, title II, § 203(e)(7)(C), June 30, 2004, 118 Stat. 775, provided that: ''The amendments made by this paragraph [amending this section] apply to a bid solicitation issued on or after October 1, 2004.''

Amendment by section 203(e)(9) of Pub. L. 108–265 effective Oct. 1, 2005, see section 502(b)(5) of Pub. L. 108–265, as amended, set out as an Effective Date note under section 1754 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–171, title IV, § 4306(b), May 13, 2002, 116 Stat. 332, provided that: ''The amendments made by this section [amending this section] take effect on the date of enactment of this Act [May 13, 2002].''

Pub. L. 107–171, title IV, § 4307(b), May 13, 2002, 116 Stat. 333, provided that: ''The amendments made by this section [amending this section] take effect on the date of enactment of this Act [May 13, 2002].''

EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106–472, title III, § 307(b)(2), Nov. 9, 2000, 114 Stat. 2073, provided that the amendment made by section 307(b)(2) is effective Oct. 1, 2000.

Amendment by section 242(b)(1), (2) of Pub. L. 106–224 effective Oct. 1, 2000, see section 242(c) of Pub. L. 106–224, set out as a note under section 1758 of this title.

Pub. L. 106–224, title II, § 244(f), June 20, 2000, 114 Stat. 422, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] take effect on the date of the enactment of this Act [June 20, 2000].

''(2) ALLOCATION OF FUNDS.—The amendments made by subsections (d) and (e) [amending this section] take effect on October 1, 2000.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 109(h) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Section 729(g)(2) of Pub. L. 104–193 provided that: ''The amendments made by paragraph (1) [amending this section] shall not apply to a contract for the procurement of infant formula under section 17(h)(8) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)) that is in effect on the date of enactment of this subsection [Aug. 22, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE AND TERMINATION DATES OF 1992 AMENDMENTS

Section 209 of title II of Pub. L. 102–512, which provided that the authority provided and the amendments made by title II of Pub. L. 102–512, amending this section and enacting provisions set out as notes under this section and section 1771 of this title, would terminate on Sept. 30, 1994, except with regard to subsec. (h)(8)(J) of this section, as amended by section 204 of Pub. L. 102–512, was repealed, eff. Oct. 1, 1994, by Pub. L. 103–448, title II, §204(*o*)(2), title IV, §401, Nov. 2, 1994, 108 Stat. 4742, 4751.

Section 4 of Pub. L. 102–314 provided that: ''The amendment made by section 3 [amending this section] shall be effective as of October 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 123(f)(2) of Pub. L. 101–147 provided that: ''The amendments made by subsections (a)(5), (a)(6), and (a)(7) [amending this section] shall be effective as of October 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–435 to be effective and implemented on Oct. 1, 1988, see section 701(a) of Pub. L. 100–435, set out as a note under section 2012 of Title 7, Agriculture.

Section 8(d) of Pub. L. 100–237 provided that: ''The amendment made by subsections (a), (b), and (c) [amending this section and enacting provisions set out below] shall take effect October 1, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 342(b) of Pub. L. 99–500 and Pub. L. 99–591 and section 4302(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to a State beginning with the fiscal year that commences after the end of the first regular session of the State legislature following the date of the enactment of this title [Oct. 18, 1986].''

Section 344(b) of Pub. L. 99–500 and Pub. L. 99–591 and section 4304(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to a plan submitted by a State agency under section 17(f)(1) of the Child Nutrition Act of 1966 [subsec. (f)(1) of this section] for the fiscal year ending September 30, 1987, and each fiscal year thereafter.''

Section 347 of Pub. L. 99–500 and Pub. L. 99–591 and section 4307 of Pub. L. 99–661 provided that the amendment made by section 347 of Pub. L. 99–500 and Pub. L. 99–591 and by section 4307 of Pub. L. 99–661 is effective Oct. 1, 1986.

Section 348(a) of Pub. L. 99–500 and Pub. L. 99–591 and section 4308(a) of Pub. L. 99–661 provided that the amendment made by section 348(a) of Pub. L. 99–500 and Pub. L. 99–591 and by section 4308(a) of Pub. L. 99–661 is effective Oct. 1, 1986.

Section 352 of Pub. L. 99–500 and Pub. L. 99–591 and section 4312 of Pub. L. 99–661 provided that the amendment made by section 352 of Pub. L. 99–500 and Pub. L. 99–591 and by section 4312 of Pub. L. 99–661 is effective Oct. 1, 1986.

Section 353(b) of Pub. L. 99–500 and Pub. L. 99–591 and section 4313(b) of Pub. L. 99–661 were substantially identical in providing that: ''Section 17(i)(3)(A)(i) of the Child Nutrition Act of 1966 [subsec. (i)(3)(A)(i) of this section] (as amended by subsection (a)) shall not apply to appropriations made before the date of enactment of this title [Oct. 18, 1986].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 820(a)(7)(B) of Pub. L. 97–35, set out as a note under section 1753 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–627 effective Oct. 1, 1978, see section 14 of Pub. L. 95–627, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 20 of Pub. L. 95–166 provided that the amendment made by that section is effective July 1, 1977.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 14 of Pub. L. 94–105 provided that the amendment made by that section is effective beginning with the fiscal year ending June 30, 1976.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REGULATIONS

Pub. L. 108–265, title II, §203(c)(2)(B), June 30, 2004, 118 Stat. 772, provided that: ''Not later than 18 months after the date of receiving the review initiated by the National Academy of Sciences, Institute of Medicine in September 2003 of the supplemental foods available for the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), the Secretary shall promulgate a final rule updating the prescribed supplemental foods available through the program.''

Pub. L. 105–336, title II, §203(f)(2), Oct. 31, 1998, 112 Stat. 3160, provided that: ''The Secretary of Agriculture shall promulgate—

''(A) not later than March 1, 1999, proposed regulations to carry out section 17(f)(24) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(24)), as added by paragraph (1); and

''(B) not later than March 1, 2000, final regulations to carry out section 17(f)(24) of that Act.''

Pub. L. 105–336, title II, §203(*l*)(2), Oct. 31, 1998, 112 Stat. 3162, provided that: ''The Secretary of Agriculture shall promulgate—

''(A) not later than March 1, 1999, proposed regulations to carry out section 17(h)(11) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(11)), as added by paragraph (1); and

''(B) not later than March 1, 2000, final regulations to carry out section 17(h)(11) of that Act.''

Pub. L. 105–336, title II, §203(p)(2), Oct. 31, 1998, 112 Stat. 3165, provided that: ''The Secretary of Agriculture shall promulgate—

''(A) not later than March 1, 1999, proposed regulations to carry out section 17(*o*) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(*o*)), as added by paragraph (1); and

''(B) not later than March 1, 2000, final regulations to carry out section 17(*o*) of that Act.''

Section 123(f)(1) of Pub. L. 101–147 provided that: ''Not later than July 1, 1990, the Secretary of Agriculture

shall issue final regulations to implement the amendments made by subsections (a)(2), (a)(3), and (a)(4) [amending this section].''

Section 213(b) of Pub. L. 101–147 provided that: ''Not later than July 1, 1990, the Secretary of Agriculture shall issue final regulations to implement the amendments made by subsection (a) [amending this section].''

Section 13 of Pub. L. 95–627 provided that:

''(a) The Secretary shall promulgate regulations to implement the provisions of section 3 of this Act [amending this section] within one hundred and twenty days of the date of enactment of this Act [Nov. 10, 1978].

''(b) The provisions of section 17 of the [Richard B. Russell] National School Lunch Act [section 1766 of this title] and section 17 of the Child Nutrition Act of 1966 [this section], in effect prior to the effective date of sections 2 and 3 of this Act [Oct. 1, 1978], which are relevant to current regulations of the Secretary governing the child care food program and the special supplemental food program, respectively, shall remain in effect until such regulations are revoked, superseded, amended, or modified by regulations issued under those sections as amended by sections 2 and 3 of this Act.

''(c) Pending proceedings under section 17 of the National School Lunch Act [section 1766 of this title] and section 17 of the Child Nutrition Act of 1966 [this section] shall not be abated by reason of any provision of sections 2 and 3 of this Act [amending this section and section 1766 of this title], but shall be disposed of under the applicable provisions of section 17 of the National School Lunch Act and section 17 of the Child Nutrition Act of 1966 in effect prior to the effective date of sections 2 and 3 of this Act [Oct. 1, 1978].

''(d) Appropriations made available to carry out section 17 of the National School Lunch Act [section 1766 of this title] and section 17 of the Child Nutrition Act of 1966 [this section] shall be available to carry out the provisions of sections 2 and 3 of this Act [amending this section and section 1766 of this title].''

STUDY OF COST CONTAINMENT PRACTICES

Pub. L. 105–336, title II, § 203(r), Oct. 31, 1998, 112 Stat. 3166, provided that:

''(1) IN GENERAL.—The Secretary of Agriculture shall conduct a study on the effect of cost containment practices established by States under the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) for the selection of vendors and approved food items (other than infant formula) on—

''(A) program participation;

''(B) access and availability of prescribed foods;

''(C) voucher redemption rates and actual food selections by participants;

''(D) participants on special diets or with specific food allergies;

''(E) participant use and satisfaction of prescribed foods;

''(F) achievement of positive health outcomes; and

''(G) program costs.

''(2) REPORT.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate—

''(A) not later than 2 years after the date of enactment of this Act [Oct. 31, 1998], an interim report describing the results of the study conducted under paragraph (1); and

''(B) not later than 3 years after the date of enactment of this Act, a final report describing the results of the study conducted under paragraph (1).''

STUDY OF WIC SERVICES

Pub. L. 105–336, title II, § 203(s), Oct. 31, 1998, 112 Stat. 3167, provided that:

''(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study that assesses—

''(A) the cost of delivering services under the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), including the costs of implementing and administering cost containment efforts;

''(B) the fixed and variable costs incurred by State and local governments for delivering the services and the extent to which those costs are charged to State agencies;

''(C) the quality of the services delivered, taking into account the effect of the services on the health of participants; and

''(D) the costs incurred for personnel, automation, central support, and other activities to deliver the services and whether the costs meet Federal audit standards for allowable costs under the program.

''(2) REPORT.—Not later than 3 years after the date of enactment of this Act [Oct. 31, 1998], the Comptroller General shall submit to the Secretary of Agriculture, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing the results of the study conducted under paragraph (1).''

REFERENCE TO COMMUNITY, MIGRANT, PUBLIC HOUSING, OR HOMELESS HEALTH CENTER CONSIDERED REFERENCE TO HEALTH CENTER

Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 254b of this title.

PROMOTION BY SECRETARY OF USE OF FARMERS' MARKETS

Section 204(v)(12) of Pub. L. 103–448 provided that: ''The Secretary of Agriculture shall promote the use of farmers' markets by recipients of Federal nutrition programs administered by the Secretary.''

REFERENCES TO SPECIAL SUPPLEMENTAL FOOD PROGRAM

Section 204(w)(3) of Pub. L. 103–448 provided that: ''Any reference to the special supplemental food program established under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) in any provision of law, regulation, document, record, or other paper of the United States shall be considered to be a reference to the special supplemental nutrition program established under such section.''

WIC INFANT FORMULA PROTECTION; FINDINGS AND PURPOSES

Section 202 of title II of Pub. L. 102–512, as amended by Pub. L. 103–448, title II, § 204(w)(2)(F), Nov. 2, 1994, 108 Stat. 4746, provided that:

''(a) FINDINGS.—

''(1) the domestic infant formula industry is one of the most concentrated manufacturing industries in the United States;

''(2) only three pharmaceutical firms are responsible for almost all domestic infant formula production;

''(3) coordination of pricing and marketing strategies is a potential danger where only a very few companies compete regarding a given product;

''(4) improved competition among suppliers of infant formula to the special supplemental food program [special supplemental nutrition program] for women, infants, and children (WIC) can save substantial additional sums to be used to put thousands of additional eligible women, infants, and children on the WIC program; and

''(5) barriers exist in the infant formula industry that inhibit the entry of new firms and thus limit competition.

''(b) PURPOSES.—It is the purpose of this title [amending this section and enacting provisions set out as notes under this section and section 1771 of this title]

to enhance competition among infant formula manufacturers and to reduce the per unit costs of infant formula for the special supplemental nutrition program for women, infants, and children (WIC).''

STUDY OF INFANT FORMULA BID SOLICITATIONS

Section 208 of title II of Pub. L. 102–512 directed Secretary of Agriculture, not later than Apr. 1, 1994, to report to Congress on State agencies that request the Secretary of Agriculture to conduct bid solicitations for infant formula under 42 U.S.C. 1786(h)(8)(G)(i), cost reductions achieved by the solicitations, and other matters the Secretary determined to be appropriate regarding title II of Pub. L. 102–512.

WOMEN, INFANTS, AND CHILDREN FARMERS' MARKET NUTRITION PROGRAM; CONGRESSIONAL STATEMENT OF PURPOSE

Section 2 of Pub. L. 102–314 provided that: ''The purpose of this Act [amending this section and enacting provisions set out as notes under this section and section 1771 of this title] is to authorize grants to be made to State programs designed to—

''(1) provide resources to women, infants, and children who are nutritionally at risk in the form of fresh nutritious unprepared foods (such as fruits and vegetables), from farmers' markets; and

''(2) expand the awareness and use of farmers' markets and increase sales at such markets.''

REVIEW OF PRIORITY SYSTEM; REPORTS TO CONGRESS

Section 123(b) of Pub. L. 101–147 directed Secretary of Agriculture to review relationship between nutritional risk criteria established under this section and priority system used under special supplemental food program under this section, especially as it affected pregnant women, and to submit preliminary and final reports to Congress on results of review by Oct. 1, 1990, and by July 1, 1991, respectively.

REPORT ON WIC FOOD PACKAGE

Section 123(c) of Pub. L. 101–147 directed Secretary of Agriculture to review appropriateness of foods eligible for purchase under special supplemental food program under this section and to submit preliminary and final reports to Congress on findings of review by June 30, 1991, and by June 30, 1992, respectively.

REPORT ON COSTS FOR NUTRITION SERVICES AND ADMINISTRATION

Section 123(d) of Pub. L. 101–147 directed Secretary of Agriculture to review effect on costs for nutrition services and administration incurred by State and local agencies of sections 123 and 213 of Pub. L. 101–647, and the amendments made by such sections, amending this section and enacting provisions set out as notes under this section (including effect of both increases and decreases in requirements imposed on such agencies), and to report results of such review to Congress not later than one year after Nov. 10, 1989.

PAPERWORK REDUCTION

Section 123(e) of Pub. L. 101–147 provided that: ''In implementing and monitoring compliance with the provisions of the amendments made by this section [amending this section] (other than the amendment made by subsection (a)(2) to section 17(d)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)), the Secretary of Agriculture shall not impose any new requirement on a State or local agency that would require the State or local agency to place additional paperwork or documentation in a case file maintained by a local agency.''

FARMERS' MARKET COUPONS DEMONSTRATION PROJECT

Section 501(a) of Pub. L. 100–435 provided that: ''The purpose of this section is to authorize the establishment of a grant program to encourage State demonstration projects designed to—

''(1) provide resources to persons who are nutritionally at risk in the form of fresh nutritious unprepared foods (such as fruits and vegetables), from farmers' markets; and

''(2) expand the awareness and use of farmers' markets and increase sales at such markets.''

STUDY OF NUTRITION SERVICES AND ADMINISTRATION FUNDING

Section 8(c) of Pub. L. 100–237 directed Secretary to conduct a study of appropriateness of percentage of annual appropriation for the program required by 42 U.S.C. 1786(h)(1) to be made available for State and local agency costs for nutrition services and administration, and to report results of this study to Congress not later than Mar. 1, 1989, such study to include an analysis of the impact in future years on per participant administrative costs if a substantial number of States implement competitive bidding, rebate, direct distribution, or home delivery systems and to examine the impact of percentage provided for nutrition services and administration on quality of such services.

STUDY OF MEDICAID SAVINGS FOR NEWBORNS FROM WIC PROGRAM

Section 10 of Pub. L. 100–237 directed Secretary of Agriculture to study medicaid savings for newborns as result of prenatal participation by mothers in special supplemental food program under this section and to report study results to Congress by Feb. 1, 1990. Similar provisions were contained in Pub. L. 100–202, § 101(k) [title III], Dec. 22, 1987, 101 Stat. 1329–349.

ACCOUNTABILITY FOR MIGRANT SERVICES

Section 348(b) of Pub. L. 99–500 and Pub. L. 99–591 and section 4308(b) of Pub. L. 99–661 provided that: ''To the extent possible, accountability for migrant services under section 17(g)(2) of the Child Nutrition Act of 1966 [subsec. (g)(2) of this section] (as added by subsection (a)) shall be conducted under regulations in effect on the date of the enactment of this Act [Oct. 18, 1986].''

§ 1787. Repealed. Pub. L. 104–193, title VII, § 730, Aug. 22, 1996, 110 Stat. 2305

Section, Pub. L. 89–642, § 18, as added Pub. L. 94–105, § 23, Oct. 7, 1975, 89 Stat. 528, authorized appropriations and directed Secretary to make cash grants for nutrition education.

§ 1788. Team nutrition network

(a) Purposes

The purposes of the team nutrition network are—

(1) to establish State systems to promote the nutritional health of school children of the United States through nutrition education and the use of team nutrition messages and material developed by the Secretary, and to encourage regular physical activity and other activities that support healthy lifestyles for children, including those based on the most recent Dietary Guidelines for Americans published under section 5341 of title 7;

(2) to provide assistance to States for the development of comprehensive and integrated nutrition education and active living programs in schools and facilities that participate in child nutrition programs;

(3) to provide training and technical assistance and disseminate team nutrition messages to States, school and community nutrition programs, and child nutrition food service professionals;

(4) to coordinate and collaborate with other nutrition education and active living pro-

grams that share similar goals and purposes; and

(5) to identify and share innovative programs with demonstrated effectiveness in helping children to maintain a healthy weight by enhancing student understanding of healthful eating patterns and the importance of regular physical activity.

(b) Definition of team nutrition network

In this section, the term ''team nutrition network'' means a statewide multidisciplinary program for children to promote healthy eating and physical activity based on scientifically valid information and sound educational, social, and marketing principles.

(c) Grants

(1) In general

Subject to the availability of funds for use in carrying out this section, in addition to any other funds made available to the Secretary for team nutrition purposes, the Secretary, in consultation with the Secretary of Education, may make grants to State agencies for each fiscal year, in accordance with this section, to establish team nutrition networks to promote nutrition education through—

(A) the use of team nutrition network messages and other scientifically based information; and

(B) the promotion of active lifestyles.

(2) Form

A portion of the grants provided under this subsection may be in the form of competitive grants.

(3) Funds from nongovernmental sources

In carrying out this subsection, the Secretary may accept cash contributions from nongovernmental organizations made expressly to further the purposes of this section, to be managed by the Food and Nutrition Service, for use by the Secretary and the States in carrying out this section.

(d) Allocation

Subject to the availability of funds for use in carrying out this section, the total amount of funds made available for a fiscal year for grants under this section shall equal not more than the sum of—

(1) the product obtained by multiplying ½ cent by the number of lunches reimbursed through food service programs under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) during the second preceding fiscal year in schools, institutions, and service institutions that participate in the food service programs; and

(2) the total value of funds received by the Secretary in support of this section from nongovernmental sources.

(e) Requirements for State participation

To be eligible to receive a grant under this section, a State agency shall submit to the Secretary a plan that—

(1) is subject to approval by the Secretary; and

(2) is submitted at such time and in such manner, and that contains such information, as the Secretary may require, including—

(A) a description of the goals and proposed State plan for addressing the health and other consequences of children who are at risk of becoming overweight or obese;

(B) an analysis of the means by which the State agency will use and disseminate the team nutrition messages and material developed by the Secretary;

(C) an explanation of the ways in which the State agency will use the funds from the grant to work toward the goals required under subparagraph (A), and to promote healthy eating and physical activity and fitness in schools throughout the State;

(D) a description of the ways in which the State team nutrition network messages and activities will be coordinated at the State level with other health promotion and education activities;

(E) a description of the consultative process that the State agency employed in the development of the model nutrition and physical activity programs, including consultations with individuals and organizations with expertise in promoting public health, nutrition, or physical activity;

(F) a description of how the State agency will evaluate the effectiveness of each program developed by the State agency;

(G) an annual summary of the team nutrition network activities;

(H) a description of the ways in which the total school environment will support healthy eating and physical activity; and

(I) a description of how all communications to parents and legal guardians of students who are members of a household receiving or applying for assistance under the program shall be in an understandable and uniform format and, to the maximum extent practicable, in a language that parents and legal guardians can understand.

(f) State coordinator

Each State that receives a grant under this section shall appoint a team nutrition network coordinator who shall—

(1) administer and coordinate the team nutrition network within and across schools, school food authorities, and other child nutrition program providers in the State; and

(2) coordinate activities of the Secretary, acting through the Food and Nutrition Service, and State agencies responsible for other children's health, education, and wellness programs to implement a comprehensive, coordinated team nutrition network program.

(g) Authorized activities

A State agency that receives a grant under this section may use funds from the grant—

(1)(A) to collect, analyze, and disseminate data regarding the extent to which children and youths in the State are overweight, physically inactive, or otherwise suffering from nutrition-related deficiencies or disease conditions; and

(B) to identify the programs and services available to meet those needs;

(2) to implement model elementary and secondary education curricula using team nutrition network messages and material developed

by the Secretary to create a comprehensive, coordinated nutrition and physical fitness awareness and obesity prevention program;

(3) to implement pilot projects in schools to promote physical activity and to enhance the nutritional status of students;

(4) to improve access to local foods through farm-to-cafeteria activities that may include the acquisition of food and the provision of training and education;

(5) to implement State guidelines in health (including nutrition education and physical education guidelines) and to emphasize regular physical activity during school hours;

(6) to establish healthy eating and lifestyle policies in schools;

(7) to provide training and technical assistance to teachers and school food service professionals consistent with the purposes of this section;

(8) to collaborate with public and private organizations, including community-based organizations, State medical associations, and public health groups, to develop and implement nutrition and physical education programs targeting lower income children, ethnic minorities, and youth at a greater risk for obesity.

(h) Local nutrition and physical activity grants

(1) In general

Subject to the availability of funds to carry out this subsection, the Secretary, in consultation with the Secretary of Education, shall provide assistance to selected local educational agencies to create healthy school nutrition environments, promote healthy eating habits, and increase physical activity, consistent with the Dietary Guidelines for Americans published under section 5341 of title 7, among elementary and secondary education students.

(2) Selection of schools

In selecting local educational agencies for grants under this subsection, the Secretary shall—

(A) provide for the equitable distribution of grants among—

(i) urban, suburban, and rural schools; and

(ii) schools with varying family income levels;

(B) consider factors that affect need, including local educational agencies with significant minority or low-income student populations; and

(C) establish a process that allows the Secretary to conduct an evaluation of how funds were used.

(3) Requirement for participation

To be eligible to receive assistance under this subsection, a local educational agency shall, in consultation with individuals who possess education or experience appropriate for representing the general field of public health, including nutrition and fitness professionals, submit to the Secretary an application that shall include—

(A) a description of the need of the local educational agency for a nutrition and physical activity program, including an assessment of the nutritional environment of the school;

(B) a description of how the proposed project will improve health and nutrition through education and increased access to physical activity;

(C) a description of how the proposed project will be aligned with the local wellness policy required under section 204 of the Child Nutrition and WIC Reauthorization Act of 2004;

(D) a description of how funds under this subsection will be coordinated with other programs under this chapter, the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), or other Acts, as appropriate, to improve student health and nutrition;

(E) a statement of the measurable goals of the local educational agency for nutrition and physical education programs and promotion;

(F) a description of the procedures the agency will use to assess and publicly report progress toward meeting those goals; and

(G) a description of how communications to parents and guardians of participating students regarding the activities under this subsection shall be in an understandable and uniform format, and, to the extent maximum practicable, in a language that parents can understand.

(4) Duration

Subject to the availability of funds made available to carry out this subsection, a local educational agency receiving assistance under this subsection shall conduct the project during a period of 3 successive school years beginning with the initial fiscal year for which the local educational agency receives funds.

(5) Authorized activities

An eligible applicant that receives assistance under this subsection—

(A) shall use funds provided to—

(i) promote healthy eating through the development and implementation of nutrition education programs and curricula based on the Dietary Guidelines for Americans published under section 5341 of title 7; and

(ii) increase opportunities for physical activity through after school programs, athletics, intramural activities, and recess; and

(B) may use funds provided to—

(i) educate parents and students about the relationship of a poor diet and inactivity to obesity and other health problems;

(ii) develop and implement physical education programs that promote fitness and lifelong activity;

(iii) provide training and technical assistance to food service professionals to develop more appealing, nutritious menus and recipes;

(iv) incorporate nutrition education into physical education, health education, and after school programs, including athletics;

(v) involve parents, nutrition professionals, food service staff, educators, community leaders, and other interested parties in assessing the food options in the school environment and developing and implementing an action plan to promote a balanced and healthy diet;

(vi) provide nutrient content or nutrition information on meals served through the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and the school breakfast program established by section 1773 of this title and items sold a la carte during meal times;

(vii) encourage the increased consumption of a variety of healthy foods, including fruits, vegetables, whole grains, and low-fat dairy products, through new initiatives to creatively market healthful foods, such as salad bars and fruit bars;

(viii) offer healthy food choices outside program meals, including by making low-fat and nutrient dense options available in vending machines, school stores, and other venues; and

(ix) provide nutrition education, including sports nutrition education, for teachers, coaches, food service staff, athletic trainers, and school nurses.

(6) Report

Not later than 18 months after completion of the projects and evaluations under this subsection, the Secretary shall—

(A) submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Agriculture, Nutrition and Forestry of the Senate a report describing the results of the evaluation under this subsection; and

(B) make the report available to the public, including through the Internet.

(i) Nutrition education support

In carrying out the purpose of this section to support nutrition education, the Secretary may provide for technical assistance and grants to improve the quality of school meals and access to local foods in schools and institutions.

(j) Limitation

Material prepared under this section regarding agricultural commodities, food, or beverages, must be factual and without bias.

(k) Team nutrition network independent evaluation

(1) In general

Subject to the availability of funds to carry out this subsection, the Secretary shall offer to enter into an agreement with an independent, nonpartisan, science-based research organization—

(A) to conduct a comprehensive independent evaluation of the effectiveness of the team nutrition initiative and the team nutrition network under this section; and

(B) to identify best practices by schools in—

(i) improving student understanding of healthful eating patterns;

(ii) engaging students in regular physical activity and improving physical fitness;

(iii) reducing diabetes and obesity rates in school children;

(iv) improving student nutrition behaviors on the school campus, including by increasing healthier meal choices by students, as evidenced by greater inclusion of fruits, vegetables, whole grains, and lean dairy and protein in meal and snack selections;

(v) providing training and technical assistance for food service professionals resulting in the availability of healthy meals that appeal to ethnic and cultural taste preferences;

(vi) linking meals programs to nutrition education activities;

(vii) successfully involving parents, school administrators, the private sector, public health agencies, nonprofit organizations, and other community partners;

(viii) ensuring the adequacy of time to eat during school meal periods; and

(ix) successfully generating revenue through the sale of food items, while providing healthy options to students through vending, student stores, and other venues.

(2) Report

Not later than 3 years after funds are made available to carry out this subsection, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives, the Committee on Health, Education, Labor, and Pensions and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the findings of the independent evaluation.

***(l)* Authorization of appropriations**

There are authorized to be appropriated such sums as are necessary to carry out this section.

(Pub. L. 89–642, § 19, as added Pub. L. 95–166, § 15, Nov. 10, 1977, 91 Stat. 1340; amended Pub. L. 96–499, title II, § 213, Dec. 5, 1980, 94 Stat. 2603; Pub. L. 97–35, title VIII, §§ 806, 817(f), Aug. 13, 1981, 95 Stat. 527, 532; Pub. L. 99–500, title III, §§ 315, 362, 372(b), 373(b), Oct. 18, 1986, 100 Stat. 1783–360, 1783–368, 1783–369, and Pub. L. 99–591, title III, §§ 315, 362, 372(b), 373(b), Oct. 30, 1986, 100 Stat. 3341–363, 3341–371, 3341–372; Pub. L. 99–661, div. D, title I, § 4105, title IV, § 4402, title V, §§ 4502(b), 4503(b), Nov. 14, 1986, 100 Stat. 4071, 4079–4081; Pub. L. 101–147, title I, § 124, title II, § 214, title III, § 327, Nov. 10, 1989, 103 Stat. 905, 913, 918; Pub. L. 103–448, title II, § 205, Nov. 2, 1994, 108 Stat. 4746; Pub. L. 104–193, title VII, § 731(a)–(f), Aug. 22, 1996, 110 Stat. 2305–2307; Pub. L. 105–336, title II, § 204, Oct. 31, 1998, 112 Stat. 3167; Pub. L. 106–78, title VII, § 752(b)(16), Oct. 22, 1999, 113 Stat. 1170; Pub. L. 108–265, title II, § 205(a), June 30, 2004, 118 Stat. 782.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsecs. (d)(1) and (h)(3)(D), (5)(B)(vi), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the

Code, see Short Title note set out under section 1751 of this title and Tables.

Section 204 of the Child Nutrition and WIC Reauthorization Act of 2004, referred to in subsec. (h)(3)(C), is section 204 of Pub. L. 108–265, which is set out as a note under section 1751 of this title.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2004—Pub. L. 108–265 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (i) relating to the establishment of a system of grants to State educational agencies for the development of comprehensive nutrition education and training programs, which would include, but not be limited to, instructing students with regard to the nutritional value of foods and the relationship between food and health, training child nutrition program personnel in the principles and practices of food service management, instructing teachers in principles of nutrition education, developing and using classroom materials and curricula, and providing information to parents and caregivers regarding the nutritional value of food and the relationship between food and health.

1999—Subsec. (d). Pub. L. 106–78 made technical amendment to references in original act which appear in text as references to sections 1761 and 1769b–1 of this title.

1998—Subsec. (i). Pub. L. 105–336 inserted subsec. heading and par. (1)(A) and struck out former subsec. heading and pars. (1) to (3)(A) which provided for grants to States for nutrition education and information programs based on rate of 50 cents for each child enrolled in schools, minimum amounts to be received by States, and authorizations of appropriations; redesignated par. (3)(B) as (1)(B); and redesignated pars. (4) and (5) as (2) and (3), respectively.

1996—Subsec. (a). Pub. L. 104–193, §731(a)(1), substituted ''that effective dissemination of scientifically valid information to children participating or eligible to participate in the school lunch and related child nutrition programs should be encouraged.'' for ''that—'' and pars. (1) to (5) which related to priority of proper nutrition, lack of understanding of principles of good nutrition, training school employees, role of parents, and opportunities for children to learn about importance of good nutrition.

Subsec. (b). Pub. L. 104–193, §731(a)(2), substituted ''establish'' for ''encourage effective dissemination of scientifically valid information to children participating or eligible to participate in the school lunch and related child nutrition programs by establishing''.

Subsec. (f)(1). Pub. L. 104–193, §731(b)(1)(B), struck out ''(A)'' before ''The funds made available'' in introductory provisions, redesignated cls. (i) to (viii) and (xx) as subpars. (A) to (H) and (I), respectively, added subpar. (J), and struck out cls. (ix) to (xix) which related to use of funds for a nutrition component usable in consumer, homemaking and health education programs, instructing staff on working with children from different backgrounds, developing means of providing nutrition education in materials to children through after-school programs, training about healthy and nutritious meals, creating instructional programming for school staff and parents, aspects of the Strategic Plan for Nutrition and Education, encouraging public service advertisements, coordinating and promoting nutrition activities in local school districts, contracting with public and private nonprofit educational institutions for nutrition education, increasing awareness of importance of breakfasts, and coordinating and promoting nutrition education under child nutrition programs.

Pub. L. 104–193, §731(b)(1)(A), struck out subpar. (B) which read as follows: ''As used in this paragraph, the term 'language appropriate' used with respect to materials, programming, or advertisements means materials, programming, or advertisements, respectively, using a language other than the English language in a case in which the language is dominant for a large percentage of individuals participating in the program.''

Subsec. (f)(2), (3). Pub. L. 104–193, §731(b)(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Any State desiring to receive grants authorized by this section may, from the funds appropriated to carry out this section, receive a planning and assessment grant for the purposes of carrying out the responsibilities described in clauses (A), (B), (C), and (D) of paragraph (1) of this subsection. Any State receiving a planning and assessment grant, may, during the first year of participation, be advanced a portion of the funds necessary to carry out such responsibilities: *Provided*, That in order to receive additional funding, the State must carry out such responsibilities.''

Subsec. (f)(4). Pub. L. 104–193, §731(b)(2), struck out par. (4) which read as follows: ''Nothing in this section shall prohibit State or local educational agencies from making available or distributing to adults nutrition education materials, resources, activities, or programs authorized under this section.''

Subsec. (g)(1). Pub. L. 104–193, §731(c), substituted ''be available at any reasonable time'' for ''at all times be available'' in second sentence.

Subsec. (h)(1). Pub. L. 104–193, §731(d)(1), in second sentence, struck out ''as provided in paragraph (2) of this subsection'' after ''needs in the State'' and ''as provided in paragraph (3) of this subsection'' after ''prepare a State plan''.

Subsec. (h)(2). Pub. L. 104–193, §731(d)(2), struck out at end ''Such assessment shall include, but not be limited to, the identification and location of all students in need of nutrition education. The assessment shall also identify State and local individual, group, and institutional resources within the State for materials, facilities, staffs, and methods related to nutrition education.''

Subsec. (h)(3). Pub. L. 104–193, §731(d)(3), struck out par. (3) which related to comprehensive nutrition education plan to be submitted by State coordinator within 9 months of award of planning and assessment grant and reviews in light of plan.

Subsec. (i)(2)(A). Pub. L. 104–193, §731(e)(1), struck out ''and each succeeding fiscal year'' after ''fiscal year 1996''.

Subsec. (i)(3) to (5). Pub. L. 104–193, §731(e)(2), (3), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (j). Pub. L. 104–193, §731(f), struck out subsec. (j) which read as follows:

''(1) The Secretary shall assess the nutrition education and training program carried out under this section to determine what nutrition education needs are for children participating under the National School Lunch Act in the school lunch program, the summer food service program, and the child care food program.

''(2) The assessment required by paragraph (1) shall be completed not later than October 1, 1990.''

1994—Subsec. (b). Pub. L. 103–448, §205(a), substituted ''education and training programs'' for ''information and education programs''.

Subsec. (c). Pub. L. 103–448, §205(a), (b), substituted ''education and training program'' for ''information and education program'' in first sentence, substituted ''child nutrition program personnel'' for ''school food service personnel'' in subpar. (B), and added subpar. (E).

Subsec. (d)(1). Pub. L. 103–448, §205(a), (c)(1), substituted ''education and training program'' for ''information and education program'' in introductory provisions and inserted '', and the provision of nutrition education to parents and caregivers'' before period at end of subpar. (C).

Subsec. (d)(4). Pub. L. 103–448, §205(c)(2), substituted ''educational, school food service, child care, and summer food service personnel'' for ''educational and school food service personnel''.

Subsec. (d)(5). Pub. L. 103–448, §205(c)(3), in first sentence inserted '', and in child care institutions and summer food service institutions,'' after ''schools''.

Subsec. (f)(1)(A). Pub. L. 103–448, § 205(d)(1), designated existing provisions of par. (1) as subpar. (A). Former subpar. (A) redesignated cl. (i).

Subsec. (f)(1)(A)(i) to (viii). Pub. L. 103–448, § 205(d)(2)–(4), redesignated subpars. (A) to (H) as cls. (i) to (viii), respectively, of subpar. (A) and realigned margins.

Subsec. (f)(1)(A)(ix). Pub. L. 103–448, § 205(d)(5), (7), added cl. (ix). Former cl. (ix) redesignated (xx).

Pub. L. 103–448, § 205(d)(3), (4), redesignated subpar. (I) as cl. (ix) of subpar. (A) and realigned margins.

Subsec. (f)(1)(A)(x) to (xix). Pub. L. 103–448, § 205(d)(7), added cls. (x) to (xix).

Subsec. (f)(1)(A)(xx). Pub. L. 103–448, § 205(d)(6), redesignated cl. (ix) as (xx).

Subsec. (f)(1)(B). Pub. L. 103–448, § 205(d)(8), added subpar. (B). Former subpar. (B) redesignated cl. (ii) of subpar. (A).

Subsec. (f)(1)(C) to (F). Pub. L. 103–448, § 205(d)(3), redesignated subpars. (C) to (F) as cls. (iii) to (vi) of subpar. (A).

Subsec. (f)(1)(G). Pub. L. 103–448, § 205(d)(3), redesignated subpar. (G) as cl. (vii) of subpar. (A).

Pub. L. 103–448, § 205(a), substituted ''education and training'' for ''information and education''.

Subsec. (f)(1)(H), (I). Pub. L. 103–448, § 205(d)(3), redesignated subpars. (H) and (I) as cls. (viii) and (ix), respectively, of subpar. (A).

Subsec. (f)(3). Pub. L. 103–448, § 205(e), added par. (3) and struck out former par. (3) which read as follows: ''An amount not to exceed 15 percent of each State's grant may be used for up to 50 percent of the expenditures for overall administrative and supervisory purposes in connection with the program authorized under this section.''

Subsec. (h). Pub. L. 103–448, § 205(f), substituted ''nutrition education and training needs'' for ''nutrition education needs'' in par. (2) and added subpar. (F) in par. (3).

Subsec. (i)(2)(A). Pub. L. 103–448, § 205(g), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''There is authorized to be appropriated for grants to each State for the conduct of nutrition education and information programs—

''(i) $10,000,000 for the fiscal year 1990;

''(ii) $15,000,000 for the fiscal year 1991;

''(iii) $20,000,000 for the fiscal year 1992; and

''(iv) $25,000,000 for each of the fiscal years 1993 and 1994.''

Subsec. (i)(3), (4). Pub. L. 103–448, § 205(h), added par. (3) and redesignated former par. (3) as (4).

Subsec. (j)(1). Pub. L. 103–448, § 205(a), substituted ''education and training program'' for ''information and education program''.

1989—Subsec. (d)(1)(B). Pub. L. 101–147, § 124(1)(A)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the food service management training of school food service personnel, and''.

Subsec. (d)(1)(C). Pub. L. 101–147, § 124(1)(A)(ii), substituted ''schools, child care institutions, and institutions offering summer food service programs under section 13 of the National School Lunch Act'' for ''schools and child care institutions''.

Subsec. (d)(2). Pub. L. 101–147, §§ 124(1)(B), 327(1)(A), substituted ''recommendations of State educational agencies, the Department of Health and Human Services, and other'' for ''recommendation of the National Advisory Council on Child Nutrition; State educational agencies; the Department of Health and Human Services; and other''.

Subsec. (d)(4). Pub. L. 101–147, §§ 124(1)(C), 327(1)(B), struck out ''(12 Stat. 503, as amended; 7 U.S.C. 301–305, 307 and 308)'' after ''Act of July 2, 1862'' and ''(26 Stat. 417, as amended; 7 U.S.C. 321–326 and 328)'' after ''Act of August 30, 1890'' and inserted '', in coordination with the activities authorized under section 21 of the National School Lunch Act''.

Subsec. (d)(5). Pub. L. 101–147, § 327(1)(C), struck out ''(12 Stat. 503, as amended; 7 U.S.C. 301–305, 307, and 308)'' after ''Act of July 2, 1862'' and ''(26 Stat. 417, as amended; 7 U.S.C. 321–326 and 328)'' after ''act of August 30, 1890''.

Subsec. (h)(3). Pub. L. 101–147, § 327(2), in subpar. (E), struck out ''(12 Stat. 503; 7 U.S.C. 301–305, 307, and 308)'' after ''Act of July 2, 1862'' and ''(26 Stat. 417, as amended; 7 U.S.C. 321–326 and 328)'' after ''act of August 30, 1890''.

Pub. L. 101–147, § 214, inserted at end ''Each plan developed as required by this section shall be updated on an annual basis.''

Pub. L. 101–147, § 124(2), in subpar. (C), struck out ''the National Advisory Council on Child Nutrition,'' after ''recommendations of''.

Subsec. (i)(2). Pub. L. 101–147, § 124(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For the fiscal year ending September 30, 1980, and for each succeeding fiscal year ending on or before September 30, 1989, there is hereby authorized to be appropriated for grants to each State for the conduct of nutrition education and information programs, an amount equal to the higher of (A) 50 cents for each child enrolled in schools or in institutions within each State, or (B) $50,000 for each State. There is authorized to be appropriated for the grants referred to in the preceding sentence not more than $15,000,000 for fiscal year 1981, and not more than $5,000,000 for each subsequent fiscal year. Grants to each State from such appropriations shall be based on a rate of 50 cents for each child enrolled in schools or in institutions within such State, except that no State shall receive an amount less than $50,000 for that year. If funds appropriated for such year are insufficient to pay the amount to which each State is entitled under the second preceding sentence, the amount of such grant shall be ratably reduced to the extent necessary so that the total of such amounts paid does not exceed the amount of appropriated funds. If additional funds become available for making such payments, such amounts shall be increased on the same basis as they were reduced.''

Subsec. (j). Pub. L. 101–147, § 124(4), added subsec. (j).

1986—Subsec. (d)(2), (3). Pub. L. 99–500 and Pub. L. 99–591, § 372(b)(1), and Pub. L. 99–661, § 4502(b)(1), amended pars. (2) and (3) identically, substituting ''Health and Human Services'' for ''Health, Education, and Welfare'' in one place in par. (2) and in two places in par. (3).

Subsecs. (i), (j). Pub. L. 99–500 and Pub. L. 99–591, §§ 315, 362, 372(b)(2), 373(b), and Pub. L. 99–661, §§ 4105, 4402, 4502(b)(2), 4503(b), amended section identically, redesignating subsec. (j) as (i), substituting ''1989'' for ''1984'' in one place and ''$50,000'' for ''$75,000'' in two places in par. (2), and substituting ''Department of Education'' for ''Office of Education of the Department of Health, Education, and Welfare'' in par. (3).

1981—Subsec. (d)(6). Pub. L. 97–35, § 817(f), struck out par. (6) relating to State prohibition on administration of program in nonprofit private schools and institutions.

Subsec. (j)(2). Pub. L. 97–35, § 806, substituted provisions authorizing $15,000,000 for fiscal year 1981 and not more than $5,000,000 for each subsequent fiscal year for provisions authorizing $15,000,000 for the fiscal year beginning Oct. 1, 1980, and each subsequent fiscal year.

1980—Subsec. (j)(2). Pub. L. 96–499 substituted ''For the fiscal year ending September 30, 1980, and for each succeeding fiscal year ending on or before September 30, 1984'' for ''For the fiscal year beginning October 1, 1979'' and ''second preceding sentence'' for ''preceding sentence'' and inserted provision authorizing appropriations for the fiscal year beginning October 1, 1980, and subsequent fiscal years, for the grants referred to in the preceding sentence, not more than $15,000,000.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–336 effective Oct. 1, 1998, see section 401 of Pub. L. 105–336, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 731(g) of Pub. L. 104–193 provided that: ''The amendments made by subsection (e) [amending this section] shall become effective on October 1, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 820(a)(4) of Pub. L. 97–35, set out as a note under section 1753 of this title.

§ 1789. Department of Defense overseas dependents' schools

(a) Purpose of program; availability of payments and commodities

For the purpose of obtaining Federal payments and commodities in conjunction with the provision of breakfasts to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the school breakfast program in the United States.

(b) Administration of program; eligibility determinations and regulations

The Secretary of Defense shall administer breakfast programs authorized by this section and shall determine eligibility for free and reduced-price breakfasts under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the school breakfast program under this section.

(c) Nutritional standards for meals; noncompliance with standards

The Secretary of Defense shall be required to offer meals meeting nutritional standards prescribed by the Secretary of Agriculture; however, the Secretary of Defense may authorize deviations from Department of Agriculture prescribed meal patterns and fluid milk requirements when local conditions preclude strict compliance or when such compliance is highly impracticable.

(d) Authorization of appropriations

Funds are hereby authorized to be appropriated for any fiscal year in such amounts as may be necessary for the administrative expenses of the Department of Defense under this section.

(e) Technical assistance for administration of program

The Secretary of Agriculture shall provide the Secretary of Defense with technical assistance in the administration of the school breakfast programs authorized by this section.

(Pub. L. 89–642, § 20, as added Pub. L. 95–561, title XIV, § 1408(b)(2), Nov. 1, 1978, 92 Stat. 2368; amended Pub. L. 99–500, title III, § 328(b), Oct. 18, 1986, 100 Stat. 1783–362, and Pub. L. 99–591, title III, § 328(b), Oct. 30, 1986, 100 Stat. 3341–365; Pub. L. 99–661, div. D, title II, § 4208(b), Nov. 14, 1986, 100 Stat. 4073.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1986—Subsec. (d). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended subsec. (d) identically, striking out ''and for payment of the difference between the value of commodities and payments received from the Secretary of Agriculture and (1) the full cost of each breakfast for each student eligible for a free breakfast, and (2) the full cost of each breakfast, less any amounts required by law or regulation to be paid by each student eligible for a reduced-price breakfast'' after ''this section''.

EFFECTIVE DATE

Section effective Oct. 1, 1978, and no provisions to be construed to impair or to prevent the taking of effect of any other Act providing for the transfer of the described functions to an executive department having responsibility for education, see section 1415 of Pub. L. 95–561, set out as a note under section 921 of Title 20, Education.

TRANSFER OF FUNCTIONS

For transfer to Secretary of Education of functions of Secretary of Defense and Department of Defense relating to operation of overseas schools for dependents of Department of Defense and under Defense Dependents' Education Act of 1978, 42 U.S.C. 921 et seq., see section 3442(a) of Title 20, Education.

§ 1790. Breastfeeding promotion program

(a) In general

The Secretary, from amounts received under subsection (d) of this section, shall establish a breastfeeding promotion program to promote breastfeeding as the best method of infant nutrition, foster wider public acceptance of breastfeeding in the United States, and assist in the distribution of breastfeeding equipment to breastfeeding women.

(b) Conduct of program

In carrying out the program described in subsection (a) of this section, the Secretary may—

(1) develop or assist others to develop appropriate educational materials, including public service announcements, promotional publications, and press kits for the purpose of promoting breastfeeding;

(2) distribute or assist others to distribute such materials to appropriate public and private individuals and entities; and

(3) provide funds to public and private individuals and entities, including physicians, health professional organizations, hospitals, community based health organizations, and employers, for the purpose of assisting such entities in the distribution of breastpumps and similar equipment to breastfeeding women.

(c) Cooperative agreements

The Secretary is authorized to enter into cooperative agreements with Federal agencies, State and local governments, and other entities to carry out the program described in subsection (a) of this section.

(d) Gifts, bequests, and devises

(1) In general

The Secretary is authorized to solicit, accept, use, and dispose of gifts, bequests, or de-

vises of services or property, both real and personal, for the purpose of establishing and carrying out the program described in subsection (a) of this section. Gifts, bequests, or devises of money and proceeds from the sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Secretary.

(2) Criteria for acceptance

The Secretary shall establish criteria for determining whether to solicit and accept gifts, bequests, or devises under paragraph (1), including criteria that ensure that the acceptance of any gifts, bequests, or devises would not—

(A) reflect unfavorably on the ability of the Secretary to carry out the Secretary's responsibilities in a fair and objective manner; or

(B) compromise, or appear to compromise, the integrity of any governmental program or any officer or employee involved in the program.

(Pub. L. 89–642, § 21, as added Pub. L. 102–342, title II, § 201, Aug. 14, 1992, 106 Stat. 912.)

§ 1791. Bill Emerson Good Samaritan Food Donation Act

(a) Short title

This section may be cited as the ''Bill Emerson Good Samaritan Food Donation Act''.

(b) Definitions

As used in this section:

(1) Apparently fit grocery product

The term ''apparently fit grocery product'' means a grocery product that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(2) Apparently wholesome food

The term ''apparently wholesome food'' means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(3) Donate

The term ''donate'' means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(4) Food

The term ''food'' means any raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption.

(5) Gleaner

The term ''gleaner'' means a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.

(6) Grocery product

The term ''grocery product'' means a nonfood grocery product, including a disposable paper or plastic product, household cleaning product, laundry detergent, cleaning product, or miscellaneous household item.

(7) Gross negligence

The term ''gross negligence'' means voluntary and conscious conduct (including a failure to act) by a person who, at the time of the conduct, knew that the conduct was likely to be harmful to the health or well-being of another person.

(8) Intentional misconduct

The term ''intentional misconduct'' means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

(9) Nonprofit organization

The term ''nonprofit organization'' means an incorporated or unincorporated entity that—

(A) is operating for religious, charitable, or educational purposes; and

(B) does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of the entity.

(10) Person

The term ''person'' means an individual, corporation, partnership, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, deacon, trustee, council member, or other elected or appointed individual responsible for the governance of the entity.

(c) Liability for damages from donated food and grocery products

(1) Liability of person or gleaner

A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals.

(2) Liability of nonprofit organization

A nonprofit organization shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the nonprofit organization received as a donation in good faith from a person or gleaner for ultimate distribution to needy individuals.

(3) Exception

Paragraphs (1) and (2) shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the person, gleaner, or nonprofit organization, as applicable, constituting gross negligence or intentional misconduct.

(d) Collection or gleaning of donations

A person who allows the collection or gleaning of donations on property owned or occupied by the person by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals shall not be subject to civil or criminal liability that arises due to the injury or death of the gleaner or representative, except that this paragraph shall not apply to an injury or death that results from an act or omission of the person constituting gross negligence or intentional misconduct.

(e) Partial compliance

If some or all of the donated food and grocery products do not meet all quality and labeling standards imposed by Federal, State, and local laws and regulations, the person or gleaner who donates the food and grocery products shall not be subject to civil or criminal liability in accordance with this section if the nonprofit organization that receives the donated food or grocery products—

(1) is informed by the donor of the distressed or defective condition of the donated food or grocery products;

(2) agrees to recondition the donated food or grocery products to comply with all the quality and labeling standards prior to distribution; and

(3) is knowledgeable of the standards to properly recondition the donated food or grocery product.

(f) Construction

This section shall not be construed to create any liability. Nothing in this section shall be construed to supercede State or local health regulations.

(Pub. L. 89–642, §22, formerly Pub. L. 101–610, title IV, §402, Nov. 16, 1990, 104 Stat. 3183; renumbered §22 and amended Pub. L. 104–210, §1(a)(2), (b), Oct. 1, 1996, 110 Stat. 3011, 3012.)

CODIFICATION

Section was formerly classified to section 12672 of this title prior to renumbering by Pub. L. 104–210.

AMENDMENTS

1996—Pub. L. 104–210, §1(a)(2)(A), substituted ''Bill Emerson'' for ''Model'' in section catchline.

Subsec. (a). Pub. L. 104–210, §1(a)(2)(B), inserted ''Bill Emerson'' before ''Good''.

Subsec. (b)(7). Pub. L. 104–210, §1(a)(2)(C), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'gross negligence' means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.''

Subsec. (c). Pub. L. 104–210, §1(a)(2)(D), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: ''A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals, except that this paragraph shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the donor constituting gross negligence or intentional misconduct.''

Subsec. (f). Pub. L. 104–210, §1(a)(2)(E), inserted at end ''Nothing in this section shall be construed to supercede State or local health regulations.''

CHAPTER 14—DEVELOPMENT AND CONTROL OF ATOMIC ENERGY

§§ 1801 to 1819. Transferred

CODIFICATION

The Atomic Energy Act of 1946, as amended, act Aug. 1, 1946, ch. 724, 60 Stat. 755, formerly classified to sections 1801 to 1819 of this title, was completely amended by act Aug. 30, 1954, ch. 1073, 68 Stat. 919, to read as follows: ''Atomic Energy Act of 1954'', which is classified to section 2011 et seq. of this title.

Section 1801, act Aug. 1, 1946, ch. 724, §1, 60 Stat. 755, related to declaration of policy and purpose of chapter. See sections 2011 to 2013 of this title.

Section 1802, acts Aug. 1, 1946, ch. 724, §2, 60 Stat. 756; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501; July 3, 1948, ch. 828, 62 Stat. 1259; Oct. 11, 1949, ch. 673, §§1–3, 63 Stat. 762; Sept. 23, 1950, ch. 1000, §§1, 2, 64 Stat. 979; July 31, 1953, ch. 283, §1, 67 Stat. 240, related to establishment of Atomic Energy Commission, its membership, tenure, compensation, and appointment of certain officers and committees. See sections 2031 to 2038 of this title.

Section 1803, act Aug. 1, 1946, ch. 724, §3, 60 Stat. 758, related to research and development activities by Commission. See sections 2051 to 2053 of this title.

Section 1804, act Aug. 1, 1946, ch. 724, §4, 60 Stat. 759, related to production of fissionable material, prohibited acts, ownership and operation of production facilities, irradiation of materials, and manufacture of production facilities. See sections 2061 to 2112 of this title.

Section 1805, acts Aug. 1, 1946, ch. 724, §5, 60 Stat. 760; Oct. 30, 1951, ch. 633, 65 Stat. 692; Aug. 13, 1954, ch. 730, §10(a)–(c), 68 Stat. 715, 716, related to control of fissionable materials. See sections 2061 to 2112 of this title.

Section 1806, act Aug. 1, 1946, ch. 724, §6, 60 Stat. 763, related to military application of atomic energy. See sections 2121 and 2122 of this title.

Section 1807, act Aug. 1, 1946, ch. 724, §7, 60 Stat. 764, related to license requirements for utilization of atomic energy, reports to Congress, and issuance of licenses. See sections 2131 to 2140 of this title.

Section 1808, act Aug. 1, 1946, ch. 724, §8, 60 Stat. 765, related to force and effect of international agreements. See sections 2151 to 2154 of this title.

Section 1809, act Aug. 1, 1946, ch. 724, §9, 60 Stat. 765, related to property of Commission and its exempt status from taxation. See sections 2015 and 2208 of this title.

Section 1810, acts Aug. 1, 1946, ch. 724, §10, 60 Stat. 766; Oct. 30, 1951, ch. 633, 65 Stat. 692; Apr. 5, 1952, ch. 159, §1, 66 Stat. 43, related to control of information. See sections 2161 to 2166 of this title.

Section 1811, act Aug. 1, 1946, ch. 724, §11, 60 Stat. 768, related to patents and inventions. See sections 2181 to 2190 of this title.

Section 1812, acts Aug. 1, 1946, ch. 724, §12, 60 Stat. 770; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972, related to authority, powers and duties of Commission. See sections 2201 to 2209 of this title.

Section 1813, act Aug. 1, 1946, ch. 724, §13, 60 Stat. 772, related to compensation for acquisition of private property. See sections 2221 to 2224 of this title.

Section 1814, act Aug. 1, 1946, ch. 724, §14, 60 Stat. 772, related to judicial review. See sections 2231 to 2239 of this title.

Section 1815, acts Aug. 1, 1946, ch. 724, §15, 60 Stat. 772; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972, related to Joint Committee of Congress on Atomic Energy. See sections 2251 to 2257 of this title.

Section 1816, act Aug. 1, 1946, ch. 724, §16, 60 Stat. 773, related to penalties for violation of certain provisions of this chapter, injunctions, subpoena of witnesses, and production of documents. See sections 2271 to 2281 of this title.

Section 1817, act Aug. 1, 1946, ch. 724, §17, 60 Stat. 774, related to reports and recommendations to Congress.

Section 1818, act Aug. 1, 1946, ch. 724, §18, 60 Stat. 774, related to definitions. See section 2014 of this title.

Section 1819, act Aug. 1, 1946, ch. 724, §19, 60 Stat. 775, related to authorization of appropriations. See section 2017 of this title.

CHAPTER 15—DISASTER RELIEF

SUBCHAPTER I—FEDERAL ASSISTANCE PROGRAMS

§§ 1851 to 1854. Repealed. Sept. 30, 1950, ch. 1125 §9, 64 Stat. 1111

Section 1851, act July 25, 1947, ch. 320, §1, 61 Stat. 422, related to transfer of surplus personal property between War Assets Administration and Federal Works Agency to be utilized in alleviation of suffering caused by flood or other catastrophe.

Section 1852, acts July 25, 1947, ch. 320, §2, 61 Stat. 422; June 30, 1949, ch. 288, title I, §103, 63 Stat. 380, related to loan or transfer of property to States and local governments.

Section 1853, acts July 25, 1947, ch. 320, §3, 61 Stat. 423; June 30, 1949, ch. 288, title I, §§103, 105, 63 Stat. 380, related to utilization of government and State officers and employees and cooperation of Federal agencies with Administrator.

Section 1854, acts July 25, 1947, ch. 320, §4, 61 Stat. 423; June 30, 1949, ch. 288, title I, §103, 63 Stat. 380, related to authorization of appropriations.

For provisions relating to disaster relief, see section 5121 et seq.) of this title.

§§ 1855 to 1855g. Repealed. Pub. L. 91–606, title III, §302(1), Dec. 31, 1970, 84 Stat. 1759

Section 1855, act Sept. 30, 1950, ch. 1125 §1, 64 Stat. 1109, set out Congressional declaration of intent in enacting act of Sept. 30, 1950, covering major disasters.

Section 1855a, acts Sept. 30, 1950, ch. 1125, §2, 64 Stat. 1109; June 27, 1962, Pub. L. 87–502, §1, 76 Stat. 111; Nov. 6, 1966, Pub. L. 89–769, §6(a), 80 Stat. 1317, defined ''major disasters'', ''United States'', ''State'', ''governor'', ''local government'', and ''Federal agency''.

Section 1855b, acts Sept. 30, 1950, ch. 1125, §3, 64 Stat. 1110; Aug. 3, 1951, ch. 293, §2, 65 Stat. 173; July 17, 1953, ch. 255, 67 Stat. 180; June 27, 1962, Pub. L. 87–502, §2, 76 Stat. 111, authorized and directed Federal agencies to render assistance in event of major disasters.

Section 1855c, act Sept. 30, 1950, ch. 1125, §4, 64 Stat. 1110, directed Federal agencies to cooperate with each other and with other agencies in providing assistance.

Section 1855d, act Sept. 30, 1950, ch. 1125, §5, 64 Stat. 1110, directed the President to coordinate disaster assistance and to issue rules and regulations covering disaster relief.

Section 1855e, act Sept. 30, 1950, ch. 1125, §6, 64 Stat. 1111, dealt with repair and reconstruction of damaged United States facilities.

Section 1855f, act Sept. 30, 1950, ch. 1125, §7, 64 Stat. 1111, provided for utilization of services and facilities of other agencies, employment of temporary personnel, incurring of obligations, and reimbursements.

Section 1855g, act Sept. 30, 1950, ch. 1125, §8, 64 Stat. 1111, authorized an appropriation of $5,000,000 and required by the President to submit a report to Congress at beginning of each session covering expenditure of amounts appropriated.

For provisions relating to disaster relief, see section 5121 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

SUBCHAPTER II—ADJUSTMENT AND COORDINATION OF FEDERAL PROGRAMS

§§ 1855aa to 1855ii. Repealed. Pub. L. 91–606, title III, §302(2), Dec. 31, 1970, 84 Stat. 1759

Section 1855aa, Pub. L. 89–769, §2, Nov. 6, 1966, 80 Stat. 1316, defined ''major disaster.''

Pub. L. 89–769, §§1, 14, Nov. 6, 1966, 80 Stat. 1316, 1321, set out as notes under section 1855aa of this title, gave the name ''Disaster Relief Act of 1966'' to Pub. L. 89–769, and provided for effective date of such act.

Section 1855bb, Pub. L. 89–769, §3(a), Nov. 6, 1966, 80 Stat. 1316, called for rescheduling and refinancing of Federal loans in event of a major disaster. See section 3538 of this title and section 912a of Title 7, Agriculture.

Section 1855cc, Pub. L. 89–769, §5, Nov. 6, 1966, 80 Stat. 1317, authorized Secretary of Defense to make available facilities of civil defense communications system in case of imminent natural disasters.

Section 1855dd, Pub. L. 89–769, §8, Nov. 6, 1966, 80 Stat. 1320, set out order of priorities to be followed in processing applications for public facility and public housing assistance in major disaster areas.

Section 1855ee, Pub. L. 89–769, §9, Nov. 6, 1966, 80 Stat. 1320, provided for reimbursement of costs of reconstruction of public facilities, eligible costs, and agencies and parties entitled to reimbursement.

Section 1855ff, Pub. L. 89–769, §10, Nov. 6, 1966, 80 Stat. 1320, directed department heads to administer programs covering major disasters so that there is no duplication of efforts between various programs.

Section 1855gg, Pub. L. 89–769, §11, Nov. 6, 1966, 80 Stat. 1321, provided for extension of time to leaseholders, etc., of public lands in disaster areas.

Section 1855hh, Pub. L. 89–769, §12, Nov. 6, 1966, 80 Stat. 1321, directed the President to coordinate and review all assistance programs.

Section 1855ii, Pub. L. 89–769, §13, Nov. 6, 1966, 80 Stat. 1321, called for a study of air operation facilities for disaster assistance and for a report of findings of such study to Congress with recommendations by May 6, 1967.

For provisions relating to disaster relief, see section 5121 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

SUBCHAPTER III—ADDITIONAL FEDERAL ASSISTANCE PROGRAMS

§§ 1855aaa to 1855nnn. Repealed. Pub. L. 91–606, title III, §302(3), Dec. 31, 1970, 84 Stat. 1759

Section 1855aaa, Pub. L. 91–79, §1, Oct. 1, 1969, 83 Stat. 125, set out Congressional statement of policy in enacting Pub. L. 91–79.

Pub. L. 91–79, §16, Oct. 1, 1969, 83 Stat. 125, set out as a note under section 1855aaa of the title, gave the name ''Disaster Relief Act of 1969'' to Pub. L. 91–79.

Section 1855bbb, Pub. L. 91–79, §2, Oct. 1, 1969, 83 Stat. 126, authorized the President to allocate funds for permanent repair and reconstruction of non-Federal streets, roads, and highway facilities destroyed or damaged as a result of a major disaster.

Section 1855ccc, Pub. L. 91–79, §3, Oct. 1, 1969, 83 Stat. 126, covered allowable alterations in timber sales con-

tracts between Secretary of Agriculture or Secretary of the Interior and a timber purchaser in event of a major disaster causing major physical changes.

Section 1855ddd, Pub. L. 91–79, § 4, Oct. 1, 1969, 83 Stat. 126, authorized Secretary of the Interior to give public land entrymen additional time to comply with requirements of law.

Section 1855eee, Pub. L. 91–79, § 6, Oct. 1, 1969, 83 Stat. 127, made provision for Small Business Administration disaster loans.

Section 1855fff, Pub. L. 91–79, § 7, Oct. 1, 1969, 83 Stat. 127, provided for emergency farm loans by Secretary of Agriculture.

Section 1855ggg, Pub. L. 91–79, § 8, Oct. 1, 1969, 83 Stat. 128, provided for development of State disaster relief programs, development of State agencies to administer disaster relief programs, and reports to Congress.

Section 1855hhh, Pub. L. 91–79, § 9, Oct. 1, 1969, 83 Stat. 128, made provision for appointment and duties of a Federal coordinating officer to operate under Office of Emergency Preparedness in any area designated a major disaster area.

Section 1855iii, Pub. L. 91–79, § 10, Oct. 1, 1969, 83 Stat. 128, authorized the President to provide on a temporary basis dwelling accommodations for individuals and families displaced by a major disaster.

Section 1855jjj, Pub. L. 91–79, § 11, Oct. 1, 1969, 83 Stat. 129, authorized the President to set up a food stamp and surplus commodities program to distribute food to persons in low-income households unable to purchase food as result of a major disaster.

Section 1855kkk, Pub. L. 91–79, § 12, Oct. 1, 1969, 83 Stat. 129, provided for unemployment assistance to persons unemployed as result of a major disaster.

Section 1855*lll*, Pub. L. 91–79, § 13, Oct. 1, 1969, 83 Stat. 129, covered grants and loans for funds used in the suppression of fire on forest or grass lands which threatens destruction as to constitute a major disaster.

Section 1855mmm, Pub. L. 91–79, § 14, Oct. 1, 1969, 83 Stat. 130, authorized grants for removal of debris.

Section 1855nnn, Pub. L. 91–79, § 15, Oct. 1, 1969, 83 Stat. 130, defined ''major disaster'' and provided termination date of sections 1855aaa et seq. of this title on Dec. 31, 1970.

For provisions relating to disaster relief, see section 5121 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

CHAPTER 15A—RECIPROCAL FIRE PROTECTION AGREEMENTS

SUBCHAPTER I—PROTECTION OF UNITED STATES PROPERTY

SUBCHAPTER II—WILDFIRE SUPPRESSION WITH FOREIGN FIRE ORGANIZATION

SUBCHAPTER I—PROTECTION OF UNITED STATES PROPERTY

§ 1856. Definitions

As used in this subchapter—

(a) The term ''agency head'' means the head of any executive department, military department, agency, or independent establishment in the executive branch of the Government;

(b) The term ''fire protection'' includes personal services and equipment required for fire prevention, the protection of life and property from fire,,[1] fire fighting, and emergency services, including basic medical support, basic and advanced life support, hazardous material containment and confinement, and special rescue events involving vehicular and water mishaps, and trench, building, and confined space extractions; and

(c) The term ''fire organization'' means any governmental entity or public or private corporation or association maintaining fire protection facilities within the United States, its Territories and possessions, and any governmental entity or public or private corporation or association which maintains fire protection facilities in any foreign country in the vicinity of any installation of the United States.

(May 27, 1955, ch. 105, § 1, 69 Stat. 66; Pub. L. 109–163, div. A, title X, § 1060, Jan. 6, 2006, 119 Stat. 3444.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–163 substituted '', fire fighting, and emergency services, including basic medical support, basic and advanced life support, hazardous material containment and confinement, and special rescue events involving vehicular and water mishaps, and trench, building, and confined space extractions'' for ''and fire fighting''.

§ 1856a. Authority to enter into reciprocal agreement; waiver of claims; reimbursement; ratification of prior agreements

(a) Each agency head charged with the duty of providing fire protection for any property of the United States is authorized to enter into a reciprocal agreement, with any fire organization maintaining fire protection facilities in the vicinity of such property, for mutual aid in furnishing fire protection for such property and for other property for which such organization normally provides fire protection. Each such agreement shall include a waiver by each party of all claims against every other party for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement. Any such agreement may provide for the reimbursement of any party for all or any part of the cost incurred by such party in furnishing fire protection for or on behalf of any other party.

(b) Any agreement heretofore executed which would have been authorized by this subchapter,

[1] So in original.

if this subchapter had been in effect on the date of execution thereof, is ratified and confirmed.

(May 27, 1955, ch. 105, § 2, 69 Stat. 66.)

§ 1856a–1. Authority to enter into contracts with State and local governmental entities

Notwithstanding any other provision of law, in fiscal year 1992 and thereafter, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Energy, and the Secretary of the Smithsonian Institution are authorized to enter into contracts with State and local governmental entities, including local fire districts, for procurement of services in the presuppression, detection, and suppression of fires on any units within their jurisdiction.

(Pub. L. 102–154, title III, § 309, Nov. 13, 1991, 105 Stat. 1034.)

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1992, and not as part of act May 27, 1955, which comprises this subchapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation act: Pub. L. 101–512, title III, § 310, Nov. 5, 1990, 104 Stat. 1959.

§ 1856b. Emergency assistance

In the absence of any agreement authorized or ratified by section 1856a of this title, each agency head is authorized to render emergency assistance in extinguishing fires and in preserving life and property from fire, within the vicinity of any place at which such agency maintains fire-protection facilities, when the rendition of such assistance is determined, under regulations prescribed by the agency head, to be in the best interest of the United States.

(May 27, 1955, ch. 105, § 3, 69 Stat. 67.)

§ 1856c. Service in line of duty

Any service performed under section 1856a or section 1856b of this title, by any officer or employee of the United States or any member of any armed force of the United States shall constitute service rendered in line of duty in such office, employment, or force. The performance of such service by any other individual shall not constitute such individual an officer or employee of the United States for the purposes of subchapter I of chapter 81 of title 5.

(May 27, 1955, ch. 105, § 4, 69 Stat. 67.)

CODIFICATION

''Subchapter I of chapter 81 of title 5'' substituted for ''the Federal Employees' Compensation Act, as amended'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

§ 1856d. Funds

Funds available to any agency head for fire protection on installations or in connection with activities under the jurisdiction of such agency may be used to carry out the purposes of this subchapter. All sums received by any agency head for fire protection rendered pursuant to this subchapter shall be covered into the Treasury as miscellaneous receipts.

(May 27, 1955, ch. 105, § 5, 69 Stat. 67.)

SUBCHAPTER II—WILDFIRE SUPPRESSION WITH FOREIGN FIRE ORGANIZATION

§ 1856m. Definitions

As used in this subchapter—

(1) the term ''fire organization'' means any governmental, public, or private entity having wildfire protection resources;

(2) the term ''wildfire protection resources'' means personnel, supplies, equipment, and other resources required for wildfire presuppression and suppression activities; and

(3) the term ''wildfire'' means any forest or range fire.

(Pub. L. 100–428, § 2, Sept. 9, 1988, 102 Stat. 1615.)

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–11, § 1, Apr. 7, 1989, 103 Stat. 15, provided that: ''This Act [repealing section 1856p of this title] may be cited as the 'Wildfire Suppression Assistance Act'.''

SHORT TITLE

Section 1 of Pub. L. 100–428 provided: ''That this Act [enacting this subchapter] may be cited as the 'Temporary Emergency Wildfire Suppression Act'.''

§ 1856n. Implementation

(a) Reciprocal agreement; waiver of claims; termination of agreement; reimbursement

(1) The Secretary of Agriculture or the Secretary of the Interior, in consultation with the Secretary of State, may enter into a reciprocal agreement with any foreign fire organization for mutual aid in furnishing wildfire protection resources for lands and other properties for which such Secretary or organization normally provides wildfire protection.

(2) Any agreement entered into under this subsection—

(A) shall include a waiver by each party to the agreement of all claims against every other party to the agreement for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement;

(B) shall include a provision to allow the termination of such agreement by any party thereto after reasonable notice; and

(C) may provide for the reimbursement of any party thereto for all or any part of the costs incurred by such party in furnishing wildfire protection resources for, or on behalf of, any other party thereto.

(b) Emergency wildfire protection resources; furnishing or accepting in absence of agreement

In the absence of any agreement authorized under subsection (a) of this section, the Secretary of Agriculture or the Secretary of the Interior may—

(1) furnish emergency wildfire protection resources to any foreign nation when the furnishing of such resources is determined by such Secretary to be in the best interest of the United States, and

(2) accept emergency wildfire protection resources from any foreign fire organization when the acceptance of such resources is determined by such Secretary to be in the best interest of the United States.

(c) Reimbursement of Canada

Notwithstanding the preceding provisions of this section, reimbursement may be provided for the costs incurred by the Government of Canada or a Canadian organization in furnishing wildfire protection resources to the Government of the United States under—

(1) the memorandum entitled ''Memorandum of Understanding Between the United States Department of Agriculture and Environment Canada on Cooperation in the Field of Forestry-Related Programs'' dated June 25, 1982; and

(2) the arrangement entitled ''Arrangement in the Form of an Exchange of Notes Between the Government of Canada and the Government of the United States of America'' dated May 4, 1982.

(d) Service in line of duty

Any service performed by any employee of the United States under an agreement or otherwise under this subchapter shall constitute service rendered in the line of duty in such employment. The performance of such service by any other individual shall not make such individual an employee of the United States.

(Pub. L. 100–428, §3, Sept. 9, 1988, 102 Stat. 1615.)

§ 1856*o*. Funds

Funds available to the Secretary of Agriculture or the Secretary of the Interior for wildfire protection resources in connection with activities under the jurisdiction of such Secretary may be used to carry out activities authorized under agreements or otherwise under this subchapter, or for reimbursements authorized under section 1856n(c) of this title: *Provided*, That no such funds may be expended for wildfire protection resources or personnel provided by a foreign fire organization unless the Secretary determines that no wildfire protection resources or personnel within the United States are reasonably available to provide wildfire protection.

(Pub. L. 100–428, §4, Sept. 9, 1988, 102 Stat. 1616.)

§ 1856p. Repealed. Pub. L. 101–11, § 2, Apr. 7, 1989, 103 Stat. 15

Section, Pub. L. 100–428, §5, Sept. 9, 1988, 102 Stat. 1616, provided that authority to enter into agreements, to furnish or accept emergency wildfire protection resources, or to incur obligations for reimbursement under section 1856n of this title was to terminate Dec. 31, 1988.

CHAPTER 15B—AIR POLLUTION CONTROL

SUBCHAPTER I—AIR POLLUTION PREVENTION AND CONTROL

§§ 1857 to 1857c–9. Transferred

CODIFICATION

Section 1857, act July 14, 1955, ch. 360, title I, §101, formerly §1, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 392; renumbered title I, §101, and amended Oct. 20, 1965, Pub. L. 89–272, title I, §101(2), (3), 79 Stat. 992; Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 485, which related to Congressional findings and declaration of purpose, was transferred to section 7401 of this title.

Section 1857a, act July 14, 1955, ch. 360, title I, §102, formerly §2, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 393; renumbered title I, §102, Oct. 20, 1965, Pub. L. 89–272, title I, §101(3), 79 Stat. 992; amended Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 485; Dec. 31, 1970, Pub. L. 91–604, §15(c)(2), 84 Stat. 1713, which related to cooperative activities, was transferred to section 7402 of this title.

Section 1857b, act July 14, 1955, ch. 360, title I, §103, formerly §3, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 394; renumbered title I, §103, and amended Oct. 20, 1965, Pub. L. 89–272, title I, §§101(3), 103, 79 Stat. 992, 996; Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 486; Dec. 31, 1970, Pub. L. 91–604, §§2(a), 4(2), 15(a)(2), (c)(2), 84 Stat. 1676, 1689, 1710, 1713, which related to research, investigations, training, and other activities, was transferred to section 7403 of this title.

Section 1857b–1, act July 14, 1955, ch. 360, title I, §104, as added Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 487; amended Dec. 5, 1969, Pub. L. 91–137, 83 Stat. 283; Dec. 31, 1970, Pub. L. 91–604, §§2(b), (c), 13(a), 15(c)(2), 84 Stat. 1676, 1677, 1709, 1713; Apr. 9, 1973, Pub. L. 93–15, §1(a), 87 Stat. 11; June 22, 1974, Pub. L. 93–319, §13(a), 88 Stat. 265, which provided for research relating to fuels and vehicles, was transferred to section 7404 of this title.

Section 1857c, act July 14, 1955, ch. 360, title I, §105, formerly §4, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 395; renumbered and amended §104, Oct. 20, 1965, Pub. L. 89–272, title I, §101(2)–(4), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89–675, §3, 80 Stat. 954; renumbered title I, §105, and amended §105, Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 489; Dec. 31, 1970, Pub. L. 91–604, §§3(a), (b)(1), 15(c)(2), 84 Stat. 1677, 1713, which related to grants for support of air pollution planning and control programs, was transferred to section 7405 of this title.

Section 1857c–1, act July 14, 1955, ch. 360, title I, §106, as added Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 490; amended Dec. 31, 1970, Pub. L. 91–604, §3(c), 84 Stat. 1677, which related to interstate air quality agencies and program cost limitations, was transferred to section 7406 of this title.

Section 1857c–2, act July 14, 1955, ch. 360, title I, §107, as added Dec. 31, 1970, Pub. L. 91–604, §4(a), 84 Stat. 1678, which related to air quality control regions, was transferred to section 7407 of this title.

Section 1857c–3, act July 14, 1955, ch. 360, title I, §108, as added Dec. 31, 1970, Pub. L. 91–604, §4(a), 84 Stat. 1678, which related to air quality criteria and control techniques, was transferred to section 7408 of this title.

Section 1857c–4, act July 14, 1955, ch. 360, title I, §109, as added Dec. 31, 1970, Pub. L. 91–604, §4(a), 84 Stat. 1679, which related to procedure for and promulgation of national primary and secondary ambient air quality standards, was transferred to section 7409 of this title.

Section 1857c–5, act July 14, 1955, ch. 360, title I, §110, as added Dec. 31, 1970, Pub. L. 91–604, §4(a), 84 Stat. 1680; amended June 22, 1974, Pub. L. 93–319, §4, 88 Stat. 256; S. Res. 4, Feb. 4, 1977, which related to State implementation plans for national primary and secondary ambient air quality standards, was transferred to section 7410 of this title.

Section 1857c–6, act July 14, 1955, ch. 360, title I, §111, as added Dec. 31, 1970, Pub. L. 91–604, §4(a), 84 Stat. 1683; amended Nov. 18, 1971, Pub. L. 92–157, title III, §302(f), 85 Stat. 464, which related to standards of performance for new stationary sources, was transferred to section 7411 of this title.

Section 1857c–7, act July 14, 1955, ch. 360, title I, §112, as added Dec. 31, 1970, Pub. L. 91–604, §4(a), 84 Stat. 1685, which related to national emission standards for hazardous air pollutants, was transferred to section 7412 of this title.

Section 1857c–8, act July 14, 1955, ch. 360, title I, §113, as added Dec. 31, 1970, Pub. L. 91–604, §4(a), 84 Stat. 1686; amended Nov. 18, 1971, Pub. L. 92–157, title III, §302(b), (c), 85 Stat. 464; June 22, 1974, Pub. L. 93–319, §6(a)(1)–(3),

88 Stat. 259, which related to Federal enforcement procedures, was transferred to section 7413 of this title.

Section 1857c–9, act July 14, 1955, ch. 360, title I, § 114, as added Dec. 31, 1970, Pub. L. 91–604, § 4(a), 84 Stat. 1687; amended June 22, 1974, Pub. L. 93–319, § 6(a)(4), 88 Stat. 259, which related to recordkeeping, inspections, monitoring, and entry, was transferred to section 7414 of this title.

§ 1857c–10. Repealed. Pub. L. 95–95, title I, § 112(b)(1), Aug. 7, 1977, 91 Stat. 709

Section, act July 14, 1955, ch. 360, title I, § 119, as added June 22, 1974, Pub. L. 93–319, § 3, 88 Stat. 248, related to the authority of the Administrator of the Environmental Protection Agency to deal with energy shortages. See section 7413 of this title.

References to section 1857c–10 appearing in section 792 of Title 15, Commerce and Trade, shall be construed to refer to section 7413(d) of Title 42, The Public Health and Welfare, see Compliance Orders note set out under section 792 of Title 15.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 7, 1977, see section 406 of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§§ 1857d to 1857f–6c. Transferred

CODIFICATION

Section 1857d, act July 14, 1955, ch. 360, title I, § 115, formerly § 5, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 396; renumbered § 105 and amended Oct. 20, 1965, Pub. L. 89–272, title I, §§ 101(2), (3), 102, 79 Stat. 992, 995; renumbered § 108 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 491; renumbered § 115 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 4(a), (b)(2)–(10), 15(c)(2), 84 Stat. 1678, 1688, 1689, 1713, which related to abatement of air pollution by means of conference procedure, was transferred to section 7415 of this title.

Section 1857d–1, act July 14, 1955, ch. 360, title I, § 116, formerly § 109 as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 497; renumbered and amended Dec. 31, 1970, Pub. L. 91–604, § 4(a), (c), 84 Stat. 1678, 1689; June 22, 1974, Pub. L. 93–319, § 6(b), 88 Stat. 259, which related to retention of State authority concerning air pollution, was transferred to section 7416 of this title.

Section 1857e, act July 14, 1955, ch. 360, title I, § 117, formerly § 6, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 399; renumbered § 106, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(3), 79 Stat. 992; renumbered § 110 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 498; renumbered § 117 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 4(a), (d), 15(c)(2), 84 Stat. 1678, 1689, 1713, which related to an Air Quality Advisory Board and to advisory committees, was transferred to section 7417 of this title.

Section 1857f, act July 14, 1955, ch. 360, title I, § 118, formerly § 7, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 399; renumbered § 107, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(3), 79 Stat. 992; renumbered § 111 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 499; renumbered § 118 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 4(a), 5, 84 Stat. 1678, 1689, which related to control and abatement of air pollution from Federal facilities, Presidential exemption, and report to Congress on Presidential exemptions, was transferred to section 7418 of this title.

SUBCHAPTER II—EMISSION STANDARDS FOR MOVING SOURCES

PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

Section 1857f–1, act July 14, 1955, ch. 360, title II, § 202, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 992; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 499; Dec. 31, 1970, Pub. L. 91–604, § 6(a), 84 Stat. 1690; June 22, 1974, Pub. L. 93–319, § 5, 88 Stat. 258, which related to establishment of motor vehicle emission and fuel standards, was transferred to section 7521 of this title.

Section 1857f–2, act July 14, 1955, ch. 360, title II, § 203, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 993; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 499; Dec. 31, 1970, Pub. L. 91–604, §§ 7(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1693, 1705, 1713, which related to prohibited acts with regard to motor vehicle emissions, was transferred to section 7522 of this title.

Section 1857f–3, act July 14, 1955, ch. 360, title II, § 204, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 994; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 500; Dec. 31, 1970, Pub. L. 91–604, § 7(b), 84 Stat. 1694, which related to subpenas and to jurisdiction of district courts to restrain violations, was transferred to section 7523 of this title.

Section 1857f–4, act July 14, 1955, ch. 360, title II, § 205, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 994; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 500; Dec. 31, 1970, Pub. L. 91–604, § 7(c), 84 Stat. 1694, which related to penalties for violations, was transferred to section 7524 of this title.

Section 1857f–5, act July 14, 1955, ch. 360, title II, § 206, as added Dec. 31, 1970, Pub. L. 91–604, § 8(a), 84 Stat. 1694, which related to motor vehicle and motor vehicle engine compliance testing and certification, was transferred to section 7525 of this title.

Section 1857f–5a, act July 14, 1955, ch. 360, title II, § 207, as added Dec. 31, 1970, Pub. L. 91–604, § 8(a), 84 Stat. 1696, which related to compliance by vehicles and engines in actual use, was transferred to section 7541 of this title.

Section 1857f–6, act July 14, 1955, ch. 360, title II, § 208, formerly § 207, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 994; amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 501; renumbered and amended Dec. 31, 1970, Pub. L. 91–604, §§ 8(a), 10(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1694, 1700, 1705, 1713, which related to reports, records, and information required, access to and copying records, availability of records to the public, and disclosure of trade secrets, was transferred to section 7542 of this title.

Section 1857f–6a, act July 14, 1955, ch. 360, title II, § 209, formerly § 208, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 501; renumbered and amended Dec. 31, 1970, Pub. L. 91–604, §§ 8(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1694, 1705, 1713, which related to State standards regarding control of emissions from new motor vehicles or new motor vehicle engines, was transferred to section 7543 of this title.

Section 1857f–6b, act July 14, 1955, ch. 360, title II, § 210, formerly § 209, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 502; renumbered and amended Dec. 31, 1970, Pub. L. 91–604, §§ 8(a), 10(b), 84 Stat. 1694, 1700, which related to Federal assistance in developing and maintaining vehicle emission devices and systems inspection and emission testing and control programs, was transferred to section 7544 of this title.

Section 1857f–6c, act July 14, 1955, ch. 360, title II, § 211, formerly § 210, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 502; renumbered and amended Dec. 31, 1970, Pub. L. 91–604, §§ 8(a), 9(a), 84 Stat. 1694, 1698; Nov. 18, 1971, Pub. L. 92–157, title III, § 302(d), (e), 85 Stat. 464, which related to regulation of fuels, was transferred to section 7545 of this title.

§ 1857f–6d. Repealed. Pub. L. 91–604, § 8(a), Dec. 31, 1970, 84 Stat. 1694

Section, act July 14, 1955, ch. 360, title II, § 211, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 503, provided for a national emissions standards study for stationary sources to be conducted by the Secretary, with a report and recommendations to be submitted to the Congress by Nov. 21, 1969, and for a study of the feasibility of controls for jet and piston aircraft engines, with a report thereon to Congress by Nov. 21, 1968.

§§ 1857f–6e to 1857f–7. Transferred

CODIFICATION

Section 1857f–6e, act July 14, 1955, ch. 360, title II, §212, as added Dec. 31, 1970, Pub. L. 91–604, §10(c), 84 Stat. 1700; amended Apr. 9, 1973, Pub. L. 93–15, §1(b), 87 Stat. 11; June 22, 1974, Pub. L. 93–319, §13(b), 88 Stat. 265, which related to low emission vehicles, was transferred to section 7546 of this title.

Section 1857f–6f, act July 14, 1955, ch. 360, title II, §213, as added June 22, 1974, Pub. L. 93–319, §10, 88 Stat. 261; amended S. Res. 4, Feb. 4, 1977, which related to fuel economy for new vehicles, was transferred to section 7547 of this title.

Section 1857f–7, act July 14, 1955, ch. 360, title II, §214, formerly §208, as added Oct. 20, 1965, Pub. L. 89–272, title I, §101(8), 79 Stat. 994; renumbered §212 and amended Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 503; renumbered §213 and amended Dec. 31, 1970, Pub. L. 91–604, §§8(a), 10(d), 11(a)(2)(A), 84 Stat. 1694, 1703, 1705; renumbered §214, June 22, 1974, Pub. L. 93–319, §10, 88 Stat. 261, which related to definitions concerning motor vehicle emission and fuel standards, was transferred to section 7550 of this title.

§1857f–8. Repealed. Pub. L. 89–675, §2(b), Oct. 15, 1966, 80 Stat. 954

Section, act July 14, 1955, ch. 360, title II, §209, as added Oct. 20, 1965, Pub. L. 89–272, title I, §101(8), 79 Stat. 995, authorized appropriations for the fiscal years ending June 30, 1966, 1967, 1968, and 1969, to carry out sections 1857f–1 to 1857f–7. See section 1857*l* of this title.

PART B—AIRCRAFT EMISSION STANDARDS

§§ 1857f–9 to 1857k. Transferred

CODIFICATION

Section 1857f–9, act July 14, 1955, ch. 360, title II, §231, as added Dec. 31, 1970, Pub. L. 91–604, §11(a)(1), 84 Stat. 1703, which related to the establishment of aircraft emission standards, was transferred to section 7571 of this title.

Section 1857f–10, act July 14, 1955, ch. 360, title II, §232, as added Dec. 31, 1970, Pub. L. 91–604, §11(a)(1), 84 Stat. 1704, which related to enforcement of aircraft emission standards, was transferred to section 7572 of this title.

Section 1857f–11, act July 14, 1955, ch. 360, title II, §233, as added Dec. 31, 1970, Pub. L. 91–604, §11(a)(1), 84 Stat. 1704, which related to State standards and controls regarding aircraft emissions, was transferred to section 7573 of this title.

Section 1857f–12, act July 14, 1955, ch. 360, title II, §234, as added Dec. 31, 1970, Pub. L. 91–604, §11(a)(1), 84 Stat. 1705, related to definitions concerning aircraft emissions standards, was transferred to section 7574 of this title.

SUBCHAPTER III—GENERAL PROVISIONS

Section 1857g, act July 14, 1955, ch. 360, title III, §301, formerly §8, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 400; renumbered title III, §301, Oct. 20, 1965, Pub. L. 89–272, title I, §101(4), 79 Stat. 992; amended Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 504; Dec. 31, 1970, Pub. L. 91–604, §§3(b)(2), 15(c)(2), 84 Stat. 1677, 1713, which related to administration of air pollution control, was transferred to section 7601 of this title.

Section 1857h, act July 14, 1955, ch. 360, title III, §302, formerly §9, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 400; renumbered title III, §302, Oct. 20, 1965, Pub. L. 89–272, title I, §101(4), 79 Stat. 992; amended Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 504; Dec. 31, 1970, Pub. L. 91–604, §15(a)(1), (c)(1), 84 Stat. 1710, 1713, which related to definitions concerning air pollution control, was transferred to section 7602 of this title.

Section 1857h–1, act July 14, 1955, ch. 360, title III, §303, as added Dec. 31, 1970, Pub. L. 91–604, §12(a), 84 Stat. 1705, which related to emergency powers of the Administrator, was transferred to section 7603 of this title.

Section 1857h–2, act July 14, 1955, ch. 360, title III, §304, as added Dec. 31, 1970, Pub. L. 91–604, §12(a), 84 Stat. 1706, which related to citizen suits, was transferred to section 7604 of this title.

Section 1857h–3, act July 14, 1955, ch. 360, title III, §305, as added Dec. 31, 1970, Pub. L. 91–604, §12(a), 84 Stat. 1707, which related to legal representation of the Administrator and appearance by the Attorney General, was transferred to section 7605 of this title.

Section 1857h–4, act July 14, 1955, ch. 360, title III, §306, as added Dec. 31, 1970, Pub. L. 91–604, §12(a), 84 Stat. 1707, which related to Federal procurement, was transferred to section 7606 of this title.

Section 1857h–5, act July 14, 1955, ch. 360, title III, §307, as added Dec. 31, 1970, Pub. L. 91–604, §12(a), 84 Stat. 1707; amended Nov. 18, 1971, Pub. L. 92–157, title III, §302(a), 85 Stat. 464; June 22, 1974, Pub. L. 93–319, §6(c), 88 Stat. 259, which related to administrative proceedings and judicial review, was transferred to section 7607 of this title.

Section 1857h–6, act July 4, 1955, ch. 360, title III, §308, as added Dec. 31, 1970, Pub. L. 91–604, §12(a), 84 Stat. 1708, which related to mandatory licensing, was transferred to section 7608 of this title.

Section 1857h–7, act July 14, 1955, ch. 360, title III, §309, as added Dec. 31, 1970, Pub. L. 91–604, §12(a), 84 Stat. 1709, which related to policy review, was transferred to section 7609 of this title.

Section 1857i, act July 14, 1955, ch. 360, title III, §310, formerly §10, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 401; renumbered title III, §303, Oct. 20, 1965, Pub. L. 89–272, title I, §101(4), 79 Stat. 992; amended Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 505; renumbered §310 and amended Dec. 31, 1970, Pub. L. 91–604, §§12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to application to other laws and nonduplication of appropriations, was transferred to section 7610 of this title.

Section 1857j, act July 14, 1955, ch. 360, title III, §311, formerly §11, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 401; renumbered title III, §304, Oct. 20, 1965, Pub. L. 89–272, title I, §101(4), 79 Stat. 992; amended Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 505; renumbered §311 and amended Dec. 31, 1970, Pub. L. 91–604, §§12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to records and audits, was transferred to section 7611 of this title.

Section 1857j–1, act July 14, 1955, ch. 360, title III, §312, formerly §305, as added Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 505; renumbered §312 and amended Dec. 31, 1970, Pub. L. 91–604, §§12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to cost studies, was transferred to section 7612 of this title.

Section 1857j–2, act July 14, 1955, ch. 360, title III, §313, formerly §306, as added Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 506; renumbered §313 and amended Dec. 31, 1970, Pub. L. 91–604, §§12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to additional reports to Congress, was transferred to section 7613 of this title.

Section 1857j–3, act July 14, 1955, ch. 360, title III, §314, formerly §307, as added Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 506; renumbered §314 and amended Dec. 31, 1970, Pub. L. 91–604, §§12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to labor standards, was transferred to section 7614 of this title.

Section 1857k, act July 14, 1955, ch. 360, title III, §315, formerly §12, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77 Stat. 401; renumbered title III, §305, Oct. 20, 1965, Pub. L. 89–272, title I, §101(4), 79 Stat. 992; renumbered §308 and amended Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 506; renumbered §315, Dec. 31, 1970, Pub. L. 91–604, §12(a), 84 Stat. 1705, which related to separability of provisions, was transferred to section 7615 of this title.

§1857*l*. Repealed. Pub. L. 95–95, title III, §306, Aug. 7, 1977, 91 Stat. 777

Section, act July 14, 1955, ch. 360, title III, §316, formerly §13, as added Dec. 17, 1963, Pub. L. 88–206, §1, 77

Stat. 401; renumbered title III, §306, and amended Oct. 20, 1965, Pub. L. 89–272, title I, §101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89–675, §2(a), 80 Stat. 954; renumbered §309 and amended Nov. 21, 1967, Pub. L. 90–148, §2, 81 Stat. 506; renumbered §316 and amended Dec. 31, 1970, Pub. L. 91–604, §§12(a), 13(b), 84 Stat. 1705, 1709; Apr. 9, 1973, Pub. L. 93–15, §1(c), 87 Stat. 11; June 22, 1974, Pub. L. 93–319, §13(c), 88 Stat. 265, authorized appropriations for air pollution control. See section 7626 of this title.

SUBCHAPTER IV—NOISE POLLUTION

§§ 1858, 1858a. Transferred

CODIFICATION

Section 1858, act July 14, 1955, ch. 360, title IV, §402, as added Dec. 31, 1970, Pub. L. 91–604, §14, 84 Stat. 1709, which established Office of Noise Abatement and Control and authorized investigation of noise and its effects on public health and welfare and a report to Congress on results of this investigation, was transferred to section 7641 of this title.

Section 1858a, act July 14, 1955, ch. 360, title IV, §403, as added Dec. 31, 1970, Pub. L. 91–604, §14, 84 Stat. 1710, which authorized appropriations concerning noise pollution, was transferred to section 7642 of this title.

CHAPTER 16—NATIONAL SCIENCE FOUNDATION

Sec.

§ 1861. Establishment; composition

There is established in the executive branch of the Government an independent agency to be

known as the National Science Foundation (hereinafter referred to as the ''Foundation''). The Foundation shall consist of a National Science Board (hereinafter referred to as the ''Board'') and a Director.

(May 10, 1950, ch. 171, § 2, 64 Stat. 149.)

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–368, § 1, Dec. 19, 2002, 116 Stat. 3034, provided that: ''This Act [enacting sections 1862n to 1862n–10 of this title, amending sections 1862i, 1862*l*, 1863, 1873, and 1885 of this title, enacting provisions set out as notes under sections 1862b, 1862*g*, 1862n, 1864, and 1885c of this title, and amending provisions set out as a note under section 1862k of this title] may be cited as the 'National Science Foundation Authorization Act of 2002'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–207, § 1, July 29, 1998, 112 Stat. 869, provided that: ''This Act [enacting sections 1862k to 1862m of this title, amending sections 1862, 1863, 1864, 1873, 1874, 1881a, 1881b, 1885b, 1885c, and 6686 of this title, and enacting provisions set out as notes under sections 1862k and 6686 of this title] may be cited as the 'National Science Foundation Authorization Act of 1998'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–476, § 1, Oct. 23, 1992, 106 Stat. 2297, provided that: ''This Act [enacting sections 1862h to 1862j of this title and amending section 1862 of this title] may be cited as the 'Scientific and Advanced-Technology Act of 1992'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–570, § 1, Oct. 31, 1988, 102 Stat. 2865, provided that: ''This Act [enacting sections 1862a to 1862g, 1870a, and 1881b of this title, amending sections 1863, 1873, 1874, and 1885c of this title and sections 3011 to 3013 of Title 20, Education, repealing former sections 1862a and 1862b of this title, enacting provisions set out as notes under sections 1861, 1875, and 7704 of this title and section 3911 of Title 20, and repealing provisions set out as a note under section 1861 of this title] may be cited as the 'National Science Foundation Authorization Act of 1988'.''

Pub. L. 100–570, title II, § 201, Oct. 31, 1988, 102 Stat. 2873, provided that: ''This title [enacting sections 1862a to 1862d of this title, repealing former sections 1862a and 1862b of this title, and repealing provisions set out as a note under section 1861 of this title] may be cited as the 'Academic Research Facilities Modernization Act of 1988'.''

Pub. L. 100–418, title VI, § 6401, Aug. 23, 1988, 102 Stat. 1542, which provided that subtitle E (§§ 6401–6403) of title VI of Pub. L. 100–418, enacting sections 1862a and 1862b of this title, was to be cited as the ''National Science Foundation University Infrastructure Act of 1988'', was repealed by Pub. L. 100–570, title II, § 206, Oct. 31, 1988, 102 Stat. 2878.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–383, § 1, Aug. 21, 1986, 100 Stat. 813, provided: ''That this Act [amending sections 1862, 1864a, 1869, and 1870 of this title and section 5316 of Title 5, Government Organization and Employees, repealing sections 1876 to 1879 of this title, and enacting provisions set out as notes under sections 1885a and 6614 of this title] may be cited as the 'National Science Foundation Authorization Act for Fiscal Year 1987'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–159, title I, § 101, Nov. 22, 1985, 99 Stat. 887, provided that: ''This title [enacting section 1886 of this title, amending sections 1862, 1863, 1864, 1868 to 1872, 1873, 1874, 1881a, 1882, and 1885 to 1885d of this title, repealing sections 1873a and 1884 of this title, and amending provisions set out as notes under sections 1861 and 1882 of this title] may be cited as the 'National Science Foundation Authorization Act for Fiscal Year 1986'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–516, § 1, Dec. 12, 1980, 94 Stat. 3007, as amended by Pub. L. 99–159, title I, § 111(a), Nov. 22, 1985, 99 Stat. 892, provided: ''That this Act [enacting sections 1885 to 1885d of this title, amending sections 1863, 1874, 1875, 1881, and 1881a of this title, and enacting provisions set out as notes under sections 1861, 1864, 1866, and 1885 of this title] may be cited as the 'National Science Foundation Authorization and Science and Engineering Equal Opportunities Act'.''

Pub. L. 96–516, § 31, Dec. 12, 1980, 94 Stat. 3010, as amended by Pub. L. 99–159, title I, § 111(b)(1), Nov. 22, 1985, 99 Stat. 892, provided that: ''This part [part B (§§ 31–39), enacting sections 1885 to 1885d of this title, and provisions set out as notes under section 1885 of this title] may be cited as the 'Science and Engineering Equal Opportunities Act'.''

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–99, § 1, Aug. 15, 1977, 91 Stat. 831, provided: ''That this Act [enacting sections 1869b, 1873a, and 1884 of this title, amending sections 1862, 1863, 1873, and 1882 of this title, and enacting provisions set out as a note under section 1862 of this title] may be cited as the 'National Science Foundation Authorization Act, Fiscal Year 1978'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–471, § 1, Oct. 11, 1976, 90 Stat. 2053, provided: ''That this Act [enacting sections 1882 and 1883 of this title, amending section 1863 of this title, and enacting provisions set out as notes under sections 1862, 1864, 1873, and 5820 of this title] may be cited as the 'National Science Foundation Authorization Act, 1977'.''

SHORT TITLE

Section 1 of act May 10, 1950, provided: ''That this Act [enacting this chapter] may be cited as the 'National Science Foundation Act of 1950'.''

TRANSFER OF FUNCTIONS

Office of Science and Technology, including offices of Director and Deputy Director, provided for by sections 1 and 2 of Reorg. Plan No. 2 of 1962, abolished and all functions vested by law in Office of Science and Technology or Director or Deputy Director of Office of Science and Technology transferred to Director of National Science Foundation by sections 2 and 3(a)(5) of Reorg. Plan No. 1 of 1973, eff. July 1, 1973, set out in the Appendix to Title 5, Government Organization and Employees.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION

Amendments by Pub. L. 90–407, July 18, 1868, 82 Stat. 360, intended to continue in effect the existing offices, procedures, and organization of the Foundation as provided by this chapter, part II of Reorg. Plan No. 2 of 1962 [set out below], and Reorg. Plan, No. 5 of 1965 [set out in Appendix to Title 5, Government Organization and Employees], but on and after July 18, 1968, part II of Reorg. Plan No. 2 of 1962, and Reorg. Plan No. 5 of 1965, as being of no force or affect, and nothing in Pub. L. 90–407 as altering or affecting any transfers of functions made by part I of Reorg. Plan No. 2 of 1962, see section 16 of Pub. L. 90–407, set out as Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation note under section 1862 of this title.

REORGANIZATION PLAN NO. 2 OF 1962

Eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, as amended Pub. L. 88–426, title III, § 305(41), Aug. 14, 1964, 78 Stat. 427; Pub. L. 94–282, title V, § 502, May 11, 1976, 90 Stat. 472

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 29, 1962, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

CERTAIN SCIENCE AGENCIES AND FUNCTIONS

PART I—OFFICE OF SCIENCE AND TECHNOLOGY

Sec. 1. [Repealed. Pub. L. 94–282, title V, §502, May 11, 1976, 90 Stat. 472. Section established, in Executive Office of the President, the Office of Science and Technology.]

Sec. 2. [Repealed. Pub. L. 94–282, title V, §502, May 11, 1976, 90 Stat. 472. Section as amended by Pub. L. 88–426, title III, §305(41)(A), (B), Aug. 14, 1964, 78 Stat. 427, 428, authorized appointment of Director and Deputy Director of Office of Science and Technology by the President by and with the advice and consent of the Senate.]

Sec. 3. [Repealed. Pub. L. 94–282, title V, §502, May 11, 1976, 90 Stat. 472. Section transferred to Director of the Office of Science and Technology, from National Science Foundation, certain functions formerly conferred upon the Foundation.]

Sec. 4. [Repealed. Pub. L. 94–282, title V, §502, May 11, 1976, 90 Stat. 472. Section authorized Director of the Office of Science and Technology to appoint employees necessary for work of the Office under classified civil service and to fix their compensation in accordance with the classification laws.]

PART II—NATIONAL SCIENCE FOUNDATION

SECTION 21. EXECUTIVE COMMITTEE

(a) There is hereby established the Executive Committee of the National Science Board, hereafter in this Part referred to as the Executive Committee, which shall be composed of five voting members. Four of the members shall be elected as hereinafter provided. The Director provided for in section 22 of this reorganization plan, ex officio, shall be the fifth member and the chairman of the Executive Committee.

(b) At its annual meeting held in 1964 and at each of its succeeding annual meetings the National Science Board, hereafter in this Part referred to as the Board, shall elect two of its members as members of the Executive Committee, and the Executive Committee members so elected shall hold office for two years from the date of their election. Any person who has been a member of the Executive Committee (established by this reorganization plan) for six consecutive years shall thereafter be ineligible for service as a member thereof during the two-year period following the expiration of such sixth year. For the purposes of this subsection, the period between any two consecutive annual meetings of the Board shall be deemed to be one year.

(c) At its first meeting held after the effective date of this section the Board shall elect four of its members as members of the Executive Committee. As designated by the Board, two of the Executive Committee members so elected shall hold office as such members until the date of the annual meeting of the Board held in 1964 and the other two members so elected shall hold such office until the annual meeting of the Board held in 1965.

(d) Any person elected as a member of the Executive Committee to fill a vacancy occurring prior to the expiration of the term for which his predecessor was elected shall be elected for the remainder of such term.

(e) The functions conferred upon the Executive Committee now existing under the provisions of the National Science Foundation Act of 1950 [42 U.S.C. 1861 et seq.], by the provisions of section 6 of the National Science Foundation Act of 1950 (42 U.S.C. 1865) or otherwise, are hereby transferred to the Executive Committee established by the provisions of this Part; and the authority of the National Science Board to assign its powers and functions to the now-existing Executive Committee, and statutory limitations upon such assignment, shall hereafter be applicable to the Executive Committee established by the provisions of this Part.

SEC. 22. DIRECTOR

(a) There is hereby established in the National Science Foundation a new office with the title of Director of the National Science Foundation. The Director of the National Science Foundation, hereafter in this Part referred to as the Director, shall be appointed by the President by and with the advice and consent of the Senate. Before any person is appointed as Director the President shall afford the Board an opportunity to make recommendations to him with respect to such appointment. The Director shall serve for a term of six years unless sooner removed by the President. The Director shall not engage in any business, vocation or employment other than that of serving as such Director, nor shall he, except with the approval of the Board, hold any office in, or act in any capacity for, any organization, agency, or institution with which the Foundation makes any contract or other arrangement under the National Science Foundation Act of 1950 [42 U.S.C. 1861 et seq.].

(b) Except to the extent inconsistent with the provisions of section 23(b)(2) of this reorganization plan, all functions of the office of Director of the National Science Foundation abolished by the provisions of 23(a)(2) hereof are hereby transferred to the office of Director established by the provisions of subsection (a) of this section.

(c) The Director, ex officio, shall be an additional member of the Board and, except in respect of compensation and tenure, shall be coordinate with other members of the Board. He shall be a voting member of the Board and shall be eligible for election by the Board as chairman or vice chairman of the Board. [As amended Pub. L. 88–426, title III, §305(41)(C), Aug. 14, 1964, 78 Stat. 428.]

SEC. 23. ABOLITIONS

(a) The following agencies, now existing under the National Science Foundation Act of 1950 [42 U.S.C. 1861 et seq.], are hereby abolished:

(1) The Executive Committee of the National Science Board (section 6 of Act; 42 U.S.C. 1865).

(2) The office of Director of the National Science Foundation (sections 2 and 5 of Act; 42 U.S.C. 1861, 1864).

(b) There are also hereby abolished:

(1) The functions conferred upon the National Science Board by that part of section 6(a) of the National Science Foundation Act of 1950 (42 U.S.C. 1865(a)) which reads ''The Board is authorized to appoint from among its members an Executive Committee''.

(2) The functions of the Director of the National Science Foundation provided for in sections 4(a) and 5(a) of the National Science Foundation Act of 1950 (42 U.S.C. 1863(a), 1864(a)) with respect to serving as a nonvoting member of the Board and his functions with respect to serving as a nonvoting member of the Executive Committee provided for in section 6(b) of that Act (42 U.S.C. 1865(b)).

(3) So much of the functions conferred upon divisional committees by the provisions of section 8(d) of the National Science Foundation Act of 1950 (42 U.S.C. 1867(d)) as consists of making recommendations to, and advising and consulting with, the Board.

(c) The provisions of sections 23(a)(1) and 23(b)(1) hereof shall become effective on the date of the first meeting of the Board held after the effective date of the other provisions of this reorganization plan.

PART III. TRANSITIONAL PROVISIONS

SECTION 31. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available, in connection with the functions trans-

ferred by the provisions of section 3 of this reorganization plan as the Director of the Bureau of the Budget shall determine shall be transferred to the Office of Science and Technology at such time or times as the said Director shall direct.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 32. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of Part I of the reorganization plan holds a position in the Executive Office of the President to act as Director of the Office of Science and Technology until the office of Director is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may authorize any person who immediately prior to the effective date of section 22 of this reorganization plan holds any office existing under the provisions of the National Science Foundation Act of 1950 [42 U.S.C. 1861 et seq.] to act as Director of the National Science Foundation until the Office of Director is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

[Amendments by Pub. L. 90–407, July 18, 1968, 82 Stat. 360, intended to continue in effect the existing offices, procedures, and organization of the National Science Foundation as provided by this chapter, part II of Reorg. Plan No. 2 of 1962, and Reorg. Plan No. 5 of 1965, but on and after July 18, 1968, part II of Reorg. Plan No. 2 of 1962, and Reorg. Plan No. 5 of 1965, as being of no force or effect, and nothing in Pub. L. 90–407 as altering or affecting any transfers of functions made by part I of Reorg. Plan No. 2 of 1962, see section 16 of Pub. L. 90–407, set out as Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation note under section 1862 of this title.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 2 of 1962, prepared in accordance with the provisions of the Reorganization Act of 1949, as amended, and providing for certain reorganizations in the field of science and technology.

Part I of the reorganization plan establishes the Office of Science and Technology as a new unit within the Executive Office of the President; places at the head thereof a Director appointed by the President by and with the advice and consent of the Senate and makes provision for a Deputy Director similarly appointed; and transfers to the Director certain functions of the National Science Foundation under sections 3(a)(1) and 3(a)(6) of the National Science Foundation Act of 1950.

The new arrangements incorporated in part I of the reorganization plan will constitute an important development in executive branch organization for science and technology. Under those arrangements the President will have permanent staff resources capable of advising and assisting him on matters of national policy affected by or pertaining to science and technology. Considering the rapid growth and far-reaching scope of Federal activities in science and technology, it is imperative that the President have adequate staff support in developing policies and evaluating programs in order to assure that science and technology are used most effectively in the interests of national security and general welfare.

To this end it is contemplated that the Director will assist the President in discharging the responsibility of the President for the proper coordination of Federal science and technology functions. More particularly, it is expected that he will advise and assist the President as the President may request with respect to—

(1) Major policies, plans, and programs of science and technology of the various agencies of the Federal Government, giving appropriate emphasis to the relationship of science and technology to national security and foreign policy, and measures for furthering science and technology in the Nation.

(2) Assessment of selected scientific and technical developments and programs in relation to their impact on national policies.

(3) Review, integration, and coordination of major Federal activities in science and technology, giving due consideration to the effects of such activities on non-Federal resources and institutions.

(4) Assuring that good close relations exist with the Nation's scientific and engineering communities so as to further in every appropriate way their participation in strengthening science and technology in the United States and the free world.

(5) Such other matters consonant with law as may be assigned by the President to the Office.

The ever-growing significance and complexity of Federal programs in science and technology have in recent years necessitated the taking of several steps for improving the organizational arrangements of the executive branch in relation to science and technology:

(1) The National Science Foundation was established in 1950. The Foundation was created to meet a widely recognized need for an organization to develop and encourage a national policy for the promotion of basic research and education in the sciences, to support basic research, to evaluate research programs undertaken by Federal agencies, and to perform related functions.

(2) The Office of the Special Assistant to the President for Science and Technology was established in 1957. The Special Assistant serves as Chairman of both the President's Science Advisory Committee and the Federal Council for Science and Technology, mentioned below.

(3) At the same time, the Science Advisory Committee, composed of eminent non-Government scientists and engineers, and located within the Office of Defense Mobilization, was reconstituted in the White House Office as the President's Science Advisory Committee.

(4) The Federal Council for Science and Technology, composed of policy officials of the principal agencies engaged in scientific and technical activities, was established in 1959.

The National Science Foundation has proved to be an effective instrument for administering sizable programs in support of basic research and education in the sciences and has set an example for other agencies through the administration of its own programs. However, the Foundation, being at the same organizational level as other agencies, cannot satisfactorily coordinate Federal science policies or evaluate programs of other agencies. Science policies, transcending agency lines, need to be coordinated and shaped at the level of the Executive Office of the President drawing upon many resources both within and outside of Government. Similarly, staff efforts at that higher level are required for the evaluation of Government programs in science and technology.

Thus, the further steps contained in part I of the reorganization plan are now needed in order to meet most effectively new and expanding requirements brought about by the rapid and far-reaching growth of the Government's research and development programs. These requirements call for the further strengthening of science organization at the Presidential level and for the adjustment of the Foundation's role to reflect

changed conditions. The Foundation will continue to originate policy proposals and recommendations concerning the support of basic research and education in the sciences, and the new Office will look to the Foundation to provide studies and information on which sound national policies in science and technology can be based.

Part I of the reorganization plan will permit some strengthening of the staff and consultant resources now available to the President in respect of scientific and technical factors affecting executive branch policies and will also facilitate communication with the Congress.

Part II of the reorganization plan provides for certain reorganizations within the National Science Foundation which will strengthen the capability of the Director of the Foundation to exert leadership and otherwise further the effectiveness of administration of the Foundation. Specifically:

(1) There is established a new office of Director of the National Science Foundation and that Director, ex officio, is made a member of the National Science Board on a basis coordinate with that of other Board members.

(2) There is substituted for the now-existing Executive Committee of the National Science Board a new Executive Committee composed of the Director of the National Science Foundation, ex officio, as a voting member and Chairman of the Committee, and of four other members elected by the National Science Board from among its appointive members.

(3) Committees advisory to each of the divisions of the Foundation will make their recommendations to the Director only rather than to both the Director and the National Science Board.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 2 of 1962 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I have found and hereby declare that it is necessary to include in the reorganization plan, by reason of reorganizations made thereby, provisions for the appointment and compensation of the Director and Deputy Director of the Office of Science and Technology and of the Director of the National Science Foundation. The rate of compensation fixed for each of these officers is that which I have found to prevail in respect of comparable officers in the executive branch of the Government.

The functions abolished by the provisions of section 23(b) of the reorganization plan are provided for in sections 4(a), 5(a), 6(a), 6(b), and 8(d) of the National Science Foundation Act of 1950.

The taking effect of the reorganizations included in the reorganization plan will provide sound organizational arrangements and will make possible more effective and efficient administration of Government programs in science and technology. It is, however, impracticable to itemize at this time the reductions in expenditures which it is probable will be brought about by such taking effect.

I recommend that the Congress allow the reorganization plan to become effective.

JOHN F. KENNEDY.

THE WHITE HOUSE, March 29, 1962.

§ 1862. Functions

(a) Initiation and support of studies and programs; scholarships; current register of scientific and engineering personnel

The Foundation is authorized and directed—

(1) to initiate and support basic scientific research and programs to strengthen scientific research potential and science education programs at all levels in the mathematical, physical, medical, biological, social, and other sciences, and to initiate and support research fundamental to the engineering process and programs to strengthen engineering research potential and engineering education programs at all levels in the various fields of engineering, by making contracts or other arrangements (including grants, loans, and other forms of assistance) to support such scientific, engineering, and educational activities and to appraise the impact of research upon industrial development and upon the general welfare;

(2) to award, as provided in section 1869 of this title, scholarships and graduate fellowships for study and research in the sciences or in engineering;

(3) to foster the interchange of scientific and engineering information among scientists and engineers in the United States and foreign countries;

(4) to foster and support the development and use of computer and other scientific and engineering methods and technologies, primarily for research and education in the sciences and engineering;

(5) to evaluate the status and needs of the various sciences and fields of engineering as evidenced by programs, projects, and studies undertaken by agencies of the Federal Government, by individuals, and by public and private research groups, employing by grant or contract such consulting services as it may deem necessary for the purpose of such evaluations; and to take into consideration the results of such evaluations in correlating the research and educational programs undertaken or supported by the Foundation with programs, projects, and studies undertaken by agencies of the Federal Government, by individuals, and by public and private research groups;

(6) to provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies of the Federal Government;

(7) to initiate and maintain a program for the determination of the total amount of money for scientific and engineering research, including money allocated for the construction of the facilities wherein such research is conducted, received by each educational institution and appropriate nonprofit organization in the United States, by grant, contract, or other arrangement from agencies of the Federal Government, and to report annually thereon to the President and the Congress; and

(8) to take a leading role in fostering and supporting research and education activities to improve the security of networked information systems.

(b) Contracts, grants, loans, etc., for scientific and engineering activities; financing of programs

The Foundation is authorized to initiate and support specific scientific and engineering activities in connection with matters relating to international cooperation, national security, and the effects of scientific and engineering ap-

plications upon society by making contracts or other arrangements (including grants, loans, and other forms of assistance) for the conduct of such activities. When initiated or supported pursuant to requests made by any other Federal department or agency, including the Office of Technology Assessment, such activities shall be financed whenever feasible from funds transferred to the Foundation by the requesting official as provided in section 1873(f) of this title, and any such activities shall be unclassified and shall be identified by the Foundation as being undertaken at the request of the appropriate official.

(c) Scientific and engineering research programs at academic and other nonprofit institutions; applied scientific and engineering research programs by Presidential directive; employment of consulting services; coordination of activities

In addition to the authority contained in subsections (a) and (b) of this section, the Foundation is authorized to initiate and support scientific and engineering research, including applied research, at academic and other nonprofit institutions. When so directed by the President, the Foundation is further authorized to support, through other appropriate organizations, applied scientific research and engineering research relevant to national problems involving the public interest. In exercising the authority contained in this subsection, the Foundation may employ by grant or contract such consulting services as it deems necessary, and shall coordinate and correlate its activities with respect to any such problem with other agencies of the Federal Government undertaking similar programs in that field.

(d) Promotion of research and education in science and engineering

The Board and the Director shall recommend and encourage the pursuit of national policies for the promotion of research and education in science and engineering.

(e) Balancing of research and educational activities in the sciences and engineering

In exercising the authority and discharging the functions referred to in the foregoing subsections, it shall be an objective of the Foundation to strengthen research and education in the sciences and engineering, including independent research by individuals, throughout the United States, and to avoid undue concentration of such research and education.

(f) Annual report to the President and Congress

The Foundation shall render an annual report to the President for submission on or before the 15th day of April of each year to the Congress summarizing the activities of the Foundation and making such recommendations as it may deem appropriate. Such report shall include information as to the acquisition and disposition by the Foundation of any patents and patent rights.

(g) Support of access to computer networks

In carrying out subsection (a)(4) of this section, the Foundation is authorized to foster and support access by the research and education communities to computer networks which may be used substantially for purposes in addition to research and education in the sciences and engineering, if the additional uses will tend to increase the overall capabilities of the networks to support such research and education activities.

(May 10, 1950, ch. 171, §3, 64 Stat. 149; Pub. L. 85–510, §1, July 11, 1958, 72 Stat. 353; Pub. L. 86–232, §1, Sept. 8, 1959, 73 Stat. 467; Pub. L. 90–407, §1, July 18, 1968, 82 Stat. 360; Pub. L. 92–372, §8, Aug. 10, 1972, 86 Stat. 528; Pub. L. 92–484, §10(b), Oct. 13, 1972, 86 Stat. 802; Pub. L. 94–273, §11(3), Apr. 21, 1976, 90 Stat. 378; Pub. L. 95–99, §12(a), formerly §14(a), Aug. 15, 1977, 91 Stat. 835, renumbered §12(a), Pub. L. 99–159, title I, §109(h), Nov. 22, 1985, 99 Stat. 890; Pub. L. 99–159, title I, §§109(e)(2), 110(a)(1)–(11), Nov. 22, 1985, 99 Stat. 890, 891; Pub. L. 99–383, §7(a), Aug. 21, 1986, 100 Stat. 814; Pub. L. 102–476, §4, Oct. 23, 1992, 106 Stat. 2300; Pub. L. 102–588, title II, §217, Nov. 4, 1992, 106 Stat. 5117; Pub. L. 105–207, title II, §202(e), July 29, 1998, 112 Stat. 875; Pub. L. 107–305, §7, Nov. 27, 2002, 116 Stat. 2375.)

AMENDMENTS

2002—Subsec. (a)(8). Pub. L. 107–305 added par. (8).

1998—Subsec. (g). Pub. L. 105–207 struck out the subsec. (g) enacted by Pub. L. 102–588. See 1992 Amendment note below.

1992—Subsec. (g). Pub. L. 102–476 and Pub. L. 102–588 amended section identically, adding subsec. (g).

1986—Subsec. (a)(6). Pub. L. 99–383 amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''to maintain a current register of scientific and engineering personnel, and in other ways to provide a central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and engineering resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal Government; and''.

1985—Subsec. (a)(1). Pub. L. 99–159, §110(a)(1), struck out ''engineering,'' after ''biological,'' and inserted provisions relating to research fundamental to the engineering process, engineering programs, and engineering activities.

Subsec. (a)(2). Pub. L. 99–159, §110(a)(2), substituted ''for study and research in the sciences or in engineering'' for ''in the mathematical, physical, medical, biological, engineering, social, and other sciences''.

Subsec. (a)(3). Pub. L. 99–159, §110(a)(3), inserted applicability to engineering and engineers.

Subsec. (a)(4). Pub. L. 99–159, §110(a)(4), inserted applicability to engineering.

Subsec. (a)(5). Pub. L. 99–159, §110(a)(5), inserted applicability to fields of engineering.

Subsec. (a)(6). Pub. L. 99–159, §110(a)(6), substituted ''engineering'' for ''technical'' in two places.

Subsec. (a)(7). Pub. L. 99–159, §110(a)(7), inserted applicability to engineering.

Subsec. (b). Pub. L. 99–159, §§109(e)(2), 110(a)(8), inserted reference to engineering in two places and substituted ''1873(f)'' for ''1873(g)''.

Subsec. (c). Pub. L. 99–159, §110(a)(9), inserted applicability to engineering research.

Subsec. (d). Pub. L. 99–159, §110(a)(10), substituted ''research and education in science and engineering'' for ''basic research and education in the sciences''.

Subsec. (e). Pub. L. 99–159, §110(11), inserted applicability to engineering.

1977—Subsec. (e). Pub. L. 95–99 substituted ''an objective'' for ''one of the objectives''.

1976—Subsec. (f). Pub. L. 94–273 substituted ''April'' for ''January''.

1972—Subsec. (a)(1). Pub. L. 92–372 inserted support of science education programs at all levels to the func-

tions of the Foundation and substituted ''scientific and educational activities'' for ''scientific activities''.

Subsec. (b). Pub. L. 92–484 inserted provisions authorizing the Foundation to initiate and support specific scientific activities in connection with matters relating to the effects of scientific applications upon society, and substituted provisions relating to the initiation or support pursuant to requests of activities by any other Federal department or agency, including the Office of Technology Assessment, for provisions relating to the initiation or support pursuant to requests of activities by the Secretary of State or Secretary of Defense.

1968—Subsec. (a)(1). Pub. L. 90–407 redesignated par. (2) as (1) and added social sciences to the enumerated list of sciences. Former par. (1) redesignated subsec. (d).

Subsec. (a)(2). Pub. L. 90–407 redesignated par. (4) as (2) and added social sciences to the enumerated list of sciences. Former par. (2) redesignated (1).

Subsec. (a)(3). Pub. L. 90–407 redesignated par. (5) as (3). Former par. (3) redesignated subsec. (b).

Subsec. (a)(4). Pub. L. 90–407 added par. (4). Former par. (4) redesignated subsec. (a)(2).

Subsec. (a)(5). Pub. L. 90–407 redesignated par. (6) as (5) and provided for the employment of consulting services, by grant or contract, to assist in the evaluation of the status and needs of the various sciences as evidenced by the programs and studies undertaken by agencies of the government, by individuals, and by public and private research groups, and provided for the consideration of the results of such evaluations in the correlation of the Foundation's programs with those undertaken by agencies of the government, as well as those undertaken by individuals and by public and private research groups. Former par. (5) redesignated (3).

Subsec. (a)(6). Pub. L. 90–407 redesignated par. (8) as (6) and provided that the register of scientific and technical personnel shall be current, and authorized the Foundation to analyze and interpret the collected data on the availability of, and the current and projected need for, scientific and technical resources in the United States and to make such information available to other agencies of the government for policy formulation. Former par. (6) redesignated (5).

Subsec. (a)(7). Pub. L. 90–407 added par. (7). Former par. (7), which provided for the establishment of such special commissions as the Board may from to time deem necessary for the purposes of this chapter, was struck out.

Subsec. (a)(8). Pub. L. 90–407 redesignated par. (8) as (6).

Subsec. (a)(9). Pub. L. 90–407 struck out par. (9) which authorized the Foundation to initiate and support a program of study, research, and evaluation in the field of weather modification, with particular attention to areas experiencing floods, drought, etc., and to report annually to the President and the Congress thereon.

Subsec. (b). Pub. L. 90–407 redesignated former subsec. (a)(3) as (b) and substituted provisions authorizing the Foundation to initiate and support specific scientific activities in matters related to international cooperation or national security for provisions authorizing the Foundation to initiate and support only scientific research activities, only in matters related to national defense and only when requested to do so by the Secretary of Defense, and inserted provisions specifying the manner of financing such scientific activities. Former subsec. (b) redesignated (e).

Subsec. (c). Pub. L. 90–407 added subsec. (c). Former subsec. (c) redesignated (f).

Subsec. (d). Pub. L. 90–407 redesignated former subsec. (a)(1) as (d) and substituted provisions authorizing the Board and the Director to recommend and encourage national policies promoting basic research and education in the sciences for provisions authorizing and directing the Foundation to develop and encourage such policies.

Subsec. (e). Pub. L. 90–407 redesignated former subsec. (b) as (e), substituted ''the foregoing subsections'' for ''subsection (a) of this section'', ''strengthen research'' for ''strengthen basic research'', and struck out reference to the territories and possessions of the United States.

Subsec. (f). Pub. L. 90–407 redesignated former subsec. (c) as (f) and struck out provision requiring the report to include the minority views and recommendations if any, of members of the Board.

1959—Subsec. (a)(2). Pub. L. 86–232 clarified the Foundation's authority to support programs to strengthen scientific research potential.

1958—Subsec. (a)(9). Pub. L. 85–510 added par. (9).

TRANSFER OF NATIONAL SCIENCE FOUNDATION PROGRAMS

For transfer of all programs relating to science education of the National Science Foundation or the Director thereof under this chapter, with certain exceptions, to the Secretary of Education, see section 3444 of Title 20, Education.

NSF STUDY AND REPORT ON THE ''DIGITAL DIVIDE''

Pub. L. 106–313, title I, §109, Oct. 17, 2000, 114 Stat. 1255, provided that:

''(a) STUDY.—The National Science Foundation shall conduct a study of the divergence in access to high technology (commonly referred to as the 'digital divide') in the United States.

''(b) REPORT.—Not later than 18 months after the date of enactment of this Act [Oct. 17, 2000], the Director of the National Science Foundation shall submit a report to Congress setting forth the findings of the study conducted under subsection (a).''

IMPROVING UNITED STATES UNDERSTANDING OF SCIENCE, ENGINEERING, AND TECHNOLOGY IN EAST ASIA

Pub. L. 105–244, title VIII, §831, Oct. 7, 1998, 112 Stat. 1820, provided that:

''(a) ESTABLISHMENT.—The Director of the National Science Foundation is authorized, beginning in fiscal year 2000, to carry out an interdisciplinary program of education and research on East Asian science, engineering, and technology. The Director shall carry out the interdisciplinary program in consultation with the Secretary of Education.

''(b) PURPOSES.—The purposes of the program established under this section shall be to—

''(1) increase understanding of East Asian research, and innovation for the creative application of science and technology to the problems of society;

''(2) provide scientists, engineers, technology managers, and students with training in East Asian languages, and with an understanding of research, technology, and management of innovation, in East Asian countries;

''(3) provide program participants with opportunities to be directly involved in scientific and engineering research, and activities related to the management of scientific and technological innovation, in East Asia; and

''(4) create mechanisms for cooperation and partnerships among United States industry, universities, colleges, not-for-profit institutions, Federal laboratories (within the meaning of section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6))), and government, to disseminate the results of the program assisted under this section for the benefit of United States research and innovation.

''(c) PARTICIPATION BY FEDERAL SCIENTISTS, ENGINEERS, AND MANAGERS.—Scientists, engineers, and managers of science and engineering programs in Federal agencies and the Federal laboratories shall be eligible to participate in the program assisted under this section on a reimbursable basis.

''(d) REQUIREMENT FOR MERIT REVIEW.—Awards made under the program established under this section shall only be made using a competitive, merit-based review process.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $10,000,000 for fiscal year 2000.''

STATUS OF SCIENTIFIC INSTRUMENTATION; CURRENT AND PROJECTED NEEDS FOR SCIENTIFIC AND TECHNOLOGICAL INSTRUMENTATION; DEVELOPMENT OF INDICES, CORRELATES, OR OTHER SUITABLE MEASURES OR INDICATORS

Pub. L. 96–44, § 7, Aug. 2, 1979, 93 Stat. 334, provided that: ''In partial fulfillment of the established statutory requirement that the National Science Foundation evaluate the status of and current and projected need for scientific resources (section 3(a)(5) and (6) of Public Law 81–507, as amended [subsec. (a)(5) and (6) of this section]), the National Science Foundation shall develop indices, correlates, or other suitable measures or indicators of the status of scientific instrumentation in the United States and of the current and projected need for scientific and technological instrumentation.''

FLOOD HAZARD MITIGATION STUDY

Pub. L. 96–44, § 8, Aug. 2, 1979, 93 Stat. 334, directed National Science Foundation to conduct a Flood Hazard Mitigation Study and report to Congress with specific program recommendations by end of fiscal year 1980.

AUTHORIZED USE OF FUNDS UNDER SCIENCE AND SOCIETY PROGRAM

Section 5 of Pub. L. 95–99 provided that:

''(a) From the funds authorized under the program 'Science and Society', the National Science Foundation is authorized to provide support which is designed to—

''(1) improve public understanding of public policy issues involving science and technology;

''(2) facilitate the participation of qualified scientists and engineers and of undergraduate and graduate students in public activities aimed at the resolution of public policy issues having significant scientific and technical aspects; and

''(3) assist nonprofit, citizens, and bona fide public interest groups to acquire necessary scientific and technical expertise in order to improve their comprehension of scientific and technical aspects of public policy issues.

''(b) Awards made pursuant to this section shall, to the extent feasible, include support for—

''(1) qualified scientists and engineers to work on public policy issues with significant scientific and technical components in conjunction with units of State and local government, nonprofit organizations, or bona fide public interest groups;

''(2) internship programs for science and engineering undergraduate or graduate students to work on public policy issues with significant scientific and technical components in conjunction with units of State and local government, nonprofit organizations, or bona fide public interest groups as part of their academic training;

''(3) forums, conferences, and workshops on public policy issues with significant scientific and technical components;

''(4) training in the presentation of scientific and technical studies in a manner which (A) improves public understanding of the ways in which science and technology influence contemporary life, (B) improves public access to the results of scientific and technical research, (C) encourages and facilitates interaction between laypersons and scientists on public issues with important scientific and technological components, and (D) increases public knowledge and understanding of the ethical and value implications of scientific and technological developments;

''(5) new and existing programs using radio or television to increase public understanding of public policy issues with significant scientific and technical components; and

''(6) bona fide public interest groups to acquire necessary scientific and technical expertise relating to the scientific and technical aspects of public policy issues and to enable such groups to bring together in appropriate forums experts whose research has been directed to the resolution of such issues.''

ESTABLISHMENT OF ''SCIENCE FOR CITIZENS PROGRAM'' CONDUCTED IN CONJUNCTION WITH ''PUBLIC UNDERSTANDING OF SCIENCE PROGRAM''

Pub. L. 94–471, § 5, Oct. 11, 1976, 90 Stat. 2054, provided that:

''(a) The National Science Foundation is authorized and directed to conduct an experimental 'Science for Citizens Program' and an augmented Public Understanding of Science Program under which funds will be available for pilot projects to:

''(1) improve public understanding of science, engineering and technology and their impact on public policy issues;

''(2) facilitate the participation of experienced scientists and engineers as well as graduate and undergraduate students in helping the public understand science, engineering and technology and their impact on public policies; and

''(3) assist nationally recognized professional societies and groups serving important public purposes in conducting a limited number of forums, conferences, and workshops to increase public understanding of science and technology, and of their impact on public policy issues, after consideration of the following eligibility factors:

''(A) the extent to which the proposal of the society or group will contribute to the development of facts, issues, and arguments relevant to public policy issues having significant scientific and technical aspects, and

''(B) the ability of the society or group, using its own resources, to conduct such forums, conferences, and workshops.

''(b) One or more review panels shall be established for the purpose of evaluating applications for awards under this section. The membership of each review panel shall have balanced representation from the scientific and nonscientific communities and the public and private sectors.

''(c) No contract, grant or other arrangement shall be made under this Section without the prior approval of the National Science Board.

''(d) To assist the Congress in evaluating activities initiated pursuant to this Section, the Director of the National Science Foundation, in consultation with a review panel having a balanced representation from the scientific and nonscientific community and the public and private sectors, is directed to prepare a comprehensive analysis and assessment of such activities to be submitted to the House Committee on Science and Technology and the Senate Committee on Labor and Public Welfare [now Committee on Health, Education, Labor, and Pensions], not later than October 31, 1977. An interim report is required no later than March 1, 1977.''

DEVELOPMENT OF PROGRAM PLAN FOR CONTINUING EDUCATION IN SCIENCE AND ENGINEERING

Section 6 of Pub. L. 94–471 required the National Science Foundation to develop a program plan for continuing education in science and engineering and, not later than Oct. 31, 1977, provide specific committees of the House of Representatives and Senate a report on the plan developed with recommendations for implementation in fiscal year 1978.

DENIAL OF FINANCIAL ASSISTANCE TO CAMPUS DISRUPTERS

Section 7 of Pub. L. 93–96, Aug. 16, 1973, 87 Stat. 316, provided that:

''(a) If an institution of higher education determines, after affording notice and opportunity for hearing to an individual attending, or employed by, such institution, that such individual has been convicted by any court of

record of any crime which was committed after the date of enactment of this Act [Aug. 16, 1973] and which involved the use of (or assistance to others in the use of) force, disruption, or the seizure of property under control of any institution of higher education to prevent officials or students in such institution from engaging in their duties or pursuing their studies, and that such crime was of a serious nature and contributed to a substantial disruption of the administration of the institution with respect to which such crime was committed, then the institution which such individual attends, or is employed by, shall deny for a period of two years any further payment to, or for the direct benefit of, such individual under any of the programs specified in subsection (c). If an institution denies an individual assistance under the authority of the preceding sentence of this subsection, then any institution which such individual subsequently attends shall deny for the remainder of the two-year period any further payment to, or for the direct benefit of, such individual under any of the programs specified in subsection (c).

''(b) If an institution of higher education determines, after affording notice and opportunity for hearing to an individual attending, or employed by, such institution, that such individual has willfully refused to obey a lawful regulation or order of such institution after the date of enactment of this Act [Aug. 16, 1973], and that such refusal was of a serious nature and contributed to a substantial disruption of the administration of such institution, then such institution shall deny, for a period of two years, any further payment to, or for the direct benefit of, such individual under any of the programs specified in subsection (c).

''(c) The programs referred to in subsections (a) and (b) are as follows:

''(1) The programs authorized by the National Science Foundation Act of 1950 [this chapter]; and

''(2) The programs authorized under title IX of the National Defense Education Act of 1958 [sections 1876 to 1879 of this title] relating to establishing the Science Information Service.

''(d)(1) Nothing in this Act [Pub. L. 93–96], or any Act amended by this Act, shall be construed to prohibit any institution of higher education from refusing to award, continue, or extend any financial assistance under any such Act to any individual because of any misconduct which in its judgment bears adversely on his fitness for such assistance.

''(2) Nothing in this section shall be construed as limiting or prejudicing the rights and prerogatives of any institution of higher education to institute and carry out an independent, disciplinary proceeding pursuant to existing authority, practice, and law.

''(3) Nothing in this section shall be construed to limit the freedom of any student to verbal expression of individual views or opinions.''

Similar provisions were contained in the following National Science Foundation Authorization Acts:

Pub. L. 92–372, §7, Aug. 10, 1972, 86 Stat. 527.

Pub. L. 92–86, §7, Aug. 11, 1971, 85 Stat. 309.

Pub. L. 91–356, §5, July 24, 1970, 84 Stat. 471.

Continuation of Authorization for Weather Modification Programs; Repeal

Section 11(1) of Pub. L. 90–407 provided in part that the authorization for the programs initiated under former subsec. (a)(9) of this section shall continue in effect until Sept. 1, 1968 for the purposes of section 1872a of this title.

Continuation of Existing Offices, Procedures, and Organization of the National Science Foundation

Section 16 of Pub. L. 90–407 provided that: ''Except as otherwise specifically provided therein, the amendments made by this Act [enacting section 1864a of this title, amending sections 1862 to 1866, 1868 to 1870, 1872 to 1875, and 1877 of this title, sections 5313, 5314, and 5316 of Title 5, Government Organization and Employees, repealing sections 1867 and 1872a of this title, and enacting provisions set out as a note under section 5313 of Title 5] are intended to continue in effect under the National Science Foundation Act of 1950 [this chapter] the existing offices, procedures, and organization of the National Science Foundation as provided by such Act, [this chapter] part II of Reorganization Plan Numbered 2 of 1962, and Reorganization Plan Numbered 5 of 1965 [set out as a note under section 1861 of this title]. From and after the date of the enactment of this Act [July 18, 1968], part II of Reorganization Plan Numbered 2 of 1962, and Reorganization Plan Numbered 5 of 1965, shall be of no force or effect; but nothing in this Act shall alter or affect any transfers of functions made by part I of such Reorganization Plan Numbered 2 of 1962.''

Investigation of Need for Geophysical Institute in Territory of Hawaii

Act Aug. 1, 1956, ch. 865, 70 Stat. 922, directed the National Science Foundation to conduct an investigation into the need for and the feasibility and usefulness of a geophysical institute located in the Territory [now State] of Hawaii. The Foundation was required to report the results of its investigations, together with its recommendations based thereon, to the Congress not later than 9 months after Aug. 1, 1956.

Ex. Ord. No. 10521. Administration of Scientific Research

Ex. Ord. No. 10521, Mar. 17, 1954, 19 F.R. 1499, as amended by Ex. Ord. No. 10807, §6(b), Mar. 13, 1959, 24 F.R. 1899, provided:

Section 1. The National Science Foundation (hereinafter referred to as the Foundation) shall from time to time recommend to the President policies for the promotion and support of basic research and education in the sciences, including policies with respect to furnishing guidance toward defining the responsibilities of the Federal Government in the conduct and support of basic scientific research.

Sec. 2. The Foundation shall continue to make comprehensive studies and recommendations regarding the Nation's scientific research effort and its resources for scientific activities, including facilities and scientific personnel, and its foreseeable scientific needs, with particular attention to the extent of the Federal Government's activities and the resulting effects upon trained scientific personnel. In making such studies, the Foundation shall make full use of existing sources of information and research facilities within the Federal Government.

Sec. 3. The Foundation, in concert with each Federal agency concerned, shall review the basic scientific research programs and activities of the Federal Government in order, among other purposes, to formulate methods for strengthening the administration of such programs and activities by the responsible agencies, and to study areas of basic research where gaps or undesirable overlapping of support may exist, and shall recommend to the heads of agencies concerning the support given to basic research.

Sec. 4. As now or hereafter authorized or permitted by law, the Foundation shall be increasingly responsible for providing support by the Federal Government for general-purpose basic research through contracts and grants. The conduct and support by other Federal agencies of basic research in areas which are closely related to their missions is recognized as important and desirable, especially in response to current national needs, and shall continue.

Sec. 5. The Foundation, in consultation with educational institutions, the heads of Federal agencies, and the Commissioner of Education of the Department of Health, Education, and Welfare [now Secretary of Education], shall study the effects upon educational institutions of Federal policies and administration of contracts and grants for scientific research and development, and shall recommend policies and procedures which will promote the attainment of general national research objectives and realization of the research

needs of Federal agencies while safeguarding the strength and independence of the Nation's institutions of learning.

SEC. 6. The head of each Federal agency engaged in scientific research shall make certain that effective executive, organizational, and fiscal practices exist to ensure (a) that the Foundation is consulted on policies concerning the support of basic research, (b) that approved scientific research programs conducted by the agency are reviewed continuously in order to preserve priorities in research efforts and to adjust programs to meet changing conditions without imposing unnecessary added burdens on budgetary and other resources, (c) that applied research and development shall be undertaken with sufficient consideration of the underlying basic research and such other factors as relative urgency, project costs, and availability of manpower and facilities, and (d) that, subject to considerations of security and applicable law, adequate dissemination shall be made within the Federal Government of reports on the nature and progress of research projects as an aid to the efficiency and economy of the overall Federal scientific research program.

SEC. 7. Federal agencies supporting or engaging in scientific research shall, with the assistance of the Foundation, cooperate in an effort to improve the methods of classification and reporting of scientific research projects and activities, subject to the requirements of security of information.

SEC. 8. To facilitate the efficient use of scientific research equipment and facilities held by Federal agencies:

(a) the head of each such agency engaged in scientific research shall, to the extent practicable, encourage and facilitate the sharing with other Federal agencies of major equipment and facilities; and

(b) a Federal agency shall procure new major equipment or facilities for scientific research purposes only after taking suitable steps to ascertain that the need cannot be met adequately from existing inventories or facilities of its own or of other agencies; and

(c) the Interdepartmental Committee on Scientific Research and Development shall take necessary steps to ensure that each Federal agency engaged directly in scientific research is kept informed of selected major equipment and facilities which could serve the needs of more than one agency. Each Federal agency possessing such equipment and facilities shall maintain appropriate records to assist other agencies in arranging for their joint use or exchange.

SEC. 9. The heads of the respective Federal agencies shall make such reports concerning activities within the purview of this order as may be required by the President.

SEC. 10. The National Science Foundation shall provide leadership in the effective coordination of the scientific information activities of the Federal Government with a view to improving the availability and dissemination of scientific information. Federal agencies shall cooperate with and assist the National Science Foundation in the performance of this function, to the extent permitted by law.

EXECUTIVE ORDER NO. 10807

Ex. Ord. No. 10807, Mar. 13, 1959, 24 F.R. 1897, as amended Ex. Ord. No. 11381, Nov. 8, 1967, 32 F.R. 15629, which established the Federal Council for Science and Technology, provided for a chairman and membership, specified the functions of the Council, provided for assistance from other Federal agencies and the establishment of standing committees and panels, revoked Ex. Ord. No. 9912 of Dec. 24, 1947, entitled ''Establishing the Interdepartmental Committee on Scientific Research and Development'', and amended Ex. Ord. No. 10521, set out above, was omitted from the Code in view of Pub. L. 94–282, title IV, § 402, May 11, 1976, 90 Stat. 472, set out below, which abolished the Federal Council for Science and Technology.

ABOLITION OF FEDERAL COUNCIL FOR SCIENCE AND TECHNOLOGY

Pub. L. 94–282, title IV, § 402, May 11, 1976, 90 Stat. 472, provided that: ''The Federal Council for Science and Technology, established pursuant to Executive Order No. 10807, Mar. 13, 1959, 24 F.R. 1897, as amended by Executive Order No. 11381, Nov. 8, 1967, 32 F.R. 15629, is hereby abolished.''

§ 1862a. Findings and purpose

(a) The Congress finds that—

(1) the fundamental research and related education program supported by the Federal Government and conducted by the Nation's universities and colleges are essential to our national security, and to our health, economic welfare, and general well-being;

(2) many national research and related education programs conducted by universities and colleges are now hindered by obsolete research buildings and equipment, and many institutions lack sufficient resources to repair, renovate, or replace their laboratories;

(3) the Nation's capacity to conduct high quality research and education programs and to maintain its competitive position at the forefront of modern science, engineering, and technology is threatened by this research capital deficit, which poses serious and adverse consequences to our future national security, health, welfare, and ability to compete in the international marketplace;

(4) a national effort to spur reinvestment in research facilities is needed, and national, State, and local policies and cooperative programs are required that will yield maximum return on the investment of scarce national resources and sustain a commitment to excellence in research and education; and

(5) the Foundation, as part of its responsibility for maintaining the vitality of the Nation's academic research, and in partnership with the States, industry, and universities and colleges, must assist in enhancing the historic linkages between Federal investment in academic research and training and investment in the research capital base by reinvesting in the capital facilities which modern research and education programs require.

(b) It is the purpose of sections 1862a to 1862d of this title to assist in modernizing and revitalizing the Nation's research facilities at institutions of higher education, independent non-profit research institutions and research museums, and consortia thereof, through capital investment.

(Pub. L. 100–570, title II, § 202, Oct. 31, 1988, 102 Stat. 2873.)

REFERENCES IN TEXT

Sections 1862a to 1862d of this title, referred to in subsec. (b), was in the original ''this title'', meaning title II of Pub. L. 100–570, Oct. 31, 1988, 102 Stat. 2873, known as the Academic Research Facilities Modernization Act of 1988, which enacted sections 1862a to 1862d of this title, repealed former sections 1862a and 1862b of this title, and repealed provisions set out as a note under section 1861 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Academic Research Facilities Modernization Act of 1988, and also as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1862a, Pub. L. 100–418, title VI, § 6402, Aug. 23, 1988, 102 Stat. 1542, related to establishment of National Science Foundation Academic Research Facilities Modernization Program, prior to repeal by Pub. L. 100–570, § 206.

§ 1862b. Establishment of Program

(a) Establishment; purpose

(1) To carry out sections 1862a to 1862d of this title, the Director shall establish and carry out a new Academic Research Facilities Modernization Program (hereafter in sections 1862a to 1862d of this title referred to as the ''Program''), under which awards are made to institutions of higher education, independent nonprofit research institutions, and research museums, and consortia thereof, for the repair, renovation, or, in exceptional cases, replacement of obsolete science and engineering facilities primarily devoted to research.

(2) Such awards shall, consistent with the functions of the Foundation set forth in section 1862 of this title and through established Foundation selection procedures, serve to—

(A) promote the modernization of graduate academic science and engineering research laboratories and related facilities so as to facilitate and support research in the scientific and engineering disciplines;

(B) assist those academic institutions that historically have received relatively little Federal research and development funds to improve their academic science and engineering infrastructures and broaden and strengthen the Nation's science and engineering base; and

(C) promote the modernization of undergraduate academic science and engineering research laboratories and related facilities so as to facilitate and support research in the scientific and engineering disciplines.

(b) Improvement projects; maximum amounts

(1) The Program shall be carried out through projects which involve the repair, renovation, or, in exceptional cases, replacement of specific science and engineering facilities devoted primarily to research at eligible institutions, or consortia thereof, and for which funds are awarded in response to specific proposals submitted by such eligible institutions or consortia in accordance with procedures prescribed by the Director pursuant to section 1862c of this title.

(2) Awards made under the Program shall not exceed $7,000,000 to any institution or consortium over any period of 5 years for the repair, renovation, or, in exceptional cases, replacement of academic research facilities.

(3) The Director shall, in making awards under the Program, consider the extent to which that institution or consortium has received funds for the repair, renovation, construction, or replacement of academic facilities from any other Federal funding source within the 5-year period immediately preceding the application. The Director shall give priority to institutions or consortia that have not received such funds in the preceding 5 years.

(4) The Director shall, in awarding funds under sections 1862a to 1862d of this title, consider the distribution of funds among institutions of different sizes and geographical locations.

(c) Criteria for award of funds

Criteria for the award of funds to any institution for a project under the Program shall include—

(1) the quality of the research and training to be carried out in the facility or facilities involved;

(2) the need for the proposed repair, renovation, or, in exceptional cases, replacement based on an analysis of the age and condition of existing research facilities and equipment;

(3) the congruence of the institution's research and training activities with the future research needs of the Nation and the research mission of the Foundation;

(4) the contribution that the project will make toward meeting national, regional, and institutional research and related training needs;

(5) in the case of an institution that historically has received relatively little Federal research and development funding, the contribution the proposed project will make to improving the institution's academic scientific and engineering infrastructure and broadening the Nation's science and engineering base; and

(6) the impact of the award on the overall geographic distribution of awards made under the Program, with the objective of avoiding undue concentration of awards.

(Pub. L. 100–570, title II, § 203, Oct. 31, 1988, 102 Stat. 2874.)

CODIFICATION

Section was enacted as part of the Academic Research Facilities Modernization Act of 1988, and also as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1862b, Pub. L. 100–418, title VI, § 6403, Aug. 23, 1988, 102 Stat. 1544, related to establishment of National Science Foundation College Science Instrumentation Program, prior to repeal by Pub. L. 100–570, § 206.

MAJOR RESEARCH INSTRUMENTATION

Pub. L. 107–368, § 13, Dec. 19, 2002, 116 Stat. 3055, required Director of the National Science Foundation to conduct a review and assessment of the major research instrumentation program and, not later than 1 year after Dec. 19, 2002, submit a report, including specified estimates, descriptions and analyses, of findings and recommendations to certain Congressional committees, and also required the Director to enter into an arrangement with the National Academy of Sciences to assess the need for an interagency program to establish and support fully equipped, state-of-the-art university-based centers for interdisciplinary research and advanced instrumentation development, and not later than 15 months after Dec. 19, 2002, to transmit to the committees the assessment conducted by the National Academy of Sciences together with the Foundation's reaction to the assessment.

§ 1862c. Procedures, guidelines, and planning activities

(a) Procedures

(1) The Director shall, consistent with the objectives of the Program and the criteria set forth in section 1862b(c) of this title, set forth procedures for the Program.

(2) The procedures so prescribed shall contain such terms, conditions, and guidelines as may be necessary in the light of Program objectives, but shall in any event provide that—

(A) funds to carry out the Program will be awarded only on the basis of merit after a comprehensive review using established Foundation procedures;

(B) the membership of merit review panels that assess proposals will be broadly representative of eligible institutions, including research universities and predominantly undergraduate and minority institutions;

(C) the institution receiving an award shall provide at least 50 percent of the cost, in cash or in kind, fairly evaluated, of the repair, renovation, or replacement involved and shall provide this contribution from private or non-Federal public sources, except that the Director may accept a match of less than 50 percent, but at least 30 percent, for institutions which are not ranked among the top 100 of the institutions receiving Federal research and development funding, as documented in the latest annual report of the Foundation entitled ''Federal Support to Universities, Colleges, and Selected Nonprofit Institutions''; and

(D) to the extent practicable, eligible institutions of a given type will compete against similar institutions for Program awards.

(b) Comprehensive planning activities

The Director shall conduct comprehensive planning activities, including surveys of research facility needs and other information-gathering activities, necessary to implement the Program and to develop the procedures called for under subsection (a) of this section.

(c) Guidelines

Prior to the issuance of the comprehensive plan required by subsection (d) of this section, and consistent with the Program criteria set forth in section 1862b(c) of this title, the Director shall publish in the Federal Register proposed Program guidelines for public review for a comment period of 30 days. Such guidelines shall provide detailed information on eligibility, criteria, terms, and conditions and shall include, but not be limited to—

(1) definitions for the terms ''institutions of higher education'', ''private non-profit research organizations'', ''research museums'', ''consortia'', ''facilities'', ''facilities primarily devoted to research'', ''instrumentation'', ''equipment'', ''repair'', ''renovation'', and ''replacement'';

(2) selection criteria to be used by the Foundation in evaluating proposals from institutions and consortia thereof, including criteria for evaluating scientific merit and for evaluating the age and condition of existing research facilities; and

(3) requirements for matching a Program award with contributions from non-Federal sources.

(d) Comprehensive plan

The Director, after gathering appropriate information and after considering comments on the proposed Program guidelines published in the Federal Register pursuant to subsection (c) of this section, shall develop a comprehensive plan for the Program that—

(1) defines the appropriate roles and responsibilities of the Federal Government, institutions of higher education, State governments, private foundations, and other appropriate organizations;

(2) states what procedures will be used to ensure that predominantly undergraduate institutions and colleges and universities that historically have received little Federal research and development funding will receive substantial percentages of the funds awarded under sections 1862a to 1862d of this title;

(3) states the estimated percentage of Program funds available for each category of eligible institutions, including predominantly undergraduate institutions and colleges and universities that historically have received little Federal research and development funding as well as research universities; and

(4) evaluates and addresses, to the maximum extent possible, a variety of factors which include—

(A) the unique circumstances and research facilities needs of research universities, undergraduate institutions, and other institutions whose enrollment includes substantial percentages of minorities underrepresented in science and engineering research;

(B) innovative approaches in the management of the Program that address both short-term and long-term aspects of the renovation, repair, and replacement of academic research facilities;

(C) programmatic approaches that recognize and support excellence, strengthen scientific and engineering research potential and, to the maximum extent possible and consistent with the purposes of this Act, assure an equitable distribution of resources with respect to institutions and geographical areas; and

(D) any recommendations necessary to improve the Program and further meet the purposes of sections 1862a to 1862d of this title.

(e) Report

The Director shall prepare and submit, not later than June 15, 1989, a report containing the comprehensive plan required by subsection (d) of this section to the Committee on Labor and Human Resources and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

(f) Final guidelines

Final guidelines shall be published in the Federal Register not later than 45 days after the submission of the report required under subsection (e) of this section.

(g) Amount available for this section

The Director shall, from amounts available to the Foundation under section 101(b) of this Act for fiscal year 1989, make available an amount,

not to exceed $1,000,000, to carry out the provisions of this section. None of the funds authorized to be appropriated in section 101 of this Act may be used for grant or contract awards under the Program prior to completion and submission to Congress of the comprehensive plan required by subsection (d) of this section.

(h) Consultation with Secretary of Education and heads of other agencies

In conducting the activities under the Program, the Director shall consult with the Secretary of Education and the heads of other related agencies.

(Pub. L. 100–570, title II, § 204, Oct. 31, 1988, 102 Stat. 2875.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (d)(4)(C) and (g), is Pub. L. 100–570, Oct. 31, 1988, 102 Stat. 2865, known as the National Science Foundation Authorization Act of 1988. Section 101 of this Act is not classified to the Code. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Academic Research Facilities Modernization Act of 1988, and also as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 1862d. Set-aside for certain institutions

Of the amounts appropriated to the Foundation for the Program, as authorized under section 101 of this Act, in each fiscal year, at least 12 percent shall be reserved for historically Black colleges or universities defined as ''part B institutions'' by section 1061(2) of title 20 and other institutions of higher education whose enrollment includes a substantial percentage of students who are Black Americans, Hispanic Americans, or Native Americans.

(Pub. L. 100–570, title II, § 205, Oct. 31, 1988, 102 Stat. 2877.)

REFERENCES IN TEXT

Section 101 of this Act, referred to in text, is section 101 of Pub. L. 100–570, title I, Oct. 31, 1988, 102 Stat. 2865, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the Academic Research Facilities Modernization Act of 1988, and also as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1862e. Evaluations of research centers

In carrying out performance reviews of research centers by the Foundation, the Director shall take such action as may be necessary, consistent with the merit review process of the Foundation, to ensure that—

(1) members of review panels are free from any conflict of interest; and

(2) the conditions of each award to such centers have been fulfilled.

(Pub. L. 100–570, title I, § 109, Oct. 31, 1988, 102 Stat. 2869.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1862f. Research center consortia

In Foundation programs making grants to research centers, the Director shall encourage the formation of consortia that include research universities, two-year and four-year colleges, and the private sector.

(Pub. L. 100–570, title I, § 110, Oct. 31, 1988, 102 Stat. 2869.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1862g. Experimental Program to Stimulate Competitive Research

(a) The Director shall operate an Experimental Program to Stimulate Competitive Research, the purpose of which is to assist those States that—

(1) historically have received relatively little Federal research and development funding; and

(2) have demonstrated a commitment to develop their research bases and improve science and engineering research and education programs at their universities and colleges.

(b) A State which has received an initial award under such Program, whether or not the award was received before or after October 31, 1988, shall be eligible for up to 5 years of additional support under the program[1] if that State provides assurances of new matching funds and submits an acceptable new plan for using Program funds and matching funds to build the research capabilities of the State.

(Pub. L. 100–570, title I, § 113, Oct. 31, 1988, 102 Stat. 2870.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

PLANNING GRANTS

Pub. L. 107–368, § 26, Dec. 19, 2002, 116 Stat. 3067, provided that: ''The Director is authorized to accept planning proposals from applicants who are within .075 percentage points of the current eligibility level for the Experimental Program to Stimulate Competitive Re-

[1] So in original. Probably should be capitalized.

search. Such proposals shall be reviewed by the Foundation to determine their merit for support under the Experimental Program to Stimulate Competitive Research or any other appropriate program.''

[For definitions of terms used in section 26 of Pub. L. 107–368, set out above, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.]

§ 1862h. Congressional statement of findings and declaration of purposes respecting scientific and technical education and training

(a) Findings

The Congress finds that—

(1) the position of the United States in the world economy faces great challenges from highly trained foreign competition;

(2) the workforce of the United States must be better prepared for the technologically advanced, competitive, global economy;

(3) the improvement of our work force's productivity and our international economic position depend upon the strengthening of our educational efforts in science, mathematics, and technology, especially at the associate-degree level;

(4) shortages of scientifically and technically trained workers in a wide variety of fields will best be addressed by collaboration among the Nation's associate-degree-granting colleges and private industry to produce skilled, advanced technicians; and

(5) the National Science Foundation's traditional role in developing model curricula, disseminating instructional materials, enhancing faculty development, and stimulating partnerships between educational institutions and industry, makes an enlarged role for the Foundation in scientific and technical education and training particularly appropriate.

(b) Purposes

It is the purpose of sections 1862h to 1862j of this title to—

(1) improve science and technical education at associate-degree-granting colleges;

(2) improve secondary school and postsecondary curricula in mathematics and science;

(3) improve the educational opportunities of postsecondary students by creating comprehensive articulation agreements and planning between 2-year and 4-year institutions; and

(4) promote outreach to secondary schools to improve mathematics and science instruction.

(Pub. L. 102–476, § 2, Oct. 23, 1992, 106 Stat. 2297.)

REFERENCES IN TEXT

Sections 1862h to 1862j of this title, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 102–476, Oct. 23, 1992, 106 Stat. 2297, known as the Scientific and Advanced-Technology Act of 1992, which enacted this section and sections 1862i and 1862j of this title and amended section 1862 of this title. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Scientific and Advanced-Technology Act of 1992, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1862i. Scientific and technical education

(a) National advanced scientific and technical education program

The Director of the National Science Foundation (hereafter in sections 1862h to 1862j of this title referred to as the ''Director'') shall award grants to associate-degree-granting colleges, and consortia thereof, to assist them in providing education in advanced-technology fields, and to improve the quality of their core education courses in science and mathematics. The grant program shall place emphasis on the needs of students who have been in the workforce (including work in the home), and shall be designed to strengthen and expand the scientific and technical education and training capabilities of associate-degree-granting colleges through such methods as—

(1) the development of model instructional programs in advanced-technology fields and in core science and mathematics courses;

(2) the professional development of faculty and instructors, both full- and part-time, who provide instruction in science, mathematics, and advanced-technology fields;

(3) the establishment of innovative partnership arrangements that—

(A) involve associate-degree-granting colleges and other appropriate public and private sector entities, and

(B) provide for private sector donations, faculty opportunities to have short-term assignments with industry, sharing of program costs, equipment loans, and the cooperative use of laboratories, plants, and other facilities, and provision for state-of-the-art work experience opportunities for students enrolled in such programs;

(4) the acquisition of state-of-the-art instrumentation essential to programs designed to prepare and upgrade students in scientific and advanced-technology fields; and

(5) the development and dissemination of instructional materials in support of improving the advanced scientific and technical education and training capabilities of associate-degree-granting colleges, including programs for students who are not pursuing a science degree.

(b) National centers of scientific and technical education

The Director shall award grants for the establishment of centers of excellence, not to exceed 10 in number, among associate-degree-granting colleges. Centers shall meet one or both of the following criteria:

(1) Exceptional instructional programs in advanced-technology fields.

(2) Excellence in undergraduate education in mathematics and science.

The centers shall serve as national and regional clearinghouses and models for the benefit of both colleges and secondary schools, and shall provide seminars and programs to disseminate model curricula and model teaching methods and instructional materials to other associate-degree-granting colleges in the geographic region served by the center.

(c) Articulation partnerships

(1) Partnership grants

(A) The Director shall make grants to eligible partnerships to encourage students to pursue bachelor degrees in mathematics, science, engineering, or technology, and to assist students pursuing bachelor degrees in mathematics, science, engineering, or technology to make the transition from associate-degree-granting colleges to bachelor-degree-granting institutions, through such means as—

(i) examining curricula to ensure that academic credit earned at the associate-degree-granting college is transferable to bachelor-degree-granting institutions;

(ii) informing teachers from the associate-degree-granting college on the specific requirements of courses at the bachelor-degree-granting institution; and

(iii) providing summer educational programs for students from the associate-degree-granting college to encourage such students' subsequent matriculation at bachelor-degree-granting institutions.

(B) Each eligible partnership receiving a grant under this paragraph shall, at a minimum—

(i) counsel students, including students who have been in the workforce (including work in the home), about the requirements and course offerings of the bachelor-degree-granting institution;

(ii) conduct workshops and orientation sessions to ensure that students are familiar with programs, including laboratories and financial aid programs, at the bachelor-degree-granting institution;

(iii) provide students with research experiences at bachelor's-degree-granting institutions participating in the partnership, including stipend support for students participating in summer programs; and

(iv) provide faculty mentors for students participating in activities under clause (iii), including summer salary support for faculty mentors.

Funds used by eligible partnerships to carry out clauses (i) and (ii) shall be from non-Federal sources. In-cash and in-kind resources used by eligible partnerships to carry out clauses (i) and (ii) shall not be considered to be contributions for purposes of applying subsection (f)(3) of this section.

(C) Any institution participating in a partnership that receives a grant under this paragraph shall be ineligible to receive assistance under part B of title I of the Higher Education Act of 1965 [20 U.S.C. 1011 et seq.] for the duration of the grant received under this paragraph.

(2) Outreach grants

The Director shall make grants to associate-degree-granting colleges with outstanding mathematics and science programs to strengthen relationships with secondary schools in the community served by the college by improving mathematics and science education and encouraging the interest and aptitude of secondary school students for careers in science and advanced-technology fields through such means as developing agreements with local educational agencies to enable students to satisfy entrance and course requirements at the associate-degree-granting college.

(d) Coordination with other Federal departments

In carrying out this section, the Director shall consult, cooperate, and coordinate, to enhance program effectiveness and to avoid duplication, with the programs and policies of other relevant Federal agencies. In carrying out subsection (c) of this section, the Director shall coordinate activities with programs receiving assistance under part B of title I of the Higher Education Act of 1965 [20 U.S.C. 1011 et seq.].

(e) Limitation on funding

To qualify for a grant under this section, an associate-degree-granting college, or consortium thereof, shall provide assurances adequate to the Director that it will not decrease its level of spending of funds from non-Federal sources on advanced scientific and technical education and training programs.

(f) Functions of Director

In carrying out sections 1862h to 1862j of this title, the Director shall—

(1) award grants on a competitive, merit basis;

(2) ensure an equitable geographic distribution of grant awards;

(3) ensure that an applicant for a grant awarded under subsection (a), (b), or (c)(1) of this section will make an in-cash or in-kind contribution in an amount equal to at least 25 percent of the cost of the program, and for a grant awarded under subsection (c)(2) of this section will make an in-cash or in-kind contribution in an amount at least equal to the amount of the grant award;

(4) establish and maintain a readily accessible inventory of the programs assisted under sections 1862h to 1862j of this title; and

(5) designate an officer of the National Science Foundation to serve as a liaison with associate-degree-granting institutions for the purpose of enhancing the role of such institutions in the activities of the Foundation.

(g) Definitions

As used in this section—

(1) the term ''advanced-technology'' includes advanced technical activities such as the modernization, miniaturization, integration, and computerization of electronic, hydraulic, pneumatic, laser, nuclear, chemical, telecommunication, fiber optic, robotic, and other technological applications to enhance productivity improvements in manufacturing, communication, transportation, commercial, and similar economic and national security activities;

(2) the term ''associate-degree-granting college'' means an institution of higher education (as determined under section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001]) that—

(A) is a nonprofit institution that offers a 2-year associate-degree program or a 2-year certificate program; or

(B) is a proprietary institution that offers a 2-year associate-degree program;

(3) the term ''bachelor-degree-granting institution'' means an institution of higher education (as determined under section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001]) that offers a baccalaureate degree program;

(4) the term ''eligible partnership'' means one or more associate-degree-granting colleges in partnership with one or more separate bachelor-degree-granting institutions; and

(5) the term ''local educational agency'' has the meaning given such term in section 2891(12)[1] of title 20.

(Pub. L. 102–476, § 3, Oct. 23, 1992, 106 Stat. 2297; Pub. L. 105–244, title I, § 102(a)(13)(B), Oct. 7, 1998, 112 Stat. 1620; Pub. L. 107–368, § 21(a), (b), Dec. 19, 2002, 116 Stat. 3064.)

REFERENCES IN TEXT

Sections 1862h to 1862j of this title, referred to in subsecs. (a) and (f), was in the original ''this Act'', meaning Pub. L. 102–476, Oct. 23, 1992, 106 Stat. 2297, known as the Scientific and Advanced-Technology Act of 1992, which enacted this section and sections 1862h and 1862j of this title and amended section 1862 of this title. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 1861 of this title and Tables.

The Higher Education Act of 1965, referred to in subsecs. (c)(1)(C) and (d), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part B of title I of the Act is classified generally to part B (§ 1011 et seq.) of subchapter I of chapter 28 of Title 20, Education. Pub. L. 105–244, title I, § 101(a), Oct. 7, 1998, 112 Stat. 1585, amended title I of the Act generally and part B, which formerly related to articulation agreements, now relates to additional general provisions. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

Section 2891(12) of title 20, referred to in subsec. (g)(5), was in the original ''section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)'', Pub. L. 89–10, and was omitted in the general amendment of that Act by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. For provisions relating to definitions, see section 7801 of Title 20, Education.

CODIFICATION

Section was enacted as part of the Scientific and Advanced-Technology Act of 1992, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–368, § 21(a)(1), inserted '', and to improve the quality of their core education courses in science and mathematics'' after ''education in advanced-technology fields'' in introductory provisions.

Subsec. (a)(1). Pub. L. 107–368, § 21(a)(2), inserted ''and in core science and mathematics courses'' after ''advanced-technology fields''.

Subsec. (a)(2). Pub. L. 107–368, § 21(a)(3), substituted ''who provide instruction in science, mathematics, and advanced-technology fields'' for ''in advanced-technology fields''.

Subsec. (c)(1)(B)(iii), (iv). Pub. L. 107–368, § 21(b), added cls. (iii) and (iv).

1998—Subsec. (g)(2), (3). Pub. L. 105–244 substituted ''section 101 of the Higher Education Act of 1965'' for ''section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))''.

[1] See References in Text note below.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

§ 1862j. Authorization of appropriations

There are authorized to be appropriated, from sums otherwise authorized to be appropriated, to the Director for carrying out sections 1862h to 1862j of this title—

(1) $35,000,000 for fiscal year 1992; and

(2) $35,000,000 for fiscal year 1993.

(Pub. L. 102–476, § 5, Oct. 23, 1992, 106 Stat. 2301.)

REFERENCES IN TEXT

Sections 1862h to 1862j of this title, referred to in text, was in the original ''this Act'', meaning Pub. L. 102–476, Oct. 23, 1992, 106 Stat. 2297, known as the Scientific and Advanced-Technology Act of 1992, which enacted this section and sections 1862h and 1862i of this title and amended section 1862 of this title. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Scientific and Advanced-Technology Act of 1992, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1862k. Findings; core strategies

(a) Findings

Congress finds the following:

(1) The United States depends upon its scientific and technological capabilities to preserve the military and economic security of the United States.

(2) America's leadership in the global marketplace is dependent upon a strong commitment to education, basic research, and development.

(3) A nation that is not technologically literate cannot compete in the emerging global economy.

(4) A coordinated commitment to mathematics and science instruction at all levels of education is a necessary component of successful efforts to produce technologically literate citizens.

(5) Professional development is a necessary component of efforts to produce system-wide improvements in mathematics, engineering, and science education in secondary, elementary, and postsecondary settings.

(6)(A) The mission of the National Science Foundation is to provide Federal support for basic scientific and engineering research, and to be a primary contributor to mathematics, science, and engineering education at academic institutions in the United States.

(B) In accordance with such mission, the long-term goals of the National Science Foundation include providing leadership to—

(i) enable the United States to maintain a position of world leadership in all aspects of science, mathematics, engineering, and technology;

(ii) promote the discovery, integration, dissemination, and application of new knowledge in service to society; and

(iii) achieve excellence in United States science, mathematics, engineering, and technology education at all levels.

(b) Core strategies

In carrying out activities designed to achieve the goals described in subsection (a) of this section, the Foundation shall use the following core strategies:

(1) Develop intellectual capital, both people and ideas, with particular emphasis on groups and regions that traditionally have not participated fully in science, mathematics, and engineering.

(2) Strengthen the scientific infrastructure by investing in facilities planning and modernization, instrument acquisition, instrument design and development, and shared-use research platforms.

(3) Integrate research and education through activities that emphasize and strengthen the natural connections between learning and inquiry.

(4) Promote partnerships with industry, elementary and secondary schools, community colleges, colleges and universities, other agencies, State and local governments, and other institutions involved in science, mathematics, and engineering to enhance the delivery of math and science education and improve the technological literacy of the citizens of the United States.

(Pub. L. 105–207, title I, §101, July 29, 1998, 112 Stat. 869.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1998, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

INDIRECT COSTS

Pub. L. 105–207, title II, §203, July 29, 1998, 112 Stat. 875, provided that:

''(a) MATCHING FUNDS.—Matching funds required pursuant to section 204(a)(2)(C) of the Academic Research Facilities Modernization Act of 1988 (42 U.S.C. 1862c(a)(2)(C)) shall not be considered facilities costs for purposes of determining indirect cost rates under Office of Management and Budget Circular A–21.

''(b) REPORT.—

''(1) IN GENERAL.—The Director of the Office of Science and Technology Policy, in consultation with other Federal agencies the Director deems appropriate, shall prepare a report—

''(A) analyzing the Federal indirect cost reimbursement rates (as the term is defined in Office of Management and Budget Circular A–21) paid to universities in comparison with Federal indirect cost reimbursement rates paid to other entities, such as industry, government laboratories, research hospitals, and nonprofit institutions;

''(B)(i) analyzing the distribution of the Federal indirect cost reimbursement rates by category (such as administration, facilities, utilities, and libraries), and by the type of entity; and

''(ii) determining what factors, including the type of research, influence the distribution;

''(C) analyzing the impact, if any, that changes in Office of Management and Budget Circular A–21 have had on—

''(i) the Federal indirect cost reimbursement rates, the rate of change of the Federal indirect cost reimbursement rates, the distribution by category of the Federal indirect cost reimbursement rates, and the distribution by type of entity of the Federal indirect cost reimbursement rates; and

''(ii) the Federal indirect cost reimbursement (as calculated in accordance with Office of Management and Budget Circular A–21), the rate of change of the Federal indirect cost reimbursement, the distribution by category of the Federal indirect cost reimbursement, and the distribution by type of entity of the Federal indirect cost reimbursement;

''(D) analyzing the impact, if any, of Federal and State law on the Federal indirect cost reimbursement rates;

''(E)(i) analyzing options to reduce or control the rate of growth of the Federal indirect cost reimbursement rates, including options such as benchmarking of facilities and equipment cost, elimination of cost studies, mandated percentage reductions in the Federal indirect cost reimbursement; and

''(ii) assessing the benefits and burdens of the options to the Federal Government, research institutions, and researchers; and

''(F) analyzing options for creating a database—

''(i) for tracking the Federal indirect cost reimbursement rates and the Federal indirect cost reimbursement; and

''(ii) for analyzing the impact that changes in policies with respect to Federal indirect cost reimbursement will have on the Federal Government, researchers, and research institutions.

''(2) REPORT TO CONGRESS.—The report prepared under paragraph (1) shall be submitted to Congress not later than 1 year after the date of enactment of this Act [July 29, 1998].''

NOTICE; ENHANCEMENT OF SCIENCE AND MATHEMATICS PROGRAMS

Pub. L. 105–207, title II, §§205, 206, July 29, 1998, 112 Stat. 876, provided that:

''SEC. 205. NOTICE.

''(a) NOTICE OF REPROGRAMMING.—If any funds appropriated pursuant to the amendments made by this Act [See Short Title of 1998 Amendment note set out under section 1861 of this title] are subject to a reprogramming action that requires notice to be provided to the Committees on Appropriations of the Senate and the House of Representatives, notice of that action shall concurrently be provided to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate, and the Committee on Science of the House of Representatives.

''(b) NOTICE OF REORGANIZATION.—Not later than 15 days before any major reorganization of any program, project, or activity of the National Science Foundation, the Director of the National Science Foundation shall provide notice to the Committees on Science and Appropriations of the House of Representatives and the Committees on Commerce, Science and Transportation, Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate, and Appropriations of the Senate.

''SEC. 206. ENHANCEMENT OF SCIENCE AND MATHEMATICS PROGRAMS.

''(a) DEFINITIONS.—In this section:

''(1) EDUCATIONALLY USEFUL FEDERAL EQUIPMENT.—The term 'educationally useful Federal equipment' means computers and related peripheral tools and research equipment that is appropriate for use in schools.

''(2) SCHOOL.—The term 'school' means a public or private educational institution that serves any of the grades of kindergarten through grade 12.

''(b) SENSE OF THE CONGRESS.—

''(1) IN GENERAL.—It is the sense of the Congress that the Director should, to the greatest extent prac-

ticable and in a manner consistent with applicable Federal law (including Executive Order No. 12999 [40 U.S.C. 549 note]), donate educationally useful Federal equipment to schools in order to enhance the science and mathematics programs of those schools.

''(2) REPORTS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [July 29, 1998], and annually thereafter, the Director shall prepare and submit to the President a report that meets the requirements of this paragraph. The President shall submit that report to Congress at the same time as the President submits a budget request to Congress under section 1105(a) of title 31, United States Code.

''(B) CONTENTS OF REPORT.—The report prepared by the Director under this paragraph shall describe any donations of educationally useful Federal equipment to schools made during the period covered by the report.''

DEFINITIONS

Pub. L. 105–207, §2, July 29, 1998, 112 Stat. 869, as amended by Pub. L. 107–368, §14(b)(3), Dec. 19, 2002, 116 Stat. 3057, provided that: ''In this Act [see Short Title of 1998 Amendment note set out under section 1861 of this title]:

''(1) DIRECTOR.—The term 'Director' means the Director of the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

''(2) FOUNDATION.—The term 'Foundation' means the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

''(3) FULL LIFE-CYCLE COST.—The term 'full life-cycle cost' means all costs of planning, development, procurement, construction, operations and support, and shut-down costs, without regard to funding source and without regard to what entity manages the project or facility involved.

''(4) BOARD.—The term 'Board' means the National Science Board established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

''(5) UNITED STATES.—The term 'United States' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

''(6) NATIONAL RESEARCH FACILITY.—The term 'national research facility' means a research facility funded by the Foundation which is available, subject to appropriate policies allocating access, for use by all scientists and engineers affiliated with research institutions located in the United States.''

§ 1862*l*. National research facilities

(a) Facilities plan

(1) In general

The Director shall prepare, and include as part of the Foundation's annual budget request to Congress, a plan for the proposed construction of, and repair and upgrades to, national research facilities, including full life-cycle cost information.

(2) Contents of the plan

The plan shall include—

(A) estimates of the costs for the construction, repairs, and upgrades described in paragraph (1), including costs for instrumentation development;

(B) estimates of the costs for the operation and maintenance of existing and proposed new facilities;

(C) in the case of proposed new construction and for major upgrades to existing facilities, funding profiles, by fiscal year, and milestones for major phases of the construction;

(D) for each project funded under the major research equipment and facilities construction account—

(i) estimates of the total project cost (from planning to commissioning); and

(ii) the source of funds, including Federal funding identified by appropriations category and non-Federal funding;

(E) estimates of the full life-cycle cost of each national research facility;

(F) information on any plans to retire national research facilities; and

(G) estimates of funding levels for grants supporting research that will be conducted using each national research facility.

(3) Special rule

The plan shall include cost estimates in the categories of construction, repair, and upgrades—

(A) for the year in which the plan is submitted to Congress; and

(B) for not fewer than the succeeding 4 years.

(b) Status of facilities under construction

The plan required under subsection (a) of this section shall include a status report for each uncompleted construction project included in current and previous plans. The status report shall include data on cumulative construction costs by project compared with estimated costs, and shall compare the current and original schedules for achievement of milestones for the major phases of the construction.

(Pub. L. 105–207, title II, §201, July 29, 1998, 112 Stat. 872; Pub. L. 107–368, §14(b)(1), (2), Dec. 19, 2002, 116 Stat. 3056, 3057.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1998, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–368, §14(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Not later than December 1, of each year, the Director shall, as part of the annual budget request, prepare and submit to Congress a plan for the proposed construction of, and repair and upgrades to, national research facilities.''

Subsec. (a)(2)(A). Pub. L. 107–368, §14(b)(2)(A), substituted ''(1), including costs for instrumentation development;'' for ''(1);''.

Subsec. (a)(2)(D) to (G). Pub. L. 107–368, §14(b)(2)(B)–(D), added subpars. (D) to (G).

§ 1862m. Financial disclosure

Persons temporarily employed by or at the Foundation shall be subject to the same financial disclosure requirements and related sanctions under the Ethics in Government Act of 1978 (5 U.S.C. App.) as are permanent employees of the Foundation in equivalent positions.

(Pub. L. 105–207, title II, §204, July 29, 1998, 112 Stat. 876.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in text, is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1998, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1862n. Mathematics and science education partnerships

(a) Program authorized

(1) In general

(A) The Director shall carry out a program to award grants to institutions of higher education or eligible nonprofit organizations (or consortia of such institutions or organizations) to establish mathematics and science education partnership programs to improve elementary and secondary mathematics and science instruction.

(B) Grants shall be awarded under this subsection on a competitive, merit-reviewed basis.

(2) Partnerships

(A) In order to be eligible to receive a grant under this subsection, an institution of higher education or eligible nonprofit organization (or consortium of such institutions or organizations) shall enter into a partnership with one or more local educational agencies that may also include a State educational agency or one or more businesses.

(B) A participating institution of higher education shall include mathematics, science, or engineering departments in the programs carried out through a partnership under this paragraph.

(3) Uses of funds

Grants awarded under this subsection shall be used for activities that draw upon the expertise of the partners to improve elementary or secondary education in mathematics or science and that are consistent with State mathematics and science student academic achievement standards, including—

(A) recruiting and preparing students for careers in elementary or secondary mathematics or science education;

(B) offering professional development programs, including summer or academic year institutes or workshops, designed to strengthen the capabilities of mathematics and science teachers;

(C) offering innovative preservice and in-service programs that instruct teachers on using technology more effectively in teaching mathematics and science, including programs that recruit and train undergraduate and graduate students to provide technical support to teachers;

(D) developing distance learning programs for teachers or students, including developing courses, curricular materials, and other resources for the in-service professional development of teachers that are made available to teachers through the Internet;

(E) developing a cadre of master teachers who will promote reform and improvement in schools;

(F) offering teacher preparation and certification programs for professional mathematicians, scientists, and engineers who wish to begin a career in teaching;

(G) developing tools to evaluate activities conducted under this subsection;

(H) developing or adapting elementary school and secondary school mathematics and science curricular materials that incorporate contemporary research on the science of learning;

(I) developing initiatives to increase and sustain the number, quality, and diversity of prekindergarten through grade 12 teachers of mathematics and science, especially in underserved areas;

(J) using mathematicians, scientists, and engineers employed by private businesses to help recruit and train mathematics and science teachers;

(K) developing and offering mathematics or science enrichment programs for students, including after-school and summer programs;

(L) providing research opportunities in business or academia for students and teachers;

(M) bringing mathematicians, scientists, and engineers from business and academia into elementary school and secondary school classrooms; and

(N) any other activities the Director determines will accomplish the goals of this subsection.

(4) Master teachers

Activities carried out in accordance with paragraph (3)(E) shall—

(A) emphasize the training of master teachers who will improve the instruction of mathematics or science in kindergarten through grade 12;

(B) include training in both content and pedagogy; and

(C) provide training only to teachers who will be granted sufficient nonclassroom time to serve as master teachers, as demonstrated by assurances their employing school has provided to the Director, in such time and such manner as the Director may require.

(5) Science enrichment programs for girls

Activities carried out in accordance with paragraph (3)(K) and (L) shall include elementary school and secondary school programs to encourage the ongoing interest of girls in science, mathematics, engineering, and technology and to prepare girls to pursue undergraduate and graduate degrees and careers in science, mathematics, engineering, or technology. Funds made available through awards to partnerships for the purposes of this paragraph may support programs for—

(A) encouraging girls to pursue studies in science, mathematics, engineering, and tech-

nology and to major in such fields in postsecondary education;

(B) tutoring girls in science, mathematics, engineering, and technology;

(C) providing mentors for girls in person and through the Internet to support such girls in pursuing studies in science, mathematics, engineering, and technology;

(D) educating the parents of girls about the difficulties faced by girls to maintain an interest and desire to achieve in science, mathematics, engineering, and technology, and enlisting the help of parents in overcoming these difficulties; and

(E) acquainting girls with careers in science, mathematics, engineering, and technology and encouraging girls to plan for careers in such fields.

(6) Research in secondary schools

Activities carried out in accordance with paragraph (3)(K) may include support for research projects performed by students at secondary schools. Uses of funds made available through awards to partnerships for purposes of this paragraph may include—

(A) training secondary school mathematics and science teachers in the design of research projects for students;

(B) establishing a system for students and teachers involved in research projects funded under this subsection to exchange information about their projects and research results; and

(C) assessing the educational value of the student research projects by such means as tracking the academic performance and choice of academic majors of students conducting research.

(7) Stipends

Grants awarded under this subsection may be used to provide stipends for teachers or students participating in training or research activities that would not be part of their typical classroom activities.

(b) Selection process

(1) Application

An institution of higher education or an eligible nonprofit organization (or a consortium of such institutions or organizations) seeking funding under subsection (a) of this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the partnership and the role that each member will play in implementing the proposal;

(B) a description of each of the activities to be carried out, including—

(i) how such activities will be aligned with State mathematics and science student academic achievement standards and with other activities that promote student achievement in mathematics and science;

(ii) how such activities will be based on a review of relevant research;

(iii) why such activities are expected to improve student performance and strengthen the quality of mathematics and science instruction; and

(iv) any activities that will encourage the interest of individuals identified in section 1885a or 1885b of this title in mathematics, science, engineering, and technology and will help prepare such individuals to pursue postsecondary studies in these fields;

(C) a description of the number, size, and nature of any stipends that will be provided to students or teachers and the reasons such stipends are needed;

(D) a description of how the partnership will serve as a catalyst for reform of mathematics and science education programs;

(E) a description of how the partnership will assess its success;

(F) a description of how the partnership will collaborate with the State educational agency to ensure that successful partnership activities may be replicated throughout the State; and

(G) a description of the manner in which the partnership will be continued after assistance under this section ends.

(2) Review of applications

In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the partnership to carry out effectively the proposed programs;

(B) the extent to which the members of the partnership are committed to making the partnership a central organizational focus;

(C) the degree to which activities carried out by the partnership are based on relevant research and are likely to result in increased student achievement;

(D) the degree to which such activities are aligned with State mathematics and science student academic achievement standards;

(E) the likelihood that the partnership will demonstrate activities that can be widely implemented as part of larger scale reform efforts; and

(F) the extent to which the activities will encourage the interest of individuals identified in section 1885a or 1885b of this title in mathematics, science, engineering, and technology and will help prepare such individuals to pursue postsecondary studies in these fields.

(3) Awards

In awarding grants under this section, the Director shall—

(A) give priority to applications in which the partnership includes a high-need local educational agency or a high-need local educational agency in which at least one school does not make adequate yearly progress, as determined pursuant to part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.); and

(B) ensure that, to the extent practicable, a substantial number of the partnerships funded under this section include businesses.

(c) Accountability and dissemination

(1) Assessment required

The Director shall evaluate the program established under subsection (a) of this section. At a minimum, such evaluation shall—

(A) use a common set of benchmarks and assessment tools to identify best practices and materials developed and demonstrated by the partnerships; and

(B) to the extent practicable, compare the effectiveness of practices and materials developed and demonstrated by the partnerships authorized under this section with those of partnerships funded by other State or Federal agencies.

(2) Dissemination of results

(A) The results of the evaluation required under paragraph (1) shall be made available to the public and shall be provided to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(B) Materials developed under the program established under subsection (a) of this section that are demonstrated to be effective shall be made widely available to the public.

(3) Annual meeting

The Director, in consultation with the Secretary of Education, shall convene an annual meeting of the partnerships participating under this section to foster greater national collaboration.

(4) Report on coordination

The Director, in consultation with the Secretary of Education, shall provide an annual report to the Committee on Science of the House of Representatives, the Committee on Education and the Workforce of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate describing how the program authorized under this section has been and will be coordinated with the program authorized under part B of title II of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6661 et seq.]. The report under this paragraph shall be submitted along with the President's annual budget request.

(5) Technical assistance

At the request of an eligible partnership or a State educational agency, the Director shall provide the partnership or agency with technical assistance in meeting any requirements of this section, including providing advice from experts on how to develop—

(A) a quality application for a grant; and

(B) quality activities from funds received from a grant under this section.

(Pub. L. 107–368, § 9, Dec. 19, 2002, 116 Stat. 3044.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (b)(3)(A) and (c)(4), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Part A of title I of the Act is classified generally to part A (§ 6311 et seq.) of subchapter I of chapter 70 of Title 20, Education. Part B of title II of the Act is classified generally to part B (§ 6661 et seq.) of subchapter II of chapter 70 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

FINDINGS

Pub. L. 107–368, § 2, Dec. 19, 2002, 116 Stat. 3034, provided that: ''Congress finds the following:

''(1) The National Science Foundation has made major contributions for more than 50 years to strengthen and sustain the Nation's academic research enterprise that is the envy of the world.

''(2) The economic strength and national security of the United States and the quality of life of all Americans are grounded in the Nation's scientific and technological capabilities.

''(3) The National Science Foundation carries out important functions in supporting basic research in all science and engineering disciplines and in supporting science, mathematics, engineering, and technology education at all levels.

''(4) The research and education activities of the National Science Foundation promote the discovery, integration, dissemination, and application of new knowledge in service to society and prepare future generations of scientists, mathematicians, and engineers who will be necessary to ensure America's leadership in the global marketplace.

''(5) The National Science Foundation must be provided with sufficient resources to enable it to carry out its responsibilities to develop intellectual capital, strengthen the scientific infrastructure, integrate research and education, enhance the delivery of mathematics and science education in the United States, and improve the technological literacy of all people in the United States.

''(6) The emerging global economic, scientific, and technical environment challenges long-standing assumptions about domestic and international policy, requiring the National Science Foundation to play a more proactive role in sustaining the competitive advantage of the United States through superior research capabilities.

''(7) Commercial application of the results of Federal investment in basic and computing science is consistent with longstanding United States technology transfer policy and is a critical national priority, particularly with regard to cybersecurity and other homeland security applications, because of the urgent needs of commercial, academic, and individual users as well as the Federal and State Governments.''

REPORT ON FOUNDATION BUDGETARY AND PROGRAMMATIC EXPANSION

Pub. L. 107–368, § 22, Dec. 19, 2002, 116 Stat. 3065, provided for a National Science Board report to address and examine specified issues concerning the National Science Foundation's budgetary and programmatic growth provided for by Pub. L. 107–368 and to be submitted to certain Congressional committees within one year after Dec. 19, 2002.

DEFINITIONS

Pub. L. 107–368, § 4, Dec. 19, 2002, 116 Stat. 3035, provided that: ''In this Act [see Short Title of 2002 Amendment note set out under section 1861 of this title]:

''(1) ACADEMIC UNIT.—The term 'academic unit' means a department, division, institute, school, college, or other subcomponent of an institution of higher education.

''(2) BOARD.—The term 'Board' means the National Science Board established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

''(3) COMMUNITY COLLEGE.—The term 'community college' has the meaning given such term in section 3301(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7011(3)).

''(4) DIRECTOR.—The term 'Director' means the Director of the National Science Foundation estab-

lished under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

''(5) ELEMENTARY SCHOOL.—The term 'elementary school' has the meaning given that term by section 9101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(18)).

''(6) ELIGIBLE NONPROFIT ORGANIZATION.—The term 'eligible nonprofit organization' means a nonprofit research institute, or a nonprofit professional association, with demonstrated experience and effectiveness in mathematics or science education as determined by the Director.

''(7) FOUNDATION.—The term 'Foundation' means the National Science Foundation established under section 2 of the National Science Foundation Act of 1950 (42 U.S.C. 1861).

''(8) HIGH-NEED LOCAL EDUCATIONAL AGENCY.—The term 'high-need local educational agency' means a local educational agency that meets one or more of the following criteria:

''(A) It has at least one school in which 50 percent or more of the enrolled students are eligible for participation in the free and reduced price lunch program established by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

''(B) It has at least one school in which—

''(i) more than 34 percent of the academic classroom teachers at the secondary level (across all academic subjects) do not have an undergraduate degree with a major or minor in, or a graduate degree in, the academic field in which they teach the largest percentage of their classes; or

''(ii) more than 34 percent of the teachers in two of the academic departments do not have an undergraduate degree with a major or minor in, or a graduate degree in, the academic field in which they teach the largest percentage of their classes.

''(C) It has at least one school whose teacher attrition rate has been 15 percent or more over the last three school years.

''(9) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

''(10) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' has the meaning given such term by section 9101(26) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(26)).

''(11) MASTER TEACHER.—The term 'master teacher' means a mathematics or science teacher who works to improve the instruction of mathematics or science in kindergarten through grade 12 through—

''(A) participating in the development or revision of science, mathematics, engineering, or technology curricula;

''(B) serving as a mentor to mathematics or science teachers;

''(C) coordinating and assisting teachers in the use of hands-on inquiry materials, equipment, and supplies, and when appropriate, supervising acquisition and repair of such materials;

''(D) providing in-classroom teaching assistance to mathematics or science teachers; and

''(E) providing professional development, including for the purposes of training other master teachers, to mathematics and science teachers.

''(12) NATIONAL RESEARCH FACILITY.—The term 'national research facility' means a research facility funded by the Foundation which is available, subject to appropriate policies allocating access, for use by all scientists and engineers affiliated with research institutions located in the United States.

''(13) SECONDARY SCHOOL.—The term 'secondary school' has the meaning given that term by section 9101(38) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(38)).

''(14) STATE.—Except with respect to the Experimental Program to Stimulate Competitive Research, the term 'State' means one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

''(15) STATE EDUCATIONAL AGENCY.—The term 'State educational agency' has the meaning given such term by section 9101(41) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(41)).

''(16) UNITED STATES.—The term 'United States' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.''

§ 1862n–1. Robert Noyce Scholarship Program

(a) Scholarship program

(1) In general

The Director shall carry out a program to award grants to institutions of higher education (or consortia of such institutions) to provide scholarships, stipends, and programming designed to recruit and train mathematics and science teachers. Such program shall be known as the ''Robert Noyce Scholarship Program''.

(2) Merit review

Grants shall be provided under this subsection on a competitive, merit-reviewed basis.

(3) Use of grants

Grants provided under this section shall be used by institutions of higher education or consortia—

(A) to develop and implement a program to encourage top college juniors and seniors majoring in mathematics, science, and engineering at the grantee's institution to become mathematics and science teachers, through—

(i) administering scholarships in accordance with subsection (c) of this section;

(ii) offering programs to help scholarship recipients to teach in elementary schools and secondary schools, including programs that will result in teacher certification or licensing; and

(iii) offering programs to scholarship recipients, both before and after they receive their baccalaureate degree, to enable the recipients to become better mathematics and science teachers, to fulfill the service requirements of this section, and to exchange ideas with others in their fields; or

(B) to develop and implement a program to encourage science, mathematics, or engineering professionals to become mathematics and science teachers, through—

(i) administering stipends in accordance with subsection (d) of this section;

(ii) offering programs to help stipend recipients obtain teacher certification or licensing; and

(iii) offering programs to stipend recipients, both during and after matriculation in the program for which the stipend is received, to enable recipients to become better mathematics and science teachers, to fulfill the service requirements of this section, and to exchange ideas with others in their fields.

(b) Selection process

(1) Application

An institution of higher education or consortium seeking funding under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the scholarship or stipend program that the applicant intends to operate, including the number of scholarships or the size and number of stipends the applicant intends to award, and the selection process that will be used in awarding the scholarships or stipends;

(B) evidence that the applicant has the capability to administer the scholarship or stipend program in accordance with the provisions of this section; and

(C) a description of the programming that will be offered to scholarship or stipend recipients during and after their matriculation in the program for which the scholarship or stipend is received.

(2) Review of applications

In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the applicant to effectively carry out the program;

(B) the extent to which the applicant is committed to making the program a central organizational focus;

(C) the degree to which the proposed programming will enable scholarship or stipend recipients to become successful mathematics and science teachers;

(D) the number and quality of the students that will be served by the program; and

(E) the ability of the applicant to recruit students who would otherwise not pursue a career in teaching.

(c) Scholarship requirements

(1) In general

Scholarships under this section shall be available only to students who are—

(A) majoring in science, mathematics, or engineering; and

(B) in the last 2 years of a baccalaureate degree program.

(2) Selection

Individuals shall be selected to receive scholarships primarily on the basis of academic merit, with consideration given to financial need and to the goal of promoting the participation of individuals identified in section 1885a or 1885b of this title.

(3) Amount

The Director shall establish for each year the amount to be awarded for scholarships under this section for that year, which shall be not less than $7,500 per year, except that no individual shall receive for any year more than the cost of attendance at that individual's institution. Individuals may receive a maximum of 2 years of scholarship support.

(4) Service obligation

If an individual receives a scholarship, that individual shall be required to complete, within 6 years after graduation from the baccalaureate degree program for which the scholarship was awarded, 2 years of service as a mathematics or science teacher for each year a scholarship was received. Service required under this paragraph shall be performed in a high-need local educational agency.

(d) Stipends

(1) In general

Stipends under this section shall be available only to mathematics, science, and engineering professionals who, while receiving the stipend, are enrolled in a program to receive certification or licensing to teach.

(2) Selection

Individuals shall be selected to receive stipends under this section primarily on the basis of academic merit, with consideration given to financial need and to the goal of promoting the participation of individuals identified in section 1885a or 1885b of this title.

(3) Duration

Individuals may receive a maximum of 1 year of stipend support.

(4) Service obligation

If an individual receives a stipend under this section, that individual shall be required to complete, within 6 years after graduation from the program for which the stipend was awarded, 2 years of service as a mathematics or science teacher for each year a stipend was received. Service required under this paragraph shall be performed in a high-need local educational agency.

(e) Conditions of support

As a condition of acceptance of a scholarship or stipend under this section, a recipient shall enter into an agreement with the institution of higher education—

(1) accepting the terms of the scholarship or stipend pursuant to subsections (c) and (g) of this section, or subsection (d) of this section;

(2) agreeing to provide the awarding institution of higher education with annual certification of employment and up-to-date contact information and to participate in surveys provided by the institution of higher education as part of an ongoing assessment program; and

(3) establishing that any scholarship recipient shall be liable to the United States for any amount that is required to be repaid in accordance with the provisions of subsection (g) of this section.

(f) Collection for noncompliance

(1) Monitoring compliance

An institution of higher education (or consortium thereof) receiving a grant under this section shall, as a condition of participating in the program, enter into an agreement with the Director to monitor the compliance of scholarship and stipend recipients with their respective service requirements.

(2) Collection of repayment

(A) In the event that a scholarship recipient is required to repay the scholarship under subsection (g) of this section, the institution shall

be responsible for collecting the repayment amounts.

(B) Except as provided in subparagraph (C), any such repayment shall be returned to the Treasury of the United States.

(C) A grantee may retain a percentage of any repayment it collects to defray administrative costs associated with the collection. The Director shall establish a single, fixed percentage that will apply to all grantees.

(g) Failure to complete service obligation

(1) General rule

If an individual who has received a scholarship under this section—

(A) fails to maintain an acceptable level of academic standing in the educational institution in which the individual is enrolled, as determined by the Director;

(B) is dismissed from such educational institution for disciplinary reasons;

(C) withdraws from the baccalaureate degree program for which the award was made before the completion of such program;

(D) declares that the individual does not intend to fulfill the service obligation under this section; or

(E) fails to fulfill the service obligation of the individual under this section,

such individual shall be liable to the United States as provided in paragraph (2).

(2) Amount of repayment

(A) If a circumstance described in paragraph (1) occurs before the completion of one year of a service obligation under this section, the United States shall be entitled to recover from the individual, within one year after the date of the occurrence of such circumstance, an amount equal to—

(i) the total amount of awards received by such individual under this section; plus

(ii) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 2.

(B) If a circumstance described in paragraph (1)(D) or (E) occurs after the completion of one year of a service obligation under this section, the United States shall be entitled to recover from the individual, within one year after the date of the occurrence of such circumstance, an amount equal to the total amount of awards received by such individual under this section minus ½ of the amount of the award received per year for each full year of service completed, plus the interest on such amounts which would be payable if at the time the amounts were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(3) Exceptions

The Director may provide for the partial or total waiver or suspension of any service or payment obligation by an individual under this section whenever compliance by the individual with the obligation is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be unconscionable.

(h) Data collection

Institutions or consortia receiving grants under this section shall supply to the Director any relevant statistical and demographic data on scholarship recipients and stipend recipients the Director may request, including information on employment required by subsection (e) of this section.

(i) Definitions

In this section—

(1) the term ''cost of attendance'' has the meaning given such term in section 1087*ll* of title 20;

(2) the term ''mathematics and science teacher'' means a mathematics, science, or technology teacher at the elementary school or secondary school level;

(3) the term ''mathematics, science, or engineering professional'' means a person who holds a baccalaureate, masters, or doctoral degree in science, mathematics, or engineering and is working in that field or a related area;

(4) the term ''scholarship'' means an award under subsection (c) of this section; and

(5) the term ''stipend'' means an award under subsection (d) of this section.

(Pub. L. 107–368, § 10, Dec. 19, 2002, 116 Stat. 3049.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–2. Establishment of centers for research on mathematics and science learning and education improvement

(a) Establishment

(1) In general

(A) The Director shall award grants to institutions of higher education (or consortia thereof) to establish multidisciplinary Centers for Research on Learning and Education Improvement.

(B) Grants shall be awarded under this paragraph on a competitive, merit-reviewed basis.

(2) Purpose

The purpose of the Centers shall be to conduct and evaluate research in cognitive science, education, and related fields and to develop ways in which the results of such research can be applied in elementary school and secondary school classrooms to improve the teaching of mathematics and science.

(3) Focus

(A) Each Center shall be focused on a different challenge faced by elementary school or secondary school teachers of mathematics and

science. In determining the research focus of the Centers, the Director shall consult with the National Academy of Sciences and the Secretary of Education and take into account the extent to which other Federal programs support research on similar questions.

(B) The proposal solicitation issued by the Director shall state the focus of each Center and applicants shall apply for designation as a specific Center.

(C) At least one Center shall focus on developing ways in which the results of research described in paragraph (2) can be applied, duplicated, and scaled up for use in low-performing elementary schools and secondary schools to improve the teaching and student achievement levels in mathematics and science.

(D) To the extent practicable and relevant to its focus, every Center shall include, as part of its research, work designed to quantitatively assess and improve the ways that information technology is used in the teaching of mathematics and science.

(b) Selection process

(1) Application

An institution of higher education (or a consortium of such institutions) seeking funding under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

(A) the initial research projects that will be undertaken by the Center and the process by which new projects will be identified;

(B) how the Center will work with other research institutions and schools to broaden the national research agenda on learning and teaching;

(C) how the Center will promote active collaboration among physical, biological, and social science researchers;

(D) how the Center will promote active participation by elementary and secondary mathematics and science teachers and administrators; and

(E) how the results of the Center's research can be incorporated into educational practices, and how the Center will assess the success of those practices.

(2) Review of applications

In evaluating the applications submitted under paragraph (1), the Director shall consider, at a minimum—

(A) the ability of the applicant to effectively carry out the research program, including the activities described in paragraph (1)(E);

(B) the experience of the applicant in conducting research on the science of teaching and learning and the capacity of the applicant to foster new multidisciplinary collaborations;

(C) the capacity of the applicant to attract elementary school and secondary school teachers from a diverse array of schools, and with diverse professional experiences, for participation in Center activities; and

(D) the capacity of the applicant to attract and provide adequate support for graduate students to pursue research at the intersection of educational practice and basic research on human cognition and learning.

(3) Awards

The Director shall ensure, to the extent practicable, that the Centers funded under this section conduct research and develop educational practices designed to improve the educational performance of a broad range of students, including individuals identified in section 1885a or 1885b of this title.

(c) Annual conference

The Director shall convene an annual meeting of the Centers to foster collaboration among the Centers and to further disseminate the results of the Centers' activities.

(d) Coordination

The Director shall coordinate with the Secretary of Education in—

(1) disseminating the results of the research conducted pursuant to grants awarded under this section to elementary school teachers and secondary school teachers; and

(2) providing programming, guidance, and support to ensure that such teachers—

(A) understand the implications of the research disseminated under paragraph (1) for classroom practice; and

(B) can use the research to improve such teachers' performance in the classroom.

(Pub. L. 107–368, § 11, Dec. 19, 2002, 116 Stat. 3053.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–3. Duplication of programs

(a) In general

The Director shall review the education programs of the Foundation that are in operation as of December 19, 2002, to determine whether any of such programs duplicate the programs authorized under this Act.

(b) Implementation

As programs authorized under this Act are implemented, the Director shall—

(1) terminate any duplicative program being carried out by the Foundation or merge the duplicative program into a program authorized under this Act; and

(2) not establish any new program that duplicates a program that has been implemented pursuant to this Act.

(c) Report

(1) Review

The Director of the Office of Science and Technology Policy shall review the education programs of the Foundation to ensure compliance with the provisions of this section.

(2) Submission

Not later than 1 year after December 19, 2002, and annually thereafter as part of the an-

nual Office of Science and Technology Policy's budget submission to Congress, the Director of the Office of Science and Technology Policy shall complete a report on the review carried out under this subsection and shall submit the report to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Commerce, Science, and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate.

(Pub. L. 107–368, § 12, Dec. 19, 2002, 116 Stat. 3054.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b), is Pub. L. 107–368, Dec. 19, 2002, 116 Stat. 3034, known as the National Science Foundation Authorization Act of 2002. For complete classification of this Act to the Code, see Short Title of 2002 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–4. Major research equipment and facilities construction plan

(a) Prioritization of proposed major research equipment and facilities construction

(1) Development of priorities

(A) The Director shall—

(i) develop a list indicating by number the relative priority for funding under the major research equipment and facilities construction account that the Director assigns to each project the Board has approved for inclusion in a future budget request; and

(ii) submit the list described in clause (i) to the Board for approval.

(B) The Director shall update the list prepared under subparagraph (A) each time the Board approves a new project that would receive funding under the major research equipment and facilities construction account, as necessary to prepare reports under paragraph (2), and, from time to time, submit any updated list to the Board for approval.

(2) Annual report

Not later than 90 days after December 19, 2002, and not later than each June 15 thereafter, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing—

(A) the most recent Board-approved priority list developed under paragraph (1)(A);

(B) a description of the criteria used to develop such list; and

(C) a description of the major factors for each project that determined the ranking of such project on the list, based on the application of the criteria described pursuant to subparagraph (B).

(3) Criteria

The criteria described pursuant to paragraph (2)(B) shall include, at a minimum—

(A) scientific merit;

(B) broad societal need and probable impact;

(C) consideration of the results of formal prioritization efforts by the scientific community;

(D) readiness of plans for construction and operation;

(E) the applicant's management and administrative capacity of large research facilities;

(F) international and interagency commitments; and

(G) the order in which projects were approved by the Board for inclusion in a future budget request.

(b) Omitted

(c) Project management

No national research facility project funded under the major research equipment and facilities construction account shall be managed by an individual whose appointment to the Foundation is temporary.

(d) Board approval of major research equipment and facilities projects

(1) In general

The Board shall explicitly approve any project to be funded out of the major research equipment and facilities construction account before any funds may be obligated from such account for such project.

(2) Report

Not later than September 15 of each fiscal year, the Board shall report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committee on Science of the House of Representatives on the conditions of any delegation of authority under section 1863 of this title that relates to funds appropriated for any project in the major research equipment and facilities construction account.

(e) National Academy of Sciences study on major research equipment and facilities construction

(1) Study

Not later than 3 months after December 19, 2002, the Director shall enter into an arrangement with the National Academy of Sciences to perform a study on setting priorities for a diverse array of disciplinary and interdisciplinary Foundation-sponsored large research facility projects.

(2) Transmittal to Congress

Not later than 15 months after December 19, 2002, the Director shall transmit to the Committee on Science and the Committee on Appropriations of the House of Representatives, and to the Committee on Commerce, Science,

and Transportation, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate, the study conducted by the National Academy of Sciences together with the Foundation's reaction to the study authorized under paragraph (1).

(Pub. L. 107–368, § 14, Dec. 19, 2002, 116 Stat. 3056.)

CODIFICATION

Section is comprised of section 14 of Pub. L. 107–368. Subsec. (b)(1), (2) of section 14 of Pub. L. 107–368 amended section 1862*l* of this title, and subsec. (b)(3) of section 14 of Pub. L. 107–368 amended provisions set out as a note under section 1862k of this title.

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–5. Board meetings; audits; reports; scholarship eligibility

(a) Board meetings

(1) Omitted

(2) Open meetings

The Board and all of its committees, subcommittees, and task forces (and any other entity consisting of members of the Board and reporting to the Board) shall be subject to section 552b of title 5.

(3) Compliance audit

The Inspector General of the Foundation shall conduct an annual audit of the compliance by the Board with the requirements described in paragraph (2). The audit shall examine the proposed and actual content of closed meetings and determine whether the closure of the meetings was consistent with section 552b of title 5.

(4) Report

Not later than February 15 of each year, the Inspector General of the Foundation shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate the audit required under paragraph (3) along with recommendations for corrective actions that need to be taken to achieve fuller compliance with the requirements described in paragraph (2), and recommendations on how to ensure public access to the Board's deliberations.

(b), (c) Omitted

(d) Scholarship eligibility

The Director shall not exclude part-time students from eligibility for scholarships under the Computer Science, Engineering, and Mathematics Scholarship program.

(Pub. L. 107–368, § 15, Dec. 19, 2002, 116 Stat. 3058.)

CODIFICATION

Section is comprised of section 15 of Pub. L. 107–368. Subsecs. (a)(1) and (c) of section 15 of Pub. L. 107–368 amended section 1863 of this title, and subsec. (b) of section 15 of Pub. L. 107–368 amended section 1873 of this title.

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–6. Undergraduate education reform

(a) In general

The Director shall award grants, on a competitive, merit-reviewed basis, to institutions of higher education to expand previously implemented reforms of undergraduate science, mathematics, engineering, or technology education that have been demonstrated to have been successful in increasing the number and quality of students studying toward and completing associate's or baccalaureate degrees in science, mathematics, engineering, or technology.

(b) Uses of funds

Activities supported by grants under this section may include—

(1) expansion of successful reform efforts beyond a single course or group of courses to achieve reform within an entire academic unit;

(2) expansion of successful reform efforts beyond a single academic unit to other science, mathematics, engineering, or technology academic units within an institution;

(3) creation of multidisciplinary courses or programs that formalize collaborations for the purpose of improved student instruction and research in science, mathematics, engineering, and technology;

(4) expansion of undergraduate research opportunities beyond a particular laboratory, course, or academic unit to engage multiple academic units in providing multidisciplinary research opportunities for undergraduate students;

(5) expansion of innovative tutoring or mentoring programs proven to enhance student recruitment or persistence to degree completion in science, mathematics, engineering, or technology;

(6) improvement of undergraduate science, mathematics, engineering, and technology education for nonmajors, including education majors; and

(7) implementation of technology-driven reform efforts, including the installation of technology to facilitate such reform, that directly impact undergraduate science, mathematics, engineering, or technology instruction or research experiences.

(c) Selection process

(1) Applications

An institution of higher education seeking a grant under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum—

(A) a description of the proposed reform effort;

(B) a description of the previously implemented reform effort that will serve as the basis for the proposed reform effort and evidence of success of that previous effort, including data on student recruitment, persistence to degree completion, and academic achievement;

(C) evidence of active participation in the proposed project by individuals who were central to the success of the previously implemented reform effort; and

(D) evidence of institutional support for, and commitment to, the proposed reform effort, including a description of existing or planned institutional policies and practices regarding faculty hiring, promotion, tenure, and teaching assignment that reward faculty contributions to undergraduate education equal to, or greater than, scholarly scientific research.

(2) Review of applications

In evaluating applications submitted under paragraph (1), the Director shall consider at a minimum—

(A) the evidence of past success in implementing undergraduate education reform and the likelihood of success in undertaking the proposed expanded effort;

(B) the extent to which the faculty, staff, and administrators of the institution are committed to making the proposed institutional reform a priority of the participating academic unit;

(C) the degree to which the proposed reform will contribute to change in institutional culture and policy such that a greater value is placed on faculty engagement in undergraduate education, as evidenced through promotion and tenure policies; and

(D) the likelihood that the institution will sustain or expand the reform beyond the period of the grant.

(3) Grant distribution

The Director shall ensure, to the extent practicable, that grants awarded under this section are made to a variety of types of institutions of higher education.

(Pub. L. 107–368, § 17, Dec. 19, 2002, 116 Stat. 3060.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–7. Reports

(a) Grant size and duration

Not later than 6 months after December 19, 2002, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report describing the impact that increasing the average grant size and duration would have on minority-serving institutions and on institutions located in States where the Foundation's Experimental Program to Stimulate Competitive Research (established under section 1862g of this title) is carrying out activities.

(b) Faculty

Not later than 3 months after December 19, 2002, the Director shall enter into an arrangement with the National Academy of Sciences to assess gender differences in the careers of science and engineering faculty. This study shall build on the Academy's work on gender differences in the carriers of doctoral scientists and engineers and examine issues such as faculty hiring, promotion, tenure, and allocation of resources including laboratory space. Upon completion, the results of this study shall be transmitted to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(c) Grant funding

Not later than 3 months after December 19, 2002, the Director shall enter into an agreement with an appropriate party to assess gender differences in the distribution of external Federal research and development funding. This study shall examine differences in amounts requested and awarded, by gender, in major Federal external grant programs. Upon completion, the results of this study shall be transmitted to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(d) Study of broadband network access for schools and libraries

(1) Report to Congress

The Director shall conduct a study of the issues described in paragraph (3), and not later than 1 year after December 19, 2002, transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report including recommendations to address those issues. Such report shall be updated annually for 4 additional years.

(2) Consultation

In preparing the reports under paragraph (1), the Director shall consult with Federal agencies and educational entities as the Director considers appropriate.

(3) Issues to be addressed

The reports shall—

(A) identify the availability of high-speed, large bandwidth capacity access to different demographic groups served by elementary schools, secondary schools, and libraries in the United States;

(B) identify how the provision of high-speed, large bandwidth capacity access to the Internet to such schools and libraries can be effectively utilized within each school and library;

(C) consider the effect that specific or regional circumstances may have on the ability of such institutions to acquire high-speed, large bandwidth capacity access to achieve universal connectivity as an effective tool in the education process; and

(D) include options and recommendations to address the challenges and issues identified in the reports.

(e) Minority-serving institution funding

(1) Annual reporting required

The Director shall submit an annual report, along with the President's annual budget request, to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate on the amount of funding awarded by the Foundation to minority-serving institutions, including funding received as members of consortia. The report shall include information on such funding to minority-serving institutions—

(A) expressed as a percentage of funding to all institutions of higher education for each appropriations account within the Foundation's budget; and

(B) for the preceding 10 years.

(2) Report on ways to improve funding

Within one year after December 19, 2002, the Director shall submit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report on recommendations on how the Foundation can improve funding to minority-serving institutions.

(Pub. L. 107–368, § 18, Dec. 19, 2002, 116 Stat. 3061.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–8. Evaluations

(a) Education

(1) In general

The Director, through the Research, Evaluation and Communication Division of the Education and Human Resources Directorate of the Foundation, shall evaluate the effectiveness of all undergraduate science, mathematics, engineering, or technology education activities supported by the Foundation in increasing the number and quality of students, including individuals identified in section 1885a or 1885b of this title studying toward and completing associate's or baccalaureate degrees in science, mathematics, engineering, and technology. In conducting the evaluation, the Director shall consider information on—

(A) the number of students enrolled in undergraduate science, mathematics, engineering, and technology programs;

(B) student academic achievement, including quantifiable measurements of students' mastery of content and skills;

(C) persistence to degree completion, including students who transfer from science, mathematics, engineering, and technology programs to programs in other academic disciplines; and

(D) placement during the first year after degree completion in post-graduate education or career pathways.

(2) Assessment benchmarks and tools

The Director, through the Research, Evaluation and Communication Division of the Education and Human Resources Directorate of the Foundation, shall establish a common set of assessment benchmarks and tools, and shall enable every Foundation-sponsored project to incorporate the use of these benchmarks and tools in their project-based assessment activities.

(3) Reports to Congress

Not later than 3 years after December 19, 2002, and once every 3 years thereafter, the Director shall transmit to the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate a report containing the results of evaluations under paragraph (1).

(b) Awards

Notwithstanding any other provision of this Act, the Director shall annually evaluate a random sample of grants, contracts, or other awards made pursuant to this Act.

(c) Dissemination

The Director shall—

(1) provide for the dissemination of the results of the evaluations conducted pursuant to this section to the public; and

(2) provide notice to the public that such evaluations are available.

(Pub. L. 107–368, § 19, Dec. 19, 2002, 116 Stat. 3063.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 107–368, Dec. 19, 2002, 116 Stat. 3034, known as the National Science Foundation Authorization Act of 2002. For complete classification of this Act to the Code, see Short Title of 2002 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–9. Astronomy and Astrophysics Advisory Committee

(a) Establishment

The Foundation, the National Aeronautics and Space Administration, and the Department of Energy shall jointly establish an Astronomy and Astrophysics Advisory Committee (in this section referred to as the ''Advisory Committee'').

(b) Duties

The Advisory Committee shall—

(1) assess, and make recommendations regarding, the coordination of astronomy and astrophysics programs of the Foundation, the National Aeronautics and Space Administration, and the Department of Energy;

(2) assess, and make recommendations regarding, the status of the activities of the Foundation, the National Aeronautics and Space Administration, and the Department of Energy as they relate to the recommendations contained in the National Research Council's 2001 report entitled ''Astronomy and Astrophysics in the New Millennium'', and the recommendations contained in subsequent National Research Council reports of a similar nature; and

(3) not later than March 15 of each year, transmit a report to the Director, the Administrator of the National Aeronautics and Space Administration, the Secretary of Energy, the Committee on Science of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate on the Advisory Committee's findings and recommendations under paragraphs (1) and (2).

(c) Membership

The Advisory Committee shall consist of 13 members, none of whom shall be a Federal employee, including—

(1) 4 members selected by the Director;

(2) 4 members selected by the Administrator of the National Aeronautics and Space Administration;

(3) 3 members selected by the Secretary of Energy; and

(4) 2 members selected by the Director of the Office of Science and Technology Policy.

(d) Selection process

Initial selections under subsection (c) of this section shall be made within 3 months after December 19, 2002. Vacancies shall be filled in the same manner as provided in subsection (c) of this section.

(e) Chairperson

The Advisory Committee shall select a chairperson from among its members.

(f) Coordination

The Advisory Committee shall coordinate with other Federal advisory committees that advise Federal agencies that engage in related research activities.

(g) Compensation

The members of the Advisory Committee shall serve without compensation, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(h) Meetings

The Advisory Committee shall convene, in person or by electronic means, at least 4 times a year.

(i) Quorum

A majority of the members serving on the Advisory Committee shall constitute a quorum for purposes of conducting the business of the Advisory Committee.

(j) Duration

Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

(Pub. L. 107–368, § 23, Dec. 19, 2002, 116 Stat. 3065; Pub. L. 108–423, § 5(a), Nov. 30, 2004, 118 Stat. 2402.)

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (j), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

2004—Subsecs. (a), (b)(1), (2). Pub. L. 108–423, § 5(a)(1), substituted '', the National Aeronautics and Space Administration, and the Department of Energy'' for ''and the National Aeronautics and Space Administration''.

Subsec. (b)(3). Pub. L. 108–423, § 5(a)(2), substituted ''Administration, the Secretary of Energy,'' for ''Administration, and''.

Subsec. (c)(1), (2). Pub. L. 108–423, § 5(a)(3)(A), substituted ''4'' for ''5''.

Subsec. (c)(3), (4). Pub. L. 108–423, § 5(a)(3)(B)–(D), added par. (3) and redesignated former par. (3) as (4) and substituted ''2'' for ''3''.

Subsec. (f). Pub. L. 108–423, § 5(a)(4), substituted ''other Federal advisory committees that advise Federal agencies that engage in related research activities'' for ''the advisory bodies of other Federal agencies, such as the Department of Energy, which may engage in related research activities''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–423, § 5(b), Nov. 30, 2004, 118 Stat. 2402, provided that: ''The amendments made by subsection (a) [amending this section] take effect on March 15, 2005.''

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1862n–10. Minority-serving institutions undergraduate program

(a) In general

The Director is authorized to establish a new program to award grants on a competitive, merit-reviewed basis to Hispanic-serving institutions, Alaska Native-serving institutions, Native Hawaiian-serving institutions, and other institutions of higher education serving a substantial number of minority students to enhance the

quality of undergraduate science, mathematics, and engineering education at such institutions and to increase the retention and graduation rates of students pursuing associate's or baccalaureate degrees in science, mathematics, engineering, or technology.

(b) Program components

Grants awarded under this section shall support—

(1) activities to improve courses and curriculum in science, mathematics, and engineering;

(2) faculty development;

(3) stipends for undergraduate students participating in research; and

(4) other activities consistent with subsection (a) of this section, as determined by the Director.

(c) Program coordination

This program shall be coordinated with and in addition to the ongoing Historically Black Colleges and Universities Undergraduate Program and the Tribal Colleges and Universities Program.

(d) Instrumentation

Funding for instrumentation is an allowed use of grants awarded under this section and under the ongoing Historically Black Colleges and Universities Undergraduate Program and the Tribal Colleges and Universities Program.

(Pub. L. 107–368, § 24, Dec. 19, 2002, 116 Stat. 3066.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 2002, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

DEFINITIONS

For definitions of terms used in this section, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.

§ 1863. National Science Board

(a) Composition; appointment; establishment of policies of the Foundation

The Board shall consist of twenty-four members to be appointed by the President, by and with the advice and consent of the Senate, and of the Director ex officio. In addition to any powers and functions otherwise granted to it by this chapter, the Board shall establish the policies of the Foundation, within the framework of applicable national policies as set forth by the President and the Congress.

(b) Executive Committee; delegation of powers and functions

The Board shall have an Executive Committee as provided in section 1865 of this title, and may delegate to it or to the Director or both such of the powers and functions granted to the Board by this chapter as it deems appropriate.

(c) Meetings; nominations; quorum; notice

The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation. In making nominations under this section, the President shall give due regard to equitable representation of scientists and engineers who are women or who represent minority groups. The President is requested, in the making of nominations of persons for appointment as members, to give due consideration to any recommendations for nomination which may be submitted to him by the National Academy of Sciences, the National Academy of Engineering, the National Association of State Universities and Land Grant Colleges, the Association of American Universities, the Association of American Colleges, the Association of State Colleges and Universities, or by other scientific, engineering, or educational organizations.

(d) Term of office; reappointment

The term of office of each member of the Board shall be six years; except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Any person, other than the Director, who has been a member of the Board for twelve consecutive years shall thereafter be ineligible for appointment during the two-year period following the expiration of such twelfth year.

(e) Meetings; quorum; notice

The Board shall meet annually on the third Monday in May unless, prior to May 10 in any year, the Chairman has set the annual meeting for a day in May other than the third Monday, and at such other times as the Chairman may determine, but he shall also call a meeting whenever one-third of the members so request in writing. The Board shall adopt procedures governing the conduct of its meetings, including delivery of notice and a definition of a quorum, which in no case shall be less than one-half plus one of the confirmed members of the Board.

(f) Election of Chairman and Vice Chairman; vacancy

The election of the Chairman and Vice Chairman of the Board shall take place at each annual meeting occurring in an even-numbered year. The Vice Chairman shall perform the duties of the Chairman in his absence. In case a vacancy occurs in the chairmanship or vice chairmanship, the Board shall elect a member to fill such vacancy.

(g) Appointment and assignment of staff; compensation; security requirements

The Board may, with the concurrence of a majority of its members, permit the appointment of a staff consisting of not more than five professional staff members and such clerical staff members as may be necessary. Such staff shall be appointed by the Chairman and assigned at the direction of the Board. The professional members of such staff may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and the

provisions of chapter 51 of title 5 relating to classification, and compensated at a rate not exceeding the maximum rate payable under section 5376 of title 5, as may be necessary to provide for the performance of such duties as may be prescribed by the Board in connection with the exercise of its powers and functions under this chapter. Each appointment under this subsection shall be subject to the same security requirements as those required for personnel of the Foundation appointed under section 1873(a) of this title.

(h) Special commissions

The Board is authorized to establish such special commissions as it may from time to time deem necessary for the purposes of this chapter.

(i) Committees; survey and advisory functions

The Board is also authorized to appoint from among its members such committees as it deems necessary, and to assign to committees so appointed such survey and advisory functions as the Board deems appropriate to assist it in exercising its powers and functions under this chapter.

(j) Report to President; submittal to Congress

(1) The Board shall render to the President, for submission to the Congress no later than January 15 of each even numbered year, a report on indicators of the state of science and engineering in the United States.

(2) The Board shall render to the President for submission to the Congress reports on specific, individual policy matters related to science and engineering and education in science and engineering, as the Board, the President, or the Congress determines the need for such reports.

(k) Closed meetings

Portions of Board meetings in which the Board considers proposed Foundation budgets for a particular fiscal year may be closed to the public until the President's budget for that fiscal year has been submitted to the Congress.

(*l*) Financial disclosure report for Board members

Members of the Board shall be required to file a financial disclosure report under title II of the Ethics in Government Act of 1978 (5 U.S.C. App.; 92 Stat. 1836), except that such reports shall be held confidential and exempt from any law otherwise requiring their public disclosure.

(May 10, 1950, ch. 171, §4, 64 Stat. 150; Pub. L. 86–232, §2, Sept. 8, 1959, 73 Stat. 467; Pub. L. 86–507, §1(36), June 11, 1960, 74 Stat. 202; Pub. L. 90–407, §2, July 18, 1968, 82 Stat. 361; Pub. L. 94–273, §11(3), Apr. 21, 1976, 90 Stat. 378; Pub. L. 94–282, title V, §503, May 11, 1976, 90 Stat. 473; Pub. L. 94–471, §9, Oct. 11, 1976, 90 Stat. 2057; Pub. L. 95–99, §12(b), formerly §14(b), Aug. 15, 1977, 91 Stat. 835, renumbered §12(b), Pub. L. 99–159, title I, §109(h), Nov. 22, 1985, 99 Stat. 890; Pub. L. 96–516, §21(a), Dec. 12, 1980, 94 Stat. 3010; Pub. L. 97–375, title II, §214, Dec. 21, 1982, 96 Stat. 1826; Pub. L. 99–159, title I, §§109(a), 110(a)(12), Nov. 22, 1985, 99 Stat. 889, 891; Pub. L. 100–570, title I, §§105(a), 108, Oct. 31, 1988, 102 Stat. 2868, 2869; Pub. L. 105–207, title II, §202(a)(1), July 29, 1998, 112 Stat. 873; Pub. L. 107–368, §15(a)(1), (c), Dec. 19, 2002, 116 Stat. 3058, 3059.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (g), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The Ethics in Government Act of 1978, referred to in subsec. (*l*), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. Title II of the Ethics in Government Act of 1978 was set out in the Appendix to Title 5, Government Organization and Employees, prior to repeal by Pub. L. 101–194, title II, §201, Nov. 30, 1989, 103 Stat. 1724. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5 and Tables.

AMENDMENTS

2002—Subsec. (e). Pub. L. 107–368, §15(a)(1), substituted ''The Board shall adopt procedures governing the conduct of its meetings, including delivery of notice and a definition of a quorum, which in no case shall be less than one-half plus one of the confirmed members of the Board.'' for ''A majority of the members of the Board shall constitute a quorum. Each member shall be given notice, not less than fifteen days prior to any meeting, of the call of such meeting.''

Subsec. (g). Pub. L. 107–368, §15(c), substituted ''Such staff shall be appointed by the Chairman and assigned at the direction of the Board.'' for ''Such staff shall be appointed by the Director, after consultation with the chairman of the Board and assigned at the direction of the Board.''

1998—Subsec. (g). Pub. L. 105–207, §202(a)(1)(A), substituted ''the maximum rate payable under section 5376'' for ''the appropriate rate provided for individuals in grade GS–18 of the General Schedule under section 5332''.

Subsecs. (k), (*l*). Pub. L. 105–207, §202(a)(1)(B), redesignated subsec. (k), relating to requirement of Board members to file financial disclosure report, as (*l*).

1988—Subsec. (k). Pub. L. 100–570, §108, added subsec. (k) relating to requirement of Board members to file financial disclosure report.

Pub. L. 100–570, §105(a), added subsec. (k) relating to closed meetings.

1985—Subsec. (c). Pub. L. 99–159, §110(a)(12), inserted ''and engineering'', ''and engineers'', and ''the National Academy of Engineering,'' and inserted '', engineering,'' after ''other scientific''.

Subsec. (e). Pub. L. 99–159, §109(a), struck out requirement that notice be made to members by registered or certified mail mailed to the last known address of record.

1982—Subsec. (j). Pub. L. 97–375 substituted provisions requiring a report in each even numbered year on the state of science and engineering, and reports on specific policy matters, as needed, for provisions requiring the Board to render an annual report to the President, for submission to the Congress on or before March 31 in each year, to deal essentially, though not necessarily exclusively, with policy issues or matters affecting the Foundation or with which the Board in its official role as the policymaking body of the Foundation was concerned.

1980—Subsec. (c). Pub. L. 96–516 inserted provisions respecting nominations of women and minority groups.

1977—Subsec. (j). Pub. L. 95–99 added subsec. (j).

1976—Subsec. (a). Pub. L. 94–471, §9(a), inserted reference to the framework of applicable national policies as set forth by the President and the Congress.

Subsec. (g). Pub. L. 94–471, §9(b), inserted reference to consultation of the Director with the Chairman of the Board and substituted ''GS–18'' for ''GS–15''.

Pub. L. 94–282 redesignated subsec. (h), and all references thereto, as subsec. (g). Former subsec. (g), concerning the annual report by the National Science Board to the President and Congress, was deleted.

Pub. L. 94–273 substituted ''April'' for ''January''.

Subsecs. (h) to (j). Pub. L. 94–282 redesignated subsecs. (h) to (j) as (g) to (i), respectively.

1968—Subsec. (a). Pub. L. 90–407 substituted provisions which authorized the Board to establish the policies of the Foundation in addition to any powers and functions otherwise granted to it by this chapter, for provisions which authorized the Board, except as otherwise provided by this chapter, to exercise the authority granted to the Foundation by this chapter. Provisions of this subsection, which enumerated the qualifications of persons nominated for appointment to the Board and provided for the specified organizations to make recommendations to the President of individuals qualified for nomination, were designated as subsec. (c).

Subsec. (b). Pub. L. 90–407 added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 90–407 redesignated provisions of former subsec. (a) as (c) and added social science and research management to the enumerated fields of eminence, and substituted ''the National Association of State Universities and Land Grant Colleges, the Association of American Universities, the Association of American Colleges, the Association of State Colleges and Universities'' for ''the Association of Land Grant Colleges and Universities, the National Association of State Universities, the Association of American Colleges''. Former subsec. (c), which provided that ''The President shall call the first meeting of the Board, at which the first order of business shall be the election of a chairman and a vice chairman'', was struck out as executed.

Subsec. (d). Pub. L. 90–407 redesignated former subsec. (b) as (d), substituted ''term of office of each member'' for ''term of office of each voting member'', struck out ''the terms of office of the members first taking office after May 10, 1950, shall expire, as designated by the President at the time of appointment, eight at the end of two years, eight at the end of four years, and eight at the end of six years, after May 10, 1950'', and provided for exemption of Director from prohibition against reappointment within two years following twelve consecutive years of Board membership. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 90–407 redesignated former subsec. (d) as (e) and substituted ''A majority of the members of the Board shall constitute a quorum'' for ''A majority of the voting members of the Board shall constitute a quorum''. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 90–407 redesignated former subsec. (e) as (f) and substituted provisions that the election of the Chairman and Vice Chairman take place at each annual meeting occurring in an even-numbered year for provisions that their election take place at the first meeting of the National Science Board following the enactment of Pub. L. 86–232, and that thereafter such election take place at the second annual meeting occurring after each such election.

Subsecs. (g) to (j). Pub. L. 90–407 added subsecs. (g) to (j).

1960—Subsec. (d). Pub. L. 86–507 inserted ''or by certified mail'' after ''registered mail''.

1959—Subsec. (d). Pub. L. 86–232 changed annual meeting of Board from first Monday in December to third Monday or other designated day in May.

Subsec. (e). Pub. L. 86–232 substituted provision for an election of a Chairman and Vice Chairman of the Board at first meeting of Board following enactment of Pub. L. 86–232 and at each second annual meeting thereafter in place of provision for election of the first Chairman and Vice Chairman to serve until first Monday in December next succeeding date of election and for election of subsequent officers for terms of two years thereafter.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1864. Director of Foundation

(a) Appointment; compensation; term of office

The Director of the Foundation (referred to in this chapter as the ''Director'') shall be appointed by the President, by and with the advice and consent of the Senate. Before any person is appointed as Director, the President shall afford the Board an opportunity to make recommendations to him with respect to such appointment. The Director shall receive basic pay at the rate provided for level II of the Executive Schedule under section 5313 of title 5, and shall serve for a term of six years unless sooner removed by the President.

(b) Exercise of authority of Foundation; actions as final and binding upon the Foundation

Except as otherwise specifically provided in this chapter (1) the Director shall exercise all of the authority granted to the Foundation by this chapter (including any powers and functions which may be delegated to him by the Board), and (2) all actions taken by the Director pursuant to the provisions of this chapter (or pursuant to the terms of a delegation from the Board) shall be final and binding upon the Foundation.

(c) Delegation and redelegation of functions

The Director may from time to time make such provisions as he deems appropriate authorizing the performance by any other officer, agency, or employee of the Foundation of any of his functions under this chapter, including functions delegated to him by the Board; except that the Director may not redelegate policymaking functions delegated to him by the Board.

(d) Formulation of programs

The formulation of programs in conformance with the policies of the Foundation shall be carried out by the Director in consultation with the Board.

(e) Authority to grant, contract, etc.; delegation of authority or imposition of conditions; reporting requirement

(1) The Director may make grants, contracts, and other arrangements pursuant to section 1870(c) of this title only with the prior approval of the Board or under authority delegated by the Board, and subject to such conditions as the Board may specify.

(2) Any delegation of authority or imposition of conditions under paragraph (1) shall be

promptly published in the Federal Register and reported to the Committee on Labor and Human Resources, and the Committee on Commerce, Science, and Transportation, of the Senate and the Committee on Science of the House of Representatives.

(f) Status; power to vote and hold office

The Director, in his capacity as ex officio member of the Board, shall, except with respect to compensation and tenure, be coordinate with the other members of the Board. He shall be a voting member of the Board and shall be eligible for election by the Board as Chairman or Vice Chairman of the Board.

(May 10, 1950, ch. 171, § 5, 64 Stat. 151; Pub. L. 86–232, § 3, Sept. 8, 1959, 73 Stat. 467; Pub. L. 90–407, § 3, July 18, 1968, 82 Stat. 362; Pub. L. 99–159, title I, § 109(b), Nov. 22, 1985, 99 Stat. 889; Pub. L. 103–437, § 15(c)(1), Nov. 2, 1994, 108 Stat. 4591; Pub. L. 105–207, title II, § 202(a)(2), July 29, 1998, 112 Stat. 873.)

AMENDMENTS

1998—Subsec. (e)(2). Pub. L. 105–207 added par. (2) and struck out former par. (2), which read as follows: ''Any delegation of authority or imposition of conditions under the preceding sentence shall be effective only for such period of time, not exceeding two years, as the Board may specify, and shall be promptly published in the Federal Register and reported to the Committees on Labor and Human Resources and Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives. On October 1 of each odd-numbered year the Board shall submit to the Congress a concise report which explains and justifies any actions taken by the Board under this subsection to delegate its authority or impose conditions within the preceding two years. The provisions of this subsection shall cease to be effective at the end of fiscal year 1989.''

1994—Subsec. (e)(2). Pub. L. 103–437 substituted ''Science, Space, and Technology'' for ''Science and Technology''.

1985—Subsec. (e). Pub. L. 99–159 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The Director shall not make any contract, grant, or other arrangement pursuant to section 1870(c) of this title without the prior approval of the Board, except that a grant, contract, or other arrangement involving a total commitment of less than $2,000,000, or less than $500,000 in any one year, or a commitment of such lesser amount or amounts and subject to such other conditions as the Board in its discretion may from time to time determine to be appropriate and publish in the Federal Register, may be made if such action is taken pursuant to the terms and conditions set forth by the Board, and if each such action is reported to the Board at the Board meeting next following such action.''

1968—Subsec. (a). Pub. L. 90–407 inserted provision prescribing the annual rate of compensation of the Director, and struck out provision authorizing the Director to serve as a nonvoting ex officio member of the Board and as the chief executive officer of the Foundation.

Subsec. (b). Pub. L. 90–407 substituted provisions authorizing the Director, except as otherwise provided, to exercise all of the authority granted to the Foundation by this chapter and to take action final and binding upon the Foundation for provisions authorizing the Director, in addition to the powers and duties specifically vested in him by this chapter, to exercise the powers granted by sections 1869 or 1870(c) of this title and such other powers and duties delegated by the Board to him, and the proviso that no action taken by the Director pursuant to section 1869 or 1870(c) shall be final unless in each instance the Board has reviewed and approved the action proposed to be taken, or such action is taken pursuant to the terms of a delegation of authority from the Board or the Executive Committee to the Director.

Subsecs. (c) to (f). Pub. L. 90–407 added subsecs. (c) to (f).

1959—Subsec. (b). Pub. L. 86–232 provided for delegation of authority from the Board or the Executive Committee to the Director.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–407, insofar as related to rates of basic pay, effective on first day of first calendar month which begins on or after July 18, 1968, see section 15(a)(4), set out as a note under section 5313 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

Authority of Director of National Science Foundation, from time to time, to make appropriate provisions authorizing performance by any other officer, or by any agency or employee, of National Science Foundation of any of his functions (including functions delegated to him by National Science Board), see Reorg. Plan No. 5 of 1965, eff. July 27, 1965, 30 F.R. 9355, 79 Stat. 1323, set out in the Appendix to Title 5, Government Organization and Employees.

Office of Director of National Science Foundation established under provisions of this section abolished and functions transferred to Director of National Science Foundation appointed pursuant to Reorg. Plan No. 2 of 1962, see section 22 (a), (b) of Reorg. Plan No. 2 of 1962, eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, set out as a note under section 1861 of this title.

STUDY ON RESEARCH AND DEVELOPMENT FUNDING DATA DISCREPANCIES

Pub. L. 107–368, § 25, Dec. 19, 2002, 116 Stat. 3067, required the Director of the National Science Foundation to enter into an agreement with the National Academy of Sciences to conduct a comprehensive study to determine the source of discrepancies in Federal reports on obligations and actual expenditures of Federal research and development funding and to submit a report on the results of the study to committees of Congress within one year after Dec. 19, 2002, and required the Director of the Office of Science and Technology Policy to submit to those committees a plan for implementation of the recommendations of the study, within 6 months after the completion of the study.

RESEARCH PURPOSES OF GRANTS; BRIEF STATEMENT IN TITLES

Pub. L. 96–516, § 20, Dec. 12, 1980, 94 Stat. 3010, provided that: ''The Director of the National Science Foundation shall require the titles of all its grants to contain a brief statement of the purpose of the research being undertaken. Insofar as possible such statements shall be in layman's language.''

FEASIBILITY STUDY OF SOLAR ENERGY TRANSMISSION TO EARTH

Pub. L. 95–434, § 8, Oct. 10, 1978, 92 Stat. 1050, provided that:

''(a) The Director of the National Science Foundation, in consultation with the Director of the Office of Science and Technology Policy, the Secretary of Energy, the Administrator of the National Aeronautics and Space Administration, and technical experts in public agencies, private organizations, and academic institutions, is authorized to determine the need to

provide support under this Act for a study of the feasibility of transmitting solar energy to Earth by using orbital structures manufactured from lunar or asteroidal materials, and the impact of such a feasibility study, if any, on existing National Science Foundation programs.

''(b)(1) If the Foundation determines that such a feasibility study is necessary, the Foundation is authorized to conduct such a study directly or by grants or contracts with public agencies, private organizations, or academic institutions.

''(2) At the conclusion of any such study the Foundation shall prepare and submit to the President and to the Congress a report of the study, together with such recommendations as the Foundation deems appropriate.

''(3) Of the funds authorized in section 2, $500,000 shall be available to carry out the provisions of this subsection.''

FEASIBILITY STUDY OF THE OPERATION OF THE PEER REVIEW SYSTEM IN THE EVALUATION OF GRANT PROPOSALS

Pub. L. 94–471, §2(f), Oct. 11, 1976, 90 Stat. 2053, provided that: ''The Director of the National Science Foundation is authorized and directed to conduct a feasibility study of operating the peer review system used in the evaluation of grant proposals within the Foundation so as to assure that the identity of the proposer is not known to the reviewers of the proposal. Any such system shall be considered to supplement and not to supplant the peer review system in operation in the Foundation on the date of enactment of this Act [Oct. 11, 1976].''

SCIENCE FOR CITIZENS PROGRAM; PREPARATION AND SUBMISSION OF PLAN TO COMMITTEES OF CONGRESS

Pub. L. 94–86, §3, Aug. 9, 1975, 89 Stat. 429, directed the Director of the National Science Foundation to prepare a comprehensive plan for the establishment and conduct of a ''Science for Citizens Program'' and, within six months from Aug. 9, 1975, submit the plan to specific committees of the House of Representatives and Senate. See section 5 of Pub. L. 94–471, set out as a note under section 1862 of this title.

PARTICIPATION OF PUBLIC IN CONDUCT OF FOUNDATION PROGRAMS; PREPARATION AND SUBMISSION OF PLAN TO COMMITTEES OF CONGRESS

Pub. L. 94–86, §4, Aug. 9, 1975, 89 Stat. 430, authorized the Director of the National Science Foundation to prepare a comprehensive plan to facilitate the participation of members of the public in the formulation, development, and conduct of National Science Foundation programs, policies, and priorities and to submit the resulting recommendations, plans, or other findings to specific committees of the House of Representatives and the Senate within 120 days from Aug. 9, 1975.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1864a. Deputy Director of the Foundation

There shall be a Deputy Director of the Foundation (referred to in this chapter as the ''Deputy Director''), who shall be appointed by the President, by and with the advice and consent of the Senate. Before any person is appointed as Deputy Director, the President shall afford the Board and the Director an opportunity to make recommendations to him with respect to such appointment. The Deputy Director shall receive basic pay at the rate provided for level III of the Executive Schedule under section 5314 of title 5, and shall perform such duties and exercise such powers as the Director may prescribe. The Deputy Director shall act for, and exercise the powers of, the Director during the absence or disability of the Director or in the event of a vacancy in the office of Director.

(May 10, 1950, ch. 171, §6, as added Pub. L. 90–407, §4, July 18, 1968, 82 Stat. 363; amended Pub. L. 99–383, §7(b)(1), Aug. 21, 1986, 100 Stat. 814.)

AMENDMENTS

1986—Pub. L. 99–383 struck out subsec. (a) designation and struck out subsec. (b) which provided for appointment of four Assistant Directors of the Foundation.

EFFECTIVE DATE

Section, insofar as related to rates of basic pay, effective on first day of first calendar month which begins on or after July 18, 1968, see section 15(a)(4) of Pub. L. 90–407, set out as an Effective Date of 1968 Amendment note under section 5313 of Title 5, Government Organization and Employees.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1865. Executive Committee

(a) Composition; powers and functions; membership; chairman

There shall be an Executive Committee of the Board (referred to in this chapter as the ''Executive Committee''), which shall be composed of five members and shall exercise such powers and functions as may be delegated to it by the Board. Four of the members shall be elected as provided in subsection (b) of this section, and the Director ex officio shall be the fifth member and the chairman of the Executive Committee.

(b) Election to membership; term of office; eligibility for reelection

At each of its annual meetings the Board shall elect two of its members as members of the Executive Committee, and the Executive Committee members so elected shall hold office for two years from the date of their election. Any person, other than the Director, who has been a member of the Executive Committee for six consecutive years shall thereafter be ineligible for service as a member thereof during the two-year period following the expiration of such sixth year. For the purposes of this subsection, the period between any two consecutive annual meetings of the Board shall be deemed to be one year.

(c) Term of vacancy appointment

Any person elected as a member of the Executive Committee to fill a vacancy occurring prior to the expiration of the term for which his predecessor was elected shall be elected for the remainder of such term.

(d) Reports; minority views

The Executive Committee shall render an annual report to the Board, and such other reports as it may deem necessary, summarizing its activities and making such recommendations as it

may deem appropriate. Minority views and recommendations, if any, of members of the Executive Committee shall be included in such reports.

(May 10, 1950, ch. 171, § 7, formerly § 6, 64 Stat. 151; Pub. L. 86–232, § 4, Sept. 8, 1959, 73 Stat. 467; renumbered and amended Pub. L. 90–407, §§ 4, 5, July 18, 1968, 82 Stat. 363, 364.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–407, § 5, made mandatory the organization of the Executive Committee, struck out prohibition that the Board may not assign to the Executive Committee the function of establishing policies, and inserted provisions setting forth the number of members, their manner of election, and the status of the Director.

Subsec. (b). Pub. L. 90–407, § 5, substituted provisions that Board elect two members as members of Executive Committee at its annual meeting, with period between any two consecutive annual meetings to be deemed one year, for provisions covering composition of Executive Committee, setting forth a special one year term of office for four members first elected after May 10, 1950, and directing that membership of Committee represent diverse interests and areas. Provisions of former subsecs. (b)(2)(A) and (b)(5) were redesignated as subsecs. (c) and (d), respectively.

Subsec. (c). Pub. L. 90–407, § 5, redesignated former subsec. (b)(2)(A) as (c) and substituted ''Any person elected as a member of the Executive Committee'' for ''any member elected''. Former subsec. (c), authorizing the Board to appoint such additional committees as it deems necessary, and to delegate to such committees survey and advisory functions as it deems appropriate, was struck out.

Subsec. (d). Pub. L. 90–407, § 5, redesignated former subsec. (b)(5) as (d) and substituted ''The Executive Committee'' for ''Such Committee''.

1959—Subsec. (a). Pub. L. 86–232 struck out prohibition against assignment to Executive Committee of function of review and approval.

Subsec. (b)(1). Pub. L. 86–232 authorized Board to have an Executive Committee consisting of from five to nine members rather than fixed number of nine.

TRANSFER OF FUNCTIONS

Executive Committee of National Science Board appointed under provisions of this section abolished and functions conferred by this section transferred to Executive Committee of National Science Board established by Reorg. Plan No. 2 of 1962, see sections 21(e) and 23(a)(1) of Reorg. Plan No. 2 of 1962, eff. June 8, 1962, 27 F.R. 5419, 76 Stat. 1253, set out as a note under section 1861 of this title.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1866. Divisions within Foundation

There shall be within the Foundation such Divisions as the Director, in consultation with the Board, may from time to time determine.

(May 10, 1950, ch. 171, § 8, formerly § 7, 64 Stat. 152; renumbered § 8 and amended Pub. L. 90–407, §§ 4, 6, July 18, 1968, 82 Stat. 363, 364.)

PRIOR PROVISIONS

A prior section 8 of act May 10, 1950, which was classified to section 1867 of this title, was repealed by Pub. L. 90–407, § 4, July 18, 1968, 82 Stat. 363.

AMENDMENTS

1968—Pub. L. 90–407, § 6, substituted provisions that there be within the Foundation such divisions as the Director, in consultation with the Board, may from time to time determine for provisions that, unless otherwise provided by the Board, there be within the Foundation a Division of Medical Research, a Division of Mathematical, Physical, and Engineering Sciences, a Division of Biological Sciences, a Division of Scientific Personnel and Education, and such other divisions as the Board deems necessary.

CONSOLIDATION OF DIRECTORATES

Pub. L. 96–516, § 18, Dec. 12, 1980, 94 Stat. 3009, directed National Science Foundation to consolidate all Directorates, including Science Education Directorate, under one roof, in present location of central administrative offices, on or before Aug. 1, 1982.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1867. Repealed. Pub. L. 90–407, § 4, July 18, 1968, 82 Stat. 363

Section, act May 10, 1950, ch. 171, § 8, 64 Stat. 152, authorized a committee for each division of the Foundation, and provided for the composition, terms of office, chairmenship, rules of procedure, and powers and duties of each divisional committee.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1868. Special commissions

(a) Each special commission established under section 1863(h) of this title shall be appointed by the Board and shall consist of such members as the Board considers appropriate.

(b) Special commissions may be established to study and make recommendations to the Foundation on issues relating to research and education in science and engineering.

(May 10, 1950, ch. 171, § 9, 64 Stat. 152; Pub. L. 90–407, § 7, July 18, 1968, 82 Stat. 364; Pub. L. 99–159, title I, § 109(d), Nov. 22, 1985, 99 Stat. 889.)

AMENDMENTS

1985—Pub. L. 99–159 amended section generally. Prior to amendment, section read as follows:

''(a) Each special commission established pursuant to section 1863(i) of this title shall consist of eleven members appointed by the Board, six of whom shall be eminent scientists and five of whom shall be persons other than scientists. Each special commission shall choose its own chairman and vice chairman.

''(b) It shall be the duty of each such special commission to make a comprehensive survey of research, both public and private, being carried on in its field, and to formulate and recommend to the Foundation at the earliest practicable date an over-all research program in its field.''

1968—Subsec. (a). Pub. L. 90–407 substituted ''section 1863(i) of this title'' for ''section 1862(a)(7) of this title''.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization

of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1869. Scholarships and graduate fellowships

The Foundation is authorized to award scholarships and graduate fellowships for study and research in the sciences or in engineering at appropriate nonprofit American or nonprofit foreign institutions selected by the recipient of such aid, for stated periods of time. Persons shall be selected for such scholarships and fellowships from among citizens, nationals or lawfully admitted permanent resident aliens of the United States, and such selections shall be made solely on the basis of ability; but in any case in which two or more applicants for scholarships or fellowships, as the case may be, are deemed by the Foundation to be possessed of substantially equal ability, and there are not sufficient scholarships or fellowships, as the case may be, available to grant one to each of such applicants, the available scholarship or scholarships or fellowship or fellowships shall be awarded to the applicants in such manner as will tend to result in a wide distribution of scholarships and fellowships throughout the United States. Nothing contained in this chapter shall prohibit the Foundation from refusing or revoking a scholarship or fellowship award, in whole or in part, in the case of any applicant or recipient, if the Board is of the opinion that such award is not in the best interests of the United States.

(May 10, 1950, ch. 171, §10, 64 Stat. 152; Pub. L. 86–232, §5, Sept. 8, 1959, 73 Stat. 468; Pub. L. 86–550, June 29, 1960, 74 Stat. 256; Pub. L. 87–835, §2, Oct. 16, 1962, 76 Stat. 1070; Pub. L. 90–407, §8, July 18, 1968, 82 Stat. 364; Pub. L. 99–159, title I, §110(a)(13), Nov. 22, 1985, 99 Stat. 891; Pub. L. 99–383, §7(c), Aug. 21, 1986, 100 Stat. 814; Pub. L. 101–589, title III, §302(c), Nov. 16, 1990, 104 Stat. 2895.)

AMENDMENTS

1990—Pub. L. 101–589 substituted ‘‘, nationals or lawfully admitted permanent resident aliens’’ for ‘‘or nationals’’ in second sentence.

1986—Pub. L. 99–383 struck out ‘‘, within the limits of funds made available specifically for such purpose pursuant to section 1875 of this title,’’ after ‘‘The Foundation is authorized to award’’.

1985—Pub. L. 99–159 substituted ‘‘study and research in the sciences or in engineering’’ for ‘‘scientific study or scientific work in the mathematical, physical, medical, biological, engineering, social, and other sciences’’.

1968—Pub. L. 90–407 inserted social sciences to the enumerated list of sciences, and substituted ‘‘throughout the United States’’ for ‘‘among the States, Territories, possessions, and the District of Columbia’’.

1962—Pub. L. 87–835 authorized the Foundation to refuse or revoke a scholarship or fellowship award if they believe such award is not in the best interests of the United States.

1960—Pub. L. 86–550 authorized the selection of nationals for scholarships and fellowships.

1959—Pub. L. 86–232 substituted ‘‘appropriate’’ for ‘‘accredited’’ and struck out ‘‘of higher education’’ after ‘‘foreign institutions’’.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1869a. Contracts for precollege science or engineering curriculum development activities; inspection of materials by parent or guardian

After August 9, 1975, the Director of the National Science Foundation, shall require, as a condition of any award made by the National Science Foundation for the purpose of precollege science or engineering curriculum development activities, that the awardee, and any subcontractors involved in the distribution, marketing, or selling of such science or engineering curricula, shall include in any testing agreement, sales contract, or other comparable legal instrument a provision requiring that all instructional materials, including teacher's manuals, films, tapes, or other supplementary instructional materials developed or provided under such award, subcontract, or other legal instrument, will be made available within the school district using such materials for inspection by parents or guardians of children engaged in educational programs or projects of that school district. In addition, the Director of the National Science Foundation shall take such action as may be necessary and feasible to modify awards made for the purpose of precollege science or engineering curriculum development and implementation activities on or before August 9, 1975, to include such a provision in all possible cases.

(Pub. L. 94–86, §2(b), Aug. 9, 1975, 89 Stat. 428; Pub. L. 99–159, title I, §110(b), Nov. 22, 1985, 99 Stat. 892.)

CODIFICATION

Section was not enacted as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1985—Pub. L. 99–159 inserted ‘‘or engineering’’ after ‘‘science’’ in three places.

§ 1869b. Issuance of instructions to grantees of pre-college curriculum projects

The National Science Foundation is directed to issue instructions to grantees for pre-college curriculum projects covering the protection of pre-college students and procedures for involving such students in pre-college education research and development, pilot-testing, evaluation, and revision of experimental and innovative pre-college curriculum projects funded by the Foundation. These instructions shall require such grantees to obtain written approval of the school board or comparable authority responsible for the schools prior to the involvement of such students.

(Pub. L. 95–99, §8, formerly §9, Aug. 15, 1977, 91 Stat. 833; renumbered §8, Pub. L. 99–159, title I, §109(h), Nov. 22, 1985, 99 Stat. 890.)

CODIFICATION

Section was not enacted as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1869c. Low-income scholarship program

(1) Establishment

The Director of the National Science Foundation (referred to in this section as the ''Director'') shall award scholarships to low-income individuals to enable such individuals to pursue associate, undergraduate, or graduate level degrees in mathematics, engineering, or computer science.

(2) Eligibility

(A) In general

To be eligible to receive a scholarship under this section, an individual—

(i) must be a citizen of the United States, a national of the United States (as defined in section 1101(a) of title 8), an alien admitted as a refugee under section 1157 of title 8, or an alien lawfully admitted to the United States for permanent residence;

(ii) shall prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require; and

(iii) shall certify to the Director that the individual intends to use amounts received under the scholarship to enroll or continue enrollment at an institution of higher education (as defined in section 1001(a) of title 20) in order to pursue an associate, undergraduate, or graduate level degree in mathematics, engineering, computer science, or other technology and science programs designated by the Director.

(B) Ability

Awards of scholarships under this section shall be made by the Director solely on the basis of the ability of the applicant, except that in any case in which 2 or more applicants for scholarships are deemed by the Director to be possessed of substantially equal ability, and there are not sufficient scholarships available to grant one to each of such applicants, the available scholarship or scholarships shall be awarded to the applicants in a manner that will tend to result in a geographically wide distribution throughout the United States of recipients' places of permanent residence.

(3) Limitation

The amount of a scholarship awarded under this section shall be determined by the Director, except that the Director shall not award a scholarship in an amount exceeding $10,000 per year. The Director may renew scholarships for up to 4 years.

(4) Funding

The Director shall carry out this section only with funds made available under section 1356(s)(3) of title 8. The Director may use no more than 50 percent of such funds for undergraduate programs for curriculum development, professional and workforce development, and to advance technological education. Funds for these other programs may be used for purposes other than scholarships.

(5) Federal Register

Not later than 60 days after December 8, 2004, the Director shall publish in the Federal Register a list of eligible programs of study.

(Pub. L. 105–277, div. C, title IV, § 414(d), Oct. 21, 1998, 112 Stat. 2681–653; Pub. L. 106–313, title I, § 110(b), Oct. 17, 2000, 114 Stat. 1256; Pub. L. 108–447, div. J, title IV, § 429, Dec. 8, 2004, 118 Stat. 3360.)

REFERENCES IN TEXT

Section 1157 of title 8, referred to in par. (2)(A)(i), was in the original ''section 207 of the Immigration and Nationality'', and was translated as reading section 207 of the Immigration and Nationality Act to reflect the probable intent of Congress.

CODIFICATION

Section was enacted as part of the American Competitiveness and Workforce Improvement Act of 1998, and also as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

2004—Par. (2)(A)(iii). Pub. L. 108–447, § 429(a), substituted ''computer science, or other technology and science programs designated by the Director'' for ''or computer science''.

Par. (3). Pub. L. 108–447, § 429(b), substituted ''$10,000 per year'' for ''$3,125 per year''.

Par. (4). Pub. L. 108–447, § 429(c), inserted at end ''The Director may use no more than 50 percent of such funds for undergraduate programs for curriculum development, professional and workforce development, and to advance technological education. Funds for these other programs may be used for purposes other than scholarships.''

Par. (5). Pub. L. 108–447, § 429(d), added par. (5).

2000—Par. (3). Pub. L. 106–313 substituted ''$3,125 per year. The Director may renew scholarships for up to 4 years'' for ''$2,500 per year.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–447 effective 90 days after Dec. 8, 2004, see section 430(a) of Pub. L. 108–447, set out as a note under section 1182 of Title 8, Aliens and Nationality.

§ 1870. General authority of Foundation

The Foundation shall have the authority, within the limits of available appropriations, to do all things necessary to carry out the provisions of this chapter, including, but without being limited thereto, the authority—

(a) to prescribe such rules and regulations as it deems necessary governing the manner of its operations and its organization and personnel;

(b) to make such expenditures as may be necessary for administering the provisions of this chapter;

(c) to enter into contracts or other arrangements, or modifications thereof, for the carrying on, by organizations or individuals in the United States and foreign countries, including other government agencies of the United States and of foreign countries, of such scientific or engineering activities as the Foundation deems necessary to carry out the purposes of this chapter, and, at the request of the Secretary of State or Secretary of Defense, specific scientific or engineering activities in connection with matters relating to international cooperation or national security, and, when deemed appropriate by the Foundation, such contracts or other arrange-

ments, or modifications thereof may be entered into without legal consideration, without performance or other bonds, and without regard to section 5 of title 41;

(d) to make advance, progress, and other payments which relate to scientific or engineering activities without regard to the provisions of section 3324(a) and (b) of title 31;

(e) to acquire by purchase, lease, loan, gift, or condemnation, and to hold and dispose of by grant, sale, lease, or loan, real and personal property of all kinds necessary for, or resulting from, the exercise of authority granted by this chapter;

(f) to receive and use funds donated by others, if such funds are donated without restriction other than that they be used in furtherance of one or more of the general purposes of the Foundation;

(g) to publish or arrange for the publication of scientific and engineering information so as to further the full dissemination of information of scientific or engineering value consistent with the national interest, without regard to the provisions of section 501 of title 44;

(h) to accept and utilize the services of voluntary and uncompensated personnel and to provide transportation and subsistence as authorized by section 5703 of title 5 for persons serving without compensation;

(i) to prescribe, with the approval of the Comptroller General of the United States, the extent to which vouchers for funds expended under contracts for scientific or engineering research shall be subject to itemization or substantiation prior to payment, without regard to the limitations of other laws relating to the expenditure of public funds and accounting therefor;

(j) to arrange with and reimburse the heads of other Federal agencies for the performance of any activity which the Foundation is authorized to conduct; and

(k) during the 5-year period beginning on August 21, 1986, to indemnify grantees, contractors, and subcontractors associated with the Ocean Drilling Program under the provisions of section 2354 of title 10 with all approvals and certifications required by such indemnification made by the Director.

(May 10, 1950, ch. 171, §11, 64 Stat. 153; Pub. L. 86–232, §6, Sept. 8, 1959, 73 Stat. 468; Pub. L. 90–407, §9, July 18, 1968, 82 Stat. 365; Pub. L. 99–159, title I, §110(a)(14), Nov. 22, 1985, 99 Stat. 891; Pub. L. 99–383, §7(d), Aug. 21, 1986, 100 Stat. 814.)

CODIFICATION

In subsec. (d), ''section 3324(a) and (b) of title 31'' substituted for ''section 3648 of the Revised Statutes (31 U.S.C., sec. 529)'' on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

In subsec. (g), ''section 501 of title 44'' substituted for ''section 87 of the Act of January 12, 1895 (28 Stat. 622), and section 11 of the Act of March 1, 1919 (40 Stat. 1270; 44 U.S.C., sec. 111)'' on authority of Pub. L. 90–620, §2(b), Oct. 22, 1968, 82 Stat. 1305, the first section of which enacted Title 44, Public Printing and Documents.

AMENDMENTS

1986—Subsec. (k). Pub. L. 99–383 added subsec. (k).

1985—Subsecs. (c), (d). Pub. L. 99–159, §110(a)(14)(A), inserted references to engineering.

Subsec. (g). Pub. L. 99–159, §110(a)(14)(B), (C), substituted ''engineering'' for ''technical'' and inserted reference to engineering value.

Subsec. (i). Pub. L. 99–159, §110(a)(14)(A), inserted applicability to engineering.

1968—Subsec. (c). Pub. L. 90–407, §9(a), substituted ''scientific activities'' for ''basic scientific research activities'' and ''scientific research activities'', ''international cooperation or national security'' for ''national defense'', and inserted ''Secretary of State'' after ''at the request of the''.

Subsec. (d). Pub. L. 90–407, §9(b), substituted ''activities'' for ''research''.

Subsec. (h). Pub. L. 90–407, §9(c), substituted ''section 5703 of title 5'' for ''section 5 of the Act of August 2, 1946 (5 U.S.C. 73b–2)''.

Subsec. (j). Pub. L. 90–407, §9(d), added subsec. (j).

1959—Subsec. (e). Pub. L. 86–232 included acquisition of property by condemnation.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1870a. Buy-American requirements

(a) Award of contracts

The Director shall, to the maximum extent practicable and consistent with current law, award to domestic firms any contracts for the purchase of goods and services intended for direct use by the Foundation.

(b) Report

The Director shall, as soon as possible after October 31, 1988, prepare a report on—

(1) the number of Foundation contracts entered into with foreign firms in fiscal year 1988;

(2) the number of such contracts entered into with domestic firms in that fiscal year;

(3) the number of contracts entered into with foreign firms where the Foundation also received a technically acceptable bid from a domestic firm; and

(4) any steps the Foundation will take to increase the number of contracts awarded to domestic firms.

Such report shall be submitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committees on Labor and Human Resources and Commerce, Science, and Transportation of the Senate.

(c) Definitions

For the purposes of this section—

(1) the term ''domestic firm'' means a business entity which is organized under the laws of the United States or the laws of a State, district, commonwealth, territory, or possession of the United States, and which conducts business operations in the United States; and

(2) the term ''foreign firm'' means a business entity not described in paragraph (1).

(Pub. L. 100–570, title I, §111, Oct. 31, 1988, 102 Stat. 2869.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1988, and not as part

of the National Science Foundation Act of 1950 which comprises this chapter.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 1871. Disposition of inventions produced under contracts or other arrangements

Each contract or other arrangement executed pursuant to this chapter which relates to scientific or engineering research shall contain provisions governing the disposition of inventions produced thereunder in a manner calculated to protect the public interest and the equities of the individual or organization with which the contract or other arrangement is executed: *Provided*, *however*, That nothing in this chapter shall be construed to authorize the Foundation to enter into any contractual or other arrangement inconsistent with any provision of law affecting the issuance or use of patents.

(May 10, 1950, ch. 171, § 12, 64 Stat. 154; Pub. L. 99–159, title I, §§ 109(c), 110(a)(15), Nov. 22, 1985, 99 Stat. 889, 891.)

AMENDMENTS

1985—Pub. L. 99–159 struck out subsec. (a) designation, inserted ''or engineering'' after ''scientific'', and struck out subsec. (b) which prohibited Foundation officers and employees from acquiring, etc., patent rights in inventions.

§ 1872. International cooperation and coordination with foreign policy

(a) The Foundation is authorized to cooperate in any international scientific or engineering activities consistent with the purposes of this chapter and to expend for such international scientific or engineering activities such sums within the limit of appropriated funds as the Foundation may deem desirable. The Director may defray the expenses of representatives of Government agencies and other organizations and of individual scientists or engineers to accredited international scientific or engineering congresses and meetings whenever he deem[1] it necessary in the promotion of the objectives of this chapter. In this connection, with the approval of the Secretary of State, the Foundation may undertake programs granting fellowships to, or making other similar arrangements with, foreign nationals for study and research in the sciences or in engineering in the United States without regard to section 1869 of this title or the affidavit of allegiance to the United States required by section 1874(d)(2)[2] of this title.

(b)(1) The authority to enter into contracts or other arrangements with organizations or individuals in foreign countries and with agencies of foreign countries, as provided in section 1870(c) of this title, and the authority to cooperate in international scientific or engineering activities as provided in subsection (a) of this section, shall be exercised only with the approval of the Secretary of State, to the end that such authority shall be exercised in such manner as is consistent with the foreign policy objectives of the United States.

(2) If, in the exercise of the authority referred to in paragraph (1) of this subsection, negotiation with foreign countries or agencies thereof becomes necessary, such negotiation shall be carried on by the Secretary of State in consultation with the Director.

(May 10, 1950, ch. 171, § 13, 64 Stat. 154; Pub. L. 86–232, § 7, Sept. 8, 1959, 73 Stat. 468; Pub. L. 90–407, § 10, July 18, 1968, 82 Stat. 365; Pub. L. 99–159, title I, § 110(a)(16), (17), Nov. 22, 1985, 99 Stat. 891.)

REFERENCES IN TEXT

Section 1874(d)(2) of this title, referred to in subsec. (a), was redesignated section 1874(c)(2) by Pub. L. 96–516, § 21(b)(2), Dec. 12, 1980, 94 Stat. 3010.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–159, § 110(a)(16), inserted ''or engineering'' after ''scientific'' the first three places appearing and ''or engineers'' after ''scientists'' and substituted ''study and research in the sciences or in engineering'' for ''scientific study or scientific work''.

Subsec. (b)(1). Pub. L. 99–159, § 110(a)(17), inserted reference to engineering.

1968—Subsec. (a). Pub. L. 90–407 struck out '', with the approval of the Board,'' after ''The Director'', and substituted ''section 15(d)(2) of this Act'' for ''section 16(d)(2) of this Act'', which resulted in no change in text because, for purposes of classification, provision was translated as ''section 1874(d)(2) of this title''.

1959—Subsec. (a). Pub. L. 86–232 authorized the Foundation, with approval of the Secretary of State, to cooperate in scientific activities rather than scientific research activities, and to grant fellowships or make other arrangements with foreign nationals for scientific study or scientific work in the United States.

Subsec. (b)(1). Pub. L. 86–232 struck out ''research'' from phrase ''scientific research activities''.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1872a. Repealed. Pub. L. 90–407, § 11(1), July 18, 1968, 82 Stat. 365

Section, act May 10, 1950, ch. 171, § 14, as added July 11, 1958, Pub. L. 85–510, § 2, 72 Stat. 353, authorized the Foundation, in carrying out a program of study, research, and evaluation in the field of weather modification, to consult with meteorologists and scientists, make contracts and grants, accept gifts, loan property, conduct hearings, and subpoena books and records.

EFFECTIVE DATE OF REPEAL

Section 11(1) of Pub. L. 90–407 provided that the repeal of this section is effective Sept. 1, 1968, and that provisions authorizing Foundation to initiate and support programs in field of weather modification should remain in effect until Sept. 1, 1968, for purpose of this section.

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Repeal by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization

[1] So in original. Probably should be ''deems''.

[2] See References in Text note below.

of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1873. Employment of personnel

(a) Appointment; compensation; application of civil service provisions; technical and professional personnel; members of special commissions; temporary appointments; travel expenses

(1) The Director shall, in accordance with such policies as the Board shall from time to time prescribe, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter. Except as provided in section 1863(h)[1] of this title, such appointments shall be made and such compensation shall be fixed in accordance with the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates: *Provided*, That the Director may, in accordance with such policies as the Board shall from time to time prescribe, employ such technical and professional personnel and fix their compensation, without regard to such provisions, as he may deem necessary for the discharge of the responsibilities of the Foundation under this chapter. The members of the special commissions shall be appointed without regard to the provisions of title 5 governing appointments in the competitive service.

(2) The Director may, under the authority provided by paragraph (1) of this subsection and in accordance with such policies as the Board chooses to prescribe, appoint for a limited term, or on a temporary basis, scientists, engineers, and other technical and professional personnel on leave of absence from academic, industrial, or research institutions to work for the Foundation.

(3) The Foundation may pay, to the extent authorized for certain other Federal employees by section 5723 of title 5, travel expenses for any individual appointed for a limited term or on a temporary basis and transportation expenses of his or her immediate family and his or her household goods and personal effects from that individual's residence at the time of selection or assignment to his or her duty station. The Foundation may pay such travel expenses and transportation expenses to the same extent for such an individual's return to the former place of residence from his or her duty station, upon separation from the Federal service following an agreed period of service. The Foundation may also pay a per diem allowance at a rate not to exceed the daily amounts prescribed under section 5702 of title 5 to such an individual, in lieu of transportation expenses of the immediate family and household goods and personal effects, for the period of his or her employment with the Foundation. Notwithstanding any other provision of law, the employer's contribution to any retirement, life insurance, or health benefit plan for an individual appointed for a term of one year or less, which could be extended for no more than one additional year, may be made or reimbursed from appropriations available to the Foundation.

(b) Operation of laboratories and pilot plants

The Foundation shall not, itself, operate any laboratories or pilot plants.

(c) Compensation of members of Board and special commissions

The members of the Board and the members of each special commission shall be entitled to receive compensation for each day engaged in the business of the Foundation at a rate fixed by the Chairman but not exceeding the maximum rate payable under section 5376 of title 5 and shall be allowed travel expenses as authorized by section 5703 of title 5. For the purposes of determining the payment of compensation under this subsection, the time spent in travel by any member of the Board or any member of a special commission shall be deemed as time engaged in the business of the Foundation. Members of the Board and members of special commissions may waive compensation and reimbursement for traveling expenses.

(d) Federal officers as members of special commissions; compensation

Persons holding other offices in the executive branch of the Federal Government may serve as members of special commissions, but they shall not receive remuneration for their services as such members during any period for which they receive compensation for their services in such other offices.

(e) Utilization of appropriations in making contracts

In making contracts or other arrangements for scientific or engineering research, the Foundation shall utilize appropriations available therefor in such manner as will in its discretion best realize the objectives of (1) having the work performed by organizations, agencies, and institutions, or individuals in the United States or foreign countries, including Government agencies of the United States and of foreign countries, qualified by training and experience to achieve the results desired, (2) strengthening the research staff of organizations, particularly nonprofit organizations, in the United States, (3) adding institutions, agencies, or organizations which, if aided, will advance scientific or engineering research, and (4) encouraging independent scientific or engineering research by individuals.

(f) Transfer of research and education funds of other Government departments or agencies

Funds available to any department or agency of the Government for scientific or engineering research or education, or the provision of facilities therefor, shall be available for transfer, with the approval of the head of the department or agency involved, in whole or in part, to the Foundation for such use as is consistent with the purposes for which such funds were provided, and funds so transferred shall be expendable by the Foundation for the purposes for which the transfer was made.

(g) "United States" defined

For purposes of this chapter, the term ''United States'' when used in a geographical sense

[1] See References in Text note below.

means the States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(h) Expiration of authorization

Notwithstanding any other provision of law, the authorization of any appropriation to the Foundation shall expire (unless an earlier expiration is specifically provided) at the close of the second fiscal year following the fiscal year for which the authorization was enacted, to the extent that such appropriation has not theretofore actually been made.

(i) Public disclosure of information

(1)(A) Information supplied to the Foundation or a contractor of the Foundation in survey forms, questionnaires, or similar instruments for purposes of section 1862(a)(5) or (6) of this title by an individual, an industrial or commercial organization, or an educational, academic, or other nonprofit institution when the institution has received a pledge of confidentiality from the Foundation, shall not be disclosed to the public unless the information has been transformed into statistical or abstract formats that do not allow for the identification of the supplier.

(B) Information that has not been transformed into formats described in subparagraph (A) may be used only for statistical or research purposes.

(C) The identities of individuals, organizations, and institutions supplying information described in subparagraph (A) may not be disclosed to the public.

(2) In support of functions authorized by section 1862(a)(5) or (6) of this title, the Foundation may designate, at its discretion, authorized persons, including employees of Federal, State, or local agencies or instrumentalities (including local educational agencies) and employees of private organizations, to have access, for statistical or research purposes only, to information collected pursuant to section 1862(a)(5) or (6) of this title that allows for the identification of the supplier. No such person may—

(A) publish information collected pursuant to section 1862(a)(5) or (6) of this title in such a manner that either an individual, an industrial or commercial organization, or an educational, academic, or other nonprofit institution that has received a pledge of confidentiality from the Foundation can be specifically identified;

(B) permit anyone other than individuals authorized by the Foundation to examine data that allows for such identification relating to an individual, an industrial or commercial organization, or an academic, educational, or other nonprofit institution that has received a pledge of confidentiality from the Foundation; or

(C) knowingly and willfully request or obtain any nondisclosable information described in paragraph (1) from the Foundation under false pretenses.

(3) Violation of this subsection is punishable by a fine of not more than $10,000, imprisonment for not more than 5 years, or both.

(May 10, 1950, ch. 171, § 14, 64 Stat. 154; renumbered § 15, Pub. L. 85–510, § 2, July 11, 1958, 72 Stat. 353; amended Pub. L. 86–232, § 8, Sept. 8, 1959, 73 Stat. 469; renumbered § 14 and amended Pub. L. 90–407, §§ 11(2), 12, July 18, 1968, 82 Stat. 365, 366; Pub. L. 91–120, § 3, Nov. 18, 1969, 83 Stat. 203; Pub. L. 95–99, § 12(c), formerly § 14(c), Aug. 15, 1977, 91 Stat. 835, renumbered § 12(c), Pub. L. 99–159, title I, § 109(h), Nov. 22, 1985, 99 Stat. 890; Pub. L. 99–159, title I, §§ 109(e)(1), 110(a)(18), Nov. 22, 1985, 99 Stat. 889, 891; Pub. L. 100–570, title I, §§ 106, 107, Oct. 31, 1988, 102 Stat. 2868, 2869; Pub. L. 101–589, title II, § 251, Nov. 16, 1990, 104 Stat. 2894; Pub. L. 102–139, title III, Oct. 28, 1991, 105 Stat. 774; Pub. L. 104–66, title II, § 2141(b), Dec. 21, 1995, 109 Stat. 731; Pub. L. 105–207, title II, § 202(a)(3), July 29, 1998, 112 Stat. 873; Pub. L. 107–368, § 15(b), Dec. 19, 2002, 116 Stat. 3058.)

REFERENCES OF TEXT

Section 1863(h) of this title, referred to in subsec. (a), was redesignated section 1863(g) of this title by Pub. L. 94–282, title V, § 503, May 11, 1976, 90 Stat. 473.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (a)(1), is set out under section 5332 of Title 5.

AMENDMENTS

2002—Subsec. (i). Pub. L. 107–368 amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''Information supplied to the Foundation or a contractor of the Foundation by an industrial or commercial organization in survey forms, questionnaires, or similar instruments for the purposes of subsection (a)(5) or (a)(6) of section 1862 of this title may not be disclosed to the public unless such information has been transformed into statistical or aggregate formats that do not allow the identification of the supplier. The names of organizations supplying such information may not be disclosed to the public.''

1998—Subsec. (c). Pub. L. 105–207 substituted ''shall be entitled to receive'' for ''shall receive'' and ''the maximum rate payable under section 5376'' for ''the rate specified for the daily rate for GS–18 of the General Schedule under section 5332'' and inserted at end ''For the purposes of determining the payment of compensation under this subsection, the time spent in travel by any member of the Board or any member of a special commission shall be deemed as time engaged in the business of the Foundation. Members of the Board and members of special commissions may waive compensation and reimbursement for traveling expenses.''

1995—Subsec. (j). Pub. L. 104–66 struck out subsec. (j) which read as follows: ''Starting with fiscal year 1990, the Foundation shall submit to the Congress in each fiscal year, at the time of the release of the President's budget, a three-year budget estimate for the Foundation. The three-year budget shall include funding estimates for each major activity, including each scientific directorate, the United States Antarctic Program, the Science and Engineering Education Directorate, and the Program Development and Management activity.''

1991—Subsec. (a)(3). Pub. L. 102–139 struck out ''and when less than'' after ''in lieu of''.

1990—Subsec. (f). Pub. L. 101–589 inserted ''or education'' after ''research''.

1988—Subsec. (a). Pub. L. 100–570, § 106, designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (j). Pub. L. 100–570, § 107, added subsec. (j).

1985—Subsec. (b). Pub. L. 99–159, § 109(e)(1)(A), (B), struck out subsec. (b) relating to outside employment and activities, and redesignated subsec. (c) as (b).

Subsecs. (c), (d). Pub. L. 99–159, § 109(e)(1)(B), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

Subsec. (e). Pub. L. 99–159, §§ 109(e)(1)(B), 110(a)(18)(A), redesignated subsec. (f) as (e) and inserted ''or engi-

neering'' after ''scientific'' wherever appearing. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 99–159, §§109(e)(1)(B), 110(a)(18)(B), redesignated subsec. (g) as (f) and substituted ''engineering'' for ''technical''. Former subsec. (f) redesignated (e).

Subsecs. (g), (h). Pub. L. 99–159, §109(e)(1)(B), redesignated subsecs. (h) and (i) as (g) and (h), respectively. Former subsec. (g) redesignated (f).

Subsec. (i). Pub. L. 99–159, §109(e)(1)(B), (C), added subsec. (i). Former subsec. (i) redesignated (h).

1977—Subsec. (d). Pub. L. 95–99 substituted provisions authorizing compensation at a daily rate fixed by the chairman but not exceeding the rate specified for the daily rate for GS–18 of the General Schedule under section 5332 of title 5 for provisions authorizing a daily rate of $100.

1969—Subsec. (i). Pub. L. 91–120 added subsec. (i).

1968—Subsec. (a). Pub. L. 90–407, §12, substituted provisions making applicable chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, for provisions making applicable the civil-service laws and regulations and the Classification Act of 1949, and provisions that the members of special commissions be appointed without regard to the provisions of title 5, governing appointments in the competitive service, for provisions that the Deputy Director, and members of divisional committees and special commissions be appointed without regard to the civil-service laws or regulations. Provisions this subsection, relating to outside employment and activities of certain specified officers of the Foundation, were designated as subsec. (b).

Subsec. (b). Pub. L. 90–407, §12, redesignated provisions of former subsec. (a) as (b) and added Assistant Directors to specified officers of Foundation prohibited from engaging in outside employment and activities. Former subsec. (b), providing for the appointment of a Deputy Director, was struck out.

Subsec. (d). Pub. L. 90–407, §12, struck out applicability to members of each divisional committee, and substituted ''$100'' for ''$50'' and ''section 5703'' for ''section 73b–2''.

Subsec. (e). Pub. L. 90–407, §12, struck out ''the divisional committees and'' after ''may serve as members of''.

Subsec. (f). Pub. L. 90–407, §12, redesignated subsec. (g) as (f), in cl. (2) substituted ''United States'' for ''States, Territories, possessions, and the District of Columbia'', in cl. (3) substituted ''advance scientific research'' for ''advance basic research'', and in cl. (4) substituted ''independent scientific research'' for ''independent basic research''. Former subsec. (f), exempting members of Board, divisional committees, or special commissions form provisions of former sections 281, 283, or 284 of title 18 or former section 99 of title 5, unless the act made unlawful by the aforementioned former sections directly involved or directly interested the Foundation, was struck out.

Subsec. (g). Pub. L. 90–407, §12, redesignated subsec. (h) as (g) and struck out ''and, until such time as an appropriation is made available directly to the Foundation, for general administrative expenses of the Foundation without regard to limitations otherwise applicable to such funds'' after ''the purposes for which the transfer was made''. Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 90–407, §12, added subsec. (h). Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 90–407, §12, struck out subsec. (i) which provided for transfer of National Roster of Scientific and Specialized Personnel from United States Employment Service to Foundation.

1959—Subsec. (d). Pub. L. 86–232 increased compensation for $25 to $50 per diem.

TRANSFER OF FUNCTIONS

Authority of Director of National Science Foundation, from time to time, to make appropriate provisions authorizing performance by any other officer, or by any agency or employee, of National Science Foundation of any of his functions (including functions delegated to him by National Science Board), see Reorg. Plan No. 5 of 1965, eff. July 27, 1965, 30 F.R. 9355, 79 Stat. 1323, set out in the Appendix to Title 5, Government Organization and Employees.

EMPLOYMENT OF MINORITIES, WOMEN, AND HANDICAPPED INDIVIDUALS IN EXECUTIVE LEVEL POSITIONS

Pub. L. 94–471, §7, Oct. 11, 1976, 90 Stat. 2056, provided that:

''(a) The Director of the National Science Foundation shall initiate an intensive search for qualified women, members of minority groups, and handicapped individuals to fill executive level positions in the National Science Foundation. In carrying out the requirement of this subsection, the Director shall work closely with organizations which have been active in seeking greater recognition and utilization of the scientific and technical capabilities of minorities, women, and handicapped individuals. The Director shall improve the representation of minorities, women, and handicapped individuals on advisory committees, review panels, and all other mechanisms by which the scientific community provides assistance to the Foundation. The Director of the National Science Foundation shall report quarterly to the Congress on the status of minorities, women, and handicapped individuals and activities undertaken pursuant to this section.

''(b) Notwithstanding any other provision of this or any other Act, the National Science Foundation shall, with funds available from the program ''Minorities, Women, and Handicapped Individuals in Science'' conduct experimental forums, conferences, workshops or other activities designed to improve scientific literacy and to encourage and assist minorities, women, and handicapped individuals to undertake and to advance in careers in scientific research and science education.

''(c)(1) In order to promote increased participation by minorities in careers in science and engineering, the National Science Foundation is authorized and directed to make available planning and study grants for programs including, but not limited to, Minority Centers for Graduate Education in Science and Engineering in accordance with this subsection.

''(2) The grants for Minority Centers for Graduate Education shall be used to determine the need for and feasibility of developing Centers to be established at geographically dispersed educational institutions which—

''(A) have substantial minority student enrollment;

''(B) are geographically located near minority population centers;

''(C) demonstrate a commitment to encouraging and assisting minority students, researchers, and faculty;

''(D) have an existing or developing capacity to offer doctoral programs in science and engineering;

''(E) will support basic research and the acquisition of necessary research facilities and equipment;

''(F) will serve as a regional resource in science and engineering for the minority community which the Center is designed to serve; and

''(G) will develop joint educational programs with nearby undergraduate institutions of higher education which have a substantial minority student enrollment.

''(3) The Director, in consultation with groups which have been active in seeking greater recognition of the scientific and technical capabilities of minorities, shall establish criteria for the award of the grants, and shall report to the Committee on Science and Technology of the House of Representatives and the Committee on Labor and Public Welfare [now Committee on Health, Education, Labor, and Pensions] of the Senate on the results of activities including an evaluation and assessment of the entire program carried out under this subsection, not later than March 1, 1977.''

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1873a. Repealed. Pub. L. 99–159, title I, § 109(f), Nov. 22, 1985, 99 Stat. 890

Section, Pub. L. 95–99, § 10, Aug. 15, 1977, 91 Stat. 834; amended Pub. L. 96–470, title I, § 119, Oct. 19, 1980, 94 Stat. 2241, related to prohibition respecting financial or other interest of employees processing applications or proposals for Foundation grants or contracts.

§ 1874. Security provisions

(a) Nuclear energy research and development

The Foundation shall not support any research or development activity in the field of nuclear energy, nor shall it exercise any authority pursuant to section 1870(e) of this title in respect to that field, without first having obtained the concurrence of the Secretary of Energy that such activity will not adversely affect the common defense and security. To the extent that such activity involves restricted data as defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] the provisions of that Act regarding the control of the dissemination of restricted data and the security clearance of those individuals to be given access to restricted data shall be applicable. Nothing in this chapter shall supersede or modify any provision of the Atomic Energy Act of 1954.

(b) Research relating to national defense

(1) In the case of scientific or engineering research activities under this chapter in connection with matters relating to the national defense, with respect to which funds have been transferred to the Foundation from the Department of Defense in accordance with the provisions of section 1873(f) of this title, the Secretary of Defense shall establish such security requirements and safeguards, including restrictions with respect to access to information and property, as he deems necessary.

(2) In the case of scientific or engineering research activities under this chapter in connection with matters relating to the national defense other than research activities referred to in paragraph (1) of this subsection, the Foundation shall establish such security requirements and safeguards, including restrictions with respect to access to information and property, as it deems necessary.

(3) Any agency of the Government exercising investigatory functions is authorized to make such investigations and reports as may be requested by the Foundation in connection with the enforcement of security requirements and safeguards, including restrictions with respect to access to information and property, established under paragraph (1) or (2) of this subsection.

(May 10, 1950, ch. 171, § 15, 64 Stat. 156; Apr. 5, 1952, ch. 159, § 1, 66 Stat. 43; renumbered § 16, Pub. L. 85–510, § 2, July 11, 1958, 72 Stat. 353; amended Pub. L. 87–835, § 1, Oct. 16, 1962, 76 Stat. 1069; renumbered § 15 and amended Pub. L. 90–407, §§ 11(2), 13, July 18, 1968, 82 Stat. 365, 366; Pub. L. 96–516, § 21(b), Dec. 12, 1980, 94 Stat. 3010; Pub. L. 99–159, title I, §§ 109(e)(2), 110(a)(19), Nov. 22, 1985, 99 Stat. 890, 891; Pub. L. 100–570, title I, § 105(b), Oct. 31, 1988, 102 Stat. 2868; Pub. L. 105–207, title II, § 202(a)(4), July 29, 1998, 112 Stat. 874.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified principally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–207 substituted ''Secretary of Energy'' for ''Atomic Energy Commission''.

1988—Subsec. (c). Pub. L. 100–570 struck out subsec. (c) which related to oath and statement prerequisite to acceptance of scholarship or fellowship, ineligibility of Communist organization members, and penalties for violation.

1985—Subsec. (b)(1). Pub. L. 99–159, §§ 109(e)(2), 110(a)(19)(A), substituted ''engineering'' for ''technical'' and ''1873(f)'' for ''1873(g)''.

Subsec. (b)(2). Pub. L. 99–159, § 110(a)(19)(B), inserted applicability to engineering.

1980—Subsecs. (c), (d). Pub. L. 96–516 redesignated subsec. (d) as (c), and struck out former subsec. (c) relating to clearance of personnel by the Civil Service Commission.

1968—Subsec. (a). Pub. L. 90–407, § 13, substituted ''1954'' for ''1946''.

Subsec. (b)(1). Pub. L. 90–407, § 13, substituted ''section 1873(g) of this title'' for section 1873(h) of this title''.

1962—Subsec. (d). Pub. L. 87–835 designated existing provisions as par. (1), inserted reference to section 1869 of this title, and substituted the requirement, for applications made on or after Oct. 1, 1962, of a full statement regarding convictions for crimes, other than any committed before age 16 or for minor traffic violations, and any criminal charges punishable by thirty days confinement, or more, pending at time of application for scholarship or fellowship, for the requirement of an affidavit stating the affiant did not believe in, and was not a member or supporter of any organization believing in, or teaching, the violent overthrow of the United States Government, or by any illegal means, in such par. (1), and added par. (2).

1952—Subsec. (c). Act Apr. 5, 1952, substituted ''Civil Service Commission'' for ''Federal Bureau of Investigation''.

SUBVERSIVE ACTIVITIES CONTROL BOARD

The Subversive Activities Control Board, established by act Sept. 23, 1950, ch. 1024, title I, § 12, 64 Stat. 997, ceased to operate as of June 30, 1973, due to lack of funding.

BASIC SCIENTIFIC RESEARCH; INCREASE IN GOVERNMENT SUPPORT; NATIONAL SCIENCE FOUNDATION

Pub. L. 91–441, title II, § 205, Oct. 7, 1970, 84 Stat. 908, provided that: ''It is the sense of the Congress that—

''(1) an increase in Government support of basic scientific research is necessary to preserve and strengthen the sound technological base essential both to protection of the national security and the solution of unmet domestic needs; and

''(2) a larger share of such support should be provided hereafter through the National Science Foundation.''

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization

of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§ 1875. Appropriations

To enable the Foundation to carry out its powers and duties, only such sums may be appropriated as the Congress may authorize by law.

(May 10, 1950, ch. 171, § 16, 64 Stat. 157; Aug. 8, 1953, ch. 377, 67 Stat. 488; renumbered § 17, Pub. L. 85–510, § 2, July 11, 1958, 72 Stat. 353; renumbered § 16 and amended Pub. L. 90–407, §§ 11(2), (14), July 18, 1968, 82 Stat. 365, 366; Pub. L. 96–516, § 21(c), Dec. 12, 1980, 94 Stat. 3010.)

AMENDMENTS

1980—Pub. L. 96–516 amended subsec. (a) generally, striking out specific dollar amounts for fiscal years ending June 30, 1969, and June 30, 1970, reference to subsequent fiscal years, and provisions relating to sums as additional to sums under section 1122(b)(1) of title 33, and struck out subsec. (b) which related to availability of sums for obligation and expenditure.

1968—Subsec. (a). Pub. L. 90–407, § 14, substituted provisions authorizing the appropriation of funds for the fiscal year ending June 30, 1969, June 30, 1970, and each subsequent fiscal year, such sums to be in addition to sums authorized by section 1122(b)(1) of title 33, for provisions authorizing the appropriation of such sums as may be necessary to carry out the provisions of this chapter out of any money in the Treasury not otherwise appropriated.

1953—Subsec. (a). Act Aug. 8, 1953, removed the $15 million limitation on the amount of the annual appropriations.

DRUG-FREE WORKPLACE

Pub. L. 100–570, title I, § 118, Oct. 31, 1988, 102 Stat. 2873, provided that:

''(a) No funds authorized to be appropriated under this Act, or under any other Act authorizing appropriations for fiscal year 1989 through 1993 for the Foundation, shall be obligated or expended unless the Foundation has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act [21 U.S.C. 801 et seq.]) by the officers and employees of the Foundation.

''(b) No funds authorized to be appropriated to the Foundation for fiscal years 1989 through 1993 shall be available for payment in connection with any grant, contract, or other agreement, unless the recipient of such grant, contractor, or party to such agreement, as the case may be, has in place and will continue to administer in good faith a written policy, adopted by the board of directors or other governing authority of such recipient, contractor, or party, satisfactory to the Director of the Foundation, designed to ensure that all of the workplaces of such recipient, contractor, or party are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of such recipient, contractor, or party.''

[Section 118 of Pub. L. 100–570, set out above, effective Jan. 16, 1989, see section 215(c) of Pub. L. 100–685, set out as a note under section 2459 of this title.]

CONTINUATION OF EXISTING OFFICES, PROCEDURES, AND ORGANIZATION OF THE NATIONAL SCIENCE FOUNDATION

Amendment by Pub. L. 90–407 intended to continue in effect the existing offices, procedures, and organization of the Foundation, see section 16 of Pub. L. 90–407, set out as a note under section 1862 of this title.

§§ 1876 to 1879. Repealed. Pub. L. 99–383, § 11, Aug. 21, 1986, 100 Stat. 817

Section 1876, Pub. L. 85–864, title IX, § 901, Sept. 2, 1958, 72 Stat. 1601, authorized establishment of a Science Information Service by National Science Foundation.

Section 1877, Pub. L. 85–864, title IX, § 902, Sept. 2, 1958, 72 Stat. 1601; Pub. L. 90–407, § 15(b), July 18, 1968, 82 Stat. 367, authorized establishment of a Science Information Council within National Science Foundation.

Section 1878, Pub. L. 85–864, title IX, § 903, Sept. 2, 1958, 72 Stat. 1601, provided National Science Foundation with same power and authority in carrying out its functions under sections 1876 to 1879 of this title as it had in carrying out its functions under this chapter.

Section 1879, Pub. L. 85–864, title IX, § 904, Sept. 2, 1958, 72 Stat. 1602, authorized appropriations to carry out programs of the Science Information Service and the Science Information Council.

§ 1880. National Medal of Science

There is established a National Medal of Science (hereinafter referred to as the ''medal''), which shall be of such design and materials and bear such inscriptions as the President, on the basis of recommendations submitted by the National Science Foundation, may prescribe, and shall be awarded as provided in section 1881 of this title.

(Pub. L. 86–209, § 1, Aug. 25, 1959, 73 Stat. 431.)

CODIFICATION

Section was not enacted as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1881. Award of National Medal of Science

(a) Recommendations

The President shall from time to time award the medal, on the basis of recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as he deems appropriate, to individuals who in his judgment are deserving of special recognition by reason of their outstanding contributions to knowledge in the physical, biological, mathematical, engineering, behavioral or social sciences.

(b) Number

Not more than twenty individuals may be awarded the medal in any one calendar year.

(c) Citizenship

An individual may not be awarded the medal unless at the time such award is made he—

(1) is a citizen or other national of the United States; or

(2) is an alien lawfully admitted to the United States for permanent residence who (A) has filed an application for petition for naturalization in the manner prescribed by section 1445(b) of title 8 and (B) is not permanently ineligible to become a citizen of the United States.

(d) Ceremonies

The presentation of the award shall be made by the President with such ceremonies as he may deem proper, including attendance by appropriate Members of Congress.

(Pub. L. 86–209, § 2, Aug. 25, 1959, 73 Stat. 431; Pub. L. 96–516, § 22(a)(1), Dec. 12, 1980, 94 Stat. 3010.)

CODIFICATION

Section was not enacted as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–516 inserted applicability to behavioral and social sciences.

EX. ORD. NO. 11287. AWARD AND PRESENTATION OF NATIONAL MEDAL OF SCIENCE

Ex. Ord. No. 11287, eff. June 28, 1966, 31 F.R. 8995, as amended by Ex. Ord. No. 11502, eff. Dec. 22, 1969, 34 F.R. 20171; Ex. Ord. No. 11734, July 30, 1973, 38 F.R. 20433, provided:

By virtue of the authority vested in me by the Act of August 25, 1959, entitled ''An Act To Establish a National Medal of Science To Provide Recognition for Individuals Who Make Outstanding Contributions in the Physical, Biological, Mathematical, and Engineering Sciences,'' 73 Stat. 431 (hereinafter referred to as the Act) [42 U.S.C. 1880, 1881], and as President of the United States, it is ordered as follows:

SECTION 1. *Award of Medal.* (a) The President shall award the National Medal of Science (hereinafter referred to as the Medal) established by the Act, the specifications of which are prescribed by Executive Order No. 10910 of January 17, 1961, as amended, on the basis of recommendations received by him in accordance with the provisions of this Order to individuals who in his judgment are deserving of special recognition by reason of their outstanding contributions to knowledge in the physical, biological, mathematical, or engineering sciences.

(b) The following-described criteria shall govern the award of the Medal—

(1) Not more than twenty individuals shall be awarded the Medal in any one calendar year.

(2) No individual shall be awarded the Medal unless, at the time such award is made, he:

(A) is a citizen or other national of the United States; or

(B) is an alien lawfully admitted to the United States for permanent residence who (i) has filed a petition for naturalization in the manner prescribed by Section 334(b) of the Immigration and Nationality Act [8 U.S.C. 1445(b)], and (ii) is not permanently ineligible to become a citizen of the United States.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, the Medal may be awarded posthumously, but only to individuals who, at the time of their death, met the conditions set forth in paragraph (2). The Medal shall not be awarded to any individual after the fifth anniversary of the day of his death.

(c) Each Medal awarded shall be suitably inscribed. Each individual awarded the Medal shall also receive a citation descriptive of the award.

(d) The presentation of the Medal shall be made in accordance with Section 2(d) of the Act.

SEC. 2. *The President's Committee.* (a) There is hereby established the President's Committee on the National Medal of Science (hereinafter referred to as the Committee), which shall be composed of twelve appointive members and two ex officio members and shall assist the President, as provided in this order, in connection with the carrying out of the Act.

(b) Each appointive member of the Committee shall be appointed by the President from among appropriately qualified citizens of the United States. Except as otherwise provided in subsection (e) of this Section, each such member shall be so appointed for a term of three years or for the balance of the unexpired term of his predecessor, whichever is appropriate. Members may be reappointed to serve one additional term of three years. As nearly as practicable, the appointive members of the Committee shall comprise a cross section of the major fields of science and engineering.

(c) The following shall be ex officio members of the Committee:

(1) The Science Adviser.

(2) The President of the National Academy of Sciences.

(d) The President shall from time to time designate one of the members of the Committee as Chairman thereof.

(e) Of the persons first designated as members of the Committee under the provisions of subsection (b) of this Section, four shall be designated to serve until December 31, 1966, four shall be designated to serve until December 31, 1967, and four shall be designated to serve until December 31, 1968.

SEC. 3. *Preliminary Procedure.* (a) The Committee shall receive, on behalf of the President, (1) the recommendations made by the National Academy of Sciences respecting the award of the Medal pursuant to the provisions of Section 2(a) of the Act [subsec. (a) of this section], and (2) such similar recommendations as may be made by any other nationally representative scientific or engineering organization or other qualified source. Each such recommendation shall include or be accompanied by such appropriate supporting material as the Committee may from time to time specify.

(b) On the basis of such criteria, information, and evidence as it may deem appropriate, and subject to the provisions of Section 1 of this Order, the Committee shall designate, from among the individuals who are recommended in accordance with Section 3(a) of this Order, those individuals whom the Committee recommends for the award of the Medal and shall transmit the names of those individuals to the President, together with its recommendations. In so transmitting its recommendations, the Committee (1) shall include expressions of its views concerning, and such other information as may be pertinent to, its recommendations, and (2) may arrange the names of all or some of the recommended individuals in a sequence deemed by it to indicate the order of precedence in which the individuals involved deserve to receive the Medal.

(c) Each recommendation respecting the award of the Medal to an individual which is transmitted to the President by the Committee shall be accompanied by a draft of a citation describing the contributions which are being recognized by the award.

SEC. 4. *Time of Awards and Recommendations.* (a) Unless otherwise directed by the President, announcement of the award of the Medal shall be made during the last sixty days of each calendar year and ceremonies for presentation of the Medal shall be held during the first ninety days of the calendar year following the announcement of the award.

(b) Recommendations for awards of the Medals shall be submitted to the Committee, pursuant to Section 3(a) of this Order, by the first day of July of the year in which it is proposed that they be announced by the President. Recommendations of the Committee shall be delivered to the President by the fifteenth day of October of the year in which it is proposed that they be announced. Awards of the Medal may be based upon recommendations of the Committee or upon such other information and evidence as the President deems appropriate.

SEC. 5. *Services and Expenses.* (a) The National Science Foundation is authorized to provide such assistance as may be necessary and appropriate to carry out the purposes of this Order.

(b) The members of the Committee shall serve without compensation, but the National Science Foundation is authorized to reimburse them for travel expenses and to pay them per diem in lieu of subsistence as authorized for persons serving without compensation (5 U.S.C. 73b–2) [see 5 U.S.C. 703].

SEC. 6. *Prior Orders.* (a) Subject to the provisions of this Order, the President's Committee on the National Medal of Science established by Section 2 of this Order shall be deemed to constitute a continuation of the Committee of the same name established by Executive Order No. 10961 of August 21, 1961. The latter Order is hereby revoked.

(b) Executive Order No. 10910 of January 17, 1961, is hereby amended by deleting from its title the words

''AND AWARD'', and by deleting the last two sentences of Section 1, and all of Section 2, thereof.

EXTENSION OF TERM OF PRESIDENT'S COMMITTEE ON THE NATIONAL MEDAL OF SCIENCE

Term of the President's Committee on the National Medal of Science extended until Dec. 31, 1978, by Ex. Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Committee on the National Medal of Science extended until Dec. 31, 1982, by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1993, by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1995, by Ex. Ord. No. 12869, Sept. 30, 1993, 58 F.R. 51751, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 1999, by Ex. Ord. No. 13062, §1(j), Sept. 29, 1997, 62 F.R. 51755, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Committee on the National Medal of Science extended until Sept. 30, 2007, by Ex. Ord. No. 13385, §1(j), Sept. 29, 2005, 70 F.R. 57989, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

§ 1881a. Alan T. Waterman Award

(a) Establishment; amounts; terms

The National Science Foundation is authorized to establish the Alan T. Waterman Award for research or advanced study in the mathematical, physical, medical, biological, engineering, behavioral, social, or other sciences. The award authorized by this section shall consist of a suitable medal and a grant to support further research or study by the recipient. The National Science Board will periodically establish the amounts and terms of such grants under this section.

(b) Purpose

Awards under this section shall be made to recognize and encourage the work of younger scientists whose capabilities and accomplishments show exceptional promise of significant future achievement.

(c) Number

No more than one award shall be made under this section in any one fiscal year.

(Pub. L. 94–86, §6, Aug. 9, 1975, 89 Stat. 430; Pub. L. 96–516, §22(b), Dec. 12, 1980, 94 Stat. 3010; Pub. L. 99–159, title I, §109(g), Nov. 22, 1985, 99 Stat. 890; Pub. L. 105–207, title II, §202(b), July 29, 1998, 112 Stat. 874.)

CODIFICATION

Section was not enacted as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–207 substituted ''social,'' for ''social, social,''.

1985—Subsec. (a). Pub. L. 99–159 substituted provisions requiring the National Science Board to periodically establish amounts and terms of grants, for provisions limiting the grant awarded to $50,000 per year for a period not exceeding three years.

1980—Subsec. (a). Pub. L. 96–516 inserted '', behavioral, social'' after ''engineering''.

§ 1881b. Presidential awards for teaching excellence

(1)(A) The President is authorized to make Presidential Awards for Excellence in Mathematics and Science Teaching to kindergarten through grade 12 school teachers of mathematics and science who have demonstrated outstanding teaching ability in the field of teaching mathematics or science.

(B) Each year the President is authorized to make no fewer than 108 awards under subparagraph (A). In selecting teachers for an award authorized by this subsection, the President shall select at least two teachers—

(i) from each of the several States;

(ii) from the District of Columbia;

(iii) from the Commonwealth of Puerto Rico;

(iv) from among the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and other commonwealths, territories, and possessions of the United States; and

(v) from schools established outside the several States and the District of Columbia by any agency of the Federal Government for dependents of the employees of such agency.

(2) The President shall carry out this subsection, including the establishment of the selection procedures, after consultation with the Director and other appropriate officials of Federal agencies.

(3)(A) Funds to carry out this subsection for any fiscal year shall be made available from amounts appropriated pursuant to annual authorization of appropriations for the Foundation for Education and Human Resources.

(B) Amounts made available pursuant to subparagraph (A) shall be available for making awards under this subsection, for administrative expenses, for necessary travel by teachers selected under this subsection, and for special activities related to carrying out this subsection.

(Pub. L. 100–570, title I, §117(a), Oct. 31, 1988, 102 Stat. 2872; Pub. L. 105–207, title II, §202(c), July 29, 1998, 112 Stat. 874.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act of 1988, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1998—Par. (1)(B)(v). Pub. L. 105–207, §202(c)(1), added cl. (v) and struck out former cl. (v) which read as follows: ''from the United States Department of Defense Dependents' School.''

Par. (3)(A). Pub. L. 105–207, §202(c)(2), substituted ''Education and Human Resources'' for ''Science and Engineering Education''.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1882. Information furnished to Congressional committees

Notwithstanding any other provision of this or any other Act, the Director of the National Science Foundation and the National Science Board shall keep the Committee on Labor and Human Resources of the Senate and the Committee on Science, Space, and Technology of the House of Representatives fully and currently informed with respect to all of the activities of the National Science Foundation.

(Pub. L. 96–44, §9, Aug. 2, 1979, 93 Stat. 335; Pub. L. 99–159, title I, §109(i), Nov. 22, 1985, 99 Stat. 890; Pub. L. 103–437, §15(c)(2), Nov. 2, 1994, 108 Stat. 4591.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96–44, known as the National Science Foundation Authorization Act for Fiscal Year 1980. For classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the authorization act cited as the credit to this section, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to this section were contained in the following prior authorization acts:

Pub. L. 95–434, §7, Oct. 10, 1978, 92 Stat. 1050.

Pub. L. 95–99, §11, formerly §13, Aug. 15, 1977, 91 Stat. 835, renumbered §11, Pub. L. 99–159, title I, §109(h), Nov. 22, 1985, 99 Stat. 890.

Pub. L. 94–471, §11, Oct. 11, 1976, 90 Stat. 2058.

Pub. L. 94–86, §11, Aug. 9, 1975, 89 Stat. 431.

Pub. L. 93–413, §7, Sept. 4, 1974, 88 Stat. 1095.

Pub. L. 93–96, §9, Aug. 16, 1973, 87 Stat. 317.

Pub. L. 91–120, §6, Nov. 18, 1969, 83 Stat. 203.

AMENDMENTS

1994—Pub. L. 103–437 substituted ''Science, Space, and Technology'' for ''Science and Technology''.

1985—Pub. L. 99–159 inserted ''and the National Science Board''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 1883. Office of Small Business Research and Development

The National Science Foundation is authorized and directed to establish an Office of Small Business Research and Development. The Foundation through the Office of Small Business Research and Development and in cooperation and consultation with the Small Business Administration shall—

(1) foster communication between the National Science Foundation and the small business community, and insure that the set-aside for small business concerns provided under this Act or any other Act authorizing appropriations for the National Science Foundation is fully and effectively utilized;

(2) collect, analyze, compile, and publish information concerning grants and contracts awarded to small business concerns by the Foundation, and the procedures for handling proposals submitted by small business concerns;

(3) assist individual small business concerns in obtaining information regarding programs, policies, and procedures of the Foundation, and assure the expeditious processing of proposals by small business concerns based on scientific and technical merit; and

(4) recommend to the Director and to the National Science Board such changes in the procedures and practices of the Foundation as may be required to enable the Foundation to draw fully on the resources of the small business research and development community.

(Pub. L. 94–471, §8, Oct. 11, 1976, 90 Stat. 2057; Pub. L. 99–386, title I, §108, Aug. 22, 1986, 100 Stat. 822.)

REFERENCES IN TEXT

This Act, referred to in par. (1), is Pub. L. 94–471, Oct. 11, 1976, 90 Stat. 2053, known as the National Science Foundation Authorization Act, 1977, which, insofar as classified to the Code, enacted sections 1882 and 1883 of this title, amended section 1863 of this title, and enacted provisions set out as notes under sections 1862, 1864, 1873, and 5820 of this title. For complete classification of this Act to the Code, see Short Title of 1976

Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act, 1977, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1986—Par. (5). Pub. L. 99–386 struck out par. (5) which related to quarterly reports to Congress concerning activities of Office of Small Business Research and Development.

§ 1884. Repealed. Pub. L. 99–159, title I, § 109(h), Nov. 22, 1985, 99 Stat. 890

Section, Pub. L. 95–99, § 6, Aug. 15, 1977, 91 Stat. 833, related to the establishment, etc., of the Resource Center for Science and Engineering.

§ 1885. Congressional statement of findings and declaration of policy respecting equal opportunities in science and engineering

(a) The Congress finds that it is in the national interest to promote the full use of human resources in science and engineering and to insure the full development and use of the scientific and engineering talents and skills of men and women, equally, of all ethnic, racial, and economic backgrounds, including persons with disabilities.

(b) The Congress declares it is the policy of the United States to encourage men and women, equally, of all ethnic, racial, and economic backgrounds, including persons with disabilities, to acquire skills in science, engineering, and mathematics, to have equal opportunity in education, training, and employment in scientific and engineering fields, and thereby to promote scientific and engineering literacy and the full use of the human resources of the Nation in science and engineering. To this end, the Congress declares that the highest quality science and engineering over the long-term requires substantial support, from currently available research and educational funds, for increased participation in science and engineering by women, minorities, and persons with disabilities. The Congress further declares that the impact on women, minorities, and persons with disabilities which is produced by advances in science and engineering must be included as essential factors in national and international science, engineering, and economic policies.

(Pub. L. 96–516, § 32, Dec. 12, 1980, 94 Stat. 3010; Pub. L. 99–159, title I, § 111(b)(2)–(5), Nov. 22, 1985, 99 Stat. 892; Pub. L. 107–368, § 16, Dec. 19, 2002, 116 Stat. 3059.)

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–368, § 16(1), substituted ''backgrounds, including persons with disabilities'' for ''backgrounds''.

Subsec. (b). Pub. L. 107–368, § 16(2), inserted '', including persons with disabilities,'' after ''backgrounds'' and substituted '', minorities, and persons with disabilities'' for ''and minorities'' in two places.

1985—Subsec. (a). Pub. L. 99–159, § 111(b)(2), substituted ''engineering'' for ''technology'' and ''scientific and engineering talents and skills'' for ''scientific talent and technical skills''.

Subsec. (b). Pub. L. 99–159, § 111(b)(3)–(5), inserted '', engineering,'' after ''skills in science'', substituted ''engineering'' for ''technical'', ''scientific and engineering literacy'' for ''scientific literacy'', and ''engineering'' for ''technology'' wherever appearing, and inserted ''and engineering'' after ''highest quality science''.

SHORT TITLE

For short title of sections 31 et seq. of Pub. L. 96–516 as the ''Science and Engineering Equal Opportunities Act'', see section 31 of Pub. L. 96–516, as amended, set out as a Short Title of 1980 Amendment note under section 1861 of this title.

SEVERABILITY OF SCIENCE AND ENGINEERING EQUAL OPPORTUNITIES ACT

Section 38 of Pub. L. 96–516 provided that: ''If a provision of this Act [enacting sections 1885 to 1885d of this title and provisions set out as notes under sections 1861 and 1885 of this title] is held invalid, the validity of the other provisions of the Act shall not be affected. If an application of a provision of this Act to a person or circumstance is held invalid, the validity of the application of the provisions to another person or circumstance shall not be affected.''

REPORTS TO CONGRESS CONCERNING NATIONAL POLICY DEVELOPMENT OF PROMOTION, ETC., OF EQUAL OPPORTUNITY FOR WOMEN AND MINORITIES IN SCIENCE AND TECHNOLOGY, AND IMPACTS OF SCIENCE AND TECHNOLOGY ON WOMEN AND MINORITIES

Section 35 of Pub. L. 96–516 directed President, with assistance of Director of Office of Science and Technology Policy and Director of Foundation, to prepare and transmit before Jan. 20, 1982, a report to Congress proposing a comprehensive national policy and program, including budgetary and legislative recommendations, for promotion of equal opportunity for women and minorities in science and technology, and directed President, with assistance of Director of Office of Science and Technology Policy, heads of appropriate executive departments, and Director of the Foundation to prepare and transmit before Jan. 1, 1983, a report to Congress proposing a comprehensive policy, including budgetary and legislative recommendations, concerning direct and indirect impacts of science and technology on women and minorities.

§ 1885a. Women in science and engineering; support of activities by Foundation for promotion, etc.

The Foundation is authorized to—

(1) support activities designed to—

(A) increase the participation of women in courses of study at the undergraduate, graduate, and postgraduate levels leading to degrees in scientific and engineering fields;

(B) encourage women to consider and prepare for careers in science and engineering; or

(C) provide traineeship and fellowship opportunities for women in science and engineering;

(2) support programs in science, engineering, and mathematics in elementary and secondary schools so as to stimulate the acquisition of knowledge, skills, and information by female students and to increase female student awareness of career opportunities requiring scientific and engineering skills;

(3) support activities in continuing education in science and engineering which provide opportunities for women who—

(A) are in the work force, or

(B) who are not in the work force because their careers have been interrupted,

to acquire new knowledge, techniques, and skills in scientific and engineering fields;

(4) undertake a comprehensive research program designed to increase public understanding of (A) the potential contribution of women in science and engineering and (B) the means to facilitate the participation and advancement of women in scientific and engineering careers;

(5) establish a visiting women scientists and engineers program;

(6) support activities designed to improve the availability and quality of public information concerning the importance of the participation of women in careers in science and engineering;

(7) support activities of museums and science centers which demonstrate potential to interest and involve women in science and engineering;

(8) make grants, to be known as the National Research Opportunity Grants, to women scientists and engineers who (A) have received their doctorates within five years prior to the date of the award or (B) have received their doctorates, have had their careers interrupted, and are re-entering the work force within five years after such interruption;

(9) make grants to women eligible under paragraph (8) to assist such women in planning and developing a research project eligible for support under such paragraph;

(10) provide support to individuals or academic institutions for full-time or part-time visiting professorships for women in science and engineering; and

(11) support demonstration project activities of individuals, public agencies, and private entities designed to encourage the employment and advancement of women in science and engineering.

(Pub. L. 96–516, § 33, Dec. 12, 1980, 94 Stat. 3011; Pub. L. 99–159, title I, § 111(b)(6), Nov. 22, 1985, 99 Stat. 892.)

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1985—Par. (1). Pub. L. 99–159, § 111(b)(6)(A), substituted ''engineering'' for ''technology'' and ''technical'' wherever appearing.

Par. (2). Pub. L. 99–159, § 111(b)(6)(A), (B), inserted '', engineering,'' after ''science'', and substituted ''engineering'' for ''technical''.

Par. (3). Pub. L. 99–159, § 111(b)(6)(A), substituted ''engineering fields'' for ''technical fields''.

Par. (4). Pub. L. 99–159, § 111(b)(6)(A), substituted ''engineering'' for ''technology'' and ''technical''.

Par. (5). Pub. L. 99–159, § 111(b)(6)(C), inserted applicability to engineers.

Pars. (6), (7). Pub. L. 99–159, § 111(b)(6)(A), substituted ''engineering'' for ''technology''.

Par. (8). Pub. L. 99–159, § 111(b)(6)(C), inserted applicability to engineers.

Par. (10). Pub. L. 99–159, § 111(b)(6)(D), inserted applicability to engineering.

Par. (11). Pub. L. 99–159, § 111(b)(6)(E), substituted ''science and engineering'' for ''science, engineering, and technology''.

COMMISSION ON THE ADVANCEMENT OF WOMEN AND MINORITIES IN SCIENCE, ENGINEERING, AND TECHNOLOGY DEVELOPMENT

Pub. L. 105–255, Oct. 14, 1998, 112 Stat. 1889, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Commission on the Advancement of Women and Minorities in Science, Engineering, and Technology Development Act'.

''SEC. 2. FINDINGS.

''The Congress finds the following:

''(1) According to the National Science Foundation's 1996 report, Women, Minorities, and Persons with Disabilities in Science and Engineering—

''(A) women have historically been underrepresented in scientific and engineering occupations, and although progress has been made over the last several decades, there is still room for improvement;

''(B) female and minority students take fewer high-level mathematics and science courses in high school;

''(C) female students earn fewer bachelors, masters, and doctoral degrees in science and engineering;

''(D) among recent bachelors of science and bachelors of engineering graduates, women are less likely to be in the labor force, to be employed full-time, and to be employed in their field than are men;

''(E) among doctoral scientists and engineers, women are far more likely to be employed at 2-year institutions, are far less likely to be employed in research universities, and are much more likely to teach part-time;

''(F) among university full-time faculty, women are less likely to chair departments or hold high-ranked positions;

''(G) a substantial salary gap exists between men and women with doctorates in science and engineering;

''(H) Blacks, Hispanics, and Native Americans continue to be seriously underrepresented in graduate science and engineering programs; and

''(I) Blacks, Hispanics, and Native Americans as a group are 23 percent of the population of the United States, but only 6 percent are scientists or engineers.

''(2) According to the National Research Council's 1995 report, Women Scientists and Engineers Employed in Industry: Why So Few?—

''(A) limited access is the first hurdle faced by women seeking industrial jobs in science and engineering, and while progress has been made in recent years, common recruitment and hiring practices that make extensive use of traditional networks often overlook the available pool of women;

''(B) once on the job, many women find paternalism, sexual harassment, allegations of reverse discrimination, different standards for judging the work of men and women, lower salary relative to their male peers, inequitable job assignments, and other aspects of a male-oriented culture that are hostile to women; and

''(C) women to a greater extent than men find limited opportunities for advancement, particularly for moving into management positions, and the number of women who have achieved the top levels in corporations is much lower than would be expected, based on the pipeline model.

''(3) The establishment of a commission to examine issues raised by the findings of these two reports would help—

''(A) to focus attention on the importance of eliminating artificial barriers to the recruitment, retention, and advancement of women and minorities in the fields of science, engineering, and technology, and in all employment sectors of the United States;

''(B) to promote work force diversity;

''(C) to sensitize employers to the need to recruit and retain women and minority scientists, engineers, and computer specialists; and

''(D) to encourage the replication of successful recruitment and retention programs by universities, corporations, and Federal agencies having difficulties in employing women or minorities in the fields of science, engineering, and technology.

''SEC. 3. ESTABLISHMENT.

''There is established a commission to be known as the 'Commission on the Advancement of Women and Minorities in Science, Engineering, and Technology Development' (in this Act referred to as the 'Commission').

''SEC. 4. DUTY OF THE COMMISSION.

''The Commission shall review available research, and, if determined necessary by the Commission, conduct additional research to—

''(1) identify the number of women, minorities, and individuals with disabilities in the United States in specific types of occupations in science, engineering, and technology development;

''(2) examine the preparedness of women, minorities, and individuals with disabilities to—

''(A) pursue careers in science, engineering, and technology development; and

''(B) advance to positions of greater responsibility within academia, industry, and government;

''(3) describe the practices and policies of employers and labor unions relating to the recruitment, retention, and advancement of women, minorities, and individuals with disabilities in the fields of science, engineering, and technology development;

''(4) identify the opportunities for, and artificial barriers to, the recruitment, retention, and advancement of women, minorities, and individuals with disabilities in the fields of science, engineering, and technology development in academia, industry, and government;

''(5) compile a synthesis of available research on lawful practices, policies, and programs that have successfully led to the recruitment, retention, and advancement of women, minorities, and individuals with disabilities in science, engineering, and technology development;

''(6) issue recommendations with respect to lawful policies that government (including Congress and appropriate Federal agencies), academia, and private industry can follow regarding the recruitment, retention, and advancement of women, minorities, and individuals with disabilities in science, engineering, and technology development;

''(7) identify the disincentives for women, minorities, and individuals with disabilities to continue graduate education in the fields of engineering, physics, and computer science;

''(8) identify university undergraduate programs that are successful in retaining women, minorities, and individuals with disabilities in the fields of science, engineering, and technology development;

''(9) identify the disincentives that lead to a disproportionate number of women, minorities, and individuals with disabilities leaving the fields of science, engineering, and technology development before completing their undergraduate education;

''(10) assess the extent to which the recommendations of the Task Force on Women, Minorities, and the Handicapped in Science and Technology established under section 8 of the National Science Foundation Authorization Act for Fiscal Year 1987 (Public Law 99–383; 42 U.S.C. 1885a note) have been implemented;

''(11) compile a list of all federally funded reports on the subjects of encouraging women, minorities, and individuals with disabilities to enter the fields of science and engineering and retaining women, minorities, and individuals with disabilities in the science and engineering workforce that have been issued since the date that the Task Force described in paragraph (10) submitted its report to Congress;

''(12) assess the extent to which the recommendations contained in the reports described in paragraph (11) have been implemented; and

''(13) evaluate the benefits of family-friendly policies in order to assist recruiting, retaining, and advancing women in the fields of science, engineering, and technology such as the benefits or disadvantages of the Family and Medical Leave Act of 1993 (29 U.S.C. 2001 et seq. [see Short Title note set out under section 2601 of Title 29, Labor, and Tables]).

''SEC. 5. MEMBERSHIP.

''(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 11 members as follows:

''(1) One member appointed by the President from among for-profit entities that hire individuals in the fields of engineering, science, or technology development.

''(2) Two members appointed by the Speaker of the House of Representatives from among such entities.

''(3) One member appointed by the minority leader of the House of Representatives from among such entities.

''(4) Two members appointed by the majority leader of the Senate from among such entities.

''(5) One member appointed by the minority leader of the Senate from among such entities.

''(6) Two members appointed by the Chairman of the National Governors Association from among individuals in education or academia in the fields of life science, physical science, or engineering.

''(7) Two members appointed by the Vice Chairman of the National Governors Association from among such individuals.

''(b) INITIAL APPOINTMENTS.—Initial appointments shall be made under subsection (a) not later than 90 days after the date of the enactment of this Act [Oct. 14, 1998].

''(c) TERMS.—

''(1) IN GENERAL.—Each member shall be appointed for the life of the Commission.

''(2) VACANCIES.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

''(d) PAY OF MEMBERS.—Members shall not be paid by reason of their service on the Commission.

''(e) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum for the transaction of business.

''(g) CHAIRPERSON.—The Chairperson of the Commission shall be elected by the members.

''(h) MEETINGS.—The Commission shall meet not fewer than 5 times in connection with and pending the completion of the report described in section 8. The Commission shall hold additional meetings for such purpose if the Chairperson or a majority of the members of the Commission requests the additional meetings in writing.

''(i) EMPLOYMENT STATUS.—Members of the Commission shall not be deemed to be employees of the Federal Government by reason of their work on the Commission except for the purposes of—

''(1) the tort claims provisions of chapter 171 of title 28, United States Code; and

''(2) subchapter I of chapter 81 of title 5, United States Code, relating to compensation for work injuries.

''SEC. 6. DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

''(a) DIRECTOR.—The Commission shall appoint a Director who shall be paid at a rate not to exceed the

maximum annual rate of basic pay payable under section 5376 of title 5, United States Code.

''(b) STAFF.—The Commission may appoint and fix the pay of additional personnel as the Commission considers appropriate.

''(c) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the maximum annual rate of basic pay payable under section 5376 of title 5, United States Code.

''(d) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the maximum annual rate of basic pay payable under section 5376 of title 5, United States Code.

''(e) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the Director of the National Science Foundation or the head of any other Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

''SEC. 7. POWERS OF COMMISSION.

''(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this Act, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

''(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

''(c) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Chairperson of the Commission, the head of that department or agency shall furnish that information to the Commission.

''(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

''(e) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act.

''(f) CONTRACT AUTHORITY.—To the extent provided in advance in appropriations Acts, the Commission may contract with and compensate Government and private agencies or persons for the purpose of conducting research or surveys necessary to enable the Commission to carry out its duties under this Act.

''SEC. 8. REPORT.

''Not later than 1 year after the date on which the initial appointments under section 5(a) are completed, the Commission shall submit to the President, the Congress, and the highest executive official of each State, a written report containing the findings, conclusions, and recommendations of the Commission resulting from the study conducted under section 4.

''SEC. 9. CONSTRUCTION; USE OF INFORMATION OBTAINED.

''(a) IN GENERAL.—Nothing in this Act shall be construed to require any non-Federal entity (such as a business, college or university, foundation, or research organization) to provide information to the Commission concerning such entity's personnel policies, including salaries and benefits, promotion criteria, and affirmative action plans.

''(b) USE OF INFORMATION OBTAINED.—No information obtained from any entity by the Commission may be used in connection with any employment related litigation.

''SEC. 10. TERMINATION; ACCESS TO INFORMATION.

''(a) TERMINATION.—The Commission shall terminate 30 days after submitting the report required by section 8.

''(b) ACCESS TO INFORMATION.—On or before the date of the termination of the Commission under subsection (a), the Commission shall provide to the National Science Foundation the information gathered by the Commission in the process of carrying out its duties under this Act. The National Science Foundation shall act as a central repository for such information and shall make such information available to the public, including making such information available through the Internet.

''SEC. 11. REVIEW OF INFORMATION PROVIDED BY THE NATIONAL SCIENCE FOUNDATION AND OTHER AGENCIES.

''(a) PROVISION OF INFORMATION.—At the request of the Commission, the National Science Foundation and any other Federal department or agency shall provide to the Commission any information determined necessary by the Commission to carry out its duties under this Act, including—

''(1) data on academic degrees awarded to women, minorities, and individuals with disabilities in science, engineering, and technology development, and workforce representation and the retention of women, minorities, and individuals with disabilities in the fields of science, engineering, and technology development; and

''(2) information gathered by the National Science Foundation in the process of compiling its biennial report on Women, Minorities, and Persons with Disabilities in Science and Engineering.

''(b) REVIEW OF INFORMATION.—The Commission shall review any information provided under subsection (a) and shall include in the report required under section 8—

''(1) recommendations on how to correct any deficiencies in the collection of the types of information described in that subsection, and in the analysis of such data, which might impede the characterization of the factors which affect the attraction and retention of women, minorities, and individuals with disabilities in the fields of science, engineering, and technology development; and

''(2) an assessment of the biennial report of the National Science Foundation on Women, Minorities, and Persons with Disabilities in Science and Engineering, and recommendations on how that report could be improved.

''SEC. 12. DEFINITION OF STATE.

''In this Act, the term 'State' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and any other territory or possession of the United States.

''SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this Act—

''(1) $400,000 for fiscal year 1999; and

''(2) $400,000 for fiscal year 2000.''

TASK FORCE ON WOMEN, MINORITIES, AND THE HANDICAPPED IN SCIENCE AND TECHNOLOGY

Pub. L. 99–383, § 8, Aug. 21, 1986, 100 Stat. 815, provided that:

''(a) It is the purpose of this section to establish a task force on women, minorities, and the handicapped in science and technology to—

''(1) examine the current status of women, minorities, and the handicapped in science and engineering

positions in the Federal Government and in federally assisted research programs;

''(2) coordinate existing Federal programs designed to promote the employment of women, minorities, and the handicapped in such positions;

''(3) suggest cooperative interagency programs for promoting such employment;

''(4) identify exemplary State, local, or private sector programs designed to promote such employment; and

''(5) develop a long-range plan to advance opportunities for women, minorities, and the handicapped in Federal scientific and technical positions in federally assisted research, and to coordinate the activities of participating agencies with the Committee on Equal Opportunities in Science and Engineering established by section 36 of the National Science Foundation Authorization and Science and Technology Equal Opportunities Act [now the National Science Foundation Authorization and Science and Engineering Equal Opportunities Act] (42 U.S.C. 1885c), after the termination of the task force established by this section.

''(b) For purposes of this section, the term 'participating agency' means—

''(1) the National Science Foundation;

''(2) the Department of Health and Human Services;

''(3) the National Aeronautics and Space Administration;

''(4) the Environmental Protection Agency;

''(5) the Department of Agriculture;

''(6) the Department of Defense;

''(7) the Department of Education;

''(8) the Department of Energy;

''(9) the Department of Commerce; and

''(10) the Department of the Interior.

''(c)(1) The task force on women, minorities, and the handicapped in science and technology shall be composed of individuals appointed by participating agencies pursuant to this subsection.

''(2) The head of each participating agency shall appoint two individuals to serve as members of the task force. If an appointed member is unable to serve for the duration of the task force, the head of the participating agency who appointed that member shall appoint another individual to fill the vacancy.

''(3) Task force members may be appointed from private business, academia, professional associations, or nonprofit foundations.

''(d) The task force shall prepare and submit a report on its findings and recommendations to the President, the Congress, and the head of each participating agency not later than December 31, 1989.

''(e) The Office of Science and Technology Policy shall call the first meeting of the task force not later than 90 days after the date of enactment of this Act [Aug. 21, 1986], shall ensure that each participating agency has appointed two members, and shall assist the task force to meet its objectives.

''(f)(1) Members of the task force not otherwise employed by the Federal Government shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the task force.

''(2) The Director of the National Science Foundation shall make provision for administrative support of the task force, and may enter into agreements with the heads of other participating agencies to facilitate the work of the task force.

''(g) The task force shall terminate on January 31, 1990.''

§ 1885b. Participation in science and engineering of minorities and persons with disabilities

(a) The Foundation is authorized (1) to undertake or support a comprehensive science and engineering education program to increase the participation of minorities in science and engineering, and (2) to support activities to initiate research at minority institutions.

(b) The Foundation is authorized to undertake or support programs and activities to encourage the participation of persons with disabilities in the science and engineering professions.

(Pub. L. 96–516, § 34, Dec. 12, 1980, 94 Stat. 3012; Pub. L. 99–159, title I, § 111(b)(7), Nov. 22, 1985, 99 Stat. 892; Pub. L. 105–207, title II, § 202(d)(1), July 29, 1998, 112 Stat. 874.)

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1998—Pub. L. 105–207, § 202(d)(1)(A), substituted section catchline for former section catchline.

Subsec. (b). Pub. L. 105–207, § 202(d)(1)(B), added subsec. (b) and struck out former subsec. (b), which read as follows: ''By September 30, 1981, the Director, with the advice and assistance of the Committee on Equal Opportunities in Science and Technology established in section 1885c of this title, shall prepare and transmit to the Committee on Labor and Human Resources of the Senate and the Committee on Science and Technology of the House of Representatives a report proposing a comprehensive and continuing program at the Foundation to promote the full participation of minorities in science and engineering. Such report shall contain budgetary and legislative recommendations for the carrying out of such program by the Foundation.''

1985—Subsec. (a). Pub. L. 99–159, § 111(b)(7), substituted ''science and engineering education'' for ''science education'' and ''engineering'' for ''technology''.

Subsec. (b). Pub. L. 99–159, § 111(b)(7)(B), substituted ''engineering'' for ''technology''.

§ 1885c. Committee on Equal Opportunities in Science and Engineering

(a) Establishment; purposes

There is established within the Foundation a Committee on Equal Opportunities in Science and Engineering (hereinafter referred to as the ''Committee''). The Committee shall provide advice to the Foundation concerning (1) the implementation of the provisions of sections 1885 to 1885d of this title and (2) other policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities in scientific, engineering, and professional fields.

(b) Membership; Chairperson; term of members

Each member of the Committee shall be appointed by the Director. In addition, the Chairman of the National Science Board may designate a member of the Board as a member of the Committee. Members of the Committee shall be appointed to serve for a three-year term, and may be reappointed to serve one additional term of three years.

(c) Responsibilities of Committee

The Committee shall be responsible for reviewing and evaluating all Foundation matters relating to opportunities for the participation in, and the advancement of, women, minorities, and persons with disabilities in education, training, and science and engineering research programs.

(d) Standing or ad hoc subcommittees

The Committee may organize such standing or ad hoc subcommittees as the Committee finds appropriate.

(e) Biennial report

Every two years, the Committee shall prepare and transmit to the Director a report on its activities during the previous two years and proposed activities for the next two years. The Director shall transmit to Congress the report, unaltered, together with such comments as the Director deems appropriate.

(Pub. L. 96–516, § 36, Dec. 12, 1980, 94 Stat. 3012; Pub. L. 99–159, title I, § 111(b)(8), Nov. 22, 1985, 99 Stat. 893; Pub. L. 100–570, title I, § 105(c), Oct. 31, 1988, 102 Stat. 2868; Pub. L. 105–207, title II, § 202(d)(2), July 29, 1998, 112 Stat. 874.)

REFERENCES IN TEXT

Sections 1885 to 1885d of this title, referred to in subsec. (a), was in the original ''this Act'', meaning sections 31 et seq. of Pub. L. 96–516, as amended, known as the Science and Engineering Equal Opportunities Act, which enacted sections 1885 to 1885d of this title and provisions set out as notes under sections 1861 and 1885 of this title. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–207, § 202(d)(2)(A), substituted ''minorities, and persons with disabilities in scientific'' for ''minorities, and other groups currently underrepresented in scientific''.

Subsec. (b). Pub. L. 105–207, § 202(d)(2)(B), struck out ''with the concurrence of the National Science Board'' after ''the Director'' and substituted ''In addition, the Chairman of the National Science Board may designate a member of the Board as a member of the Committee.'' for ''The Chairperson of the National Science Board Committee on Minorities and Women shall be an ex officio member of the Committee.''

Subsec. (c). Pub. L. 105–207, § 202(d)(2)(C), (D), added subsec. (c) and struck out former subsec. (c) which read as follows: ''There shall be a subcommittee of the Committee which shall be known as the Subcommittee on Women in Science and Engineering. The Subcommittee on Women in Science and Engineering shall have responsibility for all Committee matters relating to (1) the participation in and opportunities for the education, training, and research of women in science and engineering and (2) the impact of science and engineering on women. The Subcommittee shall be composed of all the women members of the Committee and such other members of the Committee as the Committee may designate.''

Subsec. (d). Pub. L. 105–207, § 202(d)(2)(F), struck out ''additional'' after ''organize such''.

Pub. L. 105–207, § 202(d)(2)(C), (E), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''There shall be a subcommittee of the Committee which shall be known as the Subcommittee on Minorities in Science and Engineering. The Subcommittee on Minorities in Science and Engineering shall have responsibility for all Committee matters relating to (1) the participation in and opportunities for education, training, and research for minorities in science and engineering and (2) the impact of science and engineering on minorities. The Subcommittee shall be composed of all minority members of the Committee and such other members of the Committee as the Committee may designate.''

Subsecs. (e), (f). Pub. L. 105–207, § 202(d)(2)(E), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1988—Subsec. (f). Pub. L. 100–570 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''Each year the Committee shall prepare and transmit to the Director a report concerning its activities during the previous year and its proposed activities for the next year. The Director shall transmit to Congress the report, unaltered, along with comments.''

1985—Pub. L. 99–159, § 111(b)(8)(A), substituted ''Engineering'' for ''Technology'' in section catchline.

Subsec. (a). Pub. L. 99–159 substituted ''Engineering'' for ''Technology'' and ''scientific, engineering, and professional'' for ''scientific engineering, professional, and technical''.

Subsecs. (c), (d). Pub. L. 99–159, § 111(b)(8)(A), substituted ''Engineering'' for ''Technology'' and ''engineering'' for ''technology'' wherever appearing.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973 to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REPORT BY COMMITTEE ON EQUAL OPPORTUNITIES IN SCIENCE AND ENGINEERING

Pub. L. 107–368, § 20, Dec. 19, 2002, 116 Stat. 3063, provided that: ''As part of the first report required by section 36(e) of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885c(e)) transmitted to Congress after the date of enactment of this Act [Dec. 19, 2002], the Committee on Equal Opportunities in Science and Engineering shall include—

''(1) a summary of its findings over the previous 10 years;

''(2) a description of past and present policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities in science, mathematics, and engineering fields, including activities in support of minority-serving institutions; and

''(3) an assessment of the trends in participation in Foundation activities, and an assessment of the success of Foundation policies and activities, along with proposals for new strategies or the broadening of existing successful strategies toward facilitating the goals of that Act [42 U.S.C. 1885 et seq.].''

[For definitions of terms used in section 20 of Pub. L. 107–368, set out above, see section 4 of Pub. L. 107–368, set out as a note under section 1862n of this title.]

§ 1885d. Biennial reports

(a) By January 30 of each odd-numbered year, the Director shall simultaneously transmit a report to the Congress, the Attorney General, the Director of the Office of Science and Technology Policy, the Chairman of the Equal Employment Opportunity Commission, the Director of the Office of Personnel Management, the Secretary of Labor, the Secretary of Education, and the Secretary of Health and Human Services.

(b) The report required by subsection (a) of this section shall contain—

(1) an accounting and comparison, by sex, race, and ethnic group and by discipline, of the

participation of women and men in scientific and engineering positions, including—

(A) the number of individuals in permanent and temporary and in full-time and part-time scientific and engineering positions by appropriate level or similar category;

(B) the average salary of individuals in such scientific and engineering positions;

(C) the number and type of promotional opportunities realized by individuals in such scientific and engineering positions;

(D) the number of individuals serving as principal investigators in federally conducted or federally supported research and development; and

(E) the unemployment rate of individuals seeking scientific and engineering positions;

(2) an assessment, including quantitative and other data, of the proportion of women and minorities studying scientific and engineering fields, including mathematics and computer skills, at all educational levels; and

(3) such other data, analyses, and evaluations as the Director, acting on the advice of the Committee on Equal Opportunities in Science and Engineering, determines appropriate to carry out the Foundation's functions as well as the policies and programs of sections 1885 to 1885d of this title.

(Pub. L. 96–516, § 37, Dec. 12, 1980, 94 Stat. 3013; Pub. L. 99–159, title I, § 111(b)(9), Nov. 22, 1985, 99 Stat. 893; Pub. L. 108–360, title II, § 208, Oct. 25, 2004, 118 Stat. 1679.)

REFERENCES IN TEXT

Sections 1885 to 1885d of this title, referred to in subsec. (b)(3), was in the original ''this Act'', meaning sections 31 et seq. of Pub. L. 96–516, as amended, known as the Science and Engineering Equal Opportunities Act, which enacted sections 1885 to 1885d of this title and provisions set out as notes under sections 1861 and 1885 of this title. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 1861 of this title and Tables.

CODIFICATION

Section was enacted as part of the Science and Engineering Equal Opportunities Act, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–360 substituted ''By January 30 of each odd-numbered year'' for ''By January 30, 1982, and biennially thereafter''.

1985—Subsec. (b)(1), (2). Pub. L. 99–159, § 111(b)(9)(A), substituted ''engineering'' for ''technical'' wherever appearing.

Subsec. (b)(3). Pub. L. 99–159, § 111(b)(9)(B), substituted ''Engineering'' for ''Technology''.

§ 1886. Data collection and analysis

The National Science Foundation is authorized to design, establish, and maintain a data collection and analysis capability in the Foundation for the purpose of identifying and assessing the research facilities needs of universities. The needs of universities, by major field of science and engineering, for construction and modernization of research laboratories, including fixed equipment and major research equipment, shall be documented. University expenditures for the construction and modernization of research facilities, the sources of funds, and other appropriate data shall be collected and analyzed. The Foundation, in conjunction with other appropriate Federal agencies, shall conduct the necessary surveys every 2 years and report the results to the Congress. The first report shall be submitted to the Congress by September 1, 1986.

(Pub. L. 99–159, title I, § 108, Nov. 22, 1985, 99 Stat. 888.)

CODIFICATION

Section was enacted as part of the National Science Foundation Authorization Act for Fiscal Year 1986, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

§ 1887. Indemnification of grantees, contractors, and subcontractors under ocean drilling program; approvals and certifications by Director

The Foundation is on and after November 25, 1985, authorized to indemnify grantees, contractors, and subcontractors associated with the ocean drilling program under the provisions of section 2354 of title 10, with all approvals and certifications required thereby made by the Director of the National Science Foundation.

(Pub. L. 99–160, title II, § 201, Nov. 25, 1985, 99 Stat. 922.)

CODIFICATION

Section was enacted as part of the appropriation act cited as the credit to this section, and not as part of the National Science Foundation Act of 1950 which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to this section were contained in the following prior appropriation act: Pub. L. 98–371, title II, § 201, July 18, 1984, 98 Stat. 1228.

CHAPTER 16A—GRANTS FOR SUPPORT OF SCIENTIFIC RESEARCH

§§ 1891, 1892. Repealed. Pub. L. 95–224, § 10(a), Feb. 3, 1978, 92 Stat. 6

Section 1891, Pub. L. 85–934, § 1, Sept. 6, 1958, 72 Stat. 1793, authorized the head of each executive agency to make grants for support of scientific research with institutions of higher education, etc. See section 6301 et seq. of Title 31, Money and Finance.

Section 1892, Pub. L. 85–934, § 2, Sept. 6, 1958, 72 Stat. 1793, authorized the head of each executive agency to vest title to equipment, where feasible, in institutions of higher education, etc., involved in basic or applied scientific research pursuant to grants.

EFFECTIVE DATE OF REPEAL

Section 10(a) of Pub. L. 95–224 provided that sections 1891 and 1892 are repealed effective one year after the date of enactment of Pub. L. 95–224, which was approved Feb. 3, 1978.

REPEALS

Pub. L. 95–224, § 10(a), Feb. 3, 1978, 92 Stat. 6, which repealed these sections and provided for the effective date of that repeal was itself repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, 1083.

§ 1893. Repealed. Pub. L. 93–608, § 1(1), Jan. 2, 1975, 88 Stat. 1967

Section, Pub. L. 85–934, § 3, Sept. 6, 1958, 72 Stat. 1793; Pub. L. 94–273, § 2(24), Apr. 21, 1976, 90 Stat. 376, required a report to the appropriate committees of Congress by agencies or departments making grants for basic scientific research under this chapter.

CHAPTER 16B—CONTRACTS FOR SCIENTIFIC AND TECHNOLOGICAL RESEARCH

Sec.

§ 1900. Interior Department programs

(a) Authorization for research contracts

The Secretary of the Interior is authorized to enter into contracts with educational institutions, public or private agencies or organizations, or persons for the conduct of scientific or technological research into any aspect of the problems related to the programs of the Department of the Interior which are authorized by statute.

(b) Capabilities of prospective contractors; advice and assistance, coordination of research, lines of inquiry, and cooperation

The Secretary shall require a showing that the institutions, agencies, organizations, or persons with which he expects to enter into contracts pursuant to this section have the capability of doing effective work. He shall furnish such advice and assistance as he believes will best carry out the mission of the Department of the Interior, participate in coordinating all research initiated under this section, indicate the lines of inquiry which seem to him most important, and encourage and assist in the establishment and maintenance of cooperation by and between the institutions, agencies, organizations, or persons and between them and other research organizations, the United States Department of the Interior, and other Federal agencies.

(c) Research reports or publications

The Secretary may from time to time disseminate in the form of reports or publications to public or private agencies or organizations, or individuals such information as he deems desirable on the research carried out pursuant to this section.

(Pub. L. 89–672, § 1, Oct. 15, 1966, 80 Stat. 951; Pub. L. 96–470, title I, § 108(a), Oct. 19, 1980, 94 Stat. 2239.)

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–470 struck out subsec. (d) which provided that no contract involving more than $25,000 be executed under subsec. (a) of this section prior to 30 calendar days from the date submitted to the President of the Senate and Speaker of the House of Representatives and the 30 calendar days not include days on which either the Senate or House of Representatives is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die.

§ 1900a. Rules and regulations

The Secretary shall prescribe such rules and regulations as he deems necessary to carry out the provisions of this chapter.

(Pub. L. 89–672, § 2, Oct. 15, 1966, 80 Stat. 951.)

§ 1900b. Amendment, modification, or repeal of authorizations for execution of contracts for research

Nothing contained in this chapter is intended to amend, modify, or repeal any provisions of law administered by the Secretary of the Interior which authorize the making of contracts for research.

(Pub. L. 89–672, § 3, Oct. 15, 1966, 80 Stat. 951.)

CHAPTER 17—FEDERAL EMPLOYMENT SERVICE

§§ 1901 to 1918. Transferred

CODIFICATION

Section 1901, act June 6, 1933, ch. 49, § 1, 48 Stat. 113, which related to establishment of United States Employment Service, was transferred to section 49 of Title 29, Labor.

Section 1902, act June 6, 1933, ch. 49, § 2, 48 Stat. 114; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424, which related to establishment of officers and employees of the Service, was transferred to section 49a of Title 29.

Section 1903, act June 6, 1933, ch. 49, § 3, 48 Stat. 114, which related to promotion and development of national system of employment offices, was transferred to section 49b of Title 29.

Section 1904, act June 6, 1933, ch. 49, § 4, 48 Stat. 114, which related to establishment of state agencies, was transferred to section 49c of Title 29.

Section 1905, acts June 6, 1933, ch. 49, § 5, 48 Stat. 114; May 10, 1935, ch. 102, 49 Stat. 216; June 29, 1938, ch. 816, 52 Stat. 1244; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to authorization of appropriations, was transferred to section 49d of Title 29.

Section 1906, act June 6, 1933, ch. 49, § 6, 48 Stat. 115; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to apportionment among States, was transferred to section 49e of Title 29.

Section 1907, act June 6, 1933, ch. 49, § 7, 48 Stat. 115; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to ascertainment of amount due to States and certification thereof to Secretary of the Treasury, was transferred to section 49f of Title 29.

Section 1908, act June 6, 1933, ch. 49, § 8, 48 Stat. 115; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to submission of State plans, was transferred to section 49g of Title 29.

Section 1909, act June 6, 1933, ch. 49, § 9, 48 Stat. 116; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to reports by State agencies, was transferred to section 49h of Title 29.

Section 1910, act June 6, 1933, ch. 49, § 11, 48 Stat. 116; 1939 Reorg. Plan No. I, §§ 201, 203, eff. July 1, 1939, 4 F.R.

2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, §4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to establishment of a Federal Advisory Council, was transferred to section 49j of Title 29.

Section 1911, act June 6, 1933, ch. 49, §12, 48 Stat. 117; 1939 Reorg. Plan No. I, §§201, 203, eff. July 1, 1939, 4 F.R. 2728, 53 Stat. 1424; 1946 Reorg. Plan No. 2, §4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, which related to issuance of rules and regulations, was transferred to section 49k of Title 29.

Section 1912, act Aug. 11, 1939, ch. 693, 53 Stat. 1409, which related to transfer to States of property used by United States Employment Service, was transferred to section 49c–1 of Title 29.

Section 1913, acts July 26, 1946, ch. 672, title I, §101, 60 Stat. 684; June 16, 1948, ch. 472, title I, §101, 62 Stat. 446, which related to Federal employees employed in State and local employment service and their conditions of service, was transferred to section 49c–2 of Title 29 and subsequently omitted from the Code.

Section 1914, act July 26, 1946, ch. 672, title I, §101, 60 Stat. 685, which related to refund of contributions to Federal Retirement System, was transferred to section 49c–3 of Title 29 and was repealed.

Section 1915, acts July 26, 1946, ch. 672, title I, §101, 60 Stat. 685; July 8, 1947, ch. 210, title I, §101, 61 Stat. 263; June 16, 1948, ch. 472, title I, §101, 62 Stat. 446, which related to establishment and maintenance of personnel standards on merit basis, was transferred to section 49c–4 of Title 29 and subsequently omitted from the Code.

Section 1916, acts July 26, 1946, ch. 672, title I, §101, 60 Stat. 686; 1946 Reorg. Plan No. 2, §4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; July 8, 1947, ch. 210, title I, §101, 61 Stat. 263; June 16, 1948, ch. 472, title I, §101, 62 Stat. 446, which related to joint budget for grants under this chapter and for certain grants under the Social Security Act, was transferred to section 49c–5 of Title 29 and subsequently omitted from the Code.

Section 1917, act June 16, 1948, ch. 472, title I, §101, 62 Stat. 445, which related to payment to States for administrative expenses, was transferred to section 49m of Title 29 and subsequently omitted from the Code.

Section 1918, act June 16, 1948, ch. 472, title I, §101, 62 Stat. 445, which related to personnel standards, was transferred to section 49n of Title 29 and subsequently omitted from the Code.

CHAPTER 18—YOUTH MEDALS

§ 1921. Establishment of medals for bravery; rules and regulations; conditions governing awards

The Department of Justice be, and it is, authorized and directed to promulgate rules and regulations establishing a medal; the method of selecting such recipient thereof so that an award shall be made to any child residing in the United States, who is eighteen years old or under, who has exhibited exceptional courage, extraordinary decision, presence of mind, and unusual swiftness of action, regardless of his or her own personal safety, in an effort to save or successfully saving the life or lives of any person or persons whose life or lives were in actual imminent danger.

(Aug. 3, 1950, ch. 520, §1, 64 Stat. 397.)

§ 1922. Establishment of medals for character and service; condition governing awards

The Department of Justice shall also honor by an appropriate medal such American boy or girl citizens, eighteen years old or under, who, in the opinion of the said Department of Justice, shall have achieved outstanding or unusual recognition for character and service during any given year.

(Aug. 3, 1950, ch. 520, §2, 64 Stat. 397.)

§ 1923. Names of medals; presentation

The medal to be awarded for bravery or valor as defined in section 1921 of this title shall be known as the Young American Medal for Bravery, while the medal for outstanding character and service as defined in section 1922 of this title shall be known as the Young American Medal for Service, and such medals shall be presented personally by the President of the United States for and on behalf, and in the name of the President and the Congress of the United States of America.

(Aug. 3, 1950, ch. 520, §3, 64 Stat. 398.)

§ 1924. Certificate of commendation accompanying awards; limitation on number of yearly awards

Accompanying such medals designated in this chapter there shall be an appropriate certificate of commendation presented to the recipient or recipients stating (a) the circumstances under which the act of bravery was performed, and (b) citing the outstanding recognition for character and service: *Provided*, That there shall not be awarded in any one calendar year in excess of four such medals, to wit, two for bravery and two for character and service, as herein authorized.

(Aug. 3, 1950, ch. 520, §4, 64 Stat. 398.)

§ 1925. Omitted

CODIFICATION

Section, Aug. 3, 1950, ch. 520, §5, 64 Stat. 398, which required the Department of Justice to submit an annual report furnishing a list of the names of all those upon whom the President has conferred either the Young American Medal for Bravery or the Young American Medal for Service, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 6 on page 117 of House Document No. 103–7.

§ 1926. Authorization of appropriations

It shall also be the duty of the Department of Justice to list in its annual budget request the sum of money necessary to carry out the provisions of this chapter, which sum is authorized in a sum not to exceed $5,000 per annum.

(Aug. 3, 1950, ch. 520, §6, 64 Stat. 398.)

CHAPTER 19—SALINE AND SALT WATERS

SUBCHAPTER I—SALINE WATER DEVELOPMENT PROGRAM

§§ 1951 to 1958. Repealed. Pub. L. 92–60, § 11, July 29, 1971, 85 Stat. 163

Section 1951, acts July 3, 1952, ch. 568, §1, 66 Stat. 328; Sept. 22, 1961, Pub. L. 87–295, §1, 75 Stat. 628, stated Congressional policy on conversion of sea and saline waters and defined ''saline water'' and ''United States''. See sections 1959 and 1959g(b) and (d) of this title.

Section 1952, acts July 3, 1952, ch. 568, §2, 66 Stat. 328; June 29, 1955, ch. 227, §1(1), 69 Stat. 198; Sept. 22, 1961, Pub. L. 87–295, §1, 75 Stat. 628; Aug. 11, 1965, Pub. L. 89–118, §1(1), 79 Stat. 509; June 24, 1967, Pub. L. 90–30, §1(b)–(d), 81 Stat. 78, prescribed duties of Secretary of the Interior relating to (a) research and studies for development of processes and methods for converting saline water; (b) research and technical development work for developing processes and plant designs; reports to Congress; and treatment of demonstration projects as test beds; (c) recommendations to Congress for prototype plant; (d) methods for recovery and marketing of byproducts; and (e) economic studies and surveys on water production costs. See sections 1959a and 1959b(b) of this title.

Section 1953, acts July 3, 1952, ch. 568, §3, 66 Stat. 329; June 29, 1955, ch. 227, §1(2), 69 Stat. 198; Sept. 22, 1961, Pub. L. 87–295, §1, 75 Stat. 628, provided for powers of Secretary of the Interior. See section 1959c of this title.

Section 1954, acts July 3, 1952, ch. 568, §4, 66 Stat. 329; Sept. 22, 1961, Pub. L. 87–295, §1, 75 Stat. 629, provided for coordination or joint conduct of activities with Department of Defense; cooperation with other Federal agencies; and availability to public of resulting information and developments. See section 1959d of this title.

Section 1955, acts July 3, 1952, ch. 568, §5, 66 Stat. 329; Sept. 22, 1961, Pub. L. 87–295, §1, 75 Stat. 629, related to disposal of water and byproducts, disposition of moneys and alteration of existing law. See section 1959d(e) and (f) of this title.

Section 1956, acts July 3, 1952, ch. 568, §6, 66 Stat. 329; Sept. 22, 1961, Pub. L. 87–295, §1, 75 Stat. 629, provided for reports to President and Congress. See section 1959f of this title.

Section 1957, acts July 3, 1952, ch. 568, §7, 66 Stat. 329; Sept. 22, 1961, Pub. L. 87–295, §1, 75 Stat. 629, authorized issuance of rules and regulations. See section 1959e of this title.

Section 1958, acts July 3, 1952, ch. 568, §8, 66 Stat. 329; June 29, 1955, ch. 227, §1(3), 69 Stat. 198; Sept. 22, 1961, Pub. L. 87–295, §1, 75 Stat. 629; Aug. 11, 1965, Pub. L. 89–118, §1(2), 79 Stat. 509; June 24, 1967, Pub. L. 90–30, §1(a), 81 Stat. 78; Apr. 29, 1968, Pub. L. 90–297, §1, 82 Stat. 110, authorized appropriations. See section 1959h of this title.

SUBCHAPTER II—SALINE WATER DEMONSTRATION PROGRAM

§§ 1958a to 1958g. Omitted

CODIFICATION

Section 1958a, Pub. L. 85–883, §1, Sept. 2, 1958, 72 Stat. 1706, which related to demonstration plants for production of consumptive water from saline water, was omitted pursuant to section 1958d of this title.

Section 1958b, Pub. L. 85–883, §2, Sept. 2, 1958, 72 Stat. 1707, which related to contracts for construction, operation, and maintenance of demonstration plants, was omitted pursuant to section 1958d of this title.

Section 1958c, Pub. L. 85–883, §3, Sept. 2, 1958, 72 Stat. 1707, which related to acceptance of assistance from State and public agencies, and contracts for such assistance and its use, was omitted pursuant to section 1958d of this title.

Section 1958d, Pub. L. 85–883, §4, Sept. 2, 1958, 72 Stat. 1707; Pub. L. 87–295, §2, Sept. 22, 1961, 75 Stat. 630, provided for termination of authority of the Secretary to construct, operate, and maintain demonstration plants upon the expiration of twelve years after Sept. 2, 1958.

Section 1958e, Pub. L. 85–883, §5, Sept. 2, 1958, 72 Stat. 1708, which related to additional powers of the Secretary, was omitted pursuant to section 1958d of this title.

Section 1958f, Pub. L. 85–883, §6, Sept. 2, 1958, 72 Stat. 1708, which related to contracts for construction, materials, and supplies, was omitted pursuant to section 1958d of this title.

Section 1958g, Pub. L. 85–883, §7, Sept. 2, 1958, 72 Stat. 1708, which related to authorization of appropriations, was omitted pursuant to section 1958d of this title.

SUBCHAPTER III—SALINE WATER CONVERSION PROGRAM

§§ 1959 to 1959h. Repealed. Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section 1959, Pub. L. 92–60, §2, July 29, 1971, 85 Stat. 159, set out Congressional findings and policy in enacting conversion of saline water legislation. See section 7831 of this title.

Section 1959a, Pub. L. 92–60, §3, July 29, 1971, 85 Stat. 159, set out general duties of Secretary of the Interior in the area of conversion of saline water. See section 7832 of this title.

Section 1959b, Pub. L. 92–60, §4, July 29, 1971, 85 Stat. 160, set out additional duties of Secretary of the Interior in area of conversion of saline water, such as conducting preliminary investigations, exploring potential cooperative agreements, reporting to the President and Congress, utilizing Federal agencies' expertise and accepting financial assistance from State and other public agencies. See section 7833 of this title.

Section 1959c, Pub. L. 92–60, §5, July 29, 1971, 85 Stat. 160, set out powers of Secretary of the Interior. See section 7871 of this title.

Section 1959d, Pub. L. 92–60, §6, July 29, 1971, 85 Stat. 161, provided for coordination of saline water conversion activities with Department of Defense, cooperation of Secretary of the Interior's activities with the Environmental Protection Agency and other Federal agencies, availability of research information and developments, continued validity of patent rights, publication of rules in the Federal Register, disposal of water and byproducts, dispositions of moneys and nonalteration of existing water ownership and control laws. See sections 7877(a) and 7879 of this title.

Section 1959e, Pub. L. 92–60, §7, July 29, 1971, 85 Stat. 162, authorized Secretary of the Interior to issue rules and regulations. See section 7834 of this title.

Section 1959f, Pub. L. 92–60, §8, July 29, 1971, 85 Stat. 162, required Secretary of the Interior to submit a report to the President and Congress. See section 7880 of this title.

Section 1959g, Pub. L. 92–60, §9, July 29, 1971, 85 Stat. 162, defined terms used in this chapter. See section 7835 of this title.

Section 1959h, Pub. L. 92–60, §10, July 29, 1971, 85 Stat. 162; Pub. L. 95–84, §1(a)(2), Aug. 2, 1977, 91 Stat. 400, authorized appropriations for saline water conversion programs. See sections 7873 and 7874 of this title.

SHORT TITLE

Pub. L. 92–60, §1, July 29, 1971, 85 Stat. 159, which provided that Pub. L. 92–60, which enacted sections 1959 to 1959h of this title and repealed sections 1951 to 1958 of this title may be cited as ''The Saline Water Conversion Act of 1971'' was repealed by Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316.

ANNUAL AUTHORIZATION OF APPROPRIATIONS

Annual authorization for appropriations for the saline water conversion programs for fiscal years author-

ized by former section 1959h(b) of this title were contained in the following appropriations acts:

Pub. L. 95–84, §1(b), Aug. 2, 1977, 91 Stat. 400.
Pub. L. 94–316, §1, June 22, 1976, 90 Stat. 694.
Pub. L. 94–38, June 19, 1975, 89 Stat. 217.
Pub. L. 93–342, July 10, 1974, 88 Stat. 295.
Pub. L. 92–51, July 1, 1973, 87 Stat. 129.
Pub. L. 92–273, Apr. 17, 1972, 86 Stat. 122.

INVENTIONS—DEFINITION, TITLE, AND LICENSING

Pub. L. 94–316, §3, June 22, 1976, 90 Stat. 694, which provided that relative to the definition of, title to, and licensing of inventions made or conceived in the course of or under any contract or grant pursuant to the Water Resources Research Act of 1964 (42 U.S.C. 1961 et seq.) or the Saline Water Conversion Act of 1971 (42 U.S.C. 1959 et seq.), and that notwithstanding any other provision of law, the Secretary was to be governed by the provisions of sections 9 and 10 of the Federal Nonnuclear Energy, Research, and Development Act of 1974 (42 U.S.C. 5908, 5909), provided, however, that subsecs. (*l*) and (n) of section 5908 of this title were not to apply to this act, was omitted in view of the repeal of the Water Resources Research Act of 1964 and the Saline Water Conversion Act of 1971 by Pub. L. 95–467, title IV, §410(a), Oct. 17, 1978, 92 Stat. 1316.

§ 1959i. Transferred

CODIFICATION

Section, Pub. L. 95–84, §2, Aug. 2, 1977, 91 Stat. 400, which related to desalting plants, was transferred to section 7836 of this title.

CHAPTER 19A—WATER RESOURCES RESEARCH PROGRAM

GENERAL PROVISIONS

§ 1961. Repealed. Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section, Pub. L. 88–379, §1(b), July 17, 1964, 78 Stat. 329, set out Congressional purpose in enacting water resources research program legislation. See section 7802 of this title.

SHORT TITLE

Pub. L. 88–379, §1(a), July 17, 1964, 78 Stat. 329, provided that Pub. L. 88–379, which enacted sections 1961 to 1961c–8, may be cited as the ''Water Resources Research Act of 1964'', prior to repeal by Pub. L. 95–467, title IV, §410(a), Oct. 17, 1978, 92 Stat. 1316.

SUBCHAPTER I—STATE WATER RESOURCES RESEARCH INSTITUTE

§§ 1961a to 1961a–5. Repealed. Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section 1961a, Pub. L. 88–379, title I, §100, July 17, 1964, 78 Stat. 329; Pub. L. 92–175, §§1–3, Dec. 2, 1971, 85 Stat. 493, related to water resources research institutes. See section 7811 of this title.

Section 1961a–1, Pub. L. 88–379, title I, §101, July 17, 1964, 78 Stat. 330, authorized appropriations for specific water resources research projects, including regional projects. See sections 7815(a) and 7872 of this title.

Section 1961a–2, Pub. L. 88–379, title I, §102, July 17, 1964, 78 Stat. 330; Pub. L. 92–175, §4, Dec. 2, 1971, 85 Stat. 493, set time and amount of payments to institutes, directed that an accounting officer be appointed to each State institute and submit an annual report to Secretary of the Interior, and required that State replace diminished, lost or misapplied funds. See section 7876 of this title.

Section 1961a–3, Pub. L. 88–379, title I, §103, July 17, 1964, 78 Stat. 330, made appropriated funds available for printing and publishing results of research and for the planning, coordinating and conducting of cooperative research. See section 7812 of this title.

Section 1961a–4, Pub. L. 88–379, title I, §104, July 17, 1964, 78 Stat. 331; Pub. L. 89–404, §2, Apr. 19, 1966, 80 Stat. 130, related to powers and duties of Secretary of the Interior. See section 7813 of this title.

Section 1961a–5, Pub. L. 88–379, title I, §105, July 17, 1964, 78 Stat. 331, related to legal relationship of educational institutions and State governments and Federal control or direction of education. See section 7814 of this title.

SUBCHAPTER II—ADDITIONAL WATER RESOURCES RESEARCH PROGRAMS

§ 1961b. Repealed. Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section, Pub. L. 88–379, title II, §200, July 17, 1964, 78 Stat. 331; Pub. L. 89–404, §1, Apr. 19, 1966, 80 Stat. 129; Pub. L. 92–175, §5, Dec. 2, 1971, 85 Stat. 493; Pub. L. 93–608, §1(17), Jan. 2, 1975, 88 Stat. 1970; Pub. L. 95–84, §1(a)(1), Aug. 2, 1977, 91 Stat. 400, authorized appropriations for research into water problems related to the mission of the Department of the Interior and required that the Secretary's annual report to the President and Congress identify each approved contract and grant award. See section 7815 of this title.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§§ 1961c to 1961c–8. Repealed. Pub. L. 95–467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section 1961c, Pub. L. 88–379, title III, §300, July 17, 1964, 78 Stat. 332, related to cooperation of Federal, State and private agencies with Secretary of the Interior who was directed to make information on relevant projects available. See section 7877(a) of this title.

Section 1961c–1, Pub. L. 88–379, title III, §301, July 17, 1964, 78 Stat. 332, related to lack of authority of Secretary of the Interior over water resources research of other Federal agencies and lack of effect that this chapter had on existing authorities and responsibilities of Federal agencies. See section 7881 of this title.

Section 1961c–2, Pub. L. 88–379, title III, §302, July 17, 1964, 78 Stat. 332, related to advance payments of initial expenses. See section 7818 of this title.

Section 1961c–3, Pub. L. 88–379, title III, §303, July 17, 1964, 78 Stat. 332, made expenditures of funds for scientific or technological research or development activity conditioned upon availability to public of resulting information and developments, and provided that background patent rights would be unaffected. See section 7879 of this title.

Section 1961c–4, Pub. L. 88–379, title III, §304, July 17, 1964, 78 Stat. 332, established a cataloging center. See section 7853 of this title.

Section 1961c–5, Pub. L. 88–379, title III, §305, July 17, 1964, 78 Stat. 332, related to interagency coordination of water resources research. See section 7877(b) of this title.

Section 1961c–6, Pub. L. 88–379, title III, §306, July 17, 1964, 78 Stat. 333; Pub. L. 92–175, §6, Dec. 2, 1971, 85 Stat. 494, defined ''State''. See section 7817 of this title.

Section 1961c–7, Pub. L. 88–379, title III, §307, as added Pub. L. 89–404, §2, Apr. 19, 1966, 80 Stat. 130, and amended Pub. L. 92–175, §7, Dec. 2, 1971, 85 Stat. 494, required Secretary of the Interior to make an annual report to the President and Congress. See section 7880 of this title.

Section 1961c–8, Pub. L. 88–379, title III, §308, as added Pub. L. 92–175, §8, Dec. 2, 1971, 85 Stat. 494, empowered Secretary of the Interior to convey excess personal property to cooperating institutes, educational institutions and nonprofit organizations. See section 7878 of this title.

CHAPTER 19B—WATER RESOURCES PLANNING

§ 1962. Congressional statement of policy

In order to meet the rapidly expanding demands for water throughout the Nation, it is hereby declared to be the policy of the Congress to encourage the conservation, development, and utilization of water and related land resources of the United States on a comprehensive and coordinated basis by the Federal Government, States, localities, and private enterprise with the cooperation of all affected Federal agencies, States, local governments, individuals, corporations, business enterprises, and others concerned.

(Pub. L. 89–80, § 2, July 22, 1965, 79 Stat. 244.)

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93–251, title I, § 109, Mar. 16, 1974, 88 Stat. 49, provided that: ''This title [enacting sections 1962d–5c and 1962d–15 to 1962d–17 of this title, section 460ee of Title 16, Conservation, and sections 50c–2, 50k, 579, 701b–11, and 1252a of Title 33, Navigation and Navigable Waters, amending section 4482 of this title, sections 460*l*–13(a), (a)(3) and 460*l*–14(b)(1) of Title 16, section 275a of Title 22, Foreign Relations and Intercourse, and sections 701g, 701n, 701r, 701r–1(c), 701s, 709a(b), and 1165a(d) of Title 33, and enacting provisions set out as notes under sections 1962d–5 and 1962d–7 of this title and section 460*l*–13 of Title 16] may be cited as the 'Water Resources Development Act of 1974'.''

SHORT TITLE

Section 1 of Pub. L. 89–80 provided that: ''This Act [enacting this chapter] may be cited as the 'Water Resources Planning Act'.''

WATERSHED PROTECTION AND FLOOD PREVENTION PROJECTS EXEMPT FROM REQUIREMENTS FOR INDEPENDENT WATER PROJECT REVIEW

Provisions exempting watershed projects under the Watershed Protection and Flood Prevention Act, Aug. 4, 1954, ch. 656, 68 Stat. 666, which is classified generally to chapter 18 (§ 1001 et seq.) of Title 16, Conservation, from the requirements of Executive Orders 12113 and 12141, formerly set out below, were contained in the following appropriation acts:

Pub. L. 97–370, title VI, § 619, Dec. 18, 1982, 96 Stat. 1811.

Pub. L. 97–103, title VI, § 619, Dec. 23, 1981, 95 Stat. 1490.

Pub. L. 96–528, title VI, § 622, Dec. 15, 1980, 94 Stat. 3118.

EXECUTIVE ORDER NO. 12113

Ex. Ord. No. 12113, Jan. 4, 1979, 44 F.R. 1955, as amended by Ex. Ord. No. 12141, June 5, 1979, 44 F.R. 32635, which provided for independent review of Federal water resources programs and projects by the Water Resources Council, was revoked by section 4 of Ex. Ord. No. 12322, Sept. 17, 1981, 46 F.R. 46561, set out below.

EX. ORD. NO. 12322. WATER RESOURCES PROGRAMS AND PROJECTS REVIEW

Ex. Ord. No. 12322, Sept. 17, 1981, 46 F.R. 46561, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure efficient and coordinated planning and review of water resources programs and projects, it is hereby ordered as follows:

SECTION 1. Before any agency or officer thereof submits to the Congress, or to any committee or member thereof, for approval, appropriations, or legislative action any report, proposal, or plan relating to a Federal or Federally assisted water and related land resources project or program, such report, proposal, or plan shall be submitted to the Director of the Office of Management and Budget.

SEC. 2. The Director of the Office of Management and Budget shall examine each report, proposal, or plan for consistency with, and shall advise the agency of the relationship of the project to, the following:

(a) the policy and programs of the President;

(b) the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies or other such planning guidelines for water and related land resources planning, as shall hereafter be issued; and

(c) other applicable laws, regulations, and requirements relevant to the planning process.

SEC. 3. When such report, proposal, or plan is thereafter submitted to the Congress, or to any committee or member thereof, it shall include a statement of the

advice received from the Office of Management and Budget.

SEC. 4. Executive Order No. 12113, as amended, is revoked.

RONALD REAGAN.

§ 1962–1. Effect on existing laws

Nothing in this chapter shall be construed—

(a) to expand or diminish either Federal or State jurisdiction, responsibility, or rights in the field of water resources planning, development, or control; nor to displace, supersede, limit or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States, or of two or more States and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(b) to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties of his office except as required to carry out the provisions of this chapter with respect to the preparation and review of comprehensive regional or river basin plans and the formulation and evaluation of Federal water and related land resources projects;

(c) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water and related land resources or to exercise licensing or regulatory functions in relation thereto, except as required to carry out the provisions of this chapter; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board and the United States Operating Entity or Entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico;

(d) as authorizing any entity established or acting under the provisions hereof to study, plan, or recommend the transfer of waters between areas under the jurisdiction of more than one river basin commission or entity performing the function of a river basin commission.

(Pub. L. 89–80, § 3, July 22, 1965, 79 Stat. 244.)

REFERENCES IN TEXT

The International Joint Commission, United States and Canada, referred to in subsec. (c), was organized in 1911 pursuant to article VII of the treaty of January 11, 1909, with Great Britain, 36 Stat. 2448. Provisions relating to such Commission are contained in sections 267b and 268 of Title 22, Foreign Relations and Intercourse.

§ 1962–2. Congressional statement of objectives

It is the intent of Congress that the objectives of enhancing regional economic development, the quality of the total environment, including its protection and improvement, the well-being of the people of the United States, and the national economic development are the objectives to be included in federally financed water resource projects (including shore protection projects such as projects for beach nourishment, including the replacement of sand), and in the evaluation of benefits and cost attributable thereto, giving due consideration to the most feasible alternative means of accomplishing these objectives.

(Pub. L. 91–611, title II, § 209, Dec. 31, 1970, 84 Stat. 1829; Pub. L. 104–303, title II, § 227(f), Oct. 12, 1996, 110 Stat. 3703.)

CODIFICATION

Section was enacted as a part of the Flood Control Act of 1970 and not as a part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1996—Pub. L. 104–303 inserted ''(including shore protection projects such as projects for beach nourishment, including the replacement of sand)'' after ''water resource projects''.

SUBCHAPTER I—WATER RESOURCES COUNCIL

§ 1962a. Establishment; composition; other Federal agency participation; designation of Chairman

There is hereby established a Water Resources Council (hereinafter referred to as the ''Council'') which shall be composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, and the Secretary of Energy. The Chairman of the Council shall request the heads of other Federal agencies to participate with the Council when matters affecting their responsibilities are considered by the Council. The Chairman of the Council shall be designated by the President.

(Pub. L. 89–80, title I, § 101, July 22, 1965, 79 Stat. 245; Pub. L. 94–112, § 1(a), Oct. 16, 1975, 89 Stat. 575; Pub. L. 95–91, title III, § 301(b), title VII, §§ 703, 707, Aug. 4, 1977, 91 Stat. 578, 606, 607.)

AMENDMENTS

1975—Pub. L. 94–112 included in the membership of the Water Resources Council, the Secretaries of Commerce, Housing and Urban Development, and Transportation and the Administrator of the Environmental Protection Agency, and terminated the membership for the Secretary of Health, Education, and Welfare.

TRANSFER OF FUNCTIONS

''Secretary of Energy'' substituted for ''Chairman of the Federal Power Commission'' in text pursuant to sections 301(b), 703, and 707 of Pub. L. 95–91, which are classified to sections 7151(b), 7293, and 7297 of this title, and which terminated Federal Power Commission and transferred its functions and functions of Chairman thereof (with certain exceptions) to Secretary of Energy.

NATIONAL WATER COMMISSION

Pub. L. 90–515, Sept. 26, 1968, 82 Stat. 868, provided for establishment of National Water Commission, its membership, chairman, compensation, powers, duties, and functions, required Commission to review national water resource problems and submit interim and final reports, and provided that Commission terminate no later than five years from Sept. 26, 1968.

§ 1962a–1. Powers and duties

The Council shall—

(a) maintain a continuing study and prepare an assessment biennially, or at such less frequent intervals as the Council may determine, of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein; and

(b) maintain a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation and of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies; it shall appraise the adequacy of existing and proposed policies and programs to meet such requirements; and it shall make recommendations to the President with respect to Federal policies and programs.

(Pub. L. 89–80, title I, § 102, July 22, 1965, 79 Stat. 245.)

§ 1962a–2. Principles, standards, and procedures for Federal projects

(a) Establishment, consultation, revision

The Council shall establish, after such consultation with other interested entities, both Federal and non-Federal, as the Council may find appropriate, and with the approval of the President, principles, standards, and procedures for Federal participants in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects. Such procedures may include provision for Council revision of plans for Federal projects intended to be proposed in any plan or revision thereof being prepared by a river basin planning commission.

(b) Economic evaluation; primary criterion

The Council shall develop standards and criteria for economic evaluation of water resource projects. For the purpose of those standards and criteria, the primary direct navigation benefits of a water resource project are defined as the product of the savings to shippers using the waterway and the estimated traffic that would use the waterway. ''Savings to shippers'' means the difference between (1) the freight rates or charges prevailing at the time of the study for the movement by the alternative means, and (2) those which would be charged on the proposed waterway. Estimated traffic that would use the waterway will be based on those freight rates, taking into account projections of the economic growth of the area.

(Pub. L. 89–80, title I, § 103, July 22, 1965, 79 Stat. 245; Pub. L. 97–449, § 4(a), Jan. 12, 1983, 96 Stat. 2441.)

AMENDMENTS

1983—Pub. L. 97–449 designated existing provisions as subsec. (a) and added subsec. (b).

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Chairman of Water Resources Council, see Ex. Ord. No. 11747, eff. Nov. 7, 1973, 38 F.R. 30993, as amended, set out as a note under section 1962a–3 of this title.

COMPUTATION OF PRICES FOR AGRICULTURAL COMMODITIES FOR USE IN EVALUATION OF WATER RESOURCES DEVELOPMENT PROJECTS

Pub. L. 100–460, title VI, § 632, Oct. 1, 1988, 102 Stat. 2262, provided that: ''Hereafter, none of the funds appropriated in this or any other Act shall be used to alter the method of computing normalized prices for agricultural commodities for use by any Federal agency in evaluating water resources development projects to be undertaken in whole or in part with Federal funds that was in effect as of January 1, 1986.''

Similar provisions were contained in Pub. L. 100–202, § 101(k) [title VI, § 634], Dec. 22, 1987, 101 Stat. 1329–322, 1329–357.

§ 1962a–3. Review of river basin commission plans; report to President and Congress

Upon receipt of a plan or revision thereof from any river basin commission under the provisions of section 1962b–3(3) of this title, the Council shall review the plan or revision with special regard to—

(1) the efficacy of such plan or revision in achieving optimum use of the water and related land resources in the area involved;

(2) the effect of the plan on the achievement of other programs for the development of agricultural, urban, energy, industrial, recreational, fish and wildlife, and other resources of the entire Nation; and

(3) the contributions which such plan or revision will make in obtaining the Nation's economic and social goals.

Based on such review the Council shall—

(a) formulate such recommendations as it deems desirable in the national interest; and

(b) transmit its recommendations, together with the plan or revision of the river basin commission and the views, comments, and recommendations with respect to such plan or revision submitted by any Federal agency, Governor, interstate commission, or United States section of an international commission, to the President for his review and transmittal to the Congress with his recommendations in regard to authorization of Federal projects.

(Pub. L. 89–80, title I, § 104, July 22, 1965, 79 Stat. 245.)

EX. ORD. NO. 11747. DELEGATION OF PRESIDENTIAL FUNCTIONS

Ex. Ord. No. 11747, eff. Nov. 7, 1973, 38 F.R. 30993, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

The Chairman of the Water Resources Council is designated and empowered to exercise, without the approval, ratification, or other action of the President, the approval function for standards and procedures vested in the President by section 103 of the Water Resources Planning Act, as amended (42 U.S.C. 1962a–2).

§ 1962a–4. Administrative provisions

(a) Hearings, proceedings, evidence, reports; office space; use of mails; personnel; consultants; motor vehicles; necessary expenses; other powers

For the purpose of carrying out the provisions of this chapter, the Council may: (1) hold such

hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as it may deem advisable; (2) acquire, furnish, and equip such office space as is necessary; (3) use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States; (4) employ and fix the compensation of such personnel as it deems advisable, in accordance with the civil service laws and chapter 51 and subchapter III of chapter 53 of title 5; (5) procure services as authorized by section 3109 of title 5, at rates not in excess of the daily equivalent of the rate prescribed for grade GS–18 under section 5332 of title 5 in the case of individual experts or consultants; (6) purchase, hire, operate, and maintain passenger motor vehicles; and (7) incur such necessary expenses and exercise such other powers as are consistent with and reasonably required to perform its functions under this chapter.

(b) Oaths

Any member of the Council is authorized to administer oaths when it is determined by a majority of the Council that testimony shall be taken or evidence received under oath.

(c) Records; public inspection

To the extent permitted by law, all appropriate records and papers of the Council may be made available for public inspection during ordinary office hours.

(d) Information and personnel from other Federal agencies

Upon request of the Council, the head of any Federal department or agency is authorized (1) to furnish to the Council such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (2) to detail to temporary duty with such Council on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

(e) Responsibility for personnel and funds

The Council shall be responsible for (1) the appointment and supervision of personnel, (2) the assignment of duties and responsibilities among such personnel, and (3) the use and expenditures of funds.

(Pub. L. 89–80, title I, §105, July 22, 1965, 79 Stat. 246; Pub. L. 94–112, §1(b), Oct. 16, 1975, 89 Stat. 575.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsec. (a), ''chapter 51 and subchapter III of chapter 53 of title 5'' substituted for ''Classification Act of 1949, as amended'' and ''section 3109 of title 5'' substituted for ''section 15 of the Act of August 2, 1946 (5 U.S.C. 55a)'', on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1975—Subsec. (a)(5). Pub. L. 94–112 substituted ''not in excess of the daily equivalent of the rate prescribed for grade GS–18 under section 5332 of title 5 in the case of individual experts or consultants'' for ''not to exceed $100 per diem for individuals''.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SUBCHAPTER II—RIVER BASIN COMMISSIONS

§ 1962b. Creation of commissions; powers and duties

(a) The President is authorized to declare the establishment of a river basin water and related land resources commission upon request therefor by the Council, or request addressed to the Council by a State within which all or part of the basin or basins concerned are located if the request by the Council or by a State (1) defines the area, river basin, or group of related river basins for which a commission is requested, (2) is made in writing by the Governor or in such manner as State law may provide, or by the Council, and (3) is concurred in by the Council and by not less than one-half of the States within which portions of the basin or basins concerned are located and, in the event the Upper Colorado River Basin is involved, by at least three of the four States of Colorado, New Mexico, Utah, and Wyoming or, in the event the Columbia River Basin is involved, by at least three of the four States of Idaho, Montana, Oregon, and Washington. Such concurrences shall be in writing.

(b) Each such commission for an area, river basin, or group of river basins shall, to the extent consistent with section 1962–1 of this title—

(1) serve as the principal agency for the coordination of Federal, State, interstate, local and nongovernmental plans for the development of water and related land resources in its area, river basin, or group of river basins;

(2) prepare and keep up to date, to the extent practicable, a comprehensive, coordinated, joint plan for Federal, State, interstate, local and nongovernmental development of water and related resources: *Provided*, That the plan shall include an evaluation of all reasonable alternative means of achieving optimum development of water and related land resources of the basin or basins, and it may be prepared in stages, including recommendations with respect to individual projects;

(3) recommend long-range schedules of priorities for the collection and analysis of basic data and for investigation, planning, and construction of projects; and

(4) foster and undertake such studies of water and related land resources problems in its area, river basin, or group of river basins as

are necessary in the preparation of the plan described in clause (2) of this subsection.

(Pub. L. 89–80, title II, § 201, July 22, 1965, 79 Stat. 246.)

EXECUTIVE ORDER NO. 11331

Ex. Ord. No. 11331, Mar. 6, 1967, 32 F.R. 3875, as amended by Ex. Ord. No. 11613, Aug. 2, 1971, 36 F.R. 14299; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which provided for the establishment, jurisdiction, functions, etc., of the Pacific Northwest River Basins Commission, was revoked, effective Oct. 1, 1981, by section 5(a)(1) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45591, set out below.

EXECUTIVE ORDER NO. 11345

Ex. Ord. No. 11345, Apr. 20, 1967, 32 F.R. 6329, as amended by Ex. Ord. No. 11613, Aug. 2, 1971, 36 F.R. 14299; Ex. Ord. No. 11646, Feb. 8, 1972, 37 F.R. 2925; Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which provided for the establishment, jurisdiction, functions, etc., of the Great Lakes Basin Commission, was revoked, effective Oct. 1, 1981, by section 5(a)(2) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45591, set out below.

EXECUTIVE ORDER NO. 11359

Ex. Ord. No. 11359, eff. June 20, 1967, 32 F.R. 8851, as amended by Ex. Ord. No. 11613, eff. Aug. 2, 1971, 36 F.R. 14299; Ex. Ord. No. 11635, eff. Dec. 9, 1971, 36 F.R. 23615, which established the Souris-Red-Rainy Basins Commission, was superseded by Ex. Ord. No. 11737, Sept. 7, 1973, 38 F.R. 24883, formerly set out below.

EXECUTIVE ORDER NO. 11371

Ex. Ord. No. 11371, Sept. 6, 1967, 32 F.R. 12903, as amended by Ex. Ord. No. 11528, Apr. 24, 1970, 35 F.R. 6695; Ex. Ord. No. 11613, Aug. 2, 1971, 36 F.R. 14299; Ex. Ord. No. 11707, Mar. 12, 1973, 38 F.R. 6877; Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which provided for the establishment, jurisdiction, functions, etc., of the New England River Basins Commission, was revoked, effective Oct. 1, 1981, by section 5(a)(3) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45592, set out below.

EXECUTIVE ORDER NO. 11578

Ex. Ord. No. 11578, Jan. 13, 1971, 36 F.R. 683, as amended by Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which provided for the establishment, jurisdiction, functions, etc., of the Ohio River Basin Commission, was revoked, effective Oct. 1, 1981, by section 5(a)(4) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45592, set out below.

EXECUTIVE ORDER NO. 11613

Ex. Ord. No. 11613, Aug. 2, 1971, 36 F.R. 14299, which provided for membership of the Environmental Protection Agency on the Pacific Northwest River Basins Commission, the Great Lakes Basin Commission, the Souris-Red-Rainy River Basins Commission, and the New England River Basins Commission, was omitted in view of the revocation of Ex. Ord. Nos. 11331, 11345, 11359, and 11371, which provided for the establishment, jurisdiction, functions, etc., of the Pacific Northwest River Basins Commission, the Great Lakes Basin Commission, the Souris-Red-Rainy River Basins Commission, and the New England River Basins Commission, respectively. See notes set out above.

EXECUTIVE ORDER NO. 11658

Ex. Ord. No. 11658, Mar. 22, 1972, 37 F.R. 6045, as amended by Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which provided for the establishment, jurisdiction, functions, etc., of the Missouri River Basin Commission, was revoked, effective Oct. 1, 1981, by section 5(a)(5) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45592, set out below.

EXECUTIVE ORDER NO. 11659

Ex. Ord. No. 11659, Mar. 22, 1972, 37 F.R. 6047, as amended by Ex. Ord. No. 11737, Sept. 7, 1973, 38 F.R. 24883; Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which provided for the establishment, jurisdiction, functions, etc., of the Upper Mississippi River Basin Commission, was revoked, effective Jan. 1, 1982, by section 5(b) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45592, set out below.

EXECUTIVE ORDER NO. 11737

Ex. Ord. No. 11737, Sept. 7, 1973, 38 F.R. 24883, which provided for the enlargement of the Upper Mississippi River Basin Commission, transferred all funds, property, etc., of the Souris-Red-Rainy River Basins Commission to the Upper Mississippi River Basin Commission, and superseded Ex. Ord. Nos. 11359 and 11635, was omitted in view of the revocation of Ex. Ord. No. 11659, which established the Upper Mississippi River Basin Commission and provided for its jurisdiction, functions, etc. See note set out above.

EXECUTIVE ORDER NO. 11882

Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293, relating to membership of the Energy Research and Development Administration on established river basin commissions, was omitted pursuant to Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under section 7151 of this title.

EX. ORD. NO. 12319. TERMINATION OF CERTAIN RIVER BASIN COMMISSIONS

Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45591, provided:

By the authority vested in me as President by the Constitution and laws of the United States, in order to ensure the orderly termination of the six river basin commissions established pursuant to the Water Resources Planning Act (42 U.S.C. 1962 et seq.), it is hereby ordered as follows:

SECTION 1. In accord with the decision of the Water Resources Council pursuant to Section 203(a) of the Water Resources Planning Act (42 U.S.C. 1962b–2(a)), the following river basin commissions shall terminate on the date indicated:

(a) Pacific Northwest River Basins Commission, terminated on September 30, 1981.

(b) Great Lakes Basin Commission, terminated on September 30, 1981.

(c) Ohio River Basin Commission, terminated on September 30, 1981.

(d) New England River Basins Commission, terminated on September 30, 1981.

(e) Missouri River Basin Commission, terminated on September 30, 1981.

(f) Upper Mississippi River Basin Commission, terminated on December 31, 1981.

SEC. 2. All Federal agencies shall cooperate with the commissions and the member States to achieve an orderly close out of commission activities and, if the member States so elect, to carry out an orderly transition of appropriate commission activities to the member States.

SEC. 3. To the extent permitted by law, the assets of the commissions which the Federal Government might otherwise be entitled to claim are to be transferred to the member States of the commissions, or such entities as the States acting through their representatives on the commissions may designate, to be used for such water and related land resources planning purposes as the States may decide among themselves. The terms and conditions for transfer of assets under this Section

shall be subject to the approval of the Director of the Office of Management and Budget, or such Federal agency as he designates, before the transfer is effective.

SEC. 4. Federal agency members of river basin commissions are directed to continue coordination and cooperation in future State and inter-State basin planning arrangements.

SEC. 5. (a) Effective October 1, 1981, the following Executive Orders are revoked:

(1) Executive Order No. 11331, as amended, which established the Pacific Northwest River Basins Commission.

(2) Executive Order No. 11345, as amended, which established the Great Lakes Basin Commission.

(3) Executive Order No. 11371, as amended, which established the New England River Basins Commission.

(4) Executive Order No. 11578, as amended, which established the Ohio River Basin Commission.

(5) Executive Order No. 11658, as amended, which established the Missouri River Basin Commission.

(b) Effective January 1, 1982, Executive Order No. 11659, as amended, which established the Upper Mississippi River Basin Commission, is revoked.

RONALD REAGAN.

§ 1962b–1. Membership of commissions; appointment of chairman

Each river basin commission shall be composed of members appointed as follows:

(a) A chairman appointed by the President who shall also serve as chairman and coordinating officer of the Federal members of the commission and who shall represent the Federal Government in Federal-State relations on the commission and who shall not, during the period of his service on the commission, hold any other position as an officer or employee of the United States, except as a retired officer or retired civilian employee of the Federal Government;

(b) One member from each Federal department or independent agency determined by the President to have a substantial interest in the work to be undertaken by the commission, such member to be appointed by the head of such department or independent agency and to serve as the representative of such department or independent agency;

(c) One member from each State which lies wholly or partially within the area, river basin, or group of river basins for which the commission is established, and the appointment of each such member shall be made in accordance with the laws of the State which he represents. In the absence of governing provisions of State law, such State members shall be appointed and serve at the pleasure of the Governor;

(d) One member appointed by any interstate agency created by an interstate compact to which the consent of Congress has been given, and whose jurisdiction extends to the waters of the area, river basin, or group of river basins for which the river basin commission is created;

(e) When deemed appropriate by the President, one member, who shall be appointed by the President, from the United States section of any international commission created by a treaty to which the consent of the Senate has been given, and whose jurisdiction extends to the waters of the area, river basin, or group of river basins for which the river basin commission is established.

(Pub. L. 89–80, title II, § 202, July 22, 1965, 79 Stat. 247.)

§ 1962b–2. Organization of commissions

(a) Commencement of functions; transfer of property, assets, and records upon termination of commission; availability of studies, data, and other materials to participants

Each river basin commission shall organize for the performance of its functions within ninety days after the President shall have declared the establishment of such commission, subject to the availability of funds for carrying on its work. A commission shall terminate upon decision of the Council or agreement of a majority of the States composing the commission. Upon such termination, all property, assets, and records of the commission shall thereafter be turned over to such agencies of the United States and the participating States as shall be appropriate in the circumstances: *Provided*, That studies, data, and other materials useful in water and related land resources planning to any of the participants shall be kept freely available to all such participants.

(b) Vice chairman; State election; State representation

State members of each commission shall elect a vice chairman, who shall serve also as chairman and coordinating officer of the State members of the commission and who shall represent the State governments in Federal-State relations on the commission.

(c) Vacancies; alternates for chairman and vice chairman

Vacancies in a commission shall not affect its powers but shall be filled in the same manner in which the original appointments were made: *Provided*, That the chairman and vice chairman may designate alternates to act for them during temporary absences.

(d) Consensus of members on issues; opportunities for individual views; record of position of chairman and vice chairman; final authority on procedural questions

In the work of the commission every reasonable endeavor shall be made to arrive at a consensus of all members on all issues; but failing this, full opportunity shall be afforded each member for the presentation and report of individual views: *Provided*, That at any time the commission fails to act by reason of absence of consensus, the position of the chairman, acting in behalf of the Federal members, and the vice chairman, acting upon instructions of the State members, shall be set forth in the record: *Provided further*, That the chairman, in consultation with the vice chairman, shall have the final authority, in the absence of an applicable by-law adopted by the commission or in the absence of a consensus, to fix the times and places for meetings, to set deadlines for the submission of annual and other reports, to establish subcommittees, and to decide such other procedural questions as may be necessary for the commission to perform its functions.

(Pub. L. 89–80, title II, § 203, July 22, 1965, 79 Stat. 248.)

§ 1962b–3. Duties of commissions

Each river basin commission shall—

(1) engage in such activities and make such studies and investigations as are necessary and desirable in carrying out the policy set forth in section 1962 of this title and in accomplishing the purposes set forth in section 1962b(b) of this title;

(2) submit to the Council and the Governor of each participating State a report on its work at least once each year. Such report shall be transmitted through the President to the Congress. After such transmission, copies of any such report shall be sent to the heads of such Federal, State, interstate, and international agencies as the President or the Governors of the participating States may direct;

(3) submit to the Council for transmission to the President and by him to the Congress, and the Governors and the legislatures of the participating States a comprehensive, coordinated, joint plan, or any major portion thereof or necessary revisions thereof, for water and related land resources development in the area, river basin, or group of river basins for which such commission was established. Before the commission submits such a plan or major portion thereof or revision thereof to the Council, it shall transmit the proposed plan or revision to the head of each Federal department or agency, the Governor of each State, and each interstate agency, from which a member of the commission has been appointed, and to the head of the United States section of any international commission if the plan, portion or revision deals with a boundary water or a river crossing a boundary, or any tributary flowing into such boundary water or river, over which the international commission has jurisdiction or for which it has responsibility. Each such department and agency head, Governor, interstate agency, and United States section of an international commission shall have ninety days from the date of the receipt of the proposed plan, portion, or revision to report its views, comments, and recommendations to the commission. The commission may modify the plan, portion, or revision after considering the reports so submitted. The views, comments, and recommendations submitted by each Federal department or agency head, Governor, interstate agency, and United States section of an international commission shall be transmitted to the Council with the plan, portion, or revision; and

(4) submit to the Council at the time of submitting such plan, any recommendations it may have for continuing the functions of the commission and for implementing the plan, including means of keeping the plan up to date.

(Pub. L. 89–80, title II, § 204, July 22, 1965, 79 Stat. 248.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in par. (2) of this section relating to transmittal of reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 5 on page 40 of House Document No. 103–7.

UPPER MISSISSIPPI RIVER SYSTEM COMPREHENSIVE MASTER MANAGEMENT PLAN

Pub. L. 95–502, title I, § 101, Oct. 21, 1978, 92 Stat. 1693, as amended by Pub. L. 99–662, title XI, § 1103(c)(2), Nov. 17, 1986, 100 Stat. 4226, which provided for the development, revision, and implementation of the Upper Mississippi River System comprehensive master management plan by the Upper Mississippi River Basin Commission, was omitted in view of the termination of the Upper Mississippi River Basin Commission on Dec. 31, 1981, pursuant to section 1(f) of Ex. Ord. No. 12319, Sept. 9, 1981, 46 F.R. 45591, set out as a note under section 1962b of this title.

§ 1962b–4. Administrative provisions

(a) Hearings, proceedings, evidence, reports; office space; use of mails; personnel, consultants, and professional service contracts; personnel from other agencies; retirement and employee benefit system for personnel without coverage; motor vehicles; necessary expenses; other powers

For the purpose of carrying out the provisions of this subchapter, each river basin commission may—

(1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as it may deem advisable;

(2) acquire, furnish, and equip such office space as is necessary;

(3) use the United States mails in the same manner and upon the same conditions as departments and agencies of the United States;

(4) employ and compensate such personnel as it deems advisable, including consultants, at rates not in excess of the daily equivalent of the rate prescribed for grade GS–18 under section 5332 of title 5, and retain and compensate such professional or technical service firms as it deems advisable on a contract basis;

(5) arrange for the services of personnel from any State or the United States, or any subdivision or agency thereof, or any intergovernmental agency;

(6) make arrangements, including contracts, with any participating government, except the United States or the District of Columbia, for inclusion in a suitable retirement and employee benefit system of such of its personnel as may not be eligible for or continuing in another governmental retirement or employee benefit system, or otherwise provide for such coverage of its personnel;

(7) purchase, hire, operate, and maintain passenger motor vehicles; and

(8) incur such necessary expenses and exercise such other powers as are consistent with and reasonably required to perform its functions under this chapter.

(b) Oaths

The chairman of a river basin commission, or any member of such commission designated by the chairman thereof for the purpose, is authorized to administer oaths when it is determined by a majority of the commission that testimony shall be taken or evidence received under oath.

(c) Records; public inspection

To the extent permitted by law, all appropriate records and papers of each river basin

commission shall be made available for public inspection during ordinary office hours.

(d) Information and personnel from other Federal agencies

Upon request of the chairman of any river basin commission, or any member or employee of such commission designated by the chairman thereof for the purpose, the head of any Federal department or agency is authorized (1) to furnish to such commission such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (2) to detail to temporary duty with such commission on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

(e) Responsibility for personnel and funds

The chairman of each river basin commission shall, with the concurrence of the vice chairman, appoint the personnel employed by such commission, and the chairman shall, in accordance with the general policies of such commission with respect to the work to be accomplished by it and the timing thereof, be responsible for (1) the supervision of personnel employed by such commission, (2) the assignment of duties and responsibilities among such personnel, and (3) the use and expenditure of funds available to such commission.

(Pub. L. 89–80, title II, § 205, July 22, 1965, 79 Stat. 249; Pub. L. 94–112, § 1(c), Oct. 16, 1975, 89 Stat. 575.)

AMENDMENTS

1975—Subsec. (a)(4). Pub. L. 94–112 substituted ''not in excess of the daily equivalent of the rate prescribed for grade GS–18 under section 5332 of title 5'' for ''not to exceed $100 per diem''.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 1962b–5. Compensation of members and chairmen

(a) Additional compensation prohibited to members appointed from Federal departments, agencies, and international commissions

Any member of a river basin commission appointed pursuant to section 1962b–1(b) and (e) of this title shall receive no additional compensation by virtue of his membership on the commission, but shall continue to receive, from appropriations made for the agency from which he is appointed, the salary of his regular position when engaged in the performance of the duties vested in the commission.

(b) Compensation of members from States and interstate agencies

Members of a commission, appointed pursuant to section 1962b–1(c) and (d) of this title, shall each receive such compensation as may be provided by the States or the interstate agency respectively, which they represent.

(c) Compensation of chairman

The per annum compensation of the chairman of each river basin commission shall be determined by the President, but when employed on a full-time annual basis shall not exceed the maximum scheduled rate for grade GS–18 or when engaged in the performance of the commission's duties on an intermittent basis such compensation shall be not more than $100 per day and shall not exceed $12,000 in any year.

(Pub. L. 89–80, title II, § 206, July 22, 1965, 79 Stat. 250.)

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 1962b–6. Expenses of commissions

(a) Federal share; apportionment of remainder; annual budget; estimates of proposed Federal appropriations; advances against delayed State appropriations; credit to account in the Treasury

Each commission shall recommend what share of its expenses shall be borne by the Federal Government, but such share shall be subject to approval by the Council. The remainder of the commission's expenses shall be otherwise apportioned as the commission may determine. Each commission shall prepare a budget annually and transmit it to the Council and the States. Estimates of proposed appropriations from the Federal Government shall be included in the budget estimates submitted by the Council under chapter 11 of title 31, and may include an amount for advance to a commission against State appropriations for which delay is anticipated by reason of later legislative sessions. All sums appropriated to or otherwise received by a commission shall be credited to the commission's account in the Treasury of the United States.

(b) Acceptance, reception, utilization, and disposal of appropriations, donations, and grants

A commission may accept for any of its purposes and functions appropriations, donations, and grants of money, equipment, supplies, materials, and services from any State or the United States or any subdivision or agency thereof, or intergovernmental agency, and may receive, utilize, and dispose of the same.

(c) Accounts of receipts and disbursements; annual audit; inclusion in annual report

The commission shall keep accurate accounts of all receipts and disbursements. The accounts shall be audited at least annually in accordance with generally accepted auditing standards by independent certified or licensed public accountants, certified or licensed by a regulatory authority of a State, and the report of the audit

shall be included in and become a part of the annual report of the commission.

(d) Inspection of accounts

The accounts of the commission shall be open at all reasonable times for inspection by representatives of the jurisdictions and agencies which make appropriations, donations, or grants to the commission.

(Pub. L. 89–80, title II, § 207, July 22, 1965, 79 Stat. 250.)

CODIFICATION

In subsec. (a), ''chapter 11 of title 31'' substituted for ''the Budget and Accounting Act of 1921, as amended [31 U.S.C. 1 et seq.]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

SUBCHAPTER III—FINANCIAL ASSISTANCE TO STATES FOR COMPREHENSIVE PLANNING GRANT AUTHORIZATIONS

§ 1962c. Authorization of appropriations; coordination of related Federal planning assistance programs; utilization of Federal agencies administering programs contributing to water resources planning

(a) In recognition of the need for increased participation by the States in water and related land resources planning to be effective, there are hereby authorized to be appropriated to the Council, $3,000,000 for fiscal year 1979 for grants to States to assist them in developing and participating in the development of comprehensive water and related land resources plans.

(b) The Council, with the approval of the President, shall prescribe such rules, establish such procedures, and make such arrangements and provisions relating to the performance of its functions under this subchapter, and the use of funds available therefor, as may be necessary in order to assure (1) coordination of the program authorized by this subchapter with related Federal planning assistance programs, including the program authorized under section 701 of the Housing Act of 1954[1] and (2) appropriate utilization of other Federal agencies administering programs which may contribute to achieving the purpose of this chapter.

(Pub. L. 89–80, title III, § 301, July 22, 1965, 79 Stat. 251; Pub. L. 94–112, § 1(d), Oct. 16, 1975, 89 Stat. 575; Pub. L. 95–404, § 1(d), Sept. 30, 1978, 92 Stat. 864.)

REFERENCES IN TEXT

Section 701 of the Housing Act of 1954, referred to in subsec. (b), is section 701 of act Aug. 2, 1954, ch. 649, 68 Stat. 640, which was classified to section 461 of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 97–35, title III, § 313(b), Aug. 13, 1981, 95 Stat. 398.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–404 substituted ''$3,000,000 for fiscal year 1979'' for ''for fiscal years 1977 and 1978, $5,000,000 in each such year''.

1975—Subsec. (a). Pub. L. 94–112 substituted ''for fiscal years 1977 and 1978,'' for ''for the next fiscal year beginning after July 22, 1965, and for the nine succeeding fiscal years thereafter,''.

[1] See References in Text note below.

INCREASES IN SALARY, PAY, RETIREMENT, OR OTHER BENEFITS FOR FEDERAL EMPLOYEES

For authority for payment of increases in salary and other Federal employee benefits, see section 1(e) of Pub. L. 95–404, set out as a note under section 1962d of this title.

§ 1962c–1. Allotments to States: basis, population and land area determinations; payments to States: amount

(a) From the sums appropriated pursuant to section 1962c of this title for any fiscal year the Council shall from time to time make allotments to the States, in accordance with its regulations, on the basis of (1) the population, (2) the land area, (3) the need for comprehensive water and related land resources planning programs, and (4) the financial need of the respective States. For the purposes of this section the population of the States shall be determined on the basis of the latest estimates available from the Department of Commerce and the land area of the States shall be determined on the basis of the official records of the United States Geological Survey.

(b) From each State's allotment under this section for any fiscal year the Council shall pay to such State an amount which is not more than 50 per centum of the cost of carrying out its State program approved under section 1962c–2 of this title, including the cost of training personnel for carrying out such program and the cost of administering such program.

(Pub. L. 89–80, title III, § 302, July 22, 1965, 79 Stat. 251.)

§ 1962c–2. State programs; approval by Council; submission; requirements; notice and hearing prior to disapproval

The Council shall approve any program for comprehensive water and related land resources planning which is submitted by a State, if such program—

(1) provides for comprehensive planning with respect to intrastate or interstate water resources, or both, in such State to meet the needs for water and water-related activities taking into account prospective demands for all purposes served through or affected by water and related land resources development, with adequate provision for coordination with all Federal, State, and local agencies, and nongovernmental entities having responsibilities in affected fields;

(2) provides, where comprehensive statewide development planning is being carried on with or without assistance under section 701 of the Housing Act of 1954[1] or under the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 460*l*–4 et seq.], for full coordination between comprehensive water resources planning and other statewide planning programs and for assurances that such water resources planning will be in conformity with the general development policy in such State;

(3) designates a State agency (hereinafter referred to as the ''State agency'') to administer the program;

[1] See References in Text note below.

(4) provides that the State agency will make such reports in such form and containing such information as the Council from time to time reasonably requires to carry out its functions under this subchapter;

(5) sets forth the procedure to be followed in carrying out the State program and in administering such program; and

(6) provides such accounting, budgeting, and other fiscal methods and procedures as are necessary for keeping appropriate accountability of the funds and for the proper and efficient administration of the program.

The Council shall not disapprove any program without first giving reasonable notice and opportunity for hearing to the State agency administering such program.

(Pub. L. 89–80, title III, § 303, July 22, 1965, 79 Stat. 252.)

REFERENCES IN TEXT

Section 701 of the Housing Act of 1954, referred to in par. (2), is section 701 of act Aug. 2, 1954, ch. 649, 68 Stat. 640, which was classified to section 461 of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 97–35, title III, § 313(b), Aug. 13, 1981, 95 Stat. 398.

The Land and Water Conservation Fund Act of 1965, referred to in par. (2), is Pub. L. 88–578, Sept. 3, 1964, 78 Stat. 897, as amended, which is classified generally to part B (§ 460*l*–4 et seq.) of subchapter LXIX of chapter 1 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 460*l*–4 of Title 16 and Tables.

§ 1962c–3. Noncompliance; curtailing of payments

Whenever the Council after reasonable notice and opportunity for hearing to a State agency finds that—

(a) the program submitted by such State and approved under section 1962c–2 of this title has been so changed that it no longer complies with a requirement of such section; or

(b) in the administration of the program there is a failure to comply substantially with such a requirement,

the Council shall notify such agency that no further payments will be made to the State under this subchapter until it is satisfied that there will no longer be any such failure. Until the Council is so satisfied, it shall make no further payments to such State under this subchapter.

(Pub. L. 89–80, title III, § 304, July 22, 1965, 79 Stat. 252.)

§ 1962c–4. Payments to States; computation of amount

The method of computing and paying amounts pursuant to this subchapter shall be as follows:

(1) The Council shall, prior to the beginning of each calendar quarter or other period prescribed by it, estimate the amount to be paid to each State under the provisions of this subchapter for such period, such estimate to be based on such records of the State and information furnished by it, and such other investigation, as the Council may find necessary.

(2) The Council shall pay to the State, from the allotment available therefor, the amount so estimated by it for any period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which it finds that its estimate of the amount to be paid such State for any prior period under this subchapter was greater or less than the amount which should have been paid to such State for such prior period under this subchapter. Such payments shall be made through the disbursing facilities of the Treasury Department, at such times and in such installments as the Council may determine.

(Pub. L. 89–80, title III, § 305, July 22, 1965, 79 Stat. 253.)

§ 1962c–5. "State" defined

For the purpose of this subchapter the term ''State'' means a State, the District of Columbia, Puerto Rico, the Virgin Islands or Guam.

(Pub. L. 89–80, title III, § 306, July 22, 1965, 79 Stat. 253; Pub. L. 94–285, § 2, May 12, 1976, 90 Stat. 516.)

AMENDMENTS

1976—Pub. L. 94–285 inserted reference to Guam.

§ 1962c–6. Records; audit and examination

(a) Each recipient of a grant under this chapter shall keep such records as the Chairman of the Council shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant, and the total cost of the project or undertaking in connection with which the grant was made and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Chairman of the Council and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of the grant that are pertinent to the determination that funds granted are used in accordance with this chapter.

(Pub. L. 89–80, title III, § 307, July 22, 1965, 79 Stat. 253.)

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 1962d. Authorization of appropriations to the Water Resources Council

There are authorized to be appropriated to the Water Resources Council:

(a) Limitation for single river basin commission

The sum of $2,886,000 for fiscal year 1979 for the Federal share of the expenses of administration and operation of river basin commissions, including salaries and expenses of the chairmen, but not including funds authorized by subsection (c) below: *Provided*, That not more than $750,000 annually shall be available under this subsection for any single river basin commission;

(b) Limitation on the expenses of the Water Resources Council

the[1] sum of $2,668,000 for fiscal year 1979 for the expenses of the Water Resources Council in administering this chapter, not including funds authorized by subsection (c) below;

(c) Limitation on availability of funds for preparation of certain studies and for assessments and plans

The sum of $3,179,900 for fiscal year 1979 for preparation of assessments, and for directing and coordinating the preparation of such river basin plans as the Council determines are necessary and desirable in carrying out the policy of this chapter: *Provided*, That $828,900 shall be available under this subsection for preparation of the Columbia River Estuary Special Study: *Provided further*, That $308,000 shall be available under this subsection for preparation of the New England Port and Harbor Study and $135,000 shall be available for completion of the Hudson River Basin Level B Study: *Provided further*, That $150,000 shall be available under this subsection for completion of Case Studies of the Application of Cost Sharing Policy Options for Flood Plain Management in the Connecticut River Basin: *Provided further*, That not more than $2,500,000 shall be available under this subsection for the preparation of assessments: *Provided further*, That the Council may transfer funds authorized by this subsection to river basin commissions and to Federal and State agencies upon such terms and conditions as it determines are necessary and desirable to carry out the above functions in an economical, efficient, and timely manner, and that such commissions and agencies are hereby authorized to receive and expend such funds pursuant to this subsection.

(Pub. L. 89–80, title IV, §401, July 22, 1965, 79 Stat. 253; Pub. L. 90–547, Oct. 2, 1968, 82 Stat. 935; Pub. L. 92–27, June 17, 1971, 85 Stat. 77; Pub. L. 92–396, Aug. 20, 1972, 86 Stat. 578; Pub. L. 93–55, July 1, 1973, 87 Stat. 140; Pub. L. 94–112, §1(e), Oct. 16, 1975, 89 Stat. 575; Pub. L. 94–285, §1, May 12, 1976, 90 Stat. 516; Pub. L. 95–41, §1, June 6, 1977, 91 Stat. 209; Pub. L. 95–404, §1(a)–(c), Sept. 30, 1978, 92 Stat. 864.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–404, §1(a), substituted ''The sum of $2,886,000 for fiscal year 1979'' for ''not to exceed $6,000,000 for fiscal year 1978''.

Subsec. (b). Pub. L. 95–404, §1(b), substituted ''the sum of $2,668,000 for fiscal year 1979'' for ''not to exceed $2,000,000 for fiscal year 1978''.

Subsec. (c). Pub. L. 95–404, §1(c), substituted ''The sum of $3,179,900 for fiscal year 1979'' for ''not to exceed the sum of $3,905,000 for fiscal year 1978'' and inserted provisions making available the sums of $828,900 for the Columbia River Estuary Special Study, $308,000 for the New England Port and Harbor Study, $135,000 for the Hudson River Basin Level B Study, and $150,000 for the Case Studies of the Application of Cost Sharing Policy Options for Flood Plan Management in the Connecticut River Basin.

1977—Subsecs. (a), (b). Pub. L. 95–41, §1(b), (c), substituted ''for fiscal year 1978'' for ''annually''.

Subsec. (c). Pub. L. 95–41, §1(a), substituted ''not to exceed the sum of $3,905,000 for fiscal year 1978'' for ''not to exceed a total of $10,000,000 for fiscal years 1976 and 1977''.

1976—Subsec. (b). Pub. L. 94–285 substituted ''$2,000,000'' for ''$1,500,000''.

1975—Subsec. (c). Pub. L. 94–112 substituted ''not to exceed a total of $10,000,000 for fiscal years 1976 and 1977'' for ''not to exceed $3,500,000 annually for fiscal years 1974 and 1975''.

1973—Subsec. (c). Pub. L. 93–55 substituted ''annually for fiscal years 1974 and 1975'' for ''in fiscal year 1973 and such annual amounts as may be authorized by subsequent Acts''.

1972—Pub. L. 92–396 authorized appropriations to the Water Resources Council, and in subsec. (a), substituted ''chairmen'' for ''chairman'', in subsec. (b) inserted ''not including funds authorized by subsection (c) below'', and added subsec. (c).

1971—Pub. L. 92–27 substituted appropriation authorization of $6,000,000 annually for Federal share of expenses of administration and operation of river basin commissions, including salaries and expenses of chairman, for former provisions for annual appropriation authorization of $500,000; $6,000,000; and $400,000 for subchapters I, II, and III of this chapter and authorize appropriation of $1.5 million annually for administration expenses of Water Resources Council.

1968—Pub. L. 90–547 increased authorization for appropriations to carry out provisions of subchapter I of this chapter from not to exceed $300,000 annually to not to exceed $500,000 annually.

INCREASES IN SALARY, PAY, RETIREMENT, OR OTHER BENEFITS FOR FEDERAL EMPLOYEES

Section 1(e) of Pub. L. 95–404 provided that: ''Appropriations authorized by this Act [amending sections 1962c and 1962d of this title] for salary, pay, retirement, or other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases authorized by law.''

§ 1962d–1. Rules and regulations

The Council is authorized to make such rules and regulations as it may deem necessary or appropriate for carrying out those provisions of this chapter which are administered by it.

(Pub. L. 89–80, title IV, §402, July 22, 1965, 79 Stat. 254.)

§ 1962d–2. Delegation of functions

The Council is authorized to delegate to any member or employee of the Council its administrative functions under section 1962a–4 of this title and the detailed administration of the grant program under subchapter III of this chapter.

(Pub. L. 89–80, title IV, §403, July 22, 1965, 79 Stat. 254.)

§ 1962d–3. Utilization of personnel

The Council may, with the consent of the head of any other department or agency of the United States, utilize such officers and employees of such agency on a reimbursable basis as are necessary to carry out the provisions of this chapter.

(Pub. L. 89–80, title IV, §404, July 22, 1965, 79 Stat. 254.)

[1] So in original. Probably should be capitalized.

§ 1962d–4. Northeastern United States water supply

(a) Plans for Federal construction, operation, and maintenance of reservoir system within certain river basins and conveyance and purification facilities through cooperation of Secretary of the Army and government agencies; financial participation of States

Congress hereby recognizes that assuring adequate supplies of water for the great metropolitan centers of the United States has become a problem of such magnitude that the welfare and prosperity of this country require the Federal Government to assist in the solution of water supply problems. Therefore, the Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate with Federal, State, and local agencies in preparing plans in accordance with the Water Resources Planning Act [42 U.S.C. 1962 et seq.] to meet the long-range water needs of the northeastern United States. This plan may provide for the construction, operation, and maintenance by the United States of (1) a system of major reservoirs to be located within those river basins of the northeastern United States which drain into the Chesapeake Bay, those that drain into the Atlantic Ocean north of the Chesapeake Bay, those that drain into Lake Ontario, and those that drain into the Saint Lawrence River, (2) major conveyance facilities by which water may be exchanged between these river basins to the extent found desirable in the national interest, and (3) major purification facilities. Such plans shall provide for appropriate financial participation by the States, political subdivisions thereof, and other local interests.

(b) Construction, operation, and maintenance of reservoirs and conveyance and purification facilities

The Secretary of the Army, acting through the Chief of Engineers, shall construct, operate, and maintain those reservoirs, conveyance facilities, and purification facilities, which are recommended in the plan prepared in accordance with subsection (a) of this section, and which are specifically authorized by law enacted after October 27, 1965.

(c) Reservoirs as components of river basin and water supply plans

Each reservoir included in the plan authorized by this section shall be considered as a component of a comprehensive plan for the optimum development of the river basin in which it is situated, as well as a component of the plan established in accordance with this section.

(Pub. L. 89–298, title I, § 101, Oct. 27, 1965, 79 Stat. 1073.)

REFERENCES IN TEXT

The Water Resources Planning Act, referred to in subsec. (a), is Pub. L. 89–80, July 22, 1965, 79 Stat. 244, as amended, which is classified generally to this chapter (§ 1962 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1962 of this title and Tables.

CODIFICATION

Section was not enacted as a part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–5. Water resources development projects involving navigation, flood control, and shore protection

(a) Construction, operation, and maintenance; limitation on estimated Federal first cost of construction; Congressional committee approval of projects; reports to Congress

The Secretary of the Army, acting through the Chief of Engineers, is authorized to construct, operate, and maintain any water resource development project, including single and multiple purpose projects involving, but not limited to, navigation, flood control, and shore protection, if the estimated Federal first cost of constructing such project is less than $15,000,000. No appropriation shall be made to construct, operate, or maintain any such project if such project has not been approved by resolutions adopted by the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives, respectively. For the purpose of securing consideration of such approval the Secretary shall transmit to Congress a report of such proposed project, including all relevant data and all costs.

(b) Local cooperation requirements based on certain estimated Federal first cost of construction

Any water resource development project authorized to be constructed by this section shall be subject to the same requirements of local cooperation as it would be if the estimated Federal first cost of such project were $15,000,000 or more.

(Pub. L. 89–298, title II, § 201, Oct. 27, 1965, 79 Stat. 1073; Pub. L. 94–587, § 131, Oct. 22, 1976, 90 Stat. 2928; Pub. L. 103–437, § 15(d), Nov. 2, 1994, 108 Stat. 4592.)

CODIFICATION

Section was enacted as part of the Flood Control Act of 1965, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–437 substituted ''Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House'' for ''Committees on Public Works of the Senate and House''.

1976—Subsec. (a). Pub. L. 94–587, § 131(a), substituted ''$15,000,000'' for ''$10,000,000''.

Subsec. (b). Pub. L. 94–587, § 131(b), substituted ''$15,000,000'' for ''$10,000,000''.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

LOCAL COOPERATION, STUDY; REPORT TO CONGRESS

Pub. L. 93–251, title I, § 24, Mar. 7, 1974, 88 Stat. 20, provided that the Secretary of the Army make a study of the items of local cooperation involving hold and save harmless provisions which have been required for water resource development projects under his jurisdiction and report on such study to Congress not later than June 30, 1975.

LAND AND WATER USE, STUDY; REPORT TO CONGRESS

Pub. L. 93–251, title I, § 25, Mar. 7, 1974, 88 Stat. 20, provided that the Secretary of the Army conduct a study on land use practices and recreational uses at water resource development projects under his jurisdiction and report on such study to Congress not later than June 30, 1975.

NATIONAL STREAMBANK EROSION PREVENTION AND CONTROL DEMONSTRATION PROGRAM

Pub. L. 93–251, title I, § 32, Mar. 7, 1974, 88 Stat. 21, as amended by Pub. L. 94–587, §§ 155, 161, Oct. 22, 1976, 90 Stat. 2932, 2933, known as the ''Streambank Erosion Control Evaluation and Demonstration Act of 1974'', directed the Secretary of the Army, acting through the Chief of Engineers, to establish and conduct for a period of five fiscal years a national streambank erosion prevention and control demonstration program, to consist of an evaluation of the extent of streambank erosion on navigable rivers and their tributaries; development of new methods and techniques for bank protection, research on soil stability, and identification of the causes of erosion; a report to the Congress on the results of such studies and the recommendations of the Secretary of the Army on means for the prevention and correction of streambank erosion; and demonstration projects, including bank protection works. The final report to the Congress was to be made by Secretary of the Army no later than Dec. 31, 1981.

NATIONAL SHORELINE EROSION CONTROL DEVELOPMENT AND DEMONSTRATION PROGRAM

Pub. L. 93–251, title I, § 54, Mar. 7, 1974, 88 Stat. 26, known as the ''Shoreline Erosion Control Demonstration Act of 1974'', directed the Secretary of the Army, acting through the Chief of Engineers, to establish and conduct for a period of five fiscal years a national shoreline erosion control development and demonstration program, to consist of planning, constructing, operating, evaluating, and demonstrating prototype shoreline erosion control devices, both engineered and vegetative, and to be carried out in cooperation with the Secretary of Agriculture, particularly with respect to vegetative means of preventing and controlling shoreline erosion, and in cooperation with Federal, State, and local agencies, private organizations, and the Shoreline Erosion Advisory Panel established pursuant to section 54(d) of Pub. L. 93–251. The Panel was to expire ninety days after termination of the five-year program. The Secretary of the Army was to submit to Congress a final report, sixty days after the fifth fiscal year of funding, such report to include a comprehensive evaluation of the national shoreline erosion control development and demonstration program.

TECHNICAL AND ENGINEERING ASSISTANCE FOR NON-DEVELOPMENT OF EROSION PREVENTION METHODS

Pub. L. 93–251, title I, § 55, Mar. 7, 1974, 88 Stat. 28, provided that: ''The Secretary of the Army, acting through the Chief of Engineers, is authorized to provide technical and engineering assistance to non-Federal public interests in developing structural and non-structural methods of preventing damages attributable to shore and streambank erosion.''

VISITOR PROTECTION SERVICES, STUDY; REPORT TO CONGRESS

Pub. L. 93–251, title I, § 75, Mar. 7, 1974, 88 Stat. 32, directed Secretary of the Army to conduct a study on need for and means of providing visitor protection services at water resource development projects under jurisdiction of Department of the Army and report on such study to Congress not later than Dec. 31, 1974.

§ 1962d–5a. Reimbursement to States

(a) Combination of reimbursement of installation costs and reduction in contributions; single project limitation

The Secretary of the Army, acting through the Chief of Engineers, may, when he determines it to be in the public interest, enter into agreements providing for reimbursement to States or political subdivisions thereof for work to be performed by such non-Federal public bodies at water resources development projects authorized for construction under the Secretary of the Army and the supervision of the Chief of Engineers. Such agreements may provide for reimbursement of installation costs incurred by such entities or an equivalent reduction in the contributions they would otherwise be required to make, or in appropriate cases, for a combination thereof. The amount of Federal reimbursement, including reductions in contributions, for a single project shall not exceed $5,000,000 or 1 percent of the total project cost, whichever is greater; except that the amount of actual Federal reimbursement, including reductions in contributions, for such project may not exceed $5,000,000 in any fiscal year.

(b) Agreement provisions; termination of agreement for failure to commence work

Agreements entered into pursuant to this section shall (1) fully describe the work to be accomplished by the non-Federal public body, and be accompanied by an engineering plan if necessary therefor; (2) specify the manner in which such work shall be carried out; (3) provide for necessary review of design and plans, and inspection of the work by the Chief of Engineers or his designee; (4) state the basis on which the amount of reimbursement shall be determined; (5) state that such reimbursement shall be dependent upon the appropriation of funds applicable thereto or funds available therefor, and shall not take precedence over other pending projects of higher priority for improvements; and (6) specify that reimbursement or credit for non-Federal installation expenditures shall apply only to work undertaken on Federal projects after project authorization and execution of the agreement, and does not apply retroactively to past non-Federal work. Each such agreement shall expire three years after the date on which it is executed if the work to be undertaken by the non-Federal public body has not commenced before the expiration of that period. The time allowed for completion of the work will be determined by the Secretary of the Army, acting through the Chief of Engineers, and stated in the agreement.

(c) Certification of performance

No reimbursement shall be made, and no expenditure shall be credited, pursuant to this section, unless and until the Chief of Engineers or his designee, has certified that the work for which reimbursement or credit is requested has been performed in accordance with the agreement.

(d) Beach erosion control projects

Reimbursement for work commenced by non-Federal public bodies no later than one year

after August 13, 1968, to carry out or assist in carrying out projects for beach erosion control, may be made in accordance with the provisions of section 426f of title 33. Reimbursement for such work may, as an alternative, be made in accordance with the provisions of this section, provided that agreement required herein shall have been executed prior to commencement of the work. Expenditures for projects for beach erosion control commenced by non-Federal public bodies subsequent to one year after August 13, 1968, may be reimbursed by the Secretary of the Army, acting through the Chief of Engineers, only in accordance with the provisions of this section.

(e) Prohibition of construction for Federal assumption of responsibilities of non-Federal bodies or for Federal liability for unnecessary or inapplicable project work of such bodies

This section shall not be construed (1) as authorizing the United States to assume any responsibilities placed upon a non-Federal body by the conditions of project authorization, or (2) as committing the United States to reimburse non-Federal interests if the Federal project is not undertaken or is modified so as to make the work performed by the non-Federal Public body no longer applicable.

(f) Allotment limitation for any fiscal year; specific project reimbursement authorizations

The Secretary of the Army is authorized to allot from any appropriations hereafter made for civil works, not to exceed $10,000,000 for any one fiscal year to carry out the provisions of this section. This limitation does not include specific project authorizations providing for reimbursement.

(Pub. L. 90–483, title II, § 215, Aug. 13, 1968, 82 Stat. 747; Pub. L. 99–662, title IX, § 913, Nov. 17, 1986, 100 Stat. 4190; Pub. L. 100–676, § 12, Nov. 17, 1988, 102 Stat. 4025; Pub. L. 104–303, title II, § 224(a), Oct. 12, 1996, 110 Stat. 3697.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–303, in last sentence, substituted ''$5,000,000'' for ''$3,000,000'' before ''or 1 percent'' and ''any fiscal year.'' for ''any fiscal year..''

1988—Subsec. (a). Pub. L. 100–676 inserted before period at end ''or 1 percent of the total project cost, whichever is greater; except that the amount of actual Federal reimbursement, including reductions in contributions, for such project may not exceed $5,000,000 in any fiscal year.''

1986—Subsec. (a). Pub. L. 99–662 substituted ''$3,000,000'' for ''$1,000,000''.

§ 1962d–5b. Water resources projects; written agreement requirement

(a) Cooperation of non-Federal interest

After December 31, 1970, the construction of any water resources project, or an acceptable separable element thereof, by the Secretary of the Army, acting through the Chief of Engineers, or by a non-Federal interest where such interest will be reimbursed for such construction under the provisions of section 1962d–5a of this title or under any other provision of law, shall not be commenced until each non-Federal interest has entered into a written agreement with the Secretary of the Army to furnish its required cooperation for the project or the appropriate element of the project, as the case may be; except that no such agreement shall be required if the Secretary determines that the administrative costs associated with negotiating, executing, or administering the agreement would exceed the amount of the contribution required from the non-Federal interest and are less than $25,000. In any such agreement entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future appropriations for such performance and payment when obligating future appropriations would be inconsistent with constitutional or statutory limitations of the State or a political subdivision of the State.

(b) Definition of non-Federal interest

A non-Federal interest shall be a legally constituted public body with full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform.

(c) Enforcement; jurisdiction

Every agreement entered into pursuant to this section shall be enforcible in the appropriate district court of the United States.

(d) Nonperformance of terms of agreement by non-Federal interest; notice; reasonable opportunity for performance; performance by Chief of Engineers

After commencement of construction of a project, the Chief of Engineers may undertake performance of those items of cooperation necessary to the functioning of the project for its purposes, if he has first notified the non-Federal interest of its failure to perform the terms of its agreement and has given such interest a reasonable time after such notification to so perform.

(e) Effective date

This section shall not apply to any project the construction of which was commenced before January 1, 1972, or to the assurances for future demands required by the Water Supply Act of 1958, as amended [43 U.S.C. 390b].

(Pub. L. 91–611, title II, § 221, Dec. 31, 1970, 84 Stat. 1831; Pub. L. 92–222, § 4, Dec. 23, 1971, 85 Stat. 799; Pub. L. 99–662, title IX, § 912(a), Nov. 17, 1986, 100 Stat. 4189; Pub. L. 104–106, div. A, title X, § 1064(d), Feb. 10, 1996, 110 Stat. 445; Pub. L. 104–303, title II, § 220, Oct. 12, 1996, 110 Stat. 3696; Pub. L. 106–541, title II, § 201, Dec. 11, 2000, 114 Stat. 2587.)

REFERENCES IN TEXT

The Water Supply Act of 1958, as amended, referred to in subsec. (e), is Pub. L. 85–500, title III, § 301, July 3, 1958, 72 Stat. 319, as amended, which is classified to section 390b of Title 43, Public Lands.

CODIFICATION

Section was enacted as part of the Flood Control Act of 1970, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–541 in last sentence, struck out ''State legislative'' after ''obligate future'', substituted ''constitutional'' for ''State constitutional'', and inserted ''of the State or a political subdivision of the State'' before period at end.

1996—Subsec. (a). Pub. L. 104–303, in first sentence, inserted before period at end ''; except that no such agreement shall be required if the Secretary determines that the administrative costs associated with negotiating, executing, or administering the agreement would exceed the amount of the contribution required from the non-Federal interest and are less than $25,000''.

Subsecs. (e), (f). Pub. L. 104–106 redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: ''The Secretary of the Army, acting through the Chief of Engineers, shall maintain a continuing inventory of agreements and the status of their performance, and shall report thereon annually to the Congress.''

1986—Subsec. (a). Pub. L. 99–662 inserted '', or an acceptable separable element thereof,'', ''or the appropriate element of the project, as the case may be'', and ''In any such agreement entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future State legislative appropriations for such performance and payment when obligating future appropriations would be inconsistent with State constitutional or statutory limitations.''

1971—Subsec. (f). Pub. L. 92–222 made provisions of section inapplicable to the assurances for future demands required by the Water Supply Act of 1958, as amended.

COMPLIANCE WITH COOPERATION REQUIREMENTS FOR NON-FEDERAL INTERESTS IN WATER RESOURCES PROJECTS

Section 912(b) of Pub. L. 99–662 provided that:

''(1) The Secretary may require compliance with any requirements pertaining to cooperation by non-Federal interests in carrying out any water resources project authorized before, on, or after the date of enactment of this Act [Nov. 17, 1986].

''(2) Whenever on the basis of any information available to the Secretary, the Secretary finds that any non-Federal interest is not providing cooperation required under subsection (a) [amending this section], the Secretary shall issue an order requiring such non-Federal interest to provide such cooperation. After notice and opportunity for a hearing, if the Secretary finds that any person is violating an order issued under this section [amending this section], such person shall be subject to a civil penalty not to exceed $10,000 per day of such violation, except that the total amount of civil penalties for any violation shall not exceed $50,000.

''(3) Non-Federal interests shall be liable for interest on any payments required pursuant to section 221 of the Flood Control Act of 1970 [this section] that may fall delinquent. The interest rate to be charged on any such delinquent payment shall be at a rate, to be determined by the Secretary of the Treasury, equal to 150 percent of the average bond equivalent rate of the thirteen-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional three-month period if the period of delinquency exceeds three months.

''(4) The Secretary may request the Attorney General to bring a civil action for appropriate relief, including permanent or temporary injunction, for any violation of an order issued under this section, to collect a civil penalty imposed under this section, to recover any cost incurred by the Secretary in undertaking performance of any item of cooperation under section 221(d) of the Flood Control Act of 1970 [subsec. (d) of this section], or to collect interest for which a non-Federal interest is liable under paragraph (3). Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides, or is doing business, and such court shall have jurisdiction to restrain such violation, to require compliance, to require payment of any civil penalty imposed under this section, and to require payment of any costs incurred by the Secretary in undertaking performance of any such item.

''(5) The Secretary is authorized to determine that no funds appropriated for operation and maintenance, including operation and maintenance of the project for flood control, Mississippi River and Tributaries, are to be used for the particular benefit of projects within the jurisdiction of any non-Federal interest when such non-Federal interest is in arrears for more than twenty-four months in the payment of charges due under an agreement entered into with the United States pursuant to section 221 of the Flood Control Act of 1970 (Public Law 91–611) [this section].''

§ 1962d–5c. Non-Federal public bodies, installment construction payments

(a) Annual installments during period of construction in absence of other provision for extended repayment

In connection with any water resource development project, heretofore, herein, or hereafter authorized to be undertaken by the Secretary of the Army, the construction of which has not been initiated as of March 7, 1974, where authorization requires that non-Federal public bodies make an agreed-upon cash contribution as part of their reimbursement to the Federal Government for construction costs, or a specific portion of the construction costs, and where there exists no other provision of law which would permit extended repayment for the construction costs or such specific portion of the construction costs involved, such non-Federal public bodies may make such repayment in annual installments during the period of construction.

(b) Cost sharing; modification

Upon the request of affected non-Federal public bodies, the Secretary of the Army is authorized to modify existing cost sharing agreements in order to effectuate the provisions of subsection (a) of this section.

(Pub. L. 93–251, title I, § 40, Mar. 7, 1974, 88 Stat. 23.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1974, and not as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–5d. Authorization of Secretary of the Army to contract with States and political subdivisions for increased law enforcement services during peak visitation periods; authorization of appropriations

(a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to contract with States and their political subdivisions for the purpose of obtaining increased law enforcement services at water resources development projects under the jurisdiction of the Secretary of the Army to meet needs during peak visitation periods.

(b) There is authorized to be appropriated $10,000,000 per fiscal year for each fiscal year be-

ginning after September 30, 1986, to carry out this section.

(Pub. L. 94–587, § 120, Oct. 22, 1976, 90 Stat. 2924; Pub. L. 99–662, title IX, § 920, Nov. 17, 1986, 100 Stat. 4193.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–662 amended subsec. (b) generally, substituting ''$10,000,000 per fiscal year for each fiscal year beginning after September 30, 1986'' for ''$6,000,000 per fiscal year for the fiscal years ending September 30, 1978, and September 30, 1979''.

§ 1962d–5e. Wetland areas

(a) Authorization of Secretary of the Army to plan and establish wetland areas; criteria for establishment

The Secretary of the Army, acting through the Chief of Engineers, is authorized to plan and establish wetland areas as part of an authorized water resources development project under his jurisdiction. Establishment of any wetland area in connection with the dredging required for such a water resources development project may be undertaken in any case where the Chief of Engineers in his judgment finds that—

(1) environmental, economic, and social benefits of the wetland area justifies the increased cost thereof above the cost required for alternative methods of disposing of dredged material for such project; and

(2) the increased cost of such wetland area will not exceed $400,000; and

(3) there is reasonable evidence that the wetland area to be established will not be substantially altered or destroyed by natural or man-made causes.

(b) Reports to Congress

Whenever the Secretary of the Army, acting through the Chief of Engineers, submits to Congress a report on a water resources development project after October 22, 1976, such report shall include, where appropriate, consideration of the establishment of wetland areas.

(c) Cost

In the computation of benefits and cost of any water resources development project the benefits of establishing of any wetland area shall be deemed to be at least equal to the cost of establishing such area. All costs of establishing a wetland area shall be borne by the United States.

(Pub. L. 94–587, § 150, Oct. 22, 1976, 90 Stat. 2931.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–5f. Beach nourishment

The Secretary of the Army, acting through the Chief of Engineers, is authorized to provide periodic beach nourishment in the case of each water resources development project where such nourishment has been authorized for a limited period for such additional period as he determines necessary but in no event shall such additional period extend beyond the fiftieth year which begins after the date of initiation of construction of such project.

(Pub. L. 94–587, § 156, Oct. 22, 1976, 90 Stat. 2933; Pub. L. 99–662, title IX, § 934, Nov. 17, 1986, 100 Stat. 4197.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1986—Pub. L. 99–662 substituted ''fiftieth'' for ''fifteenth''.

§ 1962d–5g. Hydroelectric power resources

(a) Study; plan

The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to conduct a study of the most efficient methods of utilizing the hydroelectric power resources at water resource development projects under the jurisdiction of the Secretary of the Army and to prepare a plan based upon the findings of such study. Such study shall include, but not be limited to, an analysis of—

(1) the physical potential for hydroelectric development, giving consideration to the economic, social, environmental and institutional factors which will affect the realization of physical potential;

(2) the magnitude and regional distribution of needs for hydroelectric power;

(3) the integration of hydroelectric power generation with generation from other types of generating facilities;

(4) measures necessary to assure that generation from hydroelectric projects will efficiently contribute to meeting the national electric energy demands;

(5) the timing of hydroelectric development to properly coincide with changes in the demand for electric energy;

(6) conventional hydroelectric potential, both high head and low head projects utilizing run-of-rivers and possible advances in mechanical technology, and pumped storage hydroelectric potential at sites which evidence such potential;

(7) the feasibility of adding or reallocating storage and modifying operation rules to increase power production at corps projects with existing hydroelectric installations;

(8) measures deemed necessary or desirable to insure that the potential contribution of hydroelectric resources to the overall electric energy supply are realized to the maximum extent possible; and

(9) any other pertinent factors necessary to evaluate the development and operation of hydroelectric projects of the Corps of Engineers.

(b) Transmittal of plan to Congressional committees

Within three years after the date of the first appropriation of funds for the purpose of carrying out this section, the Secretary of the

Army, acting through the Chief of Engineers, shall transmit the plan prepared pursuant to subsection (a) of this section with supporting studies and documentation, together with the recommendations of the Secretary and the Chief of Engineers on such plan, to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

(c) Authorization of appropriation

There is authorized to be appropriated to carry out subsections (a) and (b) of this section not to exceed $7,000,000.

(d) Feasibility studies of specific hydroelectric power installations; authorization of appropriations

The Secretary of the Army, acting through the Chief of Engineers, is authorized with respect to previously authorized projects to undertake feasibility studies of specific hydroelectric power installations that are identified in the course of the study authorized by this section, as having high potential for contribution toward meeting regional power needs. There is authorized to be appropriated to carry out this subsection not to exceed $5,000,000 per fiscal year for each of the fiscal years 1978 and 1979.

(Pub. L. 94–587, § 167, Oct. 22, 1976, 90 Stat. 2935; Pub. L. 103–437, § 15(e)(1), Nov. 2, 1994, 108 Stat. 4592.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–437 substituted ''Committee on Environment and Public Works of the Senate'' for ''Committee on Public Works of the Senate''.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

FEDERAL HYDROELECTRIC POWER MODERNIZATION STUDY

Pub. L. 100–676, § 42, Nov. 17, 1988, 102 Stat. 4040, directed Secretary to conduct a study of need to modernize and upgrade federally owned and operated hydroelectric power system, and to submit a report, along with recommendations, to Congress not later than 2 years after Nov. 17, 1988.

WATER QUALITY EFFECTS OF HYDROELECTRIC FACILITIES

Pub. L. 100–676, § 43, Nov. 17, 1988, 102 Stat. 4040, directed Secretary, in cooperation with Administrator of Environmental Protection Agency, to undertake a study of water quality effects of hydroelectric facilities owned and operated by Corps of Engineers, which was to be transmitted to Congress within 2 years of Nov. 17, 1988, and was to consider and include information for each such Corps of Engineers hydroelectric facility pertaining to: relevant water quality standards including dissolved oxygen; water quality monitoring data; possible options and projected costs of measures required to improve the quality of water released from each such facility where justified; and recommendations with respect to such study results.

§ 1962d–6. Feasibility studies; acceleration; advancement of costs by non-Federal sources

The Secretary may accelerate feasibility studies authorized by law when and to the extent that the costs of such studies shall have been advanced by non-Federal sources.

(Pub. L. 89–561, § 5, Sept. 7, 1966, 80 Stat. 714.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–7. Delmarva Peninsula hydrologic study; duties of Secretary of the Interior

The Secretary of the Interior (hereinafter referred to as the ''Secretary'') is authorized and directed to make a comprehensive study and investigation of the water resources of the Delmarva Peninsula with a view to determining the availability of fresh water supplies needed to meet the anticipated future water requirements of the Delmarva Peninsula area, and with a view to determining the most effective means from the standpoint of hydrologic feasibility of protecting and developing fresh water sources so as to insure, insofar as practicable, the availability of adequate water supplies in the future. In carrying out such study and investigation with respect to the Delmarva Peninsula, the Secretary shall—

(1) appraise the water use, requirements, and trends, and determine the availability of water in the streams and underground sources for the entire peninsula;

(2) determine the depths, thicknesses, and permeabilities, the perennial yield, and the recharge characteristics of major aquifers, and the quality characteristics to be expected from each such major aquifer;

(3) determine with respect to ground water resources the continuity and extent of important water-bearing formations;

(4) determine the yield from stream systems under natural flow conditions and under varying degrees of storage and the amounts and quality of waters available from such systems during drought, flood, and intermediate conditions;

(5) determine whether sea water has moved inland into heavily pumped coastal aquifers;

(6) give special consideration to conditions which may invite the invasion of sea water into fresh-water supplies;

(7) compile and make available to appropriate State and local officials any results of this study and investigation that would be appropriate for their use in long-range planning, development, and management of water supplies;

(8) cooperate with State and local agencies for the purpose of using any information and data available to carry out the purposes of this study; and

(9) consider such other matters as the Secretary may deem appropriate to the study and investigation herein authorized.

(Pub. L. 89–618, § 1, Oct. 4, 1966, 80 Stat. 870.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

WASHINGTON METROPOLITAN AREA WATER NEEDS AND ESTUARIAL WATER SUPPLIES; STUDIES

Pub. L. 93–251, title I, § 85, Mar. 7, 1974, 88 Stat. 36, provided in part for a study of Washington Metropolitan Area Future Water Needs, coordinated with Northeastern United States Water Supply study, and for a study of Estuarial Water Supplies, including a Potomac Estuary Water Treatment Pilot Project, for review of scientific basis for study conclusions by National Academy of Sciences-National Academy of Engineering, and made further authorizations for Sixes Bridge Dam and Lake Project, Maryland dependent on such studies and review.

§ 1962d–8. Reports on Delmarva Peninsula hydrologic study

During the course of the study and investigation authorized by sections 1962d–7 to 1962d–11 of this title, the Secretary may submit to the President for transmission to the Congress such interim reports as the Secretary may consider desirable. The Secretary shall submit a final report to the President for transmission to the Congress not more than six years after October 4, 1966.

(Pub. L. 89–618, § 2, Oct. 4, 1966, 80 Stat. 870.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–9. Information from Federal agencies for Delmarva Peninsula study

The Secretary is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Federal Government, information, suggestions, estimates, and statistics for the purpose of sections 1962d–7 to 1962d–11 of this title, and each department, bureau, agency, board, commission, office, independent establishment, or instrumentality is authorized and directed to furnish such information, suggestions, estimates, and statistics, to the Secretary upon his or his designee's request.

(Pub. L. 89–618, § 3, Oct. 4, 1966, 80 Stat. 870.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–10. Cooperation with agencies on Delmarva Peninsula study

In carrying out the study and investigation authorized by sections 1962d–7 to 1962d–11 of this title, the Secretary is authorized to cooperate with other Federal, State, and local agencies now engaged in comprehensive planning for water resource use and development in the Delmarva Peninsula area by making available to those agencies his findings and to cooperate with those agencies in the Northeastern United States Water Supply Study as authorized by section 1962d–4 of this title.

(Pub. L. 89–618, § 4, Oct. 4, 1966, 80 Stat. 871.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–11. Authorization of appropriation for Delmarva Peninsula study

There is hereby authorized to be appropriated the sum of $500,000 to carry out the provisions of sections 1962d–7 to 1962d–11 of this title: *Provided*, That nothing in such sections shall prevent the expenditure of other funds appropriated to the United States Geological Survey for studies and activities performed under its general authority.

(Pub. L. 89–618, § 5, Oct. 4, 1966, 80 Stat. 871; Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1000.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

CHANGE OF NAME

''United States Geological Survey'' substituted in text for ''Geological Survey'' pursuant to provision of title I of Pub. L. 102–154, set out as a note under section 31 of Title 43, Public Lands.

§ 1962d–11a. Potomac River water diversion structure

(a) Consent of Congress for construction; written agreement providing schedule for allocation among parties for withdrawal of waters

(1) Subject to paragraph (2) of this subsection, the consent of Congress is granted under section 401 of title 33 to the Washington Suburban Sanitary Commission to construct a water diversion structure, with an elevation not to exceed one hundred and fifty-nine feet above sea level, from the north shore of the Potomac River at the Washington Suburban Sanitary Commission water filtration plant to the north shore of Watkins Island.

(2) The structure authorized by paragraph (1) of this subsection, may not be constructed until the Secretary of the Army, acting through the Chief of Engineers, and the State of Maryland, the Commonwealth of Virginia, the Washington Suburban Sanitary Commission, and such other governmental authorities as the Secretary of the Army, the State of Maryland, and the Commonwealth of Virginia deem desirable signatories enter into a written agreement providing an enforceable schedule for allocation among the parties to such agreement for the withdrawal of the waters of that portion of the Potomac River located between Little Falls Dam and the farthest upstream limit of the pool of water behind the Chesapeake and Ohio Canal Company rubble dam at Seneca, Maryland, during periods of low flow of such portion of such river.

(b) Authorization of Secretary of the Army to enter written agreement; amendments or revisions

The Secretary of the Army, acting through the Chief of Engineers, is authorized to enter into the agreement referred to in subsection (a)(2) of this section and any amendment to or revision of such agreement.

(c) Riparian rights or other authority of Maryland, Virginia, political subdivisions; authority of District of Columbia

Except as may be provided in the agreement referred to in subsection (a)(2) of this section,

nothing in this section shall alter any riparian rights or other authority of the State of Maryland, or any political subdivision thereof, the Commonwealth of Virginia, or any political subdivision thereof, or the District of Columbia, or authority of the Corps of Engineers existing on October 22, 1976, relative to the appropriation of water from, or the use of, the Potomac River.

(Pub. L. 94–587, § 181, Oct. 22, 1976, 90 Stat. 2939; Pub. L. 96–292, § 2, June 28, 1980, 94 Stat. 609.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1980—Subsec. (a)(2). Pub. L. 96–292 struck out cl. ''(A)'' designation and cl. (B) which prohibited construction of the Potomac River water diversion structure should such structure be in conflict with the report of the Secretary of the Army, acting through the Chief of Engineers, issued in connection with a study of water resources development.

§ 1962d–11b. Dalecarlia Reservoir; delivery of water to metropolitan Maryland; expenses; payments; purchase of water from State or local authorities in Maryland or Virginia

(a) The Secretary, on the recommendation of the Chief of Engineers, is authorized to permit the delivery of water from the District of Columbia water system at the Dalecarlia filtration plant, or at other points on the system, to any competent State or local authority in the Washington, District of Columbia, metropolitan area in Maryland. All of the expense of installing the connection or connections and appurtenances between the water supply systems and any subsequent changes therein shall be paid by the requesting entity, which shall also pay such charges for the use of the water as the Secretary may, from time to time in advance of delivery, determine to be reasonable. Payments shall be made at such time, and pursuant to such regulations, as the Secretary prescribes. The Secretary may revoke any permit for the use of water at any time.

(b) The Secretary is authorized to purchase water from any State or local authority in Maryland or Virginia that has, at the time of purchase, completed a connection with the District of Columbia water system. The Secretary is authorized to pay such charges for the use of the water as the Secretary has agreed upon in advance of delivery.

(Pub. L. 99–662, title XI, § 1111, Nov. 17, 1986, 100 Stat. 4231.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1986, and not as part of the Water Resources Planning Act which comprises this chapter.

DEFINITIONS

Secretary means the Secretary of the Army, see section 2201 of Title 33, Navigation and Navigable Waters.

§§ 1962d–12 to 1962d–14. Repealed. Pub. L. 104–58, title I, § 104(g)(3), Nov. 28, 1995, 109 Stat. 560

Section 1962d–12, act Aug. 9, 1955, ch. 682, § 1, 69 Stat. 618, authorized Secretary of the Interior to make investigations of projects for conservation, development, and utilization of Alaskan water resources and to report findings, with recommendations, to President and Congress.

Section 1962d–13, act Aug. 9, 1955, ch. 682, § 2, 69 Stat. 618, directed Secretary of the Interior, prior to transmission of report on Alaskan water resource projects to Congress, to transmit copies thereof for information and comment to Governor of Alaska and to heads of interested Federal departments and agencies, and to include copies of views of such officials along with transmission of Secretary's report to Congress.

Section 1962d–14, act Aug. 9, 1955, ch. 682, § 3, 69 Stat. 618, authorized to be appropriated not more than $250,000 in any one fiscal year for Alaskan water resources investigation.

§ 1962d–14a. Alaska hydroelectric power development

(a) Congressional findings and declaration

(1) The Congress finds that the expeditious development of hydroelectric power generating facilities in Alaska that are environmentally sound to assist the Nation in meeting existing and future energy demands is in the national interest.

(2) The Congress therefore declares that the expertise of the Chief of Engineers can and should be utilized for the benefit of local public bodies in the development of projects which yield 90 per centum or more of the benefits of the project are attributable to hydroelectric power generation when the project is fully operational.

(b) Establishment of fund; composition

To meet the goals of this section, there is hereby established in the Treasury of the United States an Alaska Hydroelectric Power Development Fund (hereafter referred to as the ''fund'') to be and remain available for use by the Secretary of the Army (hereinafter referred to as the ''Secretary'') to make expenditures authorized by this section. The fund shall consist of (1) all receipts and collections by the Secretary of repayments in accordance with subsection (e) of this section and payments by non-Federal public authorities to the Secretary to finance the cost of construction of projects in accordance with subsection (f) of this section, and which the Secretary is hereby directed to deposit in the fund as they are received, and (2) any appropriations made by the Congress to the fund.

(c) Authorization of appropriation

There is authorized to be appropriated to the Secretary for deposit in the fund established by subsection (b) of this section the sum of $25,000,000.

(d) Investments; deposits

(1) If the Secretary determines that moneys in the fund are in excess of current needs, he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in direct, general obligations of, or obligations guaranteed as to both principal and interest by, the United States.

(2) With the approval of the Secretary of the Treasury, the Secretary may deposit moneys of the fund in any Federal Reserve bank or other depository for funds of the United States, or in such other banks and financial institutions and

under such terms and conditions as the Secretary and the Secretary of the Treasury may mutually agree.

(e) Expenditures for phase I design memorandum stage of advanced engineering and design; withholding of favorable report to Congress prior to repayment; expenditures from non-Federal funds

The Secretary is authorized to make expenditures from the fund for the phase I design memorandum stage of advanced engineering and design for any project in Alaska that meets the requirements of subsection (a)(2) of this section, if appropriate non-Federal public authorities, approved by the Secretary, agree with the Secretary, in writing, to repay the Secretary for all the separable and joint costs of preparing such design memorandum, if such report is favorable. Following the completion of the phase I design memorandum stage of advanced engineering and design under this subsection, the Secretary shall not transmit any favorable report to Congress prior to being repaid in full by the appropriate non-Federal public authorities for the costs incurred during such phase I. The Secretary is also authorized to make expenditures from non-Federal funds deposited in the fund as an advance against construction costs.

(f) Authorization to construct projects; expenditures

In connection with water resources development projects which meet the criteria established by subsection (a)(2) of this section and which are to be constructed by the Secretary, acting through the Chief of Engineers, in accordance with an authorization by Congress and a contract between the non-Federal public authorities and the Secretary, pursuant to subsection (g)(1) of this section occurring on or subsequent to October 22, 1976, the Secretary, acting through the Chief of Engineers, is authorized to construct such projects including activities for engineering and design land acquisition, site development, and off-site improvements necessary for the authorized construction by making expenditures from (1) the Fund established in subsection (b) of this section of funds deposited by non-Federal public authorities as payments for construction and (2) payments of non-Federal public authorities held by the Secretary as payment of construction costs for a project authorized by this section.

(g) Agreement with non-Federal public authorities and submittal to Congressional committees, payment of total non-Federal obligations; conditions of United States assumption of excess over costs fixed in agreement, payment subject to appropriations acts

(1) Prior to initiating any construction work under the authorities of this section, the Secretary and the appropriate non-Federal public authorities shall agree in writing, and submit such agreement to the Committees on Environment and Public Works and on Appropriations of the Senate and the Committees on Public Works and Transportation and on Appropriations of the House of Representatives for review and reporting to the Congress for its consideration and approval that the appropriate non-Federal public authorities will pay the full anticipated costs of constructing the project at the time such costs are incurred, together with normal contingencies and related administrative expenses of the Secretary, and such payments shall be deposited in the fund or held by the Secretary for payment of obligations incurred by the Secretary on an authorized project under this section. The agreement shall provide for an initial determination of feasibility and compliance by the project with law. The total non-Federal obligation shall be paid on or prior to the date the Chief of Engineers has estimated by agreement, that the project concerned will be available for actual generation of all or a substantial portion of the authorized hydroelectric power of the project.

(2) In consideration of the obligations to be assumed by non-Federal public authorities under the provisions of this section and in recognition of the substantial investments which will be made by these authorities in reliance on the program established by this section, the United States shall assume the responsibility for paying for all costs over those fixed in the agreement with the non-Federal public authorities, if such costs are occasioned by acts of God, failure on the part of the Secretary, acting through the Chief of Engineers, to adhere to the agreed schedule of work or a failure of design: *Provided*, That payments by the Secretary of such costs shall be subject to appropriations acts.

(h) Conveyance of title, rights, and interests of United States; Federal requirements, reservations, and provisions

The Secretary is authorized and directed, pursuant to the agreement, to convey all title, rights, and interests of the United States to any project, its lands and water areas, and appurtenant facilities to the non-Federal public authorities which have agreed to assume ownership of the project and responsibility for its performance, operation, and maintenance, as well as necessary replacements in accordance with this section upon full payment by such non-Federal public authorities as required under subsection (g)(1) of this section. Such conveyance shall, pursuant to the agreement required by subsection (g) of this section, to the maximum extent possible, occur immediately upon the project's availability for generation of all or a substantial portion of the authorized hydroelectric power of the project, and shall include such Federal requirements, reservations, and provisions for access rights to the project and its records as the Secretary finds advisable to complete any portion of project construction remaining at the time of conveyance and to assure that the project will be operated and maintained in a responsible and safe manner to accomplish, as nearly as may be possible, all of the authorized purposes of the project including, but not restricted to, hydroelectric power generation.

(i) Short title

This section shall be cited as the ''Alaska Hydroelectric Power Development Act''.

(Pub. L. 94–587, §203, Oct. 22, 1976, 90 Stat. 2946; Pub. L. 103–437, §15(e)(2), Nov. 2, 1994, 108 Stat. 4592.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (g)(1). Pub. L. 103–437 substituted ''Committees on Environment and Public Works and on Appropriations of the Senate and the Committees on Public Works and Transportation and on Appropriations of the House'' for ''Committees on Public Works and Appropriations of the Senate and House''.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 1962d–15. Protection of United States from liability for damages; exception of damages due to fault or negligence of United States

The requirement in any water resources development project under the jurisdiction of the Secretary of the Army, that non-Federal interests hold and save the United States free from damages due to the construction, operation, and maintenance of the project, does not include damages due to the fault or negligence of the United States or its contractors.

(Pub. L. 93–251, title I, § 9, Mar. 7, 1974, 88 Stat. 16.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1974, and not as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–16. Comprehensive plans for development, utilization, and conservation of water and related resources

(a) Federal and State cooperation

The Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate with any State in the preparation of comprehensive plans for the development, utilization, and conservation of the water and related resources of drainage basins, watersheds, or ecosystems located within the boundaries of such State and to submit to Congress reports and recommendations with respect to appropriate Federal participation in carrying out such plans.

(b) Fees

(1) Establishment and collection

For the purpose of recovering 50 percent of the total cost of providing assistance pursuant to this section, the Secretary of the Army is authorized to establish appropriate fees, as determined by the Secretary, and to collect such fees from States and other non-Federal public bodies to whom assistance is provided under this section.

(2) In-kind services

Up to ½ of the non-Federal contribution for preparation of a plan subject to the cost sharing program under this subsection may be made by the provision of services, materials, supplies, or other in-kind services necessary to prepare the plan.

(3) Deposit and use

Fees collected under this subsection shall be deposited into the account in the Treasury of the United States entitled, ''Contributions and Advances, Rivers and Harbors, Corps of Engineers (8862)'' and shall be available until expended to carry out this section.

(c) Authorization of appropriations; general and State limitation

There is authorized to be appropriated not to exceed $10,000,000 annually to carry out the provisions of this section except that not more than $500,000 shall be expended in any one year in any one State.

(d) "State" defined

For the purposes of this section, the term ''State'' means the several States of the United States, Indian tribes, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(Pub. L. 93–251, title I, § 22, Mar. 7, 1974, 88 Stat. 20; Pub. L. 94–587, § 168, Oct. 22, 1976, 90 Stat. 2936; Pub. L. 96–597, title VI, § 605, Dec. 24, 1980, 94 Stat. 3482; Pub. L. 99–662, title IX, § 921, Nov. 17, 1986, 100 Stat. 4194; Pub. L. 101–640, title III, § 319, Nov. 28, 1990, 104 Stat. 4642; Pub. L. 102–580, title II, § 208, Oct. 31, 1992, 106 Stat. 4829; Pub. L. 104–303, title II, § 221, Oct. 12, 1996, 110 Stat. 3697.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1974, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–303, § 221(1), inserted '', watersheds, or ecosystems'' after ''basins''.

Subsec. (b)(2) to (4). Pub. L. 104–303, § 221(2), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out heading and text of former par. (2). Text read as follows: ''The Secretary shall phase in the cost sharing program under this subsection by recovering—

''(A) approximately 10 percent of the total cost of providing assistance in fiscal year 1991;

''(B) approximately 30 percent of the total cost in fiscal year 1992; and

''(C) approximately 50 percent of the total cost in fiscal year 1993 and each succeeding fiscal year.''

Subsec. (c). Pub. L. 104–303, § 221(3), substituted ''$10,000,000'' for ''$6,000,000'' and ''$500,000'' for ''$300,000''.

1992—Subsec. (b)(3), (4). Pub. L. 102–580, § 208(1), added par. (3) and redesignated former par. (3) as (4).

Subsec. (d). Pub. L. 102–580, § 208(2), inserted ''Indian tribes,'' after ''States of the United States,''.

1990—Subsecs. (b) to (d). Pub. L. 101–640 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1986—Subsec. (b). Pub. L. 99–662 substituted ''$6,000,000'' for ''$4,000,000'' and ''$300,000'' for ''$200,000''.

1980—Subsec. (c). Pub. L. 96–597 added subsec. (c).

1976—Subsec. (b). Pub. L. 94–587 increased limitation on annual appropriation authorization to $4,000,000 from $2,000,000.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 605 of Pub. L. 96–597 provided that the amendment made by that section is effective Oct. 1, 1981.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1962d–17. Regional or river basin plans and Federal water and related land resources projects; preparation, formulation, and evaluation

(a) Interest rate formula for discounting future benefits and cost computations; repeal of conflicting provisions and administrative actions

The interest rate formula to be used in plan formulation and evaluation for discounting future benefits and computing costs by Federal officers, employees, departments, agencies, and instrumentalities in the preparation of comprehensive regional or river basin plans and the formulation and evaluation of Federal water and related land resources projects shall be the formula set forth in the ''Policies, Standards, and Procedures in the Formulation, Evaluation, and Review of Plans for Use and Development of Water and Related Land Resources'' approved by the President on May 15, 1962, and published as Senate Document 97 of the Eighty-seventh Congress on May 29, 1962, as amended by the regulation issued by the Water Resources Council and published in the Federal Register on December 24, 1968 (33 F.R. 19170; 18 C.F.R. 704.39), until otherwise provided by a statute enacted after March 7, 1974. Every provision of law and every administrative action in conflict with this section is hereby repealed to the extent of such conflict.

(b) Interest rate for prior authorized projects assured of non-Federal share of project costs; continuation of rate

In the case of any project authorized before January 3, 1969, if the appropriate non-Federal interests have, prior to December 31, 1969, given satisfactory assurances to pay the required non-Federal share of project costs, the discount rate to be used in the computation of benefits and costs for such project shall be the rate in effect immediately prior to December 24, 1968, and that rate shall continue to be used for such project until construction has been completed, unless otherwise provided by a statute enacted after March 7, 1974.

(c) Water and related resources projects; Presidential study; scope of study; report to Congress

The President shall make a full and complete investigation and study of principles and standards for planning and evaluating water and related resources projects. Such investigation and study shall include, but not be limited to, consideration of enhancing regional economic development, the quality of the total environment including its protection and improvement, the well-being of the people of the United States, and the national economic development, as objectives to be included in federally-financed water and related resources projects and in the evaluation of costs and benefits attributable to such projects, as intended in section 1962–2 of this title, the interest rate formula to be used in evaluating and discounting future benefits for such projects, and appropriate Federal and non-Federal cost sharing for such projects. He shall report the results of such investigation and study, together with his recommendations, to Congress not later than one year after funds are first appropriated to carry out this subsection.

(Pub. L. 93–251, title I, § 80, Mar. 7, 1974, 88 Stat. 34.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1974, and not as part of the Water Resources Planning Act which comprises this chapter.

RATES USED TO ASSESS RETURN ON FEDERAL GOVERNMENT'S INVESTMENT IN PROJECTS OF ARMY CORPS OF ENGINEERS AND BUREAU OF RECLAMATION

Pub. L. 95–28, title II, § 204, May 13, 1977, 91 Stat. 121, provided that: ''It is hereby reiterated that the interest rates or rates of discount to be used to assess the return on the Federal Government's investment in projects of the United States Army Corps of Engineers or the Department of the Interior Bureau of Reclamation, shall be those interest rates or rates of discount established by Public Law 93–251, the Water Resources Development Act of 1974 [see Short Title of 1974 Amendment note set out under section 1962 of this title] or by any prior law authorizing projects of the United States Army Corps of Engineers or the Department of the Interior Bureau of Reclamation.''

§ 1962d–18. Study of depletion of natural resources of regions of Colorado, Kansas, New Mexico, Oklahoma, Texas, and Nebraska utilizing Ogallala aquifer; plans; reports to Congress; authorization of appropriation

In order to assure an adequate supply of food to the Nation and to promote the economic vitality of the High Plains Region, the Secretary of Commerce (hereinafter referred to in this section as the ''Secretary''), acting through the Economic Development Administration, in cooperation with the Secretary of the Army, acting through the Chief of Engineers, and appropriate Federal, State, and local agencies, and the private sector, is authorized and directed to study the depletion of the natural resources of those regions of the States of Colorado, Kansas, New Mexico, Oklahoma, Texas, and Nebraska presently utilizing the declining water resources of the Ogallala acquifer,[1] and to develop plans to increase water supplies in the area and report thereon to Congress, together with any recommendations for further congressional action. In formulating these plans, the Secretary is directed to consider all past and ongoing studies, plans, and work on depleted water resources in the region, and to examine the feasibility of various alternatives to provide adequate water supplies in the area including, but not limited to, the transfer of water from adjacent areas, such portion to be conducted by the Chief of Engineers to assure the continued economic growth and vitality of the region. The Secretary shall report on the costs of reasonably available options, the benefits of various options, and the costs of inaction. If water transfer is found to be a part of a reasonable solution, the Secretary, as part of his study, shall include a recommended plan for allocating and distributing water in an equitable fashion, taking into account existing water rights and the needs for future growth of all affected areas. An interim report, with recommendations, shall be transmitted to the Con-

[1] So in original. Probably should be ''aquifer,''.

gress no later than October 1, 1978, and a final report, with recommendations, shall be transmitted to Congress not later than July 1, 1980. A sum of $6,000,000 is authorized to be appropriated for the purposes of carrying out this section.

(Pub. L. 94–587, § 193, Oct. 22, 1976, 90 Stat. 2943.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1976, and not as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–19. Cooperation of Secretary of the Interior with State and local regulatory and law enforcement officials in enforcement of laws or ordinances in connection with Federal resource protection, etc., within Federal water resource development project; funding

The Secretary of the Interior, in connection with Federal resource protection and the Federal administration of the use and occupancy of lands and waters within a water resource development project under his jurisdiction, is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws or ordinances of such State or political subdivision. Such cooperation may include the reimbursement of a State or its political subdivision for expenditures incurred in connection with such resource protection and administration. For purposes of complying with section 651 of title 2, the authorization provided under this section is subject to the availability of appropriations.

(Pub. L. 98–552, § 3, Oct. 30, 1984, 98 Stat. 2823.)

CODIFICATION

Section was not enacted as part of the Water Resources Planning Act which comprises this chapter.

§ 1962d–20. Prohibition on Great Lakes diversions

(a) Congressional findings and declarations

The Congress finds and declares that—

(1) the Great Lakes are a most important natural resource to the eight Great Lakes States and two Canadian provinces, providing water supply for domestic and industrial use, clean energy through hydropower production, an efficient transportation mode for moving products into and out of the Great Lakes region, and recreational uses for millions of United States and Canadian citizens;

(2) the Great Lakes need to be carefully managed and protected to meet current and future needs within the Great Lakes basin and Canadian provinces;

(3) any new diversions of Great Lakes water for use outside of the Great Lakes basin will have significant economic and environmental impacts, adversely affecting the use of this resource by the Great Lakes States and Canadian provinces; and

(4) four of the Great Lakes are international waters and are defined as boundary waters in the Boundary Waters Treaty of 1909 between the United States and Canada, and as such any new diversion of Great Lakes water in the United States would affect the relations of the Government of the United States with the Government of Canada.

(b) Congressional declaration of purpose and policy

It is therefore declared to be the purpose and policy of the Congress in this section—

(1) to take immediate action to protect the limited quantity of water available from the Great Lakes system for use by the Great Lakes States and in accordance with the Boundary Waters Treaty of 1909;

(2) to encourage the Great Lakes States, in consultation with the Provinces of Ontario and Quebec, to develop and implement a mechanism that provides a common conservation standard embodying the principles of water conservation and resource improvement for making decisions concerning the withdrawal and use of water from the Great Lakes Basin;

(3) to prohibit any diversion of Great Lakes water by any State, Federal agency, or private entity for use outside the Great Lakes basin unless such diversion is approved by the Governor of each of the Great Lakes States; and

(4) to prohibit any Federal agency from undertaking any studies that would involve the transfer of Great Lakes water for any purpose for use outside the Great Lakes basin.

(c) "Great Lakes State" defined

As used in this section, the term ''Great Lakes State'' means each of the States of Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin.

(d) Approval by Governors for diversion of water

No water shall be diverted or exported from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin unless such diversion or export is approved by the Governor of each of the Great Lake[1] States.

(e) Approval of Governors for diversion studies

No Federal agency may undertake any study, or expend any Federal funds to contract for any study, of the feasibility of diverting water from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin, unless such study or expenditure is approved by the Governor of each of the Great Lakes States. The prohibition of the preceding sentence shall not apply to any study or data collection effort performed by the Corps of Engineers or other Federal agency under the direction of the International Joint Commission in accordance with the Boundary Waters Treaty of 1909.

(f) Previously authorized diversions

This section shall not apply to any diversion of water from any of the Great Lakes which is authorized on November 17, 1986.

(Pub. L. 99–662, title XI, § 1109, Nov. 17, 1986, 100 Stat. 4230; Pub. L. 106–541, title V, § 504(a), (b), Dec. 11, 2000, 114 Stat. 2644.)

[1] So in original. Probably should be ''Lakes''.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1986, and not as part of the Water Resources Planning Act which comprises this chapter.

AMENDMENTS

2000—Subsec. (b)(2) to (4). Pub. L. 106–541, § 504(a), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d). Pub. L. 106–541, § 504(b), inserted ''or exported'' after ''diverted'' and ''or export'' after ''diversion''.

GREAT LAKES CONSUMPTIVE USE STUDY

Pub. L. 100–4, title V, § 521, Feb. 4, 1987, 101 Stat. 88, provided that in recognition of the serious impacts on the Great Lakes environment that could occur as a result of increased consumption of Great Lakes water, including loss of wetlands and reduction of fish spawning and habitat areas, as well as serious economic losses to vital Great Lakes industries, the Secretary of the Army in cooperation with the Administrator, other interested departments, agencies, and instrumentalities of the United States, and the eight Great Lakes States, was authorized to conduct a study of the effects of Great Lakes water consumption on economic growth and environmental quality in the Great Lakes region and of control measures that could be implemented to reduce the quantity of water consumed, and further provided an appropriation of $750,000 for fiscal years beginning after Sept. 30, 1986, to carry out such study.

Similar provisions were contained in Pub. L. 99–662, title XI, § 1147, Nov. 17, 1986, 100 Stat. 4253.

MEASUREMENTS OF LAKE MICHIGAN DIVERSIONS

Section 1142 of Pub. L. 99–662, as amended by Pub. L. 106–53, title V, § 508, Aug. 17, 1999, 113 Stat. 339; Pub. L. 106–541, title V, § 518, Dec. 11, 2000, 114 Stat. 2653, provided that:

''(a) Beginning October 1, 1987, the Secretary, in cooperation with the State of Illinois, shall carry out measurements and make necessary computations required by the decree of the United States Supreme Court (388 U.S. 426) relating to the diversion of water from Lake Michigan and shall coordinate the results with downstate interests. The measurements and computations shall consist of all flow measurements, gauge records, hydraulic and hydrologic computations, including periodic field investigations and measuring device calibrations, necessary to compute the amount of water diverted from Lake Michigan by the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities, not including water diverted or used by Federal installations.

''(b) There are authorized to be appropriated $1,250,000 for each of fiscal years 1999 through 2003 and $800,000 for each fiscal year beginning after September 30, 2003, to carry out this section, including those funds necessary to maintain the measurements and computations, as well as necessary capital construction costs associated with the installation of new flow measurement devices or structures declared necessary and appropriate by the Secretary.''

§ 1962d–21. John Glenn Great Lakes basin program

(a) Strategic plans

(1) Study

The Secretary shall conduct a comprehensive study of the Great Lakes region to ensure the future use, management, and protection of water resources and related resources of the Great Lakes basin.

(2) Report

(A) In general

As expeditiously as possible, but not later than 3 years after August 17, 1999, and every 2 years thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report outlining a strategic plan for Corps of Engineers programs and proposed Corps of Engineers projects in the Great Lakes basin.

(B) Contents

The plan shall include—

(i) details of projects in the Great Lakes region relating to—

(I) navigation improvements, maintenance, and operations for commercial and recreational vessels;

(II) environmental restoration activities;

(III) water level maintenance activities;

(IV) technical and planning assistance to States and remedial action planning committees;

(V) sediment transport analysis, sediment management planning, and activities to support prevention of excess sediment loadings;

(VI) flood damage reduction and shoreline erosion prevention; and

(VII) all other relevant activities of the Corps of Engineers; and

(ii) an analysis of factors limiting use of programs and authorities of the Corps of Engineers in existence on August 17, 1999, in the Great Lakes basin, including the need for new or modified authorities.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this section $1,000,000 for the period of fiscal years 2000 through 2003.

(b) Great Lakes biohydrological information

(1) Inventory

(A) In general

Not later than 90 days after August 17, 1999, the Secretary shall request each Federal agency that may possess information relevant to the Great Lakes biohydrological system to provide an inventory of all such information in the possession of the agency.

(B) Relevant information

For the purpose of subparagraph (A), relevant information includes information on—

(i) ground and surface water hydrology;

(ii) natural and altered tributary dynamics;

(iii) biological aspects of the system influenced by and influencing water quantity and water movement;

(iv) meteorological projections and the impacts of weather conditions on Great Lakes water levels; and

(v) other Great Lakes biohydrological system data relevant to sustainable water use management.

(2) Report

(A) In general

Not later than 18 months after August 17, 1999, the Secretary, in consultation with the

States, Indian tribes, and Federal agencies, and after requesting information from the provinces and the federal government of Canada, shall—

(i) compile the inventories of information;

(ii) analyze the information for consistency and gaps; and

(iii) submit to Congress, the International Joint Commission, and the Great Lakes States a report that includes recommendations on ways to improve the information base on the biohydrological dynamics of the Great Lakes ecosystem as a whole, so as to support environmentally sound decisions regarding diversions and consumptive uses of Great Lakes water.

(B) Recommendations

The recommendations in the report under subparagraph (A) shall include recommendations relating to the resources and funds necessary for implementing improvement of the information base.

(C) Considerations

In developing the report under subparagraph (A), the Secretary, in cooperation with the Secretary of State, the Secretary of Transportation, and the heads of other agencies as appropriate, shall consider and report on the status of the issues described and recommendations made in—

(i) the Report of the International Joint Commission to the Governments of the United States and Canada under the 1977 reference issued in 1985; and

(ii) the 1993 Report of the International Joint Commission to the Governments of Canada and the United States on Methods of Alleviating Adverse Consequences of Fluctuating Water Levels in the Great Lakes St. Lawrence Basin.

(c) Great Lakes recreational boating

Not later than 18 months after August 17, 1999, the Secretary, using information and studies in existence on August 17, 1999, to the extent practicable, and in cooperation with the Great Lakes States, shall submit to Congress a report detailing the economic benefits of recreational boating in the Great Lakes basin, particularly at harbors benefiting from operation and maintenance projects of the Corps of Engineers.

(d) Cooperation

In undertaking activities under this section, the Secretary shall—

(1) encourage public participation; and

(2) cooperate, and, as appropriate, collaborate, with Great Lakes States, tribal governments, and Canadian federal, provincial, and tribal governments.

(e) Water use activities and policies

The Secretary may provide technical assistance to the Great Lakes States to develop interstate guidelines to improve the consistency and efficiency of State-level water use activities and policies in the Great Lakes basin.

(f) Cost sharing

The Secretary may seek and accept funds from non-Federal entities to be used to pay up to 25 percent of the cost of carrying out subsections (b), (c), (d), and (e) of this section.

(Pub. L. 106–53, title IV, § 455, Aug. 17, 1999, 113 Stat. 330.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1999, and not as part of the Water Resources Planning Act which comprises this chapter.

DEFINITIONS

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–53, set out as a note under section 2201 of Title 33, Navigation and Navigable Waters.

§ 1962d–22. Great Lakes fishery and ecosystem restoration

(a) Findings

Congress finds that—

(1) the Great Lakes comprise a nationally and internationally significant fishery and ecosystem;

(2) the Great Lakes fishery and ecosystem should be developed and enhanced in a coordinated manner; and

(3) the Great Lakes fishery and ecosystem provides a diversity of opportunities, experiences, and beneficial uses.

(b) Definitions

In this section, the following definitions apply:

(1) Great Lake

(A) In general

The term ''Great Lake'' means Lake Superior, Lake Michigan, Lake Huron (including Lake St. Clair), Lake Erie, and Lake Ontario (including the St. Lawrence River to the 45th parallel of latitude).

(B) Inclusions

The term ''Great Lake'' includes any connecting channel, historically connected tributary, and basin of a lake specified in subparagraph (A).

(2) Great Lakes Commission

The term ''Great Lakes Commission'' means the Great Lakes Commission established by the Great Lakes Basin Compact (82 Stat. 414).

(3) Great Lakes Fishery Commission

The term ''Great Lakes Fishery Commission'' has the meaning given the term ''Commission'' in section 931 of title 16.

(4) Great Lakes State

The term ''Great Lakes State'' means each of the States of Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York, and Wisconsin.

(c) Great Lakes fishery and ecosystem restoration

(1) Support plan

(A) In general

Not later than 1 year after December 11, 2000, the Secretary shall develop a plan for activities of the Corps of Engineers that support the management of Great Lakes fisheries.

(B) Use of existing documents

To the maximum extent practicable, the plan shall make use of and incorporate documents that relate to the Great Lakes and are in existence on December 11, 2000, such as lakewide management plans and remedial action plans.

(C) Cooperation

The Secretary shall develop the plan in cooperation with—

(i) the signatories to the Joint Strategic Plan for Management of the Great Lakes Fisheries; and

(ii) other affected interests.

(2) Projects

The Secretary shall plan, design, and construct projects to support the restoration of the fishery, ecosystem, and beneficial uses of the Great Lakes.

(3) Evaluation program

(A) In general

The Secretary shall develop a program to evaluate the success of the projects carried out under paragraph (2) in meeting fishery and ecosystem restoration goals.

(B) Studies

Evaluations under subparagraph (A) shall be conducted in consultation with the Great Lakes Fishery Commission and appropriate Federal, State, and local agencies.

(d) Cooperative agreements

In carrying out this section, the Secretary may enter into a cooperative agreement with the Great Lakes Commission or any other agency established to facilitate active State participation in management of the Great Lakes.

(e) Relationship to other Great Lakes activities

No activity under this section shall affect the date of completion of any other activity relating to the Great Lakes that is authorized under other law.

(f) Cost sharing

(1) Development of plan

The Federal share of the cost of development of the plan under subsection (c)(1) of this section shall be 65 percent.

(2) Project planning, design, construction, and evaluation

The Federal share of the cost of planning, design, construction, and evaluation of a project under paragraph (2) or (3) of subsection (c) of this section shall be 65 percent.

(3) Non-Federal share

(A) Credit for land, easements, and rights-of-way

The Secretary shall credit the non-Federal interest for the value of any land, easement, right-of-way, dredged material disposal area, or relocation provided for carrying out a project under subsection (c)(2) of this section.

(B) Form

The non-Federal interest may provide up to 50 percent of the non-Federal share required under paragraphs (1) and (2) in the form of services, materials, supplies, or other in-kind contributions.

(4) Operation and maintenance

The operation, maintenance, repair, rehabilitation, and replacement of projects carried out under this section shall be a non-Federal responsibility.

(5) Non-Federal interests

Notwithstanding section 1962d–5b of this title, for any project carried out under this section, a non-Federal interest may include a private interest and a nonprofit entity.

(g) Authorization of appropriations

(1) Development of plan

There is authorized to be appropriated for development of the plan under subsection (c)(1) of this section $300,000.

(2) Other activities

There is authorized to be appropriated to carry out paragraphs (2) and (3) of subsection (c) of this section $100,000,000.

(Pub. L. 106–541, title V, § 506, Dec. 11, 2000, 114 Stat. 2645.)

REFERENCES IN TEXT

The Great Lakes Basin Compact, referred to in subsec. (b)(2), is not classified to the Code.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2000, and not as part of the Water Resources Planning Act which comprises this chapter.

DEFINITIONS

Secretary means the Secretary of the Army, see section 2 of Pub. L. 106–541, set out as a note under section 2201 of Title 33, Navigation and Navigable Waters.

CHAPTER 20—ELECTIVE FRANCHISE

SUBCHAPTER I—GENERALLY

SUBCHAPTER I—GENERALLY

§ 1971. Voting rights

(a) Race, color, or previous condition not to affect right to vote; uniform standards for voting qualifications; errors or omissions from papers; literacy tests; agreements between Attorney General and State or local authorities; definitions

(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall—

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

(C) employ any literacy test as a qualification for voting in any election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 [42 U.S.C. 1974 et seq.]: *Provided, however*, That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

(3) For purposes of this subsection—

(A) the term ''vote'' shall have the same meaning as in subsection (e) of this section;

(B) the phrase ''literacy test'' includes any test of the ability to read, write, understand, or interpret any matter.

(b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

(c) Preventive relief; injunction; rebuttable literacy presumption; liability of United States for costs; State as party defendant

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

(d) Jurisdiction; exhaustion of other remedies

The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

(e) Order qualifying person to vote; application; hearing; voting referees; transmittal of report and order; certificate of qualification; definitions

In any proceeding instituted pursuant to subsection (c) of this section in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a) of this section, the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote.

Notwithstanding any inconsistent provision of State law or the action of any State officer or court, an applicant so declared qualified to vote shall be permitted to vote in any such election. The Attorney General shall cause to be transmitted certified copies of such order to the appropriate election officers. The refusal by any such officer with notice of such order to permit any person so declared qualified to vote to vote at an appropriate election shall constitute contempt of court.

An application for an order pursuant to this subsection shall be heard within ten days, and the execution of any order disposing of such application shall not be stayed if the effect of such stay would be to delay the effectiveness of the order beyond the date of any election at which the applicant would otherwise be enabled to vote.

The court may appoint one or more persons who are qualified voters in the judicial district, to be known as voting referees, who shall subscribe to the oath of office required by section 3331 of title 5, to serve for such period as the court shall determine, to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. In a proceeding before a voting referee, the applicant shall be heard ex parte at such times and places as the court shall direct. His statement under oath shall be prima facie evidence as to his age, residence, and his prior efforts to reg-

ister or otherwise qualify to vote. Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written, shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court.

Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within ten days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report. Upon the expiration of such period, such order shall be entered unless prior to that time there has been filed with the court and served upon all parties a statement of exceptions to such report. Exceptions as to matters of fact shall be considered only if supported by a duly verified copy of a public record or by affidavit of persons having personal knowledge of such facts or by statements or matters contained in such report; those relating to matters of law shall be supported by an appropriate memorandum of law. The issues of fact and law raised by such exceptions shall be determined by the court or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that the proof in support of the exception disclose the existence of a genuine issue of material fact. The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

The court, or at its direction the voting referee, shall issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified.

Any voting referee appointed by the court pursuant to this subsection shall to the extent not inconsistent herewith have all the powers conferred upon a master by rule 53(c) of the Federal Rules of Civil Procedure. The compensation to be allowed to any persons appointed by the court pursuant to this subsection shall be fixed by the court and shall be payable by the United States.

Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally: *Provided, however*, That such applicant shall be qualified to vote under State law. In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case the order shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application. The court may take any other action, and may authorize such referee or such other person as it may designate to take any other action, appropriate or necessary to carry out the provisions of this subsection and to enforce its decrees. This subsection shall in no way be construed as a limitation upon the existing powers of the court.

When used in the subsection, the word ''vote'' includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election; the words ''affected area'' shall mean any subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a) of this section; and the words ''qualified under State law'' shall mean qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist.

(f) Contempt; assignment of counsel; witnesses

Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel.

(g) Three-judge district court: hearing, determination, expedition of action, review by Supreme Court; single-judge district court: hearing, determination, expedition of action

In any proceeding instituted by the United States in any district court of the United States under this section in which the Attorney General requests a finding of a pattern or practice of discrimination pursuant to subsection (e) of this section the Attorney General, at the time he files the complaint, or any defendant in the proceeding, within twenty days after service upon him of the complaint, may file with the clerk of such court a request that a court of three judges be convened to hear and determine the entire case. A copy of the request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to

hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In any proceeding brought under subsection (c) of this section to enforce subsection (b) of this section, or in the event neither the Attorney General nor any defendant files a request for a three-judge court in any proceeding authorized by this subsection, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or, in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(R.S. §2004; Pub. L. 85–315, pt. IV, §131, Sept. 9, 1957, 71 Stat. 637; Pub. L. 86–449, title VI, §601, May 6, 1960, 74 Stat. 90; Pub. L. 88–352, title I, §101, July 2, 1964, 78 Stat. 241; Pub. L. 89–110, §15, Aug. 6, 1965, 79 Stat. 445.)

REFERENCES IN TEXT

The Civil Rights Act of 1960, referred to in subsec. (a)(2)(C), is Pub. L. 86–449, May 6, 1960, 74 Stat. 86, as amended. Title III of the Civil Rights Act of 1960 is classified generally to subchapter II (§1974 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

Rule 53(c) of the Federal Rules of Civil Procedure, referred to in subsec. (e), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

This Act, referred to in subsec. (f), is Pub. L. 85–315, Sept. 9, 1957, 71 Stat. 634, as amended, which enacted sections 1975 to 1975e and 1995 of this title and section 295–1 of former Title 5, Executive Departments and Government Officers and Employees, amended this section and sections 1343 and 1861 of Title 28, repealed section 1993 of this title, and enacted provisions set out as a note under section 1975 of this title.

CODIFICATION

R.S. §2004 derived from act May 31, 1870, ch. 114, §1, 16 Stat. 140.

In subsec. (e), ''section 3331 of title 5'' was substituted for ''Revised Statutes, section 1757 (5 U.S.C. 16)'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 31 of Title 8, Aliens and Nationality.

AMENDMENTS

1965—Subsecs. (a), (c). Pub. L. 89–110, §15(a), struck out ''Federal'' before ''election'' wherever appearing.

Subsecs. (f) to (h). Pub. L. 89–110, §15(b), redesignated subsecs. (g) and (h) as (f) and (g), respectively, and repealed former subsec. (f) which defined ''Federal elections''.

1964—Subsec. (a). Pub. L. 88–352, §101(a), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (c). Pub. L. 88–352, §101(b), provided for a rebuttable literacy presumption when a person has not been adjudged an incompetent and has completed the sixth grade of his schooling.

Subsecs. (f), (g). Pub. L. 88–352, §101(c), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (h). Pub. L. 88–352, §101(d), added subsec. (h).

1960—Subsec. (c). Pub. L. 86–449, §601(b), permitted the State to be joined as a party defendant in cases where officials of a State or subdivision thereof are alleged to have committed acts or practices constituting a deprivation of any rights or privileges secured by subsection (a) of this section, and authorized commencement of the proceeding against the State where an official has resigned or has been relieved of his office and no successor has assumed such office.

Subsecs. (e), (f). Pub. L. 86–449, §601(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1957—Pub. L. 85–315, §131, substituted ''Voting rights'' for ''Race, color, or previous condition not to affect right to vote'' in section catchline, designated existing provisions as subsec. (a), and added subsecs. (b) to (e).

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–344, §1, Aug. 26, 1992, 106 Stat. 921, provided that: ''This Act [amending section 1973aa–1a of this title] may be cited as the 'Voting Rights Language Assistance Act of 1992'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–410, §1, Aug. 28, 1986, 100 Stat. 924, provided that: ''This Act [enacting subchapter I–G of this chapter, sections 608 and 609 of Title 18, Crimes and Criminal Procedure, and section 3406 of Title 39, Postal Service, amending sections 2401, 3627, and 3684 of Title 39, repealing subchapters I–D and I–E of this chapter, and enacting provisions set out as a note under section 1973ff of this title] may be cited as the 'Uniformed and Overseas Citizens Absentee Voting Act'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–205, §1, June 29, 1982, 96 Stat. 131, provided: ''That this Act [enacting section 1973aa–6 of this title, amending sections 1973, 1973b, and 1973aa–1a of this title, and enacting provisions set out as notes under sections 1973, 1973b, 1973aa–1a and 1973aa–6 of this title] may be cited as the 'Voting Rights Act Amendments of 1982'.''

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–285, §1, June 22, 1970, 84 Stat. 314, provided: ''That this Act [designating existing provisions of Pub. L. 89–110 as subchapter I–A, enacting subchapters I–B and I–C of this chapter, and amending sections 1973b and 1973c of this title] may be cited as the 'Voting Rights Act Amendments of 1970'.''

SHORT TITLE OF 1960 AMENDMENT

Pub. L. 86–449, §1, May 6, 1960, 74 Stat. 84, provided that: ''This Act [enacting subchapter II of this chapter and sections 837, 1074, and 1509 of Title 18, Crimes and Criminal Procedure, and amending this section and sections 241 and 640 of Title 20, Education] may be cited as the 'Civil Rights Act of 1960'.''

SHORT TITLE OF 1957 AMENDMENT

Pub. L. 85–315, pt. V, §161, Sept. 9, 1957, 71 Stat. 638, provided that: ''This Act [enacting former chapter 20A of this title and section 1995 of this title and section 295–1 of former Title 5, Executive Departments and Government Officers and Employees, amending this section and sections 1343 and 1861 of Title 28, Judiciary and Judicial Procedure, and repealing section 1993 of this title] may be cited as the 'Civil Rights Act of 1957'.''

SHORT TITLE

Pub. L. 89–110, §1, Aug. 6, 1965, 79 Stat. 437, provided that: ''This Act [enacting subchapters I–A, I–B, and I–C

of this chapter and amending this section] shall be known as the 'Voting Rights Act of 1965'.''

Act Aug. 9, 1955, ch. 656, §1, 69 Stat. 584, which provided that such Act, which enacted subchapter I–D of this chapter and repealed sections 301 to 303, 321 to 331, 341, and 351 to 355 of Title 50, War and National Defense, was to be cited as ''The Federal Voting Assistance Act of 1955'', was repealed by Pub. L. 99–410, title II, §203, Aug. 28, 1986, 100 Stat. 930.

Pub. L. 94–203, §1, Jan. 2, 1976, 89 Stat. 1142, which provided that Pub. L. 94–203, which enacted subchapter I–E of this chapter, was to be cited as ''Overseas Citizens Voting Rights Act of 1975'', was repealed by Pub. L. 99–410, title II, §203, Aug. 28, 1986, 100 Stat. 930.

Pub. L. 98–435, §1, Sept. 28, 1984, 98 Stat. 1678, provided that: ''This Act [enacting subchapter I–F of this chapter] may be cited as the 'Voting Accessibility for the Elderly and Handicapped Act'.''

Pub. L. 103–31, §1, May 20, 1993, 107 Stat. 77, provided that: ''This Act [enacting subchapter I–H of this chapter and section 3629 of Title 39, Postal Service, and amending sections 2401 and 3627 of Title 39] may be cited as the 'National Voter Registration Act of 1993'.''

SEPARABILITY

Section 701 of Pub. L. 86–449 provided that: ''If any provisions of this Act [see Short Title note above] is held invalid, the remainder of this Act shall not be affected thereby.''

VOTER REGISTRATION DRIVES

Pub. L. 98–473, title I, §101(j), Oct. 12, 1984, 98 Stat. 1963, provided that: ''It is the sense of the Congress that—

''(1) voter registration drives should be encouraged by governmental entities at all levels; and

''(2) voter registration drives conducted by State governments on a nonpartisan basis do not violate the provisions of the Intergovernmental Personnel Act (42 U.S.C. 4728, 4763).''

§ 1972. Interference with freedom of elections

No officer of the Army, Navy, or Air Force of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State.

(R.S. §2003.)

CODIFICATION

R.S. §2003 derived from act Feb. 25, 1865, ch. 52, §1, 13 Stat. 437.

Air Force inserted to conform to section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 502, which established a separate Department of the Air Force, and Secretary of Defense Transfer Order No. 40 [App. A(10)], July 22, 1949, which transferred certain functions to the Air Force. Section 207(a), (f) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 8010 to 8013 continued Department of the Air Force under administrative supervision of Secretary of the Air Force.

Section was formerly classified to section 32 of Title 8, Aliens and Nationality.

SUBCHAPTER I–A—ENFORCEMENT OF VOTING RIGHTS

§ 1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

(Pub. L. 89–110, title I, §2, Aug. 6, 1965, 79 Stat. 437; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, §206, Aug. 6, 1975, 89 Stat. 402; Pub. L. 97–205, §3, June 29, 1982, 96 Stat. 134.)

AMENDMENTS

1982—Pub. L. 97–205 redesignated existing provisions as subsec. (a), struck out the comma after ''voting'', substituted ''in a manner which results in a denial or abridgement of'' for ''to deny or abridge'', inserted '', as provided in subsection (b) of this section'' after ''in contravention of the guarantees set forth in section 1973b(f)(2) of this title'', and added subsec. (b).

1975—Pub. L. 94–73 substituted ''race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title'' for ''race or color''.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 6 of Pub. L. 97–205 provided that: ''Except as otherwise provided in this Act, the amendments made by this Act [see Short Title of 1982 Amendment note below] shall take effect on the date of the enactment of this Act [June 29, 1982].''

SHORT TITLE

This subchapter and subchapters I–B and I–C of this chapter known as the ''Voting Rights Act of 1965'', see Short Title note set out under section 1971 of this title.

SEPARABILITY

Section 208 of Pub. L. 94–73 provided that: ''If any amendments made by this Act [enacting sections 1973aa–1a and 1973aa–5 of this title, amending this section and sections 1973a to 1973d, 1973h, 1973i, 1973k, 1973*l*, 1973aa, 1973aa–2, 1973aa–3, 1973bb, 1973bb–1 of this title, and repealing sections 1973bb–2 to 1973bb–4 of this title] or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of the Voting Rights Act of 1965 [this subchapter and subchapters I–B and I–C of this chapter], or the application of such provision to other persons or circumstances shall not be affected by such determination.''

§ 1973a. Proceeding to enforce the right to vote

(a) Authorization by court for appointment of Federal examiners

Whenever the Attorney General or an aggrieved person institutes a proceeding under any

statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the Director of the Office of Personnel Management in accordance with section 1973d of this title to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such voting guarantees or (2) as part of any final judgment if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided*, That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) Suspension of use of tests and devices which deny or abridge the right to vote

If in a proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title, it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) Retention of jurisdiction to prevent commencement of new devices to deny or abridge the right to vote

If in any proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

(Pub. L. 89–110, title I, § 3, Aug. 6, 1965, 79 Stat. 437; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, §§ 205, 206, title IV, §§ 401, 410, Aug. 6, 1975, 89 Stat. 402, 404, 406; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–73 inserted reference to fourteenth amendment in three places, and substituted ''voting guarantees'' for ''guarantees'' in three places, ''Attorney General or an aggrieved person'' for ''Attorney General'', and ''on account of race or color or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title'' for ''on account of race or color''.

Subsec. (b). Pub. L. 94–73 substituted ''Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment'' for ''Attorney General under any statute to enforce the guarantees of the fifteenth amendment'', and ''on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title'' for ''on account of race or color''.

Subsec. (c). Pub. L. 94–73 substituted ''Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment'' for ''Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment'' and ''on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title'' for ''on account of race or color''.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''United States Civil Service Commission'' in subsec. (a) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 1973b. Suspension of the use of tests or devices in determining eligibility to vote

(a) Action by State or political subdivision for declaratory judgment of no denial or abridgement; three-judge district court; appeal to Supreme Court; retention of jurisdiction by three-judge court

(1) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be

denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. A declaratory judgment under this section shall issue only if such court determines that during the ten years preceding the filing of the action, and during the pendency of such action—

(A) no such test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section;

(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote;

(C) no Federal examiners under subchapters I–A to I–C of this chapter have been assigned to such State or political subdivision;

(D) such State or political subdivision and all governmental units within its territory have complied with section 1973c of this title, including compliance with the requirement that no change covered by section 1973c of this title has been enforced without preclearance under section 1973c of this title, and have repealed all changes covered by section 1973c of this title to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment;

(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 1973c of this title, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 1973c of this title, and no such submissions or declaratory judgment actions are pending; and

(F) such State or political subdivision and all governmental units within its territory—

(i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process;

(ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under subchapters I–A to I–C of this chapter; and

(iii) have engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process.

(2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation.

(3) No declaratory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated.

(4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or political subdivision and in appropriate United States post offices. Any aggrieved party may as of right intervene at any stage in such action.

(5) An action pursuant to this subsection shall be heard and determined by a court of three

judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for ten years after judgment and shall reopen the action upon motion of the Attorney General or any aggrieved person alleging that conduct has occurred which, had that conduct occurred during the ten-year periods referred to in this subsection, would have precluded the issuance of a declaratory judgment under this subsection. The court, upon such reopening, shall vacate the declaratory judgment issued under this section if, after the issuance of such declaratory judgment, a final judgment against the State or subdivision with respect to which such declaratory judgment was issued, or against any governmental unit within that State or subdivision, determines that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision which sought a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision, or if, after the issuance of such declaratory judgment, a consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds.

(6) If, after two years from the date of the filing of a declaratory judgment under this subsection, no date has been set for a hearing in such action, and that delay has not been the result of an avoidable delay on the part of counsel for any party, the chief judge of the United States District Court for the District of Columbia may request the Judicial Council for the Circuit of the District of Columbia to provide the necessary judicial resources to expedite any action filed under this section. If such resources are unavailable within the circuit, the chief judge shall file a certificate of necessity in accordance with section 292(d) of title 28.

(7) The Congress shall reconsider the provisions of this section at the end of the fifteen-year period following the effective date of the amendments made by the Voting Rights Act Amendments of 1982.

(8) The provisions of this section shall expire at the end of the twenty-five-year period following the effective date of the amendments made by the Voting Rights Act Amendments of 1982.

(9) Nothing in this section shall prohibit the Attorney General from consenting to an entry of judgment if based upon a showing of objective and compelling evidence by the plaintiff, and upon investigation, he is satisfied that the State or political subdivision has complied with the requirements of subsection (a)(1) of this section. Any aggrieved party may as of right intervene at any stage in such action.

(b) Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register

The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous sentence, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous two sentences, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 1973d or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) "Test or device" defined

The phrase ''test or device'' shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) Required frequency, continuation and probable recurrence of incidents of denial or abridgement to constitute forbidden use of tests or devices

For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e) Completion of requisite grade level of education in American-flag schools in which the predominant classroom language was other than English

(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

(f) Congressional findings of voting discrimination against language minorities; prohibition of English-only elections; other remedial measures

(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

(3) In addition to the meaning given the term under subsection (c) of this section, the term ''test or device'' shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to subsection (b) of this section, the term ''test or device'', as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of subsection (a) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language: *Provided*, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan Natives and American Indians, if the predominate language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

(Pub. L. 89–110, title I, § 4, Aug. 6, 1965, 79 Stat. 438; renumbered title I and amended Pub. L. 91–285, §§ 2–4, June 22, 1970, 84 Stat. 314, 315; Pub. L. 94–73, title I, § 101, title II, §§ 201–203, 206, Aug. 6, 1975, 89 Stat. 400–402; Pub. L. 97–205, § 2(a)–(c), June 29, 1982, 96 Stat. 131–133.)

REFERENCES IN TEXT

The Voting Rights Act Amendments of 1982, referred to in subsec. (a)(7) and (8), is Pub. L. 97–205, June 29, 1982, 96 Stat. 131. The amendments made by that Act are governed by one of three effective dates as follows:

(1) The substitution, in subsec. (a) of this section, of ''nineteen years'' for ''seventeen years'', the insertion, in subsec. (f)(4) of this section, of provisions relating to Alaskan Natives and American Indians if the predominate language is historically unwritten, and the amendment of sections 1973 and 1973aa–1a of this title are effective June 29, 1982.

(2) The enactment of section 1973aa–6 of this title is effective Jan. 1, 1984.

(3) The complete revision of subsec. (a) of this section by section 2(b) of Pub. L. 97–205 is effective on and after Aug. 5, 1984.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–205, § 2(a), (b), substituted ''nineteen years'' for ''seventeen years'' in three places, effective June 29, 1982, and, effective on and after Aug. 5, 1985, completely revised subsec. (a). Prior to such revision, subsec. (a) consisted of 4 undesignated paragraphs reading as follows:

''To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no

such test or device has been used during the seventeen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of seventeen years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after August 6, 1965, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred any where in the territory of such plaintiff. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section through the use of tests or devices have occurred anywhere in the territory of such plaintiff.

''An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section.

''If the Attorney General determines that he has no reason to believe that any such test or device has been used during the seventeen years preceding the filing of an action under the first sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

''If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section, he shall consent to the entry of such judgment.''

Subsec. (f)(4). Pub. L. 97–205, §2(c), inserted ''or in the case of Alaskan Natives and American Indians, if the predominate language is historically unwritten''.

1975—Subsec. (a). Pub. L. 94–73, §§101, 201, 206, in first par., substituted ''seventeen years'' for ''ten years'' in two places, and ''determinations have been made under the first two sentences of subsection (b)'' for ''determinations have been made under subsection (b)'', inserted provisions that no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any state with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such state or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section with the proviso that no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section through the use of tests or devices have occurred anywhere in the territory of such plaintiff, in second par., substituted ''on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section'' for ''on account of race or color'', in third par., substituted ''seventeen years preceding the filing of an action under the first sentence of this subsection'' for ''ten years preceding the filing of the action'', and added fourth par.

Subsec. (b). Pub. L. 94–73, §202, inserted provisions that on and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November, 1972.

Subsec. (d). Pub. L. 94–73, §206, substituted ''on account of race or color or in contravention of the guarantees set forth in section 1973b(f)(2) of this title'' for ''on account of race or color''.

Subsec. (f). Pub. L. 94–73, §203, added subsec. (f).

1970—Subsec. (a). Pub. L. 91–285, §3, substituted ''ten'' for ''five'' years in first and third pars.

Subsec. (b). Pub. L. 91–285, §4, inserted provision respecting the making of factual determinations concerning maintenance of any test or device on Nov. 1, 1968, registration of less than 50 per centum of persons of voting age on Nov. 1, 1968, and voting by less than 50 per centum of such persons in the presidential election of November 1968.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 2(a), (c) of Pub. L. 97–205 effective June 29, 1982, see section 6 of Pub. L. 97–205, set out as a note under section 1973 of this title.

Section 2(b) of Pub. L. 97–205 provided that the amendment made by that section is effective on and after Aug. 5, 1984.

§ 1973c. Alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification

or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court.

(Pub. L. 89–110, title I, § 5, Aug. 6, 1965, 79 Stat. 439; renumbered title I and amended Pub. L. 91–285, §§ 2, 5, June 22, 1970, 84 Stat. 314, 315; Pub. L. 94–73, title II, §§ 204, 206, title IV, § 405, Aug. 6, 1975, 89 Stat. 402, 404.)

AMENDMENTS

1975—Pub. L. 94–73 inserted ''or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972,'' after 1968, substituted ''or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object,'' for ''except that neither the Attorney General's failure to object'', and ''on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title'' for ''on account of race or color'', and inserted provisions that in the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to examine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.

1970—Pub. L. 91–285 inserted ''based upon determinations made under the first sentence of section 1973b(b) of this title'' after ''section 1973b(a) of this title'' and ''or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968,'' after ''1964,''.

§ 1973d. Federal voting examiners; appointment

Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 1973a(a) of this title, or (b) unless a declaratory judgment has been rendered under section 1973b(a) of this title, the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 1973b(b) of this title that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fourteenth or fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fourteenth or fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fourteenth or fifteenth amendment, the Director of the Office of Personnel Management shall appoint as many examiners for such subdivision as the Director

may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 1973g(a) of this title and other persons deemed necessary by the Director to carry out the provisions and purposes of subchapters I–A to I–C of this chapter shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Director of the Office of Personnel Management, and service under subchapters I–A to I–C of this chapter shall not be considered employment for the purposes of any statute administered by the Director of the Office of Personnel Management, except the provisions of subchapter III of chapter 73 of title 5 relating to political activities: *Provided*, That the Director is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

(Pub. L. 89–110, title I, §6, Aug. 6, 1965, 79 Stat. 439; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, §§205, 206, Aug. 6, 1975, 89 Stat. 402; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 103–94, §5, Oct. 6, 1993, 107 Stat. 1005.)

AMENDMENTS

1993—Pub. L. 103–94 substituted ''the provisions of subchapter III of chapter 73 of title 5 relating to political activities'' for ''the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity''.

1975—Pub. L. 94–73 inserted reference to fourteenth amendment in three places and substituted ''on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title'' for ''on account of race or color''.

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103–94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as an Effective Date; Savings Provision note under section 7321 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'', ''Director'', and ''the Director'' substituted in text for ''Civil Service Commission'', ''Commission'', and ''it'', respectively, pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§1973e. Examination of applicants for registration

(a) Form of application; requisite allegation of nonregistration

The examiners for each political subdivision shall, at such places as the Director of the Office of Personnel Management shall by regulation designate, examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Director may require and shall contain allegations that the applicant is not otherwise registered to vote.

(b) Placement of eligible voters on official lists; transmittal of lists

Any person whom the examiner finds, in accordance with instructions received under section 1973g(b) of this title, to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 1973g(a) of this title and shall not be the basis for a prosecution under section 1973j of this title. The examiner shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and in any event not later than the forty-fifth day prior to any election. The appropriate State or local election official shall place such names on the official voting list. Any person whose name appears on the examiner's list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d) of this section: *Provided*, That no person shall be entitled to vote in any election by virtue of subchapters I–A to I–C of this chapter unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

(c) Certificate of eligibility

The examiner shall issue to each person whose name appears on such a list a certificate evidencing his eligibility to vote.

(d) Removal of names from list by examiners

A person whose name appears on such a list shall be removed therefrom by an examiner if (1) such person has been successfully challenged in accordance with the procedure prescribed in section 1973g of this title, or (2) he has been determined by an examiner to have lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States.

(Pub. L. 89–110, title I, §7, Aug. 6, 1965, 79 Stat. 440; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' and ''Director'' substituted for ''Civil Service Commission'' and ''Commission'', respectively, in subsec. (a) pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 1973f. Observers at elections; assignment; duties; reports

Whenever an examiner is serving under subchapters I–A to I–C of this chapter in any political subdivision, the Director of the Office of Personnel Management may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 1973a(a) of this title, to the court.

(Pub. L. 89–110, title I, §8, Aug. 6, 1965, 79 Stat. 441; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended 1978 Reorg. Plan. No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted in text for ''Civil Service Commission'' pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 1973g. Challenges to eligibility listings

(a) Filing of challenge; supplementary affidavits; service upon person challenged; hearing; review

Any challenge to a listing on an eligibility list prepared by an examiner shall be heard and determined by a hearing officer appointed by and responsible to the Director of the Office of Personnel Management and under such rules as the Director shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Director of the Office of Personnel Management shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision of a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

(b) Rules and regulations by Director of the Office of Personnel Management

The times, places, procedures, and form for application and listing pursuant to subchapters I–A to I–C of this chapter and removals from the eligibility lists shall be prescribed by regulations promulgated by the Director of the Office of Personnel Management and the Director shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the Constitution and laws of the United States with respect to (1) the qualifications required for listing, and (2) loss of eligibility to vote.

(c) Subpena power of Director of the Office of Personnel Management; contempt

Upon the request of the applicant or the challenger or on its own motion the Director of the Office of Personnel Management shall have the power to require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter pending before the Director under the authority of this section. In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Director or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(Pub. L. 89–110, title I, §9, Aug. 6, 1965, 79 Stat. 441; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'', ''Director'', and ''the Director'' substituted in text for ''Civil Service Commission'', ''Commission'', and ''it'', respectively, pursuant to Reorg. Plan No. 2 of 1978, §102,

43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 1973h. Poll taxes

(a) Congressional finding and declaration of policy against enforced payment of poll taxes as a device to impair voting rights

The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) Authority of Attorney General to institute actions for relief against enforcement of poll tax requirement

In the exercise of the powers of Congress under section 5 of the fourteenth amendment, section 2 of the fifteenth amendment and section 2 of the twenty-fourth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) of this section and the purposes of this section.

(c) Jurisdiction of three-judge district courts; appeal to Supreme Court

The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

(Pub. L. 89–110, title I, § 10, Aug. 6, 1965, 79 Stat. 442; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title IV, § 408, Aug. 6, 1975, 89 Stat. 405.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 94–73, § 408(2), (3), inserted reference to section 2 of twenty-fourth amendment.

Subsec. (d). Pub. L. 94–73, § 408(1), struck out subsec. (d) which related to post-payment of poll taxes in event of a judicial declaration of constitutionality.

§ 1973i. Prohibited acts

(a) Failure or refusal to permit casting or tabulation of vote

No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of subchapters I–A to I–C of this chapter or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 1973a(a), 1973d, 1973f, 1973g, 1973h, or 1973j(e) of this title.

(c) False information in registering or voting; penalties

Whoever knowingly or willfully gives false information as to his name, address or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: *Provided, however*, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Falsification or concealment of material facts or giving of false statements in matters within jurisdiction of examiners or hearing officers; penalties

Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(e) Voting more than once

(1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office

of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(3) As used in this subsection, the term ''votes more than once'' does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 1973aa–1 of this title, to the extent two ballots are not cast for an election to the same candidacy or office.

(Pub. L. 89–110, title I, § 11, Aug. 6, 1965, 79 Stat. 443; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314; amended Pub. L. 91–405, title II, § 204(e), Sept. 22, 1970, 84 Stat. 853; Pub. L. 94–73, title IV, §§ 404, 409, Aug. 6, 1975, 89 Stat. 404, 405.)

AMENDMENTS

1975—Subsec. (c). Pub. L. 94–73, § 404, inserted reference to Guam and Virgin Islands.

Subsec. (e). Pub. L. 94–73, § 409, added subsec. (e).

1970—Subsec. (c). Pub. L. 91–405 substituted reference to Delegate from District of Columbia for Delegates or Commissioners from territories or possessions.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

§ 1973j. Civil and criminal sanctions

(a) Depriving or attempting to deprive persons of secured rights

Whoever shall deprive or attempt to deprive any person of any right secured by section 1973, 1973a, 1973b, 1973c, 1973e, or 1973h of this title or shall violate section 1973i(a) of this title, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) Destroying, defacing, mutilating, or altering ballots or official voting records

Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Conspiring to violate or interfere with secured rights

Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 1973, 1973a, 1973b, 1973c, 1973e, 1973h, or 1973i(a) of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(d) Civil action by Attorney General for preventive relief; injunctive and other relief

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 1973, 1973a, 1973b, 1973c, 1973e, 1973h, 1973i, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under subchapters I–A to I–C of this chapter to vote and (2) to count such votes.

(e) Proceeding by Attorney General to enforce the counting of ballots of registered and eligible persons who are prevented from voting

Whenever in any political subdivision in which there are examiners appointed pursuant to subchapters I–A to I–C of this chapter any persons allege to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under subchapters I–A to I–C of this chapter or registration by an appropriate election official and (2) their eligibility to vote, they have not been permitted to vote in such election, the examiner shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

(f) Jurisdiction of district courts; exhaustion of administrative or other remedies unnecessary

The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of subchapters I–A to I–C of this chapter shall have exhausted any administrative or other remedies that may be provided by law.

(Pub. L. 89–110, title I, § 12, Aug. 6, 1965, 79 Stat. 443; Pub. L. 90–284, title I, § 103(c), Apr. 11, 1968, 82 Stat. 75; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314.)

AMENDMENTS

1968—Subsecs. (a), (c). Pub. L. 90–284 struck out reference to violation of section 1973i(b) of this title.

§ 1973k. Termination of listing procedures; basis for termination; survey or census by Director of the Census

Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 1973d of this title whenever the Attorney General notifies the Director of the Office of Personnel Management, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment

brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title in such subdivision, and (b), with respect to examiners appointed pursuant to section 1973a(a) of this title, upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney General's refusal to request such survey or census to be arbitrary or unreasonable.

(Pub. L. 89–110, title I, §13, Aug. 6, 1965, 79 Stat. 444; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, §206, Aug. 6, 1975, 89 Stat. 402; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

AMENDMENTS

1975—Pub. L. 94–73 substituted ''on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title'' for ''on account of race or color''.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted in text for ''Civil Service Commission'' pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 1973*l*. Enforcement proceedings

(a) Criminal contempt

All cases of criminal contempt arising under the provisions of subchapters I–A to I–C of this chapter shall be governed by section 1995 of this title.

(b) Jurisdiction of courts for declaratory judgment, restraining orders, or temporary or permanent injunction

No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 1973g of this title shall have jurisdiction to issue any declaratory judgment pursuant to section 1973b or 1973c of this title or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of subchapters I–A to I–C of this chapter or any action of any Federal officer or employee pursuant hereto.

(c) Definitions

(1) The terms ''vote'' or ''voting'' shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this subchapter, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term ''political subdivision'' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(3) The term ''language minorities'' or ''language minority group'' means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.

(d) Subpenas

In any action for a declaratory judgment brought pursuant to section 1973b or 1973c of this title, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: *Provided*, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

(e) Attorney's fees

In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(Pub. L. 89–110, title I, §14, Aug. 6, 1965, 79 Stat. 445; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314; amended Pub. L. 94–73, title II, §207, title IV, §402, Aug. 6, 1975, 89 Stat. 402, 404.)

AMENDMENTS

1975—Subsec. (c)(3). Pub. L. 94–73, §207, added par. (3). Subsec. (e). Pub. L. 94–73, §402, added subsec. (e).

§ 1973m. Omitted

CODIFICATION

Section, Pub. L. 89–110, title I, §16, Aug. 6, 1965, 79 Stat. 445; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314, authorized Attorney General and Secretary of Defense, jointly, to make a study to determine whether laws or practices of any State or States impose preconditions to voting resulting in discrimination against Armed Forces personnel seeking to vote and to make a report to Congress not later than June 30, 1966, with the results of such study and recommendations for legislation.

§ 1973n. Impairment of voting rights of persons holding current registration

Nothing in subchapters I–A to I–C of this chapter shall be construed to deny, impair, or other-

wise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

(Pub. L. 89–110, title I, § 17, Aug. 6, 1965, 79 Stat. 446; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314.)

§ 1973*o*. Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of subchapters I–A to I–C of this chapter.

(Pub. L. 89–110, title I, § 18, Aug. 6, 1965, 79 Stat. 446; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314.)

§ 1973p. Separability

If any provision of subchapters I–A to I–C of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of subchapters I–A to I–C of this chapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Pub. L. 89–110, title I, § 19, Aug. 6, 1965, 79 Stat. 446; renumbered title I, Pub. L. 91–285, § 2, June 22, 1970, 84 Stat. 314.)

SUBCHAPTER I–B—SUPPLEMENTAL PROVISIONS

§ 1973aa. Application of prohibition to other States; "test or device" defined

(a) No citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State.

(b) As used in this section, the term ''test or device'' means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(Pub. L. 89–110, title II, § 201, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 315; amended Pub. L. 94–73, title I, § 102, Aug. 6, 1975, 89 Stat. 400.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–73 struck out ''Prior to August 6, 1975,'' and ''as to which the provisions of section 1973b(a) of this title are not in effect by reason of determinations made under section 1973b(b) of this title''.

§ 1973aa–1. Residence requirements for voting

(a) Congressional findings

The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections—

(1) denies or abridges the inherent constitutional right of citizens to vote for their President and Vice President;

(2) denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines;

(3) denies or abridges the privileges and immunities guaranteed to the citizens of each State under article IV, section 2, clause 1, of the Constitution;

(4) in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they may vote;

(5) has the effect of denying to citizens the equality of civil rights, and due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment; and

(6) does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.

(b) Congressional declaration: durational residency requirement, abolishment; absentee registration and balloting standards, establishment

Upon the basis of these findings, Congress declares that in order to secure and protect the above-stated rights of citizens under the Constitution, to enable citizens to better obtain the enjoyment of such rights, and to enforce the guarantees of the fourteenth amendment, it is necessary (1) to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, and (2) to establish nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections.

(c) Prohibition of denial of right to vote because of durational residency requirement or absentee balloting

No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.

(d) Registration: time for application; absentee balloting: time of application and return of ballots

For the purposes of this section, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification

to vote for the choice of electors for President and Vice President or for President and Vice President in such election; and each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

(e) Change of residence; voting in person or by absentee ballot in State of prior residence

If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President has begun residence in such State or political subdivision after the thirtieth day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision he shall be allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election, (1) in person in the State or political subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (2) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

(f) Absentee registration requirement

No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President shall be denied the right to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election because of any requirement of registration that does not include a provision for absentee registration.

(g) State or local adoption of less restrictive voting practices

Nothing in this section shall prevent any State or political subdivision from adopting less restrictive voting practices than those that are prescribed herein.

(h) "State" defined

The term ''State'' as used in this section includes each of the several States and the District of Columbia.

(i) False registration, and other fraudulent acts and conspiracies: application of penalty for false information in registering or voting

The provisions of section 1973i(c) of this title shall apply to false registration, and other fraudulent acts and conspiracies, committed under this section.

(Pub. L. 89–110, title II, § 202, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 316.)

§ 1973aa–1a. Bilingual election requirements

(a) Congressional findings and declaration of policy

The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

(b) Bilingual voting materials requirement

(1) Generally

Before August 6, 2007, no covered State or political subdivision shall provide voting materials only in the English language.

(2) Covered States and political subdivisions

(A) Generally

A State or political subdivision is a covered State or political subdivision for the purposes of this subsection if the Director of the Census determines, based on census data, that—

(i)(I) more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient;

(II) more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; or

(III) in the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient; and

(ii) the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.

(B) Exception

The prohibitions of this subsection do not apply in any political subdivision that has less than 5 percent voting age limited-English proficient citizens of each language minority which comprises over 5 percent of the statewide limited-English proficient population of voting age citizens, unless the political subdivision is a covered political subdivision independently from its State.

(3) Definitions

As used in this section—

(A) the term ''voting materials'' means registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots;

(B) the term ''limited-English proficient'' means unable to speak or understand

English adequately enough to participate in the electoral process;

(C) the term ''Indian reservation'' means any area that is an American Indian or Alaska Native area, as defined by the Census Bureau for the purposes of the 1990 decennial census;

(D) the term ''citizens'' means citizens of the United States; and

(E) the term ''illiteracy'' means the failure to complete the 5th primary grade.

(4) Special rule

The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

(c) Requirement of voting notices, forms, instructions, assistance, or other materials and ballots in minority language

Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language: *Provided*, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

(d) Action for declaratory judgment permitting English-only materials

Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in the United States District Court for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

(e) Definitions

For purposes of this section, the term ''language minorities'' or ''language minority group'' means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

(Pub. L. 89–110, title II, § 203, as added Pub. L. 94–73, title III, § 301, Aug. 6, 1975, 89 Stat. 402; amended Pub. L. 97–205, §§ 2(d), 4, June 29, 1982, 96 Stat. 134; Pub. L. 102–344, § 2, Aug. 26, 1992, 106 Stat. 921.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–344 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Prior to August 6, 1992, no State or political subdivision shall provide registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language if the Director of the Census determines (i) that more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and (ii) that the illiteracy rate of such persons as a group is higher than the national illiteracy rate: *Provided*, That the prohibitions of this subsection shall not apply in any political subdivision which has less than five percent voting age citizens of each language minority which comprises over five percent of the statewide population of voting age citizens. For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade. The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.''

1982—Subsec. (b). Pub. L. 97–205, § 4, substituted ''Prior to August 6, 1992'' for ''Prior to August 6, 1985''.

Subsec. (c). Pub. L. 97–205, § 2(d), inserted ''and American Indians'' after ''Alaskan natives''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–205 effective June 29, 1982, see section 6 of Pub. L. 97–205, set out as a note under section 1973 of this title.

EXTENSION TO AUGUST 6, 1992, OF PROHIBITION ON USE OF VOTING INSTRUCTIONS, ASSISTANCE, OR OTHER MATERIALS OR INFORMATION IN ENGLISH ONLY; LIMITATIONS BASED ON 1980 CENSUS AND SUBSEQUENT CENSUS DATA

Section 4 of Pub. L. 97–205 provided in part that: ''[T]he extension made by this section [amending subsec. (b) of this section] shall apply only to determinations made by the Director of the Census under clause (i) of section 203(b) [subsec. (b)(i) of this section] for members of a single language minority who do not speak or understand English adequately enough to participate in the electoral process when such a determination can be made by the Director of the Census based on the 1980 and subsequent census data.''

§ 1973aa–2. Judicial relief; civil actions by the Attorney General; three-judge district court; appeal to Supreme Court

Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in section 1973aa of this title, or (b) undertakes to deny the right to vote in any election in violation of section 1973aa–1 or 1973aa–1a of this title, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393[1] of title 28, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall be to the Supreme Court.

(Pub. L. 89–110, title II, § 204, formerly § 203, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 317; renumbered § 204 and amended Pub. L. 94–73, title III, §§ 302, 303, title IV, § 406, Aug. 6, 1975, 89 Stat. 403, 405.)

REFERENCES IN TEXT

Section 1393 of title 28, referred to in text, was repealed by Pub. L. 100–702, title X, § 1001(a), Nov. 19, 1988, 102 Stat. 4664.

[1] See References in Text note below.

AMENDMENTS

1975—Pub. L. 94–73 inserted reference to section 1973aa–1a of this title and substituted reference to section 2284 of title 28 for reference to section 2282 of title 28.

§ 1973aa–3. Penalty

Whoever shall deprive or attempt to deprive any person of any right secured by section 1973aa, 1973aa–1, or 1973aa–1a of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(Pub. L. 89–110, title II, § 205, formerly § 204, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 317; renumbered § 205 and amended Pub. L. 94–73, title III, §§ 302, 304, Aug. 6, 1975, 89 Stat. 403.)

AMENDMENTS

1975—Pub. L. 94–73 inserted reference to section 1973aa–1a of this title.

§ 1973aa–4. Separability

If any provision of subchapters I–A to I–C of this chapter or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of subchapters I–A to I–C of this chapter or the application of such provision to other persons or circumstances shall not be affected by such determination.

(Pub. L. 89–110, title II, § 206, formerly § 205, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 318; renumbered § 206, Pub. L. 94–73, title III, § 302, Aug. 6, 1975, 89 Stat. 403.)

§ 1973aa–5. Survey to compile registration and voting statistics

(a) Elections to House of Representatives and elections designated by United States Commission on Civil Rights

Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision with respect to which the prohibitions of section 1973b(a) of this title are in effect, for every statewide general election for Members of the United States House of Representatives after January 1, 1974; and (ii) in every State or political subdivision for any election designated by the United States Commission on Civil Rights. Such surveys shall only include a count of citizens of voting age, race or color, and national origin, and a determination of the extent to which such persons are registered to vote and have voted in the elections surveyed.

(b) Prohibition against compulsion to disclose personal data; advice of rights

In any survey under subsection (a) of this section no person shall be compelled to disclose his race, color, national origin, political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information.

(c) Report to Congress

The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

(d) Confidentiality of information; penalties

The provisions of section 9 and chapter 7 of title 13 shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section.

(Pub. L. 89–110, title II, § 207, as added Pub. L. 94–73, title IV, § 403, Aug. 6, 1975, 89 Stat. 404.)

§ 1973aa–6. Voting assistance for blind, disabled or illiterate persons

Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

(Pub. L. 89–110, title II, § 208, as added Pub. L. 97–205, § 5, June 29, 1982, 96 Stat. 135.)

EFFECTIVE DATE

Section 5 of Pub. L. 97–205 provided that this section is effective Jan. 1, 1984.

SUBCHAPTER I–C—EIGHTEEN-YEAR-OLD VOTING AGE

§ 1973bb. Enforcement of twenty-sixth amendment

(a)(1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this subchapter, which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(Pub. L. 89–110, title III, § 301, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 318; amended Pub. L. 94–73, title IV, § 407, Aug. 6, 1975, 89 Stat. 405.)

AMENDMENTS

1975—Pub. L. 94–73 substituted provisions authorizing the Attorney General to institute proceedings to enforce twenty-sixth amendment, the jurisdiction of the district courts, and penalties for denial of rights secured by twenty-sixth amendment, for provisions relating to Congressional findings and prohibition of denial of right to vote on account of age.

§ 1973bb–1. "State" defined

As used in this subchapter, the term ''State'' includes the District of Columbia.

(Pub. L. 89–110, title III, § 302, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 318; amended Pub. L. 94–73, title IV, § 407, Aug. 6, 1975, 89 Stat. 405.)

AMENDMENTS

1975—Pub. L. 94–73 substituted definition of State for provisions prohibiting denial of right to vote because of age.

§§ 1973bb–2 to 1973bb–4. Repealed. Pub. L. 94–73, title IV, § 407, Aug. 6, 1975, 89 Stat. 405

Section 1973bb–2, Pub. L. 89–110, title III, § 303, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 318, authorized the Attorney General to institute actions to enforce this subchapter, and provided for jurisdiction of district courts, appeals, and penalties for denial of rights secured by this subchapter. See section 1973bb of this title.

Section 1973bb–3, Pub. L. 89–110, title III, § 304, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 319, defined ''State''. See section 1973bb–1 of this title.

Section 1973bb–4, Pub. L. 89–10, title III, § 305, as added Pub. L. 91–285, § 6, June 22, 1970, 84 Stat. 319, provided for effective date of this subchapter.

SUBCHAPTER I–D—FEDERAL ABSENTEE VOTING ASSISTANCE

PART I—RECOMMENDATION TO STATES

§§ 1973cc to 1973cc–3. Repealed. Pub. L. 99–410, title II, § 203, Aug. 28, 1986, 100 Stat. 930

Section 1973cc, acts Aug. 9, 1955, ch. 656, title I, § 101, 69 Stat. 584; June 18, 1968, Pub. L. 90–343, § 1, 82 Stat. 180; Nov. 4, 1978, Pub. L. 95–593, § 7, 92 Stat. 2537, related to State enactment of absentee voting legislation and to covered persons. See sections 1973ff–1 and 1973ff–3 of this title.

Section 1973cc–1, acts Aug. 9, 1955, ch. 656, title I, § 102, 69 Stat. 584; June 18, 1968, Pub. L. 90–344, § 1(1), 82 Stat. 181; Aug. 6, 1981, Pub. L. 97–31, § 12(19), 95 Stat. 154, related to balloting procedures. See section 1973ff–3 of this title.

Section 1973cc–2, act Aug. 9, 1955, ch. 656, title I, § 103, 69 Stat. 585, related to availability of statistical data to assist Presidential designee in compiling comprehensive information of operations under this subchapter.

Section 1973cc–3, act Aug. 9, 1955, ch. 656, title I, § 104, as added June 18, 1968, Pub. L. 90–344, § 1(2), 82 Stat. 181, related to legal residence for voting purposes of personnel residing on military installations.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to elections taking place after Dec. 31, 1987, see section 204 of Pub. L. 99–410, set out as an Effective Date note under section 1973ff of this title.

PART II—RESPONSIBILITIES OF FEDERAL GOVERNMENT

§§ 1973cc–11 to 1973cc–15. Repealed. Pub. L. 99–410, title II, § 203, Aug. 28, 1986, 100 Stat. 930

Section 1973cc–11, acts Aug. 9, 1955, ch. 656, title II, § 201, 69 Stat. 585; Dec. 21, 1982, Pub. L. 97–375, title II, § 203(b), 96 Stat. 1823, provided for designation of Presidential designee to coordinate and facilitate Federal responsibilities and to report to the President and Congress. See section 1973ff(a) and (b) of this title.

Section 1973cc–12, acts Aug. 9, 1955, ch. 656, title II, § 202, 69 Stat. 586; Nov. 4, 1978, Pub. L. 95–593, § 8, 92 Stat. 2537, related to acquisition and distribution by Presidential designee of current absentee voting information from each State.

Section 1973c–13, acts Aug. 9, 1955, ch. 656, title II, § 203, 69 Stat. 586; June 18, 1968, Pub. L. 90–344, § 1(3), 82 Stat. 181; Nov. 4, 1978, Pub. L. 95–593, § 9, 92 Stat. 2538, related to cooperation of Government officials, drafts of State legislation, and printing and transmitting of post cards. See section 1973ff(c) of this title.

Section 1973cc–14, acts Aug. 9, 1955, ch. 656, title II, § 204, 69 Stat. 586; June 18, 1968, Pub. L. 90–343, § 2, 82 Stat. 181; June 18, 1968, Pub. L. 90–344, § 1(4)–(6), 82 Stat. 182; Nov. 4, 1978, Pub. L. 95–593, § 10, 92 Stat. 2538, related to form and content of post card application. See section 1973ff(b)(2) of this title.

Section 1973cc–15, act Aug. 9, 1955, ch. 656, title II, § 205, 69 Stat. 588, related to use of prior post card form for election of Members of Congress.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to elections taking place after Dec. 31, 1987, see section 204 of Pub. L. 99–410, set out as an Effective Date note under section 1973ff of this title.

PART III—GENERAL PROVISIONS

§§ 1973cc–21 to 1973cc–26. Repealed. Pub. L. 99–410, title II, § 203, Aug. 28, 1986, 100 Stat. 930

Section 1973cc–21, act Aug. 9, 1955, ch. 656, title III, § 301, 69 Stat. 588, provided definitions of terms used in this subchapter. See section 1973ff–6 of this title.

Section 1973cc–22, act Aug. 9, 1955, ch. 656, title III, § 302, 69 Stat. 588, provided free postage for official post cards, ballots, voting instructions, and envelopes. See section 3406 of Title 39, Postal Service.

Section 1973cc–23, act Aug. 9, 1955, ch. 656, title III, § 303, 69 Stat. 588, related to prevention of fraud and coercion.

Section 1973cc–24, act Aug. 9, 1955, ch. 656, title III, § 304, 69 Stat. 589, provided that acts done in good faith do not constitute a violation of any provision of law relating to elective franchise.

Section 1973cc–25, act Aug. 9, 1955, ch. 656, title III, § 305, 69 Stat. 589, provided that no undue influence be used by any officer but that nothing in this subchapter be deemed to prohibit free discussion regarding political issues or candidates for public office. See section 609 of Title 18, Crimes and Criminal Procedure.

Section 1973cc–26, act Aug. 9, 1955, ch. 656, title III, § 308, 69 Stat. 589, authorized appropriations as necessary to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to elections taking place after Dec. 31, 1987, see section 204 of Pub. L. 99–410, set out as an Effective Date note under section 1973ff of this title.

SUBCHAPTER I–E—VOTING RIGHTS OF OVERSEAS CITIZENS

§§ 1973dd to 1973dd–6. Repealed. Pub. L. 99–410, title II, § 203, Aug. 28, 1986, 100 Stat. 930

Section 1973dd, Pub. L. 94–203, § 2, Jan. 2, 1976, 89 Stat. 1142; Pub. L. 95–593, § 1, Nov. 4, 1978, 92 Stat. 2535, provided definitions of terms used in this subchapter. See section 1973ff–6 of this title.

Section 13973dd–1, Pub. L. 94–203, § 3, Jan. 2, 1976, 89 Stat. 1142; Pub. L. 95–593, § 2, Nov. 4, 1978, 92 Stat. 2535, related to qualifications for registration and vote by absentee ballot.

Section 1973dd–2, Pub. L. 94–203, § 4, Jan. 2, 1976, 89 Stat. 1143; Pub. L. 95–593, § 3, Nov. 4, 1978, 92 Stat. 2535,

related to State provisions concerning absentee registration or qualification and absentee ballots and to recommendations to States in carrying out the provisions of this section. See sections 1973ff–1 and 1973ff–3 of this title.

Section 1973dd–2a, Pub. L. 94–203, § 5, as added Pub. L. 95–593, § 4(2), Nov. 4, 1978, 92 Stat. 2535, related to acquisition and dissemination by Presidential designee of current absentee voting information from each State.

Section 1973dd–2b, Pub. L. 94–203, § 6, as added Pub. L. 95–593, § 4(2), Nov. 4, 1978, 92 Stat. 2536, related to printing and transmitting of voting material. See section 1973ff(c)(2) of this title and section 3406 of Title 39, Postal Service.

Section 1973dd–3, Pub. L. 94–203, § 7, formerly § 5, Jan. 2, 1976, 89 Stat. 1143; renumbered § 7, Pub. L. 95–593, § 4(1), Nov. 4, 1978, 92 Stat. 2535, provided for enforcement by the Attorney General, jurisdiction of courts, and penalties for depriving or attempting to deprive persons of secured rights and giving or conspiring to give false information or paying or accepting money either for registration to vote or voting. See section 1973ff–4 of this title and section 608 of Title 18, Crimes and Criminal Procedure.

Section 1973dd–4, Pub. L. 94–203, § 8, formerly § 6, Jan. 2, 1976, 89 Stat. 1143; renumbered § 8, Pub. L. 95–593, § 4(1), Nov. 4, 1978, 92 Stat. 2535, provided that if any provision of this subchapter is held invalid, the validity of the remainder of this subchapter not be affected.

Section 1973dd–5, Pub. L. 94–203, § 9, formerly § 7, Jan. 2, 1976, 89 Stat. 1144; renumbered § 9 and amended Pub. L. 95–593, §§ 4(1), 5, Nov. 4, 1978, 92 Stat. 2535, 2537, related to applicability of this subchapter to State registration requirements and voting practices and provided that exercise of any right to register or vote in Federal elections by any citizen outside the United States not affect the determination of residence or domicile for tax purposes. See section 1973ff–5 of this title.

Section 1973dd–6, Pub. L. 94–203, § 11, as added Pub. L. 95–593, § 6, Nov. 4, 1978, 92 Stat. 2537, authorized appropriations as necessary to carry out this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to elections taking place after Dec. 31, 1987, see section 204 of Pub. L. 99–410, set out as an Effective Date note under section 1973ff of this title.

SUBCHAPTER I–F—VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED

§ 1973ee. Congressional declaration of purpose

It is the intention of Congress in enacting this subchapter to promote the fundamental right to vote by improving access for handicapped and elderly individuals to registration facilities and polling places for Federal elections.

(Pub. L. 98–435, § 2, Sept. 28, 1984, 98 Stat. 1678.)

EFFECTIVE DATE

Section 9 of Pub. L. 98–435 provided that: ''This Act [enacting this subchapter] shall apply with respect to elections taking place after December 31, 1985.''

SHORT TITLE

This subchapter is known as the ''Voting Accessibility for the Elderly and Handicapped Act'', see Short Title note set out under section 1971 of this title.

§ 1973ee–1. Selection of polling facilities

(a) Accessibility to all polling places as responsibility of each political subdivision

Within each State, except as provided in subsection (b) of this section, each political subdivision responsible for conducting elections shall assure that all polling places for Federal elections are accessible to handicapped and elderly voters.

(b) Exception

Subsection (a) of this section shall not apply to a polling place—

(1) in the case of an emergency, as determined by the chief election officer of the State; or

(2) if the chief election officer of the State—

(A) determines that all potential polling places have been surveyed and no such accessible place is available, nor is the political subdivision able to make one temporarily accessible, in the area involved; and

(B) assures that any handicapped or elderly voter assigned to an inaccessible polling place, upon advance request of such voter (pursuant to procedures established by the chief election officer of the State)—

(i) will be assigned to an accessible polling place, or

(ii) will be provided with an alternative means for casting a ballot on the day of the election.

(c) Report to Federal Election Commission

(1) Not later than December 31 of each even-numbered year, the chief election officer of each State shall report to the Federal Election Commission, in a manner to be determined by the Commission, the number of accessible and inaccessible polling places in such State on the date of the preceding general Federal election, and the reasons for any instance of inaccessibility.

(2) Not later than April 30 of each odd-numbered year, the Federal Election Commission shall compile the information reported under paragraph (1) and shall transmit that information to the Congress.

(3) The provisions of this subsection shall only be effective for a period of 10 years beginning on September 28, 1984.

(Pub. L. 98–435, § 3, Sept. 28, 1984, 98 Stat. 1678.)

§ 1973ee–2. Selection of registration facilities

(a) Each State or political subdivision responsible for registration for Federal elections shall provide a reasonable number of accessible permanent registration facilities.

(b) Subsection (a) of this section does not apply to any State that has in effect a system that provides an opportunity for each potential voter to register by mail or at the residence of such voter.

(Pub. L. 98–435, § 4, Sept. 28, 1984, 98 Stat. 1679.)

§ 1973ee–3. Registration and voting aids

(a) Printed instructions; telecommunications devices for the deaf

Each State shall make available registration and voting aids for Federal elections for handicapped and elderly individuals, including—

(1) instructions, printed in large type, conspicuously displayed at each permanent registration facility and each polling place; and

(2) information by telecommunications devices for the deaf.

(b) Medical certification

No notarization or medical certification shall be required of a handicapped voter with respect

to an absentee ballot or an application for such ballot, except that medical certification may be required when the certification establishes eligibility, under State law—

(1) to automatically receive an application or a ballot on a continuing basis; or

(2) to apply for an absentee ballot after the deadline has passed.

(c) Notice of availability of aids

The chief election officer of each State shall provide public notice, calculated to reach elderly and handicapped voters, of the availability of aids under this section, assistance under section 1973aa–6 of this title, and the procedures for voting by absentee ballot, not later than general public notice of registration and voting is provided.

(Pub. L. 98–435, § 5, Sept. 28, 1984, 98 Stat. 1679.)

§ 1973ee–4. Enforcement

(a) Action for declaratory or injunctive relief

If a State or political subdivision does not comply with this subchapter, the United States Attorney General or a person who is personally aggrieved by the noncompliance may bring an action for declaratory or injunctive relief in the appropriate district court.

(b) Prerequisite notice of noncompliance

An action may be brought under this section only if the plaintiff notifies the chief election officer of the State of the noncompliance and a period of 45 days has elapsed since the date of notification.

(c) Attorney fees

Notwithstanding any other provision of law, no award of attorney fees may be made with respect to an action under this section, except in any action brought to enforce the original judgment of the court.

(Pub. L. 98–435, § 6, Sept. 28, 1984, 98 Stat. 1679.)

§ 1973ee–5. Relationship to Voting Rights Act of 1965

This subchapter shall not be construed to impair any right guaranteed by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(Pub. L. 98–435, § 7, Sept. 28, 1984, 98 Stat. 1679.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in text, is Pub. L. 89–110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I–A (§ 1973 et seq.), I–B (§ 1973aa et seq.), and I–C (§ 1973bb et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

§ 1973ee–6. Definitions

As used in this subchapter, the term—

(1) ''accessible'' means accessible to handicapped and elderly individuals for the purpose of voting or registration, as determined under guidelines established by the chief election officer of the State involved;

(2) ''elderly'' means 65 years of age or older;

(3) ''Federal election'' means a general, special, primary, or runoff election for the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(4) ''handicapped'' means having a temporary or permanent physical disability; and

(5) ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possesssion[1] of the United States.

(Pub. L. 98–435, § 8, Sept. 28, 1984, 98 Stat. 1679.)

SUBCHAPTER I–G—REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS IN ELECTIONS FOR FEDERAL OFFICE

PRIOR PROVISIONS

Provisions similar to this subchapter were contained in subchapters I–D and I–E (1973cc et seq. and 1973dd et seq.) of this chapter prior to repeal by Pub. L. 99–410.

§ 1973ff. Federal responsibilities

(a) Presidential designee

The President shall designate the head of an executive department to have primary responsibility for Federal functions under this subchapter.

(b) Duties of Presidential designee

The Presidential designee shall—

(1) consult State and local election officials in carrying out this subchapter, and ensure that such officials are aware of the requirements of this Act;

(2) prescribe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States as required under section 1973ff–1(4) of this title;

(3) carry out section 1973ff–2 of this title with respect to the Federal write-in absentee ballot for absent uniformed services voters and overseas voters in general elections for Federal office;

(4) prescribe a suggested design for absentee ballot mailing envelopes for use by the States as recommended in section 1973ff–3[1] of this title;

(5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions;

(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this subchapter, including a statistical analysis of uniformed services voter participation, a separate statistical analysis of overseas nonmilitary participation, and a description of State-Federal cooperation; and

(7) prescribe a standard oath for use with any document under this subchapter affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury.

[1] So in original. Probably should be ''possession''.

[1] See References in Text note below.

(c) Duties of other Federal officials

(1) In general

The head of each Government department, agency, or other entity shall, upon request of the Presidential designee, distribute balloting materials and otherwise cooperate in carrying out this subchapter.

(2) Administrator of General Services

As directed by the Presidential designee, the Administrator of General Services shall furnish official post card forms (prescribed under subsection (b) of this section) and Federal write-in absentee ballots (prescribed under section 1973ff–2 of this title).

(Pub. L. 99–410, title I, §101, Aug. 28, 1986, 100 Stat. 924; Pub. L. 105–277, div. G, title XXII, §2219(c), Oct. 21, 1998, 112 Stat. 2681–817; Pub. L. 107–107, div. A, title XVI, §1606(a)(2), Dec. 28, 2001, 115 Stat. 1279; Pub. L. 107–252, title VII, §705(a), (b)(1), (c), Oct. 29, 2002, 116 Stat. 1724, 1725; Pub. L. 108–375, div. A, title V, §566(a), Oct. 28, 2004, 118 Stat. 1919.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, as amended, known as the Uniformed and Overseas Citizens Absentee Voting Act, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

Section 1973ff–3 of this title, referred to in subsec. (b)(4), was amended generally by Pub. L. 107–107, div. A, title XVI, §1606(b), Dec. 28, 2001, 115 Stat. 1279, and, as so amended, no longer contains provisions relating to designs for absentee ballot mailing envelopes.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–375 substituted ''absent uniformed services voters and overseas voters'' for ''overseas voters''.

2002—Subsec. (b)(1). Pub. L. 107–252, §705(a), inserted '', and ensure that such officials are aware of the requirements of this Act'' before semicolon at end.

Subsec. (b)(6). Pub. L. 107–252, §705(c), substituted ''a separate statistical analysis'' for ''a general assessment''.

Subsec. (b)(7). Pub. L. 107–252, §705(b)(1), added par. (7).

2001—Subsec. (b)(2). Pub. L. 107–107 substituted ''as required under section 1973ff–1(4) of this title'' for ''as recommended in section 1973ff–3 of this title''.

1998—Subsec. (b)(6). Pub. L. 105–277 substituted ''of uniformed services voter participation, a general assessment of overseas nonmilitary participation,'' for ''of voter participation''.

EFFECTIVE DATE

Section 204 of Pub. L. 99–410 provided that: ''The amendments and repeals made by this Act [see Short Title of 1986 Amendment note set out under section 1971 of this title] shall apply with respect to elections taking place after December 31, 1987.''

SENSE OF CONGRESS REGARDING THE IMPORTANCE OF VOTING

Pub. L. 107–107, div. A, title XVI, §1601, Dec. 28, 2001, 115 Stat. 1274, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that each person who is an administrator of a Federal, State, or local election—

''(1) should be aware of the importance of the ability of each uniformed services voter to exercise the right to vote; and

''(2) should perform that person's duties as an election administrator with the intent to ensure that—

''(A) each uniformed services voter receives the utmost consideration and cooperation when voting;

''(B) each valid ballot cast by such a voter is duly counted; and

''(C) all eligible American voters, regardless of race, ethnicity, disability, the language they speak, or the resources of the community in which they live, should have an equal opportunity to cast a vote and to have that vote counted.

''(b) UNIFORMED SERVICES VOTER DEFINED.—In this section, the term 'uniformed services voter' means—

''(1) a member of a uniformed service (as defined in section 101(a)(5) of title 10, United States Code) in active service;

''(2) a member of the merchant marine (as defined in section 107 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–6)); and

''(3) a spouse or dependent of a member referred to in paragraph (1) or (2) who is qualified to vote.''

ELECTRONIC VOTING DEMONSTRATION PROJECT

Pub. L. 107–107, div. A, title XVI, §1604, Dec. 28, 2001, 115 Stat. 1277, as amended by Pub. L. 108–375, div. A, title V, §567, Oct. 28, 2004, 118 Stat. 1919, provided that:

''(a) ESTABLISHMENT OF DEMONSTRATION PROJECT.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary of Defense shall carry out a demonstration project under which absent uniformed services voters are permitted to cast ballots in the regularly scheduled general election for Federal office for November 2002 through an electronic voting system. The project shall be carried out with participation of sufficient numbers of absent uniformed services voters so that the results are statistically relevant.

''(2) AUTHORITY TO DELAY IMPLEMENTATION.—If the Secretary of Defense determines that the implementation of the demonstration project under paragraph (1) with respect to the regularly scheduled general election for Federal office for November 2002 may adversely affect the national security of the United States, the Secretary may delay the implementation of such demonstration project until the first regularly scheduled general election for Federal office which occurs after the Election Assistance Commission notifies the Secretary that the Commission has established electronic absentee voting guidelines and certifies that it will assist the Secretary in carrying out the project. The Secretary shall notify the Committee on Armed Services and the Committee on Rules and Administration of the Senate and the Committee on Armed Services and the Committee on House Administration of the House of Representatives of any decision to delay implementation of the demonstration project.

''(b) COORDINATION WITH STATE ELECTION OFFICIALS.—The Secretary shall carry out the demonstration project under this section through cooperative agreements with State election officials of States that agree to participate in the project.

''(c) REPORT TO CONGRESS.—Not later than June 1 of the year following the year in which the demonstration project is conducted under this section, the Secretary of Defense shall submit to Congress a report analyzing the demonstration project. The Secretary shall include in the report any recommendations the Secretary considers appropriate for continuing the project on an expanded basis for absent uniformed services voters during the next regularly scheduled general election for Federal office.

''(d) DEFINITIONS.—In this section:

''(1) ABSENT UNIFORMED SERVICES VOTER.—The term 'absent uniformed services voter' has the meaning given that term in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff–6(1)).

''(2) STATE.—The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.''

GOVERNORS' REPORTS ON IMPLEMENTATION OF RECOMMENDATIONS FOR CHANGES IN STATE LAW MADE UNDER FEDERAL VOTING ASSISTANCE PROGRAM

Pub. L. 107–107, div. A, title XVI, §1605, Dec. 28, 2001, 115 Stat. 1277, provided that:

''(a) REPORTS.—(1) Whenever a State receives a uniformed services voting assistance legislative recommendation from the Secretary of Defense, acting as the Presidential designee, the chief executive authority of that State shall, not later than 90 days after receipt of that recommendation, provide a report on the status of implementation of that recommendation by that State.

''(2) If a legislative recommendation referred to in paragraph (1) has been implemented, in whole or in part, by a State, the report of the chief executive authority of that State under that paragraph with respect to that recommendation shall include a description of the changes made to State law to implement the recommendation. If the recommendation has not been implemented, the report shall include a statement of the status of the recommendation before the State legislature and a statement of any recommendation the chief executive officer has made or intends to make to the legislature with respect to that recommendation.

''(3) Any report under paragraph (1) shall be transmitted to the Secretary of Defense, acting as the Presidential designee. The Secretary shall transmit a copy of the response to each Member of Congress who represents that State.

''(b) PERIOD OF APPLICABILITY.—This section applies with respect to any uniformed services voting assistance legislative recommendation transmitted to a State by the Secretary of Defense, acting as the Presidential designee, during the three-year period beginning on the date of the enactment of this Act [Dec. 28, 2001].

''(c) DEFINITIONS.—In this section:

''(1) The term 'uniformed services voting assistance legislative recommendation' means a recommendation of the Presidential designee for a modification in the laws of a State for the purpose of improving the access to the polls of absent uniformed services voters and overseas voters.

''(2) The term 'Presidential designee' means the head of the executive department designated by the President under section 101(a) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(a)).

''(3) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

''(4) The term 'Member of Congress' includes a Delegate or Resident Commissioner to the Congress.''

EX. ORD. NO. 12642. DESIGNATION OF SECRETARY OF DEFENSE AS PRESIDENTIAL DESIGNEE

Ex. Ord. No. 12642, June 8, 1988, 53 F.R. 21975, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including section 101(a) of the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99–410) (''the Act'') [42 U.S.C. 1973ff(a)], it is hereby ordered as follows:

SECTION 1. The Secretary of Defense is hereby designated as the ''Presidential designee'' under Title I of the Act [42 U.S.C. 1973ff et seq.].

SEC. 2. In order to effectuate the purposes of the Act [see Short Title note above], the Secretary of Defense is hereby authorized to delegate any or all of the functions, responsibilities, powers, authority, or discretion devolving upon him in consequence of this Order to any person or persons within the Department of Defense.

RONALD REAGAN.

§ 1973ff–1. State responsibilities

(a) In general

Each State shall—

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit absent uniformed services voters and overseas voters to use Federal write-in absentee ballots (in accordance with section 1973ff–2 of this title) in general elections for Federal office;

(4) use the official post card form (prescribed under section 1973ff of this title) for simultaneous voter registration application and absentee ballot application; and

(5) if the State requires an oath or affirmation to accompany any document under this subchapter, use the standard oath prescribed by the Presidential designee under section 1973ff(b)(7) of this title.

(b) Designation of single State office to provide information on registration and absentee ballot procedures for all voters in State

(1) In general

Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections for Federal office (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) Recommendation regarding use of office to accept and process materials

Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(c) Report on number of absentee ballots transmitted and received

Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002 [42 U.S.C. 15301 et seq.]) on the combined number of absentee bal-

lots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

(d) Registration notification

With respect to each absent uniformed services voter and each overseas voter who submits a voter registration application or an absentee ballot request, if the State rejects the application or request, the State shall provide the voter with the reasons for the rejection.

(Pub. L. 99–410, title I, § 102, Aug. 28, 1986, 100 Stat. 925; Pub. L. 107–107, div. A, title XVI, § 1606(a)(1), Dec. 28, 2001, 115 Stat. 1278; Pub. L. 107–252, title VII, §§ 702, 703(a), 705(b)(2), 707, Oct. 29, 2002, 116 Stat. 1723–1725; Pub. L. 108–375, div. A, title V, § 566(b), Oct. 28, 2004, 118 Stat. 1919.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(2), is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, as amended, known as the Uniformed and Overseas Citizens Absentee Voting Act, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

The Help America Vote Act of 2002, referred to in subsec. (c), is Pub. L. 107–252, Oct. 29, 2002, 116 Stat. 1666, which is classified principally to chapter 146 (§ 15301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15301 of this title and Tables.

AMENDMENTS

2004—Subsec. (a)(3). Pub. L. 108–375 substituted ''absent uniformed services voters and overseas voters'' for ''overseas voters''.

2002—Pub. L. 107–252, § 702, designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (a)(5). Pub. L. 107–252, § 705(b)(2), added par. (5).

Subsec. (c). Pub. L. 107–252, § 703(a), added subsec. (c).

Subsec. (d). Pub. L. 107–252, § 707, added subsec. (d).

2001—Par. (2). Pub. L. 107–107, § 1606(a)(1)(A), struck out ''general, special, primary, or runoff'' before ''election for Federal office'' and ''and'' after semicolon at end and inserted ''and absentee ballot application'' after ''voter registration application''.

Par. (4). Pub. L. 107–107, § 1606(a)(1)(B), (C), added par. (4).

DEVELOPMENT OF STANDARDIZED FORMAT FOR REPORTS

Pub. L. 107–252, title VII, § 703(b), Oct. 29, 2002, 116 Stat. 1724, provided that: ''The Election Assistance Commission, working with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board, shall develop a standardized format for the reports submitted by States and units of local government under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff–1(c)] (as added by subsection (a)), and shall make the format available to the States and units of local government submitting such reports.''

§ 1973ff–2. Federal write-in absentee ballot in general elections for Federal office for absent uniformed services voters and overseas voters

(a) In general

The Presidential designee shall prescribe a Federal write-in absentee ballot (including a secrecy envelope and mailing envelope for such ballot) for use in general elections for Federal office by absent uniformed services voters and overseas voters who make timely application for, and do not receive, States, absentee ballots.

(b) Submission and processing

Except as otherwise provided in this subchapter, a Federal write-in absentee ballot shall be submitted and processed in the manner provided by law for absentee ballots in the State involved. A Federal write-in absentee ballot of an absent uniformed services voter or overseas voter shall not be counted—

(1) in the case of a ballot submitted by an overseas voter who is not an absent uniformed services voter, if the ballot is submitted from any location in the United States;

(2) if the application of the absent uniformed services voter or overseas voter for a State absentee ballot is received by the appropriate State election official after the later of—

(A) the deadline of the State for receipt of such application; or

(B) the date that is 30 days before the general election; or

(3) if a State absentee ballot of the absent uniformed services voter or overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.

(c) Special rules

The following rules shall apply with respect to Federal write-in absentee ballots:

(1) In completing the ballot, the absent uniformed services voter or overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party (in which case the ballot shall be counted for the candidate of that political party).

(2) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate involved.

(3) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot, if the intention of the voter can be ascertained.

(d) Second ballot submission; instruction to absent uniformed services voter or overseas voter

An absent uniformed services voter or overseas voter who submits a Federal write-in absentee ballot and later receives a State absentee ballot, may submit the State absentee ballot. The Presidential designee shall assure that the instructions for each Federal write-in absentee ballot clearly state that an absent uniformed services voter or overseas voter who submits a Federal write-in absentee ballot and later receives and submits a State absentee ballot should make every reasonable effort to inform the appropriate State election official that the voter has submitted more than one ballot.

(e) Use of approved State absentee ballot in place of Federal write-in absentee ballot

The Federal write-in absentee ballot shall not be valid for use in a general election if the State involved provides a State absentee ballot that—

(1) at the request of the State, is approved by the Presidential designee for use in place of the Federal write-in absentee ballot; and

(2) is made available to absent uniformed services voters and overseas voters at least 60 days before the deadline for receipt of the State ballot under State law.

(f) Certain States exempted

A State is not required to permit use of the Federal write-in absentee ballot, if, on and after August 28, 1986, the State has in effect a law providing that—

(1) a State absentee ballot is required to be available to any voter described in section 1973ff–6(5)(A) of this title at least 90 days before the general election involved; and

(2) a State absentee ballot is required to be available to any voter described in section 1973ff–6(5)(B) or (C) of this title, as soon as the official list of candidates in the general election is complete.

(Pub. L. 99–410, title I, § 103, Aug. 28, 1986, 100 Stat. 925; Pub. L. 108–375, div. A, title V, § 566(c), (d), Oct. 28, 2004, 118 Stat. 1919.)

AMENDMENTS

2004—Pub. L. 108–375, § 566(d)(1), substituted ''Federal write-in absentee ballot in general elections for Federal office for absent uniformed services voters and overseas voters'' for ''Federal write-in absentee ballot for overseas voters in general elections for Federal office'' in section catchline.

Subsec. (a). Pub. L. 108–375, § 566(c)(1), substituted ''absent uniformed services voters and overseas voters'' for ''overseas voters''.

Subsec. (b). Pub. L. 108–375, § 566(c)(2), inserted second sentence and struck out former second sentence which read as follows: ''A Federal write-in absentee ballot of an overseas voter shall not be counted—

''(1) if the ballot is submitted from any location in the United States;

''(2) if the application of the overseas voter for a State absentee ballot is received by the appropriate State election official less than 30 days before the general election; or

''(3) if a State absentee ballot of the overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.''

Subsec. (c)(1). Pub. L. 108–375, § 566(c)(3), substituted ''absent uniformed services voter or overseas voter'' for ''overseas voter''.

Subsec. (d). Pub. L. 108–375, § 566(c)(4), (d)(2), substituted ''absent uniformed services voter or overseas voter'' for ''overseas voter'' in heading and two places in text.

Subsec. (e)(2). Pub. L. 108–375, § 566(c)(5), substituted ''absent uniformed services voters and overseas voters'' for ''overseas voters''.

§ 1973ff–3. Use of single application for all subsequent elections

(a) In general

If a State accepts and processes an official post card form (prescribed under section 1973ff of this title) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 1973ff–1(a)(4) of this title) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State through the next 2 regularly scheduled general elections for Federal office (including any runoff elections which may occur as a result of the outcome of such general elections), the State shall provide an absentee ballot to the voter for each such subsequent election.

(b) Exception for voters changing registration

Subsection (a) of this section shall not apply with respect to a voter registered to vote in a State for any election held after the voter notifies the State that the voter no longer wishes to be registered to vote in the State or after the State determines that the voter has registered to vote in another State.

(c) Revision of official post card form

The Presidential designee shall revise the official post card form (prescribed under section 1973ff of this title) to enable a voter using the form to—

(1) request an absentee ballot for each election for Federal office held in a State during a year; or

(2) request an absentee ballot for only the next scheduled election for Federal office held in a State.

(d) No Effect on voter removal programs

Nothing in this section may be construed to prevent a State from removing any voter from the rolls of registered voters in the State under any program or method permitted under section 1973gg–6 of this title.

(e) Prohibition of refusal of applications on grounds of early submission

A State may not refuse to accept or process, with respect to any election for Federal office, any otherwise valid voter registration application or absentee ballot application (including the postcard form prescribed under section 1973ff of this title) submitted by an absent uniformed services voter during a year on the grounds that the voter submitted the application before the first date on which the State otherwise accepts or processes such applications for that year submitted by absentee voters who are not members of the uniformed services.

(Pub. L. 99–410, title I, § 104, Aug. 28, 1986, 100 Stat. 926; Pub. L. 107–107, div. A, title XVI, § 1606(b), Dec. 28, 2001, 115 Stat. 1279; Pub. L. 107–252, title VII, §§ 704, 706(a), Oct. 29, 2002, 116 Stat. 1724, 1725.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–252, § 704, substituted ''through the next 2 regularly scheduled general elections for Federal office (including any runoff elections which may occur as a result of the outcome of such general elections), the State shall provide an absentee ballot to the voter for each such subsequent election'' for ''during that year, the State shall provide an absentee ballot to the voter for each subsequent election for Federal office held in the State during that year''.

Subsec. (e). Pub. L. 107–252, § 706(a), added subsec. (e).

2001—Pub. L. 107–107 amended section catchline and text generally, substituting provisions relating to use

of single application for all subsequent elections for provisions relating to recommendations to States to maximize access to polls by absent uniformed services voters and overseas voters.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–252, title VII, §706(b), Oct. 29, 2002, 116 Stat. 1725, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to elections for Federal office that occur after January 1, 2004.''

§ 1973ff–4. Enforcement

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this subchapter.

(Pub. L. 99–410, title I, §105, Aug. 28, 1986, 100 Stat. 927.)

§ 1973ff–5. Effect on certain other laws

The exercise of any right under this subchapter shall not affect, for purposes of any Federal, State, or local tax, the residence or domicile of a person exercising such right.

(Pub. L. 99–410, title I, §106, Aug. 28, 1986, 100 Stat. 927.)

§ 1973ff–6. Definitions

As used in this subchapter, the term—

(1) ''absent uniformed services voter'' means—

(A) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(B) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

(2) ''balloting materials'' means official post card forms (prescribed under section 1973ff of this title), Federal write-in absentee ballots (prescribed under section 1973ff–2 of this title), and any State balloting materials that, as determined by the Presidential designee, are essential to the carrying out of this subchapter;

(3) ''Federal office'' means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(4) ''member of the merchant marine'' means an individual (other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways)—

(A) employed as an officer or crew member of a vessel documented under the laws of the United States, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States; or

(B) enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel;

(5) ''overseas voter'' means—

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa;

(7) ''uniformed services'' means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration; and

(8) ''United States'', where used in the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

(Pub. L. 99–410, title I, §107, Aug. 28, 1986, 100 Stat. 927.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SUBCHAPTER I–H—NATIONAL VOTER REGISTRATION

§ 1973gg. Findings and purposes

(a) Findings

The Congress finds that—

(1) the right of citizens of the United States to vote is a fundamental right;

(2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and

(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

(b) Purposes

The purposes of this subchapter are—

(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;

(2) to make it possible for Federal, State, and local governments to implement this sub-

chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;

(3) to protect the integrity of the electoral process; and

(4) to ensure that accurate and current voter registration rolls are maintained.

(Pub. L. 103–31, § 2, May 20, 1993, 107 Stat. 77.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 103–31, May 20, 1993, 107 Stat. 77, as amended, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

EFFECTIVE DATE

Section 13 of Pub. L. 103–31 provided that: ''This Act [see Short Title note set out under section 1971 of this title] shall take effect—

''(1) with respect to a State that on the date of enactment of this Act [May 20, 1993] has a provision in the constitution of the State that would preclude compliance with this Act unless the State maintained separate Federal and State official lists of eligible voters, on the later of—

''(A) January 1, 1996; or

''(B) the date that is 120 days after the date by which, under the constitution of the State as in effect on the date of enactment of this Act, it would be legally possible to adopt and place into effect any amendments to the constitution of the State that are necessary to permit such compliance with this Act without requiring a special election; and

''(2) with respect to any State not described in paragraph (1), on January 1, 1995.''

SHORT TITLE

This subchapter is known as the ''National Voter Registration Act of 1993'', see Short Title note set out under section 1971 of this title.

PROOF OF CITIZENSHIP

Pub. L. 104–132, title IX, § 902, Apr. 24, 1996, 110 Stat. 1317, provided that: ''Notwithstanding any other provision of law, a Federal, State, or local government agency may not use a voter registration card (or other related document) that evidences registration for an election for Federal office, as evidence to prove United States citizenship.''

Similar provisions were contained in section 117 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37.

§ 1973gg–1. Definitions

As used in this subchapter—

(1) the term ''election'' has the meaning stated in section 431(1) of title 2;

(2) the term ''Federal office'' has the meaning stated in section 431(3) of title 2;

(3) the term ''motor vehicle driver's license'' includes any personal identification document issued by a State motor vehicle authority;

(4) the term ''State'' means a State of the United States and the District of Columbia; and

(5) the term ''voter registration agency'' means an office designated under section 1973gg–5(a)(1) of this title to perform voter registration activities.

(Pub. L. 103–31, § 3, May 20, 1993, 107 Stat. 77.)

§ 1973gg–2. National procedures for voter registration for elections for Federal office

(a) In general

Except as provided in subsection (b) of this section, notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office—

(1) by application made simultaneously with an application for a motor vehicle driver's license pursuant to section 1973gg–3 of this title;

(2) by mail application pursuant to section 1973gg–4 of this title; and

(3) by application in person—

(A) at the appropriate registration site designated with respect to the residence of the applicant in accordance with State law; and

(B) at a Federal, State, or nongovernmental office designated under section 1973gg–5 of this title.

(b) Nonapplicability to certain States

This subchapter does not apply to a State described in either or both of the following paragraphs:

(1) A State in which, under law that is in effect continuously on and after August 1, 1994, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) A State in which, under law that is in effect continuously on and after August 1, 1994, or that was enacted on or prior to August 1, 1994, and by its terms is to come into effect upon the enactment of this subchapter, so long as that law remains in effect, all voters in the State may register to vote at the polling place at the time of voting in a general election for Federal office.

(Pub. L. 103–31, § 4, May 20, 1993, 107 Stat. 78; Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, amended Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37.)

REFERENCES IN TEXT

Upon the enactment of this subchapter, referred to in subsec. (b)(2), means the date of enactment of Pub. L. 103–31, which was approved May 20, 1993.

CODIFICATION

Amendment by Pub. L. 104–91 is based on section 116(a) of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, which was enacted into law by Pub. L. 104–91.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–91, as amended by Pub. L. 104–99, substituted ''August 1, 1994'' for ''March 11, 1993'' wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 116(b) of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104–91, title I, § 101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104–99, title II, § 211, Jan. 26, 1996, 110 Stat. 37, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in the provisions of the National Voter Registration Act of 1993 [Pub. L. 103–31].''

§ 1973gg–3. Simultaneous application for voter registration and application for motor vehicle driver's license

(a) In general

(1) Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.

(2) An application for voter registration submitted under paragraph (1) shall be considered as updating any previous voter registration by the applicant.

(b) Limitation on use of information

No information relating to the failure of an applicant for a State motor vehicle driver's license to sign a voter registration application may be used for any purpose other than voter registration.

(c) Forms and procedures

(1) Each State shall include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license.

(2) The voter registration application portion of an application for a State motor vehicle driver's license—

(A) may not require any information that duplicates information required in the driver's license portion of the form (other than a second signature or other information necessary under subparagraph (C));

(B) may require only the minimum amount of information necessary to—

(i) prevent duplicate voter registrations; and

(ii) enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(C) shall include a statement that—

(i) states each eligibility requirement (including citizenship);

(ii) contains an attestation that the applicant meets each such requirement; and

(iii) requires the signature of the applicant, under penalty of perjury;

(D) shall include, in print that is identical to that used in the attestation portion of the application—

(i) the information required in section 1973gg–6(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes; and

(E) shall be made available (as submitted by the applicant, or in machine readable or other format) to the appropriate State election official as provided by State law.

(d) Change of address

Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.

(e) Transmittal deadline

(1) Subject to paragraph (2), a completed voter registration portion of an application for a State motor vehicle driver's license accepted at a State motor vehicle authority shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

(Pub. L. 103–31, § 5, May 20, 1993, 107 Stat. 78.)

§ 1973gg–4. Mail registration

(a) Form

(1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 1973gg–7(a)(2) of this title for the registration of voters in elections for Federal office.

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in section 1973gg–7(b) of this title for the registration of voters in elections for Federal office.

(3) A form described in paragraph (1) or (2) shall be accepted and used for notification of a registrant's change of address.

(b) Availability of forms

The chief State election official of a State shall make the forms described in subsection (a) of this section available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

(c) First-time voters

(1) Subject to paragraph (2), a State may by law require a person to vote in person if—

(A) the person was registered to vote in a jurisdiction by mail; and

(B) the person has not previously voted in that jurisdiction.

(2) Paragraph (1) does not apply in the case of a person—

(A) who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.];

(B) who is provided the right to vote otherwise than in person under section 1973ee–1(b)(2)(B)(ii) of this title; or

(C) who is entitled to vote otherwise than in person under any other Federal law.

(d) Undelivered notices

If a notice of the disposition of a mail voter registration application under section 1973gg–6(a)(2) of this title is sent by nonforwardable mail and is returned undelivered, the registrar may proceed in accordance with section 1973gg–6(d) of this title.

(Pub. L. 103–31, § 6, May 20, 1993, 107 Stat. 79.)

REFERENCES IN TEXT

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsec. (c)(2)(A), is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, as amended, which is classified principally to subchapter I–G (§ 1973ff et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

§ 1973gg–5. Voter registration agencies

(a) Designation

(1) Each State shall designate agencies for the registration of voters in elections for Federal office.

(2) Each State shall designate as voter registration agencies—

(A) all offices in the State that provide public assistance; and

(B) all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.

(3)(A) In addition to voter registration agencies designated under paragraph (2), each State shall designate other offices within the State as voter registration agencies.

(B) Voter registration agencies designated under subparagraph (A) may include—

(i) State or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described in paragraph (2)(B) that provide services to persons with disabilities; and

(ii) Federal and nongovernmental offices, with the agreement of such offices.

(4)(A) At each voter registration agency, the following services shall be made available:

(i) Distribution of mail voter registration application forms in accordance with paragraph (6).

(ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.

(iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.

(B) If a voter registration agency designated under paragraph (2)(B) provides services to a person with a disability at the person's home, the agency shall provide the services described in subparagraph (A) at the person's home.

(5) A person who provides service described in paragraph (4) shall not—

(A) seek to influence an applicant's political preference or party registration;

(B) display any such political preference or party allegiance;

(C) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(D) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(6) A voter registration agency that is an office that provides service or assistance in addition to conducting voter registration shall—

(A) distribute with each application for such service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance—

(i) the mail voter registration application form described in section 1973gg–7(a)(2) of this title, including a statement that—

(I) specifies each eligibility requirement (including citizenship);

(II) contains an attestation that the applicant meets each such requirement; and

(III) requires the signature of the applicant, under penalty of perjury; or

(ii) the office's own form if it is equivalent to the form described in section 1973gg–7(a)(2) of this title,

unless the applicant, in writing, declines to register to vote;

(B) provide a form that includes—

(i) the question, ''If you are not registered to vote where you live now, would you like to apply to register to vote here today?'';

(ii) if the agency provides public assistance, the statement, ''Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.'';

(iii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), together with the statement (in close proximity to the boxes and in prominent type), ''IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.'';

(iv) the statement, ''If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.''; and

(v) the statement, ''If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with _____.'', the blank being filled by the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed; and

(C) provide to each applicant who does not decline to register to vote the same degree of

assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.

(7) No information relating to a declination to register to vote in connection with an application made at an office described in paragraph (6) may be used for any purpose other than voter registration.

(b) Federal Government and private sector cooperation

All departments, agencies, and other entities of the executive branch of the Federal Government shall, to the greatest extent practicable, cooperate with the States in carrying out subsection (a) of this section, and all nongovernmental entities are encouraged to do so.

(c) Armed Forces recruitment offices

(1) Each State and the Secretary of Defense shall jointly develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces of the United States.

(2) A recruitment office of the Armed Forces of the United States shall be considered to be a voter registration agency designated under subsection (a)(2) of this section for all purposes of this subchapter.

(d) Transmittal deadline

(1) Subject to paragraph (2), a completed registration application accepted at a voter registration agency shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

(Pub. L. 103–31, § 7, May 20, 1993, 107 Stat. 80.)

EX. ORD. NO. 12926. IMPLEMENTATION OF NATIONAL VOTER REGISTRATION ACT OF 1993

Ex. Ord. No. 12926, Sept. 12, 1994, 59 F.R. 47227, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to ensure, as required by section 7(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg) [42 U.S.C. 1973gg–5(b)] (''the Act''), that departments, agencies, and other entities of the executive branch of the Federal Government cooperate with the States in carrying out the Act's requirements, it is hereby ordered as follows:

SECTION 1. *Assistance to States*. To the greatest extent practicable, departments, agencies, and other entities of the executive branch of the Federal Government that provide, in whole or in part, funding, grants, or assistance for, or with respect to the administration of, any program of public assistance or services to persons with disabilities within the meaning of section 7(a) of the Act shall: (a) provide, to State agencies administering any such program, guidance for the implementation of the requirements of section 7 of the Act, including guidance for use and distribution of voter registration forms in connection with applications for service;

(b) assist each such State agency administering any such program with the costs of implementation of the Act [42 U.S.C. 1973gg et seq.], consistent with legal authority and the availability of funds, and promptly indicate to each State agency the extent to which such assistance will be made available; and

(c) designate an office or staff to be available to provide technical assistance to such State agencies.

SEC. 2. *Armed Forces Recruitment Offices*. The Secretary of Defense is directed to work with the appropriate State elections authorities in each State to develop procedures for persons to apply to register to vote at Armed Forces recruitment offices as required by section 7(c) of the Act.

SEC. 3. *Acceptance of Designation*. To the greatest extent practicable, departments, agencies, or other entities of the executive branch of the Federal Government, if requested to be designated as a voter registration agency pursuant to section 7(a)(3)(B)(ii) of the Act, shall: (a) agree to such a designation if agreement is consistent with the department's, agency's, or entity's legal authority and availability of funds; and

(b) ensure that all of its offices that are located in a particular State will have available to the public at least one of the national voter registration forms that are required under the Act to be available in that State.

WILLIAM J. CLINTON.

§ 1973gg–6. Requirements with respect to administration of voter registration

(a) In general

In the administration of voter registration for elections for Federal office, each State shall—

(1) ensure that any eligible applicant is registered to vote in an election—

(A) in the case of registration with a motor vehicle application under section 1973gg–3 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 1973gg–4 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;

(3) provide that the name of a registrant may not be removed from the official list of eligible voters except—

(A) at the request of the registrant;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

(C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineli-

gible voters from the official lists of eligible voters by reason of—

(A) the death of the registrant; or

(B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d) of this section;

(5) inform applicants under sections 1973gg–3, 1973gg–4, and 1973gg–5 of this title of—

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; and

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(b) Confirmation of voter registration

Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.); and

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) of this section to remove an individual from the official list of eligible voters if the individual—

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

(c) Voter removal programs

(1) A State may meet the requirement of subsection (a)(4) of this section by establishing a program under which—

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that—

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) of this section to confirm the change of address.

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude—

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a) of this section; or

(ii) correction of registration records pursuant to this subchapter.

(d) Removal of names from voting rolls

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant—

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B) of this section. If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

(e) Procedure for voting following failure to return card

(1) A registrant who has moved from an address in the area covered by a polling place to an

address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

(2)(A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant—

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

(ii)(I) shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(II), voting at the other locations described in subparagraph (A) need not be provided as options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

(f) Change of voting address within a jurisdiction

In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d) of this section.

(g) Conviction in Federal court

(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 1973gg–8 of this title of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include—

(A) the name of the offender;

(B) the offender's age and residence address;

(C) the date of entry of the judgment;

(D) a description of the offenses of which the offender was convicted; and

(E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

(h) Omitted

(i) Public disclosure of voter registration activities

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) of this section are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

(j) "Registrar's jurisdiction" defined

For the purposes of this section, the term ''registrar's jurisdiction'' means—

(1) an incorporated city, town, borough, or other form of municipality;

(2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or

(3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

(Pub. L. 103–31, § 8, May 20, 1993, 107 Stat. 82; Pub. L. 107–252, title IX, § 903, Oct. 29, 2002, 116 Stat. 1728.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89–110, Aug. 6, 1965, 79 Stat. 437, as

amended, which is classified generally to subchapters I–A (§ 1973 et seq.), I–B (§ 1973aa et seq.), and I–C (§ 1973bb et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

CODIFICATION

Section is comprised of section 8 of Pub. L. 103–31. Subsec. (h) of section 8 of Pub. L. 103–31 enacted section 3629 of Title 39, Postal Service, and amended sections 2401 and 3627 of Title 39.

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–252 inserted before period at end ", except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) of this section to remove an individual from the official list of eligible voters if the individual—

"(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

"(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office".

§ 1973gg–7. Federal coordination and regulations

(a) In general

The Election Assistance Commission—

(1) in consultation with the chief election officers of the States, shall prescribe such regulations as are necessary to carry out paragraphs (2) and (3);

(2) in consultation with the chief election officers of the States, shall develop a mail voter registration application form for elections for Federal office;

(3) not later than June 30 of each odd-numbered year, shall submit to the Congress a report assessing the impact of this subchapter on the administration of elections for Federal office during the preceding 2-year period and including recommendations for improvements in Federal and State procedures, forms, and other matters affected by this subchapter; and

(4) shall provide information to the States with respect to the responsibilities of the States under this subchapter.

(b) Contents of mail voter registration form

The mail voter registration form developed under subsection (a)(2) of this section—

(1) may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(2) shall include a statement that—

(A) specifies each eligibility requirement (including citizenship);

(B) contains an attestation that the applicant meets each such requirement; and

(C) requires the signature of the applicant, under penalty of perjury;

(3) may not include any requirement for notarization or other formal authentication; and

(4) shall include, in print that is identical to that used in the attestation portion of the application—

(i) the information required in section 1973gg–6(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(Pub. L. 103–31, § 9, May 20, 1993, 107 Stat. 87; Pub. L. 107–252, title VIII, § 802(b), Oct. 29, 2002, 116 Stat. 1726.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–252 substituted "Election Assistance Commission" for "Federal Election Commission" in introductory provisions.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–252 effective upon appointment of all members of the Election Assistance Commission under section 15323 of this title, see section 15534(a) of this title.

§ 1973gg–8. Designation of chief State election official

Each State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this subchapter.

(Pub. L. 103–31, § 10, May 20, 1993, 107 Stat. 87.)

§ 1973gg–9. Civil enforcement and private right of action

(a) Attorney General

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this subchapter.

(b) Private right of action

(1) A person who is aggrieved by a violation of this subchapter may provide written notice of the violation to the chief election official of the State involved.

(2) If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.

(3) If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action under paragraph (2).

(c) Attorney's fees

In a civil action under this section, the court may allow the prevailing party (other than the United States) reasonable attorney fees, including litigation expenses, and costs.

(d) Relation to other laws

(1) The rights and remedies established by this section are in addition to all other rights and

remedies provided by law, and neither the rights and remedies established by this section nor any other provision of this subchapter shall supersede, restrict, or limit the application of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(2) Nothing in this subchapter authorizes or requires conduct that is prohibited by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(Pub. L. 103–31, § 11, May 20, 1993, 107 Stat. 88.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (d), is Pub. L. 89–110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I–A (§ 1973 et seq.), I–B (§ 1973aa et seq.), and I–C (§ 1973bb et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

§ 1973gg–10. Criminal penalties

A person, including an election official, who in any election for Federal office—

(1) knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for—

(A) registering to vote, or voting, or attempting to register or vote;

(B) urging or aiding any person to register to vote, to vote, or to attempt to register or vote; or

(C) exercising any right under this subchapter; or

(2) knowingly and willfully deprives, defrauds, or attempts to deprive or defraud the residents of a State of a fair and impartially conducted election process, by—

(A) the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held; or

(B) the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held,

shall be fined in accordance with title 18 (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31), notwithstanding any other law), or imprisoned not more than 5 years, or both.

(Pub. L. 103–31, § 12, May 20, 1993, 107 Stat. 88.)

SUBCHAPTER II—FEDERAL ELECTION RECORDS

§ 1974. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(Pub. L. 86–449, title III, § 301, May 6, 1960, 74 Stat. 88.)

§ 1974a. Theft, destruction, concealment, mutilation, or alteration of records or papers; penalties

Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 1974 of this title to be retained and preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(Pub. L. 86–449, title III, § 302, May 6, 1960, 74 Stat. 88.)

§ 1974b. Demand for records or papers by Attorney General or representative; statement of basis and purpose

Any record or paper required by section 1974 of this title to be retained and preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or his representative. This demand shall contain a statement of the basis and the purpose therefor.

(Pub. L. 86–449, title III, § 303, May 6, 1960, 74 Stat. 88.)

§ 1974c. Disclosure of records or papers

Unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General, shall disclose any record or paper produced pursuant to this subchapter, or any reproduction or copy, except to Congress and any committee thereof, governmental agencies, and in the presentation of any case or proceeding before any court or grand jury.

(Pub. L. 86–449, title III, § 304, May 6, 1960, 74 Stat. 88.)

§ 1974d. Jurisdiction to compel production of records or papers

The United States district court for the district in which a demand is made pursuant to section 1974b of this title, or in which a record or paper so demanded is located, shall have ju-

risdiction by appropriate process to compel the production of such record or paper.

(Pub. L. 86–449, title III, § 305, May 6, 1960, 74 Stat. 88.)

§ 1974e. "Officer of election" defined

As used in this subchapter, the term ''officer of election'' means any person who, under color of any Federal, State, Commonwealth, or local law, statute, ordinance, regulation, authority, custom, or usage, performs or is authorized to perform any function, duty, or task in connection with any application, registration, payment of poll tax, or other act requisite to voting in any general, special, or primary election at which votes are cast for candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico.

(Pub. L. 86–449, title III, § 306, May 6, 1960, 74 Stat. 88.)

CHAPTER 20A—CIVIL RIGHTS COMMISSION

CODIFICATION

A prior chapter 20A, which provided for the establishment of a Commission on Civil Rights in the executive branch, was comprised of part I (§§ 101–106) of Pub. L. 85–315, Sept. 9, 1957, 71 Stat. 634, and was omitted from the Code in view of the termination of the Commission 60 days after the submission of the Commission's final report which was due not later than Sept. 30, 1983.

§ 1975. Establishment of Commission

(a) Generally

There is established the United States Commission on Civil Rights (hereinafter in this chapter referred to as the ''Commission'').

(b) Membership

The Commission shall be composed of 8 members. Not more than 4 of the members shall at any one time be of the same political party. The initial membership of the Commission shall be the members of the United States Commission on Civil Rights on September 30, 1994. Thereafter vacancies in the membership of the Commission shall continue to be appointed as follows:

(1) 4 members of the Commission shall be appointed by the President.

(2) 2 members of the Commission shall be appointed by the President pro tempore of the Senate, upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

(3) 2 members of the Commission shall be appointed by the Speaker of the House of Representatives upon the recommendations of the majority leader and the minority leader, and of the members appointed not more than one shall be appointed from the same political party.

(c) Terms

The term of office of each member of the Commission shall be 6 years. The term of each member of the Commission in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.

(d) Chairperson

(1) Except as provided in paragraphs (2) and (3), the individuals serving as Chairperson and Vice Chairperson of the United States Commission on Civil Rights on September 30, 1994 shall initially fill those roles on the Commission.

(2) Thereafter the President may, with the concurrence of a majority of the Commission's members, designate a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members.

(3) The President shall, with the concurrence of a majority of the Commission's members, fill a vacancy by designating a Chairperson or Vice Chairperson, as the case may be, from among the Commission's members.

(4) The Vice Chairperson shall act in place of the Chairperson in the absence of the Chairperson.

(e) Removal of members

The President may remove a member of the Commission only for neglect of duty or malfeasance in office.

(f) Quorum

5 members of the Commission constitute a quorum of the Commission.

(Pub. L. 98–183, § 2, Nov. 30, 1983, 97 Stat. 1301; Pub. L. 102–167, § 5, Nov. 26, 1991, 105 Stat. 1101; Pub. L. 103–419, § 2, Oct. 25, 1994, 108 Stat. 4338.)

PRIOR PROVISIONS

A prior section 1975, Pub. L. 85–315, pt. I, § 101, Sept. 9, 1957, 71 Stat. 634, related to establishment, membership, etc., of Commission on Civil Rights. See Codification note set out preceding this section.

AMENDMENTS

1994—Pub. L. 103–419 amended section generally, substituting provisions relating to establishment of United States Commission on Civil Rights for provisions relating to Commission on Civil Rights.

1991—Subsec. (c). Pub. L. 102–167 substituted ''Chairperson'' for ''Chairman'' wherever appearing.

SHORT TITLE OF 1994 AMENDMENT

Section 1 of Pub. L. 103–419 provided that: ''This Act [amending this section and sections 1975a to 1975d of

this title, omitting former sections 1975e and 1975f of this title, and amending provisions set out as a note below] may be cited as the 'Civil Rights Commission Amendments Act of 1994'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–400, §1, Oct. 7, 1992, 106 Stat. 1955, provided that: ''This Act [amending section 1975e of this title] may be cited as the 'United States Commission on Civil Rights Authorization Act of 1992'.''

SHORT TITLE OF 1991 AMENDMENT

Section 1 of Pub. L. 102–167 provided that: ''This Act [amending this section and sections 1975a and 1975c to 1975f of this title] may be cited as the 'United States Commission on Civil Rights Reauthorization Act of 1991'.''

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–180, §1, Nov. 28, 1989, 103 Stat. 1325, provided that: ''This Act [amending sections 1975e and 1975f of this title] may be cited as the 'Civil Rights Commission Reauthorization Act of 1989'.''

SHORT TITLE

Section 1 of Pub. L. 98–183, as amended by Pub. L. 103–419, §2, Oct. 25, 1994, 108 Stat. 4338, provided that: ''This Act [enacting this chapter] may be cited as the 'Civil Rights Commission Act of 1983'.''

§ 1975a. Duties of Commission

(a) Generally

The Commission—

(1) shall investigate allegations in writing under oath or affirmation relating to deprivations—

(A) because of color, race, religion, sex, age, disability, or national origin; or

(B) as a result of any pattern or practice of fraud;

of the right of citizens of the United States to vote and have votes counted; and

(2) shall—

(A) study and collect information relating to;

(B) make appraisals of the laws and policies of the Federal Government with respect to;

(C) serve as a national clearinghouse for information relating to; and

(D) prepare public service announcements and advertising campaigns to discourage;

discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice.

(b) Limitations on investigatory duties

Nothing in this chapter or any other Act shall be construed as authorizing the Commission, its advisory committees, or any person under its supervision or control, to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club, or any religious organization.

(c) Reports

(1) Annual report

The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States.

(2) Other reports generally

The Commission shall submit such other reports to the President and the Congress as the Commission, the Congress, or the President shall deem appropriate.

(d) Advisory committees

The Commission may constitute such advisory committees as it deems advisable. The Commission shall establish at least one such committee in each State and the District of Columbia composed of citizens of that State or District.

(e) Hearings and ancillary matters

(1) Power to hold hearings

The Commission, or on the authorization of the Commission, any subcommittee of two or more members of the Commission, at least one of whom shall be of each major political party, may, for the purpose of carrying out this chapter, hold such hearings and act at such times and places as the Commission or such authorized subcommittee deems advisable. Each member of the Commission shall have the power to administer oaths and affirmations in connection with the proceedings of the Commission. The holding of a hearing by the Commission or the appointment of a subcommittee to hold a hearing pursuant to this paragraph must be approved by a majority of the Commission, or by a majority of the members present at a meeting when a quorum is present.

(2) Power to issue subpoenas

The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process. In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

(3) Witness fees

A witness attending any proceeding of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(4) Depositions and interrogatories

The Commission may use depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

(f) Limitation relating to abortion

Nothing in this chapter or any other Act shall be construed as authorizing the Commission, its advisory committees, or any other person under its supervision or control to study and collect, make appraisals of, or serve as a clearinghouse for any information about laws and policies of the Federal Government or any other governmental authority in the United States, with respect to abortion.

(Pub. L. 98–183, §3, Nov. 30, 1983, 97 Stat. 1302; Pub. L. 102–167, §5, Nov. 26, 1991, 105 Stat. 1101; Pub. L. 103–419, §2, Oct. 25, 1994, 108 Stat. 4339.)

PRIOR PROVISIONS

A prior section 1975a, Pub. L. 85–315, pt. I, §102, Sept. 9, 1957, 71 Stat. 634; Pub. L. 88–352, title V, §501, July 2, 1964, 78 Stat. 249; Pub. L. 91–521, §4, Nov. 25, 1970, 84 Stat. 1357; Pub. L. 92–496, §1, Oct. 14, 1972, 86 Stat. 813, established rules of procedure for Commission. See Codification note set out preceding section 1975 of this title.

AMENDMENTS

1994—Pub. L. 103–419 amended section generally, substituting provisions relating to duties of Commission for provisions relating to rules of procedure of Commission hearings.

1991—Subsecs. (a), (d), (f). Pub. L. 102–167 substituted ''Chairperson'' for ''Chairman'' wherever appearing.

§ 1975b. Administrative provisions

(a) Staff

(1) Director

There shall be a full-time staff director for the Commission who shall—

(A) serve as the administrative head of the Commission; and

(B) be appointed by the President with the concurrence of a majority of the Commission.

(2) Other personnel

Within the limitation of its appropriations, the Commission may—

(A) appoint such other personnel as it deems advisable, under the civil service and classification laws; and

(B) procure services, as authorized in section 3109 of title 5, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS–15 of the General Schedule under section 5332 of title 5.

(b) Compensation of members

(1) Generally

Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Executive Schedule under section 5315 of title 5, prorated on a daily basis for time spent in the work of the Commission.

(2) Persons otherwise in Government service

Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from such member's usual place of residence, under subchapter I of chapter 57 of title 5.

(c) Voluntary or uncompensated personnel

The Commission shall not accept or use the services of voluntary or uncompensated persons. This limitation shall apply with respect to services of members of the Commission as it does with respect to services by other persons.

(d) Rules

(1) Generally

The Commission may make such rules as are necessary to carry out the purposes of this chapter.

(2) Continuation of old rules

Except as inconsistent with this chapter, and until modified by the Commission, the rules of the Commission on Civil Rights in effect on September 30, 1994 shall be the initial rules of the Commission.

(e) Cooperation

All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(Pub. L. 98–183, §4, Nov. 30, 1983, 97 Stat. 1304; Pub. L. 103–419, §2, Oct. 25, 1994, 108 Stat. 4340.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(2)(A), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in subsec. (a)(2)(A), are classified generally to chapter 51 (§5101 et seq.) and subchapter III (§5331 et seq.) of chapter 53 of Title 5.

PRIOR PROVISIONS

A prior section 1975b, Pub. L. 85–315, pt. I, §103, Sept. 9, 1957, 71 Stat. 635; Pub. L. 88–352, title V, §§502, 503, July 2, 1964, 78 Stat. 250, 251; Pub. L. 91–521, §1, Nov. 25, 1970, 84 Stat. 1356; Pub. L. 92–496, §2, Oct. 14, 1972, 86 Stat. 813; Pub. L. 95–444, §2, Oct. 10, 1978, 92 Stat. 1067, related to compensation of members of Commission. See Codification note set out preceding section 1975 of this title.

AMENDMENTS

1994—Pub. L. 103–419 amended section generally, substituting administrative provisions for provisions relating to compensation of members of Commission.

§ 1975c. Authorization of appropriations

There are authorized to be appropriated,[1] to carry out this chapter $9,500,000 for fiscal year 1995. None of the sums authorized to be appropriated for fiscal year 1995 may be used to create additional regional offices.

(Pub. L. 98–183, §5, Nov. 30, 1983, 97 Stat. 1304; Pub. L. 102–167, §2, Nov. 26, 1991, 105 Stat. 1101; Pub. L. 103–419, §2, Oct. 25, 1994, 108 Stat. 4341.)

PRIOR PROVISIONS

A prior section 1975c, Pub. L. 85–315, pt. I, §104, Sept. 9, 1957, 71 Stat. 635; Pub. L. 86–383, title IV, §401, Sept. 28, 1959, 73 Stat. 724; Pub. L. 87–264, title IV, §401, Sept. 21, 1961, 75 Stat. 559; Pub. L. 88–152, §2, Oct. 17, 1963, 77 Stat. 271; Pub. L. 88–352, title V, §504, July 2, 1964, 78 Stat. 251; Pub. L. 90–198, §1, Dec. 14, 1967, 81 Stat. 582; Pub. L. 92–496, §§3, 4, Oct. 14, 1972, 86 Stat. 813, 814; Pub. L. 95–444, §3, Oct. 10, 1978, 92 Stat. 1067; Pub. L. 96–81, §2, Oct. 6, 1979, 93 Stat. 642, related to duties of Commission. See Codification note set out preceding section 1975 of this title.

AMENDMENTS

1994—Pub. L. 103–419 amended section generally, substituting provisions authorizing appropriations for fis-

[1] So in original. The comma probably should not appear.

cal year 1995 for provisions relating to duties of Commission.

1991—Subsec. (f). Pub. L. 102–167, which directed the insertion of ''The Commission shall, in addition to any other reports under this section, submit at least one annual report that monitors Federal civil rights enforcement efforts in the United States to Congress and to the President.'' at the end of this section, was executed by making the insertion at the end of subsec. (f).

§ 1975d. Termination

This chapter shall terminate on September 30, 1996.

(Pub. L. 98–183, §6, Nov. 30, 1983, 97 Stat. 1305; Pub. L. 102–167, §5, Nov. 26, 1991, 105 Stat. 1101; Pub. L. 103–419, §2, Oct. 25, 1994, 108 Stat. 4342.)

PRIOR PROVISIONS

A prior section 1975d, Pub. L. 85–315, pt. I, §105, Sept. 9, 1957, 71 Stat. 636; Pub. L. 86–449, title IV, §401, May 6, 1960, 74 Stat. 89; Pub. L. 88–352, title V, §§505–507, July 2, 1964, 78 Stat. 251, 252; Pub. L. 91–521, §2, Nov. 25, 1970, 84 Stat. 1356; Pub. L. 92–496, §5, Oct. 14, 1972, 86 Stat. 814; Pub. L. 95–444, §§4–6, Oct. 10, 1978, 92 Stat. 1067, 1068, related to powers of Commission. See Codification note set out preceding section 1975 of this title.

AMENDMENTS

1994—Pub. L. 103–419 amended section generally, substituting provisions terminating this chapter Sept. 30, 1996, for provisions relating to powers of Commission.

1991—Subsec. (f). Pub. L. 102–167 substituted ''Chairperson'' for ''Chairman'' in two places.

§§ 1975e, 1975f. Omitted

CODIFICATION

Sections 1975e and 1975f were omitted in the general amendment of this chapter by Pub. L. 103–419.

Section 1975e, Pub. L. 98–183, §7, Nov. 30, 1983, 97 Stat. 1307; Pub. L. 101–180, §2(1), Nov. 28, 1989, 103 Stat. 1325; Pub. L. 102–167, §3, Nov. 26, 1991, 105 Stat. 1101; Pub. L. 102–400, §2, Oct. 7, 1992, 106 Stat. 1955, authorized appropriations to carry out this chapter. See section 1975c of this title.

A prior section 1975e, Pub. L. 85–315, pt. I, §106, Sept. 9, 1957, 71 Stat. 636; Pub. L. 90–198, §2, Dec. 14, 1967, 81 Stat. 582; Pub. L. 91–521, §3, Nov. 25, 1970, 84 Stat. 1356; Pub. L. 92–64, Aug. 4, 1971, 85 Stat. 166; Pub. L. 92–496, §6, Oct. 14, 1972, 86 Stat. 814; Pub. L. 94–292, §2, May 27, 1976, 90 Stat. 524; Pub. L. 95–132, §2, Oct. 13, 1977, 91 Stat. 1157; Pub. L. 95–444, §7, Oct. 10, 1978, 92 Stat. 1068; Pub. L. 96–81, §3, Oct. 6, 1979, 93 Stat. 642; Pub. L. 96–447, §2, Oct. 13, 1980, 94 Stat. 1894, related to authorization of appropriations for this chapter. See Codification note set out preceding section 1975 of this title.

Section 1975f, Pub. L. 98–183, §8, Nov. 30, 1983, 97 Stat. 1307; Pub. L. 101–180, §2(2), Nov. 28, 1989, 103 Stat. 1325; Pub. L. 102–167, §4, Nov. 26, 1991, 105 Stat. 1101, provided termination date for this chapter. See section 1975d of this title.

CHAPTER 21—CIVIL RIGHTS

SUBCHAPTER I—GENERALLY

SUBCHAPTER I–A—INSTITUTIONALIZED PERSONS

SUBCHAPTER I—GENERALLY

§ 1981. Equal rights under the law

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term ''make and enforce contracts'' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

(R.S. §1977; Pub. L. 102–166, title I, §101, Nov. 21, 1991, 105 Stat. 1071.)

CODIFICATION

R.S. §1977 derived from act May 31, 1870, ch. 114, §16, 16 Stat. 144.

Section was formerly classified to section 41 of Title 8, Aliens and Nationality.

AMENDMENTS

1991—Pub. L. 102–166 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 402 of Pub. L. 102–166 provided that:

''(a) IN GENERAL.—Except as otherwise specifically provided, this Act [see Short Title of 1991 Amendment note below] and the amendments made by this Act shall take effect upon enactment [Nov. 21, 1991].

''(b) CERTAIN DISPARATE IMPACT CASES.—Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983.''

SHORT TITLE OF 1991 AMENDMENT

Section 1 of Pub. L. 102–166 provided that: ''This Act [enacting section 1981a of this title and sections 60*l* and 1201 to 1224 of Title 2, The Congress, amending this section and sections 1988, 2000e, 2000e–1, 2000e–2, 2000e–4, 2000e–5, 2000e–16, 12111, 12112, and 12209 of this title, and section 626 of Title 29, Labor, and enacting provisions set out as notes under this section and sections 2000e and 2000e–4 of this title, and section 1a–5 of Title 16, Conservation] may be cited as the 'Civil Rights Act of 1991'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–559, which amended section 1988 of this title, is known as ''The Civil Rights Attorney's Fees Awards Act of 1976'', see note set out under section 1988 of this title.

SEVERABILITY

Section 401 of Pub. L. 102–166 provided that: ''If any provision of this Act [see Short Title of 1991 Amendment note above], or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected.''

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 102–166 provided that: ''The Congress finds that—

''(1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;

''(2) the decision of the Supreme Court in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and

''(3) legislation is necessary to provide additional protections against unlawful discrimination in employment.''

PURPOSES OF 1991 AMENDMENT

Section 3 of Pub. L. 102–166 provided that: ''The purposes of this Act [see Short Title of 1991 Amendment note above] are—

''(1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;

''(2) to codify the concepts of 'business necessity' and 'job related' enunciated by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989);

''(3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

''(4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.''

LEGISLATIVE HISTORY FOR 1991 AMENDMENT

Section 105(b) of Pub. L. 102–166 provided that: ''No statements other than the interpretive memorandum appearing at Vol. 137 Congressional Record S 15276 (daily ed. Oct. 25, 1991) shall be considered legislative history of, or relied upon in any way as legislative history in construing or applying, any provision of this Act [see Short Title of 1991 Amendment note above] that relates to Wards Cove—Business necessity/cumulation/alternative business practice.''

CONSTRUCTION OF 1991 AMENDMENT

Section 116 of title I of Pub. L. 102–166 provided that: ''Nothing in the amendments made by this title [enacting section 1981a of this title and amending this section, sections 1988, 2000e, 2000e–1, 2000e–2, 2000e–4, 2000e–5, 2000e–16, 12111, and 12112 of this title, and section 626 of Title 29, Labor] shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law.''

ALTERNATIVE MEANS OF DISPUTE RESOLUTION

Section 118 of title I of Pub. L. 102–166 provided that: ''Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title [enacting section 1981a of this title and amending this section, sections 1988, 2000e, 2000e–1, 2000e–2, 2000e–4, 2000e–5, 2000e–16, 12111, and 12112 of this title, and section 626 of Title 29, Labor].''

EXECUTIVE ORDER NO. 13050

Ex. Ord. No. 13050, June 13, 1997, 62 F.R. 32987, which established the President's Advisory Board on Race, was revoked by Ex. Ord. No. 13138, § 3(e), Sept. 30, 1999, 64 F.R. 53880, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

§ 1981a. Damages in cases of intentional discrimination in employment

(a) Right of recovery

(1) Civil rights

In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e–5, 2000e–16] against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act [42 U.S.C. 2000e–2, 2000e–3, 2000e–16], and provided that the complaining party cannot recover under section 1981 of this title, the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

(2) Disability

In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 or 717 of the Civil Rights Act of 1964 [42 U.S.C. 2000e–5, 2000e–16] (as provided in section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)), and section 794a(a)(1) of title 29, respectively) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) under section 791 of title 29 and the regulations implementing section 791 of title 29, or who violated the requirements of section 791 of title 29 or the regulations implementing section 791 of title 29 concerning the provision of a reasonable accommodation, or section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112), or committed a violation of section 102(b)(5) of the Act, against an individual, the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

(3) Reasonable accommodation and good faith effort

In cases where a discriminatory practice involves the provision of a reasonable accommodation pursuant to section 102(b)(5) of the Americans with Disabilities Act of 1990 [42 U.S.C. 12112(b)(5)] or regulations implementing section 791 of title 29, damages may not be awarded under this section where the covered entity demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

(b) Compensatory and punitive damages

(1) Determination of punitive damages

A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

(2) Exclusions from compensatory damages

Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964 [42 U.S.C. 2000e–5(g)].

(3) Limitations

The sum of the amount of compensatory damages awarded under this section for future

pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party—

(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000;

(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $100,000; and

(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $200,000; and

(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.

(4) Construction

Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1981 of this title.

(c) Jury trial

If a complaining party seeks compensatory or punitive damages under this section—

(1) any party may demand a trial by jury; and

(2) the court shall not inform the jury of the limitations described in subsection (b)(3) of this section.

(d) Definitions

As used in this section:

(1) Complaining party

The term ''complaining party'' means—

(A) in the case of a person seeking to bring an action under subsection (a)(1) of this section, the Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); or

(B) in the case of a person seeking to bring an action under subsection (a)(2) of this section, the Equal Employment Opportunity Commission, the Attorney General, a person who may bring an action or proceeding under section 794a(a)(1) of title 29, or a person who may bring an action or proceeding under title I of the Americans with Disabilities Act of 1990 [42 U.S.C. 12111 et seq.].

(2) Discriminatory practice

The term ''discriminatory practice'' means the discrimination described in paragraph (1), or the discrimination or the violation described in paragraph (2), of subsection (a) of this section.

(R.S. §1977A, as added Pub. L. 102–166, title I, §102, Nov. 21, 1991, 105 Stat. 1072.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (d)(1)(A), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VII of the Act is classified generally to subchapter VI (§2000e et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (d)(1)(B) is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended. Title I of the Act is classified generally to subchapter I (§12111 et seq.) of chapter 126 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

EFFECTIVE DATE

Section effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as an Effective Date of 1991 Amendment note under section 1981 of this title.

§1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

(R.S. §1978.)

CODIFICATION

R.S. §1978 derived from act Apr. 9, 1866, ch. 31, §1, 14 Stat. 27.

Section was formerly classified to section 42 of Title 8, Aliens and Nationality.

EX. ORD. NO. 11063. EQUAL OPPORTUNITY IN HOUSING

Ex. Ord. No. 11063, Nov. 20, 1962, 27 F.R. 11527, as amended by Ex. Ord. No. 12259, Dec. 31, 1980, 46 F.R. 1253; Ex. Ord. No. 12892, §6–604, Jan. 17, 1994, 59 F.R. 2939, provided:

WHEREAS the granting of Federal assistance for the provision, rehabilitation, or operation of housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws; and

WHEREAS the Congress in the Housing Act of 1949 [see Short Title note set out under section 1441 of this title] has declared that the general welfare and security of the Nation and the health and living standards of its people require the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family; and

WHEREAS discriminatory policies and practices based upon race, color, creed, or national origin now operate to deny many Americans the benefits of housing financed through Federal assistance and as a consequence prevent such assistance from providing them with an alternative to substandard, unsafe, unsanitary, and overcrowded housing; and

WHEREAS such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness; and

WHEREAS the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

PART I—PREVENTION OF DISCRIMINATION

SECTION 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, disability, familial status or national origin—

(a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are—

(i) owned or operated by the Federal Government, or

(ii) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, or

(iii) provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the credit of the Federal Government, or

(iv) provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under a loan of grant contract hereafter entered into; and

(b) in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans hereafter insured or guaranteed by the Federal Government.

SEC. 102. I hereby direct the Department of Housing and Urban Development and all other executive departments and agencies to use their good offices and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to residential property and related facilities heretofore provided with Federal financial assistance of the types referred to in Section 101(a)(ii), (iii), and (iv).

PART II—IMPLEMENTATION BY DEPARTMENTS AND AGENCIES

SEC. 201. Each executive department and agency subject to this order is directed to submit to the President's Committee on Equal Opportunity in Housing established pursuant to Part IV of this order (hereinafter sometimes referred to as the Committee), within thirty days from the date of this order, a report outlining all current programs administered by it which are affected by this order.

SEC. 202. Each such department and agency shall be primarily responsible for obtaining compliance with the purposes of this order as the order applies to programs administered by it; and is directed to cooperate with the Committee, to furnish it, in accordance with law, such information and assistance as it may request in the performance of its functions, and to report to it at such intervals as the Committee may require.

SEC. 203. Each such department and agency shall, within thirty days from the date of this order, issue such rules and regulations, adopt such procedures and policies, and make such exemptions and exceptions as may be consistent with law and necessary or appropriate to effectuate the purposes of this order. Each such department and agency shall consult with the Committee in order to achieve such consistency and uniformity as may be feasible.

PART III—ENFORCEMENT

SEC. 301. The Committee, any subcommittee thereof, and any officer or employee designated by any executive department or agency subject to this order may hold such hearings, public or private, as the Committee, department, or agency may deem advisable for compliance, enforcement, or educational purposes.

SEC. 302. If any executive department or agency subject to this order concludes that any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion unless similar efforts made by another Federal department or agency have been unsuccessful. In conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to Section 203 hereof, a department or agency may take such action as may be appropriate under its governing laws, including, but not limited to, the following:

It may—

(a) cancel or terminate in whole or in part any agreement or contract with such person, firm, or State or local public agency providing for a loan, grant, contribution, or other Federal aid, or for the payment of a commission or fee;

(b) refrain from extending any further aid under any program administered by it and affected by this order until it is satisfied that the affected person, firm, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order, and any nondiscrimination provisions included in any agreement or contract;

(c) refuse to approve a lending institution or any other lender as a beneficiary under any program administered by it which is affected by this order or revoke such approval if previously given.

SEC. 303. In appropriate cases executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or violations of any nondiscrimination provisions included in any agreement or contract, for such civil or criminal action as he may deem appropriate. The Attorney General is authorized to furnish legal advice concerning this order to the Committee and to any department or agency requesting such advice.

SEC. 304. Any executive department or agency affected by this order may also invoke the sanctions provided in Section 302 where any person or firm, including a lender, has violated the rules, regulations, or procedures issued or adopted pursuant to this order, or the nondiscrimination provisions included in any agreement or contract, with respect to any program affected by this order administered by any other executive department or agency.

PART IV—ESTABLISHMENT OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

[Revoked. Ex. Ord. No. 12259, Dec. 31, 1980, 46 F.R. 1253; Ex. Ord. No. 12892, §6–604, Jan. 17, 1994, 59 F.R. 2939.]

PART V—POWERS AND DUTIES OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

SEC. 501. [Revoked. Ex. Ord. No. 12259, Dec. 31, 1980, 46 F.R. 1253; Ex. Ord. No. 12892, §6–604, Jan. 17, 1994, 59 F.R. 2939.]

SEC. 502. (a) The Committee shall take such steps as it deems necessary and appropriate to promote the coordination of the activities of departments and agencies under this order. In so doing, the Committee shall consider the overall objectives of Federal legislation relating to housing and the right of every individual to participate without discrimination because of race, color, religion (creed), sex, disability, familial status or national origin in the ultimate benefits of the Federal programs subject to this order.

(b) The Committee may confer with representatives of any department or agency, State or local public agency, civic, industry, or labor group, or any other group directly or indirectly affected by this order; examine the relevant rules, regulations, procedures, policies, and practices of any department or agency subject

to this order and make such recommendations as may be necessary or desirable to achieve the purposes of this order.

(c) The Committee shall encourage educational programs by civic, educational, religious, industry, labor, and other nongovernmental groups to eliminate the basic causes of discrimination in housing and related facilities provided with Federal assistance.

SEC. 503. [Revoked. Ex. Ord. No. 12259, Dec. 31, 1980, 46 F.R. 1253; Ex. Ord. No. 12892, §6–604, Jan. 17, 1994, 59 F.R. 2939.]

PART VI—MISCELLANEOUS

SEC. 601. As used in this order, the term ''departments and agencies'' includes any wholly-owned or mixed-ownership Government corporation, and the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories of the United States.

SEC. 602. This order shall become effective immediately.

[Functions of President's Committee on Equal Opportunity in Housing under Ex. Ord. No. 11063 delegated to Secretary of Housing and Urban Development by Ex. Ord. No. 12892, §6–604(a), Jan. 17, 1994, 59 F.R. 2939, set out as a note under section 3608 of this title.]

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. §1979; Pub. L. 96–170, §1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104–317, title III, §309(c), Oct. 19, 1996, 110 Stat. 3853.)

CODIFICATION

R.S. §1979 derived from act Apr. 20, 1871, ch. 22, §1, 17 Stat. 13.

Section was formerly classified to section 43 of Title 8, Aliens and Nationality.

AMENDMENTS

1996—Pub. L. 104–317 inserted before period at end of first sentence '', except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable''.

1979—Pub. L. 96–170 inserted ''or the District of Columbia'' after ''Territory'', and provisions relating to Acts of Congress applicable solely to the District of Columbia.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–170 applicable with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after Dec. 29, 1979, see section 3 of Pub. L. 96–170, set out as a note under section 1343 of Title 28, Judiciary and Judicial Procedure.

§ 1984. Omitted

CODIFICATION

Section, act Mar. 1, 1875, ch. 114, §5, 18 Stat. 337, which was formerly classified to section 46 of Title 8, Aliens and Nationality, related to Supreme Court review of cases arising under act Mar. 1, 1875. Sections 1 and 2 of act Mar. 1, 1875 were declared unconstitutional in *U.S. v. Singleton*, 109 U.S. 3, and sections 3 and 4 of such act were repealed by act June 25, 1948, ch. 645, §21, 62 Stat. 862.

§ 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election

of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

(R.S. § 1980.)

CODIFICATION

R.S. § 1980 derived from acts July 31, 1861, ch. 33, 12 Stat. 284; Apr. 20, 1871, ch. 22, § 2, 17 Stat. 13.

Section was formerly classified to section 47 of Title 8, Aliens and Nationality.

§ 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

(R.S. § 1981.)

CODIFICATION

R.S. § 1981 derived from act Apr. 20, 1871, ch. 22, § 6, 17 Stat. 15.

Section was formerly classified to section 48 of Title 8, Aliens and Nationality.

§ 1987. Prosecution of violation of certain laws

The United States attorneys, marshals, and deputy marshals, the United States magistrate judges appointed by the district and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of section 1990 of this title or of sections 5506 to 5516 and 5518 to 5532 of the Revised Statutes, and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States or the territorial court having cognizance of the offense.

(R.S. § 1982; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Pub. L. 90–578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

REFERENCES IN TEXT

Sections 5506 to 5510, 5516 to 5519 and 5524 to 5535 of the Revised Statutes, referred to in text, were repealed by act Mar. 4, 1909, ch. 321, § 341, 35 Stat. 1153; section 5506, 5511 to 5515, and 5520 to 5523, also referred to in text, were repealed by act Feb. 8, 1894, ch. 25, § 1, 28 Stat. 37. The provisions of sections 5508, 5510, 5516, 5518 and 5524 to 5532 of the Revised Statutes were reenacted by act Mar. 4, 1909, and classified to sections 51, 52, 54 to 59, 246, 428 and 443 to 445 of former Title 18, Criminal Code and Criminal Procedure. Those sections were repealed and reenacted as sections 241, 242, 372, 592, 593, 752, 1071, 1581, 1583 and 1588 of Title 18, Crimes and Criminal Procedure, in the general revision of Title 18 by act June 25, 1948, ch. 645, 62 Stat. 683.

CODIFICATION

R.S. § 1982 derived from acts Apr. 9, 1866, ch. 31, § 4, 14 Stat. 28; May 31, 1870, Ch. 114, § 9, 16 Stat. 142.

Section was formerly classified to section 49 of Title 8, Aliens and Nationality.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted ''United States attorneys'' for ''district attorneys''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

''United States magistrate judges'' substituted in text for ''magistrates'' pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28. Previously, ''magistrates'' substituted for ''commissioners'' pursuant to Pub. L. 90–578. See chapter 43 (§ 631 et seq.) of Title 28.

Reference to the district courts substituted for reference to the circuit courts on authority of section 291 of act Mar. 3, 1911.

§ 1988. Proceedings in vindication of civil rights

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and

1986 of this title, title IX of Public Law 92–318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

(R.S. §722; Pub. L. 94–559, §2, Oct. 19, 1976, 90 Stat. 2641; Pub. L. 96–481, title II, §205(c), Oct. 21, 1980, 94 Stat. 2330; Pub. L. 102–166, title I, §§103, 113(a), Nov. 21, 1991, 105 Stat. 1074, 1079; Pub. L. 103–141, §4(a), Nov. 16, 1993, 107 Stat. 1489; Pub. L. 103–322, title IV, §40303, Sept. 13, 1994, 108 Stat. 1942; Pub. L. 104–317, title III, §309(b), Oct. 19, 1996, 110 Stat. 3853; Pub. L. 106–274, §4(d), Sept. 22, 2000, 114 Stat. 804.)

REFERENCES IN TEXT

Title 13 of the Revised Statutes, referred to in subsec. (a), was in the original ''this Title'' meaning title 13 of the Revised Statutes, consisting of R.S. §§530 to 1093. For complete classification of R.S. §§530 to 1093 to the Code, see Tables.

Title 24 of the Revised Statutes, referred to in subsec. (a), was in the original ''Title 'CIVIL RIGHTS,' '' meaning title 24 of the Revised Statutes, consisting of R.S. §§1977 to 1991, which are classified to sections 1981 to 1983, 1985 to 1987, and 1989 to 1994 of this title. For complete classification of R.S. §§1977 to 1991 to the Code, see Tables.

Title 70 of the Revised Statutes, referred to in subsec. (a), was in the original ''Title 'CRIMES,' '' meaning title 70 of the Revised Statutes, consisting of R.S. §§5323 to 5550. For complete classification of R.S. §§5323 to 5550, see Tables.

Title IX of Public Law 92–318, referred to in subsec. (b), is title IX of Pub. L. 92–318, June 23, 1972, 86 Stat. 373, as amended, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, which is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Religious Freedom Restoration Act of 1993, referred to in subsec. (b), is Pub. L. 103–141, Nov. 16, 1993, 107 Stat. 1488, which is classified principally to chapter 21B (§2000bb et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000bb of this title and Tables.

The Religious Land Use and Institutionalized Persons Act of 2000, referred to in subsec. (b), is Pub. L. 106–274, Sept. 22, 2000, 114 Stat. 803, which is classified principally to chapter 21C (§2000cc et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000cc of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

R.S. §722 derived from acts Apr. 9, 1866, ch. 31, §3, 14 Stat. 27; May 31, 1870, ch. 114, §18, 16 Stat. 144.

Section was formerly classified to section 729 of Title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, §1, 62 Stat. 869.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–274 inserted ''the Religious Land Use and Institutionalized Persons Act of 2000,'' after ''Religious Freedom Restoration Act of 1993,'' and deleted comma after ''section 13981 of this title,''.

1996—Subsec. (b). Pub. L. 104–317 inserted before period at end '', except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction''.

1994—Subsec. (b). Pub. L. 103–322, which directed the amendment of the last sentence of this section by striking ''or'' after ''92–318,'' and by inserting '', or section 13981 of this title,'' after ''1964'', was executed to subsec. (b) of this section by striking ''or'' after ''Act of 1993,'' and by inserting '', or section 13981 of this title,'' after ''1964'', to reflect the probable intent of Congress and amendments by Pub. L. 102–166 and Pub. L. 103–141. See 1993 and 1991 Amendment notes below.

1993—Subsec. (b). Pub. L. 103–141 inserted ''the Religious Freedom Restoration Act of 1993,'' before ''or title VI''.

1991—Subsec. (a). Pub. L. 102–166, §113(a)(1), designated first sentence of existing provisions as subsec. (a).

Subsec. (b). Pub. L. 102–166, §§103, 113(a)(1), designated second sentence of existing provisions as subsec. (b) and inserted ''1981a,'' after ''1981,''.

Subsec. (c). Pub. L. 102–166, §113(a)(2), added subsec. (c).

1980—Pub. L. 96–481 struck out ''or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code,''.

1976—Pub. L. 94–559 authorized the court, in its discretion, to allow a reasonable attorney's fee as part of the prevailing party's costs.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–481 effective Oct. 1, 1981, and applicable to adversary adjudication as defined in section 504(b)(1)(C) of Title 5, Government Organization and Employees, and to civil actions and adversary adjudications described in section 2412 of Title 28, Judiciary and Judicial Procedure, which are pending on, or commenced on or after Oct. 1, 1981, see section 208 of Pub. L. 96–481, set out as an Effective Date note under section 2412 of Title 28.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–559, §1, Oct. 19, 1976, 90 Stat. 2641, provided: ''That this Act [amending this section] may be cited as 'The Civil Rights Attorney's Fees Awards Act of 1976'.''

§1989. United States magistrate judges; appointment of persons to execute warrants

The district courts of the United States and the district courts of the Territories, from time

to time, shall increase the number of United States magistrate judges, so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in section 1987 of this title; and such magistrate judges are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States. Said magistrate judges are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the magistrate judges may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State or Territory within which they are issued.

(R.S. §§1983, 1984; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Pub. L. 90–578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

CODIFICATION

R.S. §§1983 and 1984 derived from acts Apr. 9, 1866, ch. 31, §§4, 5, 14 Stat. 28; May 31, 1870, ch. 114, §§9, 10, 16 Stat. 142.

Section was formerly classified to section 50 of Title 8, Aliens and Nationality.

CHANGE OF NAME

''United States magistrate judges'' and ''magistrate judges'' substituted in text for ''magistrates'' wherever appearing pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, ''magistrates'' substituted for ''commissioners'' pursuant to Pub. L. 90–578. See chapter 43 (§631 et seq.) of Title 28.

''District courts'' substituted for ''circuit courts'' on authority of section 291 of act Mar. 3, 1911.

§ 1990. Marshal to obey precepts; refusing to receive or execute process

Every marshal and deputy marshal shall obey and execute all warrants or other process, when directed to him, issued under the provisions of section 1989 of this title. Every marshal and deputy marshal who refuses to receive any warrant or other process when tendered to him, issued in pursuance of the provisions of this section, or refuses or neglects to use all proper means diligently to execute the same, shall be liable to a fine in the sum of $1,000, for the benefit of the party aggrieved thereby.

(R.S. §§1985, 5517.)

CODIFICATION

R.S. §1985 derived from acts Apr. 9, 1866, ch. 31, §5, 14 Stat. 28; May 31, 1870, ch. 114, §10, 16 Stat. 142.

R.S. §5517 derived from act May 31, 1870, ch. 114, §10, 16 Stat. 142.

Section was formerly classified to section 51 of Title 8, Aliens and Nationality.

§ 1991. Fees; persons appointed to execute process

Every person appointed to execute process under section 1989 of this title shall be entitled to a fee of $5 for each party he may arrest and take before any United States magistrate judge, with such other fees as may be deemed reasonable by the magistrate judge for any additional services necessarily performed by him, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention, and until the final determination of the magistrate judge; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid out of the Treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recoverable from the defendant as part of the judgment in case of conviction.

(R.S. §1987; Pub. L. 90–578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

CODIFICATION

R.S. §1987 derived from acts Apr. 9, 1866, ch. 31, §7, 14 Stat. 29; May 31, 1870, ch. 114, §12, 16 Stat. 143.

Section was formerly classified to section 53 of Title 8, Aliens and Nationality.

CHANGE OF NAME

''United States magistrate judge'' and ''magistrate judge'' substituted in text for ''magistrate'' wherever appearing pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, ''magistrate'' substituted for ''commissioner'' pursuant to Pub. L. 90–578. See chapter 43 (§631 et seq.) of Title 28.

§ 1992. Speedy trial

Whenever the President has reason to believe that offenses have been, or are likely to be committed against the provisions of section 1990 of this title or of section 5506 to 5516 and 5518 to 5532 of the Revised Statutes, within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and United States attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons so charged, and it shall be the duty of every judge or other officer, when any such requisition is received by him to attend at the place and for the time therein designated.

(R.S. §1988; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

REFERENCES IN TEXT

Sections 5506 to 5510, 5516 to 5519 and 5524 to 5535 of the Revised Statutes, referred to in text, were repealed by act Mar. 4, 1909, ch. 321, §341, 35 Stat. 1153; section 5506, 5511 to 5515, and 5520 to 5523, also referred to in text, were repealed by act Feb. 8, 1894, ch. 25, §1, 28 Stat. 37. The provisions of sections 5508, 5510, 5516, 5518 and 5524 to 5532 of the Revised Statutes were reenacted by act Mar. 4, 1909, and classified to sections 51, 52, 54 to 59, 246, 428 and 443 to 445 of former Title 18, Criminal Code and Criminal Procedure. Those sections were repealed and reenacted as sections 241, 242, 372, 592, 593, 752, 1071, 1581, 1583 and 1588 of Title 18, Crimes and

Criminal Procedure, in the general revision of Title 18 by act June 25, 1948, ch. 645, 62 Stat. 683.

CODIFICATION

R.S. §1988 derived from act Apr. 9, 1866, ch. 31, §8, 14 Stat. 29.

Section was formerly classified to section 54 of Title 8, Aliens and Nationality.

CHANGE OF NAME

Act June 25, 1948, effective Sept. 1, 1948, substituted ''United States attorney'' for ''district attorney''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

§ 1993. Repealed. Pub. L. 85–315, pt. III, § 122, Sept. 9, 1957, 71 Stat. 637

Section, R.S. §1989, authorized President to employ land or naval forces to aid in execution of judicial process issued under sections 1981 to 1983 or 1985 to 1992 of this title, or to prevent violation and enforce due execution of sections 1981 to 1983 and 1985 to 1994 of this title. See section 332 of Title 10, Armed Forces.

§ 1994. Peonage abolished

The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

(R.S. §1990.)

CODIFICATION

R.S. §1990 derived from act Mar. 2, 1867, ch. 187, §1, 14 Stat. 546.

Section was formerly classified to section 56 of Title 8, Aliens and Nationality.

§ 1995. Criminal contempt proceedings; penalties; trial by jury

In all cases of criminal contempt arising under the provisions of this Act, the accused, upon conviction, shall be punished by fine or imprisonment or both: *Provided however*, That in case the accused is a natural person the fine to be paid shall not exceed the sum of $1,000, nor shall imprisonment exceed the term of six months: *Provided further*, That in any such proceeding for criminal contempt, at the discretion of the judge, the accused may be tried with or without a jury: *Provided further*, *however*, That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of the sum of $300 or imprisonment in excess of forty-five days, the accused in said proceeding, upon demand therefore, shall be entitled to a trial de novo before a jury, which shall conform as near as may be to the practice in other criminal cases.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience, of any officer of the court in respect to the writs, orders, or process of the court.

Nor shall anything herein or in any other provision of law be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

(Pub. L. 85–315, pt. V, §151, Sept. 9, 1957, 71 Stat. 638.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 85–315, Sept. 9, 1957, 71 Stat. 634, as amended, known as the Civil Rights Act of 1957, which enacted this section, sections 1975 to 1975e of this title and section 295–1 of former Title 5, Executive Departments and Government Officers and Employees, repealed section 1993 of this title, amended section 1971 of this title and sections 1343 and 1861 of Title 28, Judiciary and Judicial Procedure, and enacted provisions set out as a note under section 1971 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

§ 1996. Protection and preservation of traditional religions of Native Americans

On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

(Pub. L. 95–341, §1, Aug. 11, 1978, 92 Stat. 469.)

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–344, §1, Oct. 6, 1994, 108 Stat. 3125, provided that: ''This Act [enacting section 1996a of this title] may be cited as the 'American Indian Religious Freedom Act Amendments of 1994'.''

SHORT TITLE

Pub. L. 95–341, as amended, which enacted this section, section 1996a of this title, and a provision set out as a note under this section, is popularly known as the American Indian Religious Freedom Act.

FEDERAL IMPLEMENTATION OF PROTECTIVE AND PRESERVATION FUNCTIONS RELATING TO NATIVE AMERICAN RELIGIOUS CULTURAL RIGHTS AND PRACTICES; PRESIDENTIAL REPORT TO CONGRESS

Section 2 of Pub. L. 95–341 provided that the President direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders to determine changes necessary to preserve Native American religious cultural rights and practices and report to the Congress 12 months after Aug. 11, 1978.

EX. ORD. NO. 13007. INDIAN SACRED SITES

Ex. Ord. No. 13007, May 24, 1996, 61 F.R. 26771, provided:

By the authority vested in me as President by the Constitution and the laws of the United States, in fur-

therance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

SECTION 1. *Accommodation of Sacred Sites*. (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) ''Federal lands'' means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) ''Indian tribe'' means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103–454, 108 Stat. 4791 [see 25 U.S.C. 479a, 479a–1], and ''Indian'' refers to a member of such an Indian tribe; and

(iii) ''Sacred site'' means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

SEC. 2. *Procedures*. (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' [25 U.S.C. 450 note].

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

SEC. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, ''agency action'' has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

SEC. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

WILLIAM J. CLINTON.

§ 1996a. Traditional Indian religious use of peyote

(a) Congressional findings and declarations

The Congress finds and declares that—

(1) for many Indian people, the traditional ceremonial use of the peyote cactus as a religious sacrament has for centuries been integral to a way of life, and significant in perpetuating Indian tribes and cultures;

(2) since 1965, this ceremonial use of peyote by Indians has been protected by Federal regulation;

(3) while at least 28 States have enacted laws which are similar to, or are in conformance with, the Federal regulation which protects the ceremonial use of peyote by Indian religious practitioners, 22 States have not done so, and this lack of uniformity has created hardship for Indian people who participate in such religious ceremonies;

(4) the Supreme Court of the United States, in the case of Employment Division v. Smith, 494 U.S. 872 (1990), held that the First Amendment does not protect Indian practitioners who use peyote in Indian religious ceremonies, and also raised uncertainty whether this religious practice would be protected under the compelling State interest standard; and

(5) the lack of adequate and clear legal protection for the religious use of peyote by Indians may serve to stigmatize and marginalize Indian tribes and cultures, and increase the risk that they will be exposed to discriminatory treatment.

(b) Use, possession, or transportation of peyote

(1) Notwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.

(2) This section does not prohibit such reasonable regulation and registration by the Drug Enforcement Administration of those persons who cultivate, harvest, or distribute peyote as may be consistent with the purposes of this section and section 1996 of this title.

(3) This section does not prohibit application of the provisions of section 481.111(a) of Vernon's Texas Health and Safety Code Annotated, in effect on October 6, 1994, insofar as those provisions pertain to the cultivation, harvest, and distribution of peyote.

(4) Nothing in this section shall prohibit any Federal department or agency, in carrying out its statutory responsibilities and functions, from promulgating regulations establishing reasonable limitations on the use or ingestion of peyote prior to or during the performance of duties by sworn law enforcement officers or personnel directly involved in public transportation or any other safety-sensitive positions where the performance of such duties may be adversely affected by such use or ingestion. Such regula-

tions shall be adopted only after consultation with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice. Any regulation promulgated pursuant to this section shall be subject to the balancing test set forth in section 3 of the Religious Freedom Restoration Act (Public Law 103–141; 42 U.S.C. 2000bb–1).

(5) This section shall not be construed as requiring prison authorities to permit, nor shall it be construed to prohibit prison authorities from permitting, access to peyote by Indians while incarcerated within Federal or State prison facilities.

(6) Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103–141; 42 U.S.C. 2000bb–1) [42 U.S.C. 2000bb et seq.], this section shall not be construed to prohibit States from enacting or enforcing reasonable traffic safety laws or regulations.

(7) Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103–141; 42 U.S.C. 2000bb–1), this section does not prohibit the Secretary of Defense from promulgating regulations establishing reasonable limitations on the use, possession, transportation, or distribution of peyote to promote military readiness, safety, or compliance with international law or laws of other countries. Such regulations shall be adopted only after consultation with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice.

(c) Definitions

For purposes of this section—

(1) the term ''Indian'' means a member of an Indian tribe;

(2) the term ''Indian tribe'' means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) the term ''Indian religion'' means any religion—

(A) which is practiced by Indians, and

(B) the origin and interpretation of which is from within a traditional Indian culture or community; and

(4) the term ''State'' means any State of the United States, and any political subdivision thereof.

(d) Protection of rights of Indians and Indian tribes

Nothing in this section shall be construed as abrogating, diminishing, or otherwise affecting—

(1) the inherent rights of any Indian tribe;

(2) the rights, express or implicit, of any Indian tribe which exist under treaties, Executive orders, and laws of the United States;

(3) the inherent right of Indians to practice their religions; and

(4) the right of Indians to practice their religions under any Federal or State law.

(Pub. L. 95–341, §3, as added Pub. L. 103–344, §2, Oct. 6, 1994, 108 Stat. 3125.)

REFERENCES IN TEXT

The Religious Freedom Restoration Act, referred to in subsec. (b)(6), (7), probably means the Religious Freedom Restoration Act of 1993, Pub. L. 103–141, Nov. 16, 1993, 107 Stat. 1488, which is classified principally to chapter 21B (§2000bb et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000bb of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(2), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 1996b. Interethnic adoption

(1) Prohibited conduct

A person or government that is involved in adoption or foster care placements may not—

(A) deny to any individual the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the individual, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

(2) Enforcement

Noncompliance with paragraph (1) is deemed a violation of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(3) No effect on the Indian Child Welfare Act of 1978

This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978 [25 U.S.C. 1901 et seq.].

(Pub. L. 104–188, title I, §1808(c), Aug. 20, 1996, 110 Stat. 1904.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in par. (2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Indian Child Welfare Act of 1978, referred to in par. (3), is Pub. L. 95–608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§1901 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 25 and Tables.

SUBCHAPTER I–A—INSTITUTIONALIZED PERSONS

§ 1997. Definitions

As used in this subchapter—

(1) The term ''institution'' means any facility or institution—

(A) which is owned, operated, or managed by, or provides services on behalf of any State or political subdivision of a State; and

(B) which is—

(i) for persons who are mentally ill, disabled, or retarded, or chronically ill or handicapped;

(ii) a jail, prison, or other correctional facility;

(iii) a pretrial detention facility;

(iv) for juveniles—

(I) held awaiting trial;

(II) residing in such facility or institution for purposes of receiving care or treatment; or

(III) residing for any State purpose in such facility or institution (other than a residential facility providing only elementary or secondary education that is not an institution in which reside juveniles who are adjudicated delinquent, in need of supervision, neglected, placed in State custody, mentally ill or disabled, mentally retarded, or chronically ill or handicapped); or

(v) providing skilled nursing, intermediate or long-term care, or custodial or residential care.

(2) Privately owned and operated facilities shall not be deemed ''institutions'' under this subchapter if—

(A) the licensing of such facility by the State constitutes the sole nexus between such facility and such State;

(B) the receipt by such facility, on behalf of persons residing in such facility, of payments under title XVI, XVIII [42 U.S.C. 1381 et seq., 1395 et seq.], or under a State plan approved under title XIX [42 U.S.C. 1396 et seq.], of the Social Security Act, constitutes the sole nexus between such facility and such State; or

(C) the licensing of such facility by the State, and the receipt by such facility, on behalf of persons residing in such facility, of payments under title XVI, XVIII [42 U.S.C. 1381 et seq., 1395 et seq.], or under a State plan approved under title XIX [42 U.S.C. 1396 et seq.], of the Social Security Act, constitutes the sole nexus between such facility and such State;

(3) The term ''person'' means an individual, a trust or estate, a partnership, an association, or a corporation;

(4) The term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States;

(5) The term ''legislative days'' means any calendar day on which either House of Congress is in session.

(Pub. L. 96–247, § 2, May 23, 1980, 94 Stat. 349.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (2)(B), (C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVI, XVIII, and XIX of the Social Security Act are classified generally to subchapters XVI (§ 1381 et seq.), XVIII (§ 1395 et seq.), and XIX (§ 1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

SHORT TITLE

Section 1 of Pub. L. 96–247 provided: ''That this Act [enacting this subchapter] may be cited as the 'Civil Rights of Institutionalized Persons Act'.''

§ 1997a. Initiation of civil actions

(a) Discretionary authority of Attorney General; preconditions

Whenever the Attorney General has reasonable cause to believe that any State or political subdivision of a State, official, employee, or agent thereof, or other person acting on behalf of a State or political subdivision of a State is subjecting persons residing in or confined to an institution, as defined in section 1997 of this title, to egregious or flagrant conditions which deprive such persons of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing such persons to suffer grievous harm, and that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General, for or in the name of the United States, may institute a civil action in any appropriate United States district court against such party for such equitable relief as may be appropriate to insure the minimum corrective measures necessary to insure the full enjoyment of such rights, privileges, or immunities, except that such equitable relief shall be available under this subchapter to persons residing in or confined to an institution as defined in section 1997(1)(B)(ii) of this title only insofar as such persons are subjected to conditions which deprive them of rights, privileges, or immunities secured or protected by the Constitution of the United States.

(b) Discretionary award of attorney fees

In any action commenced under this section, the court may allow the prevailing party, other than the United States, a reasonable attorney's fee against the United States as part of the costs.

(c) Attorney General to personally sign complaint

The Attorney General shall personally sign any complaint filed pursuant to this section.

(Pub. L. 96–247, § 3, May 23, 1980, 94 Stat. 350; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 803(a)], Apr. 26, 1996, 110 Stat. 1321, 1321–70; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–134 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Any complaint filed by the Attorney General pursuant to this section shall be personally signed by him.''

§ 1997b. Certification requirements; Attorney General to personally sign certification

(a) At the time of the commencement of an action under section 1997a of this title the Attorney General shall certify to the court—

(1) that at least 49 calendar days previously the Attorney General has notified in writing the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution of—

(A) the alleged conditions which deprive rights, privileges, or immunities secured or

protected by the Constitution or laws of the United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities;

(B) the supporting facts giving rise to the alleged conditions and the alleged pattern or practice, including the dates or time period during which the alleged conditions and pattern or practice of resistance occurred; and when feasible, the identity of all persons reasonably suspected of being involved in causing the alleged conditions and pattern or practice at the time of the certification, and the date on which the alleged conditions and pattern or practice were first brought to the attention of the Attorney General; and

(C) the minimum measures which the Attorney General believes may remedy the alleged conditions and the alleged pattern or practice of resistance;

(2) that the Attorney General has notified in writing the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution of the Attorney General's intention to commence an investigation of such institution, that such notice was delivered at least seven days prior to the commencement of such investigation and that between the time of such notice and the commencement of an action under section 1997a of this title—

(A) the Attorney General has made a reasonable good faith effort to consult with the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution, or their designees, regarding financial, technical, or other assistance which may be available from the United States and which the Attorney General believes may assist in the correction of such conditions and pattern or practice of resistance;

(B) the Attorney General has encouraged the appropriate officials to correct the alleged conditions and pattern or practice of resistance through informal methods of conference, conciliation and persuasion, including, to the extent feasible, discussion of the possible costs and fiscal impacts of alternative minimum corrective measures, and it is the Attorney General's opinion that reasonable efforts at voluntary correction have not succeeded; and

(C) the Attorney General is satisfied that the appropriate officials have had a reasonable time to take appropriate action to correct such conditions and pattern or practice, taking into consideration the time required to remodel or make necessary changes in physical facilities or relocate residents, reasonable legal or procedural requirements, the urgency of the need to correct such conditions, and other circumstances involved in correcting such conditions; and

(3) that the Attorney General believes that such an action by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) The Attorney General shall personally sign any certification made pursuant to this section.

(Pub. L. 96–247, § 4, May 23, 1980, 94 Stat. 350; Pub. L. 97–256, title II, § 201(a), Sept. 8, 1982, 96 Stat. 816; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 803(b)], Apr. 26, 1996, 110 Stat. 1321, 1321–71; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(b)(1)(A)], substituted ''the Attorney General'' for ''he'' in introductory provisions and in subpar. (C).

Subsec. (a)(2). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(b)(1)(A)], substituted ''the Attorney General'' for ''he'' wherever appearing in introductory provisions and in subpars. (A) to (C).

Pub. L. 104–134, § 101[(a)] [title VIII, § 803(b)(1)(B)], substituted ''the Attorney General's'' for ''his'' in introductory provisions and in subpar. (B).

Subsec. (a)(3). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(b)(1)(A)], substituted ''the Attorney General'' for ''he''.

Subsec. (b). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(b)(2)], amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Any certification made by the Attorney General pursuant to this section shall be personally signed by him.''

1982—Subsec. (a). Pub. L. 97–256 substituted ''section 1997a of this title'' for ''section 1997 of this title'' in provisions preceding par. (1).

§ 1997c. Intervention in actions

(a) Discretionary authority of Attorney General; preconditions; time period

(1) Whenever an action has been commenced in any court of the United States seeking relief from egregious or flagrant conditions which deprive persons residing in institutions of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing them to suffer grievous harm and the Attorney General has reasonable cause to believe that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General, for or in the name of the United States, may intervene in such action upon motion by the Attorney General.

(2) The Attorney General shall not file a motion to intervene under paragraph (1) before 90 days after the commencement of the action, except that if the court determines it would be in the interests of justice, the court may shorten or waive the time period.

(b) Certification requirements by Attorney General

(1) The Attorney General shall certify to the court in the motion to intervene filed under subsection (a) of this section—

(A) that the Attorney General has notified in writing, at least fifteen days previously, the Governor or chief executive officer, attorney general or chief legal officer of the appropriate State or political subdivision, and the director of the institution of—

(i) the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the

United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities;

(ii) the supporting facts giving rise to the alleged conditions, including the dates and time period during which the alleged conditions and pattern or practice of resistance occurred; and

(iii) to the extent feasible and consistent with the interests of other plaintiffs, the minimum measures which the Attorney General believes may remedy the alleged conditions and the alleged pattern or practice of resistance; and

(B) that the Attorney General believes that such intervention by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(2) The Attorney General shall personally sign any certification made pursuant to this section.

(c) Attorney General to personally sign motion to intervene

The Attorney General shall personally sign any motion to intervene made pursuant to this section.

(d) Discretionary award of attorney fees; other award provisions unaffected

In any action in which the United States joins as an intervenor under this section, the court may allow the prevailing party, other than the United States, a reasonable attorney's fee against the United States as part of the costs. Nothing in this subsection precludes the award of attorney's fees available under any other provisions of the United States Code.

(Pub. L. 96–247, § 5, May 23, 1980, 94 Stat. 351; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 803(c)], Apr. 26, 1996, 110 Stat. 1321, 1321–71; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

AMENDMENTS

1996—Subsec. (b)(1)(A). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(c)(1)(A)], substituted ''the Attorney General'' for ''he'' in introductory provisions and in cl. (iii).

Subsec. (b)(1)(B). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(c)(1)(A)], substituted ''the Attorney General'' for ''he''.

Subsec. (b)(2). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(c)(1)(B)], amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Any certification made by the Attorney General pursuant to this subsection shall be personally signed by him.''

Subsec. (c). Pub. L. 104–134, § 101[(a)] [title VIII, § 803(c)(2)], amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Any motion to intervene made by the Attorney General pursuant to this section shall be personally signed by him.''

§ 1997d. Prohibition of retaliation

No person reporting conditions which may constitute a violation under this subchapter shall be subjected to retaliation in any manner for so reporting.

(Pub. L. 96–247, § 6, May 23, 1980, 94 Stat. 352.)

§ 1997e. Suits by prisoners

(a) Applicability of administrative remedies

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

(b) Failure of State to adopt or adhere to administrative grievance procedure

The failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action under section 1997a or 1997c of this title.

(c) Dismissal

(1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

(d) Attorney's fees

(1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 1988[1] of this title, such fees shall not be awarded, except to the extent that—

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988[1] of this title; and

(B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or

(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of title 18 for payment of court-appointed counsel.

(4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney's fee in an amount greater than the

[1] See References in Text note below.

amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant pursuant to section 1988[1] of this title.

(e) Limitation on recovery

No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

(f) Hearings

(1) To the extent practicable, in any action brought with respect to prison conditions in Federal court pursuant to section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility, pretrial proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which the prisoner is confined.

(2) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.

(g) Waiver of reply

(1) Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983 of this title or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

(2) The court may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits.

(h) "Prisoner" defined

As used in this section, the term ''prisoner'' means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(Pub. L. 96–247, §7, May 23, 1980, 94 Stat. 352; Pub. L. 103–322, title II, §20416(a), Sept. 13, 1994, 108 Stat. 1833; Pub. L. 104–134, title I, §101[(a)] [title VIII, §803(d)], Apr. 26, 1996, 110 Stat. 1321, 1321–71; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.)

REFERENCES IN TEXT

Section 1988 of this title, referred to in subsec. (d)(1), (4), was in the original a reference to section 2 of the Revised Statutes of the United States (42 U.S.C. 1988), and has been translated as reading section 722 of the Revised Statutes of the United States to reflect the probable intent of Congress. Section 2 of the Revised Statutes, which defined the term ''county'', was repealed and reenacted as section 2 of Title 1, General Provisions, by act July 30, 1947, ch. 388, 61 Stat. 633, 640.

AMENDMENTS

1996—Pub. L. 104–134 amended section generally, substituting provisions relating to suits by prisoners, consisting of subsecs. (a) to (h), for former provisions relating to exhaustion of remedies, consisting of subsecs. (a) to (d).

1994—Subsec. (a). Pub. L. 103–322, §20416(a)(1), substituted ''exceed 180 days'' for ''exceed ninety days'' in par. (1) and inserted before period at end of par. (2) ''or are otherwise fair and effective''.

Subsec. (c). Pub. L. 103–322, §20416(a)(2), inserted ''or are otherwise fair and effective'' before period at end of par. (1) and ''or is no longer fair and effective'' before period at end of par. (2).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 20416(b) of Pub. L. 103–322 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Sept. 13, 1994].''

NONDISCLOSURE OF INFORMATION IN ACTIONS BROUGHT BY PRISONERS

Pub. L. 105–277, div. A, §101(b) [title I, §127], Oct. 21, 1998, 112 Stat. 2681–50, 2681–74, provided that: ''Notwithstanding any other provision of law, in any action brought by a prisoner under section 1979 of the Revised Statutes (42 U.S.C. 1983) against a Federal, State, or local jail, prison, or correctional facility, or any employee or former employee thereof, arising out of the incarceration of that prisoner—

''(1) the financial records of a person employed or formerly employed by the Federal, State, or local jail, prison, or correctional facility, shall not be subject to disclosure without the written consent of that person or pursuant to a court order, unless a verdict of liability has been entered against that person; and

''(2) the home address, home phone number, social security number, identity of family members, personal tax returns, and personal banking information of a person described in paragraph (1), and any other records or information of a similar nature relating to that person, shall not be subject to disclosure without the written consent of that person, or pursuant to a court order.''

[Pub. L. 105–277, div. A, §101(b) [title I, §127], set out above, applicable to fiscal year 2000 and thereafter, see Pub. L. 106–113, div. B, §1000(a)(1) [title I, §109], set out as an Applicability of Provisions Relating to Use of Counterterrorism Appropriations and Nondisclosure of Information in Actions Brought by Prisoners note under section 524 of Title 28, Judiciary and Judicial Procedure.]

§ 1997f. Report to Congress

The Attorney General shall include in the report to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28—

(1) a statement of the number, variety, and outcome of all actions instituted pursuant to this subchapter including the history of, precise reasons for, and procedures followed in initiation or intervention in each case in which action was commenced;

(2) a detailed explanation of the procedures by which the Department has received, reviewed and evaluated petitions or complaints regarding conditions in institutions;

(3) an analysis of the impact of actions instituted pursuant to this subchapter, including, when feasible, an estimate of the costs incurred by States and other political subdivisions;

(4) a statement of the financial, technical, or other assistance which has been made avail-

able from the United States to the State in order to assist in the correction of the conditions which are alleged to have deprived a person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States; and

(5) the progress made in each Federal institution toward meeting existing promulgated standards for such institutions or constitutionally guaranteed minima.

(Pub. L. 96–247, § 8, May 23, 1980, 94 Stat. 353; Pub. L. 97–256, title II, § 201(b), Sept. 8, 1982, 96 Stat. 817; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 803(e)], Apr. 26, 1996, 110 Stat. 1321, 1321–73; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

AMENDMENTS

1996—Pub. L. 104–134 substituted ''the report'' for ''his report'' in introductory provisions .

1982—Pub. L. 97–256 substituted ''Attorney General'' for ''Attorney''.

§ 1997g. Priorities for use of funds

It is the intent of Congress that deplorable conditions in institutions covered by this subchapter amounting to deprivations of rights protected by the Constitution or laws of the United States be corrected, not only by litigation as contemplated in this subchapter, but also by the voluntary good faith efforts of agencies of Federal, State, and local governments. It is the further intention of Congress that where Federal funds are available for use in improving such institutions, priority should be given to the correction or elimination of such unconstitutional or illegal conditions which may exist. It is not the intent of this provision to require the redirection of funds from one program to another or from one State to another.

(Pub. L. 96–247, § 9, May 23, 1980, 94 Stat. 354.)

§ 1997h. Notice to Federal departments

At the time of notification of the commencement of an investigation of an institution under section 1997a of this title or of the notification of an intention to file a motion to intervene under section 1997c of this title, and if the relevant institution receives Federal financial assistance from the Department of Health and Human Services or the Department of Education, the Attorney General shall notify the appropriate Secretary of the action and the reasons for such action and shall consult with such officials. Following such consultation, the Attorney General may proceed with an action under this subchapter if the Attorney General is satisfied that such action is consistent with the policies and goals of the executive branch.

(Pub. L. 96–247, § 10, May 23, 1980, 94 Stat. 354; Pub. L. 104–134, title I, § 101[(a)] [title VIII, § 803(f)], Apr. 26, 1996, 110 Stat. 1321, 1321–73; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

AMENDMENTS

1996—Pub. L. 104–134 substituted ''the action'' for ''his action'' and ''the Attorney General is satisfied'' for ''he is satisfied''.

§ 1997i. Disclaimer respecting standards of care

Provisions of this subchapter shall not authorize promulgation of regulations defining standards of care.

(Pub. L. 96–247, § 11, May 23, 1980, 94 Stat. 354.)

§ 1997j. Disclaimer respecting private litigation

The provisions of this subchapter shall in no way expand or restrict the authority of parties other than the United States to enforce the legal rights which they may have pursuant to existing law with regard to institutionalized persons. In this regard, the fact that the Attorney General may be conducting an investigation or contemplating litigation pursuant to this subchapter shall not be grounds for delay of or prejudice to any litigation on behalf of parties other than the United States.

(Pub. L. 96–247, § 12, May 23, 1980, 94 Stat. 354.)

SUBCHAPTER II—PUBLIC ACCOMMODATIONS

§ 2000a. Prohibition against discrimination or segregation in places of public accommodation

(a) Equal access

All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Establishments affecting interstate commerce or supported in their activities by State action as places of public accommodation; lodgings; facilities principally engaged in selling food for consumption on the premises; gasoline stations; places of exhibition or entertainment; other covered establishments

Each of the following establishments which serves the public is a place of public accommodation within the meaning of this subchapter if its operations affect commerce, or if discrimination or segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is

physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) Operations affecting commerce; criteria; "commerce" defined

The operations of an establishment affect commerce within the meaning of this subchapter if (1) it is one of the establishments described in paragraph (1) of subsection (b) of this section; (2) in the case of an establishment described in paragraph (2) of subsection (b) of this section, it serves or offers to serve interstate travelers of a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b) of this section, it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b) of this section, it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, ''commerce'' means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Support by State action

Discrimination or segregation by an establishment is supported by State action within the meaning of this subchapter if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

(e) Private establishments

The provisions of this subchapter shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b) of this section.

(Pub. L. 88–352, title II, § 201, July 2, 1964, 78 Stat. 243.)

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–411, § 1, Oct. 14, 1992, 106 Stat. 2102, provided that: ''This Act [amending section 2000e–4 of this title] may be cited as the 'EEOC Education, Technical Assistance, and Training Revolving Fund Act of 1992'.''

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92–261, § 1, Mar. 24, 1972, 86 Stat. 103, provided: ''That this Act [enacting sections 2000e–16 and 2000e–17 of this title, amending sections 5108 and 5314 to 5316 of Title 5, Government Organization and Employees, and sections 2000e to 2000e–6, 2000e–8, 2000e–9, 2000e–13, and 2000e–14 of this title, and enacting provisions set out as a note under section 2000e–5 of this title] may be cited as the 'Equal Employment Opportunity Act of 1972'.''

SHORT TITLE

Section 1 of Pub. L. 88–352 provided: ''That this Act [enacting subchapters II to IX of this chapter, amending sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees, section 1447(d) of Title 28, Judiciary and Judicial Procedure, and sections 1971 and 1975a to 1975d of this title, and enacting provisions set out as a note under section 2000e of this title] may be cited as the 'Civil Rights Act of 1964'.''

§ 2000a–1. Prohibition against discrimination or segregation required by any law, statute, ordinance, regulation, rule or order of a State or State agency

All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

(Pub. L. 88–352, title II, § 202, July 2, 1964, 78 Stat. 244.)

§ 2000a–2. Prohibition against deprivation of, interference with, and punishment for exercising rights and privileges secured by section 2000a or 2000a–1 of this title

No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive any person of any right or privilege secured by section 2000a or 2000a–1 of this title, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 2000a or 2000a–1 of this title, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 2000a or 2000a–1 of this title.

(Pub. L. 88–352, title II, § 203, July 2, 1964, 78 Stat. 244.)

§ 2000a–3. Civil actions for injunctive relief

(a) Persons aggrieved; intervention by Attorney General; legal representation; commencement of action without payment of fees, costs, or security

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2000a–2 of this title, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may

authorize the commencement of the civil action without the payment of fees, costs, or security.

(b) Attorney's fees; liability of United States for costs

In any action commenced pursuant to this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) State or local enforcement proceedings; notification of State or local authority; stay of Federal proceedings

In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) of this section before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

(d) References to Community Relations Service to obtain voluntary compliance; duration of reference; extension of period

In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a) of this section: *Provided*, That the court may refer the matter to the Community Relations Service established by subchapter VIII of this chapter for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: *Provided further*, That upon expiration of such sixty-day period, the court may extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance.

(Pub. L. 88–352, title II, § 204, July 2, 1964, 78 Stat. 244.)

§ 2000a–4. Community Relations Service; investigations and hearings; executive session; release of testimony; duty to bring about voluntary settlements

The Service is authorized to make a full investigation of any complaint referred to it by the court under section 2000a–3(d) of this title and may hold such hearings with respect thereto as may be necessary. The Service shall conduct any hearings with respect to any such complaint in executive session, and shall not release any testimony given therein except by agreement of all parties involved in the complaint with the permission of the court, and the Service shall endeavor to bring about a voluntary settlement between the parties.

(Pub. L. 88–352, title II, § 205, July 2, 1964, 78 Stat. 244.)

§ 2000a–5. Civil actions by the Attorney General

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his ab-

sence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(Pub. L. 88–352, title II, § 206, July 2, 1964, 78 Stat. 245.)

§ 2000a–6. Jurisdiction; exhaustion of other remedies; exclusiveness of remedies; assertion of rights based on other Federal or State laws and pursuit of remedies for enforcement of such rights

(a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subchapter and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this subchapter shall be the exclusive means of enforcing the rights based on this subchapter, but nothing in this subchapter shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this subchapter, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

(Pub. L. 88–352, title II, § 207, July 2, 1964, 78 Stat. 245.)

SUBCHAPTER III—PUBLIC FACILITIES

§ 2000b. Civil actions by the Attorney General

(a) Complaint; certification; institution of civil action; relief requested; jurisdiction; impleading additional parties as defendants

Whenever the Attorney General receives a complaint in writing signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national origin, by being denied equal utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in section 2000c of this title, and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly progress of desegregation in public facilities, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) Persons unable to initiate and maintain legal proceedings

The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(Pub. L. 88–352, title III, § 301, July 2, 1964, 78 Stat. 246.)

§ 2000b–1. Liability of United States for costs and attorney's fee

In any action or proceeding under this subchapter the United States shall be liable for costs, including a reasonable attorney's fee, the same as a private person.

(Pub. L. 88–352, title III, § 302, July 2, 1964, 78 Stat. 246.)

§ 2000b–2. Personal suits for relief against discrimination in public facilities

Nothing in this subchapter shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in any facility covered by this subchapter.

(Pub. L. 88–352, title III, § 303, July 2, 1964, 78 Stat. 246.)

§ 2000b–3. "Complaint" defined

A complaint as used in this subchapter is a writing or document within the meaning of section 1001, title 18.

(Pub. L. 88–352, title III, § 304, July 2, 1964, 78 Stat. 246.)

SUBCHAPTER IV—PUBLIC EDUCATION

§ 2000c. Definitions

As used in this subchapter—

(a) ''Secretary'' means the Secretary of Education.

(b) ''Desegregation'' means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex or national origin, but ''desegregation'' shall not mean the assignment of students to public schools in order to overcome racial imbalance.

(c) ''Public school'' means any elementary or secondary educational institution, and ''public college'' means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or

property, or funds or property derived from a governmental source.

(d) ''School board'' means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

(Pub. L. 88–352, title IV, § 401, July 2, 1964, 78 Stat. 246; Pub. L. 92–318, title IX, § 906(a), June 23, 1972, 86 Stat. 375; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–318 inserted ''sex'' after ''religion,''.

TRANSFER OF FUNCTIONS

''Secretary means the Secretary of Education'' substituted for ''Commissioner means the Commissioner of Education'' in subsec. (a) pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education of Department of Health, Education, and Welfare to Secretary of Education.

§ 2000c–1. Omitted

CODIFICATION

Section, Pub. L. 88–352, title IV, § 402, July 2, 1964, 78 Stat. 247, authorized the Commissioner to conduct a survey and make a report to the President and the Congress within two years of July, 1964 concerning the availability of educational opportunities for minority group members.

§ 2000c–2. Technical assistance in preparation, adoption, and implementation of plans for desegregation of public schools

The Secretary is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Department of Education or other persons specially equipped to advise and assist them in coping with such problems.

(Pub. L. 88–352, title IV, § 403, July 2, 1964, 78 Stat. 247; Pub. L. 96–88, title III, § 301(a)(1), (b)(2), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 678, 692.)

TRANSFER OF FUNCTIONS

''Secretary'', meaning the Secretary of Education, and ''Department of Education'' substituted in text for ''Commissioner'' and ''Office of Education'', respectively, pursuant to sections 301(a)(1), (b)(2) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1), (b)(2) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education and transferred Office of Education to the Department of Education.

§ 2000c–3. Training institutes; stipends; travel allowances

The Secretary is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation. Individuals who attend such an institute on a full-time basis may be paid stipends for the period of their attendance at such institute in amounts specified by the Secretary in regulations, including allowances for travel to attend such institute.

(Pub. L. 88–352, title IV, § 404, July 2, 1964, 78 Stat. 247; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

TRANSFER OF FUNCTIONS

''Secretary'', meaning the Secretary of Education, substituted in text for ''Commissioner'' pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

§ 2000c–4. Grants for inservice training in dealing with and for employment of specialists to advise in problems incident to desegregation; factors for consideration in making grants and fixing amounts, terms, and conditions

(a) The Secretary is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of—

(1) giving to teachers and other school personnel inservice training in dealing with problems incident to desegregation, and

(2) employing specialists to advise in problems incident to desegregation.

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Secretary shall take into consideration the amount available for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

(Pub. L. 88–352, title IV, § 405, July 2, 1964, 78 Stat. 247; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

TRANSFER OF FUNCTIONS

''Secretary'', meaning the Secretary of Education, substituted in text for ''Commissioner'' pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

§ 2000c–5. Payments; adjustments; advances or reimbursement; installments

Payments pursuant to a grant or contract under this subchapter may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

(Pub. L. 88–352, title IV, § 406, July 2, 1964, 78 Stat. 248; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

TRANSFER OF FUNCTIONS

''Secretary'', meaning the Secretary of Education, substituted in text for ''Commissioner'' pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

§ 2000c–6. Civil actions by the Attorney General

(a) Complaint; certification; notice to school board or college authority; institution of civil action; relief requested; jurisdiction; transportation of pupils to achieve racial balance; judicial power to insure compliance with constitutional standards; impleading additional parties as defendants

Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) Persons unable to initiate and maintain legal proceedings

The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(c) "Parent" and "complaint" defined

The term ''parent'' as used in this section includes any person standing in loco parentis. A ''complaint'' as used in this section is a writing or document within the meaning of section 1001, title 18.

(Pub. L. 88–352, title IV, § 407, July 2, 1964, 78 Stat. 248; Pub. L. 92–318, title IX, § 906(a), June 23, 1972, 86 Stat. 375.)

AMENDMENTS

1972—Subsec. (a)(2). Pub. L. 92–318 inserted ''sex'' after ''religion,''.

§ 2000c–7. Liability of United States for costs

In any action or proceeding under this subchapter the United States shall be liable for costs the same as a private person.

(Pub. L. 88–352, title IV, § 408, July 2, 1964, 78 Stat. 249.)

§ 2000c–8. Personal suits for relief against discrimination in public education

Nothing in this subchapter shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

(Pub. L. 88–352, title IV, § 409, July 2, 1964, 78 Stat. 249.)

§ 2000c–9. Classification and assignment

Nothing in this subchapter shall prohibit classification and assignment for reasons other than race, color, religion, sex or national origin.

(Pub. L. 88–352, title IV, § 410, July 2, 1964, 78 Stat. 249; Pub. L. 92–318, title IX, § 906(a), June 23, 1972, 86 Stat. 375.)

AMENDMENTS

1972—Pub. L. 92–318 inserted ''sex'' after ''religion,''.

SUBCHAPTER V—FEDERALLY ASSISTED PROGRAMS

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(Pub. L. 88–352, title VI, § 601, July 2, 1964, 78 Stat. 252.)

COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF PROVISIONS

For provisions relating to the coordination of implementation and enforcement of the provisions of this subchapter by the Attorney General, see section 1–201 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d–1 of this title.

EX. ORD. NO. 13160. NONDISCRIMINATION ON THE BASIS OF RACE, SEX, COLOR, NATIONAL ORIGIN, DISABILITY, RELIGION, AGE, SEXUAL ORIENTATION, AND STATUS AS A PARENT IN FEDERALLY CONDUCTED EDUCATION AND TRAINING PROGRAMS

Ex. Ord. No. 13160, June 23, 2000, 65 F.R. 39775, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 921–932 of title 20, United States Code; section 2164 of title 10, United States Code; section 2001 *et seq.*, of title 25, United States Code; section 7301 of title 5, United States Code; and section 301 of title 3, United States Code, and to achieve equal opportunity in Federally conducted education and training programs and activities, it is hereby ordered as follows:

SECTION 1. *Statement of policy on education programs and activities conducted by executive departments and agencies.*

1–101. The Federal Government must hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs and activities—including discrimination against people with disabilities, prohibited by the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*, as amended, employment discrimination on the basis of race, color, national origin, sex, or religion, prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–17 [42 U.S.C. 2000e et seq.], as amended, discrimination on the basis of race, color, national origin, or religion in educational programs receiving Federal assistance, under Title VI of the Civil Rights Acts of 1964, 42 U.S.C. 2000d [et seq.], and sex-based discrimination in education programs receiving Federal assistance under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* Through this Executive Order, discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent will be prohibited in Federally conducted education and training programs and activities.

1–102. No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.

SEC. 2. *Definitions.*

2–201. ''Federally conducted education and training programs and activities'' includes programs and activities conducted, operated, or undertaken by an executive department or agency.

2–202. ''Education and training programs and activities'' include, but are not limited to, formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and teacher training programs.

2–203. The Attorney General is authorized to make a final determination as to whether a program falls within the scope of education and training programs and activities covered by this order, under subsection 2–202, or is excluded from coverage, under section 3.

2–204. ''Military education or training programs'' are those education and training programs conducted by the Department of Defense or, where the Coast Guard is concerned, the Department of Transportation, for the primary purpose of educating or training members of the armed forces or meeting a statutory requirement to educate or train Federal, State, or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2–205. ''Armed Forces'' means the Armed Forces of the United States.

2–206. ''Status as a parent'' refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

(a) a biological parent;
(b) an adoptive parent;
(c) a foster parent;
(d) a stepparent;
(e) a custodian of a legal ward;
(f) in loco parentis over such an individual; or
(g) actively seeking legal custody or adoption of such an individual.

SEC. 3. *Exemption from coverage.*

3–301. This order does not apply to members of the armed forces, military education or training programs, or authorized intelligence activities. Members of the armed forces, including students at military academies, will continue to be covered by regulations that currently bar specified forms of discrimination that are now enforced by the Department of Defense and the individual service branches. The Department of Defense shall develop procedures to protect the rights of and to provide redress to civilians not otherwise protected by existing Federal law from discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent and who participate in military education or training programs or activities conducted by the Department of Defense.

3–302. This order does not apply to, affect, interfere with, or modify the operation of any otherwise lawful affirmative action plan or program.

3–303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program established consistent with federal law or limited by Federal law to individuals of a particular race, sex, color, disability, national origin, age, religion, sexual orientation, or status as a parent different from his or her own.

3–304. This order does not apply to ceremonial or similar education or training programs or activities of schools conducted by the Department of the Interior, Bureau of Indian Affairs, that are culturally relevant to the children represented in the school. ''Culturally relevant'' refers to any class, program, or activity that is fundamental to a tribe's culture, customs, traditions, heritage, or religion.

3–305. This order does not apply to (a) selections based on national origin of foreign nationals to participate in covered education or training programs, if such programs primarily concern national security or foreign policy matters; or (b) selections or other decisions regarding participation in covered education or training programs made by entities outside the executive branch. It shall be the policy of the executive branch that education or training programs or activities shall not be available to entities that select persons for participation in violation of Federal or State law.

3–306. The prohibition on discrimination on the basis of age provided in this order does not apply to age-based admissions of participants to education or training programs, if such programs have traditionally been age-specific or must be age-limited for reasons related to health or national security.

SEC. 4. *Administrative enforcement.*

4–401. Any person who believes himself or herself to be aggrieved by a violation of this order or its implementing regulations, rules, policies, or guidance may, personally or through a representative, file a written complaint with the agency that such person believes is in violation of this order or its implementing regulations, rules, policies, or guidance. Pursuant to procedures to be established by the Attorney General, each executive department or agency shall conduct an investigation of any complaint by one of its employees alleging a violation of this Executive Order.

4–402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any of its implementing rules, regulations, policies, or guidance,

such office shall complete a report and refer a copy of the report and any relevant findings or supporting evidence to an appropriate agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.

(b) In addition, the designated investigating office may provide appropriate agency officials with a recommendation for any corrective and/or remedial action. The appropriate officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing in this order authorizes monetary relief to the complainant as a form of remedial or corrective action by an executive department or agency.

4–403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance, including removal from employment, where appropriate, shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Public Law No. 95–454, 92 Stat. 1111 [see Tables for classification].

SEC. 5. *Implementation and Agency Responsibilities.*

5–501. The Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance, as the Attorney General deems appropriate, to be followed by all executive departments and agencies. The Attorney General shall address:

a. which programs and activities fall within the scope of education and training programs and activities covered by this order, under subsection 2–202, or excluded from coverage, under section 3 of this order;

b. examples of discriminatory conduct;

c. applicable legal principles;

d. enforcement procedures with respect to complaints against employees;

e. remedies;

f. requirements for agency annual and tri-annual reports as set forth in section 6 of this order; and

g. such other matters as deemed appropriate.

5–502. Within 90 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its Federally conducted education and training programs and activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 90 days of issuance.

5–503. The head of each executive department and agency shall be responsible for ensuring compliance within this order.

5–504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5–505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

SEC. 6. *Reporting Requirements.*

6–601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. For the first 3 years after the date of this order, such reports shall be submitted annually within 90 days of the end of the preceding year's activities. Subsequent reports shall be submitted every 3 years and within 90 days of the end of each 3-year period.

SEC. 7. *General Provisions.*

7–701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order 12250 [42 U.S.C. 2000d–1 note].

SEC. 8. *Judicial Review.*

8–801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, *et seq.*

WILLIAM J. CLINTON.

§ 2000d–1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(Pub. L. 88–352, title VI, § 602, July 2, 1964, 78 Stat. 252.)

DELEGATION OF FUNCTIONS

Function of the President relating to approval of rules, regulations, and orders of general applicability under this section, delegated to the Attorney General, see section 1–101 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out below.

EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

Nondiscrimination in government employment and in employment by government contractors and subcontractors, see Ex. Ord. No. 11246, eff. Sept. 24, 1965, 30 F.R. 12319, and Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of this title.

EXECUTIVE ORDER NO. 11247

Ex. Ord. No. 11247, eff. Sept. 24, 1965, 30 F.R. 12327, which related to enforcement of coordination of nondiscrimination in federally assisted programs, was superseded by Ex. Ord. No. 11764, eff. Jan. 21, 1974, 39 F.R. 2575, formerly set out below.

EXECUTIVE ORDER NO. 11764

Ex. Ord. No. 11764, Jan. 21, 1974, 39 F.R. 2575, which related to coordination of enforcement of provisions of this subchapter, was revoked by section 1–501 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72996, set out below.

EX. ORD. NO. 12250. LEADERSHIP AND COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF NONDISCRIMINATION LAWS

Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, provided: By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1–1. DELEGATION OF FUNCTION

1–101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–2. COORDINATION OF NONDISCRIMINATION PROVISIONS

1–201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1–202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1–203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1–204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1–205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1–206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1–207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of the laws covered by this Order.

1–3. IMPLEMENTATION BY THE ATTORNEY GENERAL

1–301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1–302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1–303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations as he deems necessary, in consultation with affected agencies.

1–304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1–305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

1–4. AGENCY IMPLEMENTATION

1–401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1–402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1–403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

1–5. GENERAL PROVISIONS

1–501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to

the coordination of enforcement of Title VI of the Civil Rights Act of 1964 [this subchapter] shall continue in effect until revoked or modified (28 CFR 42.401 to 42.415).

1–502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended [29 U.S.C. 794], shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1–503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1–504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.

JIMMY CARTER.

EX. ORD. NO. 13166. IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

Ex. Ord. No. 13166, Aug. 11, 2000, 65 F.R. 50121, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

SECTION 1. *Goals.*

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

SEC. 2. *Federally Conducted Programs and Activities.*

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

SEC. 3. *Federally Assisted Programs and Activities.*

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

SEC. 4. *Consultations.*

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

SEC. 5. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

WILLIAM J. CLINTON.

§ 2000d–2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 2000d–1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that chapter.

(Pub. L. 88–352, title VI, § 603, July 2, 1964, 78 Stat. 253.)

CODIFICATION

''Chapter 7 of title 5'' and ''that chapter'' substituted in text for ''section 10 of the Administrative Procedure Act'' and ''that section'', respectively, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 10 of the Administrative Procedure Act was classified to section 1009 of Title 5.

§ 2000d–3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

(Pub. L. 88–352, title VI, § 604, July 2, 1964, 78 Stat. 253.)

§ 2000d–4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(Pub. L. 88–352, title VI, § 605, July 2, 1964, 78 Stat. 253.)

§ 2000d–4a. "Program or activity" and "program" defined

For the purposes of this subchapter, the term ''program or activity'' and the term ''program'' mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(Pub. L. 88–352, title VI, § 606, as added Pub. L. 100–259, § 6, Mar. 22, 1988, 102 Stat. 31; amended Pub. L. 103–382, title III, § 391(q), Oct. 20, 1994, 108 Stat. 4024; Pub. L. 107–110, title X, § 1076(y), Jan. 8, 2002, 115 Stat. 2093.)

AMENDMENTS

2002—Par. (2)(B). Pub. L. 107–110 substituted ''7801'' for ''8801''.

1994—Par. (2)(B). Pub. L. 103–382 substituted ''section 8801 of title 20'' for ''section 198(a)(10) of the Elementary and Secondary Education Act of 1965''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EXCLUSION FROM COVERAGE

This section not to be construed to extend application of Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100–259, set out as a Construction note under section 1687 of Title 20, Education.

ABORTION NEUTRALITY

This section not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100–259, set out as a note under section 1688 of Title 20, Education.

§ 2000d–5. Prohibited deferral of action on applications by local educational agencies seeking Federal funds for alleged noncompliance with Civil Rights Act

The Secretary of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.], by the Act of September 30, 1950[1] (Public Law 874, Eighty-first Congress), or by the Cooperative Research Act [20 U.S.C. 331 et seq.], on the basis of alleged noncompliance with the provisions of this subchapter for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 2000d–1 of this title, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Secretary, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of this subchapter: *Provided*, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned.

(Pub. L. 89–750, title I, § 182, Nov. 3, 1966, 80 Stat. 1209; Pub. L. 90–247, title I, § 112, Jan. 2, 1968, 81

[1] See References in Text note below.

Stat. 787; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 103–382, title III, § 392(b)(1), Oct. 20, 1994, 108 Stat. 4026.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 89–750, Nov. 3, 1966, 80 Stat. 1191, as amended, known as the Elementary and Secondary Education Amendments of 1966. For complete classification of that Act to the Code, see Short Title of 1966 Amendment note set out under section 6301 of Title 20, Education, and Tables.

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§ 6301 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Act of September 30, 1950, referred to in text, is act Sept. 30, 1950, ch. 1124, 64 Stat. 1100, as amended, popularly known as the Educational Agencies Financial Aid Act, which was classified generally to chapter 13 (§ 236 et seq.) of Title 20 prior to repeal by Pub. L. 103–382, title III, § 331(b), Oct. 20, 1994, 108 Stat. 3965. For complete classification of this Act to the Code, see Tables.

The Cooperative Research Act, referred to in text, is act July 26, 1954, ch. 576, 68 Stat. 533, which was classified generally to chapter 15 (§ 331 et seq.) of Title 20, and terminated on July 1, 1975, under provisions of section 402(c)(1) of Pub. L. 93–380, title IV, Aug. 21, 1974, 88 Stat. 544. See section 1851 et seq. of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Elementary and Secondary Education Amendments of 1966, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

AMENDMENTS

1994—Pub. L. 103–382, which directed amendment of this section by striking out ''by the Act of September 23, 1950 (Public Law 815, 81st Congress),'', was executed by striking out ''by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress)'' before ''or by the Cooperative'' to reflect the probable intent of Congress.

1968—Pub. L. 90–247 inserted proviso.

EFFECTIVE DATE

Section 191 of Pub. L. 89–750 provided that: ''The provisions of this title [enacting this section and sections 241m, 871 to 880, and 886 of Title 20, Education, amending sections 241b, 241c, 241e, 241f, 241g, 241h, 241j, 241k, 241*l*, 244, 331a, 332a, 332b, 821, 822, 823, 841, 842, 843, 844, 861, 862, 863, 864, 883, and 884 of Title 20, repealing section 241d of Title 20, and enacting provisions set out as notes under sections 241a, 241b, and 241c of Title 20] shall be effective with respect to fiscal years beginning after June 30, 1966, except as specifically provided otherwise.''

TRANSFER OF FUNCTIONS

''Secretary of Education'' and ''Secretary'' substituted in text for ''Commissioner of Education'' and ''Commissioner'', respectively, pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education of Department of Health, Education, and Welfare to Secretary of Education.

§ 2000d–6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies

(a) Declaration of uniform policy

It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and section 182 of the Elementary and Secondary Education Amendments of 1966 [42 U.S.C. 2000d–5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

(b) Nature of uniformity

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

(c) Prohibition of construction for diminution of obligation for enforcement or compliance with nondiscrimination requirements

Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally assisted programs and activities as required by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(d) Additional funds

It is the sense of the Congress that the Department of Justice and the Secretary of Education should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

(Pub. L. 91–230, § 2, Apr. 13, 1970, 84 Stat. 121; Pub. L. 96–88, title III, § 301, title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsecs. (a) and (c), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (§ 2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

Section was enacted as part of the Elementary and Secondary Education Amendments of 1969, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

TRANSFER OF FUNCTIONS

''Secretary of Education'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (d) pursuant to sections 301 and 507 of Pub. L. 96–88, which are classified to sections 3441 and 3507 of Title 20, Education, and which transferred functions and offices (relating to education) of Department and Secretary of Health, Education, and Welfare to Secretary of Education.

§ 2000d–7. Civil rights remedies equalization

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42

U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986.

(Pub. L. 99–506, title X, § 1003, Oct. 21, 1986, 100 Stat. 1845.)

REFERENCES IN TEXT

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(1), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (§ 2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

Section was enacted as part of the Rehabilitation Act Amendments of 1986, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

SUBCHAPTER VI—EQUAL EMPLOYMENT OPPORTUNITIES

§ 2000e. Definitions

For the purposes of this subchapter—

(a) The term ''person'' includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers.

(b) The term ''employer'' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term ''employment agency'' means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term ''labor organization'' means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term ''employee'' means an individual employed by an employer, except that

the term ''employee'' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term ''commerce'' means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term ''industry affecting commerce'' means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry ''affecting commerce'' within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term ''State'' includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(j) The term ''religion'' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms ''because of sex'' or ''on the basis of sex'' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e–2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(*l*) The term ''complaining party'' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term ''demonstrates'' means meets the burdens of production and persuasion.

(n) The term ''respondent'' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e–16 of this title.

(Pub. L. 88–352, title VII, §701, July 2, 1964, 78 Stat. 253; Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 662; Pub. L. 92–261, §2, Mar. 24, 1972, 86 Stat. 103; Pub. L. 95–555, §1, Oct. 31, 1978, 92 Stat. 2076; Pub. L. 95–598, title III, §330, Nov. 6, 1978, 92 Stat. 2679; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–166, title I, §§104, 109(a), Nov. 21, 1991, 105 Stat. 1074, 1077.)

REFERENCES IN TEXT

The National Labor Relations Act, as amended, referred to in subsec. (e)(1), is act July 5, 1935, ch. 372, 49 Stat. 449, as amended, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

The Railway Labor Act, referred to in subsec. (e)(1), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (h), is Pub. L. 86–257, Sept. 14, 1959, 73 Stat. 519, as amended, which is classified principally to chapter 11 (§401 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 29 and Tables.

For definition of Canal Zone, referred to in subsec. (i), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Outer Continental Shelf Lands Act, referred to in subsec. (i), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

AMENDMENTS

1991—Subsec. (f). Pub. L. 102–166, §109(a), inserted at end ''With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.''

Subsecs. (*l*) to (n). Pub. L. 102–166, §104, added subsecs. (*l*) to (n).

1986—Subsec. (b). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1978—Subsec. (a). Pub. L. 95–598 substituted ''trustees in cases under title 11'' for ''trustees in bankruptcy''.

Subsec. (k). Pub. L. 95–555 added subsec. (k).

1972—Subsec. (a). Pub. L. 92–261, §2(1), included within ''person'' governments, governmental agencies, and political subdivisions.

Subsec. (b). Pub. L. 92–261, §2(2), substituted ''fifteen or more employees'' for ''twenty-five or more employees'', extended coverage to include State and local governments, excepted from coverage any department or agency of the District of Columbia subject by statute to procedures of the competitive service, as defined in section 2102 of title 5, and substituted provisions under which persons having fewer than twenty-five employees

during the first year after March 24, 1972, were not to be considered employers, for provisions under which persons having fewer than a specified number of employees during the first year after the effective date of this section, and the second and third years after such date were not to be considered employers.

Subsec. (c). Pub. L. 92–261, § 2(3), struck out from term ''employment agency'' exemption from coverage for agencies of the United States, States or political subdivisions of States, other than the United States Employment Service and the system of State and local employment services receiving Federal assistance.

Subsec. (e). Pub. L. 92–261, § 2(4), substituted provisions which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as twenty-five or more during the first year after March 24, 1972, and fifteen or more thereafter, for provisions which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as one hundred or more during the first year after the effective date of this section, seventy-five or more during the second year after such date, fifty or more during the third year after such date, and twenty-five or more thereafter.

Subsec. (f). Pub. L. 92–261, § 2(5), inserted provisions enumerating persons excepted from term ''employee''.

Subsec. (h). Pub. L. 92–261, § 2(6), inserted '', and further includes any governmental industry, business, or activity'' after ''Labor-Management Reporting and Disclosure Act of 1959''.

Subsec. (j). Pub. L. 92–261, § 2(7), added subsec. (j).

1966—Subsec. (b). Pub. L. 89–554 struck out proviso which stated that it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin and directed the President to utilize his existing authority to effectuate this policy.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 104 of Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

Section 109(c) of Pub. L. 102–166 provided that: ''The amendments made by this section [amending this section and sections 2000e–1, 12111, and 12112 of this title] shall not apply with respect to conduct occurring before the date of the enactment of this Act [Nov. 21, 1991].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1978 AMENDMENT; EXCEPTIONS TO APPLICATION

Section 2 of Pub. L. 95–555 provided that:

''(a) Except as provided in subsection (b), the amendment made by this Act [amending this section] shall be effective on the date of enactment [Oct. 31, 1978].

''(b) The provisions of the amendment made by the first section of this Act [amending this section] shall not apply to any fringe benefit program or fund, or insurance program which is in effect on the date of enactment of this Act [Oct. 31, 1978] until 180 days after enactment of this Act.''

EFFECTIVE DATE

Subsecs. (a), (b) of section 716 of Pub. L. 88–352 provided that:

''(a) This title [enacting this section and sections 2000e–1, 2000e–4, 2000e–7 to 2000e–15 of this title, and amending sections 2204 and 2205(a)(45) of former Title 5, Executive Departments and Government Officers and Employees] shall become effective one year after the date of its enactment [July 2, 1964].

''(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 [sections 2000e–2, 2000e–3, 2000e–5, and 2000e–6 of this title] shall become effective immediately [July 2, 1964].''

GLASS CEILING

Title II of Pub. L. 102–166, entitled the ''Glass Ceiling Act of 1991'', established a Glass Ceiling Commission which was to submit to Congress, no later than 15 months after Nov. 21, 1991, study and recommendations concerning eliminating artificial barriers to advancement of women and minorities in the workplace and increasing opportunities and developmental experiences of women and minorities to foster advancement to management and decisionmaking positions in businesses, authorized creation of a National Award for Diversity and Excellence in American Executive Management which was to be awarded annually by the Commission to a qualified business concern which promoted more diverse skilled work force at management and decisionmaking levels in business, and further provided for composition of Commission, powers, staff and consultants, confidentiality of information, appropriations, and termination of Commission and authority to make awards 4 years after Nov. 21, 1991.

READJUSTMENT OF BENEFITS

Section 3 of Pub. L. 95–555 provided that: ''Until the expiration of a period of one year from the date of enactment of this Act [Oct. 31, 1978] or, if there is an applicable collective-bargaining agreement in effect on the date of enactment of this Act, until the termination of that agreement, no person who, on the date of enactment of this Act is providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation with this Act [amending this section and enacting provisions set out above] shall, in order to come into compliance with this Act, reduce the benefits or the compensation provided any employee on the date of enactment of this Act, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: *Provided*, That where the costs of such benefits on the date of enactment of this Act are apportioned between employers and employees, the payments or contributions required to comply with this Act may be made by employers and employees in the same proportion: *And provided further*, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with this Act.''

EXECUTIVE ORDER NO. 11126

Ex. Ord. No. 11126, Nov. 1, 1963, 28 F.R. 11717, as amended by Ex. Ord. No. 11221, May 6, 1965, 30 F.R. 6427; Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, which related to the Interdepartmental Committee on the Status of Women and the Citizens' Advisory Council on the Status of Women, was revoked by Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, formerly set out below.

EX. ORD. NO. 11246. EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, as amended by Ex. Ord. No. 11375, Oct. 13, 1967, 32 F.R. 14303; Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985; Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501; Ex. Ord. No. 13279, § 4, Dec. 12, 2002, 67 F.R. 77143, provided:

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I—NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT

[Superseded. Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985.]

PART II—NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

SUBPART A—DUTIES OF THE SECRETARY OF LABOR

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

SUBPART B—CONTRACTORS' AGREEMENTS

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

''During the performance of this contract, the contractor agrees as follows:

''(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

''(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

''(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

''(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

''(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

''(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

''(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 [section 204 of this Order] so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, *however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.''

SEC. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or any agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

SEC. 204. (a) The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order.

(b) The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United

States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.

(c) Section 202 of this Order shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.

(d) The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *provided*, that such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *and provided further*, that in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

SUBPART C—POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 [sections 2000d to 2000d–4 of this title and this subchapter] or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

SUBPART D—SANCTIONS AND PENALTIES

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964 [this subchapter].

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

SEC. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

SUBPART E—CERTIFICATES OF MERIT

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices, and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

PART III—NONDISCRIMINATION PROVISIONS IN FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

SEC. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor; together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

SEC. 302. (a) ''Construction contract,'' as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term ''applicant'' as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

SEC. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 [sections 2000d to 2000d–4 of this title] shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof [section 2000d–1 of this title] and the regulations of the administering department or agency issued thereunder.

PART IV—MISCELLANEOUS

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the ''Plans for Progress.''

SEC. 403. (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Govern-

ment contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

EX. ORD. NO. 11478. EQUAL EMPLOYMENT OPPORTUNITY IN FEDERAL GOVERNMENT

Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985, as amended by Ex. Ord. No. 11590, Apr. 23, 1971, 36 F.R. 7831; Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053; Ex. Ord. No. 13087, May 28, 1998, 63 F.R. 30097; Ex. Ord. No. 13152, May 2, 2000, 65 F.R. 26115, provided:

NOW THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

SECTION 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, sexual orientation, or status as a parent., [sic] and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government, to the extent permitted by law.

SEC. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

SEC. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

SEC. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and and [sic] appropriate to carry out its responsibilities under this Order.

SEC. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

SEC. 6. ''Status as a parent'' refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

(a) a biological parent;
(b) an adoptive parent;
(c) a foster parent;
(d) a stepparent;
(e) a custodian of a legal ward;
(f) in loco parentis over such an individual; or
(g) actively seeking legal custody or adoption of such an individual.

SEC. 7. The Office of Personnel Management shall be authorized to develop guidance on the provisions of this order prohibiting discrimination on the basis of an individual's sexual orientation or status as a parent.

SEC. 8. This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office [now Government Accountability Office]) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

SEC. 9. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

SEC. 10. This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970 [Title 39, Postal Service].

SEC. 11. This Executive Order does not confer any right or benefit enforceable in law or equity against the United States or its representatives.

EXECUTIVE ORDER NO. 12050

Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, as amended by Ex. Ord. No. 12057, May 8, 1978, 43 F.R. 19811; Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639; Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, which established a National Advisory Committee for Women, was omitted in view of the revocation of sections 1 to 5 and 7 and 8 by Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639 and the revocation of section 6 by Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239.

EX. ORD. NO. 12067. COORDINATION OF FEDERAL EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out under section 2000e–4 of this title and in the Appendix to Title 5, Government Organizations and Employees], it is ordered as follows:

1–1. IMPLEMENTATION OF REORGANIZATION PLAN

1–101. The transfer to the Equal Employment Opportunity Commission of all the functions of the Equal Employment Opportunity Coordinating Council, and the termination of that Council, as provided by Section 6 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out under section 2000e–4 of this title and in the Appendix to Title 5, Government Organization and Employees] shall be effective on July 1, 1978.

1–2. RESPONSIBILITIES OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

1–201. The Equal Employment Opportunity Commission shall provide leadership and coordination to the

efforts of Federal departments and agencies to enforce all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity without regard to race, color, religion, sex, national origin, age or handicap. It shall strive to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the Federal departments and agencies having responsibility for enforcing such statutes, Executive orders, regulations and policies.

1–202. In carrying out its functions under this order the Equal Employment Opportunity Commission shall consult with and utilize the special expertise of Federal departments and agencies with equal employment opportunity responsibilities. The Equal Employment Opportunity Commission shall cooperate with such departments and agencies in the discharge of their equal employment responsibilities.

1–203. All Federal departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this order and shall furnish the Commission such reports and information as it may request.

1–3. SPECIFIC RESPONSIBILITIES

1–301. To implement its responsibilities under Section 1–2, the Equal Employment Opportunity Commission shall, where feasible:

(a) develop uniform standards, guidelines, and policies defining the nature of employment discrimination on the ground of race, color, religion, sex, national origin, age or handicap under all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity;

(b) develop uniform standards and procedures for investigations and compliance reviews to be conducted by Federal departments and agencies under any Federal statute, Executive order, regulation or policy requiring equal employment opportunity;

(c) develop procedures with the affected agencies, including the use of memoranda of understanding, to minimize duplicative investigations or compliance reviews of particular employers or classes of employers or others covered by Federal statutes, Executive orders, regulations or policies requiring equal employment opportunity;

(d) ensure that Federal departments and agencies develop their own standards and procedures for undertaking enforcement actions when compliance with equal employment opportunity requirements of any Federal statute, Executive order, regulation or policy cannot be secured by voluntary means;

(e) develop uniform record-keeping and reporting requirements concerning employment practices to be utilized by all Federal departments and agencies having equal employment enforcement responsibilities;

(f) provide for the sharing of compliance records, findings, and supporting documentation among Federal departments and agencies responsible for ensuring equal employment opportunity;

(g) develop uniform training programs for the staff of Federal departments and agencies with equal employment opportunity responsibilities;

(h) assist all Federal departments and agencies with equal employment opportunity responsibilities in developing programs to provide appropriate publications and other information for those covered and those protected by Federal equal employment opportunity statutes, Executive orders, regulations, and policies; and

(i) initiate cooperative programs, including the development of memoranda of understanding between agencies, designed to improve the coordination of equal employment opportunity compliance and enforcement.

1–302. The Equal Employment Opportunity Commission shall assist the Office of Personnel Management, or its successor, in establishing uniform job-related qualifications and requirements for job classifications and descriptions for Federal employees involved in enforcing all Federal equal employment opportunity provisions.

1–303. The Equal Employment Opportunity Commission shall issue such rules, regulations, policies, procedures or orders as it deems necessary to carry out its responsibilities under this order. It shall advise and offer to consult with the affected Federal departments and agencies during the development of any proposed rules, regulations, policies, procedures or orders and shall formally submit such proposed issuances to affected departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall use its best efforts to reach agreement with the agencies on matters in dispute. Departments and agencies shall comply with all final rules, regulations, policies, procedures or orders of the Equal Employment Opportunity Commission.

1–304. All Federal departments and agencies shall advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity. Departments and agencies shall formally submit such proposed issuances to the Equal Employment Opportunity Commission and other interested Federal departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall review such proposed rules, regulations, policies, procedures or orders to ensure consistency among the operations of the various Federal departments and agencies. Issuances related to internal management and administration are exempt from this clearance process. Case handling procedures unique to a single program also are exempt, although the Equal Employment Opportunity Commission may review such procedures in order to assure maximum consistency within the Federal equal employment opportunity program.

1–305. Before promulgating significant rules, regulations, policies, procedures or orders involving equal employment opportunity, the Commission and affected departments and agencies shall afford the public an opportunity to comment.

1–306. The Equal Employment Opportunity Commission may make recommendations concerning staff size and resource needs of the Federal departments and agencies having equal employment opportunity responsibilities to the Office of Management and Budget.

1–307. (a) It is the intent of this order that disputes between or among agencies concerning matters covered by this order shall be resolved through good faith efforts of the affected agencies to reach mutual agreement. Use of the dispute resolution mechanism contained in Subsections (b) and (c) of this Section should be resorted to only in extraordinary circumstances.

(b) Whenever a dispute which cannot be resolved through good faith efforts arises between the Equal Employment Opportunity Commission and another Federal department or agency concerning the issuance of an equal employment opportunity rule, regulation, policy, procedure, order or any matter covered by this Order, the Chairman of the Equal Employment Opportunity Commission or the head of the affected department or agency may refer the matter to the Executive Office of the President. Such reference must be in writing and may not be made later than 15 working days following receipt of the initiating agency's notice of intent publicly to announce an equal employment opportunity rule, regulation, policy, procedure or order. If no reference is made within the 15 day period, the decision of the agency which initiated the proposed issuance will become effective.

(c) Following reference of a disputed matter to the Executive Office of the President, the Assistant to the President for Domestic Affairs and Policy (or such other official as the President may designate) shall designate an official within the Executive Office of the President to meet with the affected agencies to resolve the dispute within a reasonable time.

1–4. ANNUAL REPORT

1–401. The Equal Employment Opportunity Commission shall include in the annual report transmitted to the President and the Congress pursuant to Section 715 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–14), a statement of the progress that has been made in achieving the purpose of this order. The Equal Employment Opportunity Commission shall provide Federal departments and agencies an opportunity to comment on the report prior to formal submission.

1–5. GENERAL PROVISIONS

1–501. Nothing in this order shall relieve or lessen the responsibilities or obligations imposed upon any person or entity by Federal equal employment law, Executive order, regulation or policy.

1–502. Nothing in this order shall limit the Attorney General's role as legal adviser to the Executive Branch.

JIMMY CARTER.

EX. ORD. NO. 12086. CONSOLIDATION OF CONTRACT COMPLIANCE FUNCTIONS FOR EQUAL EMPLOYMENT OPPORTUNITY

Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 U.S.C. 1531], in order to provide for the transfer to the Department of Labor of certain contract compliance functions relating to equal employment opportunity, it is hereby ordered as follows:

1–1. TRANSFER OF FUNCTIONS

1–101. The functions concerned with being primarily responsible for the enforcement of the equal employment opportunity provisions under Parts II and III of Executive Order. No. 11246, as amended [set out as a note above], are transferred or reassigned to the Secretary of Labor from the following agencies:

(a) Department of the Treasury.
(b) Department of Defense.
(c) Department of the Interior.
(d) Department of Commerce.
(e) Department of Health and Human Services.
(f) Department of Housing and Urban Development.
(g) Department of Transportation.
(h) Department of Energy.
(i) Environmental Protection Agency.
(j) General Services Administration.
(k) Small Business Administration.

1–102. The records, property, personnel and positions, and unexpended balances of appropriations or funds related to the functions transferred or reassigned by this Order, that are available and necessary to finance or discharge those functions, are transferred to the Secretary of Labor.

1–103. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

1–2. CONFORMING AMENDMENTS TO EXECUTIVE ORDER NO. 11246

1–201(a). In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, Section 201 of Executive Order No. 11246, as amended, is amended to read:

''SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.''.

(b) Paragraph (7) of the contract clauses specified in Section 202 of Executive Order No. 11246, as amended, is amended to read:

''(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.''.

1–202. In subsection (c) of Section 203 of Executive Order No. 11246, as amended, delete ''contracting agency'' in the proviso and substitute ''Secretary of Labor'' therefor.

1–203. In both the beginning and end of subsection (d) of Section 203 of Executive Order No. 11246, as amended, delete ''contracting agency or the'' in the phrase ''contracting agency or the Secretary''.

1–204. Section 205 of Executive Order No. 11246, as amended, is amended by deleting the last two sentences, which dealt with agency designation of compliance officers, and revising the rest of that Section to read:

''SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.''.

1–205. In order to delete references to the contracting agencies conducting investigations, Section 206 of Executive Order No. 11246, as amended, is amended to read:

''SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.''.

''(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.''.

1–206. In Section 207 of Executive Order No. 11246, as amended, delete ''contracting agencies, other'' in the first sentence.

1–207. The introductory clause in Section 209(a) of Executive Order No. 11246, as amended, is amended by deleting ''or the appropriate contracting agency'' from ''In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:''.

1–208. In paragraph (5) of Section 209(a) of Executive Order No. 11246, as amended, insert at the beginning the phrase ''After consulting with the contracting agency, direct the contracting agency to'', and at the end of paragraph (5) delete ''contracting agency'' and substitute therefor ''Secretary of Labor'' so that paragraph (5) is amended to read:

''(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions

of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.''.

1–209. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions, substitute ''Secretary of Labor'' for ''each contracting agency'' in Section 209(b) of Executive Order No. 11246, as amended, so that Section 209(b) is amended to read:

''(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.''.

1–210. In order to reflect the responsibility of the contracting agencies for prompt compliance with the directions of the Secretary of Labor, Sections 210 and 211 of Executive Order No. 11246, as amended, are amended to read:

''SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.''.

''SEC. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.''.

1–211. Section 212 of Executive Order No. 11246, as amended, is amended to read:

''SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.''.

1–212. In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, references to the administering department or agency are deleted in clauses (1), (2), and (3) of Section 301 of Executive Order No. 11246, as amended, and those clauses are amended to read:

''(1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order,''.

1–213. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions ''Secretary of Labor'' shall be substituted for ''administering department or agency'' in Section 303 of Executive Order No. 11246, as amended, and Section 303 is amended to read:

''SEC. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.''.

''(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.''.

''(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.''.

1–214. Section 401 of Executive Order No. 11246, as amended, is amended to read:

''SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.''.

1–3. GENERAL PROVISIONS

1–301. The transfers or reassignments provided by Section 1–1 of this Order shall take effect at such time or times as the Director of the Office of Management and Budget shall determine. The Director shall ensure that all such transfers or reassignments take effect within 60 days.

1–302. The conforming amendments provided by Section 1–2 of this Order shall take effect on October 8, 1978; except that, with respect to those agencies identified in Section 1–101 of this Order, the conforming amendments shall be effective on the effective date of the transfer or reassignment of functions as specified pursuant to Section 1–301 of this Order.

EXECUTIVE ORDER NO. 12135

Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639, which established the President's Advisory Committee for Women, was revoked by Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, set out below.

EX. ORD. NO. 12336. TASK FORCE ON LEGAL EQUITY FOR WOMEN

Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, as amended by Ex. Ord. No. 12355, Apr. 1, 1982, 47 F.R. 14479, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the systematic elimination of regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from Federal activities, it is hereby ordered as follows:

SECTION 1. *Establishment.* (a) There is established the Task Force on Legal Equity for Women.

(b) The Task Force members shall be appointed by the President from among nominees by the heads of the following Executive agencies, each of which shall have one representative on the Task Force.

(1) Department of State.
(2) Department of The Treasury.
(3) Department of Defense.
(4) Department of Justice.
(5) Department of The Interior.
(6) Department of Agriculture.
(7) Department of Commerce.
(8) Department of Labor.
(9) Department of Health and Human Services.
(10) Department of Housing and Urban Development.
(11) Department of Transportation.
(12) Department of Energy.
(13) Department of Education.

(14) Agency for International Development.
(15) Veterans Administration [now Department of Veterans Affairs].
(16) Office of Management and Budget.
(17) International Communication Agency.
(18) Office of Personnel Management.
(19) Environmental Protection Agency.
(20) ACTION [now Corporation for National and Community Service].
(21) Small Business Administration.

(c) The President shall designate one of the members to chair the Task Force. Other agencies may be invited to participate in the functions of the Task Force.

SEC. 2. *Functions.* (a) The members of the Task Force shall be responsible for coordinating and facilitating in their respective agencies, under the direction of the head of their agency, the implementation of changes ordered by the President in sex-discriminatory Federal regulations, policies, and practices.

(b) The Task Force shall periodically report to the President on the progress made throughout the Government in implementing the President's directives.

(c) The Attorney General shall complete the review of Federal laws, regulations, policies, and practices which contain language that unjustifiably differentiates, or which effectively discriminates, on the basis of sex. The Attorney General or his designee shall, on a quarterly basis, report his findings to the President through the Cabinet Council on Legal Policy.

SEC. 3. *Administration.* (a) The head of each Executive agency shall, to the extent permitted by law, provide the Task Force with such information and advice as the Task Force may identify as being useful to fulfill its functions.

(b) The agency with its representative chairing the Task Force shall, to the extent permitted by law, provide the Task Force with such administrative support as may be necessary for the effective performance of its functions.

(c) The head of each agency represented on the Task Force shall, to the extent permitted by law, furnish its representative such administrative support as is necessary and appropriate.

SEC. 4. *General Provisions.* (a) Section 1–101(h) of Executive Order No. 12258, as amended, is revoked.

(b) Executive Order No. 12135 is revoked.

(c) Section 6 of Executive Order No. 12050, as amended, is revoked.

RONALD REAGAN.

[The International Communication Agency was redesignated the United States Information Agency, see section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22.]

EX. ORD. NO. 13171. HISPANIC EMPLOYMENT IN THE FEDERAL GOVERNMENT

Ex. Ord. No. 13171, Oct. 12, 2000, 65 F.R. 61251, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the representation of Hispanics in Federal employment, within merit system principles and consistent with the application of appropriate veterans' preference criteria, to achieve a Federal workforce drawn from all segments of society, it is hereby ordered as follows:

SECTION 1. *Policy. It is the policy of the executive branch to recruit qualified individuals from appropriate sources in an effort to achieve a workforce drawn from all segments of society. Pursuant to this policy, this Administration notes that Hispanics remain underrepresented in the Federal workforce: they make up only 6.4 percent of the Federal civilian workforce, roughly half of their total representation in the civilian labor force. This Executive Order, therefore, affirms ongoing policies and recommends additional policies to eliminate the underpresentation [sic] of Hispanics in the Federal workforce.*

SEC. 2. *Responsibilities of Executive Departments and Agencies.* The head of each executive department and agency (agency) shall establish and maintain a program for the recruitment and career development of Hispanics in Federal employment. In its program, each agency shall:

(a) provide a plan for recruiting Hispanics that creates a fully diverse workforce for the agency in the 21st century;

(b) assess and eliminate any systemic barriers to the effective recruitment and consideration of Hispanics, including but not limited to:

(1) broadening the area of consideration to include applicants from all appropriate sources;

(2) ensuring that selection factors are appropriate and achieve the broadest consideration of applicants and do not impose barriers to selection based on nonmerit factors; and

(3) considering the appointment of Hispanic Federal executives to rating, selection, performance review, and executive resources panels and boards;

(c) improve outreach efforts to include organizations outside the Federal Government in order to increase the number of Hispanic candidates in the selection pool for the Senior Executive Service;

(d) promote participation of Hispanic employees in management, leadership, and career development programs;

(e) ensure that performance plans for senior executives, managers, and supervisors include specific language related to significant accomplishments on diversity recruitment and career development and that accountability is predicated on those plans;

(f) establish appropriate agency advisory councils that include Hispanic Employment Program Managers;

(g) implement the goals of the Government-wide Hispanic Employment Initiatives issued by the Office of Personnel Management (OPM) in September 1997 (Nine-Point Plan), and the Report to the President's Management Council on Hispanic Employment in the Federal Government of March 1999;

(h) ensure that managers and supervisors receive periodic training in diversity management in order to carry out their responsibilities to maintain a diverse workforce; and

(i) reflect a continuing priority for eliminating Hispanic underrepresentation in the Federal workforce and incorporate actions under this order as strategies for achieving workforce diversity goals in the agency's Government Performance and Results Act (GPRA) Annual Performance Plan.

SEC. 3. *Cooperation.* All efforts taken by heads of agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation among Federal, public, and private sector employers, and appropriate Hispanic organizations whenever such partnerships and cooperation are possible and would promote the Federal employment of qualified individuals. In developing the long-term comprehensive strategies required by section 2 of this order, agencies shall, as appropriate, consult with and seek information and advice from experts in the areas of special targeted recruitment and diversity in employment.

SEC. 4. *Responsibilities of the Office of Personnel Management.* The Office of Personnel Management is required by law and regulations to undertake a Government-wide minority recruitment effort. Pursuant to that on-going effort and in implementation of this order, the Director of OPM shall:

(a) provide Federal human resources management policy guidance to address Hispanic underrepresentation where it occurs;

(b) take the lead in promoting diversity to executive agencies for such actions as deemed appropriate to promote equal employment opportunity;

(c) within 180 days from the date of this order, prescribe such regulations as may be necessary to carry out the purposes of this order;

(d) within 60 days from the date of this order, establish an Interagency Task Force, chaired by the Director and composed of agency officials at the Deputy Secretary level, or the equivalent. This Task Force shall meet semi-annually to:

(1) review best practices in strategic human resources management planning, including alignment with agency GPRA plans;

(2) assess overall executive branch progress in complying with the requirements of this order;

(3) provide advice on ways to increase Hispanic community involvement; and

(4) recommend any further actions, as appropriate, in eliminating the underrepresentation of Hispanics in the Federal workforce where it occurs; and

(e) issue an annual report with findings and recommendations to the President on the progress made by agencies on matters related to this order. The first annual report shall be issued no later than 1 year from the date of this order.

SEC. 5. *Judicial Review*. This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity except as may be identified in existing laws and regulations, by a party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 2000e–1. Exemption

(a) Inapplicability of subchapter to certain aliens and employees of religious entities

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) Compliance with statute as violative of foreign law

It shall not be unlawful under section 2000e–2 or 2000e–3 of this title for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

(c) Control of corporation incorporated in foreign country

(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e–2 or 2000e–3 of this title engaged in by such corporation shall be presumed to be engaged in by such employer.

(2) Sections 2000e–2 and 2000e–3 of this title shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on—

(A) the interrelation of operations;

(B) the common management;

(C) the centralized control of labor relations; and

(D) the common ownership or financial control,

of the employer and the corporation.

(Pub. L. 88–352, title VII, §702, July 2, 1964, 78 Stat. 255; Pub. L. 92–261, §3, Mar. 24, 1972, 86 Stat. 103; Pub. L. 102–166, title I, §109(b)(1), Nov. 21, 1991, 105 Stat. 1077.)

AMENDMENTS

1991—Pub. L. 102–166 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1972—Pub. L. 92–261 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: ''This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102–166, set out as a note under section 2000e of this title.

§ 2000e–2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to

classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase ''unlawful employment practice'' shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C. 781 et seq.].

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of title 29.

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employ-

ment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1)(A) An unlawful employment practice based on disparate impact is established under this subchapter only if—

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of ''alternative employment practice''.

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C. 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(*l*) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had—

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to—

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28.

(Pub. L. 88–352, title VII, § 703, July 2, 1964, 78 Stat. 255; Pub. L. 92–261, § 8(a), (b), Mar. 24, 1972, 86 Stat. 109; Pub. L. 102–166, title I, §§ 105(a), 106, 107(a), 108, Nov. 21, 1991, 105 Stat. 1074–1076.)

REFERENCES IN TEXT

The Subversive Activities Control Act of 1950, referred to in subsec. (f), is title I (§§ 1–32) of act Sept. 23, 1950, ch. 1024, 64 Stat. 987, as amended, which is classified principally to subchapter I (§ 781 et seq.) of chapter 23 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

The Controlled Substances Act, referred to in subsec. (k)(3), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Federal civil rights laws, referred to in subsec. (n)(1), are classified generally to chapter 21 (§ 1981 et seq.) of this title.

The Federal Rules of Civil Procedure, referred to in subsec. (n)(2)(A), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1991—Subsec. (k). Pub. L. 102–166, § 105(a), added subsec. (k).

Subsec. (*l*). Pub. L. 102–166, § 106, added subsec. (*l*).

Subsec. (m). Pub. L. 102–166, § 107(a), added subsec. (m).

Subsec. (n). Pub. L. 102–166, § 108, added subsec. (n).

1972—Subsec. (a)(2). Pub. L. 92–261, § 8(a), inserted ''or applicants for employment'' after ''his employees''.

Subsec. (c)(2). Pub. L. 92–261, § 8(b), inserted ''or applicants for membership'' after ''membership''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

SUBVERSIVE ACTIVITIES CONTROL BOARD

Subversive Activities Control Board established by act Sept. 23, 1950, ch. 1024, § 12, 64 Stat. 977, and ceased to operate on June 30, 1973.

§ 2000e–3. Other unlawful employment practices

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

(Pub. L. 88–352, title VII, § 704, July 2, 1964, 78 Stat. 257; Pub. L. 92–261, § 8(c), Mar. 24, 1972, 86 Stat. 109.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–261, § 8(c)(1), inserted provision making it an unlawful employment practice for a joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against the specified individuals.

Subsec. (b). Pub. L. 92–261, § 8(c)(2), inserted provisions making prohibitions applicable to joint labor-management committees controlling apprenticeship or other training or retraining, including on-the-job training programs, and notices or advertisements of such joint labor-management committees relating to admission to, or employment in, any program established to provide apprenticeship or other training.

§ 2000e–4. Equal Employment Opportunity Commission

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of title 5 governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5.

(b) General Counsel; appointment; term; duties; representation by attorneys and Attorney General

(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e–5 and 2000e–6 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

(c) Exercise of powers during vacancy; quorum

A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) Seal; judicial notice

The Commission shall have an official seal which shall be judicially noticed.

(e) Reports to Congress and the President

The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) Principal and other offices

The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

(g) Powers of Commission

The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e–5 of this title by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

(h) Cooperation with other departments and agencies in performance of educational or promotional activities; outreach activities

(1) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(2) In exercising its powers under this subchapter, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to—

(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination,

concerning rights and obligations under this subchapter or such law, as the case may be.

(i) Personnel subject to political activity restrictions

All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324[1] of title 5, notwithstanding any exemption contained in such section.

(j) Technical Assistance Training Institute

(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

(2) An employer or other entity covered under this subchapter shall not be excused from compliance with the requirements of this subchapter because of any failure to receive technical assistance under this subsection.

(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.

(k) EEOC Education, Technical Assistance, and Training Revolving Fund

(1) There is hereby established in the Treasury of the United States a revolving fund to be known as the ''EEOC Education, Technical Assistance, and Training Revolving Fund'' (hereinafter in this subsection referred to as the ''Fund'') and to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to laws administered by the Commission. Monies in the Fund shall be available without fiscal year limitation to the Commission for such purposes.

(2)(A) The Commission shall charge fees in accordance with the provisions of this paragraph to offset the costs of education, technical assistance, and training provided with monies in the Fund. Such fees for any education, technical assistance, or training—

(i) shall be imposed on a uniform basis on persons and entities receiving such education, assistance, or training,

(ii) shall not exceed the cost of providing such education, assistance, and training, and

(iii) with respect to each person or entity receiving such education, assistance, or training, shall bear a reasonable relationship to the cost of providing such education, assistance, or training to such person or entity.

(B) Fees received under subparagraph (A) shall be deposited in the Fund by the Commission.

(C) The Commission shall include in each report made under subsection (e) of this section information with respect to the operation of the Fund, including information, presented in the aggregate, relating to—

(i) the number of persons and entities to which the Commission provided education, technical assistance, or training with monies in the Fund, in the fiscal year for which such report is prepared,

(ii) the cost to the Commission to provide such education, technical assistance, or training to such persons and entities, and

(iii) the amount of any fees received by the Commission from such persons and entities for such education, technical assistance, or training.

(3) The Secretary of the Treasury shall invest the portion of the Fund not required to satisfy current expenditures from the Fund, as determined by the Commission, in obligations of the United States or obligations guaranteed as to principal by the United States. Investment proceeds shall be deposited in the Fund.

(4) There is hereby transferred to the Fund $1,000,000 from the Salaries and Expenses appropriation of the Commission.

(Pub. L. 88–352, title VII, § 705, July 2, 1964, 78 Stat. 258; Pub. L. 92–261, § 8(d)–(f), Mar. 24, 1972, 86 Stat. 109, 110; Pub. L. 93–608, § 3(1), Jan. 2, 1975, 88 Stat. 1972; Pub. L. 95–251, § 2(a)(11), Mar. 27, 1978, 92 Stat. 183; Pub. L. 102–166, title I, §§ 110(a), 111, Nov. 21, 1991, 105 Stat. 1078; Pub. L. 102–411, § 2, Oct. 14, 1992, 106 Stat. 2102; Pub. L. 104–66, title II, § 2031, Dec. 21, 1995, 109 Stat. 728.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5.

The effective date of this Act, referred to in subsec. (b)(1), probably means the date of enactment of Pub. L. 92–261, which was approved Mar. 24, 1972.

Section 7324 of title 5, referred to in subsec. (i), which related to Executive agency employees or District of Columbia government employees influencing elections or taking part in political campaigns, was omitted in the general revision of subchapter III of chapter 73 of Title 5 by Pub. L. 103–94, § 2(a), Oct. 6, 1993, 107 Stat. 1003, which enacted a new section 7324, relating to prohibition of political activities while on duty. See section 7323 of Title 5.

CODIFICATION

In subsec. (a), reference to section ''5372'' of title 5 substituted for reference to section ''5362'' on authority of Pub. L. 95–454, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221, which redesignated sections 5361 through 5365 of title 5 as sections 5371 through 5375.

In subsec. (i), ''section 7324 of title 5'' substituted for ''section 9 of the Act of August 2, 1939, as amended (the Hatch Act)'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 9 of the Act of August 2, 1939, as amended, was classified to section 118i of Title 5.

AMENDMENTS

1995—Subsec. (k)(2)(C). Pub. L. 104–66 substituted ''including information, presented in the aggregate, relat-

[1] See References in Text note below.

ing to'' for ''including'' in introductory provisions, ''the number of persons and entities'' for ''the identity of each person or entity'' in cl. (i), ''such persons and entities'' for ''such person or entity'' in cl. (ii), and ''fees'' for ''fee'' and ''such persons and entities'' for ''such person or entity'' in cl. (iii).

1992—Subsec. (k). Pub. L. 102–411 added subsec. (k).

1991—Subsec. (h). Pub. L. 102–166, §111, designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 102–166, §110(a), added subsec. (j).

1978—Subsec. (a). Pub. L. 95–251 substituted ''administrative law judges'' for ''hearing examiners'' wherever appearing.

1975—Subsec. (e). Pub. L. 93–608 struck out reporting requirement of names, salaries, and duties of all individuals in employ of Commission.

1972—Subsec. (a). Pub. L. 92–261, §8(d), struck out provisions setting forth length of terms of original members of Commission and provisions authorizing Vice Chairman to act as Chairman in certain circumstances, inserted provisions relating to continuation in office of all members of Commission, and substituted provisions requiring appointment of officers, etc., in accordance with provisions of title 5, fixing compensation of such officers, etc., in accordance with provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, and requiring assignment, removal, and compensation of hearing examiners in accordance with specified sections, for provisions requiring appointment of officers, etc., in accordance with civil service laws, and fixing compensation of such officers, etc., in accordance with the Classification Act of 1949, as amended.

Subsecs. (b) to (e). Pub. L. 92–261, §8(e), added subsec. (b), struck out subsec. (e) which amended sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees, and redesignated existing subsecs. (b), (c), and (d) as (c), (d), and (e), respectively.

Subsec. (g)(6). Pub. L. 92–261, §8(f), substituted provisions which authorized Commission to intervene in a civil action brought under section 2000e–5 of this title where respondent is other than a government, governmental agency, or political subdivision for provisions which authorized Commission to refer matters to Attorney General with recommendations to intervene or institute civil actions.

Subsecs. (h) to (j). Pub. L. 92–261, §8(e)(2), (3), struck out subsec. (h) which provided for legal representation for Commission, and redesignated subsecs. (i) and (j) as (h) and (i), respectively.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 110(b) of Pub. L. 102–166 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 21, 1991].''

Amendment by section 111 of Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (e) of this section is listed in item 20 on page 165), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, §1402(1)] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

REORGANIZATION PLAN NO. 1 OF 1978 SUPERSEDED BY CIVIL SERVICE REFORM ACT OF 1978

Section 905 of Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1224, provided in part that any provision in Reorganization Plan No. 1 of 1978 [set out below] inconsistent with any provision of that Act [see Tables for classification] was superseded thereby.

REORGANIZATION PLAN NO. 1 OF 1978

43 F.R. 19807, 92 Stat. 3781

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 23, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

EQUAL EMPLOYMENT OPPORTUNITY

SECTION 1. TRANSFER OF EQUAL PAY ENFORCEMENT FUNCTIONS

All functions related to enforcing or administering Section 6(d) of the Fair Labor Standards Act, as amended, (29 U.S.C. 206(d)) are hereby transferred to the Equal Employment Opportunity Commission. Such functions include, but shall not be limited to, the functions relating to equal pay administration and enforcement now vested in the Secretary of Labor, the Administrator of the Wage and Hour Division of the Department of Labor, and the Civil Service Commission pursuant to Sections 4(d)(1); 4(f); 9; 11(a), (b), and (c); 16(b) and (c) and 17 of the Fair Labor Standards Act, as amended, (29 U.S.C. 204(d)(1); 204(f); 209; 211(a), (b), and (c); 216(b) and (c) and 217) and Section 10(b)(1) of the Portal-to-Portal Act of 1947, as amended, (29 U.S.C. 259).

SEC. 2. TRANSFER OF AGE DISCRIMINATION ENFORCEMENT FUNCTIONS

All functions vested in the Secretary of Labor or in the Civil Service Commission pursuant to Sections 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 621, 623, 626, 627, 628, 629, 630, 631, 632, 633, and 633a) are hereby transferred to the Equal Employment Opportunity Commission. All functions related to age discrimination administration and enforcement pursuant to Sections 6 and 16 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 625 and 634) are hereby transferred to the Equal Employment Opportunity Commission.

SEC. 3. TRANSFER OF EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT ENFORCEMENT FUNCTIONS

(a) All equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to Section 717(b) and (c) of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–16(b) and (c)), are hereby transferred to the Equal Employment Opportunity Commission.

(b) The Equal Employment Opportunity Commission may delegate to the Civil Service Commission or its successor the function of making a preliminary determination on the issue of discrimination whenever, as a part of a complaint or appeal before the Civil Service Commission on other grounds, a Federal employee alleges a violation of Section 717 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–16) provided that the Equal Employment Opportunity Commission retains the function of making the final determination concerning such issue of discrimination.

SEC. 4. TRANSFER OF FEDERAL EMPLOYMENT OF HANDICAPPED INDIVIDUALS ENFORCEMENT FUNCTIONS

All Federal employment of handicapped individuals enforcement functions and related functions vested in the Civil Service Commission pursuant to Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) are hereby transferred to the Equal Employment Opportunity Commission. The function of being co-chairman of the Interagency Committee on Handicapped Employees now vested in the Chairman of the Civil Service Commission pursuant to Section 501 is hereby transferred to the Chairman of the Equal Employment Opportunity Commission.

SEC. 5. TRANSFER OF PUBLIC SECTOR 707 FUNCTIONS

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with re-

spect to State or local government, or political subdivisions under Section 707 of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–6) and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, are hereby transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with said Title VII. The Attorney General is authorized to delegate any function under Section 707 of said Title VII to any officer or employee of the Department of Justice.

SEC. 6. TRANSFER OF FUNCTIONS AND ABOLITION OF THE EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

All functions of the Equal Employment Opportunity Coordinating Council, which was established pursuant to Section 715 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–14), are hereby transferred to the Equal Employment Opportunity Commission. The Equal Employment Opportunity Coordinating Council is hereby abolished.

SEC. 7. SAVINGS PROVISION

Administrative proceedings including administrative appeals from the acts of an executive agency (as defined by Section 105 of Title 5 of the United States Code) commenced or being conducted by or against such executive agency will not abate by reason of the taking effect of this Plan. Consistent with the provisions of this Plan, all such proceedings shall continue before the Equal Employment Opportunity Commission otherwise unaffected by the transfers provided by this Plan. Consistent with the provisions of this Plan, the Equal Employment Opportunity Commission shall accept appeals from those executive agency actions which occurred prior to the effective date of this Plan in accordance with law and regulations in effect on such effective date. Nothing herein shall affect any right of any person to judicial review under applicable law.

SEC. 8. INCIDENTAL TRANSFERS

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate department, agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of the Council abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SEC. 9. EFFECTIVE DATE

This Reorganization Plan shall become effective at such time or times, on or before October 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code.

[Pursuant to Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053, the transfer to the Equal Employment Opportunity Commission of certain functions of the Civil Service Commission relating to enforcement of equal employment opportunity programs as provided by sections 1 to 4 of this Reorg. Plan is effective Jan. 1, 1979.]

[Pursuant to Ex. Ord. No. 12144, June 22, 1979, 44 F.R. 37193, sections 1 and 2 of this Reorg. Plan are effective July 1, 1979, except for transfer of functions already effective Jan. 1, 1979, under Ex. Ord. No. 12106 above.]

[Pursuant to Ex. Ord. No. 12068, June 30, 1978, 43 F.R. 28971, section 5 of this Reorg. Plan is effective July 1, 1978.]

[Pursuant to Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, section 6 of this Reorg. Plan is effective July 1, 1978.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I am submitting to you today Reorganization Plan No. 1 of 1978. This Plan makes the Equal Employment Opportunity Commission the principal Federal agency in fair employment enforcement. Together with actions I shall take by Executive Order, it consolidates Federal equal employment opportunity activities and lays, for the first time, the foundation of a unified, coherent Federal structure to combat job discrimination in all its forms.

In 1940 President Roosevelt issued the first Executive Order forbidding discrimination in employment by the Federal government. Since that time the Congress, the courts and the Executive Branch—spurred by the courage and sacrifice of many people and organizations—have taken historic steps to extend equal employment opportunity protection throughout the private as well as public sector. But each new prohibition against discrimination unfortunately has brought with it a further dispersal of Federal equal employment opportunity responsibility. This fragmentation of authority among a number of Federal agencies has meant confusion and ineffective enforcement for employees, regulatory duplication and needless expense for employers.

Fair employment is too vital for haphazard enforcement. My Administration will aggressively enforce our civil rights laws. Although discrimination in any area has severe consequences, limiting economic opportunity affects access to education, housing and health care. I, therefore, ask you to join with me to reorganize administration of the civil rights laws and to begin that effort by reorganizing the enforcement of those laws which ensure an equal opportunity to a job.

Eighteen government units now exercise important responsibilities under statutes, Executive Orders and regulations relating to equal employment opportunity:

The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964, [section 2000e et seq. of this title] which bans employment discrimination based on race, national origin, sex or religion. The EEOC acts on individual complaints and also initiates private sector cases involving a ''pattern or practice'' of discrimination.

The Department of Labor and 11 other agencies enforce Executive Order 11246 [set out as a note under section 2000e of this title]. This prohibits discrimination in employment on the basis of race, national origin, sex, or religion and requires affirmative action by government contractors. While the Department now coordinates enforcement of this ''contract compliance'' program, it is actually administered by eleven other departments and agencies. The Department also administers those statutes requiring contractors to take affirmative action to employ handicapped people, disabled veterans and Vietnam veterans.

In addition, the Labor Department enforces the Equal Pay Act of 1963 [section 206(d) of Title 29, Labor], which prohibits employers from paying unequal wages based on sex, and the Age Discrimination in Employment Act of 1967 [section 621 et seq. of Title 29], which forbids age discrimination against persons between the ages of 40 and 65.

The Department of Justice litigates Title VII cases involving public sector employers—State and local governments. The Department also represents the Federal government in lawsuits against Federal contractors and grant recipients who are in violation of Federal nondiscrimination prohibitions.

The Civil Service Commission (CSC) enforces Title VII and all other nondiscrimination and affirmative action requirements for Federal employment. The CSC rules on complaints filed by individuals and monitors affirmative action plans submitted annually by other Federal agencies.

The Equal Employment Opportunity Coordinating Council includes representatives from EEOC, Labor, Justice,

CSC and the Civil Rights Commission. It is charged with coordinating the Federal equal employment opportunity enforcement effort and with eliminating overlap and inconsistent standards.

In addition to these major government units, other agencies enforce various equal employment opportunity requirements which apply to specific grant programs. The Department of the Treasury, for example, administers the anti-discrimination prohibitions applicable to recipients of revenue sharing funds.

These programs have had only limited success. Some of the past deficiencies include:

—inconsistent standards of compliance;
—duplicative, inconsistent paperwork requirements and investigative efforts;
—conflicts within agencies between their program responsibilities and their responsibility to enforce the civil rights laws;
—confusion on the part of workers about how and where to seek redress;
—lack of accountability.

I am proposing today a series of steps to bring coherence to the equal employment enforcement effort. These steps, to be accomplished by the Reorganization Plan and Executive Orders, constitute an important step toward consolidation of equal employment opportunity enforcement. They will be implemented over the next two years, so that the agencies involved may continue their internal reform.

Its experience and broad scope make the EEOC suitable for the role of principal Federal agency in fair employment enforcement. Located in the Executive Branch and responsible to the President, the EEOC has developed considerable expertise in the field of employment discrimination since Congress created it by the Civil Rights Act of 1964 [section 2000e–4 of this title]. The Commission has played a pioneer role in defining both employment discrimination and its appropriate remedies.

While it has had management problems in past administrations, the EEOC's new leadership is making substantial progress in correcting them. In the last seven months the Commission has redesigned its internal structures and adopted proven management techniques. Early experience with these procedures indicates a high degree of success in reducing and expediting new cases. At my direction, the Office of Management and Budget is actively assisting the EEOC to ensure that these reforms continue.

The Reorganization Plan I am submitting will accomplish the following:

On July 1, 1978, abolish the Equal Employment Opportunity Coordinating Council (42 U.S.C. 2000e–14) and transfer its duties to the EEOC (no positions or funds shifted).

On October 1, 1978, shift enforcement of equal employment opportunity for Federal employees from the CSC to the EEOC (100 positions and $6.5 million shifted).

On July 1, 1979, shift responsibility for enforcing both the Equal Pay Act and the Age Discrimination in Employment Act from the Labor Department to the EEOC (198 positions and $5.3 million shifted for Equal Pay; 119 positions and $3.5 million for Age Discrimination).

Clarify the Attorney General's authority to initiate ''pattern or practice'' suits under Title VII in the public sector.

In addition, I will issue an Executive Order on October 1, 1978, to consolidate the contract compliance program—now the responsibility of Labor and eleven ''compliance agencies''—into the Labor Department (1,517 positions and $33.1 million shifted).

These proposed transfers and consolidations reduce from fifteen to three the number of Federal agencies having important equal employment opportunity responsibilities under Title VII of the Civil Rights Act of 1964 and Federal contract compliance provisions.

Each element of my Plan is important to the success of the entire proposal.

By abolishing the Equal Employment Opportunity Coordinating Council and transferring its responsibilities to the EEOC, this plan places the Commission at the center of equal employment opportunity enforcement. With these new responsibilities, the EEOC can give coherence and direction to the government's efforts by developing strong uniform enforcement standards to apply throughout the government: standardized data collection procedures, joint training programs, programs to ensure the sharing of enforcement related data among agencies, and methods and priorities for complaint and compliance reviews. Such direction has been absent in the Equal Employment Opportunity Coordinating Council.

It should be stressed, however, that affected agencies will be consulted before EEOC takes any action. When the Plan has been approved, I intend to issue an Executive Order which will provide for consultation, as well as a procedure for reviewing major disputed issues within the Executive Office of the President. The Attorney General's responsibility to advise the Executive Branch on legal issues will also be preserved.

Transfer of the Civil Service Commission's equal employment opportunity responsibilities to EEOC is needed to ensure that: (1) Federal employees have the same rights and remedies as those in the private sector and in State and local government; (2) Federal agencies meet the same standards as are required of other employers; and (3) potential conflicts between an agency's equal employment opportunity and personnel management functions are minimized. The Federal government must not fall below the standard of performance it expects of private employers.

The Civil Service Commission has in the past been lethargic in enforcing fair employment requirements within the Federal government. While the Chairman and other Commissioners I have appointed have already demonstrated their personal commitment to expanding equal employment opportunity, responsibility for ensuring fair employment for Federal employees should rest ultimately with the EEOC.

We must ensure that the transfer in no way undermines the important objectives of the comprehensive civil service reorganization which will be submitted to Congress in the near future. When the two plans take effect; I will direct the EEOC and the CSC to coordinate their procedures to prevent any duplication and overlap.

The Equal Pay Act now administered by the Labor Department, prohibits employers from paying unequal wages based on sex. Title VII of the Civil Rights Act, which is enforced by EEOC, contains a broader ban on sex discrimination. The transfer of Equal Pay responsibility from the Labor Department to the EEOC will minimize overlap and centralize enforcement of statutory prohibitions against sex discrimination in employment.

The transfer will strengthen efforts to combat sex discrimination. Such efforts would be enhanced still further by passage of the legislation pending before you, which I support, that would prohibit employers from excluding women disabled by pregnancy from participating in disability programs.

There is now virtually complete overlap in the employers, labor organizations, and employment agencies covered by Title VII and by the Age Discrimination in Employment Act. This overlap is burdensome to employers and confusing to victims of discrimination. The proposed transfer of the age discrimination program from the Labor Department to the EEOC will eliminate the duplication.

The Plan I am proposing will not affect the Attorney General's responsibility to enforce Title VII against State or local governments or to represent the Federal government in suits against Federal contractors and grant recipients. In 1972, the Congress determined that the Attorney General should be involved in suits against State and local governments. This proposal reinforces that judgment and clarifies the Attorney General's authority to initiate litigation against State or local governments engaged in a ''pattern or practice'' of discrimination. This in no way diminishes the

EEOC's existing authority to investigate complaints filed against State or local governments and, where appropriate, to refer them to the Attorney General. The Justice Department and the EEOC will cooperate so that the Department sues on valid referrals, as well as on its own ''pattern or practice'' cases.

A critical element of my proposals will be accomplished by Executive Order rather than by the Reorganization Plan. This involves consolidation in the Labor Department of the responsibility to ensure that Federal contractors comply with Executive Order 11246. Consolidation will achieve the following: promote consistent standards, procedures, and reporting requirements; remove contractors from the jurisdiction of multiple agencies; prevent an agency's equal employment objectives from being outweighed by its procurement and construction objectives; and produce more effective law enforcement through unification of planning, training and sanctions. By 1981, after I have had an opportunity to review the manner in which both the EEOC and the Labor Department are exercising their new responsibilities, I will determine whether further action is appropriate.

Finally, the responsibility for enforcing grant-related equal employment provisions will remain with the agencies administering the grant programs. With the EEOC acting as coordinator of Federal equal employment programs, we will be able to bring overlap and duplication to a minimum. We will be able, for example, to see that a university's employment practices are not subject to duplicative investigations under both Title IX of the Education Amendments of 1972 [section 1681 et seq. of Title 20, Education] and the contract compliance program. Because of the similarities between the Executive Order program and those statutes requiring Federal contractors to take affirmative action to employ handicapped individuals and disabled and Vietnam veterans, I have determined that enforcement of these statues should remain in the Labor Department.

Each of the changes set forth in the Reorganization Plan accompanying this message is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. I have taken care to determine that all functions abolished by the Plan are done only under the statutory authority provided by Section 903(b) of Title 5 of the United States Code.

I do not anticipate that the reorganizations contained in this Plan will result in any significant change in expenditures. They will result in a more efficient and manageable enforcement program.

The Plan I am submitting is moderate and measured. It gives the Equal Employment Opportunity Commission—an agency dedicated solely to this purpose—the primary Federal responsibility in the area of job discrimination, but it is designed to give this agency sufficient time to absorb its new responsibilities. This reorganization will produce consistent agency standards, as well as increased accountability. Combined with the intense commitment of those charged with these responsibilities, it will become possible for us to accelerate this nation's progress in ensuring equal job opportunities for all our people.

JIMMY CARTER.

THE WHITE HOUSE, February 23, 1978.

EX. ORD. NO. 12106. TRANSFER OF CERTAIN EQUAL EMPLOYMENT ENFORCEMENT FUNCTIONS

Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053, provided:

By the authority vested in me as President of the United States of America by Section 9 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out above], in order to effectuate the transfer of certain functions relating to the enforcement of equal employment programs, and in order to make certain technical amendments in other Orders to reflect this transfer of functions, it is hereby ordered as follows:

1–101. The transfer to the Equal Employment Opportunity Commission of certain functions of the Civil Service Commission, relating to enforcement of equal employment opportunity programs as provided by Sections 1, 2, 3 and 4 of Reorganization Plan No. 1 of 1978 (43 FR 19807) shall be effective on January 1, 1979.

1–102. Executive Order No. 11478, as amended [set out as a note under section 2000e of this title], is further amended by deleting the preamble, by substituting ''national origin, handicap, or age'' for ''or national origin'' in the first sentence of Section 1, and revising Sections 3, 4, and 5 to read as follows:

''SEC. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

''SEC. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

''SEC. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.''

1–103. Executive Order No. 11022, as amended [set out as a note under section 3001 of this title], is further amended by revising Section 1(b) to read as follows:

''(b) The Council shall be composed of the Secretary of Health, Education, and Welfare [now Health and Human Services], who shall be Chairman, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of Veterans Affairs, the Director of the Office of Personnel Management, the Director of the Community Services Administration, and the Chairman of the Equal Employment Opportunity Commission.''

1–104. Executive Order No. 11480 of September 9, 1969 [set out as a note under section 791 of Title 29, Labor], is amended by deleting ''and the Chairman of the United States Civil Service Commission'' in Section 4 and substituting therefor ''Director of the Office of Personnel Management, and the Chairman of the Equal Employment Opportunity Commission''.

1–105. Executive Order No. 11830 of January 9, 1975 [set out as a note under section 791 of Title 29, Labor], is amended by deleting Section 2 and revising Section 1 to read as follows:

''In accord with Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and Section 4 of Reorganization Plan No. 1 of 1978 (43 FR 19808) the Interagency Committee on Handicapped Employees is enlarged and composed of the following, or their designees whose positions are Executive level IV or higher:

''(1) Secretary of Defense.

''(2) Secretary of Labor.

''(3) Secretary of Health, Education, and Welfare [now Health and Human Services], Co-Chairman.

''(4) Director of the Office of Personnel Management.

''(5) Administrator of Veterans Affairs.

''(6) Administrator of General Services.

''(7) Chairman of the Federal Communications Commission.

''(8) Chairman of the Equal Employment Opportunity Commission, Co-Chairman.

''(9) Such other members as the President may designate.''

1–106. This Order shall be effective on January 1, 1979.

JIMMY CARTER.

EX. ORD. NO. 12144. TRANSFER OF CERTAIN EQUAL PAY AND AGE DISCRIMINATION IN EMPLOYMENT ENFORCEMENT FUNCTIONS

Ex. Ord. No. 12144, June 22, 1979, 44 F.R. 37193, provided:

By the authority vested in me as President of the United States of America by the Constitution and laws of the United States, including Section 9 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out above], in order to effectuate the transfer of certain functions relating to the enforcement of equal pay and age discrimination in employment programs from the Department of Labor to the Equal Employment Opportunity Commission, it is hereby ordered as follows:

1–101. Sections 1 and 2 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out as a note above] shall become effective on July 1, 1979, with the exception of the transfer of functions from the Civil Service Commission, already effective January 1, 1979 (Executive Order No. 12106 [set out above]).

1–102. The records, property, personnel and positions, and unexpended balances of appropriations or funds, available or to be made available, which relate to the functions transferred as provided in this Order are hereby transferred from the Department of Labor to the Equal Employment Opportunity Commission.

1–103. The Director of the Office of Management and Budget shall make such determinations, issue such Orders, and take all actions necessary or appropriate to effectuate the transfers provided in this Order, including the transfer of funds, records, property, and personnel.

1–104. This Order shall be effective July 1, 1979.

JIMMY CARTER.

§ 2000e–5. Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e–2 or 2000e–3 of this title.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the ''respondent'') within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a)[1] of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

[1] So in original. Probably should be subsection ''(b)''.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section, is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days

pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2)(A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e–3(a) of this title.

(B) On a claim in which an individual proves a violation under section 2000e–2(m) of this title and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e–2(m) of this title; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of chapter 6 of title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of title 29 shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders

In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, title 28.

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow

the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

(Pub. L. 88–352, title VII, § 706, July 2, 1964, 78 Stat. 259; Pub. L. 92–261, § 4, Mar. 24, 1972, 86 Stat. 104; Pub. L. 102–166, title I, §§ 107(b), 112, 113(b), Nov. 21, 1991, 105 Stat. 1075, 1078, 1079.)

REFERENCES IN TEXT

This Act, referred to in subsec. (f)(2), means Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Rules 65 and 53 of the Federal Rules of Civil Procedure, referred to in subsec. (f)(2), (5), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Chapter 6 (§ 101 et seq.) of title 29, referred to in subsec. (h), is a reference to act Mar. 23, 1932, ch. 90, 47 Stat. 70, as amended, popularly known as the Norris-LaGuardia Act. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1991—Subsec. (e). Pub. L. 102–166, § 112, designated existing provisions as par. (1) and added par. (2).

Subsec. (g). Pub. L. 102–166, § 107(b), designated existing provisions as pars. (1) and (2)(A) and added par. (2)(B).

Subsec. (k). Pub. L. 102–166, § 113(b), inserted ''(including expert fees)'' after ''attorney's fee''.

1972—Subsec. (a). Pub. L. 92–261, § 4(a), added subsec. (a). Former subsec. (a) redesignated (b) and amended generally.

Subsec. (b). Pub. L. 92–261, § 4(a), redesignated former subsec. (a) as (b), modified the procedure for the filing and consideration of charges by the Commission, subjected to coverage unlawful employment practices of joint labor-management committees controlling apprenticeship or other training or retraining, including on-the-job training programs, required the Commission to accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law in its determination of reasonable cause, and inserted provision setting forth the time period, after charges have been filed, allowed to the Commission to determine reasonable cause. Former subsec. (b) redesignated (c).

Subsecs. (c), (d). Pub. L. 92–261, § 4(a), redesignated former subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 92–261, § 4(a), redesignated former subsec. (d) as (e), extended from ninety to one hundred and eighty days after the occurrence of the alleged unlawful employment practice the time for filing charges under this section and from two hundred and ten to three hundred days the time for filing such charges where the person aggrieved initially instituted proceedings with a State or local agency, and inserted requirement that notice of the charge be served on the respondent within ten days after filing. Former subsec. (e) redesignated (f)(1).

Subsec. (f). Pub. L. 92–261, § 4(a), redesignated former subsec. (e) as par. (1), substituted provisions setting forth the procedure for civil actions where the Commission was unable to secure from the respondents a conciliation agreement to prevent further unlawful employment practices for provisions setting forth the procedure for civil actions where the Commission was unable to obtain voluntary compliance with this subchapter and inserted provisions setting forth the procedure for civil action where the respondent is a government, governmental agency, or political subdivision and the Commission could not secure a conciliation agreement, added par. (2), redesignated former subsec. (f) as par. (3), substituted ''aggrieved person'' for ''plaintiff'', and added pars. (4) and (5).

Subsec. (g). Pub. L. 92–261, § 4(a), inserted provisions which authorized the court to order affirmative action not limited solely to the enumerated affirmative acts and such other equitable relief as deemed appropriate, and provisions which set forth the accrual date for back pay.

Subsecs. (i), (j). Pub. L. 92–261, § 4(b)(1), (2), substituted ''this section'' for ''subsection (e) of this section''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 14 of Pub. L. 92–261 provided that: ''The amendments made by this Act to section 706 of the Civil Rights Act of 1964 [this section] shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act [Mar. 24, 1972] and all charges filed thereafter.''

§ 2000e–6. Civil actions by the Attorney General

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Jurisdiction; three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a cir-

cuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

Effective two years after March 24, 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of title 5, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e–5 of this title.

(Pub. L. 88–352, title VII, §707, July 2, 1964, 78 Stat. 261; Pub. L. 92–261, §5, Mar. 24, 1972, 86 Stat. 107.)

AMENDMENTS

1972—Subsecs. (c) to (e). Pub. L. 92–261 added subsecs. (c) to (e).

TRANSFER OF FUNCTIONS

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under this section, and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, were transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with this subchapter, and with the Attorney General authorized to delegate any function under this section to any officer or employee of the Department of Justice, by Reorg. Plan No. 1 of 1978, §5, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e–4 of this title.

EX. ORD. NO. 12068. TRANSFER OF CERTAIN FUNCTIONS TO ATTORNEY GENERAL

Ex. Ord. No. 12068, June 30, 1978, 43 F.R. 28971, provided:

By virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out as a note under section 2000e–4 of this title], in order to clarify the Attorney General's authority to initiate public sector litigation under Section 707 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–6), it is ordered as follows:

1–1. SECTION 707 FUNCTIONS OF THE ATTORNEY GENERAL

1–101. Section 5 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out as a note under section 2000e–4 of this title] shall become effective on July 1, 1978.

1–102. The functions transferred to the Attorney General by Section 5 of Reorganization Plan Number 1 of 1978 [set out as a note under section 2000e–4 of this title] shall, consistent with Section 707 of Title VII of the Civil Rights Act of 1964, as amended [this section], be performed in accordance with Department of Justice procedures heretofore followed under Section 707.

JIMMY CARTER.

§ 2000e–7. Effect on State laws

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

(Pub. L. 88–352, title VII, §708, July 2, 1964, 78 Stat. 262.)

§ 2000e–8. Investigations

(a) Examination and copying of evidence related to unlawful employment practices

In connection with any investigation of a charge filed under section 2000e–5 of this title, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being inves-

tigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

(c) Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance

Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Prohibited disclosures; penalties

It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty, of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

(Pub. L. 88–352, title VII, § 709, July 2, 1964, 78 Stat. 262; Pub. L. 92–261, § 6, Mar. 24, 1972, 86 Stat. 107.)

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–261 inserted provisions authorizing the Commission to engage in and contribute to the cost of research and other projects undertaken by State and local agencies and provisions authorizing the Commission to make advance payments to State and local agencies and their employees for services rendered to the Commission, and struck out provisions relating to agreements between the Commission and State and local agencies prohibiting private civil actions under section 2000e–5 of this title in specified cases.

Subsec. (c). Pub. L. 92–261 struck out ''Except as provided in subsection (d) of this section,'' before ''every employer, employment agency, and labor organization subject to this subchapter shall (1)'', required the party seeking an exemption to bring an action in the district court only after the Commission denied the application for the exemption, and inserted provision which authorized the Commission, or the Attorney General in a case involving a government, etc., to apply for a court order compelling compliance with the recordkeeping and reporting obligations set out in this subsection.

Subsec. (d). Pub. L. 92–261 substituted provisions requiring consultation and coordination between Federal and State agencies in prescribing recordkeeping and reporting requirements pursuant to subsec. (c) of this section, and authorizing the Commission to furnish information obtained pursuant to subsec. (c) of this section to interested State and local agencies, for provisions exempting from recordkeeping and reporting requirements employers, etc., required to keep records and make reports under State or local fair employment practice laws, except for the maintenance of notations by such employers, etc., which reflect the differences in coverage or enforcement between State or local laws and the provisions of this subchapter, and dispensing with recordkeeping and reporting requirements where the employer reports under some Executive Order prescribing fair employment practices for Government contractors or subcontractors.

§ 2000e–9. Conduct of hearings and investigations pursuant to section 161 of title 29

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of title 29 shall apply.

(Pub. L. 88–352, title VII, § 710, July 2, 1964, 78 Stat. 264; Pub. L. 92–261, § 7, Mar. 24, 1972, 86 Stat. 109.)

AMENDMENTS

1972—Pub. L. 92–261 substituted provisions making applicable section 161 of title 29 to all hearings and investigations conducted by the Commission or its authorized agents or agencies, for provisions enumerating the investigatory powers of the Commission and the procedure for their enforcement.

§ 2000e–10. Posting of notices; penalties

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts, from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

(Pub. L. 88–352, title VII, § 711, July 2, 1964, 78 Stat. 265.)

§ 2000e–11. Veterans' special rights or preference

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

(Pub. L. 88–352, title VII, § 712, July 2, 1964, 78 Stat. 265.)

§ 2000e–12. Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of title 5.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

(Pub. L. 88–352, title VII, § 713, July 2, 1964, 78 Stat. 265.)

CODIFICATION

In subsec. (a), ''subchapter II of chapter 5 of title 5'' substituted for ''the Administrative Procedure Act'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

RELIGIOUS LIBERTY

Pub. L. 103–317, title VI, § 610, Aug. 26, 1994, 108 Stat. 1774, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the liberties protected by our Constitution include religious liberty protected by the first amendment;

''(2) citizens of the United States profess the beliefs of almost every conceivable religion;

''(3) Congress has historically protected religious expression even from governmental action not intended to be hostile to religion;

''(4) the Supreme Court has written that 'the free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires';

''(5) the Supreme Court has firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the content of the ideas is offensive to some;

''(6) Congress enacted the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.] to restate and make clear again our intent and position that religious liberty is and should forever be granted protection from unwarranted and unjustified government intrusions and burdens;

''(7) the Equal Employment Opportunity Commission has written proposed guidelines to title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.], published in the Federal Register on October 1, 1993, that expand the definition of religious harassment beyond established legal standards set forth by the Supreme Court, and that may result in the infringement of religious liberty;

''(8) such guidelines do not appropriately resolve issues related to religious liberty and religious expression in the workplace;

''(9) properly drawn guidelines for the determination of religious harassment should provide appropriate guidance to employers and employees and assist in the continued preservation of religious liberty as guaranteed by the first amendment;

''(10) the Commission states in its proposed guidelines that it retains wholly separate guidelines for the determination of sexual harassment because the Commission believes that sexual harassment raises issues about human interaction that are to some extent unique; and

''(11) the subject of religious harassment also raises issues about human interaction that are to some extent unique in comparison to other harassment.

''(b) CATEGORY OF RELIGIOUS HARASSMENT IN PROPOSED GUIDELINES.—For purposes of issuing final regulations under title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.] in connection with the proposed guidelines published by the Equal Employment Opportunity Commission on October 1, 1993 (58 Fed. Reg. 51266), the Chairperson of the Equal Employment Opportunity Commission shall ensure that—

''(1) the category of religion shall be withdrawn from the proposed guidelines at this time;

''(2) any new guidelines for the determination of religious harassment shall be drafted so as to make explicitly clear that symbols or expressions of religious belief consistent with the first amendment and the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.] are not to be restricted and do not constitute proof of harassment;

''(3) the Commission shall hold public hearings on such new proposed guidelines; and

''(4) the Commission shall receive additional public comment before issuing similar new regulations.''

§ 2000e–13. Application to personnel of Commission of sections 111 and 1114 of title 18; punishment for violation of section 1114 of title 18

The provisions of sections 111 and 1114, title 18, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

(Pub. L. 88–352, title VII, § 714, July 2, 1964, 78 Stat. 265; Pub. L. 92–261, § 8(g), Mar. 24, 1972, 86 Stat. 110.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

AMENDMENTS

1972—Pub. L. 92–261 inserted provisions which made section 1114 of title 18 applicable to officers, etc., of the Commission and set forth punishment for violation of such section 1114.

§ 2000e–14. Equal Employment Opportunity Coordinating Council; establishment; composition; duties; report to President and Congress

The Equal Employment Opportunity Commission shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 of each year, the Equal Employment Opportunity Commission shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

(Pub. L. 88–352, title VII, § 715, July 2, 1964, 78 Stat. 265; Pub. L. 92–261, § 10, Mar. 24, 1972, 86 Stat. 111; Pub. L. 94–273, § 3(24), Apr. 21, 1976, 90 Stat. 377; 1978 Reorg. Plan No. 1, § 6, eff. July 1, 1978, 43 F.R. 19807, 92 Stat. 3781.)

CODIFICATION

The first sentence of this section, which read ''There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates'' was omitted pursuant to Reorg. Plan No. 1 of 1978, § 6, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e–4 of this title, which abolished the Equal Employment Opportunity Coordinating Council, effective July 1, 1978, as provided by section 1–101 of Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, set out as a note under section 2000e of this title. See Transfer of Functions note below.

AMENDMENTS

1976—Pub. L. 94–273 substituted ''October'' for ''July''.

1972—Pub. L. 92–261 substituted provisions which established the Equal Employment Opportunity Coordinating Council and set forth the composition, powers, and duties of the Council for provisions which directed the Secretary of Labor to make a report to the Congress not later than June 30, 1965 concerning discrimination in employment because of age.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to transmittal of a report and recommendations to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section

1113 of Title 31, Money and Finance, and item 19 on page 165 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

''Equal Employment Opportunity Commission'' substituted in text for ''Council'', meaning Equal Employment Opportunity Coordinating Council, pursuant to Reorg. Plan. No. 1 of 1978, §6, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e–4 of this title, which abolished Equal Employment Opportunity Coordinating Council and transferred its functions to Equal Employment Opportunity Commission, effective July 1, 1978, as provided by section 1–101 of Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, set out as a note under section 2000e of this title.

SUBMISSION OF SPECIFIC LEGISLATIVE RECOMMENDATIONS TO CONGRESS BY JANUARY 1, 1967, TO IMPLEMENT REPORT ON AGE DISCRIMINATION

Pub. L. 89–601, title VI, §606, Sept. 23, 1966, 80 Stat. 845, directed the Secretary of Labor to submit to the Congress not later than Jan. 1, 1967 his specific legislative recommendations for implementing the conclusions and recommendations contained in his report on age discrimination in employment made pursuant to provisions of this section prior to its amendment in 1972.

§ 2000e–15. Presidential conferences; acquaintance of leadership with provisions for employment rights and obligations; plans for fair administration; membership

The President shall, as soon as feasible after July 2, 1964, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this subchapter.

(Pub. L. 88–352, title VII, §716(c), July 2, 1964, 78 Stat. 266.)

EXECUTIVE ORDER NO. 11197

Ex. Ord. No. 11197, eff. Feb. 5, 1965, 30 F.R. 1721, which established the President's Council on Equal Opportunity, was revoked by Ex. Ord. No. 11247, eff. Sept. 24, 1965, 30 F.R. 12327, formerly set out as a note under section 2000d–1 of this title.

§ 2000e–16. Employment by Federal Government

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, in executive agencies as defined in section 105 of title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Printing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e–5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e–5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e–5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties..[1]

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(Pub. L. 88–352, title VII, § 717, as added Pub. L. 92–261, § 11, Mar. 24, 1972, 86 Stat. 111; amended 1978 Reorg. Plan No. 1, § 3, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub. L. 96–191, § 8(g), Feb. 15, 1980, 94 Stat. 34; Pub. L. 102–166, title I, § 114, Nov. 21, 1991, 105 Stat. 1079; Pub. L. 104–1, title II, § 201(c)(1), Jan. 23, 1995, 109 Stat. 8; Pub. L. 105–220, title III, § 341(a), Aug. 7, 1998, 112 Stat. 1092; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

[1] So in original.

REFERENCES IN TEXT

This Act, referred to in subsec. (e), means Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Executive Order 11478, as amended, referred to in subsecs. (c) and (e), is set out as a note under section 2000e of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1998—Subsec. (a). Pub. L. 105–220 inserted ''in the Smithsonian Institution,'' before ''and in the Government Printing Office,''.

1995—Subsec. (a). Pub. L. 104–1 substituted ''units of the judicial branch'' for ''units of the legislative and judicial branches'' and inserted ''Government Printing Office, the General Accounting Office, and the'' before ''Library of Congress''.

1991—Subsec. (c). Pub. L. 102–166, § 114(1), substituted ''90 days'' for ''thirty days''.

Subsec. (d). Pub. L. 102–166, § 114(2), inserted before the period '', and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.''

1980—Subsec. (a). Pub. L. 96–191 struck out ''(other than the General Accounting Office)'' after ''in executive agencies''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–220 effective Aug. 7, 1998, and applicable to and may be raised in any administrative or judicial claim or action brought before Aug. 7, 1998, but pending on such date, and any administrative or judicial claim or action brought after such date regardless of whether the claim or action arose prior to such date, if the claim or action was brought within the applicable statute of limitations, see section 341(d) of Pub. L. 105–220, set out as a note under section 633a of Title 29, Labor.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–1 effective 1 year after Jan. 23, 1995, see section 1311(d) of Title 2, The Congress.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–191 effective Oct. 1, 1980, see section 10(a) of Pub. L. 96–191.

TRANSFER OF FUNCTIONS

''Equal Employment Opportunity Commission'' substituted for ''Civil Service Commission'' in subsecs. (b) and (c) pursuant to Reorg. Plan No. 1 of 1978, § 3, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e–4 of this title, which transferred all equal opportunity in Federal employment enforcement and related functions vested in Civil Service Commission by subsecs. (b) and (c) of this section to Equal Employment Opportunity Commission, with certain authority dele-

gable to Director of Office of Personnel Management, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053, set out as a note under section 2000e–4 of this title.

EX. ORD. NO. 13145. TO PROHIBIT DISCRIMINATION IN FEDERAL EMPLOYMENT BASED ON GENETIC INFORMATION

Ex. Ord. No. 13145, Feb. 8, 2000, 65 F.R. 6877, provided:

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, it is ordered as follows:

SECTION 1. *Nondiscrimination in Federal Employment on the Basis of Protected Genetic Information.*

1–101. It is the policy of the Government of the United States to provide equal employment opportunity in Federal employment for all qualified persons and to prohibit discrimination against employees based on protected genetic information, or information about a request for or the receipt of genetic services. This policy of equal opportunity applies to every aspect of Federal employment.

1–102. The head of each Executive department and agency shall extend the policy set forth in section 1101 to all its employees covered by section 717 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16).

1–103. Executive departments and agencies shall carry out the provisions of this order to the extent permitted by law and consistent with their statutory and regulatory authorities, and their enforcement mechanisms. The Equal Employment Opportunity Commission shall be responsible for coordinating the policy of the Government of the United States to prohibit discrimination against employees in Federal employment based on protected genetic information, or information about a request for or the receipt of genetic services.

SEC. 2. *Requirements Applicable to Employing Departments and Agencies.*

1–201. Definitions.

(a) The term ''employee'' shall include an employee, applicant for employment, or former employee covered by section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16).

(b) Genetic monitoring means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, respond to the effects of, or control adverse environmental exposures in the workplace.

(c) Genetic services means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic or therapeutic purposes, or for genetic education or counseling.

(d) Genetic test means the analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites in order to detect disease-related genotypes or mutations. Tests for metabolites fall within the definition of ''genetic tests'' when an excess or deficiency of the metabolites indicates the presence of a mutation or mutations. The conducting of metabolic tests by a department or agency that are not intended to reveal the presence of a mutation shall not be considered a violation of this order, regardless of the results of the tests. Test results revealing a mutation shall, however, be subject to the provisions of this order.

(e) Protected genetic information.

(1) In general, protected genetic information means:

(A) information about an individual's genetic tests;

(B) information about the genetic tests of an individual's family members; or

(C) information about the occurrence of a disease, or medical condition or disorder in family members of the individual.

(2) Information about an individual's current health status (including information about sex, age, physical exams, and chemical, blood, or urine analyses) is not protected genetic information unless it is described in subparagraph (1).

1–202. In discharging their responsibilities under this order, departments and agencies shall implement the following nondiscrimination requirements.

(a) The employing department or agency shall not discharge, fail or refuse to hire, or otherwise discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of that employee, because of protected genetic information with respect to the employee, or because of information about a request for or the receipt of genetic services by such employee.

(b) The employing department or agency shall not limit, segregate, or classify employees in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect that employee's status, because of protected genetic information with respect to the employee or because of information about a request for or the receipt of genetic services by such employee.

(c) The employing department or agency shall not request, require, collect, or purchase protected genetic information with respect to an employee, or information about a request for or the receipt of genetic services by such employee.

(d) The employing department or agency shall not disclose protected genetic information with respect to an employee, or information about a request for or the receipt of genetic services by an employee except:

(1) to the employee who is the subject of the information, at his or her request;

(2) to an occupational or other health researcher, if the research conducted complies with the regulations and protections provided for under part 46 of title 45, of the Code of Federal Regulations;

(3) if required by a Federal statute, congressional subpoena, or an order issued by a court of competent jurisdiction, except that if the subpoena or court order was secured without the knowledge of the individual to whom the information refers, the employer shall provide the individual with adequate notice to challenge the subpoena or court order, unless the subpoena or court order also imposes confidentiality requirements; or

(4) to executive branch officials investigating compliance with this order, if the information is relevant to the investigation.

(e) The employing department or agency shall not maintain protected genetic information or information about a request for or the receipt of genetic services in general personnel files; such information shall be treated as confidential medical records and kept separate from personnel files.

SEC. 3. *Exceptions.*

1–301. The following exceptions shall apply to the nondiscrimination requirements set forth in section 1202.

(a) The employing department or agency may request or require information defined in section 1–201(e)(1)(C) with respect to an applicant who has been given a conditional offer of employment or to an employee if:

(1) the request or requirement is consistent with the Rehabilitation Act [of 1973, 29 U.S.C. 701 et seq.] and other applicable law;

(2) the information obtained is to be used exclusively to assess whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1–301(b) of this order;

(3) such current disease, or medical condition or disorder could prevent the applicant or employee from performing the essential functions of the position held or desired; and

(4) the information defined in section 1–201(e)(1)(C) of this order will not be disclosed to persons other than medical personnel involved in or responsible for assessing whether further medical

evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1–301(b) of this order.

(b) The employing department or agency may request, collect, or purchase protected genetic information with respect to an employee, or any information about a request for or receipt of genetic services by such employee if:

(1) the employee uses genetic or health care services provided by the employer (other than use pursuant to section 1–301(a) of this order);

(2) the employee who uses the genetic or health care services has provided prior knowing, voluntary, and written authorization to the employer to collect protected genetic information;

(3) the person who performs the genetic or health care services does not disclose protected genetic information to anyone except to the employee who uses the services for treatment of the individual; pursuant to section 1–202(d) of this order; for program evaluation or assessment; for compiling and analyzing information in anticipation of or for use in a civil or criminal legal proceeding; or, for payment or accounting purposes, to verify that the service was performed (but in such cases the genetic information itself cannot be disclosed);

(4) such information is not used in violation of sections 1–202(a) or 1–202(b) of this order.

(c) The employing department or agency may collect protected genetic information with respect to an employee if the requirements of part 46 of title 45 of the Code of Federal Regulations are met.

(d) Genetic monitoring of biological effects of toxic substances in the workplace shall be permitted if all of the following conditions are met:

(1) the employee has provided prior, knowing, voluntary, and written authorization;

(2) the employee is notified when the results of the monitoring are available and, at that time, the employer makes any protected genetic information that may have been acquired during the monitoring available to the employee and informs the employee how to obtain such information;

(3) the monitoring conforms to any genetic monitoring regulations that may be promulgated by the Secretary of Labor; and

(4) the employer, excluding any licensed health care professionals that are involved in the genetic monitoring program, receives results of the monitoring only in aggregate terms that do not disclose the identity of specific employees.

(e) This order does not limit the statutory authority of a Federal department or agency to:

(1) promulgate or enforce workplace safety and health laws and regulations;

(2) conduct or sponsor occupational or other health research that is conducted in compliance with regulations at part 46 of title 45, of the Code of Federal Regulations; or

(3) collect protected genetic information as a part of a lawful program, the primary purpose of which is to carry out identification purposes.

SEC. 4. *Miscellaneous.*

1–401. The head of each department and agency shall take appropriate action to disseminate this policy and, to this end, shall designate a high level official responsible for carrying out its responsibilities under this order.

1–402. Nothing in this order shall be construed to:

(a) limit the rights or protections of an individual under the Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), the Privacy Act of 1974 (5 U.S.C. 552a), or other applicable law; or

(b) require specific benefits for an employee or dependent under the Federal Employees Health Benefits Program or similar program.

1–403. This order clarifies and makes uniform Administration policy and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 2000e–16a. Short title; purpose; definition

(a) Short title

Sections 2000e–16a to 2000e–16c of this title may be cited as the ''Government Employee Rights Act of 1991''.

(b) Purpose

The purpose of sections 2000e–16a to 2000e–16c of this title is to provide procedures to protect the rights of certain government employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

(c) "Violation" defined

For purposes of sections 2000e–16a to 2000e–16c of this title, the term ''violation'' means a practice that violates section 2000e–16b(a) of this title.

(Pub. L. 102–166, title III, § 301, Nov. 21, 1991, 105 Stat. 1088; Pub. L. 103–283, title III, § 312(f)(1), July 22, 1994, 108 Stat. 1446; Pub. L. 104–1, title V, § 504(a)(1), Jan. 23, 1995, 109 Stat. 40.)

REFERENCES IN TEXT

Sections 2000e–16a to 2000e–16c of this title, referred to in text, was in the original ''this title'', meaning title III of Pub. L. 102–166, which is classified generally to sections 2000e–16a to 2000e–16c of this title. For complete classification of title III to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 1201 of Title 2, The Congress.

AMENDMENTS

1995—Pub. L. 104–1 amended section generally, substituting ''rights of certain government employees'' for ''right of Senate and other government employees'' in subsec. (b) and striking out definitions of ''Senate employee'' and ''head of employing office'' in subsec. (c).

1994—Subsec. (c)(1)(B) to (D). Pub. L. 103–283, which directed the amendment of subsec. (c) by striking out subpar. (B), redesignating subpars. (C) and (D) as (B) and (C), respectively, and striking out ''or (B)'' after ''described in subparagraph (A)'' in subpars. (B) and (C), was executed by making the amendment to subsec. (c)(1) to reflect the probable intent of Congress. Prior to amendment, subpar. (B) read as follows: ''any employee of the Architect of the Capitol who is assigned to the Senate Restaurants or to the Superintendent of the Senate Office Buildings;''.

EFFECTIVE DATE

Section effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as an Effective Date of 1991 Amendment note under section 1981 of this title.

§ 2000e–16b. Discriminatory practices prohibited

(a) Practices

All personnel actions affecting the Presidential appointees described in section 1219[1] of title 2 or the State employees described in section 2000e–16c of this title shall be made free from any discrimination based on—

(1) race, color, religion, sex, or national origin, within the meaning of section 2000e–16 of this title;

(2) age, within the meaning of section 633a of title 29; or

[1] See References in Text note below.

(3) disability, within the meaning of section 791 of title 29 and sections 12112 to 12114 of this title.

(b) Remedies

The remedies referred to in sections 1219(a)(1)[1] of title 2 and 2000e–16c(a) of this title—

(1) may include, in the case of a determination that a violation of subsection (a)(1) or (a)(3) of this section has occurred, such remedies as would be appropriate if awarded under sections 2000e–5(g), 2000e–5(k), and 2000e–16(d) of this title, and such compensatory damages as would be appropriate if awarded under section 1981 or sections 1981a(a) and 1981a(b)(2) of this title;

(2) may include, in the case of a determination that a violation of subsection (a)(2) of this section has occurred, such remedies as would be appropriate if awarded under section 633a(c) of title 29; and

(3) may not include punitive damages.

(Pub. L. 102–166, title III, § 302, Nov. 21, 1991, 105 Stat. 1088; Pub. L. 104–1, title V, § 504(a)(1), Jan. 23, 1995, 109 Stat. 40.)

REFERENCES IN TEXT

Section 1219 of title 2, referred to in text, was repealed by Pub. L. 104–331, § 5(a), Oct. 26, 1996, 110 Stat. 4072.

CODIFICATION

Section was formerly classified to section 1202 of Title 2, The Congress.

AMENDMENTS

1994—Pub. L. 104–1 amended section generally. Prior to amendment, text read as follows: ''All personnel actions affecting employees of the Senate shall be made free from any discrimination based on—

''(1) race, color, religion, sex, or national origin, within the meaning of section 2000e–16 of this title;

''(2) age, within the meaning of section 633a of title 29; or

''(3) handicap or disability, within the meaning of section 791 of title 29 and sections 12112 to 12114 of this title.''

EFFECTIVE DATE

Section effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as an Effective Date of 1991 Amendment note under section 1981 of this title.

§ 2000e–16c. Coverage of previously exempt State employees

(a) Application

The rights, protections, and remedies provided pursuant to section 2000e–16b of this title shall apply with respect to employment of any individual chosen or appointed, by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof—

(1) to be a member of the elected official's personal staff;

(2) to serve the elected official on the policy-making level; or

(3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

(b) Enforcement by administrative action

(1) In general

Any individual referred to in subsection (a) of this section may file a complaint alleging a violation, not later than 180 days after the occurrence of the alleged violation, with the Equal Employment Opportunity Commission, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission determines that a violation has occurred, the final order shall also provide for appropriate relief.

(2) Referral to State and local authorities

(A) Application

Section 2000e–5(d) of this title shall apply with respect to any proceeding under this section.

(B) Definition

For purposes of the application described in subparagraph (A), the term ''any charge filed by a member of the Commission alleging an unlawful employment practice'' means a complaint filed under this section.

(c) Judicial review

Any party aggrieved by a final order under subsection (b) of this section may obtain a review of such order under chapter 158 of title 28. For the purpose of this review, the Equal Employment Opportunity Commission shall be an ''agency'' as that term is used in chapter 158 of title 28.

(d) Standard of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitutional and statutory provisions. The court shall set aside a final order under subsection (b) of this section if it is determined that the order was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(e) Attorney's fees

If the individual referred to in subsection (a) of this section is the prevailing party in a proceeding under this subsection,[1] attorney's fees may be allowed by the court in accordance with the standards prescribed under section 2000e–5(k) of this title.

(Pub. L. 102–166, title III, § 304, formerly § 321, Nov. 21, 1991, 105 Stat. 1097; renumbered § 304 and amended Pub. L. 104–1, title V, § 504(a)(3), (4), Jan. 23, 1995, 109 Stat. 41.)

CODIFICATION

Section was formerly classified to section 1220 of Title 2, The Congress.

[1] So in original.

PRIOR PROVISIONS

A prior section 304 of Pub. L. 102–166 was classified to section 1204 of Title 2, The Congress, prior to repeal by Pub. L. 104–1.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–1, § 504(a)(4), struck out ''and 1207(h) of title 2'' before ''shall apply'' in introductory provisions.

EFFECTIVE DATE

Section effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as an Effective Date of 1991 Amendment note under section 1981 of this title.

§ 2000e–17. Procedure for denial, withholding, termination, or suspension of Government contract subsequent to acceptance by Government of affirmative action plan of employer; time of acceptance of plan

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of title 5, and the following pertinent sections: *Provided*, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: *Provided further*, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

(Pub. L. 88–352, title VII, § 718, as added Pub. L. 92–261, § 13, Mar. 24, 1972, 86 Stat. 113.)

SUBCHAPTER VII—REGISTRATION AND VOTING STATISTICS

§ 2000f. Survey for compilation of registration and voting statistics; geographical areas; scope; application of census provisions; voluntary disclosure; advising of right not to furnish information

The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. Such a survey and compilation shall, to the extent recommended by the Commission on Civil Rights, only include a count of persons of voting age by race, color, and national origin, and determination of the extent to which such persons are registered to vote, and have voted in any statewide primary or general election in which the Members of the United States House of Representatives are nominated or elected, since January 1, 1960. Such information shall also be collected and compiled in connection with the Nineteenth Decennial Census, and at such other times as the Congress may prescribe. The provisions of section 9 and chapter 7 of title 13 shall apply to any survey, collection, or compilation of registration and voting statistics carried out under this subchapter: *Provided, however*, That no person shall be compelled to disclose his race, color, national origin, or questioned about his political party affiliation, how he voted, or the reasons therefore, nor shall any penalty be imposed for his failure or refusal to make such disclosure. Every person interrogated orally, by written survey or questionnaire or by any other means with respect to such information shall be fully advised with respect to his right to fail or refuse to furnish such information.

(Pub. L. 88–352, title VIII, § 801, July 2, 1964, 78 Stat. 266.)

SUBCHAPTER VIII—COMMUNITY RELATIONS SERVICE

§ 2000g. Establishment of Service; Director of Service: appointment, term; personnel

There is hereby established in and as a part of the Department of Commerce a Community Relations Service (hereinafter referred to as the ''Service''), which shall be headed by a Director who shall be appointed by the President with the advice and consent of the Senate for a term of four years. The Director is authorized to appoint, subject to the civil service laws and regulations, such other personnel as may be necessary to enable the Service to carry out its functions and duties, and to fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(Pub. L. 88–352, title X, § 1001(a), July 2, 1964, 78 Stat. 267; Pub. L. 95–624, § 5, Nov. 9, 1978, 92 Stat. 3462.)

REFERENCES IN TEXT

The civil service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

References to ''chapter 51 and subchapter III of chapter 53 of title 5'' and ''section 3109 of title 5'' substituted in text for ''the Classification Act of 1949, as amended'' and ''section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55a)'', respectively, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1978—Pub. L. 95–624 struck out provision authorizing the Director to procure the services of experts and consultants at rates for individuals not in excess of $75 per diem.

REORGANIZATION PLAN NO. 1 OF 1966

Eff. Apr. 22, 1966, 31 F.R. 6187, 80 Stat. 1607

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 10, 1966, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

COMMUNITY RELATIONS SERVICE

SECTION 1. TRANSFER OF SERVICE

Subject to the provisions of this reorganization plan, the Community Relations Service now existing in the

Department of Commerce under the Civil Rights Act of 1964 (Pub. L. No. 88–352, July 2, 1964) [see Short Title note under 42 U.S.C. 2000a], including the office of Director there of, is hereby transferred to the Department of Justice.

SEC. 2. TRANSFER OF FUNCTIONS

All functions of the Community Relations Service, and all functions of the Director of the Community Relations Service, together with all functions of the Secretary of Commerce and the Department of Commerce with respect thereto, are hereby transferred to the Attorney General.

SEC. 3. INCIDENTAL TRANSFERS

(a) Section 1 hereof shall be deemed to transfer to the Department of Justice the personnel, property, and records of the Community Relations Service and the unexpended balances of appropriations, allocations, and other funds available or to be made available to the Service.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 1 of 1966, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization of community relations functions in the area of civil rights.

After a careful review of the activities of the Federal agencies involved in the field of civil rights, it became clear that the elimination of duplication and undesirable overlap required the consolidation of certain functions.

As a first step, I issued Executive Orders 11246 and 11247 on September 24, 1965.

Executive Order 11246 simplified and clarified executive branch assignments of responsibility for enforcing civil rights policies and placed responsibility for the Government-wide coordination of the enforcement activities of executive agencies in the Secretary of Labor with respect to employment by Federal contractors and in the Civil Service Commission with respect to employment by Federal agencies.

Executive Order 11247 directed the Attorney General to assist Federal agencies in coordinating their enforcement activities with respect to title VI of the Civil Rights Act of 1964, which prohibits discrimination in federally assisted programs.

As a further step for strengthening the operation and coordination of our civil rights programs, I now recommend transfer of the functions of the Community Relations Service, established in the Department of Commerce under title X of the Civil Rights Act of 1964, to the Attorney General and transfer of the Service, including the Office of Director, to the Department of Justice.

The Community Relations Service was located in the Department of Commerce by the Congress on the assumption that a primary need would be the conciliation of disputes arising out of the public accommodations title of the act. That decision was appropriate on the basis of information available at that time. The need for conciliation in this area has not been as great as anticipated because of the voluntary progress that has been made by businessmen and business organizations.

To be effective, assistance to communities in the identification and conciliation of disputes should be closely and tightly coordinated. Thus, in any particular situation that arises within a community, representatives of Federal agencies whose programs are involved should coordinate their efforts through a single agency. In recent years, the Civil Rights Division of the Justice Department has played such a coordinating role in many situations, and has done so with great effectiveness.

Placing the Community Relations Service within the Justice Department will enhance the ability of the Justice Department to mediate and conciliate and will insure that the Federal Government speaks with a unified voice in those tense situations where the good offices of the Federal Government are called upon to assist.

In this, as in other areas of Federal operations, we will move more surely and rapidly toward our objectives if we improve Federal organization and the arrangements for interagency coordination. The accompanying reorganization plan has that purpose.

The present distribution of Federal civil rights responsibilities clearly indicates that the activities of the Community Relations Service will fit most appropriately in the Department of Justice.

The Department of Justice has primary program responsibilities in civil rights matters and deep and broad experience in the conciliation of civil rights disputes. Congress has assigned it a major role in the implementation of the Civil Rights Act of 1957, 1960, and 1964, and the Voting Rights Act of 1965. The Department of Justice performs related functions under other acts of Congress. Most of these responsibilities require not only litigation, but also efforts at persuasion, negotiation, and explanation, especially with local governments and law enforcement authorities. In addition, under the Law Enforcement Assistance Act the Department will be supporting local programs in the area of police-community relations.

The test of the effectiveness of an enforcement agency is not how many legal actions are initiated and won, but whether there is compliance with the law. Thus, every such agency necessarily engages in extensive efforts to obtain compliance with the law and the avoidance of disputes. In fact, title VI of the Civil Rights Act of 1964 requires each agency concerned to attempt to obtain compliance by voluntary means before taking further action.

Among the heads of Cabinet departments the President looks principally to the Attorney General for advice and judgment on civil rights issues. The latter is expected to be familiar with civil rights problems in all parts of the Nation and to make recommendations for executive and legislative action.

The Attorney General already has responsibility with respect to a major portion of Federal conciliation efforts in the civil rights field. Under Executive Order 11247, he coordinates the Government-wide enforcement of title VI of the Civil Rights Act of 1964, which relies heavily on the achievement of compliance through persuasion and negotiation.

In the light of these facts, the accompanying reorganization plan would transfer the functions of the Community Relations Service and of its Director to the Attorney General. In so providing, the plan, of course, follows the established pattern of Federal organization by vesting all the transferred powers in the head of the department. The Attorney General will provide for the organization of the Community Relations Service as a separate unit within the Department of Justice.

The functions transferred by the reorganization plan would be carried out with full regard for the provisions of section 1003 of title X of the Civil Rights Act of 1964 relating to (1) cooperation with appropriate State or local, public, or private agencies; (2) the confidentiality of information acquired with the understanding that it would be so held; and (3) the limitation on the performance of investigative or prosecutive functions by personnel of the Service.

This transfer will benefit both the Department of Justice and the Community Relations Service in the fulfillment of their existing functions.

The Attorney General will benefit in his role as the President's adviser by obtaining an opportunity to anticipate and meet problems before the need for legal action arises.

The Community Relations Service, brought into closer relationship with the Attorney General and the Civil Rights Division of the Department of Justice, will gain by becoming a primary resource in a coordinated effort in civil rights under the leadership of the Attorney General. The Community Relations Service will have direct access to the extensive information, experience, staff, and facilities within the Department and in other Federal agencies.

Finally, the responsibility for coordinating major Government activities under the Civil Rights Act aimed at voluntary and peaceful resolution of discriminatory practices will be centered in one department. Thus, the reorganization will permit the most efficient and effective utilization of resources in this field. Together the Service and the Department will have a larger capacity for accomplishment than they do apart.

Although the reorganizations provided for in the reorganization plan will not of themselves result in immediate savings, the improvement achieved in administration will permit a fuller and more effective utilization of manpower and will in the future allow the performance of the affected functions at lower costs than would otherwise be possible.

After investigation I have found and hereby declare that each organization included in Reorganization Plan No. 1 of 1966 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I recommend that the Congress allow the reorganization plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, February 10, 1966.

§ 2000g–1. Functions of Service

It shall be the function of the Service to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce. The Service may offer its services in cases of such disputes, disagreements, or difficulties whenever, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby, and it may offer its services either upon its own motion or upon the request of an appropriate State or local official or other interested person.

(Pub. L. 88–352, title X, § 1002, July 2, 1964, 78 Stat. 267.)

§ 2000g–2. Cooperation with other agencies; conciliation assistance in confidence and without publicity; information as confidential; restriction on performance of investigative or prosecuting functions; violations and penalties

(a) The Service shall, whenever possible, in performing its functions, seek and utilize the cooperation of appropriate State or local, public, or private agencies.

(b) The activities of all officers and employees of the Service in providing conciliation assistance shall be conducted in confidence and without publicity, and the Service shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held. No officer or employee of the Service shall engage in the performance of investigative or prosecuting functions of any department or agency in any litigation arising out of a dispute in which he acted on behalf of the Service. Any officer or other employee of the Service, who shall make public in any manner whatever any information in violation of this subsection, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned not more than one year.

(Pub. L. 88–352, title X, § 1003, July 2, 1964, 78 Stat. 267.)

§ 2000g–3. Reports to Congress

Subject to the provisions of sections 2000a–4 and 2000g–2(b) of this title, the Director shall, on or before January 31 of each year, submit to the Congress a report of the activities of the Service during the preceding fiscal year.

(Pub. L. 88–352, title X, § 1004, July 2, 1964, 78 Stat. 267.)

SUBCHAPTER IX—MISCELLANEOUS PROVISIONS

§ 2000h. Criminal contempt proceedings: trial by jury, criminal practice, penalties, exceptions, intent; civil contempt proceedings

In any proceeding for criminal contempt arising under title II, III, IV, V, VI, or VII of this Act, the accused, upon demand therefor, shall be entitled to a trial by jury, which shall conform as near as may be to the practice in criminal cases. Upon conviction, the accused shall not be fined more than $1,000 or imprisoned for more than six months.

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to writs, orders, or process of the court. No person shall be convicted of criminal contempt hereunder unless the act or omission constituting such contempt shall have been intentional, as required in other cases of criminal contempt.

Nor shall anything herein be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

(Pub. L. 88–352, title XI, § 1101, July 2, 1964, 78 Stat. 268.)

REFERENCES IN TEXT

Title II, III, IV, V, VI, or VII of this Act, referred to in text, mean title II, III, IV, V, VI, or VII of Pub. L. 88–352, July 2, 1964, 78 Stat. 243, as amended. Titles II, III, and IV are classified generally to subchapters II (§ 2000a et seq.), III (§ 2000b et seq.), and IV (§ 2000c et seq.) of this chapter. Title V amended sections 1975a to 1975d of this title. Title VI enacted sections 2000d to 2000d–4 of this title. Title VII enacted sections 2000e to 2000e–15 of this title, amended sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees, and enacted provisions

set out as a note under section 2000e of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 2000h–1. Double jeopardy; specific crimes and criminal contempts

No person should be put twice in jeopardy under the laws of the United States for the same act or omission. For this reason, an acquittal or conviction in a prosecution for a specific crime under the laws of the United States shall bar a proceeding for criminal contempt, which is based upon the same act or omission and which arises under the provisions of this Act; and an acquittal or conviction in a proceeding for criminal contempt, which arises under the provisions of this Act, shall bar a prosecution for a specific crime under the laws of the United States based upon the same act or omission.

(Pub. L. 88–352, title XI, § 1102, July 2, 1964, 78 Stat. 268.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 2000h–2. Intervention by Attorney General; denial of equal protection on account of race, color, religion, sex or national origin

Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

(Pub. L. 88–352, title IX, § 902, July 2, 1964, 78 Stat. 266; Pub. L. 92–318, title IX, § 906(a), June 23, 1972, 86 Stat. 375.)

AMENDMENTS

1972—Pub. L. 92–318 inserted ''sex'' after ''religion,''.

§ 2000h–3. Construction of provisions not to affect authority of Attorney General, etc., to institute or intervene in actions or proceedings

Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

(Pub. L. 88–352, title XI, § 1103, July 2, 1964, 78 Stat. 268.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 2000h–4. Construction of provisions not to exclude operation of State laws and not to invalidate consistent State laws

Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.

(Pub. L. 88–352, title XI, § 1104, July 2, 1964, 78 Stat. 268.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 2000h–5. Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

(Pub. L. 88–352, title XI, § 1105, July 2, 1964, 78 Stat. 268.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 2000h–6. Separability

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Pub. L. 88–352, title XI, § 1106, July 2, 1964, 78 Stat. 268.)

REFERENCES IN TEXT

This Act and the Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§ 2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CHAPTER 21A—PRIVACY PROTECTION

SUBCHAPTER I—FIRST AMENDMENT PRIVACY PROTECTION

PART A—UNLAWFUL ACTS

SUBCHAPTER I—FIRST AMENDMENT PRIVACY PROTECTION

PART A—UNLAWFUL ACTS

§ 2000aa. Searches and seizures by government officers and employees in connection with investigation or prosecution of criminal offenses

(a) Work product materials

Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate: *Provided, however*, That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of section 793, 794, 797, or 798 of title 18, or section 2274, 2275, or 2277 of this title, or section 783 of title 50, or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18); or

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being.

(b) Other documents

Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize documentary materials, other than work product materials, possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate: *Provided, however*, That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of section 793, 794, 797, or 798 of title 18, or section 2274, 2275, or 2277 of this title, or section 783 of title 50, or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18);

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being;

(3) there is reason to believe that the giving of notice pursuant to a subpena duces tecum would result in the destruction, alteration, or concealment of such materials; or

(4) such materials have not been produced in response to a court order directing compliance with a subpena duces tecum, and—

(A) all appellate remedies have been exhausted; or

(B) there is reason to believe that the delay in an investigation or trial occasioned by further proceedings relating to the subpena would threaten the interests of justice.

(c) Objections to court ordered subpoenas; affidavits

In the event a search warrant is sought pursuant to paragraph (4)(B) of subsection (b) of this section, the person possessing the materials shall be afforded adequate opportunity to submit an affidavit setting forth the basis for any contention that the materials sought are not subject to seizure.

(Pub. L. 96–440, title I, § 101, Oct. 13, 1980, 94 Stat. 1879; Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 121[6]], Sept. 30, 1996, 110 Stat. 3009, 3009–26, 3009–30.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–208, § 101(a) [title I, § 121[6(1)]], inserted '', or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18'' before parenthesis at end.

Subsec. (b)(1). Pub. L. 104–208, § 101(a) [title I, § 121[6(2)]], inserted '', or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18'' before parenthesis at end.

EFFECTIVE DATE

Section 108 of title I of Pub. L. 96–440 provided that: ''The provisions of this title [enacting this subchapter] shall become effective on January 1, 1981, except that insofar as such provisions are applicable to a State or any governmental unit other than the United States, the provisions of this title shall become effective one year from the date of enactment of this Act [Oct. 13, 1980].''

SHORT TITLE

Section 1 of Pub. L. 96–440 provided: ''That this Act [enacting this chapter and provisions set out as notes under this section] may be cited as the 'Privacy Protection Act of 1980'.''

PART B—REMEDIES, EXCEPTIONS, AND DEFINITIONS

§ 2000aa–5. Border and customs searches

This chapter shall not impair or affect the ability of a government officer or employee, pursuant to otherwise applicable law, to conduct searches and seizures at the borders of, or at international points of, entry into the United States in order to enforce the customs laws of the United States.

(Pub. L. 96–440, title I, § 105, Oct. 13, 1980, 94 Stat. 1880.)

§ 2000aa–6. Civil actions by aggrieved persons

(a) Right of action

A person aggrieved by a search for or seizure of materials in violation of this chapter shall have a civil cause of action for damages for such search or seizure—

(1) against the United States, against a State which has waived its sovereign immunity under the Constitution to a claim for damages resulting from a violation of this chapter, or against any other governmental unit, all of which shall be liable for violations of this chapter by their officers or employees while acting within the scope or under color of their office or employment; and

(2) against an officer or employee of a State who has violated this chapter while acting within the scope or under color of his office or employment, if such State has not waived its sovereign immunity as provided in paragraph (1).

(b) Good faith defense

It shall be a complete defense to a civil action brought under paragraph (2) of subsection (a) of this section that the officer or employee had a reasonable good faith belief in the lawfulness of his conduct.

(c) Official immunity

The United States, a State, or any other governmental unit liable for violations of this chapter under subsection (a)(1) of this section, may not assert as a defense to a claim arising under this chapter the immunity of the officer or employee whose violation is complained of or his reasonable good faith belief in the lawfulness of his conduct, except that such a defense may be asserted if the violation complained of is that of a judicial officer.

(d) Exclusive nature of remedy

The remedy provided by subsection (a)(1) of this section against the United States, a State, or any other governmental unit is exclusive of any other civil action or proceeding for conduct constituting a violation of this chapter, against the officer or employee whose violation gave rise to the claim, or against the estate of such officer or employee.

(e) Admissibility of evidence

Evidence otherwise admissible in a proceeding shall not be excluded on the basis of a violation of this chapter.

(f) Damages; costs and attorneys' fees

A person having a cause of action under this section shall be entitled to recover actual damages but not less than liquidated damages of $1,000, and such reasonable attorneys' fees and other litigation costs reasonably incurred as the court, in its discretion, may award: *Provided, however*, That the United States, a State, or any other governmental unit shall not be liable for interest prior to judgment.

(g) Attorney General; claims settlement; regulations

The Attorney General may settle a claim for damages brought against the United States under this section, and shall promulgate regulations to provide for the commencement of an administrative inquiry following a determination of a violation of this chapter by an officer or employee of the United States and for the imposition of administrative sanctions against such officer or employee, if warranted.

(h) Jurisdiction

The district courts shall have original jurisdiction of all civil actions arising under this section.

(Pub. L. 96–440, title I, § 106, Oct. 13, 1980, 94 Stat. 1880.)

§ 2000aa–7. Definitions

(a) ''Documentary materials'', as used in this chapter, means materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, motion picture films, negatives, video tapes, audio tapes, and other mechanically, magentically[1] or electronically recorded cards, tapes, or discs, but does not include contraband or the fruits of a crime or things otherwise criminally possessed, or property designed or intended for use, or which is or has been used as, the means of committing a criminal offense.

(b) ''Work product materials'', as used in this chapter, means materials, other than contraband or the fruits of a crime or things otherwise criminally possessed, or property designed or intended for use, or which is or has been used, as the means of committing a criminal offense, and—

(1) in anticipation of communicating such materials to the public, are prepared, produced, authored, or created, whether by the person in possession of the materials or by any other person;

(2) are possessed for the purposes of communicating such materials to the public; and

(3) include mental impressions, conclusions, opinions, or theories of the person who prepared, produced, authored, or created such material.

(c) ''Any other governmental unit'', as used in this chapter, includes the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any local government, unit of local government, or any unit of State government.

(Pub. L. 96–440, title I, § 107, Oct. 13, 1980, 94 Stat. 1881.)

SUBCHAPTER II—ATTORNEY GENERAL GUIDELINES

§ 2000aa–11. Guidelines for Federal officers and employees

(a) Procedures to obtain documentary evidence; protection of certain privacy interests

The Attorney General shall, within six months of October 13, 1980, issue guidelines for the procedures to be employed by any Federal officer or employee, in connection with the investigation or prosecution of an offense, to obtain documentary materials in the private possession of a person when the person is not reasonably believed to be a suspect in such offense or related by blood or marriage to such a suspect, and when the materials sought are not contraband or the fruits or instrumentalities of an offense. The Attorney General shall incorporate in such guidelines—

(1) a recognition of the personal privacy interests of the person in possession of such documentary materials;

(2) a requirement that the least intrusive method or means of obtaining such materials be used which do not substantially jeopardize the availability or usefulness of the materials sought to be obtained;

(3) a recognition of special concern for privacy interests in cases in which a search or seizure for such documents would intrude upon a known confidential relationship such as that which may exist between clergyman and parishioner; lawyer and client; or doctor and patient; and

(4) a requirement that an application for a warrant to conduct a search governed by this subchapter be approved by an attorney for the government, except that in an emergency situation the application may be approved by another appropriate supervisory official if within 24 hours of such emergency the appropriate United States Attorney is notified.

(b) Use of search warrants; reports to Congress

The Attorney General shall collect and compile information on, and report annually to the Committees on the Judiciary of the Senate and the House of Representatives on the use of search warrants by Federal officers and employees for documentary materials described in subsection (a)(3) of this section.

(Pub. L. 96–440, title II, § 201, Oct. 13, 1980, 94 Stat. 1882.)

§ 2000aa–12. Binding nature of guidelines; disciplinary actions for violations; legal proceedings for non-compliance prohibited

Guidelines issued by the Attorney General under this subchapter shall have the full force and effect of Department of Justice regulations and any violation of these guidelines shall make the employee or officer involved subject to appropriate administrative disciplinary action. However, an issue relating to the compliance, or the failure to comply, with guidelines issued pursuant to this subchapter may not be litigated, and a court may not entertain such an issue as the basis for the suppression or exclusion of evidence.

(Pub. L. 96–440, title II, § 202, Oct. 13, 1980, 94 Stat. 1883.)

CHAPTER 21B—RELIGIOUS FREEDOM RESTORATION

§ 2000bb. Congressional findings and declaration of purposes

(a) Findings

The Congress finds that—

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

[1] So in original. Probably should be ''magnetically''.

(2) laws ''neutral'' toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without compelling justification;

(4) in Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) Purposes

The purposes of this chapter are—

(1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

(Pub. L. 103–141, §2, Nov. 16, 1993, 107 Stat. 1488.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 103–141, Nov. 16, 1993, 107 Stat. 1488, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 1 of Pub. L. 103–141 provided that: ''This Act [enacting this chapter and amending section 1988 of this title and section 504 of Title 5, Government Organization and Employees] may be cited as the 'Religious Freedom Restoration Act of 1993'.''

§ 2000bb–1. Free exercise of religion protected

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(Pub. L. 103–141, §3, Nov. 16, 1993, 107 Stat. 1488.)

§ 2000bb–2. Definitions

As used in this chapter—

(1) the term ''government'' includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, or of a covered entity;

(2) the term ''covered entity'' means the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term ''demonstrates'' means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term ''exercise of religion'' means religious exercise, as defined in section 2000cc–5 of this title.

(Pub. L. 103–141, §5, Nov. 16, 1993, 107 Stat. 1489; Pub. L. 106–274, §7(a), Sept. 22, 2000, 114 Stat. 806.)

AMENDMENTS

2000—Par. (1). Pub. L. 106–274, §7(a)(1), substituted ''or of a covered entity'' for ''a State, or a subdivision of a State''.

Par. (2). Pub. L. 106–274, §7(a)(2), substituted ''term 'covered entity' means'' for ''term 'State' includes''.

Par. (4). Pub. L. 106–274, §7(a)(3), substituted ''religious exercise, as defined in section 2000cc–5 of this title'' for ''the exercise of religion under the First Amendment to the Constitution''.

§ 2000bb–3. Applicability

(a) In general

This chapter applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.

(b) Rule of construction

Federal statutory law adopted after November 16, 1993, is subject to this chapter unless such law explicitly excludes such application by reference to this chapter.

(c) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

(Pub. L. 103–141, §6, Nov. 16, 1993, 107 Stat. 1489; Pub. L. 106–274, §7(b), Sept. 22, 2000, 114 Stat. 806.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–274 struck out ''and State'' after ''Federal''.

§ 2000bb–4. Establishment clause unaffected

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the ''Establishment Clause''). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. As used in this section, the term ''granting'', used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

(Pub. L. 103–141, §7, Nov. 16, 1993, 107 Stat. 1489.)

CHAPTER 21C—PROTECTION OF RELIGIOUS EXERCISE IN LAND USE AND BY INSTITUTIONALIZED PERSONS

Sec.

§ 2000cc. Protection of land use as religious exercise

(a) Substantial burdens

(1) General rule

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application

This subsection applies in any case in which—

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion

(1) Equal terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits

No government shall impose or implement a land use regulation that—

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

(Pub. L. 106–274, § 2, Sept. 22, 2000, 114 Stat. 803.)

SHORT TITLE

Pub. L. 106–274, § 1, Sept. 22, 2000, 114 Stat. 803, provided that: ''This Act [enacting this chapter and amending sections 1988, 2000bb–2 and 2000bb–3 of this title] may be cited as the 'Religious Land Use and Institutionalized Persons Act of 2000' ''.

§ 2000cc–1. Protection of religious exercise of institutionalized persons

(a) General rule

No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 1997 of this title, even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) Scope of application

This section applies in any case in which—

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

(Pub. L. 106–274, § 3, Sept. 22, 2000, 114 Stat. 804.)

§ 2000cc–2. Judicial relief

(a) Cause of action

A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense

under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) Burden of persuasion

If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2000cc of this title, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) Full faith and credit

Adjudication of a claim of a violation of section 2000cc of this title in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) Omitted

(e) Prisoners

Nothing in this chapter shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) Authority of United States to enforce this chapter

The United States may bring an action for injunctive or declaratory relief to enforce compliance with this chapter. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

(g) Limitation

If the only jurisdictional basis for applying a provision of this chapter is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

(Pub. L. 106–274, § 4, Sept. 22, 2000, 114 Stat. 804.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 106–274, Sept. 22, 2000, 114 Stat. 803, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000cc of this title and Tables.

The Prison Litigation Reform Act of 1995, referred to in subsec. (e), is Pub. L. 104–134, title I, § 101(a) [title VIII], Apr. 26, 1996, 110 Stat. 1321, 1321–66, as amended. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 3601 of Title 18, Crimes and Criminal Procedure, and Tables.

CODIFICATION

Section is comprised of section 4 of Pub. L. 106–274. Subsec. (d) of section 4 of Pub. L. 106–274 amended section 1988(b) of this title.

§ 2000cc–3. Rules of construction

(a) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

(b) Religious exercise not regulated

Nothing in this chapter shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) Claims to funding unaffected

Nothing in this chapter shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government funding for a religious activity, but this chapter may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) Other authority to impose conditions on funding unaffected

Nothing in this chapter shall—

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this chapter.

(e) Governmental discretion in alleviating burdens on religious exercise

A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) Effect on other law

With respect to a claim brought under this chapter, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this chapter.

(g) Broad construction

This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.

(h) No preemption or repeal

Nothing in this chapter shall be construed to preempt State law, or repeal Federal law, that is

equally as protective of religious exercise as, or more protective of religious exercise than, this chapter.

(i) Severability

If any provision of this chapter or of an amendment made by this chapter, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, the amendments made by this chapter, and the application of the provision to any other person or circumstance shall not be affected.

(Pub. L. 106–274, § 5, Sept. 22, 2000, 114 Stat. 805.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 106–274, Sept. 22, 2000, 114 Stat. 803, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000cc of this title and Tables.

§ 2000cc–4. Establishment Clause unaffected

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the ''Establishment Clause''). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. In this section, the term ''granting'', used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

(Pub. L. 106–274, § 6, Sept. 22, 2000, 114 Stat. 806.)

§ 2000cc–5. Definitions

In this chapter:

(1) Claimant

The term ''claimant'' means a person raising a claim or defense under this chapter.

(2) Demonstrates

The term ''demonstrates'' means meets the burdens of going forward with the evidence and of persuasion.

(3) Free Exercise Clause

The term ''Free Exercise Clause'' means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) Government

The term ''government''—

(A) means—

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 2000cc–2(b) and 2000cc–3 of this title, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) Land use regulation

The term ''land use regulation'' means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) Program or activity

The term ''program or activity'' means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d–4a of this title.

(7) Religious exercise

(A) In general

The term ''religious exercise'' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) Rule

The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

(Pub. L. 106–274, § 8, Sept. 22, 2000, 114 Stat. 806.)

CHAPTER 21D—DETAINEE TREATMENT

§ 2000dd. Prohibition on cruel, inhuman, or degrading treatment or punishment of persons under custody or control of the United States Government

(a) In general

No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(b) Construction

Nothing in this section shall be construed to impose any geographical limitation on the applicability of the prohibition against cruel, inhuman, or degrading treatment or punishment under this section.

(c) Limitation on supersedure

The provisions of this section shall not be superseded, except by a provision of law enacted after December 30, 2005, which specifically repeals, modifies, or supersedes the provisions of this section.

(d) Cruel, inhuman, or degrading treatment or punishment defined

In this section, the term ''cruel, inhuman, or degrading treatment or punishment'' means the

cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(Pub. L. 109–148, div. A, title X, §1003, Dec. 30, 2005, 119 Stat. 2739; Pub. L. 109–163, div. A, title XIV, §1403, Jan. 6, 2006, 119 Stat. 3475.)

REFERENCES IN TEXT

The date ''December 30, 2005'', referred to in subsec. (c), was in the original ''the date of the enactment of this Act'' and was translated as the date of enactment of Pub. L. 109–148.

CODIFICATION

Pub. L. 109–148 and Pub. L. 109–163 enacted identical sections.

SHORT TITLE

Pub. L. 109–148, div. A, title X, §1001, Dec. 30, 2005, 119 Stat. 2739, and Pub. L. 109–163, div. A, title XIV, §1401, Jan. 6, 2006, 119 Stat. 3474, provided that: ''This title [enacting this chapter, amending section 2241 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under section 801 of Title 10, Armed Forces] may be cited as the 'Detainee Treatment Act of 2005'.''

§ 2000dd–1. Protection of United States Government personnel engaged in authorized interrogations

(a) Protection of United States Government personnel

In any civil action or criminal prosecution against an officer, employee, member of the Armed Forces, or other agent of the United States Government who is a United States person, arising out of the officer, employee, member of the Armed Forces, or other agent's engaging in specific operational practices, that involve detention and interrogation of aliens who the President or his designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted, it shall be a defense that such officer, employee, member of the Armed Forces, or other agent did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful. Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful. Nothing in this section shall be construed to limit or extinguish any defense or protection otherwise available to any person or entity from suit, civil or criminal liability, or damages, or to provide immunity from prosecution for any criminal offense by the proper authorities.

(b) Counsel

The United States Government may provide or employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation of an officer, employee, member of the Armed Forces, or other agent described in subsection (a), with respect to any civil action or criminal prosecution arising out of practices described in that subsection, under the same conditions, and to the same extent, to which such services and payments are authorized under section 1037 of title 10.

(Pub. L. 109–148, div. A, title X, §1004, Dec. 30, 2005, 119 Stat. 2740; Pub. L. 109–163, div. A, title XIV, §1404, Jan. 6, 2006, 119 Stat. 3475.)

CODIFICATION

Pub. L. 109–148 and Pub. L. 109–163 enacted identical sections.

CHAPTER 22—INDIAN HOSPITALS AND HEALTH FACILITIES

SUBCHAPTER I—MAINTENANCE AND OPERATION

SUBCHAPTER II—CONSTRUCTION OF HEALTH FACILITIES AND COMMUNITY HOSPITALS

SUBCHAPTER I—MAINTENANCE AND OPERATION

§ 2001. Hospitals and health facilities transferred to Public Health Service; restriction on closing hospitals

(a) All functions, responsibilities, authorities, and duties of the Department of the Interior, the Bureau of Indian Affairs, Secretary of the Interior, and the Commissioner of Indian Affairs relating to the maintenance and operation of hospital and health facilities for Indians, and the conservation of the health of Indians, are transferred to, and shall be administered by, the Surgeon General of the United States Public Health Service, under the supervision and direction of the Secretary of Health and Human Services: *Provided*, That hospitals now in operation for a specific tribe or tribes of Indians shall not be closed prior to July 1, 1956, without the consent of the governing body of the tribe or its organized council.

(b) In carrying out his functions, responsibilities, authorities, and duties under this subchapter, the Secretary is authorized, with the consent of the Indian people served, to contract with private or other non-Federal health agencies or organizations for the provision of health services to such people on a fee-for-service basis or on a prepayment or other similar basis.

(Aug. 5, 1954, ch. 658, § 1, 68 Stat. 674; Pub. L. 93–222, § 6(a), Dec. 29, 1973, 87 Stat. 935; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1973—Pub. L. 93–222 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section 6 of act Aug. 5, 1954, as amended by Pub. L. 86–121, § 2, July 31, 1959, 73 Stat. 268, provided that: ''Sections 1 to 5, inclusive, of this Act [enacting this subchapter and repealing sections 444 to 449 of Title 25, Indians] shall take effect July 1, 1959.''

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2002. Transfer of hospitals and facilities to State or private institutions; conditions and restrictions; failure to meet requirements

Whenever the health needs of the Indians can be better met thereby, the Secretary of Health and Human Services is authorized in his discretion to enter into contracts with any State, Territory, or political subdivision thereof, or any private nonprofit corporation, agency or institution providing for the transfer by the United States Public Health Service of Indian hospitals or health facilities, including initial operating equipment and supplies.

It shall be a condition of such transfer that all facilities transferred shall be available to meet the health needs of the Indians and that such health needs shall be given priority over those of the non-Indian population. No hospital or health facility that has been constructed or maintained for a specific tribe of Indians, or for a specific group of tribes, shall be transferred by the Secretary of Health and Human Services to a non-Indian entity or organization under this subchapter unless such action has been approved by the governing body of the tribe, or by the governing bodies of a majority of the tribes, for which such hospital or health facility has been constructed or maintained: *Provided*, That if, following such transfer by the United States Public Health Service, the Secretary of Health and Human Services finds the hospital or health facility transferred under this section is not thereafter serving the need of the Indians, the Secretary of Health and Human Services shall notify those charged with management thereof, setting forth needed improvements, and in the event such improvements are not made within a time to be specified, shall immediately assume management and operation of such hospital or health facility.

(Aug. 5, 1954, ch. 658, § 2, 68 Stat. 674; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2003. Regulations

The Secretary of Health and Human Services is also authorized to make such other regulations as he deems desirable to carry out the provisions of this subchapter.

(Aug. 5, 1954, ch. 658, § 3, 68 Stat. 674; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2004. Transfer of personnel, property, records, monies

The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available), which the Director of the Office of Management and Budget shall determine to relate primarily to the functions transferred to the Public Health Service of the Department of Health and Human Services hereunder, are transferred for use in the administration of the functions so transferred. Any of the personnel transferred pursuant to this subchapter which the transferee agency shall find to be in excess of the personnel necessary for the administration of the functions transferred to such agency shall be retransferred under existing law to other positions in the Government or separated from the service.

(Aug. 5, 1954, ch. 658, § 4, 68 Stat. 674; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970, redesignated Bureau of the Budget as Office of Management and Budget.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg.

Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2004a. Sanitation facilities

(a) Powers of Surgeon General

In carrying out his functions under this subchapter with respect to the provision of sanitation facilities and services, the Surgeon General is authorized—

(1) to construct, improve, extend, or otherwise provide and maintain, by contract or otherwise, essential sanitation facilities, including domestic and community water supplies and facilities, drainage facilities, and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures, for Indian homes, communities, and lands;

(2) to acquire lands, or rights or interests therein, including sites, rights-of-way, and easements, and to acquire rights to the use of water, by purchase, lease, gift, exchange, or otherwise, when necessary for the purposes of this section, except that no lands or rights or interests therein may be acquired from an Indian tribe, band, group, community, or individual other than by gift or for nominal consideration, if the facility for which such lands or rights or interests therein are acquired is for the exclusive benefit of such tribe, band, group, community, or individual, respectively;

(3) to make such arrangements and agreements with appropriate public authorities and nonprofit organizations or agencies and with the Indians to be served by such sanitation facilities (and any other person so served) regarding contributions toward the construction, improvement, extension and provision thereof, and responsibilities for maintenance thereof, as in his judgment are equitable and will best assure the future maintenance of facilities in an effective and operating condition; and

(4) to transfer any facilities provided under this section, together with appurtenant interests in land, with or without a money consideration, and under such terms and conditions as in his judgment are appropriate, having regard to the contributions made and the maintenance responsibilities undertaken, and the special health needs of the Indians concerned, to any State or Territory or subdivision or public authority thereof, or to any Indian tribe, group, band, or community or, in the case of domestic appurtenances and fixtures, to any one or more of the occupants of the Indian home served thereby.

(b) Transfer and reversion of lands

The Secretary of the Interior is authorized to transfer to the Surgeon General for use in carrying out the purposes of this section such interest and rights in federally owned lands under the jurisdiction of the Department of the Interior, and in Indian-owned lands that either are held by the United States in trust for Indians or are subject to a restriction against alienation imposed by the United States, including appurtenances and improvements thereto, as may be requested by the Surgeon General. Any land or interest therein, including appurtenances and improvements to such land, so transferred shall be subject to disposition by the Surgeon General in accordance with paragraph (4) of subsection (a) of this section: *Provided*, That, in any case where a beneficial interest in such land is in any Indian, or Indian tribe, band, or group, the consent of such beneficial owner to any such transfer or disposition shall first be obtained: *Provided further*, That where deemed appropriate by the Secretary of the Interior provisions shall be made for a reversion of title to such land if it ceases to be used for the purpose for which it is transferred or disposed.

(c) Project consultation and participation

The Surgeon General shall consult with, and encourage the participation of, the Indians concerned, States and political subdivisions thereof, in carrying out the provisions of this section.

(Aug. 5, 1954, ch. 658, § 7, as added Pub. L. 86–121, § 1, July 31, 1959, 73 Stat. 267.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2004b. Implementation of education, hospital and health facility, etc., contracts and grants by Public Health Service personnel; request for detail of personnel

In accordance with subsection (d) of section 215 of this title, upon the request of any Indian tribe, band, group, or community, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to sections 450f and 450h of title 25.

(Aug. 5, 1954, ch. 658, § 8, as added Pub. L. 93–638, title I, § 104(b), formerly § 105(b), Jan. 4, 1975, 88 Stat. 2208; renumbered § 104(b) and amended Pub. L. 100–472, title II, § 203(a), (c), Oct. 5, 1988, 102 Stat. 2290.)

AMENDMENTS

1988—Pub. L. 100–472, which directed amendment of this section by substituting ''sections 450f and 450h'' for ''sections 450f, 450g, and 450h'' was executed by making the substitution for ''section 450f, 450g, or 450h'', to reflect the probable intent of Congress.

SUBCHAPTER II—CONSTRUCTION OF HEALTH FACILITIES AND COMMUNITY HOSPITALS

§ 2005. Financial assistance by Surgeon General

Whenever the Surgeon General of the Public Health Service, in carrying out his functions under subchapter I of this chapter with respect to the provision of health services to Indians in

any particular area, determines, after consultation with such Indians, that the provision of financial assistance to one or more public or other nonprofit agencies or organizations for the construction of a community hospital constitutes a method of making needed hospital facilities available for such Indians which is more desirable and effective than direct Federal construction, he may provide such financial assistance from funds available for the construction of Indian health facilities for such Indians.

(Pub. L. 85–151, § 1, Aug. 16, 1957, 71 Stat. 370.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2005a. Amount of assistance; determination of costs

The amount of such financial assistance shall not exceed that portion of the reasonable cost of the construction project which is attributable to the Indian health needs, as determined by the Surgeon General: *Provided*, That in determining, for the purposes of this subchapter, the portion of the cost of the construction project attributable to Indian health needs, the Surgeon General shall take into account only those categories of Indians for which hospital and medical care, including outpatient care and field health services, is being provided by or at the expense of the Public Health Service on August 16, 1957.

(Pub. L. 85–151, § 2, Aug. 16, 1957, 71 Stat. 371.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2005b. Conditions of assistance

As a condition to providing assistance under section 2005 of this title, the Surgeon General shall—

(a) require plans and specifications meeting such standards of construction and equipment as he may prescribe, and

(b) obtain such assurances and agreements as in his judgment are equitable in the light of the financial assistance provided under this subchapter and are necessary to assure the availability of the facility for the provision of hospital and medical care to Indians and to assure that the hospital is operated in compliance with State standards for operation and maintenance of hospitals which receive Federal aid under title VI of the Public Health Service Act [42 U.S.C. 291 et seq.].

(Pub. L. 85–151, § 3, Aug. 16, 1957, 71 Stat. 371.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in par. (b), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title VI of the Act is classified generally to subchapter IV (§ 291 et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2005c. Payments

The Surgeon General shall make payments under section 2005 of this title in advance or by way of reimbursement and in such installments consistent with construction progress, as he may determine.

(Pub. L. 85–151, § 4, Aug. 16, 1957, 71 Stat. 371.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 2005d. Eligibility of assisted project for aid under other acts; excluded costs

Neither assistance provided under this subchapter for meeting part of the cost of construction of a hospital project, nor the giving of any assurance required as a condition of such assistance, shall be construed as affecting in any way the eligibility of such project for aid under title VI of the Public Health Service Act [42 U.S.C. 291 et seq.] or any other Federal Act authorizing financial aid in the construction of such project, but construction costs met with Federal funds made available under this subchapter shall not be included in the cost of construction in which the Federal Government shares under such title VI or other Federal Act.

(Pub. L. 85–151, § 5, Aug. 16, 1957, 71 Stat. 371.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title VI of the Act is classified generally to subchapter IV (§ 291 et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

§ 2005e. Definitions

As used in this subchapter:

(a) ''Hospital'' includes diagnostic or treatment centers and general hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities,

and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care;

(b) ''Diagnostic or treatment center'' means a facility for the diagnosis or diagnosis and treatment of ambulatory patients—

(1) which is operated in connection with a hospital, or

(2) in which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the State, or, in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the State.

(c) ''Nonprofit'' means owned or operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(d) ''Construction'' means construction of new buildings, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings (including medical transportation facilities), including architects and engineering fees, but excluding legal fees, the cost of off-site improvements and the cost of the acquisition of land.

(Pub. L. 85–151, § 6, Aug. 16, 1957, 71 Stat. 371.)

§ 2005f. Supervision or control of assisted hospitals

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any hospital, with respect to which any funds have been or may be expended under this subchapter.

(Pub. L. 85–151, § 7, Aug. 16, 1957, 71 Stat. 372.)